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Briefings on How To Use the Federal Register
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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

(TWO BRIEFINGS)

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Rules and Regulations

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Monday, June 14, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ANE–49; Amdt. 39–8589; AD 93–10–10]

Airworthiness Directives; Allied-Signal Aerospace Company, Garrett Engine Division, TFE731 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Allied-Signal Aerospace Company, Garrett Engine Division, TFE731 series turbofan engines. This action requires installing a clamp assembly to support the fuel line. This amendment is prompted by reports of fuel line cracks resulting in inflight engine shutdowns and fuel spillage in the engine accessory gearbox area. The actions specified in this AD are intended to prevent leaking fuel from spraying in or around electrical components, which can cause an engine fire.

DATES: Effective June 29, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 29, 1993.

Comments for inclusion in the Rules Docket must be received on or before August 13, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–49, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Allied-Signal Propulsion Engines, Aviation Services Division, Data Distribution, Dept. 64–3/2102–1M, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2548. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, CA 90806–2425; telephone (310) 988–5246; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: The FAA has received six reports of fuel lines cracking and failing, resulting in inflight engine shutdowns and fuel spillage in the engine accessory gearbox area on Allied-Signal Aerospace Company, Garrett Engine Division, TFE731 series turbofan engines. These cracks were caused by failures of the starter generator bearing, which created an unacceptably high vibration of the associated gearbox components. This condition, if not corrected, could result in leaking fuel spraying in or around electrical components, which can cause an engine fire.

The FAA has reviewed and approved the technical contents of Allied-Signal Aerospace Company, Garrett Engine Division, Service Bulletin (SB) No. TFE731–73–3107, dated June 21, 1992; SB No. TFE731–73–3107, Revision 1, dated September 23, 1992; SB No. TFE731–73–3118, dated September 3, 1992; and SB No. TFE731–73–3118, Revision 1, dated February 16, 1993, that describe procedures for insfalling a clamp assembly to support the fuel line.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent leaking fuel from spraying in or around electrical components, which can cause an engine fire. This AD requires installing a clamp assembly to support the fuel line. Installing a clamp assembly minimizes unacceptable vibration and possible cracking of the fuel line. The actions are required to be accomplished in accordance with the service bulletins described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ANE–49." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does

not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-10-10 Allied-Signal Aerospace Company, Garrett Engine Division: Amendment 39-8589. Docket 92-ANE-49.

Applicability: Allied-Signal Aerospace Company, Garrett Engine Division, Model TFE731-2, -3, and -4 series turbofan engines installed on but not limited to Dassault Falcon 10, 50, and 100 series; Learjet 35, 36, 55, and 31 (M31) series; British Aerospace BAe HS125 series; Sabreliner NA-265-65 (65, 65A); and Cessna 650 Citation III, VI, and VII series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent leaking fuel from spraying in or around electrical components, which can cause an engine fire, accomplish the following:

(a) Within 150 hours time in service after the effective date of this AD, for Allied-Signal Aerospace Company, Garrett Engine Division, TFE731-2, -3, -3AR, and -3R series engines, install a clamp assembly to support the fuel line in accordance with the Accomplishment Instructions of Allied-Signal Aerospace Company, Garrett Engine Division, Service Bulletin (SB) No. TFE731-73-3107, dated June 21, 1991, or TFE731-73-3107, Revision 1, dated September 23, 1992.

(b) Within 150 hours time in service after the effective date of this AD, for Allied-Signal Aerospace Company, Garrett Engine Division, TFE731-3B, 3BR, -3C, -3CR, and -4R series engines, install a clamp assembly to support the fuel line in accordance with the Accomplishment Instructions of Allied-Signal Aerospace Company, Garrett Engine Division, SB No. TFE731-73-3118, dated September 3, 1992, or SB No. TFE731-73-3118, Revision 1, dated February 16, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The installation of a clamp assembly shall be done in accordance with the following service bulletins:

Document No.	Pages	Rev.	Date
Allied-Signal Aerospace Company, Garrett Engine Division—SB No. TFE731-73-3107 ..... Total pages: 8.	1-8	Original	June 21, 1992.
Allied-Signal Aerospace Company, Garrett Engine Division—SB No. TFE731-73-3107 ..... Total pages: 8.	1-8	1	Sept. 23, 1992.
Allied-Signal Aerospace Company, Garrett Engine Division—SB No. TFE731-73-3118 ..... Total pages: 6.	1-6	Original	Sept. 3, 1992.
Allied-Signal Aerospace Company, Garrett Engine Division—SB No. TFE731-73-3118 ..... Total pages: 6.	1-6	1	Feb. 16, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Allied-Signal Propulsion Engines, Aviation Services Division, Data Distribution, Dept. 64-3/2102-1M, P.O. Box 29003, Phoenix, AZ 85038-9003; telephone (602) 365-2548. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 29, 1993.

Issued in Burlington, Massachusetts, on June 3, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93-13904 Filed 6-11-93; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 93-NM-40-AD; Amdt. 39-8602; AD 93-11-10]

Airworthiness Directives; Corporate Jets, Limited, Model BAe 125-1000A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Corporate Jets, Limited, Model BAe 125-1000A series airplanes. This action requires repetitive

inspections of the outer fan duct on both engines to detect fluid contamination or disbonding along the outer skin longitudinal seams, and subsequent modification of the outer fan ducts. This amendment is prompted by results of tests of engine fan duct material that was contaminated with flammable fluids; these results indicated that the duct material was not fireproof. The actions specified in this AD are intended to ensure the fireproof integrity of the engine fan duct material, which will reduce the hazards associated with an engine fire.

DATES: Effective June 29, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 29, 1993.

Comments for inclusion in the Rules Docket must be received on or before August 13, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–40–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Corporate Jets, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Corporate Jets, Limited, Model BAe 125–1000A series airplanes. The CAA advises that the seams in the outer fan duct on the right and left engines of these airplanes are unable to withstand the FAA burn-through certification requirement for fireproof material when the duct is contaminated with hydraulic fluid, fuel, or other fluids. Testing of fluid-contaminated samples revealed that the duct burn-through condition is caused by contamination of rubber tape in the fan duct joints. Engine fan duct outer skin seams contaminated by flammable fluids may also disbond; this could result in a fan duct burning through in the event of an engine fire, thus adversely affecting the ability of the engine fire extinguisher system to extinguish an engine fire. This condition, if not corrected, could result in reduced fireproof integrity of the engine fan duct, which would increase the hazards associated with an engine fire.

Corporate Jets, Limited, has issued Alert Service Bulletin S.B. 71–A43, dated February 9, 1993, that describes procedures for repetitive visual inspections of the outer fan duct on the right and left engines to detect potential fluid contamination or disbonding along the outer skin longitudinal seams.

Corporate Jets, Limited, has also issued Service Bulletin SB.71–43–3644A, dated February 8, 1993, that describes procedures for modification of the outer fan duct of the right and left engines (Modification No. 253644A). This modification entails replacing the existing outer fan ducts with new outer fan ducts that incorporate PS700 adhesive sealant and NEXTEL fabric ply over the longitudinal/diagonal seams of the outer skin. Installation of this modification will improve sealing of the outer skin seams of the fan duct, which will prevent deterioration of the fireproof standard and disbonding due to fluid contamination.

The CAA classified these service bulletins as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to ensure the fireproof integrity of the engine fan duct material, which will reduce the hazards associated with an engine fire. This AD requires repetitive detailed visual inspections of the outer fan duct on both engines to detect fluid contamination or disbonding along the outer skin longitudinal seams, and subsequent modification of the outer fan ducts. The actions are required to be accomplished in accordance with the service bulletins described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–40–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–11–10 Corporate Jets, Limited (Formerly British Aerospace): Amendment 39–8602. Docket 93–NM–40–AD.

Applicability: Model BAe 125–1000A series airplanes, as listed in Corporate Jets, Limited, Alert Service Bulletin S.B. 71–A43, dated February 9, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the fireproof integrity of the engine fan duct material, which will reduce the hazards associated with an engine fire, accomplish the following:

(a) Within 7 days after the effective date of this AD, conduct a detailed visual inspection along the longitudinal seams of the outside surface of the outer fan duct on the right and left engines to detect fluid contamination or disbonding at the edges of the seams, in accordance with Corporate Jets, Limited, Alert Service Bulletin S.B. 71–A43, dated February 9, 1993.

(b) If no fluid contamination or disbonding is detected, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Thereafter repeat the visual inspection required by paragraph (a) of this AD at intervals not to exceed 14 days until the modification required by paragraph (b)(2) of this AD is accomplished.

(2) Within 300 hours time-in-service after the effective date of this AD, modify the longitudinal seams of the outside surface of the outer fan duct on the right and left engines, in accordance with Corporate Jets, Limited, Service Bulletin SB.71–43–3644A, dated February 8, 1993. Accomplishment of this modification constitutes terminating action for the repetitive inspections required by paragraph (b)(1) of this AD.

(c) If fluid contamination only is detected, accomplish paragraphs (c)(1) and (c)(2) of this AD.

(1) Repeat the detailed visual inspection required by paragraph (a) of this AD prior to the first flight of each day until the modification required by paragraph (c)(2) of this AD is accomplished.

(2) Within 50 hours time-in-service after the effective date of this AD, modify the longitudinal seams of the outside surface of the outer fan ducts on the right and left engines, in accordance with Corporate Jets, Limited, Service Bulletin SB.71–43–3644A, dated February 8, 1993. Accomplishment of this modification constitutes terminating action for the repetitive inspections required by paragraph (c)(1) of this AD.

(d) If disbonding is detected at the longitudinal seams, prior to further flight, modify the longitudinal seams of the outside surface of the outer fan duct on the right and left engines, in accordance with Corporate Jets, Limited, Service Bulletin SB.71–43–3644A, dated February 8, 1993.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspection shall be done in accordance with Corporate Jets, Limited, Alert Service Bulletin S.B. 71–A43, dated February 9, 1993. The modification shall be done in accordance with Corporate Jets, Limited, Service Bulletin SB.71–43–3644A, dated February 8, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Corporate Jets, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on June 29, 1993.

Issued in Renton, Washington, on June 7, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–13905 Filed 6–11–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Parts 91, 93, and 137

[Docket No. 24456; Amendment Nos. 91–227, 93–64, 137–14]

RIN 2120–AB95

Airspace Reclassification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the Airspace Reclassification final rule that was promulgated on December 17, 1991, by deleting Class B from the airspace areas where the indicated airspeed of aircraft is restricted to 200 knots; by continuing the special communications requirements currently in effect at Ketchikan International Airport, Alaska; and by deleting Class B and Class C airspace areas from the exception for agricultural aircraft operating to and from dispensing areas. The correction is necessary to ensure the operating rules continue as intended on September 16, 1993, the implementation date of Airspace Reclassification.

EFFECTIVE DATE: This amendment is effective September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. William M. Mosley, Air Traffic Rules Branch, ATP–230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1991, the FAA published the Airspace Reclassification final rule (56 FR 65638) which, among other things, changed the wording of many operating rules by replacing the existing terminology for airspace with the new international classes of airspace that are being adopted by the United States. These actions become effective September 16, 1993.

Two of the existing airspace terms, airport traffic area and control zone, can

have application in four of the five classes of controlled airspace, that is, Class B, Class C, Class D, and Class E. Depending on the specific rule, these applications can be in an individual class, a combination of classes, or in all four classes. During the Airspace Reclassification rulemaking process, over 90 sections of Title 14 of the code of federal regulations (CFR) were revised or amended, and the FAA has found three errors resulting from the changes to the new terminology. This action corrects those errors.

Discussion

The first error occurred in section 91.117(b) which imposed a 200 knots speed limitation for operations at or below 2,500 feet above the surface within 4 nautical miles of the primary airport of a Class B, Class C, or Class D airspace area. The error actually occurred in the Airspace Reclassification Notice of Proposed Rulemaking (NPRM) (Notice No. 89–28, 54 FR 42916). That NPRM included Class A and Class B airspace surface areas in the 200 knot speed restriction; the final rule merely adopted the rule as proposed. However, the existing section 91.117(b) states that, "This paragraph (b) [200 knots] does not apply to any operations within a terminal control area." While the inclusion of Classes A and B was proposed, the FAA did not intend to significantly change the operating requirements in Class B airspace from the existing operating requirements in the terminal control area (TCA). And lastly, the United States does not have any current plans to establish any Class A surface areas; this was a misnomer used in the final rule. Therefore, this correction allows the current exemption from the 200 knot restriction in TCA's to continue in Class B airspace areas.

The next error involves the exception for agricultural aircraft, operating to and from dispensing areas, without an authorization from air traffic control (ATC). This error was a case of applying the terms airport traffic area and control zone in three classes when, in fact, the proposal was only for Class D airspace (Notice No. 89–28, 54 FR 42933). An ACT clearance is required for aircraft being operated under visual flight rules (VFR) to operate within Class B airspace. Likewise, establishing and maintaining two-way communications with ATC is required for aircraft being operated under VFR within Class C airspace. Removing these requirements was not proposed for agricultural aircraft and such an exception would be considered a decrease in the level of safety provided by these rules. This action deletes Class B and Class C airspace areas from the authorization exception and corrects the rule to conform with the amendment as proposed.

The third and final error occurred as a result of simultaneous rulemaking actions. The Airspace Reclassification NPRM (Notice No. 89–28, 54 FR 42916) was published October 18, 1989, and proposed to amend § 93.151 by revising the introductory text. The revision merely replaced the term "control zone" with "the lateral limits of the surface area of controlled airspace." Subsequently, the FAA issued a NPRM (Notice No. 90–15, 55 FR 17564) to modify the communications requirement so that the entire control zone would be included. The Ketchikan International Special Airport Traffic Final Rule was issued September 23, 1991, (56 FR 48092) and adopted the communications requirement as proposed. On December 17, 1991, the FAA promulgated the Airspace Reclassification Final Rule (56 FR 65638) which adopted, effective September 16, 1993, the language in § 93.151 as it was prior to the Ketchikan International Special Airport Traffic Final Rule (56 FR 48092). This inadvertently negated the efforts of the FAA to improve safety to, from, and within the immediate vicinity of the Ketchikan International Airport. This action ensures that the current communications requirements are continued after September 16, 1993.

List of Subjects

14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Air transportation, Reporting and recordkeeping requirements.

14 CFR Part 93

Air traffic control, Airports, Alaska, Navigation (air) Reporting and recordkeeping requirements, Special air traffic rules.

14 CFR Part 137

Agriculture, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Accordingly, 14 CFR Parts 91, 93, and 137 are amended as follows:

The following correction is made to 14 CFR part 93 currently in effect by making the following correcting amendment:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. app. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2451 *et seq.*; 49 U.S.C. 106(g).

2. Section 93.151 is corrected by revising paragraph (b) to read as follows:

§ 93.151 Applicability.

* * * * *

(b) Within that airspace below 3,000 feet MSL within the lateral boundary of the surface area of the Ketchikan Class E airspace regardless of whether that airspace is in effect.

The following corrections are made to 14 CFR parts 91, 93, and 137 in effect September 16, 1993, by making the following correcting amendments:

PART 91—GENERAL OPERATING AND FLIGHT RULES

3. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; articles 12, 29, 31, and 31(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514, 35 FR 4247, 3CFR, 1966–1970 Comp., p.902; 49 U.S.C. 106(g).

4. Section 91.117 is corrected by revising paragraph (b) to read as follows:

§ 91.117 Aircraft speed.

* * * * *

(b) Unless otherwise authorized or required by ATC, no person may operate an aircraft at or below 2,500 feet above the surface within 4 nautical miles of the primary airport of a Class C or Class D airport at an indicated airspeed of more than 200 knots (230 mph).

* * * * *

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

5. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. app. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2451 *et seq.*; 49 U.S.C. 106(g).

6. Section 93.151 is corrected by revising the introductory text to read as follows:

§ 93.151 Applicability.

This subpart prescribes special air traffic rules and communications requirements for persons operating aircraft, under VFR—

* * * * *

PART 137—AGRICULTURAL AIRCRAFT OPERATIONS

7. The authority citation for part 137 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1348(c), 1421, and 1427.

8. Section 137.43 is corrected by revising paragraph (a) to read as follows:

§ 137.43 Operations in controlled airspace designated for an airport.

(a) Except for flights to and from a dispensing area, no person may operate an aircraft within the lateral boundaries of the surface area of Class D airspace designated for an airport unless authorization for that operation has been obtained from the ATC facility having jurisdiction over that area.

* * * * *

Issued in Washington, DC, on May 27, 1993.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-13044 Filed 6-11-93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 27320; Amdt. No. 1550]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket. FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPS. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMS, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPS which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPS are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, standard instrument, Incorporation by reference.

Issued in Washington, DC on June 4, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
05/04/93	MN	Morris	Morris Muni	3/2675	VOR Rwy 14, Orig.
05/24/93	MN	Morris	Morris Muni	3/2676	VOR Rwy 32 Amdt 4.
05/25/93	KS	Goodland	Renner Field Goodland Muni	3/2698	ILS Rwy 30 Amdt 3.
05/25/93	KS	Goodland	Renner Field/Goodland Muni	3/2699	NDB Rwy 30 Amdt 6.
05/25/93	KS	Goodland	Renner Field/Goodland Muni	3/2700	VOR Rwy 30 Amdt 7.
05/26/93	MA	Hyannis	Barnstable Muni-Boardman/ Polando Field.	3/2705	ILS Rwy 24 Amdt 16.
05/26/93	MA	Hyannis	Barnstable Muni-Boardman/ Polando Field.	3/2707	NDB Rwy 24 Amdt 9.
05/26/93	MA	Hyannis	Barnstable Muni-Boardman/ Polando Field.	3/2709	VOR Rwy 6 Amdt 6.
05/26/93	MN	Fergus Falls	Fergus Falls Muni/Einar Mickelson Field.	3/2684	VOR Rwy 35 Amdt 6A.
05/26/93	MN	Fergus Falls	Fergus Falls Muni/Einar Mickelson Field.	3/2685	VOR Rwy 17 Amdt 6A.
05/26/93	OH	Akron	Akron Fulton Intl	3/2722	Vor Rwy 23 Amdt 8.
05/26/93	OH	Akron	Akron Fulton Intl	3/2722	Vor Rwy 23 Amdt 8.
05/26/93	OH	Akron	Akron Fulton Intl	3/2726	LOC Rwy 25 Amdt 12.
05/26/93	OH	Carrollton	Carroll County-Tolson	3/2724	VOR-A Orig-A.
05/26/93	OH	Salem	Salem Airpark	3/2723	VOR-A Orig-A.
05/26/93	OH	Youngstown	Youngstown Elser Metro	3/2725	VOR-C Orig.
05/26/93	TX	Amarillo	Tradewind	3/2719	RNAV Rwy 35 Amdt 7.
05/26/93	TX	Amarillo	Tradewind	3/2720	NDB-A Amdt 12.
05/27/93	AR	Springdale	Springdale Muni	3/2818	ILS Rwy 18 Amdt 4.
05/27/93	AR	Springdale	Springdale Muni	3/2820	VOR/DME Rwy 36 Amdt 7.
05/27/93	CO	Fort Collins	Fort Collins-Loveland Muni	3/2812	VOR/DME-A Amdt 6.
05/27/93	LA	Baton Rouge	Baton Rouge Metropolitan/Ryan	3/2793	VOR/DME Rwy 22R Amdt 7.
05/27/93	LA	Hammond	Hammond Muni	3/2794	VOR Rwy 18 Amdt 2A.
05/27/93	LA	Hammond	Hammond Muni	3/2795	VOR Rwy 31 Amdt 3A.
05/27/93	MN	Fergus Falls	Fergus Falls Muni/Einar Mickelson Field.	3/2776	VOR/DME Rwy 31 Amdt 3A.
05/28/93	AZ	Fort Huachuca/Sierra Vista	Libby AAF/Sierra Vista Muni	3/2851	ILS Rwy 26 Orig.
05/28/93	AZ	Fort Huachuca/Sierra Vista	Libby AAF/Sierra Vista Muni	3/2852	NDB Rwy 26 Amdt 1.
05/28/93	CO	Fort Collins-Loveland	Fort Collins-Loveland Muni	3/2837	ILS Rwy 33 Amdt 5.
05/28/93	CO	Fort Collins-Loveland	Fort Collins-Loveland Muni	3/2838	VOR/DME RNAV Rwy 33 Amdt 5.
05/28/93	CO	Fort Collins-Loveland	Fort Collins-Loveland Muni	3/2839	VOR/DME RNAV Rwy 15 Amdt 4.
05/28/93	CO	Fort Collins-Loveland	Fort Collins-Loveland Muni	3/2840	NDB Rwy 33 Amdt 4
06/01/93	AK	Mekoryuk	Mekoryuk	3/2923	NDB/DME-A Amdt 2
06/01/93	AK	Mekoryuk	Mekoryuk	3/2924	NDB Rwy 23 Amdt 1
06/01/93	AZ	Fort Huachuca/Sierra Vista	Libby AAF/Sierra Vista Muni	3/2903	VOR Rwy 26 Amdt 1
06/01/93	MO	St. Charles	St. Charles	3/2907	VOR Rwy 9 Amdt 4.

[FR Doc. 93-13932 Filed 6-11-93; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 27319; Amdt. No. 1549]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 522(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on June 4, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME

or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective July 22, 1993

Chandler, AZ, Stellar Airpark, VOR–A, Amdt. 1
Atlanta, GA, Peachtree City-Falcon Field, LOC BC RWY 13, Orig.
Atlanta, GA, Peachtree City-Falcon Field, LOC RWY 31, Amdt. 1
Atlanta, GA, Peachtree City-Falcon Field, NDB RWY 31, Amdt. 1
Effingham, IL, Effingham County Memorial, VOR RWY 1, Amdt. 9
Effingham, IL, Effingham County Memorial, LOC RWY 29, Amdt. 1
Provincetown, MA, Provincetown Muni, NDB RWY 7, Orig.
Provincetown, MA, Provincetown Muni, NDB–A, Amdt. 8, CANCELLED
Provincetown, MA, Provincetown Muni, NDB RWY 25, Orig., CANCELLED
Provincetown, MA, Provincetown Muni, NDB RWY 25, Orig.
Provincetown, MA, Provincetown Muni, ILS RWY 7, Amdt. 6
Cleveland, OH, Cleveland-Hopkins Intl, ILS RWY 23L, Amdt. 15
Cleveland, OH, Cleveland-Hopkins Intl, ILS RWY 28, Amdt. 21
Galion, OH, Galion Muni, VOR RWY 23, Amdt. 12
Galion, OH, Galion Muni, VOR/DME RNAV RWY 5, Amdt. 2
Galion, OH, Galion Muni, VOR/DME RNAV RWY 5, Amdt. 2
Toledo, OH, Toledo Express, VOR/DME RWY 34, Amdt. 5
Toledo, OH, Toledo Express, ILS RWY 25, Amdt. 5
Toledo, OH, Toledo Express, VOR/DME RNAV RWY 16, Amdt. 5
Antlers, OK, Antlers Muni, NDB RWY 35, Amdt. 2
Blackwell, OK, Blackwell-Tonkawa Muni, VOR–A, Amdt. 2
Blackwell, OK, Blackwell-Tonkawa Muni, VOR/DME RNAV RWY 17, Amdt. 2
Chickasha, OK, Chickasha Muni, NDB RWY 17, Orig.
Enid, OK, Enid Woodring Muni, VOR RWY 17, Amdt. 11
Enid, OK, Enid Woodring Muni, VOR RWY 35, Amdt. 12
Enid, OK, Enid Woodring Muni, NDB RWY 35, Amdt. 5
Enid, OK, Enid Woodring Muni, ILS RWY 35, Amdt. 3
Perry, OK, Perry Muni, VOR/DME RWY 17, Amdt. 1
Ponca City, OK, Ponca City Muni, VOR–A, Amdt. 8
Ponca City, OK, Ponca City Muni, VOR/DME RNAV RWY 35, Amdt. 2
Stillwater, OK, Stillwater Muni, VOR RWY 17, Amdt. 13
Rhinelander, WI, Rhinelander-Oneida County, VOR RWY 5, Amdt. 10, CANCELLED
Rhinelander, WI, Rhinelander-Oneida County, VOR/DME RWY 5, Orig.
Rhinelander, WI, Rhinelander-Oneida County, VOR RWY 9, Amdt. 4
Rhinelander, WI, Rhinelander-Oneida County, VOR/DME RWY 23, Amdt. 10
Rhinelander, WI, Rhinelander-Oneida County, VOR RWY 27, Amdt. 3, CANCELLED
Rhinelander, WI, Rhinelander-Oneida County, VOR/DME RWY 27, Orig.
Rhinelander, WI, Rhinelander-Oneida County, ILS RWY 9, Amdt. 5

Effective May 27, 1993

Salem, OR, McNary Field, LOC BC RWY 13, Amdt. 6

Effective May 20, 1993

Casper, WY, Natrona County Intl, ILS RWY 8, Amdt. 24

[FR Doc. 93–13933 Filed 6–11–93; 8:45 am]
BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 92]

Staff Accounting Bulletin No. 92

AGENCY: Securities and Exchange Commission.

ACTION: Publication of staff accounting bulletin.

SUMMARY: The interpretations in this staff accounting bulletin express certain views of the staff regarding accounting and disclosures relating to loss contingencies. The guidance in this Staff Accounting bulletin is intended to promote timely recognition of contingent losses and to address the diversity in practice with respect to accounting and disclosures in this area.

EFFECTIVE DATE: June 8, 1993.

FOR FURTHER INFORMATION CONTACT: Randall Larson, Office of the Chief Accountant (202–272–2130), or Kurt Hohl, Division of Corporation Finance (202–272–2553), Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Jonathan G. Katz,
Secretary.

Accordingly, part 211 of title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 92 to the table found in Subpart B.

Staff Accounting Bulletin No. 92

The staff hereby adds Section Y to Topic 5 of the Staff Accounting Bulletin Series. Topic 5–Y provides guidance regarding the accounting and disclosures relating to loss contingencies. In addition, the staff hereby adds Question 7 to Topic 2–A and adds Section F to Topic 10. Question 7 of Topic 2–A discusses loss contingencies assumed in a business combination accounted for as a purchase. Topic 10–F discusses the presentation by utility companies of liabilities for environmental costs.

Topic 5: Miscellaneous Accounting

* * * * *

Y. Accounting disclosures relating to loss contingencies:

Facts: A registrant believes it may be obligated to pay material amounts as a result of product or environmental liability. These amounts may relate to, for example, damages attributed to the registrant's products or processes, clean-up of hazardous wastes, reclamation costs, fines, and litigation costs. The registrant may seek to recover a portion or all of these amounts by filing a claim against an insurance carrier or other third parties.

Paragraph 8 of *Statement of Financial Accounting Standards No. 5*, "Accounting for Contingencies," ("SFAS 5") states that an estimated loss from a loss contingency shall be accrued by a charge to income if it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. The Emerging Issues Task Force ("EITF") of the Financial Accounting Standards Board reached a consensus on EITF Issue 93–5, "Accounting for Environmental Liabilities," that an environmental liability should be evaluated independently from any potential claim for recovery. Under that consensus, any loss arising from the recognition of an environmental liability should be reduced by a potential claim for recovery only when that claim is probable [1] of realization. The EITF also reached a consensus that discounting an environmental liability for a specific clean-up site to reflect the time value of

[1] Paragraph 3 of SFAS 5 defines probable as "likely to occur."

money is appropriate only if the aggregate amount of the obligation and the amount and timing of the cash payments are fixed or reliably determinable for that site. Further, any asset that is recognized relating to a claim for recovery of a liability that is recognized on a discounted basis also should be discounted to reflect the time value of money.

Because uncertainty regarding the alternative methods of presenting in the balance sheet the amounts recognized as contingent liabilities and claims for recovery from third parties was not resolved by the EITF and current disclosure practices remain diverse, the staff is publishing its interpretation of the current accounting literature and disclosure requirements to serve as guidance for public companies. The AICPA's Accounting Standards Executive Committee has appointed a task force to address environmental concerns. The staff encourages efforts by the profession to develop comprehensive guidance applicable to the accounting and financial statement disclosures relating to environmental matters.

Question 1: Does the staff believe that it is appropriate to offset in the balance sheet a claim for recovery that is probable of realization against a probable contingent liability, that is, report the two as a single net amount on the face of the balance sheet?

Interpretive Response: Not ordinarily. The staff believes that separate presentation of the gross liability and related claim for recovery in the balance sheet most fairly presents the potential consequences of the contingent claim on the company's resources and is the preferable method of display. Recent reports of litigation over insurance policies' coverage of product and environmental liabilities and financial failures in the insurance industry indicate that there are significant uncertainties regarding both the timing and the ultimate realization of claims made to recover amounts from insurance carriers and other third parties. The risks and uncertainties associated with a registrant's contingent liability are separate and distinct from those associated with its claim for recovery from third parties.

Separate presentation of the gross liability and the claim for recovery is consistent with the recent consensus of the EITF, which concluded that the amounts of the contingent liability and any claim for recovery should be estimated and evaluated independently. Furthermore, accounting guidance generally proscribes the offsetting of assets and liabilities except where a right of setoff exists.[2] This general proscription was strengthened by the recent issuance of *Financial Accounting Standards Board Interpretation No. 39*, "Offsetting of Amounts Relating to Certain Contracts," ("FIN 39"), which is effective for financial statements issued for periods beginning after December 15, 1993. The guidance in that interpretation indicates that the prohibition on setoff in the balance sheet should be applied more comprehensively than previously may have been the practice.

It is the staff's view that presentation of liabilities net of claims for recovery will not be appropriate after the provisions of FIN 39 are required to be applied in financial statements. In the interim, registrants should ensure that notes to the financial statements include information necessary to an understanding of the material uncertainties affecting both the measurement of the liability and the realization of recoveries. The staff believes these disclosures should include the gross amount of any claims for recovery that are netted against the liability.

Question 2: If a registrant is jointly and severally liable with respect to a contaminated site but there is a reasonable basis for apportionment of costs among responsible parties, must the registrant recognize a liability with respect to costs apportioned to other responsible parties?

Interpretive Response: No. However, if it is probable that other responsible parties will not fully pay costs apportioned to them, the liability that is recognized by the registrant should include the registrant's best estimate, before consideration of potential recoveries from other parties, of the additional costs that the registrant expects to pay. Discussion of uncertainties affecting the registrant's ultimate obligation may be necessary if, for example, the solvency of one or more parties is in doubt or responsibility for the site is disputed by a party. A note to the financial statements should describe any additional loss that is reasonably possible.

Question 3: Estimates and assumptions regarding the extent of environmental or product liability, methods of remedy, and amounts of related costs frequently prove to be different from the ultimate outcome. How do these uncertainties affect the recognition and measurement of the liability?

Interpretive Response: The measurement of the liability should be based on currently available facts, existing technology, and presently enacted laws and regulations, and should take into consideration the likely effects of inflation and other societal and economic factors. Notwithstanding significant uncertainties, management may not delay recognition of a contingent liability until only a single amount can be reasonably estimated. If management is able to determine that the amount of the liability is likely to fall within a range and no amount within that range can be determined to be the better estimate, the registrant should recognize the minimum amount of the range pursuant to *Financial Accounting Standards Board Interpretation No. 14*, "Reasonable Estimation of the Amount of a Loss" ("FIN 14"). The staff believes that recognition of a loss equal to the lower limit of the range is necessary even if the upper limit of the range is uncertain.

In measuring its environmental liability, a registrant should consider available evidence including the registrant's prior experience in remediation of contaminated sites, other companies' clean-up experience, and data released by the Environmental Protection Agency or other organizations. Information necessary to support a reasonable estimate or range of loss may be available prior to the performance of any detailed remediation study. Even in situations in which the registrant has not determined the specific strategy for remediation, estimates of the costs associated with the various alternative remediation strategies considered for a site may be available or reasonably estimable. While the range of costs associated with the alternatives may be broad, the minimum clean-up cost is unlikely to be zero. As additional information becomes available, changes in estimates of the liability should be reported in the period that those changes occur in accordance with paragraphs 31–33 of *Accounting Principles Board Opinion No. 20*, "Accounting Changes."

Question 4: Assuming the registrant's estimate of an environmental or product liability meets the conditions set forth in the consensus on EITF Issue 93–5 for recognition on a discount basis, what discount rate should be applied?

Interpretive Response: The staff believes that the rate used to discount the cash payments should be the rate that will produce an amount at which the environmental or product liability could be settled in an arm's-length

[2] Paragraph 7 of Accounting Principles Board Opinion No. 10, "Omnibus Opinion." Also, FASB Technical Bulletin 88–3, "Definition of a Right of Setoff."

transaction with a third party. If that rate is not readily determinable, the discount rate used to discount the cash payments should not exceed the interest rate on monetary assets that are essentially risk free [3] and have maturities comparable to that of the environmental or product liability.

If the liability is recognized on a discounted basis to reflect the time value of money, the notes to the financial statements should, at a minimum, include disclosures of the discount rate used, the expected aggregate undiscounted amount, expected payments for each of the five succeeding years and the aggregate amount thereafter, and a reconciliation of the expected aggregate undiscounted amount to amounts recognized in the statements of financial position. Material changes in the expected aggregate amount since the prior balance sheet date, other than those resulting from pay-down of the obligation, should be explained.

Question 5: What financial statement disclosures should be furnished with respect to recorded and unrecorded product or environmental liabilities?

Interpretive Response: Paragraphs 9 and 10 of SFAS 5 identify disclosures regarding loss contingencies that generally are furnished in notes to financial statements. The staff believes that product and environmental liabilities typically are of such significance that detailed disclosures regarding the judgments and assumptions underlying the recognition and measurement of the liabilities are necessary to prevent the financial statements from being misleading and to inform readers fully regarding the range of reasonably possible outcomes that could have a material effect on the registrant's financial condition, results of operations, or liquidity. Examples of disclosures that may be necessary include:

- Circumstances affecting the reliability and precision of loss estimates.
- The extent to which unasserted claims are reflected in any accrual or may affect the magnitude of the contingency.
- Uncertainties with respect to joint and several liability that may affect the magnitude of the contingency, including disclosure of the aggregate expected cost to remediate particular sites that are individually material if the likelihood of contribution by the other significant parties has not been established.
- Disclosure of the nature and terms of cost-sharing arrangements with other potentially responsible parties.
- The extent to which disclosed but unrecognized contingent losses are expected to be recoverable through insurance, indemnification arrangements, or other sources, with disclosure of any material limitations of that recovery.
- Uncertainties regarding the legal sufficiency of insurance claims or solvency of insurance carriers.[4]
- The time frame over which the accrued or presently unrecognized amounts may be paid out.
- Material components of the accruals and significant assumptions underlying estimates.

Registrants are cautioned that a statement that the contingency is not expected to be material does not satisfy the requirements of SFAS 5 if there is at least a reasonable possibility that a loss exceeding amounts already recognized may have been incurred and the amount of that additional loss would be material to a decision to buy or sell the registrant's securities. In that case, the registrant must either (a) disclose the estimated additional loss, or range of loss, that is reasonably possible, or (b) state that such estimate cannot be made.

Question 6: What disclosures regarding loss contingencies may be necessary outside the financial statements?

Interpretive Response: Registrants should consider the requirements of Items 101 (Description of Business), 103 (Legal Proceedings), and 303 (Management's Discussion and Analysis) of Regulations S–K and S–B. The Commission has issued two interpretive releases that provide additional guidance with respect to these items.[5] In a 1989 interpretive release, the Commission noted that the availability of insurance, indemnification, or contribution may be relevant in determining whether the criteria for disclosure have been met with respect to a contingency.[6] The registrant's assessment in this regard should include consideration of facts such as the periods in which claims for recovery may be realized, the likelihood that the claims may be contested, and the financial condition of third parties from which recovery is expected.

Disclosures made pursuant to the guidance identified in the preceding paragraph should be sufficiently specific to enable a reader to understand the scope of the contingencies affecting the registrant. For example, a registrant's discussion of historical and anticipated environmental expenditures should, to the extent material, describe separately (a) recurring costs associated with managing hazardous substances and pollution in on-going operations, (b) capital expenditures to limit or monitor hazardous substances or pollutants, (c) mandated expenditures to remediate previously contaminated sites, and (d) other infrequent or non-recurring clean-up expenditures that can be anticipated but which are not required in the present circumstances. Disaggregated disclosure that describes accrued and reasonably likely losses with respect to particular environmental sites that are individually material may be necessary for a full understanding of these contingencies. Also, if management's investigation of potential liability and remediation cost is at different stages with respect to individual sites, the consequences of this with respect to amounts accrued and disclosed should be discussed.

Examples of specific disclosures typically relevant to an understanding of historical and anticipated product liability costs include the nature of personal injury or property damages alleged by claimants, aggregate settlement costs by type of claim, and related costs of administering and litigating claims. Disaggregated disclosure that describes accrued and reasonably likely losses with respect to particular claims may be necessary if they are individually material. If the contingency involves a large number of relatively small individual claims of a similar type, such as personal injury from exposure to asbestos disclosure of the number of claims pending at each balance sheet date, the number of claims filed for each period presented, the number of claims dismissed, settled, or otherwise resolved for each period, and the average settlement amount per claim may be necessary. Disclosures should address historical and expected trends in these amounts and their reasonably likely effects on operating results and liquidity.

Question 7: What disclosure should be furnished with respect to site

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[3] As described in paragraph 4(a) of *Statement of Financial Accounting Standards No. 76*, "Extinguishment of Debt."

[4] The staff believes there is a rebuttable presumption that no asset should be recognized for a claim for recovery from a party that is asserting that it is not liable to indemnify the registrant. Registrants that overcome that presumption should disclose the amount of recorded recoveries that are being contested and discuss the reasons for concluding that the amounts are probable of recovery.

[5] See Securities Act Release No. 6130 (September 27, 1979) and Financial Reporting Release No. 36 (May 18, 1989).

[6] See, for example, footnote 30 of Financial Reporting Release No. 36 (footnote 17 of Section 501.02 of the Codification of Financial Reporting Policies).

restoration costs or other environmental exit costs?

Interpretive Response: The staff believes that material liabilities for site restoration, post-closure, and monitoring commitments, or other exit costs that may occur on the sale, disposal, or abandonment of a property should be disclosed in the notes to the financial statements. Appropriate disclosures generally would include the nature of the costs involved, the total anticipated cost, the total costs accrued to date, the balance sheet classification of accrued amounts, and the range or amount of reasonably possible additional losses. If an asset held for sale or development will require remediation to be performed by the registrant prior to development, sale, or as a condition of sale, a note to the financial statements should describe how the necessary expenditures are considered in the assessment of the asset's net realizable value. Additionally, if the registrant may be liable for remediation of environmental damage relating to assets or businesses previously disposed, disclosure should be made in the financial statements unless the likelihood of a material unfavorable outcome of that contingency is remote. The registrant's accounting policy with respect to such costs should be disclosed in accordance with *Accounting Principle Board Opinion No. 22,* "Disclosure of Accounting Policies."

Question 8: A registrant expects to incur site restoration costs, post-closure and monitoring costs, or other environmental exit costs at the end of the useful life of the asset. Would the staff object to the registrant's proposal to accrue the exit costs over the useful life of the asset?

Interpretive Response: No. This is an established accounting practice in some industries. In other industries, the staff will raise no objection to that accounting provided that the criteria in paragraph 8 of SFAS 5 are met. The staff acknowledges that in some circumstances the use of the asset in operations gives rise to growing exit costs that represent a probable liability. The accrual of the liability should be recognized as an expense in accordance with the consensus on EITF Issue 90–8, "Capitalization of Costs to Treat Environmental Contamination." See interpretive responses to questions 7 and 8 for guidance on appropriate disclosures.

Topic 2: Business Combinations

A. Purchase Method

* * * * *

7. Loss contingencies assumed in a business combination.

Facts: A registrant acquires a business enterprise in a transaction accounted for by the purchase method. In connection with the acquisition, the acquiring company assumes certain contingent liabilities of the acquired company.

Question: How should the acquiring company account for and disclose contingent liabilities that have been assumed in a business combination?

Interpretive Response: In accordance with *Accounting Principles Board Opinion No. 16,* "Business Combinations," the acquiring company should allocate the cost of an acquired company to the assets acquired and liabilities assumed based on their fair values at the date of acquisition. With respect to contingencies for which a fair value is not determinable at the date of acquisition, the guidance of *Statement of Financial Accounting Standards No. 5,* "Accounting for Contingencies" and *Financial Accounting Standards Board Interpretation No. 14,* "Reasonable Estimation of the Amount of a Loss" should be applied. If the registrant is awaiting additional information that it has arranged to obtain for the measurement of a contingency during the allocation period specified by *Statement of Financial Accounting Standards No. 38,* "Accounting for Preacquisition Contingencies of Purchased Enterprises," the staff believes that the registrant should disclose that the purchase price allocation is preliminary. In that circumstance, the registrant should describe the nature of the contingency and furnish other available information that will enable a reader to understand its potential effects on the final allocation and on post-acquisition operating results. Management's Discussion and Analysis should include appropriate disclosure regarding any unrecognized preacquisition contingency and its reasonably likely effects on operating results, liquidity, and financial condition.

The staff believes that the allocation period should not extend beyond the minimum reasonable period necessary to gather the information that the registrant has arranged to obtain for purposes of the estimate. Since an allocation period usually should not exceed one year, registrants believing that they will require a longer period are encouraged to discuss their circumstances with the staff. If it is unlikely that the liability can be estimated on the basis of information known to be obtainable at the time of the initial purchase price allocation, the allocation period should not be extended with respect to that liability. An adjustment to the contingent liability after the expiration of the allocation period would be recognized as an element of net income.

Topic 10: Utility Companies

* * * * *

F. Presentation of Liabilities for Environmental Costs

Facts: A public utility company determines that it is obligated to pay material amounts as a result of an environmental liability. These amounts may relate to, for example, damages attributed to clean-up of hazardous wastes, reclamation costs, fines, and litigation costs.

Question 1: May a rate-regulated enterprise present on its balance sheet the amount of its estimated liability for environmental costs net of probable future revenue resulting from the inclusion of such costs in allowable costs for rate-making purposes?

Interpretive Response: No. *Statement of Financial Accounting Standards No. 71,* "Accounting for the Effects of Certain Types of Regulation," ("SFAS 71") specifies the conditions under which rate actions of a regulator can provide reasonable assurance of the existence of an asset. The staff believes that environmental costs meeting the criteria of paragraph 9[7] of SFAS 71 should be presented on the balance sheet as an asset and should not be offset against the liability. Contingent recoveries through rates that do not meet the criteria of paragraph 9 should not be recognized either as an asset or as a reduction of the probable liability.

Question 2: May a rate-regulated enterprise delay recognition of a probable and estimable liability for environmental costs which it has incurred at the date of the latest balance sheet until the regulator's deliberations have proceeded to a point enabling management to determine whether this cost is likely to be included in allowable costs for rate-making purposes?

Interpretive Response: No. *Statement of Financial Accounting Standards No. 5,* "Accounting for contingencies," states that an estimated loss from a loss contingency shall be accrued by a charge to income if it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. The staff believes that actions

[7] Paragraph 9 of SFAS 71 requires a rate-regulated enterprise to capitalize all or part of an incurred cost that would otherwise be charged to expense if it is probable that future revenue will be provided to recover the previously incurred cost from inclusion of the costs in allowable costs for rate-making purposes.

of a regulator can affect whether an incurred cost is capitalized or expensed pursuant to SFAS 71, but the regulator's actions cannot affect the timing of the recognition of the liability.

[FR Doc. 93-13893 Filed 6-11-93; 8:45 am]
BILLING CODE 4310-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by Kansas as a modification to the State's permanent regulatory program (hereinafter referred to as the Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to general requirements, definitions, permit application, public hearings, civil penalties, permit review, coal exploration, bonding procedures, performance standards, underground mining, small operator assistance, lands unsuitable for surface mining, blaster certification, employee financial interests, and inspection and enforcement.

The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: June 14, 1993.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning Kansas' program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

II. Submission of Amendment

By letter dated July 10, 1992 (Administrative Record No. KS-511), Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment in response to required amendments placed on the Kansas program at 30 CFR 916.16(b) of the Federal regulations by OSM on September 13, 1991 (56 FR 46531, 46548), and at the State's own initiative to improve its programs.

The regulations that Kansas proposes to amends are: Kansas Administrative Regulations (K.A.R.) 47-1-9, Notice of Citizen Suits; 47-2-14, Complete and Accurate Application Defined; 47-2-53a, "Regulatory program" defined; 47-2-58, "Significant, imminent environmental harm to land, air, or water resources" defined; 47-2-67, Surety Bond Defined; 47-2-75, Definitions—Adoption by Reference; 47-3-2, Application for Mining Permit—Adoption by Reference; 47-3-3a, Application for Mining Permit—Maps; 47-3-42, Application for Mining Permit—Adoption by Reference; 47-4-14a, Administrative Hearing Procedure; 47-4-15, Administrative Hearings, Discovery; 47-5-5a, Civil Penalties—Adoption by Reference; 47-5-16, Civil Penalties—Final Assessment and Payment of Civil Penalties; 47-6-1, Permit Review; 47-6-2, Permit Revision; 47-6-3, Permit Renewals—Adoption by Reference; 47-6-4, Permit Transfers, Assignments, and Sales—Adoption by Reference; 47-6-6, Permit Conditions; 47-6-7, Permit Suspension or Revocation; 47-6-8, Termination of Jurisdiction—Adoption by Reference; 47-6-9, Exemption for Coal Extraction Incident to Government Financed Highway or Other Construction—Adoption by Reference; 47-6-10, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals—Adoption by Reference; 47-7-2, Coal Exploration—Adoption by Reference; 47-8-9, Bonding Procedures—Adoption by Reference; 47-8-11, Use of Forfeited Bond Funds; 47-9-1, Performance Standards—Adoption by Reference; 47-9-4, Interim Program Performance Standards—Adoption by Reference; 47-10-1, Underground Mining—Adoption by Reference; 47-11-8, Small Operator Assistance Program—Adoption by Reference; 47-12-4, Lands Unsuitable for Surface Mining—Adoption by Reference; 47-13-4, Training and Certification of Blasters—Adoption by Reference; 47-13-5, Responsibilities of Operators and Blasters-in-Charge; 47-14-4, Employee Financial Interest; 47-14-7, Employee Financial Interest—Adoption by Reference; 47-15-1a, Inspection and Enforcement—Adoption by Reference; 47-15-4, Injunctive Relief; 47-15-7, State Inspections; and 47-15-8, Citizen's Request for State Inspections.

OSM published a notice in the August 18, 1992, **Federal Register** (57 FR 37132) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended September 18, 1992. The public hearing scheduled for September 14, 1992, was not held because no one requested an opportunity to testify.

During its review of the amendment, OSM identified concerns related to K.A.R. 47-2-75(a)(6), Definition of "Director"; K.A.R. 47-3-42(a)(44), Review of permit applications; K.A.R. 47-4-14a(c)(1), Rules of procedure; K.A.R. 47-4-14a(c)(11), Waiver of hearing; K.A.R. 47-4-14a(d)(13)(F), Orders, initial and final; K.A.R. 47-4-14a(d)(2)(D), Disqualification of presiding officers; K.A.R. 47-4-14a (d)(10)(D) and (d)(5)(B)(vi), The presiding officer and prehearing conference procedure; K.A.R. 47-4-15, Administrative hearings; discovery; K.A.R. 47-6-7(e), Procedure; K.A.R. 47-9-1(a)(3), Permanent program performance standards—general provisions; K.A.R. 47-9-1(c) (36) and (37), Permanent performance standards—surface mining activities; and K.A.R. 47-15-1a (a)(6), (a)(12), and (b), Inspection and enforcement. OSM notified Kansas of the concerns by letter dated October 22, 1992 (Administrative Record No. KS-540). Kansas responded in a letter dated December 23, 1992 (Administrative Record No. KS-545), by submitting revised language for the proposed amendment to address the concerns raised by OSM. On January 14, 1993, OSM published a notice in the **Federal Register** (58 FR 4381) announcing receipt of revised language for the proposed amendment and invited public comment on its adequacy (Administrative Record No. KS-547). The public comment period ended January 29, 1993.

III. Director's Findings

After a thorough review, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, with certain exceptions and additional requirements, that the proposed amendment as submitted by Kansas on July 10, 1992, and as revised on December 23, 1992, meets the requirements of SMCRA and 30 CFR chapter VII.

1. Provisions Not Discussed

Kansas proposes revisions to its rules that involve minor editorial and word changes, and recodification. Examples of these revisions include but are not limited to changing upper case letters to lower case, changing the word "things" to "items," and recodifying as a result of responding to required program amendments placed on the Kansas program. Kansas also proposes to revise its current adoptions by reference of OSM's regulations from those in effect as of July 1, 1990, to those in effect as of July 1, 1992.

The Director finds that these proposed revisions, unless specifically discussed below, are no less effective than the Federal regulations and is approving them.

2. Provisions Not Discussed That Are Substantively the Same as the Counterpart Federal Regulations

Kansas proposes revisions to rules that contain language that is the same or similar to the counterpart Federal regulations, replace Federal references and terms with appropriate State references and terms, or add specificity without adversely affecting other aspects of the program regulation. The Director, therefore, finds that these proposed revisions to Kansas' regulations are no less effective than the Federal regulations. These revisions are as follows (Federal regulation counterparts are indicated in brackets): K.A.R. 47–2–53a, "Regulatory program" defined [30 CFR 700.5]; K.A.R. 47–2–67, "Surety bond" defined [30 CFR 800.5(a)]; K.A.R. 47–4–14a(d)(13)(C), Orders, initial and final [43 CFR 4.1127, 4.1128]; K.A.R. 47–4–14a(d)(14) (A), (D) and (F), Review of initial order; exceptions to reviewability [43 CFR 4.1270, 4.1271, 4.1274, and 4.1275]; and K.A.R. 47–4–14a(d)(16)(B), Reconsideration [43 CFR 4.21(c), 4.1276].

3. Required Program Amendments

Kansas submitted proposed revisions in response to required program amendments at 30 CFR 916.16(b) that OSM placed on the Kansas program in the September 13, 1991, final rule Federal Register notice (56 FR 46531). The Director finds that the following proposed State regulations satisfy the required program amendments, are no less effective than the Federal regulations indicated in each required program amendment, and is approving them [the codified required amendments at 30 CFR 916.16 are indicated in brackets]: K.A.R. 47–2–14, removing a duplicate definition for "Complete and accurate information" [30 CFR 916.16(b)(1)]; K.A.R. 47–2–75(a), renumbering subsections and clarifying when the term "Director" referred to the Director of OSM [30 CFR 916.16(b)(2)]; K.A.R. 47–2–75(e)(6), removing that section [30 CFR 916.16(b)(3)]; K.A.R. 47–3–42(a)(9), requiring the inclusion of additional State citations in the replacement of terms [30 CFR 916.16(b)(5)]; K.A.R. 47–3–42(a)(41), clarifying that proximity may not be the decisive factor in deciding to regulate off-site processing plants [30 CFR 916.16(b)(6)]; K.A.R. 47–4–14a(c)(1), requiring that hearings locations are selected in accordance with K.A.R. 47–4–14a(c)(1) unless the Kansas act requires otherwise [30 CFR 916.16(b)(7)]; K.A.R. 47–4–14a(c)(8), replacing the word "shall" with the word "may" in the phrases "*shall* withdraw it by moving to dismiss" and "shall grant such a motion" [30 CFR 916.16(b)(9)]; K.A.R. 47–4–14a(d), removing the phrase "except as otherwise provided by subsections (e), (f), and (g)" [30 CFR 916.16(b)(11)]; K.A.R. 47–4–14a(d)(2), replacing the word "shall" with the word "may" in the sentence any party *shall* petition for the disqualification of a person promptly after receipt of notice * * *; and by providing the petitioning party the right to have an independent review of the disqualification determination [30 CFR 916.16(b)(12)]; K.A.R. 47–4–14a(d)(3), replacing the word "shall" with the word "may" in the sentence "the presiding officer designated to conduct the hearing shall conduct a prehearing conference"; and by correcting the citation at K.A.R. 47–4–14a(d)(3)(A) [30 CFR 916.16(b)(13)]; K.A.R. 47–4–14a(d)(4) and (5) removing paragraph K.A.R. 47–4–14a(d)(4)(G) and (d)(5)(B)(i) from its program [30 CFR 916.16(b)(14)]; K.A.R. 47–4–14a(d)(6)(A), (C)(iv), (C)(vii), and (e) correcting typographical errors and providing a complete citation for subsections (i) through (iv) [30 CFR 916.16(b)(15)]; K.A.R. 47–4–14a(d)(7) providing a complete sentence at K.A.R. 47–4–14a(d)(7)(C) [30 CFR 916.16(b)(16)]; K.A.R. 47–4–14a(d)(14)(I) clarifying the prescribed manner required for service [30 CFR 916.16(b)(18)]; K.A.R. 47–4–14a(d)(15) replacing the word "shall" with the word "may" in the sentence "a party shall submit to the presiding officer or agency head a petition for stay of effectiveness * * *" [30 CFR 916.16(b)(19)]; K.A.R. 47–4–14a(d)(16)(A) replacing the word "shall" with the word "may" in the phrase "shall file a petition for reconsideration with the agency head" [30 CFR 916.16(b)(20)]; K.A.R. 47–4–14a(d)(17) removing K.A.R. 47–4–14a(d)(17)(C) regarding orders [30 CFR 916.16(b)(21)]; K.A.R. 47–4–14a(e), (f), and (g) removing these sections, regarding conference hearings, emergency proceedings and summary proceedings [30 CFR 916.16(b)(22)]; K.A.R. 47–5–5a(c) *et seq.*, by changing the word "procedure" to "procedures" and the Kansas citation "K.A.R. 47–4–14" to "K.A.R. 47–4–14a," by providing a complete Kansas citation for K.A.R. 47–5–5a(a) regarding civil penalties and correcting the referenced 30 CFR part 723 to K.A.R. 47–5–5a(b)(1) through (9); by changing the citation at K.A.R. 47–5–5a(c)(4)(A) to "subsection (b)(6);" and by providing statutory citations at K.A.R. 47–5–5a(c)(1)(C) and (c)(2)(C) [30 CFR 916.16(b)(25)]; K.A.R. 47–5–5a(c)(5) requiring that the ultimate burden of persuasion as to the fact of the violation be placed with the person who petitioned the review [30 CFR 916.16(b)(26)]; K.A.R. 47–5–5a(c)(7)(D) reducing the time period in which any increase in penalty must be paid from 30 to 15 days [30 CFR 916.16(b)(27)]; K.A.R. 47–5–5a(c)(8) regarding appeals by correcting the citation from "K.A.R. 47–4–14(d)(14) or (16)" to "K.A.R. 47–4–14a(d)(14) or (16)" [30 CFR 916.16(b)(28)]; K.A.R. 47–6–1 allowing the regulatory authority to order reasonable revisions or modifications of permits at any time [30 CFR 916.16(b)(29)]; K.A.R. 47–8–9(a) removing from adoption by reference at 30 CFR 800.5, the definition for the term "self-bond" [30 CFR 916.16(b)(31)]; K.A.R. 47–9–1(a) deleting the adopting by reference of 30 CFR 810.2 and replacing the Federal terms and citations with appropriate State terms and citations [30 CFR 916.16(b)(32)]; K.A.R. 47–9–1(b), (c), (d), (e), (f), (g), and (h) making the editorial changes necessary to specify that Kansas intends to adopt only the sections of 30 CFR Parts 815, 816, 817, 819, 823, 827, and 828 listed [30 CFR 916.16(b)(33)]; K.A.R. 47–9–1(a) by not replacing the term "subchapter" with the phrase "K.A.R. 47–9–1(a)" in the adoption by reference of 30 CFR 816.61(c)(1) and at K.A.R. 47–9–1(d) by not replacing the phrase "K.A.R. 47–9–1(d)" in the adoption by reference of 30 CFR 817.61(c)(1) [30 CFR 916.16(b)(34)]; K.A.R. 47–9–1(c)(35) removing from the adoption by reference of 30 CFR 816.102 (general backfilling and grading requirements) the references to 30 CFR 785.14 and .16 (specific categories of mining for mountaintop removal and variance from approximate original contour (AOC) for

steep slope mining) [30 CFR 916.16(b)(35)]; K.A.R. 47–9–1(c)(37) and (38) providing objective formulae for defining thin and thick overburden [30 CFR 916.16(b)(36)]; K.A.R. 47–9–1(c)(43) removing the direction to delete editorial note "3" and indicating that the practices to be approved by the regulatory agency must also have been approved in advance by OSM in accordance with 30 CFR 732.17 and 816.116(c)(4) [30 CFR 916.16(b)(37)]; K.A.R. 47–9–1(d)(47) through (50) correcting the typographical error at K.A.R. 47–9–1(d)(47)–(50) by changing the adopted Federal regulation prefixes from 30 CFR 816 to 30 CFR 817 [30 CFR 916.16(b)(38)]; K.A.R. 47–9–1(f)(2) requiring that prime farmland occupied by all coal preparation plants, support facilities, and roads that are a part of the surface mining activities must meet the applicable prime farmland performance standards [30 CFR 916.16(b)(39)]; K.A.R. 47–12–4(a)(6) providing that the term "Secretary" means Secretary of the Interior, not the secretary of the Kansas Department of Health and Environment [30 CFR 916.16(b)(40)]; K.A.R. 47–13–4 removing K.A.R. 47–13–4(b)(2) and (b)(3), duplicative adoptions by reference dealing with training and certification of blasters [30 CFR 916.16(b)(41)]; and K.A.R. 47–15–1a(a)(6), (a)(12), and (b) replacing Federal terms and citations with appropriate State counterpart terms and citations [30 CFR 916.16(b)(42)].

Accordingly, the Director is removing the required program amendments as identified above from the Kansas program and as codified at 30 CFR 916.16.

4. K.A.R. 47–2–75(e)(6), Definitions

Kansas proposes to remove from its program all of K.A.R. 47–2–75(e)(6) which replaced the term "section 703" of SMCRA with the term "77–501 *et seq.*" This removal is in response to a required program amendment placed on Kansas' program at 30 CFR 916.16(b)(3). The discussion leading up to the required program amendment is found in Finding no. 8 of the **Federal Register** notice dated September 13, 1991 (56 FR 46531). This discussion pointed out that the substitution of section 703 of SMCRA (which deals with employee protection) with the Kansas Administrative Procedure Act (K.S.A.) 77–501 *et seq.* was inappropriate because K.S.A. 77–501 *et seq.* was not a State counterpart provision to section 703 of SMCRA. In addition, K.S.A. 77–501 *et seq.* was not part of the approved Kansas program.

Kansas adopts, at K.A.R. 47–2–75(e), the definitions at 30 CFR 846.5, including the definition of "violation, failure, or refusal." This definition also refers to "section 703" of SMCRA. Therefore, by removing the substitution at K.A.R. 47–2–75(e)(6), Kansas references a nonexistent section of the Kansas statute. This renders K.A.R. 47–2–75(e) less effective than the Federal program.

The Director finds that K.A.R. 47–2–75(e) is less effective than the Federal program and is not approving it to the extent that it references a nonexistent State statute. The Director is requiring Kansas to either provide that this reference is not incorporated into its definition by specifying that the phrase "or section 703 of the Act" in the Federal definition shall be deleted from the State definition or to provide OSM with a State statute that is comparable to section 703 of SMCRA for future review and approval.

5. K.A.R. 47–3–42(a)(2), Violation information, and (a)(44), Review of Permit Applications

Kansas proposes to add a statement to clarify that the term "act," as used in these subsections, means SMCRA. This proposed rule change is in response to and satisfies a required program amendment placed on the Kansas program at 916.16(b)(4).

The Director wishes to clarify that the reference to SMCRA, as used in this context, must be understood to encompass SMCRA, its implementing regulations, and all State and Federal programs approved under SMCRA. See **Federal Register's** dated September 28, 1983 (48 FR 44344, 44389), and October 3, 1988 (53 FR 38868, 38882).

Since Kansas has satisfied the required program amendment, the Director is removing 30 CFR 916.16(b)(4) and approving the proposed amendments at K.A.R. 47–3–42(a)(2) and 47–3–42(a)(44).

6. K.A.R. 47–4–14a(c)(7), Intervention

Kansas proposes to amend K.A.R. 47–4–14a(c)(7) in response to the required program amendment placed on Kansas' program at 30 CFR 916.16(b)(8). This required program amendment instructed Kansas, in part, to replace the word "shall" with the word "may" in the phrase "shall petition for leave to intervene in a proceeding" and to make the changes necessary so that Kansas' standards for intervention are no more strict than those required by the Federal regulations at 43 CFR 4.1110.

Kansas changed the word "shall" to "may" in the phrase "shall petition for leave to intervene in a proceeding." Thus, Kansas satisfied, in part, the required amendment at 30 CFR 916.16(b)(8).

However, the required amendment additionally required Kansas to make the changes necessary so that Kansas' standards for intervention are no more strict than those required by the Federal regulations at 43 CFR 4.1110. Kansas revised its proposal at K.A.R. 47–4–14a(c)(7) to make the granting of intervention mandatory if either criterion at K.A.R. 47–4–14a(c)(7)(A)(i) or (ii) is satisfied. This makes the Kansas proposal at 47–4–14a(c)(7)(A) no less effective than the counterpart Federal rule at 43 CFR 4.1110(c). However, the Kansas proposal regarding intervention at K.A.R. 47–4–14a(c)(7)(B) is still less effective than the Federal counterpart rule because the Kansas proposal simply states that the presiding officer may consider the factors set forth at K.A.R. 47–4–14a(c)(7)(B)(i) through (iv) to determine if intervention is appropriate. By comparison, the Federal counterpart regulation at 43 CFR 4.1110 requires the administrative law judge or Board to apply the factors listed at 43 CFR 4.1110 (d)(1)–(4) when, and only when, paragraph (c)(1) and (c)(2) do not apply. Thus, Kansas' rule could be interpreted to allow the presiding officer to make a decision to grant intervention based on the factors listed at K.A.R. 47–4–14a(c)(7)(B)(i)–(iv) even where the criteria for mandatory intervention at K.A.R. 47–4–14a(c)(7)(A)(i) or (ii) were satisfied. Moreover, in circumstances where the criteria for mandatory intervention at K.A.R. 47–4–14a(c)(7)(A)(i) or (ii) were not satisfied, the Kansas proposal would allow the presiding officer the discretion to ignore the factors listed at K.A.R. 47–4–14a(c)(7)(B)(i)–(iv) when determining whether intervention would be appropriate, whereas the Federal rule, under such circumstances, requires the consideration of the listed factors.

Finally, the second sentence of proposed K.A.R. 47–4–14a(c)(7) requires that the petition shall set out the interest of the petitioner and why it would be adversely affected. The Federal counterpart provision at 43 CFR 4.1110(b) requires that a petitioner for leave to intervene shall incorporate the petition a statement setting forth the interest of the petitioner and, where required, a showing of why his interest is or may be adversely affected. Thus, the Kansas proposal is less effective than the Federal regulations because the State requirements impose stricter standards on the required contents of a petition for leave to intervene.

The Director finds that the required amendment at 30 CFR 916.16(b)(8) is partially satisfied and is removing the

requirement that Kansas replace the word "shall" with the word "may" in the phrase "shall petition for leave to intervene in a proceeding." However, the Director finds that Kansas' proposed rule at K.A.R. 47–4–14a(c)(7) continues to be less effective than the Federal regulations at 43 CFR 4.1110 and is not approving it. Kansas is required to amend its program at K.A.R. 47–4–14a(c)(7) to: (1) change proposed K.A.R. 47–4–14a(c)(7)(B) so that it is no less effective than the Federal rule at 43 CFR 4.1110(d); and (2) change the standards for the required contents of a petition for leave to intervene so that they are not less effective than the Federal standards at 43 CFR 4.1110(b). The Director will modify the required amendment at 30 CFR 916.16(b)(8) in accordance with this finding.

7. K.A.R. 47–4–14a(c)(11), Waiver of Hearing

Kansas proposes to amend K.A.R. 47–4–14a(c)(11) in response to the required program amendment placed on Kansas' program at 30 CFR 916.16(b)(10). This required program amendment instructed Kansas to replace the word "shall" with the word "may" in the phrases "shall waive such a right" and "shall be deemed to have waived his right" and to require that a hearing will be held unless all parties to a proceeding who are entitled to a hearing waive their right to a hearing. Kansas addressed the concerns of the required program amendment with the exception that the word "shall" was not changed to the word "may" in the phrase "shall be deemed to have waived his right." The Director is approving the changes at K.A.R. 47–4–14a(c)(11), however, he is also amending the required program amendment at 30 CFR 916.16(b)(10) to require that Kansas change the word "shall" to the word "may" in the phrase "shall be deemed to have waived his right."

8. K.A.R. 47–4–14a(b), Definitions, 47–4–14a(d), Formal Hearings, and (d)(2)(F), Presiding Officer

Kansas's rule at K.A.R. 47–4–14a(d) requires that when a statute provides for a hearing in accordance with this act, the hearing shall be governed by this subsection, and amendments thereto. Kansas' rule at K.A.R. 47–4–14a(d)(2)(F) allows the department to enter into agreements with another State agency to provide hearing officers to conduct proceedings under this act or for other agency proceedings. OSM noted in its review of this amendment package that K.A.R. 47–4–14a(b), Definitions, also inaccurately refers to "this act." In all instances, by using the phrase "this act," Kansas is incorrectly referring to its rules and regulations as its act. If Kansas intended to reference its act it should state "the act." However, if Kansas intended to reference its rules and regulations it should amend these provisions to provide appropriate substitute terms for the term "this act."

The Director finds Kansas' rules at K.A.R. 47–4–14a(d) and (d)(2)(F) to be no less effective than the Federal program and is approving them. However, the Director is requiring Kansas to amend its program at K.A.R. 47–4–14a(b), 47–4–14a(d), and (d)(2)(F) by providing appropriate substitute terms for the term "this act" as used in these two provisions and to review its program to identify and correct any other inappropriate usages of the term "this act."

9. K.A.R. 47–4–14a(d)(4)(H), Prehearing Conference Notice

Kansas proposes at K.A.R. 47–4–14a(d)(4)(h), which deals with prehearing conference notices, to replace the word "shall" with the word "may" so that the prehearing conference notice may include any other matters that the presiding officer considers desirable to expedite proceedings. Kansas' current rule at K.A.R. 47–4–14a(d)(4)(H) already provides the presiding officer with discretion in deciding what information to include in the prehearing conference notice. Therefore, this proposed change would reinforce that discretion. While there is no direct Federal counterpart provision, general requirements for prehearing conferences are found at 43 CFR 4.1121(b).

The Director finds that proposed K.A.R. 47–4–14a(d)(4)(H) is not inconsistent with the requirements of SMCRA and the Federal regulations and is approving it.

10. K.A.R. 47–4–14a(d)(10) (D) and (E), The Presiding Officer, and K.A.R. 47–4–14a(d)(5)(B)(vi), Prehearing Conference Procedure

Kansas' rule at K.A.R. 47–4–14a(d)(10)(D) allows that the presiding officer may conduct all or part of the hearing by telephone or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding. Similarly, Kansas requires, at K.A.R. 47–4–14a(d)(5)(B)(vi), that the presiding officer shall conduct the prehearing conference, as appropriate, to determine the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form, and the extent to which telephone or other electronic means will be used as a substitute for proceedings, in person.

As discussed in the September 13, 1991, **Federal Register** notice (56 FR 46531, 46538), this proposal conflicts with the requirement found in the State program at K.A.R. 47–4–14a(d)(10)(f) that the hearing be open to the public (see also Kansas State Act at 49–405c, 49–407, 49–415, and 49–416a). SMCRA also requires that hearings be open to the public. The SMCRA requirements for public hearings are found throughout the Act including sections 513, 514, 518, 521, and 525. Consequently, OSM did not approve Kansas' rules at K.A.R. 47–4–14a(d)(10)(D) and (d)(5)(B)(vii) and placed a required amendment on Kansas' program, at 30 CFR 916.16(b)(17), requiring Kansas to remove the provision for the holding of hearings by telephone or other electronic means. An additional component to the required program amendment at 30 CFR 916.16(b)(17) required Kansas to replace the word "shall" with the word "may" in the phrase "shall cause a person other than the State agency to prepare a transcript * * *" at K.A.R. 47–4–14a(d)(10)(E). Kansas has proposed this change and has satisfied this component of the required program amendment.

In regard to this proposed program amendment package, OSM again notified Kansas in the October 22, 1992, issue letter (Administrative Record No. KS–540) that K.A.R. 47–4–14a(d)(10)(D) and (d)(5)(B)(vii) were not approvable because they contained provisions for conducting hearings by telephone or other electronic means. Kansas defended its language by submitting to OSM a memorandum from the Secretary of the Kansas Department of Health and Environment (DHE) requesting all State agencies to adopt procedures to increase State efficiency and conserve the public funds wherever possible. The memorandum goes on to say that telephonic proceedings are to be considered prior to request for location of the hearing outside Topeka and that K.S.A. 77–523(d) provides that hearings may be conducted by telephone or other electronic means. The secretary of DHE concluded that the Kansas statutes clearly contemplate a determination of the issues based on telephone testimony.

OSM supports the State's efforts to increase efficiency and conserve public funds. In addition, OSM believes that some of Kansas' State agencies may be free to hold hearings over the telephone. However, the Surface Mining Section of DHE, named as the State regulatory authority, operates under the Mined-

Land Conservation and Reclamation Act (K.S.A. 1979 Supp. 49–405, 49–406; effective May 1, 1980), and is obligated to hold public hearings per the requirements of the Mined-Land Conservation and Reclamation Act cited above.

The Director notes that Kansas may be able to establish that its telephonic hearings are, in fact, public hearings—that is, open and accessible to members of the public. However, based upon the administrative record at this point, the Director must find that such hearings violate the requirement for public hearings. Therefore, the Director finds that Kansas' proposal, at K.A.R. 47–4–14a(d)(10)(D) and (d)(5)(B)(vii), to conduct hearings by telephone or other electronic means is inconsistent with other provisions of the State program, less stringent than SMCRA and less effective than requirements of the Federal regulations and is not approving it. The Director will modify the required program amendment at 30 CFR 916.16(b)(17) by removing that portion satisfied at K.A.R. 47–4–14a(d)(10)(E) and by retaining the requirement that Kansas remove the provision for the holding of hearings by telephone conference.

11. K.A.R. 47–4–14a(d)(12)(D), Evidence, Official Notice

Kansas proposes to replace the word "shall" with the word "may" in the requirement that any part of evidence shall be received in written form. The effect of this proposal would be to provide the presiding officer with the license to use discretion in deciding what evidence needs to be received in written form. While there is no direct counterpart Federal regulation, 43 CFR 4.1121 outlines the general powers of the administrative law judge. The Director finds that the proposed rule at K.A.R. 47–4–14a(d)(12)(D) to be not inconsistent with the requirements of SMCRA and the Federal regulations and is approving it.

12. K.A.R. 47–4–14a(d)(18), Service of Order

Under its administrative procedures, service of order requirements, Kansas proposes to replace the phrase "take some proceedings" with the phrase "file a petition" in the requirement that whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or order and the notice or order is served by mail, 3 days shall be added to the prescribed period. The effect of Kansas' proposed revision is to restrict the proceedings to which 3 days will be added to the prescribed period.

While there is no direct Federal counterpart regulation, this State proposal is not inconsistent with the Federal program and is an acceptable State administrative procedure. Therefore, the Director approves the proposed rule at K.A.R. 47–4–14a(d)(18).

13. K.A.R. 47–4–15 (a), (c), (l)(7), and (m)(3)(C)

Kansas proposes to amend K.A.R. 47–4–15 (a), (c), (l)(7) and (m)(3)(C) in response to the required program amendment placed on Kansas' program at 30 CFR 916.16(b)(23) that directed Kansas to clarify that no all requests for discovery must be approved beforehand by the presiding officer, and to correct typographical errors. Kansas modified its rules to clarify that all requests for discovery are to be filed with the presiding officer. However, the presiding officer does not have to rule on the request for discovery. The intent of this modification was verified during a phone conversation between Kansas and OSM on December 3 1992 (Administrative Record No. KS–536). Therefore, the Director finds Kansas' proposed rules at K.A.R. 47–4–15 (a), (c), (l)(7), and (m)(3)(C) to be no less effective that the Federal regulations at 43 CFR 4.1130–4.1141 and is approving them. The Director is also removing the required program amendment at 30 CFR 916.16(b)(23).

14. K.A.R. 47–5–5a (a) and (b), Civil Penalties

Kansas proposes to amend K.A.R. 47–5–5a (a) and (b) in response to the required program amendment at 30 CFR 916.16(b)(24) that instructed Kansas to correct editorial errors and to replace certain Federal terms and citations with appropriate State terms and citations. Kansas corrected the typographical errors but did not replace the cited Federal terms and citations with appropriate State terms and citations. Therefore, the Director finds K.A.R. 47–5–5a(a)(10) in its adoption of 30 CFR part 846, continues to be less effective than its counterpart Federal regulation at 30 CFR 846.5. In its definition of "violation, failure, or refusal," Kansas: (1) has not replaced the phrase "A Federal program, a Federal lands program, Federal enforcement pursuant to section 502 of the Act, or Federal enforcement of a State program pursuant to section 521 of the Act" or the terms "section 521 of the Act," and "section 518(b) or section 703 of the Act" with the appropriate State terms; (2) has not replaced, at 30 CFR 846.17(b)(1), the address to where an individual files a petition for review with the appropriate State address; and, (3) at 30 CFR 846.18(d), has not replaced the references to 30 CFR 870.15(e)(1)–(5) and 30 CFR 870.15 (f) and (g) with the appropriate State citations. The Director is not approving K.A.R. 47–5–5a(a)(10) and is amending 30 CFR 916.16(b)(24) to reflect the finding above.

15. K.A.R. 47–5–5a(c)(7)(B)(i), Initial Order of Presiding Officer

Kansas proposes to amend this rule by requiring that the point system contained in the Federal regulation at 30 CFR 845.13, as well as the conversion table contained in the Federal regulation at 30 CFR 845.14, should be adhered to when establishing the amount of a penalty. Kansas' program currently refers only to 30 CFR 845.14.

The Federal counterpart regulation, 30 CFR 845.11, requires each notice of violation and cessation order shall be reviewed in accordance with the assessment procedures described in 30 CFR 845.12, 845.13, 845.14, and 845.16 to determine whether a civil penalty will be assessed and the amount of the penalty.

Kansas is incorporating the reference to 30 CFR 845.13 to clarify that 30 CFR 845.13 defines the point system whereas 30 CFR 845.14 defines the conversion table.

The Director finds the proposed rule at K.A.R. 47–5–5a(c)(7)(B)(i) to be no less effective than the Federal regulation at 30 CFR 845.11 and is approving it.

16. K.A.R. 47–5–5a(c)(7)(C), Initial Order of Presiding Officer

Kansas proposes to add language at K.A.R. 47–5–5a(c)(7)(C) that requires if the presiding officer makes a finding that no violation occurred or if the presiding officer reduces the amount of the civil penalty below the proposed assessment and a timely petition for review of the decision is not filed with the secretary or the secretary refuses to grant such a petition, the presiding officer shall order the Surface Mining Section to remit the appropriate amount to the person who made the payment.

The Federal counterpart regulation at 30 CFR 845.20(c) requires that if the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed, the Office shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount.

The effect of Kansas' proposed language is to make clear that the Surface Mining Section shall make the refund to the person who made the

payment. However, the proposed language does not place a time limit within which the State must remit the money. The Director finds the proposed changes to K.A.R. 47–5–5a(c)(7)(C) do not render it less effective than the Federal counterpart regulation at 30 CFR 845.20(c) and is approving it. However, Kansas is required to further amend its rule at K.A.R. 47–5–5a(c)(7)(C) by placing a time limit within which the Surface Mining Section must remit a refund.

17. K.A.R. 47–6–7(h)(2), Appeals

In its October 22, 1992, issue letter, OSM requested that Kansas address the required program amendment at 30 CFR 916.16(b)(30) that required Kansas to correct the citations at K.A.R. 47–6–7(e) and 47–6–7(h)(2) which established procedures for conducting hearings and appeals for permit suspension and revocation proceedings. Kansas provided the proper citation in K.A.R. 47–6–7(e) in its December 23, 1992, response; however, Kansas contended that, with regard to K.A.R. 47–6–7(h)(2), it provided the proper citation in its June 29, 1989, program amendment package and that no further action was required.

As stated in the required program amendment, K.A.R. 47–6–7(h)(2) references K.A.R. 47–4–14*(a)*(d)(14) which was revoked in its entirety effective February 11, 1991. The correct citation is K.A.R. 47–4–14*a*(d)(14). Therefore, the Director finds that the required program amendment at 30 CFR 916.16(b)(30) is partially addressed and will modify the required program amendment to reflect the remaining requirement that Kansas correct the citation in K.A.R. 47–6–7(h)(2).

18. K.A.R. 47–9–1(c)(17) and (d)(17), Use of Explosives: General Requirements

Kansas proposes at K.A.R. 47–9–1(c)(2) that "subchapter" shall be replaced by "K.A.R. 47–9–1(c)" except at K.A.R. 47–9–1(c)(17), which adopts by reference 30 CFR 816.61, where "subchapter" will remain unchanged. Similarly, Kansas proposes at K.A.R. 47–9–1(d)(2) that "subchapter" shall be replaced by "K.A.R. 47–9–1(d)" except at K.A.R. 47–9–1(d)(17), which adopts by reference 30 CFR 817.61, where "subchapter" will remain unchanged.

These revisions are in response to the required program amendment at 30 CFR 916.16(b)(34) which summarized Finding no. 48 in the September 13, 1991, Federal Register (56 FR 46531, 46544). This finding noted that, at K.A.R. 47–9–1(a)(4) and (d)(2), Kansas proposed to replace the term "subchapter" with the phrase "K.A.R. 47–9–1(a)" and "K.A.R. 47–9–1(d)" respectively throughout K.A.R. 47–9–1. The finding continued that, at 30 CFR 816.61(c)(1), use of explosives: general requirements for surface mining, and 30 CFR 817.61(c)(1), use of explosives: general requirements for underground mining operations, the substitution was improper. Thus, Kansas' current proposed revisions satisfy the required program amendment at 30 CFR 916.16(b)(34) and the Director is removing it from Kansas' program.

However, in conducting its review, OSM overlooked the fact that Kansas had an additional set of word substitutions at the end of Article 9 at K.A.R. 47–9–1(i)(7), which replaces the term "subchapter C" with the phrase "these rules and regulations." The effect of this substitution is that it would only require State approval of the blaster certification program, while the Federal regulations at 30 CFR 816.61(c)(1) and 917.61(c)(1) require such programs to be submitted as a State program amendment subject to approval by the Director of OSM. Since Kansas already has an approved blaster certification program, most of the language of the Federal regulations at 30 CFR 816/817.61(c)(1) no longer applies. Therefore, the Director finds K.A.R. 47–9–1(c)(17) and (d)(17) to be no less effective than the Federal program. However, the Director is requiring Kansas to amend its program at K.A.R. 47–9–1 (c)(17) and (d)(17) by deleting from its adoption by reference of 30 CFR 816/817.61(c)(1) everything but the statement that "all blasting operations shall be conducted under the direction of a certified blaster."

19. K.A.R. 47–9–1(c)(46), Postmining Land Use (Surface Mining Operations) and K.A.R. 47–9–1(d)(44), Postmining Land Use (Underground Mining Operations)

Kansas is proposing, at K.A.R. 47–9–1(c)(46) and (d)(44), to incorporate the Federal regulations at 30 CFR 816.133 and 817.133 as they existed on July 1, 1992, rather than July 1, 1990, as in their current rule. On December 17, 1991 (56 FR 65612, 65634), OSM removed the suspension of 30 CFR 816.133(d) and 817.133(d), that established criteria for AOC variances and references 30 CFR 785.16, variances from AOC for steep slope mining operations. As part of that rulemaking, OSM also promulgated a revised version of 30 CFR 785.16 that, in accordance with In re: Permanent Surface Mining Regulation Litigation II (D.D.C., October 1, 1984), provided that variances from approximate original contour (AOC) requirements may be approved only for steep slope operations. See 56 FR 65612, 65613 (December 17, 1991).

Kansas has not proposed to adopt by reference the Federal regulation at 30 CFR 785.16 or 30 CFR 816.107 and therefore must revise K.A.R. 47–9–1(c)(46) and (d)(44) to delete the adoption of 30 CFR 816.133(d) and 817.133(d), respectively since these Federal rules address requirements for steep slope mining operations for which the Kansas program has no provision.

The Director finds that K.A.R. 47–9–1(c)(46) and (d)(44) are less effective than the Federal regulation at 30 CFR 816.133 and 817.133 to the extent that they adopt by reference paragraph (d) of both Federal regulation sections. The required program amendment at 30 CFR 916.16(a) required Kansas to either (1) remove the incorporation by reference of 30 CFR 816.133(d) and 817.133(d), (2) submit revisions to K.A.R. 47–3–42 to include provisions no less effective than those of 30 CFR 785.16, or (3) otherwise propose to amend its program to be no less effective than the Federal regulations with respect to variances from approximate original contour. Kansas has chosen not to incorporate by reference the Federal regulations at 30 CFR 785.16 or 30 CFR 816.107. Therefore, the Director is amending 30 CFR 916.16(a) to require Kansas to amend its program by removing from its adoption by reference, at K.A.R. 47–9–1(c)(46) and (d) (44), the Federal regulations at 30 CFR 816.133(d) and 817.133(d), respectively.

20. K.A.R. 47–9–1(c)(52)(C) and (d)(50)(C), Backfilling and Grading: Steep Slope (For Surface and Underground Mining Operations)

Kansas proposes to delete from adoption by reference at K.A.R. 47–9–1(c)(52)(C) and (d)(50)(C) the Federal regulations at 30 CFR 816.107 and 817.107 respectively. These Federal regulations deal with the backfilling and grading requirements for steep slope mining for surface and underground mining operations. Kansas has not adopted any counterpart steep slope regulation in its program. Therefore, it is proper for Kansas to not adopt these Federal regulations. The Director finds that K.A.R. 47–9–1(c)(52)(C) and (d)(50)(C) are no less effective than the Federal program and is approving them.

21. K.A.R. 47–15–1a, Inspection and Enforcement; Adoption by Reference

Kansas adopts by reference much of the Federal regulations dealing with inspection and enforcement. However, on the first page these rules are cited as K.A.R. 47–15–1a while on the following

pages, in the upper right hand corner, they are cited as K.A.R. 47–15–5a. This confusion existed in Kansas' June 29, 1989, program amendment package and resulted in a required program amendment being placed on the Kansas program at 30 CFR 916.16(b)(42) in the September 13, 1991, **Federal Register** (56 FR 46531, 46549). This required program amendment instructed Kansas, at K.A.R. 47–15–1a, to either adopt the Federal regulation at 30 CFR 842.12 or replace it with an appropriate State counterpart, and to replace the Federal terms, "section 518(e), 518(f), 521(a)(4), or 521(c) of the Act," "Act," and "Director" with appropriate State terms. The replacement of 30 CFR 842.12 with an appropriate State counterpart and the replacement of Federal terms with appropriate State counterpart terms was preformed at K.A.R. 47–15–5a.

OSM, in its issue letter to Kansas regarding this current program amendment package, requested that Kansas address the required program amendment at 30 CFR 916.16(b)(42). Kansas responded that the required program amendment was satisfied by the substitutions already in existence in various locations of K.A.R. 47–15–5a. Herein lies the problem; Kansas provides two different citations, K.A.R. 47–15–1a and 5a for the same set of rules. Given that the rules are adequate and that the confusion stems from the improper citations, the Director finds the rules at K.A.R. 47–15–1a and 5a to be no less effective than the Federal regulations at 30 CFR part 840 and 843 and is removing the required program amendment at 916.16(b)(42). However, the Director is requiring Kansas to correct the citation problem.

22. K.A.R. 47–15–1a(a)(10), Informal Public Hearings

Kansas proposes to adopt by reference the Federal regulations at 30 CFR 843.15, addressing informal public hearings, as they existed on July 1, 1992. However, section 30 CFR 843.15(e) refers to section 554 of Title 5 of the United States Code. Kansas needs to replace this Federal citation with the appropriate State citation authority.

The Director finds Kansas' proposed rule at K.A.R. 47–15–1a(a)(10) to be no less effective than the Federal regulations at 30 CFR 843.15 and is approving it. However, the Director is requiring Kansas to further amend its program by providing the appropriate State citation for the phrase "Section 554 of Title 5 of the United States Code" K.A.R. 47–15–1a(a)(10).

23. K.A.R. 47–15–1a(a)(6), (8), and (9), Inspection and Enforcement

Kansas proposes, at K.A.R. 47–15–1a, to adopt by reference the Federal regulations at 30 CFR Parts 840 through 843, inspection and enforcement, Federal inspections and monitoring, and Federal enforcement, as they existed on July 1, 1992. At section K.A.R. 47–15–1a(b)(6) and (b)(9), Kansas proposes to replace the Federal terms "43 CFR Part 4" and "43 CFR 4.1281" with "K.S.A. 1989 Supp. 49–416a" which deals with board review of notices of violation (NOV's) or cessation order (CO's). There are three locations in the proposed State rules that adopt Federal regulations where these word substitutions are not appropriate. First, at K.A.R. 47–15–1a(a)(6), adopting by reference 30 CFR 842.15(d), the substituted State citation, 49–416a(a), does not make sense in this context. The State citation relates solely to administrative review of NOV's and CO's, while the pertinent Federal regulation relates to administrative review of decisions not to inspect or enforce.

Second, at K.A.R. 47–15–1a(a)(8), adopting by reference 30 CFR 843.12(i), the Federal regulation deals with administrative review of determinations whether to grant an abatement period. The proposed State citation does not provide for such decisions but instead deals with administrative review of NOV's and CO's.

Third, at K.A.R. 47–15–1a(a)(9), adopting by reference 30 CFR 843.13(b) and (c), the Federal regulation deals with administrative review of permit suspension and revocation decisions. The proposed State citation relates to administrative review of NOV's and CO's.

The Director finds the proposed rules at K.A.R. 47–15–1a(a)(6), (8), and (9) to be less effective than the Federal regulations at 30 CFR 842.15(d), 843.12(i), 843.13(b) and 843.13(c), respectively to the extent that they replace adopted Federal citations with incorrect State citations and is not approving them. The Director is requiring Kansas to amend its program by providing the correct counterpart State citations for the terms "43 CFR Part 4" and "43 CFR 4.1281" at K.A.R. 47–15–1a(a)(6), (8), and (9).

IV. Public and Agency Comments

Public Comments

For a complete history of the opportunity provided for public comment on the proposed amendment, please refer to "Submission of Amendment." Because no one requested an opportunity to testify at a public hearing, no hearing was held. No public comments were received.

Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), comments were solicited from the Administrator of the Environmental Protection Agency (EPA), and various other Federal agencies with an actual or potential interest in the Kansas program. Comments were also solicited from various State agencies.

The U.S. Soil Conservation Service and Fish and Wildlife Service both responded that they had no suggested changes or objections to the proposed amendment (Administrative Record Nos. KS–527 and KS–528).

Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), concurrence was solicited from the EPA for those aspects of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act and the Clean Air Act.

By letter dated August 25, 1992 (Administrative Record No. KS–529), the EPA regional office in Kansas City, Kansas responded that it had no comment. By letter dated December 18, 1992 (Administrative Record No. KS–546), the EPA Washington, DC office responded that it concurred with the proposed amendment.

State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation Comments (ACHP)

30 CFR 732.17(h)(4) requires that all amendments that may have an effect on historic properties be provided to the SHPO and ACHP for comment. Comments were solicited from these offices. By a letter dated July 17, 1992, the SHPO responded that they had no concerns regarding the proposed amendment (Administrative Record No. KS–526). No comments were received from ACHP.

V. Director's Decision

Based on the above findings, the Director is approving, with certain exceptions, the proposed amendment submitted by Kansas on July 10, 1992, and revised on December 23, 1992, with the exception of those provisions found to be inconsistent with SMCRA or the Federal regulations.

The Director is not approving the proposed rules as discussed in findings No. 4, K.A.R. 47–2–75(e)(6), Definitions; No. 6, K.A.R. 47–4–14a(c)(7), Intervention; No. 10, K.A.R. 47–4–14a(d)(10)(D), The presiding officer, and K.A.R. 47–4–14a(d)(5)(B)(vi), Prehearing

conference procedure; No. 14, K.A.R. 47–5–5a(a)(10), Civil penalties; No. 19, K.A.R. 47–9–1(c)(46), Postmining land use (surface mining operations) and K.A.R. 47–9–1(d)(44), Postmining land use (underground mining operations); and No. 23, K.A.R. 47–15–1a(a) (6), (8), and (9), Inspection and enforcement.

The Director is approving, with further required program amendments, the proposed rules discussed in findings No. 7, K.A.R. 47–4–14a(c)(11), Waiver of hearing; No. 8, K.A.R. 47–4–14a(d), Formal hearings and (d)(2)(F), Presiding officer; No. 16, K.A.R. 47–5–5a(c)(7)(C), Initial order of presiding officer; No. 17, K.A.R. 47–6–7(h)(2), Appeals; No. 18, K.A.R. 47–9–1(c)(17) and (d)(17), Use of explosives: general requirements; No. 21, K.A.R. 47–15–1a, Inspection and Enforcement; adoption by reference; and No. 22, K.A.R. 47–15–1a(a)(10), Informal public hearings.

Except as noted above, the Director is approving the Kansas proposed rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 916 codifying decisions concerning the Kansas program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Kansas program, the Director will recognize only the statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Kansas of only such provisions.

VII. Procedural Determinations

Compliance With Executive Order No. 12291

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for decisions to approve or disapprove State or Tribe abandoned mine land plans and amendments. Accordingly, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State or Tribe.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 4, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, Subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 916—KANSAS

1. The authority citation for part 916 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 916.15 is amended by adding paragraph (l) as follows:

§ 916.15 Approval of regulatory program amendments.

* * * * * * *

(l) With the exceptions of K.A.R. 47–2–75(e)(6), Definitions; K.A.R. 47–4–14a(c)(7), Intervention; K.A.R. 47–4–14a(d)(10)(D), The presiding officer and 47–4–14a(d)(5)(B)(vi), Prehearing conference procedure; K.A.R. 47–5–5a(a)(10), Civil penalties; K.A.R. 47–9–1 (c)(46) and (d)(44), Postmining land use; and K.A.R. 47–15–1a (a)(6), (8), and (9), Inspection and enforcement, the following revisions to the Kansas Administrative regulations (K.A.R.)

submitted to OSM on July 10, 1992, as revised on December 23, 1992, are approved effective June 14, 1993:

K.A.R. 47–1–9, Notice of Citizen Suits; 47–2–14, Complete and Accurate Application Defined; 47–2–53a, "Regulatory program" defined; 47–2–58, "Significant, imminent environmental harm to land, air, or water resources" defined; 47–2–67, Surety Bond Defined; 47–2–75, Definitions-Adoption by Reference; 47–3–2, Application for Mining Permit-Adoption by Reference; 47–3–3a, Application for Mining Permit-Maps; 47–3–42, Application for Mining Permit-Adoption by Reference; 47–4–14a, Administrative Hearing Procedure; 47–4–15, Administrative Hearings, Discovery; 47–5–5a, Civil Penalties-Adoption by Reference; 47–5–16, Civil Penalties-Final Assessment and Payment of Civil Penalties; 47–6–1, Permit Review; 47–6–2. Permit Revision; 47–6–3, Permit Renewals-Adoption by Reference; 47–6–4, Permit Transfers, Assignments, and Sales-Adoption by Reference; 47–6–6, Permit Conditions; 47–6–7, Permit Suspension or Revocation; 47–6–8, Termination of Jurisdiction-Adoption by Reference; 47–6–9, Exemption for Coal Extraction Incident to Government Financed Highway or Other Construction-Adoption by Reference; 47–6–10, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals-Adoption by Reference; 47–7–2, Coal Exploration-Adoption by Reference; 47–8–9, Bonding Procedures-Adoption by Reference; 47–8–11, Use of Forfeited Bond Funds; 47–9–1, Performance Standards-Adoption by Reference; 47–9–4, Interim Program Performance Standards-Adoption by Reference; 47–10–1, Underground Mining-Adoption by Reference; 47–11–8, Small Operator Assistance Program-Adoption by Reference; 47–12–4, Lands Unsuitable for Surface Mining-Adoption by Reference; 47–13–4, Training and Certification of Blasters-Adoption by Reference; 47–13–5, Responsibilities of Operators and Blasters-in-Charge; 47–14–4, Employee Financial Interest; 47–14–7, Employee Financial Interest-Adoption by Reference; 47–15–1a, Inspection and Enforcement-Adoption by Reference; 47–15–4, Injunctive Relief; 47–15–7, State Inspections; and 47–15–8, Citizen's Request for State Inspections.

3. Section 916.16 is amended by revising paragraph (a); amending paragraph (b) by revising the introductory text, removing and reserving paragraphs (b)(1) through (7), (b)(9), (b)(11) through (16), (b)(18) through (23), (b)(25) through (29), (b)(31) through (42), and revising (b)(24) and (30); and by adding paragraph (c) as follows:

§ 916.16 Required regulatory program amendments.

(a) By July 14, 1993, Kansas shall submit revisions to K.A.R. 47–9–1(c)(46) and (d)(44) to remove the incorporation by reference of 30 CFR 816.133(d) and 817.133(d), respectively.

(b) By July 14, 1993, Kansas shall amend its program as follows:

* * * * *

(8) At K.A.R. 47–4–14a(c)(7), by: (1) changing proposed K.A.R. 47–4–14a(c)(7)(B) so that it is no less effective than the Federal rule at 43 CFR 4.1110(d); and (2) changing the standards for the required contents of a petition for leave to intervene so that they are no less effective than the Federal standards at 43 CFR 4.1110(b).

* * * * *

(10) At K.A.R. 47–4–14a(c)(11), by changing the word "shall" to the word "may" in the phrase "shall be deemed to have waived his right."

* * * * *

(17) At K.A.R. 47–4–14a(d)(10)(D), by removing the provision for the holding of hearings by telephone conference and at K.A.R. 47–4–14a(d)(5)(B)(vi) by removing the phrase "and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person."

* * * * *

(24) At K.A.R. 47–5–5a(a)(10), by replacing the cited Federal terms and citations with appropriate State terms and citations for the following in the definition of "violation, failure, or refusal": "A Federal program, a Federal lands program, Federal enforcement pursuant to section 502 of the Act, or Federal enforcement of a State program pursuant to section 521 of the Act" or the terms "section 521 of the Act," and "section 518(b) or section 703 of the Act;" at 30 CFR 846.17(b)(1), the address to where an individual files a petition for review with the appropriate State address; and, at 30 CFR 846.18(d), the references to 30 CFR 870.15(e) (1)–(5) and 30 CFR 870.15 (f) and (g).

* * * * *

(30) At K.A.R. 47–6–7(h)(2), by providing the correct cross-reference to the procedures to be followed for proceedings to suspend or revoke a permit.

* * * * *

(c) By July 14, 1993 Kansas shall amend its program as follows:

(1) At K.A.R. 47–2–75(e)(6), by either providing that K.S.A. 77–501 *et seq.* is not incorporated into its definition by specifying that the phrase "or section 703 of the Act" in the Federal definition shall be deleted from the State definition or by providing OSM with a State statute that is comparable to section 703 of SMCRA for future review and approval.

(2) At K.A.R. 47–4–14a(b), 47–4–14a(d), and 47–4–14a(d)(2)(F), by providing the correct references for where the phrase "this act" is improperly used and to review its program to identify and correct any other inappropriate usages of the term "this act."

(3) At K.A.R. 47–5–5a(c)(7)(C), by placing a time limit within which the Surface Mining Section must remit a refund.

(4) At K.A.R. 47–9–1(c)(17) and (d)(17), by deleting from its adoption by reference of 30 CFR 816/817.61(c)(1), everything but the statement that "all blasting operations shall be conducted under the direction of a certified blaster."

(5) At K.A.R. 47–15–1a and 5a, by resolving the citation problem between the two.

(6) At K.A.R. 47–15–1a(a)(10), by providing the appropriate State citation for the phrase "Section 554 of Title 5 of the United States Code."

(7) At K.A.R. 47–15–1a(a) (6), (8), and (9), by providing the correct counterpart State citations for the terms "43 CFR Part 4" and "43 CFR 4.1281."

[FR Doc. 93–13852 Filed 6–11–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–4665–2]

Commonwealth of Virginia Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The Commonwealth of Virginia has applied for final authorization of a revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Commonwealth of Virginia's application and has made a decision, subject to public review and comment, that the Commonwealth of Virginia's hazardous waste program revision satisfies all the of the requirements necessary to qualify for final

authorization. Thus, EPA intends to approve the Commonwealth of Virginia's hazardous waste program revisions. The Commonwealth of Virginia's application for program revision is available for public review and comment.

DATES: Final authorization for the Commonwealth of Virginia shall be effective August 13, 1993 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on the Commonwealth of Virginia's program revision application must be received by the close of business July 14, 1993.

ADDRESSES: Copies of the Commonwealth of Virginia's revision application are available during 8:30 a.m.–4 p.m. at the following addresses for inspection and copying: Virginia Department of Environmental Quality, Waste Management Program, Monroe Building, 11th Floor, 101 North Fourteenth Street, Richmond, Virginia 23219, Phone: (804) 225–2667. U.S. EPA Region III, Library, 841 Chestnut Building, Philadelphia, PA 19107, Phone: (215) 597–9800). Written comments should be sent to Linda Miller, Mail Code: 3HW52, EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107, Phone: (215) 597–3178).

FOR FURTHER INFORMATION CONTACT: Linda Miller, Mail Code: 3HW52, EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107, Phone: (215) 597–3178.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste program are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266, 268, 124 and 270.

B. Commonwealth of Virginia

The Commonwealth of Virginia initially received final authorization on December 18, 1984. On October 21, 1992, the Commonwealth of Virginia submitted a program revision application. Today the Commonwealth of Virginia is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed the Commonwealth of Virginia's application, and has made an immediate final decision that the Commonwealth of Virginia's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the requested program modification to the Commonwealth of Virginia. The public may submit written comments on EPA's immediate final decision up until July 14, 1993. Copies of the Commonwealth of Virginia's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of the Commonwealth of Virginia's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either; (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

The program revision submitted by the Commonwealth of Virginia and approved today transfers administration of the Commonwealth's hazardous waste program to the newly created Virginia Department of Environmental Quality effective April 1, 1993.

Operation of the program by the Department of Environmental Quality between April 1, 1993 and the effective date of this approval is hereby ratified.

Decision

I conclude that the Commonwealth of Virginia's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, the Commonwealth of Virginia is granted final authorization to operate its hazardous waste program as revised.

The program revision approved today deals solely with an executive branch organizational change made by the Commonwealth of Virginia to its state government structure. No other change to the existing Virginia hazardous waste program is being approved by this action.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens or small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 93–13939 Filed 6–11–93; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–930–4210–06; WYC 050733, WYC 051835, WYW 92945]

43 CFR Public Land Order 6981

Opening of Land, Under Section 24 of the Federal Power Act, in the Executive Order Dated July 2, 1910, Power Site Reserve No. 115, and Restoration of Reconveyed Land to Tribal Ownership; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order opens 40 acres of land withdrawn for Powersite Reserve No. 115 by Executive Order of July 2, 1910, subject to section 24 of the Federal Power Act. This action will permit disposal of a parcel of land and retain the power rights to the United States. This order also restores reconveyed private land and mineral interests within the Wind River Indian Reservation to ownership of the Arapahoe and Shoshone Indian Tribes. These actions have been directed by the United States District Court, District of

Wyoming, in a judgment resolving litigation between Oliver J. Foust and the Secretary of the Interior regarding correction of errors in two homestead entry patents.

EFFECTIVE DATE: June 14, 1993.

FOR FURTHER INFORMATION CONTACT: Jon Johnson, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6116.

In compliance with the Order and Judgment dated November 21, 1991, of the United States District Court, District of Wyoming, in the case of *Oliver J. Foust, plaintiff, v. Manuel Lujan, Jr., Secretary of the Interior, defendant, Northern Arapaho and Shoshone Indian Tribes of the Wind River Indian Reservation, intervenor,* 88–CV–0235–K; and by virtue of the authority vested in the Secretary of the Interior by sections 204 and 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, 1746 (1988); by section 24 of the Act of June 10, 1920, as amended, 16 U.S.C. 818 (1988); by section 5 of the Act of July 27, 1939, 25 U.S.C. 575 (1988); and pursuant to the determination by the Federal Energy Regulatory Commission dated November 18, 1992 (DVWY–187, WYC 051835, 1865 (931), Power Site Reserve No. 115), it is ordered as follows:

1. The following described land withdrawn by Executive Order of July 2, 1910, creating Power Site Reserve No. 115, is hereby opened to disposal at 9 a.m. on June 14, 1993, subject to the provisions of Section 24 of the Federal Power Act of June 10, 1920, as amended (16 U.S.C. 818):

Wind River Meridian

T. 6 N., R. 6 E.,
Sec. 28, lot 13 (originally described as SW¼NE¼).

The land described contains 40.00 acres in Hot Springs County.

2. Subject to valid existing rights, the following described land and mineral interests which have been reconveyed to the United States in conjunction with Correction of Conveyance Document Applications Serial Nos. WYC 050733 and WYC 051835, are hereby restored to tribal ownership to be held by the United States of America in trust for the use and benefit of the Northern Shoshone and Arapahoe Indian Tribes, and are added to and made part of the Wind River Indian Reservation, Wyoming:

Wind River Meridian

The rights to the surface estate in the following described land:

T. 6 N., R. 6 E.,
Sec. 28, lot 5.

The rights to the surface estate and the mineral estate in the following described land:

T. 6 N., R. 6 E.,
Sec. 28, NE¼SE¼.

The land described contains 87.55 acres in Hot Springs County.

Dated: May 26, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–13876 Filed 6–11–93; 8:45 am]

BILLING CODE 4310–22–M

43 CFR Public Land Order 6982

[AK–932–4210–06; AA–8139]

Revocation of Public Land Order No. 5, as Amended; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety, a public land order as it affects approximately 15 acres of public land withdrawn for use by the War Department for military purposes in the Anchorage area. The land is no longer needed for the purpose for which it was withdrawn. The land continues to be subject to overlapping Public Land Order No. 6127 and remains closed to all forms of appropriation under the public land laws, including the mining laws. The land has been and remains closed to mineral leasing.

EFFECTIVE DATE: June 14, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 5, as amended, which withdrew public land for military purposes is hereby revoked as it affects the following described land:

Seward Meridian

A parcel of land located within the SE¼, sec. 3, T. 12 N., R. 3 W., more particularly described as:

Commencing at the Southwest corner of the SE¼, thence north a distance of 800 feet, on the west line thereof, to the True Point of Beginning;

Thence N. 45° E., a distance of 900 feet;
Thence S. 45° E., a distance of 726 feet;
Thence S. 45° W., a distance of 900 feet;
Thence N. 45° W., a distance of 726 feet to said point of beginning.

The area described contains approximately 15 acres.

2. The land continues to be subject to the terms and conditions of Public Land Order No. 6127, and thus remains closed to settlement, sale, location, or entry under the general land laws, including the mining laws, 30 U.S.C. Ch. 2 (1988). The land is withdrawn from mineral leasing pursuant to Public Land Order No. 5187.

Dated: May 26, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–13877 Filed 6–11–93; 8:45 am]

BILLING CODE 4310–JA–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7069]

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

EFFECTIVE DATE: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each

community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in the floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as set forth below.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: June 8, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Cleburne	Unincorporated areas.	May 5, 1993, May 12, 1993, *The Sun Times.*	The Honorable Claude Dill, County Judge, County Courthouse, Heber Springs, Arkansas 72543.	April 6, 1993	050424
California: Riverside	Unincorporated areas.	January 22, 1993, January 29, 1993, *Riverside Press Enterprise.*	The Honorable Patricia Larson, Chairperson, Riverside County Board of Supervisors, P.O. Box 1359, Riverside, California 92502–1359.	March 10, 1993	060245
California: Tulare	Unincorporated areas.	June 11, 1993, June 18, 1993, *Visalia Times Delta.*	Mr. Charles Harness, Chairman, Tulare County Board of Supervisors, Administration Building, Visalia, California 93291.	May 19, 1993	065066
Idaho: Ada	Unincorporated areas.	May 14, 1993, May 21, 1993, *Idaho Statesman.*	The Honorable Bern Bisterfeldt, Chairman, Ada County Board of Commissioners, 650 Main Street, Boise, Idaho 83702.	April 23, 1993	160001
Illinois: Cook	City of Prospect Heights.	May 25, 1993, June 1, 1993, *Daily Herald.*	The Honorable Edward Rotchford, Mayor of the City of Prospect Heights, One North Elmhurst Road, Prospect Heights, Illinois 60070–1509.	May 20, 1993	170919
Kansas: Sedgwick	City of Wichita	May 7, 1993, May 14, 1993, *The Daily Reporter.*	The Honorable Elma Broadfoot, Mayor, City of Wichita, City Hall, 1st Floor, 455 North Main Street, Wichita, Kanasas 67202.	April 22, 1993	200328

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
	Unincorporated areas.	May 27, 1993, June 3, 1993, *Wichita Eagle.*	The Honorable Mark F. Schroeder, Chairman, County Commissioners, Sedgwick County, 1250 South Seneca, Wichita, Kansas 67213–4498.	May 5, 1993	200321
Ohio: Lorain	City of Avon	June 2, 1993, June 9, 1993, *The Press.*	The Honorable Pearl Olearcik, Mayor of the City of Avon, Lorain County, Avon City Hall, 36774 Detroit Road, Avon, Ohio 44011.	May 25, 1993	390348 C
Oklahoma: Oklahoma	City of Oklahoma City.	April 22, 1993, April 29, 1993, *The Journal Record.*	The Honorable Ronald J. Norick, Mayor, City of Oklahoma City, 200 North Walker, Oklahoma City, Oklahoma 73102.	March 18, 1993	405378
Pennsylvania: Franklin	Township of Greene.	May 21, 1993, May 28, 1993, *Public Opinion.*	Mr. Richard P. Kramer, Chairman of the Township of Greene Board of Supervisors, P.O. Box 215, Scotland, Pennsylvania 17254.	May 10, 1993	421649 B
Texas: El Paso County	City of El Paso	May 27, 1993, June 3, 1993, *El Paso Times.*	The Honorable William S. Tilney, Mayor, City of El Paso, No. 2 Civic Center Plaza, El Paso, Texas 79901.	April 28, 1993	480214

[FR Doc. 93–13923 Filed 6–11–93; 8:45 am]
BILLING CODE 6718–03–M

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the Office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate that appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as set forth below.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: June 8, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California (FEMA Docket No. 7062): Sacramento	City of Sacramento	Feb. 19, 1993, Feb. 26, 1993, Sacramento Bee.	The Honorable Joe Serna, Jr. mayor, City of Sacramento, City Hall, room 205, 915 I Street, Sacramento, California 95814–2672.	Jan. 29, 1993.	060266
California (FEMA Docket No. 7052): Sacramento	Unincorporated areas	Feb. 17, 1993, Feb. 24, 1993, Sacramento Bee.	Mr. Douglas M. Fraleigh, Director, Sacramento County Department of Public Works, 827 Seventh Street, room 304, Sacramento, California 95814.	Jan. 29, 1993.	060262
Connecticut: Fairfield (FEMA Docket No. 7060).	Town of Weston	Jan. 6, 1993, Jan. 13, 1993, The Weston Forum.	The Honorable George C. Guidera, First Selectman of the Town of Weston, Fairfield County, P.O. Box 1007, Weston, Connecticut 06883.	Dec. 30, 1992.	090018 B
Illinois: DuPage (FEMA Docket No. 7060).	City of Darien	Dec. 23, 1992, Dec. 30, 1992, Darien Metropolitan.	The Honorable Carmen Soldado, mayor of the city of Darien, DuPage County, 1702 Plainfield Road, Darien, Illinois 60559.	Dec. 15, 1992.	170750 A
Cook (FEMA Docket No. 7043).	Village of Justice	Apr. 10, 1992, Apr. 17, 1992, Southtown Economist.	The Honorable Edward Rusch, Jr., mayor of the village of Justice, 7800 Archer Road, Justice, Illinois 60458.	Mar. 26, 1992.	170112 D
Kansas: Sedgwick	City of Wichita (Docket No. 7062).	Feb. 11, 1993, Feb. 18, 1993, The Wichita Eagle.	The Honorable Frank Ojile, mayor, city of Wichita, City Hall, first floor, 455 North Main Street, Wichita, Kansas 67202.	Jan. 26, 1993.	200328
New York: Rockland (FEMA Docket No. 7060).	Town of Ramapo	Jan. 15, 1993, Jan. 22, 1993, Rockland Journal.	The Honorable Herbert Reisman, Ramapo town supervisor, Rockland County, 237 Route 59, Suffern, New York 10901.	Jan. 6, 1993	365340 C
Oklahoma: Tulsa, Osago, and Rogers (FEMA Docket No. 7058).	City of Tulsa	Dec. 29, 1992, Jan. 5, 1993, Tulsa World.	The Honorable M. Susan Savage, mayor of the city of Tulsa, 200 Civic Center, Tulsa, Oklahoma 74103.	Dec. 17, 1992.	405381
Texas (FEMA Docket No. 7062): Bell	Unincorporated areas	Feb. 18, 1993, Feb. 25, 1993, Temple Daily Telegram.	The Honorable John Garth, judge, chairman, Bell County, board of commissioners, P.O. Box 768, Belton, Texas 76513–0768.	Jan. 29, 1993.	480706
Brazoria	City of Pearland	Feb. 24, 1993, Mar. 3, 1993, The Journal.	The Honorable Vic Coppinger, mayor, city of Pearland, P.O. Box 2068, Pearland, Texas 77588.	Feb. 15, 1993.	480077
Denton	City of Denton (Docket No. 7060).	Jan. 13, 1993, Jan. 20, 1993, Denton Record Chronicle.	The Honorable Bob Castleberry, mayor, city of Denton, 215 East McKinney Street, Denton, Texas 76201.	Dec. 10, 1992.	480194
Tarrent	City of Benbrook (Docket No. 7062).	Jan. 28, 1993, Feb. 4, 1993, The Benbrook News.	The Honorable Jerry Dunn, mayor, city of Benbrook, P.O. Box 26569, Benbrook, Texas 76126.	Jan. 15, 1993.	480586

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Wisconsin: Dane (FEMA Docket No. 7060).	Village of Cross Plains	Jan. 7, 1993, Jan. 14, 1993, Dane County News.	Mr. Richard Greffin, president for the village of Cross Plains, Dane County, 2107 Julius Street, Cross Plains, Wisconsin 53528-9499.	Dec. 23, 1992.	550081 B

[FR Doc. 93-13922 Filed 6-11-93; 8:45 am]
BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Newton (town), Dale County (FEMA Docket No. 7061)	
Choctawhatchee River:	
Approximately 2,000 feet downstream of the confluence of Hurricane Creek ..	*171
Downstream side of State Route 123	*174
Maps available for inspection at the Town Hall, Newton, Alabama.	
ARIZONA	
Carefree (town), Maricopa County (FEMA Docket No. 7057)	
Grapevine Wash:	
Approximately 1,300 feet upstream of the confluence with Rowe Wash	*2,517
Approximately 0.51 mile upstream of Father Kino Trail ..	*2,725
Galloway Wash-North Tributary:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 0.73 mile upstream of the confluence with Unnamed Tributary to Galloway Wash	*2,311
Approximately 0.53 mile downstream of Father Kino Trail	*2,449
Approximately 0.44 mile downstream of Father Kino Trail	*2,462
Approximately 0.8 mile upstream of Father Kino Trail	*2,629
Rowe Wash:	
Approximately 100 feet downstream of the confluence with Rowe Wash-Tributary 1	*2,537
Approximately 0.6 mile upstream of the confluence with Rowe Wash-Tributary 1	*2,704
Maps are available for review at Town Hall, 100 Easy Street, Carefree, Arizona.	
Cave Creek (town), Maricopa County (FEMA Docket No. 7057)	
Grapevine Wash:	
At the confluence with Rowe Wash	*2,482
Approximately 1,300 feet upstream of the confluence with Rowe Wash	*2,517
Galloway Wash-North Tributary:	
At the confluence with Unnamed Tributary to Galloway Wash	*2,216
Approximately 0.73 mile upstream of the confluence with Unnamed Tributary to Galloway Wash	*2,311
Approximately 0.53 mile downstream of Father Kino Trail	*2,449
Approximately 0.44 mile downstream of Father Kino Trail	*2,462
Ocotillo Wash-Tributary 1:	
Approximately 450 feet upstream of the confluence with Ocotillo Wash	*2,291
Approximately 0.84 mile upstream of the confluence with Ocotillo Wash-Tributary 1A	*2,450
Ocotillo Wash-Tributary 1A:	
At the confluence with Ocotillo Wash-Tributary 1	*2,319
Approximately 0.7 mile upstream of the confluence with Ocotillo Wash-Tributary 1	*2,453
Ocotillo Wash-Tributary 2:	
At the confluence with Ocotillo Wash	*2,228
At Echo Canyon Road	*2,274
Approximately 0.73 mile upstream of Echo Canyon Road	*2,402
Ocotillo Wash-Tributary 3:	
At the confluence with Ocotillo Wash	*2,164
At Echo Canyon Road	*2,284
Just upstream of Highland Road (upper crossing)	*2,374
Ocotillo Wash-Tributary 4:	
At the confluence with Ocotillo Wash	*2,124
Approximately 100 feet upstream of Schoolhouse Road	*2,215
Approximately 700 feet upstream of Echo Canyon Road	*2,314
Rowe Wash:	
Approximately 1,900 feet upstream of Echo Canyon Road	*2,315
At the confluence with Grapevine Wash	*2,484
Approximately 100 feet downstream of the confluence with Rowe Wash-Tributary 1	*2,537
Willow Springs Wash:	
Approximately 700 feet downstream of the confluence with Willow Springs Wash-Tributary 2	*2,188
Approximately 275 feet upstream of the confluence with Willow Springs Wash-Tributary 2	*2,218
Approximately 2,000 feet upstream of the confluence with Willow Springs Wash-Tributary 2	*2,255
Approximately 2,550 feet downstream of Sierra Vista Drive (lower crossing)	*2,273
Willow Springs Wash-Tributary 1:	
At the confluence with Willow Springs Wash	*2,101
Approximately 1,250 feet downstream of Morningstar Road	*2,162
Willow Springs Wash-Tributary 2:	
At the confluence with Willow Springs Wash	*2,211
Approximately 100 feet upstream of the confluence with Willow Springs Wash	*2,211
Willow Springs Wash-Tributary 5:	
At the confluence with Willow Springs Wash	*2,063
Approximately 100 feet upstream of Spur Cross Road	*2,118
Just downstream of Schoolhouse Road	*2,200
Just downstream of Rockway Hills Drive	*2,251
Willow Springs Wash-Tributary 5A:	
At the confluence with Willow Springs Wash-Tributary 5	*2,119
Approximately 0.6 mile upstream of the confluence with Willow Springs-Wash-Tributary 5	*2,194
Maps are available for review at the Planning Department, Town Hall, 37622 North Cave Creek Road, Cave Creek, Arizona.	
Surprise (town), Maricopa County (FEMA Docket No. 7058)	
Trilby Wash:	
At the concrete overchute at C.A.P. Canal	*1,546
Approximately 1,350 feet upstream of C.A.P. Canal (at Jomax Road Alignment)	*1,556
Map are available for review at the Building Administration and Community Development Department, 15818 North Hollyhock Street, Surprise, Arizona.	
Tucson (city), Pima County (FEMA Docket No. 7063)	
Flowing Wells Wash and Navajo Wash:	
Approximately 350 feet downstream of Fort Lowell Road	*2,296
Just upstream of Fort Lowell Road	*2,301
Approximately 150 feet upstream of Oracle Road	*2,329
At Altos Avenue	*2,348
Approximately 800 feet downstream of Mountain Avenue	*2,368
Wilson Wash:	
Approximately 200 feet upstream of East Fort Lowell Road	*2,369
At Olsen Avenue	*2,387
At Glenn Street	*2,401
Just upstream of Water Street	*2,416
Just downstream of East Grant Road	*2,419
Cemetery Wash:	
Approximately 70 feet upstream of Erma Avenue	*2,310
At Fairview Avenue	*2,316
Approximately 70 feet downstream of Oracle Road	*2,327
Just downstream of Stone Avenue	*2,335
Christmas Wash:	
Approximately 100 feet upstream of Roger Road	*2,351
Just downstream of East Prince Road	*2,373
Just downstream of Fort Lowell Road	*2,396
Just downstream of Country Club Road	*2,402
Columbus Wash and Midway Wash:	
Approximately 200 feet upstream of the confluence with Alvernon Wash	*2,412
At the intersection of Desert Avenue and Blackridge Drive	*2,421

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 50 feet upstream of Monte Vista Drive	*2,332
Just upstream of East Grant Road	*2,453
Approximately 70 feet downstream of East Pima Street	*2,472
At East Speedway Boulevard	*2,480
Just downstream of East Fifth Street	*2,505
Van Buren Wash:	
At the confluence with Alamo Wash	*2,490
Approximately 50 feet downstream of Waverly Place	*2,493
At East Pima Street	*2,500
Just downstream of Bellevue Street	*2,513
Just downstream of East Speedway Boulevard	*2,518
Sahuara Wash:	
At the confluence with Alamo Wash	*2,503
Just upstream of East Pima Street	*2,509
Approximately 50 feet downstream of Fairmount Street	*2,516
Just downstream of East Speedway Boulevard	*2,522
El Rio Wash:	
At the confluence with Silvercroft Wash	*2,309
Just downstream of El Rio Drive	*2,311
Approximately 100 feet upstream of Riverview Boulevard	*2,321
Just downstream of Speedway Boulevard	*2,325
Bronx Wash:	
At the confluence with Santa Cruz River	*2,318
Approximately 150 feet upstream of Interstate Highway 10	*2,333
Just downstream of Miracle Mile Road	*2,356
At Seventh Avenue	*2,373
Just downstream of North First Avenue	*2,399
High School Wash:	
At Second Avenue	*2,387
Just upstream of Martin Avenue	*2,425
At Wilson Avenue	*2,444
Approximately 150 feet upstream of Wilson Avenue	*2,446
Rolling Hills Wash:	
At the confluence with Pantano Wash	*2,618
Just downstream of Samoff Drive	*2,653
Just upstream of Olympic Club Drive	*2,702
At Cathy Avenue	*2,746
Approximately 300 feet upstream of Kevin Drive	*2,802
Este Wash:	
At the confluence with Tanque Verde Creek	*2,569
Just upstream of Bonanza Avenue	*2,614
Just downstream of Fifth Avenue	*2,656
Approximately 40 feet upstream of East 22nd Street	*2,830
Just downstream of Houghton Road	*2,843

Maps are available for review at the Department of Transportation, Engineering Division, Floodplain Section, 201 North Stone Avenue, Tucson, Arizona.

ARKANSAS

Little Rock (city), Pulaski County (FEMA Docket No. 7042)

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Arkansas River:	
Approximately 2.05 river miles downstream of Interstate Route 440	*246
Approximately 1.75 river miles upstream of confluence with Little Maumelle River	*262
Fourche Creek:	
At the confluence with Arkansas River	*249
Approximately 0.7 mile upstream of State Route 5	*318
Little Fourche Creek:	
At the confluence with Fourche Creek	*257
Approximately 0.1 river mile downstream of Union Pacific Railroad	*272
Stump Creek:	
At the confluence with Little Fourche Creek	*261
Approximately 125 feet upstream of Baseline Road	*278
Field Creek:	
Approximately 0.2 river mile downstream of confluence of Field Creek Tributary	*263
Approximately 250 feet upstream of Senate Drive	*277
Field Creek Tributary:	
At confluence with Field Creek	*263
Approximately 100 feet upstream of Geyen Springs Road	*269
Smith Creek:	
At the confluence with Little Fourche Creek	*264
Approximately 0.26 river mile upstream of Chicot Road	*295
Smith Creek Tributary:	
Confluence with Smith Creek	*275
Approximately 100 feet upstream of Yorkwood Drive	*283
Rock Creek:	
At confluence with Fourche Creek	*258
Upstream corporate limits	*530
Rock Creek Tributary A:	
Approximately 0.30 mile upstream of confluence with Rock Creek	*487
Approximately 0.56 mile upstream of Chenal Valley Parkway	*548
Rock Creek Tributary 1:	
At confluence with Rock Creek	*511
Approximately 0.12 mile upstream of Chenal Parkway	*553
Grassy Flat Creek:	
At confluence with Rock Creek	*331
At Pleasant Valley Drive	*454
Brodie Creek:	
At confluence with Fourche Creek	*266
Approximately 0.43 river mile upstream of Bowman Road	*337
Panther Branch:	
At confluence with Brodie Creek	*316
Approximately 1.0 river mile upstream of Bowman Road	*395
Young Creek:	
At confluence with Fourche Creek	*265
Approximately 100 feet upstream of Union Pacific Railroad	*280
Clover Dale:	
At confluence with Young Creek	*272
Approximately 0.5 river mile upstream of Union Pacific Railroad	*286
Nash Creek:	
At confluence with Fourche Creek	*273
Approximately 50 feet upstream of Union Pacific Railroad	*306
Nash Creek Tributary:	
Confluence with Nash Creek	*290
Approximately 50 feet upstream of Mabelvale West Road	*303
McHenry Creek:	
Confluence with Fourche Creek	*260
Upstream corporate limits	*311
Otter Creek:	
Confluence with Fourche Creek	*268
Approximately 300 feet upstream of corporate limits	*312
Callegahan Branch:	
Confluence with Fourche Creek	*293
At the upstream corporate limits	*337
Crooked Creek:	
Confluence with Fourche Creek	*298
At State Route 111	*314
Haw Branch:	
Confluence with Fourche Creek	*290
Approximately 1,848 feet upstream of State Route 5	*305

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Taylor Loop Creek:	
At the Missouri-Kansas-Texas Railroad	*264
Approximately 820 feet upstream of Pleasant Valley Place	*431
Good Earth Drain:	
Confluence with Taylor Loop Creek	*280
Approximately 280 feet upstream of Private Road	*267
South Loop:	
Confluence with Taylor Loop Creek	*264
At divergence from Taylor Loop Creek	*305
South Loop Split:	
At the confluence with South Loop	*280
At divergence from South Loop	*295
Iron Creek:	
Approximately 0.3 mile upstream of confluence with Taylor Loop Creek	*264
Approximately 0.98 mile upstream of confluence with Taylor Loop Creek	*267
Little Maumelle River:	
At confluence with Arkansas River	*262
Approximately 2.7 miles upstream of confluence of Taylor Loop Creek	*264

Maps available for inspection at the Public Works Building, Room 111, 701 West Markham, Little Rock, Arkansas.

CALIFORNIA

Highland (city), San Bernardino County (FEMA Docket No. 7058)

City Creek:	
Approximately 150 feet north of Third Street	*1,069
Just upstream of Del Rosa Avenue	*1,087
Just upstream of Third Street	*1,150
Just upstream of Palm Avenue	*1,190
Approximately 800 feet upstream of Church Avenue	*1,211
Sand Creek:	
At Highland Avenue	*1,269
Approximately 400 feet upstream of Highland Avenue	*1,284

Maps are available for review at City Hall, 27215 East Baseline, Suite A, Highland, California.

San Marcos (city), San Diego County (FEMA Docket No. 7048)

San Marcos Creek:	
Just upstream of Discovery Street	*515
Approximately 1,020 feet upstream of Discovery Street	*516
Just downstream of Via Vera Cruz	*530
Just downstream of Echo Lane	*548
Just upstream of State Highway 78	*561
Approximately 1,240 feet upstream of Twin Oaks Valley Road	*571
Approximately 280 feet upstream of Valpreda Road	*585
Approximately 240 feet upstream of the Atchison, Topeka, and Santa Fe Railroad	*592
Just downstream of the Woodland Parkway box culvert	*621
San Marcos Creek, Highway 78 Split Flow:	
At the convergence with San Marcos Creek	*534
Approximately 400 feet downstream of State Highway 78	*549
At the divergence from San Marcos Creek	*561
Along Via Vera Cruz, approximately 500 feet north of the intersection with San Marcos Boulevard	#1
Twin Oaks Valley Creek:	
At the confluence with San Marcos Creek	*566
Approximately 1,100 feet upstream of Mission Road	*580
Approximately 3,100 feet upstream of Mission Road	*596
Just downstream of Drop Structure No. 6	*645
Approximately 200 feet upstream of Drop Structure No. 7	*653
Approximately 120 feet upstream of Drop Structure No. 8	*664
Approximately 1,360 feet upstream of La Cienega Road	*682
Just downstream of Olive Drive	*697
Just downstream of the Walnut Creek Park entrance	*702
At Mulberry Drive	*715
Las Posas Creek:	
500 feet upstream of Linda Vista Drive	#1
750 feet downstream of Grand Avenue	#3
Just upstream of Grand Avenue	*543
Approximately 80 feet downstream of Descanso Avenue	*550
Approximately 850 feet upstream of Mission Road	*569

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for review at the Department of Developmental Services, 570 Rancheros Drive, Suite 101, San Marcos, California.	

Temecula (city), Riverside County (FEMA Docket No. 7055)

Temecula Creek:	
Approximately 270 feet upstream of Dala Road	*1,002
Approximately 1,070 feet upstream of Dala Road	*1,006
Approximately 1,670 feet upstream of Dala Road	*1,009
Approximately 2,270 feet upstream of Dala Road	*1,014
Approximately 2,970 feet upstream of Dala Road	*1,018
Approximately 4,070 feet upstream of Dala Road	*1,024
Approximately 5,070 feet upstream of Dala Road	*1,030

Maps are available for review at the City of Temecula Department of Public Works, 43174 Business Park Drive, Temecula, California.

CONNECTICUT

Stamford (city), Fairfield County (FEMA Docket No. 7050)

Mianus River:	
Approximately 400 feet downstream of West Glen Drive	*75
Approximately 0.4 mile upstream of Farms Road	*198
East Branch Mianus River:	
At confluence with Mianus River	*181
Approximately 75 feet upstream of Mill Road	*320
Rippowam River:	
At 50 feet downstream of Main Street	*15
Approximately 60 feet upstream of Interlaken Road	*180
Toilsome Brook:	
At confluence with Rippowam River	*30
Approximately 1,373 feet upstream of Daniel Drive	*132
Noroton River:	
Upstream side of U.S. Route 1	*12
Approximately 1.1 miles upstream of Woodway Road	*110
Springdale Brook:	
At confluence with Noroton River	*77
At upstream corporate limits	*204

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Environmental Protection Board, Stamford Government Center, 888 Washington Boulevard, Stamford, Connecticut.	
GEORGIA	
Union County (unincorporated areas) (FEMA Docket No. 7061)	
Nottely River:	
Approximately 0.4 mile downstream of Nicholson Bridge .	*1,848
Approximately 1,450 feet upstream of Morris Ford Road	*1,884
Coosa Creek:	
At upstream side of Coosa Creek Road Bridge	1,822
Approximately 1,900 feet upstream of Owltown Road Bridge	*1,865
Maps available for inspection at the Union County Courthouse, Zoning Administration, 114 Courthouse Street, Blairsville, Georgia.	
IOWA	
Emmetsburg (city), Palo Alto County (FEMA Docket No. 7058)	
West Fork Des Moines River:	
Just upstream of State Highway 4	*1,198
About 2.03 miles upstream of U.S. Highway 18	*1,215
Maps are available for review at City Hall, 2021 Main Street, Emmetsburg, Iowa.	
KENTUCKY	
Augusta (city), Bracken County (FEMA Docket No. 7061)	
Ohio River:	
At upstream corporate limits ...	*510
Approximately 0.5 mile downstream of upstream corporate limits	*510
Maps available for inspection at the Augusta City Hall, 219 Main Street, Augusta, Kentucky.	
Bowling Green (city) Warren County (FEMA Docket No. 7058)	
Jennings Creek:	
Approximately 650 feet downstream of Hobson Lane	*462
Approximately 0.5 mile upstream of Whispering Road .	*492
Sinkhole No. 14: At Wellington Way	*479
Sinkhole No. 6: At Churchill Court	*510
Sinkhole No. 25A: At Three Springs Hollow	*536
Sinkhole No. 25B: At Three Springs Hollow	*531
Sinkhole No. 25C: At Three Springs Hollow	*540
Sinkhole No. 3: At Catherine Drive	*465
Sinkhole No. 9D: At Cave Mill Road	*511
Sinkhole No. 9G: At Cave Mill Road	*503
Sinkhole No. 9H: At Cave Mill Road	*509
Sinkhole No. 9J: At Cave Mill Road	*489
Sinkhole No. 9K: At Cave Mill Road	*510
Sinkhole No. 12A: At McDivit Court	*473
Sinkhole No. 12B: At McDivit Court	*473
Sinkhole No. 12C: At McDivit Court	*473
Sinkhole No. 12D: At McDivit Court	*481
Sinkhole No. 10: At Cave Mill Road	*514
Maps available for inspection at the City/County Planning Commission, 1141 State Street, Bowling Green, Kentucky.	
Warren County (unincorporated areas) (FEMA Docket No. 7058)	
Jennings Creek:	
Approximately 0.4 mile upstream of U.S. Highway 231	446
Approximately 75 feet upstream of Hobson Lane	473
Green River:	
At confluence of Barren River .	423
At upstream county boundary .	437
Sinkhole No. 25D: At Three Springs Hollow	539
Sinkhole No. 7: At Boxwood ...	545
Sinkhole No. 9A: At Cave Mill Road	508
Sinkhole No. 9B: At Cave Mill Road	510
Sinkhole No. 9C: At Cave Mill Road	512
Sinkhole No. 9D: At Cave Mill Road	511
Sinkhole No. 9E: At Cave Mill Road	512
Sinkhole No. 8: At University Estates	538
Sinkhole No. 11: At Memphis Junction	565
Sinkhole No. 32: At Chaney Lake	594
Sinkhole No. 31: At Dillard Road	557
Sinkhole No. 33: At Rich Pond	580
Sinkhole No. 38: Area south of Woodburn	617
Sinkhole No. 37A-North: Area north of Woodburn	624
Sinkhole No. 37A-South: Area north of Woodburn	629
Sinkhole No. 37B: Area north of Woodburn	622
Sinkhole No. 35: At Sinking Creek	584
Sinkhole No. 34: At Rich Pond Church	588
Sinkhole No. 29: At church property window	547
Sinkhole No. 27: At Scottish Manor	557
Sinkhole No. 28: At Elrod Road	538
Sinkhole No. 30: At church property	554
Sinkhole No. 36: At Plano Road (State Route 242)	568
Maps available for inspection at the City/County Planning Commission, 1141 State Street, Bowling Green, Kentucky.	
MISSISSIPPI	
Smith County, (unincorporated areas) (FEMA Docket No. 7063)	
Lyon Creek:	
At confluence with Leaf River .	*250
Approximately 2.4 miles upstream of State Highway 37	*289
Tributary of Lyon Creek:	
At confluence with Lyon Creek	*251
Approximately 1,250 feet upstream of State Highway 28	*297
Leaf River:	
Approximately 1.0 mile downstream of confluence of Lyon Creek	*247
Approximately 1.4 miles upstream of State Highway 28	*257
Maps available for inspection at the Smith County Office Building, Tax Assessor's Office, Raleigh, Mississippi.	
Taylorsville (town), Smith County (FEMA Docket No. 7063)	
Tributary of Lyon Creek:	
Approximately 1,600 feet downstream of Norris Street	*257
Approximately 200 feet upstream of the Illinois Central Railroad	*277
Leaf River:	
Affecting southeast corner	*251
Affecting northeast corner	*257

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Taylorsville Town Hall, Building Official's Office, 125 Eaton Street, Taylorsville, Mississippi.	
MISSOURI	
Herculaneum (city), Jefferson County (FEMA Docket No. 7063)	
Bonacher Creek:	
Just upstream of Gravel Road	*418
Just upstream of relocated Coachman Drive	*425
At the confluence of Bonacher Tributary	*429
Maps are available for review at No. 1 Parkwood Court, Herculaneum, Missouri.	
OREGON	
Marion County (unincorporated areas) (FEMA Docket No. 7061)	
Willamette River:	
Approximately 7,200 feet downstream of South River Road	*157
Approximately 4,000 feet upstream of South River Road	*160
Croisan Creek:	
Approximately 100 feet downstream of Private Drive, at the downstream City of Salem Corporate Limits	*213
Just downstream of Croisan Creek Road	*300
Approximately 1,500 feet downstream of Kuebler Road	*384
Just upstream of Kuebler Road	*430
Approximately 2,300 feet upstream of Balyntine Road	*495
Maps are available for review at the Marion County Planning Department, 148 High Street, Salem, Oregon.	
Polk County (unincorporated areas) (FEMA Docket No. 7061)	
Glenn Creek:	
At the intersection of Glenn Creek Road and Doaks Ferry Road Northwest	*253
Approximately 600 feet downstream of Doaks Ferry Road Northwest	*268
Approximately 230 feet upstream of Doaks Ferry Road Northwest	*291
Approximately 650 feet downstream of 34th Avenue Northwest	*352
Gibson Creek:	
Approximately 450 feet upstream of Doaks Ferry Road Northwest	*155
Approximately 1.0 mile upstream of Doaks Ferry Road Northwest	*169
Maps are available for review at Polk County Courthouse, 850 Main Street, Dallas, Oregon.	
Salem (city), Marion and Polk Counties (FEMA Docket No. 7061)	
West Fork Pringle Creek:	
Approximately 1,550 feet upstream of Madrona Avenue SE	*213
Just upstream of Pringle Road SE	*244
Approximately 750 feet upstream of Pringle Road SE	*258
Croisan Creek:	
Just upstream of Burlington Northern Railroad	*145
Just upstream of South River Road	*153
Just upstream of Croisan Creek Road	*210
Approximately 1,400 feet downstream of Kuebler Road	*384
Just upstream of Kuebler Road	*430
Glenn Creek:	
Just upstream of Wallace Road	*139
At Orchard Heights Road Northwest	*175
Just upstream of Glenn Creek Road	*252
Just upstream of Doaks Ferry Road	*285
Approximately 2,970 feet upstream of Gleneden Court NW	*511
Gibson Creek:	
Just downstream of Wallace Road	*136
Just upstream of Brush College Road NW	*151
Just upstream of Doaks Ferry Road NW	*155
Approximately 2,100 feet upstream of Doaks Ferry Road NW	*159
Maps are available for review at the Department of Public Works, 555 Liberty Street, SE, Salem, Oregon.	
NEVADA	
Churchill County (unincorporated areas) (FEMA Docket No. 7058)	
Carson River:	
Approximately 3,250 feet downstream of U.S. Highway 95	*3,954
Approximately 200 feet upstream of U.S. Highway 95	*3,957
Approximately 500 feet downstream of Coleman Division Dam	*3,966
Just upstream of U.S. Highway 50	*3,974
Maps are available for review at the Department of Planning, 10 West Williams Avenue, Fallon, Nevada.	
RHODE ISLAND	
Johnston (town), Providence County (FEMA Docket No. 7063)	
Pocassel River:	
At downstream corporate limits	*76
0.8 mile upstream of Interstate Route 295 (southbound)	*255
Woonasquatucket River:	
Approximately 250 feet upstream of Manton Avenue	*69
At upstream corporate limits	*115
Maps available for inspection at the Johnston Town Hall, 1385 Harford Avenue, Johnston, Rhode Island.	
TENNESSEE	
Erin (city), Houston County (FEMA Docket No. 7057)	
Erin Branch:	
At confluence with Wells Creek	*410
At upstream corporate limits	*568
Musterground Creek:	
At confluence with Wells Creek	*410
Approximately 50 feet upstream of State Highway 49	*415
Wells Creek:	
At downstream corporate limits	*407
At upstream corporate limits	*416
Owl Hollow:	
At confluence with Erin Branch	*453
Approximately 820 feet upstream of Owl Hollow Road	*484
Rocky Hollow:	
At confluence with Erin Branch	*455
At upstream corporate limits	*499
Maps available for inspection at the City Hall, Erin Tennessee.	
TEXAS	
Burleson (city), Johnson and Tarrant Counties (FEMA Docket No. 7055)	
Hurst Creek:	
Approximately 640 feet downstream of County Road 601	*721

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 60 feet upstream of Frontage Road to Westbound Interstate Route 35	*754
Little Booger Creek:	
Approximately 0.7 mile upstream of Southwest Thomas Road	*745
Approximately 1.54 miles upstream of Southwest Thomas Road	*771
South Shannon Creek:	
Approximately 615 feet downstream of Atchison, Topeka, & Santa Fe Railway	*799
Approximately 565 feet downstream of Atchison, Topeka, & Santa Fe Railway	*799
Maps available for inspection at the City Hall, Engineering Department, 141 West Renfro Street, Burleson, Texas.	
Freeport (city), Brazoria County (FEMA Docket No. 7061)	
Velasco Drainage Area:	
At the crossing of Velasco Boulevard and Missouri Pacific Railroad	*2
North Freeport Drainage Area:	
At the intersection of Twelfth Street and Cedar Street	*0
Maps are available for review at the City Hall, 128 East Fourth Street, Freeport, Texas.	
Galveston County unincorporated areas (FEMA Docket No. 7061)	
Gulf of Mexico:	
Gulf Shore Drive at Avenue G	*16
Approximately 500 feet southwest of intersection of Broadway Avenue and 7th Street	*17
At intersection of 22nd Street and Broadway Avenue	*14
At intersection of Boyt Road State Highway 87	*15
Maps available for inspection at the Galveston County Courthouse, 722 Moody, Galveston, Texas.	
Johnson County unincorporated areas (FEMA Docket No. 7057)	
Hurst Creek:	
Approximately 150 feet downstream of County Route 601	*725
Approximately 40 feet downstream of Frontage Road to Westbound Interstate Route 35	*751
South Shannon Creek:	
Approximately 0.89 mile upstream of County Route 920	*786
Approximately 100 feet upstream of Atchison, Topeka, & Santa Fe Railway	*810
Maps available for inspection at the Public Works Department, Johnson County Courthouse, 2 Main Street, Cleburne, Texas.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: June 8, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–13921 Filed 6–11–93; 8:45 am]

BILLING CODE 6718–03–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 41

[Docket No. 48599]

RIN 2105–AB79

Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The U.S. Department of Transportation is implementing the provisions of Executive Order (E.O.) 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction." Under the Executive Order each affected Federal agency is given the responsibility for developing and implementing its own mission-appropriate and cost-effective regulations governing seismic safety. For DOT, this includes the design and construction of any of its new buildings for use or ownership, as well as the need for seismic safety recognition in all grant and safety programs affecting federally leased, assisted or regulated buildings. The purpose is to reduce the risk of death or injury to building occupants, improve the capabilities of essential buildings to function during or after an earthquake, and to reduce earthquake losses of public buildings and investments. The rules adopted in this document may be further implemented by the DOT Operating Administrations.

EFFECTIVE DATE: This regulation becomes effective on July 14, 1993.

FOR FURTHER INFORMATION CONTACT: Paul B. Larsen, Office of the Assistant General Counsel for Environmental, Civil Rights and General Law, (202) 366–9161, or Donald R. Trilling, Director, Office of Transportation Regulatory Affairs, (202) 366–4220, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On January 14, 1993, DOT published a notice of proposed rulemaking in the **Federal Register** for this regulation (58 FR 4393, January 14, 1993). Interested persons were invited to submit comments, and no comments were received.

Discussion of Regulation

Introduction

Seismic hazards pose a serious threat throughout much of the United States. It is therefore important in most parts of the nation to design structures according to appropriate seismic standards in order to mitigate losses from earthquakes. The Federal government, through the Earthquake Hazards Reduction Act of 1977, has developed the National Earthquake Hazards Reduction Program (NEHRP) to reduce the risks to life and property from future earthquakes. Through work of the NEHRP, the President has issued Executive Order 12699, "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction," which calls for Federal agencies to use appropriate seismic design and construction standards in design and construction of Federally owned, leased, assisted, and regulated new buildings. To support the implementation of this order, the Interagency Committee on Seismic Safety in Construction (ICSSC) recommends the use of seismic codes and standards that are substantially equivalent to the NEHRP Recommended Provisions for the Development of Seismic Regulations for New Buildings (Provisions and Commentary). This document offers guidelines (including maps defining the seismic groundshaking hazard nationwide) which represent the state-of-the-art in seismic design, have been widely reviewed, and are currently being incorporated into national standards and codes for adoption by state and local building codes.

Seismic Hazard

An earthquake is the oscillatory, sometimes violent movement of the Earth's surface that follows a release of energy in the Earth's crust. This energy

can be generated by a sudden dislocation of segments of the crust, by volcanic eruption, and even by manmade explosions. Seismic hazards that may be induced by earthquakes include ground shaking, surface faulting, liquefaction, landslides, lateral spreading, seiches, and tsunami. Seismic risk is a measure of potential losses due to the expected seismic hazards in a given area. Therefore, an unpopulated area has a lower seismic risk than an urban area exposed to the same seismic hazards. Similarly, poorly constructed buildings are exposed to greater seismic risk than well constructed ones in the same location.

Although in the United States most earthquakes occur in areas bordering the Pacific Ocean, history shows that other areas across the U.S. are susceptible to seismic hazard. On August 31, 1886 an earthquake estimated at 7.5 on the Richter scale shook Charleston, South Carolina, causing extensive damage and killing an estimated 60 to 100 people. On the basis of geologic and geophysical studies, it appears that quakes of this magnitude are possible at geologically similar locations along the eastern seabord. In the winter of 1811–1812, the New Madrid seismic zone, located in the Central U.S., produced three of the largest earthquakes known to have occurred in North America. This area is regarded by seismologists as the most hazardous zone east of the Rocky Mountains and it remains seismically active. The Loma Prieta earthquake that hit the San Francisco/Oakland area on October 17, 1989 measured 7.1 on the Richter scale and killed 64 people. The shock caused an estimated $7.1 billion in damage, and caused failure in key transportation links including the San Francisco-Oakland Bay Bridge and a 1½ mile long section of Interstate 880 in Oakland.

On the West Coast of the U.S. most people have experienced earthquakes, and recognize that major earthquakes will occur. The absence of large-magnitude earthquakes in the Central and Eastern U.S. since the Charleston earthquake in 1886 has resulted in a lack of awareness on the part of the general public of the existence of an earthquake threat in these areas. Nevertheless, the examples above illustrate why seismic hazard is more than a West Coast issue. Forty-six states as well as many U.S. territories and possessions are at risk from earthquakes.

Ground shaking is the seismic hazard that affects all buildings in an area impacted by an earthquake. (Liquefaction, landslides, and other seismic hazards are generally localized disturbances.) Because of the universal effect of ground shaking, it is the hazard that is addressed in greatest detail by building codes.

The ground shaking hazard is generally represented on maps. The United States Geological Survey (USGS) has developed national maps of ground shaking hazard that present equal levels of expected horizontal acceleration due to ground shaking. These maps are published in the Commentary to the 1991 NEHRP Recommended Provisions. On these maps, the plotted acceleration at any location represents a 90 percent probability that it will not be exceeded in 50 years. These maps have become the basis for the hazard maps included in up-to-date seismic design guidelines and codes. Similar maps are being developed for select areas at a larger scale that portray other seismic hazards. These illustrate the significant variation that can be expected due to multiple seismic hazards within a local region.

The derivation of the ground shaking maps considered, for each location, a number of factors. These included historical seismicity, proximity to known faults, and results of geological investigations. Because of the complexity of these factors, the development of the maps required a great deal of professional judgement and expertise.

The ground shaking maps described above quantify the significant variation in the expected hazard nationwide. The maps are the basis which allows a single building code to be applicable nationwide: The design, detailing, and construction requirements are varied according to the expected hazard as presented in the maps. Thus, a single design provision results in stringent requirements in a high hazard area and less stringent requirements in a low hazard area.

Seismic Design

Unlike hurricanes, large earthquakes cannot be predicted; they strike without warning with great destructive force. Most casualties occur from the ground shaking that can cause buildings and other structures to collapse and objects to fall. Related ground failure hazards also can cause serious losses in local areas. For these reasons, buildings and other structures need to be designed to resist earthquake forces.

The importance of using sound engineering and construction practices in design and construction is evident when the effects of two very similar earthquakes are compared: the 1971 San Fernando, California earthquake and the 1972 Managua, Nicaragua earthquake, with magnitudes of 6.6 and 6.2 respectively. Both earthquakes occurred at times of day when most people were at home, and both affected a population of approximately 1 million. The San Fernando earthquake affected an area with much new construction that had been designed under a building code that included earthquake requirements. This quake caused 58 deaths and $550 million in economic losses. The Managua quake affected a city where few buildings had been designed using modern requirements. This event caused over 5,000 deaths and an economic loss comparable to the annual gross national product of the entire country. Studies of structural performance in earthquakes indicate that severe damages and collapses of buildings almost always are the consequence of inadequate design or construction. The successful performance of buildings designed and constructed in accord with modern seismic standards show that effects of severe earthquakes can be resisted economically.

In California, where the perception of earthquake hazards has been high, up-to-date seismic preparedness and mitigating practices are regularly adopted and enforced, particularly in the form of seismic design and construction provisions in building codes. However, in the Central and Eastern United States recognition of earthquake hazards is more recent. In the past, the model building codes used in the Central and Eastern United States have tended to lag behind the West Coast in adoption of modern seismic design and construction provisions. However, in 1991 these model code organizations incorporated the NEHRP Recommended Provisions into their 1992 editions, bringing the seismic requirements of their model codes up to date with the most current information available. State and local regulatory authorities may adopt, modify, and enforce these model code provisions to achieve seismic safety in new building construction in their jurisdictions.

The impact of an earthquake includes not only immediate destruction of life and property, but also potential dangers to critical facilities and services, including hospitals, fire stations, police stations and emergency operating centers. Functions of these critical facilities may be crippled leading to further losses from lack of these services in a time of great need. Modern seismic standards require a higher level of seismic design an safety for these facilities in order to support their functionality following an earthquake.

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Federal Action

The Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*) was enacted by Congress to reduce risks to life and property from future earthquakes in the U.S. through establishment and maintenance of an effective earthquake hazards reduction program. The Act states that "Earthquakes have caused, and can cause in the future, enormous loss of life, injury, destruction of property, and economic and social disruption. With respect to future earthquakes, such loss, destruction, and disruption can be substantially reduced through the development and implementation of earthquake hazards reduction measures including improved design and construction methods and practices * * *" The Act also directs the President "to establish and maintain an effective earthquake hazards reduction program." To implement such a program, the President was to develop a plan, which specified "the roles for Federal agencies and recommended appropriate roles for State and local units of government, individuals, and private organizations." The National Earthquake Hazards Reduction Program (NEHRP) was established in response to this legislation on June 22, 1978, when it was transmitted by the President to Congress.

The objectives of the NEHRP include the development of technologically and economically feasible design and construction methods to make structures, both new and existing, earthquake resistant; the development and promotion of model codes; the development of improved understanding and capability with respect to defining and reducing seismic risk; the education of the public regarding earthquake phenomena; and research in other earthquake related areas.

The NEHRP joint memorandum to the heads of agencies transmitting the National Earthquake Hazards Reduction Program, June 22, 1978, page C–2, states that "The Federal government should set a strong example in the construction and safety of its facilities and develop guidelines and standards for Federally-assisted or licensed critical facilities. The evolutionary improvement of local building codes, which are the bases for all private construction, including Federally-assisted, non-critical construction, must be accomplished by encouragement and persuasion, particularly through working with State and local officials and professional organizations." In order to assist the Federal departments and agencies involved in construction to develop and incorporate earthquake hazards reduction measures in their ongoing programs, the Interagency Committee for Seismic Safety in Construction (ICSSC) was established. The ICSSC is composed of members representing 30 Federal departments and independent agencies involved with construction or responsible for governmental assistance for construction. Executive Order 12699, "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction" was prepared by the ICSSC to implement certain provisions of the Earthquake Hazards Reduction Act. It was signed by the President on January 5, 1990.

Executive Order 12699

The Executive Order requires all Federal agencies to ensure that new Federal buildings are designed and constructed in accord with appropriate seismic design and construction standards. The Order pertains to any new building which is federally owned, leased, assisted, or regulated. A building is defined as any structure, fully or partially enclosed, used or intended for sheltering persons or property.

Seismic safety requirements for new Federal buildings are intended to "reduce the risks to the lives of occupants of buildings owned by the Federal government and to persons who would be affected by the failure of Federal buildings in earthquakes, to improve the capability of essential Federal buildings to function during or after an earthquake, and to reduce earthquake losses of public buildings." Any new Federal building that entered the detailed design stage after January 5, 1990 must be designed and constructed in accordance with appropriate seismic standards.

Similar requirements are stated for Federally leased, assisted, or regulated buildings in order to reduce risks to the lives of persons who would be affected by earthquake failures of these buildings and to protect public investments.

For space constructed and leased for Federal occupancy, the Executive Order applies to agreements executed after January 5, 1990. For assistance, grants, and regulatory programs, the Executive Order (the Earthquake Hazard Reduction Act, 42 U.S.C. 7701 *et seq.*) requires agencies to plan and initiate within three years (i.e., by February 1, 1993) measures to assure appropriate consideration of seismic safety. This final rule responds to that requirement.

The Executive Order requires the use of nationally recognized private sector standards and practices, unless none is adequate. This is in accordance with OMB Circular A–119. Local building codes which are determined by the cognizant agency or by the ICSSC to provide adequately for seismic safety may be used as well. Special seismic standards and practices required by unique agency mission needs also may be used.

Each agency is responsible for issuing or amending its regulations or procedures, planning for implementation through its own budget process, and regularly reviewing its regulations and procedures. The Federal Emergency Management Agency (FEMA) is responsible for requesting an annual status report from each agency and reporting annually to the President and Congress on the execution of the Executive Order.

Section 4(a) of the Executive Order charges the ICSSC with recommending appropriate and cost-effective seismic design and construction standards and practices. In its official recommendation to FEMA, "Recommendation of Design and Construction Practices in Implementation of Executive Order 12699," the ICSSC recommends, as the minimum standard for all Federal agencies, the use of standards and practices which are substantially equivalent to or exceed the most recent or the immediately preceding edition of the NEHRP Recommended Provisions for the Development of Seismic Regulations for New Buildings.

An assessment prepared by the Council of American Building Officials and reviewed by the ICSSC compared the seismic provisions of major model building codes with the provisions of the 1988 NEHRP recommended provisions. Each of the following model codes was found to provide a level of seismic safety substantially equivalent to that provided by the 1988 NEHRP recommended provisions: 1991 ICBO Uniform Building Code, 1992 Supplement to the BOCA National Building Code, and the 1992 Amendments to the SBCC Standard Building Code. The ICSSC recommendation supports the use of these editions of the model codes as appropriate for use in implementing the Executive Order. In addition, the recommendation states that "state, county, local or other jurisdictional building ordinances adopting and enforcing these model codes in their entirety, without significant revisions or changes in the direction of less seismic safety, are also deemed adequate for implementing the Order."

The recommendation goes on to state that any other ordinances must be determined by the responsible cognizant agency to be substantially equivalent to

the NEHRP recommended provisions before they can be considered to be appropriate for implementing the Order. A copy of the recommendation can be found in ICSSC RP 2.1–A, "Guidelines and Procedures for Implementation of the Executive Order on Seismic Safety of New Building Construction," which includes additional ICSSC consensus guidance for implementation. ICSSC RP 2.1–A is available from the U.S. Department of Commerce, National Institute of Standards and Technology, Building and Fire Research Laboratory, Gaithersburg, MD 20899.

The NEHRP recommended provisions are not a standard or model code, but constitute a resource document that may be used to develop effective seismic standards and building codes. The primary function to the NEHRP recommended provisions is to provide the minimum criteria considered prudent and economically justified for life safety and the protection of property as it impacts life safety in buildings subject to earthquakes at any location in the United States. The provisions were developed as a NEHRP project funded by FEMA. They are reviewed, updated, and published by the Building Seismic Safety Council (BSSC), a private sector organization representing nearly 60 organizations concerned with seismic safety. The Provisions have been extensively reviewed and balloted by the building community to provide a key source for the development of seismic provisions for national standards, model building codes, and building regulations for state and local governments in seismic areas. An updated version of the NEHRP recommended provisions is prepared every three years by the BSSC.

The most recent edition available is 1991. A non-technical explanation of the background, objective, and methods related to the NEHRP recommended provisions is available from FEMA.

In late 1989, the Building Officials and Code Administrators International (BOCA) appointed an ad hoc committee to review the 1988 Edition of the NEHRP recommended provisions with the purpose of developing a comprehensive and consistent position on code requirements for earthquake loads that will reflect technology, design practices and national codes and standards. The Southern Building Code Congress (SBCC) participated in a similar cooperative effort. As a result of these efforts, the 1992 versions of the BOCA National Building Code and the SBCC Standard Building Code have incorporated the NEHRP recommended provisions into their seismic requirements. The NEHRP Recommended Provisions are also being considered by the American Society of Civil Engineers (ASCE) for adoption into the National Standard ASCE 7–88, "Minimum Design Loads for Buildings and Other Structures."

Section 3(a) of the Order requires implementation actions to "consider the seismic hazards in various areas of the country to be as shown in the most recent edition of the American National Standards Institute Standard A58, Minimum Design Loads for Buildings and Other Structures, or subsequent maps adopted for Federal use in accord with this order." The cited standard map is now available as ASCE 7. This map is based on the nationwide maps of horizontal ground acceleration developed by the USGS that also serve as the base for the design maps included with the NEHRP Recommended Provisions.

The ICSSC has recommended the use of standards and codes equivalent to the NEHRP Recommended Provisions. Therefore, the NEHRP maps are considered appropriate for Federal use in implementing the Executive Order.

Versions of the NEHRP maps have been adopted along with the NEHRP Recommended Provisions into the BOCA National and SBCC Standard building codes. The seismic zone map in the 1991 International Conference of Building Officials (ICBO) Uniform Building Code is also based on one of the USGS maps of horizontal ground acceleration. The ICBO map should be used with the ICBO code. It is not appropriate to use the NEHRP maps with the ICBO Uniform Building Code, because the design requirements of building codes are keyed to the numerical values of the map they reference.

This rule applies only to new construction. All buildings owned, leased, constructed, assisted through such methods as loans, grants or guarantees of loans, or regulated by DOT must conform to the requirements of the new rule. Under the Earthquake Hazard Reduction Act, 49 U.S.C. 7701 *et seq.*, the Department of Transportation is independently responsible for ensuring that appropriate seismic design and construction standards are applied to new construction under its purview. In the Department of Transportation the DOT Operating Administrations will further implement this rule, where necessary.

Section 41.110 states the general purpose of the rule. The rule applies to buildings. A building means any structure, fully or partially enclosed, used or intended for sheltering persons and property. "New building" is not defined. However, it is commonly accepted construction practice in this country, as expressed in the model codes, to treat additions as new buildings. Therefore, this rule should be interpreted to apply to additions to existing buildings as well as to new buildings.

Section 41.115 states that the rule applies to buildings leased for DOT occupancy. The 1988 NEHRP Recommended Provisions required that the entire building meet the most stringent requirements of any use that occupies 15 percent or more of the total building area. It is therefore reasonable to require that seismic safety provisions apply to buildings in which 15 percent or more of the total space will be leased for DOT use.

Section 41.117 provides that any buildings constructed with DOT financial assistance must be designed and constructed in accordance with approved seismic standards.

Section 41.119 provides that buildings regulated by DOT are subject to the rule.

Section 41.120 identifies the acceptable model codes. Emergency work or assistance in compliance with the Stafford Act, 42 U.S.C. 5170a, 5170b, 5174, 5178, 5192 and 5193 is not required to meet the requirements of a seismic safety program.

Finally, § 41.125 provides that nothing in this rule is intended to create any right or benefit against DOT, its Operating Administrations, its officers or any person.

Reference

The following materials are referenced in 49 CFR part 41. Each of the following model codes has been found to provide a level of seismic safety substantially equivalent to that provided by use of the 1988 NEHRP Recommended Provisions: The 1991 International Conference of Building Officials (ICBO) Uniform Building Code; the 1992 Supplement to the Building Officials and Code Administrators International (BOCA) National Building Code; and the 1992 Amendments to the Southern Building Code Congress (SBCC) Standard Building Code. Revisions of these model codes that are substantially equivalent to or exceed the then current or immediately preceding edition of the NEHRP Recommended Provisions, as it is updated, can be approved by a DOT Operating Administration to meet the requirements of this part.

Regulatory Evaluation

The rule is not considered to be major under Executive Order 12291, but is

significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040), February 26, 1979. Therefore, DOT has determined that a Regulatory Impact Analysis under Executive Order 12291 is not required. We have, however, prepared a final regulatory evaluation, which is available for review in the docket.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Department must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because, as discussed above, the Department expects the impact of this rule to be minimal, the Department certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

The Department has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule has minimal federalism implications which are insufficient to warrant the preparation of a Federalism Assessment.

Environment

The Department considered the environmental impact of this rule and concluded that this rule will not have a significant impact on the environment.

List of Subjects in 49 CFR Part 41

Buildings and facilities, Seismic safety.

For reasons set out in the preamble, the Department of Transportation adds a new 49 CFR part 41 to read as follows:

PART 41—SEISMIC SAFETY

Sec.

41.100 Purpose and applicability.
41.105 Definitions.
41.110 New DOT owned buildings and additions to buildings.
41.115 New buildings to be leased for DOT occupancy.
41.117 Buildings built with Federal assistance.
41.119 DOT regulated buildings.
41.120 Acceptable model codes.
41.125 Judicial review.

Authority: 42 U.S.C. 7701 *et seq.*; 49 U.S.C. 322; E.O. 12699, 3 CFR, 1990 Comp., p. 269.

§ 41.100 Purpose and applicability.

(a) This part implements the provisions of 49 U.S.C. 7701 *et seq.* and Executive Order (E.O.) 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction" (3 CFR, 1990 Comp., p. 269). Under the Executive Order the DOT is given the responsibility for developing and implementing its own mission-appropriate and cost-effective regulations governing seismic safety.

(b) This part applies to new DOT owned buildings and to new DOT leased, assisted and regulated buildings. The purpose of this part is to reduce risk to lives of the building occupants, improve the capabilities of essential buildings to function during or after an earthquake, and to reduce earthquake losses of public buildings and investments.

(c) This part may be further implemented by the DOT Operating Administrations.

§ 41.105 Definitions.

As used in this part—

Operating Administration includes the Office of the Secretary.

DOT means the U.S. Department of Transportation.

§ 41.110 New DOT owned buildings and additions to buildings.

(a) DOT Operating Administrations responsible for the design and construction of new DOT Federally owned buildings will ensure that each building is designed and constructed in accord with the seismic design and construction standards set out in § 41.120 of this part.

(b) This section pertains to all building projects for which development of detailed plans and specifications was initiated after January 5, 1990. It applies to additions to existing buildings as well as to new buildings. It applies worldwide.

(c) For DOT Federally owned buildings, a certification of compliance with the seismic design and construction requirements of this part is required prior to the acceptance of the building. Such statements of compliance may include the engineer's and architect's authenticated verifications of seismic design codes, standards, and practices used in the design and construction of the building, construction observation reports, local or state building department plan review documents, or other documents deemed appropriate by the DOT Operating Administration.

§ 41.115 New buildings to be leased for DOT occupancy.

(a) DOT Operating Administrations responsible for the design and construction of new buildings to be leased for DOT occupancy or use will ensure that each building is designed and constructed in accord with the seismic design and construction standards set out in § 41.120 of this part.

(b) This section pertains to all new building projects for which the agreement covering development of detailed plans and specifications was executed after January 5, 1990.

(c) For new Federally leased buildings, a certification of compliance with the seismic design and construction requirements of this part is required prior to the acceptance of the building. Such statements of compliance may include the engineer's and architect's authenticated verifications of seismic design codes, standards, and practices used in the design and construction of the building, construction observation reports, local or state building department plan review documents, or other documents deemed appropriate by the DOT Operating Administration.

§ 41.117 Buildings built with Federal assistance.

(a) Each DOT Operating Administration assisting in the financing, through Federal grants or loans, or guaranteeing the financing, through loan or mortgage insurance programs, of newly constructed buildings will ensure that any building constructed with such assistance is constructed in accord with seismic standards set out in § 41.120 of this part.

(b) This section applies to new buildings and additions to existing buildings financed in whole or in part through Federal grants or loans administered by DOT Operating Administrations, or through guaranteed financing through loan or mortgage insurance programs administered by DOT Operating Administrations.

(c) Any building constructed with Federal financial assistance, after July 14, 1993 must be designed and constructed in accord with seismic standards approved by the DOT operating Administration under § 41.120 of this part in order to be eligible for Federal financial assistance.

(d) For buildings built with Federal financial assistance, a certification of compliance with the seismic design and construction requirements of this part is

required prior to the furnishing of such assistance. Such statements of compliance may include the engineer's and architect's authenticated verifications of seismic design codes, standards, and practices used in the design and construction of the building, construction observation reports, local or state building department plan review documents, or other documents deemed appropriate by the DOT Operating Administration.

§ 41.119 DOT regulated buildings.

(a) Each DOT Operating Administration with responsibility for regulating the structural safety of buildings and additions to existing buildings will ensure that each DOT regulated building is designed and constructed in accord with seismic design and construction standards as provided by this part.

(b) This section pertains to all new building projects for which development of detailed plans and specifications begin after July 14, 1993.

(c) Any building for which a DOT Operating Administration responsible for regulating the structural safety must comply with the seismic design and construction standards in this part.

(d) For DOT regulated buildings a certification of compliance with the seismic design and construction requirements of this part is required prior to the acceptance of the building. Such statements of compliance may include the engineer's and architect's authenticated verification of seismic design codes, standards, and practices used in the design and construction of the building, construction observation reports, local or state building department plan review documents, or other documents deemed appropriate by the DOT Operating Administration.

§ 41.120 Acceptable model codes.

(a) This section describes the standards that must be used to meet the seismic design and construction requirements of this part.

(b) (1) The following are model codes which have been found to provide a level of seismic safety substantially equivalent to that provided by use of the 1988 National Earthquake Hazards Reduction Program (NEHRP) Recommended Provisions (Copies are available from the Office of Earthquakes and Natural Hazards, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.):

(i) The 1991 International Conference of Building Officials (ICBO) Uniform Building Code, published by the International Conference of Building Officials, 5360 South Workman Mill Rd., Whittier, Cal. 90601;

(ii) The 1992 Supplement to the Building Officials and Code Administrators International (BOCA) National Building Code, published by the Building Officials and Code Administrators, 4051 West Flossmoor Rd., Country Club Hills, Ill. 60478–5795; and

(iii) The 1992 Amendments to the Southern Building Code Congress (SBCC) Standard Building Code, published by the Southern Building Code Congress International, 900 Montclair Rd., Birmingham, Ala. 35213–1206.

(2) Versions of the NEHRP seismic maps have been adopted along with the NEHRP Recommended Provisions into the BOCA National and SBCC Standard building codes. The seismic zone map in the ICBO Uniform Building Code is also based on one of the USGS maps of horizontal ground acceleration. However, the ICBO map should be used only with the ICBO code. Also, it is not appropriate to use the NEHRP maps with the ICBO Uniform Building Code, because the design requirements of building codes are keyed to the numerical values of the map they reference.

(c) Revisions to the model codes listed in paragraph (b) of this section that are substantially equivalent to or exceed the then current or immediately preceding edition of the NEHRP recommended provisions, as it is updated, may be approved by a DOT Operating Administration to meet the requirements in this part.

(d) State, county, local, or other jurisdictional building ordinances adopting and enforcing the model codes, listed in paragraph (b) of this section, in their entirety, without significant revisions or changes in the direction of less seismic safety, meet the requirements in this part. For ordinances that do not adopt the model codes listed in paragraph (b) of this section, substantial equivalency of the ordinances to the seismic safety level contained in the NEHRP recommended provisions must be determined by the DOT Operating Administration before the ordinances may be used to meet the requirements of this part.

(e) DOT Operating Administrations that, as of January 5, 1990, required seismic safety levels higher than those imposed by this part in new building construction programs will continue to maintain such levels in force.

(f) Emergencies. Nothing in this part applies to assistance provided for emergency work or for assistance essential to save lives and protect property and public health and safety performed pursuant to sections 402, 403, 502, and 503 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5170a, 5170b, 5192, and 5193, or for temporary housing assistance programs and individual and family grants performed pursuant to Sections 408 and 411 of the Stafford Act, 42 U.S.C. 5174 and 5178. However, this part applies to other provisions of the Stafford Act after a Presidentially declared major disaster or emergency when assistance actions involve new construction or total replacement of a building.

§ 41.125 Judicial review.

Nothing in this part is intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the DOT, its Operating Administrations, its officers, or any person.

Issued this 26th day of May 1993 at Washington, D.C.

Federico Peña,

Secretary of Transportation.

[FR Doc. 93–13867 Filed 6–11–93; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 920407–2159; I.D. 030293A]

Atlantic Tuna Fisheries; Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Announcement of fishing category quota overharvests/underharvests for the 1992 fishing season and adjustments to the 1993 quota.

SUMMARY: NMFS announces that the domestic western Atlantic bluefin tuna category quotas have either been overharvested or underharvested during the 1992 fishing season. Additionally, NMFS also announces that it is taking action, pursuant to authority in implementing regulations at 50 CFR 285.22(f), to allocate tonnage from the 1992 and 1993 reserve to cover the 1992 overharvest in the General and Harpoon categories.

These actions result in a base 1993 category quota breakdown as follows: General category—573 metric tons (mt); Harpoon category—53 mt; Purse Seine category—302 mt; Incidental Catch category—southern longline subcategory quota of 54 mt, northern longline

subcategory quota of 28 mt, and "other" subcategory quota of 7 mt; and Angling category—315 mt. The southern longline subcategory overharvest was dealt with in a separate action.

EFFECTIVE DATE: June 8, 1993.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the International Commission for the Conservation of Atlantic Tunas (ICCAT) recommended U.S. quota among the various domestic fishing categories.

If a quota in any category, or as appropriate, subcategory, has been exceeded or has not been reached, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is required under § 285.22(h) to subtract the overharvest from, or add the underharvest to, that quota for 1993; provided that the total of the 1992 harvest plus the 1993 adjusted quotas and the reserve does not exceed 2,497 mt. The Assistant Administrator is further required to publish in the **Federal Register** any amounts to be subtracted or added and the basis for the quota reductions or increases.

NMFS announces that the domestic western Atlantic bluefin tuna category quotas have either been overharvested or underharvested during the 1992 fishing season as follows: General category—overharvested its 531 mt quota by 4.6 mt; Harpoon category—overharvested its 53 mt quota by 5.4 mt; Purse Seine category—underharvested its 301 mt quota by 1.0 mt; Incidental Catch category—overharvested its southern longline subcategory quota of 104 mt by 13.2 mt, underharvested its northern longline subcategory quota of 28 mt by 9.6, and underharvested its "other" subcategory quota of 5 mt by 3.9 mt; and Angling category—underharvested its 219-mt quota by 96.2 mt. Therefore, pursuant to the 1991 ICCAT recommendations and the implementing regulations at 50 CFR 285.22(h), action is currently needed to adjust the 1993 fishing quotas accordingly for the 1993 season.

Under the implementing regulations at 50 CFR 285.22(f), the Assistant Administrator has the authority to allocate any portion of the reserve amount to any fishing category after considering the following factors: (1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock; (2) the catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) the projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season; and (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

Allocation of the unused 1992 reserve amount of 31 mt to the reserve for 1993 would result in a total reserve of 62 mt. Experience in 1992 indicates that the commercial fishery can be managed so as to remain within close proximity to the quotas for all subcategories. Additional quota monitoring measures proposed for 1993 (e.g., daily faxing of dealer reports) should further improve NMFS ability to restrict all categories within assigned quotas. Since 1993 is the second year of the biennial quota, and one of the stated management objectives is to maximize use of the available ICCAT quota, NMFS believes a 62-mt reserve is overly conservative. Rather than allocate from the reserve later in the fishing season, it is preferable to allocate some of the reserve prior to the commencement of fishing in 1993. Allocation of the reserve beforehand will enable fishermen to better plan for fishing activities, will reduce the likelihood of disruptive premature closures, and may more fairly distribute fishing opportunities than could be accomplished late in the season.

Therefore, NMFS announces that it is taking action to allocate 10 mt from the 1992 reserve to cover the 1992 overharvest in the General and harpoon categories. This action results in a base 1993 category quota breakdown as follows: General—531 mt; Harpoon—53 mt; Purse Seine—302 mt; Incidental Catch category—southern longline subcategory quota of 54 mt, northern longline subcategory quota of 28 mt, and "other" subcategory quota of 7 mt; and, Angling—315 mt. The southern longline Incidental Catch category overharvest was dealt with in a separate action, and is further explained in the **Federal Register** at 57 FR 59310, published December 15, 1992.

Assuming an amount similar to 1992's overharvest may be needed, NMFS announces that it is taking an additional 10 mt from the 1992 reserve and transferring it for use as the 1993 reserve in order to maintain all categories within their assigned quotas. Based on the considerations discussed above, the remainder of the 1992 reserve, 11 mt, is combined with the 31-mt reserve planned for 1993, and the total, 42 mt, is allocated to the General category. These combined actions result in a revised 1993 General catagory quota of 573 mt.

The intent of these actions is to prevent overharvest of the western Atlantic bluefin tuna catch quotas established for this fishery for the 1992–93 biennial period, while assuring sufficient opportunity for fishermen to fill the 1992–93 U.S. ICCAT quota and optimum data are generated from the catches for scientific purposes.

Since the purpose of the ICCAT quota is scientific monitoring, NMFS believes that allocation of the excess reserve to the General category is warranted. Additional data should result in a more precise measure of large fish abundance and thus contribute to a more accurate assessment of stock status. Further, allocation of an addition 42 mt to the General category would mitigate some of the economic hardship resulting from the 1992 10-percent quota reduction by allowing fishing to extend into the autumn when bluefin prices are generally higher.

No adjustments are proposed for the Angling category quotas other than for overharvest/underharvest in 1992. While such treatment of the Angling category quota is in strict conformance with existing regulations, the rationale for this proposal warrants some additional explanation.

In implementing the 1991 ICCAT recommendation to limit catch of school bluefin to 8 percent of the U.S. national quota, the 1992 Angling category quota of 219 mt was split into two subquotas—100 mt of school fish and 119 mt of large school/small medium fish. Preliminary estimates indicate that the quota for school bluefin was exceeded by 8 mt, but only 15 mt of the 119—mt subquota for large school/small medium fish were taken by the Angling category in 1992, leaving 104 mt unharvested. The prohibition on the sale of bluefin less than 70 inches (178 cm) may have reduced the incentive for anglers to target on these size classes of bluefin. Alternatively, the estimated harvest of large school and small medium bluefin might imply either relatively low abundance or lack of availability on the grounds of these sizes of bluefin in 1992. It is not possible at this time to determine whether or not anglers will make full use of this subquota in the 1993 fishing season.

Since the results of only one season cannot be held to be conclusive, NMFS will attempt during 1993 to determine the magnitude of the effect of the no-

sale provision, on other factors, on landings of these size classes of bluefin by recreational anglers. Therefore, as specified at 50 CFR 285.22(h), the underharvest of 104 mt from 1992 will be added to the 1993 Angling category quota for large school and small medium bluefin. Conversely, the 8-mt overharvest for school bluefin will be subtracted from the 1993 Angling category quota. The total quota for 1993 would thus be 315 mt, with 223 mt available for large school/small medium bluefin and 92 mt available for school bluefin.

Classification

This action is required by 50 CFR 285.22(h) and complies with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: April 7, 1993.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-13901 Filed 6-8-93; 5:08 pm]

BILLING CODE 3501-22-M

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50 CFR Part 675

[Docket No. 920944-3075; I.D. 031293A]

RIN 0648-AE80

Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: This final rule responds to public comments on the proposed rule for the 1994–1995 Western Alaska Community Development Quota (CDQ) program for the pollock fishery in the Bering Sea and Aleutian Islands area (BSAI) and provides four clarifications of the CDQ implementing regulations. This action is intended to promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management in the BSAI.

EFFECTIVE DATE: July 14, 1993.

ADDRESSES: Individual copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from the Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: David C. Ham, Fishery Management Biologist, Alaska Region, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION:

Background

Domestic fisheries in the exclusive economic zone of the BSAI area are managed by the Secretary of Commerce (Secretary) in accordance with the Fishery Management Plan for the Groundfish Fishery in the BSAI (FMP). The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the U.S. fishery at 50 CFR part 675. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

Amendment 18 to the FMP, or the "inshore-offshore" amendment, was partially disapproved by the Secretary on March 4, 1992. The final rule implementing the approved portion of Amendment 18 (57 FR 23321, June 3, 1992) provided for an annual allocation of pollock for the CDQ program from 1992 through 1995. This CDQ allocation provides for 7.5 percent of the annual total allowable catch (TAC) of pollock for each BSAI subarea to be set aside in a "CDQ reserve."

The CDQ program is intended to help develop commercial fisheries in western Alaska communities. A western Alaska community or group of communities may submit a Community Development Plan (CDP), which includes a request for part of the "CDQ reserve." Approval of a CDP by the Secretary would result in an allocation of part of the CDQ reserve to specific western Alaska communities.

Public comments on the implementation of the CDQ program in 1992–1993 were invited during a 21-day period ending October 23, 1992. Public comments on the CDQ program in 1994–1995 were invited during a concurrent 45-day period ending November 16, 1992.

Public comments received on the implementation of the CDQ proposed rule for 1992–1993 were summarized and responded to in the final rule for the 1992–1993 CDQ program (57 FR 54936, November 23, 1992). Public comments on the implementation of the 1994–1995 CDQ proposed rule are summarized and responded to in this final rule.

The CDQ program was fully described in the preamble to the CDQ proposed rule (57 FR 46139, October 7, 1992) and further in the preamble to the final rule for the 1992–1993 CDQ program.

Additional information is contained in the EA/RIR/FRFA (see **ADDRESSES**).

Changes From the Proposed Rule

The 1992–1993 CDQ final rule included nine changes from the proposed rule. This final rule for the 1994–1995 CDQ program includes four additional changes to the CDQ implementing regulations as follows:

1. Section 675.27(a)(2) states that "prior to granting approval of a CDP by the Governor, the Secretary shall find that the Governor developed and approved the CDP after conducting at least one public hearing, at an appropriate time and location, in the geographical area concerned so as to allow all interested parties an opportunity to be heard." The word "recommended" was mistakenly omitted from the sentence, which should have stated that "prior to granting approval of a CDP *recommended* by the Governor, the Secretary shall find that . . ." This revision is consistent with the Secretarial review and approval process set forth at § 675.27(c).

2. Section 675.27(b)(3)(ii)(F) is revised to include an example of what would constitute a "demonstration of management and technical expertise necessary to carry out the CDP as proposed by the CDP application." This revision is necessary to clarify the types of information that demonstrate management and technical expertise so that comparable information will be available to evaluate CDPs.

3. Section 675.27(d)(5)(iv)(E) states that the Governor will consider, in his findings for recommending a CDP, "the success or failure of the applicant and/or the managing organization in the execution of a prior CDP." In order to make the successful CDP applicants clearly aware of the possible effects of violations, this final rule adds an example to that paragraph describing what may partially or fully preclude a CDP applicant from future participation.

4. Paragraph 675.27(g) is clarified to reflect NMFS's intent for the recordkeeping and reporting of the catch, discard, and production amounts of all groundfish species and the discard amounts of prohibited species that occur in conjunction with a CDQ fishery. The final rule is revised to clarify that all catch, discard, and production amounts that occur in conjunction with a CDQ operation should be recorded and reported as part of that operation. These requirements are consistent with the existing recordkeeping and reporting requirements at § 675.5.

Response to Comments on the Proposed Regulations

Forty letters of comment were received during the public comment period on the implementation of the CDQ proposed rule. Of these letters, 29 were in favor of the CDQ program, four were against, and seven letters commented on specific details of the proposed rule without expressing an opinion for or against approval. Thirty-eight of these letters were summarized and responded to in the 1992–1993 CDQ final rule notice. The remaining two letters of comment on the 1994–1995 CDQ program are summarized and responded to as follows:

Comment 1: Duty free import-export trade zones could be established in western Alaska that would lead to Russian-U.S. joint venture projects in seafood processing and trade.

Response: NMFS notes this comment. However, this comment is beyond the scope of the CDQ program as proposed by the Council. Therefore, there is no change to the final rule based on this comment.

Comment 2: (a) The managing organization is defined as "any entity undertaking any part of the plan." This would mean that a fishing company whose vessels are harvesting CDQ pollock is the managing organization. This statement is inconsistent with the requirement that a "managing organization" be composed of 75 percent resident fishermen. The fishing company cannot be expected to change the composition of its governing board to give 75 percent of the seats to resident fishermen. (b) The provisions at § 675.27(b)(2)(ii) and (viii) through (x) that request information from the applicant and managing organization about marketing, capital equipment, and financial information should apply only to profit-making investments the applicant or managing organization is making from CDQ proceeds, and not apply to past business activities unrelated to CDQ activities. The requirements should be that the applicant has ensured that they will be paid by the harvester, and that the buyer and harvester have a good track record in harvesting, processing, and selling pollock.

Response: (a) The definition of a managing organization at § 675.27(b)(3)(ii) is "any organization or firm that would assume responsibility for managing all or part of the CDP" and that would meet certain criteria relating to community support, documentation of contracts, and demonstration of necessary technical expertise. A fishing company contracted to harvest CDQ pollock is not part of the CDP managing organization, and would not be required to change the composition of its governing board. However, if a fishing company is the managing organization, then its governing board would be required to comply with the membership requirements of the CDQ regulations. (b) The business information requested as part of a CDP under § 675.27(b)(2)(ii), (viii), and (ix) is information that the applicant is required to submit as it relates to the proposed business operations of the CDP. Section 675.279b)(2)(x) was revised in the 1992–1993 CDQ final rule to state that the business information must include "a balance sheet and income statement, including profit, loss, and return on investment for the proposed CDP."

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this final rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an EA for the Western Alaska CDQ program that discusses the impacts on the environment as a result of the CDQ program. The Assistant Administrator concluded that no significant impact on the human environment will result from its implementation. The impacts on the human environment that will result from implementation of this final rule are within those analyzed in the EA. Therefore, this final rule is categorically excluded from the requirement to prepare an environmental assessment in accordance with NAO 216–6. A copy of the EA may be obtained (see ADDRESSES.)

The FRFA prepared for the Western Alaska CDQ program as part of the EA/RIR/FRFA concludes that the CDQ program could have a significant economic impact on a substantial number of small entities. The impacts on small entities that could result from implementation of this final rule are within those analyzed in the FRFA. A copy of this analysis is available (see ADDRESSES).

NMFS concluded formal section 7 consultations on Amendment 18 to the BSAI FMP on March 4, 1992. The biological opinion issued for the consultation concluded that operation of the fishery under the amendment, including the CDQ program, is not likely to jeopardize the continued existence and recovery of any endangered or threatened species. NMFS also concluded informal section 7 consultation on the 1993 final specifications for the BSAI groundfish fishery. The informal consultation concluded that the 1993 BSAI groundfish fishery, including the CDQ pollock fishery, is not likely to adversely affect any endangered or threatened species. Adoption of the management measures described in this rule will not affect listed species in a way that was not already considered in the biological opinion or informal consultation. Therefore, NMFS has determined that no further section 7 consultation is required for adoption of this action.

The Regional Director has determined that fishing activities conducted under this rule will have no adverse impact on marine mammals.

Based on the socio-economic impacts discussed in the EA/RIR/FRFA prepared for the Western Alaska CDQ program, the Assistant Administrator determined that the final rule implementing the CDQ program is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. NMFS has concluded that none of the measures contained in this final rule will cause impacts different from those discussed in the EA/RIR/FRFA or will cause impacts considered significant for purposes of E.O. 12291. A copy of the EA/RIR/FRFA is available (see ADDRESSES).

The rule clarifies collection-of-information requirements subject to the Paperwork Reduction Act that have been approved by the Office of Management and Budget (OMB). The reporting requirements addressed in § 675.27(g) (1), (2), and (3) are approved under control number 0684–0213 and are estimated to take 15, 30, and 15 minutes, respectively, per response. This includes the time for recording and reporting the data needed for the collection of information. The CDP application addressed in § 675.27(b)(3)(ii)(C) is approved under control number 0648–0269 and is estimated to average 160 hours per response for applications. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS (see ADDRESSES) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

NMFS determined that the Western Alaska CDQ program will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. That determination was submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act and consistency was automatically inferred because the appropriate State agency did not reply within the statutory time period.

The Department of Commerce's Federalism Implementation Officer determined that the Western Alaska CDQ program has sufficient federalism implications to warrant preparation of a Federalism Assessment (FA) under Executive Order 12612. An FA was prepared that concluded that implementation of the rule is consistent with the principles, criteria, and requirements of Executive Order 12612. This final rule does not contain federalism implications different from those analyzed in the FA; therefore, implementation of this rule is consistent with the principles, criteria, and requirements of Executive Order 12612.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: June 9, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 675 is amended as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 675.27, the first sentence of paragraph (a)(2), and paragraphs (b)(3)(ii)(C), (d)(5)(iv)(E), and (g) are revised to read as follows:

§ 675.27 Western Alaska Community Development Quota Program (applicable through December 31, 1995).

(a) * * *

(2) Prior to granting approval of a CDP recommended by the Governor, the Secretary shall find that the Governor developed and approved the CDP after conducting at least one public hearing, at an appropriate time and location in the geographical area concerned, so as to allow all interested persons an opportunity to be heard. * * *

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(C) Demonstration of management and technical expertise necessary to carry out the CDP as proposed by the CDP application (e.g., proven business experience as shown by a balance and income statement, including profit, loss, and the return on investment on all business ventures within the previous 12 months by the managing organization).

* * * * *

(d) * * *

(5) * * *

(iv) * * *

(E) The success or failure of the applicant and/or the managing organization in the execution of a prior CDP (e.g., exceeding a CDQ allocation or any other related violation may be considered a failure and may therefore result in partially or fully precluding a CDP from a future CDQ allocation).

* * * * *

(g) *CDQ fishing requirements.* The following recordkeeping and reporting requirements will be required in addition to existing regulations at § 675.5:

(1) Operators of all vessels fishing CDQs must record all CDQ catch, including all groundfish species and prohibited species caught, taken, or harvested in the tow or set, on a Daily Fishing Logbook Sheet, as required in § 675.5(b)(2). A separate sheet must be used for CDQ catch, and the CDQ identification number must be clearly written on the sheet.

(2) An operator of a processor vessel must record all CDQ receipts, including receipts of all groundfish species and prohibited species caught, taken, or harvested in the tow or set, on a Daily Cumulative Production Log sheet, as required in § 675.5(b)(3). A separate sheet must be used for CDQ receipts, and the CDQ identification number must be clearly written on the sheet.

(3) A manager of a shoreside processing facility and the operator of a processor vessel must record all CDQ receipts, including all groundfish species and prohibited species caught, taken, or harvested in the tow or set, on a Weekly Production Report sheet, as required in § 675.5(c)(2). A separate sheet must be used for CDQ receipts, and the CDQ identification number must be clearly written on the sheet.

* * * * *

[FR Doc. 93–13951 Filed 6–11–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 112
Monday, June 14, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–248–AD]

Airworthiness Directives; Beech Aircraft Corporation Model 400A and 400T Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Beech Aircraft Corporation Model 400A airplanes, that would have required a one-time inspection to verify the installation of all rivets in the area adjacent to the upper edge of the emergency exit door, and installation of any missing rivets. That proposal was prompted by reports that, during manufacturing, 35 rivets may have been inadvertently omitted from the area adjacent to the upper edge of the emergency exit door. This action revises the applicability of the proposed rule by including certain Model 400T airplanes. The actions specified by this proposed AD are intended to prevent structural failure of the emergency door frame support, which could lead to decompression of the cabin.

DATES: Comments must be received by July 26, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–248–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Airframe Branch, ACE–120W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–248–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–248–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to certain Beech Aircraft Corporation Model 400A airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 3, 1993 (58 FR 12194). That NPRM would have required a one-time inspection to verify the installation of all rivets in the area adjacent to the upper edge of the emergency exit door, and installation of any missing rivets. That NPRM was prompted by reports that, during manufacturing, 35 rivets may have been inadvertently omitted from the area adjacent to the upper edge of the emergency exit door. That condition, if not corrected, could result in structural failure of the emergency door frame support, which could lead to decompression of the cabin.

Since the issuance of that NPRM, the FAA has determined that certain Beech Aircraft Corporation Model 400T airplanes must be included in the applicability of the proposed rule. The FAA has determined that the subject rivets may not have been installed on those airplanes; therefore, certain Model 400T airplanes may be susceptible to the same unsafe condition addressed by the originally proposed AD. Rivets missing from the area adjacent to the upper edge of the emergency exit door could result in structural failure of the emergency door frame support, which could lead to decompression of the cabin. Therefore, the applicability statement of this supplemental notice has been revised to include Beech Aircraft Corporation Model 400T airplanes.

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

There are approximately 59 Beech Aircraft Corporation Model 400A and 400T airplanes of the affected design in the worldwide fleet. The FAA estimates that 41 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate

is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,765, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Beech Aircraft Corporation: Docket 92–NM–248–AD.

Applicability: Model 400A airplanes, serial numbers RK–1 through RK–41, inclusive; and Model 400T airplanes, serial numbers TT–3 through TT–20, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the emergency door frame support, which could lead to decompression of the cabin, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, perform a one-time inspection to verify the installation of all rivets in the area adjacent to the upper edge of the emergency exit door, in accordance with Beechcraft Service Bulletin 2482, dated December 1992.

(1) If no rivet is missing, no further action is required by this AD.

(2) If any rivet is missing, prior to further flight, install a rivet in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 8, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–13910 Filed 6–11–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Chapter I

Rock Climbing

AGENCY: National Park Service, Interior.

ACTION: Advance notice of proposed rulemaking and management statement.

SUMMARY: The National Park Service (NPS) is seeking information and comments from the public on the need to promulgate general regulations for managing recreational rock climbing in the National Parks. While rock climbing has been a long accepted recreational activity in most park areas, because of the relatively low levels of use in many parks there have never been regulations promulgated relative to climbing (other than administrative regulations specific to a particular park area). An explosive growth of rock climbing in recent years, along with increased impacts to park resources because of this activity, suggest that regulations and guidelines need to be developed to protect park resources while providing for a quality climbing experience. The purpose of this Advance Notice of Proposed Rulemaking is to solicit comments or suggestions from the public, including climbers, on what the NPS should consider in the regulatory process, and to outline applicable NPS statutory authorities, management policies and guidelines.

DATES: Comments are requested by September 13, 1993.

ADDRESSES: All comments should be addressed to the National Park Service, Climbing Docket 1, Division of Ranger Activities, P.O. Box 37127, Washington, DC 20013–7027.

FOR FURTHER INFORMATION CONTACT: Tony Sisto, Division of Ranger Activities, Department of the Interior, Washington, DC 20240, telephone: (202) 208–4874.

SUPPLEMENTARY INFORMATION:

Background

NPS policies and practices have long recognized and allowed mountaineering and rock climbing as legitimate recreational activities (*Management Policies, Department of the Interior, National Park Service 1988*, 8:2)[1] National Parks contain many of the nation's most spectacular and challenging climbing areas, and have been the principal location for the evolution of climbing in the United States for over a century. Rock climbing in the parks has evolved with both the tacit and explicit approval of the NPS. As with any human activity, however, climbing will have impacts on park resources and values.

The protection of park resources—natural, cultural and asethetic—is the primary goal of park management. Legislation that created the NPS in 1916, commonly referred to as the Organic Act, mandates the NPS to conserve natural and cultural resources "unimpaired for the enjoyment of future generations" (16 U.S.C. 1). Subsequent legislation further states that any NPS authorized activity "shall not be exercised in derogation of the values and purposes" of a park area, except as specifically authorized by Congress (16 U.S.C. 1a–1).

Human impacts need not necessarily entail impairment. Whether an individual action is or is not an "impairment" is a management

[1] Number citation refers to "Chapter:Page"; hereafter to be referred to as "POL, (Chapter:Page)".

determination (POL, 1:3). The objective of management, and the difficult responsibility of park managers, is not simply to prevent any human-induced change from occurring, but to determine how much change will be allowed to occur (*Natural Resources Management Guideline (NPS–77)*—3:74)[2]. While only those uses that will not impair resources may be allowed (POL, 1:4), this does not mean that any human-induced impact short of impairment will be allowed. A use or activity may be restricted or prohibited when, in the judgement of the superintendent, its occurrence, continuation, or expansion would result in the derogation of the values or purposes for which the park was established, interfere significantly with other park visitors, or be inconsistent with the park's enabling legislation (POL, 8:2). These management responsibilities must necessarily be applied to climbing.

Although the impacts of the sport were probably minimal in the early phases of its development when there were relatively few climbers, many parks today are experiencing increasing resource damage due to the recent explosive growth in the popularity of the sport. In Yosemite National Park, for instance, the number of climbing routes increased from approximately 90 in 1954, to about 500 in 1970, to over 3000 in 1992. Other popular climbing parks have also shown an exponential increase in climber use days.

The impacts associated with this explosion of activity have increased proportionately. These impacts include soil compaction and erosion; vegetation damage and wildlife disturbances; impacts associated with the use of bolts, motorized drills, chalk and the creation and reinforcement of hand and foot holds; the accumulation of litter and human wastes; increased foot and vehicle traffic around popular climbing areas; impacts to the park experience and wilderness values for other park users and visitors, including visual impacts of climbers and equipment; and increased administrative activities such as search and rescue. Impacts can be found on approach and descent routes, bivouac sites, and climbing staging and viewing areas, as well as on the rock itself.

Current Management

Because park managers must ensure that visitors uses do no impair park resources, and that they do not occur in derogation of park values and purposes, each park with significant climbing activity will develop a Climbing Management Plan (CMP) consistent with NPS policy on management of recreational uses (POL, 8:2).

Among other things, CMPs, with the aid of public involvement, will determine for each applicable park area (1) what park resources and values are being or may be affected and under what circumstances; (2) what, if any, types and levels of impacts associated with climbing in the area are acceptable (do not impair park resources), and are not in derogation of park values; (3) what climbing practices are used and are necessary and appropriate for the pursuit of climbing, and what their associated impacts are; and (4) based on the above determinations, what manner and levels of climbing uses, along with attendant levels and kinds of mitigating management actions, are appropriate consistent with the protection of park resources and values, and assure no significant conflict with other park users (POL,8:1). CMPs will also address as necessary those areas where climbing is prohibited.

These determinations may vary from park to park, based on the unique resources of each park area, its enabling legislation and other general authorities, and existing and historical park uses, including climbing. Because of these differences between park areas, park managers have broad discretionary authority to manage activities within the individual parks. An activity that is entirely appropriate when conducted in one location may be inappropriate if conducted in another (POL,8:2,3). Management actions should be implemented on a graduated scale from indirect (e.g. education), to direct (e.g. route closures), and be the minimum necessary to protect park resources (NPS–77, 3:75; POL,8:2). If it is uncertain whether an activity will result in impairment or not, the activity will be managed to assure no impairment until the doubt is resolved (POL,1:4).

Need for Rulemaking

Although park managers have this discretionary authority to manage activities specific to their park areas, some impacts related to climbing activities require consistency in the management of these issues. Some climbing activities, because of their permanent or cumulative effects (or a single, direct impact), have a greater impact on park resources and values than others. For example, such practices may include gluing or chipping rock to enhance climbs, the use of motorized drills (prohibited in non-developed areas), and the extensive placement of fixed anchors.

Currently, existing general regulations at 36 CFR parts 1 and 2 can be and are being used to prohibit motorized drills, direct climbers to specific access trails or campgrounds, prescribe colors or type of chalk and equipment to protect visual impacts, close off areas to bolting or other activities to protect the resource, or other actions. Section 1.5 allows for area closures, use restrictions, or the development of special rulemaking if necessary. Section 2.12 relative to audio and mechanical devices prohibits the use of motorized equipment such as power drills in nondeveloped areas (§ 1.4 defines "developed" and "nondeveloped" areas), except where specifically permitted. In addition, § 2.1 prohibits the physical altering of rock faces, such as by chiseling or by breaking off loose rocks, and the removal of lichen or plants from rock faces.

Because of the general nature of these regulations, however, they may not be specific enough to adequately address climbing as an allowed recreational activity. It is important to note that § 2.1 is a general regulation related to the broad protection of natural and cultural resources. It prohibits, in general, consumptive or impacting uses of park resources unless otherwise provided for in separate regulation. For instance, "traditional" consumptive activities long allowed in parks, such as sport fishing and campfires, are allowed under prescribed conditions by separate regulation as exceptions to the general prohibitions of § 2.1. Because § 2.1 is generally prohibitive in nature, and because there are § 2.1 impacts inherently associated with climbing, the management of climbing may best be addressed by a separate regulation.

The intent of promulgating such regulations would be to (1) clarify that climbing is a generally allowed activity in parks; (2) clarify the role of individual parks in managing climbing; (3) address certain climbing practices having permanent or cumulative effects, such as the use of power drills, to be specifically prohibited in all parks; and (4) address climbing in designated wilderness. Prior to the promulgation of any new regulations, climbing will continue to be managed at the park level by the application of existing regulations as consistently as possible with past practices, as long as park resources and values are protected, and consistent with the development of individual park-climbing management plans.

[2] Number citation refers to "Chapter:Page"; hereafter to be referred to as "NPS–77, (Chapter:Page)".

Purpose of Advance Notice

This advance notice is for the purpose of soliciting comments on the necessity for general rulemaking on the NPS management of climbing activities. The NPS in any proposed regulations would, among other things, clarify NPS climbing management as follows:

1. Climbing would be a generally allowed activity in all park areas. Management authority to determine appropriate activities and to regulate climbing in specific park areas—including not allowing new or existing climbing, based on the unique resources and other activities in a park area, or other management responsibilities—would be left with individual park superintendents.

2. Gluing or chipping rock to create, augment, or reinforce holds, or other damaging practices such as forcibly prying off rock or destroying vegetation to enhance a route, are viewed by the NPS as not essential or appropriate for the practice of climbing and an unacceptable impact to park resources. Proposed regulations would define and prohibit such activities in all park areas.

3. Motorized drills are viewed by the NPS as not essential or appropriate for the pursuit of climbing. They allow the rapid proliferation of both fixed anchors and new routes, leading to a rapid increase in direct and associated impacts to park resources. While their general use is currently prohibited in wilderness areas and in nondeveloped areas by 36 CFR 2.12, proposed regulations would make it clear that they are specifically prohibited.

4. The use of fixed anchors (bolts, pitons, rurps, bashies, etc., often used for belay and rappel anchors, protection, and direct aid) is necessary and appropriate in some instances for the safe practice of roped climbing. Unfortunately, their use causes permanent alteration of the rock. Newer equipment (primarily various types of nuts and camming devices) allows the use of cracks for protection with no or minimal disturbance of the rock surface. These devices may reduce, but do not completely eliminate, the need for fixed anchors. Because impacts caused by fixed anchors are inherently cumulative, parks must manage their use at some level short of resource impairment and not in derogation of park values and purposes. This point should be determined by individual parks, and indeed may have already been reached or exceeded in some parks, or in some park climbing areas.

A proposed regulation would generally address the use of fixed anchors, clarifying the authority and responsibility of park managers to regulate their use at the park level, including prohibition if necessary, to protect park resources and values. The NPS is interested in hearing comments specific to the management of fixed anchors. Under what conditions should fixed anchors be allowed, prohibited or regulated? Should other climbing equipment and accoutrements be addressed in regulation?

5. Other resources potentially affected by climbing, including critical or sensitive plant and wildlife communities, and threatened or endangered species, are protected under other laws and regulations. However, prohibitions against climbing in areas of cultural and archaeological resources, or areas of critical or sensitive plant and wildlife communities or species, could be addressed in a general regulation.

6. As of 1990, the NPS had over 39 million acres of designated wilderness. Wilderness recommendations submitted to Congress total another 7.1 million acres, while wilderness studies in progress involve another 46.7 million acres (most in Alaska). Many climbing areas are currently in designated wilderness (i.e., Yosemite National Park, California; Pinnacles National Monument, California; Black Canyon of the Gunnison National Monument, Colorado).

Wilderness is defined by law to be "an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions." A wilderness area must generally appear "to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable." (Wilderness Act of 1964; 16 U.S.C. 1311 *et seq.*). When wilderness is designated in a park, the preservation of wilderness character becomes an additional statutory purpose of the park. The preservation of wilderness character and resources while providing for appropriate use will be the primary management responsibility other than the saving of human life (POL, 6:3). Park managers must specifically address climbing as it relates to the added protection provided wilderness areas.

The NPS would specifically like to hear comments relative to the management of climbing in designated wilderness areas in National Parks. Should climbing in wilderness areas be regulated differently than in other areas? How should fixed anchors or the use of other climbing equipment be managed in wilderness?

There is no intent by the NPS by this Notice to specifically regulate individual climber safety. Climbing is a high-risk, high-adventure sport which the NPS has neither the authority nor the ability to physically control (POL, 8:6). While the NPS has the discretionary authority to intervene in any activity for health, safety or administrative reasons, the NPS views climber safety as being primarily the responsibility of climbers.

Request for Comments

The NPS solicits comments and information from all segments of the climbing public, and from other park users with an interest in climbing management in parks, on recommended ways in which to manage rock climbing in accordance with the above discussion. The primary focus of this advance notice is on roped rock climbing using artificial devices for ascent, descent, or protection. We are not seeking comments regarding mountaineering (i.e., snow and glacial "expedition" climbing practiced in areas such as Denali National Park or Mt. Rainier National Park). Any regulations that may eventually be promulgated will be general in nature and applicable to the entire National Park System. It is not the intent of the NPS in this notice to develop individual regulations specific to any one park area. However, examples of climbing activities observed in one park area may be used to support an opinion or comment on overall climbing management.

Persons submitting comments based on the above discussion should include their name and address, and identify clearly and specifically the particular aspects of climbing that they feel should or should not be regulated and how (to what extent). Specific reasons should be provided to support such recommendations.

All comments received by the NPS at the address and by the date listed above will be reviewed and utilized in any development of proposed regulations. Comments received pursuant to this Advance Notice of Proposed Rulemaking will be analyzed and discussed in the preamble to the Proposed Rule. Any proposed rulemaking will also be made available for public review and comment.

Dated: March 10, 1993.

Herbert S. Cables, Jr.,

Director, National Park Service.

[FR Doc. 93–13958 Filed 6–11–93; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter 1

[FR-4665-6]

Open Meeting on the Definition of Solid Waste and Hazardous Waste Recycling

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Meeting.

SUMMARY: The Environmental Protection Agency (EPA) is conducting a public meeting on revising the regulatory definition of solid waste under the Resource Conservation and Recovery Act (RCRA). The revisions are intended to simplify the regulations and to eliminate disincentives to recycling while maintaining full protection of human health and the environment. They are also intended to reduce any possible current underregulation of hazardous waste recycling.

The Agency has selected sixteen individuals to provide technical and policy expertise at the meeting. These individuals will provide their opinions about the issues of hazardous waste recycling and how the federal solid waste rules affect such recycling. The individuals are:

Dorothy Kelly (Ciba-Geigy Corp.)
John Fognani (Gibson, Dunn, and Crutcher)
Harvey Alter (Chamber of Commerce)
Jeff Reamy (Phillips Petroleum Co.)
John Jewett (Solite Corp.)
Bob Wescott (Wesco Parts Cleaners)
Richard Fortuna (Hazardous Waste Treatment Council)
John Wittenborn (Collier, Rill, Shannon, and Scott)
William Collinson (General Motors Corp.)
Gerald Dumas (RSR Corp.)
Kevin Igli (Waste Management Inc.)
Karen Florini (Consultant)
David Lennett (Consultant)
Melinda Taylor (Consultant)
Roy Brower (State of Oregon)
Pat Matuseski (State of Minnesota)

EPA participants in the discussions will be Sylvia Lowrance, Director of the Office of Solid Waste, and a representative from an EPA Region (individual to be determined). In addition, any interested member of the public may attend the meeting.

DATES: The meeting will take place on July 7, 1993 from 8:30 AM to 5:30 PM, and on July 8, 1993 from 8:30 AM to 12:30 PM.

ADDRESSES: The meeting will take place at the Omni Shoreham Hotel at 2500 Calvert St., NW, Washington, DC, 20008, (202) 234-0700.

FOR FURTHER INFORMATION CONTACT: For additional information on the meeting, please contact Marilyn Goode of EPA's Office of Solid Waste at (202) 260-8104.

Dated: June 9, 1993.

Deborah Dalton,

Deputy Director, Consensus and Dispute Resolution Program.

[FR Doc. 93-13941 Filed 6-11-93; 8:45 am]

BILLING CODE [illegible]

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7070]

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472 (202) 646-2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for each community listed, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Impact Analysis

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. Section 67.4 is proposed to be amended as follows:

SOURCE OF FLOODING AND LOCATION

State	City/town/county	Source of flooding	Location	# Depth in feet above ground * Elevation in feet (NGVD)
Louisiana	Sterlington, Town, Ouachita Parish.	North Branch Chauvin Bayou.	At downstream corporate limits	*72
			Approximately 100 feet upstream of SR 2	*75

Maps available for inspection at the Sterlington Town Hall, 103 High Street, Sterlington, Louisiana.

Send comments to The Honorable J.H. Rainwater, Mayor of the Town of Sterlington, Ouachita Parish, 103 High Street, Sterlington, Louisiana 71280.

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	Navajo County, Unincorporated Areas.	Silver Creek	Approximately 180 feet downstream of the northern corporate limits of the Town of Snowflake.	*5,567	*5,562
			At the northern corporate limits of the Town of Snowflake.	*5,570	*5,563
			Approximately 1,000 feet downstream of Hoyt Road.	*5,591	*5,588
			At the southern corporate limits of the Town of Taylor.	*5,648	*5,646

Maps are available for review at the Engineering Department, 100 East Carter Drive, Holbrook, Arizona.

Send comments to The Honorable Larry Layton, Chairman, Navajo County Board of Supervisors, P.O. Box 668, Holbrook, Arizona 86025.

Arizona	Town of Taylor, Navajo County.	Silver Creek	Approximately 4,700 feet downstream of the confluence with Railroad Grade Wash (at the Northern corporate limit of the Town of Taylor).	*5,609	*5,607
			Just upstream of Silver Creek Lane	*5,620	*5,617
			Approximately 500 feet upstream of Willow Lane.	*5,622	*5,620
			Approximately 3,800 feet upstream of Willow Lane.	*5,627	*5,625

Maps are available for review at Town Hall, 425 West Papermill Road, Taylor, Arizona.

Send comments to The Honorable Gerald Gullick, Mayor, Town of Taylor, P.O. Box 158, Taylor, Arizona 85939.

California	Kern County (unincorporated areas).	Sand Canyon	Approximately 5,500 feet northeast of the intersection of Three Flags Highway and Onyx Peak Avenue.	None	#2
			Approximately 2,800 feet west of the intersection of Three Flags Highway and Onyx Peak Avenue.	None	#2
			Approximately 4,000 feet west of the intersection of Three Flags Highway and Onyx Peak Avenue.	None	#3
		Grapevine Canyon	Along Three Flags Highway between 14,500 and 5,000 feet north of the intersection of Lelitar Road.	#2	#1
			Approximately 3,000 feet downstream of the second Los Angeles Aqueduct.	#3	#1
			Approximately 1,500 feet downstream of the second Los Angeles Aqueduct.	#4	#2

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 700 feet downstream of the second Los Angeles Aqueduct.	#5	#3
			At the second Los Angeles Aqueduct	#7	#4
		Short Canyon	At the intersection of Brown-Inyokern Road and Willcox Avenue.	#2	#1
			Approximately 2,500 feet north of the intersection of Three Flags Highway and Leliter Road.	None	#1
			Approximately 4,000 feet south of the intersection of Three Flags Highway and Leliter Road.	None	#1
			Approximately 4,000 feet west of the intersection of Three Flags Highway and Leliter Road.	None	#2
		Indian Wells Canyon	At the intersection of Athel Street and Quail Street.	#1	#1
			Approximately 7,500 feet south of the intersection of Three Pines Canyon Avenue and Hawk Street.	#2	#1
			At the intersection of Three Pines Canyon Avenue and Sierra Vista Street.	#3	#1
			Approximately 7,000 feet south of the intersection of Placer Street and Three Pines Canyon Avenue.	None	#1
			Approximately 5,000 feet south of the intersection of Bull Run Street and Three Pines Canyon Avenue.	#2	#2
			Approximately 2,000 feet west of the intersection of Three Pines Canyon Avenue and Sierra Vista Street.	#4	#2
			Approximately 1,500 feet southwest of Indian Wells Canyon Road measured along Highway 14.	None	#2
			Approximately 300 feet north of the intersection of Indian Wells Canyon Road and Highway 14.	#8	#3

Maps are available for review at the Kern County Engineering and Survey Services Department, 2700 "M" Street, Suite 570, Bakersfield, California.

Send comments to The Honorable Roy Ashburn, Chairperson, Kern County Board of Supervisors, 1115 Truxton Avenue, Fifth Floor, Bakersfield, California 93301.

California	City of Merced, Merced County.	Bear Creek (between levees).	Downstream of U.S. Highway 99	#1	*163

Maps are available for review at Merced City Hall, Department of Public Works, 678 West 18th Street, Merced, California

Send comments to The Honorable James Lindsey, Mayor, City of Merced, City Hall, 678 West 18th Street, Merced, California 95340.

California	Merced County, Unincorporated Areas.	Bear Creek (with levees) ..	At the confluence of Black Rascal Creek .	*161	*163
			Approximately 200 feet downstream of U.S. Highway 99.	*163	*163
		Canal Creek (with levee) ..	At the confluence with Black Rascal Slough.	*146	*150
			At Landram Avenue	*146	*150
			At Elliot Avenue	*150	*150
		Black Rascal Slough (without levee).	Southeast of the south levee and north of State Route 140 across from Buhach Road.	*140	*142
		Shallow Flooding	South of Merced Municipal Airport and north of Mission Avenue.	None	*#1
			South of Childs Avenue and north of Mission Avenue between Coffee Avenue and State Route 59.	None	*#1

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at Merced County Planning Department, 2222 M Street, Merced, California. Send comments to The Honorable Clark Channing, County Administrator, Merced County, 2222 M Street, Merced, California 95340.					
Idaho	Elmore County, Unincorporated Areas.	Rattlesnake Creek	Approximately 440 feet downstream of 18th South Street.	None	*3,114
			Just downstream of 6th South Street	*3,128	*3,132
			Approximately 450 feet downstream of 8th North Street.	*3,144	*3,143
			Just upstream of Interstate Route 84	*3,184	*3,204
			Just downstream of Mountain Home Reservoir Spillway.	None	*3,285
		Rattlesnake Creek Diversion.	At the confluence with Rattlesnake Creek	*3,122	*3,122
			Approximately 350 feet downstream of 9th South Street.	*3,125	*3,125
			Approximately 1,000 feet upstream of 9th South Street.	*3,128	*3,129
		Rattlesnake Creek Gated Outlet.	At the confluence with Rattlesnake Creek	*3,218	*3,218
			Just downstream of the Mountain Home Reservoir Gated Outlet.	None	*3,240
Maps are available for review at the Elmore County Courthouse, Planning and Zoning Department, 150 South Fourth East Street, Mountain Home, Idaho. Send comments to The Honorable John Hiler, Chairperson, Elmore County Board of Commissioners, 150 South Fourth East Street, Suite 3, Mountain Home, Idaho 83647.					
Idaho	City of Mountain Home, Elmore County.	Rattlesnake Creek	Approximately 400 feet downstream of American Legion Boulevard.	None	*3,138
			Just upstream of Eighth North Street	None	*3,148
			Approximately 2,900 feet upstream of Eighth North Street.	None	*3,165
		Rattlesnake Creek Diversion.	At 12th South Street	None	*3,122
			Just upstream of Sixth South Street	None	*3,130
			Just downstream of American Legion Boulevard.	None	*3,139
Maps are available for review at City Hall, 160 South Third East Street, Mountain Home, Idaho. Send comments to The Honorable Donald Etter, Mayor, City of Mountain Home, 160 South Third East Street, P.O. Box 10, Mountain Home, Idaho 83647.					
Kentucky	Russellville (City), Logan County.	Town Branch	At upstream side of Newton Road	*563	*564
			At downstream face of U.S. Highway 79	*618	*621
		Town Branch Tributary C	At confluence with Town Branch	*576	*577
			Approximately 230 feet upstream of confluence with Town Branch.	*576	*577
		Town Branch Tributary D	Approximately 150 feet upstream of confluence with Town Branch.	*575	*576
			At confluence of Town Branch Tributary F	*596	*595
		Town Branch Tributary F	At confluence of Town Branch Tributary D.	*596	*595
			Approximately 60 feet downstream of East 9th Street.	*598	*597
		Town Branch Tributary G	At confluence with Town Branch	*564	*565
			Approximately 250 feet upstream of confluence with Town Branch.	*564	*565
Maps available for inspection at the City Engineering Office, 106 S.W. Park Square, Russellville, Kentucky. Send comments to The Honorable Ken Smith, Mayor of the City of Russellville, Logan County, 106 S.W. Park Square, Russellville, Kentucky 42276.					
Louisiana	Monroe, City, Ouachita Parish.	West Prong Young's Bayou.	Approximately 100 feet upstream of confluence with Youngs Bayou.	*70	*69
			At 18th Street	*76	*75
		East Prong Young's Bayou	Approximately 100 feet upstream of confluence with West Prong Young's Bayou.	*72	*71

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 350 feet upstream of Washington Street.	&74	*72
		Oliver Road Canal	Approximately 950 feet upstream of confluence with Rogers Street Canal.	*71	*70
			Approximately 2,200 feet upstream of N. 19th Street.	*76	*75
		East Branch Oliver Road Canal.	At confluence with Oliver Road Canal	*75	*74
			At Union Pacific Railroad	*75	*74
		Airport Canal	Approximately 4,275 feet downstream of Elm Street.	*68	*68
			At South College Avenue	*75	*76
		Rogers Street Canal	At confluence with Oliver Road Canal	*71	*70
			Approximately 100 feet downstream of White Street.	*72	*73
		Youngs Bayou	Approximately 600 feet upstream of confluence of Swayze School Canal.	*68	*67
			At the confluence of Oliver Road Canal and West Prong Youngs Bayou.	*70	*69
		Swayze School Canal	At upstream of U.S. 165	*70	*69
			Approximately 750 feet downstream of McGee Street.	*71	*70
		Ouachita River	At Interstate Route 20	*65	*64
			At upstream corporate limits	*66	*65

Maps available for inspection at the Munroe City Hall, 400 Lea Joyner Expressway, Munroe, Louisiana.

Send comments to The Honorable Robert Powell, Mayor of the City of Munroe, Ouachita Parish, 400 Lea Joyner Expressway, Munroe, Louisiana 71201.

Louisiana	Ouachita Parish	Youngs Bayou	At Ruby Road	*67	*66
			At confluence of Oliver Road Canal and West Prong Youngs Bayou.	*70	*69
		West Prong Youngs Bayou.	At confluence with Youngs Bayou	*70	*69
			Area west of confluence with East Prong Youngs Bayou.	*72	*71
		Pine Bayou	At confluence with Youngs Bayou	*67	*66
			Approximately 800 feet upstream of Burg Jones Road.	*69	*70
		Zoo Branch	At confluence with Pine Bayou	*70	*69
			At Standifer Avenue	*70	*69
		Oliver Road Canal	At confluence with Youngs Bayou	*70	*69
			Downstream side of Louberta Street	*72	*70
		Canal L–11	At confluence with Little Bayou Boeuf	None	*69
			At confluence of Chauvin Bayou	*71	*74
		North Branch Chauvin Bayou.	Approximately 0.5 mile downstream of Smith Road.	*72	*71
			Approximately 1,200 feet downstream of SR 2.	*72	*71
		Black Bayou	At confluence of Levee Ditch	*72	*70
			At extreme upstream corporate limits	*73	*71
		Black Bayou Tributary	Approximately 350 feet downstream of Hilton Street.	*96	*95
			Approximately 250 feet upstream of Hilton Street.	*101	*100
		Levee Ditch	At confluence with Black Bayou	*72	*70
			At upstream corporate limits	*73	*71
		Golf Course Creek	At downstream corporate limits	*73	*71
			At upstream corporate limits	*73	*71
		Ouachita River	Approximately 1,700 feet downstream of City of Monroe most southerly corporate limits.	None	*83
			Approximately 400 feet upstream of City of Munroe most northerly corporate limits.	None	*65
		Little Bayou Boeuf	At confluence with Bayou Lafourche	None	*69
			At the confluence of Canal L–11	None	*69
		Petticoat Bayou	At confluence with Bayou Lafourche	None	*66
			At confluence of Raccoon Bayou	None	*66
		Raccoon Bayou	At confluence with Petticoat Bayou	None	*66
			Upstream Route 165	None	*69

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Black Bayou Lake	At confluence with Bayou DeSiard	None	*75
			At Swartz Fairbanks Road	None	*96
		Airport Canal	At confluence with Youngs Bayou	*68	*67
			At Union Pacific Railroad	None	*74
		Airport Canal Lateral "A"	At confluence with Airport Canal	*68	*67
			At Illinois Central Railroad	None	*88
		Caney Creek	At confluence with Canal L–11	*70	*73
			Approximately 40 feet upstream of State Route 139.	None	*90
		East Prong Youngs	At downstream corporate limits	*72	*71
			At upstream corporate limits	*72	*71
		Bayou Lafourche	At downstream corporate limits	None	*66
			At upstream corporate limits	None	*69
		Swayze School Canal	Approximately 300 feet northeast of intersection of Peters Street and Beverly Street.	*71	#1
			Approximately 650 feet upstream of McGee Street.	*71	*70
			Approximately 1,000 feet upstream of Burg Jones Road.	#1	*70
			At confluence with Youngs Bayou	*68	*67

Maps available for inspection at the Department of Public Works, 337 Well Road, Munroe, Louisiana.

Send comments to Mr. Abe Pierce, President of the Ouachita Parish Police Jury, 300 St. John, Munroe, Louisiana 71201.

Louisiana	Richwood, (Town) Ouachita Parish.	Raccoon Bayou	At downstream corporate limits	None	*67
			At U.S. Route 165	None	*69

Maps available for inspection at the Richwood Town Hall, 5214 Brown Road, Richwood, Louisiana 71202.

Send comments to The Honorable Edward Lee Harris, Mayor of the Town of Richwood, Ouachita Parish, 5214 Brown Road, Richwood, Louisiana.

Louisiana	West Monroe, City (Ouachita Parish).	Black Bayou	Approximately 550 feet downstream of Illinois Central Railroad.	*72	*71
			At downstream side of downstream crossing of Blanchard Street.	*74	*73
		Levee Ditch	At downstream corporate limits	*73	*71
			Approximately 500 feet upstream of Interstate Route 20.	*75	*74
		Golf Course Creek	At Travis Street	*73	*71
			Approximately 100 feet downstream of U.S. Highway 80 (Claiborne Road).	*77	*76

Maps available for inspection at the West Monroe City Hall, 2305 N. Seventh Street, West Monroe, Louisiana.

Send comments to The Honorable Dave Norris, Mayor of the City of West Monroe, Ouachita Parish, 2305 N. Seventh Street, West Monroe, Louisiana 71291.

Maine	Hartford (Town) Oxford County.	Bear Pond	Entire shoreline within community	None	*374
		Lake Anasagunticook	Entire shoreline within community	None	*405
		Little Bear Pond	Entire shoreline within community	None	*374

Maps available for inspection at the Hartford Municipal, Building, Canton, Maine.

Send comments to Mr. Wes Bennoch, Chairman of the Town of Hartford Board of Supervisors, Oxford County, Hartford Municipal Building, Canton, Maine 04211.

Maryland	Princess Anne (Town) Somerset County.	Manokin River	Approximately 1.2 miles downstream of U.S. Route 13.	None	*6
			Approximately 0.7 mile upstream of State Route 675 (Somerset Avenue).	None	*6
		Manokin Branch	At confluence with Manokin River	None	5
			Approximately 720 feet upstream of West Broad Street.	None	*6
		Wesley Branch	At State Route 363	None	*6
			Approximately 1,600 feet upstream of State Route 363.	None	*6

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Municipal Building, 11786 Beckford Avenue, Princess Anne, Maryland.					
Send comments to Ms. Johanna Volandt, Town Manager for the Town of Princess Anne, Somerset County, Municipal Building, 11786 Beckford Avenue, Princess Anne, Maryland 21853.					
Mississippi	Unincorporated Areas Greene County.	Faulk Ditch	Approximately 0.5 mile downstream of State Highway 63.	None	*85
			Approximately 2.5 miles upstream of State Highway 63.	None	*109
		Chickasawhay River	Approximately 0.9 mile downstream of State Highway 63.	None	*85
			Approximately 0.82 mile upstream of State Highway 63.	None	*88
		Blakely Creek	At confluence with Chickasawhay River	None	*87
			Approximately 0.78 mile upstream of Oak Street.	None	*109
		Martin Creek	At confluence with Chickasawhay River	None	*85
			Approximately 0.6 mile upstream of Lackey Street.	None	*106
Maps available for inspection at the Greene County Courthouse, Board of Supervisors' Office, Leakesville, Mississippi.					
Send comments to Mr. Douglas Walley, President of the Greene County Board of Supervisors, P.O. Box 610, Leakesville, Mississippi 39451.					
Mississippi	Jackson, City (Hinds, Rankin, and Madison Counties).	Pearl River	At downstream corporate limits	*267	*268
			At upstream corporate limits	*283	*285
		Cany Creek	At confluence with Pearl River	*268	*270
			Approximately 450 feet upstream of County T.V. Road.	None	*341
		Hardy Creek	At confluence with Pearl River	*269	*272
			Approximately 0.19 mile upstream of Greenwood Avenue.	*271	*272
		Three Mile Creek	At confluence with Pearl River	*269	*272
			Approximately 0.02 mile downstream of Illinois Central Gulf Railroad.	*271	*272
		Lynch Creek	At confluence with Pearl River	*272	*274
			Approximately 500 feet upstream of 2nd Illinois Central Gulf Railroad crossing.	*273	*274
		Town Creek	At confluence with Pearl River	*273	*275
			At downstream side of Interstate Route 220.	*346	*349
		Town Creek Tributary No. 2.	At confluence with Town Creek	*323	*325
			Approximately 0.20 mile upstream of confluence with Town Creek.	*324	*325
		Town Creek Tributary No. 3.	At confluence with Town Creek	*282	*281
			Approximately 400 feet upstream of Marion Dunbar Street.	None	*331
		Town Creek Tributary No. 4.	Approximately 250 feet upstream of confluence with Town Creek.	*287	*288
			Approximately 100 feet downstream of Overbrook Drive.	*336	*337
		Stream 1	At confluence with Pearl River	*282	*284
			Approximately 0.25 mile downstream of Braeburn Drive.	*283	*284
		Trahon Creek	At the downstream corporate limits	*277	*279
			Approximately 100 feet downstream of Henderson Road.	*319	*320
		Trahon Creek Tributary No. 1.	At confluence with Trahon	*291	*290
			Approximately 120 feet upstream of Lakeshore Road.	*303	*304
		Hanging Moss Creek Tributary No. 4	Approximately 300 feet upstream of confluence with Hanging Moss Creek.	*293	*294
			Approximately 350 feet upstream of Old Agency Road.	None	*372
		Purple Creek	At confluence with Pearl River	*281	*283

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 450 feet upstream of Old Canton Road.	*283	*283
		Big Creek	Approximately 300 feet upstream of downstream corporate limits.	*319	*318
			At upstream with side of State Route 18 .	*364	*362
		Big Creek Tributary No. 5 .	At At confluence with Big Creek	*332	*333
			At downstream side of State Route 18	None	*386
		Big Creek Tributary No. 6 .	At confluence with Big Creek Tributary No. 5.	None	*356
			At the upstream corporate limits	None	*402
		Big Creek Tributary No. 7 .	At confluence with Big Creek	*341	*340
			At upstream crossing of State Route 18 ..	None	*361
		Town Creek Tributary No. 5.	At confluence with Town Creek	*295	*291
			Approximately 100 feet downstream of Illinois Central Gulf Railroad.	*359	*360
		Eubanks Creek	At confluence with Pearl River	*277	*278
			Approximately 425 feet downstream of Wood Dale Drive.	*277	*278
		Twin Lakes Creek G	At confluence with Pearl River	*278	*281
			Upstream side of Kimwood Drive	*316	*317
		Twin Lakes Creek H	At confluence with Pearl River	*280	*281
			Approximately 0.3 mile upstream of confluence with Pearl River.	*280	*281
		Belhaven Creek	At confluence with Pearl River	*276	*277
			Approximately 185 feet upstream of U.S. Route 55.	*276	*277
		Hanging Moss Creek	At confluence with Pearl River	*281	*283
			Approximately 400 feet upstream of Ridgewood Road.	*282	*283
		White Oak Creek (Tributary 3 to Hanging Moss Creek).	At confluence with Hanging Moss Creek .	*281	*283
			Approximately 0.24 mile upstream of Old Canton Road.	*282	*283

Maps available for inspection at the Building Official's office, Department of Planning and Development, 429 South West Street, Jackson, Mississippi.

Send comments to The Honorable Kane Ditto, Mayor of the City of Jackson, hinds, Rankin, and Madison Counties, P.O. Box 17, Jackson, Mississippi 39205.

New York	Canton (Village) St. Lawrence County.	Grass River	Approximately 1.02 miles downstream of Main Street.	None	*323
			Approximately 0.6 mile upstream of Conrail.	None	*352

Maps available for inspection at the Canton Municipal Building, 60 Main Street, Canton, New York.

Send comments to The Honorable David Button, Mayor of the Village of Canton, St. Lawrence County, 60 Main Street, Canton, New York 13617.

Pennsylvania	Honesdale (Borough) Wayne County.	Lackawaxen River	Approximately 0.5 mile downstream of Brown Street.	*961	*953
			Approximately 0.66 mile upstream of Main Street.	*991	*990
		Dyberry Creek	At confluence with Lackawaxen River	*970	*968
			At upstream corporate limits	*978	*969

Maps available for inspection at the Borough Office, 958 Main Street, Honesdale, Pennsylvania.

Send comments to Mr. William E. Rogers, President of the Borough of Honesdale Council, Wayne County, 958 Main Street, Honesdale, Pennsylvania 18431.

Pennsylvania	Palmyra (Township) Wayne County.	Lackawaxen River	Approximately 100 feet upstream of U.S. Route 6 and State Route 590 Bridge.	*896	*891
			Approximately 990 feet downstream of Park Street Bridge.	*929	*925

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Township Office, Oak Street, Hawley, Pennsylvania.					
Send comments to Mr. John Mazzga, Chairman of the Township of Palmyra Board of Supervisors, Wayne County, P.O. Box N, Hawley, Pennsylvania 18428.					
Tennessee	Mt. Juliet (City) Wilson County.	Stoners Creek	At Mt. Juliet Road	*549	*550
			Approximately 1.65 miles downstream of Pascal Drive.	*483	*484
Maps available for inspection at the Mt. Juliet City Hall, 2040 Mt. Juliet Road, Mt. Juliet, Tennessee.					
Send comments to The Honorable Ed Binkley, Mayor of the City of Mt. Juliet, Wilson County, P.O. Box 256, Mt. Juliet, Tennessee 37122.					
Tennessee	Wilson County (Unincorporated Areas).	Stoners Creek	Just upstream of Rutland Road	None	*541
			At Old Lebanon Dirt Road	*568	*569
		Sinking Creek	Approximately 100 feet of Interstate 40	*575	*572
			Approximately 800 feet upstream of Stumpy Lane.	None	*594
		Cedar Creek	Just upstream of North Posey Hill Road	*543	*542
			Approximately 0.8 mile upstream of North Posey Hill Road.	*552	*553
Maps available for inspection at the Wilson County Planning Department, 236 E. Main Street, Room 104, Lebanon, Tennessee.					
Send comments to Mr. Don Simpson, Wilson County Executive, County Courthouse, Room 104, Lebanon, Tennessee 37087.					
Washington	City of Bothell, King and Snohomish Counties.	North Creek	Just upstream of State Route 522	*23	*23
			Approximately 700 feet downstream of Interstate 405 South (Landward of West Levee/Riverward ofLeevees/ Landward of East Levee).	*25	*27/27/24
			At the intersection of 195th Street Northeast and the North Creek Parkway.	None	*31
			At the upstream crossing of North Creek Parkway (Landward of West Levee/ Riverward of Levees/Landward of East Levee).	None	*36/37/34
			Just downstream of Northeast 205th Street.	*36	*40
Maps are available for review at the City Hall, 18305 101st Avenue Northeast, Bothell, Washington.					
Send comments to The Honorable Paul Cowles, Mayor, City of Bothell, 18305 101st Avenue Northeast, Bothell, Washington 98011.					
Wyoming	Cheyenne City, Laramie County.	Crow Creek	700 feet above confluence with Dry Creek.	*5,885	*5,885
			1,440 feet above confluence with Dry Creek.	*5,890	*5,887
			38,325 feet above confluence with Dry Creek.	*6,009	*6,009
		Dry Creek	At the confluence with Crow Creek	*5,887	*5,886
			3,240 feet above confluence with Crow Creek.	*5,903	*5,904
			5,400 feet above confluence with Crow Creek.	*5,915	*5,916
			9,100 feet above confluence with Crow Creek.	*5,921	*5,921
			18,900 feet above confluence with Crow Creek.	*5,971	*5,971
Maps are available for review at the City Engineer's Office, 2101 O'Neil Avenue, Cheyenne, Wyoming.					
Send comments to The Honorable Leo Pando, Mayor, City of Cheyenne, 2101 O'Neil Avenue, Cheyenne, Wyoming 82001.					
Wyoming	Laramie County Unincorporated Areas.	Crow Creek	1,000 feet below confluence with Dry Creek.	*5,882	*5,882
			1,440 feet above confluence with Dry Creek.	*5,890	*5,887
			14,175 feet above confluence with Dry Creek.	*5,919	*5,919

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Dry Creek	26,097 feet above confluence with Dry Creek.	*5,977	*5,977
			37,750 feet above confluence with Dry Creek.	*6,000	*6,000
			At the confluence with Crow Creek	*5,887	*5,888
			2,850 feet above confluence with Crow Creek.	*5,895	*5,895
			9,400 feet above confluence with Crow Creek.	*5,937	*5,938
			16,300 feet above confluence with Crow Creek.	*5,953	*5,953
			18,120 feet above confluence with Crow Creek.	*5,962	*5,962

Maps are available for review at Laramie County Engineering Office, 2503 East Fox Farm Road, Cheyenne, Wyoming.

Send comments to The Honorable Byran Rookstool, Chairman, Laramie County Commissioner's, P.O. Box 608, Cheyenne, Wyoming 82003.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: June 8, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93-13294 Filed 6-11-93; 8:45 am]

BILLING CODE 6718-05-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 538 and 552

[GSAR Notice 5-348C]

General Services Administration Acquisition Regulation; Multiple Award Schedule Price Reductions Clause

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the General Services Administration Acquisition Regulation (GSAR) to prescribe a Price Reductions clause for use in multiple award schedule (MAS) solicitations and contracts. The clause proposed is a modification of that which is currently used. The modifications are intended to clarify the clause's applicability and reduce contractor reporting requirements.

DATES: Comments are due in writing on or before July 14, 1993.

ADDRESSES: Comments should be addressed to the GSA Desk Officer, room 3235, NEOB, Washington, DC 20503 and Marjorie Ashby, Office of GSA Acquisition Policy, 18th and F Streets, NW., room 4006, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Les Davison, Office of GSA Acquisition Policy (202) 501-4768.

SUPPLEMENTARY INFORMATION:

A. Background

The October 1, 1982, GSA Multiple Award Schedule (MAS) Policy Statement (47 FR 50242) prescribed a Price Reductions clause for use in all MAS solicitations and contracts. GSA is proposing to cancel the 1982 Policy Statement. In its place, the agency would adopt regulations based on the provisions of a test of revised MAS procedures authorized by GSA Acquisition Circular (AC-92-1) (57 FR 5862).

The Price Reductions clause is still a necessary aspect of MAS contracting. MAS contracts are negotiated and expressed as a discount from a vendor's commercial price list. Prices are determined fair and reasonable by comparing the discounts which a vender offers to the Government with the discount(s) the vender gives to its commercial customers. The Price Reductions clause is needed to assure that the Government maintains the discount advantage, negotiated at the time of award, throughout the term of the contract.

Some vendors have complained of the paperwork burden imposed by the current Price Reductions clause. The current clause requires, in paragraph (b), that contractors report all price decreases, to all commercial customers, which occur during the term of the MAS contracts. Only price decreases to the customer or category of customer, which was the basis of negotiation, result in a MAS price reduction, however. Consequently, to reduce the paperwork burden on MAS contractors, the Price Reductions clause would be revised to delete the requirement to report price reductions to commercial customers that did not serve as the basis of contract award.

Paragraphs (c) and (d) of the current Price Reductions clause contain a parenthetical phrase stating that they are not applicable to non-schedule ADP/communications/teleprocessing services contracts entered into by MAS contractors with Federal agencies. The meaning of the exclusionary language is not clear to some agencies and contractors. The parenthetical phrase would be revised by this proposal to clarify that the clause is inapplicable to "open market" sales to the Government, i.e., those not placed under an IRMS MAS contract.

Paragraph (d)(2) of the Price Reductions clause requires that all commercial price reductions be reported not later than 10 calendar days after they become effective. Some MAS contractors have stated that it is difficult to comply within the specified timeframe. In consideration of contractor concerns, the clause would be revised to require reporting within 15 calendar days. This increase in reporting time, plus the decrease in information which must be reported under paragraph (b) of the revised clause, should provide relief to MAS contractors.

Paragraph (e) of the current clause requires that, within 10 calendar days after the end of the contract period, a contractor shall submit a statement certifying that it has either reported all price reductions or that there were no applicable reductions. For each price reduction, the contractor must state the date when the price reduction was reported. Consistent with the change proposed to paragraph (d)(2) of the clause, the number of days would be changed to 15 calendar days by this

proposal. Consistent with the change proposed to paragraph (b) of the clause, the requirement to report the date on which each price reduction was reported would be deleted by this proposal.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule.

C. Regulatory Flexibility Act

An initial regulatory flexibility analysis has been prepared and submitted to the Acting Chief Counsel for Advocacy of the Small Business Administration. Copies of the initial regulatory flexibility analysis are available from the Office identified above. The initial regulatory flexibility analysis indicates that the proposed rule will affect contractors, including small businesses, that are awarded contracts under GSA's MAS program. Historically, approximately seventy percent of MAS contractors have been small businesses. Based on the number of MAS contracts currently in effect, it is estimated that 4,288 small businesses will be impacted by the new rule.

D. Paperwork Reduction Act

The Price Reductions clause is an information collection subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et sequentia*, and has been submitted to OMB for approval under the Act. Comments on the information collection requirements may be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503. The title of the information collection is "GSAR 552.238–75 Price Reductions."

The Price Reductions clause is intended to ensure that the Government maintains its price/discount (and/or term and condition) advantage in relation to the contractor's commercial customer(s) upon which the MAS contract is predicated. The customer or category of customer upon which the award is predicated is identified at the conclusion of negotiations and reflected in the MAS contract.

The Price Reductions clause requires MAS contractors to report price decreases to the customer or category of customer which was the basis of negotiations of the MAS contract to the contracting officer within 15 calendar days. The clause also require the contractor to certify, within 15 days after the end of the contract period, either that there were no applicable price reductions during the contract's term or that any price reduction was reported to the contracting officer.

The Price Reductions clause is needed to assure that the Government maintains the relative discount position, negotiated at the time of contract award, throughout the term of the contract.

The estimated annual burden for the Price Reductions clauses is 36,762 hours. This is based upon an estimated average burden per response of 3 hours, a frequency of 2 responses per respondent, and an estimated number of likely respondents of 6,127.

List of Subjects in CFR Parts 538 and 552

Government procurement.

Accordingly, it is proposed that 48 CFR parts 538 and 552 be amended as follows:

1. The authority citation for 48 CFR parts 538 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 538.203–71 is amended by revising the heading and by adding paragraph (f) to read as follows:

538.203–71 Solicitation provisions and contract clauses.

* * * * *

(f) Contracting officers shall insert the clause at 552.238–75, Price Reductions, in all MAS solicitations and contracts.

3. Section 538.272 is added to read as follows:

538.272 MAS price reductions.

(a) Prior to the award of a MAS contract, the contracting officer and the offeror shall reach an agreement as to the customer, price lists, and discounts which will serve as the basis of contract award. The award document shall expressly state the price/discount relationship between the Government and the identified commercial customer which are the basis of contract award. The Price Reductions clause is intended to maintain this price/discount relationship (and/or term and condition) between the Government and the offeror's customer or category of customer upon which the MAS contract was predicated for the contract term.

(b) During the term of the contract any changes in discount/pricing practices by the contractor which result or will result in a less advantageous relationship between the Government and the customer or category of customer upon which the MAS contract discount/price was predicated, shall result in a price reduction to the Government to the extent necessary to reflect the original relationship.

4. Section 552.238–75 is added to read as follows:

552.238–75 Price reductions.

As prescribed in 538.203–71(f), insert the following clause:

Price Reductions (XXX 1993)

(a) *General.* This Price Reductions clause is intended to ensure that the Government maintains its price/discount (and/or term and condition) advantage in relation to the Contractor's commercial customer or category of customers, upon which this contract award was predicated. The customer or category of customers, upon which the contract award is predicated, will be identified at the conclusion of negotiations.

(b) *Price Reductions to Customers Other than the Federal Agencies.*

(1) Prior to the award of a contract, the Contracting Officer and the offeror shall reach an agreement as to the price relationship between the Government and the offeror's identified customer or category of customers upon which the contract award is predicated. This relationship shall be maintained throughout the contract period. Any change in the Contractor's commercial pricing arrangement applicable to the identified customer or category of customers, which disturbs this relationship, will constitute a price reduction.

(2) During the contract period, the Contractor shall report to the Contracting Officer all price reductions to the Contractor's identified customer or category of customers upon which the contract award was predicated. The Contractor's report shall include an explanation of the conditions under which the reductions were made.

(3)(i) A price reduction shall apply to purchases under this contract if, after the date negotiations conclude, the Contractor either:

(A) Reduces prices (or grants any more favorable discounts, or terms and conditions) contained in the commercial catalog, pricelist, schedule or other documents upon which contract award by the Government was predicated; or

(B) Grants special discounts to the identified customer or category of customers, upon which the contract award by the Government was predicated, so as to disturb the discount/price relationship of the Government to that identified customer or category of customers.

(ii) A price reduction pursuant to subparagraph (3)(i) will be effective during the remainder of the contract period, or until further reductions are required by this clause's operation; except that, in the case of a temporary price decrease, the price reduction shall be only for the duration of the temporary period.

(4) This clause will not apply to the Contractor's firm-fixed-price, definite-quantity contracts with specified deliveries in excess of the maximum order limitation specified in this contract.

(5) The Contracting Officer may exempt from the application of this clause any sale at a price below the contract price if caused by an error in quotation or billing, provided adequate documentation is furnished by the

Contractor to the Contracting Officer immediately following the discovery of the error.

(C) *Price Reductions to Federal Agencies.* (This paragraph does not apply to IRMS schedule contracts when a sale to a Federal agency is made pursuant to an open market procurement, i.e., the sale is not an order placed against an IRMS schedule contract.)

Except for temporary "Government-only" price reductions described below, if after the effective date of this contract, the Contractor reduces the price of any contract item to any Federal agency and the sale falls within the contract's maximum order limitation, an equivalent price reduction shall apply to all subsequent sales of the contract item to Federal agencies for the duration of the contract period or until the price is further reduced. The Contractor may offer to the Contracting Officer a temporary "Government-only" price reduction, which has a duration of 30 calendar days or more, except during the last month of the contract period. If offered during the final month of the contract, any such offer must be for the remainder of the contract period.

(d) *Effective Dates and Notifications.* (This paragraph does not apply to GSA IRMS schedule contracts when a sale to a Federal agency is made pursuant to an open market procurement, i.e., the sale is not an order placed against an IRMS schedule contract.)

(1) Any price reduction pursuant to paragraph (b) above, shall become effective for sales to the Government at the same time as the price reduction is made applicable to sales to other customers. Any price reduction pursuant to paragraph (c) above, shall be effective at the time of the initial purchase by the Federal agency (Government) at the reduced price, except in the case of a temporary "Government-only" price reduction, which shall be effective at the time of acceptance by a Contracting Officer. The Contractor shall invoice at such reduced price and indicate thereon that the price reduction is pursuant to this Price Reductions clause until such time as this contract is modified.

(2) The Contractor shall notify the Contracting Officer in writing of any price reduction as soon as possible, but not later than 15 calendar days after its effective date. Failure to give timely notice shall require that such price reduction (including temporary price reductions) apply to the contract for the duration of the contact period, or until the price is further reduced, and may constitute a basis for termination of the contract, as provided in the Default clause of this contract.

(e) *Contractor's Statement of Price Reductions.* The Contractor shall furnish, within 15 calendar days after the end of the contract period, a statement certifying that either (1) there was no applicable reduction during the contract's term; or (2) any price reduction to the customer or category of customers upon which the contract was predicated was reported to the Contracting Officer.

(End of Clause)

Dated: April 16, 1993.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 93-13592 Filed 6-11-93; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 930514-3114]

Subsistence Taking of Northern Fur Seals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed subsistence harvest estimate and request for comments.

SUMMARY: Regulations governing the subsistence taking of northern fur seals require NMFS to publish (1) a summary of the previous year's fur seal harvest and (2) to project the number of seals expected to be taken in the current year to meet subsistence needs of the Aleut residents of the Pribilof Islands, Alaska. This document summarizes the 1992 harvest, and provides an estimate of the number of seals likely to be taken for subsistence in 1993.

Following a 30-day public comment period, NMFS will publish the final expected harvest levels for 1993. The final expected harvest levels will be published prior to the start of the 1993 harvest season, which begins on June 23, 1 week earlier than during previous years.

DATES: Written comments must be received on or before July 14, 1993.

ADDRESSES: Comments should be addressed to Director, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Zimmerman (907) 586-7235 or Mr. Michael Payne, (301) 713-2332.

SUPPLEMENTARY INFORMATION:

Background

The Pribilof Island population of the northern fur seal, *Callorhinus ursinus*, is considered depleted under the Marine Mammal Protection Act (MMPA) (50 CFR 216.15(c)). The subsistence harvest of northern fur seals on the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR part 215, subpart D. These regulations were published under the authority of the Fur Seal Act, 16 U.S.C. 1151 *et seq.*, and the MMPA (16 U.S.C. 1361 *et seq.*) (at 51 FR 24828, July 9, 1986). The purposes of these regulations are to limit the take of fur seals to a level providing for the subsistence needs of the Pribilof Aleuts using non-wasteful harvesting methods, and to restrict taking by sex, age, and season for herd management purposes.

This document summarizes the 1992 subsistence harvest and pursuant to § 215.32(b) of the regulations governing the taking of fur seals for subsistence purposes, discusses the number of seals expected to be taken in 1993 to satisfy the subsistence requirements of the Pribilof Aleuts for St. Paul and St. George Islands. The estimates are given as a range, the lower end of which can be exceeded if NMFS is given notice by the Pribilof Aleuts, and the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determines that the subsistence needs of the Pribilof Aleuts have not been satisfied. Conversely, the harvest can be terminated before the lower range of the estimate is reached if it is determined by NMFS that the subsistence needs of the Pribilof Aleuts have been met or the harvest has been conducted in a wasteful manner.

The subsistence harvest has been regulated to minimize negative effects on the population by limiting the harvest to a 40-day harvest season (June 23–August 8) and by limiting the harvest to subadult male fur seals. The August 8 deadline was chosen to avoid the taking of immature female fur seals, which begin arriving at rookeries and haulouts in early August. Previous regulations at 50 CFR 215.32(f)(2) allowed the Assistant Administrator to extend the harvest beyond August 8 under certain circumstances. However, on June 3, 1991, NMFS proposed to eliminate the extension option and to begin the harvest 1 week earlier (56 FR 25066). That rule was finalized on July 31, 1992 (57 FR 33900). Thus, there will be no extension of the harvest past August 8, 1993, and the harvest can begin on June 23.

Summary of Data from the 1992 Harvest Season

As required by 50 CFR 215.32(b), this document summarizes the 1992 harvest and estimates the number of seals needed for subsistence in 1993. Subsistence harvesting of northern fur seals was conducted on St. George Island on 12 days between July 3, 1992, and August 8, 1992, and on St. Paul Island on 27 days between June 30, 1992, and August 7, 1992. A total of 1,482 seals were harvested on St. Paul Island. A total of 194 seals were harvested on St. George Island. A harvest of approximately 100 seals was

scheduled to occur on St. Paul Island on August 8, 1992, the last available date of the 1992 harvest. However, due to a family emergency, the harvest foreman had to leave the island on that date, and the harvest did not occur. Had the harvest occurred on August 8, the total number of seals taken on St. Paul Island during 1992 would likely have increased by approximately 100 individuals.

A review of previous years' subsistence takes (Table 1) indicates that over the last 5 years, the number of fur seals harvested on St. Paul Island has fluctuated from a low of 1,077 (1990) to a high of 1,645 (1991). An average of 1,338 seals (with an upper 95-percent confidence limit (CI) of 1,749) has been taken on St. Paul Island since 1988. The number of seals taken for subsistence purposes on St. George Island per year has ranged from 113 (1988) to 281 (1991) (Table 1). The average number of seals taken on St. George Island per year for subsistence purposes has been 187 seals (upper 95-percent confidence limit of 294).

TABLE 1.—SUBSISTENCE HARVEST LEVELS FOR NORTHERN FUR SEALS ON THE PRIBILOF ISLANDS, 1985–1992.

	Year				
	1988	1989	1990	1991	1992
St. Paul	1,145	1,340	1,077	1,645	1,492
St. George	113	181	164	281	184
Total	1,258	1,521	1,241	1,926	1,676

Estimated Number of Fur Seals Needed for Subsistence in 1993

NMFS is required by its regulations to include in this document an estimate of the fur seal harvest levels for 1993 that will satisfy the subsistence needs of the residents of the Pribilof Islands. The subsistence harvest estimates are intended as estimates of need, not quotas. The annual estimation of the number of seals required to meet the subsistence needs of the Pribilof Aleuts has been inexact when compared to the number of seals actually taken in each harvest, reflecting difficulties inherent in such estimations. NMFS conducted a workshop on November 5, 1991, to discuss, among other issues, a better method for estimating the subsistence needs of the Pribilof Island residents. Discussion at the workshop indicated that a household survey, conducted by the Traditional Council on each island, would be the most appropriate approach to determine the number of fur seals needed during the current year. Participants at the workshop indicated that such a house-to-house survey has been conducted previously by the residents of St. George Island to make this determination. Survey were carried out in 1992, and, in part, were used to estimate the number of seals required to meet the 1992 subsistence needs of the residents of St. George Island (57 FR 22450, May 25, 1992). If any of the households on either St. George or St. Paul Islands cannot be contacted during these mid-winter surveys, then the estimate of need for those households that could not be reached by survey can be determined either by extrapolating subsistence need using (1) the number of seals taken per household in the previous years' harvests, or (2) the average number of seals requested per household contacted during that survey, multiplied by the number of households. Alternatively, NMFS has determined that using the previous year's harvest level as a baseline that can be adjusted, provided that substantiated evidence of increased or decreased subsistence need is presented to NMFS, is an acceptable method for estimating current year needs (56 FR 36735, August 1, 1991).

During 1992, 41 households estimated a subsistence need for 365 seals on St. George Island (57 FR 22450, May 25, 1992). Based in part on these survey results, NMFS estimated a range of 281–500 fur seals needed for subsistence in 1992. One hundred and ninety-four fur seals were actually taken for subsistence purposes (Table 1), 171 fewer seals than estimated by the survey. Since 1986, the lower limit of subsistence need on St. George Island has been reached only in 1990 and 1991. On February 10, 1993, the St. George Traditional Council provided a listing to NMFS indicating that 38 households would require 407 seals for 1993. However, since fewer seals were actually taken in 1992 than estimated, and since the average number taken over the past 5 years has been 187, NMFS concludes that there has not been a demonstrated need for an increase in the number of fur seals taken for subsistence over the levels estimated for 1992. Therefore, NMFS proposes that the 1993 harvest estimate remain at the 1992 levels. If the Aleut residents of St. George Island reach the lower level of estimated need, 281 animals, and still have unmet subsistence needs, they may request an additional number of seals up to a harvest total of 500 (the upper bound estimated for the 1991 and 1992 harvest).

On February 26, 1993, the Tribal Government of St. Paul Island provided the estimate of its 1993 subsistence needs to NMFS. Fifty-four households, approximately one-third of the households on the island, responded to the survey. In contrast, 156 households responded to the 1992 survey, which resulted in a NMFS estimate of 1,645–2000 fur seals needed for subsistence (57 FR 34081, August 3, 1992). The 54 households that responded to the 1993 survey stated that their subsistence need for 1993 would require the taking of 842 fur seals. Since only one-third of the households on St. Paul Island responded to the 1993 survey, it is difficult to determine whether the resulting estimate is an accurate indication of subsistence needs.

Rather than attempting to extrapolate subsistence need on St. Paul Island based on incomplete survey data, and given that there have not been any significant changes in the demographics or economics of the island that would result in a decreased need for fur seal meat, it is reasonable to assume that subsistence need would vary little between 1992 and 1993. During 1992, the lower level of estimated need on St. Paul Island (1,645) was based on the results of the household survey, and the number of animals taken in the 1991 harvest on that island (57 FR 34081, August 3, 1992). At this time, therefore, NMFS proposes that the expected harvest levels for subsistence need on St. Paul Island for 1993 remain at 1992 levels, 1,645–2,000 fur seals. If the residents of St. Paul Island reach the lower limit of the estimated range of animals, and still have unmet

subsistence needs, they may request an additional number of seals, up to the upper level of the subsistence estimate.

Based on the low response by St. Paul residents to the 1993 survey, it may be interpreted that only a small percentage of the residents of St. Paul Island are interested in the fur seal harvest, and that the estimate of subsistence need may need to be reduced in future harvests from levels set for previous years.

NMFS biologists will continue to monitor the entire harvest on St. Paul Island during 1993 to ensure that the harvest is carried out in a manner that fully complies with the regulations specified at 50 CFR 215.32, and to determine whether subsistence need on St. Paul Island is declining from levels of previous years. However, at this time, NMFS believes that the actual number of seals needed for subsistence likely falls at, or below, the upper 95-percent CI for the average number of seals killed in the harvests during the past 5 years. The upper 95-percent CI value is within the range of the 1993 subsistence estimates (upper and lower values) for each of the islands. NMFS believes, therefore, that 1993 subsistence estimates, based on 1992 data, are reflective of present subsistence need.

List of Subjects in 50 CFR Part 215

Administrative practice and procedure, Marine mammals, Penalties, Pribilof Islands, Reporting and recordkeeping requirements.

Nancy Foster,

Acting Assistant Administrator for Fisheries.

[FR Doc. 93-13934 Filed 6-9-93; 12:42 pm]

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50 CFR Part 285

[Docket No. 930488-3088; ID #032293A]

RIN 0648-AE83

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this proposed rule governing the Atlantic tuna fisheries to: (1) Require Atlantic bluefin tuna (ABT) dealers to submit daily reports via FAX and replace the weekly report with a revised bi-weekly report; (2) require permits for vessels fishing in the Angling category; (3) require at-sea observer coverage on vessels taking Atlantic tunas, if so requested by NMFS; (4) allow only authorized gear in the Atlantic tuna fisheries except when exempted as experimental; (5) allow the Assistant Administrator to make inseason transfers of potentially underharvested quota between fishing categories; (6) raise the amount of General category set-aside for the late season fishery from 40 metric tons (mt) to 100 mt; (7) allow for inseason adjustments to the Angling category bag and boat limits for private, party and charter boats; and (8) make other technical changes to enhance administration, management and enforcement.

This action is necessary to improve management and monitoring of the U.S. Atlantic tuna fisheries, to conform more closely to the 1991 International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations, and to enhance collection of data to improve the assessment of the environmental, economic, and social impacts of the fisheries.

DATES: Comments on this proposed rule must be received on or before July 8, 1993.

ADDRESSES: Comments on the proposed rule should be sent to, and copies of the Draft Background Document/ Environmental Assessment/Regulatory Impact Review, are available from, Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service (NMFS), 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under the implementing regulations at 50 CFR part 285 under the authority of the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* The ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations as may be necessary to carry out the recommendations of ICCAT. The authority to implement the ICCAT recommendations is delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (Assistant Administrator).

Purpose of Current Action

The proposed actions for the 1993 fishing season are limited in scope. They are intended to meet existing obligations to implement ICCAT recommendations and to improve the efficiency of the domestic fishery management program.

Pursuant to the 1991 ICCAT recommendations and the implementing regulations at 50 CFR part 285, action is currently needed to adjust management measures for the 1993 fishery to improve monitoring of bluefin catch to ensure that the ICCAT-recommended biannual quota of 2,496 mt is not exceeded. In addition, the proposed measures would enhance NMFS' ability to meet the stated management objectives for the domestic fishery: provide data to monitor the stock, minimize economic displacement, maximize the use of the resource, and spread fishing opportunity among as many users as possible. Also, pursuant to the 1992 ICCAT Standing Committee on Research and Statistics (SCRS) reports concerning status of bigeye/ yellowfin tuna stocks, NMFS proposes to implement experimental fisheries provisions for new gear in the Atlantic tuna fisheries to investigate and assess the environmental, economic and social effects of new gear, to enable NMFS to make future management decisions. Finally, a number of technical corrections are needed to clarify the language of existing regulations and to enhance enforcement.

Proposed Management Measures

Proposed changes would improve NMFS' ability to implement the ICCAT recommendations and would further the management objectives for the domestic tuna fisheries.

Daily Reports by FAX, Revised Bi-weekly Report, and Permit Fee

NMFS is proposing to require ABT dealers to submit daily reports by FAX, as well as by mail. This was suggested during the 1992 fishing season by fishermen and dealers to give NMFS better information for quota monitoring and to allow NMFS to make decisions on seasonal closures or adjustments on a real-time basis. It also was suggested during scoping meetings for this rulemaking. In addition, the weekly dealer report is proposed to be revised and replaced with a bi-weekly report to enhance the usefulness of information collected. The Regional Director would be authorized to collect fees to recover the administrative costs of issuing dealer permits. The amount of the fee would be calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. As an interim measure, no fee is proposed for dealer permit applications processed in 1993. Dealer permit requests processed after 1993 would be assessed the full administrative cost approved annually by the NOAA Comptroller.

Angling Category Permits

NMFS received many comments recommending permitting for all vessels in the bluefin tuna fishery. NMFS agrees with these comments and believes that, to monitor the catch in the Angling category, it is essential to have an accurate count of the universe of angling vessels. Currently, to extrapolate catch per unit of effort estimates to total catch, it is necessary to use an estimate of the total number of vessels in the fishery. With Angling category vessel permits, the catch estimation procedure will be much more timely and accurate. This will help to resolve questions concerning past estimates of catch in the Angling category and will increase confidence in future estimates. Given limited agency resources and the potentially large number of privately owned Angling category vessels, it is proposed that permits be issued first to party and charter vessels in 1993 and to private vessels in 1994.

A vessel owner applying for an Atlantic bluefin tuna permit would be required to submit a completed permit application signed by the owner or agent on an appropriate form obtained from the Regional Director. It would be required that the application be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. Valid permits would be required of party and charter vessels beginning July 1, 1993. Private vessel permits would be required beginning January 1, 1994.

The Regional Director would be authorized to collect fees to recover the administrative costs of issuing Angling category permits. The amount of the fee would be calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. As an interim measure, the fee would be $20.00 for permit applications processed in 1993, a level equal to that charged for other categories of Atlantic bluefin tuna permits. Angler permit requests processed after 1993 would be assessed the full administrative cost approved annually by the NOAA Comptroller.

In past years, there has not been a clear distinction between commercial and recreational users of the bluefin tuna resource, especially with regard to General category permit holders. In permitting the Angling category, NMFS recognizes a distinct category of recreational users. Therefore, NMFS proposes to designate holders of General category permits as commercial users. Vessels holding a General category permit would be classified as commercial vessels, which are subject to Coast Guard regulations pertaining to safety equipment requirements. Additionally, as commercial users, the names and addresses of General category permit holders would be subject to release under Freedom of Information Act (FOIA) requests. Those fishermen who do not want to fish for bluefin tuna commercially, but who want to retain a trophy fish (one large medium or giant bluefin annually) taken incidental to fishing under the regulations applicable to the Angling category, may apply for an Incidental Catch (Rod and Reel) category permit.

Mandatory Observer Coverage

Observer coverage is often the most efficient and effective means of scientifically validating catch, bycatch and discard data, and to collect biological samples. Mandatory observer coverage would improve collection of the scientific data necessary for management decisions affecting the Atlantic tuna fisheries. This rule change would establish the authority for NMFS to require observers for any category of vessel that is fishing for, or incidentally catching, Atlantic tunas at any time. Owners of vessels selected for observer coverage would be required to notify NMFS prior to the vessel's departure on a fishing trip. Notification procedures would be specified in the selection notice to the vessel owner. If, after notification, NMFS decides to place an observer on board for that fishing trip, the vessel owner would be instructed to wait at the dock until an observer arrives.

Prohibit Unauthorized Gear in the Atlantic Tuna Fisheries

NMFS has received numerous comments concerning the harvest of Atlantic tunas and other species by certain types of gear, including pair-trawl gear and other potential new types of fishing gear. In addition, NMFS has received a petition for rulemaking from the Center For Marine Conservation (refer to 58 FR 21967, April 26, 1993) concerning the unrestricted use of pair trawls and other new types of gear in fisheries when the effects of these gear types on protected resources are not known. Because of the overfished or fully exploited status of the Atlantic tuna stocks and the need for additional data before determinations can be made whether to allow new gear into a directed fishery, establish a bycatch quota for the new gear, establish safeguards to reduce interaction with protected species, or make other management decisions concerning the gear, NMFS proposes to designate only certain types of fishing gear as authorized for use in the Atlantic tuna fisheries and to prohibit the use of unauthorized gear.

Specifically, NMFS proposes that fishing for Atlantic tuna, with the exception of Atlantic bluefin tuna, be authorized only with handlines, rod and reel, harpoon, purse seine, longline, and drift gillnet. Authorized gear for Atlantic bluefin tuna is any gear type allocated a quota under the categories designated for directed or incidental fishing. Authorization of a gear type at any point does not establish a permanent authorized status for that gear in the Atlantic tuna fisheries. NMFS may collect information from selected vessels using authorized gear to evaluate the effects of the gear on the tuna resources and the environment. Given new information, NMFS would re-evaluate the status of any authorized gear.

It is proposed that vessels with unauthorized gear on board may not fish for, retain, or possess Atlantic tunas unless authorized under specific conditions of incidental catch. However, to obtain necessary information, NMFS proposes to allow exemptions for certain gear types under conditions of limited experimental fisheries. Exemptions may be granted to vessels employing selected gear to allow scientific assessment of the gear and to develop a data base for future decisions on managing these gear types.

Fishermen wishing to employ gear not authorized to take Atlantic tunas, either as a directed fishery, or as an incidental fishery, could submit a request to the Director of the Office of Fisheries Conservation and Management (Director) for an experimental fishing exemption. The Director may authorize, for limited experimental purposes, the directed or incidental harvest of tunas that would be otherwise prohibited. Experimental fishing may not be conducted unless authorized by an exemption issued by the Director to the participating vessel(s) in accordance with the criteria and procedures specified in the exemption letter of authorization.

Applicants for experimental fishing exemptions would be assessed a fee calculated to recover the administrative costs of issuing the exemption. The amount of the fee would be calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. As an interim measure, the fee for exemption requests processed in 1993 would be set at

$20.00, a level equal to that charged Atlantic bluefin tuna permit holders. Exemption requests processed after 1993 would be assessed the full administrative cost approved annually by the NOAA Comptroller.

Authority To Allocate Underharvest Between Fishing Categories

The implementing regulations at 50 CFR 285.22(h) provide for adjustments to 1993 quotas when fishing categories take more or less than their authorized quotas in 1992. Specifically, if the Assistant Administrator determines, based on landing statistics and other available information, that a 1992 quota in any category, or as appropriate, subcategory, has been exceeded or has not been reached, the Assistant Administrator must subtract the overharvested amount from, or add the underharvested amount to, that quota for 1993.

Large amounts of underharvested quota in any fishing category at the end of the fishing year, if used to increase quota for that category in the following year, may result in excessive allocations and continuing underharvest of quota if the particular gear segment is in fact unable to harvest the additional amount. Allocation of additional quota to a particular category that cannot make use of that amount is inconsistent with the stated management objective of maximizing use of the available quota while sharing the opportunity to fish among as many users as possible. Additionally, ATCA requires that NMFS provide a reasonable opportunity for domestic fishermen to harvest any quota allocated to the United States under an international agreement.

Under the regulations at 50 CFR 285.22(f), the Assistant Administrator has the authority to allocate any portion of the reserve amount to any fishing category as an inseason adjustment after considering the following factors: (1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock; (2) the catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made; (3) the projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season; and (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

NMFS proposes to amend the regulations at 50 CFR 285.22 to provide authority for the Assistant Administrator to make adjustments to quotas by transfers of quotas between fishing categories if, during any year of a single-year quota period, or the second year of a biannual quota period as defined by ICCAT, the Assistant Administrator determines, based on landing statistics, present year catch rates, and other available information, that any category or, as appropriate, subcategory, is not likely to take its entire quota as previously allocated for that year. Given that determination, the Assistant Administrator may transfer, inseason, any portion of the quota of any fishing category to any other fishing category or to the reserve after considering the four factors indicated at § 285.22(f) and the likelihood that any transfers between categories will not result in the total single-year quota or the total 2-year quota being exceeded. The Assistant Administrator will file a notification of transfer of any inseason adjustment amount with the Office of the Federal Register before the date such transfer is to become effective .

Allowing the Assistant Administrator to make inseason transfers of unharvested quota between categories provides the flexibility needed to collect data necessary for monitoring the status of the stock, minimize economic displacement, and maximize use of the available resource.

Set-aside for the Late Season General Category Fishery

Written and oral comments have been received recommending various methods to provide a late-season fishery to allow maximum fishing opportunity for all geographic areas and to allow fishermen to take advantage of the higher prices potentially received in late summer/early fall in areas where this fishery has been traditional. Along with recommendations for delaying the opening of the season to accomplish this, NMFS has received recommendations for reserving each year 100 mt of the General category quota until September 15. NMFS agrees that this would help ensure that a portion of the annual quota would remain for traditional late-season fisheries. NMFS believes this late-season set-aside has merit from a scientific standpoint (e.g., continuing the collection of data on large ABT through September, and potentially in October) and could have positive economic impacts due to the higher prices usually received from ABT in late summer and early fall.

Angling Category In-season Adjustments

Differential bag limits were implemented in 1992 in the Angling category for ABT less than 115 cm (45 inches) in an effort to ensure that the Angling category fishery stay open as long as possible. All vessels (including charter and party boats), except purse seiners, are limited to one medium ABT per day. Private boats are allowed only two school ABT per trip, while anglers on charter and party boats are allowed one school ABT per angler per trip (day).

Additionally, the Assistant Administrator is provided the authority to adjust the bag limits for anglers fishing from charter or party vessels from one school ABT per angler per trip (day) to two school ABT per angler per trip. Comments have been received recommending that the private boat sector be treated in a similar manner, in terms of the bag limits, as the charter/party boat sector. In addition, public comment has indicated to NMFS that closures can adversely impact the recreational sector to a greater degree than lower bag or boat limits. NMFS believes the data collected during 1992 provide adequate justification for allowing the Assistant Administrator the flexibility to adjust the private boat catch from two school ABT per boat to one per angler or two per angler per trip, as in the charter/partyboat sector, and to adjust the charter/party boat sector to as few as two fish per vessel, as in the private boat sector, if necessary to avoid a closure. Such flexibility would provide more options for the private boat fishery and could help to reduce the likelihood of closures in the recreational sector if charter boat catch rates become excessive.

Technical Changes to the Regulations

A number of technical changes are proposed to clarify the language or to enhance enforcement of the existing regulations. These clarifications will facilitate a consistent interpretation of the regulations. The proposed changes will:

1. Clarify the dividing line between the northern and southern regions for management of the Angling category quota;
2. Clarify the meaning of "authorized officer", "postmarking", and "delegated authority";
3. Clarify the prohibitions and authorized activities for incidental take of ABT;
4. Clarify which categories of permit may be held concurrently;
5. Clarify that ABT may not be possessed or landed in areas otherwise closed to fishing;
6. Clarify non-transferability of vessel permits;

7. Clarify references to certain size classes of ABT;

8. Correct misspellings and incorrect cross-references;

9. Eliminate redundant sections; and

10. Clarify permit application information requirements.

These changes will not affect the conduct of the tuna fisheries except to close "loopholes" and facilitate enforcement. Without such changes, the fisheries cannot be monitored or enforced with maximum effectiveness.

In addition, NMFS has received comment that a correction to the regulatory text is needed to clarify the prohibition on landing Atlantic tuna in a form other than round (fins intact) or other than with the head removed and eviscerated. NMFS requests additional comment on the need for flexibility in the regulations governing at-sea processing of all species of Atlantic tuna, as applied to both the commercial and recreational fisheries.

Classification

This proposed rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq*. The Assistant Administrator has preliminarily determined that this proposed rule is necessary to implement the recommendations of ICCAT and is necessary for management of the Atlantic tuna fisheries.

An environmental assessment (EA) of the proposed measures was prepared by NMFS and is available for public review (see **ADDRESSES**).

The Assistant Administrator has determined, based on the Regulatory Impact Review (RIR) prepared for this rule, that this is not a "major" rule requiring a Regulatory Impact Analysis under E.O. 12291. The proposed action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated. The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because less than 20 percent of the entities are affected by the rule. A copy of the RIR may be obtained from NMFS (see **ADDRESSES**).

The Assistant Administrator has determined that this proposed rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the Atlantic, Gulf of Mexico, and Caribbean states that have approved coastal zone management programs. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule contains several new collection-of-information requirements subject to review under the Paperwork Reduction Act and revises and continues requirements that were approved by the Office of Management and Budget (OMB) under OMB control numbers 0648–0202 and 0648–0239. The continuing requirements are revised because changes in the information requested on permit applications and on dealer reports involved changing or deleting several words in the existing regulatory text. The public reporting burden for permit application collections of information is estimated to remain unchanged at an average 30 minutes per response for a new vessel permit application and 15 minutes per response for a vessel permit renewal. The revised public reporting burden for collections of information on dealer reports are estimated at 2.5 minutes per response for daily dealer reports, and 33 minutes per response for bi-weekly dealer reports. The burden for inspection notification for purse seine vessels remains unchanged at 5 minutes. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

New collection-of-information requirements are associated with requests for permitting the Angling category, experimental fishing exemptions, and mandatory observer coverage. The public reporting burden for Angling category permits is expected to average 30 minutes for a new application and 10 minutes for a renewal (in the case that a vessel owner would be applying for an Angling category permit in addition to renewing a current General category permit). The public reporting burden for an experimental fishing exemption is expected to average 1 hour to apply for an exemption, and 2 hours per report on exempted fishing activities. The public reporting burden for vessel owners selected for observer coverage is estimated to average 1 hour per observed fishing trip. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention NOAA Desk Officer).

NMFS has consulted under section 7 of the Endangered Species Act concerning the potential impact of this fishery and of the proposed management measures on endangered and threatened species. It has been determined that no new information is available that would provide a basis for altering the conclusions of the Biological Opinion issued on July 5, 1989. Thus, the fishery and these proposed actions are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS.

This proposed rule does not contain policies with federalism implications sufficient to warrent preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 8, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 285 is proposed to be amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq*.

2. In § 285.2, new definitions for "drift gillnet" and "postmark" are added in alphabetical order and the definitions of "authorized officer" and "Secretary" are revised to read as follows:

§ 285.2 Definitions.

* * * * *

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard; or any U.S. Coast Guard personnel accompanying and acting under the direction of a commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any special agent or fisheries enforcement officer of NMFS; or

(3) Any person designated by the head of any Federal or state agency that has

entered into an agreement with the Secretary or the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act.

* * * * *

Drift gillnet, sometimes called a drift entanglement net or drift net, means a flat net, unattached to the ocean bottom, whether or not attached to a vessel, designed to be suspended vertically in the water to entangle the head or other body parts of fish that attempt to pass through the meshes.

* * * * *

Postmark means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt or a receipt issued upon hand delivery to an authorized representative of NMFS.

* * * * *

Secretary means the Secretary of Commerce, or a designee.

* * * * *

3. Section 285.3 is amended by revising the introductory phrase and adding paragraphs (i) through (n) to read as follows:

§ 285.3 Prohibitions.

It is unlawful:

* * * * *

(i) For any person or vessel subject to the jurisdiction of the United States to fish for, catch or retain any species of Atlantic tuna with gear that is not authorized under § 285.9, unless authorized under § 285.7.

(j) For any person or vessel subject to the jurisdiction of the United States to possess any Atlantic tuna on board a vessel that has gear on board that is not authorized under § 285.9, unless authorized under § 285.7.

(k) For any person to assault, resist, oppose, impede, intimidate, interfere with, obstruct, delay or prevent any authorized officer in the conduct of any search, inspection, seizure or lawful investigation made in connection with enforcement of this part.

(l) For any person to assault, resist, oppose, impede, harass, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(m) Interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an at-sea observer conducting his or her duties aboard a vessel.

(n) Fail to provide an observer with the required food, accommodations, access, and assistance, as specified in § 285.8(c).

4. Sections 285.7 through 285.9 are added to subpart A to read as follows:

§ 285.7 Experimental fishing exemption.

(a) Upon a written request received at least 30 days before the desired effective date, the Director may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing to gather data needed to make management decisions for the Atlantic tuna resources or fisheries.

(b) A request for an exemption must be in writing and received by the Director at least thirty (30) days before the desired effective date. The request must specify any vessel(s) involved, describe the gear to be used, the manner in which the gear will be fished, the duration of the activity, the area where the activity will be conducted, the species of tuna that will be caught, the anticipated bycatch, the port(s) involved and the disposition of the catch, both domestic and foreign. The request must include any fee specified by the Director pursuant to § 285.7(e).

(c) The Director may not grant such exemption unless it is determined that the purpose, design, and administration of the experimental fishing is consistent with the objectives of the management program, ICCAT recommendations, the provisions of the Atlantic Tunas Convention Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the Atlantic tunas resources and fisheries; or

(2) Create significant enforcement problems.

(d) Each vessel participating in any experimental fishing activity is subject to all provisions of this part except those clearly inconsistent with the exemption granted that activity by the Director. The conditions and duration of the experimental fishing will be specified in a letter issued by the Director to each vessel or person participating in the exempted activity. This letter must be carried aboard the vessel conducting the exempted activity. Any exemption authorization that has been altered, erased, or mutilated is invalid. A letter of exemption issued under this part is not transferable or assignable.

(e) The Director may charge a fee to recover the administrative expenses of issuing a letter of exemption. The amount of the fee will be calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs. Persons seeking an exemption may contact the Director at (301) 713–2334 to find out the applicable fee. Failure to pay the fee will preclude issuance of the exemption. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any letter of exemption.

§ 285.5 At-sea observer coverage.

(a) Notwithstanding the placement of on-board fishery observers under the authority of any other Federal statute, NMFS may require observers for any category of vessel engaged in directed fishing for, or incidentally taking, Atlantic tunas at any time.

(b) Owners of vessels selected for observer coverage will be required to notify the appropriate Regional or Center Director before commencing any fishing trip that may result in the harvest of any Atlantic tuna. Notification procedures will be specified in selection letters to vessel owners.

(c) An owner or operator of a vessel on which a NMFS-approved observer is embarked must—

(1) Provide accommodations and food that are equivalent to those provided to the crew;

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties;

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position;

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish; and

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

§ 285.9 Authorized gear.

(a) Authorized fishing gear for Atlantic tuna, with the exception of Atlantic bluefin tuna, is the following: Handline, rod and reel, harpoon, purse seine, longline, and drift gillnet.

(b) Authorized gear for Atlantic bluefin tuna is any gear appropriate to the categories allocated a quota under subpart B of this part.

5. In § 285.21, paragraphs (a), (b), (c), (e), (g), (h), (k) and (l) and the OMB control number at the end of the section are revised and paragraph (m) is added to read as follows:

§ 285.21 Vessel permits.

(a) *Permit requirements.* Each vessel that fishes for or takes Atlantic bluefin tuna must have on board a valid permit issued under this section. Party and charter vessels fishing in the Angling category; must have on board a valid permit by July 1, 1993. Private vessels fishing in the Angling category must have a valid permit on board by January 1, 1994.

(b) *Categories of permits.* Except as allowed under paragraph (m) of this section, the Regional Director will issue a permit to each vessel for only one of the following categories: General (handgear), Angling, Harpoon Boat, Purse Seine, or Incidental Catch. A permitted vessel is entitled to fish for Atlantic bluefin tuna only under the quota for the category in which it is permitted, and must use gear appropriate to that category. The Regional Director will issue permits to catch and retain Atlantic bluefin tuna under § 285.22(c) only to current owners of those purse seine vessels, or their replacements, that were granted allocations under this subpart and landed Atlantic bluefin tuna in the fishery for Atlantic bluefin tuna during the period 1980 through 1982. The Regional Director will not issue a permit to take Atlantic bluefin tuna under this subpart to any vessel that was replaced with another vessel and retired from the purse seine fishery during the period 1980 through 1982, unless that vessel is replacing another vessel being retired from the fishery.

(c) *Application procedure.* Permits issued under this section must be renewed annually. A vessel owner applying for an Atlantic bluefin tuna permit under this section must submit a completed permit application signed by the owner or agent on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The application must include the name, address and telephone number of the vessel owner(s) (for each owner that owns more than a 25 percent interest in the vessel); the name of the vessel; the port where the vessel is docked; the official state registration or U.S. Coast Guard documentation number; the gross tonnage, if known; the length of the vessel; the engine horsepower; the year the vessel was built; the type of vessel construction; the type of vessel propulsion; the vessel's fish hold capacity; the type(s) of fishing gear used; the normal crew size; number of party or charter passengers licensed to carry (if applicable); and the category of the permit. In addition, if applicable, applicants must include a copy of the official state registration or U.S. Coast Guard documentation, party/charter boat license, and, if a boat is owned by a corporation or partnership, the corporate or partnership documents (copy of Certificate of Incorporation and Articles of Association or Incorporation, including the names and addresses of all shareholders owning 25 percent or more of the corporation's shares). Except for purse seine vessels, an owner may change the category of the vessel's permit by notifying the Regional Director in writing before May 15. After May 15, the vessel's permit category may not be changed for the remainder of the calendar year, regardless of any change in the vessel's ownership, unless the vessel never had recorded landings of Atlantic bluefin tuna, or unless there is sufficient evidence for the Regional Director to determine that an error involving contradictory information was made on the application.

* * * * *

(e) *Duration.* A permit issued under this section remains valid until it is suspended or revoked, or it expires. A permit issued under this section expires when the name of the owner or vessel changes, or upon the renewal date specified on the permit by the Regional Director.

* * * * *

(g) *Replacement.* The Regional Director may issue replacement permits when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the vessel, and the fishing permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (k) of this section, may be charged for issuance of the replacement permit.

(h) *Transfer.* A permit issued under this section, except in the case of purse seine permits as allowed under paragraph (b) of this section, is not transferable or assignable to another vessel or owner; it is valid only for the vessel and owner to which it is issued.

* * * * *

(k) *Fees.* The Regional Director may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(l) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the vessel owner must report the change in writing to the Regional Director. The permit is void if any change in the information is not reported within 15 days.

(m) *Multiple categories.* The following combinations of vessel permits, and fishing activity subject to the provisions governing these categories, are allowed to exist simultaneously aboard a single vessel, although individual fish taken under any permit category remain subject to the provisions of the regulations applicable to that category:

(1) Angling and General category; and

(2) Angling and Incidental Catch (Rod and Reel) category.

[Approved by the Office of Management and Budget under OMB control number 0648–0202]

6. Section 285.22 is amended by revising the introductory text and paragraphs (a) through (e) and adding paragraph (i) to read as follows:

§ 285.22 Quotas.

The total annual (January 1–December 31) amount of Atlantic bluefin tuna that may be caught, retained, possessed or landed by persons and vessels subject to U.S. jurisdiction in the regulatory area is subdivided as follows:

(a) *General.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the General category under § 285.21(b) is 531 mt, of which 100 mt is set aside for a late-season fishery beginning September 15. On the basis of the statistics referenced at § 285.20(b)(1), the Assistant Administrator will project a date when the catch of Atlantic bluefin tuna will equal the annual quota minus 100 mt, and will publish a notification in the Federal Register stating that fishing for, retaining, possessing or landing Atlantic bluefin tuna under the early-season quota must cease on that date at a specified hour, and not recommence until September 15, whereupon a quota equal to the difference between the annual quota and the estimated catch prior to September 15 will become available. If the Assistant Administrator determines (based on dealer reports, availability of

large medium or giant Atlantic bluefin tuna on the fishing grounds, and any other relevant information) that variations in seasonal distribution, abundance, or migration patterns of Atlantic bluefin tuna, and the catch rate, may prevent fishermen in an identified area from harvesting their share of the quota, the Assistant Administrator may set aside an allocation of the late-season quota for such area. The amount of any allocation will not exceed the greater of 20 mt or the maximum reported landings in the identified area in any of the preceding 3 years. The Assistant Administrator will publish notification of any set-aside allocation and its basis in the **Federal Register**. The daily catch limit for the identified area will be set at one large medium or giant Atlantic bluefin tuna per day per vessel.

(b) *Harpoon boat.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the Harpoon Boat category under § 285.21(b) is 53 mt.

(c) *Purse seine.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the Purse Seine category under § 285.21(b) is 301 mt.

(d) *Angling.* The total annual amount of school, large school, and small medium Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by anglers is 219 mt. No more than 100 mt of this quota may be school Atlantic bluefin tuna. This quota is further subdivided as follows:

(1) 47 mt of school Atlantic bluefin tuna may be caught, retained, possessed or landed south of 38°47′ N. latitude.

(2) 53 mt of school Atlantic bluefin tuna may be caught, retained, possessed or landed north of 38°47′ N. latitude.

(e) *Incidental.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels permitted in the Incidental Catch category under § 285.21(b) is 226 mt for the 2-year period 1992–1993. This quota is further subdivided as follows:

(1) In 1992, 132 mt for longline vessels. No more than 104 mt may be caught, retained, possessed or landed in the area south of 36°00′ N. latitude.

(2) In years after 1992, 85 mt for longline vessels. No more than 67 mt may be caught, retained, possessed or landed in the area south of 36°00′ N. latitude.

(3) For vessels fishing for species of fish other than tuna with gear other than rod and reel, and vessels fishing with rod and reel under the regulations pertaining to the Angling category, 5 mt in 1992 and 4 mt in years after 1992 may be caught, retained, possessed or landed in the regulatory area.

* * * * *

(i) *Transfers between categories.* The Assistant Administrator is authorized to make adjustments to quotas involving transfers between vessel categories or, as appropriate, subcategories if, during any year of a single year quota period or the second year of a biannual quota period as defined by ICCAT, the Assistant Administrator determines, based on landing statistics, present year catch rates, and other available information, that any category, or as appropriate, subcategory, is not likely to take its entire quota as previously allocated for that year. Given that determination, the Assistant Administrator may transfer inseason any portion of the quota of any fishing category to any other fishing category or to the reserve after considering the four factors indicated in paragraphs (f) (1) through (4) of this section, and the likelihood that any transfers between categories will not result in the total single-year quota or the total 2-year quota being exceeded. The Assistant Administrator will file a notification of transfer of any inseason adjustment amount with the Office of the Federal Register before such transfer is to become effective.

7. Section 285.23 is amended by revising paragraphs (c)(1) and (c)(2) and removing paragraph (f) to read as follows:

§ 285.23 Incidental catch.

(c) * * *

(1) One fish per vessel per fishing trip landed south of 36°00′ N. latitude, provided that at least 2,500 pounds (1,134 kg), either dressed or round weight, of species other than Atlantic bluefin tuna are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout as sold; and

(2) Two percent by weight, either dressed or round weight, of all other fish legally landed, offloaded and documented on the dealer weighout as sold at the end of each fishing trip, north of 36°00′ N. latitude.

* * * * *

8. Section 285.24 is amended by revising paragraphs (d)(2)(ii) and (d)(3) to read as follows:

§ 285.24 Catch limits.

* * * * *

(d) * * *

(2) * * *

(ii) The Assistant Administrator may change the per angler limit to a per boat limit or a per boat limit to a per angler limit, and may increase the bag limit for school bluefin tuna for anglers on party and charter boats from one to two, and may reduce it from two to one, based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota over the longest possible period of time. The Assistant Administrator will publish a notification in the **Federal Register** of any adjustment in the bag limit made under this paragraph (d)(2)(ii).

(3) *Private boats*—(i) Private boat anglers may catch, retain, possess or land each day the bag limit for anglers specified in paragraph (d)(1) of this section for the number of anglers on board; provided, however, that no more than one small medium and two school bluefin tuna may be retained each day, regardless of the number of anglers on board.

(ii) The Assistant Administrator may change the per angler limit to a per boat limit or a per boat limit to a per angler limit, and may increase the bag limit for school bluefin tuna for anglers on private boats from one to two per angler, and may reduce it from two to one per angler, based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota over the longest possible period of time. The Assistant Administrator will publish a notification in the **Federal Register** of any adjustment in the bag limit made under this paragraph (d)(3)(ii).

9. Section 285.25 is amended by revising paragraph (c) to read as follows:

§ 285.25 Purse seine vessel requirements.

* * * * *

(c) *Inspection.* Any owner of a purse seine vessel with a permit issued under § 285.21(b) must request an inspection of the vessel and fishing gear by an enforcement agent of NMFS before commencing any fishing trip that may result in the harvest of any regulated species and before offloading any Atlantic bluefin tuna. The vessel owner must request such inspection at least 24 hours before commencement of a fishing trip and offloading by calling 508–563–5721 or 508–281–9261. Purse seine vessel owners must have each large medium and giant bluefin tuna in their catch weighed (round weight), measured, and the information recorded on the appropriate forms at the time of

offloading and prior to transporting said tuna from the area of offloading.

* * * * *

10. Section 285.26 is amended by revising the entry for line two in the body of the table to read as follows:

§ 285.26 Size classes.

* * * * *

Size class	Total fork length	Pectoral fin fork length	Approx. round weight
* * *	*	* *	*
School	26 to <45 in	19 to <33 in	14 to <66 lbs.
* * *	*	* *	*

11. Section 285.28 is amended by revising paragraphs (b) and (j) to read as follows:

§ 285.28 Dealer permits.

* * * * *

(b) *Application.* An applicant must apply for a dealer permit in writing on an appropriate form obtained from the Regional Director. The application must be signed by the applicant, and be submitted to the Regional Director at least 30 days before the date upon which the applicant desires the permit to be effective. The application must contain the following information: Company name; principal place of business; owner or owners' names; applicant's name (if different from owner or owners) and mailing address and telephone number; and any other information required by the Regional Director.

* * * * *

(j) *Fees.* The Regional Director may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

* * * * *

12. Section 285.29 is amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 285.29 Dealer recordkeeping and reporting.

* * * * *

(a) Must submit to the Regional Director via both electronic facsimile (FAX) and the postal system a daily report on a reporting card provided by NMFS, within 24 hours of the purchase or receipt of each Atlantic bluefin tuna from the person or vessel that harvested the fish. A FAX of said card must be received at the NMFS NE Regional Office (FAX 508–281–9135) within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. Additionally, said card must be postmarked and mailed within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. Each reporting card must be signed by the vessel permit holder or vessel operator to verify the name of the vessel that landed the fish and must show the Atlantic bluefin tuna vessel permit number, metal tag number affixed to the fish by the dealer or assigned by an authorized officer, the date landed, the port where landed, the round or dressed weight, the fork length, gear used, and area where the fish was caught.

(b) Must submit to the Regional Director a bi-weekly report on forms supplied by NMFS.

(1) Said report must be postmarked and mailed within 10 days after the end of each 2-week reporting period week in which Atlantic bluefin tuna were purchased, received, or imported. Each report must specify accurately and completely for each tuna purchased: Date of landing or import; vessel ABT permit number (if appropriate); metal tail tag number; weight in pounds or kilograms (specify if round or dressed); nature of the sale (dockside or consignment); price per pound or kilogram (round or dressed weight); quality rating (A, B or C) for four attributes (freshness, fat, color and shape); and destination of the fish (domestic or export).

(2) At the top of each form, the dealer must indicate the company name, license number, and the name of the person filling out the report. In addition, the beginning and ending dates of the 2-week period must be specified by the dealer and noted at the top of the form.

* * * * *

(d) Must retain at his/her place of business a copy of each daily report (including proof of FAX transmission) and a copy of each bi-weekly report for a period of 2 years from the date on which each was submitted to the Regional Director.

* * * * *

13. Section 285.30 is amended by revising paragraph (c)(2) to read as follows:

§ 285.30 Metal tags.

* * * * *

(c) * * *

(2) Any person who catches a large medium or giant Atlantic bluefin tuna and does not transfer it to a permitted dealer must contact the nearest NMFS enforcement office at the time of landing said Atlantic bluefin tuna and make the tuna available so that a NMFS enforcement agent may inspect the fish and attach a metal tag to it. The offices to contact are: Portland, ME (207–780–3241); Otis Air Force Base, MA (508–563–5721); Brielle, NJ (201–528–3315); Atlantic Beach, NC (919–247–4549); Brunswick, GA (912–265–0108); Miami, FL (305–361–4224); St. Thomas, U.S. Virgin Islands (809–774–5226); San Juan, Puerto Rico (809–782–8686); St. Petersburg, FL (813–893–3145); St. Joe, FL (904–227–1879); or Corpus Christi, TX (512–888–3362). The Regional Director may designate a person other than a NMFS agent to inspect and tag the fish. Such designation will be made in writing.

* * * * *

14. Section 285.31 is amended by revising paragraphs (a) (7), (16), (26), (30) and (31), and removing paragraph (32); and redesignating paragraphs (a)(33) through (a)(38) as paragraphs (a)(32) through (a)(37), respectively, to read as follows:

§ 285.31 Prohibitions.

(a) * * *

(7) Fish for, catch, possess, or land Atlantic bluefin tuna in an area otherwise closed to fishing.

* * * * *

(16) Engage in fishing with a vessel holding a permit under § 285.21 unless the vessel travels to and from the area

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where it will be fishing under its own power and the person operating that vessel brings any Atlantic bluefin tuna under control (secured to the catching vessel or aboard) with no assistance from other vessels, except in circumstances where the safety of the vessel or its crew is jeopardized or due to other circumstances beyond the control of the operator;

* * * * *

(26) Fish for, catch, retain, possess or land Atlantic bluefin tuna with longline gear except as provided in § 285.23(c);

* * * * *

(30) Fish for, catch, possess or land Atlantic bluefin tuna from the Gulf of Mexico except as specified under § 285.23 (c), (d) and (l);

(31) Fish for or catch Atlantic bluefin tuna with a gear type or in a manner other than specified in §§ 285.22, 285.23, and 285.25, or other than authorized under an experimental fishing exemption issued pursuant to the requirements of § 285.7.

* * * * *

15. Section 285.50 is revised to read as follows:

§ 285.50 Authorized fishing.

Fishing for, catching, retention or possession of yellowfin and bigeye tuna in the regulatory area by persons or fishing vessels subject to the jurisdiction of the United States is authorized only for:

(a) Vessels employing gear types specified at § 285.9 unless the gear is authorized under an experimental fishing exemption issued pursuant to the requirements of § 285.7;

(b) Yellowfin or bigeye tuna that weigh 7 pounds round weight (3.2 kg) or more, except as provided in § 285.52.

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Notices

Federal Register
Vol. 58, No. 112
Monday, June 14, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Lolo Trail; Clearwater National Forest, Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; Intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) that will analyze and disclose the environmental impacts of the following proposals; (1) Revise the Lolo Trail System Guidelines that were adopted into the Forest Plan. The revisions would become an amendment to the Forest Plan; (2) Reconstruct segments of the Historic Lolo Motorway (FS #500 and associated road segments that access the motorway) from Musselshell Meadows and Canyon Junction to Rocky Point Lookout in 1996. Also proposed during this time and along the same route are the construction of dispersed camping spurs, interpretative and informational signing, and trail head facilities; and (3) Construct a continuous recreation trail across the Clearwater National Forest along the Lolo Trail route. It would run from Musselshell Meadows and Lolo Campground (intersecting near Rocky Ridge) and continuing east to the Idaho-Montana border near Packer Meadows. Historic routes would be used where feasible, but segments (particularly the Lewis and Clark route in Hungery Creek) would be preserved in their natural state. The Forest objective is to complete this trail by 2005, the Lewis and Clark Expedition Bicentennial. This EIS will tier to the Clearwater National Forest Land and Resource Management Plan Final EIS of September, 1987, which provides overall guidance in achieving the desired future condition for the area.

The purpose and need for each proposed action, in order, is: (1) The original 1985 draft of the Lolo Trail System Guidelines was adopted into the Forest Plan in 1987. After six years it is apparent that a revision is needed for several reasons. The original Guidelines are difficult to read and to understand, and direction for each resource was written independently with little integration between resource areas; second, the Clearwater National Forest has been unable to establish agreement with the Advisory Council for Historic Preservation; third, the current guidelines do not provide for long term planning; fourth, the Nee-Me-Poo and Q'useyn'eisskit Trails have been since designated National Historic Trails; fifth, the current guidelines do not address the recent increase in public interest in the Lolo Trail system; and finally, systematic historical resource inventories and ethnographic surveys are currently underway or planned for the Lolo Trail system. A revision of the Guidelines, that remedies the current problems and incorporates recent changes and remains flexible to accommodate those of the future, is needed to provide clear management direction for the Lolo Trail system. (2) Considered not much more than a jeep trail now, the Historic Lolo Motorway was a major improvement in transportation across the old trail when it was built by the Civilian Conservation Corps in the early 1930's. The road exists now, as it did when it was built, narrow and rough, and steep in places, with tight curves along dizzying precipices. However, much of the original road surface has disappeared, exposing large rocks making the road almost non-maintainable and creating hazardous conditions for travelers. Increased use of the road and increased interest in the Lolo Trail system have added to the problem. Minor improvements to the road are needed to restore it near to its original condition. Construction of recreation and interpretative sites or facilities are needed to safely accommodate increase public demand while providing a quality historic and recreation experience within the Lolo Trail system. (3) There has been increased public interest and use of the Lolo Trail system, and the National Historic Trails Act directs the Forest Service to provide reasonable access to the historic trails in this area. However, it is currently difficult to achieve a quality historic and/or recreation experience in this area. Most of the trails are in poor condition. Some trail segments are located in poor locations, and some have been replaced by roads or have been obliterated by past logging activities. Construction of a maintainable, cross-Forest, recreation trail would help satisfy public demand and use, preserve known existing routes, and provide a quality historic and recreation experience within the Lolo Trail system;

The agency invites written comments and suggestions on the issues and management opportunities for the area being analyzed.

DATES: Comments concerning the scope of the analysis should be received by September 30, 1993 to receive timely consideration in the preparation of the Draft EIS. The Draft EIS will be filed with the Environmental Protection Agency by December 15, 1993. The Final EIS and Record of Decision are expected in July of 1994.

ADDRESSES: Send written comments to Bert Kulesza Deputy Forest Supervisor, Clearwater National Forest, 12730 Highway 12, Orofino, ID 83544.

FOR FURTHER INFORMATION CONTACT: George Harbaugh, Lolo Trail Interdisciplinary Team Leader, Lochsa Ranger District, Clearwater National Forest, (208) 926–4275.

SUPPLEMENTARY INFORMATION: The Lolo Trail study area consists of prehistoric and historic trails, sites, roads, and surrounding areas across three ranger districts making up the Lolo Trail system corridor and is located in Townships 34–38 North, Ranges 6–15 East of the Boise Principal Meridian. Included within this corridor are the Lolo Trail, the Lewis and Clark Trail or Buffalo Trail (Q'useyn'eisskit), the Bird-Truax Wagon Road, the Nee-Me-Poo or Nez Perce Trail, and the historic Lolo Motorway. These individual travel routes follow roughly the same route over much of the Forest, but diverge occasionally.

The cultural and historical importance of this travelway has been recognized for many years. The Lolo Trail was viewed as having national significance in 1962 when it was designated a National Historic Landmark. It was subsequently listed on the National Register of Historic Places in 1966. In 1965 the Lolo Trail was

designated a part of the Nez Perce National Historical Park by the passage of Public Law 89–19. Congress passed the National Trails System Act in 1968 establishing a framework for a nationwide system of scenic, recreational, and historic trails. In 1978 the roughly 3,700 mile long route used by Lewis and Clark, from Wood River, Illinois to the mouth of the Columbia River in Oregon, was designated a National Historic Trail. When crossing the Bitterroot Mountains the Lewis and Clark route followed most of the prehistoric Buffalo Trail, called Q'useyn'eisskit by the Nez Perce Tribe. The Nez Perce or Nee-Me-Poo Trail, extending approximately 1,170 miles from the vicinity of Wallowa Lake, Oregon to the Bears Paw Battlefield near Chinook, Montana, was designated a National Historic Trail in 1986. This was the path taken by the Wallowa Nez Perce to flee General Howard and his troops, who followed the then recently completed Bird-Truax Trail in crossing the Bitterroot Mountains.

The Clearwater National Forest Land and Resource Management Plan provides overall guidance for management activities in the potentially affected area through goals, objectives, standards, guidelines, and management area direction. For management purposes the Lolo Trail system corridor has been defined as the area approximately one half mile in width (one fourth mile on either side) that encompasses the historic Lolo Trail system. Management emphasis is aimed at providing opportunity for recreational activities oriented to traveling over, understanding, and appreciating the route as a historic travel route.

Scoping for reconstructing segments of the Lolo Motorway began in 1987, which culminated in the release of a Position Statement on July 8, 1988. That project has been incorporated into the current analysis, and the Interdisciplinary Team has identified the following preliminary issues;

1. Improved access made possible by proposed trail and road activities may affect Heritage Resources related to prehistoric and historic evidence of human activity.
2. Improved access made possible by proposed trail and road activities may affect American Indian religious, sacred, and/or food gathering sites.
3. The trail and road activities may affect habitat for threatened, endangered, and sensitive species of both animals and plants.
4. Additional camping facilities and improved access may affect elk security.
5. Proposed stream crossings could affect water quality and fish habitat.
6. The location of the recreation trail may affect sensitive soils.
7. The visual quality objectives in the revised Lolo Trail System Guidelines may affect timber options and outputs.
8. The proposals could have an economic affect on the recreation, tourism, and timber industries.
9. Proposed road reconstruction and construction of recreation facilities and sites may change the current recreation experience.
10. The revised Lolo Trail System Guidelines would allow only foot and stock traffic on the proposed recreation trail.
11. The proposals may affect the roadless character of the Hoodoo, Bighorn-Weitas, Weir-Post Office Creek, and Eldorado Creek roadless areas.
12. Additional use of the trail system by stock could introduce noxious weeds into the area.
13. Location of the recreation trail may affect the Bald Mountain Research Natural Area.
14. The proposed recreation trail will require right-of-way acquisition through private land.

The Forest Service is now looking for further information and comments from Federal, State, and local agencies, industry, and from people or groups who are interested in or affected by the proposed actions. Meetings are planned, and letters, phone calls, or personal visits are invited for the purpose of providing information related to this proposal. This additional information will be used to prepare a draft EIS. This process will include:

1. Determination of significant issues to be used in developing alternatives;
2. Identification of potential cooperating agencies;
3. Identification of additional, reasonable alternatives; and
4. Identification of potential environmental effects of the alternatives.

Public participation is important all through the analysis process. Two key time periods have been identified for receipt of formal comments on the proposal and analysis:

1. Scoping period, which is now through September 30, 1993; and
2. Review of the Draft EIS in January and February, 1994.

The Forest Service expects to file the Draft EIS with the Environmental Protection Agency by December 15, 1993. The Final EIS and Record of Decision are expected in July of 1994. The responsible official is the Forest Supervisor of the Clearwater National Forest, Forest Supervisor's Office, 12730 Highway 12, Orofino, ID 83544.

The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS.

Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: May 24, 1993.

Bert Kulesza,

Deputy Forest Supervisor.

[FR Doc. 93–13915 Filed 6–11–93; 8:45 am]

BILLING CODE 3410–11–M

USHK Bay Timber Sale Offerings (FY 94); Tongass National Forest Chatham Area, Sitka, Alaska; Public Hearing for Subsistence Testimony and Public Comment

The Department of Agriculture, Forest Service will hold an Open House and Public Hearing for subsistence testimony and public comment regarding the Draft Environmental Impact Statement (DEIS) for the Ushk Bay timber sale on July 19, 1993. The Open House is provided for members of the public to ask questions and receive

answers directly. Comments on the DEIS may be submitted at that time. The Hearing is intended to meet Subsistence Evaluation requirements outlined in Section 810, Alaska National Interest Lands Conservation Act (ANILCA) and provide an opportunity for public comment on the DEIS.

The Hearing is designed to receive testimony from individuals, agencies, and organizations on the alternatives proposed in the DEIS for the Ushk Bay Project Area, and how these alternatives may potentially affect users of subsistence resources of the Ushk Bay area.

The Open House and Public Hearing will be held in Sitka, Alaska on July 19, 1993. The Open House will be held from 6 to 7:30 p.m. and the Public Hearing from 7:30 to 9:30 p.m. in the Centennial Building. Written subsistence testimony is just as acceptable as oral testimony but must be received within 5 days of the Public Hearing. Send written testimony to Ushk Bay Planning Team, Forest Service, 204 Siginaka Way, Sitka, Alaska, 99835.

The ANILCA Section 810 subsistance evaluation and findings are detailed in the DEIS. The DEIS was released on June 4, 1993 and comments concerning the DEIS must be received by July 26, 1993. Copies of the DEIS and further information is available from the Ushk Bay Planning Team, Forest Service, 204 Siginaka Way, Sitka, Alaska, 99835, (907) 747–6671.

Dated: June 7, 1993.

Jere Christner,

Acting Forest Supervisor.

[FR Doc. 93–13909 Filed 6–11–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 920669–3101]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commercial Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of interim final list of fisheries for 1993 and request for comments.

SUMMARY: NMFS issues this interim final List of Fisheries for 1993 associated with the interim exemption for the taking of marine mammals incidental to commercial fishing operations under section 114 of the Marine Mammal Protection Act of 1972 (MMPA) to become effective June 14, 1993. NMFS is also soliciting comments on this interim final List of Fisheries. On August 5, 1992 (57 FR 34553), NMFS proposed to maintain the 1992 List of Fisheries for 1993 and requested comments and information on the proposed List of Fisheries for 1993. NMFS obtained additional interaction information since the proposed List of Fisheries for 1993 which, in addition to comments received, warranted the reclassification of all or parts of three fisheries and the redefinition of a fourth fishery in the interim final List of Fisheries of 1993.

DATES: Comments on the charges presented in this interim final List of Fisheries for 1993 must be submitted by July 14, 1993. The interim final List of Fisheries for 1993 is effective June 14, 1993. Vessel owners who will operate in Category I or II for the first time have until July 14, 1993 to register.

ADDRESSES: Comments on the changes presented in this interim final List of Fisheries for 1993 should be addressed to Dr. William W. Fox, Jr., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, Attention: Victoria R. Credle.

FOR FURTHER INFORMATION CONTACT: Victoria R. Credle, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, 301–713–2322.

SUPPLEMENTARY INFORMATION: Section 114 of the MMPA establishes an interim exemption for the taking of marine mammals incidental to commercial fishing operations and requires NMFS to publish and annually update a List of Fisheries, along with the marine mammals and number of vessels or persons involved in each fishery, in three categories, as follows:

(I) A frequent incidental taking of marine mammals;

(II) An occasional incidental taking of marine mammals; or

(III) A remote likelihood, or no known incidental taking, of marine mammals.

Based on Congressional guidance, NMFS interpretation of the 1988 Amendments, public comment, and meetings and consultations with state and Federal agencies, Regional Fishery Management Councils, and other interested parties, NMFS published the original List of Fisheries on April 20, 1989 (54 FR 16072). NMFS also published an interim rule governing the taking of marine mammals incidental to commercial fishing operations on May 19, 1989 (54 FR 219100, and a final rule governing reporting of the take of marine mammals incidental to commercial fishing operations on December 15, 1989 (54 FR 51718).

On August 5, 1992 (57 FR 34553), NMFS proposed to maintain the 1992 List of Fisheries for 1993 and requested comments and information on the proposed List of Fisheries for 1993.

The following criteria were used in classifying fisheries in the List of Fisheries:

Category I. There is documented information indicating a "frequent" incidental taking of marine mammals in the fishery. "Frequent" means that it is highly likely that more than one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

Category II. (1) There is documented information indicating an "occasional" incidental taking of marine mammals in the fishery, or (2) in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals in the area suggest there is a likelihood of at least an "occasional" incidental taking in the fishery. "Occasional" means that there is some likelihood that one marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period, but that there is little likelihood that more than one marine mammal will be incidentally taken.

Category III. (1) There is information indicating no more than a "remote likelihood" of an incidental taking of a marine mammal in the fishery, or (2) in the absence of information indicating the frequency of incidental taking of marine mammals, other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, and species and distribution of marine mammals, in the area suggest there is no more than a remote likelihood of an incidental take in the fishery. "Remote likelihood" means that it is highly unlikely that any marine mammal will be incidentally taken by a randomly selected vessel in the fishery during a 20-day period.

Three comments were received in response to the notice of proposed list from fishermen and conservation groups. These comments are summarized below and were considered in developing the List of Fisheries for 1993. A summary of the changes to the List of Fisheries for 1993 appears after the comments sections.

General Comments

Commenters stated that NMFS should make the data from the observer program and vessel owner logbooks available so reviewers can better determine if the proposed changes are appropriate or if other changes should be recommended.

These data are available upon request in aggregate, summary, or other such form that does not disclose the identity or business of any person (50 CFR 229.10(b)).

Two commenters suggested that vessel owner data be used to reclassify certain fisheries according to reported take rates. A preliminary verification of vessel owner data suggests that the number of lethal takes reported by vessel owners is not consistent with that reported by Federal observers, even when logbooks are compared with observer reports for the same day of fishing. Due to this disparity, NMFS is reluctant to use vessel owner reports, and associated take rates, as the sole criteria for reclassifying fisheries at this time.

One commenter stated that the time lag between fishing effort, the submittal of vessel owner logbooks, and the conversion of logbook data into electronic form has hindered the ability to utilize vessel owner information in the classification of fisheries. NMFS agrees that there is a time delay in the availability of vessel owner data and is reviewing methods to hasten the collection and entry of these data.

Comments on the 1993 List of Fisheries

One commenter suggested that the Alaska Prince William Sound salmon drift gill net fishery (Table 1) be redefined as two separate fisheries to reflect the differential take rates between the Prince William Sound area and the Copper River/Bering River area.

Analysis of the Alaska Prince William Sound salmon drift gill net fishery observer data in 1991 estimated that 601 mammals were entangled in the Copper River/Bering River districts and 14 mammals were entangled in the Prince William Sound districts of Coghill, Eshamy, and Unakwik. These estimates were based on the number of entanglements reported by technicians that observered approximately 5 percent of the total fishing effort. Estimates of total fishing effort from the Alaska Department of Fish and Game are 8,883 fishing vessel days in the Copper River and Bering River districts adjacent to Prince William Sound and 9,532 fishing vessel days in the Eshamy, Coghill and Unakwik districts within Prince William Sound. Consequently, take rate estimates indicate 1.35 mammals were entangled per 20 days of fishing effort in the Copper River and Bering River districts, and 0.029 mammals were entangled per 20 days in the Eshamy, Coghill and Unakwik districts. The difference in estimated take rates for the two areas warrants splitting of this fishery into two distinct fisheries. The Alaska Prince William Sound salmon drift gill net fishery is redefined as the Alaska Copper River and Bering River (adjacent to Prince William Sound) salmon drift gill net fishery (Table 1). The Alaska Prince William Sound (Eshamy, Coghill, and Unakwik districts) salmon drift gill net fishery is added as a Category II fishery (Table 2).

One commenter suggested that the Alaska Bristol Bay salmon drift gill net fishery (Table 2) be reclassified to a Category I fishery due to the high levels of misidentified species reported in vessel owner logbooks, and to determine the actual nature of interactions in this fishery.

The absence of documented evidence, besides that submitted in vessel owner logbooks, does not allow a reclassification of this fishery at this time. Efforts are being made to make marine mammal field guides available to vessel owners in Alaska so that accurate species identifications can be made and reported in logbooks. NMFS funded, in part, the recently published "Guide to Marine Mammals of Alaska" (Alaska Sea Grant College Program, University of Alaska Fairbanks, Fairbanks, AK 99775–5040).

One commenter suggested that the Alaska Prince William Sound sablefish longline/setline fishery (Table 2) be given increased observation due to the reported mortalities of 134 unidentified species in vessel owner logbooks.

Upon further investigation of the vessel owner logbooks, it was determined that the reported mortalities of unidentified species were attributed to one vessel owner's logbook on 2 fishing days. After re-examination of the original logbook and communication with the vessel owner, it was apparent that the mortalities were reported to NMFS in error (the vessel owner had reported landing data instead).

One commenter suggested that the Alaska Bering Sea/Gulf of Alaska groundfish trawl fishery (Table 3) be reclassified to a Category II fishery due to its reported takes of Steller sea lions.

NMFS provided documented evidence that this fishery falls below the criteria for a Category I or II fishery on May 12, 1992 (57 FR 20328). The classification of fisheries is based on take rate criteria, not the type of species that the fishery interacts with.

One commenter suggested that the following fisheries be reclassified as Category I fisheries based on information obtained in vessel owner logbooks and from stranding records, which indicate a high mortality rate due to gunshot wounds:

(1) The California squid purse seine fishery (Table 2);

(2) The California squid dip net fishery (Table 2);

(3) The California herring purse seine fishery (Table 2); and

(4) The California and Oregon salmon troll fishery (Table 2).

NMFS is aware that some marine mammals are subject to harassment by certain boaters and has pursued enforcement actions against those individuals found to be responsible. Unfortunately, evidence of marine mammals with gunshot wounds does not indicate which particular fisheries, if any, were responsible for these mortalities. Based on the absence of documented evidence implicating certain fisheries as the cause of these mortalities, and the fact that vessel owner logbooks have not been verified, a reclassification of these fisheries is not warranted at this time.

Commenters suggested that the following fisheries be reclassified based on information obtained in vessel owner logbooks.

Reclassify as Category III fisheries:

(1) The Alaska South Unimak (False Pass and Unimak Pass) salmon purse seine fishery (Table 2);

(2) The Alaska Metlakatla fish trap fishery (Table 2);

(3) The Alaska Cook Inlet salmon set and drift gill net fisheries (Table 2);

(4) The Oregon salmon ranch fishery (Table 2);

(5) The California Klamath River gill net fishery (Table 2);

(6) The California squid dip net fishery (Table 2);

(7) The California herring purse seine fishery (Table 2);

(8) The California anchovy/mackerel/tuna purse seine fishery (Table 2);

(9) The California sardine purse seine fishery (Table 2); and

(10) The California squid purse seine fishery (Table 2).

Reclassify as Category I fisheries:

(11) The Oregon and California salmon troll fishery (Table 2); and

(12) The Atlantic, Caribbean, and Gulf of Mexico tuna/shark/swordfish longline fishery (Table 5).

As discussed previously, a preliminary verification of vessel owner logbooks suggests that logbook data are not consistent with observer reports. Therefore, vessel owner logbooks will not be used as the sole criteria for reclassifying fisheries at this time.

One commenter suggested that the Atlantic Ocean, Caribbean and Gulf of Mexico swordfish/tuna/shark pair trawl fishery (Table 5) be reclassified as Category I due to "insufficient characterization" of the fishery and evidence that the fishery is currently experiencing significant growth.

There is evidence from the Northeast Fisheries Science Center, NMFS, that the number of vessels and associated fishing effort in the pair trawl fishery is increasing, yet increased effort in a particular fishery is not one of the criteria used to reclassify fisheries. NMFS is required to classify a fishery as Category I if it is highly likely that more than one marine mammal will be incidentally taken by a randomly selected fishing vessel during a 20-day period. Preliminary observations of the pair trawl fishery in the Atlantic during the fall of 1992 indicates that 12 marine mammals were taken during the 67 days (nine trips) that observed vessels were absent from port. Days absent represents a maximum estimate of fishing effort. Of the 12 takes, 11 mammals were reported as dead and one was of unknown condition. NMFS has calculated a take rate of 0.18 mammals per day absent, or 3.58 mammals per 20 days absent. No extrapolations have been made as to total takes in this fishery. As this fishery was observed near what should be considered the end of the fishery season, these data may not be representative of takes made during the unobserved part of the season. However, based on the observed take rates, this fishery falls within the definition of a Category I fishery and reclassification is warranted.

Since the publication of the proposed List, new information has been received and/or analyzed that warrants that the following changes be made:

1. Redefine (and Recategorize part of) the Washington marine (areas 4, 4A, and 4B) salmon set gill net fishery (Table 1) as the Northern Washington coastal (areas 4 and 4A) salmon set gill net fishery (Table 1); and

2. Add the Washington marine area 4B salmon set gill net fishery to the Washington Puget Sound Region and inland waters south of the U.S.-Canada border, including the Strait of Juan de Fuca, Hood Canal and estuaries and lower river areas (subject to tidal action) set and drift gill net fishery (Table 2).

Observer data collected over the past 4 years indicates that the incidental takes of marine mammals in the salmon set gill net fishery in the Strait of Juan de Fuca (area 4B) are substantially lower than the incidental takes that occur in set gill nets in coastal waters of Northern Washington (areas 4 and 4A). The area 4B set gill net fishery was initially grouped with areas 4 and 4A as a Category I fishery when the original List of Fisheries was developed based on proximity to the coastal areas, the fact that many of the same vessels operated in all three areas, and the assumption that marine mammal take rates were similar in the three areas. On-board observers that covered about 43 percent of the fishing effort from 1989 to 1992 in areas 4, 4A, and 4B reported a mean incidental take rate of 4.1 mammals per 20 days in area 4; 2.2 mammals per 20 days in area 4A; and 0.07 mammals per 20 days in area 4B. Because the take rate in area 4B falls below the Category I threshold of greater than one marine mammal take per 20 days, it is being reclassified as a Category II fishery.

3. Redefine the Florida east coast shark gill net fishery (Table 5) as the Southern Atlantic shark gill net fishery.

The Florida east coast shark gill net fishery was identified in the 1991 List of Fisheries when the best available evidence suggested that the fishery was comprised of 10 to 12 vessels operating out of the Ft. Pierce, Florida, area and fishing south of the Florida-Georgia border. However, information was obtained in the fall of 1992 indicating that at least three shark gill net vessels were reported fishing in waters off Cumberland Island, Georgia, in the summer of 1992. These vessels moved north and returned to the Cumberland Island area in early fall 1992. This expansion of the fishery beyond the Florida border warrants clarification of this fishery to include all vessels participating in the shark gill net in the southern Atlantic.

Comments on the changes presented in this Interim Final List of Fisheries for 1993 are being solicited. Please restrict comments to the changes identified in this notice.

Summary of Changes to the List of Fisheries

Table 1—Category I Commercial Fisheries in the Pacific Ocean

Redefine the Alaska Prince William Sound salmon drift gill net fishery as the Alaska Copper River and Bering River districts (adjacent to Prince William Sound) salmon drift gill net fishery.

Redefine the Washington marine (areas 4, 4A, and 4B) salmon set gill net as the Northern Washington coastal (areas 4 and 4A) salmon set gill net fishery.

Add the Washington marine area 4B salmon set gill net fishery (reclassified from Category I) to the Washington Puget Sound Region and inland waters south of the U.S.-Canada border, including the Strait of Juan de Fuca, Hood Canal and estuaries and lower river areas (subject to tidal action) set and drift gill net fishery (Table 2).

Table 2—Category II Commercial Fisheries in the Pacific Ocean

Add the Alaska Prince William Sound (Eshamy, Coghill, and Unakwik districts) salmon drift gill net fishery.

Add the Washington marine area 4B salmon set gill net fishery (reclassified from Category I) to the Washington Puget Sound Region and inland waters south of the U.S.-Canada border, including the Strait of Juan de Fuca, Hood Canal and estuaries and lower river areas (subject to tidal action) set and drift gill net fishery.

Table 3—Category III Commercial Fisheries in the Pacific Ocean

No changes.

Table 4—Category I Commercial Fisheries in the Atlantic Ocean, Caribbean, and Gulf of Mexico

Reclassify the Atlantic Ocean, Caribbean, Gulf of Mexico swordfish, tuna, shark pair trawl fishery from a Category II fishery (Table 5).

Table 5—Category II Commercial Fisheries in the Atlantic Ocean, Caribbean, and Gulf of Mexico

Reclassify the Atlantic Ocean, Caribbean, Gulf of Mexico pair trawl fishery for swordfish, tuna, shark as a Category I fishery (Table 4).

Redefine the Florida east coast shark gill net fishery as the Southern Atlantic shark gill net fishery.

Table 6—Category III Commercial Fisheries in the Atlantic Ocean, Caribbean, and Gulf of Mexico

No changes.

List of Fisheries—Interim Exemption for Commercial Fisheries

TABLE 1.—CATEGORY I COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery	Estimated number of vessels/persons	Marine mammal species involved
Gill Net Fisheries, Salmonids:		
AK Copper River and Bering River districts (adjacent to Prince William Sound) salmon drift gill net	547	2, 6, 13, 14, 15.
Northern WA coastal (area 4 and 4A) salmon set gill net	19	6, 13, 15, 30, 32.
WA Willapa Bay (includes rivers, estuaries, etc.) drift gill net	362	2, 3, 6, 11.
WA Grays Harbor (includes rivers, estuaries, etc.) drift gill net	222	2, 3, 6.
WA, OR Lower Columbia River (includes tributaries) drift gill net	874	2, 3, 6, 30.
Gill Net Fisheries, Other Finfish:		
CA thresher shark and swordfish drift gill net	224	2, 3, 6, 11, 14, 15, 16, 17, 18, 22, 23, 29, 30, 32, 33.
CA California halibut set gill net	273	3, 6, 41, 15, 16, 30.
CA angel shark set gill net	178	3, 6, 15, 16, 30.
CA soupfin shark, yellowtail, white sea bass set gill net	42	2, 3, 6, 14, 15, 16, 27, 41, 30.

TABLE 2.—CATEGORY II COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery	Estimated number of vessels/persons	Marine mammal species involved
Gill Net Fisheries, Salmonids:		
AK Prince William Sound set gill net	30	2, 6, 13, 15.
AK Prince William Sound (Eshamy, Coghill, and Unakwik districts) drift gill net	547	2, 6, 13, 14, 15.
AK South Unimak (False Pass and Unimak Pass) drift gill net	158	2, 6, 13, 14, 15, 30.
AK Peninsula (other than South Unimak) drift gill net	156	2, 6, 13, 15, 30.
AK Southeast Alaska drift gill net	469	2, 6, 13, 14, 15, 25, 30, 31.
AK Metlakatla/Annette Island drift gill net	56	2, 6, 13, 14, 15, 25, 30, 31.
AK Yakutat set gill net	164	2, 6, 13, 14, 30.
AK Cook Inlet drift gill net	560	2, 6, 13, 15, 26.
AK Cook Inlet set gill net	743	2, 6, 13, 15, 26.
AK Kodiak set gill net	187	2, 6, 13, 15.
AK Peninsula set gill net	113	2, 6, 13, 30.
AK Bristol Bay drift gill net	1,746	2, 6, 26, 30.
AK Bristol Bay set gill net	943	2, 6, 26, 30.
WA Puget Sound Region and inland waters south of the U.S.-Canada border, including the Strait of Juan de Fuca, Hood Canal and estuaries and lower river areas (subject to tidal action) set and drift gill net.	3,900	1, 2, 3, 6, 14, 15, 25.
WA coastal river set gill net	325	2, 3, 6.
CA Klamath River gill net	504	3, 6.
Gill Net Fisheries, Other Finfish:		
AK gill net (except salmon, herring, and sunken gill nets for groundfish)	235	2, 6, 15.
CA white croaker, bonito, and flying fish gill net	41	2, 3, 6, 14, 15, 16, 27, 30, 41.
Sunken Gill Nets, Groundfish:		
AK Prince William Sound sunken gill net	3	15.
AK Kodiak (south of Cape Douglas, east of 159°W)	5	15.
AK Central Gulf of Alaska (north and east of Cape Douglas) sunken gill net	2	15.
AK Aleutian Islands (south of 55°N, west of 170°W) sunken gill net	1	15.
Purse Seine Fisheries, Salmonids:		
AK South Unimak (False Pass and Unimak Pass) salmon purse seine	115	1, 2, 13.
Troll Fisheries		
OR, CA south of 45°46'00" (Cape Falcon, OR) salmon troll	3,400	2, 3, 6.
Round Haul (seine and lampara), Beach Seine, and Throw Net Fisheries:		
CA herring purse seine	100	3, 6.
CA anchovy, mackerel, tuna purse seine	160	3, 27.
CA sardine purse seine	120	3, 27.
CA squid purse seine	145	3, 22, 23, 27.
Long Line/Set Line Fisheries, Sablefish:		
AK Prince William Sound (NMFS Statistical Area 649) sablefish long line/set line	270	25, 28.
AK Southern Bering Sea, Aleutian Islands, (NMFS Statistical Reporting Areas 517, 518, 519, 540) and Western Gulf of Alaska (NMFS Statistical Reporting Area 610 West of 165°W) sablefish long line/set line.	226	25.
Pot, Ring Net, and Trap Fisheries:		
AK Metlakatla fish trap	4	2, 6.

TABLE 2.—CATEGORY II COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery	Estimated number of vessels/persons	Marine mammal species involved
Dip Net Fisheries:		
CA squid dip net	115	3, 23.
Aquaculture, Ranch Pen Fisheries:		
WA, OR salmon net pens	21	2, 3, 6.
OR salmon ranch	8	3, 6.

TABLE 3.—CATEGORY III COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery	Estimated number of vessels/persons	Marine mammal species involved
Gill Net Fisheries:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gill nets	2,023	15.
AK herring gill net	174	2, 6.
WA, OR Upper Columbia River Basin (above Bonneville Dam) salmon and other finfish gill net	100	3.
WA, OR, CA herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gill net	1,218	3, 6.
HI gill net	81	12, 27.
Troll Fisheries:		
AK salmon troll	2,873	1, 2, 6, 28, 31.
WA, OR north of 45°46'00" (Cape Falcon, OR) salmon troll	900	3.
AK North Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmon troll fisheries.	1,354	4, 6.
HI trolling, rod and reel	503	20, 21, 24.
Guam tuna troll	<50	None documented.
Commonwealth of the Northern Mariana Islands tuna troll	<50	None documented.
American Samoa tuna troll	<50	None documented.
Purse Seine, Beach Seine, Round Haul (seine and lampara) and Throw Net Fisheries:		
AK salmon/herring beach or purse seine	1,749	2, 13, 15.
AK other finfish beach or purse seine	9	None documented.
WA salmon purse seine	440	6, 14.
WA salmon reef net	53	6.
WA, OR herring, smelt, squid purse seine	100	3, 6.
WA (all species) beach seine	199	None documented.
HI purse seine	18	None documented.
HI opelu/akule net	3	None documented.
HI throw net, cast net	24	None documented.
HI net unclassified	8	None documented.
Western Pacific yellowfin tuna purse seine (South Pacific Tuna Treaty)	32	None documented.
Long Line/Set Line Fisheries:		
AK groundfish long line/set line (except sablefish in BSAI/GOA which are in Category II)	1,296	2, 31.
AK, WA, OR North Pacific halibut long line/set line	5,893	2, 4, 25, 28.
WA, OR, CA groundfish, bottomfish long line/set line	357	3, 4, 6, 17.
CA shark/bonito long line/set line	10	3.
HI tuna, billfish, mahi mahi, wahoo, oceanic sharks long line/set line	200	21, 24.
Trawl Fisheries:		
AK Bering Sea and Aleutian Islands groundfish trawl	490	1, 2, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 25, 32
AK Gulf of Alaska groundfish trawl	490	1, 2, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 25, 32.
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeastern Alaska groundfish trawl.	6	14.
AK food/bait herring trawl	2	None documented.
AK, WA, OR, CA shrimp trawl	382	None documented.
WA, OR, CA groundfish, squid, smelt, bottomfish trawl	585	1, 2, 3, 6, 14, 17, 27, 33.
CA California halibut trawl	25	3.
CA sea cucumber trawl	6	None documented.
Pot, Ring Net, and Trap Fisheries:		
AK shellfish pot	1,533	13.
AK finfish pot	226	None documented.
WA, OR, CA sablefish pot	176	4, 6.
WA, OR, CA dungeness crab pot	1,426	4, 6, 30, 32.
WA, OR shrimp pot	231	None documented.
CA lobster, prawns, shrimp, rock crab, fish pot	600	None documented.
OR, CA hagfish pot	7	None documented.

TABLE 3.—CATEGORY III COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery	Estimated number of vessels/persons	Marine mammal species involved
HI lobster trap	21	12.
HI crab trap	5	None documented.
HI fish trap	2	None documented.
HI shrimp trap	2	None documented.
HI other trap	5	None documented.
Handline and Jig Fisheries:		
AK North Pacific halibut	69	None documented.
AK other finfish	33	None documented.
WA groundfish, bottomfish jig	579	4, 6.
HI aku boat, pole and line	17	None documented.
HI inshore handline	76	20.
HI deep sea bottomfish	434	12, 20.
HI tuna	144	12, 20, 21.
Guam bottomfish	<50	None documented.
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented.
American Somoa bottomfish	<50	None documented.
Dip Net Fisheries:		
WA, OR smelt, herring dip net	119	None documented.
Harpoon Fisheries:		
CA swordfish harpoon	228	None documented.
Pound Fisheries:		
AK Southeast Alaska herring food/bait	1	None documented.
WA herring brush weir	1	None documented.
Bait Pens:		
WA, OR herring bait pen	12	6.
Dredge Fishery:		
Coastwide scallop dredge	106	None documented.
Dive, Hand/Mechanical Collection Fisheries:		
AK abalone	23	None documented.
AK dungeness crab	3	None documented.
AK, Prince William Sound herring spawn-on-kelp	81	2.
AK herring spawn-on-kelp	172	None documented.
AK urchin and other fish/shellfish	19	None documented.
AK clam hand shovel	64	None documented.
AK clam mechanical/hydraulic fisheries	3	None documented.
WA herring spawn-on-kelp	4	None documented.
WA geoduck	37	4.
WA, OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop	647	2, 6.
CA abalone	129	None documented.
CA sea urchin	800	None documented.
HI squiding, spear	49	None documented.
HI lobster diving	16	None documented.
HI coral diving	2	None documented.
HI handpick	86	None documented.
Aquaculture, Ranch, Ponds:		
WA tribal salmon ranch	1	None documented.
WA oyster farm	316	None documented.
WA mussel/clam	224	None documented.
WA, CA kelp	4	None documented.
HI fish pond	3	None documented.
Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:		
AK, WA, OR, CA all species	1,243	3, 6.
Other Fisheries:		
HI	17	None documented.

TABLE 4.—CATEGORY I COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, CARIBBEAN, AND GULF OF MEXICO

Fishery	Estimated number of vessels/persons	Marine mammal species involved
Trawl Fisheries:		
MDA Foreign mackerel trawl	19	16, 20, 22, 23, 34.
Pair Trawl Fisheries:		
Atlantic Ocean, CB, GMX, swordfish, tuna, shark pair trawl	11	16, 20, 22, 23, 24.
Gill Net Fisheries:		
Atlantic Ocean, CB, GMX swordfish, tuna, shark gill net	75	16, 19, 20, 22, 23, 29.

TABLE 4.—CATEGORY I COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, CARIBBEAN, AND GULF OF MEXICO—Continued

Fishery	Estimated number of vessels/persons	Marine mammal species involved
New England Multispecies sink gill net (includes all species as defined in the Multispecies Fishery Management Plan and spiny dogfish) for all waters east of 71°40'W.	945	6, 15, 23, 31, 32, 34, 35, 38.
GME small pelagics (which includes mackerel, herring, menhaden) surface gill net	50	6, 15, 31, 32, 34, 35.

TABLE 5.—CATEGORY II COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, CARIBBEAN, AND GULF OF MEXICO

Fishery	Estimated number of vessels/persons	Marine mammal species involved
Gill Net Fisheries:		
MDA coastal gill net (includes, but not limited to, Atlantic croaker, Atlantic mackerel, Atlantic sturgeon, black drum, bluefish, herring, menhaden, scup, shad, striped bass, weakfish, white perch, and yellow perch).	3,230	15, 20, 31, 32.
SOA shark gill net	10	20.
Trawl Fisheries:		
MDA Atlantic mackerel trawl	250	16, 22, 23.
Longline Fisheries:		
Atlantic Ocean, CB, GMX, tuna, shark, swordfish longline	820	16, 22, 23, 24, 27, 31, 32, 26.

TABLE 6.—CATEGORY III COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, CARIBBEAN, AND GULF OF MEXICO

Fishery	Estimated number of vessels/persons	Marine mammal species involved
Trawl Fisheries:		
GME northern shrimp trawl	320	None documented.
GME mackerel trawl	30	None documented.
GME, MDA groundfish trawl	1,052	None documented.
GME, MDA sea scallop trawl	215	None documented.
GME, SOA, GMX coastal herring trawl	5	36.
MDA squid trawl	250	16, 22, 23, 34.
MDA mixed species trawl	>1,000	None documented.
SOA, GMX shrimp trawl	18,292	20, 40.
GMX butterfish trawl	5	36.
GA, SC whelk trawl	25	None documented.
Calico scallops trawl	200	None documented.
Bluefish, croaker, flounder trawl	550	None documented.
Crab trawl	400	None documented.
Purse Seine Fisheries:		
GME Atlantic herring purse seine	30	6, 15, 35.
GME, MDA menhaden purse seine	10	20.
GME, MDA Atlantic bluefin tuna purse seine	5	31.
SOA, GMX menhaden purse seine	97	20.
FL west coast sardine purse seine	16	20.
Bottom Longline/Hook and Line Fisheries:		
GME tub trawl groundfish	46	6, 35.
SOA, GMX snapper-grouper and other reef fish	1,300	None documented.
SOA, GMX shark	124	None documented.
Pelagic Hook and Line/Harpoon Fisheries:		
GME, MDA tuna, shark, swordfish	26,223	None documented.
SOA, GMX	1,446	None documented.
Gill Net Fisheries:		
GME, SOA coastal shad, sturgeon gill net	1,285	15, 20, 32.
SOA, GMX coastal gill net	4,000	20.
FL east coast, GMX pelagics king and spanish mackerel gill net	271	20.
Fixed Gear Fisheries, Trap/Pot—Fish:		
GME, MDA mixed species	100	6, 15, 31, 32, 35.
MDA black sea bass	30	None documented.
MDA eel	500	None documented.
Fixed Gear Fisheries, Trap/Pot—Lobster, Crab:		
GME, MDA inshore lobster	10,613	6, 31, 32, 38, 39.
GME, MDA offshore lobster	2,902	None documented.

TABLE 6.—CATEGORY III COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, CARIBBEAN, AND GULF OF MEXICO—Continued

Fishery	Estimated number of vessels/persons	Marine mammal species involved
Atlantic Ocean, GMX blue crab	20,500	20, 40.
SOA, GMX, CB spiny lobster	2,500	20, 40.
SOA, GMX, CB reef fish	2,200	None documented.
FL east and west coast, GMX stone crab	500	20, 40.
Stop Seine, Weirs (Staked Fish Traps):		
GME herring and Atlantic mackerel	50	6, 15, 31, 32, 35, 38.
MDA mixed species	500	None documented.
MDA crab	2,600	None documented.
Dredge Fisheries:		
GME, MDA sea scallops	233	31.
MDA offshore clam	159	None documented.
GME mussel	>50	None documented.
MDA oyster	7,000	None documented.
Haul Seine Fisheries: SOA, CB	150	None documented.
Beach Seine Fisheries: CB	15	40.
Aquaculture, Pens: GME Atlantic salmon	30	6, 35.
Dive, Hand/Mechanical Collection Fisheries:		
GME urchins	<50	None documented.
Atlantic Ocean, GMX, CB shellfish	20,000	None documented.

List of State Abbreviations Used in Tables:
AK—Alaska
CA—California
FL—Florida
GA—Georgia
HI—Hawaii
OR—Oregon
SC—South Carolina
TX—Texas
WA—Washington

Acronyms and the Areas They Represent:
BSAI—Bering Sea and Aleutian Islands
CB—Caribbean
GME—Gulf of Maine—Canadian Border to Nantucket Island, Massachusetts (includes Georges Bank)
GMX—Gulf of Mexico—All Gulf states
GOA—Gulf of Alaska
MDA—Mid Atlantic—Nantucket Island, Massachusetts, to Cape Hatteras, North Carolina
SOA—Southern Atlantic—South Carolina to Florida

Explanation of Columns:
Fishery—Identified by gear, target species, and area.
Estimated Number of Vessels/persons—Contains the best and most recent available information on the number of vessels/persons licensed to participate in a fishery or, in the case of Alaska, the number of permits.
Marine Mammal Species Involved—Contains a list of all documented or reported instances (including rare and unique instances) of marine mammal interactions. The inclusion of a species does not address the magnitude of take and makes no statement regarding the significance of any interaction.

SPECIES CODES FOR MARINE MAMMALS TAKEN IN COMMERCIAL FISHERIES

Species codes	Common name	Scientific name
1	Northern fur seal	*Callorhinus ursinus.*
2	Steller (northern) sea lion	*Eumetopias jubatus.*
3	California sea lion	*Zalophus californianus.*
4	Unidentified sea lion	
5	Walrus	*Odobenus rosmarus.*
6	Harbor seal	*Phoca vitulina.*
7	Spotted seal	*Phoca larga.*
8	Ringed seal	*Phoca hispida.*
9	Ribbon seal	*Phoca fasciata.*
10	Bearded seal	*Erignathus barbatus.*
11	Northern elephant seal	*Mirounga angustirostris.*
12	Hawaiian monk seal	*Monachus schauinslandi.*
13	Alaska sea otter	*Enhydra lutris lutris.*
14	Dall's porpoise	*Phocoenoides dalli.*
15	Harbor porpoise	*Phocoena phocoena.*
16	Common (saddleback) dolphin	*Delphinus delphis.*
17	Pacific whitesided dolphin	*Lagenorhynchus obliquidens.*
18	Northern right whale dolphin	*Lissodelphis borealis.*
19	Striped dolphin	*Stenella coeruleoalba.*

SPECIES CODES FOR MARINE MAMMALS TAKEN IN COMMERCIAL FISHERIES—Continued

Species codes	Common name	Scientific name
20	Bottlenose dolphin	*Tursiops truncatus.*
21	Rough toothed dolphin	*Steno bredanensis.*
22	Risso's dolphin	*Grampus griseus.*
23	Pilot whale	*Globicephala spp.*
24	False killer whale	*Pseudorca crassidens.*
25	Killer whale	*Orcinus orca.*
26	Beluga whale	*Delphinapterus leucas.*
27	Unidentified small cetacean	
28	Sperm whale	*Physeter catodon.*
29	Beaked whales	*Ziphiidae.*
30	Gray whale	*Eschrichtius robustus.*
31	Humpback whale	*Megaptera novaeangliae.*
32	Minke whale	*Balaenoptera acutorostrata.*
33	Unidentified large cetacean	
34	Atlantic whitesided dolphin	*Lagenorhynchus acutus.*
35	Gray seal	*Halichoerus grypus.*
36	Spotted dolphin	*Stenella spp.*
37	Pygmy sperm whale	*Kogia brevicaps.*
38	Northern right whale	*Eubalaena glacialis.*
39	Fin whale	*Balaenoptera physalus.*
40	Manatee	*Trichechus manatus.*
41	Southern (California) sea otter	*Enydra lutris nereis.*

Dated: June 9, 1993.

Samuel W. McKeen,

Program Management Officer for Fisheries.

[FR Doc. 93–13935 Filed 6–9–93; 12:42 pm]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Public Display Permit No. 833.

SUMMARY: On Thursday, February 18, 1993, notice as published in the **Federal Register** (58 FR 6934) that an application (P31A) had been filed by the Gladys Porter Zoo, 500 Ringgold Street, Brownsville, Texas 78520. A public display permit was requested to obtain the permanent care and custody of four California sea lions (*Zalophus californianus*) from captive stock, currently in the custody of the Gladys Porter Zoo under the terms of a NMFS temporary Letter of Agreement No. 123 pending the review of and decision on the permit application.

Notice is hereby given that on June 7, 1993, as authorized by the provisions of the Marine Mammal Protection Act, the NMFS issued a permit for the above activities subject to the special conditions set forth therein.

The permit is available for review, by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, room 7324, Silver Spring, MD 20910, (301) 713–2289; and

Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702, (813) 893–3141.

Dated: June 7, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–13906 Filed 6–11–93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit (P532A).

SUMMARY: On April 9, 1993, notice was published in the **Federal Register** (58 FR 18376) that Dr. Michael A. Castellini, Institute of Marine Science, University of Alaska, Dr. Randall W. Davis, Department of Marine Biology, Texas A&M University, and Dr. Terrie M. Williams, Naval Ocean Systems Center, had applied for a Permit to take Steller sea lions for scientific research purposes, including up to 40 pups and 40 adult females, the incidental harassment of up to 1000 animals, and the incidental lethal take of up to 2 pups and 2 adults during capture and handling operations.

Notice is hereby given that on June 7, 1993, as authorized by the provisions of the Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361 *et seq.*) and the Endangered Species Act of 1973 (16 U.S.C. 1543 *et seq.*), the NMFS issued a Permit for the above taking, subject to certain conditions set forth therein, except that the Applicants are authorized to take only up to 30 adult female Steller sea lions annually.

The application and accompanying documentation satisfy the issuance criteria for scientific research permits. The requested activities are consistent with the purposes and policies of the MMPA. The research will further a *bona fide* scientific purpose that does not involve unnecessary duplication of other research.

The Permit and accompanying documentation are available for review by writing to or by appointment in the Permits Division, Office of Protected Resources, NMFS, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, Federal Annex, 9109 Mendenhall Mall Rd., suite 6, Juneau, AK 99802 (907/586–7221); and

Director, Alaska Fisheries Science Center, NMML, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–4047).

Dated: June 7, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–13907 Filed 6–11–93; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Issuance of Permits

On March 29, 1993, notice was published (58 FR 16522) that two applications (P507D, P211E) had been filed by the Washington Department of Fisheries (WDF) and the Oregon Department of Fish and Wildlife

(ODFW), respectively, to take listed Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*).

The above applications were submitted to receive permission to collect adult broodstock for research and enhancement programs for a period of 5 years at the WDF's Tucannon Fish Hatchery and ODFW's Imnaha River Facility, as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing endangered fish and wildlife permits (50 CFR parts 217–227).

Notice is hereby given that on May 26 and May 28, 1993, respectively, as authorized by the provisions of the ESA, NMFS issued permits to WDF and ODFW for the above direct takes subject to certain conditions set forth therein.

Issuance of these permits, as required by the ESA, is based on the finding that the permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of the threatened species that is the subject of the permits; and (3) will be consistent with the purposes and policies set forth in section 2 of the ESA. These permits were also issued in accordance with and are subject to parts 217–222 of title 50 CFR, the NMFS regulations governing listed species permits.

The applications, permits and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated: June 3, 1993.

William W. Fox, Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–13878 Filed 6–11–93; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Field Readers

AGENCY: Department of Education.

ACTION: Notice inviting individuals to serve as field readers for grant application competitions.

SUMMARY: The Director of the Office of Bilingual Education and Minority Languages Affairs (OBEMLA) invites individuals to apply to serve as field readers to evaluate grant applications submitted for funding for fiscal year (FY) 1994 under various discretionary grant programs administered by OBEMLA.

DATES: Individuals interested in serving as field readers should submit their résumés to OBEMLA as soon as possible. (See section of this notice, FOR FURTHER INFORMATION CONTACT.) Because grant competitions are held throughout the year, delays in the receipt of resumes may preclude individuals from being considered for service during FY 1994. However, all individuals unable to meet FY 1994 deadlines for submitting resumes will be considered for future service.

SUPPLEMENTARY INFORMATION: Each year, field readers selected by the Secretary evaluate grant applications on the basis of criteria published in program regulations and, where applicable, in application notices in the Federal Register.

Potential field readers for the FY 1994 OBEMLA grant competitions will be selected to evaluate grant applications in their respective areas of expertise. The Department will identify an area of expertise based on the resume provided by each potential field reader.

Expertise is desirable in a variety of areas, including bilingual education, native language instruction, English-as-a-second-language (ESL) instruction, second language acquisition, early childhood education, elementary education, secondary education, special education, education of the gifted and talented, adult literacy, computer-assisted instruction, curriculum and materials development, educational personnel training, parent training, evaluation, research, and education administration. This is not an exhaustive list and individuals with expertise in related fields are encouraged to apply.

Field readers will be provided honoraria for their service and must travel to the review site in the Washington, DC metropolitan area. The Department will pay the travel expenses of the field readers under the requirements of the Federal travel regulations.

FOR FURTHER INFORMATION CONTACT: Potential field readers should send their resume to: Ms. Vernice Diggs, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–8071. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: June 3, 1993.

René Gonzales,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 93–13916 Filed 6–11–93; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Technology Transfer Guidelines for Small Businesses

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) is announcing guidelines to facilitate and encourage the transfer of technology to small businesses. The National Defense Authorization Act for Fiscal Year 1993, Public Law 102–484, Section 3135(b)(1), requires that "The Secretary of Energy shall establish a program to facilitate and encourage the transfer of technology to small businesses and shall issue guidelines relating to the program not later than May 1, 1993."

DATES: Comments should be submitted no later than July 14, 1993.

ADDRESSES: Comments should be addressed to: Director, Office of Technology Utilization, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Fax 202–586–8854.

FOR FURTHER INFORMATION CONTACT: Sandy Glatt, Small Business Coordinator, Office of Technology Utilization, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–5388. For additional points-of-contact, see list at the end of this document.

SUPPLEMENTARY INFORMATION: These guidelines, in order to facilitate and encourage the transfer of technology to small businesses, provide an information, access, and referral process for guiding the potential small business partner through the technology transfer process at the Department of Energy Headquarters, at regional operations offices, in the program offices, and at the laboratories. These guidelines will identify a single contact as a starting point for all small business inquiries related to the transfer of technology. These guidelines will illustrate examples of currently established programs in technology transfer aimed

at small businesses and will identify a means for accessing these programs and provide points-of-contact. These guidelines will identify goals for further activity associated with strengthening the small business technology transfer program at the Department of Energy.

Program to Facilitate and Encourage the Transfer of Technology to Small Businesses

The Department of Energy is announcing a program to facilitate and encourage the transfer of technology to small businesses. Often the most difficult element of the technology transfer process at the Department of Energy, especially for the small business with its limited resources, is locating the first and most appropriate initial contact or starting point. While the most straight-forward method of contact is for the interested party to go directly to the program or laboratory that is the technology source, this is not always an obvious path.

Currently, there are several sources for accessing technology transfer information at the Department of Energy. Those who are familiar with DOE programs can contact the appropriate program office directly or access one of the Department's regional operations offices. Those familiar with the Department's laboratories can contact the laboratories directly through the Office of Research and Technology Applications,[1] located at each laboratory. For those who are uncertain as to the appropriate starting point, the Office of Technology Utilization, DOE Headquarters, is identified as a starting point-of-contact for technology transfer inquiries for the small business.

The Office of Technology Utilization

The Office of Technology Utilization is responsible for addressing Departmentwide issues in technology transfer, implementation, and utilization activities. The Office of Technology Utilization serves as an advocate for technology transfer both internal and external to the Department.

This office will serve as a focal point for technology transfer activities and inquiries at the Department of Energy for the small business. The office will provide information and guidance on all technology transfer related activities, identify appropriate contact points, and provide detailed information on technology transfer opportunities available and the benefits afforded by these opportunities. The office will provide information on how to find and access currently established programs in technology transfer for the small business. Finally, the Office of Technology Utilization will publish, maintain, and update these small business contacts and guidelines on a regular basis.

The office will receive technology transfer-related inquiries by telephone or mail and will identify the proper source of contact for the inquiry including program office, laboratory, or other Departmental element such as the current Office of Economic Impact and Diversity, the Small Business Innovation Research Program, and others.

The office will further assist the small business technology transfer inquirer by providing reference and resource materials, such as technology transfer publications and by coordinating activities as necessary with other DOE elements. The office will promote and conduct outreach efforts aimed at identifying the small business audience and introducing them to the technology transfer activities at the Department of Energy. In addition, the office will coordinate these outreach efforts with the program offices, operations offices, and laboratories. Finally, the office will coordinate with all Departmental Elements on small business technology transfer activities. For further information, contact Sandy Glatt, Small Business Coordinator, Office of Technology Utilization, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–5388.

Regional Points-of-Contact

The resources of the Department of Energy, including Headquarters, operations offices, and laboratories provide a diverse regional complex. Due to the financial limitations of many small businesses to travel and to research opportunities, locating resources closer to the source would provide a great benefit.

Under the direction of the Office of Technology Utilization, using the DOE operations offices and laboratories as the resource base, a network of regional technology transfer contacts and resources for the small business partner will be identified. These coordinators will serve as a local point-of-contact for technology transfer inquiries and resources. The DOE Small Business Regional Technology Transfer Coordinators will identify relevant programs and activities at the DOE facilities within that region and be able to guide the small business to those resources, including State and local economic and development organizations, universities, and other non-profit entities.

The DOE Small Business Regional Technology Transfer Coordinators will conduct and promote outreach activities to help bring the small business into the DOE technology transfer system and will help identify new and emerging opportunities for the small business community. The DOE Small Business Regional Technology Transfer Coordinators will be established by September 30, 1993.

Technology Transfer at the Department of Energy

The U.S. Department of Energy performs about $6.6 billion worth of research and development each year, much of which is performed at the Department's laboratories. The Department of Energy laboratories and facilities employ more than 59,000 scientists, engineers, and technicians. These institutions have a long history of excellence in a number of areas including basic sciences, applied energy research, and weapons-related technologies. If the full benefits of these laboratories and facilities are to be realized, results of the research and development programs must be used by the Nation.

For the purpose of these guidelines, technology transfer is defined as the process of making federally funded science and technology more accessible to industry, academia, or State and local government. These collaborations can result in the further development of the technology into new products, processes, materials, and services. The science and technology developed in DOE research programs, laboratories, and non-laboratory facilities help to form a knowledge base that is one of our most valuable national assets.

While technology transfer has always been an important aspect of many DOE programs, it is now an established mission of the Department and its laboratories and facilities. Further, the Department is committed to affording special consideration in the area of technology transfer to small businesses. This can be accomplished through relationships with individual small businesses, consortia of small businesses, universities, and State and local governments.

[1] Points-of-contact at the Department of Energy Program Offices, Operations Offices and Laboratory Offices of Research and Technology Applications are provided later in this document. Not all Laboratories call their technology transfer organizations Office of Research and Technology Applications. The term Office of Research and Technology Applications is a generic designation established by the Stevenson-Wydler Technology Innovation Act of 1980.

Statutory Background

The National Competitiveness Technology Transfer Act of 1989 enabled DOE to provide new tools for U.S. industries and universities to obtain technology and participate in collaborative research and development efforts with most departmental laboratories and facilities. In particular, the National Competitiveness Technology Transfer Act enabled the Government-owned, contractor-operated laboratories of DOE to enter into Cooperative Research and Development Agreements. The Department's Government-owned and operated laboratories and other agencies' Government-owned and operated laboratories had already been given that authority under the Federal Technology Transfer Act of 1986.

Additionally, the National Competitiveness Technology Transfer Act provided that certain research and development information generated under a Cooperative Research and Development Agreement could be withheld from dissemination for a period of up to five years. This provision was particularly important in light of industry concerns about the financial risks of attempting the commercialization of technology developed in concert with Federal laboratories.

In accordance with the Stevenson-Wydler Technology Innovation Act of 1980, as amended, (15 U.S.C. 3710(c)(4)(A)), DOE Laboratory Directors, in deciding which Cooperative Research and Development Agreements to enter, shall "give special consideration to small business firms, and consortia involving small business firms." The Department's laboratories and other facilities engaging in technology transfer are encouraged to be sensitive to the special needs of the small and disadvantaged businesses and to develop innovative approaches to address those needs.

Technology Transfer Mechanisms

As mentioned previously, the Federal Technology Transfer Act of 1986 and the National Competitiveness Technology Transfer Act of 1989 enabled Federal laboratories to enter into Cooperative Research and Development Agreements with private partners. At the present time, approximately 25 percent of the Department's nearly 400 Cooperative Research and Development Agreements are with small business partners. The Department's goal is to increase that percentage through aggressive outreach activities and other programs, described below, that focus on the small business.

Cooperative Research and Development Agreements are agreements between Government laboratories and one or more non-Federal party(ies) in which both participants provide personnel, services, facilities, or equipment for the conduct of specified research and development. The non-Federal party(ies) may also provide funds to the laboratory (but no funding is provided by the laboratory to the non-Federal parties). Fairness of opportunity and conflict of interest aspects of the Management & Operating contract apply. Rights to inventions and other intellectual property are negotiated between the laboratory and participant, and certain data that are generated may be protected from public disclosure for up to five years. These are subject to statutory requirements for DOE approval or communication of disapproval. Cooperative Research and Development Agreement benefits to partners, including small businesses are:

- Access to world-class technology and technical know-how that can be applied to solving problems in manufacturing, equipment, and processes.
- Leveraging scarce research and development resources to improve competitiveness of domestic small firms.
- Reducing the time between research and development and commercialization.
- Agreements that offer shared intellectual property and protection of data for up to five years.

A Cooperative Research and Development Agreement can be used not only for joint research, but also as a mechanism to provide technical assistance. These cooperative arrangements have already shown to be of benefit to the small business community as described in the following example. A Cooperative Research and Development Agreement between a DOE laboratory, Oak Ridge National Laboratory, DOE production facilities, Y–12 and K–25, and the State of Tennessee provides for short-term technical advice and assistance to local small businesses. To date, about 80 such firms have been served. In one case, a nuclear reactor scientist helped a local pencil manufacturer. In only a couple of days, the scientist provided technical advice and assistance that enabled the pencil company to extend the life of its cutting tools. This did not result in a better pencil but reduced the cost of making pencils and reduced solid waste generated by the production process.

Cooperative Research and Development Agreements are not the only means available to work with DOE, its laboratories, and facilities to increase technical competitiveness. Many other mechanisms for sharing technology can be equally effective; they may, in fact, serve a particular company's needs more appropriately than would a Cooperative Research and Development Agreement. Other technology transfer mechanisms include:

—DOE cooperative agreements
—Cost-shared contracts/subcontracts
—Research and development consortia
—User facility agreements
—Work-for-others
—Technical personnel exchanges
—Consulting arrangements
—Technology and software licensing
—Technical assistance

Department of Energy Cooperative Agreements are made with industries, universities, non-profits, and others in order to support or stimulate research. These agreements are generally cost-shared with the non-Federal participant.

Cost-Shared Contracts/Subcontracts are collaborations, through a procurement, of mutual benefit to industry and DOE. Cost-sharing arrangements may include cash or in-kind contributions including personnel, facilities, and work commitments.

Research and Development Consortia combine a group of small businesses or combine a small business with one or more large businesses in a cooperative effort. A small company can participate in cooperative research that it could not afford to pursue on its own.

User Facility Agreements are arrangements permitting private parties to conduct research and development at Federal Laboratories. Potential users must submit research proposals, which are peer reviewed for appropriateness and quality. Access to a DOE user facility is based on the scientific merit of the proposal. For proprietary work, the laboratory is reimbursed the full cost of the work, including added factor and depreciation. If the work is to be published, there is no charge for the use of the facility. Intellectual property rights generally belong to the user.

Work-for-Others Agreements are made between DOE and outside parties under which proprietary work for Federal and non-Federal parties may be done by Government scientific professionals using the Government laboratory facilities and equipment and where no technology transfer, as defined above, takes place. Typically, both data and intellectual property rights reside with the sponsor. This does not involve jointly funded work and is not intended

to cover collaborative efforts. These agreements are not subject to any statutory time requirements for DOE approval or other action.

Technical Personnel Exchanges allow the exchange of personnel with U.S. industrial and academic laboratories, typically for about six months. They provide opportunities for laboratories/facilities and industry/universities to interact and maintain/enhance the skills of scientific and engineering staff. Intellectual property rights to work at DOE laboratories or facilities arising out of such exchanges belong to the employer of the participant.

Consulting Arrangements make available scientists and engineers from DOE laboratories to consult with outside organizations, under laboratory-by-laboratory procedures. Many Management and Operating contractors allow their employees to consult for fees. Many laboratories and facilities also have programs which allow their employees to provide free technical assistance to outside organizations on a limited and selected basis. Laboratory and facility employees are allowed to sign non-disclosure agreements with respect to their work under these arrangements.

Technology and Software Licensing is the sale of rights to use intellectual property (copyright, patent, maskwork and trademark). Such licenses may be exclusive, nonexclusive, with or without right to sub-license and further delimited by time period, end use, geographic area, or other limitation. Each DOE laboratory or facility that has accepted the technology transfer clause in its Management and Operating contract can own its own intellectual property and may negotiate licenses subject to the terms on which the contractor obtains ownership.

Technical Assistance is the provision of advice based upon expertise and experience, by a Federal source, specific to problems or issues raised by non-Federal parties within areas of expertise and experience of the Federal source.

Ongoing Programs and Contacts for the Small Business As mentioned before, the Office of Technology Utilization, DOE Headquarters, is a starting point for technology transfer inquiries at the Department of Energy when a clear path to the direct source is not known. Technology transfer inquiries can also be addressed directly to relevant program offices, regional operations offices, and laboratories. Technology transfer points-of-contact for DOE program offices, regional operations offices, and laboratories are provided at the end of this document.

Several DOE Program Offices have launched special initiatives to assist the small business in technology transfer activities. Detailed explanations of individual program office efforts in this area can be obtained from the program office point-of-contact identified above. Examples of several of these programs are identified below.

- *Small Business Technology Integration Program, DOE Office of Environmental Restoration and Waste Management*

The Small Business Technology Integration Program seeks to enhance opportunities for small businesses in the Department's Environmental Restoration and Waste Management program. The main responsibilities of the Environmental Restoration and Waste Management program are to clean up DOE sites and facilities and to treat, store, and dispose of hazardous and radioactive waste materials in an environmentally acceptable manner. The Environmental Restoration and Waste Management program conducts applied research, testing, and demonstration activities within its Office of Technology Development to advance innovative technologies that can improve the efficiency and reduce the costs of site cleanup and waste management operations. The role of the Small Business Technology Integration Program is to provide assistance to small firms interested in using the Environmental Restoration and Waste Management program to develop, apply, and adopt innovative technologies.

The Small Business Technology Integration Program focuses its efforts on providing firms with comprehensive information on Environmental Restoration and Waste Management activities and associated business opportunities as well as on improving their access to DOE funding and resources to help them develop, test, apply, and commercialize their technologies. Information is provided by means of regional workshops sponsored by the Small Business Technology Integration Program or by contacting the program office directly. The Small Business Technology Integration Program issues through the DOE Morgantown Energy Technology Center in Morgantown, West Virginia, a Research Opportunity Announcement to solicit proposals for applied research and development projects that advance environmental technologies. A minimum of 20 percent of the awards made as a result of the Research Opportunity Announcement competition is set aside for small businesses.

In addition, the Small Business Technology Integration Program and the Environmental Restoration and Waste Management Office of Technology Development participate in DOE's Small Business Innovation Research Program, which provides grants via annual solicitations. Other opportunities relative to receiving support for research and development projects or for providing environmental restoration and waste management services within the Environmental Restoration and Waste Management program exist. For further information contact: Mr. Joseph B. Paladino, Small Business Technology Integration Program, Office of Environmental Restoration and Waste Management, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 301–903–7449.

- *Defense Programs Small Business Initiative Program, DOE Office of Defense Programs*

The Small Business Initiative program seeks to enhance opportunities for small businesses in the Department of Energy Office of Defense Programs and associated laboratories. Scheduled to begin in spring of 1993, DOE National Laboratories working with the DOE operations offices and the Office of Defense Programs, will develop an integrated program targeting U.S. small businesses. The program will target the greatest opportunities for synergy and leveraging of resources in establishing small business National Laboratory technology partnerships benefitting U.S. economic competitiveness. These partnerships may require the creation of new mechanisms that provide enhanced opportunities for small businesses and DOE National Laboratories to work together quickly and responsively.

The Small Business Initiative programmatic activity slated for FY 1993 is to establish the programmatic infrastructure required to support the Small Business Initiative. This will include the establishment of working relationships with other Federal agencies, State and local governments, universities, and industry organizations that represent small businesses and understand small business needs. An important aspect of programmatic infrastructure is to develop specific objectives targeting specific needs of small business and building upon specific strengths of the DOE National Laboratories. Specific programmatic objectives will lead to further development of Small Business Initiative Program Guidance and will become the basis for the Small Business Initiative programmatic activities funded in future years. For further

information contact: Michael Snow, Small Business Program Manager, Technology Transfer Division, Office of Defense Programs, Department of Energy, Albuquerque Operations Office, Albuquerque, NM 87185–5400, 505–845–4947.

In addition to technology transfer activities, there are special departmental preference programs and initiatives to augment economic opportunities for small businesses and disadvantaged businesses. A listing of some of these programs with contacts follows:

• *The Office of Economic Impact and Diversity*

The Office of Economic Impact and Diversity manages the Departmentwide Small Business Program and directs activities for the Department that facilitate and encourage small business and labor surplus area set-asides, 8(a) procurements, women-owned businesses, and subcontracting to small business and disadvantaged business concerns.

Some of the program functions of the Office of Economic Impact and Diversity include: fulfillment of the functions and duties in sections 8 and 15 of the Small Business Act, Public Law 85–536 as amended, negotiation of departmental goals with Small Business Administration and effective implementation of these goals in cooperation with the DOE organizational elements, and facilitating communication and cooperation between all levels of the Department and the small business community including technology transfer. For further information contact: Paul Terban, Office of Economic Impact and Diversity, Department of Energy, 1707 H Street, NW., Washington, DC 20585, 202–254–5583.

• *The Small Business Innovation Research Program*

The Small Business Innovation Research program was created in 1982 by Public Law 97–219 and reauthorized in 1992 until the year 2000 by Public Law 102–564. The goal of the program is to increase private sector commercialization of technology developed through Federal research and development, to increase small business participation in Federal research and development, and to improve the Federal Government dissemination of information concerning the Small Business Innovation Research program.

The Small Business Innovation Research program provides grants via an annual solicitation process. The program is designed for implementation in three phases with Phase I determining, insofar as possible, the scientific or technical merit and feasibility of ideas proposed for investigation. Phase II is the principal research or research and development effort, and Phase III is the commercial application of the research or research and development effort by the small businesses using non-Federal funding, or alternatively, it may involve follow-on non-Small Business Innovation Research program Federal contracts for products or services desired by the Government.

The DOE Small Business Innovation Research program funding for FY 1992 was $42.6 million. These funds are used to support an annual competition of Phase I awards of up to $75,000 for about six months to explore the feasibility of innovative concepts. Phase II is the principal research or research and development effort, and awards are up to $500,000 for a two year period. The Department's Small Business Innovation Research program has two features that are unique: (1) provides for uninterrupted funding between Phase I and II for those awardees that choose to submit their Phase II applications six weeks before the end of their Phase I grants; and (2) aids awardees in seeking follow-on funding of Phase III. The Department has sponsored a Commercialization Assistance Program for the past three years that has provided individual assistance in business planning, in preparation of presentations to potential investment sponsors, and in contacting sponsors. For further information contact: Samuel J. Barish, Small Business Innovation Research Program Manager, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 301–903–3054.

• *The Inventions and Innovations Program, Office of Energy Efficiency and Renewable Energy*

The Inventions and Innovation Division has three programs that offer technical and financial assistance primarily to individual inventors and small companies, although universities and large entities are not precluded from participating in Innovation and Invention Division activities.

The major Innovation and Invention Division program is the Energy-Related Inventions Program, a joint program between the National Institute of Standards and Technology (NIST) and DOE. In response to a continuous, open solicitation that has no topics, inventors can apply for a free, confidential technical evaluation of their technologies at NIST, which then can recommend that DOE consider providing technical and financial assistance to the inventor in order to move the invention closer to the marketplace. Unlike the Energy Related Inventions Program, the Innovative Concepts Program selects a topic, conducts a request for proposals, awards seed money grants, and requires attendance at a technology transfer fair to assist the innovator in meeting potential sponsors for the technology. The States' Inventors' Initiative provides information and technical assistance to State and local organizations that help inventors.

Nonfinancial assistance efforts include the Commercialization Planning Workshop for inventors recommended to DOE by NIST. These Commercialization Planning Workshops are often conducted jointly and cost-shared with a State department of commerce or economic development agency in order to help inventors funded by programs sponsored by that organization. We are currently interested in increasing the frequency of these workshops by conducting them on a cost-shared basis with other DOE program offices and the National Laboratories.

The National Innovation Workshops are conducted at six or seven sites around the country each year in order to educate inventors, small business owners, and entrepreneurs about the skills necessary to develop a successful business around an invention or innovation. Although the curriculum may be somewhat similar, the major contrast between the National Innovation Workshops and the Commercialization Planning Workshops is that the National Innovation Workshops are open to the public. Another purpose of these workshops is to assist in the formation or enhancement of an inventor organization that can serve as a self-help group for inventors. For further information contact: Terry M. Levinson, Director, Inventions and Innovation Division, Office of Energy Efficiency and Renewable Energy, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–1478.

• *Superconducting Super Collider*

The Energy and Water Appropriations Act of 1991, Public Law 102–104, mandated that 10 percent of Federal funding for the development, construction, and operation of the Superconducting Super Collider be made available to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals including

historically black colleges and universities and other minority institutions having a student body in which more than 20 percent of the students are Hispanic Americans, Native Americans, and women. For further information contact: James Richardson-Gonzales, Director of Minority Affairs, Superconducting Super Collider, 2550 Beckleymeade Ave., Dallas, TX 75237, 214–708–1566.

• *Business and Community Development Program, Office of Economic Impact and Diversity*

The Office of Economic Impact and Diversity addresses the mandated responsibilities set forth in Public Law 95–619, Title VI, Part 3. Specifically, the program is designed to provide management and technical assistance to enable minority business enterprises to enhance their competitive skills to achieve meaningful participation in Department of Energy research, development, demonstration, and contract activities.

The primary objective of the Business and Community Development Program is to identify energy-related minority business enterprises and minority business opportunities that could benefit from the transfer of new and emerging technologies such that the communities where those business entities exist would experience economic growth, including the creation of new job opportunities and empowerment of the community residents. Emphasis will be placed on projects that will include technical and managerial assistance efforts in Black, Hispanic, and American Indian communities.

The program is designed to provide a comprehensive range of services and support systems to minority-owned, energy-related businesses. The program will use a phased approach to assisting businesses:

• *Phase I: Identification and Profile.* Minority-owned, energy-related businesses will be identified and profiled according to their geographic location, nature of energy-related enterprise, business development status, and organizational structure.

• *Phase II: Business Development Plan.* An assessment will be conducted and a business development plan will be established for each business, detailing their individual needs.

• *Phase III: Research and Analysis.* An ongoing, long-term research and analysis program will be attached to each pilot project.

• *Phase IV: Identification of Feasible Energy Technology Transfer Activities for Each Participating Business and Specific Linkage Strategies.*

• *Phase V: Acquire Venture Capital and Other Sources of Financing.*

• *Phase VI: Technology Transfer and Commercialization.* This phase will solidly join relationships with the National Laboratories and minority business enterprise, actively pursue technology transfer opportunities, and assist with the process of commercialization of the product or service.

For further information contact: Gloria B. Smith, Office of Economic Impact and Diversity, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–8383.

Finally, the Department of Energy laboratories have programs designed to facilitate small business access to laboratory technology and personnel. Because of the regional dispersion of the laboratories, many of these efforts are conducted in cooperation with State and local economic development organizations and nearby universities. In many instances, these initiatives, which are based at the local level, provide the most effective and immediate avenue to technology transfer with the Department of Energy. The laboratory Office of Research and Technology Applications contact listed below can provide the necessary information for each laboratory.

Some examples of laboratory technology transfer efforts with the small business community include:

• At *Argonne National Laboratory* eight of the current 26 Cooperative Research and Development Agreements have been with small businesses. Of 48 agreements under the High-Temperature Superconducting Pilot Center, 22 have been with small businesses. Since 1987, 37 of 52 inventions have been licensed to 10 small businesses under 15 licenses; four of those companies also have obtained an option to license additional inventions. At least four of those companies are now selling products commercially. Argonne also holds Cooperative Research and Development Agreement conferences approximately biannually to brief small businesses on cooperative research opportunities.

• *Lawrence Berkeley Laboratory* is a member of East Bay Network for Entrepreneurs and Technologies, a group of business and science professionals that aid early-stage technology companies. East Bay Network for Entrepreneurs and Technologies provides services such as technology assessment, market analysis, patent advice, and location financing. PolyPlus of Berkeley, California, licensee of an Lawrence Berkeley Laboratory battery technology, was formed and capitalized as a result of an East Bay Network for Entrepreneurs and Technologies conference.

• *Ames Laboratory* is participating in a national demonstration project sponsored by the Federal Laboratory Consortium and conducted by the National Association of Management and Technical Assistance Centers. This project will couple Ames and the Iowa State University Center for Industrial Research and Service in transferring Ames technologies to small Iowa businesses. Metal casting and foundry companies have been targeted as the first group to serve.

• During the period of time that *Los Alamos National Laboratory* has had a formal licensing program, 19 licenses have been completed. Of those, 18 have been with small businesses, five of them start-up companies. The major attraction is favorable licensing terms geared to the special needs of the small business.

• A memorandum of understanding was signed between the *National Renewable Energy Laboratory* and the Small Business Administration to promote technology transfer initiatives with small businesses in 15 states in the Midwest and Rocky Mountain region.

• *Oak Ridge National Laboratory* is processing Cooperative Research and Development Agreements that cover global assessment, chlorofluorocarbons and refrigeration efficiency, thermal performance of cellulose insulation, biodegradation of polychlorinated biphenyls, and various other research and manufacturing technologies. Approximately 20 percent of the Cooperative Research and Development Agreements are with small businesses.

• *Pacific Northwest Laboratory* is working with Decmomp of Washington, Inc., an incinerator of municipal solid waste, to develop the Nation's first commercial ash "glassification" plant.

• *Sandia National Laboratories* has developed the Technology-based Regional Economic Development Program to provide the personalized attention needed to ensure that small businesses have an effective avenue for approaching Sandia with their needs and ideas. The program includes tours of Sandia, technical seminars and workshops, and one-on-one interactions.

Request for Input

The needs and requirements of the small business often require special consideration in order to compete in our complex and global economy. Due largely to limited funding, resources,

and personnel, the small business faces obstacles and barriers to participation in opportunities such as technology transfer that are not faced by larger firms.

The Office of Technology Utilization at the Department of Energy seeks public input in identifying the requirements of the potential small business partner in technology transfer relationships.

These inputs will assist the Department in formulating internal guidance with respect to technology transfer activities for small business in conjunction with existing goals and already identified objectives and activities.

Goals

The goals identified for developing internal guidance in the area of technology transfer to the small business are:

- Encourage and facilitate the transfer of technology to small businesses;
- Coordinate and support small business technology transfer efforts throughout the DOE Programs, regional operations offices, and laboratories;
- Facilitate and strengthen the role of small businesses in meeting DOE technological needs;
- Enhance the competitiveness of small businesses within Government and private sector markets.

Objectives and Activities

- Establish mechanisms to promote small business technology transfer participation.
- Develop strategies which promote special consideration for small businesses.
- Develop and disseminate comprehensive information on DOE programs and associated business opportunities.
- Promote regional alliances between DOE facilities, State and local organizations, and universities.
- Coordinate small business technology transfer activities with other DOE small business programs, such as the Small Business Innovation Research program.
- Coordinate small business technology transfer activities throughout the DOE complex, including programs, regional operations offices, and laboratories.
- Coordinate DOE small business activities to the extent clearly defined points-of-contact can present all of the programs that are available to the small business community.
- Identify barriers and obstacles that inhibit small business participation in DOE technology transfer programs.

Department of Energy Program, Operations Office and Laboratory Technology Transfer Contacts

Programs

John Keliher, Office of Intelligence and National Security, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, 202–586–8405

Leonel Miranda, Office of Economic Impact and Diversity, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, 202–254–5583

Keith Frye, Office of Business Operations, Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, 301–903–2098

Nicholas Chumbris, Office of Congressional Operations, Office of Congressional, Intergovernmental, and International Affairs, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, 202–586–2764

James Bressee, Office of Program and Resources Management, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, 202–586–9116

Richard Constant, Office of General Counsel, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, 202–586–2802

Antionette Joseph, Office of Laboratory Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, 202–586–5447

Claire Sink, Office of Technology Integration and Environmental Education Development, Office of Environmental Restoration and Waste Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, 301–903–7928

Chris Kielich, Office of Public and Consumer Affairs, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, 202–586–0581

Warren Chernock, Office of Defense Programs, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, 202–586–7590

Jessie Harris, Office of Technology Cooperation, Office of Policy, Planning and Program Evaluation, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, 202–586–7180

Ronald Cone, Sr., Office of Human Resources and Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, 202–586–9065

Larry Forsythe, Office of Marketing, Technology Deployment and Strategic Planning, Office of Nuclear Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, 301–903–4610

Michele Donovan, Office of Human Resources and Administration, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, 202–586–7092

Helen O. Sherman, Office of Financial Policy, Office of Chief Financial Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, 202–586–4860

Jerry Kotas, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, 202–586–9220

Gerald Chappel, Office of Information Resources Management, Office of Human Resources and Administration, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, 202–586–0166

Operations Offices

V.V. Berniklau, Albuquerque Operations Office, U.S. Department of Energy, P.O. Box 5400, Albuquerque, NM 87185–5400, 505–845–4659

Rod Warner, Fernald Environmental Management Operations Office, U.S. Department of Energy, P.O. Box 398075, Cincinnati, OH 45239–8705, 513–648–3156

Charles Pietri, Chicago Operations Office, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439, 708–252–2449

Ray Barnes, Idaho Operations Office, U.S. Department of Energy, 785 DOE Place, Idaho Falls, ID 83402, 202–526–1323

John Spahn, Nevada Operations Office, U.S. Department of Energy, P.O. Box 98518, Las Vegas, NV 89193–8518, 702–295–1138

Robert Poteat, Oak Ridge Operations Office, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831, 615–576–1070

Steve Hortin, Savannah River Operations Office, U.S. Department of Energy, P.O. Box A, Aiken, SC 29802, 803–725–5537

Gail McClure, Richland Operations Office, U.S. Department of Energy, 825 Jadwin Avenue, P.O. Box 550, Richland, WA 99352, 509–376–0343

Dick Fredlund, San Francisco Operations Office, U.S. Department of Energy, 1301 Clay St., Room 700N, Oakland, CA 94612, 510–637–1654

Laboratories

Ames Laboratory

Daniel E. Williams, Office of Planning and Technology, Applications, Ames Laboratory, 119 Office and Laboratory Building, Iowa State University, Ames, IA 50011, 515–294–2635

Argonne National Laboratory

Stanley S. Borys, Technology Transfer Center, Argonne National Laboratory, 9700 S. Cass Ave., Bldg 900, Argonne, IL 60439, 708–252–2030

Bates Linear Accelerator Center

William Lobar, Bates Linear Accelerator Center, P.O. Box 846, Middleton, MA 01949, 617–245–6600

Brookhaven National Laboratory

Margaret Bogosian, Office of Technology Transfer, Building 902–C, Brookhaven National Laboratory, Upton, Long Island, NY 11973, 516–282–7338

Continuous Electron Beam Accelerator Facility

H. Frederick Dylla, Project Management, Continuous Electron Beam Accelerator Facility, 1200 Jefferson Avenue, Newport News, VA 23606, 804–249–7450

Energy Technology Engineering Center

Guy Ervin III, Energy Technology Engineering Center, P.O. Box 1449, Canoga Park, CA 91304, 818–586–5532

Environmental Measurements Laboratory

Philip W. Krey, 376 Hudson Street, Environmental Measurements Laboratory, New York, NY 10014, 212–620–3619

Fermi National Accelerator Laboratory

John T. Venard, Office of Technology Applications, Fermi National Accelerator Laboratory, P.O. Box 500, Batavia, IL 60510, 708–840–3333

Idaho National Engineering Laboratory

Richard Hitt, Office of Research and Technology Applications, Idaho National Engineering Laboratory, P.O. Box 1625, Idaho Falls, ID 83415, 208–526–1571

Inhalation Toxicology Research Institute

Charles Hobbs, Office of Technology Transfer, Inhalation Toxicology Research Institute, P.O. Box 5890, Albuquerque, NM 87185–5890, 505–845–1045

Laboratory of Radiobiology and Environmental Health

Sheldon Wolff, Laboratory of Radiobiology and Environmental Health, LR–102, University of California at San Francisco, 3rd and Parnassus Avenues, San Francisco, CA 94143–0750, 415–476–1636

Lawrence Berkeley Laboratory

Cheryl Fragiadakias, Technology Transfer Department, Lawrence Berkeley Laboratory, Mail Stop 90–1070, Berkeley, CA 94720, 510–486–7020

Lawrence Livermore National Laboratory

Gilbert R. Marguth, Technology Transfer, Lawrence Livermore National Laboratory, P.O. Box 8080, Livermore, CA 94550, 510–423–1341

Los Alamos National Laboratory

Kay V. Adams, Industrial Partnership Center, Los Alamos National Laboratory, IPC, Mail Stop K–763, P.O. Box 1663, Los Alamos, NM 87545, 505–665–9090

Michigan State University—DOE Plant Research Laboratory

Alice J. Albin, MSU-DOE Plant Research Laboratory, Michigan State University, East Lansing, MI 48824, 517–353–2270

Morgantown Energy Technology Center

William F. Lawson, Technology Transfer Program Division, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26505, 304–291–4173

National Institute for Petroleum and Energy Research

Herbert A. Tiedemann, U.S. Department of Energy, Bartlesville Project Office, P.O. Box 1398, Bartlesville, OK 74005, 918–337–4293

National Renewable Energy Laboratory

Dallas Martin, Technology Transfer Office, National Renewable Energy Laboratory, 1617 Cole Boulevard, Golden, CO 80401, 303–231–7005

New Brunswick Laboratory

Carleton Bingham, New Brunswick Laboratory, 9800 South Cass Avenue, Argonne, IL 60439, 708–252–2446

Notre Dame Radiation Laboratory

John Bentley, Notre Dame Radiation Laboratory, Notre Dame, IN 46556–0768, 219–239–6117,

Oak Ridge Associated Universities

Mary M. Loges, Oak Ridge Associated Universities, P.O. Box 117, Oak Ridge, TN 37831–0117, 615–576–3756

Oak Ridge National Laboratory

William R. Martin, Oak Ridge National Laboratory, 701 SCA Building, MS 8242, Oak Ridge, TN 37831–8242, 615–576–8368

Pacific Northwest Laboratory

Marv Clement, Office of Research & Technology Applications, Pacific Northwest Laboratory, P.O. Box 9999, Richland, WA 99352, 509–375–2789

Pittsburgh Energy Technology Center

Kay Downey, Office of Research and Development, Pittsburgh Energy Technology Center, P.O. Box 10940, Pittsburgh, PA 15236, 412–892–6029

Princeton Plasma Physics Laboratory

Lou Meixler, Office of Technology Transfer, Princeton Plasma Physics Laboratory, P.O. Box 451, Princeton, NJ 08544, 609–243–3009

Sandia National Laboratory

T. Michal Dyer, Technology Transfer Center 4200, Sandia National Laboratory, P.O. Box 5800, Albuquerque, NM 87185, 505–271–7813

Savannah River Ecology Laboratory

Robert I. Nestor, Engineering and Projects Office, Savannah River Ecology Laboratory, P.O. Box E, Aiken, SC 29802, 803–725–2472

Savannah River Laboratory

Jon C. Corey, Technology Transfer Section, Westinghouse/Savannah River Site, Savannah River Laboratory, P.O. Box 616, Aiken, SC 29802, 803–725–3020

Stanford Linear Accelerator Center

James E. Simpson, Office of Research and Technology Activity, P.O. Box 4349, Stanford Linear Accelerator Center, Stanford, CA 94309, 415–926–2213

Stanford Synchrotron Radiation Laboratory

Ms. Katherine Cantwell, Stanford Synchrotron Radiation Laboratory, P.O. Box 4349, Bin 69, Stanford, CA 94309, 415–926–3191

Superconducting Super Collider Laboratory

Anthony Montgomery, Superconducting Super Collider Laboratory, Mail Stop 1072, 2550 Beckleymeade Avenue, Dallas, Texas 75237, 214–708–1104

Westinghouse-Hanford Company

Alva L. Ward, Office of Research and Technology Applications, L5–08, Westinghouse-Hanford Company, P.O. Box 1970, Richland, WA 99352, 509–376–8656

Dated: June 1, 1993.

Hazel R. O'Leary,

Secretary of Energy, Washington, DC 20585.

[FR Doc. 93–13955 Filed 6–11–93; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award; Intent To Award Grant to East-West Center

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(B) to the East-West Center (EWC), Honolulu, Hawaii, under Grant Number DE–FG01–93EP10050. The purpose of the grant is to support three studies for a period of 30 months on the energy situation in Indochina, Latin America, and the Persian Gulf. This effort will have a total estimated cost of $580,903, of which $296,779 (51.1%) will be provided by the DOE and $284,124 (48.9%) will be provided by the EWC.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Jeffrey R. Dulberg, PR–322.4, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The grant will provide funding to the EWC to support a 30 month study on the energy situation in Indochina, Latin America, and the Persian Gulf. The study will provide a report on each of the three regions every 15 months. The effort will also produce an investment advisory series to be published three times a year which will provide current information on trade and investment opportunities in these regions. The aforementioned reports and series will be available to the private sector. Finally, the EWC will organize and conduct workshops for the DOE and other Federal agencies to identify key energy issues and to facilitate future assistance to U.S. companies in capturing trade and investment opportunities abroad.

The project is meritorious because of its relevance to the accomplishment of an important public purpose—providing reports and serialized publications to both the private sector and the Government and utilizing workshops as forums on key energy issues and on trade and investment opportunities in Indochina, Latin America, and the Persian Gulf. Supplementing the EWC's contribution of 48.9% of the planned

total budget, the DOE's 51.1% contribution will enhance the scale of the study, thereby enhancing the benefits to both the public and the Government. The total project objective encompasses an understanding of: the emergence of regional trade areas; the increasing integration of upstream and downstream markets by oil-exporting nations; environmental consciousness in developing countries; the restructuring of the global oil supply due to the dissolution of the Soviet Union; the transition from the barter trade for oil supplies to more capitalistic trade practices; and, the furtherance of U.S. commercial interests in Indochina, Latin America, and the Persian Gulf. Finally, the DOE knows of no other entity which is planning to conduct an effort of this type with the EWC's specific focus on the energy situations in these regions.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the proposal represents a beneficial method and approach to disseminate to the public, the DOE, and other Federal agencies comprehensive information on energy strategies, trade and investment opportunities, and economic security issues in Indochina, Latin America, and the Persian Gulf.

Scott Sheffield,

Acting Director, Division "B", Office of Placement and Administration.

[FR Doc. 93–13957 Filed 6–11–93; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

[BPA File No.: BCR–14.]

Decision To Sign Two Proposed Billing Credits Contracts

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Decision. BPA announces its decision to sign two billing credit contracts for two generation projects.

SUMMARY: BPA has previously signed other billing credit generation contracts, in addition to the contracts described in this Notice. These prior contract signings were addressed in previous-released **Federal Register** Notices. (57 FR 33501; July 29, 1992 and 57 FR 48792; October 28, 1992)

The Cottrell Hydroelectric project is the reconstruction of an abandoned project located on McCloskey Creek in Western Skamania County, Washington. It includes a 1.8 square mile drainage area with 30 acre-feet of storage; a new 24-foot high, 218-foot long, earth filled diversion structure on McCloskey Creek; a 9,900-foot, 28-inch diameter pipeline with 1,350 feet of hydraulic head; a 3-jet Pelton turbine and 4,400-kilowatt sychronous generator located in a restored powerhouse near the Washougal River; a 5-MVA step-up transformer; and an upgrade of the 12.5-kilovolt distribution system from the powerhouse to the Bonneville Cape Horn Substation. The project expects to begin producing power in September 1994. The Cottrell Hydroelectric project is licensed to Truman Price, Inc., under Federal Energy Regulatory Commission number 7174.

The South Fork Tolt Hydroelectric project, located in King County, Washington, includes mutual use of the existing South Fork Tolt earth dam, storage reservoir and regulating basin, all part of the City of Seattle's water supply facilities. The project will utilize approximately 1,000 feet of hydraulic head to generate hydroelectric energy. The project facilities will consist of a new 66 inch diameter 5 mile long buried steel pipeline and a powerhouse housing a 15 megawatt (MW) Pelton-type turbine and generator. A diversion outlet structure will channel the water from the powerhouse to an existing regulation basin. The South Fork Tolt Hydroelectric project is licensed to the City of Seattle, Washington, under Federal Energy Regulatory Commission number 2959.

BPA, pursuant to its Billing Credits Policy, as amended August 30, 1984, (49 FR 34395), and its Billing Credit Solicitation July 1990, has negotiated with one public utility district and one municipal body for two generation projects.

SUPPLEMENTARY INFORMATION: The Administrative Record, available for public review, contains background on BPA's Billing Credits Policy, the need for billing credit resources, a summary of the Billing Credit Solicitation, a summary of the evaluation process for proposals, and environmental considerations. The Administrative Record includes three Appendices: Appendix A—Billing Credit Solicitation, Appendix B—Issue Resolution Log. Addendum One of the Draft Administrative Record—Customer System Efficiency Improvements (CSEI) Contract Development, and Amendment A to Addendum One provide specific information about CSEI projects and how billing credits are determined. These were previously released for public review (57 FR 1161; January 10, 1992 and 57 FR 9250; March 17, 1992).

Addendum Two of the Administrative Record—Contract Development Conservation Proposals, provides specific information about the conservation projects and how billing credits are determined for these projects. This addendum was previously released for public review (57 FR 9250).

Responsible Official: Ruth Bennett, Billing Credits Project Manager, is the official responsible for BPA's Billing Credit contracts, the Administrative Record, and Addenda.

DATES: Ninety days after a **Federal Register** Notice announcing billing credit contracts have been signed is published, payment or credit will be awarded to appropriate customers.

FOR FURTHER INFORMATION CONTACT: For a copy of a specific generation billing credit contract(s), or the Administrative Record, please contact the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

Telephone numbers, voice/TTY, for the Public Involvement Office are 503–230–3478 in Portland, or toll-free 800–622–4519.

Information may also be obtained from:

Mr. George E. Bell, Lower Columbia Area Manager, 1500 NE. Irving Street, Room 250, Portland, Oregon 97208, 503–230–4551.

Mr. Robert Laffel, Eugene District Manager, Federal Building, Room 206, 211 East Seventh Street, Eugene, Oregon 97410, 503–465–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561 U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Ms. Carol S. Fleischman, Spokane District Manager, Room 112 U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201, 509–353–3279.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, 301 Yakima Street, Room 307, Wenatchee, Washington 98807, 509–662–4377.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 201 Queen Avenue North, Suite 400, Seattle, Washington 98109, 206–553–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, 1520 Kelly Place, Walla Walla, Washington 99362, 509–522–6226.

Mr. Jim Normandeau, Boise District Manager, Federal Building, 304 North Eighth Street, Room 450, Boise, Idaho 83702, 208–334–9137.

Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

I. Background

BPA is a self-financing power marketing agency with the United States Department of Energy. BPA was established by the Bonneville Project

Act of 1937, 16 U.S.C. 832 et seq., to market wholesale power from Bonneville Dam and to construct power lines for the transmission of this power to load centers in the Northwest. BPA sells wholesale electric power and energy to 126 utilities, 13 direct service industrial customers (DSIs) and several government agencies.

The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) directs BPA to serve the net power requirements of any electric utility requesting service, and to serve existing DSIs in the Pacific Northwest. 16 U.S.C. 839c (b)(1) and (d). Although BPA cannot own or construct electric generating facilities, the Northwest Power Act directs BPA to acquire rights to the output or capability of electric power resources to serve increased customer requirements. See 16 U.S.C. 839a(1) and (d). The Northwest Power Act requires BPA to grant credits to BPA's customers on their power bills for electric power resources that reduce the Administrator's obligation to acquire resources to meet BPA's electric power requirements. 16 U.S.C. 839d(h). Billing credits may be adjustments to customers' power bills or equivalent cash payments. Resources eligible for billing credits include conservation and generation. Specific requirements for resources and the amount BPA can pay for these resources are outlined in the Northwest Power Act and BPA's Billing Credits Policy.

BPA's Billing Credits Policy interprets the billing credits provisions in the Northwest Power Act, prescribes criteria for customer and resource eligibility, and establishes procedures for granting billing credits.

BPA's 1990 Resource Program focused on choosing near-term resource actions for Fiscal Years 1992 and 1993. Subsequent to receiving comments from customers on the draft 1990 Resource Program that suggested BPA use billing credits, BPA developed a solicitation requesting proposals for billing credits resources. Billing credits provide a way to shift some of the risk for resource development to utilities and others, which was an objective of the chosen strategy in the 1990 Resource Program. In July 1990, BPA released the solicitation. It proposed to test the billing credit approach for acquiring energy resources by granting 50 average MW of billing credits to eligible resources. BPA's objective in the test was to ensure that the billing credit mechanism is workable for BPA customers.

II. Description of the Generation Proposals

Seventeen generation proposals representing 11 public bodies or cooperative utilities were submitted pursuant to the July 1990 Billing Credit Solicitation. Proposed generation projects included hydroelectric, biomass, and cogeneration projects to produce electricity. Five of the 17 proposals were withdrawn during the evaluation process and three proposals were rejected for not meeting the threshold criteria. BPA has released previous **Federal Register** Notices announcing the signing of generation projects.

BPA intends to sign two contracts with these public utilities for the following generation projects:

1. Skamania County Public Utility District—Cottrell Hydroelectric project—a hydroelectric project.
2. Seattle City Light—South Fork Tolt Hydroelectric project—a hydroelectric project.

These projects meet the qualifications for billing credits, and BPA has completed its obligations under NEPA. The customers will comply with all applicable environmental requirements in the construction of the project and during the operation phase.

III. Methodology for Determining Generation Billing Credits

The payment for billing credits (BC) for these customers will be calculated and paid monthly as follows:

As Skamania County Public Utility District is a Metered Requirements Customer under its Power Sales Contract with BPA, the monthly BC will be the lesser of the Adjusted Alternative Cost or Net Cost multiplied by the monthly amounts of Estimated Firm Energy of the Billing Credit Resource, less the amount of Priority Firm Rate dollars the customer avoids paying as a result of the Billing Credit Resource. The Actual BC is determined annually and compared to the Estimated BC payments for the previous year and any over or under payment is corrected.

As Seattle City Light is a Computed Requirements Customer under its Power Sales Contract with BPA, the monthly BC will be the lesser of the Adjusted Alternative Cost or Net Cost multiplied by the monthly amounts of Assured Energy Capability of the BC Resource, less the amount of Priority Firm Rate dollars the customer avoids paying as a result of the BC Resource. There is no true-up; this is because the customer is required to maintain the Assured Energy Capability for the BC Resource, as it must do for all its firm resources under the Power Sales Contract.

IV. Materials Available

Copies of the Billing Credits Policy, the Administrative Record, its Appendices, Addendum One, Amendment A to Addendum One, Addendum Two, and Addendum Three are available from BPA's Public Involvement office. Refer to the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Issued in Portland, Oregon, on May 28, 1993.

Edward W. Sienkiewicz,

Senior Assistant Administrator.

[FR Doc. 93-13954 Filed 6-11-93; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Consent Order with Revere Petroleum Corporation and Richard E. Dobyns

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comments.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Revere Petroleum Corporation (Revere) and Richard E. Dobyns. The agreement proposes to resolve matters relating to Revere's and Dobyns' compliance with the federal petroleum price and allocation regulations for the period April 1, 1979 through March 31, 1980. If this Consent Order is approved, Revere and Dobyns shall pay to the DOE $850,000.00, plus half of any proceeds over $1,200,000.00 resulting from the liquidation of Revere's assets, which must occur within nine (9) months of the effective date of a final Consent Order. To distribute these monies, the DOE's Office of Hearings and Appeals will be petitioned to implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in which proceedings any persons who claim to have suffered injury from the alleged overcharges would have the opportunity to submit claims for payment.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order and will consider all comments received from the public in determining whether to accept the settlement and issue a final Order, renegotiate the agreement and issue a modified agreement as a final Order, or reject the settlement. DOE's

final decision will be published in the Federal Register, along with an analysis of significant written comments in response to this notice, as well as any other considerations that were relevant to the final decision.

DATES: Comments must be received by July 14, 1993.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposed Consent Order to: Revere Consent Order Comments, U.S. Department of Energy, Economic Regulatory Administration, RG–30, 820 First Street, NE., suite 810, Washington, DC 20585. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR § 205.9(f).

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 820 First Street, NE., suite 810, Washington, DC 20585, (202) 523–3045.

SUPPLEMENTARY INFORMATION: During the period covered by the proposed Consent Order, April 1, 1979 through March 31, 1980, Dobyns was the president of Revere. During that same period, Revere was a crude oil "reseller" as that term was defined in the federal petroleum price and allocation regulations and was subject to the jurisdiction of the DOE.

As a result of DOE's investigation of Revere's compliance with the federal petroleum price and allocation regulations during the period covered by the proposed Consent Order, ERA issued a Proposed Remedial Order to Revere and Gordon Walz on January 18, 1983; and an Amended Proposed Remedial Order (PRO) to Revere, Dobyns, Gordon Walz and four others on August 9, 1990. On May 29, 1992, DOE's Office of Hearings and Appeals issued the PRO as a Remedial Order to Revere and Dobyns, the then two remaining PRO respondents. *Revere Petroleum Corp.*, 22 DOE ¶ 83,004 (1992), *appeal pending*, FERC Docket No. RO92–4–000. The Remedial Order finds Revere and Dobyns jointly and severally liable to make restitution of $54,163,195.85, plus interest, for violations of the anti-"layering" rule (10 CFR 212.186) in connection with Revere's resales of crude oil during the period April 1979 through March 1980.

The Remedial order also extinguished any assertions or claims of liability for the said violations with regard to the other PRO respondents, by reason of settlements with those parties during the course of the PRO proceeding. Upon motion of the Secretary of Energy in the Remedial Order recipients' appeal to the Federal Energy Regulatory Commission, the presiding Administrative Law Judge reduced the principal amount of Revere's and Dobyns' liability to $50,277,694.07, to reflect settlements reached with the other PRO respondents. With interest, Revere's and Dobyns' joint and several liability totals $212,347,034.00.

ERA has preliminarily agreed to the proposed settlement as resolution of Revere's and Dobyns' liability for DOE regulatory violations for the period covered by the proposed Consent Order. This agreement was reached after entering into settlement discussions with Revere and Dobyns on an ability-to-pay basis. In reliance on the financial information and documentation submitted to DOE, including a sworn statement that the information submitted is true and complete and includes all the assets of Revere and Dobyns and believing that it serves the public interest for DOE to compromise its claims against Revere and Dobyns on an ability-to-pay basis where, as here, the financial status of the parties covered can be satisfactorily determined, DOE has agreed to enter into this proposed Consent Order. Specifically, Revere's only assets consist of certain real estate located in the Harris County, Texas area, proceeds from the sale of which will be paid to DOE. Mr. Dobyns' assets, which are being administered by a court-approved guardian, consist of a modest amount of cash and certain pension benefits utilized for his nursing home care.

ERA has tentatively concluded that the resolution of its claims against Revere and Dobyns for $850,000 plus half of any proceeds over $1,200,000 from the liquidation of Revere's assets is an appropriate settlement and in the public interest.

Under the terms of the proposed settlement, Dobyns shall pay to the DOE (i) $20,000 within fifteen (15) days, and $30,000 within sixty (60) days, of the effective date of the Consent Order; and (ii) $800,000 from the liquidation of Revere's assets, which must occur within nine (9) months of the effective date of the Consent Order, plus half of any proceeds of the asset liquidation above $1,200,000.

Revere, Dobyns and DOE mutually release each other from the claims arising under the subject matter covered by the proposed Consent Order.

If the settlement is not made final by the one hundred fiftieth (150th) day following execution, Revere and Dobyns may withdraw from the proposed agreement.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

All comments received by the thirtieth day (30th) following publication of this Notice in the Federal Register will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comments. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the Federal Register.

Issued in Washington, DC, on June 8, 1993.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

Consent Order With Revere Petroleum Corporation and Richard E. Dobyns

I. Introduction

101. This Consent Order is entered into between the Department of Energy ("DOE") and Revere Petroleum Corporation ("Revere"), a corporation organized under the laws of the State of Texas, and Richard E. Dobyns ("Dobyns") individually. Except as otherwise provided herein, this Consent Order settles and finally resolves all civil and administrative disputes, claims and causes of action, whether or not heretofore asserted, between DOE, as hereinafter defined, and Revere and Dobyns, relating to compliance by Revere and Dobyns with the federal petroleum price and allocation regulations (as defined herein) administered and enforced by DOE and its predecessor agencies during the period April 1, 1979 through March 31, 1980 ("the period covered by this Consent Order"). All the matters settled and resolved by this Consent Order are referred to as "the matters covered by this Consent Order."

II. Jurisdiction and Regulatory Authority

201. This Consent Order is entered into by DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193; Executive Order 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. Reference herein to "DOE" includes, besides the Department of

Energy, the Economic Regulatory Administration ("ERA"), and all agencies succeeding to DOE's authority to enforce the federal petroleum price and allocation regulations. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all pricing, allocation, reporting, and recordkeeping requirements imposed by or under the Economic Stabilization Act ("ESA") of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, the DOE Act, any and all amendments to said Acts, Presidential Proclamation 3279, all applicable DOE regulations codified in 10 CFR parts 205, 210, 211, 212, and 213 including all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, forms, and reporting and certification requirements regarding such regulations. The provisions of 10 CFR 205.199J and the definitions under the federal price and allocation regulations shall apply to this Consent Order except to the extent inconsistent herewith.

III. Facts and Determinations

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by the Consent Order, Dobyns was the president of Revere. During the same period, Revere was a crude oil "reseller" as that term was defined in the federal petroleum price and allocation regulations and was subject to DOE's jurisdiction.

302. As a result of DOE's investigation of Revere's compliance with the price and allocation regulations, on August 9, 1983, ERA issued an Amended Proposed Remedial Order ("PRO") to Revere, Dobyns, and five others. On May 29, 1992, DOE's Office of Hearings and Appeals issued the PRO as a Remedial Order to Revere and Dobyns, the then two remaining PRO respondents. *Revere Petroleum Corp.*, 22 DOE ¶83,004 (1992), *appeal pending*, FERC Docket No. RO92–4–000. The Remedial Order finds Revere and Dobyns jointly and severally liable for violations of 10 CFR 212.186 in connection with Revere's resales of crude oil during the period April 1979 through March 1980.

303. DOE and Revere and Dobyns agreed to enter into settlement discussions on an ability-to-pay basis in order to resolve DOE's claim against them as set forth in the Remedial Order described above. Revere and Dobyns submitted to DOE certain financial information and documentation which DOE requested, to permit it to evaluate their financial ability to satisfy the aforementioned claim.

304. In reliance on the financial information and documentation that Revere and Dobyns have submitted to DOE, including the sworn statements of Dobyns's financial representative that the information submitted is true and complete and includes all of their assets, and believing that it serves the public interest for DOE to compromise its enforcement claim on an ability-to-pay basis where, as here, the financial status of the parties concerned can be satisfactorily determined, DOE has agreed to enter into this Consent Order.

305. In reliance on DOE's undertakings to consider settlement on an ability-to-pay basis, and in order to resolve DOE's claims against Revere and Dobyns as set forth in the Remedial Order cited in Paragraph 302 hereof, without the expense and inconvenience of further administrative or judicial proceedings relating thereto, Revere and Dobyns have agreed to enter into this Consent Order.

IV. Remedial Provisions

401. In full and final settlement of the matters covered by this Consent Order and in lieu of all other remedies which have been or might be sought by DOE against Revere and/or Dobyns for such matters under 10 CFR 205.199I or otherwise:

(a) Revere and Dobyns shall pay to DOE the sum of Fifty Thousand Dollars ($50,000.00) as follows: (i) Twenty Thousand Dollars ($20,000.00) within fifteen (15) days of the effective date of this Consent Order, and Thirty Thousand Dollars ($30,000.00) within sixty (60) days of the effective date of this Consent Order. In the Event that any such payment date is not a business day, payment shall be due on the first business day following such date.

(b) All of the assets of Revere shall be liquidated and Revere shall deliver to DOE within nine (9) months of the effective date of this Consent Order the proceeds of that liquidation, less reasonable expenses incurred in the liquidation; provided however, that the liquidated sum delivered to DOE must be at least Eight Hundred Thousand Dollars ($800,000.00); and further provided, that all proceeds of said liquidation above One Million Two Hundred Thousand Dollars ($1,200,000.00) shall be distributed equally between DOE and Dobyns.

402. The payments pursuant to paragraph 401 of this Consent Order shall be by certified or cashier's check made payable to the United States Department of Energy and delivered to the Office of Comptroller, Office of Washington Financial Services, Cash Management Division, P.O. Box 500, Germantown, Maryland 20874–0550.

403. If any payment provided for above becomes more than fifteen (15) days overdue, then the payment amount with interest to the date of actual payment shall become immediately due and payable at DOE's option. Between the time that any payment or portion thereof is required to be paid under this Consent Order and the time the full payment is completed, interest shall accrue on the overdue amount at the rate of 12% per annum, compounded quarterly. Such interest shall be paid to DOE with the overdue payment(s). Any late payment that is less than the amount overdue shall be applied first to pay any interest that has accrued pursuant to this paragraph, and any remaining portion of the payment shall be applied to reduce the overdue balance.

404. Payments made by Revere and Dobyns pursuant to this Consent Order shall be distributed by DOE pursuant to the special refund procedures prescribed by 10 CFR part 205, subpart V.

V. Issues Resolved

501. All pending and potential civil and administrative claims, demands, liabilities, causes of action, or other proceedings by DOE against Revere and Dobyns regarding Revere's and Dobyns's compliance with and obligations under the federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Proposed Remedial Order, Remedial Order, actions in courts or otherwise, are resolved and extinguished by this Consent Order. This Consent Order, however, does not resolve, extinguish, or otherwise affect DOE's claims against any other person or entity.

502. Revere and Dobyns warrant that there is no litigation pending against the DOE initiated or participated in by Revere or Dobyns which in any way relates to or arises out of the matters covered by this Consent Order, or related claims arising under the Freedom of Information Act (5 U.S.C. 552). Revere and Dobyns hereby agree to release any and all claims, demands, liabilities, or causes of action that they have asserted or might be able to assert against DOE, and any employee of DOE, in any matter related to the matters covered by this Consent Order.

503. (a) Compliance by Revere and Dobyns with this Consent Order shall be deemed by DOE to constitute full compliance for civil purposes with

regard to the matters covered by this Consent Order. Except as explicitly excluded herein, in consideration for performance as required under this Consent Order by Revere and Dobyns, DOE hereby releases Revere and Dobyns completely and for all purposes from all administrative and civil judicial claims, demands, liabilities, or causes of action, including, without limitation, claims for civil penalties that DOE has asserted or might otherwise be able to assert against Revere and Dobyns before or after the date of this Consent Order for alleged violations of the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. DOE will not initiate or prosecute any such administrative or civil judicial matter against Revere and Dobyns or cause or refer any such matter to be initiated or prosecuted, nor will DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil judicial matter against Revere and Dobyns or participate voluntarily in the prosecution of such actions. DOE will not assert voluntarily in any administrative or civil judicial proceeding that Revere and Dobyns have violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order, or otherwise take action with respect to Revere and Dobyns in derogation of this Consent Order. However, nothing contained herein shall preclude DOE from defending the validity of the federal petroleum price and allocation regulations.

(b) DOE will not seek or recommend any criminal fines or penalties based on information or evidence presently in its possession for the matters covered by this Consent Order; provided, however, that nothing in this Consent Order precludes DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence at present known to DOE, that a criminal violation may have occurred, or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations to appropriate authorities. Nothing contained herein may be construed as a bar, an estoppel, or a defense: against any criminal action or against any civil action brought by an instrumentality or agency of the United States other than DOE under (i) section 210 of the ESA or (ii) any statute or regulation other than the federal petroleum price and allocation regulations.

(c) Revere and Dobyns release DOE completely and for all purposes from all administrative and civil judicial claims, or causes of action that Revere and Dobyn have asserted or may otherwise be able to assert against DOE relating to DOE's administration of the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. This release, however, does not preclude Revere and Dobyns from asserting a factual or legal position or argument as a defense to any action, claim, or proceeding brought by DOE, the United States, or any agency of the United States. Nor does it preclude Revere and Dobyns from asserting a defense, counterclaim of offset to any action, claim or proceeding brought by any other person.

(d) Revere and Dobyns hereby release any and all claims that they may have for refunds pursuant to any special refund proceedings implemented pursuant to 10 CFR part 205, subpart V. Such proceedings include, but are not limited to, proceedings to distribute (i) consent order funds and (ii) crude oil overcharge funds.

504. Within ten (10) days after the effective date of this Consent Order, Revere and Dobyns shall file with the Commission in Docket No. RO92–4–000 a "Withdrawal of Petition for Review of Remedial Order", in the form attached hereto as Exhibit A.

505. Execution of this Consent Order constitutes neither an admission by Revere or Dobyns nor a finding by DOE of any violation by Revere or Dobyns of any statute or of any regulation. DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and DOE will not seek any such civil penalties. The payments by Revere and Dobyns pursuant to this Consent Order are not be considered for any purpose as a penalty, fine, forfeiture, or as settlement of any potential liability for penalties, fines, or forfeitures.

506. Notwithstanding any other provision herein, and in addition to the matters excluded herein, DOE reserves the right to initiate an enforcement proceeding, including, without limitation, an action for penalties, for any newly discovered regulatory violations committed by Revere and/or Dobyns during the period covered by this Consent Order, but only if Revere or Dobyns concealed facts relating to such violations. DOE also reserves the right to seek appropriate judicial remedies other than full rescission of this Consent Order, or to rescind this Consent Order, for any misrepresentation of fact material to this Consent Order made by Revere or Dobyns during the course of ERA's audit preceding issuance of the Remedial Order cited in paragraph 302 above, during any stage of the litigation relating to Revere's and Dobyns's alleged liability for the violations asserted in FERC Docket No. RO92–4–000, or during the course of the negotiations that preceded this Consent Order.

VI. Reporting and Recordkeeping Requirements

601. Revere and Dobyns shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to this Consent Order, Revere and Dobyns shall also maintain any records in their possession for the time period covered by this Consent Order evidencing sales volume data for crude oil and refined products subject to controls and customers' names and addresses, until thirty (30) days after final distribution by DOE of the funds paid pursuant to this Consent Order. If requested, Revere and Dobyns shall make such information available to DOE. Except as otherwise provided in this paragraph, upon timely payment to DOE of the amounts required to be paid under this Consent Order, Revere and Dobyns are relieved of their obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters covered by this Consent Order.

602. Except for formal requests for information regarding compliance by other firms with the federal petroleum price and allocation regulations, Revere and Dobyns will not be subject hereafter to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to their activities subject to such regulations regarding the matters covered by this Consent Order.

603. This Consent Order is subject to disclosure by DOE pursuant to the requirements of the Freedom of Information Act ("FOIA"), as amended, 5 U.S.C. 552. Revere and Dobyns waive all claims which they may have that some or all of the information contained in this Consent Order is exempt from the mandatory public disclosure requirements of the FOIA, as amended, is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure.

VII. Contractual Undertaking

701. It is the understanding and express intention of Revere, Dobyns, and DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Revere, Dobyns, and DOE each reserves the right to institute a civil action in an appropriate United States District Court, if necessary, to secure enforcement of the terms of this Consent Order, and DOE also reserves the right to seek appropriate penalties for any failure to comply with the terms of this Consent Order. Consistent with Departmental policy, DOE will undertake the defense of the Consent Order in response to any litigation challenging the Consent Order's validity in which the DOE is named as a party. Revere and Dobyns agree to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Subject to Article IX, this Consent Order is a final order of DOE having the same force and effect as a Remedial Order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Revere and Dobyns hereby waive their right to administrative or judicial appeal from this Order, but they reserve the right to participate in any such review initiated by a third party.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. DOE will consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, DOE reserves the right to withdraw consent to this Consent Order by written notice to Revere and Dobyns, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred fiftieth (150th) day following execution by Revere and Dobyns, they may, at any time thereafter, but before the effective date, withdraw their agreement to this Consent Order by written notice to DOE, in which event this Consent Order shall be null and void.

I, the duly appointed personal representative of Richard E. Dobyns, hereby agree to and accept the foregoing Consent Order on his behalf.

David A. Jentho,

Personal Representative of Richard E. Dobyns.

Dated: May 13, 1993.

I, the undersigned, a duly authorized representative for the Department of Energy, Economic Regulatory Administration, hereby agree to and accept on behalf of said Administration the foregoing Consent Order.

M.C. Lorenz,

Chief Counsel, ERA, DOE.

Dated: June 8, 1993.

I, the undersigned, a duly authorized representative of Revere Petroleum Corporation, hereby agree to and accept the foregoing Consent Order on behalf of Revere Petroleum Corporation.

David A. Jentho,

Secretary-Treasurer.

Dated: May 13, 1993.

EXHIBIT A

[Docket No. RO92-4-000]

Revere Petroleum Corp. and Richard E. Dobyns; Withdrawal of Petition for Review of Remedial Order by Revere Petroleum Corporation and Richard E. Dobyns

Revere Petroleum Corporation ("Revere") and Richard E. Dobyns ("Dobyns") and the Economic Regulatory Administration of the Department of Energy ("DOE") have entered into a Consent Order which resolves all the matters at issue in the above-captioned proceeding. 10 CFR 205.199J. Therefore, pursuant to 18 CFR 385.916(a) of the Commission's Rules of Practice and Procedure, Revere and Dobyns hereby withdraw their petition for review of the Remedial Order issued to them on May 29, 1992.

Revere and Dobyns respectfully request that the Presiding Judge issue and serve upon all participants herein an order terminating this proceeding with prejudice.

Respectfully submitted,

David D. Aughtry,

Chamberlain, Hrdlicka, White, Williams & Martin, 1400 Harris Tower, 233 Peachtree Street, NE. Atlanta, Georgia 30303 (404) 659-1410

Counsel for Petitioners

[FR Doc. 93-13956 Filed 6-11-93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER93-684-000, et al.]

The Montana Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 7, 1993.

Take notice that the following filings have been made with the Commission:

1. The Montana Power Co.

[Docket No. ER93-684-000]

Take notice that on May 28, 1993, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 Supplements No. 3 and No. 4 to Rate Schedule FERC No. 179. Supplement No. 3 is comprised of a "Second Amendment to Firm Capacity and Energy Purchase Agreement Between The Montana Power Company and Black Hills Power and Light Company" (Second Amendment). Supplement No. 4 is comprised of a "Third Amendment to Firm Capacity and Energy Purchase Agreement Between The Montana Power Company and Black Hills Power and Light Company" (Third Amendment). Montana requests that the Commission (a) accept the Second and Third Amendments for filing, to be effective June 1, 1993; and (b) grant a waiver of notice pursuant to 18 CFR 35.11, so as to allow the filing of the Agreement less than 60 days prior to the date on which service under the Second and Third Amendments is to commence.

A copy of the filing was served upon Black Hills Power and Light Company.

Comment date: June 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Western Resources, Inc.

[Docket No. ER93-683-000]

Take notice that on May 28, 1993, Western Resources, Inc. tendered for filing an Electric Power, Transmission and Service Contract between Kansas Gas and Electric Company (KG&E) and the Kansas Electric Power Cooperative, Inc. (KEPCo). KG&E states that the filing is a replacement to the contract currently in effect between KG&E and KEPCo. KG&E requests an effective date of June 1, 1993.

Notice of the filing has been served upon KEPCo and the Kansas Corporation Commission.

Comment date: June 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Northeast Utilities Service Co.

[Docket No. ER93–403–000]

Take notice that on May 28, 1993, Northeast Utilities Service Company (NUSCO) tendered for filing a response to the deficiency letter in Docket No. ER93–403–000 regarding transmission service between the NU System Companies and New England Power Company (NEP). NUSCO renews its request for an April 1, 1993 effective date.

NUSCO states that copies of the filing have been mailed to NEP.

Comment date: June 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. West Texas Utilities Co.

[Docket No. ER93–685–000]

Take notice that on May 28, 1993, West Texas Utilities Company (WTU) tendered for filing a Letter Agreement between WTU and the City of Brady, Texas and a Letter Agreement between WTU and the City of Coleman, Texas. Pursuant to the Letter Agreements, WTU has agreed to make additional energy available to Brady and Coleman during the on-peak hours of the summer months of 1993, pursuant to Supplemental Sales Agreements between WTU and Brady and Coleman.

Copies of the filing have been served on Brady and Coleman, Texas and on the Public Utility Commission of Texas.

Comment date: June 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Long Island Lighting Co.

[Docket No. ER93–687–000]

Take notice that Long Island Lighting Company (LILCO or Company) on June 1, 1993, tendered for filing proposed changes in its FERC Rate Schedule No. 40, pursuant to which LILCO transmits New York Power Authority (Power Authority) Economic Development Power to certain Economic Development Power Consumers in LILCO's service territory.

LILCO requests an effective date 60 days following the date of this filing. LILCO states that a copy of its filing has been served on the Power Authority, Suffolk County Electrical Agency, Nassau County Public Utility Agency, and Public Service Commission of the State of New York.

Comment date: June 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Central Vermont Public Service Corp.

[Docket No. ER93–677–000]

Take notice that on May 28, 1993, Central Vermont Public Service Corporation (CVPS) tendered for filing the Actual 1992 Cost Report required under Article 2.3(A) on Original Sheet No. 21 of FERC Electric Tariff, Original Volume No. 4, of Central Vermont Public Service Corporation (Company) under which the Company provides Unreserved System Power Service to the following Customers:

Lyndonville Electric Department
Village of Ludlow Electric Light Department
Village of Johnson Water and Light Department
Village of Hyde Park Water and Light Department

Comment date: June 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Central Vermont Public Service Corp.

[Docket No. ER93–678–000]

Take notice that on May 28, 1993, Central Vermont Public Service Corporation (CVPS) tendered for filing the Actual 1992 Cost Report required under Article 2.4 on Second Revised Sheet No. 18 of FERC Electric Tariff, Original Volume No. 3, of Central Vermont under which Central Vermont provides transmission and distribution service to the following Customers:

Vermont Electric Cooperative, Inc.
Lyndonville Electric Department
Village of Ludlow Electric Light Department
Village of Johnson Water and Light Department
Village of Hyde Park Water and Light Department
Rochester Electric Light and Power Company

Comment date: June 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Central Vermont Public Service Corp.

[Docket No. ER93–679–000]

Take notice that on May 28, 1993, Central Vermont Public Service Corporation (CVPS) tendered for filing the Actual 1992 Cost Report required under Paragraph Q–1 on Original Sheet No. 18 of the Rate Schedule FERC No. 135 (RS–2 rate schedule) under which Central Vermont Public Service Corporation (Company) sells electric power to Connecticut Valley Electric Company Inc. (Customer). The Company states that the Cost Report reflects changes to the RS–2 rate schedule which were approved by the Commission's June 6, 1989 order in Docket No. ER88–456–000.

Comment date: June 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Arizona Public Service Co.

[Docket No. ER93–680–000]

Take notice that on May 28, 1993, Arizona Public Service Company (APS) tendered for filing a Service Agreement and related Service Schedules A and B (Agreement) for Firm Transmission Service provided by APS to the Navajo Tribal Utility Authority (NTUA). This Agreement provides for the basic firm transmission and ancillary services to be furnished for the purpose of transmitting third party electric power that NTUA has secured from Tucson Electric Power Company (TEP) to various delivery points on the Navajo Reservation.

APS requests waiver of the Commission's Notice Requirements 18 CFR 35.3(a) under § 35.11 to allow for an effective date of June 1, 1993, the date service under the NTUA/TEP Wholesale Power Supply Agreement is scheduled to commence.

Copies of this filing have been served upon NTUA, Walter Wolf, Esq. (NTUA's attorney), R.W. Beck & Associates (NTUA's consultant), Spiegel & McDiarmid (NTUA's attorney) and the Arizona Corporation Commission.

Comment date: June 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Puget Sound Power & Light Co.

[Docket No. ER93–681–000]

Take notice that on May 28, 1993, Puget Sound Power & Light Company (Puget) tendered for filing an unsigned Emergency Temporary Interconnection Agreement between Public Utility District No. 1 of Grant County (District) and Puget dated as of May 21, 1993. Under the Agreement, Puget is to temporarily interconnect with District's mobile substation in order to provide District with emergency transmission service until a non-functioning District transformer can be replaced.

Copies of the filing were served upon District.

Comment date: June 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–13885 Filed 6–11–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10881–001–South Carolina]

Daniel Nelson Evans, Jr.; Availability of Environmental Assessment

June 8, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Whitney Mills Project located on the Lawson's Fork Creek, Spartanburg County, South Carolina, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–13899 Filed 6–11–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2425–001 Virginia]

Potomac Edison Co.; Availability of Environmental Assessment

June 8, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new major license for the existing Luray/Newport Hydroelectric Project, located on the South Fork Shenandoah River in Page County, Virginia, near the towns of Luray and Newport, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing and potential future environmental effects of the project and concludes that approval of the project would not be a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–13896 Filed 6–11–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST93–3198–000 through ST93–3637–000]

Tennessee Gas Pipeline Co.; Self-Implementing Transactions

June 7, 1993.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA), section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an intestate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

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[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-3198	Tennessee Gas Pipeline Co.	U.S. Steel Group	03-31-93	G-S	50,000	N	I	03-01-93	Indef.
ST93-3199	Tennessee Gas Pipeline Co.	Cornerstone Production Co.	03-31-93	G-S	150,000	N	I	03-01-93	Indef.
ST93-3200	Williston Basin Inter. P/L Co.	Koch Hydrocarbon Co.	03-31-93	G-S	13,953	A	I	03-01-93	03-31-93.
ST93-3201	Colorado Interstate Gas Co.	Coastal Gas Marketing Co.	03-31-93	G-S	150,000	A	I	03-01-93	Indef.
ST93-3202	Colorado Interstate Gas Co.	North Central Oil Corp.	03-31-93	G-S	25,000	N	I	01-13-93	02-01-96.
ST93-3203	Transcontinental P/L Corp.	City of Kings Mountain.	03-31-93	B	58,500	N	I	03-24-93	Indef.
ST93-3204	Trunkline Gas Co	Amerada Hess Corp	04-01-93	G-S	50,000	N	I	03-20-93	Indef.
ST93-3205	Trunkline Gas Co	Eastex Hydrocarbons, Inc.	04-01-93	G-S	20,000	N	I	03-20-93	Indef.
ST93-3206	Trunkline Gas Co	O & R Energy, Inc ...	04-01-93	G-S	50,000	N	I	03-27-93	Indef.
ST93-3207	Trunkline Gas Co	Midcon Gas Services Corp.	04-01-93	G-S	100,000	N	I	03-13-93	Indef.
ST93-3208	Trunkline Gas Co	Western Gas Marketing, Inc.	04-01-93	G-S	100,000	N	I	03-25-93	Indef.
ST93-3209	Trunkline Gas Co	CNG Producing Co .	04-01-93	G-S	30,000	N	I	03-28-93	Indef.
ST93-3210	Colorado Interstate Gas Co.	City of Colorado Springs.	04-01-93	B	20,000	N	I	04-01-93	09-30-96.
ST93-3211	Mid Louisiana Gas Co.	Louisiana Marketing Co.	04-01-93	G-S	500,000	A	I	03-01-93	03-31-93.
ST93-3212	Dow Pipeline Co	Amoco Gas Co	04-01-93	C	25,000	N	I	02-01-93	02-01-95.
ST93-3213	Monterey Pipeline Co.	Transcontinental Gas Pipe Line Co.	04-01-93	C	25,000	N	I	03-01-93	Indef.
ST93-3214	Monterey Pipeline Co.	Columbia Gulf Transmission Co.	04-01-93	C	5,000	N	I	02-01-93	Indef.
ST93-3215	Natural Gas P/L Co. of America.	American Hunter Exploration, LTD.	04-01-93	G-S	75,000	N	I	03-18-93	Indef.
ST93-3216	Northern Natural Gas Co.	Direct Energy Marketing Limited.	04-01-93	G-S	50	N	F/I	03-05-93	Indef.
ST93-3217	Florida Gas Transmission Co.	Valero Transmission, L.P.	04-01-93	B	500	N	I	03-01-93	Indef.
ST93-3218	Florida Gas Transmission Co.	Texaco Gas Marketing, Inc.	04-01-93	G-S	50,000	N	I	03-06-93	Indef.
ST93-3219	Texas Gas Transmission Corp.	CNG Producing Co .	04-02-93	G-S	20,000	N	I	03-17-93	Indef.
ST93-3220	Texas Gas Transmission Corp.	Eagle Natural Gas Co.	04-02-93	G-S	20,000	N	I	03-25-93	Indef.
ST93-3221	Arkla Energy Resources Co.	Clinton Gas Transmission, Inc.	04-02-93	G-S	5,000	N	I	04-01-93	Indef.
ST93-3222	Delhi Gas Pipeline Corp.	Panhandle Eastern P/L Co., et al.	04-05-93	C	7,000	N	I	03-12-93	Indef.
ST93-3223	Tennessee Gas Pipeline Co.	Eastern Marketing Corp.	04-05-93	G-S	50,000	N	I	03-20-93	Indef.
ST93-3224	Tennessee Gas Pipeline Co.	CNG Transmission Corp.	04-05-93	G	37,669	N	F	03-15-93	11-01-00.
ST93-3225	ANR Pipeline Co	Yuma Gas Corp	04-05-93	G-S	50,000	N	I	03-26-93	Indef.
ST93-3226	ANR Pipeline Co	CNG Producing Co .	04-05-93	G-S	500,000	N	I	03-23-93	Indef.
ST93-3227	ANR Pipeline Co	Murphy Oil USA, Inc	04-05-93	G-S	100,000	N	I	03-20-93	Indef.
ST93-3228	ANR Pipeline Co	Monterey Pipeline co	04-05-93	B	100,000	N	I	03-16-93	Indef.
ST93-3229	ANR Pipeline Co	Triumph Gas Marketing Co.	04-05-93	G-S	200,000	N	I	03-14-93	Indef.
ST93-3230	Arkla Energy Resources Co.	Gas Energy Development.	04-05-93	G-S	1,000	N	I	04-01-93	Indef.
ST93-3231	Panhandle Eastern Pipe Line Co.	Amgas, Inc	04-05-93	G-S	40	N	I	03-20-93	Indef.
ST93-3232	Panhandle Eastern Pipe Line Co.	Semco Energy Services, Inc.	04-05-93	G-S	9,387	N	F	03-01-93	Indef.
ST93-3233	Panhandle Eastern Pipe Line Co.	Nitex, Inc	04-05-93	G-S	20,000	N	I	03-16-93	Indef.
ST93-3234	Colorado Interstate Gas Co.	KN Gas Marketing, Inc.	04-06-93	G-S	10,000	N	I	03-20-93	Indef.
ST93-3235	Colorado Interstate Gas Co.	North Canadian Marketing Corp.	04-06-93	G-S	10,000	N	I	03-24-93	Indef.
ST93-3236	Valero Transmission, L.P.	United Gas Pipeline	04-06-93	C	25,000	N	I	03-11-93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-3237	Northern Natural Gas Co.	North Canadian Marketing Corp.	04-06-93	G-S	18,000	N	I/F	10-15-92	10-14-94.
ST93-3238	Northern Natural Gas Co.	Wisconsin Power & Light.	04-06-93	G-S	150,000	N	I/F	12-01-92	Indef.
ST93-3239	Northern Natural Gas Co.	Seagull Marketing Services, Inc.	04-06-93	G-S	50,000	N	I/F	02-01-93	Indef.
ST93-3240	Transcontinental Gas P/L Corp.	Cape Fear Energy ...	04-06-93	G-S	700,000	A	I	03-29-93	Indef.
ST93-3241	Texas Eastern Transmission Corp.	Texas Southeastern Gas Co.	04-07-93	B	20,000	N	I	03-20-93	Indef.
ST93-3242	Texas Eastern Transmission Corp.	Public Service Electric & Gas Co.	04-07-93	B	30,000	N	I	03-26-93	Indef.
ST93-3243	Texas Eastern Transmission Corp.	Equitrans, Inc	04-07-93	G	100,000	N	I	03-18-93	Indef.
ST93-3244	Texas Eastern Transmission Corp.	Yuma Gas Corp	04-07-93	G-S	25,000	N	I	03-20-93	Indef.
ST93-3245	High Island Offshore System.	Energy Development Corp.	04-07-93	K-S	100,000	N	I	03-01-93	Indef.
ST93-3246	Northwest Pipeline Corp.	Petro-Canada Hydrocarbons, Inc.	04-07-93	G-S	30,772	N	F	03-11-93	Indef.
ST93-3247	CNG Transmission Corp.	New Jersey Natural Gas Co.	04-07-93	G-S	5,000	N	I	11-01-92	Indef.
ST93-3248	CNG Transmission Corp.	Elizabethtown Gas Co.	04-07-93	G-S	5,522	N	I	05-01-92	Indef.
ST93-3249	CNG Transmission Corp.	North Penn Gas Co .	04-07-93	G-S	2,104	N	I	10-02-91	Indef.
ST93-3250	CNG Transmission Corp.	Virginia Natural Gas	04-07-93	G-S	6,700	Y	I	12-06-92	Indef.
ST93-3251	CNG Transmission Corp.	Piedmont Natural Gas Co.	04-07-93	G-S	20,000	N	I	07-29-92	Indef.
ST93-3252	CNG Transmission Corp.	A & W and Mountaineer Gas Co.	04-07-93	G-S	4,000	N	I	04-01-92	Indef.
ST93-3253	CNG Transmission Corp.	National Fuel Gas Supply.	04-07-93	G-S	45,850	N	I	12-01-90	Indef.
ST93-3254	CNG Transmission Corp.	Long Island Lighting Co.	04-07-93	G-S	75,000	N	I	04-01-92	Indef.
ST93-3255	CNG Transmission Corp.	NGC Transportation, Inc.	04-07-93	G-S	50,000	N	I	06-01-92	Indef.
ST93-3256	CNG Transmission Corp.	Baltimore Gas & Electric Co.	04-07-93	G-S	75,000	N	I	05-05-92	Indef.
ST93-3257	Williston Basin Inter. P/L Co.	Rainbow Gas Co	04-07-93	G-S	352,836	A	I	03-11-93	07-31-94.
ST93-3258	Natural Gas P/L Co. of America.	Cimarron Gas Co., Inc.	04-07-93	G-S	20,000	N	I	03-20-93	Indef.
ST93-3259	Columbia Gas Transmission Corp.	Coenergy Venture Corp.	04-07-93	G-S	100,000	Y	I	03-17-93	Indef.
ST93-3260	Columbia Gas Transmission Corp.	Capital Oil & Gas, Inc.	04-07-93	G-S	10,000	N	I	03-12-93	Indef.
ST93-3261	Columbia Gas Transmission Corp.	Sprague Energy Corp.	04-07-93	G-S	40,000	Y	I	03-15-93	Indef.
ST93-3262	Columbia Gas Transmission Corp.	Minard Run Oil Co ..	04-07-93	G-S	950	Y	I	03-15-93	Indef.
ST93-3263	Columbia Gas Transmission Corp.	Eastern Shore Natural Gas Co.	04-07-93	G-S	50,000	Y	I	03-15-93	Indef.
ST93-3264	Columbia Gas Transmission Corp.	Three Rivers Pipeline Co.	04-07-93	B	50,000	Y	I	03-15-93	Indef.
ST93-3265	Columbia Gas Transmission Corp.	Endevco Oil & Gas Co.	04-07-93	G-S	40,000	Y	I	03-22-93	Indef.
ST93-3266	Columbia Gas Transmission Corp.	Vesta Energy Co	04-07-93	G-S	20,000	Y	I	03-15-93	Indef.
ST93-3267	Columbia Gas Transmission Corp.	Prestonsburg City's Utilities Comm.	04-07-93	B	3,000	N	I	03-15-93	Indef.
ST93-3268	Columbia Gas Transmission Corp.	Fina Natural Gas Co	04-07-93	G-S	75,000	Y	I	03-15-93	Indef.
ST93-3269	Columbia Gas Transmission Corp.	Chautauqua Energy Marketing, Inc.	04-07-93	G-S	8,500	Y	I	03-15-93	Indef.
ST93-3270	Columbia Gas Transmission Corp.	LL&E Gas Marketing, Inc.	04-07-93	G-S	10,000	Y	I	03-15-93	Indef.
ST93-3271	Columbia Gas Transmission Corp.	Torch Gas, L.C	04-07-93	G-S	100,000	Y	I	03-15-93	Indef.

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Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-3272	Columbia Gas Transmission Corp.	Howard Energy Co., Inc.	04-07-93	G-S	200,000	Y	I	03-15-93	Indef.
ST93-3273	Columbia Gas Transmission Corp.	Premier Enterprises, Inc.	04-07-93	G-S	50,000	Y	I	03-15-93	Indef.
ST93-3274	Columbia Gas Transmission Corp.	GTE Products Corp .	04-07-93	G-S	3,000	N	I	03-15-93	Indef.
ST93-3275	Columbia Gas Transmission Corp.	Prior Intrastate Corp	04-07-93	G-S	100,000	Y	I	03-15-93	Indef.
ST93-3276	Columbia Gas Transmission Corp.	Tejas Hydrocarbons Co.	04-07-93	G-S	100,000	Y	I	03-15-93	Indef.
ST93-3277	Columbia Gas Transmission Corp.	Williams Power Services Co.	04-07-93	G-S	54,000	Y	I	03-15-93	Indef.
ST93-3278	Natural Gas P/L Co. of America.	American Hunter Energy.	04-08-93	G-S	100,000	N	I	03-26-93	Indef.
ST93-3279	Channel Industries Gas Co.	Tennessee Gas Pipeline Co.	04-08-93	C	75,000	A	I	03-13-93	Indef.
ST93-3280	Tennessee Gas Pipeline Co.	Mountaineer Gas Co	04-09-93	G-S	5,000	N	F	04-08-93	Indef.
ST93-3281	Tennessee Gas Pipeline Co.	Mountaineer Gas Co	04-09-93	G-S	5,000	N	F	05-08-93	Indef.
ST93-3282	Transok, Inc	ANR Pipeline Co., et al.	04-09-93	C	50,000	N	I	03-25-93	Indef.
ST93-3283	Transok, Inc	ANR Pipeline Co., et al.	04-09-93	C	100,000	N	I	03-13-93	Indef.
ST93-3284	Transok, Inc	ANR Pipeline Co., et al.	04-09-93	C	50,000	N	I	03-20-93	Indef.
ST93-3285	Transok, Inc	ANR Pipeline Co., et al.	04-09-93	C	50,000	N	I	03-20-93	Indef.
ST93-3286	Delhi Gas Pipeline Corp.	Nat. Gas P/L Co. of America, et al.	04-09-93	C	3,000	N	I	03-12-93	Indef.
ST93-3287	Northern Natural Gas Co.	Midcon Marketing Corp.	04-09-93	G-S	100,000	N	F/I	12-01-92	Indef.
ST93-3288	Northern Natural Gas Co.	Mountain Iron & Supply Co.	04-09-93	G-S	300	N	F/I	11-01-92	Indef.
ST93-3289	Northern Natural Gas Co.	Transok Gas Co	04-09-93	G-S	25,000	N	F/I	11-01-92	Indef.
ST93-3290	Northern Natural Gas Co.	Bridgegas USA, Inc .	04-09-93	G-S	200,000	N	F/I	11-02-92	Indef.
ST93-3291	Northern Natural Gas Co.	Arkla Resources, Inc	04-09-93	G-S	2,600	N	F/I	11-01-92	Indef.
ST93-3292	Northern Natural Gas Co.	Gas Energy Development.	04-09-93	G-S	10,000	N	F/I	10-13-92	Indef.
ST93-3293	Gas Co. of New Mexico.	El Paso Natural Gas Co.	04-09-93	C	8,000	N	I	03-01-93	01-01-94.
ST93-3294	Lone Star Gas Co ...	Transwestern Gas Co., et al.	04-09-93	C	60,000	N	I	03-14-93	Indef.
ST93-3295	Enoglex Inc	Natural Gas Pipeline Co. of America.	04-09-93	C	20,000	N	I	04-01-93	Indef.
ST93-3296	Enogex Inc	Panhandle Eastern Pipeline Co.	04-09-93	C	10,000	N	I	04-01-93	Indef.
ST93-3297	Enogex Inc	Panhandle Eastern Pipeline Co.	04-09-93	C	10,000	N	I	04-02-93	Indef.
ST93-3298	Enogex Inc	Black Marlin Pipeline Co.	04-09-93	C	50,000	N	I	03-19-93	Indef.
ST93-3299	Enogex Inc	Panhandle Eastern Pipeline Co.	04-09-93	C	50,000	N	I	04-02-93	Indef.
ST93-3300	Enogex Inc	William Natural Gas Co.	04-09-93	C	5,000	N	I	03-23-93	Indef.
ST93-3301	Louisiana Intrastate Gas Corp.	ANR Pipeline Co., et al.	04-12-93	C	50,000	N	I	04-02-93	Indef.
ST93-3302	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	04-12-93	G-S	50,000	N	I	03-24-93	Indef.
ST93-3303	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	04-12-93	G-S	10,200,000	N	I	03-23-93	Indef.
ST93-3304	Algonquin Gas Transmission Co.	Entrade Corp	04-12-93	G-S	9,700,000	N	I	03-24-93	Indef.
ST93-3305	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	04-12-93	G-S	77,500	N	F	03-12-93	Indef.
ST93-3306	K N Energy, Inc	Associated Intrastate Pipeline Co.	04-12-93	B	50,000	A	I	03-13-93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-3307	Natural Gas P/L Co. of America.	National Gas Resources, L.P.	04-12-93	G-S	50,000	N	I	04-01-93	Indef.
ST93-3308	Natural Gas P/L Co. of America.	PanCanadian Petroleum Co.	04-12-93	G-S	100,000	N	I	04-01-93	Indef.
ST93-3309	Arkla Energy Resources Co.	Oshe Foods, Inc	04-12-93	G-S	350	N	I	04-01-93	Indef.
ST93-3310	East Ohio Gas Co ...	General Motors Corp	04-12-93	G-ST	500	N	N/A	04-01-93	04-30-94.
ST93-3312	Texas Gas Transmission Corp.	Conoco, Inc	04-12-93	G-S	20,000	N	I	03-11-93	Indef.
ST93-3313	United Gas Pipe Line Co.	Vista Chemical Co ..	04-13-93	G-S	25,152	N	I	03-31-93	07-29-93.
ST93-3314	United Gas Pipe Line Co.	Sonat Marketing Co	04-13-93	G-S	26,200	N	I	03-31-93	07-29-93.
ST93-3315	United Gas Pipe Line Co.	Chevron U.S.A., Inc	04-13-93	G-S	104,800	N	I	03-19-93	07-17-93.
ST93-3316	United Gas Pipe Line Co.	Endevco Oil & Gas Co.	04-13-93	G-S	26,200	N	I	04-01-93	07-30-93.
ST93-3317	United Gas Pipe Line Co.	Union Pacific Fuels, Inc.	04-13-93	G-S	60,000	N	I	03-31-93	07-29-93.
ST93-3318	United Gas Pipe Line Co.	Amax Oil & Gas, Inc	04-13-93	G-S	20,960	N	I	03-31-93	07-29-93.
ST93-3319	United Gas Pipe Line Co.	Excel Gas Marketing, Inc.	04-13-93	G-S	102,704	N	I	04-01-93	07-30-93.
ST93-3320	Houston Pipe Line Co.	Tennessee Gas Pipeline Co.	04-13-93	C	50,000	N	I	04-01-93	Indef.
ST93-3321	Houston Pipe Line Co.	Enron Gas Marketing, Inc.	04-13-93	G-I	100,000	N	I	04-01-93	Indef.
ST93-3322	Houston Pipe Line Co.	Amoco Energy Trading Co.	04-13-93	G-I	15,000	N	I	04-01-93	Indef.
ST93-3323	Houston Pipe Line Co.	Mitchell Marketing Co.	04-13-93	G-I	17,500	N	I	03-27-93	Indef.
ST93-3324	Houston Pipe Line Co.	Tennessee Gas Pipeline Co.	04-13-93	G	10,000	N	I	03-20-93	Indef.
ST93-3325	Houston Pipe Line Co.	Tennessee Gas Pipeline Co.	04-13-93	G	100,000	N	I	03-14-93	Indef.
ST93-3326	Natural Gas P/L Co. of America.	Elf Exploration, Inc ..	04-14-93	G-S	100,000	N	I	04-01-93	Indef.
ST93-3327	Natural Gas P/L Co. of America.	Midcon Gas Services Corp.	04-14-93	G-S	100,000	A	I	03-19-93	Indef.
ST93-3328	Northern Border Pipeline Co.	Cibola Corp	04-14-93	G-S	100,000	Y	I	04-03-93	12-17-94.
ST93-3329	Northern Natural Gas Co.	Arkla Energy Marketing.	04-14-93	G-S	100,000	N	F/I	03-25-93	Indef.
ST93-3330	Channel Industries Gas Co.	Sabine Pipe Line Co	04-14-93	C	75,000	N	I	03-17-93	Indef.
ST93-3331	Columbia Gulf Transmission Co.	Cng Producing Co ...	04-14-93	G-S	100,000	N	I	04-03-93	Indef.
ST93-3332	Columbia Gulf Transmission Co.	Oryx Gas Marketing, L.P.	04-14-93	G-S	70,000	N	I	04-01-93	Indef.
ST93-3333	Columbia Gulf Transmission Co.	Oxy USA, Inc	04-14-93	G-S	40,000	N	I	04-01-93	Indef.
ST93-3334	Columbia Gulf Transmission Co.	Northern Natural Gas Co.	04-14-93	G	10,000	N	I	03-27-93	Indef.
ST93-3335	Columbia Gulf Transmission Co.	Kerr-McGee Corp	04-14-93	G-S	100,000	N	I	04-01-93	Indef.
ST93-3336	Columbia Gulf Transmission Co.	Elf Exploration, Inc ..	04-14-93	G-S	30,000	N	I	04-01-93	Indef.
ST93-3337	Columbia Gulf Transmission Co.	Energy Development Corp.	04-14-93	G-S	200,000	N	I	03-25-92	Indef.
ST93-3338	Phillips Gas Pipeline Co.	Phillips Texas Border Pipeline Co.	04-15-93	B	75,000	A	I	01-01-93	Indef.
ST93-3339	Tennessee Gas Pipeline Co.	Mg Natural Gas Corp.	04-15-93	G-S	160,000	N	I	01-15-92	Indef.
ST93-3340	Midwestern Gas Transmission Co.	Energy Development Corp.	04-15-93	G-S	150,000	N	I	03-20-93	Indef.
ST93-3341	El Paso Natural Gas Co.	Tristar Gas Co	04-15-93	G-S	1,500	N	I	02-01-93	Indef.
ST93-3342	Transwestern Pipeline Co.	Washington Energy Marketing, Inc.	04-15-93	G-S	200,000	N	I	03-31-93	Indef.
ST93-3343	Ozark Gas Transmission System.	Gas Energy Development Co.	04-16-93	G-S	10,000	N	F	04-01-93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-3344	Northern Natural Gas Co.	Peninsular Gas Co ..	04-16-93	G-S	390	N	F/I	01-28-93	Indef.
ST93-3345	Northern Natural Gas Co.	Peninsular Gas Co ..	04-16-93	G-S	510	N	F/I	02-01-93	Indef.
ST93-3346	Northern Natural Gas Co.	OXY USA, Inc	04-16-93	G-S	39,298	N	F/I	01-24-93	Indef.
ST93-3347	Natural Gas P/L Co. of America.	Olympic Fuels Co	04-16-93	G-S	40,000	N	I	04-01-93	Indef.
ST93-3348	Williams Natural Gas Co.	Nebraska Municipal Gas Agency.	04-16-93	G-S	10,000	N	I	04-15-93	Indef.
ST93-3349	Williams Natural Gas Co.	Lawrence Paper Co	04-16-93	G-S	260	N	F	04-01-93	Indef.
ST93-3350	ANR Pipeline Co	Texaco Gas Marketing, Inc.	04-16-93	G-S	100,000	N	F	04-01-93	Indef.
ST93-3351	ANR Pipeline Co	Polaris Pipeline Corp	04-16-93	G-S	50,000	N	I	03-27-93	Indef.
ST93-3352	ANR Pipeline Co	Murphy Exploration & Production Co.	04-16-93	G-S	100,000	N	I	04-01-93	Indef.
ST93-3353	ANR Pipeline Co	Western Gas Marketing, Inc.	04-16-93	G-S	437,000	N	I	04-01-93	Indef.
ST93-3354	ANR Pipeline Co	MG Natural Gas Corp.	04-16-93	G-S	100,000	N	I	04-01-93	Indef.
ST93-3355	ANR Pipeline Co	Enron Gas Marketing, Inc.	04-16-93	G-S	200,000	N	I	04-01-93	Indef.
ST93-3356	ANR Pipeline Co	Columbia Gas of Ohio, Inc.	04-16-93	B	50,000	N	I	04-01-93	Indef.
ST93-3357	ANR Pipeline Co	Fina Natural Gas Co	04-16-93	G-S	50,000	N	I	04-01-93	Indef.
ST93-3358	ANR Pipeline Co	Enron Gas Marketing, Inc.	04-16-93	G-S	200,000	N	I	04-01-93	Indef.
ST93-3359	Southern Natural Gas Co.	Texas-Ohio Gas, Inc	04-16-93	G-S	2,500	N	I	04-02-93	Indef.
ST93-3360	Southern Natural Gas Co.	Allied Lime Co	04-16-93	G-S	1,000	N	I	03-31-93	Indef.
ST93-3361	CNG Transmission Corp.	Three River Health ..	04-19-93	G-S	500	N	I	03-30-93	Indef.
ST93-3362	CNG Transmission Corp.	City of Richmond	04-19-93	G-S	2,744	N	I	04-01-93	Indef.
ST93-3363	CNG Transmission Corp.	Birchwood Health Care Center.	04-19-93	G-S	500	N	I	03-30-93	Indef.
ST93-3364	CNG Transmission Corp.	Paul Wissmach Glass Co., Inc.	04-19-93	G-S	210	N	I	04-01-93	Indef.
ST93-3365	Trunkline Gas Co	Stellar Gas Co	04-19-93	G-S	50,000	N	I	04-03-93	Indef.
ST93-3366	Trunkline Gas Co	Mega Natural Gas Co.	04-19-93	G-S	50,000	N	I	04-01-93	Indef.
ST93-3367	Trunkline Gas Co	Aquila Energy Marketing Corp.	04-19-93	G-S	20,000	N	I	03-27-93	Indef.
ST93-3368	Trunkline Gas Co	Tennessee Gas Pipeline Co.	04-19-93	G	12,000	N	I	04-02-93	Indef.
ST93-3369	Trunkline Gas Co	Oryx Gas Marketing, L.P.	04-19-93	G-S	125,000	N	I	04-01-92	Indef.
ST93-3370	Panhandle Eastern Pipe Line Co.	American Hunter Energy Limited.	04-19-93	G-S	64,500	N	I	03-27-93	Indef.
ST93-3371	Columbia Gulf Transmission Co.	CNG Trading Co	04-19-93	G-S	20,000	N	I	03-20-93	Indef.
ST93-3372	Columbia Gas Transmission Corp.	New York State Electric & Gas Corp.	04-19-93	B	7,425	Y	F	04-01-93	Indef.
ST93-3373	Columbia Gas Transmission Corp.	Columbia Gas Development Corp.	04-19-93	G-S	1,182	A	F	04-01-93	Indef.
ST93-3374	Stingray Pipeline Co	Associated Natural Gas, Inc.	04-19-93	K-S	60,000	N	I	04-01-93	Indef.
ST93-3375	Natural Gas P/L Co. of America.	Torch Gas, L.C	04-19-93	G-S	20,000	N	I	04-05-93	Indef.
ST93-3376	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc.	04-19-93	G-S	150,000	N	I	04-10-93	Indef.
ST93-3377	United Gas Pipe Line Co.	Excel Gas Marketing, Inc.	04-19-93	G-S	102,704	N	I	04-05-93	08-03-93.
ST93-3378	United Gas Pipe Line Co.	Riverside Energy Resources.	04-19-93	G-S	67,072	N	I	03-31-93	03-31-95.
ST93-3379	United Gas Pipe Line Co.	Scana Hydrocarbons, Inc.	04-19-93	G-S	100,000	N	I	04-06-93	08-04-93.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-3380	Arkla Energy Resources Co.	Transok Gas Co	04-18-93	G-S	50,000	N	I	03-01-93	Indef.
ST93-3381	Tennessee Gas Pipeline Co.	Petroleum Source & Sys. Group, Inc.	04-19-93	G-S	4,000	N	I	04-01-93	Indef.
ST93-3382	Valero Transmission, L.P.	United Gas Pipeline	04-19-93	C	5,000	N	I	03-24-93	Indef.
ST93-3383	Valero Transmission, L.P.	Transcontinental Gas Pipeline Corp.	04-19-93	C	5,000	N	I	03-24-93	Indef.
ST93-3384	Valero Transmission, L.P.	Transcontinental Gas Pipeline Corp.	04-19-93	C	5,000	N	I	03-24-93	Indef.
ST93-3385	Valero Transmission, L.P.	Natural Gas Pipeline Co. of America.	04-19-93	C	3,327	N	I	03-25-93	Indef.
ST93-3386	Colorado Interstate Gas Co.	Farmer's Union Central Exchange.	04-20-93	G-S	12,327	N	I	04-01-93	Indef.
ST93-3387	Colorado Interstate Gas Co.	Tiger Natural Gas, Inc.	04-20-93	G-S	700	N	I	04-01-93	Indef.S
ST93-3388	Colorado Interstate Gas Co.	Conoco, Inc	04-20-93	G-S	10,000	N	F	04-01-93	12-05-98.
ST93-3389	Colorado Interstate Gas Co.	Mountain Fuel Supply Co.	04-20-93	G-S	500	N	F	04-01-93	Indef.
ST93-3390	Colorado Interstate Gas Co.	Coastal Oil & Gas Corp.	04-20-93	G-S	100,000	Y	I	04-01-93	Indef.
ST93-3391	Colorado Interstate Gas Co.	Mercado Gas Services, Inc.	04-20-93	G-S	5,000	N	I	04-07-93	Indef.
ST93-3392	Colorado Interstate Gas Co.	Questar Pipeline Co	04-20-93	G-S	5,000	N	I	04-01-93	Indef.
ST93-3393	Colorado Interstate Gas Co.	Coastal Oil & Gas Corp.	04-20-93	G-S	100,000	Y	I	04-01-93	Indef.
ST93-3394	Colorado Interstate Gas Co.	Grand Valley Gas Co.	04-20-93	G-S	15,000	N	I	04-01-93	Indef.
ST93-3395	Colorado Interstate Gas Co.	Texaco Gas Marketing Inc.	04-20-93	G-S	50,000	N	I	04-01-93	Indef.
ST93-3396	Gas Co. of New Mexico.	El Paso Natural Gas Co.	04-20-93	C	2,500	N	I	03-20-93	04-01-95.
ST93-3397	Gas Co. of New Mexico.	El Paso Natural Gas Co.	04-20-93	C	2,500	N	I	04-01-93	03-31-94.
ST93-3398	Gas Co. of New Mexico.	El Paso Natural Gas Co.	04-20-93	C	9,100	N	I	04-01-93	03-31-03.
ST93-3399	Gas Co. of New Mexico.	El Paso Natural Gas Co.	04-20-93	C	2,000	N	I	04-01-93	04-01-03.
ST93-3400	Webb/Duval Gatherers.	Tennessee Gas Pipeline Co.	04-20-93	C	50,000	N	I	12-01-93	Indef.
ST93-3401	United Gas Pipe Line Co.	United Gas Services Co.	04-20-93	G-S	628,800	A	I	04-02-93	07-31-93.
ST93-3402	Panhandle Eastern Pipe Line Co.	Cabot Oil & Gas Marketing Corp.	04-20-93	G-S	10,000	N	I	04-01-93	Indef.
ST93-3403	Texas Eastern Transmission Corp.	City of Pulaski	04-20-93	B	19,750	N	I	04-01-93	Indef.
ST93-3404	Panhandle Eastern Pipe Line Co.	Tristar Gas Co	04-20-93	G-S	5,000	N	I	04-01-93	Indef.
ST93-3405	Panhandle Eastern Pipe Line Co.	Enron Gas Marketing, Inc.	04-20-93	G-S	50,000	N	I	04-09-93	Indef.
ST93-3406	Panhandle Eastern Pipe Line Co.	Cabot Oil & Gas Marketing Co.	04-20-93	G-S	50,000	N	I	04-01-93	Indef.
ST93-3407	Texas Eastern Transmission Corp.	Columbia Gas of Kentucky.	04-20-93	B	195,000	N	I	04-01-93	Indef.
ST93-3408	Texas Eastern Transmission Corp.	James River Paper Co.	04-20-93	G-S	30,000	N	I	04-01-93	Indef.
ST93-3409	Panhandle Eastern Pipe Line Co.	Peoples Natural Gas Co.	04-20-93	G-S	25,000	N	I	04-01-93	Indef.
ST93-3410	Texas Eastern Transmission Corp.	Arkla Energy Marketing Co.	04-20-93	G-S	700,000	N	I	04-01-93	Indef.
ST93-3411	Columbia Gas Transmission Corp.	Columbia Gas of Kentucky, Inc.	04-20-93	B	100	Y	I	03-29-93	Indef.
ST93-3412	Columbia Gas Transmission Corp.	Mountaineer Gas Services, Inc.	04-20-93	G-S	6,000	N	I	04-01-93	Indef.
ST93-3413	Columbia Gas Transmission Corp.	Mountaineer Gas Co	04-20-93	G-S	5,000	N	I	04-01-93	Indef.
ST93-3414	Columbia Gas Transmission Corp.	Energy Transportation Mgmt., Inc.	04-20-93	G-S	1,200	Y	I	03-22-93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-3415	Columbia Gas Transmission Corp.	Energy Marketing Services, Inc.	04-20-93	G-S	7,066	N	F	04-01-93	Indef.
ST93-3416	Texas Gas Transmission Corp.	Western Kentucky Gas Co.	04-20-93	B	148	N	I	04-01-93	Indef.
ST93-3417	Texas Gas Transmission Corp.	Equitable Resources Marketing Co.	04-20-93	G-S	20,000	N	I	04-01-93	Indef.
ST93-3418	Texas Gas Transmission Corp.	Oxy USA, Inc	04-20-93	G-S	10,000	Y	I	04-01-93	Indef.
ST93-3419	Texas Gas Transmission Corp.	Arkla Energy Marketing Co.	04-20-93	G-S	100,000	N	I	04-01-93	Indef.
ST93-3420	Texas Gas Transmission Corp.	Arkla Energy Marketing Co.	04-20-93	G-S	100,000	N	I	04-01-93	Indef.
ST93-3421	Natural Gas P/L Co. of America.	NGC Transportation, Inc.	04-21-93	G-S	100,000	N	I	10-01-93	Indef.
ST93-3422	CNG Transmission Corp.	Catex, Inc	04-21-93	G-S	30,000	N	I	04-03-93	Indef.
ST93-3423	CNG Transmission Corp.	NFGD, Quikrete, Reichhold.	04-21-93	G-S	1,500	N	I	04-02-93	Indef.
ST93-3424	Mojave Pipeline Co	Texaco, Inc	04-21-93	G-S	50,000	N	I	12-18-93	03-03-08.
ST93-3425	Texas Gas Gathering.	Natural Gas Pipeline Co. of America.	04-21-93	C	20,000	N	I	02-01-93	Indef.
ST93-3426	Texas Gas Gathering.	Gulf States Transmission Corp.	04-21-93	C	30,000	N	I	03-01-93	Indef.
ST93-3427	Florida Gas Transmission Co.	Cargill Fertilizer, Inc	04-21-93	G-S	1,567	N	I	01-08-93	Indef.
ST93-3428	Florida Gas Transmission Co.	Heath Petra Resources.	04-21-93	G-S	100,000	N	I	01-24-93	Indef.
ST93-3429	Florida Gas Transmission Co.	Endevco Pipeline Co	04-21-93	B	40,000	N	I	03-23-93	Indef.
ST93-3430	Northern Border Pipeline Co.	Natural Gas Pipeline Co. of America.	04-21-93	G	32,000	N	I	04-17-93	02-28-94.
ST93-3431	Texas Corp	Northern Natural Gas Co.	04-21-93	C	3,000	N	I	11-01-93	Indef.
ST93-3432	Channel Industries Gas Co.	Northern Natural Gas Co.	04-21-93	C	70,000	N	I	03-22-93	Indef.
ST93-3433	National Fuel Gas Supply Corp.	Encogen Four Partners, L.P.	04-22-93	G-S	15,000	N	I	03-30-93	03-29-94.
ST93-3434	National Fuel Gas Supply Corp.	Fulton Cogeneration Assoc.	04-22-93	G-S	13,000	N	I	04-01-93	04-30-93.
ST93-3435	National Fuel Gas Supply Corp.	Direct Energy Marketing Limited.	04-22-93	G-S	20,000	N	I	04-15-93	03-30-13.
ST93-3436	National Fuel Gas Supply Corp.	Indeck-Oswego, L.P	04-22-93	G-S	3,000	N	I	03-17-93	03-14-13.
ST93-3437	Trunkline Gas Co	Arkla Energy Marketing Co.	04-22-93	G-S	100,000	N	I	03-01-93	Indef.
ST93-3438	Trunkline Gas Co	Associated Natural Gas, Inc.	04-22-93	G-S	50,000	N	I	04-01-93	Indef.
ST93-3439	Natural Gas P/L Co. of America.	NGC Transportation, Inc.	04-22-93	G-S	45,000	N	I	10-01-93	Indef.
ST93-3440	United Gas Pipe Line Co.	YUMA Gas Corp	04-22-93	G-S	78,600	N	I	04-14-93	08-12-93.
ST93-3441	United Gas Pipe Line Co.	KCS Energy Marketing, Inc.	04-22-93	G-S	78,600	N	I	04-14-93	08-12-93.
ST93-3442	United Gas Pipe Line Co.	Arkla Energy Marketing Co.	04-22-93	G-S	209,600	N	I	04-08-93	08-06-93
ST93-343	United Gas Pipe Line Co.	Pennzoil Gas Marketing Co.	04-22-93	G-S	209,600	N	I	04-13-93	08-11-93.
ST93-3444	United Gas Pipe Line Co.	Scana Hydrocarbons, Inc.	04-22-93	G-S	100,000	N	I	04-15-93	08-13-93.
ST93-3445	Williston Basin Inter. P/L Co.	William Herbert Hunt Trust Estate.	04-23-93	G-S	11,200	A	I	03-25-93	07-31-94.
ST93-3446	Northern Natural Gas Co.	Peoples Natural Gas Co.	04-23-93	B	50,000	N	F/I	12-22-92	Indef.
ST93-3447	Northwest Pipeline Corp.	Eagle-Picher Minerals.	04-23-93	G-S	184	N	F	04-01-93	Indef.
ST93-3448	Northwest Pipeline Corp.	Harvey's Resort Hotel Casino.	04-23-93	G-S	360	N	F	04-01-93	Indef.
ST93-3449	Northwest Pipeline Corp.	Caesars Tahoe	04-23-93	G-S	300	N	F	04-01-93	Indef.
ST93-3450	Northwest Pipeline Corp.	United Engine & Machine.	04-23-93	G-S	250	N	F	04-01-93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-3451	Northwest Pipeline Corp.	Eagle-Picher Minerals.	04-23-93	G-S	1,680	N	F	04-01-93	Indef.
ST93-3452	Northwest Pipeline Corp.	Domtar Gypsum Inc	04-23-93	G-S	3,000	N	F	04-01-93	Indef.
ST93-3453	Northwest Pipeline Corp.	Washington Natural Gas Co.	04-23-93	G-S	2,000	N	F	04-01-93	Indef.
ST93 3454	Northwest Pipeline Corp.	Northwest Natural Gas Co.	04-23-93	G-S	50,000	N	F	04-04-93	Indef.
ST93-3455	Northwest Pipeline Corp.	Harrah's Lake Tahoe Resort Casino.	04-23-93	G-S	500	N	F	04-01-93	Indef.
ST93-3456	Northwest Pipeline Corp.	James River Corp ...	04-23-93	G-S	2,341	N	F	04-01-93	Indef.
ST93-3457	Northwest Pipeline Corp.	Simpson Tacoma Kraft Co.	04-23-93	G-S	10,000	N	F	04-01-93	Indef.
ST93-3458	Northwest Pipeline Corp.	Simpson Paper Co ..	04-23-93	G-S	1,000	N	F	04-01-93	Indef.
ST93-3459	Northwest Pipeline Corp.	James River Corp ...	04-23-93	G-S	8,000	N	F	04-01-93	Indef.
ST93-3460	Northwest Pipeline Corp.	Boeing Co	04-23-93	G-S	2,156	N	F	04-01-93	Indef.
ST93-3461	Northwest Pipeline Corp.	Basic Inc	04-23-93	G-S	850	N	F	04-01-93	Indef.
ST93-3462	Northwest Pipeline Corp.	Santa Fe Pacific Minerals Corp.	04-23-93	G-S	1,100	N	F	04-01-93	Indef.
ST93-3463	Northwest Pipeline Corp.	Grand Valley Gas Co.	04-23-93	G-S	10,196	N	F	04-01-93	Indef.
ST93-3464	Northwest Pipeline Corp.	Washington Energy Exploration, Inc.	04-23-93	G-S	616	N	F	04-13-93	Indef.
ST93-3465	Northwest Pipeline Corp.	Washington Energy Exploration, Inc.	04-23-93	G-S	10,000	N	F	04-01-93	Indef.
ST93-3466	Northwest Pipeline Corp.	Columbia Aluminum Corp.	04-23-93	G-S	500	N	F	04-01-93	Indef.
ST93-3467	Northwest Pipeline Corp.	Rosenburg Forest Products.	04-23-93	G-S	1,250	N	F	04-01-93	Indef.
ST93-3468	Northwest Pipeline Corp	Development Associates, Inc.	04-23-93	G-S	40,784	N	F	04-01-93	Indef.
ST93-3469	Northwest Pipeline Corp.	Development Associates, Inc.	04-23-93	G-S	2,464	N	F	04-01-93	Indef.
ST93-3470	Northwest Pipeline Corp.	Canwest Gas Supply U.S.A., Inc.	04-23-93	G-S	51,550	N	F	04-01-93	Indef.
ST93-3471	Northwest Pipeline Corp.	TM Star Fuel Co	04-23-93	G-S	10,500	N	F	04-01-93	Indef.
ST93-3472	Northwest Pipeline Corp.	Grand Valley Gas Co.	04-23-93	G-S	2,464	N	F	04-01-93	Indef.
ST93-3473	Northwest Pipeline Corp.	Sierra Pacific Power Co.	04-23-93	G-S	9,000	N	F	04-01-93	Indef.
ST93-3474	Northwest Pipeline Corp.	IGI Resources, Inc ..	04-23-93	G-S	7,000	N	F	04-01-93	Indef.
ST93-3475	Northwest Pipeline Corp.	Cascade Natural Gas Corp.	04-23-93	G-S	1,078	N	F	04-01-93	Indef.
ST93-3476	Northwest Pipeline Corp.	TM Star Fuel Co	04-23-93	G-S	12,000	N	F	04-01-93	Indef.
ST93-3477	Northwest Pipeline Corp.	Boeing Co	04-23-93	G-S	12,600	N	F	04-01-93	Indef.
ST93-3478	Northwest Pipeline Corp.	Cascade Natural Gas Corp.	04-23-93	G-S	616	N	F	04-01-93	Indef.
ST93-3479	Arkansas Western Gas Co.	Arida Energy Resources.	04-22-93	G-HT	10,000	N	I	02-01-93	Indef.
ST93-3480	Arkansas Western Gas Co.	Arida Energy Resources.	04-22-93	G-HT	4,500	N	I	04-01-93	Indef.
ST93-3481	Arkansas Western Gas Co.	Arida Energy Resources.	04-22-93	G-HT	3,500	N	I	11-01-92	Indef.
ST93-3482	Arkansas Western Gas Co.	Arida Energy Resources.	04-22-93	G-HT	3,000	N	I	11-01-92	Indef.
ST93-3483	El Paso Natural Gas Co.	Oryx Gas Marketing, L.P.	04-23-93	G-S	100,000	N	I	03-24-93	Indef.
ST93-3484	Williams Natural Gas Co.	Kansas Municipal Gas Agency.	04-23-93	G-S	24,102	N	I	04-01-93	01-01-94.
ST93-3485	Columbia Gas Transmission Corp.	Delmarva Power & Light Co.	04-23-93	G-S	100,000	Y	I	04-01-93	Indef.

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ST93-3486	Columbia Gas Transmission Corp.	Goetz Energy Corp .	04-23-93	G-S	5,000	Y	I	04-12-93	Indef.
ST93-3487	Columbia Gas Transmission Corp.	Quaker State Corp ..	04-23-93	G-S	5,740	N	F	04-01-93	Indef.
ST93-3488	Columbia Gas Transmission Corp.	Access Energy Corp	04-23-93	G-S	111	Y	F	04-02-93	10-31-93.
ST93-3489	Columbia Gas Transmission Corp.	R. C. Poling Co., Inc	04-23-93	G-S	4,000	N	I	04-01-93	Indef.
ST93-3490	Northwest Pipeline Corp.	City of Enumclaw	04-23-93	G-S	928	N	F	04-01-93	Indef.
ST93-3491	Northwest Pipeline Corp.	Cyanco Co	04-23-93	G-S	2,000	N	F	04-01-93	Indef.
ST93-3492	Northwest Pipeline Corp.	Northwest Natural Gas Co.	04-23-93	G-S	9,400	N	F	04-13-93	Indef.
ST93-3493	Northwest Pipeline Corp.	Texaco Gas Marketing, Inc.	04-23-93	G-S	29,000	N	F	04-08-93	Indef.
ST93-3494	Northwest Pipeline Corp.	High Sierra Hotel & Casino.	04-23-93	G-S	225	N	F	04-01-93	Indef.
ST93-3495	Northwest Pipeline Corp.	Husky Gas Marketing, Inc.	04-23-93	G-S	4,311	N	F	04-01-93	Indef.
ST93-3496	Algonquin Gas Transmission Co.	Continental Energy Marketing, Inc.	04-23-93	G-S	50,000	N	I	04-01-93	Indef.
ST93-3497	Algonquin Gas Transmission Co.	O & R Energy, Inc ...	04-23-93	G-S	300,000	N	I	04-06-93	Indef.
ST93-3498	Algonquin Gas Transmission Co.	Louis Dreyfus Energy Corp.	04-23-93	G-S	1,500,000	N	I	04-02-93	Indef.
ST93-3499	Algonquin Gas Transmission Co.	Louis Dreyfus Energy Corp.	04-23-93	G-S	1,500,000	N	I	04-01-93	Indef.
ST93-3500	Kern River Gas Transmission Co.	Hesse Gas Co	04-23-93	G-S	5,000	N	I	03-31-93	Indef.
ST93-3501	Monterey Pipeline Co.	Sabine Pipe Line Co	04-26-93	C	20,000	N	I	09-02-93	Indef.
ST93-3502	K N Energy, Inc	Gerrity Oil & Gas Corp.	04-26-93	G-S	30,000	N	I	04-01-93	Indef.
ST93-3503	K N Energy, Inc	K N Gas Marketing, Inc.	04-26-93	G-S	4,930	A	F	04-01-93	Indef.
ST93-3504	Tennessee Gas Pipeline Co.	Pennzoil Gas Marketing, Co.	04-26-93	G-S	6,865	N	I	04-04-93	Indef.
ST93-3505	Tennessee Gas Pipeline Co.	Capital Oil & Gas, Inc.	04-26-93	G-S	6,300	N	I	04-01-93	Indef.
ST93-3506	Tennessee Gas Pipeline Co.	Endevco Oil & Gas Co.	04-26-93	G-S	20,000	N	I	04-01-93	Indef.
ST93-3507	Delhi Gas Pipeline Corp.	El Paso Natural Gas Co.	04-26-93	C	250,000	N	I	04-01-93	Indef.
ST93-3508	Delhi Gas Pipeline Corp.	Arkla Energy Resources, et al.	04-26-93	C	20,000	N	I	04-02-93	Indef.
ST93-3509	Delhi Gas Pipeline Corp.	Transwestern Pipeline Co., et al.	04-26-93	C	5,000	N	I	04-17-93	Indef.
ST93-3510	Noark Pipeline System, L.P.	Texas Eastern Trans. Corp., et al.	04-26-93	C	60,000	N	I	03-01-93	11-30-94.
ST93-3511	Noark Pipeline System, L.P.	Texas Eastern Trans. Corp., et al.	04-26-93	C	141,000	N	I	03-01-93	Indef.
ST93-3512	Noark Pipeline System, L.P.	Texas Eastern Trans. Corp., et al.	04-26-93	C	7,000	N	I	11-27-92	11-26-02.
ST93-3513	Natural Gas P/L Co. of America.	Midcon Gas Services Corp.	04-26-93	G-S	100,000	N	I	03-27-93	Indef.
ST93-3514	Trunkline Gas Co	Yuma Gas Corp	04-26-93	G-S	150,000	N	I	04-01-93	Indef.
ST93-3515	Trunkline Gas Co	O & R Energy, Inc ...	04-26-93	G-S	50,000	N	I	04-01-93	Indef.
ST93-3516	Trunkline Gas Co	EP Operating, L.P ...	04-26-93	G-S	10,000	N	I	04-01-93	Indef.
ST93-3517	Columbia Gulf Transmission Co.	Brooklyn Interstate Nat. Gas Corp.	04-26-93	G-S	50,000	N	I	04-15-93	Indef.
ST93-3518	Arkla Energy Resources Co.	Phoenix Gas Pipeline Co.	04-26-93	G-S	25,000	N	I	04-22-93	Indef.
ST93-3519	K N Energy, Inc	IBP, Inc	04-27-93	G-S	4,500	N	I	04-12-93	Indef.
ST93-3520	Valero Transmission, L.P.	Florida Gas Transmission Co.	04-27-93	C	20,000	N	I	04-01-93	Indef.
ST93-3521	Enercorp Pipeline Ltd.	Texas Eastern Transmission Corp.	04-27-93	C	40,000	N	I	03-25-93	Indef.
ST93-3522	Colorado Interstate Gas Co.	Texaco Gas Marketing Inc.	04-27-93	G-S	8,000	N	F	05-01-93	09-30-93.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-3523	ANR Pipeline Co	Centra Gas Manitoba, Inc.	04-27-93	G-S	18,950	N	I	04-01-93	10-31-93.
ST93-3524	ANR Pipeline Co	Total Minatome Corp	04-27-93	G-S	50,000	N	F	04-01-93	Indef.
ST93-3525	ANR Pipeline Co	Total Minatome Corp	04-27-93	G-S	50,000	N	F	04-01-93	Indef.
ST93-3526	ANR Pipeline Co	Milwaukee Metropolitan Sewerage DST.	04-27-93	G-S	5,800	N	F	04-01-93	03-31-98.
ST93-3527	ANR Pipeline Co	Seagull Marketing Services, Inc.	04-27-93	G-S	75,000	N	F	04-01-93	Indef.
ST93-3528	ANR Pipeline Co	Coenergy Ventures, Inc.	04-27-93	G-S	100,000	N	F	04-01-93	Indef.
ST93-3529	ANR Pipeline Co	Anadarko Trading Co.	04-27-93	G-S	25,000	N	F	04-01-93	Indef.
ST93-3530	ANR Pipeline Co	Kohler Co	04-27-93	G-S	374	N	F	04-01-93	03-31-98.
ST93-3531	ANR Pipeline Co	Wisconsin Gas Co ..	04-27-93	G-S	7,653	N	F	04-01-93	03-31-94.
ST93-3532	Tennessee Gas Pipeline Co.	Louis Dreyfus Energy Corp.	04-27-93	G-S	100,000	N	I	04-02-93	Indef.
ST93-3533	Tennessee Gas Pipeline Co.	North Atlantic Utilities, Inc.	04-27-93	G-S	10,000	N	I	04-10-93	Indef.
ST93-3534	Tennessee Gas Pipeline Co.	Proctor & Gamble Paper Products Co.	04-27-93	G-S	600,000	N	I	04-11-93	Indef.
ST93-3535	Channel Industries Gas Co.	Northern Natural Co	04-27-93	C	50,000	N	I	04-01-93	Indef.
ST93-3536	Tennessee Gas Pipeline Co.	Nashville Gas Co	04-27-93	B	24,000	N	F	04-13-93	Indef.
ST93-3537	Tennessee Gas Pipeline Co.	UGI Utilities, Inc	04-27-93	B	30,000	N	F	04-01-93	Indef.
ST93-3538	Tennessee Gas Pipeline Co.	Tenngasco Corp	04-27-93	G-S	43,000	A	F	04-05-93	Indef.
ST93-3539	Tennessee Gas Pipeline Co.	Producers Gas Sales, Inc.	04-27-93	G-S	5,000	N	I	04-01-93	Indef.
ST93-3540	Tennessee Gas Pipeline Co.	Mountaineer Gas Services, Inc.	04-27-93	G-S	10,000	N	I	04-14-93	Indef.
ST93-3541	Tennessee Gas Pipeline Co.	Proctor & Gamble Paper Products Co.	04-27-93	G-S	30,000	N	I	04-11-93	Indef.
ST93-3542	Tennessee Gas Pipeline Co.	NGC Transportation, Inc.	04-27-93	G-S	600,000	N	I	04-01-93	Indef.
ST93-3543	Tennessee Gas Pipeline Co.	Entrade Corp	04-27-93	G-S	1,310,000	A	I	04-01-93	Indef.
ST93-3544	Panhandle Eastern Pipe Line Co.	Kimball Energy Corp	04-27-93	G-S	40,000	N	I	04-01-93	Indef.
ST93-3545	Panhandle Eastern Pipe Line Co.	United Cities Gas Co	04-27-93	G-S	3,000	N	I	04-07-93	Indef.
ST93-3546	Panhandle Eastern Pipe Line Co.	United Cities Gas Co	04-27-93	G-S	1,000	N	I	04-03-93	Indef.
ST93-3547	Panhandle Eastern Pipe Line Co.	United Cities Gas Co	04-27-93	G-S	2,000	N	I	04-04-93	Indef.
ST93-3548	Texas Gas Transmission Corp.	Tenngasco Corp	04-27-93	G-S	4,000	N	I	04-05-93	Indef.
ST93-3549	Texas Gas Transmission Corp.	Stellar Gas Co	04-27-93	G-S	352	N	I	04-01-93	Indef.
ST93-3550	Texas Gas Transmission Corp.	Interstate Gas Supply, Inc.	04-27-93	G-S	50,000	N	I	04-01-93	Indef.
ST93-3551	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	04-27-93	B	40,000	Y	I	04-01-93	Indef.
ST93-3552	Columbia Gas Transmission Corp.	City of Lancaster	04-27-93	B	3,000	Y	I	04-01-93	Indef.
ST93-3553	Kern River Gas Transmission Co.	AMOCO Energy Trading Corp.	04-28-93	G-S	50,000	N	F	04-02-93	Indef.
ST93-3554	Kern River Gas Transmission Co.	Union Pacific Fuels, Inc.	04-28-93	G-S	100,000	N	F	04-02-93	Indef.
ST93-3555	Williston Basin Inter. P/L Co.	Retex Gathering Co., Inc.	04-28-93	G-S	34,112	N	I	03-29-93	09-30-94.
ST93-3556	Channel Industries Gas Co.	Amerada Hess Corp	04-28-93	G-I	50,000	N	I	03-01-93	Indef.
ST93-3557	Texas Gas Transmission Corp.	AMOCO Energy Trading Corp.	04-28-93	G-S	150,000	N	I	03-21-93	Indef.
ST93-3558	Texas Gas Transmission Corp.	Public Service Electric & Gas Co.	04-28-93	G-S	200,000	N	I	04-20-93	Indef.

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ST93-3559	Texas Gas Transmission Corp.	Niagara Mohawk Power Corp.	04-28-93	G-S	200,000	N	I	04-22-93	Indef.
ST93-3560	Texas Gas Transmission Corp.	ANR Pipeline Co	04-28-93	G	500,000	N	I	03-01-93	Indef.
ST93-3561	Black Marlin Pipeline Co.	Superior Natural Gas Corp.	04-28-93	G-S	120,000	N	I	04-01-93	Indef.
ST93-3562	Northern Natural Gas Co.	Interenergy Corp	04-28-93	G-S	10,000	N	F/I	03-22-93	Indef.
ST93-3563	Northern Natural Gas Co.	Pancanadian Petroleum Co.	04-28-93	G-S	100,000	N	F/I	04-01-93	Indef.
ST93-3564	Northern Natural Gas Co.	Enron Gas Marketing, Inc.	04-28-93	G-S	250,000	A	F/I	04-01-93	Indef.
ST93-3565	Florida Gas Transmission Co.	Energy Transportation Mgmt., Inc.	04-28-93	G-S	800	N	I	04-01-93	Indef.
ST93-3566	Florida Gas Transmission Co.	Pennzoil Gas Marketing Co.	04-28-93	G-S	20,000	N	I	04-01-93	Indef.
ST93-3567	Florida Gas Transmission Co.	Citrus Marketing, Inc	04-28-93	G-S	600,000	A	I	04-01-93	Indef.
ST93-3568	Florida Gas Transmission Co.	Transco Energy Marketing Co.	04-28-93	G-S	25,000	N	I	04-01-93	Indef.
ST93-3569	Panhandle Eastern Pipe Line Co.	Western Resources, Inc.	04-28-93	G-S	10,000	N	I	04-01-93	Indef.
ST93-3570	Iroquois Gas Trans. Sys., L.P.	Continental Energy Marketing Inc.	04-28-93	G-S	35,000	N	I	04-01-93	05-01-93.
ST93-3571	Iroquois Gas Trans. Sys., L.P.	New York State Electric & Gas Corp.	04-28-93	B	250,000	N	I	04-01-93	Indef.
ST93-3572	Iroquois Gas Trans. Sys., L.P.	Wes Canada Energy Marketing Inc.	04-28-93	G-S	420,000	N	I	04-02-93	Indef.
ST93-3573	Panhandle Eastern Pipe Line Co.	Enron Gas Marketing, Inc.	04-28-93	G-S	10,000	N	I	04-01-93	Indef.
ST93-3574	Texas Eastern Transmission Corp.	Public Service Electric & Gas Co.	04-28-93	G-S	10,341	N	F	01-25-92	Indef.
ST93-3575	Texas Eastern Transmission Corp.	Public Service Electric & Gas Co.	04-28-93	G-S	67,542	N	F	11-01-92	Indef.
ST93-3576	Texas Eastern Transmission Corp.	City of Cairo	04-28-93	G-S	324	N	F	11-01-92	Indef.
ST93-3577	Texas Eastern Transmission Corp.	Yankee Gas Services Co.	04-28-93	G-S	5,078	N	F	11-01-92	Indef.
ST93-3578	Northwest Pipeline Corp.	Development Associates, Inc.	04-28-93	G-S	40,000	N	F	04-01-93	Indef.
ST93-3579	Natural Gas P/L Co. of America.	Tristar Gas Co	04-28-93	G-S	50,000	N	I	04-15-93	Indef.
ST93-3580	Mojave Pipeline Operating Co.	Mobil Natural Gas, Inc.	04-28-93	G-S	25,000	N	I	04-07-93	04-06-08.
ST93-3581	ANR Pipeline Co	NGC Transportation, Inc.	04-28-93	G-S	300,000	N	F	04-01-93	Indef.
ST93-3582	ANR Pipeline Co	NGC Transportation, Inc.	04-28-93	G-S	300,000	N	F	04-01-93	Indef.
ST93-3583	ANR Pipeline Co	ARCO Natural Gas Marketing, Inc.	04-28-93	G-S	100,000	N	F	04-01-93	Indef.
ST93-3584	ANR Pipeline Co	ARCO Natural Gas Marketing, Inc.	04-28-93	G-S	100,000	N	F	04-01-93	Indef.
ST93-3585	ANR Pipeline Co	Pennzoil Gas Marketing Co.	04-28-93	G-S	35,000	N	I	04-01-93	Indef.
ST93-3586	ANR Pipeline Co	Ohio Valley Gas Corp.	04-28-93	G-S	11,500	N	I	04-01-93	Indef.
ST93-3587	ANR Pipeline Co	Central Illinois Light Co.	04-28-93	B	150,000	N	I	04-02-93	Indef.
ST93-3588	ANR Pipeline Co	Coenergy Ventures, Inc.	04-28-93	G-S	100,000	N	I	04-02-93	Indef.
ST93-3589	ANR Pipeline Co	FINA Natural Gas Co.	04-28-93	G-S	50,000	N	I	04-01-93	Indef.
ST93-3590	ANR Pipeline Co	Citrus Marketing, Inc	04-28-93	G-S	75,000	N	I	04-02-93	Indef.
ST93-3591	ANR Pipeline Co	Transok Gas Transmission Co.	04-29-93	G-S	70,000	N	I	04-05-93	Indef.
ST93-3592	ANR Pipeline Co	Transo Liquids Co ...	04-29-93	G-S	150,000	N	I	04-04-93	Indef.
ST93-3593	ANR Pipeline Co	Gilbert Paper	04-29-93	G-S	700	N	F	04-01-93	03-31-94.
ST93-3594	ANR Pipeline Co	Wisconsin Tissue Mills, Inc.	04-29-93	G-S	3,500	N	F	04-01-93	03-31-95.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-3595	Tennessee Gas Pipeline Co.	Kerr-McGee Corp	04-29-93	G-S	450,000	N	I	04-01-93	Indef.
ST93-3596	Tennessee Gas Pipeline Co.	Selkirk Cogen Partners, L.P.	04-29-93	G-S	50,000	N	I	04-01-93	Indef.
ST93-3597	Tennessee Gas Pipeline Co.	Orchard Gas Corp ...	04-29-93	G-S	27,000	N	I	04-01-93	Indef.
ST93-3598	Tennessee Gas Pipeline Co.	Elizabeth Gas Co	04-29-93	G-S	1,400	N	F	04-02-93	Indef.
ST93-3599	Kern River Gas Transmission Co.	Canadian Hydrocarbons Marketing.	04-29-93	G-S	20,000	N	F	04-02-93	Indef.
ST93-3600	Kern River Gas Transmission Co.	Dept. of Water & Power, Los Angeles.	04-29-93	G-S	85,500	N	F	04-02-93	Indef.
ST93-3601	Kern River Gas Transmission Co.	Canwest Gas Supply U.S.A., Inc.	04-29-93	G-S	25,000	N	F	04-02-93	Indef.
ST93-3602	Texas Eastern Transmission Corp.	New Jersey Natural Gas Co.	04-29-93	G-S	3,411	N	F	12-01-92	Indef.
ST93-3603	Texas Eastern Transmission Corp.	CNG Transmission Corp.	04-29-93	G	154,442	N	F	12-01-92	Indef.
ST93-3604	Trunkline Gas Co	Brooklyn Interstate Nat. Gas Corp.	04-29-93	G-S	50,000	N	I	03-01-93	Indef.
ST93-3605	Trunkline Gas Co	Midcon Gas Services Corp.	04-29-93	G-S	100,000	N	I	03-02-93	Indef.
ST93-3606	Natural Gas P/L Co. of America.	Aquila Energy Marketing Corp.	04-29-93	G-S	100,000	N	I	04-02-93	Indef.
ST93-3607	Lone Star Gas Co ...	Northern Natural Gas Co., et al.	04-30-93	C	50,000	N	I	04-01-93	Indef.
ST93-3608	Midcon Texas Pipeline Corp.	Nat. Gas P/L Co. of Amer., et al.	04-30-93	C	104,000	N	I	04-01-93	04-01-13.
ST93-3609	Channel Industries Gas Co.	United Gas Pipe Line Co., et al.	04-30-93	C	50,000	N	I	03-31-93	Indef.
ST93-3610	Natural Gas P/L Co. of America.	Aquila Energy Marketing Corp.	04-30-93	G-S	75,000	N	I	04-22-93	Indef.
ST93-3611	ANR Pipeline Co	Centra Gas Manitoba Inc.	04-30-93	G-S	70,829	A	I	04-01-93	10-31-13.
ST93-3612	Great Lakes Gas Trans., L.P.	Progas U.S.A., Inc ..	04-30-93	G-S	75,000	N	I	04-01-93	11-01-00.
ST93-3613	Northern Border Pipeline Co.	Bridge Gas USA Inc	04-30-93	G-S	200,000	Y	I	04-02-93	05-14-95.
ST93-3614	Northern Border Pipeline Co.	Associated Natural Gas, Inc.	04-30-93	G-S	50,000	N	I	03-31-93	Indef.
ST93-3615	Transwestern Pipeline Co.	NGC Transportation, Inc.	04-30-93	G-S	10,000	N	I	04-01-93	Indef.
ST93-3616	Transwestern Pipeline Co.	Sid Richardson Gasoline Co.	04-30-93	G-S	10,000	N	I	03-31-93	Indef.
ST93-3617	Transcontinental Gas P/L Corp.	American Hunter Exploration Ltd.	04-30-93	G-S	360,000	N	I	04-01-93	Indef.
ST93-3618	Transcontinental Gas P/L Corp.	Bayou Cuba Production Co.	04-30-93	G-S	1,000	N	I	01-15-93	Indef.
ST93-3619	Transcontinental Gas P/L Corp.	Pennzoil Gas Marketing Co.	04-30-93	G-S	55,000	N	I	04-01-93	Indef.
ST93-3620	Valero Transmission, L.P.	Arida Energy Resources.	04-30-93	C	25,000	N	I	04-01-93	Indef.
ST93-3621	Delhi Gas Pipeline Corp.	ANR Pipeline Co., et al.	04-30-93	C	10,000	N	I	04-13-93	Indef.
ST93-3622	Delhi Gas Pipeline Corp.	El Paso Natural Gas Co.	04-30-93	C	1,500	N	I	04-01-93	Indef.
ST93-3623	Delhi Gas Pipeline Corp.	El Paso Natural Gas Co., et al.	04-30-93	C	900	N	I	04-01-93	Indef.
ST93-3624	United Gas Pipeline Co.	Ledco Inc	04-30-93	G-S	486,629	N	I	04-19-93	08-17-93.
ST93-3625	United Gas Pipeline Co.	Endevco Oil & Gas Co.	04-30-93	G-S	26,200	N	I	04-16-93	08-14-93.
ST93-3626	United Gas Pipeline Co.	Enserch Gas Co	04-30-93	G-S	209,500	N	I	04-21-93	08-19-93.
ST93-3627	United Gas Pipeline Co.	Monsanto Co	04-30-93	G-S	31,000	N	F	04-21-93	08-19-93.
ST93-3628	United Gas Pipeline Co.	MG Natural Gas Corp.	04-30-93	G-S	41,920	N	I	04-19-93	08-17-93.
ST93-3629	United Gas Pipeline Co.	Stellar Gas Co	04-30-93	G-S	524,000	N	I	04-19-93	08-17-93.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST93-3630	United Gas Pipeline Co.	Excel Gas Marketing, Inc.	04-30-93	G-S	102,704	N	I	04-21-93	08-19-93.
ST93-3631	Williston Basin Inter. P/L Co.	Prairielands Energy Marketing, Inc.	04-30-93	G-S	237,719	A	I	03-31-93	09-30-94.
ST93-3632	Williston Basin Inter. P/L Co.	Hiland Partners	04-30-93	G-S	91,550	A	I	04-16-93	05-31-93.
ST93-3633	Trunkline Gas Co	Northern Indiana Public Service Co.	04-30-93	G-S	10,000	N	F	04-01-93	Indef.
ST93-3634	Panhandle Eastern Pipe Line Co.	Appalachian Gas Sales.	04-30-93	G-S	450	N	F	04-01-93	Indef.
ST93-3635	Panhandle Eastern Pipe Line Co.	Appalachian Gas Sales.	04-30-93	G-S	50	N	F	04-01-93	Indef.
ST93-3636	Panhandle Eastern Pipe Line Co.	Clinton Gas Transmission, Inc.	04-30-93	G-S	50,000	N	I	04-02-93	Indef.
ST93-3637	Panhandle Eastern Pipe Line Co.	Peoples Natural Gas Co.	04-30-93	G-S	1,500	N	F	04-01-93	Indef.

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with Order No. 436 (final rule and notice requesting supplemental comments, 50 FR 43,372, 10/10/85).
[2] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, Mcf and DT.
[3] Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 93-13886 Filed 6-11-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP93-135-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 8, 1993.

Take notice that Algonquin Gas Transmission Company (Algonquin) on June 4, 1993, tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets with proposed effective date of July 7, 1993, respectively:

Original Sheet No. 20A
Original Sheet No. 97
Sheet Nos. 98-99

Algonquin states that the purpose of this filing is to provide for the recovery of certain transition costs associated with upstream capacity retained by Algonquin. Specifically, Algonquin seeks to recover gas supply realignment costs (GSR Costs) associated with retained capacity that are to be paid by Algonquin to Texas Eastern Transmission Corporation. Algonquin requests that the Commission waive § 154.22 of the Commission's regulations to the extent necessary in order to permit this application to take effect on July 7, 1993.

Algonquin states that copies of this tariff filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-13897 Filed 6-11-93; 8:45 am]
BILLING CODE 6717-01-P

[Docket No. RP93-134-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 8, 1993.

Take notice that Algonquin Gas Transmission Company (Algonquin) on June 4, 1993, tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets with the proposed effective dates of Sheet Nos. 95 and 95A are June 1, 1993, and July 7, 1993, respectively:

Original Sheet No. 95
Original Sheet No. 95A

Algonquin states that the purpose of this filing is to provide for the recovery of transition costs to be paid by Algonquin to Texas Eastern Transmission Corporation (Texas Eastern) pursuant to Texas Eastern's second direct bill of Account No. 191 purchased gas costs filed on May 28, 1993, and to include in Algonquin's Fourth Revised Volume No. 1 a tariff sheet that was previously accepted by the Commission as part of Algonquin's Third Revised Volume No. 1 in Docket No. RP93-113-000 on May 28, 1993. Algonquin requests that the Commission waive § 154.22 of the Commission's regulations to the extent necessary in order to permit this application to take effect as requested.

Algonquin states that copies of this tariff filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-13898 Filed 6-11-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP93-96-000]

Colorado Interstate Gas Co.; Technical Conference

June 8, 1993.

By order issued April 30, 1993, the Commission directed its staff to convene a technical conference in the above-captioned proceeding. The conference was established to address the Uinta Basin Lateral "at-risk" condition and some Account No. 106 issues. The conference has been scheduled for Thursday, June 17, 1993 at 10 am in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426. All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-13884 Filed 6-11-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-136-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

June 8, 1993.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on June 4, 1993, tendered for filing certain tariff sheets to Third Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff, with proposed effective date of July 1, 1993.

Transco states that the tariff sheets and the rates contained therein are being filed pursuant to the Commission's May 14, 1993 Order on Compliance With Restructuring Order issued in Docket Nos. RP92-86-000, *et al.*, *Transcontinental Gas Pipe Line Corporation*, 63 FERC ¶ 61,194 (1993) and Section 4 of the Natural Gas Act and Part 154 of the Commission's regulations.

Transco states that the purpose of the filing is to comply with the Commission's directive in its May 14 order that Transco submit a limited Section 4 filing to amend and replace its currently pending Interruptible Pooling Service Rate Schedule (IPS) proposal in the instant docket with Transco proposed "firm to wellhead" FT service structure (and related TABS service).

Transco states that copies of the filing have been served upon all parties listed on the official service list for Docket No. RP92-108-000 and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-13895 Filed 6-11-93; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4665-3]

Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act

In the matter of EPA Contractor Science Applications International Corp.—Technology Services Co. and its Subcontractor, Cotton & Co:, Certified Public Accountants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.301(h) for authorization to disclose to its contractor, Science Applications International Corporation—Technology Services Company (hereinafter "SAIC-TSC") of San Francisco, California and SAIC-TSC's subcontractor, Cotton & Company, Certified Public Accountants (hereinafter "Cotton") of Alexandria, Virginia, Superfund confidential business information ("CBI") which has been submitted to EPA Region 9, Comptroller Branch pursuant to Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). SAIC-TSC's principal offices are located at 20 California Street, Suite 400, San Francisco, California 94111. Cotton's principal offices are located at 100 South Royal Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: David Wood, Comptroller Office, Cost Accounting Team, Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105 (415) 744-1747.

SUPPLEMENTARY INFORMATION:

Notice of Required Determinations, Contract Provisions and Opportunity to Comment

The Comprehensive Environmental Response, Compensation, and Liability Act of 1960 ("CERCLA"), as amended, (commonly known as "Superfund") and other Federal laws require the maintenance of site records, including those relevant to cost recovery. EPA has entered into a contract, No. 68-W9-0008, Work Assignment No. CO9056, (the "Contract") with SAIC-TSC to provide financial cost documentation support, including documentation, verification and development of proof to support cost recovery for EPA Region 9 Superfund sites. SAIC-TSC has, in turn, entered into a contract with Cotton to perform the work required by the Contract. EPA Region 9 has determined that disclosure of CBI to SAIC-TSC and Cotton employees is necessary in order that they may carry out the work required by the Contract. The Contract complies with all requirements of 40 CFR 2.301(h)(2)(ii). EPA Region 9 will require each SAIC-TSC and Cotton employee working under this work assignment, who may have access to CBI, to sign a written non-disclosure agreement that he or she: (1) Will use the information only for the purpose of carrying out the work required by the Contract; (2) shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office; and (3) shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA Region 9 Comptroller office, whenever the information is no longer required by SAIC-TSC and Cotton for performance of the work required by the Contract, or upon completion of the Contract. These non-disclosure agreements shall be maintained on file with the Region 9 Work Assignment Manager. SAIC-TSC and Cotton employees will be trained on Superfund CBI requirements.

EPA hereby advises affected parties that they have ten working days from the date of this notice to submit comments pursuant to 40 CFR 2.301(h)(2)(iii). Comments should be sent to: Environmental Protection Agency, Region 9, David Wood (P-4-2-3), 75 Hawthorne Street, San Francisco, CA 94105, (415) 744-1747

Dated: June 1, 1993.

David S. Mowday,

Acting Assistant Regional Administrator for Policy and Management.

[FR Doc. 93-13943 Filed 6-11-93; 8:45 am]

BILLING CODE [illegible]

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

June 9, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, Suite 140, Washington, DC 20037 (202) 857-3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

Please note: The Commission has requested expedited review of these items by June 17, 1993, under the provisions of 5 CFR 1320.18.

OMB Number: None.

Title: Section 76.911, Petition for Reconsideration of Certification.

Action: New collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 450 responses; 2 hours average burden per response; 900 hours total annual burden.

Needs and Uses: On 4/1/93, the Commission adopted a Report and Order in MM Docket No. 92-266, Implementation of sections 623, 612, and 622(c) of the Communications Act of 1934, as amended, by the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). To implement this statutory requirement, the Commission added new § 76.911(b)(2) which requires competing video programmers, when requested by cable operators, to provide information regarding the competitor's reach and number of subscribers. The information will be used by cable operators to rebut a franchising authority's certification to the FCC that the cable system is not subject to effective competition. FCC staff will use the data to achieve the goals of the Communications Act, the Cable Act, by ensuring that the threshold effective competition determination is based on a complete record and to resolve disputes concerning the presence or absence of effective competition.

OMB Number: None.

Title: Section 76.913, Assumption of Jurisdiction by the Commission.

Action: New collection.

Respondents: State or local governments and federal agencies or employees.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 500 responses; 8 hours average burden per response; 4,000 hours total annual burden.

Needs and Uses: New § 76.913(b) provides that a franchising authority that has insufficient resources to regulate rates or lacks the legal authority to do so may petition the Commission to regulate the rates for basic cable service and associated equipment of its franchisee. If the franchising authority lacks the resources to administer rate regulation, its petition must be accompanied by a demonstration that franchise fees are insufficient to fund any additional activities required to administer basic service rate regulation. In cases where the franchising authority lacks the legal authority to regulate rates, it must submit with its petition a statement detailing the legal infirmity. The data will be used by FCC staff to identify situations where it should exercise jurisdiction over basic service and equipment rates in place of a local franchising authority. If the information was not collected, the basic cable rates of some franchise areas not subject to effective competition would remain unregulated in contravention of the goals of the 1992 Cable Act.

OMB Number: None.

Title: Section 76.915, Change in Status of Cable Operator.

Action: New collection.

Respondents: State or local governments, businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 465 responses; 2.39 hours average burden per response; 1,111 hours total annual burden.

Needs and Uses: New § 76.915 provides that (1) franchising authorities notify the Commission of any decision changing the regulatory status of a cable operator (§ 76.915(b)); (2) to effectuate a change in the regulatory status of a cable operator, a cable operator and a franchising authority may submit a joint statement that effective competition exists (§ 76.915(d)); (3) cable operators denied a change in status by a franchising authority may seek review of that finding at the Commission by filing a petition for revocation of the franchise authority's certification (§ 76.915(d)); and (4) a cable operator may petition the Commission for change in its regulatory status in cases where a local franchising authority has not been certified to regulate rates (§ 76.915(f)). These new requirements will ensure that cable subscribers nationwide enjoy the rates that would be charged by cable systems operating in a competitive environment.

OMB Number: None.

Title: Section 76.916, Petition for Recertification.

Action: New collection.

Respondents: State or local governments.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 1,300 responses; 2.5 hours average burden per response; 3,250 hours total annual burden.

Needs and Uses: New § 76.916 provides that a franchising authority wishing to assume jurisdiction to regulate basic service and associated equipment rates after its request for certification has been denied or revoked must file a "Petition for Reconsideration." If the collection of information was not conducted, such franchise authorities would not have an opportunity to establish their qualifications after their initial request for certification was denied or revoked.

OMB Number: None.

Title: Section 76.924, Cost Accounting and Cost Allocation Requirements.

Action: New collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 30,070 recordkeepers; 80 hours average burden per recordkeeper; 2,405,600 hours total annual burden.

Needs and Uses: While the requirements adopted in the Report and Order, MM Docket No. 92-266, will permit immediate implementation of its rules, the Commission has an insufficient record on which to determine the optimum level of rate averaging for the cable industry. The Commission determined that it will

include in a Second Further Notice of Proposed Rulemaking issues pertaining to what cost accounting and cost allocation requirements it should adopt on a permanent basis. The rate regulations adopted by the Commission impose a price cap on cable rates service with certain categories of costs defined as external to the cap. The cost accounting and cost allocation requirements are necessary in order to assure that costs that are intended to receive external treatment are in fact accorded such treatment. The regulations adopted by the Commission additionally authorize cable operators to make cost-of-service showings to justify a rate higher than the capped level. Cost accounting and cost allocation requirements are also necessary to permit identification of costs that will justify a rate above the cap.

OMB Number: None.

Title: Section 76.944, Commission Review of Franchising Authority Decisions on Rates for the Basic Service Tier and Associated Equipment.

Action: New collection.

Respondents: State or local governments, businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 2,000 responses; 40 hours average burden per response; 80,000 hours total annual burden.

Needs and Uses: New § 76.944 provides that any participant at the franchising authority level in a ratemaking proceeding may file an appeal of the franchising authority's decision with the Commission within 30 days of release of the text of the franchising authority's decision. The data will be used to ensure that franchising authority's decisions regarding cable rates are consistent with the provision of the 1992 Cable Act and the Commission's rules regarding cable rate regulation. Commission review of appeals is necessary to ensure uniformity of interpretation of these federal guidelines. Otherwise, rulings by state or local courts in different parts of the country could produce varying and conflicting determinations about section 623 of the Commission's Rules which could frustrate the purpose of having federal guidelines.

OMB Number: None.

Title: Section 76.952, Information to be Provided by Cable Operator on Monthly Subscriber Bills.

Action: New collection.

Respondents: Individuals or households, businesses or other for-profit (including small businesses).

Frequency of Response: Other: One-time requirement.

Estimated Annual Burden: 31,000 responses; 8 hours average burden per response; 248,000 hours total annual burden.

Needs and Uses: New § 76.952 requires cable operators to provide on monthly subscriber bills the name and mailing address of the relevant franchising authority and the FCC community unit identifier for the cable system. The information will be used by subscribers wishing to file a complaint concerning a cable operator's rates for cable programming service or associated equipment, to properly complete FCC Form 329, Cable Programming Service Complaint Form. Upon receipt of FCC Form 329, the information will be used by the FCC to efficiently and accurately determine the identity of the cable operator in question and the relevant franchising authority. If the collection of information was not conducted, complainants would not be able to adequately identify the cable system in question or the relevant franchising authority so that the FCC could resolve the complaint expeditiously as required by the Cable Act. Also, absent the information, the confusion that would ensue would make it impossible for FCC staff to properly process in an efficient manner the voluminous number of complaints expected to be filed.

OMB Number: None.

Title: Section 76.962, Implementation and Certification of Compliance.

Action: New collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 2,900 responses; 0.5 hours average burden per response; 1,450 hours total annual burden.

Needs and Uses: New § 76.962 provides that a cable operator must certify to the Commission its compliance with any Commission order requiring prospective rate reductions, refunds or other remedial relief to subscribers. This new requirement will ensure that cable subscribers nationwide enjoy the rates that would be charged by cable systems operating in a competitive environment. The data will be collected to monitor a cable operator's compliance with FCC orders.

OMB Number: None.

Title: Section 76.970, Commercial Leased Access Rates.

Action: New collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Annual reporting requirement and recordkeeping requirement.

Estimated Annual Burden: 31,000 responses, 8 hours average burden per response, 248,000 hours total reporting burden; 31,000 recordkeepers, 1 hour average burden per recordkeeper, 31,000 hours total recordkeeping burden; 279,000 hours total annual burden.

Needs and Uses: New § 76.970 requires cable operators to (1) calculate the maximum reasonable rates for each rate classification annually; (2) to provide a schedule of rates upon request to prospective leased access programmers; and (3) maintain sufficient supporting documentation to justify scheduled rates, including supporting contracts, calculations of the new implicit fees, and justifications for all adjustments. These new requirements are designed to assure that the leased access option brings about the intended diversity of programming and competition in programming delivery. The data will be used by the prospective leased access programmers and the Commission to verify rate calculations for leased access channels. Setting maximum rates will eliminate uncertainty in negotiations for leased commercial access as required by section 612 of the 1992 Cable Act.

OMB Number: None.

Title: Section 76.975, Commercial Leased Access Dispute Resolution.

Action: New collection.

Respondents: Individuals or households, businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 500 responses; 8 hours average burden per response; 4,000 hours total annual burden.

Needs and Uses: New § 76.975 provides that (1) any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available or to charge rates for such capacity may file a petition for relief with the Commission; (2) this petition must state concisely the facts constituting a violation of the FCC's leased access rules and the specific rule or regulation violated, and certify that the petition was served on the cable operator; and (3) any petition for relief must be filed within 60 days of the alleged violation. A cable operator would then have 30 days from the date of filing the petition in which to respond. These new requirements are designed to assure that the leased access option brings about the intended diversity of programming and

competition in programming delivery. The data will be reviewed by the Commission to resolve leased access disputes. These expedited leased access procedures may obviate the need for oral rulings or other emergency processing of leased access disputes.

OMB Number: None.

Title: Section 76.982, Continuation of Rate Agreements.

Action: New collection.

Respondents: State or local governments, businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 150 responses; 0.5 hours average burden per response; 75 hours total annual burden.

Needs and Uses: New § 76.982 provides that franchise authorities who were regulating basic cable rates pursuant to a rate agreement executed before July 1, 1990, may continue to regulate rates during the remainder of the agreement. Franchise authorities must notify the Commission of their intentions to continue regulating rates under the rate agreement. This notification will give the Commission the information we need regarding those systems regulated under the 1984 Cable Act to assess the impact of our new regulatory scheme under the 1992 Cable Act.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-14090 Filed 6-11-93; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 052493 AND 060493

Name of acquiring person, name of acquired person and name of acquired entity	PMN No.	Date terminated
Phillips Petroleum Company, Mobil Corporation and Mobil Corporation	93-1007	05/24/93
Mobil Corporation, Phillips Petroleum Company and Phillips Petroleum Company	93-1008	05/24/93
Morristown Memorial Health Foundation, Inc., Chilton Memorial Corporation and Forrest S. Chilton, 3rd Memorial Hospital, Inc.	93-1010	05/24/93
George R. Roberts, Connecticut Mutual Life Insurance Company and Sunriver Properties Oregon, Ltd.	93-0987	05/25/93
CPI Corp., Melville Corporation and Ridgedale Prints Plus, Inc.	93-1044	05/25/93
Aon Corporation, Lincoln National Corporation and K&K Insurance Specialties, Inc.	93-1055	05/25/93
Pulitzer Voting Trust, H&C Communications, Inc. and H&C Communications, Inc.	93-1057	05/25/93
Beneficial Corporation, Consolidated International Insurance Group, Inc. and Wesco Insurance Company	93-1075	05/25/93
The Society of the New York Hospital, MHB Corporation and Methodist Hospital of Brooklyn	93-0979	05/26/93
The Society of the New York Hospital, Brooklyn Community Health Management Services, Inc. and Community Hospital of Brooklyn, Inc.	93-0980	05/26/93
Alco Standard Corporation, Erskine House Group PLC and Erskine House Group PLC	93-1042	05/26/93
Zell/Chilmark Fund, L.P., Scott Sports Group, Inc. and Scott Sports Group, Inc.	93-0989	05/27/93
SCANA Corporation, NICOR, Inc. and NICOR Exploration and Production Company	93-1004	05/27/93
Ray C. Anderson, First Chicago Corporation and Bentley Mills, Inc.	93-1050	05/27/93
Cyprus Minerals Company, USX Corporation and U.S. Steel Mining Co.	93-1060	05/27/93
Citicorp, Alco Standard Corporation and Paper Corporation of America and MDR Corporation	93-1037	05/28/93
Tomen Corporation, Goldtex, Inc. and Goldtex, Inc.	93-1043	05/28/93
Citicorp, Inc., N.V. Amev and General Furniture Leasing Co.	93-1048	05/28/93
Citicorp, Inc., Compagnie Financiere et de Reassurance du Groupe AG and General Furniture Leasing Co.	93-1049	05/28/93
Michael T. Reinbold, c/o PAMCORP Holdings, Inc., Primark Corporation and Triad International Maintenance Corporation	93-1076	05/28/93
The B.F. Goodrich Company, Abex, Inc. and Pneumo Abex Corporation	93-1079	05/28/93
Ford Motor Company, Regie Nationale des Usines Renault S.A. and Mack Trucks, Inc.	93-1082	05/28/93
The Minnesota Mutual Life Insurance Company, Ministers Life—A Mutual Life Insurance Company and Ministers Life—A Mutual Life Insurance Company	93-1086	05/28/93
Pearson plc, THORN EMI plc and Thames Television PLC	93-1088	05/28/93
MDL Information Systems, Inc., Maxwell Communication Corporation plc and Molecular Design Limited	93-1089	05/28/93
SLK Investing Co., LIT Holdings PLC and LIT America, Inc.	93-1096	05/28/93
Plaza Home Mortgage Corporation, Douglas E. Heltne and Sandia Mortgage Corporation	93-1106	05/28/93
Edwards Dunlop and Company Limited, The Meade Corporation and Seaboard Paper Company	87-1488	05/30/98
AIF II, L.P., Ronald O. Perelman and SCI Television, Inc.	93-1091	06/01/93
AIF II, L.P., United International Holdings and United International Holdings, Inc.	93-1092	06/01/93
Pitney Bowes Inc., Ameriscribe Corporation and Ameriscribe Corporation	93-0999	06/02/93
Energy Service Company, Inc., NGP No. I, L.P. and Penrod Holding Corporation	93-1065	06/02/93
SAGASCO Holdings Limited, Magellan Petroleum Corporation and Magellan Petroleum Corporation	93-1072	06/02/93
Bausch & Lomb Incorporated, H.F. Johnson Distributing Trust f/t/b of Samuel Johnson and S.C. Johnson & Son, Inc.	93-1081	06/02/93
Airgas, Inc., Phoenix Distributors, Inc. and PDI Western Distributing Group	93-1090	06/02/93
O. Gene Bicknell, NRH Corporation and NRH Corporation	93-1100	06/02/93
Roger H. Elton, International Game Technology and CMS-International	93-1109	06/02/93

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 052493 AND 060493—Continued

Name of acquiring person, name of acquired person and name of acquired entity	PMN No.	Date terminated
Apache Corporation, Gary L. Hall and Hall-Houston Oil Company	93-1077	05/03/93
Equitable Resources, Inc., Arkla, Inc. and Louisiana Intrastate Gas Corporation	93-1080	05/03/93
NationsBank Corporation, Mr. Joseph J. Ritchie and Chicago Research & Trading Group, Ltd.	93-1104	05/03/93
NationsBank Corporation, CRT Japan, Inc. and CRT Japan, Inc.	93-1105	05/03/93
SPX Corporation, The Allen Group Inc. and The Allen Group Inc. (Test Products Division)	93-0955	05/04/93
IVAX Corporation, Societe Nationale Elf Aquitaine and Newco	93-1038	05/04/93
The Olsten Corporation, Lifetime Corporation and Lifetime Corporation	93-1064	05/04/93

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93-13927 Filed 6-11-93; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3427]

The Clorox Company; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California-based manufacturer of various household and food products from misrepresenting the total fat, saturated fat, cholesterol, or sodium content of any salad dressing.

DATES: Complaint and Order issued May 17, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Anne Maher, FTC/S-4002, Washington, DC 20580. (202) 326-2987.

SUPPLEMENTARY INFORMATION: On Thursday, October 29, 1992, there was published in the **Federal Register**, 57 FR 49085, a proposed consent agreement with analysis In the Matter of The Clorox Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdiction findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 93-13930 Filed 6-11-93; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[Dkt. C-3428]

Fleetwood Manufacturing, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an Arizona-based company and its officer from representing that use, in a manner requiring little or no effort, of their continuous passive motion ("CPM") exercise tables: Reduces or helps to reduce body fat; results in or contributes to weight-loss or inch loss; tones or firms human tissue; removes or eliminates cellulite; or provides health or physical fitness benefits similar or superior to those provided by rigorous exercise. In addition, respondents are prohibited from making similar representations, with respect to any passive exercise machine, or fitness or diet program, unless they possess competent and reliable scientific evidence to substantiate such claims. Furthermore, the order also prohibits the respondents from representing that a consumer endorsement or testimonial represents the typical or ordinary experience of those who use the exercise program or CPM machines, unless that is the case.

DATES: Complaint and Order issued May 18, 1993.[1]

FOR FURTHER INFORMATION CONTACT: C. Steven Baker or Theresa McGrew, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., suite 1437, Chicago, IL. 60603. (312) 353-8156.

SUPPLEMENTARY INFORMATION: On Wednesday, March 10, 1993, there was published in the **Federal Register**, 58 FR 13267, a proposed consent agreement with analysis In the Matter of Fleetwood Manufacturing, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Donald S. Clark,

Secretary.

[FR Doc. 93-13928 Filed 6-11-93; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. 9251]

Synchronal Corp., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a New York-based

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

infomercial company and two of its former officers from making any unsubstantiated product claims and from disseminating the two infomercials for a purported baldness cure and a cellulite treatment, and from misrepresenting the results of any tests or studies used for marketing any product or service. In addition, the consent agreement would require Synchronal to pay $3.5 million into a consumer redress fund, and Ira Smolev, a former officer, to maintain a $500,000 escrow account before advertising various consumer products in the future.

DATES: Comments must be received on or before August 13, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Cleland, FTC/S–4002, Washington, DC 20580. (202) 326–3088 or Michael Bloom, New York Regional Office, Federal Trade Commission, 150 William St., suite 1300, New York, NY 10038. (212) 264–1207.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of: Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation, corporations, Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc., Richard E. Kaylor, individually and as an officer and director of Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation, Thomas L. Fenton, individually and as an officer and director of Synchronal Corporation and Synchronal Group, Inc., Ana Blau a/k/a Anushka, and Steven Victor, M.D., individually.

The agreement herein, by and between Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation, corporations, by their duly authorized officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group, Inc.; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation; and Ana Blau a/k/a Anushka, and Steven M. Victor, M.D., individually, hereinafter sometimes referred to as respondents, and their attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Synchronal Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 1515 Broadway, New York, New York, 10036.

Respondent Synchronal Group, Inc. ("Synchronal Group"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 1515 Broadway, New York, New York, 10036.

Respondent Smoothline Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 171 Mariner Drive, Southampton, New York, 11968.

Respondent Omexin Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 171 Mariner Drive, Southampton, New York, 11968.

Respondent Ira Smolev ("Smolev") is or was at relevant times herein an officer and director of Synchronal Corporation and Synchronal Group. He formulated, directed and controlled the policies, acts and practices of said corporations. His home address is 120 Meadow Lane, Southampton, New York, 11968.

Respondent Richard E. Kaylor ("Kaylor") is or was at relevant times herein an officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation. He formulated, directed and controlled the policies, acts and practices of said corporations. His home address is 2 Woodside Lane, Rye, New York, 10580.

Respondent Ana Blau a/k/a Anushka ("Blau") is or was at relevant times herein the founder and co-owner of the Anushka Institute. Her business address is 241 East 60th Street, New York, New York, 10022.

Respondent Steven Victor, M.D. ("Victor") is or was at relevant times herein a medical doctor licensed to practice by the State of New York, with a specialty in dermatology. Victor's business address is 30 East 76th Street, New York, New York, 10022.

2. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violations of sections 5(a) and 12 of the Federal Trade Commission Act and the provisions of the Postal Reorganization Act, 39 U.S.C. 3009, and have filed answers to said complaint denying said charges.

3. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

(d) Any claims under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to respondents, (1) issue its amended complaint corresponding in form and substance with the draft of complaint

here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondents' addresses as stated in this agreement shall constitute service. Respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purposes of this Order:

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

2. "Shipping" shall mean sending, or causing to be sent, any product or products by mail, by carrier, or by any other means.

3. "Continuity program" shall mean any plan, arrangement, or system by which a consumer is periodically shipped a product or products, and is charged by credit card or otherwise billed for each shipment.

4. "Expressed consent" shall mean the affirmative agreement of the consumer to the terms and conditions of a continuity program obtained only after a description of the material conditions and terms of the continuity program, and the material duties and obligations of a subscriber thereto, have been clearly and prominently provided to the subscriber, and shall not be construed to allow the interpretation of a consumer's silence as affirmative agreement to the material terms and conditions of any continuity program.

5. "Subscriber" shall mean any person who has given his or her expressed consent to receive the benefits of and assume the obligations entailed in any continuity program.

6. "Video advertisement" shall mean any advertisement intended for dissemination through television broadcast, cablecast, home video, or theatrical release.

I

It is ordered, That respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; Ana Blau a/k/a Anushka and Steven Victor, M.D. individually; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from selling, broadcasting or otherwise disseminating, or assisting others to sell, broadcast or otherwise disseminate, in part or in whole:

A. The program-length television advertisement for the Anushka Bio-Response Body Contouring Program described and identified in the complaint as "Cellulite Free: Straight Talk with Erin Gray;" or

B. The program-length television advertisement for Omexin described and identified in the complaint as "Can You Beat Baldness?"

II

It is further ordered, That respondents, Synchronal Corporation, Synchronal Group, and Smoothline Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of the Anushka Bio-Response Body Contouring Program or any other substantially similar cellulite treatment product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

1. Such product or service contains any ingredient that can or will substantially reduce or eliminate cellulite from the body;

2. Users of such product or service can or will achieve a visible reduction in cellulite after a single or a few treatments;

3. Use of such product or service can or will cause a substantial reduction in the size of the hips and thighs;

4. The use of such product or service can or will cause the loss of a substantial amount of weight; or

5. For thousands of women, such product or service has substantially reduced or eliminated cellulite from the body.

For purposes of this Order a "substantially similar cellulite treatment product or service" shall be defined as any product or service that is advertised to treat, reduce, or eliminate cellulite from the body through the application of ingredients to the skin and that contains or purportedly contains seaweed or any extract thereof as an ingredient.

B. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

1. The use of such product or service can or will reduce or eliminate cellulite from body;

2. The use of such product or service can or will cause a reduction in the size of the hips or thighs;

3. The use of such product or service can or will enable users to lose weight; or

4. The use of such product or service can or will achieve any reduction of cellulite, reduction in the size of the hips or thighs, or any loss of weight within or for a specific period of time or after a specific number of treatments, unless such representation is true and unless, at the time of making such

representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

III

It is further ordered, That respondent Ana Blau a/k/a Anushka and her agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the endorsing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of the Anushka Bio-Response Body Contouring Program or any other substantially similar cellulite treatment product or service, as that term is defined in Part II.A herein, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

1. Such product or service contains any ingredient that can or will substantially reduce or eliminate cellulite from the body; or

2. For thousands of women, such product or service has substantially reduced or eliminated cellulite from the body.

B. Representing, directly or by implication, in connection with the endorsing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

1. The use of the product or service can or will reduce or eliminate cellulite from the body;

2. The use of the product or service can or will cause a reduction in the size of the hips or thighs;

3. The use of the product or service can or will enable users to lose weight; or

4. The use of the product or service can or will achieve any reduction of cellulite, reduction in the size of the hips or thighs, or any loss of weight within or for a specific period of time or after a specific number of treatments, unless such representation is true and unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. *Provided that,* For any representation made as an expert endorser, respondent must possess and rely upon competent and reliable scientific evidence, and an actual exercise of her represented expertise, in the form of an examination or testing of the products or services at least as extensive as an expert in that field would normally conduct in order to support the conclusions presented in the representation.

IV

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Omexin or any other substantially similar hair loss treatment product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

1. Such product or service contains an ingredient that can or will curtail hair loss for a large majority of balding men and women;

2. Such product or service contains an ingredient that can or will promote the growth of significant numbers of new, pigmented terminal hairs where hair has previously been lost for a large majority of men and women;

3. Such product or service contains an ingredient that has been scientifically proven to curtail hair loss for a large majority of men and women;

4. Such product or service contains an ingredient that has been scientifically proven to promote the growth of new, pigmented terminal hairs where hair has previously been lost for a large majority of men and women; or

5. Such product or service has successfully curtailed hair loss and promoted new hair growth for thousands of balding men and women.

For purposes of this Order a "substantially similar hair loss treatment product or service" shall be defined as any product or service that is advertised or intended for sale over-the-counter to treat, cure or curtail hair loss and which contains omentum or any extract thereof.

B. Representing, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

1. The use of the product or service can or will prevent, cure, relieve, reverse, or reduce hair loss;

2. The use of the product or service can or will promote the growth of hair where hair has already been lost;

3. The product or service is an effective remedy for hair loss in a substantial number of cases; or

4. Any test or study establishes that the product or service relieves, cures, prevents or reverses hair loss.

unless such representation is true and unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

C. Advertising, packaging, labeling, promoting, offering for sale, selling, or distributing any product that is represented as promoting hair growth or preventing hair loss, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq., provided that,* This subpart shall not limit the requirements of Part IV.A and B herein.

V

It is further ordered, That respondent Steven Victor, M.D., and respondent's agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, do forthwith cease and desist from:

A. Representing, directly or by implication, in connection with the endorsing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Omexin or any other substantially similar hair loss treatment product or service, as that term is defined in Part IV.A herein, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

1. Such product or service contains an ingredient that can or will curtail hair loss for a large majority of balding men and women;

2. Such product or service contains an ingredient that can or will promote the growth of significant numbers of new, pigmented terminal hairs when the hair has previously been lost for a significant number of balding men and women;

3. Such product or service contains an ingredient that has been scientifically proven to curtail hair loss for a large majority of men and women;

4. Such product or service contains an ingredient that has been scientifically proven to promote the growth of significant numbers of new, pigmented

terminal hairs where hair has previously been lost for a large majority of men and women; or

5. Such product or service has successfully curtailed hair loss and promoted hair growth for thousands of balding men and women.

B. Representing, directly or by implication, in connection with the endorsing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, that:

1. The use of the product or service can or will prevent, cure, relieve, reverse or reduce hair loss;

2. The use of the product or service can or will promote the growth of hair where hair has already been lost;

3. The product or service is an effective remedy for hair loss in a substantial number of cases; or

4. Any test or study establishes that the product or service relieves, cures, prevents, or reverses hair loss, unless such representation is true and unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. *Provided that,* For any representation made as an expert endorser, respondent must possess and rely upon competent and reliable scientific evidence, and an actual exercise of his represented expertise, in the form of an examination or testing of the products or services at least as extensive as an expert in that field would normally conduct in order to support the conclusion presented in the representation.

C. Endorsing, advertising, packaging, labeling, promoting, offering for sale, selling, or distributing any product that is represented as promoting hair growth or preventing hair loss, unless the product is the subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq., provided that,* This subpart shall not limit the requirements of Part V.A and B herein.

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

VII

It is further ordered, That respondents Ana Blau a/k/a Anushka and Steven Victor, M.D., and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the endorsing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

VIII

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any food, drug or device, as those terms are defined in section 15 of the Federal Trade Commission Act, 15 U.S.C. 55, unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

B. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any product or service (other than a product or service covered under Part VIII.A herein), unless, at the time of making such representation, respondents possess and rely upon competent and reliable evidence that substantiates the representation.

IX

It is further ordered, That respondents Ana Blau a/k/a Anushka and Steven Victor, M.D., and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the endorsing, advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any food, drug or device, as those terms are defined in section 15 of the Federal Trade Commission Act, 15 U.S.C. 55, unless at the time of making such representation respondents possess and rely upon competent and reliable evidence that substantiates the representation. *Provided that,* For any representation made as an expert endorser, respondents Blau and Victor must possess and rely upon competent and reliable scientific evidence, and an actual exercise of his or her represented expertise, in the form of an examination or testing of the products or services at least as extensive as an expert in that field would normally conduct in order to support the conclusions presented in the representation.

B. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any product or service (other than a product or service covered under Part IX.A herein), unless at the time of making such representation respondents possess and rely upon a reasonable basis consisting of competent and reliable evidence that substantiates the representation. *Provided that,* For any representation made as an expert endorser, respondents Blau and Victor must possess and rely upon competent and reliable evidence, and an actual exercise of his or her represented expertise, in the form of an examination or testing of the products or services at least as extensive as an expert in that

field would normally conduct in order to support the conclusions presented in the representation.

X

It is further ordered, That respondents, Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling, or disseminating:

A. Any advertisement that misrepresents, directly or by implication, that it is not a paid advertisement;

B. Any commercial or other video advertisement fifteen (15) minutes in length or longer or intended to fill a broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer that does not display visually, in a clear and prominent manner and for a length of time sufficient for an ordinary consumer to read, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

THE PROGRAM YOU ARE WATCHING IS A PAID ADVERTISEMENT FOR [THE PRODUCT OR SERVICE].

Provided that, For the purposes of this provision, the oral or visual presentation of a telephone number or address for viewers to contact to place an order for the product or service shall be deemed a presentation of ordering instructions so as to require the display of the disclosure provided herein.

XI

It is further ordered, That respondents, Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service through a continuity program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Selling or distributing or causing to be sold or distributed any product by means of a continuity program without first obtaining the expressed consent of the consumer. Prior to obtaining the consumer's expressed consent, respondents shall convey to the consumer, in the manner set forth in Part XI.B herein, all material terms and conditions of the program, including but not limited to:

1. The fact that periodic shipments of the product will be made without further action by the consumer;

2. A description of each product included in each shipment;

3. The approximate interval between each shipment;

4. A description of the billing procedure to be employed, including the total cost to be charged to the subscriber's credit card, or otherwise billed to the subscriber, for each shipment;

5. The minimum number of purchases required under the program, if any; and

6. A description of the terms and conditions under which and the procedures by which a subscriber may cancel further shipments, as set forth in Part XI.D herein.

B. Failing to convey the terms and conditions of the continuity program to the consumer in the following manner:

1. For any solicitation initiated or completed by telephone, the terms and conditions set forth in Part XI.A.1–6 herein shall be disclosed during that conversation in clear and understandable language;

2. For any solicitation by a print advertisement or direct mail, the terms and conditions set forth in Part XI.A.1–6 herein shall be disclosed in a clear and prominent manner in close proximity to the ordering instructions, *provided that,* If the advertisement or mailing contains an order form or coupon on a separate page or document from the advertising material, the disclosure shall be made both in the advertising materials and on the order form or coupon;

3. For any solicitation by a video advertisement, the following information shall be disclosed in a clear and prominent superscript with a simultaneous voice-over recitation of the superscript, during the presentation of ordering instructions for the product:

a. That the products must be purchased through a continuity program and that periodic shipments of the product will be made without further action by the consumer, if such is the case; and

b. The minimum number of purchases required under the continuity program, if any.

C. Once the subscriber has been sent an initial shipment of the product pursuant to a continuity program, failing to send to the subscriber, at least fourteen (14) days prior to the mailing date of the next shipment a written statement of the material conditions and terms of the continuity program, and the material duties and obligations of a subscriber thereto, including but not limited to those described in Parts XI.A.1–6 herein. The statement shall be sent by first class mail to each subscriber and disclose clearly and prominently the date, which in any event, shall not be less than 14 days from the date the statement was sent to the subscriber, by which the subscriber must cancel in order to avoid being billed for the next shipment. For purposes of Part XI.E., if cancellation is by mail, respondents shall be deemed to be notified on the date the subscriber mails the postage-paid mailing or other communication cancelling further shipments.

D. Failing to provide in conjunction with each shipment made pursuant to any continuity program a clear and prominent description of the terms and conditions under which and the procedures by which the subscriber may cancel further shipments. Such description shall include either a toll-free "800" telephone number the subscriber may call or a postage-paid mailing the subscriber may return to notify respondents of the subscriber's cancellation of further shipments. *Provided that,* The requirements of this subpart shall not apply to those shipments coming within a minimum purchase requirement to which the subscriber has given expressed consent, except that this subpart shall apply to the last shipment of any minimum purchase requirement.

E. Shipping any product or products to, mailing any bill or dunning communication to, or billing the credit card of any subscriber who, having once

subscribed to a continuity program and having fulfilled any minimum purchase requirement to which the subscriber has given expressed consent, notifies respondents by the means described in Part XI.D herein, or by any other reasonable means, of the subscriber's cancellation of further shipments.

F. Shipping any products to any consumer who receives the Anushka Bio-Response Body Contouring Program pursuant to the terms of any continuity program, without first informing the consumer in writing that respondents have entered into a Consent Order with the Federal Trade Commission, and setting forth the specific provisions that relate to the Anushka Bio-Response Body Contouring Program and providing an opportunity to cancel further shipments.

G. Shipping any products to any consumer who receives the Omexin System for Hair pursuant to the terms of any continuity program, without first informing the consumer in writing that respondents have entered into a Consent Order with the Federal Trade Commission, and setting forth the specific provisions that relate to the Omexin System for Hair and providing an opportunity to cancel further shipments.

XII

It is further ordered, That respondents, Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Shipping products or causing products to be shipped without the expressed, informed request of the recipient unless such merchandise shall have attached to it a clear and conspicuous statement that the recipient may treat the merchandise as a gift and that the consumer has the right to retain, use, discard, or dispose of it in any manner that he or she sees fit without any obligation whatsoever to the sender.

B. Representing that any person can or will receive a "free sample," "free trial," or other receipt of product at no cost, unless such is the fact.

XIII

It is further ordered, That respondents, Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that a consumer may avoid charges or not be billed if a product is returned within a specified time period unless:

A. At the time of making the representation, the representation is true; and

B. If respondents represent directly or by implication that the product is free for a period of time,

1. respondents disclose clearly and prominently through written notice contained within the product shipment that consumers can return the product by calling respondents' designated "800" telephone number, and that the cost of the return will be paid by respondents; and

2. respondents maintain such "800" telephone lines as are necessary to process requests for return of the product; and

3. upon request, respondents pay the cost of return of the product in the manner designated by the consumer, or advise the consumer that the consumer can keep the product with no return required and no further obligations.

C. The date for returning the product in order to avoid charges or not be billed is computed from the date the consumer receives the product, and, for purposes of determining whether the product has been returned within the specified time period, the date the consumer mails or causes the product to be shipped to the respondents is considered the date the product was returned; and

D. Complete instructions for returning the product, including, but not limited to, the address to which the product may be returned and, if applicable, directions for shipping, or in the event that it is not necessary to return the product to avoid the charge, instructions for avoiding the charge, are clearly and prominently disclosed to the consumer at the time the consumer receives the product.

Provided that, A consumer's credit card shall be deemed "billed" if the charge appears on the consumer's credit card statement, whether or not a credit is subsequently issued.

XIV

It is further ordered, That respondents, Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to comply with the requirements of section 166 of the Truth in Lending Act, 15 U.S.C. 1666e and 12 CFR 226.12(e)(1).

XV

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of any product or service in

or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of the product or service represents the typical or ordinary experience of members of the public who use the product or service, unless such is the fact.

XVI

It is further ordered, That respondents Synchronal Corporation and Synchronal Group, corporations, their successors and assigns are jointly and severally liable for consumer redress in the amount of three million five hundred thousand dollars ($3,500,000.00) and shall:

A. No later than the date that this Order becomes final, deposit into an escrow account, to be established by the Commission for the purpose of receiving payments due under the provisions of this Order ("escrow account"), the total sum of one million three hundred thousand dollars ($1,300,000.00);

B. Within ninety (90) days of the date that this Order becomes final, deposit into said escrow account the sum necessary to bring the total sum of the deposits to one million six hundred sixty-six thousand six hundred sixty-six dollars and sixty-six cents ($1,666,666.66), exclusive of any interest that may have accrued;

C. Within one hundred eighty (180) days of the date that this Order becomes final, deposit into said escrow account the sum necessary to bring the total sum of the deposits to two million thirty-three thousand three hundred thirty-three dollars and thirty-two cents ($2,033,333.32), exclusive of any interest that may have accrued;

D. Within two hundred seventy (270) days of the date that this Order becomes final, deposit into said escrow account the sum necessary to bring the total sum of the deposits to two million three hundred ninety-nine thousand nine hundred ninety-nine dollars and ninety-eight cents ($2,399,999.98), exclusive of any interest that may have accrued;

E. Within three hundred sixty-five (365) days of the date that this Order becomes final, deposit into said escrow account the sum necessary to bring the total sum of the deposits to two million seven hundred sixty-six thousand six hundred sixty-six dollars and sixty-four cents ($2,766,666.64), exclusive of any interest that may have accrued;

F. Within four hundred fifty-five (455) days of the date that this Order becomes final, deposit into said escrow account the sum necessary to bring the total sum of the deposits to three million one hundred thirty-three thousand three hundred thirty-three dollars and thirty cents ($3,133,333.30), exclusive of any interest that may have accrued; and

G. Within five hundred forty-five (545) days of the date that this Order becomes final, deposit into said escrow account the sum necessary to bring the total sum of the deposits to three million five hundred thousand dollars ($3,500,000.00), exclusive of any interest that may have accrued.

Notwithstanding the provisions of Parts XVI.A–G herein, respondents Synchronal Corporation and Synchronal Group shall deposit into said escrow account the sum necessary to bring the total sum of the deposits to three million five hundred thousand dollars ($3,500,000.00), exclusive of any interest that may have accrued, within five (5) business days of the receipt by Regal Communications Corporation or any person authorized or designated by Regal Communications Corporation of any proceeds in excess of two million two hundred thousand dollars ($2,200,000.00) from the Offering of Convertible Subordinated Debentures pursuant to Registration Statement No. 33–61424 filed with the Securities and Exchange Commission on April 22, 1993, or any other securities offered by Regal Communications Corporation after April 22, 1993.

In the event of any default of an obligation to make a deposit pursuant to Parts XVI.A–G herein, which default continues for ten (10) calendar days beyond the date the deposit is due, the entire unpaid amount shall immediately become due and payable.

These funds, together with accrued interest, shall be used to provide redress to consumers injured by respondents in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration. The final determination for, and amount of, refunds to be paid to consumers shall rest with the Commission; *provided that,* Nothing contained herein shall be construed to require the payment by respondents of an amount in excess of three million five hundred thousand dollars ($3,500,000.00) for consumer redress. If the Commission determines that direct payment of said funds to eligible consumers is wholly or partially impracticable, then, in lieu of making direct consumer redress, the Commission shall cause said funds to be paid to the United States Treasury.

At any time after this Order becomes final, the Commission may direct the escrow agent to transfer funds from the escrow account, including accrued interest, to the Commission to be disbursed as herein provided. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein described shall be deemed a payment of any fine, penalty, or punitive assessment against respondents with respect to the acts and practices which are the subject matter of the complaint and which occurred prior to the date of entry of the Order. The Commission, or its representative, shall, in its sole discretion, select the escrow agent. Costs associated with the administration of the escrow account, if any, shall be paid from the accrued interest.

Respondents relinquish all dominion, control and title to the funds paid into the escrow account, and all legal and equitable title to the amounts vests in the Treasurer of the United States and in the designated consumers. Respondents shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

XVII

It is further ordered, That respondent Ira Smolev, and respondent Smolev's agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, joint venture or other device, do forthwith cease and desist from advertising, promoting, offering for sale, selling, or distributing to the general public, the following:

A. Any health-related product or service, including but not limited to, any product or service purporting to treat, cure, or mitigate impotence;

B. Any weight loss product or service, including but not limited to, any product or service purporting to treat, cure, or eliminate cellulite or obesity;

C. Any hair care product or service, including but not limited to, any product or service purporting to grow new hair or prevent, cure, relieve, reverse, or reduce loss of hair;

D. Any personal improvement product or service, including but not limited to, any product or service purporting to enhance motivation or provide educational development;

E. Any cosmetic product or service; or

F. Any houseware item, including but not limited to, any cleaning product, cooking utensil, or appliance,

unless, prior to advertising, promoting, offering for sale, selling, or distributing to the general public any product or

service set forth in subparts A through F above, respondent Smolev establishes and funds, pursuant to the terms set forth herein, an escrow account in the principal sum of five hundred thousand dollars ($500,000) in cash, or such other assets of equivalent value, which the Commission, or its representative, in its sole discretion may approve, and maintains such amount in that account until at least five years after he last advertised, promoted, offered for sale, sold, or distributed such product or service described herein, *provided, however,* That until July 1, 1993, or the date the final decree is entered in *Ava Ross Smolev* v. *Ira Smolev,* Index No. 64795/91 (N.Y. Sup. Ct.), whichever shall occur first, respondent Smolev shall not be in violation of this provision so long as he maintains in the escrow account at least three hundred seventy-five thousand dollars ($375,000) in cash, or other approved assets of equivalent value.

Respondent Smolev shall pay all costs associated with the creation, funding, operation, and administration of the escrow account. The Commission, or its representative, shall, in its sole discretion, select the escrow agent.

The escrow agreement shall be in substantially the form attached to this Order as Exhibit A. The escrow agreement shall provide that the escrow agent, within thirty days following receipt of notice that a final judgment or an order of the Commission against respondent Smolev for consumer redress or disgorgement in an action brought under the provisions of the Federal Trade Commission Act has been entered, or, in the case of an order of the Commission, has become final, finding that he has violated the terms of the Consent Order in this proceeding or the provisions of the Federal Trade Commission Act, and determining the amount of consumer redress or disgorgement to be paid, shall pay to the Commission so much of the funds of the escrow account as does not exceed the amount of consumer redress or disgorgement ordered, and which remains unsatisfied at the time notice is provided to the escrow agent, *provided that,* If respondent Smolev has agreed to the entry of a court order or an order of the Commission, a specific finding that Smolev has violated the terms of the Consent Order or the provisions of the Federal Trade Commission Act shall not be necessary. A copy of the notice provided for herein shall be mailed to respondent Smolev at his last known address.

Respondent Smolev may not disclose the existence of the escrow account to any consumer, or other purchaser or prospective purchaser, to whom a product or service is advertised, promoted, offered for sale, sold, or distributed, without also disclosing at the same time and in a like manner that the escrow account is required by order of the Federal Trade Commission in settlement of charges that respondent Smolev engaged in false and misleading representations.

XVIII

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Synchronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and Ana Blau a/k/a Anushka and Dr. Steven Victor, individually, shall, for three (3) years after the date of the last dissemination to which they pertain, maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that were relied upon by respondent(s) in disseminating any representation covered by this Order; and

B. All reports, tests, studies, surveys, demonstrations or other evidence in any respondent's possession or control that contradict, qualify, or call into question such representation, or the basis upon which respondent relied upon for such representation, including complaints from consumers.

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation shall:

A. Within thirty (30) days after service of this Order, provide a copy of this Order to each of respondents' current principals, officers, directors and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order.

B. For a period of ten (10) years from the date of issuance of this Order, provide a copy of this Order to each of respondents' principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order who are associated with respondents or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her position.

XX

It is further ordered, That respondents, Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in their corporate structures, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this Order.

XXI

It is further ordered, That respondents Ira Smolev, Richard E. Kaylor, Ana Blau a/k/a Anushka and Steven Victor, M.D., shall, for a period of ten (10) years from the date of issuance of this Order, notify the Commission within thirty (30) days of the discontinuance of his or her present business or employment and of his or her affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his or her duties and responsibilities. The expiration of the notice provision of this Part XXI shall not affect any other obligation arising under this Order.

XXII

It is further ordered, That respondents Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation, corporations, their successors and assigns, and their officers; Ira Smolev, individually and as a former officer and director of Synchronal Corporation and Sychronal Group; Richard E. Kaylor, individually and as a former officer and director of Synchronal Corporation, Synchronal Group, Smoothline Corporation, and Omexin Corporation; and Ana Blau a/k/a Anushka and Dr. Steven Victor, individually, shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Exhibit A

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Escrow Agreement

This Escrow Agreement, made and entered into this _____day of _____, 1993, by and between Ira Smolev (hereinafter called "Smolev"); and the Federal Trade Commission, an agency of the Government of the United States of America, by and through _____(herein called "FTC"); and _____(herein called "Escrow Agent");

Witnesseth:

Whereas, The FTC has issued an administrative complaint against Smolev, Docket No. 9251; and

Whereas, The FTC and Smolev have entered into an Agreement Containing Consent Order to Cease and Desist (herein called "Consent Order") in that matter, a copy of which is attached hereto and marked Exhibit A; and

Whereas, The Consent Order requires that Smolev cease and desist from advertising, promoting, offering for sale, selling, or distributing any product or service listed therein to the general public unless he first establishes and maintains an escrow account, under the terms and conditions specified in the Consent Order;

Now, wherefore, In accordance with the terms of the Consent Order, the terms of which are incorporated herein by reference, the parties covenant and agree as follows:

1. Smolev shall establish an escrow account at _____, to be styled *Smolev Escrow Account, _____, Escrow Agent.* Smolev shall deposit into the Escrow Account an initial sum of at least three hundred seventy-five thousand dollars ($375,000) in cash, or other approved assets of equivalent value. On or before July 1, 1993, or the date the final decree is entered in *Ava Ross Smolev* v. *Ira Smolev*, Index No. 64795/91 (N.Y. Sup. Ct.), whichever occurs first, Smolev shall deposit an additional one hundred twenty-five thousand dollars ($125,000) into the Escrow Account. Thereafter, Smolev shall deposit such additional amounts into the Escrow Account as are necessary to maintain the total amount in the Escrow Account at five hundred thousand dollars ($500,000). Smolev shall pay the one hundred twenty-five thousand dollars ($125,000) and such additional amounts as may be necessary by a certified or cashier's check or cash.

2. The Escrow Agent shall be the sole signatory on the Escrow Account and access to the funds held in that account shall be solely through the Escrow Agent. It is understood by the parties to this Escrow Agreement that upon the signing of this Agreement, Smolev relinquishes to the Escrow Agent, all legal title to the escrow funds, except as to such amounts in the Escrow Account that are in excess of Five Hundred Thousand Dollars ($500,000). Until and unless the Escrow Account is terminated as provided for herein, Smolev agrees to make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and, in the event of bankruptcy, Smolev acknowledges that the funds are not part of Smolev's estate, nor does the estate have any claim or interest therein.

3. The Escrow Agent and the parties hereto agree that the escrow funds shall be held only in accordance with the terms of the Consent Order and the Escrow Agreement. Smolev shall pay all costs associated with the creation, funding, operation, and administration of the Escrow Account as they become due. In the event that Smolev fails to pay such costs as they become due, the Escrow Agent shall pay the costs from the interest earned on the escrow funds.

4. The Escrow Agent, within thirty days following receipt of notice that a final judgment or an order of the Commission against Smolev for consumer redress or disgorgement in an action brought under the provisions of the Federal Trade Commission Act has been entered, or, in the case of an order of the Commission, has become final, finding that he has violated the terms of the Consent Order in this proceeding or the provisions of the Federal Trade Commission Act, and determining the amount of consumer redress or disgorgement to be paid, which notice shall also be mailed to Smolev at his last known address, shall pay to the Commission so much of the funds of the Escrow Account as does not exceed the amount of consumer redress or disgorgement ordered, and which remains unsatisfied at the time notice is provided to the Escrow Agent, *provided that*, If Smolev has agreed to the entry of a court order or an order of the Commission, a specific finding that Smolev has violated the terms of the Consent Order or the provisions of the Federal Trade Commission Act shall not be necessary. The Escrow Agent shall have the power to convert to cash so much of the Escrow Account assets as are necessary to satisfy the obligations of the judgment or order.

5. The Escrow Account shall continue until at least five years after Smolev last advertised, promoted, offered for sale, sold, or distributed any product or service specified in the Consent Order, at which time, if there are no pending FTC investigations, legal or administrative actions by the FTC against Smolev, or unsatisfied obligations pursuant to a judgment or order described in paragraph 4 herein, for which a claim could be made against the escrow funds under the terms of the Consent Order, the FTC shall, upon Smolev's request, instruct the Escrow Agent to terminate the Escrow Account and return the balance of the Escrow Account to Smolev. At such time, the Escrow Agent shall be fully and completely released from its agency as herein described. The legal title to the escrow funds shall vest in Smolev at such time as the Escrow Agent, pursuant to instructions from the FTC, returns the funds to Smolev.

Witness the signatures of the parties, the day and year first above written.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Synchronal Corporation, Synchronal Group, Inc., Smoothline Corporation, Omexin Corporation, Ira Smolev, Richard E. Kaylor, Ana Blau a/k/a Anushka, and Steven Victor, M.D.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising and promotional practices related to the sale of the Anushka Bio-Response Body Contouring Program ("the Anushka products"), which was advertised on the infomercial "Cellulite Free: Straight Talk with Erin Gray"; the Omexin System for Hair ("Omexin"), which was advertised on the infomercial "Can You Beat Baldness?"; and Chae Basics.

The Commission's Complaint, issued on October 28, 1991, charges that respondents Synchronal Corporation and Synchronal Group ("Synchronal"), Smoothline Corporation, Smolev, and Kaylor falsely represented that the Anushka products will reduce or eliminate cellulite, will achieve a visible reduction in cellulite after only a few treatments, will reduce hips and thighs, will cause weight loss, and has reduced or eliminated cellulite for thousands of women. The Complaint also alleges that respondent Blau falsely represented as an expert endorser that the Anushka products will reduce or eliminate cellulite and has reduced or eliminated cellulite for thousands of women.

The Complaint alleges that Synchronal, Omexin Corporation, Smolev, Kaylor, and Victor falsely represented that Omexin will curtail hair loss, will promote hair growth, is scientifically proven to curtail hair loss and promote hair growth, and has successfully curtailed hair loss and promoted hair growth for thousands of balding men and women.

According to the allegations of the Complaint, the two infomercials were falsely represented to be independent programming, rather than paid advertisements. The Complaint further charges that consumer testimonials on the infomercials were falsely represented to reflect the typical experience of members of the public who used the products.

The Complaint alleges that once consumers ordered a product, Synchronal, Smoothline Corporation, Omexin Corporation, Smolev, and Kaylor periodically sent a number of them additional shipments without their consent and billed their credit cards without their authorization. Synchronal, Smolev, and Kaylor are also charged with representing that consumers would receive free supplies

of merchandise, when, in fact, their credit cards were charged for the products.

The proposed consent order contains provisions which are designed to remedy the advertising violations charged and to prevent respondents from engaging in similar acts and practices in the future. Part I of the proposed order prohibits respondents from disseminating the infomercials "Cellulite Free: Straight Talk with Erin Gray" and "Can You Beat Baldness?"

With regard to the Anushka products or any substantially similar product, Parts II.A and III.A prohibit Synchronal, Smoothline Corporation, Smolev, Kaylor, and Blau from making the claims alleged in the Complaint to be false. Parts II.B and III.B prohibit the same respondents from representing that any product or service will reduce or eliminate cellulite, reduce hips and thighs, cause weight loss, or achieve any of these results within a specific period of time, unless such representations are true and substantiated by competent and reliable scientific evidence.

With regard to Omexin or any substantially similar product, Parts IV.A and V.A prohibit Synchronal, Omexin Corporation, Smolev, Kaylor, and Victor from making the claims alleged in the Complaint to be false. Parts IV.B and V.B prohibit them from representing that any product or service will prevent or reduce hair loss, will promote hair growth, is an effective remedy for hair loss, or is proven through any test or study to relieve hair loss unless the claim is true and substantiated by competent and reliable scientific evidence. Parts IV.C and V.C forbid these respondents from advertising or promoting any hair loss product unless it is the subject of an approved New Drug Application by the Food and Drug Administration.

Parts III.B and V.B further specify that for any representation Blau or Victor make as expert endorsers they must both possess competent and reliable scientific evidence that substantiates the claim and rely upon an actual exercise of their represented expertise in the form of an examination or testing at least as extensive as an expert in that field would normally conduct to support the conclusions presented in the representation.

Parts VI and VII of the proposed order prohibit respondents from misrepresenting the validity, results, conclusions, or interpretations of any test or study. Parts VIII.A and IX.A prohibit them from making any representation about the performance, benefits, efficacy, or safety of any food, drug, or device unless they possess competent and reliable scientific evidence that substantiates the representation. Under Parts VIII.B and IX.B, respondents must possess competent and reliable evidence to substantiate any representation regarding the performance, benefits, efficacy, or safety of any other product of service. In addition, Parts IX.A and IX.B specify that for any representations made as expert endorsers, Blau and Victor must rely on both the required level of substantiation and an actual exercise of their represented expertise as defined in Parts III.B and V.B.

Part X.A of the proposed order prohibits Synchronal, Smoothline Corporation, Omexin Corporation, Smolev, Kaylor from disseminating any advertisement that misrepresents that it is not a paid advertisement. Part X.B requires that any advertisement fifteen minutes or longer display visually, in a clear and prominent manner and for a length of time sufficient for an a ordinary consumer to read, within the first thirty seconds of the commercial and immediately before each presentation of ordering instructions, the following disclosure: "THE PROGRAM YOU ARE WATCHING IS A PAID ADVERTISEMENT FOR [THE PRODUCT OR SERVICE]." Part X.B specifies that an oral or visual presentation of an ordering address or telephone number shall also require the display of this disclosure.

Part XI relates to any products that Synchronal, Smoothline Corporation, Omexin Corporation, Smolev, and Kaylor distribute through a continuity program, defined as a plan by which consumers receive and are billed for periodic shipments of products. Parts XI.A and XI.B prohibit them from selling any product through a continuity program without first obtaining the consumer's expressed consent and disclosing all material terms and conditions of the program. Part XI.C specifies that once a consumer has agreed to receive products through a continuity program, these respondents must send the consumer a written statement disclosing all material terms of the program. Part XI.D requires they include in each shipment a clear and prominent explanation of how to cancel future shipments, including either an 800 number or a postage-paid mailer. Once a consumer cancels further shipments, Part XI.E prohibits these respondents from sending the consumer merchandise or billing their credit card. Parts XI.F and XI.G require that these respondents notify any consumers who receive the Anushka products or Omexin through any continuity program of the settlement in this case.

Part XII.A prohibits Synchronal, Smoothline Corporation, Omexin Corporation, Smolev, and Kaylor from shipping products to consumers without their expressed consent unless a statement is attached that the recipient may treat the merchandise as a gift. According to Part XII.B, these respondents may not represent that any person will receive a "free sample," "free trail," etc., unless such is the fact.

Part XIII relates to representations that consumers may avoid being billed if a product is returned within a specific time period. Part XIII.A prohibits Synchronal, Smoothline Corporation, Omexin Corporation, Smolev, and Kaylor from making such a representation unless it is true. If these respondents represent that a product is free for a period of time, Part XIII.B specifies that they must clearly disclose through written notices within the product shipment that consumers can return the product by calling a designated toll-free telephone number and that respondents will pay the cost of the return. Part XIII.C specifies how the deadlines for returns are to be calculated. Part XIII.D requires that instructions for returning the product must be clearly and prominently disclosed at the time the consumer receives the product. Part XIII specifies that a consumer's credit card shall be deemed "billed" if the charge appears on the consumer's statement, whether or not a credit is later issued. Part XIV requires these respondents to comply with section 166 of the Truth in Lending Act.

Under the terms of Part XV, Synchronal, Smoothline Corporation, Omexin Corporation, Smolev, and Kaylor may not represent that any endorsement of a product or service represents the typical or ordinary experience of members of the public, unless such is the fact.

Part XVI of the proposed order requires Synchronal to pay consumer redress in the amount of $3,500,000. Part XVI also states that if the Commission should determine that direct payment of the fund to eligible consumers is impracticable, then the Commission shall cause the funds to be paid to the United States Treasury.

Part XVII requires respondent Smolev to maintain a $500,000 escrow account prior to the advertising of a wide variety of consumer products, which shall be used to fund consumer redress or disgorgement ordered in any action alleging a violation of the Federal Trade Commission Act.

Parts XVIII, XIX, XX, and XXI relate to respondents' obligation to maintain records, distribute the Order to current

and future officers and employees, notify the Commission of changes in business or corporate structure, and file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 93–13931 Filed 6–11–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

Council on Graduate Medical Education

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, DC. Copies may be obtained from: Marc L. Rico, M.D., Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, Room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6190.

Dated: June 8, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–13880 Filed 6–11–93; 8:45 am]

BILLING CODE 4160–15–P

Special Projects of National Significance

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Advance notice of application deadline date for Special Projects of National Significance for Fiscal Year 1993.

SUMMARY: The Health Resources and Services Administration's Bureau of Health Resources Development (BHRD) will provide funding for new grant applications during fiscal year 1993 to support innovative programs to advance knowledge and skills in the delivery of health and support services for adolescents with HIV/AIDS or who are at high risk for infection under the Special Projects of National Significance program. The purpose of this announcement is to give early notice to potential applicants of the amount of funding and application deadline date.

FOR FURTHER INFORMATION CONTACT: Potential applicants may contact the Grants Management Officer, Ms. Glenna Wilcom, Bureau of Health Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, room 13A38, Rockville, MD 20857, (301) 443–2280.

SUPPLEMENTARY INFORMATION: A notice of Availability of Funds will be published in the **Federal Register** announcing program provisions, priorities, and evaluation criteria for this program.

Program	Application deadline	Number of awards (Est.)	Funds available (Est.)
Special projects of national significance	July 28, 1993	4–6	$1.2 mil.

Dated: June 9, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–13917 Filed 6–11–93; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention

[Docket No. N–93–3817; FR–3444–C–02]

NOFA for Lead-Based Paint Hazard Reduction in Priority Housing: Category I and Category II Grants; Correction

AGENCY: Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Notice of funding availability; correction.

SUMMARY: This notice corrects a date that appeared in Section 8.5 of the NOFA document that was published in the **Federal Register** on June 4, 1993 (58 FR 31848).

FOR FURTHER INFORMATION CONTACT: Ellis G. Goldman, Director, Program Management Division, Office of Lead-Based Paint Abatement and Poisoning Prevention, room B–133, 451 Seventh Street SW., Washington, DC 20410, telephone 1–800–RID–LEAD (1–800–743–5323). TDD numbers for the hearing-impaired are: (202) 708–9300 (not a toll-free number), or 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On June 4, 1993, the Department published a Notice of Funding Availability for this program (58 FR 31848). An incorrect date was included on page 31859 in the text under Section 8.5, Selection Criteria and Process, under paragraph (b), Stage One. In order to avoid confusion about the requirements, the Department is publishing this correction notice to clarify the application deadlines referenced in paragraph (b) of Section 8.5.

Accordingly, in FR Doc. 93–13101, a NOFA for Lead-Based Paint Hazard Reduction in Priority Housing: Category I and Category II Grants, published in the **Federal Register** on June 4, 1993 (58 FR 31848), on page 31859, in column 3, "8.5, Selection Criteria and Process", paragraph (b) introductory text is corrected to read as follows:

8.5 Selection Criteria and Process

* * * * *

(b) *Stage One.* A State that does not have a statute or that has existing legislation that is not consistent with the currently identified elements of a State certification program may file a formal grant application at any time after an enabling statute, or amendment to existing legislation, is signed into law, but not sooner than 9 a.m. (Eastern time), Tuesday, September 21, 1993. States that have existing enabling legislation that is consistent with the currently identified elements of a satisfactory State program may file a formal Stage One grant application at any time after 9 a.m. (Eastern time),

Tuesday, September 21, 1993. Upon acceptance by HUD and EPA of the statute, the implementation plan, and the budget, the State may apply for one-half its total grant sum.

* * * * *

(Authority: 42 U.S.C. 3535(d) and 4821–4846)

Dated: June 8, 1993.

Brenda W. Gladden,

Acting Assistant General Counsel for Regulations.

[FR Doc. 93–13911 Filed 6–11–93; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Walker's Manioc for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for Walker's Manioc (*Manihot walkerae*), which the Service listed as a threatened species on October 2, 1991. The plant, Walker's manihot, is known from one location on private land in Hidalgo County, Texas. The species is also known to occur at two locations on private lands in Tamaulipas, Mexico. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 13, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Angela Brooks, U.S. Fish and Wildlife Service Botanist, telephone (512) 994–9005 or at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site-specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Walker's manihot is an endangered species known to occur on a single site in the United States; that being on private land in Hidalgo County, Texas. The species is known to occur also at two sites on private lands in Tamaulipas, Mexico. The species is endemic to the Tamaulipan grassland-thornscrub community of South Texas and Tamaulipas, Mexico, where it grows on fine, sandy soils underlaid by caliche. Walker's manihot occurs in openings within native brush or grows up through thornscrub. Destruction and fragmentation of native brush threaten the species' continued existence. The majority of this species' habitat has been altered through clearing for agriculture, urban development and for recreation purposes. Invasion of non-native plants such as buffelgrass (*Cenchrus ciliaris*) further threaten the species' existence.

The Walker's manihot recovery plan has been reviewed by the appropriate Service staff in Region 2 and selected experts on the biology of the species. The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: June 7, 1993.

John G. Rogers,

Regional Director.

[FR Doc. 93–13914 Filed 6–11–93; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for the Cochise Pincushion Cactus for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Cochise pincushion cactus (*Coryphantha robbinsorum*), which the Service listed as a threatened species on January 9, 1986. The plant, Cochise pincushion cactus, occurs in southeastern Cochise County, Arizona and northern Sonora, Mexico. Small colonies of this species occur sporadically on three isolated limestone hills. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 13, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, 3616 West Thomas Road, suite 6, Phoenix, Arizona 85019. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Susan Rutman, U.S. Fish and Wildlife Service Botanist, telephone (602) 379–4720 or at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most listed species native to the United States. Recovery plans describe site-specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Cochise pincushion cactus is a threatened species found only on three isolated limestone hills in southeastern Cochise County, Arizona, and northern Sonora, Mexico. Small colonies of this species occur sporadically throughout the habitat. Management issues and concerns include illegal collecting, livestock and wildlife management, oil and gas drilling, material extraction, and pesticide application.

The Cochise pincushion cactus recovery plan has been reviewed by the appropriate Service staff in Region 2 and selected experts on the biology of the species. The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: June 7, 1993.

John G. Rogers,

Regional Director.

[FR Doc. 93–13912 Filed 6–11–93; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for the Sentry Milk-Vetch for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the sentry milk-vetch (*Astragalus cremnophylax* var. *cremnophylax*), which the Service listed as an endangered species on December 5, 1990. The plant, sentry milk-vetch, occurs on the south rim of the Grand Canyon, Coconino County, Arizona. There are two known populations, both occurring on public land managed by the Grand Canyon National Park. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 13, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85019. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Bruce Palmer, U.S. Fish and Wildlife Service Ecologist, telephone (602) 379–4720 or at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site-specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The endangered sentry milk-vetch is known from only two populations. One population consists of three plants, the other has fewer than 350 plants. The small number of populations, small population size, declining numbers, low plant vigor, insufficient reproduction, and disturbance by park visitors are the principal threats to the continued existence and recovery of sentry milk-vetch.

The objective of the plan is to recover the species to the point where it can be downlisted to threatened status. Preliminary criteria for downlisting are given in the plan. Recovery efforts outlined in the draft plan focus on protecting currently known populations, searching for additional populations, managing the two known populations to increase plant numbers and vigor, conducting biological studies needed to improve management, and developing an off-site propagation program.

The sentry milk-vetch recovery plan has been reviewed by the appropriate Service staff in Region 2 and selected experts on the biology of the species. The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: June 7, 1993.
John G. Rogers,
Regional Director.
[FR Doc. 93–13913 Filed 6–11–93; 8:45 am]
BILLING CODE 4310–RE–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–940–4110–03; NMNM 64491]

Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease NMNM 64491, Chaves County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from February 1, 1993, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management (BLM) is proposing to reinstate the lease effective February 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Martha A. Rivera, BLM, New Mexico State Office, (505) 438–7584.

Dated: June 4, 1993.
Dolores L. Vigil,
Chief, Adjudication Section.
[FR Doc. 93–13875 Filed 6–11–93; 8:45 am]
BILLING CODE 4310–FB–M

[CA–060–03–3110–10–B010; CA–30339FD/PT].

Realty Action; Exchange of Public and Private Lands, San Bernardino and Kern Counties, CA

AGENCY: Bureau of Land Management, Department of the Interior.
ACTION: Notice of realty action; exchange of public and private lands in San Bernardino & Kern Counties, CA.

SUMMARY: The following described public land has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

San Bernardino Meridian, California

T. 11 N., R. 6 W.,
Sec. 30: Lot 5.

Containing 21.88 acres of public land, more or less.

In exchange for these lands, the United States will acquire the following private lands in Kern County from Luz Solar Partners Ltd., V:

Mount Diablo Meridian, California

T. 31 S., R. 38 E.,
Sec 21: N½SE¼NE¼, E½SE¼SE¼, E½W½SE¼SE¼.

Containing 50 acres of non-Federal lands, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire private land in the designated Desert Tortoise Research Natural Area. The designated area encompasses lands which have historically supported the highest and most stable population of tortoise within its range. The desert tortoise has been listed as a threatened species under the Endangered Species Act of 1973. Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the general mining laws, but not the mineral leasing laws. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

The exchange will be on an equal value basis. Full equalization of value will be achieved by acreage adjustment or by cash payment in an amount not to exceed 25 percent of the fair market value of the selected lands.

The public land will be transferred out of Federal ownership with a reservation of right-of-way to the United States for ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945), and subject to a right-of-way for electric power distribution facilities, Serial Number LA0145482, held by Southern California Edison Company.

The private lands will be acquired subject to easements and mineral reservations of record. The exchange is scheduled to be completed in August of 1993.

For further information concerning this exchange, contact Becki Gonzales, California Desert District, 6221 Box Springs Blvd., Riverside, CA 92507.

For a period of 45 days after publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, California Desert District, in care of the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action.

Dated: June 2, 1993.
Henri R. Bisson,
District Manager.
[FR Doc. 93–13874 Filed 6–11–93; 8:45 am]
BILLING CODE 4310–40–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–319 (Sub-No. 2X)]

Florida Central Railroad Company, Inc.—Abandonment Exemption—In Lake County, FL

AGENCY: Interstate Commerce Commission.
ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 10903–05 the abandonment by Florida Central Railroad Company, Inc., of a 3,315-foot segment of rail line in Lake County, FL, between milepost FCEN 33.41 and the end of the line at milepost FCEN 34.05, subject to standard labor protective conditions.

DATES: The exemption will be effective on July 14, 1993, unless a formal expression of intent to file an offer of financial assistance is filed. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by June 24, 1993, petitions to stay must be filed by June 29, 1993, requests for a public use condition must be filed by July 6, 1993, and petitions to reopen must be filed by July 9, 1993.
ADDRESSES: Send pleadings referring to Docket No. AB–319 (Sub-No. 2X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
and
(2) Petitioner's representative: Robert L. Calhoun, Suite 1000, 1025 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610 [TDD for hearing impaired: (202) 927–5721].
SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).

Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: June 7, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–13920 Filed 6–11–93; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any change in the Substance or in the Method of Collection

(1) Controlled Substances Import/Export Declaration.
(2) DEA Form 236, Drug Enforcement Administration (DEA).
(3) On occasion.
(4) Businesses or other for-profit. Form 236 provides DEA with control measures over the importation and exportation of controlled substances as required by both domestic and international drug control laws and treaties.
(5) 2,760 annual responses at .25 hours per response.
(6) 690 annual burden hours.
(7) Not applicable under 3504(h).

(1) U.S. Official Order Forms for Schedules I and II Controlled Substances.
(2) DEA Forms 222 and 222a, Drug Enforcement Administration.
(3) On occasion.
(4) Individuals or households, State or local governments, businesses or other for-profit, Federal agencies or employees. DEA–222 is used to transfer or purchase Schedule I or II controlled substances, and data is needed to provide an audit record of the transfer or purchase. DEA–222a Requisition Form is used to obtain the DEA–222 Form. Respondents are DEA registrants desiring to handle these controlled substances.
(5) 436,000 annual responses at .25 hours per response.
(6) 109,000 annual burden hours.
(7) Not applicable under 3504(h).

(1) ACROS Transaction Reporting.
(2) DEA Form 333, Drug Enforcement Administration.
(3) Quarterly.
(4) Businesses or other for-profit. Drug, narcotic, and controlled substance manufacturing data collection is necessary for the U.S. to meet obligations under two international treaties: the Single Convention on Narcotic Drugs, and the Convention on Psychotropic Substances. The DEA Form 333 is the means by which this information is collected.
(5) 2468 annual responses at 1 hour per response.
(6) 2468 annual burden hours.
(7) Not applicable under 3504(h).

(1) Registrants Inventory of Drugs Surrendered.
(2) DEA Form 41, Drug Enforcement Administration
(3) On occasion
(4) Businesses or other for-profit. Section 1307.21 of 21 CFR requires that any registrant desiring to voluntarily dispose of controlled substances shall list them on DEA Form 41 and submit it to the nearest DEA office. The DEA 41 is used to account for surrendered or destroyed controlled substances and its use is mandatory.
(5) 20,000 annual responses at .5 hours per response
(6) 10,000 annual burden hours
(7) Not applicable under 3504(h)

(1) Visa Waiver Nonimmigrant Arrival/Departure Document
(2) I–94W, Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. The data collected on this form will be used by the Service to determine eligibility for admission to the United States. The form serves the purpose of standardizing requests for the benefit, and ensuring that the basic information required to assess eligibility is provided by applicants.
(5) 4,000,000 annual responses at .105 hours per response.
(6) 420,000 annual burden hours
(7) Not applicable under 3504(h)

(1) National Institute of Justice/NCJRS Registration for Service Form, and Renewal Form
(2) NIJ Form 1431/2 and NIJ Form 1431/7; Office of Justice Programs, National Institute of Justice
(3) Annually
(4) Individuals or households, State or local governments. The National Institute of Justice/NCJRS was established to meet technical information needs of the law enforcement, criminal justice, juvenile justice, and investigative communities. Information is collected and used only by NCJRS to tailor its products and services.
(5) NIJ Form 1431/2: 1800 annual responses at .1 hours per response; NIJ Form 1431/7: 45600 annual responses at .01 hours per response
(6) 2256 annual burden hours (combined total for both forms)
(7) Not applicable under 3504(h)

New Collections

(1) Emergency Federal Law Enforcement Assistance
(2) No form number. Immigration and Naturalization Service
(3) On occasion
(4) State or local governments. The Immigration Act of 1990 includes a new section which authorizes the Attorney General to expend up to

$20,000,000 of the Immigration Emergency Fund for the reimbursement of States and localities in three additional immigration-related emergency circumstances. This collection of information is necessary for the States and localities to submit claims for such reimbursement.

(5) 10 annual responses at 30 hours per response

(6) 300 annual burden hours

(7) Not applicable under 3504(h)

Public comment on these items is encouraged.

Dated: June 8, 1993.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 93-13929 Filed 6-11-93; 8:45 am]

BILLING CODE 4410-02-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93-052]

NASA Advisory Council (NAC) Task Force on National Facilities; Aeronautics R&D Facilities Task Group; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC Task Force on National Facilities, Aeronautics R&D Facilities Task Group.

DATES: June 22, 1993, 8 a.m. to 4:30 p.m.; and June 23, 1993, 8 a.m to 4:30 p.m.

ADDRESSES: ARC Professional Services Group, Suite 950, 500 E Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne McKinney, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681 (804/864-8686).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Facility Working Group Reports

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: June 7, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93-13882 Filed 6-11-93; 8:45 am]

BILLING CODE 7510-01-M

[Notice 93-053]

NASA Advisory Council (NAC), Space Station Advisory Committee (SSAC); Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Advisory Committee.

DATES: June 30, 1993, 8:30 a.m. to 5 p.m., and July 1, 1993, 8:30 a.m. to 12 Noon.

ADDRESSES: 300 E Street SW., room 7-C61, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. W.P. Raney, Code D, National Aeronautics and Space Administration, Washington DC 20546, 202/358-1857.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Office of Space Systems Development Overview

—Space Station Redesign Status

—Utilization Activities

—Congressional Status

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 7, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 93-13881 Filed 6-11-93; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on 202/606-8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4) and (6) of section 552b of title 5, United States Code.

1. *Date:* July 1, 1993.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after November 1, 1993.

2. *Date:* July 8-9, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications in Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs, for projects beginning after January 1, 1994.

3. *Date:* July 9, 1993.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals for the May 1, 1993 deadline in the Challenge Grants Program, submitted to the Division of Education Programs, for projects beginning after January, 1994.

4. *Date:* July 12, 1993.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals for the May 1, 1993 deadline in the

Challenge Grants Programs, submitted to the Division of Education Programs, for projects beginning after January, 1994.

5. *Date:* July 14, 1993.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals for the May 1, 1993 deadline in the Challenge Grants Program, submitted to the Division of Education Programs, for projects beginning after January, 1994.

6. *Date:* July 15–16, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications in Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs, for projects beginning after January 1, 1994.

7. *Date:* July 22–23, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications in Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs, for projects beginning after January 1, 1994.

8. *Date:* July 29–30, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications in Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs, for projects beginning after January 1, 1994.

David C. Fisher,
Advisory Committee Management Officer.
[FR Doc. 93–13948 Filed 6–11–93; 8:45 am]
BILLING CODE 7536–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Value Engineering; Final Revision of OMB Circular No. A–131

AGENCY: Office of Management and Budget.

ACTION: The Office of Management and Budget (OMB) is publishing the final revision of OMB Circular No. A–131, "Value Engineering." The Circular has been revised in accordance with the sunset provisions contained in the January 1988 Circular.

PRESIDENT'S COUNCIL ON MANAGEMENT IMPROVEMENT: At the request of the Administrator for Federal Procurement Policy, the President's Council on Management Improvement (PCMI) made recommendations to OMB for a revised Government-wide policy on value engineering. The PCMI membership consists of senior-level officials from all the major agencies and their review of Circular A–131 has helped assure a truly Government-wide approach to value engineering. The attached revision of Circular A–131 is the culmination of the combined efforts of OFPP, a PCMI task force chaired by the General Services Administration, and extensive deliberations of the full PCMI.

SUMMARY: OMB Circular No. A–131 requires agencies to establish value engineering programs and to use value engineering techniques, where appropriate, to reduce nonessential procurement and program cost. As defined in OMB Circular No. A–131, VE is an organized effort to analyze the functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life-cycle cost consistent with required performance, reliability, quality and safety.

The Circular requires that agencies implement the following management and procurement practices: (1) Emphasize, through training and other means, the potential of value engineering to reduce unnecessary cost; (2) Establish a focal point within each agency to monitor, manage and maintain data on agency value engineering programs; (3) Establish criteria and guidelines for screening programs and projects which might benefit from the application of value engineering techniques; (4) Establish guidelines to evaluate value engineering proposals; and (5) Actively solicit value engineering ideas from contractors.

CHANGES FROM THE PREVIOUS CIRCULAR NO. A–131: This revision adds new requirements to Circular A–131 by requiring each agency to develop annual VE plans. Agency plans must identify both the inhouse and contractor projects, programs, systems, and products to which VE will be applied in the next fiscal year, and the estimated costs of those projects. The revision emphasizes that value engineering is one of many management tools that can be used alone or in concert with other management techniques, such as total quality management, to improve operations and reduce costs. In addition, the revision imposes on agencies a revised annual reporting requirement to OMB in lieu of the previous ad hoc requirements. The new reporting requirement has three parts: Part I requires agencies to report agency dollar thresholds for VE, agency VE expenditures, dollar share of savings provided to contractors, agency VE cost savings, and VE cost savings by category (acquisition, program, or other). Part II requires agencies to identify their top twenty fiscal year VE projects and the associated net life-cycle cost savings and quality improvements achieved by the agency through application of VE. Part III requires agencies to submit a detailed schedule of year-by-year cost savings, cost avoidances and cost sharing with contractors for each program/project for which the agency is reporting cost savings or cost avoidances. The aggregate total of all schedules shall equal the totals reported in the Part I.A. of the annual report.

FOR FURTHER INFORMATION CONTACT: The Office of Federal Procurement Policy at 395–6893.

Dated: June 8, 1993.

Allan V. Burman,
Administrator.

Circular No. A–131

To the Heads of Executive Departments and Establishments

Subject: Value Engineering

1. *Purpose.* This Circular requires Federal Departments and Agencies to use value engineering (VE) as a management tool, where appropriate, to reduce program and acquisition costs.

2. *Supersession Information.* This Circular supersedes and cancels OMB Circular No. A–131, Value Engineering, dated January 26, 1988.

3. *Authority.* This Circular is issued pursuant to 31 U.S.C. 1111.

4. *Background.* For the purposes of this Circular, value analysis, value management, and value control are considered synonymous with VE. VE is an effective technique for reducing costs, increasing productivity, and improving quality. It can be applied to hardware and software; development, production, and manufacturing; specifications, standards, contract requirements, and other acquisition program documentation; facilities design and construction. It may be successfully introduced at any point in the life-cycle of products, systems, or procedures. VE is a technique directed toward analyzing the functions of an item or process to determine "best value," or the best relationship between worth and cost. In other words, "best value" is represented by an item or process that consistently performs the required basic function and has the lowest total cost. In this context, the application of VE in facilities construction can yield a better value when construction is approached in a manner that incorporates environmentally-sound and energy-efficient practices and materials.

VE originated in the industrial community, and it has spread to the Federal Government due to its potential for yielding a large return on investment. VE has long been recognized as an effective technique to

lower the Government's cost while maintaining necessary quality levels. Its most extensive use has been in Federal acquisition programs.

An August 1991 audit of VE in the Federal Government by the President's Council on Integrity and Efficiency concluded that more can and should be done by Federal agencies to realize the benefits of VE. Reports issued by the General Accounting Office and agency Inspectors General have also consistently concluded that greater use of this technique would result in additional savings to the Government.

5. *Relationship to other management improvement processes.* VE is a management tool that can be used alone or with other management techniques and methodologies to improve operations and reduce costs. For example, the total quality management process can include VE and other cost cutting-techniques, such as life-cycle costing, concurrent engineering, and design-to-cost approaches, by using these techniques as analytical tools in process and product improvement.

VE contributes to the overall management objectives of streamlining operations, improving quality, reducing costs, and can result in the increased use of environmentally-sound and energy-efficient practices and materials. The complementary relationship between VE and other management techniques increases the likelihood that overall management objectives are achieved.

6. *Definitions.*

a. *Agency.* As used in this Circular, the term "agency" means an executive department or an independent establishment within the meaning of sections 101, 102, 103(1) and 104(1), respectively, of title 5, United States Code.

b. *Life-cycle cost.* The total cost of a system, building, or other product, computed over its useful life. It includes all relevant costs involved in acquiring, owning, operating, maintaining, and disposing of the system or product over a specified period of time, including environmental and energy costs.

c. *Cost savings.* A reduction in actual expenditures below the projected level of costs to achieve a specific objective.

d. *Cost avoidance.* An action taken in the immediate time frame that will decrease costs in the future. For example, an engineering improvement that increases the mean time between failures and thereby decreases operation and maintenance costs is a cost avoidance action.

e. *In-house savings.* Net life-cycle cost savings achieved by in-house agency staff using VE techniques.

e. *Contracted savings.* Net life-cycle cost savings realized by contracting for the performance of a VE study or by a Value Engineering Change Proposal submitted by a contractor.

f. *Total Quality Management (TOM).* A customer-based management philosophy for improving the quality of products and increasing customer satisfaction by restructuring traditional management practices. An integral part of TOM is continuous process improvement, which is achieved by using analytical techniques to determine the causes of problems. The goal is not just to fix problems but to improve processes so that the problems do not recur. Value engineering can be used as an analytical technique in the TOM process.

g. *Value Engineering.* An organized effort directed at analyzing the functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life-cycle cost consistent with required performance, reliability, quality, and safety. These organized efforts can be performed by both in-house agency personnel and by contractor personnel.

h. *Value Engineering Change Proposal (VECP).* A proposal submitted by a contractor under the VE provisions of the Federal Acquisition Regulations (FAR) that, through a change in a project's plans, designs, or specifications as defined in the contract, would lower the project's life-cycle cost to the Government.

i. *Value Engineering Proposal (VEP).* An in-house agency-developed proposal, or a proposal developed by a contractor under contract to provide VE service, to provide VE studies for a Government project/program.

7. *Policy.* Federal agencies shall use VE as a management tool, where appropriate, to ensure realistic budgets, identify and remove nonessential capital and operating costs, and improve and maintain optimum quality of program and acquisition functions. Senior management will establish and maintain VE programs, procedures and processes to provide for the aggressive, systematic development and maintenance of the most effective, efficient, and economical and environmentally-sound arrangements for conducting the work of agencies, and to provide a sound basis for identifying and reporting accomplishments.

8. *Agency responsibilities.* To ensure that systemic VE improvements are achieved, agencies shall, at a minimum:

a. Designate a senior management official to monitor and coordinate agency VE efforts.

b. Develop criteria and guidelines for both in-house personnel and contractors to identify programs/projects with the most potential to yield savings from the application of VE techniques. The criteria and guidelines should recognize that the potential savings are greatest during the planning, design, and other early phases of project/program/system/product development. Agency guidelines will include:

(1) Measuring the net life-cycle cost savings from value engineering. The net life-cycle cost savings from value engineering is determined by subtracting the Government's cost of performing the value engineering function over the life of the program from the value of the total saving generated by the value engineering function.

(2) Dollar amount thresholds for projects/programs requiring the application of VE. The minimum threshold for agency projects and programs which require the application of VE is $1 million. Lower thresholds my be established at agency discretion for projects having a major impact on agency operations.

(3) Criteria for granting waivers to the requirement to conduct VE studies, in accordance with the FAR 48.201(a).

(4) Guidance to ensure that the application of VE to construction projects/programs and other projects/programs, will include consideration of environmentally-sound and energy efficient considerations to arrive at environmentally-sound and energy efficient results.

c. Assign responsibility to the senior management official designated pursuant to section 8a above, to grant waivers of the requirement to conduct VE studies on certain programs and projects. This responsibility may be delegated to other appropriate officials.

d. Provide training in VE techniques to agency staff responsible for coordinating and monitoring VE efforts and for staff responsible for developing, reviewing, analyzing, and carrying out VE proposals, change proposals, and evaluations.

e. Ensure that funds necessary for conducting agency VE efforts are included in annual budget requests to OMB.

f. Maintain files on projects/programs/systems/products that meet agency criteria for requiring the use of VE techniques. Documentation should include reasons for granting waivers of VE studies on projects/programs which met agency criteria. Reasons for not implementing recommendations made in VE proposals should also be documented.

g. Adhere to the acquisition requirements of the FAR, including the use of VE clauses set forth in Parts 48 and 52.

h. Develop annual plans for using VE in the agency. At a minimum, the plans should identify both the in-house and contractor projects, programs, systems, products, etc., to which VE techniques will be applied in the next fiscal year, and the estimated costs of these projects. These projects should be listed by category, as required in the agency's annual report to OMB. VEP's and VECP's should be included under the appropriate category. Annual plans will be made available for OMB review upon request.

i. Report annually to OMB on VE activities, as outlined below.

9. *Reports to OMB.* Each agency shall report the Fiscal Year results of using VE annually to OMB, except those agencies whose total budget is under $10 million or whose total procurement obligations do not exceed $10 million in a given fiscal year. The reports are due to OMB by December 31st of the calendar year, and should include the current name, address, and telephone number of the agency's VE manager.

The report format is provided in the Attachment.

Part I of the report asks for net life-cycle cost savings achieved through VE. In addition, it requires agencies to show the project/program dollar amount thresholds the agency has established for requiring the use of VE if greater than $1 million. If thresholds vary by category, show the thresholds for all categories. Savings resulting from VE proposals and VE change proposals should be included under the appropriate categories.

Part II asks for a description of the top 20 fiscal year VE projects (or all projects if there are fewer than 20). List the projects by title and show the net life-cycle cost savings and quality improvements achieved through application of VE.

Part III requires agencies to submit a detailed schedule of year-by-year cost savings, cost avoidances and cost sharing with contractors for each program/project for which the agency is reporting cost savings or cost avoidances. The aggregate total of all schedules shall equal the totals reported in Part I.A. of the annual report.

10. *Inspectors General audits.* Two years after the issuance of this revised Circular, Agency Heads shall ask the Inspectors General (IGs) to audit agency value engineering programs to (1) validate the accuracy of agency reported value engineering savings and (2) assess the adequacy of agency value engineering policies, procedures and implementation of this revised Circular.

Periodically thereafter, agency IGs should audit agency reported VE savings as the need arises.

11. *Related Guidance.* In general, value engineering investments should have positive net present value when discounted with the appropriate interest rate, as described in OMB Circular No. A–94, section 8.c. For detailed guidance on value engineering, refer to the appropriate sections of the Federal Acquisition Regulations.

12. *Effective date and Implementation.* This Circular takes effect within 30 days of its publication in the **Federal Register**. Heads of departments and agencies are responsible for taking all necessary actions to assure effective implementation of these policies, such as disseminating this Circular to appropriate program and other staff, developing implementation strategies and initiating staff training. Since these policies must be implemented in the Federal Acquisition Regulation (FAR), agencies should not duplicate the development of implementing procurement regulations being undertaken by the Federal Acquisition Regulatory Councils. However, implementation of these policies in the FAR must be accomplished within the time period specified below, with inclusion in agency solicitations and resulting contracts, as appropriate, to occur immediately thereafter.

Pursuant to subsections 6(a) of the Office of Federal Procurement Policy Act, as amended, (41 U.S.C. 401 *et seq.*), the Federal Acquisition Regulatory Councils shall ensure that the policies established herein are incorporated in the FAR within 180 days from the date this Circular is published in final form in the **Federal Register**. Promulgation of final FAR regulations within that 180 day period shall be considered issuance in a "timely manner" as prescribed in 41 U.S.C. 405(b)."

13. *Sunset review.* The policies contained in this Circular will be reviewed by OMB five years from the date of issuance.

14. *Inquiries.* Further information about this Circular may be obtained from the Office of Management and Budget (OMB), 725 17th Street, NW., Washington, DC 20503, Telephone (202) 395–6803.

Leon Panetta,

Director.

Attachment

Agency Fiscal Year XXXX—Annual Value Engineering Report

Part I.

Name, Title, Address and Phone Number of Agency Senior Official Responsible for VE Program:

Agency VE Expenditures ($'s invested in VE this fiscal year): $_____

Dollar Share of Savings Provided to Contractors: $_____

Dollar Thresholds for each VE category (if different from $1 million):

TOTAL AGENCY NET LIFE-CYCLE COST SAVINGS ATTRIBUTABLE TO VE

Cost savings			Cost avoidance			Grand total in-house+contractor savings+avoidance
In-house	Contractor	Total cost savings	In-house	Contractor	Total cost avoidance	

A. Summary of cost savings and avoidances reported by category (See B. below):

B. Total Agency VE Net Life-Cycle Cost Savings and Cost Avoidances by Category:
Category
1. Acquisition
2. Administrative
3. Other (be specific)
a.
b.
c.

C. Please describe the steps you have taken to validate the reported cost savings, whether through IG audit or other measures. Attach additional sheets, if necessary.

Agency Fiscal Year XXXX—Annual Value Engineering Report

Part II

VE Project Description

List the top 20 VE projects by name. Show the VE expenditures, VE savings, and VE cost avoidances. Describe any quality or other non-quantifiable improvements resulting from VE.

Project title [1]	VE expenditure		Cost savings		Cost avoidance	
	In-house	Contractor	In-house	Contractor	In-house	Contractor
Description of Quality or other Non-Quantifiable Improvements: [1]						

[1] Use additional sheets as necessary to include top 20 VE projects. Also, for each project listed, indicate what steps you have taken to validate the reported cost savings, whether through IG audit or other measures.

Part III.

AGENCY FISCAL YEAR XXXX—ANNUAL VALUE ENGINEERING REPORT

Program/Project Name: Construction of John Doe Bridge

	1994	1995	1996	1997	1998	1999	2000
1. Cost Savings:							
2. Cost Avoidance:							
3. Dollar Share of Savings Provided to Contractors:							
4. VE Expenses Attributable to this Program/Project: (including a pro rata share of Salary/Expenses)							

5. For programs/projects not discussed in part II of the report, please discuss what steps you have taken to validate the reported cost savings, whether through IG audits or other measures. Attach additional sheets if necessary.

[FR Doc. 93–13900 Filed 6–11–93; 8:45 am]
BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32428; File No. SR–Amex–93–20]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Appointment of Additional Senior Floor Officials

June 8, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 14, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).
[2] 17 CFR 240.19b–4 (1991).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 21(a) to provide for the appointment of additional Senior Floor Officials from among the Exchange officials who previously served as Floor Governors.

The Amex requests accelerated approval of the proposed rule change. The Exchange states that its five Senior Floor Officials are overburdened by their responsibilities and that it has an urgent and immediate need to appoint additional qualified individuals to serve as Senior Floor Officials as expeditiously as possible.

The text of the proposed rule change is available at the Office of the

Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Recently, concerns have been raised as to whether there are sufficient number of Senior Floor Officials[3] to assist the Senior Supervisory Officer[4] on the Floor in overseeing Floor matters. Only the five Floor Governors are designated as Senior Floor Officials pursuant to Exchange Rule 21(a), and they alone are the ultimate source for speedy resolution of on-Floor disputes. While Floor Officials (including Exchange Officials who spend a substantial part of their time on the Floor)[5] are empowered to make a wide variety of rulings on questions or disputes that arise on the Floor, certain matters require approval of a Senior Floor Official (*e.g.* to allow an options specialist to exceed established position limits),[6] and under Amex Rule 22(d) on-Floor appeals of the rulings of a Floor Official are made to the Senior Supervisory Officer on the Floor and the available Senior Floor Officials. These responsibilities have, at times, placed an undue burden on the existing Senior Floor Officials, particularly when one or more of the Floor Governors are absent or are engaged in other Exchange activities.

Therefore, the Exchange is proposing to amend Rule 21(a) to provide that the Chairman of the Exchange, with the approval of the Board, and in consultation with the Senior Supervisory Officer on the Floor, may also appoint additional Senior Floor Officials from among the Exchange Officials who have previously served on the Exchange's Board of Governors, and who continue to be active on the Floor.[7] Such individuals would be empowered to perform any duty, make any decision or take any action assigned to or required of a Senior Floor Official pursuant to the Exchange Constitution and Rules.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objective(s) of section 6(b)(3), in particular, in that it is concerned with the fair and expeditious administration of the Exchange's affairs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-93–20 and should be submitted by July 6, 1993.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the Amex's proposal to amend Exchange Rule 21(a) to provide for the appointment of additional Senior Floor Officials is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6 (b)(1), (b)(3) and (b)(5) of the Act.[8] The Commission believes that the proposal is consistent with section 6(b)(1) of the Act which requires that an exchange be organized and have the capacity to carry out the purposes of the Act and to enforce compliance with the rules of the Exchange by its members and persons associated with its members, and 6(b)(3) of the Act which requires, among other things, the fair representation of members in the administration of the affairs of an exchange. The Commission also believes that the Amex proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest in accordance with section 6(b)(5) of the Act.

The Commission believes that the Amex proposal is a reasonable measure designed to provide the Exchange with flexibility to increase the number of Senior Floor Officials on its Floor. Under the Amex's current rule, only Floor Governors may serve as Senior Floor Officials.[9] As noted above, as a result of the proposal, the Chairman of the Exchange, subject to the approval of the Board, and in consultation with the Senior Supervisory Officer on the Floor,

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[3] Amex Rule 21(a) provides that each governor of the Exchange who spends a substantial part of his time on the floor shall serve as a Senior Floor Official. Under Amex's Constitution there are five Floor Governors. *See* Article II, Section 1(a)(1). A Senior Floor Official's duties include, on request of any member, participating in a prompt, on-Floor review of a Floor Official's market decision. *See* Amex Rule 22(d).

[4] Amex Rule 21(a) specifies that the Vice Chairman of the Board, if he is a member who spends a substantial part of his time on the Floor of the Exchange, shall serve as the Senior Supervisory Officer on the floor. If the Vice Chairman does not spend a substantial part of his time on the floor, the Chairman, subject to the approval of the Board, designates one of the governors serving as Senior Floor Official to act as a Senior Supervisory Officer on the floor. The authority of a Senior Supervisory Officer is set forth in Amex Rule 22.

[5] Amex Rule 21(b) provides that the Chairman, subject to approval of the Board, shall appoint as Floor Officials Exchange Officials who spend a substantial part of their time on the Floor, and such other persons familiar with the Floor as the Chairman shall determine to be necessary for the effective and orderly supervision of the operations on the floor. The authority of a Floor Official is set forth in Amex Rule 22.

[6] *See* Amex Rule 904, Commentary .05.

[7] The additional Senior Floor Officials who will be appointed pursuant to this proposal would, pursuant to Rule 21(b), also be acting as Floor Officials at the time of their appointment.

[8] 15 U.S.C. 78f (1988).

[9] *See* Amex Rule 21(a).

would be able to appoint additional Senior Floor Officials from among Exchange officials who have previously served as Floor Governors, and who continue to spend a substantial part of their time on the Exchange Floor. In this regard, the Amex has stated that the additional Senior Floor Officials would only be appointed as necessary to assist the Floor Governors in performing the Senior Floor Official functions.[10] The Commission recognizes that Senior Floor Officials serve a vital role in the resolution of disputes and the issuance of rulings [11] on the Floor. The Commission believes that the addition of Senior Floor Officials on the Exchange Floor should enhance the Exchange's efforts to enforce compliance with the rules of the Exchange by its members and persons associated with its members. This, in turn, should enhance the members' ability to engage in transactions in securities and thereby, protect investors and the public interest. Accordingly, the Commission believes that it is appropriate to permit the Amex to appoint additional Senior Floor Officials, as provided in the proposal, to meet the demands of its marketplace.

The Commission also believes that the proposal establishes appropriate qualifications for the additional Senior Floor Officials and appropriate procedures for their appointment. First, only those Exchange officials who have previously served as Floor Governors and who continue to spend a substantial part of their time on the Exchange Floor would be eligible for appointment as one of the additional Senior Floor Officials.[12] The Commission believes that this requirement should help to ensure that only qualified Exchange officials, with requisite skills, knowledge and experience, are appointed as additional Senior Floor Officials. Moreover, an appointment would be made by the Chairman of the Exchange, subject to Board approval and in consultation with the Senior Supervisory Officer on the Floor. Once appointed, the additional Senior Floor Officials would serve for a limited time period. In accordance with Amex Rule 21, Commentary .01, the additional Senior Floor Officials would serve until the next annual meeting of the Exchange in April.[13] The Commission believes that these requirements should help to ensure that the appointment of additional Senior Floor Officials is consistent with the fair representation requirement of section 6(b)(3) of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Exchange has represented that its five current Senior Floor Officials are overburdened and that there is an urgent and immediate need to appoint additional Senior Floor Officials. The proposed rule change does not alter the authority or responsibility of the Amex's Senior Floor Officials but simply provides the Exchange with flexibility to increase the number of qualified Senior Floor Officials on its Floor. The Commission finds that accelerated approval of the proposal will permit the Amex to effectuate its proposal in a timely manner upon approval.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Amex–93–20) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. 93–13944 Filed 6–11–93; 8:45 am]

BILLING CODE 8010–01–M

[10] See letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy Division, Amex, to Diana Luka-Hopson, Branch Chief, Exchange Branch, Division of Market Regulation, Commission, dated May 13, 1993.

[11] See *supra* note 3 and accompanying text.

[12] The Amex has stated that the additional Senior Floor Officials would be chosen from among those members who have already been determined to have the knowledge, experience and other qualifications necessary to function as Exchange Officials. The Exchange believes that such persons will command the respect of the membership and the Exchange administration, and can be expected to be eminently well qualified for the position. According to the Exchange, there is a limited pool of individuals who are both Exchange officials and former Floor Governors that would qualify for appointment as an additional Senior Floor Official under this proposal. The Amex states that currently seven persons meet this criteria. See letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy Division, Amex, to Diana Luka-Hopson, Branch Chief, Exchange Branch, Division of Market Regulation, Commission, dated May 13, 1993.

[13] The Exchange has stated that, although Senior Floor Officials may be appointed at any time during the year, all appointments will expire in April of each year. See letter from Claudia Crowley, Special Counsel, Legal and Regulatory Policy Division, Amex, to Diana Luka-Hopson, Branch Chief, Exchange Branch, Division of Market Regulation, Commission, dated May 13, 1993.

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–32430; File No. SR–CBOE–92–42]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to an Agreement with the Board of Trade of the City of Chicago.

June 8, 1993.

I. Introduction

On January 4, 1993 the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a request for Commission approval of a revised version of CBOE Rule 3.16(c) and an agreement dated September 1, 1992 ("Agreement") between the Board of Trade of the City of Chicago ("CBOT") and the CBOE interpreting the right of full members of the CBOT to become members of the CBOE pursuant to paragraph (b) of Article Fifth of the CBOE's Certificate of Incorporation ("Article Fifth(b)").[3] The CBOT has amended its rules in order to implement the agreement.[4]

Notice of the proposed rule change was published for comment in Securities Exchange Act Release No. 31977 (March 10, 1993), 58 FR 14453 (March 17, 1993). No comment letters were received on the proposed rule change. This order approves the proposal.

II. Description of Proposal

Article Fifth(b) provides, in part, that CBOT members shall be entitled to become members of the CBOE upon application therefore, notwithstanding any limitations on the number of CBOE members and without the necessity of acquiring that membership for consideration or value from the CBOE,

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1991).

[3] The CBOE has proposed revising CBOE Rule 3.16(c) in two other separate rule filings submitted to the Commission, File Nos. SR–CBOE–90–11 and SR–CBOE–90–21. File No. SR–CBOE–90–11 was filed with the Commission on May 2, 1990, and subsequently withdrawn on June 27, 1990. File No. SR–CBOE–90–21 was filed with the Commission on July 13, 1990 and amendment No. 1 to File No. SR–CBOE–90–21 was filed with the Commission on January 9, 1991. The CBOE agrees to withdraw File No. SR–CBOE–90–21 upon Commission approval of the current rule proposal, File No. SR–CBOE–92–42.

[4] See Letter from David P. Van Wagner, Special Counsel, CFTC, to Paul J. Draths, Vice President and Secretary, Chicago Board of Trade, dated December 29, 1992 (stating that the CBOT proposed adoption of Rules 210.00 and 221.00(g) does not require CFTC approval under section 5a(12) of the Commodity Exchange Act and may be made effective immediately).

its members, or otherwise. From time to time, the CBOE, the CBOT, and their respective members have disagreed about how to interpret Article Fifth(b). To resolve these matters the CBOE and CBOT have entered into an agreement ("Agreement"), interpreting the right of certain CBOT members to exercise the right to become members of the CBOE pursuant to Article Fifth(b). The Agreement provides that only an individual who is an "Eligible CBOT Full Member" or an "Eligible CBOT Full Member Delegate" is a member of the CBOT within the meaning of Article Fifth(b). The Agreement defines the term "Eligible CBOT Full Member," in pertinent part, to include only those individuals who are holders of one of the 1,402 existing CBOT full memberships (and only those memberships), as of September 1, 1992, the date of the Agreement, and who are in possession of all trading rights and privileges appurtenant to that CBOT full membership. The term "Eligible CBOT Full Member Delegate," in turn, would include only the individual to whom a CBOT full membership is delegated (leased) and who is in possession of all trading rights and privileges appurtenant to such CBOT full membership. For purposes of the Agreement, a trading right and privilege appurtenant to a CBOT full membership is the right and privilege of a CBOT full membership which entitles a holder or a delegate (*i.e.*, a lessee of a CBOT membership) to trade as principal and broker for others in all contracts traded on the CBOT, whether by open outcry, by electronic means, or otherwise, during any segment of a trading day when trading is authorized, as well as every other right or privilege granted, assigned or issued by the CBOT after September 1, 1992 to holders of CBOT full memberships as a class (but excluding any right or privilege which is the subject of an option that is granted, assigned or issued by the CBOT to a CBOT full member and which is not exercised by that CBOT full member).

The CBOT has agreed that it will maintain an effective record of every trading right and privilege granted, assigned or issued in respect of each CBOT full membership and every delegation or lease of any CBOT full membership (or of any trading right or privilege appurtenant thereto) and to make such records available to the CBOE promptly upon reasonable request. In furtherance of these and other provisions of the Agreement, the CBOT has agreed to amend its rules and regulations to reflect these terms.

The Agreement states that all "Exerciser Members"—*i.e.*, "Eligible CBOT Full Members" or "Eligible CBOT Full Member Delegates" who have exercised their right to become CBOE members pursuant to Article Fifth(b)—have the same rights and privileges of CBOE regular membership as do other "CBOE Regular Members," with the qualification that an "Exerciser Member" does not have the right to transfer (whether by sale, lease, gift, bequest or otherwise) his or her CBOE regular membership or any of the trading rights and privileges appurtenant thereto.

An "Exerciser Member" has the right to purchase or participate in the offer or distribution of any optional or additional CBOE membership or trading right or privilege offered or distributed by the CBOE after September 1, 1992 to other CBOE "Regular Members," as a class, on the same terms and conditions as other "CBOE Regular Members." In such a case, the Agreement expressly provides that any such additional membership, trading right, or privilege would be separately transferable by the "Exerciser Member" on the same basis as it may be separately transferable by other "CBOE Regular Members." Similarly, in the event that the CBOE were to make a cash or property distribution to "CBOE Regular Members" as a class which has the effect of diluting the value of a CBOE membership, the Agreement stipulates that any such distribution is to be made on the same terms and conditions to "Exerciser Members."

The Agreement further provides that the CBOE shall establish a reasonable record date for any such offer, distribution or redemption and, solely for such purpose, to waive all membership dues, fees and other charges and all qualification requirements,[5] other than those that may be imposed by law, that may be applicable to the application for CBOE membership of each "Eligible CBOT Full Member" and "Eligible CBOT Full Member Delegate" who wishes to exercise the rights conferred by Article Fifth(b). Any such waiver would be effective only during the period commencing on the date on which the CBOE, acting pursuant to the Agreement, gives notice to CBOT of such offer, distribution, or redemption and ending on the date that individual participates in such offer, distribution, or redemption. In such circumstances, an "Exerciser Member" for whom dues, fees and other charges and qualification requirements have been waived will not have any rights as a CBOE member other than to participate in that offer, distribution or redemption. Further, the CBOE membership of each such "Exerciser Member" will terminate immediately following the time that individual participates in that offer, distribution or redemption.

As noted, the CBOE has agreed to revise its Rule 3.16(c) in the form and manner set forth in an exhibit to the Agreement. Revised Rule 3.16(c) gives effect to the Agreement by declaring that for purposes of Article Fifth(b), the term "member of the Board of Trade of the City of Chicago" is interpreted to mean an individual who is either an "Eligible CBOT Full Member" or an "Eligible CBOT Full Member Delegate," as those terms are defined in the Agreement, and shall not mean any other person. In addition, revised Rule 3.16(c) implements the anti-dilution provisions, the notice requirements, and the fee and qualification waivers of the Agreement.

III. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 of the Securities Exchange Act of 1934, in general. Specifically, the Commission believes that the proposed rule change is consistent with section 6(b)(2) of the Act, which provides that the reuls of the CBOE are designed to provide that any registered broker dealer, or person associated with a broker dealer, may become a member, or associated with a member, of the CBOE, section 6(c)(3), which provides, among other things, that the CBOE may examine and verify the qualifications of an applicant to become a member and the natural persons associated with such an applicant, and section 6(c)(1), which states that an exchange shall deny membership to any person, other than a natural person, which is not a registered broker or dealer or any natural person who is not, or is not associated with, a registered broker or dealer.

The Agreement provides that the CBOE will waive all membership dues, fees and other charges and all qualification requirements, other than those imposed by law, in order to permit Eligible CBOT Full Members and Eligible CBOT Full Member Delegates to participate in certain offers, distributions, or redemptions. Eligible CBOT Full Members or Eligible CBOT Full Member Delegates, similarly to other securities brokers and dealers,

[5] Before an Eligible CBOT Full Member or Eligible CBOT Full Member Delegate could utilize trading privileges on the CBOE floor they would have to comply with all the requirements of the Act and CBOE Rules for trading on the CBOE floor.

must nevertheless comply with all the requirements of the Act and CBOE Rules in order to utilize their trading privileges on the CBOE floor. Accordingly, the Commission believes that the changes to CBOE Rule 3.16 are appropriate. Finally, the Commission believes that, by specifying more clearly in the CBOE's rules the requirements for certain CBOT members to become members of the CBOE, the Exchange community will be better informed as to such requirements.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and section 6 the Act, in particular.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR–CBOE–92–42) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 93–13945 Filed 6–11–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32419; File No. SR–NASD–92–50]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Excess Spread Parameters

June 4, 1993.

On November 24, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The proposal amends Part VI, Section 2 of Schedule D to the NASD By-Laws[3] to reduce excess spread parameters[4] for Nasdaq and Consolidated Quotation Service ("CQS") securities.

Notice of the proposed rule change, together with its terms of substance, appeared in the Federal Register on December 17, 1992.[5] No comments were received on the proposal. This order approves the proposed rule change.

I. Background

The rule change amends Schedule D to the NASD's By-Laws to reduce excess spread parameters for securities quoted in the Nasdaq system. The NASD is concerned that its current excess spread parameters are excessively wide, in some instances permitting spreads of 200 percent of the average dealer spread. The rule change establishes new excess spread parameters for Nasdaq and CQS securities,[6] limiting a dealer's spread in a security to 125% of the average of the narrowest three dealer spreads in that security.[7] The current system of excess spread parameters uses all market maker spreads in the calculation of average dealer spread, which gives undue weight to spreads that may reflect one-sided buying or selling interest on the part of a few part of a few market makers. After study of the impact on the members of reducing spread parameters as described above, the NASD determined that an average of the three best dealer spreads was an appropriate benchmark for calculating maximum allowable spreads.

The rule change would simplify the current system of excess spread parameters, which is cumbersome and unwieldy. Currently, the maximum allowable spread in a security varies, depending upon the average dealer spread at that time. These excess spread parameters—set out in a chart in Part VI, Section 2 of Schedule D—vary between 125% and 200% of the average dealer spread in a security, depending upon the size of the prevailing average dealer spread.[8] The rule change eliminates the chart in Schedule D and applies a uniform standard for calculating maximum permissible spreads—125% of the average of the narrowest three dealer spreads in a security.[9]

The NASD believes that an important benefit of reducing excess spread parameters may be to reduce dealer spreads overall, which would redound to the benefit of investors.[10] Nasdaq market makers are required to maintain continuous, two-sided quotations that are reasonably related to the transactions they are effecting.[11] During rapidly moving markets, dealers may be paying more attention to that side of the market where their buy or sell interest lies, resulting in less than careful monitoring of the other side of their quotes. In this fashion, spreads may widen, impairing market efficiency. Accordingly, the NASD believes that more stringent excess spread parameters will result in a reduction in dealer spreads and will thereby result in a more competitive market.

II. Commission Findings

The Commission believes that the proposed excess spread parameters will help reduce dealer spreads overall. Calculating excess spread parameters based on the three narrowest dealer spreads—as opposed to an average of all dealer spreads in a stock—eliminates the effect of a few aberrant dealer quotes that may not accurately reflect buying or selling interest, and results in more narrow permissible spreads. Moreover, while current parameters provide for spreads as high as 200% of the average dealer spread, the rule change limits spreads to 125% of the average of the three narrowest spreads. The

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[6] 15 U.S.C. 78s(b)(2) (1983).

[7] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] NASD Securities Dealers Manual, Part VI, Section 2(d) of Schedule D to the By-Laws, CCH ¶ 1819.

[4] Excess parameters establish the maximum allowable bid-ask spreads that individual dealers may quote in a market.

[5] Securities Exchange Act Release No. 31583 (December 9, 1992), 57 FR 60017.

[6] The rule change also modifies Section 2 to clarify that excess spread parameters apply to both Nasdaq and CQS securities.

[7] Where there are fewer than 3 market makers in a security, the rule change limits the maximum allowable spread to 125% of the average spread. In no case, however, will the maximum allowable spread in a security be less than ⅛ point.

[8] For example, a security with an average dealer spread of ⅜ is subject to a maximum allowable spread of ¾—that is, 200% of the average spread—whereas a security with an average dealer spread of 3 is subject to a maximum allowable spread of 3¾—125% of the average spread.

[9] The Nasdaq system automatically calculates the maximum allowable spread in a security and alerts market makers when they have entered a quote that exceeds the maximum allowable spread. Market makers may then override the alert if they still wish to enter a quote that exceeds the spread parameters. An exception report is produced whenever a market maker enters a quote that exceeds the maximum allowable spread. The NASD will continue to use exception reports for surveillance of its excess spread parameters. These reports include the time of quote entry, the amount of the excessive spread, and the time when the spread returned to within allowable limits. Firms maintaining excessive spreads are routinely queried as to why their spreads are exceeding the spread parameters, and are fined if the Compliance Subcommittee of the NASD's Market Surveillance Committee concludes that there is a pattern of abuse. Disciplinary actions for violations of the excess spread rules involving fines that do not exceed $2,500 and/or a censure may now be brought under the NASD's new Minor Rule Violations Plan. *See* Securities Exchange Act Release No. 32383 (May 28, 1993) (Order approving SR–NASD–93–6 establishing the Minor Rule Violations Plan).

[10] In connection with this rule change, the NASD will conduct a study of dealer spreads in the Nasdaq/NMS market in the month prior to, and the month following the effective date of the rule change. See letter from Robert E. Aber, Vice President and General Counsel/Corporate Subsidiaries, NASD, to Selwyn Notelovitz, Branch Chief, Over-the-Counter Regulation, SEC (May 14, 1993).

[11] *NASD Securities Dealers Manual*, Part VI, Section 2(a), (c) of Schedule D to the By-Laws, CCH ¶ 1819. See also section 3(a)(38) of the Act, 15 U.S.C. 78c(a)(38), and Rule 3b–8(a)–(b) thereunder, 17 CFR 240.3b–8(a)–(b).

Commission believes that these reductions in the NASD's excess spread parameters should help reduce spreads overall, which could contribute to a more competitive dealer market.

The Commission believes that the rule change is an appropriate means of reinforcing the obligations of Nasdaq market makers to buy and sell on a continuous basis and to maintain two-sided quotations that are reasonably related to the prevailing market. The Commission is concerned about firms that register as market makers in various Nasdaq securities even though they have no intention of actually making markets in those stocks. These market makers often maintain very wide spreads in order to avoid their market making obligations. More stringent excess spread parameters will compel market makers to maintain quotations that are reasonably related to the prevailing market, reinforcing their obligations to make continuous markets. More stringent excess spread parameters will also oblige market makers to update their quotes on both sides of the market, discouraging market makers from focusing on that side of the market where their buy or sell interest lies.

The Commission believes that reinforcing market makers' dealer obligations is an encouraging step in addressing the issue of very wide spreads in certain Nasdaq securities. Nevertheless, the Commission recognizes that narrower excess spread parameters will have little impact on the inside spread—that is, the prevailing best bid and ask prices in a security—or on the quality of customer executions. Excess spread parameters merely compel market makers to maintain quotes that are consistent with the quotes of the other market makers in a security. Tighter inside spreads and better executions are the product of more efficient price competition in the Nasdaq market.

For these reasons, and for the reasons stated above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(6) of the Act.[12] Section 15A(b)(6) requires that the NASD's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing and settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the Commission finds that the proposed rule change is consistent with section 15A(b)(11) of the Act,[13] which requires that the Association's rules relating to quotations be designed to produce fair and informative quotations. Indeed, the proposal also furthers Congressional expectations in enacting the Securities Acts Amendments of 1975 which were intended, in part, to assure the accurate, reliable, and fair publication of quotations and the economically efficient execution of securities transactions.[14]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the instant rule change be, and hereby is, approved, effective July 26, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. 93-13892 Filed 6-11-93; 8:45 am]

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[Release No. 34-32422; File No. SR-NYSE-93-14]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Change Relating to Floor Conduct and Safety Guidelines.

June 7, 1993.

I. Introduction

On March 9, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend the Exchange's Floor Conduct and Safety Guidelines ("Guidelines")[3] to adopt a provision governing clearance procedures for floor clerical personnel. The NYSE requests accelerated approval of the proposed rule change.[4]

The proposed rule change was noticed in Securities Exchange Act Release No. 32294 (May 11, 1993), 58 FR 29019 (May 18, 1993). No comments were received on the proposal.

II. Description of the Proposal

The NYSE proposes to amend its Guidelines to establish a clearance procedure for Floor clerical employees[5] and to provide for the imposition of a $1,000 fine on members or member organizations that fail to comply with the Exchange's floor clerical personnel clearance procedures. The proposal emphasizes that floor clerical personnel must be cleared by the Exchange before they are employed by a member or member organization and have access to the NYSE floor.

The Exchange states that the purpose of the proposed rule change is to ensure the safety and welfare of all individuals on the Exchange Floor, and to foster membership compliance with NYSE Rule 35. NYSE Rule 35 provides, among other matters, that an employee of a member or member organization may not be admitted to the trading floor unless such employee is registered with, and approved by, the Exchange for admittance and until the employer and employee have complied with requirements set forth by the Exchange. The Exchange believes that the imposition of a fine for failure to adhere to these procedures is an appropriate means of insuring compliance with Rule 35.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of sections 6(b) (5), (6) and (7) of the Act.[6] The Commission believes that the NYSE's proposal is

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[12] 15 U.S.C. 78o-3(b)(6).

[13] 15 U.S.C. 78o-3(b)(11).

[14] 15 U.S.C. 78k-1(a)(1)(C); S. Rep. No. 94-75, 94th Cong., 1st Sess. 104, reprinted in 1975 U.S. Code Cong. and Admin. News 179, 282.

[15] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] The Guidelines were originally adopted in 1977 to ensure that the behavior and practices of individuals on the floor of the Exchange contribute to the efficient, undisrupted conduct of business, and do not jeopardize the safety or welfare of others. See Securities Exchange Act Release No. 13893 (August 26, 1977), 42 FR 45402 (September 9, 1977) (Order announcing immediate effectiveness of File No. SR-NYSE-77-23).

[4] The Exchange states that accelerated effectiveness will enable the Exchange to provide an effective regulatory measure to control access to the floor. See letter from Donald Siemer, Director, Market Surveillance, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, dated June 3, 1993.

[5] The proposed clearance procedure states that temporary clerks to be employed up to six weeks must first obtain a form from the ID Card Office, 8 Broad Street lobby, to be completed by the member or member organization and returned to Security, at which time an access control card will be issued for the period requested. Clerks to be employed in excess of six weeks must first be formally registered with Floor Services, 20th Floor, 11 Wall Street. Floor Services will process the clerks and Security will issue access control cards with no time limitations.

[6] 15 U.S.C. 78e, 78f and 78g (1988).

designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Commission also believes that the NYSE's proposal will provide the Exchange with the ability to enforce compliance by its members with the rules of the Exchange and will establish fines for appropriate discipline of members for violation of the floor clerical personnel clearance procedures in accordance with sections 6(b)(6) and 6(b)(7) of the Act.

The Commission believes that the NYSE proposal is a reasonable measure which should help to ensure the security of NYSE staff, members, and the Exchange facility. The proposal addresses important security concerns by establishing a clearance procedure for floor clerical personnel prior to their admission on the floor. In this regard, the proposed rule change is consistent with NYSE Rule 35 which, among other things, prohibits the admittance of an employee of a member or member organization to the trading floor without such employee being registered and approved by the Exchange. The Commission believes that the proposal should contribute to the NYSE's efforts to monitor Exchange security, as well as contribute to the efficient, undisrupted conduct of business on the Exchange.

The Commission believes that the proposal provides appropriate penalties for violations of the clearance procedure. Specifically, the proposed fine for failure to comply with the procedures is reasonable in relation to the infraction because of the NYSE's interest in ensuring the safety of its trading floor and the floor personnel thereon.[7] In addition, because the proposal defines the scope of prohibited conduct, provides notice to members, and is tailored to serve a legitimate Exchange regulatory interest, the proposal provides fair and reasonable procedures for the regulation of trading floor conduct. As a result, the proposal should enhance the members' ability to engage in transactions in securities and thereby, protect investors and the public interest.

Finally, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The NYSE proposal does not substantially alter current NYSE Guidelines nor its procedures. Moreover, the proposal is consistent with NYSE Rule 35 which prohibits the admittance of an employee of a member or member organization on the trading floor without such employee being registered and approved by the Exchange. The Commission finds that accelerated approval will permit the NYSE to effectuate its proposal in a timely manner upon approval.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–93–14) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 93–13889 Filed 6–11–93; 8:45 am]

BILLING CODE 8010–01–M

[7] A member or member organization would be able to appeal any fine levied under this proposal pursuant to the procedures outlined in the Guidelines. *See* letter from Donald Siemer, Director, Market Surveillance, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, dated April 5, 1993.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–32421; File No. SR–NYSE–93–24]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Addition of Rule 410B to the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A" and Amending Minor Rule Violation Enforcement and Reporting Plan

June 7, 1993

Pursuant to section 19(b)(1) and (d)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rules 19b–4 and 19d–1(c)(2) thereunder[2] notice is hereby given that on May 12, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This proposal would revise the List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A ("List") for imposition of fines for minor violations of rules and/or policies by adding to the List Exchange Rule 410B.[3]

The Exchange requests accelerated approval of the proposed rule change. The NYSE believes that accelerated approval would enable it to expedite efforts to improve compliance with Rule 410B.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 476A[4] provides that the Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member

[1] 15 U.S.C. 78s(b)(1) and (d)(1) (1988).

[2] 17 CFR 240.19b–4 and 19d–1(c)(2) (1991).

[3] The NYSE also has requested approval, under Rule 19d–1(c)(2), 17 CFR 240.19d–1(c)(2), to amend its Rule 19d–1 Minor Rule Violation Enforcement and Reporting Plan ("Plan") to include Rule 410B. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, Exchange and Options Regulation, Division of Market Regulation, Commission, dated May 11, 1993.

[4] Rule 476A was approved by the Commission on January 25, 1985 in Securities Exchange Act Release No. 21688, 50 FR 5025 (February 5, 1985). Subsequent additions of rules to the Rule 476A Violations List were made in: Securities Exchange Act Release No. 22037 (May 14 1985); 50 FR 12213 (May 21, 1985); Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600 (September 23, 1985); Securities Exchange Act Release No. 22496 (October 2, 1985), 50 FR 41064 (October 8, 1985); Securities Exchange Act Release No. 23104 (April 11, 1986), 51 FR 13307 (April 18, 1986); Securities Exchange Act Release No. 24965 (October 22, 1987), 52 FR 23820 (October 29, 1987); Securities Exchange Act Release No. 25763 (May 2, 1988), 54 FR 20925 (June 7, 1988); Securities Exchange Act Release No. 27878 (April 4, 1990), 55 FR 13345 (April 10, 1990); Securities Exchange Act Release No. 28003 (May 9, 1990), 55 FR 20004 (May 14, 1990); Securities Exchange Act Release No. 28505 (October 2, 1990), 55 FR 41288 (October 10, 1990); Securities Exchange Act Release No. 28965 (March 28, 1991), 56 FR 12967 (March 28, 1991); Securities Exchange Act Release No. 30280 (January 22, 1992), 57 FR 34522 (January 29, 1992); Securities Exchange Act Release No. 30836, (March 31, 1992) 57 FR 12357 (April 9, 1992).

organization for a minor violation of certain specified Exchange rules.[5]

The purpose of the Rule 476A procedure is to provide for a response to a rule violation when a meaningful sanction is appropriate but when initiation of a disciplinary proceeding under Rule 476 is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the minor nature of the violation.[6] Rule 476A provides for an appropriate response to minor violations of certain Exchange rules while preserving the due process rights of the party accused through specified, required procedures. The list of rules which are eligible for 476A procedures specifies those rule violations which may be the subject of fines under the rule and also includes a schedule of fines.

In Exchange filing SR–NYSE–84–17, which initially set forth the provisions and procedures of Rule 476A, the Exchange indicated it would amend the list of rules from time to time, as it considered appropriate, in order to phase-in the implementation of Rule 476A as experience with it was gained. The Exchange's regulatory divisions have amended the List since its initial implementation to include either existing rules or newly approved ones, which are appropriate for inclusion in this particular disciplinary process when violations occur.[7]

The Exchange is presently seeking approval to add Exchange Rule 410B to the List of Rules subject to possible imposition of fines under Rule 476A procedures. Rule 410B requires members and member organizations to report trades in Exchange listed stocks, not otherwise reported to the Consolidated Tape, to the Exchange in an automated format by the next business day.[8]

The purpose of the proposed change to Rule 476A is to facilitate the Exchange's ability to induce compliance with all aspects of the above-named rule.

The Exchange believes that failure to comply with the requirements of this Rule should be addressed with an appropriate sanction and it seeks Commission approval to add violations of these requirements to the rule 476A List.

[5] See notes 8 and 9, *infra*.

[6] NYSE Rule 476 sets forth procedures for disciplinary proceedings involving charges against members, member organizations, allied members, approved persons or employees.

[7] See note 4, *supra*.

[8] See Securities Exchange Act Release No. 31358 (October 26, 1992), 57 FR 48738 (November 3, 1992), (File No. SR–91–46).

2. Statutory Basis

The proposed rule change will advance the objectives of section 6(b)(6) of the Act in that it will provide a procedure whereby member organizations can be "appropriately disciplined" in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. The proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of section 6(b)(7) and 6(d)(1) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–24 and should be submitted by July 6, 1993.

IV. Commission's Discussion and Conclusion

In 1984, the Commission adopted amendments to paragraph (c) of Securities Exchange Act Rule 19d–1 to allow SROs to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations.[9] Subsequently, in 1985, the Commission approved an NYSE Plan for the abbreviated reporting of minor rule violations pursuant to Rule 19d–1(c) under the Act. The Plan relieves the NYSE of the current reporting requirements imposed under section 19(d)(1) for violations listed in NYSE Rule 476A. The NYSE Plan, as embodied in NYSE Rule 476A, provides that the Exchange may designate violations of certain rules as minor rule violations. The Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a violation of the delineated rules by issuing a citation with a specific penalty.[10] Such person can either accept the penalty, or opt for a full disciplinary hearing on the matter. Fines assessed pursuant to NYSE Rule 476A in excess of $2,500 are not considered pursuant to the Plan and must be reported in a manner consistent with the current reporting requirement of section 19(d)(1) of the Act. The Exchange also retains the option of bringing violations of rules included under NYSE Rule 476A to full disciplinary proceedings, and the Commission expects the Exchange to do so for egregious or repeat violations.

In adopting Rule 19d–1, the Commission noted that the Rule was an attempt to balance the informational needs of the Commission against the reporting burdens of the SROs.[11] In promulgating paragraph (c) of the Rule, the Commission was attempting further to reduce those reporting burdens by permitting, where immediate reporting was unnecessary, quarterly reporting of minor rule violations. The Rule is

[9] See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23833 (June 8, 1984). Pursuant to paragraph (c)(1) of Rule 19d–1, an SRO is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d–1, any disciplinary action taken by an SRO for a violation of an SRO rule that has been designated a minor rule violation pursuant to the Plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated minor violations as not final, the Commission permits the SRO to report violations on a periodic, as opposed to immediate, basis.

[10] The List is contained under Supplementary Material to Exchange Rule 476A. As discussed in note 8, *supra* only those fines imposed that are not in excess of $2,500 are subject to periodic reporting. Fines imposed pursuant to Rule 476A in excess of $2,500 are deemed final and therefore are subject to immediate reporting to the Commission.

[11] See Securities Exchange Act Release No. 13782 (July 8, 1977), 42 FR 35411 (July 14, 1977).

intended to be limited to rules which relate to areas, such as record keeping or record retention, that can be adjudicated quickly and objectively.

The Commission believes that the Rule 410B reporting requirements meet this criteria and should be added to the list of minor rule violations subject to the Rule 476A minor rule violation plan. In particular, the Commission believes that whether a member or member organization has met the Rule 410B requirement that it report trades in Exchange listed stocks, not otherwise reported to the Consolidated Tape, to the Exchange in an automated format by the next business day, is amenable to quick, objective determinations of compliance. Efficient and equitable enforcement of a violation of the Rule 410B reporting requirement should not entail the complicated factual and interpretative inquiries associated with more sophisticated Exchange disciplinary actions.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities Exchange and, in particular, with the requirements of section 6(b) (1), (6) and (7), 6(d)(1) and 19(d).[12] The proposal is consistent with the section 6(b)(6) requirement that the rules of an exchange provide that its members and persons associated with its members shall be appropriately disciplined for violations of rules of the exchange. In this regard, the proposal provides an efficient procedure for appropriate disciplining of members for a rule violation that is technical and objective in nature. Moreover, because the Plan provides procedural rights to the person fined and permits a disciplined person to request a full hearing on the matter, the proposal provides a fair procedure for the disciplining of members and persons associated with members which is consistent with section 6(b)(7) and 6(d)(1) of the Act.

The Commission also believes that the proposal provides an alternate means by which to deter violations of the reporting requirements of Rule 410B, thus furthering the purposes of section 6(b)(1) of the Act. An exchange's ability to effectively enforce compliance by its members and member organizations with Commission and Exchange rules is central to its self-regulatory functions. Inclusion of a rule in an exchange's minor rule violation plan should not be interpreted to mean it is an unimportant rule. On the contrary, the Commission recognizes that inclusion of rules under a minor rule violation plan may not only reduce reporting burdens on an SRO but also may make its disciplinary system more efficient in prosecuting violations of these rules.

In addition, because the NYSE retains the discretion to bring a full disciplinary proceeding for any violation included on the List, the Commission believes that adding the Rule 410B reporting requirement to the List will enhance, rather than reduce, the NYSE's enforcement capabilities regarding this Exchange Rule.

Finally, the Commission believes that the inclusion of Rule 410B on the List will prove to be an effective alternate response to a violation when the initiation of a full disciplinary proceeding is unsuitable because such a proceeding may be more costly and time-consuming in view of the minor nature of the particular violation.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Commission approved Rule 410B on October 26, 1992, to require members and member organizations to report trades in NYSE listed stocks, not otherwise reported to the Consolidated Tape, to the Exchange in an automated format by the next business day. All members or member organizations have been notified by Exchange Circular of their obligations under the rule. Accordingly, the Commission believes that accelerated approval is appropriate to enable the NYSE to expedite its efforts to improve compliance with Rule 410B.

It therefore is ordered, Pursuant to section 19(b)(2) and Rule 19d–1(c)(2) under the Act,[13] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 93–13894 Filed 6–11–93; 8:45 am]

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[12] 15 U.S.C. 78f(b) (1), (6) and (7), 78f(d)(1) and 78s(d) (1988).

[13] 15 U.S.C. 78s(b)(2) (1988) and 17 CFR 240.19d–1(c)(2) (1991).

[14] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–32425; File No. SR–PSE–93–09]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Amendments to its Equity Transaction Charges

June 8, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 25, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend the Equity Transaction Charges published in the Schedule of Rates for Exchange Services. The Exchange proposes the following amendments to its Schedule of Rates for Exchange Services: [1]

I. PSE EQUITY TRANSACTION CHARGES
A. EXCHANGE TRANSACTIONS PER MONTH
Note: Transaction fees are capped at 50,000 shares per trade side *and at an $80 price per share.*
[C. KEYPUNCH SERVICES
$0.15 for PSE-keypunched side]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] With respect to the following schedule, italicizing indicates new material and brackets indicate material to be deleted.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make two changes to its charges to members for certain equity transactions as published in the Exchange's Schedule of Rates. First, the Exchange proposes to impose an $80 cap on the price per share of stock traded in block trades for purposes of calculating transaction costs. Accordingly, block trades would be calculated at the rate of the actual share price up to $80, and any share price over $80 would be calculated, for PSE charges, using an $80 price. The Exchange believes that the proposed change will make the Exchange a more competitive marketplace for the execution of block trades.

Second, the Exchange is proposing to eliminate its keypunch charge of $0.15 for PSE-keypunched sides of transactions. The elimination of this charge results from the Exchange's improvements to its automated systems, which have substantially eliminated the need for manual trade processing. The Exchange believes that the proposed change will result in charges that are more consistent with the services that the Exchange provides to its members.

2. Statutory Basis

The proposed filing is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable charges among its members and persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–93–09 and should be submitted by July 6, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–13891 Filed 6–11–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32423; File No. SR–PHLX–92–21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Fines for Infractions of Position/Exercise Limits and Hedge Exemptions

June 7, 1993.

On August 19, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange"), submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to amend its rules by adopting Options Floor Procedure Advice ("OFPA") F–15, entitled "Minor Infractions of Position/Exercise Limits and Hedge Exemptions."[3]

Notice of the proposed rule change was published for comment and appeared in the **Federal Register** on December 29, 1992.[4] No comments were received on the proposal.

Paragraph (a) of OFPA F–15 establishes a fine schedule for minor violations of the Exchange's position and exercise limits.[5] The PHLX proposes to include OFPA F–15 in its minor rule violation plan.[6] Specifically, for position and exercise limit violations amounting to less than 5% of the applicable limit, paragraph (a) provides a fine of $500 for the first occurrence, $1000 for the second occurrence, $2000 for the third occurrence, and a sanction discretionary with the Exchange's Business Conduct Committee ("BCC") for subsequent infractions. Any violation which exceeds the 5% threshold is subject to review by the BCC for formal disciplinary action. The fines established under paragraph (a) also apply to position and exercise limit infractions resulting from lapsed hedged position limit exemptions.

Paragraph (b) of OFPA F–15 exempts from the position and exercise limit aggregation count each option of a stock option position that is hedged by 100

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1992).

[3] The Exchange amended its proposal on December 18, 1992. *See* Letter from Edith Hallahan, Attorney, Market Surveillance, PHLX, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation ("Division"), Commission, dated December 18, 1992 ("Amendment No. 1"), and again on April 21, 1993. *See* Letter from Edith Hallahan, Attorney, Market Surveillance, PHLX, to Sharon Lawson, Assistant Director, Division, Commission, dated April 21, 1993 ("Amendment No. 2"). Amendment No. 2 provides that (1) OFPA F–15 applies to "minor" rather than "inadvertent" violations of the Exchange's position and exercise limits; and (2) OFPA F–15 and the fine schedule established therein are intended to be incorporated into the PHLX's minor rule violation enforcement and reporting plan, and applied pursuant to PHLX Rule 970.

[4] *See* Securities Exchange Act Release No. 31021 (December 18, 1992), 57 FR 61939.

[5] *See* Exchange Rule 1001, "Position Limits," and Exchange Rule 1002, "Exercise Limits."

[6] *See* Amendment No. 2, *supra* note 3. Pursuant to paragraph (c)(1) of Securities Exchange Act Rule 19d–1, a self-regulatory organization ("SRO") is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d–1, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated minor violations as not final, the Commission permit the SRO to report violations on a periodic (quarterly), as opposed to immediate, basis.

shares of the underlying stock or securities convertible into the stock.[7] The exemption is limited to an amount of option contracts no greater than twice the standard limit of the option, and is available for the following permissible hedges: (i) Long stock-short call; (ii) long stock-long put; (iii) short stock-long call; (iv) short stock-short put. A party utilizing the exemption must report his position to the Exchange's Market Surveillance Department in a manner prescribed by the Exchange no later than the close of the business day following the day the exemption is availed upon. Under paragraph (b)(1), failures to provide the Exchange with the requisite hedge exemption form are subject to fines of $100 for the first occurrence, $250 for the second occurrence, $500 for the third occurrence, and a sanction discretionary with the BCC for subsequent infractions.

Paragraph (b)(ii) indicates that the hedge exemptions apply only as long as the hedge is maintained. Accordingly, when the stock side to a hedge exemption is decreased, the appropriate number of options must be liquidated prior to or simultaneously with stock decrease in order to continue to maintain the exemption. Under paragraph (b)(ii), the failure to reduce the respective option position following a decrease in the stock position may result in a fine of $500 for the first occurrence, $2000 for the second occurrence, and a sanction discretionary with the BCC for subsequent infractions, in the case of options positions that exceed the applicable limit by less than 5%. Options positions that exceed the applicable limit by more than 5% are also subject to the disciplinary review by the BCC in accordance with the procedures set forth under the PHLX's Disciplinary Rules.[8]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5), in that proposal is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Specifically, the Commission believes that the fines and sanctions established by OFPA F–15 for position and exercise limit violations not exceeding 5% of the limits should provide the Exchange with a prompt, efficient, and effective means to enforce compliance with its position and exercise limits. As the Commission has noted in the past, the Exchange's position and exercise limits are designed to help the Exchange prevent the establishment of large options positions that can be used to manipulate or disrupt the underlying market so as to benefit the options position.[9] Accordingly, by enhancing the PHLX's ability to enforce its position and exercise limits, the proposal should help the PHLX to provide fair and orderly markets.

In addition, the Commission believes that the fines provided in paragraph (b) should help the PHLX to monitor the use of the hedge exemption by providing a means to sanction individuals who utilize the exemption but fail to provide the Exchange's Market Surveillance Department with the requisite documentation. By helping the PHLX monitor the use of the hedge exemption, the proposal should assist the Exchange in its efforts to detect and deter trading abuses that might arise from the increased position and exercise limits provided by the hedge exemption.

The Commission also believes that the fines provided in paragraph (b)(ii) for failures to reduce an options position after a decrease in the corresponding stock position should encourage members who utilize the exemption to remain fully hedged under the terms of the exemption. In this regard, the Commission believes, as it has found in the past,[10] that when an options position is fully hedged with an offsetting stock position, potential disruptions in the underlying stock market are lessened because the entity with the options position is not required to enter the market to buy or sell the stock if the options are exercised or assigned. In addition, to the extent that an options position is fully hedged with stock, it would be more difficult to profit from an intermarket manipulation because an increase in the value of the options position usually would be accompanied by a corresponding decrease in the value of the stock position.

Section 6(b)(6) of the Act requires that the rules of the Exchange provide that its members be appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the Exchange's rules. The Commission believes that the proposed fines, and enforcement of the violations through the PHLX's minor rule plan as set forth in PHLX Rule 970, are an appropriate disciplinary measure because violations not exceeding 5% of the Exchange's position and exercise limits and the hedge exemption are objective in nature and easily verifiable, and, therefore, the enforcement of these provisions should not entail the complicated factual and interpretive inquiries associated with more sophisticated disciplinary actions. Accordingly, the Commission believes that such violations of the Exchange's position and exercise limits and the hedge exemption lend themselves to the use of the PHLX's minor rule plan and the fines provided for in OFPA F–15. The Commission notes, finally, that the provisions authorizing the Exchange's BCC to impose discretionary sanctions for infractions where the resulting position exceeds 5% of the position and exercise limits, and for infractions after the third violation of the position and exercise limits and the hedge exemption, should provide the Exchange with the flexibility to impose more stringent sanctions for repeated or more egregious violations of the position and exercise limits and the hedge exemption.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–PHLX–92–21), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 93–13946 Filed 6–11–93; 8:45 am]

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[7] *See* Securities Exchange Act Release No. 32174 (April 20, 1993) 58 FR 25087 (order extending the PHLX's equity hedge exemption pilot program and expanding the pilot to include securities convertible into stock as a basis for the exemption). Paragraph (b) of OFPA F–15 corresponds to the hedge exemption provided currently in Exchange Rule 1001, Commentary .07. Commentary .07 establishes an exemption from position limits for stock options "hedged" by 100 shares of stock or securities convertible into stock for the following hedge positions: (i) Long call and short stock; (ii) short call and long stock; (iii) long put and long stock; and (iv) short put and short stock. *See also* Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201 (order approving File Nos. SR–Amex–87–13, SR–CBOE–87–27, and SR–PHLX–87–32) ("Hedge Exemption Approval Order"). Under Commentary .07, a member or member organization who utilizes the automatic hedge exemption must file a form with the Exchange's Market Surveillance Department no later than the close of the business day following the day the exemption is utilized.

[8] *See* Amendment No. 1, *supra* note 3.

[9] *See* Hedge Exemption Approval Order, *supra* note 7.

[10] *See* Hedge Exemption Approval Order, *supra* note 7.

[11] 15 U.S.C. 78s(b)(2) (1982).

[12] 17 CFR 200.30–3(a)(12) (1992).

[Rel. No. IC–19516; 811–3362]

PMI Fund, Inc.; Notice of Application

June 7, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: PMI Fund, Inc. (the "Fund").

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that the Fund has ceased to be an investment company under the Act.

FILING DATE: The application on Form N–8F was filed on July 6, 1992 and amended on February 1, 1993, May 11, 1993, and May 20, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 1, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington DC 20549. Applicant, 211 Corporation Way, Medford, MA 02155.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272–2190, or Barry D. Miller, Senior Special Counsel, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Fund is a closed-end, non-diversified, management investment company incorporated under the laws of Delaware. The Fund registered as an investment company under the Act on December 24, 1981. Prior to registration, the Fund was an operating company.

2. On March 25, 1992, the Fund's board of directors approved a plan of liquidation and dissolution (the "Plan"). On that date, a majority of the Fund's shareholders also approved the Plan by written consent. Pursuant to Delaware law, the Fund mailed a notice of the liquidation to each shareholder of record as of April 6, 1992.

3. Pursuant to the liquidation, the Fund offered its portfolio of municipal bonds to several institutions for competitive bids and sold the portfolio to the highest bidder, the Bank of Boston, the Fund's custodian. No brokerage commissions were incurred in this transaction.

4. On or after April 7, 1992, applicant paid its shareholders their proportionate share of applicant's net asset value in the form of a cash dividend of $.089 per share, a long-term capital gain distribution of $.4079 per share, and a final liquidating distribution of $4.585 per share.

5. At the time of filing the application, applicant could not locate 83 shareholders to distribute their *pro rata* portion of the Fund's net asset value. Applicant represents that Delaware law requires applicant to distribute the unclaimed assets to the unclaimed property administration of the states in which the shareholders reside. After several attempts to locate the shareholders, applicant distributed a total of $109,559.96 to eight states on January 26, 1993.

6. Applicant paid $2,736.42 in legal, bookkeeping and mailing expenses related to the liquidation.

7. As of the date of the application, applicant has filed a certificate of dissolution with the State of Delaware.

8. As of the date of the application, the Fund had no assets, debts, liabilities or securityholders, and was not a party to any litigation or administrative proceeding.

9. The Fund is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–13890 Filed 6–11–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2629]

California; Declaration of Disaster Loan Area; Amendment #6

The above-numbered Declaration is hereby amended, effective June 1, 1993, to include the Pit River Indian Tribe in Shasta County, California as a disaster area as a result of damages caused by winter storms, mud and rock slides, and flooding which occurred January 5 through January 22, 1993.

Because the termination date for filing applications for physical damage closed on June 1, 1993, victims located in the above-named area may file applications for physical damage until the close of business on July 1, 1993, 30 days from the date of the amendment. The termination date for filing applications for economic injury remains the close of business on November 3, 1993.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 7, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–13919 Filed 6–11–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2644]

Missouri; Declaration of Disaster Loan Area, Amendment #2

The above-numbered Declaration is hereby amended according to notifications from the Federal Emergency Management Agency dated May 26 and May 29, 1993 to include Ralls County as a disaster area as a result of damages caused by severe storms and flooding, and to establish the incident period for this disaster as beginning on April 15 and continuing through May 29, 1993.

All counties contiguous to the above-named county have previously been declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 10, 1993 and for economic injury the date is February 11, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 7, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–13918 Filed 6–11–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

DATES: June 8, 1993.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on June 8, 1993:

DOT No.: 3728.
OMB No.: 2133–0011.
Administration: Maritime Administration.
Title: War Risk Insurance—Applications and Related Information.
Need for Information: The information is needed to obtain War Risk Insurance from the U.S. Government when such insurance is unavailable on reasonable terms from the commercial market.
Proposed Use of Information: The information collected is used to determine the eligibility of the applicant and the vessel for participation in the War Risk Insurance program.
Frequency: On occasion.
Burden Estimate: 930 hours.
Respondents: Vessel owners and charterers.
Form(s): MA–528, MA–942, MA–355, and MA–828.
Average Burden Hours Per Response: 32 minutes reporting.

DOT No.: 3729.
OMB No.: 2115–0105.
Administration: U.S. Coast Guard.
Title: Evidence of Competency; Person in Charge.
Need for Information: This information collection is needed to reduce the risk of accidents caused by human error that may occur at waterfront facilities which handle dangerous cargo.
Proposed Use of Information: Coast Guard will use this information to determine if persons in charge of bulk liquid dangerous cargo transfer operations are qualified to transfer this type of cargo.
Frequency: On occasion.
Burden Estimate: 3 hours.
Respondents: Persons in charge of waterfront facilities.
Form(s): None.
Average Burden Hours Per Response: 30 minutes reporting.

DOT No.: 3730.
OMB No.: 2133–0504.
Administration: Maritime Administration.
Title: Regulations for Making Excess or Surplus Federal Property Available to the U.S. Merchant Marine Academy, the State Maritime Academies and Approved Non-Profit Maritime Training Institutions.
Need for Information: The information collection provides a justification for the intended use of excess or surplus property by a maritime training institute.
Proposed Use of Information: MARAD will use the information to facilitate the process of transferring excess or surplus property to the requesting institution.
Frequency: As required.
Burden Estimate: 120 hours.
Respondents: Maritime training institutions.
Form(s): None.
Average Burden Hours Per Response: 1 hour reporting.

DOT No.: 3731.
OMB No.: New.
Administration: U.S. Coast Guard.
Title: Periodic Gauging and Engineering Analyses.
Need for Information: This information collection requirement is needed by the Coast Guard to ensure that minimum standards are established for plating thickness of tank vessels over 30 years old in accordance with the Oil Pollution Act of 1990.
Proposed Use of Information: Coast Guard will use this information to evaluate and verify the structural integrity of tank vessels over 30 years old before reissuing a Certificate of Inspection.
Frequency: Every five years.
Burden Estimate: 23,664 hours.
Respondents: Owners and operators of tank vessels.
Form(s): None.
Average Burden Hours Per Response: 58 hours reporting.

DOT No.: 3732.
OMB No.: 2132–0549.
Administration: Federal Transit Administration.
Title: Technical Activities Form.
Need for Information: Data is needed to indicate how the planning process responds to identified goals, objectives, and policies of Congress and the Administration.
Proposed Use of Information: Data is used by FTA grantees to specify how funds are utilized for pre-defined work activities and on annual reports to Congress.
Frequency: On occasion.
Burden Estimate: 150 hours.
Respondents: State or local governments, business or other for-profit organizations.
Form(s): None.
Average Burden Hours Per Response: 1 hour reporting; 1 hour recordkeeping.

DOT No.: 3733.
OMB No.: 2132–0540.
Administration: Federal Transit Administration.
Title: Title VI as it Applies to FTA Grant Programs.
Need for Information: FTA needs this information to determine grantee compliance with Title VI of the 1964 Civil Rights Act.
Proposed Use of Information: The information will enable FTA to ensure non-discrimination in the distribution of transportation services and related benefits.
Frequency: On occasion, every three hours.
Burden Estimate: 2,883 hours.
Respondents: Grant applicants, recipients, and subrecipients.
Form(s): None.
Average Burden Hours Per Response: 7 hours reporting; 1 hour recordkeeping.

DOT No.: 3734.
OMB No.: 2132–0542.
Administration: Federal Transit Administration.
Title: Section 19 (EEO) as it Applies to FTA Grant Programs.
Need for Information: The data is needed to aid FTA in monitoring transit operation compliance with applicable EEO laws, rules, regulations, and statutes.
Proposed Use of Information: The information will be used to ensure that minorities and women have equitable access to employment opportunities and that recipients of Federal funds do not discriminate against any employee or applicant because of race, color, religion, sex, or national origin.
Frequency: On occasion, every three years, annually.
Burden Estimate: 6,000 hours.
Respondents: Grant recipients.
Form(s): None.
Average Burden Hours Per Response: 39 hours reporting; 1 hour recordkeeping.

DOT No.: 3735.
OMB No.: 2115–0594.
Administration: U.S. Coast Guard.
Title: Additional Requirements for Prince William Sound, Alaska.
Need for Information: This information collection is needed to ensure that spill response organizations and vessels carrying oil in bulk have oil spill response plans available while operating in Prince William Sound, Alaska.
Proposed Use of Information: This information will be used to determine if the response plans provide for prepositioned oil spill containments, removal equipment, an oil spill removal organization, training of local residents in oil spill removal, containment techniques, practice exercises, periodic testing and certification of equipment to protect this environmentally sensitive area.
Frequency: On occasion.
Burden Estimate: 1,280 hours.
Respondents: Spill response facilities and tank vessel owners.
Form(s): None.
Average Burden Hours Per Response: 293 hours and 20 minutes reporting; 400 hours recordkeeping.

DOT No.: 3736.
OMB No.: 2115–0096.
Administration: U.S. Coast Guard.
Title: Oil and Hazardous Materials Pollution Prevention and Safety Records, Equivalents/Alternatives and Exemptions.
Need for Information: The information collection requirement contained in this regulation is needed to: (1) Prevent or mitigate the result of an accidental release of bulk liquid hazardous materials being transferred at waterfront facilities; (2) ensure that facilities and vessels which use vapor control systems are in compliance with the safety standards developed by the Coast Guard; (3) provide equipment and operational requirements for facilities and vessels that transfer oil or hazardous materials in bulk to and from vessels with a 250 or more barrel capacity; and (4) provide procedures for vessel or facility operators who request exemption or partial exemption from the requirements of the pollution prevention regulations.
Proposed Use of Information: This information collection requirement will be used to minimize the number and impact of pollution discharges and accidents occurring during transfer of oil or hazardous materials. This requirement will also be used to evaluate proposed alternatives and requests for exemptions.
Frequency: On occasion.
Burden Estimate: 112,094 hours.
Respondents: Facility and vessel operators of bulk oil and hazardous materials.
Form(s): None.
Average Burden Hours Per Response: 4 hours and 21 minutes reporting; 5 minutes recordkeeping.

DOT No.: 3737.
OMB No.: 2115–0539.
Administration: U.S. Coast Guard.
Title: Special Requirements for Cargo Lightering Operations.
Need for Information: This information collection is needed to comply with the requirements of the Port and Tanker Safety Act of 1978 regarding lightering of oil and hazardous materials in the navigable waters of the United States or the high seas.
Proposed Use of Information: This information collection will be used to allow the Coast Guard to respond to an oil or hazardous material spill in a timely manner, which in turn, will minimize the environmental damage caused by such spills.
Frequency: On occasion.
Burden Estimate: 125 hours.
Respondents: Owners and operators of tank vessels.
Form(s): None.
Average Burden Hours Per Response: 15 minutes reporting.

DOT No.: 3738.
OMB No.: 2115–0078.
Administration: U.S. Coast Guard.
Title: Operations Manual and Amendments.
Need for Information: This information collection is needed to ensure that operations manuals are maintained at marine bulk oil and hazardous materials facilities. The operations manual establishes proper procedures in the transfer of oil in order to prevent or reduce oil spills caused by human error. Periodic amendments are required to accommodate changes in circumstances or in the regulations.
Proposed Use of Information: The operations manual and amendments, once approved by the Coast Guard, will be used by the person in charge of transfer operations.
Frequency: On occasion.
Burden Estimate: 3,536 hours.
Respondents: Owners or operators of marine bulk oil or hazardous materials facilities.
Form(s): None.
Average Burden Hours Per Response: 54 minutes reporting; 5 minutes recordkeeping.

DOT No.: 3739.
OMB No.: New.
Administration: U.S. Coast Guard.
Title: Structural and Operational Measures to Reduce Oil Spills from Existing Tank Vessels Without Double Hulls.
Need for Information: This information collection is needed by the Coast Guard to ensure that tank vessels over 5,000 gross tons that carry oil comply with certain structural and operational requirements. These requirements will provide substantial protection to the environment. It will also reduce oil outflow from single hull vessels until they are required to be fitted with a double hull.
Proposed Use of Information: Coast Guard will use this information to determine if a vessel's construction, arrangement and/or equipment meet the standards as required by the regulations.
Frequency: One time.
Burden Estimate: 592,956 hours.
Respondents: Owners or operators of single hull tank vessels over 5,000 gross tons.
Form(s): None.
Average Burden Hours Per Response: 2,534 hours reporting.

DOT No.: 3740.
OMB No.: 2132–0550.
Administration: Federal Transit Administration.
Title: Bus Testing Requirements.
Need for Information: The information is needed to provide performance information on new bus models.
Proposed Use of Information: The information will be used by transit agencies in their lease and purchase decisions regarding new bus models.
Frequency: On occasion.

Burden Estimate: 60 hours.
Respondents: Business or other for-profit organizations.
Form(s): None.
Average Burden Hours Per Response: 3 hours reporting.
DOT No.: 3741.
OMB No.: 2115–0077.
Administration: U.S. Coast Guard.
Title: Letter of Intent.
Need for Information: This information collection requirement is needed by the Coast Guard to ensure that waterfront facilities that transfer oil or hazardous materials or change ownership are in compliance with the Ports and Waterways Safety Act.
Proposed Use of Information: The information collection will be used by the Coast Guard to alert its enforcement personnel, in case of an emergency, that a transfer of hazardous materials or change in ownership is to take place.
Frequency: On occasion.
Burden Estimate: 720 hours.
Respondents: Owners or operators of marine bulk oil or hazardous materials facilities.
Form(s): None.
Average Burden Hours Per Response: 1 hour and 20 minutes reporting; 6 minutes recordkeeping.
DOT No.: 3742.
OMB No.: 2115–0541.
Administration: U.S. Coast Guard.
Title: Barges Carrying Bulk Hazardous Materials.
Need for Information: The information collection is needed by the Coast Guard to determine if tank barges transporting hazardous materials in bulk are in compliance with the safety standards of 46 CFR part 151.
Proposed Use of Information: Coast Guard will use this information collection to evaluate barge design, conduct inspections to determine if barges are in compliance with the regulations and to ensure that crew members have the necessary information to operate the barges safely.
Frequency: On occasion.
Burden Estimate: 12,009 hours.
Respondents: Owners or operators of barges.
Form(s): None.
Average Burden Hours Per Response: 1 hour and 41 minutes reporting; 5 hours and 20 minutes recordkeeping.
DOT No.: 3743.
OMB No.: 2133–0516.
Administration: Maritime Administration.
Title: Tug Operators Report.
Need for Information: This information collection provides a current and detailed knowledge of the tug resources which could be made available for towing Ready Reserve Force vessels to activation facilities.
Proposed Use of Information: The information will be used to plan allocation of Ready Reserve Force vessels to specific layup locations and activation facilities and to establish activation priorities.
Frequency: On occasion.
Burden Estimate: 40 hours.
Respondents: Tug operators.
Form(s): None.
Average Burden Hours Per Response: 20 minutes reporting.
DOT No.: 3744.
OMB No.: 2115–0089.
Administration: U.S. Coast Guard.
Title: Recordkeeping/Reporting Requirements in Rules for Ships Carrying Bulk Hazardous Liquid.
Need for Information: This information requirement is needed to ensure the safe transport of bulk hazardous liquids on chemical tank vessels and to protect the environment from pollution.
Proposed Use of Information: This information collection requirement will be used by the Coast Guard to enforce Annex II of MARPOL and to ensure that crew members have sufficient information to operate vessels that are carrying hazardous materials.
Frequency: On occasion.
Burden Estimate: 7,544 hours.
Respondents: Owners or operators of chemical tanks.
Form(s): CG 4602B.
Average Burden Hours Per Response: 3 hours and 27 minutes reporting; 17 hours and 55 minutes recordkeeping.
DOT No.: 3745.
OMB No.: 2115–0100.
Administration: U.S. Coast Guard.
Title: Marine Transport of Bulk Solid Hazardous Materials.
Need for Information: This information collection is needed by the U.S. Coast Guard to administer and enforce the laws and regulations for the safe transportation and stowage of hazardous materials, including bulk solids.
Proposed Use of Information: This information collection will be used to make a well-informed determination by the Coast Guard as to the severity of the hazard posed by the material being shipped. This will allow the Coast Guard to set sufficient guidelines for safe carriage of the hazardous material or deny permission for shipping the material if it presents a great hazard to the environment.
Frequency: On occasion.
Burden Estimate: 550 hours.
Respondents: Owners or operators of solid bulk cargo vessels or barges.
Form(s): None.
Average Burden Hours Per Response: 52 minutes reporting.
DOT No.: 3746.
OMB No.: 2127–0510.
Administration: National Highway Traffic Safety Administration.
Title: Consolidated Vehicle Identification Number Requirements and Motor Vehicle Theft Prevention Standards, 49 CFR 571.115, and parts 541, 565 and 567.
Need for Information: This information collection is needed to ensure that motor vehicle manufacturers assign a unique vehicle identification number to each new vehicle and mark major component parts on high theft motor vehicle lines.
Proposed Use of Information: The information will be used to identify motor vehicles subject to recall; to calculate motor vehicle theft rates; to monitor manufacturer compliance with safety standards; to aid in law enforcement activities; to decrease the market for stolen parts; and to decrease the incentive for motor vehicle theft.
Frequency: On occasion.
Burden Estimate: 376,592 hours.
Respondents: Manufacturers.
Form(s): None.
Average Burden Hours Per Response: 11 minutes reporting; 10 hours recordkeeping.
DOT No.: 3747.
OMB No.: 2127–0021.
Administration: National Highway Traffic Safety Administration.
Title: National Accident Sampling System (NASS) Crashworthiness Data System.
Need for Information: This information collection is needed to provide NHSTA with nationally representative data on motor vehicle crashes.
Proposed Use of Information: The data is used to analyze circumstances, mechanisms and consequences of high severity motor vehicle crashes; to determine traffic safety problems; to design countermeasures; and to evaluate the effects of existing and proposed safety measures.
Frequency: On occasion.
Burden Estimate: 5,807 hours.
Respondents: Individuals/State or Local Governments.
Form(s): HS–433A and HS–433B.
Average Burden Hours Per Response: 20 minutes reporting.
DOT No.: 3748.
OMB No.: 2115–0505.
Administration: U.S. Coast Guard.
Title: Plan Approval for Various Vessels Certificated under 46 CFR subchapters D, H, I, I–A, J, R, and U.

Need for Information: This information collection requirement is needed to determine if a vessel's construction, arrangement and equipment are in full compliance with the marine safety regulations and in addition, meet the standards of the Safety of Life at Sea Convention.

Proposed Use of Information: Coast Guard will use this information collection to review and approve plans prior to the construction of various vessels to assure that they are designed in accordance with regulatory standards. This requirement is also intended to ensure that sufficient information is provided to vessel personnel is the safe operation of the vessel.

Frequency: On occasion.

Burden Estimate: 8,288 hours.

Respondents: Shipbuilders and owners.

Form(s): None.

Average Burden Hours Per Response: 30 minutes reporting.

DOT No.: 3749.

OMB No.: 2125–0536.

Administration: Federal Highway Administration.

Title: Motor Carrier Safety Assistance Program.

Need for Information: This information collection is needed to determine State compliance with specific legislative and administrative requirements for grant funds.

Proposed Use of Information: The FHWA will use the information to monitor and evaluate the progress of each State program for grants and to justify grants.

Frequency: Quarterly.

Burden Estimate: 1,540 hours.

Respondents: State highway agencies.

Form(s): FHWA Form MCSAP–3.

Average Burden Hours Per Response: 3 hours and 6 minutes reporting; 12 hours recordkeeping.

DOT No.: 3750.

OMB No.: 2105–0508.

Administration: Federal Highway Administration.

Title: Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs.

Need for Information: This information collection is needed to monitor changes in the level of activity and expenditures; and (2) to measure the impact on grantee agencies and affected families and businesses.

Proposed Use of Information: The information will be used to ascertain the utility of the program, the number of people affected and the cost.

Frequency: Once every three years.

Burden Estimate: 30,689 hours.

Respondents: State highway, transit and airport agencies.

Form(s): Statistical Report Form.

Average Burden Hours Per Response: 8 hours and 30 minutes reporting; 22 hours and 20 minutes recordkeeping.

DOT No.: 3751.

OMB No.: 2127–0554.

Administration: National Highway Traffic Safety Administration.

Title: 49 CFR part 538, Minimum Driving Range for Dual Energy and Natural Gas Dual Energy Passenger Automobiles.

Need for Information: NHTSA established driving ranges for dual energy and natural gas dual energy passenger cars when operating on alternative fuel. Data is needed to track the minimum driving range standards.

Proposed Use of Information: The information will be used by NHTSA to determine whether a manufacturer qualifies for a reduced driving range standard, to evaluate the need for a lower standard, and to establish a level for that standard.

Frequency: On occasion.

Burden Estimate: 800 hours.

Respondents: Manufacturers.

Form(s): None.

Average Burden Hours Per Response: 80 hours.

DOT No.: 3752.

OMB No.: 2120–0098.

Administration: Federal Aviation Administration.

Title: Airplane Operator Security—FAR 108.

Need for Information: The information is needed to ensure that air carriers are carrying out their responsibilities under the law with regard to the protection of persons and property against acts of criminal violence and aircraft piracy.

Proposed Use of Information: The information is used to ensure compliance, and is reviewed at least annually by FAA civil aviation security inspectors to ensure that the contents are current, complete, and correct.

Frequency: On occasion.

Burden Estimate: 6,986 hours.

Respondents: Air carriers.

Form(s): FAA Form 1650–17.

Average Burden Hours Per Response: 1 hour and 22 minutes reporting.

DOT No.: 3753.

OMB No.: 2120–0063.

Administration: Federal Aviation Administration.

Title: Airport Operating Certificate.

Need for Information: The information is needed to determine eligibility for issuance of an Airport Operating Certificate.

Proposed Use of Information: The information is used to ensure safe operating conditions at airports serving air carriers. To operate an airport serving air carriers, a person must obtain and maintain an Airport Operating Certificate. The application initiates the certification process including airport inspection and documentation of safe airport operations and equipment. The certification remains valid if safety standards are maintained as verified by inspections, records, and reports.

Frequency: On occasion.

Burden Estimate: 173,069 hours.

Respondents: State or local governments.

Form(s): FAA Forms 5280–1 and 5280–2.

Average Burden Hours Per Response: 58 hours and 28 minutes reporting; 243 hours recordkeeping.

DOT No.: 3754.

OMB No.: 2120–0500.

Administration: Federal Aviation Administration.

Title: Aviation Safety Inspector Employment Application.

Need for Information: The information is needed to examine and evaluate applicants' qualifications for aviation safety inspector positions, establish competitive registers, and issue certificates of eligibles.

Proposed Use of Information: The information collection will be used for computerized rating and ranking of aviation safety inspector applicants on civil service registers of eligibles maintained by FAA.

Frequency: On occasion.

Burden Estimate: 6,655 hours.

Respondents: Individuals applying for Aviation Safety Inspector positions.

Form(s): FAA Form 3330–47–1, FAA Form 3330–47–2, and FAA Form 3330–47–3.

Average Burden Hours Per Response: 1 hour and 20 minutes reporting.

DOT No.: 3755.

OMB No.: 2120–0507.

Administration: Federal Aviation Administration.

Title: SFAR–36 Development of Major Repair Data.

Need for Information: The information is needed to provide authorization that will enable the certificate holder to use major repair data it develops for approving an aircraft, airframe, aircraft engine, propellers, or appliance for return to service after a major repair.

Proposed Use of Information: SFAR–36 relieves qualifying applicants (repair stations, air carriers, air taxis and commercial operators) of the burden of

obtaining FAA approval of data developed by them for major repairs on a case-by-case basis and provides for one-time approvals.

Frequency: On occasion.

Burden Estimate: 658 hours.

Respondents: Repair stations, air carriers, air taxis and commercial operators.

Form(s): None.

Average Burden Hours Per Response: 43 hours reporting; 10 hours recordkeeping.

DOT No.: 3756.

OMB No.: 2127–0521.

Administration: National Highway Traffic Safety Administration.

Title: 49 CFR 571.116, Motor Vehicle Brake Fluids.

Need for Information: The information is needed to ensure compliance with Federal Motor Vehicle Safety Standard 116, which requires manufacturers and packagers of brake fluids to furnish certain information to buyers when purchasing brake fluids.

Proposed Use of Information: The information will be used by owners or operators and service people to select the proper brake fluids and mineral oils for use in vehicles and to properly store the materials. The labeling on fluid containers will help ensure that only complying fluid is sold, and facilitate NHTSA's enforcement efforts by identifying the packagers or manufacturers not complying.

Frequency: On occasion.

Burden Estimate: 140,000 hours.

Respondents: Manufacturers, Packagers.

Form(s): None.

Average Burden Hours Per Response: 7 seconds.

DOT No.: 3757.

OMB No.: 2127–0002.

Administration: National Highway Traffic Safety Administration.

Title: Motor Vehicle Importation.

Need for Information: Title 49 CFR parts 591, 592, 593 and 594 provide procedural guidelines and regulations for importing motor vehicles into the United States. The information collection is needed to ensure compliance with applicable safety standards.

Proposed Use of Information: The information will be used by NHTSA to authorize motor vehicle importation. The importer must be registered and accepted by NHTSA or have a contract with a person that is registered to import vehicles. The importer must submit a petition for determination that the nonconforming vehicle is eligible for importation. Any person importing a motor vehicle that has not been manufactured by its original manufacturer for sale in the United States, shall furnish an appropriate bond to ensure that the vehicle will be brought into conformance with all applicable safety standards.

Frequency: On occasion.

Burden Estimate: 16,876 hours.

Respondents: Individuals and manufacturers.

Form(s): HS–7 and HS–474.

Average Burden Hours Per Response: 5 minutes reporting.

DOT No.: 3758.

OMB No.: 2125–0032.

Administration: Federal Highway Administration.

Title: A Guide to Reporting Highway Statistics.

Need for Information: The FHWA needs highway-related statistical information to monitor and evaluate the effectiveness of the Federal-aid highway program, and to analyze the effect of changes in the program.

Proposed Use of Information: The information collection serves as a reference to the reporting system that FHWA desires the States to use in reporting State and local highway statistical data.

Frequency: On occasion, monthly, annually, biennially.

Burden Estimate: 33,508 hours.

Respondents: State highway agencies.

Form(s): FHWA–531, 532, 534, 541, 543, 551M, 556, 561, 562, 571, 536, 566, and 524.

Average Burden Hours Per Response: 8 hours and 42 minutes reporting.

DOT No.: 3759.

OMB No.: 2133–0012.

Administration: Maritime Administration.

Title: Requirements for Establishing U.S. Citizenship.

Need for Information: Shipowners and others seeking benefits under the Merchant Marine Act of 1936, as amended, including certain participants in the ship financing guarantee program, must qualify as a citizen of the United States. This information collection provides MARAD with a sworn affidavit as evidence of U.S. citizenship from each participant in a given transaction.

Proposed Use of Information: MARAD will use the information to determine whether or not a corporation, partnership or association meets the requirements for U.S. citizenship, and to enforce statutory compliance.

Frequency: Annually.

Burden Estimate: 1,500 hours.

Respondents: Shipowners, charterers, equity owners.

Form(s): None.

Average Burden Hours Per Response: 5 hours reporting.

DOT No.: 3760.

OMB No.: 2130–0516.

Administration: Federal Railroad Administration.

Title: Remotely Controlled Railroad Switch Operations.

Need for Information: The information collection is needed to ensure that remotely controlled switches are lined so as to protect the lives and safety of railroad workmen or occupants of camp cars. Title 49 CFR parts 218.30 and 218.67 require the operators of remotely controlled switches to maintain a record of each notification requesting blue signal protection.

Proposed Use of Information: The information will be used by operators as a record of protection provided under blue signal protection of workmen and camp cars. The information serves as a valuable tool for use by railroad supervisory personnel, as well as FRA inspectors in regulatory enforcement compliance activity.

Frequency: Recordkeeping.

Burden Estimate: 240,608 hours.

Respondents: Railroads.

Form(s): None.

Average Burden Hours Per Response: 601 hours recordkeeping.

DOT No.: 3761.

OMB No.: 2138–0013.

Administration: Research and Special Programs Administration.

Title: Report of Financial and Operating Statistics for Large Certificated Air Carriers.

Need for Information: Large certificated air carriers are required by 14 CFR part 241 to file Form 41, which comprises financial and statistical schedules, including balance sheet, profit and loss information and operating statistics.

Proposed Use of Information: The data will be used for inonitoring the condition of the air transport industry; evaluating trends and new innovations; monitoring individual carrier operations; negotiating international agreements; and determining air carrier fitness and regulatory compliance.

Frequency: Monthly, quarterly, semiannually, annually.

Burden Estimate: 21,011 hours.

Respondents: U.S. large certificated air carriers.

Form(s): RSPA Form 41.

Average Burden Hours Per Response: 5 hours reporting.

DOT No.: 3762.

OMB No.: 2120–0027.

Administration: Federal Aviation Administration.

Title: Application for Certificate of Waiver or Authorization.

Need for Information: The information is needed to determine the type and extent of the intended deviation from prescribed regulations.

Proposed Use of Information: After reviewing the information collected on FAA Form 7711–2, Application for Certificate of Waiver or Authorization, a certificate of waiver or authorization to deviate is generally issued to the applicant if the proposed operation does not create a hazard to person, property, or other aircraft.

Frequency: On occasion.

Burden Estimate: 13,646 hours.

Respondents: Individuals and businesses.

Form(s): FAA Form 7711–2.

Average Burden Hours Per Response: 32 minutes reporting.

DOT No.: 3763.

OMB No.: 2130–0517.

Administration: Federal Railroad Administration.

Title: Supplemental Qualifications Statement for Railroad Safety Inspection Applicants.

Need for Information: The information is needed to determine the specialized skills of applicants for Railroad Safety Inspector positions.

Proposed Use of Information: The information is used to evaluate and rank the qualifications of applicants for Railroad Safety Inspector positions.

Frequency: On occasion.

Burden Estimate: 6,000 hours.

Respondents: Individuals.

Form(s): FRA–F–120.

Average Burden Hours Per Response: 3 hours reporting.

DOT No.: 3764.

OMB No.: 2127–0049.

Administration: National Highway Traffic Safety Administration.

Title: 49 CFR part 575, Consumer Information Regulations.

Need for Information: The information collection is needed to provide performance and safety information to new motor vehicle purchasers.

Proposed Use of Information: NHTSA will use the information to monitor and enforce regulatory compliance; dealers selling the vehicles will provide the consumer with information to compare the safety performance attributes of various vehicles before making a purchase; and the first purchaser of a motor vehicle will be provided with a permanent record of the vehicle's performance capabilities.

Frequency: On occasion.

Burden Estimate: 507 hours.

Respondents: Manufacturers.

Form(s): None.

Average Burden Hours Per Response: 13 hours reporting.

DOT No.: 3765

OMB No.: 2125–0033.

Administration: Federal Highway Administration.

Title: Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds.

Need for Information: The information collection provides the FHWA with information on usage of materials and labor in Federal-Aid highway construction.

Proposed Use of Information: FHWA uses the information to estimate current material usage and cost distribution on Federal-aid highway construction contracts. The information is also used by the Department of Labor in its studies in labor and materials requirements by industry.

Frequency: On occasion.

Burden Estimate: 7,475 hours.

Respondents: State highway agencies.

Form(s): FHWA–47.

Average Burden Hours Per Response: 5 hours reporting.

DOT No.: 3766.

OMB No.: 2125–0037.

Administration: Federal Highway Administration.

Title: Inspection, Repair and Maintenance.

Need for Information: Title 49 CFR 396 requires motor carriers to maintain records on inspection, repair and maintenance activities.

Proposed Use of Information: The information is used by FHWA and State personnel when conducting audits of motor carrier operations to determine a carrier's overall level of compliance with safety regulations.

Frequency: Recordkeeping.

Burden Estimate: 16,632,939 hours.

Respondents: Motor carriers.

Form(s): None.

Average Burden Hours Per Response: Recordkeeping requirement (one year retention period).

DOT No.: 3767.

OMB No.: 2115–0003.

Administration: U.S. Coast Guard.

Title: Chemical Drug and Alcohol Testing of Commercial Vessel Personnel and Commercial Vessel and Personnel Accidents.

Need for Information: This information collection is needed: (1) to improve the Coast Guard's capability to detect or reduce drug use by the commercial mariner; (2) to deny the issuance of seaman's papers to users of dangerous drugs; and (3) to be informed of marine accidents that involve death, serious injury and material damage affecting the seaworthiness of a vessel.

Proposed Use of Information: This information will be used by the Coast Guard to identify users of dangerous drugs and alcohol in the merchant marine industry and to determine if certain applicants are qualified to be issued seaman's papers. The marine casualty information will be used to determine the extent of an investigation and what corrective action is to be taken. This information will also be used by other Federal, state or local agencies for civil or criminal enforcement actions.

Frequency: On occasion.

Burden Estimate: 16,883 hours.

Respondents: Commercial marine industry.

Form(s): CG–2692, CG–2692–A, CG–2692–B.

Average Burden Hours Per Response: 54 minutes reporting; 24 minutes recordkeeping.

DOT No.: 3768.

OMB No.: New.

Administration: Federal Aviation Administration.

Title: Special Federal Aviation Regulation—Special Flight Authorization for Noise Restricted Aircraft.

Need for Information: Under part 91, operators of large turbojet aircraft (Stage 1 and some Stage 2 noise level) are prohibited at U.S. airports unless compliance with Part 36 noise levels is demonstrated. Therefore, operators (foreign, domestic, and corporate) will need a special flight authorization to bring into the United States, or move within the United States, aircraft that need to be modified to meet compliance or to be disposed of.

Proposed Use of Information: The FAA will use the information to issue special flight authorizations for the operation of a Stage 1 or Stage 2 aircraft at U.S. airports.

Frequency: On occasion.

Burden Estimate: 75 hours.

Respondents: Operators of noise restricted aircraft.

Form(s): None.

Average Burden Hours Per Response: 1 hour and 30 minutes reporting.

DOT No.: 3769.

OMB No.: 2120–0565.

Administration: Federal Aviation Administration.

Title: Federal Aviation Administration, Alaskan Region Air Traffic Division Aviator Questionnaire.

Need for Information: The FAA has initiated Total Quality Management throughout the agency, requiring that every element have contact with their customers to assure that customers' needs are being met and that service is improved.

Proposed Use of Information: This information will be used by FAA

regional air traffic personnel to solve problems that are brought to their attention and to generally improve service to the public.

Frequency: Annual.

Burden Estimate: 69 hours.

Respondents: Customers serviced by FAA regional air traffic personnel.

Form(s): Questionnaire.

Average Burden Hours Per Response: 15 minutes reporting.

DOT No: 3770.

OMB No.: 2130–0004.

Administration: Federal Railroad Administration.

Title: Railroad Locomotive Safety Standards.

Need for Information: The information is needed to record that a locomotive has been inspected and is in proper condition for service.

Proposed Use of Information: This information is utilized to assure and promote safe and suitable locomotives and as the written record in post-accident investigations.

Frequency: Recordkeeping, on occasion.

Burden Estimate: 1,186,661 hours.

Respondents: Railroad.

Form(s): FRA F 6180.49A.

Average Burden Hours Per Response: 15 minutes reporting; 1,961 hours and 25 minutes recordkeeping.

DOT No.: 3771.

OMB No.: New.

Administration: U.S. Coast Guard.

Title: Job Task Analysis Survey of Recreational Boating Safety Tasks Performed by State Boating Safety/Law Enforcement Officers.

Need for Information: This information collection requirement is needed to update and validate national training classes for Marine Law Enforcement Officers in the 50 States and 5 U.S. territories. This request will also identify any areas of boating safety that are not covered in current programs so that it may be included in future training programs.

Proposed Use of Information: This information collection will be used by the Coast Guard: (1) To identify specific boating safety trends, issues and other areas that need to be covered in future training programs; (2) to tailor training classes to specific regions since boating safety tasks vary from state to state; and (3) to determine which boating safety tasks warrant additional emphasis and training.

Frequency: One time.

Burden Estimate: 1,000 hours.

Respondents: Marine Law Enforcement Officers.

Form(s): Survey.

Average Burden Hours Per Response: 1 hour reporting.

DOT No.: 3772.

OMB No.: New.

Administration: Federal Railroad Administration.

Title: Remedial Actions Reporting.

Need for Information: This information collection is needed to identify railroads for inspection.

Proposed Use of Information: FRA will use this information in systematically targeting inspections by integrating available accident and injury data with inspection and compliance data, to determine if affected entities are minimizing and correcting safety problems.

Frequency: On occasion.

Burden Estimate: 2,597 hours.

Respondents: Railroads.

Form(s): FRA–F–6180.93.

Average Burden Hours Per Response: 23 minutes reporting.

DOT No.: 3773.

OMB No.: New.

Administration: Federal Highway Administration.

Title: Entry Level Commercial Motor Vehicle Driver Training in the Private Sector.

Need for Information: The FHWA is mandated by the Intermodal Surface Transportation Efficiency Act of 1991 to report to Congress on the effectiveness of private sector efforts to ensure adequate training of entry-level drivers of commercial motor vehicles.

Proposed Use of Information: FHWA will use the information collected to assess the effectiveness of the efforts of the private sector to provide adequate training to commercial motor vehicle entry-level drivers.

Frequency: One time.

Burden Estimate: 369 hours.

Respondents: Truck and motor coach (bus) industry.

Form(s): None.

Average Burden Hours Per Response: 35 minutes reporting.

DOT No.: 3774.

OMB No.: New.

Administration: Federal Aviation Administration.

Title: Operating Procedures for Airport Traffic Control Towers (ATCT) that are Not Operated by or Under Contract with the United States (non-Federal)—Advisory Circular (AC) 90–XX.

Need for Information: The intent of the Advisory Circular is to maintain a high level of air safety without regulating certain entities. With this rationale in mind, the FAA is requesting operators of non-Federal ATCT's to voluntarily comply with the recommendations as stated in the AC, as well as to voluntarily submit information by using the listed forms, in the same manner as is currently prescribed for FAA air traffic personnel.

Proposed Use of Information: The information collected through the utilization of the various FAA forms becomes a part of the FAA's official records and is used only by the FAA for certification, compliance and enforcement, and when accidents, incidents, reports of non-compliance, safety programs, or other circumstances require references to records.

Frequency: On occasion.

Burden Estimate: 913 hours.

Respondents: Non-Federal Air Traffic Control Towers.

Form(s): FAA Forms 7210–2, 7210–3, 7230–4, 7230–7.2, 7230–8, 7230–10, 8020–9, 8020–11, 8020–17, 8020–19, 8020–21.

Average Burden Hours Per Response: 35 minutes reporting; 33 hours recordkeeping.

DOT No.: 3775.

OMB No.: New.

Administration: Federal Aviation Administration.

Title: Accident Prevention Counselor of the Year Competition.

Need for Information: The information is needed to select the recipient of the Accident Prevention Counselor of the Year Award.

Proposed Use of Information: This award will be used as an incentive for the Accident Prevention Program's Voluntary Accident Prevention Counselors who assist in promoting aviation safety.

Frequency: Annually.

Burden Estimate: 200 hours.

Respondents: Nominators of candidates.

Form(s): FAA Form 8740–XX.

Average Burden Hours Per Response: 1 hour reporting.

DOT No.: 3776.

OMB No.: 2120–0545.

Administration: Federal Aviation Administration.

Title: Race and National Origin Identification.

Need for Information: The collection of data is necessary for examination of employee selection procedures, enhancement of recruitment programs, and providing equal employment opportunity to all candidates.

Proposed Use of Information: The information received from this form will be used solely to help the FAA improve its recruitment of Air Traffic Control Specialist candidates.

Frequency: One time.

Burden Estimate: 2,000 hours.

Respondents: Individuals (applicants).

Form(s): SF–181A.
Average Burden Hours Per Response: 2 minutes reporting.
DOT No.: 3777.
OMB No.: 2120–0505.
Administration: Federal Aviation Administration.
Title: Indirect Air Carrier Security, FAR 14 Part 109.
Need for Information: The information is needed to ensure that plans are in effect that would protect and ensure that the property received by an air carrier does not contain bombs or other explosives or incendiary devices.
Proposed Use of Information: Security programs required by FAR Part 109 set forth procedures to be used by indirect air carriers in carrying out their responsibilities involving the protection of persons and property against acts of criminal violence, aircraft piracy, and terrorist activities in the forwarding of package cargo by passenger aircraft. The information collected is used to ensure compliance and is reviewed at least annually by FAA civil aviation security inspectors to ensure that the contents are current, complete, and correct.
Frequency: On occasion.
Burden Estimate: 473 hours.
Respondents: Air carriers including each air freight forwarder and each cooperative shippers' association engaged indirectly in air transportation of property.
Form(s): None.
Average Burden Hours Per Response: 3 hours reporting; 7 minutes recordkeeping.
DOT No.: 3778.
OMB No.: New.
Administration: National Highway Traffic Safety Administration.
Title: Measure DWI (Driving While Intoxicated) Attitudes II.
Need for Information: NHTSA conducted a base-line survey in 1991 to identify knowledge, attitudes and behavior of the American public regarding drinking and driving. This information collection is needed to measure the current status (1993) of public attitudes, knowledge and behavior, and to identify changes that have occurred in these areas in the past two years.
Proposed Use of Information: NHTSA will use the information to assess the current status of the public attitudes and behavior regarding drinking and driving. Data will be used to track progress in reducing DWI, and to guide programmatic activity directed at the DWI problem.
Frequency: One time.
Burden Estimate: 1,175 hours.
Respondents: Individuals.
Form(s): None.
Average Burden Hours Per Response: 18 minutes reporting.
DOT No.: 3779.
OMB No.: 2133–0030.
Administration: Maritime Administration.
Title: Supplementary Training Course Application.
Need for Information: MARAD needs the information to provide supplemental education and training to U.S. merchant seamen, and U.S. citizens employed in other areas of waterborne commerce on a space available basis.
Proposed Use of Information: This information collection is used to facilitate course administration, management, and recordation for additional training of U.S. merchant seamen.
Frequency: On occasion.
Burden Estimate: 100 hours.
Respondents: Merchant seamen, U.S. citizens employed in waterborne commerce.
Form(s): MA–823.
Average Burden Hours Per Response: 3 minutes reporting.
DOT No.: 3780.
OMB No.: 2130–0008.
Administration: Federal Railroad Administration.
Title: Railroad Power Brake and Drawbars (Air Brake Inspection and Test Certification).
Need for Information: The information collection is needed to verify the basic integrity of the train air line, the train brake system as a whole, and the basic functional capability of the individual air brake system on each car in the train.
Proposed Use of Information: The information is used by the engineer and road crew to verify that the requirements for an initial terminal brake test and an intermediate train air brake test have been satisfactorily performed.
Frequency: Recordkeeping.
Burden Estimate: 1,806 hours.
Respondents: Railroads.
Form(s): None.
Average Burden Hours Per Response: 45 hours recordkeeping.
DOT No.: 3781.
OMB No.: 2133–0024.
Administration: Maritime Administration.
Title: Subsidy Voucher—Operating-Differential Subsidy—Bulk Cargo Vessels/Liner Cargo Vessels.
Need for Information: MARAD is responsible for prescribing rules governing the payment of Operating-Differential Subsidy (ODS) for the U.S. bulk and liner cargo vessels engaged in carrying commodities in worldwide services.
Proposed Use of Information: The information is utilized by MARAD examiners to determine subsidy payable for voyages performed in accordance with ODS agreements.
Frequency: Monthly, annually.
Burden Estimate: 760 hours.
Respondents: Bulk and liner vessel operators (ODS).
Form(s): MA–790, SF–1034 and supporting schedules.
Average Burden Hours Per Response: 2 hours reporting.

Issued in Washington, DC on June 8, 1993.

Cynthia C. Rand,
Director of Information Resource Management.

[FR Doc. 93–13937 Filed 6–11–93; 8:45 am]
BILLING CODE 4910–62–M

Federal Aviation Administration

Advisory Circular 20–131A, Airworthiness Approval of Traffic Alert and Collision Avoidance Systems (TCAS II) and Mode S Transponders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 20–131A, Airworthiness Approval of Traffic Alert and Collision Avoidance Systems (TCAS II) and Mode S Transponders. This AC provides guidance material for the airworthiness approval of these systems installed on transport category airplanes.

DATES: Advisory Circular 20–131A was issued by the Acting Director, Aircraft Certification Service, AIR–1, on March 29, 1993.

HOW TO OBTAIN COPIES: A copy may be obtained by writing to the U.S. Department of Transportation, Utilization and Storage Section, M–443.2, 400 7th Street SW., Washington, DC 20590, or faxing your request to that office at 202–366–3911.

Issued in Renton, Washington, on June 3, 1993.

James V. Devany,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 93–13936 Filed 6–11–93; 8:45 am]
BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 93–42; Notice 1]

Diamond Coach Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

The Diamond Coach Corporation (Diamond) of Oswego, Kansas has determined that some of its vehicles fail to comply with 49 CFR 571.120, "Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars," (Federal Motor Vehicle Safety Standard (FMVSS) No. 120), and has filed an appropriate report pursuant to 49 CFR part 573. Diamond has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

During December, 1992, Diamond produced five buses, model VIP 2000, which were found to be in non-compliance with requirement S5.1.2 of FMVSS No. 120. This requirement states that the sum of the maximum load ratings of the tires fitted to an axle shall be not less than the gross axle weight rating (GAWR) of the axle system as specified on the vehicle's certification label.

The certification label on the five vehicles shows a GAWR of 3900 pounds for the front axle and 7480 pounds for the rear axle. However, the Tire and Rim Association (TRA) Yearbook shows a tire load capability of 3880 pounds for the front axle and 7500 pounds for the rear axle.

Diamond cites the following reasons for requesting an exemption from the notification and remedy requirements:

1. The non-compliance is a technical non-compliance of S5.1.2 of FMVSS No. 120 only, i.e., the 16x6 k tires on the front of the vehicle are capable of sustaining loads in excess of the 3880 [pounds] as called out by the TRA Yearbook, when one considers the 10% safety factory [sic] specified by S5.1.2.

2. The certification label shows a GAWR of 3900 lbs for the front axle and a load of 7480 pounds for the rear axle. The TRA Yearbook shows a tire load capability of 3880 pounds for the front axle and 7500 pounds for the rear axle. Therefore the front axle is technically 20 pounds under rated and the rear axles 20 pounds over rated, at the tire pressures shown. Diamond Coach Corporation feels that, while every attempt is made to accurately reflect the actual loads for each axle, it is entirely foreseeable that on any given vehicle the mere 20 pound differential between the two axles could [as] easily fall to the rear as the front.

3. Lastly, Diamond Coach Corporation would like to point out that there are only five (5) units involved. All other units preceding and [following] these five have been rated accurately. These five were misstated due to clerical error only. New procedures have been established to correct this problem and see that it is not repeated.

Interested persons are invited to submit written data, views, and arguments on the petition of Diamond, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 14, 1993.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: June 8, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–13938 Filed 6–11–93; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 8, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0085

Form Number: IRS Form 1040A, and Schedules 1, 2, 3, and EIC

Type of Review: Revision

Title: U.S. Individual Income Tax Return

Description: This form is used by individuals to report their income subject to income tax and to compute their correct tax liability. The data is used to verify that the income reported on the form is correct and are also for statistics use.

Respondents: Individuals or households

Estimated Number of Respondents/ Recordkeepers: 22,009,213

Estimated Burden Hours Per Respondent/Recordkeeper:

	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending, the form to the IRS
Form 1040A	1 hr., 3 min	2 hr., 11 min	2 hr., 47 min	35 min.
Schedule 1	20 min	4 min	10 min	20 min.
Schedule 2	33 min	12 min	41 min	28 min.
Schedule 3	13 min	14 min	28 min	35 min.
Schedule EIC	39 min	16 min	33 min	47 min.

Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 174,200,223 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 93–13925 Filed 6–11–93; 8:45 am]
BILLING CODE 4830–01–M

VOL 58 ISS 112 JE 14 1993 UMI

Sunshine Act Meetings

Federal Register
Vol. 58, No. 112
Monday, June 14, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Thursday, June 17, 1993, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Matters relating to the Corporation's corporate and supervisory activities.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda

Matters relating to the possible closing of certain insured depository institutions:

Names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: June 10, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93-14101 Filed 6-10-93; 3:53 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Thursday, June 17, 1993, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Delegation of Authority to the Director of the Division of Liquidation to Make Finding of Worthlessness of Claims Against Receiverships.

Discussion Agenda

Memorandums and resolutions with respect to the reports of the studies of (1) the feasibility of establishing a private reinsurance system, and (2) the cost, feasibility, and privacy implications of tracking deposits.

Memorandum and resolution re: Risk-Related Premiums for FDIC-Insured Institutions.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 898-6745 (Voice); (202) 898-3509 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: June 10, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93-14102 Filed 6-10-93; 3:53 pm]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Closed Meeting

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

DATE AND TIME: June 16, 1993, 9:30 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Fall River Hydroelectric Project, Project No. 9685.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

Dated: June 9, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14024 filed 6-10-93; 1:54 pm]

BILLING CODE 6717-01-M

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), U.S.C. 552b:

DATE AND TIME: June 16, 1993, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone

(202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 981st Meeting—June 16, 1993, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 7548–005, Geobon II Associates Limited Partnership
CAH–2.
Project No. 5223–021, International Falls Power Company
CAH–3.
Project No. 6902–037, City of New Martinsville, West Virginia
CAH–4.
Project No. 6939–031, City of Jackson, Ohio
CAH–5.
Project No. UL93–5–002, The Gilman Brothers Company
CAH–6.
Docket No. 10536–002, Public Utility District No. 1 of Okanogan County, Washington
CAH–7.
Project No. 9401–006, Halecrest Company
Project No. 8595–002, Energy Storage Corporation
Project No. 9105–002, Esperanza Power Limited Partnership
CAH–8.
Project No. 2239–006, Tomahawk Power and Pulp Company
CAH–9.
Project No. 2731–007, Central Vermont Public Service Corporation
CAH–10.
Omitted
CAH–11.
Project No. 9885–034, Marysville Hydro Partners
CAH–12.
Project No. 3109–003, Eugene Water and Electric Board
CAH–13.
Project No. 9025–005, Weyerhaeuser Company
CAH–14.
Project Nos. 2916–006 and 010, East Bay Municipal Utility District
CAH–15.
Docket No. RM93–17–000, License Termination

Consent Agenda—Electric

CAE–1.
Docket No. ER93–191–000, Alabama Power Company
CAE–2.
Docket No. ER93–96–002, Delmarva Power & Light Company
CAE–3.
Docket No. ER93–259–001, Northern States Power Company (Minnesota)
CAE–4.
Docket No. ER91–565–003, New England Power Company
CAE–5.
Docket No. ER93–296–001, Green Mountain Power Corporation
Docket No. ER93–297–001, Northeast Utilities Service Company
CAE–6.
Docket No. ER93–397–001, Ocean State Power
Docket No. ER93–398–001, Ocean State Power II
CAE–7.
Docket No. ER91–457–004, Central Maine Power Company
Docket Nos. ER92–286–003, ER92–484–002, ER92–512–002, ER92–817–002 and ER93–130–002, New England Power Company
CAE–8.
Docket No. ER93–401–001, Montaup Electric Company
CAE–9.
Docket No. EL93–2–001, PSI Energy, Inc.
CAE–10.
Docket No. ER85–477–011, Southwestern Public Service Company
CAE–11.
Docket No. FA88–62–001, Wisconsin Electric Power Company
CAE–12.
Docket Nos. ER82–553–006 and ER82–554–006, Ohio Power Company
CAE–13.
Omitted
CAE–14.
Docket No. EG93–46–000, Richmond Generating Company, L.P.
Docket No. EG93–47–000, Muscogee Generating Company, L.P.
Docket No. EG93–48–000, Haralson Generating Company, L.P.
Docket No. EG93–49–000, Clarke Generating Company, L.P.
CAE–15.
Docket No. EG93–50–000, AES San Nicolas, Inc.
CAE–16.
Docket No. EG93–51–000, Central Termica San Nicolas, S.A.
CAE–17.
Docket No. QF88–292–002, Kamine/Besicorp Allegany L.P.
CAE–18.
Docket No. ER92–330–005, Green Mountain Power Corporation
CAE–19.
Docket Nos. ER92–284–000 and EL92–40–000, Vermont Electric Power Company, Inc.
CAE–20.
Docket Nos. ER92–236–000, 002 and EL92–13–000, Delmarva Power & Light Company
CAE–21.
Docket No. EL93–17–000, South Carolina Electric & Gas Company
CAE–22.
Docket No. EL93–6–000, Municipal Resale Service Customers v. Ohio Power Company
CAE–23.
Docket No. EL93–20–000, New York State Electric & Gas Corporation
Docket No. EL93–29–000, Niagara Mohawk Power Corporation
CAE–24.
Docket No. EL92–33–000, Barton Village, Inc., Village of Enosburg Falls Water & Light Department, Village of Orleans, and Village of Swanton, Vermont v. Citizens Utilities Company (Vermont Division)
CAE–25.
Docket No. EL93–19–000, San Diego Gas & Electric Company v. Tucson Electric Power Company and Century Power Corporation
Docket No. FA90–34–000, Tucson Electric Power Company

Consent Agenda—Oil and Gas

CAG–1.
Omitted
CAG–2.
Docket No. RP89–137–012, Northwest Pipeline Corporation
CAG–3.
Docket No. RP92–74–005, South Georgia Natural Gas Company
CAG–4.
Docket No. TA92–2–31–006, Arkla Energy Resources Company
CAG–5.
Docket Nos. CP87–5–026 and 022, *et al.*, Texas Eastern Transmission Corporation
CAG–6.
Docket No. RP93–120–000, Northern Natural Gas Company
CAG–7.
Docket Nos. RP86–41–011, RP87–14–011 and RP90–22–018, Algonquin Gas Transmission Company
CAG–8.
Docket No. RP93–88–001, Arkla Energy Resources Company
CAG–9.
Docket Nos. RP93–80–001, RP93–81–001 and RS92–14–004, CNG Transmission Corporation
CAG–10.
Docket No. RP91–143–014, Great Lakes Gas Transmission Limited Partnership
CAG–11.
Omitted
CAG–12.
Omitted
CAG–13.
Docket Nos. RP88–197–010 and RP88–236–004, Williston Basin Interstate Pipeline Company
CAG–14.
Docket Nos. RP85–39–010 and 011, Wyoming Interstate Company, Ltd.
CAG–15.
Docket No. RP92–133–003, Gas Research Institute
CAG–16.
Docket Nos. IS92–39–002, IS93–21–001 and OR92–8–001, SFPP, Inc.
CAG–17.
Omitted
CAG–18.
Docket No. GP91–8–002, Jack J. Grynberg, Individually and as General Partner for the Greater Green River Basin Drilling Program: 72–73 v. Rocky Mountain Natural Gas Company, a division of KN Energy, Inc.
Docket No. GP91–10–002, Rocky Mountain Natural Gas Company v. Jack J. Grynberg, Individually and as General Partner for the Greater Green River Basin Drilling Program: 72–73
CAG–19.

Omitted
CAG–20.
Omitted
CAG–21.
Omitted
CAG–22.
Docket Nos. ST90–1471–000, ST90–2669–000, ST90–2904–000, ST90–2905–000, ST90–3420–000, ST91–4375–000, ST91–4376–000, ST91–6232–000, ST91–6434–000, ST91–6448–000, ST91–7812–000, ST91–8315–000, ST91–8620–000, ST91–8968–000, ST91–9216–000, ST91–9217–000, ST91–9710–000, ST91–9711–000, ST92–52–000, ST92–387–000, ST92–3241–000, ST92–3597–000, ST92–3598–000, ST92–3599–000, ST92–3600–000, ST92–3877–000, ST92–3878–000, ST92–3879–000, ST92–3880–000, ST92–3881–000, ST92–4821–000, ST92–5295–000, ST92–5296–000, ST92–5297–000, ST92–5355–000, ST92–5629–000, ST92–5663–000, ST93–178–000, ST93–179–000, ST93–180–000, ST93–563–000, ST93–568–000, ST93–569–000, ST93–652–000, ST93–654–000, and ST93–1627–000, Transok, Inc.
Docket Nos. ST92–1060–000, ST92–5664–000, and ST92–5665–000, ST92–5666–000, Texas Gas Gathering Company
Docket Nos. ST92–5654–000, ST93–792–000, ST93–896–000, and ST93–897–000, Lone Star Gas Company
Docket Nos. ST93–289–000, ST93–1433–000, ST93–1434–000, ST93–1435–000, ST93–1436–000, and ST93–1437–000, NOARK Pipeline System, Ltd.
Docket No. ST93–1984–000, TransAmerica Natural Gas Corporation
CAG–23.
Docket No. OR91–1–000, Kerr-McGee Refining Corporation and Texaco Refining and Marketing, Inc. v. Williams Pipe Line Company
CAG–24.
Docket No. GP93–3–000, Marathon Oil Company
CAG–25.
Docket No. RS92–79–001, Sea Robin Pipeline Company
CAG–26.
Docket No. RS92–83–002, Tarpon Transmission Company
CAG–27.
Docket No. RS92–4–001, Colorado Interstate Gas Company
CAG–28.
Docket No. RS92–30–001, Carnegie Natural Gas Company
CAG–29.
Docket Nos. RS92–11–000, 010, RP88–67–068 (Phase I/Rates), and RP92–234–003, Texas Eastern Transmission Corporation
Docket Nos. RP85–177–106, RP93–13–003, RP93–22–002 and CP90–2154–005, Texas Eastern Transmission Corporation
Docket No. RP93–65–001, Public Service Electric and Gas Company v. Texas Eastern Transmission Corporation
Docket Nos. RP88–81–022, RP88–221–016, RP89–255–005, RP90–15–003, RP90–119–016 and RP91–4–004, Texas Eastern Transmission Corporation
CAG–30.
Docket No. RS92–33–001, East Tennessee Natural Gas Company
CAG–31.
Docket No. RS92–45–002, Natural Gas Pipeline Company of America
CAG–32.
Docket Nos. RS92–41–002 and RP91–189–007, Midwestern Gas Transmission Company
CAG–33.
Docket No. RS92–52–001, Viking Gas Transmission Company
CAG–34.
Docket No. RS92–45–000, Natural Gas Pipeline Company of America
CAG–35.
Docket No. CP92–182–005, Florida Gas Transmission Company
Docket No. CP92–415–003, Transcontinental Gas Pipe Line Corporation and Florida Gas Transmission Company
CAG–36.
Docket No. CP91–1910–001, Southwestern Public Service Company v. Red River Pipeline
CAG–37.
Docket No. RM87–3–022, Green Canyon Pipe Line Company
CAG–38.
Docket No. CP80–34–010, Panhandle Eastern Pipe Line Company
Docket No. CP80–35–010, Colorado Interstate Gas Company
CAG–39.
Docket No. CP91–1634–002, Great Lakes Gas Transmission Limited Partnership
CAG–40.
Omitted
CAG–41.
Docket No. CP92–448–001, ANR Pipeline Company
CAG–42.
Omitted
CAG–43.
Docket No. CP93–246–000, Midwestern Gas Transmission Company
CAG–44.
Omitted
CAG–45.
Docket Nos. CP93–62–000 and CP93–92–000, Arkla Energy Resources, a Division of Arkla, Inc.
Docket No. CP93–195–000, Bayou South Gas Gathering Company
CAG–46.
Docket No. CP92–711–000, Williams Natural Gas Company
Docket No. CP93–85–000, Oryx Energy Company
CAG–47.
Docket No. CP91–2392–002, Northwest Pipeline Corporation
Docket No. CP91–2393–002, Williams Gas Processing Company
CAG–48.
Omitted
CAG–49.
Docket No. CP92–222–000, Great Plains Natural Gas Company
CAG–50.
Docket No. CP91–2904–000, Mississippi River Transmission Corporation
CAG–51.
Docket Nos. RP93–34–003 and RS92–87–015, Transwestern Pipeline Company
CAG–52.
Docket No. RP93–117–000, Northwest Pipeline Corporation
CAG–53.
Docket Nos. RP91–203–029, RP92–132–030, RP92–160–002, CP89–629–028, CP90–639–017, CP91–2208–007 and RS92–23–009, Tennessee Gas Pipeline Company
CAG–54.
Docket No. CP93–185–000, Portal Municipal Gas Company
CAG–55.
Docket No. RS92–11–010, Texas Eastern Transmission Corporation
CAG–56.
Docket Nos. RS92–19–001, RP92–104–004 and RP92–131–005, KN Energy, Inc.

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Omitted
E–2.
Docket No. RM93–18–000, Accounting and Ratemaking Treatment of Special Assessments Levied Under the Atomic Energy Act of 1954, as Amended by Title XI of the Energy Policy Act of 1992. Notice providing accounting guidance and notice of propose rulemaking.
E–3.
Docket No. RM93–19–000, Inquiry Concerning Possible Revisions to the Commission's Pricing for Transmission Services Provided by Public Utilities Under the Federal Power Act. Notice of technical conference and request for comments.

Oil and Gas Agenda

I. Pipeline Rate Matters

II. Restructuring Matters

RS–1.
Docket Nos. RS92–65–001 and 002, Kern River Gas Transmission Company. Order on compliance.
RS–2.
Docket Nos. RS92–66–001 and 002, Mojave Pipeline Company. Order on compliance.
RS–3.
Docket Nos. RS92–53–000, 001 and RP93–40–003, Western Gas Interstate Company. Order on compliance.
RS–4.
Docket No. RS92–48–000, Riverside Pipeline Company, L.P. Order on compliance.
RS–5.
Docket No. RS92–54–000, Western Transmission Corporation. Order on compliance.
RS–6.
Docket No. RS92–59–000, Chandeleur Gas Pipeline Company. Order on compliance.
RS–7.
Docket No. RS92–64–000, High Island Offshore System.
Docket No. RS92–88–000, U–T Offshore System. Order on compliance.
RS–8.
Docket Nos. RS92–67–000, Northern Border Pipeline Company. Order on compliance.
RS–9.

Docket Nos. RS92–18–002 and 003, Kentucky West Virginia Gas Company. Order on compliance.

RS–10.

Docket Nos. RS92–21–000, 002, RP93–101–000, RP93–103–000 and RP93–105–000, National Fuel Gas Supply Corporation. Order on compliance filing and requests for rehearing.

RS–11.

Docket Nos. RS92–42–001 and 002, MIGC, Inc. Order on compliance filing and requests for rehearing.

RS–12.

Docket No. RS92–71–000, Overthrust Pipeline Company. Order on compliance.

RS–13.

Docket No. RS92–72–000, Ozark Gas Transmission System. Order on compliance.

RS–14.

Docket Nos. RS92–81–000 and RP91–212–000, Stingray Pipeline Company. Order on compliance.

RS–15.

Docket No. RS92–85–000, Trailblazer Pipeline Company. Order on compliance.

RS–16.

Docket No. RS92–90–000, Wyoming Interstate Company, Ltd. Order on compliance.

RS–17.

Docket No. RS93–1–000, Granite State Gas Transmission, Inc. Order on compliance.

RS–18.

Docket Nos. RS92–17–003 and 004, Iroquois Gas Transmission System, L.P. Order on compliance and request for rehearing.

III. Pipeline Certificate Matters

PC–1.

Reserved.

Dated: June 9, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14025 Filed 6–10–93; 1:54 pm]

BILLING CODE 6717–01–M

VOL 58 ISS 112 JE 14 1993 UMI

Federal Register

Monday
June 14, 1993

Part II

Department of Education

Office of Special Education and Rehabilitative Services; Private Schools Serving Publicly Placed Children With Disabilities; Notice Inviting Comments

VOL
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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Private Schools Serving Publicly Placed Children With Disabilities; Notice Inviting Comments

ACTION: Notice regarding the notice inviting comments.

SUMMARY: The Secretary of Education publishes this Notice to inform the public that, as a result of the public comments received, no further action will be taken with regard to the Notice Inviting Comments on Private Schools Serving Publicly Placed Children with Disabilities. Section 613(a)(4)(B)(ii) of the Individuals with Disabilities Education Act (IDEA) (previously the Education of the Handicapped Act (EHA)) requires that if a public agency places a child with a disability in a private program or facility for the purpose of providing a free appropriate public education (FAPE), the State educational agency (SEA) must ensure that the program meets the standards that apply to publicly operated programs.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas B. Irvin, U.S. Department of Education, 400 Maryland Avenue, SW., room 3092, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8825. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9090.

SUPPLEMENTARY INFORMATION: On August 13, 1992, the Secretary published a Notice Inviting Comments (NIC) from all interested parties on issues concerning the personnel standards requirements of Part B of the IDEA that apply to private schools serving publicly placed children with disabilities (57 FR 36582). Public comment was specifically invited on (1) whether the IDEA should be amended to permit public agencies to place children in private school programs if it is determined that personnel meet standards that are comparable or equivalent, under State law or policy, to the standards for personnel in publicly operated programs but different from those standards; and (2) how States would formulate policy on comparable or equivalent personnel standards. A 45-day public comment period was provided.

Analysis of Comments

In response to the Secretary's invitation in the notice, 2,862 parties submitted comments on the NIC. Comments were received from a wide range of individuals and organizations, including professional and advocacy organizations, State and local educational agencies, individual providers, representatives of private schools, and Members of Congress. An analysis of the comments received in response to the publication of the NIC follows.

The overwhelming number of commenters expressed the view that current statutory and regulatory provisions should not be changed because they guarantee equal treatment for students with disabilities by ensuring that all eligible students receive special education and related services from qualified personnel, regardless of the setting in which those services are provided. The majority of commenters expressed the additional concern that an unintended effect of the proposed change could be lower standards for personnel in private schools than the standards for personnel in public schools, thereby denying children with disabilities publicly placed in private programs the appropriate education to which they are entitled under the IDEA. Some commenters also opposed any statutory or regulatory changes that would authorize comparable or equivalent standards for special education and related services personnel because of difficulties that States and the Department could experience in monitoring compliance with these standards at the State and local level.

Approximately 50 commenters supported making statutory and regulatory changes and emphasized the talent, effectiveness, and dedication of private school personnel, regardless of whether they met State qualification standards. Many of these commenters expressed the view that private schools had the capacity to offer programs that addressed the unique needs of students with disabilities that publicly operated programs could not address, even though the personnel in private schools might not meet State-mandated qualification standards. These commenters also expressed the belief that comparable or equivalent standards for personnel in private schools would afford private schools the necessary flexibility to use adequately trained personnel who may not meet State-mandated qualification standards but who could provide students with disabilities quality programming to meet their unique needs.

Based on a thorough review and analysis of all of the public comments received in response to the NIC, the Secretary has determined not to propose changes to either the IDEA statute or the Department's regulations implementing the IDEA that would alter applicable standards for personnel serving children with disabilities publicly placed in private schools.

Dated: June 8, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–13879 Filed 6–11–93; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Monday
June 14, 1993

Part III

Department of Education

34 CFR Part 73
Standards of Conduct; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 73

RIN 1801–AA08

Standards of Conduct

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Standards of Conduct for Department of Education employees. These regulations have generally been superseded by the government-wide Standards of Ethical Conduct for Employees of the Executive Branch. The Secretary takes this action to eliminate the superseded provisions and to update cross-references in the regulations that continue to be applicable, in accordance with the government-wide standards.

EFFECTIVE DATE: This amendment will take effect on June 14, 1993.

FOR FURTHER INFORMATION CONTACT: Susan A. Winchell, U.S. Department of Education, 400 Maryland Avenue, SW., room 5117, Washington DC 20202–2152. Telephone: (202) 401–1730. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Pursuant to section 201 of Executive Order (E.O.) 12674 (April 12, 1989), as modified by E.O. 12731, the Office of Government Ethics (OGE) issued final regulations governing the Standards of Ethical Conduct for Employees of the Executive Branch. The new rule, which became effective on February 3, 1993, establishes uniform standards of ethical conduct for officers and employees of the Executive Branch of the Federal Government and supersedes most of the provisions contained in the Department's Standards of Conduct in 34 CFR part 73. Therefore, the Secretary has determined that part 73 should be amended by removing subparts A, B, and F and §§ 73.20, 73.21, and 73.31 through 73.37 and by amending §§ 73.22 and 73.30.

Subparts A, B, and F and §§ 73.20, 73.21, and 73.31 through 73.37 contain the Department's Standards of Conduct provisions that have been superseded by the new OGE regulations and are therefore being removed.

Section 73.22 contains the Department's requirements for approval of outside activities and employment. Pursuant to the new Standards of Ethical Conduct for Employees of the Executive Branch, these requirements will remain in effect until February 4, 1994, or until new requirements are published. Section 73.22 has been amended to cross-reference the new government-wide standards.

Section 73.30 contains the Department's regulatory waiver for financial interests held in a widely diversified mutual fund or other regulated investment company, issued pursuant to E.O. 11222 and 18 U.S.C. 208. Executive Order 12674 (April 12, 1989), as amended by E.O. 12731 (October 17, 1989) revokes an individual agency's authority to promulgate regulations implementing 18 U.S.C. 208 and vests sole authority to do so in OGE. However, E.O. 12674 preserves regulations issued prior to April 12, 1989, pursuant to E.O. 11222 that are not inconsistent with new regulations issued by OGE. Section 73.30 is amended to cross-reference the new government-wide standards.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, public comment is unnecessary because these regulations merely revoke existing regulations in accordance with previously issued government-wide regulations and amend cross-references in the regulations that remain in effect. In addition, since these regulations relate to agency management and personnel, they are exempt from notice and comment under 5 U.S.C. 553(a)(2).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

List of Subjects in 34 CFR Part 73

Conflict of interest, Education department, Government employees, Standards of conduct.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: June 8, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by amending part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 is revised to read as follows:

Authority: 5 CFR 2635.803, 18 U.S.C. 208, and E.O. 12674, unless otherwise noted.

Subparts A and B—[Removed and Reserved]

2. Subparts A and B are removed and reserved.

§§ 73.20 and 73.21 [Removed and Reserved]

3. Sections 73.20 and 73.21 are removed and reserved.

4. Section 73.22 is revised to read as follows:

§ 73.22 Prior approval to participate in outside activities.

(a) Except as provided in paragraph (b) of this section, an employee who intends to engage in outside employment or in other outside activity shall obtain prior approval from his or her principal officer in accordance with procedures of the Department.

(b) Prior approval is not required if the outside activity will not—

(1) Be performed during the employee's regular work hours;

(2) Aggregate 10 or more hours a week;

(3) Involve public writing or speaking;

(4) Involve services for a prohibited source, as defined in 5 CFR 2635.203(d) and 2635.102(k), or services that relate to any matters funded by or regulated by another Federal agency; and

(5) Reasonably raise questions under the Standards of Conduct for the Executive Branch.

(c) The principal officer files in his or her immediate office a record of each approval under this section.

(d) The requirement of paragraph (a) of this section does not apply to a special Government employee.

(Authority: 5 CFR 2635.803)

5. Section 73.30 is revised to read as follows:

§ 73.30 Conflict of interest waiver.

If a financial interest arises from ownership by an employee—or other person or enterprise referred to in 5 CFR 2635.402 (b)(2)—of stock in a widely diversified mutual fund or other regulated investment company that in turn owns stock in another enterprise, that financial interest is exempt from the prohibition in 5 CFR 2635.402(a).

(Authority: 18 U.S.C. 208; E.O. 12674)

§§ 73.31–73.37 [Removed and Reserved]

6. Sections 73.31, 73.32, 73.33, 73.34, 73.35, 73.36, and 73.37 are removed and reserved.

Subpart F—[Removed and Reserved]

7. Subpart F is removed and reserved.

[FR Doc. 93–13888 Filed 6–11–93; 8:45 am]
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Part IV

Department of Labor

Employment and Training Administration

20 CFR Parts 626 and 638
Job Training Partnership Act; Job Corps Program Under Title IV–B; Proposed Rule

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626 and 638

RIN 1205–AA

Job Training Partnership Act: Job Corps Program Under Title IV–B

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Office of Job Corps of the Employment and Training Administration of the Department of Labor proposes to amend its regulations for the Job Corps program under title IV–B of the Job Training Partnership Act (JTPA). These amendments are required so that the regulations will conform to the Job Training Reform Amendments of 1992 (Amendments). With the amended regulations, Job Corps can implement related portions of the Amendments.

DATES: All comments and information shall be submitted in writing by July 14, 1993.

ADDRESSES: Send comments to the Assistant Secretary for Employment and Training, Employment and Training Administration, Department of Labor, room N–4510, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Peter E. Rell, Director, Office of Job Corps. Commenters wishing acknowledgement of receipt of their comments shall submit them by certified mail, return receipt requested.

Comments received will be available for public inspection during normal business hours at the Office of Job Corps, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–5410, Washington, DC 20210. Persons who need assistance to review the comments will be provided with appropriate aids such as audio tape or print magnifiers. To schedule an appointment, call 202–219–5556.

Copies of this notice of proposed rulemaking are available in large print or computer disk. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy F. Sullivan, Chief, Division of Program Planning and Development, Office of Job Corps, Employment and Training Administration, U.S. Department of Labor, room N–4510, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–5556 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Job Corps proposes to amend its regulations to implement amendments to the Job Training Partnership Act (JTPA or Act) applicable to Job Corps contained in the Job Training Reform Amendments of 1992 (Amendments), which will become effective July 1, 1993. These amendments involve: (1) A change in the language related to income eligibility, (2) Changes in the definitions of "family" and "family of one," (3) a change in the language defining eligibility for Job Corps through receipt of food stamps, (4) provision for a portion of the total Job Corps enrollment to come from persons who are age 22 through 24, (5) a change requiring the national performance measurement system to include the establishment of annual performance standards for centers and other program components, (6) provision of a management fee for all Job Corps contractors, (7) addition of language giving priority in nonresidential programs to single parents, (8) provision for transfer of participants between Title II and Title IV–B programs, and (9) change in the language related to individuals with handicaps, and (10) provision for child care at centers where practicable.

These proposed changes are discussed in further detail below:

(1) *Change in income eligibility language.*

While JTPA, as amended, now provides for the 6-month period before application to be used as the basis for determination of income eligibility, existing Job Corps regulations provide for the 12-month, or 6-month annualized, period before application to be used. To conform to the Act and Amendments, Job Corps proposes to change its regulations to provide for a 6-month annualized period as the basis for determination of income eligibility. Annualizing the 6-month period will facilitate comparing the applicant's income to the official Poverty Guidelines as revised by the Department of Health and Human Services or the Lower Living Standard Income Level (LLSIL) guidelines, which use annual incomes.

(2) *Definitions of "family" and "family of one."*

Job Corps currently defines "family" in its regulations as one or more persons living in a single residence who are related by blood, marriage or adoption. "Family of one" is an individual who lives alone, or who lives with unrelated individuals, or who lives in a single residence where no family member claims that person as a dependent. An individual with disabilities has the option of applying and being considered as a member of a family or as a family of one. The Amendments, however, define "family" as two or more persons related by blood, marriage, or decrees of court, who are living in a single residence and comprise either a husband, wife and children; a parent or guardian and dependent children, or a husband and wife. To conform to the definition of "family" in the Amendments, Job Corps proposes to revise its definition accordingly. In addition, to avoid confusion that might occur when referring to an individual as "family of one," Job Corps proposes to change the name of "family of one" to "individual." When determining income eligibility for a person who applies for Job Corps as an individual, Job Corps will use the "family unit of one" standards in the official Poverty Guidelines, as revised by the Department of Health and Human Services (for LLSIL the "Family of One" column is used). This will not change the eligibility determination requirements, but reduces confusion that might occur in use of titles.

(3) *Receipt of food stamps.*

Currently under Job Corps regulations, an individual who is receiving food stamps pursuant to the Food Stamp Act of 1977, as administered by the Department of Agriculture, meets the income criterion for eligibility. The Amendments have added language which states that an individual is eligible who has been determined within the 6-month period prior to application for Job Corps to be eligible under this criterion. By adding this language to its regulations, Job Corps conforms to the Amendments and can implement the requirement.

(4) *Enrollment of individuals 22 through 24 years of age.*

Students currently are enrolled in Job Corps from ages 16 through 21. The Amendments permit enrollment of individuals also from ages 22 through 24, but that age group may not exceed 20 percent of the total enrollment of Job Corps. The proposed change to the Job Corps regulations adds this provision to conform to the Amendments and implement the requirement. Although the Amendments stipulate age 14 as the minimum age for Job Corps enrollment, 14 and 15-year-olds may be admitted to Job Corps only upon specific determination of the Job Corps Director. This stipulation is not a change. The restriction is made for the following reasons: (1) youth of this age are required by law to be in school and Job Corps does not want to encourage youth of this age to leave school, and (2) 16 is the legal age for work.

(5) *Performance standards.*

The Amendments provide for development of performance standards for Job Corps and authorize the

Secretary of Labor to modify these standards each program year (July 1–June 30). Job Corps has had performance standards for Job Corps centers in place for several years and has published these standards in the *Job Corps Policy and Requirements Handbook* (PRH). Job Corps proposes to amend its regulations to provide for the establishment of performance standards for centers and other program components to conform to the Amendment. Job Corps has already developed and is currently field testing standards for Job Corps placement contractors, and will begin developing standards for Job Corps screening agencies. When completed, the placement and screening standards will be published in the PRH as well.

(6) *Contractor's management fee.*

The Amendments provide for the addition of an equitable and negotiated management fee of not less than 1 percent of the contract amount for all Job Corps contractors. By adding this language to its regulations, Job Corps will conform to the Amendments and can implement the requirement.

(7) *Priority to single parents in nonresidential program.*

The Amendments have added language to the Act providing that when enrolling individuals who are to be nonresidential participants, Job Corps shall give priority to those eligible individuals who are single parents with dependent children. To conform to the Amendments and implement this requirement, Job Corps proposes to add similar such language to the regulations.

(8) *Child care at centers.*

Current Job Corps regulations authorize center operators to propose and, with approval of the Job Corps director, establish child care facilities. The Amendments authorize Job Corps to provide child care at or near centers, to the extent practicable, for individuals who require child care for their children in order to participate in Job Corps. Job Corps proposes to add this language to its regulations in order to conform to the Amendments and implement the statute.

(9) *Transfer of participants between Title II and Title IV–B programs.*

Job Corps regulations presently provide for development of policies and requirements to ensure linkages with other Federal, State and local programs to enhance the provision of services, either sequentially or concurrently, to disadvantaged youth, including those services authorized under Title II of the Act. The Amendments provide that nothing in the Act shall be construed to prohibit a Job Corps student from concurrently or subsequently participating in Title II programs, or to prohibit an individual who has been a participant in programs under Title II from concurrently or subsequently participating in Job Corps. Job Corps proposes to add this specific language to its regulations in order to conform to the Amendment and implement the requirement.

(10) Throughout the Amendments and the Rehabilitation Act Amendments of 1992, the term "handicap" is changed to "disability." In this rule, the Job Corps regulations will conform to provisions of those Acts by changing the terms in the definition section.

(11) Other technical and clarifying amendments are made, including those which conform the regulations directly to the statutory amendments.

Regulatory Impact

This proposed rule applies only to changes in Job Corps regulations required by enactment of the Job Training Reform Amendments of 1992. It does not have the financial or other impact to make it a major rule for the purposes of Executive Order No. 12291, 3 CFR, 1981 Comp., p. 127, 5 U.S.C. 601 note. For the same reasons, as required by the Regulatory Flexibility Act, the Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

The proposed rule contains no new collection of information requirements.

List of Subjects

20 CFR Part 626

Grant programs, Labor, Manpower training programs.

20 CFR Part 638

Contract programs, Labor, Training and employment programs.

Proposed Rule

Accordingly, 20 CFR chapter V is proposed to be amended as follows:

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

1. The authority citation to 20 CFR part 626 continues to read:

Authority: 29 U.S.C. 1579(a); section 6305(f), Pub. L. 100–418, 102 Stat. 1107; 29 U.S.C. 1791i(e).

2. The consolidated table of contents in § 626.3 is amended by revising the heading for § 638.302 to read as follows:

§ 626.3 Table of contents for the regulations under the Job Training Partnership Act.

* * * * *

638.302 Performance measurement.

* * * * *

PART 638—JOB CORPS PROGRAM UNDER TITLE IV–B OF THE JOB TRAINING PARTNERSHIP ACT

3. The authority for part 638 continues to read as follows:

Authority: 29 U.S.C. 1579(a).

4. Section 638.200 is amended as follows:

a. In the definition of *"Economically disadvantaged"*, the introductory language in paragraph (2) is revised and paragraph (3) is revised;

b. The definition of *"Family"* is revised;

c. The definition of *"Family income"* is removed and the definition of *"Income"* is added;

d. The definition of *"Individual with handicaps"* is removed and the definition of *"Individual with disabilities"* is added;

e. The definition of *"Family of one"* is removed and the definition of *"Individual"* is added to read as follows:

§ 638.200 Definitions.

* * * * *

Economically Disadvantaged * * *

(2) Has, or is a member of a family which has received a total income for the 6-month (annualized) period prior to application to the program which, in relation to family size or for an individual, was not in excess of the higher of:

* * * * *

(3) Is receiving (or has been determined within the 6-month period prior to the application for the program involved to be eligible to receive) food stamps pursuant to the Food Stamp Act of 1977, as administered by the U.S. Department of Agriculture;

* * * * *

Family means persons living in a single residence who are related by blood, marriage, or decrees of court and are included in one or more of the following categories: (1) A husband, wife and dependent children, (2) a parent or guardian and dependent children, and (3) a husband and wife. A step-child or step-parent is considered to related by marriage.

* * * * *

Income means all income actually received from all sources by an individual or, in the case of a family, by all members of the family for the 6-

month (annualized) period prior to application. Family size is the maximum number of family members during the 6-month period prior to application. When computing family income, income of a spouse and other family members is counted for the portion of the 6-month (annualized) period prior to application that the person was actually a member of the family.

(1) For the purpose of determining an individual's eligibility for participation in the Job Corps program, family income includes:

(i) Gross wages, including wages from community service employment (CSE), work experience, and on-the-job training (OJT) paid from Job Training Partnership Act funds, and salaries (before deductions);

(ii) Net self-employment income (gross receipts minus operating expenses); and

(iii) Other money income received from sources such as interest, net rents, OASI (Old Age and Survivors Insurance) social security benefits, pensions, alimony, and periodic income from insurance policy annuities, and other sources of income.

(2) Family income does not include:

(i) Non-cash income such as food stamps or compensation received in the form of food or housing;

(ii) Imputed value of owner-occupied property, i.e., rental value;

(iii) Public assistance payments;

(iv) Cash payments received pursuant to a State plan approved under titles I, IV, X, or XVI of the Social Security Act, or disability insurance payments received under title II of the Social Security Act;

(v) Federal, State, or local unemployment benefits;

(vi) Capital gains and losses;

(vii) One-time unearned income, such as, but not limited to:

(A) Payments received for a limited fixed term under income maintenance programs and supplemental (private) unemployment benefits plans;

(B) One-time or fixed-term scholarship or fellowship grants;

(C) Accident, health, and casualty insurance proceeds;

(D) Disability and death payments including fixed-term (but not lifetime) life insurance annuities and death benefits;

(E) One-time awards and gifts;

(F) Inheritance, including fixed-term annuities;

(G) Fixed-term workers compensation awards;

(H) Soil bank payments; and

(I) Agricultural crop stabilization payments;

(viii) Pay or allowances which were previously received by any veteran while serving on active duty in the Armed Forces;

(ix) Educational assistance and compensation payments to veterans and other eligible persons under chapters 11, 13, 31, 34, 35, and 36, of title 38, U.S. Code;

(x) Payments made under the Trade Act of 1974;

(xi) Payments received under the Black Lung Benefits Act (30 U.S.C. 901 *et seq.*);

(xii) Any income directly or indirectly derived from, or arising out of, any property held by the United States in trust for any Indian tribe, band, or group or any individual; per capita payments; and services, compensation or funds provided by the United States in accordance with, or generated by, the exercise of any right guaranteed or protected by treaty; and any property distributed or income derived therefrom, or any amounts paid to or for the legatees or next of kin of any member, derived from or arising out of the settlement of an Indian claim; and;

(xiii) Child support payments.

Individual means a person who lives alone, or who lives with unrelated individuals, or who lives in a single residence where no family member claims that person as a dependent. An individual with disabilities has an option of applying and being considered as a member of a family or as an individual.

Individual with disabilities means any person within the definition at 29 CFR part 33 or 34 or 41 CFR part 60–741 as applicable. Although the definition employs the plural form "disabilities," individuals with a single impairment are covered within the definition. See §§ 638.539(g) and 638.811(a) of this part.

* * * * * * *

5. In § 638.301, a new paragraph (j) is added to read as follows:

§ 638.301 Funding procedures.

* * * * * * *

(j) All Job Corps contractors shall be provided with an equitable and negotiated management fee of not less than 1 percent of the contract amount.

6. Section 638.302 is revised to read as follows:

§ 638.302 Performance measurement.

The Job Corps Director shall establish a national performance measurement system for centers and other program components which shall include annual performance standards.

7. In § 638.400, paragraph (a) is revised to read as follows:

§ 638.400 Eligibility for participation.

* * * * * * *

(a) Is at least 16 and not yet 25 years of age at the time of enrollment, with the following exceptions:

(1) In the case of an otherwise eligible individual with disabilities, there is no upper age limit;

(2) Not more than 20 percent of the individuals enrolled by Job Corps may be ages 22 through 24; and

(3) Youths 14 to 15 years of age may be eligible for enrollment upon a specific determination by the Job Corps Director to enroll them;

* * * * *

8. In § 638.401, a new paragraph (d) is added to read as follows:

§ 638.401 Outreach and screening of participants.

* * * * *

(d) In enrolling individuals who are to be nonresidential participants, priority shall be given to those eligible individuals who are single parents with dependent children.

9. In § 638.539, paragraph (g)(1) is revised to read as follows:

§ 638.539 Complaints and Disputes.

* * * * *

(1) 29 CFR part 34 and subparts B and C and appendix A of 29 CFR part 32 for programs receiving financial assistance under JTPA.

* * * * *

10. Section 638.541 is amended by adding a sentence at the end to read as follows:

§ 638.541 Job Corps training opportunities.

* * * Nothing in this part shall be construed to prohibit an individual who has been a participant in Job Corps from concurrently or subsequently participating in programs under title II of JTPA, or to prohibit an individual who has been a participant in programs under title II of JTPA from concurrently or subsequently participating in Job Corps.

11. In Section 638.542 the existing text is designated as paragraph (b); and new paragraph (a) is added, to read as follows:

§ 638.542 Child care services.

(a) Job Corps centers shall, where practicable, arrange for the provision of child care for students with dependent children.

* * * * *

Signed at Washington, DC, this 3rd day of June, 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–13908 Filed 6–11–93; 8:45 am]

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-019-00001-1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869-019-00002-8)	17.00	[1] Jan. 1, 1993
4	(869-019-00003-8)	5.50	Jan. 1, 1993
5 Parts:			
1-699	(869-019-00004-6)	21.00	Jan. 1, 1993
700-1199	(869-019-00005-4)	17.00	Jan. 1, 1993
1200-End, 6 (6 Reserved)	(869-019-00006-2)	21.00	Jan. 1, 1993
7 Parts:			
0-26	(869-019-00007-1)	20.00	Jan. 1, 1993
27-45	(869-019-00008-9)	13.00	Jan. 1, 1993
46-51	(869-019-00009-7)	20.00	Jan. 1, 1993
52	(869-019-00010-1)	28.00	Jan. 1, 1993
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2000-End	(869-019-00025-9)	12.00	Jan. 1, 1993
8	(869-019-00026-7)	20.00	Jan. 1, 1993
9 Parts:			
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Microfiche CFR Edition: Complete set (one-time mailing)		188.00	1990

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Complete set (one-time mailing)		188.00	1992
Subscription (mailed as issued)		223.00	1993
Individual copies		2.00	1993

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1992. The CFR volume issued July 1, 1989, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1992. The CFR volume issued July 1, 1991, should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 1991 to September 30, 1992. The CFR volume issued October 1, 1991, should be retained.

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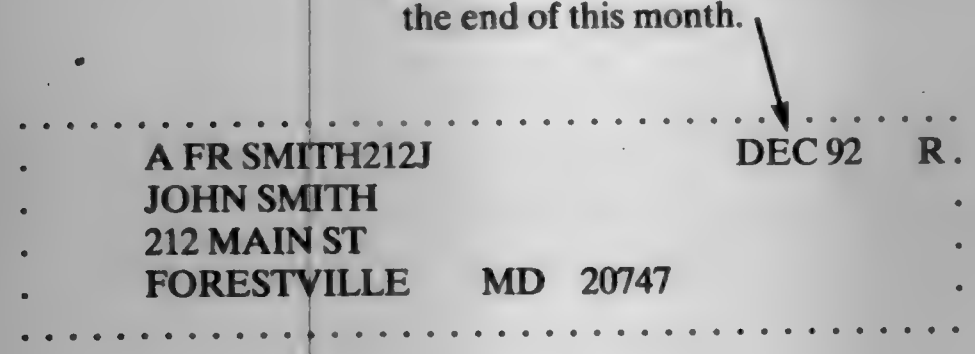

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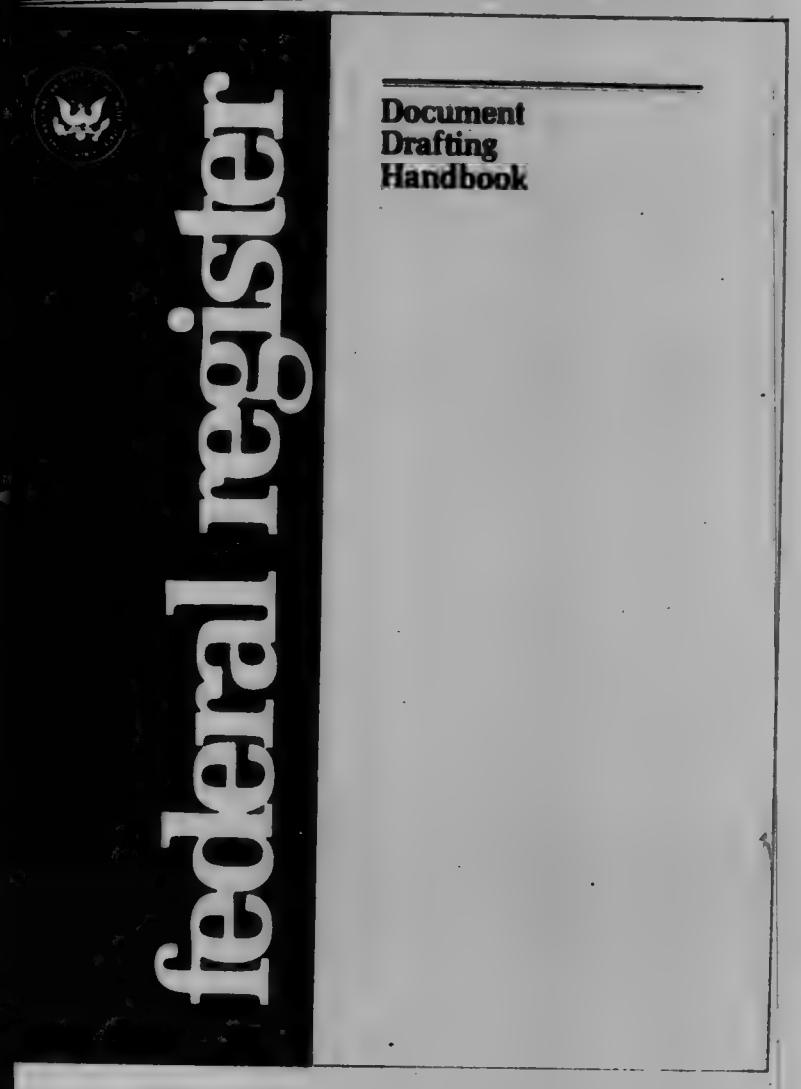

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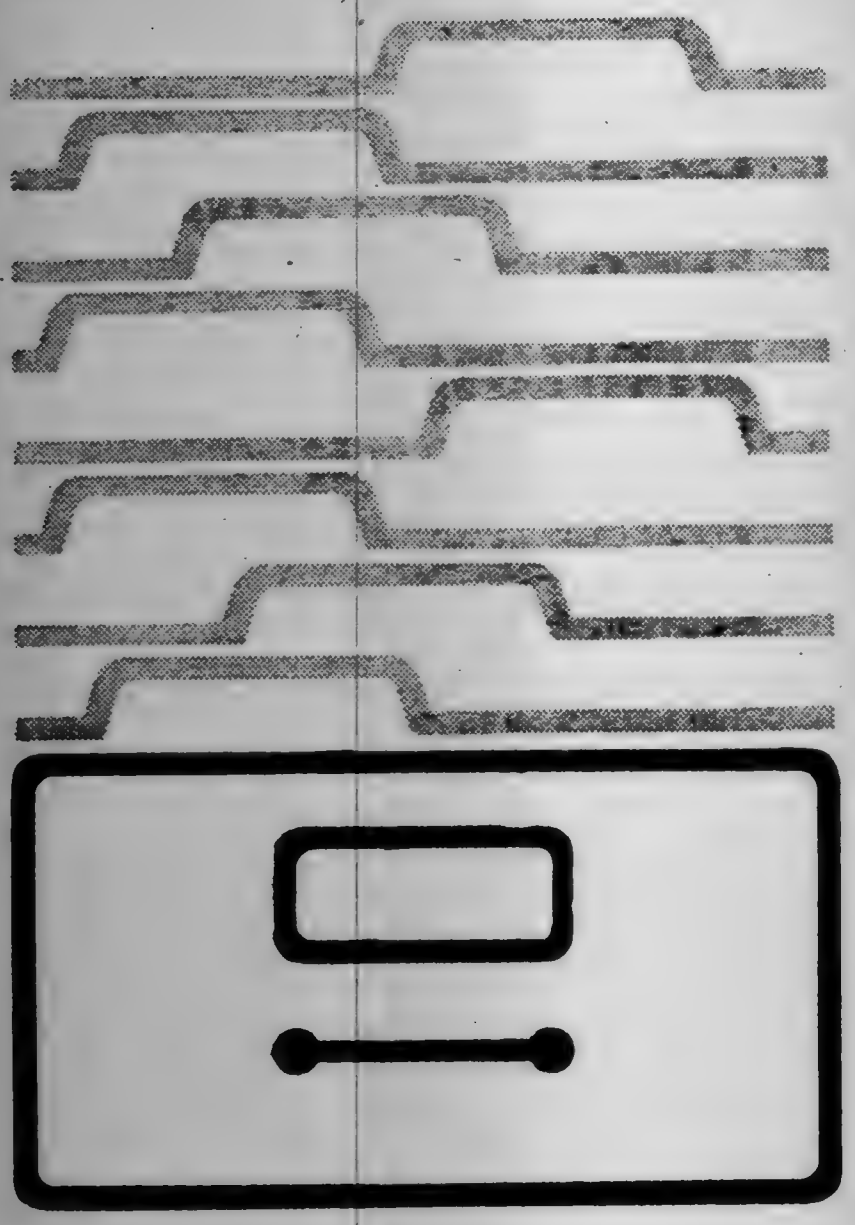

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Federal Register

Tuesday
June 15, 1993

Briefings on How To Use the Federal Register
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WHO: The Office of the Federal Register.

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Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 93–25 of June 2, 1993

Determination Under Section 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to section 402(d)(1) of the Trade Act of 1974, as amended (19 U.S.C. 2432(d)(1)) (hereinafter "the Act"), I determine that the further extension of the waiver authority granted by section 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waivers applicable to Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 2, 1993.

[FR Doc. 93–14222
Filed 6–11–93; 2:33 pm]
Billing code 4710–10–M

Editorial note: For the President's letter to Congressional leaders on trade with Albania, Romania, and certain states of the former Soviet Union, see the *Weekly Compilation of Presidential Documents* (vol. 29, p. 1021).

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Presidential Documents

Presidential Determination No. 93–26 of June 3, 1993

Presidential Determination Under Subsections 402(a) and 409(a) of the Trade Act of 1974, as Amended—Emigration Policies of the Republic of Bulgaria

Memorandum for the Secretary of State

Pursuant to the authority vested in me by subsections 402(a) and 409(a) of the Trade Act of 1974 (19 U.S.C. 2432(a) and 2439(a)) ("the Act"), I determine that the Republic of Bulgaria is not in violation of paragraph (1), (2), or (3) of subsection 402(a) of the Act, or paragraph (1), (2), or (3) of subsection 409(a) of the Act.

You are authorized and directed to publish this determination in the Federal Register.

William J. Clinton

THE WHITE HOUSE,
Washington, June 3, 1993.

[FR Doc. 93–14235
Filed 6–11–93; 3:08 pm]
Billing code 4710–10–M

Editorial note: For the President's letter to Congressional leaders on trade with Bulgaria, see the *Weekly Compilation of Presidential Documents* (vol. 29, p. 1025).

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Rules and Regulations

Federal Register
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AF19

Federal Employees Health Benefits Program: An Opportunity To Change to a Family Enrollment

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to allow separating employees to change from a self only to a family enrollment under the Federal Employees Health Benefits (FEHB) Program during the final pay period if the employee or the employee's spouse is pregnant. The purpose of these regulations is to give employees an opportunity to elect family coverage before separation so that the health care costs of a child born during the 31-day temporary extension of coverage following the separation from Federal service can be covered through the end of the 31-day period of the temporary extension of coverage. Although these employees may elect a family enrollment under the temporary continuation of coverage (TCC) provisions, the TCC enrollments do not begin until the temporary extension expires.

EFFECTIVE DATE: July 15, 1993.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606–0191.

SUPPLEMENTARY INFORMATION: On September 18, 1992, OPM issued interim regulations (57 FR 43132) providing that separating employees may change their FEHB enrollment from self only to family coverage during their final pay period if the employee or spouse is pregnant.

Under FEHB law and OPM regulations, Federal employees may change from a self only enrollment to a family enrollment within 60 days after the birth of a child. The change is effective retroactively to the first day of the pay period during which the child was born. Therefore, the health costs of a child born to a Federal employee become covered even though the employee has self only coverage at the time of the birth.

The FEHB law provides for a temporary extension of coverage for conversion to a nongroup policy following the termination of an enrollment due to separation from Federal service. Regulations specify that the temporary extension of coverage is for 31 days. There is no cost to the separated employee for this extended coverage since it is merely an extension of the coverage that existed when the employee separated. No change of enrollment can occur during that period.

When an enrolled Federal employee separates from Federal service, he or she is also eligible to enroll for TCC for a period of up to 18 months, unless the separation is involuntary due to gross misconduct. The separating employee may choose either a self only or family enrollment under TCC regardless of the type of enrollment he or she had at separation. That is, a pregnant employee with self only coverage at the time of separation can elect a family enrollment under TCC in order to cover the child when it is born. By law, the TCC enrollment begins when the 31-day temporary extension of coverage expires. After the TCC enrollment begins, a former employee whose initial TCC enrollment was for self only coverage may change to family coverage within 60 days after the birth of a child and the change will be retroactive, just as it is for employees with regular FEHB coverage. In both cases, the birth must occur after the enrollment begins.

However, there is no provision by which a child born to an employee with self only coverage during the 31-day temporary extension can acquire coverage before the TCC enrollment begins. In most cases, of course, an employee can time his or her separation so that the TCC coverage begins before the child is born. Occasionally, however, a child is born during the 31-day temporary extension either because the birth occurs early or because the employee had no control over the date of separation. In these cases, the child's health care costs are not covered from the date of birth until the TCC coverage begins.

For these reasons, OPM issued the interim regulations to allow an employee to change from self only to family coverage during his or her final pay period if the employee or the employee's spouse is pregnant. If the separating employee chooses to change enrollment under these regulations, the change is to be effective on the first day of the employee's final pay period. Thus, the coverage terminated by the separation would be a family enrollment and any child born during the 31-day extension of that coverage would be covered. In addition, those few employees who are barred from enrolling under TCC because of the circumstances of their separation can make this change in order to have the opportunity to convert to a nongroup contract for the family.

OPM received two comments on these interim regulations. One commenter suggested that OPM regulate to allow change of enrollment for a different and unrelated event. We will consider that suggestion in connection with a future regulation package.

Another commenter suggested that we allow separated employees to change their enrollment through the end of the 31-day temporary extension period in order to give them more time to make the enrollment change or to deem them to have made a timely change if the baby is born during the 31-day temporary extension period. The commenter also suggested that employees who have separated in similar circumstances in the past be given the opportunity to make a retroactive change in their enrollment.

It is a fundamental principle of insurance that people must make their choices about coverage before a need occurs. That is, people buy insurance to protect themselves against future need. If OPM's regulations allowed individuals to wait until after a need occurs to obtain the insurance necessary to cover the need, no one would obtain coverage unless they actually experienced a need. No insurance program could survive this result. Therefore, we have not accepted the concept of extending the enrollment period to a point in time when the child either has or has not been born during

the 31-day extension period. For the same reason, we have not accepted the suggestion to allow former employees to make retroactive changes in their enrollment.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect a small number of Federal employees.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.
Patricia W. Lattimore,
Acting Deputy Director.

Accordingly, under the authority of 5 U.S.C. 8913, OPM is adopting its interim regulations amending 5 CFR part 890 as published in FR Doc. 92–22586, on September 18, 1992 (57 FR 43132), as final rules without change.

[FR Doc. 93–13987 Filed 6–14–93; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

[FV92–907–2FR]

Navel and Valencia Oranges Grown in Arizona and Designated Parts of California; Expenses and Assessment Rates for the 1992–93 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule the provisions of an interim final rule (without change) authorizing expenditures and establishing assessment rates under Marketing Order Nos. 907 and 908 for California-Arizona navel and Valencia oranges, respectively, for the 1992–93 fiscal years established for each order. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: November 1, 1992–October 31, 1993.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2522–S, Washington, D.C. 20090–6456; telephone: (202) 690–0992.

SUPPLEMENTARY INFORMATION:

This final rule is effective under Marketing Order Nos. 907 and 908 [7 CFR Parts 907 and 908], both as amended, regulating the handling of California-Arizona navel and Valencia oranges, respectively. Both orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing orders now in effect, California-Arizona navel and Valencia oranges are subject to assessments. It is intended that the assessment rates specified herein be made applicable to all assessable navel and Valencia oranges during the 1992–93 fiscal year, which began on November 1, 1992. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under the respective marketing orders. There are approximately 4,000 producers of navel oranges and 3,500 producers of Valencia oranges in the regulated areas. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and handlers of California-Arizona navel and Valencia oranges may be classified as small entities.

The navel and Valencia orange marketing orders require that assessment rates for a particular fiscal year shall apply to all assessable navel or Valencia oranges handled from the beginning of such year. Annual budgets of expenses are prepared by the Navel Orange Administrative Committee (NOAC) and the Valencia Orange Administrative Committee (VOAC) and submitted to the Department for approval. The members of the NOAC and VOAC are handlers and producers of navel and Valencia oranges. They are familiar with the NOAC's and VOAC's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of navel or Valencia oranges. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay each committee's expected expenses. The recommended budget and rate of assessment is usually acted upon by each committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their individual expenses.

The NOAC met on September 15, 1992, and recommended, by a vote of eight in favor, one opposed, and one abstention, 1992–93 fiscal year expenditures of $1,463,270 and an assessment rate of $0.0316 per carton of navel oranges. In comparison, 1991–92 fiscal year budgeted expenditures were $1,255,760, and the assessment rate was $0.0315 per carton. Major expenditure categories in the 1992–93 budget are $496,010 for program administration, $206,800 for compliance activities, $591,360 for the field department, $165,700 for direct expenses, and $3,400 for a salary reserve. This compares to $388,490, $194,315, $512,295, $157,300, and $3,360, respectively, for the 1991–92 fiscal year. Assessment income for 1992–93 is expected to total $1,374,600, based on shipments of 43.5 million cartons of oranges. Interest and incidental income is estimated at $44,100. The increase in the assessment rate was recommended to minimize the expected shortfall in income. The NOAC plans on utilizing $44,570 from its reserve to cover the difference between income and expenses.

The VOAC also met on September 15, 1992, and unanimously recommended 1992–93 fiscal year expenditures of $724,330 and an assessment rate of $0.032 per carton of Valencia oranges. In comparison, 1991–92 fiscal year budgeted expenditures were $661,540, and the assessment rate was the same. Major expenditure categories in the 1992–93 budget are $228,090 for program administration, $95,100 for compliance activities, $271,940 for the field department, $127,600 for direct expenses, and $1,600 for a salary reserve. This compares to $189,510, $94,785, $249,905, $125,700, and $1,640, respectively, for the 1991–92 fiscal year. Assessment income for 1992–93 is expected to total $640,000 based on shipments of 20 million cartons of oranges. Interest and miscellaneous income is estimated at $25,900. The VOAC plans on utilizing $58,430 from its reserve to cover the difference between income and expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

An interim final rule was published in the Federal Register on October 26, 1992, (57 FR 48437). This document added § 907.230 and § 908.232 authorizing expenses and establishing assessment rates for the NOAC and VOAC. This interim final rule provided that interested persons could file comments through November 25, 1992.

Twelve comments were received and all twelve opposed finalization of this rule. Comments were submitted by Mr. Brian Leighton, on behalf of Growers for Modern Marketing and eleven producers and/or handlers.

The commenters presented several arguments opposing the finalization of this rule. Mr. Leighton and all 11 producers and/or handlers who commented questioned the status of the marketing order, contending that the August 21, 1992, decision by the U.S. Court of Appeals for the Ninth Circuit in San Francisco (Ninth Circuit) voided marketing orders 907 and 908. The commenters assert that since there are no orders, there can be no assessments. It is the Department's position that the August 21 decision invalidated only the 1985 amendments to the Valencia orange marketing order, and that the decision, at most, also affects only the 1985 amendments to the navel orange order since that order was amended concurrently. Both marketing orders continue in effect without the 1985 amendments. This position was upheld by the United States District Court for the Eastern District of California in a related case decided on December 18, 1992.

Mr. Leighton and one other commenter alleged that the Department has insufficient support for the marketing order. Both commenters cited the number of handlers who have filed motions in Federal court challenging the order to support this claim. While handlers may file petitions challenging provisions of an order, all marketing orders are initiated by growers and their level of continued support is determined through continuance referenda. Continuance referenda were held for the California-Arizona navel and Valencia orange orders in June 1991. The navel orange order was approved by 89 percent of the navel orange growers voting who accounted for 84 percent of the navel orange production represented in its referendum, and the Valencia orange order was approved by 92 percent of the Valencia orange growers voting who accounted for 83 percent of the Valencia orange production represented in its referendum.

In his last point, Mr. Leighton stated that both the NOAC and VOAC were seated on the basis of the provisions of the orders which included the invalidated amendments, and therefore, the committees and any recommendations they made were invalid. Consequently, the commenter stated that the recommended budgets and assessment rates are invalid.

The removal of the 1985 amendments from the orders has little effect on the provisions dictating how the committees are seated. The most significant change resulting from the withdrawal of the amendments concerning committee structure is the elimination of the additional alternate handler member positions. While the committees which recommended the budgets did include additional alternate handler members, none of them were seated for the meeting. The committee members who were seated, and voted on the recommendations all meet the qualifications as provided under the orders as they appear without the 1985 amendments. Furthermore, the action imposing the assessment rates was taken by the Secretary, and there is no indication why the status of the Committee members should invalidate such Departmental action.

Therefore, for the reasons stated, the above comments in opposition to the interim final rule are not well founded.

After consideration of the information and recommendations submitted by the NOAC and VOAC and other available information, it is found that this rule will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553) because the committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1992–93 fiscal period for the NOAC and VOAC began on November 1, 1992, and the marketing orders require that the assessment rates for the fiscal period apply to all assessable oranges handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committees at public meetings, and these final rules make no change in the interim final rules already in effect.

List of Subjects

7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

7 CFR Part 908

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 and 7 CFR part 908 are amended as follows:

1. The authority citation for both 7 CFR parts 907 and 908 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. Accordingly, the interim final rule adding § 907.230, which was published in the Federal Register (57 FR 48437, October 26, 1992) is adopted as a final rule.

Note: This action will not appear in the annual Code of Federal Regulations.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

3. Accordingly, the interim final rule adding § 908.232, which is published in the Federal Register (57 FR 48437, October 26, 1992) is adopted as a final rule.

Note: This action will not appear in the annual Code of Federal Regulations.

Dated: June 3, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–13991 Filed 6–14–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 926

[Docket No. FV93–926–1IFR]

Expenses and Assessment Rate for the Marketing Order Covering Tokay Grapes Grown in San Joaquin County, CA

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate for the Tokay Grape Industry Committee (committee) under M.O. No. 926 for the 1993–94 fiscal year. Authorization of this budget enables the committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning April 1, 1993, through March 31, 1994. Comments received by July 15, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Peter Parks, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102 B, Fresno, California 93721, telephone: (209) 487–5901; or Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 690–0992.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 926 (7 CFR part 926) regulating the handling of Tokay grapes grown in San Joaquin County, California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, tokay grapes grown in California are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable tokay grapes handled during the 1993–94 fiscal year, beginning April 1, 1993, through March 31, 1994. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately three handlers of tokay grapes regulated under the marketing order each season and approximately 15 tokay grape producers in San Joaquin County, California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The tokay grape marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable grapes handled from the beginning of such year. Annual budgets of expenses are prepared by the committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the committee are grape handlers and producers. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The committee's budget is formulated and discussed in a public meeting. Thus, all directly affected

persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing the anticipated expenses by expected shipments of grapes. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the committee's expected expenses.

The committee met on April 2, 1993, and unanimously recommended total expenditures for the 1993–94 fiscal year of $5,150 with an assessment rate of $0.07 per carton. In comparison, this is a $125 decrease in expenditures from the 1992–93 fiscal year with the assessment rate remaining unchanged. Funds in the reserve at the end of the 1993–94 fiscal year, estimated at $4,500, will be within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year for the committee began April 1, 1993, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable grapes handled during the fiscal year; (3) handlers are aware of this action which was unanimously recommended by the committee at a public meeting and which is similar to budgets issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 926

Marketing agreements, Tokay grapes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 926 is amended as follows:

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 926 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 926.232 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 926.232 Expenses and assessment rate.

Expenses of $5,150 by the Tokay Grape Industry Committee are authorized and an assessment rate of $0.07 per carton on assessable grapes is established for the fiscal year ending March 31, 1994. Unexpended funds may be carried over as a reserve.

Dated: June 3, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–14039 Filed 6–14–93; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 932

[Docket No. FV92–932–1FR]

Expenses and Assessment Rate for the Marketing Order Covering Olives Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule the provisions of the interim final rule (without change) which authorized expenditures and established an assessment rate for the California Olive Committee (committee) under M.O. No. 932 for the 1993 fiscal year. Authorization of this budget enables the committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: January 1, 1993, through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 690–0992.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 932 (7 CFR part 932), both as amended, regulating the handling of olives grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, olives grown in California are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable olives handled during the 1993 fiscal year, beginning January 1, 1993, through December 31, 1993. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly

or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5 handlers of olives regulated under Marketing Order No. 932, and approximately 1,350 olive producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Most of the producers and none of the handlers may be classified as small entities.

The olive marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable olives handled from the beginning of such year. Annual budgets of expenses are prepared by the committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the committee are olive handlers and producers. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The committee's budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing the anticipated expenses by expected shipments of olives (in tons). Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the committee's expected expenses.

The committee met on December 10, 1992, and unanimously recommended total expenditures for the 1993 fiscal year of $2,796,000 with an assessment rate of $25.75 per ton based on an assessable tonnage of 147,000 tons from the record 1992 olive crop. In comparison, this is a $963,770 increase in expenditures and a $5.07 increase in the assessment rate from the 1992 fiscal year.

The increase in expenses is primarily for administrative costs, production research, market development, and the completion of a comprehensive grower acreage survey. Due to the anticipation of a smaller olive crop in 1993, the assessment rate increase is deemed necessary because it will provide for an increase in the committee's reserves at the end of the 1993 fiscal year that will be used in the 1994 fiscal year. The projected reserves at the end of the 1993 fiscal year will not exceed the amount permitted under the marketing order of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The committee needs to have sufficient funds to pay its expenses. Such expenses are incurred on a continuous basis. The 1993–94 fiscal year for the committee began January 1, 1993. Marketing order No. 932 requires that any rate of assessment for a fiscal year apply to all assessable olives handled during that fiscal year. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, the interim final rule adding § 932.226, which was published in the **Federal Register** (58 FR 8538, February 16, 1993) is adopted as a final rule.

Dated: June 3, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–13993 Filed 6–14–93; 8:45 am]

BILLING CODE 3410-02-P

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7 CFR Part 945

[FV–92–087FR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Establishment of Positive Lot Identification Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (Department) is adopting without modification, as a final rule, the provisions of an interim final rule which established procedures for handlers who utilize positive lot identification (PLI) for lots of potatoes inspected and certified under the Idaho-Eastern Oregon potato marketing order. The interim final rule allowed handlers to ship positive lot identified potatoes without a valid inspection certificate; established inspection procedures for positive lot identified potato lots that are not shipped within four days of inspection; and required handlers to report the quantities of potatoes shipped under PLI. These procedures allow handlers to operate more efficiently when they use PLI as a method of inspection. This action was unanimously recommended by the Idaho-Eastern Oregon Potato Committee (committee), which is responsible for local administration of the order.

EFFECTIVE DATE: July 15, 1993.

FOR FURTHER INFORMATION CONTACT: Dennis West, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Northwest Marketing Field Office, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone (503) 326–2724, or Valerie L. Emmer, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 205–2829.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 98 and Marketing Order No. 945 (7 CFR part 945), both as amended, regulating the handling of Irish potatoes grown in certain counties in Idaho and Malheur County, Oregon. The marketing agreement and order are

authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 66 handlers of Idaho-Eastern Oregon potatoes who are subject to regulation under the marketing order and approximately 2,200 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A majority of the handlers and producers of Idaho-Eastern Oregon potatoes may be classified as small entities.

The interim final rule revised § 945.341 of the rules and regulations of the order, which was unanimously recommended by the committee at its June 9, 1992, meeting.

Prior to the issuance of the interim final rule, paragraph (d)(1) of § 945.341 provided that no handler shall handle potatoes unless the potatoes are inspected by either the Idaho Federal-State Inspection Service or Oregon Federal-State Inspection Service and all shipments are covered by a valid inspection certificate. However, many handlers of Idaho-Eastern Oregon potatoes have been using positive lot identification (PLI) inspection procedures approved by the Fresh Products Branch of the Fruit and Vegetable Division. Positive lot identification provides that a specific load or lot can be linked to an official inspection certificate or numbered notesheet (Federal or Federal-State) that shows the produce has been officially sampled, inspected, and certified by a USDA authorized inspector. This can be accomplished by sealing conveyances with pre-numbered seals, pre-stamped identification tags inserted or attached to containers, stamping containers with official stamping devices, taping and/or tagging unitized pallets of products, or other methods if approved by the Fresh Products Branch. Copies of these procedures are attainable from Scott P. Brubaker, Federal Supervisor, Federal-State Inspection Service, Fresh Fruit and Vegetable Inspection, 2270 Old Penitentiary Road, Boise, Idaho 83712; telephone (208) 334–3830. Under these procedures, the lot can be tied to a particular inspection certificate, numbered notesheet or shipping clearance report. A numbered notesheet or inspection certificate is used by inspectors to list results of inspections completed during the day. A shipping clearance report is also used as evidence of inspection when previously inspected positive lot identified lots are subsequently re-inspected and found to meet marketing order regulations. The PLI procedures make the inspection more valuable to the shipper because the shipper can more easily show that condition problems at destination more likely occurred during transit and not at the packing facility. In addition, the committee is able to verify handler compliance with inspection and certification requirements more easily.

Prior to the interim final rule, the rules and regulations required that no handler shall handle potatoes unless the potato shipments are covered by a valid inspection certificate. However, because each lot positively identified under Fresh Products Branch procedures can be linked directly to a valid inspection certificate, numbered notesheet, or shipping clearance report, the committee recommended that valid copies of these documents not be required to accompany positive lot identified potatoes. Containers or lots of potatoes not shipped under PLI procedures will have to be accompanied with a copy of a valid inspection certificate, numbered notesheet, or shipping clearance report. Such containers or lots have no identifying marks other than those placed on them by the shipper, and it is sometimes difficult to determine if all cartons in the lot have been inspected.

The second change established inspection procedures for positive lot identified potatoes not shipped within four days of inspection. Paragraph (d)(3) of section 945.341 previously provided that inspection certificates issued for potatoes which are to be shipped outside the production area must be issued within four days of shipment. Otherwise, another inspection is required. A new inspection will continue to be conducted on positive lot identified lots that are not shipped within a four-day period. If the subsequent inspection verifies that the handling regulation requirements, specified in paragraphs (a), (b), and (c) of section 945.341 have been met, a new inspection certificate, a new numbered notesheet, or a new shipping clearance report will be issued which references the original PLI number. A new PLI number will not be required on the lots. However, if the lot does not meet the requirements of the handling regulations, the lot will be required to be reconditioned in the presence of an authorized representative from the Idaho Federal-State Inspection Service or Oregon Federal-State Inspection Service prior to the close of the business day. If the lot is reconditioned to bring the lot into conformity with the handling regulation requirements, a new inspection certificate or new numbered notesheet must be issued and a new PLI number or modified PLI number will be applied. If the failing lot is not reconditioned prior to the close of business, all PLI numbers will be obliterated. This procedure will save time since handlers will not have to apply a new PLI number to the lots that are required to be reinspected and

which continue to meet the handling regulation requirements.

The third change required handlers to report to the committee, either orally or in writing, the quantity of potatoes shipped under PLI procedures. Prior to the interim final rule, handlers were required under paragraph (d)(4) of section 945.341 to provide the committee with destination zip codes of all potatoes handled, by permitting the Idaho Federal-State Inspection Service or Oregon Federal-State Inspection Service to review bills of lading upon inspection to determine the destination zip codes. These zip codes, along with the quantity of potatoes shipped, were included on the inspection certificates which were received by the committee. However, only the destination zip codes were included on the numbered notesheets which are used for PLI inspections. Inspectors inspecting potatoes under PLI will indicate a full day's inspection information on the inspection certificate or numbered notesheet and issue one inspection certificate for all lots inspected that day. Therefore, separate quantities of each shipment to a specific destination zip code will not be indicated on the numbered notesheet or the single inspection certificate. For the committee to receive the quantities shipped to each destination zip code, it recommended that the handler inform the committee either orally or in writing of the quantities so shipped under PLI procedures. The committee needs this information to ascertain the exact quantities of PLI potatoes shipped to each destination zip code for greater statistical accuracy.

The information collection requirements that are contained in these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control No. 0581–0069.

The interim final rule was published in the **Federal Register** with effective date of December 30, 1992 (57 FR 62165, December 30, 1992). Comments on the interim final rule were invited from interested persons until January 29, 1993. No comments were received.

Based on the above information, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the provisions of the interim final rule amending 7 CFR Part 945 which were published at 57 FR 62167 on December 30, 1992, are adopted as a final rule without change.

Dated: June 3, 1993.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–13990 Filed 6–14–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 946

[Docket No. FV93–946–2IFR]

Irish Potatoes Grown in Washington; Specification of a Minimum Grade Requirement for Potatoes Packed in Cartons and Clarification of the Handling Regulation (M.O. No. 946)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule specifies that Washington potatoes packed in cartons for domestic and export shipment must be U.S. No. 1 grade or better. The State of Washington Potato Committee (Committee) unanimously recommended this revision. The Committee is the agency responsible for local administration of the marketing order for Washington potatoes. This action also clarifies the handling regulations. These changes are recommended by the Department of Agriculture (Department).

EFFECTIVE DATE: Interim final rule effective June 15, 1993. Comments received by July 15, 1993, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456. FAX No. (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jim Wendland, Marketing Specialist, MOAB, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2170, or Dennis West, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Northwest Marketing Field Office, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204; telephone (503) 326–2724.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 946 (7 CFR part 946), both as amended, regulating the handling of Irish potatoes grown in the State of Washington and the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of Washington potatoes who are subject to regulation under the marketing order and approximately 450 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of Washington potatoes may be classified as small entities.

The Committee unanimously recommended these revisions at its February 4, 1993, meeting. The revisions are authorized pursuant to Sections 946.51 and 946.52(a)(3) of the marketing order. Section 946.52(a)(3) authorizes the Committee, with the approval of the Secretary, to regulate the handling of particular grades, sizes, qualities or maturities of any or all varieties differently for: Different portions of the production area, different uses or outlets, different packs or for any combination of the foregoing, during any period.

The first revision (section 946.336 (a)(2)(iv), (c)(1) and (c)(2)) specifies that Washington potatoes packed in cartons for domestic and export shipments must be U.S. No. 1 grade or better. Currently, the handling regulations require that potatoes packed in 50-pound cartons meet U.S. No. 1 grade or better. The Committee has been informed by food service and institutional buyers, both domestic and foreign, that a smaller carton size is more desirable for some users than the currently used 50-pound carton. These buyers indicate that they need a smaller carton that takes up less storage space and is easier to lift and handle. However, the buyers still want to be provided with the same quality of potato—U.S. No. 1 or better. Currently, potatoes packed in other than 50-pound cartons must meet only U.S. No. 2 requirements. Handlers have indicated that they have provided U.S. No. 1 potatoes in smaller carton sizes, and want to assure both domestic and export buyers that only U.S. No. 1 potatoes will be packed in cartons. This change in the handling regulation reflects the industry's current practice of providing a high quality product to users of potatoes packed in cartons. Therefore, the Committee recommended that the handling regulations be revised to delete the reference to "50-pound" sized cartons. As a result of this action, potatoes grading U.S. No. 2 or less may not be packed in cartons. This revision also applies to export shipments of potatoes.

The second revision (section 946.336(a)(2)(iv)) revises the handling regulations by removing redundant language in that paragraph. This action is being taken by the Department. Currently, the handling regulations specify that the tolerances for size in the U.S. Standards for Grades of Potatoes (Standards) shall apply, except that for long varieties of potatoes packaged in other than 50-pound cartons and which are packed to meet a minimum size and weight of 2⅛ inches or 4 ounces, a 3 percent tolerance for undersize shall apply. The Standards specify a 3 percent tolerance for potatoes that are smaller than the minimum size, regardless of the type of container used by the handler. The minimum size under the handling regulations for long variety (Russet type) potatoes is 2⅛ inches or 4 ounces. Therefore, the 3 percent tolerance specified in the Standards for long variety (Russet type) potatoes smaller than 2⅛ inches or 4 ounces would apply. Therefore, the exception section 946.336(a)(2)(iv) is redundant and should be removed.

The third revision (sections 946.336 (a)(2) and (a)(2)(iii)) clarifies the handling regulations by specifying that certain potatoes must meet all U.S. No. 1 Grade requirements except size. This action is also being taken by the Department to further clarify the handling regulations. Currently, the handling regulations provide that red, yellow-fleshed and white type potatoes, may be 1 inch minimum diameter, if U.S. No. 1 grade. The handling regulations also provide that any type of any size of potato may be packed in 3 pound or less containers if the potatoes are U.S. No. 1 grade or better. These regulations need to be clarified because the U.S. No. 1 Grade requires a minimum size of 1⅞ inches in diameter. Therefore, the regulatory language will be clarified to indicate that these potatoes must be U.S. No. 1 in all respects except size.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented and the Committee's recommendation, it is found that the revisions to the handling regulations will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The action specifying that Washington potatoes packed in cartons must be U.S. No. 1 or better is consistent with current industry practice; (2) this action allows handlers to provide buyers with the quality of potato and package they desire; (3) the action was discussed at a public meeting and is fully supported by the industry; (4) handlers need no time to prepare their packing facilities because this action recognizes current industry practices; (5) the clarifications are administrative in nature and will improve the effectiveness of the marketing order program; and (6) this action provides a 30-day comment period and all comments timely received will be considered prior to finalization of this interim final rule.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 946.336 is amended by revising paragraphs (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (c) introductory text, (c)(1), and (c)(2) to read as follows:

[**Note:** This section will be published in the annual Code of Federal Regulations].

§ 946.336 Handling regulation.

* * * * *

(a) * * *

(1) * * *

(2) *Size:* (i) At least 1⅞ inches in diameter, except that all red, yellow fleshed, and white types may be 1 inch (25.4 mm) minimum diameter, if they otherwise meet the requirements of U.S. No. 1.

(ii) * * *

(iii) Any type of any size may be packed in a 3-pound or less container if the potatoes otherwise meet the requirements of U.S. No. 1 grade or better at the time of packing.

(iv) *Tolerances*—The tolerance for size contained in the U.S. Standards for Grades of Potatoes shall apply.

* * * * *

(c) *Pack:*

(1) *Domestic:* Potatoes packed in cartons shall be U.S. No. 1 grade or better, except that potatoes which fail to meet the U.S. No. 1 grade only because of internal defects may be shipped provided the lot contains not more than 10 percent damage by any internal defect or combination of internal defects but not more than 5 percent serious damage by any internal defect or combination of internal defects.

(2) *Export:* Potatoes packed in cartons shall be U.S. No. 1 grade or better.

* * * * *

Dated: June 3, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–13995 Filed 6–14–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 947

[Docket No. FV93–947–2IFR]

Irish Potatoes Grown in Oregon-California; Amendment of the Pack Requirements (M.O. No. 947)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule amends the handling regulation for Oregon-California potatoes by requiring potatoes packed in cartons to meet the same grade and size requirements currently specified for potatoes packed in 50-pound cartons. The Oregon-California Potato Committee (Committee) unanimously recommended this amendment. The Committee has been informed by food service and institutional buyers that a smaller carton weight is more desirable for many users. The Committee is the agency responsible for local administration of the marketing order for Oregon-California potatoes.

EFFECTIVE DATE: Interim final rule effective June 15, 1993. Comments received by July 15, 1993, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456 or FAX No. (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for further public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: James Wendland, Marketing Specialist, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, telephone (202) 720–2170 or FAX (202) 720–5698; or Teresa Hutchinson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Northwest Marketing Field Office, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone (503) 326–2725 or FAX (503) 326–7440.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement No. 114 and Order No. 947 (order), both as amended, regulating the handling of Irish potatoes grown in Oregon-California and the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 550 producers of potatoes in the Oregon-California production area and approximately 40 handlers who are subject to regulation under the order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers subject to regulations under the order may be classified as small entities.

This amendment is authorized pursuant to section 947.52(a)(3) of the order. Section 947.52(a)(3) authorizes regulation of the handling of particular grades, sizes, qualities or maturities of any or all varieties differently, for different portions of the production area, for different uses or outlets, for potatoes for prepeeling to different markets, for different packs or for any combination of the foregoing, during any period.

This action amends the requirements specified in § 947.340(e) of the handling regulation by deleting the 50-pound reference regarding potatoes packed in cartons. The deletion of this reference will require the potatoes that handlers pack in cartons to meet the same grade and size currently specified for potatoes packed in 50-pound cartons. Such potatoes shall be either: (1) U.S. No. 1 grade or better, except that potatoes that fail to meet U.S. No. 1 grade only because of hollow heart and/or internal discoloration may be shipped provided the lot contains not more than 10 percent damage by hollow heart and/or internal discoloration, or not more than 5 percent serious damage by internal defects; or (2) U.S. No. 2 potatoes weighing at least 10 ounces. Other size requirements are as follows: (1) Potatoes shipped to points within the continental United States shall be at least 2 inches in diameter or 4 ounces in weight, and

potatoes shipped to export destinations shall be at least 1½ inches in diameter; (2) red-skinned varieties of potatoes may be shipped without regard to any minimum size requirement, if they otherwise grade at least U.S. No. 1; or (3) all non-redskinned varieties of potatoes that measure 1¾ inches in diameter or less may be shipped if such potatoes otherwise grade at least U.S. No. 1.

The Committee has been informed by food service and institutional buyers, both domestic and foreign, that a smaller carton weight is more desirable for some users than the currently used 50-pound carton. These buyers indicate that they need a smaller carton for ease of handling resulting in less risk of injury. Smaller cartons also require less of the limited storage space available to such buyers and the quicker turnover means fresher potatoes for the clientele. However, the buyers still want to be provided with the same quality of potatoes as packed in 50-pound cartons.

Currently, potatoes packed in containers other than 50-pound cartons must only meet minimum U.S. No. 2 grade requirements. However, handlers in Oregon and California have been providing smaller carton sizes of high quality potatoes. Hence, this change in the handling regulation reflects the industry's current practice of providing a higher quality product to users of potatoes packed in cartons. As a result of this action, potatoes grading U.S. No. 2 or less may not be packed in cartons, unless the potatoes weigh at least 10 ounces each.

Last season, the pack regulations for potatoes in 50-pound cartons were changed to allow U.S. No. 2 grade to be shipped, if the potatoes weighed at least 10 ounces each. Handlers packing such potatoes have reported great success and high acceptance by the receivers. Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities. Written comments, timely received in response to this action, will be considered before finalization of this rule.

After consideration of the Committee's recommendation and other relevant matters presented, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The action will require Oregon-California potatoes packed in any size carton to meet modified U.S. No. 1 or better grade requirements or U.S. No. 2 grade weighing at least 10 ounces, which is consistent with current industry practices; (2) this action allows handlers to provide buyers with the quality of potatoes and smaller cartons they desire; (3) the action was discussed at a public meeting; (4) handlers need no additional time to prepare their packing facilities because this action recognizes current industry practices; (5) the changes will improve the effectiveness of the marketing order program; and (6) this action provides a 30-day comment period and all comments timely received will be considered prior to finalization of this interim final rule.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN OREGON-CALIFORNIA

1. The authority citation for 7 CFR Part 947 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 947.340 is amended by removing the word "50-pound" immediately preceding "carton" in paragraph (e) to read as follows:

[**Note:** This section will be published in the annual Code of Federal Regulations].

§ 947.340 Handling regulation.

* * * * *

(e) *Pack.* Potatoes packed in cartons shall be either: (1) U.S. No. 1 grade or better, except that potatoes that fail to meet the U.S. No. 1 grade only because of hollow heart and/or internal discoloration may be shipped provided the lot contains not more than 10 percent damage by hollow heart and/or internal discoloration, or not more than 5 percent serious damage by internal defects; or (2) U.S. No. 2 potatoes weighing at least 10 ounces.

* * * * *

Dated: June 3, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–13994 Filed 6–14–93; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 948

[Docket No. FV93–948–1IFR]

Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures of $16,851 and establishes an assessment rate of $0.02 per hundredweight of potatoes under Marketing Order No. 948 for the 1993–94 fiscal period. Authorization of this budget enables the Colorado Potato Administrative Committee, Northern Colorado Office (Area III) (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective July 1, 1993, through June 30, 1994. Comments received by July 15, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone number 503–326–2724; or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone number 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental

Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Colorado potatoes are subject to assessments. Funds to administer the Colorado potato marketing order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1993–94 fiscal period beginning July 1, 1993, through June 30, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 producers of Colorado Area III potatoes under the marketing order and approximately 15 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Colorado Area III potato producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 fiscal period was prepared by the Colorado Potato Administrative Committee, Northern Colorado Office (Area III), the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Colorado Area III potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area III potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

The Committee met on April 9, 1993, and unanimously recommended a 1993–94 budget of $16,851, $1,717 more than the previous year. Increases in the Federal portion of the administrative budget include $1,200 for salary expenses, $150 for office equipment, $125 for committee expenses, $150 for utilities and telephone, and $92 in additional payroll taxes.

The Committee also unanimously recommended an assessment rate of $0.02 per hundredweight, the same as last season. This rate, when applied to anticipated potato shipments of 1,086,000 hundredweight, will yield $21,720 in assessment income, which is adequate to cover budgeted expenses. Funds in the reserve at the end of the 1993–94 fiscal period, estimated at $20,126, will be within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on July 1, 1993, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 948.209 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 948.209 Expenses and assessment rate.

Expenses of $16,851 by the Colorado Potato Administrative Committee,

Northern Colorado Office (Area III) are authorized, and an assessment rate of $0.02 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1994. Unexpended funds may be carried over as a reserve.

Dated: June 3, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–14040 Filed 6–14–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 981

[Docket No. FV–92–083FR]

Almonds Grown in California; Final Rule Revising Regulations Concerning Crediting for Advertising and Promotion

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the administrative rules and regulations established under the Federal marketing order for California almonds, which describe conditions under which handlers may receive credit against their assessments for paid advertising. This final rule will limit credit against handlers' assessment obligations for paid outdoor advertising in certain almond producing counties to those advertisements that direct consumers to a particular store or outlet for almonds and disallow credit against handlers' assessment obligations for paid advertising placed in publications that target the almond farming or grower trade. This action is intended to promote the sale, consumption, or use of California almonds. This action is based on a recommendation of the Almond Board of California (Board), which is responsible for local administration of the order.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 2202 Monterey St., suite 102B, Fresno, CA 93721; telephone (209) 487–5901 or Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S., P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720–1509.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), as amended, regulating the handling of almonds grown in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of almonds that are subject to regulation under the marketing order and approximately 7,000 producers in the regulated area. Small agricultural service firms are defined as those whose annual receipts are less than $3,500,000, and small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000. The majority of the almond producers and handlers may be classified as small entities.

This action will revise § 981.441 of Subpart—Administrative Rules and Regulations and is based on a recommendation of the Board and other available information.

Section 981.41 of the order provides authority for crediting a handler's direct expenditures for advertising against such handler's assessment obligation. This section clearly sets forth that the intent of the regulation is to promote the sale of almonds, almond products or their uses. The regulations prescribing rules for crediting for marketing promotion requirements for California almonds are specified in § 981.441 of the Administrative Rules and Regulations. Since the inception of the creditable advertising and promotion program in 1972, activities for which credit may be received have frequently been revised and others added to the rules as situations arise that demonstrate the need for change.

Prior to the effective date of this final rule, credits for advertising and promotion of almonds have been allowed for certain advertisements in trade magazines and other publications, and outdoor advertisements (primarily billboards). At a meeting held on June 4, 1992, the Board recommended revising the regulation to redirect the creditable advertising efforts of the industry to more effective activities.

Many outdoor advertisements appear to promote the name and business of a specific handler and are targeted toward growers rather than the consuming public. For this reason, the Board discussed eliminating all forms of outdoor advertising eligible for credit. However, it determined that such advertisements directing consumers to a handler-operated outlet for almonds clearly has the intent of selling almonds. For example, some of the major U.S. markets for almonds are in major metropolitan areas of California (Los Angeles, San Francisco Bay Area), and outdoor advertisements are effective in promoting almonds in those areas. The Board, therefore, recommended that credit be granted for that type of outdoor advertising. The Board noted that, at the present time, outdoor advertisements in almond producing counties are primarily directed at almond growers. Therefore, this final rule will not allow credit for outdoor advertising in specified almond growing counties unless such advertising directs

consumers to a handler-operated outlet for almonds.

The Board also believes that advertisements in publications targeting almond growers are not an effective method of increasing the consumption of almonds and should not be allowed for credit against a handler's assessment obligation. Therefore, the Board recommended that the regulations be revised to not allow credit for advertisements in publications that target the almond farming or grower trade. Such publications are those whose editorial and feature articles, and advertisements, primarily or exclusively concern agricultural or food-production topics.

In addition, this final rule will allow a handler to bring any advertisement, for which the handler may intend to seek credit against his or her assessment obligation, to the Board for pre-approval of credit prior to any costs being incurred by a handler.

The proposed rule was published in the **Federal Register** on December 1, 1992 (57 FR 56866). Interested persons were invited to submit comments on the proposal until December 31, 1992. Four comments were received. Two of the comments supported the recommendation.

The third comment was received from the Chief Counsel for Advocacy of the United States Small Business Administration. The commenter stated that the agency failed to explain adequately the basis for its certification that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The agency does not agree with this comment and has concluded, based upon the analysis of the nature and effect of these amendments to the existing creditable advertising program, that the certification is correct and in accord with applicable law.

The fourth comment was received from Mr. Brian Leighton on behalf of an independent almond handler. The commenter objected to any mandatory advertising program, claiming it violates the handler's First Amendment rights. It is the Department's position that all provisions of the order are authorized under the Act and that the creditable advertising regulations in no way infringe upon the First Amendment rights of any handler.

The commenter stated that a study on the Board's advertising program has never been conducted by the Board or the Department to determine whether the program yields any returns to handlers or growers. The Department established the advertising program pursuant to statutory authority and on the basis of substantial supporting evidence at a formal rulemaking proceeding. Since the establishment of the program in 1972, the Board has made many recommendations concerning this program and the Department has engaged in rulemaking actions to revise the creditable advertising and promotion regulations as situations arise that demonstrate the need for change. The Board is made up of growers and handlers who individually and collectively possess years of experience in marketing their products and who are thoroughly familiar with the needs of the industry. It has been the consistent view of the Board that the almond advertising program is an effective means of promoting almonds. Consistent with that view, we are revising the regulations to refine the creditable advertising program to more effectively direct the authorized promotional activities carried out under the program.

The commenter also objected to limiting credits for any form of advertising but was primarily concerned with the recommendation relating to limiting credits for outdoor advertisements in certain almond producing counties. The commenter stated that if outdoor advertising is ineffective in these counties, they must not be effective at all. Therefore, the commenter claims that all forms of outdoor advertising should be eliminated from the crediting provisions. However, the Department believes that outdoor advertisements directing consumers to handler-operated outlets are an effective means of advertising, even in almond growing counties. This final rule specifies that credit will not be allowed for outdoor advertisements directed at the almond farming and grower trade and will only be allowed for advertising directed at consumers.

The commenter also objected to outdoor advertisements in one almond producing county that may direct a consumer to an outlet in another county several hours away. The commenter stated that this type of advertising serves no purpose because anyone who reads a billboard in one county would not remember that almonds were for sale several hours away in another county. The intent of the creditable advertising regulations is to promote the consumption of almonds and almond products, not to restrict or direct what types of advertising almond handlers may use. The regulations specify that credits against assessments will be granted if the advertising is directed at consumers and not the farming or grower trade. The billboard example the commenter mentions does target consumers and therefore serves the purposes of the creditable advertising regulations.

The commenter also contends that the advertising regulations governing the expenditure of creditable advertising assessments benefit only one handler which handles most of the almond production. The Department disagrees with this statement. Handlers are expected to spend these funds on their own marketing promotion activities and receive credit against their creditable assessment obligation, or pay the assessments to the Board to be used in the Board's generic advertising program, designed to benefit all handlers.

The commenter also objected to the Board being given the discretion with respect to determining whether publications target the grower trade. This regulation is supported fully by the record and is clear in its terms.

The industry understands the terms used and we anticipate that its implementation will present no particular problems.

For the reasons stated, the above comments submitted on behalf of an independent handler are denied.

The commenter questioned if advertisements in magazines directed at corn growers would not be allowed. The Board intended this regulation to apply to almond growers. Therefore, we are accepting this comment and adding the word "almond" before the words "farming or grower trade" in § 981.441(c)(5)(iv) of the regulations.

After consideration of all relevant matters presented, the Board's recommendation and other available information, it is found that the issuance of this rule will tend to effectuate the declared policy of the Act.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

The Board would like the changes to be effective by the beginning of the 1993–94 crop year, which begins on July 1, 1993. The Board believes that this action will be better administered and be more equitable to the industry if it is implemented at the beginning of a crop year.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 981. 441 is amended by adding paragraphs (c)(5)(iv), (c)(5)(v), and (c)(5)(vi) to read as follows:

§ 981.441 Crediting for marketing promotion including paid advertising.

* * * * *

(c) * * *

(5) * * *

(iv) No credit will be given for advertisements placed in publications that target the almond farming or grower trade.

(v) No credit shall be given for any outdoor advertising placed in the following California almond growing counties: Butte, Colusa, Fresno, Glenn, Kern, Madera, Merced, Sacramento, San Joaquin, Stanislaus, and Tulare counties, unless such advertising directs consumers to a handler-operated outlet for almonds.

(vi) A handler may submit any advertisement and promotion to the Board for pre-approval for credit against that handler's assessment obligation.

* * * * *

Dated: June 3, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–13989 Filed 6–14–93; 8:45 am]

BILLING CODE 3410-02-P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule updates the table of interest rates issued by the Pension Benefit Guaranty Corporation (PBGC) for actuarial valuations of multiemployer pension plans following mass withdrawal. The rule adds to the table the rate series for July 1993.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202–778–8820 (202–778–1958 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This rule amends the PBGC's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of July 1993.

The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 553(b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. Authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates the new entries to read as follows:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month	The values for i_t are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
July 1993	.06	.05875	.0575	.05625	.055	.05375	.05375	.05375	.05375	.05375	.0525	.0525	.0525	.0525	.0525	.05

Issued at Washington, DC, on this 11th day of June 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–14153 Filed 6–14–93; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 93–031]

Great Kennebec River Whatever Race, Augusta, ME

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The annual Great Kennebec Whatever Race is held on the Kennebec River between Augusta and Gardiner, Maine. This regulation temporarily amends the permanent regulation published in 33 CFR Section 100.108, by changing the effective date of this year's event. This regulation is needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the event, thus providing for the safety of life and property on effected navigable waters.

EFFECTIVE DATES: This rule is effective from 6:00 a.m. to 6:00 p.m. on June 27, 1993.

FOR FURTHER INFORMATION CONTACT: Lieutenant Eric G. Westerberg, Chief Boating Safety Affairs Branch, First Coast Guard District, (617) 223–8310.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LT E. G. Westerberg, project officer, Chief, Boating Safety Affairs Branch, First Coast Guard District and LCDR J. D. Stieb, project attorney, First Coast Guard District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective without a public comment period. The Great Kennebec Whatever Race is a long standing and popular local event. The public is well aware of the terms of this annual event. Additional notice will be provided by extensive local advertising and publication in the Local Notice to Mariners. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to any potential hazards to the maritime public.

Background and Purpose

The circumstances requiring this regulation result from the desire to protect the boating public from possible dangers and hazards associated with this event. The sponsor requested an earlier date for this year's event to avoid crowded conditions expected on the July 4th weekend. The date change for the 1993 event is the only revision of the permanent regulation governing The Great Kennebec Whatever Race. The event will consist of a race involving a large number of unpowered homebuilt craft. A portion of the Kennebec River will be closed during the effective period to all vessel traffic except participants, spectators, and officially designated patrol craft. The regulated area is that area of the Kennebec River between Memorial Bridge in Augusta and Randolf Bridge in Gardiner, Maine. In order to provide for the safety of spectators and participants, movement of spectator vessels within the affected portion of the Kennebec River will also be restricted.

Regulatory Evaluation

This rule constitutes a temporary revision of the permanent regulations governing the running of the Great Kennebec Whatever Race published in 33 CFR 100.108 by changing the date of the race. The public is fully aware of the terms and conditions of this annual event. Due to infrequent commercial traffic on the applicable portion of the Kennebec River, the short duration of the race and regional popularity of the event, these regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). Local commercial entities have been appraised of the race schedule. Vessel traffic may be allowed to transit the regulated area at the discretion of the Patrol Commander.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. Due to the short duration of the event and the fact that the race will be conducted on a Sunday, no adverse impact on commercial interests is anticipated. The Coast Guard has considered the impact of these regulations and certifies under 5 U.S.C. 605(b) that they will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulations

In consideration of the foregoing, part 100 of Title 33, Code of Federal Regulations, is temporarily amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Paragraph (c) of section 100.108, is temporarily revised to read as follows:

§ 100.108 Great Kennebec River Whatever Race.

* * * * *

(c) Effective Period. This section is effective between the hours of 6 a.m. and 6 p.m. on June 27, 1993.

Dated: June 4, 1993.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 93–14070 Filed 6–14–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL–4666–7]

Standards of Performance for New Stationary Sources; National Emissions Standards for Hazardous Air Pollutants Supplemental Delegation of Authority to the State of South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On February 11, 1993, South Carolina requested delegation of authority for the implementation and enforcement of additional categories of New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPS). EPA's review of South Carolina laws, rules, and regulations showed them to be adequate for the implementation and enforcement of these federal standards, and the agency made the delegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is March 8, 1993.

ADDRESSES: Copies of the request for the delegation of authority and EPA's letter delegation are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the newly designated standards should not be submitted to the Region IV office, but should instead be submitted to the following address: Mr. R. Lewis Shaw, P.E., Deputy Commissioner, Environmental Quality Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Bill Eckert of the EPA Region IV Air Programs Branch at (404) 347–2864 and at the above address.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 110, 111(c)(1), and 112(d)(1) of the Clean Air Act as amended November 15, 1990, authorize the Administrator to delegate his authority to implement and enforce the standards set out in 40 CFR part 60, Standards of Performance for New Stationary Sources (NSPS) and to implement and enforce the standards set out in 40 CFR part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS).

After a thorough review of the categories requested for delegation, the Regional Administrator determined that such delegation was appropriate for these source categories with conditions set forth in the original delegation letter of October 19, 1976, and subsequent delegation letters of January 22, 1981, February 1, 1984, June 29, 1987, February 9, 1988, January 5, 1989, December 10, 1990, and March 3, 1992.

EPA, thereby, delegated its authority for 40 CFR part 60 and 40 CFR part 61 as follows:

40 CFR Part 60—New Categories for NSPS

Subpart UUU—Calciners and Dryers in Mineral Industry

40 CFR Part 61—Revised Categories for NESHAPS

Subpart FF—Benzene Waste Operations (Revised 1/7/93)

The Administrator retains the exclusive right to approve equivalent and alternative test methods, continuous monitoring procedures, and reporting requirements.

The EPA hereby notifies the public that it has delegated the authority over certain NSPS and NESHAP subparts to the State of South Carolina.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. This notice is issued under the authority of sections 101, 110, 111, 112, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 74121, 7412, and 7601).

Dated: April 15, 1993.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 93–14051 Filed 6–14–93; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6980

[WY–930–4210–06; WYW 111611]

Public Land Order No. 6960, Correction; Withdrawal of Public Mineral Estate for East Fork Elk Winter Range; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct errors in the land description in Public Land Order No. 6960.

EFFECTIVE DATE: June 15, 1993.

FOR FURTHER INFORMATION CONTACT: Tamara J. Gertsch, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6115.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

The land description in Public Land Order No. 6960, 58 FR 16628, March 30, 1993, is hereby corrected as follows:

On page 16628, column 2, line 9, which reads "Sec. 19, lots 1 and 2, E½W½, NW¼NE¼," is hereby corrected to read "Sec. 19, lots 1 and 2, E½E½, NW¼NE¼,". On page 16628, column 2, line 10, which reads "E½NW¼, NE¼,SW¼, and NW¼SE¼;" is hereby corrected to read "E½NW¼, NE¼SW¼, and NW¼SE¼;". On page 16628, column 2, between lines 29 and 30, insert "Sec. 26, E½, W½W½;".

Dated: May 26, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–14013 Filed 6–14–93; 8:45 am]

BILLING CODE 4310-JB-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 930355–3126; I.D. 022293B]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 6 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). Amendment 6 continues through December 31, 1994, the vessel trip limits for red snapper of 2,000 pounds (907 kg) for a vessel that has a red snapper endorsement on its reef fish permit and 200 pounds (91 kg) for a permitted vessel without such endorsement, as currently implemented by emergency interim rule. The intended effect of this rule is to continue in effect management measures that respond to social and economic emergencies without jeopardizing the long-term rebuilding program for the overfished red snapper resource.

EFFECTIVE DATES: June 29, 1993, through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813–893–3161.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP prepared by the Gulf of Mexico Fishery Management Council (Council) and its implementing regulations at 50 CFR part 641, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

By emergency interim rule published on December 30, 1992 (57 FR 62237), NMFS established commercial vessel trip limits for red snapper of 2,000 pounds (907 kg) for a vessel that has a red snapper endorsement on its reef fish permit and 200 pounds (91 kg) for a permitted vessel without such endorsement. That emergency interim rule, initially effective through March 30, 1993, was extended through June 28, 1993 (58 FR 13560, March 12, 1993). Amendment 6 continues the vessel trip limits through 1993 and 1994. It would also allow earlier replacement by a more comprehensive effort limitation program. The proposed rule was published on March 19, 1993 (55 FR 15132), the availability of which was published on March 2, 1993 (55 FR 12018).

The background and rationale for the trip limits were included in the emergency interim rule and are not repeated here. Under Amendment 6, no new applications for red snapper endorsements would be allowed—those currently issued would remain in effect. Transfer of an endorsement would be allowed only by an owner from one permitted vessel owned by him or her to another vessel so owned. The specific trip limits applicable to red snapper may be changed for 1994 under the FMP's framework procedure for adjusting management measures.

Comments and Responses

Only two comments were received during the public comment period. These comments dealt with issues outside the scope of Amendment 6 and, therefore, are not addressed here. Minority reports were submitted by three members of the Council.

Comment: One of the minority reports objected to the 200-pound (91–kg) red snapper trip limit for permitted vessels not fishing under a red snapper endorsement. The Council member stated that, under the seven-fish recreational bag limit, red snapper in amounts approaching 500 pounds could be harvested legally aboard a vessel that does not possess a reef fish permit. Therefore, the 200-pound (91–kg) commercial trip limit should be increased to at least 500 pounds (227 kg).

Response: The proposed 200-pound (91–kg) red snapper trip limit was selected by the Council primarily to provide (1) a share of the limited quota to permitted vessels ineligible for the 2,000-pound (907–kg) trip limit; and (2) a reduction in waste of red snapper bycatch by vessels targeting other reef fishes. The Council recognized that the 200-pound (91–kg) harvest level is below that necessary to support a directed fishery.

Depending on the amount of fishing effort and the weight of each fish harvested, it is possible that persons aboard a vessel fishing under the recreational bag limit could harvest red snapper totaling as much as 500 pounds (227 kg), none of which could be legally sold. However, the commenter offers no rationale to support his suggestion that an equivalent trip limit be implemented for commercially permitted vessels unable to qualify for the endorsement (and therefore not historically dependent on the red snapper fishery). Moreover, a 500-pound (227-kg) trip limit could encourage additional harvest at rates that negate the anticipated benefits and impede the Council's rebuilding program for red snapper.

Comment: In the second minority report, a Council member objected to continuing the trip limits that were initiated under the emergency interim rule before the full effects of that rule can be determined. The minority report also stated that red snapper congregate at manmade structures during certain time periods and then disperse. Therefore, it is not a valid assumption that high catch rates, as observed in January and February of 1992, would continue through the remainder of the year in the absence of restrictions, and continued restrictions may be unnecessary.

The Council member also opposed the use of only fishery-dependent data to assess the red snapper stocks and evaluate the impacts of proposed regulations, particularly in years when there is a quota closure. The Council member stated that, as a result of quota closures in 1991 and 1992, there is a lack of substantial fishery-dependent data during long intervals. Further, the suitability of fishery-dependent data is reduced, and such data are biased when the fishery is operating under trip limits because fishing effort concentrates on nearshore areas. The minority report suggested a compensatory increase in NMFS' collection of fishery-independent data. Finally, the Council member stated that the social impact analysis in Amendment 6 is inadequate.

Response: Based upon the best available scientific information, the Council decided that continuation of the vessel trip limits, initially implemented by emergency interim rule, is necessary for effective conservation and management of the red snapper resource. NMFS concurs.

Concerning the stock assessment data, NMFS recognizes that collection of such data is constrained by staffing and funding limitations. NMFS is pursuing means of improving and expanding its data gathering efforts. While persons fishing under trip limits may attempt to shorten the interval between trips by concentrating on nearshore areas, no method for correction of bias caused by such behavior is currently available in the stock assessment procedure.

The social impact analysis in Amendment 6 acknowledges the scarcity of data. As indicated in the analysis, the Council has contracted for an additional social impact study which should facilitate a more comprehensive assessment of the social consequences of the red snapper management program.

Comment: The third minority report objected to Amendment 6 because it does not allow for changes, under the framework procedure for amending the regulations, to establish additional levels of qualifying criteria for red snapper endorsements and corresponding trip limits. The Council member believes the Council should have the opportunity, after 1993 landings data have been analyzed and changes to the 1994 total allowable catch have been made, to correct inequities that may become apparent during the 1993 season. The Council member suggested that, if necessary, the opening of the 1994 red snapper season may be delayed to February 16, as was done in 1993, if necessary to allow for processing of additional applications for red snapper endorsements.

Response: As indicated in Amendment 6, the Council recognizes that the upcoming stock assessment may necessitate revision of the individual trip limits for 1994 in accordance with the FMP's existing framework procedure. However, Amendment 6 does not propose changes to the existing red snapper endorsement criteria. Accordingly, Council action and an additional amendment would be needed to revise the framework procedure.

Moreover, the framework offers the opportunity for abbreviated rulemaking (including a 15-day period for public comment) and is limited to certain management adjustments including bag

limits, closed seasons, and trip limits. The intent of the framework is to provide for timely adjustments to the specified management parameters based on annual stock assessments, not to provide a regulatory "shortcut" for significant management changes, such as altering the endorsement criteria. Such action most likely would significantly affect the number of vessels eligible to fish under the larger trip limit, and therefore should be submitted under the 140-day "fast-track" schedule (not the framework procedure) so as to allow maximum opportunity for public comment.

Classification

The Secretary of Commerce (Secretary) determined that Amendment 6 is necessary for the conservation and management of the reef fish fishery and that it is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law.

In accordance with section 553(d)(3) of the Administrative Procedure Act, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), finds that good cause exists not to delay the effective date of this final rule beyond June 29, 1993. Specifically, an effective date of June 29, 1993, will continue in effect, without interruption, management measures that respond to economic and social emergencies.

The Assistant Administrator determined that this final rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291.

The Council prepared a regulatory impact review (RIR) as part of Amendment 6, which concludes that extending the red snapper endorsements and trip limits beyond the duration of the emergency interim rule will generate positive economic benefits compared to the "derby" fishery that occurred in 1992 without the endorsements and trip limits.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis was not prepared.

The Council prepared an environmental assessment (EA) that discusses the impacts on the environment as a result of this rule. Based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule.

NMFS determined that the emergency interim rule, which this final rule continues in effect through as late as December 31, 1994, would be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not participate in the coastal zone management program. The Council made a similar determination regarding Amendment 6. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Louisiana and Mississippi agreed with the determinations on the emergency interim rule. Florida agreed on Amendment 6. Alabama did not respond during the statutory time period; therefore, state agency agreement with the consistency determination is presumed.

This final rule involves a collection-of-information requirement for purposes of the Paperwork Reduction Act, specifically, applications for transfers, under limited circumstances, of red snapper endorsements on reef fish permits. This requirement was previously approved by the Office of Management and Budget, OMB Control Number 0648–0270.

A federalism assessment was prepared on the emergency interim rule that concluded that its implementation was consistent with the principles, criteria, and requirements of E.O. 12612. Since this rule continues in effect the measures in that emergency interim rule, a new federalism assessment is not required.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 9, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 641.4 is amended by adding paragraphs (m) and (n), effective from June 29, 1993, through December 31, 1994, to read as follows:

§ 641.4 Permits and fees.

* * * * *

(m) *Red snapper endorsement.* (1) As a prerequisite for exemption from the trip limit for red snapper specified in § 641.21(d)(1), a vessel for which a reef fish permit has been issued under this section must have a red snapper endorsement on such permit and such permit and endorsement must be aboard the vessel.

(2) A red snapper endorsement is invalid upon sale of the vessel; however, an owner of a permitted vessel may transfer the red snapper endorsement to another permitted vessel owned by him or her by returning the existing endorsement with an application for an endorsement for the replacement vessel.

(n) *Condition of a permit.* As a condition of a reef fish permit issued under this section, without regard to where red snapper are harvested or possessed, a permitted vessel—

(1) May not exceed the appropriate vessel trip limit for red snapper, as specified in § 641.21 (d)(1) or (d)(2); and

(2) May not transfer a red snapper at sea, as specified in § 641.21(d)(3).

3. Section 641.7 is amended by adding paragraphs (u) and (v), effective from June 29, 1993, through December 31, 1994, to read as follows:

§ 641.7 Prohibitions.

* * * * *

(u) Exceed the vessel trip limits for red snapper, as specified in § 641.21 (d)(1) and (d)(2).

(v) Transfer a red snapper at sea, as specified in § 641.21(d)(3).

4. Section 641.21 is amended by adding paragraph (d), effective from June 29, 1993, through December 31, 1994, to read as follows:

§ 641.21 Harvest limitations.

* * * * *

(d) *Red snapper trip and transfer limitations.* (1) Except as provided in paragraph (d)(2) of this section, a vessel for which a reef fish permit has been issued under § 641.4 may not possess on any trip red snapper in excess of 200 pounds (91 kg), whole or eviscerated.

(2) A vessel for which a red snapper endorsement has been issued under § 641.4(m) may not possess on any trip red snapper in excess of 2,000 pounds (907 kg), whole or eviscerated.

(3) A red snapper may not be transferred at sea from one vessel to another.

[FR Doc. 93–14000 Filed 6–14–93; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 651

[Docket No. 930353-3052; I.D. #012593A]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS announces a technical amendment to the final regulations implementing Amendment 4 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) which were published on May 31, 1991 (56 FR 24724). This technical amendment is necessary to revise incorrect cross-referencing to some sections that occurred in the final rule implementing Amendment 4.

EFFECTIVE DATE: Effective June 15, 1993.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Fisheries Management, Northeast Region, NMFS, 508–281–9252.

SUPPLEMENTARY INFORMATION: A final rule was published May 31, 1991 (56 FR 24724), that revised management of the exempted fisheries program under the FMP. This technical amendment revises the reference in the table in § 651.22(e)(2)(i) so that the description of restrictions for northern shrimp correctly refers to § 651.20(b)(3) which covers shrimp gear measures, rather than to § 651.21, the section on closed areas.

Classification

Because this technical amendment makes only a minor, nonsubstantive correction to an existing rule, notice and public comment thereon and a delay in effectiveness would serve no useful purpose. Accordingly, under 5 U.S.C. 553(b)(B) and (d), notice and public comment thereon and a delay in effectiveness are unnecessary.

Because this rule is being issued without prior comment, it is not subject to the Regulatory Flexibility Act requirement for a regulatory flexibility analysis and none has been prepared.

This rule makes minor technical changes to a rule that has been determined not to be a major rule under E.O. 12291, does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612, and does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 9, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is corrected by making the following correcting amendments:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 651.22, the last entry titled, "Restrictions" in the tabular material in paragraph (e)(2)(i), immediately preceding the footnote, is revised to read as follows:

§ 651.22 Exempted fishery program.

* * * * *

(e) * * *

(2) * * *

(i) * * *

Restrictions	Regulated species weight may not exceed 10 percent for the reporting period or 25 percent on each trip of the total landings of shrimp. Gear must comply with the shrimp gear specified according to § 651.20(b)(3).

* * * * *

[FR Doc. 93–14057 Filed 6–14–93; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 113
Tuesday, June 15, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 792

RIN 0560–AD03

Debt Settlement Policies and Procedures

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the policies and procedures the Agricultural Stabilization and Conservation Service (ASCS) will use to settle debts owed to ASCS and other agencies of the United States. ASCS policies and procedures conform to the guidelines set forth in the Federal Claims Collection Act, as amended by the Debt Collection Act of 1982. ASCS will also follow the provisions of the Federal Claims Collection Standards with respect to administrative actions undertaken by ASCS to settle claims.

This regulation is necessary to protect the financial integrity of many Federal agricultural programs by ensuring the Government will be able to collect, or otherwise settle, debts owed it by any person, organization, corporation, or other legal entity.

DATES: Comments must be received by July 15, 1993 in order to be assured of consideration.

ADDRESSES: Comments concerning this proposed rule should be addressed to Director, Financial Management Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013–2415. All comments submitted in response to this proposed rule will be available for public inspection in room 1206, Park Office Center, 3101 Park Center Drive, Alexandria, VA, between 8:30 a.m. and 4 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Paula Roney, Debt Management and Contract Procedures Branch, Financial Management Division, ASCS, at 703–305–1424.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This proposed rule has been reviewed in conformance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs and prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Review

This action does not constitute a review as to need, currency, clarity, and effectiveness of these regulations under Departmental Regulation 1512–1. No sunset review date has been set for this regulation because review is ongoing.

Paperwork Reduction Act

This rule at 7 CFR part 792 imposes information collection requirements on the public that require review by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35. A request for review of these information collections has been submitted to OMB.

Regulatory Flexibility Act

ASCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule. Therefore this action is exempt from the provision of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. It is not retroactive and preempts State and local laws. Before any judicial action may be brought regarding the provisions of this proposed rule, administrative appeal remedies set forth at 7 CFR parts 24 and 780 must be exhausted.

Executive Order 12372

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

Regulatory Reform: Less Burdensome or More Efficient Alternatives

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this Notice.

Background

The Federal Claims Collection Act of 1966 (the Act), as amended by the Debt Collection Act of 1982, (31 U.S.C. 3711, et seq.), and the joint regulations promulgated thereunder by the Comptroller General and the Attorney General (4 CFR parts 101–105) provide minimum standards for the administrative collection of claims by

the United States. The Federal Claims Collection Standards require each Federal agency to take aggressive action to collect debts owed it, and to cooperate with other Federal agencies in their debt collection activities. Federal agencies are required to promulgate regulations consistent with the standards.

Currently, ASCS follows the Department of Agriculture's debt collection procedures at 7 CFR part 3. However, 7 CFR part 3 provides that the head of any agency of the Department may adopt separate regulations to be followed for the collection of claims and debts.

This regulation is necessary to protect the financial integrity of many Federal agricultural programs by ensuring the Government will be able to collect, or otherwise settle, debts owed it by any person, organization, corporation, or other legal entity.

List of Subjects in 7 CFR Part 792

Claims, Income taxes, Loan Programs—Agriculture

Accordingly, it is proposed that subchapter E, chapter VII of title 7 of the Code of Federal Regulations be amended by adding a new part 792 to read as follows:

PART 792—DEBT SETTLEMENT POLICIES AND PROCEDURES

Sec.

792.1 Applicability.
792.2 Administration.
792.3 Definitions.
792.4 Demand for payment of debts.
792.5 Collection by payment in full.
792.6 Collection by installment payments.
792.7 Collection by administrative offset.
792.8 Priorities of offsets versus assignments.
792.9 Withholding.
792.10 Late payment interest, penalty and administrative charges.
792.11 Waiver of late payment interest, penalty charge and administrative charges.
792.12 Administrative appeal.
792.13 Additional administrative collection action.
792.14 Contact with debtor's employing agency.
792.15 Prior provision of rights with respect to debt.
792.16 Discharge of debts.
792.17 Referral of delinquent debts to credit reporting agencies.
792.18 Referral of debts to Department of justice.
792.19 Referral of delinquent debts to IRS for tax refund offset.
792.20 Reporting discharged debts to IRS.
792.21 Referral of debts to private collection agencies.
792.22 Collection and compromise.

Authority: 31 U.S.C. 3701, 3711, 3716–3719, 3728, 4 CFR parts 101–105; 7 CFR 3.21(b).

§ 792.1 Applicability.

Except as may otherwise be provided by statute, this part sets forth the manner in which the Agricultural Stabilization and Conservation Service (ASCS) will settle and collect debts by ASCS. The provisions of part 1403 of this title are applicable to actions of ASCS regarding the settlement and collection of debts on the behalf of the Commodity Credit Corporation (CCC).

§ 792.2 Administration.

The regulations in this part will be administered under the general supervision and direction of the Administrator, ASCS.

§ 792.3 Definitions.

The following definitions shall be applicable to this part:

Administrative charges means the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

Administrative offset means deducting money payable or held by the United States Government, or any agency thereof, to satisfy in whole or in part a debt owed the Government, or any agency thereof.

ASCS means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture (USDA).

CCC means the Commodity Credit Corporation.

Certified financial statement means an account of the assets, liabilities, income and expenses of a debtor, executed in accordance with generally accepted accounting principles and attested to as accurate by the debtor and preparer, under penalty of perjury.

Claim means an amount of money or property which has been determined by ASCS, after a notice of delinquency and a demand for the payment of the debt has been made by ASCS, to be owed to ASCS by any person other than a Federal agency.

Credit reporting agency means:

(1) A reporting agency as defined at 4 CFR 102.5(a), or

(2) Any entity which has entered into an agreement with USDA concerning the referral of credit information.

Debt means any amount owed to ASCS which has not been satisfied through payment or otherwise.

Debt record refers to the account, register, balance sheet, file, ledger, data file, or similar record of debts owed to ASCS, CCC, or any other Government Agency with respect to which collection action is being pursued, and which is maintained in an ASCS office.

Delinquent debt means: (1) Any debt owed to ASCS that has not been paid by the date specified in the applicable statute, regulation, contract, or agreement; or

(2) Any debt that has not been paid by the date of an initial notification of indebtedness mailed or hand-delivered pursuant to § 792.4.

Discharged debt means any debt, or part thereof, which ASCS has determined is uncollectible and has closed out, and if the amount in controversy exceeds $100,000.00, excluding interest and administrative charges, in which the Department of Justice has concurred in such determination.

IRS means the Internal Revenue Service.

Late payment interest rate means the amount of interest charged on delinquent debts and claims. The late payment interest rate shall be determined as of the date a debt becomes delinquent and shall be equal to the higher of the Prompt Payment Act interest rate or the standard late payment rate prescribed by 31 U.S.C. 3717, which is based on the Treasury Department's current value of funds rate.

Person means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, the Federal Government or a State government, or any agency thereof.

Salary offset means the deduction of money from the current pay account of a present or former Government employee payable by the United States Government to, or held by the Government for, such person to satisfy a debt that person owes the Government.

Settlement means any final disposition of a debt or claim.

System of records means a group of any records under the control of ASCS or CCC from which information is retrieved by the name of the individual, organization or other entity or by some identifying number, symbol, or other identification assigned to the individual, organization or other entity.

Withholding means the taking of action to temporarily prevent the

payment of some or all amounts to a debtor under one or more contracts or programs.

§ 792.4 Demand for payment of debts.

(a) When a debt is due ASCS, an initial written demand for payment of such amount shall be mailed or hand-delivered to the debtor. If the debt is not paid in full by the date specified in the initial demand letter, or if a repayment schedule acceptable to ASCS has not been arranged with the debtor, the initial demand may be followed by two subsequent written demands at approximately 30-day intervals, unless it is determined by ASCS that further demands would be futile and the debtor's response does not require rebuttal. The initial or subsequent demand letters shall specify the following:

(1) The basis for and the amount of the debt determined to be due ASCS, including the principal, applicable interest, costs and other charges;

(2) ASCS' intent to establish an account on a debt record 30 days after the date of the letter, or other applicable period of time, if the debt is not paid within that time;

(3) The applicable late payment interest rate.

(i) If a late payment interest rate is specified in the contract, agreement or program regulation, the debtor shall be informed of that rate and the date from which the late payment interest has been accruing;

(ii) If a late payment interest rate is not specified in the contract, agreement or program regulation, the debtor shall be informed of the applicable late payment interest rate set out in § 792.10.

(4) ASCS' intent, if applicable, to collect the debt 30 days from the date of the initial demand letter, or other applicable period of time, by administrative offset from any CCC or ASCS payments due or to become due to the debtor, and that the claim may be reported to other agencies of the Federal government for offset from any amounts due or to become due to the debtor;

(5) ASCS' intent, if applicable, under § 792.17, to report any delinquent debt to a credit reporting agency no sooner than 60 days from the date of the letter;

(6) ASCS' intent, if applicable, under § 792.19, to refer any delinquent debt to the IRS, no sooner than 60 days from the date of the letter, to be considered for offset against any tax refund due or to become due the debtor.

(7) If not previously provided, the debtor's right to request administrative review by an authorized ASCS official, and the proper procedure for making such request. If the request relates to the:

(i) Existence or amount of the debt, it must be made within 15 days from the date of the letter, unless a different time period is specified in the contract, agreement or program regulation;

(ii) Appropriateness of reporting to a credit reporting agency, it must be made within 30 days from the date of the letter; or

(iii) Appropriateness of referral to IRS for tax refund offset, it must be made within 60 days from the date of the letter, if applicable.

(8) The debtor's right to a full explanation of the debt and to dispute any information in the records of ASCS concerning the debt;

(9) The opportunity afforded the debtor to enter into a written agreement which is acceptable to ASCS for the repayment of the debt;

(10) That ASCS maintains the right to initiate legal action to collect the amount of the debt;

(11) That if any portion of the debt remains unpaid or if a repayment schedule satisfactory to ASCS has not been arranged 90 days after the due date, a penalty charge shall be assessed on the unpaid balance of the debt as prescribed in § 792.10(e);

(b) When ASCS deems it necessary to protect the Government's interest, written demand may be preceded by other appropriate actions.

§ 792.5 Collection by payment in full.

Except as ASCS may provide, ASCS shall collect debts owed to the Government, including applicable interest, penalties, and administrative costs, in full, whenever feasible whether the debt is being collected by administrative offset or by another method, including voluntary payment. If a debt is paid in one lump sum after the due date, ASCS will impose late payment interest, as provided in § 792.10, unless such interest is waived as provided in § 792.11.

§ 792.6 Collection by installment payments.

(a) Payments in installments may be arranged, at ASCS's discretion, if a debtor furnishes satisfactory evidence of inability to pay a claim in full by the specified date. The size and frequency of installment payments shall:

(1) Bear a reasonable relation to the size of the debt and the debtor's ability to pay; and

(2) Normally be of sufficient size and frequency to liquidate the debt in not more than three years.

(b) Except as otherwise determined by ASCS, no installment arrangement will be considered unless the debtor submits a certified financial statement which reflects the debtor's assets, liabilities, income, and expenses. The financial statement shall not be required to be submitted sooner than 15 workdays following its request by ASCS.

(c) All installment payment agreements shall be in writing and require the payment of interest at the late payment interest rate in effect on the date such agreement is executed, unless such interest is waived or reduced by ASCS. The installment agreement shall specify all the terms of the arrangement and include provision for accelerating the debt in the event the debtor defaults.

(d) ASCS may deem a repayment plan to be abrogated if the debtor fails to comply with its terms.

(e) If the debtor's financial statement or other information discloses the ownership of assets which are not encumbered, the debtor may be required to secure the payment of an installment note by executing a security agreement and financing agreement which provides ASCS a security interest in the assets until the debt is paid in full.

(f) If the debtor owes more than one debt to ASCS, ASCS may allow the debtor to designate the manner in which a voluntary installment payment is to be applied. If the debtor does not designate the application of a voluntary installment or partial payment, the payment will be applied to such debts as determined by ASCS.

§ 792.7 Collection by administrative offset.

(a) The provisions of this section shall apply to all debts due ASCS except as otherwise provided in this part and part 1404 of this title. This section is not applicable to:

(1) ASCS requests for administrative offset against money payable to a debtor from the Civil Service Retirement and Disability Fund and ASCS requests for salary offset against a present, former or retired employee of the Federal Government which shall be made in accordance with regulations at part 3 of this title;

(2) ASCS requests for administrative offset against a Federal income tax refund payable to a debtor which shall be made in accordance with § 792.19;

(3) Cases in which ASCS must adjust, by increasing or decreasing, a payment which is to be paid under a contract in order to properly make other payments due by ASCS; and

(4) Any case in which a statute explicitly provides for or prohibits using administrative offset to collect the debt for the type of debt involved.

(b) Debts due ASCS or CCC may be collected by administrative offset from amounts payable by ASCS when:

(1) The debtor has been provided written notification of the basis and amount of the debt and has been given an opportunity to make payment. Such written notification and opportunity includes notice of the right to pursue an administrative appeal in accordance with part 780 of this title or any other applicable appeal procedures, if not previously provided;

(2) The debtor has been provided an opportunity to request to inspect and copy the records of ASCS related to the debt;

(3) The debtor has been given the opportunity to enter into a written agreement which is acceptable to ASCS for repayment of the debt;

(4) The debtor has been notified in writing that the debt will be collected by administrative offset if not paid; and

(5) The debt has not been delinquent for more than ten years or legal action to enforce the debt has not been barred by an applicable period of limitation, whichever is later.

(c) Administrative offset shall also be effected against amounts payable by ASCS:

(1) When requested or approved by the Department of Justice; or

(2) When a person is indebted under a judgment in favor of ASCS or the United States.

(d) A payment due any person may be offset when there is a breach of a contract or a violation of ASCS program requirements, and offset is considered necessary by ASCS to protect the financial interests of the Government.

(e) ASCS may effect administrative offset against a payment to be made to a debtor prior to completion of the procedures required by paragraphs (b)(1)–(4) of this section if:

(1) Failure to take the offset would substantially prejudice ASCS's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit the completion of those procedures.

(f)(1) Judgments in favor of the United States may be offset against any amounts payable by ASCS based on information provided by or obtained from the Department of Justice. Debts due any agency other than ASCS which have not been reduced to judgment shall be offset against amounts payable by ASCS to a debtor when an agency of the U.S. Government has submitted a written request for offset which is mailed or hand-delivered to the appropriate ASCS State office, Kansas City Financial Management Office, Kansas City Management Office or Kansas City Commodity Office. Such written request must:

(i) Bear the signature of an authorized representative of the requesting agency;

(ii) Include a certification that all requirements of the law and the regulations for collection of the debt and for requesting offset have been complied with;

(iii) State the name, address (including county), and, where legally available, the Social Security number or employer ID number of the debtor, and a brief description of the basis of the debt, including identification of the judgment, if any.

(iv) State the amount of the debt separately as to principal, interest, penalties, and administrative costs. Interest, if any, shall be computed on a daily basis to a date shown in the request. The amount to be offset shall not exceed the principal sum owed by the debtor, plus interest computed in accordance with the request, and any late payment interest, penalties and administrative costs that have been assessed;

(v) Certify that the debtor has not filed for bankruptcy. If the debtor has filed for bankruptcy, a copy of the order of the bankruptcy court relieving the agency from the automatic stay must be included; and

(vi) State the name, address, and telephone number of a contact person within the agency and the address to which payment should be sent.

(2) Unless prohibited by law, the head of an agency, or a designee, may defer or subordinate in whole or in part the right of the agency to recover through offset all or part of any indebtedness to such agency, or may withdraw a request for offset. Notice of such action must be sent to the appropriate ASCS office.

(g)(1) After ASCS has complied with the provisions of this part, ASCS may request other agencies of the Government to offset amounts payable by them to persons indebted to ASCS.

(2) In the case of a request to IRS for a tax refund offset, the provisions at § 792.19 shall apply.

(h)(1) Debts shall be collected by offset in the following order of priority without regard to the date of the request for such collection:

(i) Debts to ASCS.

(ii) Debts to other agencies of USDA as determined by ASCS.

(iii) Debts to other government agencies as determined by ASCS.

(2) In the case of multiple debts involving the same debtor, ASCS may, at its discretion, deviate from the usual order of priority in applying recovered amounts to debts owed other agencies when considered to be in the Government's best interest. Such decision shall be made by ASCS based on the facts and circumstances of the particular case.

(i) Amounts recovered by offset for ASCS and CCC debts but later found not to be owed to the Government shall be promptly refunded.

(j) The debtor shall be notified whenever any offset action has been taken.

(k) Offsets made pursuant to this section shall not deprive a debtor of any right he might otherwise have to contest the debt involved in the offset action either by administrative appeal or by legal action.

(l) Any action authorized by the provisions of this section may be taken against amounts payable to a debtor who operates under more than one name, provided there is identical ownership, or ASCS determines that the debtor has established an entity for the purpose of avoiding the payment of the claim or debt.

(m) The amount to be offset shall not exceed the actual or estimated amount of the debt, including interest, administrative charges, and penalties, unless the Department of Justice requests that a larger specified amount be offset.

(n) Offset action will not be taken against payments when:

(1) The payment represents loan or purchase proceeds for a commodity which is subject to the rights of the holder of a prior valid enforceable lien. However, any amount that exceeds the amount of the prior lien shall be available for offset.

(2) A debt has been discharged as provided in § 792.16.

(3) ASCS determines such action will unduly interfere with the administration of an ASCS or CCC program.

(4) The debt has been delinquent for more than ten years or legal action to enforce the debt due ASCS is barred by an applicable period of limitation, whichever is later.

§ 792.8 Priorities of offsets versus assignments.

(a) No amounts payable to a debtor by ASCS shall be paid to an assignee until there have been collected any amounts owed by the debtor except as provided in this section.

(b) A payment which is assigned in accordance with part 1404 of this title by execution of Form CCC–36 shall be subject to offset for any debt owed to ASCS or CCC or any judgment in favor of the United States without regard to the date notice of assignment was accepted by ASCS or CCC.

(c) A payment which is assigned in accordance with part 1404 of this title

by execution of Form CCC–252 shall be offset:

(1) Against any debt of the assignor entered on the debt record of the applicable ASCS office prior to the filing of such form with ASCS or CCC, or

(2) At anytime, regardless of the date of filing of such form with ASCS or CCC, if the debt which is the basis for the offset arises from a judgment in favor of the United States, or under the same contract under which the payment is earned by the assignor.

(d) Offset shall be made, if the Internal Revenue Service so requests or has served a Notice of Levy, of any amounts for which the assignor is indebted to the United States for taxes, for which a notice of lien was filed in accordance with the provisions of the Internal Revenue Code prior to the date the notice of assignment was accepted by ASCS or CCC. The burden of determining whether a notice of lien has been filed shall be upon the assignee.

(e) With respect to all other Federal agencies, offset shall be made of any amounts due any other Federal agency which have not been reduced to judgment, and which are entered on the debt record of the appropriate ASCS office prior to the date the notice of assignment was accepted by ASCS or CCC.

(f) Any amount due and payable to the assignor which remains after deduction of amounts paid to the assignee shall be available for offset.

§ 792.9 Withholding.

(a) Withholding of a payment prior to the completion of an applicable offset procedure may be made from amounts payable to a debtor by ASCS to ensure that the interests of ASCS and the United States will be protected as provided in this section.

(b) A payment may be withheld to protect the interests of ASCS or the United States only if ASCS determines that:

(1) There has been a serious breach of contract or violation of program requirements and the withholding action is considered necessary to protect the financial interests of ASCS;

(2) There is substantial evidence of violations of criminal or civil frauds statutes and criminal prosecution or civil frauds action is of primary importance to program operations of ASCS;

(3) Prior experience with the debtor indicates that collection will be difficult if amounts payable to the debtor are not withheld;

(4) There is doubt that the debtor will be financially able to pay a judgment on the claim of ASCS;

(5) The facts available to ASCS are insufficient to determine the amount to be offset or the proper payee;

(6) A judgment on a claim of ASCS has been obtained; or

(7) Such action has been requested by the Department of Justice.

(c) Except for debts due ASCS or CCC, withholding action by ASCS on amounts payable to debtors of other Government agencies may not be made unless requested by the Department of Justice.

§ 792.10 Late payment interest, penalty and administrative charges.

(a) Late payment interest provisions of this section shall not apply:

(1) To debts owed by Federal agencies and State and local governments. Interest on debts owed by such entities shall be charged to the extent authorized under the common law or applicable statutory authority.

(2) If an applicable statute, regulation, agreement or contract either prohibits the charging of such interest or specifies the interest or charges applicable to the debt involved;

(3) If the late payment interest is waived by ASCS in accordance with § 792.11.

(4) To administrative charges as set forth in paragraph (f) of this section.

(b) ASCS will assess late payment interest on the full amount of delinquent debts. For purposes of this section, the term "full amount of the delinquent debt" means the sum of the principal, accrued regular loan interest or accrued program interest, and any other charges which are otherwise due and owing to ASCS on the delinquent debt at the time the late payment interest is assessed, except as provided in paragraphs (a)(2) and (d)(3) of this section.

(c) The late payment interest shall be expressed as an annual rate of interest which ASCS charges on delinquent debts. The late payment interest rate shall be equal to the higher of the Treasury Department's current value of funds rate or the rate of interest assessed under the Prompt Payment Act, determined as of the date specified in paragraphs (d)(1) and (d)(2) of this section. The rate of interest assessed under the Prompt Payment Act was chosen as an alternative rate to ensure that the Government would recoup interest at a rate which was at least as high as that which it pays for late payments.

(d)(1) When a debt results from a statute, regulation, contract or other agreement with specific provisions for late payment interest and payment due date, late payment interest shall accrue on the amount of the debt from the first day the debt became delinquent, unless otherwise provided by statute.

(2) With respect to debts not resulting from a statute, regulation, contract or agreement containing specific provisions for late payment interest and payment due date, late payment interest shall begin to accrue from the date on which notice of the debt is first mailed or hand-delivered to the debtor.

(3) The rate of late payment interest initially assessed will be fixed for the duration of the indebtedness, except when a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement. ASCS may then set a new rate of interest which reflects the late payment interest rate in effect at the time the new agreement is executed. All charges which accrued, but which were not collected under the defaulted agreement, shall be added to the principal to be paid under a new repayment agreement.

(4) The late payment interest on delinquent debts will accrue on a daily basis.

(e) Except as specified in paragraph (a)(2) of this section, a penalty charge of three (3) percent per annum will be assessed on any portion of a debt which remains unpaid ninety (90) days after the date described in paragraph (d)(1) or (d)(2) of this section, if no repayment schedule satisfactory to ASCS has been agreed upon. Such penalty charge will be assessed retroactively from the date late payment interest began to accrue and applied on a daily basis. Such rate shall continue to accrue until the delinquent debt has been paid.

(f) ASCS shall assess as administrative charges the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

(g) When a debt is paid in partial or installment payments, payments will be applied first to administrative charges, second to the penalty charge assessed in accordance with paragraph (e) of this section and late payment interest, and third to outstanding principal.

§ 792.11 Waiver of late payment interest, penalty charge and administrative charges.

(a) ASCS shall waive the collection of late payment interest and administrative

charges on a debt or any portion of a debt which is paid within 30 days after the date on which late payment interest began to accrue.

(b) ASCS may waive the assessment and collection of all or a portion of the penalty charge on debts which are appealed in accordance with 7 CFR part 780 or other applicable appeal procedures from either the date of the appeal or the date such interest began to accrue, whichever is later, until the date a final administrative determination is issued. Such waiver shall not apply for any delay due to:

(1) The appellant's request for a postponement of the scheduled hearing;

(2) The appellant's request for an additional time following the hearing to present additional information or a written closing statement; or

(3) The appellant's failure to timely present information to the reviewing authority.

(c) Assessment and collection of late payment interest, the penalty charge and administrative charges under this part may be waived by ASCS in full, or in part, if it is determined by the Controller, ASCS, or his or her designee, that such action is in the best interest of ASCS.

§ 792.12 Administrative appeal.

If the opportunity to appeal the determination has not previously been provided under parts 24 or 780 of this title or any other appeal procedure, a debtor may obtain an administrative review under part 780 of this title, or other applicable appeal procedures, of ASCS's determination concerning the existence or amount of a debt, if a request is filed with the authority who made the determination within 15 days of the date of ASCS's initial demand letter, unless a longer period is specified in the initial demand letter.

§ 792.13 Additional administrative collection action.

Nothing contained in this part shall preclude the use of any other administrative or contractual remedy which may be available to ASCS to collect debts owed to the Government.

§ 792.14 Contact with debtor's employing agency.

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, ASCS may contact the employing agency to arrange for payment of the debt by allotment or otherwise, in accordance with section 206 of Executive Order No. 11222, May 8, 1965, 30 FR 6469, 3 CFR, 1964–1965 Comp., p. 306.

§ 792.15 Prior provision of rights with respect to debt.

ASCS will not provide an administrative appeal with respect to issues which were raised or should have been raised at any administrative review requested by the debtor as provided under another statute or regulation before:

(a) Effecting administrative offset;

(b) Referring the debt to private collection or credit reporting agencies;

(c) Referring the debt to the Office of Personnel Management (OPM) for salary offset against the current pay of a present or former Government employee; or

(d) Referring the debt to IRS for tax refund offset.

§ 792.16 Discharge of debts.

(a) Except as required by other applicable regulation or statute, a debt or part thereof owed ASCS shall be discharged with the concurrence of the Department of Justice, if applicable, and the records and accounts on that debt closed in the following situations:

(1) When an obligation or part thereof is discharged in bankruptcy;

(2) When an obligation or part thereof is the subject of a final judgment entered by a court of competent jurisdiction which is adverse to ASCS and no appeal will be taken by ASCS;

(3) When a debt or part thereof is compromised and paid, the amount of such compromise;

(4) When collection of a debt by administrative offset is barred in accordance with § 792.7(b)(5).

(b) Debts discharged in accordance with this section may be reported to the Internal Revenue Service pursuant to § 792.20.

§ 792.17 Referral of delinquent debts to credit reporting agencies.

(a) This section specifies the procedures that will be followed by ASCS and the rights that will be afforded to debtors when ASCS reports delinquent debts to credit reporting agencies.

(b) Before disclosing information to a credit reporting agency in accordance with this part, ASCS shall review the claim and determine that it is valid and delinquent.

(c) Before a debt may be referred to a credit reporting agency, the debtor must be notified, pursuant to § 792.4, of ASCS's intent to make such a report. Such notification shall include:

(1) ASCS's intent to disclose to a credit reporting agency that the debtor is responsible for the debt, and that such disclosure will be made not less than 60 days after notification to such debtor.

(2) The information intended to be disclosed to the credit reporting agency under paragraph (g)(1) of this section.

(3) The debtor's right to enter a repayment agreement on the debt, including, at the discretion of ASCS, installment payments, and that if such an agreement is reached, the debt will not be referred to a credit reporting agency.

(4) The debtor's right to review of this action in accordance with paragraph (i) of this section.

(d) The debtor shall be notified, in writing at the debtor's last known address, when ASCS has reported any delinquent debt to a credit reporting agency.

(e)(1) ASCS shall notify each credit reporting agency to which an original disclosure of delinquent debt information was made of any substantial change in the condition or amount of the claim.

(2) ASCS shall promptly verify or correct, as appropriate, information about the debt on request of a credit reporting agency. The records of the debtor shall reflect any correction resulting from such request.

(f) Information reported to a credit reporting agency on delinquent debts shall be derived from the system of records maintained by ASCS.

(g) ASCS shall limit delinquent debt information disclosed to credit reporting agencies to:

(1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor;

(2) The amount, status, and history of the claim; and

(3) The program under which the claim arose.

(h) Reasonable action shall be taken to locate a debtor for whom ASCS does not have a current address before reporting delinquent debt information to a credit reporting agency.

(i)(1) Before disclosing delinquent debt information to a credit reporting agency, ASCS shall, upon request of the debtor, provide for a review of the debt in accordance with § 792.12. This review shall only consider defenses or arguments which were not available or could not have been available at any previous appeal proceeding permitted under § 792.12.

(2) Upon receipt of a request for review within 30 days from the date of notice to the debtor of intent to refer delinquent debt information to a credit reporting agency, ASCS shall suspend its schedule for disclosure to a credit

reporting agency until a final decision regarding the appropriateness of disclosure to a credit reporting agency is made.

(3) Upon completion of the review, the reviewing official shall transmit to the debtor a written notification of the decision. If appropriate, the debtor shall be notified of the scheduled date on or after which the debt will be referred to the credit reporting agency. The debtor will also be notified of any changes from the initial notification in the information to be disclosed.

(j)(1) In accordance with guidelines established by the Administrator, ASCS, the responsible claims official shall report to credit reporting agencies delinquent debt information specified in paragraph (g) of this section.

(2) The agreements entered into by USDA and credit reporting agencies shall provide the necessary assurances to ASCS that the credit reporting agencies to which information will be provided are in compliance with the provisions of all the laws and regulations of the United States relating to providing credit information.

(3) ASCS shall not report delinquent debt information to credit reporting agencies when:

(i) The debtor has entered a repayment agreement covering the debt with ASCS, and such agreement is still valid; or

(ii) ASCS has suspended its schedule for disclosure of delinquent debt information pursuant to paragraph (i)(2) of this section.

(k) Disclosures made under this section shall be in accordance with the requirements of the Privacy Act, as amended (5 U.S.C. 552a).

(l) The provisions of paragraphs (a) through (k) of this section apply to commercial debts owed by farm producers and all personal debts. All commercial debts owed by debtors other than farm producers may be reported to credit reporting agencies without following the provisions of paragraphs (a) through (k) of the section.

§ 792.18 Referral of debts to Department of Justice.

(a) Debts that exceed $100,000.00 exclusive of interest, penalties, and administrative charges shall be referred to the Department of Justice before they can be discharged.

(b) Debts which cannot be compromised or on which collection action cannot be suspended or terminated, may be referred to the Department of Justice for collection action. Claims of less than $600.00 exclusive of interest, penalties, and administrative costs will not be referred to the Department of Justice unless:

(1) Referral is important to a significant enforcement policy, or

(2) The debtor not only has the clear ability to pay the claim, but the Government can effectively enforce payment, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

§ 792.19 Referral of delinquent debts to IRS for tax refund offset.

ASCS may refer legally enforceable delinquent debts to IRS to be offset against tax refunds due to debtors under 26 U.S.C. 6402, in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

§ 792.20 Reporting discharged debts to IRS.

(a) In accordance with IRS regulations, ASCS may report to IRS as discharged debts on IRS Form 1099–G the amounts specified in paragraph (b) of this section.

(b) The following discharged debts may be reported to IRS:

(1) The amount of a debt discharged under a compromise agreement between ASCS and the debtor, except for compromises made due to doubt about the Government's ability to prove its case in court for the full amount of the debt.

(2) The amount of a debt discharged by the running of the statutory period of limitation for collecting the debt by administrative offset specified in 31 U.S.C. 3716.

§ 792.21 Referral of debts to private collection agencies.

If ASCS's collection efforts have been unsuccessful after 90 days from the date of delinquency the head of the agency or his designee may enter into a contract with any person or organization, under such terms and conditions as the head of the agency or his designee considers appropriate for collection services to recover debts owed to ASCS.

§ 792.22 Collection and compromise.

The Administrator, ASCS, or his designee may compromise any claim of the Government of not more than $100,000.00 exclusive of interest, penalties, and administrative charges, or such higher amount as the Attorney General may from time to time prescribe that has not been referred to another executive or legislative agency for further collection action.

Signed at Washington, DC, on June 4, 1993.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 93–13763 Filed 6–14–93; 8:45 am]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV92–920–1PR]

Kiwifruit Grown in California; Clarification in Definition of the Term Kiwifruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination.

SUMMARY: This action invites comments regarding the California kiwifruit marketing order, which regulates the handling of kiwifruit grown in California. The order is administered locally by the Kiwifruit Administrative Committee (committee). This action would terminate a provision of the marketing order containing an obsolete definition of the term "kiwifruit." This action was recommended by the committee as a means of bringing the order into conformity with the currently accepted scientific definition of the commodity covered by the marketing order.

DATES: Comments must be received by June 30, 1993.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–8139; or Kurt J. Kimmel, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This action is issued under Marketing Agreement and Order No. 920 (7 CFR part 920), as amended, regulating the

handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This action has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of California kiwifruit subject to regulation under the order, and approximately 600 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and a majority of handlers of California kiwifruit may be classified as small entities.

This action invites comments regarding the California kiwifruit marketing order. This action would terminate a portion of an order provision defining the term "kiwifruit." This action was unanimously recommended by the Kiwifruit Administrative Committee (committee).

At the time the order was promulgated in 1984, the accepted botanical classification for kiwifruit grown in California was Actinidia chinensis, Planch. and was based on the work of C.F. Liang in 1975. As a result, kiwifruit was initially defined in § 920.5 [7 CFR 920.5] under the botanical name A. chinensis, Planch. Shortly thereafter, the scientific community determined that the botanical nomenclature used to classify California kiwifruit should be changed. It was found that the nomenclature for kiwifruit had been earlier described by the French botanist A. Chevalier and thus took precedence. A. Chevalier first made a detailed botanical distinction between the variants of A. chinensis in 1946. These were described as A. chinensis Planch. var. deliciosa and A. chinensis Planch. var. chinensis.

Subsequently, based on comprehensive studies of A. chinensis by three other taxonomic botanists (H.L. Li, C.F. Liang, and A.R. Fergusan), it was determined that enough difference existed between the variants to warrant raising them to separate species status. Thus in 1984 or 1985, botanical nomenclature was revised to reflect three separate species: A. chinensis, A. deliciosa, and A. setosa.

Under the new botanical nomenclature, A. chinensis is seldom found outside of China and A. setosa is seldom found outside of Taiwan. The prevalent commercial variety grown in California is the Hayward variety. Other varieties commercially grown include Abbott, Allison, Monty, and Bruno. All of these varieties are now classified under the species A. deliciosa var. deliciosa.

Thus, the language "Actinidia chinensis, Planch., commonly called" found in § 920.5 (7 CFR 920.5) of the marketing order is obsolete. Terminating this language would eliminate any confusion caused by the change in nomenclature by the scientific community. The intent of the marketing order is to cover all varieties, including any new varieties of kiwifruit, that are commercially produced in California. Therefore, it has been determined that the generic term "kiwifruit" is sufficient to define the commodity covered under the marketing order.

This action would not have a significant economic impact on small producers or handlers. The action would update the definition of "kiwifruit" to include the same varieties that are covered under the order.

Based on available information, the Administrator of the AMS has determined that the issuance of this action would not have a significant economic impact on a substantial number of small entities.

A 15-day period is provided to allow interested persons to comment on this proposal. This action proposes to terminate a provision of the marketing order to clarify the definition of the term kiwifruit. This action, if adopted, should be implemented as soon as possible, so as to eliminate any confusion caused by the change in nomenclature by the scientific community. All written comments received will be considered prior to issuance of a final suspension.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR Part 920 is proposed to be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 920.5 [Amended]

2. In section 920.5, the words "Actinidia chinensis, Planch., commonly called" are removed.

Dated: June 3, 1993.

L. P. Massaro,

Acting Administrator.

[FR Doc. 93–13992 Filed 6–14–93; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 945

[FV93–945–1PR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County Oregon; Temporary Suspension of Date for Continuance Referendum on Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule with request for comments.

SUMMARY: This proposal would temporarily suspend order provisions which require a continuance referendum to be conducted on the marketing order. The proposed suspension would allow the Department of Agriculture (Department) time to complete an order amendment proceeding, including an amendment referendum. If the order is subsequently amended, this proposed action would allow the industry sufficient time to test operations under such an amended order before producers would be asked to vote whether they favored continuance of the order.

DATES: Comments which are received by July 15, 1993 will be considered prior to issuance of a suspension.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dennis West, Northwest Marketing Field Office, 1220 S.W. Third Avenue, Room 369, Portland, Oregon 97204; telephone (503) 326–2724, or FAX (503) 326–7440; or Valerie L. Emmer or James B. Wendland, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 205–2829 or (202) 720–2170 respectively, or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposed suspension of a provision of Marketing Agreement No. 98 and Order No. 945 (7 CFR part 945), both as amended, regulating the handling of potatoes grown in designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the "order," is issued under section 16 of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed suspension has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a non-major rule.

This proposed suspension has been reviewed under Executive Order 12778, Civil Justice Reform, and is not intended to have retroactive effect. This proposal will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of potatoes subject to regulation under the order and approximately 2,200 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A majority of the handlers and producers of Idaho-Eastern Oregon potatoes may be classified as small entities.

This proposal would temporarily suspend the provisions in § 945.83(d) of the order which specify that the Secretary shall conduct a referendum as soon as practicable after July 31, 1992, and at such time every sixth year thereafter, to ascertain whether continuance of this order is favored by the producers.

In June 1992, the Committee recommended several amendments to improve the operations of the marketing order. A public hearing to consider the various proposals had been scheduled to begin March 4, 1993. However, since adequate notice could not be provided to interested parties, the Committee recommended that the hearing be rescheduled for this fall. Under the applicable rules of practice (7 CFR part 900), the next step in the amendment process, after the oral hearing and the receipt of post-hearing briefs, would be for the Administrator of the AMS to issue a Recommended Decision, with a period allowed to file exceptions thereto. Thereafter, the Secretary would consider the entire record, including any exceptions to the Recommended Decision, and then issue a Secretary's Decision and, if warranted, a Referendum Order. Without this proposed temporary suspension of the initial continuance referendum, producers would be asked to vote on whether to continue a program which the Committee, which is representative of the industry as a whole, believes may need improvements. Thus, such a vote would not likely give the best indication of producers' true sentiments regarding continuation of the program.

The proposed suspension would allow the Department time to complete the amendatory proceeding, which may result in a referendum of industry producers to determine whether they favor any amendments that may result from the hearing.

The Committee also has recommended that the industry be allowed a year or two to test operations under any such amended order before being asked to vote on whether or not to continue the program. Although the Department could potentially hold a continuance referendum in 1995, that would result in conducting three producer referenda within a five year period. Such action would be an

unnecessary use of the time and funds of the industry and the Department.

Therefore, the Department is proposing that the provisions regarding the initial continuance referendum and the requirement for a referendum every sixth year thereafter be temporarily suspended through July 31, 1998, which is when the next continuance referendum would have been scheduled. However, the Department could decide to hold a continuance referendum earlier than July 31, 1998, if an order amendment referendum is not held.

This proposal would not have a significant economic impact on small producers or handlers. The proposed temporary suspension of the order provision would allow the Secretary to conduct a continuance referendum later than the initial date specified in the order. No increased costs on producers or handlers are anticipated as a result of this administrative proposal.

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 945 be amended by suspending a provision thereof as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. The first sentence of paragraph (d) of section 945.83 is temporarily suspended through July 31, 1998.

Dated: June 3, 1993.

L. P. Massaro,

Acting Administrator.

[FR Doc. 93–13996 Filed 6–14–93; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1007

[DA–93–16]

Milk in the Georgia Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal that would suspend certain provisions of the Georgia Federal milk order. This notice would suspend indefinitely the provisions of the Georgia order that limit diversions of producer milk to 25 percent of pool plant receipts. The request for the suspension was made by Carolina Virginia Milk Producers Association, Inc. (CVMPA), which represents member producers who deliver milk to plants regulated by the Georgia and the Nashville Federal Milk Marketing Orders. CVMPA requested this suspension to prevent the uneconomic movement of milk under the order.

DATES: Comments are due no later than June 22, 1993.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed suspension of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the indefinite suspension of the following provisions of the order regulating the handling of milk in the Georgia marketing area is being considered, provided that, the April 27, 1993, proposal to terminate the Nashville Order is adopted as a final rule (58 FR 25577).

1. In § 1007.13, paragraph (b)(4), the words "Provided, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received from member producers at all pool plants during the month shall not be producer milk;"

2. In § 1007.13, paragraph (b)(5), the words "Provided, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at such plant during the month from producers who are not members of a cooperative association shall not be producer milk;"

All persons who desire to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The comment period is limited to 7 days in order to facilitate completion of the required procedures if the Nashville

order is terminated and it is concluded that this proposal should be adopted.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension was requested by Carolina Virginia Milk Producers Association, a cooperative association operating under both the Georgia and Nashville orders. CVMPA has requested the suspension of certain provisions in the Georgia order to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling milk.

CVMPA requests the suspension of the diversion limitations for an indefinite period of time. CVMPA notes that the proposed termination of the Nashville order is now under consideration. If the Nashville order is terminated, CVMPA asserts that plants now regulated by the Nashville order will likely become regulated by other Federal orders, namely the Georgia order.

CVMPA anticipates that the proposed suspension will allow producer milk that has been pooled under the Nashville order for the supply needs of plants regulated under that order, to continue to be pooled for those plants that become regulated by the Georgia order if the Nashville order is terminated. CVMPA maintains that the continued pooling of this producer milk, now regulated under the Nashville order, is necessary to insure orderly marketing conditions and to prevent uneconomic movements of milk strictly for pooling purposes.

CVMPA contends that the proposed suspension will not substantially liberalize the market performance of producer milk, since § 1007.13(b)(2) requires that not less than 10 days' production of the producer whose milk is diverted be physically received at a pool plant.

CVMPA further explains that the request for suspension of diversion limitations for an indefinite period of time was made in recognition that a proposal(s) has been made to the Department for consolidation of several orders in the Southeast, including the Georgia order. CVMPA claims that in the consolidation proposal, changing market conditions and the need for producer milk diversion limitations that more closely reflect current market needs are addressed. CVMPA asserts that since the time frame for consideration of the proposed consolidation of the orders is unclear, an indefinite suspension is needed to assure pooling of producer milk that has been historically regulated under the Nashville order. The suspension proposed by CVMPA would stay in effect only until the completion of any consolidation action which might take place.

List of Subjects in 7 CFR Part 1007

Milk marketing orders.

The authority citation for 7 CFR part 1007 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: June 9, 1993.

Paul M. Fuller,

Acting Administrator.

[FR Doc. 93–14038 Filed 6–14–93; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1036

[DA–93–15]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Proposed Revision of Delivery Requirement for Cooperative Association Reserve Processing Plants

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed revision of rules.

SUMMARY: This notice invites written comments on a proposal to lower the percentage of a cooperative's milk that must be delivered to fluid milk plants to qualify a reserve processing plant operated by the cooperative as a pool plant under the Eastern Ohio-Western Pennsylvania Federal milk order. The applicable percentage would be reduced by 10 percentage points, from 35 percent to 25 percent. The action is requested by Milk Marketing Inc., a cooperative that supplies milk to fluid processing plants that are regulated under the order. Proponent contends that the action is needed to prevent uneconomic movements of the cooperative's milk to assure its pool status.

DATES: Comments are due no later than June 22, 1993.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7311.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed revision of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1036.7(f) of the order, the revision of certain provisions of the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is being considered.

All persons who desire to submit written data, views or arguments about the proposed revision should send two

copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 7th day after publication of this notice in the **Federal Register**. The filing period is limited to seven days because proponent asked that this revision be effective during the imminent "flush" milk production season.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provision proposed for revision is the delivery percentage required of a cooperative association operating a reserve processing pool plant pursuant to Section 1036.7(d) of the Eastern Ohio-Western Pennsylvania order (Order 36). As proposed, the percentage of a cooperative's producer milk that must be delivered to fluid milk plants if the cooperative's plant is to be considered a pool plant would be decreased by the maximum allowable 10 percentage points, from 35 percent to 25 percent.

Section 1036.7(f) allows the Director of the Dairy Division to reduce or increase a cooperative's minimum delivery requirement by up to 10 percentage points to prevent uneconomic milk shipments or to assure an adequate supply of milk for fluid use. The order also provides that the minimum pooling standard may be met on the basis of deliveries in the current month or during the preceding 12 months.

Milk Marketing Inc. (MMI), a dairy farmer cooperative that supplies milk to Order 36 fluid milk plants, requested that the delivery requirement be reduced. The cooperative states that the seasonal increase in milk production this spring, coupled with the usual seasonal decline in milk demanded by distributing plants for fluid use, will create a situation in the Order 36 market under which it will be necessary to move greater quantities of milk off the fluid market to manufacturing plants.

Furthermore, MMI stated that the proposed reduction is warranted because marketing conditions under Order 36 have changed since the performance standards for pooling were reviewed at a hearing. During the last two years, the cooperative's largest fluid milk customer, who was regulated under Order 36 and whose plant is located in the marketing area regulated under that order, became a pool plant under the Ohio Valley order (Order 33) because the plant has more sales of fluid milk products in the Order 33 marketing area than in the Order 36 marketing area. This regulatory change has reduced the demand for milk at Order 36 distributing plants. If the pooling percentage is not reduced, more milk could be required to be delivered by cooperatives to fluid milk plants than is actually needed to fulfill the market's demand for fluid milk.

In view of the foregoing, it may be appropriate to decrease the delivery requirements for cooperative associations operating reserve processing plants under Order 36 as quickly as possible. Since proponent did not specify a proposed time period for the requested lower standard, interested parties are invited to comment on this aspect of the proposal in addition to commenting on the need for the proposed revision.

List of Subjects in 7 CFR Part 1036

Milk marketing orders.

The authority citation for 7 CFR Part 1036 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: June 9, 1993.

W.H. Blanchard,

Director, Dairy Division.

[FR Doc. 93–14037 Filed 6–14–93; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 93–008ANPR]

Labeling of Poultry Product Produced by Mechanical Deboning and Products in Which Such Poultry Product is Used

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Food Safety and Inspection Service (FSIS) is soliciting comments, information, scientific data, and recommendations regarding the consideration of the need for labeling of poultry product produced by mechanical deboning and products in which such poultry product is used. Poultry product produced by mechanical deboning is a finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses. FSIS is considering the need for rulemaking that would establish regulations on the labeling of poultry product produced by mechanical deboning and products in which such poultry product is used. The Agency is interested in receiving information from the meat and poultry industries and industry-related organizations, the scientific community, academia, consumers and consumer groups, and other interested parties prior to undertaking any such proposed rulemaking.

DATES: Comments must be received on or before August 16, 1993.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be directed to Ms. Margaret O'K. Glavin, (202) 720–2709. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Ms. Margaret O'K. Glavin, Deputy Administrator, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–2709.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit written comments concerning this notice. Written comments should be sent to the Policy Office at the address shown above and should refer to Docket No. 93–008ANPR. Any person desiring an opportunity for an oral presentation of views as provided by the Poultry Products Inspection Act should make such request to Ms. Margaret O'K. Glavin so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this notice will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m., and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

Introduction

Poultry product produced by mechanical deboning is a product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of poultry carcasses. The product is prepared from various materials, including necks, backs, and whole carcasses. These starting materials may be raw or cooked, may contain varying amounts of muscle and/or skin, and may contain kidneys, except when

product is made from mature chickens or mature turkeys. Kidneys of mature chickens or turkeys may not be used as human food.

The technology to mechanically separate and remove most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses began in the late 1950's or early 1960's. The Department's initial reaction was to consider the resulting product adulterated because of the amount of bone present and the physical size of the bone particles. However, the development in the mid 1960's of "second generation" equipment capable of producing product containing less than 1½ percent bone with an extremely small bone particle size prompted the Department to reevaluate its position. Widespread commercial production of products containing ingredients produced by mechanical deboning began sometime in the early 1970's. By 1975, poultry product produced by mechanical deboning was being used in products such as poultry franks, poultry bologna, poultry salami, and poultry rolls.

Today, poultry product produced by mechanical deboning is used in a wide variety of poultry products, including cooked poultry sausages (such as chicken frankfurters, turkey bologna, and poultry vienna sausages), baby foods, and chicken patties. The level at which it is used has depended in part on technological capabilities and has reached 100 percent of the poultry product portion of a number of cooked poultry sausage products. Poultry product produced by mechanical deboning is also used in meat food products including cooked sausages, such as frankfurters and bologna, at a level of up to 15 percent of the total ingredients, excluding water (9 CFR 319.180).

Over the years, the meat and poultry industries have also referred to poultry product produced by mechanical deboning as "comminuted poultry." Terminology such as "finely comminuted," "deboned comminuted," "finely ground," and "mechanically deboned" have been used on poultry product labels to describe the form of the product.

Existing Regulations

Poultry product produced by mechanical deboning is subject to 9 CFR 381.117(d) relating to boneless poultry products. Under this regulation, boneless poultry products must be labeled in a manner that accurately describes their actual form and composition. The product name must specify the form of the product (e.g., emulsified or finely chopped) and the kind name of the poultry, i.e., the species of poultry from which it is derived. If the product does not consist of natural proportions of skin and fat, as they occur in the whole carcass, the product name must also include terminology that describes the actual composition. If the product is cooked, it must be so labeled. Section 381.117(d) also limits the bone solids content of boneless poultry products to 1 percent, calculated on a weight basis.

Poultry product produced by mechanical deboning is also subject to 9 CFR 381.47(e). This regulation requires that rooms or compartments containing mechanical deboning equipment must be maintained at 50 °F. or less during mechanical deboning of raw poultry.

In all other respects, existing regulations do not distinguish between poultry product produced by mechanical deboning and poultry product deboned by traditional techniques. As such, poultry product produced by mechanical deboning is subject to the general requirements for declaring ingredients on finished poultry product labels. It is declared, for example, in the ingredients statement, along with any other chicken product used, as "chicken" where parts such as skin and fat are included but not in excess of their natural proportions, or as "chicken meat" when such parts are not included (9 CFR 381.118(b)).

Report on Health and Safety of Poultry Product Produced by Mechanical Deboning

In 1976, the Department initiated an analytical program to obtain data on a number of nutrients and substances of potential concern in poultry product produced by mechanical deboning. Data were also gathered from scientific literature, industry, other government agencies, and university scientists. Details of the analytical program and a resulting evaluation were published in a June 1979 report entitled "Health and Safety Aspects of the Use of Mechanically Deboned Poultry." An errata supplement correcting certain items in the report was prepared and published on August 14, 1979 (44 FR 47576). (The June 1979 report and the errata supplement are available for public inspection in the FSIS Hearing Clerk's office.) On June 29, 1979, the Department announced the availability of this report and encouraged interested members of the public to review the report and submit comments. The Department also notified the public that it was particularly interested in receiving comments regarding the proper labeling of products containing poultry product produced by mechanical deboning and what means, if any, should be taken to implement the labeling recommendations in the report (44 FR 37965).

The Department received 221 comments, most of which were general reactions to the labeling issues raised in the notice, and health, safety, or economic concerns. Ninety-seven comments were submitted by individual consumers; 98 by industry-related individuals and groups; and 26 by public interest organizations, academia, other professionals and professional societies, farm-related organizations, and government officials and agencies. Of the 187 commenters that expressed a general opinion on the adequacy of the regulations concerning mechanically deboned poultry, 175 were supportive. Some commenters stated that the regulations have effectively controlled the use of product produced by mechanical deboning over many years with a wide base of consumer acceptance, that such product is not significantly different from product produced by hand deboning, that these regulations provide truthful labeling, and/or that the report and scientific literature support the adequacy of current regulations. Other commenters indicated that mechanically deboned poultry should be regulated the same as mechanically separated (species) (MS(S)) (then named mechanically processed (species) product).

GAO Report on Mechanically Separated Products

In 1983, the General Accounting Office (GAO) issued a report recommending that the Secretary of Agriculture direct the Administrator of FSIS to establish specific standards on poultry product produced by mechanical deboning and labeling requirements on products made with such poultry product as had been done for MS(S) and products made with MS(S). MS(S) is a finely comminuted product resulting from the mechanical separation and removal of most of the bone from the attached skeletal muscle of livestock carcasses and parts of carcasses that meets the provisions of 9 CFR 319.5.

Comments Requested

FSIS is seeking input on whether poultry product produced by mechanical deboning and products in which it is used should be addressed in the FSIS labeling regulations. As indicated, current FSIS regulations contain no labeling provisions unique to poultry product produced by mechanical deboning.

FSIS regulations do make provision for the labeling of MS(S) (9 CFR 317.2 (c), (f), and (j)(13), 319.1, and 319.5), a meat food product produced by means similar to the mechanical deboning of poultry. FSIS has recently reaffirmed its policy concerning the labeling of MS(S) in a notice published in the Federal Register on April 16, 1993 (58 FR 19781).

On the question of labeling requirements for poultry product produced by mechanical deboning, FSIS is interested in receiving any available information which might assist the Agency in considering its policy position. Such information may include data and recommendations regarding the manufacture, characteristics, use, and labeling of poultry product produced by mechanical deboning. FSIS also welcomes comments on consumer expectations of products containing poultry product produced by mechanical deboning and on the economic impact of labeling requirements for such products.

The preamble to any proposed regulations which might be issued would include a discussion of the comments received in response to this notice.

Done at Washington, DC, on: June 10, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–14042 Filed 6–14–93; 8:45 am]

BILLING CODE 3410–DM–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 30, 40, 50, 60, 61, 70, 72, and 150

RIN 3150–AE50

Whistleblower Protection for Nuclear Power Plant Employees

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations regarding the protection of employees who provide information to the NRC or their employers concerning safety issues. The proposed rule would conform current regulations to reflect the new nuclear whistleblower protection provisions of the Energy Policy Act of 1992, which was enacted on October 24, 1992.

DATES: The comment period expires July 15, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. Federal workdays.

Copies of comments received and NRC Form 3 may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–504–2741.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 1992, the President signed into law the Energy Policy Act of 1992. Section 2902, "Employee Protection for Nuclear Whistleblowers," includes provisions amending Section 210 of the Energy Reorganization Act (ERA) of 1974, as amended. The changes pertinent to this rulemaking include the following:

(1) Because the ERA contained two Sections 210, the legislation has renumbered the whistleblower protection provisions as Section 211.

(2) The new legislation extends the period in which a whistleblower complaint may be filed with the Department of Labor (DOL) from 30 days to 180 days.

(3) The new legislation extends and/or clarifies protection to new classes of employees and employers to include: (a) employees who bring or are about to bring concerns directly to their employers; (b) employees who have "refused to engage in" an unlawful practice, provided that the employee has identified the illegality to the employer; (c) employees who have testified, or are about to testify, before Congress or in any Federal or State proceeding regarding any provision (or proposed provision) of the ERA or the Atomic Energy Act (AEA).

As a result of these legislative changes, the NRC has concluded that its regulations in 10 CFR parts 19, 30, 40, 50, 60, 61, 70, 72, and 150 should be updated to reflect the changes.

Currently, § 19.11(c) requires that the June 1982 version or later revision of the NRC Form 3, "Notice to Employees," be posted. This section is being changed to eliminate uncertainty and to ensure that the most recent version of NRC Form 3 is posted. The language is modified so that the date of publication for NRC Form 3 is inserted in the revision to 10 CFR part 19. In the future, if NRC Form 3 is changed, 10 CFR part 19 will also be changed. This change to 10 CFR part 19 will revise and reissue NRC Form 3 (6/93). The revised NRC Form 3, in addition to addressing the 180 day time period that employees have to file a complaint, describes protection for employees who: (1) bring safety complaints to their employers; (2) refuse to engage in an unlawful practice, provided that the employee has identified the illegality to the employer; and (3) have testified or are about to testify before Congress or in any Federal or State proceeding regarding any provision (or proposed provision) of the ERA or the AEA. In addition, 10 CFR parts 30, 40 and 70 are modified to require posting of NRC Form 3 by general licensees subject to 10 CFR part 19.

Section 211 requires that the provisions of that section be posted. The Department of Labor (DOL) is implementing procedures to require all employers to post the provisions of Section 211. Accordingly, given that the DOL action will require posting by a class of employers that includes all NRC licensees, the NRC is not separately requiring the posting of the provisions. However, NRC licensees will be subject to the DOL rule of implementing the posting provision of section 211 and will also be required by this rule to post NRC Form 3 which summarizes protected activities, defines discrimination, and explains how to file a complaint with the DOL.

In 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 70.7, and 72.10, "Employee Protection," the following changes are being made to reflect the new legislation:

(1) The applicable Section 210 is renumbered as Section 211.

(2) The definition of protected activities is modified to reflect the provisions of the Energy Policy Act of 1992.

(3) The period in which a complaint can be filed with DOL is changed from 30 days to 180 days.

(4) References in certain sections of the regulations to "compensation, terms, conditions, and privileges of employment" are being changed to "compensation, terms, conditions, or privileges of employment." This change is necessary to correct earlier language to conform to the language in the ERA of 1974, as amended.

(5) The exemption in §§ 30.7, 40.7, and 70.7, formally exempting general licensees from the requirement to post NRC Form 3, is being deleted because

some general licensees are subject to part 19.

(6) The Part 150 NRC general license, recognizing Agreement State licenses, would be amended to conform to the changes to §§ 30.7, 40.7, and 70.7.

(7) These sections are being amended to advise licensees and applicants that they are expected to notify their contractors of the prohibition against discrimination for engaging in protected activities. The purpose of this notification is to ensure that contractors understand their obligations under the ERA to avoid discrimination against employees for raising safety issues.

As provided in 10 CFR 30.7(c), 40.7(c), 50.7(c), 60.9(c), 61.9(c), 70.7(c), and 72.10(c) of these regulations, licensees and applicants may be subject to enforcement action for discrimination caused by their contractors or subcontractors.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0044, –0017, –0020, –0011, –0127, –0135, –0009, and –0132.

Regulatory Analysis

The Commission finds that there is no alternative to amending the regulations because the amendments are statutorily mandated as required by the Energy Policy Act of 1992. The proposed rule is necessary to conform the Commission's regulations to the language of the nuclear whistleblower provisions of the Energy Policy Act of 1992. The proposed rule would extend and clarify protection to new classes of employees and employers and extend the period in which an employee may file a whistleblower complaint. The foregoing constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The proposed rule is necessary to conform the Commission's regulations to the language of the nuclear whistleblower provisions of the Energy Policy Act of 1992.

Backfit Analysis

The Nuclear Regulatory Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule because these amendments are required by law and do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials—transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Criminal penalties, Hazardous materials—transportation, Nuclear materials, Packing and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 150

Criminal penalties, Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 19, 30, 40, 50, 60, 61, 70, 72 and 150.

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

1. The authority citation for part 19 is revised to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851).

2. In § 19.11, paragraph (c) is revised to read as follows:

§ 19.11 Posting of notices to workers.

* * * * *

(c) Each licensee and each applicant for a specific license shall prominently post NRC Form 3, (Revision dated [date of latest NRC Form 3 to be inserted]), "Notice to Employees."

Note—Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D to Part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

* * * * *

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

3. The authority citation for part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

4. Section 30.7 is revised to read as follows:

§ 30.7 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the above statutes or possible violations of requirements imposed under either of the above statutes;

(ii) Refusing to engage in any practice made unlawful under either of the above statutes or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the above statutes.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraphs (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e) (1) Each specific licensee, each applicant for a specific license, and each general licensee subject to Part 19 shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c).

(2) All licensees and applicants are expected to notify their contractors of the prohibition against discrimination for engaging in protected activities.

(3) The posting of NRC Form 3 must be at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

Note.—Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D to Part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

5. The authority citation for part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234).

Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

6. Section 40.7 is revised to read as follows:

§ 40.7 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited.

Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the above statutes or possible violations of requirements imposed under either of the above statutes;

(ii) Refusing to engage in any practice made unlawful under either of the above statutes or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the above statutes.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraphs (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e) (1) Each specific licensee, each applicant for a specific license, and each general licensee subject to part 19 shall prominently post the revision of NRC Form 3, "Notice to Employees", referenced in 10 CFR 19.11(c).

(2) All licensees and applicants are expected to notify their contractors of the prohibition against discrimination for engaging in protected activities.

(3) The posting of NRC Form 3 must be at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

Note.—Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D to Part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

7. The authority citation for part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 is also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 82 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50–81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

8. Section 50.7 is revised to read as follows:

§ 50.7 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the above statutes or possible violations of requirements imposed under either of the above statutes;

(ii) Refusing to engage in any practice made unlawful under either of the above statutes or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the above statutes.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e) (1) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form shall be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

(2) All licensees and applicants are expected to notify their contractors of the prohibition against discrimination for engaging in protected activities.

Note: Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D to Part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

9. The authority citation for part 60 is revised to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213(g), 2228 as amended (42 U.S.C. 10134, 10141) and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

10. Section 60.9 is revised to read as follows:

§ 60.9 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the above statutes or possible violations of requirements imposed under either of the above statutes;

Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e) (1) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form shall be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

(2) All licensees and applicants are expected to notify their contractors of the prohibition against discrimination for engaging in protected activities.

Note: Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D to Part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

11. The authority citation for part 61 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851) and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

12. Section 61.9 is revised to read as follows:

§ 61.9 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the above statutes or possible violations of requirements imposed under either of the above statutes;

(ii) Refusing to engage in any practice made unlawful under either of the above statutes or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the above statutes.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e) (1) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form shall be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be

posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

(2) All licensees and applicants are expected to notify their contractors of the prohibition against discrimination for engaging in protected activities.

Note: Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D to Part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

13. The authority citation for part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954 as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended., 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C.10155, 10161). Section 70.7 also issued under Pub. L. 5–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

14. Section 70.7 is revised to read as follows:

§ 70.7 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the above statutes or possible violations of requirements imposed under either of the above statutes;

(ii) Refusing to engage in any practice made unlawful under either of the above statutes or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the above statutes.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraphs (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e) (1) Each specific licensee, each applicant for a specific license, and each general licensee subject to part 19 shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c).

(2) All licensees and applicants are expected to notify their contractors of the prohibition against discrimination for engaging in protected activities.

(3) The posting of NRC Form 3 must be at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

Note: Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D to Part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this

section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

15. The authority citation for part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282), sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148 (c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168 (c), (d). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h). Subparts K and L are also issued under sec. 133, 96 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

16. Section 72.10 is revised to read as follows:

§ 72.10 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the above statutes or possible violations of requirements imposed under either of the above statutes;

(ii) Refusing to engage in any practice made unlawful under either of the above statutes or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the above statutes.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraphs (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission licensee, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form shall be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

(2) All licensees and applicants are expected to notify their contractors of the prohibition against discrimination for engaging in protected activities.

(3) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D to Part 20 of this chapter or by contacting the NRC Information and Records Management Branch (telephone no. 301–492–8138).

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

18. The authority citation for part 150 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C.

2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

19. In § 150.20, paragraph (b) introductory text is revised to read as follows:

§ 150.20 Recognition of Agreement State licensees.

* * * * *

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person engaging in activities in a non-Agreement State or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to the provisions of §§ 30.7(a) through (f), 30.9, 30.10, 30.14(d), 30.34, 30.41, 30.51 to 30.63, inclusive, of part 30 of this chapter; §§ 40.7(a) through (f), 40.9, 40.10, 40.41, 40.51, 40.61, 40.63 inclusive, 40.71 and 40.81 of part 40 of this chapter; §§ 70.7(a) through (f), 70.9, 70.10, 70.32, 70.42, 70.51 to 70.56, inclusive, 70.60 to 70.62, inclusive, and to the provisions of 10 CFR parts 19, 20 and 71 and subpart B of part 34, §§ 39.15 and 39.31 through 39.77, inclusive, of part 39 of this chapter. In addition, any person engaging in activities in non-Agreement States or in offshore waters under the general licenses provided in this section:

* * * * *

Dated at Rockville, Maryland, this 4th day of June 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 93–14016 Filed 6–14–93; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064–AA54

Notice of Filing an Application for a Merger Transaction

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC proposes to amend its regulatory requirements for publishing notice of the filing of an application for a merger transaction under the Bank Merger Act. If an emergency exists requiring expeditious action, the FDIC proposes to require an applicant only to publish twice during the statutory 10 day period instead of daily for 10 days. In non-emergency cases, the FDIC proposes to delete the requirement that notice be published on the same day for each of the five weeks on which notice must be published and on the 30th day from first publication. The proposed amendments would also clarify that the public comment period begins when the first notice is published and is 30 days for non-emergency merger transactions and 10 days for emergency merger transactions. These amendments would bring the FDIC's regulations more into conformance with those of the other federal banking agencies, give applicants more flexibility, and lessen the paperwork and cost burdens imposed by the FDIC's current notice requirements.

DATES: Comments must be received no later than August 16, 1993.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to room F–400, 1776 F Street NW., Washington, DC on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838.) Comments may also be inspected in room 7118, 550 17th Street NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: A. David Meadows, Associate Director, Operations Branch, Division of Supervision (202) 898–3855; Ann Loikow, Counsel, Legal Division, (202) 898–3796, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

The Bank Merger Act (12 U.S.C. 1828(c)) ("Act") prohibits any insured depository institution from merging or consolidating with, or directly or indirectly acquiring the assets or assuming the liabilities of, another insured depository institution or any noninsured bank or institution without the prior written approval of the responsible federal banking agency. The Act requires notice of the proposed merger transaction to be published prior to approval of the transaction and at appropriate intervals during a period at least as long as that allowed the Attorney General and other banking agencies to comment on the competitive factors involved (12 U.S.C. 1828(c)(3)).

Except when the responsible agency finds that it must act immediately to prevent the probable failure of a depository institution, in which case no public notice is required, the statutory notice period is 30 days, unless the responsible agency advises the Attorney General and other banking agencies of the existence of an emergency requiring expeditious action, in which case the period is 10 days (12 U.S.C. 1828(c)(4)).

Section 303.6 of the FDIC's regulations (12 CFR 303.6) sets forth the FDIC's notice procedures for applications for merger transactions. Paragraph (f)(1)(i) of that section requires an applicant to publish notice of filing of an application for a merger transaction in a newspaper of general circulation in the community or communities where the main offices of the banks or institutions involved are located at least once a week on the same day for five consecutive weeks and, when published in a daily newspaper, on the thirtieth day from the date of first publication, unless the FDIC's Board of Directors determines it must act immediately to prevent the failure of one of the depository institutions involved. Where the FDIC's Board of Directors determines that an emergency exists requiring expeditious action, paragraph (f)(1)(i) requires notice to be published daily during a period of at least 10 calendar days.

In requiring that the agency responsible for approving a merger transaction request reports on the competitive factors involved from the other banking agencies, as well as the Attorney General, Congress specifically sought to encourage the development of uniform standards in the administration of the Act through consultation among the banking agencies (12 U.S.C. 1828(c)(4)). In fact, the other federal banking agencies responsible for acting on Bank Merger Act applications have adopted less onerous publication requirements than the FDIC has.

The Office of Thrift Supervision requires an applicant to publish no more than three calendar days before or after filing an application and thereafter on a weekly basis during the period allowed for furnishing competitive factors reports (12 CFR 563.22(d)(2)(i)). The same rule applies regardless of whether the required statutory period is 10 or 30 days.

The Board of Governors of the Federal Reserve System requires that notice of proposed merger transactions, whether emergency or non-emergency, be published only once (12 CFR

225.14(b)(3), 262.3(b)(1)(i) and 262.25). The Board of Governors' regulations also authorize modifying or waiving compliance with these requirements when an emergency exists requiring expeditious action (12 CFR 225.14(h)(2) and 262.3(l)).

The Comptroller of the Currency by regulation provides that the statutory notice requirements, rather than those set forth in their rules of procedure, should be observed (12 CFR 5.33(e)). The Comptroller has interpreted the Act to require three publications if the 30 day period applies: First, the day the application is filed and then at two-week intervals with the final publication, if in a daily newspaper, on the 30th day (Comptroller's Manual for Corporate Activities, p. 103 (Jan. 1992)). Where there is an emergency requiring expeditious action, the Comptroller requires that notice be published twice, first on the day a request for emergency processing is approved and, second, on the tenth day after that date or the closest day after that (Ibid. at 112).

Because some proposed merger transactions are part of transactions subject to approval by more than one federal banking agency, these differing notice requirements can confuse applicants and delay action on applications. This can have a particularly adverse impact on transactions for which the responsible agency has found that an emergency exists requiring expeditious action.

In enacting the Bank Merger Act, Congress included the publication notice requirement to provide a means by which the people of the community served by the merging depository institutions could have an opportunity to consider the effects of the proposed merger transaction and express their views. Congress did not intend to impose any unnecessary burden on persons seeking to arrange a merger (H. Rep. 1416, 86th Cong. 2d Sess. (1960), reprinted in 1960 U.S.C.C.A.N. 1995, 2006–2008).

In requiring daily publication of notice of a proposed merger where an emergency exists requiring expeditious action, the FDIC imposes a significantly more burdensome publication requirement than do the other banking agencies. This is particularly true when the bank is located in a community that does not have a regular daily newspaper of general circulation. Although the FDIC's regulations authorize publication in a newspaper of general circulation published in the community nearest to the affected community (12 CFR 303.6(f)(1)(i)), publication in a local weekly newspaper, rather than in a more distant community's daily newspaper, may more fully provide notice to an affected community. This would not be possible under the FDIC's present regulations.

Similarly, the FDIC's requirement that notice of non-emergency transactions be published on the same day for five consecutive weeks may bar publication in a weekly newspaper (for example, if the weekly's publication date varies when it falls on a holiday), even though the weekly might be more widely read than a daily newspaper from a neighboring community. The FDIC also believes that requiring notice of a non-emergency transaction to be published on the thirtieth day of the statutory comment period does not add significantly to the notice given and may cause unnecessary delay in consummating the transaction if the Corporation waits before acting to receive comments generated by this final notice.

Discussion of Proposal

For these reasons, the FDIC proposes to amend paragraph (f)(1)(i) of § 303.6 to delete the requirement that notice of non-emergency merger transactions be published on the same day each week and that, if published in a daily newspaper, notice be published on the thirtieth day. The FDIC proposes to reduce the necessary publication in emergencies requiring expeditious action from daily for at least 10 calendar days to twice during a 10 day period, first as soon as possible after the Corporation notifies the applicant that the merger will be processed as an emergency requiring expeditious action and, second, on the newspaper's publication date one week, or the day closest to one week, after the date of first publication. The FDIC also proposes to amend paragraphs (f)(1), (f)(3) and (f)(4) of § 303.6 to clarify that the public comment period runs from the date of first publication and is 30 days for non-emergency merger transactions and 10 days for emergency merger transactions, as set forth in the Act.

The effect of these amendments would be to apply the same notice requirements regardless of whether it is an emergency or non-emergency transaction. In both cases, applicants would publish weekly during the statutory period. These changes would increase consistency, reduce the cost and paperwork burdens associated with meeting regulatory notice requirements, allow applicants more flexibility regarding the newspapers in which notice could be published, and bring the FDIC's requirements more into conformity with those of the other banking agencies.

The proposed notice requirements are similar to those of the Office of Thrift Supervision, which requires weekly publication in both emergency and non-emergency transactions. Although the Comptroller of the Currency only requires biweekly publication in non-emergency situations, it also requires two publications where an emergency requiring expeditious action exists. In addition, applicants which meet the proposed amended FDIC notice requirements also would have met the Board of Governors' requirement of publishing a single notice of a proposed merger transaction.

Although this amendment would reduce the costs and paperwork burden associated with publishing notice of proposed merger transactions, the FDIC is concerned that the opportunity for public comment not be adversely affected. It should be noted that the proposed rule does not affect the length of the statutory public comment period, rather it merely eliminates the requirement of publication on the thirtieth day and that publication be on the same day each week in non-emergency transactions, and for emergency transactions substitutes a requirement that notice be published twice during a 10 day period for daily publication for 10 calendar days.

The FDIC invites comment on all aspects of the proposal, including the benefits of reducing an applicant's publication burden and the proposed rule's possible effect on the opportunity for public comment.

Paperwork Reduction Act

The collection of information requirement contained in the proposed rule has been submitted to the Office of Management and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on it should be directed to the Office of Management and Budget, Paperwork Reduction Project (3064–0016), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Assistant Executive Secretary (Administration), room F–453, FDIC, 550 17th Street NW., Washington, D.C. 20429.

The proposed rule's collection of information requirement is found at § 303.6(f) of the FDIC's regulations which requires applicants for merger transactions to publish notice of the proposed transaction. This reporting requirement is mandated by the Act (12 U.S.C. 1828(c)(3)) to provide people in the affected communities a chance to comment on the proposed merger

transaction. The proposed rule lessens the regulatory burdens and costs imposed by existing rules by giving applicants some flexibility in meeting the notice requirements and by decreasing the frequency of required publication. In so doing, it also furthers the Act's goal of developing uniform standards among the banking agencies for the approval of merger transactions (12 U.S.C. 1828(c)(4)).

The estimated annual reporting burden for the collection of information requirement in the regulation is:

Number of Respondents: 200

Number of Responses per Respondent: 1

Number of Annual Responses: 200

Total Annual Responses: 200

Hours per Response: 0.5

Total Annual Burden: 100 hours

It is assumed for calculation of this burden estimate that a single notice is composed and publication can be arranged with a single telephone call, regardless of the number of times notice is to be published.

Regulatory Flexibility Act Statement

The Board of Directors has determined that the proposed rule, if adopted, would not have a significant adverse economic impact on a substantial number of small entities. Instead, it would reduce certain regulatory burdens for all depository institutions, including small depository institutions, for which the FDIC is the responsible agency under the Act and would have no particular adverse impact on other small entities. Accordingly, the Board hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the proposal, if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 12 CFR Part 303

. Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

For the reasons set forth in the preamble, the Board of Directors of Federal Deposit Insurance Corporation proposes to amend part 303 of title 12 of the Code of Federal Regulations as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES REQUIRED TO BE FILED BY STATUTE OR REGULATION

1. The authority citation for part 303 would continue to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, 1819 ("Seventh" and "Tenth"), 1828, 1831e, 1831o; 15 U.S.C. 1607.

2. Section 303.6 is amended by revising paragraphs (f)(1)(i), (f)(3), and (f)(4) to read as follows:

§ 303.6 Application procedures.

* * * * *

(f) * * *

(1) * * *

(i) In the case of applications in connection with a "merger transaction" (as defined by the Bank Merger Act, 12 U.S.C. 1828(c)(3)), unless the Corporation determines it must act immediately in order to prevent the probable failure of one of the depository institutions involved, the applicant must publish notice of the proposed transaction in a newspaper of general circulation in the community or communities where the main offices of the banks or institutions involved are located, or if there is no such newspaper in the community, then in the newspaper of general circulation published nearest thereto. Publication shall be made at least once each week for five consecutive weeks, and the public shall have 30 days from the date of first publication to comment on the application. Where the Corporation determines that an emergency exists which requires expeditious action, then notice shall be published twice during a 10 day period, first, as soon as possible after the Corporation notifies the applicant that the merger will be processed as an emergency requiring expeditious action and, second, on the newspaper's publication date one week, or the day closest to one week, after the date of first publication. The public shall have 10 days from the date of first publication to comment on the application. The published notice shall include the name and main office location of all banks or institutions involved in the transactions and the subject matter of the application. If it is contemplated that the continuing bank will operate the offices of the other depository institution(s) as branches, the following statement shall be added to the notice:

It is contemplated that all of the offices of the above named institutions will continue to be operated (with the exception of [identity and location of each office which will not be operated]).

* * * * *

(3) *Comments.* Anyone who wishes to comment on an application may do so by filing comments in writing with the appropriate regional director at any time before the Corporation has completed processing the application. Processing will be completed, for applications other than home or branch office relocation and remote service facility relocation applications and merger applications, not less than 15 days after the publication of the notice required by paragraph (f)(1) of this section or 15 days after the Corporation's receipt of the application, whichever is later; for home or branch office relocation and remote service facility relocation applications, not less than 21 days after the last publication or 21 days after the Corporation's receipt of the application, whichever is later; for merger applications for which the Corporation has not determined it must act immediately in order to prevent the probable failure of one of the depository institutions involved, not less than 30 days after the first publication or, if the Corporation has determined that an emergency exists which requires expeditious action, not less than 10 days after the first publication. This time period may be extended by the appropriate regional director for good cause. Such regional director shall report the reasons for such action to the Board of Directors.

(4) *Notice of right to comment.* In order to fully apprise the public of its rights under paragraph (f)(3) of this section, the notice described in paragraph (f)(1) of this section shall include a statement describing the right to comment upon, or protest the granting of, the application. This notice shall consist of the following statement:

Any person wishing to comment on this application may file his or her comments in writing with the regional director of the Federal Deposit Insurance Corporation at its regional office (address of the regional office) before processing of the application has been completed. Processing will be completed no earlier than the (non-emergency mergers—30th; emergency mergers—10th; relocations—21st; other applications described in paragraph (a) of this section—15th) day following (mergers—the first required publication; relocations and other applications described in paragraph (a) of this section—either the date of the last required publication or the date of receipt of the application by the FDIC, whichever is later). The period may be extended by the regional director for good cause. The nonconfidential portion of the application file is available for inspection within one day following the request for such file. It may be

inspected in the Corporation's regional office during regular business hours. Photocopies of information in the nonconfidential portion of the application file will be made available upon request. A schedule of charges for such copies can be obtained from the regional office.

* * * * *

By Order of the Board of Directors.

Dated at Washington, DC, this 9th day of June, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–14023 Filed 6–14–93; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWP–9]

Proposed Establishment of VOR Federal Airway V–597; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish VOR Federal Airway V–597 between San Marcus and Mission Bay, CA. The establishment of this airway would improve traffic flow and reduce controller workload.

DATES: Comments must be received on or before August 4, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500, Docket No. 93–AWP–9, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9203.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AWP–9." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Available of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is concerning an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish VOR Federal Airway V–597 between San Marcus and Mission Bay, CA. The establishment of this airway would improve traffic flow and reduce controller workload. Domestic VOR Federal airways are published in § 71.123 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, incorporation by reference, navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–597 [NEW]

From San Marcus, CA; Fillmore, CA; Van Nuys, CA; INT Van Nuys 110°T(095°M) and Seal Beach, CA, 334°T(319°M) radialS; Seal Beach; Oceanside, CA; to Mission Bay, CA.

* * * * *

Issued in Washington, DC, on June 8, 1993.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93–14062 Filed 6–14–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AGL–10]

Proposed Control Zone and Transition Area Modifications, Wausau, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the existing control zone and transition area near Wausau, WI, to accommodate a new nondirectional beacon-B (NDB–B) Standard Instrument Approach Procedure (SIAP) to Wausau Municipal Airport, Wausau, WI. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before July 20, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 93–AGL–10, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AGL–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lake Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the control zone and transition area near Wausau, WI, to accommodate a new NDB–B SIAP to Wausau Municipal Airport, Wausau, WI.

The development of this procedure requires that the FAA alter the designated airspace to ensure that the procedure would be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements. The coordinates for this airspace docket are based on North American Datum 83. Control zones are published in Section 71.171 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document would be published subsequently in the Order. Transition areas are published in Section 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the enticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones

* * * * *

AGL WI CZ Wausau, WI [Revised]

Wausau Municipal Airport, WI
(lat. 44°55'43" N, long. 89°37'36" W)

Within a 4.4-mile radius of Wausau Municipal Airport, WI, and within 2.5 miles each side of the 129° bearing from the airport extending from the 4.4-mile radius to 7 miles southeast of the airport.

* * * * *

Section 71.181 Designation of Transition Areas

AGL WI TA Wausau, WI [Revised]

Wausau Municipal Airport, WI
(lat. 44°55'43" N, long. 89°37'36" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Wausau Municipal Airport, WI, and within 2.5 miles each side of the 129° bearing from the airport extending from the 6.5-mile radius to 7 miles southeast of the airport, excluding that airspace within the Wausau, WI, control zone.

* * * * *

Issued in Des Plaines, Illinois, on May 20, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93-14061 Filed 6-14-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 93N-0153]

Food Labeling: Nutrient Content Claims and Health Claims; Restaurant Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its food labeling regulations by removing the provisions that exempt restaurant menus from the requirements for how nutrient content claims and health claims are to be made. The agency is also proposing to modify the provisions that delay the effective date of these regulations for small restaurant firms for 1 year. FDA is proposing these actions following a reconsideration of the provisions in question.

DATES: Written comments by August 16, 1993. The agency proposes that any final rule that may issue based on this proposal become effective 4 months after the date of publication of the final rule in the **Federal Register** except as may be otherwise specified in the text of §§ 101.10, 101.13(q)(5), and 101.14(d)(2)(vii)(B) and (d)(3).

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Center for Food Safety and Applied Nutrition (HFS-150, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4561.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 6, 1993 (58 FR 2066 *et seq.*), FDA published final rules implementing the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). Included among those final rules were documents entitled "Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food" (58 FR 2302) and "Food Labeling; General Requirements for Health Claims for Food" (58 FR 2478). Those final rules set forth the provisions governing the proper use of nutrient content claims and health claims on food labels and in food labeling.

As stated in the final rules, it is clear that the 1990 amendments apply to restaurant foods for which nutrient content claims (58 FR 2302 at 2386) or health claims (58 FR 2478 at 2515) are made. However, as FDA also pointed out in the final rules, the question of how the agency should regulate claims for restaurant foods was highly controversial during the rulemaking.

In response to its November 27, 1991, food labeling proposals (56 FR 60366 *et seq.*), FDA received numerous comments on this issue. Many of those comments argued strongly that packaged foods and restaurant foods differ markedly in the way that they are prepared and sold and thus should not be subject to the same regulatory regime. Others took the contrary position.

Numerous comments specifically addressed whether restaurant menus should be covered by the various claims regulations. On the one hand, comments argued that because restaurant menus are frequently changed, subjecting them to the requirements for nutrient content and health claims would be unduly burdensome. On the other hand, other comments argued that the thrust of the 1990 amendments is to ensure that nutrient content claim and health claim information is scientifically valid wherever it appears.

FDA acknowledged the distinction between restaurant foods and other types of foods in its final rules, stating that it was not obligated under the Federal Food, Drug, and Cosmetic Act (the act) to regulate claims on restaurant foods in a manner identical to that for packaged foods (58 FR 2302 at 2386 and 58 FR 2478 at 2515). The agency noted that Congress had recognized that there are significant differences between packaged foods and restaurant foods. For example, in the 1990 amendments, Congress exempted restaurant foods from mandatory nutrition labeling and certain provisions regarding nutrient content claims. However, the agency also pointed out that because Congress did not exempt restaurant foods from the general requirements applicable to nutrient content claims and health claims, if a restaurant chooses to use a nutrient content claim (e.g., "low fat") or a health claim (e.g., "a low fat diet may reduce the risk of heart disease"), it must do so in a manner that is consistent with the FDA regulation applicable to those terms.

In light of the greater versatility of restaurant foods relative to packaged foods, and to encourage useful claims for restaurant foods, the agency decided that it should provide more flexibility with respect to claims on restaurant foods than on other types of food. Thus, FDA provided that a restaurant could make a nutrient content claim or a health claim for a product as long as it had a reasonable basis for believing that the food contained the requisite level of the nutrient in question (58 FR 2302 at 2387 and 58 FR 2478 at 2516).

In addition, given the frequency with which menus are changed, the final regulations exempted claims made on restaurant menus from the requirements for nutrient content claims and health claims (58 FR 2302 at 2388 and 58 FR 2478 at 2517). Thus, for example, § 101.10 (21 CFR 101.10) provides that nutrition labeling or information about the amount of the nutrient that provides the basis for the claim shall be provided upon request for any restaurant food or meal for which a nutrient content claim or a health claim is made, except if the claim is made on a menu. Section 101.13(q)(5) (21 CFR 101.13(q)(5)) provides that a nutrient content claim used on food that is served in restaurants or other establishments in which food is served for immediate human consumption, or that is sold for sale or use in such establishments, must comply with the requirements and definitions governing nutrient content

claims, except for nutrient content claims made on menus. There are similar provisions with respect to health claims made on restaurant menus in § 101.14 (21 CFR 101.14) and with respect to the applicability of § 101.10 to such claims.

In addition, because of concerns about the demands that the new regulatory regime would impose on small restaurants, FDA decided to exercise its enforcement discretion and to delay for 1 year the effective date of its regulations governing the use of nutrient content claims and health claims by small restaurants, that is, restaurant firms consisting of 10 or fewer individual establishments (58 FR 2302 at 2388 and 58 FR 2478 at 2517). Thus, the agency gave small restaurants until May 8, 1995, to comply with §§ 101.10 and 101.13 (nutrient content claims) and until May 8, 1994, to comply with §§ 101.10 and 101.14 (health claims).

II. The Decision to Reconsider

The decisions to exempt menus and to delay the effective date for small restaurants were made only after considerable debate within the government. Many, both inside and outside government, felt that exempting menus was not consistent with the act or with the statutory charge provided by the 1990 amendments. Following publication of the final rules, FDA confronted the question of what is a menu. FDA found that it was virtually impossible to distinguish menus from the other types of restaurant labeling, such as signs, placards, and other point of purchase information, that the agency said, in the final rules on nutrient content and health claims, would be covered (see e.g., 58 FR 2302 at 2387 and 58 FR 2478 at 2516). Given these facts, FDA has reconsidered the menu exemption.

The appropriateness of reconsidering this issue is supported by two of the comments that the agency received during the 30-day period for technical comment that it provided in the final rules (see 58 FR 2066). FDA received three comments on the menu exemption.

One comment approved of the menu exemption, pointing out that it will provide important flexibility and cost savings for all segments of the restaurant industry (Ref. 1). The other two comments (Refs. 2 and 3), including one from a Congressman, criticized the menu exemption and raised questions about its legality under both the 1990 amendments and the Administrative Procedure Act (the APA).

The information received in one of these comments (Ref. 1) convinced the agency that it was also appropriate to reconsider its decision to delay the effective date of the nutrient content claims and health claims regulations for small restaurants. Another comment (Ref. 3) argued that this delay is not consistent with the 1990 amendments. In light of this information, FDA decided to reconsider whether it should exercise its enforcement discretion to give small restaurants an additional year to comply with both the health claims and the nutrient content claims regulations.

On March 11, 1993, FDA was sued by two public interest groups and two individuals on the grounds that the menu exemption and the delay in the effective date of the regulations for small restaurants are unlawful because they violate the 1990 amendments and the APA (*Public Citizen, Inc., et al.* v. *Shalala*, Civil Action No. 93 0509 (D.D.C.)). The filing of this Lawsuit heightens the significance of FDA's decision to reconsider these matters.

III. FDA'S Proposal

A. The Menu Exemption

After reconsidering the menu exemption, FDA is proposing to remove the provisions of the regulations that provide this exemption.

There are, first, policy and practical reasons for FDA's tentative decision to remove this exemption. FDA's statutory charge under the 1990 amendments is to ensure that nutrient content and health claims made for foods accurately characterize the food and are scientifically valid. Restaurant foods are an important part of the food supply. As stated in the final rule, almost half of the American food dollar is spent on food consumed away from home, and perhaps as much as 30 percent of the American diet is composed of foods prepared in food service operations (58 FR 2302 at 2387). Thus, if FDA is to effectuate its policy objectives under the 1990 amendments. it is vitally important that FDA ensure that claims made in restaurants comply with the act.

In the final rule, FDA justified its exemption for menus on the grounds that it will help ensure that restaurants will not be deterred by the 1990 amendments from providing useful nutrition-related information to their customers (58 FR 2302 at 2388). However, on reconsideration, FDA has become concerned that health claims or nutrient content claims will be of little utility if they fail to comply with the standards in FDA's regulations, which are designed to assure the validity of these claims. Moreover, FDA is concerned that an exemption for menus would create a situation in restaurants in which confusion about the valid information provided by authorized claims on signs and placards could be caused by unauthorized claims in menus. Thus, FDA tentatively concludes that an exemption for menus is inconsistent with FDA's charge under the 1990 amendments.

FDA's proposal to remove the exemption is also based on a further review of the act and its legislative history. Section 405 of the act (21 U.S.C. 345), which authorizes exemptions, was amended by the 1990 amendments to state: "This section does not apply to the labeling requirements of section 403(q) and 403(r)." The legislative history of the 1990 amendments provides the following statement of the intent of this provision:

> Section 5(a) [of the 1990 amendments] is a technical provisions and states that the Secretary will not have authority under section 405 of the [act] to promulgate regulations exempting food from the labeling requirements of sections 403(q) and 403(r) of the Act.

(H. Rept. 101–538, 101st Cong., 2d sess. 23 (1990)) Because the menu exemption is an exemption from the requirements of section 403(r) of the act (21 U.S.C. 343(r)), it appears to be barred by section 405 of the act.

Finally, there is a strong suggestion in the legislative history of the 1990 amendments that Congress intended to include menus in the coverage of section 403(r) of the act. Section 403 (r)(5)(B) of the act limits the extent to which the nutrient content claim and health claim provisions of the act apply to restaurants. The version of section 403(r)(5)(B) of the act in the bill that was reported by the Committee on Energy Commerce of the House of Representatives would have exempted all nutrient content claims in restaurants from the coverage of the act (H. Rept. 101–538, *supra*, 5). As enacted, however, the provision exempts restaurant foods that bear nutrient content or health claims only from certain disclosure requirements that relate to nutrient content claims.

This change in the act was made between the time the bill was reported by the Energy and Commerce Committee and its passage by the full House. This change was explained by the majority and minority sponsors of the bill in a sponsors' report. The report states:

> Section 403(r)(5)(B) has been amended to provide that restaurants that use content descriptors in connection with the sale of food (for example, the use of the word "light" or "low" *on a menu*) must comply with the

regulations issued by the Secretary under section 403(r)(2)(A)(i).

(136 Congressional Record H5841 (July 30, 1990) (emphasis added).) This part of the bill was passed by the Senate unchanged. Thus, FDA tentatively concludes that the menu exemption is not consistent with the congressional intent in adopting the 1990 amendments.

Therefore, for the foregoing reasons, FDA is proposing to amend the food labeling regulations by removing the provisions of the regulations that exempt nutrient content claims and health claims made on restaurant menus from the coverage of those regulations. Specifically, FDA is proposing to amend the food labeling regulations by removing: (1) From § 101.10, pertaining to nutrition labeling of restaurant foods, the language that reads * * * "(except on menus)"; (2) from § 101.13(q)(5), pertaining to nutrient content claims on restaurant foods, the language that reads * * * "(except on menus)"; and (3) from § 101.14(d)(2)(vii)(B), pertaining to health claims on restaurant foods, the language that reads * * * "(except if the claim is made on a menu)." Thus, the agency is proposing to include claims made for restaurant foods on menus, as well as those made on signs and placards, within the coverage of the food labeling regulations implementing the 1990 amendments. Should the actions proposed in this document be adopted and go into effect, any nutrient content or health claim made for any food sold in a restaurant, in or on any labeling in the restaurant, including menus, signs, or placards, will be subject to FDA's food labeling rules.

B. The Delay for Small Restaurants

FDA adopted the delayed effective date for the health claim and nutrient content claim provisions for small restaurants because of concerns about the demands that these regulations would make on small restaurants (58 FR 2302 at 2388). FDA has received information subsequent to its decision to observe such a delay as a matter of enforcement discretion, however, that suggests that there is no appropriate basis for differentiating among restaurants based on size and, thus, that all restaurants should be given a comparable effective date.

As a result, the agency has reconsidered whether to maintain the current position, to provide a delayed effective date for all restaurant foods, or to remove the delay in the effective date of regulations on health claims and nutrient content claims for small restaurants. On reconsideration, FDA has decided that the same effective date should be provided for all restaurant claims, albeit a later one than that for packaged foods (as discussed below). Restaurant food is simply too important a part of the American diet to unduly delay the application of the health claim and nutrient content claim provisions to it. Therefore, FDA is proposing to remove the delay in effective date of its regulations on nutrient content claims and health claims for small restaurants, although given the circumstances of this rulemaking, what FDA is proposing amounts to more of a modification than a complete removal.

IV. Effective Dates

FDA recognizes that all restaurants should be given time to bring their menus into compliance with health claim and nutrient content claim regulations. The agency also recognizes that if it were to make the health claim regulations and nutrient content claim regulations effective for food served in small restaurants on the same date that they are effective for all other foods, small restaurants would have no or very little time to prepare for the new requirements. Thus, instead of protecting small restaurants, FDA could be penalizing them. FDA considers that to do so would be unfair.

FDA believes that the amount of time that it gives restaurants to bring their menus into compliance, and small restaurants to come into general compliance, should generally reflect the amount of time that all others who use nutrient content claims or health claims in their labeling were given. The general nutrient content claim provisions are effective May 8, 1994, 16 months after the date of their publication. Thus, for nutrient content claims on restaurant menus and for small restaurants generally, FDA tentatively concludes that the appropriate effective date is 12 months after publication of a final rule in this rulemaking. The agency tentatively finds that 12 months will provide the optimum accommodation of several opposing needs. There is a public health need to ensure that nutrient content claims on menus and in small restaurants are made in an appropriate manner as quickly as is reasonably achievable. On the other hand, there is a need to allow restaurants, including small restaurants, time to adjust to the changes that must be made in their menus and, in the case of small restaurants, in their other labeling.

Given the flexible rules that FDA has adopted for restaurants, FDA tentatively concludes that 12 months is an adequate time for restaurants to come into compliance if they choose to make nutrient content claims on menus. Thus, FDA is proposing that the deletion of the exemption for nutrient content claims on menus from §§ 101.10 and 101.13(q)(5) will be effective 12 months from the date of publication in the **Federal Register** of the final rule in this rulemaking. Likewise, for small restaurants, §§ 101.10 with respect to nutrient content claims and 101.13 will be effective on that date.

The health claim regulations are effective on May 8, 1993, 4 months after the date of their publication. Thus, FDA is proposing that the deletion of the exemption for health claims on menus from §§ 101.10 and 101.14(d)(2)(vii)(B) will be effective 4 months from the date of publication in the **Federal Register** of the final rule in this rulemaking. Likewise, for small restaurants, § 101.10 with respect to health claims and § 101.14 will be effective on that date.

Even though FDA is proposing to modify the effective dates of its regulations for small restaurants, the agency advises that this action should not impose a particular hardship on these businesses. These rules place no affirmative requirement on small restaurants to make claims and provide a significant amount of flexibility when claims are made. Small restaurants can be in full compliance by simply refraining from making claims (although this may not be a desirable outcome) or, if they decide to do so, by taking the modest steps necessary to ensure that there is a reasonable basis for the claim. Moreover, FDA recognizes the value of valid claims and intends to continue to work with the small restaurant industry to help ensure that compliance is achievable.

The agency emphasizes that the amendments being proposed herein (except for the deletion of the menus exemption) do not alter the substance or status of the current regulations governing the use of the nutrient content claims and health claims in restaurants. These amendments are being proposed to clarify, for the benefit of the reader, the dates that FDA will apply the provisions of the nutrient content claims and health claims regulations to restaurant foods. After these regulations are fully in effect, the provisions of the regulations that set out the various dates will be deleted in a future **Federal Register** document.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment

nor an environmental impact statement is required.

VI. Economic Impact

FDA has examined the economic implications of the proposed actions as required by the Regulatory Flexibility Act (Pub. L. 96–354) and Executive Order 12291. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. Executive Order 12291 states that agencies shall use cost-benefit analysis as a component of decisionmaking. The agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act, FDA has determined that this proposed rule may have a burden on a number of small businesses.

A. Costs

1. Background

In January of 1993, FDA published a final regulatory impact analysis (RIA) of the final rules implementing the 1990 amendments. In that document, FDA presented costs of compliance with the 1990 amendments for food service establishments. There are approximately 262,000 commercial establishments and 36,000 institutions with approximately 406,000 printed menus. Based on an analysis of entries in the National Restaurants Association's annual menu contest, the association determined that 89 percent of all printed menus include at least one claim. Thus, approximately 362,000 individual menus and 233,000 establishments in the commercial food service sector would potentially be affected by the regulations. Further, the survey also indicated that at least 18 percent of printed menus would require revisions of an entire section or symbol program e.g., a heart logo. However, those firms that would normally redesign their menus within the compliance period would not incur costs attributable to FDA's regulations. FDA assumed in the previous analysis that 75 percent of all menus would normally be revised during the compliance period ending in May 1994. These costs are one-time costs only as the use of health or nutrient content claims are voluntary. In addition, because the agency was deferring enforcement on small restaurants (which comprise 75 percent of food service establishments), there would be no costs for such firms.

Therefore, it was estimated that approximately 14,500 establishments would need to redesign 18,000 menus requiring changes in terminology or individual menu items at a cost of $500 per menu. Also, 2,600 establishments would revise 4,500 menus requiring alteration or replacement of sections or symbols at a cost of $1,700 per menu. Because the agency is requiring only a reasonable basis to support claims, no analytical testing is necessary.

Although the agency chose to exempt menus from its regulatory coverage, FDA assumed restaurants would alter menus to comply with the agency's definitions because of the possibility of enforcement by the States. Based on anecdotal information, FDA assumes that restaurants are not currently making health claims—only nutrient content claims. Therefore, the agency determined that approximately 18,000 menus would require changes valued at $500 per menu, or $9 million. In addition, approximately 4,500 menus would require more extensive changes valued at $1,700 per menu, or $8 million. The total cost of compliance for food service establishments was estimated to be $17 million.

2. Current Estimate

FDA is currently proposing to remove provisions that exempt restaurant menus from the requirements for how nutrient content claims and health claims are to be made. Because the agency originally assumed that restaurants of all sizes would alter their menus in order to comply with the regulations so as to avoid State enforcement, the current action to include menus in the agency's regulatory coverage will not result in any significant increase in costs to food service establishments.

However, the currently proposed effective dates will have an impact on costs to restaurants. This regulation will require that approximately 2,800 large and medium restaurants to redesign 3,600 menus (simple changes at $500 per menu) and approximately 900 menus (complex changes at $1,700 per menu). Total costs to large and medium sized restaurants are $3.4 million. If, however, 90 percent of large and medium sized restaurants have a reasonable basis to support claims currently being made, the current proposal will result in costs to large and medium sized restaurants of less than $1 million.

However, because FDA originally deferred enforcement for small food service firms (10 or fewer individual establishments), which constitute 75 percent of food service establishments, FDA's currently proposed effective date for small restaurants to comply with nutrient content claims definitions will result in an increase in costs for small restaurants. Small firms will need to change their menus and other labeling to comply with the nutrient content claims regulations approximately 6 to 8 months earlier than under the previous effective date of May 1995. Therefore, this regulation will cause approximately 8,500 small restaurants to redesign 10,800 menus (simple changes at $500 per menu) and approximately 2,700 menus (complex changes at $1,700 per menu). Total costs to small restaurants are estimated to be as much as $10.1 million. If, however, 90 percent of small restaurants have a reasonable basis to support claims currently being made, which is not an unreasonable assumption, the current proposal will result in costs to small restaurants of approximately $1 million.

Total costs to all restaurants are estimated to be between $1 million and $13.5 million, depending on how many restaurants can provide a reasonable basis to support the claims currently being made.

B. Benefits

Because the agency is proposing to include menus in their coverage of these regulations and to require small restaurants to comply earlier than would have been the case under the January 6, 1993, final rules, this proposal will result in some benefits, although the agency is unable to quantify them at this time.

C. Regulatory Flexibility

The Regulatory Flexibility Act states that its purpose is "to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation" (Sec. 2(b)). The agency is compelled to examine regulatory alternatives which would alleviate the burden on small businesses.

The agency determined in its final rules implementing the 1990 amendments that, in spite of the flexibility provided restaurants by allowing for a reasonable basis standard for making claims, the requirements were sufficiently complex so as to be burdensome to small firms. Therefore, the agency determined that it was appropriate to defer enforcement for 1 year for small restaurant firms. The agency's proposal could increase costs to small businesses by between $1 million to $10 million. However, the agency is unable to determine whether the proposed rule will have a significant impact on a substantial number of small businesses.

D. Summary

FDA has examined the impact of this proposed rule in accordance with Executive Order 12291 and has determined that it is not a major rule. The proposed rule will result in total costs to restaurants of between $1 million and $13.5 million, depending on the number of restaurants that have a reasonable basis to support the claims they currently use.

FDA has also examined the impact of this proposed rule on small businesses in accordance with the Regulatory Flexibility Act and has determined that this proposed rule will result in an increase of costs to small businesses of between $1 million and $10 million.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. William P. Fisher, National Restaurant Association, Letter to the Dockets Management Branch, FDA, February 5, 1993.

2. Henry A. Waxman, U.S. House of Representatives, Letter to David Kessler, FDA, February 1, 1993.

3. Theresa A. Amato, Public Citizen Litigation Group, Letter to Donna E. Shalala, Secretary of Health and Human Services, February 26, 1993.

VIII. Comments

Interested persons may, on or before August 16, 1993, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.10 is revised to read as follows:

§ 101.10 Nutrition labeling of restaurant foods.

(a) *Nutrient content claims.* Effective May 8, 1994, nutrition labeling in accordance with § 101.9 shall be provided upon request for any restaurant food or meal for which a nutrient content claim (as defined in § 101.13 or subpart D of this part) is made, except:

(1) For means in restaurant firms consisting of more than 10 individual restaurant establishments, for which paragraph (a) of this section will be effective [12 months after the date of publication of the final rule in the **Federal Register**];

(2) for restaurant firms consisting of 10 or fewer individual establishments, for which paragraph (a) of this section will be effective [12 months after the date of publication of the final rule in the **Federal Register**]; and

(3) That information on the nutrient amounts that are the basis for the claim (e.g., "low fat," this meal provides less than 10 grams of fat) may serve as the functional equivalent of complete information as described in § 101.9. Nutrient levels may be determined by nutrient data bases, cookbooks, or analyses or by other reasonable bases that provide assurance that the food or meal meets the nutrient requirements for the claim. Presentation of nutrition labeling may be in various forms, including those provided in § 101.45 and other reasonable means.

(b) *Health claims.* Effective May 8, 1993, nutrition labeling in accordance with § 101.9 shall be provide upon request for any restaurant food or meal for such a health claim (as defined in § 101.14 and permitted by a regulation in subpart E of this part) is made, except:

(1) For menus in restaurant firms consisting of more than 10 individual restaurant establishments, for which paragraph (b) of this section will be effective [4 months after the date of publication of the final rule in the **Federal Register**];

(2) For restaurant firms consisting of 10 or fewer individual establishments, for which paragraph (b) of this section will be effective [4 months after the date of publication of the final rule in the **Federal Register**];

(3) That information on the nutrient amounts that are the basis for the claim (e.g., "low fat," this meal provides less than 10 grams of fat) may serve as the functional equivalent of complete information as described in § 101.9. Nutrient levels may be determined by nutrient data bases, cookbooks, or analyses or by other reasonable bases that provide assurance that the food or meal meets the nutrient requirements for the claim. Presentation of nutrition labeling may be in various forms, including those provided in § 101.45 and other reasonable means.

3. Section 101.13 is amended by redesignating paragraphs (q)(5) (i) through (iii) as paragraphs (q)(5) (iii) through (v), by revising the introductory text of paragraph (q)(5), and adding new paragraphs (q)(5) (i) and (ii) to read as follows:

§ 101.13 Nutrition content claims—general principles.

* * * * *

(q) * * *

(5) a nutrient content claim used on food that is served in restaurants or other establishments in which food is served for immediate human consumption or which is sold for sale or use in such establishments shall comply with the requirements of this section and the appropriate definition in subpart D of this part, by May 8, 1994, except:

(i) For menus for which the requirements of paragraph (q)(5) of this section will be effective [12 months after date of publication of the final rule in the **Federal Register**]; and

(ii) For restaurant firms consisting of 10 or fewer individual restaurant establishments, for which the requirements of paragraph (q)(5) of this section will be effective [12 months after date of publication of the final rule in the **Federal Register**; and

* * * * *

4. Section 101.14 is amended by revising paragraphs (d)(2)(vii)(B) and (d)(3) to read as follows:

§ 101.14 Health claims; general

* * * * *

(d) * * *

(2) * * *

(vii) * * *

(B) Where the food that bears the claim is sold in a restaurant or in other establishments in which the food that is ready for human consumption is sold, the food can meet the requirements of paragraphs (d)(2)(vi) or (d)(2)(vii) of this section if the firm that sells the food has a reasonable basis on which to believe that the food that bears the claims meets the requirements of paragraphs (d)(2)(vi) or (d)(2)(vii) of this section and provides that basis upon request. The

requirements of this paragraph are effective May 8, 1993, except:

(*1*) For menus for which the requirements of paragraph (d)(2)(vii)(B) of this section will be effective [4 months after date of publication of the final rule in the **Federal Register**]; and

(*2*) For restaurant firms consisting of 10 or fewer individual restaurant establishments, for which the requirements of paragraph (d)(2)(vii)(B) of this section will be effective [4 months after date of publication of the final rule in the **Federal Register**].

(*3*) Nutrition labeling shall be provided in the label or labeling of any food for which a health claim is made in accordance with § 101.9 or for restaurant foods, in accordance with § 101.10. The requirements of this paragraph are effective as of May 8, 1993, except:

(i) For menus for which the requirements of paragraph (d)(3) of this section will be effective [4 months after date of publication of the final rule in the **Federal Register**; and

(ii) for restaurant firms consisting of 10 or fewer individual restaurant establishments, for which the requirements of paragraph (d)(3) of this section will be effective [4 months after date of publication of the final rule in the **Federal Register**].

* * * * *

David A. Kessler,

Commissioner of Food and Drugs.

Dated: May 27, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 93–13970 Filed 6–10–93; 9:56 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–0041–92]

RIN 1545–AQ81

Special Rules for Determining Source of Scholarships and Fellowship Grants

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations that provide necessary guidance for determining the source of scholarships and fellowship grants under section 863(a). The proposed regulations will affect both individuals and withholding agents.

DATES: Written comments and requests for a public hearing must be received by August 16, 1993.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (INTL–0041–92), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol P. Tello of the Office of Associate Chief Counsel (International), Internal Revenue Service, (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed Income Tax Regulations (26 CFR part 1) under section 863 of the Internal Revenue Code (Code).

Explanation of provisions

Under section 863(a), the Secretary is authorized to provide regulations regarding the source of items of gross income other than items specified in sections 861(a) and 862(a). No rules for determining the source of scholarships or fellowship grants as defined in § 1.117–3 are provided by sections 861(a) and 862(a).

In Revenue Ruling 89–67, 1989–20 I.R.B. 4, the Service stated its position that scholarships and fellowship grants are sourced by reference to the residence of the grantor. The revenue ruling, however, did not consider all cases that may arise. These proposed regulations adopt the position contained in Revenue Ruling 89–67 and provide a special rule for nonresident aliens who receive scholarships or fellowship grants as defined under § 1.117–3 from U.S. grantors in respect of study or research activities to be conducted outside the United States. Under such circumstances, the scholarship or fellowship grant is treated as income from sources outside the United States.

The revenue ruling holds that the source is determined by the residence of the payor, adding that an actual payment made by a genuine agent of the payor does not alter the source. The regulations provide the same rule by looking to the status (*i.e.*, whether the person is a U.S. person or a foreign person) of the person making the award.

Proposed Effective Date

These regulations are proposed to be effective for payments made after December 31, 1986. However, the residence of the payor rule (contained in § 1.863–1(d)(1) of the proposed regulations) without application of the special rule (contained in § 1.863–1(d)(2) of the proposed regulations) may be applied to payments made after May 14, 1989, and before June 16, 1993.

Comments and Request for a Public Hearing

Before adoption of these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits timely written comments on the proposed rules. If a hearing is scheduled, notice of the time, place and date for the hearing will be published in the Federal Register.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Carol P. Tello of the Office of Associate Chief Counsel (International), Internal Revenue Service. However, other personnel from offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for part 1 is amended by adding a citation in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.863–1 also issued under 26 U.S.C. 863(a). * * *

Par. 2. Paragraph (d) is added to § 1.863–1 to read as follows:

§ 1.863–1 Allocation of gross income under section 863(a).

* * * * *

(d) *Scholarships and fellowship grants*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, scholarships and fellowship grants as defined under § 1.117–3 awarded after December 31, 1986, by a U.S. citizen or resident, a domestic corporation, the United States (or an instrumentality or agency thereof), a State (or any political subdivision thereof), or the District of Columbia shall be treated as income from sources within the United States. Conversely, scholarships and fellowship grants awarded by a nonresident alien, a foreign corporation, a foreign government (or an instrumentality, agency, or any political subdivision thereof), or an international agency shall be treated as income from sources without the United States.

(2) *Study or research outside the United States by a nonresident alien.* If a scholarship or fellowship grant as defined under § 1.117–3 is received by a nonresident alien in respect of study or research activities to be conducted outside the United States, the scholarship or fellowship grant shall be treated as income from sources without the United States.

(3) *Effective date.* This paragraph (d) is effective for payments made after December 31, 1986. However, the residence of the payor rule of paragraph (d)(1) of this section, without application of the special rule of paragraph (d)(2) of this section may be applied to payments made after May 14, 1989, and before June 16, 1993.

Teddy R. Kern,

Acting Commissioner of Internal Revenue.

[FR Doc. 93–13967 Filed 6–14–93; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL–4665–7]

Public Meeting To Discuss Organization of Small Nonroad Engine Regulatory Negotiation Process

AGENCY: Environmental Protection Agency.

ACTION: Public meeting.

SUMMARY: The Environmental Protection Agency (EPA) will hold a public meeting June 30 and July 1, 1993 concerning the organization of a committee and use of a regulatory negotiation process to develop data and regulations for the control of emissions from small nonroad engines under the Clean Air Act Amendments. The meeting is open to the public without advance registration.

The meeting will begin with a orientation session on the negotiation process and negotiation skills for potential negotiation participants. This session is scheduled to run from 10 a.m. to 2 p.m. on June 30. The agenda for the remainder of the meeting will include reporting on the development of data to date and related regulation, and discussions of membership in the regulatory negotiation process, organizational protocols for the small nonroad engine regulatory negotiation committee, and a schedule for regulation development and future meetings of the regulatory negotiation committee.

DATES: The meeting will be held on June 30, 1993 from 10 a.m. to 5 p.m. and on July 1, 1993 from 8:30 a.m. to 3 p.m.

ADDRESSES: The location of the meeting will be the Sheraton Inn, 3200 Boardwalk, Ann Arbor, Michigan 48108.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the technical and substantive issues related to the potential negotiated rule should contact Betsy McCabe, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor, Michigan 48105; phone (313) 668–4344. Persons needing further information on procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, Washington, DC 20460, (202) 260–5495.

Dated: June 9, 1993.

Deborah S. Dalton,

Deputy Director, EPA Consensus and Dispute Resolution Program, Office of Regulatory Management and Evaluation.

[FR Doc. 93–14052 Filed 6–14–93; 8:45 am]

BILLING CODE 6560–60–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 93–124; FCC 93–203]

Treatment of Operator Services Under Price Cap Regulation

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under its notice, the Commission proposed to amend its price cap regulations by establishing a new service category in the basket for traffic sensitive switched interstate access elements (Traffic Sensitive Basket) to include the rates set by local exchange carriers (LECs) for their operator services. The Commission tentatively concluded that creation of this separate category is necessary to ensure that price cap LECs do not have unlimited ability to change rates for these services in relation to their rates for other services. Accordingly, the Commission sought comment on its proposals and invited parties to submit alternative proposals.

DATES: Comments must be filed on or before July 6, 1993, and reply comments must be filed on or before July 21, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Allen A. Barna, Common Carrier Bureau, (202) 632–6917.

SUPPLEMENTARY INFORMATION:

Background

This is a summary of the Commission's Notice of Proposed Rulemaking (Notice) in CC Docket No. 93–124, adopted April 23, 1993 and released May 26, 1993, FCC 93–203. The full text is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC 20554. The Notice proposes the establishment of a new operator services category in the Traffic Sensitive Basket for local exchange carriers subject to price cap regulation.

Current Commission Rules require that costs associated with operator services be allocated to the interexchange category of part 69 but do not clearly provide for recovery of these costs. However, over the past few years, the Commission's Common Carrier Bureau (Bureau) has granted various waivers of part 69 to enable LECs to establish access elements to recover the costs of providing these services.

In an order addressing such a waiver petition, the Bureau required one LEC offering such services to create a separate access rate element for these operator services and to allocate all costs of these services to that element. Ameritech Operating Companies, Petition for Waiver of Section 69.4(b) of the Commission's Rules, 6 FCC Rcd 1541 (Com. Car. Bur. 1991) (*Ameritech Order*). Recognizing that other LECs would likely seek similar waivers, the *Ameritech Order* granted a blanket waiver of part 69 to enable other LECs meeting these conditions to recover the

costs of such services without individual waivers.

Under price cap regulation, operator services are considered to be "new" services at the time they are introduced. Although temporarily held outside price cap baskets and service categories, new services are eventually incorporated into a basket and category. As a general matter, the part 69 rules determine the basket and category classification but, as noted above, current part 69 rules do not describe an operator service element or elements. Several LECs have therefore established such elements pursuant to individual part 69 waivers or the *Ameritech Order*.

To clarify its proposed treatment of these operator services and seek comment on its proposal, the Commission adopted the Notice. These actions were taken pursuant to Sections 1, 4 (i) and (j), 201–205, 218, 220, and 403 of the Communications Act as amended, 47 U.S.C. 151, 154 (i) and (j), 201–205, 218, 220, and 403.

Summary of Notice of Proposed Rulemaking

1. In this Notice, the Commission proposes to amend part 61 of its Rules to establish a new operator services category in the Traffic Sensitive Basket for two types of LEC operator services: operator transfer and line status verification services. The Commission believes that placement of these services in a newly-created category within the Traffic Sensitive Basket is necessary to ensure that price cap LECs do not have unlimited ability to change prices for these services in relation to other traffic sensitive or interexchange rates.

2. The Commission also proposes to apply banding limitations on this new service category identical to those used for the other traffic sensitive categories, *e.g.*, plus or minus 5 percent per year adjusted for changes in the basket's price cap index. Use of a separate category, coupled with banding limitations, will ensure that operator services customers as a whole will not experience large price increases or decreases in a given year, while at the same time providing LECs with the flexibility they may need to adjust prices in an incremental manner. Accordingly, the Commission seeks comment on this proposal, and invites parties to submit alternative proposals.

Initial Regulatory Flexibility Analysis

3. Because of the nature of local exchange and access service,, the Commission concluded that small telephone companies are dominant in their fields of operation and therefore are not small entities as defined by the Regulatory Flexibility Act. See MTS and WATS Market Structure, 93 FCC 2d 241, 338–39 (1983). Thus, the Commission is not required by the terms of that Act to apply the formal procedures set forth therein. The Commission is nevertheless committed to reducing the regulatory burdens on small telephone companies whenever possible consistent with its other public interest responsibilities. Accordingly, the Commission will, on an informal basis as appropriate, analyze the effect of these proposed regulations on small telephone companies.

Ex Parte Analysis

4. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See *generally*, 47 CFR 1.1202, 1.1203, and 1.1206(a).

Ordering Clauses

5. Accordingly, *it is ordered* that notice is hereby given of the proposed changes in the basket established under price cap regulation for traffic sensitive switched interstate access services. Comment is invited on these proposals.

6. Accordingly, *it is further ordered* that, pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, parties wishing to file comments must file them with the Secretary, Federal Communications Commission, Washington, DC 20554 on or before July 6, 1993. Persons wishing to file reply comments must do so on or before July 21, 1993. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting documents. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. In addition, parties must file two copies of any such pleadings with the Tariff Division, Common Carrier Bureau, room 518, 1919 M Street, NW., Washington, DC 20554. Parties must also file one copy of any documents filed in this docket with International Transcription Service, the Commission's duplicating contractor, at its office in Suite 140, 2100 M Street, NW., Washington, DC 20037.

List of Subjects in 47 CFR Part 61

Communications common carriers, Price cap regulation, Price cap tariff filing and review procedures, Telephone.

Federal Communications Commission.

Donna Searcy,

Secretary.

[FR Doc. 93–13962 Filed 6–14–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[PR Docket 93–144; FCC 93–257]

Private Land Mobile Radio Services; 800 MHz Wide Area Operations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Notice of Proposed Rule Making soliciting comment on proposals to amend its Rules to facilitate the aggregation of substantial numbers of 800 MHz Specialized Mobile Radio channels at base station sites within defined geographic areas. The proposed rules will promote development of more efficient systems of communication and offer a diverse array of mobile communications services to greater numbers of customers.

DATES: Comments must be filed on or before July 19, 1993 and reply comments must be filed on or before August 5, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Julia Kogan, Steve Sharkey, Rosalind Allen or Martin Liebman, Private Radio Bureau, (202) 632–7125 or (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, FCC 93–257, adopted May 13, 1993 and released June 9, 1993. The full text is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW, Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M Street, NW, suite 140, Washington, DC 20037, telephone (202) 857–3800. The following collection of information contained in these proposed rules has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of the submission may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, telephone (202) 857–3800. Persons wishing to comment on this collection should direct their comments to Jonas Niehardt, (202) 395–4814,

Office of Management and Budget, room 3235 NEOB, Washington, DC 20503. A copy of any comments filed with the Office of Management and Budget also should be sent to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project, Washington, DC 20554. For further information contact Judy Boley, Information Resources Branch, Office of Managing Director, Federal Communications Commission, (202) 632–7513.

OMB Number: None.

Title: Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band.

Action: New collection.

Respondents: Individuals or households, state or local governments, businesses or other for-profit entities, and small businesses or organizations.

Estimated Annual Burden: It is estimated that there will be approximately 1410 applicants for Expanded Mobile Service Provider (EMSP) licenses, and that most will file applications within the first two years of EMSP licensing, and that it will take 70 minutes to prepare information related to the initial EMSP license, which equals a one-time burden of 1645 total burden hours in the first two years for information to be filed as part of the original application and its accompanying supplements. We also estimate that there will be approximately 1175 eventual EMSP licensees, and that they will request, on average, licensing of 8 base station sites per year during the five years after the grant of an EMSP license, and that the information collection burden will be approximately 20 minutes per application for permission to operate at each base station site, totaling 3133⅓ hours per year for the five years after the first EMSP licenses are granted. In addition, EMSP licensees must demonstrate within five years after the license grant that they have constructed their EMSP base stations so as to cover 80 percent of the geographic area or 80 percent of the population in the BTA or MTA. We estimate that this collection will maintain or decrease existing information collection burdens, because these licensees will demonstrate coverage instead of making traditional, more burdensome demonstrations of spectrum usage by reference to system loading.

Estimated Frequency of Response: On occasion.

Needs and Uses: This information collection would be used to determine whether the requested channels should be licensed to EMSP licensees at the requested sites, to enforce EMSP licensee compliance with our co-channel separation rules, and to maintain an accurate database to resolve licensing and interference protection issues.

Summary of Notice of Proposed Rule Making

1. The Commission initiates this proceeding to examine approaches to assigning 800 MHz Specialized Mobile Radio (SMR) spectrum for use throughout wide service areas. In particular, the Commission proposes to establish an "Expanded Mobile Service Provider" (EMSP) licensing method, and grant 800 MHz SMR wide-area licenses that would permit channels to be aggregated for operation of wide-area systems throughout each of the 47 Rand-McNally Major Trading Areas (MTAs), or, in the alternative, each of the 487 Rand-McNally Basic Trading Areas (BTAs). The Commission proposes to initially restrict eligibility for EMSP licenses to those entities who were licensees of existing 800 MHz SMR systems within the MTA or BTA on or before May 13, 1993, and seek to reuse throughout that area the SMR channels operating on stations that they have constructed and placed in operation as of the date that they apply for the EMSP license. The Commission would dispose of applications requesting licensing on the same channels within a MTA or BTA by (a) providing applicants within each area with a 60-day opportunity to resolve the conflict, and if they are unable to do so, by (b) rank-ordering all applications within the area by lottery and granting applications accordingly. Alternatively, if the Commission receives legislative authority, it would use competitive bidding procedures to select among mutually exclusive applicants.

2. After conducting the first round of EMSP licensing, the Commission would, under certain conditions, grant, on a first-come, first-served basis, EMSP licenses for an additional 42 channels. An EMSP licensee could reuse any SMR Category channels covered by the EMSP license throughout the MTA or BTA without regard to current restrictions on applying for more than five channels at a time or establishing minimum loading. The EMSP licensee would be required, however, to construct and operate a system that covers at least 80 percent of the population or 80 percent of the geographic area in its BTA/MTA. In addition, EMSP licensees would be required to certify that they will protect existing co-channel licensees and previously filed co-channel applications from harmful interference. Furthermore, an EMSP licensee would be required to construct and begin operating its system within five years of the date the license is granted.

3. The Commission proposes to permit an EMSP licensee to modify its system license by obtaining conditional authority to operate its individual base stations within the MTA or BTA upon completing a "self-coordination" procedure. In addition, under the proposed rules, any EMSP licensee that had not constructed and placed in operation sufficient 800 MHz SMR channels to meet the EMSP coverage standard prior to applying for an EMSP license would be required to post a performance bond or place funds in escrow to be withdrawn as needed for construction of the remaining facilities as a condition of receiving five years to implement its wide-area system. EMSP licensees would be prohibited from assigning or transferring their licenses or applying for additional wide-area channels until they satisfied the Commission's requirements for constructing and operating their EMSP channels, although they could lease system capacity in the interim.

4. The Commission proposes to cancel the license of any EMSP licensee that fails to comply with any of the proposed conditions of the license. Upon cancellation, the EMSP licensee would retain an individual SMR license for each base station within the MTA or BTA that was constructed and placed in operation.

Initial Regulatory Flexibility Analysis

5. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis of the expected impact on small entities of the proposals contained in the notice.

A. Reason for Action

6. This rule making proceeding is initiated to obtain comment regarding whether marketplace developments should lead the Commission to change part 90 of its Rules. The part 90 changes proposed herein would respond to those developments by enhancing use of the 806–824 MHz and 851–869 MHz bands for Specialized Mobile Radio (SMR) systems.

B. Objectives

7. The Commission seeks to permit development of spectrally efficient wide-area SMR systems while continuing to allow entities that do not evolve into wide-area systems to acquire spectrum and remain viable. It also seeks to encourage more efficient use of spectrum in congested areas and to

accommodate technologically advanced systems supporting enhanced services such as seamless wide-area roaming and clear data transmission.

C. Legal Basis

8. The legal basis for these rule changes is found in sections 4(i), 302, 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 302, 303(g), 303(r), and 332(a).

D. Reporting, Recordkeeping, and Other Compliance Requirements

9. Applicants for Expanded Mobile Service Provider (EMSP) licenses must electronically file their EMSP license applications, and subsequent EMSP licensees must electronically file their applications for conditional authorizations for individual base station sites, using a particular computer-readable format, provided that the Commission has the capacity to accept information in such a format. The EMSP license applications must include the names of participants in the application; information regarding channels sought to be incorporated into the EMSP license; certification that the applicant will protect co-channel licensees and pending applications for co-channel facilities in the MTA/BTA from harmful interference; a construction schedule and cost estimates. EMSP licensees applying for conditional authorizations must include in each license modification application a list of all co-channel stations and previously filed co-channel applications in the area, including call signs and coordinates, and the stations' effective radiated power and antenna heights if co-channel spacing requirements are not met. In addition, EMSPs that do not have constructed and operational base stations in the relevant BTA/MTA must place into escrow sums equal to their reasonable estimates of costs of constructing their proposed EMSP systems, or obtain a performance bond in that amount. These licensees must demonstrate within five years after the license grant that they have constructed their EMSP channels so as to cover 80 percent of the geographic area or 80 percent of the population in the BTA/MTA, or any funds remaining in escrow that were not used for construction, or the amount of the performance bond, will be paid over to the U.S. Treasury.

E. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

10. None.

F. Description, Potential Impact, and Number of Small Entities Involved

11. Many small entities, including SMR licensees, could be positively affected by this proposal because additional SMR service offerings and authorized service areas would be made available to them. The number of small entities that will be affected is unknown. In addition, expanded service opportunities will generate demand for new SMR equipment, benefiting equipment manufacturers. After evaluating comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

12. This Notice solicits comment on a variety of alternatives. All significant alternatives presented in response to the petitions for rule making have been addressed in this Notice of Proposed Rule Making.

List of Subjects in 47 CFR Part 90

Radio, Private and mobile radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–13961 Filed 6–14–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–118; Notice 3]

RIN 2137–AB97

Excess Flow Valve Installation on Service Lines

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Notice of meeting and extension of comment period.

SUMMARY: In a notice of proposed rulemaking (NPRM) (Notice 2), RSPA requested public comment concerning the proposed rules regarding excess flow valves (EFVs) (58 FR 21524; April 21, 1993). Certain parties have requested a conference with RSPA regarding the issues presented in the Notice. Accordingly, RSPA has determined that a public meeting is appropriate to receive additional comments for consideration in preparing the final rule.

DATES: The meeting will be held on June 18, 1993, from 9 a.m. until noon. The comment period for responding to the NPRM is extended to July 6, 1993 in order to allow those not attending the meeting to have access to the transcript of the meeting.

ADDRESSES: The meeting will be held in the Nassif Building, Rooms 9230 and 9232, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. The transcript of the meeting will be available for inspection and copying in Room 8421, Nassif Building, 400 Seventh Street SW., Washington, DC 20590 between the hours of 8:30 a.m. and 5 p.m. each working day.

FOR FURTHER INFORMATION CONTACT: Jack Willock, (202) 366–2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366–4453, regarding copies of this notice or other material in the docket that is referenced in this notice.

SUPPLEMENTARY INFORMATION: In the NPRM referenced above, RSPA discussed comments and data received in response to the Advance Notice of Proposed Rulemaking (ANPRM) (55 FR 52188; December 20, 1990) and proposed new pipeline safety rules requiring the installation of EFVs under certain conditions. Certain parties have stated a desire to confer with RSPA regarding the issues the NPRM presented. Accordingly, RSPA has determined that a public meeting is appropriate to receive additional comments for consideration in preparing the final rule. The purpose of the meeting is to receive information from commenters. Accordingly, RSPA officials will not answer questions, but will respond to appropriate comments in the final rule.

Anticipated topics to be discussed by commenters at the meeting include, but are not limited to the following:

1. RSPA's benefit-cost analysis.
2. Required use of non-bypass EFVs.
3. Requirement of operator standard testing.
4. Sizing of piping, fittings and other valves in EFV-equipped service lines.
5. Content of manufacturing specifications.
6. Number of EFVs in service.
7. EFV false closure data base.
8. RSPA interpretation of 10 psig rule applicability.
9. Function of EFVs under differing gas densities.

Interested persons are invited to attend the meeting and present oral or

written statements on the matters set for the meeting. Any person who wishes to make oral statements at the meeting should notify Rebecca Key (202–366–1640) before June 17, 1993, stating the topic and the time required for the initial statement.

Interested parties that are not scheduled to comment will have an opportunity to comment only after approval of the meeting officer.

(49 App. U.S.C. 1672 and 1804; 49 CFR 1.53)

Issued in Washington, DC, on June 10, 1993.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 93–14047 Filed 6–11–93; 1:19 pm]

BILLING CODE [illegible]

Notices

Federal Register
Vol. 58, No. 113
Tuesday, June 15, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Request for Applications from Persons Interested in Designation to Provide Official Services in the Geographic Area Presently Assigned to the State of New York

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: In the April 29, 1993, **Federal Register** FGIS requested applications for designation for the geographic area currently assigned to the New York State Department of Agriculture and Markets (New York) to be received by May 31, 1993. Since no applications were timely received, FGIS is again asking persons, including New York, interested in providing official services in the geographic area assigned to New York to submit an application for designation. The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designation of New York will end October 31, 1993, according to the Act.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before July 15, 1993.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send their application to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

In the April 29, 1993, **Federal Register** (58 FR 25965), FGIS asked persons interested in providing official services in the geographic area assigned to New York to submit an application for designation. Applications were due by May 31, 1993. Since no applications for the New York area were timely received, FGIS is again asking for applications from persons interested in providing official services in the geographic area assigned to New York to submit an application for designation. FGIS designated New York, main office located in Albany, New York, to provide official grain inspection services under the Act on November 1, 1990. Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation New York ends on October 31, 1993.

The geographic area presently assigned to New York, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is the entire State of New York, except those export port locations within the State which are serviced by FGIS.

Interested persons, including New York, are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning November 1, 1993, and ending October 31, 1996. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: June 9, 1993

Neil E. Porter

Director, Compliance Division

[FR Doc. 93–13947 Filed 6–14–93; 8:45 am]

BILLING CODE 3410–EN–F

Forest Service

Southern Region; Exemption From Appeal of the Decision to Control Southern Pine Beetle Infestations in Turkey Hill Wilderness, Angelina National Forest, TX

AGENCY: Forest Service, USDA.

ACTION: Notice; exemption of decision from administrative appeal.

SUMMARY: Pursuant to 36 CFR 217.4(a)(11), the Acting Regional Forester for the Southern Region has determined that good cause exists and notice is hereby given to exempt from administrative appeal the decision to suppress southern pine beetle (SPB) infestations within Turkey Hill Wilderness, Angelina National Forest, Texas, during the current outbreak where they are threatening susceptible pine trees on adjacent private lands or potentially threatening a colony and foraging habitat of the red-cockaded woodpecker (RCW), a federally-listed endangered species.

EFFECTIVE DATE: June 15, 1993.

FOR FURTHER INFORMATION CONTACT: Wesley A. Nettleton, Group Leader, Entomology, Southern Region, Forest Service-USDA, 1720 Peachtree Road, NW., Atlanta, GA 30367 (404) 347–2961.

SUPPLEMENTARY INFORMATION: The Forest Stewardship Act of 1990 authorizes the protection of federally-owned forest lands from insects and diseases. The 1964 Wilderness Act in section 4(d)(1), states; "In addition, such measures may be taken as may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable." The 1973 Endangered Species Act requires that

the Forest Service must "seek to conserve endangered species." The USDI Fish and Wildlife Service (FWS) issued a biological opinion dated December 12, 1986, stating that failure to take action in wilderness to protect RCW colonies from SPB is likely to jeopardize the continued existence of the species. The Forest Service followed the advise of the FWS. A Record of Decision (ROD), for the Final Environmental Impact Statement for the Suppression of the Southern Pine Beetle (SPB–FEIS) was signed on April 6, 1987. The alternative selected in the ROD protects RCW colonies and adjacent private forested land by permitting suppression of SPB spots within wilderness. However, stringent criteria were set for determining the need for any control action. In wilderness, SPB spots will normally be allowed to run their natural course until an essential RCW colony or its foraging habitat or adjacent forested-private land is threatened. Before any control action is taken, a site-specific environmental analysis must be completed. It must indicate that the spot: (1) Occurs within ¼ mile of susceptible host type on private land, or (2) is predicted to threaten an essential RCW colony site within the next 30 days. The analysis must also show a reasonable expectation of meeting the control objectives. Affected and interested publics will be informed about potential control-related activities.

Presently, there are active SPB spots within Turkey Hill Wilderness, one of which is within ¼ mile of the wilderness boundary and poses an immediate threat to susceptible pine trees on adjacent private land. Due to this situation, within Turkey Hill Wilderness, an environmental analysis is currently underway on a proposed action to suppress the SPB infestations that are predicted to cross the wilderness boundary onto private lands who owners show evidence of actively managing their land to suppress SPB infestations, or are maintaining a high degree of forest health. The proposal also includes provisions to protect the essential RCW colony, #11–6, and its associated foraging habitat that is located approximately ⅛ mile outside the Turkey Hill Wilderness boundary. The analysis includes control methods identified in the selected alternative in the Record of Decision for SPB–FEIS, and it also analyzes the use of behavioral chemicals that have been proven effective in local experimental work by the Texas Forest Service. The environmental document being prepared will disclose the effects of the proposed action on the environment, document public involvement, and address the issues raised by the public. Given the existing rapid expansion of infestations, time for action is critical. Any additional delay could result in a loss to presently undamaged forest resources on adjacent private lands or a red-cockaded woopecker colony site.

Dated: June 8, 1993.

Robert J. Lentz,

Deputy Regional Forester.

[FR Doc. 93–14009 Filed 6–14–93; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Announcement of Applications Received Under the Distance Learning and Medical Link Grant Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of applications received.

SUMMARY: The Administrator of the Rural Electrification Administration (REA) is hereby announcing the applications received for the Distance Learning and Medical Link Grant Program.

FOR FURTHER INFORMATION CONTACT: Lawrence L. Bryant, Jr., Chief, Planning Branch, or Mark B. Wyatt, Chief, Finance Branch, Rural Development Assistance Staff, Rural Electrification Administration, telephone number (202) 720–1400.

SUPPLEMENTARY INFORMATION: REA is hereby publishing the names of the organizations which applied for grants under 7 CFR 1703 Subpart D, Distance Learning and Medical Link Grant Program, published as a final rule on February 26, 1993. This information is being published in accordance with § 1703.115, Public Notice of Applications Received. The Administrator will make the applications available for public inspection. The applicants are as follows:

Applicant	State	Dollar amount of application
KENAI PENINSULA BOROUGH SCHOOL DISTRICT	AK	499,890
YUKON-KUSKOKWINN HEALTH CORPORATION	AK	500,000
BLACKBELT TELECOMMUNICATIONS CONSORTIUM	AL	496,020
SOUTHWEST ALABAMA MENTAL HEALTH/MENTAL RETARDATION BOARD	AL	16,172
BAPTIST MEDICAL CENTER ARKADELPHIA	AR	49,780
PENNY ADAIR FERGUSON	AR	363,037
SILOAM SPRINGS MEMORIAL HOSPITAL	AR	71,200
SLOAN-HENDRIX SCHOOL DISTRICT NO. 45	AR	22,287
UNIVERSITY OF ARKANSAS FOR MEDICAL SCIENCES	AR	497,280
AK-CHIN INDIAN COMMUNITY	AZ	93,000
CENTRAL ARIZONA COLLEGE	AZ	250,000
CENTRAL ARIZONA MEDICAL CENTER	AZ	131,900
COCHISE COLLEGE	AZ	240,200
EDUCATIONAL ENHANCEMENT FOUNDATION	CA	384,450
GENERAL HOSPITAL	CA	41,200
THE KLAMATH-TRINITY JOINT UNIFIED SCHOOL DISTRICT	CA	272,350
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA	CA	586,106
EAST CENTRAL BOARD OF COOP. EDUCATIONAL SERVICES	CO	291,301
DESOTO MEMORIAL HOSPITAL, INC.	FL	112,200
HEALTHMARK OF WALTON, INC.	FL	171,320
PANHANDLE AREA EDUCATIONAL COOPERATIVE	FL	374,424
SOUTH FLORIDA COMMUNITY COLLEGE	FL	540,221
WALKER MEMORIAL MEDICAL CENTER	FL	110,872
HOSPITAL AUTHORITY OF DOOLY COUNTY	GA	38,400

Applicant	State	Dollar amount of application
KOHALA HIGH & ELEMENTARY SCHOOL	HI	100,000
BUENA VISTA COLLEGE	IA	499,442
CENTRAL COMMUNITY HOSPITAL	IA	16,000
EASTERN IOWA COMMUNITY COLLEGE DISTRICT	IA	161,758
GREENE COUNTY MEDICAL CENTER	IA	55,303
HLV COMMUNITY SCHOOL DISTRICT	IA	236,000
KIRKWOOD COMMUNITY COLLEGE	IA	382,756
MERCY FOUNDATION	IA	500,000
NORTHWEST IOWA COMMUNITY COLLEGE	IA	216,337
VAN BUREN COUNTY HOSPITAL	IA	257,880
WINNESHIEK COUNTY MEMORIAL HOSPITAL	IA	11,600
COLLEGE OF SOUTHERN IDAHO	ID	500,000
NORTH IDAHO RURAL HEALTH CONSORTIUM	ID	496,215
SOUTHEAST IDAHO COUNCIL OF GOVERNMENT	ID	500,000
DANVILLE AREA COMMUNITY COLLEGE	IL	370,406
ILLINI HOSPITAL FOUNDATION	IL	63,825
ILLINOIS VALLEY COMMUNITY COLLEGE	IL	384,162
JANE RENEAU (MONROE GRADE SCHOOL)	IL	50,000
LAKE LAND COMMUNITY COLLEGE DISTRICT #517	IL	374,900
MERCER COUNTY HOSPITAL	IL	97,505
NORTH CENTRAL REGIONAL EDUCATIONAL LABORATORY	IL	334,510
SHAWNEE COMMUNITY COLLEGE	IL	500,000
METHODIST HOSPITAL OF INDIANA	IN	183,000
MIDWEST CENTER FOR RURAL HEALTH, DIVISION OF HOSPITAL	IN	38,690
ASBURY-SOLINA REGION MEDICAL CENTER	KS	72,640
COMMUNITY HOSPITAL, ONAGA, INC.	KS	498,800
ELLINWOOD DISTRICT HOSPITAL	KS	79,600
PRATT HEALTH CARE SERVICES FOUNDATION	KS	238,775
UNIFIED SCHOOL DISTRICT #502	KS	24,651
UNIVERSITY OF KANSAS MEDICAL CENTER	KS	500,000
WEST SOLOMON VALLEY SCHOOL DISTRICT #213	KS	436,025
CLINTON COUNTY SCHOOL DISTRICT	KY	500,000
FLOYD COUNTY BOARD OF EDUCATION	KY	256,610
GRAYSON COUNTY HOSPITAL FOUNDATION, INC.	KY	78,798
MURRAY STATE UNIVERSITY	KY	418,912
SOMERSET COMMUNITY COLLEGE	KY	399,998
ST. CATHERINE COLLEGE	KY	294,835
UNIVERSITY OF KENTUCKY RESEARCH FOUNDATION	KY	500,000
UNIVERSITY OF KENTUCKY, PRESTONBURG COLLEGE	KY	300,344
GRAMBLING STATE UNIVERSITY	LA	359,315
LAFAYETTE GENERAL HOSPITAL	LA	289,190
NORTHWESTERN STATE UNIVERSITY OF LOUISIANA	LA	499,900
REGIONAL EDUCATION SERVICE AGENCY OF APPALACHIAN	MD	482,208
MAINE SCHOOL ADMINISTRATIVE DISTRICT NO. 3	ME	345,200
PENOBSCOT BAY MEDICAL CENTER	ME	500,000
CHEBOYGAN-OTSEGO-PRESQUE ISLE INTERMEDIATE	MI	379,500
CLARE-GLADWIN INTERMEDIATE SCHOOL DISTRICT	MI	268,850
GLADWIN HOSPITAL, INC. DBA MID MICHIGAN REGIONAL MEDICAL CENTER-GLADWIN.	MI	29,960
UPPER GREAT LAKES TECHNOLOGIES EDUCATIONAL, INC.	MI	373,894
CLEARWATER COUNTY MEMORIAL HOSPITAL	MN	149,360
DISTRICT #880 HOWARD LAKE/WAVERLY	MN	173,647
DOUGLAS COUNTY HOSPITAL	MN	68,248
EAST CENTRAL MINNESOTA EDUCATIONAL CABLE CONSORTIUM	MN	488,209
INDEPENDENT SCHOOL DISTRICT #262	MN	221,476
MILLE LACS HOSPITAL & HOME	MN	27,917
MILLER-DWAN MEDICAL CENTER	MN	4,997
MINNESOTA TELE-MEDIA	MN	424,820
NORTHEASTERN EDUCATION DISTRICT #6033	MN	500,000
REGENTS OF THE UNIVERSITY OF MINNESOTA	MN	289,100
SOUTHWEST MINNESOTA TELECOMMUNICATIONS	MN	424,200
UNIVERSITY OF MINNESOTA	MN	586,000
CITIZENS MEMORIAL HOSPITAL DISTRICT	MO	180,000
KEMPER COUNTY SCHOOL DISTRICT	MS	43,700
MISSISSIPPI AUTHORITY FOR EDUCATIONAL TELEVISION	MS	484,929
MISSISSIPPI COMMUNITY COLLEGE FOUNDATION	MS	500,000
UNIVERSITY OF MISSISSIPPI	MS	500,000
CHOTEAU ELEMENTARY SCHOOL	MT	54,387
DEACONESS MEDICAL CENTER	MT	482,910
MILES COMMUNITY COLLEGE	MT	98,585
MONTANA DEACONESS MEDICAL CENTER	MT	312,200
RICHEY SCHOOL DISTRICT	MT	168,000

Applicant	State	Dollar amount of application
SCOBEY PUBLIC SCHOOLS	MT	515,500
EAST CAROLINA UNIVERSITY	NC	416,485
MOUNTAIN AREA HEALTH EDUCATION CENTER	NC	395,000
PPCC DISTRICT HEALTH DEPARTMENT	NC	120,000
UNIVERSITY OF NORTH CAROLINA AT GREENSBORO UNCG	NC	173,600
UNIVERSITY OF NC AT WILMINGTON; DIVISION FOR PUBLIC SERVICE	NC	484,452
CENTRAL DAKOTA TELECOMMUNICATIONS CONSORTIUMS	ND	493,750
COMMUNITY MEMORIAL HOSPITAL & NURSING HOME	ND	41,000
MISSOURI HILLS INTERACTIVE CONSORTIUM	ND	563,185
NEW DIMENSIONS INFORMATION AUTHORITY	ND	107,472
NORTHERN RED RIVER INTERACTIVE TELEVISION COOP.	ND	212,800
ST. ANSGAR'S HOSPITAL	ND	24,500
ST. LUKES ASSOCIATION	ND	53,445
UNIVERSITY OF NORTH DAKOTA	ND	497,186
UNIVERSITY OF NORTH DAKOTA	ND	21,073
HIGH PLAINS COMMUNITY CENTER	NE	100,000
RURAL DEVELOPMENT COMMISSION	NE	500,000
SCHOOL DISTRICT 90	NE	120,304
SCHOOL ADMINISTRATIVE UNIT #19	NH	499,716
HEALTH CENTERS OF NORTHERN NEW MEXICO	NM	481,408
NEVADA DEPARTMENT OF PRISONS	NV	58,320
UNIVERSITY & COMMUNITY COLLEGE SYSTEM OF NEVADA	NV	490,000
CLIFTON-FINE HOSPITAL	NY	39,008
DELAWARE-CHENANGO-MADISON-OTSEGO BOCES	NY	499,000
ORANGE-ULSTER BOCES	NY	114,000
THE MARY IMOGENE BASSETT HOSPITAL	NY	494,755
WESTERN NEW YORK RURAL HEALTHCARE, ASSOCIATION	NY	500,000
ELMWOOD LOCAL SCHOOL DISTRICT	OH	497,169
VANTAGE VOCATIONAL SCHOOL DISTRICT	OH	229,400
CADDO-KIOWA AREA VOCATIONAL-TECHNICAL CENTER	OK	500,000
JACKSON COUNTY MEMORIAL HOSPITAL	OK	500,000
LINDSAY PUBLIC SCHOOLS	OK	500,000
MCCURTAIN COUNTY HIGHER EDUCATION PROGRAM	OK	305,437
NORTH CADDO SCHOOLS, INC.	OK	203,238
NORTHEASTERN OK EDUCATIONAL INTERACTIVE VIDEO NETWORK	OK	389,500
NORTHWEST OKLAHOMA TECHNOLOGY CONSORTIUM, INC.	OK	477,700
REDLANDS COMMUNITY COLLEGE	OK	483,930
ROGERS STATE COLLEGE	OK	500,000
RURAL EDUCATIONAL LINK CONSORTIUM	OK	320,000
STILLWATER MEDICAL CENTER	OK	253,880
TRI-DISTRICT FIRE DEPTARTMENT	OK	27,126
VHA OF OKLAHOMA, INC.	OK	500,000
GLENDALE SCHOOL DISTRICT #77	OR	120,800
GRANDE RONDE HOSPITAL	OR	163,275
LANE COUNCIL OF GOVERNMENTS	OR	500,000
NEWBERG COMMUNITY HOSPITAL	OR	82,500
OREGON STATE SYSTEM OF HIGHER EDUCATION	OR	224,160
HUNTINGDON AREA SCHOOL DISTRICT	PA	499,996
LANCASTER GENERAL HOSPITAL	PA	32,135
LINCOLN INTERMEDIATE UNIT NO. 12	PA	500,000
TOWANDA AREA SCHOOL DISTRICT	PA	493,595
UNIVERSITY OF PITTSBURGH	PA	500,000
LOW COUNTRY GENERAL HOSPITAL	SC	25,000
ARTISEAN/LETCHER SCHOOL DISTRICT 55-5	SD	500,000
ELM VALLEY SCHOOL DISTRICT	SD	500,000
HEALTH EDUCATION DEVELOPMENT SYSTEMS, INC.	SD	497,844
MISSOURI VALLEY HEALTH NETWORK	SD	500,000
SOUTH DAKOTA BOARD OF REGENTS	SD	303,944
UNIVERSITY OF SOUTH DAKOTA	SD	343,185
EXCELLENCE IN COMMUNITY EDUCATION & ECONOMIC DEVELOPMENT	TN	500,000
MONROE COUNTY SCHOOLS	TN	486,215
SAVANNAH AREA VOCATIONAL-TECHNICAL SCHOOL	TN	60,520
UPPER EAST TENNESSEE EDUCATIONAL COOPERATIVE	TN	473,781
JACKSON COUNTY HOSPITAL DISTRICT	TX	39,400
LOHN INDEPENDENT SCHOOL DISTRICT	TX	481,568
MT. VERNON PUBLIC SCHOOLS	TX	499,900
PARIS JUNIOR COLLEGE	TX	483,502
SAN ISIDRO INDEPENDENT SCHOOL DISTRICT	TX	499,200
STAR SCHOOL INDEPENDENT DISTRICT	TX	481,586
STEPHEN F. AUSTIN STATE UNIVERSITY	TX	456,400
TEXAS TECH UNIVERSITY HEALTH SCIENCE CENTER	TX	91,404
TEXAS UNIVERSITY HEALTH SCIENCES CENTER	TX	500,000

Applicant	State	Dollar amount of application
F. LYNN BILLS	UT	493,389
MILLARD SCHOOL DISTRICT	UT	500,000
BOTETOURT COUNTY SCHOOL BOARD	VA	146,294
CAMPBELL COUNTY SCHOOLS	VA	409,644
OLD DOMINION UNIVERSITY	VA	797,624
SHENANDOAH COUNTY PUBLIC SCHOOLS	VA	73,680
CLE-ELUM ROSLYN SCHOOL DISTRICT	WA	330,094
ECONOMIC DEVELOPMENT COUNCIL OF JEFFERSON COUNTY	WA	39,030
LINCOLN HOSPITAL DISTRICT 3	WA	500,000
NORTHERN WISCONSIN EDUCATIONAL COMMUNICATION SYSTEMS	WI	1,000,000
SAUK PRAIRIE MEMORIAL HOSPITAL	WI	69,775
WEST WING (BALDWIN-WOODVILLE SCHOOL DISTRICT)	WI	500,000
CARBON COUNTY SCHOOL DISTRICT #1	WY	460,186
TRI-VALLEY CONSORTIUM C/O ST. JOHN'S HOSPITAL	WY	69,304
Total Dollar Amount of Applications		$56,999,912

Note: Total Number of Applicants—181

Authority: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*

Dated: June 9, 1993.

James B. Huff, Sr.,

Administrator.

[FR Doc 93–14041 Filed 6–14–93; 8:45 am]

BILLING CODE 3410–15–F

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Annual Survey of State and Local Government Finance.

Form Number(s): F–11, F–12, F–13, F–21, F–22, F–25, F–28, F–29, F–32, F–42.

Agency Approval Number: 0607–0585.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 22,678 hours.

Number of Respondents: 7,419.

Avg Hours Per Response: 3 hours.

Needs and Uses: This annual survey collects data in non–census years on the revenues, expenditures, indebtedness, and assets of states, counties, cities, and other governmental units. The Census Bureau incorporates data collected in this survey into its governmental finance program, a program in which the Census Bureau disseminates comprehensive and comparable governmental finance statistics. The Bureau of Economic Analysis uses data gathered in this survey as input into its calculation of Gross Domestic Product. The public and private sectors use these statistics widely to follow the size and trends of the government sector of the economy.

Affected Public: State or local governments.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 8, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–14086 Filed 6–14–93; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1993 Company Organization Survey.

Form Number(s): NC–9901, NC–9907.

Agency Approval Number: 0607–0444.

Type of Request: Reinstatement of a previously approved collection for which approval has expired .

Burden: 146,246 hours.

Number of Respondents: 65,000.

Avg Hours Per Response: 2 hours and 15 minutes.

Needs and Uses: The Census Bureau conducts the Company Organization Survey (COS) annually to update and maintain the Standard Statistical Establishment List (SSEL). The SSEL is a computerized list of employers and their establishments with one or more employees and contains such information as name, address, physical location, Standard Industrial Classification (SIC) code, employment size code, and company affiliation. It provides a single universe for the selection and maintenance of statistical samples of establishments, legal entities, or enterprises; provides a standard basis for assigning SIC codes; and provides establishment level data from multi–establishment companies that are summarized and published in the annual County Business Patterns series of reports. The updated SSEL provides a current directory of business locations for use in current economic surveys and economic censuses.

Affected Public: Businesses or other for–profit organizations, Small Businesses or organizations, Non–profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room

5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 8, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–14087 Filed 6–14–93; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Census Employment Inquiry.

Form Number(s): BC–170.

Agency Approval Number: 0607–0139.

Type of Request: Revision of a currently approved collection.

Burden: 5,000 hours.

Number of Respondents: 20,000.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Census Bureau uses the Census Employment Inquiry to obtain employment information from job applicants before or at the time they are tested. The data gathered are used by selecting officials to determine an applicant's initial qualifications to fill Census jobs.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Required to obtian or retain a benefit.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 8, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–14085 Filed 6–14–93; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Applicant Background Questionnaire.

Form Number(s): BC–1431.

Agency Approval Number: 0607–0494.

Type of Request: Revision of a currently approved collection.

Burden: 625 hours.

Number of Respondents: 15,000.

Avg Hours Per Response: 2 and one–half minutes.

Needs and Uses: The Census Bureau uses the Applicant Background Questionnaire to obtain minority and handicap information from applicants for Schedule A non–competitive positions. The data collected are analyzed to evaluate and improve the Bureau's affirmative action activities.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 8, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–14088 Filed 6–14–93; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers exports of this merchandise to the United States during the period August 1, 1991, through July 31, 1992. The review indicates the existence of dumping margins for the period of review (POR).

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the difference between United States price and foreign market value.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 15, 1993.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Tom Prosser, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1757.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1992, the Department published in the **Federal Register** (57 FR 36063) a notice of "Opportunity to Request Administrative Review" for the August 1, 1991, through July 31, 1992, period of review of the antidumping duty order on gray portland cement and clinker from Mexico (55 FR 35371, August 29, 1990). In accordance with 19 CFR 353.22, CEMEX, S.A. (CEMEX), and Apasco, S.A. de C.V. (Apasco), requested reviews. The Department published separate notices of "Initiation of Antidumping Review", on September 28, 1992, for CEMEX (57 FR 44551), and on October 22, 1992, for Apasco (57 FR 48201). Thus, the Department is now conducting a review of these respondents pursuant to section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under the

Harmonized Tariff Schedule (HTS) item number 2523.29, and cement clinker is currently classifiable under number 2523.10. Gray portland cement has also been entered under number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and U.S. Customs Service purposes only. The written description remains dispositive as to the scope of the product coverage.

United States Price

For CEMEX, we based United States price (USP) on exporter's sales price (ESP), in accordance with section 772(c) of the Tariff Act. In calculating USP, we made adjustments for foreign inland freight, ocean freight, freight from the border to the U.S. terminal, freight from U.S. terminals to customers for delivered sales, foreign brokerage, import duty, U.S. brokerage, early payment discount, competitive trade discount, inventory carrying expenses, credit and debit memos, indirect selling expenses incurred in the United States, indirect expenses incurred in Mexico on behalf of U.S. sales, credit expenses, billing adjustment, and uncollected taxes. In addition, we adjusted the U.S. price of the further-manufactured merchandise by deducting the U.S. cost of further manufacturing, the selling, general and administrative expenses applicable to the further-manufactured goods, and the profit realized from the sale of the further manufactured goods. CEMEX also claimed a transaction tax in Texas as a direct selling expense. We did not adjust for this tax, since there is no provision in the Tariff Act for such an adjustment.

Further, on March 19, 1993, the United States Court of Appeals for the Federal Circuit, in affirming the decision in *Zenith Electronics Corp.* v. *United States*, Appeals 92–1043, –1044, –1045, 1046 (Fed. Cir. March 19, 1993), ruled that section 772(d)(1)(C) of the Tariff Act provides for an addition to U.S. price to account for taxes which the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Tariff Act does not allow circumstance-of-sale adjustments to foreign market value (FMV) for the difference in taxes. Accordingly, we have changed our practice and will no longer calculate a hypothetical tax on the U.S. product, but will, for the time being, add to the U.S. price the absolute amount of tax on the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to U.S. price, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to U.S. price.

In addition, we will propose a change in 19 CFR 353.2(f)(2) to provide that we will calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated as described above, by the aggregated U.S. prices net of taxes. This change would result in weighted-average dumping margin rates which are neither inflated nor deflated on account of our methodology of accounting for taxes paid in the home market but rebated or not collected by reason of exportation. We are in the process of drafting this proposed change, and we will begin the rulemaking process as soon as possible.

On November 16, 1992, Apasco informed the Department that it made no shipments to the United States of the merchandise covered by the order during the POR. The Department has contacted the U.S. Customs Service (Customs) to verify the lack of imports of the covered merchandise produced by Apasco.

Foreign Market Value

The Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement and the National Cement Company of California (petitioners) have alleged that CEMEX created a fictitious market with respect to Type II and Type V cement. The Department is conducting a fictitious market investigation to determine whether use of CEMEX's sales of Type II and Type V cement is the appropriate basis of FMV, or whether the Department should rely on sales of Type I cement as the basis of FMV.

Petitioners have raised two main points in their allegation: (a) that CEMEX manipulated freight costs for home market shipments of Type II and Type V cement in a manner designed to lower FMV, and (b) that Mexican consumers of cement are indifferent with regard to Type I and Type II cement, and that CEMEX has sold Type II cement in the home market only for the purpose of lowering FMV.

After reviewing the extensive information provided by CEMEX in response to the Department's fictitious market questionnaire, we find preliminarily that CEMEX has adequately explained and documented for the record movements in freight costs as the result of legitimate business practices as well as reasons beyond CEMEX's control. Although arguments have been made regarding the demand for Type II cement in the home market, we find preliminarily that CEMEX has provided evidence of a genuine demand for Type II cement in Mexico. The record suggests that while Type II cement may be used where Type I cement is required, the reverse is not true; in addition, CEMEX has provided sufficient evidence that a number of its customers required Type II cement to meet specific needs for which Type I cement could not be used. Thus, we preliminarily conclude that the evidence currently on the record does not support a determination of fictitious sales.

Petitioners have also alleged that CEMEX made sales below the cost of production (COP). In response to this allegation, the Department has conducted a COP investigation. In conducting our analysis, we have relied on the COP information submitted by CEMEX, except in instances where it was not appropriately quantified or valued. Most notably, we have adjusted CEMEX's submitted expense for excess capacity, because CEMEX did not provide the specific information which the Department requested regarding this allocation. Accordingly, as best information available, we have recalculated the excess capacity expense based upon the adverse assumption that all excess capacity is related entirely to the subject merchandise. We have also made the following corrections:

(a) We corrected the calculation of general and administrative expenses (G&A) to remove the effect of a deduction by CEMEX, which CEMEX did not adequately explain;

(b) We recalculated financial expenses to include only the net monetary correction and the interest income which CEMEX specifically identified as short-term in nature;

(c) We recalculated the cost of a raw material input obtained by a particular plant from a related party, since CEMEX stated that the profits from these related party inputs had been eliminated, but did not provide sufficient explanation. Therefore, we added profit to the reported amounts, using the adverse assumptions that all raw materials at this point were purchased from the related party;

(d) We calculated COP for each of two time periods: June through December 1991, and January through June 1992;

(e) We estimated transfer prices for a related party for which CEMEX had only reported production costs; as best information available, we inflated reported cost by the percentage of profit shown on this entity's 1991 financial statements.

As a result of our investigation, we have found that over 90 percent of CEMEX's Type II sales and between 10 and 90 percent of Type V sales were made at prices below COP in substantial

quantities and over an extended period of time. In addition, we have not found that CEMEX made these sales at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. Review of the legislative history indicates that Congress recognized that certain industries have enormous pre-production costs which might cause initial sales to be below COP. Because in such instances some costs would benefit future sales, Congress would not have the Department disregard the below-cost sales if all the costs would be recovered, by those future sales, in a reasonable period of time. The Mexican cement industry is a mature industry, and CEMEX is an established manufacturer. There is no evidence on record to suggest that CEMEX experienced high pre-production costs, or other unusually high expenses in the review period, which would have been recovered in future sales.

Therefore, in accordance with section 773(b) of the Tariff Act, we have disregarded CEMEX's below-cost sales in our calculation of FMV. Since over 90 percent of CEMEX's home market sales of Type II cement were below-cost sales, we have excluded Type II cement sales from our analysis, and we based FMV for Type II cement on constructed value, in accordance with section 773(e) of the Tariff Act.

In accordance with section 773(a) of the Tariff Act, we made our FMV calculations for Type V cement using only home market sales made at prices above COP, and constructed value in place of sales made at prices below COP. For above-cost sales, we calculated FMV based on f.o.b. and c.i.f. prices. Where appropriate, we made adjustments to home market price for inland freight, early payment discount, competitive market discount, distance discount, automatic rebate, manual rebate, credit expenses, handling revenue, and home market indirect selling expenses, which consist of general indirect selling expenses and inventory carrying costs. We limited the amount deducted for indirect selling expenses incurred in the home market by the amount of indirect selling expenses incurred on sales in the U.S. market in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margins for the period August 1, 1991, through July 31, 1992, to be:

Company	Margin percentage
CEMEX, S.A	56.58
Apasco, S.A de C.V.	[1] 53.26

[1] For the period August 1, 1991, to July 31, 1992, Apasco made no shipments. In the final determination of sales at less than fair value, the Department determined a margin percentage of 53.26 percent for Apasco.

Case briefs and/or written comments from interested parties may be submitted no later than 30 days of the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 37 days of the date of publication of this notice.

Within 10 days of the date of publication of this notice, interested parties to this proceeding may request a disclosure and/or a hearing. The hearing, if requested, will take place no later than 44 days after publication of this notice. Persons interested in attending the hearing should ascertain with the Department the date and time of the hearing.

The Department will subsequently publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to Customs upon completion of this review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for the reviewed companies will be those rates established in the final results of this review;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the original less-than-fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate established in the final results of this administrative review.

This rate represents the highest rate for any firm with shipments in this review, other than those firms receiving a rate based entirely on best information available. Preliminarily, the "all others" rate for this period is 56.58%.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 4, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–13984 Filed 6–14–93; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs (OETCA), International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in

compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether the Certificate should be amended. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88–2A012."

OETCA has received the following application for a second amendment to Export Trade Certificate of Review No. 88–00012, which was issued on October 18, 1988 (53 FR 43140, October 25, 1988), and previously amended on December 4, 1989 (54 FR 51914, December 19, 1989).

Summary of the Application

Applicant: National Tooling & Machining Association ("NTMA"), 9300 Livingston Road, Ft. Washington, Maryland 20744, Contact: Thomas H. Garcia, Jr., Manager Marketing, Telephone: (301) 248–6200

Application No.: 88–2A012

Date Deemed Submitted: June 4, 1993

Request for Amended Conduct: NTMA seeks to amend its Certificate to:

1. Add each of the companies listed in Appendix A as a "Member" of the Certificate. See Appendix A.

2. Delete each of the companies listed in Appendix B as a "Member" of the Certificate. See Appendix B.

Dated: June 8, 1993.

George Muller,

Director, Office of Export Trading Company Affairs.

Appendix A

A&A Machine Company, Inc, Hatboro, PA
A&A Tool & Die Co., Inc., Lynn, MA
A&E Machine Shop, Inc., Lone Star, TX
A&G Machine, Kent, WA
A&M Engineering, Inc., Burbank, CA
A&R Manufacturing, Inc., Indianapolis, IN
A&R Precision, Tucson, AZ
A C Machine & Manufacturing, Meadville, PA
A D S Precision Sheet Metal Tucson, AZ
A L Machining & Manufacturing, Chatsworth, CA
A Landau Company, Warminster, PA
A M Design, Canton, OH
A M S, Inc., Van Nuys, CA
A M T Applied Mfg. Technologies, Desoto, TX
A S P Industries, Rochester, NY
A Z Manufacturing & Sales, Independence, MO
ACube Precision, Woodland Park, CO
A–TP Precison Deburring, Phoenix, AZ
A–1 Machining Company, New Britain, CT
A–1 Valve Repair, Inc., Oklahoma City, OK
Abco Tool and Die, Inc., Hyannis, MA
Able Wire EDM, Inc., Orange, CA
Accu Rounds, Inc., Avon, MA
Accu-Met Laser, Inc., Cranston, RI
Accurate Steel Treating, Inc., South Gate, CA
Accurate Welding II, Inc., Warren, MI
Ace Machine, Boise, ID
Ackley Machine Corporation, Moorestown, NJ
Acro-Fab Ltd., Hannibal, NY
Adept Precision Machining, Milpitas, CA
Adler Manufacturing, Burbank, CA
Advanced Ceramic Technology, Orange, CA
Advanced Grinding, Inc., Oakland, CA
Advanced Machine & Eng. Co., Rockford, IL
Advanced Machine Technology, Inc., Indianapolis, IN
Advanced Tooling Systems, Inc., Comstock Park, MI
Aero Engineering & Mfg. Company, Valencia, CA
Aerospece Products, Inc., Wichita, KS
Aerospec, Inc., Chandler, AZ
Aerotek Mfg., Inc., Barton, VT
Afam Manufacturing, Inc., Albuquerque, NM
Agape Precision Machining, Inc., Rochester, NY
Air Capital Tool Services, Inc., Wichita, KS
Aircraft Hinge, Valencia, CA
Airmetal Corporation, Jackson, MI
Alan Ramsay, Inc., Webster, NY
Alard Machine Products, Gardena, CA
All Metals Fabricating, Inc., Richardson, TX
All Tools Texas, Inc., Houston, TX
All-Tech Machining, Inc., Oakland Park, FL
Allen Randall Enterprises, Inc., Wadsworth, OH
Allfab Engineering Company, Inc., Phoenix, AZ
Alliance Metal Stamping, Rochester, NY
Alliance Precision Plastics, Rochester, NY
Alpha Mold Inc., Dayton, OH
Alpha Mold West Inc., Broomfield, CO
Alpha Tooling, Inc., Santa Fe Springs, CA
Alpine Precision, Inc., Chelmsford, MA
Alro Machine Co., Inc., Lindenhurst, NY
Alt's Tool & Machine, Inc., Santee, CA
Ambel Precision Mfg. Corp., Bethel, CT
American Mfg. & Machining, Inc., Racine, WI
American Tool & Die Welding, Roseville, MI
Amerimold, Inc., Mogadore, OH
Ameritec Tool & Die, Inc., Bay City, MI
Ames Engineering Corporation, Wilmington, DE
Andon Electronic Corporation, Lincoln, RI
Angone Tool & Die, Inc., Vernon, CA
Anoroc Company, Gardena, CA
Arc Drilling—Dynamic Balancing, Garfield Heights, OH
Arrow Diversified Tooling, Inc., Ellington, CT
Artisan Tool & Die, Inc., Muncie, IN
Artron Precision Inc., Sunnyvale, CA
Associated Spring/Raymond, Maumee, OH
Assured Quality Machining, Inc., St. Petersburg, FL
Astro Automation, Inc., Trafford, PA
Astrotronics Inc., Mesa, AZ
Atch-Mont Gear, Inc., Ivyland, PA
Atlantic Tool & Die Company, Hampstead, NC
August Machine, Inc., Phoenix, AZ
Aurelius Mfg. Co., Inc., Braham, MN
Austin Machine Company, St. Charles, MO
Automated System Integrators, Evansville, IN
Avtech Systems, Inc., Provo, UT
Axis CNC Machining, S. El Monte, CA
ABBEC Tool & Die, Rochester, NY
AT Engineering & Mfg., Inc., Chatsworth, CA
B & E Electroform Co. of S.C., Simpsonville, SC
B & L Engravers, Inc., Clearwater, FL
B & W Manufacturing Company, Bristol, CT
B C Machine Shop, Rochester, NY
B M Company, Cranston, RI
Bahnson's Machine Shop, Palm Springs, CA
Barberie Mold, Gardena, CA
Barnes Machine, Inc. Shelton, WA
Bartley Machine & Manufacturing, Amesbury, MA
Bay Tech Industries, Inc., Tampa, FL
Beacon Metrology, Inc., Chardon, OH
Beaver Fab Inc., Cedar Hill, TX
Beck Tool Company, Cambridge Springs, PA
Bedard Machine, Inc., Brea, CA
Bedford Precision, Kirkland, WA
Bennett Machine & Welding, Inc., Caldwell, ID
Benning Inc., Blaine, MN
Bent River Machine, Cottonwood, AZ
Best Way Stamping Inc., La Habra, CA
Beta Tool & Mold/Dyna-Tech, Independence, OH
Bimco, Inc., Salt Lake City, UT
Birdsall Tool & Gage, Farmington Hills, MI
Blackburn Melton Mfg. Company, Houston, TX
Blackhawk Engineering Co., Inc., Cedar Falls, IA
Blackwood Grinding Inc., Hurst, TX
Blankinship Industries, Ltd., Kent, WA
Blue Chip Tool Company, Titusville, PA
Boehm Pressed Steel Company, Cleveland, OH
Bonneville Machine, Inc., Salt Lake City, UT
Booz Tooling, Willow Grove, PA
Boyce Machine, Tallmadge, OH
Bradford Machine Company Inc., Brattleboro, VT
Brady Mold and Machine Co., Inc., Kent, OH
Brasco Machine, Anaheim, CA
Breeze Industrial Products, Saltsburg, PA
Breeze's Precision Boring Company, Pinellas Park, FL
Brent Grinding & Machine, Inc., Houston, TX
Broaching Specialties, Inc., Madison Heights, MI
Broadway Carolina, Inc., Anderson, SC
Brookfield Machine, Inc., West Brookfield, MA
Brown Corporation of Waverly, Waverly, OH
Browning Technology, Inc., Dayton, OH
BroTron Mfg. Inc., Kent, WA
Burr N Bench, Inc., Westfield, MA
Buss Precision Mold Inc., Milwaukie, OR
C & A Precision, Inc., Phoenix, AZ
C & M Precision Spindle, Inc., Carlton, OR
C A S Industries Inc., Paramount, CA

C D S Leopold, San Carlos, CA
C E C Tool Co., Inc., Fountain Inn, SC
C E I Automation, Aurora, CO
C F A Company, Inc., Milford, CT
C J Machine Products, Hayward, CA
C K D Engineering & Mfg., La Habra, CA
C M Industries, Inc., Old Saybrook, CT
C P M, Inc., Billings, MT
C Q Machining, Inc., Phoenix, AZ
C R Metal Products, Inc., St. Louis, MO
C. A. J. Welding, Westfield, MA
C. C. Industries, Brea, CA
Cal & Rogers, Meridien, ID
Calder Machine Co. (C M C), Florence, SC
California Tool Grinding, Rancho Cordova, CA
Cameron Machine Shop, Inc., Richardson, TX
CamTech Systems, Carson, CA
Cannon Industries, Inc., Rochester, NY
Carbide Probes, Inc., Dayton, OH
Carlton Precision Machine Inc., Norwich, CT
Cascade Plastics Company, Inc., Tacoma, WA
Cast Industries, Corp., Costa Mesa, CA
Castle Hone & Lap, Santa Clara, CA
Catalina Precision Engineering, Irvine, CA
Cedarbrook Engineering Corp., Minneapolis, MN
Center Machine Company, Webster, PA
Centerpoint Mfg. Co., Inc., Burbank, CA
Central Massachusetts Machine, Holyoke, MA
Central Tools, Inc., Cranston, RI
Centurion Manufacturing, Simi Valley, CA
Century Tool & Engr., Inc., Indianapolis, IN
Challenge Machining Co., Piedmont, SC
Chance Tool & Die Co., Inc., Cincinnati, OH
Chandler Tool Company, Rockford, IL
Charles P. Schilling & Sons, Inc., Bohemia, NY
Chatham Precision, Inc., Hinesburg, VT
Chicago Grinding & Machine Company, Melrose Park, IL
Chip-Makers Tooling Supply, Whittier, CA
Chip's Machine Shop Service, Phoenix, AZ
Cimco, Costa Mesa, CA
Cinex Inc., Cincinnati, OH
City Industrial Tool & Die, Harbor City, CA
Clark & Clark Enterprises, Inc., Tucson, AZ
Clark & Wheeler Engineering, Inc., Cerritos, CA
Clarke Engineering, Inc., North Hollywood, CA
Class Machine & Welding, Inc., Akron, OH
Classic Tool, Saegertown, PA
Classic Tool & Mold, Inc., Alvin, TX
Cleveland Electric Laboratories, Twinsburg, OH
Coastal Machine Company, Branford, CT
Cogswell Mfg. Co., Inc., Agawam, MA
Colbrit Manufacturing Co., Inc., Chatsworth, CA
Collins Machine Works, Inc., Wellford, SC
Collins Manufacturing, Inc., Essex, MA
Colonial Machine Co., Inc., Pleasantville, PA
Columbia Products, Inc., Dallastown, PA
Comac Manufacturing Corporation, Santa Clara, CA
Commercial Aircraft Products, Inc., Wichita, KS
Compact Air Products, Inc., Westminister, SC
Compdraw Inc., Attleboro, MA
Competitive Engineering Inc., Tucson, AZ
Computech Manufacturing Co., Inc., North Kansas City, MO
Concept Group Berlin, NJ
Condor Engineering, Inc., Colorado Springs, CO
Connecticut Tool & Cutter Co., Cheshire, CT
Conroy & Knowlton, Inc., Lake Forest, CA
Contine Corporation, Erie, PA
Continental Precision Machining , Santa Clara, CA
Contour Metrological & Mfg., Inc., Troy, MI
Cook Speciality Company, Green Lane, PA
Coventry Carbide Tool, Coventry, RI
Cramer Engineering Company, Santa Fe Springs, CA
Creative Manufacturing, Inc., Tempe, AZ
Creative Precision, Inc., Folsom, PA
Creb Engineering, Pascoag, RI
Crowe Industries, Dayton, OH
Custom Die & Insert, Inc., Lafayette, LA
Custom Precision Grinding Inc., Ft. Lauderdale, FL
Custom Ultrasonics, Inc., Buckingham, PA
Cutting Tool Technologies, Inc., Wilton, NH
CAL–SWISS Manufacturing Company, Pasadena, CA
CAM Fran Tool Co., Inc., Bensenville, IL
D & D Tool, Inc., Westfield, MA
D & K Industries, Chatsworth, CA
D & S Tool, Inc., Dallas, TX
D F O'Brien & Associates, Santa Fe Springs, CA
D K Tool & Die, Inc., Grand Rapids, MI
D M Machine & Tool, Kennerdell, PA
D O Fabrication, Inc., Sacramento, CA
D–J Engineering, Augusta, KS
Dakota Machine Tool Company, West Fargo, ND
Dan McEachern, Alameda, CA
Danson Tool and Die Inc., Bay City, MI
Darco Manufacturing, Inc., Syracuse, NY
Day-Tec Tool & Mfg., Inc., Dayton, OH
DaCo Precision Manufacturers, Sandy, UT
DaKa Enterprises, Tucson, AZ
Delaware Valley Manufacturing, Cherry Hill, NJ
Delta Fabrication & Machine, Daingerfield, TX
Delta Machine & Tool Company, Valley View, OH
Delta Tech, Inc., Mentor, OH
Desert Tool, Tucson, AZ
Dial Machine Comapny, Andalusia, PA
Diamond Door, Dunkirk, OH
Die Dimensions, Grand Rapids, MI
Die Tech Industries, Ltd., Providence, RI
Die Technology, Inc., Santa Ana, CA
Die-Namic Tool & Mfg., Inc., Rockford, IL
Digital Tool & Die, Inc., Grand Rapids, MI
Dimension Mold & Design, Tempe, AZ
Direct Machine, Inc., Tucson, AZ
Diversified Manufacturing, Inc., Lockport, NY
Diversified Tool, Inc., Mukwonago, WI
Dot Tool Company, Inc., Binghamton, NY
Dresco Machining Servicenter, Bay City, MI
Drewco Corporation, Franksville, WI
Drill Masters Inc., Hamden, CT
Dun-Rite Deburring, Denver, CO
Dyna-Tech Molding, Inc., Independence, OH
Dynamic Fabrication, Inc., Santa Ana, CA
Dynamic Technology Corporation, Fountain Inn, SC
E & S Equipment, Inc., Norman, OK
E & W Services, Mentor, OH
E K G Precision Machining, Mt. View, CA
E K L Machine Company, Inc., Andalusia, PA
E-Fab, Inc., Santa Clara, CA
Eagle Mold Company, Inc., Carlisle, OH
Eagle Precision Tooling, Erie, PA
East Side Machine, Inc., Webster, NY
Eckert Machining, Inc., San Jose, CA
Eckhart & Associates, Inc., Lansing, MI
Edwards Enterprises, Newark, CA
Egbert Precision, Inc., Colorado Springs, CO
Electro Products Company, Waltham, MA
Electronic Dev. Labs, Inc., Danville, VA
Ellison Machine Company, Laurens, SC
Emptool Co., Inc., New Kingstown, PA
Engineering Technology, Inc., Salt Lake City, UT
Erie Shore Machine Co., Inc., Cleveland, OH
Erie Specialty Products, Inc., Erie PA
Euro Swiss, Inc., San Diego, CA
Eurotech, Inc., Greenville, SC
Evans Machine, Evanston, IL
Evans Production Engineering Co., St. Louis, MO
Everett Mfg. Technologies, Santa Ana, CA
Exar Industries, Inc., Sinking Spring, PA
Excalibur Precision Tool, Hampstead, NH
Excel Manufacturing, Inc., Valencia, CA
Expedient Tool & Manufacturing, Rockford, IL
EBCO Tools, Inc., St. Louis, MO
F & F Machining Co., Inc., East Northport, NY
F F I F F Industries Inc., Grandview, MO
F R B Machine, Emlenton, PA
F S G, Inc., Mishawaka, IN
F T T Manufacturing, Lakeville, NY
F W Gartner Thermal Spraying Co., Houston,TX
Fantasy Manufacturing, Windsor, CA
Fenwick Machine & Tool, Piedmont, SC
Fischer Engineering, Inc., Duarte, CA
Fleximation Tool Corporation, Riverside, CA
Florida Wire EDM Systems, Largo, FL
Flower City Fasteners, Inc., Rochester, NY
Fluitron, Inc., Ivyland, PA
Foriska Machine Shop, Saegertown, PA
Forrest Manufacturing Company, Houston, TX
Forte Company, Kansas City, MO
Fortner Precision, Santa Fe Springs, CA
Foundry & Steel, Inc., Anderson, SC
Fox Hone & Lap, Inc., Chatsworth, CA
Frasal Tool Company, Newington, CT
Frazier Aviation, Inc., North Hollywood, CA
Freeport Welding & Fabricating, Freeport, TX
Future Machine, Kent, OH
Future Tool, Inc., Rockford, IL
G & K Machine Company, Denver, CO
G & L Enterprises, Tucson, AZ
G & L Precision Products, Deer Park, NY
G & N Gear, Inc., Santa Ana, CA
G E B Industries, Inc., Torrance, CA
G F S, Inc., Cleveland, OH
G F T Manufacturing Corporation, Vandergrift, PA
G M S Metal Works, Auburn, WA
G N F Computer Services, Redlands, CA
G–S Industries, Inc., Fraser, MI
Gain Industries, Inc., West Allis, WI
Galvin Precision Machining Inc., Santa Rosa, CA
Gar Manufacturing Company, Taylor, MI
Gardner Industries, Independence, MO
Garland Laboratory, Silver Spring, MD
Garvey & Associates, Centerville, VA
Garvey Precision Machine, Inc., Cranston, RI
Gebhardt Machine Works, Inc., Portland, OR
Geiger Manufacturing, Inc., Stockton, CA
Gene's Gundrilling, Los Angeles, CA
General Die Casters, Inc./Engrav, Peninsula, OH

General Weldments Inc., Irwin, PA
Geometric Engineering, Tucson, AZ
Geometric Tool & Machine Co., Inc., Piedmont, SC
Gidden's Industries, Inc., Everett, WA
Giessen Tool & Lathe, Anaheim, CA
Gillespie Machine & Tool Company, Erie, PA
Global Tool & Mfg. Company, Inc., Dayton, OH
Golden State Engineering, Inc., Paramount, CA
Golis Machine, Inc., Montrose, PA
Great Western Grinding & Eng., I, Huntington Beach, CA
Green Machine & Tool Inc., Houston, TX
Greene International West, Inc., Oceanside, CA
Grinding Service & Mfg. Co., Forrestville, CT
Grinding Specialties, Eastlake, OH
Groveland Engineering Inc., Groveland, MA
Grover's Machine Shop, Taylors, SC
Gurney Precision Machining, Pinellas Park, FL
Gust Swenson & Sons, Inc., Crookston, MN
H & M Metal Processing Company, Cuyahoga Falls, OH
Hager Machine & Tool, Inc., Houston, TX
Haig Precision Mfg. Corp., Campbell, CA
Hamblen Cage Corporation, Indianapolis, IN
Hamilton Metalcraft, Inc., Pasadena, CA
Harris & Bruno Machine Company, San Leandro, CA
Harris Manufacturing Co., Inc., Grand Prairie, TX
Harter Industries, Inc., Tempe, AZ
Heinhold Engineering & Machine C, Salt Lake City, UT
Hendricks & Richardson, Inc., Piedmont, SC
Hexatron Engineering Co., Inc., Salt Lake City, UT
Heyden Mold & Bench Company, Tallmadge, OH
Hi-Tech Machine & Tool, Inc., Byron Center, MI
Hickham Industries, Inc., LaPorte, TX
Hickory Machine Company, Inc., Newark, NY
Highland Mfg. Inc., Manchester, CT
Hill Tool & Die Company, Danville, KY
Hillcrest Tool & Die, Titusville, PA
Honemasters, Inc., Huntington Beach, CA
Horizon Industries, Lancaster, PA
Horizon Machining, Inc., San Jose, CA
Hornet Bay, Ltd., Philadelphia, PA
Hughes Industries, Riverton, NJ
Humble Machine Works, Inc., Humble, TX
Hunt Enterprises, Santa Ana, CA
Huntington Beach Machining, Huntington Beach, CA
Hurco Companies, Inc., Indianapolis, IN
Huron Machine Products, Inc., Burbank, CA
Huwelco, Inc., Pasadena, TX
Hy-Tech Mold, Inc., Rochester, NY
Hydromat, Inc., St. Louis, MO
HGG Laser Fare, Inc., Smithfield, RI
Image Casting Inc., Oxnard, CA
Imaginetics, Inc., Kent, WA
Imperial Machining Co., Denver, CO
Imperial Mfg., Santa Fe Springs, CA
Impex Machine, Newington, CT
Industrial Brake and Clutch, Buffalo, NY
Industrial Machining, Santa Clara, CA
Industrial Mold, Inc., Twinsburg, OH
Industrial Research, Litchfield, MN
Ingalls Machine, Bakersfield, CA
Inject Tool & Die, Inc., Oak Harbor, WA
Inline Inc., Phoenix, AZ
Innovative E D M, Inc., Warren, MI
International Stamping Inc., Warwick, RI
Interscope Manufacturing Inc., Middletown, OH
Intrex Corporation, Broomfield, CO
Intri-Cut, Inc., Amherst, NY
Iowa Laser Technology, Inc., Cedar Falls, IA
Isylon Machining Co., Inc., Bohemia, NY
Iverson Industries, Inc., Wyandotte, MI
J & A Honing Service, La Verne, CA
J & G Tool Co., Saginaw, MI
J & M Unlimited, Ashland City, TN
J B M Precision Honing, Inc., Bohemia, NY
J B M, Inc., Kalispell, MT
J D C Manufacturing, Redwood City, CA
J F Machine, Inc., W. Babylon, NY
J K B Tool Company, Inc., Milford, CT
J K Engineering Company, Corona, CA
J M Mold South, Easley, SC
J M P Industries, Inc., Parma, OH
J O Tool & Manuf. Company, Inc., Kenilworth, NJ
J R F Sharpening Service, Berlin, CT
J R Tool & Die, Wooster, OH
J R's Tool Crib, Mogadore, OH
Jackson's Precision Machine Co., Nashville, TN
Jaco Tool Company, Inc., Birmingham, AL
Jaques Diamond Tool, Indianapolis, IN
Jason Tool & Engineering, Inc., Garden Grove, CA
Jatco Machine & Tool Company, In, Pittsburgh, PA
Jayco Engineering, Costa Mesa, CA
Jena Tool Company, Dayton, OH
Jepson Precision Tool, Inc., Cranesville, PA
Jeropa Swiss Precision, Inc., Escondido, CA
Jerry Roberts & Company, San Carlos, CA
Jerry Roberts Machine, St. Paul, MN
Jesel, Inc., Wall, NJ
Jesse Industries, Inc., Phoenix, AZ
John L. Lutz Welding & Fabrication, Frenchtown, NJ
John List Corporation/Chatsworth, Chatsworth, CA
John Ramming Machine Company, St. Louis, MO
Jorgenson Fabrication & Welding, Santa Fe Springs, CA
JST Custom Fabrication, Boise, ID
K & H Precision Products, Inc., Honeoye Falls, NY
K & K Laser Marking, Stanton, CA
K & K Machine Shop, Attleboro, MA
K & W Machine Products, Inc., Galax, VA
K L H Industries, Inc., Germantown, WI
K–B Machine Shop, Olathe, KS
Kalman Manufacturing, San Jose, CA
Karlson Machine Works, Inc., Phoenix, AZ
Kaskaskia Tool & Machine, Inc., New Athens, IL
Kell-Strom Tool Company, Inc., Wethersfield, CT
Kellar's Honing & Lapping, Van Nuys, CA
Kenmore Gear & Machine Co., Akron, OH
Keystone Electric Co., Inc., Baltimore, MD
Kickhaefer Manufacturing Company, Port Washington, WI
King Machine & Engineering Co., Indianapolis, IN
King-Tek Wire EDM, Inc., Fullerton, CA
Kitco Machine Shop, Springville, UT
Kiwanda Machine Works, Inc., Clackamas, OR
Kolenda Tool & Die, Inc., Wyoming, MI
Koval Tool & Die, Inc., Somerset, PA
Krug Precision Industries, Port Washington, NY
Krukemeier Machine & Tool Co., I, Beech Grove, IN
Kuhn Tool & Die Co., Meadville, PA
Kurt J. Lesker Company, Pittsburgh, PA
Kurt Manufacturing Company, Minneapolis, MN
L & L Industries, Jackson, MI
L & T Machining, Temecula, CA
L & W Machine Co., Phoenix, AZ
L A Wilper Mfg. Co., Hazelwood, MO
L B M Manufacturing, Belmont, CA
L D C Inc., North Providence, RI
L J R Grinding Corporation, Gardena, CA
Lake Manufacturing Co., Inc., Wakefield, MA
Lapco Industries, Inc., Haledon, NJ
Laser Automation, Inc., Chagrin Falls, OH
Laser Mark-It, Glendale, CA
Laser Marking Services, Inc., Esmond, RI
Laser Specialists, Inc., Fraser, MI
Laser Workshop, Anaheim, CA
Laser-Tech Engineering, Irvine, CA
Lasercut Machining, Inc., Dallas, TX
Layke Incorporated, Phoenix, AZ
LaCour Engineering, Culver City, CA
LaFarge & Egge, Inc., Lynnwood, WA
Lee's Grinding, Inc., Cleveland, OH
Leefson Tool & Die Company, Fernwood, PA
Light & Medium Fabricating, Inc., Willoughby, OH
Lorraine Machine, Inc., Greenville, SC
Lu-den Machine Tool Co., Inc., Plainville, CT
M & S Holes Corporation, Berkeley Heights, NJ
M C I Tool & Die, Inc., Saginaw, MI
M Earl Adams Company, Johnston, RI
M J C Machine, Inc., Tewksbury, MA
M J M Interests, Kensington, CT
M P E Machine Tool, Corry, PA
M R Mold & Engineering Corp., Brea, CA
M S P Tool Company, Inc., E. Kingston, NH
M T I Manufacturing Technologies, Woburn, MA
M-Ron Corporation, Phoenix, AZ
MacLean Precision, Madison, NH
Mac-Erie Inc., Erie, PA
Mac-Mold Base, Inc., Romeo, MI
Machine Kinetics Corporation, Knoxville, TN
Machine Shop Services, Duncan, SC
Machine Tool Technologies, Inc., Mt. Clemens, MI
Machinery Maintenance, Greenville, SC
Machinist Cooperative, Gilroy, CA
MacKay Manufacturing, Spokane, WA
Magnum Manufacturing Corporation, Colorado Springs, CO
Main Tool & Mfg. Co., Inc., Minneapolis, MN
Majestic E D M, Inc., Bensenville, IL
Manor Research, Inc., Hayward, CA
Mantel & Mantel Stamping Corp., Ronkonkoma, NY
Manufacturing Designs, Buffalo Creek, CO
Manufacturing Service Corp., Hartford, CT
Mara Products, Inc., Everett, MA
Mardeco Mold Tooling, Inc., Wichita, KS
Mark Williams Enterprises, Inc., Louisville, CO
Martin Production Tooling Inc., Corona, CA
Martinek Manufacturing, Fremont, CA
Master Research & Manufacturing, San Fernando, CA
Master Swaging, Jackson Center, OH
Master Tool & Die Company, Warren, MI
Masterman's Machine Shop, Kent, WA

Matrix Manufacturing, Inc., Pearland, TX
McDaniels Machinery Company, Erie, PA
McIntyre Machine Co., Inc., Charlotte, NC
MechTech, Inc., Cranston, RI
Metadyne Technologies, Inc., Boise, ID
Metal Specialists, Fremont, CA
Metalcraft, Akron, OH
Metric Machining, Monrovia, CA
Metric Precision, Spartanburg, SC
Micro Dimensions, Inc., Vancouver, WA
Micro Precision Corporation, Mountville, PA
Micro-Tronics, Inc., Tempe, AZ
Microfinish Precision Lapping, San Jose, CA
Microform Corp., Auburn, WA
Microphoto, Inc., Detroit, MI
Mid-Continent Engineering, Inc., Minneapolis, MN
Mid-States Forging Die & Tool, Rockford, IL
Midway Mfg. Inc., Elyria, OH
Midwest Fabricating, Grand Rapids, MI
Mikron Machine, Inc., Cranesville, PA
Millennium Three Corporation, Platteville, WI
Miller Equipment Corporation, Richmond, VA
Milling Precision Tool, Inc., Wichita, KS
Milwaukee Precision Corporation, Milwaukee, WI
Mitutoyo/MTI Engineering Corp., Huntington Beach, CA
Mod Tech Industries, Inc., Shawano, WI
Mold Consultants of America, Inc., Orrville, OH
Morland, Inc., Manchester, CT
Morlin Incorporated, Erie, PA
Morrissey Corporation, Bloomington, MN
Moseys' Production Machinists, Fullerton, CA
Mountain Tool Corporation, Caldwell, ID
Mullen Machine & Mfg. Co., St. Clair, MO
Musgrove Machine Works, Boise, ID
Myers Amazing Machine Works, Bloomingdale, NJ
Myers Precision Grinding Company, Warrensville Hts., OH
N B S, Inc., Macedonia, OH
N I C O Machine, Inc., Phoenix, AZ
N/C Industries, Brea, CA
National Center for Tooling, Toledo, OH
National Flight Services, Glendale, AZ
National Jet Company, LaVale, MD
Nelson Grinding, Inc., Fullerton, CA
Neutronics, Inc., Phoenix, AZ
New Tech Industrial, Portland, OR
Newton Tool & Manufacturing Co., Wenonah, NJ
Niles Machine & Tool Works, Inc., Newark, CA
Nimco Instruments, Houston, TX
Noesting, Inc., Bronx, NY
North Canton Tool Company, Canton, OH
North Coast Tool, Inc., Erie, PA
Northeast E D M, Newburyport, MA
Northeast Mold & Plastic Inc., Portland, CT
Northeast Quality Service, Wallingford, CT
Northern Precision Metal Product, San Jose, CA
Northland Extension Drills, Grove City, MN
Northtech Manufacturing Corp., Phoenix, AZ
Northwest Machine Works, Inc., Grand Junction, CO
Northwest Machining & Mfg., Inc., Meridian, ID
Northwest Tool & Die, Seegertown, PA
Northwood Industries, Toledo, OH
Norton Company, Northboro, MA
Norwood Tool Company, Dayton, OH
Nova Machine Company, Inc., Rochester, NY
Nova Manufacturing Company, North Hollywood, CA
Novatech Machining Corporation, Buffalo, NY
Numeric Machine, Fremont, CA
Numet Machine, Stratford, CT
O–D Tool & Cutter Inc., Mansfield, MA
Oaklyn Specialty Company, Bellmawr, NJ
Oconee Machine & Tool Company, I, Westminster, SC
Oconnor Engineering Laboratories, Costa Mesa, CA
Oilfield Die Manufacturing, Inc., Lafayette, LA
Olympic Fabrications Corporation, Brentwood, NY
Omega One, Inc., Maple Heights, OH
Omni-Tech Mfg. & Eng., Inc., Hillsboro, OR
On-Tech Machine & Manufacturing, San Jose, CA
One-Way Manufacturing, Inc., Santa Ana, CA
Orach Machine Shop Service, Tucson, AZ
Orange County Grinding, Anaheim, CA
Orco Block Company, Stanton, CA
Orix Credit Alliance, Inc., Pasadena, CA
Ornee Mfg., Glendora, CA
Overton & Sons Tool & Die Co. Inc., Mooresville, IN
Overton Corporation, E. Cleveland, OH
P & J Machining, Inc., Puyallup, WA
P D Q Inc., Middletown, CT
P M C Machining, Inc., Phoenix, AZ
P M Tool & Die Company, Caldwell, ID
P X Engineering Company, Inc., Hingham, MA
Pace Design & Fab., Inc., Whittier, CA
Pacific Metal Craft, Inc., Bell Gardens, CA
Pacific Tool Corporation, Englewood, CO
Palmer Machine Company, Conway, NH
Palmetto Machine Parts, Anderson, SC
Palmetto Mechanical Services, Spartanburg, SC
Papago Plastics, Inc., Rochester, NY
Paragon N/C Machining, Elk Grove Village, IL
Parkway Machine Services, Inc., Lafayette, LA
Parkway-Kew Corporation, Edison, NJ
Part-Rite, Inc., North Royalton, OH
Parts Fabricators, Inc., New Carlisle, OH
Pelmor Laboratories, Inc., Newtown, PA
Pendama Company, Seattle, WA
Pengo Corporation, Union City, CA
Peninsula Screw Machine Products, Belmont, CA
PenTel Tool & Die, Inc., Romulus, MI
Performance Grinding Tempe, AZ
Performance Machining Services, Irwin, PA
Performance Systems Inc., Tempe, AZ
Perkinson Foundry & Machine Co., Danville, VA
Pettey Machine Works, Inc., Trinity, AL
Phillips Machine & Stamping Corp., Akron, OH
Phoenix Precision Pattern Corp., Tempe, AZ
Phoenix, Inc., Seekonk, MA
Pickens Tool Company, Inc., Pickens, SC
Plastic Technology Company, Monroe, GA
Plastics Development, Inc., Milwaukie, OR
Plastipak Packaging, Inc., Medina, OH
Polycast Mfg. of Annandale, Inc., Annandale, MN
Polymer Mold and Engineering, Medina, OH
Polynetics, Inc., Fullerton, CA
Pope Corporation, Santa Ana, CA
Popp Machine & Tool, Inc., Louisville, KY
Portage Knife Company, Inc., Mogadore, OH
Post Products, Inc., Kent, OH
Potter & Son, Inc., Piedmont, SC
Powers Bros. Machine, Inc., Montebello, CA
Prebco Bushing Company, Baldwin Park, CA
Precise Mold & Engineering Inc., Valley Park, MO
Precision Aircraft Components, I, Dayton, OH
Precision Automated Machining, Englewood, CO
Precision Automatics, Inc., Gadsden, AL
Precision Metal Fabrication, Dayton, OH
Precision Metal Finishing Co., Erie, PA
Precision Metal Tooling, Inc., Hayward, CA
Precision Profiling, Inc., Wichita, KS
Precision Resources, Gardena, CA
Precision Specialists, Inc., Berlin, NJ
Precision Technologies, Grand Junction, CO
Precision Technology, Inc., Chandler, AZ
Precision Tool & Die, Inc., Lawrence, MA
Precision Turned Components, Inc., Cranston, RI
Precision Valve Modification, Inc., Houston, TX
Precision Welding, Mach. & Fab., Bridgeport, CT
Precision Wire Cut Corporation, Watertown, CT
Precon, Inc., Anaheim, CA
Premac Inc., Rahway, NJ
Prime Die Castings, Inc., Clearwater, FL
Pro-Gram Engineering Corporation, Barberton, OH
Pro-Met Machining Inc., Gresham, OR
Process Manufacturing Inc., Richmond, KY
Production Products Inc., Broomfield, CO
Professional Machine & Tool Co., Hendersonville, TN
Proficient Machining Co., Inc., Mentor, OH
Profile Grinding, Inc., Cleveland, OH
Proform Tool Corporation, Sagertown, PA
Progressive Concepts Machining, Pleasanton, CA
Proto Machine & Manufacturing, Kent, OH
Prototype and Short-Run Services, Fullerton, CA
Pull-Brite, Fremont, CA
Q S P Technology, Inc., Boise, ID
Qualfab Machining, Redwood City, CA
Quality Machine & Supply, Inc., Lafayette, LA
Quality Machine & Tool Co., Inc., St. Louis, MO
Quality Machine Engineering, Inc., Santa Rosa, CA
Quality Precision, Inc., Hayward, CA
Queen City Precision, Inc., Cincinnati, OH
Quick Tool & Machine, Barberton, OH
Quintex Tooling, Nampa, ID
R & D Engineering, Hawaiian Gardens, CA
R & D Machine Shop, Dallas, TX
R & R Precision Machine, Inc., Wichita, KS
R C Machine, Clackamus, OR
R H Spencer Co., West Boxford, MA
R J S Machine Products, Campbell, CA
R M Johnson Company, Annandale, MN
R R Howell Company, Annandale, MN
R V P Industries, Newhall, CA
Ralph Stockton Valve Products, I, Houston, TX
Ranor, Inc., Westminster, MA
Ray Paradis Machine, Inc., Jackson, CA
Re-Del Engineering, Campbell, CA
Reclamation Dynamics, Nashville, TN

Rectack of America, Los Angeles, CA
Regional Tool Corporation, Hamden, CT
Remco Industries, Inc., Chatsworth, CA
Remington Products Company, Wadsworth, OH
Reny & Company, El Monte, CA
Ribic Tool, Inc., Willoughby, OH
Rich Tool & Die Company, Scarborough, ME
Rick Sanford Machine Company, San Leandro, CA
Right Way Tool, Inc., Redmond, WA
Ring Technologies, Inc., Warren, MI
Rite Design, Rochester, NY
Riteway Precision Machine, Inc., Minneapolis, MN
Ro-Mai Industries, Inc., Twinsburg, OH
Robert C. Reetz Company, Inc., Pawtucket, RI
Robinson Manufacturing Inc., Brea, CA
Robrad Tool & Engineering, Mesa, AZ
Roc-Aire Corporation, South El Monte, CA
Rockford Spring Company, Rockford, IL
Rogers Wire EDM Service, Arvada, CO
Ron-Vik, Inc., Minneapolis, MN
Rons Racing Products, Inc., Tucson, AZ
Rotational Technology, Inc., Houston, TX
Rovi Products Incorporated, Simi Valley, CA
Roy & Val Tool Grinding, Inc., Chatsworth, CA
Royal Wire Products, Inc., N. Royalton, OH
Rubbermaid, Inc.—Mold Division, Wooster, OH
Russing Machining Corp., Glendale, CA
Ruxton Tool & Die, Upper Marlboro, MD
RA-White, Inc., Inglewood, CA
S & K Machine, Inc., Detroit, MI
S & R Precision Company, San Jose, CA
S D S Machine, Inc., Hayward, CA
S H E Industries, Inc., Torrance, CA
S J R Precision, Burbank, CA
S M S Technologies Company, Chatsworth, CA
S P M/Anaheim, Anaheim, CA
S T I Manufacturing Group (STIM), Dallas, TX
Sager Precision Machine Inc., Weymouth, MA
Samaniego Enterprises, Inc., Tucson, AZ
Santa Clarita Mfg. Co., Valencia, CA
Sawtech, Lawrence, MA
Scheirer Machine Co., Inc., Bethel Park, PA
Schmitt Machine, Inc., Ventura, CA
Schneider Machine Company, Torrance, CA
Scott Engineering Company, Phoenix, AZ
Seaford Machine Works, Inc., Seaford, DE
Seaway Industrial Products, Erie, PA
Sematool Mold & Die Co., Santa Clara, CA
Service Industries, Inc., Ocala, FL
Setters Tools, Inc., Piedmont, SC
Sherman Tool & Gage, Erie, PA
Shomo Tool Co., Inc., Redford, MI
Shookus Tool & Die, Inc., Epping, NH
Sieger Engineering, Inc., S. San Francisco, CA
Sigma Specialties, Torrance, CA
Silco Engineering Co., Inc., Beech Grove, IN
Sim's Precision Machining, Santa Ana, CA
Simmons Machine Tool Corporation, Albany, NY
Simons & Susslin, Mountain View, CA
Simplex Engine & Machine, Inc., Providence, RI
Smith Bell & Thompson, Inc., Burlington, VT
Smith Precision Grinding & Mfg., Sun Valley, CA
Solo Enterprise Corp., City of Industry, CA
Sonic Machine & Tool, Inc., Tempe, AZ
Sonoma Precision Mfg. Co., Santa Rosa, CA
South Bay Machining, Santa Clara, CA
Southern Die-Casters, Inc., Shrewsbury, PA
Southwest Manufacturing Company, Wichita, KS
Southwest Metalcraft Corporation, Tucson, AZ
Specialty Machine & Hydraulics, Pleasantville, PA
Specialty Machining, Inc., Oakland Park, FL
Spenco Machine & Manufacturing, Temecula, CA
Spike Industries, North Lima, OH
Spin Pro Inc., San Jose, CA
Spiral Grinding Company, Culver City, CA
Sprint Tool & Die Inc., Meadville, PA
St. Mary Manufacturing Corporati, North Tonawanda, NY
Stanley Engineering Company, Glen Burnie, MD
Stearman Aircraft Products Corp., Valley Center, KS
Steel Craft Manufacturing, Inc., Hopewell, VA
Stelted Manufacturing, Inc., Tempe, AZ
Stevens Industries, Inc., Norcross, GA
Stone Tool & Machine, Inc., Louisville, KY
Strobel Machine, Inc., Worthington, PA
Subsea Ventures Inc., Houston, TX
Suburban Boring Company, Oak Park, MI
Suburban Jewelry Co., Inc., Charlestown, RI
Summit Precision, Inc., Phoenix, AZ
Sun Tool Supply, Inc., St. Petersburg, FL
Super Finishers II, Glendale, AZ
Superior Technology, Inc., Rochester, NY
Superior Tool Service, Inc., Wichita, KS
Supreme Machine Products, Inc., Rancho Cucamonga, CA
Supreme Tool & Die Company, Fenton, MO
Systems 3, Inc., Tempe, AZ
SEPCO–ERIE, Erie, PA
STD Precision Gear & Instrument, West Bridgewater, MA
T & C Industries, Inc., Irwin, PA
T & E Manufacturing, Inc, Kent, WA
T & S Industrial Machining Corp., Lynn, MA
T C Precision Machine, Dayton, OH
T M S Inc., Cumberland, RI
T R Jones Machine Company, Inc., Woodstock, IL
T. J. Karg Company, Inc., Akron, OH
T-Mac Machine Company, Kent, OH
Talent Manufacturing, Star, ID
Tangent Machine & Tool Corporation, Farmingdale, NY
Tanksley Machine & Tool, Inc., Decatur, AL
Tarus Products Inc., Sterling Heights, MI
Task Industrial Corporation, Greenville, SC
Tate Andale, Inc., Baltimore, MD
Tech-Marine Enterprises, Inc., Seattle, WA
Techniplas, Inc., Ankeny, IA
Tek-Am Corporation, Springfield, VA
Tempco Manufacturing Co., Inc., Mendota Heights, MN
Tennessee Tool Corporation, Charlotte, TN
Textile Machinery, Inc., Greenville, SC
The Buckeye Stamping Company, Columbus, OH
The Freeman Company, Yankton, SD
The Will-Burt Company, Orrville, OH
Thomac, Inc., Colorado Springs, CO
Thoms C N C Machining, Yorba Linda, CA
Thomas Tool and Manufacturing, Pleasanton, CA
Thorton Company, Wichita, KS
Thurman's Tool & Machine Co., Dayton, OH
Tight Tolerance Machining, Boise, ID
Timberland Tool & Die, Newberg, OR
Tool & Die Supply, Inc., Santa Ana, CA
Tooling & Production, Olathe, KS
Tooling Concepts, Nashville, TN
Tooling Designs, Inc., Humble, TX
Top Quality Tool & Machine, Grandview, MO
Toth Aerospace Manufacturing, Cherry Hill, NJ
Traco Manufacturing Corp., Houston, TX
Treblig, Inc., Greenville, SC
Tren Engineering Corporation, Beverly, MA
Tri J Machine Company, Gardena, CA
Tri-Gon Precision, Inc., Colorado Springs, CO
Triangle Mold & Machine Co., Inc., Hartville, OH
Trico Industries, Inc., Lexington, TN
Trico Machine Products Corp., Bedford Heights, OH
Tridecs Corporation, Hayward, CA
Trim Tech, Inc., Columbia Station, OH
True Cut EDM, Garland, TX
True Position, Fremont, CA
Tucson Tool & Manufacturing, Tucson, AZ
Turner and Walima Mfg. Co., Inc., Essex, MA
Turning Technology, Inc., Tipp City, OH
TTI Testron, Inc., Woonsocket, RI
U N C Manufacturing Technology, Uncasville, CT
Uddeholm Corporation, Sante Fe Springs, CA
Ultra Stamping & Assembly, Inc., Rockford, IL
Uni-Tek, Phoenix, AZ
Unique Model, Inc., Walker, MI
United Gage, Inc., North Hollywood, CA
United Machine Co., Inc., Wichita, KS
United States Fittings, Inc., Warrinsville Heights, OH
Universal Custom Process, Inc., Bedford Heights, OH
Universal Machine, Boise, ID
V I P Tooling, Inc., Shelbyville, IN
Valley Tool & Machine Co., Inc., Pomona, CA
Valv-Trol Company, Stow, OH
Van Os Machine Works, Inc., St. Louis, MO
Van Sanford Tool Company, E. Syracuse, NY
Vandeventer Machine Works Corp., St. Louis, MO
Vector Design and Mfg., Inc., Tucson, AZ
Venture Tool, Inc., Erie, PA
Versa Companies, St. Paul, MN
Vertex Tool and Die, Akron, OH
Vicount Industries, Farmington Hills, MI
Vitullo & Associates, Inc., Warren, MI
Vogel Tool and Die Corp., Stone Park, IL
Volume Machine, Pacoima, CA
Vortex Precision Services, Inc., Houston, TX
W E C Technologies Corporation, Deer Park, NY
W. or K. Precision Machining, Garden Grove, CA
W.R. Lathom Tool, Inc., Rockford, IL
Wagner Precision, Inc., N. Tonawanda, NY
Wajo Tool and Die, Inc., East Hampstead, NH
Waltz Industries, Ontario, CA
Walz & Krenzer, Inc., Rochester, NY
Waxler Machine and Tool, Inc., Houston, TX
Wayne Manufacturing, Inc., Boulder, CO
Webber Metal Products, Inc., Cascade, IA
Webco Machine Products, Inc., Valley View, OH
Webco Tool & Die, Inc., Toledo, OH
Weber Tool & Mfg. Inc., Cleveland, OH
Welding Service Company, Glendora, CA
West Fab Manufacturing, San Jose, CA

Westech Corporation, Muskegon, MI
Western Gage Repair Company, Santa Clara, CA
Western Grinding, Tempe, AZ
Western Metal Products, Inc., Seattle, WA
Western Precision, West Jordon, UT
Western Steel Cutting, Inc., San Jose, CA
Western Unitool Mfg. Inc., Burnaby, BC V3N 4A4, XX
Westhoff Tool & Die Company, St. Charles, MO
Westside Metal Fabricators, Inc., Canoga Park, CA
Whelan Machine & Tool Co., Inc., Louisville, KY
Whole Shop, Inc., Munroe Falls, OH
Wichita Manufacturing, Inc., Cerritos, CA
Wilkinson Mfg., Inc., Santa Clara, CA
William A. McGovern, Inc., Jamesburg, NJ
Winegard Co., Burlington, IA
Winter's Grinding Service, Menomonee Falls, WI
Wire Tech, Waterbury, CT
Wire Tech E D M, Inc., Los Alamitos, CA
Woehr Tool & Die, San Jose, CA
Wood's Service Corporation, Old Ocean, TX
Woodcraft Manufecturing Company, Pataskala, OH
X-Cel Machine Tool, Inc., Cochranton, PA
Yampa Valley Manufacturing, Prescott Valley, AZ
Yates Tool, Inc., Medina, OH
Yoder Die Casting Corporation, Dayton, OH
Youngstown Plastic Tooling, Youngstown, OH
Z M D Mold & Die Inc., Mentor, OH
Zacova Industries, Inc., Roseville, MI
Zellcon Industries, Milford, CT
Zetec, Inc., Issaquah, WA
4B Precision Products, Boring, OR

Appendix B

A & W Specialty Co., Inc., Deer Park, NY
A B C Machine Works, Ltd., Bethel, CT
A D Grinding, La Habra, CA
A I D Corporation, Clayton, GA
A.N.O. Machining Corporation, Santa Fe Springs, CA
Abbey Machine Products Company, Euclid, OH
Able Spinning & Stamping Inc., Riverside, CA
Accu-Turn Machine Works, Inc., Houston, TX
Accura Industries, Rochester, NY
Accurate Metal Fabricators, Long Beach, CA
Acro Tech, Redmond, WA
Adams Machine & Tools, Inc., Capitol Heights, MD
Aerodyne Mfg. Corp., North Hollywood, CA
Aeromach—LFP, Sylmar, CA
Alcatel Comptech, Inc., San Jose, CA
Algenic Machine Corporation, Farmingdale, NY
All Custom Form Tools, Inc., Anaheim, CA
Allied Machine Products, Inc., Smithfield, RI
Alto Systems, Inc., Houston, TX
Amco Precision Tool, Inc., Kensington, CT
American Machine Systems, Inc., Muncie, IN
American Metalcrafters, Inc., Stockton, CA
American Trion Corporation, Casa Grande, AZ
American Trion Corporation, Arizona City, AZ
American Tube, Nazareth, PA
Anaheim Gear, Anaheim, CA
Anco Precision Products, Inc., Fullerton, CA
Anmark Machine, Tempe, AZ
Apparatus Repair Company, Houston, TX
Applied Industrial Machining, Oklahoma City, OK
Arbor Model & Tooling, Inc., Grand Rapids, MI
Ardent Engineering, Seattle, WA
Aroplax Corporation, Minneapolis, MN
Asteric Tool & Die Mfg. Co., Inc, Philadelphia, PA
Atlas Machine Products Co., Cleveland, OH
Atlas Precision, Inc., Woodstock, VA
Aul Bros. Tool & Die, Muncie, IN
Aurora Technology Corporation, East Aurora, NY
B & C Engineering, Inc., Goshen, IN
B & C Machine, Inc., Pinellas Park, FL
B & R Machine Company Inc., New Britain, CT
B M I, Inc., Palatine, IL
Barberton Mold & Machine Co., Barberton, OH
Barth Industries, Inc., Cleveland, OH
Bartlett Enterprises, Hillsboro, OR
Baystate Machine, Warwick, RI
Beaverton Parts Mfg. Co., Inc., Hillsboro, OR
Belding Tool & Machine Corporati, Belding, MI
Bergdorf Engineering, Pomona, CA
Black Machine—B T Industries, Port Clinton, OH
Blackie's Grinding Service, Auburn, WA
Blessing Industries, Lockport, NY
Bond's Custom Manufacturing, Arvada, CO
Bradley Machine, Inc., Wichita, KS
Bratton Machine Works, Inc., Houston, TX
Briley's Machine Works, Kent, WA
Bristol Machining & Fabrication, Bristol, RI
Brontel/Bearing Bronze Company, Cleveland, OH
Burkey & Sons, Inc., Anaheim, CA
Burn-Rite Mold & Machine, Inc., Canton, OH
Busnardo Engineering, Inc., Nampa, ID
C & P Industries, Seneca, PA
C M S Graphite/Ed Welch Partners, Cheshire, CT
C N C Machining Inc., East Berlin, CT
C N C Manufacturing, Inc., Lynnwood, WA
Cal-Bay Grinding, Inc., San Jose, CA
Cal-Dan, Fountain Valley, CA
Cal-Tron Corporation, Bishop, CA
California Spline and Gage Co., Santa Ana, CA
Campanile Tool Co., Sunnyvale, CA
Canton Industrial Systems, Inc., East Canton, OH
Capitol Machine Company, Phoenix, AZ
Caretti Tool & Mfg., Inc., Pinellas Park, FL
Carlson-Formetec, Inc., Tacoma, WA
Carolina Tool & Die, Charlotte, NC
Central Manufacturing, Inc., Parker City, IN
Central Specialties Mfg. Co., Tulsa, OK
Cercon Division Howmet-Cercast, Hillsboro, TX
Clarence Machine Co., Inc., St. Louis, MO
Clark Precision Sheetmetal, Inc., Santa Clara, CA
Classic Craft, Inc., Tucson, AZ
Clearwater Engineering, Clearwater, KS
Columbia Machine Works, Inc., Columbia, TN
Commercial Grinding Company, Paramount, CA
Concept Components Co., Bohemia, NY
Cone Engineering, Inc., Hawaiian Gardens, CA
Continental Tool & Gage Company, N. Hollywood, CA
Contour Plastics, Inc., Baldwin, WI
Contour Tool & Die, Inc., South Bend, IN
Counts Precision Grinding, Inc., Hazel Park, MI
Couple-Up, Inc., Compton, CA
Cox Machine, Inc., Wichita, KS
Custom Lathe & Mfg., Inc., Graham, WA
D A Griffin Corp., West Seneca, NY
D M Z Machine Company, Eastlake, OH
D Y E Design, Inc., Louisville, KY
Dallen Precision CNC Machining, Paramount, CA
Damon Industries, Inc., Pompano Beach, FL
Dan Krall & Co., Inc., Franklin, WI
Danlyn Machine Co., Inc., Douglas, MA
Darco Products Incorporated, Albuquerque, NM
Davalor Mold Corporation, Chesterfield, MI
Decsa Precision Machining, Inc., Houston, TX
Dell Manufacturing Co., Farmington, CT
Delta Design & Manufacturing, Phoenix, AZ
Derleth & Kelley Tool & Die, Rochester, NY
Dern/Moore Machine Co., Inc., Lockport, NY
Design Tool & Machine, Macon, MO
Diematics, Inc., Littleton, CO
Digital Machine Co., Inc., Warminster, PA
Donal Machine, Inc., Petaluma, CA
Douglas Machining, Inc., Hillsboro, OR
Duluth Engineering, Duluth, MN
Duncan Industries, Inc., Los Angeles, CA
Dynamic Machine Service, Houston, TX
DEMCO, Inc., Milford, DE
E Fred Portwine, M.D., P.C., Waycross, GA
Eagle Tool & Die, Richmond, MI
Earl Mfg. Co., Inc., Santa Fe Springs, CA
East Side Tool & Die Co., Portland, OR
Eihinger Machine, Inc., Norton, OH
Eltee Tool & Die, Newark Valley, NY
Empire Machine & Manufacturing C, St. Louis, MO
Esteem Manufacturing Corporation, Ellington, CT
Eutsler Technical Products, Inc., Houston, TX
Exacta Tool & Engineering, Inc., Largo, FL
F B F Industries, Southhampton, PA
F M Machining, Santa Clara, CA
F. A. Wunder Associates, Inc., Adah, PA
Factum, Inc., Santa Clara, CA
Faivre Machine & Fabrication, Inc, Meadville, PA
Falcon Corporation, Ferrysburg, MI
Fech-Tech Precision, Palmdale, CA
Federal Machine Tool, Bristol, CT
Ferco Tech, Franklin, OH
Florida Custom Mold, Inc., Clearwater, FL
Florida Tri-City Fabricators, St. Petersburg, FL
Form-A-Tool South, Inc., Piedmont, SC
Francois Belvisi Co., Inc., Bohemia, NY
Futureweld Co., Inc., Phoenix, AZ
G L Bly Company, Wichita, KS
G N F, Inc., Olmsmar, FL
G Pruefer Manufacturing Co., Inc., Johnston, RI
G R McCormick, Inc., Burbank, CA
Gardner Tools Corporation, Broomfield, CO
Gaydash Industries, Inc., Uniontown, OH
Global Tool & Manufacturing Co I, Dayton, OH
Globe Grinding Corporation, Farmingdale, NY
Graduate N/C Machining, Rancho Cordova, CA

Graphite & Specialty Products, I, Paramount, CA
Greenfeather Tool & Gage, Euless, TX
Gundrilling Ltd., Paramount, CA
H & H Machine Tool Co., Inc., Dayton, OH
H & H Molds, Inc., Spokane, WA
H T M Corporation, Hillsboro, OR
Hall's Machining Services, Inc., Easley, SC
Hamilton Machine, West Point, PA
Hammock Machine & Welding Co., I, Perry, GA
Hedger Company, Los Angeles, CA
Heinz Plastic Mold Co., Elk Grove, IL
Hi-Tech Machine, Inc., Old Saybrook, CT
High Tech Machinists Inc., Chelmsford, MA
High Tech West, Inc., Long Beach, CA
High-Low, Inc., Tempe, AZ
High-Tech Manufacturing Service, Vancouver, WA
Hydel Engineering, San Jose, CA
I M C Magnetics Corp., Hauppauge, NY
Imo Industries, Manchester, CT
Industrial Design Company, Mill Valley, CA
Industrial Services Group, New Alexandria, PA
Inland Tool & Mfg. Co., Inc., Kansas City, KS
Innovative Plastics, San Jose, CA
Inter Precision Tools, Inc., Seattle, WA
International Lasersmiths, Compton, CA
J & Vee Precision Depp Hole, Roosevelt, NY
J B Armstrong Machine Co., Inc., Cypress, TX
J E B Tool & Manufacturing, Enfield, CT
J G Grinding, Redwood City, CA
J. G. Minter & Son, Inc., Brea, CA
Jacobi Industries, Santa Ana, CA
Jesse Industries, Inc., Newberry Park, CA
Jessee Brothers, Campbell, CA
Jeyan Engineering Group, Santa Ana, CA
Jim Talbot Machine Tool, North Hollywood, CA
John Weitzel, Inc., Wichita, KS
Justrite Machine Works, Inc., Kansas City, MO
K & A Tool Company, Cleveland, OH
K & M Machine Company, Inc., Newport, NH
K K Molds, Inc., Grand Rapids, MI
Kaman Industrial Technologies Co, Spokane, WA
Kirkwood Commutator, Cleveland, OH
Kofler's Tool & Die, Inc., Farmingdale, NY
Kyden Machine, Inc., Salt Lake City, UT
L & M Machining, Anaheim, CA
L C Miller Company, Monterey Park, CA
L F W Manufacturing, Stockton, CA
L J Machine Works, Houston, TX
L M B Industrial Services Corp., Menlo Park, CA
Lab Engineering & Mfg., Inc., Watertown, MA
Lake Quality Products, Inc., Wickliffe, OH
Lange Engineering, Inc., Minneapolis, MN
Larrus Engineering, Santa Fe Springs, CA
Larson Enterprises, Santa Clara, CA
Laser Applications, Inc., Westminster, MD
Laser Technology, Inc., North Hollywood, CA
Lemco, Danvers, MA
Lenape Forge, Inc., West Chester, PA
Lindberg Heat Treating, Orlando, FL
Lobsien's Machine Company, Tewksbury, MA
Lonero Engineering Co., Inc., Troy, MI
Lowry Tool & Cutter Grinding, Coconut Creek, FL
Lublink Tool & Die Co., Boring, OR
M & M Machine and Tool Company, Westminster, CA
M & N Machine Co., Simi Valley, CA
M & R Machine and Tool Co., Easthampton, MA
M & S Precision Company, Ft. Lauderdale, FL
M C Aero-Tech, Inc., Anaheim, CA
M I W Aerospace, Tacoma, WA
M M F Inc., Taylors, SC
M T C Industries, Inc., Corsicana, AZ
M W J, Inc., Clinton, MD
Malbert & Mitchell Grinding, Brea, CA
Malco Tool & Machine, Inc., Stanton, CA
Manchack Manufacturing, Inc., Houston, TX
Maryland MechTech, Inc., Catonsville, MD
Master Tool Engineering, Santa Clara, CA
MaTech Machining Technologies, I, Salisbury, MD
McAlpin Industries Inc., Rochester, NY
McGregor Manufacturing, Arcadia, CA
Mechtech, Inc., Amesbury, MA
Medina Tool & Die Co., Inc., Medina, OH
Memory Engineering Co., Gardena, CA
Mercury Engineering & Mfg., Inc., Canton, OH
Met-Tek, Inc., Clackamas, OR
Metra Electronics Corporation, Holly Hill, FL
Metro Dynamics, Franklin Square, NY
Micro Accurate Corporation, Tucson, AZ
Micro Precision Machining, Campbell, CA
Micro Tech Tool, Seekonk, MA
Mid-State Machine Products, Inc., Winslow, ME
Midway Machine & Instrument Co., South Houston, TX
Mika Prototype Eng. Co., Inc., Largo, FL
Milwaukee Bearing & Machining, Milwaukee, WI
Minnesota Fineblanking, Minneapolis, MN
Missouri Pressed Metals Inc., Sedalia, MO
Model Screw Products, Inc., Clearwater, FL
Multi-Swiss Technology, Inc., Sunnyvale, CA
Nadler, Incorporated, Plaquemine, LA
Nance Manufacturing, Inc., Wichita, KS
National Tooling Company, Tempe, AZ
Northeast Metrology Corp., Rochester, NY
Northwest Machine Products, Inc., Sumner, WA
Northwestern Palm Tool & Mfg. Co, Coon Rapids, MN
Numeric Systems, Fife, WA
Numerical Tool Division, Houston, TX
Ochs Industries, Inc., Vandalia, OH
Ogren Industries, Asheville, NC
Operating and Maintenance, Charlotte, NC
Optical Radiation Corp., Azusa, CA
Orange County Tool & Engineering, Santa Ana, CA
Oregon Tool and Die, Inc., Portland, OR
OMEGA Engineering Company, Kansas City, MO
P B Machine Co., Inc., Palmyra, NY
P D S, Bell Gardens, CA
P H Precision Products Corporati, Pembroke, NY
Pacific Machine & Development, I, Vancouver, WA
Pacific Precision Machine, Inc., Belmont, CA
Paradigm Metals, Inc., Sunnyvale, CA
Parallel Ventures, Inc., Tucson, AZ
Parker Kinetic Designs, Inc., Austin, TX
Paul Schurman Machine Inc., Ridgefield, WA
Paul's Products Corporation, Belmont, NC
Pease Grinding Service Inc., Dayton, OH
Pentz Design Pattern & Foundry, Duvall, WA
Pequot Tool & Mfg., Inc., Pequot Lakes, MN
Petersen Instruments, Inc., Concord, CA
Phoenix Precision Products, Inc., Hartford, WI
Phoenix Stainless & Alloy, Inc., Houston, TX
Pierce Precision Finishing, Santa Ana, CA
Pinnacle Tool, Bloomington, IN
Potter County Precision Co., Inc., Tucson, AZ
Power Mfg., Santa Clara, CA
Precision Fabricating & Tool, Bridgeport, CT
Precision Laser, Inc., High Point, NC
Precision Plus, Inc., Greenwood, SC
Precision Prototypes, Mineola, NY
Precision Rings Inc., Indianapolis, IN
Precision Tool Company, Englewood, CO
Precision Wheels, Inc., Ronkonkoma, NY
Prime Machine & Tool, Inc., Lantana, FL
Prior Lake Machine, Inc., Prior Lake, MN
Priority Mfg., Wood Dale, IL
Product Services, Inc., Santa Clarita, CA
Progressive Tool & Engineering, Mora, MN
PLASTECH, San Jose, CA
Q E C, Inc., La Mirada, CA
Q M, Inc., Connellsville, PA
Qualicut, Inc., Rochester, NY
Quality Concept, Arlington, WA
Quality Tool, Inc., E. Longmeadow, MA
Quasar Industries, Rochester Hills, MI
R & J Tool and Manufacturing, Livermore, CA
R & J Tool, Inc., Brookville, OH
R & R Grinding Company, Santa Fe Springs, CA
R M S Tool & Die, Foster, RI
R S Machining Inc., Manitowoc, WI
R W Dunn Machine, Inc., Arcadia, CA
Ram Precision Inc., Deer Park, NY
Rantom, Inc., Canton, MI
Raycon Corporation, Ann Arbor, MI
Reading Plastic Fabricators, Reading, PA
Refrigeration Research, Brighton, MI
Relli Manufacturing, Inc., Valley Stream, NY
Richard's Grinding, Inc., Cleveland, OH
Ricman Manufacturing, Hayward, CA
Rico's Tool and Engineering, Chandler, AZ
Riverside Foundry, Inc., Marysville, WA
Roberts Precision Machine, Inc., Duvall, WA
Robinson Precision Die Casting, Huntington Beach, CA
Rockhill Machining Industries, Akron, OH
Rockwood Swendeman Corp., S. Portland, ME
Rocky Mountain Precision Co. Inc., Windsor, CO
Rohrer, Incorporated, Boardman, OH
Ron Mills & Co., Walnut, CA
Rush Machine & Tool Co., Inc., Los Angeles, CA
Saturn Manufacturing, Inc., Mishawaka, IN
Scharers' Engineering, Gardena, CA
Select Mold, Anaheim, CA
Shackelford Machine, Clearwater, KS
Shiloh Corporation, Mansfield, OH
Simi Industries, Simi Valley, CA
Sirius Enterprises, Inc., Dallas, TX
Sizemore Machine, Inc., Wichita, KS
Snow Corporation, Fort Worth, TX
Sonic Engineering, Garden Grove, CA
Spec-Tech Unlimited, Orange, CA
Specialty Machines & Manufacturi, Kensington, MD
Standard-Hall Group, Greenville, SC
Stanley Tool & Die, Inc., Deerfield Beach, FL
Star Tool Service, Inc., Wichita, KS
Starwin Industries, Inc., Dayton, OH
Steel & O'Brien Manufacturing, I, Springville, NY
Steel Products Inc., Seattle, WA
Stelmar Mfg., Inc., Safety Harbor, FL
Stidd Systems, Inc., Greenport, NY
Stines Designs, Huntsville, AR

Sto-Kar Enterprises, Inc., Northridge, CA
Stringer Welding & Machine, Inc., Dugger, IN
Sumner Machining Center, Sumner, WA
Superior Plate Products, Inc., Cheshire, CT
Swissline Products, Inc., Woonsocket, RI
T L C Tool, Inc., Clearwater, FL
T-Tech Machine, Inc., Warwick, RI
Tampa Bay Machining, Inc., Tampa, FL
Target Manufacturing Company, Pasadena, MD
Taton's Machine Shop, Goddard, KS
Tennessee Precision Tool & Die C, Nashville, TN
Tessa Precision Products, Mentor, OH
The McGinty Machine Company, Inc., Wichita, KS
The Tool Room—Tool & Die Co., North Scituate, RI
Tice Industries, Portland, OR
Tool Services Co., Inc., Dayton, OH
Tool Technology Dist. Inc., Fremont, CA
Trans Spar, San Jacinto, CA
Triangle Engineering Corporation, Indianapolis, IN
Trinity Machine & Grinding, Inc., Phoenix, AZ
Triple S Industries, Linden, NJ
True Dimension Mfg. Inc., Kent, WA
Turning Technology, Inc., Golden, CO
Tydeman Machine Works Inc., Redwood City, CA
United Mold Incorporated, Milpitas, CA
UFE CalTec Inc., Brea, CA
Valley Fabricators, Simi Valley, CA
Valvtron Industries, Houston, TX
Ve-Ve, Incorporated, Anoka, MN
Vector Engineering, Chaska, MN
Vosky Precision Machining Corp., Deer Park, NY
W Machine Works, Panorama City, CA
Watson's Profiling Corp., Ontario, CA
Wichita Design & Mfg., Inc., Wichita, KS
Williams Metal Blanking Die Co., Paramount, CA
Willow Tool & Machining, Inc., Strongsville, OH
Wilson Tool & Manufacturing Comp, Spokane, WA
Wire—E D M Company, Inc., Middleburg Heights, OH
Wirecut Specialties, Owings Mills, MD
Woods Machining & Tooling, Inc., Akron, OH

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National Oceanic and Atmospheric Administration

[Docket No. 930499–3099; I.D. 031793B]

Tilefish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the tilefish fishery.

SUMMARY: NMFS announces that owners of commercial vessels entering the tilefish fishery after June 15, 1993 (control date) will not be assured of future access to or an allocation of the tilefish resource if a management regime is developed and implemented under the Magnuson Fishery Conservation and Management Act (Magnuson Act) that limits the number of participants in the fishery. This announcement is intended to promote awareness of a potential eligibility criterion for access to the tilefish resource and to discourage new entries into this fishery based on economic speculation while the Mid-Atlantic Fishery Management Council (Council) contemplates whether and how access to the tilefish fishery should be controlled. This announcement does not prevent any other date for eligibility in the fishery or another method of controlling fishing effort from being proposed and implemented.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 302–674–2331 or Richard Roe, NMFS, 508–281–9244.

SUPPLEMENTARY INFORMATION: Tilefish inhabit the outer edge of the continental shelf from Nova Scotia to South America and are relatively abundant in Mid-Atlantic/Southern New England areas at depths of 360 to 780 feet (110 to 240 m). They are commonly found in and around submarine canyons where they occupy burrows and depressions in the sedimentary substrate, as well as occurring around obstructions. Tilefish are relatively slow growing and long-lived, with a maximum age of 35 years and length of 47 inches (120 cm).

Commercial tilefish catches were first recorded in 1915 and reached an all-time peak in 1916 of 10 million pounds (4,500 mt). Landings averaged around 2 to 3 million pounds (900 to 1,400 mt) during the 1950s but declined to less than 100 thousand pounds (45 mt) during the late 1960s. Most recently, catches increased to over 8 million pounds (3,600 mt) in 1979 but have declined steadily to 1991 landings of only 2.5 million pounds (1,100 mt). Commercial catch-per-unit-effort during this time period declined from 13 thousand pounds (5.9 mt) per day fished to only 1,500 pounds (0.7 mt). A small recreational fishery developed during the early 1970s in New York and New Jersey with landings never exceeding 300 pounds (0.14 mt). Recent recreational catches are very low.

Landings and catch-per-unit-effort data indicate that tilefish were heavily overexploited during the height of the longline fishery between 1977 and 1982. Fishing mortality exceeded the estimates of the maximum sustainable yield level by three times. Catches during this period were well above the long-term potential yield of the stock (2.5 million pounds or 1,100 mt). This period was followed by steadily declining values in catch-per-unit-effort, and a lesser decline in both landings and average fish size. There were also changes in the spawning structure of the population, with decreases in the size and age of maturity in males. These declines since the early 1980s reflect significant stock decline and continued overexploitation.

The Council intends to address whether and how to limit entry of commercial vessels into this fishery in the Tilefish Fishery Management Plan. The Council's intent in making this announcement is to discourage speculative entry into the commercial tilefish fishery while potential management regimes to control access into the fishery are discussed and possibly developed by the Council. The control date will help to distinguish bona fide established fishermen from the speculative entrants to the fishery. Although fishermen are hereby notified that entering the fishery after the control date will not assure them of future access to the tilefish resource on the grounds of previous participation, other qualifying criteria also may be applied in the future.

This announcement establishes June 15, 1993 for potential use in determining historical or traditional participation in the tilefish fishery. This action does not commit the Council to develop any particular management regime or to use any specific criteria for determining entry to the fishery. The Council may choose a different control date, or it may choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to fishermen in this fishery before and after the control date. The Council may also choose to take no further action to control entry or access to the fishery. Any action by the Council will be taken pursuant to the requirement for fishery management plan development established under the Magnuson Act.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 9, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–13997 Filed 6–14–93; 8:45 am]
BILLING CODE 3510–22–M

VOL 58 ISS 113 JE 15 1993 UMI

[Docket No. 930516-3116; I.D. 041493A]

Financial Assistance for Research and Development Projects for Full and Wise Use and Enhancement of Fishery Resources in the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Request for comments on proposed program emphasis areas.

SUMMARY: Funds are requested in the President's fiscal year (FY) 1994 budget to assist persons in carrying out research projects that optimize the use of U.S. Gulf of Mexico and South Atlantic (North Carolina to Florida) fisheries involving the U.S. fishing industry (recreational and commercial), including fishery biology, resource assessment, social-economic assessment, management and conservation, selective harvesting methods, and fish handling and processing. Emphasis is on research that will enhance social and economic benefits from living marine resources. NMFS issues this notice to solicit public comments on the FY 1994 proposed program emphasis areas for the Marine Fisheries Initiative (MARFIN) Financial Assistance Program. This is not a solicitation for proposals.

DATES: Public comments on the proposed areas of program emphasis for the FY 1994 MARFIN solicitation will be accepted between June 15, 1993 and July 15, 1993.

ADDRESSES: Send comments to: Regional Director, Attn: D. Pritchard, Southeast Regional Office, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mr. David L. Pritchard, 813-893-3720.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Fish and Wildlife Act of 1956, at 16 U.S.C. 753a, authorizes the Secretary of Commerce to enter into cooperative agreements for the conduct of research to enhance U.S. fisheries. Funds are requested in the President's FY 1994 budget for financial assistance under the MARFIN program to manage and enhance the use of fishery resources in the Gulf of Mexico and off the States of North Carolina, South Carolina, Georgia and Florida. "U.S. fisheries" includes any fishery that is or may be engaged in by U.S. citizens. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries. This program is described in the Catalog of Federal Domestic Assistance under program number 11.433 Marine Fisheries Initiative.

A Notice of Availability of Financial Assistance for the FY 1994 MARFIN program is expected to be published in the **Federal Register** after public comments have been received on the proposed areas of emphasis in this notice.

II. Proposed Areas of Emphasis for the FY 1994 MARFIN Program

Research needs identified in fishery management plans (FMPs) and amendments prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and the Gulf and Atlantic States Marine Fisheries Commissions (Commissions) are included in this proposal. Areas of special emphasis include:

1. Shrimp Trawler Bycatch

Studies are needed to contribute to the regional shrimp trawler bycatch program being conducted by NMFS in cooperation with state fishery management agencies, commercial and recreational fishing organizations and interests, environmental organizations, universities, the Councils, and the Commissions. Specific guidance and research requirements are contained in the Regional Bycatch Plan prepared by the Gulf and South Atlantic Fisheries Development Foundation. In particular, the studies should address:

a. Data collections and analyses to expand and update current bycatch estimates, temporally and spatially, including offshore, nearshore, and inshore waters. Emphasis should be on inshore and nearshore waters (less than 10 fathoms (18.3 m)). Estimated numbers and weights should be included, plus samples of hard parts of fish to allow analysis of year-class impact.

b. Assessments of the status and condition of fish stocks significantly impacted by shrimp trawling, with emphasis given to overfished species under the jurisdiction of the Councils.

c. Identification, development, and evaluation of gear, non-gear, and tactical fishing options to reduce bycatch.

d. Economic studies of the dynamic effects of bycatch on the bycatch fisheries, e.g., mackerel, reef fish, demersal species, and estuarine species.

e. Improved methods for communicating with and improving technology and information transfer to the shrimp industry.

f. Measurement of the biological impacts of various management options to reduce shrimp fishery bycatch. Information is needed on trophic level interactions of changes due to bycatch reduction.

2. Highly Migratory Pelagic Fisheries

a. Longline Fishery, Including Bycatch

A number of pelagic longline fisheries exist in the Gulf and South Atlantic. Most target highly migratory species such as tunas, billfish, some sharks, and swordfish. These fisheries have evolved rapidly over the last decade, with increases in fishing effort and changes in fishing gear and tactics. These changes need to be characterized and their effects quantified. High priority areas include:

(1) Characterization of specific longline fisheries, including targeted species, stock identification, bycatch catch per unit effort, and biological parameters (e.g., sex and reproductive state) by gear type, area, and season.

(2) Evaluation of vessel log data for monitoring the fisheries.

(3) Development and evaluation of gear and fishing tactics to minimize the bycatch of undersized and unwanted species, including sea turtles and marine mammals.

(4) Assessment of the impact of longline bycatch on related fisheries, including biological, social, and economic factors and effects.

b. Sharks

Little is known about shark resources in the Gulf and South Atlantic. A Secretarial FMP for Atlantic sharks has been developed that identifies a number of research needs. These needs can be grouped as:

(1) Characterization of the directed and bycatch commercial and recreational fisheries from existing and new data. Emphasis should be on species, stock identification, size, and sex composition and catch per unit effort by season, area, and gear type.

(2) Collection and analysis of basic biological data on movements, habitats, growth rates, mortality rates, age composition, and reproduction. Especially needed are collection and analysis of data on the extent of geographic range, migration characteristics, and other movements of blacktip and sandbar sharks. Of particular interest for the sandbar shark are determination of its relationship to water depth and determination of the southern boundary of its range.

(3) Determination of baseline cost and returns for commercial fisheries that take and retain sharks, and estimations of demand curves for shark products and recreational shark fisheries.

(4) Development of species profiles and stock assessments for sharks taken

in significant quantities by commercial and recreational directed and bycatch fisheries. Assessments can be species-specific or for species groups, so long as the latter does not differ substantially from the groups identified in the Shark FMP.

(5) Identification of coastal sharks using laboratory (tissue analysis) methods.

(6) Characterization of the recreational shark fishery; research to improve the precision and accuracy of recreational catch estimates; increase in the size and species sampling of the recreational catch.

(7) Development of fishery-independent abundance indices.

3. Reef Fish

Many species within the reef fish complex are showing signs of being overfished, either by directed or bycatch fisheries. The ecology of reef fish makes them especially vulnerable to overfishing because they tend to concentrate over specific types of habitats that are patchily distributed (widely scattered, but often clustered). The patchy distribution of the resource can make traditional fishery statistics misleading, because catch per unit effort can remain relatively high as fishermen move from one area to another, yet overall abundance of the resource can be declining sharply. Priority research areas include:

a. Collection of basic biological data for species in commercially and recreationally important fisheries, with emphasis on stock and species identification, age and growth, early life history, the source of recruits (especially amberjack and vermilion snapper in the Gulf of Mexico and the possibility of a Caribbean source for Florida Keys snapper and grouper), reproductive biology, and movement and migration patterns. The behavior of age-0 and age-1 red snapper is another important research need. Also important is the effect of reproductive mode and sex change (protogynous hermaphroditism) on population size and characteristics, with reference to sizes of fish exploited in the fisheries and the significance to proper management.

b. Identification and quantification of natural and human-induced mortality.

c. Determination of the habitat and limiting factors for important reef fish resources (such as snapper in the Gulf of Mexico).

d. Identification and characterization of spawning aggregations by species, areas, and seasons.

e. Assessment of tag performance on primary reef fish species (snappers and groupers). Characteristics examined should include shedding rate, holding power, effects on growth and survival, and ultimately the effects of these characteristics on estimation of vital population parameters.

f. Stock assessments to establish the status of major recreational and commercial species. Especially needed are innovative methods for assessing stocks of aggregate species, including the impact of fishing on genetic structure.

g. Research in direct support of management techniques, including catch-and-release mortality, gear and fishing tactic modifications to minimize bycatch, balancing traditional fisheries use with alternate uses (e.g., ecotourism and sport diving), and economic and social profiles and studies to evaluate impacts of management options. Also needed are studies to determine effects of fishing closures and quotas on alternative commercial and recreational fisheries.

h. Research to evaluate the use of reef fish marine reserves (sanctuaries) as an alternative or supplement to current fishery management measures and practices, especially in the South Atlantic. Also needed is an examination of the effects of these sanctuaries on non-target species.

i. Use of available data to describe the social-economic behavior of recreational fishermen (e.g., effects of switching species and bag limits on recreational trips).

j. Characterization and quantification of the biological, economic and social impacts of the 1994 experimental longline fishery for reef fish in the 15–20 fathom (27–37 m) zone along Florida's west coast. This should include the following features:

(1) Characterization of the longline fishery, including the target species, bycatch catch per unit effort, and biological parameters (including size, sex, and reproductive state) by gear type, area, and season.

(2) Evaluation of vessel log data for monitoring the fishery.

(3) Development and evaluation of gear and fishing tactics to minimize the bycatch of undersized and unwanted species, including sea turtles and marine mammals.

(4) Assessment of the impact of longline bycatch on related fisheries including biological, social, and economic factors and effects.

k. A study designed to outline approaches to the development of multispecies individual transferable quotas (ITQs) and the economic performance resulting from ITQ management. The study should address the unique problems associated with the catch of multiple species with given units of effort. The implications for the costs of development and monitoring such ITQs should be included in the analysis. A suggested example species complex is Gulf of Mexico reef fish (snappers and groupers).

Additional explanation of research needs for Gulf reef fish is available from a MARFIN-supported plan for cooperative reef-fish research in the Gulf of Mexico.

1. Characterization of the Gulf of Mexico fish trap fishery, with emphasis given to onboard observer data, including information on bycatch and undersized target species, condition of the catch, catch handling techniques, fishing techniques, area and seasonal fishing practices, and fate of released fish.

4. Coastal Herrings

Preliminary studies indicate that substantial stocks of coastal herrings occur in the Gulf and South Atlantic. Most of the available data come from fishery-independent surveys conducted by NMFS and state fishery management agencies. Because of the size of these stocks, their importance as prey, and in some instances as predator species, their potential for development as commercial and recreational fisheries needs to be understood. General research needs include:

a. Collection, collation, and analysis of available fishery-independent and fishery-dependent data from state and Federal surveys, with emphasis on species and size composition, seasonal distribution patterns, biomass, and environmental relationships. Emphasis should be given to high-profile species, such as Spanish sardines.

b. Description and quantification of predator-prey relationships between coastal herring species and those such as the mackerels, tunas, swordfish, billfish, sharks, bluefish, and others in high demand by commercial and recreational fisheries.

5. Coastal Migratory Pelagic Fisheries

The demand for many of the species in this complex by commercial and recreational fisheries has led to overfishing for some, such as Gulf King and Spanish mackerel, and Atlantic Spanish mackerel. Additional, some are transboundary with Mexico and other countries and ultimately will demand international management attention. Current high priorities include:

a. Development of recruitment indices for king and Spanish mackerel, cobia, dolphin, and bluefish, primarily from fishery-indpendent data sources, though indices of year-class success using

occurrence in bycatch are also important.

b. Development of assessment and management models for coastal pelagic resources for which dynamics are dominated by single year classes (such as Spanish mackerel, dolphin, and bluefish).

c. Improved catch statistics for all species in Mexican waters, with special emphasis on king mackerel. This includes length frequency and life history information.

d. Information on populations of coastal pelagics overwintering off North Carolina, South Carolina, and Georgia; especially population size, age, food, and movements.

e. Collection of basic biostatistics for coastal pelagic species (e.g., cobia and dolphin) to develop age-length keys and maturation schedules for stock assessments, where significant gaps in the database exist.

f. Demand and supply functions for recreational and commercial fisheries for king mackerel in the South Atlantic and Gulf of Mexico. Emphasis can be on changes in marginal values of production and surplus since the studies would be used in allocation frameworks where total values are not necessarily required. Potential applicants must ensure that they are familiar with the status of research in this area.

6. Groundfish and Estuarine Fishes (Weakfish, Menhaden, Spot, Croaker, and Red Drum)

Substantial stocks of groundfish and estuarine species occur in the Gulf and South Atlantic. Most of the database comes from studies conducted by NMFS and state fishery management agencies. Because of the historic and current size of these fish stocks, their importance as predator and prey species, and their current or potential use as commercial and recreational fisheries, more information on their biology and conservation is needed. General research needs are:

a. Measurement of the effects of sport fishing on red drum populations in the Gulf of Mexico and the South Atlantic. Specific needs in the South Atlantic area are increased sampling of night-time fishing for red drum on the Outer Banks of North Carolina.

b. Definitions of the stocks of groundfish and estuarine fishes in the South Atlantic.

c. Information on the immigration and escapement of red drum from state waters into the exclusive economic zone (EEZ) in the Gulf of Mexico.

d. Determination of life history and stock identification parameters for weakfish, menhaden, spot, croaker and red drum in the Gulf of Mexico and the South Atlantic area. Research should include determination of migratory patterns through tagging, monitoring long-term changes in abundance, measurement of growth rates and age structure, and comparisons of the inshore and offshore components of the recreational and/or commercial fisheries.

e. Monitoring of juvenile populations and population indices to determine year-class strength, including recruitment indices and fishery-independent indices of spawning stock.

f. Catch and effort statistics from recreational and commercial fisheries, including size and age structure of the catch, to develop production models.

g. Biological and economic analyses of the optimum utilization of long-term fluctuating populations.

h. Quantification of the bycatch in the commercial menhaden purse seine fishery and the coastal herring purse seine and beach seine fisheries.

Note. Preliminary coastwide studies on menhaden have been conducted.

i. Quantification of the bycatch in finfish trawl fisheries (such as the flounder fishery and the fly-net fishery for sciaenids in the South Atlantic area).

j. Turtle excluder device (TED) development and testing for finfish trawl fisheries.

k. Determination of catch-and-release mortality rates for spotted seatrout and red drum in inshore and nearshore waters.

l. Consideration of options with the potential for implementing a limited access system for the menhaden fishery.

m. Cooperative red drum tag-recapture studies to estimate the standing stick biomass in the EEZ and to determine red drum escapement rates from state waters.

7. Crabs and Lobsters

a. Monitoring of fecundity and sex/size frequency for examination of spawning potential in relation to overfishing criteria for stone crabs and spiny lobsters.

b. Development of indices of recruitment and/or migration rates for stone crabs and spiny lobsters.

c. Development of assessment and management models for single year-class fisheries for stone crabs and spiny lobsters.

8. Sea Turtle Conservation

The conservation of endangered and threatened sea turtles in the southeast region continues to be of relatively high priority. Specific needs include:

a. Information on the distribution, abundance, species, and size composition of sea turtles in inshore waters, especially where these turtles may be affected by inshore fisheries (e.g., shrimp trawls, gill nets).

b. TED modifications or designs to exclude adult leatherback sea turtles effectively. The area of special concern is off South Carolina, Georgia, and Florida.

c. TED designs and modifications of existing designs for use in small, inshore shrimp trawls. Research on shrimp retention and on the effectiveness of the TEDs to operate in areas with debris is especially needed.

d. Sea turtle incidental catch in fisheries other than the shrimp fishery.

e. Definition, spatially and seasonally, of critical habitat areas for Kemp's ridley sea turtles in coastal and inshore areas.

9. General

There are many areas of research that need to be addressed for improved understanding and management of fishery resources. These include methods for data collection, management, analysis, and for better conservation. Examples of high priority research topics include:

a. Basic design and critical analysis of a data collection system, which may involve permits, logbooks, trip interviews, dealer reporting or other innovative methods. The system design should be applicable across the entire range of species that may be pursued throughout the Gulf and South Atlantic region and should address established social-economic and biological data needs.

b. Assessment of the changes in recreational and commercial values that have resulted from past management actions for red drum, shrimp, mackerels, and reef fish.

c. Development of improved methods and procedures for technology transfer and education of constituency groups concerning fishery management and conservative programs. Of special importance are programs concerned with controlled access and introductions of conservation gear and fishing practice modifications.

d. Development of new modeling and analytical approaches to understanding basic processes in fishery productivity and energy transfer that can be applied to specific fishery resource problems.

e. Development of baseline socio-demographic information on Federally managed South Atlantic and Gulf of Mexico fisheries.

Authority: 16 U.S.C. 753a.

Dated: June 9, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–14058 Filed 6–14–93; 8:45 am]

BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council's Surf Clam and Ocean Quahog Committee will hold a public meeting on June 30, 1993, at the Ramada Inn, 76 Industrial Highway, Essington, PA. The meeting will begin at 10:00 a.m.

The primary purpose of the meeting is to discuss Amendment #9 to the Surf Clam and Ocean Quahog Fishery Management Plan.

For more information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: June 9, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–13998 Filed 6–14–93; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council (Council) is commencing a review of stocks which have not met their spawning escapement objectives for three consecutive years. The review is required by Amendment #10 to the West Coast Ocean Salmon Fishery Management Plan. The Council has formed two teams to proceed with reviews of the Sacramento River and Klamath River fall chinook stocks. Each team will review the causes for the escapement failure of its respective stock and provide recommendations for resolving the problems to the Council prior to the 1994 ocean salmon season.

The Teams' agendas, and meeting dates, times and locations are as follows:

The Klamath River Fall Chinook Review Team will hold its initial meeting on June 24–25, 1993, in room 106 of Nelson Hall East, Humboldt State University, Arcata, CA. The meeting will begin at 1 p.m. on June 24 and continue on June 25 from 8 a.m. until about 12 noon. This Team will examine the causes which have led to a failure in meeting spawning escapement objectives for naturally produced Klamath River fall chinook. This stock has been below its floor spawning escapement level (35,000) for the past three years.

The Sacramento River Fall Chinook Review Team will hold its initial meeting June 29–30, 1993, in the Main Conference Room, Region 2 Headquarters of California Department of Fish and Game, 1701 Nimbus Road, Rancho Cordova, CA. The meeting will begin at 1 p.m. on June 29 and continue on June 30 from 8 a.m. until about 12 noon. This Team will examine the causes which have led to a failure in meeting the annual spawning escapement range (122,000 to 180,000 adults) for natural and hatchery produced Sacramento River fall chinook over the past three years.

For more information contact John Coon, Staff Officer (Salmon), Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: June 9, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–13994 Filed 6–14–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of scientific research permit No. 837 (P771#67).

SUMMARY: On April 1, 1993, notice was published in the **Federal Register** (58 FR 17208) that a request for a scientific research permit to take marine mammals (P771#67) had been submitted by the Alaska Fisheries Science Center, NMFS, NOAA, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Building 4, Seattle, WA 98115, to conduct scientific research on northern fur seals (*Callorhinus ursinus*) over a 5-year period.

Notice is hereby given that on June 4, 1993, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966 (16 U.S.C. 1151–1187), the NMFS issued the requested Permit for the above activities subject to the Special Conditions set forth therein.

The Permit and other related documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/586–7221);

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150); and,

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802, (310/980–4016).

Dated: June 4, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–14010 Filed 6–14–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

June 9, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 17, 1993.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as consultations have not resulted in a mutually satisfactory solution on Categories 334/634, the

United States Government has decided to control imports in these categories for the prorated period beginning on May 29, 1993 and extending through December 31, 1993 at a level of 91,264 dozen.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in further consultations with the Government of Pakistan, further notice will be published in the Federal Register.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 56904, published on December 1, 1992; and 58 FR 15486, published on March 23, 1993.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 9, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 25, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on June 17, 1993, you are directed to establish a limit for cotton and man-made fiber textile products in Categories 334/634 for the period beginning on May 29, 1993 and extending through December 31, 1993 at a level of 91,264 dozen [1].

For the import period February 28, 1993 through March 24, 1993, you are directed to charge 1,120 dozen for Category 634 to the limit established in the directive dated March 18, 1993 for Categories 334/634 for the period beginning on February 28, 1993 and extending through May 28, 1993.

Imports charged to the limit for Categories 334/634 for the February 28, 1993 through May 28, 1993 period shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–14077 Filed 6–14–93; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after May 28, 1993.

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title and OMB Control Number: Parent Subsidiary Verification System; OMB Control No. 0704–0236.

Type of Request: Revision.

Number of Respondents: 125.

Responses Per Respondent: 1.

Annual Responses: 125.

Average Burden per Response: 2 hours.

Annual Burden Hours: 250.

Needs and Uses: The annual publication entitled, "100 Companies Receiving the Largest Dollar Volume of Prime Contract Awards," provides total DoD awards reported during a fiscal year to a company and all of its subsidiaries. To ensure that the published data are accurate, a listing is sent to the companies likely to appear in this publication requesting information on their subsidiaries.

Affected Public: Businesses or other for-profit.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: June 10, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–14089 Filed 6–14–93; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award a Cooperative Agreement to Conference of Radiation Control Program Directors

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criteria set forth at 10 CFR 600.7(b)(2)(i) (A), (B) and (D) under Cooperative Agreement Number DE–FC01–93RW00284 to the Conference of Radiation Control Program Directors. The Department's purpose in negotiating a Cooperative Agreement with this non-profit national association of State radiation safety offices is to provide them assistance in establishing radiological inspection procedures and in reviewing emergency-response procedures for shipment of radioactive material, including transportation of nuclear waste pursuant to the Nuclear Waste Policy Act of 1982, as amended.

SCOPE: DOE intends to award a five year cooperative agreement at a total projected cost of $502,284 for the purpose of (1) evaluating the resources and needs of state agencies involved with the transportation of spent nuclear fuel and high-level radioactive waste (HLW), and adequately distribute that information; (2) providing a forum for, and enhancing, communications concerning HLW radiation control programs (RCPs), DOE Office of Civilian Radioactive Waste Management (OCRWM) Office of Storage and Transportation Systems (OSTS), other professional and governmental organizations involved in HLW, and the general public; (3) providing information and instruction by national authorities to first responders for transportation accidents involving radioactive materials, and to the general public; (4) reviewing documents and analyzing HLW transportation issues from the perspective of state radiation control authorities; and (5) representing the concerns, needs, and program developments of state radiation control programs to the OCRWM/OSTS and to

other related government agencies and professional associations.

Basis for Non-Competitive Award

DOE has determined that the circumstances of the proposed award meet the criteria of 10 CFR 600.7(b)(2)(i) A, B and D, in that DOE had determined that (1) this is an activity presently being funded under an expiring cooperative agreement with the Conference of Radiation Control Program Directors for which competition for support would have a significant adverse effect on the continuity or completion of the activity; (2) the Conference of Radiation Control Program Directors will use its own resources and those of third parties, however, DOE support will enhance the public benefits to be derived from this activity and DOE knows of no other entity which is conducting or planning to conduct such activities; and (3) the Conference of Radiation Control Program Directors has exclusive domestic capability to perform these activities successfully, based upon its unique position as the chartered board representing State radiation safety offices.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Mr. Bill Heaps, PR–322.3, 1000 Independence Ave. SW., Washington, DC 20585.

Linda Strand,

Acting Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 93–14076 Filed 6–14–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP93–425–000, et al.]

CNG Transmission Corp., et al.; Natural Gas Certificate Filings

June 8, 1993.

Take notice that the following filings have been made with the Commission:

1. CNG Transmission Corp.

[Docket No. CP93–425–000]

Take notice that on June 3, 1993, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP93–425–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of certain pipeline facilities in New York, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, CNG proposes to construct and operate 3.68 miles of 30-inch pipeline in Bethlehem Township, Albany County, New York. The proposed pipeline would connect CNG's TL–383 pipeline to its TL–470 pipeline near Niagara Mohawk Power Corporation's South Albany Steam Plant, it is stated.

CNG states that the facilities are necessary to enable it to provide long-term, firm natural gas transportation service to the LG&E-Westmoreland Rensselaer Cogeneration Plant located in Rensselaer, New York.

CNG estimates the cost of the facilities to be $8,358,600, which would be financed from funds on hand or obtained from its parent, Consolidated Natural Gas Company.

Comment date: June 29, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Co.

[Docket No. CP93–360–000]

Take notice that on May 27, 1993, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP93–360–000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon service under five individually certificated transportation and exchange agreements with Western Gas Interstate Company (Western), Natural Gas Pipeline Company of America (NGPL), Cabot Corporation (Cabot), Lukens Steel Company (Lukens) and DeKalb Swine Breeders, Inc. (DeKalb), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Panhandle states that it proposes to abandon service under its Rate Schedules E–1, T–5, T–9, T–55 and T–63 contained in its FERC Gas Tariff, Original No. 2. Panhandle further states that the various transportation and exchange services are no longer required by Western, NGPL, Cabot, Lukens and DeKalb. Panhandle asserts that proper notices were given for the termination of these services under these rate schedules.

No facilities are proposed to be abandoned herein.

Comment date: June 29, 1993, in accordance with Standard Paragraph F at the end of this notice.

3. Williams Natural Gas Co. and Transwestern Pipeline Co.

[Docket No. CP93–367–000]

Take notice that on June 1, 1993, Williams Natural Gas Company (WNG) P.O. Box 3288, Tulsa, Oklahoma 74101, and Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP93–367–000, a joint application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service provided pursuant to WNG's Rate Schedule X–17 and Transwestern's Rate Schedule X–16, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that by order issued May 23, 1980, in Docket No. CP80–25, WNG (formerly Cities Service Gas Company) and Transwestern were authorized to exchange natural gas pursuant to an agreement dated August 9, 1979. The agreement, it is said, provided for natural gas produced from nine wells, and other wells added by mutual agreement, located near WNG's facilities and dedicated to Transwestern, would be gathered into WNG's system. WNG, it is said, would concurrently reduce the volumes received from Transwestern by an equivalent quantity at an existing delivery point between WNG and Transwestern located in Hemphill County, Texas.

WNG and Transwestern state that there has been no activity pursuant to this exchange for several years and therefore the agreement has been terminated pursuant to mutual written agreement of the parties.

No facilities are proposed to be abandoned herein.

Comment date: June 29, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to

jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13982 Filed 6–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–420–000]

Arkla Energy Resources Co.; Request Under Blanket Authorization

June 8, 1993.

Take notice that on June 3, 1993, Arkla Energy Resources Company (AER), Post Office Box 2174, Shreveport, Louisiana 71151, filed in Docket No. CP93–420–000, a request pursuant to §§ 157.205, 157.211, and 157.212 of the Commission's Regulations under the Natural Gas Act and pursuant to Northern's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, for authority to construct and operate facilities in Louisiana, all as more fully set forth in the application which is on file and open to the public inspection.

AER specifically proposes to upgrade one existing meter station at an estimated cost of $13,000, for increased deliveries to Arkansas Louisiana Gas Company's (ALG's) new rural extension to serve customers in Claiborne Parish, Louisiana. AER also contends that ALG will reimburse AER for all construction costs, and that the volume of gas that will be delivered through this tap is approximately 2,190 Mcf on a peak day.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–13981 Filed 6–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–412–000]

Northwest Pipeline Corp.; Petition for Declaratory Order

June 9, 1993.

Take notice that on June 2, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP93–412–000 a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order confirming that Northwest's past and proposed accommodation and use of mobile compressors to temporarily replace existing permanent compressor units on its interstate natural gas pipeline qualifies as a miscellaneous rearrangement of facilities subject to 18 CFR 157.208, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Northwest states that it has modified seven existing compressor station sites to accommodate mobile compressors, to temporarily replace existing compressor units when such units are out-of-service. Northwest states further that such modifications were done as part of a miscellaneous rearrangement of facilities under Northwest's blanket construction certificate. The request, it is said, is made out of an abundance of caution to provide certainty that the activity complies with Commission regulations.

It is stated that in the alternative, Northwest requests the Commission to issue a certificate granting Northwest authority to construct facilities to accommodate temporary replacement mobile compressor units, operate and subsequently remove them.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 30, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13979 Filed 6–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–549–000]

Public Service Co. of New Mexico; Filing

June 9, 1993.

Take notice that on June 3, 1993, Public Service Company of New Mexico submitted (1) an additional Explanatory Statement relating to the Letter Agreement between Tucson Electric Power Company and PNM dated August 26, 1981, submitted on April 7, 1993 in the captioned proceeding, and (ii) Exhibits I–IV to the Co-Tenancy Agreement between PNM and TEP, which was inadvertently omitted from the April 7, 1993 filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13977 Filed 6–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93-160-000]

Puget Sound Power & Light Co.; Filing

June 9, 1993.

Take notice that on May 5, 1993, Puget Sound Power & Light Company (Puget) tendered for filing an amendment to its original filing filed in this docket on November 17, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-13978 Filed 6-14-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES93-38-000]

Texas-New Mexico Power Co.; Application

June 8, 1993.

Take notice that on June 4, 1993, Texas-New Mexico Power Company (Texas-New Mexico) filed an application under § 204 of the Federal Power Act requesting authorization to issue not more than $150 million of First Mortgage Bonds and $150 million of Secured Debentures, over a two-year period. Also, Texas-New Mexico requests exemption from the Commission's competitive bidding and negotiated placement regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-13980 Filed 6-14-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-435-000]

Transcontinental Gas Pipe Line Corp.; Request Under Blanket Authorization

June 9, 1993.

Take notice that on June 7, 1993, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP93-435-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new point of delivery to Public Service Electric & Gas Company (PSE&G), under the blanket certificate issued in Docket No. CP83-426-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that it would construct, install, own, and maintain a new delivery point to PSE&G, one of its sales, transportation and storage customers. It is indicated that the facility, referred to as the Camden Cogen Delivery Point, would include a branch tee, a 12-inch valve and appurtenant facilities on Transco's existing 14-inch Plant "A" Lateral, all in Camden County, New Jersey and would cost estimated $143,000. It is also indicated that PSE&G would construct, or cause to be constructed, facilities to enable it to receive gas from Transco at the new delivery point.

Transco states that the Camden Cogen Delivery Point would be used by PSE&G to receive up to a maximum daily delivery point entitlement of 31,000 Mcf per day of gas from Transco on a firm and interruptible basis. It is stated that the facility is required to enable PSE&G to serve Cogen Technologies, an incremental cogeneration customer of PSE&G that would use the gas as fuel for its cogeneration plant. It is also stated that the authorized total transportation and sales service entitlement for PSE&G would not be altered from the current level, and the addition of the delivery point would have no effect on Transco's peak day or annual deliveries to PSE&G. It is further indicated that Transco has sufficient system delivery flexibility to accomplish deliveries at the new delivery point without determent or disadvantage to Transco's other gas transportation and sales customers. Also, Transco states that the addition of the new delivery point would have no effect on Transco's peak day or annual deliveries to other customers. Transco also states that the addition of the new delivery point in not prohibited by Transco's FERC Gas Tariff. It is indicated that PSE&G would continue to have total firm mainline sales and transportation capacity of 430,549 Mcf per day.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-13976 Filed 6-14-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Efficiency and Renewable Energy

[Case No. CW-001]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver From Clothes Washer Test Procedures of New Harmony Systems Corp.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to New Harmony Systems Corporation (New Harmony) from the existing Department of Energy (DOE or Department) test procedure for clothes washers regarding its series 1 and 2 machines. The design features that differ from those covered by the existing clothes washer test procedure are: An internal electrical heater for heating wash water; a continuously variable wash temperature

control; and 120/208Y and/or 120/240 volt electrical power supply.

Today's notice also publishes a "Petition for Waiver" from New Harmony. New Harmony's Petition for Waiver requests DOE to grant relief from the DOE clothes washer test procedure relating to the series 1 and 2 machines. The design features that differ from those covered by the existing clothes washer test procedure are: an internal electrical heater for heating wash water; a continuously variable wash temperature control; and 120/208Y and/or 120/240 volt electrical power supply.

New Harmony seeks to test by internally heating the inlet cold water instead of using externally heated water; test by using a continuously variable wash temperature control instead of the 3 temperature requirements (i.e., hot (140°F), warm (100°F) and cold (60°F)); and test by using an electrical power supply of 120/208Y and/or 120/240 volts instead of 120 ±2 volts. DOE is soliciting comments and information regarding the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than July 15, 1993.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. CW–001, Mail Stop EE–90, room 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC., 20585, (202) 586–0561.

FOR FURTHER INFORMATION CONTACT:

William W. Hui, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43, Forrestal Building, 1000 Independence Avenue, SW. Washington, DC., 20585 (202) 586–9145

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC., 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including clothes washers. The intent of the test procedures is to provide a comparable measures of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to temporarily waive the test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On February 2, 1993, New Harmony filed an Application for Interim Waiver regarding its series 1 and 2 machines with design features that differ from those covered by the existing clothes washer test procedure: an internal water heating source; a various temperature testing capability; and an alternate electrical power supply. New Harmony's Application seeks an Interim Waiver from the DOE provisions that require an externally heated water supply, three specified temperature settings (i.e., 140°F, 100°F and 60°F), and 120 volt ±2 volt electrical power supply. Instead, New Harmony requests the allowance to test both machines with: A cold water supply that is heated internally for washing; continuously variable settings in water temperature; and manufactured specified voltages of 120/208Y and/or 120/240. New Harmony states that these energy-efficient machines are to be imported into the United States in the near future. Since current DOE test procedures do not address the design features discussed above, New Harmony asks that the Interim Waiver be granted.

New Harmony states in its application to the Department that being a small company, it will suffer economic hardship if it cannot commence sales in a short time. Comments received from the Speed Queen Company of March 4, 1993, support the waiver request. To encourage and foster the availability of these energy-efficient products is in the public interest and thus, the Department grants the application for interim waiver.

Therefore, DOE is granting New Harmony an Interim Waiver for its series 1 and 2 machines. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations Part 430, the following letter granting the Application for Interim Waiver to New Harmony was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE would appreciate comments, data and other information regarding the petition discussed above.

Issued in Washington, DC., June 7, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

Mr. Allen Jaisle, President
New Harmony Systems Corporation, 1660 South Highway 100, 122 Parkdale Plaza, Minneapolis, MN 55416.

Dear Mr. Jaisle: This is in response to your February 2, 1993, Application for Interim Waiver and Petition for Waiver request from the Department of Energy (DOE or Department) test procedure pursuant to title 10 CFR 430.27 for clothes washers regarding New Harmony System Corporation's (New Harmony) series 1 and 2 machines with the following features that differ from those covered by the existing test procedure: an internal electrical heater for heating wash water, a continuously variable wash temperature control, and 120/208Y and/or 120/240 volt electrical power supply.

New Harmony states in its letter to the Department that being a small company, it will suffer economic hardship if it cannot commence sales in a short time. Comments received from the Speed Queen Company of March 4, 1993, support the waiver request. To encourage and foster the availability of these energy-efficient products is in the public interest and thus, the Department grants New Harmony's Application for an Interim Waiver from the DOE test procedure for its New Harmony series 1 and 2 machines, with the following features that differ from those covered by the existing clothes washer test procedure: an internal electric heater for heating wash water, a continuously variable wash temperature control, and 120/208Y and/or 120/240 volt electrical power supply.

New Harmony Systems Corporation shall be permitted to test its clothes washers on the basis of the test procedures specified in 10 CFR part 430, subpart B, Appendix J, with the modifications set forth below:

(i) Add a new Section 1.19 in Appendix J to read as follows:

1.19 "Water heating clothes washer" means a clothes washer that has an internal electrical heater which provides all the energy needed to heat water for washing.

(ii) Sections 2.2 and 2.3 in Appendix J are amended to read as follows:

2.2 *Electrical energy supply.* Maintain the electrical supply to the clothes washer terminal block within 1 percent of 120/208Y or 120/240 volts as applicable to the particular terminal block wiring system as specified by the manufacturer. If the clothes washer has a dual voltage conversion capability, conduct the test at the highest voltage recommended by the manufacturer.

2.3 *Water Temperature.* The temperature of the water supply shall be maintained at 60°F ± 5°F.

(iii) Sections 3.2.1 through 3.3.5 in Appendix J shall be deleted and replaced with the following:

3.2.1 *Per-Cycle Electrical Energy Consumption at Maximum Fill.* Set the water level selector at maximum fill. Insert the appropriate test load, if applicable. Set the variable water temperature thermostat to the hot setting (140°F) and activate the normal cycle of the clothes washer. At the end of the wash cycle, interrupt the normal cycle by bypassing the antishock step to prevent mixing of hot waste water and cold rinse water. Verify the temperature of the discharged waste water in the drain pipe, which must be at 140°F ± 5°F. If the measured temperature is lower than the specified lower bound, adjust the variable water temperature thermostat and/or increase wash time increment and repeat the procedure. Otherwise, reactivate and complete normal cycle and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{h,max}$.

3.2.1.1 Repeat section 3.2.1 for warm wash setting at 100°F ± 5°F and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{w,max}$.

3.2.1.2 For cold wash setting at 60°F ± 5°F, set variable water temperature thermostat to its lowest temperature setting and activate the normal cycle of the clothes washer after inserting the appropriate test load. Record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{c,max}$.

3.2.2 *Per-Cycle Electrical Energy Consumption at Minimum Fill.* Set the water level selector at minimum fill and repeat section 3.2.1 for hot wash setting at 140°F ± 5°F. Record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{h,min}$.

3.2.2.1 Repeat section 3.2.2 for warm wash setting at 100°F ±5°F and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{w,min}$.

3.2.2.2 Repeat section 3.2.1.2 for cold wash setting at 60°F ± 5°F and record the kilowatt-hours of electrical energy consumed for the complete cycle as $E_{c,min}$.

(iv) Sections 4.1 and 4.2 in Appendix J are amended to read as follows:

4.1 *Per-Cycle Temperature-Weighted Machine Electrical Energy Consumption For Maximum and Minimum Water Fill Levels.* Calculate the per-cycle temperature-weighted electrical energy consumption for the maximum water fill level, E_{max}, and for the minimum water fill level, E_{min}, expressed in kilowatt-hours per cycle and defined as:

$E_{min} = (0.30 \times E_{h,max}) + (0.55 \times E_{w,max}) + (0.15 \times E_{c,max})$

$E_{min} = (0.30 \times E_{h,min}) + (0.55 \times E_{w,min}) + (0.15 \times E_{c,min})$

where:

$E_{h,max}$ = as defined in section 3.2.1
$E_{w,max}$ = as defined in section 3.2.1.1
$E_{c,max}$ = as defined in section 3.2.1.2
$E_{h,min}$ = as defined in section 3.2.2
$E_{w,min}$ = as defined in section 3.2.2.1
$E_{c,min}$ = as defined in section 3.2.2.2

4.2 *Total Per-Cycle Machine Electrical Energy Consumption.* Calculate the total per-cycle energy consumption, E_{TE}, expressed in kilowatt-hours per cycle and defined as:

$E_{TE} = (0.72 \times E_{max}) + (0.28 \times E_{min})$

where:

E_{max} = as defined in section 4.1
E_{min} = as defined in section 4.1

(v) Delete sections 4.3 through 6.1 in Appendix J.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by New Harmony Systems Corporation. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until the Department acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

February 2, 1993.

Assistant Secretary,
Conservation and Renewable Energy, United States Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

RE: Application for Interim Waiver and Petition for Waiver, Appendix J, subpart B CFR part 430, Test Method for Water Heating Clothes Washers

Honorable Assistant Secretary: This Application for Interim Waiver and Petition for Waiver is submitted pursuant to Title 10 CFR 430.27, which provides for modification of test method because of design characteristics preventing testing or producing data unrepresentative of a covered product's true energy consumption characteristics.

New Harmony Systems is a small business which intends to market innovative new clothes washing machines, with special design characteristics and addressed to a small specialized market niche. New Harmony Systems' water heating clothes washers have certain design characteristics, which make testing impractical and unrepresentative when tested according to the existing Appendix J test method. These design characteristics are:

—Internal electrical heater for heating wash water;
—Continuously variable wash temperature control;
—Cold water rinse only, no heated water rinses; and,
—120/208Y and 120/240 volt electrical power supply.

New Harmony Systems proposes an Interim Waiver and Waiver to amend Appendix J to provide a practical and representative method for testing of New Harmony Systems' clothes washers, according to the attached *Test Method for Water Heating Clothes Washers.* The proposed *Test Method* includes the following amendments to Appendix J to accommodate the special design characteristics of water heating clothes washers:

1. *Definitions*—"Water heating clothes washer" is defined to specify design characteristics. "Water heating factor" is defined to provide a means of weighting internal water heating energy consumption at different wash/rinse temperature settings. New Harmony Systems' clothes washers are front loading designs; however, these definitions do not limit water heating clothes washers to front or top load design.

2. *Testing Conditions*—This section establishes testing conditions to accommodate 120/208Y and 120/240 volt power supply and to include water heating clothes washers in the specification of water supply on a comparable basis with non-heating clothes washers.

3. *Test Measurements*—This section provides for machine electrical energy test measurements of water heating clothes washers at both maximum and minimum water fill, for each wash/rinse temperature setting.

4. *Calculation of Derived Results from Test Measurements*—The calculation section provides for weighting of machine electrical energy consumption to account for useage at different water fill levels and different wash/rinse water temperature settings.

5. and 6. *Temperature Use Factors*—No amendments are proposed to these sections. New Harmony clothes washers can use Temperature Use Factors in Section 5.5.

Alternate II, in cases where some hot water is supplied to the clothes washer before wash water is further heated by internal heating. Initial New Harmony Systems' clothes washers will only have cold water supply. All New Harmony Systems' clothes washers will have cold rinses exclusively.

7. *Water Heating Factors*—This section specifies the Water Heating Factors used to weight the machine electrical energy consumption at different wash/rinse temperature settings. The Water Heating Factors are based on the Temperature Use Factors in Section 5.5, Alternate II. The only change is that the use factor for Hot Wash (Temperature Use Factor=.30) is divided into two water heating categories: Hot Wash (Water Heating Factor=.25) and Ultra Wash (Water Heating Factor=.05). This is because the maximum temperature wash, Ultra Wash—maximum temperature of about 190°F, is intended only for extremely soiled clothes made of strong materials—for example, cotton diapers. Clothes washing instructions and temperature control settings will emphasize washing at the lowest wash temperature possible. New Harmony expects that less than 5% of the washes will be at the Ultra Wash setting. This will be verified by surveys of users in the United States after enough water heating clothes washers are in use for meaningful survey results.

New Harmony Systems requests immediate relief by grant of the proposed Interim Waiver, justified by the following reasons:

Economic Hardship—New Harmony Systems is a small business and will suffer economic hardship if it cannot commence sales in a short time. The developmental process has already been unexpectedly long, so that additional regulatory delay will jeopardize the company. Filing for Waiver was deferred until completion of development. In addition to the time required by the Department of Energy for approval of Waiver on the Test Method, New Harmony Systems also faces the delay associated with approval of an appropriate Energy Guide label for water heating clothes washers. Unless the Application for Interim Waiver is granted and the regulatory processes can be expedited, the combined regulatory delay could work severe economic hardship.

Likely Approval of Waiver—The Petition for Waiver is likely to be granted, because the design characteristics of water heating clothes washers are distinctly different from non-heating clothes washers. The proposed Test Method for Water Heating Clothes Washers is written to closely integrate with the existing test method of Appendix J. The weighting strategy for water heating clothes washers is modeled on the weighting strategy currently specified in Appendix J for non-heating clothes washers. It seems very likely that a test method generally on the lines of the proposed method will be approved, with any appropriate modifications by the Department of Energy.

In the period between Interim Waiver and Waiver, only a relatively small number of water heating clothes washers will be sold by New Harmony Systems. Any difference between the test method approved for Interim Waiver and that finally approved for the Waiver will have only minimal impact on energy consumption or consumer decisions.

Public Policy Merits—The public policy benefits of encouraging small business success and fostering innovation in clothes washer design are additional reasons for prompt approval of the requested Interim Waiver. New Harmony Systems' water heating clothes washers use less than *one-third* of the water for washing, compared to most clothes washers. This means much less energy for heating wash water. It also means a two-thirds reduction in washing chemicals introduced into the environment directly or during the chemical manufacturing process.

New Harmony Systems' water heating clothes washers are designed to efficiently extract more water from wet clothes by a high speed spin cycle, up to 1000 RPM. Such water extraction is many times more energy efficient than drying the same amount of water. This innovation in clothes washer design does not affect the test method for clothes washers, but does result in increased energy savings.

Thank you for your timely attention to this request for Interim Waiver and Waiver. All clothes washing machine manufacturers known to New Harmony Systems have been notified by letter of this application. A copy of the letter is attached.

Sincerely,

Allen Jaisle,

President, New Harmony Systems.

Attachments: *Test Method for Water Heating Clothes Washers*, Letter to Manufacturers of Clothes Washers.

Application for Interim Waiver and Petition for Waiver

TEST METHOD FOR WATER HEATING CLOTHES WASHERS

(Title 10 CFR part 430, subpart B, Appendix J)

1. Definitions

Add the following definitions for "Water Heating Clothes Washer" and "Water Heating Factor" in new subsections in Appendix J, Section 1:

1.XX "Water heating clothes washer" means a clothes washer having an internal electrical heater to provide some or all of the energy required to heat water for washing. Wash water temperature is selectable on a continuously variable basis, with control settings at Cold Wash (no heating), Warm Wash (100°F), Hot Wash (140°F) and Ultra Wash (maximum temperature). All rinses are Cold Rinse (no heating).

1.XX "Water heating factor" means the percentage of the total number of washes a user would wash with a particular wash/rinse temperature setting. Water heating factors are specified in Section 7 and used in the Section 4.4 calculation of water heating electric energy consumption for water heating clothes washers.

2. Testing Conditions

Amend the first sentence of Appendix J, Section 2.2, Electrical Energy Supply, to include clothes washers using 120/208Y and 120/240 volt supply as follows:

Maintain the electrical supply to the clothes washer at 120 volts ±2 volts or within one percent of 120/208Y and 120/240 volts as applicable.

Amend the second sentence of Appendix J, Section 2.3, Water Temperature, to include water heating clothes washers as follows:

For clothes washers equipped with thermostatic valves or for water heating clothes washers, the temperature of the hot water supply should be maintained at 140°F ± 5°F and the cold water supply should be maintained at 60°F ± 5°F.

3. Test Measurements

Amend Appendix J, Section 3.2.1, Per Cycle Electrical Energy Consumption, by adding a new sentence requiring measurement of machine electrical energy consumption for water heating clothes washers at both maximum and minimum water fill, as follows:

3.2.1 *Per cycle electrical energy consumption.* Set the water level selector at maximum fill and insert the appropriate test load, if applicable. For water heating clothes washers, repeat test to measure electrical energy consumption at minimum fill. Activate the normal cycle of the clothes washer and also any suds saver switch.

Amend Appendix J, Section 3.3.1, to require data recording of the machine electrical energy consumption, at maximum and minimum fill levels, for water heating clothes washers, as follows:

3.3.1 Total the kilowatt hours of electrical energy for clothes washers, M_E, consumed to operate the clothes washer without internal water heating in 3.2.1. For water heating clothes washers, record the machine kilowatt hours of energy consumed at maximum fill, $M_E\ max_i$, and at minimum fill, $M_E\ min_i$, for each of the wash/rinse temperature settings, i, in Section 7.

4. Calculation of Derived Results from Test Measurements

Amend Appendix J, Section 4.4, Per Cycle Electrical Energy Consumption, for calculation of the weighted per cycle machine electrical energy consumption for water heating clothes washers, as follows:

4.4 *Per cycle machine electrical energy consumption.* The value recorded in 3.3.1 is the per cycle machine electrical energy consumption, M_E, expressed in kilowatt hours per cycle, for clothes washers without internal water heating. The equivalent weighted per cycle machine electrical energy consumption, M_E, for water heating clothes washers is expressed in kilowatt hours per cycle and defined as follows:

$$M_E\ max = \sum_{i=0}^{n} [M_E\ max_i \times WHF_i]$$

$$M_E\ min = \sum_{i=0}^{n} [M_E\ min_i \times WHF_i]$$

$M_E = [M_E\ max \times F\ max] + [M_E\ min \times F\ min]$

where

M_E max_i and M_E min_i are per cycle machine electrical energy consumption, recorded according to Section 3.3.1, at maximum and minimum fill at each wash temperature selection, i, specified in Section 7.
WHF_i = Water Heating Factors from Section 7.
F max = Usage fill factor = 0.72.
F min = Usage fill factor = 0.28.
M_E max = Per cycle machine electrical energy consumption in kilowatt hours at maximum fill.
M_E min = Per cycle machine electrical energy consumption in kilowatt hours at minimum fill.

5. and 6. Temperature Use Factors

No amendments are proposed to these sections. Water heating clothes washers can use Table 5.3 Temperature Use Factors for automatic washers.

7. Water Heating Factors

Amend Appendix J by adding a new Section 7, Water Heating Factors, specifying water heating factors for water heating clothes washers as follows:

7. Water Heating Factors (WHF) for Water Heating Clothes Washer

Wash/rinse temperature setting	Water heating factor (WHF)
Ultra Wash (maximum temperature) Cold Rinse (no heating)	.05
Hot Wash (140°F) Cold Rinse (no heating)	.25
Warm Wash (100°F) Cold Rinse (no heating)	.55
Cold Wash (no heating) Cold Rinse (no heating)	.15

* * * * *

Allen Jaisle, President, New Harmony Systems
February 2, 1993.
Manufacturers of Domestically Marketed Clothes Washers
Re: Application for Interim Waiver and Petition for Waiver, Relating to Department of Energy Test Method for Water Heating Clothes Washers

Attached for your information is the referenced waiver application proposed by New Harmony Systems to the United States Department of Energy.

The Assistant Secretary for Conservation and Renewable Energy will receive and consider timely written comments on the Application for Interim Waiver. Title 10 CFR 430.27(d), Department of Energy rules, provides that: "Any person submitting written comments to DOE with respect to an Application for Interim Waiver shall also send a copy of the comments to the applicant."

Thank you for your kind consideration of the Application for Interim Waiver.

Attachments: Application Letter, Test Method.

[FR Doc. 93–14078 Filed 6–14–93; 8:45 am]
BILLING CODE 6450–01–P–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4666–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 15, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR CONTACT: Ms. Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Kraft Pulp Mills–Subpart BB–Information Requirements (EPA ICR No. 1055.04; OMB No. 2060–0021). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of kraft pulp mills must provide EPA, or the delegated State regulatory authority, with one-time notifications and reports, and must keep records, as required of all facilities subject to the general NSPS requirements. In addition, facilities subject to this subpart must install a continuous monitoring system (CMS) to record opacity, total reduced sulfur (TRS) emissions, temperature, and (for scrubbers) pressure drop, and must notify EPA or the State regulatory authority of the date upon which demonstration of the CMS performance commences. Owners or operators must submit semiannual reports of excess emissions and of monitoring system performance. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 23 hours per response for reporting, and 175 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of kraft pulp mills.

Estimated Number of Respondents: 58.

Estimated Number of Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondents: 14,996 hours.

Frequency of Collection: One-time notifications and reports for new facilities; semiannually reporting for existing facilities.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: June 9, 1993.

Paul Lapsley,
Director, Regulatory Management Division.

[FR Doc. 93–14055 Filed 6–14–93; 8:45 am]
BILLING CODE 6560–50–F

[FRL–4666–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 15, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR CONTACT: Ms. Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Fossil-Fuel-Fired Steam Generating Units (Subpart D)–Information Requirements (EPA ICR No. 1052.04; OMB No. 2060–0026). This is

a request for renewal of a currently approved information collection.

Abstract: Owners or operators of fossil-fuel-fired steam generators of more than 73 megawatts heat input rate (250 million Btu per hour) must provide EPA, or the delegated State regulatory authority, with one-time notifications and reports, and must keep records, as required of all facilities subject to the general NSPS requirements. In addition, facilities subject to this subpart must install a continuous monitoring system (CMS) to monitor opacity and SO2 and NOx emissions, and must notify EPA or the State regulatory authority of the date upon which demonstration of the CMS performance commences. Owners or operators must submit quarterly reports of excess emissions and of monitoring system performance. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 1 hour per response for reporting, and 91 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of fossil-fuel-fired steam generating units which are capable of combusting more than 73 megawatts heat input (250 mmBtu/hr) of fossil fuel.

Estimated Number of Respondents: 660.

Estimated Number of Responses Per Respondent: 4.

Estimated Total Annual Burden on Respondents: 62,865 hours.

Frequency of Collection: One-time notifications and reports for new facilities; quarterly reporting for existing facilities.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: June 9, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–14056 Filed 6–14–93; 8:45 am]

BILLING CODE [illegible]

Environmental Protection Agency

[FRL–4636–6]

Science Advisory Board; Clean Air Scientific Advisory Committee; June 29, 30, and July 1, 1993, Public Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board (SAB) will conduct a meeting to review: (1) the content of the Environmental Protection Agency's Research Strategy for Alternative Fuels, (2) the Office of Research and Development's Research Program for Motor Vehicles, and (3) revisions to the Air Quality Criteria Document for Nitrogen Oxides (NO_X). The Strategy and Program reviews will focus on the scientific and technical adequacy of the documents as well as their overall approach. The NO_X Air Quality Criteria Document has undergone previous public comment and CASAC review. At the upcoming public meeting, the main focus of discussions will be on proposed final revisions for that document made in response to the prior review. The meeting will be held at the Sheraton Imperial Hotel and Convention Center, 4700 Emperor Boulevard, Research Triangle Park, North Carolina 27709. The hotel telephone number is (919) 941–5050. The meeting will be held on June 29 and 30 from 9 a.m. to 5:30 p.m. and on July 1 from 9 a.m. to 2:30 p.m. Seating at the meeting is limited and will be on a first come basis.

Availability of Documents

The following documents are not available from the Science Advisory Board.

1. Single copies of proposed final text revisions for inclusion in the draft document *Air Quality Criteria for Oxides of Nitrogen* (NO_X) are available from Dr. Dennis Kotchmar, U.S. EPA, Environmental Criteria and Assessment Office, (MD–52), Research Triangle Park, NC, telephone (919) 541–4158.

Copies of the full NO_X Air Quality Criteria document will be available for inspection at the time and site of the public meeting.

2. Single copies of the ORD Alternative Fuels Research Strategy document (EPA/600/AP–92/002), are available from the Center for Environmental Research Information (CERI) library, Cincinnati, OH, telephone (513) 569–7562.

3. Single copies of the Issue Plan for Pollutants from Motor Vehicles are available from Dr. Judith A. Graham, U.S. EPA, Environmental Criteria and Assessment Office, (MD–52), Research Triangle Park, NC, telephone (919) 541–0349.

For Further Information

For additional information concerning this meeting or to obtain a draft agenda, please contact Mr. Randall Bond, Designated Federal Official, or Ms. Janice Jones, Management Analyst, at (202) 260–8414, Clean Air Scientific Advisory Committee, Science Advisory Board (A–101), U.S. Environmental Protection Agency 401 M St., SW, Washington, DC 20460. Anyone wishing to make a presentation at the meeting must notify Ms. Jones and forward twenty-five copies of a written statement to her no later than June 18, 1993. Oral comments to the Committee will be limited to five minutes per individual, and should not be repetitive of previously submitted written statements.

Dated: June 3, 1993.

A. R. Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–14054 Filed 6–14–93; 8:45 am]

BILLING CODE [illegible]

[OPPTS–59323A; FRL–4628–2]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–93–19. The test marketing conditions are described below.

EFFECTIVE DATE: June 4, 1993.

FOR FURTHER INFORMATION CONTACT: William B. Lee, New Chemicals Branch, Chemical Control Division (TS–794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–613–A, 401 M St. SW., Washington, DC 20460, (202) 260–1769.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test

marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–93–19. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–93–19. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–93–19

Date of Receipt: April 27, 1993.
Notice of Receipt: May 27, 1993 (58 FR 30788).
Applicant: Westvaco.
Chemical: (G) polymeric styrene/acrylic amidoamine.
Use: (G) air entraining, bond strength enhancing, and grinding aid for masonry/mortar cement.
Production Volume: Confidential.
Number of Customers: 52.
Test Marketing Period: 12 months, commencing on first day of commercial manufacture.
Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

Dated: June 4, 1993.

Denise M. Keehner,

Acting Director, Chemical Control, Division Office of Pollution Prevention and Toxics.

[FR Doc. 93–14053 Filed 6–14–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 8, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0484.
Title: Amendment of Part 63 of the Commission's Rules to Provide for Notification by Common Carriers of Service Disruptions (Section 63.100).
Action: Extension of a currently approved collection.
Respondents: Businesses or other for-profit.
Frequency of Response: On occasion reporting and other: Initial report due 90 minutes after service disruption; final report required 30 days after incident.
Estimated Annual Burden: 56 responses; 2.3 hours average burden per response; 129 hours total annual burden.

Needs and Uses

Section 63.100 of the Commission's rules requires that "any local exchange or interexchange common carrier that operates transmission or switching facilities and provides access service or interstate or international telecommunications service that experiences an outage which potentially affects 50,000 or more of its customers on any facilities which it owns or operates must notify the Commission if such service outage continues for 30 or more minutes." The reporting requirement was implemented in light of a number of incidents where the introduction of new technology into the telecommunications infrastructure led to significant service disruptions. Carriers are required to file the Initial Service Disruption Report within 90 minutes of the carrier's knowledge of the incident. The Final Service Disruption Report is required not later than 30 days after the incident. The initial notification is to be served on the Commission's Monitoring Watch Officer, at its headquarter office in Washington, DC, who is on duty 24 hours a day, or on a secondary basis it may be served on the Commission's Watch Officer on duty at the FCC's facility at Grand Island, Nebraska. Notification shall be by facsimile or other record means. The Commission announced in its Public Notice of 4/2/92 that a facsimile dedicated for outage reporting by carriers had been installed at headquarters. After transmitting its report the carrier should telephone the Commission's Watch Officer to verify receipt by the Commission.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–13959 Filed 6–14–93; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 8, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235

NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None

Title: International PSN Quarterly Reports (MO, O&A, DA–438)

Action: New collection

Respondents: Businesses or other for-profit

Frequency of Response: Quarterly reporting

Estimated Annual Burden: 44 responses; 1 hour average burden per response; 44 hours total annual burden

Needs and Uses: The Commission received 11 applications requesting authority to establish and operate voice-grade international satellite circuits using the Intersputnik Statsionar 4 satellite located at 14 degrees W.L. to provide public switched services, including IMTS, data, and facsimile services, between appropriately licensed earth stations in the U.S. and the republics formerly comprising the Union of Soviet Socialist Republics and certain Eastern European countries. A total of 1,013 64-kbps equivalent circuits were requested by the applicants. In order to ensure that the limited number of 64-kbps circuits available for allocation will be placed in service as soon as possible, the Commission is requiring that the applicants file quarterly reports detailing the number of PSN circuits in use each month over the Intersputnik satellite system. The reports should also detail monthly the "no circuit" conditions during the reporting period. The reports must set forth the number of circuits each applicant has in use over each communications system for the countries served by the Intersputnik system. The quarterly reports shall be submitted within 60 days from the end of each calendar quarter. The quarterly reporting requirement will ensure that the circuits are being fully utilized.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–13960 Filed 6–14–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

[Petition No. P20–93, et al.]

Petitions for Temporary Exemption From Electronic Tariff Filing Requirements

In the Matter of Petition No. P20–93, of AEI Ocean Services Corp., ET AL.; Petition No. P21–93 of Distribution Services Ltd. and Distribution Services Export Ltd., Petition No. P22–93 of Wallenius Lines AB and Wallnos Far East Service; Petition No. P23–93 of Fritz Companies, Inc. D/B/A Fritz Transportation International; Petition No. P24–93 of Matson Navigation Co., Inc.

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from the June 4, 1993, electronic filing deadline. Petitioners state they are unable to comply with the June 4, 1993, deadline for filing of World Wide/Asian and South Pacific tariffs for a variety of reasons.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than June 22, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on petitioners or their representatives as follows:

P20–93—Edward D. Greenberg, Esq., Galland, Kharasch, Morse & Garfinkle, P.C., 1054 Thirty-first Street NW., Washington, DC 20007–4492

P21–93 & P22–93—David P. Street, Esq., Galland, Kharasch, Morse & Garfinkle, P.C., 1054 Thirty-first Street NW., Washington, DC 20007–4492

P23–93—Paul D. Coleman, Esq., Hoppel, Mayer & Coleman, 1000 Connecticut Avenue NW., Washington, DC 20036

P24–93—Peter P. Wilson, General Manager of Pricing, Matson Navigation Company, Post Office Box 7452, San Francisco, California 94120.

Copies of the petitions are available for examination at the Washington, DC, Office of the Secretary of the Commission, 800 N. Capitol Street NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–14014 Filed 6–14–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P13–93, et al.]

Petitions for Temporary Exemption From Electronic Tariff Filing Requirements

In the Matter of Petition No. P13–93 of Sumner Tariff Service, Inc. on Behalf of A. Burghart, et al.; Petition No. P14–93 of Innovative Logistics Inc.; Petition No. P15–93 of Zim Israel Navigation Co.; Petition No. P16–93 of Seth Shipping Corp.; Petition No. P17–93 of Trans-American Steamship Agency; Petition No. P18–93 of China Ocean Shipping Co.; Petition No. P19–93 of ASG Forwarding, Inc.

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from the June 4, 1993, electronic filing deadline. Petitioners state they are unable to comply with the June 4, 1993, deadline for filing of World Wide/Asian and South Pacific tariffs for a variety of reasons.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than June 21, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on petitioners or their representatives as follows:

P13–93—Roy R. Sumner, President, Sumner Tariff Service, Inc., 1010 Massachusetts Avenue NW., Suite 240, Washington, DC 20001

P14–93—Donald G. Hichman, Director of International Pricing, Innovative Logistics, 377 Carowinds Blvd., Suite 127, Fort Mill, South Carolina 29716

P15–93—Michael Prudenti, Director, Regulatory Matters & Conferences, Zim Israel Navigation Company, One World Trade Center, 16th Floor, New York, New York 10048

P16–93—Michael Prudenti, Tariff Issuing Officer, Seth Line, One World Trade Center, 16th Floor, New York, New York 10048

P17–93—Meiko Geyer, Pricing Supervisor, Trans-American Steamship Agency, 140 W. 16th Street, San Pedro, California 90731

P18–93—Sean M. McChesney, Assistant Pricing Manager, China Ocean Shipping Company, Harmon Tower #1, Harmon Plaza, Secaucus, New Jersey 07094

P19–93—Carlos Rodriguez, Esq., Sonnenberg, Anderson & Rodriguez, 1120 Connecticut Avenue NW., Suite 470, Washington, DC 20036.

Copies of the petitions are available for examination at the Washington, DC, Office of the Secretary of the Commission, 800 N. Capitol Street NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–14015 Filed 6–14–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P7–93, et al.]

Petitions for Temporary Exemption From Electronic Tariff Filing Requirements

In the Matter of Petition No. P7–93 of Pacific Coast Tariff Bureau; Petition No. P8–93 of Studley Associates, Inc.; Petition No.

P9–93 of Effective Tariff Management Corp.; Petition No. P10–93 of World Tariff Services, Inc.; Petition No. P11–93 of Transax Data; Petition No. P12–93 of Dart Maritime Service, Inc.

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners are tariff filing agents for a number of common carriers and, on behalf of their clients, request exemption from the June 4, 1993, electronic filing deadline. Petitioners state they are unable to comply with the June 4, 1993, deadline for filing of World Wide/Asian and South Pacific tariffs for a variety of reasons.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than June 21, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on petitioners or their representatives as follows:

P7–93—James C. Olsson, President, Pacific Coast Tariff Bureau, 221 Main Street, Suite 530, San Francisco, CA 94105–1915
P8–93—Edna M. Studley, Studley Associates, Inc., Post Office Box 946, Marshall, VA 22115
P9–93—Tanga S. FitzGibbon, Executive Vice President, Effective Tariff Management Corporation, Omni Professional Center, 4000 Mitchellville Road, Suite 326–B, Bowie, MD 20716
P10–93—Paul Coleman, Esq. Hoppel, Mayer & Coleman, 1000 Connecticut Avenue, NW, Washington, DC 20036
P11–93—Steven Baker, Manager, Regulatory, Transax Data, 721 Route 202/206, Bridgewater, NJ 08807
P12–93—Willie Jefferson, President, Dart Maritime Service, Inc., 60 West Broad Street, Suite 203, Bethlehem, PA 18018.

Copies of the petitions are available for examination at the Washington, DC, Office of the Secretary of the Commission, 800 N. Capitol Street NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–13963 Filed 6–14–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Amboy-Madison National Bank Employee Stock Ownership Plan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 1, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Amboy-Madison National Bank Employee Stock Ownership Plan, Old Bridge, New Jersey; to acquire 9.79 percent of the voting shares of Amboy Bancorporation, Inc., Old Bridge, New Jersey, and thereby indirectly acquire Amboy National Bank, Old Bridge, New Jersey.

2. George E. Scharpf, Colts Neck, New Jersey, and Ernest Scharpf, Old Bridge, New Jersey; to acquire 16.9 percent of the voting shares of Amboy Bancorporation, Inc., Old Bridge, New Jersey, and thereby indirectly acquire Amboy National Bank, Old Bridge, New Jersey.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Lawrence J. Del Papa, Galveston, Texas; to acquire an additional 5.3 percent for a total of 15.0 percent; Charles T. Doyle, Texas City, Texas, to acquire an additional 5.5 percent for a total of 15.0 percent; William J. Estrada, Houston, Texas, to acquire an additional 6.1 percent for a total of 15.0 percent of the voting shares of Texas Independent Bancshares, Inc., Texas City, Texas, and thereby indirectly acquire Gulf Shores Bank, Crystal Beach, Texas; Bank of the West, Galveston, Texas; First State Bank, Hitchcock, Texas; and Gulf National Bank of Texas, Texas City, Texas.

Board of Governors of the Federal Reserve System, June 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14001 Filed 6–14–93; 8:45 am]

BILLING CODE 6210–01–F

F & M Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 9, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. F & M Bancorporation, Inc., and F & M Merger Corporation, both in Kaukauna, Wisconsin; to merge with Park Ridge Bancshares, Inc., Stevens Point, Wisconsin, and thereby indirectly acquire Bank of Park Ridge, Park Ridge, Wisconsin.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Farmers State Corporation, Mountain Lake, Minnesota; to acquire 100 percent of the voting shares of Green Lake Bancorporation, Inc., Spicer, Minnesota, and thereby indirectly acquire Green Lake State Bank, Spicer, Minnesota.

2. Northeast Bancorp, Inc., Brandon, South Dakota; to acquire 100 percent of

the voting shares of Wilmot State Bank, Wilmot, South Dakota.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Mountain Parks Financial Corp., Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank, National Association, Breckenridge, Colorado; The Bank, Evergreen, Colorado; and Mountain Parks Bank, Kremmling, Colorado.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. First United Bank Group, Inc., Albuquerque, New Mexico; Ford Bank Group Holdings, Inc., Dover, Delaware; and Ford Bank Group, Inc., Lubbock, Texas; to acquire 100 percent of the voting shares of Midland National Bank, Midland, Texas, and Texas Commerce Bank, N.A., Lubbock, Texas.

2. Morton Financial Corporation, Morton, Texas; South Plains Delaware Financial Corporation, Dover, Delaware; and South Plains Financial Corporation, Dover, Delaware, South Plains Financial, Inc., Morton, Texas; to acquire 100 percent of the voting shares of HUB Financial Corporation, Lubbock, Texas, and City Bank, Lubbock, Texas.

Board of Governors of the Federal Reserve System, June 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14003 Filed 6–14–93; 8:45 am]

BILLING CODE 6210–01–F

First Baird Bancshares, Inc.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Correction

This notice corrects a previous notice (FR Doc. 93-13175) published at page 31714 of the issue for Friday, June 4, 1993.

Under the Federal Reserve Bank of Dallas heading, the entry for First Baird Bancshares, Inc. is revised to read as follows:

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. First Baird Bancshares, Inc., Baird, Texas, and First Baird Bancshares of Delaware, Inc., Dover, Delaware; to acquire 100 percent of the voting shares of First Parker Bancshares, Inc., Carson City, Nevada; First Weatherford Bancshares, Inc., Carson City, Nevada; Parker County Bancshares, Inc., Weatherford Texas; Weatherford Bancshares, Inc., Weatherford, Texas; and thereby indirectly acquire First National Bank of Weatherford, Weatherford, Texas.

Comments on this application must be received by June 28, 1993.

Board of Governors of the Federal Reserve System, July 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14002 Filed 6–14–93; 8:45 am]

BILLING CODE 6210–01–F

Peoples State Bancshares, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 6, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Peoples State Bancshares, Inc., Grant, Alabama; to engage *de novo* through its subsidiary, Gunter Mountain Finance, Inc., Grant, Alabama, in making consumer loans and taking assignments of consumer credit contracts that will be unsecured and secured by encumbrances on both real and personal property pursuant to § 225.25(b)(1); and to engage in insurance agency activities as agent or broker for insurance directly related to the extension of credit pursuant to § 225.25(b)(8)(ii) and (b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in the State of Alabama.

2. SunTrust Banks, Inc., Atlanta, Georgia; to engage *de novo* through its subsidiary, SunTrust BankCard, National Association, Orlando, Florida, in making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout the States of Florida, Georgia, Tennessee, and Alabama.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Menomonie Financial Services, Inc., Menomonie, Wisconsin; to engage *de novo* through its subsidiary, Electronic Strategies, Inc., Menomonie, Wisconsin, in data processing and data transmission services for the processing of financial, banking or economic data pursuant to § 225.25(b)(7); and providing management consulting advice to nonaffiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14004 Filed 6–14–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Privacy Act of 1974; Altered System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of an altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Agency for Health Care Policy and Research (AHCPR) in the Public Health Service (PHS), is publishing notice of a proposal to alter an existing system of records, 09–35–0001, "Agency for Health Care Policy and Research, Grants Information and Tracking System with Contracts Component (GIAnT), HHS/AHCPR/OM." The name of the system is being changed to reflect the inclusion of a contracts component and the entire system is being automated. The former name was "Agency for Health Care Policy and Research, Grants Record System, HHS/AHCPR/OPRM."

DATES: PHS invites interested parties to submit comments on the proposed internal and routine uses on or before July 15, 1993. PHS has sent a Report of Altered System to the Congress and to the Office of Management and Budget (OMB) on May 27, 1993. The alteration to the system will be effective 60 days from the date submitted to OMB unless PHS receives comments which would result in a contrary determination.

ADDRESSES: Please submit comments to: Privacy Act Officer, Agency for Health Care Policy and Research, Executive Office Center, Suite 601, 2101 E. Jefferson Street, Rockville, Maryland 20852, (301) 227–8445.

Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: GIAnT Data Administrator, Agency for Health Care Policy and Research, Office of Management, Executive Office Center, Suite 601, 2101 E. Jefferson Street, Rockville, Maryland 20852, (301) 227–8433. The numbers listed above are not toll free.

SUPPLEMENTARY INFORMATION: This system has been altered to: (a) Change the system name to be more indicative of the purpose and scope of the system; and (b) to reflect the conversion of a manual system to an automated system.

The records in this system will be maintained in a secure manner commensurate with their use and sensitivity.

The AHCPR Automated Systems Security Officer will arrange for a risk analysis and assure that a system security plan is in place for the system of records. The system manager will control access to these data. Only authorized users whose official duties require the use of the data will have access to the records in this system.

We are not proposing any new routine uses.

We have also made editorial changes throughout the system notice to enhance clarity and specificity and to accommodate normal updating changes.

The following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the alteration becomes effective.

Dated: June 7, 1993.

Wilford J. Forbush,

Director, Office of Management.

09–35–0001

SYSTEM NAME:

Agency for Health Care Policy and Research, Grants Information and Tracking System with Contracts Component (GIAnT), HHS/AHCPR/OM.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Agency for Health Care Policy and Research, Office of Management, Executive Office Center, Suite 601, 2101 E. Jefferson Street, Rockville, Maryland 20852.

Office of the Assistant Secretary for Health, Office of Management, Division of Acquisition Management, Parklawn Building, Room 5C–10, 5600 Fishers Lane, Rockville, Maryland 20857.

For a list of contractors, please write to the system manager at the address listed below.

Inactive Records will be stored at: Washington National Records Center, Room 125, 4205 Suitland Road, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Research grant applicants and principal investigators, research training grant program directors, and research fellowship recipients; peer and other special reviewers; contractor project directors and other contractor key personnel

CATEGORIES OF RECORDS IN THE SYSTEM:

Research grant, research training grant, research fellowship, and contract files, including grant applications, grant award notices, individual credit reports, summary comments of peer reviewers, salary information, project staffing lists, and Social Security numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act: Sec. 902, 922, 924, 925 (42 U.S.C. 299a, 299c–1, 299c–3, 299c–4) (AHCPR grants and contract administration authorities and duties) and sec. 487 (42 U.S.C. 288) (National Research Service Awards).

PURPOSE(S):

The information in this system is used to facilitate day-to-day grants and contracts management operations and for purposes of review, analysis, planning and policy formulation by AHCPR staff members and by other components of DHHS which conduct research.

AHCPR also may refer these records to the appropriate office in the Department for the purpose of monitoring payback; if necessary, debt collection; and investigation of alleged scientific misconduct.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the records of an individual in response to an inquiry from the congressional office made at the request of the individual.

2. The Department may disclose information from this system of records to the Department of Justice, to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. AHCPR may disclose information about an individual grant application or fellowship applicant to credit reporting agencies to obtain a credit report in order to determine his/her credit worthiness.

4. Disclosure may be made to the National Technical Information Service (NTIS), U.S. Department of Commerce, to contribute to the Smithsonian Science Information Exchange, for dissemination of scientific and fiscal information on funded awards (abstracts and relevant administrative and financial data).

5. Disclosure may be made to qualified experts not within the definition of Department employees for

opinions as a part of the grant application review and award process.

6. Disclosure may be made to a private firm for the purposes of (a) carrying out research, and (b) providing services relating to grant review, or for carrying out quality assessment, program evaluation, and/or management reviews. The firm is required to maintain Privacy Act safeguards with respect to such records.

7. Disclosure may be made to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit of the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

8. Where Federal agencies having power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

9. Disclosure may be made to the cognizant Audit Agency for auditing.

10. In the event that a system of records maintained by the Department indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by statute or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal (e.g., the Department of Justice), or State (e.g., the State Attorney General's Office) charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto for litigation.

11. Disclosure may be made to the grantee/contractor institution in connection with performance or administration under the terms and condition of the award, or in connection with problems that might arise in performance or administration if an award is made on a grant/contract proposal.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure Pursuant to 5 U.S.C. 552a (b)(12)

Disclosure may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

Disclosure of records is limited to the individual's name, address, Social Security number, and other information necessary to establish the individual's identity; the amount, status, and history of the claim; and the agency program under which the claim arose. This disclosure will be made only after the procedural requirement of 31 U.S.C. 3711(f) has been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE

Records are stored on hard disks with magnetic tape backup as well as in manual files (file folders).

RETRIEVABILITY:

Electronic records are retrievable by key data fields such as investigator name, application, grant or contract number.

Paper records are retrievable by name and/or contract number.

SAFEGUARDS:

1. *Authorized users:* All AHCPR staff who work with grants or contracts will have access to the system. Level of access will be determined by individual need-to-know and controlled by passwork access. Levels of access will be granted by the System Manager.

Only staff members of the Grants Management Branch have regular access to paper grant files. Limited access to official grant files is granted to other AHCPR and DHHS staff with need-to-know about AHCPR research projects, only with authorization of the responsible Branch chief.

2. *Physical safeguards:* File servers and database servers are maintained in areas secured by combination lock. Data is backed up from hard drive to magnetic tape daily. Paper records are secured in locked file cabinets in locked offices. All file cabinet and computer equipment is maintained under general building security.

3. *Procedural safeguards:* Access to electronic records by non-AHCPR personnel is through the Systems Manager only. DHHS staff may inspect AHCPR grant records on a need-to-know basis only, with the approval of the Branch chief. Visitors are not left unattended in the office containing the files. Offices are locked when not in use. Grant records are either transmitted in sealed envelopes or are hand-carried.

4. *Technical safeguards:* Initial electronic access is through the AHCPR local area network which is controlled by password. Subsequent levels of security exist for access to the GIAnT system itself and, within the system, individual users are granted appropriated levels of access (read only, read/write) depending upon individual need. Levels of access are granted by the System Manager.

RETENTION AND DISPOSAL:

Electronic records containing portions of information from the paper applications of unfunded grants will be retained and accessible at AHCPR for ten years. The complete paper applications of unfunded grants will be retired to the Federal Records Retention Center after one year and subsequently disposed of after two years in accordance with the records retention schedule.

Electronic records containing portions of information from the paper applications of funded grants or contracts will be retained and accessible at AHCPR for fifteen years following final payment. Paper records of funded grant applications and contracts and their respective files are retained at AHCPR for one year beyond the termination date of the grant or until after the final report is received, whichever is sooner. They are then retired to the Federal Records Center and disposed of twelve years after final payment in accordance with the records retention control schedule. The records control schedule may be obtained by writing to the System Manager at the following address.

Contact records will be maintained and destroyed in accordance with the National Archives and Records Administration General Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

GIAnT Policy-Coordinating Official, GIAnT Administrator, Office of Management, Agency for Health Care Policy and Research, Executive Office Center, Suite 601, 2101 E. Jefferson Street, Rockville, Maryland 20852, (301) 227–8433.

Chief, Grants Management Branch, Agency for Health Care Policy and Research, Executive Office Center, Suite 601, 2101 E. Jefferson Street, Rockville, Maryland 20852.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the above

address. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be. The requester should specify name and/or grant/contract number. The requester must also understand that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. Positive identification is required. Individuals may also request an accounting of disclosures that have been made of their record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above and reasonably identify the record, specify the information being contested, and state the corrective action sought and reasons(s) for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Grant applicants, contractor project director, reports and correspondence from the research community, and statements from grant review committees; consumer reporting agencies; IMPAC 09–25–0036, Extramural Awards: IMPAC (Grant/Contract/Cooperative Agreement Information), HHS/NIH/DRG.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93–13966 Filed 6–9–93; 8:45 am]
BILLING CODE 4160–90

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. R–93–3676; FR–3372–C–02]

Housing Programs for Homeless Persons: Fund Availability for Supportive Housing Program, Shelter Plus Care, and Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings for Homeless Individuals, Notice of Fund Availability; Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fund availability, (NOFA); Correction.

SUMMARY: This notice corrects a typographical error that appeared in a Notice of Fund Availability with respect to Housing Programs for Homeless Persons, that was published in the **Federal Register**, on March 15, 1993 (58 FR 13904).

FOR FURTHER INFORMATION CONTACT: HUD address: Mark Johnston, Acting Director, Special Needs Assistance Programs, room 7262, telephones: (202) 708–4300; TDD, (202) 708–2565, (these are not toll-free numbers); or the HUD field office for the area in which the proposed project is located.

SUPPLEMENTARY INFORMATION: On March 15, 1993 (58 FR 13904), the Department published in the **Federal Register**, a notice that announced the availability of approximately $515 million in funds for applications for assistance under three of the Department's programs for homeless persons. These programs included Supportive Housing, Shelter Plus Care, and Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings for Homeless Individuals.

The purpose of this document is to correct a typographical error that appeared on page 13908, under the paragraph heading of "Allocation" for the section entitled, "Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals". The last sentence states: "In addition, no single applicant will receive assistance for more than 100 units." The word "applicant" was a typographical error and should have been "application."

Accordingly, in FR Doc. 93–5690, published in the **Federal Register** on March 15, 1993 (58 FR 13904), under the section entitled, "Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals", the following correction is made:

On page 13908, in the first column, under the paragraph heading, "Allocation", the last sentence in the paragraph is corrected to read, "In addition, no single application shall receive assistance for more than 100 units."

Dated: June 9, 1993.

Brenda W. Gladden,

Acting General Counsel for Regulations.

[FR Doc. 93–13986 Filed 6–14–93; 8:45 am]
BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–060–03–4210–05]

Environmental Assessment; San Juan Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) is proposing to amend the San Juan Resource Management Plan (RMP) and prepare the associated Environmental Assessment (EA).

DATES: The comment period for this proposed plan amendment will commence with the date of publication of this notice. Comments must be submitted on or before July 15, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Turri, Acting San Juan Resource Area Manager, Bureau of Land Management, 435 North Main, P.O. Box 7, Monticello, Utah 84535, telephone (801) 587–2141. Existing planning documents and information are available at the above address or at the Moab District Office, 82 East Dogwood, Moab, Utah 84532, telephone (801) 259–6111.

SUPPLEMENTARY INFORMATION: The purpose of this amendment is to identify certain lands as suitable for sale to San Juan County for the purpose of a sanitary landfill under authority of the Recreation and Public Purposes Act, as amended (44 Stat. 741; 43 U.S.C. 869 *et seq.*). The sanitary landfill will be for approximately 100 acres. In order to determine the proper location and consider alternative sites 1,050 acres in southern San Juan County are being studied. The lands being studied are described as follows:

Salt Lake Meridian, Utah

T. 39 S., R. 22 E.,

Sec. 3, S½N½, and S½,
Sec. 4, S½SE¼,
Sec. 9, NE¼, S½SE¼NW¼, E½SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼, and SW¼SE¼SE¼,
Sec. 10, NW¼.

The existing plan does not identify these lands for disposal. However, San Juan County has made a proposal to purchase public lands and this proposal appears to have merit and may be in the public interest, so it will be considered through the plan amendment process. The amendment will only be for the acreage needed (approximately 100 acres) and not the 1,050 acres being studied.

General issues to be addressed in the amendment include impacts of the proposed sale to livestock forage, wildlife habitat, water quality, cultural resources, visual resources, and public safety.

The amendment and environmental assessment will be prepared by an interdisciplinary team. Public participation will be sought during the issues identification phase and at various other stages of the process. Comments should be sent to Robert Turri, Acting San Juan Resource Area Manager, Bureau of Land Management, 435 North Main, P.O. Box 7, Monticello, Utah 84535, telephone (801) 587–2141.

G. William Lamb,
Acting State Director.
[FR Doc. 93–14007 Filed 6–14–93; 8:45 am]
BILLING CODE 4310–DQ–M

[CA–060–4210–02]

Intent To Prepare an Environmental Impact Statement on Soda Ash Processing Facility, Mining Operation, Railroad Renovation, and Right-of-Way, Inyo and Kern Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is given that the Bureau of Land Management (BLM), Inyo County, and the California State Lands Commission will prepare a joint Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for a right-of-way on public land as part of proposed Soda Ash Processing Facility.

SUPPLEMENTARY INFORMATION: The Owens Lake Soda Ash Company (OLSAC), a joint venture of Lake Minerals Corporation and Vulcan Soda Ash Company, proposes to construct and operate a trona mining and soda ash production facility on the west shore of Owens Lake (Inyo County) on land owned by the State of California. An existing 73 mile railroad will be renovated in order to transport the soda ash in one 30–40 car train every other day, from the plant site to Searles Junction in Kern County. The proposed renovation will utilize standard railroad equipment operating mainly from the existing track. Proposed material storage areas or laydown areas, approximately one acre each, and access roads on public land would be placed at various locations along the route. The trona deposit covers approximately 16,120 acres in the center of the state owned lake bed. The lake bed would be dredged to mine the trona deposit which lies within a depth of nine feet or less. The dredged slurry would be pumped to the proposed plant facility for processing, located on the west side of the lake shore. Surface disturbance for the proposed plant site and its various facilities is approximately 78.9 acres. Initial soda ash production is anticipated at 500,000 tpy (tons per year), expandable to 600,000 tpy. Reserves are anticipated to allow a potential 40-year production period. The No Action alternative will be analyzed in the EIS. Other alternatives considered in the EIS will include alternate means of transporting the soda ash product (exclusively trucking, eliminating the railroad renovation), more extensive trucking, and alternate fuels. The EIR/EIS will consider a number of issues not restricted to air quality, groundwater, sensitive wildlife among others.

DATES: Written comments will be accepted until July 14, 1993.

ADDRESSES: Written comments should be sent to the BLM, Ridgecrest Resource Office, 300 South Richmond Rd, Ridgecrest, CA 93555, ATTN: OLSAC Soda Ash Project.

FOR FURTHER INFORMATION CONTACT: Greg Thomsen (619) 375–7125.

Dated: June 8, 1993.
Henri R. Bisson,
District Manager.
[FR Doc. 93–14011 Filed 6–14–93; 8:45 am]
BILLING CODE 4310–40–M

[NM010–4340–01–ADVB/G910G20108]

District Advisory Council Meeting; Albuquerque, NM

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of Albuquerque District Advisory Council meeting.

SUMMARY: The BLM Albuquerque District Advisory Council will meet on July 15, 1993, in the Albuquerque District Office located at 435 Montano Blvd. NE., Albuquerque, New Mexico. The meeting will begin at 9:30 a.m. on Thursday the 15th and meet until 4 p.m. that day with lunch break from 12 noon to 1:30 p.m.

Topics on Thursday's agenda will include an overview of the Albuquerque District's current status and future direction by the District Manager, an update report on the Rio Puerco and Taos Resource Areas and the El Malpais National Conservation Area, a report on the establishment of the Cuba, NM, field office, an update on the Rio Puerco Watershed, and a discussion of Advisory Council roles. The agenda will also include time for public comments.

Members of the public are invited to attend all or part of the meeting. Persons wishing to address the Council should contact Charna Lefton, Public Affairs Specialist, 435 Montano Blvd. NE., Albuquerque, NM 87107, (505) 761–8700.

Dated: June 7, 1993.
Michael R. Ford,
District Manager.
[FR Doc. 93–13867 Filed 6–14–93; 8:45 am]
BILLING CODE 4310–FB–M

[OR–010–02–4320–02: GP3–262]

Lakeview District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, DOI.

ACTION: Lakeview District Grazing Advisory Board meeting and tour.

SUMMARY: The Lakeview District Grazing Advisory Board will meet beginning at 9 a.m. to look at significant areas pertaining to grazing in the Lakeview Resource Area. The tour will begin at the Lakeview District Office located at 1000 South Ninth Street, Lakeview, Oregon. The following items will be discussed: the Beaty Butte grazing schedule for 1993 and 1994; the Hill Camp prescribed burn area history, objectives, results, and future grazing use; and juniper management objectives. The public is invited to attend. Those attending will be responsible for bringing their own sack lunch and wearing suitable field attire (trousers, boots, hat). Anyone planning to attend must contact the Lakeview District Office by close of business June 22nd, 1993.

DATES: Wednesday, June 23, 1993 at 9 a.m.

FOR FURTHER INFORMATION CONTACT: Dick Mayberry, Lakeview District Office, Post Office Box 151, 1000 South

Ninth Street, Lakeview, Oregon 97630, (Telephone 503–947–2177).

Terry H. Sederlf,

Acting District Manager.

[FR Doc. 93–14080 Filed 6–14–93; 8:45 am]

BILLING CODE 4310–33–M

[UT–020–93–4210–05, U–70286]

Realty Action; Tooele County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, Recreation and Public Purposes (R&PP) Act classification in Tooele County, Utah.

SUMMARY: The following public lands in Tooele County, Utah have been examined and found suitable for classification for conveyance to the County of Tooele under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The County of Tooele proposes to use the lands for waste transfer stations and class IV landfills.

This notice provides a public comment period and segregates the lands described from entry and mining under the public land laws and the United States mining laws.

DATES: Comments must be received by August 16, 1993.

ADDRESSES: Comments should be sent to the District Manager, BLM Salt Lake District, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Sharon Knowlton, BLM Salt Lake District Office, (801) 977–4300.

SUPPLEMENTARY INFORMATION: The following described lands have been found suitable for conveyance by sale under the Recreation and Public Purposes Act as amended (43 U.S.C. 869 *et seq.*).

Salt Lake Meridian, Utah

T. 6 S., R. 5 W.,
Section 6, SE¼NE¼SE¼; 10.00 acres
T. 6 S., R. 7 W.,
Section 4, SE¼SW¼NE¼; 10.00 acres
T. 8 S., R. 5 W.,
Section 28, NW¼SE¼SW¼; 10.00 acres
T. 9 S., R. 19 W.,
Section 10, SW¼SW¼SW¼; 10.00 acres
Section 15, NW¼NW¼NW¼; 10.00 acres
Containing a total of 50.00 acres

The lands described above are hereby segregated from entry and mining under the public land laws and the United States mining laws. The segregative effect will terminate upon notice in the Federal Register or eighteen months from the date of this publication, whichever occurs first.

The lands are not needed for Federal Purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. There will be no reduction in grazing preference. The patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All minerals will be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

3. A right-of-way for ditches and canals constructed by the authority of the United States.

4. The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances (substance as defined in 40 CFR part 302) and indemnify the United States against any legal liability or future costs that may arise out of any violation of such laws.

Upon publication of this notice in the Federal Register, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested persons may submit comments regarding the proposed conveyance or classification to the District Manager at the address listed above. Notice is hereby given that an opportunity for the public to comment is given within the comment period identified above.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the Federal Register.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a waste transfer station site and class IV landfill. Comments on the classification are restricted to whether the land is physically suited for a waste transfer station site and class IV landfill, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a waste transfer station site and class IV landfill.

Deane H. Zeller,

District Manager.

[FR Doc. 93–14008 Filed 6–14–93; 8:45 am]

BILLING CODE 4310–DQ–M

Fish and Wildlife Service

Possible New Listing Criteria for the Appendices, and Possible Nursery Registration of Appendix I Plants, for the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or the Convention) regulates particular international trade in animals and plants. Species for which trade in specimens is controlled are listed in Appendices I, II, and III to the Convention.

Possible new criteria for listing species in the CITES appendices have been circulated by the CITES Standing Committee. The U.S. Fish and Wildlife Service (Service) announces the availability (upon request) of these draft criteria, and solicits comments on them, and on their potential application. Also, a draft resolution to register nurseries artificially propagating Appendix I plants is being considered by the CITES Plants Committee. The Service announces a public meeting to receive comments on the draft criteria, to provide information presented at the most recent CITES Standing Committee meeting, and to provide information on a draft resolution on nursery registration.

DATES: A public meeting will be held on June 16, 1993. The Service will consider all comments received by June 23, 1993, in developing a response on the draft criteria, for transmittal to the CITES Secretariat by June 30, 1993. Further, the Service will consider all comments received by July 15, 1993: (1) In determining the U.S. negotiating position on the draft criteria for U.S. representatives to a joint committee

meeting established to prepare a draft resolution on the criteria; and (2) on the possible draft resolution on nursery registration, for consideration at the seventh meeting of the CITES Plants Committee (PC7). Any resulting final draft resolutions would be submitted to the Parties for their consideration at the ninth meeting of the Conference of the Parties to CITES (COP9), to be held in the second half of 1994.

ADDRESSES: Comments, information, and questions should be sent to Chief, Office of Management Authority; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, room 420c; Arlington, Virginia 22203; fax number 703–358–2280. Express and messenger deliveries should be addressed to the Office of Management Authority; 4401 North Fairfax Drive, room 420c; Arlington, Virginia 22203. Comments and materials received will be available for public inspection by appointment, from 8 a.m. to 4 p.m. Monday through Friday, at the above address in Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Marshall P. Jones, Chief, Office of Management Authority concerning policy and administrative matters (telephone 703–358–2093) and Dr. Charles W. Dane, Chief, Office of Scientific Authority concerning the biological criteria and assessment thereof (telephone 703–358–1708).

SUPPLEMENTARY INFORMATION:

Background

The Convention (TIAS 8249) regulates import, export, re-export, and introduction from the sea of certain animal and plant species and specimens. Those species for which such trade is controlled are included in three appendices. Appendix I lists species threatened with extinction that are or may be affected by the trade. Under the provisions of CITES Article II, paragraph 2(a), Appendix II lists species that although not necessarily now threatened with extinction may become so, unless the trade in them is strictly controlled. Under the provisions of Article II.2(b), Appendix II lists other species that must be subject to regulation, in order that the trade in those currently and potentially threatened species may be brought under effective control (*e.g.*, because of difficulty in distinguishing specimens of those currently or potentially threatened species among the specimens of other species). Appendix III includes species that any Party country identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of the other Parties in controlling trade.

Any country that is a Party to this treaty may propose amendments to Appendix I and II, for consideration usually at a meeting of the Conference of the Parties. Criteria on: (1) Addition or up-listing of species and other taxa for Appendix I or II, and on (2) deletion or down-listing of species and other taxa for Appendix I or II, were established in Resolutions Conf. 1.1 and 1.2 respectively, in 1976 at the first meeting of the Conference of the Parties to CITES (COP1). These criteria have been supplemented with criteria for particular situations in several other resolutions adopted at subsequent COPs.

At COP8 in March 1992, the Parties adopted Resolution Conf. 8.20, which directed the CITES Standing Committee (SC) to undertake, with the assistance of the CITES Secretariat, a revision of the criteria for amending the appendices. This resolution directed a joint meeting of the CITES Animals Committee (AC) and CITES Plants Committee (PC) to prepare a draft resolution on such criteria. In June 1992, the Standing Committee provided further direction to the process, and (1) designated the World Conservation Union (IUCN) along with individuals selected by the Standing Committee to provide recommendations on new criteria and a report for the March 1993 SC meeting; and (2) determined (a) that the joint meeting of the Animals and Plants Committees (AC/PC) to prepare the draft resolution would take place in closed sessions, and (b) that this meeting would consist of the alternate and the Regional representatives of the AC and PC, and also the members of the Standing Committee (which is comprised of six Regional representatives, the depository government, the country that hosted the last COP, and the country hosting the next COP).

The CITES Parties are recognized within six Regions: Africa, Asia, Europe, North America, Oceania, and South America, Central America and the Caribbean. Canada is the North American Regional representative on the Standing Committee, and the alternate member on the Animals Committee. Mexico is the Regional representative on the Animals Committee, and the alternate member on the Plants Committee. The United States is a member of the Standing Committee as the next host country (for COP9 in 1994), and is the Regional representative on the Plants Committee.

IUCN submitted their report with recommendations on possible new listing criteria to the Standing Committee meeting in March 1993. Several concerns with the IUCN draft were discussed. The draft was revised by the IUCN, and the revision was circulated to the Parties by the SC Chairman on April 16, 1993, for review and comment; it has not been adopted by the SC.

Report on Possible New Criteria

The report with recommendations from IUCN on possible new criteria for listing species in the CITES appendices has been received by the Service, and is available upon request to the Office of Scientific Authority (see the **ADDRESSES** section). The report contains the draft criteria for appendix I species, for including species that "look like" appendix I species, for Appendix II species under CITES Article II.2(a), and for Appendix II species under Article II.2(b). In addition, the report contains a section on Application of the Criteria, with subsections on Movement between Appendices, Use of Export Quotas, Ranching Criteria, Split-Listings, Consultation with Range States, Extremely Rare and Extinct Species, the Use of Higher Taxa Listings, and Supporting Information. The report also contains a proposed format for submission of amendments to the appendices.

Information Sought

The Service is interested in receiving any comments on the scientific and technical adequacy of the draft criteria as well as the following questions posed by the SC Chairman:

(1) Are the trade criteria adequately developed? [Are the criteria only restrictive of trade when appropriate?]

(2) Could the proposed criteria, and in particular the requirement for a number of quotas and management plans, be implemented or enforced in a practical way by Parties?

(3) Are the proposed criteria practical and will they produce satisfactory results when applied to specific cases? [For example, are the draft criteria sufficiently clear for general use? Are the criteria appropriate for the proper protection of species, or has some key biological factor not been considered?]

(4) Are there taxa to which these criteria can not be applied and for which some different formulation will be necessary, especially marine species or plants?

(5) Should the proposed criteria be non-discriminatory, as defined in the Terms of Reference (see Annex 1 of the report)?

(6) Are all of the proposed criteria consistent with the terms of the

Convention, especially with respect to listings based on concerns for by-catches or the ecological role of a species?

In addition to submitting comments on these questions, if efforts also are made to assess the criteria in terms of whether a particular species would be classified in Appendix I, or II, or neither, the Service would be interested in receiving all the information used in making that assessment. If it is found that the biological or trade information was not adequate to determine on which appendix the species should be placed, the Service would be interested in a discussion of what information was insufficient for application of the criteria. The Service would be interested in receiving any other comments on the interpretation and the application of the draft criteria.

The Service is also interested in any input from scientific or other experts on alternative listing criteria, should the IUCN draft criteria not be recommended to the Parties by the Joint committee.

Future Actions

The World Conservation Union (IUCN) is seeking to "validate" the draft criteria based on information available on a selected number of species. The IUCN's Species Survival Commission Specialist Groups are trying to use the criteria to determine how particular species would be classified. Information from this undertaking may not be available until shortly before the joint AC/PC/SC meeting. The SC Chairman, in his letter to the CITES Management Authorities, asked that the Parties send comments to their Regional representative on at least one of those three committees before June 30, 1993, with a copy to the CITES Secretariat. This early date was established to provide the Regional representatives, especially from those Regions with a large number of Party countries, adequate opportunity to consider the comments from the Region before participating in the joint meeting.

Inasmuch as the Regional representative to the PC for the North American Region is an employee of the Service, the Service does not believe that comments need to be received by the SC Chairman's requested date in order for them to be fully considered by the United States. Nonetheless, any major issue should be identified and submitted to the CITES Secretariat by June 30, 1993, and so the Service is requesting that any such comments be submitted to the Service by June 23, 1993. In addition, the Service is requesting that all comments on the draft criteria or application of the criteria be submitted by July 15, 1993. The United States also will consult with Canada and Mexico (the other members of the North American Region) prior to participation in the joint meeting. The AC/PC/SC meeting is scheduled to be held August 30 through September 3, 1993, in Brussels, Belgium.

Nursery Registration

The CITES Plants Committee plans to meet separately after the joint meeting, on September 6–8, 1993, in Brussels. One of the PC topics will be review of a provisional draft resolution for COP9 on whether and how to register internationally those nurseries that the Parties determine are artificially propagating Appendix I taxa, in order to facilitate the trade in those specimens. The Service anticipates receiving the latest revision of that resolution from the CITES Secretariat's Plants Officer in early June 1993, and will make the draft available to those who contact the Service (see the ADDRESSES section). The United States seeks comments on this topic by July 15, 1993, in preparation for PC7.

Public Meeting

The Service announces a public meeting on June 16, 1993, at 2 p.m. in the auditorium of the Department of the Interior at 18th and C Streets, NW., Washington, D.C. This meeting is being held to provide information obtained at the March 1993 SC meeting and on nursery registration, and to receive comments on the draft listing criteria and the potential application of the draft criteria.

This notice was prepared by Drs. Charles W. Dane and Bruce MacBryde, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 8, 1993.

Bruce Blanchard,

Acting Director.

[FR Doc. 93–14207 Filed 6–14–93; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

National Register of Historic Places; Process, Criteria, Effects of Listings and Determinations of Eligibility

AGENCY: National Park Service, Interior.

ACTION: Public notice and request for comment.

SUMMARY: In section 4025 of the 1992 Amendments to the National Historic Preservation Act, the Department of the Interior is required to prepare a report on the manner in which properties are listed or determined to be eligible for listing in the National Register, the appropriateness of the criteria used in determining such eligibility, and the effect, if any, of such listing or finding of eligibility. The Department of the Interior invites comments on the National Register criteria, the process for listing historic properties in or determining them eligible for the National Register, and the effects of listings and determinations. The relevant regulations include 35 CFR part 60 (National Register of Historic Places), 36 CFR part 63 (Determinations of Eligibility for inclusion in the National Register of Historic Places), and 36 CFR part 800 (Advisory Council on Historic Preservation).

DATES: Comments must be received on or before August 16, 1993.

ADDRESSES: Written comments should be sent to the Chief of Registration, National Register of Historic Places, National Park Service, U.S. Department of the Interior, P.O. 37127, Washington, DC 20013–7127. Attention: Report on National Register Criteria and Effects.

FOR FURTHER INFORMATION CONTACT: Ms. Carol D. Shull, Chief of Registration, National Register of Historic Places, Interagency Resources Division, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127, (202/343–9536).

SUPPLEMENTARY INFORMATION: Authorized by the 1966 National Historic Preservation Act, as amended, the National Register of Historic Places is the nation's official list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture. In establishing the National Register, Federal recognition of historic properties extended to those of State and local as well as national importance. Today, the National Register includes over 61,000 properties. National Register status qualifies properties for Historic Preservation Fund grants, Federal preservation tax incentives, and consideration in the planning of Federally-assisted projects. It encourages the acceleration of survey and identification activities and the accumulation of information about cultural resources available for planning, development of protection strategies, and education and interpretation. The Department of the Interior, through the National Park

Service, expands and maintains the National Register.

Beth Boland,

Acting Chief of Registration, National Register.

[FR Doc. 93–13953 Filed 6–14–93; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 5, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by June 30, 1993.

Beth M. Boland,

Acting Chief of Registration, National Register.

ALABAMA

Marengo County

Altwood (Plantation Houses of Alabama Canebrake and Their Associated Outbuildings MPS), W of Marengo Co. Rd. 51, S of jct. with Co. Rd. 51, Faunsdale vicinity, 93000598

Cedar Grove Plantation (Plantation Houses of Alabama Canebrake and Their Associated Outbuildings MPS), Marengo Co. Rd. E of jct. with AL 25, Faunsdale vicinity, 93000599

Cedar Haven (Plantation Houses of Alabama Canebrake and Their Associated Outbuildings MPS), Marengo Co. Rd. 61 SE of jct. with AL 25, Faunsdale vicinity, 93000600

Cuba Plantation (Plantation Houses of Alabama Canebrake and Their Associated Outbuildings MPS), Marengo Co. Rd. 54 W of jct. with AL 25, Faunsdale vicinity, 93000601

Faunsdale Plantation (Plantation Houses of Alabama Canebrake and Their Associated Outbuildings MPS), Marengo Co. Rd. 54 just W of jct. with AL 25, Faunsdale vicinity, 93000602

CALIFORNIA

Orange County

Hetebrink House, 515 E. Chapman, Fullerton, 93000597

San Bernardino County

Hofer Ranch, 11248 S. Turner Ave., Ontario, 93000596

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

Whitelaw Hotel, 1839 13th St. NW, Washington, D.C., 93000595

FLORIDA

Marion County

Aver, Alfred House (Early Residences of Rural Marion County MPS), US Alt. 27/441 W of Oklawaha, Oklawaha vicinity, 93000590

Aver, Thomas R. House (Early Residences of Marion County MPS), 11885 SE. 128th Pl., Oklawaha, 93000588

Bullock, General Robert House (Early Residences of Rural Marion County MPS), Jct. of SE. 119th Ct. and SE. 128 Pl., Oklawaha, 93000589

Josselyn James Riley House (Early Residences of Rural Marion County MPS), 13845 Alt. US 27, East Lake Weir, 93000591

St. Johns County

Lopez, Xavier, House, 93½ King St., St. Augustine, 93000579

GEORGIA

Bibb County

Tindall Heights Historic District, Roughly bounded by Broadway, Eisenhower Pkwy., Felton and Nussbaum Aves., Central of Georgia RR tracks and Oglethorpe St., Macon, 93000587

MINNESOTA

Hennepin County

Stevens Square Historic District, Roughly bounded by E. 17th St., 3rd Ave. S., Franklin and 1st Aves. S., Minneapolis, 93000594

MISSISSIPPI

Yazoo County

Hart, Big John, House, Castle Chapel Rd., SE of Yazoo City, Yazoo City vicinity, 93000580

NEW YORK

Cortland County

Unitarian Universalist Church (Cobblestone Architecture of New York State MPS), 3 Church St., Cortland, 93000592

Sullivan County

St. Joseph's Seminary (Upper Delaware Valley MPS), Seminary Rd. W side, Callocoon, 93000582

NORTH CAROLINA

Gaston County

Belmont Abbey Historic District, 100 Belmont—Mt. Holly Rd. (NC 2093, E side), Belmont, 93000584

RHODE ISLAND

Providence County

Ladd Observatory, 210 Doyle Ave. (jct. of Doyle Ave. and Hope St.), Providence, 93000583

SOUTH CAROLINA

Sumter County

Brogdon, J. Clinton, House, 3755 Boots Branch Rd., Sumter vicinity, 93000585

TENNESSEE

Hardin County

White, Meady, House, Main St. (TN 69), Saltillo, 93000586

VERMONT

Windham County

Canal Street—Clark Street Neighborhood Historic District, Roughly bounded by Canal, S. Main, Lawrence and Clark Sts., Brattleboro, 93000593

[FR Doc. 93–13952 Filed 6–14–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–5750 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

Comments on the following assessment are due 30 days after the date of availability: AB–55 (SUB–NO. 458X, CSX Transportation, Inc.—Abandonment—Barbour County, West Virginia. EA available June 11, 1993.

Sidney L. Strickland,

Secretary.

[FR Doc. 93–19034 Filed 6–14–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32293]

Union Pacific Railroad Company—Petition for Declaratory Order—Feeder Line Acquisition by Wyoming & Colorado Railroad, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Institution of declaratory order proceeding.

SUMMARY: In response to a request by the Union Pacific Railroad Company (UP), the Commission institutes this declaratory order proceeding under 5 U.S.C. 554(e) to determine whether Wyoming & Colorado Railroad, Inc. (WYCO), is required by the Feeder Railroad Development Program in 49 U.S.C. 10910 to operate a line of railroad

acquired from UP for 3 years and to provide UP a right of first refusal to repurchase the line. An opportunity to participate in the proceeding is provided interested persons and their comments are invited.

DATES: Written comments (original and 10 copies) must be filed by July 30, 1993, and concurrently served on the representatives of petitioner UP and respondent WYCO. Each comment must contain the basis for the party's position either in support or opposition to petitioner's position.

ADDRESSES: Send an original and 10 copies of all comments to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32293, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy to each of the following:

UP's representatives: Arthur M. Albin, Joseph D. Anthofer, 1416 Dodge Street, room 830, Omaha, NE 68179.

WYCO's representatives: Douglas M. Durbano, 3340 Harrison Blvd. #200, Ogden, UT 84403 and Karl Morell, Suite 210, 919 18th Street, NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610 or Joseph C. Levin (202) 927–6287 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: The Commission approved WYCO's purchase of UP's Oregon Eastern Branch Line between milepost 1.88, near Ontario, OR, and milepost 157.2, at Burns, OR, in Finance Docket No. 31377, Wyoming Colorado Railroad, Inc.—Feeder Line Acquisition—Union Pacific Railroad Company Line between Ontario and Burns, Oregon (not printed), served April 3, 1989, petition to reopen denied by decision (also not printed) served September 3, 1991, under the Feeder Railroad Development Program, 49 U.S.C. 10910 and 49 CFR part 1151. The statute authorizes a feeder line operator to elect to be exempt from any of the provisions of title 49 of the United States Code (except certain joint-rate provisions). WYCO elected the full exemption available under section 10910(g)(1).

UP alleges that WYCO discontinued rail service over the line less than 3 years after acquiring the line contrary to section 10910(a)(1) and commenced to dismantle and remove track material without according UP the "right of first refusal" to acquire the line under section 10910(h). UP is suing WYCO in the United States District Court for the District of Oregon, in a proceeding docketed as *Union Pacific Railroad Company* v. *Wyoming Colorado Railroad, Inc., Continental Rail Company, and A & K Railroad Materials*, No. 92–1131–JE. WYCO sought to dismiss the court action alleging, among other things, that having elected to be exempt (except with respect to joint rates) from the requirements of title 49 U.S.C., it is not subject to requirements in section 10910, a part of title 49.

The court has stayed the proceeding and referred the "issues relating to the effect and scope of the exemption granted to WYCO under 49 U.S.C. 10910(g)(1)" to the Commission. UP filed its petition seeking a declaratory order from the Commission determining whether WYCO is required: (1) to provide service over the line for a minimum of 3 years under section 10901(a) (1); and (2) to accord UP a right of first refusal to purchase the line at a price determined under section 10910(h) should WYCO wish to sell or abandon all or part of the line.

Under 49 CFR 1011.8(c), the Director of the Office of Proceedings has the delegated authority to institute or decline to institute Commission declaratory order proceedings under 5 U.S.C. 554(e) to terminate a controversy or removing uncertainty. While the institution of a proceeding is discretionary, petitions for issuance of a declaratory order premised on referral from a court are granted routinely when matters within the Commission's jurisdiction are involved. Delegation of Authority—Declaratory Order Proceedings, 5 I.C.C.2d 675, 676 (1989). A declaratory order proceeding to address the issues UP has raised is instituted and WYCO is made the respondent.

The issues presented in UP's petition are unprecedented and involve interpretation of the statute. For these reasons, public comments are invited. Any person seeking to participate in support of, or, in opposition to petitioner's position, is invited to submit written representations, views, or arguments to the Commission.[1] No oral hearing is contemplated.

Copies of UP's petition and WYCO's response are available for public inspection and copying at the Office of Secretary, Interstate Commerce Commission, Washington, DC 20423, and from the representatives identified above. Petitioner and respondent should make copies immediately available to those who request them so that potential commenters will be able to submit informed comments on a timely basis.

Decided: June 9, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland,

Secretary.

[FR Doc. 93–14033 Filed 6–14–93; 8:45 am]

BILLING CODE 7035–01–M

[1] By letter filed May 6, 1993, UP requested that the procedural schedule be postponed for 45 days to accommodate discovery. By motion filed June 5, 1993, UP seeks an order to compel certain discovery. While these requests were premature because they were made before this proceeding was instituted, they have been considered in setting the comment date. Now that the proceeding is being instituted, UP may renew its motion to compel and request any extension of the schedule needed. However, if extensions are granted for discovery purposes, they will not automatically extend the time for public comments from parties other than UP and WYCO.

DEPARTMENT OF LABOR

Office of the Secretary

Service Members Occupational Conversion and Training Act (SMOCTA); Request for OMB Approval

AGENCY: Office of the Secretary, Labor.

ACTION: Request for expedited review under the Paperwork Reduction Act.

SUMMARY: The Office of the Assistant Secretary for Veterans' Employment and Training (OASVET), Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35, 5 CFR part 1320 (53 FR 16618, May 10, 1988)), is submitting a request for approval to the Office of Management and Budget for an information collection to support the Service Members Occupational Conversion Training Act (Pub. L. 102–484, sec. 4481–4495). VETS has requested an expedited review of this submission under the Paperwork Reduction Act; this OMB review has been requested to be completed by July 15, 1993.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the information collection should be directed to Kenneth A. Mills, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., room N–1301, Washington, DC 20210 (202–219–5095). Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for VETS, Office of Management and Budget, room 3001, Washington, DC 20503 (202 395–6880). Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Average Burden Hours/Minutes Per Response: 50 minutes
Frequency of Response: Quarterly
Number of Respondents: 1,600
Annual Burden Hours: 5,333
Affected Public: State Employment Security Agency's Local Veterans Employment Representatives and Local Office Managers.
Respondents Obligation To Reply: Statutory (Pub. L. 102–484, Sec. 4491, 4494(f)).

Signed at Washington, DC, this 9th day of June 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

Supporting Statement

General Instructions

A supporting statement must accompany each request for approval of a collection of information. The statement must be prepared in the format described below, and all statements must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. If Section B does not apply, indicate that the collection does not employ statistical methods.

OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

A. Justification.—Requests for Approval Shall

1. Explain the circumstances that make the collection of information necessary. Include identification of any legal or administrative requirements that necessitate the collection.

A copy of the appropriate section of each statute and of each regulation mandating or authorizing the collection of information should be attached to the supporting statement.

1. Title 38, United States Code, 2004(c) requires the providing of reports by each Local Veterans' Employment Representative (LVER) to the manager of each local employment service office and to the Director for Veterans' Employment and Training (DVET) for the State. These reports are to be submitted not less than quarterly and set forth information pertaining to compliance with federal law and regulations with respect to special services and priorities for eligible veterans and other eligible persons.

Public Law 102–484, the National Defense Authorization Act of 1992, title XLIV, subtitle G (codified under 10 U.S.C. 1143 note, 106 Stat. 2315 *et seq.*) enacted the Service Members Occupational Conversion and Training Act of 1992 (SMOCTA), under which U.S.D.O.L. has the responsibility, at sections 4494(b) and 4494(f) for this information collection. SMOCTA requires the establishment of a program to assist eligible newly separated veterans in obtaining employment through participation in programs of significant training for employment in stable and permanent positions. SMOCTA requires DOL, in conjunction with and through a Memorandum of Agreement (MOA) between itself and the Departments of Defense and Veterans Affairs, to develop and implement the Defense and Veterans Affairs, to develop and implement the program, and to provide case management services to eligible and monitor case management contacts with veterans participating in the program as well as the effectiveness of training and employment efforts under the program's provisions. The forms upon which this approval is being sought are necessary to the program's legislative mission and intent. The Act also requires collection of information from eligible veterans and employers, and under the MOA between the Departments, the Department of Veterans' Affairs will be submitting a justification and request for that information collection.

2. Indicate how, by whom, and for what purpose the information is to be used and the consequence to Federal program or policy activities if the collection of information was not conducted.

2. The information collected is used by the Office of the Assistant Secretary of Labor for Veterans' Employment and Training to monitor compliance with performance standards that are imposed at 38 U.S.C. 2007 (b) and (c)(2); and to ensure that veterans are provided with priority and special emphasis services as required by 38 U.S.C. 2002. If the reports are not developed and submitted the Department of Labor would not be in compliance with 38 U.S.C. 2007 (b) and (c)(2) 2004(c), and 2002.

The new information collection necessitated by Public Law 102–484 will enable the Departments of Defense, Veterans' Affairs and Labor to obtain information from eligible veterans and employers to determine eligibility in the program (DVA's information collection) and to monitor the effectiveness of the program and in particular, the reasons for noncompletion in the training program, the salaries, and the nature of the training programs (DOL information collection).

3. Describe any consideration of the use of improved information technology to reduce burden and any technical or legal obstacles to reducing burden.

3. The regulations provide for the submission of the data, if the State has the capability, in electronic media. Automatic Data Planning capability is currently in use for development of the data used by LVERs to analyze services to veterans in all but a few States. Insufficient availability to LVERs of computer terminals or personal computers prohibits data processing technology from reducing the burden of subsequent reporting to the Department of Labor.

With regards to SMOCTA the statute requires a process to allow prospective trainees and employer/trainers access. In all instances where States have the necessary equipment and skills to allow for electronic collection, processing and transmittal of the information via improved technology will be utilized in an effort to lessen the burden on all individuals involved.

Specifically, State Employment Security Agencies (SESAs) already collect and compile information electronically to develop and submit their VETS 200 and ETA 9002 reports. Coordination has taken place with their information services provider and they are agreeable to changes in the electronic forms used to collect this data. The LVER quarterly Technical Report is a narrative that does not lend itself to automation, however, the data necessary to assess program problems or barriers will be automated to the greatest extent feasible.

4. Describe efforts to identify duplication.

4. Information concerning the provision of special services and priorities for eligible veterans and eligible persons is not being reported by others. This is a legislative requirement

SMOCTA addresses specifically the needs of newly separated and certain disabled veterans by offering them training opportunities with private sector employers by reimbursing employers for a portion of their wages during a training program. Because of the specific eligible and nature of the program, there is no duplication of other existing programs. To avoid duplication with respect to the information collection, the DVA and DOL will submit separate information collections based on the division of responsibility established in the SMOCTA MOA between the Departments. In particular, DVA's information collection addresses eligible veterans and employers and DOL's program activity and outcomes. This particular modification requires reporting on problems and barriers to participation and statutorily required case management follow-up contacts

after placement of an eligible in a training program.

5. Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in 2.

5. Other data collection does not include analysis (as is done by the LVERs), but rather ensures that the data necessary for this analysis is collected in a manner which facilitates this effort.

For purposes of SMOCTA, this request modifies existing information collections to minimize burden and facilitate expeditious collection of information. The ETA 9002 and VETS 200 reports will be used to capture the bulk of the information required by statute. (1205–0240)

6. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

6. The narrative report does not affect small business or other small entities. Likewise, with SMOCTA, no data collection requirements are imposed upon small businesses relative to this request.

7. Describe the consequence to Federal program or policy activities if the collection were conducted less frequently.

7. If the analysis and narrative report were less frequent than quarterly, there would be little time within a funding cycle (one year) to remedy any potential compliance problem.

The requirement that the narrative analysis be submitted on "not less than quarterly" basis is contained in the U.S. Code (38 U.S.C. 2004(c)).

The SMOCTA data will be collected as DVOP/LVER staff contact participants to ensure appropriate progress in the training program. Reporting will be on a quarterly basis which corresponds with the reporting cycle of the report being modified. Less frequent reporting would impose an additional burden on the respondent state agencies rather than reduce such a burden.

8. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

8. No special circumstance requires data collection in conflict with 5 CFR 1320.6 for either information collection process.

9. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the date elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained, or those who must compile records, should occur at least once every three years—even if the collection of information activity is the same as in prior periods. There may be circumstances that mitigate against consultation in a specific situation. These circumstances should be explained in the supporting statement.

In the supporting statement, provide:

a. The names and telephone numbers of those consulted and the year in which the consultation took place. Indicate the agencies, companies, State or local governments, or other organizations represented by those consulted.

b. A summary of any major problems that could not be resolved during consultation.

c. A description of other public contacts and opportunities for public comment, and a summary of the comments received.

9. Several LVER and LESO offices were consulted for input as to burden based on size of office (large or small), and particularly as to its use and value, and any changes that could be made to make it more effective, less burdensome, or facilitate its ease of completion. Respondents indicated that resources were available and easily accessible to complete the report; that quarterly reports were adequate, in one instance a narrative report was prepared monthly on their own volition to better manager operations; State instructions were viewed as clear, and only in one instance did a LVER mention that the instructions from his State be revised; no concerns were raised over the manner in which the information was collected, while some respondents stated that the information was very useful to the operation of the DVOP/LVER programs; and finally, responses ranged from 30 minutes to one hour with regard to the time it takes to prepare for and write the narrative report. It was interesting to us that the narrative report is also used as a means of identifying success stories or other matters of interest within the office of State. (See Attachment A)

With regards to SMOCTA information collection, over 40 SESAs are supported by a centralized automation services provider (ESSI), 3 more use their programs, but changed to fit their particular State needs and the remainder normally uses some of ESSIs programs and, or, instructional materials. DOL has consulted with and coordinated with ESSI to identify the least burdensome manner in which to collect this information from existing forms, programs and reports.

In developing this information collection process, USDOL has consulted with and coordinated with staff of the Departments of Defense and Veterans' Affairs. Additionally, several meetings were held which involved representatives from the Interstate Conference of Employment Security Agencies (ICESA) and Employment Security Systems Institute (ESSI). In addition, weekly contact for coordination purposes was established with ESSI to minimize problems or additional burdens and, indeed, the forms on which this request is based are representative of changes to a present system of data collection which has resulted from those deliberations.

Formal Contacts:

—Briefing by the Assistant Secretary to the ICESA Veterans' Affairs Committee (May 1993)
—VETS meeting with the ICESA Coordinator (May 1993)
—VETS meeting with Automation and Technology Committee of ICESA (May 1993)

Opportunities for comment:

—A Veterans' Program Letter will be issued in June 1993 notifying SESAs of reporting needs, this information collection and providing sample draft forms of changes that need to be made to their input and reporting formats to be able to meet the statutory requirements. This policy issuance will provide an opportunity for comment and suggestions.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

10. None of the data collected identifies individuals, for either collection process. The information collection from the public (eligible veterans and employers) for SMOCTA will be submitted by the Department of Veterans' Affairs. The process guarantees no anonymity. The information provided will be reviewed by all involved agencies, as necessary.

This information collection addresses only program activity and barriers or problems. Thus the assurance of confidentiality does not apply.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the

information is requested, and any steps to be taken to obtain their consent.

11. No data collected relative to services to veterans is of sensitive nature. No questions of a sensitive nature are necessary to the SMOCTA program's process. The focus will be on ascertaining numbers of eligible seeking assistance from State Agencies, case management services provided by DVOP and LVER staff, and generic identification of problems or barriers to successful completion of the training program.

12. Provide estimates of annualized cost to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours operational expenses (such as equipment, overhead, printing and support staff), and any other expenses that would not have been incurred without the paperwork burden.

12. For the LVER report, Federal involvement mainly consists of Director for Veterans' Employment and Training (or Assistant Directors) review of the narrative reports (less than one quarter of one hour per report per quarter unless problems are identified requiring technical assistance or corrective action). This translates into roughly sixty (60) hours of Federal involvement. For respondent State agencies, there is involvement by LESO managers in reviewing each report equal to that of Federal involvement or roughly sixty-four (64) hours. In addition, SESA Administrators may review those reports that denote failure to meet standards (one quarter hour per report that denote failure to meet standards (one quarter hour per report for one quarter of reports), resulting in roughly 16 hours of review effort. LVER time is addressed above. LVERs spend approximately 4,800 hours in the compilation of data for, and preparation of the narrative report (from 30 minutes to one hour depending on office size and volume of clientele, by 1,600 LVERs on quarterly basis). Federal costs are roughly $1,800 (DVET/ADVET time—2.9% of staff year multiplied by GS–13/7 salary plus overhead). State costs are roughly $101,381 (LESO Managers, including overhead $1,472; SEAS Administrators $537; and LVERs $99,372).

The only additional Federal costs imposed by this approval request for SMOCTA relate to the training of staff which, depending on need, will be conducted by the National Veterans' Training Institute and costs of reducing the burden on states by addressing the programming of current information systems. LVER staff prepare a narrative report on activity, problems and degree to which priority of services are being provided. This modification will ask for narrative information on SMOCTA case management follow-ups and problems or barriers affecting participation or completion of training programs.

13. Provide estimates of the burden of the collection of information. The statement should:

- Provide number of respondents, frequency of response, annual burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not make special survey to obtain information on which to base burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated burden, and explain the reasons for the variance.
- If the request for approval is for more than one form, provide burden estimates for each form for which approval is sought and summarize the burdens on the SF 83.
- If only one form is submitted, you need not duplicate the information entered on the SF 83.
- If the proposed collection of information was not included in the agency's Information Collection Budget (ICB) or if the burden shown on the SF 83 is different from that in the ICB, explain the difference.

13. Additions to the ICR are as a result of new legislation and were not anticipated during the FY 1993 ICB submission.

There are no more than 1,600 LVERs at any one time. Each prepares a quarterly narrative report for review by the LESO manager. The data used is readily available from other approved data collections (for which separate requests are being made to modify to facilitate collection of SMOCTA information). The burden was estimated from knowledge available within VETS as to operations, then corroborated by consultation with actual LVERs. LVERs compare data in VETS–200 and ETA–9002 (1205–0240) as well as making a qualitative assessment of consultation, often add success stories as anecdotal references to the quality of services..

The comparison of data and computations of percentages necessary to address quantitative performance standards may be performed by automatic data processing, either by the production of a sub-report to VETS–200 and ETA–9002; as a spreadsheet in a personal computer, which implies entry of the data; or manually. The qualitative assessment and case management narrative entail review of a sample of records and personal observation throughout the quarter. Success stories and anecdotal references are generally culled from the records review or personal experience.

Compiling the information, analyzing it and preparing the report takes from 20 minutes to one hour, with the majority of those consulted responding under 30 minutes. Obviously, LVERs using automatic data processing capabilities take less time preparing the report, as do those with offices with lesser volume of activity. We estimate the average time to prepare at 40 minutes per LVER (this assumes that less than half of the LVERs have automatic data processing support), and five minutes on the average for the LESO manager to read the report.

Since this modification adds SMOCTA and case management followups, an additional five minutes per LVER are estimated as the burden for this modification.

Current Burden: 1,600 LVERs × 45 min × 4 quarters=4,800.

Proposed Burden: 1,600 LVERs × 50 min × 4 quarters=5,333.

(an increase of 533 hours over the existing information collection)

14. Explain reasons for changes in burden, including the need for any increase.

14. The reason for a program increase is the SMOCTA legislation, which increases the burden by + 533 hours. This request adds reporting on problems or barriers to management activities associated with SMOCTA for each local office.

15. For collections of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

15. For the LVER report this question is not applicable. The information is used for program management purposes only.

The data collected will be tabulated within USDOL/VETS to report to DOD and DVA as required by the interdepartmental MOA for inclusion in reports to Congress. The information will also be reported to Congress as part of VETS' Annual Report to Congress pursuant to 38 U.S.C. 4007.

[FR Doc. 93–14048 Filed 6–14–93; 8:45 am]
BILLING CODE 4510–79–P–M

Service Members Occupational Conversion and Training Act (SMOCTA)

AGENCY: Office of the Secretary, Labor.

ACTION: Request for expedited review under the Paperwork Reduction Act.

SUMMARY: The Employment and Training Administration (ETA), Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35, 5 CFR part 1320 (53 FR 16618, May 10, 1988)), is submitting a request for approval to the Office of Management and Budget for an information collection to support the Service Members Occupational Conversion Training Act (Pub. L. 102–484, Sec. 4481–4495). ETA has requested an expedited review of this submission under the Paperwork Reduction Act; this OMB review has been requested to be completed by July 15, 1993.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the information collection should be directed to Kenneth A. Mills, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC., 20210 (202 219–5095). Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for VETS, Office of Management and Budget, room 3001, Washington, DC 20503 (202 395–6880).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 9002A–C (Operation)	States	54	Quarterly	3 hours
ETA 9002A–C (Programming)	States	54	One-time	30 minutes
Recordkeeping	States	54	One-time	12 hours
VETS 200A	States	54	One-time	45 minutes
VETS 200B	States	54	Quarterly	45 minutes
VETS 300	States	54	Quarterly	1 hour
ETA 9002A/9002B–S/9002C–S (Reprogramming)	States	54	One-time	20 hours
2,944 Total Burden Hours				

RESPONDENTS OBLIGATION TO REPLY: Statutory (Pub. L. 102–484, Sec. 4494(f)).

Signed at Washington, DC this 9th day of June 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

A. Justification.—Requests for Approval Shall:

1. Explain the circumstances that make the collection of information necessary. Include identification of any legal or administrative requirements that necessitate the collection.

A copy of the appropriate section of each statute and of each regulation mandating or authorizing the collection of information should be attached to the supporting statement.

1. Circumstances Necessitating the Collection

a. Basic Labor Exchange

Information on basic labor exchange services is necessary to assure that States are complying with legal requirements of the Wagner-Peyser Act as amended by the Job Training Partnership Act (JTPA). Section 18(c) of the amended Wagner-Peyser Act reads:

"(c) Each State receiving funds under this Act shall—

(1) Make sure reports concerning its operations and expenditures are in such form and containing such information as shall be prescribed by the Secretary, and

(2) Establish and maintain a management information system in accordance with guidelines established by the Secretary designed to facilitate the compilation and analysis of programmatic and financial data necessary for reporting, monitoring, and evaluating purposes."

20 CFR 652.3 states:

"At a minimum, each State shall administer a labor exchange system which has the capability:

(a) To assist jobseekers in finding employment;

(b) To assist employers in filling jobs;

(c) To facilitate the match between jobseekers and employers;

(d) To participate in a system for clearing labor between the States including the use of a standardized classification system issued by the Secretary * * *

(e) To meet the work test requirements of the State unemployment compensation system"

Program data items are required from States reporting to DOL as part of other information in order to determine if States are complying with the basic labor exchange requirements. Individuals placed, placement transactions, obtained employment, and individual registrants data are required to determine if States are assisting jobseekers. Individuals referred, and job openings data are required to determine if States are assisting employers. UI claimant and interstate clearance data are required to determine if States are administering the UI work test and participating in interstate clearance activities. Four data elements relating to Migrant Seasonal Farm Workers (MSFW) are required.

b. Veterans' Employment and Training Service

Information regarding employment and training services provided to veterans by State public employment service agencies must be collected by the Department of Labor to satisfy legislative requirements, as follows: (a) To report annually to Congress on specific services (38 U.S.C. 2007(c) and 2012(c)); (b) to establish administrative controls (38 U.S.C. 2007(b)); and (c) for administrative purposes. Enactment of the Veterans' employment, Training, and Counseling Amendments of 1988 (Pub. L. 100–323), added several new data items to the specific reporting requirements at 38 U.S.C. 2007(c). Public Law 100–323 also added requirements for reporting case management activities according to section 15(b) of the Veterans' Job Training Act, Public Law 98–77, as amended. See Attachment I for copies of 38 U.S.C. 2007(c) and Section 15(f) of Public Law 98–77, as amended.

Public Law 102–484, the National Defense Authorization Act of 1992, Title XLIV, Subtitle G (codified under 10

U.S.C. 1143 note, 106 Stat. 2315 et. seq.) enacted the Service Members Occupational Conversion and Training Act of 1992 (SMOCTA), under which U.S.D.O.L. has the responsibility, at section 44914(f) for a new information collection. SMOCTA requires the establishment of a program to assist eligible newly separated veterans in obtaining employment through participation in programs of significant training for employment in stable and permanent positions. SMOCTA requires DOL, in conjunction with and through a memorandum of agreement (MOA) between itself and the Departments of Defense and Veterans Affairs, to develop and implement the program, and to effect the attendant collection of information relative to the outcomes from the program as well as the effectiveness of training and employment efforts under the program's provisions. The forms upon which this approval is being sought are necessary to the program's legislative mission and intent. The Act requires the Secretary of Labor to collect the proposed information on a quarterly basis. The Act also requires collection of information from eligible veterans and employers, and under the MOA between the Departments, the Department of Veterans' Affairs will be submitting a justification and request for that information collection.

2. Indicate how, by whom, and for what purpose the information is to be used and the consequence to Federal program or policy activities if the collection of information was not conducted.

2. Use of Information

a. Labor Exchange Service Reporting

These data will be used primarily by the USES to monitor services provided by State agencies.

Major DOL users include:

Employment and Training Administration

United States Employment Service (USES)
Office of the Comptroller
Office of Strategic Planning and Policy Development
Office of Regional Management

Other DOL Components

Office of the Assistant Secretary for Policy (ASP)
Office of the Assistant Secretary for Veterans' Employment and Training (OASVET)

Data will also be available for members of Congress and others needing information on ES activities. These data are used at Regional and National levels for conducting compliance reviews (1205–0270 expiring 12/31/94) of ES program operations. If these data are not collected, DOL and Congress would have no means of measuring the national impact of the ES Program.

b. Veterans' Service Reporting

Data will be provided to Congress by OASVET to meet the reporting requirements of 38 U.S.C. Other users are DOL components (primarily the Employment and Training Administration and the Office of the Assistant Secretary for Policy), veterans organizations, the Interstate Conference of employment Security Agencies, and other interested parties.

If data are not collected, DOL would fail to comply with:

(a) the legislative mandate for reporting specific veterans' services information to Congress (38 U.S.C. 2007 (c), and 2012 (c)), and (b) the legislative mandate to establish administrative controls and performance standards by which to ensure that State Employment/Job Service agencies provide priority services to veterans (38 U.S.C. 2007 (a) and (b)).

For SMOCTA, this information collection will enable the Departments of Defense, Veterans' Affairs and Labor to obtain information from eligible veterans and employers to determine eligibility in the program (DVA's information collection) and to monitor the effectiveness of the program and in particular, the reasons for noncompletion in the training program, the salaries, and the nature of the training programs (DOL information collection).

3. Describe any consideration of the use of improved information technology to reduce burden and any technical or legal obstacles to reducing burden.

3. ETA and the States plan to develop an electronic reporting protocol that will allow ETA access to State databases and, thus, remove from the States any reporting burden associated with ES reporting.

For SMOCTA the statute requires a process to allow prospective trainees and employer/trainers access. In all instances where States have the necessary equipment and skills to allow for electronic collection, processing and transmittal of the information via improved technology will be utilized in an effort to lessen the burden on all individuals involved.

Specifically, State Employment Security Agencies (SESAs) already collect and compile information electronically to develop and submit their ETA 9002 report. Coordination has taken place with their information services provider and they are agreeable to changes in the electronic forms used to collect this data. DOL is exploring contracting with the Employment Security Systems Institute (ESSI) to develop the programs necessary to obtain this information with the resultant reduction in burden to its client SESAs. We are also exploring a contract to assist non-ESSI client states by providing technical assistance and programming support as necessary to reduce their collection and reporting burden. Care has been exercised, in coordination with the Interstate Conference of Employment Security Agencies (ICESA), and their information systems' service provider (ESSI), to ensure that the basic forms used to collect the data are only changed by adding new codes to existing input forms and new outputs (reports to be generated) to further reduce the burden. All these efforts will likely result in a substantial reduction in the collection and reporting burden to states.

4. Describe efforts to identify duplication.

4. There is no duplication.

SMOCTA addresses specifically the needs of newly separated and certain disabled veterans by offering them training opportunities with private sector employers by reimbursing employers for a portion of their wages during a training program. Because of the specific eligibles and nature of the program, there is no duplication of other existing programs. To avoid duplication with respect to the information collection, the DVA and DOL will submit separate information collections based on the division of responsibility established in the SMOCTA MOA between the Departments. In particular, DVA's information collection addresses eligible veterans and employers and DOL's program activity and outcomes.

5. Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in 2.

5. No similar information is available for the uses described in 2.

This request, for SMOCTA, modifies existing information collections to minimize burden and facilitate expeditious collection of information. The ETA 9002 and VETS 200 reports will be used to capture the bulk of the information required by statute.

6. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

6. The information collection does not involve small business.

No data collection requirements are imposed upon small businesses relative to this modification request.

7. Describe the consequence to Federal program or policy activities if the collection were conducted less frequently.

7. a. Basic Labor Exchange reporting is needed quarterly to provide data for compliance reviews and to adequately monitor State activities.

b. For the Veterans' Employment and Training Service, if the information is collected less than quarterly as requested, the information would be almost valueless in (a) determining progress against performance standards, or, (b) in obtaining cost accounting information for Normal Budgetary Adjustments. A primary purpose of performance standards is to enable identification of emerging problems as early as possible and take appropriate corrective actions in a timely manner. If reports on services to veterans were received less than quarterly, such corrective actions could not be taken in time to be effective during any Program Year and the information collected would be of historical value only.

Similarly, it is necessary to have a regular flow of information available (in this case, quarterly reporting is the minimum frequency deemed adequate) upon which to base administrative decisions. If appropriate reports are not available on a timely basis, the DOL will fail to comply with its legislative mandate to take necessary actions to ensure that veterans receive priority services through the State Employment Service/Job Service agencies.

For SMOCTA, data will be collected as applicants for services complete an individual application and are interviewed for services by SESA and VETS staff. Reporting will be on a quarterly basis which corresponds with the reporting cycle of the reports being modified. Less frequent reporting would impose an additional burden on the respondent state agencies rather than reduce such a burden.

8. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

8. Information will be collected consistent with 5 CFR 1320.6.

9. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the date elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained, or those who must compile records, should occur at least once every three years—even if the collection of information activity is the same as in prior periods. There may be circumstances that mitigate against consultation in a specific situation. These circumstances should be explained in the supporting statement.

In the supporting statement, provide:

a. The names and telephone numbers of those consulted and the year in which the consultation took place. Indicate the agencies, companies, State or local governments, or other organizations represented by those consulted.

b. A summary of any major problems that could not be resolved during consultation.

c. A description of other public contacts and opportunities for public comment, and a summary of the comments received.

9. a. These data are for Federal level use and consultations between ETA components have determined the level of reporting needed from the States.

b. For Vets, several consultations were held with ETA during the past year since ETA is responsible for the information collection covered by the request. In addition, comprehensive information and detailed estimates were obtained from VETS field staff and the Employment Security Systems Institute (ESSI) regarding burden estimates, availability of data, frequency of collection, etc. (ESSI) provides computer programming and system support to most of the State employment services—42 of 54 jurisdictions—for the Public Employment Reporting System.) Comments and recommendations of the above parties were addressed.

c. *Standard Form 269 Activity*: (Attachment III)

Reporting instructions for the use of SF 269 are attached. There is no burden incurred for the use of this Standard Form.

For SMOCTA, over 40 SESAs are supported by a centralized automation services provider (ESSI), as noted above. Three more use their programs, but changed to fit their particular State needs and the remainder normally uses some of ESSIs programs and, or, instructional materials. DOL has consulted with and coordinated with ESSI to identify the least burdensome manner in which to collect this information from existing forms, programs and reports. In addition, we are exploring contracting for their services to eliminate the burden of changing automated programs or forms used to collect the information, and to assist non-ESSI serviced states.

In developing this information collection process, USDOL has consulted and coordinated with staff of the Departments of Defense and Veterans' Affairs. Additionally, several meetings were held which involved representatives from the Interstate Conference of Employment Security Agencies (ICESA) and Employment Security Systems Institute (ESSI). In addition, weekly contact for coordination purposes was established with ESSI to minimize problems or additional burdens and, indeed, the forms on which this request is based are representative of changes to a present system of data collection which has resulted from those deliberations.

Formal Contacts:

—Briefing by the Assistant Secretary to the ICESA Veterans' Affairs Committee (May 1993)

—VETS meeting with the ICESA Coordinator (May 1993)

—VETS meeting with Automation and Technology Committee of ICESA (May 1993)

Opportunities for comment:

—A Veterans' Program Letter will be issued in June 1993 notifying SESAs of reporting needs, this information collection and providing sample draft forms of changes that need to be made to their input and reporting formats to be able to meet the statutory requirements. This policy issuance will provide an opportunity for comment and suggestions.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

10. Data reported are not considered confidential. State level aggregated data does not identify individual employers or applicants and are available to the general public.

For SMOCTA, the information collection from the public (eligible veterans and employers) will be submitted by the Department of Veterans' Affairs. The process guarantees no anonymity. The information provided will be reviewed by all involved agencies, as necessary. This information collection addresses only program activity and summary numbers. Thus the assurance of confidentiality does not apply.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made

of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

11. No information of a sensitive nature or that which is commonly considered private will be collected.

For SMOCTA, no questions of a sensitive nature are necessary to the program's process. The focus will be on ascertaining the numbers of eligibles seeking assistance from State Agencies, services provided, and summary information on the nature of the training programs, their salaries and reasons for non-completion, as well as data on those completing training as well as their subsequent employment, as required by the statute.

12. Provide estimates of annualized cost to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing and support staff), and any other expenses that would not have been incurred without the paperwork burden.

12. Federal Cost: Total Federal cost for reporting requirement is $14,812. This cost is distributed as follows:

a. Basic Labor Exchange

Federal cost for the report is estimated at .25 positions for GS–12/5 ($39,192) or $9,789.

b. Veterans' Employment and Training Service

Federal cost to process and compile the data is broken down as follows:

- Data entry takes about three-quarters of an hour per State per quarter (.75 × 54 × 4 = 162 for GS–4/5 ($7.64/hr.) = $1,238.
- Database management takes about 240 hours per year for GS–13/5 or $22.33 × 240 = $5,359.
- Production of reports takes about 5 hours per quarter or 20 hours annually for GS–7/5 ($10.59/hr.) = $212.

For SMOCTA, the only additional Federal costs imposed by this approval request relate to the training of staff which, depending on need, will be conducted by the National Veterans' Training Institute and costs of reducing the burden on states by addressing the programming of current information systems. We estimate that the costs will be $100,000 for both these activities. A more accurate estimate can be made upon completion of the development of the program.

13. Provide estimates of the burden of the collection of information. The statement should:

- Provide number of respondents, frequency of response, annual burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not make special survey to obtain information on which to base burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated burden, and explain the reasons for the variance.
- If the request for approval is for more than one form, provide burden estimate for each form for which approval is sought and summarize the burdens on the SF 83. If only one form is submitted, you need not duplicate the information entered on the SF 83.
- If the proposed collection of information was not included in the agency's Information Collection Budget (ICB) or if the burden shown on the SF 83 is different from that in the ICB, explain the difference.

13. Estimate of Data Collection Burden

Burden Hour Summary: The combined total burden hours are 2,944.

USES Reporting Burden: 648 hours.
Recordkeeping Burden: 648 hours.
Reprogramming: 28 hours.
Total USES Burden: 1,324 hours.
VETS Reporting Burden: 540 hours.
a. *Basic Labor Exchange Reporting Burden:* 1,324 hours.
Data Collection: 648 hours.

Operating the reporting system requires about two hours and 45 minutes per quarter for processing, maintaining and reporting the data. Estimates are based on meetings with the States.

Operation:
2.75 hours × 4 reports for ES × 54 Reporting Units = 594 hours
.25 hours × 4 reports for VETS × 54 =54 hours

Programming System will require on time burden of an additional 15 minutes per State:
15 minutes × 1 × 54 Reporting Units for ES hours.
15 minutes × 1 × 54 Reporting Units for VETS = 14 hours.

Recordkeeping Burden: 648 hours.

States are required to maintain records on several MSFW data items for monitoring purposes:
54 States × 12 hours = 648 hours

b. *Veterans Employment and Training Service* 540 hours

Number of Respondents: 54 (All States plus District of Columbia and Puerto Rico, Virgin Islands and Guam).

Frequency of Response: Quarterly (4 times per year)

The overall hours required for each respondent per quarter to produce the required reports are:

Form VETS 200 A—.75 hour × 4 × 54 = 162
VETS 200 B—.75 hour × 4 × 54 = 162
VETS 300—1 hour × 4 × 54 = 216
Reporting burden hours: 540

The disclosure statement appears on each form.

Additions to the ICR are as a result of new legislation (Pub. L. 102–484—SMOCTA) not anticipated during the FY 1993 Information Collection Budget.

The data collection burden on the collection of eligibles for SMOCTA and their program participation is only related to the administrative effort to include more choices in existing forms. The actual identification of eligibles requires no additional questions or effort from interviewers than currently asked, since as part of the initial interview for veterans they are asked when they separated to determine whether eligible as recently separated veterans for JTPA participation; whether they are unemployed and for how long as part of the barrier assessment; and the other choices relate only to participation in a training program, which is simply a code added to the input forms.

DOL is looking to contract with ESSI for the administration of changing input forms, the handbooks that carry the definitions and the programming involved, so the administrative burden to State Agencies will be reduced to arrangements to install the new programs.

We estimate this one-time burden to the States at 20 hours per State for 54 states or 1,080 hours.

14. Explain reasons for changes in burden, including the need for any increase.

14. For SMOCTA, this request is for revision of an information collection process which has previously been approved by OMB under 1205–0240. The need for the 1,080-hour increased burden (as noted above in item 13) is to comply with the statutory requirement at Section 4494(f) of Public Law 102–484.

15. For collections of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

15. Collection of the data does not employ statistical methods, and an actual count of all transactions is required.

For SMOCTA, the data collected will be tabulated within USDOL/VETS, DOD

and DVA for inclusion in reports to Congress. A report will be prepared 120 days after the end of the fiscal year addressing the legislative requirements and transmitted to DOD and DVA. Summary data and analysis of the information collected will also be incorporated into the VETS Annual Report to Congress pursuant to 38 U.S.C. 4107 which is required by February 1 of each year.

Directive: ET Handbook No. 406, Change 1
To: Regional and State Offices
From: Barbara Ann Farmer, Administrator for Regional Management
Subject: ETA 9002 Data Preparation Handbook

1. *Purpose.* To transmit changes to subject Handbook and to announce the extension of Office of Management and Budget (OMB) approval of collection of information on the ETA Form 9002.

2. *Background.* Public Law 102–484, the National Defense Authorization Act of 1992, Title XLIV, Subtitle G, enacted the Service Members Occupational Conversion and Training Act of 1992 (SMOCTA). The Labor Department is responsible for providing case management services to veterans who are participating in training under SMOCTA. State Employment Security Agencies (SESAS) Job Service will be the primary focal point for developing training opportunities, matching qualified applicants with certified employers and providing case management services. Quarterly reports are required to comply with SMOCTA.

3. *Changes.* To accommodate SMOCTA reporting requirements, the definition of SMOCTA has been added to page III–5; a column has been added to page four of Form 9002A; and two forms, 9002B–S and 9002C–S have been added for reporting information on SMOCTA.

4. *OMB Approval.* Reporting requirements in this Handbook have been approved by the Office of Management and Budget (OMB) according to the Paperwork Reduction Act of 1930, under OMB Approval No. 1205–0240, expiration date _____.

5. *Action Required.* Administrators are requested to provide above information to appropriate staff.

6. *Instructions for Handbook Maintenance*

Remove & destroy	Insert
Page III–5 ..... 7/93	Page III–5.
Page 4 of Form 9002A 3/93.	Page 4 of Form.
Page 4 of 7/93	9002A.
	Form 9002B–S.
7/93	
	Form 9002C–S.
7/93	

7. *Attachments*
Page III–5
Page 4 of Form 9002A
Form 9002B–S
Form 9002C–S

BILLING CODE 4510–30–M

Average Wage on Orders and Placements for Job Orders Received and Job Openings Received and Filed by Occupational Category and Agricultural Status

U.S. Department of Labor
Employment Service Programs

State | Program Year | Quarter

	Occupational Categories		Job Orders Received	OPENINGS RECEIVED						OPENINGS FILLED					
				Total	Non-AG		AVERAGE WAGE	Agricultural		Total	Non-AG		AVERAGE WAGE	Agricultural	
	DOT	Title		Non-AG and AG	Temp	Perm	ON ORDE	Temp	Perm	Non-AG and AG	Temp	Perm	ON PLCM	Temp	Perm
			A	B	C	D	E	F	G	H	I	J	K	L	M
1		TOTAL													
2	0-1	Professional, Technical & Managerial													
3	20-24	Clerical													
4	25-29	Sales													
5	30	Domestic Services													
6	31-29	Other Services													
7	4	Farm, F & F													
8	5	Processing													
9	6	Machine Trades													
10	7	Bench Work													
11	8	Structural													
12	90	Motor Freight													
13	91	Transportation													
14	92	Pkg Materials Handling													
15	93-97	Other													

CERTIFICATION	Signature of Authorized Certifying Official	Date report submitted
I certify to the best of my knowledge and belief that this report is correct and complete.	Type or print name and title	Telephone (area code, number and extension

ETA-9002C-S
Rev. Jul 1993

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time of reviewing instructions, searching existing data sources gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden, including estimates or any other aspect of the collection of information, including suggestions for reducing this burden to the Office of Information and Management, Department of Labor, Room N-1301, 200 Constitution Avenue, N.W. Washington, D.C. 20210, and to the Office of Management and Budget, Paperwork Reduction Project (1205-0240), Washington, D.C. 20503

Job Openings Received and Filled by Occupational Category and Standard Industrial Classification (SIC)

U.S. Department of Labor
Employment Service Programs

State | Program year | Quarter

VOL 58 ISS 113 JE 15 1993 UMI

Job Openings Received and Filled by Occupational Category and Standard Industrial Classification (SIC)

U.S. Department of Labor

Employment Service Programs

State _____ Program year _____ Quarter _____

	DOT	Title	TOTAL	Agri F & F	Mining	Const.	Mfg.	Transp. & Util.	Wholesale Trade	Retail Trade	Finance Ins. & Real Est.	Services	Public Admin.	Nonclass. Est.
			A	B	C	D	E	F	G	H	I	J	K	L
1	JOB OPENINGS REC													
2.	0-1	Prof., Tech & Mgr.												
3.	20-24	Clerical												
4.	25-29	Sales												
5.	30	Domestic Services												
6.	31-39	Other Services												
7.	4	Farm, F & F												
8.	5	Processing												
9.	6	Machine Trades												
10	7	Bench Work												
11	8	Structural												
12.	[illegible]	Motor Freight												
13.	91	Transportation												
14.	92	Pkg Mat Hand												
15	93-97	Other												

	DOT	Title												
16	JOB OPENINGS REC													
17.	0-1	Prof., Tech & Mgr.												
18.	20-24	Clerical												
19.	25-29	Sales												
20.	30	Domestic Services												
21.	31-39	Other Services												
22	4	Farm, F & F												
23.	5	Processing												
24	6	Machine Trades												
25	7	Bench Work												
26	8	Structural												
27	90	Motor Freight												
28	91	Transportation												
29	92	Pkg Mat Hand												
30.	93-97	Other												
31.	FCJL Openings													
32.	No. of Fed. Contractors													

ETA-9002B-S

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time of reviewing instructions, searching existing data sources gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden, including estimates or any other aspect of the collection of information, including suggestions for reducing this burden to the Office of Information and Management, Department of Labor, Room N-1301, 200 Constitution Avenue, N.W. Washington, D.C. 20210, and to the Office of Management and Budget, Paperwork Reduction Project (1205-0240), Washington, D.C. 20503

ETA 9002 Quarterly Report (Cont'd)

State | Program Year | Quarter

J

VETERANS

Cumulative year-to-date	DISABLED		SPECIAL DISABLED				ELIGIBLE PERSONS				SMOCTA
	55+	Total	22-44	45-54	55 +	Total	22-44	45-54	55 +	Total	Total
	29	29	30	31	32	33	34	35	36	37	38
1 Total Active Applicants											
2 Veterans											
3 Male											
4 Female											
5 Youth											
6 Adult (22 and over)											
7 22-44											
8 45-54											
9 55 and over											
10 Economically Disadvantaged Total											
11 Welfare											
12 Assessment services											
13 Interviewed											
14 Counseled											
15 Tested											
16 Assigned Case Manager											
17 Provided Case Management services											
18 Vocational Guidance services provided											
19 Referred to other services											
20 Referred to skills training											
21 Referred to Federal training											
22 Referred to JTPA											
23 Referred to other training											
24 Referred to Educational services											
25 Referred to supportive services											
26 Training Placements											
27 Federal training placements											
28 Job Search Activities											
29 Referred to Employment											
30 Referred to Federal job											
31 Referred to FCJL job											
32 Referred to perm job (+150 days)											
33 Entered Employment											
34 Placed Total											
35 Placed (Under 22)											
36 Placed (22-44)											
37 Placed (45-54)											
38 Placed (55 & Over)											
39 Placed in Federal job											
40 Placed in FCJL job											
41 Placed in perm. job (+ 150 days)											
42 Obtained Employment											
43 Rec. Some Reportable Service											
Transactions											
44 Assessment services total											
45 Interviewed											
46 Counseled											
47 Tested											
48 Referred to Employment											
49 Placed											
50 Obtained Employment											

ETA 9002A
Rev. July 1993

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time of reviewing instructions, searching existing data sources gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden, including estimates or any other aspect of the collection of information, including suggestions for reducing this burden to the Office of Information and Management, Department of Labor, Room N-1301, 200 Constitution Avenue, N.W. Washington, D.C. 20210, and to the Office of Management and Budget, Paperwork Reduction Project (1205-0240), Washington, D.C. 20503

ETA 9002 Quarterly Report (Cont'd)

State Program Year Quarter

J

VETERANS

Cumulative year-to-date	DISABLED		SPECIAL DISABLED			ELIGIBLE PERSONS					SMOCTA
	55 +	Total	22-44	45-54	55 +	Total	22-44	45-54	55 +	Total	Total
	28	29	30	31	32	33	34	35	36	37	38
1 Total Active Applicants											
2 Veterans											
3 Male											
4 Female											
5 Youth											
6 Adult (22 and over)											
7 22-44											
8 45-54											
9 55 and over											
10 Economically Disadvantaged Total											
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31 Referred to FCJL job											
32 Referred to perm job (+150 days)											
33 Entered Employment											
34 Placed Total											
35 Placed (Under 22)											
36 Placed (22-44)											
37 Placed (45-54)											
38 Placed (55 & Over)											
39 Placed in Federal job											
40 Placed in FCJL job											
41 Placed in perm. job (+ 150 days)											
42 Obtained Employment											
43 Rec. Some Reportable Service Transactions											
44 Assessment services total											
45 Interviewed											
46 Counseled											
47 Tested											
48 Referred to Employment											
49 Placed											
50 Obtained Employment											

Page 4 of 4

ETA 9002A
Rev. Jul 1993

Public reporting burden for this collection of information is estimated to average XX minutes per response, including the time of reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden, including estimates or any other aspect of the collection of information, including suggestions for reducing this burden to the Office of Information and Management, Department of Labor, Room N-1301, 200 Constitution Avenue, N.W. Washington, D.C. 20210, and to the Office of Management and Budget, Paperwork Reduction Project (1205-0240), Washington, D.C. 20503.

[FR Doc. 93-14049 Filed 6-14-93; 8:45 am]

BILLING CODE 4510-30-C

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/ reporting requirement.

The title of the recordkeeping/ reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/ reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202) 219–5095. Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 (202) 395–6880.

Any member of the public who wants to comment on recordkeeping/ reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics

Response Analysis Survey (RAS) of BLS 790 and ES–202 Reporters 1220–0089; CES/UI RAS

On occasion

State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

10,800 respondents; 30 minutes per response; 5,400 total hours; 1 form

The Current Employment Statistics Survey and Employment and Wages Program are the primary sources of employment and wage information used to measure economic performance. The RAS continues the Bureau of Labor Statistics' efforts to review the sources of information available to respondents, to better match available records to program definitions, and to improve the quality of data.

Revision

Bureau of Labor Statistics

Application for BLS Labor Market Information Cooperative Agreement

1220–0079

Information collection	Frequency	Time	Respondents	Total hours
Work Statements	1	4 min	55	4
BIF (LMI 1A, 1B)	1	6 hr, 42 min	55	369
BLS Cooperative Statistics Financial Report (LMI 2A) Quarterly Financial Reports	4	8 hr, 2 min	10	321
(CAS or FARS) Quarterly Status Report	4	6 min	45	18
LMI 2B	4	45 min	27	61
Total burden hours				783

Cooperative Agreements (CAs) between BLS and State Employment Security Agencies are entered into annually to provide financial assistance for the following Labor Market Information statistics programs: Current Employment Statistics, Local Area Unemployment Statistics, Occupational Employment Statistics, and Employment and Wages Report. The CAs provide the basis for administrative planning, financial planning and monitoring. Respondents are State government agencies.

Signed at Washington, DC, this 8th day of June, 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–14050 Filed 6–14–93; 8:45 am]

BILLING CODE 4510–24–P

Employment and Training Administration

[TA–W–28,525]

Bethlehem Steel Corporation Bar, Rod and Wire Division, Johnstown, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated for workers of the subject firm. The Department inadvertently issued a certification on June 7, 1993 irrespective of the fact that the workers were under an existing, certification. However, the notice was not published in the **Federal Register**. This notice corrects the above noted inadvertent action.

On May 18, 1993, under petition TA–W–27,118, the Department certified all workers of Bethlehem Steel Corporation in Johnstown, Pennsylvania except the workers in the wire mill. The wire mill workers were denied because the wire mill had increased sales and production and was sold to another domestic company.

Therefore, since the subject workers were previously certified or, in the case of the wire mill workers, determined otherwise ineligible, further investigation into TA–W–28,525 would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 9th day of June 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–14044 Filed 6–14–93; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-28,523]

Conemaugh & Black Lick Railroad Co., Johnstown, PA; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the Group Eligibility Requirements of section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated in response to a petition received on April 5, 1993 and filed by the United Steelworkers of America on behalf of workers at Conemaugh & Black Lick Railroad Company, Johnstown, Pennsylvania. The workers firm is an affiliate of Bethlehem Steel Corporation and provides rail services to the Johnstown plant of Bethlehem Steel Corporation.

The investigation revealed that the subject firm provides rail services primarily for the Johnstown plant of Bethlehem Steel Corporation. The Bethlehem Steel Corporation Johnstown plant is under an existing certification (TA-W-27,118).

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with steel bar and semi-finished products produced at Bethlehem Steel Corporation, Johnstown, Pennsylvania with rail services performed by Conemaugh & Black Lick Railroad Company contributed importantly to the decline in sales or production and to the total or partial separation of workers of Conemaugh & Black Lick Railroad Company. In accordance with the provisions of the Act, I make the following certification:

All workers of Conemaugh & Black Lick Railroad Company, Johnstown, Pennsylvania who became totally or partially separated from employment on or after March 19, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 7th day of June 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-14043 Filed 6-14-93; 8:45 am]

BILLING CODE 4510-30-M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of May & June 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,507; Holden Manufacturing Co., Holden, MO

TA-W-28,143; Thumb Plastics-McAllen, Inc., Traverse City, MI

TA-W-28,320; Cytemp Specialty Steel, Titusville, PA

TA-W-28,426; NACCON, Inc., Pennsauken, NJ

TA-W-28,482; Jacks Industries, Inc., Saranac, MI

TA-W-28,481; Moog, Inc., East Aurora, NY

TA-W-28,340; Giddings & Lewis Automation (Kearney & Trecker Corp.), West Allis, WI

TA-W-28,341; Echo Ultrasound, Reedsville, PA

TA-W-28,338; Hecla Mining Co., Lucky Friday Mine, Mullan, ID

TA-W-28,366; Armco Stainless & Alloy Products, Bridgeville, PA

TA-W-28,583; Camco Products & Services, Houston, TX

TA-W-28,433; R&S Pants Co., Inc., Wilkes Barre, PA

TA-W-28,370; Armco Stainless & Alloy Products, Baltimore, MD

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-28,521; Digital Equipment Corp., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,452; Bell Petroleum Laboratories, Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,569; ITT Avionics, Clifton, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,475; Airfoil Forgings Textron, Euclid, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,593; Big Mac Welding, Inc., New Iberia, LA

U.S. imports of oil and gas field machinery was negligible in 1991 and 1992.

TA-W-28,194; Arco Oil & Gas Co., Arco Alaska, Inc., Anchorage, AK

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and to the absolute decline in sales or production.

TA-W-28,385; Electro-Wire Products, Divisional Maintenance Dept., El Paso, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,380; Geodyne Resources, Inc., Tulsa, OK

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,566; Southwestern Energy Production Co., Oklahoma City, OK

The investigation revealed that criterion (1) and criterion (2) have not

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been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,344; Tektronix, Inc., Corporate Benefits Dept., Beaverton, OR

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,550; Bolen Leather Products, Springfield, TN

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,501 & TA-W-28,502; B & B Tool Co., Inc., Ada, OK and Lindsay, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,432; Western Electric Corp., Nuclear & Advanced Technology Div., Advanced Energy Systems Dept., Madison, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,510; Alyeska Pipeline, Anchorage, AK

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,490; Anheuser-Bush, Inc., Newark, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,576; IBM Corp., Buffalo, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,464 Austin Computer Systems, El Paso, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,378; Houston Engineers, Inc., Oklahoma City, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,471; Laurel Metal Processing, Inc., Johnstown, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,602 & TA-W-28,603; Pennington Seismic Exchange, Inc., Tulsa, OK & Oklahoma City, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,440; Energy Gathering, Inc., Corpus Christi, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,495; Union Texas Petroleum Service Corp., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,534; University of Oklahoma, Oklahoma City, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-28,462; Pennzoil Sulphur Co., The Woodlands, TX

A certification was issued covering all workers separated on or after March 9, 1992.

TA-W-28,212; Gregg Originals, Inc., Hoboken, NJ

A certification was issued covering all workers separated on or after January 5, 1992.

TA-W-28,444; North American Brine Resources, Woodward, OK

A certification was issued covering all workers separated on or after March 5, 1992.

TA-W-28,325; Union Oil Co of California, Unocal Energy Resources Div., Bakersfield District, Bakersfield, CA

TA-W-28,326; Union Oil Co of California, Unocal Energy Resources Ventura District, Ventura, CA

TA-W-28,327; Union Oil Co of California, Unocal Energy Resources Div., Santa Maria District, Orcutt, CA

TA-W-28,328; Union Oil Co of California, Unocal Energy Resources Div., Santa Fe Springs District, Santa Fe Springs, CA

A certification was issued covering all workers engaged in employment related to the production of crude oil, natural gas and natural gas liquids separated on or after December 30, 1991.

TA-W-28,488; The Florsheim Shoe Co., 550 Highway AB, Cape Girardeau, MO

A certification was issued covering all workers separated on or after March 15, 1992.

TA-W-28,376; National Semiconductor, South Portland, ME

A certification was issued covering all workers engaged in the production of semiconductors separated on or after February 11, 1992.

TA-W-28,436; TA Corp., Newark, NJ

A certification was issued covering all workers separated on or after February 16, 1992.

TA-W-28,520; Granada Industries Corp., Martinsburg, WV

A certification was issued covering all workers engaged in the production of ladies' shirts, blouses, loungewear, robes and dresses separated on or after March 25, 1992.

TA-W-28,567; Simpson Paper Co., Humboldt Pulp Mill, Eureka, CA

A certification was issued covering all workers engaged in the production of bleached kraft softwood pulp separated on or after March 31, 1992.

TA-W-28,301; Syracuse China Corp., Syracuse, NY

A certification was issued covering all workers separated on or after January 26, 1992.

TA-W-28,476 & TA-W-28,477; M-I Drilling Fluids, Denver, CO & Williston, ND

A certification was issued covering all workers engaged in the production of exploration and drilling for oil and gas separated on or after February 26, 1992.

TA-W-25,451; A.F. Gallun & Sons Co., Milwaukee, WI

A certification was issued covering all workers separated on or after March 2, 1992.

TA-W-28,493; Charm Corp., Ridgeway, SC

A certification was issued covering all workers separated on or after March 15, 1992.

TA-W-28,311; BHP Petroleum (Americas), Inc., Houston, TX & Operating Out of Various Other Locations: A; CO, B; NM, C; TX

A certification was issued covering all workers separated on or after January 29, 1992.

TA-W-28,518; Joey Mfg, Inc., Pittston, PA

A certification was issued covering all workers separated on or after March 29, 1992.

TA-W-28,025; Lido Fashions, Paterson, NJ

A certification was issued covering all workers separated on or after June 29, 1992.

TA–W–28,497; GE Aerospace Aircraft Controls, dba Martin Marietta, Johnson City, NY

A certification was issued covering all workers engaged in the production of printed circuit boards separated on or after March 26, 1993. Also workers engaged in the production of analog and disital flight and engine controls are denied.

TA–W–28,503; Tucker Drilling Co. Services, San Angelo, TX

A certification was issued covering all workers separated on or after June 8, 1992.

TA–W–28,516; C.A. Reed, Inc., Williamsport, PA

A certification was issued covering all workers engaged in the production of napkins and table covers separated on or after March 24, 1992.

TA–W–28,573; FMR Grinding Wheel Co., Inc., West Haven, CT

A certification was issued covering all workers separated on or after March 30, 1992.

TA–W–28,539; Apparel Service Industries, Hialeah Gardens, FL

A certification was issued covering all workers separated on or after March 10, 1992.

TA–W–28,622; Oshkosh B'Gosh, Camden, TN

A certification was issued covering all workers separated on or after April 16, 1992.

TA–W–28,381 & TA–W–28,382; Dixie Yarns, Inc., Cumberland, NC & Hope Mills, NC

A certification was issued covering all workers separated on or after February 7, 1992 and before May 1, 1993.

TA–W–28,658; Sharon Steel Corp., Masury Steel Center Div., Masury, OH

A certification was issued covering all workers separated on or after May 5, 1992.

TA–W–28,499; Kraft/General Foods, Dover, DE

A certification was issued covering all workers separated on or after March 22, 1992.

TA–W–28,484 & TA–W–28,485; Harken Exploration Corp., Dallas, TX & Midland, TX & Operating Out of Various Other Locations: A; CA, B; CO, C; OK, D; NM

A certification was issued covering all workers separated on or after March 1, 1992.

TA–W–28,540; South Buffalo Railway Co., Lackawanna, NY

A certification was issued covering all workers separated on or after March 29, 1992.

TA–W–28,575; AAI/Microflite Simulation International, Binghamton, NY

A certification was issued covering all workers engaged in the production and modifying full flight simulators and flight training devices separated on or after April 1, 1992.

I hereby certify that the aforementioned determinations were issued during the month of May and June 1993. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, during normal business hours or will be mailed to persons to write to the above address.

Dated: June 8, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–14045 Filed 6–14–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,620]

Pyke Manufacturing Co., Salt Lake City, UT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 3, 1993 in response to a worker petition which was filed on May 3, 1993 on behalf of workers at Pyke Manufacturing Company, Salt Lake City, Utah.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 7th day of June 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–14046 Filed 6–14–93; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–055]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee.

DATES: June 28, 1993, 8:15 a.m. to 5:30 p.m.; June 29, 1993, 8:30 a.m. to 5:30 p.m.; and June 30, 1993, 8:30 a.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, room MIC–5, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Lawrence J. Caroff, Code SZF, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0342.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Comments by the Administrator
—NASA FY 1994 Budget Overview
—Office of Space Science Report
—Office of Life and Microgravity Sciences and Applications Report
—Office of Mission to Planet Earth Report
—Comments by the Chief Scientist
—Subcommittee Reports
—Space Station Redesign
—NASA Strategic Planning
—Advanced Concepts and Technology
—Report on Mission Operations and Data Analysis
—Committee Writing Assignments

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 8, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–14030 Filed 6–14–93; 8:45 am]

BILLING CODE 7510–01–M

[Notice 93–054]

Procedures To Comment on NASA's Draft Section 504 Self-Evaluation and Transition Plan

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice; request for comments.

SUMMARY: NASA is soliciting comments on the draft of its Self-Evaluation and Transition Plan for section 504 of the Rehabilitation Act of 1973, as amended.

DATES: Comments must be received on or before August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Christopher Rodriguez, Agencywide Section 504 Program Manager, Office of

Equal Opportunity Programs, NASA Headquarters, Washington, DC 20546, 202–358–0950.

SUPPLEMENTARY INFORMATION: This notice announces the availability of NASA's Section 504 Self-Evaluation and Transition Plan Draft document. Responsibility for coordinating the Self-Evaluation and Transition Plan process was delegated to the NASA Office of Equal Opportunity Programs. NASA is evaluating its current policies and practices to ensure that discrimination against individuals with disabilities does not occur in its programs or activities. This evaluation is being conducted to comply with NASA's final regulations for the enforcement of nondiscrimination on the basis of disability in NASA programs or activities. This regulation was issued in the **Federal Register** on July 8, 1988, through NASA's adaption of the concurrently published common rule (53 FR 25881–82) and 25885–89 and is codified at 14 CFR 1251.5). It requires NASA to perform the Self-Evaluation and Transition Plan and to provide an opportunity for individuals with disabilities, organizations representing individuals with disabilities, and other interested parties to participate in the process.

NASA believes that public involvement in the Self-Evaluation and Transition Plan process is not only valuable, but is essential to the effective and efficient implementation of section 504.

Copies of the Self-Evaluation and Transition Plan Draft document are available for public inspection in room CV74 at the NASA User Resource Center, 300 E Street, SW., Washington, DC 20546, during regular business hours (8 a.m.–4:30 p.m.) Monday through Friday. Persons needing assistance to review the document should contact NASA's Office of Equal Opportunity Programs by calling 202–358–3807 (Voice) or 202–358–3748 (TDD) 48 hours in advance to ensure that assistance or aids are available. Several aids are available on a continuing basis at the User Resource Center (room CV74). These include voice recognition systems, voice output systems, magnification of words on the screen, and key easy recognition

Information about how the general public can obtain this document and/or submit written or oral comments is as follows. Copies of the Self-Evaluation and Transition Plan Draft document are available by request in standard format, large print format, braille, audio tape, and computer disk. All requests must specify the desired format(s). Written comments should be sent to NASA Headquarters, Office of Equal Opportunity Programs, Code E, 300 E Street, SW., room 3A11, Washington, DC 20546.

Oral comments may be submitted by calling 202–358–3807 (Voice) or 202–358–3748 (TDD). Callers should be advised that these are not toll-free numbers. Comments must be received no later than August 16, 1993, in order to assure consideration. NASA will consider revisions to the draft document based on comments received, as well as any further evaluations performed by NASA Field Installations or other NASA offices by the end of the comment period.

Dated: June 8, 1993.

Yvonne B. Freeman,

Associate Administrator for Equal Opportunity Programs.

[FR Doc. 93–14031 Filed 6–14–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before July 30, 1993. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Animal and Plant Health Inspection Service (N1–463–93–1). Medical monitoring records.

2. Department of the Air Force (N1–AFU–93–13). Routine records of closing bases.

3. Department of the Air Force (N1–AFU–93–8). Preprocessed sets of photographs provided by Defense Mapping Agency.

4. Department of Justice, Asset Forfeiture Office (N1–60–93–10). Case files relating to the transfer of Federally forfeited property and related records.

5. Department of Transportation, Office of the Secretary (N1–398–93–2). Poor quality, unidentified and incomplete videotapes.

6. Department of Treasury, Office of Thrift Supervision, Congressional Affairs (N1–483–93–3). Comprehensive schedule.

7. Department of Treasury, Office of Thrift Supervision (N1–483–93–4). General program and administrative records relating to public affairs.

8. Department of Treasury, Office of Thrift Supervision, Washington Operations (N1–483–93–8). Routine records relating to oversight of thrift institution operation.

9. Department of Treasury, Office of Thrift Supervision, Washington Operations (N1–483–93–9). Routine correspondence, background files, and training materials supporting policy and standards development.

10. ACTION (N1–362–93–2). Volunteers In Service To America training program files, 1964–71.

11. Federal Bureau of Investigation (N1–65–93–5). Reduction in retention period for electronic surveillance audio tapes.

12. Federal Labor Relations Authority (N1–480–93–1). Labor-management arbitration case files.

13. Peace Corps (N1–490–93–01). Subject files of the Administration and Finance Division, 1961–69.

14. United States Information Agency, Office of Administration (N1–306–93–5). Routine and facilitative records.

Dated: June 2, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–14079 Filed 6–14–93; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL

Field Hearings

AGENCY: National Commission on Judicial Discipline and Removal.

ACTION: Field hearings.

Time and Place: Notice is hereby given in the public interest that field hearings of the National Commission on Judicial Discipline and Removal will occur on June 23, 1993, in Philadelphia, Pennsylvania, on June 24, 1993, in Chicago, Illinois, and on June 25, 1993, in San Francisco, California. Each hearing will commence at 9:30 a.m. and continue, subject to the rule of the chair, until 4:30 p.m. The precise location of the Philadelphia hearing will be the Ceremonial Courtroom of the United States Courthouse at 601 Market Street. The precise location of the Chicago hearing will be the Main Courtroom of the United States District Circuit, at 219 Dearborn Street. The precise location of the San Francisco hearing will be Courtroom 7 in the United States District Court in the Philip Burton Federal Building at 450 Golden Gate Avenue.

Status and Authority: Each hearing will be open to the public. The National Commission is a body composed of thirteen members appointed by the Speaker of the House, the President *pro tem* of the Senate, the President, the Chief Justice of the United States and the Conference of Chief Justices. The National Commission, established by Public Law 101–650 (title IV), is assigned three statutory duties. The first is to investigate and study the problems and issues involved in the tenure (including discipline and removal) of Article III (appointed to serve for life) Federal judges. The second is to evaluate the advisability of proposing alternatives for current arrangements with respect to such problems and issues, including alternatives for the discipline or removal of Federal judges that would require constitutional amendments. Finally, the Commission is required to prepare and submit a report to the Congress, the Chief Justice and the President setting forth a detailed statement of its findings and conclusions together with any recommendations for legislative and administrative actions as are considered appropriate. The Commission is not authorized to consider the factual underpinnings of specific complaints against Federal judges.

Ordinarily the provisions of the Governments in the Sunshine Act are not applicable to legislative or judicial agencies. Nonetheless, since the Commission is composed of representatives of all three branches of the Federal government, good faith attempts will be made to follow the spirit of the law. This good faith commitment to open meetings and hearings is incorporated in the Commission's By-laws.

MATTERS TO BE CONSIDERED: The Commission will receive testimony concerning its Draft Report and Tentative Recommendations.

CONTACT PERSONS FOR FURTHER INFORMATION:

For more information, contact Michael J. Remington or William J. Weller at the National Commission on Judicial Discipline and Removal, suite 690, 2100 Pennsylvania Avenue NW., Washington, DC 20037–3203; or call (202) 254–8169.

William J. Weller,

Deputy Director.

[FR Doc. 93–14063 Filed 6–14–93; 8:45 am]

BILLING CODE 8820–06–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Arts Plus Roundtable) to the National Council on the Arts will be held on June 29, 1993 from 9 a.m.–5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Topics of discussion will include a discussion of needs, opportunities and various issues related to a future restructuring of the Arts Plus Program.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, art least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: June 8, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–14017 Filed 6–14–93; 8:45 am]

BILLING CODE 7537–01–M

Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/ Advancement Advisory Panel

(Expansion Arts Challenge Section) to the National Council on the Arts will be held on July 14, 1993, from 9 a.m.–5:30 p.m. This meeting will be held in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on July 14 from 9 a.m.–9:45 a.m. for introductions.

The remaining portion of this meeting on July 14 from 9:45 a.m.–5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: June 9, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–14019 Filed 6–14–93; 8:45 am]

BILLING CODE 7537–01–M

Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Folk Arts Challenge Section) to the National Council on the Arts will be held on July 2, 1993 from 10 a.m.–2 p.m. This meeting will be held in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on July 14 from 10 a.m.–10:45 a.m. for introductions.

The remaining portion of this meeting on July 2 from 10:45 a.m.–2 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: June 9, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–14020 Filed 6–14–93; 8:45 am]

BILLING CODE 7537–01–M

Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Opera Musical Theatre Challenge Section) to the National Council on the Arts will be held on July 1, 1993 from 9 a.m.–5:30 p.m. This meeting will be held in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on July 1 from 9 a.m.–9:45 a.m. for introductions.

The remaining portion of this meeting on July 1 from 9:45 a.m.–5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: June 9, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–14021 Filed 6–14–93; 8:45 am]

BILLING CODE 7537–01–M

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on June 28–29, 1993 from 9 a.m.–5:45 p.m. on June 28, 1993 and from 9 a.m.–5:30 p.m. on June 29, 1993 in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Topics of discussion will include a discussion

of the various design disciplines, the FY 94 Budget, and review of guidelines.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: June 8, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–14022 Filed 6–14–93; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Special Projects Section) to the National Council on the Arts will be held on July 1, 1993 from 9 a.m.–5:30 p.m. This meeting will be held in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on July 1 from 4:30 p.m.–5:30 p.m. Topics for discussion will include policy and guidelines recommendations.

The remaining portions of this meeting on July 1 from 9 a.m.–1:30 p.m. and from 2:30 p.m.–4:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: June 8, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–14018 Filed 6–14–93; 8:45 am]

BILLING CODE 7537–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32432; File No. SR–NASD–93–18]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Relating to Autoquote Policy for the Nasdaq Market

June 8, 1993.

I. Description of the Rule and Background

On April 19, 1993,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted a proposed rule change to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder.[3] The rule change extends a policy banning the automated update of quotations by Nasdaq market makers. With two long-standing exemptions, the policy prohibits so-called "autoquote" systems from effecting automated quote updates or tracking of inside quotations in Nasdaq. Autoquoting is permitted to update quotations in response to an execution in the security by that firm (such as execution of an order that partially fills a market marker's quotation size) or when it requires physical entry, such as a manual entry to the market maker's internal system which then automatically forwards the update to Nasdaq.

Notice of the proposed rule change, together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 32235, April 29, 1993) and by publication in the **Federal Register** (58 FR 26805, May 5, 1993). No comments were received on the proposal. This order approves the proposed rule change.

In 1990, the Commission approved a policy banning autoquoting in the Nasdaq system for a period of one year, and subsequently extended the policy for another six months.[4] Like the instant rule proposal, the policy prohibited autoquote systems from effecting automated quotation updates or tracking of inside quotations in the Nasdaq market with two expections: automated update of quotations has been permitted when the update is in response to an execution in the security by that firm; and automated update has been permitted when it requires a physical entry to the market maker's internal system which then automatically forwards the update to Nasdaq.

In effect this policy prohibits autoquote systems from effecting automated quote updates or the tracking away from the inside quotations in the Nasdaq system. There currently are a variety of autoquote systems employed in the securities industry and the NASD's policy seeks to curb the processing impact of such systems that track changes to the inside quotation on Nasdaq and automatically react to keep a market maker's quote away from the best market. The NASD proposes this policy because of the potential impact of additional quotation traffic on the capacity of the Nasdaq system.[5]

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[1] The NASD originally filed the proposed rule change on March 25, 1993. On April 19, the NASD filed Amendment No. 1 to the proposal, which states that the Association's Policy Statement on autoquoting will be included in the *NASD Manual* at Schedule D to the By-Laws, Part VI, (CCH) ¶ 1816 and Part VII, (CCH) ¶ 1816.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1992).

[4] *See* Securities Exchange Act Rel. No. 28330 (August 13, 1990), 55 FR 34636, approving File No. SR–NADS–90–5; and Securities Exchange Act Rel. No. 29304 (June 13, 1991), 56 FR 28207, notice of effectiveness of File No. SR–NASD–91–25.

[5] The Commission is presently reviewing a proposed rule change by the NASD that, in part, would allow a market maker to elect to have Nasdaq automatically "refresh" its quotation once its exposure limit has been exhausted on the Small Order Execution System ("SOES"). *See* Securities Exchange Act Rel. No. 32143 (April 14, 1993), 58 FR 21484 (April 21, 1993), providing notice of File No. SR–NASD–93–16. The NASD has represented that its computer network has the capacity to handle the increased volume of information necessary to process this new feature.

In December 1991, when the formal policy expired, the NASD asked members to comply voluntarily with the policy on autoquoting. The NASD had conducted a study earlier in 1991 on the impact of autoquoting upon the network. The study raised serious questions of network and system capacity and the NASD determined that it was not feasible to permit autoquoting within the current network architecture and band width. The NASD states that it would need to substantially increase transmission speed and Workstation capacity to accommodate traffic levels that have been forecast for an autoquote environment. The addition of autoquote would be particularly problematic from a network capacity perspective during the planned transition to a new network architecture which will take approximately two years to phase in for all subscribers. The study also revealed that all members surveyed indicated strong objections to any kind of capability that would allow Nasdaq market makers to automatically track away from the Nasdaq inside quotation or another market marker's quotation. In the members' view, allowing automatic tracking could create a "fair-weather" market making environment that would not contribute to the depth or liquidity for trading the security. The NASD believes, however, that automation in the securities markets should be encouraged, and is therefore proposing to reevaluate the question of eventually allowing autoquoting in certain additional prescribed circumstances. For example, several members believe that an autoquoting capability that would keep a market maker's quotation at the inside Nasdaq quote, thus reducing the need for manual quote updates and fostering depth and liquidity should be permitted as soon as the system is capable of processing the additional traffic.

II. Discussion and Conclusion

Extending the current ban on autoquoting will provide the NASD with the opportunity for additional consideration of autoquote functions that could facilitate member trading at the inside market and for study of the technology required to process additional traffic on Nasdaq. The NASD has undertaken a major redesign of the technology that supports the Nasdaq system which the NASD represents will lead to significant long-term improvement to the infrastructure of that system. The NASD believes this redesign will enhance flexibility in the accommodation of automated quotation changes. However, during this phase, the NASD believes it would be imprudent to allow the higher traffic rates that may result from unrestricted autoquoting. The Commission is in accord with this course and, therefore, has determined to approve the instant rule change extending the autoquote policy until the migration effort to the new Nasdaq platforms has been completed. The NASD estimates that the migration will be completed by the fourth quarter 1995, at which time the application of autoquote technology will be reevaluated.

The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of sections 15A(b)(6) and 15A(b)(11) of the Act.[6] Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(11) requires, in part, that NASD rules include provisions designed to produce fair and informative quotations and promote orderly procedures for collecting, distributing, and publishing quotations. A ban on autoquoting except in certain prescribed instances is necessary to control the potential negative impact on the capacity of the network, to foster deep and liquid markets, and is a reasonable means to ensure the continued viability of the Nasdaq network and related systems.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 93–13985 Filed 6–14–93; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78o–3 (1988).

[7] 17 CFR 200.30–3(a)(12).

[Release No. 34–32431; International Series Release No. 549; File No. SR–NYSE–92–33]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 Relating to an Interpretation to Rule 345 ("Employees Registration, Approval Records")

June 8, 1993.

I. Introduction

On November 4, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add an interpretation to existing Exchange Rule 345 ("Employees—Registration, Approval, Records") with respect to the payment of transaction related compensation to nonregistered foreign persons (or "finders") who refer foreign customer business to NYSE members or member organizations. On December 23, 1992, the NYSE submitted to the Commission Amendment No. 1 to the proposal.[3] On February 3, 1993, the NYSE submitted Amendment No. 2 to the Commission.[4] On March 29, 1993, the NYSE submitted Amendment No. 3 to the Commission.[5] The proposed rule change, together with Amendment No. 1, was published for comment in Securities Exchange Act Release No.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] See letter from Mary Ann Furlong, Director, Rule and Interpretative Standards, NYSE to Cheryl Evans-Dunfee, Attorney, Exchange Branch, Division of Market Regulation, Commission, dated December 17, 1992. Amendment No. 1 to the proposed rule change changed the citation to the descriptive document from that required by IAA Brochure Rule 204–3(a) of the Investment Advisers Act of 1940 to that required by Rule 206(4)–3(b) of the Investment Advisers Act of 1940.

[4] See letter from Mary Ann Furlong, Director, Rule and Interpretative Standards, NYSE to Cheryl Evans-Dunfee, Attorney, Exchange Branch, Division of Market Regulation, Commission, dated January 29, 1993. Amendment No. 2 to the proposed rule change clarified that item b) of the proposed interpretation (Rule 345, (a)(i), /04, b)) would apply to foreign entities as well as to foreign nationals.

[5] See letter from Donald van Weezel, Managing Director, Regulatory Affairs, NYSE, to Sharon Lawson, Assistant Director, Exchange and Options Regulation, Division of Market Regulation, Commission, dated March 29, 1993 ("March 29, 1993 Letter"). Amendment No. 3 to the proposed rule change clarified that a written customer acknowledgement must be available for inspection by the Exchange. It also stated that records required to be kept pursuant to the Interpretation are subject to the record retention requirements of Rules 17a–3 and 17a–4 of the Act and that the Exchange will implement procedures to monitor compliance with conditions of the Interpretation.

31708 (January 8, 1993), 58 FR 4726 (January 15, 1993). No comments were received on the proposal. This order approves the proposed rule change, including all three amendments.

Currently, the NYSE's Interpretation Handbook contains an interpretation under Rule 345 which limits compensation to nonregistered persons for business they direct to members and member organizations other than on an isolated basis and only to persons not routinely engaged in making such referrals.[6] Under this interpretation, a member or member organization is prohibited from paying to nonregistered persons compensation based upon the business of customers they direct to members or member organizations if the compensation is formulated as a direct percentage of the commissions or income generated. The NYSE states that the existing interpretation is intended to ensure that persons who regularly solicit customer business for a member or member organization and who are paid transaction-related compensation are associated with or registered as a broker-dealer and are qualified and approved to perform the function of a registered representative.

II. Description of the Proposal

The Exchange proposes to adopt an interpretation under Rule 345 to permit the payment of transaction related compensation to foreign finders[7] who refer foreign customer[8] business to NYSE members or member organizations, under the conditions specified in the interpretation. Specifically, the proposed interpretation would require that the member or member organization assure itself that the foreign finder who will receive the compensation is not required to register in the U.S. as a broker-dealer and has further assured itself that the compensation arrangement does not violate applicable foreign law. The proposed interpretation also would require that customers receive a descriptive document similar to that required by Rule 206(4)–3(b)[9] of the Investment Advisers Act of 1940,[10] that discloses what compensation is being paid to the finders. The interpretation would require customers to provide written acknowledgement to the member or member organization of the existence of the compensation arrangement and that such acknowledgement be retained and made available for inspection by the Exchange. The proposed interpretation would further require that the member or member organization maintain records on its books reflecting payments to foreign finders and require that actual agreements between the member or member organization and the foreign finder be available for inspection by the Exchange. Finally, the proposed interpretation would require that the confirmation of each transaction indicate that a referral or finder's fee is being paid pursuant to an agreement.[11]

If all of the specified conditions of the proposed interpretation are met, NYSE members and member organizations would be able to pay transaction related compensation to non-registered foreign finders based on the business of non-U.S. customers that the finders refer to the NYSE member or member organization. Under the new interpretation, compensation could be made on an ongoing basis and tied to such variables as the level of business generated or assets under control, notwithstanding the fact that the foreign finders' sole involvement would be the initial referral to a member or member organization.

The Exchange has represented that it will issue an Interpretation Memo concerning the proposed interpretation to Rule 345.[12] According to the Exchange, the memo will remind member organizations that records required by the interpretation are subject to the record retention requirements of Securities Exchange Act Rules 17a–3 and 17a–4.[13] The Interpretation Memo also will indicate that the Exchange will implement procedures to monitor compliance with the conditions stated in the interpretation.

The Exchange believes that the proposed interpretation will give members and member organizations the opportunity to enhance their competitive position in foreign countries where new accounts are routinely opened on a referral basis with ongoing compensation arrangements. The Exchanges states that the proposed rule change is consistent with section 6(b)(5) of the Act which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market,

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[6] Rule 345, EMPLOYEES—REGISTRATION, APPROVAL, RECORDS (a)(i) TRANSFER OF REGISTERED REPRESENTATIVES

/02—*Compensation to Non-Registered Persons*, states that:

Rule 345(a) precludes members and member organizations from paying to non-registered persons compensation based upon the business of customers they direct to members or member organizations if:

(a) The compensation is formulated as a direct percentage of the commissions or income generated, or

(b) Payment is on other than an isolated basis, or

(c) The customers have the use of the facilities of such person for the transmission of orders or messages directly to the member or member organization, or

(d) Such person has formal discretionary authority to place orders or instructions with the member or member organization, or

(e) Such person regularly engages in activity which may be reasonably expected to result in the procurement of new customers or orders.

[7] The proposed interpretation only applies to finders who are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad.

[8] The proposed interpretation only applies to customers who are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad transacting business in either foreign or U.S. securities.

[9] 17 CFR 275.206(4)–3(b) (1992). Rule 206(4)–3(b) requires, among other things, that a separate written disclosure document be furnished by the solicitor to the client containing: the name of the solicitor; the name of the investment adviser; the nature of the relationship between the solicitor and the investment adviser; a statement that the solicitor will be compensated for his solicitation services by the investment adviser; the terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and the amount, if any, for the cost of obtaining his account, the client will be charged in addition to the advisory fee.

[10] 15 U.S.C. 80b (1991).

[11] The proposed interpretation would state: Rule 345, *EMPLOYEES—REGISTRATION, APPROVAL, RECORDS* (a)(i) *TRANSFER OF REGISTERED REPRESENTATIVE*

/04—*Compensation to Nonregistered Foreign Persons Acting as Finders*

Members and member organizations may pay to nonregistered foreign persons transaction-related compensation based upon the business of customers they direct to members or member organizations if the following conditions are met:

(a) The member or member organization has assured itself that the nonregistered foreign person who will receive the compensation (the "finder") is not required to register in the U.S. as a broker-dealer and has further assured itself that the compensation arrangement does not violate applicable foreign law;

(b) The finders are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad;

(c) The customers are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad transacting business in either foreign or U.S. securities;

(d) Customers received a descriptive document, similar to that required by Rule 206(4)–3(b) of the Investment Advisers Act of 1940, that discloses what compensation is being paid to finders;

(e) Customers provide written acknowledgement to the member or member organization of the existence of the compensation arrangement and that such acknowledgement is retained and made available for inspection by the Exchange;

(f) Records reflecting payments to finders are maintained on the member's or member organization's books and actual agreements between the member or member organization and persons compensated are available for inspection by the Exchange; and

(g) The confirmation of each transaction indicates that a referral or finders fee is being paid pursuant to an agreement.

[12] See March 29, 1993 Letter, *supra* note 3.

[13] 17 CFR 240.17a–3 and 240.17a–4 (1992). Rules 17a–3 and 17a–4 set forth the requirements for records to be made and preserved by certain Exchange members, brokers and dealers.

and, in general, to protect investors and the public interest.

III. Discussion and Conclusion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of sections 6(b)(5) and (8) of the Act.[14] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Section 6(b)(8) requires that exchange rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the proposed interpretation to Rule 345 adequately balances competitive concerns with the promotion of just and equitable principles of trade and the protection of investors and the public interest, consistent with the requirements of sections 6(b)(5) and 6(b)(8) of the Act. In this regard, the Commission believes that the proposed foreign finders interpretation should provide NYSE members and member organizations with the opportunity to enhance their competitive position in foreign countries where, according to the Exchange, new accounts are frequently opened on a referral basis with ongoing compensation arrangements. The proposed rule change will permit NYSE members and member organizations to pay transaction related compensation to foreign finders based on the business of non-U.S. customers on a referral basis, under certain specified conditions. Accordingly, the Commission believes that the proposed interpretation should enhance competition and will allow NYSE firms to compete more equally with foreign entities for securities business from foreign customers. The Commission notes, however, that the proposed interpretation only pertains to specific situations involving foreign finders[15] and foreign customers.[16] The NYSE's existing interpretation under Rule 345, Compensation to Non-Registered Persons, generally will continue to preclude NYSE members and member organizations from paying non-registered persons compensation based upon the business of customers they direct to members and member organizations.[17] Thus, the proposed foreign finders interpretation is limited solely to foreign nationals or foreign entities currently not subject to the jurisdiction of the U.S. securities laws, and will not extend to compensation arrangements involving U.S. citizens or entities which continue to be prohibited under existing NYSE Rule 345 (a)(i) /02.

The Commission believes that the proposed interpretation contains sufficient investor protection provisions. As an initial matter, the proposed interpretation will require that the NYSE member or member organization assure itself that the foreign finder is not required to register in the U.S. as a broker-dealer and further assure itself that the compensation arrangement does not violate foreign law. The proposed interpretation also should ensure that the foreign customer is aware of the compensation arrangement with the foreign finder. As noted above, the proposed interpretation requires that such customers receive a descriptive document disclosing what compensation is being paid to a foreign finder, that customers provide written acknowledgement to the member or member organization of the existence of the compensation arrangements, and that the confirmation of each transaction indicate that a referral or finders fee is being paid pursuant to an agreement. Members or member organizations will also be required to make available for Exchange inspection the customer's written acknowledgement and records on payments and agreements with finders. These requirements should serve investors and the public interest by assuring meaningful disclosure of the compensation arrangement as well as assisting the Exchange in its oversight of foreign finders compensation arrangements.

Finally, the Commission believes that the proposed amendment is consistent with section 17(a) of the Act[18] and Rules 17a–3 and 17a–4 thereunder.[19] Section 17(a), requires, among other things, that every national securities exchange, member thereof, and broker-dealer make and keep records, furnish copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. Rules 17a–3 and 17a–4 specify the records to be made by certain exchange members, brokers and dealers. The Commission believes that the proposed interpretation imposes record maintenance requirements which will allow the Exchange to surveil for compliance with the interpretation requirements. As noted above, the proposed interpretation requires that NYSE members and member organizations retain, and make available for NYSE inspection, copies of the customer's written acknowledgement of the compensation arrangement, records reflecting payments to foreign finders, and agreements between members or member organizations and persons compensated. The records required by this interpretation will be subject to the record retention requirements of Rules 17a–3 and 17a–4 which require records to be maintained for at least three years.[20] In addition, the NYSE has informed the Commission that it intends to implement specific procedures to monitor compliance with the requirements of the foreign finders interpretation.[21] The Commission, therefore, believes that the record maintenance requirements in the proposed rule change should prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and protect investors and the public interest.

The Commission finds good cause for approving Amendment Nos. 2 and 3 prior to the thirtieth day after the day of publication of notice of filing thereof. Amendment No. 2 revised the proposed interpretation to clarify that the interpretation applies to both foreign nationals and foreign entities. This clarifying amendment will help forestall any future confusion on this point. Amendment No. 3 revised the proposed interpretation to reflect the Exchange's intention that the customer's written acknowledgement of the existence of the compensation arrangement be retained and made available for inspection by the Exchange. This amendment serves to clarify the record retention requirements of the interpretation. In addition, the proposed rule change was published in the **Federal Register** for the full statutory period[22] and no comments were received.

Interested persons are invited to submit written data, views and arguments concerning Amendments No.

[14] 15 U.S.C. 78f(b) (5) and (8) (1988).

[15] See *supra* note 7.

[16] See *supra* note 8.

[17] See *supra* note 6 for the specific prohibitions under Rule 345(a)(i) /02, *Compensation to Non-Registered Persons.*

[18] 15 U.S.C. 78q(a) (1988).

[19] 17 CFR 240.17a–3 and 240.17–4 (1992).

[20] See March 29, 1993 Letter, *supra note* 5.

[21] *Id.*

[22] See Securities Exchange Act Release No. 31708 (January 8, 1993), 58 FR 4726 (January 15, 1993).

2 and 3 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to Amendments 2 and 3 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–92–33 and should be submitted by July 6, 1993.

It is therefore ordered, Pursuant to Section 19(b)(2)[23] of the Act, that the proposed rule change, including Amendments No. 2 and 3 on an accelerated basis (SR–NYSE–92–33), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Jonathan G. Katz,

Secretary.

[FR Doc. 93–14026 Filed 6–14–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32433; File No. SR–NYSE–93–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Rescission of Exchange Rules 391 and 392 and an Amendment to Exchange Rule 393.10

June 8, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 7, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On May 27, 1993, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to rescind Rules 391 and 392 and to amend Rule 393.10 to delete any references to Rules 391 and 392.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In light of the Commission's rescission of Rule 10b–2, promulgated under the Act,[2] the Exchange is proposing to rescind its Rules 391 and 392. Rule 10b–2, adopted by the Commission in 1937, was part of a comprehensive package of anti-fraud provisions.[3] Its purpose was to prevent persons participating in the distribution of a security from stimulating the purchase of such, on an exchange, by paying compensation to any person for soliciting such purchases.

In 1942, the Commission amended Rule 10b–2 to permit an exemption for special offerings under a plan filed with the Commission by an exchange.[4] The NYSE's plan, contained in Rule 391, permits special offerings, at a fixed price and for a fixed period of time, on the Exchange where the quantity of stock involved cannot be absorbed in the regular auction market within a reasonable time and at a reasonable price. Rule 391 permits a person making a special offering to pay a special commission to a broker for a purchasing customer.

Rule 391 specifies a minimum share size of 1,000 shares, with a value of $25,000. By today's standards, 1,000 shares of stock with a value of $25,000 is not a quantity of stock that cannot readily be absorbed in the regular auction market. Rule 391 predates special NYSE block trading rules, such as Rule 127, which defines a block of stock as 10,000 shares or a quantity of stock with a market value of $200,000 or more.

In 1953, the Commission amended Rule 10b–2 to expand the scope of its exemption by eliminating the requirement that the compensation paid be a "special commission."[5] NYSE Rule 392, which permits distributions of stock of the type addressed under Exchange Act Rule 10b–2, was also amended to require that compensation be paid in accordance with the terms of a Commission approved plan for an exchange distribution, and that the payer not know or have reasonable grounds to believe that transactions violating the terms of an approved plan were taking place.

In proposing the rescission of Rule 10b–2, the Commission indicated that it believed that the significant changes that have taken place in the securities markets since Rule 10b–2's adoption, and the coverage of other anti-fraud and anti-manipulation provisions of the federal securities laws, such as Rule 10b–5 and Rule 10b–6, made it appropriate to rescind the Rule 10b–2.[6] The Exchange is now proposing to rescind Rules 391 and 392, its plans adopted in response to Rule 10b–2, because they are obsolete and have not been utilized in the past ten years. The Exchange is also proposing to amend Rule 393.10 (which pertains to secondary distributions) to delete a reference to the Exchange plans contained in Rules 391 and 392.

(b) Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the

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[23] 15 U.S.C. 78s(b)(2) (1988).

[24] 17 CFR 200.30–3(a)(12) (1992).

[1] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, dated May 25, 1993, clarifying the statement of purpose section of the proposed rule change.

[2] See Securities Exchange Act Release No. 32100 (April 2, 1993), 58 FR 18145 (April 8, 1993) (File No. S7–37–92).

[3] See Securities Exchange Act Release No. 1330 (August 4, 1937).

[4] See Securities Exchange Act Release No. 3146 (February 6, 1942).

[5] See Securities Exchange Act Release No. 4922 (August 20, 1953).

[6] The Exchange supported the Commission proposal to rescind Rule 10b–2. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan Katz, Secretary, Commission, dated December 29, 1992.

mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange proposal to rescind Rules 391 and 392 and to amend Rule 393.10 is consistent with these objectives in that it deletes inefficient and unused Exchange plans.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–20 and should be submitted by July 6, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–14029 Filed 6–14–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19520; 812–8146]

First Variable Rate Fund, dba Calvert First Government Money Market Fund, et al.; Notice of Application

June 9, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the "Act").

APPLICANTS: First Variable Rate Fund, dba Calvert First Government Money Market Fund; Calvert Tax-Free Reserves; The Calvert Fund; Calvert Cash Reserves, dba Money Management Plus; Calvert Social Investment Fund; Acacia Capital Corporation ("ACC"); Calvert Municipal Fund, Inc. ("CMF"); Ariel Growth Fund, dba Calvert-Ariel Growth Fund; and Calvert World Values Fund, Inc ("CWVF") (collectively, the "Funds").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 13(a)(2), 13(a)(3), 17(a)(1), 18(f)(1), 22(f), and 22(g) and rule 2a–7 thereunder, and pursuant to rule 17d–1 under the Act to permit certain transactions in accordance with section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Funds to offer a deferred compensation plan to their independent directors under which an independent director may elect to have his or her deferred compensation adjusted at a rate equal to the rate of return of shares of a Calvert investment company.

FILING DATE: The application was filed on November 5, 1992, and amended on April 7, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 6, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 4500 Montgomery Avenue, Suite 1000N, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chiefs, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Funds are open-end, management investment companies registered under the Act. All of the Funds are Massachusetts Business Trusts, except for ACC, CMF, and CWVF which are Maryland corporations. Various investment advisers, including Calvert Asset Management Company, Inc. ("Calvert"), serve as investment advisers for the Funds.

2. Each of the Funds' board of directors/trustees ("directors") consists of a majority of members who are not "interested persons" of the Funds within the meaning of section 2(a)(19) of the Act ("Independent Directors"). Each Independent Director currently receives an annual retainer and meeting fees for each board or committee meeting attended. The retainer and meeting fees are shared by the Funds based on their relative net assets. No director who is an interested person receives any renumeration from the Funds.

3. Applicants request relief so that the Funds may offer their Independent Directors deferred compensation agreements (the "Agreements") under the terms of a deferred compensation plan (the "Plan"). The purpose of the Agreements is to permit Independent Directors to elect to defer receipt of all or a portion of their directors' compensation to enable them to defer payment of income taxes, or for other reasons.

4. Applicants request that the exemption requested, other than the

exemption from section 13(a)(3) that applies only to the Funds named above, also apply to any registered open-end investment company for which Calvert, or any entity under common control or controlled by Calvert, subsequently serves as investment adviser.

5. The Agreements will allow each Independent Director to elect to defer receipt of all or a percentage of the fees which otherwise would become payable to the director for services performed after the date of the election. An Independent Director may request that the deferred compensation be adjusted at a rate equal to the rate of return on shares of any of the Funds or be placed in Calvert Insured Plus Account.[1] If the Independent Director elects to have the deferred compensation adjusted according to the rate of return on a Fund or combination of Funds, the investment yield will be the same as that achieved by the selected Funds' public shareholders. The director's benefits will not be transferable or assignable except in the event of death. Each Independent Director will receive a statement of his or her deferred compensation account at least annually.

6. The value of a director's account will be credited to a book reserve account maintained by the Fund on which the director serves in the director's name. The value of each account will be determined by the rate of return earned on shares of the chosen Fund. Accordingly, when the Fund's net asset value is determined, the income, realized again or loss on investments, or unrealized appreciation or depreciation of a Fund attributed to a director's account through the Agreements will be identical in amount to the income, gain, loss, appreciation, or depreciation which would be received by a shareholder of that respective Fund. No segregated account will be established for the benefit of the Independent Directors and the Funds' payment obligation will be a general unsecured obligation of the Funds. Additionally, the Agreements will not obligate the Funds to retain a director in such capacity, nor will it obligate the Funds to pay any (or any particular level of) directors' fees to any director.

7. The Funds will be under no obligation to an Independent Director to purchase, hold, or dispose of any investment to fund the obligations under the Agreement. However, if the Fund chooses to purchase investments to cover these obligations, then any and all such investments will continue to be a part of the general assets and property of the Fund. In this regard, the Funds may purchase their own shares or the shares of affiliated investment companies ("underlying securities") to fund the deferred compensation. Each Fund's purchase of underlying securities is made for the benefit of shareholders and not for the benefit of participating directors.

8. Under existing deferral arrangements, certain Independent Directors have deferred receipt of their compensation on a basis similar to that proposed in the application. Applicants acknowledge that the grant of the exemptive order requested will not imply Commission approval, authorization, or acquiescence in any particular deferred fee account already in existence prior to the effective date of any order which may be issued by the Commission. Applicants agree that they will not transfer any amounts accumulated under the existing deferred fee agreements to a participating director's deferred fee account in reliance upon any order issued in connection with the application.[2]

Applicants' Legal Analysis

1. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that an open-end company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants assert that the Plan contains none of the characteristics of senior securities that led Congress to enact the restrictions. The Funds would not be "borrowing" from their directors in the sense that concerned Congress, *e.g.*, borrowing for securities speculation. In addition, all liabilities created under the Plan would be offset by essentially equal assets of the Funds that would not otherwise exist if the Independent Directors' compensation were paid on a current basis. Applicants also believe that, given the common existence of deferred compensation plans, the Plan would not confuse investors.

2. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only by shareholder vote. Applicants request an exemption from the section to enable the Funds named in the application to purchase shares of affiliated investment companies as underlying securities without a shareholder vote. Each of the Funds has an investment policy that prohibits it from purchasing the securities of other investment companies, except as they may be acquired as part of a merger, consolidation, or acquisition of assets. This policy would prevent the Funds from purchasing shares of any other Funds without a shareholder vote. Applicants will provide notice to shareholders in the prospectus of each Fund of the deferred fee arrangement with the Independent Directors. Applicants contend that the value of each Independent Directors' account is *de minimis* compared to the total net assets of the respective Fund and would not affect control of the Fund or disrupt the Fund's operations. Changes in the value of the underlying securities will not affect the value of shareholders' investments. Applicants assert that permitting the Funds to invest in the underlying securities without obtaining the shareholder approval, therefore, would result in no harm to shareholders.

3. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or any affiliated person of such person, from selling any security to such registered investment company. The section was designed to prevent sponsors of investment companies from using investment company assets as capital for their enterprises with which they were associated or to acquire controlling interests in such enterprises. The Funds are affiliated because they are under the common control of Calvert. Applicants contend that the sale of securities issued by a Fund to another Fund does not implicate Congress' concerns but would merely facilitate the matching of a Fund's liabilities for deferred trustees' fees with the underlying securities that determine the amount of the Funds' liability.

4. Section 22(f) bars undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. The section is designed to bar only those restrictions on transferability or negotiability either not disclosed to the holder of the subject security or expressly prohibited by Commission rule or regulation. Applicants assert that neither of these circumstances apply to the restriction on transferability of a director's benefits under the Plan. The restrictions would be clearly set forth in the Plan and would not adversely affect the interests

[1] Calvert Insured Plus Account is a bank product (not a mutual fund) distributed by Calvert Securities Corporation.

[2] Applicants have not requested, and any order will not grant, an exemption to allow the implementation or continuance of the existing deferred compensation arrangements.

of the Independent Directors or of any Fund shareholder.

5. Section 22(g) prohibits a registered open-end investment company from issuing any of its securities for services or for property other than cash or securities. The provision is designed to prevent the dilution of equity and voting power that can result when securities are issued for consideration that is not readily valued. Applicants believe that the Funds' obligation to make payments under the Plan would not be "issued" for services or for property other than cash or securities. Any fees which might become payable to an Independent Director would clearly be for services, but any such fees would become payable independent of the Plan.

6. Rule 2a–7 provides that the current price per share of a "money market fund" may be computed by use of the amortized cost method under certain circumstances. Two of these circumstances require that the money market fund: (a) limit its investments to securities that have a remaining maturity of 397 days or less and that meet certain credit quality standards; and (2) maintain a dollar-weighted average portfolio maturity that does not exceed 90 days. Applicants request an exemption from rule 2a–7 for each money market fund solely to the extent necessary to permit each money market fund to invest in underlying securities so that an exact match of underlying securities with the investments chosen by the Independent Directors under the Agreements will be achieved. This matching would ensure that the deferred fee accounts will not affect the net asset value of the particular Fund.

7. Section 6(c) provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, transaction, or any class or classes of persons, securities, or transactions, from any of the provisions of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe the requested exemption meets the section 6(c) standard.

8. Section 17(d) of the Act prohibits affiliated persons from participating in joint transactions with a registered investment company in contravention of rules and regulations prescribed by the Commission. Rule 17d–1 under the Act prohibits affiliated persons of a registered investment company from entering into joint transactions with the investment company unless the Commission has granted an order permitting such transaction after considering whether the participation of such investment company is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants represent that while the Plan does possess profit-sharing characteristics, it does not have the effect of making the participation of the Funds less advantageous than that of any Independent Director. The effect of the Plan is to defer the payment of fees that the Funds otherwise would be obligated to pay on a current basis as services are performed by the directors.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief shall be subject to the following conditions:

1. The balance sheet for each Fund will show liability and asset entries for deferred fees or will include a footnote explaining that such Fund has offset its liability for deferred fees with the assets that determine the amount of such Funds' liability.

2. With respect to the requested relief from rule 2a–7, any money market series that values its assets using the amortized cost method will buy and hold the securities that determine the performance of the deferred compensation fee accounts to achieve an exact match between such Funds' liability to pay deferred fees and the assets that offset that liability.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–14028 Filed 6–14–93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–19519; 811–960]

Capital Investments, Inc.; Application for Deregistration

June 9, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Capital Investments, Inc.

RELEVANT 1940 ACT SECTIONS: Sections 3(c)(1) and 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATES: The application was filed on January 14, 1993, and amended and restated applications were filed on March 24 and June 2, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, either personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 2, 1993, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Capital Investments, Inc., 744 North Fourth Street, Milwaukee, WI 53203.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel (202) 272–3030, or Barry D. Miller, Senior Special Counsel (202) 272–3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Wisconsin corporation, filed a registration statement on Form N–8A under the 1940 Act as a closed-end management investment company on July 7, 1960. On July 15, 1960, Applicant filed a registration statement on Form N–5 with respect to an offering of 60,000 shares of common stock, which was declared effective on September 9, 1960. Applicant subsequently filed registration statements in connection with rights offerings in 1962 and 1969 of an additional 86,370 and 170,140 shares, respectively. Applicant has not made any public offering of its shares of common stock since 1969.

2. Applicant also is a small business investment company ("SBIC") under the Small Business Investment Act of 1958, and is regulated by the United States Small Business Administration ("SBA"). As an SBIC, Applicant's policy is to invest in small business concerns with experienced management and long-term growth potential.

3. In April 1992, Applicant's Board of Directors approved a proposal to amend

Applicant's articles of incorporation to provide for a reverse stock split, whereby each 3,000 shares issued and outstanding on November 16, 1992 would be combined into one share of Applicant's common stock. Each fractional share interest would be converted into the right to receive a cash payment equal to 100% of the net asset value of such share interest as of the effective date of the reverse stock split. The primary effect of the reverse stock split and repurchase of fractional interests created thereby would be to reduce the number of beneficial owners of Applicant's common stock to not more than 100 persons so that Applicant would no longer be an "investment company" as defined in the 1940 Act and could seek to deregister from the 1940 Act.

4. On August 14, 1992, Applicant filed an application for an order under section 23(c)(3) of the 1940 Act to permit it to effect the proposed reverse stock split and repurchase the fractional interests created thereby. On November 13, 1992, the SEC issued a notice of the application (Investment Company Act Release No. 19098), and, on December 21, 1992, the SEC issued the requested order under section 23(c)(3) of the 1940 Act (Investment Company Act Release No. 19171).

5. At a special meeting held on December 28, 1992, Applicant's shareholders approved the reverse stock split. An information statement describing the reverse stock split and the reasons for it had been sent to Applicant's shareholders on or about December 8, 1992. In addition, Applicant had mailed a copy of the notice of application under section 23(c)(3) of the 1940 Act to all shareholders on or before November 19, 1992.

6. As set forth in the information statement, nine shareholders owning approximately 93% of the outstanding shares of Applicant's common stock on the record date for the special meeting owned a sufficient number of shares to approve the reverse stock split, and did in fact vote their shares in favor of the reverse stock split. The reverse stock split was effected on December 31, 1992, through the filing of Articles of Amendment with the Wisconsin Secretary of State. The holders of fractional share interests are to be paid at a rate of $8.20 per share, which was the net asset value per share on December 31, 1992 prior to the reverse stock split. The net asset value per share was computed based on Applicant's net assets of $4,476,956 as of December 31, 1992 (*i.e.*, total assets of $12,388,295 less total liabilities of $7,911,339) divided by 545,764 shares, the total number of issued and outstanding shares on December 31, 1992.

7. On January 5, 1993, and again on March 19 and May 1, 1993, Applicant's transfer agent mailed to each of the record holders a letter of transmittal and instructions for use in effecting the surrender of the certificates representing fractional share interests in exchange for payment. As of May 17, 1993, 55 of the 95 shareholders of record as of December 31, 1992 had been paid $344,015 for their 41,953 shares, representing 87.1% of the total amount of fractional interests created by the reverse stock split.

8. The remaining fractional interests, representing 6,205 shares, are held by 40 record owners. Applicant will cause the transfer agent to make additional reminder mailings in July, August, and November 1993 to those holders who have not yet submitted the proper documentation in order to redeem their fractional interests. In January and June 1994, Applicant itself will mail a reminder to those holders of fractional interests who have not yet submitted the proper documentation for redemption and will make a mailing at least once a year thereafter until 1999. In connection with all of these mailings, the transfer agent and Applicant will take appropriate additional action as indicated by the postal service to communicate with remaining holders of fractional interests. In addition, Applicant represents that it and the transfer agent will diligently take all reasonable steps during June and July 1993 to contact all remaining fractional interest holders, including telephone contact, and facilitate payment to such persons for their holdings.

9. On June 1, 1993, Applicant remitted to the transfer agent an amount necessary to redeem the remaining outstanding fractional interests, which thereafter shall be held in trust for the benefit of the holders of such interests. Under Wisconsin law, if fractional interest payments are not claimed by the respective holders by December 31, 1999 (*i.e.*, seven years following consummation of the reverse stock split), and provided certain other events have not occurred, the remaining unclaimed fractional interest payments shall be presumed abandoned and will escheat to the State of Wisconsin.

10. The SEC order under section 23(c)(3) dated December 21, 1992 also allowed Applicant to offer to repurchase shares of common stock held by three of the 12 remaining shareholders following the reverse stock split who, to Applicant's knowledge, would have been its only remaining unaffiliated shareholders. Under the terms of the order, at the same time the information statement was mailed, Applicant offered to repurchase the shares of such unaffiliated shareholders at a price equal to 100% of their net asset value at the effective date of the reverse stock split. All of these shareholders accepted the offer, and Applicant has repurchased their shares. As a result, the number of holders of Applicant's common stock has been reduced to nine.

11. Applicant has no intention at this time to dissolve, liquidate, or merge with any party. Applicant is now engaged, and proposes to continue to engage, in substantially the same business as it has in the past: investing in "small business concerns" as that term is defined by the SBA.

12. Even if the holders of the remaining fractional interests were to be counted as beneficial owners for purposes of section 3(c)(1) of the 1940 Act, the number of beneficial owners of Applicant's securities is still well below 100. In this connection, Applicant does not believe that any of the remaining 40 record owners represent more than one beneficial owner. In addition, Applicant is not making and presently does not propose to make a public offering of any of its securities. Applicant therefore believes it has ceased to be within the definition of an "investment company" under the 1940 Act by virtue of the exclusion provided in section 3(c)(1) thereof.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–14027 Filed 6–14–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended June 4, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48830.
Date filed: June 1, 1993.
Parties: Members of the International Air Transport Association.
Subject:
TC2 Reso/C0361 dated May 21, 1993
TC2 Areawide Expedited Reso 501 r–1
TC2 Reso/C0362 dated May 21, 1993
TC2 Africa Expedited Reso 590 r–2

TC2 Reso/C0363 dated May 21, 1993
TC2 Eur-Africa EXP. Resos 552 & 590 r–3–4
TC2 Reso/C0364 dated May 21, 1993
TC2 Eur-MidEast Exp. Resos 552 & 590 r–5–6
TC2 Reso/C0365 dated May 21, 1993
TC2 Eur-Israel Exped. Resos. 552 & 590 r–7–8
TC2 Reso/C0366 dated May 21, 1993
TC2 MidEast-Africa Exped. Reso 590 r–9
TC2 Reso/C0367 dated May 21, 1993
TC2 Europe Expedited Resos 552 & 590 r–10–11
TC2 Reso/C0368 dated May 21, 1993
TC2 Europe Expedited Reso 500 r–12

Proposed Effective Date: Expedited August 1, 1993.

Docket Number: 48831.
Date filed: June 1, 1993.
Parties: Members of the International Air Transport Association.
Subject: CSC/Reso/062 dated April 16, 1993. Reso 600b. 15th IATA Cargo Services Conference.
Proposed Effective Date: October 1, 1995.

Docket Number: 48832.
Date filed: June 1, 1993.
Parties: Members of the International Air Transport Association.
Subject: COMP Reso/C0553 dated May 21, 1993. COMPOSITE Expedited Reso 033d.
Proposed Effective Date: Expedited July 1, 1993.

Docket Number: 48833.
Date filed: June 1, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC31 Reso/C0237 dated May 18, 1993. TC31 (except USA/UST) SEast Asia-TC1 r–1–116n & r–2–556a.
Proposed Effective Date: Expedited August 1, 1993.

Docket Number: 48834.
Date filed: June 1, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC123 Reso/C dated May 18, 1993. TC123 TC1–S.Asian Subcontinent (except USA/UST) via Atlantic r–1–002gg.
Proposed Effective Date: Expedited August 1, 1993.

Docket Number: 48835.
Date filed: June 1, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC1 Reso/C 0247 dated May 18, 1993. TC1 (except USA/UST) Expedited Reso r–1–002dd.
Proposed Effective Date: Expedited August 1, 1993.

Docket Number: 48836.
Date filed: June 1, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/C0917 dated May 18, 1993. TC12 Mid Atlantic (no US) Expedited Reso r–1–554b.
Proposed Effective Date: Expedited August 1, 1993.

Docket Number: 48837.
Date filed: June 1, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/C 0915 dated May 18, 1993. TC12 Areawide (except USA/UST) Expedited Resos r–1–002LL & r–2–501.
Proposed Effective Date: Expedited August 1, 1993.

Docket Number: 48838.
Date filed: June 1, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC3 Reso/C 0081 dated May 18, 1993. TC3 (except UST) Expedited Resos r–1–553 & r–2–590.
Proposed Effective Date: Expedited August 1, 1993.

Docket Number: 48839.
Date filed: June 1, 1993.
Parties: Members of the International Air Transport Association.
Subject: CSC/Reso/062 dated April 16, 1993. Book Of Finally Adopted Resos R–1 to R–12 15th IATA Cargo Services Conference.
Proposed Effective Date: October 1, 1993.

Docket Number: 48841.
Date filed: June 3, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC31 Reso/C 0239 dated May 18, 1993. TC31 Southeast Asia-USA/UST. Expedited Resos 556a R–1.
Proposed Effective Date: Expedited August 1, 1993.

Docket Number: 48842.
Date filed: June 3, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC123 Reso/C 0033 dated May 18, 1993. TC!-South Asian Subcontinent via Atlantic (to/from USA/UST) Expedited Resos r–1–501 r–2–554d r–3–590.
Proposed Effective Date: August 1, 1993.

Docket Number: 48843.
Date filed: June 3, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/C 0916 dated May 21, 1993. North Atlantic (USA/UST) Expedited Resos r–1–501 & r–2–554a.
Proposed Effective Date: August 1, 1993.

Docket Number: 48844.
Date filed: June 3, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/C 0214 dated May 28, 1993. TC23/123 Areawide (except UST) (except UST) r–1 to r–11.
Proposed Effective Date: August 1, 1993.

Docket Number: 48845.
Date filed: June 3, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/C 0215 dated May 28, 1993. TC23/123 Resos (to/from UST) Reso 501.
Proposed Effective Date: August 1, 1993.

Docket Number: 48846.
Date filed: June 3, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/P 0596 dated May 28, 1993. Europe-Japan/Korea Expedited Reso 085Z r–1. TC23 Reso/P 0597 dated May 28, 1993. Europe-Japan/Korea Exped. Resos r–2 to r–21.
Proposed Effective Date: September 1, 1993/November 1, 1993.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 93–14082 Filed 6–14–93; 8:45 am]
BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 4, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48827.
Date filed: June 1, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 29, 1993.
Description: Application of USAir, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity so as to authorize USAir to provide

scheduled foreign air transportation on a nonstop basis between Charlotte, North Carolina and Tampa, Florida, on the one hand, and Grand Cayman, Grand Cayman Islands, on the other hand.

Docket Number: 48847.
Date filed: June 3, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 23, 1993.
Description: Application of American International Airways, Inc., TCA, Inc. and Trans Continental Airlines, Inc., requests approval of the transfer of TCA's certificates of public convenience and necessity, which were recently sold together with other assets to AIA pursuant to a Bankruptcy Court Order, to New TCA, a recently formed Michigan corporation. The proposed transfer clearly meets the Department's well-articulated standards for approval under Section 401(h) of the Act, as well as the fitness requirements enumerated in Part 204 of the Department's Economic Regulations.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 93-14061 Filed 6-14-93; 8:45 am]
BILLING CODE 4910-62-M

Coast Guard

[CGDS-93-13]

Lower Mississippi River Waterway Safety Advisory Committee; Solicitation for Membership

AGENCY: Coast Guard, DOT.

ACTION: Notice, extension of application deadline.

SUMMARY: The U.S. Coast Guard has extended the deadline for applications for appointment to membership on the Lower Mississippi River Waterway Safety Advisory Committee.

DATES: Completed applications should be returned no later than June 30, 1993.

ADDRESSES: Persons interested in applying should write to Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, USCG, Recording Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander Eighth Coast Guard (oan) Room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

SUPPLEMENTARY INFORMATION: The Committee shall consist of twenty-four members, who have particular expertise, knowledge, and experience regarding the transportation, equipment, and techniques that are used to ship cargo and to navigate vessels on the waters of the Lower Mississippi River:

(1) Five members representing River Port Authorities between Baton Rouge, Louisiana, and the head of passes of the Lower Mississippi River, of which one member shall be from the Port of St. Bernard and one member from the Port of Plaquemines.

(2) Two members representing vessel owners or ship owners domiciled in the State of Louisiana.

(3) Two members representing organizations which operate harbor tugs or barge fleets in the geographical area covered by the Committee.

(4) Two members representing companies which transport cargo or passengers on the navigable waterways in the geographical area covered by the Committee.

(5) Three members representing State Commissioned Pilot organizations, with one member each representing the New Orleans/Baton Rouge Steamship Pilots Association, the Crescent River Port Pilots Association, and the Associated Branch Pilots Association.

(6) Two at-large members who utilize water transportation facilities located in the geographical area covered by the Committee.

(7) Three members representing consumers, shippers, or importers/exporters that utilize vessels which utilize the navigable waterways covered by the Committee.

(8) Two members representing those licensed merchant mariners, other than pilots, who perform shipboard duties on those vessels which utilize navigable waterways covered by the Committee.

(9) One member representing an organization that serves in a consulting or advisory capacity to the maritime industry.

(10) One member representing an environmental organization.

(11) One member representing the general public.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

The purpose of the committee is to provide local expertise on such matters as communications, surveillance, traffic control, anchorages, aids to navigation, and other related topics dealing with navigation safety in the Lower Mississippi River area as required by the Coast Guard. The committee normally meets four times a year. Members serve voluntarily, without compensation from the Federal Government for salary, travel, or per diem. Term of membership will not exceed the expiration of the charter, October 1, 1995.

(P.L. 102-241, 105 Stat. 208)

Dated: May 27, 1993.

J. C. Card,
Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 93-14069 Filed 6-14-93; 8:45 am]
BILLING CODE 4910-14-M

[CGD 93-036]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC) and workgroups. A preliminary meeting of the TSAC workgroups will be held on Tuesday, July 20, 1993, in Room 2415 of U.S. Coast Guard Headquarters. This meeting is scheduled to run from 8:30 a.m. to 4 p.m. Attendance is open to the public. The Committee meeting will be held on Wednesday, July 21 1993, from 8:30 a.m. to 12 noon in the same room. This meeting is also open to the public. The agenda for the Committee meeting follows:

1. Workgroup Reports
   a. Model Company Concept
   b. Training Standards for Entry-Level
   c. Improve Timeliness and Effectiveness
2. Other Topics of Discussion

With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the TSAC Executive Director no later than the day before the meeting.

Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each Committee member, 20 copies of the written material should be submitted to the Executive Director by July 14, 1993.

FOR FURTHER INFORMATION CONTACT: LCDR Roger Dent, Towing Safety Advisory Committee, room 1300, U.S. Coast Guard Headquarters (G-MTH), 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-2206.

Dated: May 28, 1993.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–14075 Filed 6–14–93; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Stockton Metropolitan Airport (SCK), Stockton, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed Noise Compatibility Program that was submitted by the San Joaquin County for Stockton Metropolitan Airport (SCK), Stockton, California, under the provisions of title 1 of the Aviation Safety ad Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150. This program was submitted subsequent to a determination by the FAA that associated Noise Exposure Maps submitted under 15 CFR part 150 for Stockton Metropolitan were in compliance with applicable requirements effective May 10, 1991. The proposed Noise Compatibility Program will be approved or disapproved on or before November 22, 1993.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the Noise Compatibility Program is May 26, 1993. The public comment period ends July 25, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph Rodriguez, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303, Telephone (415) 876–2805. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed Noise Compatibility Program for Stockton Metropolitan Airport which will be approved or disapproved on or before November 22, 1993. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted Noise Exposure Maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a Noise Compatibility Program for the FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the Noise Compatibility Program for Stockton Metropolitan Airport effective on May 26, 1993. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to maximum of 180 days, will be completed on or before November 22, 1993. The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports District Office, SFO–600, 831 Mitten Road, room 210, Burlingame, California 94010–1303

Mr. Dan DeAngelis, Airport Manager, County of San Joaquin, Department of Aviation, 5000 South Airport Way, Stockton, California 95206–3996

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on May 26, 1993.

Ellsworth L. Chan,

Acting Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 93–14060 Filed 6–14–93; 8:45 am]

BILLING CODE 4910–13–M

[Docket No. 26987]

Draft Environmental Impact Statement; Effects of Changes of Aircraft Flight Patterns Over the State of New Jersey; Extension of Comment Period

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Extension of the comment period.

SUMMARY: On November 12, 1992, the FAA issued a Draft Environmental Impact Statement (DEIS) to assess the impact of changes in aircraft flight patterns caused by the implementation of the Expanded East Coast Plan (EECP) over the State of New Jersey for public review and comment. The DEIS evaluates the EECP and alternatives to its continued use.

In December, 1992, the FAA extended the period for public comment from January 22, 1993 to March 5, 1993 because of the technical complexity of the DEIS. On March 15, 1993 the FAA reopened the comment period through June 14, 1993 due to a request from the New Jersey Citizens for Environmental Research (NJCER) and a joint request from the Governor of New Jersey and the Chairman of the Port Authority of New York and New Jersey.

In response to a request from NJCER dated May 28, 1993, the FAA is again extending the comment period through August 6, 1993.

COMMENT PERIOD: The comment period is extended to August 6, 1993.

ADDRESS: Written comments on the document should be addressed to: Federal Aviation Administration, Office of the Chief Counsel: Docket Number 26987, 800 Independence Avenue SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: The FAA will consider and respond to all comments directly within the scope of the DEIS. The most useful comments are those which provide facts and analyses to support the reviewer's recommendations or conclusions. The FAA will consider comments received after the close of the comment period to the extent practicable. The FAA will issue a final EIS that includes corrections, clarifications and responses to comments on the DEIS.

Issued in Washington, DC, on June 11, 1993.

Bill F. Jeffers,

Acting Deputy Associate Administrator for Air Traffic.

[FR Doc. 93–14183 Filed 6–14–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Binghamton Regional Airport, Binghamton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Binghamton Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 15, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Manager, New York Airports District Office, 181 South Franklin Avenue, room 305, Valley Stream, New York 11581.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to William C. Finn, Commissioner of Aviation, Broome County Department of Aviation at the following address: 2534 Airport Road, Box 16, P.O. Box 51, Johnson City, New York 13790.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Broome County Department of Aviation under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Philip Brito, Manager New York Airports District Office, 181 South Franklin Avenue, room 305, Valley Stream, New York 11581 (Tel 718–553–1882). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Binghamton Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 5, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Broome County Department of Aviation was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 25, 1993. The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: November 1, 1993

Proposed charge expiration date: October 31, 1997

Total estimated PFC revenue: $1,872,264

Brief description of proposed projects: The PFC funds will be utilized to fund the local share of the following proposed AIP projects.

—Airfield Signage Update
—Terminal Apron Overlay
—Airport Master Plan Study
—Runway Sweeper Refurbishing
—Ga Apron and Selected Taxiway Overlay
—Equipment Replacement
—Land Acquisition (Impose Only)
—Equipment Replacement (Impose Only)
—Maintenance Facility Replacement (Impose Only)
—Emergency Access Road Construction (Impose Only)
—Remove obstructions (Impose Only)

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: All air taxi/commercial operators filing form 1800–31.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Binghamton Regional Airport.

Issued in Jamaica, New York on May 25, 1993.

Louis P. DeRose,

Manager, Airports Division, Eastern Region.

[FR Doc. 93–14059 Filed 6–14–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Safety of Private Highway-Rail Grade Crossings; Open Meeting

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of open meeting.

SUMMARY: FRA announces an open meeting to consider issues regarding draft "Preliminary Guidelines: Safety of Private Highway-Rail Crossings" previously circulated to members of the highway-rail crossing safety community. Open for discussion will be the rationale, form and substance of this proposal. Specific issues to be addressed will include, but not be limited to, safety treatments at private crossings, crossing closure itself and private crossings on high speed rail corridors.

DATES: (1) The open meeting will be held on July 15, 1993, at 11 a.m. (2) Written comments are invited and must be received by FRA by July 6, 1993, in order to be available for distribution at the open meeting. (3) Any person wishing to participate in the open meeting must register with the Highway-Rail Crossing and Trespasser Programs Division by close of business July 7, 1993.

ADDRESSES: (1) The open meeting will be held at the Hyatt Regency St. Louis, One St. Louis Union Station, St. Louis, Missouri. (2) Written comments should be submitted to the Highway-Rail Crossing and Trespasser Programs Division, RRS–23, FRA, 400 Seventh Street SW., Washington, DC 20590. Telephone registration may be made by contacting Ms. Monica Shaw at 202–366–0533. (3) Persons wishing to receive a copy of the draft preliminary guidelines should contact Ms. Shaw.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Belk, Program Analyst, Highway-Rail Crossing and Trespasser Programs Division, Office of Safety Analysis, FRA, 400 Seventh Street, SW., Washington, DC 20590 telephone 202–366–0533, or Mark Tessler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–0628).

SUPPLEMENTARY INFORMATION: On January 15, 1993, FRA began distribution of a draft of "Preliminary Guidelines: Safety of Private Highway-Rail Crossings" in which FRA intended to initiate industry-wide discussions concerning safety at private highway-rail crossings. The draft preliminary guidelines have already stimulated discussion of the various safety issues surrounding private crossings.

It is hoped that when guidelines are issued by FRA in the future, they will help to define safety responsibilities of the various parties and will help to identify minimum safety standards for those crossings.

While FRA solicits discussion and comments on all areas of safety at private crossings, and all aspects of the draft preliminary guidelines, we particularly encourage comments on the following areas:

1. Should the Federal government, and particularly FRA, be involved in private highway-rail crossing safety issues? If yes, how, and to what extent should FRA be involved?

2. How would FRA's involvement, or lack of involvement, affect the authority or involvement of States in the area of private crossing safety?

3. How should responsibilities of the interested parties be allocated? Should the Federal government become involved in determining those responsibilities?

4. Under what circumstances should railroads close private crossings?

5. Can the U.S. DOT/AAR National Rail-Highway Crossing Inventory be relied upon for information relative to the number, location and category of warning devices currently extant?

6. Should a survey be initiated to determine the present allocation of safety and maintenance responsibilities.

7. Should train horns be sounded at all private crossings? If not, for what categories of crossings, if any, should horns be sounded? Should such action be mandatory?

Please note that any person wishing to participate in the open meeting must register with the Highway-Rail Crossing and Trespasser Programs Division at the address and telephone number provided above by close of business July 7. Persons not registering in advance will be free to observe the meeting but will not be permitted to participate in the discussion.

Issued in Washington, DC, on June 8, 1993.

Philip Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93–13988 Filed 6–14–93; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of calculation and interest.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts and refunds of Customs duties. For the quarter beginning July 1, 1993, the rates will be 6 percent for overpayments and 7 percent for underpayments. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: John V. Accetturo, National Finance Center, Revenue Branch, (317) 298–1308.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Interest rates are determined based on the short-term Federal rate. The interest rate that Treasury pays on overpayments will be the short-term Federal rate plus two percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus three percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less and fluctuate quarterly. The rates effective for a quarter are determined during the first-month period of the previous quarter.

The rates of interest for the period of July 1, 1993–September 30, 1993, are 6 percent for overpayments and 7 percent for underpayments. These rates will remain in effect through September 30, 1993, and are subject to change on October 1, 1993.

Dated: June 7, 1993.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 93–14006 Filed 6–14–93; 8:45 am]

BILLING CODE 4820-02-M

Performance Review Board—Appointment of Members

AGENCY: Customs Service, Department of Treasury.

ACTION: General notice.

SUMMARY: This Notice announces the appointment of the menbers of the United States Customs Service Performance Review Boards (PRB's) in accordance with 5 U.S.C. 4313(c)(4). The purpose of the PRB's is to review senior executives' performance appraisals and make recommendations regarding performance appraisals and performance awards.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Loretta J. Goerlinger, Director, Office of Human Resources, United States Customs Service, Post Office Box 636, Washington, DC 20044; telephone (202) 634–5270.

Background

There are two (2) PRB's in the U.S. Customs Service.

Performance Review Board 1

The purpose of this Board is to review the performance appraisals of senior executives rated by the Commissioner or Deputy Commissioner of Customs. The members are:

Daniel R. Black, Associate Director, Office of Compliance Operations, Bureau of Alcohol, Tobacco & Firearms

Guy P. Caputo, Deputy Director, U.S. Secret Service

John C. Dooher, Director, Washington Center, Federal Law Enforcement Training Center

Ray M. Rice, Assistant Director, Office of General Training, Federal Law Enforcement Training Center

Jay Weinstein, Assistant Inspector General, Audit, Inspector General Office

Performance Review Board 2

The purpose of this Board is to review the performance appraisals of all senior executives *except* those rated by the Commissioner or Deputy Commissioner of Customs. All are Assistant Commissioners or Regional Commissioners of U.S. Customs Service. The members are:

Assistant Commissioners:

Samuel H. Banks, Office of Commercial Operations

John E. Hensley, Office of Enforcement

Charles W. Winwood, Office of Inspection and Control

James W. Shaver, Office of International Affairs

George D. Heavey, Office of Internal Affairs

Carlton L. Brainard, Office of Management

William F. Riley, Office of Information Management
Regional Commissioners:
Philip W. Spayd, Northeast Region
Anthony N. Liberta, New York Region
Garnet J. Fee, North Central Region
George C. Corcoran, Jr., Southeast Region
J. Robert Grimes, South Central Region
Robert S. Trotter, Southwest Region

Dated: June 7, 1993.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 93–14005 Filed 6–14–93; 8:45 am]

BILLING CODE 4820–02–M

Fiscal Service

[Dept. Circ. 570, 1992—Rev., Supp. No. 23]

Surety Companies Acceptable on Federal Bonds Termination of Authority: Acceleration National Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Acceleration National Insurance Company, of Dublin, Ohio, under the United States Code, title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 57 FR 29357, July 1, 1992.

With respect to any bonds currently in force with Acceleration National Insurance Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202/FTS) 874–6765.

Dated: June 4, 1993.

Diane E. Clark,

Assistant Commissioner, Financial Information, Financial Management Service.

[FR Doc. 93–13964 Filed 6–14–93; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1992—Rev., Supp. No. 24]

Surety Companies Acceptable on Federal Bonds Termination of Authority: Pinnacle Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Pinnacle Insurance Company, of Carrollton, Georgia, a Georgia corporation under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 57 FR 29387, July 1, 1992.

With respect to any bonds currently in force with Pinnacle Insurance Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202/FTS) 874–6696.

Dated: June 4, 1993.

Diane E. Clark,

Assistant Commissioner, Financial Information, Financial Management Service.

[FR Doc. 93–13965 Filed 6–14–93; 8:45 am]

BILLING CODE 4810–35–M

Internal Revenue Service

[Delegation Order No. 67 (Rev. 22)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The authority to sign on behalf of the Commissioner, Internal Revenue Service, is given to Margaret Milner Richardson, Commissioner, Internal Revenue Service.

EFFECTIVE DATE: May 12, 1993.

FOR FURTHER INFORMATION CONTACT: Marcene Austin, Acting Chief, Office of Directives Management, PR:P:D, room 3139, 1111 Constitution Avenue NW., Washington, DC 20224, telephone (202) 622–6890 (not a toll-free call).

Order No. 67 (Rev. 22)
Effective date: May 12, 1993
Signing the Commissioner's Name or on the Commissioner's Behalf

Effective 8:10 a.m., May 12, 1993, Margaret Milner Richardson became Commissioner of Internal Revenue. All outstanding authorizations are hereby amended to authorize the signing of the name of, or on behalf of Margaret Milner Richardson, Commissioner of Internal Revenue.

Delegation Order No. 67 (Rev. 21), effective January 20, 1993, is superseded.

Dated: June 2, 1993.

Approved:

Michael P. Dolan,

Deputy Commissioner.

[FR Doc. 93–13969 Filed 6–14–93; 8:45 am]

BILLING CODE 4830–01–U

Office of Thrift Supervision

Western Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) and (E) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Western Federal Savings Bank, Marina Del Rey, California, on June 4, 1993.

Dated: June 9, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–13973 Filed 6–14–93; 8:45 am]

BILLING CODE 6720–01–M

Vista Federal Savings Assoc., City of Industry, CA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Vista Federal Savings Association, City of Industry, California ("Association"), OTS No. 10651, with the Resolution Trust Corporation as sole Receiver for the Association on June 4, 1993.

Dated: June 9, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–13974 Filed 6–14–93; 8:45 am]

BILLING CODE 6720–01–M

Western Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Western Federal Savings and Loan Association, Marina Del Rey, California, OTS Number 3865, on June 4, 1993.

Dated: June 9, 1993.

By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 93–13972 Filed 6–14–93; 8:45 am]
BILLING CODE 6720–01–M

[AC–25: OTS No. 0492]

Leader Federal Bank for Savings, Memphis, TN; Approval of Conversion Application

Notice is hereby given that on June 4, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Leader Federal Bank for Savings, Memphis, Tennessee, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, IL 60601–4360.

Dated: June 9, 1993.

By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 93–13971 Filed 6–14–93; 8:45 am]
BILLING CODE 6720–01–M

VOL 58 ISS 113 JE 15 1993 UMI

Sunshine Act Meetings

Federal Register
Vol. 58, No. 113
Tuesday, June 15, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, June 16, 1993.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

Enforcement Matter OS# 5750

The staff will brief the Commission on issues related to enforcement matter OS# 5750.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: June 9, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–14242 Filed 6–11–93; 3:28 pm]

BILLING CODE 6355-01-M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 17, 1993.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

1. Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

2. Enforcement Matter OS# 4360

The staff will brief the Commission on issues related to enforcement matter OS# 4360.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Shelton D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: June 9, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–14243 Filed 6–11–93; 3:28 pm]

BILLING CODE 6355-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 21, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14216 Filed 6–11–93; 2:37pm]

BILLING CODE 6210-01-F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD: .

TIME AND DATE: 10:00 a.m., June 21, 1993.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the last meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of audit reports:

KPMG Peat Marwick audit report entitled "Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Forfeiture and Forfeiture Restoration Operations at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

KPMG Peat Marwick audit report entitled "Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Participant Support Process at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

4. Review of memorandum on additional TSP funds.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: June 11, 1993.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 93–14184 Filed 6–11–93; 1:25 pm]

BILLING CODE 6760-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 10–93

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time	*Subject Matter*
Tues., June 22, 1993 at:	Oral Hearings on objections to Proposed Decisions in the following claims against Iran:
11:00 a.m	IR–1102, IR–1429—Ocean-Air Cargo.
2:00 p.m	IR–1585—John Rost.
2:30 p.m	IR–2423—James Rullin.
3:00 p.m	IR–2333, IR–2334—Mark & Judith Forrest.
Wed., June 23, 1993 at 10:30 a.m.	Consideration of Proposed Decisions on claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208–7727.

Dated at Washington, DC, on June 11, 1993.

Judith H. Lock,

Administrative Officer.

[FR Doc. 93–14214 Filed 6–11–93; 2:36 pm]

BILLING CODE 4410–01–M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, June 22, 1993.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Ex Parte No. MC–43 (Sub-No. 20), *Petition to Amend Lease and Interchange of Vehicles Regulations—Household Goods Carriers*

Ex Parte No. 394 (Sub-No. 11), *Cost Ratio for Recyclables—1993 Determination*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of External Affairs, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–14164 Filed 6–11–93; 11:39 am]

BILLING CODE 7035–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Wednesday, June 23, 1993.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5848A—Highway Accident Report: Charter Bus Loss of Control, Overturn and Fire, Vernon, New Jersey, July 26, 1992.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: June 11, 1993.

[FR Doc. 93–14248 Filed 6–11–93; 3:36 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 14, 21, 28, and July 5, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 14

Thursday, June 17

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 21—Tentative

Thursday, June 24

8:30 a.m.
Briefing on Status of Pacific Northwest Laboratories (PNL) Study of Decommissioning Costs (Public Meeting) (Contact: Cheryl Trottier, 301–492–3640)

10:00 a.m.
Briefing on Status of Design Basis Threat Reevaluation (Public Meeting) (Contact: Robert Burnett, 301–504–3365)

11:30
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing on Internal Management Review of NRC Program for Medical Use of Byproduct Material (Public Meeting) (Contact: Carl Paperiello, 301–504–2659)

Friday, June 25

9:30 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting) (Contact: William Bateman, 301–504–1711)

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Week of June 28—Tentative

Thursday, July 1

1130 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 5—Tentative

Thursday, July 8

2:00
Briefing by Nuclear Safety Research Review Committee (NSRRC) (Public Meeting) (Contact: George Sege, 301–492–3904)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: June 11, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–14241 Filed 6–11–93; 3:27 pm]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

TIME AND DATE: 2:00 p.m., June 23, 1993.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Issues in Docket No. MC93–2.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW, Washington, DC 20268–0001, Telephone (202) 789–6840.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 93–14132 Filed 6–10–93; 4:49 pm]

BILLING CODE 7710–FW–P–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of June 14, 1993.

A closed meeting will be held on Thursday, June 17, 1993, at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, June 17, 1993, at 2:00 p.m., will be:

Settlement of injunctive action.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brian Lane at (202) 272–2400.

Dated: June 11, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–14253 Filed 6–11–93; 3:55 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 58, No. 113
Tuesday, June 15, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 93-010-1]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

Correction

In notice document 93-4979 beginning on page 12355 in the issue of Thursday, March 4, 1993, make the following corrections:

1. On page 12356, in the table, under the heading Organisms, in the eighth and ninth entries, in the second line, "5-enolpyruvly" should read "5-enolpyruvyl".

2. On the same page, under the same heading, in the 12th entry, in the 2d line, "phosphionthricin" should read "phosphinothricin".

3. On the same page, under the same heading, in the 16th entry, in the 1st line, insert "engineered to" after "genetically".

4. On page 12357, under the heading Organisms, in the 18th entry, in the 2d line, "(MCDV)" should read "(MCMV)".

5. On the same page, under the heading Applicant No., in the 19th entry, in the 2d line, "92-156-01," should read "91-156-01,".

6. On the same page, under the heading Field test location, in the 21st and 22d entries, "Indiana" was misspelled.

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

Correction

In Sunshine Act meeting notice document 93-13531 appearing on page 32171 in the issue of Tuesday, June 8, 1993, make the following corrections:

1. In the first column, under **TIME AND DATE:**, in the second line, "June 19," should read "June 29,".

2. In the same column, under **CONTACT PERSON FOR MORE INFORMATION:**, "254-6315." should read "254-6314."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-4210-06; GP3-209; OR-48744]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

Correction

In notice document 93-10923 beginning on page 27582 in the issue of Monday, May 10, 1993, make the following corrections:

On page 27582, in the first column under **FOR FURTHER INFORMATION CONTACT:**, in the third line the phone number should read "503-280-7162".

1. On the same page in the second column, under *Eagle Rock Section*, in Sec. 10, in the fifth line, "89°16'28" should read "89°16'55".

2. On the same page in the second column, in Sec. 11, in the sixth line, "111.85 feet" should read "111.86 feet" and in the fourth line from the end of that section, remove "Thence along the north line of the NW¼SW¼" the first time it appears.

3. On the same page in the third column, under *Eagle Rock Section*, in the fifth line, "SE½NW¼" should read "SE¼NW¼".

BILLING CODE 1505-01-D

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federal register

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Proposed Endangered Status and Designation of Critical Habitat for the Alabama Sturgeon; Proposed Rule

VOL 58 ISS 113 JE 15 1993 UMI

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB73

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status and Designation of Critical Habitat for the Alabama Sturgeon (Scaphirhynchus suttkusi)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list the Alabama sturgeon as an endangered species and to delineate areas of critical habitat. This small sturgeon is endemic to the Mobile River system, Alabama and Mississippi. Its current range is restricted to the lower Alabama River and the Cahaba River in Alabama. Both of these areas and the free flowing portion of the lower Tombigbee River are proposed as critical habitat. Factors in the sturgeon's decline include dams, and possible adverse effects from altered water flows, channel maintenance and gravel dredging. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by October 13, 1993. A public hearing will be held to answer questions and gather additional information on the biology of the Alabama sturgeon and the proposed listing and critical habitat designation. The date, time, and location of the public hearing will be announced as soon as possible under a separate **Federal Register** notice and in newspapers of general circulation within the counties that may be affected.

ADDRESSES: Comments and materials concerning this proposal should be sent to U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Stewart at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

The Alabama sturgeon, also referred to as the Alabama shovelnose sturgeon, was described in 1991 by Williams and Clemmer as *Scaphirhynchus suttkusi*. The Alabama sturgeon has been recognized since 1976 as a distinct, undescribed taxon that is most similar to the shovelnose sturgeon, *S. platorynchus* (Ramsey 1976). The Alabama sturgeon is known only from the Mobile Bay drainage of Alabama and Mississippi. Shovelnose sturgeons were first reported from the Mobile River basin in an anonymous article in the *Alabama Game and Fish News* in 1930 and in scientific literature by Chermock in 1955 (Burke and Ramsey 1985). Confirmed records of this species are uncommon. Clemmer (1983) listed 23 specimens in museum collections. In their status survey, Burke and Ramsey (1985) captured only five Alabama sturgeon. Williams and Clemmer (1991) located 32 specimens in museum, university, and private collections. All verified localities have been large channels of big rivers in the Mobile Bay drainage.

Despite the scarcity of recent records, the Alabama sturgeon was once common in Alabama. In a statistical report to Congress in 1898, the total catch of shovelnose sturgeon from Alabama was 42,900 pounds. Of this total, 39,500 pounds came from the Alabama River, 2,300 pounds from the Black Warrior River, and 1,100 pounds from the Tennessee River. The shovelnose sturgeon from the Alabama and Black Warrior Rivers is the same fish that was recently determined to be a distinct species, the Alabama sturgeon. It is apparent from this statistical report that historical records of sturgeon from the Mobile River system are uncommon but that the sturgeon was once abundant.

Since the Burke and Ramsey report (1985), there have been several anecdotal reports of Alabama sturgeon. In a recent interview, a commercial fisherman stated that he catches 8 to 10 small slim sturgeon per year during the colder winter months (pers. comm. 1992). This fisherman nets upstream of Claiborne Lock and Dam and very obviously differentiates between the Alabama sturgeon and the larger Gulf sturgeon. There are two reports of small sturgeon being caught by fishermen in 1992, one from the Cahaba River and one from the Alabama River below Millers Ferry Lock and Dam. Neither fish was made available for positive confirmation of the species. However, both were described as small and slender, more descriptive of Alabama sturgeon than the Gulf sturgeon. The site of capture for both fish and those captured by the commercial fisherman would also indicate they are Alabama sturgeon, since a Gulf sturgeon would have to pass through or over Claiborne Lock and Dam, a possible though improbable feat.

Biologists from the Alabama Department of Conservation and Natural Resources have conducted periodic electrofishing for sturgeon. A single sturgeon has been observed, but eluded capture. The boat operator (a biotechnician) believed the sturgeon to be *Scaphirhynchus suttkusi* but could not confirm that belief. The most recent firm evidence consists of the capture of five sturgeon in 1985 (Burke and Ramsey 1985), of which two were gravid females and one was a juvenile of about 2 years old. Burke and Ramsey (1985) aged two other Alabama sturgeon at 7 and 10 years of age. The gravid females and juvenile Alabama sturgeon captured by Burke and Ramsey are sufficient evidence that reproduction was occurring during the 1980's and likely continues into the 1990's, since habitat changes have been minimal during the past 7 years. Several studies have aged sturgeon with all of them indicating this group of fish are long lived. Rochard *et al.* (1990) in a general statement about sturgeon gives 40 years as a life expectancy. Helms (1974) aged shovelnose sturgeon up to 12 years old and referenced work by Zweiacker (1967) and Fogle (1963) that aged shovelnose sturgeon at 27 and 10 years respectively. Neither Zweiacker nor Fogle could validate the marks interpreted as annuli (Moos 1978). Durkee *et al.* (1979) aged shovelnose sturgeon at 14 years of age. Ruelle and Keenlyne (in press) aged three pallid sturgeon, *Scaphirhynchus albus*, at 10, 41, and 37 years of age. It is apparent that captures of 7 years ago are relatively recent for such a species. Based upon the evidence at hand, both confirmed and anecdotal, it is highly probable that Alabama sturgeon continue to exist in the Alabama River system, albeit in low numbers.

The Alabama sturgeon, (*Scaphirhynchus suttkusi*) is a relatively small sturgeon, the maximum standard length is about 72 centimeters (cm) or 28 inches. It has an elongate, heavily armored, depressed body and an attenuated caudal peduncle (the area immediately anterior to the tail fin). The tail fin has the long filament on the upper lobe characteristic of the genus. Sexual dimorphism is slight. Morphological characteristics of young Alabama sturgeon are unknown.

The Alabama sturgeon is distinguished from the closely related shovelnose sturgeon by a larger eye, differences in plate and fin ray counts, placement of the dorsal and anal fins, and in head morphology (Williams and Clemmer 1991). The shovelnose

sturgeon has not been found in the Mobile River drainage. The Alabama sturgeon was once called the Alabama shovelnose sturgeon or just shovelnose sturgeon. References to the shovelnose sturgeon in the Mobile River system are to the Alabama sturgeon, rather than the shovelnose sturgeon that occurs in the Mississippi River system.

The specific habitat needs of the Alabama sturgeon are largely unknown. One Alabama sturgeon, tracked by telemetry, preferred swift currents in water 25 to 40 feet deep (Burke and Ramsey 1985). Closely related sturgeon species are most common in river channels with strong currents and sand and gravel sediments but may occur over soft substrates. The closely related shovelnose sturgeon often uses channel training devices, i.e., wing walls and closing dams, as habitat (Helms 1974, Hurley and Nickum 1984, Hurley *et al.* 1987). Sturgeon seem to be tolerant of high turbidity (Pflieger 1975). Based upon the limited information available, the Alabama sturgeon seems to prefer unmodified main channels of large rivers as non-spawning habitat (Burke and Ramsey 1985).

Sturgeon swim upstream to spawn. Spawning habitats may be tributaries with hard substrates, main channel areas, or training devices (water diversion structures used in directing currents to maintain channels) in major rivers (Hurley and Nickum 1984). Currents are required for the development of the sturgeon's adhesive eggs, which require 5 to 8 days to hatch (Burke and Ramsey 1985). Spawning of the shovelnose sturgeon in the Mississippi River system apparently occurs from April to early July. The spawning period for sturgeon probably depends upon water temperature and current as it does for numerous other fish species. Anecdotal reports of sturgeon captures in the Alabama River during the period of January through March indicate that sturgeon spawning in this river system may be earlier than at more northerly latitudes. Recent capture efforts have been conducted during the late spring under the assumption that the Alabama sturgeon would be moving to spawning sites and more vulnerable to capture. The failure to capture Alabama sturgeon during this period is more likely due to the sturgeon not moving very much, thereby reducing susceptibility to capture, than it is to an absence of the species.

This species has been included in Federal Register notices of review for candidate animals in 1982, 1985, and 1989. In the notice of 1982 (47 FR 58454) and 1985 (50 FR 37958), this species was listed as a category 2 (sufficient information indicates proposing to list may be appropriate, but conclusive data is not currently available to support a proposed rule). In the notice of 1989 (54 FR 554), the species was listed as a category 1 (substantial information supports listing).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Alabama sturgeon, *Scaphirhynchus suttkusi*, are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The historic range of the Alabama sturgeon totaled 1022 river miles (RM) and included the Black Warrior, Tombigbee, Alabama, Coosa, Tallapoosa, Mobile, Tensas, and Cahaba Rivers (Burke and Ramsey 1985). This sturgeon has been extirpated from 586 RM (57 percent), its status in 90 RM (9 percent) is unknown, 194 RM (19 percent) is thought to be marginal habitat, and only 152 RM (15 percent) apparently still supports a good population (recalculated from Burke and Ramsey 1985). Channel maintenance for navigation, gravel mining, and flow regulation may be threats to this species. Based upon the absence of collecting records, the Alabama sturgeon has been extirpated from the Black Warrior River and the Tombigbee River. The Alabama sturgeon may also be extirpated from the Coosa, Tallapoosa, and upper Alabama Rivers. If so, it may be because the Robert F. Henry Lock and Dam (=Jones Bluff Lock and Dam) interrupted the sturgeon's migration to spawning habitat and perhaps caused siltation of spawning grounds. The continued existence of this species in downstream reservoirs may be because suitable spawning habitat, i.e., Cahaba River, is still accessible in those areas. The Alabama sturgeon is known to survive in 346 of the 1022 RM of the historic habitat [Cahaba River from the Little Cahaba River downstream to the confluence with the Alabama River (91 RM), and the Alabama River from Robert F. Henry Lock and Dam downstream to its confluence with the Tombigbee River, (255 RM) (Burke and Ramsey 1985)]. The Claiborne Lake reach (61 RM) and the lower Alabama River (91 RM) probably support the largest Alabama sturgeon populations (Burke and Ramsey 1985).

Population declines of the Alabama sturgeon have occurred because of habitat modification (impoundments and likely also channel maintenance). Dam and hydroelectric facility construction by the U.S. Army Corps of Engineers (Corps) and the Alabama Power Company have transformed the Coosa, Tallapoosa, and upper Alabama Rivers into a series of impoundments. Impoundment of the lower Tombigbee and Black Warrior Rivers and construction of the Tennessee-Tombigbee Waterway for navigation likely extirpated this sturgeon from the Tombigbee River drainage, at least upstream of Coffeeville Dam. Many of these dams are capable of completely blocking water flow during low flow conditions. In addition to regulating waterflow, except under extreme flood conditions, these dams block the upstream migration of sturgeon. The Alabama sturgeon has not been observed to accumulate below dams as do anadromous species of sturgeon.

Research on sturgeon has been more extensive in Russia than in this country. However, with the recent listing of the pallid sturgeon, there is renewed interest in this group of fishes. Henry and Ruelle (1992) conducted a study of pallid and shovelnose sturgeon reproduction in the Mississippi River drainage. They concluded that shovelnose sturgeon do not spawn every year and that poor body condition may result in the production of fewer eggs or less frequent spawning. Shovelnose sturgeon in the Mississippi River system feed primarily on aquatic insect larvae now, where forage fish were once an important food item (Modde and Schmulbach 1977, Durkee *et al.* 1979). This change is believed to be the result of channelization reducing the number of shoal areas and deep holes in the river, with sturgeon now moving to sandbar areas and the mouths of fertile tributary streams to forage. The changes in channel configuration and control of flows altered aquatic habitats and produced a uniformly fast current that eliminated or reduced populations of many smaller aquatic species. This caused a decrease in the availability of the food supply for sturgeon and eliminated forage fish as a part of the diet (Henry and Ruelle 1992). Sturgeon are opportunistic bottom feeders. Shovelnose sturgeon may have become more opportunistic as river channelization reduced the availability

of prey organisms resulting in fish of poorer body condition (Henry and Ruelle 1992). Stomach analyses of a few Alabama sturgeon have found aquatic insect larvae to be a major dietary component. Fish eggs, snails, mussels and fish are also taken (Burke and Ramsey 1985).

In Russia, the effect of dams on sturgeon reproduction has been studied extensively (Khoroshko 1972, Zakharyan 1972, Veshchev 1982, Veshchev and Novikova 1983). These studies have shown that the Russian sturgeon species are adversely affected by impoundments, and by water discharge fluctuations and altered temperature regimes resulting from them. Among the effects recorded were increased activity and physical injury, increased egg predation, decreased growth rates, increased juvenile mortality, deviation in gonad development, egg resorption, and a decrease in spawning.

The apparent extirpation of Alabama sturgeon in the Alabama River system upstream of Robert F. Henry Lock and Dam does not mean the remaining population is not adversely affected by upstream reservoirs. As discussed earlier, water flow fluctuations can be adverse to sturgeon. To a large extent, the amount of water available for release through R.E. Bob Woodruff Lake, William Bill Dannelly Reservoir, and Claiborne Lake is a function of the inflows from upstream reservoirs. Therefore, flow regulation by all the reservoirs in the Mobile River drainage must be considered a threat, even when the nearest known sturgeon population is many river miles downstream. However, the Service believes that coordination of hydropower production between the various entities can provide the necessary water for minimum flows without increasing the cost of electricity.

Flow regulation is affected by the amount of water available. With increasing demands for water by municipalities, industry, and agriculture, the maintenance of minimum flows will be more difficult. There are plans to construct reservoirs and divert water for municipal purposes in Georgia and in Birmingham, Alabama. Undoubtedly, other interests will look toward the Mobile River system for water as the demand increases. This water depletion will adversely impact the river fauna, including the Alabama sturgeon, if the amount of water falls below that necessary to maintain adequate flows. Until more is known about the Alabama sturgeon's life history, the Service expects that continuous minimum flows of approximately 3,000 cubic feet per second (cfs) will be required below Robert F. Henry Lock and Dam and Millers Ferry Lock and Dam on the lower Alabama River. This amount of continuous flow should have negligible impact to water levels in the respective reservoirs since there is a minimum flow into the Alabama River of 3,400 cfs already required from the Coosa and Tallapoosa Rivers, and there is a substantial contribution of water from other tributary streams to the Alabama River in this area. Evaluation of the impact of these minimum flows on the river over a period of time may require some level of adjustment that can only be determined by monitoring continuous minimum flows combined with actual flow conditions. Minimum flows below Claiborne Lock and Dam are already maintained at approximately 5,000 cfs to provide for cooling water intake of downstream industry. This amount of continuous flow should also benefit the Alabama sturgeon and other aquatic organisms in the lower Alabama River.

Channel maintenance for navigation may be a threat to the sturgeon. This threat can be minimized by using methods that reduce dredging of the channel. Dredging removes gravel and sand bars essential for spawning and habitat for prey. Reduction of dredging while still maintaining a navigation channel has been accomplished in the Apalachicola, Mississippi, and Missouri Rivers by installation of channel training devices, i.e., training dikes, wing walls, and closing dams (Wells 1982, Cobb and Magoun 1985, Sigrest and Cobb 1987, U.S. Army Corps of Engineers 1987). Channel training devices are structures that direct water flows to improve sediment transportation capabilities of the river as a means of maintaining a navigation channel. Dikes on the Apalachicola River were constructed in the 1960's and were found to be effective in eliminating 55 percent of the dredging requirements within the effective range of the dikes (U.S. Army Corps of Engineers 1987). In that report, the Corps states, "This is known to be a conservative value because of changes in maintenance dredging practices since the dikes were constructed and therefore the Alabama River dikes were assumed to be slightly more effective at 60 percent." This same document predicts that with channel training devices in place, dredge disposal acres will be reduced by more than half and that quantities dredged will be reduced by over 400,000 cubic yards at a savings of over $500,000. The report further concludes that under existing conditions of 8450 cfs, the addition of training devices saves a total of over $900,000 per year in transportation delays and damages and in reduced dredging.

In the lower Alabama River, the Corps of Engineers has constructed over 60 channel training works since 1988 that are intended to reduce the need for dredging. Installation of these structures is too recent to fully evaluate their effectiveness at reducing dredging in the Alabama River. However, the more training devices reduce the need to dredge, the more the Alabama sturgeon and other aquatic species will benefit from stabilization of the river bed. Based upon the Corps' demonstrated desire to use methods of channel maintenance that reduce the need to dredge, the Service expects the Corps to be able to maintain the navigation channel in the Alabama River while reducing the threat to the Alabama sturgeon's existence. Where dredging is required for channel maintenance, the placement of dredge disposal can likely be accomplished in such a way that deep water areas around channel training devices are maintained. This should allow for a greater amount of stable substrate than occurred prior to installation of channel training devices, especially in the deep water areas near the training devices. This should also maintain deep water refugia for the Alabama sturgeon.

It is not expected that channel training devices will be effective on the lower Tombigbee River since there is practically no slope to the river bed. Since this river stretch has not been demonstrated as preferred habitat for the Alabama sturgeon and is only considered as potential habitat for eventual recovery, it is not expected that any changes to the channel maintenance program in the lower Tombigbee River will be required, relative to the Alabama sturgeon, within the next several years. If the population of this species becomes more numerous and there is evidence that it is using the lower Tombigbee River, there may be a need to consider modification of the channel maintenance program.

There is evidence that sturgeon may use training devices for egg deposition, and they do use them as preferred habitat at various water flows (Helms 1974, Hurley and Nickum 1984, Hurley *et al.* 1987, Curtis 1990). Shovelnose sturgeon have been observed to use areas with a primarily sand bottom (Curtis 1990). Alternative channel maintenance methods that allow gravel and sand bar formation and reduce spoil deposition on gravel bars reduce the threat to, and might actually benefit, the

sturgeon. While alternate methods are not expected to eliminate the need for dredging, they should reduce that need and possibly allow only site specific dredging to maintain navigation while benefiting the Alabama sturgeon and its riverine habitat.

Gravel mining destroys gravel and sand bars that provide habitat for food organisms, spawning substrate, and stability to sturgeon habitat. Current methods that remove gravel and sand have an adverse impact on the Alabama sturgeon. If the Alabama sturgeon is to survive, instream gravel and sand mining within certain areas of proposed critical habitat will probably have to cease. However, in the impounded areas proposed as critical habitat, where sand and gravel is covered by thick layers of sediment, it is possible that commercial dredging of these deposits can continue without adversely affecting the Alabama sturgeon.

Since the Alabama sturgeon occurs in the larger channel areas, the impact of water quality degradation by point discharges is somewhat minimized by dilution. However, there is an increasing demand to use the Mobile River system for point discharges. As an example, in the Cahaba River basin, there are 10 municipal wastewater treatment plants, 35 surface mining areas, and 67 other permitted discharges (Alabama Department of Environmental Management, *in litt.* 1990) and there is considerable interest in methane gas extraction with the release of produced water into the Cahaba River and subsequent movement downstream. The potential impact of these wastewaters on fish or the prey organisms on which they depend is unknown. There is some indication that invertebrates may be more sensitive to chlorides from methane-produced water and sewage treatment plants than are vertebrates. If that is the case, permits may seem to protect the fish while allowing the discharge of substances that would eliminate the food base. Of course, this would indirectly affect the survival of the fish. The threat that methane-produced water presents to the Cahaba River system may not materialize due to local opposition. The methane drilling industry is seeking other ways to dispose of the produced water (Dennis Latham, Coalbed Methane Association of Alabama, pers. comm. 1991). The Alabama sturgeon may be more susceptible to water quality degradation in smaller rivers, e.g., Cahaba River, that are used for spawning, because the dilution capability is substantially less than in large rivers. Until there is evidence that current water quality standards are inadequate, it is expected the existing fish and wildlife standards of the Clean Water Act are sufficient to protect the Alabama sturgeon, provided they are enforced. Violation of these water quality standards is a violation of the Clean Water Act, and listing the Alabama sturgeon may increase the penalty for non-compliance, but would not increase the standards.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

This uncommon species is occasionally taken by commercial fishermen on trot lines or with other fishing gear. Alabama State law requires the immediate release of any incidentally caught sturgeon. As a result, the sturgeon is neither commercially nor recreationally valuable, and is not pursued by humans. The effort required to capture this species would make overutilization very difficult.

C. Disease or Predation

There is no known threat from disease or natural predators. To the extent that disease or predation occurs, it becomes a more important consideration as the total population decreases in number.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing State law precludes the possession of and requires the release of all sturgeon caught by any gear, whether dead or alive (Burke and Ramsey 1985, F. Harders, Alabama Department of Conservation and Natural Resources, pers. comm. 1991). There are no regulations that require the consideration of the Alabama sturgeon within the scope of other environmental laws.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

In addition to impacts discussed under Factor A, the Alabama sturgeon's reproductive capability is likely adversely impacted by low numbers of mature individuals. As the sturgeon's range and population are reduced, populations become more scattered and isolated. This isolation probably reduces levels of successful reproduction and also reduces gene flow among populations. As genetic diversity is reduced, the ability of the sturgeon to adapt to adversity may be reduced. Reduction of reproductive success will exacerbate the problems impacting this species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Alabama sturgeon as endangered, defined under the Act as being in danger of extinction throughout all or a significant portion of its range. This preferred action is chosen due to the restricted range, continued adverse impacts to its habitat, low numbers, unusual biological traits, and possible water quantity and quality problems. Critical habitat is designated for reasons discussed in that section.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features: (I) Essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being proposed for the Alabama sturgeon to include lower portions of the Alabama, Cahaba, and Tombigbee Rivers. These areas are precisely delineated below in the "Proposed Regulations Promulgation" section.

The three designated river portions contain the entire known range of the Alabama sturgeon, plus the free flowing portion of the Tombigbee River that may, or could, provide habitat for this species. The continued existence of the Alabama sturgeon in the lower Alabama River and the Cahaba River indicates that life history requirements for food, water quantity, breeding sites, reproduction, and rearing of offspring exist in some portions of these areas to some extent. The continued decline of this species in recent years indicates that some life history requirements are marginal or lacking. These could be sufficient space for individual and population growth, sufficient breeding and spawning habitat, water quantity or quality, some unknown factors or any combination of factors. It is for this reason the Service is proposing to include the lower free-flowing portion of the Tombigbee River in its designation of critical habitat, despite

the lack of recent records of Alabama sturgeon.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Activities that could adversely affect the habitat include dredging for channel maintenance, mining of sand and gravel, water flow regulation, and water quality degradation from point discharges. Activities that may be affected by the designation of critical habitat include: (1) Those by the Corps of Engineers involving channel maintenance, permit regulation programs, and the regulation of water flows from reservoirs; (2) the permitting of effluents under the authority of the Environmental Protection Agency; and (3) relicensing of hydropower plants by the Federal Energy Regulatory Commission.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will consider the critical habitat designation in light of all additional relevant information obtained before making a decision on whether to issue a final rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal actions potentially affected are discussed under the "Critical Habitat" section above.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species; and,

(5) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat.

Final promulgation of the regulations on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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Author

The author of this proposed rule is James H. Stewart (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "FISHES", to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
* * * * *							
Fishes							
* * * * *							
Sturgeon, Alabama (=Alabama shovelnose)	*Scaphirhynchus suttkusi*	U.S.A. (AL, MS)	Entire	E	17.95(e)	NA	
* * * * *							

3. It is further proposed to amend § 17.95(e) by adding critical habitat for the Alabama sturgeon in the same alphabetical order as the species occurs in § 17.11(h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

* * * * *

Alabama Sturgeon (*Scaphirhynchus suttkusi*)

Alabama: Alabama River from its mouth in Baldwin County upstream to Robert E. Henry Dam, Autauga County, including the Counties of Clarke, Monroe, Wilcox, and Dallas; Cahaba River from its confluence with the Alabama River in Dallas County upstream to the confluence of the Cahaba and Little Cahaba Rivers, Bibb County, including that portion in Perry County; and the Tombigbee River from its confluence with the Alabama River in Baldwin County upstream to Coffeeville (=Jackson) Dam, Choctaw County, including Clarke, Washington, and Mobile Counties.

Constituent elements include breeding and spawning sites, feeding sites, water quality and quantity, and room for individual and population growth.

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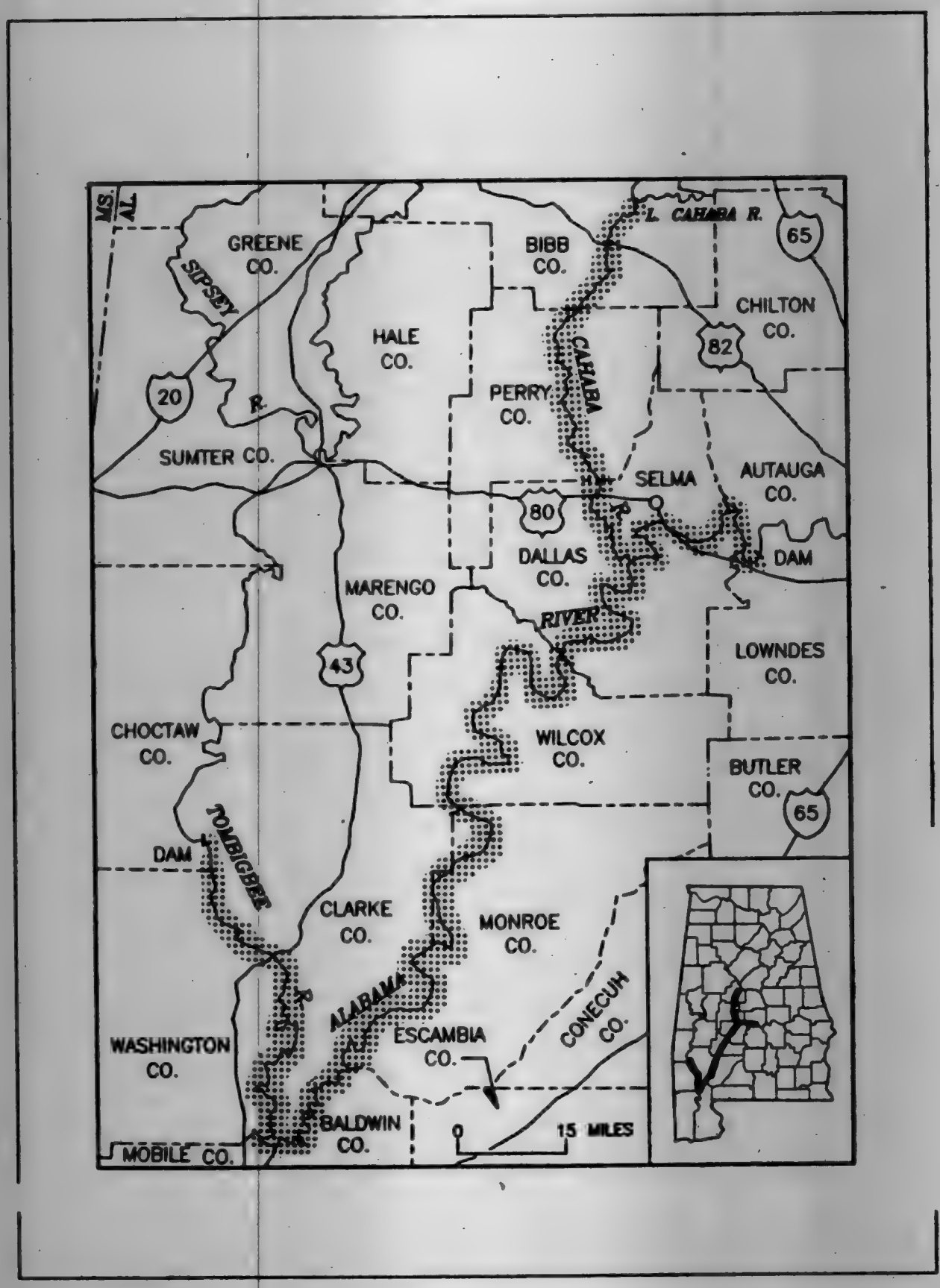

BILLING CODE 4310-55-C

Dated: March 4, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93-13903 Filed 6-14-93; 8:45 am]

BILLING CODE 4310-55-P

federal register

Tuesday
June 15, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Child Welfare Act (ICWA) Grant Program; Notice

VOL 58 ISS 113 JE 15 1993 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Fiscal Year (FY) 1993 Indian Child Welfare Act (ICWA) Grant Program, FY 1992 Grant Extensions for Indian Tribes

ACTION: Notice of FY 1992 Grant Extensions for Indian Tribes.

SUMMARY: This notice provides an update on the status of the promulgation of a revised Final Rule for the Indian Child Welfare Act (ICWA) grant program as codified at 25 CFR part 23, and informs federally recognized Indian tribes of the Fiscal Year (FY) 1993 ICWA grant funds distribution plan.

DATES: This notice takes effect June 15, 1993.

ADDRESSES: Indian tribes with FY 1992 ICWA grant programs must contact their Agency Superintendent or appropriate Area Director to initiate their ICWA grant extensions.

FOR FURTHER INFORMATION CONTACT: Betty Tippeconnie, Bureau of Indian Affairs, Division of Social Services, room 310–SIB, 1849 C Street NW., Washington, DC 20240. Telephone number 202/208–2721.

SUPPLEMENTARY INFORMATION: Title II of the Indian Child Welfare Act, Public Law 95–608 (25 U.S.C. 1901 et seq.; 25 U.S.C. 1931), authorizes the utilization of funds for grants to Indian tribes to operate Indian child and family service programs which promote the intent and purposes of the Act. The Assistant Secretary—Indian Affairs is announcing procedures for the extension of existing ICWA programs operated by Indian tribes in accordance with existing regulations at 25 CFR 23.51 and 276.14. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Bureau has assigned the highest priority to the preparation, finalization and publication of the final ICWA regulations. When published, these regulations will authorize the conversion from the current competitive grant award process to a noncompetitive system for eligible Indian tribes as proposed in the January 12, 1993, Notice of Proposed Rulemaking. The Final Rule is currently undergoing review. Before publication, the Final Rule must undergo a final review by the Office of Management and Budget. The time required for these reviews and subsequent publication of the Final Rule precludes the timely distribution of FY 1993 ICWA funds to all eligible Indian tribes on a noncompetitive basis.

For the reasons given above and for purposes of program continuity, the BIA will be extending the FY 1992 ICWA grant programs operated by Indian tribes in accordance with existing authorities for grant revisions/amendments.

Approximately $9,308,875 in FY 1993 ICWA funds will be available for distribution to the BIA Area Offices for the purpose of extending existing FY 1992 ICWA programs operated by Indian tribes. The extended programs will be funded with FY 1993 ICWA grant funds at approximately 65 percent of their FY 1992 ICWA grant award amounts until such time as all eligible Indian tribes are able to access FY 1994 ICWA funds.

Dated: June 9, 1993.

Thomas Thompson,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 93–14064 Filed 6–14–93; 8:45 am]

BILLING CODE 4310–02–P

Federal Register

Tuesday
June 15, 1993

Part IV

Department of the Interior

Fish and Wildlife Service
50 CFR Part 20
Migratory Bird Hunting; Meeting; Proposed Rule

VOL 58 ISS 113 JE 15 1993 UMI

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Meetings; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; correction.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) announced in an earlier document the meetings of the Service Migratory Bird Regulations Committee. This document announces a change in location for the June 22 meeting (58 FR 31244, June 1, 1993).

DATES: The Service Migratory Bird Regulations Committee will meet to consider proposed regulations for early seasons on June 22, 23, and 24. The June 22 meeting will be delayed until 9 a.m.

ADDRESSES: The June 22 meeting of the Service Migratory Bird Regulations Committee will be held in the Diplomat Room of the State Plaza Hotel, 2117 E Street, NW., Washington, DC. The June 23 and 24 meetings will be held in the Large Buffet Room of the Department of the Interior Building, 1849 C Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION: Due to a conflict in the schedule for the Large Buffet Room in the Main Department of the Interior Building, the location of the June 22 meeting of the Service Migratory Bird Regulations Committee has been moved to the Diplomat Room at the State Plaza Hotel. Announcements of this change and directions to the new location will be posted at the Large Buffet Room. The meeting will be delayed for 30 minutes (until 9 a.m.) to accommodate those persons who may not be aware of the change in location until arriving at the Large Buffet Room.

Dated: June 9, 1993.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–14083 Filed 6–14–93; 8:45 am]

BILLING CODE 4310-55-M

federal register

Tuesday
June 15, 1993

Part V

Department of the Interior

Bureau of Indian Affairs

Approved Nation-State Compact; Notice

VOL 58 ISS 113 JE 15 1993 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved nation-state compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the Nation-State Compact Between the Oneida Indian Nation of New York and the State of New York, which was enacted on April 16, 1993.

DATES: This action is effective June 15, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: June 4, 1993.

Thomas Thompson,

Assistant Secretary, Indian Affairs.

[FR Doc. 93–14065 Filed 6–14–93; 8:45 am]

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federal register

Tuesday
June 15, 1993

Part VI

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Correction to Competitive Discretionary Assistance Program Announcement and Extension of Time To Submit for ABC Intervention Program; Notice

VOL 58 ISS 113 JE 15 1993 UMI

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Notice of Correction to the Competitive Discretionary Assistance Program Announcement and Extension of Time To Submit for the Accountability-Based Community (ABC) Intervention Program

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Department of Justice.

ACTION: This notice clarifies (1) joint application requirements and (2) issues about the required population to be an eligible jurisdiction. This notice also extends the due date.

SUPPLEMENTARY INFORMATION: This is a clarification to 58 FR, page 27170, May 6, 1993.

Eligibility Requirements

Joint Application Requirements

Public applicants must be the primary applicant under this initiative. However, to clarify the intent of the statement concerning joint applicants, applicant organizations may submit joint proposals with other organizations that are eligible to receive funds under part C of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This means that a public applicant may submit a joint application with a private non-profit organization or individual. A public applicant may also contract with private non-profit organizations or individuals to carry out functions under this initiative.

Population Eligibility Requirements

This clarification is provided in response to telephone calls concerning the eligibility requirement that an applicant must be involved in planning a community-based juvenile justice system that is located in and serves: (1) A Metropolitan Statistical Area (MSA) of 350,000 to 500,000 population (2) counties of 350,000 to 500,000; or (3) states certifying a county or MSA with a population of 350,000 to 500,000. It was the intent of the Office of Juvenile Justice and Delinquency Prevention to set a threshold population for eligibility at 350,000—not in the range of 350,000 to 500,000. Therefore the corrected eligibility requirement is as follows:

The applicant must be involved in a juvenile justice system that is located in and serves: (1) A Metropolitan Statistical Area (MSA) with a minimum population of 350,000; (2) counties with a minimum population of 350,000; or (3) states certifying a county or MSA with a population of a minimum of 350,000. The jurisdiction must document this population level in the supporting documents to the application. The jurisdiction must also have documented risk factors.

Due Date

Because of these changes, the due date for submission of applications by mail or delivery to OJJDP is extended to July 15, 1993.

Contact

For further information contact Douglas C. Dodge, Special Emphasis Division, (202) 307–5914.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 93–14035 Filed 6–14–93; 8:45 am]

BILLING CODE 4410–18–P

federal register

Tuesday
June 15, 1993

Part VII

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

The Honorable Albert Gore, Jr.,
President of the Senate, Washington, DC 20510

Dear Mr. President: In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report six proposed rescissions, totaling $176.0 million in budgetary resources.

These proposed rescissions affect the Departments of Housing and Urban Development, Justice, and Transportation. The details of the proposed rescissions are contained in the attached reports.

Sincerely,

William J. Clinton,

The White House, June 4, 1993.

The Honorable Thomas S. Foley,
Speaker of the House of Representatives, Washington, DC 20515

Dear Mr. Speaker: In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report six proposed rescissions, totaling $176.0 million in budgetary resources.

These proposed rescissions affect the Departments of Housing and Urban Development, Justice, and Transportation. The details of the proposed rescissions are contained in the attached reports.

Sincerely,

William J. Clinton,

The White House, June 4, 1993.

BILLING CODE 3110-01-M

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CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

RESCISSION NO.	ITEM	BUDGET AUTHORITY
	Department of Housing and Urban Development:	
	Housing Programs:	
R93–2	Annual contributions for assisted housing	13,000
R93–3	Homeownership and opportunity for people everywhere grants	100,000
	Department of Justice:	
	Legal Activities:	
R93–4	Assets forfeiture fund	20,000
	Department of Transportation:	
	Federal Aviation Administration:	
R93–5	Operations	3,100
R93–6	Grants–in–aid for airports	36,750
	Coast Guard:	
R93–7	Operating expenses	3,150
	Total, rescissions	176,000

R93-2

Department of Housing and Urban Development

Housing Programs

Annual contributions for assisted housing

Of the funds made available under this heading for non-incremental housing assistance in Public Law 102-389 and prior years, $13,000,000 are rescinded.

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Rescission Proposal No. R93–2

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93–344

AGENCY: Department of Housing and Urban Development	New budget authority..... $ 8,778,665,000 (P.L. 102–389)
BUREAU: Housing Programs	Other budgetary resources.. $ 1,722,740,947
Annual contributions for assisted housing 86X0164	Total budgetary resources... $ 10,501,405,947
OMB identification code: 86–0164–0–1–604	Amount proposed for rescission..... $ 13,000,000
Grant program: [X] Yes [ ] No	**Legal authority (in addition to sec. 1012):** [ ] Antideficiency Act [ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi–year: _____ (expiration date) [X] No–Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

JUSTIFICATION: This account funds a variety of new construction and rental assistance programs, including amendments to existing rental assistance contracts. Estimating the need for contract amendments in a given year is an imprecise art. From FY 1992 into FY 1993, there was a larger–than–expected carryover of unobligated balances, particularly for Project Reserve contract amendments, which are unlikely to be used in FY 1993. Therefore, the Administration proposes rescinding $13 million of this carryover in FY 1993.

ESTIMATED PROGRAM EFFECT: There is no programmatic effect since these unobligated balances would not be obligated during the current fiscal year.

OUTLAY EFFECT: (in thousands of dollars):

1993 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998
13,393,000	13,393,000	---	---	---	---	---	---

R93-3

Department of Housing and Urban Development

Housing Programs

Homeownership and opportunity for people everywhere grants

Of the funds made available under this heading in Public Law 102-389 and prior years, $100,000,000 are rescinded: Provided, That of the foregoing amount, $63,000,000 shall be rescinded from the HOPE for the Public and Indian Housing Homeownership Program, and $37,000,000 shall be rescinded from the HOPE for Homeownership of Multi-family Units Program and from amounts earmarked for assistance to mutual housing associations.

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Rescission Proposal No. R93–3

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93–344

AGENCY: Department of Housing and Urban Development	New budget authority..... $ 661,000,000 (P.L. 102–388)
BUREAU: Housing Programs	Other budgetary resources.. $ 179,987,742
Homeownership and opportunity for people everywhere grants 86X0196 86X0196	Total budgetary resources... $ 840,987,742
	Amount proposed for rescission..... $ 100,000,000
OMB identification code: 86–0196–0–1–604	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multi–year: _____ (expiration date) ☒ No–Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This account funds the Homeownership and Opportunity for People Everywhere (HOPE) Grants, which provide homeownership opportunities that are affordable for low–income families. Units will be converted to homeownership from public and Indian housing properties in HOPE 1, from FHA–insured and Government held multi–family properties in HOPE 2, and from Government–owned or held single–family properties in HOPE 3. HOPE grants will be used for property acquisition where appropriate, rehabilitation, mortgage subsidies, security measures, operating reserves, and technical assistance.

An excess of unreserved balances for FY 1993 and prior year funding is being proposed for rescission from the HOPE for Public and Indian Housing Homeownership Program and the HOPE for Homeownership of Multi–family Units Program as a partial offset to proposed increases in Community Development Grants and HOME Investment Partnerships programs. The amounts requested under the two programs will be used to aid residents of areas impacted by Hurricane Andrew, Hurricane Iniki, and Typhoon Omar.

ESTIMATED PROGRAM EFFECT: The availability of funds is reduced for the HOPE program.

OUTLAY EFFECT: (in thousands of dollars):

1993 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998
59,078	58,935	–143	–17,147	–30,779	–26,274	–13,479	–11,051

R93-4

Department of Justice

Legal Activities

Assets forfeiture fund

Of the funds made available under this heading in Public Law 102-395, $20,000,000 are rescinded.

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Rescission Proposal No. R93–4

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93–344

AGENCY: Department of Justice	New budget authority..... $ 93,000,000 (P.L. 102–395)
BUREAU: Legal Activities	Other budgetary resources.. $ 419,531,000
Assets forfeiture fund	Total budgetary resources... $ 512,531,000
1535042	Amount proposed for rescission..... $ 20,000,000
OMB identification code: 15–5042–0–2–752	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act
Grant program: ☐ Yes ☒ No	☐ Other _____
Type of account or fund: ☒ Annual	**Type of budget authority:** ☒ Appropriation
☐ Multi–year: _____ (expiration date)	☐ Contract authority
☐ No–Year	☐ Other _____

JUSTIFICATION: This appropriation funds the Assets forfeiture fund. The Comprehensive Crime Control Act of 1984 established the Assets forfeiture fund, into which forfeited cash and the proceeds of sale of forfeited property are deposited. Authorities of the fund have been amended by various public laws enacted since 1984. Under current law, authority to use the fund for investigative expenses is required to be specified in annual appropriation acts.

The amounts appropriated for the Assets forfeiture fund for 1993 by Public Law 102–395 are in excess of current needs as a result of enactment of legislation amending the Assets forfeiture fund authorities. Therefore, the rescission of $20 million is proposed. This rescission will be used to offset other higher priority programs.

ESTIMATED PROGRAM EFFECT: No program effect is anticipated as the rescission affects appropriated amounts that are in excess of current needs.

OUTLAY EFFECT: (in thousands of dollars):

1993 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998
479,944	471,944	–8,000	–8,000	–4,000	---	---	---

R93-5

Department of Transportation

Federal Aviation Administration

Operations

Of the funds made available under this heading in Public Law 102-388, $3,100,000 are rescinded.

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Rescission Proposal No. R93–5

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93–344

AGENCY: Department of Transportation	New budget authority..... $ 2,258,679,000 (P.L. 102–388)
BUREAU: Federal Aviation Administration	Other budgetary resources.. $ 2,340,342,000
Operations	Total budgetary resources... $ 4,599,021,000
6931301 69x1301	Amount proposed for rescission..... $ 3,100,000
OMB identification code: 69–1301–0–1–402	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☐ Multi–year: _____ (expiration date) ☒ No–Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This account funds the operation and maintenance of the Federal Aviation Administration. It finances the personnel and support costs of operating and maintaining the air traffic control system and ensuring the safety and security of aircrafts, flight procedures, navigation aids, and airports through periodic inspections. It also supports overall policy direction and guidance. This rescission proposal reflects reduced estimates of overhead costs.

ESTIMATED PROGRAM EFFECT: There is no programmatic effect as the rescission proposal reflects the more efficient conduct of current programs.

OUTLAY EFFECT: (in thousands of dollars):

1993 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998
2,227,687	2,224,959	–2,728	–372	---	---	---	---

R93-6

Department of Transportation

Federal Aviation Administration

Grants-in-aid for airports

Of the funds available under this heading, $36,750,000 are rescinded.

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Rescission Proposal No. R93–6

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93–344

AGENCY: Department of Transportation	New budget authority..... $ 2,907,237,629 (P.L. 102–388)
BUREAU: Federal Aviation Administration	Other budgetary resources.. $ –1,022,237,629
Grants–in–aid to airports 69X8106	Total budgetary resources... $ 1,885,000,000
	Amount proposed for rescission..... $ 36,750,000
OMB identification code: 69–8106–0–7–402	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multi–year: _____ (expiration date) ☒ No–Year	**Type of budget authority:** ☐ Appropriation ☒ Contract authority ☐ Other _____

JUSTIFICATION: This account funds the Grants–in–aid to airports program, which supports airport development and noise mitigation programs through grants to States, localities, and airports. The contract authority proposed to be rescinded is part of the approximately $1 billion in contract authority that is unavailable for obligation due to the obligation limitation placed upon this account in the FY 1993 appropriations act (P.L. 102–388). There are no plans to use this contract authority in the future.

ESTIMATED PROGRAM EFFECT: There is no programmatic effect since this contract authority is not available for obligation.

OUTLAY EFFECT: (in thousands of dollars):

1993 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998
2,071,800	2,071,800	---	---	---	---	---	---

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R93-7

Department of Transportation

Coast Guard

Operating expenses

Of the funds made available under this heading in Public Law 102-388, $3,150,000 are rescinded.

Rescission Proposal No. R93–7

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93–344

AGENCY: Department of Transportation	New budget authority..... (P.L. 102–388) $ 2,247,750,000
BUREAU: United States Coast Guard	Other budgetary resources.. $ 443,050,000
Operating expenses 6930201 69x0201	Total budgetary resources... $ 2,690,800,000 Amount proposed for rescission..... $ 3,150,000
OMB identification code: 69–0201–0–1–999	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☒ Annual ☐ Multi–year: _____ (expiration date) ☒ No–Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This account funds the operating expenses of the United States Coast Guard to carry out its unique duties as a peacetime operating agency and one of the military services. The Coast Guard employs multi–purpose vessels, aircraft, and shore units, strategically located along the coasts and inland waterways of the United States and in selected areas overseas. This account funds public safety and law enforcement programs. The rescission is proposed to reflect revised estimates of overhead costs.

ESTIMATED PROGRAM EFFECT: There are no programmatic effects as the rescission proposal reflects the more efficient conduct of current programs.

OUTLAY EFFECT: (In thousands of dollars):

1993 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1993	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998
2,604,689	2,602,169	–2,520	–630	---	---	---	---

[FR Doc. 93–13975 Filed 6–14–93; 8:45 am]
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Part VIII

The President

Executive Order 12851—Administration of Proliferation Sanctions, Middle East Arms Control, and Related Congressional Reporting Responsibilities

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Presidential Documents

Title 3—

The President

Executive Order 12851 of June 11, 1993

Administration of Proliferation Sanctions, Middle East Arms Control, and Related Congressional Reporting Responsibilities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code; sections 1701–1703 of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510 (50 U.S.C. App. 2402 note, 2405, 2410b; 22 U.S.C. 2797–2797c); sections 303, 324, and 401–405 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, Public Law 102–138; sections 305–306 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, Public Law 102–182 (50 U.S.C. App. 2410c; 22 U.S.C. 2798, 5604–5606); sections 241 and 1097 of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102–190; and section 1364 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102–484, I hereby order as follows:

Section 1. *Chemical and Biological Weapons Proliferation and Use Sanctions.* (a) *Chemical and Biological Weapons Proliferation.* The authority and duties vested in me by section 81 of the Arms Export Control Act, as amended ("AECA") (22 U.S.C. 2798), and section 11C of the Export Administration Act of 1979, as amended ("EAA") (50 U.S.C. App. 2410c), are delegated to the Secretary of State, except that:

(1) The authority and duties vested in me to deny certain United States Government contracts, as provided in section 81(c)(1)(A) of the AECA and section 11C(c)(1)(A) of the EAA, pursuant to a determination made by the Secretary of State under section 81(a)(1) of the AECA or section 11C(a)(1) of the EAA, as well as the authority and duties vested in me to make the determinations provided for in section 81(c)(2) of the AECA and section 11C(c)(2) of the EAA are delegated to the Secretary of Defense. The Secretary of Defense shall notify the Secretary of the Treasury of determinations made pursuant to section 81(c)(2) of the AECA and section 11(c)(2) of the EAA.

(2) The authority and duties vested in me to prohibit certain imports as provided in section 81(c)(1)(B) of the AECA and section 11C(c)(1)(B) of the EAA, pursuant to a determination made by the Secretary of State under section 81(a)(1) of the AECA or section 11C(a)(1) of the EAA, and the obligation to implement the exceptions provided in section 81(c)(2) of the AECA and section 11C(c)(2) of the EAA, insofar as the exceptions affect imports of goods into the United States, are delegated to the Secretary of the Treasury.

(b) *Chemical and Biological Weapons Use.* The authority and duties vested in me by sections 306–308 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (22 U.S.C. 5604–5606) are delegated to the Secretary of State, except that:

(1) The authority and duties vested in me to restrict certain imports as provided in section 307(b)(2)(D), pursuant to a determination made by the Secretary of State under section 307(b)(1), are delegated to the Secretary of the Treasury.

(2) The Secretary of State shall issue, transmit to the Congress, and notify the Secretary of the Treasury of, as appropriate, waivers based upon findings made pursuant to section 307(d)(1)(A)(ii).

(3) The authority and duties vested in me to prohibit certain exports as provided in section 307(a)(5) and section 307(b)(2)(C), pursuant to a determination made by the Secretary of State under section 306(a)(1) and section 307(b)(1), are delegated to the Secretary of Commerce.

(c) *Coordination Among Agencies.* The Secretaries designated in this section shall exercise all functions delegated to them by this section in consultation with the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, the Secretary of Commerce, the Director of the Arms Control and Disarmament Agency, and other departments and agencies as appropriate, utilizing the appropriate interagency groups prior to any determination to exercise the prohibition authority delegated hereby.

Sec. 2. *Missile Proliferation Sanctions.* (a) *Arms Export Control Act.* The authority and duties vested in me by sections 72–73 of the AECA (22 U.S.C. 2797a–2797b) are delegated to the Secretary of State, except that:

(1) The authority and duties vested in me by section 72(a)(1) to make determinations with respect to violations by United States persons of the EAA are delegated to the Secretary of Commerce.

(2) The authority and duties vested in me to deny certain United States Government contracts as provided in sections 73(a)(2)(A)(i) and 73(a)(2)(B)(i), pursuant to a determination made by the Secretary of State under section 73(a)(1), as well as the authority and duties vested in me to make the findings provided in sections 72(c), 73(f), and 73(g)(1), are delegated to the Secretary of Defense. The Secretary of State shall issue, transmit to the Congress, and notify the Secretary of the Treasury of, as appropriate, any waivers based upon findings made pursuant to sections 72(c) and 73(f).

(3) The authority and duties vested in me to prohibit certain imports as provided in section 73(a)(2)(C), pursuant to a determination made by the Secretary of State under that section, and the obligation to implement the exceptions provided in section 73(g), are delegated to the Secretary of the Treasury.

(b) *Export Administration Act.* The authority and duties vested in me by section 11B of the EAA (50 U.S.C. App. 2410b) are delegated to the Secretary of Commerce, except that:

(1) The authority and duties vested in me by sections 11B(a)(1)(A) (insofar as such section authorizes determinations with respect to violations by United States persons of the AECA), 11B(b)(1) (insofar as such section authorizes determinations regarding activities by foreign persons), and 11B(b)(5) are delegated to the Secretary of State.

(2) The authority and duties vested in me to make the findings provided in sections 11B(a)(3), 11B(b)(6), and 11B(b)(7)(A) are delegated to the Secretary of Defense. The Secretary of Commerce shall issue, transmit to the Congress, and notify the Secretary of the Treasury of, as appropriate, waivers based upon findings made pursuant to section 11B(a)(3). The Secretary of State shall issue, transmit to the Congress, and notify the Secretary of the Treasury of, as appropriate, waivers based upon findings made pursuant to section 11B(b)(6).

(3) The authority and duties vested in me to prohibit certain imports as provided in section 11B(b)(1), pursuant to a determination by the Secretary of State under that section, and the obligation to implement the exceptions provided in section 11B(b)(7), are delegated to the Secretary of the Treasury.

(c) *Reporting Requirements.* The authority and duties vested in me to make certain reports to the Congress as provided in section 1097 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 and section 1364 of the National Defense Authorization Act for Fiscal Year 1993 are delegated to the Secretary of State.

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(d) *Coordination Among Agencies.* The Secretaries designated in this section shall exercise all functions delegated to them by this section in consultation with the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, the Secretary of Commerce, the Director of the Arms Control and Disarmament Agency, and other departments and agencies as appropriate, utilizing the appropriate interagency groups prior to any determination to exercise prohibition authority delegated hereby.

Sec. 3. *Arms Control in the Middle East.* The certification and reporting functions vested in me by sections 403 and 404 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, are delegated to the Secretary of State. The Secretary of State shall exercise these functions in consultation with the Secretary of Defense and other agencies as appropriate.

Sec. 4. *China and Weapons Proliferation.* The reporting functions regarding China and weapons proliferation vested in me by sections 303(a)(2) and 324 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, are delegated to the Secretary of State. The Secretary of State shall exercise these functions in consultation with the Secretary of Defense and other agencies as appropriate.

Sec. 5. *Arrow Tactical Anti-Missile Program.* The authority and duties vested in me to make certain certifications as provided by section 241(b)(3)(C) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 are delegated to the Secretary of State.

Sec. 6. *Delegations.* The functions delegated herein may be redelegated as appropriate. Regulations necessary to carry out the functions delegated herein may be issued as appropriate.

Sec. 7. *Priority.* This order supercedes the Memorandum of the President, "Delegation of Authority Regarding Missile Technology Proliferation," June 25, 1991. To the extent that this order is inconsistent with any provisions of any prior Executive order or Presidential memorandum, this order shall control.

William J. Clinton

THE WHITE HOUSE,
June 11, 1993.

[FR Doc. 93-14289
Filed 6-14-93; 10:26 am]
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S. 1/P.L. 103–43
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Briefings on How To Use the Federal Register
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The President

Proclamation 6572 of June 14, 1993

Flag Day and National Flag Week, 1993

By the President of the United States of America

A Proclamation

In 1777, the Continental Congress adopted the Stars and Stripes as the official flag of the young United States of America. Describing the new flag, the Congress wrote, "White signifies Purity and Innocence; Red, Hardiness and Valor; Blue signifies Vigilance, Perseverance and Justice," with the stars forming "a new constellation."

The words of the Continental Congress ring truer to us today than ever before. Wherever the Stars and Stripes are flown, they represent the highest ideals of America: justice, purity, and strength. The flag has flown over smoky battlefields, peaceful demonstrations, and wherever else Americans strive to express their precious freedoms in the face of adversity. Today, in accordance with congressional joint resolutions (63 Stat. 492 and 80 Stat. 194), we set aside June 14 as Flag Day and the week beginning June 13 as National Flag Week to honor the colors and stars that have flown proudly over the United States for 216 years.

Just as we pay our respects to our flag, so must we honor our Nation's Founders, the brave people who inscribed their names on the Declaration of Independence and breathed life into its text. The ideals embodied by the Declaration have served as a guide for our Nation and an inspiration for people around the world. This document delineated the very idea of America, that individual rights are derived not from the generosity of the government, but from the hand of the Almighty. The Founders forever abandoned their allegiance to the old European notions of caste and dedicated themselves to the belief that all people are created equal.

The brilliant men who gathered in Philadelphia in 1776 to declare our Nation's independence risked their honor, their fortunes, and their very lives to create a better future for their children and grandchildren. We, the inheritors of freedom's legacy, owe our liberties to the fact that our Founders saw the need for dramatic change and acted upon it.

Today, vast changes are sweeping the globe. Nations that have known only tyranny for centuries are now dedicating themselves to the ideals of freedom and democracy. And wherever freedom is proclaimed, echoes of the American Declaration of Independence can be heard. Thomas Jefferson's words are being spoken in dozens of nations in hundreds of languages.

We are justly proud of the influence that our beliefs have had on the world. But the mission of America is far from complete. While the world is filled with opportunity, it is rife with uncertainty. We must dedicate ourselves to carrying on the dreams of the Founders and adding our own chapter to the unfinished American story. By embracing the changes that are altering the landscape of the world today, we help ensure a brighter, more democratic, and more peaceful world. As we celebrate our independence, I encourage all Americans to rededicate themselves to the conviction that our precious freedoms require constant vigilance and reaffirmation.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim June 14, 1993, as Flag Day and the week beginning June 13, 1993, as National Flag Week. I direct the appropriate officials of the government to display the flag of the United States on all government buildings during that week. I encourage all Americans to observe Flag Day and Flag Week by flying the Stars and Stripes from their homes and other suitable places. I also urge the American people to celebrate those days from Flag Day through Independence Day, as set aside by the Congress (89 Stat. 211), as a time to honor America, by having public gatherings and activities at which they can honor and pledge their allegiance to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of June, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93-14345
Filed 6-14-93; 2:02 pm]
Billing code 3195-01-P

Editorial note: For the President's remarks on signing this proclamation, see issue no. 24 of the *Weekly Compilation of Presidential Documents*.

VOL 58 ISS 114 JE 16 1993 UMI

Rules and Regulations

Federal Register
Vol. 58, No. 114
Wednesday, June 16, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

[FV92-907-6 FR]

Navel and Valencia Oranges Grown in Arizona and Designated Parts of California; Suspension of Provisions Regarding Committee Compensation and Correction in Committees' Address

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension and final rule.

SUMMARY: This document effectuates two actions regarding the California-Arizona navel and Valencia orange marketing orders. The marketing orders regulate the handling of navel and Valencia oranges grown in Arizona and designated parts of California and are administered locally by the Navel and Valencia Orange Administrative Committees (committees). The first action suspends, for an indefinite period, provisions of the marketing orders limiting compensation rates for committee members. Presently, such compensation is limited to $25 per day. The second action modifies the orders' rules and regulations to reflect the committees' current address. These actions were recommended by the committees at a meeting on November 24, 1992.

EFFECTIVE DATE: June 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mark J. Kreaggor, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127; or Maureen Pello, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This action is issued under Marketing Order Nos. 907 and 908 [7 CFR parts 907 and 908], as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California, hereinafter referred to as the "orders." These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

This action has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of navel oranges and 115 handlers of Valencia oranges who are subject to regulation under the respective marketing orders and approximately 4,000 producers of navel oranges and 3,500 producers of Valencia oranges in the regulated areas. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and handlers of California-Arizona navel and Valencia oranges may be classified as small entities.

A proposal was published in the Federal Register on February 18, 1993, [58 FR 8912] inviting comments on two actions regarding the California-Arizona navel and Valencia orange marketing orders. That proposal provided a 15-day comment period which ended March 5, 1993. Two comments were received on the proposal. Both comments were from the manager of the committees, supporting the suspension of the marketing order provisions limiting the compensation rate for committee members. The comments stated that the existing compensation rate of $25 per day for committee members is too low under current economic conditions.

This action suspends, for an indefinite period, provisions of the marketing orders limiting compensation rates for committee members. Presently, such compensation is limited to $25 per day. The final rule also modifies the orders' rules and regulations to reflect the committees' current address. These actions were recommended by the committees at a joint meeting on November 24, 1992, with a unanimous vote by the Valencia Orange Administrative Committee (VOAC) and a vote of 10 in favor and one opposed by the Navel Orange Administrative Committee (NOAC).

The NOAC and VOAC are responsible for locally administering the marketing orders for California-Arizona navel and

Valencia oranges, respectively. Each committee consists of 10 members who may be growers, employees of growers, handlers, employees of handlers, or employees of cooperative marketing organizations, and one non-industry member. Each grower member has an alternate and an additional alternate member. Each handler and non-industry member has a single alternate.

Sections 907.31 and 908.31 of the navel and Valencia orange marketing orders, respectively, currently provide that committee members and their respective alternates, when acting as members, be reimbursed for expenses necessarily incurred by them in the performance of their duties. Those sections also state that these members and alternates shall receive compensation at a rate determined by the respective committee, which rate shall not exceed $25 per day, or portion thereof, spent in performing such duties.

Sections 907.31 and 908.31 were amended in 1985 whereby the compensation rates for committee members and alternates were increased from $25 per day to a rate not to exceed $100 per day. In addition, the committees' non-industry members' compensation rate was set at a rate not to exceed $250 per day. However, those amendments were removed from the orders as a result of an August 21, 1992, decision by the U.S. Court of Appeals for the Ninth Circuit in San Francisco, California, invalidating the 1985 amendments to the Valencia orange marketing order on procedural grounds. The decision also relates to the navel orange marketing order because that order was amended concurrently with the Valencia orange order using the same procedures. Thus, with removal of the 1985 amendments, committee members' compensation rates as specified by the orders reverted to a maximum of $25 per day.

The committees believe that the $25 per day rate is too low under current economic conditions. Many committee members and alternates commute long distances and spend time away from their own or their employers' businesses in order to fulfill their obligations as committee members. In addition, committee members were reimbursed at a higher level during the past seven years. Therefore, the committees recommended that the provisions of the orders limiting compensation to $25 per day be suspended so that the committees may recommend an increase in the rates. Any increase in the rates will be subject to approval by the Secretary in the committees' annual budget.

This action will not have a significant economic impact on small producers or handlers. The compensation rate paid to committee members is derived from the administrative budget which consists of uniform assessments collected from handlers in order for the committees to operate and carry out their functions each season. The committees do not anticipate that it will be necessary to increase the current assessment rates to cover the additional expense. In fact, higher compensation rates were included in the committees' current budgets for the 1992–93 fiscal year which became effective on November 1, 1992. The compensation rates paid to committee members has not been a substantial portion of the committees' budgets, and is not expected to become a substantial item in the budgets in the future. Thus, there is no significant impact anticipated.

This rule also modifies the committees' address as specified in paragraphs (g) and (h) of §§ 907.100 and 908.100 and in §§ 907.101 and 908.101 of the orders' rules and regulations to reflect the committees' current address. The committees moved their office in the fall of 1990 from Los Angeles to Newhall, California. The committees' new address is 25129 The Old Road, Suite 300, Newhall, California, 91381.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the committees' recommendations, the comments received, and other available information, it is found that the provisions of the marketing orders limiting compensation for committee members no longer tend to effectuate the declared policy of the Act. It is further found that the correction of the committees' address will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) NOAC and VOAC meetings are ongoing; (2) this action needs to be in place as soon as possible to ensure adequate compensation of committee members; and (3) the proposed rule provided a 15-day comment period, and both comments received favored this action.

List of Subjects in 7 CFR Parts 907 and 908

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 907 and 908 are amended as follows:

1. The authority citation for both 7 CFR parts 907 and 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Note: These amendments will appear in the Code of Federal Regulations.

§ 907.31 [Amended]

2. In § 907.31, the words ", which rate shall not exceed $25 per day or portion thereof spent in performing such duties" in the first sentence, and the words "at the rate provided in this section" in the second sentence are suspended indefinitely.

3. In § 907.100, paragraph (g) and the first sentence of paragraph (h) are revised to read as follows:

§ 907.100 Definitions.

* * * * *

(g) Whenever a time of day is specified in this subpart, it shall mean local time in effect at the headquarters of the committee in Newhall, Calif., except when specifically stated otherwise.

(h) The regular weekly meeting of the committee is held on Tuesday at the headquarters in Newhall. * * *

* * * * *

§ 907.101 [Amended]

4. Section 907.101 is amended to remove the words "117 West Ninth Street, Room 913, Los Angeles, CA 90015" and add in their place the words "25129 The Old Road, suite 300, Newhall, California, 91381".

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Note: These amendments will appear in the Code of Federal Regulations.

§ 908.31 [Amended]

5. In § 908.31, the words ", which rate shall not exceed $25 per day or portion thereof spent in performing such duties" in the first sentence, and the words "at the rate provided in this section" in the second sentence are suspended indefinitely.

6. In § 908.100, paragraph (g) and the first sentence of paragraph (h) are revised to read as follows:

§ 908.100 Definitions.

* * * * *

(g) Whenever a time of day is specified in this subpart, it shall mean local time in effect at the headquarters of the committee in Newhall, Calif., except when specifically stated otherwise.

(h) The regular weekly meeting of the committee is held on Tuesday at the headquarters in Newhall. * * *

* * * * *

§ 908.101 [Amended]

7. Section 908.101 is amended to remove the words "117 West Ninth Street, room 913, Los Angeles, CA 90015" and add in their place the words "25129 The Old Road, Suite 300, Newhall, California, 91381".

Dated: June 3, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–14126 Filed 6–15–93; 8:45 am]

BILLING CODE 3410–02–M

FARM CREDIT ADMINISTRATION

12 CFR Part 620

RIN 3052–AB40

Disclosure to Shareholders

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under part 620 on May 12, 1993 (58 FR 27922). The final regulation amends 12 CFR part 620 to expand the options available to Farm Credit System institutions to comply with the requirements of the directors' certification pertaining to quarterly reports. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the Federal Register during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is June 17, 1993.

EFFECTIVE DATE: June 17, 1993.

FOR FURTHER INFORMATION CONTACT:

Tong-Ching Chang, Staff Accountant, Technical and Operations Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4483, TDD (703) 883–4444, or

William L. Larsen, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020

(12 U.S.C. 2252(a)(9) and (10))

Date: June 10, 1993.

Curtis Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–14166 Filed 6–15–93; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 27314]

RIN 2120–AE–40

Special Federal Aviation Regulation No. 64; Special Flight Authorizations for Noise Restricted Aircraft, Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; Correction.

SUMMARY: This action deletes the amendment number inadvertently used with SFAR 64 published on June 3, 1993; 58 FR 31640. SFAR No. 64 allows persons to bring a noise-restricted aircraft into the United States under certain conditions without requesting an exemption.

EFFECTIVE DATE: June 3, 1993.

FOR FURTHER INFORMATION CONTACT:

Ms. Laurette Fisher, Policy and Regulatory Division (AEE–300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267–3561.

SUPPLEMENTARY INFORMATION: The document was published June 3, 1993, 58 FR 31640. Please delete ", Amendment No. 91–232" from the heading in column one on page 31640.

Denise Castaldo,

Manager, Program Management Staff.

[FR Doc. 93–14144 Filed 6–15–93; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 260

[Release Nos. 33–7002, 34–3213; International Series Release No. 550]

RIN 3235–AC64

Multijurisdictional Disclosure; Eligibility of British Columbia Trustees and Exemption for British Columbia Trust Indentures From Specific Provisions of the Trust Indenture Act

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today adopted an amendment to Rule 10a–5 under the Trust Indenture Act of 1939 ("Trust Indenture Act") to permit any person incorporated and regulated as a trust company under the laws of the province of British Columbia, who is authorized to exercise corporate trust powers and subject to federal supervision or examination under the laws of Canada, to act as sole trustee under indentures qualified or to be qualified under the Trust Indenture Act in connection with offerings under the Commission's multijurisdictional disclosure system with Canada.

In addition, the Commission today adopted an amendment to Rule 4d–9 under the Trust Indenture Act to exempt from the operation of specified provisions of the Trust Indenture Act trust indentures of British Columbia obligors filing registration statements in the United States under the multijurisdictional disclosure system.

EFFECTIVE DATE: June 16, 1993.

FOR FURTHER INFORMATION CONTACT:

Martin P. Dunn or Mark W. Green, (202) 272–2573, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today adopted amendments to Rule 4d–9 [1] and 10a–5 [2] under the Trust Indenture Act.[3]

I. Executive Summary

In 1991, the Commission adopted rules implementing its multijurisdictional disclosure system with Canada ("MJDS").[4] Those rules generally provide an exemption from

[1] 17 CFR 260.4d–9.

[2] 17 CFR 260.10a–5.

[3] 15 U.S.C. 77aaa *et seq.*

[4] *See* Securities Act Release No. 6902 [56 FR 30036] (June 21, 1991).

the operation of specific provisions of the Trust Indenture Act (including the requirement for a United States institutional trustee) for trust indentures and trust companies subject to Canadian federal law and most Canadian provincial laws. Exemptive relief was not provided, however, for trust indentures or trust companies subject to British Columbia provincial law, because under the Company Act, R.S.B.C. 1979, c. 59 of British Columbia ("Company Act"), United States obligors who make offerings in British Columbia were precluded from using an indenture qualified only under the Trust Indenture Act.[5] Furthermore, because of the province's residency requirement, a United States institutional trustee ("United States trustee") was not permitted to act as sole trustee under an indenture.[6] Although British Columbia authorities advised that they would seek legislation to provide exemptive authority so that United States obligors could use trust indentures qualified under the Trust Indenture Act and appoint United States to act as sole indenture trustee, the timing of enactment of such legislation was not known at that time.[7] Rather than delay the implementation of MJDS until changes were made in British Columbia law, the Commission adopted Rules 4d–9 and 10a–5 under the Trust Indenture Act and excluded British Columbia obligors and trust companies.

After the adoption of Rules 4d–9 and 10a–5, the Company Act was amended to authorize the Superintendent of Brokers ("Superintendent"), appointed by the British Columbia Securities Commission, to exempt trust indentures from one or more provisions of the Company Act. Shortly thereafter, the Commission proposed that Rules 4d–9 and 10a–5 be amended to rescind the exclusion of British Columbia trust companies and trust indentures from exemptions presently available in MJDS offerings of debt securities.[8] The Superintendent has indicated that he will issue a "blanket order" exempting United States obligors from the requirements of the Company Act (including the residency requirements for institutional trustees) contemporaneously with the amendments to Rules 4d–9 and 10a–5 being adopted today.

[5] *Id.* at 71.

[6] *Id.* at 69–70.

[7] *Id.* at 71.

[8] *See*, Trust Indenture Act Release No. 2297 [57 FR 57713] (December 1, 1992) (the "Proposing Release"). No comments were received in response to the Proposing Release.

II. Discussion

The Commission today adopted amendments to Rules 4d–9 and 10a–5 under the Trust Indenture Act that rescind the exclusion of British Columbia trust companies and trust indentures from exemptions presently available in MJDS offerings of debt securities. Under the amended rules, a British Columbia obligor will be able to offer its debt securities pursuant to a trust indenture that complies with the Company Act. British Columbia obligors also will be permitted to appoint as sole trustee any trust company that is subject to supervision or examination under Trust Companies Act (Canada)[9] or the Canada Deposit Insurance Corporation.[10] Finally, any trust company incorporated and regulated under the Company Act that otherwise satisfies the requirements of Rule 10a–5(a)[11] will be eligible to act as sole trustee under a qualified indenture.

III. Effective Date

These amended rules shall be effective immediately upon publication in the **Federal Register**, in accordance with the Administrative Procedure Act, which allows effectiveness in less than 30 days after publication for a "substantive rule which grants or recognizes an exemption or relieves a restriction," 5 U.S.C. 553(d)(1).

IV Cost Benefit Analysis

No specific data was submitted in response to the Commission's invitation to provide information on the costs and benefits of the proposed amendments to Rules 4d–9 and 10a–5.

The rules provide an exemption from specified provisions of the Trust Indenture Act, and relate to a determination that British Columbia trust companies are eligible to act as sole trustees under qualified indentures, respectively. The benefit to British Columbia obligors and Canadian trustees (including British Columbia trust companies) of permitting appointment of trust companies subject to Canadian federal or provincial law for offerings made in the United States by British Columbia obligors, and exempting the trust indentures of such obligors from the operation of specified provisions of the Trust Indenture Act greatly outweighs any burden. The only entities eligible for exemption under the amended rules will be British Columbia obligors and Canadian trustees. Any impact on such entities would be minimal. The amended rules also benefit public security holders by facilitating the expansion of investment opportunities for United States citizens by removing barriers to public issuances of debt securities by British Columbia registrants in the United States.

[9] Trust Companies Act (Canada), R.S.C. 1985.

[10] Canada Deposit Insurance Corporation Act, R.S.C. 1985. III.

[11] 17 CFR 260.10a–5(a).

V. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], at the time the Commission issued the Proposing Release the Chairman of the Commission certified that the amendments to Rule 4d–9 under section 304(d) of the Trust Indenture Act and Rule 10a–5 under section 310(a)(1) of the Trust Indenture Act will not have a significant impact on a substantial number of small entities. That certification, including the reasons therefor, was attached as Appendix A to the Proposing Release.

VI. Statutory Bases and Text of Adopted Regulations and Form

Rules 4d–9 and 10a–5 are amended pursuant to the authority of sections 304, 305, 307, 308, 310, 314, and 319 of the Trust Indenture Act of 1939, as amended [15 U.S.C. 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, and 77sss].

List of Subjects in 17 CFR Part 260

Reporting and recordkeeping requirements, Securities, Trusts and trustees.

Text of Regulations and Forms

In accordance with the foregoing, title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

1. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

2. In § 260.4d–9, amend the introductory text of paragraph (a) by removing the phrase "Subject to paragraph (b) of this section [17 CFR 260.4d–9], any" and adding in its place "Any"; in paragraph (a)(2) remove the word "or"; in paragraph (a)(3) remove the period and add "; or"; remove paragraph (b) and redesignate paragraphs (a) introductory text and (a)(1) through (a)(3) as the introductory text of the section and paragraphs (a) through (c); and add paragraph (d) to read as follows:

§ 260.4d–9 Exemption for Canadian trust indentures from specified provisions of the act.

* * * * *

(d) the Company Act, R.S.B.C. 1979, C. 59.

§ 260.10a–5 [Amended]

3. In § 260.10a–5, amend paragraph (a) by removing the phrase "paragraphs (b), (c), and (d)" and add in its place "paragraph (b)"; remove paragraphs (b) and (c) and redesignate paragraph (d) as paragraph (b).

Dated: June 10, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14120 Filed 6–15–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD9–93–20]

Drawbridge Operation Regulations, Chicago River, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation.

SUMMARY: The Coast Guard is hereby providing notice that the City of Chicago has been granted permission to temporarily deviate from regulations governing the opening of certain drawbridges over the Chicago River, from June 1 to July 31, 1993, for the purpose of evaluating the reasonableness of possible changes to the permanent regulations. This deviation reduces the periods during which the City must open the draws for recreational vessels, requires the vessels to give advance notice, and requires vessels leaving the boatyards from winter storage to pass through the draws in organized flotillas. Boats returning to the boatyards for necessary repairs and service during the period of this deviation shall be passed through the draws of the bridges during the designated days and times. Boats returning for repairs shall be passed through the bridges without regard as to a minimum number of boats.

EFFECTIVE DATE: The period of deviation is from Tuesday, June 1, 1993, to Saturday, July 31, 1993.

ADDRESSES: Comments may be sent to Robert W. Bloom, Jr., Bridge Program Manager, Ninth Coast Guard District, room 2083D, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, telephone (216) 522–3993.

FOR FURTHER INFORMATION CONTACT: Robert W. Bloom, Jr., Bridge Program Manager, Ninth Coast Guard District, room 2083D, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, telephone (216) 522–3993.

SUPPLEMENTARY INFORMATION: The Coast Guard granted a temporary deviation to the regulations for bridges owned and operated by the City of Chicago presently governed in accordance with 33 CFR 117.391 which allows the City to not open the draws during peak vehicle traffic periods during the morning and afternoon rush hours. In addition, certain bridges need not open unless notice is given in advance of a vessel's time of intended passage through the draws. The boat yards that are located on the North and South Branches of the Chicago River are faced with two critical periods when there are as many as five to twenty-five boats leaving the Chicago River System on given days in the spring and returning in the fall. The City originally requested that multiple boat transits be restricted to only Saturday and Sunday mornings, unless there is a special event on these days, at which time a bridge may not be required to open for vessel traffic to pass. In addition, the City submits that it is unduly burdensome to open the bridges for the passage of single recreational vessels within the Chicago River System. This temporary period of deviation is being granted to the City of Chicago in order to evaluate the reasonableness of possible changes to the permanent regulations. In addition, the Tuesday and Thursday starting time for the flotillas to begin their trips to Lake Michigan has been changed and a Wednesday opening has been added. This deviation is intended to best accommodate the City of Chicago while still providing for the reasonable needs of recreational vessels transiting the Chicago River System.

On Wednesday, May 12, 1993, the Coast Guard published a temporary deviation in the **Federal Register**, FR 27933 and 27934, granting the City of Chicago permission to open their bridges from 6 a.m. on Saturdays through 7 p.m. on Sundays for the passage of organized flotillas consisting of no less than five and not more than twenty-five vessels; on Tuesdays and Thursdays the draws were required to open for the passage of organized flotillas consisting of no less than five and not more than twenty-five vessels, from 6:30 p.m. until all organized flotillas have safely completed passage. This deviation will change the starting time from 6:30 p.m. to 6 p.m. on Tuesdays and Thursdays and add Wednesdays to the 6 p.m. starting time for the passage of recreational boat flotillas. The new starting time of 6 p.m., combined with late sunsets, will provide recreational vessels with more daylight hours to navigate the river. The times for the Saturday and Sunday transits have not been changed.

There were 69 comments received as a result of the temporary deviation published in the **Federal Register**, Docket Number (CGD9–93–08). Of these 69 comments; 32 were concerned with the safety of vessels navigating at night and the number of vessels required to transit through the Chicago River System during the late hours; 52 comments were totally opposed to the deviation; 60 comments requested that the deviation be rescinded; 51 thought a public hearing should have been held prior to the granting of the deviation; 18 comments were concerned with the length of time it takes to transit the Chicago River System into Lake Michigan; 22 comments were concerned with the reliability of the bridges and their operators; 6 comments were not opposed to the deviation but would like to have regulations less restrictive; 6 comments wanted more day openings.

The City of Chicago has agreed to add an additional day during the week, Wednesdays, and has adjusted the starting time of the flotillas to begin one-half hour earlier during the weekday openings. In addition, the City has attempted to shorten the length of time it takes for flotillas transiting the river. When the organized trips began, the average time it took for vessels to get out into Lake Michigan was 6 to 9 hours. The City has strived to improve the reliability of the bridges to open in a timely manner and has been able to get the flotillas through the bridges in a little more than three hours.

Traditionally, the Coast Guard has sought to avoid regulations which specify the type and number of vessels entitled to demand an opening. However, it appears that this may be a case in which such a regulatory structure is appropriate, and this deviation is intended to provide an evaluation period which will provide the Coast Guard a valuable test of the reasonableness of such a regulatory structure.

Request for Comments

The Coast Guard encourages interested persons to participate in this evaluation of possible changes to the regulations governing bridges operated by the City of Chicago by submitting written data, views, or arguments to the

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address above. Persons submitting comments should include their name and address, identify this docket number (CGD9–93–20) and specific provisions to which each comment applies, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. At such time as it appears appropriate to propose a permanent change to the regulations, the Coast Guard plans to publish a notice of proposed rulemaking which will again request comments, and which will state a different period for the consideration of comments for those proposed regulations.

Notice

Notice is hereby given that:

1. The Coast Guard has granted the City of Chicago, Department of Transportation, a temporary deviation from the operating requirements at 33 CFR 117.391 governing certain bridges owned by the City of Chicago over the Chicago River, as follows:

Main Branch

Lake Shore Drive
Columbus Drive
Michigan Avenue
Wabash Avenue
State Street
Dearborn Street
Clark Street
La Salle Street
Wells Street
Franklin-Orleans Street

South Branch

Lake Street
Randolph Street
Washington Street
Madison Avenue
Monroe Street
Adams Street
Jackson Boulevard
Van Buren Street
Eisenhower Expressway
Harrison Street
Roosevelt Road
18th Street
Canal Street
South Halsted Street
South Loomis Street
South Ashland Avenue

North Branch

Grand Avenue
Ohio Street
Chicago Avenue
North Halsted Street

2. This deviation from normal operating regulations is authorized in accordance with the provisions of title 33 of the Code of Federal Regulations, § 117.43, for the purpose of evaluating possible changes to the permanent regulations. This temporary deviation applies only to the passage of recreational vessels. Under this deviation the bridges listed above operated by the City of Chicago need not open for the passage of recreational vessels unless the City of Chicago receives a twenty-four hour advance notice for passage, and need not open for recreational vessels except during the following periods, subject to the conditions indicated:

a. From 6 a.m. on Saturdays through 7 p.m. on Sundays, the draws shall open for the passage of organized outbound flotillas consisting of no less than five and not more than twenty-five vessels.

b. On Tuesdays, Wednesdays, and Thursdays the draws shall open for the passage of organized outbound flotillas consisting of no less than five and not more than twenty-five vessels, from 6:00 p.m. until all organized flotillas have safely completed passage.

c. Vessels returning to the boatyards for necessary repairs and service shall give advance notice and be passed through the draws of the bridges. However, there shall be no established minimum for the number of boats inbound or outbound for these trips.

3. Notwithstanding this deviation, the City of Chicago, after receiving notice twenty-four hours in advance of the intended passage of the flotilla through the draws of the bridges, shall ensure that:

a. The necessary bridgetenders are provided for the safe and prompt opening of the draws;

b. The operating machinery of each draw is maintained in a serviceable condition; and

c. The draws are operated at sufficient intervals to assure their satisfactory operation.

4. The Kinzie Street bridge, mile 1.81 across the North Branch, and Cermak Road bridge, mile 4.05 across the South Branch, shall continue to operate in accordance with requirements presently established in 33 CFR 117.391.

5. All draws shall open for commercial vessels in accordance with current regulations in 33 CFR 117.391. In accordance with current regulations, including 33 CFR 117.391, government vessels of the United States, state and local vessels used for public safety, and vessels in distress shall be passed through the draws of all bridges as soon as possible at all times.

6. This period of deviation is effective from the beginning of Tuesday, June 1, 1993, to the beginning of Saturday, July 31, 1993.

(Authority: P.L. 102–241; 105 Stat. 208)

Dated: May 27, 1993.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 93–14067 Filed 6–15–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4–2–5364; FRL 4659–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; RACT for VOC From Pharmaceutical Tablet Coating Facilities in the City of Philadelphia

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Pennsylvania Department of Environmental Resources (PADER), at the request of the Philadelphia Air Management Service (AMS), to revise the Philadelphia portion of the S.E. Pennsylvania ozone SIP. This revision establishes reasonably available control technology (RACT) measures to reduce volatile organic compound (VOC) emissions from pharmaceutical tablet coating facilities located in the City of Philadelphia. The intended effect of this action is to approve a VOC RACT regulation adopted by Philadelphia AMS to fulfill commitments made in the Pennsylvania SIP in accordance with section 110 and subchapter I, part D of the Clean Air Act Amendments of 1990 (CAAA or the Act) 42 U.S.C. 7410.

EFFECTIVE DATE: This action will become effective August 16, 1993 unless notice is received on or before July 16, 1993 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401

M Street, SW., Washington, DC 20460; Commonwealth of Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, Market Street Office Building, 12th floor, Harrisburg, PA 17105–8468; and the City of Philadelphia, Department of Public Health, Air Management Services, 321 University Avenue, Spelman Building, Philadelphia, PA 19104.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Lewis at: (215) 597–6863.

SUPPLEMENTARY INFORMATION: On February 23, 1987, at the request of AMS, PADER submitted revisions which proposed to amend the Philadelphia portion of the Pennsylvania ozone SIP. These revisions amend AMS's Regulation V by adding new definitions to Section I pertaining to pharmaceutical tablet coating, and by adding a new section XII and compliance guidelines, both entitled "Pharmaceutical Tablet Coating." AMS incorporated the recordkeeping and reporting requirements into the compliance guidelines on February 29, 1988, and submitted them to EPA as an addendum to the SIP submittal.

On May 26, 1988, EPA notified the Governor of Pennsylvania that the Philadelphia portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient RACT rules for ozone and establish a deadline of May 15, 1991 for States to submit corrections of those deficiencies.

Although this submittal preceded the date of enactment of the Act [1], it serves to fulfill part of the "RACT fix-up" requirements of amended section 182(a)(2)(A) of the Act, 42 U.S.C. 7511(a)(2)(A) for the Philadelphia nonattainment area. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet that RACT Fix-up requirement. Under section 182(a)(2)(A) of the Act, 42 U.S.C. 7511(a)(2)(A), States were required by May 15, 1991, to correct RACT as it was required under pre-amended section 172(b) of the Act, 42 U.S.C. 7502(b) as that requirement was interpreted in pre-amendment guidance.[2] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The Southeastern Pennsylvania (Philadelphia) area is classified as severe.[3] Therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

In addition to the regulations for pharmaceutical tablet coating, the PADER's February 23, 1987 submittal included regulations for petroleum solvent dry cleaning, compliance with Pennsylvania standards for VOC and a revised definition of VOC. Only the portion of the February 23, 1987 SIP revision submittal pertaining to pharmaceutical tablet coating is being addressed by this rulemaking action.

Summary of SIP Revision

This revision adds a new Section XII, "Pharmaceutical Tablet Coating," to AMS Regulation V, "Control of Emissions of Organic Substances From Stationary Sources." This regulation was developed to impose RACT on pharmaceutical tablet coating sources whose actual emissions are greater than 50 tons/year of VOCs or that have the potential to emit greater than 33 lb/day of VOCs. Section XII requires affected facilities to achieve 90% overall reduction of VOC emissions by use of carbon adsorption or incineration if the subject source's daily VOC emissions exceed 330 lb/day. The regulation also requires the use of a carbon adsorption system or incinerator if a subject source's VOC emissions fall below 330 lb/day to reduce emissions to 33 lb/day. The compliance guidelines submitted to accompany section XII require daily records of consumption, purchasing and inventory be kept and retained for at least two years in order to determine compliance with section XII.

Further details are contained in the Technical Support Document (TSD) prepared to accompany this action. Copies of the TSD are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

EPA has reviewed this SIP submittal and has determined that it constitutes RACT for this source category. EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days from the date of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establish a comment period. If no such comments are received, the public is advised that this action will be effective on August 16, 1993.

Final Action

EPA is approving a revision to the Philadelphia portion of the Pennsylvania ozone SIP, submitted on February 23, 1987 by PADER. This revision consists of amendments to Regulation V, Section I, "Definitions," and Section XII, "Pharmaceutical Tablet Coating" and Compliance Guidelines to accompany Regulation V, Section XII.

The Agency has reviewed this request for revision of the federally-approved State Implementation Plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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[1] Pub. L. 101–549, 104 Stat. 2399 (1990).

[2] Among other things, the pre-amendment guidance consists of (a) the Post-87 policy, 52 FR 45044 (Nov. 24, 1987); (b) the "Blue Book", "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register" (of which notice of availability was published in the Federal Register on May 25, 1988); (c) the existing Control Technology Guidelines (CTG's).

[3] The City of Philadelphia retained its designation of nonattainment and was classified by operation of law pursuant to section 107(d) and 181(a) of the Act, 42 U.S.C. 7407 & 7511, upon enactment of the Amendments. 56 FR 56694 (November 6, 1991).

SIP approvals under Section 110 and subchapter I, and Part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action approving Philadelphia revisions to the portion of the Pennsylvania SIP, consisting of amendments to Sections I, and XII of Regulation V, "Control Of Emissions Of Organic Substances From Stationary Sources," and the associated compliance guidelines, must be filed in the United States Court of Appeals for the appropriate circuit August 16, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (Section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by Reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 11, 1993.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

Part 52 chapter I, title 40 of the Code of Federal Regulations is to be amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(82) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(82) Revision to the State Implementation Plan submitted by the Pennsylvania Department of Environmental Resources on February 23, 1987 at the request of Philadelphia Air Management Services.

(i) *Incorporated by reference.* (A) Letter from the Pennsylvania Department of Environmental Resources dated February 23, 1987 submitting a revision to the Philadelphia portion of the Pennsylvania Ozone State Implementation Plan effective November 28, 1986.

(B) Regulation V, Section I, "Definitions" for the term Pharmaceutical Tablet Coating; and Section XII, "Pharmaceutical Tablet Coating" only.

(C) Compliance Guidelines for Air Management Regulation V, "Control of Emissions of Organic Substances from Stationary Sources," Section XII: "Pharmaceutical Tablet Coating," effective November 28, 1986, (containing amendments and revisions through February 29, 1988).

[FR Doc. 93–14140 Filed 6–15–93; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[CA–14–12–5771; FRL 4657–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking (NFR).

SUMMARY: EPA is finalizing a limited approval and a limited disapproval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on September 17, 1992. The revisions concern rules from the following local agencies: Bay Area Air Quality Management District (BAAQMD), and San Diego County Air Pollution Control District (SDCAPCD). This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended (CAA or the Act). The revised rules control VOC emissions from pressure relief valves at petroleum refineries and chemical plants, and from polyester resin operations.

EFFECTIVE DATE: This action is effective July 16, 1993.

ADDRESSES: Copies of these rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX 75 Hawthorne Street, San Francisco, CA 94105.

Jerry Kurtzweg ANR–443, Environmental Protection Agency, 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation, 2020 L Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

FOR FURTHER INFORMATION CONTACT: Chris Stamos, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 1992 in 57 FR 42913, EPA proposed granting limited approval and limited disapproval of the following rules into the California SIP: BAAQMD Rule 8–28, Pressure Relief Valves at Petroleum Refineries and Chemical Plants and SDCAPCD Rule 67.12, Polyester Resin Operations. Rule 8–28 was adopted by BAAQMD on September 6, 1989. This rule was submitted by the California Air Resources Board (CARB) to EPA on December 31, 1990. Rule 67.12 was adopted by SDCAPCD on December 4, 1990. This rule was submitted by CARB to EPA on April 5, 1991. These rules were submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their

Reasonably Available Control Technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amended Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the above-referenced notice of proposed rulemaking (NPR).

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in 57 FR 42913. EPA is today finalizing the limited approval of these rules in order to strengthen the SIP and finalizing the limited disapproval thereby requiring correction of the remaining deficiencies. A detailed discussion of the rule provisions and evaluations has been provided in 57 FR 42913 and in technical support documents (TSDs) available at EPA's Region IX office (TSD for BAAQMD Rule 8–28 and TSD for SDCAPCD Rule 67.12 both dated January 8, 1992.)

Response to Public Comments

A 30-day public comment period was provided in 57 FR 42913. EPA received one comment letter from BAAQMD on the NPR. The comment has been evaluated by EPA and a summary of the comment and EPA's response are set forth below.

Comment: BAAQMD does not agree that the elements of this rule identified by the EPA as constituting policy deficiencies are, in fact, deficiencies. The District suggests that the CTG *EPA–450/3–83–006: Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment* was misapplied by the EPA; that the recent EPA regulatory negotiation for fugitive emissions from synthetic organic chemical and polymer manufacturing equipment (SOCMI) excluded the petroleum refining industry and that "therefore, it is inconsistent for EPA Region 9 to extend the requirement of this CTG for chemical plants to include petroleum refining industry when the EPA regulatory negotiation participants consider the two industries to be significantly different." For this reason, BAAQMD requests an approval rather than the proposed simultaneous limited approval and limited disapproval.

Response: Because Rule 8–28 contains Appendix D/RACT deficiencies related to test method references and recordkeeping requirements, it is not approvable as submitted. EPA considers the old petroleum refinery CTG, which predates the research used for New Source Performance Standards for the petroleum refining industry and for the CTG *EPA–450/3–83–006: Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment*, as technologically inadequate. EPA believes that the SOCMI CTG can represent RACT for petroleum refineries. In addition, the decision in the December 1992 Regulatory Negotiation to exclude the petroleum refining industry was specifically with respect to MACT standards for toxics as opposed to VOC rules. Therefore, applying the SOCMI CTG to a VOC rule for petroleum refineries does not involve EPA in any inconsistencies. And finally, several districts have refinery rules which are as stringent as, or more stringent than, the SOCMI CTG. Therefore the SOCMI CTG can be thought of as representing control technology that is available and currently in use at petroleum refineries.

EPA Action

EPA is today finalizing a limited approval and a limited disapproval of the above-referenced rules. The limited approval of these rules is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is granting limited approval of these rules under section 110(k)(3) and 301(a) of the CAA. This action approves the rules into the SIP as federally enforceable rules.

At the same time, EPA is finalizing the limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. The sanctions schedule pursuant to section 179 will be triggered upon publication of this NFR. The 18-month period referred to in section 179(a) and the 24-month period referred to in section 110(c) will begin July 16, 1993. A detailed discussion of the procedures that will be followed pursuant to section 179 can be found in the above-referenced NPR. It should be noted that the rules covered by this NFR have been adopted by BAAQMD and SDCAPCD and are currently in effect in the San Francisco-Bay Area and in San Diego County. EPA's limited disapproval action in this NFR does not prevent EPA, BAAQMD, and SDCAPCD from fully enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1993. Filing a petition for reconsideration by the Administrator of these final rules does not affect the finality of these rules for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rules or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 29, 1993.

John C. Wise,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, part 52, is amended to read as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (182)(i)(B)(*2*) and (183)(i)(A)(*7*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(182) * * *

(i) * * *

(B) * * *

(*2*) Amended Rule 8–28, Adopted September 6, 1989.

* * * * *

(183) * * *

(i) * * *

(A) * * *

(*7*) New Rule 67.12, Adopted December 4, 1990.

* * * * *

[FR Doc. 93–14141 Filed 6–15–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[CA 12–13–5757; FRL–4657–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Placer County Air Pollution Control District, and San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking (NFR).

SUMMARY: EPA is finalizing a limited approval and a limited disapproval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on December 24, 1991. The revisions concern rules from the Placer County Air Pollution Control District (PCAPCD) and the San Diego County Air Pollution Control District (SDCAPCD). This final action will incorporate PCAPCD Rules 410, and 223, and SDCAPCD Rule 67.4 into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended (CAA or the Act). These rules control VOC emissions from can and coil operations (PCAPCD Rule 223, SDCAPCD Rule 67.4), and provide recordkeeping requirements for VOC emissions from various sources (PCAPCD Rule 410).

EFFECTIVE DATE: This action is effective July 16, 1993.

ADDRESSES: Copies of the rule revisions for Rule 223, Rule 67.4, new Rule 410, and EPA's evaluation report for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Jerry Kurtzweg ANR–443, 401 "M" Street SW., Washington, DC 20460.

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

FOR FURTHER INFORMATION CONTACT: Chris Stamos, Rulemaking Section II A–5–3, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 44–1187.

SUPPLEMENTARY INFORMATION:

Background

On December 24, 1991 in 56 FR 66612, EPA proposed granting limited approval and limited disapproval of the following rules into the California SIP: PCAPCD Rule 223—Can and Coil Coating Operations and Rule 410—Recordkeeping for Volatile Organic Compound Emissions; SDCAPCD Rule 67.4, Metal Container, Metal Closure, and Metal Coil Operations. Rules 410 and 223 were adopted by the PCAPCD on September 25, 1990 and Rule 67.4 was adopted by SDCAPCD on July 3, 1990. These rules were submitted by the California Air Resources Board (CARB) to EPA on April 5, 1991. These rules were submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their Reasonably Available Control Technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the above-referenced notice of proposed rulemaking.

EPA has evaluated the above rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in 56 FR 66612. EPA is today finalizing the limited approval of these rules in order to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies. A detailed discussion of these rule provisions and evaluations has been provided in 56 FR 66612 and in technical support documents (TSDs) available at EPA's Region IX office (TSD for PCAPCD Rule 410, TSD for PCAPCD Rule 223, and TSD for SDCAPCD Rule 67.4, all dated November 20, 1991).

Response to Public Comments

A 30-day public comment period was provided in 56 FR 66612. EPA received two comment letters on the notice of proposed rulemaking for SDCAPCD Rule 67.4 from Richard Smith, Deputy Director of the SDCAPCD, and Mark Johnson of NAPP Systems, Inc. The comments on SDCAPCD Rule 67.4 have been evaluated by EPA and a summary of the comments and EPA's responses are set forth below.

Comment: SDCAPCD commented that submitted Rule 67.4 was originally revised and adopted with input from EPA, but that EPA's comments on the rule during public workshops and hearings never mentioned the deficiencies that are now being cited as the reason for a limited disapproval. SDCAPCD believes that Rule 67.4 should be approved because the district revised the rule according to EPA's comments and no other deficiencies in the rule were cited by EPA at the time the rule was adopted. The district also believes that they should not be required to expend the time and cost of revising the rule as a result of EPA's original failure to identify all rule deficiencies. The district would like to wait and correct the deficiencies when the rule is next amended to meet State requirements.

Response: EPA regrets that not all of the deficiencies in the rule were noted by EPA at the time that the district revised the rule, and that revising the rule again may be a burden to the district. However, the primary responsibility for identifying rule deficiencies is with the district, and EPA's failure to identify all rule deficiencies during the local public workshops and hearings for the rule does not excuse compliance with CAA requirements. EPA believes that the CAA allows the district adequate time to revise the rule before sanctions would be required.

Comment: Mr. Mark Johnson, Manager of the Environmental Compliance and Safety Branch at NAPP Systems, Inc. argues that the allowance of non-specified test methods in Rule 67.4 is necessary and should not be disallowed or considered a deficiency in the rule. He argues that without the assurance of a precise and accurate test

method for determining volatile organic compound (VOC) content of products used in coil coating operations, NAPP and companies like it "could potentially be exposed to adverse enforcement actions with severe economical repercussions." It is NAPP's position that EPA's standard test methods for the determination of VOC, Test Methods 24 and 24A, are not applicable for multi-component, water reducible, monomeric resins and that it would be arbitrary for the EPA to require all coating materials to be screened by these two standard methods. NAPP also contends that EPA's categorization of Rule 67.4 as deficient because it allows non-specified test methods for VOC determination of coatings, fails to recognize that EPA's standard test methods are unsuitable for certain coatings.

Response: It is EPA's position that for determination of VOC content in coatings and inks, EPA Test Method 24 should be used. However, if it can be adequately demonstrated to EPA that the use of RM24 is not appropriate for certain types of coatings or inks, EPA may consider on a case-by-case basis any proposed modifications or new methods to be used for determination of VOC content. As written, Rule 67.4 precludes any review or decision on proposed modifications or new methods by EPA because in 67.4 test method approval is solely at the discretion of the Air Pollution Control Officer (APCO). Therefore, for reasons set forth in the proposed action, EPA still considers the allowance of APCO discretion for approval of equivalent methods to be a rule deficiency requiring correction.

EPA Action

EPA is today finalizing a limited approval and a limited disapproval of the above-referenced rules. The limited approval of these rules is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is granting limited approval of these rules under section 110(k)(3) and 301(a) of the CAA. This action approves the rules into the SIP as federally enforceable rules.

At the same time, EPA is finalizing the limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of part D of the Act. The sanctions schedule pursuant to section 179 will be triggered upon publication of this NFR. The 18 month period referred to in section 179(a) and the 24 month period referred to in section 110(c) will begin July 16, 1993, the effective date of this action. A detailed discussion of the procedures that will be followed pursuant to section 179 can be found in the above-referenced NPR. It should be noted that the rules covered by this NFR have been adopted by PCAPCD and by SDCAPCD and are currently in effect in the PCAPCD and in the SDCAPCD. EPA's limited disapproval action in this NFR does not prevent EPA, Placer County, or San Diego County from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend publication). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and record-keeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 27, 1993.

John C. Wise,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, Part 52 is amended to read as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c) (183)(i)(A)(5), (183)(i)(C)(3) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(183) * * *

(i) * * *

(A) * * *

(5) Amended Rule 67.4, adopted July 3, 1990.

(C) * * *

(3) New Rule 410 and Amended Rule 223, adopted on September 25, 1990.

* * * * *

[FR Doc. 93–14136 Filed 6–15–93; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 52

[PA–15–2–5570; FRL–4659–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania Group III CTG: RACT for VOC Emissions From Synthetic Organic Chemical Manufacturing Industries (SOCMI) Air Oxidation Processes—Aristech Chemical Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a request from the Pennsylvania Department of Environmental Resources (PADER) to revise the Allegheny County portion of the Commonwealth of Pennsylvania State Implementation Plan (SIP). This revision consists of an installation permit which defines and imposes

reasonable available control technology (RACT) to control volatile organic compound (VOC) emissions from air oxidation processes at the Aristech Chemical Corporation plant on Neville Island, Pennsylvania. This source-specific revision has been submitted by PADER, at the request of the Allegheny County Bureau of Air Pollution Control, to fulfill requirements of the Pennsylvania SIP. The intended effect of this action is to approve RACT for VOC emissions from the Aristech Chemical Corporation. This action is being taken under section 110 and part D of the Clean Air Act (CAA) 42 U.S.C. 7401 *et seq.*

EFFECTIVE DATE: This action will become effective August 16, 1993 unless notice is received on or before July 16, 1993 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division; U.S. Environmental Protection Agency; Region III; 841 Chestnut Building; Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, Market Street Office Building, 12th Floor, P.O. Box 8468, Harrisburg, Pennsylvania 17120–8468; and Allegheny County Health Department, Bureau of Air Pollution Control, 301 Thirty-ninth Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline R. Lewis, (215) 597–6863.

SUPPLEMENTARY INFORMATION: On September 12, 1978 EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act) that included the Southwest Pennsylvania Intrastate Air Quality Control Region (AQCR) in the Commonwealth of Pennsylvania. Allegheny County is in this AQCR 43 FR 40513, 40 CFR 81.339. Because Allegheny and other counties were unable to reach attainment by the statutory attainment date of December 31, 1982, Pennsylvania requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.2022. The Pittsburgh-Beaver Valley metropolitan area, containing Allegheny County, did not attain the ozone standard by the approved attainment date. To fulfill the requirements of section 172 (a)(2) and (b)(3) of the 1977 CAA and its 1982 SIP, PADER submitted a revision to the Allegheny County portion of the Pennsylvania ozone SIP to EPA on July 13, 1987.

On May 26, 1988, EPA notified the Governor of Pennsylvania that the Pittsburgh-Beaver Valley portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q (the 1990 Amendments). In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient RACT rules for ozone and establish a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

In addition, although the July 13, 1987 SIP revision preceded the date of enactment of the 1990 Amendments, it serves to fulfill part of the "RACT fix-up" requirement of section 182(a)(2)(A) of the amended Act for the Pittsburgh-Beaver Valley nonattainment area. Areas designated nonattainment before enactment of the 1990 Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet that RACT fix-up requirement. Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT. RACT fix-ups were also required under pre-amended section 172(b) as that requirement was interpreted in pre-amended guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The Pittsburgh-Beaver Valley nonattainment area is classified as moderate, and is, therefore, subject to the RACT fix-up requirement.[2]

[1] Among other things, the pre-amendment guidance consists of the Post-87 policy, 52 FR 45044 (Nov. 24, 1987); the "Bluebook," "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing CTGs.

[2] The Pittsburgh-Beaver Valley area retained its designation and was classified by operation of law pursuant to sections 107(d) and 181(a) of the CAA upon the date of enactment of the 1990 Amendments. See 56 FR 56694 (Nov. 6, 1991).

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the CAA and specify the presumptive norms for what is RACT for specific source categories. Under the Amendments, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Allegheny County's SIP revision is entitled, "Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry" (SOCMI) (EPA 450/3–84–015, published December 1984).

Further interpretations of EPA policy are found in the "Bluebook." In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

This source-specific SIP revision establishes and imposes RACT for the control of VOC emissions from air oxidation processes at the Aristech Chemical Corporation, adopted in accordance with the recommendations made in the SOCMI CTG. EPA has determined that the requirement imposed in Aristech's permit are consistent with the recommendations made in the SOCMI CTG. The July 13, 1987 SIP revision also included the addition of section 534, "Synthetic Organic Chemical and Polymer Manufacturing Industry—Fugitive Sources," and section 605 I, referencing the test method required to determine compliance with section 534. Only the portion of the July 13, 1987, SIP revision submittal pertaining to the control of VOC emissions from air oxidation processes at the Aristech Chemical Corporation is addressed by this rulemaking action and notice. The remaining amendments are the subject of a separate rulemaking action.

Summary of SIP Revision

On August 28, 1986, the Allegheny County Health Department imposed an installation permit (86–I–0024–P) to the Aristech Chemical Corporation Plant, formerly the USX Corporation, Neville Island, Pennsylvania, for the modification of an existing phthalic anhydride fume incinerator to treat tail gases containing carbon monoxide and residual butane from two maleic anhydride reactor trains. Subsequently, the permit was revised on March 3, 1987, to reflect current EPA policy.

The Aristech permit standards specify that the maleic anhydride process off-

gas incineration destruction of organic chemical components must be at least 98%, and for carbon monoxide at least 93.5%. As an alternative to meeting a 98% VOC destruction efficiency, equivalent RACT of at least 1600 degrees fahrenheit incinerator temperature and at least 0.75 seconds residence time must be demonstrated and maintained.

Consistent with the recommendations of the SOCMI CTG, if a total resource effectiveness (TRE) index value greater than 1.0 is demonstrated (using the calculation procedures of the CTG), then the 98% VOC emission reduction requirement would not apply to these streams.

EPA has reviewed this SIP submittal and has determined that it constitutes RACT for the Aristech Chemical Corporation SOCMI-Air Oxidation processes on Neville Island. EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days from the date of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establish a comment period. If no such comments are received, the public is advised that this action will be effective on August 16, 1993.

Final Action

EPA is approving this source-specific revision to the Allegheny County portion of the Pennsylvania SIP submitted on July 13, 1987. This source-specific SIP revision consists of the RACT requirements imposed in an installation permit to control VOC emissions from air oxidation processes at the Aristech Chemical Corporation plant on Neville Island, Pennsylvania.

The Agency has reviewed this request for revision of the federally-approved State Implementation Plan for conformance with the provisions of the 1990 amendments. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, and part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected.

Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, approving a revision to the Allegheny County portion of the Pennsylvania SIP, consisting of the addition of an installation permit (86–I–0024–P) to impose RACT for VOC emissions from the air oxidation processes at the Aristech Chemical Corporation plant on Neville Island, must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: May 18, 1993.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

Part 52 chapter I, title 40 of the Code of Federal Regulations to be amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(80) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(80) Revision to the Allegheny County portion of the Pennsylvania State Implementation Plan submitted on July 13, 1987, which consists of the addition of an installation permit (86–I–0024–P) which defines and imposes RACT to control VOC emissions from air oxidation processes at the Aristech Chemical Corporation plant on Neville Island.

(i) Incorporation by reference.

(A) A letter from the Pennsylvania Department of Environmental Resources dated July 13, 1987, submitting revisions to the Allegheny County portion of the Pennsylvania ozone State Implementation Plan.

(B) The original permit (86–I–0024–P), issued and effective August 28, 1986, and the modification and amendments to the original permit, issued and effective March 3, 1987.

[FR Doc. 93–14138 Filed 6–15–93; 8:45 am]

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40 CFR Part 52

[A-1-FRL-PA4-3-5365; FRL-Y663-3]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Control of Emissions of Volatile Organic Compounds From Stationary Sources in Philadelphia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania Department of Environmental Resources (PADER) at the request of the Philadelphia Air Management Services (AMS). These revisions amend Air Management Regulation V Section I, by adding the new definition of volatile organic compound (VOC) as defined in 25 Pa Code § 121.1 of the Pennsylvania Air Pollution Control Regulations. These revisions also amend Regulation V by adding Section X entitled, "Compliance with Pennsylvania Standards for Volatile Organic Compounds." The intended effect of this action is to approve Philadelphia's revised definition of VOC and its new Section X of Regulation V. This action is being taken in accordance with section 110 and part D of the Clean Air Act (CAA), as amended, 42 U.S.C. 7410.

EFFECTIVE DATE: This action will become effective August 16, 1993 unless notice is received on or before July 16, 1993 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; Commonwealth of Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, Harrisburg, PA 17105–8468; Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, PA 19104.

FOR FURTHER INFORMATION CONTACT: Aquanttta Dickens, (215) 597–4554.

SUPPLEMENTARY INFORMATION: On February 23, 1987, the Commonwealth of Pennsylvania on behalf of the City of Philadelphia's Air Management Services (AMS), submitted a formal revision to its SIP. The SIP revision amends the definition of VOC, and adds Section X, "Compliance with Pennsylvania Standard for Volatile Organic Compounds" in Air Management Services Regulation V, "Control of Emission of Organic Substances from Stationary Sources." The February 23 submittal also includes new definitions pertaining to Petroleum Solvents, Petroleum Solvent Dry Cleaning, Pharmaceutical Tablet Coating, Section XI entitled, "Petroleum Solvent Dry Cleaning," and Section XII entitled, "Pharmaceutical Tablet Coating."

Only the portion of the February 23 SIP submittal pertaining to the definition of VOC and Section X revision to Regulation V are addressed by this rulemaking and notice. The remaining portions of the SIP submittal are the subjects of separate rulemaking actions and notices.

Background

On May 26, 1988, EPA issued a SIP call letter to Pennsylvania notifying the Commonwealth that its SIP was substantially inadequate to achieve the National Ambient Air Quality Standard for ozone in Philadelphia. In a June 14, 1988 follow-up letter, EPA notified Philadelphia of deficiencies in its VOC regulations which needed to be corrected in order to make the regulations consistent with EPA policy and guidance. A SIP call letter is a finding made by EPA that the SIP does not provide for attainment by the required date, (section 110(a)(2)(H) of the Act, as amended, 42 U.S.C. 7410(a)(2)(H); 42 U.S.C. 7410 (A)(K)(5)). Although this submittal preceded the date of enactment of the Clean Air Act Amendments of 1990, the changes to the regulation submitted on February 23, 1987 satisfies the deficiencies cited in the June 14, 1988 SIP call letter. The revision consists of changes to Air Management Regulation V, "Control of Emissions of Organic Substance from Stationary Sources."

Summary of SIP Revision

Section I. Definitions—Volatile Organic Compounds (VOCs)

The amendment adds a new definition of VOCs which was revised to reflect the Pennsylvania Air Pollution Control Regulations, defined in 25 Pa Code § 121.1. The revised definition deletes vapor pressure as a criterion for determining whether an organic compound is a VOC, and adds the requirement that any organic compound which participates in atmospheric photochemical reactions is a VOC.

Section X. Compliance With Pennsylvania Standards for VOCs

The amendment adds a new Section X, subsection A which requires sources that emit VOCs to comply with the standards in Chapter 129 of the Pennsylvania Air Pollution Control Regulations, in addition to its Regulation V requirements.

B. A source may be determined in compliance with Chapter 129 of the Pennsylvania Air Pollution Control Regulations provided that the Pennsylvania VOC standard reflects reasonable available control technology (RACT) and has been incorporated into the SIP. Subsection B is applicable to sources that are subject to dual compliance under Section VI and VII of Regulation V of Philadelphia's regulations and Chapter 129 of Pennsylvania's regulations.

C. Under subsection C, if a source is subject to Section VI or VII of Air Management Regulation V and would be regulated under Chapter 129 of Pennsylvania's regulation, but has been considered exempt because its emissions are below the applicability threshold in the Pennsylvania regulation, the owner or operator of that source can petition the AMS for a waiver of the applicability limit of Section VI or VII of its Regulation V. The source may then request an application of the Pennsylvania VOC standard in lieu of Regulation V. If approved, the source will be subject to the provisions of Section X(B) of Regulation V.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on August 16, 1993.

Final Action

EPA is approving the amended definition of VOC in Section I and the addition of new Section X in Air Management Regulation V as a revision to the Philadelphia portion of the Pennsylvania SIP. The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA, as amended, 42 U.S.C. 7410, do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This action to revise the Air Management Regulation V of the Philadelphia portion of the Pennsylvania SIP has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the CAA, as amended, 420 U.S.C. 7607(b)(1) petitions for judicial review of this action to revise the Air Management Regulation V of the Philadelphia portion of the Pennsylvania SIP must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: May 19, 1993.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(83) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(83) Revisions to the State Implementation Plan submitted by the Pennsylvania Department of Environmental Resources on February 23, 1987.

(i) *Incorporation by reference.* (A) A letter from the Pennsylvania Department of Environmental Resources dated February 23, 1987 submitting a revision to the Pennsylvania State Implementation Plan.

(B) A revision to Section I—Definitions—for the term Volatile Organic Compound (VOC) of Philadelphia Air Management Regulation V "Control of Emissions of Organic Substances from Stationary Sources." The effective date is November 28, 1986.

(C) The addition of Section X—Compliance with Pennsylvania Standards for VOC to Philadelphia Air Management Regulation V. The effective date is November 28, 1986.

(ii) *Additional materials.* (A) The remainder of the Commonwealth's February 23, 1987 submittal.

[FR Doc. 93–14139 Filed 6–15–93; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[IN6–3–5789; FRL–4661–8]

Approval and Promulgation of State Implementation Plans; Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On December 31, 1992, USEPA proposed to approve as a revision to the Indiana Total Suspended Particulate (TSP) State Implementation Plan (SIP) an emissions trade for Joseph E. Seagram & Sons, Inc. (Seagram) at its Lawrenceburg, Indiana facility. The proposal stated that prior to final approval it was necessary for the State to submit certain federally enforceable recordkeeping requirements as well as a modeling analysis consistent with USEPA's Emissions Trading Policy Statement (ETPS). Public comments were solicited on the proposed SIP revision and on USEPA's proposed action. This rule responds to public comments on the proposal, discusses the modeling and recordkeeping requirements, and approves the submission as a revision to the Indiana SIP.

USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act.

EFFECTIVE DATE: This final rulemaking becomes effective on July 16, 1993.

ADDRESSES: Copies of the SIP revision, public comments on the proposed approval, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone David Pohlman at (312) 886–3299, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77

West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this revision to the Indiana SIP is available for inspection at: Jerry Kurtzweg (ANR-443), Office of Program Management Operations, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Regulation Development Branch, Regulation Development Section (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-3299.

SUPPLEMENTARY INFORMATION: On March 3, 1989, the Indiana Department of Environmental Management (IDEM) submitted a revision to the Indiana SIP for TSP to the USEPA. This revision, 326 Indiana Administrative Code (IAC) 6-1-8.1, involves an emission trade or "bubble" for Joseph E. Seagram & Sons, Inc. at its distillery and storage facility in Lawrenceburg, Indiana. The emissions trade consists of an increase in the emission limit for Seagram boiler 6, to be offset by a decrease in the emission limit on boiler 5 when boiler 6 is burning fuel other than natural gas. The revised rule also limits the combined annual emissions from the two sources to the sum of the individual limits contained in the existing rule.

The notice of proposed rulemaking was published in the Federal Register on December 31, 1992 (57 FR 62535). The notice stated that, before final approval of the revision, the State had to submit federally enforceable recordkeeping requirements, as well as a modeling analysis consistent with the ETPS. Additional information about the submission can be found in the December 31, 1992, notice and USEPA's March 18, 1993, Technical Support Document.[1]

USEPA has subsequently determined that the necessary recordkeeping requirements are contained in section (c)(5) of rule 326 IAC 6-1-8.1, which is being approved by this notice. Therefore, no further recordkeeping requirements are necessary for this revision to be approvable (see discussion under response to public comments).

According to the ETPS, the State must submit a Level II dispersion modeling analysis showing that the March 3, 1989, submission will cause no ambient impact above significance levels for PM (particulate matter with an aerodynamic diameter of a nominal 10 microns or less). The December 31, 1992, notice states that the USEPA will interpret ETPS significance levels for PM to be the same as those for TSP. On May 5, 1993, the State submitted a screening analysis to comply with USEPA's requirements for a Level II modeling study. This screening analysis, which used the current version of the Industrial Source Complex Short Term model, was generally satisfactory. However, the meteorological data set used in the study did not include every combination of stability class and wind speed required by USEPA for a screening analysis. In addition, the receptor grid had a resolution of only 250 meters. USEPA requires a receptor grid of at least 100-meter resolution in order to ensure that the model will pinpoint maximum concentrations. From the model output submitted, however, USEPA was able to verify that with a tighter receptor grid and a full set of screening meteorological conditions, the Seagram SIP revision would not cause ambient impacts in excess of the PM significance levels. USEPA, therefore, accepts the demonstration that the March 3, 1989, SIP revision will not result in a significant increase in ambient PM concentrations.

The public comment period ended on March 3, 1993, and comments were received from Seagram. The USEPA's response to these comments follows.

Public Comments

(1) *Comment:* On March 3, 1993, Seagram commented that the necessary recordkeeping requirements are already in the March 3, 1989, submission and will be federally enforceable upon its approval.

USEPA Response: USEPA agrees with Seagram's comment. After reviewing an earlier USEPA Technical Support Document dated July 19, 1991, and the recordkeeping required for Seagram by Indiana's rule 326 IAC 6-1-8.1, USEPA has determined that this SIP revision does contain adequate recordkeeping requirements.

(2) *Comment:* Seagram also commented that, while it did a modeling analysis, no such analysis should have been required. Its reasons are:

1. The Level II modeling analysis required by the ETPS has been inappropriately applied to this SIP revision. This requirement should not be applied because the revision results in a net decrease in particulate emissions for the Seagram facility.

2. USEPA should accept a demonstration of compliance with the PM National Ambient Air Quality Standards (NAAQS) in accordance with USEPA's *PM-10 SIP Development Guideline*, which says that "maintenance of the NAAQS may be demonstrated by means of a dispersion model or other procedure which is shown to be adequate and appropriate for this purpose". A description of the facts surrounding the SIP revision is an "adequate and appropriate" demonstration.

3. If modeling needs to be done, the previously submitted modeling showing no significant impact in ambient concentrations of TSP should satisfy this requirement, since PM only comprises a fraction of TSP and both sources in the trade involve the same type of emissions (and therefore the same PM/TSP ratios).

USEPA Response: A level II modeling analysis is required for the Seagram SIP revision in order to show that there will be no significant impact on ambient air quality for PM. The fact that the net particulate emissions are being decreased does not necessarily ensure that ambient air quality will be proportionately improved. The revision involves an increased emission rate from one source, and a decreased rate from another. Since these two sources have different control equipment and stack parameters, it is reasonable to assume that the two sources do not have identical effects on ambient air quality at all receptors. Therefore, decreasing emissions from one stack will not necessarily offset the air quality effects of increased emissions from the other stack.

Similarly, a description of the facts surrounding the revision request is not "adequate and appropriate" for demonstrating maintenance of the NAAQS under the PM-10 SIP Development Guideline. A demonstration under this guideline would require a full scale modeling analysis showing maintenance of the NAAQS rather than the simpler Level II analysis showing no significant impact which is required by the ETPS.

The previously submitted modeling showing no significant impact in ambient TSP concentrations is not acceptable for showing no significant impact in ambient PM concentrations. PM is now the particulate matter indicator, and should be used in the analysis. Since these two sources burn different fuels with different PM/TSP fractions (the new rule does not allow both boilers to burn coal simultaneously), the changes in TSP emission limits which are included in this revision are not necessarily proportional to the changes in PM emissions. For purposes of this final rulemaking action, however, this issue should be of no consequence, because

[1] On February 12, 1993, at Seagram's request, USEPA extended the public comment period for 30 days (58 FR 8247).

USEPA had been able to verify that the revised limits should not cause a significant increase in ambient PM concentrations.

Rulemaking Action

Based on the State's March 3, 1989, submittal, the modeling analysis submitted on May 5, 1993, and the existence of enforceable recordkeeping requirements in the rule, the USEPA is approving Indiana's 326 IAC 6–1–8.1.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Note—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 20, 1993.

Janet Mason,

Acting Regional Administrator.

For the reasons stated in the preamble, chapter 1 of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(90) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(90) On March 3, 1989, the Indiana Department of Environmental Management submitted a request to revise the Indiana State Implementation Plan (SIP) by adding an emission trade or bubble for Joseph E. Seagram and Sons which is located in Lawrenceburg, Indiana. This requested SIP revision repeals rule 326 Indiana Administrative Code (IAC) 6–1–8, adds a new Section, 326 IAC 6–1–8.1, and amends 326 IAC 6–1–7 to include a reference for the new Section and a recodification of the applicable rule.

(i) *Incorporation by reference.* (A) Title 326 IAC 6–1–7 as published in the Indiana Register Volume 12, Number 6, March 1, 1989, effective April 9, 1989.

(B) Title 326, IAC 6–1–8.1, repeal of 326 IAC 6–1–8 as published in the Indiana Register, Volume 12, Number 6, March 1, 1989, effective March 1, 1989.

[FR Doc. 93–14137 Filed 6–15–93; 8:45 am]

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40 CFR Part 52

[PA8–1–5572; A–1–FRL–4651–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania Air Pollution Emergency Episode Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Pennsylvania. This revision consists of regulatory provisions which: Revise the pollutants for which are prescribed air pollution emergency episode plans; revise the ambient air quality threshold levels which would trigger the component stages of such plans. The intended effect of this action is to approve Pennsylvania's revised regulations, as they conform with the requirements of 40 CFR part 51. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective August 16, 1993, unless notice is received on or before July 16, 1993, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and Commonwealth of Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 2357, Executive House—2nd & Chestnut Streets, Harrisburg, PA 17105.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 597–1325.

SUPPLEMENTARY INFORMATION: On January 8, 1991, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). The State revised § 137.3 of chapter 137 (Air Pollution Episodes). The revisions to § 137.3 establishes revised threshold ambient levels for particulate matter (PM_{10}), sulfur dioxide (SO_2), ozone (O_3) nitrogen dioxide (NO_2) which would trigger various stages of air pollution episode plans.

Pennsylvania provided proof that public hearings were held on September 21, 1989 in Coreopolis, September 25, 1989 in King of Prussia, and September 27, 1989 in Harrisburg, in accordance with the requirements of 40 CFR 51.102.

Summary of SIP Revision

Pennsylvania revised the following air pollution episode threshold criteria for NO_2, O_3, PM_{10} and SO_2 in § 137.3 :

1. Alert Level (§ 137.3(2))

Added: PM_{10}—350 micrograms per cubic meter (ug/m^3), 24-hour average O_3—0.2 parts per million (p.p.m.), one hour average

Revised: NO_2—0.15 ppm, 24-hour average (§ 137.3(2)(v)). (Current SIP standard: 0.20 p.p.m., 24-hour average]

Deleted: The threshold levels for particulate matter and SO_2 and particulate matter combined.

2. Warning Level (§ 137.3(3)

Added: PM_{10}—420 ug/m^3, 24-hour average O_3—0.4 p.p.m., one hour average

Revised: SO_2—0.6 p.p.m., 6-hour average (Current SIP standard: 0.5 p.p.m., 6-hour average)

Deleted: The threshold levels for particulate matter, SO_2 and particulate matter combined, and oxidants.

3. Emergency Level (§ 137.3(4))

Added: PM_{10}—500 ug/m^3, 24-hour average. O_3—0.5 p.p.m., one hour average.

Revised: SO_2—0.8 p.p.m., 24-hour average (Current SIP standard: 0.6 p.p.m., 24-hour average)

Deleted: The threshold levels for particulate matter, SO_2 and particulate matter combined, and oxidants.

The revised Pennsylvania DER regulations contain some administrative wording changes and revised paragraph numbering for carbon monoxide (CO) as result of these revisions and deletions. There are no changes to the levels themselves. Similarly, the paragraph numbering with respect to the NO_2 levels for the warning and emergency stages are changed, but the levels themselves are unchanged. Pennsylvania also submitted some administrative wording changes to the introductory paragraphs of §§ 137.3, 137.3(2), and 137.3(3), and 137.3(4). These revised wording changes serve to clarify the meaning or intent of these provisions.

The revised threshold levels found in § 137.3 reflect changes to the list of criteria pollutants found in section 109 of the Clean Air Act and 40 CFR part 50. Total suspended particulate matter has been replaced with PM_{10}, while "oxidants" have been replaced with ozone. Although the SO_2 levels which would trigger the respective warning and emergency levels have been raised from the currently prescribed SIP levels, they still conform with the triggering levels prescribed in 40 CFR part 51, appendix L. Similarly, the revised threshold levels for NO_2, PM_{10}, and ozone also conform with those prescribed in 40 CFR part 51, appendix L.

The revisions to § 137.3 have a limited impact on the attainment and maintenance of standards. The provisions in § 137.3 are designed to ensure that SIP-enforceable emergency plans are activated at prescribed air quality levels above the standard, so as to prevent further worsening of unhealthy air quality levels during emergency conditions. Sections 137.11 through 137.14 provide the actual emergency measures that are to be taken if and when an air pollution emergency episode is triggered.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on August 16, 1993.

Final Action

EPA is approving the revisions to § 137.3 of Pennsylvania's air quality regulations as a revision to the Pennsylvania SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2) requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This SIP approval action pertaining to revised § 137.3 of the Pennsylvania DER regulations has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this SIP approval pertaining to revised § 137.3 of the Pennsylvania DER regulations must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides.

Dated: May 18, 1993.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraphs (c)(75) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(75) Revisions to the State Implementation Plan submitted by the Pennsylvania Department of Environmental Resources on January 8, 1991.

(i) *Incorporation by reference.* (A) Letter from the Pennsylvania Department of Environmental Resources dated January 8, 1991 submitting a revision to the Pennsylvania State Implementation Plan.

(B) Revisions to Pennsylvania Department of Environmental Resources' Air Quality Regulations, § 137.3, subsections (2), (3), (4), and introductory paragraph, effective June 9, 1990.

(ii) *Additional materials.* (A) Remainder of State submittal, dated January 8, 1991.

[FR Doc. 93–14135 Filed 6–15–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[VA9–1–6470; A–1–FRL–4661–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of Revisions to the Particulate Matter Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision consists of revised requirements to part IV, part V, and the Appendices of Virginia's Regulations for the Control and Abatement of Air Pollution with regard to opacity standards, allowable emissions limitations for particulate matter, determination of compliance, and associated revised definitions of terms. The intended effect of this action is to revise the federally-approved SIP to reflect the current State requirements. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on July 16, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Virginia Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 597–1325.

SUPPLEMENTARY INFORMATION: On October 19, 1987 (52 FR 38787), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of revisions to the particulate matter and opacity requirements submitted by Virginia. The formal SIP revision was submitted by Virginia on February 14, 1985.

Virginia has revised the general opacity provisions and the definitions of associated terms found in Rule 4–1 of part IV and Rule 5–1 of part V. Virginia has also revised specific opacity limitations found in Rule 4–8, Fuel Burning Equipment, and in Rule 4–13 (Kraft Pulp Mills) as it applies to existing recovery boilers. In addition, Virginia has revised the particulate matter emission standards and associated definition of terms in the following rules of part IV:

SIP rule No.	Subject matter
4–1	Visible Emissions/Fugitive Emissions.
4–4	General Process Operations.
4–7	Incinerators.
4–8	Fuel Burning Equipment.
4–9	Coke Ovens.
4–10	Asphalt Concrete Plants.
4–12	Chemical Fertilizer Manufacturing Operations.
4–13	Kraft Pulp Mills.
4–14	Sand and Gravel Processing and Stone Quarrying Operations.
4–15	Coal Preparation Plants.
4–16	Portland Cement Plants.
4–17	Woodworking Operations.
4–18	Primary and Secondary Metal Operations.
4–19	Lightweight Aggregate Process Operations.
4–20	Feed Manufacturing Operations.

Note: Rule 4–11, Petroleum Refinery Operations also contains emission standards for particulate matter. However, Virginia did not substantively revise the applicable particulate matter emission standards. Virginia did revise the format and rule citation of the applicable emission standard, which EPA has approved in a separate rulemaking action on February 25, 1993, 58 FR 11374.

Finally, an appendix Q, Interpretation of Emission Standards Based on Process Weight-Rate Tables, has been added and which explains how to interpret the emission limits based on process weight rate tables for those emission standards based on process weight rate.

Virginia certified that public hearings pertaining to these proposed revisions were held on June 15, 1984, and September 18, 1984, in Richmond, as required by 40 CFR 51.102. Additional public hearings were held in Abingdon, Roanoke, Lynchburg, Virginia Beach, and Springfield. During the 30-day public comment period following publication of the October 19, 1987 NPR, no comments were received.

Rationale for Approving the SIP Revision

In general, to evaluate the more substantial amendments that occur when a state revises its SIP rules recodification scheme, the critical factors to be considered are:

(1) Whether any revised emission limitation provides for attainment and maintenance of the National Ambient Air Quality Standards (NAAQS);

(2) Whether issues of enforceability arise; and

(3) Whether all of the applicable requirements (both procedural and substantive) of 40 CFR part 51 are met.

Impacts on Attainment/Maintenance on the NAAQS

The revised process weight tables referenced in section 120–04–XX03A. of Rules 4–10, 4–12, 4–14, 4–16, 4–19 and 4–20 no longer exempt, based on the process weight rate, sources of that particular process category and located in State Regions 1 through 6 from an enforceable particulate matter emission limitation. EPA considers these revised provisions to be more stringent than the current SIP requirement since it theoretically expands the number of sources that would be subject to a federally-enforceable emissions limitation. Therefore, EPA expects these revised provisions to have a beneficial impact on ambient air quality.

On the other hand, revised Table 4–4B of section 120–04–0404 of Rule 4–4 and sections 120–04–XX04C. of Rules 4–10, 4–14, 4–17, 4–18 and 4–20 remove the federally-enforceable emission limit for categories of process sources located in State Region 7 (Northern Virginia Air Quality Control Region [AQCR]) with a process weight rate between 50 pounds per hour (lb/hr) (the current SIP applicability threshold)

and 100 lb/hr. However, Virginia has provided information to EPA that no sources subject to the current SIP requirements would now be exempted by these revised threshold levels. Therefore, EPA concludes that there will be no adverse air quality impact nor consumption of the Prevention of Significant Deterioration (PSD) increment for particulate matter in State Region 7.

The provisions of Rule 4–8, section 120–04–0801C. also increase the size of gas-fired boilers that would be subject to the provisions of this Rule. However, based on an evaluation of the combustion characteristics of natural gas, EPA has determined that gas-fired boilers do not generally emit significant amounts of PM_{10}, as natural gas inherently contains less particulate matter than either coal or oil. With regard to the revised definition of "fuel burning equipment unit" found in section 120–04–0802C., Virginia has stated, and EPA agrees, that for all practical purposes, the definition of "fuel burning equipment" should be regarded as the definition of "fuel burning equipment unit."

EPA accepts Virginia's determination that both the revised exemption levels for gas-fired boilers and the revised definition of "fuel burning equipment unit" is expected to have no adverse impact on NAAQS, and further concludes that there will be no consumption of the Prevention of Significant Deterioration (PSD) increment for particulate matter.

In addition, in Rule 4–17 (Woodworking Operations), Virginia has revised section 120–08–1703B. by deleting references to the process weight table found in Table 4–4A. According to the current SIP, woodworking operations located in State Regions 1–6 are subject to both this process weight standard, as well as a grain loading standard of 0.05 gr/dscf. However, Virginia has justified the deletion of the applicability of the process weight standard that the table, as applied to woodworking operations, is unenforceable, and therefore not relied upon when determining a given source's compliance status. Accordingly, Virginia concludes, and EPA agrees, that removing the applicability of the general process weight standard to woodworking operations located in State Regions 1–6 will not result in any adverse air quality impacts nor consume PSD increment, because woodworking operations would still be subject to the grain loading standard of 0.05 gr/dscf.

Similarly, Virginia states that the revision to section 120–04–1305B. of Rule 4–13, which allows for increased opacity from kraft pulping operations, represents a more realistic representation of actual opacity. Virginia has recorded no violations of the ambient standards for particulate matter during the past three years (1990 through 1992). Since the allowable emission "increases" are not likely to result in "actual" emission increases, EPA concludes that the revised emission and opacity limits will not consume PSD increment.

Therefore, EPA concludes that there will be no adverse ambient air quality impacts on particulate matter nor consumption of the PSD increment for particulate matter as a result of approval of the revised provisions.

Enforceability Issues

Virginia's revised provisions were made to improve the enforceability of the particulate matter requirements. Some revisions clarify the wording and intent, while others clarify and define the applicable emission limitation. At the same time, Virginia has removed provisions which it considered to be unenforceable. The method for determining compliance with the requirements of Rule 4–1 have been more clearly defined. For the source-specific emission limits, appendix Q, which describes Virginia's methods for determining source compliance with respect to the particulate matter requirements, has been added.

The change in the term "total capacity" by making references to "use load" are made to clarify and make legally enforceable an interpretation Virginia has used for some time (i.e., "standby and emergency fuel burning units are not to be included when determining a source's "total capacity"). EPA accepts Virginia's determination that the revised definition is not expected to allow increased total emissions of particulate matter.

Section 120–04–0805C. contains provisions for determining the efficiency factor of pollution collection equipment. The pre-1985 regulations (section 4.31(d)(3)) had also provided for alternative criteria by which the efficiency factor for collection equipment would be determined, should the owner of such equipment not accept the standard provisions. EPA had previously disapproved this "alternative criteria" provisions, because they were considered to be unenforceable. See, 46 FR 22581 (April 20, 1981). Virginia has now deleted these alternative provisions, which is acceptable to EPA. As a result, in this rulemaking action, EPA will remove 40 CFR 52.2423(g), referring to the Agency's prior disapproval action.

Conformity With the Clean Air Act, As Amended, and the Applicable Requirements of 40 CFR Part 51

This SIP revision conforms with all statutory requirements of the Clean Air Act, as amended on November 15, 1990, as well as the substantive and procedural requirements of 40 CFR part 51.

Final Action

EPA is approving the following revised particulate matter requirements of as a revision to the Virginia SIP: (1) The revised opacity requirements of Rules 4–1, 4–8, 4–13 and 5–1; (2) the revised particulate matter emissions limitations found in Rules 4–4, 4–7, 4–8, 4–10, and 4–12 through 4–20; (3) revised definitions of terms found in rules 4–1, 4–4, 4–7, 4–8, 4–12 through 4–20, and 5–1; (4) the revised emission allocation system, collection equipment efficiency factor determination and emission monitoring requirements found in Rule 4–8; and (5) revised wording to Section 120–04–0903C. (quenching operations) of Rule 4–9. EPA is also removing 40 CFR 52.2423(g), referring to a prior disapproval action with respect to Virginia's requirements for determining the proper collection equipment efficiency factor for fuel burning equipment.

The Agency has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This approval action regarding Virginia's revised particulate matter regulations has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a

permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1993. Filing a petition for reconsideration by the Administrator of this final rule regarding Virginia's revised particulate matter regulations does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 18, 1993.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

Part 52 of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraph (c)(90) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(90) Revisions to the State Implementation Plan submitted by the Virginia Department of Air Pollution Control on February 14, 1985.

(i) Incorporation by reference.

(A) Letter from the Virginia Department of Air Pollution Control dated February 14, 1985 submitting a revision to the Virginia State Implementation Plan.

(B) The following provisions of the Virginia regulations, effective February 1, 1985:

(1) Part IV—Emission Standards From Existing Sources

"Rule 4–1, sections 120–04–0101 through 120–04–0107; deletion of the definitions of "fumes" and "mist".

Rule 4–4, sections 120–04–0402.C. (definitions of "combustion installation," "combustion unit," "manufacturing operation," "materials handling equipment," "physically connected," "process operation," "process unit," "process weight," "process weight rate," and "total capacity" only), 120–04–0403, 120–04–0404.

Rule 4–7, sections 120–04–0702.C., 120–04–0703, 120–04–0708.

Rule 4–8, sections 120–04–0802.C. (definitions of "fuel burning equipment," "fuel burning equipment installation," "refuse derived fuel," and "total capacity" only), 120–04–0803, 120–04–0804, 120–04–0805, 120–04–0807B, Figures 4–8A, 4–8B.

Rule 4–9, section 120–04–0903.C.

Rule 4–10, sections 120–04–1002.C., 120–04–1003.

Rule 4–12, sections 120–04–1202.C. (definitions of "manufacturing operation," "materials handling equipment," "physically connected," "process operation," "process unit," "process weight," and "process weight rate" only), 120–04–1203.

Rule 4–13, sections 120–04–1302.C. (definitions of "cross recovery furnace," "kraft pulp mill," "lime kiln," "recovery furnace," "smelt dissolving tank," and "straight kraft recovery furnace" only), 120–04–1303, 120–04–1305.

Rule 4–14, sections 120–04–1402.C., 120–04–1403.

Rule 4–15, sections 120–04–1502.C. (except for definition of "coal preparation plant"), 120–04–1503; deletion of the definition "air table."

Rule 4–16, sections 120–04–1602.C., 1120–04–1603.

Rule 4–17, sections 120–04–1702.C., 120–04–1703.

Rule 4–18, sections 120–04–1802.C. (definitions of "aluminum production operation," "brass or bronze," "brass or bronze production," "ferroalloy production operation," "gray iron foundry operation," "lead," "magnesium product operation," "primary copper smelter," "primary lead smelter," "primary metal operation," "primary zinc smelter," "secondary lead production operation," "secondary metal operation," "steel foundry operation," and "zinc processing operation" only), 120–04–1803.

Rule 4–19, sections 120–04–1902.C., 120–04–1903.

Rule 4–20, sections 120–04–2002.C., 120–04–2003.

(2) Part V—Emission Standards for New and Modified Sources

Rule 5–1, sections 120–05–0102.C. (definitions of "fugitive dust," "fugitive emissions," and "six minute period" only), 120–05–0103, 120–05–0104.

(3) Appendix Q

(ii) Additional materials.

(A) Remainder of the February 14, 1985 submittal.

(B) Letters of June 21, 1985 and September 5, 1985 from the Virginia State Air Pollution Control Board to EPA.

[FR Doc. 93–14143 Filed 6–15–93; 8:45 am]

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40 CFR Part 86

[FRL 4665–5]

Control of Air Pollution From New Motor Vehicle Engines: Gaseous and Particulate Emission Regulations for 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: This document contains technical amendments to regulations on control of air pollution from new motor vehicles and new motor vehicle engines. The regulatory text in question was published on Wednesday, June 5, 1991 (56 FR 25724) as part of the final rule establishing gaseous and participate tailpipe emission standards for light-duty vehicles and light-duty trucks beginning with model year 1994. The final rule contained several inadvertent minor errors and omissions that are discussed briefly below and are corrected by this document.

EFFECTIVE DATE: July 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mary E. Walsh, Certification Division, U.S. Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone (313) 668–4205.

SUPPLEMENTARY INFORMATION:

Background

The Agency has promulgated new gaseous and particulate tailpipe emission standards, referred to as the Tier 1 standards, for use in certifying 1994 and later model year new light-duty vehicles and light-duty trucks. Today's action corrects inadvertent errors and omissions in the NO_x emission standards for in-use light-duty trucks, the labeling of a figure for the exhaust gas analytical system, the meaning of an abbreviation, the vehicle labeling and reporting requirements, the intermediate useful life in-use standard for hydrocarbon emissions from methanol-fueled vehicles, and other typographical errors that may prove misleading and are in need of clarification.

By issuing these technical amendments directly as a final rule, EPA is foregoing the issuance of a Notice of Proposed Rulemaking (NPRM) and the opportunity for public comment on the proposal provided by the NPRM rulemaking process. Such a curtailed procedure is permitted by 5 U.S.C. 553(b) and section 307(d) of the Clean Air Act when issuance of a proposal and public comments would be impracticable, unnecessary, or contrary to the public interest. The Agency is publishing this action without prior proposal because these are non-controversial corrections that rectify minor errors and omissions in the Tier 1 final rule in a manner that does not substantively change the requirements of the final rule. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b) for a determination that the issuance of an NPRM is unnecessary. Statutory authority for this action is provided by sections 202 and 207 of the Clean Air Act.

The Agency has determined that this action does not meet any of the criteria for classification as a major rule under Executive Order 12291. Therefore, no Regulatory Impact Analysis is required.

This action does not include any new information collection requirements. The Paperwork Reduction Act is not applicable to this action as these changes to the regulations at 40 CFR part 86 will not impose any reporting requirements on affected parties.

The Regulatory Flexibility Act of 1990 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis. The Agency has determined that the action adopted today will not have a significant impact on small entities. Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, I certify that this regulation does not have a significant impact on a substantial number of small entities.

Today's notice does not create any new regulatory requirements; rather, it restates and clarifies existing requirements; rather, it restates and clarifies existing requirements by correcting a number of errors in the June 5, 1991 final rule (56 FR 27724).

Description of Changes

The following paragraphs describe the individual corrections that are being generated by this document.

In §§ 86.094–8 and 86–094–9, the Tier 1 rule creates standards for NMHC (non-methane hydrocarbon) emissions, but there is no definition of this abbreviation except in terms of an equation in the calculations. Therefore, NMHC is added to the list of abbreviations in part 86, subpart A.

A requirement in § 86.094–23 for certain information to be included in the end-of year report is reduced, because the information EPA needs to determine compliance with the Tier 1 emission standards (engine family, model year, U.S. sales volume based on point of first sale) is included generically in the sales data required elsewhere in the same section. The specific information (individual vehicle identification number, shipment date, purchaser, purchase contract), should EPA wish to inspect it, is required elsewhere in the documentation related to certification to be retained by the manufacturer (§ 86.094–7(h)(1)). Requiring it in the end-of-year report does not serve any useful function, and EPA regards it as unnecessary.

One paragraph is § 86.094–35 that was inadvertently deleted in the final rule is restored. The language clarifies the labeling requirements for high altitude-only vehicles, and does not impose a new requirement.

The title of a paragraph in § 86.094–35 that was inadvertently truncated is extended to explicitly recognize that light-duty truck labeling requirements also apply to heavy-duty vehicles certified to light duty truck standards.

In §§ 86.094–35 and 86.095–35, text requiring evaporative family information on the label is added to the labeling requirements for light-duty trucks and heavy-duty vehicles optionally certifying under light-duty truck provisions. This text, which had been inadvertently eliminated from some of the corresponding earlier model year sections, as well as these sections, is restored so that it is again identical to the corresponding paragraph pertaining to light-duty vehicles.

An incorrect section reference in § 86.095–35 is corrected.

A label on a figure in § 86.111–94 correctly published as "CH_4" in the NPRM was inadvertently changed to "CH_3" when the final rule was published; the label is changed to its correct designation.

Several typographical errors appearing in § 86.708–94 as "Tier 1[1]" are corrected to the proper designations of "Tier 1" and "Tier 1_1" and a table heading appearing as "Tier 1" is corrected to read "Tier 1_1."

Errors in the full useful life NO_X standard for light light-duty trucks in § 86.709–94 are corrected to the proper number of significant digits.

Two values entered by typographical error into the "THC" column of the intermediate useful life standards for methanol-fueled heavy light-duty vehicles in § 86.709–94 are transferred to the "OMHCE" column.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Confidential business information, Gasoline, Imports, Incorporation by reference, Labeling, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: June 7, 1993.

Michael H. Shapiro,

Acting Assistant Administrator.

Accordingly, 40 CFR part 86 is amended by making the following technical amendments:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

2. In § 86.094–3, paragraph (b), an abbreviation is added in alphabetical order to read as follows:

§ 86.094–3 Abbreviations.

* * * * * *

(b) * * *

NMHC—Non-Methane Hydrocarbons.

* * * * * *

3. In § 86.094–23, in paragraph (l)(2)(v), the first sentence is deleted so that the paragraph reads as follows:

§ 86.094–23 Required data.

* * * * * *

(l) * * *

(2) * * *

(v) The information shall be organized in such a way as to allow the administrator to determine compliance with the Tier 1 standards implementation schedules of § 86.094–8 and § 86.094–9, and Tier 1 and Tier 1_1 implementation schedules of § 86.708–94 and § 86.709–94.

4. In § 86.094–35, paragraph (a)(1)(iii)(L) is added, and paragraph (a)(2) is amended by revising the heading and by revising paragraph (a)(2)(iii)(C) to read as follows:

(a) * * *

(1) * * *

(iii) * * *

(L) Vehicles which have been certified under the provisions of § 86.094–8(j) must comply with the labeling requirements contained in § 86.1606.

(2) *Light-duty trucks and heavy-duty vehicles optionally certified in accordance with the light-duty truck provisions.* * * *

(iii) * * *

(C) Engine family displacement (in cubic inches), engine family identification, and evaporative family identification;

* * * * *

5. In § 86.095–35, paragraphs (a)(1)(iii)(J) and (a)(2)(iii)(C) are revised to read as follows:

§ 86.095–35 Labeling.

(a) * * *

(1) * * *

(iii) * * *

(J) Vehicles granted final admission under § 85.1505 of this chapter must comply with the labeling requirements contained in § 85.1510 of this chapter.

* * * * *

(2) * * *

(iii) * * *

(C) Engine family displacement (in cubic inches), engine family identification, and evaporative family identification;

* * * * *

§ 86.111–94 [Amended]

6. In § 86.111–94, Figure B94–7 in paragraph (a) is amended by revising "CH_3" to read "CH_4" in two locations. The amended figure is included for the reader's convenience.

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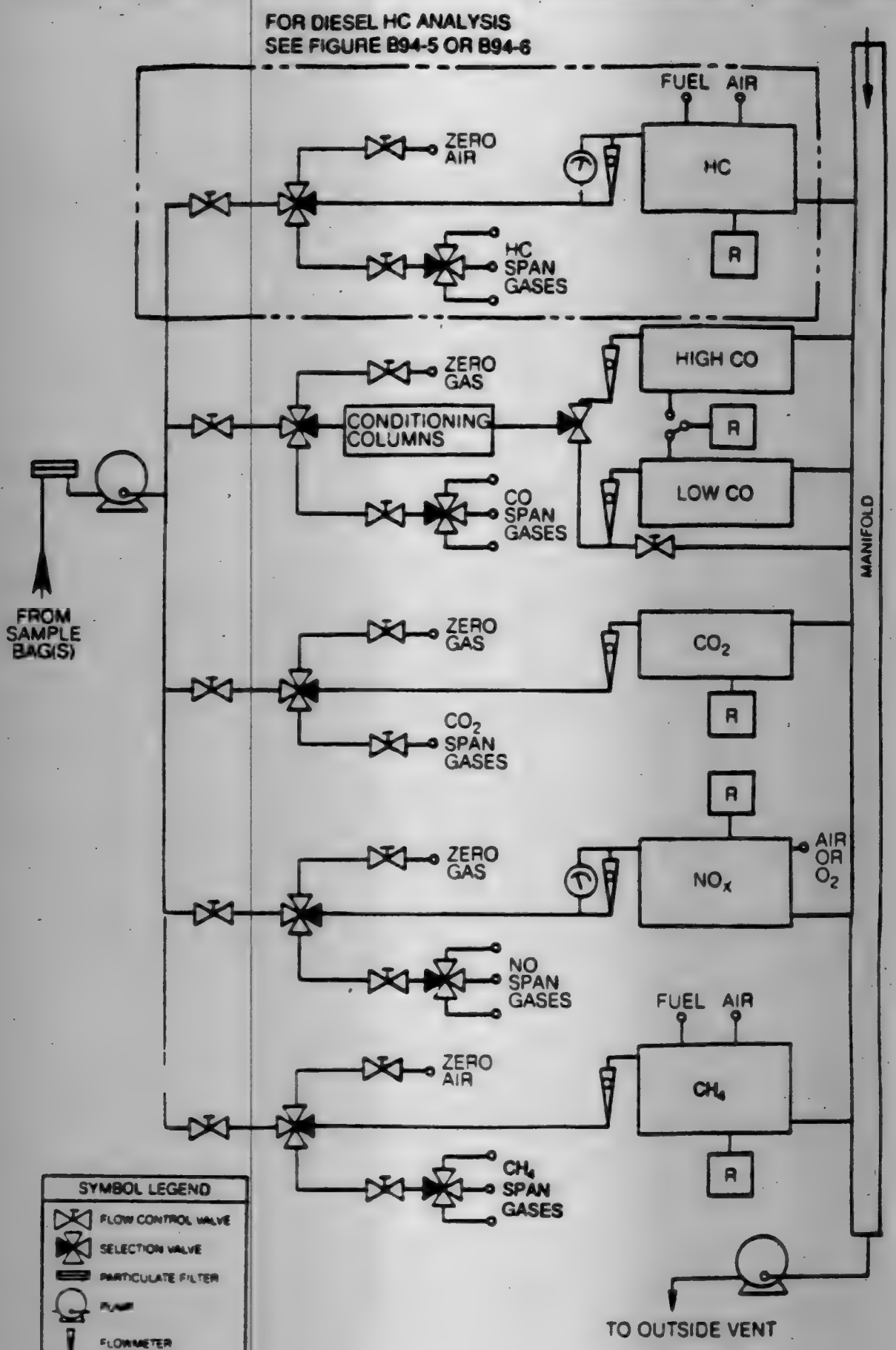

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FIGURE B94-7 EXHAUST GAS ANALYTICAL SYSTEM

7. In § 86.708–94, Table H94–1, the heading "Tier 1 percentage" is revised to read "Tier 1_1 percentage", and paragraph (a)(1)(i)(A) is revised to read as follows:

§ 86.708–94 In-use emission standards for 1994 and later model year light duty vehicles.

(a)(1) * * *

(i) * * *

(A)(*1*)(*i*) For model years 1994 and 1995, a minimum of the percentage shown in Table H94–1 of a manufacturer's sales of the applicable model year's light-duty vehicles shall not exceed the applicable Tier 1_1 standards in Table H94–3. The remaining vehicles, if any, shall not exceed the applicable Tier 0 standards in Table H94–3.

(*ii*) For model years 1996 and beyond, a minimum of the percentages shown in Table H94–2 of a manufacturer's sales of the applicable model year's light-duty vehicles shall not exceed the applicable Tier 1 standards in Tables H94–3 and H94–4. The remaining vehicles, if any, shall not exceed the applicable Tier 1_1 standards in Table H94–3.

(*2*) *Particulates.* For in-use exhaust emissions for model years 1994 and later, a minimum of the percentage shown in Table H94–5 of a manufacturer's sales of the applicable model year's light-duty vehicles shall not exceed the applicable Tier 1 standards in Tables H94–6 and H94–7. The remaining vehicles, if any, shall not exceed the applicable Tier 0 standards in Table H94–6.

(*3*) Optionally, compliance with the Tier 1_1 and Tier 1 implementation schedules of this section may be based on the combined sales of light-duty vehicles and light light-duty trucks, if such option was taken for certification as allowed in § 86.094–8 and § 86.094–9 of subpart A of this part. Vehicles meeting Tier 1_1 in-use standards shall only be combined for this purpose with other vehicles meeting Tier 1_1 standards, and those meeting Tier 1 standards shall only be combined with those meeting the Tier 1 standards.

* * * * *

8. In § 86.709–94, Table H94–10, the full useful life Tier 1 NO_x standard for gasoline-fueled and methanol-fueled light light-duty trucks of 0–3750 lbs LVW (in the column "NO_x1") is revised from "0.60" to read "0.6", and in Table H94–15, the intermediate useful life Tier 0 standard given as "0.80" for methanol-fueled heavy light-duty trucks with LVW 0–3750 lbs and with LVW >3750 lbs is removed twice from the THC column and added to the OMHCE column.

[FR Doc. 93–13836 Filed 6–15–93; 8:45 am]

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40 CFR Part 180

[OPP–300246A; FRL–4078–3]

RIN 2070–AB78

Silvex; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the tolerances and interim tolerances listed in 40 CFR 180.319 and 180.340 for residues of the herbicide and plant regulator silvex [2-(2,4,5-trichlorophenoxy)propionic acid] in or on various raw agricultural commodities. EPA is initiating this action because all registered uses of silvex have been canceled.

EFFECTIVE DATE: This regulation becomes effective June 16, 1993.

ADDRESSES: Written objections, identified by the document control number, [OPP-300246A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Downing, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 718H, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5179.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of June 30, 1992 (57 FR 29055). It proposed the revocation of tolerances and interim tolerances for residues of silvex in or on various raw agricultural commodities established under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) listed in 40 CFR 180.319 and 180.340. EPA initiated this action because all registered uses of silvex have been canceled.

No public comments or requests for referral to an advisory committee were received in response to the notice of proposed rulemaking.

Therefore, based on the information considered by the Agency and discussed in detail in the June 30, 1992 proposal and in this final rule, the Agency is hereby revoking the tolerance listed in 40 CFR 180.340 for residues of silvex in pears and the interim tolerances listed in 40 CFR 180.319 for residues of silvex in apples, plums (prunes), rice, and sugarcane.

Since silvex is not considered a persistent chemical and the related uses were canceled many years ago (final cancellation order on February 11, 1985), there is no anticipation of a residue problem due to environmental contamination. Consequently, the Agency will not recommend action levels to replace the tolerances upon their revocation.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Executive Order 12291

As explained in the proposal published June 30, 1992, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the removal of these tolerances will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a

substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the June 30, 1992 proposal.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 8, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.319 [Amended]

2. In the table to § 180.319 *Interim tolerances* by removing the entry for silvex from the list.

§ 180.340 [Removed]

3. By removing § 180.340 *Silvex; tolerances for residues.*

[FR Doc. 93–14196 Filed 6–15–93; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 91–66; FCC 93–262]

Private Land Mobile Radio Services; Secondary Fixed Operations in the 450–470 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In response to petitions for clarification received, this document clarifies frequency coordination procedures for secondary fixed operations in the 450–470 MHz band.

EFFECTIVE DATE: June 16, 1993.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION:

Summary of Memorandum Opinion and Order

In response to petitions submitted by Forest Industries Telecommunications (FIT) and the Manufacturers Radio Frequency Advisory Committee (MRFAC), this Memorandum Opinion and Order clarifies rules adopted in the Report and Order, PR Docket No. 91–66, 57 FR 24991, June 12, 1992, concerning the procedures frequency coordinators use when recommending frequencies in the 450–470 MHz band for secondary fixed use. It also denies the request by FIT that the Commission reconsider its decision to permit secondary fixed use of the frequencies in urban areas.

Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis was prepared for the Report and Order in this proceeding. None of the rules adopted in this Memorandum Opinion and Order modify the effect this proceeding has on small businesses and it is, therefore, unnecessary for us to modify our Final Regulatory Flexibility Analysis.

Paperwork Reduction Act Statement

The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collecting and/or recordkeeping, labeling, disclosure, or record retention requirements, and will not increase burden hours imposed upon the public.

List of Subjects in 47 CFR Part 90

Radio, Secondary fixed.

Amendatory Text

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.261 is amended by revising paragraph (e) to read as follows:

§ 90.261 Assignment and use of the frequencies in the band 450–470 MHz for fixed operations.

* * * * *

(e) Coordination of assignable frequencies subject to the provisions of this section will be permitted by any certified frequency coordinator. If an applicant elects to obtain a frequency recommendation from the certified frequency coordinator for the service in which the applicant is eligible, the coordinator shall first attempt to recommend a frequency within the applicant's own radio service. If none are available, the coordinator may then recommend a frequency allocated to another radio service. If an applicant elects to obtain a frequency recommendation from a certified coordinator of a service in which the applicant is not eligible, that coordinator may only recommend a frequency allocated to the service for which the coordinator is certified. If a coordinator recommends a frequency allocated to a service where the applicant is not eligible on a primary basis, or if a recommended frequency is shared by more than one radio service on a primary basis, then the coordinator must notify all coordinators certified to recommend that frequency on a primary basis. If any of these coordinators objects to a recommendation, they must notify the coordinator making the frequency recommendation of such objection within 10 working days, as calculated in accordance with § 1.4 of the Rules, from receipt of the notification. The recommending coordinator should attempt to resolve any objections raised by the notified coordinators and may not submit the application to the Commission prior to the expiration of this 10-day period.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–14091 Filed 6–15–93; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 920783–3085]

Designated Critical Habitat; Sacramento River Winter-Run Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS is designating critical habitat for the Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) pursuant to the Endangered Species Act (ESA). The habitat for designation includes: The Sacramento River from Keswick Dam, Shasta County (River Mile 302) to Chipps Island (River Mile 0) at the westward margin of the Sacramento-San Joaquin Delta; all waters from Chipps Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait; all

waters of San Pablo Bay westward of the Carquinez Bridge; and all waters of San Francisco Bay (north of the San Francisco/Oakland Bay Bridge) from San Pablo Bay to the Golden Gate Bridge. Maps are available on request (see ADDRESSES). In addition, the critical habitat designation identifies those physical and biological features of the habitat that are essential to the conservation of the species and that may require special management consideration or protection. The economic and other impacts resulting from this critical habitat designation, over and above those arising from the listing of the species under the ESA, are expected to be minimal. The designation of critical habitat provides explicit notice to Federal agencies and the public that these areas and features are vital to the conservation of the species.

EFFECTIVE DATE: July 16, 1993.

ADDRESSES: Requests for maps should be addressed to William W. Fox, Jr., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, or Gary Matlock, Acting Regional Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, NMFS, Southwest Region, Protected Species Management Division, (310) 980–4015, or Margaret Lorenz, NMFS, Office of Protected Resources, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

Although winter-run chinook salmon are currently listed as threatened (55 FR 46515, November 5, 1990), NMFS published a proposed rule to reclassify the species as endangered on June 19, 1992 (57 FR 27416).

On August 14, 1992 (57 FR 36662), NMFS published a proposed rule to designate critical habitat for Sacramento River, California, winter-run chinook salmon. NMFS also completed an assessment that focused on identifying the economic consequences (costs and benefits) of implementing alternative water management strategies to achieve specific temperature and flow criteria for various alternative critical habitat designations (Final Report, Evaluation of Economic Impacts of Alternatives for Designation of Winter-run Chinook Salmon Critical Habitat in the Sacramento River, Hydrosphere Resource Consultants, July 1991). In addition, NMFS prepared an environmental assessment (EA), pursuant to the National Environmental Policy Act (NEPA), to evaluate both the environmental and economic impacts of the proposed critical habitat designations.

NMFS is designating critical habitat for the Sacramento River winter-run chinook salmon as described in the proposed rule, excluding South San Francisco Bay. Because the area designated is consistent with the criteria established by the definition of critical habitat under section 3(5)(A) of the ESA. No significant new information regarding winter-run chinook salmon biology or Federal agency activities was received during the comment period.

Comments and Responses

State agencies, county governments, Federal agencies and other interested parties were notified and requested to comment on the proposed rule. Public hearings on the proposed rule were held November 16, 17, and 18, 1992, in Fresno, Sacramento, and Willows, California, respectively. Thirty-three individuals presented testimony at these hearings. During the 154-day comment period, NMFS received 37 written comments from government agencies, non-government organizations and individuals on the proposed rule. These comments are addressed below.

Geographic Extent of Critical Habitat

Comments: Several commenters recommended that the proposed geographic range of critical habitat for winter-run chinook salmon be revised. For example, five commenters recommended that NMFS include the open ocean habitat used by winter-run chinook salmon in the designation. One commenter recommended that only the McCloud and Pitt Rivers be designated as critical habitat for winter-run chinook. Another suggested that Clear Creek and Cottonwood Creek be included in the designation. One commenter recommended that the designation be expanded to include several tributaries of the San Joaquin River and portions of the Mokelumne River, Georgiana Slough, and other waterways in the Sacramento-San Joaquin Delta. Two others recommended that San Francisco Bay and San Pablo Bay not be included. Several commenters expressed concern that the definition of riparian zone in the critical habitat designation was too vague.

Response: Critical habitat is defined in section 3(5) of the ESA as the specific areas within the geographic area occupied by the species on which are found those physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection.

Although it is important, NMFS has not included the open ocean habitat used by winter-run chinook salmon because this area does not appear to be in need of special management consideration or protection. Degradation of this portion of the species habitat, and other factors associated with the open ocean, such as commercial and recreational fishing, do not appear to be significant factors in the decline of the species. In addition, existing laws appear adequate to protect these areas, and special management of this habitat is not considered necessary at this time. Also, during the comment period, NMFS did not receive any new information indicating that degradation of ocean habitat or other factors associated with the open ocean are significant factors in the decline of the species. However, NMFS will continue to monitor activities in the open ocean to determine if it needs to be included in the critical habitat designation, and will continue to consult under section 7 of the ESA to address Federal actions that may affect the species or result in takings in the open ocean.

Areas outside the current geographical area occupied by a species that are determined to be essential for its conservation also may be included in a critical habitat designation under section 3(5) of the ESA. Before construction of Shasta and Keswick Dams, winter-run chinook were reported to have spawned in the upper reaches of the McCloud, lower Pitt, and Little Sacramento Rivers. However, the geographic extent of spawning habitat on these rivers before construction of Shasta and Keswick dams is largely speculative or unknown. Significant hydropower development in the 1920's is thought to have significantly reduced any available habitat for winter-run spawning on the Pitt River. Construction of Shasta and Keswick Dams in the early 1940's completely blocked access by winter-run chinook to any spawning habitat above the dams, and construction of passage facilities is not practical. However, subsequent operations of these dams by the Bureau of Reclamation (Bureau) created new habitat below Keswick Dam due to the release of cold water from Shasta reservoir into the mainstem of the Sacramento River. This habitat did not exist before operation of Shasta/Keswick Dams, but is now essential to the continued existence of winter-run chinook salmon.

NMFS agrees that Clear Creek, Cottonwood Creek, and other tributaries of the Sacramento River deliver gravel

for spawning substrate for winter-run chinook salmon and that clean gravel is an essential physical feature for the conservation of the species. However, since these tributaries are not, in themselves, essential for the conservation of winter-run chinook salmon, NMFS has not included them in the critical habitat designation. But, agency actions that may destroy or modify critical habitat features, even if the actions occur outside the designated habitat area, are subject to section 7 of the ESA. NMFS will monitor activities that occur in these tributaries that may adversely impact winter-run chinook or essential habitat features to ensure that recovery of the species is not impeded.

Until 1984, a small number of winter-run chinook salmon returned annually to a tributary to the lower San Joaquin River in the upper Calavaras River and spawned below New Hogan Dam. Exceptionally low flows due to the operation of New Hogan Dam and the 1987–1992 drought appear to have eliminated this group. NMFS has determined that the San Joaquin River Basin is not essential for the conservation of the Sacramento River winter-run chinook salmon population. Therefore, the upper Calavaras River is not included in the critical habitat designation for Sacramento River winter-run chinook salmon.

The Sacramento-San Joaquin Delta contains less suitable habitat for winter-run chinook salmon than habitat that is found in the Sacramento River. It has been estimated that as much as 25 to 40 percent of juvenile winter-run chinook salmon may be diverted into the Delta at the Delta Cross Channel. Once diverted through the Cross Channel, juveniles are subject to adverse conditions that decrease their survival. For instance, diverted juveniles may be subject to a longer migration route where fish are exposed to predation, higher water temperatures, unscreened diversions, poor water quality, reduced availability of food, and entertainment in Delta pumps.

NMFS' goal is to minimize diversion of winter-run chinook salmon in the Cross Channel. However, NMFS included measures in its 1992 and 1993 biological opinions on the operation of the Central Valley Project and State Water Project to exclude winter-run chinook salmon from the central Delta. For these reasons, rivers and sloughs of the Delta are not essential for the conservation of winter-run chinook salmon and are not included in the critical habitat designation.

Water quality is an essential feature of winter-run chinook salmon habitat. For instance, dredging activities may degrade habitat used by winter-run chinook salmon in San Francisco Bay and elsewhere. In the past, NMFS has evaluated dredging projects both in terms of their quantitative and qualitative impact on water quality. Currently, small scale dredging projects, typically of 100,000 cubic yards or less, are thought to have minor impact while larger projects are thought to have potentially significant impacts on water quality. Because juvenile winter-run chinook salmon may ingest prey organisms with high levels of contaminants (i.e., DDT, PCB's) during their outmigration through San Francisco Bay, dredging activities in the Bay will most likely continue to require special management considerations to conserve winter-run chinook. No new information on the effects of dredging on water quality was received during the comment period.

Also, NMFS wants to clarify that South San Francisco Bay is not included in the critical habitat designation because it is not considered an essential component of winter-run chinook salmon's migration corridor to the Pacific Ocean. However, all the waters of San Pablo Bay and San Francisco Bay north of the San Francisco/Oakland Bay Bridge are included in the critical habitat designation.

Riparian zones. In the Sacramento River, critical habitat includes the river water, river bottom, and the adjacent riparian zone. According to a 1983 report by the Dept. of Agriculture, riparian zones are those adjacent terrestrial areas that directly affect a freshwater aquatic ecosystem. A 1992 report by the U.S. Fish and Wildlife Service states that riparian streambanks are composed of natural, eroding substrates supporting vegetation that either overhangs or protrudes into the water and, consequently, provides shade and escape cover for salmonids and other wildlife. Riparian vegetation also increases river productivity which, in turn, provides prey for salmonids.

Riparian zones on the Sacramento River are considered essential for the conservation of winter-run chinook salmon because they provide important areas for fry and juvenile rearing. For example, studies of chinook salmon smolts in the middle reaches of the Sacramento River found higher densities in natural, eroding bank habitats with woody debris (Michny 1988). Because adverse modification of riparian zones along the Sacramento River may impede the recovery of winter-run chinook salmon, the "adjacent riparian zone" is included in the critical habitat designation for winter-run chinook. However, because influences of riparian vegetation progressively decrease away from the water source (e.g., river), riparian areas cannot be defined by discrete boundary zones. Therefore, NMFS is limiting the "adjacent riparian zones" to only those areas above a streambank that provide cover and shade to the nearshore aquatic areas.

Economic Impacts—Incremental Approach

Comments: Nine commenters believe that NMFS improperly minimized the economic impacts by separating the designation of critical habitat from the listing process (i.e., incremental approach). These are concerned that by separating the costs associated with the various regulatory actions (e.g., listing, critical habitat designation, section 7), NMFS underestimated the real economic consequences of protection of winter-run chinook salmon as required by the ESA. Several commenters objected to NMFS' interpretation that the impact of critical habitat designation only duplicates the protection provided under section 7 of the ESA. Also, several commenters believe that using an incremental approach for critical habitat designation renders sections of the ESA meaningless and circumvents the intent of Congress.

Response: NMFS concludes that the economic impact of designating critical habitat will have only a small incremental increase in impacts above those resulting from the listing. The law is unambiguous in both its prohibition of the consideration of economics in the listing process and its requirement to analyze the economic impact of designating critical habitat. These disparate requirements for each determination lead to an incremental analysis in which only the economic impacts resulting from the designation of the critical habitat are considered.

NMFS disagrees with the assertion that the incremental approach to critical habitat designation renders designation meaningless. Critical habitat is important because it identifies habitat that is essential for the continued existence of a species and that may require special management measures. This facilitates and enhances Federal agencies' ability to comply with section 7 by ensuring they are aware of the habitat that should be considered in analyzing the effects of their activities on listed species and habitats essential to support them. In addition to aiding Federal agencies in determining when consultations are required pursuant to section 7(a)(2), critical habitat can aid an agency in fulfilling its broader obligation under section 7(a)(1) to use

its authority to carry out programs for the conservation of listed species.

Several commenters asserted that the incremental approach fails to take into account the substantial effect on non-Federal interests that will suffer the effects of designation to the extent they must receive Federal approvals or funds to conduct their activities. Whether or not critical habitat is designated, non-Federal interests must conduct their actions consistent with the requirements of the ESA. When a species is listed, non-Federal interests must comply with the prohibitions on takings under section 9 or associated regulations. If the activity is funded, permitted or authorized by a Federal agency, that agency must comply with the non-jeopardy mandate of section 7 of the ESA. In addition, once critical habitat is designated, the agency must avoid actions that destroy or adversely modify that critical habitat. However, given definitions under 50 CFR 402.02, any action that destroys or adversely modifies critical habitat is likely to jeopardize the continued existence of the species. Therefore, NMFS does not anticipate that the designation will result in additional requirements for non-Federal interests.

Economic Impact Analysis

Comments: Fifteen comments questioned the adequacy of NMFS' economic impact analysis (Hydrosphere 1991). Several commenters objected to NMFS' determination that the proposed designation would have only minimal economic impacts. There were several comments on the expected costs of the proposed designation. Commenters also expressed concern that the analysis entirely ignored impacts resulting from possible reduction in water supply to areas south of the Sacramento-San Joaquin Delta. Two commenters believe the analysis failed to evaluate the impact of dredging delays or curtailed dredging on the economy of the San Francisco Bay Area. One commenter stated that the analysis contained no justification for the apparent economic benefits and two commenters stated that the analysis overestimated the beneficial impacts of the proposed rule on hydropower usage. One commenter believed that the additional administrative impacts of the proposed designation for winter-run chinook salmon were underestimated.

Response: Under section 4(b)(2) of the ESA, the Secretary is required to designate critical habitat on the basis of the best scientific data available and after taking into account the economic impact, and other relevant impacts, of specifying any particular area as critical habitat. An area may be excluded from a critical habitat designation if the overall benefits of exclusion outweigh the benefits of designation and the exclusion will not result in the extinction of the species.

NMFS has concluded, based on an assessment of the economic impacts of designating critical habitat for winter-run chinook salmon, that the designation is not likely to have any additional adverse impacts on Federal, state, or private actions beyond those that already occur as a result of listing a species under the ESA. Although many of the comments received on the economic impact of the proposed designation suggested that the designation will have major economic costs, these costs are attributable to the economic impacts resulting from the listing of the species and not from designating its critical habitat.

Currently, Federal agencies active within the range of the winter-run chinook salmon are required to consult with NMFS regarding projects and activities they permit, fund, or otherwise carry out that may affect the species since the species is listed as threatened under the ESA. Thus, even without this critical habitat designation, Federal agencies would be required to consult with NMFS, in most if not all situations, if winter-run chinook salmon habitat might be adversely affected since any action that is likely to affect the habitat of winter-run chinook salmon would also be expected to affect the species. For example, on February 12, 1993, NMFS issued a biological opinion to the Bureau and the California Department of Water Resources (DWR) addressing the effects of Central Valley Project and State Water Project activities on winter-run chinook salmon. The biological opinion concluded that the proposed operation of these projects would likely jeopardize the continued existence of winter-run chinook salmon. With respect to Shasta and Keswick Dams, NMFS identified a specific reasonable and prudent alternative to avoid jeopardy that requires the Bureau to maintain end-of-water-year (September 30) carryover storage in Shasta Reservoir of 1.9 million acre feet. The alternatives ensure that suitable water temperature conditions are maintained in the upper Sacramento River during winter-run chinook salmon spawning and incubation periods and implement protective measures in the Delta to limit loss of juvenile fish at pumping plants. NMFS recognizes the requirements could have significant economic impacts. However, these measures are clearly required as a result of the listing of winter-run chinook salmon, not critical habitat designation, since critical habitat had not been designated at the time the biological opinion was issued.

Hydrosphere evaluated the economic impacts of implementing various water management alternatives (i.e., specific temperature and instream flow criteria within the geographically defined critical habitat) that NMFS believes would improve the critical habitat of winter-run chinook salmon and, therefore, benefit the species. NMFS is currently using these same general hydrologic attributes to determine whether proposed or existing actions are likely to result in jeopardy to winter-run chinook salmon. For this reason, it is difficult to separate the estimated costs of the critical habitat designation from the costs associated with listing the species and the resulting prohibition on taking. For the purpose of this analysis, costs associated with achieving the identified hydrologic attributes (e.g., minimum flow requirements and temperature goals) within the critical habitat designation were analyzed. The resulting changes in hydrology and associated economic costs or benefits were then estimated.

Although information was requested from relevant Federal agencies on the potential impacts of the proposed designations on their operations and management of systems over which they have direct control or regulatory authority, a few agencies, including the Bureau, could not provide the requested information. Therefore, without responses from all Federal agencies, some costs associated with alternative management measures had to be estimated or were not identified. Although NMFS recognizes that the Hydrosphere report may not be complete, the analysis was broader than the impacts of a critical habitat designation. Therefore, it is not necessary to revise or update the Hydrosphere report before final designation of critical habitat.

Seasonal Designation

Comments: One commenter recommended that critical habitat for winter-run chinook salmon be designated on a seasonal basis, suggesting that tit could be based on the seasonal distribution of different winter-run chinook life history stages (e.g., breeding and rearing areas).

Response: A seasonal critical habitat designation for Sacramento river winter-run chinook salmon is not appropriate because it would not be practical or beneficial for the conservation of the species. Due to the life history of winter-run chinook salmon, either eggs, fry,

juveniles, or adults are present almost year-round in the Sacramento River. Therefore, impacts to winter-run critical habitat need to be evaluated on a year-round basis.

Increase in 1992 Spawning Escapement

Comment: One commenter believes that designation of critical habitat is not justified and is no longer necessary because of the increase in the 1992 spawning escapement.

Response: The designation of critical habitat is a statutory requirement under section 4(a)(3) of the ESA. Improvements in spawning escapement do not affect this statutory requirement.

Impact of Critical Habitat Designation

Comment: Several commenters stated that designating critical habitat for winter-run chinook salmon was a "major rule" because the economic impacts will be greater than $100 million and recommended that NMFS conduct a regulatory impact analysis under E.O. 12291 and under the Regulatory Flexibility Act. Two other commenters recommended that NMFS prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act on the critical habitat designation because designation is a major Federal action and will have a significant impact on the environment.

Response: NMFS has concluded that the economic impacts of designating critical habitat for winter-run chinook salmon are minimal and the designation is not a major rule because these economic costs are not greater than $100 million. Also, NMFS completed an Environmental Assessment pursuant to NEPA and concluded that this measure would not result in any significant adverse environmental impacts. Therefore, NMFS has determined that a regulatory impact analysis and/or an EIS are not necessary.

Recovery Plan

Comment: One commenter recommended that NMFS delay critical habitat designation for winter-run chinook salmon until a recovery plan is developed in order to allow for an adequate evaluation of the impacts of the critical habitat designation.

Response: In 1992, NMFS appointed a recovery team to develop a recovery plan for Sacramento River winter-run chinook salmon. The team will likely require a year to complete a draft recovery plan. NMFS does not have the authority to delay the designation of critical habitat. However, if new information becomes available from the Recovery Team or other sources, NMFS may revise the designation as provided under section 4(A)(3)(b) of the ESA.

Public Health

Comments: Three commenters were concerned about the impacts of the critical habitat designation on public health. One commenter believed that critical habitat designation could restrict Butte County Mosquito Abatement District's ability to use pesticides to control disease-vectoring mosquitos that use the back-waters of the Sacramento River as breeding grounds and harborage.

Response: Actions such as these that may adversely impact critical habitat may also adversely affect the species, and would be evaluated under section 7 or 10 of the ESA with or without critical habitat designation.

Notice of Proposed Rule

Comments: Two commenters stated that they were not provided with adequate notice of the proposed designation of critical habitat for winter-run chinook salmon.

Response: After NMFS became aware that some counties that may be affected by the winter-run chinook salmon critical habitat designation were not notified of the proposed rulemaking, NMFS extended the public comment period an additional 60 days.

Primary Constituent Elements

Comments: Two commenters recommended that "primary constituent elements" (e.g., water quality and quantity standards) specified in the proposed rule under "Need for Special Management Consideration or Protection" should be included as part of the regulatory requirements of the critical habitat designation for winter-run chinook salmon.

Response: The primary constituent elements that are described under the "Need for Special Management Considerations or Protection" discussed in the proposed rule are provided to inform the public and to provide general guidance to Federal agencies. The recommended temperature and flow criteria have not been included in the regulatory text describing critical habitat; rather, this discussion is to alert the public to recommendations that NMFS may make on a case-by-case basis as part of the section 7 consultation process. For instance, NMFS has required some of these criteria to be achieved through a biological opinion issued to the Bureau of Reclamation that includes requirements for reasonable and prudent alternatives to be implemented to achieve a likelihood of non-jeopardy to winter-run chinook salmon. NMFS does not have the expertise to regulate water quality and quantity criteria for Federally-permitted water projects. Requiring Federal agencies to use their own expertise through the section 7 consultation process is a more effective method of obtaining adequate water quality and quantity standards.

Procedural Methodology

Comments: One commenter expressed concern that NMFS did not publish the standards it used to evaluate the economic impacts of winter-run chinook salmon critical habitat designation. This commenter recommended that NMFS publish the standards it will use to evaluate economic impacts such as direct or indirect job losses, regional or national analysis, short-term or long-term analysis.

Response: Due to the variety of habitats and human activities, NMFS analyzes economic impacts of particular actions on a case-by-case basis. The economic study conducted by NMFS does describe the accounting perspective in terms of both a state-wide and national perspective. The analysis also considers indirect impacts of specific management measures as well as direct impacts.

Water Quality Criteria and Standards—Decision 1630

Comment: A commenter suggested that conditions required by the critical habitat designation should take into consideration the new regulatory framework set forth by the State Water Resources Control Board's Decision 1630.

Response: Since the State Water Resources Control Board has not adopted Decision 1630 (which includes criteria for water quality and quantity standards), NMFS did not consider it in the critical habitat designation for winter-run chinook salmon.

Essential Habitat of the Sacramento River Winter-run Chinook Salmon

Physical and biological features that are essential for the conservation of winter-run chinook salmon, based on the best available information, include (1) access from the Pacific Ocean to appropriate spawning areas in the upper Sacramento River, (2) the availability of clean gravel for spawning substrate, (3) adequate river flows for successful spawning, incubation of eggs, fry development and emergence, and downstream transport of juveniles, (4) water temperatures between 42.5 and 57.5°F (5.8 and 14.1°C) for successful spawning, egg incubation, and fry

development, (5) habitat areas and adequate prey that are not contaminated, (6) riparian habitat that provides for successful juvenile development and survival, and (7) access downstream so that juveniles can migrate from the spawning grounds to San Francisco Bay and the Pacific Ocean.

Need for Special Management Considerations or Protection

In the identified habitat areas, NMFS has determined that certain physical and biological features may require special management considerations or protection. In particular, specific water temperature criteria, minimum instream flow criteria, and water quality standards represent physical features of the winter-run chinook salmon's habitat that are essential for the species' conservation and that may require special management. Similarly, biological features of the designated critical habitat that are considered vital for winter-run chinook salmon include unimpeded adult upstream migration routes, spawning habitat, egg incubation and fry emergence areas, rearing areas for juveniles, and unimpeded downstream migration routes for juveniles. Again, these habitat features may require special management.

Special considerations and protection for these and other habitat features will be evaluated during the section 7 process and in the development and implementation of a recovery plan for winter-run chinook salmon. If adequate protection cannot be provided through consultation or through the recovery planning process, separate management actions with binding requirements may be considered.

Activities That May Affect the Essential Habitat

A wide range of activities may affect the essential habitat requirements of winter-run chinook salmon. These activities include water management operations by the Bureau of Reclamation's Central Valley Project (e.g., Shasta and Keswick Dams, Red Bluff Diversion Dam, the Tehama-Colusa Canal, the Delta Cross Channel, and delta export facilities) that affect the Sacramento River and Delta, water management operations by the California Department of Water Resource's State Water Project (including export of water from the Sacramento-San Joaquin Delta) that affect both the Sacramento River and Delta, small and large water diversions by private entities such as the Anderson-Cottonwood Irrigation District and the Glenn-Colusa Irrigation District that are located on the Sacramento River, bank restoration activities by the U.S. Army Corps of Engineers (Corps) in the Sacramento River and Sacramento-San Joaquin Delta, and Corps permitting activities that authorize dredging and other construction-related activities in the Sacramento River, Sacramento-San Joaquin Delta, and San Francisco Bay.

The Federal agencies that most likely will be affected by this critical habitat designation include the U.S. Bureau of Reclamation, the Corps, the U.S. Fish and Wildlife Service, the Federal Energy Regulatory Commission, the U.S. Navy, and NMFS. This designation will provide clear notification to these agencies, private entities, and the public of the existence of critical habitat for winter-run chinook salmon and the boundaries of the habitat and the protection provided for that habitat by the section 7 consultation process. This designation will also assist these agencies, and others as required, in evaluating the potential effects of their activities on the winter-run chinook salmon and its critical habitat, and in determining when consultation with NMFS would be appropriate.

Expected Impacts of Designation Critical Habitat

Under section 7 of the ESA, Federal agencies are required to ensure that their actions are not likely to jeopardize the continued existence of listed species or to result in the destruction or adverse modification of listed species' critical habitat. Also, takings of winter-run chinook salmon are prohibited under regulations issued when the species was listed as threatened.

This action identifies specific habitat areas that have been determined to be essential for the conservation of the winter-run chinook salmon and that may be in need of special management considerations or protection. Also, this designation requires Federal agencies to evaluate their activities with respect to the critical habitat of winter-run chinook salmon and to consult with NMFS pursuant to section 7 of the ESA before engaging in any action that may affect the critical habitat. Federal agencies must ensure that their activities are not likely to result in the destruction or adverse modification of this critical habitat.

Currently, Federal agencies active within the range of the winter-run chinook salmon are required to consult with NMFS regarding projects and activities they permit, fund or otherwise carry out that may affect the species since it is listed as threatened under the ESA. Even without this critical habitat designation, Federal agencies are required to consult with NMFS, in most if not all situations, if winter-run chinook salmon habitat might be adversely affected since any action that is likely to affect the habitat of winter-run chinook salmon would also be expected to affect the species.

Designation of critical habitat for winter-run chinook salmon is not likely to have any additional direct adverse economic impacts on Federal, state, or private activities beyond those that already occur as a result of listing a species under the ESA. Following designation of critical habitat, Federal agencies will continue to engage in section 7 consultations to determine if the actions they authorize, fund, or carry out are likely to jeopardize the continued existence of winter-run chinook salmon. With the designation, they will also need to address explicitly impacts to the species' critical habitat as well. However, this is not expected to materially affect the scope of future consultations or result in greater economic impacts since the impacts to winter-run chinook salmon habitat are already considered in section 7 consultations.

Hydrosphere evaluated the economic impacts of implementing various special water management alternatives (i.e., specific temperature and instream flow criteria within the geographically defined critical habitat) that NMFS believes would improve the critical habitat of winter-run chinook salmon and, therefore, benefit the species. NMFS is currently using these same general hydrologic attributes to determine whether proposed or existing actions are likely to result in jeopardy to winter-run chinook salmon. For this reason, it is difficult to separate the estimated costs of the critical habitat designation from the costs associated with listing the species and the taking prohibition. However, for the purpose of this analysis, costs associated with achieving the identified hydrologic attributes (e.g., minimum flow requirements and temperature goals) within the critical habitat designation were analyzed. The resulting changes in hydrology and associated economic costs or benefits were then estimated.

Some actions that would improve winter-run habitat were not included in the analysis conducted by hydrosphere since they (e.g., the Shasta temperature control device) are already in the planning or financing stages and are expected to be implemented regardless of whether critical habitat for winter-run chinook salmon is designated.

An evaluation of costs associated with achieving specified hydrologic attributes, such as minimum flow

requirements and temperature goals, within the designated critical habitat concluded that total economic benefits and costs would be about $82.5 million and $69.6 million, respectively, with an overall net economic benefit of $12.9 million (hydrosphere 1991).

Critical Habitat; Essential Features

Based on available information, NMFS is designating critical habitat that is considered essential for the survival and recovery of the winter-run chinook salmon and that requires special management consideration or protection. The critical habitat designated by this rule includes areas that are currently used by winter-run chinook salmon including the Sacramento River, all waterways and bays westward of Chipps Island to San Francisco Bay, and San Francisco Bay.

Specific critical habitat includes (1) the Sacramento River from Keswick Dam, Shasta County (River Mile 302) to Chipps Island (River Mile 0) at the westward margin of the Sacramento-San Joaquin Delta, (2) all waters from Chipps Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait, (3) all waters of San Pablo Bay westward of the Carquinez Bridge, and (4) all waters of San Francisco Bay (north of the San Francisco/Oakland Bay Bridge) from San Pablo Bay to the Golden Gate Bridge and north of the San Francisco-Oakland Bay Bridge.

Within the Sacramento River, this designation includes the river water, river bottom (including those areas and associated gravel used by winter-run chinook salmon as spawning substrate), and adjacent riparian zone used by fry and juveniles for rearing. Also, in the areas westward from Sherman Island to Chipps Island, it includes Kimball Island, Winter Island, and Browns Island. In the areas westward from Chipps Island, including San Francisco Bay to the Golden Gate Bridge, it includes the estuarine water column and essential foraging habitat and food resources used by winter-run chinook salmon as part of their juvenile outmigration or adult spawning migration. This designation does not include any estuarine sloughs within San Francisco Bay or San Pablo Bay.

Although it is important, critical habitat does not include the open ocean habitat used by winter-run chinook salmon because this area does not appear to be in need of special management consideration. Degradation of this portion of the species' habitat, and other factors associated with the open ocean such as commercial and recreational fishing, do not appear to be significant factors in the decline of the species. In addition, existing laws appear adequate to protect these areas, and special management of this habitat is not considered necessary at this time. However, NMFS will continue to monitor activities in this area to determine if it needs to be included in the critical habitat designation.

NMFS has not included specific areas outside the current geographical area occupied by winter-run chinook salmon in this designation since these areas are not considered essential for conservation of the species. Although some may recommend removing dams (e.g., Shasta and Keswick) along the Sacramento River so that the former upriver habitat could once again be made available to winter-run chinook salmon, NMFS has concluded that proper management of the existing habitat is sufficient to provide for the survival and recovery of this species. However, if sufficient habitat is not maintained below Shasta Reservoir to satisfy the spawning and survival requirements of winter-run chinook salmon, the future existence of the species would be jeopardized.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The regulations are not likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions, or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified that this rule will not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act. The designation of critical habitat only duplicates and reinforces the substantive protection resulting from listing; therefore, the economic and other impacts resulting from designation are expected to be minimal, and a regulatory flexibility analysis is not required.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator determined that this designation is consistent to the maximum extent practicable with the approved Coastal Zone Management Program of the State of California. This determination was submitted for review by the responsible State agency under section 3.7 of the Coastal Zone Management Act. Because the State did not respond within the statutory time period, agreement with the determination is inferred.

NOAA Administrative Order 216–6 states that critical habitat designations under the ESA, generally, are categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. However, in order to more clearly evaluate the minimal impacts of the critical habitat designation, NMFS prepared an environmental assessment; copies are available on request (see ADDRESSES).

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: June 9, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR part 226 is amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. Subpart C, which was reserved, is added to part 226 to read as follows:

Subpart C—Critical Habitat for Fish

Sec.

226.21 Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*).

Subpart C—Critical Habitat for Fish

§ 226.21 Sacramento River winter-run chinook salmon (Oncorhynchus tshawytscha).

The following waterways, bottom and water of the waterways and adjacent riparian zones: The Sacramento River from Keswick Dam, Shasta County (River Mile 302) to Chipps Island (River Mile 0) at the westward margin of the Sacramento-San Joaquin Delta, all waters from Chipps Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait, all waters of San Pablo Bay westward of the Carquinez Bridge,

and all waters of San Francisco Bay (north of the San Francisco/Oakland Bay Bridge) from San Pablo Bay to the Golden Gate Bridge.

[FR Doc. 93–14133 Filed 6–15–93; 8:45 am]
BILLING CODE 3510–22–M

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50 CFR Part 227

[Docket No. 920780–2180]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Turtle excluder device exemption.

SUMMARY: NMFS will continue to allow 30-minute tow times as an alternative to the requirement to use turtle excluder devices (TEDs) by shrimp trawlers in a small area off the coast of North Carolina for 30 days. NMFS will monitor the situation to ensure there is adequate protection for sea turtles in this area when tow-time limits are allowed in lieu of TEDs and to determine whether algal concentrations continue to make TED use impracticable.

EFFECTIVE DATES: This rule is effective from June 11, 1993 through July 12, 1993.

ADDRESSES: Comments on the collection-of-information requirement in this action should be directed to the Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, Attention: Phil Williams, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator (301/713–2322) or Charles A. Oravetz, Chief, Protected Species Program, Southeast Region, NMFS, (813/893–3366).

SUPPLEMENTARY INFORMATION:

Background

In regulations published April 15, 1993 (58 FR 19361), and on May 17, 1993 (58 FR 28793), NMFS allowed limited tow times as an alternative to the requirement to use TEDs by shrimp trawlers in a small area off the coast of North Carolina. This area seasonally exhibits high concentrations of brown algae, *Diclyopteris* spp., and a red alga, *Halymenia* sp. Shrimp live within the algae, which shrimpers harvest. Use of TEDs under these conditions is impractical because they clog or exclude a large portion of the algae. Limiting tow times to 30 minutes allows fishermen to harvest shrimp efficiently and maintains adequate protection for sea turtles that may be nesting in this area. NMFS will continue to monitor the situation to ensure there is adequate protection for sea turtles in this area when tow-time limits are allowed in lieu of TEDs and to determine whether algal concentrations continue to make TED use impracticable.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that immediate action is necessary to conserve sea turtles pursuant to the regulations at 50 CFR 227.72(e)(6). The Assistant Administrator has also determined that incidental takings of sea turtles during shrimp trawling are unauthorized unless these takings are consistent with the applicable biological opinions and associated incidental take statements described in the previous TED exemption published at 58 FR 28793 (May 17, 1993).

Recent Events

The North Carolina sea turtle stranding network reported that nine sea turtles stranded in the North Carolina Restricted Area during the previous exemption period: Eight loggerheads and one green turtle. None of the turtles were nesting females, although it is nesting season. Recent aerial surveys have shown as many as 80 loggerhead turtles in offshore waters adjacent to the restricted area. This number of strandings compares with five loggerheads and one leatherback, which stranded during May 1992.

In addition, the marine mammal stranding network reported seven bottlenose dolphins stranded in the restricted area during this time. The majority of the turtle and dolphin strandings occurred near Topsail Island, in the southern portion of the restricted area.

The cause of the strandings is not certain as both shrimp trawlers and gillnet vessels have been operating in and near the restricted area. The North Carolina Division of Marine Fisheries (NCDMF), which monitors fishing activity in the restricted area, reported that, at most, one shrimp trawler was fishing at any given time. NCDMF reported compliance by trawlers observed in the restricted area with the 30-minute tow-time requirement. Residents in the restricted area reported to NMFS greater shrimping activity (zero to six trawlers fishing at any given time), though some of the vessels may have been trawling outside the restricted area. This difference in reported fishing activity is to be expected since NCDMF personnel were only able to observe fishing for 1 to 2 hours daily.

NCDMF also reported that a coastal gillnet fishery for finfish is operating in the region. North Carolina does not regulate gillnet fishing in its waters and no estimate of activity is available. Several of the bottlenose dolphins stranded on beaches had net marks characteristic of gillnet interactions.

Consultation under section 7 of the Endangered Species Act (ESA) has been reinitiated for the continuation of this TED exemption because the strandings of eight sea turtles may represent incidental takings in the restricted area in excess of those authorized for the previous exemption (April 1, 1993). As a condition to continuing the TED exemption in the North Carolina Restricted Area, NMFS will place observers on shrimp trawlers in this area on a weekly basis during the sea turtle nesting season to monitor any incidental capture of turtles and to monitor environmental conditions. NMFS may impose more stringent conservation measures, including the use of TEDs, if it is determined that turtles are not adequately protected in the restricted area.

NMFS has determined that the environmental conditions in the restricted area continue to render TED use impracticable. Therefore, the Assistant Administrator extends the authorization to use restricted tow times previously issued on May 12, 1993 (58 FR 28793, May 17, 1993), as an alternative to the requirement to use TEDs in the North Carolina restricted area. Specifically, all shrimp trawlers in the North Carolina restricted area are authorized, as an alternative to the otherwise required use of TEDs, to limit tow times to 30 minutes for 30 days.

This action provides shrimpers in the North Carolina restricted area with immediate relief from having to comply with the TED-use requirement while comments are being received on a proposed rule, published at 58 FR 30007 (May 25, 1993), that would amend 50 CFR parts 217 and 227 to provide permanent relief. The tow-time limit and other requirements imposed by this action will provide adequate protection for endangered and threatened sea turtles in the North Carolina restricted area.

Sea Turtle Conservation Measures

The sea turtle conservation measures published at 58 FR 28793 (May 17, 1993) are extended here for another 30 days. The owner or operator of a shrimp trawler trawling in the North Carolina restricted area must register with the

Director, Southeast Region, NMFS, by telephoning 813/893–3141. Information required for registering is described in the previous exemptions. Shrimp trawlers in the restricted area must restrict tow times to 30 minutes or less when tow times are used as an alternative to the requirement to use TEDs. Tow times are measured from the time that the trawl door enters the water until it is removed from the water. For a trawl that is not attached to a door, the tow time is measured from the time the codend enters the water until it is removed from the water.

Classification

The Assistant Administrator has determined that this action is necessary to provide relief from an impractical TED-use requirement, while providing adequate protection for listed sea turtles, and while comments are being received for the proposed rule that would amend 50 CFR parts 217 and 227 to allow for a permanent tow-time allowance in the North Carolina restricted area. It is anticipated that this action will be extended for one or two additional 30-day periods to allow completion of the permanent rulemaking. This action is consistent with the ESA and other applicable law. This action does not require a regulatory impact analysis under E.O. 12291 because it is not a major rule.

Because neither section 553 of the Administrative Procedure Act (APA) nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The environmental assessments prepared for this action are described in the previous TED exemption published at 58 FR 28793 (May 17, 1993).

This action contains a collection-of-information requirement subject to the Paperwork Reduction Act, namely, requests for registration to trawl in the North Carolina restricted area. This collection of information has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0267. The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, may be sent to NMFS and OMB (see ADDRESSES).

The Assistant Administrator, pursuant to section 553(b)(B) of the APA, finds there is good cause to extend this exemption on an immediate basis and that it is impracticable and contrary to the public interest to provide advance notice and opportunity for comment. Failure to implement temporary measures would result in fishermen not being able to catch shrimp as efficiently as possible in the North Carolina restricted area, while still protecting endangered and threatened sea turtles. Because this action relieves a restriction (the requirement to use TEDs), under section 553(d)(1) of the APA, this rule is being made immediately effective.

Dated: June 11, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 93–14205 Filed 6–11–93; 3:53 pm]

BILLING CODE 3510–22–M

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50 CFR Part 227

[Docket No. 930642–3142]

Sea Turtle Conservation; Observer Requirement for Shark Gillnet Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Temporary observer requirements.

SUMMARY: NMFS notifies owners and operators of vessels conducting shark gillnet fishing from North Carolina through Florida that upon request, through June 30, 1993, they must carry a NMFS-approved observer aboard such vessels. This action is necessary to monitor the taking of threatened and endangered sea turtles. NMFS is requiring that vessel owners or operators carry aboard a NMFS-approved observer to document take of threatened and endangered species, if requested to do so. NMFS will monitor this fishery to ensure adequate protection for sea turtles and to determine whether impacts of shark gillnet vessels require the imposition of temporary conservation measures.

DATES: This action is effective from June 11, 1993 through June 30, 1993.

ADDRESSES: Requests for a copy of the environmental assessment (EA) for this action should be addressed to William W. Fox, Jr., Ph.D., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, room 8268, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator, at 301/713-2322, or Charles A. Oravetz, Chief, Protected Species Program, Southeast Region, NMFS, at 813/893–3366.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA), U.S.C. 1531 *et seq.* Incidental capture by shrimp trawlers has been documented for five species of sea turtles that occur in U.S. coastal waters. Sea turtle take by other types of fishing gear has also been documented, but the amount and extent of impact to turtles by other gear types is unknown. Gillnets of different sizes have been reported to take sea turtles; for example, gillnets have been reported to take loggerhead turtles in South Carolina sturgeon fisheries, and green sea turtles in southern Florida. In fact, gillnets were the preferred means of capturing turtles when turtle fisheries were conducted in U.S. waters prior to their listing.

NMFS issued an advance notice of proposed rulemaking (57 FR 30709, July 10, 1992) that addressed the need for expansion of turtle conservation regulations to fisheries other than the shrimp fisheries. NMFS also published a final rule (57 FR 57348, December 4, 1992) that amended the sea turtle conservation regulations, and included provisions to allow restriction of fishing activities other than shrimp trawling when the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determines that restrictions are necessary to avoid unauthorized taking. Pursuant to 50 CFR 227.72(e)(6)(ii), NMFS published a notice action effective on October 7, 1992 (57 FR 46815, October 13, 1992), that specifically required observer coverage in shark gillnet fisheries.

NMFS recently issued a final rule implementing the Shark Fishery Management Plan (FMP). In pertinent part, that rule authorizes observer coverage, effective July 1, 1993, on Federally registered shark fishing vessels, including gillnet vessels (58 FR 21931, April 26, 1993). The temporary rule issued today provides the authority to require observers before July 1, 1993.

Recent Events

In July 1992, the shark fishery came under suspicion of taking sea turtles when over 20 loggerhead sea turtles stranded on Cumberland Island, Georgia, during a 10-day period. Three

shark gillnet vessels were reportedly fishing off Cumberland Island during that time period. In response to that stranding event, NMFS law enforcement efforts were increased, and a number of shrimp trawl vessels were boarded to determine whether the strandings could be attributed to lack of compliance with the sea turtle conservation regulations.

During the period of September 5–7, 1992, a total of seven turtles stranded on Cumberland Island. Those strandings coincided with the return of shark gillnet vessels into waters off southern Georgia. A number of tarpon and other large fish stranded at the same time, suggesting that they may have been killed by the same gear as the turtles. Tarpon and large fish are seldom taken by shrimp trawlers, but are commonly taken as bycatch in gillnets.

NMFS received a number of complaints from private individuals and the Georgia Department of Natural Resources (DNR) suggesting that shark gillnet vessels were responsible for a large number of turtle strandings off Georgia. Both NMFS and Georgia DNR requested that those vessels carry observers to document take of sea turtles during fishing activities, but the vessel owners declined to cooperate. On September 9, 1992, Georgia DNR formally requested that NMFS take regulatory action to require mandatory observers on shark gillnet boats fishing in Federal waters off Georgia's coast. NMFS issued a temporary rule requiring observer coverage in this fishery effective October 7, 1992. Upon publication of this requirement, the gillnet vessels ceased fishing and no observer information was collected.

Vessels in the shark gillnet fishery use up to 1.5 miles (2.4 km) of gillnet, consisting of 10-inch (25.4-cm) stretched-mesh net averaging 40 meshes deep. Sets are generally made at night with vessels leaving port in the afternoon and returning the following morning. All fishing reportedly occurs outside of state waters in the Federal Exclusive Economic Zone.

In correspondence dated April 30, 1993, Georgia DNR again raised the issue of shark gillnet vessels operating off Georgia. In fact, Georgia DNR not only requested observer coverage in this fishery, but also asked NMFS to proceed with a rulemaking that would ban shark gillnets in Federal waters off Georgia. Based upon problems encountered last year with this fishery and lack of cooperation in placing observers aboard shark gillnet vessels, NMFS has determined that mandatory observer coverage is necessary to assess levels of take and to determine whether additional conservation measures are warranted.

Sea Turtle Conservation Measures

Based on the information presented and the likelihood that the shark gillnet fishery is taking sea turtles, the Assistant Administrator has determined that immediate action is necessary to conserve endangered and threatened sea turtles pursuant to regulations at 50 CFR 227.72(e)(6)(ii). The Assistant Administrator has determined that incidental takings of sea turtles during shark gillnet fishing are unauthorized unless specifically allowed under the incidental take statement for the section 7 ESA consultation for this fishery completed on September 23, 1991. That incidental take statement allows for the documented take (by injury or mortality) of two Kemp's ridley or hawksbill sea turtles, four green or leatherback sea turtles, or 10 loggerhead turtles. The reasonable and prudent measures necessary to minimize the impacts of the shark fisheries on sea turtles include implementation of observer programs to document incidental capture, injury and mortality, with emphasis on monitoring of gillnet and longline fisheries for sharks.

A biological opinion for the October 7, 1992, notice action also analyzed the impact of the shark gillnet fishery on threatened and endangered sea turtles. That opinion reemphasized the need for an observer program to determine the impact of the shark gillnet fishery on listed species. A supplemental biological opinion prepared for this action reiterates the need for immediate observer coverage until the FMP final rule takes effect on July 1, 1993. The incidental take statement issued with that opinion allows for the documented take by injury or mortality of one Kemp's ridley, green, hawksbill, or leatherback turtles, or two loggerhead turtles.

Requirements

This action establishes an observer requirement to evaluate the interactions between the shark gillnet fishery and sea turtles within a designated area, known as the "shark gillnet restricted area." The "shark gillnet restricted area" means all inshore and offshore waters of the Atlantic area. This includes waters south of 36°33'00.8"N. latitude (the line of the North Carolina/Virginia border) but does not include waters of the Gulf area or Southwest Florida. The term "shark gillnet vessel" means any vessel fishing with gillnet gear that targets or is capable of taking shark, or any vessel possessing shark that has gillent gear on board. "Fishing" or "to fish" has the meaning specified under 50 CFR 217.12 and includes operations in support of or in preparation for the catching of fish, including having gillnet gear on board a vessel (unless that gear is stowed below deck or covered so that it is in a condition that makes it unavailable for fishing). "Gillnet gear" includes any net designed to be suspended vertically in the water and to entangle the head or other body parts of fish passing through the net, including drifting nets and nets anchored or attached to the sea bottom, the fishing vessel, or any other object.

NMFS hereby notifies owners and operators of shark gillnet vessels fishing in the shark gillnet restricted area that they must carry a NMFS-approved observer onboard such vessel(s) if requested to do so by the Director, Southeast Region, NMFS, upon written notification sent to either the address specified for the vessel under the Marine Mammal Exemption Program or the address specified for vessel registration or documentation purposes or otherwise served on the owner or operator of the vessel. A shark gillnet vessel fishing in the shark gillnet restricted area must comply with the terms and conditions specified in or accompanying such written notification, including all observer treatment requirements. Any person who does not comply with any requirement in this document, including any term or condition in any written notification issued hereunder, is in violation of regulations at 50 CFR 227.71(b)(3).

Additional Sea Turtle Conservation Measures

At any time, the Assistant Administrator may modify the requirements of this action through notification in the **Federal Register**, if necessary, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the Assistant Administrator will impose any necessary additional or more stringent measures, if it is determined that shark gillnet vessels are having a significant adverse effect on sea turtles. Likewise, conservation measures may be modified if monitoring to assess turtle mortality indicates that the incidental take level for the program is approaching the incidental take level established by the supplemental biological opinion prepared for this action. The August 9, 1992, biological opinion prepared for the final sea turtle regulations considered actions such as observer requirements and set an incidental take level of four hawksbill or leatherback turtles, or 10 Kemp's ridley or green turtles, or 370 loggerhead turtles. The allowable take level set in the

supplemental biological opinion for this action is one lethal take of a Kemp's ridley, green, hawksbill, or leatherback turtle; or two lethal takes or loggerhead turtles.

The Assistant Administrator will impose additional conservation measures on this fishery if the incidental take level is exceeded, or if significant or unanticipated levels of lethal or nonlethal takings or strandings of sea turtles associated with fishing activities in the restricted area occur. Such additional restrictions may include requirements to reduce the soak-time of nets or reduce the length of nets. Notification will be published in the **Federal Register** announcing any additional sea turtle conservation measures or the termination of the requirement for observers on shark gillnet fishing vessels.

Classification

The Assistant Administrator has determined that this rule is necessary to respond to an emergency situation to provide adequate protection for listed sea turtles, and is consistent with the ESA and other applicable laws. This rule does not require a regulatory impact analysis under E.O. 12291 because it is not a "major rule."

Pursuant to sections 553(b) and (d) of the Administrative Procedure Act (APA), the Assistant Administrator finds there is good cause to take this action on an emergency basis and that it is impracticable and contrary to the public interest to provide prior notice and opportunity for comment. Emergency action is needed to be consistent with protecting endangered and threatened sea turtles. Because neither section 553 of the APA, nor any other law, requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial Regulatory Flexibility Analysis is not required.

The Assistant Administrator prepared an EA for the final rule published on December 4, 1992 (57 FR 40861), which considered temporary actions such as this.

A supplemental EA prepared specifically for this action concludes that, with specified mitigation measures, this action will have no significant impact on the human environment.

Dated: June 11, 1993

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service, National Oceanic and Atmospheric Administration

[FR Doc. 93–14206 Filed 6–11–93; 3:53 pm]

BILLING CODE 3510-22-M

VOL 58 ISS 114 JE 16 1993 UMI

Proposed Rules

Federal Register
Vol. 58, No. 114
Wednesday, June 16, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 93–ASW–1]

Proposed Establishment of Restricted Area R–3807; Glencoe, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Restricted Area R–3807 located in the vicinity of Glencoe, LA. The U.S. Customs Service proposes to install an aerostat-borne radar system in R–3807. The aerostat–borne radar system would provide surveillance to detect suspected illegal drug transportation into the United States. The aerostat balloon is proposed to fly up to 15,000 feet mean sea level (MSL). This action would support the drug interdiction program.

DATES: Comments must be received on or before July 26, 1993.

ADDRESSES: Send comments on the proposed in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 93–ASW–1, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX 76193–0500.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m., and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ASW–1." The postcard will be date/time stamped and returned to the commenter. Send comments on environment and land use aspects to: Mr. Ernie Mercer, Department of the Treasury, U.S. Customs Service, Director, Research and Development Division, 1301 Constitution Avenue, NW., Washington, DC 20229. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish Restricted Area R–3807, Glencoe, LA. The restricted area would provide airspace for the operation of a tethered aerostat-borne radar system. This system would provide surveillance of airspace to detect low altitude aircraft attempting to penetrate the United States airspace. The proposed restricted area would encompass a 3-statute-mile radius of a geographical point, lat. 29°48'37"N., long. 91°39'47"W., from the surface to 15,000 feet MSL. The system would increase the probability of the interception and interdiction of suspect aircraft and provide low altitude radar coverage for the Customs Service. The coordinates for this airspace docket are based on North American Datum 83. Section 73.38 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

There are no airports, airways, or persons on the ground that would be impacted by the establishment of the proposed restricted area. Any impact on air traffic in the area would be negligible due to the small area and location of the area involved.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

An environmental assessment of the proposal performed by the U.S. Customs Service, which the FAA adopts, finds no significant environmental impact. Use

of the subject area as proposed is consistent with existing national environmental policies and objectives as set forth in section 101(a) of NEPA and would not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(c) of NEPA.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.38 [Amended]

R–3807 Glencoe, LA (New)

Boundaries: A circular area 3 miles in diameter centered at lat. 29°48'37"N., long. 91°39'47"W.
Designated altitudes: Surface to 15,000 feet MSL.
Time of designation: Continuous.
Controlling agency: FAA, Houston ARTCC.
Using agency: USAF, Southeast Air Defense Sector, Tyndall AFB, FL

Issued in Washington, DC, on May 27, 1993.

Willis C. Nelson,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93–14146 Filed 6–15–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF EDUCATION

34 CFR Part 648

RIN 1840–AB56

Graduate Assistance in Areas of National Need

AGENCY: Department of Education

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes regulations for the Graduate Assistance in Areas of National Need (GAANN) program. The program originally was enacted in the Education Amendments of 1980 and recently has been amended by the Higher Education Amendments of 1992. The proposed regulations incorporate statutory requirements and provide rules for applying for and spending Federal funds under this program.

DATES: Comments must be received on or before July 16, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Carolyn Proctor-Kelly, U.S. Department of Education, Regional Office Building 3, room 3022, 7th and D Streets SW., Washington, DC 20202–5251.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Carolyn Proctor-Kelly. Telephone: (202) 458–7389. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These proposed regulations would implement the GAANN program authorized under Title IX, Part D, of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1992 (Pub. L. 102–325). This program provides fellowships through academic departments of institutions of higher education to assist graduate students of superior ability who demonstrate financial need. The purpose of the program is to sustain and enhance the capacity for teaching and research in areas of national need.

The GAANN program furthers National Education Goal 4, that U.S. students will be first in the world in science and mathematics achievement, and Goal 5, that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The program furthers both goals by providing fellowship assistance to increase the number of teachers with a substantive background in mathematics and science, as well as increase the number of graduate students who complete degrees in mathematics, science, and engineering. The program also furthers these goals by providing fellowship assistance to graduate students so that these students can provide an example for American youth on the importance of continued learning throughout an individual's life.

Summary of Major Provisions

The following is a summary of the major regulatory provisions implementing the GAANN program. The summary distinguishes between those regulatory provisions that restate statutory language and other regulatory provisions that (1) contain interpretations of statutory text or (2) provide standards and procedures for the program that are not stated in the statutory text. Commenters are requested to direct their comments to the latter category.

Section 648.1 What Is the Graduate Assistance in Areas of National Need Program?

Section 941 of the HEA provides that the GAANN program awards fellowships to academic departments of institutions of higher education to assist graduate students of superior ability who demonstrate financial need. The purpose of the program is to sustain and enhance the capacity for teaching and research in areas of national need. The Secretary would incorporate the purpose of the program into the general provisions of the program regulations.

Section 648.2 Who Is Eligible for a Grant?

Sections 942(a)(2) and 943(a) of the HEA list the eligibility requirements for a grant under the program. Any academic department of an institution of higher education that provides courses of study leading to a graduate degree in an area of national need and that has been in existence for at least four years at the time of an application for a grant under the program is eligible. Any academic department of an institution that satisfies these criteria and submits a joint application with one or more eligible nondegree-granting institutions that have formal arrangements for the support of doctoral dissertation research with one or more degree-granting institutions is also eligible to receive a grant. The Secretary would incorporate these eligibility requirements into the general provisions of the program regulations.

Section 648.3 What Activities May the Secretary Fund?

Section 941 of the HEA requires that grants under the GAANN program be used to fund fellowships in one or more areas of national need. The Secretary selects the areas of national need from the disciplines or subdisciplines listed in the appendix to the proposed regulations or the resulting inter-disciplines. The list of these priority disciplines and subdisciplines in the appendix was derived from the Classification of Instructional Programs (CIP) developed by the Office of Educational Research and Improvement

of the U.S. Department of Education and includes the instructional programs that might constitute courses of studies toward graduate degrees. The appendix listing will be updated occasionally to keep current with emerging academic fields.

The Secretary would announce an absolute preference for certain of the priority disciplines and subdisciplines in a notice published in the **Federal Register** as described in § 648.33. The Secretary would not select all of the disciplines or subdisciplines listed in the CIP for priority. Section 943(b) of the HEA requires the Secretary to consult with the National Science Foundation, the National Academy of Sciences, the National Endowments for the Arts and the Humanities, and other appropriate Federal and nonprofit agencies and organizations in determining which disciplines and subdisciplines are accorded priority. In making these designations, the Secretary takes into account the extent to which the interest is compelling and the extent to which other Federal programs support postbaccalaureate study in the area concerned. The Secretary would incorporate the activities that may be supported under the program into the general provisions of the program regulations.

Section 648.4 What Is Included in the Grant?

Sections 945(b) and 946(a) of the HEA provide that the grants awarded under the GAANN program include Federal funds for stipends to fellows and an institutional payment to the institution of higher education for each fellowship awarded by that institution. The Secretary has determined that a stipend provides an allowance to a fellow (and his or her dependents) for subsistence and other living expenses. The institutional payment must be applied against the fellow's tuition and fees. The Secretary would incorporate the above description of what is included in a grant into the general provisions of the program regulations.

Section 648.5 What Is the Amount of the Grant?

Section 942(b)(2) of the HEA provides that the amount of a grant received by an academic department under the program may not be less than $100,000 and may not be more than $750,000 each fiscal year. The Secretary has determined that no academic department would receive more than $750,000 as an aggregate total of new and continuing grants in any fiscal year. The Secretary would incorporate the above rules into the general provisions of the program regulations.

Section 648.6 What Is the Duration of a Grant?

Section 942(b)(2) of the HEA provides that the duration of a grant received under the program is a maximum of three annual budget periods within a three-year project period. The Secretary would incorporate this limitation on the duration of a grant into the general provisions of the program regulations.

Section 648.7 What Is the Institutional Matching Contribution?

Section 944(b)(2) of the HEA provides that an institution that applies for a grant under the program must provide, from non-Federal funds, an institutional matching contribution of at least 25 percent of the amount of the grant received for the purposes of the fellowship program. The Secretary would incorporate this matching requirement into the general provisions of the program regulations.

Section 648.9 What Definitions Apply?

Sections 942(a)(2) and 943 of the HEA define "eligible non-degree granting institution." The Secretary has also defined "academic department", "academic field", "academic year", "application period", "discipline", "fees", "fellow", "fellowship", "financial need", "general operational overhead", "graduate student", "graduate study", "highest degree available", "institution of higher education", "inter-discipline", "minority", "multi-disciplinary application", "project", "satisfactory progress", "school or department of divinity", "students from traditionally underrepresented backgrounds", "supervised training", "tuition", and "underrepresented in areas of national need." The Secretary would incorporate these definitions into the general provisions of the program regulations.

Section 648.20 How Does an Institution of Higher Education Apply for a Grant?

The Secretary has determined that an applicant must submit an application that responds to the selection criteria for the program and that contains certain other information.

Section 944(b) of the HEA provides what an application for a grant under the program must contain to be considered for an award under the program. The Secretary would incorporate these statutory application requirements, as well as the two following additional requirements in the program regulations: (1) The Secretary would require institutions to include in their applications a request for a specific number of fellowships to be awarded under the grant in each academic discipline included in its application. (2) The Secretary also would provide that an academic department could submit only one application for a new grant in any application period. The Secretary would incorporate these requirements into § 648.20 of the program regulations.

Section 648.31 What Selection Criteria Does the Secretary use?

Section 942(b)(1) of the HEA provides that the principal criterion for the allocation of awards shall be the relative quality of the graduate programs presented in competing applications. The Secretary's general approach to the selection criteria is to evaluate the quality of an applicant's graduate program and the academic department's plans for the GAANN project, including course offerings, faculty and academic resources, purpose and need for the GAANN project, project administration, and overall institutional commitment to the graduate fellowships initiated under the program.

Applicants would be required to demonstrate the quality of their academic program by submitting formal evaluations of their academic programs performed by professional associations, or other comparable data. The Secretary would also require that the evaluations submitted by applicants be field-specific.

Section 648.32 What Additional Factors Does the Secretary Consider?

Section 942(c) of the HEA provides that preference is to be given to continuation applications from grantees requesting their second and third year of funding before funding is provided to new applications. The Secretary would incorporate this preference into § 648.32(a) of the proposed regulations.

Section 942(b)(1) of the HEA provides that the Secretary consider, to the extent possible, the equitable geographic distribution of grants to eligible applicant public and private institutions of higher education. The Secretary would also consider the equitable distribution of grants to eligible applicant public and eligible applicant private institutions of higher education. The equitable distribution among public and private institutions would be based on the number of institutions that apply for a grant. Equity would be measured by the overall ratio of public and private institutions that apply for a grant. These additional factors would be used to break ties between applicants after a

determination of the relative quality of competing applications is made under the selection criteria. The Secretary would incorporate these additional factors into § 648.32(b) of the program regulations.

Section 648.33 What Priorities and Absolute Preferences Does the Secretary Establish?

The Secretary would establish as an area of national need and give absolute preference to one or more of the disciplines and subdisciplines listed as priorities in the appendix to the program regulations and the resulting inter-disciplines and will announce these absolute preferences in a notice published in the **Federal Register**. The Secretary would incorporate this procedure for establishing priorities and absolute preferences into § 648.33 of the program regulations.

Section 648.40 How Does an Academic Department Select Fellows?

Section 944(b)(4) of the HEA provides that to be eligible for a fellowship, an individual must (1) have financial need; (2) have an excellent academic record; (3) plan a teaching or research career; and (4) plan to pursue the highest degree available in his or her course of study. Section 941 of the HEA provides that individuals who are eligible for a fellowship also must have superior ability.

The Secretary has defined "highest degree available" in § 648.9(b) of the proposed regulations to mean a doctorate in an academic field or a master's degree, professional degree, or other post-baccalaureate degree if a doctorate is not available in that academic field. Section 944(b)(4)(D) provides that, in order to be eligible for a fellowship, an individual must plan to pursue the highest possible degree available in their course of study. The Secretary has interpreted section 944(b)(4)(D) of the HEA to require an individual to pursue a doctorate in their academic field, if a doctorate is available in their course of study, since this would be the highest possible degree available in their course of study. The Secretary solicits comment on the appropriateness of and the potential effects of this interpretation.

In addition to the statutory requirements, the Secretary also would require that an individual be enrolled as a graduate student, accepted at the grantee institution, or enrolled or accepted as a graduate student at an eligible nondegree-granting institution of higher education to be eligible to receive a fellowship.

The Secretary also would require that an individual who is enrolled in a master's degree program, professional degree program, or a doctoral degree program that will not lead to an academic career be (1) a United States citizen or national; (2) in the United States for other than a temporary purpose and intend to become a permanent resident; or (3) a permanent resident of the Trust Territory of the Pacific Islands.

An individual who is enrolled in a doctoral degree program that will lead to an academic career would be eligible only if he or she is a citizen of the United States. Section 901(a)(2) of the HEA provides that the purpose of the GAANN program, and the other graduate programs funded under Title IX of the HEA, is to provide incentives and support for United States citizens to complete doctoral degree programs leading to academic careers. The Secretary believes the use of United States citizens, academic careers, and doctoral degree programs in section 901(a)(2) of the HEA limits eligibility for doctoral degree programs leading to academic careers to United States citizens. The Secretary particularly solicits comments on the appropriateness of and the potential effects of this interpretation.

Finally, the Secretary has determined that an individual who satisfies all of the eligibility criteria, but whose institution does not offer the highest degree available in their course of study, may nevertheless be eligible for a fellowship. The individual would be eligible if he or she plans to subsequently attend an institution that offers the highest degree available in their course of study. The Secretary would incorporate the rules for eligibility for a fellowship into § 648.40 of the program regulations.

Section 648.41 How Does an Individual Apply for a Fellowship?

The Secretary has determined that an individual who wishes to be considered for a fellowship under the GAANN program should apply directly to the academic department of an institution of higher education that has received a grant. The Secretary would incorporate this procedure for applying for a fellowship into § 648.41 of the program regulations.

Section 648.50 What Are the Secretary's Payment Procedures?

The Secretary would award both stipends and the institutional payments directly to the institution of higher education in which the fellow is enrolled. Section 942(b)(3) of the HEA provides that if an academic department of an institution of higher education is unable to use all of the amounts available under this part, the Secretary will reallot the amounts not used to academic departments of other institutions of higher education for use in the academic year following the date of reallotment. The Secretary would incorporate these payment procedures into § 648.50 of the program regulations.

Section 648.51 What Is the Amount of a Stipend?

Section 945(b) of the HEA provides that the amount of a stipend initially awarded for a fellowship in 1993–94 is set at a level equal to that provided by National Science Foundation graduate fellowships, adjusted as necessary so as not to exceed the fellow's demonstrated financial need. The amount of a National Science Foundation graduate fellowship stipend is $14,000 for academic year 1993–94. The Secretary has also determined that a stipend paid to a student receiving a fellowship prior to 1993–94 should not exceed the fellow's financial need or $10,000, whichever is less. The Secretary uses Title IV, Part F, of the HEA to calculate the financial need of a fellow on an annual basis.

The stipend limitation does not preclude an institution from providing additional stipend support to a fellow from its own funds so long as these funds are not derived from grant funds. Institutions are cautioned, however, that providing these additional stipends—either through their institutional matching contribution or through other non-federal monies—to a fellow might affect a fellow's financial need. The Secretary would incorporate the rules relating to the amount of a stipend into § 648.51 of the program regulations.

Section 648.52 What Is the Amount of the Institutional Payment?

Section 946(a) provides that the amount of the institutional payment for academic year 1993–94 is $9,000. The institutional payment will be adjusted thereafter in accordance with inflation as determined by the U.S. Department of Labor's Consumer Price Index. The Secretary would incorporate the rules for the amount of the institutional payment into § 648.52 of the program regulations.

Section 648.60 When Does an Academic Department Make a Commitment to a Fellow to Provide Stipend Support?

Section 945(a)(1) of the HEA allows an academic department to make a commitment to a fellow at any point in

his or her graduate study for the length of time necessary for the fellow to complete the course of graduate study, but in no case longer than five years. An academic department may not make a commitment to provide stipend support unless the academic department has determined that adequate funds are available to fulfill the commitment either from funds received or anticipated under the program or from institutional funds. The Secretary would incorporate these statutory requirements relating to when an institution makes a commitment to a fellow to provide stipend support into § 648.60 of the program regulations.

Section 648.61 How Must the Academic Department Supervise the Training of Fellows?

Section 944(b)(8) of the HEA requires that academic departments of institutions provide fellows with the opportunity for supervised training in instruction for at least one year. The Secretary has determined that the instruction may take place at the graduate or undergraduate level. The Secretary also has determined that the instruction be under the guidance and direction of faculty in the academic department. Finally, the Secretary has determined that the supervised instruction must be at least one academic year in duration and must be at the schedule of at least a one-half time teaching assistant. The Secretary would incorporate these rules relating to the supervision of fellows' training in instruction into § 648.61 of the program regulations.

Section 648.62 How can the Institutional Payment Be Used?

Section 944(b)(5) of the HEA requires an institution to use the institutional payment to supplement and, to the extent practical, increase the funds that otherwise would be made available for the purposes of the program and, in no case, to supplant institutional funds currently available for fellowships. In addition to this statutory non-supplanting requirement, the Secretary has determined that the institutional payment must be applied against a fellow's tuition and fees. The Secretary would incorporate these rules relating to the proper use of institutional payments into § 648.62 of the program regulations.

Section 648.63 How can the Institutional Matching Contribution Be Used?

Section 945(c) of the HEA provides that an institution may use its matching contribution to supplement the institutional payment to pay for tuition and fees not covered by the institutional payment. The Secretary has also determined that the institutional matching contribution may be used to (1) provide additional fellowships to graduate students who are not already receiving fellowships under this program but are eligible under § 648.40; (2) pay for costs of providing a fellow's instruction that are not included in the determination of tuition or fees paid to the institution in which the fellow is enrolled; and (3) supplement the stipend received by a fellow under § 648.51 of the proposed regulations.

The Secretary would also provide that an institution may not use an institutional matching contribution to fund fellowships that were funded by the institution prior to the award of the grant. This maintenance-of-effort requirement fulfills the purpose of the program, which is to expand the number of fellowships. The Secretary would incorporate these rules relating to the proper use of an institutional matching contribution into § 648.63 of the program regulations.

Section 648.64 What Are Unallowable Costs?

Section 946(b) of the HEA prohibits the use of grant funds to pay for general operational overhead costs. The Secretary has determined that institutional matching funds also should not be used to pay for general operational overhead costs. The Secretary would incorporate these rules on unallowable costs into § 648.64 of the program regulations.

Section 648.65 How Does the Institution of Higher Education Disburse and Return Funds?

The Secretary has determined that an institution shall disburse a stipend to a fellow in accordance with its regular payment schedule, but shall not make less than one payment per academic term. In the event that a fellow withdraws from an institution before completion of an academic term, the institution would be permitted to award the fellowship to another eligible individual.

The Secretary also has determined that if the fellowship is vacated or discontinued for any period of time, the institution should be required to return the prorated portion of the institutional payment and unexpended stipends to the Secretary, unless the Secretary authorizes the use of funds for a subsequent project period. In addition, a fellow who withdraws from an institution before the completion of the academic term for which he or she received a stipend installment, should be required to return a prorated portion of the stipend installment to the institution at a time and manner determined by the Secretary. The Secretary would incorporate these rules for disbursal and return of grant funds into § 648.65 of the program regulations.

Section 648.66 What Records and Reports Are Required From the Institution?

The Secretary has determined that an institution that receives a grant should submit to the Secretary, prior to receipt of grant funds for disbursement to a fellow, a certification that the fellow is enrolled in, is making satisfactory progress in, and is devoting essentially full time to, study in the academic field for which the grant was made. The Secretary also has determined that the institution should maintain records necessary to establish (1) that students receiving fellowships satisfy the eligibility requirements for participation in the program; (2) the time and amount of all disbursements and return of stipend payments; (3) appropriate use of the institutional payment; and (4) that assurances, policies, and procedures in the application have been satisfied. The Secretary would incorporate these recordkeeping and reporting requirements into § 648.66 of the program regulations.

Section 648.70 What Conditions Must Be Met by a Fellow?

Section 945(d) of the HEA provides that to continue to be eligible for a fellowship, a fellow must (1) maintain satisfactory progress in the program for which the fellowship was awarded; (2) devote essentially full-time to study or research in the discipline in which the fellowship is awarded; and (3) not engage in gainful employment, except on a part-time basis in teaching, research, or similar activities determined by the academic department to support the student's progress toward a degree. The Secretary would incorporate these conditions for continued fellowship eligibility into § 648.70 of the program regulations.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of entities.

The entities that would be affected by these proposed regulations are institutions of higher education receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the institutions affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 648.20, 648.31, and 648.66 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Institutions of higher education are eligible to apply for grants under these regulations. The Department needs and uses information to make grants. Annual public reporting burden for this collection of information is estimated to average 40 hours per response for 250 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, D.C. 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3022, ROB–3, 7th and D Street SW., Washington, DC. between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there might be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 648

College and universities, Grant program—education, Reporting and recordkeeping requirements, and fellowships.

(Catalog of Federal Domestic Assistance Number 84.200—Graduate Assistance in Areas of National Need Program)

Dated: June 9, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by adding a new part 648 to read as follows:

PART 648—GRADUATE ASSISTANCE IN AREAS OF NATIONAL NEED

Subpart A—General

Sec.

648.1 What is the Graduate Assistance in Areas of National Need program?
648.2 Who is eligible for a grant?
648.3 What activities may the Secretary fund?
648.4 What is included in the grant?
648.5 What is the amount of the grant?
648.6 What is the duration of the grant?
648.7 What is the institutional matching contribution?
648.8 What regulations apply?
648.9 What definitions apply?

Subpart B—How Does an Institution of Higher Education Apply for a Grant?

648.20 How does an institution of higher education apply for a grant?

Subpart C—How Does the Secretary Make an Award?

648.30 How does the Secretary evaluate an application?
648.31 What selection criteria does the Secretary use?
648.32 What additional factors does the Secretary consider?
648.33 What priorities and absolute preferences does the Secretary establish?

Subpart D—How Are Fellows Selected?

648.40 How does an academic department select fellows?
648.41 How does an individual apply for a fellowship?

Subpart E—How Does the Secretary Distribute Funds?

648.50 What are the Secretary's payment procedures?
648.51 What is the amount of a stipend?
648.52 What is the amount of the institutional payment?

Subpart F—What Are the Administrative Responsibilities of the Institution?

648.60 When does an academic department make a commitment to a fellow to provide stipend support?
648.61 How must the academic department supervise the training of fellows?
648.62 How can the institutional payment be used?
648.63 How can the institutional matching contribution be used?
648.64 What are unallowable costs?
648.65 How does an institution of higher education disburse and return funds?
648.66 What records and reports are required from the institution?

Subpart G—What Conditions Must Be Met by a Fellow After an Award?

648.70 What conditions must be met by a fellow?

Appendix to Part 648: Area of National Need Priorities

Authority: 20 U.S.C. 1134, 1134l—1134q–1, unless otherwise noted.

Subpart A—General

§ 648.1 What is the Graduate Assistance in Areas of National Need program?

The Graduate Assistance in Areas of National Need program provides fellowships through academic departments of institutions of higher education to assist graduate students of superior ability who demonstrate financial need. The purpose of the program is to sustain and enhance the capacity for teaching and research in areas of national need.

(Authority: 20 U.S.C. 1134l–1134n)

§ 648.2 Who is eligible for a grant?

(a) The Secretary awards grants to the following:

(1) Any academic department of an institution of higher education that—

(i) Provides courses of study leading to a graduate degree in an area of national need; and

(ii) Has been in existence for at least four years at the time of an application for a grant under this part.

(2) An academic department of an institution of higher education that—

(i) Satisfies the requirements of paragraph (a)(1) of this section; and

(ii) Submits a joint application with one or more eligible nondegree-granting institutions that have formal arrangements for the support of doctoral dissertation research with one or more degree-granting institutions.

(b) A formal arrangement under paragraph (a)(2)(ii) of this section is a written agreement between a degree-granting institution and an eligible nondegree-granting institution whereby the degree-granting institution accepts students from the eligible nondegree-granting institution as doctoral degree candidates with the intention of awarding these students doctorates in an area of national need.

(c) The Secretary does not award a grant under this part for study at a school or department of divinity.

(Authority: 20 U.S.C. 1134, 1134m, 1134n)

§ 648.3 What activities may the Secretary fund?

(a) The Secretary awards grants to institutions of higher education to fund fellowships in one or more areas of national need.

(b) (1) For the purposes of this part, the Secretary designates areas of national need from the disciplines or subdisciplines listed in the appendix to this part or from the resulting inter-disciplines.

(2) The Secretary announces these areas of national need in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1134l–1134n)

§ 648.4 What is included in the grant?

The grants awarded by the Secretary consist of the following:

(a) The stipends paid by the Secretary through the institution of higher education to fellows. The stipend provides an allowance to a fellow for the fellow's (and his or her dependents') subsistence and other expenses.

(b) The institutional payments paid by the Secretary to the institution of higher education to be applied against the fellows' tuition and fees.

(Authority: 20 U.S.C. 1134p, 1134q)

§ 648.5 What is the amount of a grant?

(a) The amount of a grant to an academic department may not be less than $100,000 and may not be more than $750,000 in a fiscal year.

(b) In any fiscal year, no academic department may receive more than $750,000 as an aggregate total of new and continuing grants.

(Authority: 20 U.S.C. 1134m)

§ 648.6 What is the duration of the grant?

The duration of a grant awarded under this part is a maximum of three annual budget periods during a three-year (36-month) project period.

(Authority: 20 U.S.C. 1134m)

§ 648.7 What is the institutional matching contribution?

An institution shall provide, from non-Federal funds, an institutional matching contribution equal to at least 25 percent of the amount of the grant received under this part, for the uses indicated in § 648.63.

(Authority: 20 U.S.C. 1134o, 1134p)

§ 648.8 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1134l, 1134m)

§ 648.9 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Budget period
Department
EDGAR
Equipment
Grant
Nonprofit
Project period
Secretary
Supplies

(b) *Other definitions.* The following definitions also apply to this part:

Academic department means any department, program, unit, or any other administrative subdivision of an institution of higher education that—

(1) Directly administers or supervises post-baccalaureate instruction in a specific discipline; and

(2) Has the authority to award academic course credit acceptable to meet degree requirements at an institution of higher education.

Academic field means an area of study in an academic department within an institution of higher education other than a school or department of divinity.

Academic year means the 12-month period commencing with the fall instructional term of the institution.

Application period means the period in which the Secretary solicits applications for this program.

Discipline means a branch of instruction or learning.

Eligible non-degree granting institution means any institution that—

(1) Conducts post-baccalaureate academic programs of study but does not award doctoral degrees in an area of national need;

(2) Is described in section 501(c)(3) of the Internal Revenue Code of 1986 and is exempt from tax under section 501(a) of the Code;

(3) Is organized and operated substantially to conduct scientific and cultural research and graduate training programs;

(4) Is not a private foundation;

(5) Has academic personnel for instruction and counseling who meet the standards of the institution of higher education in which the students are enrolled; and

(6) Has necessary research resources not otherwise readily available in the institutions in which students are enrolled.

Fees mean non-refundable charges paid by a graduate student for services, materials, and supplies that are not included within the tuition charged by the institution in which the student is enrolled.

Fellow means a recipient of a fellowship under this part.

Fellowship means an award made by an institution of higher education to an individual for graduate study under this part at the institution of higher education.

Financial need means the fellow's financial need as determined under Title IV, Part F, of the HEA for the period of the fellow's enrollment in the approved academic field of study for which the fellowship was awarded.

General operational overhead means non-instructional expenses incurred by an academic department in the normal administration and conduct of its academic program, including the costs of supervision, recruitment, capital outlay, debt service, indirect costs, or any other costs not included in the determination of tuition and non-refundable fee charges.

Graduate student means an individual enrolled in a program of post-baccalaureate study at an institution of higher education.

Graduate study means any program of postbaccalaureate study at an institution of higher education.

HEA means the Higher Education Act of 1965, as amended.

Highest possible degree available means a doctorate in an academic field or a master's degree, professional degree, or other post-baccalaureate degree if a doctorate is not available in that academic field.

Institution of higher education (Institution) means an institution of higher education, other than a school or department of divinity, as defined in section 1201(a) of the HEA.

Inter-discipline means a course of study that involves academic fields in two or more disciplines.

Minority means Alaskan Native, American Indian, Asian-American, Black (African-American), Hispanic American, Native Hawaiian, or Pacific Islander.

Multi-disciplinary application means an application that requests fellowships for more than a single academic department in areas of national need designated as priorities by the Secretary under this part.

Project means the activities necessary to assist, whether from grant funds or institutional resources, fellows in the successful completion of their designated educational programs.

Satisfactory progress means that a fellow meets or exceeds the institution's criteria and standards established for a graduate student's continued status as an applicant for the graduate degree in the academic field for which the fellowship was awarded.

School or department of divinity means an institution, or an academic department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter into some other religious vocation or to prepare them to teach theological subjects.

Students from traditionally underrepresented backgrounds mean women and minorities who traditionally are underrepresented in areas of national need priority as designated by the Secretary.

Supervised training means the opportunity for fellows under this program to provide instruction at the graduate or undergraduate level under the guidance and direction of faculty in the academic department.

Tuition means the charge for instruction by the institution of higher education in which the fellow is enrolled.

Underrepresented in areas of national need means proportionate representation as measured by degree recipients, that is less than the proportionate representation in the general population, as indicated by——

(1) The most current edition of the Department's *Digest of Educational Statistics*;

(2) The National Research Council's *Doctorate Recipients from United States Universities*;

(3) Other standard statistical references, as announced annually in the **Federal Register** notice inviting applications for new awards under this program; or

(4) As documented by national survey data submitted to and accepted by the Secretary on a case-by-case basis.

(Authority: 20 U.S.C. 11341–1134q)

Subpart B—How Does an Institution of Higher Education Apply for a Grant?

§ 648.20 How does an institution of higher education apply for a grant?

(a) To apply for a grant under this part, an institution of higher education shall submit an application that responds to the appropriate selection criteria in § 648.31.

(b) In addition, an application for a grant must—

(1) Describe the current academic program for which the grant is sought;

(2) Request a specific number of fellowships to be awarded on a full-time basis for the academic year covered under the grant in each academic field included in the application;

(3) Set forth policies and procedures to ensure that in making fellowship awards under this part the institution will seek talented students from traditionally underrepresented backgrounds;

(4) Set forth policies and procedures to assure that in making fellowship awards under this part the institution will make awards to individuals who satisfy the requirements of § 648.40;

(5) Set forth policies and procedures to ensure that Federal funds made available under this part for any fiscal year will be used to supplement and, to the extent practical, increase the funds that otherwise would be made available for the purposes of this part and, in no case, to supplant those funds;

(6) Provide assurances that the institution will provide the institutional matching contribution described in § 648.7;

(7) Provide assurances that, in the event that funds made available to the academic department under this part are insufficient to provide the assistance due a student under the commitment entered into between the academic department and the student, the academic department will endeavor, from any funds available to it, to fulfill the commitment to the student;

(8) Provide that the institution will comply with the requirements in Subpart F; and

(9) Provide assurances that the academic department will provide at least one year of supervised training in instruction to students receiving fellowships under this program.

(c) In any application period, an academic department may not submit more than one application for new awards.

(Authority: 20 U.S.C. 1134o)

Subpart C—How Does the Secretary Make an Award?

§ 648.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 648.31.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1134m, 1134o)

§ 648.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Meeting the purposes of the program.* (7 points) The Secretary reviews each application to determine how well the project will meet the purposes of the program, including the extent to which—

(1) The applicant's general and specific objectives for the project are realistic and measurable;

(2) The applicant's objectives for the project seek to sustain and enhance the capacity for teaching and research at the institution and at State, regional, or national levels;

(3) The applicant's objectives seek to institute policies and procedures to ensure the enrollment of talented graduate students from traditionally underrepresented backgrounds; and

(4) The applicant's objectives seek to institute policies and procedures to ensure that it will award fellowships to individuals who satisfy the requirements of § 648.40.

(b) *Extent of need for the project.* (5 points) The Secretary considers the extent to which a grant under the program is needed by the academic department by considering—

(1) How the applicant identified the problems that form the specific needs of the project;

(2) The specific problems to be resolved by successful realization of the goals and objectives of the project; and

(3) How increasing the number of fellowships will meet the specific and general objectives of the project.

(c) *Quality of the graduate academic program.* (25 points) The Secretary reviews each application to determine the quality of the current graduate academic program for which project funding is sought, including—

(1) The course offerings and academic requirements for the graduate program;

(2) The qualifications of the faculty, including education, research interest, publications, teaching ability, and accessibility to graduate students;

(3) The focus and capacity for research; and

(4) The ranking of the academic department among similar graduate academic programs.

(d) *Quality of the supervised teaching experience.* (5 points) The Secretary reviews each application to determine the quality of the teaching experience the applicant plans to provide fellows under this program, including the extent to which the project—

(1) Provides each fellow with the required supervised training in instruction;

(2) Provides adequate instruction on effective teaching techniques;

(3) Provides extensive supervision of each fellow's teaching performance; and

(4) Provides adequate and appropriate evaluation of the fellow's teaching performance.

(e) *Recruitment plan.* (10 points) The Secretary reviews each application to determine the quality of the applicant's recruitment plan, including—

(1) How the applicant plans to identify, recruit, and retain students from traditionally underrepresented backgrounds in the academic program for which fellowships are sought;

(2) How the applicant plans to identify eligible students for fellowships;

(3) The past success of the academic department in enrolling talented graduate students from traditionally underrepresented backgrounds; and

(4) The past success of the academic department in enrolling talented graduate students for its academic program.

(f) *Project administration.* (7 points) The Secretary reviews the quality of the proposed project administration, including—

(1) How the applicant will select fellows, including how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, religion, gender, age, or disabling condition;

(2) How the applicant proposes to monitor whether a fellow is making satisfactory progress toward the degree for which the fellowship has been awarded;

(3) How the applicant proposes to identify and meet the academic needs of fellows;

(4) How the applicant proposes to maintain enrollment of graduate students from traditionally underrepresented backgrounds; and

(5) The extent to which the policies and procedures the applicant proposes to institute for administering the project are likely to ensure efficient and effective project implementation, including assistance to and oversight of the project director.

(g) *Institutional commitment.* (16 points) The Secretary reviews each application for evidence that—

(1) The applicant will provide, from any funds available to it, sufficient funds to support the financial needs of the fellows if the funds made available under the program are insufficient;

(2) The institution's social and academic environment is supportive of the academic success of students from traditionally underrepresented backgrounds on the applicant's campus;

(3) Students receiving fellowships under this program will receive stipend support for the time necessary to complete their courses of study, but in no case longer than 5 years; and

(4) The applicant demonstrates a financial commitment, including the nature and amount of the institutional matching contribution, and other institutional commitments that are likely to ensure the continuation of project activities for a significant period of time following the period in which the project receives Federal financial assistance.

(h) *Quality of key personnel.* (5 points) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The qualifications of the project director;

(2) The qualifications of other key personnel to be used in the project;

(3) The time commitment of key personnel, including the project director, to the project; and

(4) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, religion, gender, age, or disabling condition, except pursuant to a lawful affirmative action plan.

(i) *Budget.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The applicant shows a clear understanding of the acceptable uses of program funds; and

(2) The costs of the project are reasonable in relation to the objectives of the project.

(j) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Relate to the specific goals and measurable objectives of the project;

(2) Assess the effect of the project on the students receiving fellowships under this program, including the effect on persons of different racial and ethnic backgrounds, genders, and ages, and on persons with disabilities who are served by the project;

(3) List both process and product evaluation questions for each project activity and outcome, including those of the management plan;

(4) Describe both the process and product evaluation measures for each project activity and outcome;

(5) Describe the data collection procedures, instruments, and schedules for effective data collection;

(6) Describe how the applicant will analyze and report the data so that it can make adjustments and improvements on a regular basis; and

(7) Include a time-line chart that relates key evaluation processes and benchmarks to other project component processes and benchmarks.

(k) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant makes available to graduate students receiving fellowships under this program, including facilities, equipment, and supplies.

(Authority: 20 U.S.C. 1134m–1134p)

§ 648.32 What additional factors does the Secretary consider?

(a) *Continuation awards.* (1) Before funding new applications, the Secretary gives preference to grantees requesting their second or third year of funding.

(2) If appropriations for this program are insufficient to fund all continuation grantees for the second and third years at the approved funding level, the Secretary prorates the available funds, if any, among the continuation grantees and, if necessary, awards continuation grants of less than $100,000.

(b) *Equitable distribution.* In awarding grants, the Secretary will, consistent with an allocation of awards based on the quality of competing applications, ensure the following:

(1) An equitable geographic distribution of grants to eligible applicant institutions of higher education.

(2) An equitable distribution of grants to eligible applicant public and eligible applicant private institutions of higher education.

(Authority: 20 U.S.C. 1134m–1134p)

§ 648.33 What priorities and absolute preferences does the Secretary establish?

(a) For each application period, the Secretary establishes as an area of national need and gives absolute preference to one or more of the general disciplines and sub-disciplines listed as priorities in the appendix to this part or the resulting inter-disciplines.

(b) The Secretary announces the absolute preferences in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1134l–1134n)

Subpart D—How Are Fellows Selected?

§ 648.40 How does an academic department select fellows?

(a) In selecting individuals to receive fellowships, an academic department shall consider only individuals who—

(1) Are currently enrolled as a graduate student, have been accepted at the grantee institution, or are enrolled or accepted as graduate students at an eligible nondegree-granting institution;

(2) Are of superior ability;

(3) Have an excellent academic record;

(4) Have financial need;

(5) Are planning to pursue the highest possible degree available in their course of study;

(6) Are planning a career in teaching or research; and

(7) Are not ineligible to receive assistance under 34 CFR § 75.60.

(b) An individual who is enrolled in a master's degree program, a professional degree program, or a doctoral degree program that will not lead to an academic career must satisfy the requirements in paragraph (a) of this section and—

(1) Be a United States citizen or national;

(2) Be in the United States for other than a temporary purpose and intend to become a permanent resident; or

(3) Be a permanent resident of the Trust Territory of the Pacific Islands.

(c) An individual who is enrolled in a doctoral degree program that will lead to an academic career must satisfy the requirements of paragraph (a) of this section and be a citizen of the United States.

(d) An individual who satisfies the eligibility criteria in paragraph (a), and who satisfies the eligibility criteria in either paragraph (b) or (c), but who attends an institution that does not offer the highest possible degree available in their course of study, is eligible for a fellowship if the individual plans to subsequently attend an institution that offers this degree.

(Authority: 20 U.S.C. 1134, 1134l, 1134m, 1134o)

§ 648.41 How does an individual apply for a fellowship?

An individual shall apply directly to an academic department of an institution of higher education that has received a grant.

(Authority: 20 U.S.C. 1134m–1134p)

Subpart E—How Does the Secretary Distribute Funds?

§ 648.50 What are the Secretary's payment procedures?

(a) The Secretary awards to the institution of higher education a stipend and an institutional payment for each individual awarded a fellowship under this part.

(b) If an academic department of an institution of higher education is unable to use all of the amounts available to it under this part, the Secretary reallots the amounts not used to academic departments of other institutions of higher education for use in the academic year following the date of the reallotment.

(Authority: 20 U.S.C. 1134n, 1134p, 1134q)

§ 648.51 What is the amount of a stipend?

(a) For a fellowship initially awarded for an academic year prior to the academic year 1993–94, the institution shall pay the fellow a stipend in an amount that equals the fellow's financial need or $10,000, whichever is less.

(b) For a fellowship initially awarded for the academic year 1993–94, or any succeeding academic year, the institution shall pay the fellow a stipend at a level of support equal to that provided by the National Science Foundation graduate fellowships, except that this amount must be adjusted as necessary so as not to exceed the fellow's demonstrated level of financial need. The Secretary announces the amount of the stipend in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1134p)

§ 648.52 What is the amount of the institutional payment?

For academic year 1993–1994, the amount of the institutional payment received by an institution of higher education for each student awarded a fellowship at the institution is $9,000. Thereafter, the Secretary adjusts the amount of the institutional payment annually in accordance with inflation as determined by the United States Department of Labor's Consumer Price Index for the previous calendar year. The Secretary announces the amount of the institutional payment in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1134q)

Subpart F—What Are the Administrative Responsibilities of the Institution?

§ 648.60 When does an academic department make a commitment to a fellow to provide stipend support?

(a) An academic department makes a commitment to a fellow at any point in his or her graduate study for the length of time necessary for the fellow to complete the course of graduate study, but in no case longer than five years.

(b) An academic department shall not make a commitment under paragraph (a) of this section to provide stipend support unless the academic department has determined that adequate funds are available to fulfill the commitment either from funds received or anticipated under this part or from institutional funds.

(Authority: U.S.C. 1134p)

§ 648.61 How must the academic department supervise the training of fellows?

(a) The institution shall provide the opportunity for fellows to provide instruction at the graduate or undergraduate level under the guidance and direction of faculty in the academic department.

(b) The supervised instruction required in paragraph (a) of this section

must be at least one academic year in duration and must be at the schedule of at least a one-half-time teaching assistant.

(Authority: 20 U.S.C. 1134o)

§ 648.62 How can the institutional payment be used?

(a) The institutional payment must be applied against a fellow's tuition and fees.

(b) The institutional payment must supplement and, to the extent practical, increase the funds that would otherwise be made available for the purpose of the program and, in no case, to supplant institutional funds currently available for fellowships.

(Authority: 20 U.S.C. 1134o-1134q)

§ 648.63 How can the institutional matching contribution be used?

(a) The institutional matching contribution may be used to—

(1) Provide additional fellowships to graduate students who are not already receiving fellowships under this part and who satisfy the requirements of § 648.40;

(2) Supplement the institutional payment to pay for tuition and fees not covered by the institutional payment;

(3) Pay for costs of providing a fellow's instruction that are not included in the tuition or fees paid to the institution in which the fellow is enrolled; and

(4) Supplement the stipend received by a fellow under § 648.51.

(b) An institution may not use its institutional matching contribution to fund fellowships that were funded by the institution prior to the award of the grant.

(Authority: 20 U.S.C. 1134l, 1134o, 1134p)

§ 648.64 What are unallowable costs?

Neither grant funds nor the institutional matching funds may be used to pay for general operational overhead costs of the academic department.

(Authority: 20 U.S.C. 1134m, 1134q)

§ 648.65 How does the institution of higher education disburse and return funds?

(a) An institution that receives a grant shall disburse a stipend to a fellow in accordance with its regular payment schedule, but shall not make less than one payment per academic term.

(b) If a fellow withdraws from an institution before completion of an academic term, the institution may award the fellowship to another individual who satisfies the requirements in § 648.40.

(c) If a fellowship is vacated or discontinued for any period of time, the institution shall return a prorated portion of the institutional payment and unexpended stipend funds to the Secretary, unless the Secretary authorizes the use of those funds for a subsequent project period. The institution shall return the prorated portion of the institutional payment and unexpended stipend funds at a time and in a manner determined by the Secretary.

(d) If a fellow withdraws from an institution before the completion of the academic term for which he or she received a stipend installment, the fellow shall return a prorated portion of the stipend installment to the institution at a time and in a manner determined by the Secretary.

(Authority: 20 U.S.C. 1134p, 1134q)

§ 648.66 What records and reports are required from the institution?

(a) An institution of higher education that receives a grant shall provide to the Secretary, prior to the receipt of grant funds for disbursement to a fellow, a certification that the fellow is enrolled in, is making satisfactory progress in, and is devoting essentially full time to study in the academic field for which the grant was made.

(b) An institution of higher education that receives a grant shall keep records necessary to establish—

(1) That students receiving fellowships satisfy the eligibility requirements in § 648.40;

(2) The time and amount of all disbursements and return of stipend payments;

(3) The appropriate use of the institutional payment; and

(4) That assurances, policies, and procedures provided in its application have been satisfied.

(Authority: 20 U.S.C. 1134m–1134q)

Subpart G—What Conditions Must Be Met by a Fellow After an Award?

§ 648.70 What conditions must be met by a fellow?

To continue to be eligible for a fellowship, a fellow must—

(a) Maintain satisfactory progress in the program for which the fellowship was awarded;

(b) Devote essentially full time to study or research in the academic field in which the fellowship was awarded; and

(c) Not engage in gainful employment, except on a part-time basis in teaching, research, or similar activities determined by the academic department to be in support of the fellow's progress toward a degree.

(Authority: 20 U.S.C. 1134p)

Appendix to Part 648—Area of National Need Priorities

The Secretary may give an absolute preference to applications that meet any of the areas of national need listed as disciplines or subdisciplines below, or the resulting inter-disciplines. The list was derived from the Classification of Instructional Programs (CIP) developed by the Office of Educational Research and Improvement of the U.S. Department of Education and includes the instructional programs that may constitute courses of studies toward graduate degrees. The code number to the left of each discipline and subdiscipline is the Department's identification code for that particular type of instructional program.

01. Agricultural Business and Production

01.01 Agricultural Business and Management
01.02 Agricultural Mechanization
01.03 Agricultural Production Workers and Managers
01.04 Agricultural and Food Products Processing
01.05 Agricultural Supplies and Related Services
01.06 Horticultural Services Operations and Management
01.07 International Agriculture

02. Agricultural Sciences

02.01 Agriculture/Agricultural Sciences
02.02 Animal Sciences
02.03 Food Sciences and Technology
02.04 Plant Sciences
02.05 Soil Sciences

03. Conservation and Renewable Natural Resources

03.01 Natural Resources Conservation
03.02 Natural Resources Management and Protective Services
03.03 Fishing and Fisheries Sciences and Management
03.04 Forest Production and Processing
03.05 Forestry and Related Sciences
03.06 Wildlife and Wildlands Management

04. Architecture and Related Programs

04.02 Architecture
04.03 City/Urban, Community, and Regional Planning
04.04 Architectural Environmental Design
04.05 Interior Architecture
04.06 Landscape Architecture
04.07 Architectural Urban Design and Planning

05. Area, Ethnic, and Cultural Studies

05.01 Area Studies
05.02 Ethnic and Cultural Studies

08. Marketing Operations/Marketing and Distribution

08.01 Apparel and Accessories Marketing Operations
08.02 Business and Personal Services Marketing Operations
08.03 Entrepreneurship
08.04 Financial Services Marketing Operation
08.05 Floristry Marketing Operations
08.06 Food Products Retailing and Wholesaling Operations

08.07 General Retailing and Wholesaling Operations and Skills
08.08 Home and Office Products Marketing Operations
08.09 Hospitality and Recreation Marketing Operations
08.10 Insurance Marketing Operations
08.11 Tourism and Travel Services Marketing Operations
08.12 Vehicle and Petroleum Products Marketing Operations
08.13 Health Products and Services Marketing Operations

09. Communications

09.01 Communications, General
09.04 Journalism and Mass Communications
09.05 Public Relations and Organizational Communications
09.07 Radio and Television Broadcasting

11. Computer and Information Sciences

11.01 Computer and Information Sciences, General
11.02 Computer Programming
11.04 Information Sciences and Systems
11.05 Computer Systems Analysis
11.07 Computer Science

13. Education

13.01 Education, General
13.02 Bilingual/Bicultural Education
13.03 Curriculum and Instruction
13.04 Education Administration and Supervision
13.05 Educational/Instructional Media Design
13.06 Educational Evaluation, Research, and Statistics
13.07 International and Comparative Education
13.08 Educational Psychology
13.09 Social and Philosophical Foundations of Education
13.10 Special Education
13.11 Student Counseling and Personnel Services
13.12 General Teacher Education
13.13 Teacher Education, Specific Academic, and Vocational Programs
13.14 Teaching English as a Second Language/Foreign Language
13.15 Teacher Assistant/Aide

14. Engineering

14.01 Engineering, General
14.02 Aerospace, Aeronautical, and Astronautical Engineering
14.03 Agricultural Engineering
14.04 Architectural Engineering
14.05 Bioengineering and Biomedical Engineering
14.06 Ceramic Sciences and Engineering
14.07 Chemical Engineering
14.08 Civil Engineering
14.09 Computer Engineering
14.10 Electrical, Electronic, and Communications Engineering
14.11 Engineering Mechanics
14.12 Engineering Physics
14.13 Engineering Science
14.14 Environmental/Environmental Health Engineering
14.15 Geological Engineering
14.16 Geophysical Engineering
14.17 Industrial/Manufacturing Engineering
14.18 Materials Engineering
14.19 Mechanical Engineering
14.20 Metallurgical Engineering
14.21 Mining and Mineral Engineering
14.22 Naval Architecture and Marine Engineering
14.23 Nuclear Engineering
14.24 Ocean Engineering
14.25 Petroleum Engineering
14.27 Systems Engineering
14.28 Textile Sciences and Engineering
14.29 Engineering Design
14.30 Engineering/Industrial Management
14.31 Materials Science
14.32 Polymer/Plastics Engineering

16. Foreign Languages

16.01 Foreign Languages and Literatures
16.03 East and Southeast Asian Languages and Literatures
16.04 East European Languages and Literatures
16.05 Germanic Languages and Literatures
16.05 Greek Languages and Literatures
16.07 South Asian Languages and Literatures
16.09 Romance Languages and Literatures
16.11 Middle Eastern Languages and Literatures
16.12 Classical and Ancient Near Eastern Languages and Literatures

19. Home Economics

19.01 Home Economics, General
19.02 Home Economics Business Services
19.03 Family and Community Studies
19.04 Family/Consumer Resource Management
19.05 Foods and Nutrition Studies
19.06 Housing Studies
19.07 Individual and Family Development Studies
19.09 Clothing/Apparel and Textile Studies

20. Vocational Home Economics

20.02 Child Care and Guidance Workers and Managers
20.03 Clothing, Apparel, and Textile Workers and Managers
20.04 Institutional Food Workers and Administrators
20.05 Home Furnishings and Equipment Installers and Consultants
20.06 Custodial, Housekeeping, and Home Services Workers and Managers

22. Law and Legal Studies

22.01 Law and Legal Studies

23. English Language and Literature/Letters

23.01 English Language and Literature, General
23.03 Comparative Literature
23.04 English Composition
23.05 English Creative Writing
23.07 American Literature (United States)
23.08 English Literature (British and Commonwealth)
23.10 Speech and Rhetorical Studies
23.11 English Technical and Business Writing

24. Liberal Arts and Sciences, General Studies, and Humanities

24.01 Liberal Arts and Sciences, General Studies, and Humanities

25. Library Science

25.01 Library Science/Librarianship
25.03 Library Assistant

26. Biological Sciences/Life Sciences

26.01 Biology, General
26.02 Biochemistry and Biophysics
26.03 Botany
26.04 Cell and Molecular Biology
26.05 Microbiology/Bacteriology
26.08 Miscellaneous Biological Specializations
26.07 Zoology

27. Mathematics

27.01 Mathematics
27.03 Applied Mathematics
27.05 Mathematic Statistics

31. Parks, Recreation, Leisure, and Fitness Studies

31.01 Parks, Recreation, and Leisure Studies
31.03 Parks, Recreation, and Leisure Facilities Management
31.05 Health and Physical Education/Fitness

38. Philosophy and Religion

38.01 Philosophy
38.02 Religion/Religious Studies

39. Theological Studies

39.01 Biblical and Other Theological Languages and Literatures
39.02 Bible/Biblical Studies
39.03 Missions/Missionary Studies and Misology
39.04 Religious Education
39.05 Religious/Sacred Music

40 Physical Sciences

40.01 Physical Sciences, General
40.02 Astronomy
40.03 Astrophysics
40.04 Atmospheric Sciences and Meteorology
40.05 Chemistry
40.06 Geological and Related Sciences
40.07 Miscellaneous Physical Sciences
40.08 Physics

42. Psychology

42.01 Psychology
42.02 Clinical Psychology
42.03 Cognitive Psychology and Psycholinguistics
42.04 Community Psychology
42.06 Counseling Psychology
42.07 Developmental and Child Psychology
42.08 Experimental Psychology
42.09 Industrial and Organizational Psychology
42.11 Physiological Psychology/Psychobiology
42.16 Social Psychology
42.17 School Psychology

43. Protective Services

43.01 Criminal Justice and Corrections
43.02 Fire Protection

44. Public Administration and Services

44.02 Community Organizations, Resources, and Services
44.04 Public Administration
44.05 Public Policy Analysis
44.07 Social Work

45. Social Sciences and History

45.01 Social Sciences, General
45.02 Anthropology

45.03 Archeology
45.04 Criminology
45.05 Demography/Population Studies
45.06 Economics
45.07 Geography
45.08 History
45.09 International Relations and Affairs
45.10 Political Science and Government
45.11 Sociology
45.12 Urban Affairs/Studies

50. Visual and Performing Arts

50.01 Visual and Performing Arts
50.02 Crafts, Folk Art, and Artisanry
50.03 Dance
50.04 Design and Applied Arts
50.05 Dramatic/Theater Arts and Stagecraft
50.06 Film/Video and Photographic Arts
50.07 Fine Arts and Art Studies
50.09 Music

51. Health Professions and Related Sciences

51.01 Chiropractic (D.C., D.C.M.)
51.02 Communication Disorders Sciences and Services
51.03 Community Health Services
51.04 Dentistry (D.D.S., D.M.D.)
51.05 Dental Clinical Sciences/Graduate Dentistry (M.S., Ph.D.)
51.06 Dental Services
51.07 Health and Medical Administrative Services
51.08 Health and Medical Assistants
51.09 Health and Medical Diagnostic and Treatment Services
51.10 Health and Medical Laboratory Technologies/Technicians
51.11 Health and Medical Preparatory Programs
51.12 Medicine (M.D.)
51.13 Medical Basic Science
51.14 Medical Clinical Services (M.S., Ph.D)
51.15 Mental Health Services
51.16 Nursing
51.17 Optometry (O.D.)
51.18 Ophthalmic/Optometric Services
51.19 Osteopathic Medicine (D.O.)
51.20 Pharmacy
51.21 Podiatry (D.P.M., D.P., Pod.D.)
51.22 Public Health
51.23 Rehabilitation/Therapeutic Services
51.24 Veterinary Medicine (D.V.M.)
51.25 Veterinary Clinical Services
51.26 Miscellaneous Health Aides
51.27 Miscellaneous Health Professions

52. Business Management and Administrative Services

52.01 Business
52.02 Business Administration and Management
52.03 Accounting
52.04 Administrative and Secretarial Services
52.05 Business Communications
52.06 Business/Managerial Economics
52.07 Enterprise Management and Operations
52.08 Financial Management and Services
52.09 Hospitality Services Management
52.10 Human Resources Management
52.11 International Business
52.12 Business Information and Data Processing Services
52.13 Business Quantitative Methods and Management Science
52.14 Marketing Management and Research
52.15 Real Estate
52.16 Taxation

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AE80

Schedule of Rating Disabilities; Muscle Injuries

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its rating schedule regarding evaluation of muscle injuries. This amendment is necessary in order to comply with a General Accounting Office (GAO) study, which recommended that medical criteria in the rating schedule be reviewed and updated. The intended effect is to update the muscle injuries portion of the Schedule of Rating Disabilities to ensure that it uses current medical terminology and unambiguous criteria for evaluating these disabilities.

DATES: Comments must be received on or before July 16, 1993. Comments will be available for public inspection until July 26, 1993. This change is proposed to be effective 30 days after the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until July 26, 1993.

FOR FURTHER INFORMATION CONTACT: John L. Roberts, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Advanced notice of proposed rulemaking regarding the muscle injuries portion of the rating schedule was published in the **Federal Register** on November 8, 1990. We received a report from a consulting firm contracted to suggest revisions to this portion of the Rating Schedule.

The report included suggestions that we incorporate the muscular system section of the schedule into the musculoskeletal section, base the evaluations for muscle injuries on the functioning of muscles and muscle groups, and update terminology to reflect current usage. We have considered all of these suggestions and implemented several as explained in the following proposal.

The sections in subpart B pertaining to muscle injuries are §§ 4.47 through 4.56, § 4.69, § 4.72 and § 4.73. Much of the information in the narrative sections prefacing the schedule for rating musculoskeletal disabilities pertains to the basic physiology of bones and muscles and was originally intended for the general guidance of all personnel associated with the rating process. Since that time, the Veterans Health Administration Physician's Guide for Disability Evaluation Examinations (IB 11-56) (hereinafter the Physician's Guide) and the Veterans Benefits Administration (VBA) Adjudication Procedures Manual (M21-1) have been developed with expanded and clarified versions of these original instructions. The medical discussions in the rating schedule are often redundant and, even with revisions, would not add appreciably to the understanding of muscle injuries beyond the more complete explanations provided in the Physician's Guide, the VBA Manual, and standard medical texts and references. We propose to consolidate several of these sections and to delete the parts that are simply recitations of standard medical principles, retaining only those portions which are essentially regulatory in nature, i.e. those which prescribe general rating policy or mandatory rating procedures. This editing of the schedule is not intended to change fundamental rules of rating, but rather to condense and clarify the schedule in the interest of efficiency and ease of use.

In its current form, much of the regulatory material in this portion of the schedule is loosely organized and ambiguous, and we propose to revise and reorganize it for the sake of clarity and ease of reference. A number of grammatical elements are useful in eliminating ambiguity and ensuring that the schedule presents rating criteria as precisely as possible. We are proposing a number of editorial changes and reorganizations throughout the sections of the schedule dealing with muscle injuries. These changes are intended to clarify the rating criteria and represent no substantive amendment.

Section 4.47 is, in effect, a discussion of the results of missile wounds on muscles, pointing out that residual muscle fusion and scarring interfere

with coordination and strength, and that fatigue and pain result from prolonged exertion of the injured muscles. Since this is common medical fact readily available in more complete form elsewhere, it serves no regulatory purpose and we propose to delete § 4.47 from the schedule. Similarly, § 4.48 is a discussion of scars resulting from wounds, emphasizing the importance of a complete examination to assess any disability arising from the scars. Since there is a regulatory requirement elsewhere that evaluations be based on a complete examination (see §§ 4.1 and 4.2), and Chapter 1 of the Physician's Guide also emphasizes the importance of complete examinations and reports, § 4.48 is redundant and we propose to delete it.

Section 4.49 discusses residuals of wounds in deeper structures and the importance of reviewing the complete history of injury, which is also required by 38 CFR 4.1. Residuals of wounds and evaluation of evidence is discussed in Part VI of the VBA Manual and Chapter 2 of the Physician's Guide, and we propose to delete § 4.49 from the schedule.

The first seven sentences of § 4.50 recite the symptoms of missile wounds, emphasizing that it is the deeper scarring of muscles that is disabling. This information is covered in Chapter 2 of the Physician's Guide and, since it is not regulatory in nature, we propose to delete it from the schedule. The final three sentences of § 4.50, however, are regulatory; they specifically prohibit the evaluation of injured muscle groups which act upon ankylosed joints, with the two exceptions of the shoulder or knee joints. This provision is regulatory and is a long-standing principle of rating practice which could not be deleted without substantially altering current policy. Since these two exceptions are also mentioned in § 4.55 (d) and (e), we proposed to incorporate all of the instructions concerning ankylosed joints into § 4.55 and to delete § 4.50 altogether. This consolidation will codify all instructions dealing with ankylosed joints in one place and dispose of an unnecessary redundancy in the schedule.

Section 4.51 is a discourse on the subject of muscle weakness due to injury, and the testing of muscles to evaluate occupational efficiency. Since symptoms of muscle injury are detailed in the section concerning factors for evaluating muscle disabilities (§ 4.56), we propose to delete § 4.51.

The section titled "Muscle damage", § 4.52, discusses the anatomical structure of muscles and the effects of missile wounds, also discussing the symptoms of muscle injury. Since this subject is addressed in § 4.56, we propose to delete § 4.52.

Muscle patterns and the interaction of individual muscles in producing movement are discussed in § 4.53, with a list of the cardinal symptoms of muscle disability. These cardinal symptoms are an important factor in the evaluation of muscle injuries, and we propose to move them to § 4.56, the section dealing with factors to be considered in evaluation of muscle injuries. Since the remaining material dealing with muscle patterns and the mechanics of movement in § 4.53 is medical in nature and not regulatory, we propose to delete it from the schedule.

Section 4.54 lists the muscle groups and anatomical regions, repeats the cardinal symptoms of muscle disability, and lists the cardinal signs of muscle disability. For the sake of clarity, we propose to delete § 4.54 and incorporate the portion dealing with muscle groups and anatomical regions into § 4.55, and to incorporate the portion addressing cardinal signs and symptoms of muscle injury into § 4.56. As a result, § 4.55 will deal exclusively with the principles for rating muscle injuries, and § 4.56 will define the terms used in the rating schedule to evaluate muscle injuries.

The scheme for rating muscle injuries places individual muscles into 23 muscle groups, each with its own diagnostic code. Each muscle group is assigned to one of five anatomical regions: (1) The shoulder girdle and arm, (2) the forearm and hand, (3) the foot and leg, (4) the pelvic girdle and thigh, or (5) the torso and neck. The current schedule contains interchangeable references to anatomical "regions" and "segments" originating from attempts to edit and consolidate earlier versions of the schedule. For the sake of consistency, we propose to use only the term anatomical region, which will eliminate a potential source of confusion. While muscles may be grouped in arrangements other than those found here, consistent terminology is necessary when applying the rules of combined evaluations explained in § 4.55. Those rules relate primarily to the five anatomical regions outlined in § 4.73.

The proposed changes in § 4.55 are primarily in syntax. We propose to change the term anatomical "segment" to anatomical "region" consistent with the changes mentioned above and with the remainder of the schedule. We also propose to add the designations of the muscle groups and anatomical regions from § 4.54 as previously discussed.

Section 4.56 defines the four levels of muscle disability as slight, moderate, moderately severe and severe. Within each of these levels, the type of injury, history and complaint of the injury, and objective findings are outlined. These are the criteria which must generally be met in order for a muscle injury to be evaluated at that level. The descriptions of objective findings within the categories of moderate and moderately severe injuries use the subjective adjectives of "moderate" and "moderately severe." We propose to delete these words since they cause confusion within the categories by using the same words to describe the terms they are defining. The word "marked" in these descriptions of findings is vague and ambiguous, and we propose to delete it for clarity. The paragraph describing history and complaint under the level of severe muscle injury currently refers the rater back to the corresponding paragraph under moderately severe level of muscle injury, "in aggravated form." For the convenience of the user, we propose to repeat the entire paragraph under severe muscle injuries, noting that the signs and symptoms should be worse than for moderately severe injuries. Further, we propose to list the primary signs of severe muscle injury for clarity and completeness, subdivided for easier reference.

In part, § 4.72 describes the significance of fractures and wounds. Since fractures are now classified in medical practice as either open or closed, we propose to change the term "compound" comminuted fracture, which is currently used in this section, to "open" comminuted fracture. Two regulatory instructions are stated in § 4.72, the first concerning evaluation of open comminuted fractures and the second concerning evaluation of through and through missile wounds. For ease of reference, we propose to put these instructions under § 4.56 with the other factors relating to evaluation of muscle disabilities. We propose to delete the phrases "from the missile," which appears twice in this section, since muscle wounds may also be due to other causes. We have also proposed editorial changes which do not alter the substance of current rules. With the rearranging of these regulatory instructions into § 4.56, we propose to delete § 4.72.

Muscles work collectively to perform movement about a particular joint. Muscular ability is evaluated in functional terms and the functions of muscle groups serve as the primary

evaluation criteria. For this reason we propose to list the functions of the muscle group under each diagnostic code ahead of the specific muscles which comprise the group and perform those movements. This will simplify the rating process by identifying the muscle group by functional disability rather than by the names of the individual muscles involved.

The preferred medical terms describing handedness are "dominant" and "nondominant." We propose to substitute these designations for "major" and "minor", and change the heading of § 4.69, to avoid confusion when these terms are used in the orthopedic section of the schedule in a different sense, describing the size or relative importance of a skeletal joint. We also propose to amend § 4.69 to indicate that in an ambidextrous individual, the injured hand, or the most severely injured, will be considered the dominant hand for rating purposes.

The 50 percent level under diagnostic code 5317 (gluteus muscles) includes a footnote directing that entitlement to special monthly compensation be considered when bilateral function of the buttocks is severely impaired. The criteria for entitlement to special monthly compensation contained in 38 CFR 3.350 are extremely complex. There are many instances of entitlement to special monthly compensation based on different criteria than those used in assigning a schedular evaluation. Cross referencing them consistently and accurately would be very difficult, if not impossible. We propose to delete this note in favor of a note under § 4.73, preceding the coded evaluations of disabilities, instructing raters to refer to § 3.350 whenever they rate a muscle injury which has resulted in loss of use of any extremity or loss of use of both buttocks. We believe that this will be more effective than the footnote in ensuring complete review for special monthly compensation.

Since the word "neoplasm" connotes a pathological abnormality better than the term "new growth," we propose to substitute that word under diagnostic codes 5327 and 5328, which pertain to malignant and benign muscle conditions, respectively.

Diagnostic codes 5327 (malignancies of muscles) and 5329 (soft tissue sarcomas) are the only codes which currently provide a 100 percent evaluation for only six months following surgery or the cessation of antineoplastic therapy. These provisions are currently applied at the time of rating by assigning a six month total evaluation with a prospective reduction. We believe that it would be more appropriate, however, if the decision to reduce an evaluation were based on medical findings rather than a regulatory assumption that there has been improvement. We are therefore proposing to continue the total evaluation under these codes indefinitely after treatment is discontinued, and to examine the veteran six months thereafter. If the results of this or any subsequent examination warrant a reduction in evaluation, the reduction would be implemented under the provisions of 38 CFR 3.105(e). This method would in effect extend entitlement; there could be no reduction at the end of six months since any proposed reduction would be based on the examination and the notification process could begin only after this examination had been reviewed. This method also has the advantage of offering the veteran more contemporary notice of any proposed action and, under the provisions of 38 CFR 3.105(e), offering the opportunity to present evidence showing that the proposed action should not be taken.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual impact on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: April 20, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 72 Stat. 1125; 38 U.S.C. 1155.

Subpart B—Disability Ratings

2. Sections 4.47 through 4.54 are removed and reserved.

3. In § 4.55, the introductory text and paragraph (g) are removed and paragraphs (a) through (f) are revised to read as follows:

§ 4.55 Principles of combined ratings for muscle injuries.

(a) Muscle injury ratings will not be combined with peripheral nerve paralysis ratings of the same body part, unless the injuries affect entirely different functions.

(b) For rating purposes, the skeletal muscles of the body are divided into 23 muscle groups in 5 anatomical regions: 6 muscle groups for the shoulder girdle and arm (diagnostic codes 5301 through 5306), 3 muscle groups for the forearm and hand (codes 5307 through 5309), 3 muscle groups for the foot and leg (codes 5310 through 5312), 6 muscle groups for the pelvic girdle and thigh (codes 5313 through 5318), and 5 muscle groups for the torso and neck (codes 5319 through 5323).

(c) There will be no rating assigned for muscle groups which act upon an ankylosed joint, with the following exceptions:

(1) In the case of an ankylosed knee, Muscle group XIII will be rated, but at the next lower level than that which would otherwise be assigned.

(2) In the case of an ankylosed shoulder, if muscle groups I and II are severely disabled, the evaluation of the shoulder joint under diagnostic code 5200 will be elevated to that for unfavorable ankylosis, but the muscle groups themselves will not be rated.

(d) The combined evaluation of muscle groups acting upon a single unankylosed joint will not exceed the evaluation for intermediate ankylosis of that joint, except for muscle groups I and II acting upon the shoulder, which are addressed in paragraph (c)(ii) of this section.

(e) For compensable muscle group injuries which are in the same anatomical region but do not act on the

same joint, the evaluation for the most severely injured muscle group will be increased by one level and used as the combined evaluation for the affected muscle groups.

(f) For muscle group injuries in different anatomical regions which do not act upon ankylosed joints, each muscle group injury shall be separately rated and the ratings combined under the provisions of § 4.25.

4. Section 4.56 is revised to read as follows:

§ 4.56 Evaluation of muscle disabilities.

(a) An open comminuted fracture with muscle or tendon damage will be rated as a severe injury of the muscle group involved unless, for locations such as in the wrist or over the tibia, evidence establishes that the muscle damage is minimal.

(b) A through-and-through injury with muscle damage shall be evaluated as no less than a moderate injury for each group of muscles damaged.

(c) For VBA rating purposes, the cardinal signs and symptoms of muscle disability are loss of power, weakness, lowered threshold of fatigue, fatigue-pain, impairment of coordination and uncertainty of movement.

(d) Under diagnostic codes 5301 through 5323, disabilities resulting from muscle injuries shall be classified as slight, moderate, moderately severe or severe as follows:

(1) *Slight disability of muscles.*

(i) *Type of injury.* Simple wound of muscle without debridement, infection, or impairment of function.

(ii) *History and complaint.* Service department record of superficial wound with brief treatment and return to duty. Healing with good functional results. No cardinal signs or symptoms of muscle injury as defined in paragraph (c) of this section.

(iii) *Objective findings.* Minimal scar. No evidence of fascial defect, atrophy, or impaired tonus. No impairment of function or metallic fragments retained in muscle tissue.

(2) *Moderate disability of muscles.*

(i) *Type of injury.* Through and through or deep penetrating wound of short track from a single bullet, small shell or shrapnel fragment, without explosive effect of high velocity missile, residuals of debridement, or prolonged infection.

(ii) *History and complaint.* Service department record or other evidence of in-service treatment for the wound. Record of consistent complaint of one or more of the cardinal signs and symptoms of muscle injury as defined in paragraph (c) of this section, particularly lowered threshold of fatigue after average use, affecting the particular functions controlled by the injured muscles.

(iii) *Objective findings.* Small or linear entrance and, if present, exit scars indicating short track of missile through muscle tissue. Some loss of deep fascia or muscle substance or impairment of muscle tonus and clearly defined loss of power or lowered threshold of fatigue when compared to the sound side.

(3) *Moderately severe disability of muscles.*

(i) *Type of injury.* Through and through or deep penetrating wound by small high velocity missile or large low velocity missile, with debridement, prolonged infection, or sloughing of soft parts, and intermuscular scarring.

(ii) *History and complaint.* Service department record or other evidence showing hospitalization for a prolonged period for treatment of wound. Record of consistent complaint of cardinal signs and symptoms of muscle injury as defined in paragraph (c) of this section and, if present, evidence of unemployability because of inability to keep up with work requirements.

(iii) *Objective findings.* Large entrance and, if present, exit scars indicating track of missile through one or more muscle groups. Indications on palpation of loss of deep fascia, muscle substance, or normal firm resistance of muscles compared with sound side. Tests of strength and endurance compared with sound side demonstrate positive evidence of impairment.

(4) *Severe disability of muscles.*

(i) *Type of injury.* Through and through or deep penetrating wound due to high velocity missile with explosive effect, large low velocity missile, or multiple low velocity missiles, with shattering bone or open comminuted fracture and definite muscle or tendon damage with extensive debridement, prolonged infection, or sloughing of soft parts, and intermuscular binding and scarring.

(ii) *History and complaint.* Service department record or other evidence showing hospitalization for a prolonged period for treatment of wound. Record of consistent complaint of cardinal signs and symptoms of muscle injury as defined in paragraph (c) of this section, worse than those shown for moderately severe muscle injuries, and, if present, evidence of unemployability because of inability to keep up with work requirements.

(iii) *Objective findings.* Ragged, depressed and adherent scars indicating wide damage to muscle groups in missile track. Palpation shows loss of deep fascia or muscle substance, or soft flabby muscles in wound area. Muscles swell and harden abnormally in contraction. Tests of strength, endurance, or coordinated movements compared with the corresponding muscles of the uninjured side indicate extreme impairment of function. If present, the following are also signs of severe muscle disability:

(*A*) X-ray evidence of minute multiple scattered foreign bodies indicating intermuscular trauma and explosive effect of the missile.

(B) Adhesion of scar to one of the long bones, scapula, pelvic bones, sacrum or vertebrae, with epithelial sealing over the bone rather than true skin covering in an area where bone is normally protected by muscle.

(C) A diminished excitability to faradic current in electrical tests, compared with the sound side.

(D) Visible or measurable atrophy.

(E) Adaptive contraction of an opposing group of muscles.

(F) Atrophy of muscle groups not in the track of the missile, particularly of the trapezius and serratus in wounds of the shoulder girdle (traumatic muscular dystrophy).

(G) Induration or atrophy of an entire muscle following simple piercing by a projectile (progressive scelerosing myositis).

5. Section 4.69 is revised to read as follows:

§ 4.69 Dominant hand.

Handedness for the purpose of a dominant rating will be determined by the evidence of record, or by testing on VA examination. Only one hand shall be considered dominant. The injured hand, or the most severely injured hand, of an ambidextrous individual will be considered the dominant hand for rating purposes.

6. Section 4.72 is removed and reserved.

7. Section 4.73 is revised to read as follows:

§ 4.73 Schedule of Ratings-Muscle injuries.

Note: When evaluating any claim involving muscle injuries resulting in loss of use of any extremity or loss of use of both buttocks, refer to § 3.350 of this chapter to determine whether the veteran may be entitled to special monthly compensation.

THE SHOULDER GIRDLE AND ARM

	Rating	
	Dominant	Nondominant
5301 Group I. *Function:* Upward rotation of scapula; elevation of arm above shoulder level.		
Extrinsic muscles of shoulder girdle: (1) Trapezius; (2) levator scapulae; (3) serratus magnus.		
Severe	40	30
Moderately Severe	30	20
Moderate	10	10
Slight	0	0
5302 Group II. *Function:* Depression of arm from vertical overhead to hanging at side, (1, 2); downward rotators of scapula, (3, 4); 1 and 2 act with Group III in forward and backward swing of arm.		
Extrinsic muscles of shoulder girdle: (1) Pectoralis major II (costosternal); (2) latissimus dorsi and teres major (teres major, although technically an intrinsic muscle, is included with latissimus dorsi); (3) pectoralis minor; (4) rhomboid.		
Severe	40	30
Moderately Severe	30	20
Moderate	20	20
Slight	0	0
5303 Group III. *Function:* Elevation and abduction of arm to level of shoulder; act with 1 and 2 of Group II in forward and backward swing of arm.		
Intrinsic muscles of shoulder girdle: (1) Pectoralis major I (clavicular); (2) deltoid.		
Severe	40	30
Moderately Severe	30	20
Moderate	20	20
Slight	0	0
5304 Group IV. *Function:* Stabilizing muscles of the shoulder against injury in strong movements, holding head of humerus in socket; abduction, outward rotation and inward rotation of arm.		
Intrinsic muscles of shoulder girdle: (1) Supraspinatus; (2) infraspinatus and teres minor; (3) subscapularis; (4) coracobrachialis.		
Severe	30	20
Moderately Severe	20	20
Moderate	10	10
Slight	0	0
5305 Group V. *Function:* Elbow supination (1) (long head of biceps is stabilizer of shoulder joint); flexion of elbow (1, 2, 3).		
Flexor muscles of elbow: (1) Biceps; (2) brachialis; (3) brachioradialis.		
Severe	40	30
Moderately Severe	30	20
Moderate	10	10
Slight	0	0
5306 Group VI. *Function:* Extension of elbow (long head of triceps is stabilizer of shoulder joint).		
Extensor muscles of the elbow: (1) Triceps; (2) anconeus.		
Severe	40	30
Moderately Severe	30	20
Moderate	10	10
Slight	0	0

THE FOREARM AND HAND

	Rating	
	Dominant	Nondominant
5307 Group VII. *Function:* Flexion of wrist and fingers.		
Muscles arising from internal condyle of humerus: Flexors of the carpus and long flexors of fingers and thumb; pronator.		
Severe	40	30
Moderately Severe	30	20
Moderate	10	10
Slight	0	0
5308 Group VIII. *Function:* Extension of wrist, fingers, and thumb; abduction of thumb.		
Muscles arising mainly from external condyle of humerus: Extensors of carpus, fingers, and thumb; supinator.		
Severe	30	20
Moderately Severe	20	20
Moderate	10	10
Slight	0	0

THE FOREARM AND HAND—Continued

	Rating	
	Dominant	Nondominant
5309 Group IX. *Function:* The forearm muscles act in strong grasping movements and are supplemented by the intrinsic muscles in delicate manipulative movements. *Intrinsic muscles of hand:* Thenar eminence; short flexor, opponens, abductor and adductor of thumb; hypothenar eminence; short flexor, opponens and abductor of little finger; 4 lumbricales; 4 dorsal and 3 palmar interossei. Note—The hand is so compact a structure that isolated muscle injuries are rare, being nearly always complicated with injuries of bones, joints, tendons, etc. Rate on limitation of motion, minimum 10 percent.		

THE FOOT AND LEG

	Rating
5310 Group X. *Function:* Movements of forefoot and toes; propulsion thrust in walking. *Intrinsic muscles of the foot:* *Plantar:* (1) Flexor digitorum brevis; (2) abductor hallucis; (3) abductor digiti V; (4) quadratus plantae; (5) lumbricales; (6) flexor hallucis; (7) flexor digiti V brevis; (8) opponens digiti V, plantar interossei. Other important plantar structures; plantar aponeurosis, long plantar and calcaneonavicular ligament, tibialis posterior, peroneus longus, and long flexors of great and little toes.	
Severe	30
Moderately Severe	20
Moderate	10
Slight	0
Dorsal: Extensor hallucis brevis; (2) extensor digitorum brevis; (3) 4 dorsal interossei. Other important dorsal structures: cruciate, crural, deltoid, and other ligaments; tendons of long extensors of toes and peronei muscles.	
Severe	20
Moderately Severe	10
Moderate	10
Slight	0
Note—minimum rating for through and through wounds of the foot	10
5311 Group XI. *Function:* Propulsion, plantar flexion of foot (1); stabilizing arch (2, 3); flexion of toes (4, 5); flexion of knee (6). *Posterior and lateral crural muscles, and muscles of the calf:* (1) Triceps surae (gastrocnemius and soleus); (2) tibialis posterior; (3) peroneus longus; (4) flexor hallucis longus; (5) flexor digitorum longus; (6) popliteus.	
Severe	30
Moderately Severe	20
Moderate	10
Slight	0
5312 Group XII. *Function:* Dorsiflexion (1); extension of toes (2); stabilizing arch (3). *Anterior muscles of the leg:* (1) Tibialis anterior; (2) flexor digitorum longus; (3) peroneus tertius.	
Severe	30
Moderately Severe	20
Moderate	10
Slight	0

THE PELVIC GIRDLE AND THIGH

	Rating
5313 Group XIII. *Function:* Extension of hip and flexion of knee; outward and inward rotation of flexed knee; acting with rectus femoris and sartorius (see XIV, 1, 2) synchronizing simultaneous flexion of hip and knee and extension of hip and knee by belt-over-pulley action at knee joint. *Posterior thigh group, Hamstring complex of 2-joint muscles:* (1) Biceps femoris; (2) semimembranosus; (3) semitendinosus.	
Severe	40
Moderately Severe	30
Moderate	10
Slight	0
5314 Group XIV. *Function:* Extension of knee (2, 3, 4, 5); simultaneous flexion of hip and flexion of knee (1); tension of fascia lata and iliotibial (Maissiat's) band, acting with XVII (1), in postural support of body (6); acting with hamstrings in synchronizing hip and knee (1, 2). *Anterior thigh group:* (1) Sartorius; (2) rectus femoris; (3) vastus externus; (4) vastus intermedius; (5) vastus internus; (6) tensor vaginae femoris.	
Severe	40
Moderately Severe	30
Moderate	10
Slight	0
5315 Group XV. *Function:* Adduction of hip (1, 2, 3, 4); flexion of hip (1, 2); flexion of knee (4). *Mesial thigh group:* (1) Adductor longus; (2) adductor brevis; (3) adductor magnus; (4) gracilis.	
Severe	30
Moderately Severe	20

THE PELVIC GIRDLE AND THIGH—Continued

	Rating
Moderate	10
Slight	0
5316 Group XVI. *Function:* Flexion of hip (1, 2, 3).	
Pelvic girdle group 1: (1) Psoas; (2) iliacus; (3) pectineus.	
Severe	40
Moderately Severe	30
Moderate	10
Slight	0
5317 Group XVII. *Function:* Extension of hip (1); abduction of thigh; elevation of opposite side of pelvis (2, 3); tension of fascia lata and iliotibial (Maissiat's) band, acting with XIV (6), in postural support of body steadying pelvis upon head of femur and condyles of femur on tibia (1).	
Pelvic girdle group 2: (1) Gluteus maximus; (2) gluteus medius; (3) gluteus minimus.	
Severe	50
Moderately Severe	40
Moderate	20
Slight	0
5318 Group XVIII. *Function:* Outward rotators of thigh and stabilizers of hip joint.	
Pelvic girdle group 3: (1) Pyriformis; (2) gemellus (superior or inferior); (3) obturator (external or internal); (4) quadratus femoris.	
Severe	30
Moderately Severe	20
Moderate	10
Slight	0

THE TORSO AND NECK

	Rating
5319 Group XIX. *Function:* Support and compression of abdominal wall and lower thorax; flexion and lateral motions of spine; synergists in strong downward movements of arm (1).	
Muscles of the abdominal wall: (1) Rectus abdominis; (2) external oblique; (3) internal oblique; (4) transversalis; (5) quadratus lumborum.	
Severe	50
Moderately Severe	30
Moderate	10
Slight	0
5320 Group XX. *Function:* Postural support of body; extension and lateral movements of spine.	
Spinal muscles: sacrospinalis (erector spinae and its prolongations in thoracic and cervical regions).	
Cervical and thoracic region:	
Severe	40
Moderately Severe	20
Moderate	10
Slight	0
Lumbar region:	
Severe	50
Moderately Severe	40
Moderate	20
Slight	0
5321 Group XXI. *Function:* Respiration.	
Muscles of Respiration: Thoracic muscle group.	
Severe or Moderately Severe	20
Moderate	10
Slight	0
5322 Group XXII. *Function:* Rotary and forward movements of the head; respiration; deglutition.	
Muscles of the front of the neck: (Lateral, supra-, and infrahyoid group.) (1) trapezius I (clavicular insertion); (2) sternocleidomastoid; (3) the "hyoid" muscles; (4) sternothyroid; (5) digastric.	
Severe	30
Moderately Severe	20
Moderate	10
Slight	0
5323 Group XXIII. *Function:* Movements of the head; fixators for shoulder movements.	
Muscles of the side and back of the neck: Suboccipital; lateral vertebral and anterior vertebral muscles.	
Severe	30
Moderately Severe	20
Moderate	10
Slight	0

MISCELLANEOUS

	Rating
5324 Diaphragm, rupture of, with herniation. Rate under diagnostic code 7346.	
5325 Muscle injury, facial muscles. Consider injury to cranial nerves, minimum rating if interfering to any extent with mastication	10
5326 Muscle hernia, extensive. Without other injury to the muscle	10
5327 Muscle, neoplasm of, malignant (excluding soft tissue sarcoma)	100
Note: Following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure, the rating of 100 percent shall continue with a mandatory VA examination at the expiration of six months. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residual impairment of function.	
5328 Muscle, neoplasm of, benign, postoperative. Rate on impairment of function, i.e., limitation of motion, or scars, diagnostic code 7805, etc.	
5329 Sarcoma, soft tissue, (of muscle, fat, or fibrous connective tissue)	100
Note: Following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure, the rating of 100 percent shall continue with a mandatory VA examination at the expiration of six months. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residual impairment of function.	

[FR Doc. 93–13350 Filed 6–15–93; 8:45 am]

BILLING CODE 6320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–4657–5]

Approval of State Programs and Delegation of Federal Authorities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing and extension of public comment period.

SUMMARY: On May 19, 1993 (58 FR 29296), EPA proposed regulations to provide guidance, relating to approval of State programs, that EPA is required to publish under section 112(1) of the Clean Air Act Amendments (CAA) of 1990. The proposed notice announced that, if requested, a public hearing would be held at the EPA office located in Research Triangle Park (RTP), North Carolina. The EPA received several requests and as a result, a June 22, 1993 hearing has been scheduled to allow interested parties the opportunity to present oral testimony. The period for receiving written public comments on the proposed rule is being extended from the original date of June 18, 1993 to July 6, 1993 to allow interested parties time to prepare responses after the public hearing.

DATES: Comments. Comments must be received on or before July 6, 1993.

Public Hearing. The public hearing will be held on June 22, 1993 in RTP, North Carolina. The hearing will start at 9 a.m. and will end when all oral testimony is heard.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by June 18, 1993. Each speaker will be allowed up to 10 minutes.

ADDRESSES: Comments. Written comments should be submitted (in duplicate, if possible) to: Air Docket Section (LE–131), ATTN: Docket No. A–92–46, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing: The public hearing will be held on June 22, 1993 at the EPA's Office of Administration Auditorium, RTP, North Carolina. The hearing will start at 9 a.m. and will end when all oral testimony is heard. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Pam Smith, Pollutant Assessment Branch, Emission Standards Division, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards (MD–13), RTP, North Carolina 27711, telephone (919) 541–5319.

Docket. The docket listed above under ADDRESSES contains supporting information used in developing the proposed rule. The docket is available for public inspection and copying from 8:30 a.m.–12 noon and 1:30 p.m.–3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For general information on the proposed rule, contact Tim Ream, Pollutant Assessment Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, RTP, North Carolina 27711 or contact Sheila Q. Milliken, Pollutant Assessment Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, RTP, North Carolina 27711, telephone number (919) 541–2625.

SUPPLEMENTARY INFORMATION: On May 19, 1993, the EPA proposed regulations to provide guidance, relating to approval of State programs, that EPA is required to publish under section 112(1) of the Clean Air Act Amendments (CAA) of 1990 (58 FR 29296). Section 112(1)(2) of the CAA requires EPA to publish guidance useful to States in developing programs for implementing and enforcing emission standards and other requirements for hazardous air pollutants (HAP's) and guidance concerning requirements for the prevention and mitigation of accidental releases of toxic substances into the ambient air. The proposed rule contains guidance specifically relating to the approval of rules or programs that States can implement and enforce in place of certain Federal section 112 rules, and the partial or complete delegation of Federal authorities and responsibilities associated therewith. Submission of such rules or programs by the States is entirely voluntary. EPA received several requests for a public hearing and with this notice is clarifying the date and procedures for the hearing.

Dated: June 11, 1993.

Robert D. Bruce,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–14275 Filed 6–15–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 930640-3140; I.D. 052093C]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement the conservation and management measures prescribed in Amendment 4 to the Fishery Management Plan for the Summer Flounder Fishery (FMP). This rule proposes to revise the percentage of the commercial quota allocated to each state, and revise the manner in which 1994 state quotas will be adjusted for quota overages that may occur in 1993. The intent of Amendment 4 is to adjust for the underreporting in Connecticut catch data used to establish allocation shares and to make additional quota available to commercial vessels landing summer flounder in Connecticut. An emergency interim rule that is effective from May 4, 1993, through August 5, 1993, with a possible 90-day extension, would be superseded by this amendment, if implemented.

DATES: Comments on the proposed rule must be received on or before August 2, 1993.

ADDRESSES: Comments on the proposed rule, the FMP, or supporting documents should be sent to Richard B. Roe, Director, Northeast Region, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope "Comments on Summer Flounder Plan."

Copies of Amendment 4, the environmental assessment (EA), and the regulatory impact review (RIR) are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 S. New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, Resource Policy Analyst, 508-281-9324.

SUPPLEMENTARY INFORMATION: The summer flounder fishery is managed under the FMP, which was developed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the Canadian border. The objectives of the FMP are to: (1) Reduce fishing mortality in the summer flounder fishery to assure that overfishing does not occur; (2) reduce fishing mortality on immature summer flounder to increase spawning stock biomass; (3) improve the yield from the fishery; (4) promote compatible management regulations between state and Federal jurisdictions; (5) promote uniform and effective enforcement of regulations; and (6) minimize regulations to achieve the management objectives stated above.

Implementing regulations for the summer flounder fishery are issued under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are found at 50 CFR part 625. The regulations were amended on December 4, 1992 (57 FR 57358), by the final rule to implement Amendment 2 to the FMP. These regulations imposed several management measures, including an annual commercial quota allocated on a percentage basis to the Atlantic coast states from North Carolina to Maine.

The allocation of the state quota shares was based on historical landings data. Subsequent to approval and implementation of Amendment 2, ASMFC member states recognized that Connecticut's commercial landings were underreported from the early to mid-1980s. In response, Amendment 4 was prepared by the Council in consultation with the ASMFC and the New England and South Atlantic Fishery Management Councils. A notice of availability for the proposed Amendment 4 was published in the **Federal Register** on May 26, 1993 (58 FR 30140).

Amendment 4 would use a proxy for underreported landings in the State of Connecticut to revise the percentages of commercial quota allocated to the states under § 625.20(d)(1) of the regulations (see Table 1). This would make additional quota available to commercial vessels landing in the State. Specifically, the revision would increase Connecticut's quota share by 1.30388 percent. The remaining states would share a corresponding decrease, with the decreases ranging from 0.00004 percent to 0.36967 percent. The total quota for the management unit, which is set annually based on a target fishing mortality rate and stock abundance of various year classes, would not be affected by this action. This action merely redistributes the available quota.

The quota apportioned to the State of Connecticut was harvested quickly because historic landings were significantly underrepresented by the original allocation to that State. The commercial fishery for Connecticut was closed on February 19, 1993 (58 FR 8557; February 16, 1993). This prompted the Council and ASMFC to request the Secretary of Commerce (Secretary) to take emergency action to make additional quota available to vessels landing summer flounder in that State while Amendment 4 was being prepared. Emergency regulations were implemented on May 4, 1993, through August 5, 1993 (58 FR 27214; May 7, 1993). This emergency interim rule may be extended for one 90-day period.

TABLE 1.—REVISED STATE QUOTA SHARES (PROPOSED)

State	Revised	Original %	Difference
Maine	0.04756	0.0482	−0.00064
New Hampshire	0.00046	0.0005	−0.00004
Massachusetts	6.82046	6.9111	−0.09064
Rhode Island	15.68296	15.8914	−0.20842
Connecticut	2.25706	0.9532	+1.30388
New York	7.64699	7.7488	−0.10181
New Jersey	16.72499	16.9473	−0.22231
Delaware	0.01779	0.0180	−0.00021
Maryland	2.03910	2.0662	−0.0271
Virginia	21.31676	21.6001	−0.28334

TABLE 1.—REVISED STATE QUOTA SHARES (PROPOSED)—Continued

State	Revised	Original %	Difference
North Carolina	27.44584	27.8155	−0.36967
Total	100.00000		

Quota Overage Adjustment for 1994

This amendment also proposes to modify the regulations regarding 1994 quota adjustments if any state's landings exceed its 1993 allocation and there is an overall balance of 1993 quota remaining. The current regulations at § 625.20(d)(2) require quota overages in any state to be deducted from that states's annual quota for the following year.

The proposed revision to state quota percentages in Table 1 would result in a reduction in quota for ten states of 161,029 pounds (73,042 kg), with individual state reductions shown in Table 2. The quota for Connecticut was increased by the same amount. If there is unused 1993 quota at the end of the fishing year, the Amendment proposes to apply the unused quota to any quota overages for the ten states that experienced a quota reduction in 1993, before any deduction is made from any 1994 state quotas. The maximum adjustment per state would not exceed the amount of quota reduction experienced in 1993, which is shown in Table 2.

The amendment also proposes that, if the unused quota is inadequate to compensate the ten states for all overages, the unused 1993 quota would be allocated proportionally among the states. To calculate a given state's proportional share, the figures from Table 2 for each state with an overage would be summed. The individual state percentage share of that total will be calculated. For each state with an overage, that percentage would be applied to the total amount of unused 1993 quota, and the resulting amount would be deducted from the state's 1993 overage. The remaining overage for each state, if any, would be deducted from the 1994 state quota. This provision would only be applicable to state quota overages occurring in 1993 because the quota revision, if approved, would take place while 1993 fishing activity is underway and may complicate quota monitoring efforts. In future years, quota overages in any state would be deducted from that state's annual quota for the following year.

TABLE 2.—REDUCTIONS IN 1993 STATE QUOTAS RESULTING FROM REVISED STATE QUOTA SHARES

State	Pounds	Kilograms
Maine	82	37
New Hampshire	5	2
Massachusetts	11,194	5,078
Rhode Island	25,737	11,674
New York	12,547	5,691
New Jersey	27,453	12,453
Delaware	26	12
Maryland	3,347	1,518
Virginia	34,989	15,871
North Carolina	45,649	20,706
Totals	161,029	73,042

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires the Secretary to publish regulations proposed by a Council to implement a proposed FMP amendment within 15 days of the receipt date of the amendment and proposed regulations. At this time, the Secretary has not determined that the Amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared an environmental assessment (EA) for the Amendment and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the EA may be obtained from the Council (see **ADDRESSES**).

An informal consultation under Section 7 of the Endangered Species Act (ESA) was conducted for Amendment 4 and concluded that a formal consultation and biological opinion are not necessary to address endangered species interactions and critical habitat issues for this action. Amendment 4 proposes minor adjustments in the percent shares of the annual quota for the commercial fisheries for each state, implemented by Amendment 2. The biological opinion for the FMP calls for promulgation of permanent ESA regulations by the fall of 1993 to provide for long-term protection of sea turtles. Those regulations are currently under development by NMFS. This Amendment will not affect endangered or threatened species or critical habitat in any way that was not already considered in other consultations undertaken for the FMP (NMFS, 1988, 1991 and 1992).

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the draft Regulatory Impact Review (RIR) that demonstrates that the quota reduction required by this redistribution will not significantly impact fishermen in the affected states because the subtracted quota amounts are relatively small. The adjusted state quota shares will be less disruptive to traditional commercial landing patterns in the states than those in Amendment 2 because they will more closely reflect the actual historical state share of landings. A copy of the RIR may be obtained from the Council (see **ADDRESSES**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because of the reasons set forth in the RIR prepared by the Council, a copy of which may be obtained from the Council (see **ADDRESSES**). As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Caroline. For Pennsylvania, the Council determined that this rule will not affect the coastal zone. This determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Maine, New

Hampshire, Rhode Island, Connecticut, Pennsylvania, and Delaware have concurred with the Council's opinion.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: June 11,1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 625 is proposed to be amended as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 625.20, paragraphs (d)(1) through (d)(3) are revised to read as follows:

§ 625.20 Catch quotas and other restrictions.

* * * * *

(d)(1) The annual commercial quota will be distributed to the states based upon the following percentages:

State	Share (%)
Maine	0.04756
New Hampshire	0.00046
Massachusetts	6.82046
Rhode Island	15.68298
Connecticut	2.25708
New York	7.64599
New Jersey	16.72499
Delaware	0.01779
Maryland	2.03910
Virginia	21.31676
North Carolina	27.44584

(d)(2) All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year.

(d)(3) Before any 1993 state quota overage is deducted from a respective 1994 state quota figure for Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, or North Carolina, the sum total or unused 1993 quotas will be used to reduce those overages up to the maximum shown below for each state. If the sum total of unused 1993 quotas is inadequate to eliminate all state overages, the unused 1993 quota will be allocated proportionally among the states. The figures from the table below for each state having an overage will be summed. The individual state percentage share of that total will be applied to the total amount of unused 1993 quota. The resulting amount for each state will be deducted from the state's 1993 overage. Any remaining overage shall be deducted from the 1994 state quota.

State	Maximum adjustment	
	(lbs)	(kg)
Maine	82	37
New Hampshire	5	2
Massachusetts	11,194	5,078
Rhode Island	25,737	11,674
New York	12,547	5,691
New Jersey	27,453	12,453
Delaware	26	12
Maryland	3,347	1,518
Virginia	34,989	15,871
North Carolina	45,648	20,706

* * * * *

[FR Doc. 93–14270 Filed 6–14–93; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 58, No. 114
Wednesday, June 16, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974: Computer Matching Program for the Disqualified Recipient Subsystem—U.S. Department of Agriculture and State Welfare Agencies Administering the Food Stamp Program

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Computer Matching Programs for the Disqualified Recipient Subsystem—U.S. Department of Agriculture and State welfare agencies administering the Food Stamp Program.

SUMMARY: The Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA) is providing notice that it intends to conduct a computer matching program with all fifty States as well as the District of Columbia, Guam, and the Virgin Islands. However, not all of the States will be fully prepared to participate in the computer matching program at its inception and only those that have completed technical preparations and executed computer matching agreements are included under this notice. Therefore, this notice announces the participation in the computer matching program of the States of Alaska, Arizona, California, Idaho, Nevada, Washington, Florida, South Carolina, Tennessee, West Virginia, Connecticut, New Hampshire, New Mexico, Kentucky, Oregon, Mississippi, Alabama, Georgia, Maryland, District of Columbia, Virgin Islands, Pennsylvania, Louisiana, Oklahoma, Arkansas, New York, North Dakota, and Colorado.

As the remainder of the States complete technical preparations and execute computer matching agreements, additional notices will be published to announce their inclusion in this matching program.

The matching program will enable State agencies to determine appropriate periods of disqualification from participation in the Food Stamp Program for intentional program violations. To assign appropriate periods of disqualification, State agencies will match data on individuals recently determined to have committed intentional program violations with an FNS-maintained, centralized data bank list of individuals previously disqualified. Then, based on the number of times an individual has been disqualified, an appropriate period of disqualification will be assigned for the latest violation.

The matching program will also enable State agencies to prevent the certification or detect the participation of individuals who are in a disqualified status. At their option, State agencies may match the FNS-supplied data against their records of applicants and/or recently-certified individuals to insure that those currently in a disqualified status do not participate. Matches will be conducted in accordance with written agreements between USDA and each of the State agencies.

This notice is required by Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988. The information provided is in accordance with paragraph 6.c. of the Final Guidance Interpreting Pub. L. 100–503 issued by the Office of Management and Budget, 54 FR 25818 (June 19, 1989). A copy of this notice has been provided to the Committee on Government Operations, U.S. House of Representatives, the Committee on Governmental Affairs, U.S. Senate, and the Office of Management and Budget.

DATES: In accordance with Section 2 of Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. 552a(o)(2)(B) the matching programs will begin no sooner than 30 days after the signed agreements are transmitted to the Committee on Government Operations, U.S. House of Representatives, the Committee on Governmental Affairs, U.S. Senate, and the Office of Management and Budget. This matching program will continue for 18 months, the maximum time period allowed under section 2 of Pub. L. 100–503, 5 U.S.C. 552a(o)(2)(C). At the end of that period, with the approval of the USDA Data Integrity Board, this matching program may be extended for an additional year without further notice.

ADDRESSES: Comments and inquiries should be addressed to: Cecilia Fitzgerald, Supervisor, State Management Section, State Administration Branch, Program Accountability Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 907, 3101 Park Center Drive, Alexandria, VA 22302. telephone (703) 305–2386.

SUPPLEMENTARY INFORMATION: Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981, requires that individuals who intentionally violate Food Stamp Program regulations more than once be assigned increasingly longer periods of disqualification for each subsequent offense. To assign appropriate disqualification periods, State agencies must have access to information on individuals who have previously been disqualified in other jurisdictions as well as their own. Although Congress, in Pub. L. 97–35, did not specify a system for assuring State agencies access to information on disqualified individuals, it did require State agencies to report disqualification actions to FNS. Thus, to enable States to act on this information as Congress intended, FNS will make this information available to State agencies through the Disqualified Recipient Subsystem.

FNS will act as the central collection point for data on disqualified individuals, which States will then access through the Disqualified Recipient Subsystem. The data will include the name, social security number, date of birth, and sex of disqualified individuals. If data in the Disqualified Recipient Subsystem indicates that an individual had been disqualified previously, the information obtained from the Disqualified Recipient Subsystem will be verified before a new period of disqualification is assigned. If the information in the Disqualified Recipient Subsystem originated in another State, that State will be asked to verify the subject data. This procedure will also be followed before any action is taken to deny an individual's application or terminate an individual's participation based on a match with the Disqualified Recipient Subsystem.

Food Stamp Program regulations provide for notification and due-process

rights for individuals adversely affected by computer match programs.

Name of Participating Agencies

Food and Nutrition Service, USDA, and the States of Alaska, Arizona, California, Idaho, Nevada, Washington, Florida, South Carolina, Tennessee, West Virginia, Connecticut, New Hampshire, New Mexico, Kentucky, Oregon, Mississippi, Alabama, Georgia, Maryland, District of Columbia, Virgin Islands, Pennsylvania, Louisiana, Oklahoma, Arkansas, New York, North Dakota, and Colorado.

Purpose

To facilitate the Congressional mandate to increase the length of disqualifications from the Food Stamp Program for repeated instances of fraudulently obtaining Food Stamp Program benefits and to verify eligibility of applicants for Food Stamp Program benefits.

Authority: 7 U.S.C. 2015, the Food Stamp Act of 1977, as amended.

Files To Be Used in This Matching Program Are

(1) The FNS-maintained file of State-provided disqualification information is entitled "Information on Persons Disqualified from the Food Stamp Program" and designated as USDA/FNS–5. This Privacy Act System of Records consists of standardized records containing identifying information (first name, middle initial, last name; social security number; date of birth; and sex) on individuals disqualified from the Food Stamp Program and information identifying the location, date(s) and length(s) of any disqualification determined and imposed.

(2) State agency food stamp recipient information files for each State, the District of Columbia, Guam, and the Virgin Islands.

Inclusive Dates

In accordance with section 2 of Pub. L. 100–503, 5 U.S.C. 552a(o)(2)(B) the Computer Matching and Privacy Protection Act of 1988, the matching programs will begin no sooner than 30 days after the signed agreements are transmitted to the Committee on Government Operations, U.S. House of Representatives, the Committee on Governmental Affairs, U.S. Senate, and the Office of Management and Budget. They will continue for 18 months, the maximum time period allowed under section 2 of Pub. L. 100–503, 5 U.S.C. 552a(o)(2)(C). At the end of that period, with the approval of the USDA Data Integrity Board, this matching program may be extended for an additional year without further notice.

Public Comments or Inquiries

Comments and inquiries should be addressed to: Cecilia Fitzgerald, Supervisor, State Management Section, State Administration Branch, Program Accountability Division, Food and Nutrition Service, U.S. Department of Agriculture, room 907, 3101 Park Center Drive, Alexandria, VA 22302, telephone (703) 305–2386.

Signed at Washington, DC, on June 4, 1993.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 93–14125 Filed 6–15–93; 8:45 am]

BILLING CODE 3410–30–U

Animal and Plant Health Inspection Service

[Docket No. 93–059–1]

Receipt of a Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
93–117–01, renewal of permit 90–065–06, issued on 05–15–90.	University of Kentucky	04–27–93	Tobacco plants genetically engineered to express resistance to tobacco vein mottling virus.	Kentucky.

Done in Washington, DC, this 10th day of June 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–14127 Filed 6–15–93; 8:45 am]

BILLING CODE 3410-34-P

Forest Service

Environmental Statements; Jefferson National Forest, et al.

In the matter of Appalachian Power Co. Transmission Line Construction-Cloverdale, VA, to Oceana, WV; Jefferson National Forest, Appalachian National Scenic Trail, the New River and R.D. Bailey Lake Flowage Easement Land; Virginia Counties of Botetourt, Roanoke, Craig and Giles and the West Virginia counties of Monroe, Summers, Mercer and Wyoming.

AGENCY: Forest Service, USDA.

ACTION: Revised notice; explains why the federal agencies are conducting their analysis, explains how the proposed transmission line relates to the Jefferson National Forest's Land and Resource Management Plan, defines the scope of the federal analysis, identifies the significant issues that will be addressed in the environmental impact statement, revises the publication dates for the draft and final environmental impact statements, and changes the responsible official for the US Army Corps of Engineers.

SUMMARY: The Forest Service will prepare a draft and final environmental impact statement on a proposed action to authorize the Appalachian Power Company to construct a 765,000-volt transmission line across approximately twelve miles of the Jefferson National Forest, as well as portions of the Appalachian National Scenic Trail, the New River (at Bluestone Lake) and R.D. Bailey Lake Flowage Easement Land (at Guyandotte River).

The Appalachian Power Company proposal involves federal land under the administrative jurisdiction of the USDA Forest Service (Jefferson National Forest), the USDI National Park Service (Appalachian National Scenic Trail) and the US Army Corps of Engineers (New River and R.D. Bailey Lake Flowage Easement Land).

The Forest Service will be the lead agency and is responsible for the preparation of the environmental impact statement. The National Park Service and the US Army Corps of Engineers will be cooperating agencies in accordance with 40 CFR 1501.6.

In initiating and conducting the analysis the federal agencies are responding to the requirements of their respective permitting processes and the need for the Appalachian Power Company to cross federal lands with the proposed transmission line.

The Forest Service additionally will assess how the proposed transmission line conforms to the direction contained in their Land and Resource Management Plan (LRMP). Changes in the LRMP could be required if the transmission line is authorized across the Jefferson National Forest.

The total length of the electric transmission line proposed by the Appalachian Power Company is approximately 115 miles.

FOR FURTHER INFORMATION CONTACT: Frank Bergmann, Forest Service Project Coordinator, Jefferson National Forest, 210 Franklin Road SW., Caller Service 2900, Roanoke, Virginia 24001, or call (703) 982–4348.

SUPPLEMENTARY INFORMATION: The Appalachian Power Company has submitted an application to the Jefferson National Forest for authorization to construct a 765,000-volt electric transmission line across approximately twelve miles of the National Forest. Portions of the Appalachian National Scenic Trail, the New River (at Bluestone Lake), and R.D. Bailey Lake Flowage Easement Land (at Guyandotte River) would also be crossed by the proposed transmission line.

Studies conducted by the Appalachian Power Company and submitted to the Virginia State Corporation Commission, as part of its application and approval process, indicate a need to reinforce its extra high voltage transmission system by the mid-to-late 1990s in order to maintain a reliable power supply for projected demands within its service territory in central and western Virginia and southern West Virginia.

A study to evaluate potential route locations for the proposed transmission line has been prepared for Appalachian Power Company through a contract with Virginia Polytechnic Institute and State University (VPI) and West Virginia University (WVU). The information gathered by VPI and WVU, along with other information collected during the analysis process, will be utilized in the preparation of the environmental impact statement. General information about the transmission line route proposal is available from the Jefferson National Forest.

The decisions to be made following the environmental analysis are whether the Forest Service, the National Park Service, and the US Army Corps of Engineers will authorize Applachian Power Company to cross the Jefferson National Forest, the Appalachian National Scenic Trail, and the New River and R.D. Bailey Lake Flowage Easement Land, respectively, with the proposed 765,000-volt transmission line and, if so, under what conditions a crossing would be authorized.

In preparing the environmental impact statement a range of routing alternatives will be considered to meet the purpose and need for the proposed action. A no action alternative will also be analyzed. Under the no-action alternative APCO would not be authorized to cross the Jefferson National Forest, the Appalachian National Scenic Trail, the New River or R.D. Bailey Lake Flowage Easement Land. The alternatives developed by VPI and WVU will also be considered.

The federal analysis of the effects of the proposed transmission line along the entire proposed route as well as all alternative routes which are considered in detail.

The significant issues identified for the federal analysis are listed below:

—The construction and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) affect soil productivity by increasing soil compaction and erosion; (2) affect geologic resources (karst areas, Peters, Lewis, Potts Mountains, Arnolds Knob) and unique geologic features like caves through blasting, earthmoving or construction machinery operations; and (3) result in unstable structural conditions due to the placement of the towers.

—The construction and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) degrade surface and ground water quality due to the application of herbicides; (2) degrade surface and ground water quality because of sedimentation resulting from soil disturbance and vegetation removal; (3) reduce the quantity of ground and spring water due to the disturbance of aquifers resulting from blasting, earthmoving or construction machinery operation; and (4) adversely affect the commercial use of ground and surface waters due to herbicide contamination and sedimentation.

—The construction and maintenance of the 765kV transmission and the associated access roads and right-of-way may affect existing cultural resources, and historic structures and districts through the direct effect of the construction and maintenance activities and by changing the existing resource setting.

—The operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may adversely affect human health through (1) direct and indirect exposure to herbicides and (2) exposure to electromagnetic fields and induced voltage.
—The construction and maintenance of the 765kV transmission line may adversely affect the safety of those operating aircraft at low altitudes or from airports located near the transmission line.
—The operation of the 765kV transmission line may (1) adversely affect communications by introducing a source of interference; (2) increase noise levels for those in close proxdmity to the line.
—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) adversely affect trails (including the Appalachian Trail) and trail facilities by facilitating vehicle access through new road construction and the upgrading of existing roads; and (2) reduce hiker safety by facilitating vehicle access to remote trail locations.
—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may affect hunting, fishing, hiking, camping, boating and birding opportunities and experiences because (1) the setting in which these pursuits take place may be altered; and (2) the noise associated with the operation of the line may detract from the backcountry or recreation experience.
—The construction and operation of the 765kV transmission line and the associated access roads and right-of-way may affect local communities by (1) reducing the value of private lands adjecent to the line; (2) decreasing tax revenues due to the reductions in land value; and (3) influencing economic growth, industry siting, and employment.
—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may (1) conflict with management direction contained in resource management plans and designations; (2) affect the uses that presently occur on and adjacent to the proposed right-of-way; (3) affect the wild, scenic and/or recreational qualities of the New River; (4) affect sensitive land uses like schools, churches, and community facilities; (5) affect the cultural attachment residents feel toward Peters Mountain; and (6) affect the scenic and/or recreational qualities of the Appalachian National Scenic Trail (Appalachian Trail).
—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may adversely affect the visual attributes of the area because the line, the associated right-of-way, and access roads may (1) alter the existing landscape; and (2) conflict with the standards established for scenic designations.
—The construction, operation and maintenance of the 765kV transmission line and the associated access roads and right-of-way may affect wildlife, plant and aquatic populations, habitat and livestock because (1) habitats are created, changed or eliminated: (2) herbicides are used and herbicides may be toxic; (3) the transmission line presents a flight hazard to birds; (4) electromagnetic fields and induced voltage may be injurious.

The following permits and/or licenses would be required to implement the proposed action:

—Certificate of Public Convenience and Necessity (Virginia State Corporation Commission)
—Certificate of Public Convenience and Necessity (West Virginia Public Service Commission)
—Special Use Authorization (Forest Service)
—Right-of-Way Authorization (National Park Service)
—Section 10 Permit (US Army Corps of Engineers)
—Right-of-Way Easement (US Army Corps of Engineers)
—Consent to Easement (US Army Corps of Engineers)

Other authorizations may be required from a variety of Federal and State agencies.

Public participation will occur at several points during the federal analysis process. The first point in the analysis was the scoping process (40 CFR 1501.7). The Forest Service has collected information, comments, and assistance from Federal, State and local agencies, the proponent of the action, and other individuals or organizations who are interested in or affected by the electric transmission line proposal. This input will be utilized in the preparation of the draft environmental impact statement. The scoping process included, (1) identifying potential issues, (2) identifying issues to be analyzed in depth, (3) eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.

Public participation was solicited through contacts with known interested and/or affected groups, and individuals; news releases; direct mailings; and/or newspaper advertisements. Public meetings were also held to hear comments concerning the Appalachian Power Company proposal and to develop the significant issues to be considered in the analysis. Similar public participation opportunities will be provided throughout the federal analysis process.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by September 1, 1994. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register**. The comment period on the draft environmental impact statement will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

Reviewers need to be aware of several court rulings related to public participation in the environmental impact statement review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the

adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the draft environmental impact statement, the comments will be analyzed, considered, and responded to by the three federal agencies in preparing the final environmental impact statement. The final environmental impact statement is expected to be filed with the EPA and available for public review by February 1, 1995.

The responsible officials will consider the comments, responses, environmental consequences discussed in the final environmental impact statement, and applicable laws, regulations, and policies in making a decision regarding this document. The responsible officials will document their decisions and reasons for their decisions in a Record of Decision.

The responsible official for the Forest Service is Joy E. Berg, Forest Supervisor, Jefferson National Forest, 210 Franklin Road SW. Caller Service 2900 Roanoke, Virginia 24001. The responsible official for the National Park Service is John F. Byrne, Project Manager—Appalachian National Scenic Trail, National Park Service, Harpers Ferry Center, Harpers Ferry, West Virginia 25425. The responsible official for the US Army Corps of Engineers is changed from Colonel James R. Van Epps, to Colonel Earle C. Richardson, Commanding, Huntington District, US Army Corps of Engineers, 508 8th Street, Huntington, West Virginia 25701–2070.

Dated: June 7, 1993.

Joy E. Berg,

Forest Supervisor, Jefferson National Forest.

[FR Doc. 93–14099 Filed 6–15–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Amended Final Determination and Antidumping Duty Order: Certain Welded Stainless Steel Butt-Weld Pipe Fittings From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 16, 1993.

FOR FURTHER INFORMATION CONTACT: John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230: (202) 482–2778.

Scope of Order

The products subject to this investigation are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter.

Certain welded stainless steel butt-weld pipe fittings (pipe fittings) are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes the most basic: "elbows", "tees", "reducers", "stub ends", and "caps". The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from these investigations. The pipe fittings subject to these investigations are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

After it withdrew from this investigation, Tachia Yung Ho Machine Industry Co., Ltd. (TYH) inquired whether A774 type stainless steel pipe fittings were included within the scope of the investigation, and therefore, subject to any antidumping duty order.

Based on the information on the record, we determined in our final determination that A774 is covered by the scope of this investigation because it meets the requirements outlined in our scope. Our scope states that fittings must be under 14" in inside diameter and can be either finished or unfinished. Our scope language only specifically excludes threaded, bolted and grooved fittings, and none of these criteria apply to A774 fittings. Therefore, we determined that A774 fittings are included in the scope of this investigation.

Amendment of Final Determination

In accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), on May 14, 1993, the Department published its final determination that certain welded stainless steel butt-weld pipe fittings from Taiwan were being sold at less than fair value (58 FR 28556).

On May 24, 1993, respondent, Ta Chen Stainless Pipe Company, Ltd. (Ta Chen), alleged that the Department had made eight clerical errors in its final calculations. First, Ta Chen claimed that the Department incorrectly calculated warranty expenses by allocating the total value of credit memos for defective merchandise over the value of exporter's sales price (ESP) sales, rather than over the total value of ESP and purchase price (PP) sales. Second, Ta Chen argued that the Department incorrectly denied an adjustment for exchange gains on raw material purchases. Third, Ta Chen argued that the Department inadvertently double counted the material costs of packing fittings. Fourth, Ta Chen argued that the Department improperly denied an adjustment to Ta Chen's reported costs of manufacture (COM) which included costs for wooden boxes used in export. Fifth, Ta Chen argued that the Department erred in its constructed value (CV) calculation when it calculated an offset to reported interest expenses to avoid double counting finance charges. Sixth, Ta Chen claimed that the accumulated translation adjustment to reported general and administrative (G&A) expenses was an inadvertent ministerial error. Seventh, Ta Chen claimed that the Department's use of Ta Chen's reported profit in the Department's CV calculations was erroneous. Eighth, Ta Chen argued that the Department inadvertently omitted excluding sales where the dumping estimates are so aberrational relative to other dumping margins as to indicate clear error.

The Department has determined that ministerial errors were committed only with respect to Ta Chen's third, fourth and seventh allegations. As a result, we have made the following changes in Ta Chen's margin calculations. With respect to the double counting of the material costs of packing fittings, we have corrected the COP and CV programming by deducting the amounts reported for home market packing material costs from reported COM. With respect to the inclusion in Ta Chen's reported COM of the costs of wooden boxes used for export, we have

corrected the COP and CV programming by deducting the amounts reported for wooden box costs from reported COM. Finally, with respect to the use of Ta Chen's reported profit in the Department's CV calculations, since the Department made certain adjustments which lowered Ta Chen's reported COM, we have corrected the CV programming by setting profit equal to eight percent of the revised COM. The Department has determined that Ta Chen's remaining allegations are not ministerial errors. (See "Ministerial Error Allegations Memorandum," dated June 8, 1993).

Accordingly, pursuant to section 735(e) of the Act, we have corrected the ministerial errors in the final determination of sales at less than fair value. The cash deposit rate for Ta Chen is now 0.64 percent. The cash deposit rate for the "All Others" category is now 51.01 percent. The cash deposit rates for TYH and Tru-Flow Industrial Co., Ltd. (Tru-Flow) remain unaffected by this amendment to the final determination.

Antidumping Duty Order

In accordance with section 735(a) of the Act, on May 7, 1993, the Department of Commerce made its final determination that certain welded stainless steel butt-weld pipe fittings from Taiwan are being sold at less than fair value (58 FR 28556, May 14, 1993). On June 3, 1993, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that such imports materially injure a U.S. industry.

Therefore in accordance with section 736 of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain welded stainless steel butt-weld pipe fittings from Taiwan. These antidumping duties will be assessed on all unliquidated entries of certain welded stainless steel butt-weld pipe fittings from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after December 23, 1992, the date on which the Department published its preliminary determination notice in the **Federal Register** (57 FR 61047). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise.

Manufacturer/producer/exporter	Margin percentage
Tachia Yung Ho Machine Industry Co., Ltd	76.20
Ta Chen Stainless Pipe Co., Ltd	0.64
Tru-Flow Industrial Co., Ltd	76.20
All others	51.01

In its final determination, the Department found that critical circumstances exist with respect to exports from Taiwan by TYH and Tru-Flow. However, on June 3, 1993, The ITC notified the Department that retroactive assessment of antidumping duties is not necessary to prevent recurrence of material injury from massive imports over a short period. As a result of the ITC's determination, pursuant to section 735(c)(3) of the Act, we shall order Customs to terminate the retroactive suspension of liquidation and to release any bond or other security and refund any cash deposit required under section 733(d)(2) of the Act with respect to TYH's and Tru-Flow's entries of subject merchandise entered, or withdrawn from warehouse, for consumption prior to December 23, 1992.

This notice constitutes the antidumping duty order with respect to certain welded stainless steel butt-weld pipe fittings from Taiwan, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: June 10, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-14231 Filed 6-15-93; 8:45 am]

BILLING CODE 3510-DS-P

[C-559-802]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore; Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative reviews.

SUMMARY: The Department of Commerce is conducting administrative reviews of the countervailing duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore. We preliminarily determine the total bounty or grant to be as follows: 9.11 percent *ad valorem* for Sundstrand Pacific (Pte.) Ltd. (Sundstrand); zero for Pelmec Industries (Pte.) Ltd. (Pelmec), NMB Singapore Ltd. (NMB) and Minebea Co., Ltd. Singapore Branch (MSB); and 2.01 percent *ad valorem* for all other companies for the period January 1, 1991 through December 31, 1991. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 16, 1993.

FOR FURTHER INFORMATION CONTACT: Anna T. Milone, Stephanie Moore, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1992, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (57 FR 19412) of the countervailing duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore (54 FR 19125; May 3, 1989). On May 28, 1992, Torrington Company, the petitioner, requested an administrative review of the order. On May 29, 1992, Pelmec, NMB, and MSB (the Minebea companies), producers and exporters of the subject merchandise, also requested an administrative review of the orders. We initiated the review, covering the period January 1, 1991 through December 31, 1991, on June 18, 1992 (57 FR 27212).

Scope of Review

Imports covered by this review are shipments of antifriction bearings (other than tapered roller bearings) and parts thereof. The subject merchandise covers five separate classes or kinds of merchandise and is described in detail in Appendix A to this notice. The Harmonized Tariff Schedule item numbers listed in Appendix A are provided for convenience and Customs purposes. The written descriptions remain dispositive.

On October 30, 1992, the Department received a request for a scope determination from Sundstrand. Specifically, Sundstrand asked the Department to find its part number 742973, an outer-race of the cylindrical roller bearing, not within the scopes of

the countervailing duty orders. The request was subsequently evaluated in accordance with § 353.29(i)(1) of the Department's regulations. On February 4, 1993, the Department determined that the product in question was within the scope of the order on cylindrical roller bearings. Because the product descriptions detailed in Sundstrand's request for a scope determination were dispositive as to whether part number 742973 was within the scope of the order on cylindrical roller bearings, the Department did not initiate a formal scope inquiry. On March 5, 1993, Sundstrand instituted an action in the United States Court of International Trade (CIT) (Court No. 93–03–00149) challenging the Department's scope ruling. This action is pending before the CIT.

The review covers the period January 1, 1991 through December 31, 1991, four companies, and twelve programs. Three related companies responded to the Department's questionnaire: NMB, Pelmec, and MSB. Sundstrand, a known exporter of the subject merchandise to the United States, did not respond to the questionnaire.

Best Information Available

Sundstrand, which is known to be a producer and exporter of the subject merchandise, did not respond to our questionnaire. Nor did the Government of Singapore provide any information regarding Sundstrand's sales of the subject merchandise, or the extent of Sundstrand's participation in the programs reviewed. Therefore, in accordance with section 776(c) of the Act, we are assigning to Sundstrand a rate based upon best information available (BIA). As BIA, we used the highest net bounty or grant rate calculated in any previous administrative review or in the investigation of the subject merchandise. On this basis, we preliminarily determine the benefit for Sundstrand to be 9.11 percent *ad valorem*. *See Antifriction Bearings (other than Tapered Roller Bearings) and Parts thereof from Singapore Final Results of Countervailing Duty Administrative Review* (56 FR 26384; June 7, 1991).

Calculation of Country-Wide Rate

In calculating the subsidy rates during the review period, we followed the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 52306, and 52325; December 27, 1988). To calculate a country-wide rate, we weight-averaged Sundstrand's rate with the respondents' rate. As the denominator in these calculations, the Department used the total imports to the United States from Singapore of the subject merchandise. In determining the weights used, the Department first calculated a U.S. dollar value for the exports of subject merchandise entering the United States in calendar year 1991 as reported by the responding companies. The Department derived this figure by adding the reported total exports of subject merchandise to the United States by the two producer/exporter respondents, NMB and Pelmec, to the total net mark-up on exports of subject merchandise to the United States reported by the trading company respondent, MSB. The total of these three values represents the value of imports of subject merchandise to the United States by the Minebea Companies. This figure was then subtracted from the total U.S. dollar value of imports of subject merchandise to the U.S. The resulting difference is the value for exports to the United States of the subject merchandise that we assigned as BIA to Sundstrand.

For the Minebea companies, their weight was the ratio of the value of their exports (inclusive of mark-up) of the subject merchandise to the United States to the total value of the subject merchandise (or AFBs) imported into the United States. For Sundstrand, the weight used was the ratio of its assigned value of exports of the subject merchandise to the United States to the total value for imports of the subject merchandise (or AFBs) into the United States.

The Department then multiplied the Minebea Companies' ratio by the calculated *ad valorem* rate found for the two programs determined to be bounties or grants (i.e. zero); we then multiplied Sundstrand's ratio by the 9.11 percent BIA rate. By adding the two results, the Department calculated a weighted-average country-wide rate of 2.01 percent *ad valorem*.

Because Sundstrand's rate of 9.11 percent and the respondents' zero rate are significantly different from the country-wide rate, they will each receive their respective rates. For all other companies, the rate is 2.01 percent *ad valorem* for all classes or kinds of merchandise detailed in Appendix A.

Analysis of Programs

(1) Production for Export under Part VI of the Economic Expansion Incentives Act (EEIA)

Under part VI of the EEIA, 90 percent of a qualifying company's incremental export profit above a predetermined base figure is exempt from corporate income tax. The base figure is the average of the company's export profits for the three years preceding the application for participation in the program. The base figure and ten percent of any incremental export profit are taxed at the normal corporate tax rate. If there is no export profit above the export profit base, no exemption is permitted. The exemption cannot be carried forward or backward. An exporting company qualifies for the exemption if its export sales of a product (or products) are at least 100,000 Singapore dollars and a minimum of 20 percent of the value of its total sales of the product.

None of the companies that responded to the questionnaire used this program during the review period. On this basis, we preliminarily determine the benefit from this program to be zero for NMB, Pelmec, and MSB for the period January 1, 1991 through December 31, 1991.

(2) Monetary Authority of Singapore (MAS) Rediscount Facility

The MAS rediscounting scheme is intended to provide Singapore exporters with access to short-term financing by discounting export and pre-export bills of exchange. Companies apply for this program through approved banks. The bank discounts the exporters' bills at a rediscount rate established by the MAS, plus a maximum spread of 1.5 percent. We have previously determined that this program is countervailable because it is available only to exporters and the interest rate is preferential. *See Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore* (54 FR 19125, 19127; May 3, 1989).

None of the companies that responded to the questionnaire used this program during the review period. On this basis, we preliminarily determine the rate to be zero for NMB, Pelmec, and MSB during the review period.

(3) Other Programs

We also examined the following programs and preliminarily determine that the responding exporters of the subject merchandise did not use any of these programs during the review period:

A. Tax Incentives under the EEIA
- Part IV: Expansion of Established Enterprises
- Part VII: International Trade Incentives
- Part VIII: Foreign Loans for Productive Equipment
- Part XI: Warehousing and Servicing Incentives

B. Income Tax Act Incentives
- Double Deduction of Export Promotion Expenses—Sections 14B and 14C
- Double Deduction for Research and Development—Section 14E
- Write-Offs of Payments for "Know-How", Patents and Manufacturing Licenses—Section 19B

C. Programs Administered by the Economic Development Board
- Capital Assistance Scheme
- Productive Development Assistance Scheme
- Initiatives in New Technology Program

Application of Rate

In this review the GOS and the responding companies did not report the relevant export data on a class or kind basis. Therefore, as in previous reviews, the rate determination applies to all classes or kinds listed in Appendix A.

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the total bounty or grant to be as follows: 9.11 percent *ad valorem* for Sundstrand; zero for Pelmec, NMB, and MSB; and 2.01 percent *ad valorem* for all other companies for the period January 1, 1991, through December 31, 1991.

The Department intends to instruct the Customs Service to assess countervailing duties as follows for subject merchandise exported on or after January 1, 1991, and on or before December 31, 1991: 9.11 percent of the f.o.b. invoice price on shipments from Sundstrand; zero on shipments from Pelmec, NMB, and MSB; and 2.01 percent of the f.o.b. invoice price on shipments for all other companies.

Further, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Act, as follows: 9.11 percent of the f.o.b. invoice price on shipments from Sundstrand; zero on shipments from Pelmec, NMB, and MSB; and 2.01 percent of the f.o.b. invoice price on shipments for all other companies from Singapore entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Interested parties may request a hearing not later than 10 days after the date of publication of this notice. (See 19 CFR 355.38(b)) Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with § 355.38(e) of the Commerce regulations.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due. (See 19 CFR 355.34(b)(iii))

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 9, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Attachment.

Appendix A

Scope of the Reviews

The products covered by these reviews, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) Ball Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ balls as the rolling element. Such merchandise is classifiable under the following Harmonized Tariff Schedule (HTS) item numbers: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, and 8708.99.50.

(2) Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ spherical rollers as the rolling element. Such merchandise is classifiable under the following HTS item numbers: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, and 8708.99.50.

(3) Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ cylindrical rollers as the rolling element. Such merchandise is classifiable under the following HTS item numbers: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, and 8708.99.50.

(4) Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ needle rollers as the rolling element. Such merchandise is classifiable under the following HTS item numbers: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, and 8708.99.50.

(5) Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof: These products include all spherical plain bearings which do not employ rolling elements and include spherical plain rod ends. Such merchandise is classifiable under the following HTS item numbers: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, and 8708.99.50.

These reviews cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to finished parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts are included in the scope of this review. For unfinished parts (inner race, outer race, rollers, balls, etc.), such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by this review are those where the part will be subject to heat treatment importation.

[FR Doc. 93–14234 Filed 6–15–93; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

The North Pacific Fishery Management Council's Crab Interim Action Committee will hold a public meeting on June 18, 1993, in the large Conference Room, suite 5, Bureau of Indian Affairs, 9109 Mendenhall Mall Road, Juneau, AK. The meeting will begin at 10 a.m. Alaska Daylight Time.

The purpose of the meeting will be to discuss recent regulatory action by the Alaska Board of Fisheries affecting management of crab fisheries under the Fishery Management Plan for King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area. That action would establish Norton Sound as a superexclusive registration area.

The meeting is open to the public, but no public hearing is scheduled. For more information contact Steven Pennoyer, Director, Alaska Region, NMFS, P. O. Box 2–1668, Juneau,

Alaska; 99803, telephone: (907) 586–7221.

Dated: June 10, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–14123 Filed 6–14–93; 8:45 am]

BILLING CODE 3510–22–M

Foreign-Trade Zones Board

[Docket 23–93]

Proposed Foreign-Trade Zone—Holyoke, MA (Springfield Customs Port of Entry); Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Holyoke Economic Development and Industrial Corporation, requesting authority to establish a general-purpose foreign-trade zone in Holyoke, Massachusetts, within the Springfield Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 4, 1993. The applicant is authorized to make the proposal under Massachusetts General Laws, Chapter 23A, Section 28A, July 26, 1976.

The proposed foreign-trade zone would cover 13 acres on 2 parcels located within the Springdale Industrial Park at 49/51 Garfield Street, Holyoke. Both sites are privately owned storage/distribution facilities. The proposed zone operator is Trinity Management, Inc., d/b/a Holyoke Free-Trade Zone Management Company.

The application contains evidence of the need for zone services in the Holyoke area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as paper products, plywood, sports equipment, animal pharmaceuticals, and commercial air compressors.

Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50806, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on July 7, 1993, at 9 a.m. in the Council Chambers, City Hall, Holyoke, Massachusetts.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to [75 days from date of publication]).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations: Office of the Port Director, U.S. Customs Service, 1145 Main Street, suite 221, Springfield, MA 01103, Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 8, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–14232 Filed 6–15–93; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 22–93]

Foreign-Trade Zone 121—Albany, NY; Application for Subzone; Sanofi Winthrop Pharmaceutical Plant, Rensselaer, NY (Albany Area)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Capital District Regional Planning Commission, grantee of FTZ 121, requesting special-purpose subzone status for the pharmaceutical manufacturing facility of Sanofi Winthrop L.P. (joint venture between Elf Sanofi (France) and Sterling Winthrop Inc./Eastman Kodak Company, hereinafter referred to as Sanofi Winthrop) in Rensselaer, New York, within the Albany Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 1, 1993.

Sterling Winthrop is a global pharmaceutical firm whose primary product lines include: Diagnostic imaging agents, hormonal products, cardiovasculars, analgesics, antihistamines and muscle relaxants. In 1991, Sterling Winthrop and Elf Sanofi, a French pharmaceutical and health care products company, formed the Sanofi Winthrop alliance to jointly develop, manufacture and market products worldwide. This proposal is part of an overall company cost reduction effort. (An application is pending for its Barceloneta, Puerto Rico plant (FTZ Doc. 18–93, 58 FR 29192, 5–19–93) and applications for subzone status are being submitted for facilities in McPherson, Kansas and Des Plaines, Illinois).

Sanofi Winthrop's plant (23 acres, 21 bldgs., 261,000 sq. ft.) is located at 33 Riverside Avenue, Rensselaer (Rensselaer County), New York, east of Albany, on the Hudson River. The facilities (200 employees) are primarily engaged in the production of bulk pharmaceutical chemicals including Iohexal used in the production of "Omnipaque" diagnostic imaging agent, and Hydroxychloroquine Sulfate used in the production of "Plaquenil", a medication for rheumatoid arthritis. Company officials are also considering using the plant to produce oncology, cardiovascular and certain other diagnostic products. Most of the bulk chemicals are shipped to company plants in Barceloneta, Puerto Rico and McPherson, Kansas for further processing. Foreign-sourced materials account for 60 percent of the finished products' value, on average, and include primarily aminopropanedial and acetybutyrolactone at this time. The company may also purchase from abroad products in the following general categories: Empty pharmaceutical capsules, yttrium or scadium metal compounds, hydrocarbons, alcohols, phenols, ethers, epoxides, acetals, aldehydes, ketone function compounds, mono- and polycarboxylic acids, phosphoric esters, amine-, carboxymide, nitrile- and oxygen-function compounds, hydrazine or hydroxylamine, heterocyclic compounds, sulfonamides, vitamins, hormones, vegetable alkaloids, blood/vaccines/toxins/cultures, sugars, antibiotics, gelatins, enzymes, packaging, medical instruments/appliances and parts thereof, medicaments, and other pharmaceutical products.

Zone procedures would exempt Sanofi Winthrop from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free to 16.2%, with most falling in the 6.3%–6.9% range). The duty rates on foreign-sourced items range from duty-free to 23.5 percent, with most falling with the 3.7%–7.9% range. The application indicates that zone savings will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff

has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 16, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 31, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Port of Albany, New York, James T. Foley Courthouse Building, 445 Broadway, Albany, New York 12207.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 4, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–14233 Filed 6–15–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Binational Panel under U.S.-Canada Free-Trade Agreement.

SUMMARY: By a decision dated May 19, 1993, a Binational Panel affirmed in part and remanded in part the final affirmative determination of dumping made by Revenue Canada, Customs and Excise, regarding Certain Machine Tufted Carpeting Originating in or Exported from the United States of America (Secretariat File No. CDA–92–1904–01). A copy of the complete panel decision is available from the Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter was conducted in accordance with these Rules.

Background

On March 18, 1992, the Deputy Minister for National Revenue made a final determination of dumping of the subject goods. Following this finding, the Carpet & Rug Institute, a trade association representing certain United States of America exporters of carpet, and Shaw Industries, Inc. made a formal request for a Binational Panel Review. Panel hearings were held in Ottawa on February 18, 1993 and the decision of the Panel was issued on May 19, 1993.

Panel Decision

The Panel remanded to Revenue Canada that aspect of its final determination of dumping that related to the reasonable period of time for recovery of costs. Revenue Canada had used a three month period of investigation and, without providing any reasons, used the same three month period for recovery of all costs other than general, administrative and selling. On remand, the Deputy Minister was directed to address and determine the appropriate reasonable period based on the administrative record, provide an explanation explicitly discussing the grounds for the determination and, if necessary, recalculate the pertinent normal values.

The Panel also remanded to Revenue Canada that aspect of its final determination of dumping that related to like goods. The remand is on the basis that Revenue Canada shall calculate normal values for like goods in a manner consistent with the *Fletcher Leisure Group, Inc.* court decision.

The Panel affirmed all other aspects of Revenue Canada's determination.

The results of the remands shall be provided by Revenue Canada to the Panel within 45 days of this decision (by not later than July 5, 1993).

Dated: June 9, 1993.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 93–14194 Filed 6–15–93; 8:45 am]

BILLING CODE 3510–GT–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in China

June 10, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 11, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 313 and 617 are being increased by application of swing, reducing the limit for Category 607 to account for the increases.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff

Schedule of the United States (see Federal Register notice 57 FR 54976, published on November 23 1992). Also see 57 FR 62304, published on December 30, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 10, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 23, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on June 11, 1993, you are directed to amend further the directive dated December 23, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Levels not in a group:	
313	40,600,206 square meters.
607	2,466,869 kilograms.
617	15,832,540 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–14188 Filed 6–15–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in China

June 10, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 17, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for carryforward used and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 62304, published on December 30, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 10, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 23, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on June 17, 1993, you are directed to amend further the directive dated December 23, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Levels not in group:	
218	10,345,758 square meters.
338/339	2,278,844 dozen of which not more than 1,781,530 dozen shall be in Categories 338–S/339–S [2].
342	251,173 dozen.
359–C [3]	527,545 kilograms.
434	12,748 dozen.
634	543,186 dozen.
636	500,695 dozen.
640	1,382,053 dozen.
651	687,510 dozen of which not more than 124,619 dozen shall be in Category 651–B [4].
845	2,342,731 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[4] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–14189 Filed 6–15–93; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Czech Republic

June 10, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: June 17, 1993

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Consultations were held between the Governments of the United States and the Czech Republic concerning the Bilateral Textile Agreement, effected by exchange of notes dated June 25 and July 22, 1986, as amended, with respect to exports from the Czech Republic. In a Memorandum of Understanding dated May 28, 1993, the two governments agreed to amend and extend the agreement for certain cotton and man-made fiber textile products, produced or manufactured in the Czech Republic and exported during the period June 1, 1993 through May 31, 1994. In the event that the Uruguay Round is not completed and implemented before May 31, 1994, this agreement will be automatically extended until May 31, 1995.

In the letter published, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period which began on June 1, 1993 and extends through May 31, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 58 FR 3936, published on January 12, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 10, 1993

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding (MOU) dated May 28, 1993, between the Governments of the United States and the Czech Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 17, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in the Czech Republic and exported during the twelve-month period which began on June 1, 1993 and extends through May 31, 1994 in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
410	1,500,000 square meters.
433	5,891 dozen.
435	3,876 dozen.
443	71,815 numbers.
624	1,500,000 square meters.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1993.

Textile products in Category 624 which have been exported to the United States prior to June 1, 1993, shall not be subject to this directive.

Textile products in Category 624 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Imports charged to these category limits, except Category 624, for the period June 1, 1992 through May 31, 1993 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the MOU dated May 28, 1993 between the Governments of the United States and the Czech Republic.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–14190 Filed 6–15–93; 8:45 am]

BILLING CODE 3510-DR-F

Request for Public Comments on Bilateral Textile Consultations with the Government of Pakistan on Certain Cotton and Man-Made Fiber Textile Products

June 10, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 17, 1993.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On May 26, 1993, under the terms of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended and extended, between the Governments of the United States and Pakistan, the United States Government requested consultations with the Government of Pakistan with respect to cotton and man-made fiber coats in Categories 335/635.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Categories 335/635, the Government of the United States has decided to control imports during the ninety-day period which began on May 26, 1993 and extends through August 23, 1993 at a level of 69,139 dozen.

If no solution is agreed upon in consultations between the two

governments, CITA, pursuant to the agreement, may later establish a specific limit for the entry and withdrawal from warehouse for consumption of textile products in Categories 335/635, produced or manufactured in Pakistan and exported during the prorated period beginning on August 24, 1993 and extending through December 31, 1993, of not less than 84,428 dozen.

A summary market statement concerning Categories 335/635 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 335/635, under the agreement with the Government of Pakistan, or to comment on domestic production or availability of products included in Categories 335/635, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Pakistan.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 335/635. Should such a solution be reached in consultations with the Government of Pakistan, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 56904, published on December 1, 1992.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Pakistan

Category 335/635—Women's and Girls' Cotton and Man-Made Fiber Coats

May 1993

Import Situation and Conclusion

U.S. imports of women's and girls' cotton and man-made fiber coats, Category 335/635, from Pakistan reached 197,539 dozen for the year ending February 1993, over three and one half times the 53,792 dozen imported a year earlier. Imports from Pakistan were 41,450 dozen in 1991.

The sharp and substantial increase in Category 335/635 imports from Pakistan is causing a real risk of disruption in the U.S. market for women's and girls' cotton and man-made fiber coats.

U.S. Production, Import Penetration, and Market Share

U.S. production of women's and girls' cotton and man-made fiber coats, Category 335/635, declined from 6,724,000 dozens in 1987 to 4,173,000 dozen in 1992, a decline of 38 percent. By contrast, U.S. imports of women's and girls' cotton and man-made fiber coats, Category 335/635, increased from 6,923,000 dozen in 1987 to 9,516,000 dozen in 1992, an increase of 37 percent. This increase continued in 1993, as U.S. imports of Category 335/635 reached 9,691,454 dozen during the year ending February 1993, an increase of 22 percent when compared with the same period in 1992.

The ratio of imports to domestic production more than doubled, increasing from 103 percent in 1987 to 228 percent in 1992. The share of this market held by domestic manufacturers fell from 49 percent in 1987 to 30 percent in 1992, a decline of 19 percentage points.

Duty-Paid Value and U.S. Producers' Price

Approximately 72 percent of Category 335/635 imports from Pakistan during the year ending February 1993 entered under HTSUSA numbers 6202.92.2060—women's cotton anoraks, windbreakers and similar articles, other than those of corduroy; 6204.32.2030—women's cotton suit-type jackets, other than those of corduroy; and 6211.43.0050—women's or girls' man-made fiber jackets for track suits. These coats entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable coats.

Committee for the Implementation of Textile Agreements

June 10, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 25, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on June 17, 1993, you are directed to establish a limit for cotton and man-made fiber textile products in Categories 335/635 for the period beginning on May 26, 1993 and extending through August 23, 1993 at a level of 69,139 dozen [1].

Textile products in Categories 335/635 which have been exported to the United States prior to May 26, 1993 shall not be subject to the limit established in this directive.

Textile products in Category 635 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–14191 Filed 6–15–93; 8:45 am]

BILLING CODE 3510-DR-F

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Pakistan

June 10, 1993

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 28, 1993.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the

[1] The limit has not been adjusted to account for any imports exported after May 25, 1993.

bulletin boards of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as consultations have not resulted in a mutually satisfactory solution on Category 314, the United States Government has decided to control imports in this category for the prorated period beginning on June 26, 1993 and extending through December 31, 1993 at a level of 2,002,210 square meters.

The United States remains committed to finding a solution concerning Category 314. Should such a solution be reached in further consultations with the Government of Pakistan, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 56904, published on December 1, 1992; and 58 FR 15486, published on April 15, 1993.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 10, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 25, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on June 28, 1993, you are directed to establish a limit for cotton textile products in Category 314 for the period beginning on June 26, 1993 and extending through December 31, 1993 at a level of 2,002,210 square meters [1].

Textile products in Category 314 which are exported to the United States on and after January 1, 1993 shall remain subject to the group limit.

Imports charged to the limit for Category 314 for the March 28, 1993 through June 25, 1993 shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–14192 6–15–93; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after June 25, 1993.

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

June 10, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: June 17, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Consultations were held between the Governments of the United States and the Slovak Republic concerning the Bilateral Textile Agreement, effected by exchange of notes dated June 25 and July 22, 1986, as amended, with respect to exports from the Slovak Republic. In a Memorandum of Understanding dated May 20, 1993, the two governments agreed to establish a successor agreement for certain wool textile products, produced or manufactured in the Slovak Republic and exported during two consecutive one-year periods, beginning on June 1, 1993 and extending through May 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the period which began on June 1, 1993 and extends through May 31, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see . **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 58 FR 3936, published on January 12, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 10, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding (MOU) dated May 20, 1993, between the Governments of the United States and the Slovak Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 17, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Slovak Republic and exported during the twelve-month period which began on June 1, 1993 and extends through May 31, 1994, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
410	391,718 square meters.
433	10,941 dozen.
435	16,526 dozen.
443	91,401 numbers.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1993.

Imports charged to these category limits for the period June 1, 1992 through May 31, 1993 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established

for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the MOU dated May 20, 1993 between the Governments of the United States and the Slovak Republic.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-14193 Filed 6-15-93; 8:45 am]

BILLING CODE 3510-DR-F

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearings

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, June 23, 1993. The hearing will be part of the Commission's business meeting which is open to the public and scheduled to begin at 9:30 a.m. in the Ballroom of the Inn at Hunt's Landing, 900 Routes 6 & 209, Matamoras, Pennsylvania.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Holdover Project: Wilmington Suburban Water Corporation D-91-72 CP.* A surface water supply project that entails an increase of withdrawal at the applicant's existing White Clay Creek intakes adjacent to its Stanton water treatment plant. The applicant provides water to portions of northern New Castle County and requests an increase in its water withdrawal from 16 mgd to 30 mgd. The project is located just off First State Boulevard in Stanton, New Castle County, Delaware. This hearing continues that of March 24, 1993.

2. *Holdover Project: City of Coatsville Authority D-92-64 CP.* A sewage treatment plant (STP) upgrade project that entails the addition of a phosphorus removal system to the City of Coatsville Authority's existing 3.85 mdg capacity facility which will continue to serve the City of Coatsville and portions of Caln and Valley Townships. The STP is located just west of Franklin Street in South Coatsville Borough, Chester County, Pennsylvania and will continue to discharge to the West Branch Brandywine Creek. This hearing continues that of May 26, 1993.

3. *New York State Department of Environmental Conservation (NYS DEC) D-77-20 CP (Revision No. 2).* An application for approval of a revised schedule of augmented conservation release rates from Pepacton and Neversink Reservoirs to be tried on an experimental basis for up to three years (June 1993–May 1996). Increases during the warmer months are offset with decreases during other months with no change in the total releases on a yearly basis. The modifications are designed to conserve the available thermal stress bank and enable NYS DEC to improve fisheries management in the Delaware River. The reservoirs are located in Sullivan and Delaware Counties, New York.

4. *City of Harrington D-88-27 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 21 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 1, 2 and 3. Commission approval on June 22, 1988, was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 21 mg/30 days. The project is located in the City of Harrington, Kent County, Delaware.

5. *Roamingwood Sewer and Water Association, Inc. D-88-45 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 26.69 mg/30 days of water to the applicant's distribution system from Well Nos. 1 through 5. Commission approval on August 3, 1988 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 26.69 mg/30 days. The project is located in Lake and Salem Townships, Wayne County, Pennsylvania.

6. *Hackettstown Municipal Utilities Authority D-92-41 CP.* An application for approval of an increased ground water withdrawal project to supply up to 43.2 mg/30 days of water to the applicant's distribution system from existing Well No. 5, and to increase the existing withdrawal limit from all wells of 75 mg/30 days to 90 mg/30 days. The project is located in Hackettstown Borough, Warren County, New Jersey.

7. *Upper Uwchlan Township-Marsh Harbour Treatment Plant D-93-10 CP.* A project to rerate the applicant's Marsh Harbour Treatment Plant from 0.062 mgd to 0.082 mgd to provide capacity for development in two residential areas of Upper Uwchlan Township, Chester County, Pennsylvania. The existing plant will continue to provide high-quality secondary treatment for discharge to a 14.5 acre spray irrigation site located adjacent to Marsh Creek State Park in the East Branch Brandywine Creek Watershed.

8. *Pocono Mountain School District D-93-23 CP.* A project to modify the operation of two existing sewage treatment plants (STPs), one for the Senior High School and the other for the Junior High School, both serving the Pocono Mountain School District in Pocono and Paradise Townships, Monroe County, Pennsylvania. The treated effluent will continue to discharge to Swiftwater Creek, a tributary of Paradise Creek in Paradise Township, via an existing common outfall. The operation of STPs will be combined to improve their treatment efficiency at the existing permitted rate of 28,600 gpd. A new ultraviolet disinfection system will also be installed. Both STPs are located just north of Swiftwater Creek and east of State Route 611, with the Junior High School STP located in Pocono Township and the Senior High School STP located in Paradise Township. Further, the discharge is to the drainage area of the Special Protection Waters of the Delaware Water Gap National Recreation Area.

9. *J.T. Baker, Inc. D-93-24.* A project to dredge an approximately 90-foot by 300-foot area of the Delaware River bed and bank to remove sediments contaminated via past discharges from a storm water outfall pipe. Solids will be disposed of at a licensed solid and/or hazardous waste landfill. The excavated area will be restored with clean backfill material. Water infiltrating a proposed temporary cofferdam around the excavated area will be pumped through a filter system and discharged to the Delaware River in Water Quality Zone 1D. Discharge, depending on its quality, will be either downstream of the excavation area or via J.T. Baker's existing wastewater treatment plant and discharge pipe at a rate estimated at 0.43 mgd. The project is located at the J.T. Baker plant site in the Town of Phillipsburg, Warren County, New Jersey.

10. *AMETEK, U.S. Gauge Division D-93-25 CP (G).* A ground water remediation project consisting of the proposed withdrawal of up to 3.88 mg/30 days of ground water from Wells No. MW-6S, MW-6D and PW-2 located at

the applicant's industrial facility (Plant #2), in Sellersville Borough, Bucks County, within the Southeastern Pennsylvania Ground Water Protected Area. The treatment facilities and discharge to the East Branch of the Perkiomen Creek are to be reviewed by Docket No. D–93–25 CP(D).

11. *Outletter Associates D–93–26.* An application for a proposed 0.017 mgd wastewater treatment plant to provide secondary biological treatment via the extended aeration process to serve the existing and future flows from the Crossings Outlet Square retail/commercial development. The treatment plant will be located just north of the Town of Tannersville between U.S. Route 80 and State Route 611 in Pocono Township, Monroe County, Pennsylvania. The treated effluent will discharge to Pocono Creek via a new outfall after ultraviolet disinfection. Further, the discharge will be to the drainage area of the Special Protection Waters of the Delaware Water Gap National Recreation Area. Documents relating to these items may be examined at the Commission's office. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Other Scheduled Hearings

By earlier notice, the Commission announced its schedule of public hearings on proposed amendments to its Comprehensive Plan, Water Code, Water Quality Regulations and Rules of Practice and Procedure relating to the control of nonpoint sources of pollution in the drainage area to classified Special Protection Waters. The proposed amendments involve a three-pronged approach: the first addresses new nonpoint sources on a project-by-project basis through the Commission's project review process under Section 3.8 of the Delaware River Basin Compact; through USEPA's NPDES stormwater permitting regulations; and on a discretionary basis when needed. The second prong addresses new and existing nonpoint sources on a priority watershed basis. For priority watersheds, watershed nonpoint source management plans would be developed and implemented. The third prong would encourage the development and implementation of watershed nonpoint source plans on a voluntary basis in watersheds which are not considered the highest priority of the Commission. A process to identify priority watersheds and develop watershed nonpoint source management plans is included in the proposal.

Hearing Dates: The public hearings are scheduled as follows:

June 16, 1993 beginning at 1:30 p.m. and continuing until 4:30 p.m. as long as there are people present wishing to testify.

June 22, 1993 beginning at 2 p.m. and continuing until 5 p.m. as long as there are people present wishing to testify.

June 22, 1993 beginning at 7 p.m. and continuing until 9:30 p.m. as long as there are people present wishing to testify.

ADDRESSES: The June 16, 1993 hearing will be held in the New Castle County Council Chambers, First Floor of the City/County Building, 800 French Street, Wilmington, Delaware.

The June 22, 1993 hearings will be held in the Ballroom of the Inn at Hunt's Landing, 900 Routes 6 & 209, Matamoras, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Copies of the full text of the proposed amendments, the Water Code, the Water Quality Regulations and the Rules of Practice and Procedure may be obtained by contacting Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, Telephone (609) 883–9500 x203.

Persons wishing to testify are requested to notify the Secretary in advance. Written comments on the proposed amendments should also be submitted to the Secretary at the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

Public Information Notice

Water Quality Program

The Commission is preparing its water quality program for the fiscal year ending September 30, 1994. Notice of this action is given in accordance with the requirements of the Federal Clean Water Act, as amended. The proposed program will involve a variety of activities in the areas of planning, surveillance, compliance monitoring, regional coordination, water quality standards, wasteload allocations and public participation. While the proposed program is not subject to public hearing by the Commission, it will be available for examination and review by interested individuals at the Commission's offices upon request beginning July 1, 1993. The public review and comment period will end July 31, 1993. Please contact Paul J. Webber for further information.

Dated: June 8, 1993.

Susan M. Weisman,

Secretary.

[FR Doc. 93–14179 Filed 6–15–93; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 16, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed

information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: June 10, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Office of Educational Research and Improvement (OERI) Fellows Program.
Frequency: Annually.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 45.
Burden Hours: 630.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used to apply for funding under the OERI Fellows Program. The Department will use the information to make grant awards.

Type of Review: New.
Title: Survey of Public Long-Term Juvenile Correctional Facilities for the National Assessment of Vocational Education.
Frequency: One time.
Affected Public: Individuals or households; state or local governments; businesses or other for-profit.
Reporting Burden:
Responses: 568.
Burden Hours: 2,406.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This project involves a survey of educational directors in public long-term juvenile correctional facilities in the U.S. It is designed to collect information on the implementation and effects of the 1990 Perkins Act, as these might be relevant in correctional facilities, examine the administration and characteristics of education and vocational education programs in these settings, and identify potential pre- and post-release outcomes, which current research has not released.

[FR Doc. 93–14095 Filed 6–15–93; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Contract Award: KPMG Peat Marwick

AGENCY: Department of Energy.
ACTION: Notice of intent.

SUMMARY: In accordance with Department of Energy (DOE) Acquisition Regulations relating to organizational conflicts of interest, 48 CFR 909.570, DOE gives public notice that it intends to award a contract recognizing the existence of potential organizational conflicts of interest, because it has been determined to be in the best interests of the United States.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon W. Harvey, U.S. Department of Energy, Office of Inspector General, 1000 Independence Avenue, SW., room 5A–179, Washington, DC 20585, (202) 586–1943.

SUPPLEMENTARY INFORMATION:

General

Under provisions of the Federal Nonnuclear Energy Research and Development Act of 1974 (Pub. L. 93–577), as amended, and the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended, the Department of Energy is subject to strict requirements intended to avoid organizational conflicts of interest in the award and performance of contracts for technical and management support services. An organizational conflict of interest (OCI) is considered to exist when a contractor "has past, present, or currently planned interests that either directly or indirectly, through a client relationship relate to the work to be performed under a Department contract and which (1) may diminish its capacity to give impartial, technically sound, objective assistance and advice, or (2) may result in it being given an unfair competitive advantage." DOE Acquisition Regulations, 48 CFR 909.570–3. Pursuant to these provisions, a contract may not be awarded unless the Secretary or her designee has made a determination that it is unlikely that an OCI would exist, or that a conflict has been avoided after inclusion of appropriate conditions in the contract. If an OCI is determined to exist and cannot be avoided, the contract may be awarded only if the Secretary or her designee determines that award would be in the best interest of the United States and includes appropriate provisions in the contract to mitigate the OCI.

Based on the following findings and determination, the contract described below will be awarded, after taking into account the existence of an OCI, because the contract is determined to be in the best interests of the United States, pursuant to the authority of DOE Acquisition Regulation 48 CFR 909.570. Any comments should be provided within 5 days after publication of this notice.

Findings

1. The DOE Office of Inspector General (OIG) operates under the authority of the Inspector General Act of 1978, as amended. 5 U.S.C. app. 3.

2. At present, the DOE OIG annually audits the financial statements of 11 major DOE commercial and trust entities pursuant to the requirements of the Chief Financial Officers Act of 1990 (Pub. L. 101–576) (the CFO Act).

3. The CFO Act, if full implementation is mandated by Congress, would require the OIG to audit the consolidated financial statements of the DOE. In order to prepare consolidated financial statements for DOE, the Chief Financial Officer would have to ensure the preparation of some 59 sets of financial statements, all of which the OIG would have to audit or have audited. The OIG does not have, nor does it anticipate being authorized, sufficient in-house resources to accomplish this potential additional workload.

4. Therefore, a competitive procurement (DE–RP01–92IG00312, to Provide Nationwide Audit Support Services for the Office of Inspector General (OIG)) was initiated in May 1992 to solicit support services to accomplish a specific Statement of Work. The vast majority of the proposed effort will be financial audits required by full implementation of the CFO Act of 1990, and this procurement would support the OIG's timely implementation of the potential new CFO Act requirements. Notice was provided in the Request for Proposals, however, that the performance level of the proposed contract is dependent on full implementation of the CFO Act, and further, that if the CFO Act is not fully implemented, the required level of effort could be substantially reduced.

5. Based on a comprehensive evaluation of its technical and cost proposals, KPMG Peat Marwick offered superior technical strengths with the lowest proposed and probable costs to the Government. It was therefore determined that KPMG Peat Marwick would best successfully achieve the purposes of DOE OIG audits.

6. KPMG Peat Marwick submitted the necessary OCI information as part of the required proposal package. The KPMG Peat Marwick statement certified that a potential for an organizational conflict

of interest is perceived concerning the proposed work.

7. Based on an evaluation of the facts contained in the OCI information submitted, the Department of Energy has determined that KPMG Peat Marwick may have a potential organizational conflict of interest.

8. All firms who were in the competitive range were determined to have potential organizational conflicts of interest.

Mitigation

1. The contract includes a detailed mitigation plan that is summarized below:

a. KPMG Peat Marwick plans to use subcontractors to perform work at the sites where potential organizational conflicts of interest may exist.

b. KPMG Peat Marwick will use a consultant to perform quality control reviews of the work of the subcontractors.

c. The consultant will transmit the audit reports completed by the subcontractors directly to DOE OIG Task Monitors in a sealed envelope with an accompanying cover letter. Accordingly, such reports will not be influenced by KPMG Peat Marwick personnel.

2. Each task will be monitored by a member of the Office of Inspector General's audit staff.

3. The contractor will submit monthly progress reports which will include the identification of any potential conflicts of interest and any efforts made to mitigate such conflicts.

4. The contract includes DEAR 952.209–72, "Organizational Conflicts of Interest—Special Clause."

Determination

In light of the above Findings and Mitigations and in accordance with 48 CFR 909.570, award of this contract to KPMG Peat Marwick is considered to be in the best interest of the United States.

Dated : June 9, 1993.

John C. Layton,

Inspector General.

[FR Doc. 93–14210 Filed 6–15–93; 8:45 am]

BILLING CODE 6450–01–P

Secretary of Energy Advisory Board Task Force on Radioactive Waste Management

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

NAME: Secretary of Energy Advisory Board Task Force on Radioactive Waste Management.

DATES AND TIME: Wednesday, July 7, 1993, 9 a.m.–4 p.m.

PLACE: National Wildlife Federation, Kimball Conference Room, First Floor, 1400 16th Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel S. Metlay, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3903.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Secretary of Energy Advisory Board Task Force on Radioactive Waste Management was established in May 1991 to:

(1) Identify the factors that affect the level of public trust and confidence in Department of Energy programs;

(2) Assess the effectiveness of alternative financial, organizational, legal, and regulatory arrangements in promoting public trust and confidence;

(3) Consider the effects on other programmatic objectives, such as cost and timely acceptance of waste, of those alternative arrangements; and

(4) Provide the Secretary with recommendations and guidance for implementing those recommendations.

Tentative Agenda

9–10:30 a.m.—Public Comments on Revisions to Draft Final Report
10:30–10:45 a.m.—Break
10:45–12 p.m.—Public Comment Continued
12–1 p.m.—Lunch
1–4 p.m.—Task Force Deliberations
4 p.m.—Adjourn

A final agenda will be available at the meeting.

Public Participation

The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, the Task Force welcomes comments on its Draft Final Report. Members of the public are invited to present their views and will be heard in the order they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Dr. Daniel Metlay, Secretary of Energy of Advisory Board, AC–1, 1000 Independence Avenue SW., Washington, DC 20585. In order to insure consideration by Task Force members in advance of the meetings, written comments should be received by June 30, 1993.

Minutes

Minutes of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued at Washington, DC, on June 11, 1993.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–14211 Filed 6–15–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER92–436–003, et al.]

Florida Power Corp., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 9, 1993.

Take notice that the following filings have been made with the Commission:.

1. Florida Power Corporation

[Docket No. ER92–436–003]

Take notice that on May 28, 1993, Florida Power Corporation (FPC) tendered for filing its compliance refund report in the above-referenced docket.

Comment date: June 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of Oklahoma

[Docket No. ER93–547–000]

Take notice that on May 13, 1993, Public Service Company of Oklahoma (PSO) tendered for filing a Notice of Termination, which states that an unexecuted Contract for Electric Service between PSO and the Chelsea Municipal Authority is to be canceled effective as of May 8, 1993.

Copies of the filing have been sent to CMA and the Oklahoma Corporation Commission.

Comment date: June 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Iowa Electric Light and Power Company and Iowa Southern Utilities Company

[Docket No. EC93–14–000]

Take notice that on June 4, 1993, Iowa Electric Light and Power Company (Iowa Electric) and Iowa Southern Utilities Company (Iowa Southern) tendered for filing an Application for

Authorization and Approval of a Merger. Filing requirements were submitted pursuant to section 203 of the Federal Power Act and part 33 of the Commission's Rules and Regulations.

Under the terms of the Merger Agreement between Iowa Electric and Iowa Southern, Iowa Southern will be merged into Iowa Electric and the surviving corporation will be renamed upon the consummation of the merger. Both Applicants are wholly-owned subsidiaries of IES Industries Inc. At the time of merger, all of the shares of common stock of Iowa Southern, wholly-owned by IES, will be fully redeemed and retired.

The Applicants submit that the merger of Iowa Electric and Iowa Southern would be consistent with the public interest as required by section 203 of the Federal Power Act. Applicants therefore request that the Commission authorize the merger without the necessity of hearing.

Comment date. June 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Company

[Docket Nos. EC90-10-007 and ER93-294-000]

Take notice that on May 28, 1993, Northeast Utilities Service Company tendered for filing its compliance filing in the above-referenced dockets pursuant to the Commission's order issued on March 29, 1993.

Comment date: June 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER93-461-001]

Take notice that New England Power Company on June 4, 1993 tendered for filing its compliance refund report in this docket.

Comment date: June 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Power & Light Company

[Docket No. ER93-698-000]

Take notice that on June 7, 1993, Puget Sound Power & Light Company (Puget) submitted under its Electric Tariff Original Volume No. 3 an executed Service Agreement (the Agreement) with Colockum Transmission Company, Inc. (Colockum). Puget previously filed an unexecuted copy of the Agreement in the above-referenced docket which was accepted for filing by the Commission on April 12, 1993 and designated Service Agreement No. 14 under FPC Electric Tariff, Original Volume No. 3.

The Service Agreement makes service under the referenced tariff available to Colockum. A copy of the filing was served upon Colockum.

Comment date: June 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Otter Tail Power Company

[Docket No. ER93-590-000]

Take notice that on June 7, 1993 Otter Tail Power Company (Otter Tail) tendered for filing on behalf of itself an amendment to its April 28, 1993 application for changing the limit on its percentage adder in rates for transmission services and accompanying service schedules setting rates, terms, and conditions for sales affected by the change.

Otter Tail states that copies of the amendment have been provided to the Mid-Continent Area Power Pool and to the Public Service Commissions of Minnesota, North Dakota and South Dakota.

Comment date: June 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER93-694-000]

Take notice that on June 3, 1993, Southern California Edison Company (Edison) tendered for filing the following letter agreement, executed on April 23, 1993, by the respective parties: Electrical Service by Southern California Edison Company to Southern California Water Company Retail Customer, Camp Radford (Letter Agreement).

The Letter Agreement formalizes an arrangement whereby Edison provides electrical service from Edison distribution facilities to Camp Radford, a retail customer of Southern California Water Company (SCWC), located in SCWC's service territory.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: June 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Potomac Electric Power Company

[Docket No. ER93-691-000]

Take notice that on June 2, 1993, the Potomac Electric Power Company (Pepco) tendered for filing as initial rate schedules two existing facilities agreements, between Pepco and (respectively), Baltimore Gas and Electric Company (BG&E) regarding certain Maryland portions for the Baltimore-Washington 500 Kilovolt Loop, and Southern Maryland Electric Cooperative, Inc. (Smeco) regarding certain jointly-constructed substations and a Notice of Termination for Pepco FPC Rate Schedule No. 29 regarding the B-W 500 KV Loop (which FPC No. 29 was superseded by the foregoing agreement between Pepco and BG&E). Pursuant to Florida Power Corp., 61 FERC ¶ 61,063 (1992), effective dates as of the date each facility agreement or supplement thereto became an effective contract between the parties (various dates between 1985 and 1992) are requested for good cause, and an effective date of termination as of the date of FPC No. 29 became void according to its terms of December 31, 1973 is requested for good cause.

Comment date: June 23, 1993, in accordance with Paragraph E at the end of the notice.

10. Puget Sound Power & Light Company

[Docket No. ER93-674-000]

Take notice that on May 27, 1993, Puget Sound Power & Light Company (Puget) tendered for filing an unsigned Emergency Temporary Interconnection Agreement between Public Utility District No. 1 of Grant County (District) and Puget dated as of May 21, 1993. Under the Agreement, Puget is to temporary interconnected with District's mobile substation in order to provide District with emergency transmission service until a non-functioning District transformer can be replaced.

Copies of the filing were served upon District.

Comment date: June 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Power and Light Company

[Docket No. ER93-696-000]

Take notice that on June 4, 1993, Wisconsin Power and Light Company (WPL) tendered for filing an amendment dated May 27, 1993, between the Wisconsin Public Power, Inc. System and WPL. WPL states that this amendment supplements the previous agreement first signed on June 5, 1989 between the two parties which was last amended October 1, 1992, and on file under Rate Schedule No. 132 by the Commission.

The purpose of this amendment is to provide for a new delivery point under construction by the Sun Prairie Water & Light Commission. Terms of service will be in accordance with standard WPL Rate Schedule W-1.

WPL requests that an effective date concurrent with the construction

completion date on or about June 4, 1993 be assigned. WPL states that copies of the agreement and the filing have been provided to the Wisconsin Public Power, Inc. System and Sun Prairie Water & Light Commission, and the Wisconsin Public Service Commission.

Comment date: June 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp

[Docket No. ER93-531-000]

Take notice that on May 24, 1993, PacifiCorp tendered for filing an amendment to its original filing of April 1, 1993 in this docket.

Comment date: June 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER93-693-000]

Take notice that Northeast Utilities Service Company (NUSCO), on June 3, 1993, tendered for filing two separate Service Agreements to provide non-firm transmission service to (i) The United Illuminating Company (UI) and (II) Long Island Company (LILCO) under the NU System Companies' Transmission Service Tariff No. 2.

NUSCO states that copies of the filing have been mailed to UI and LILCO.

Comment date: June 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14117 Filed 6-15-93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10981-000]

Bangor Hydroelectric Co.; Intent To Hold Scoping Meetings and Site Visit

June 9, 1993.

The Federal Energy Regulatory Commission (FERC) published on April 15, 1993, in the **Federal Register** (58 FR 19665) a notice of intent to prepare an Environmental Impact Statement (EIS) for the Basin Mills Project No. 10981, Maine. The proposed project consists of the Veazie (existing, proposed expansion), Orono (existing, to be decommissioned), and Basin Mills (proposed) developments situated on the Penobscot River and Stillwater Branch of the Penobscot River in Penobscot County, Maine. FERC will conduct a project site visit on Wednesday, July 28, and two scoping meetings on Thursday, July 29, 1993, in Orono, Maine.

All interested individuals are invited to attend the project site visit. Trip participants will meet at 9 a.m. at the Black Bear Inn, 4 Godfrey Drive, in Orono (on the right at exit 51 off I-95), and vans will be available to take participants to the site. Please make reservations for the site visit by calling (207) 945-5621 before July 21, 1993.

All interested individuals, representatives of organizations, and agencies with environmental expertise and concerns are invited to attend the two scoping meetings to be held also at the Black Bear Inn. The purpose of the scoping meetings is to obtain agency and public comment on environmental issues that should be addressed in the EIS. The scoping meetings, scheduled for Thursday, July 29, 1993, will consist of a morning meeting, from 9 a.m. to 12 noon, which is primarily for government agencies to voice their concerns and recommendations; and an evening meeting, from 7 to 10 p.m., which is primarily for the public to voice their concerns and recommendations.

Objectives

To help focus discussion, a preliminary EIS scoping document outlining subject areas to be addressed at the meeting will be distributed by mail to parties on the FERC service list and FERC mailing list. Copies of the preliminary scoping document will also be available at the scoping meetings.

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) determine the relative depth of analysis for issues to be addressed in the EIS; (3) identify resource issues that are not important and do not require detailed analysis; (4) solicit from the meeting participants all available information, especially quantified data, on the resources at issue; and (5) encourage statement from experts and the public on issues that should be analyzed in the EIS, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The meetings will be recorded by a court reporter and all statements (oral and written) thereby become part of the formal record of the Commission proceedings on the Basin Mills Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Participants at the public meetings are asked to keep comments to 5 minutes to allow everyone an opportunity to speak.

Persons choosing not to speak at the scoping meetings, but who have views on the issues or information relevant to the issues, may submit written statements at the meetings for inclusion in the public record. In addition, written scoping comments may be filed until August 27, 1993, with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All correspondence should clearly show the following caption on the first page: Basin Mills Project No. 10981, Maine.

All those that are formally recognized by the Commission as intervenors in the Basin Mills project are asked to refrain from discussing the merits of the project with the staff or its contractor outside of any announced meetings.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedure, requiring parties or interceders (as defined in 18 CFR 385.2010) filing written comments or documents with the Commission, to serve a copy of the written comments or documents on each person whose name is on the official service list for this proceeding. See 18 CFR 4.34(b).

For further information, please contact Sabina Joe at (202) 219-1648.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14119 Filed 6-15-93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2183-009 Oklahoma]

Grand River Dam Authority; Availability of Environmental Assessment

June 10, 1993.

In accordance with the National Environmental Policy Act of 1969 and

the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for non-project use of project lands for the Markham Ferry Project. The licensee requested Commission authorization to grant an easement on a parcel of land on Lake Hudson to the Town of Salina for a state-mandated water treatment facility. The proposed facility is to serve as holding basins for the backwash water from the filters of the existing water treatment plant. The proposed facility is required in order to comply with the Oklahoma State Department of Health's standards for handling and disposal of backwash water bearing alum and mud. The project is located on Lake Hudson (reservoir) in Salina, Oklahoma.

The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, the staff concludes that the licensee's proposals would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14111 Filed 6–15–93; 8:45 am]

BILLING CODE 6717–01–M

Application Tendered for Filing With the Commission

June 9, 1993.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Minor License.

b. *Project No.:* 10856–002.

c. *Date Filed:* April 30, 1993.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Au Train Hydroelectric Project.

f. *Location:* On the Au Train River, near the Town of Au Train, Alger County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Clarence R. Fisher, Upper Peninsula Power Company, P.O. Box 130, 600 Lakeshore Drive, Houghton, Michigan 49931–0130, (906) 487–5000.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Comment Date:* 60 days from the filing date in paragraph C. (June 29, 1993).

k. *Description of Project:* The proposed project consists of the following features: (1) An existing dam 38 feet high and 1,500 feet long; (2) an existing reservoir with a storage capacity of 12,342 acre-feet and a surface area of approximately 1,557 acres; (3) an existing 2,516-foot-long, 5-foot, 6-inch-diameter penstock; (4) an existing powerhouse containing two turbine-generating units having a total generating capacity of 1,440 kilowatts; (5) an existing 2,300-volt, 2,500-foot-long transmission line; and (6) appurtenant facilities. The applicant estimates that the total average annual net generation would be 5,778 megawatthours. The owner of the dam is the Upper Peninsula Power Company.

l. With this notice, we are initiating consultation with the *Michigan STATE HISTORIC PRESERVATION OFFICER (SHPO)*, as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14112 Filed 6–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–09961T New Mexico–14]

Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

June 10, 1993.

Take notice that on June 7, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Dakota Formation in a portion of the Lindrith Gallup-Dakota West Pool underlying a portion of Rio Arriba and Sandoval Counties, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 10,240 acres, all of which are Jicarilla Apache Indian Reservation Lands. The recommended area is described as follows:

Township 23 North, Range 3 West
Secs. 13–16: All;
Secs. 21–28: All;
Secs. 33–36: All.

The notice of determination also contains BLM's findings that the referenced portion of the Dakota Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14114 Filed 6–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–09960T New Mexico–40]

Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

June 10, 1993.

Take notice that on June 7, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Gallup and Dakota Formations in a portion of the Lindrith Gallup-Dakota West Pool underlying a portion of Rio Arriba County, New Mexico, qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 8,320 acres, all of which are Jicarilla Apache Indian Reservation Lands. The recommended area is described as follows:

Township 24 North, Range 4 West,
Secs. 1–4: All;
Secs. 9–15: All;
Secs. 23–24: All.

The notice of determination also contains BLM's findings that the referenced portion of the Gallup and

Dakota Formations meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14116 Filed 6–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–137–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 10, 1993.

Take notice that Algonquin Gas Transmission Company (Algonquin) on June 7, 1993, tendered for filing proposed changes in its FERC Gas Tariff, Fourth Revised Volume No. 1, as set forth in the revised tariff sheet:

Original Sheet No. 96

The proposed effective date of the tariff sheet is July 7, 1993.

Algonquin states that the purpose of this filing is to establish the balance and allocation of contract assignment program costs to be paid by Algonquin to Texas Eastern Transmission Corporation (Texas Eastern) pursuant to Texas Eastern's initial direct bill of contract assignment program costs filed on May 28, 1993.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 17, 1993, Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14110 Filed 6–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–39–002]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 10, 1993.

Take notice that on June 8, 1993, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Substitute Ninth Revised Sheet No. 570 under Rate Schedule X–64, to be effective January 1, 1993 for billing and refund purposes.

ANR states that the compliance filing is being made to reduce the monthly charge under Rate Schedule X–64 to reflect ANR's offer of settlement approved by the Commission in a letter order dated May 4, 1993 in Docket No. RP93–39–001. ANR states that the tariff sheets reflects a reduction in the monthly charge for Rate Schedule X–64 from $269,695 to $249,981, as set forth in ANR's March 3, 1993 offer of settlement, to be effective January 1, 1993.

ANR states that copies of the filing are being mailed to High Island Offshore System.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14104 Filed 6–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF90–87–003]

Camden Cogen L.P.; Amendment to Filing

June 10, 1993.

On June 7, 1993, Camden Cogen L.P. tendered for filing a supplement to its filing in this docket.

The supplement pertains to the ownership structure and technical aspects of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by June 28, 1993, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14113 Filed 6–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–7–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

June 10, 1993.

Take notice that on June 7, 1993, Granite State Gas Transmission, Inc. (Granite State) 300 Friberg Parkway, Westborough, Massachusetts 01581, filed Twenty-Seventh Revised Sheet No. 21 in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on July 1, 1993.

According to Granite State, the revised sales rates on Twenty-Seventh Revised Sheet No. 21 reflect Granite State's regular quarterly purchased gas adjustment based on projected costs and sales for the third quarter of 1993.

Granite State further states that, in addition to reflecting projected gas costs, its filing reflects the costs for certain transportation services for the services it receives under Algonquin Gas Transmission Company's (Algonquin) Rate Schedules F–2 and F–3 as a result of the effectiveness of Order Nos. 636, *et al.* compliance filings by Algonquin in Docket No. RS92–28–000, Texas Eastern Transmission Corporation in Docket No. RS92–11–000 and Transcontinental Gas Pipe Line Corporation in Docket No. RS92–86–000.

Granite State indicates that the revised sales rates on Twenty-Seventh Revised Sheet No. 21 are applicable to

Granite State's wholesale sales to its two affiliated distribution company customers: Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities).

Granite State states that copies of its filing were served upon its customers Bay State Gas Company and Northern Utilities, Inc. and the regulatory commissions of the states of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to make protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14103 Filed 6–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–50–006]

High Island Offshore System; Refund Plan

June 10, 1993.

Take notice that on June 3, 1993, High Island Offshore System (HIOS) filed with the Federal Energy Regulatory Commission (Commission) a revised refund plan for the referenced proceeding.

HIOS states that the revised refund plan (1) corrects both the amount of the refunds and the Report of Refunds which HIOS filed on May 7, 1993, in Docket No. RP92–50–006, relative to its obligation under Article III of the Commission approved Stipulation and Agreement to refund to its shippers certain refunds that it has received from ANR Pipeline Company (ANR) under ANR's Rate Schedule X–64 and (2) to recoup refund overpayments which resulted from the foregoing corrections through offsets against those overpayments certain additional refunds HIOS is required to make under Article III relative to amounts it has recently received from U–T Offshore System (UTOS) under UTOS' Rate Schedule X–1.

HIOS states that copies of the filing were served on all parties and all refund recipients.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14106 Filed 6–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–4–007, and TQ93–1025–001]

Mississippi River Transmission Corp.; Rate Change Filing

June 10, 1993.

Take notice that on June 7, 1993, Mississippi River Transmission Corporation (MRT) tendered for filing the following gas tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective May 1, 1993.

Substitute First Revised Eighty-Fifth Revised Sheet No. 4
Substitute Third Revised Eighty-Fifth Revised Sheet No. 4
Substitute First Revised Forty-Fourth Revised Sheet No. 4.1

MRT states that the instant filing corrects the tariff sheets filed in MRT's April 30, 1993 out-of-cycle PGA and the Docket No. RP93–4–005 compliance filing to reflect the appropriate May 1, 1993 current adjustment to the demand cost component and the related substitution charge for MRT's Rate Schedule SGS–1.

MRT states that a copy of this filing has been served on all of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Illinois and Missouri and to all parties on the Commission's official service list in Docket No. RP93–4–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 of CFR 385.211. All such protests should be filed on or before June 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14108 Filed 6–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–36–005]

Natural Gas Pipeline Co. of America; Filing Revised Tariff Sheets

June 10, 1993.

Take notice that on June 7, 1993, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Second Substitute Third Revised Sheet No. 10 and Second Substitute Second Revised Sheet Nos. 12 and 13 to be effective June 1, 1993.

Natural states that the purpose of this filing is to comply with the Commission's order issued May 28, 1993 at Docket No. RP93–36–002. Natural states that the order accepted for filing Natural's motion filing of April 30, 1993 and suspended the rates to become effective June 1, 1993, subject to refund, and subject to Natural refiling to remove the effect of the Trunkline Gas Company (Trunkline) Rate Schedule X–49 conversion from firm to interruptible service.

Natural states that the effect of removing the Trunkline conversion was a reduction of $.01 in Rate Schedule DMQ–1 peak period demand rates and a reduction of $.0001 in the peak and off-peak period commodity rates. Reductions were also made in the Rate Schedule G–1 sales rates. Natural also states that while costs allocated to transportation and storage rates changed, there was no reduction.

Natural requested waiver of any applicable Commission regulations and orders to the extent necessary to permit the proposed tariff sheets to be effective on June 1, 1993.

Natural states that copies of the filing have been served on all of its jurisdictional customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission,

825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14105 Filed 6–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–644–000]

PacifiCorp; Filing

June 9, 1993.

Take notice that PacifiCorp, on June 2, 1993, tendered for filing in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, an amended filing in this docket.

Copies of this amended filing were supplied to Arizona Public Service Company, the Arizona Corporate Commission and the Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14118 Filed 6–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–366–000]

The Washington Water Power Co.; Application

June 8, 1993.

Take notice that on June 1, 1993, The Washington Water Power Company (Water Power), East 1411 Mission Avenue, Spokane, Washington 99202, filed, in Docket No. CP93–366–000, pursuant to part 157 of the Commission's Rules of Practice and Procedure and section 7 of the Natural Gas Act (NGA), an application for a certificate of public convenience and necessity authorizing the release of a portion of the Jackson Prairie Underground Storage Project (Project) deliverability and capacity to Northwest Pipeline Corporation (Northwest) for a limited term with pregranted abandonment. In addition, Water Power requests limited term sales-for-resale authority, as a transitional measure, for the sale of gas in place at the Project for use by Northwest during the 1993–94 heating season, all as more fully set forth in the application on file with the Commission and open to public inspection.

Water Power is a distribution company engaged in the business of distributing natural gas within the States of Washington and Idaho, as well as in the States of Oregon and California (through its operating division, WP Natural Gas). Water Power is a one-third owner of a natural gas storage field referred to as the Jackson Prairie Storage Project located in Lewis County, Washington. The remaining undivided ownership interests belong to Northwest and Washington Natural Gas Company, with the latter designated as the Project Operator.

Water Power and Northwest have entered into an Agreement dated March 31, 1993, entitled "Agreement for the Release of Jackson Prairie Storage" that calls for the release by Water Power to Northwest of 150,000 therms per day of firm deliverability, and 6,000,000 therms of seasonal capacity, for the three (3) year term of the Agreement, ending on March 31, 1993. The Release Agreement between Water Power and Northwest sets forth, as a condition precedent, the receipt of all necessary regulatory authorizations not later than November 1, 1993, in order to enable Northwest to make effective use of the capacity and deliverability of the Storage Project during the 1993–94 hearing season. Water Power, therefore, respectfully requests that the Commission expedite its consideration of the instant application to enable Northwest to make effective use of the released deliverability and capacity by not later than November 1, 1993.

Water Power further requests limited term authority, with pre-granted abandonment, to provide sales-for-resale service to Northwest, in an amount not to exceed 6,000,000 therms of working gas stored in the Project, for a period terminating December 31, 1993. Water Power requests, in this regard, a waiver of all reporting and filing requirements incidental to such sales-for-resale service, including the requirements of part 154, regarding the filing of rate schedules and tariffs for such service.

Pursuant to § 385.802 of the Commission's Rules of Practice and Procedure, Water Power requests that the intermediate decision procedure be omitted and that this application be disposed of pursuant to the shortened procedure provided for in the Commission's Rules. In making such a request, Water Power waives oral hearing and opportunity for filing exceptions to the decision of the Commission.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 29, 1993, file with the Federal Energy Regulatory Commission,Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Water Power to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–14182 Filed 6–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93-3-35-000]

West Texas Gas, Inc.; Proposed Changes in FERC Gas Tariff

June 10, 1993.

Take notice that on June 1, 1993, West Texas Gas, Inc. (WTG) filed as part of its FERC Gas Tariff, First Revised Volume No. 1, Seventh Revised Sheet No. 4, with a proposed effective date of July 1, 1993.

WTG states that the tariff sheet and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14109 Filed 6-15-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-438-000]

Williams Natural Gas Co.; Request Under Blanket Authorization

June 10, 1993.

Take notice that on June 7, 1993, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93-438-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate an existing delivery point as a jurisdictional facility for deliveries of gas to United Cities Gas Company (United Cities) under William's blanket certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams states that the delivery point, located in Douglas County, Kansas, was constructed under section 311 authority to make deliveries of natural gas to United Cities for subsequent use in an asphalt and concrete plant. Williams further states that it proposes to utilize the facilities for other deliveries of natural gas to United Cities. Williams asserts that this authorization would allow United Cities receipt point flexibility in the future.

Williams states that this change is not prohibited by its existing tariff and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14115 Filed 6-15-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Civilian Radioactive Waste Management

Multi-Purpose Canister Conceptual Design Workshop

AGENCY: Department of Energy (DOE).

ACTION: Notice of meeting.

SUMMARY: The Office of Civilian Radioactive Waste Management (OCRWM) is developing a conceptual design for a Multi-Purpose Canister (MPC) system. The MPC would be a metallic canister holding multiple spent nuclear fuel assemblies and would be placed in separate overpacks or casks for storage, transportation, and geologic disposal. The reference nuclear waste management system would involve the handling and rehandling of numerous spent nuclear fuel assemblies in the spent fuel pools at reactors and in shielded transfer cells at the Monitored Retrievable Storage facility and geologic repository. The MPC would eliminate the need for routine spent fuel handling at the Monitored Retrievable Storage facility and at the repository. The workshop is intended to provide affected governments, interested parties and members of the public with an opportunity to learn more about the MPC concept and exchange various perspectives on the subject with the OCRWM.

DATES AND ADDRESSES: The Workshop will be held from 8 a.m.–5 p.m., July 1; and 8:30 a.m. – 12 noon, July 2, 1993 at the Hyatt Regency Crystal City located at 2799 Jefferson Davis Highway in Arlington, Virginia 22202. The Multi-Purpose Canister Workshop is open to the public, and persons wishing to participate should notify the contact person listed below by June 21, 1993.

SUPPLEMENTARY INFORMATION: The consideration of an MPC conceptual design follows wide-spread interest expressed by regulatory agencies, the scientific community and others for a nuclear waste management system that considers the compatibility of the various steps required in storage, transportation and geologic disposal of spent nuclear fuel. Initial studies have indicated that the MPC concept may provide this system-wide compatibility and offer additional benefits to the system. The day and a half workshop will be structured to encourage participants to have an open dialogue about the technical and institutional considerations of such a system. This process will be facilitated through break-out sessions, each covering a particular subject area of the MPC conceptual design effort. Significant information developed during these sessions will be recorded, evaluated and considered during the current MPC conceptual design phase. A second workshop will be scheduled at a later date to address those items identified for followup and to update participants on the conceptual design effort.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey Williams, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 (telephone 202-586-9620); or Tommy Smith, Civilian Radioactive Waste Management System, Management & Operating Contractor, 2650 Park Tower Drive, Suite 800, Vienna, Virginia 22180 (telephone 703-204-8978).

Lake H. Barrett,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 93-14209 Filed 6-15-93; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4655–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In Compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 16, 1993.

FOR FURTHER INFORMATION, OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Ms. Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Equipment Leaks of VOC in Petroleum Refineries (Subpart GGG)–Information Requirements (EPA ICR No. 0983.04; OMB No. 2060–0067). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of process units producing intermediate or final products from petroleum, unfinished petroleum derivatives, or other intermediates must provide EPA, or the delegated State regulatory authority, with one-time notifications and reports, and must keep records, as required of all facilities subject to the general NSPS requirements. In addition, facilities must monitor equipment in VOC service (i.e. the piece of equipment contains or contacts a process fluid that is at least 10 percent VOC by weight) monthly and record and report semiannually on leaks detected and repaired. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 10 hours per response for reporting, and 110 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of facilities equipped to produce intermediate or final products from petroleum, unfinished petroleum derivatives, or other intermediates.

Estimated No. of Respondents: 30.

Estimated No. of Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondents: 3,878.

Frequency of Collection: Semiannually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency,Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: June 10, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–14197 Filed 6–15–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4666–2]

Agency Information Collection ActivitiesUnder OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 16, 1993.

FOR FURTHER INFORMATION, OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Ms. Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Glass Manufacturing Plants (Subpart CC)–Information Requirements (EPA ICR No. 1131.04; OMB No. 2060–0054). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of glass manufacturing plants must provide EPA, or the delegated State regulatory authority, with one-time notifications and reports, and must keep records, as required of all facilities subject to the general NSPS requirements. In addition, facilities subject to this subpart must install a continuous monitoring system (CMS) to monitor opecity, and must notify EPA or the State regulatory authority of the date upon which demonstration of the CMS performance commences. Owners or operators must submit semiannual reports of excess emissions and of monitoring system performance. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 13 hours per response for reporting, and 62.5 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of glass manufacturing plants.

Estimated Number of Respondents: 25.

Estimated Number of Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondents: 2,212 hours.

Frequency of Collection: One-time notifications and reports for new facilities; semiannual reporting for existing facilities.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency,Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: June 10, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–14198 Filed 6–15–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP-100122; FRL-4589-3]

Mantech Environmental Technology, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). ManTech Environmental Technology, Inc. has been awarded a contract to perform work for the EPA Office of Environmental Processes and Effects Research, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to ManTech Environmental Technology, Inc. consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), and will enable ManTech Environmental Technology, Inc. to fulfill the obligations of the contract.

DATES: ManTech Environmental Technology, Inc. will be given access to this information no sooner than June 21, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 234, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5259.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-C8-0006, ManTech Environmental Technology, Inc. will provide technical support to EPA's Office of Environmental Processes and Effects Research, Environmental Research Laboratory in conducting a retrospective analysis of terrestrial pesticide field studies to evaluate the relationship between field study results and laboratory-based risk assessments. This contract involves no subcontractor.

The Office of Environmental Processes and Effects Research and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA and that access by ManTech Environmental Technology, Inc. to information on the following pesticide chemicals is necessary for the performance of this contract:

Aldicarb
Bendiocarb
Bolstar
Carbofuran
Carbofuran (FL)
Cloethocarb
Diazinon
Dicrotophos
Di-Syston
Ethoprop
Fenamiphos
Fensulfothion
Guthion
Methamidophos
Oxamyl
Phorate
Sulprofos
Terbufos
Vydate

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.37(h)(3), the contract with ManTech Environmental Technology, Inc., prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Environmental Processes and Effects Research. All information supplied to ManTech Environmental Technology, Inc. by EPA for use in connection with this contract will be returned to EPA when ManTech Environmental Technology, Inc. has completed its work.

Dated: June 4, 1993.

Daniel Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93-13942 Filed 6-15-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4666-8]

Proposed Settlements Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act; In Re M. T. Richards, Inc.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: Notice of Settlements for recovery of past costs: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, a amended (CERCLA). notice is hereby given of two proposed administrative settlements concerning the removal action at the M.T. Richards Superfund Site, Village of Crossville, White County, Illinois. The Agreement was proposed by EPA Region V on April 16, 1993. Subject to review by the public pursuant to this Notice, the agreement was approved by the United States Department of Justice on June 2, 1993.

DATES: Comments must be provided on or before July 16, 1993.

ADDRESSES: Comments should be addressed to the Docket Clerk, Mail Code MFA-10J, U.S. Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590, and should refer to: In Re M.T. Richards Superfund Site in Crossville, Illinois, U.S. EPA Docket Nos. V-W-93-C-191 and V-W-93-C-192.

FOR FURTHER INFORMATION CONTACT: Barbara Wester, U.S. Environmental Protection Agency. Office of Regional Counsel, 77 W. Jackson Blvd., Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: Below are listed the parties who have executed binding certifications of their consent to participate in the settlement:

List of Settlors

Safari Oil Company, R.J Oil Company, Marvin T. Richards, James and Darlene White.

These parties will pay a total of $216,558.73 in settlement payments for removal costs under the two agreements, subject to the contingency that EPA may elect not to complete the settlements based on matters brought to its attention during the public comment period established by this Notice. One hundred percent of this amount will reimburse EPA for its past costs at the M.T. Richards, Inc. Superfund Site.

EPA is entering into these agreements under the authority of section 122(h) and 107 of CERCLA. Section 122(h)

authorizes settlements with potentially responsible parties for the recovery of past costs expended by the Agency where these claims have not been referred to the U.S. Department of Justice for further action. The proposed settlements reflect, and were agreed to based on, conditions as known to the parties as of April 16, 1993.

The Environmental Protection Agency will receive written comments relating to these agreements for thirty days from the date of publication of this notice.

A copy of the proposed administrative settlement agreements and additional background information relating to the settlements are available for review and may be obtained in person or by mail from Barbara L. Wester, Office of the Regional Counsel, U.S. Environmental Protection Agency, Region V, 77 W. Jackson, Mail Code CS–3T, Chicago, Illinois 60604.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601–9675.

Janet Mason,

Acting Regional Administrator.

[FR Doc. 93–14200 Filed 6–15–93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Coastal Barrier Improvement Act; Property Availability: Approximately 572.268 Acres at Lohman Ford Road and Austin Boulevard, Travis County, TX

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that a property described as approximately 572.268 acres at Lohman Ford Road and Austin Boulevard, Travis County, Texas, is affected by section 10 of the Coastal Barrier Improvement Act of 1990.

DATES: Written notice of serious interest to purchase the property must be received on or before September 14, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, may be obtained by contacting Mari Epperson, ORE Specialist, at the Federal Deposit Insurance Corporation, Addison Consolidated Office, 5080 Spectrum Drive, suite 1000E, Dallas, Texas 75248. Telephone (800) 759–9314, Extension 4737, or (214) 385–4737; Telecopier (214) 385–4708.

SUPPLEMENTARY INFORMATION: The approximately 572.268 acres of land is composed of three contiguous or nearly contiguous tracts, one of approximately 434.669 acres, one of approximately 8.989 acres and one of approximately 128.610 acres. The tracts are located approximately two and one half miles south of Farm to Market Road 1431, along the east side of Lohman Ford Road at Austin Boulevard, Travis County, Texas. The tracts are irregular in shape, are typical rolling Texas hill county terrain, are undeveloped except for a small, abandoned airfield landing strip on one tract, and are used primarily for livestock grazing and recreation. A portion of the property has frontage on Lake Travis. There is also an unconfirmed suspicion that endangered or protected species, including, without limitation, the Golden-Cheeked Warbler and the Black-Capped Vireo or their habitats exist in the area.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the federal government;

2. Agencies or entities of state or local government; and

3. "Qualified organizations" pursuant to section 170(h) of the Internal Revenue Code of 1986 (26 U.S.C. 170–(h)(s)).

FORM OF NOTICE: Notices of serious interest should be addressed to the attention of Mari Epperson at the address provided above, and should be in the following form:

Notice of Serious Interest re: Approximately 572.268 acres at Lohman Ford Road and Austin Boulevard, Travis County, Texas

1. Name of eligible entity.

2. Declaration of eligibility to submit notice under criteria set forth in Public Law 101–591, section 10(b)(2).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural or natural resources conservation purposes.

Dated: June 10, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–14122 Filed 6–15–93; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

NationsBank Corporation; Application to Engage in Certain Nonbanking Activities; Correction

This notice corrects a previous notice (FR Doc. 93-9754) published at page 25649 of the issue for Tuesday, April 27, 1993.

Under the Federal Reserve Bank of Richmond heading, the entry for NationsBank Corporation is revised to read as follows:

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. NationsBank Corporation, Charlotte, North Carolina (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) to engage through its wholly owned subsidiary, NationsBanc Capital Markets, Inc., Charlotte, North Carolina (Company), in the following nonbanking activities:

1. Underwriting and dealing in, on a limited basis, all types of debt and equity securities (other than securities issued by open-end investment companies), including sovereign debt securities, corporate debt securities, convertible debt securities, debt securities issued by a trust or other vehicle secured by or representing interests in debt obligations, preferred stock, common stock, American Depositary Receipts, and other direct and indirect equity ownership interests in corporations and other entities;[1] and

2. Providing foreign exchange advisory and transactional services, while also taking positions in foreign exchange for its own account for hedging purposes only.

Applicant seeks approval to conduct the proposed activities throughout the United States.

Applicant states that the Board previously has determined by order that the proposed underwriting and dealing activities, when conducted within the limitations established by the Board in its previous orders, are closely related to banking for purposes of section 4(c)(8) of the BHC Act and consistent with section 20 of the Glass-Steagall Act (12 U.S.C. 377). *See, e.g., J.P. Morgan & Co. Incorporated, et al.,* 75 Federal Reserve Bulletin 192 (1989); *Order Approving Modifications to Section 20 Orders,* 75 Federal Reserve Bulletin 751 (1989); *Canadian Imperial Bank of Commerce, et al.,* 76 Federal Reserve Bulletin 158; *Order Approving Modification to Section 20 Orders to Allow Use of Alternative Index Revenue Test,* 79 Federal Reserve Bulletin 226 (1993). Applicant further states that the proposed underwriting and dealing

[1] Applicant also has proposed that Company engage in certain activities which Applicant maintains are incidental to the proposed underwriting and dealing activities, including certain securities clearing, investment advisory and foreign exchange trading activities.

activities will be conducted in accordance with the prudential limitations and other conditions established by the Board in these orders. Applicant also states that the proposed foreign exchange advisory and transactional services have been determined by the Board to be closely related to banking. *See* 12 CFR 225.25(b)(17). *See also Hongkong and Shanghai Banking Corporation, et al.*, 69 Federal Reserve Bulletin 221 (1983); *The Nippon Credit Bank, Ltd.*, 75 Federal Reserve Bulletin 308 (1989).

Applicant believes that the proposal will produce public benefits that outweigh any potential adverse effects, and therefore that the proposed activities are proper incidents to banking for purposes of section 4(c)(8) of the BHC Act. In particular, Applicant maintains that the proposal will enhance market competition, provide greater convenience to Company's customers, and enable Company to achieve greater efficiency within its own operations. In addition, Applicant states that the proposed underwriting and dealing activities, when conducted within the limitations established by the Board in previous orders, will not result in adverse effects such as an undue concentration of resources, conflicts of interest, or unsound banking practices. Applicant also maintains that the proposed foreign exchange advisory and transactional services will not result in adverse effects when conducted within the limitations proposed by Applicant. In this regard, Applicant states that the potential for conflicts of interest posed by Company's providing such foreign exchange services while also taking positions in foreign exchange for its own account will be minimized by the establishment of appropriate information barriers and other procedural safeguards between Company's foreign exchange trading personnel and Company's personnel engaged in providing the proposed foreign exchange advisory and transactional services.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act or other applicable law.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 1, 1993. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Richmond.

Board of Governors of the Federal Reserve System, June 10, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14142 Filed 6–14–93; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 902 3364]

Nationwide Industries, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a North Carolina-based manufacturer of automotive maintenance and cleaning products from making false and misleading environmental claims by representing, through the use of certain terms, that any product containing a Class I or Class II ozone-depleting substance, will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere, and also would prohibit the respondent from representing that any of its products offer any environmental benefit, unless the respondent possesses competent and reliable scientific evidence that substantiates such representation.

DATES: Comments must be received on or before August 16, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S–4002, Washington, DC 20580. (202) 326–3158.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U S C 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii))

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Nationwide Industries, Inc. (hereinafter "Nationwide"), a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is Hereby Agreed By and between Nationwide, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Nationwide is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business at 2200 West Main Street, Suite 3000, Durham, North Carolina 27705.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly

released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint, or that the facts alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

"Class I ozone depleting substance" means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in title 6 of the Clean Air Act Amendments of 1990, Pub. L. 101–549, and any other substance which may in the future be added to the list pursuant to title 6 of the Act. Class 1 substances currently include chlorofluorocarbons, halons, carbon tetrachloride and 1,1,1-trichloroethane.

"Class II ozone depleting substance" means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in title 6 of the Clean Air Act Amendments of 1990, Pub. L. 101–549, and any other substance which may in the future be added to the list pursuant to title 6 of the Act. Class II substances currently include hydrochlorofluorocarbons.

I

It is ordered That respondent Nationwide Industries, Inc. (hereinafter "Nationwide"), a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, through the use of such terms as "no CFCs," "CFC free," "no CFCs, environment friendly," "no CFCs, environmentally formulated" "formulated to help preserve the environment," "ozone safe," "ozone friendly," or any substantially similar term or expression, or, by words, depictions, or symbols, directly or by implication, that any such product containing any Class I or Class II ozone depleting substance will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere.

II

It is further ordered That respondent Nationwide, a corporation, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions or symbols that any product offers any environmental benefit, unless at the time of making such representation, respondent possesses and relies upon a reasonable basis, consisting of competent and reliable scientific evidence that substantiates such representation. To the extent such evidence consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

III

It is further ordered That for three years from the date that the representations to which they pertain are last disseminated, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that respondent relied upon in disseminating any representation covered by this Order.

2. All tests, reports, studies or surveys in respondent's possession or control that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation.

IV

It is further ordered That respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this Order.

V

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VI

It is Further Ordered That respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Nationwide Industries, Inc., a Pennsylvania corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the agreement's proposed order.

This matter concerns labeling and advertising of Nationwide's "Fix-a-Flat" instant tire repair products. The Commission's complaint in this matter charges that the respondent's labeling and advertising claims contain false and misleading representations that these products are "formulated to help our environment," and that because they have no CFCs (and no VOCs), they are "Environment Friendly" and "Environmentally Formulated." The complaint alleges that the respondent represented through the use of these claims that there are no ingredients in its products which are damaging to the environment. In addition, respondent represented that because its products contain no CFCs (and no VOCs), they do not harm the environment. In fact, the complaint alleges, these representations are false and misleading, because respondent's "Fix-a-Flat" products contain both 1,1,1-trichloroethane (a Class I ozone depleter) and chlorodifluoromethane (a Class II ozone depleter), which harm and cause damage to the earth's ozone layer.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

The proposed order defines Class I and Class II ozone-depleting substances, incorporating the definitions established in the Clean Air Act Amendments of 1990. Class I substances currently listed under the Act are CFCs, halons, carbon tetrachloride, and 1,1,1,-trichloroethane. Class II substances currently consist of HCFCs.

Part I of the proposed order requires the respondent, in connection with the advertising, sale, or distribution of any product, to cease representing, through the use of such terms as "CFC free," "no CFCs," "no CFCs, environment friendly," "no CFCs, environmentally formulated," "formulated to help preserve our environment," "ozone safe" or "ozone friendly", or any similar term or expression, that any product containing a Class I or Class II ozone-depleting substance, will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere.

Under the Clear Air Act Amendments, the EPA has authority to add new chemicals to the Class I and II lists. Thus, the order's definitions of Class I and Class II ozone-depleting substances specifically include substances that may be added to the lists. If additional substances are added to the Class I or II lists, Part I of the order becomes applicable to claims made for products containing those substances after the substances are added to the lists.

Part II of the proposed order requires the respondent to cease representing that any of its products offer any environmental benefits, unless the respondent possesses a reasonable basis for such representation.

Parts III, IV, V, and VI of the order are standard order provisions requiring the respondent to distribute copies of the order to certain company officials and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 93–14154 Filed 6–15–93; 8:45 am]

BILLING CODE 6750–01–M

[Docket 9228]

Promodes, S.A., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's consent order issued May 17, 1990 (55 FR 23138) by requiring the Tennessee company to divest a specific Red Food supermarket in Chattanooga, rather than the store specified in East Ridge. The Commission concluded that the respondents had demonstrated that the public interest warranted the change, and therefore it approved the substitution.

DATES: Consent Order issued May 17, 1990. Modifying Order issued May 20, 1993.[1]

FOR FURTHER INFORMATION CONTACT:
Daniel Ducore, FTC/S–2115, Washington, DC 20580. (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of Promodes, S.A., et al. The prohibited trade practices and/or corrective actions as set forth at 55 FR 23138, are changed, in part, as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 93–14162 Filed 6–15–93; 8:45 am]

BILLING CODE 6750–01–M

[Docket 9228]

Promodes, S.A., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's consent order issued May 17, 1990 (113 FTC 372) by setting aside Paragraphs II.A.1 and II.A.2, thereby relieving the respondents of the obligation to divest the two stores described in those paragraphs.

DATES: Consent Order issued May 17, 1990. Modifying Order issued May 21, 1993.[1]

FOR FURTHER INFORMATION CONTACT:
Daniel Ducore, FTC/S–2115, Washington, DC 20580. (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of Promodes, S.A., et al. The prohibited trad practices and/or corrective actions as set forth at 55 FR 23138, are changed, in part, as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 93–14163 Filed 6–15–93; 8:45 am]

BILLING CODE 6750–01–M

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[1] Copies of the Modifying Order and Commissioners Azcuenaga's and Owen's statements are available from the Commission's Public Reference Branch, H–130, 6th & PA. Ave., NW., Washington, DC 20580.

[1] Copies of the Modifying Order are available from the Commission's Public Reference Branch, H–130, 6th & PA. Ave., NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Establishment of an Advisory Committee on Head Start Quality and Expansion

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of the establishment of an Advisory Committee on Head Start Quality and Expansion.

SUMMARY: Pursuant to Public Law 92–463, the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) announces the establishment by the Secretary of the Advisory Committee on Head Start Quality and Expansion.

The purpose of the Advisory Committee on Head Start Quality and Expansion is to conduct an in-depth study of the Head Start program with particular attention to issues identified by the Inspector General and to develop recommendations for the Secretary on ways to improve and strengthen the program in a time of expansion.

The Committee shall terminate on June 10, 1994 unless renewed prior to that date.

FOR FURTHER INFORMATION CONTACT: David Siegel, 7th floor, Aerospace Building, 370 L'Enfant Promenade, SW., Washington DC 20047 (202) 401–9215.

Dated: June 11, 1993.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

[FR Doc. 93–14221 Filed 6–15–93; 8:45 am]

BILLING CODE 4184–01–M

Advisory Committee Meeting on Head Start Quality and Expansion

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to Public Law 92–463, the Federal Advisory Committee Act, that the Advisory Committee on Head Start Quality and Expansion will hold a meeting on Thursday, July 1, 1993, from 9 a.m. to 5 p.m. and on Friday, July 2, 1993 from 9 a.m. to noon. The meeting will be held at L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20201.

The meeting of the Committee shall be open to the public. The proposed agenda includes presentation of background information and the development of a plan for the operation of the Committee.

Records shall be kept of all Committee proceedings and shall be available for public inspection at 370 L'Enfant Promenade, Aerospace Building, Suite 600, Washington, DC 20201.

If a sign language interpreter is needed, contact David Siegel at the address and telephone number below.

FOR FURTHER INFORMATION CONTACT: David Siegel, 7th floor, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20047 (202) 401–9215.

Dated: June 11, 1993.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

[FR Doc. 93–14220 Filed 6–15–93; 8:45 am]

BILLING CODE 4184–01–M

National Institutes of Health

Office of the Director; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Advisory Committee to the Director, NIH, June 22, 1993, Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland, which was published in the **Federal Register** on May 17, 1993 (58 FR 28886).

The meeting was canceled due to complications of other commitments and will be rescheduled at a later date.

Dated: June 9, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–14097 Filed 6–15–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the President's Cancer Panel Special Commission on Breast Cancer

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, June 25, 1993, at the Hollywood Roosevelt Hotel, 7000 Hollywood Boulevard, Hollywood, California 90028.

The entire meeting will be open to the public from 8:30 a.m.–5 p.m. The topic will include: Information Dissemination and the Role of the Media.

Ms. Carole Frank, Committee Management Office, National Cancer Institute, Executive Plaza North, Room 630E, 9000 Rockville Pike, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and a roster of the committee members upon request.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Ms. Nora Winfrey, (301/496–1148), in advance of the meeting.

Ms. Iris Schneider, Executive Secretary, President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, Building 31A, room 11A48, 9000 Rockville Pike, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5534) will furnish substantive program information.

This notice is being published less than 15 days prior to the meeting due to conflict of schedules of committee members.

Dated: June 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–14280 Filed 6–15–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Meetings

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior announces a public meeting of the Exxon Valdez Oil Spill Public Advisory Group to be held on July 15 and 16, 1993, at 9:30 a.m., in the first floor conference room, 645 G Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Affairs, 1689 C Street, Suite 119, Anchorage, Alaska (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. This meeting will include: (1) A discussion and recommendations for the draft Restoration Plan; (2) a discussion and recommendations for the 1994 Work Plan; and (3) a discussion of proposed endowment concepts.

Dated: June 10, 1993.
Jonathan P. Deason,
Director, Office of Environmental Affairs.
[FR Doc. 93–14098 Filed 6–15–93; 8:45 am]
BILLING CODE 4310–RG–M

Bureau of Land Management

[MT–930–6410–10–E020; MTM 82152]

Receipt of Conveyance of Mineral Interest Application

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice.

SUMMARY: The private lands described in this notice, aggregating approximately 20.105 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface minerals ownership where there are no known mineral values or in those instances where the United States mineral reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Dick Thompson, Land Law Examiner, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2829.

Principal Meridian, Montana

T. 6S., R. 3E.,
Sec. 34, that portion of the SE¼ described as follows: Beginning at a point which is on the east line of said Section 34 which bears N 00°34'15" E a distance of 1,089.67 feet from the SE corner of said Section 34, thence N 89°34'20" W a distance of 1,362.41 feet, thence N 41°15'48" W a distance of 290.47 feet, thence along a curve to the right with a radius of 120.00 feet a distance of 186.67 feet, thence N 49°00'36" E a distance of 32.23 feet, thence along a curve to the left with a radius of 110.42 feet a distance of 122.84 feet, thence N 14°43'43" W a distance of 185.40 feet, thence along a curve to the left with a radius of 180.00 feet a distance of 150.25 feet, thence N 62°33'21" W a distance of 116.89 feet, thence along a curve to the right with a radius of 45.81 feet a distance of 139.02 feet, thence S 68°41'41" E a distance of 274.32 feet, thence along a curve to the right with a radius of 237.06 feet a distance of 129.81 feet, thence S 37°19'45" E a distance of 257.98 feet, thence along a curve to the left with a radius of 219.97 feet a distance of 247.86 feet, thence N 77°41'39" E a distance of 395.24 feet, thence along a curve to the right with a radius of 143.95 feet a distance of 124.10 feet, thence S 60°13'11" E a distance of 145.22 feet, thence along a curve to the left with a radius of 220.08 feet a distance of 225.64 feet, thence N 66°01'56" E a distance of 125.24 feet to a point on the east line of said Section 34, thence along said line S 00°34'15" W a distance of 514.76 feet to the point of beginning. The area described contains 20.105 acres in Gallatin County.

Mineral Reservation—All minerals and geothermal steam and associated geothermal resources.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate upon issuance of a patent or deed of such mineral interest, final rejection of the application, or 2 years from the date of filing of the application, April 29, 1993, which ever occurs first.

Dated: June 7, 1993.
John A. Kwiatkowski,
Deputy State Director, Division of Lands and Renewable Resources.
[FR Doc. 93–14181 Filed 6–15–93; 8:45 am]
BILLING CODE 4310–DN–M

[AZ–010–93–5440–10–A103, AZA 24631]

Airport Patent Application, Mohave County, AZ; Collection

AGENCY: Bureau of Land Management, Interior.
ACTION: Correction, notice of airport patent application AZA 24631.

SUMMARY: Pursuant to section 516 of the Airport and Airway Improvement Act of September 3, 1982 (49 U.S.C. 2215), notice was published May 18, 1993 (58 FR 28990), for a 45-day comment period before 111.89 acres was conveyed to the Town of Colorado City for an airport. The mineral estate will also be reserved to the United States. This correction will not extend the comment period, which expires July 3, 1993.

FOR FURTHER INFORMATION CONTACT: Laurie Ford, Vermillion Resource Area Realty Specialist, at (801) 673–3545.

Dated: June 3, 1993.
Raymond D. Mapston,
Acting Arizona Strip District Manager.
[FR Doc. 93–14177 Filed 6–15–93; 8:45 am]
BILLING CODE 4310–33–M

[UT–020–03–4210–05; U–48889]

Realty Action; Recreation and Public Purpose Land Classification, Rich County, UT

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice.

SUMMARY: The following public lands in Rich County, Utah, have been found suitable for classification for conveyance to Rich County under the provision of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Rich County holds a lease for, has been, and proposes to continue using the lands for a solid waste sanitary landfill.

Salt Lake Meridian, Utah

T. 12 N., R. 7 E.,
Sec. 15, S½SW¼NW¼SW¼, W½SW¼SW¼;
Sec. 16, S½S½N½SE¼, S½SE¼.
Containing 125.00 acres more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and disposal would be in the public interest.

DATES: Interested parties may submit comments on the recreation and public purpose conveyance or classification of the lands on or before August 2, 1993.

ADDRESSES: Comments should be sent to the District Manager, Salt Lake District BLM, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Michael L. Barnes, BLM Salt Lake District Office, (801) 977–4300.

SUPPLEMENTARY INFORMATION: When issued, the patient will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreations and Public Purpose Act and to all applicable regulations of the Secretary of Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 43 U.S.C. 945.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
4. Any other reservation that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

5. Provisions of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended, 43 U.S.C. 6901–6987 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. 9601 and all applicable regulations.

The lands described above are hereby segregated from entry and mining under the public land laws and the United States mining laws, except for lease or purchase under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

Publication of this notice constitutes notice to the grazing permittees of the Sage Creek Allotment that the 125 acres offered in the conveyance will be excluded from the allotment upon issuance of the patent.

Comments relative to the classification of the lands are restricted to whether the land is physically suitable for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The classification will become effective 60 days from the date of publication of this notice.

Deane H. Zeller,

District Manager.

[FR Doc. 93–14170 Filed 6–15–93; 8:45 am]

BILLING CODE 4310–DQ–M

[UT–040–03–4920–10]

Proposed Plan Amendment; Cedar/Beaver/Garfield/Antimony Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: This notice is to advise the public that the proposed planning amendment and associated environmental assessment for the Cedar/Beaver/Garfield/Antimony Resource Management Plan have been completed. The proposed plan amendment provides for the disposal of a tract of public land through exchange in Iron County, Utah, comprising approximately 422.67 acres described as follows:

Salt Lake Meridian

T. 33 S., R. 8 W., sec. 1 lot 4, SW¼NW¼, NW¼SW¼, W½SW¼SW¼;
Sec. 3 lots 1, 5, and 11, SE¼NE¼;
Sec. 11 E½NE¼, SW¼NE¼, NW¼SE¼.

DATES: The protest period for this proposed plan amendment will commence with the date of publication of this notice. Protests must be submitted on or before July 16, 1993.

ADDRESSES: Protests should be addressed to the Director, Bureau of Land Management (760), MS 406 LS, 1849 C Street, NW., Washington, DC 20240, within 30 days after the date of publication of this Notice for the proposed planning amendment.

FOR FURTHER INFORMATION CONTACT: Arthur L. Tait, Beaver River Resource Area Office, 365 South Main, Cedar City, UT 84720, telephone (801) 586–2458.

SUPPLEMENTARY INFORMATION: This plan amendment is necessary since the existing plan does not identify this land for disposal. This exchange is between the United States Government and Robin K. Bradshaw, et al. The exchange would benefit the public by improving public land ownership patterns, by acquiring private land with valuable big game habitat, and by providing legal access to public lands. The environmental assessment identifies no significant impacts. The public interest would be served by providing for this land exchange.

This action is announced pursuant to section 206 of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610. The proposed planning amendment is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with the provision of 43 CFR 1610.5–2. Protests must contain the following minimal information:

- The name, mailing address, telephone number, and interest of the person filing the protest.
- A statement of the issue or issues being protested.
- A statement of the part or parts being protested and a citing of pages, paragraphs, maps, etc., of the proposed plan amendment, where practical.
- A copy of all documents addressing the issue(s) submitted by the protester during the planning process or a reference to the date when the protester discussed the issue(s) for the record.
- A concise statement as to why the protester believes the BLM State Director's decision is incorrect.

James M. Parker,

State Director.

[FR Doc. 93–14169 Filed 6–15–93; 8:45 am]

BILLING CODE 4310–DQ–M

[AZ–054–5440–10; 8390]

Arizona; Yuma District; Concession Review Program

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of release of program manual.

SUMMARY: Notice is hereby given of the completion and dispersal of the Yuma (Arizona) District's Concession Review Program Manual. These guidelines organize both the operational performance and contractual compliance aspects of the program into one usable text. Standards have been identified to assist concession operations in meeting the basic health, safety, and recreational needs of the user public. At present, these standards will be applied in the management of 16 concessions operated along the Colorado River as Bureau of Land Management cooperative units.

EFFECTIVE DATE: The Yuma District's Concession Review Program Manual was signed effective April 11, 1993.

SUPPLEMENTARY INFORMATION: Authority for this manual lies in the following: Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*); Reclamation Project Act (43 U.S.C. 375a, 387–389, 485–485k) (1982); National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*); Departmental Manual (Interior), Parts 613 (613 DM 1); Departmental Manual (Interior), Part 8360.2 (8360.2 DM 1); Executive Order 11988, Flood Plain Management; Bureau of Land Management Manual Section 8390 (BLM Manual 8390); title 43, Code of Federal Regulations, subpart 2920 (43 CFR 2920); Bureau of Land Management Manual Section 2920 (BLM Manual 2920); and Uniform Federal Accessibility Standards and Equal Employment Opportunity laws.

FOR FURTHER INFORMATION CONTACT: Concessions Management, Havasu Resource Area, 3189 Sweetwater Drive, Lake Havasu City, AZ 86403, telephone (602) 855–8017.

Dated: May 25, 1993.

Michael A. Taylor,

Acting District Manager.

[FR Doc. 93–14176 Filed 6–15–93; 8:45 am]

BILLING CODE 4310–32–M

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Monitoring Committee Meeting

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Monitoring Committee (Committee), a committee of the Aquatic Nuisance Species Task Force. A number of subjects will be discussed during the Committee meeting including: current nonindigenous species detection and monitoring activities, monitoring needs, standard reporting format for information transfer, and scope and function of a nonindigenous species information system.

DATES: The Monitoring Committee will meet from 8:30 a.m. to 3 p.m. on Thursday, July 1, 1993.

ADDRESSES: The Monitoring Committee meeting will be held at the U.S. Fish and Wildlife Service Building, room 200 A, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dr. James Weaver, National Fisheries Research Center, 7920 N.W. 71st Street, Gainesville, Florida 32606 at (904) 378–5181.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Monitoring Committee established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Monitoring Committee Chairman, National Fisheries Research Center, 7920 NW. 71st Street, Gainesville, Florida 32606 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: June 10, 1993.

Noreen K. Clough,

Acting Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 93–14096 Filed 6–15–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Civil War Sites Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting of the Civil War Sites Advisory Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that a meeting of the Civil War Sites Advisory Commission will be held on Saturday, July 10, 1993, at the Hilton Hotel, 301 North Water Street, Wilmington, North Carolina. The meeting will begin at 9 a.m. and conclude before 3:30 p.m.

This meeting constitutes the sixteenth meeting of the Commission. The primary focus of the meeting will be on discussion of the Commission's final report to Congress and the Secretary of Interior. The Commission will welcome input from the public on the subject of Civil War site evaluation and preservation, especially as it relates to Civil War sites in North Carolina and surrounding states.

Space and facilities to accommodate members of the public may be limited and persons will be accommodated on a first-come, first-served basis. Anyone may file a written statement with the Commission concerning matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements, may contact Ms. Jan Townsend, Interagency Resources Division, P.O. Box 37127, Washington, DC 20013–7127 (telephone 202–343–3936). Draft summary minutes of the meeting will be available for public inspection about 8 weeks after the meeting, in Suite 250, 800 N. Capitol St., NW., Washington, DC 20002.

Dated: June 8, 1993.

de Teel P. Tiller,

Acting Executive Director and Chief, Interagency Resources Division.

[FR Doc. 93–14100 Filed 6–15–93; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–337]

Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus; Commission Decision To Extend Administrative Deadline for Completion of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has decided to extend the administrative deadline for completion of the above-captioned investigation from June 9, 1993, to June 21, 1993.

ADDRESSES: Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Matthew T. Bailey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3108. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted by publication of a notice of investigation on April 8, 1992. Subsequently, the investigation was declared "more complicated" and an administrative deadline of June 9, 1993, established for completion of the investigation. The presiding administrative law judge issued his final initial determination (ID) on March 9, 1993. On April 29, 1993, the Commission determined to review certain limited portions of the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.54–210.59 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.54–210.59 (1990)).

Issued: June 10, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–14202 Filed 6–15–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–646–649 (Preliminary)]

Certain Steel Wire Rod From Brazil, Canada, Japan, and Trinidad and Tobago

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil, Canada, and Japan of certain steel wire rod,[2] provided for in subheadings 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00, 7213.50.00, and 7227.90.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Further, the Commission determines,[3] pursuant to section 733(a) of the Tariff Act of 1930, that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Trinidad and Tobago of certain steel wire rod that are alleged to be sold in the United States at LTFV.

Background

On April 23, 1993, a petition was filed with the Commission and the Department of Commerce by Connecticut Steel Corp., Wallingford, CT; North Star Steel Texas, Inc., Beaumont, TX (except for the investigation concerning Japan); Keystone Steel & Wire Corp., Peoria, IL; Co-Steel Raritan, Perth Amboy, NJ (except for the investigation concerning Brazil); and Georgetown Steel Corp., Georgetown, SC (except for the investigation concerning Japan), alleging that an industry in the United States is materially injured by reason of LTFV imports of certain steel wire rod from Brazil, Canada, Japan, and Trinidad and Tobago. Accordingly, effective April 23, 1993, the Commission instituted antidumping investigations Nos. 731–TA–646–649 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 30, 1993 (58 FR 26156). The conference was held in Washington, DC, on May 14, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on June 7, 1993. The views of the Commission are contained in USITC Publication 2647 (June 1993), entitled "Certain Steel Wire Rod from Brazil, Canada, Japan, and Trinidad and Tobago: Determinations of the Commission in Investigations Nos. 731–TA–646–649 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: June 8, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–14208 Filed 6–15–93; 8:45 am]

BILLING CODE 7020–02–P

[2] For purposes of these investigations, certain steel wire rod is defined as hot-rolled carbon steel and alloy steel wire rod, in coils, of approximately round cross section, between 0.20 inch and 0.75 inch in solid cross-sectional diameter. Excluded from the scope of these investigations are free-machining steel containing 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium. Excluded as well are stainless steel rods, tool steel rods, free-cutting steel rods, resulfurized steel rods, ball bearing steel rods, high-nickel steel rods, and concrete reinforcing bars and rods.

[3] Chairman Newquist dissenting.

[Investigation No. 337–TA–348]

Certain In-Line Roller Skates With Ventilated Boots and In-Line Roller Skates With Axle Aperture Plugs and Component Parts Thereof

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the Matter of certain in-line roller skates with ventilated boots and in-line roller skates with axle aperture plugs and component parts thereof; notice of commission determinations not to review initial determinations granting joint motion to terminate the investigation as to two respondents on the basis of licensing agreements and to add seven respondents.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determinations (IDs) in the above-captioned investigation. The first ID grants a joint motion to terminate the investigation with respect to two respondents on the basis of a patent licensing agreement. The second ID grants a motion to amend the notice of investigation to add seven new respondents.

ADDRESSES: Copies of the IDs and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Anjali Singh, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3117. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On February 18, 1993, Rollerblade, Inc. filed a complaint with the Commission alleging unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The unfair acts alleged in the complaint are the unauthorized importation into the United States, the sale for importation, and the sale within the United States after importation of certain in-line roller skates with ventilated boots, and in-line roller skates with axle aperture plugs and component parts thereof, that allegedly infringe claim 1, 2, 3, 4, 5, 6, 7 or 8 of U.S. Letters Patent 5,171,033, and/or claim 5 of U.S. Letters Patent 5,048,848. On March 18, 1993, the Commission voted to institute an investigation of the complaint and published notice of its investigation in the **Federal Register** (58 FR 16204 (March 25, 1993)).

On April 29, 1993, complainant Rollerblade, Inc. and respondents Canstar Sport U.S.A. and Canstar Sports Group, Inc. (hereinafter collectively referred to as "Canstar") jointly moved for the termination of the investigation with respect to Canstar on the basis of a patent cross-license agreement (Motion Docket No. 348–5). The Commission investigative attorneys support the motion. On May 10, 1993, the presiding administrative law judge (ALJ) issued an ID (Order No. 3) terminating the investigation with respect to Canstar.

On April 29, 1993, complainant Rollerblade, Inc. filed a motion to amend the notice of investigation to add seven new respondents (Motion No. 348–4). The Commission investigative attorneys support the motion. Respondents Roller Derby Skate Corporation and Variflex, Inc. opposed the motion. On May 11, 1993, the ALJ issued an ID granting the motion to amend the notice of investigation to include the proposed seven respondents. The seven new respondents are: Hwin Kwo Industry Co., Ltd.; Far Great Plastics Industrial Co., Ltd; European Sports Enterprise Co., Ltd; Minson; Leo Shoe Co.; Roller King Enterprise Co., Ltd.; and Jan Lee,

Ltd. All seven new respondents are located in Taiwan.

No petitions for review, or agency or public comments were received as to either ID.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53(h) (19 CFR 210.53(h)).

Issued: June 7, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–14201 Filed 6–15–93; 8:45 am]

BILLING CODE 7035–02–P

[Investigation No. 731–TA–627 (Final)]

Pads for Woodwind Instrument Keys From Italy

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–627 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy of pads for woodwind instrument keys, provided for in subheadings 9209.99.4040 and 9209.99.4080 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: May 25, 1993.

FOR FURTHER INFORMATION CONTACT: Janine Wedel (202–205–3178), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of pads for woodwind instrument keys from Italy are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on October 21, 1992, by Prestini Musical Instruments Corp., Nogales, AZ.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on July 30, 1993, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on August 12, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 4, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on August 9, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is August 6, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is August 20, 1993; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before August 20, 1993. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: June 7, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–14203 Filed 6–15–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–352]

Certain Personal Computers With Memory Management Information Stored in External Memory and Related Materials; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 7, 1993, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Intel Corporation, 2200 Mission College Boulevard, Santa Clara, California 95052–8119. The complaint alleges violations of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain personal computers with memory management information stored in external memory and related materials by reason of alleged direct and induced infringement of claims 2 and 6 of U.S. Letters Patent 4,972,338, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Mary Jane Boswell, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2582.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on June 8, 1993, *Ordered, That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain personal computers with memory management information stored in external memory and related materials by reason of alleged infringement of claims 2 or 6 of U.S. Letters Patent 4,972,338, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Intel Corporation, 2200 Mission College Boulevard, Santa Clara, California 95052–8119.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Twinhead International Corp., Global Industrial Center, 2nd Floor, #2 Lane 235, Bao Chiao Road, Hsin Tien, Taiwan.
Twinhead Corporation, 1537 Centre Pointe Drive, Milpitas, California 95035

(c) Mary Jane Boswell, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401I, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to such respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: June 9, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–14204 Filed 6–15–93; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under the Clean Water Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on May 28, 1993 a proposed consent decree in *United States* v. *Modine Manufacturing Co.*, No. 91–C–3615, was lodged with the United State District Court for the Northern District of Illinois. This action was brought, pursuant to Section 309 of the Clean Water Act ("the Act"), 33 U.S.C. 1319, to obtain injunctive relief and civil penalties to enforce terms and conditions of a National Pollutant Discharge Elimination System ("NPDES") permit that was issued to defendant pursuant to Section 402 of the Act, 33 U.S.C. 1342.

The proposed consent decree requires Modine Manufacturing Company ("Modine") to achieve final compliance with the Act and terms and conditions of its NPDES permit within 31 months after entry of the consent decree. Under the proposed decree, Modine will:

(1) Phase-out its current production process over a 15 month period and complete installation of a new process that generates fewer pollutants;

(2) Dredge and dispose of sludge from ponds used in Modine's current wastewater treatment system;

(3) Comply with interim effluent limits pending completion of dredging;

(4) Separate cooling water from process wastewater streams;

(5) Install a new treatment system for sanitary and remaining process wastes; and

(6) Install a system to chill cooling water from the new production process as necessary to meet federal or state requirements. In addition, Modine will pay a civil penalty of $750,000.

The Department of Justice will receive comments relating to the proposed consent degree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Modine Manufacturing Co.*, DJ Ref. #90–5–1–1–3623.

The proposed consent decree may be examined at the office of the United State Attorney, 219 South Dearborn Street, Chicago, Illinois 60604 and at the Region V Office of the Environmental Protection Agency, 111 West Jackson Blvd., 3rd floor, Chicago, Illinois 60604. Copies of the proposed consent decree may also be examined at the Consent Decree Library, 1120 G. Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $7.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–14172 Filed 6–15–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—IBACoS, Inc.

Notice is hereby given that, on April 20, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), IBACoS, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Honeywell, Inc., Golden Valley, MN, was admitted as a member of IBACoS.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and IBACoS intends to file additional written notification disclosing all changes in membership.

On April 6, 1992, IBACoS's filed its original notification pursuant to section 6(a) of the Act under the name ABACoS Development, Inc. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 6, 1992 (57 FR 19442).

The last notification was filed with the Department on December 29, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 1993 (58 FR 12371).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–14174 Filed 6–15–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Portland Cement Association

Notice is hereby given that, on May 7, 1993, and May 27, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the Capitol Cement Corporation (Winchester, VA) and the Allentown Cement Company (Blandon, PA) have joined the PCA, and Cadence Chemical Resources, Inc. has changed its name to Cadence Environmental Energy, Inc. (Michigan City, IN).

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015.

The last notification was filed with the Department on February 22, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 12, 1993, 58 FR 19141.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–14175 Filed 6–15–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Thermoplastic Engineering Design Venture

Notice is hereby given that, on May 11, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Thermoplastic Engineering Design Venture has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are General Motors Corporation, Detroit, MI; and General Electric Company, Schenectady, NY. The parties intend to identify opportunities for joining aspects of their independent research and development efforts pertaining to thermoplastics in industrial applications. The objectives are to avoid inefficient duplication of effort and expense and improve general scientific knowledge in this area by developing unproved design technology and know-how for engineering use. To meet these objectives, the parties will collect, exchange and analyze research information regarding industrial applications of thermoplastics; conduct tests and develop basic engineering techniques for use in proof of theories and concepts in the relevant topics; attempt to interact with appropriate organizations, especially the National Institute of Standards and Technology's Advanced Technology Program; and perform further acts allowed by the Act that would advance the venture's objectives in this area. Membership in the venture remains open, and the parties intend to file additional written notification disclosing all changes in membership to the venture.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–14173 Filed 6–15–93; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on 202/606–8282.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. Date: June 28, 1993.

Time: 9 a.m. to 5 p.m.

Room: 430

Program: This meeting will review applications submitted for the Public Challenge Grants program category, submitted to the Division of Public Programs, for projects beginning after December 1, 1992.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 93–14180 Filed 6–15–93; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–1162]

Western Nuclear Inc.; Finding of No Significant Impact Regarding Reclamation In-Place of the Tailings From the Western Nuclear Inc., Split Rock Mill, Fremont County, WY

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a finding of no significant impact.

1. Proposed Action

The administrative action is issuance of a license amendment to the Western Nuclear, Inc. license to implement the approved reclamation plan for the Split Rock Mill in Fremont County, Wyoming.

2. Reasons for Finding of No Significant Impact

An environmental assessment was prepared by the staff of the U.S. Nuclear Regulatory Commission's Uranium Recovery Field Office. The environmental assessment evaluated alternatives for reclamation of the tailings at the Split Rock Mill. The assessment included an evaluation of the licensee's environmental report dated February 1980 and supplement dated March 17, 1993.

Western Nuclear, Inc.'s preferred alternative for tailings reclamation is disposal in-place in accordance with the technical criteria of Appendix A to 10 CFR part 40. A Technical Evaluation Report which recommended conditional approval of the proposed plan for reclamation of the tailings in-place was prepared by the NRC on June 12, 1992. A Notice of Intent to amend the license to incorporate the conditional approval of the plan was published in the **Federal Register** on June 12, 1992, under a 30-day comment period. No comments were received during the comment period.

The NRC determined that an environmental assessment must be performed prior to issuance of a license amendment authorizing reclamation of the tailings. As a result of the assessment, the staff concurred with the licensee's conclusion that reclamation in-place is the preferred alternative. Based on the findings of this assessment, and the lack of any comments during the 30-day comment period, the staff proposes to amend the license upon publication of this final FONSI to incorporate the reclamation plan proposed in Western Nuclear, Inc.'s submittals dated June 30, 1987, and April 12, 1992.

The Environmental Assessment providing the basis for the finding of no significant impact was completed on June 4, 1993. This document is available for public inspection and copying at the Commission's Uranium Recovery Field Office, 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room, 2120 L Street NW., Washington, DC.

Dated at Denver, Colorado, this 7th day of June 1993.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office, Region IV.

[FR Doc. 93–14148 Filed 6–15–93; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Review Group

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of the comment period on the Regulatory Review Group report.

SUMMARY: On May 28, 1993, the Regulatory Review Group Report was placed in the NRC Public Document Room for a 30 day comment period. Due to the importance of the comments and the detail contained in the report, the comment period is being extended to 60 days. The comment period will now end July 29, 1993.

A public meeting is planned for June 15, 1993 to answer questions and receive comments on the report. The meeting will take place in room 1F–7/9 at 2 p.m., at the NRC headquarters building located at 11555 Rockville Pike, Rockville, MD. Copies of the referenced material are available for inspection and/or copying for a fee in the NRC Public Document Room, 2102 L Street, NW. (Lower Level), Washington, DC. Additionally, copies may be ordered by telephone, with a reproduction fee, by calling the NRC Public Document Room at (202) 634–3273.

Dated at Rockville, Maryland, this 9th day of June, 1993.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Regulatory Review Group.

[FR Doc. 93–14149 Filed 6–15–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Turkey Point Nuclear Generating Units 3 and 4; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action on a Petition of October 15, 1992, and an addendum to the October 15 Petition dated October 21, 1992 (Petition) for action under 10 CFR 2.206, filed by Mr. Regino R. Diaz-Robainas (Petitioner) concerning the Turkey Point Nuclear Generating Units of the Florida Power and Light Company (FPL or Licensee).

The Petition alleged a number of deficiencies with the Turkey Point units during and after Hurricane Andrew. The Petitioner requested that the Turkey Point units, which were shut down, not be permitted to restart until the Petitioner's concerns were addressed. The Notice of Receipt of Petition Under 10 CFR 2.206 was published in the **Federal Register** on December 9, 1992 (57 FR 58263).

The Director of the Office of Nuclear Reactor Regulation has determined that the Petition should be denied for the reasons explained in the "Director's Decision under 10 CFR 2.206" (DD-93-13), which is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the Turkey Point plant located at Florida International University, University Park, Miami, Florida 33199.

A copy of this Director's Decision will be filed with the Secretary for the Commission to review in accordance with 10 CFR 2.206(c). As provided in this regulation, this decision will constitute the final action of the Commission 25 days after the date of issuance of this decision, unless the Commission on its own motion institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 7th day of June, 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93-14150 Filed 6-15-93; 8:45 am]

BILLING CODE 7590-01-M

Docket No. 50-298

Nebraska Public Power District, Cooper Nuclear Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of a schedular exemption from the requirements of Appendix J to 10 CFR part 50 to the Nebraska Public Power District (the licensee) for the Cooper Nuclear Station (CNS), located in Nemaha County, Nebraska.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant a one-time, temporary exemption from the requirements of Section III.C.1 of Appendix J to 10 CFR part 50, to allow Type C testing (local leak-rate testing) of 10 containment isolation valves in the reverse direction.

The licensee's request for exemption and the bases for the exemption are contained in a letter dated June 7, 1993.

The Need for the Proposed Action

The purpose of Type C testing is to measure the leakage through the primary reactor containment and thereby provide assurance that the maximum allowable leakage rates are not exceeded. Prior to the current refueling outage, the licensee had made the determination that reverse direction testing of containment isolation valves produced equivalent or more conservative results than testing in the accident direction. However, leakage testing during the current outage included tests on some valves in both the accident and the reverse direction. The results of these tests cast doubt on the determination that reverse testing is acceptable under Appendix C for certain valves. During the current refueling outage, the licensee tested all such valves in the accident direction, where possible. However, the current plant configuration does not permit 10 of these valves to be tested in the accident direction. As a result, the licensee has committed to reanalyze the basis for testing in the reverse direction and, if necessary, modify the plant to permit testing of the 10 valves in the accident direction. However, due to the time required to design, procure, and install the plant modifications necessary to allow testing of the valves in the accident direction, the licensee has requested that the 10 valves be exempted from testing in the accident direction until the next refueling outage, currently scheduled to begin in the fall of 1994.

Without the proposed exemption, the licensee would be forced, at a significant cost, but without any significant increase in public health and safety, to delay the restart date of the current outage, which is currently scheduled for June 21, 1993.

Environmental Impacts of the Proposed Action

The proposed exemption would allow a one-time exemption from Appendix J to 10 CFR part 50 to allow Type C testing of 10 isolation valves in the reverse direction. The licensee has committed to install the hardware necessary to test these valves in the accident direction during the next scheduled refueling outage unless it can otherwise show that testing in the reverse direction is adequate. Since Appendix J requires Type C testing at every refueling outage, the requested exemption will state that the valves for which reverse testing cannot be justified must be tested in the accident direction at the next refueling outage, currently scheduled to begin in the fall of 1994.

The proposed exemption will not negatively impact containment integrity and will not significantly change the release from facility accidents. Therefore, post-accident radiological releases will not be significantly greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents or result in any significant occupational exposure. Likewise, the proposed exemption would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Cooper Nuclear Station, dated February 1973.

Agencies and Persons Consulted

The staff consulted with the State of Nebraska regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated June 7, 1993, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room at the Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Dated at Rockville, Maryland, this 10th day of June 1993.

Terence Chan,

Acting Director, Project Directorate IV–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–14151 Filed 6–15–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance of a Revised Information Collection: Forms RI 34–1 and RI 34–3

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of a revised information collection. Form RI 34–1, Financial Resources Questionnaire, collects detailed financial information for use by OPM in determining whether to agree to a waiver, compromise, or adjustment of the collection of erroneous payments from the Civil Service Retirement and Disability Fund. RI 34–3, Notice of Debt Due Because of Annuity Overpayment, informs the annuitant that a debt is due, describes the debt, and collects information from the annuitant about the payment of the debt.

Approximately 1,561 RI 34–1 forms will be completed per year. The form requires approximately 1 hour to complete. The annual burden is 1,561 hours. Approximately 520 RI 34–3 forms will be completed per year. The form requires approximately 1 hour to complete. The annual burden is 520 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch (202) 606–0616.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–14128 Filed 6–15–93; 8:45 am]

BILLING CODE 6325–01–M

Federal Salary Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the twenty-second meeting of the Federal Salary Council will be held at the time and place shown below. The agenda for the meeting will be the discussion of issues relating to the new locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting will be open.

DATES: July 13, 1993 beginning at 10 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street, NW., room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office Of Personnel Management, 1900 E Street NW., room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–14129 Filed 6–15–93; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Boston Stock Exchange, Inc.

June 10, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Corporacion Bancaria de Expana S.A.
American Depositary Shares, No Par Value (File No. 7–10809)
Health Professionals, Inc.
Common Stock, $.02 Par Value (File No. 7–10810)
Resorts International, Inc.
Common Stock, $.01 Par Value (File No. 7–10811)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 1, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–14160 Filed 6–15–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

June 10, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Corporacion Bancaria de Espana, S.A.
American Depositary Shares (rep. ½ Sh. of Comm. Stk., Nominal Value 500 Spanish pesetas) (File No. 7–10801)
Mudeco S.A.
American Depositary Shares (rep. 10 Shs. of Common Stock, No Par Value) (File No. 7–10802)
Mark Centers Trust
Common Shares, $.001 Par Value (File No. 7–10803)
Nuveen North Carolina Premium Income Municipal Fund
Shares of Beneficial Interest, $.01 Par Value (File No. 7–10804)
Nuveen Connecticut Premium Income Municipal Fund
Shares of Beneficial Interest, $.01 Par Value (File No. 7–10805)
Nuveen Premium Income Municipal Fund V
Shares of Beneficial Interest, $.01 Par Value (File No. 7–10806)
Senior High Income Portfolio, Inc.
Common Stock, $.10 Par Value (File No. 7–10807)
Zeneca Group Plc
American Depositary Shares (rep. 3 Ord. Shrs., 25 pence each) (File No. 7–10808)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 1, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–14158 Filed 6–15–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32440; File No. SR–MBS–93–04]

Self-Regulatory Organizations; MBS Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Effective Date of an Aged Fail Date and Fees for Trade-for-Trade Trade Creates

June 10, 1993.

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 25, 1993, the MBS Clearing Corporation ("MBS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MBS–93–04) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends Chapter VI–7 of the Risk Management section of MBS's Source Book in order to change the effective date of an "Aged Fail Date" under MBS's Procedures. The proposed rule change went into effect on June 1, 1993. In addition, the proposed rule change amends MBS's Schedule of Charges applicable to Dealer Account Group participants by increasing the charge for Trade-for-Trade Trade Creates from $4.00/side to $5.00/side.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to change the effective date of an "Aged Fail Date" under MBS's Procedures. The Aged Fail Date is the date when a trade moves from a Fail to an Aged Fail status under MBS's Procedures. Under MBS's Procedures, a trade with a settlement date equal to or after the Aged Fail Date is categorized as an Aged Fail for profit/loss offsetting purposes, and all trading profits are disregarded.

Under the proposed rule change, the Aged Fail Date is changed to the last business day of the month of a trade's scheduled settlement date, rather than the Monday before the first Public Securities Association ("PSA") class settlement date for the settlement month immediately following the trade's settlement month. The practical effect of the rule change is to make clear that the Aged Fail Date is always the last day of the month of the trade's scheduled settlement date, rather than the following Monday before the first PSA class settlement date for the next month. Even though that latter date is generally no more than three days after the last business day of the month of a trade's scheduled settlement date, MBS believes the new procedure will further encourage participants to report settled trade information with the current month of a trade.

The proposed rule change also increases from $4.00/side to $5.00/side the fee for Trade-for-Trade Trade Creates charged to Dealer Account Group participants. MBS stated the change is necessary to further align MBS's revenue with the costs of providing services.

MBS believes that the change to the effective date of an Aged Fail Date is consistent with the requirements of sections 17A(b)(3)(A) and (F) of the Act,[2] and the rule and regulations thereunder, in that it will facilitate the prompt and accurate clearance and settlement of securities transactions. In addition, MBS believes that the amendment to MBS's Schedule of Charges is consistent with the requirements of section 17A(b)(3)(D) of the Act,[3] and the rules and regulations thereunder, in that it provides for the equitable allocation of reasonable dues,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78q-1(b)(3)(A) and (F) (1988).

[3] 15 U.S.C. 78q-1(b)(3)(D) (1988).

fees, and other charges among its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBS does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

MBS solicited comments with respect to the proposed rule change, however, no written comments were received. MBS stated that the verbal comments received from participants were all favorable.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder, because the proposed rule change (1) constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization; and (2) establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appeals to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBS. All submissions should refer to the File No. SR–MBS–93–04 and should be submitted by July 7, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14167 Filed 6–15–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32439; File No. SR–MBS–93–03]

Self-Regulatory Organizations; MBS Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Establishment of the Trade Assignment Account

June 10, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 24, 1993, the MBS Clearing Corporation ("MBS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MBS–93–03) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends MBS's Schedule of Charges applicable to Dealer Account Group participants. The amendment establishes a new category of account, referred to as a "Trade Assignment Account" and an accompanying monthly fee to be charged for each such secondary trade account.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish a new designation for a secondary account, referred to as a "Trade Assignment Account" pursuant to Chapter III, the Account Structure section of MBS's Source Book, and an accompanying monthly fee to be charged for each such secondary trade account. Currently, non-participant mortgage banks and a participant Dealer may execute a trade. Subsequent to the trade and before the trade is entered into MBS's system for comparison and clearing, the non-participant mortgage banker may assign the trade to another participant Dealer.

Both participant Dealers then use the facilities of MBS to compare the trade. To better internally track trades that are entered into MBS facilities as a result of such assignments, participant Dealers who have been assigned the trade requested that MBS designate a secondary account as a Trade Assignment Account. MBS has agreed to accommodate this request and will impose a monthly fee of $50 for each such secondary trade account.

MBS does not limit the number of secondary accounts that a participant may open. The designation of a secondary account as a Trade Assignment Account imposes no changes in MBS's operating system or rules and the Trade Assignment Account is treated systematically as any other secondary account.

MBS believes that the proposed rule change is consistent with the requirements of sections 17A(b)(3) (D) and (F) of the Act,[2] and the rules and regulations thereunder, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its participants, and that it promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBS does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78q-1(b)(3) (D) and (F) (1988).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

MBS has not solicited written comments with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder, because the proposed rule change (1) constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization; and (2) establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBS. All submissions should refer to the File No. SR–MBS–93–03 and should be submitted by July 7, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

[3] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 93–14166 Filed 6–15–93; 8:45 am]
BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; and Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 10, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Corporacion Bancaria de Espana SA
American Depository Receipts (representing ½ share of Common Stock)
No Par Value (File No. 7–10836)
Nuveen North Carolina Premium Income Municipal Fund
Shares of Beneficial Interest, $0.1 Par Value (File No. 7–10837)
Nuveen Premium Income Municipal Fund V
Shares of Beneficial Interest, $.01 Par Value (File No. 7–10838)
Nuveen Connecticut Premium Income Municipal Fund
Shares of Beneficial Interest, $.01 Par Value (File No. 7–10839)
Dimark, Inc.
Common Stock, No Par Value (File No. 7–10840)
Echo Bay Finance Corp.
$1.75 Ser. A Cum. Pfd. Conv., $.01 Par Value (File No. 7–10841)
Healthcare Realty Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–10842)
Lasmo Plc
American Depositary Shares (each rep. 3 ordinary shares) $.25 Par Value (File No. 7–10843)
Mark Centers Trust
Common Stock, $.001 Par Value (File No. 7–10844)
Qual-Med, Inc.
Common Stock, $.01 Par Value (File No. 7–10845)
Manitowoc Company, Inc.
Common Stock, $.01 Par Value (File No. 7–10846)
Blackrock California Investment Quality Municipal Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–10847)
Blackrock Florida Investment Quality Municipal Trust, Inc.
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10848)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 1, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.
[FR Doc. 93–14161 Filed 6–15–93; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–32438; File No. SR–NYSE–93–15]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange Relating to the Listing and Trading of Options on the New York Stock Exchange Utility Index

June 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 9, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to list and trade European-style options on the NYSE Utility Index ("Index"), a capitalization-weighted "broad index stock group" comprised of all utilities stocks listed on the Exchange. As of October 30, 1992, the Index contained one hundred and eighty-seven companies. The market value of the outstanding shares of those companies ranged from $9.3 million to $32.2 billion. The NYSE asserts its proprietary interest in the manner of calculation of the Index, in the resulting Index values, and in the trading of options on the Index.

Trading in options on the Index will be governed by the Exchange's 700-

series of Rules as they pertain to broad index stock group options. The Exchange calculates, disseminates, and publishes the Index value on a real-time basis in the same manner as it currently does for the NYSE Composite Index. Securities information vendors disseminate the Index value every fifteen seconds. The contract specifications for NYSE Utility Index options are identical to the specifications for options on the NYSE Composite Index.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In 1982, the NYSE filed with the Commission a proposed rule change to allow the Exchange to trade options on certain index stock groups (File No. SR–NYSE–82–2) ("Index Options Filing"). As part of that filing, the Exchange sought Commission approval to trade such options on the NYSE Composite Index and on the Exchange's four sector indices: the NYSE Utility Index, the NYSE Finance Index, the NYSE Industrial Index, and the NYSE Transportation Index.

The Commission approved the Exchange's Index Options Filing (including the trading of options on the NYSE Composite Index and the four sector indexes), as well as counterpart filings of the American Stock Exchange, Inc. and the Chicago Board Options Exchange, Inc. in Release No. 19264 ("Approval Order"), dated November 30, 1982. Since the date of the Approval Order, the Exchange has commenced trading in options on the NYSE Composite Index, but on none of the four sector indexes.

The Exchange now proposes to commence the listing and trading of options on the NYSE Utility Index and is submitting the proposed rule change to reflect certain changes that have occurred to the Index and to the terms of operation of options based on the Index.

The Index is currently comprised of all Exchange-listed stocks that fall within the five industries (electric services, gas services, telecommunications, water supply companies, and multi-service companies) that comprise the utility sector of the stock market.

The Index will be adjusted as utility sector stocks become listed on, or delisted from, the Exchange, as well as for stock splits or reverse splits, stock dividends, reorganizations, recapitalizations and similar events, upon their occurrence.

No single stock in the Index has a weight of more than 6.5 percent of the aggregate capitalization weight of all the stocks in the Index. Additionally, as of October 30, 1992, the three highest capitalized stocks in the Index had an aggregate weight of 15.52 percent.

The total market capitalization of the Index as of October 30, 1992, exceeded $500 billion. The Exchange is the primary market for each component stock.

Expiration months and strike prices for the Index options will be determined according to the procedures established for options on broad index stock groups in Rule 703 (Series of Options Open for Trading); position and exercise limits, according to Rules 704 (Position Limits) and 705 (Exercise Limits); trading rotations, according to Rule 717 (Trading Rotations, Halts and Suspensions); exercise cut-off times, according to Rule 780 (Exercise of Option Contracts); and delivery and payment of this European-style cash-settled option, according to Rule 782 (Delivery and Payment).

The options will have European-style exercise and will settle based upon the opening values of the component stocks on the last trading day before expiration. The proposed options will expire on the Saturday following the third Friday of the expiration month.

Options on the Index will offer investors a low-cost means to achieve diversification or to tilt a portfolio toward or away from the utility sector of the stock market. They will enable institutional and retail investors to benefit from their forecasts of the utilities sector's market performance. In addition, portfolio managers and investors can use the Index to provide a performance measure and evaluation guide for managed utilities funds, as well as to hedge the risks of investing in the utilities sector.

In addition, in order to provide a means for portfolio managers and institutional customers with a means to protect positions in utility stocks from long-term market movements, the Exchange is also proposing to list and trade long-term index option series on the Index.

The NYSE believes that the proposed rule change is consistent with section 6 of the Act, in general, and with section 6(b)(5), in particular, in that it will provide members of the public with useful new hedging and trading opportunities under a scheme of regulation designed to maintain a fair and orderly market, to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–15 and should be submitted by July 8, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14121 Filed 6–14–93; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Pacific Stock Exchange, Inc.

June 10, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Alza Corp.
Common Stock, $.01 Par Value (File No. 7–10824)
British Airways Plc
Rights (Exp. June 11, 1993) (File No. 7–10825)
City National Corp.
Rights (Exp. June 3, 1993) (File No. 7–10826)
Geon Co.
Common Stock, $.10 Par Value (File No. 7–10827)
Saatchi & Saatchi Co.
Rights (Exp. June 11, 1993) (File No. 7–10828)
Samuel Goldwyn Co.
Common Stock, $.20 Par Value (File No. 7–10829)
Tiphook Plc
American Depositary Receipts (File No. 7–10830)
USG Corp.
Common Stock, $.10 Par Value (File No. 7–10831)
XTRA Corp.
Common Stock, $.50 Par Value (File No. 7–10832)
Zeneca Group Plc
American Depositary Shares (File No. 7–10833)
Zeneca Group Plc
Rights (Exp. June 21, 1993) (File No. 7–10834)
Zurich Reinsurance Centre Holdings, Inc.
Common Stock, $.01 Par Value (File No. 7–10835)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 1, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderely markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–14165 Filed 6–15–93; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 10, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Senior High Income Portfolio, Inc.
Common Stock, $.10 Par Value (File No. 7–10812)
Nuveen North Carolina Premium Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7–10813)
Nuveen Premium Income Municipal Fund 5
Common Stock, $.01 Par Value (File No. 7–10814)
Nuveen Connecticut Premium Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7–10815)
Qual-Med Inc.
Common Stock, $.01 Par Value (File No. 7–10816)
Gulf States Utilities Co.
$1.75 Dividend Preference Stock, No Par Value (File No. 7–10817)
International Business Machines
Depositary Shares each representing ¼ of a share of series A 7½% Pfd Stock (File No. 7–10818)
Calton, Inc.
Common Stock, $.01 Par Value (File No. 7–10819)
Lasmo Plc
American Depositary Shares (File No. 7–10820)
Madeco S.A.
American Depositary Shares each representing 10 shares of Common Stock (File No. 7–10821)
Fila Holding SPA
American Depositary Shares each representing five ordinary shares of LIT 500 Par Value (File No. 7–10822)
Mark Centers Trust
Common Stock, $.001 Par Value (File No. 7–10823)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 1, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–14159 Filed 6–15–93; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

San Francisco District Advisory Council; Public Meeting

The U.S. Small Business Administration San Francisco District Advisory Council will hold a public meeting at 1:30 p.m. on Wednesday, June 30, 1993, at 211 Main Street—room 543 (5th Floor), San Francisco, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. J. Mark Quinn, Acting District Director, U.S. Small Business Administration, 211 Main Street—4th Floor, San Francisco, California 94105–1988, (415) 744–6801.

[1] 17 CFR 200.30–3(a)(12) (1993).

Dated: June 9, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93-14093 Filed 6-15-93; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

[Public Notice 1820]

Suspension of Munitions Export Licenses to Burma

AGENCY: Department of State.

ACTION: Public notice.

SUMMARY: Notice is hereby given that all licenses and other approvals to export or otherwise transfer defense articles or defense services to Burma, are suspended until further notice pursuant to sections 2, 38, and 42 of the Arms Export Control Act.

EFFECTIVE DATE: June 16, 1993.

FOR FURTHER INFORMATION CONTACT: Roger Swenson, Office of Defense Trade Policy, Bureau of Political-Military Affairs, Department of State (202-647-4231).

SUPPLEMENTARY INFORMATION: Effective immediately, it is the policy of the U.S. Government to deny all applications for licenses and other approvals to export or otherwise transfer defense articles and defense services to Burma. In addition, U.S. manufacturers and exporters and any other affected parties are hereby notified that the Department of State has suspended all previously issued licenses and approvals authorizing the export or other transfer of defense articles or defense services to Burma. This action has been taken in light of the human rights abuses being committed by the current Government of Burma.

The licenses and approvals that have been suspended include any manufacturing licenses, technical assistance agreements, technical data, and commercial military exports of any kind subject to the Arms Export Control Act involving Burma. This action also precludes the use in connection with Burma of any exemptions from licensing or other approval requirements included in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130).

This action has been taken pursuant to sections 2, 38, and 42 of the Arms Export Control Act (22 U.S.C. 2752, 2778, and 2791) and § 126.7 of the ITAR in furtherance of the foreign policy of the United States. In accordance with §§ 126.3 and 126.7 of the ITAR, affected persons desiring review of this decision with regard to a particular export may petition the Director, Office of Defense Trade Controls. Exceptions to this policy will be considered on a case-by-case basis.

Dated: June 9, 1993.

Robert L. Gallucci,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 93-14156 Filed 6-15-93; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 93-6-12; Docket 48682]

Application of Salair, Inc.; For Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Salair, Inc., fit, willing, and able and award it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation.

DATES: Persons wishing to file objections should do so no later than June 25, 1993.

ADDRESSES: Objections and answers to objections should be filed in Docket 48682 and addressed to the Documentary Services Division (C-55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2337.

Dated: June 10, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93-14227 Filed 6-15-93; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

[FHWA Docket No. 92-24]

Participation in the Congestion Pricing Pilot Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; extension of request for participation.

SUMMARY: This notice extends the invitation to State or local governments or other public authorities to make applications for participation in the Congestion Pricing Pilot Program established by section 1012(b) of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, and presents additional guidelines to complement the criteria for program applications provided in a Federal Register notice published on November 24, 1992 (57 FR 55293). This document also contains a summary and discussion of the types of applications received in response to FHWA's initial request for participation.

DATES: (Proposals must be received on or before October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Link or Mr. John T. Berg, Highway Revenue Analysis Branch, HPP-13, (202) 366-0570; or Mr. Wilbert Baccus, Office of the Chief Counsel, HCC-32, (202) 366-0780; Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Section 1012(b) of the ISTEA (Pub. L. No. 102-240, 105 Stat. 1914) authorizes the Secretary of Transportation (the Secretary) to create a Congestion Pricing Pilot Program by entering into cooperative agreements with up to five State or local governments or other public authorities, to establish, maintain, and monitor congestion pricing pilot projects. Three of these agreements may involve the use of tolls on the Interstate System notwithstanding 23 U.S.C. 129, as amended, and 301. A maximum of $25 million is authorized for each of the fiscal years 1992 through 1997 to be made available to carry out program requirements. Not more than $15 million can be made available each fiscal year to fund any single cooperative agreement.

In advance of completing its plan for implementing this program, the FHWA published a Federal Register notice on May 29, 1992 (57 FR 22857) which presented general information about the Pilot Program and solicited public comment [Docket No. 92-24] on a number of implementation issues. The comment period closed on June 29, 1992. FHWA published the initial solicitation for the Congestion Pricing Pilot program in the Federal Register on November 24, 1992 (57 FR 55293). The solicitation period closed on January 25, 1993. Results of Initial Solicitation: Proposals were received for Congestion

Pricing applications in 16 urban areas in 9 States. The proposals were reviewed by an Interagency Review Group comprised of representatives of the FHWA, the Office of the Secretary of Transportation, the Federal Transit Administration, the Environmental Protection Agency, and the Department of Energy. The group applied the criteria contained in the November 24 Notice to develop its recommendations. For purposes of this discussion, the proposals have been grouped into five categories—Full Facility Demand Pricing, High Occupancy Vehicle (HOV) Lane Pricing (HOV Buy-in), Feasibility Studies, HOV/Electronic Toll and Traffic Management (ETTM) User Toll Reductions, and Other.

The Full Facility Demand Pricing proposals involved at least some aspect of using peak-period tolls on congested facilities to charge vehicles for their contribution to congestion. The HOV Buy-in proposals involved a toll system that would allow single occupant vehicles (SOV's) to pay a toll to use under-utilized separated HOV lanes during congested times on the parallel general purpose lanes. Some of the proposals in this category called for converting existing HOV lanes to HOV/Express lanes, others entailed pricing on yet-to-be constructed HOV lanes. The Feasibility Study proposals were essentially designed to study congestion pricing options, with little or no commitment to implementing specific applications of congestion pricing included in the proposal. The HOV/ETTM User Toll Reduction proposals entailed reducing tolls during peak periods on existing tollways for HOV users and for users of ETTM equipment. Federal funds would be used for the installation of ETTM equipment and to compensate the toll authority for revenue losses associated with toll reductions. Other proposals called for implementation of parking pricing with no road pricing component, and the pricing of new lanes to be added to an existing non-tolled highway.

The Interagency Review Group determined that all but one of the proposals failed to respond well to the Pilot Program criteria contained in the November 24 notice because they had little or no commitment to the implementation of road pricing projects which establish a fee schedule that would influence road use choices. In addition, some proposed projects were unlikely to be implemented in time to allow evaluation information to be developed for the FHWA to report to Congress on the effectiveness of Pilot Projects prior to the expiration of the ISTEA. As a result, only the proposal submitted jointly by the California Department of Transportation and the Metropolitan Transportation Commission was selected during the initial solicitation for further negotiation of a congestion pricing pilot project.

The proposed project will raise peak-period tolls on the Oakland-San Francisco Bay Bridge to manage demand. The project will also contain significant transit enhancement, public outreach, and monitoring/evaluation elements. The Interagency Review Group believes that the Bay Area proposal, more than any other proposal received, manifests "a clear intent to use congestion charges to encourage driver behavior in a manner that will promote the use of alternative times, routes, modes, or trip patterns to reduce congestion."

The following paragraphs provide a description of the reasons the Interagency Review Group did not recommend other proposals for participation in the Pilot Program at this time.

HOV Buy-in Proposals: Although an HOV Buy-in project would involve pricing, it would address the problem of congestion by making more capacity available to SOV's, not by providing market incentives that would lead to behavioral changes commonly thought to be associated with congestion pricing, such as a shift of some peak-period trips to off-peak periods, to HOV modes, to less congested routes or destinations, or to the elimination of certain trips. Because the entire facility is not priced, and new capacity is opened to SOV's, an HOV Buy-in may, in fact, have the opposite effects. Travelers might even shift out of HOV modes, or be attracted from other routes or times to take advantage (for a price) of improved travel times on the HOV lanes. For these reasons, the Interagency Review Group concluded that HOV Buy-in projects would not promote the congestion relief and related air quality and energy conservation objectives of the ISTEA, and should not be selected for participation in the Pilot Program. HOV Buy-in proposals were therefore not selected by the FHWA during this solicitation and will not be considered for participation during the solicitation extension.

Feasibility Study Proposals: Several proposals were designed to fund feasibility studies of congestion pricing as an option for addressing congestion problems. The Review Group felt that such proposals did not include a sufficient commitment to implementation of a specific congestion pricing pilot project. As stated in the November 24 notice, the FHWA is looking for proposals which reflect a clear intent to use congestion charges to influence driver behavior. The FHWA understands the need for feasibility studies, and recognizes the difficulty of developing local support for a specific application of congestion pricing. The intent of the Pilot Program, however, is to establish up to five cooperative agreements where there is a commitment to implementation and evaluation of specific congestion pricing projects within the life of the ISTEA. While some of the areas that submitted study proposals may have the potential to develop proposals for pilot projects in the future, the submissions were not found to meet the objectives of the Pilot Program at this time. These areas would be reconsidered by the Interagency Review Group if their proposals are further developed to indicate a commitment to implementation of a specific congestion pricing pilot project. This could include phased projects involving a commitment to an early pricing application, along with a study to evaluate additional or more comprehensive pricing applications for implementation in future phases of the project.

HOV/ETTM User Toll Reductions: The November 24 notice states that congestion pricing projects must involve increasing the price for the use of congested facilities and that proposals which would establish price differentials for the use of congested roads, but do not involve an increase in tolls on vehicles contributing to congestion, would be given low priority consideration. The notice also states that such projects are not eligible to have revenue losses reimbursed with Pilot Program funds. For these reasons, and based on the recommendations of the Review Group, such proposals were not selected by the FHWA for participation in the Pilot Program during the initial solicitation and will not be considered for participation during the solicitation extension. The Review Group suggests that a congestion pricing project should be designed to become financially viable without Federal participation. That is, if toll reductions are to be offered to some users as part of a pilot project, associated revenue losses should be offset by added revenues resulting from peak-period toll increases or other sources.

Other Problems: Other proposals did not meet the criteria for congestion pricing pilot projects during the initial solicitation because they failed to include road pricing as part of the project proposal; failed to provide a project time schedule which indicates

the likelihood of early implementation of congestion pricing; lacked necessary endorsements; or failed to provide a clear pricing and financial plan. As stated in the November 24 notice, proposals which do not include some form of road pricing have been given low priority in the selection process. Nevertheless, the Review Group recognizes the important role and potential application of parking pricing in a market-based approach to congestion management. For this reason, high priority will be given to applications which integrate market-based parking policies with road pricing in a comprehensive market-based approach to demand management.

Some proposals failed to include a firm and timely commitment to implementation of congestion pricing. In some cases, the facility to be priced had not yet been constructed and construction was not even planned to be completed until 1996 or later. Even though congestion pricing might be implemented on such facilities in the future, the Review Group viewed them as being unlikely to provide useful experience with congestion pricing during the life of the ISTEA.

Another problem found in several proposals was a lack of necessary endorsements. As stated in the November 24 notice, an acceptable submission must include, as a minimum, an endorsement by the designated local Metropolitan Planning Organization (MPO), the State Department of Transportation (State DOT), and if not the State DOT, the owner of the facility. If clear letters of endorsement from the local MPO and the State DOT (or the owner of the facility) are not submitted with a proposal, it will not be considered for selection by the Review Group. Additionally, proposals must be submitted by or through the State DOT to the appropriate FHWA Division Office.

Several proposals suffered from the lack of a clear pricing and financial plan. Proposals should clearly identify proposed bridge toll and road pricing schedules, or at least describe the ranges of price increases contemplated. If parking pricing is included as part of a comprehensive pricing plan, proposed parking rates should also be included. As described in the November 24 notice, various types of congestion tolls have been considered in the literature on road pricing, including charging for the use of certain congested points on a network of roads, charging for the use of certain congested links on the network, charging for crossing certain cordon points on the network, either in one or both directions, charging to travel within a congested area, charging based on the distance traveled within a congested area, charging based on the time spent traveling, or charging based on congestion experienced. A proposal should as clearly as possible indicate the type, timing, level, and location of pricing being proposed. Proposed price differentials for certain classes of users should be described. If there are existing toll schedules in effect, these should also be described, including existing discount practices (e.g., for classes of HOV users, ETTM subscribers, frequent users, etc.).

A proposed financial plan should clearly identify all costs and sources of funding (including estimated project revenues) associated with each element of the proposed project. The proposal should show that projected revenues will cover project costs within the three-year period in which section 1012(b) funds are available (that is, that the project will become financially viable without Federal participation within the three-year period). The cost information should include as a minimum, total project cost; total capital and operating cost; capital and operating costs by project element, including capital and operating costs for new or expanded transit service provided as an integral part of the congestion pricing project; ETTM costs; enforcement costs, consulting costs; public outreach/marketing costs; and costs for project planning, design, monitoring, and evaluation. Funding information should include: total project funding; funding by source, including source of local matching share; estimated project revenues; and any Federal funds from sources other than section 1012(b) which are to be incorporated into the project. The proposed use of project revenues must also be identified, and comply with the restrictions stated in the November 24 notice (Eligible Uses of Revenue).

Extension of Solicitation

The FHWA is extending the period of solicitation for participation in the Congestion Pricing Program for a period of 4 months from the date of this notice. The criteria contained in the November 24 Federal Register notice on participation in the Congestion Pricing Pilot Program will continue to serve as the guidelines the Interagency Review Group will use to evaluate proposals. Additional information is contained in the previous section of this Notice which describes reasons the Interagency Review Group did not recommend proposals submitted in response to the initial solicitation for participation. The FHWA encourages potential applicants to contact the FHWA Highway Revenue Analysis Branch before committing significant effort to developing or revising a proposal for participation in the Congestion Pricing Pilot Program. To obtain further information or procedural advice in preparing proposals, contact John T. Berg or James R. Link at the address provided under FOR FURTHER INFORMATION CONTACT.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: June 9, 1993.

Rodney E. Slater,

Administrator.

[FR Doc. 93–14223 Filed 6–15–93; 8:45 am]

BILLING CODE 4910-22-P

[FHWA Docket 93–22]

General Material Requirements; Buy America Requirements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed nationwide waiver of Buy America for ferryboat equipment and machinery; request for comments.

SUMMARY: The FHWA requests public comment on a proposed nationwide waiver of the Buy America requirements for certain steel items used in the construction of ferryboats. This action would permit the use of steel equipment and machinery manufactured outside of the United States in Federal-aid highway construction projects for ferryboats.

DATES: Written comments must be received on or before August 2, 1993.

ADDRESSES: Submit signed, written comments to FHWA Docket 93–22, Federal Highway Administration, Room 4232, HCC–10; 400 Seventh Street, SW.; Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. David R. Geiger, Office of Engineering (202) 366–0355 or Mr. Wilbert Baccus, Office of the Chief Counsel (202) 366–0780, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In accordance with 23 CFR 635.410(c)(6), the FHWA hereby provides notice that it is considering a nationwide waiver of the requirements of 23 CFR 635.410, Buy America requirements, for ferryboat

equipment and machinery. Section 635.410 provides, with exceptions, that no Federal-aid highway construction project using steel or iron materials is to be authorized to proceed unless all manufacturing processes including the application of coatings for such materials occur in the United States. Because the construction of ferryboats is increasingly difficult within the requirements of Buy America, a nationwide waiver of these requirements is being proposed for ferryboat equipment and machinery. The items to be included in the waiver are marine diesel engines, electrical switchboards and switchgear, electric motors, pumps, ventilation fans, boilers, electrical controls and electronic equipment. Items not to be included in the waiver are products which are readily available in the United States such as steel and stainless steel plate and shapes, sheet steel and stainless steel, steel and stainless steel pipe and tubing, and galvanized steel products. Items not specifically included in the waiver remain subject to the Buy America requirements.

The basis for the proposed nationwide waiver is that certain equipment and machinery are not manufactured in the United States, using exclusively United States steel and iron, in sufficient and reasonably available quantities to avoid an enormous administrative burden on the State, contractor and suppliers. Therefore, imposing Buy America requirements in this limited instance is not in the public interest.

The FHWA is requesting comments on the proposed nationwide waiver and the availability of domestic supply for the items included in the proposed waiver. The FHWA's Buy America requirements contained in 23 CFR 635.410 are based on section 165 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424, 96 Stat. 2136), as amended by Public Law 98–229, section 10, 98 Stat. 55, 57, and Public Law 102–240, section 1048, 105 Stat. 1914, 1999.

(23 U.S.C. 315; 49 CFR 1.48; 23 CFR 635.410)

Issued on: June 10, 1993.

Rodney E. Slater,

Administrator.

[FR Doc. 93–14225 Filed 6–15–93; 8:45 am]

BILLING CODE 4910-22-P

Intelligent Vehicle-Highway Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Vehicle-Highway Society of America (IVHS AMERICA) will hold a meeting of its Coordinating Council on July 21 and 22, 1993. IVHS AMERICA provides a forum for national discussion and recommendations on IVHS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of IVHS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 USC app. 2, when it provides advice or recommendations to DOT officials on IVHS policies and programs. (56 FR 9400, March 6, 1991.)

DATES: The Coordinating Council of IVHS AMERICA will meet on July 21 from 1 p.m. to 5 p.m. e.t., and on July 22 from 8 a.m. to 4 p.m. e.t. The session is expected to focus on: (1) IVHS Architecture and Consensus Building; (2) IVHS Program Planning; (3) IVHS Education and Public Outreach; (4) Technical Committee Actions to the Council; and (5) IVHS Workshop Proposals.

ADDRESSES: Massachusetts Institute of Technology, Bush Room, Building 10, room 105, 77 Massachusetts Avenue, Cambridge, MA 02139.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Euler, FHWA, HTV–10, Washington, DC 20590, (202) 366–2201, office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except for legal holidays; or Mr. Daniel Toohey, IVHS AMERICA, 1776 Massachusetts Avenue, NW., Washington, DC 20036, (202) 857–1202.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: June 9, 1993.

Rodney E. Slater,

Administrator.

[FR Doc. 93–14224 Filed 6–15–93; 8:45 am]

BILLING CODE 4910-22-P

National Highway Traffic Safety Administration

[Docket No. 93–22; Notice 2]

General Motors; Grant of Petition of Determination of Inconsequential Noncompliance

General Motors (GM) of Warren, Michigan, determined that some of its vehicles fail to comply with 49 CFR 571.102, Federal Motor Vehicle Safety Standard No. 102, "Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect," and filed an appropriate report pursuant to 49 CFR part 573. GM also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) on the basis that the noncompliance was inconsequential as it relates to motor vehicle safety.

This notice grants that petition. Notice of receipt of the petition was published on March 30, 1993, and an opportunity afforded for comment (58 FR 16735).

GM manufactured 13,732 1992 Buick Skylarks which may not comply with the display requirements of Standard No. 102. On some of the cars (the precise number affected is a function of production variability and, therefore, not determinable by GM), the electronic park, reverse, neutral, drive, and low (PRNDL) display might not be illuminated when the ignition switch is in the rearmost portion of the "Off" position.

Paragraph S3.1.4.1 of Standard No. 102 requires that

> * * * if the transmission shift lever sequence includes a park position, identification of shift lever positions, including the positions in relation to each other and the position selected [PRNDL display], shall be displayed in view of the driver whenever any of the following conditions exist:
>
> (a) The ignition is in a position where the transmission can be shifted.
>
> (b) The transmission is not in park.

If the vehicle operator turns the ignition switch to the rearmost "Off" position without the transmission being placed in the "Park" position, the transmission shift interlock is activated. The transmission shift interlock, required by Paragraph S4.2 of Standard No. 114, prevents a vehicle's key from being removed from the ignition if the transmission is not in the "Park" position. In this situation on the noncompliant vehicles, the electronic PRNDL display will not be illuminated. Thus, the operator would not be aware that the key is locked in place due to the transmission being in a position other than "Park." On these non compliant vehicles, if the key is turned slightly forward, within the "Off" position, the electronic PRNDL display will be illuminated, thus informing the operator of the necessary information.

GM supported its petition for inconsequential noncompliance with the following:

> Two factors are key. First, GM has no record of any customer complaint or accident report that could be associated with or attributed to this condition. Second, all of the 13,732 vehicles comply with S3.1.4.1 of FMVSS 102 during normal ignition activation and vehicle operation. As NHTSA recognized in proposing the standard (49 FR

32409–32411 (August 25, 1988)), the purpose of the display requirement for PRNDL information is to "provide the driver with transmission position information for the vehicle conditions where such information can reduce the likelihood of shifting errors." Thus, in all but the rarest circumstances, the primary function of the PRNDL display is to inform the driver of gear selection and relative position of the gears while the engine is running. All of the subject vehicles display PRNDL information whenever the ignition switch is in the "On" or "Run" position.

In fact, the only condition where PRNDL information would not be displayed as required by FMVSS 102 is when the ignition switch is in the rearmost portion to the "Off" position prior to the interlock. In order for this condition to be present, a vehicle would have to be affected with the (noncompliance) and then, a driver would have to shut the vehicle's engine off without shifting the transmission to "Park." In such a case, there are two possible outcomes:

1. The driver exits the vehicle (leaving the key in the ignition) or

2. The driver remains in the vehicle.

Paralleling NHTSA's analysis in the Final Rule promulgating the standard, the first outcome represents more of a theoretical possibility than an actual problem. Compared, for example, to drivers leaving their vehicles with their lights on, NHTSA recognized that the sort of driver behavior addressed here "would be limited to the rare situation." (54 FR 29042, 29044 (July 11, 1989)). Indeed, as emphasized above, GM is aware of no complaint or claim that this rare situation has actually occurred with respect to the subject vehicles. Furthermore, as required by S4.5 of FMVSS 114, GM provides an audible warning to the driver that activates whenever the key has been left in the locking system and the driver's door is opened.

In the second outcome, where a driver remains in the vehicle, his or her next action will be either an attempt to restart the vehicle's engine or an attempt to remove the key to exit the vehicle. If an attempt is made to restart the engine, S3.1.3 Starter Interlock of FMVSS 102 requires that the starter be inoperative whenever the vehicle's transmission is in gear. The driver rotating the ignition switch forward attempting to start the engine will definitely activate the PRNDL display.

Therefore, the driver will have all the necessary information to conclude that the vehicle did not start because the transmission was not in "Park" or "Neutral." With regard to the second potential action, GM's ignition locking system is designed so that upon key removal the transmission becomes locked in the "Park" position to meet S4.2 of FMVSS 114. Because both of these situations are covered by FMVSS requirements, a lack of PRNDL information in either of these cases may constitute a minor inconvenience, but will have no consequence to safety.

GM recognizes that there may be isolated non-driving situations in which a person may desire to know gear selection or the relative position of the gears with the engine off, such as when placing the vehicle in tow. However, these cases occur infrequently and do not occur during a crisis or panic situation. If the noncompliant condition is present during these infrequent non-driving situations when PRNDL information may be desired, gear selection and relative positioning can easily be determined by rotating the ignition switch slightly forward to activate the electronic display without starting the vehicle's engine. Given the nature of these non-driving situations and since the information can be readily obtained with a slight key rotation, GM believes that the noncompliant condition will have no influence on safety.

No comments were received on the petition.

The Buicks for which the petition is submitted comply with the display requirements of Standard No. 102 during normal activation of the ignition and operation of the car. The noncompliance occurs when the ignition is off. The operator is affected only when (s)he turns the ignition switch to the rearmost "off" position without the transmission in the "Park" position. In order to activate the ignition, the transmission must be placed in the "Park" position. The action of turning the switch slightly forward activates the PRNDL display which, along with the inability to start the vehicle, will alert the driver that the transmission is not in "Park". Once the transmission is placed in "Park" and the ignition switch is activated, the vehicle complies once more with Standard No. 102. In summary, the noncompliance does not occur during times that the affected vehicles are operated, and for this reason, the noncompliance presents no discernible threat to safety.

In consideration of the foregoing, it is hereby found that the petitioner has met its burden of persuasion that the noncompliance herein described in inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: June 11, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–14226 Filed 6–15–93; 8:45 am]

BILLING CODE 4910–59–M

Federal Aviation Administration

Sportplane (formerly Microlite Class) Design Standards for Acceptance Under Primary Category Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of design standards for sport airplanes achieving acceptance under the Primary Category Rule. Sportplane standards are applicable to one and two-place airplanes having a maximum takeoff weight of 1,200 pounds or less and a stall speed of 39 knots or less. Operation is limited to day VFR. The design standards currently are identical to Transport Canada TP101–41 Ultralight design standards.

DISCUSSION: The commenters expressed significant support for the proposed program with two caveats. First, it is considered essential that the technical and pilotage differences between the proposed program and part 103 of the Federal Aviation Regulations (FAR), Ultralights, be widely recognized. Second, it must be acknowledged that the proposed program and part 103 Ultralights are unrelated programs with no intended interdependence. The FAA concurs that these are valid issues. Unfortunately, the originally selected name, Microlite, is closely associated with Ultralights and is, therefore, confusing. The identification has been changed to Sportplane Design Standards to remove any implication of relationship between the part 103 provisions and the primary category rule. Otherwise, the standards are identical as originally proposed.

ADDRESSES: Copies of TP101–41 can be obtained from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106.

FOR FURTHER INFORMATION CONTACT: Julea Bell, Standards Staff (ACE–110), telephone number (816) 426–6941.

Issued in Kansas City, Missouri, June 9, 1993.

Roger D. Anderson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–14147 Filed 6–15–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

[Treasury Order Number 105–11]

Delegation of Authority Under the Counterfeit Deterrence Act of 1992

Dated: June 9, 1993.

By virtue of the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b) and 18 U.S.C. 504, I hereby delegate to the Assistant Secretary (Enforcement) all responsibilities and authorities under 18 U.S.C. 504, as amended by the Counterfeit Deterrence Act of 1992

(subtitle E of title XV of Public Law 102–550), including:

1. The promulgation of regulations concerning color illustrations of selected U.S. currency; and

2. The establishment of a system (pursuant to 18 U.S.C. 504) to ensure that the legitimate use of electronic methods used for the acquisition, recording, retrieval, transmission, or reproduction of any obligation or other security, and retention of such reproductions, by businesses, hobbyists, press or others shall not be unduly restricted.

The responsibilities and authorities assigned by this Order may be redelegated.

Lloyd Bentsen,

Secretary of the Treasury.

[FR Doc. 93–14124 Filed 6–15–93; 8:45 am]

BILLING CODE 4810–25–P

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 10, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0068
Form Number: IRS Form 2441
Type of Review: Revision
Title: Child and Dependent Care Expenses
Description: Internal Revenue Code (IRC) section 21 allows a credit for certain child and dependent care expenses to be claimed on Form 1040 (reduced by employer-provided day care excluded under section 129). Day care provider must be reported to the IRS for both the credit and exclusion. Form 2441 is used to verify that the credit and exclusion are properly figured, and that provider information is reported.
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers: 4,421,940
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—40 minutes
Learning about the law or the form—24 minutes
Preparing the form—59 minutes
Copying, assembling, and sending the form to the IRS—28 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 11,054,850 hours
OMB Number: 1545–0145
Form Number: IRS Form 2439
Type of Review: Extension
Title: Notice to Shareholder of Undistributed Long-Term Capital Gains
Description: Form 2439 is sent by regulated investment companies to their shareholders to report undistributed capital gains and the amount of tax paid on these gains designated under Internal Revenue Code (IRC) section 852(b)(3)(D). Both the company and shareholder file copies of Form 2493 with IRS. IRS used the information to check shareholder compliance.
Respondents: Businesses or other for-profit
Estimated Number of Respondents/ Recordkeepers: 10,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—1 hour, 55 minutes
Learning about the law or the form—6 minutes
Preparing and sending the form to the IRS—8 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 21,500 hours
OMB Number: 1545–1205
Form Number: IRS Form 8826
Type of Review: Revision
Title: Disabled Access Credit
Description: Code section 44 allows eligible small businesses to claim a nonrefundable income tax credit of 50% of the amount of eligible public accommodations access credit expenditures for any tax year that exceeds $250 but do not exceed $10,250. Form 8826 figures the credit and the tax limit.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 50,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—4 hours, 32 minutes
Learning about the law or the form—47 minutes
Preparing and sending the form to the IRS—55 minutes
Frequency of esponse: Annually
Estimated Total Reporting/ Recordkeeping Burden 312,000 hours
Clearnace Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer

[FR Doc. 93–14213 Filed 6–15–93; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 10, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0178
Form Number: None
Type of Review: Extension
Title: Automotive Products Trade Act of 1965 (APT)
Description: Under APT Canadian articles may enter the U.S. duty free so long as they are intended for use as original motor vehicle equipment in the U.S. If diverted to other purposes, they are subject to duties. This information collection issued to track these diverted articles to collect the proper duties on them.
Respondents: Businesses or other for-profit
Estimated Number of Respondents/ Recordkeepers: 210
Estimated Burden Hours Per Respondent/Recordkeeper: 22 hours, 8 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 27,510 hours
Clearance Officer: Ralph Meyer, (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room

6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–14215 Filed 6–15–93; 8:45 am]

BILLING CODE 4830–02–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 10, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0110
Form Number: IRS Form 1099–DIV
Type of Review: Extension
Title: Dividends and Distributions
Description: The form is used by the Service to insure that dividends are properly reported as required by Code section 6042 and that liquidation distributions are correctly reported as required by Code section 6043, and to determine whether payees are correctly reporting their income.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 149,300
Estimated Burden Hours Per Respondent: 14 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 19,883,500 hours
OMB Number: 1545–0997
Form Number: IRS Form 1099–S
Type of Review: Extension
Title: Proceeds From Real Estate Transactions
Description: Form 1099–S is used by the person treated as the real estate reporting person to report proceeds from a real estate transaction to IRS.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 91,400
Estimated Burden Hours Per Respondent: 8 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 483,000 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–14217 Filed 6–15–93; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

Establishment of the National Center for Veteran Analysis and Statistics

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: On May 5, 1993, the Secretary of Veterans Affairs, Jesse Brown, announced the establishment, under the authority of 38 U.S.C. 510, of the National Center of Veteran Analysis and Statistics. The purpose of the National Center is to strengthen the Department's analytic and statistical ability and to better enable VA to participate in major policy debates including national issues. The National Center will help VA meet the challenge of change by better utilizing veteran demographic, biometric, and national survey data to support critical policy and planning activities and decisions. To help VA to be a unified Department, the Center will serve as the single, Department-wide repository, clearinghouse, and publication source for key veterans demographic and statistical information needed for policy development and analysis and strategic planning and will provide data for use by veterans service organizations (VSO), universities, and think tanks. Planned initiatives include assessing and improving the quality of statistical data, creating a data library as a focal point for inquiries, and exchanging data with VSOs. The National Center has been established as part of the Office of the Assistant Secretary for Policy and Planning. Mr. Conrad R. Hoffman has been named as the Director of the Center. Mr. Hoffman was formerly Senior Financial Advisor to the Commission on the Future Structure of Veterans Health Care and for almost two decades previously, the Controller of VA.

FOR FURTHER INFORMATION CONTACT: Michael L. Facine (202) 233–6852 or write to: National Center for Veterans Analysis and Statistics (008C), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420; FAX: (202) 233–2633.

Dated: June 4, 1993.

By direction of the Secretary.

Conrad A. Hoffman,

Director, National Center for Veteran Analysis and Statistics.

[FR Doc. 93–14131 Filed 6–15–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 114
Wednesday, June 16, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 10:00 a.m.–12:00 Noon.

PLACE: ADF Headquarters.

DATE: Friday, June 11, 1993.

STATUS: Open.

Agenda

10:00-12:00—President's Report

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673-3916.

Gregory Robeson Smith,
President.

[FR Doc. 93–14333 Filed 6–14–93; 1:27 pm]

BILLING CODE 8116–01–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–93–18]

TIME AND DATE: June 23, 1993 at 3:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meetings.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–461 (Remand) (Gray Portland Cement and Cement Clinker from Japan)—briefing and vote.
5. Inv. No. 731–TA–571 (Final) (Professional Electric Cutting and Sanding/Grinding Tools from Japan)—briefing and vote.
6. Consideration of any matters related to Inv. No. 22-53, Dairy Products
7. Continuation of discussion of APO matters.
8. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205-2000.

Issued: June 10, 1993.

Paul R. Bardos,
Acting Secretary.

[FR Doc. 93–14268 Filed 6–11–93; 4:53 pm]

BILLING CODE 7020–02–P

VOL 58 ISS 114 JE 16 1993 UMI

federal register

Wednesday
June 16, 1993

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 106 et al.

Oil Spill Prevention and Response Plans; Interim Final Rule

VOL 58 ISS 114 JE 16 1993 UMI

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 106, 107, 110, 130, 171, 172, 173, 174, 176, 178, 180

[Docket Nos. HM-214 and PC-1; Amdt. Nos. 106-6, 107-27, 110-2, 130-1, 171-120, 172-128, 173-233, 174-73, 176-33, 178-96, and 180-3]

RIN 2137-AC31

Oil Spill Prevention and Response Plans

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Interim final rule; request for comments and public meeting.

SUMMARY: This interim final rule implements the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, and amends requirements that RSPA issued on February 2, 1993. This interim final rule removes the designation as "hazardous materials" of oils that, before February 2, 1993, had not been so designated; requires response plans for oil shipments in bulk packagings (i.e., cargo tanks (tank trucks), railroad tank cars, and portable tanks) in a quantity greater than 42,000 gallons; and requires less detailed response plans for petroleum oil shipments in bulk packagings of 3,500 gallons or more. This rule responds to public and industry concerns that subjecting previously unregulated oils to regulation as hazardous materials is unnecessary and undesirable.

DATES: *Effective date.* This interim final rule is effective June 16, 1993.

Compliance dates: Persons subject to this rule must comply with its requirements by October 1, 1993, except for persons subject to the requirements of 49 CFR 130.31(b), who must comply immediately.

Comments. Comments must be received on or before July 30, 1993.

Public meeting. A public meeting will be held on June 28, 1993, from 9:30 a.m. to 5 p.m.

ADDRESSES: *Comments.* Address comments to the Dockets Unit, Research and Special Programs Administration, Department of Transportation, room 8421, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify the docket numbers and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Unit is located in the Department of Transportation headquarters building (Nassif Building) on the eighth floor. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Public meeting. The public meeting will be held in room 2230 of the Department of Transportation headquarters building (Nassif Building), 400 Seventh Street, SW., Washington, DC 20590. Any person planning to attend should notify RSPA, by telephone or in writing, no later than two days prior to the meeting. To confirm plans to attend, contact Ms. Diane LaValle at (202) 366–8553.

FOR FURTHER INFORMATION CONTACT: Thomas Allan, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001, Telephone (202) 366–4488 or Charles Holtman, Office of the Chief Counsel, RSPA, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001, Telephone (202) 366–4400.

SUPPLEMENTARY INFORMATION: On February 2, 1993, RSPA published an interim final rule (IFR), 58 FR 6864, with request for comments, concerning oil spill prevention and response plans. The IFR implemented requirements of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990 (FWPCA). It did so through amendments to the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180, which are issued under the Hazardous Materials Transportation Act (HMTA). Details concerning the FWPCA statutory requirements and delegation of authority under that Act are contained in the preamble to that IFR. On April 20, 1993, RSPA reopened and extended the public comment period from April 5 to June 3, 1993, and announced a May 13, 1993 public hearing.

Under the IFR, many oils not previously regulated as hazardous materials (particularly animal, vegetable, mineral and lube oils) were designated as hazardous materials and then subjected to the requirements of the HMR. That regulatory approach has been the focus of extensive industry and public interest in the IFR, as reflected by the more than 250 public comments submitted to the docket and extensive remarks made at the day-long public hearing.

It has become clear that implementation of the FWPCA through designation of all oils as "hazardous materials" has unforeseen and potentially costly effects. These include increased insurance costs, applicability of numerous State and local regulatory requirements which attach to "hazardous materials," and railroad interlining requirements.

RSPA's goal is to provide adequate protection for the environment while imposing minimal costs and burdens on the regulated community. To avoid unnecessary costs and burdens while implementing the FWPCA, RSPA is taking a different approach.

First, it is rescinding the implementation through or under the HMR and rejecting any use of the HMTA to accomplish the requirements of the FWPCA. Second, it is creating a new part 130 in title 49 of the CFR solely for implementation of the FWPCA. Thus, the HMTA and FWPCA requirements will be separate.

This action should eliminate confusion about which statutory and RSPA regulatory requirements apply to any particular "oil." Any oil which meets the existing definitions of a hazardous material (e.g., flammable or combustible) will continue to be regulated as a hazardous material under 49 CFR parts 171–180. Any oil subject to regulation under the FWPCA (which includes animal and vegetable oils) will be regulated as an oil under 49 CFR part 130. Any oil which is a hazardous material and is subject to regulation under the FWPCA will be regulated under both parts 171–180 and part 130.

The new part 130 contains comprehensive response plan requirements for shipments of bulk packagings containing oil in quantities greater than 42,000 gallons (1,000 barrels). These bulk packagings may be cargo tanks (tank trucks), railroad tank cars, or portable tanks. These requirements fulfill the FWPCA mandate that the President issue regulations requiring response plans to be prepared by an owner or operator of an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines. 33 U.S.C. 1321(j)(5).

RSPA has preliminarily determined that it is unnecessary to require any response plans or impose any prevention requirements with respect to non-petroleum oils in quantities of 42,000 gallons or less. This is based on a preliminary finding that non-petroleum oils generally appear to possess a lower level of aquatic toxicity than petroleum oils. Comments are solicited on this determination and finding.

Therefore, part 130 contains basic response plan and prevention

regulations applicable only to petroleum oils. It contains basic response plan requirements for shipments of any petroleum oil in a bulk packaging of 13,248 liters (3,500 gallons) or more.

The 3,500-gallon bulk packaging criterion is the same as the HMTA bulk packaging registration requirement, 49 App. U.S.C. 1805(c)(1)(C), and the Federal Highway Administration's financial responsibility requirement, 49 CFR part 387.

Part 130 also contains prevention requirements for oils above 42,000 gallons and petroleum oils in packagings with a capacity of 3,500 gallons or more. These requirements relate to communication, packaging, emergency response information, and training. Unlike the previous IFR, this rule applies these selected, critical prevention requirements and does not require adherence to all the requirements contained in the HMR. To ensure that the plans are put into practice, part 130 also requires that the applicable plan be implemented when a discharge of oil occurs during transportation.

In accordance with 5 U.S.C. 553(b)(3)(B), this interim final rule is issued without prior notice of proposed rulemaking and opportunity to comment. The FWPCA contains statutory deadlines for the preparation and submission of response plans for onshore facilities (including, but not limited to, motor vehicles and rolling stock). After these deadlines, carriers not in compliance with the Act are prohibited from transporting oil in bulk packagings.

In order to continue the timely and uninterrupted implementation of the FWPCA, RSPA has determined that good cause exists for finding that notice and comment is impracticable and contrary to public interest. RSPA believes that any further delay in issuing these regulations would create an undue hardship on the regulated community and have the potential to disrupt the sale and delivery of oil. These same reasons provide good cause for making the comprehensive response plans effective upon publication.

Although an opportunity for public comment on this particular approach has not been provided prior to issuing this interim final rule, RSPA seeks public comment to assure that the rule is feasible and workable. If appropriate, RSPA will amend the provisions of this rule. RSPA also will hold a public meeting on this rule. As an interim final rule, this regulation is fully in effect and binding upon publication in the Federal Register.

Although no further regulatory action by RSPA is essential to implement this rule, RSPA encourages interested persons to participate in this rulemaking by submitting written views, data, or information on this interim final rule. Persons submitting comments should include their names and addresses, identify this rulemaking by the docket number stated in the heading of this rule and the specific section of the rule to which each comment applies, and give the basis for each comment. RSPA will consider all public comments and will make changes to this rule if public comments indicate a change is necessary.

Regulatory Analyses and Notices

Executive Order 12291 and DOT Regulatory Policies and Procedures

This rule does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule, but it is considered a significant rule under section 5(a)(2)(f) of DOT's Regulatory Policies and Procedures ("the Procedures") (44 FR 11034; February 26, 1979) because of significant public and congressional interest. This rule does not require a Regulatory Impact Analysis, or an environmental assessment or impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

In accordance with section 10(e) of the Procedures, RSPA has determined that a Regulatory Analysis is not required because these regulations do not meet any of the criteria mandating the preparation of such an analysis. As a result, in accordance with section 10(e), RSPA prepared a Regulatory Evaluation, which includes an analysis of the economic consequences of the regulation and an analysis of its anticipated benefits and impacts. The Regulatory Evaluation is available for review in the Dockets Unit.

Regulatory Flexibility Act

I certify this regulation will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Executive Order 12612

This rule has been reviewed in accordance with Executive Order 12612 ("Federalism"). These regulations have no substantial effects on the States, on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Paperwork Reduction Act

The requirements for information collection have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) under OMB control number 2137–0590 (expiration date: August 31, 1993).

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 106

Administrative practice and procedure, Hazardous materials transportation, Oil, Pipeline safety.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 110

Disaster assistance, Education, Emergency preparedness, Grant programs—Environmental protection, Grant programs—Indians, Hazardous materials transportation, Hazardous substances, Indians, Reporting and recordkeeping requirements.

49 CFR Part 130

Oil, Response plans, Reporting and recordkeeping requirements, Transportation.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous material transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, and under the authority of 33 U.S.C. 1321, 49 CFR parts 106, 107, 110, 130, 171, 172, 173, 174, 176, 178, and 180 are amended as follows:

1. Subchapter A of title 49, subtitle B, chapter I, is added and the heading reads as follows:

SUBCHAPTER A—HAZARDOUS MATERIALS TRANSPORTATION, OIL TRANSPORTATION, AND PIPELINE SAFETY

PART 106—RULEMAKING PROCEDURES

2. The authority citation for Part 106 is revised to read as follows:

Authority: 49 App. U.S.C. 1653, 1657(e), 1672, 1803, 1804, 1808; 2002, and 11472(b)(1); 33 U.S.C. 1321.

3. Part 106 is transferred from subchapter B to subchapter A of subtitle B, chapter I of 49 CFR.

4. Appendix A to part 106 is amended by adding paragraph (a)(4) to read as follows:

Appendix A to Part 106

* * * * *

(a) * * *

(4) Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(j), as amended by section 4202(a)(6) of the Oil Pollution Act of 1990 (Pub. L. 101–380; 33 U.S.C. 1321).

* * * * *

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

5. The authority citation for Part 107 is revised to read as follows:

Authority: 49 App. U.S.C. 1421(c), 1653(d), 1655, 1802, 1804, 1805, 1806, 1808–1811, 1815; 49 CFR 1.45 and 1.53 and App. A of 49 CFR part 1.

6. Part 107 is transferred from subchapter B to subchapter A of chapter I of 49 CFR.

PART 110—HAZARDOUS MATERIALS PUBLIC SECTOR TRAINING AND PLANNING GRANTS

6a. The authority citation for Part 110 continues to read as follows:

Authority: 49 App. U.S.C. 1815; 49 CFR part 1.

6b. Part 110 is transferred from subchapter B to subchapter A of subtitle B, chapter I of 49 CFR.

7. Subchapter B of chapter I of title 49 is revised to read as follows:

SUBCHAPTER B—OIL TRANSPORTATION

PART 130—OIL SPILL PREVENTION AND RESPONSE PLANS

Sec.
130.1 Purpose.
130.2 Scope.
130.3 General requirements.
130.5 Definitions.
130.11 Communication requirements.
130.21 Packaging requirements.
130.31 Response plans.
130.33 Response plan implementation.

Authority: 33 U.S.C. 1321.

§ 130.1 Purpose.

This part prescribes prevention and response requirements of the Department of Transportation applicable to transportation of oil.

§ 130.2 Scope.

(a) The requirements of this part apply to—

(1) Any petroleum oil in packagings having capacities of 3500 gallons or more; and

(2) Any oil in a quantity of 42,000 gallons or more per packaging.

(b) The requirements of this part have no effect on—

(1) The applicability of the Hazardous Materials Regulations set forth in subchapter C of this chapter; and

(2) The discharge notification requirements of the United States Coast Guard (33 CFR part 153) and the EPA (40 CFR part 110).

§ 130.3 General requirements.

No person may offer or accept for transportation or transport oil subject to this part unless that person—

(a) Complies with this part; and

(b) Has been instructed on the applicable requirements of this part.

§ 130.5 Definitions.

In this subchapter:

EPA means the U.S. Environmental Protection Agency.

Oil means oil of any kind or in any form, including, but not limited to, petroleum, vegetable oil, animal oil, fuel oil, sludge, oil refuse, an oil mixed with waste other than dredged spoil.

Package means a packaging plus its contents.

Packaging means a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the packing requirements of this part.

Person means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof.

Petroleum oil means any oil extracted from geological hydrocarbon deposits, including fractions and derivatives thereof.

RSPA means the Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Transports or Transportation means any movement of property by any mode, and any loading, unloading, or storage incidental thereto.

§ 130.11 Communication requirements.

(a) No person may offer oil subject to this part for transportation unless that person provides the person accepting the oil for transportation a document indicating the shipment contains oil.

(b) No person may transport oil subject to this part unless a readily available document indicating that the shipment contains oil is in the possession of the transport vehicle operator during transportation.

§ 130.21 Packaging requirements.

Each packaging used for the transportation of oil must be designed, constructed, maintained, closed, and loaded so that, under conditions normally incident to transportation, there will be no release of oil to the environment.

§ 130.31 Response plans.

(a) After September 30, 1993, no person may transport oil subject to this part unless that person has a current basic written plan that:

(1) Sets forth the manner of response to discharges that may occur during transportation;

(2) Takes into account the maximum potential discharge of the contents from the packaging;

(3) Identifies who will respond to a discharge;

(4) Identifies the appropriate persons and agencies (including their telephone numbers) to be contacted in regard to such a discharge and its handling, including the National Response Center;

(5) For each motor carrier, is retained on file at that person's principal place of business and at each location where dispatching of motor vehicles occurs; and for each railroad, is retained on file at that person's principal place of business and at the dispatcher's office.

(b) After February 18, 1993, no person may transport an oil in a quantity greater than 1,000 barrels (42,000 U.S. gallons) unless that person has a current comprehensive written plan that:

(1) Conforms with all requirements specified in paragraph (a) of this section;

(2) Is consistent with the requirements of the National Contingency Plan (40 CFR part 300) and Area Contingency Plans;

(3) Identifies the qualified individual having full authority to implement removal actions, and requires immediate communications between that individual and the appropriate Federal official and the persons providing spill response personnel and equipment;

(4) Identifies, and ensures by contract or other means the availability of, private personnel (including address and phone number), the equipment necessary to remove, to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion) and to mitigate or prevent a substantial threat of such a discharge;

(5) Describes the training, equipment testing, periodic unannounced drills, and response actions of facility personnel, to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent the discharge, or the substantial threat of such a discharge; and

(6) Is submitted, and resubmitted in the event of any significant change, to the Associate Administrator for Hazardous Materials Safety (for portable tanks), to the Federal Railroad Administrator (for tank cars), or to the Federal Highway Administrator (for cargo tanks) at 400 Seventh Street, SW., Washington, DC 20590–0001.

§ 130.33 Response plan implementation.

If a discharge of oil occurs during transportation, the person transporting the oil shall take appropriate action to implement each plan required by § 130.31.

SUBCHAPTER C—HAZARDOUS MATERIALS REGULATIONS

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

8. The authority citation for part 171 is revised to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808 and 1818; 49 CFR part 1.

§ 171.1 [Amended]

9. In § 171.1, paragraph (a)(3)(v) is removed.

§ 171.2 [Amended]

10. In § 171.2, remove the words "subchapter B" and add, in their place, the words "subchapter A" in paragraphs (c) and (d)(3).

§ 171.5 [Removed]

11. Section 171.5 is removed.

§ 171.8 [Amended]

12. In § 171.8, the definition for "Oil" is removed.

§ 171.11 [Amended]

13. In § 171.11, paragraph (d)(14) is removed.

§ 171.12 [Amended]

14. In § 171.12, paragraph (b)(17) is removed.

§ 171.12a [Amended]

15. In § 171.12a, paragraph (b)(16) is removed.

16. In § 171.15, the Note at the end of this section is revised to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

* * * * *

Note: Under 40 CFR 302.6 EPA requires persons in charge of facilities (including transport vehicles, vessels and aircraft) to report any release of a hazardous substance in a quantity equal to or greater than its reportable quantity, as soon as that person has knowledge of the release, to the U.S. Coast Guard National Response Center at (toll free) 800–424–8802 or (toll) 202–267–2675.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

17. The authority citation for part 172 is revised to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

18. In the § 172.101 Table, the entry for "Oil, n.o.s., *with a flashpoint not less than 93° C(200° F)*" is removed.

§ 172.203 [Amended]

19. In § 172.203, paragraph (o) is removed.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

20. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

§§ 173.22 and 173.124 [Amended]

21. In part 173, remove the words "subchapter B" and add, in their place, the words "subchapter A" in § 173.22(a)(2)(iv) and § 173.124(a)(1)(ii)(A).

22. In § 173.140, paragraph (b) is revised to read as follows:

§ 173.140 Class 9—Definitions.

* * * * *

(b) Any material that meets the definition in § 171.8 of this subchapter for an elevated temperature material, a hazardous substance, a hazardous waste, or a marine pollutant.

23. In § 173.150, paragraphs (f)(3)(viii) and (f)(4) introductory text are revised to read as follows:

§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).

* * * * *

(f) * * *

(3) * * *

(viii) The requirements of §§ 173.1, 173.21, 173.24, 173.24a, 173.24b, 174.1, 177.804, 177.817, and 177.834 of this subchapter.

(4) A combustible liquid that is not a hazardous substance, a hazardous waste, or a marine pollutant is not subject to the requirements of this subchapter if it is a mixture of one or more components that—

* * * * *

§ 173.155 [Amended]

24. In § 173.155, paragraph (d) is removed.

PART 174—CARRIAGE BY RAIL

25. The authority citation for part 174 is revised to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1808; 49 CFR 1.53(e), 1.53, app. A to part 1.

§ 174.25 [Amended]

26. In § 174.25, paragraph (b)(6) is removed.

PART 176—CARRIAGE BY VESSEL

27. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1808; 49 CFR 1.53, app. A to part 1.

§ 176.70 [Amended]

28. In § 176.70 the words ", and shipments of oil in bulk packagings," in paragraph (a) are removed.

PART 178—SPECIFICATIONS FOR PACKAGINGS

29. The authority citation for part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1.

§§ 178.320, 178.337–18 and 178.345–15 [Amended]

30. In 49 CFR part 178, remove the words "subchapter B" and add, in their place, the words "subchapter A" in § 178.320, in the definition of "Manufacturer", § 178.337–18(a), and § 178.345–15(a).

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

31. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. App. 1803; 49 CFR part 1.

§ 180.3 and 180.413 [Amended]

32. In 49 CFR part 180, remove the words "subchapter B" and add, in their place, the words "subchapter A" in § 180.3(a), (b)(3) and (b)(5) and § 180.413(a)(1) and (a)(2).

Issued in Washington, DC on June 11, 1993, under authority delegated in 49 CFR part 1.

Rose A. McMurray,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 93–14230 Filed 6–14–93; 9:47 am]

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Part III

Department of Education

34 CFR Part 649

Patricia Roberts Harris Fellowship Program; Proposed Rule and Notice Inviting Applications

VOL 58 ISS 114 JE 16 1993 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 649

RIN 1840-AB67

Patricia Roberts Harris Fellowship Program

AGENCY: Department of Education.

ACTION: Summary of anticipated changes.

SUMMARY: The Secretary publishes a summary of anticipated changes to the notice of proposed rulemaking for the Patricia Roberts Harris Fellowship Program. The regulations are needed to implement changes made by the Higher Education Amendments of 1992. The regulations would establish eligibility criteria, selection criteria, and other terms and conditions for awarding grants to institutions of higher education to assist in making available the benefits of master's level, professional, and doctoral education programs to women and individuals from minority groups who are underrepresented in these programs.

FOR FURTHER INFORMATION CONTACT: Charles Miller. Telephone: (202) 708-8935. Individuals who use a telecommunications device for deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time Monday through Friday.

SUPPLEMENTARY INFORMATION: On March 1, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for the Patricia Roberts Harris Fellowship Program in the Federal Register (58 FR 11928-11937). In addition, on March 24, 1993, the Secretary published a notice in the Federal Register (58 FR 15824) to correct an error in the NPRM by restoring language inadvertently deleted from the definition of "Minority" in § 649.6(b) of the proposed regulations. The public comment period for the notice of proposed rulemaking ended on March 31, 1993.

It is not the policy of the Department of Education to solicit applications before the publication of final regulations. However, in this case it is necessary to solicit applications on the basis of the NPRM in order to have sufficient time available to conduct the competition and make awards prior to the end of the fiscal year (September 30, 1993). An application notice for the Patricia Roberts Harris Fellowship Program is published in this issue of the Federal Register.

Eighty-six comments were received in response to the Secretary's invitation to comment on the NPRM. In response to these comments, the Secretary anticipates making a number of changes to the regulations proposed in the NPRM. The following is a summary of anticipated changes and the comments prompting them.

Summary of Anticipated Changes

Eligibility for a Grant

One commenter questioned whether in order to receive a grant under this program an institution would be required to demonstrate shortages of both women and minorities in a particular academic field. An institution is not required to demonstrate underrepresentation of both women and minorities in order to be eligible for a grant. An institution may serve members of any one targeted group or more than one targeted group.

The Secretary recognizes that the proposed regulations are confusing regarding the groups of students to which an institution may give priority under each type of fellowship program. The Secretary expects to revise §§ 649.3(b), 649.10, and 649.40 of the regulations to clarify that an institution may propose a fellowship program that gives priority to members of one or more of the following six targeted groups.

(1) Women who are underrepresented in an academic field in which they are pursuing master's level or professional study.

(2) Individuals from minority groups who are underrepresented in an academic field in which they are pursuing master's level or professional study.

(3) Women who are pursuing master's level study leading to careers that serve the public interest.

(4) Individuals from minority groups who are pursuing master's level study leading to careers that serve the public interest.

(5) Women who are undertaking doctoral study.

(6) Individuals from traditionally underrepresented groups undertaking doctoral study.

The Secretary also anticipates revising the proposed regulations regarding the establishment of priorities as follows:

- Section 649.22(a) would be revised to clarify that the Secretary will give an absolute preference to projects that give priority in awarding fellowships to women "or" individuals from minority groups who are pursuing master's level or professional study and are underrepresented in the academic field.
- Section 649.22(b) would be revised to clarify that the Secretary will give a competitive preference to projects that give priority to women "or" individuals from minority groups who are pursuing master's level study leading to careers that serve the public interest.
- Section 649.32(a) would be revised to clarify that the Secretary will give an absolute preference to projects that give priority to women "or" individuals from traditionally underrepresented groups undertaking doctoral study.

The Secretary also anticipates revising the selection criteria in paragraphs (a)(1) and (a)(2) of §§ 649.21 and 649.31 to clarify that applicants are generally required to provide institutional commitment and recruitment plan information that is related only to the group or groups the applicant is proposing to serve. However, the Secretary expects to retain paragraph (a)(2)(ii)(C) of proposed §§ 649.21 and 649.31, which requires all applicants to provide information to show their success in providing students with access to careers in which women and minority groups are underrepresented, because the Secretary is required by statute to consider this information for every applicant.

Finally, the Secretary expects to correct § 649.21(a)(2)(ii)(A)(1) of the proposed regulations by removing the word "traditionally" because there is no statutory basis for establishing a priority for the traditionally underrepresented in the master's level and professional study program.

Academic Year (§§ 649.6, 649.63)

Several commenters requested clarification regarding the definition of this term and its impact. One commenter asked how the definition would affect a fellow who first enrolled for the spring term.

The Secretary does not intend the definition of "academic year" to restrict flexibility regarding the starting dates of fellows. The Secretary intends to allow an institution to apply a pro-rated portion of the funds for fellows who start in the spring and carry over the remaining funds to the following academic year. In the end, a fellow who starts in the spring should have received the same total fellowship funds as a fellow who started in the same program in the fall.

The Secretary anticipates revising §§ 649.50 and 649.51 to replace the terms "academic year" and "academic years" with the words "year" and "years." The Secretary further anticipates revising § 649.63 of the proposed regulations to clarify that if a fellow starts in the spring, an institution shall disburse a pro-rated stipend and shall carry over a pro-rated portion of the institutional payment and of the remainder of the stipend for the fellow

for the next academic year. Finally, the Secretary expects to correct § 649.61 by removing paragraph (b) because the Secretary does not intend to make pro-rated institutional payments for fellows that are enrolled for less than a full academic year. Rather, the Secretary intends that institutions will return or carry over a pro-rated portion of institutional payments, as provided in § 649.63.

Careers That Serve the Public Interest (§§ 649.6, 649.22(b)(1))

A number of commenters requested a more precise definition of the term. One commenter asked whether a career at a public institution of higher education would be a career serving the public interest if the institution is a department of State government. Commenters were also concerned that the three-to-five point competitive preference proposed to implement the statutory priority for women and students from minority groups pursuing master's level study leading to careers that serve the public interest would result in all awards for the master's level and professional study program going to this category of fellowships since the point spread among applicants is generally less than three.

The Secretary does not anticipate modifying the definition of this term. The Secretary expects institutions to explain in their grant applications how the academic areas that they are proposing for this fellowship program will lead to careers that serve the public interest. For example, the Secretary believes a career in teaching at a nonprofit public or private institution of higher education meets the definition because it promotes National Education Goal 5, which calls for every adult American to possess the knowledge and skills necessary to complete in the global economy and exercise the rights and responsibilities of citizenship.

The Secretary agrees with the commenters that the number of points proposed for the competitive preference should be reduced. The Secretary anticipates revising paragraph (b)(1) of proposed § 649.22 to reduce the number of points awarded to applications that meet the competitive preference from "between three and five" to "one."

Doctoral Study (§ 649.6)

Some commenters expressed concern that including the teaching requirement in the definition of "doctoral study" is inconsistent with existing doctoral programs at many institutions and therefore would preclude some doctoral programs from participating. Commenters also pointed out that since the teaching requirement had been incorporated into the regulations as a condition of a doctoral fellowship, including the requirement in the definition of doctoral study is redundant and unnecessary. Commenters recommended that the teaching requirement be removed from the definition.

The Secretary does not intend to restrict certain doctoral programs from eligibility and agrees that the teaching requirement in the definition is unnecessary since it is already a condition of a doctoral fellowship. In response to public comment, the Secretary anticipates revising the definition of "doctoral study" to remove the requirement for one year of supervised teaching experience. The Secretary also expects to make a corresponding change to the definition of "professional study" to remove the reference to "supervised teaching."

Project (§§ 649.21, 649.31)

Several commenters requested clarification regarding the use of the term "project" in both the institution-wide and the academic field selection criteria, and its implications regarding the respective project responsibilities of an institution and an academic department.

The Secretary agrees with the comments that the use of the term project in the academic field criteria in the NPRM is confusing because a project is institution-wide and may include more than one academic area. The Secretary anticipates revising paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5)(i)(B) of §§ 649.21 and 649.31 to clarify that those criteria must be addressed with respect to each academic field within the project.

Institutional Commitment Criterion (§§ 649.21(a); 649.31(a))

One commenter noted that the points allocated to the "Institutional commitment" criterion seemed high relevant to other selection criteria. The Secretary agrees and anticipates reducing the points allocated to the "Institutional commitment" criterion from 20 to 15 and adding those 5 points to the "Quality of academic program" criterion.

Faculty Criterion (§§ 649.21(b); 649.31(b))

Several commenters requested that the quality of key faculty be emphasized more strongly in the selection criteria. The Secretary agrees with the commenters that more emphasis should be placed on the quality of key faculty. The Secretary therefore anticipates revising paragraph (b)(5)(i)(B) of §§ 649.21 and 649.31 of the proposed regulations to provide a criterion regarding the qualifications of "key faculty" rather than "other key personnel". In addition, the Secretary anticipates adjusting the points allocated to the selection criteria to increase the "Quality of key personnel" criterion from 10 to 12 points, with 6 of those points assigned to "Quality of key faculty" and 2 points assigned to each of the other three subsections under (A), (B), and (C) of the "Quality of key personnel" criterion.

Discrimination Prohibition (§§ 649.21(b)(3)(vi) and 649.31(b)(3)(vi))

A number of commenters suggested that paragraph (b)(3)(vi) in §§ 649.21 and 649.31 of the proposed regulations, which requires applicants to ensure that otherwise eligible project participants are selected without regard to race, color, national origin, religion, gender, age, or disabling condition is inconsistent with the purposes of the program.

The Secretary agrees that this provision is confusing because it could be interpreted to be in conflict with the priority requirements under the program. The Secretary anticipates revising paragraph (b)(3)(vi) of §§ 649.21 and 649.31 to clarify that applicants may not consider the prohibited factors, except as necessary to implement the priority requirements under this program.

Evaluation Plan (§§ 649.21(b)(7) and 649.31(b)(8))

Several commenters objected to the evaluation plan requirements, calling them excessive, cumbersome, and unnecessary. Some commenters suggested that the evaluation plan be an institution-wide criterion, rather than an academic field criterion.

The Secretary agrees with the commenters that the evaluation plan requirements are unnecessarily burdensome for a graduate fellowship program, that the evaluation should be conducted centrally, and the evaluation plan therefore should be an institution-wide criterion. The Secretary anticipates that the project director would oversee an institution-wide evaluation that addresses each academic field. The Secretary anticipates revising the regulations to simplify the evaluation requirements, to move the evaluation plan criterion from the academic field to the institution-wide criteria, and to reduce the number of points allocated to the evaluation plan.

In particular, the Secretary anticipates revising the evaluation plan

requirements in the proposed regulations as follows: (1) To remove the requirements in paragraphs (b)(2) (iii), (iv), and (vi) of § 649.21 and the corresponding requirements in paragraphs (b)(8) (iii), (iv), and (vi) of § 649.31; (2) To revise paragraph (b)(7)(ii) of § 649.21 and paragraph (b)(8)(ii) of § 649.31 to provide that the Secretary reviews each application to determine the extent to which the applicant's evaluation methods include both process and product evaluation measures that are objective and designed to produce data that are quantifiable; (3) To move the revised evaluation plan requirements from the academic field criteria in §§ 649.21(b)(7) and 649.31(b)(8) to the institution-wide criteria in a new paragraph (a)(5) of §§ 649.21 and 649.31; and (4) To reduce the points allocated to the evaluation plan selection criteria from 10 to 5. Two of the extra points would be added to the "Quality of key personnel" criterion, as discussed above, and the other 3 points would be added to the "Quality of academic program" criterion to increase its weight to a total of 15 points.

Priority Fields (§ 649.22(c)(1))/Appendix

Some of the commenters believe the list of priority fields in the appendix is too broad, and some commenters stated that any list is too restrictive. Many of the comments on the fields of high national priority reflect a misunderstanding of the process the Secretary uses for giving an absolute preference. None of the academic areas listed in the appendix has been given a preference as a field of high national priority. The Secretary establishes the academic career fields of high national priority that will be given a preference on an annual basis by selecting fields from among the academic areas listed in the appendix and announcing the absolute preference for the selected fields in the Federal Register notice inviting applications for new awards. The areas of high national priority for this year's grant competition are specified in this application notice under absolute priority 2. For this reason, the Secretary does not believe the list of academic areas is too broad. Nor does the Secretary believe the list is too restrictive because the Secretary also may give an absolute preference to an academic field that is a subdisciplinary or interdisciplinary academic area of those academic areas on the list.

The Secretary anticipates minor revisions to the language of the regulations to clarify that not all of the areas listed in the appendix are areas of high national priority.

National and Citizenship Requirements (§§ 649.40 (b)(3), (c)(3), and (d)(3))

A number of commenters requested clarification regarding why the citizenship requirement applies only to doctoral fellows pursuing academic careers and not to any other fellows. Commenters also requested a definition of the term "national".

The citizenship requirement for doctoral fellows pursuing academic careers is taken from the Higher Education Act of 1965, as amended by Congress in the Higher Education Amendments of 1992 (HEA), which states expressly that one of the purposes of the title IX graduate fellowship programs is to "provide incentives and support for *United States citizens* to complete doctoral degree programs leading to academic careers" (20 U.S.C. 1134(a)(2)) (emphasis added). The Secretary believes that limiting eligibility for doctoral programs leading to academic careers to U.S. citizens is consistent with legislative intent. Since the statute did not specifically target U.S. citizens for any of the other types of fellowships, the Secretary did not restrict eligibility for any of the other fellowships.

The Secretary agrees with the commenters that a definition of "national" would help to clarify the eligibility provisions. The Secretary anticipates adding to § 649.6 of the regulations a definition of the term "U.S. national" that is drawn from the Immigration and Nationality Act definition and is consistent with the definition of "U.S. citizen or national" that is used in other higher education grant programs. The definition would provide that a "U.S. national" means a citizen of the United States or a person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States owes permanent allegiance to the United States.

Doctoral Fellowship Teaching Requirement (§ 649.51(b)(3))

Some commenters requested clarification regarding the provision that requires doctoral fellows pursuing academic careers to fulfill a teaching requirement that is equal to the teaching requirement of a half-time teaching assistant since that requirement may vary among institutions. The Secretary agrees that the half-time requirement is confusing. The Secretary intends that the teaching requirements for fellows under this program be the same as for other graduate teaching assistants and anticipates revising paragraph (b)(3)(1)(ii) of § 649.51 to remove the reference to "half-time" and to provide that the teaching requirements for fellows under this program must be equal to those required of other graduate teaching assistants at that institution.

Disbursement Requirements (§ 649.64(a))

One commenter noted that institutions will not be able to satisfy the requirement that institutions certify that fellows are making satisfactory academic progress prior to the fellow's receipt of the stipend.

The Secretary agrees with the commenter that no certification would be possible prior to a fellow's initial receipt of a stipend and anticipates revising paragraph (a) of this section to clarify that the certification requirement does not apply until after a fellow's first academic term.

Other Issues

The Secretary also received public comment regarding a number of other issues in response to which the Secretary does not anticipate making any changes to the proposed regulations. These comments will be discussed fully in the preamble to the final regulations for this program when they are published in the Federal Register. Among the major issues raised by commenters that the Secretary does not expect will result in a change to the proposed regulations is the use of the test in part F of title IV of the HEA for determining the amount of a fellow's financial need. The Secretary believes it is reasonable to require graduate students who receive stipends under this program to demonstrate need based on the same standards as graduate students who receive support under all other programs funded by the Department. Title IV–F contains separate provisions for graduate students that reflect Congress' assessment of factors relevant to the financial need of those students.

The Secretary notes that a project period for this program was established for "up to 60 months" to accommodate the doctoral competition. The Secretary expects that projects funded under the masters' level and professional study competition would generally be for a project period of 24 or 36 months.

Program Authority: 20 U.S.C. 1134, 1134d–1134g.

Dated: June 11, 1993.

Maureen A. McLaughlin,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 93–14165 Filed 6–15–93; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No. 84.084B]

Patricia Roberts Harris Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To provide, through institutions of higher education, grants to assist in making available the benefits of master's level, professional, and doctoral education programs to women and individuals from minority groups who are underrepresented in these programs. This program supports National Education Goal Five calling for adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Institutions of higher education that offer a program of postbaccalaureate study leading to a master's level, professional, or doctoral degree other than schools or departments of divinity, are eligible to receive grants under this program.

Deadline for Transmittal of Applications: July 19, 1993.

Deadline for Intergovernmental Review: September 17, 1993.

Applications Available: June 16, 1993.

Available Funds: $11,791,000 of which $5,346,000 is available for awards for master's level and professional study and $6,345,000 is available for awards for doctoral education programs.

Estimated Range of Awards: $46,000 to $460,000.

Estimated Average Size of Awards: $92,000.

Estimated Number of Awards: 128.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Budget Period: 12 months.

Applicable Regulations: (a) The Education Department General Administration Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) When published as final regulations, the Patricia Roberts Harris Fellowship Program regulations.

SUPPLEMENTARY INFORMATION: On March 1, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for the Patricia Roberts Harris Fellowship Program in the **Federal Register** (58 FR 11928–11937). In addition, on March 24, 1993, the Secretary published a notice in the **Federal Register** (58 FR 15824) to correct an error in the NPRM by restoring language inadvertently deleted from the definition of "Minority" in § 649.6(b) of the proposed regulations. The public comment period for the notice of proposed rulemaking ended on March 31, 1993.

It is not the policy of the Department of Education to solicit applications before the publication of final regulations. However, in this case it is necessary to solicit applications on the basis of the NPRM in order to have sufficient time available to conduct the competition and make awards prior to the end of the fiscal year (September 30, 1993).

Eighty-six comments were received in response to the Secretary's invitation to comment on the NPRM. In response to these comments, the Secretary anticipates making a number of changes to the regulations proposed in the NPRM. These changes are discussed in a summary of anticipated changes published in this issue of the **Federal Register**.

Applicants should prepare their grant applications based on the provisions in the NPRM, as amended by the changes discussed in the summary of anticipated changes published in this issue of the **Federal Register**. If the Secretary makes any changes in the regulations that were not discussed in the summary of anticipated changes, applicants will be given an opportunity to revise their applications.

Priorities

Master's Level and Professional Study Competition

Under 34 CFR 75.105(c)(3) and 34 CFR 649.22 of the notice of proposed rulemaking the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under this competition only applications that meet both of these absolute priorities:

Absolute Priority 1—

Fellowships in the award of which priority is given to women or individuals from minority groups, or both, who are pursuing master's level or professional study and are underrepresented in the academic field for which a grant award is sought.

Absolute Priority 2—

Fellowships in the following academic career fields that the Secretary has identified, from among the academic areas listed in the appendix of the notice of proposed rulemaking, as high national priority for the purpose of the master's level and professional study competition in FY 1993:

Business and management
Computer and information sciences
Education
Engineering
Health sciences
Law
Life sciences
Mathematics
Physical sciences
Public administration and services

Competitive Preference Priority

Under 34 CFR 75.105(c)(2)(i) and 34 CFR 649.22(b) of the notice of proposed rulemaking the Secretary gives preference to applications that meet the following competition priority. The Secretary awards one point to each academic field for which the applicant is requesting funding that meets this competitive preference in a particularly effective way. This point is in addition to any points the application earns under the institutional and academic field selection criteria for the master's level and professional study competition under this program:

Fellowships in the award of which priority is given to women or individuals from minority groups, or both, who are pursuing master's level study leading to careers that serve the public interest.

Doctoral Study Competition

Under 34 CFR 75.105(c)(3) and 34 CFR 649.32 of the notice of proposed rulemaking the Secretary gives an absolute preference to applications that meet both of these absolute priorities:

Absolute Priority 1—

Fellowships in the award of which priority is given to women undertaking doctoral study, or individuals from traditionally underrepresented groups undertaking doctoral study, or both.

Absolute Priority 2—

Fellowships in the following academic career fields that the Secretary has identified, from among the academic areas listed in the appendix of the notice of proposed rulemaking, as high national priority for the purpose of the doctoral study competition in FY 1993:

Computer and information sciences
Education
Engineering
Health sciences (medical research and nursing only)
Life sciences
Mathematics
Physical sciences

Stipend Level

The Secretary has determined that the maximum fellowship stipend for academic year 1993–1994 is $14,000, which is equal to the level of support that the National Science Foundation is providing for its graduate fellowships.

FOR APPLICATIONS OR INFORMATION CONTACT: Dr. Charles H. Miller, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, room 3022, Washington, DC 20202–5251. Telephone: (202) 708–8395. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1134, 1134d–1134g.

Dated: June 8, 1993.

Maureen A. McLaughlin,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 93–14186 Filed 6–15–93; 8:45 am]

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federal register

Wednesday,
June 16, 1993

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121
The Age 60 Rule; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 27264]

The Age 60 Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of rescheduling of public meeting; and extension of comment period.

SUMMARY: The FAA is issuing this notice to advise the public that the June 23, 1993, public meeting on the Age 60 Rule announced on April 20, 1993 (58 FR 21336) has been rescheduled for September 29, 1993, and that the comment period has been extended from July 17, 1993, to October 15, 1993. The FAA has determined that the meeting should be rescheduled to afford a new Administrator the opportunity to participate in the deliberations regarding the Age 60 Rule issues. This rescheduling will also provide industry additional time to evaluate the report entitled "Age 60 Project, Consolidated Database Experiments, Final Report," dated March 1993, and to prepare their presentations.

DATES: The public meeting has been postponed until September 29, 1993. The request for comment period is being extended from July 17, 1993, to October 15, 1993.

ADDRESSES: As stated in the Notice dated April 20, 1993, comments should be mailed, in triplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 27264, 800 Independence Avenue SW., Washington, DC 20591. All comments must be marked: "Docket No. 27264." Comments on this Notice may be examined in room 915G on weekdays, except on Federal holidays, between 8:30 a.m. and 5 p.m.

The public meeting will be held at the Quality Hotel Capitol Hill, 415 New Jersey Avenue NW. Washington, DC 20001. Persons unable to attend the meeting may mail their comments to the above-referenced address.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the meeting or questions regarding the logistics of the meeting should be directed to Florence Hamn, Office of Rulemaking, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9822; telefax (202) 267–5075.

Questions concerning the subject matter of the meeting should be directed to Dan Meier, Federal Aviation Administration, Regulatory Branch, Flight Standards Service, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3749; telefax (202) 267–5229.

SUPPLEMENTARY INFORMATION:

Participation at the Meeting

Requests from persons who wish to present oral statements at the public meeting should be received by the FAA no later than September 10, 1993. Such requests should be submitted to Florence Hamn, as listed above in the section titled FOR FURTHER INFORMATION CONTACT and should include a written summary of oral remarks to be presented, and an estimate of time needed for the presentation. Requests received after the date specified above will be scheduled if there is time available during the meeting; however, the name of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers that will be available at the meeting. In order to accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested.

Persons who are currently scheduled to speak will keep their assigned time slot, which will be confirmed by the FAA.

Background

On April 20, 1993, the FAA issued a Notice of public meeting and request for comments regarding the Age 60 Rule. The FAA invited comments on various aspects of the report entitled "Age 60 Project, Consolidated Database Experiments, Final Report," dated March 1993, and the issues addressed therein.

The FAA has determined that the meeting should be rescheduled to afford a new Administrator the opportunity to participate in the deliberations regarding the Age 60 Rule issues. This rescheduling will also provide industry additional time to evaluate the report and to prepare their presentations.

Specific Issues for Public Comment

There are several specific issues, discussed in the following paragraphs, on which the FAA seeks comment at the public meeting.

These key issues are intended to help focus public comments on areas which will be useful to the FAA in determining whether to initiate rulemaking. The comments at the meeting need not be limited to these issues, and the FAA invites comments on any other aspect of the report or the possible rulemaking.

Economic Issues

(1) Would possible rulemaking to increase the current age 60 limitation increase or reduce costs for the airline industry?

(2) Would a rule change result in the hiring of fewer new pilots or in increased furloughs due to the retention of pilots age 60 or older? If so, to what extent? What would be the effect on training costs?

(3) What portion of pilots reaching the age of 60 would be inclined to continue working as part 121 pilots if permitted?

Safety Issues

(1) Should there be a maximum age limit for pilots operating in part 121 operations? If so, what should be the age limit?

(2) Does the report provide enough information to serve as a basis for a rule change to section 121.383(c) of the FAR. If not, what additional areas should be considered for further study? Are there mortality and morbidity data available for individuals who have ceased serving as part 121 pilots after reaching the age of 60?

(3) If the age limit were increased, should the number of individuals over the age of 60 serving as part 121 pilots on an aircraft be restricted?

(4) If a rule change occurs, should the part 121 pilot over the age of 60 be limited to the duties of the second-in-command?

(5) Is there evidence that older pilots have greater difficulty transitioning from one aircraft to another type of aircraft? Does that difficulty increase with age? If so, should the FAA restrict part 121 pilots at a certain age from transitioning to other aircraft used in part 121 operations with which they are unfamiliar?

(6) Should the FAA impose additional requirements (e.g., training, currency, medical, performance testing) for any former part 121 pilot or current part 121 pilot who would be affected by a rule change?

(7) Are the current air crew training and qualification rules adequate for pilots who are age 60 or older?

(8) Should tests to measure individual performance be required for part 121 pilots over the age of 60?

Meeting Procedures

The following procedures are established to facilitate the meeting:

(1) There will be no admission fee or other charge to attend or to participate in the meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting

(between 8:30 a.m. and 9 a.m.) subject to availability of space in the meeting room. The meeting may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled for the meeting.

(2) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, we will notify the speaker if additional time is available.

(3) The FAA will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served basis. However, the FAA reserves the right to exclude some speakers if necessary to present a balance of viewpoints and issues.

(4) Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

(5) Representatives of the FAA will preside over the meeting. A panel of FAA personnel involved in this issue will be present.

(6) The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

(7) The FAA will review and consider all material presented by participants at the meeting. Position papers or material presenting views or arguments related to the report and issues may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

(8) Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a member of the panel is not intended to be, and should not be construed as, a position of the FAA.

(9) The meeting is designed to solicit public views and more complete information on the report and the issues discussed in this notice. Therefore, the meeting will be conducted in an informal and nonadversarial manner. No individual will be subject to cross-examination by any other participant; however, panel members may ask questions to clarify a statement and to ensure a complete and accurate record.

(Authority: 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1501; 49 U.S.C. 106(g))

Issued in Washington, DC, on June 10, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

[FR Doc. 93–14084 Filed 6–10–93; 3:07 pm]

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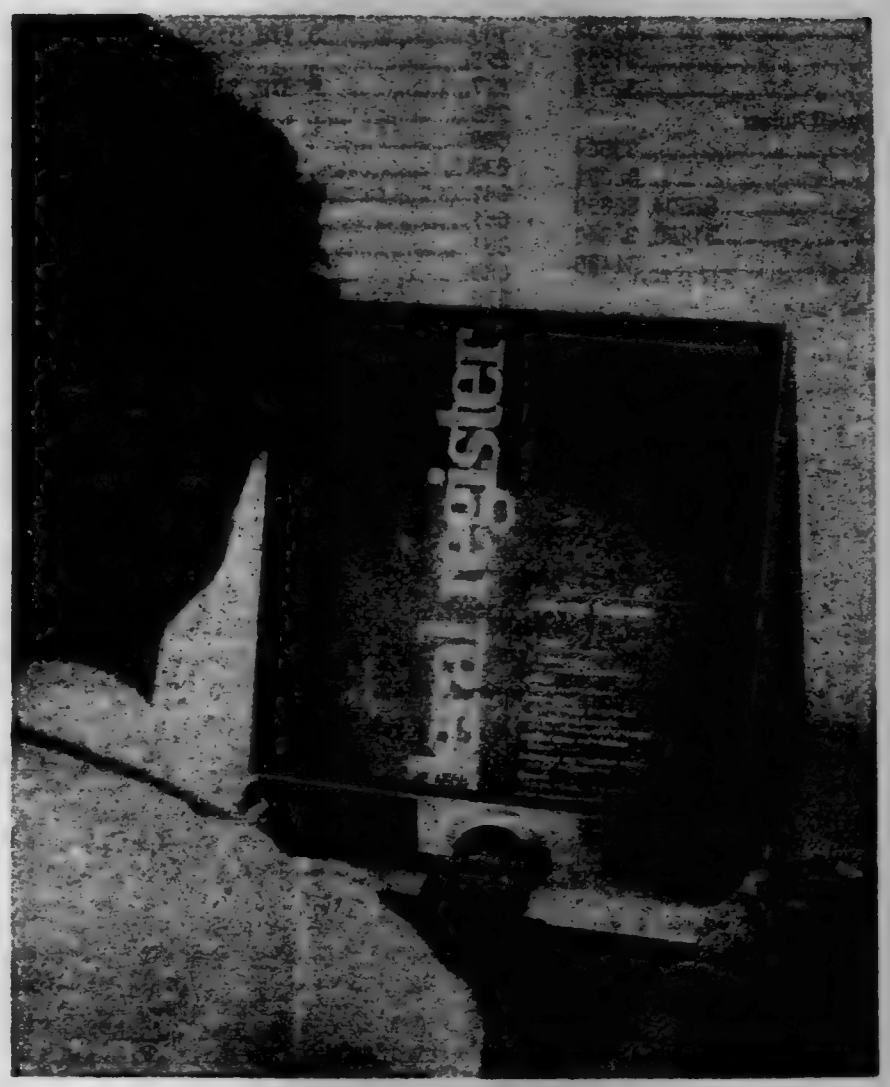

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

(two briefings)

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OVERSEAS PRIVATE INVESTMENT CORPORATION

5 CFR Chapter XXXIII

22 CFR Part 705

RINs 3209–AA00, 3209–AA04, 3209–AA15, and 3209–AA16

Supplemental Standards of Ethical Conduct for Employees of the Overseas Private Investment Corporation

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Interim rule.

SUMMARY: The Overseas Private Investment Corporation, with the concurrence of the Office of Government Ethics (OGE), is issuing a regulation for employees of OPIC that supplements the executive branch-wide Standards of Ethical Conduct issued by OGE. The Overseas Private Investment Corporation is also repealing its existing agency standards of conduct regulations that are now superseded by the branch-wide Standards of Ethical Conduct and by the executive branch financial disclosure regulation also issued by OGE. In the place of those OPIC regulations, the Overseas Private Investment Corporation is substituting a cross-reference to the new branch-wide regulations and this supplemental regulation.

DATES: Interim rule effective July 17, 1993. Comments are invited and must be received on or before August 2, 1993.

ADDRESSES: Send comments to the Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527, Attention Ms. Scott.

FOR FURTHER INFORMATION CONTACT: Jane H. Chalmers or Kathlyn R. Scott, Overseas Private Investment Corporation, Office of Legal Affairs, telephone (202) 336–8400.

SUPPLEMENTARY INFORMATION:

I. Analysis of Regulation

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) for codification at 5 CFR part 2635. See 57 FR 35006–35067, as corrected at 57 FR 48557 (October 27, 1992) and 57 FR 52583 (November 4, 1992). The Standards, effective February 3, 1993, set uniform ethical conduct standards applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive agencies to publish agency-specific supplemental regulations that are necessary to properly implement their respective ethics programs. The Overseas Private Investment Corporation and OGE have determined that the following interim supplemental rule is necessary for successful implementation of OPIC's ethics program, in light of OPIC's operations.

5 CFR 2635.105 and 2635.803 authorize individual agencies, by supplemental regulation, to require employees to obtain approval before engaging in outside employment activities. This interim rule, for codification at 5 CFR 4301.101, will require any employee of OPIC who wants to engage in outside employment to obtain prior approval of such activity from OPIC's Designated Agency Ethics Official.

The Overseas Private Investment Corporation is also repealing its existing standards of conduct regulations at 22 CFR part 705 which, except for the sections noted immediately below, were superseded by the executive branch-wide Standards on February 3, 1993. Sections 705.735–104, 705.735–109 and part of 705.735–110 of OPIC's standards, dealing with financial disclosure, were superseded on October 5, 1992 by OGE's executive branch-wide financial disclosure regulation codified at 5 CFR part 2634. See 57 FR 11800–11830 (April 7, 1992), as amended at 57 FR 21854–21855 (May 22, 1992) and 57 FR 62605 (December 31, 1992). In place of its old standards at 22 CFR part 705, OPIC is issuing a residual cross-reference provision at new 22 CFR 705.101 to refer to both the branch-wide Standards and financial disclosure regulations and to OPIC's new supplemental regulation.

II. Matters of Regulatory Procedure

Administrative Procedure Act

As General Counsel of OPIC, I have found good cause pursuant to 5 U.S.C. 553(b) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these interim rules and repeal. The reason for this determination is that it is important to a smooth transition from OPIC's prior ethics rules to the new executive branch-wide Standards and financial disclosure regulations that these rulemaking actions take place as soon as possible. Furthermore, this rulemaking is related to OPIC organization, procedure and practice. Nonetheless, this is an interim rulemaking, with provision for a 45-day public comment period. The Overseas Private Investment Corporation will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as final, with the concurrence of the Office of Government Ethics.

Executive Order 12291, Federal Regulation

As General Counsel of OPIC, I have determined that this is not a major rule as defined in section 1(b) of Executive Order 12291 of February 17, 1981.

Regulatory Flexibility Act

As General Counsel of OPIC, I have determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant impact on small business entities because it affects only OPIC employees.

Paperwork Reduction Act

As General Counsel of OPIC, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 4301 and 22 CFR Part 705

Conflict of interests, Government employees.

Dated: March 3, 1993.

Jane H. Chalmers,

Acting General Counsel, Overseas Private Investment Corporation.

Approved: March 18, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Overseas Private Investment Corporation, in concurrence with the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 22, chapter VII, of the Code of Federal Regulations, as follows:

TITLE 5—[AMENDED]

1. A new chapter XXXIII, consisting of part 4301, is added to title 5 of the Code of Federal Regulations to read as follows:

5 CFR CHAPTER XXXIII—OVERSEAS PRIVATE INVESTMENT CORPORATION

PART 4301—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION

§ 4301.101 Prior approval for outside employment.

Any employee of the Overseas Private Investment Corporation who is interested in engaging in outside employment must first obtain approval from the Designated Agency Ethics Official before engaging in such employment activity. For this purpose, employment has the meaning set forth in § 2635.603(a) of this title.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 3635.105, 2635.803.

22 CFR CHAPTER VII—OVERSEAS PRIVATE DEVELOPMENT CORPORATION, INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

2. Part 705 of 22 CFR chapter VII is revised to read as follows:

PART 705—EMPLOYEE ETHICAL CONDUCT STANDARDS AND FINANCIAL DISCLOSURE REGULATIONS

§ 705.101 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Overseas Private Investment Corporation (OPIC) should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the OPIC regulation at 5 CFR 4301.101 which supplements the executive branch-wide standards, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

Authority: 5 U.S.C. 7301.

[FR Doc. 93–14212 Filed 6–16–93; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 999

[Docket No. FV–92–039FR]

Final Rule Establishing Pit and Pit Fragment Tolerances for Dried Prunes Imported Into the United States

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is adopting, without modification, as a final rule the provisions of an interim final rule which established pit and pit fragment tolerances for imported pitted and pitted macerated dried prunes. Prior to the interim final rule, no tolerance was specified for pits or pit fragments under the import regulation. This action is required under section 8e of the Agricultural Marketing Agreement Act of 1937 to bring the import requirements for dried prunes into conformity with the requirements of the marketing order for dried prunes produced in California.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Richard Van Diest, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487–5901; or Kathleen M. Finn, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone (202) 720–1509.

SUPPLEMENTARY INFORMATION: This final rule, which adopts the interim final rule which amended the prune import regulation (§ 999.200), is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act. Section 8e provides that whenever certain specified commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. Marketing Order No. 993, as amended (7 CFR part 993), prescribes grade and size requirements for dried prunes produced in California.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has also been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on regulations established under Federal marketing orders for fresh fruits, vegetables, and specialty crops, like prunes. Thus, import regulations should also have small entity orientation and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms, including importers, are defined as those whose annual receipts are less than $3,500,000. Currently, pitted and pitted macerated dried prunes are not imported into the United States, and thus, at this time no importers are affected by the regulations implemented by this action.

Grade and size requirements are included in section 999.200 covering prunes imported into the United States. However, these requirements did not set standards for pitted and pitted macerated dried prunes. The interim final rule established the requirements

specified in Marketing Order No. 993 for California dried prunes as the comparable grade requirements for pitted and pitted macerated dried prunes imported into the United States. The interim final rule also did not subject imports of pitted and pitted macerated prunes to the size and undersized requirements specified in M.O. No. 993 because these requirements are applied prior to pitting and cannot be applied after the pits have been removed.

Imported prunes meeting grade and size requirements for such prunes are designated as standard prunes. Imported pitted and pitted macerated dried prunes meeting these grade requirements will be designated as standard pitted or standard pitted macerated dried prunes, as applicable. Prunes failing to meet either of those requirements will be designated as manufacturing grade substandard prunes if the prunes meet the maximum tolerances specified in paragraphs 1, 2, and 3 of Exhibit A of the grade requirements for mold, imbedded dirt, insect infestation, and decay. Manufacturing grade substandard prunes are used for human consumption outlets as prune products. Such prunes lose their form and character as prunes during processing.

The interim final rule modified paragraphs (a), (b), (c), (e), and (f) of the prune import regulation (7 CFR 999.200). Imported prunes will have to meet the same pit and pit fragment tolerances required of pitted and pitted macerated dried prunes that are specified under M.O. No. 993. Also, it is necessary to add definitions regarding pitted and pitted macerated dried prunes. Recently, the Department modified the quality requirements under the marketing order for dried prunes produced in California based on a recommendation by the Prune Marketing Committee (Committee). The Committee works with the Department in administering the marketing order program for dried prunes produced in California. Section 8e of the Act requires the import requirements for dried prunes to be in conformity with the requirements of the marketing order for dried prunes produced in California.

Paragraphs (a) and (b) of § 999.200 provide definitions and grade and size requirements for the importation of dried prunes, respectively. The interim final rule differentiated pitted and pitted macerated dried prunes imported into the United States and set pit and pit fragment tolerances for pitted and pitted macerated dried prunes.

Due to their attractive appearance, pitted dried prunes, with their shape maintained, are preferred by consumers for snacking. Such prunes are also used for cooking and baking. Such prunes are characterized by a uniform depression and minimal skin break where the pit has been removed (punched-out).

Pitted macerated dried prunes are characterized by a flattened appearance with slightly more skin break where the pit has been mechanically removed using rollers to squeeze the pits out. Such prunes are preferred as an ingredient for cooking and baking (appearance and identity are not as important) but can also be used for snacking.

Well macerated prunes are pitted prunes which have lost their shape as prunes by being cut or diced into small pieces or by being block pressed into cakes of pitted prune flesh. Cut or diced prunes generally are used as ingredients for cooking and baking. Block pressed prunes are used in prune products such as prune butter, prune paste, and prune purees.

The most common consumer complaint received by California prune handlers concerns pitted prunes and macerated prunes which contain pits and pit fragments. Nearly 2,000 such complaints are received annually, and the industry believes this figure significantly underestimates the magnitude of the problem. Many consumers who find pits and pit fragments simply discontinue purchasing a brand or all prune brands. Therefore, the Committee recommended establishing tolerances for pits and pit fragments for California prunes regulated under the marketing order. Pursuant to section 8e, the same or comparable requirements must be applied to prune imports. Thus, tolerances are established for pitted and pitted macerated dried prunes.

Prior to changing the requirements under the marketing order, the presence of pits and pit fragments in pitted and pitted macerated dried prunes was not scored as a defect under the marketing order. The Dried Fruit Association (DFA), the inspection agency employed under the marketing order, inspected pitted prunes and pitted macerated prunes for pits and pit fragments only at the request of the handler. The tolerance level used was the level set by the U.S. Food and Drug Administration (FDA) as a food defect action level. Pursuant to FDA requirements (The Food Defect Action Level), pitted prunes cannot contain more than an average of 2 percent by count whole pits and/or pit fragments 2 mm or longer and 4 of 10 subsamples of pitted prune samples cannot have more than 2 percent by count with whole pits and/or pit fragments 2 mm or longer.

The Committee recommended applying the FDA's pitted prune tolerance to California produced pitted macerated prunes because such prunes are used mostly as ingredients in cooking and baking where pit or pit fragments are more easily noticed by the consumer. Thus, lots of California grown pitted macerated dried prunes shall contain no more than 2 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer and 4 of 10 subsamples of pitted macerated dried prunes shall contain no more than 2 percent by count of whole pits and/or pit fragments 2 mm or longer. The interim final rule applied the same standard to pitted macerated dried prunes imported into the United States.

No tolerance was recommended for well macerated prunes because these prunes are used only in prune products where there is no apparent pit or pit fragment problem. When well macerated prunes are used in manufactured products, pit fragments are generally so small that they are not noticed by consumers and thus, cause no problems.

There will be no size and undersized requirements for pitted and pitted macerated prunes. The size requirements under the marketing order regulations are applied prior to pitting and cannot be applied after the pits are removed. However, lots of pitted and pitted macerated prunes must meet the applicable minimum grade requirements set forth in § 999.200 (Exhibit A), except that skin and flesh damage shall not be scored as a defect in determining whether the prunes meet the grade requirements.

Because pitted dried prunes are mostly eaten out-of-hand as snacks, there is a greater chance of consumer dental injury due to pits and pit fragments remaining in the product. Consequently, the Committee recommended establishing a tolerance for California produced pitted dried prunes by requiring that no lot of such prunes, intended for human consumption as pitted prunes, shall be handled unless such prunes contain no more than an average of 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer and that 4 of 10 subsamples of pitted prunes contain no more than 0.5 percent by count of whole pits and/or pit fragments 2 mm or longer. The interim final rule applied the same standard to pitted dried prunes imported into the United States.

This action is being taken by the Department so that the prune import

requirements will be comparable to those applied to domestic production regulated under the marketing order—as required by section 8e of the Act. While there is no evidence that pitted and pitted macerated dried prunes are imported into the United States, such prunes could be imported in the future.

These tolerances will ensure a consistently higher quality product for consumers, which is expected to benefit importers, when and if they begin importing such prunes. The tolerances will apply uniformly to all pitted and pitted macerated dried prunes.

Minor conforming changes are also made in the import regulation to update the language and to reflect coverage of pitted and pitted macerated prunes.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the import regulation have been approved previously by the Office of Management and Budget.

An interim final rule concerning this action was published in the Federal Register on November 27, 1992 (57 FR 56243). Comments on the interim final rule were invited from interested persons until December 28, 1992. No comments were received.

After consideration of all relevant matter presented, it is found that the action, as set forth, will tend to effectuate the declared policy of the Act.

In accordance with section 8e of the Act, the United States Trade Representative (USTR) has concurred with the issuance of this final rule.

List of Subjects in 7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 999 is amended to read as follows:

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

1. The authority citation for 7 CFR Part 999 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. For the reasons set forth in the preamble, the provisions of the interim final rule amending 7 CFR part 999 which were published at 57 FR 56243 on November 27, 1992, are adopted as a final rule without change.

Dated: June 11, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–14330 Filed 6–16–93; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Part 391

[Docket No. 92–030F]

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services to meat and poultry establishments. The fees reflect the increased costs of providing these services due primarily to the increase in salaries of Federal employees allocated by Congress under the Federal Employees Pay Comparability Act of 1990.

EFFECTIVE DATE: June 27, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. William L. West, Director, Budget and Finance Division, Administrative Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700, (202) 720–3367.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule is issued in conformance with Executive Order 12291 and has been determined not to be a "major rule." It will not result in an annual effect on the economy of $100 million or more; in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The fee increases reflect a small increase in costs for establishments that elect to utilize certain inspection services.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions, all applicable administrative procedures must be exhausted. Under the Federal Meat and Poultry Products Inspection Acts, the administrative procedures are set forth in 7 CFR part 1.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The fees provided for in this document reflect a minimal increase in the costs currently borne by those entities which elect to utilize certain inspection services.

Background

Mandatory inspection by Federal inspectors of meat and poultry slaughtered and/or processed at official establishments is provided for under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry products; and the ordinary costs of it are borne by the U.S. Government. However, costs for these inspection services performed on holidays or on an overtime basis may be incurred to accommodate the business needs of particular establishments. Any or all of these costs which are not a part of the mandatory inspection service are recoverable by the Government.

FSIS also provides a range of voluntary inspection services (9 CFR 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5); the costs of which are totally recoverable by the Government.

These services, set forth in Subchapter B—Voluntary Inspection and Certification Service, are provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*) to assist in the orderly marketing of various animal products and byproducts not subject to the Federal Meat Inspection Act or the Poultry Products Inspection Act.

Each year the fees for certain services rendered by FSIS to operators of official meat and poultry establishments, importers, or exporters are reviewed. A cost analysis, which is on file with the FSIS Hearing Clerk and may be requested free of charge from the FSIS

Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700, is then performed to determine if such fees are adequate to recover the cost of providing the services. The analysis covers fees charged in connection with overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services. This year, the fees to be charged for these services have been determined by an analysis of data on the current cost of these services, by anticipated costs associated with changes in operations of the program, by increases in those costs due to an increase in the salaries of Federal employees allocated by Congress under the Federal Employees Pay Comparability Act of 1990, and by other increases affecting Federal employees, such as costs for benefits.

Based on the Agency's analysis of the increased costs in providing these services FSIS is increasing the fees relating to such services. These increased costs are a result of the pay raise of 3.7 percent for Federal employees effective January 1993; the increasing number of employees covered by the Federal Employees Retirement System in 1993 which is subject to the Federal Insurance Contributions Act tax, and increased health insurance costs. On March 16, 1993, FSIS published a proposed rule in the **Federal Register** (58 FR 14177) to increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services to meat and poultry establishments.

FSIS received on comment in response to the proposal. The commenter was from a trade association representing a segment of the industry and this commenter indicated that the FSIS should do more to control program costs and minimize charges to industry.

FSIS is continually examining its programs and seeking ways to become more efficient and effective in its operations. After analyzing the available data relating to costs of providing these services, FSIS has determined that these are the rates that will be charged for 1993.

The new rates reflect only an incremental increase in the costs currently borne by those entities electing to utilize overtime and holiday inspection services and certain other voluntary inspection services.

These amendments to the regulations increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services due to the pay raise effective January 1993 for Federal employees. To recover these increased costs in a timely manner, the Administrator has determined that these amendments should be effective less than 30 days after publication in the **Federal Register**.

Done at Washington, DC, on June 11, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

List of Subjects in 9 CFR Part 391

Fees and charges, Meat inspection, Poultry products inspection.

Accordingly, 9 CFR part 391 of the Federal meat and poultry products inspection regulations is amended as follows:

PART 391—FEES AND CHARGES FOR INSPECTION SERVICES

1. The authority citation for part 391 continues to read as follows:

Authority: 21 U.S.C. 601 *et seq.*, 460 *et seq.*; 7 CFR 2.17 (g) and (i), 2.55; 7 U.S.C. 394, 1622, and 1924.

2. Sections 391.2, 391.3, and 391.4 are revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $29.84 per hour, per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5, and 381.38 shall be $30.72 per hour, per program employee.

§ 391.4 Laboratory services rate.

The rate of laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $51.80 per hour, per program employee.

[FR Doc. 93–14279 Filed 6–16–93; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 517

[No. 93–34]

RIN 1550–AA53

Minority-, Women-, and Individuals With Disabilities-Owned Business Outreach Program: Contracting for Goods and Services

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is adopting a Minority-, Women- and Individuals With Disabilities-Owned Business (MWIDOB) Contracting Outreach Program. This final rule is intended to ensure that business concerns owned and controlled by members of minority groups, women and individuals with disabilities are provided the opportunity to participate in the OTS's contracting programs. It also designates the official responsible for implementing the program and its oversight.

This program is required by the Financial Institutions Reform, Recovery and Enforcement Act of 1989. Designation of the responsible official will promote participation of minority groups in OTS's contracting programs.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Columbus D. Jude, Sr., Advocate, Minority- and Women-Owned Businesses (MWIDOBs) Outreach Program, Procurement Management Division, (202) 906–6346, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background, Legal Authority, and Description of the Proposal

The OTS is hereby establishing a Minority-, Women- and Individuals With Disabilities-Owned Business Contracting Outreach Program, to ensure the participation of firms that are owned and operated by minorities, women and individuals with disabilities in the OTS contracting program to the maximum extent possible. The program includes outreach activities for individuals with disabilities that are consistent with the intent of the Americans with Disabilities Act of 1990 and broader Federal guidelines pertaining to equal employment opportunity for individuals with disabilities.

The OTS MWIDOB Outreach Program applies to the contracting activities of the OTS, as required by section 1216(c) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Public Law 101–73, 103 Stat. 183 (codified at 12 U.S.C. 1833e (1990)) and is intended to further facilitate the participation of certain designated groups in the OTS's contracting processes. The FIRREA also requires the OTS to prescribe regulations establishing and overseeing a MWIDOB Outreach Program. OTS is applying the program, as well, to businesses owned by individuals with disabilities consistent with the intent of the Americans with Disabilities Act of 1990, Public Law 101–336, 104 Stat. 327.

The FIRREA requires the OTS and other financial institutions regulatory agencies to prescribe regulations to establish and oversee a minority outreach program within each agency. The program should ensure inclusion, to the maximum extent possible, of minorities, women and individuals with disabilities and entities owned by minorities, women and individuals with disabilities, including financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the agency with such persons or entities, public or private, in order to manage the institutions and their assets for which the agency is responsible, or to perform such other functions authorized under any law applicable to such agency.

On September 17, 1992, the OTS published for comment in the Federal Register a Proposed Rule to govern the outreach portion of the MWIDOB program. The Proposed Rule set forth the agency's proposed outreach program and proposed standards for qualification as a minority- or women- or individuals with disabilities-owned businesses.

II. Summary of Comments and OTS Response

The OTS received a total of four comments in response to the Proposed Rule. Commenters included one minority financial institution trade association, one minority-owned management and financial consulting firm, one minority-owned law firm, and one private hospital. One commenter supported the proposal without change. One commenter recommended an approach whereby Federal Government purchasing officials would be responsible for achieving a set percentage of business with minority-, women- and persons with disabilities-owned firms. OTS, however, already has such a set-aside program and, to the extent the commenters' concerns focused on other agencies of the Federal Government, they are beyond OTS's authority to address.

One commenter recommended that the OTS incorporate the definition of a "minority thrift" as contained in title III, section 308(b)(c) of the FIRREA, into the definition of minority-owned business. This definition recognizes the ethnic make-up of a thrift's management, board of directors and the communities they serve, in addition to the ethnic background of stockholders of stock-owned entities. The commenter also argued that trade organizations that represent minority groups should qualify to bid for OTS contracts.

The OTS has decided not to modify the definition of a minority business to reflect this commenter's suggestion. The definition adopted today, which follows that adopted by other Federal banking agencies, would include savings associations that otherwise meet its requirements. A separate reference to thrifts is, therefore, unnecessary.

The commenter further stated that, historically, there have been numerous cases of misrepresentation reported in special contracting entities. In addition to OTS's requirement that minority or women managers be in control of the day-to-day operations of the firm, the commenter believed that the resumes of the firm's managers should demonstrate a history of running the day-to-day operations of the organization. OTS believes that management experience should be taken into account on a case-by-case basis in determining whether it is appropriate to contract with a particular business that is controlled by minorities, women, or individuals with disabilities. Accordingly, it is unnecessary to include this requirement in the Outreach Program rule.

One commenter suggested changing the definition of a "minority" to use the term "African-American" rather than "Black." OTS has added the term "African-American" to the definition. Language has also been added clarifying the agency's intent on the scope of its definition. This language makes clear that OTS will construe the definitions in the regulation to include the most widely accepted and understood terms used to refer to the minority groups listed.

One commenter urged that the OTS Outreach Program Advocate be instructed to supply certification forms in any mailing to minority businesses and, in addition, to create and attach to that form a checklist with instructions for completing the form. The OTS Outreach Program Advocate will consider this approach in fulfilling that role, but OTS does not believe that it is necessary for the regulation to mandate this level of detail because the existing form is self-explanatory and will be made widely available.

III. Description of the Final Rule

The provisions of the final rule are substantially the same as those in the proposal, although several have been shortened and simplified. As it implements its Outreach Program, OTS continues to be receptive to suggestions to help program participants overcome hurdles they may encounter in the OTS's contracting process.

The final rule includes the following elements: identification of minority-, women-, and individuals with disabilities-owned firms capable of providing goods and services to the OTS; the agency's official policy; certification of identified firms; promotion of the program; guidelines for the solicitation of contracts that promote the participation of minority-, women-, and individuals with disabilities-owned firms in OTS's contracting; and the oversight and monitoring of the program.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the OTS certifies that this rule will not have a significant economic impact on a substantial number of small entities. OTS uses outside contractors only to a limited extent.

Executive Order 12291

The Director of the OTS has determined that this rule does not constitute a major rule. Therefore, a regulatory impact analysis is not required.

List of Subjects in 12 CFR Part 517

Government contracts, Minorities, Women, and Individuals with disabilities.

Accordingly, OTS hereby amends subchapter A, chapter V, title 12, Code of Federal Regulations as set forth below:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

1. Part 517 is added to read as follows:

PART 517—THE MINORITY, WOMEN, AND INDIVIDUALS WITH DISABILITIES OUTREACH PROGRAM: CONTRACTING FOR GOODS AND SERVICES

Sec.
517.1 Purpose and scope.
517.2 Definitions.
517.3 Policy.

Sec.
517.4 Oversight and monitoring.
517.5 Outreach.
517.6 Certification.
517.7 Contract award guidelines.

Authority: 12 U.S.C. 1833(e); 42 U.S.C 12101 *et seq.*

§ 517.1 Purpose and scope.

The purpose of the OTS Minority-, Women- and Individuals with Disabilities-Owned Businesses Outreach Program (Outreach Program) is to ensure that firms owned and operated by minorities, women and individuals with disabilities are given the opportunity to participate to the maximum extent possible in all contracts entered into by the OTS. Sections 517.5 through 517.7 of this part apply to all contracting activities, with the exception of contracting for legal services, engaged in by OTS in any of its capacities, for all OTS functions authorized by law. These contracts will typically pertain to services in support of OTS's business operations, such as consulting, programming, auditing, expert witnesses, customized training, relocation services, information systems technology (computer systems, database management, software and office automation), or micrographic services; or in support of its day-to-day operations, such as facilities management, mail and printing services, or procurement of office supplies, furniture and office equipment.

§ 517.2 Definitions.

The definitions included in this part are derived from common usage of these terms. A term in this part includes all those who are commonly understood to be included within that term.

(a) *Minority- and/or women-owned (small and large) businesses and entities owned by minorities and women* means firms at least fifty-one (51) percent owned by individuals who are members of the minority group or women and who are citizens of the United States. In the case of publicly-owned companies, at least fifty-one (51) percent of each class of voting stock must be owned by one or more members of the minority group or by one or more women, who are citizens of the United States. In the case of partnerships, at least fifty-one (51) percent of the partnership interest must be owned by one or more members of the minority group or by one or more women, who are citizens of the United States. Additionally, the management and daily business operations of the firm must be controlled by one or more such individuals.

(b) *Minority* means any Black/African-American; Native American (American Indians, Eskimos, Aleuts and Native Hawaiians); Hispanic American; Asian-Pacific American; or Subcontinent-Asian American.

(c) *Small and large businesses and entities owned by individuals with disabilities* means firms at least fifty-one (51) percent owned by individuals with disabilities who are citizens of the United States. In the case of publicly-owned companies, at least fifty-one (51) percent of each class of voting stock must be owned by individuals with disabilities who are citizens of the United States. In the case of partnerships, at least fifty-one (51) percent of the partnership interest must be owned by individuals with disabilities who are citizens of the United States. Additionally, the management and daily business operations must be controlled by one or more such individuals.

(d) *Disability*, as used in this part, has the same meaning as the term used in section 3 of the Americans With Disabilities Act of 1990, Public Law 101–336, 104 Stat. 327 (42 U.S.C. 12101 *et seq*).

§ 517.3 Policy.

It is the policy of the OTS that minorities, women and individuals with disabilities and entities owned by minorities, women and individuals with disabilities are given the opportunity to participate to the maximum extent possible in all contracts entered into by the OTS.

§ 517.4 Oversight and monitoring.

The Director of OTS shall appoint an Outreach Program Advocate, who shall have primary responsibility for furthering the purposes of the Outreach Program.

§ 517.5 Outreach.

(a) The outreach program advocate shall perform outreach activities and act as liaison between the OTS and the public on outreach program issues.

(b) Outreach activities include the identification and registration of minority-, women-owned (small and large) businesses and entities owned by individuals with disabilities who can provide goods and services utilized by the OTS. This includes distributing information concerning the Outreach Program and providing appropriate registration materials for use by vendors and contractors. Identification will primarily be accomplished by:

(1) Obtaining various lists and directories maintained by other federal, state and local governmental agencies of Outreach Program businesses;

(2) Participating in conventions, seminars and professional meetings oriented towards Outreach Programs;

(3) Conducting seminars, meetings, workshops and various other functions; and

(4) Monitoring proposed purchases and contracts to assure that OTS contracting staff understand and actively promote the Outreach Program.

§ 517.6 Certification.

In order to qualify as an Outreach Program participant, each business or contractor must either:

(a) Self-certify ownership status by filing with the OTS Outreach Program Advocate a completed and signed Solicitation Mailing List Application, Standard Form 129 (SF–129), as prescribed by the Federal Acquisition Regulation (48 CFR part 53);

(b) Self-certify ownership status by filing with the OTS Outreach Program Advocate a completed and signed ABELS Registration/Certification Form, as prescribed by the U.S. Department of Commerce's Minority Business Development Agency and available from the Outreach Program Advocate at the headquarters address of the OTS as specified in 12 CFR 516.1(a); or

(c) Submit a valid Outreach Program certification received from a Federal agency, or a designated state or authorized local agency.

§ 517.7 Contract award guidelines.

Contracts for goods or services shall be awarded in accordance with OTS procurement rules and policies (48 CFR chapter 1 and FIRMR, 41 CFR chapter 201). The OTS Outreach Program Advocate shall work to facilitate the maximum participation of minority-, women-owned (small and large) businesses and entities owned by individuals with disabilities in the OTS procurement of goods or services.

Dated: March 10, 1993.

By The Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 93–14251 Filed 6–16–93; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–85; Special Conditions No. 25–ANM–74]

Special Conditions: Modified Lockheed Model 1329 Series Airplanes, High Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Lockheed Model 1329 series airplanes modified by AMR Combs, Inc., of Denver, Colorado. These airplanes are equipped with digital electronic flight instrument systems (EFIS) that perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of the EFIS from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions performed by these systems are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is June 2, 1993. Comments must be received on or before August 2, 1993.

ADDRESSES: Comments on these final special conditions; request for comments, may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–85, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked "Docket No. NM–85." Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–85." The postcard will be date stamped and returned to the commenter.

Background

On May 3, 1993, AMR Combs, Inc., of Denver, Colorado, applied for a supplemental type certificate to modify the Lockheed Model 1329 series airplanes. The Lockheed Model 1329 is a business jet with four aft-mounted turbojet engines. The airplane can carry two pilots and 10 passengers and is capable of operating to 43,000 feet altitude. The proposed modification incorporates the installation of digital avionics consisting of an electronic flight instrument system (EFIS) that is potentially vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the FAR, AMR Combs, Inc., must show that the altered Lockheed Model 1329 series airplanes continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. 2A15, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated reference in Type Certificate No. 2A15 include the following: Lockheed Model 1329 series: CAR 4b dated December 31, 1953, including Amendments 4b–1 thru 4b–9. In addition the following regulations apply to the EFIS installation for all Lockheed Model 1329 series airplanes: §§ 25.1301, 25.1303(b) and 25.1322, as amended through Amendment 25–38; §§ 25.1309, 25.1321(a), (b), (d), and (e), 25.1331, 25.1333, and 25.1335, as amended by Amendment 25–41. These special conditions will form an additional part of the supplemental type certification basis.

If the Administrator finds that the applicable worthiness regulations (i.e., CAR 4b or part 25, as amended) do not contain adequate or appropriate safety standards for the Lockheed Model 1329 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the modified Lockheed Model 1329 series airplanes that would require that the EFIS be designed and installed to preclude component damage and interruption of function due to the effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz—100 KHz	50	50
100 KHz—500 KHz	60	60
500 KHz—2000 KHz	70	70
2 MHz—30 MHz	200	200
30 MHz—70 MHz	30	30
70 MHz—100 MHz	30	30
100 MHz—200 MHz	150	33
200 MHz—400 MHz	70	70
400 MHz—700 MHz	4,020	935
700 MHz—1000 MHz	1,700	170
1 GHz—2 GHz	5,000	990
2 GHz—4 GHz	6,880	840
4 GHz—6 GHz	6,850	310
6 GHz—8 GHz	3,600	670
8 GHz—12 GHz	3,500	1,270
12 GHz—18 GHz	3,500	360
18 GHz—40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Conclusion

This action affects only certain unusual or novel design features on the Lockheed Model 1329 series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the modified Lockheed Model 1329 series airplanes:

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

2. The following definition applies with respect to this special condition:

Critical Function. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on June 2, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 93–14145 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 17 and 18

Reporting Futures Positions of Commodity Pools, Commodity Trading Advisors and Partnerships; Definition of Financial Interest for Reporting Purposes and Reporting Information Concerning Controlled Accounts

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is adopting amendments to 17 CFR parts 17 and 18 of its regulations as part of its ongoing review of various reporting requirements. The amendments clarify the manner of reporting futures positions of commodity pools, certain commodity trading advisors (CTAs), and accounts controlled by two or more persons to the Commission. Additionally, the Commission is adopting amendments that more fully explain the information that should be provided under Rules 17.01(b) and 18.04(a) concerning financial interest in futures and options trading accounts. The amendments reduce the amount of information that must be provided to the Commission concerning controlled accounts that are a part of a customer trading program.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Division of Economic Analysis, 2033 K Street, NW., Washington, DC 20581, Telephone (202) 254–3310.

SUPPLEMENTARY INFORMATION: On March 15, 1993, the Commission published for comment in the **Federal Register** proposed amendments to its large trader reporting requirements set forth in parts 17 and 18 of the regulations under the Commodity Exchange Act (Act), 58 FR 13716. These proposals make consistent the manner in which positions of commodity pools and CTAs are reported by ensuring that the positions are identified in the name of the controller of the account, clarify information that is required concerning participants in commodity pools, and limit the amount of information that traders provide routinely concerning controlled accounts that are part of a customer trading program. Three persons, all exchanges, commented on the Commission's proposed rule making.

I. Reporting Accounts Under Part 17—Ownership and Control

Generally, parts 17 and 18 of the regulations require reports from members of contracts markets, futures commission merchants (FCMs) or foreign brokers (firms) and traders, respectively, when a trader holds a "reportable position," i.e., any open position held or controlled by a trader at the close of business in any one futures contract of a commodity traded on any one contract market that is equal to or in excess of the quantities fixed by the Commission in 15.03 of the regulations, 17 CFR 15.03 (1992).[1]

When reporting large trader positions, firms must consider as a single account for reporting purposes all accounts that a person controls or in which a person

[1] Firms that carry accounts in which traders hold "reportable positions" are required to identify such accounts on a form 102 and report on a form 101 or electronically any reportable positions in the account, the delivery notices issued or stopped by the account and any exchanges of futures for physicals. Traders who own or control reportable positions are required to file annually a CFTC form 40 giving certain background information concerning their trading in commodity futures and, on call by the Commission, must submit a form 103 showing positions and transactions in the contract market specified in the call.

has a financial interest.[2] This manner of reporting compares with the manner in which compliance with speculative limits is enforced, since all futures positions that a person directly or indirectly holds or controls must be combined to determine compliance with speculative position levels. See, for example, Section 4a(1) of the Act, 7 U.S.C. 6a(1).

In a number of instances, control of an account is vested in a person other than the account owner. Reporting issues arise when a person maintains two or more accounts at the same FCM and different persons have authority to trade each of the accounts. This generally is the case with accounts held by commodity pools and with partnership accounts.

For a number of commodity pools, trading is conducted by multiple independent CTAs with each CTA given trading authority for separate accounts of the pool. Under current regulations there are two ways in which the accounts of a commodity pool and CTAs of the pool could be reported in a manner that would avoid duplicate reporting of the pool's and the CTA's position in futures.[3] Using the ownership standard, a firm may report accounts in the name of the pool or, alternatively, using the control standard, the firm may report accounts in the name of the CTA. Similar problems exist with partnership accounts.[4]

The Commission proposed that part 17 be amended to ensure that accounts of commodity pools under the trading control of independent CTAs uniformly were reported in the name of the CTA. As the Commission noted in its proposed rule making, the Commission, in a series of rule makings extending from October 1988 to September 1992,[5] amended part 150 of its regulations to provide certain exemptions from speculative limits for eligible entities,[6] such as commodity pools using independent CTAs, but continued applying the limits individually to positions held or controlled by such independent CTAs. Thus under the Commission's proposal accounts of an eligible entity such as a commodity pool under trading control of a particular independent account controller would be combined for reporting purposes with all other accounts held or controlled by that independent account controller.

In addition, the Commission proposed to clarify the manner in which accounts subject to trading control by two or more persons are to be combined for reporting purposes.[7]

In such cases, the Commission proposed that firms combine for reporting purposes only accounts which are under control by exactly the same persons.[8] All commenters were in favor of these amendments to the regulations. In view of this, the Commission is adopting its amendments as proposed.

II. Definition of Financial Interest

In addition to the above amendments, the Commission proposed to amend its regulations concerning the definition of financial interest contained in parts 17 and 18. For the purpose of filing reports under these parts of the regulations, Rules 17.00(b) and 18.01(a) currently define financial interest to mean, except for the interest of a limited partner or shareholder (other than the commodity pool operator (CPO)) in a commodity pool, an interest of 10 percent or more in ownership or equity of an account, 17 CFR 17.00(b) and 18.01(a) (1990).

The definition of financial interest contained in these sections alerts the firms and traders that certain accounts need not be combined to determine if the trader has a reportable position. For example, if a trader owns and controls accounts (personal accounts) and is a limited partner in a commodity pool traded by independent CTAs, then, using the Commission's definition of financial interest, the accounts of the commodity pool need not be combined with the trader's personal accounts to determine if reports must be filed. In its proposed rule making the Commission noted that, although this definition is pertinent to Rules 17.00 and 18.01, the current language makes it applicable to all sections of parts 17 and 18 and may result in a loss of important surveillance information. The term "financial interest" also is used in 17.01(b) and 18.04. These regulations require reporting firms and traders to identify persons who have a financial interest of 10 percent or more in a reportable account or trader and other persons or accounts in which the subject trader has a financial interest of 10 percent or greater. In all cases, it is important for the Commission to have this financial information, whether or not the accounts in question are limited partnerships.

In view of the above, the Commission proposed to amend §§ 17.00(b) and 18.01(a) by making its current definition of financial interest applicable only to these sections of the regulations rather than to parts 17 and 18 in general. These were not objections to the proposed amendment. In view of this, the Commission is adopting the amendment as proposed.

III. Reporting Information About Controlled Accounts in Managed or Guided Account Trading Programs

Many FCMs, CTAs, and others offer customer trading programs known commonly as managed or guided account programs. Such programs may include but are not limited to arrangements whereby participants enter into an agreement not obtained from other customers and make a minimum deposit or pay fees in excess of that required of others for the purpose of having their account traded by the program or to receive specific advice

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[2] That is, the aggregate position for each expiration month of a contract market in all such accounts is reported if this aggregate position exceeds the Commission's reporting levels, 17 CFR 17.00(b) (1992).

[3] Duplicate position data collected by the Commission must be eliminated before the data can be used for regulatory analyses or publication.

[4] In the case of general partnership accounts, each partner may be authorized to trade the partnership account and, additionally, each partner may hold and/or control other accounts. The Commission does not wish firms to combine the partnership account with each of the partners' other accounts, since reporting a combined position for each partner results in duplicate reporting of the futures positions of the partnership. Moreover, there is no way for the Commission to distinguish the position of the partnership from the combined position in order to eliminate the duplicate reporting.

[5] See 53 FR 41563 (October 24, 1988); 56 FR 14308 (April 9, 1991); and 57 FR 44490 (September 28, 1992).

[6] Commission rule 150.1 defines an eligible entity as a commodity pool operator, the operator of a trading vehicle which is excluded, or who itself has qualified for exclusion from the definition of the term "pool" or " commodity pool operator," respectively, under 4.5 of this chapter, or a commodity trading advisor:

(1) Which authorizes an independent account controller independently to control all trading decisions for positions it holds directly or indirectly, or on its behalf, but without its day-to-day direction; and

(2) Which maintains only such minimum control over the independent account controller as is consistent with its fiduciary responsibilities and necessary to fulfill its duty to supervise diligently the trading done on its behalf.

[7] FCMs may carry master accounts that are opened for purposes of carrying funds to margin one or more subaccounts, which will be traded by selected CTAs. Typically, the selected CTAs have actual trading authority over the subaccounts. In such cases, the subaccounts, rather than the master accounts, will be considered as accounts for reporting purposes under part 17 of the regulations.

[8] As noted above, all futures positions that a person directly or indirectly holds or controls must be combined to determine compliance with speculative position levels. Accordingly, these reporting requirements do not alter the application of speculative limits to positions owned or controlled by a trader. Thus, although positions are reported in the manner specified above, the Commission will continue to combine all positions owned or controlled by a trader to determine if the trader is in violation of Commission or exchange speculative position levels. In this respect, traders must themselves make the necessary calculations of their overall position to ensure they are in compliance with Commission regulations and exchange rules.

and recommendations which are not available to others. For reporting purposes, futures positions in all accounts in a program are combined and reported as a single account pursuant to Commission Rule 17.00(b). Although positions in all accounts that are part of a program are combined, the firm, when reporting the positions for the first time, must provide the name and address of each customer with an account that participates in the program, 17 CFR 17.01(b)(6) (1992). In addition, the program manager or CTA directing the trading of the program must file a CFTC Form 40 showing the name and address of each customer with an account that participates in the program, 17 CFR 18.04(a)(5) (1992). Commission regulations also require this information to be updated whenever an account is added or dropped from the program. In some instances, several hundred customers may participate in a customer trading program. In such instances, the cost to initially provide and to update this information may be relatively high. Since, for the most part, participants in these programs tend to be small traders who do not direct trading in other accounts, their identity for market surveillance purposes is not needed on a routine basis.

In view of this, the Commission proposed to adopt a rule to limit the amount of information that is reported under 17.01(b)(6) and 18.04(a)(5). As proposed, these rules continue to require that firms and traders provide the names and addresses of persons whose accounts are under the control of another person. However, if the accounts are part of a customer trading program that is a managed or guided account program and there are 10 or more such accounts, only those accounts which are owned by commodity pools need to be identified. Additionally, the proposed amendments to Rule 17.01(b)(6) specify that the Commission will retain the authority to collect, on call, the names and addresses of all persons whose accounts are part of the customer trading program.[6]

One exchange commented that "a more positive approach would be to require disclosure of any owner within a managed account program who owns greater than 10% of the total position in the program." The Commission considered this approach, however it opted for the procedures discussed above because of the difficulties that the firms would face in compiling the information required by the alternative proposal. In view of these implementation burdens, the Commission has determined not to adopt this suggested modification.

Another exchange, concerned about the revision to require limited information about traders in customer trading programs, maintained that it "relies on complete controlled account lists and information in conducting its market surveillance and believes that such complete information is vital for the detection and enforcement of speculative position limits and timely identification of potential market disruptions."

Although this information is not central to the Commission's surveillance programs, nothing in the revisions would preclude an exchange from continuing to require more detailed information. In this respect, the proposed amendments require full disclosure of the names and addresses of program participants on call by the Commission when circumstances warrant. The Commission believes that being selective in requiring this information can relieve a burden on reporting firms by targeting only that information which is required for surveillance purposes. In view of the above, the Commission is adopting its amendments as proposed.

IV. Related Matters

A. The Regulatory Flexibility Act (RFA)

The RFA requires that agencies consider the impact of substantive rules on small businesses. These amendments affect large traders, FCMs, commodity pools, CTAs and other similar entities such as foreign brokers and foreign traders. The Commission has defined "small entities" in evaluating the impact of its rule in accordance with the RFA, 47 FR 18618–18621 (April 30, 1982).

In that statement, the Commission concluded that large traders and FCMs are not considered to be small entities for purposes of the RFA. In this regard, the proposed amendments to reporting requirements relating to the positions of CPOs and CTAs, fall mainly upon FCMs. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable, *i.e.*, large positions. Thus, pursuant to section 3(a) of the RFA (5 U.S.C. 605(b)), the Acting Chairman, on behalf of the Commission, certified that these proposed rules would not have a significant economic impact on a substantial number of small entities. The Commission invited comments from any firm which believed that these rules would have a significant economic impact upon its operation. No comments were received.

B. Paperwork Reduction Act (PRA)

The PRA of 1980, 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted these rules in proposed form and their associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with these rules, and assigned OMB control number 3038–0009 to these rules. Copies of the OMB approved information collection package associated with these rules may be obtained from Gary Waxman, Office of Management and Budget, room 3220, NEOB, Washington, DC 20503, (202) 395–7340.

The burden associated with the entire collection, including this rule, is as follows:

Average Burden Hours Per Response—.1587 hour

Number of Respondents—3709

Frequency of Response—Daily

List of Subjects

17 CFR Part 17

Brokers, Commodity Futures, Reporting and Recordkeeping Requirements

17 CFR Part 18

Commodity Futures, Reporting and Recordkeeping Requirements

In consideration of the foregoing, and pursuant to the authority contained in the Act and, in particular, sections 4g, 4i, 5 and 8a of the Act, 7 U.S.C. 6g, 6i, 7 and 12a (1989), the Commission hereby amends Chapter I of title 17 of the Code of Federal Regulations as follows:

PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS

1. The authority citation for part 17 continues to read as follows:

Authority: 7 U.S.C. 6a, 6c, 6d, 6f, 6g, 6i, 7 and 12a.

2. Section 17.00 is amended by revising paragraph (b), as follows:

[6] The amendments to Rule 18.04 do not include this call provision since, under 18.05 of the regulations, the Commission already has authority to request this information.

§ 17.00 Information to be furnished by futures commission merchants, clearing members and foreign brokers.

(b) *Interest in or Control of Several Accounts.* (1) Except as otherwise instructed by the Commission or its designee, and as provided specifically below, if any person holds or has a financial interest in or controls more than one account, all such accounts shall be considered by the futures commission merchant, clearing member or foreign broker as a single account for the purpose of determining Special Account status and for reporting purposes. For purposes of this Section, the following shall apply:

(i) *Accounts of Eligible Entities*—Accounts of eligible entities as defined in Section 150.1 of the Chapter that are traded by an independent account controller shall, together with other accounts traded by the independent account controller or in which the independent controller has a financial interest, be considered a single account.

(ii) *Accounts Controlled by Two or More Persons*—Accounts that are subject to day-to-day trading control by two or more persons shall, together with other accounts subject to control by exactly the same persons, be considered a single account.

(2) For the purpose of this section 17.00(b), except for the interest of a limited partner or shareholder (other than the CPO) in a commodity pool, the term financial interest shall mean an interest of 10 percent or more in ownership or equity of an account.

* * * * *

(6) Section 17.01 is amended by revising paragraph (b)(6) as follows:

§ 17.01 Special account designation and identification.

* * * * *

(b) * * *

(6) The name and address of any other person whose futures or options trading is controlled by the account. Provided that, if the special account reported is that of a customer trading program, or the person controlling the trading thereof, that is a managed or guided account program in which ten or more accounts participate, the following information:

(i) the name of any commodity pool which participates in the program and the name and address of the CPO; and

(ii) on call by the Commission or its designee the name and address of each person who participates in the program.

* * * * *

PART 18—REPORTS BY TRADERS

(7) The authority section for part 18 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 12a and 19; 5 U.S.C. 552 and 552(b).

(8) Section 18.01 is amended by revising paragraph (a) as follows:

§ 18.01 Interest in or control of several accounts.

(a) *Multiple accounts.* If any trader holds, has a financial interest in or controls more than one account, whether carried with the same or with different futures commission merchants or foreign brokers, all such accounts shall be considered as a single account for the purposes of determining whether such trader has a reportable position and for the purpose of reporting. For the purpose of § 18.01, except for the interest of a limited partner or shareholder (other than the CPO) in a commodity pool, the term "financial interest" shall mean an interest of 10 percent or more in ownership or equity of an account.

* * * * *

(9) Section 18.04 is amended by revising paragraph (a)(5) as follows:

§ 18.04 Statement of reporting trader.

* * * * *

(a) * * *

(5) The name and address of each person whose option or futures trading is controlled by the reporting trader. Provided that if the reporting trader is a customer trading program, or the commodity trading advisor thereof, that is a managed or guided account program in which ten or more persons participate, the information furnished may be limited to the name of any commodity pool which participates in the program and the name and address of the CPO.

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Issue in Washington, DC, this 11th day of June 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–14229 Filed 6–16–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Polyotic® (Tetracycline) Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by American Cyanamid Co. The supplemental applications provide for the safe and effective use of tetracycline soluble powder in calf and swine drinking water for the control and treatment of bacterial diseases susceptible to tetracycline. These approvals also reflect compliance with the results of the National Academy of Sciences/National Research Council (NAS/NRC), Drug Efficacy Study Group (DESI) evaluation of the drug's effectiveness and FDA's conclusions concerning that evaluation.

EFFECTIVE DATE: June 17, 1993.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8623.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Agricultural Research Division, Berdan Ave., Wayne, NJ 07470, filed supplemental NADA 65–269 Polyotic® (tetracycline hydrochloride) Soluble Powder (6.4–ounce (oz) packet) and NADA 65–441 Polyotic® (tetracycline hydrochloride) Concentrate Soluble Powder (4–oz packet) to provide for use at 10 milligrams per pound (mg/lb) of body weight for the control and treatment of bacterial enteritis (scours) caused by *Escherichia coli* and bacterial pneumonia associated with *Pasteurella* spp., *Actinobacillus pleuropneumoniae* (*Haemophilus* spp.), and *Klebsiella* spp., susceptible to tetracycline. The applications were originally approved May 17, 1954. The drug was the subject of an NAS/NRC DESI evaluation of effectiveness (DESI 0012NV), and the findings were published in the **Federal Register** of July 8, 1970 (35 FR 10966). NAS/NRC evaluated the products and found them to be "probably effective" for oral treatment of animal diseases when such diseases are caused by pathogenic microorganisms sensitive to tetracycline hydrochloride, diseases such as: (1) Enteric and respiratory diseases in poultry; (2) gastrointestinal and respiratory diseases in swine; (3) infected wounds, gastrointestinal and respiratory diseases in calves, sheep, and goats; (4) digestive system and respiratory diseases, pyelonephritis, peritonitis, infected wounds, abscesses, ulcers, and secondary bacterial invaders in dogs and cats; (5) coccidiosis in dogs; and (6) hexamitiasis in turkeys.

NAS/NRC concluded that: (1) Most of the dosage directions provide for a less

than effective dose, and the recommended minimum oral dose for large animals is 10 mg/lb of body weight daily in divided doses and for small animals 25 mg/lb of body weight daily in divided doses; (2) claims for the treatment of viral diseases must be limited to microorganisms belonging to the psittacosis-lymphogranuloma group; (3) each disease claim should be properly qualified as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)," and if the disease cannot be so qualified the claim must be dropped; (4) claims made "for prevention of" or "to prevent" should be replaced with "as an aid in the control of" or "to aid in the control of"; (5) as applicable, the manufacturer's label should warn that treated animals must consume enough medicated water or medicated feed to provide a therapeutic dose under the conditions that prevail—as a precaution, the label should state the desired oral dose per unit of animal weight per day for each species as a guide to effective use of the preparation in drinking water or feed; (6) the manufacturer of boluses, oblets, or tablets must provide evidence that they disintegrate in the gastrointestinal tract of the medicated species to produce the desired therapeutic effect; (7) information is needed from manufacturers of boluses or oblets recommended for insertion in the uterus with respect to the degree of disintegration within the uterus, the presence of hazardous foreign body ingredients, and the chemical compatibility of the vehicle and active agent or agents, and the labeling should also provide information regarding proper sanitary techniques for intrauterine administration; and (8) additional documentation of effectiveness is needed to establish activity against *Clostridia* in animals.

FDA concurred with the NAS/NRC findings.

The NAS/NRC evaluation is concerned only with the drug's effectiveness and safety to the treated animal. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drugs or their metabolites as residues in food products derived from treated animals.

The supplemental NADA's are approved as of April 29, 1993, and the regulations are amended by revising § 520.2345d (21 CFR 520.2345d) to reflect the approvals.

FDA's approval of these supplemental applications does not involve a reevaluation or reaffirmation of the human food safety data in the applications. Such data will be evaluated and affirmed in accordance with the scheduled priorities of the agency. Tolerances for residues of the drug and its metabolites in calf and swine tissues of 0.25 part per million have already been established.

In addition, the disease microorganism *Haemophilus* spp. has been renamed *A. pleuropneumoniae*. Section 520.2345d is amended to add the new name and to retain the old name parenthetically.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these approvals do not qualify for an exclusivity period because reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) essential to approval of the supplements and conducted or sponsored by the applicant were not required for the NAS/NRC DESI finalization of these approvals.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (address above) between 9 a.m. to 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.2345d is amended by revising paragraphs (e)(1)(iii)(A) through (e)(1)(iii)(C) and (e)(3)(iv)(A) through (e)(3)(iv)(C) to read as follows:

§ 520.2345d Tetracycline soluble powder.

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(A) *Indications for use.* Control and treatment of bacterial enteritis (scours) caused by *Escherichia coli* and bacterial pneumonia (shipping fever complex) associated with *Pasteurella* spp., *Actinobacillus pleuropneumoniae* (*Haemophilus* spp.), and *Klebsiella* spp., susceptible to tetracycline.

(B) *Limitations.* Administer for 3 to 5 days; do not slaughter animals for food within 4 days for 010042 and within 5 days of treatment for 054273; as sole source of tetracycline.

(C) *Sponsor.* See Nos. 010042 and 054273 in § 510.600(c) of this chapter.

* * * * *

(3) * * *

(iv) * * *

(A) *Indications for use.* Control and treatment of bacterial enteritis (scours) caused by *E. coli* and bacterial pneumonia associated with *Pasteurella* spp., *A. pleuropneumoniae* (*Haemophilus* spp.), and *Klebsiella* spp., susceptible to tetracycline.

(B) *Limitations.* Administer for 3 to 5 days; do not slaughter animals for food within 7 days of treatment for 010042 and within 4 days of treatment for 054273; as sole source of tetracycline.

(C) *Sponsor.* See 010042 and 054273 in § 510.600(c) of thjs chapter.

Dated: June 1, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–14308 Filed 6–16–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Regulatory Program; Deep Mining; Permit Application; Permit Review

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Maryland regulatory program (hereinafter referred to as the Maryland program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment concerns changes to subtitle 13, chapter 02, Deep Mining of Coal, in the Code of Maryland Regulations (COMAR). The amendment is intended to make the Maryland program consistent with the corresponding Federal regulations.

EFFECTIVE DATE: June 17, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Office, 4th and Market Streets, suite 3C, Harrisburg, PA 17101; Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding the general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214). Actions taken subsequent to the approval of the Maryland program are identified at 30 CFR 920.12, 30 CFR 920.15, and 30 CFR 920.16.

II. Submission of Amendment

By letter dated February 23, 1993, the Maryland Bureau of Mines (Bureau) submitted a program amendment to OSM (Administrative Record No. MD–563.00). The amendment requires that the surface element of the permit application for a deep mine contain the applicable provisions of COMAR 08.13.09.02 (Permit Applications: General Requirements) and requires that the application be reviewed by the Bureau in accordance with COMAR 08.13.09.04 (Permit Applications: Review Procedures). Effective April, 1993, COMAR 08.13.09 was recodified as COMAR 08.20.

OSM announced receipt of the proposed amendment in the March 26, 1993, **Federal Register** (58 FR 16384) and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on April 26, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment submitted on February 23, 1993. Any revisions not specifically addressed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions that are not discussed below containing language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

Revisions to Maryland's Regulations That Are Substantively Identical to the Corresponding Federal Regulations

State Regulation—08.13.02.07A
Subject—Deep-Mining Bonds
Federal Counterpart—30 CFR 800.11(a)

Revisions to Maryland's Regulations That Are not Substantively Identical to the Corresponding Federal Regulations

1. Application Requirements

Maryland is revising its regulations at COMAR 08.13.02.02A to require that a person not continue or commence any deep-mining operation without first obtaining a permit from the State. Maryland is deleting the requirement that an applicant for a deep-mining permit register with the State, certify that he is the operator of the proposed deep-mining operation, and obtain all permits required by law. The Federal regulations at 30 CFR 773.11(a) require that a person obtain a permit issued by the regulatory authority prior to engaging in a coal mining operation. Deleting the requirement for obtaining other permits would not negate the mandate that those permits still must be obtained since any other permits would be required pursuant to other independent legal authority. The Director finds the proposed revisions at COMAR 08.13.02.02A no less effective than the counterpart Federal regulations.

2. Mining and Reclamation Plan

Maryland is deleting its existing provision for the surface element of a mining and reclamation plan and is revising COMAR 08.13.02.04B to require that the surface element of the mining and reclamation plan be prepared in accordance with the applicable provisions of COMAR 08.13.09 (now COMAR 08.20). Since COMAR 08.13.09 regulates both surface and underground coal operations, the Director finds that the deletion and subsequent revision are not inconsistent with the requirements of SMCRA and the Federal regulations.

Maryland is revising COMAR 08.13.02.04C to delete the requirements that the subsurface element of the plan be prepared at a scale of 200 feet to the inch and include the extent to which mining operations presently have been completed. There is no comparable Federal counterpart. Therefore, the Director finds the proposed deletion at COMAR 08.13.02.04C does not render the State program less effective than the Federal regulations.

3. Deep-Mining Bonds

At COMAR 08.13.02.07B, Maryland is revising its provisions for performance bonds to permit the acceptance by the State of cash or negotiable bonds, certificates of deposit or surety bonds. The Federal regulations at 30 CFR 800.12 permit the regulatory authority to prescribe the form of performance bonds. The bonds may be in the form of surety bonds, collateral bonds, self-bonds, or any combination of the above. The Director finds the proposed revisions at COMAR 08.13.02.07B no less effective than the counterpart Federal regulations.

Deletions to Maryland's Regulations

1. Definitions

At COMAR 08.13.02.01B, E, and M, Maryland is deleting the definition for the following terms: "abandoned," "disposal area," and "operator." The remaining sections are relettered for consistency. The definition of "abandoned" is retained in Maryland's deep mining statute at 7–5A–01(b) of the Annotated Code of Maryland. The Federal regulations at 30 CFR 701.5 do not define "disposal area." On November 16, 1992, the Director approved Maryland's revised definition of "operator" to include deep coal mining operators in sections 7–1–1(k), 7–501(o), and 7–5A–01(h) in the Annotated Code of Maryland (57 FR 53993). The Director finds that the proposed deletions at COMAR 08.13.02.01B, E, and M do not render the State program less effective than the Federal regulations.

2. Application Requirements

At COMAR 08.13.02.02C(2), Maryland is deleting the requirement that a permit application contain a copy of an application for each other permit

required for operation by the Natural Resources Article. The remaining sections are renumbered for consistency. The Federal regulations at 30 CFR part 777 contain no comparable provision. The Director finds that the proposed deletion at COMAR 08.13.02.02C(2) does not render the State program less effective than the Federal regulations.

3. Application Contents—Quadrangle Map

Maryland is revising COMAR 08.13.02.03E to delete the requirement that the quadrangle map specify the names and indicated depths of identified bodies of water. At COMAR 08.13.02.03J, Maryland is deleting the requirement that the quadrangle map identify the conditions of any adjacent deep mines. At COMAR 08.13.02.03M, Maryland is deleting the requirement that the quadrangle map identify the location of an approved reference monument. The remaining sections are relettered for consistency. The Federal regulations at 30 CFR 783.24 and 30 CFR 783.25 contain no comparable provisions. The Director finds that the proposed deletions at COMAR 08.13.02.03E, J, and M do not render the State program less effective than the Federal regulations.

4. Application Review Procedures

At COMAR 08.13.02.06, Maryland is deleting its procedure for the review of deep-mining permit applications. Maryland's review procedures for permit applications are specified at COMAR 08.20.04. Pursuant to COMAR 08.13.09.13A (now COMAR 08.20.13.01), "all surface operations and activities conducted in conjunction with deep mining of coal shall comply with" COMAR 08.13.09 including its provisions on permit applications. In a letter to OSM dated December 14, 1992, Maryland stated that deep mine permit applications will be reviewed in accordance with COMAR 08.13.09.02 (now COMAR 08.20.04). The Director finds that the proposed deletion at COMAR 08.13.02.06 does not render the State program less effective than the Federal regulations.

5. Interim Permits

At COMAR 08.13.02.08, Maryland is deleting its provisions for interim permits. No interim sites exist rendering this provision obsolete. The Director finds that the proposed deletion at COMAR 08.13.02.08 does not render the State program less effective than the Federal regulations.

6. Flagging or Marking Affected Areas

At COMAR 08.13.02.09, Maryland is deleting its requirements for marking affected areas at the time the plan is submitted to the State. There is no comparable Federal regulation. The Director finds that the proposed deletion at COMAR 08.13.02.09 does not render the State program less effective than the Federal regulations.

7. Standards Governing Surface Operations Related to Deep Mining Operations

At COMAR 08.13.02.10, Maryland is requiring that all surface operations and activities related to deep mining operations comply with COMAR 08.13.09 (now COMAR 08.20). Maryland is also deleting the regulations addressing face-up areas at COMAR 08.13.02.10A and disposal areas at COMAR 08.13.02.10B. In a letter to OSM dated December 14, 1992, Maryland stated that the standards for face-up areas and disposal areas are contained in COMAR 08.13.09.13 and .33, respectively (now COMAR 08.20.13 and .27). The Director finds that the proposed deletions at COMAR 08.13.02.10A and B do not render the Maryland program less effective than the Federal regulations pertaining to performance standards for underground mining activities at 30 CFR part 817.

IV. Summary and Disposition of Comments

Public Comments

The public comment period announced in the March 26, 1993, **Federal Register** (58 FR 16384) ended on April 26, 1993. No public comments were received and a public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program. The Department of Labor, Mine Safety and Health Administration and Bureau of Mines responded without comment.

EPA Concurrence

Section 503(b)(2) of SMCRA and 30 CFR 732.17(h)(11)(ii) require that the Administrator of the Environmental Protection Agency (EPA) concur with all State program provisions relating to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment submitted by Maryland on February 23, 1993.

The Federal regulations at 30 CFR part 920 codifying decisions concerning the Maryland program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)]

provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 9, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S. 1201 *et seq.*

2. In § 920.15, a new paragraph (v) is added to read as follows:

§ 920.15 Approval of amendments to State regulatory programs.

* * * * *

(v) The following amendment submitted to OSM on February 23, 1993, is approved effective June 17, 1993. The amendment consists of the following modifications to the Maryland program:

(1) Revision of the following rules of the Code of Maryland Administrative Regulations:

08.13.02.02A—Application Requirements
08.13.02.03E—Quadrangle Maps
08.13.02.04B, C—Mining and Reclamation Plan
08.13.02.07A, B—Deep-Mining Bonds
08.13.02.10—Standards Related to Deep-Mining

(2) Deletion of the following rules of the Code of Maryland Administrative Regulations:

08.13.02.01(B), (E), (M)—Definitions
08.13.02.02C(2)—Application Requirements
08.13.02.03J, M—Quadrangle Maps
08.13.02.06—Application Review Procedures
08.13.02.08—Interim Permits
08.13.02.09—Flagging or Marking Affected Areas
08.13.02.10A, B—Standards Related to Deep-Mining

[FR Doc. 93–14313 Filed 6–16–93; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 93–13]

Special Local Regulations; Fireworks on the Upper Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Fireworks on the Mississippi. This event will be held on the Upper Mississippi River from mile 202.0 to mile 203.0, near Alton, Illinois from 9 p.m. to 10:30 p.m. on both July 3, 1993, and July 4, 1993. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective daily at 9 p.m. local time on July 3, 1993 and July 4, 1993, and terminate at 10:30 p.m. local time each day.

FOR FURTHER INFORMATION CONTACT: Ensign D. R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832. The telephone number is (314) 539–3971, Fax (314) 539–2685.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application for this event was not received until May 3, 1993, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are Ensign D. R. Dean, Project Officer, Second Coast Guard District Boating Safety Division and Captain L. I. McClelland, Project Attorney, Second Coast Guard District Legal Officer.

Discussion of Regulations

The Fireworks on the Mississippi is a fireworks display being shot over the Upper Mississippi River at Alton Pool, Illinois on July 3, 1993, and July 4, 1993, from 9 p.m. until 10:30 p.m. local time. These regulations are required to protect the boating public from possible dangers and hazards associated with the event. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the regatta area. The river will be closed during part or all of the effective periods to all vessel traffic except participants, official regatta vessels, and patrol craft. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T0213 is added, to read as follows:

§ 100.35–T0213 Fireworks on the Mississippi

(a) *Regulated area.* Upper Mississippi River from mile 202.0 to mile 203.0.

(b) *Special local regulations.* (1) The U.S. Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any vessel within the regulated area. A

succession of sharp, short blasts by whistle or horn from a designated patrol vessel shall be the signal to stop. Failure or refusal to stop or comply with orders of the Patrol Commander may result in expulsion from the area, citation for failure or refusal to comply, or both.

(3) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(4) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(5) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective dates.* These regulations are effective daily from 9 p.m. to 10:30 p.m. local time on July 3, 1993 and July 4, 1993.

Dated: June 3, 1993.

J.J. Lantry,

Captain, U.S. Coast Guard, Commander, Second Coast Guard District, Acting.

[FR Doc. 93-14701 Filed 6-16-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD1 93-041]

Special Local Regulations; Newburyport Grand Prix, Newburyport, MA

AGENCY Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the Newburyport Grand Prix offshore powerboat race. The race will be held on Saturday, June 19, 1993, in the waters of the Atlantic Ocean between the Southern end of Plum Island and the Merrimack River inlet, Massachusetts. This regulation is needed to restrict access to the area of the race course and provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: This temporary regulation is effective from 10 a.m. to 4 p.m. on June 19, 1993. In case of inclement weather, the regulations will be effective between the hours of 12 a.m. and 4 p.m. on June 20, 1993.

FOR FURTHER INFORMATION CONTACT: Lieutenant Eric G. Westerburg, Chief Boating Safety Affairs Branch, (617) 223-8311.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are LT E.G. Westerberg, Project Officer, First Coast Guard District Boating Safety Affairs Branch, and LCDR J.D. Stieb, Project Attorney First Coast Guard District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) has not been published for these regulations and good cause exists for making them effective less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until April 15, 1993. After adjusting the position of the race course and exclusionary zone to best accommodate the needs of the boating public, insufficient time remained to publish proposed rules prior to the event or to provide for a delayed effective date. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to any potential hazards associated with this type of marine event. The Newburyport Grand Prix has been conducted annually for the past five years. The event is of such local popularity that delay or cancellation to provide for a NPRM would be against the public interest.

Background and Purpose

The Newburyport Grand Prix is a high speed powerboat race which will be held in the waters of Ipswitch Bay, Massachusetts adjacent to Plum Island. This event will include up to 25 powerboats competing on a rectangular course at speeds approaching 100 mph. This regulation establishes an exclusionary zone for the race course and an anchorage area for spectator craft. The regulated area will be patrolled by the Coast Guard, Coast Guard Auxiliary, sponsor-provided patrols, and state and local law enforcement officials. No vessel, other than participants, spectator craft or those vessels authorized by the Coast Guard Patrol Commander, shall enter the regulated area. Other vessels will be able to transit around the regulated area without interference or delay. The potential hazards to participants, spectators, and transiting vessels are such that in the interest of safety, the Coast Guard District Commander is issuing special local regulations governing the regatta. The circumstances requiring this regulation result from the desire to protect the maritime public from possible hazards associated with high speed powerboat racing.

Regulatory Evaluation

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The regulated area does not obstruct commercial shipping lanes or harbor entrances. The Merrimack River will remain accessible to vessel traffic. The Coast Guard will attempt to minimize any delays for commercial vessels transiting the area. The economic impact of this rule is expected to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined above in the Regulatory Evaluation section, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and has concluded under section 2.B.2.c of Commandant Instruction M16475.1B, that it will have no significant impact and is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket.

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List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulations

In consideration of the foregoing, 33 CFR part 100 is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35T01–041 is added to read as follows:

§ 100.35T01–041 Newburyport Grand Prix, Plum Island and Merrimack River Inlet, MA.

(a) Regulated area. The regulated area includes the coastal Atlantic waters between the Merrimack River Inlet and the Southern end of Plum Island, with a northern boundary extending from the South bank of Merrimack River Inlet Eastward to 42°-49′-00″ N, 70°-48′-07″ W, a southerly boundary extending from the southern most point of Plum Island to 42°-41′-01″ N and 70°-41′-05″ W. The eastern boundary of the regulated area consists of a North/South line between the end points of the northern and southern Boundaries. The western boundary of the regulated area is the shoreline of Plum Island. The race course will be located within the regulated area approximately 2 nautical miles off the shore of Plum Island. The designated area inshore of the race course will serve as a spectator area.

(b) Special local regulations. (1) Commander, U.S. Coast Guard Group Boston reserves the right to delay, modify or cancel the race as conditions or circumstances require.

(2) The regulated area will be closed to all traffic except participants, patrol craft, and spectator vessels. The Commanding Officer, Coast Guard Group Boston or designee may, at his discretion, allow vessels to enter the regulated area between races. Transiting and spectating vessels are exempted from this requirement as follows:

(i) Transiting vessels exiting the Merrimack River Inlet must proceed in a Northerly or Easterly direction only: navigation through the regulated area is prohibited unless specifically authorized by Coast Guard patrol vessels.

(ii) Spectator Vessels. The spectator fleet will remain West of the race course adjacent to Plum Island. The sponsor shall provide a readily identifiable means to mark the spectator area. The boundaries of the spectator area are subject to the approval of the Commander, Coast Guard Group Boston. Spectator vessels may operate in the designated spectator area only.

(3) All persons and vessels shall comply with the instructions of Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and of other applicable laws.

(c) Effective period. This regulation will be effective between the hours of 12 a.m. and 4 p.m. on June 19, 1993. In case of inclement weather, the regulations will be effective between the hours of 12 a.m. and 4 p.m. on June 20, 1993.

Dated: June 7, 1993.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 93–14072 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD2 93–15]

Special Local Regulations; Wheeling Symphony Fireworks Display

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Wheeling Symphony Regatta. This event will be held on the Ohio River from mile 90.0 to mile 91.0, near Wheeling from 9:30 p.m. to 11 p.m. on July 4, 1993. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 9:30 p.m. local time on July 4, 1993, and terminate at 11 p.m. local time.

FOR FURTHER INFORMATION CONTACT: Ensign D.R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832. The telephone number is (314) 539–3971, Fax (314) 539–2685.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impracticable. The information concerning this event was not received until May 24, 1993 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are Ensign D.R. Dean, Project Officer, Second Coast Guard District Boating Safety Division and Captain L.I. McClelland, Project Attorney, Second Coast Guard District Legal Officer.

Discussion of Regulations

The Wheeling Symphony Regatta is a Fireworks Display that is being shot from the Municipal Wharf in Wheeling, West Virginia, on July 4, 1993, from 9:30 p.m. until 11 p.m. local time. These regulations are required to protect the boating public from possible dangers and hazards associated with the event. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the regatta area. The river will be closed during all or part of the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

List of Subjects in 33 CFR Part 100

Marine safety, navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. A temporary § 100.35–T0215 is added, to read as follows:

§ 100.35–T0215 Wheeling Symphony Fireworks Display:

(a) *Regulated area.* Ohio River from mile 90.0 to mile 91.0.

(b) *Special local regulations.* (1) The U.S. Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any vessel within the regulated area. A succession of sharp, short blasts by whistle or horn from a designated patrol vessel shall be the signal to stop. Failure or refusal to stop or comply with orders of the Patrol Commander may result in

expulsion from the area, citation for failure or refusal to comply, or both.

(3) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(4) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(5) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective dates.* These regulations are effective from 9:30 p.m. to 11 p.m. local time on July 4, 1993.

Dated: June 3, 1993.

J.J. Lantry,

Captain, U.S. Coast Guard, Commander, Second Coast Guard District, Acting.

[FR Doc. 93-14073 Filed 6-16-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

CGD 11-93-04

Drawbridge Operation Regulations

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: At the request of the Contra Costa County Public Works Department, the Coast Guard is establishing a temporary drawbridge operation regulation to allow the Waterfront Road Avon Bridge and adjacent Southern Pacific Railroad Bridge immediately upstream to remain in the closed to navigation position from June 1, 1993 through September 30, 1993. Both bridges cross Pacheco (Walnut) Creek in Martinez, Contra Costa County, California. This temporary regulation is being established to enable rehabilitation of the Avon Bridge. This action should enable Contra Costa County to improve the mechanical condition of the Avon Bridge, and should also accommodate the needs of marine traffic.

EFFECTIVE DATE: This rule becomes effective on June 1, 1993 and terminates on September 30, 1993. Comments are encouraged during the entire period the temporary regulation is in force.

ADDRESSES: Comments may be mailed to Commander (oan-br), Eleventh Coast Guard District, Building 10, room 214, Coast Guard Island, Alameda, CA 94501-5100, or may be delivered to room 214 at the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (510) 437-3514. Commander (oan-br), Eleventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Bldg. 10, room 214, Coast Guard Island Alameda.

FOR FURTHER INFORMATION CONTACT: Jerry P. Olmes, Bridge Management Specialist, Eleventh Coast Guard District at (510) 437-3514.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for this regulation and it is being made effective in less than 30 days from the date of publication. Following normal rulemaking procedure would have been contrary to the public interest. The bridge has not been opened except for tests during the past ten years. The county has obtained state funds for rehabilitating and seismically upgrading the bridge and may lose the funding source if work is not begun by 1 July 1993. The regulation also authorizes closure of the adjacent Southern Pacific Transportation Company railroad bridge which cannot be opened unless the Avon Bridge is opened at the same time.

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. A comment period is being provided during the entire period the temporary regulation is in force. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 11-93-04), and give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Commander, Eleventh Coast Guard District will also evaluate all communications received during this comment period. A local Notice to Mariners and local Coast Guard Public Notice have also been issued. The regulation may be changed in light of comments received.

The Coast Guard plans no public hearing.

Drafting Information

The principal persons involved in drafting this rule are Jerry P. Olmes, Project Officer, and Lieutenant Commander Craig M. Jucknies, Project Attorney, Eleventh Coast Guard District Legal Office.

Background and Purpose

The Avon Bridge was built in 1948 as a swing bridge. It was built as a manually operated, movable bridge to allow for the infrequent passage of dredges and shallow draft marine construction equipment. There are no navigation facilities upstream of the bridge. The bridge needs maintenance and seismic upgrading.

Discussion of Regulation

The temporary drawbridge operating regulation would eliminate the requirement that the bridge open for waterway traffic between June 1, 1993 and September 30, 1993. Vertical clearances under both bridges, when closed, are 4 ft. at Mean High Water, and 9 ft. at Mean Lower Low Water. Horizontal clearance past the highway bridge is 40 ft. and 41 ft. past the railroad bridge. Any vessel exceeding these clearances would be unable to pass beneath either the highway bridge or the railroad bridge during that period.

Economic Assessment And Certification

This rule is not major under Executive Order 12291 on Federal Regulation and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The economic impact of this rule is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the economic impact of this rule is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)., the Coast Guard must consider whether this rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no collection of information or recordkeeping requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications

to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REQUIREMENTS

Subpart B—Specific Requirements

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; and 33 CFR 1.05–1(g).

2. Section 117.185 is temporarily revised to read as follows:

§ 117.185 Pacheco Creek

During the period June 1, 1993 to September 30, 1993, the draw of the Contra Costa Highway Bridge, mile 1.0, and the Southern Pacific Railroad Bridge, mile 1.1, both near Martinez, need not open for the passage of vessels.

Dated: May 21, 1993.

M. E. Gilbert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 93–14066 Filed 6–16–93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD 11–92–10]

Drawbridge Operation Regulations; Mokelumne River, Sacramento County, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the California Department of Transportation (CALTRANS), the Coast Guard is revising the regulations governing the Mokelumne River Bridge near Isleton, California. This change is being made because of serious highway traffic congestion during periods of peak highway and waterway use. This action will reduce highway congestion and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This rule becomes effective on July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Susan Worden, Bridge Section, Aids to Navigation and Waterways Management Branch, Eleventh Coast Guard District at (510) 437–3514.

SUPPLEMENTARY INFORMATION:

Drafting Information:

The drafters of this rule are Susan Worden, project manager, and Lieutenant Commander Craig M. Juckniess, project counsel, Eleventh Coast Guard District Legal Office.

Background and Purpose:

Highway 12 is the major east-west arterial in the Sacramento-San Joaquin River Delta. Traffic has been increasing on the roadway for many years and, in some locations near the Mokelumne River Bridge, peak traffic volumes exceed 1,000 vehicles per hour. The highway crosses three major recreational waterways on drawbridges, and peak highway periods often coincide with peak waterway use periods. Traffic backups on this two lane road are sometimes 8 miles long, and drawbridge openings exacerbate the highway traffic congestion. The Mokelumne River Bridge provides only 7 feet vertical clearance when closed and must open for most of the vessels using the waterway. Prior to the tests of this regulation, the bridge was sometimes open for vessels more than 30 minutes each hour. The revised regulation will limit openings for recreational vessels to three times an hour during peak highway traffic periods on summer weekends and holidays. Openings for commercial vessels are infrequent on weekends and holidays, and it is not safe for commercial vessels to maneuver or stop in the channel. Accordingly, commercial vessels are excluded from the regulation and will be provided openings upon signal.

Regulatory History

On February 8, 1993 the Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** (58 FR 7499) concerning this proposal. The Commander, Eleventh Coast Guard District also published the proposal as a Public Notice 11–65d dated February 16, 1993. In each notice interested persons were given until March 25, 1993 to submit comments.

As early as 1988, regulations similar to the permanent regulation were tested to determine whether vessels could safety wait for openings spaced 20 minutes apart. In 1990, a temporary regulation was enacted for the summer boating period 1 may-31 October. The regulations was published in the **Federal Register** on June 7, 1990 (55 FR 23202) and in the local area, by a Public Notice. Comments were solicited during the period the regulations was in effect. In 1991, another similar regulation was published in the **Federal Register** on May 8, 1991 (56 FR 21301) and in the local area, by a Public Notice. Comments were solicited during the period the regulation was in effect. In 1992, another similar regulation was published in the **Federal Register** on April 22, 1992 (57 FR 14644) and in the local area, by a Public Notice. Again comments were solicited during the period the regulation was in effect.

Discussion of comments

As discussed in the NPRM, during the 1988 test and the 1990–1992 temporary regulation implementations, the Coast Guard received seven comments—four in support and three in opposition. During the most recent advertisement, three comments were received, all supporting the regulation. The commenters opposing the regulation expressed concern for vessels waiting for openings and vessels using a fuel dock near the bridge, and asked for a 15 minute opening interval instead of a 20 minute interval. The Coast Guard observed bridge operations under the new regulation and concluded that there is adequate room in the channel for pleasure vessels to await bridge openings and maneuver safely. The adjacent levees shelter waiting vessels from strong winds. The regulation had no noticeable effect on vessels using a nearby fuel dock. The opening interval appears to be a reasonable compromise between highway and waterway traffic.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this rule is expected to be so minimal that a full regulatory evaluation is unnecessary. Vehicular traffic flow will be enhanced and no vessels will be prevented from using the waterway. Since the economic impact of this rule is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no collection of information or recordkeeping requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33 of the Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REQUIREMENTS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

Subpart B—Specific Requirements

2. Section 117.175 is amended by revising paragraph (a) to read as follows:

§ 117.175 Mokelumne River.

(a) The draw of the California Department of Transportation highway bridge, the Mokelumne River Bridge, mile 3.0, at East Isleton shall open upon signal as follows:

(1) From November 1 through April 30 from 9 a.m. to 5 p.m.

(2) From May 1 through October 31 from 6 a.m. to 10 p.m., except that during the following periods the draw need only open for recreational vessels on the hour, 20 minutes past the hour, and 40 minutes past the hour:

Saturdays 10 a.m. until 2 p.m.
Sundays 11 a.m. until 6 p.m.
Memorial Day; 4th of July; and Labor Day 11 a.m. until 6 p.m.

(3) At all other times the draw shall open on signal if at least 4 hours notice is given to the drawtender at Rio Vista bridge over the Sacramento River, mile 12.8.

(4) Emergency vessels of the United States, state or commercial vessels engaged in rescue or emergency salvage operations, and vessels in distress shall be passed as soon as possible but no later than one hour after notice is given.

* * * * *

Date: May 21, 1993.

M.E. Gilbert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 93–14068 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Baltimore, MD Regulation 93–05–02]

Safety Zone Regulation; Hammerman Area of Gunpowder Falls State Park, Baltimore County, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the purpose of the Maryland "Swim For Life", at the request of the Maryland "Swim For Life" Committee of Baltimore, MD. The "Swim For Life" event will consist of a two and a one half mile swim from the Hammerman area beach number five, to the Maxwell Point buoy, thence to Oliver Point buoy and thence to Hammerman area beach numbers one and two. The safety zone is necessary to control small craft and recreational vessel traffic, and to provide for the safety of life and property on U.S. navigable waters from the hazards associated with this swimming event. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation will become effective at 7 a.m. June 19, 1993, and terminate at 1 p.m. June 19, 1993, unless sooner terminated by Captain of the Port, Baltimore, Maryland. The alternate event date will be June 20, 1993, encompassing the same area description and running from 7 a.m. to 1 p.m., unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Mark Williams at U.S. Coast Guard Marine Safety Office Baltimore, 40 S. Gay Street, Baltimore, Maryland, (410) 962–5100.

SUPPLEMENTARY INFORMATION: As allowed by 5 U.S.C. 553(b), the Coast Guard has not published a notice of proposed rulemaking on this regulation because it would be contrary to the public interest to cancel the event or to hold the event without appropriate regulatory safeguards for the participants.

Drafting Information

The drafters of this regulation are Lieutenant Junior Grade Mark R. Williams, project officer for the Captain of the Port, Baltimore, Maryland and Lieutenant Commander Keith B. Letourneau, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose

The Maryland "Swim For Life" Committee filed an application with the U.S. Coast Guard, Group Baltimore requesting a safety zone for the Maryland "Swim For Life" event, to take place on June 19, 1993. The alternate event date will be June 20, 1993, encompassing the same area description and time frame. As part of their application, the Maryland "Swim For Life" Committee requested the Coast Guard provide control of spectator and commercial traffic during the swimming event.

Discussion of Regulations

The event will start at the Gunpowder Falls State Park, Baltimore County Maryland, Hammerman area beach number five, and proceed southeast to the Maxwell Point buoy, thence north to the Oliver Point buoy, and return southwest to the Hammerman beach areas one and two, at Gunpowder Falls State Park. This safety zone will encompass all waters 500 yards on either side of lines drawn from a point at Hammerman area beach number five, located at latitude 39° 21.8′ N., longitude 76° 20.4′ W., to the Maxwell Point buoy, located at latitude 39° 21.6′ N., longitude 76° 19.9′ W., thence north to the Oliver Point buoy, located at latitude 39° 22.6′ N., longitude 76° 20.2′ W., and finally south to a point at the Hammerman area beach numbers one and two at latitude 39° 21.8′ N., longitude 76° 20.4′ W. This regulation is necessary to ensure the safety of spectator craft, recreational vessels as well as swimmers participating in the event, and to provide for the safety of life and property on U.S. navigable waters during the event. Since the Gunpowder Falls river will not be closed for an extended period, vessel traffic should not be severely disrupted.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic

impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

The Coast Guard also considered the impact of this regulation on small entities and concluded that such impact is expected to be minimal. Therefore the Coast Guard certifies under 5 U.S.C. 605(b), that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Temporary Regulations

In consideration of the foregoing, the Coast Guard is amending part 165 of title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section 165.T5102 is added to read as follows:

§ 165.T5102 Safety Zone: Hammerman Area of the Gunpowder Falls State Park, Gunpowder State Park, MD.

(a) *Location.* The following area is a safety zone. All waters 500 yards either side of a line connecting the following points beginning at

Latitude	*Longitude*
39°21.8' N.	76° 20.4' W., thence to
39°21.6' N.	76° 19.9' W., thence to
39°22.6' N.	76° 20.1' W., thence to
39°21.8' N.	76° 20.4' W.

(b) *Designated COTP representative.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf. The following officers are designated by the Captain of the Port: the Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Office at the Marine Safety Office Baltimore, Maryland.

(c) *Local Regulations.* Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(1) The operator of any vessel in this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(2) The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5100.

(3) The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF-FM channels 16 and 81.

(4) Any spectator vessel may anchor outside of the regulated areas specified in paragraph (2)(a) of these regulations, but may not block a navigable channel.

(d) *Effective dates:* This regulation is effective from 7 a.m. June 19, 1993, to 1 p.m. June 19, 1993; the alternate day will be June 20, 1993, encompassing the same area description and time frame; unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

Dated: May 25, 1993.

R.L. Edmiston,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 93–14074 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN03–2–5848; FRL–4667–3]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is disapproving a State submittal of a revision to the Indiana State Implementation Plan (SIP) for ozone. On April 10, 1989, the Indiana Department of Environmental Management (IDEM) submitted a new rule, that applies to only one source, Jeffboat, Incorporated (Jeffboat), located in Clark County, Indiana, which is designated non-attainment for ozone. This rule was developed in response to a May 26, 1988, SIP call issued under the Clean Air Act (Act).

DATES: This final rulemaking becomes effective on July 19, 1993.

ADDRESSES: Copies of the SIP revision request and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Randolph O. Cano, at (312) 886–6036, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch (5AR–18J), U.S. Environmental Protection Agency, 77 West Jackson, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: On February 24, 1993 (58 FR 11200), USEPA published a proposed rule on this requested SIP revision, as summarized below. For a detailed explanation, the proposed rule should be consulted.

Section 172 of the Act, as amended in 1977, requires that an approvable SIP include legally enforceable requirements reflecting the application of reasonably available control technology (RACT) for stationary sources of volatile organic compounds (VOC) emissions. In partial response to the requirement for RACT VOC rules, Indiana submitted rules covering many of the applicable sources in the Indiana ozone nonattainment areas. Some source categories, however, were not covered by these rules. Because the State failed to adopt and submit to USEPA RACT level emission controls for all the required source categories, including marine vessel surface coating, section 110(a)(2)(H) of the Act required a SIP call.

On May 26, 1988, USEPA issued a SIP call, notifying the Governor of Indiana, pursuant to section 110(a)(2)(H) of the Act, that the Indiana SIP for ozone was substantially inadequate to attain the NAAQS. On June 17, 1988, USEPA sent a letter detailing the SIP inadequacies, including the absence of a marine vessel surface coating rule.

On November 15, 1990, Congress enacted the Clean Air Act Amendments of 1990. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7617q. Under section 182(a)(2)(A) of the 1990 Amendments, areas designated nonattainment before enactment of the 1990 Amendments and which retained that designation and were classified as "marginal" or above as of enactment are required to correct previously identified deficiencies. Under section 182(a)(2)(A), those areas are required by May 15, 1991, to correct deficiencies in the plan concerning RACT which was required under section 172(b) of the 1977 amendments, as that requirement was interpreted in pre-amended guidance. The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The ozone nonattainment area encompassing Clark County, Indiana is classified as "moderate" and is

therefore, subject to the RACT correction requirement. Indiana's SIP revision request which it submitted in response to the SIP call letter, also responds to part of the RACT correction requirement.

On April 10, 1989, the IDEM submitted a new rule, Title 326 of the Indiana Administrative Code (326 IAC) 8–2–13, Marine Vessel Surface Coating. This new rule applies to only one source, Jeffboat, located in Clark County, Indiana which is designated nonattainment for ozone and classified as a moderate nonattainment area. 326 IAC 8–2–13 was developed in response to USEPA's May 26, 1988, SIP call letter.

USEPA proposed to disapprove the requested SIP revision on February 24, 1993, (see 58 FR 11200) because of the State's failure to demonstrate that the rule represents RACT for Jeffboat. The public comment period on the proposed rule closed on April 26, 1993. No comments were received in response to USEPA's solicitation of comments on the requested SIP revision and the proposed rulemaking action.

Final Rulemaking Action

USEPA is disapproving this rule, Marine Vessel Surface Coating (326 IAC 8–2–13), because the State has not adequately demonstrated that the rule represents RACT for Jeffboat. Therefore, the rule does not meet the requirement under section 182(a)(2)(A) of the Act that Indiana correct that rule so that it meets the RACT requirement of section 172 of the Act as amended in 1977. This action becomes effective July 19, 1993.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This disapproval affects only one source, Jeffboat. Therefore, it does not have a significant impact on a substantial number of small entities. The request does not meet the requirements of the CAA and USEPA cannot approve the request. Therefore, USEPA has no option but to disapprove the submittal.

Under Executive Order 12291, today's action is not "Major".

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 3, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–14252 Filed 6–16–93; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 279

[FRL–4667–8]

Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) is correcting errors in the hazardous waste regulations that appeared in the **Federal Register** on May 3, 1993 (58 FR 26420). In that document, EPA published corrections to the used oil management standards that were originally promulgated on September 10, 1992 (57 FR 41566). In the May 3 notice, EPA inadvertently amended several sections of part 279 dealing with notification requirements for used oil handlers. This action corrects this error and restores the original language from the September 10, 1992 final rule. In addition, EPA inadvertently omitted the explanation for a correction in the May 3 notice. This action corrects this error.

EFFECTIVE DATE: June 17, 1993.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline at (800) 424–9346 (toll-free) or (703) 920–9810 in the Washington, DC metropolitan area. For specific information concerning the used oil management standards rulemaking, contact Ms. Eydie Pines at (202) 260–3509 or Bryan Groce at (202) 260–8550, Office of Solid Waste, U.S. EPA, 401 M Street, SW., Washington, DC, 20460.

SUPPLEMENTARY INFORMATION:

I. Reason for This Document

The Agency promulgated management standards for recycled used oils on September 10, 1992 (57 FR 41566) and published a subsequent correction notice on May 3, 1993 (58 FR 26420). In the correction notice, EPA inadvertently amended four regulatory sections of Part 279 dealing with notification requirements for certain used oil handlers. Specifically, the correction notice revised paragraph (a) of §§ 279.42, 279.51, 279.62, and 279.73. These amendments were mistakenly included in the correction notice; the Agency did not intend to change these provisions. Therefore, today's notice corrects these four sections and restores the original language contained in the September 10 final rule.

In the May 3 notice, EPA also inadvertently omitted the explanation for one of the corrections clarifying the applicability of the part 279 regulations to on-specification used oil. This correction included the removal of the last sentence of § 279.72 (a). This sentence, originally placed in subpart H, Standards for Used Oil Marketers, establishes that on-specification used oil "that is to be burned for energy recovery is not subject to the requirements of this part." EPA was concerned that this provision might be unclear in light of the more complete explanation of the applicability of these regulations to on-specification used oil found in § 279.11. The final sentence of § 279.11 reads as follows: "Once the used oil that is to be burned for energy recovery has been shown not to exceed any specification and the person making that showing complies with §§ 279.72, 279.73, and 279.74(b), the used oil is no longer subject to this part." EPA therefore removed the sentence in § 279.72(a) to avoid any confusion about the applicability of the Part 279 regulations to on-specification used oil.

II. Administrative Procedures Act Requirements

This action does not create any new regulatory requirements; rather, it reinstates existing language that was inadvertently changed by the Agency in a correction notice and restores an inadvertently omitted explanation. For this reason, EPA finds that good cause exists under section 3010(b)(3) of RCRA (42 U.S.C. 6930(b)(3)) and under 5 U.S.C. 553(d) to provide for an immediate effective date. EPA also believes good cause exists to waive the

notice and comment requirements of the APA. As this rule merely corrects errors in a previous final rule, notice and comment are unnecessary.

III. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis (RIA). Due to the nature of this regulation (correction notice), the amendment is not "major;" therefore, no RIA is required.

List of Subjects in 40 CFR Part 279

Petroleum, Recycling, Reporting and recordkeeping requirements, Used oil.

Dated: May 28, 1993.

Richard J. Guimond,

Assistant Surgeon General, USPHS Acting Assistant Administrator.

The following corrections are made to the rules in, Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards; Corrections, published in the **Federal Register** on May 3, 1993 (58 FR 26420).

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

1. The authority citation for part 279 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and sections 101(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

2. Paragraph (a) of § 279.42 is revised to read as follows:

§ 279.42 Notification.

(a) *Identification numbers.* Used oil transporters who have not previously complied with the notification requirements of RCRA section 3010 must comply with these requirements and obtain an EPA identification number.

* * * * *

3. Paragraph (a) of § 279.51 is revised to read as follows:

§ 279.51 Notification.

(a) *Identification numbers.* Used oil processors and re-refiners who have not previously complied with the notification requirements of RCRA section 3010 must comply with these requirements and obtain an EPA identification number.

* * * * *

4. Paragraph (a) of § 279.62 is revised to read as follows:

§ 279.62 Notification.

(a) *Identification numbers.* Used oil burners which have not previously complied with the notification requirements of RCRA section 3010 must comply with these requirements and obtain an EPA identification number.

* * * * *

5. Paragraph (a) of § 279.73 is revised to read as follows:

§ 279.73 Notification.

(a) *Identification numbers.* A used oil fuel marketer subject to the requirements of this subpart who has not previously complied with the notification requirements of RCRA section 3010 must comply with these requirements and obtain an EPA identification number.

* * * * *

[FR Doc. 93–14316 Filed 6–16–93; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 50

Sterilization of Persons in Federally Assisted Family Planning Projects

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This final rule amends Public Health Service regulations, which govern the sterilization of persons in federally assisted family planning projects, by removing informational material concerning sterilizations contained in the appendix relating to "Required Consent Form." The Department had previously made this information generally available in the form of pamphlets, but it has recently updated the pamphlets, as much of the information has become obsolete, and it is no longer distributing the obsolete versions of the pamphets.

EFFECTIVE DATE: This rule is effective June 17, 1993.

FOR FURTHER INFORMATION CONTACT: Samuel S. Taylor, Acting Director, Office of Family Planning, Office of Population Affairs, Office of the Assistant Secretary for Health, Hubert H. Humphrey Building, room 736–E, 200 Independence Avenue, SW., Washington, DC 20201; telephone: (202) 690–8151.

SUPPLEMENTARY INFORMATION: On November 8, 1978, this Department published in the **Federal Register** (43 FR 52146), final rules prescribing the requirements for sterilizations funded under the various health programs administered by the Department. Included with the portion of the rules pertaining to those programs administered by the Public Health Service (PHS), as part of the appendix to subpart B, was a copy of two pamphlets—one for women, one for men—explaining the sterilization procedure and its risks and benefits. The pamphlets are not part of the regulation and the removal of the text of the pamphlets does not affect the requirements and restrictions of the regulations. As the preamble to the rules explained, the pamphlets were published with the rules for informational purposes only:

> Many of the particular facts that comments suggested be required will generally be conveyed in the discussion of discomforts and risks. Requiring that a specific pamphlet be used would be analogous, so this suggestion has likewise been rejected. However, while the Department is not inclined to mandate use of an informational pamphlet, it is strongly of the view that provision of a pamphlet is an efficient and effective means of reinforcing the information required to be given orally. It also gives the individual to be sterilized information to consider during the waiting period. Consequently, it has developed pamphlets setting out the general information required under § 50.204(a) for male and female surgical sterilizations. The Department plans to make these pamphlets generally available for use by providers and encourages their use. These pamphlets are published following the rules below.

43 FR 52159. However, the pamphlets have continued to appear with the codification of the PHS rules from 1978 to the present; they do not appear with the codification of the companion Health Care Financing Administration (HCFA) rules at 42 CFR part 441, subpart F.

Numerous advances in information about sterilization procedures and the effectiveness of other forms of family planning, as well as the development of new family planning technologies, have made much of the information contained in the 1978 pamphlets obsolete or inaccurate. Consequently, the PHS has revised both pamphlets to incorporate current information and to clarify them and is making the revised pamphlets available to the public. (Copies of the revised pamphlets may be obtained by writing the Family Life Information Exchange, P.O. Box 37299, Washington, DC 20013–7299, or by calling 301–565–6636.) Further, the Department will no longer distribute the outdated version set out in the appendix to subpart B of part 50. This results in an anomalous situation in which the

version in the "Code of Federal Regulations," which purports to be the official version of the pamphlets, is in fact both outdated and no longer generally available.

The Department has concluded that this situation should be corrected. In order to effect a change in the material codified in the "Code of Federal Regulations," however, the Department must issue this change in the form of a final rule, even though the material being removed is informational only and not part of the existing regulations. Accordingly, this final rule amends 42 CFR part 50 by removing the obsolete pamphlet language contained in the appendix to subpart B—that portion of the appendix following the "Physician's Statement," beginning with the heading "Your Sterilization Operation: Information for Women" and the remainder of the appendix following this heading will be removed. This amendment will also make the codified PHS regulations more consistent with the companion HCFA regulations pertaining to sterilizations and eliminate any confusion that this discrepancy may have caused.

Justification for Omitting Notice of Proposed Rulemaking

Since this amendment is of a purely technical nature, and, in fact, does not alter or amend existing regulatory provisions, the Secretary has determined, pursuant to 5 U.S.C. 553 and departmental policy that it is unnecessary and impractical to follow proposed rulemaking procedures or to delay the effective date of this regulation.

Regulatory Flexibility Act and Executive Order 12291

This rule is merely a technical removal of supplemental out-of-date information. The rule will neither exceed the threshold level of $100 million established in section 1(b) of Executive Order 12291 nor does it meet any of the additional criteria contained in the Executive Order. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further more, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that this regulation will not have a significant economic impact on a substantial number of small entities, and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act of 1980

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980. 44 U.S.C. 3501 et seq.

List of Subjects in 42 CFR Part 50

Family planning—Birth control, Grant programs—Health, Health facilities.

Dated: March 18, 1993.

Audrey F. Manley,

Acting Assistant Secretary for Health.

Approved: May 5, 1993.

Donna E. Shalala,

Secretary.

Accordingly, in 42 CFR part 50, the appendix to subpart B, "Required Consent Form," is amended as set forth below:

PART 50—POLICIES OF GENERAL APPLICABILITY

1. The authority citation for 42 CFR part 50 continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); Sec. 1006, Public Health Service Act, 84 Stat. 1507 (42 U.S.C. 300a–4), unless otherwise noted.

Subpart B—Sterilization of Persons in Federally Assisted Family Planning Projects

2. The appendix to subpart B is amended by removing the centerhead "Your Sterilization Operation: Information for Women" and all text following it, and removing the centerhead "Your Sterilization Operation: Information for Men" and all text following it.

[FR Doc. 93–14155 Filed 6–16–93; 8:45 am]

BILLING CODE 4160–17–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 92–164; FCC 93–219]

Class C Emergency Position Indicating Radio Beacons

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: This Report and Order amends the Commission's Rules to phase out the use of the Class C Emergency Position Indicating Radio Beacons (EPIRBs) after February 1, 1999. This action is in response to a request from the United States Coast Guard. Informing the maritime community now that the Commission intends to eliminate authorization of Class C EPIRBs by February 1, 1999, will allow for amortization of existing Class C EPIRBs and provide sufficient time for the marine public to obtain another type of EPIRB prior to the full implementation of the Global Maritime Distress and Safety System.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: George R. Dillon, Aviation and Marine Branch, Private Radio Bureau, Federal Communications Commission, 2025 M St. NW., Washington, DC 20554; or telephone (202) 632–7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 92–164, adopted May 3, 1993, and released May 18, 1993. The complete text of the Report and Order, including Appendices, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The full text also may be purchased from the Commission's copy contractor: International Transcription Services, 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800.

Summary of Report and Order

1. The United States Coast Guard requested that the Commission amend its Maritime Services Rules (part 80) to eliminate authorization of Class C EPIRBs by February 1, 1999. EPIRBs are small, battery powered transmitters carried on ships for the purpose of sending a distress signal. Class C EPIRBs transmit distress signals on marine VHF channels 15 and 16 both as an alarm to alert others that a ship is in distress and as a beacon to aid in its location by search and rescue personnel. Because satellites do not monitor marine VHF channels 15 and 16, other nearby ships and coast stations can receive their distress signal.

2. The Global Maritime Distress and Safety System (GMDSS), which will be fully implemented by February 1, 1999, changes the mandatory watch requirement for ships from marine VHF channel 16 to an automated watch on Digital Selective Calling (DSC) channel 70. The Coast Guard also intends to discontinue its watch on marine VHF channel 16 after February 1, 1999. This lack of monitoring by satellites, ocean going vessels and the Coast Guard will dramatically reduce the effectiveness and need for Class C EPIRBs during search and rescue operations. Informing the maritime community now that the Commission intends to eliminate authorization of Class C EPIRBs by

February 1, 1999, will allow for amortization of existing Class C EPIRBs and provide sufficient time for the marine public to obtain another type of EPIRB prior to the full implementation of the GMDSS.

3. Accordingly, *it is ordered that,* Pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), part 80 of the Commission's Rules, 47 CFR part 80, is amended as set forth below.

4. *It is further ordered that,* This Report and Order will be effective July 19, 1993.

List of Subjects in 47 CFR Part 80

Communications equipment, Marine safety, Radio

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Final Rule

Part 80 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.15 is amended by revising paragraph (e)(1) introductory text to read as follows:

§ 80.15 Eligibility for station license.

* * * * *

(e) EPIRB stations. (1) New class C EPIRB stations will not be authorized after February 1, 1995. Class C EPIRB stations installed and licensed before February 1, 1995, will be authorized until February 1, 1999:

* * * * *

3. Section 80.205 is amended by adding a new Footnote 13 to the "G3N" entry in the table in paragraph (a) to read as follows:

§ 80.205 Bandwidths.

(a) * * *

Class of emission	Emission designator	Authorized bandwidth (kHz)
*	*	*
G3N[3,13]	* * *	* * *
*	*	*

[3]Applicable only to EPIRB's.

* * * * *

[13] Class C EPIRB stations may not be used after February 1, 1989.

* * * * *

4. Section 80.207 is amended by adding a new Footnote 13 to the "156.750 and 156.800 MHz" entry in the table in paragraph (d) to read as follows:

§ 80.207 Classes of emission.

* * * * *

(d) * * *

Types of stations	Classes of emission
*	*
Distress, Urgency, and Safety [8,9]	* * *
*	*
156.750 and 156.800 MHz[13].	* * *
*	*

[8] For direction finding equipment requirements see § 80.375.

[9] Includes distress emissions used by ship, coast, EPIRB's and survival craft stations.

* * * * *

[13] Class C EPIRB stations may not be used after February 1, 1999.

5. Section 80.209 is amended by adding a new Footnote 6 to the "Operating on 156.750 and 156.800 MHz" entry in the table in paragraph (a) to read as follows:

§ 80.209 Transmitter frequency tolerances.

(a) * * *

Frequency bands and categories of stations	Tolerances [1]
*	*
(5) * * *	
(iv) * * *	
Operating on 156.750 and 156.800 MHz[6].	* * *
*	*

[1] Transmitters authorized prior to January 2, 1990, with frequency tolerances equal to or better than those required after this date will continue to be authorized in the maritime services provided they retain type acceptance and comply with the applicable standards in this part.

* * * * *

[6] Class C EPIRB stations may not be used after February 1, 1999.

6. Section 80.1057 is amended by adding an introductory paragraph to read as follows:

§ 80.1057 Special requirements for Class C EPIRB stations.

Class C EPIRB's shall not be manufactured, imported, or sold in the United States after February 1, 1995. Class C EPIRB stations installed on board vessels before February 1, 1995, may be used until February 1, 1999, and not thereafter.

* * * * *

[FR Doc. 93–14244 Filed 6–16–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 930522–3122; I.D. #061493B]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Amendment to emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) amends the regulations implementing the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). This amendment to the emergency rule published on June 8, 1993 (58 FR 32062) reopens to fishing the area designated as Closed Area II. The 2,500-pound (1,134-kg) haddock possession limit and ban on pair trawling in the Northeast multispecies fishery implemented by that rule remain in effect. The intended effect of this rule is to relieve some of the confusion and burden caused by the original implementation of the emergency interim rule while still providing additional protection to haddock and cod, and promoting the rebuilding of these depleted fish stocks.

EFFECTIVE DATES: This amendment to the emergency interim rule is effective June 14, 1993, through September 6, 1993.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Resource Policy Analyst (508–281–9252), Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930.

SUPPLEMENTARY INFORMATION: On June 3, 1993, the Secretary implemented cod and haddock protection measures through an emergency interim rule published on June 8, 1993 (58 FR 32062). The rule implemented: A 2,500-pound (1,134-kg) haddock possession

limit applying to all vessels permitted under regulations for this fishery; the area known as Closed Area II was expanded by 20 minutes longitude to the west and 15 minutes latitude to the south along its existing western and southern boundaries; Closed Area II was closed through the month of June; and a ban on pair trawling in the multispecies fishery.

Regulations implementing the FMP (§ 651.21(a)) closed the area designated as Closed Area II from February 1 through May 31 of each year. On June 3, 1993, when the emergency interim rule became effective, vessels had already sailed and were fishing in the area to be re-opened under this rule. The area is approximately 120 miles (192.4 km) from shore and is fished primarily by larger vessels on trips lasting approximately 10 days.

On June 11, 1993, the Assistant Secretary of Commerce for Oceans and Atmosphere met with members of the fishing community from Maine, Massachusetts, and Rhode Island; local government officials from Gloucester, MA; Representative Peter Torkildsen; Congressional staff, a member of the Council, and the Council's Executive Director.

The representatives of the Council present stated that upon reviewing the Council's recommendation, it was not the Council's intention for the area to be extended in time but rather just expanded in area during the regulated closure months. They noted that the proposal being considered for Amendment 5 to the FMP would extend the area in time in the third year after implementation. The stated rationale for the delayed implementation was that it would allow Canada to implement a similar closure.

As a result of input from the fishing community and the confusion over what the recommendation from the Council was, the Secretary has determined that Closed Area II should be reopened immediately. The haddock possession limit of 2,500 pounds (1,134 kg) will remain in effect as well as the prohibition on the use of pair trawl gear in the Northeast multispecies fishery.

Classification

The Secretary has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and with other applicable law.

The Secretary finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide full notice and opportunity for public comment on these emergency regulations, under the provisions of section 553(b) of the Administrative Procedure Act. Because this rule relieves a restriction, a 30-day delay of the effective date is not required under section 553(d)(1) of the Administrative Procedure Act. The Secretary notes, however, that substantial public comment was received and considered before deciding on this emergency action.

This emergency interim rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. The rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not practicable to follow the regular procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

This rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

This rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia. This rulemaking has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 14, 1993.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 651.21 [Amended]

2. In § 651.21, the suspension of paragraph (a)(2) is lifted, and paragraph (a)(5) is removed, effective June 14, 1993 through September 6, 1993.

[FR Doc. 93-14319 Filed 6-14-93; 12:42 pm]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 921107-3068; I.D. 061493A]

Groundfish on the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 61 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 14, 1993, through 12 noon, A.l.t., July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The second quarterly allowance of pollock TAC in Statistical Area 61 is 6,239 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1993 second quarterly allowance of pollock TAC in Statistical Area 61 soon will be reached. The Regional Director established a directed fishing allowance of 5,615 mt, and has set aside the remaining 624 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 61 is prohibited, effective from 12 noon A.l.t., June 14, 1993, through 12 noon, A.l.t., July 1, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 14, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–14311 Filed 6–14–93; 12:13 pm]

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Proposed Rules

Federal Register
Vol. 58, No. 115
Thursday, June 17, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002, 1004, 1005, 1007, 1011, 1030, 1033, 1036, 1040, 1044, 1046, 1049, 1065, 1068, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1135, and 1138

[Docket No. AO–14–A65–RO2, etc; DA–91–013]

Milk in the New England and Certain Other Marketing Areas; Extension of Time for Filing Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Services, USDA.

ACTION: Extension of time for filing exceptions to proposed rules.

7 CFR part	Marketing area	AO Nos.
1001 ...	New England	AO–14–A65–R02
1002 ...	New York-New Jersey.	AO–71–A80–R02
1004 ...	Middle Atlantic.	AO–160–A68–R02
1005 ...	Carolina	AO–388–A5–R02
1007 ...	Georgia	AO–366–A34–R02
1011 ...	Tennessee Valley.	AO–251–A36–R02
1030 ...	Chicago Regional.	AO–361–A29–R02
1033 ...	Ohio Valley	AO–166–A62–R02
1036 ...	Eastern Ohio-Western Pennsylvania.	AO–179–A57–R02
1040 ...	Southern Michigan.	AO–225–A43–R02
1044 ...	Michigan Upper Peninsula.	AO–299–A27–R02
1046 ...	Louisville-Lexington-Evansville.	AO–123–A63–R02
1049 ...	Indiana	AO–319–A40–R02
1065 ...	Nebraska-Western Iowa.	AO–86–A48–R02
1068 ...	Upper Midwest.	AO–178–A46–R02
1079 ...	Iowa	AO–295–A42–R02
1093 ...	Alabama-West Florida.	AO–386–A12–R02
1094 ...	New Orleans-Mississippi.	AO–103–A54–R02
1096 ...	Greater Louisiana.	AO–257–A41–R02
1097 ...	Memphis, Tennessee.	AO–219–A47–R02
1098 ...	Nashville, Tennessee.	AO–184–A56–R02
1099 ...	Paducah, Kentucky.	AO–183–A46–R02
1106 ...	Southwest Plains.	AO–210–A53–R02
1108 ...	Central Arkansas.	AO–243–A44–R02
1124 ...	Pacific Northwest.	AO–368–A20–R02
1126 ...	Texas	AO–231–A61–R02
1131 ...	Central Arizona.	AO–271–A30–R02
1135 ...	Southwestern Idaho-Eastern Oregon.	AO–380–A10–R02
1138 ...	New Mexico-West Texas.	AO–335–A37–R02

SUMMARY: This notice extends the time for filing exceptions to the May 11, 1993, recommended decision on Class III–A pricing for 29 Federal orders. The new deadline of June 18 is consistent with the date announced in the Department's May 21 press release.

DATES: Exceptions now are due on or before June 18, 1993.

ADDRESSES: Exceptions (six copies) should be filed with the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued July 16, 1991; published July 22, 1991 (56 FR 33395).

Tentative Decision: Issued December 10, 1991; published December 19, 1991 (56 FR 65801) and corrected December 23, 1991 (56 FR 66482).

Revised Tentative Decision: Issued December 24, 1991; published January 2, 1992 (57 FR 15).

Interim Amendment of Orders: Issued December 27, 1991; published January 3, 1992 (57 FR 173).

Notice of Reopened Hearing: Issued August 11, 1992; published August 14, 1992 (57 FR 36609).

Notice of Reopened Hearing: Issued September 22, 1992; published September 25, 1992 (57 FR 44344).

Revised Tentative Decision: Issued October 20, 1992; published October 27, 1992 (57 FR 48575).

Interim Amendment of Orders: Issued October 29, 1992; published November 3, 1992 (57 FR 49633).

Recommended Decision: Issued May 11, 1993; published May 19, 1993 (58 FR 29133).

Preliminary Statement

Notice is hereby given that the time for filing exceptions to the May 11, 1993, recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the New England and 28 other marketing areas is hereby extended from June 8 to June 18, 1993.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Dated: June 11, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–14331 Filed 6–15–93; 10:30 am]
BILLING CODE 3410–02–P

7 CFR Parts 1033, 1036 and 1049

[Docket Nos. AO–166–A51; AO–179–A56; and AO–319–A39; DA 90–015]

Milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts changes in the Ohio Valley, Eastern Ohio-

Western Pennsylvania, and Indiana Federal milk orders based on industry proposals considered at a public hearing held August 14–17, 1990, in Columbus, Ohio, and August 28–29, 1990, in Indianapolis, Indiana. For all three orders, the decision adopts a plan for pricing milk on the basis of its protein; as well as butterfat, components. For the first time in the Federal milk order system, the proposed pricing plan includes adjustments to the protein price based on the somatic cell count of producer milk.

The decision also adopts pooling standards for producer milk and pool distributing and supply plants that will be more uniform between the three markets. Amendments to the Ohio Valley and Indiana orders will price some diverted milk at the location of the plant from which it is diverted. The decision reduces the level of the Indiana Class I price differential and amends the location adjustment provisions of the Indiana order.

Other changes to the orders include increases in the rate of maximum allowable marketing service assessments for all three orders, and an increase in the maximum allowable administrative assessment under the Eastern Ohio-Western Pennsylvania order to the level allowable under the other two orders.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended orders will promote more orderly marketing of milk by producers and regulated handlers.

These proposed amendments have been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Prior documents in this proceeding:

Notice of Hearing: Issued July 25, 1990; published July 31, 1990 (55 FR 31056).

Notice of Reconvened Hearing: Issued August 21, 1990; published August 23, 1990 (55 FR 34569).

Recommended Decision: Issued July 30, 1992; published August 13, 1992 (57 FR 36536).

Extension of Time for Filing Exceptions: Issued September 14, 1992; published September 17, 1992 (57 FR 42899).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR part 900), at Columbus, Ohio, on August 14–17, 1990; and at Indianapolis, Indiana, on August 28–29, 1990. Notice of such hearing was issued on July 25, 1990, and published July 31, 1990 (55 FR 31056).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, Agricultural Marketing Service, on July 30, 1992, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under material issue "1(c). Pool distributing plant definition (Orders 33 and 49).", a sentence is added at the beginning of paragraph 12, two new paragraphs are added after the second sentence of paragraph 14, the last part of paragraph 14 becomes a new paragraph with a new sentence added as the second sentence, paragraphs 15 and 33 are revised slightly, 5 paragraphs are added after paragraph 34, paragraph 35 is revised by adding a phrase in the last sentence and by adding another sentence, and a new paragraph is added at the end of 1(c).

2. Under material issue "1(d). Pool supply plant (all three orders).", two paragraphs are added after paragraph 7, and 12 paragraphs are added after paragraph 29.

3. Under material issue "1(e). Co-op pool plant (Order 33).", two paragraphs are added after paragraph 4.

4. Under material issue "1(g)(i). Diversion limits (all three orders).", 4 paragraphs are added after paragraph 13.

5. Under material issue "1(g)(ii). Pricing diverted milk (Orders 33 and 49).", five paragraphs are added after paragraph 10 and six paragraphs are added after paragraph 19.

6. Under material issue "4(a). Protein pricing.", two paragraphs are added after paragraph 29, eight paragraphs are added after paragraph 32, and three paragraphs are added after paragraph 33.

7. Under material issue "4(b). Somatic cell adjustment.", the first paragraph is revised, thirteen paragraphs are added after paragraph 15, paragraph 16 is revised, a new paragraph is added after paragraph 16, paragraphs 17 and 19 and the table following paragraph 19 are revised, paragraphs 20 and 21 are removed, and paragraph 27 is revised.

8. Under material issue "4. Multiple component pricing.", a new heading "c. Other changes.", has been added after paragraph 27 of issue 4(b), paragraphs 28 through 36 of issue 4(b) have become paragraphs 1 through 9 of issue 4(c), the first, second, and fifth through eighth paragraphs after the new heading are revised, and the ninth paragraph is deleted.

9. Under material issue "5. Class prices and location adjustments (Order 49).", eleven paragraphs are added after paragraph 11.

10. Under material issue "8. Administrative assessment (Order 36).", two paragraphs are added after paragraph 12.

11. Under material issue "10. Conforming changes.", the last paragraph is revised.

The material issues on the record of the hearing relate to:

1. Definitions.
   a. Route Disposition (Order 49).
   b. Supply plant (Order 49).
   c. Pool distributing plant (Orders 33 and 49).
   d. Pool supply plant (all three orders).
   e. Co-op pool plant (Orders 33 and 49).
   f. Pool plant disaster clause (Order 49).
   g. Producer milk.
   i. Diversion limits (all three orders).
   ii. Pricing diverted milk (Orders 33 and 49).
2. Reporting (Order 49).
3. Classification (Order 49).
4. Multiple component pricing (all three orders).
   a. Protein pricing.
   b. Somatic cell adjustment.
   c. Other changes.
5. Class prices and location adjustments (Order 49).
6. Accountability for 9(c) milk (Order 49).
7. Payments to producers.
   a. Due dates and late-payment charges (Order 49).
   b. Seasonal incentive payment plan (all three orders).
8. Administrative assessment (Order 36).
9. Marketing service assessments (all three orders).
10. Conforming changes.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Definitions

A number of proposals were made by several parties to amend some of the definitions under the three orders. The definitions proposed to be amended range from what were described as clarifying amendments to the route disposition and supply plant definitions under the Indiana order through the pool plant and producer milk definitions of all three orders. Most of the proposals dealing with pool plant and producer milk definitions address the issue of which plants and producers will be eligible to participate in the marketwide pools and, consequently, generated extensive testimony.

The clarifying amendments proposed by the Hoosier Milk Marketing Agency to the "Route disposition" and "Supply plant" definitions of the Indiana order should be adopted. Neither amendment is expected to change the pool status of any entity, but will assure that the order's provisions will be more easily understood and administered.

In general, the pooling provisions of the three orders should be made more uniform. Merger of the three orders was not an issue considered at the hearing and cannot be adopted on the basis of the record of this proceeding. However, the record does show that many of the marketing conditions that normally are considered as reasons for merging Federal order marketing areas are present in these three regulated markets.

Testimony and exhibits in the record show clearly that there is a great deal of overlapping of milksheds between the Indiana and Ohio Valley markets, and between the Ohio Valley and Eastern Ohio-Western Pennsylvania markets. In addition, the record demonstrates that handlers regulated under the three orders have substantial volumes of overlapping sales, and that the order under which some handlers are regulated changes with the proportion of sales the handlers have in each order. The existence of a number of plants that operate as common reserve supplies or common surplus outlets for more than one of the markets also contributes to a picture of three very interrelated markets. In such a situation, differing levels of performance standards for pool plants and producers clearly can create inequities between handlers and producers who are competing within the same areas. Therefore, it is important that the pool plant and producer milk provisions of the orders be similar enough to assure that order provisions do not constitute artificial barriers to the participation of handlers and producers in any of the three marketwide pools.

The two major cooperative associations operating in the three marketing areas proposed amendments to the pool plant definitions that primarily would have the effect of reducing handler access to the three marketwide pools. One of the dominant cooperative associations is Milk Marketing, Inc. (MMI), which markets approximately two-thirds of the milk pooled under the Ohio Valley order (Order 33) and about two-fifths of the milk pooled under the Eastern Ohio-Western Pennsylvania order (Order 36). The other principal cooperative association is Associated Milk Producers, Inc., which pools milk through the Hoosier Milk Marketing Agency (Hoosier) in concert with MMI. Hoosier markets approximately two-thirds of the milk pooled under the Indiana order (Order 49).

Most of the amendments proposed by the two cooperatives would make participation in the three marketwide pools more difficult for handlers and producers who are not assured of a stable and significant share of the markets' fluid use. National Farmers Organization (NFO) proposed amendments to all three orders that generally would allow slightly greater participation by producers in the three pools, on a more uniform basis than currently exists. Proprietary cheese plant operators and fluid milk handlers proposed amendments to Order 36 that would have opposing effects on the ability of pool supply plants to maintain their pool status.

For Order 49, in addition to the Hoosier proposals to tighten pooling provisions, NFO, the Milk Foundation of Indiana (MFI), an organization of milk plant operators, and New Paris Creamery, a proprietary handler, made and supported proposals that primarily would allow handlers and producers to participate in the marketwide pool more easily.

A set of proposals made by Hoosier (Nos. 20, 22 and 24), to exclude from the marketwide pool producers who are paid under the "Louisville" plan of another order during that order's "payback" months, was abandoned by proponent at the hearing, and not supported by any of the hearing participants. Since the record contains no support for these proposals, they are not considered in this decision.

a. Route Disposition (Order 49)

A witness for Hoosier testified that the organization had proposed two changes to the route disposition definition. The first proposed change is to include other distributing plants, as well as other persons, in the description of milk movements that comprise "route dispositions." The witness stated that Hoosier's intention is that fluid milk products packaged for another distributing plant be included as part of the packaging plant's route sales and thus part of the computation of the packaging plant's qualification for pooling. The second proposed change would describe Class I fluid milk moved to any milk or filled milk processing plant in other than bulk form as "packaged." The Hoosier witness explained that at the present time bulk milk transferred from one distributing plant to another is not included in the route disposition calculation. He went on to say that at one time omission of bulk fluid sales from pooling qualification was justified by the pattern of milk movement in Order 49, but that such sales are used now only to

manipulate the route disposition computation for determining qualification. There was no testimony opposing the proposal, and NFO's brief supported its adoption.

Although neither change to the current order language can be considered substantive, the proposed amendments do contribute some clarification to the route disposition definition. Therefore, the proposed changes should be adopted.

b. Supply Plant (Order 49)

An amendment to the Order 49 supply plant definition proposed by Hoosier that can be considered a clarification of current order language should be adopted. The witness for Hoosier stated that the addition of the words "and is physically unloaded and received into a distributing plant" to the supply plant definition would clarify what constitutes a delivery by a supply plant to a distributing plant. The present definition of a delivery may be considered open to interpretation by those unfamiliar with the order although, in fact, a court has ruled that the present language results in the same meaning that proponents wish to spell out. For purposes of clarity, the proposed language should be adopted, but its adoption in no way implies that the meaning which is to be spelled out more fully is deficient in conveying the requirement that milk that is "shipped to" must also be "physically unloaded and received into".

c. Pool Distributing Plant

Order 33. Two changes to the pool distributing plant definition of the Ohio Valley order proposed by MMI should be denied. MMI proposed that the pool distributing plant in-area sales requirement for Order 33 be reduced from 15 percent to 10 percent of a handler's route disposition. In addition, MMI proposed increases in the total percentage of a distributing plant's receipts that must be disposed of on routes, from 40 percent to 50 percent for the months of September through February (except December), from 35 percent to 40 percent for the months of March through July, and from 35 percent to 50 percent for the month of August.

Proponent's witness stated that a decrease in the in-area sales requirement, which would increase the likelihood of a partially regulated plant becoming fully regulated, is necessary to eliminate a partially regulated handler's competitive advantage over pooled handlers on raw milk costs. The witness stated that this competitive advantage is due to partially regulated handlers paying the equivalent of the Federal order blend price for their entire milk supply while regulated handlers must pay the Federal order Class I price for their Class I milk. The witness explained that his estimate of the cost difference between partially and fully regulated plants was between 60 cents per hundredweight and $2.19 per hundredweight, depending on which plants were compared. The proponent witness went on to explain that due to this competitive advantage in raw milk costs, partially regulated handlers are increasing sales in the Order 33 marketing area and thus taking sales from regulated handlers. The MMI witness characterized this situation as a disorderly marketing condition that would be remedied by their proposal.

Some concern was expressed by the proponent witness that because Order 36 would continue to have a 15-percent in-area sales requirement, certain plants would become regulated under Order 33 rather than under Order 36, causing proponents difficulty in economically supplying milk to these plants. In fact, the witness stated, a handler who had initially supported the proposal was now opposed to it because a proposed amendment to Order 36 was not also included in the hearing notice, as initially intended by the proponents.

In testimony and in a post-hearing brief the MMI witness explained that the second proposed change in the Order 33 pool distributing plant definition, to increase the total route disposition percentage, was needed to increase the amount of milk available to distributing plants. He said that when the requirements were lowered, in 1984, there was a surplus of milk in the marketing area. According to the witness, however, the situation has changed dramatically to the extent that substantial volumes of milk have had to be imported to satisfy the needs of the pool distributing plants in the Order 33 marketing area. The witness also explained that the increase was needed to prevent manufacturing plants from riding the pool by paying distributing plants for the opportunity to qualify for pooling.

Proponent witness explained that August should be added to the higher total route disposition standard because August has become a relatively high Class I demand month at a time when milk production is declining. The witness explained that this higher Class I demand is primarily due to the need to begin filling school inventories.

A witness for United Dairy, Inc. (United) testified in support of the MMI proposal, stating that United had lost an account because a partially regulated Virginia dairy had been able to offer a customer a 15- to 20-cent per gallon lower price. According to the United witness, a price difference of this size can be attributed only to a substantial difference in raw milk costs.

A witness representing Sani-Dairy, a partially regulated handler under Orders 33, 36 and 2 (New York-New Jersey), opposed adoption of the MMI proposal, and stated that no disorderly marketing conditions had been demonstrated. The witness explained that Sani-Dairy relies on uniform order provisions across the area in which it markets its products. The witness testified that at past hearings considerable effort has been made to make the provisions of Orders 33 and 36 the same. He stated that reducing the percentage of in-area route sales needed to qualify as a pool distributing plant in Order 33 without a corresponding change in Order 36 would likely cause his plant to become fully regulated under Order 33 while allowing Sani-Dairy's primary competitor in Johnstown, Pennsylvania, to avoid regulation.

The Sani-Dairy witness characterized the proposed change to Order 33 as an arbitrary change that would be disruptive and impede the free flow of goods, a result which the witness characterized as defeating the stabilizing purpose of the Federal order system. The witness also stated that Sani-Dairy needs to maintain its partially regulated status under the Federal order so it can continue to pay competitive prices to its producers.

A producer representing 133 producers shipping milk to Sani-Dairy also testified in opposition to the MMI proposal. The witness testified that if Sani-Dairy's pay price was reduced by Federal order regulation below Pennsylvania State pricing levels, he and other producers would have to consider shipping to another plant. If the price difference was significant, the producer stated, they would probably switch to another plant.

In a brief filed on behalf of Hoosier it was argued that information entered into the record for Toft Dairy, a partially regulated handler under both Orders 33 and 36, should be disregarded since it was not subject to cross-examination. Hoosier argued that Toft is able to distribute up to 15 percent of its receipts in each order without being fully regulated. The Toft information indicated that Toft pays the average of Order 33 and Order 36 Class I prices for raw milk, and argued that MMI had failed to meet the evidentiary burden necessary to justify adoption of its proposed amendment.

The portion of the MMI proposal that would reduce the in-area sales percentage requirement is the only amendment proposed by either MMI or Hoosier that would have the effect of loosening pooling standards to include more handlers in any of the three marketwide pools. Speculation by proponent witness that partially regulated handlers are able to increase sales in the regulated marketing areas because of an unfair advantage based on lower prices paid for raw milk is not a sufficient basis for reducing the in-area sales percentage at which a handler becomes fully regulated. The source of proponent's estimates of the size of two partially regulated plants about which he testified, and the magnitude of their disposition in the marketing areas (that of Order 36, as well as Order 33) was unclear, and the accuracy of the estimates was questionable. At any rate, Toft Dairy apparently represents less than .6 percent of the route disposition in the Order 33 marketing area, and approximately one-half of one percent of the Class I use in the marketing areas of Orders 33 and 36 combined. Reduction of the in-area sales percentage would, if Toft reduced its sales in order to avoid full regulation, remove from the Order 33 market fluid sales representing about .2 percent of the market's total Class I use.

Comments filed by MMI stated that the record does not reveal any insight into the value paid by Richfood Dairy, especially for sales outside the state of Virginia. However, information contained in the record about Richfood Dairy in Virginia, which apparently distributes milk in both the Order 33 and Order 36 marketing areas, indicates that the value paid by Richfood for raw milk is at least as much as the dairy's obligation would be under full Federal order regulation, because it does not incur any obligation to the Federal order pool as a partially regulated distributing plant.

Given the very small share of Order 33 Class I use that the dairies in question represent, there is no basis for trying to have the small volume of sales represented by the handlers in question become part of the marketwide pool.

The second part of the MMI proposal represents an inappropriate method of attempting to assure that an adequate supply of milk is made available for fluid use. Pool distributing plant standards exist for the purpose of determining which plants are substantially involved in distributing fluid milk products in the marketing area, and therefore should be included in the marketwide pool.

MMI exceptions in regard to Federal Order 33 charged that the hearing record had been either ignored or not read at all, and asserted that corrective action must be taken when pool distributing plants are paid a "pooling fee" to allow producer milk affiliated with manufacturing plants to ride the pool with no intention of making the milk available for Class I purposes. MMI noted that, contrary to the decision, corrective action to eliminate abuse of the system is not "inappropriate" and that pool distributing plant standards must be an integral part of "restricting producer access to the pool" if such producers are not helping to supply the Class I market when milk is truly needed.

MMI comments claimed that the Department's recommendation would allow "pool riders" and irresponsible organizations to dump surplus milk on markets in the name of "greater participation" when participation is not warranted, resulting in more disarray and less commitment to the local market. MMI asserted that the Department admitted within the recommended decision that a lack of commitment causes "problems". Additionally, MMI stated that the Dairy Division is required by law to draft decisions that contribute to orderly marketing conditions, rather than making recommendations that cause marketing problems.

There is no evidence in the record of this proceeding that would support a conclusion that a plant distributing 40 percent of its total receipts on routes during the market's months of relatively high Class I utilization is not a significant enough source of fluid milk products for the marketing area to justify its pool status. In fact, failure to regulate a plant distributing such a significant percentage of its total receipts on routes certainly could be expected to create disorderly conditions. The average Class I use percentage of milk pooled under Order 33 is barely over 55 percent, and exceeds 60 percent only about one month per year. Further, Class I use percentages do not support any argument that the pooling standard for the month of August should be increased. The record contains no basis upon which it can be determined that the current total pool distributing plant standards are not high enough. Attempts to assure that milk included in the marketwide pool is adequately associated with the fluid market are more appropriately directed at supply plant provisions.

Order 49. The pool distributing plant standards of the Indiana order should be reduced to more closely resemble those of the adjacent Ohio Valley order so that the order under which a given plant with route sales in both marketing areas is regulated is dependent upon the marketing order with which the plant has more association. The computation of the qualifying percentage should be amended to include as receipts diversions of producer milk from distributing plants, but not transferred receipts from other distributing plants or diverted receipts from other order plants. Provisions allowing continued pool status for plants which have met pooling percentages for the previous month or during summer months for plants which have qualified during the preceding September through May should be retained in modified form.

Three proposals were made to amend the pool distributing plant standards for the Indiana order. Hoosier's proposal would reduce the minimum route disposition percentage from 50 percent to 40 percent of total receipts for the months of May through July, include diversions from distributing plants as receipts in computing qualification percentages, and remove the ability of distributing plants to qualify for pooling on the basis of their previous pool status. Generally, the proposal advanced by Hoosier would make it more difficult for handlers to qualify their plants for participation in the marketwide pool.

Proposals by the National Farmers Organization (NFO), a producer cooperative association, and Milk Foundation of Indiana (MFI), a group of six handlers regulated under Order 49, would loosen Order 49 pooling qualifications for distributing plants. NFO proposed that the required route disposition percentage be reduced from 50 percent to 35 percent year-round, but modified its proposal at the hearing to conform to the percentages included in the MFI proposal, and the current route disposition standards of Order 33. NFO's proposal would exclude diverted receipts from other order plants from the receipts used to determine qualifying percentages. The MFI proposal would reduce the percentage of a handler's receipts that must be disposed of as route dispositions if the handler's plant is to qualify for pooling from 50 percent year-round to 40 percent during the months of September through February and 35 percent for the months of March through August.

According to testimony presented by a Hoosier witness at the hearing and arguments included in a brief filed on behalf of Hoosier after the hearing, the current pool distributing plant provisions of the Indiana order allow handlers to attract and maintain receipts

of milk without making them available for Class I use. The Hoosier witness stated that many distributing plant operators want a pooled milk supply for the purpose of making Class II products or diverting milk to nonpool plants for use in cheese or Class II products. Hoosier claimed that under the current provisions a distributing plant may be pooled all year on the basis of meeting the order's pooling standards in only 5 months.

The Hoosier witness stated that the Indiana market historically is deficit in milk production, and needs a supplemental supply for fluid use. He testified that during 1989 and 1990, Hoosier imported 3 to 8 million pounds of milk per month at a cost of $2.51 per hundredweight. The witness claimed that exclusion of milk diverted by handlers to nonpool plants from the computation of pool qualification percentages leaves a loophole for handlers to attract and maintain supplies of milk that are not made available for Class I.

According to the Hoosier witness, there is no evidence that the Hoosier proposal would result in depooling any distributing plants currently meeting pooling requirements, or impair the ability of any pool plants to remain pooled. The witness stated that the order should not allow the pooling of milk used in Class II while milk must be imported for Class I use at increased costs to handlers and consumers, and added that the Indiana market has one of the highest percentages of Class II use of the 3-class markets.

A witness for NFO testified that the cooperative markets approximately 16 million pounds of milk monthly on Order 49, and opposed Hoosier's proposals to tighten the pool distributing plant qualification requirements. NFO attributed changes in regulation of Wayne Dairy from Order 49 to Order 33, and back again to Order 49, to differences in the pooling standards for distributing plants under the two orders. As a result of the differing standards, according to NFO, Wayne Dairy was pooled on Order 33 even when the majority of the handler's sales were in the Order 49 marketing area. The cooperative asserted that changes in the order under which handlers are regulated create problems for other handlers and for producers because of the instability in the handler's regulatory status.

The NFO witness attributed Hoosier's proposals to tighten pool distributing plant requirements to former Hoosier customers changing their source of milk supply to other suppliers or to nonmembers, to an increase in the manufacture of Class II products in several of the Order 49 distributing plants, and to the competition of these distributing plants with Hoosier plants in the Class II finished product market. The NFO witness suggested that because Class II is a substantial portion of some distributing plants' product lines, the Order 49 distributing plant Class I disposition requirement should be loosened, not tightened. The NFO witness went on to say that any perceived problem generated by increased Class II use in the market was not caused by a few distributing plants, but by the increase in Class II use by nonpool plants, particularly by Hoosier members' plants.

According to NFO, the one-month lock-in provision for Order 49 distributing plants has been a stabilizing provision that has prevented pool plants from changing regulation under different orders, and should be retained. NFO criticized the Hoosier proposal as being anti-competitive, characterizing it as designed either to cause difficulty for Hoosier competitors in participating in the Indiana pool, or discourage competitors from competing with Hoosier by producing Class II products such as condensed milk. The NFO witness favored retaining the present pooling framework and changing the qualifying percentages for pool distributing plants to agree with those effective under Orders 33 and 36.

The witness for MFI stated that a number of small distributing plants increased their Class II production as a means of utilizing their surplus butterfat, and that when they were supplied by Hoosier these distributing plants helped balance the market by using seasonal and weekend surplus milk. Since they no longer receive their supply of milk from Hoosier, they must balance their own supply. The MFI witness went on to state that since Order 49 can be characterized as a two-part market, those that are Hoosier customers and those who are not, order provisions should not contribute to the restrictive practices of Hoosier. He added that the Hoosier proposals would make retention of pool status more difficult for certain distributing plants that use significant amounts of milk in Class II, which would benefit Hoosier plants and customers who compete for the same sales.

The MFI witness pointed out that when the distributing plant provisions were written, fluid cream was considered a Class I product. Since fluid cream is now a Class II product, a plant would have had to increase its Class I route sales to maintain the same percentage for qualification. He also stated that during the last year, Class II had made a positive contribution to the producers' blend price and that Class II should not be considered a detriment to the pool.

The MFI witness argued that Class II use in pool plants had been stable over the previous 5 years, and that the increased Class II use in the market is due to milk used by nonpool plants who have received milk diverted to them by the market's cooperative associations. The witness stated that Class II use of pool milk in nonpool plants had increased by a factor of 10 during 1989.

The post-hearing brief filed on behalf of MFI stated that while there is no evidence plants have taken advantage of the one-month lock-in provision, that provision serves the purpose of assuring that a distributing plant will not lose its pool status as a result of the loss of one large customer, but will have a month to try to increase its fluid sales to the extent necessary to meet pooling qualifications. The brief argued that ice cream operations are an integral part of pool plant operations and use seasonal surpluses caused by seasonally-reduced Class I demand and increased production. According to the brief, Hoosier would not denigrate the importance of Class II use if they thought it would be lost to the market instead of gravitating to Hoosier plants.

A witness for New Paris Creamery Company, a pool distributing plant under Order 49 and member of MFI, stated that when New Paris was a full supply customer of Hoosier, Hoosier would move milk in such a way that New Paris would remain qualified under the order. Now that Hoosier is not supplying New Paris, he testified, Hoosier characterizes the same type of milk movements in which it once participated as "sham pooling transactions."

A representative of Miller Corporation, a distributing plant operator pooled under Order 49 and a member of MFI, testified in opposition to Hoosier's proposal to tighten the pool distributing plant requirements. The Miller witness stated that he had been a full supply customer of Hoosier for many years until Miller developed a sizable market for its Class II condensed milk. He testified that Hoosier expressed unhappiness with the amount of Class II use at his plant and started assessing an extra charge for Class II products moving to other orders. The witness for Miller stated that Miller changed suppliers because Hoosier had pulled a considerable amount of milk from the Miller plant and was unhappy with Miller, and another supply became available. He continued by saying that

to a small distributing plant the loss of one account could mean the difference between being a pool plant and being a partially regulated plant. The witness indicated that in Miller's case, they would probably try very hard to maintain their pool status. He also stated that in many cases Miller's condensed product is in competition with condensed skim milk marketed by MMI, a member of Hoosier.

The record contains no justification for a higher pool distributing plant qualification percentage for Order 49 than for Order 33. These two adjoining orders share much of the same milkshed, and many of the handlers regulated under either of the orders have route disposition within the other order's marketing area. Approximately 10 percent of Indiana handlers' total route sales are within the Order 33 marketing area, and amount to over 6 percent of the total sales within the Ohio Valley marketing area.

The existence of significantly higher pooling standards in the Indiana order than in Ohio Valley can serve only as an artificial barrier that may have the effect of keeping plants pooled under Order 33 when they actually have more sales in the Indiana marketing area. As in Order 33, pool distributing plant standards should not be used as a means of restricting producer access to the pool, but solely as a means of determining which plants are significantly engaged in distributing fluid milk products in the marketing area, and which distributing plants have a close enough association with the market to justify their inclusion in the marketwide pool. Therefore, the pool distributing plant standards under the Indiana order should be relaxed to the level currently effective under the neighboring Ohio Valley order.

The receipts to be considered in calculating pool plant qualification should correspond with those included in the Ohio Valley order. The receipts to be considered, therefore, are fluid milk products received at and diverted from the distributing plant, but not bulk fluid milk products received as Class II or Class III by transfer or diversion from other plants. All producer milk for which the handler is responsible to the pool should be considered as receipts of the distributing plant, along with other fluid milk receipts for which Class II or Class III classification is not requested. Such receipts represent the supply of milk available to the handler for fluid use. Receipts of milk for which Class II or Class III classification is requested by both the selling and buying handler, however, represent a supply of milk for which fluid use has already been precluded.

The current provisions of the Indiana pool distributing plant definition that allow a plant to retain pool status for one month after meeting the pool plant percentage requirement and allow plants which have met pooling requirements for the previous months of September through May to retain pool status for the summer months of lower Class I use should remain in the order in modified form, as long as the plant meets the order's in-area route disposition requirement during the month. Plants regulated by the Indiana order clearly have greater than average proportions of their milk used in Class II. Indiana handlers apparently use milk for Class II products consumed in other marketing areas with lower percentages of Class II use.

Although Hoosier argued that Class II use does not enhance the pool, such use clearly had added significantly to the uniform price during the year preceding the hearing, and may do so again. This increased value should be recognized by accommodating the pool status of handlers using milk in cream products and soft manufactured products.

Comments objecting to the recommended decision's failure to eliminate the "lock-in" provision from Federal Order 49 were filed by Hoosier Milk Marketing Agency and Milk Marketing Inc. The exceptors stated that the recommendation continues to allow distributing plants to be pooled on a year-round basis by meeting the Order's performance standard only five months out of 12 or by less than a 25 percent route disposition on an annual basis. The comments claimed that such an unreasonable standard in Order 49, which they described as a deficit market with high Class I utilization, makes a mockery of the Federal Order system.

Hoosier proposed a modification of the recommended decision that would allow a handler with high Class II utilization to be given a choice of retaining year-round pool status either on the basis of every other month performance or by meeting the route disposition percentage requirements during each of the months of September through May. According to Hoosier, the proposed modification would address the concerns of handlers with high Class II usage while, at the same time, insuring that milk is made available to meet the demands of the fluid market during months of greatest demand for fluid products.

MMI comments noted that while the recommended decision calls for more uniformity for the purpose of relaxing pooling standards, this criterion is not applied when proposals call for greater participation by handlers and producers. MMI stated that the evidence weighs heavily in favor of more participation by handlers and producers in serving the Class I needs of the Indiana market, not less. Hoosier claimed that the Department rejected its proposal for pool distributing plant "reform" aimed at reducing the cost of supplying milk to fluid handlers and favored a regulatory provision that can only perpetuate and burden fluid handlers with unnecessary costs.

MMI and Hoosier noted that, contrary to the findings, a continuing need for supplemental milk to supply fluid milk requirements does exist in Order 49. MMI argued that although the NFO witness testified that his organization was willing and able to supply milk, NFO has never seemed willing to make a commitment to the Hoosier Agency, nor make milk available at a reasonable price when it is needed. MMI stated that it has had more success purchasing supplemental supplies from NFO in Wisconsin than from NFO locally, and speculated that the problem of supplying milk to fluid handlers in Indiana seems to be a pricing and commitment problem rather than a pooling standards problem.

Hoosier's and MMI's comments continue to reflect a view of distributing plant pooling standards as a means of limiting producer association with the market. Order provisions that would reduce the likelihood that a distributing plant with a significant share of its business in fluid milk sales in the marketing area would be able to maintain regular pool status would surely lead to disorderly marketing conditions. Other parties involved in marketing milk in the marketing area, both producers and handlers, could easily find themselves having to deal with continually changing conditions if the pool status of a significant fluid milk distributor changes on a frequent basis.

The provision that allows a pool plant to retain its pool status for one month after meeting pool qualifications for a month is unusual, but does exist in modified form in the Ohio Valley and Middle Atlantic orders. In a marketing area such as Indiana, where handlers have a greater than normal share of Class II use, it is entirely possible that a distributing plant losing a fluid milk customer could fail to meet pooling qualifications for a month. Disorderly marketing conditions, such as producers losing their pooling base because of a sudden loss of a handler's route dispositions, are more likely to result in the absence of the provision than to be caused by the provision. However, the

current provision should be amended to require that a handler meet at least the in-area route disposition requirement and be pooled for at least the two immediately preceding months to retain pool status. These changes should assure that any distributing plant to which the provision applies will be one with a continuing and significant role in distributing fluid milk products in the marketing area.

Similarly, the "free ride" provision for summer months is not contained in most orders, but has some utility in an order regulating the handling of milk in an area such as Indiana, which produces more than its per capita share of Class II products. Class I sales generally are at their lowest level while milk production usually increases during summer months, leaving handlers to deal with more surplus milk than during the rest of the year. Summer is also a time when demand is higher for Class II products such as ice cream and cottage cheese, and production of these products is at its highest level. Handlers who have met the distributing plant qualification percentages during the months of greatest demand for fluid products should not have to be concerned about meeting those percentages when fluid demand is low.

In comments filed by MMI, the cooperative recommended that August not be considered a "free-ride" month but rather a "transition" month when shipments should be required, but not at the same level as in other months, nor be a part of the qualification period for determining pool status during the months of June and July. This suggestion corresponds to data contained in the record. The percentage of the Indiana market's production needed for Class I use was higher in August for the period 1985–89 than for any of the months of June or July during the same period. In addition, the August Class I use percentage for any year during this period was as high as, or higher than, the Class I use percentage for the month of May. As recommended by MMI, however, it would be more appropriate to treat August as a "transition" period between months of being allowed to qualify on the previous year's dispositions and having to again meet the order's performance requirements. Therefore, August should become a month in which distributing plant pool qualification is dependent upon meeting percentage distribution requirements, but at the lower level of 30 percent.

d. Pool Supply Plant

Order 33. A proposal by Milk Marketing, Inc. (MMI), to increase the percentage of a supply plant's receipts that must be shipped to pool distributing plants from 35 percent to 50 percent if the supply plant is to meet pooling requirements should be denied, as should the portion of the proposal that would add August to the months in which shipping percentages must be met. The proposed requirement that qualifying shipments be met on a net basis should be adopted. The portion of the proposed net shipments provision that contains an allowance for transfers or diversions from distributing plants to supply plants during holidays because of reduced Class I consumption at such times should not be adopted, although the significant reduction in fluid milk consumption during the Christmas holiday season should be recognized by reducing the required shipping percentage for the month of December to 30 percent.

A witness for MMI explained that although there were no proprietary supply plants pooled under Order 33 at the time of the hearing, one was expected to qualify for pooling in the following month. The witness asserted that higher shipping standards are necessary because the market was experiencing a shortage of milk supplies at the time of the hearing. He observed that a pool supply plant should supply the fluid market and not ride the pool, reducing blend prices to producers. The MMI witness explained that as a result of increasing the percentage, only those supply plants actually supplying the market would be pooled. He stressed the need for a net shipment provision as a means of preventing a supply plant from shipping milk to a distributing plant and then having the distributing plant return milk to the supply plant, thus defeating the purpose of allowing the supply plant to participate in the pool. The witness stated that August should be added to the qualifying months to assure a supply of milk for the market when it is needed.

A representative of the Kroger Company, a handler operating a pool distributing plant under Order 33, testified in support of the proposal to increase Order 33 pool supply plant shipping percentages. The witness stated that Kroger has spent a great deal of money procuring a supply of milk for its Order 33 distributing plant, and expressed the belief that the adoption of the MMI proposal would result in more local milk being more readily available to the Class I market, reducing costs to handlers and therefore to consumers.

Briefs filed on behalf of MMI and Hoosier supported adoption of the proposal for the purpose of increasing milk supplies available to bottling plants and reducing the need for costly importation of supplemental supplies.

Evidence in the record fails to support any need for increased pool supply plant shipping percentages for the Ohio Valley market. In addition to the absence of any recent experience of such plants under the order or, consequently, any pooling difficulties associated with the order's present shipping percentages, the Class I use percentages for prior years do not support any increase in supply plant shipping requirements.

If supply plants were to become part of the Ohio Valley market, however, they should ship the required percentages without exchanging milk shipments with distributing plants for the purpose of evading the order's pooling standards. Therefore, the proposed net shipment provision should be adopted, without, however, including the allowances for holidays. The proposed percentage allowances for shipments of milk from distributing plants back to supply plants are needlessly complicated. For the purpose of allowing for reduced fluid milk consumption during late December, however, the shipping percentage for the month of December should be reduced to 30 percent.

The record of Class I use in the market also fails to support any need to remove August from the months during which supply plant operators who have met the order's requirements for the preceding period of relatively high Class I use may be pooled without meeting the order's shipping percentages. Increased shipments of milk for fluid use may be needed at the very end of August in order to satisfy school contracts, but such needs do not constitute a basis for requiring shipments at the full fall level for the entire month of August.

Comments opposing the Department's decision to deny a proposed increase in Federal Order 33 supply plant shipping requirements were filed by The Kroger Company (Kroger). Kroger reiterated its hearing testimony that an increase in supply plant shipping requirements combined with making August an additional qualifying month would encourage milk to move to the Class I market during months of greatest demand at a reduced cost to distributing plants, benefitting consumers of fluid dairy products. Kroger indicated that the Department's decision would allow supply plants to reap the financial benefits of participation in the pool without shipping adequate supplies of milk for the fluid market, and stated that the decision violates the primary goal of the Federal milk order program of

providing an adequate supply of milk for fluid use at a reasonable cost.

At the time of the hearing, more than three-quarters of the 16 Order 33 pool distributing plants in operation had either full or partial supply contracts with cooperative associations. It is most likely that those few distributing plants lacking such supply arrangements rely heavily on supplies of milk from nonmember producers, with supplemental supplies on an irregular basis from cooperative associations and, when available, supply plants. Given the market's supply arrangements, it is unreasonable to expect that any supply plant would be able to deliver a significant enough share of its milk on a consistent basis to distributing plants to maintain pool status if delivery requirements are set at a level near the Class I use percentage for the entire market.

Order 36. Shipping requirements for Eastern Ohio-Western Pennsylvania pool supply plants should be increased from 30 to 35 percent for the months of January and February with a provision added to require net shipments for all months, but the increases proposed by MMI and United Dairy should not be adopted. An MMI proposal that supply plants be required to transfer at least one tankerload of milk (45,000 pounds) during the fall months to maintain pool status should be adopted. A proposal by Brewster Dairy, a proprietary cheese manufacturer and supply plant operator, to allow supply plants to meet some of their qualifications for pooling on the basis of shipments to nonpool distributing plants should be denied.

Proposals by MMI and United Dairy, a proprietary pool distributing plant, would increase the amount of milk required to be moved from pool supply plants to pool distributing plants from 40 percent to 50 percent for September, October, and November, and from 30 percent to 40 percent for the remaining months of the year. The proposals also included a net shipment provision to eliminate sales back to the supply plants from pool distributing plants. The MMI proposal included a requirement that supply plants must ship at least 45,000 pounds of milk to a pool distributing plant during the months of September, October and November.

The witness for MMI explained that in recent years more and more supply plants are being pooled on Order 36. The witness went on to explain that the increase in supply plants has not increased the amount of milk available to pool distributing plants because some of these supply plants have accumulated a supply of Grade A milk and then have not performed the function of supplying the market. According to the witness, the intended function of a supply plant is to carry a reserve supply of milk for the market and provide milk for Class I use when the market needs it. The witness stated that these supply plants have not joined the market to serve the Class I needs of the market, but to help affiliated cheese plants obtain additional supplies of milk. The witness noted that for a supply plant to provide for the fluid needs of the market, it must be able to segregate, cool, store, load, and unload Grade A milk. According to the witness, the provision in the MMI proposal that would require supply plants to transfer at least one tankerload of milk during September, October, and November would demonstrate that a supply plant has the necessary facilities to supply the market.

The MMI witness continued by noting that the supply of producer milk had declined slightly over the last eight years in Order 36, while the combined Class I and Class II needs of Order 36 had increased by 17 percent during the same period. The witness went on to explain that supply plant shipping requirements had not changed during this time and that the requirements should be changed to reflect the change in the market, particularly since supply plants are joining the market to ride the pool.

A witness for United Dairy, who also represented Hillside Dairy and R. Bruce Fike Dairy, two other Order 36 pool distributing plants, testified in support of the United Dairy proposal, which he characterized as similar or identical to the MMI proposal. According to the witness, the net shipments provision is necessary to eliminate sales back to supply plants from pool distributing plants, a practice which he said does not increase the amount of milk available to the fluid market, and therefore does not benefit the market.

The United Dairy witness stated that in Order 36, supply plants do not fulfill their function as a reserve and balancing supply for the Class I market. The witness explained that the supply plants draw millions of dollars from the Order 36 pool and yet do not supply the market when the milk is needed. The witness testified that the supply plants use the pool money to pay their producers, which, combined with premiums derived from profitable cheese operations, allows the supply plants to outpay the distributing plants and thus attract a significant portion of a diminishing Grade A milk supply. The United Dairy witness concluded that the order must contain minimum supply plant shipping percentages that reflect the needs of the market, not only in the quantity needed but also at the times needed.

A witness for Hillside Dairy testified in support of United's proposal. The witness stated that supply plants are not releasing sufficient supplies of milk in the fall. He explained that distributing plants cannot compete with the supply plants for a supply of milk due not only to the draw the supply plants receive from the pool to pay their producers, but also the premiums they can afford to offer. The witness indicated that the supply plants can pay premiums because they can derive additional benefits from milk that distributing plants can not derive, such as higher cheese yields from higher protein milk. The Hillside witness testified that when the shipping percentages were reduced to their present levels in 1978, milk was plentiful. Since that time, he stated, the supply situation had changed, and therefore the proposed increase in the shipping percentage would enhance the marketing conditions in Order 36.

A witness representing Brewster Dairy, a pool supply plant under Order 36, testified in opposition to the MMI and United Dairy proposals, and in support of Brewster's proposal to include shipments by Order 36 supply plants to nonpool distributing plants in determining supply plant pool qualifications. The witness explained that supply plants such as Brewster serve an important function in the market by balancing the market when the demand for Class I milk does not meet the available Grade A supply. The witness noted that the supply plants not only balance the market seasonally but also on a daily, weekly, and monthly basis. The witness indicated that United Dairy's problems in acquiring milk at certain times of the year are not due to a shortage in the market, but to United Dairy's unwillingness to pay a reasonable price for the milk. The witness characterized United Dairy's problem as one of its own making, a problem that should not be remedied by regulation but by the marketplace.

The Brewster Dairy witness claimed that increasing the supply plant shipping percentage would not increase Class I use in the market but would require one sector of the market to supply milk for fluid use, thus leaving more milk for another sector of the market to use for manufacturing. Opposition to the MMI and United Dairy proposals by the Brewster Dairy witness also concerned a perceived inequity in the difference between the proposed shipping percentages for supply plants and the shipping percentages for cooperative pool plants.

The witness pointed out that in some neighboring Federal orders the shipping percentages for proprietary supply plants are the same as for cooperative supply plants and in at least one Federal order the requirements for a cooperative plant are greater than for a proprietary plant.

The Brewster witness explained that allowing proprietary pool supply plants to ship milk to other order distributing plants for qualification in Class I would enhance the Order 36 blend price and help to achieve greater equity between the two types of supply plants (proprietary and cooperative). The Brewster witness continued by stating that proprietary pool supply plants should be allowed qualifying shipments of milk to other order distributing plants for the same reasons that such shipments are allowed for cooperative supply plants. The Brewster Dairy witness' testimony in favor of the Brewster proposal was supported by two other Order 36 proprietary pool supply plants, Hans Rothenbuhler & Sons (Rothenbuhler) and Miceli Dairy Products Company.

A brief filed on behalf of the Dairy Industry Association of Pennsylvania expressed support of the MMI and United Dairy proposals to increase supply plant shipping percentages because of the difficulty of obtaining supplies of milk for Class I and Class II use, as demonstrated by temporary revisions of the shipping percentages during fall months in two recent years. The brief argued that the increased number of supply plants on the Eastern Ohio-Western Pennsylvania market has not had the effect of serving Class I needs. The supply plants were described as riding the pool during the flush production months, drawing payments from Class I handlers to pay producers the order's blend price plus premiums that enable the supply plant operators to capture a milk supply to fill their own manufacturing needs, and shipping milk out of the market during the fall months rather than supplying Order 36 distributing plants. The Association brief stressed the need for adopting a net shipments provision to make milk available for fluid use and fulfill the intent of the supply plant provision.

A brief filed on behalf of National Farmers Organization (NFO) took no position on the appropriate levels of shipment for proprietary supply plants, but suggested that higher shipping percentages could be justified for fall months because the proprietary supply plants are not required to meet qualifying percentages year-round, as cooperative plants are required to do.

The MMI and United Dairy proposals were opposed in briefs filed by Brewster Dairy and Rothenbuhler. Both briefs stated that United Dairy doesn't plan for and negotiate supplies of milk, and is unwilling to pay the prevailing rate for milk. They argued that the proposals are based on a temporary downward trend in production which, at the time of the hearing, was in the process of reversing itself. Brewster stated that no abuses were detailed in the record that warranted adoption of a net shipping standard, and asserted that there are valid reasons for distributing plants to return shipments. The brief charged that MMI wants supply plants making Class II products to have to release their supplies of milk to competing distributing plants.

The Brewster Dairy proposal to allow shipments to nonpool distributing plants to be included in determining whether supply plants meet the order's qualifying percentages was supported in briefs filed by Brewster Dairy and Rothenbuhler. The Brewster brief stated that although Brewster sells Class I milk to nonpool plants in the south and southeastern United States, the handler has also had to depool Order 36 milk because of deliveries to Order 33 pool plants because no local customer required the supplies.

Briefs filed on behalf of the Dairy Industry Association of Western Pennsylvania, United Dairy, Fike Dairy and Hillside Dairy, and MMI opposed adoption of the Brewster proposal. According to the briefs, if the proposal were adopted a supply plant could ride the pool during the flush production months while shipping only 20 percent of its receipts to pool distributing plants during the fall. The Association brief argued that Order 36 pool distributing plants should not have to pay prices consistent with both Order 36 and other markets for seasonal and spot supplies of milk.

Although the percentage of Class I use under Order 36 is generally slightly less than the same percentage under Order 33, the percentage of a supply plant's receipts that must be shipped to pool distributing plants to qualify the supply plant for pooling is 5 percentage points higher in Order 36 than in Order 33 for the months of September through November. This seeming discrepancy is explainable by differing marketing conditions and structure in the two markets. The record of this proceeding contains testimony about fluid milk handlers' difficulties in obtaining adequate supplies of milk under Order 36, while no such problems were described in relation to Order 33. In addition, only about half of the 26 Eastern Ohio-Western Pennsylvania pool distributing plants listed at the time of the hearing were described as having contracts with MMI for all or some of their milk supply, while more than three-quarters of the 16 Ohio Valley pool distributing plants were locked into a cooperative supply of milk. Clearly, a greater need exists for reliable supplies of milk at Order 36 distributing plants than for Order 33 plants, both in the proportion and number of plants that need to procure milk from sources other than the principal cooperative association.

Based on the apparent need for continued supplies of milk for Order 36 distributing plants from supply plants, there appears to be no reason to reduce the current shipping percentages to the level of Order 33. At the same time, the need to increase the shipping percentages to the levels proposed by MMI and United Dairy is not evident either. Even though the percentage of producer milk used in Class I had increased slightly in 1989 above 1987 and 1988 levels, it still represented a 10-percent decrease from the 1969–1975 period, when supply plant shipping standards were 10 percentage points higher.

It is reasonable to require that supply plants actually ship to distributing plants the percentage of their receipts specified by the order. Pooling standards that can be negated by offsetting shipments from distributing plants are meaningless. Therefore, the standards adopted should represent net shipments from supply plants to distributing plants.

The data in the record support a higher shipping standard for the months of December through February than for the "free ride" months of March through August. Class I use percentages for the market are noticeably higher during this period while schools are still in session, requiring a relatively high level of fluid milk products, and before milk production starts to increase seasonally. However, because of the customary decline in Class I use late in December, the percentage for only January and February should be increased. Therefore, the 30-percent shipping standard for all months except September through November should be increased to 35 percent for January and February and remain unchanged for the months of March through August, and December.

The MMI proposal that each supply plant be required to ship at least one tankerload of milk (at least 45,000 pounds) during the months of September, October and November to demonstrate that the plant has the

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facilities to segregate, cool, store, load and unload Grade A milk is a reasonable criterion for a supply plant, and should be adopted. Proponent's testimony is unclear as to whether the intent of the proposal is to require the minimum volume of shipment in each of the three months, or in just one of the months. Establishing that a plant has the ability to handle the milk, however, should be necessary for only one of the three months, and the recommended language reflects such a requirement.

The Brewster Dairy proposal that proprietary supply plants be allowed to fulfill up to half of their required deliveries to pool distributing plants with shipments to nonpool distributing plants would not assure that Order 36 supply plants are contributing sufficiently to the supply of milk for fluid use in the Order 36 marketing area, and should be denied. Proprietary supply plants meet the order's shipping requirements for the purpose of being able to pay their producers the market's blend price, which is generated by the Class I use of pool distributing plant operators in the market under which they are pooled. It is the market's distributing plant operators who contribute the portion of the marketwide pool that exceeds the Class III price and that enables supply plant operators to pay their producers a higher price than manufacturing uses normally would generate.

Brewster Dairy apparently sells milk for fluid uses to more southerly markets during the fall months when those markets are experiencing even tighter milk supply conditions than exist in the Order 36 market. If Brewster's proposal were adopted, the handler (and other supply plant operators) would be able to use such sales as part of their qualifying shipping percentage under the Order 36 market, reap the advantages of collecting large premium payments from the southern handlers, and still maintain pool status under Order 36. Brewster would then be able to ride the Order 36 pool during the flush production months, shipping nothing to distributing plants during the months of March through August, while collecting equalization payments from the Order 36 pool to enhance its payments to its own producers.

Comments opposing an increase in supply plant shipping requirements from thirty to thirty-five percent for the months of January and February in Federal Order 36 were filed by Hans Rothenbuhler & Son (Rothenbuhler), Brewster Dairy, Miceli Dairy Products Company (Miceli), cheese manufacturing supply plant operators; and by Dairymens Oberlin Farms Dairy (Oberlin), a distributing plant operator. The comments argued that no evidence was presented which would indicate that distributing plants experienced difficulty in obtaining Class I milk during January or February. Moreover, the comments claimed that the testimony of MMI, United, and Hillside focused on the difficulties encountered during certain fall months.

Rothenbuhler stressed that there has been no request for a temporary increase in shipping requirements during the past two years. Rothenbuhler noted that the Department recently proposed reducing shipping requirements in the Northeast-West Iowa (sic., probably Nebraska-Western Iowa), Pacific Northwest, and Great Basin orders.

Brewster Dairy claimed that there is no justification for the recommended increase in supply plant shipping requirements while at the same time the department denied Brewster's proposal to permit proprietary supply plants the same flexibility in serving Class I customers inside and outside the market as currently enjoyed by cooperatives. Brewster stated that the Department's reasoning that cooperative associations have year-round performance standards and proprietary supply plants qualify automatically from March through August is an effectively meaningless distinction because the "free ride" months are of inconsequential benefit to suppliers such as Brewster who make commitments to supply fluid customers on a year-round basis.

Comments opposing a net shipping requirement which provides that the shipments used in determining qualifying percentages shall be milk received by distributing pool plants less any transfers or diversions were filed by Miceli, Oberlin, Rothenbuhler, and Brewster. The comments claimed that supply plants serve an important balancing function by shipping to distributing plants during days of the week when demand is greatest and receiving milk from distributing plants on weekends and holidays when demand is low.

The Miceli comments stated that due to management decisions to acquire a large Italian cheese plant and producer pricing policies, the predominant cooperative operating in Federal Order 36 has encountered financial difficulties which make it difficult for the cooperative to compete for producer milk in the milkshed. Miceli and Oberlin indicated the cooperative experienced a significant drop in membership over the past two years. The exceptors claimed that passage of this amendment would reduce competition by causing the termination of relationships between proprietary supply plants and distributing plants, forcing bottlers and cheese manufacturers to deal solely with the cooperative at much higher prices. According to exceptors, such an outcome would leave the cooperative's cheese plant as the primary outlet for fluid handlers' surplus supplies.

Miceli pointed out that although this amendment was proposed in 1990, when there was a temporary shortage of milk in Order 36, there is now an abundance of milk bordering on over-supply. Miceli stated that if the net shipping percentage amendment has to be instituted it should be done at the discretion of the local milk market administrator and not arbitrarily instituted at the behest of the only major cooperative in Order 36.

Brewster Dairy stated that if a need is demonstrated in the record for a net shipment provision the Secretary should modify the Administrator's recommendations by adopting the proposed exceptions to net shipments that are contained in the Chicago order. Brewster claimed that such modification would better encourage such services to the fluid market by operators of supply-manufacturing plants as shipments of bulk milk to the market when needed and receipts of surplus milk supplies when fluid demand is low.

Hans Rothenbuhler & Son (Rothenbuhler) complained that the proposed provision that requires supply plants in Federal Order 36 to ship at least one tankerload of milk during one of the months of September, October, or November is unnecessary. Rothenbuhler agreed that supply plants should be expected to perform the tasks of segregating, cooling, storing, loading and unloading Grade A milk. However, Rothenbuhler argued, no evidence was presented which suggests supply plants cannot currently perform these tasks. Rothenbuhler claimed that requiring milk to be actually received at a supply plant simply wastes time and resources, stating that additional transfer causes an increased risk of contamination.

Although testimony at the hearing focused on the perceived need for increasing supply plant shipping percentages for the months of September through November, the marketwide Class I use percentages for those months do not support such an increase. However, the percentages of producer milk used in Class I during the months of January and February do support an increase in the required shipping percentages for those months to a level 5 percentage points lower than the September-November level. These are months when producer deliveries

continue to be at their lowest and seasonal demand for fluid milk products remains strong. Therefore, it is appropriate to have higher shipping standards for this period, which is included in the months during which the "free ride" status is earned for later months, than for the "free ride" period. In any case, the order still contains a provision allowing the shipping percentage to be increased or decreased by up to 10 percentage points, as necessary.

The proposal of reduced shipping standards for other orders are irrelevant in determining the appropriate level of shipments for the market in question. In addition, the fact that some supply plants may have year-round commitments to supply their distributing plant customers does not assure that milk will be made available to the fluid market, in the amounts needed, during the market's months of highest Class I use.

The requirement that supply plant shipments to distributing plants be computed on a net basis does not preclude supply plants from serving a balancing function, and should not require an end to cooperative relationships between supply and distributing plant operators. The provision contained in the Chicago order that provides an allowance for milk movements between the two types of plants should be unnecessary because of the reduced level of required shipments during December and other months affected by holidays. (And, of course, all months contain Saturdays). In addition, such a provision seems unduly complicated for the needs of this market.

It is difficult to see how the market can be assured that supply plants pooled under the order are able to perform the tasks of segregating, cooling, storing, loading and unloading Grade A milk unless they are required to demonstrate their ability at some point during the year. The necessity of receiving and reloading one tankerload of milk during the months in which the market has the greatest need for a reliable supply of milk for fluid use is not onerous. The value of the time and resources expended in such an effort is exceedingly small in comparison with the benefit gained by a cheese plant operator in being able to pay its producers the blend price. Further, in a plant that is fully capable of performing the necessary operations connected with supplying milk to the fluid market, surely the risk of contamination in receiving one load of milk is not excessive.

Order 49. The portion of a Hoosier proposal to amend the Indiana order pool supply plant provision that would reduce the shipping percentage for the "free ride" period from 50 percent to 35 percent should be adopted. The percentage of milk that must be moved by supply plants to distributing plants during the months of September through February should be reduced from 50 percent to 40 percent, to bring the order more closely into agreement with the other orders involved in this proceeding. Also, pooling qualification percentages should be subject to temporary adjustment by the market administrator when marketing conditions warrant.

Proposals by New Paris Creamery and the Milk Foundation of Indiana to allow diversions of milk, as well as transfers, from supply plants to distributing plants as qualifying shipments should be adopted, up to the limit of the volume of milk transferred. An aspect of the Hoosier proposal that would shorten the "free ride" period to May through July instead of April through August should be denied. The Hoosier proposal that shipments of condensed milk re-used in fluid milk products be included in supply plant qualifying shipments has been rendered moot in light of the recommended decision [Issued November 6, 1991; published November 22, 1991 (56 FR 58972)] on the record of the national hearing held in the Fall of 1990. [Docket No. AO–14–A64, etc. DA–90–017;RIN 0581–AA37].

The Hoosier witness characterized the Indiana market as a deficit market in which outside sources of milk have been needed for many years. He explained that since Hoosier supplies the majority of the supplemental milk for the market at a cost substantially above order prices, Hoosier's producers bear the brunt of the cost while other producers on the market share in the blend price, but not in the cost of supplying the market's Class I needs. The witness stated that present order provisions contribute to the problem by allowing supply plants to ride the pool.

The Hoosier representative testified that pool supply plant qualifying percentages should be computed on the basis of all producer receipts at the supply plant, including milk diverted to other plants and commercial food establishments. Other changes to the pool supply plant definition proposed by Hoosier included shortening the "free ride" period to May through July instead of April through August, allowing condensed skim milk to be used for qualification, and providing for the shipping percentages to be changed at the discretion of the market administrator.

The witness for Hoosier explained that the shipment of milk by supply plants to pool distributing plants should be on a net basis. He stated that adoption of a net shipment provision would prevent supply plants from establishing schemes to ship fluid milk to pool distributing plants for qualification and then have the distributing plants ship the fluid milk back to the supply plant or to a nonpool plant. The witness went on to say that the Hoosier proposal would allow condensed skim milk to be used by the supply plant as part of its qualification shipments. He stated that even though this type of movement does not occur presently under the order, the use of condensed skim milk or specialty condensed mixes for fortification is a coming trend, and provision should be made for this type of movement. The witness testified that Hoosier did not intend that condensed skim milk be considered a fluid milk product.

NFO opposition to Hoosier's proposal centered around the proposed reduction in the "free-ride" period. The NFO witness stated that tightening the shipping requirements by reducing the "free-ride" period has no sound basis, and would place Order 49 supply plants at a competitive disadvantage to supply plants regulated under Order 33. The NFO witness spoke in favor of the proposed net shipments provision provided that reasonable shipping requirements are used (presumably 35 percent in March through July and December, with no change for other months). The NFO witness also supported the portion of the Hoosier proposal that would give the Market Administrator authority to adjust shipping percentages as needed.

MFI presented testimony opposing the proposal to tighten the supply plant shipping requirements. The MFI witness stated that the only change in marketing conditions in the Indiana market had been that neither of the two supply plants operating under the order at the time of the hearing marketed their milk through Hoosier, and therefore at least one of them had had to make uneconomic movements of milk to remain a supply plant under Order 49. The witness explained that even though milk is moved to qualify a plant, the movement does not result in any more milk being available for the distributing plants, and in fact some milk moves when the distributing plants do not need it. The MFI witness stated that in view of Indiana market conditions, loosening the supply plant standards would be more appropriate than

tightening the standards as proposed by Hoosier.

The MFI witness explained that the MFI proposal to amend the supply plant qualification provisions, in contrast to Hoosier's proposal, would improve the efficiency of the market by allowing supply plants to divert milk to distributing plants to meet the supply plant qualification percentage. The witness testified that many other orders allow supply plants to qualify on the basis of milk movements to distributing plants direct from farms, and that such movements are recognized as the most efficient and least cost method of supplying milk to distributing plants.

In the 20 years between the merger of the Indianapolis, Fort Wayne and Northwestern Indiana orders to form the present Indiana marketing area and the hearing in this proceeding, the percentage of Indiana producer milk used in Class I declined approximately 10 percentage points. Over the same time period, the percentages of producer milk used in Class I in the Ohio Valley and Eastern Ohio-Western Pennsylvania marketing areas declined about 15 percentage points and 10 percentage points, respectively. (Official Notice has been taken of the Annual Federal Milk order Market Statistics for the years 1969–1990). Over the same twenty-year time period, Order 33 supply plant pooling requirements have been reduced by 15 percentage points, while the same requirements for Order 36 pool supply plants have been reduced by 10 percentage points.

It is apparent from these trends that a failure to loosen pooling provisions does not cause Class I use percentages to remain at a higher level. Also, with Class I utilization of about 60 percent annually, the Indiana market is clearly not seriously deficit in terms of milk supply for fluid uses. Although Hoosier obviously has imported large quantities of milk, sometimes at substantial cost, the market's need for such imported milk for fluid use is not clearly shown. The record indicates that some handlers have found it difficult to find fluid outlets for supplies of milk they wish to pool. Testimony by an NFO witness indicates that NFO would have been willing and able to supply some or all of the milk required by Hoosier to fulfill its supply contracts, in order to meet qualification requirements for its own milk supply. According to Hoosier testimony, 9 of the 10 fluid milk plants on the Indiana market at the time of the hearing were full or partial supply customers of Hoosier's, leaving 1 customer to be supplied by other sources.

In keeping with amendments to pool qualification provisions in Order 33 and Order 36, the Indiana pool supply plant shipping percentages should be reduced to 40 percent for the months of September through February, and to 35 percent for the months of March through August. The record provides no basis for changing the order's current "free ride" period, during which supply plants meeting the order's pooling requirements during the months of September through February retain their pool status for the following months of April through August, to May through July as proposed by Hoosier. The Class I use statistics for the previous 5 years show that the percentage of milk needed for fluid use drops sharply between the months of March and April in the Indiana market and rises most markedly between the months of August and September. In this respect the Indiana market differs slightly from the 2 Ohio markets, where the seasonal drop in Class I use is more marked between the months of February and March.

The percentage of a pool supply plant's milk supply that must be delivered to pool distributing plants should be a net requirement. As in the 2 Ohio markets, failure to adopt a net shipment requirement would result in meaningless shipping standards, and would not help to assure an adequate supply of milk for fluid use.

For the purpose of facilitating efficiencies in milk marketing, diversions of producer milk should be considered in determining supply plant qualifications, up to the amount of milk moved by transfer to distributing plants. Moving milk directly from farms to distributing plants is a more efficient way of getting milk to where it is needed than having to unload and reload the milk at supply plants. In addition, extra unloading and reloading increases the cost to handlers of handling milk and causes the milk to deteriorate in quality. Direct delivery by supply plants from producers' farms to distributing plants supplies the market just as transfers do, but at a lower cost.

Milk diverted by a supply plant operator should be considered a receipt at the plant for the purpose of determining pool qualification, as should .9(c) milk received from a cooperative association. Such milk constitutes the supply of producer milk available to the handler for shipment to distributing plants. In addition, allowing diversions of producer milk to be included as qualifying shipments necessitates that such movements be considered as receipts. Receipts of other source milk or transfers and diversions for which Class II or III classification is requested by both the shipping handler and receiving supply plant handler do not need to be considered as receipts for qualification purposes.

Provision should be made in the pool plant definition for the market administrator to temporarily adjust the percentage shipping requirement by up to 10 percentage points if such action is needed to assure an adequate supply of milk for fluid use, or to prevent uneconomic shipments of milk. Such a provision will allow more efficiency in adjusting regulations to marketing conditions.

e. Co-op Pool Plant

Order 33. A proposal by National Farmers Organization (NFO) to reduce the shipping percentages required of a cooperative association plant from 50 to 35 percent should be adopted. The modification to the proposal made by proponent at the hearing, to eliminate the requirement that qualifying shipments be to pool plants instead of to pool distributing plants, should not be adopted. The NFO witness testified that NFO's proposal to change the cooperative pool plant shipping percentage in Order 33 to equal the Order 36 cooperative pool plant shipping percentage would further NFO's goal of making the provisions of the 2 Ohio orders more uniform. The witness explained that the Class I utilization of the two orders was almost equal in 1989, and that no other parties at the hearing had proposed increasing the cooperative pool plant shipping percentages effective under Order 36. The NFO witness further stated that a long-time fluid milk customer had ceased bottling activity, causing NFO difficulty in meeting the order's pooling requirements.

The proposal was opposed by MMI and Hoosier on the basis that shipping requirements under Order 33 should be tightened, not loosened. The MMI brief argued that there is no reason to reduce shipping requirements in a market with 80 percent Class I and Class II use. The brief filed on behalf of Hoosier stated that the NFO plant at McCartyville is only 15 miles from the MMI New Bremen plant to which some of the NFO milk is delivered. The Hoosier brief stated that the NFO facility is a reload point, not an actual plant with the ability to cool or hold milk, and that its operation makes no economic sense and serves no balancing function for the market. The Hoosier brief also argued that NFO moves milk to its own plant first to multiply the pounds of milk it can qualify for pooling on the basis of sales to New Bremen and other handlers.

The current language of the order makes very clear that a cooperative pool plant can qualify for pooling only if 50 percent of the association's member producer milk is actually delivered to pool distributing plants, and leaves no room at all for pyramiding additional volumes of pooled milk on top of the milk which is qualified at the cooperative pool plant. In view of the Class I use percentage of the Ohio Valley market and the portion of the market dominated by MMI, it is unreasonable to require a cooperative association to deliver 50 percent of its milk supply to pool distributing plants on a year-round basis. Reduction of the required percentage to 35 percent will still require that cooperatives operating cooperative pool plants demonstrate a higher level of commitment to supplying the fluid market than regular supply plants must meet because supply plants that meet the 35-percent shipping percentage requirement for the months of September through February do not have to do so during the months of March through August. There is no reason to require cooperative pool plants to meet a significantly higher shipping percentage than regular supply plants, as well as meeting such a percentage on an average annual basis.

The proposal to allow any shipments to pool plants as qualifying, however, or to include shipments to nonpool distributing plants in cooperative pool plant qualification, would have the effect of ignoring the responsibility of such plants to supply the market for fluid use within the Ohio Valley Federal milk order marketing area. Therefore, these modifications to the proposal should not be adopted.

MMI filed exceptions to the recommended reduction in Order 33 cooperative pool plant shipping standards on the basis that the cooperative finds no justification for lowering standards in the Ohio Valley market. The cooperative observed that the market performed more smoothly when milk supplies declined, and stated that cooperative associations that have made a commitment to the fluid market, made an effort to deliver high-quality milk and not made unrealistic statements to their members have not had any difficulty in meeting pooling standards.

The justification for lowering the shipping requirements in question is set forth above. Further, the comment that the market performed more smoothly when milk production declined is no doubt true because in that situation the current performance standards were not unrealistically high. As milk production has increased, reductions in shipping standards have become necessary in order to prevent inefficient and uneconomic shipments of milk from occurring solely for the purpose of meeting the order's pooling requirements.

Order 49. A proposal by NFO that a cooperative pool plant provision be added to the Indiana order should not be adopted. The NFO witness stated that NFO's proposal was patterned after similar provisions in Order 33 and Order 36 where, he said, the cooperative supply plant provision has been a positive method of efficiently pooling the milk of cooperative members. The witness explained that this provision would allow the most efficient pooling of NFO's supply plant and the cooperative's total milk supply. The provision would allow a cooperative to qualify a cooperative supply plant if the cooperative shipped 35 percent of its total producer milk on the market year-round to pool distributing plants.

The proposal was opposed in a brief filed on behalf of Hoosier on the basis that the Indiana marketing area does not need supply plants, and has never needed a balancing plant. According to Hoosier, the NFO Madison plant doesn't serve the purpose of a balancing plant because it provides no processing of the market's reserve supplies.

The record provides no indication that a cooperative pool plant provision is needed in the Indiana order. There was no testimony that milk must be transferred from farm pick-up routes to over-the-road tankers to assure Indiana fluid milk handlers of a milk supply. The producer milk diversion allowances, relaxed under this decision, should allow NFO to continue to qualify its member producer milk associated with the Indiana market to retain pool status without adding an unnecessary provision to the order.

f. Pool Plant Disaster Clause (Order 49)

A "disaster clause" proposed by Hoosier for inclusion in the Indiana order should be adopted. The proposal would assure continued pool status for pool distributing and pool supply plants if a plant was unable to meet the order's pooling standards because of disastrous circumstances. Proponent witness defined such disasters as unavoidable circumstances such as natural weather-related events, fires, breakdowns and work stoppages, and proposed that relief be limited to two consecutive months to prevent abuse.

No opposition to the proposal was expressed at the hearing, and the NFO brief filed on the basis of the hearing record supported the proposal as preserving orderly marketing in the event of natural disasters or other events that could interfere with pool plant status. An order provision assuring continued pool status in the event of an unforeseen and unavoidable circumstance that is not a result of a handler's business decisions should enhance the orderly marketing of milk in the Indiana marketing area. Such provisions have worked well in other orders over a number of years. Therefore, the proposal should be adopted.

g. Producer Milk

(i) *Diversion limits (all three orders).* A proposal by NFO to make the diversion limits uniform between the three orders should be adopted. The amended orders would allow 50 percent of a handler's producer milk to be diverted during the months of September through February, except for the month of December when the allowable percentage of diversions would be 60 percent. Diversions during the months of March through August would continue to be unlimited. During the months of September through November at least one day's production of each producer's milk would have to be received at a pool plant. Proposals to eliminate requirements in Orders 36 and 49 that producer milk be received at pool plants before being eligible for diversion are adopted.

The NFO witness testified that the NFO proposal to amend the producer milk definitions of the three orders to achieve a higher degree of uniformity is based on the high degree of interrelation between the three marketing areas. The witness stated that NFO's proposal would achieve uniformity by (a) requiring each producer to "touch base" at a pool plant during each month of September through November, as is currently the case under Orders 33 and 36, (b) allowing a producer's milk to be diverted to a nonpool plant prior to being received at a pool plant, and (c) establishing a uniform 50-percent diversion limit for the months of September through February, excluding December.

NFO's proposal was opposed in briefs filed on behalf of MMI and Hoosier, wherein it was argued that the proposed diversion limits would liberalize and reduce shipping standards that are needed to protect the integrity of the pools and insure an adequate supply of milk for fluid use. In addition, Hoosier's brief stated that the pooling provisions of each order are established on the basis of production and marketing data unique to each. The brief argued that if the uniformity argument is not specious, the pooling provisions of Order 49

should also conform with those of Orders 30, 40, 32, 50 and 46.

NFO's proposed amendment to Order 36 would enable producers to maintain their producer status after a break in deliveries (such as in the case of a degrade) without having to touch base at a pool plant, as long as their milk has not been pooled under another order since being pooled under Order 36. The witness explained that under the present provisions of Order 36 a producer must maintain continuous association with the market to be diverted, even during those months when there is no touch-base requirement. According to the witness, uneconomical movements of milk result when a producer temporarily loses Grade A status. In such a case, the producer's first day's production upon returning to the market must be received at a pool plant, requiring that the entire load with which the producer's milk is picked up be received at a pool plant, and resulting in uneconomical and unnecessary movements of milk. The witness explained that NFO's proposal would allow a producer's milk to be diverted before being received at a pool plant if the producer has not been associated with another Federal order during the time the milk was not pooled. No testimony or briefs were received opposing the NFO proposal to amend the Order 36 producer milk provisions.

A proposal by Milk Marketing, Inc., to amend Order 36 would limit March through August diversions of producers with less than one-third of their milk pooled during the preceding months of September through November. The MMI witness stated that producers who share in proceeds from the fluid market during the flush production months should be expected to deliver some milk to market when it is most needed for Class I. The MMI brief referred to testimony in the record that some producers ship milk south in the fall and ride the Order 36 pool in the spring. The proposal was characterized by MMI as similar to provisions in other markets.

NFO opposed adoption of the proposal on the basis that it would be difficult if not impossible to administer. The NFO brief described the MMI proposal as an attempt to penalize or restrict movement of producers off of Order 36 and back on again. According to NFO, no problem necessitating adoption of the proposal was demonstrated at the hearing. The Dairy Industry Association of Pennsylvania filed a brief stating that the Association had no objection to the proposal if producers' milk may be diverted without limit in December and March through August when one-third of the producers' milk is pooled during the months of September through November.

The MMI proposal should not be adopted. The amended producer milk provisions should provide sufficient assurance that producers whose milk is qualified for pooling are adequately associated with the fluid market to share in the proceeds of the marketwide pool. The record contains little or no basis to support adoption of the proposal.

A proposal by Hoosier for Order 49 would amend the producer milk definition to allow producers to "touch base" at pool plants any time during a month, allow producer milk to be diverted to commercial food processors as well as to nonpool plants, and remove April and August from the months in which unlimited diversions are allowed. A brief filed on behalf of NFO supported the portions of the proposal that would allow diversions of producer milk to commercial food processors and allow a new producer's milk to be diverted before it is received at a pool plant. NFO opposed tightening Order 49 delivery standards, arguing that if Order 49 standards are significantly higher than those under Order 33, the result will be more milk pooled under Order 33 rather than more milk available to Order 49 pool distributing plants.

As adopted herein, the Indiana producer milk definition will allow producers to "touch base" at pool plants at any time during each of the months of September through November, for the same reasons of efficient hauling and handling that such provisions were adopted for Order 36. In addition, the November 1991 decision on the 1990 national hearing adopts provisions that allow producer milk to be diverted to commercial food processing establishments. Therefore, that issue is not addressed in this decision. Finally, the record provides no basis for tightening Indiana diversion provisions.

All of the ways in which the milk marketing activities of these three markets overlap support the argument that producer milk diversion limits should be more uniform between the three orders. The milkshed of the Ohio Valley marketing area overlaps significantly with those of the Eastern Ohio-Western Pennsylvania and Indiana marketing areas, to the extent that in December 1989 nearly 80 percent of the milk pooled under Order 33 was produced in counties which also supplied milk to Orders 36 and 49. Over 60 percent of the producer milk pooled under the Ohio Valley order was produced in the common milkshed with Order 49, while over 20 percent of the producer milk pooled under the Indiana order was produced in the common Order 33-Order 49 milkshed. Further, milk was pooled under Order 33 in 1990 from 12 counties in Indiana and Michigan that did not supply milk to Order 33 handlers in 1988 or 1989 but did supply Order 49 handlers, and from 6 Michigan, Pennsylvania and Ohio counties that did not supply milk to Order 33 handlers in 1988 or 1989 but did supply Order 36 handlers, indicating significant levels of changes in market by producers among the three markets.

The outlets for surplus milk supplies used by the three markets also demonstrate a high degree of interrelationship. During 1989 and 1990, 21 nonpool plants were listed as recipients of Class II and Class III milk from both Order 33 and Order 36, while 13 nonpool plants were listed as receiving surplus milk from handlers regulated under Orders 33 and 49. Ten nonpool plants received Class II and Class III milk from handlers regulated under Orders 36 and 49 in 1990, and 11 nonpool plants received Class II and Class III milk from handlers regulated under all three orders during the period 1985–90.

Two pool distributing plants, Smith Dairy and Wayne Dairy, shifted between orders in both 1989 and 1990; Smith Dairy becoming pooled under Order 33 instead of Order 36 during some fall months of both years, and Wayne Dairy shifting regulation from Order 49 to Order 33 during the summer of 1989 and fall of 1990. In addition, at the time of the hearing, the Shipshewanna supply plant was expected to shift regulation from Order 49 to Order 33. The effect of a shift in the order under which a plant is regulated will be disorderly for producers if they fail to meet the delivery requirements of the order under which they find their handler regulated, instead of the requirements of the order under which their handler had been regulated.

As noted earlier, the pooling provisions of the Indiana order have failed to be adjusted in accordance with marketing conditions as milk production pooled under the order has increased faster than Class I sales by regulated handlers. For this reason, and because of the need for uniformity between provisions of the three orders as outlined above, the producer shipping percentages of the three orders should be amended as proposed by NFO.

Milk Marketing, Inc., filed comments opposing the recommendation to

liberalize diversion allowances for all three orders and the denial of MMI's proposal for Order 36 to limit March through August diversions of milk from producers who had less than one-third of their milk pooled during the previous September through November period. MMI stated that evidence on the record indicates that handlers have used the three markets as "dumping grounds" after taking advantage of high premiums payments from other markets, but failed to cite such evidence. MMI claimed that although there is considerable overlap between Orders 33, 36, and 49, marketing conditions between the markets are different. MMI indicated that the Order 36 milkshed traditionally has had more than an adequate supply of producer milk to meet the Class I and Class II needs of the market without incurring significant transportation costs. In contrast, MMI claimed, a substantial amount of milk must be moved long distances in Orders 33 and 49 for delivery to processing plants.

MMI noted that provisions which allow milk not continuously affiliated with the market to ride the pool during the flush months are inequitable and will lead to more disorderly conditions. The cooperative stated that denial of its proposal is inconsistent with denial of the Brewster Dairy proposal to allow supply plants to include shipments to nonpool distributing plants in calculating supply plant pool qualifications. MMI stated that the Department apparently approves of moving milk as producer milk to other markets while not approving of plant transfers for the same purpose.

As noted by MMI in its exceptions, marketing conditions do differ somewhat between the three markets. However, the degree of overlap in production and distribution between the markets makes it necessary for the orders' diversion limits to be equitable, as described above. In fact, the differences in pooling provisions between the three orders may be as much a cause as an effect of the differing marketing conditions.

With regard to denial of the MMI proposal to preclude from unlimited diversions during the months of March through August the milk of producers who had less than one-third of their milk pooled during the preceding September through November, such a denial is not inconsistent with the denial of the Brewster Dairy proposal to consider diversions to nonpool distributing plants as part of a supply plant's qualifying shipments. Under the terms of Order 36 as adopted herein, producers participating in the pool cannot have their milk pooled under another order during the period between its physical receipt at an Order 36 pool plant and its diversion under Order 36 to a nonpool plant. The order also provides that milk diverted to another order plant can be producer milk only if moved for Class II or III use under the other order. Therefore, this decision is consistent in disallowing milk moved to other order plants for Class I use from participating in the Order 36 pool.

ii. Pricing diverted milk (Orders 33 and 49). Order 33. A proposal by MMI to amend the Ohio Valley order to price milk diverted to plants located outside the marketing area and outside the State of Ohio from farms located inside Ohio or in five Michigan counties at the location of the plant from which diverted should be adopted, with some modification. At the time of the hearing, proponent modified the proposal to require that producers whose milk is priced at the location of the plant from which it is diverted deliver at least 66 percent, or 20 days' production, of their milk to pool plants during each of the months of September, October and November. The proposal as adopted would be further modified by limiting the location adjustment applicable to the uniform price paid to such producer to that effective at the location of the producer's farm for the months of March through August, but only when 65 percent of a producer's milk is delivered to a pool plant or plants at which an equivalent or higher price is applicable during the months of September through February.

The MMI witness stated that every fluid milk market needs facilities or access to facilities to handle reserve supplies of milk that are not needed for fluid use on weekends and holidays. He testified that the number of manufacturing plants in the Order 33 marketing area has decreased to such an extent that on many occasions milk not needed for the Class I market must be moved long distances to be processed into storable products. According to the witness, milk produced outside the marketing area near the reserve processing plants creates no difficulty, but that milk produced within the marketing area that must be transported outside the area to manufacturing plants does create financial problems.

The witness testified that producers whose milk is moved to distant plants (located at Goshen and Auburn, Indiana) expect to be subject to prices and hauling rates competitive with their neighbors whose milk goes to nearby fluid outlets. He explained that disruptive and disorderly marketing conditions would occur if individual dairy farmers began competing for the local market and trying to avoid the cost of sending their milk to distant plants and receiving a lower blend price as well. The MMI witness argued that producers who have diverted their milk from local markets have already suffered financial loss due to increased hauling, and should not be subject to the additional loss of receiving a lower blend price as well. However, the witness also testified that producers pay a fixed rate for hauling under their contracts with haulers, regardless of the destination of their milk. Proponent cited what he described as similar provisions to those proposed for the Ohio Valley order in the current Southern Michigan order and former Lake Mead order.

It appears that adoption of the proposal may have the effect of causing milk to be moved to Goshen rather than to fluid plants in the southern part of the marketing area, where much less milk is produced and where more milk is needed for fluid use. The distance from New Bremen, Ohio, where much of the milk in question is normally received, to the surplus outlet at Goshen, Indiana, (about 120 miles) is about the same as the distance from New Bremen to Cincinnati, Ohio, in the southern part of the Ohio Valley marketing area. The ability of producers to easily receive the same price for deliveries to a surplus outlet as they would if their milk had gone to a nearby plant would remove the incentive intended by the order's location adjustment provisions to move milk to the more southerly part of the marketing area where it is needed.

Three-quarters of the distributing plants, at which milk is needed for fluid use, that are pooled under the Ohio Valley order are located south of Zone 2 and south of the area of heavy milk production in which the MMI witness indicated producers experience problems with additional negative location adjustments. In fact, in December 1989 over 50 percent of the Ohio milk pooled under Order 33 was produced in the Ohio counties of the Ohio Valley marketing area north of Zone 3, while less than 40 percent of the Ohio milk pooled under Order 33 was produced south of Zone 2. With less than 40 percent of Ohio milk available from nearby sources to supply approximately 75 percent of the Class I needs of the market, it is apparent that the need for price incentives to move milk from the heavy production area of northern Ohio to the southern Ohio area of greater Class I demand still exists in the market. Therefore, the incentives contained in the current location adjustment structure of the market

should not be curtailed as abruptly as proposed by MMI.

The provisions of the Southern Michigan order and the former Lake Mead order differ significantly from those proposed by MMI. Under the Southern Michigan order, only the milk of producers who each month deliver 65 percent of their production to plants at which the same location adjustment rate is applicable are eligible to have all of their milk deliveries subject to that same rate, rather than a lower rate for milk diverted to distant manufacturing outlets. The Lake Mead order provided that only those producers located in two counties for which the only nearby outlet was a fluid milk plant in Las Vegas, Nevada, would have their milk priced at the plant from which diverted. The location adjustment on prices paid to producers located in the vicinity of a distant manufacturing plant was capped at the rate applicable at that plant. Similar provisions for the Ohio Valley order would allow pricing at the location from which diverted only for the milk of producers located in the Cincinnati area, and require the assumption that the nearest surplus outlet is in Goshen, Indiana.

According to the record of this proceeding, there are at least six nonpool plants located in Zones 1 and 2 of the Ohio Valley marketing area and the three northwestern Ohio counties that lie between the Order 33 and Order 49 marketing areas that receive Class II and Class III milk from pool plants for use in the manufacture of ice cream, yogurt, and evaporated milk. A number of surplus outlets also exist in Zones 3 and 4 for milk usually delivered to pool plants in that area that must be diverted from fluid use at times when the fluid plants do not need it. These plants certainly represent closer surplus outlets for the milk of producers in northern Ohio and southern Michigan than the Goshen facility, as does a Kraft ice cream plant in Huntington, Indiana.

Although proponent witness referred specifically to problems encountered in the diversion of producer milk to manufacturing outlets on weekends and holidays, it is apparent from seasonal production and fluid use statistics that a greater problem exists in connection with moving surplus milk to manufacturing outlets in the spring and summer months when production increases and fluid milk needs decline.

For the period March 1987 through February 1988, which apparently was unaffected by any shift in plant regulation under Order 33, the average daily volume of producer milk used in Class III during the months of March through August exceeded the average daily Class III use for the following September through February period by more than 130 percent, or over 1,600,000 pounds per day. In view of the availability of some nearby manufacturing plants and the wide seasonal variation in the amount of surplus milk that must be disposed of, changes in the pricing of diverted producer milk should be confined to the season in which significant volumes of surplus milk are produced. Further, those producers who benefit from the amended provision should not benefit to the extent of having milk that is diverted to a lower-priced area priced at the same rate as if it were received at a plant in a higher-priced zone. In order to avoid such a situation, the location adjustment provisions should limit the price paid for diverted milk to the price effective for the zone in which the farm is located.

The provisions adopted in this decision will assure that the order retains a price incentive to move milk from the northern area of heavy production for the Ohio Valley market to southern Ohio, where consumption is greater relative to production. Only producers whose milk is regularly received at pool plants during the months when supply plants are required to ship milk to distributing plants should be eligible to have their diverted milk priced at the plants where it is regularly received rather than at reserve processing plants. Adoption of a provision pricing most milk at the location from which it is diverted, even if applicable only to producers in a particular vicinity, would provide a disincentive to move milk from farm locations to the cities where it is needed for fluid use.

Although MMI's comments expressed pleasure at the recommended decision's acknowledgment that milk produced in excess of fluid needs must be moved away from the primary market, dissatisfaction was expressed with several aspects of the decision. The comments indicated an MMI concern that the decision has an unequal impact on the cooperative as compared with other producers and ignores the price difference between Cincinnati and New Bremen. MMI's comments argued that the decision overstated the number and location of nonpool plants in the marketing area. MMI stated that it would be more appropriate to price milk at the plant from which diverted rather than the farm location because hauling rates and prices at neighboring farms do not change just because milk is diverted away from the market. The cooperative also suggested that the month of December should be added to the months for which location adjustments on diverted milk are altered.

The decision should not affect cooperative members and nonmembers inequitably, since the revised order language does not require a higher level of performance of cooperative members and applies to all producers. Although there is a 21-cent price difference between New Bremen and Cincinnati, such a difference amounts to only about 1.6 cents per hundredweight per 10 miles, or significantly less than the amount required to move the milk. The current location adjustment rate cannot be expected to provide enough of an incentive to cause milk to move long distances to pool plants when the milk is needed at the cooperative's manufacturing plant to maintain the desired level of operation. The number and location of nonpool plants that were cited in the recommended decision as being closer than Goshen to the Order 33 production area was derived from the only information available in the hearing record regarding such facilities.

MMI's argument that its member producers on neighboring farms should be subject to the same hauling rates and prices disregards MMI's own testimony that the co-op's members pay a fixed rate for hauling under their contracts with haulers, regardless of destination, and overlooks the reblending privilege available to cooperative associations. That privilege allows MMI to assure that its members located on adjoining farms would receive the same price for their milk, regardless of its destination. Further, the price received at the location to which milk is customarily delivered is irrelevant to the appropriate price to be paid for diverted milk.

The amendment is adopted as a means of assuring that producers whose milk must be diverted to distant manufacturing plants are not unfairly penalized for such movements in addition to any extra hauling charges that may be incurred. It would be inequitable to assure that such diversions would result in the same return as movements of needed milk to distributing plants located in higher-priced zones.

Data in the hearing record indicate that the percentage of producer milk used in Class I in December under Order 33 is as high or higher than in the other months included in the September through February period. Therefore, it should not be necessary to include December as a month for which diverted milk is not subject to location adjustments.

Order 49. A proposal by the Milk Foundation of Indiana (MFI) to price all diverted milk at the location at which it

is received instead of the location from which it is diverted should be adopted, with modifications. MFI, a group of proprietary distributing plant operators, proposed the deletion of a provision of the Indiana order that allows milk diverted to a plant located in the marketing area, the State of Ohio, or south of the marketing area to be priced at the plant from which diverted. The witness for MFI stated that the provision allows Hoosier to take as much as $60,000 a month out of the pool by moving milk to nonpool manufacturing plants for surplus use instead of to fluid milk plants for Class I use, as normally intended by location adjustment provisions.

A portion of Hoosier's proposal to amend the producer milk definition would have provided for diverted milk to be priced at the location of the last pool plant from which it was diverted, and, in the case of a dairy farmer who was not pooled under the order in the prior month, for such milk to be priced at the location at which it is first received.

MFI's proposal was opposed by Hoosier and Milk Marketing, Inc., on the basis that producers who normally deliver milk to a particular plant expect to receive the price paid at that location, not a lower price when their milk must be diverted to a distant plant for which they incur higher hauling costs. According to the brief filed by Hoosier, the Indiana market is unlike most Midwest areas, in that diverted milk pooled under the Indiana order primarily moves from inside the marketing area to the periphery, instead of from the periphery to the center. Further, the brief stated, Indiana differs from many Midwest areas where the milk supply is located to the north of the fluid handlers and location adjustments are needed to avoid paying "phantom freight" for diversions of milk to nearby manufacturing plants. The Hoosier brief stated that there is no "phantom freight" in Order 49, and that the present provision is justified on the same basis as the Lake Mead provision referred to in relation to the Ohio Valley location pricing proposal.

Hoosier explained that many of its producers are located near handlers to which milk is delivered when needed. When not needed by fluid handlers, the brief stated, the milk is diverted to a balancing outlet some miles distant. Hoosier argued that such producers should not be penalized by receiving lower prices for their milk that must be diverted, as well as incurring higher hauling costs.

Hoosier's argument that diverted Indiana pool milk moves from the center of the market to the periphery, and not from a northern production area, is contradicted by record evidence. According to data in the record, milk production in the northern part of the Indiana market is much heavier in relation to fluid needs than is the case in the southern part of the market. Sixty percent of the milk produced for the Indiana market is produced in the northern part of the marketing area, where the primary surplus outlets are also located and where negative location adjustments are effective. A number of other surplus outlets are located in Illinois, where minus location adjustments apply, and in Ohio Valley zones with lower Class I differentials under Order 33 than under the Indiana base zone, but subject to no location adjustments under the Indiana order.

Only one-half to two-thirds of the volume of milk used in Class I in the Indiana zero adjustment zone is produced there. Similarly, seventy to ninety percent of the milk needed for Class I use in the minus 20-cent zone, just north of the zero zone, is produced within the minus 20-cent zone. Eighty-five to ninety percent of the Indiana Class I milk is distributed from plants located in the zero and minus 20-cent zones, but less than 40 percent of the milk in the pool is produced in the Indiana portion of the zero and minus 20-cent zones where the distributing plants are located.

The need for supplemental milk supplies in the two southern zones of the Indiana order makes it clear that the order should provide some incentive for milk to be moved from northern Indiana, Ohio and southern Michigan, where it is produced, to southern and central Indiana distributing plants. The present order provisions, allowing milk to be priced at the plant from which diverted, contain no economic incentive to move milk to where it is needed for fluid use. Provisions similar to those adopted for the Ohio Valley order, as explained above, should provide the needed economic incentive to move milk for fluid use without unduly penalizing handlers who must move milk to distant manufacturing plants when their milk supplies are not needed for fluid use.

Because of the dearth of outlets for surplus milk in the southern portion of the Indiana marketing area, the diverted milk of producers who meet the 65-percent shipping requirement to pool plants in the southern zones during any month should not be subject to any additional minus location adjustments. However, milk delivered primarily to locations in the northern part of the marketing area, in which most of the primary surplus outlets are located, should be priced at the plant at which it is physically received. Such provisions will assure that producers whose milk is usually received in the lower-priced northern portion of the market will have a price incentive to allow their milk to be moved south, where it is more likely to be needed for fluid use. In addition, the provisions adopted in this decision will more closely resemble the Southern Michigan and Lake Mead provisions cited by Hoosier and MMI than do the current Indiana order provisions regulating the pricing of diverted milk.

For the reasons stated above, the Indiana order should require that 65 percent of a producer's milk be delivered to a pool plant or plants in the current zero and minus 20-cent pricing zones of the marketing area during any month in order to have the producer's diverted milk priced at the location from which diverted. Milk customarily delivered elsewhere should be priced at the location at which it is physically received.

Comments regarding the recommended decision for Federal Order 49 to price diverted milk at the location at which it is received instead of the location of the plant from which it is diverted, with some modifications, were submitted by Hoosier Milk Marketing Agency and Milk Foundation of Indiana.

Hoosier's comments stated that the amending language of the recommended decision failed to account or provide clearly for the manner of pricing diverted milk of producers located in the plus 10-cent, zero, and minus 10-cent, zones of the marketing area, or in the 35-cent zones when 65 percent or more of such milk is delivered to a zero or proposed minus 10-cent zone handler. Hoosier observed that the stated intention of the decision is not to allow the price for the diverted milk of a producer located in the minus 35-cent zone, who delivers to a zero zone plant 65 percent or more of the time and whose milk is diverted to a minus 20-cent zone plant, to be adjusted downward to the uniform price applicable to the (minus 35-cent) location of the producer's farm, even though the milk was received at 20-cent location plant. Hoosier argued that the diverted milk of any producer should be priced at the location of the plant from which the milk is diverted as long as 65 percent or more of the producer's milk is delivered to a zero, minus 10, or plus 10-cent plant location in any month.

Milk Foundation of Indiana comments asserted that the proposed order language does not provide for

producers in such counties as Jefferson, Washington, Scott, and others (in the plus 10-cent zone). MFI stated that a producer in those counties could not qualify under the 65 percent provision since there are no plants "at which the same or higher uniform price is applicable" to which the milk could be moved economically. MFI suggested a modification to the recommended order language that would eliminate the discrepancy.

Hoosier's concern about the minus 35-cent zone producer who delivers milk to a minus 20-cent zone plant is unfounded. The amended order language provides that the uniform price for such milk not be adjusted downward below the uniform price applicable at the location of the producer's farm. The language does not require (nor intend) that the uniform price be adjusted below the price applicable at the location to which the milk is delivered.

The MFI comments regarding producers located in the plus 10-cent zone warrant a slight modification to the recommended order amendments to specify more clearly the area in which 65 percent or more of a producer's milk must be delivered if diversions outside that area are to be priced at the location of the farm.

Hoosier's assertion that diverted milk should be priced at the location of the plant from which diverted in all cases in which 65 percent of more of a producer's milk is delivered to a minus 10-cent, zero, or plus 10-cent, zone is not persuasive. Location adjustments are intended to assure that milk produced in one part of the marketing area and needed in another location will be provided an economic incentive to move to where it is needed. If no movement that requires additional hauling expense occurs, location adjustments should not be necessary.

2. Reporting (Order 49)

A Hoosier proposal to eliminate from Order 49 a reporting requirement that handlers notify the market administrator of their intention to divert milk prior to doing so should be adopted. According to proponent witness, the notification requirement has not been enforced for many years. He also stated that such a reporting requirement would be cumbersome, if not impossible, to fulfill, and that the market administrator has no use for such data even if it were reported. No opposition to the proposal was received at the hearing, and its adoption was supported in the brief filed on behalf of NFO.

The provision proposed to be deleted appears to be not only unnecessary, but, if it were enforced, a positive hindrance to the efficient and economical marketing of producer milk. Diversions of milk to nonpool plants apparently have become much more common and voluminous since the provision was adopted. Many diversions also would not be planned for with enough time to give prior notice to the market administrator. Other Federal milk orders operate well without such provisions, as the Indiana order apparently has for some time without it being enforced. Therefore, the requirement should be removed.

3. Classification

The portion of the multiple component pricing proposal that would have changed the classification of packaged fluid milk products in inventory at the end of a month from Class III to Class I does not need to be considered in this proceeding because the proposed change was included in the November 1991 recommended decision on issues considered at the national hearing held in the fall of 1990.

A proposal by New Paris Creamery to amend Order 49 to change the classification of milk used in infant formulas from Class II to Class III because of a difference in classification of the product between the Indiana and Southern Michigan orders also is not addressed in this decision. The November 1991 recommended decision on national hearing issues included uniform classification provisions for all Federal milk orders. Adoption of uniform classification should eliminate the problem addressed by the New Paris Creamery proposal.

4. Multiple Component Pricing (All Three Orders)

a. Protein Pricing

A proposal to incorporate a multiple component pricing plan in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana Federal milk orders should be adopted, with some modifications. The pricing plan generally would be patterned after the multiple component pricing plan that has operated under the Great Basin milk order for several years. Producers would be paid on the basis of the pounds of milkfat and protein contained in their milk, and would share in the value of the pool's Class I and Class II uses on a per hundredweight basis. Regulated handlers would pay for the milk they receive on the basis of total milkfat, the protein used in Classes II and III, the skim milk used in Class I, and the hundredweight of total product used in Classes I and II.

The pricing plan recommended in this decision would vary from the initial protein pricing plan in the Great Basin order by using the percentage of protein contained in the milk included in the Minnesota-Wisconsin price survey rather than the marketwide average protein percentage, and by adjusting protein prices paid to producers and charged to handlers by the somatic cell count of the milk.

The proposal to incorporate multiple component pricing in Orders 33, 36 and 49 was proposed by Milk Marketing Incorporated (MMI), and Hoosier Milk Marketing Agency (Hoosier). The proponents' witness explained that in May of 1990 MMI marketed approximately 67 percent of the milk pooled on Order 33 with 1,988 producers and approximately 40 percent of the milk pooled on Order 36 with 2,020 producers. The witness explained that Hoosier consists of Associated Milk Producers, Inc. (AMPI) and MMI. These two cooperatives, through Hoosier, represent 1,475 producers whose milk is pooled on Order 49, and 65 percent of the producer milk pooled under that order.

Proponent witness explained that milk has been priced on the basis of butterfat and volume for many years. He stated that in recent years, however, demand for lowfat dairy products has changed the emphasis as to which fraction of the milk has the most value. For many years, he testified, the butterfat fraction had the most value and therefore was a major pricing factor in milk. However, with the popularity of lowfat products, the skim fraction has become the major factor of value in milk. Data introduced by the witness showed that since the 1960's butterfat has gone from 77 percent of the value of milk down to 32 percent of the value, with the skim showing a corresponding increase in the percentage of value in the milk. The witness went on to state that by pricing milk on the basis of its protein, as well as butterfat content, the producers would receive the pricing signal necessary to adjust to changes in the marketplace.

The proponents' representative presented several reasons for the implementation of multiple component pricing under Orders 33, 36, and 49. The first reason given by the witness was that these three orders should have mandatory multiple component pricing regulated by the Federal order system. The witness stated that although 77 percent of the Order 33 producers, 65 percent of the Order 36 producers, and 99 percent of the Order 49 producers were eligible for some form of multiple component pricing in May of 1989, the

multiple component pricing plans currently in effect vary in their payment criteria, resulting in disorderly marketing conditions in these three markets.

The witness explained that since proponents' plan would incorporate the pooling of the protein value, producers with above average protein would benefit. According to the witness, some milk is bypassing certain plants to receive multiple component pricing, thus increasing transportation costs and helping create a disorderly marketing condition. He stated that producers would benefit from having their milk shipped to the nearest plant rather than bypassing bottling plants and going to manufacturing plants.

The second reason given by the proponents' witness for implementing multiple component pricing was that the current pricing system does not properly reflect the value of the milk. The witness pointed out that the skim fraction of milk has gone from representing 25 percent of the value of milk during the 1960's to representing 65 percent of the value of milk at the present time. The witness stated that as a result the most valuable portion of the milk is not priced. Therefore, he concluded, the market does not send economic signals to the producer about the composition of the milk produced.

The third reason given by the proponents' witness for implementing multiple component pricing under the Federal orders is the growing interest by consumers in the nutritive value of their diets. The witness explained that consumers are becoming increasingly interested in the nutritive content of their dairy foods, while the present pricing system does not recognize the relative value of these components in milk. The witness pointed out that while the present system does not reward dairy farmers who produce milk containing more than average protein, which is valued by consumers, it does pay for additional butterfat, which is rejected by consumers. The witness continued by explaining that the proposed multiple component pricing plan would encourage producers to increase the content of milk components that are worth more, such as protein, in relation to the components of milk that are not worth as much, thus improving the milk to meet the demands of the marketplace.

The representative for the proponents explained that the proposed multiple component pricing plan is modeled from the Great Basin order, and would include protein as a component to be priced, in addition to the butterfat and product pounds that are now used in determining producers' pay prices.

Proponent witness stated that the proposed multiple component pricing plan is modeled on the Great Basin order because the provisions of that order incorporate the current structure of the three orders for which the plan is proposed, and have been used successfully for several years. He stated further that the Great Basin order excludes adjustments to the Class I price, an important feature for maintaining uniformity in Class I handler costs. The witness also argued that the Great Basin order provides for multiple component pricing on Class II and Class III milk, where there is a demonstrable relationship between the components of milk and the yield of finished products.

The witness then explained the modifications of the Great Basin order's multiple component pricing plan proposed by proponents. The first modification addressed the computation of the protein price. Under the initial protein pricing plan of the Great Basin order, the handler protein price is computed by dividing the Class III skim price by the previous month's marketwide average protein percentage. According to the witness, use of a different marketwide protein test for each market would result in each market having a different protein price and, therefore, differing Class III prices between markets, leading to disorderly marketing conditions.

Proponent witness described five alternatives for determining the protein price, and said that the most preferred method would use formulas to compute a butterfat price and a protein price, probably based on the Chicago butter market and the Green Bay cheese exchange. However, the witness indicated, this type of change in pricing would not be practical now. All of the remaining alternatives for computing the protein prices would use the Class III skim price divided by one of several protein percentages. The witness stated that proponents prefer the method which would use the protein percentage of the milk received by plants included in the Minnesota-Wisconsin survey. According to the witness, use of this protein percentage under all three orders would result in the same handler protein price under the three orders, thus avoiding a potential source of market disorder. The protein price would then reflect more closely the value of protein contained in milk included in the M–W survey.

The witness also pointed out that by using the M–W protein percentage, producers will be able to increase the protein content of their milk without reducing the protein price, a result which would occur when market average protein content is used. Another alternative suggested by the witness would be to have the Market Administrators of Orders 30 and 68 (for the Chicago and Upper Midwest marketing areas) test and report a protein percentage for the plants that are in Minnesota and Wisconsin and are pooled on those orders. A third alternative that the witness listed for determining the protein percentage was to have the department conduct a survey of plants in Minnesota and Wisconsin to determine the average protein content of their milk. This average would then be used to determine the handler protein price. The witness added that if the protein percentage from one of the above alternatives cannot be obtained, use of the current month's market average protein percentage would be acceptable.

Another modification of the Great Basin order advocated by proponents' witness was to include the Class II price differential in computing the producer protein price. The Great Basin order uses both the Class I price differential and the Class II price differential in computing the producers' weighted average differential price. In proposing this change, the witness stated there would be a Class II protein price as well as a Class III protein price. The witness said that this change would show the producer that the protein fraction of the producer's milk is worth something and would thus encourage producers to increase the protein content of their milk.

Another change from the Great Basin order proposed by proponents is the separate pricing of Class II and Class III milk used-to-produce manufactured products, and the other milk uses in these two classes. The proponents' proposal would price milk used to produce manufactured items on the basis of protein and butterfat, while the other Class II and Class III uses, such as inventory, shrinkage, and fluid cream products, would be priced as they are now; i.e., on the basis of skim and butterfat. The witness stated that this change is favored because non-used-to-produce items do not rely on the protein content of the milk for their value. Therefore, he said, handlers should not have to pay for protein that has no relationship to yield. The witness also advocated the inclusion of transfers and diversions to nonpool plants under the multiple component pricing plan.

Proponents' representative explained that the final modification proponents desired to make in the Great Basin order

to adapt its use to the three orders under consideration is the inclusion of somatic cells in the computation of handler protein prices and producer protein prices. The witness characterized this difference as pricing protein on its' "true value". The witness said that the industry recognizes somatic cells as a factor in the "availability" of protein for use by handlers, and therefore as affecting the value of protein to handlers. The witness continued by saying that producers would receive the proper return for their milk by including somatic cells in the computation of each producer's pay price. The pricing of milk according to its somatic cell content will be discussed in detail later in this decision.

A witness for National All-Jersey, Inc., testifying in support of proponents' multiple component pricing plan, stated that including multiple component pricing in these three orders will provide an important mechanism for enhancing the efficiency of milk production and marketing. The witness pointed out that not only will handlers and producers benefit from multiple component pricing, but consumers also will benefit.

The witness explained that handlers would benefit because they would be required to account for the milk components that give milk value. With multiple component pricing, handlers would know the protein content of the milk they are receiving and would consequently be able to do a better job of using the protein to yield the best return. The witness compared accounting for protein to the present accounting for butterfat. The witness went on to explain that handlers do not want to pay for something that they don't receive, and that with the proposed multiple component pricing plan, they would pay only for what they get.

Producers would benefit, explained the witness, because they would be rewarded if they produce the higher-protein milk that is demanded by the marketplace, in contrast to the present system in which there is no reward for higher-protein milk. Also, he said, since under the proposed multiple component pricing plan the producer would be paid for pounds of protein, pounds of butterfat, and total product pounds, the producer could clearly determine what component of his milk is giving the greatest return and therefore what component to improve in his herd. The witness also pointed out that since the product pounds will be valued at the weighted average differential the producer can see what value participation in the pool contributes to his return.

A representative of National Farmers Organization, a dairy farmer cooperative, testified in support of the proposed multiple component pricing plan. The witness explained that NFO supports multiple component pricing because producers will be rewarded for supplying the market with the milk components that the marketplace demands. The witness went on to explain that NFO supports the proposed pricing plan because, unlike the initial Great Basin multiple component pricing plan, the producer protein price would not be reduced as the marketwide percentage of protein increases.

The NFO witness also expressed support for the use of protein rather than nonfat solids in the proposed multiple component pricing plan. He supported the use of protein rather than nonfat solids because protein is the component most demanded by handlers in the marketplace, and because producers are familiar with protein levels in their herds due to protein testing by the Dairy Herd Improvement Association (DHIA) and by USDA sire summaries. The NFO witness did, however, express concern over the use of a producer protein price that may cause a decline in income for 50 percent of the producers. The witness suggested that a neutral protein range be adopted with a plus adjustment for protein percentages above the neutral range and negative adjustments for protein percentages below the neutral range.

A representative of Dairylea Cooperative, Inc., testified that Dairylea has approximately 2,300 members, with the milk of one hundred and twenty of these producers pooled on Order 36. The Dairylea representative stated that at Dairylea's last annual meeting a resolution was passed favoring Federal order amendments that encourage the use of protein or nonfat solids as part of the pricing system. The witness continued by saying that the time has come for protein pricing, particularly since the value of butterfat has declined substantially relative to the value of the protein or nonfat fraction of milk solids.

A witness for Kraft USA testified in favor of the multiple component pricing proposal. The witness expressed particular support for the use of the M-W protein average in computing the handler protein price. The Kraft witness explained that by using the M-W protein average rather than a market average, handlers' cost of protein from market to market would be equal, as it is for butterfat. This would allow handlers from areas with varying protein levels to compete on an equal price basis. According to the witness, this would not be the case when the market average protein percentages are used to compute the handler protein price.

The multiple component pricing proposal was also supported by a representative of National All-Jersey Inc., and the American Jersey Cattle Club. The witness explained that National All-Jersey is a national dairy farmer organization affiliated with the American Jersey Cattle Club, a breed registry organization for owners of Jersey cattle that provides marketing services to its members. The witness stated that the two organizations have 796 members in Indiana, Ohio, and Pennsylvania. He explained that a milk pricing system should give producers the incentive to produce the components demanded by consumers, be of value to processors, and be fair to producers. The witness testified that the present pricing system does not accomplish this function, while the proposed multiple component pricing plan would. The witness said that the present pricing system, because it does not account for the protein or solids in milk, encourages a producer to produce water for which he receives the same return as he does for the solids. By accounting for and pricing protein, the witness stated, the multiple component pricing plan would encourage producers to manage their herds to obtain the greatest return by increasing their protein levels. The witness continued by saying that the production tools are in place to increase protein levels, even to the extent of increasing protein while decreasing butterfat. All that is lacking, he said, is the marketing incentive to do so, and incentives will be provided with the implementation of multiple component pricing.

The multiple component pricing proposal was supported in a post-hearing brief filed on behalf of Brewster Dairy, a proprietary supply plant operator regulated under Order 36. The Brewster brief favored adoption of the proposal on the basis that the proposed provisions providing a uniform price per pound for protein and an economic adjustment for somatic cells are needed.

A brief filed on behalf of the Dairy Industry Association of Western Pennsylvania opposed adoption of the multiple component pricing plan on the basis that the record of the hearing supports a national multiple component pricing plan with consistency between orders. The Association's brief states that over-order premiums already are substantial and significant enough to provide incentives and send signals for producers to increase the protein content of their milk production until

uniform multiple component pricing provisions can be adopted nationally. The brief acknowledged the benefits from and demand for higher protein content and lower somatic cell counts demonstrated in the hearing record.

Multiple component pricing should be included in the amended orders, with pricing on the basis of butterfat and protein. The record shows that a large percentage of producers whose milk is pooled under the three orders already are eligible for or receive some form of multiple component pricing, and that nearly all of these component pricing plans use protein as a pricing component. The record also indicates, however, that different handlers have differing protein premium payment programs, resulting in nonuniform bases of payments to producers. Such differing bases for payment may cause, and according to proponents has caused, disorderly conditions in the procurement of milk supplies by competing handlers. In addition, adoption of multiple component pricing will allow the order to recognize the additional value in milk with a higher-than-average protein content by incorporating such pricing within the order.

The hearing evidence leaves no question that payment for milk on the basis of its protein content can be justified on the criterion of economic value. Milk containing a higher percentage of protein will result in greater yields of most manufactured products than milk with a lower protein test. Handlers receiving milk that will result in greater volumes of finished products such as cheese or cottage cheese than an equivalent volume of milk testing lower in protein should be required to pay more for the higher-testing milk. At the same time, the dairy farmer producing milk that yields greater amounts of finished product deserves to be paid more for it than a dairy farmer producing the same volume of milk that results in less product yield.

Pricing milk on the basis of its protein content also meets the criteria of measurability, intrinsic value, and variability. The evidence in the record shows that protein can be easily measured and, in fact, that the variability in measurement may be less than the variability in butterfat testing because protein does not separate as butterfat does. Second, the record evidence shows that protein has value to the manufacturing sector in the form of improved product yield and product structure. The value to the fluid sector was not quantified in the hearing record; however, testimony indicated some benefit to the fluid sector from higher-protein milk, resulting in a more nutritional product. The criterion of variability is necessary to justify pricing a component separately from the product in which it is contained. In the case of protein in milk the record shows that the level of protein varies from season to season, region to region, and farm to farm. In view of its economic value in dairy products, its widespread use as a pricing component in the three markets, and its qualification under the three criteria above, protein appears to be the appropriate component for pricing milk in these orders.

Pennsylvania Farmers Union and Farmers Union Milk Producers Association (Farmers Union) filed comments objecting to the proposed component pricing formula on the basis that it would result in reduced returns to low-protein producers and drive many producers out of business. Pennsylvania Farmers Union's comments stated that it is difficult to reverse a half-century of breeding for butterfat, and expressed the fear that the proposed pricing plan would result in an instant penalty for butterfat production.

Although the component pricing plan adopted in this decision will reduce returns to producers whose milk contains less than average percentages of protein, that fact does not provide a basis for failing to adopt a multiple component pricing plan. It is not unfair to pay producers according to the actual value of their milk used in dairy products. In fact, the present method of payment could be considered inequitable to the extent producers producing higher-than-average levels of protein are not compensated for the full value of their milk.

The price for protein should be based on the Minnesota-Wisconsin price and the protein content of the milk included in the Minnesota-Wisconsin price series. The handler protein price should be computed by subtracting from the Minnesota-Wisconsin price for the month the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk included in the determination of the Minnesota-Wisconsin price.

Proponents presented several alternatives for computing the handler protein price because it was not known at the time of the hearing whether or not the protein content of the Minnesota-Wisconsin milk would be available to compute the handler protein price. Since the hearing, however, the protein content of the milk used for the Minnesota-Wisconsin price has begun to be collected and reported for the month preceding the month for which the M–W price is announced. This data can be adjusted for the current month using historical data collected by the market administrators of the Upper Midwest and Chicago Regional milk orders. With the availability of this information, the other alternatives are no longer relevant. Not only did the testimony strongly favor using the protein content of the Minnesota-Wisconsin milk to determine the handler protein price, but as multiple component pricing becomes a more common feature of Federal milk orders, it will be necessary that a standard price for protein be used.

The proponents' proposal to price Class II and Class III used-to-produce items separately from Class II and Class III other uses should not be included in the amended orders. This proposal would result in the three orders included in this proceeding having five classes of utilization as well as different protein prices for Class II and Class III. At the present time, almost every Federal order has a three-class market, with the industry moving to more uniform classification rather than away from it. The November 1991 recommended decision on the national Federal milk order hearing includes provisions for uniform classification in all of the federal orders. Adoption of proponents' modification would compound problems of interorder differences in regulation. At the same time, there is some question about whether only used-to-produce items are favorably affected by higher protein content. Testimony at the hearing indicated that fluid cream products benefit from higher protein levels, and therefore should be included in the protein pricing of Class II items. The remaining products that make up the proposed "other uses" portion of Class II and III are a very small percentage of the milk pooled and would therefore not affect the producer protein price. In fact, on the basis of pool data from the hearing record, this particular portion of the multiple component pricing proposal would have no effect on the weighted average differential and producer protein price or handlers' cost of milk.

Kroger, Superior Dairy, and Dairy Industry Association of Western Pennsylvania (on behalf of the Association, Superior Dairy, Inc., and United Dairy of Ohio, Inc.) filed comments opposing the application of multiple component pricing to all Class II and Class III milk. The comments argued that there is no economic justification for incorporating a protein pricing formula on uses of milk which are not affected by protein content.

Comments on behalf of Kroger explained that some used-to-produce Class II products such as frozen desserts and dips will not derive an economic benefit by incorporating multiple component pricing in their cost structure because the price or product yield of none of these items are influenced by the amount of protein in the raw milk used in their manufacture. Kroger complained that the proposed pricing system potentially would make it impossible to recover the cost of these products compared to competitors regulated in markets where component pricing does not exist. Kroger claimed that the proposed decision will create inequitable and uncompetitive Class II and Class III market conditions for processors regulated in Orders 33 and 49.

Kroger and the Dairy Industry Association of Western Pennsylvania, (the Association) stated that the argument presented by the Department of establishing uniformity among Federal Orders is unsubstantiated. Kroger posed the question of why the Department granted Class III–A classification to some and not all federal orders if the Department is as determined to establish uniform classification within the order system as the national hearing decision indicates. The Association explained that many Federal Orders do not have a multiple component pricing system and that the proposed decision is breaking new ground with regard to the establishment of such pricing.

The Association claimed that the statement that the proposal would create five classes of milk gives a misleading impression that if the proposal were adopted the orders would not be compatible with the more general three-class structure. The organization stated that the used-to-produce and non-used-to produce categories are merely subcategories of the existing Classes II and III, and that no products were shifted between those classifications. In addition, the organization stated that there would be no difficulty in combining the subcategories in Classes II and III to give totals for those classes comparable to other orders when required.

Kroger proposed that the originally proposed language, which priced only "used-to-produce" Class II and III manufactured items, be adopted. Kroger stated that such a provision would assure handlers regulated under Orders 33 and 49 that costs of Class II and III items whose price, cost, and yield are determined by components other than protein would be similar to their competition in other orders.

The Association claimed that increased protein content does not add any measurable benefit to most fluid cream products on the market. However, the Association's comments stated that if on the basis of the testimony the Secretary finds that fluid cream does directly benefit from higher protein levels, fluid cream products should be shifted to a used-to-produce category rather than have the orders fail to differentiate between used-to-produce and other uses.

Division of Class II and III into "used-to-produce" and "non-used-to-produce" categories for the purpose of pricing differences is an unnecessary complication. Most handlers' receipts will not differ greatly from the average protein content, as the milk of many producers, when commingled, will tend toward an average protein test. In addition, the value of "used-to-produce" milk as determined by Class prices cannot differ materially from the value of such milk as determined by component prices since the component prices add up to the Class III price. Further, according to expert testimony, the protein content of milk affects the ability of such products as whipping cream and ice cream mix to hold air, affecting the quality or yield of both products. The inclusion of milk used in these products, combined with Class I classification of packaged fluid milk products in ending inventory, would result in very little milk to be priced in the "non-used-to-produce" category.

The experience of using pricing systems similar to the one adopted in this decision in the Great Basin marketing area since April 1988 and in the Middle Atlantic marketing area since January 1992 indicates no dissatisfaction with pricing all Class II and III milk on the basis of its components. In fact, although a hearing was held in August 1990 to consider proposed amendments to the Great Basin order that included several proposals to adjust details of the Great Basin protein pricing procedure, no handlers or producer groups whose milk is regulated under that order proposed that any changes be made in pricing all of the milk used in Classes II and III on the basis of its components.

The argument that protein used in Class II should have a higher price than protein used in Class III was not supported by the evidence at the hearing. The testimony at the hearing clearly showed that protein has value in used-to-produce products in both Class II and Class III, but the testimony did not establish any additional value or additional contribution of the protein used in Class II products versus protein used in Class III products. Therefore, the added value of Class II products should be represented entirely by the weighted average differential rather than by a Class II protein price.

Comments filed by MMI expressed concern that the protein content of bulk milk, and its somatic cell content, need to be followed throughout the accounting process in order to be properly priced. In addition, MMI stated, the protein content of milk transferred to other handlers should be accounted for.

The order language accompanying this decision requires handlers to report the butterfat and protein content of milk transferred and diverted to other plants. Beyond this requirement, it is not feasible or necessary to follow protein content and somatic cell counts through processing within the plant. In addition to the unlikelihood that milk will be segregated for further use after receipt at a plant, there is no indication in the record of this proceeding that protein or somatic cells are easily separable from the skim milk in which they are contained. Requiring such accounting, and the testing necessary to carry it out, would be unnecessarily burdensome for handlers. Therefore, the orders should operate under the assumption that "protein follows skim", prorating protein to the uses of the skim milk in which it is contained.

Comments filed on behalf of the Milk Industry Foundation (MIF) opposed the application of multiple component pricing to Class I milk, stating that handlers' payments for Class I milk should not be based on the protein content of the milk. The pricing plan adopted in this decision does not intend, and should not result in, adjustments for protein content to handlers' value of milk used in Class I.

b. Somatic Cell Adjustment

The value of milk should reflect the level of somatic cells contained in that milk. The change in value should be made by adjusting the protein price paid by handlers for Class II and Class III milk, and the protein price paid to producers, for the somatic cell content of the milk.

An expert witness for proponents of the multiple component pricing proposal testified that a somatic cell count is a measure of the concentration of white blood cells in milk. According to the witness, these cells are present in the milk as an immune response to a bacterial infection of a cow's udder. The white blood cells attack and destroy the bacteria and, in the process, contribute to the damage the bacteria has done in the secretory system. They also release

enzymes that not only attack the bacteria, but also affect the milk. Besides causing loss of quality of the milk, the somatic cells also may cause a decrease in production in the affected animal and, in very severe cases, death of the animal.

The witness continued by saying that the effect of somatic cells on milk occurs primarily in the udder of the cow where conditions are favorable for the development of bacteria and the activity of the somatic cells. Once the milk has been removed from the cow and placed under correct handling conditions, stored at or below 4.4 degrees Celsius (40 degrees Fahrenheit), the activity of the cells is reduced and further deterioration of the milk is minimal. Some of the enzymes, however, are not destroyed during pasteurization and therefore may continue to affect milk quality. The expert witness testified that somatic cells cause a breakdown of fat with a resultant release of free fatty acids. These fatty acids cause a rancidity and an off-flavor in dairy products.

Proponents' expert witness testified that the effect of somatic cells on manufactured products is attributed to the enzymes released by the somatic cells. These enzymes attack the casein in the milk and break the casein down into shorter chain proteins that are then lost in the whey during the cheese-making process. The general result is that under identical conditions with milk of equal protein tests, milk with a higher somatic cell count will yield less cheese due to lower casein levels than will milk with a lower somatic cell count. The witness also explained that somatic cell levels affect the final moisture content of the cheese and the activity of the cheese starter. According to the witness this reduction in the functional ability of protein to result in a high-quality manufactured product is not limited to cheese. He stated that any manufactured product that relies on protein to give it structure or form is also affected by degradation of the protein by somatic cells.

Several proponent witnesses testifying on the issue of somatic cells stated that as the number of somatic cells increases, the quality of milk, even that used in fluid products, decreases. A witness for Brewster Dairy testified that Brewster's fluid customers are willing to pay a premium for low somatic cell count milk because of its extended shelf life. Another witness, representing Dean Foods, stated that lowering the somatic cell counts helps bottlers by increasing the quality of the milk, consequently increasing the shelf life of the fluid products.

The quantitative effect of various somatic cell levels on the yield of cheese was discussed at great length at the hearing because this measurement is the basis for the somatic cell differential levels included in the protein payment proposal. Proponents' witness indicated that commingled milk shows a more linear relationship between somatic cell counts and cheese yield than does milk from individual cows, and that milk from individual udder quarters will show more variability from a linear relationship of the two factors than milk from individual cows. However, he stated, the relationship between changes in somatic cell counts and cheese yields is not linear, even with commingled milk. Proponents' witness explained that there is a sudden decrease in cheese yield of about one percent as the somatic cell count increases to approximately 100,000. As the somatic cell count increases from 100,000 to 1,300,000, he testified, the decline in cheese yield may be an additional one to two percent depending on milk handling conditions. The witness testified that there is a three- to four-percent decline in cheese yield as the somatic cell count goes from 100,000 to 1,000,000. Although there is an apparent discrepancy between one of the studies introduced and the testimony of the proponent witness, both show a relationship between somatic cell levels and cheese yields.

The witness went on to discuss research that showed cheese yield decreasing by approximately five percent as somatic cell counts increased from 100,000 to 500,000. The study showed that as somatic cell counts increased from 500,000 to 1,000,000, cheese yields decreased an additional 3.7 percent for a total decrease in yield of 8.7 percent. The witness pointed out that the researcher identified a loss in cheese yield of .045 kg per 45.36 kg of milk for every 100,000 increase in somatic cell counts. This translates to a 1/10th of one percent decrease in cheese yield per every 100,000 increase in somatic cells.

A witness for Kraft USA summarized the results of the three studies received into evidence by concluding that the studies showed an average .07 pound decrease in cheese yield for every 100,000 increase in somatic cell count. A representative of Brewster Dairy stated that Brewster uses as a rule of thumb a 1/10th of one pound change in cheese yield for each 100,000 change in the somatic cell count.

A witness for MMI explained that the five percent figure used in the multiple component pricing proposal to compute the somatic cell differential was derived from the conclusion that as somatic cell counts increase from 100,000 to 1,000,000, cheese yields decline by one pound. The witness stated that this one pound decline represented a ten percent factor of the cheese price and that the proposal was intended to represent one-half of the reduction in cheese yield attributable to somatic cells. The proposed ten percent factor represents the incremental change of one tenth of one pound of cheese and not the percentage change in the cheese yield if the yield changed from 10 pounds of cheese per 100 pounds of milk to 9.9 pounds of cheese per 100 pounds of milk.

A witness for MMI stated that the neutral range in the somatic cell differential was chosen because that is the range into which MMI's weighted average somatic cell count falls. Proponents proposed that producers' pay prices increase with somatic cell counts below the neutral range and decrease with somatic cell counts above the neutral range. Proponent witness explained the use of 200,000 cells as the lowest category by stating that there is no significant effect on cheese yields as somatic cell counts decline below 200,000. A witness for Kraft USA stated that the 200,000 somatic cell level was used as the minimum category because McDonald College of McGill University considers somatic cell counts below 200,000 to be from a healthy cow.

A witness for Kraft USA, testifying as a proponent, explained that somatic cell testing consists of counting the number of cells in a specified size sample of milk, and described two procedures used for counting somatic cells: the direct microscopic somatic cell count (DMSCC) and the optical somatic cell count (OSCC). The DMSCC is a manual microscope counting method while the OSCC is an electronic method.

The Kraft witness explained that there are two different machines that use different techniques for determining somatic cell levels. The Fossomatic machine uses a dye to stain somatic cell nuclei and then counts the stained cells. The Coulter counter counts particles of a certain size. A witness for proponents observed that the Fossomatic was the more commonly used machine in the dairy industry. It was also pointed out that both machines must be calibrated against a known standard, and that in the case of somatic cell testing, the standard is the DMSCC method.

A witness for MMI testified that both MMI and the Ohio DHIA use the Fossomatic machine for their somatic cell testing. The witness stated that a Fossomatic machine costs around $65,000, while another proponent

witness put the cost of OSCC machines between $38,000 and $195,000, depending on the options included, as compared to the $2,000 to $4,000 for the DMSCC.

The proponent witness noted that, as with any laboratory procedure, employee training and skill are critical to the results of the procedure. The record states that the coefficient of variation for somatic cell testing should be below 5 to 7.5 percent while the coefficient of variation for butterfat and protein testing is approximately one half of one percent. However, according to proponents' expert witness, the variability in testing is randomly distributed and therefore would not consistently bias a producer's pay price one way or another. The witness also testified that since there are many industry payment plans using somatic cells as part of their payment criteria there is an industry standard for somatic cell testing that the industry trusts and uses.

For somatic cell counts to be used for determining payments to producers, the level of somatic cells must affect the value of the milk to the user. The hearing record contains substantial testimony to the effect that as somatic cell counts increase the functional value of the milk decreases. The record shows that this change in functional value affects all dairy products, from fluid milk to hard products. In fact, several witnesses testified that high somatic cell counts reduce the quality and shelf life of fluid milk products. The record also shows that somatic cell levels have an effect on the molecular structure of soft manufactured products, including the ability of cream to whip properly. In the manufacture of hard products, record evidence shows that the yield of cheese is directly related to the level of somatic cells in milk.

The recommended decision in this proceeding proposed that the producer protein price for all milk be adjusted for somatic cell count outside the pool, as is currently the case with butterfat. Although there was little opposition to the incorporation under the order of some form of somatic cell adjustment, a number of exceptions were filed in response to the recommended decision on this issue. The exceptions focused primarily on the effect the proposed somatic cell adjustment would have on fluid milk handlers and the basis for making somatic cell adjustments applicable to all milk. In addition some handlers, even those who favored applying such an adjustment to all milk, considered the proposed neutral zone of 400,000–500,000 too high.

Many of the Class I handlers in the three marketing areas argued that the application of price adjustments on all milk for somatic cell count was not proposed in the hearing notice or in testimony at the hearing. These commentors stated that the hearing record contains no evidence of any measurable economic benefit to fluid milk handlers from reduced levels of somatic cells, and that any testimony supporting such adjustment was casual and incidental.

Some of the Class I handlers complained that the recommended adjustments, by being based on the cheese price, would affect the advance notice feature of Class I pricing because the cheese price is not available when the Class I price is announced. Consequently, they stated, the somatic cell adjustment would have to be estimated.

Several of the Class I handlers also stated that they would be unable to recover the benefit of low somatic cell count milk in the marketplace. They argued that adoption of the recommended provisions would give fluid milk handlers a strong economic incentive to procure low-quality milk as a result of the increased cost of high-quality milk. According to these exceptors, the somatic cell adjustment would increase their cost of milk and make them uncompetitive with handlers regulated under other orders.

A number of exceptors argued that a neutral range of 400,000–500,000 somatic cells is too high, with one comment suggesting 250,000–300,000 as a more appropriate range, and others advocating 300,000–400,000. Several comments observed that the new Pasteurized Milk Ordinance Grade A standard for somatic cells, to be effective in 1993, will be reduced from 1,000,000 to 750,000 somatic cells, and argued that when observations greater than 750,000 are eliminated, the average somatic cell count will decrease. Another comment stated that 40–50 percent of producers' milk falls within the 200,000–400,000 range.

Two comments filed by a veterinarian/dairy farmer contradicted evidence about somatic cell testing in the hearing record and asserted that testing for somatic cells suffers from inaccuracy, variability and lack of repeatability. He argued that connecting payment for protein with somatic cell counts would result in penalties for high-protein milk that enhances cheese yield. The veterinarian/dairy farmer and comments filed by the Milk Foundation of Indiana urged that a limit be established on the amount of somatic cell adjustments, such as 15 cents or 12-18 cents.

Several comments favoring adoption of the recommended decision were submitted, including comments filed on behalf of Hoosier and MMI. Hoosier characterized the testimony supporting the application of somatic cell adjustments to all milk as substantial. In addition, National All-Jersey urged the application of protein pricing, as well as somatic cell adjustments, to all milk.

The effect of somatic cell adjustments on the advance nature of Class I prices could be expected to be minimal. The somatic cell adjustments are a very small portion of the cheese price, and any changes from month to month would be correspondingly small in relation to changes in the cheese price. In addition, the biggest factor in Class I price movements is the amount of change in the Minnesota-Wisconsin price, which can be expected on average to represent 10 times the change in the cheese price.

Regarding assertions that somatic cell adjustments would increase Class I handlers' cost of milk significantly, it is unlikely that any handler's total milk receipts would vary greatly from the market's average somatic cell count. It is also probable that application of somatic cell adjustments to Class II and III milk, but not to Class I, will result in Class I handlers receiving lower-quality milk from suppliers without the payment of some additional premium.

Although the record contains significant testimony relating the somatic cell count of milk to the quality, including flavor and shelf-life, of fluid milk and cream products, there was insufficient opportunity for opponents to counter the testimony supporting such a modification of proponents' proposal. The provisions included in this decision adjust handlers' costs for the protein in milk used in Classes II and III for somatic cell count and the protein prices paid to producers for all of their milk. The aspect of the recommended decision that would have included somatic cell adjustments by handlers on all protein in producer milk, including that used in Class I, has been changed.

In addition, the neutral range proposed and recommended at 400,000–500,000 is reduced to 301,000–400,000. Although the average somatic cell count for the period for which MMI entered statistics did fall within the 400,000–500,000 range, a closer inspection of the statistics shows that the median somatic cell count is significantly lower. In other words, the somatic cell count of over half of the producer milk for which MMI had statistics was generally in the

lower half of the 301,000–400,000 increment, and sometimes just under 300,000. The average in this case clearly is substantially influenced by several observations in the 1–2 million somatic cell count range.

In this situation, an attempt to make the somatic cell adjustment neutral for "average" producer milk requires using the median somatic cell count instead of the average. In addition, because of the reduction in the maximum permissible somatic cell count, 750,000 and over will become the maximum increment for which protein prices will be adjusted for somatic cell content. Because of differences between the market administrators and health departments in the number of leucocyte (somatic cell) tests taken in a given period of time, it is entirely possible that some Grade A producers may have an average somatic cell count of 750,000 or more for a month without losing Grade A status.

A further modification of the recommended decision is the breakdown of somatic cell counts into smaller increments for adjustment purposes. Increments of 50,000 will assure producers that if slight testing inaccuracies (which are greater in the case of somatic cells than for butterfat or protein) cause their protein price to be adjusted to the next lower level, that adjustment will not represent the entire value of a 100,000 increment of somatic cell count.

Since the value of milk has been shown to be affected by the level of somatic cells, appropriate adjustments must be determined to apply to the various levels of somatic cells. These adjustments will then be used to adjust handlers' values of protein in Classes II and III, and the protein prices paid to individual producers. The somatic cell adjustment to handlers' value of milk will be computed by multiplying the appropriate constant for each handler's weighted average somatic cell count by the monthly average 40-pound block cheese price at the National Cheese Exchange as published monthly by the Dairy Division. The resulting somatic cell adjustment on milk used in Class II and Class III will be added or subtracted from the protein price paid by each handler.

In computing the producer protein price, negative somatic cell adjustments will be added to, and positive adjustments subtracted from, the total value of handler protein and Class I skim milk, with the result divided by the pounds of producer protein in the pool. Because of the necessity of pooling the somatic cell adjustments in order to avoid affecting the Class I price of milk to handlers, it will be necessary for the somatic cell counts for all producer milk to be reported at pool time.

The somatic cell adjustment to be used in determining protein prices paid to handlers and producers is derived from the reduction in cheese yield as the somatic cell level goes from zero to 1,000,000, converted to a value per pound of protein. The evidence contained in the hearing record shows that as somatic cells increase from 100,000 to 1,000,000 cheese yield declines anywhere from three percent to nine percent, with a substantial amount of this decline occurring somewhat below 200,000 somatic cells and above 900,000 somatic cells. Since the record clearly shows that the relationship between cheese yield and somatic cell count is not linear, the relationship adopted in this decision between the somatic cell adjustment and the somatic cell count is not linear, but reflects the proportional change in cheese yields as the somatic cell level changes.

The constant to be used was computed by dividing the change in the cheese yields attributable to changes in somatic cell counts by a representative protein test of producer milk (3.2%). As proposed, the adjustment to the producer protein price for somatic cell content would be computed by dividing the product of the cheese price and a factor, which varied with the somatic cell level, by the average protein percent used in calculating the handler protein price. The proposed factors varied from .15 for a somatic cell count below 200,000 to −.30 for a somatic cell count above 1,000,000. The proposed factors changed by .05 for every 100,000 change in somatic cells, with a neutral range of 400,000 to 500,000 somatic cells. The factors contained in the proposal were based on the reduction in cheese yield associated with varying somatic cell counts, assuming a linear relationship between cheese yields and somatic cell counts.

Because the reduction in cheese yield with increasing somatic cells is not linear, the factors to be used in adjusting handler and producer protein prices for somatic cell content are revised from the proposal, as shown in Table 1. Dividing these factors by a standard protein content of 3.2 yields the constants shown in Table 1 to be used for computing the somatic cell adjustment. Use of a constant substantially simplifies the computation of the somatic cell adjustment without changing the corresponding value. This result occurs because the protein percentage must change by a considerable amount before the adjustment will change. Therefore, the somatic cell adjustment will be calculated by multiplying the constant corresponding to each somatic cell count interval by the average price of 40-pound block cheese at the National Cheese Exchange as reported monthly by the Dairy Division.

TABLE 1.—FACTORS AND CONSTANTS TO BE USED IN COMPUTING THE SOMATIC CELL ADJUSTMENT

Somatic cell counts	Factors	Constants for computing the somatic cell adjustment
1 to 50,000	.300	.09375
51,000 to 100,000	.200	.062500
101,000 to 150,000	.150	.046875
151,000 to 200,000	.100	.031250
201,000 to 250,000	.050	.015625
251,000 to 300,000	.025	.0078125
301,000 to 350,000	.000	.000000
351,000 to 400,000	.000	.000000
401,000 to 450,000	−.025	−.0078125
451,000 to 500,000	−.050	−.015625
501,000 to 550,000	−.075	−.0234375
551,000 to 600,000	−.100	−.031250
601,000 to 650,000	−.125	−.0390625

TABLE 1.—FACTORS AND CONSTANTS TO BE USED IN COMPUTING THE SOMATIC CELL ADJUSTMENT—Continued

Somatic cell counts	Factors	Constants for computing the somatic cell adjustment
651,000 to 700,000	−.150	−.046875
701,000 to 750,000	−.200	−.062500
751,000 and above	−.250	−.078125

In an ex parte communication received after the hearing, a veterinarian from Ohio expressed opposition to the inclusion of somatic cell adjustments in the multiple component pricing plan. His opposition stemmed from the variability in somatic cell testing that he had seen in his practice. His major complaint was with the accuracy of testing when the Coulter Counter is used for somatic cell testing.

As specified in the Agricultural Marketing Agreement Act of 1937, one of the functions of the market administrator is "Providing * * * for the verification of weights, sampling, and testing of milk purchased from producers." Since the market administrator will now be verifying the sampling and testing of milk for somatic cells, the variation in somatic cell levels due to testing should be minimized much as differences in butterfat tests due to testing variations were minimized when the Federal milk order program was first instituted. The concern expressed in the ex parte communication over the accuracy of the Coulter Counter is, perhaps, relevant in the current situation in which producer payments are affected by somatic cell counts only outside the Federal order. However, the Coulter Counter testing method is not one of the methods approved by the American Association of Analytical Chemists (AOAC) for determining somatic cell content, and is not likely to be deemed acceptable for determining producer payments under the Federal order. (Official Notice is taken of the publication "Standard Methods for the Examination of Dairy Products"; 15th Edition; Gary H. Richardson, Ph.D., Editor; American Public Health Association; 1985).

In the brief filed on behalf of NFO, the cooperative objected to the inclusion of somatic cells in the multiple component pricing plan. The brief contained four arguments against the inclusion of somatic cell adjustments to producer payments: (1) somatic cells are not part of the milk, and therefore are not subject to price differentials under the Agricultural Marketing Agreement Act in section 8c(5) 7 U.S.C. 608c(5), (2) somatic cells are a product of disease and subject to wide fluctuations that could lead to inaccurate pricing unless every load is tested, (3) under the proposal, Class I handlers would not have to pay for somatic cells even though the hearing record showed that somatic cell levels are important to such handlers, and (4) the somatic cell adjustment contained in the multiple component pricing proposal uses a linear price reduction while the evidence in the hearing record indicated that the relationship between somatic cell levels and the value of milk to handlers is non-linear.

The Agricultural Marketing Agreement Act in section 8c(5) 7 U.S.C. 608c(5) specifically authorizes adjustments to prices paid to producers for "the grade or quality of the milk delivered." Because the record of this hearing shows that the presence of somatic cells directly affects the quality of milk and that the level of somatic cells in producer milk affects the grade of the milk in that somatic cell counts above a certain level will result in loss of a producer's Grade A permit, the argument that somatic cells can not be used as a criteria for adjusting a producer's pay price is not valid.

The contention that somatic cell counts have wider fluctuations than butterfat or protein tests is apparently valid. However, the hearing record does not contain enough evidence that the variability in testing outweighs the benefits of including somatic cell counts in the multiple component pricing plan.

Point numbers three and four of NFO's objections to including somatic cells in the multiple component pricing plan are discussed earlier in this section of this decision.

c. Other changes

With the inclusion of multiple component pricing in the three orders affected by this decision, certain conforming changes need to be made in these orders to implement this decision. Since protein will now be priced under the three orders included in this decision, each handler will need to include the amount of milk protein and somatic cells contained in total producer receipts, including protein and somatic cells contained in producer milk diverted to other plants, with its report of receipts and utilization. As in the Great Basin order, the assumption will be made that the protein is uniformly contained in the skim portion of the milk and may not be separated easily. Therefore, the protein will follow the skim milk through the allocation process and be allocated proportionately with the skim milk. This allocation procedure means that handlers will not have to report the protein content of milk transferred to other handlers. For handlers filing payroll reports with the market administrator, the milk protein content and the average somatic cell count of each producer's milk will be included on the payroll report in addition to the information currently reported to the market administrator on such reports.

To properly price the components under the amended orders, several price computations must be defined. These are the skim milk price, the butterfat price, and the protein price. The skim milk price per hundredweight will be determined by subtracting the butterfat differential multiplied by 35 from the Class III price. The butterfat price per pound will be determined by adding the skim milk price divided by 100 to the butterfat differential multiplied by 10. The handler protein price per pound will be determined by subtracting the butterfat price per pound, multiplied by 3.5, from the Class III price and dividing the result by the average protein content of milk used in obtaining the basic formula price (the Minnesota-Wisconsin price). Since the proposed skim milk prices, butterfat prices, and protein prices for Class I and Class II are not specifically needed to determine the weighted average differential or the producer protein price, these prices are not defined in this decision.

Two separate marketwide pools will be used to determine the amount that producers will be paid for the milk, and the protein contained in the milk, that they deliver. The first marketwide pool will determine the weighted average differential, while the second marketwide pool will determine the producer protein price. The weighted average differential is the additional

value of the Class I and Class II milk in the pool and will be paid on all producer milk. The producer protein price is determined by the amount of protein used in Class II and Class III and the amount of skim milk used in Class I. In determining payments to producers, the producer protein price will be adjusted for each producer's somatic cell count, and be paid on a per pound of protein basis.

The weighted average differential is determined by computing, for each handler, the differential value of the product pounds used in Class I and Class II, and then adding or subtracting, as is appropriate, the value of such items as inventory reclassification, shrinkage or overage, receipts of other source milk allocated to Class I, receipts from unregulated supply plants, and location adjustments. The above values are then combined for all handlers and the value of producer location adjustments and one-half the unobligated balance in the producer settlement fund are added. The resulting value is then divided by the total pounds of producer milk in the pool and an amount not less than four cents or more than five cents will be subtracted to arrive at the weighted average differential for the zero zone.

The producer protein price is determined by combining, for all handlers, the value of the pounds of skim milk allocated to Class I at the skim milk price with the value of protein contained in the skim milk allocated to Class II and Class III at the handler protein price adjusted for the average somatic cell count of the handler's receipts. The resulting total is modified to include somatic cell adjustments on all producer milk, and divided by the total pounds of protein contained in pooled producer milk. Each producer's protein price will then be adjusted for the average somatic cell count of the individual's producer milk. The somatic cell adjustment will be determined by multiplying the cheese price by the appropriate constant for each producer's average somatic cell count.

Each producer will be paid based on total product pounds at the weighted average differential price at the applicable zone, the pounds of protein contained in the producer milk at the protein price adjusted for the producer's average somatic cell count, and the pounds of butterfat contained in the producer milk at the butterfat price.

The value of producer milk to each handler will consist of the sum of the value of pounds of producer milk in Class I times the difference between the Class I and Class III prices, the pounds of producer milk in Class II times the difference between the Class II price and the Class III price, the value of overage, inventory reclassification, other source milk, receipts from unregulated supply plants, handler location adjustments, the value obtained by multiplying the pounds of skim milk in Class I by the skim milk price, and the value obtained by multiplying the pounds of protein contained in the skim milk in Class II and Class III by the protein price adjusted for the somatic cell content of the handler's receipts. The pounds of protein shall be computed by multiplying the pounds of skim milk in Class II and Class III by the percentage of protein contained in the skim milk of the handler's producer milk.

A handler's obligation to the producer settlement fund will be the difference between the value of producer milk to the handler and the sum of: (a) The value of the handler's receipts of producer milk at the weighted average differential price after adjusting for the producer's location, (b) the value, adjusted for the producer's somatic cell counts, of the protein contained in the handler's receipts of producer milk at the producer protein price, and (c) the value of other source milk at the weighted average differential price adjusted for the location of the plant from which the milk was shipped.

5. Class I Price and Location Adjustments (Order 49)

The Class I price differential and location adjustment provisions of the Indiana order should be amended to bring pricing within the Indiana marketing area into closer alignment with surrounding marketing order areas. The MFI proposal to amend the Indiana Class I price and location adjustment provisions should be adopted in a modified form to minimize intermarket price misalignment and enhance price alignment within the marketing area. A proposal by Hoosier to amend the order's location adjustment provisions should be denied, but changes that would address some of Hoosier's concerns should be made.

Hoosier proposed that the order's location adjustment provisions be changed to provide for adjusting prices downward at locations in the State of Ohio and in parts of Indiana not specifically zoned by the distance of such locations from the Indiana basing points. Proponents argued that the proposed amendment would result in pricing all receipts of producer milk at locations outside the marketing area on an equal basis, and would remove incentives for handlers to associate milk with the Indiana order and then divert it to Ohio locations at no reduction in the blend price. They also stated that the language "south of the marketing area," in the current location adjustment provision, describing locations at which no location adjustment is applicable, is inexact and confusing. An NFO witness opposed the Hoosier proposal as arbitrary and without economic justification, and stated that it would apply negative location adjustments in areas subject to higher milk prices.

Hoosier's proposal would, indeed, result in the application of negative location adjustments in locations at which higher prices apply, and such a misalignment of prices between orders would be very unlikely to result in more orderly marketing conditions. If the proposal were adopted, the Indiana Class I price adjusted for location at Louisville would be 35 cents less than the price at Louisville under the Louisville-Lexington-Evansville order. Producer prices for milk pooled under the Indiana order but delivered to the Louisville area would fall short of Louisville producer prices by 24 cents more than the current amount by which the Louisville blend price exceeds the Indiana blend price. Similarly, a negative location adjustment under the Indiana order at, for instance, Dayton, Ohio, would result in an Indiana Class I price at Dayton 26 cents lower than the Ohio Valley price for the same location. The difference in producer prices under the two orders at Dayton, Ohio, (or at any Ohio location) would be at least 10–15 cents, with Indiana producer milk receiving the lower price.

A provision such as that proposed by Hoosier would give handlers located outside the Indiana marketing area an incentive to acquire pool status under the Indiana order or to procure supplies of milk pooled under the Indiana order. Price alignment between the Indiana marketing area and locations to its south and east would be most equitable to both handlers and producers who receive and price milk pooled under the adjoining order areas if the Indiana price were adjusted to a level equivalent to that effective at the other order locations where Indiana-pooled milk is received. Accordingly, such language should be included in the order.

A witness for the Milk Foundation of Indiana (MFI), which proposed changes in the order's Class I differential and location adjustments, stated that the Foundation is composed of six proprietary handlers, five of which are pool plant handlers under the Indiana order. The witness testified that the Food and Security Act of 1985 had resulted in the Indiana Class I price differential being increased significantly

more than the Class I price differentials for the surrounding markets were increased. He stated that, based on the location of Indianapolis relative to other population centers in the region, the Indianapolis Class I price is too high and results in an intermarket misalignment of prices. The MFI witness argued that there would be no shortage of milk for Class I use if the Indiana Class I price differential were reduced to correspond more closely with the price levels in surrounding marketing areas. According to the witness, the interorder misalignment of prices has caused Indiana handlers to lose sales to handlers regulated under other orders because they are unable to compete on the basis of price.

The MFI witness also testified in support of the MFI proposal to reduce the rate of location adjustments within the Indiana marketing area. The proposal, as modified at the hearing, would combine the present minus 20- and 30-cent zones into one minus 10-cent zone, and change the location adjustment of the present minus 40-cent zone to minus 30 cents. The witness stated that the location adjustments in the Indiana order do not serve the purpose of attracting milk to the market's principal consumption centers because the price differences are not reflected in differences in payments to cooperative member producers. At the same time, he said, the order's location adjustments create a disparity in price among competing handlers regulated under the Indiana order.

The MFI proposal was opposed by both Hoosier and NFO. Both parties argued that Class I price levels and location adjustments were considered in the national hearing proceeding held in late 1990, and should not be determined for just one market. Hoosier's brief stated that the present Class I differentials were based on the cost of transporting milk to consumption centers from areas of alternate milk supplies available at lower prices, and that the best alternate supply area for Indiana is northeast Iowa, central and western Wisconsin and southeastern Minnesota. Hoosier cited testimony by a representative of Dean Foods Company that Dean experiences no Class I price misalignment between the Indiana and surrounding order areas, and stated that price alignment between Indiana plants and Order 30 (Chicago) bottling plants located 80–100 miles from Chicago needs to be considered. The Hoosier brief concluded that adoption of the MFI proposal would create disorder and disarray in surrounding marketing areas.

A comparison of Class I price differentials effective at different locations within the Indiana and surrounding marketing areas both before and after 1985 shows that Class I differentials were increased significantly more for the Indiana Federal order area than for neighboring marketing areas. The 1985 Class I price increases were 14 cents at Chicago, 21 cents at Louisville, 19 cents in the southern part of the Southern Michigan marketing area, 29 cents in the northern portion of the Southern Illinois market adjoining Indiana, and a maximum of 41 cents under the Ohio Valley order, at Cincinnati. The price increase at Dayton, Ohio, a location closer to the population centers of the Indiana market, was 34 cents. In comparison, the Class I price increase at Indianapolis, the major population area of the Indiana marketing area, was 47 cents.

The price misalignment between markets resulting from the 1985 price increases is particularly noticeable between Chicago and Indianapolis, and between Indianapolis and Louisville, or in a north-south direction. According to the 1985 Household Goods Carriers' Bureau Mileage Guide, of which official notice is taken, the mileage between Chicago and Louisville is 286 miles, with 175 miles from Chicago to Indianapolis, and 111 miles from Indianapolis to Louisville. If the $.024483 location adjustment rate per 10 miles of distance reflected in the current Chicago-Louisville price difference of 71 cents is applied to the Chicago-Indianapolis distance and the Indianapolis-Louisville distance, the appropriate Class I price differential at Indianapolis would be $1.83, very close to the $1.82 level proposed by MFI.

The north-south price alignment in the Indiana order is significant because most of the milk supply for the Indiana market comes from northern Indiana, southern Michigan and the two northern pricing zones of Ohio, and a disproportionate amount of Class I milk is used in the southern part of the Indiana marketing area. Hoosier characterized Wisconsin and Minnesota as the primary alternative sources of supply for the Indiana market. These locations apparently serve as sources of milk for handlers importing supplies of milk that are pooled elsewhere, rather than being sources of producer milk pooled under the Indiana order. Statistics in the record indicate that during only one of the months for which milk production by state and county was published was Wisconsin milk pooled under the Indiana order, with none from Minnesota. The one month in which Wisconsin milk was shown to be pooled under the Indiana order was May 1988, when only 54 percent of the producer milk pooled under the Indiana order was used in Class I. According to the Hoosier witness' testimony, some of the milk Hoosier arranges to buy in Wisconsin for the Indiana market never moves to Indiana plants.

Another factor that must be considered is price alignment between markets from west to east. In spite of the fact that pricing between Chicago and Louisville would justify a $1.83 Class I price differential at Indianapolis, an appropriate price alignment between west central Illinois, Indianapolis, and Dayton, Ohio, establishes a minimum Class I price differential at Indianapolis of $1.90. The current price difference between Champaign, Illinois, and Dayton, Ohio is 29 cents, while the distance between these two points is 223 miles. The resulting rate per hundredweight is $.0126 per 10 miles of distance. When this rate is applied to the distance between each of these two points and Indianapolis (124 miles to Champaign and 105 miles to Dayton) and the corresponding price level at Indianapolis is computed, an Indianapolis Class I price differential of $1.90 results. In addition, an Indiana pool distributing plant located at Richmond, Indiana, is located only about 40 miles from an Ohio Valley pool distributing plant at Dayton, Ohio, where the Class I differential is $2.04. It would be difficult to justify a 20-cent price difference between these two locations (at a rate of $.0525 per 10 miles), just as it is difficult to defend the current 20-cent price difference between Chicago and Gary, Indiana, located only 28 miles apart (at a rate of § .067 per ten miles).

Comments and exceptions were filed by several of the handlers doing business in the Indiana marketing area. Hoosier and Milk Marketing, Inc. (MMI), opposed the proposed changes to the Class I differential and location adjustments. The two cooperative groups argued that the recommended decision ignored the standard of supply and demand in changing milk prices by failing to allow for the necessity of moving milk from north to south within the marketing area to assure an adequate supply of milk in the southern part of the marketing area. The exceptors stated that the proposed reduction in the Class I price differential would cause a 6-cent reduction in the uniform price paid to producers, threatening a shortage of milk for fluid use if the recommended price level is adopted. According to the comments, reduction of the Class I price at Indianapolis and narrowing the price difference from the northern part of the marketing area to the southern part will

discourage milk from moving to where it is needed for fluid use.

Both Hoosier and MMI stated that Indiana order Class I prices are not misaligned with those of other orders, and that the proposed changes would result in misalignment and competitive disruptions between locations within the Indiana marketing area. The Hoosier comments pointed out that the restructured location adjustments would add 5 and 10 cents per hundredweight to the cost advantage handlers in zones 4 and 1 currently experience over other handlers distributing milk in those zones. On the basis of this result, the co-ops argued that the recommended changes would impede zone 2, 3 and 4 handlers from moving milk to zone 1, contrary to the purpose of location adjustments.

Both exceptors argued that the national 43-day hearing decision considered proposals to change Class I differentials and price alignment between orders and found no need for doing so.

Dean Foods' comments to the recommended decision began with support for reducing the Class I differential to $1.90 because it would improve price alignment between Indianapolis and Louisville. The comments concluded that the resulting 6-cent reduction in blend prices to producers is unacceptable, and that the Class I differential should be left at $2.00, with zone differentials unchanged.

The Dean comments focused primarily on arguments that the zone designation for Fulton County, where Dean has a distributing plant, is incorrect. Dean's comments argued that 20 percent of its Rochester, Indiana, plant's sales compete with those from plants in Lake and Porter Counties in the minus 40-cent zone. At the present time, Dean states, these plants have a 20-cent competitive advantage, which will be changed to 25 cents under the recommended decision. According to Dean, Rochester is 85 miles from the order's lowest price zone, and should have a 16-cent Class I price difference with plants located there, rather than the recommended 25 cents. Dean also argued that the location of other plants with which the Rochester plant competes for sales make it necessary for the Rochester location to be in the same pricing zone (minus 20 cents) as the New Paris plant, rather than in the minus 10-cent zone.

MFI and Kroger supported the recommended Class I price differential and location adjustment changes for Order 49 as re-establishing the historical price relationships that existed between Order 49 and adjoining markets prior to the 1985 Farm Bill. MFI also stated that the recommended changes will result in more equity among competing handlers in the Indiana marketing area and contribute to more orderly and efficient marketing.

The 10-cent change in the Order 49 Class I price differential and the corresponding 6-cent estimated reduction in prices paid to producers effectuated by this decision should have no discernable impact on the supply and demand for milk in this market. The estimated 6-cent impact on the blend price paid to producers represents approximately one-half of one percent of the average Order 49 blend price for 1988. During 1988, the Minnesota-Wisconsin (M–W) price, upon which all of the prices in the market are based, changed by nearly $2.00, or over 17 percent of its average. Considering the much greater movements in the basic formula price, which reflects national supply and demand conditions for milk, any attempt to determine the effect of a 6-cent difference in blend prices on supply/demand conditions in the Indiana market would be an exercise in minutiae.

Although Class I price differentials were not changed as a result of the 43-day national hearing for which a final decision was recently issued, failure to make such changes in that proceeding does not preclude changes to Class I price differentials from being made on the basis of hearing records dealing with individual orders. According to the final decision in the national hearing, "The proposals that were considered at the hearing in this proceeding involved possible changes on at least a regional or multi-order basis, possibly even changing all orders. There was no notice given that the appropriate Class I price level for any individual market would be considered outside the context of price alignment among a group of orders."

The reduction in location adjustments between northern and southern Indiana should not impede the movement of milk from the heaviest production area of the market to the primary consumption area, or from locations north of the marketing area to Indiana distributing plants. The changes included in this decision that assure that Indiana pool milk is more likely to be priced at the location to which it is delivered rather than the location from which it is diverted will provide more incentive for milk to move to where it is needed than existed under the previous order provisions. In addition, Indiana blend prices generally exceed blend prices effective under the Southern Michigan order significantly. When the blend prices of both orders are adjusted for location to the border area between the two States, the Indiana blend price under the amended order will still exceed the Southern Michigan blend price by approximately 10 cents per hundredweight.

The zone price differentials adopted in this decision are intended to correct a Class I differential noticeably higher than in surrounding orders that was mandated by the 1985 Farm Bill. As a secondary effect, the restructured zone differentials should reinstate inter- and intra-market price relationships in effect before the 1985 Farm Bill provisions became effective. Therefore, the adopted differentials should require no more dramatic adjustments in competitive relationships than were experienced at that time.

The zone location of Fulton County should not be changed from the recommended decision. Location pricing is designed to allow milk to move from production areas to consumption centers. Therefore, the appropriate Class I price level at any given distributing plant location should be determined on the basis of its distance from available supplies of milk. Rochester, Indiana, is located at approximately the same distance from the heavy production areas of northern Indiana as are Huntington and Fort Wayne. The location of plants with which the Dean plant at Rochester chooses to compete for sales of fluid milk products has no bearing on the appropriate price for the Rochester location. In addition, the lowest-price zone in the marketing area, from which Dean proposes the Rochester price be determined, is not the area of heaviest milk production and therefore should not be used as the basis for establishing the price at Rochester.

For the foregoing reasons, the Class I price differential at Indianapolis should be reduced to $1.90. At the same time, location adjustments within the marketing area should be reduced to maintain alignment with adjoining Federal order pricing, especially in the northern portion of the Ohio Valley marketing area. The current $2.00 price differential should be maintained for a strip of counties on the southern edge of the Indiana marketing area, including Jackson, Jefferson, Jennings, Lawrence, Ripley and Switzerland counties. These counties, located about halfway between Louisville and Indianapolis, can comprise an intermediate pricing zone between the Indiana and Louisville-Lexington-Evansville marketing areas. The current minus 40-cent location adjustment zone in the northwest corner

of the marketing area should become a minus 35-cent pricing zone, to moderate the large price difference between Chicago and Gary, Indiana.

Although the MFI witness was correct in stating that intramarket location adjustments have had little effect in the Indiana market because of the provision allowing milk to be priced at the location from which diverted, this decision adopts amendments to the order that will result in more milk being priced at the location at which it is actually received. Consequently, it is important for reasons of both intermarket and intramarket price alignment to assure that the price differences between various points in the marketing area will accommodate movements of milk from where it is produced to where it is needed for fluid use. The location adjustments in the current minus 20- and minus 30-cent zones therefore should be changed to minus 10- and minus 20-cents, respectively, while the current minus 40-cent adjustment should become a minus 35-cent adjustment. These changes will assure that the current price differences between northeastern Indiana and northwestern Ohio are unchanged.

6. Accountability for .9(c) milk (Order 49)

A proposal by Hoosier to change the accountability to the pool for milk moved directly from producers' farms to pool plants by cooperative associations pursuant to Section .9(c) of the Indiana order from the receiving pool plant operator to the cooperative association handler should be adopted. The proposal, as adopted, would require .9(c) handlers to sell such milk to receiving handlers at classified prices, including component values, and equalize with the pool on the value of the milk so moved. The .9(c) handler would be responsible for the testing of individual producers' milk, and for paying its member producers on the basis of those test results. The Hoosier proposal encountered no opposition, and was supported by NFO. Adoption of the proposal will simplify reporting and accounting for milk and its components under the multiple component pricing plan adopted in this decision.

7. Payments to Producers

a. Due Dates and Late-Payment Charges (Order 49)

A proposal by NFO, joined in by Hoosier, to require timely payment by handlers for producer milk by imposing a one-percent per month late charge on payments not made by the due date required in the order should be adopted. According to the NFO witness, handler payments made under Orders 33 and 36, which require payments to be made to the market administrator, are made on a much more timely basis than payments for milk under Order 49. The witness stated that the current delay in Order 49 is 6½ days, and attributed the delay to the use of the postal service in making payments rather than using wire transfers. The witness testified that the late payment fee should be assessed by the market administrator, even on monies due to cooperatives from handlers, and paid into the administrative fund. Hoosier supported the proposal on the basis that current technology allows a requirement that payments be required to be received when due, not just mailed by the due date.

The proposal should be adopted to assure that monies due to producers is available to be paid to them when it is due. Handlers currently are able to rely on a delay in the delivery of mailed checks to enhance their own cash-flow positions at the expense of the dairy farmers from whom they obtain milk. The widespread availability of bank transfers of funds makes possible faster payment, which should be passed along to producers as soon as possible. The one-percent late-payment charge will provide an incentive for handlers to make their payments for milk in a timely manner. Payment of any late-payment charges collected into the administrative fund should cover the market administrator's cost of implementing and enforcing timely payment.

b. Seasonal Incentive Payment Plan (All Three Orders)

The Brewster Dairy proposal to provide a seasonal plan to pay dairy farmers, designed to even out monthly milk production under Orders 33, 36 and 49, should be denied. At the present time, producers supplying these three markets receive the uniform price for their monthly milk deliveries. None of the three orders provides any type of seasonal payment program.

Brewster Dairy, Inc., proposed that a unique type of "Louisville" plan be incorporated into each of the three orders. The Order 36 proprietary supply plant operator testified that seasonal pricing programs are needed in these three markets to encourage dairy farmers to level out their milk production during the year so that the amount of milk they produce each month is in better alignment with the amount of milk that fluid processors and manufacturers demand. Traditionally, more milk is produced in the spring than the fall and fluid bottling plants need more milk for processing in the fall than in the spring. To demonstrate this problem, proponent pointed out that the average daily receipts from producers in November represent only about 85 percent of the amount produced in May while daily Class I use in November is normally about 10 percent greater than in May.

In support of its proposal, Brewster's witness argued that the marketing problems associated with seasonal milk production are complicated by distributing plant operators who contract to buy only enough milk to meet their Class I needs in the spring and rely on others to furnish them with additional supplies in the fall. The Brewster witness stated that these purchasing arrangements, coupled with the seasonality of milk production, result in raising the overall marketing cost to the region's dairy industry. In the spring, he testified, the milk in excess of bottling needs that also exceeds the manufacturing capacity at local plants must be hauled to distant plants for disposal. Conversely, he stated, in the fall supplemental milk from sources beyond the normal procurement area must be transported to distributing plants to furnish the fluid requirements of such plants. According to the witness these extra transportation costs are borne primarily by cooperatives and their member producers. In addition, he said, handlers maintain plant capacity to manufacture reserve milk supplies in the spring and much of that capacity is inefficiently idled in the fall when more of the lower seasonal milk supply is needed for Class I purposes at distributing plants.

Proponent characterized its proposal as a "modest" plan that is designed to reward producers who make the extra effort to increase their milk production in the fall relative to the amount they produced in the prior spring. Brewster proposed that monetary incentives be used to encourage dairy farmers whose milk is pooled under these three orders to gear their milk production toward greater output in the fall. In this regard, the handler proposed that 5 cents per hundredweight be deducted from the pool funds due producers in computing the uniform prices for the months of February through July.

The "Louisville" plan proposed by Brewster is unique in terms of how the money deducted in the prior months of February through July would be returned to dairy farmers. As proposed, the funds would be distributed in the months of September through November, but only to dairy farmers

who qualified for incentive payments. Producers whose average daily milk deliveries in the months of September through November equal 90 percent or more of their daily deliveries in the prior months of February through July would qualify to receive incentive payments. Producers whose average daily deliveries fall below the 90-percent level would not qualify for incentive money.

NFO was supportive of the concept of tailoring milk production to more nearly coincide with the demands of the marketplace. The cooperative's witness insisted, however, that the program must be designed so that the program's costs and benefits are more appropriately aligned. In that regard, he testified that dairy farmers have to spend money to alter their seasonal production patterns, while the benefits of level milk production accrue to handlers because they are able to achieve greater plant operating efficiencies. In recognition of these cost and benefit factors, NFO suggested that Brewster's proposal be modified so that handlers, rather than all of the market's producers, would fund the program. As modified by NFO, handlers would pay a surcharge of 5 cents per hundredweight on their producer milk deliveries assigned to each class during the months of February through July. Such funds would be returned to qualified dairy farmers in the following months of September through November on the same basis proposed by Brewster.

MMI also endorsed the concept of seasonal incentive plans. A spokesman for the cooperative testified that Brewster's proposal has merit, but that MMI would prefer a handler-financed seasonal payment program, as suggested by NFO, to the one proposed by Brewster which would be funded by dairy farmers. He further testified that the dairy industry has made many attempts over the years to encourage dairy farmers to alter their production patterns and thereby increase the efficiency of the entire milk marketing system. The witness asserted that any program designed to address this issue would be welcomed by his association.

A representative of the Hoosier Milk Marketing Agency also supported the concept of seasonal pricing and NFO's modification whereby the incentive money would be derived by increasing the handler Class I prices by 5 cents per hundredweight rather than deducting that rate per hundredweight from the pool funds due producers. In addition, Hoosier testified that this issue should more appropriately be addressed at the national hearing and took the position that a seasonal payment plan should not be adopted for these three markets unless it is provided under all neighboring Federal orders. The Agency's spokesman stated that adoption of a seasonal payment plan for Orders 33, 36 and 49 and not in surrounding orders would create competitive problems similar to those now experienced by Indiana handlers who are competing with handlers regulated by the Louisville-Lexington-Evansville order, which provides a seasonal base-excess plan to pay dairy farmers.

Hoosier also asked that any seasonal payment program adopted for these markets not be mandatory each year. In that regard, the producer spokesman suggested that the amended orders include provisions that would establish procedures whereby the operation of the seasonal plan could be made inoperative for any year if a review of marketing conditions indicates that it would be unnecessary to encourage additional fall milk production in that particular year.

If Brewster's payment plan had been in effect during 1989, record data show that producers under Orders 33 and 36 would have received about $2.00 per hundredweight on their eligible milk deliveries during the months of September through November and about 40 percent of the markets' dairy farmers would have qualified for incentive payments. They also indicate that Order 49 producers would have received about $1.30 per hundredweight for their eligible milk deliveries in such months and about half of the market's dairy farmers would have qualified for incentive payments.

In addition, the record evidence indicates that an Order 36 dairy farmer producing the market's average daily delivery per farm would have had about $180 deducted from pool funds on his or her behalf through the computation of the uniform prices for February through July of 1989. If such producer marketed the same daily quantity of milk during the following months of September through November as he or she marketed in the spring, the dairy farmer would have received an additional $370 on 10 percent of his or her deliveries during the ensuing 3-month period. Proponent testified that this may not seem like a lot of money, but if producers know they will be rewarded for extra effort it will motivate them to work hard to qualify for incentive payments.

It is evident from the foregoing that the financial impact of Brewster's proposal on individual dairy farmers would not be substantial. Thus, it is questionable whether the monetary rewards would be sufficient under the proposed seasonal plans to encourage dairy farmers to make the necessary herd management decisions to gear their production patterns toward greater milk production in the fall. Also, as more producers qualify additional milk for incentive payments, the per hundredweight incentive rate of return for the participating dairy farmers would decrease.

Furthermore, the hearing testimony indicates that there are many differences of opinion among interested parties regarding the adoption of any seasonal payment program for these three markets. These programs affect dairy farmers and, with the exception of the evidence presented by Brewster, no other interested party supported adoption of the proposal as it appeared in the hearing notice.

The hearing participants who represented dairy farmers generally supported the concept of seasonal pricing but stated that Brewster's proposal should be modified in certain respects. For instance, three producer groups (MMI, Hoosier and NFO), which represent a considerable portion of the milk pooled under each of these three orders, endorsed the modification advanced by NFO whereby the incentive money would be generated through higher class prices paid by handlers rather than deducted from money due dairy farmers, as Brewster proposed. Without the support of Hoosier, MMI and NFO, the Brewster proposal lacks widespread support among dairy farmers who supply milk for these three markets.

The funding modification, which shifts the program's cost from producers to handlers, represents a major change in the proposal's impact. It would be inappropriate to adopt such a revision on the basis of this record, since the hearing notice did not alert interested parties that such a proposal would be considered at this hearing and thus provided no opportunity for hearing participants to comment on such a proposition. In view of this consideration and the aforementioned shortcomings, Brewster's proposal must be denied.

Several seasonal incentive plan proposals, including one advanced by MMI, were considered at the national hearing. Such proposals involved many of the same issues that are addressed herein regarding Brewster's three-market proposal. On the basis of the national hearing record, all of the seasonal payment plan proposals were denied.

8. Administrative Expense (Order 36)

The maximum allowable rate of assessment to be paid by handlers to cover the cost of administering the Eastern Ohio-Western Pennsylvania order (Order 36) should be increased to 4 cents per hundredweight. The assessment would continue to be applied to the same milk to which the present assessment applies.

The Act specifies that persons who are regulated shall pay the cost of operating the program through an assessment on the milk handled by regulated persons who are defined as handlers under the order. The present 3-cent per hundredweight maximum allowable rate of assessment has been provided for the administration of Order 36 since the Eastern Ohio-Western Pennsylvania order became effective on July 1, 1968.

A one-cent increase in the maximum allowable rate was proposed by MMI, a cooperative that supplies a considerable portion of the market's total milk needs. A spokesman for the producer group testified that the current maximum funding level of 3 cents per hundredweight is no longer adequate to administer Order 36 effectively.

There was no other testimony on this proposal at the hearing. In briefs, NFO supported the proposed increase and MMI reiterated its hearing position on this issue.

The one-cent increase in the Order 36 maximum rate of administrative assessment was opposed in a brief filed by the Dairy Industry Association of Western Pennsylvania. The handlers' counsel contended that there is no evidence in the record to justify a 33-percent rate increase. He argued that the record fails to adequately demonstrate how much of an increase, if any, is needed and stated that an increase of this magnitude certainly is not warranted.

The Ohio Valley and Eastern Ohio-Western Pennsylvania orders (Orders 33 and 36) are administered under the supervision of a single market administrator who, at the time of the hearing, was headquartered in Columbus, Ohio. Since 1987, consolidated Balance Sheets and Income and Expense Statements for the Administrative Fund, which combine the income and expense activities for the two markets, have been compiled by the market administrator and reported annually to regulated handlers as well as other interested parties. Also, since the market administrator conducts essentially the same verification program in connection with the administration of both orders, the handler assessment rate has been maintained at the same level in both markets.

Record data for the years 1985–89 show that the administrative expenses associated with the operation of Orders 33 and 36 exceeded the income the market administrator received from assessments by more than $900,000. They also indicate that an assessment rate of 2.4 cents per hundredweight of milk handled was effective for 1986, 1987 and 1988. It was raised to 2.8 cents for 1989 and further increased to 3 cents per hundredweight for 1990. (Official notice is taken of the market administrator's annual report to all handlers of the Income and Expense Statement for the calendar year ending December 31, 1990.) Since the Order 36 assessment for administration is at the maximum level currently allowed under the order, there is no opportunity for the market administrator to increase the rate to cover any further cost increases. Without the opportunity to increase the assessment rate, additional operating funds can be generated only if substantially greater quantities of milk are pooled under the order or if the expenses of administering the program decline significantly.

Handlers and producers serving the market have jointly asked that a new pricing program be provided to establish handlers' value of Class II and III milk and to pay dairy farmers. A program similar to that requested by the dairy farmers and processors is adopted herein. The implementation and administration of that pricing plan for Order 36 may require the purchase of some new laboratory equipment and the performance of additional administrative duties. Many of the testing expenses associated with the multiple component pricing program will be paid for with money from the marketing service fund. However, since the value of milk used by handlers in Class II and Class III will be established on the basis of the milk's butterfat, protein and somatic cell content, some of the expenses related to establishing the level of these factors in producer milk likely will be paid for with money from the administrative fund. Thus, there is no reason to expect the expenses of administering the order to decline.

The pounds of pooled milk to which the assessment rate applies under orders 33 and 36 has declined considerably during the past few years. For example, receipts of milk from dairy farmers supplying these two markets in 1989 was 14 percent less than the amount pooled in 1985. Also, producer receipts in 1990 were unchanged from 1989. (Official notice is taken of the publication Federal Milk Order Statistics for December 1990). Current milk price and production trends provide no basis to expect receipts from the market's producers to increase dramatically anytime soon.

It is evident from the foregoing that sufficient funds to cover administrative expenses in the future cannot be guaranteed by either increased milk production or reduced administrative expenses. Accordingly, the proposed one-cent increase in the maximum allowable assessment rate is adopted as the best way of assuring continued adequate funding for the effective administration of the Eastern Ohio-Western Pennsylvania order.

This one-cent increase for Order 36 will establish the same 4-cents per hundredweight maximum allowable administrative assessment rate that exists under Orders 33 and 49, as well as most other Federal milk orders. Increasing the Order 36 maximum permissible administrative assessment rate to 4 cents per hundredweight will give the market administrator the necessary flexibility to generate the financial resources needed to properly administer the order, as amended. It also should enable him to establish and maintain an appropriate financial reserve that is within the Department's guidelines.

Providing a higher maximum rate of assessment in the order does not mean that the higher rate will apply automatically when the amended order becomes effective. The amendment gives the market administrator the discretionary authority to set the rate at any level up to the maximum specified in the order. Because of that discretion, when the amended order becomes effective the market administrator may decide that no change in the effective assessment rate is necessary, or he may find that some increase is warranted, but not up to the maximum allowed.

Pennsylvania Farmers Union filed comments objecting to the proposed increase in the ceiling on administrative assessments in Federal Order 36 to the levels of Orders 33 and 49. Pennsylvania Farmers Union stated that raising fees to the levels in other orders simply because they are the levels used in those areas is not sufficient justification. However, the organization stated, an increased burden in administering a component pricing system is a reasonable cause for such an increase.

As described in the preceding paragraphs, an increase in the Order 36 maximum allowable administrative assessment is necessary to provide for

the optimum administration of the order, and not merely to raise the level of the assessment to that prevailing in Orders 33 and 49. In addition, it would be inequitable to fund the administrative costs of Order 36 at the expense of Order 33 handlers.

9. Marketing Service Assessments (All Three Orders).

The maximum rate of deduction from payments to nonmember producers for the cost of providing marketing services such as butterfat, protein and somatic cell testing and market information for nonmember producers should be increased to 7 cents per hundredweight under the three orders (Orders 33, 36 and 49) involved in this proceeding. The increase is needed to assure sufficient funding to cover the expenses incurred by the market administrators in providing such services to producers for whom the services are not provided by a cooperative association.

Currently, 6 cents per hundredweight is the maximum allowable deduction for such services under Order 33, and 5 cents is the maximum under Orders 36 and 49. These maximum rates have been effective under the individual orders for many years. For example, the 6-cent maximum has been provided in the Ohio Valley order since August 1, 1970. The 5-cent rate has been provided in the Eastern Ohio-Western Pennsylvania order since July 1, 1968, and in the Indiana order since January 1, 1969.

Milk Marketing, Inc. and the Hoosier Milk Marketing Agency proposed that the limits on the rates of deduction be raised to 7 cents per hundredweight under the three orders. These producer organizations represent a substantial portion of the milk supply pooled under each of the 3 orders. The producer spokesman testified that the cost of performing marketing services for dairy farmers has increased considerably over the years. He also testified that the market administrators have streamlined their operations to the extent possible and adopted the latest office and laboratory technology available in an attempt to provide the maximum services to dairy farmers for the lowest possible cost. He contended that the extent to which costs can be reduced before affecting the program's effectiveness is limited.

In support of their proposal, proponents argued that the maximum rates of deduction for marketing services provided under the three orders represent much smaller percentages of the markets' blend prices now than when the rates originally were provided. Proponent witness stated that over the years the market administrators have expanded their marketing services for dairy farmers and that the cost of performing these functions has increased. The witness testified that the marketing service assessment proposal is designed to complement the cooperatives' proposal to provide multiple component pricing plans for these three markets. Since the new pricing plan will require accurate measurement of the butterfat, protein and somatic cell content of producer milk, additional milk testing duties will be imposed on the market administrators.

No other interested party testified on this issue at the hearing. In briefs, NFO agreed that an increase in the maximum rates of deduction for marketing services would be needed with the implementation of component pricing plans under these three orders.

Opposition to the proposed increase in the maximum allowable marketing service assessment was expressed in a brief filed on behalf of the Dairy Industry Association of Western Pennsylvania. The brief argued that the record fails to justify rate increases of up to 40 percent for marketing services. Counsel for the handlers stated that proponents offered only vague and nonspecific reasons to support their proposal and relied primarily on the fact that the maximum rates had not been changed for several years and that inflationary pressures have resulted in increased operating costs. The brief argued that these generalities do not provide an adequate basis for increasing the rates and insisted that if higher maximum rates are justified, they certainly would not have to be raised to the 7-cent level proposed by MMI and Hoosier.

The marketing service programs for these three orders are provided under the supervision of two market administrators. The program for the Ohio Valley and Eastern Ohio-Western Pennsylvania orders (Orders 33 and 36) was, at the time of the hearing, conducted under the auspices of the market administrator who was headquartered in Columbus, Ohio. The orders are still administered by a single market administrator. Since 1987, Balance Sheets and Income and Expense Statements for the Marketing Service Fund for these two markets have been published annually on a combined basis for nonmember producers and other interested parties. Since the market administrator provides essentially the same marketing service program for producers under both orders, the rate of deduction to cover such services under Orders 33 and 36 has been maintained at the 5-cent maximum level provided in Order 36.

Similarly, the marketing service program for the Chicago Regional and Indiana orders (Orders 30 and 49) is operated under the jurisdiction of the market administrator who is located in Glen Ellyn, Illinois. Since 1987, Balance Sheets and Income and Expense Statements for the Marketing Service Fund showing combined activities for these two markets have been reported annually to nonmember producers and other interested parties. Similar services are provided by the market administrator for nonmember dairy farmers supplying both markets and 5 cents per hundredweight, which is the maximum provided under both orders, has been deducted from payments to dairy farmers to cover the expenses associated with providing these services.

Record data for Orders 33 and 36 show that for the years of 1985–1989 the marketing service program expenses exceeded the amount deducted from producer payments for such services by a net amount of almost $127,000. They also indicate that expenses exceeded deductions in 4 of the 5 years and that most of the income shortfall, $82,000, was accounted for in 1989. Marketing service expenses in these two markets for the 5-year period averaged 5.1 cents per hundredweight of nonmember milk pooled. For 1985–89, expenses represented 5.0, 4.9, 5.1, 5.1 and 5.4 cents per hundredweight respectively of such producer milk.

Record data for Orders 30 and 49 show that the expenses incurred by the market administrator in providing marketing services for nonmember dairy farmers in these two markets for the 3-year period of 1987–89 exceeded the amount deducted from producer payments to cover such expenses by almost $10,000. The 3-year net figure, however, does not demonstrate the seriousness of the income shortfall because in 1989 expenses exceeded the amount deducted by more than $38,000. The data also show that the marketing service program expenses in these two markets for the 3-year period averaged 5.1 cents per hundredweight of nonmember milk pooled. For the years of 1987–89, expenses represented 4.6, 4.8 and 5.7 cents per hundredweight, respectively, of such producer milk.

It is evident from the foregoing that the 5-cent deductions from producer payments for marketing services in these 3 markets have been inadequate to cover the expenses incurred in the performance of such duties by the market administrators. It also shows that the financial situations are becoming

progressively worse each year. In addition, the multiple component pricing plan adopted in this decision is going to require additional testing activities. Since not all handlers are equipped to make all of the determinations that will be required under the amended order, many of these extra duties will have to be performed by the market administrators responsible for the administration of these three orders.

The 7-cent maximum rate of deduction for marketing services proposed by MMI and Hoosier should be provided in the three orders involved in this proceeding. These higher rates should give the market administrators the necessary flexibility to conduct effective marketing service programs, including any additional duties relating to the implementation and administration of the new pricing program that will be incorporated in the three orders.

Provision of a 7-cent maximum rate does not mean that the 7-cent rate will become effective automatically. Maximum rather than fixed rates of deduction are specified in the orders because the relationship between income and expenses for these funds is subject to many variables. Changes in the pounds of nonmember milk marketed and the rate assessed on these marketings increase or decrease the income of the marketing services funds while changes in order requirements and the expenses of providing marketing services result in changes in total outlays. Because of such variations, an increase in maximum allowable assessments will give the market administrators the discretionary authority to set the rates of deduction for marketing services at levels necessary to cover the expense of providing marketing services. If the market administrators decide that rates below the upper limits adopted in the amended orders will provide sufficient funding to conduct an adequate program for nonmember producers they may use their discretionary authority to do so.

10. Conforming changes

The provisions specifying reporting requirements and the computation of handlers' obligations to the pool and to producers have been changed as needed to assure that the multiple component pricing plan adopted herein will be practicable. In addition, the current requirement under both the Ohio Valley and Eastern Ohio-Western Pennsylvania milk orders that handlers report each producer's days of production is removed in the accompanying order language changes.

Neither of these orders contains a base plan or any other provisions that would necessitate such a reporting requirement.

The proposed amendments to order language included with this decision are based on the amended order language published for these three orders with the final decision for the 1990 national hearing for all orders, issued in early 1993.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

(d) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency for Order 36 will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1036.85 of the aforesaid tentative marketing agreement and the order as proposed to be amended.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Referendum Order to Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended, regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area. The representative period for the conduct of such referendum is hereby

determined to be October 1992. The agent of the Secretary to conduct such referendum is hereby designated to be Marvin A. Baumer.

Determination of Producer Approval and Representative Period

October 1992 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Ohio Valley and Indiana marketing areas is approved or favored by producers, as defined under the terms of the orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1033, 1036 and 1049

Milk marketing orders.

Dated: June 9, 1993

Eugene Branstad,

Assistant Secretary, Marketing and Inspection Services.

Order Amending the Orders Regulating the Handling of Milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Indiana Marketing Areas

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held; and

(4) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency for the Eastern Ohio-Western Pennsylvania areas will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1036.85.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the orders contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on July 30, 1992, and published in the **Federal Register** on August 13, 1992 (57 FR 36536), shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein, subject to the following modifications:

a. Changes in the treatment of somatic cell adjustments require modifications of reporting requirements in paragraphs (a)(1)(i), (a)(4), (b)(1), (b)(1)(ii) and (b)(3) of §§ 1033.30 and 1036.30. Corresponding changes in § 1049.30 are in paragraphs (a), (a)(6)(ii), and (c)(1). Modifications are also necessary in §§ 1033.32(e)(4), and 1036.32 (d) and (f).

b. Additional changes due to the treatment of the somatic cell adjustment have been made in §§ 1033.60(i), 1036.60(i) and 1049.60(i); §§ 1033.62, 1036.62 and 1049.62; §§ 1033.66, 1036.66 and 1049.66; and §§ 1033.71(b) and 1036.71(b).

c. Language has been added to §§ 1033.50(d), 1036.50(d) and 1049.50(d) to specify rounding in the computation of the butterfat price.

d. Language in §§ 1033.61(a) and 1033.62(a) is changed to allow for the manner in which milk described in § 1033.43(d) is pooled.

e. Changes in the qualification standards for pool distributing plants require changes in § 1049.7, paragraphs (a)(1), (a)(1)(ii) and (a)(1)(iii).

f. Changes in § 1049.13, paragraphs (e)(5) and (f), are made to clarify the application of the location adjustment provisions.

g. Corrections have been made in §§ 1049.32(a) and 1049.52, paragraphs (a)(6), (a)(7) and (b).

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

1. The authority citation for 7 CFR parts 1033, 1036 and 1049 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 1033.7 is amended by revising the introductory language of paragraph (b), redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4), adding a new paragraph (b)(2); and changing the words "50 percent" in the introductory text of paragraph (c) and in paragraph (c)(2) to "35 percent"; to read as follows:

§ 1033.7 Pool plant.

* * * * *

(b) A supply plant from which 35 percent or more during the months of January through November, and 30 percent in December, of the receipts at such plant from producers (including producer milk diverted from the plant but excluding milk diverted to such plant) and from handlers described in § 1033.9(c) is delivered by transfer or diversion as fluid milk products except filled milk, to pool distributing plants qualified pursuant to paragraph (a) of this section, subject to the following conditions:

(1) * * *

(2) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from such distributing pool plants;

* * * * *

2. In § 1033.13, paragraphs (e)(2), (e)(3) and (f) are revised to read as follows:

§ 1033.13 Producer milk.

* * * * *

(e) * * *

(2) The operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (e)(3) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk physically received at or diverted from such pool plant during the month;

(3) A cooperative association may divert an aggregate quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month; and

* * * * *

(f) Milk diverted pursuant to paragraph (d) or (e) of this section shall be priced at the location of the plant where it is received, except that for the months of March through August the uniform price applicable to milk of producers located within the State of Ohio or the Michigan counties of Hillsdale, Lenawee, Monroe, Jackson and Washtenaw that is diverted to a plant located outside the marketing area and outside the State of Ohio shall not be adjusted downward below the uniform price for the month applicable at the location of the producer's farm, *Provided*, that 65 percent or more of such producer's milk is delivered to a plant or plants at which the same or a higher uniform price is applicable during the preceding months of September through February.

3. Section 1033.30 is amended by revising paragraphs (a)(1)(i), (a)(3)(ii), (a)(4) and (b) to read as follows:

§ 1033.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(i) Producer milk, showing in the case of milk received directly from each producer the pounds of milk, the butterfat and milk protein contained in the milk, and the somatic cell count of the milk;

* * * * *

(3) * * *

(ii) Transfers and diversions to other plants, and the butterfat and milk protein content of such milk;

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat and milk protein, and somatic cell count, as the market administrator may prescribe;

(b) Each cooperative association shall report:

(1) The quantities of skim milk, butterfat and milk protein, and somatic cell count contained in milk from producers for which it is the handler pursuant to § 1033.9 (b) or (c), showing:

(i) The quantity of milk delivered to each plant; and

(ii) For each producer the pounds of milk, butterfat and milk protein tests, and the somatic cell count;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (b)(1) of this section, except that contained in producer milk described in § 1033.13(b); and

(3) Such other information with respect to its receipts and utilization of skim milk, butterfat and protein, and somatic cell count as the market administrator may prescribe; and

* * * * *

4. Section 1033.31 is amended by revising paragraph (a)(2), the second sentence of paragraph (b), and paragraph (c), to read as follows:

§ 1033.31 Payroll reports.

(a) * * *

(2) The total pounds of milk and, with respect to final payments, the average butterfat and protein content and somatic cell count of the milk for which payment is being made;

(b) * * * Such payroll shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

(c) On or before the 22nd day after the end of the month, each cooperative association with respect to the milk of producers shall submit to the market administrator the association's completed producer payroll which shall list the pounds of milk received, the average butterfat and milk protein content thereof, the somatic cell count of the milk, and the rate and net amount of the payment made to such dairy farmer, together with the amount and nature of any deductions involved.

5. Section 1033.32 is amended by revising paragraphs (e)(2), (e)(4) and (e)(5), and paragraph (f) to read as follows:

§ 1033.32 Other reports.

* * * * *

(e) * * *

(2) The total pounds of producer milk received from such producer, its average butterfat and milk protein content, and its somatic cell content;

* * * * *

(4) The total pounds of skim milk, butterfat and milk protein, and the somatic cell count of milk received from a handler described in § 1033.9(c); and

(5) The total pounds of skim milk, butterfat and protein in bulk fluid milk products received from a pool plant operated by a cooperative association.

(f) On or before the second day prior to the reporting dates specified in paragraphs (c) and (e) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred or diverted to another pool plant within the time periods described in paragraphs (c) and (e) of this section shall report to each such pool plant operator and the market administrator the name and location of each transferor-plant and the total pounds, butterfat and milk protein included in the bulk fluid milk products transferred or diverted from each such plant.

* * * * *

6. Section 1033.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1033.41 Shrinkage.

* * * * *

(c) * * * If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, with protein and butterfat tests and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.

7. Section 1033.43 is amended by revising paragraph (d) to read as follows:

§ 1033.43 General classification rules.

* * * * *

(d) Bulk fluid milk products transferred or diverted from a pool plant operated by a cooperative association to another pool plant shall be classified in accordance with the rules set forth in § 1033.42(a) and the value thereof shall be used to compute the receiving handler's pool obligation for such milk pursuant to § 1033.60 (a), (b), (h), (i) and (j).

* * * * *

8. Section 1033.50 is amended by revising the section heading, revising the introductory language, and adding new paragraphs (d), (e) and (f), to read as follows:

§ 1033.50 Class and component prices.

Subject to the provisions of § 1033.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

* * * * *

(d) *Butterfat price.* The butterfat price per pound shall be the total of the following steps, rounded to the nearest whole cent:

(1) The skim milk price per hundredweight for the month, computed pursuant to paragraph (f) of this section, divided by 100; and

(2) The butterfat differential for the month, computed pursuant to § 1033.73 multiplied by 10.

(e) *Milk protein price.* The price per pound for milk protein shall be computed by subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division, and rounding the result to the nearest whole cent.

(f) *Skim milk price.* The skim milk price per hundredweight shall be computed by subtracting from the Class III price the butterfat differential computed pursuant to § 1033.73 times 35, and rounding the result to the nearest whole cent.

9. Section 1033.53 is revised to read as follows:

§ 1033.53 Announcement of class and component prices.

The market administrator shall announce on or before:

(a) The fifth day of each month:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The butterfat differential for the preceding month;

(4) The butterfat price, the milk protein price, and the skim milk price computed pursuant to § 1033.50 (d), (e) and (f) for the preceding month; and

(5) The monthly average price for 40-pound blocks of cheese at the National Cheese Exchange (Green Bay, Wisconsin) for the preceding month.

(b) The 15th day of each month, the Class II price for the following month computed pursuant to § 1033.50(b).

10. The undesignated center heading before § 1033.60 is revised to read "DIFFERENTIAL POOL AND HANDLER OBLIGATIONS"

11. Section 1033.60 is revised to read as follows:

§ 1033.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler defined in § 1033.9(a) with respect to each of such handler's pool plants, and for each handler defined in § 1033.9 (b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1033.44, and the pounds of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d) in Class I, both multiplied by the difference between the Class I price (adjusted pursuant to § 1033.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1033.44, and the pounds of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d) in Class II, both multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1033.44(a)(14) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1033.44(a)(14), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(14) and the corresponding step of § 1033.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1033.44(a)(14) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1033.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1033.44(a)(14) and the corresponding step of § 1033.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1033.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1033.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1033.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1033.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1033.44(a)(9) and the corresponding step of § 1033.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to § 1033.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(9) and the corresponding step of § 1033.44(b) applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1033.44(a)(9) and the corresponding step of § 1033.44(b) at the current month's Class II-Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(7) (i) through (iv), and the corresponding step of § 1033.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I-Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(7) (v) and (vi) and the corresponding step of § 1033.44(b) applicable at the location of the transferor-plant at the current month's Class I-Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1033.44(a)(11) and the corresponding step of § 1033.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and

is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I-Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1033.44, and the pounds of skim milk in Class I bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), both multiplied by the skim milk price for the month computed pursuant to § 1033.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, and the pounds of protein in Class II and Class III skim milk in bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), both multiplied by the protein price for the month, computed pursuant to § 1033.50(e) and adjusted pursuant to § 1033.66 for the weighted average somatic cell content of the handler's receipts of milk.

(j) The pounds of butterfat in all three classes as determined pursuant to § 1033.44, and the pounds of butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), both multiplied by the butterfat price for the month computed pursuant to § 1033.50(d).

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use, provided that the handler establishes a disposition of labeled reconstituted fluid milk products; and

(l) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1033.76(c).

12. Section 1033.61 is revised to read as follows:

§ 1033.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1033.60, paragraphs (a) through (g) and (k) and (l), excluding the values in paragraphs (a) and (b) associated with bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), for all handlers who made reports pursuant to § 1033.30 and who made payments pursuant to § 1033.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1033.74(a);

(c) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1033.74(a);

(d) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1033.60(g).

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "Weighted Average Differential Price";

13. New §§ 1033.62 through 1033.66 are added under the undesignated center heading "Differential Pool and Handler Obligations", as follows:

§ 1033.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1033.60, paragraphs (h) and (i), excluding the values associated with bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d), for all handlers who made reports pursuant to § 1033.30 and who made payments pursuant to § 1033.71 for the preceding month;

(b) Add all of the negative adjustments and subtract all of the positive adjustments determined for each producer's somatic cell count pursuant to § 1033.66;

(c) Divide the resulting amount by the total pounds of protein in producer milk; and

(d) Round to the nearest whole cent. The result is the "Producer protein price."

§ 1033.63 Uniform price.

A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1033.61 to the basic formula price for the month.

§ 1033.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 12th day after the end of the month the weighted average differential price computed pursuant to § 1033.61, the producer protein price computed pursuant to § 1033.62, and the uniform price computed pursuant to § 1033.63(a).

§ 1033.65 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The weighted average differential price computed pursuant to § 1033.61 and adjusted pursuant to § 1033.74, multiplied by the total hundredweight of producer milk received from the producer;

(b) The producer protein price computed pursuant to § 1033.62 and adjusted pursuant to § 1033.66, multiplied by the total milk protein contained in the producer milk received from the producer; and

(c) The butterfat price computed pursuant to § 1033.50(d) multiplied by the total butterfat contained in the producer milk received from the producer.

§ 1033.66 Computation of somatic cell adjustment.

(a) For each producer, an adjustment to the producer protein price for the somatic cell count of the producer's milk shall be determined by multiplying the constant associated with the appropriate somatic cell count interval in the table in paragraph (b) of this section by the average price for the month of 40-pound blocks of cheese at the National Cheese Exchange at Green Bay, WI, as reported monthly by the Dairy Division, Agricultural Marketing Service. If a handler has not determined a monthly average somatic cell count, it

will be determined by the market administrator.

(b) The following table shows the factors and constants to be used in computing the somatic cell adjustment.

FACTORS AND CONSTANTS TO BE USED IN COMPUTING THE SOMATIC CELL ADJUSTMENT

Somatic cell counts	Factors	Constants for computing the somatic cell adjustment
1 to 50,000	.300	.09375
51,000 to 100,000	.200	.062500
101,000 to 150,000	.150	.046875
151,000 to 200,000	.100	.031250
201,000 to 250,000	.050	.015625
251,000 to 300,000	.025	.0078125
301,000 to 350,000	.000	.000000
351,000 to 400,000	.000	.000000
401,000 to 450,000	−.025	−.0078125
451,000 to 500,000	−.050	−.015625
501,000 to 550,000	−.075	−.0234375
551,000 to 600,000	−.100	−.031250
601,000 to 650,000	−.125	−.0390625
651,000 to 700,000	−.150	−.046875
701,000 to 750,000	−.200	−.062500
751,000 and above	−.250	−.078125

14. In § 1033.70, paragraph (b) is revised to read as follows:

§ 1033.70 Producer-settlement fund.

* * * * *

(b) The difference between the amount added pursuant to § 1033.61(d) and the amount resulting from the subtraction pursuant to § 1033.61(f) shall be deposited in, or withdrawn from, this fund, as the case may be.

15. Section 1033.71 is amended by revising the introductory language of paragraph (b) and paragraph (b)(1) to read as follows:

§ 1033.71 Payments to the market administrator.

* * * * *

(b) Subject to paragraph (c) of this section, each handler shall pay to the market administrator on or before the 15th day after the end of each month the value of such handler's milk pursuant to § 1033.60 (a) through (l) and the value of bulk fluid milk products received from a pool plant operated by a cooperative association pursuant to § 1033.43(d) as determined pursuant to § 1033.60 (a), (b), (h), (i) and (j), less:

(1) The amount obtained from multiplying the weighted average differential price applicable at the location of the plants from which the other source milk is received (not to be less than zero) by the hundredweight of other source milk for which a value is computed pursuant to § 1033.60(g);

* * * * *

16. Section 1033.72 is amended by revising paragraphs (b) introductory text and (d)(2) to read as follows:

§ 1033.72 Payments to producers and to cooperative associations.

* * * * *

(b) On or before the 17th day after the end of the month, the market administrator shall make payment, subject to paragraphs (c) and (d) of this section, to each producer for milk received from such individual producer and to each cooperative association for bulk fluid milk products delivered from its pool plant to another pool plant during the month by handlers from whom the appropriate payments have been received pursuant to § 1033.71(b) of the amount determined pursuant to § 1033.65, less:

* * * * *

(d) * * *

(2) The total pounds and, with respect to final payments, the average butterfat and protein content and somatic cell count of the milk for which payment is being made;

* * * * *

17. Section 1033.86 is amended by revising paragraph (a) to read as follows:

§ 1033.86 Deduction for marketing services.

(a) The market administrator, in making payments to each producer pursuant to § 1033.72, shall deduct 7 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk (except a handler's own farm production) of such producer for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association as determined by the Secretary.

* * * * *

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. Section 1036.7 is amended by revising paragraph (b) to read as follows:

§ 1036.7 Pool plant.

* * * * *

(b) A supply plant from which not less than 40 percent during the months of September, October and November, not less than 35 percent during the months of January and February, and not less than 30 percent in all other months, of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received at such plant from dairy farmers (including milk diverted from the plant as producer milk pursuant to § 1036.13 but excluding milk received as diverted milk) and handlers defined in § 1036.9(c) is transferred or diverted to and physically received in the form of fluid milk products, except filled milk, at pool plants qualified under paragraph (a) of this section or disposed of as route disposition in the marketing area, subject to the following conditions:

(1) At least one tank load of Grade A fluid milk products (not less than 45,000 pounds) must be shipped from the supply plant to a pool distributing plant during one of the months of September, October and November; and

(2) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from such distributing pool plants.

* * * * *

2. Section 1036.13 is amended by revising the reference "(e), (f) and (g)" in paragraphs (a)(3) and (b) to "(e) and (f)", revising paragraphs (e), (f) and (h) to read as follows, and removing and reserving paragraph (g):

§ 1036.13 Producer milk.

* * * * *

(e) During March through August, subject to the conditions of paragraph (f) of this section, the operator of a pool plant or a cooperative association may divert the milk of a producer without limit.

(f) Diverted to a nonpool plant for the account of a handler operating a pool plant or for the account of a handler described in § 1036.9(c), subject to the following conditions:

(1) The operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (f)(2) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk physically received at or diverted from such pool plant during the month;

(2) A cooperative association may divert an aggregate quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month;

(3) During each of the months of September through November not less than one day's production of a producer must be physically received at a pool plant;

(4) Milk of a producer shall not be eligible for diversion unless the milk of such producer has been physically received at least once as producer milk at a pool plant and the dairy farmer has not been pooled on another federal order since that time;

(5) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be deemed to have been received at such pool plant and shall not be producer milk;

(6) Any milk diverted in excess of the limit set forth in paragraph (f)(1) and (f)(2) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to do so, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(7) Milk diverted to an other order plant shall be producer milk only if a Class II or Class III classification is designated for such milk pursuant to the provisions of the other order issued pursuant to the Act and such milk is not subject to the pricing and pooling provisions of such order.

(g) [Reserved]

(h) Milk diverted pursuant to paragraphs (a)(3), (a)(4) and (b) of this section shall be deemed to have been received by the diverting handler at the location of the plant to which diverted.

3. Section 1036.30 is amended by revising paragraphs (a)(1)(i), (a)(3)(ii), (a)(4) and (b) to read as follows:

§ 1036.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(i) Producer milk, showing in the case of milk received directly from each producer the pounds of milk, the butterfat and milk protein contained in the milk, and the somatic cell count of the milk;

* * * * *

(3) * * *

(ii) Transfers and diversions to other plants, and the butterfat and milk protein content of such milk;

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat and milk protein, and somatic cell count, as the market administrator may prescribe;

(b) Each cooperative association shall report:

(1) The quantities of skim milk, butterfat and milk protein, and somatic cell count contained in milk from producers for which it is the handler pursuant to § 1036.9 (b) or (c), showing:

(i) The quantity of milk delivered to each plant; and

(ii) For each producer the pounds of milk, butterfat and milk protein tests, and the somatic cell count;

(2) The utilization of all skim milk and butterfat required to be reported pursuant to paragraph (b)(1) of this section, except that contained in producer milk described in § 1036.13(b); and

(3) Such other information with respect to its receipts and utilization of skim milk, butterfat and protein, and somatic cell count as the market administrator may prescribe; and

* * * * *

4. Section 1036.31 is amended by revising paragraph (a)(2) and paragraph (b)(3) to read as follows:

§ 1036.31 Payroll reports.

(a) * * *

(2) The total pounds of milk, and, with respect to final payments, the average butterfat and protein content and somatic cell count of the milk for which payment is being made;

* * * * *

(b) * * *

(3) The average butterfat and milk protein content, and the somatic cell count, of such milk;

* * * * *

5. Section 1036.32 is amended by revising paragraph (c)(2) and paragraph (d) to read as follows:

§ 1036.32 Other reports.

* * * * *

(c) * * *

(2) The total pounds of producer milk received from such producer, its average butterfat and milk protein contents, and its average somatic count;

* * * * *

(d) On or before the second day prior to the reporting dates specified in paragraphs (a) and (c) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred or diverted to pool plants of other handlers within the time periods described in paragraphs (a) and (c) of this section shall report to each such pool plant operator and the market administrator the name and location of the transferor-plant and the total pounds, butterfat and protein, and somatic cell count included in the bulk fluid milk products transferred or diverted from each such plant.

* * * * *

6. Section 1036.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1036.41 Shrinkage.

* * * * *

(c) * * * If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, with protein and butterfat tests and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.

7. Section 1036.50 is amended by revising the section heading, revising the introductory language, and adding new paragraphs (d), (e) and (f), to read as follows:

§ 1036.50 Class and component prices.

Subject to the provisions of § 1036.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

* * * * *

(d) *Butterfat price.* The butterfat price per pound shall be the total of the following steps, rounded to the nearest whole cent:

(1) The skim milk price per hundredweight for the month, computed pursuant to paragraph (f) of this section, divided by 100; and

(2) The butterfat differential for the month, computed pursuant to § 1036.74 multiplied by 10.

(e) *Milk protein price.* The price per pound for milk protein shall be computed by subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division, and rounding the result to the nearest whole cent.

(f) *Skim milk price.* The skim milk price per hundredweight shall be computed by subtracting from the Class III price the butterfat differential computed pursuant to § 1036.74 times 35, and rounding the result to the nearest whole cent.

8. Section 1036.53 is revised to read as follows:

§ 1036.53 Announcement of class and component prices.

The market administrator shall announce on or before:

(a) The fifth day of each month:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The butterfat differential for the preceding month; and

(4) The butterfat price, the milk protein price, and the skim milk price computed pursuant to § 1036.50 (d), (e) and (f) for the preceding month.

(5) The monthly average price for 40-pound blocks of cheese at the National Cheese Exchange (Green Bay, Wisconsin) for the preceding month.

(b) The 15th day of each month, the Class II price for the following month computed pursuant to § 1036.50(b).

9. The undesignated center heading before § 1036.60 is revised to read "DIFFERENTIAL POOL AND HANDLER OBLIGATIONS".

10. Section 1036.60 is revised to read as follows:

§ 1036.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each handler defined in § 1036.9 (a), (b), and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1036.44 multiplied by the difference between the Class I price (adjusted pursuant to § 1036.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1036.44 multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1036.44(a)(16) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1036.44(a)(16), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(16) and the corresponding step of § 1036.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1036.44(a)(16) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1036.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1036.44(a)(16) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1036.44(a)(16) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1036.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1036.44(a)(16) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1036.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1036.44(a)(9) and the corresponding step of § 1036.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to § 1036.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(9) and the corresponding step of § 1036.44(b) applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1036.44(a)(9) and the corresponding step of § 1036.44(b) at the current month's Class II-Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(7)(i) through (iii), and the corresponding step of § 1036.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I-Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(7) (iv) and (v) and the corresponding step of § 1036.44(b) applicable at the location of the transferor-plant at the current month's Class I-Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1036.44(a)(12) and the corresponding step of § 1036.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers

fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I-Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1036.44 multiplied by the skim milk price for the month computed pursuant to § 1036.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, multiplied by the protein price for the month computed pursuant to § 1036.50(e) and adjusted pursuant to § 1036.66 for the weighted average somatic cell content of the handler's receipts of milk.

(j) The pounds of butterfat in all three classes as determined pursuant to § 1036.44 multiplied by the butterfat price for the month computed pursuant to § 1036.50(d).

(k) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use, provided that the handler establishes a disposition of labeled reconstituted fluid milk products; and

(l) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1036.76(c).

11. Section 1036.61 is revised to read as follows: § 1036.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1036.60, paragraphs (a) through (g) and (k) and (l), for all handlers who made reports pursuant to § 1036.30 and who made payments pursuant to § 1036.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1036.75(a);

(c) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1036.75(a);

(d) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1036.60(g).

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "Weighted Average Differential Price".

12. Section 1036.62 is revised to read as follows:

§ 1036.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1036.60, paragraphs (h) and (i), for all handlers who made reports pursuant to § 1036.30 and who made payments pursuant to § 1036.71 for the preceding month;

(b) Add all of the negative adjustments and subtract all of the positive adjustments determined for each producer's somatic cell count pursuant to § 1036.66;

(c) Divide the resulting amount by the total pounds of protein in producer milk; and

(d) Round to the nearest whole cent. The result is the "Producer protein price."

13. New §§ 1036.63 through 1036.66 are added under the undesignated center heading "Differential Pool and Handler Obligations" to read as follows:

§ 1036.63 Uniform price and handlers' obligations for producer milk.

(a) A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1036.61 to the basic formula price for the month.

(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of §§ 1036.65 and 1036.73.

§ 1036.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 13th day after the end of the month the weighted average differential price computed pursuant to § 1036.61, the producer protein price computed pursuant to § 1036.62, and the uniform price computed pursuant to § 1036.63(a).

§ 1036.65 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The weighted average differential price computed pursuant to § 1036.61 and adjusted pursuant to § 1036.75, multiplied by the total hundredweight of producer milk received from the producer;

(b) The producer protein price computed pursuant to § 1036.62 and adjusted pursuant to § 1036.66, multiplied by the total milk protein contained in the producer milk received from the producer; and

(c) The butterfat price computed pursuant to § 1036.50(d) multiplied by the total butterfat contained in the producer milk received from the producer.

§ 1036.66 Computation of somatic cell adjustment.

(a) For each producer, an adjustment to the producer protein price for the somatic cell count of the producer's milk shall be determined by multiplying the constant associated with the appropriate somatic cell count interval in the table in paragraph (b) of this section by the average price for the month of 40-pound blocks of cheese at the National Cheese Exchange at Green Bay, WI, as reported monthly by the Dairy Division, Agricultural Marketing Service. If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.

(b) The following table shows the factors and constants to be used in computing the somatic cell adjustment.

FACTORS AND CONSTANTS TO BE USED IN COMPUTING THE SOMATIC CELL ADJUSTMENT

Somatic cell counts	Factors	Constants for computing the somatic cell adjustment
1 to 50,000	.300	.09375
51,000 to 100,000	.200	.062500
101,000 to 150,000	.150	.046875
151,000 to 200,000	.100	.031250
201,000 to 250,000	.050	.015625
251,000 to 300,000	.025	.0078125
301,000 to 350,000	.000	.000000
351,000 to 400,000	.000	.000000
401,000 to 450,000	−.025	−.0078125
451,000 to 500,000	−.050	−.015625
501,000 to 550,000	−.075	−.0234375
551,000 to 600,000	−.100	−.031250
601,000 to 650,000	−.125	−.0390625
651,000 to 700,000	−.150	−.046875
701,000 to 750,000	−.200	−.062500
751,000 and above	−.250	−.078125

14. Section 1036.71 is amended by revising the introductory language of paragraph (b), paragraph (b)(1), and paragraph (c) to read as follows:

§ 1036.71 Payments to the market administrator.

* * * * *

(b) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 17th day after the end of each month the value of such handler's milk pursuant to § 1036.60(a) through (l), less:

(1) The amount obtained from multiplying the weighted average differential price applicable at the location of the plants from which the other source milk is received (not to be less than zero) by the hundredweight of other source milk for which a value is computed pursuant to § 1036.60(g);

* * * * *

(c) Subject to paragraph (d) of this section, each handler operating a pool plant who receives bulk fluid milk products by transfer or diversion from a pool plant operated by a cooperative association, or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1036.9(c) that also operates a pool plant, shall pay to the market administrator, on or before the 17th day after the end of each month, an amount determined by the sum of the following:

(1) The quantity of such receipts classified as Class I pursuant to § 1036.44(a)(15) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class I price (adjusted pursuant to § 1036.44(a)(15) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class I price at the receiving plant (adjusted pursuant to § 1036.52) and the Class III price;

(2) The quantity of such receipts classified as Class II pursuant to § 1036.44(a)(15) and the corresponding step of § 1036.44(b) multiplied by the difference between the Class II price and the Class III price;

(3) The quantity of skim milk in such receipts classified as Class I pursuant to § 1036.44(a)(15) multiplied by the skim milk price for the month computed pursuant to § 1036.50(f);

(4) The pounds of protein in the skim milk in such receipts classified in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of skim milk from a pool plant operated by a cooperative association, or from a cooperative association in its capacity as a handler pursuant to § 1036.9(c);

(5) The pounds of butterfat in all three classes as determined pursuant to § 1036.44(b)(15) multiplied by the butterfat price for the month computed pursuant to § 1036.50(d); less

(6) Any payments made by the handler pursuant to paragraphs (a)(2) and (a)(3) of this section for such month.

* * * * *

15. Section 1036.72 is revised to read as follows:

§ 1036.72 Payments from the producer-settlement fund.

Subject to § 1036.73(c), on or before the 18th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the net pool obligation pursuant to § 1036.60 for such handler is less than the value of such handler's receipts of producer milk at the weighted average differential price adjusted pursuant for location pursuant to § 1036.75, the protein price before adjustments are made for somatic cell count, and the butterfat price.

16. Section 1036.73 is amended by revising paragraphs (a)(2) introductory text, (b)(2), (d)(2) and (d)(3) to read as follows:

§ 1036.73 Payments to producers and to cooperative associations.

(a) * * *

(2) On or before the 18th day after the end of the month, to each producer not less than the value determined pursuant to § 1036.65, less the following amounts:

* * * * *

(b) * * *

(2) On or before the 18th day after the end of each month for milk for which payment is received by the market administrator pursuant to § 1036.71. Such payment shall be in the amount determined for such milk pursuant to § 1036.65, less the payments made pursuant to paragraph (b)(1) of this section.

* * * * *

(d) * * *

(2) The total pounds and, with respect to final payments, the average butterfat and milk protein content and somatic cell count of the milk for which payment is being made;

(3) The minimum rates of payment required by the order and the rates of payment used if such rates are other than the applicable minimum rates;

* * * * *

§ 1036.85 [Amended]

17. Section 1036.85 is amended by changing the words "3 cents" in the introductory language to "4 cents".

§ 1036.86 [Amended]

18. Section 1036.86 is amended by changing the words "5 cents" in paragraph (a) to "7 cents".

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. Section 1049.3 is revised to read as follows:

§ 1049.3 Route disposition.

Route disposition means a delivery (including that packaged for another person, another distributing plant, disposition from a plant store or from a distribution point, and distribution by a vendor or vending machine) of any packaged fluid milk product classified as Class I milk other than a delivery in bulk form to any milk or filled milk processing plant.

2. Section 1049.6 is revised to read as follows:

§ 1049.6 Supply plant.

Supply plant means a plant in which some milk approved by any duly constituted health authority for fluid consumption in the marketing area is assembled and shipped in bulk as a fluid milk product and is physically unloaded and received into a distributing plant during the month.

3. Section 1049.7 is amended by revising paragraphs (a) and (b), redesignating present paragraph (c) as paragraph (d), and adding a new paragraph (c), to read as follows:

§ 1049.7 Pool plant.

* * * * *

(a) A distributing plant with:

(1) Total route disposition of not less than 40 percent during each of the months of September through February, 35 percent during each of the months of March through July, and 30 percent during the month of August, of its total receipts of fluid milk products (including milk diverted from such plant but excluding bulk fluid milk products received by transfer or diversion from other plants as Class II or Class III milk) that are approved by a duly constituted health authority for fluid consumption, subject to the following conditions:

(i) In making the percentage computations in paragraphs (a) (1) and (2) of this section, a plant's route disposition and receipts shall be exclusive of filled milk and of packaged fluid milk products received from other pool or other Federal order plants;

(ii) A plant meeting such percentage requirement for the two immediately preceding months and the requirement of paragraph (a)(2) of this section for the current month may remain qualified under this paragraph in the current month; and

(iii) A plant meeting the requirements of this paragraph in each of the months of September through May, inclusive, shall continue to have pool plant status in the months of June and July immediately following if the plant meets the requirements of paragraph (a)(2) of this section;

(2) Route disposition within the marketing area during the month of at least 10 percent of such receipts, such route disposition to be exclusive of packaged fluid milk products received from other plants and filled milk.

(b) A supply plant from which not less than 40 percent during the months of September through February and not less than 35 percent during the months of March through August, of the Grade A milk received from producers (including producer milk diverted from the plant but excluding milk diverted to such plant) and from handlers described in § 1049.9(c) at such plant during the month is shipped to plants qualifying for the month pursuant to paragraph (a) of this section. A plant qualified pursuant to this paragraph in each of the immediately preceding months of September through February shall remain so qualified for the months of April through August unless written application is filed with the market administrator on or before the first day of any such month to designate such plant as a nonpool plant for such month and for each subsequent month through August during which it would otherwise not qualify under this paragraph. Pool supply plant qualification shall be subject to the following conditions:

(1) The operator of a supply plant may include milk diverted from such plant to pool distributing plants as qualifying deliveries in meeting up to one-half of the required deliveries;

(2) Shipments to be used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from such distributing pool plants; and

(3) The shipping percentage requirements of this paragraph may be increased or decreased temporarily by up to 10 percentage points by the market administrator if such person finds that such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision on either such person's own initiative or at the request of interested persons. If the investigation shows that a temporary revision might be appropriate, the market administrator shall issue a notice stating that revision is being considered and invite data, views, or arguments in favor of or in opposition to the proposed temporary revision.

(c) Any plant that qualifies as a pool plant in each of the immediately preceding three months pursuant to paragraph (a) of this section or by meeting the shipping percentages in paragraph (b) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood) fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than two consecutive months.

* * * * *

4. Section 1049.13 is revised to read as follows:

§ 1049.13 Producer milk.

Producer milk means the skim milk and butterfat contained in milk from producers which is:

(a) Received at a pool plant directly from a producer, excluding any such milk received by diversion from another pool plant;

(b) Received at a pool plant from a handler described in § 1049.9(c) under the conditions set forth therein;

(c) Received by a handler described in § 1049.9(c) from producers in excess of the quantity delivered to pool plants;

(d) Diverted from a pool plant for the account of the handler operating such plant to another pool plant; or

(e) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in § 1049.9(b), subject to the following conditions:

(1) During each of the months of September through November not less than one day's production of the producer must be physically received at a pool plant;

(2) The operator of a pool plant may divert the milk of any producer that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (e)(3) of this section. The operator of such plant may divert a total quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent

during the month of December, of the producer milk physically received at or diverted from such pool plant during the month;

(3) A cooperative association may divert an aggregate quantity of milk not exceeding 50 percent during the months of September through November, January and February, and 60 percent during the month of December, of the producer milk that the cooperative association caused to be physically received at or diverted from pool plants during the month;

(4) Any milk diverted in excess of the limit set forth in paragraph (e)(2) or (3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(f) Milk diverted pursuant to paragraph (d) or (e) of this section shall be priced at the location of the plant where it is received, except that the uniform price applicable to milk that is diverted to a plant located outside the areas specified in § 1049.52(a)(1) through (3) shall not be adjusted downward below the uniform price for the month applicable at the location of the producer's farm, *Provided*, that 65 percent or more of such producer's milk is delivered to a plant or plants in an area specified in § 1049.52(a)(1) through (3) or to a plant at which the same or a higher uniform price is applicable.

5. Section 1049.30 is amended by revising paragraphs (a)(1), (a)(6), and (c), to read as follows:

§ 1049.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants, showing the pounds of milk, butterfat and milk protein contained in the milk, and the somatic cell count of the milk;

* * * * *

(6) The utilization or disposition of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately:

(i) Total route dispositions and route disposition in the marketing area, showing separately such disposition of filled milk inside and outside the marketing area; and

(ii) Transfers and diversions to other plants, the butterfat and milk protein content of such milk, and the somatic cell count of the milk;

(b) * * *

(c) Each cooperative association shall report:

(1) The quantities of skim milk, butterfat and milk protein, and somatic cell count contained in milk from producers for which it is the handler pursuant to § 1049.9 (b) or (c), showing:

(i) The quantities of such receipts delivered to each pool plant of other handlers; and

(ii) The classification of such receipts diverted pursuant to § 1049.13.

(2) [Reserved]

(d) * * *

6. Section 1049.31 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 1049.31 Payroll reports.

(a) * * *

(3) The average butterfat content, average milk protein content, and average somatic cell count of such milk; and

(4) The price per hundredweight, butterfat and milk protein prices and somatic cell adjustment to the producer protein price, the gross amount due, the amount and nature of any deductions, and the net amount paid.

* * * * *

7. Section 1049.32 is amended by removing paragraph (a) and the paragraph designation from paragraph (b), and deleting the words "paragraph (a) of this section and".

8. Section 1049.41 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 1049.41 Shrinkage.

* * * * *

(c) * * * If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, with protein and butterfat tests and somatic cell counts determined from farm bulk tank samples, the applicable percentage for the cooperative association shall be zero.

9. Section 1049.50 is amended by revising the section heading, revising the introductory language and paragraph (a), and adding new paragraphs (d), (e) and (f), to read as follows:

§ 1049.50 Class and component prices.

Subject to the provisions of § 1049.52, the class and component prices for the month, per hundredweight or per pound, shall be as follows:

(a) The Class I price shall be the basic formula price for the second preceding month plus $1.90.

* * * * *

(d) *Butterfat price.* The butterfat price per pound shall be the total of the following steps, rounded to the nearest whole cent:

(1) The skim milk price per hundredweight for the month, computed pursuant to paragraph (f) of this section, divided by 100; and

(2) The butterfat differential for the month, computed pursuant to § 1049.74 multiplied by 10.

(e) *Milk protein price.* The price per pound for milk protein shall be computed by subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division, and rounding the result to the nearest whole cent.

(f) *Skim milk price.* The skim milk price per hundredweight shall be computed by subtracting from the Class III price the butterfat differential computed pursuant to § 1049.74 times 35, and rounding the result to the nearest whole cent.

10. Paragraphs (a) and (b) of § 1049.52 are revised to read as follows:

§ 1049.52 Plant location adjustments for handlers.

(a) For producer milk received at pool plants located in the following zones, which milk is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1049.50(a) shall be adjusted as set forth in paragraphs (a)(1) through (a)(7), as follows, except that in no event shall the adjustment result in a price less than the Class III price for the month:

(1) *Zero adjustment zone.* Any Indiana county not specifically named in paragraphs (a)(2) through (a)(5) of this section, and not part of the Louisville-Lexington-Evansville marketing area.

(2) *Plus 10-cent adjustment zone.* The Indiana counties of Jackson, Jefferson, Jennings, Lawrence, Ripley, Scott and Switzerland.

(3) *Minus 10-cent adjustment zone.* The Indiana counties of Adams, Allen, Benton, Blackford, Carroll, Cass, Fulton, Huntington, Jay, Miami, Wabash, Wells, and White.

(4) *Minus 20-cent adjustment zone.* The Indiana counties of Dekalb, Elkhart, Jasper, Kosciusko, Lagrange, La Porte, Marshall, Newton, Noble, Pulaski, Starke, Steuben, St. Joseph, and

Whitley; and the Michigan counties of Berrien, Branch, Cass and St. Joseph.

(5) *Minus 35-cent adjustment zone.* The Indiana counties of Lake and Porter.

(6) At locations in other Federal order marketing areas, the appropriate price adjustment shall be the difference between the applicable Class I price effective at such plant location under the order for the area in which the plant is located and the Class I price specified in § 1049.50(a). For purposes of this paragraph, the locations in the Ohio counties of Defiance, Paulding, Van Wert and Williams, and the Michigan counties of Hillsdale, Lenawee and Monroe that are not part of any Federal milk order marketing area, will be considered to be in pricing zone 1 of the Ohio Valley milk marketing area.

(7) At locations outside any Federal order marketing area and north of 38 degrees latitude, the applicable adjustment rate per hundredweight shall be based on the shortest highway distance between the plant and the nearest of the Monument Circle, Indianapolis, Indiana, or the main post offices of Fort Wayne, South Bend, or Valparaiso, Indiana, and shall be minus 2.0 cents for each 10 miles or fraction thereof from such point in addition to the amount of the location adjustment pursuant to paragraphs (a) (1) through (5) of this section applicable at the respective point.

(b) For the purpose of calculating adjustments pursuant to this section, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the receipts at such plant from producers and handlers pursuant to § 1049.9 (b) and (c) and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which the Class I price is not less than the Class I price at the transferee plant, and then to receipts from plants with lower Class I prices in sequence beginning with the plant having the highest Class I price.

* * * * *

11. Section 1049.53 is revised to read as follows:

§ 1049.53 Announcement of class and component prices.

The market administrator shall announce on or before:

(a) The fifth day of each month:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The butterfat differential for the preceding month; and

(4) The butterfat price, the milk protein price, and the skim milk price computed pursuant to § 1049.50(d), (e) and (f) for the preceding month.

(5) The monthly average price for 40-pound blocks of cheese at the National Cheese Exchange (Green Bay, Wisconsin) for the preceding month.

(b) The 15th day of each month, the Class II price for the following month computed pursuant to § 1049.50(b).

12. The undesignated center heading before § 1049.60 is revised to read

"Differential Pool and Handler Obligations"

13. Section 1049.60 is revised to read as follows:

§ 1049.60 Computation of handlers' obligations to pool.

The market administrator shall compute each month for each pool plant of each handler, and for each handler pursuant to § 1049.9 (b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of producer milk in Class I as determined pursuant to § 1049.44 multiplied by the difference between the Class I price (adjusted pursuant to § 1049.52) and the Class III price;

(b) The pounds of producer milk in Class II as determined pursuant to § 1049.44 multiplied by the difference between the Class II price and the Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1049.44(a)(14) and the value of the corresponding protein pounds associated with the skim milk subtracted from Class II and Class III pursuant to § 1049.44(a)(14), by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(14) and the corresponding step of § 1049.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1049.44(a)(14) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1049.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1049.44(a)(14) and the corresponding step of § 1049.44(b) multiplied by the difference between the Class II price and the Class III price, plus the protein pounds in skim milk subtracted from Class II pursuant to § 1049.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class II pursuant to § 1049.44(b) multiplied by the butterfat price;

(3) The protein pounds in skim milk overage subtracted from Class III pursuant to § 1049.44(a)(14) multiplied by the protein price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1049.44(b) multiplied by the butterfat price;

(d) The value of the product pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1049.44(a)(9) and the corresponding step of § 1049.44(b), and the value of the protein pounds associated with the skim milk subtracted from Class II pursuant to § 1049.44(a)(9), computed by multiplying the skim milk pounds so subtracted by the percentage of protein in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(9) and the corresponding step of § 1049.44(b) applicable at the location of the pool plant at the current month's Class I-Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1049.44(a)(9) and the corresponding step of § 1049.44(b) at the current month's Class II-Class III price difference and the current month's protein and butterfat prices, less the Class III value of the milk at the previous month's protein and butterfat prices;

(e) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(7) (i) through (iv), and the corresponding step of § 1049.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I-Class III price difference;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(7) (v) and (vi) and the corresponding step of § 1049.44(b) applicable at the location of the transferor-plant at the current month's Class I-Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1049.44(a)(11) and

the corresponding step of § 1049.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I-Class III price difference.

(h) The pounds of skim milk in Class I producer milk, as determined pursuant to § 1049.44 multiplied by the skim milk price for the month computed pursuant to § 1049.50(f).

(i) The pounds of protein in skim milk in Class II and Class III, computed by multiplying the skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed, separately, multiplied by the protein price for the month computed pursuant to § 1049.50(e) and adjusted pursuant to § 1049.66 for the weighted average somatic cell content of the handler's receipts of milk.

(j) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use, provided that the handler establishes a disposition of labeled reconstituted fluid milk products; and

(k) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1049.76(c).

14. Section 1049.61 is revised to read as follows:

§ 1049.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1049.60, paragraphs (a) through (g) and (j) and (k), for all handlers who made reports pursuant to § 1049.30 and who made payments pursuant to § 1049.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1049.75(a);

(c) Subtract an amount equal to the total value of the plus location differentials computed pursuant to § 1049.75(a);

(d) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1049.60(g).

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "Weighted Average Differential Price";

15. Section 1049.62 is revised to read as follows:

§ 1049.62 Computation of producer protein price.

For each month the market administrator shall compute the producer protein price to be paid to all producers for the pounds of protein in their milk, as follows:

(a) Combine into one total the values computed pursuant to § 1049.60, paragraphs (h) and (i), for all handlers who made reports pursuant to § 1049.30 and who made payments pursuant to § 1049.71 for the preceding month;

(b) Add all of the negative adjustments and subtract all of the positive adjustments determined for each producer's somatic cell count pursuant to § 1049.66;

(c) Divide the resulting amount by the total pounds of protein in producer milk; and

(d) Round to the nearest whole cent. The result is the "Producer protein price."

16. New §§ 1049.63 through 1049.66 are added under the undesignated center heading "DIFFERENTIAL POOL AND HANDLER OBLIGATIONS" to read as follows:

§ 1049.63 Uniform price and handlers' obligations for producer milk.

(a) A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1049.61 to the basic formula price for the month.

(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of §§ 1049.65 and 1049.73.

§ 1049.64 Announcement of weighted average differential price, producer protein price, and uniform price.

The market administrator shall announce publicly on or before the 14th day after the end of the month the weighted average differential price computed pursuant to § 1049.61, the producer protein price computed pursuant to § 1049.62, and the uniform price computed pursuant to § 1049.63(a).

§ 1049.65 Value of producer milk.

The value of producer milk shall be the sum of:

(a) The weighted average differential price computed pursuant to § 1049.61 and adjusted pursuant to § 1049.75, multiplied by the total hundredweight of producer milk received from the producer;

(b) The producer protein price computed pursuant to § 1049.62 and adjusted pursuant to § 1049.66, multiplied by the total milk protein contained in the producer milk received from the producer; and

(c) The butterfat price computed pursuant to § 1049.50(d) multiplied by the total butterfat contained in the producer milk received from the producer.

§ 1049.66 Computation of somatic cell adjustment.

(a) For each producer, an adjustment to the producer protein price for the somatic cell count of the producer's milk shall be determined by multiplying the constant associated with the appropriate somatic cell count interval in the table in paragraph (b) of this section by the average price for the month of 40-pound blocks of cheese at the National Cheese Exchange at Green Bay, WI, as reported monthly by the Dairy Division, Agricultural Marketing Service. If a handler has not determined a monthly average somatic cell count, it will be determined by the market administrator.

(b) The following table shows the factors and constants to be used in computing the somatic cell adjustment.

FACTORS AND CONSTANTS TO BE USED IN COMPUTING THE SOMATIC CELL ADJUSTMENT

Somatic cell counts	Factors	Constants for Computing the Somatic cell adjustment
1 to 50,000	.300	.09375
51,000 to 100,000	.200	.062500
101,000 to 150,000	.150	.046875
151,000 to 200,000	.100	.031250
201,000 to 250,000	.050	.015625
251,000 to 300,000	.025	.0078125
301,000 to 350,000	.000	.000000
351,000 to 400,000	.000	.000000
401,000 to 450,000	−.025	−.0078125
451,000 to 500,000	−.050	−.015625
501,000 to 550,000	−.075	−.0234375
551,000 to 600,000	−.100	−.031250
601,000 to 650,000	−.125	−.0390625
651,000 to 700,000	−.150	−.046875
701,000 to 750,000	−.200	−.062500
751,000 and above	−.250	−.078125

17. Section 1049.71 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 1049.71 Payments to the producer settlement fund.

(a) * * *

(1) The total obligation of the handler for such month as determined pursuant to § 1049.60.

(2) The sum of:

(i) The value of such handler's receipts of producer milk at the weighted average differential price adjusted pursuant to § 1049.75;

(ii) The value of the protein in such handler's receipts of producer milk at the producer protein price computed pursuant to § 1049.62; and

(iii) The value at the weighted average differential price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1049.60(g).

* * * * *

18. Section 1049.73 is amended by revising the first sentence of paragraph (a)(2), paragraph (c)(2)(ii), and paragraph (d)(2) to read as follows:

§ 1049.73 Payments to producers and to cooperative associations.

(a) * * *

(2) On or before the 18th day after the end of the month to each producer, not less than the value determined pursuant to § 1049.65, less any payment made pursuant to paragraph (a)(1) of this section, and less the deduction for advertising and promotion made pursuant to § 1049.107. * * * * * * * *

(c) * * *

(2) * * *

(ii) On or before the 16th day of the following month for milk received during the month, not less than the value of milk determined pursuant to § 1049.65, less any payments made pursuant to paragraph (c)(2)(i) of this section.

(d) * * *

(2) The daily and total pounds of producer milk, its butterfat and milk protein content, and the somatic cell count of the milk;

* * * * *

19. Section 1049.75 is revised to read as follows:

§ 1049.75 Plant location adjustments for producers and on nonpool milk.

(a) The weighted average differential price for producer milk received at pool plants or diverted to nonpool plants shall be adjusted according to the location of the plants at which it was received or was deemed to have been received at the rates set forth in § 1049.52(a), except that the adjusted weighted average differential price plus the withholding rate for the Advertising and Promotion program computed in § 1049.121(e), shall be not less than zero for the month.

(b) For purposes of computations pursuant to §§ 1049.71 and 1049.72 the weighted average differential price shall be adjusted at the rates set forth in § 1049.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average differential price shall not be less than zero.

20. Section 1049.78 is revised to read as follows:

§ 1049.78 Charges on overdue accounts.

(a) Any unpaid obligation of a handler pursuant to § 1049.71, § 1049.76, § 1049.77(a), § 1049.78, § 1049.85, or § 1049.86(a) shall be increased 1 percent beginning on the first day after the due date of such obligation and on the same day of each succeeding month until such obligation is paid. All such charges on overdue accounts shall be paid to the administrative assessment fund maintained by the market administrator.

(b) Any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due, shall be considered to have been payable by the date it would have been due if the report had been filed when due.

§ 1049.86 [Amended]

21. Section 1049.86 is amended by changing the words "5 cents" in paragraph (a) to "7 cents."

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ _____[1] to _____, all inclusive, of the orders regulating the handling of milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania and Indiana marketing areas (7 CFR PARTS 1033, 1036 and 1049) which is annexed hereto; and

II. The following provisions:

[1] First and last sections of order.

§ _____[2] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of October 1992, _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ _____[2] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature)

(Seal)

BY

(Name) (Title)

(Address)

Attest

[FR Doc. 93-14036 Filed 6-16-93; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 32, and 35

RIN 3150-AD65

Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations for the medical use of byproduct material. This action is being taken in response to a petition for rulemaking. The proposed rule is intended to provide greater flexibility by allowing properly qualified nuclear pharmacists and authorized users who are physicians greater discretion to prepare radioactive drugs containing byproduct material for medical use. The proposed rule would also allow research involving human subjects using byproduct material and the medical use of radiolabeled biologics. In addition, the proposed rule also contains other miscellaneous and conforming amendments necessary to clarify or update the current regulations.

DATES: The comment period expires October 15, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m., and 4:15 p.m. on Federal workdays.

Copies of the draft regulatory analysis and any public comments received on the proposed rule may be examined at: the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Samuel Z. Jones or Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3738 for Mr. Jones, or (301) 492-3797 for Mr. Tse.

SUPPLEMENTARY INFORMATION:

Background

The Petition for Rulemaking

In early 1989, the American College of Nuclear Physicians (ACNP) and the Society of Nuclear Medicine (SNM) approached the NRC staff with concerns that the Commission's regulations failed to accommodate the functions and responsibilities of the practice of nuclear pharmacy. At the suggestion of the NRC staff, the ACNP and SNM submitted a petition for rulemaking requesting the Commission to amend its regulations to fully recognize the role of licensed nuclear pharmacists and physicians. On September 15, 1989 (54 FR 38239), the Commission published in the **Federal Register** a notice of receipt of a petition for rulemaking for public comment (PRM-35-9).

During the development of the ACNP-SNM petition, one NRC staff member provided substantial assistance in the preparation of the petition, but has not participated in the NRC's resolution of the petition or in the development of this proposed rule. Another NRC staff member reviewed the petition prior to its formal submittal to the Commission and participated, to some extent, in the NRC's resolution of the petition and in the development of the proposed rule. The Commission, while aware of this background, considered the petition on its own merits.

The NRC reviewed the petition and identified the following issues:

A. The petitioners requested that authorized users who are physicians (physician authorized users) be given greater flexibility regarding the medical use of radiopharmaceuticals containing byproduct material. Specifically, the petitioners requested that these physicians be permitted to: (1) Use radiopharmaceuticals to treat diseases that are not listed in the U.S. Food and Drug Administration (FDA) approved package insert; (2) use methods of administration of radiopharmaceuticals for therapy that are not listed in the package insert; (3) use radiopharmaceuticals other than those for which the FDA has accepted an Investigational New Drug (IND) or an approved New Drug Application (NDA); (4) prepare radiopharmaceuticals using radionuclide generators and reagent kits in a manner other than in accordance with the manufacturer's instructions; and (5) compound radiopharmaceuticals in accordance with State law.

B. The petitioners requested that the NRC recognize the practice of nuclear pharmacy by nuclear pharmacists and the certification of nuclear pharmacists by the Board of Pharmaceutical Specialties. Specifically, the petitioners requested that nuclear pharmacists be permitted to: (1) Compound radiopharmaceuticals as described in State or FDA regulations; (2) compound radiopharmaceuticals whose manufacture and distribution are not regulated by the State or FDA; (3) prepare radiopharmaceuticals using radionuclide generators and reagent kits in a manner other than in accordance with the manufacturer's instructions; (4) produce reagent kits; and (5) distribute radiopharmaceuticals that are not regulated by the FDA.

C. Additionally, the petitioners requested that the NRC: (1) Permit categories of research using radioactive drugs that do not require an IND, such as research approved by a Radioactive Drug Research Committee (RDRC); (2) permit the use of radiolabeled biologics for which the FDA has issued a license in response to a product license application (PLA); and (3) clarify its regulations pertaining to specific licenses of broad scope.

In response to the **Federal Register** notice that announced the receipt of the petition, 466 comment letters were received. About 99 percent of the commenters supported and agreed with the petition. After consideration of the public comment letters and consultation with the FDA staff, the Commission

[2] Next consecutive section number.

determined that some issues should be addressed promptly.

On August 23, 1990 (55 FR 34513), the Commission published an Interim Final Rule to allow, for a period of 3 years, the use of therapeutic radiopharmaceuticals for indications not listed in the package insert and to allow departures from the manufacturer's instructions for preparing diagnostic radiopharmaceuticals using radionuclide generators and reagent kits. In response to the Commission's request for public comments associated with the Interim Final Rule, eight comment letters were received. Seven letters supported the intent of the rule but disagreed with the recordkeeping requirements contained in the rule. One comment letter sought clarification of the rule. The Interim Final Rule permitted specific departures only at the written direction of a physician authorized user, and it does not permit pharmacy-directed departures.

On September 20, 1990, NRC received a "Petition for Reconsideration and for Stay of Action" (Petition for Reconsideration) from Syncor International Corporation (Syncor) regarding NRC's Interim Final Rule. Among other objections, the petition asserted that the rule violates the Atomic Energy Act, the Administrative Procedure Act, and NRC's implementing regulations, and that the recordkeeping requirements of the Interim Final Rule have a direct and negative impact on nuclear pharmacies.

On October 19, 1990, Syncor also filed a "Petition for Review" with the U.S. Court of Appeals for the District of Columbia Circuit (*Syncor International Corp.* v. *NRC,* NO 90–1495). The petition asked the court to review and set aside portions of the "Interim Final Rule," especially the recordkeeping requirements in 10 CFR 30.34(i)(1)(i–ii).

Also, Syncor requested that the NRC amend its nuclear pharmacy license to permit certain pharmacy-directed departures in addition to the Interim Final Rule's physician-directed departures. Syncor and the NRC staff agreed to hold the court action in abeyance for a period of several months to give the NRC an opportunity to respond to Syncor's request. After considerable interaction among the NRC, Syncor, and the FDA, the requested license amendments for pharmacy-directed departures were granted. Because of the generic interest this licensing action might have had for other commercial nuclear pharmacy licensees, the NRC, on June 26, 1991, sent each of these licensees a letter informing them of the NRC's action in issuing Syncor's amendments. Until the amendments contemplated in this proposed rulemaking are adopted through the issuance of a final rule, the NRC stands ready to consider similar license amendment requests from other commercial nuclear pharmacies.

Meanwhile, to provide relief from the recordkeeping requirements contained in the Interim Final Rule, the Commission published a final rule entitled "Departure From Manufacturer's Instructions; Elimination of Recordkeeping Requirements" (57 FR 45566; October 2, 1992). This final rule eliminated all the recordkeeping requirements. Based on the information collected under the Interim Final Rule, both the NRC and FDA staff agreed that the major trends in departures that could be identified by the recordkeeping were already discernible. Thus, additional recordkeeping was not necessary.

In a parallel effort, the NRC continued to work on the remaining issues in the ACNP-SNM petition. On August 7, 1991, the NRC conducted a public workshop in Rosemont, Illinois, to present "strawman" language on the training and experience criteria for authorized nuclear pharmacists to representatives of the following organizations: Board of Pharmaceutical Specialties, American Board of Science in Nuclear Medicine, National Association of Boards of Pharmacy, Committee on Radionuclides and Radiopharmaceuticals of the U.S. Council for Energy Awareness, American Pharmaceutical Association, American Society of Hospital Pharmacists, and three graduate schools of pharmacy. Subsequently, the NRC also discussed the proposed resolution of these issues in meetings with the FDA, the NRC's Advisory Committee on the Medical Uses of Isotopes (ACMUI), and the Agreement States. This proposed rulemaking is the evolutionary result of numerous meetings with the aforementioned groups.

The Proposed Modifications

In a policy statement published on February 9, 1979 (44 FR 8242), entitled "Regulation of the Medical Uses of Radioisotopes; Statement of General Policy," the NRC stated:

1. The NRC will continue to regulate the medical uses of radioisotopes as necessary to provide for the radiation safety of workers and the general public.

2. The NRC will regulate the radiation safety of patients where justified by the risk to patients and where voluntary standards, or compliance with these standards, are inadequate.

3. The NRC will minimize intrusion into medical judgments affecting patients and into other areas traditionally considered to be a part of the practice of medicine.

In conformance with this policy, the Commission proposes to eliminate certain restrictions in the NRC regulations on the practice of medicine and pharmacy (e.g., compounding), and provide the authority for research involving human subjects and the use of radiolabeled biologics. The Commission believes that these restrictions can be eliminated without compromising the level of protection of public health and safety against radiological hazards. The Commission recognizes that physicians have the primary responsibility for the diagnosis and treatment of their patients or human research subjects and recognizes that the nuclear pharmacists have the primary responsibility for the preparation of radioactive drugs. NRC regulations are predicated on the assumption that properly trained and adequately informed physicians and pharmacists will make decisions that are in the best interest of their patients or human research subjects. Furthermore, the pharmacological aspects of radioactive drugs, including drug safety and efficacy, are regulated by the FDA or the States.

The Commission believes that the proposed amendments would provide greater discretion for physician authorized users to use byproduct material in the practice of medicine. Also, the proposed amendments would incorporate into the regulations the concept of an authorized nuclear pharmacist to allow properly qualified pharmacists greater discretion to prepare (including compound) radioactive drugs containing byproduct material for medical use. In response to the petition for rulemaking, the Commission is proposing to:

1. Allow physician authorized users to use therapeutic radioactive drugs containing byproduct material for indications or methods of administration not listed in the FDA-approved package insert;

2. Allow physician authorized users to use radioactive drugs containing byproduct material for research involving human subjects;

3. Allow physician authorized users to use radiolabeled biologics containing byproduct material;

4. Allow medical use licensees and commercial nuclear pharmacies to depart from the manufacturer's instructions for preparing radioactive drugs using radionuclide generators and reagent kits;

5. Allow medical use licensees and commercial nuclear pharmacies to compound radioactive drugs using byproduct material;

6. Delete the existing regulations related to the nonradioactive reagent kits; and

7. Clarify regulatory requirements for specific licenses of broad scope.

Table 1 summarizes the requests made in the petition and the Commission's responses.

In addition to the proposed amendments in response to the issues raised in the petition, the Commission is proposing related or miscellaneous amendments to parts 32 and 35. In general, the objective of these proposed amendments is to clarify, update, and simplify the current regulations. Specifically, these proposed amendments include:

1. In part 32, the Commission is proposing to replace the word "radiopharmaceutical" with the term "radioactive drug" in proposed § 32.72. This change is necessary to include both radiopharmaceuticals and radiolabeled biologics in part 32.

2. In part 35, whenever applicable, the Commission is proposing to use the term "unsealed byproduct material" instead of "radiopharmaceutical" or "radioactive drug." This proposed change is intended to indicate that the Commission's regulations regarding the medical use of byproduct material are focused on radiation safety and are separate from FDA's regulations regarding radioactive drugs. However, to prevent massive changes in part 35, the word "radiopharmaceutical" will continue to be used in existing sections for which no modifications are proposed and for sections in which the only modification is to replace the word "patient" with the term "patient or human research subject." Thus, the word "radiopharmaceutical" will be used as the equivalent of "unsealed byproduct material" in these sections of the proposed rule.

3. The Commission is proposing to modify the definition of "medical use" in parts 30 and 35 by replacing the term "human beings" with the term "patients or human research subjects" to include the administration of byproduct material to an individual who is participating in a research procedure. In addition, the Commission proposes to delete the language in the definition of "medical use" that the administration of byproduct material be in the practice of medicine in accordance with a license to practice medicine. The definition of other terms in part 35 (e.g., physician) include this licensing concept.

With this proposed definition, applicable requirements in part 35, such as misadministration reporting and quality management program, would also apply to human research subjects; thus, an equivalent level of protection would be provided for both patients and human research subjects.

4. In part 32, the Commission is proposing to clarify the existing regulations regarding the labeling of syringes, vials, generators, or other containers of radioactive drugs. This proposed change is necessary to avoid confusion over the types of information to be submitted.

5. In part 32, the Commission is proposing to replace the text in § 32.72(b) because it is obsolete.

6. In discussing the proposed regulations concerning transfer of radioactive drugs, the Commission has noted later in this preamble that it is sometimes necessary to transfer a dosage of a radioactive drug on a case-by-case basis from one medical use licensee to another medical use licensee. These case-specific transfers would not be considered commercial transfers by the NRC and, therefore, would not require a part 32 license.

7. In part 35, the Commission is proposing to change the lower limit for testing dose calibrators for linearity from 0.37 Megabecquerel (10 microcuries) to 1.1 Megabecquerels (30 microcuries) for consistency with 10 CFR 35.32, "Quality Management Program."

8. In regard to the accuracy, linearity, and geometry tests of dose calibrators, the Commission is proposing to replace the requirement for the Radiation Safety Officer's (RSO) signature with the requirement for the identity of the individual actually performing these tests. This proposed change is necessary to identify the individual who actually performed these tests. Furthermore, this change would provide additional time for the RSO to devote to other radiation safety issues. However, this change would not affect the responsibilities of the RSO that are defined in existing 10 CFR 35.21.

9. The Commission is proposing to update the regulations by recognizing several certification boards in the training and experience requirements.

10. The Commission is proposing that licensees may allow authorized users and authorized nuclear pharmacists who meet certain requirements to use byproduct material without the licensee first obtaining a license amendment from the NRC. Therefore, the Commission is proposing to delete the provisions in part 35 addressing visiting authorized users.

11. The Commission is proposing to modify the requirements for recentness of training of certain authorized users.

12. The Commission is proposing to add requirements regarding the preparation of byproduct material for medical use under the supervision of a physician authorized user and to provide comparable requirements regarding the supervisory responsibilities of authorized nuclear pharmacists.

TABLE 1.—SUMMARY OF REQUESTS IN THE PETITION AND THE COMMISSION'S RESPONSES

Request	Response
Permit authorized users to use radiopharmaceuticals for therapeutic uses not covered in the package insert.	Permit physician authorized users who are qualified for therapeutic administration to use radioactive drugs for therapeutic uses not covered in the package insert.
Permit authorized users to use radioactive drugs for research involving human subjects.	Permit physician authorized users to use radioactive drugs for research, provided that human research subjects are protected.
Permit authorized users to use radiolabeled biologics	Permit physician authorized users to use radiolabeled biologics, provided that dosages of alpha- or beta-emitting radionuclides are measured.
Permit medical use licensees and pharmacies to depart from package inserts when using generators and kits.	Permit physician authorized users and authorized nuclear pharmacists who meet certain training and experience criteria to depart from package inserts when using generators and kits.
Permit medical use licensees and pharmacies to use byproduct material to compound radioactive drugs.	Permit physician authorized users and authorized nuclear pharmacists who meet certain training and experience criteria to prepare (including compound) radioactive drugs.

TABLE 1.—SUMMARY OF REQUESTS IN THE PETITION AND THE COMMISSION'S RESPONSES—Continued

Request	Response
Permit nuclear pharmacists to prepare reagent kits	Delete NRC regulations on reagent kits which do not contain byproduct material. Thus, nuclear pharmacists would be able to prepare reagent kits under applicable law.
Clarify requirements on licenses of broad scope	Clarify the requirements by adding two exemptions in part 35.

13. The responsibilities of the Radiation Safety Committee would be modified to reflect the activities which the proposed changes to part 35 would authorize.

Discussion of Proposed Regulatory Text

Section 30.4. Definitions

The definition of "medical use" would be modified to conform to the corresponding definition proposed for 10 CFR 35.2. This definition would be modified by replacing "patients" with "patients or human research subjects" to include the administration of byproduct material to an individual who is participating in a research procedure.

In addition, the modifications would delete the current statement in this definition that the byproduct material be administered in the practice of medicine in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. This change would be made because: (1) This aspect of the definition is included in other existing definitions in part 35 (e.g., authorized user and physician); and (2) the definition of "medical use" would include research involving human subjects.

Section 30.34 Terms and Conditions of Licenses

Section 30.34(i) provided interim relief from the restrictions that licensees follow the manufacturer's instructions when preparing radiopharmaceuticals using radionuclide generators and reagent kits. This proposed rulemaking would eliminate these restrictions. Therefore, the Commission proposes to delete § 30.34(i) in its entirety.

Section 32.72 Manufacture, Preparation, or Transfer for Commercial Distribution of Radioactive Drugs Containing Byproduct Material for Medical Use Under 10 CFR Part 35

The Commission proposes to retitle this section to more accurately reflect the operations of licensees (i.e., manufacturers and commercial nuclear pharmacies) regulated under this section.

Section 32.72(a)

This paragraph would be modified to add the word "prepare" and the phrase "transfer for commercial distribution" to more accurately reflect the operations of licensees regulated under this section.

Section 32.72(a)(1)

The proposed amendment to this paragraph is an editorial change to replace "§ 30.33 of this chapter" with "10 CFR 30.33."

Section 32.72(a)(2)

The Commission proposes to modify this paragraph to recognize radioactive drug manufacturers holding registration by the FDA, or appropriate State agencies, as well as commercial nuclear pharmacies licensed by State Boards of Pharmacy (SBPs) and nuclear pharmacies operating in Federal facilities. The intent of this paragraph is to clarify that commercial nuclear pharmacies are covered under this section.

Radioactive drugs transferred from a commercial nuclear pharmacy to another licensee in the normal course of business are considered commercial transfers by the NRC and require a part 32 license. However, the Commission recognizes that in the course of patient care or in the conduct of research procedures, it is sometimes necessary for licensees to transfer a dosage of a radioactive drug on a case-by-case basis from one medical use licensee to another medical use licensee. These case-specific transfers would not be considered commercial transfers by the NRC and, therefore, would not require a Part 32 license.

Section 32.72(a)(3)

The Commission proposes to modify this paragraph to clarify the type of information that should be submitted to the NRC. The words "packaging" and "package" in the existing § 32.72(a)(3) could be interpreted as referring only to the external transportation package (e.g., cardboard box). In the proposed § 32.72(a)(3), the words "* * * per vial, syringe, generator, or other container * * *" would be used to clearly indicate the types of information to be submitted. In addition, the phrase "group licensees" would be replaced with the phrase "medical use licensees."

Section 32.72(a)(4)

The Commission proposes to modify § 32.72(a)(4)(i) to clarify the types of information that should be contained on the label to be affixed to each container of a radioactive drug. This action is proposed to ensure that the information on the label would include information specified in existing 10 CFR 35.60(b) and 35.61(b).

Also, the Commission proposes to replace the phrase "each package" by the phrase "labels to be applied to containers of radioactive drugs, as specified in 10 CFR 35.60(b) and 35.61(b) * * *" for the same reason as for the proposed changes in § 32.72(a)(3), discussed above.

In addition, the Commission is also proposing to delete the last sentence of § 32.72(a)(4)(i) because it is obsolete.

Furthermore, "time of assay" would be added to the existing "date of assay." This information is necessary for determining the dosage, at the time of administration, for radioactive drugs containing radionuclides with short half-lives.

The Commission also proposes to delete the provision in § 32.72(a)(4)(ii) that required FDA approval before combining labeling information. In addition, the remaining phrase of the existing § 32.72(a)(4)(ii) "the labels, leaflets or brochures required by this paragraph are in addition to the labeling required by the Food and Drug Administration (FDA)" would be replaced by "NRC's labeling requirements are independent of requirements of the U.S. Food and Drug Administration (FDA)." This proposed sentence would be moved to the existing § 32.72(a)(4)(i) which would be renamed § 32.72(a)(4). This proposed amendment would not preclude use of one label if it contains all the required information.

Section 32.72(b)

The Commission proposes to revise this paragraph because the existing text is obsolete.

The Commission proposes new text that would allow an "authorized

nuclear pharmacist" (or individual working under the supervision of the "authorized nuclear pharmacist") working in a commercial nuclear pharmacy to prepare (including compound) radioactive drugs. The NRC is using the phrase "prepare radioactive drugs" in a general sense to include: (1) Using radionuclide generators and nonradioactive reagent kits to produce radioactive drugs; and (2) using byproduct material and other basic ingredients to compound radioactive drugs.

Current regulations require that a part 32 licensee may not depart from manufacturer's instructions when preparing radioactive drugs unless: (1) A license amendment has been granted permitting the departure; or (2) the departure has been requested by a physician authorized user. This requirement restricts the ability of qualified nuclear pharmacists to practice their profession which could otherwise include, but for NRC restrictions, compounding radioactive drugs. The NRC believes that this restriction can be eliminated provided that the pharmacist meets the training and experience requirements in proposed 10 CFR 35.980.

The Commission is proposing to define the terms "medical use" and "authorized nuclear pharmacist" in part 32 by referencing the definition of these terms in proposed 10 CFR 35.2. The definition of "medical use" would be modified to add the term "human research subject" to include the administration of byproduct material to an individual who is participating in a research procedure. It is necessary to define an "authorized nuclear pharmacist" because the proposed amendments would provide pharmacists with the authority to possess and use byproduct material in the practice of nuclear pharmacy.

For purposes of part 32, an authorized nuclear pharmacist also includes those individuals who are currently licensed or registered by a state as a pharmacist and who are also designated, as of the effective date of the final rule, as an "authorized user" on a nuclear pharmacy license issued by the Commission under 10 CFR part 32 to work as an authorized nuclear pharmacist. The Commission believes that this limited "grandfathering" is justified because: (1) currently, these "authorized users" essentially meet the training and experience criteria for an authorized nuclear pharmacist as specified in proposed 10 CFR 35.980(b)(1); and (2) these "authorized users" are currently working in a nuclear pharmacy.

A part 32 "authorized user" who does not currently possess a valid state pharmacy licensure or registration would not be grandfathered as an authorized nuclear pharmacist because, under state law, this individual is not qualified to be a pharmacist. However, such an individual may work in a nuclear pharmacy under the supervision of an authorized nuclear pharmacist.

The Commission proposes to require licensees to submit a copy of the individual's board certification, the license, or the permit, and the state pharmacy licensure or registration to the NRC within 30 days of the date that the licensee permits the individual to work as an authorized nuclear pharmacist. This proposal would reduce the licensees' burden because such a notification would replace the currently required license amendment and the associated amendment fee which are currently necessary before a licensee may allow an authorized nuclear pharmacist to work in its facility. In addition, the proposed action would also eliminate the delay associated with the license amendment process. The NRC will review the notifications upon receipt to verify that the requirements of proposed § 32.72(b) have been met. During the review process, the NRC can consider an individual's character in addition to credentials in determining whether the individual should be approved as an authorized user or authorized nuclear pharmacist, such as verifying that the individual has not committed or caused others to commit any willful violations of the Commission's regulations. At the time of the next licensing action, the names of approved individuals would be listed on the license, without fee, as an authorized nuclear pharmacist.

Section 32.72(c)

The Commission proposes to add this paragraph to explicitly require part 32 licensees to measure and record each dosage of radioactive drugs before transferring these drugs to a medical use licensee. This proposed change is necessary so that the proposed relief to 10 CFR part 35 medical use licensees with respect to measurements can be granted. In proposed § 35.53, medical use licensees would not be required to measure unit dosages of alpha- and beta-emitting radioactive drugs obtained from part 32 licensees before administering these unit dosages to patients or human research subjects. Thus, it is necessary for the part 32 licensees to make these measurements.

Section 32.72(d)

This paragraph is necessary to remind part 32 licensees to comply with applicable FDA, other Federal, and State requirements in addition to applicable NRC requirements. Compliance with NRC requirements does not eliminate the need to comply with other lawful requirements. However, it is not the intent of the Commission to perform inspections to ensure compliance with FDA or State requirements nor to enforce those regulations.

Section 32.73 Manufacture and Distribution of Generators or Reagent Kits for Preparation of Radiopharmaceuticals Containing Byproduct Material

The Commission proposes to delete this section in its entirety. Because radionuclide generators would be included as a radioactive drug in proposed § 32.72, it is no longer necessary to include the generators in § 32.73. In addition, the Commission is proposing to discontinue regulating reagent kits because they do not contain byproduct material.

10 CFR Part 35 Medical Use of Byproduct Material

The Commission is proposing to replace the word "patient" with the term "patient or human research subject" as stated in the sections of part 35 which the Commission is proposing to amend. However, only those sections of part 35 which are otherwise being amended are included in the section-by-section "Discussion of Proposed Regulatory Text" which follows. The sections not included in that discussion are: §§ 35.2 (the definitions of *misadministration* and *written directive*), 35.32, 35.33, 35.60, 35.75, 35.310, 35.315, 35.404, 35.406, 35.410, 35.415, 35.610, and 35.615. The purpose of using the phrase "patient or human research subject" is to make it explicit that licensees must follow the requirements of part 35 whenever byproduct material or radiation therefrom is being administered either to a patient or to a human research subject. It is necessary to provide an equivalent level of protection for both patients and human research subjects.

Section 35.2 Definitions

Authorized nuclear pharmacist. The Commission proposes to add this new definition. It is necessary to define an authorized nuclear pharmacist because the proposed amendments would provide pharmacists the authority to possess and use byproduct material in the practice of nuclear pharmacy

independent of the supervision of a physician authorized user.

The definition would specify three groups of individuals that would be qualified as authorized nuclear pharmacists: (1) Individuals certified by the Board of Pharmaceutical Specialties (BPS) as a board certified nuclear pharmacist (BCNP), (2) individuals identified as authorized nuclear pharmacists on a Commission or Agreement State license, or (3) individuals identified as authorized nuclear pharmacists on a permit issued by a Commission or Agreement State specific licensee of broad scope. The individuals in the second and third groups must meet the training and experience requirements specified in the proposed § 35.980(b).

Authorized user. The Commission is proposing to modify the definition of "authorized user" to include those individuals who are: (1) board certified by at least one of the boards listed in paragraph (a) of §§ 35.910, 35.920, 35.930, 35.940, 35.950, or 35.960; (2) identified as an authorized user on a Commission or Agreement State license, or (3) identified as an authorized user on a permit issued by a Commission or Agreement State specific licensee of broad scope. The individuals in the second and third groups must meet the training and experience requirements specified in paragraphs (b) or (c) of §§ 35.910 or 35.920, or paragraph (b) of §§ 35.930, 35.940, 35.950, or 35.960.

Proposed § 35.13 would eliminate, under certain conditions, the requirement for a licensee to submit an amendment to list an authorized user on its license. Instead, proposed § 35.14 would require specific licensees of limited scope to provide a copy of the individual's board certification, the license, or the permit to the Commission within 30 days of the date that the licensee permits the individual to work as an authorized user.

However, before allowing a physician who does not have board certification (or is not listed on a license or a permit) to work as an authorized user, the specific licensee of limited scope must continue to submit a license amendment and obtain NRC approval. The NRC will review the notifications upon receipt to verify that the requirements of proposed § 32.72(b) have been met. During the review process, the NRC may consider character in addition to credentials in determining whether the individual should be approved as an authorized user or authorized nuclear pharmacist, such as to verify that the individual has not committed or caused others to commit any willful violations of the Commission's regulations.

Medical use. The Commission is proposing to modify the definition of "medical use" by replacing the term "human beings" with the term "patients or human research subjects" to include the administration of byproduct material to an individual who is participating in a research procedure.

Currently, the NRC allows by license condition specific medical use licensees of broad scope to perform research involving human subjects using byproduct material. Because part 35 is silent on research involving human subjects using byproduct material, part 35 specific medical use licensees of limited scope may only conduct such research if the NRC grants a license amendment to do so. The effects of the current regulatory framework are to inhibit or delay research activities by specific medical use licensees of limited scope.

Medical research involving human subjects not using radioactive material is currently conducted by large medical institutions and community hospitals through, for example, their participation in regional and national research programs. Such research may lead to a better understanding of diseases, improved diagnostic and therapeutic methods, new or better drug products or medical devices, or essential basic scientific information.

Current regulations require all medical institutions to have a Radiation Safety Committee whose responsibilities include oversight of all uses of licensed material. Other part 35 licensees are required to have a Radiation Safety Officer who has such responsibility. The Commission believes that restrictions on research can be reduced provided there are certain additional protections of human subjects as described in proposed § 35.6.

The proposed provisions include requiring a licensee who conducts research involving human subjects to: (a) Possess a part 35 license authorizing medical use, (b) implement the Federal Policy for the Protection of Human Subjects or comply with specific NRC licensing requirements, and (c) have a physician authorized user who will supervise the administration of the byproduct material.

The Commission believes that information gathered through research, although it may not benefit the individual subject of the research, has the potential to benefit the society at large. Therefore, given adequate protection of the rights and radiological safety of human research subjects, it is appropriate to permit this activity.

Furthermore, under the proposed definition of "medical use," the applicable provisions of part 35, such as requirements related to misadministrations and the quality management program, also apply to a human research subject. Thus, an equivalent level of protection would be provided for both patients and human research subjects.

The Commission is also proposing to delete the current statement in this definition that the byproduct material be administered in the practice of medicine in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. This change is being made because this aspect of the definition is included in other existing definitions in part 35 (e.g., authorized user and physician).

Pharmacist. The Commission is proposing to add this new term to define a pharmacist in part 35 to complement another new definition "authorized nuclear pharmacist."

Section 35.6 Provisions for Research Involving Human Subjects

The Commission is proposing to add this section to address the protection of the rights of human subjects who would be involved in research using byproduct material. The Commission believes that most research involving human subjects using byproduct material is currently conducted, funded, supported, or regulated by another federal agency which has implemented the Federal Policy for the Protection of Human Subjects [1] (56 FR 28002; June 18, 1991). Therefore, the rights of human subjects involved in such research activities would be protected by the other federal agency funding the research under the provisions of the Federal Policy. The Federal Policy has been implemented by 15 Federal departments or agencies (not including NRC) and includes provisions, among others, for obtaining Institutional Review Board (IRB) review and approval of the research activities and informed consent from the human subjects. The NRC understands that compliance with the Federal Policy by institutions conducting research involving human subjects is achieved through the use of letters of assurance of compliance and certain reporting requirements.

This section proposes to allow the licensees covered by the Federal Policy as adopted by another Federal agency to conduct human research without prior NRC approval. If a licensee's activities

[1] For a copy of the Federal Policy for the Protection of Human Subjects contact: Office for Protection from Research Risks, National Institute of Health, Building 31, room 5B59, Bethesda, MD 20892, telephone (301) 496–7005.

are not funded by another Federal agency which has adopted the Federal Policy, the licensee would need to apply for and obtain approval of a specific amendment to its NRC license prior to conducting research involving human subjects using byproduct material. During the review of the license amendment application, the NRC would ensure that the proposed research would receive approval of the IRB and obtain the human subject's informed consent. The Commission is soliciting public comment on the numbers and type of research activities which would not be funded by another Federal agency which has adopted the Federal Policy and, thus under the proposed rule, would require a license amendment.

The focus of NRC inspections would be to confirm that both types of licensees have obtained prior IRB review and approval of the research activities and informed consent of the human subjects.

The Commission is soliciting public comment on whether it should broaden or narrow its focus to require compliance with all or none of the provisions of the Federal Policy or equivalent license conditions. In making comments, consideration should be given to the fact that all the radiation safety provisions of 10 CFR part 35 are proposed to be made applicable to research involving human subjects.

Section 35.7 FDA, Other Federal, and State Requirements

This section is necessary to remind medical use licensees to comply with applicable FDA, other Federal, and State requirements. However, it is not the intent of the Commission to perform inspections to ensure compliance with FDA or State requirements nor to enforce those regulations.

Section 35.11 License Required

The Commission is proposing to add paragraph (c), in parallel with the existing paragraph (b), to this section. The new paragraph (c) would permit an individual to prepare unsealed byproduct material for medical use under the supervision of an authorized nuclear pharmacist or authorized user who is a physician. Also, the existing paragraph (a) would be revised by replacing the phrase "paragraph (b)" with "paragraphs (b) or (c)."

Section 35.12 Application for License, Amendment, or Renewal

The Commission is proposing to add paragraph (e) to this section. This paragraph would remind part 35 medical use licensees that they may apply for a Type A specific license of broad scope under 10 CFR part 33.

Section 35.13 License Amendments

The Commission proposes to modify paragraph (b) of this section to delete the term "visiting authorized user." Instead, under the proposed provisions, the licensees could allow, without a license amendment, an individual to work as an authorized user provided that the individual is: (1) Certified by a board listed in subpart J, (2) identified as an authorized user on a Commission or Agreement State license, or (3) identified as an authorized user on a permit issued by a Commission or Agreement State specific licensee of broad scope. However, the licensee would be required to provide a copy of an individual's board certification, the license, or the permit to the Commission within 30 days of the date that the licensee permits the individual to work as an authorized user (See proposed § 35.14).

The Commission also proposes to add an exception for authorized nuclear pharmacists to this section like the exception for authorized users.

Section 35.14 Notification

In addition to the existing notification requirement, the Commission proposes to amend this section to require specific licensees of limited scope to submit a copy of an individual's board certification, the license, or the permit as discussed in § 35.13. This proposal would reduce licensees' burden because this notification would replace the currently required license amendment and the associated amendment fee which are currently necessary before a specific licensee of limited scope may allow an authorized user to work in its facility. In addition, the proposed action would also eliminate the delay associated with the license amendment process. The NRC will review the notifications upon receipt to verify that the requirements of this section have been met. In addition, the NRC would verify at that time that this individual has not committed or caused another individual to commit any willful violations of the Commission's regulations. At the time of the next licensing action, the name of this individual would be listed on the license, without fee, as an authorized user. The Commission also proposes to apply this section to authorized nuclear pharmacists in the same manner as for authorized users.

Section 35.15 Exemptions Regarding Type A Specific Licenses of Broad Scope

The Commission is proposing to clarify requirements on Type A specific licenses of broad scope by adding the proposed exemptions. This proposed section would specify that an application for and receipt of a license amendment would not be necessary for the following actions: (1) Permit a new authorized user or authorized nuclear pharmacist to work under the license; and (2) permit a change of the area of use of byproduct material within the address identified in the license. Also, specific licensees of broad scope would be exempt from certain notification requirements specified in proposed § 35.14.

These changes are being made to ensure that the proposed rule conforms with the current practice regarding Type A specific licensees of broad scope. Under current practice, the other prescriptive and performance requirements of Part 35 apply to Type A specific licensees of broad scope. Because a Part 33 specific licensee of broad scope is required to establish more complete administrative procedures and controls to ensure radiation safety than a Part 35 licensee, the exemptions would not reduce protection of public health and safety.

Section 35.22 Radiation Safety Committee

The Commission is proposing to amend paragraph (b)(2) to apply this section to authorized nuclear pharmacists in the same manner as for authorized users.

The Commission also proposes to require the Radiation Safety Committee to review an individual's certification, license, or permit, and determine, based on the proposed § 35.13(b)(1) through (b)(4), whether to allow the individual to work as an authorized user or authorized nuclear pharmacist without submitting a license amendment for NRC approval.

Section 35.25 Supervision

Existing paragraph (b) would be redesignated as paragraph (c).

The Commission is proposing to add a new paragraph (b) to address the supervisory responsibilities of the licensee, the authorized nuclear pharmacist, and the physician authorized user who prepare unsealed byproduct material for medical use. Specifically, under the proposed paragraph, an authorized nuclear pharmacist or a physician authorized user would be able to permit

individuals to prepare unsealed byproduct material for medical use, provided that the individuals are adequately supervised. This section describes the level of supervision that an authorized nuclear pharmacist or a physician authorized user would be required to provide to individuals who are preparing unsealed byproduct material for medical use under their supervision.

Section 35.27 Visiting Authorized User

The Commission is proposing to delete this section which permits a visiting authorized user to work for a period of 60 days each year without a license amendment. Under proposed § 35.13(b), the concept of a visiting authorized user would no longer be necessary. Any individual who meets § 35.13(b)(1) through (b)(4) would be permitted to work in a licensee's facility either temporarily or permanently. However, under proposed § 35.14, the licensee would be required to provide a copy of the individual's board certification, the license, or the permit to the NRC.

Section 35.49 Supplier for Sealed Sources or Devices for Medical Use

The Commission is proposing to modify this section as follows:

The title of this section would be modified to indicate that this section would only apply to sealed sources or devices for medical Use

The Commission is proposing to delete the reference to §§ 32.72 and 32.73 in the proposed § 35.49(a) because, under the proposed rule, the requirements applicable to unsealed byproduct material for medical use would be incorporated into the proposed §§ 35.100, 35.200, and 35.300. Furthermore, the proposed rule would allow medical use licensees to prepare (including compound) radioactive drugs. Therefore, limiting suppliers of radioactive drugs to manufacturers or commercial nuclear pharmacies would no longer be necessary. However, the requirements applicable to sealed sources or devices as specified in § 32.74 would remain in the proposed § 35.49(a).

In addition, the Commission is proposing to delete existing § 35.49(b). Under the proposed rule, all the requirements applicable to reagent kits would be deleted because the reagent kits do not contain byproduct material. Therefore, this paragraph would no longer be necessary. The existing § 35.49(c) would be redesignated as § 35.49(b).

Section 35.50 Possession, Use, Calibration, and Checks of Dose Calibrators

The Commission is proposing the following modifications to this section.

(1) In paragraph (a), the phrase "photon-emitting" would be inserted to clarify that this section is applicable only to photon-emitting radionuclides. This modification would avoid confusion between this section and proposed § 35.52 pertaining to instruments to measure dosages of alpha- or beta-emitting radionuclides.

(2) The Commission is proposing to use the term "radionuclides" instead of the term "radiopharmaceuticals." The new term is broader and would include radiolabeled biologics as well as radiopharmaceuticals.

(3) In paragraph (b)(3) regarding the linearity test of the dose calibrator, the lower limit for the test would be changed from 0.37 megabecquerel (10 microcuries) to 1.1 megabecquerel (30 microcuries). This modification is necessary for consistency with the requirements of the Quality Management Program (§ 35.32) and proposed § 35.53(c)(3).

(4) In paragraphs (e)(2) through (e)(4) regarding records on the accuracy, linearity, and geometry tests of dose calibrators, the Commission is proposing to require the identity of the individual actually performing these tests rather than the Radiation Safety Officer's (RSO) signature. This proposed change is necessary to identify the individual who actually performed these tests. Furthermore, this change would provide additional time for the RSO to devote to other radiation safety issues.

Section 35.52 Possession, Use, Calibration, and Checks of Instrumentation to Measure Dosages of Alpha- and Beta-Emitting Radionuclides

The Commission is proposing to require medical use licensees to possess and use instrumentation to measure alpha- or beta-emitting radionuclides. New radiolabeled biologics are being developed which have potential benefits for diagnosis and treatment in medicine. Some of these biologics may contain alpha- or beta-emitting radionuclides that do not emit photons of sufficient energy or frequency to be detected or quantified in a dose calibrator. Thus, this section is proposed so that medical use licensees would be able to determine that the correct dosages will be administered to patients or human research subjects.

The measurement requirements of this section would not apply to unit dosages obtained from a manufacturer or a commercial nuclear pharmacy for the following reasons: (1) The instrumentation for measuring activity of alpha- or beta-emitters is expensive and not commonly available in a medical use licensee's facility; (2) the frequency of using alpha- or beta-emitters for most medical use licensees is very low; and (3) the manufacturer or the commercial nuclear pharmacy would be required, pursuant to proposed § 32.72(c), to measure each dosage of a radioactive drug prior to transfer for commercial distribution.

Section 35.53 Measurement of Dosages of Unsealed Byproduct Material for Medical Use

The Commission is proposing to modify this section as follows:

(1) In the title, the term "radiopharmaceutical dosages" would be replaced by the phrase "dosages of unsealed byproduct material for medical use." This is proposed to avoid the connotation that the Commission is regulating drug safety and efficacy. The word "unsealed" is proposed to emphasize that this section applies only to unsealed byproduct material for medical use. This section does not apply to sealed sources such as teletherapy or brachytherapy sources.

(2) Existing paragraphs (a) and (b) have been combined as proposed paragraph (a). However, the measurement requirements are the same.

(3) The new text of paragraph (b) would require medical use licensees to measure dosages of alpha- or beta-emitting radionuclides, except for unit dosages obtained from a manufacturer or a commercial nuclear pharmacy. Medical use licensees would be required to measure dosages that will be administered to patients or human research subjects.

The measurement requirements of this section would not apply to unit dosages of alpha- or beta-emitting radionuclides because the manufacturer or the commercial nuclear pharmacy must measure the dosage before distributing it to a medical use licensee. Also, the proposed rule would allow a licensee to use the combination of several measurements and calculations to determine the dosage because it may not be possible to measure alpha- or beta-emitting radionuclides by a single measurement.

(4) In paragraph (c)(3), 0.37 megabecquerel (10 microcuries) would be changed to 1.1 megabecquerels (30 microcuries). This modification is necessary for consistency with the requirements of the Quality

Management Program (§ 35.32). Also, because the radiological risk associated with a dosage of 1.1 megabecquerels (30 microcuries) is small, it is unnecessary to require more than just recording that the dosage is less than 1.1 megabecquerels (30 microcuries).

Section 35.100 Use of Unsealed Byproduct Material for Uptake, Dilution, and Excretion

The current § 35.100 requires medical use licensees to use only byproduct material in a radiopharmaceutical for uptake, dilution and excretion for which the FDA has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND) or approved a New Drug Application (NDA). The effect of this restriction is to prohibit a licensee from using other types of radioactive drugs such as those approved by a Radioactive Drug Research Committee (RDRC), unless a license amendment is received authorizing their use.

The Commission believes that these restrictions can be eased without compromising the level of protection of public health and safety against radiological hazards because of certain conditions which must be met (discussed below). In addition, the Commission recognizes that physicians have the primary responsibility for the diagnosis and treatment of their patients or human research subjects. Commission regulations are predicated on the assumption that properly trained and adequately informed physicians will make decisions that are in the best interest of their patients or human research subjects. Furthermore, the pharmacological aspects of radioactive drugs, including drug safety and efficacy, are regulated by the FDA.

Detailed discussions of proposed changes are presented below.

The Commission is proposing to use the term "unsealed byproduct material" instead of the term "radiopharmaceutical" in this proposed section. This is proposed to avoid the connotation that the Commission is regulating drug safety and efficacy. The word "unsealed" is proposed to emphasize that this section applies only to unsealed byproduct material for medical use and does not apply to sealed sources such as teletherapy or brachytherapy sources.

This proposed modification would provide medical use licensees with the maximum flexibility to use any byproduct material for medical use provided that the material is: (1) Obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72; or (2) prepared by an authorized nuclear pharmacist, a physician authorized user who meets the training requirements specified in § 35.920, or an individual under supervision of either, as specified in proposed § 35.25.

In addition, the Commission is proposing to modify this section as follows:

(1) The phrase "unsealed byproduct material prepared for medical use" would be used. This phrase includes "IND" and "NDA," as specified in the existing § 35.100, and other radioactive drugs containing byproduct material that are not specified in the existing § 35.100.

(2) The supplier or preparer of unsealed byproduct material for medical use would be specified under this section. A licensee may obtain byproduct material from a manufacturer or a commercial nuclear pharmacy.

(3) This proposed section would allow licensees to use unsealed byproduct material to prepare (including compound) radioactive drugs by physician authorized users who meet § 35.920, authorized nuclear pharmacists, or individuals under their supervision. The NRC is using the phrase "prepare radioactive drugs" in a general sense to include: (a) using radionuclide generators and nonradioactive reagent kits to produce radioactive drugs and (b) using byproduct material and other basic ingredients to compound radioactive drugs.

(4) This proposed section would require a physician authorized user who wants to prepare radioactive drugs to meet the requirements specified in existing § 35.920. Training and experience requirements specified in existing §§ 35.910 and 35.930, although adequate to administer byproduct material, would not be sufficient for preparing radioactive drugs. Similar training and experience requirements for authorized nuclear pharmacists are proposed in § 35.980.

(5) This proposed section would also allow an individual under the supervision of a physician authorized user or an authorized nuclear pharmacist to use byproduct material to prepare (including compound) radioactive drugs. A part 35 medical use licensee operating a nuclear pharmacy to prepare radioactive drugs for use within the licensee's facility would not be required to obtain a part 32 license, unless the nuclear pharmacy transfers radioactive drugs for commercial distribution. The proposed rule language in § 35.25 would require the supervising physician authorized user or authorized nuclear pharmacist to instruct the individual on radiation safety principles and procedures and would require the individual to follow the procedures.

(6) The Commission recognizes that, in the course of patient care or in the conduct of research procedures, it is sometimes necessary to transfer a dosage of a radioactive drug, on a case-by-case basis, from one medical use licensee to another medical use licensee. These case-specific transfers would not be considered commercial transfers by the NRC and, therefore, would not require a part 32 license. Licensees should be aware that other than infrequent transfers may require a license for commercial transfer of byproduct material.

Section 35.200 Use of Unsealed Byproduct Material for Imaging and Localization Studies

Paragraph (a) of the current § 35.200 restricts medical use licensees to use byproduct material in a radiopharmaceutical for which the FDA has accepted an IND or approved an NDA. The effect of this restriction is to prohibit a licensee from using other types of radioactive drugs such as those approved by a Radioactive Drug Research Committee (RDRC), unless a license amendment is received that authorizes such use. Furthermore, paragraphs (b) and (c) of the current section require licensees to follow the manufacturer's instructions for eluting radionuclide generators and preparing reagent kits unless a departure is directed by a physician authorized user.

The Commission believes that these restrictions can be eased without compromising the level of protection of public health and safety against radiological hazards because of certain conditions which must be met (discussed below). In addition, the Commission recognizes that physicians have the primary responsibility for the diagnosis and treatment of their patients or human research subjects and recognizes that the nuclear pharmacists have the primary responsibility for the preparation of radioactive drugs. Commission regulations are predicated on the assumption that properly trained and adequately informed physicians and pharmacists will make decisions that are in the best interest of their patients or human research subjects. Furthermore, the pharmacological aspects of radioactive drugs, including drug safety and efficacy, are regulated by the FDA.

Detailed discussions of proposed changes are presented below.

(1) The Commission is proposing to use the term "unsealed byproduct material" instead of the term "radiopharmaceutical" in this proposed

section to avoid the connotation that the Commission is regulating drug safety and efficacy. Also, this phrase includes "IND" and "NDA," as specified in the existing § 35.200, and other radioactive drugs containing byproduct material that are not specified in the existing § 35.200.

(2) This proposed modification would provide medical use licensees with the maximum flexibility to use any byproduct material for medical use provided that the material is: (a) obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or (b) prepared by an authorized nuclear pharmacist, a physician authorized user who meets the training requirements specified in § 35.920, or an individual under supervision of either, as specified in proposed § 35.25.

(3) The supplier or preparer of unsealed byproduct material for medical use would be specified under this section. A licensee may obtain byproduct material from a manufacturer or a commercial nuclear pharmacy.

(4) This proposed section would allow licensees to use unsealed byproduct material to prepare (including compound) radioactive drugs by physician authorized users who meet § 35.920, authorized nuclear pharmacists, or individuals under their supervision. The NRC is using the phrase "prepare radioactive drugs" in a general sense to include: (a) using radionuclide generators and nonradioactive reagent kits to produce radioactive drugs; and (b) using byproduct material and other basic ingredients to compound radioactive drugs.

(5) This proposed section would also allow an individual under the supervision of a physician authorized user or an authorized nuclear pharmacist to use byproduct material to prepare (including compound) radioactive drugs. The proposed rule language in § 35.25 would require the supervising physician authorized user or authorized nuclear pharmacist to instruct the individual on radiation safety principles and procedures and would require the individual to follow the procedures.

(6) The Commission recognizes that, in the course of patient care or in the conduct of research procedures, it is sometimes necessary to transfer a dosage of a radioactive drug, on a case-by-case basis, from one medical use licensee to another medical use licensee. These case-specific transfers would not be considered commercial transfers by the NRC and, therefore, would not require a part 32 license.

Section 35.300 Use of Unsealed Byproduct Material for Therapeutic Administration

Paragraph (a) of the current § 35.300 restricts medical use licensees to use byproduct material in a radiopharmaceutical for which the FDA has accepted an IND or approved an NDA. Also, this paragraph requires licensees to comply with the package insert instructions regarding indications and method of administration unless a departure is directed by a physician authorized user.

While recognizing that therapeutic dosages result in greater radiation exposure, the Commission believes that these restrictions can be eased without compromising the level of protection of public health and safety against radiological hazards because of certain conditions which must be met (discussed below). In addition, the Commission recognizes that physicians have the primary responsibility for the diagnosis and treatment of their patients or human research subjects. Commission regulations are predicated on the assumption that properly trained and adequately informed physicians will make decisions that are in the best interest of their patients or human research subjects. Furthermore, the pharmacological aspects of radioactive drugs, including drug safety and efficacy, are regulated by the FDA.

Detailed discussions of proposed changes are presented below.

(1) The Commission is proposing to use the term "unsealed byproduct material" instead of the term "radiopharmaceutical" in this proposed section to avoid the connotation that the Commission is regulating drug safety and efficacy. Also, this phrase includes "IND" and "NDA," as specified in the existing § 35.300, and other radioactive drugs containing byproduct material that are not specified in the existing § 35.300.

(2) This proposed modification would provide medical use licensees with the maximum flexibility to use any byproduct material for medical use provided that the material is: (a) obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or (b) prepared by an authorized nuclear pharmacist, a physician authorized user who meets the training requirements specified in § 35.920, or an individual under supervision of either, as specified in proposed § 35.25.

(3) The supplier or preparer of unsealed byproduct material for medical use would be specified under this section. A licensee may obtain byproduct material from a manufacturer or a commercial nuclear pharmacy.

(4) This proposed section would allow licensees to use unsealed byproduct material to prepare (including compound) radioactive drugs by physician authorized users who meet § 35.920, authorized nuclear pharmacists, or individuals under their supervision.

(5) This proposed section would also allow an individual under the supervision of a physician authorized user or an authorized nuclear pharmacist to use byproduct material to prepare (including compound) radioactive drugs. The proposed rule language in § 35.25 would require the supervising physician authorized user or authorized nuclear pharmacist to instruct the individual on radiation safety principles and procedures and would require the individual to follow the procedures.

(6) The Commission recognizes that, in the course of patient care or in the conduct of research procedures, it is sometimes necessary to transfer a dosage of a radioactive drug, on a case-by-case basis, from one medical use licensee to another medical use licensee. These case-specific transfers would not be considered commercial transfers by the NRC and, therefore, would not require a part 32 license.

Section 35.900 Radiation Safety Officer

The Commission is proposing to modify this section to recognize the certification in nuclear medicine by the Royal College of Physicians and Surgeons of Canada and in radiation oncology physics by the American Board of Medical Physics.

Section 35.910 Training for Uptake, Dilution, and Excretion Studies

The Commission is proposing, as recommended by the ACMUI, to modify this section to recognize the certification in nuclear medicine by the Royal College of Physicians and Surgeons of Canada.

Section 35.920 Training for Imaging and Localization Studies

The Commission is proposing, as recommended by the ACMUI, to modify this section to recognize the certification in nuclear medicine by the Royal College of Physicians and Surgeons of Canada.

Section 35.930 Training for Therapeutic Use of Unsealed Byproduct Material

The Commission is proposing to amend § 35.930(a)(2) to recognize the

certification in radiation oncology by the American Board of Radiology (ABR). In 1987, the ABR renamed "therapeutic radiology" as "radiation oncology" but the criteria for certification remain the same. Therefore, it is necessary to recognize both certifications.

Section 35.940 Training for Use of Brachytherapy Sources

The Commission is proposing to amend § 35.940(a)(1) to recognize the certification in radiation oncology by the American Board of Radiology (ABR).

Section 35.950 Training for Use of Sealed Sources for Diagnosis

The Commission is proposing to amend § 35.950(a)(1) to recognize the certification in radiation oncology by the American Board of Radiology (ABR) and the certification in nuclear medicine by the Royal College of Physicians and Surgeons of Canada.

Section 35.960 Training for Teletherapy

The Commission is proposing to amend § 35.960(a)(1) to recognize the certification in radiation oncology by the American Board of Radiology (ABR).

Section 35.961 Training for Teletherapy Physicist

The Commission is proposing to modify this section to recognize the certification in radiation oncology physics by the American Board of Medical Physics.

Section 35.972 Recentness of Training

Existing § 35.972 required that an individual's training must have been acquired within the last 5 years. The Board of Pharmaceutical Specialties (BPS) recertifies board certified nuclear pharmacists (BCNP) every 7 years. Based on BPS's 11 years experience with recertification, the Commission is proposing to replace 5 years with 7 years. This action is necessary to achieve consistency for recentness of training requirements among authorized users, Radiation Safety Officers, teletherapy physicists, and authorized nuclear pharmacists. The Commission is requesting public comment on which period (either 5 or 7 years) is more appropriate and the basis for any recommendation.

Section 35.980 Training for Authorized Nuclear Pharmacist

The Commission is proposing to add a new section that would contain specific training requirements for an authorized nuclear pharmacist. This action is necessary because an authorized nuclear pharmacist may be responsible for handling, preparing, and distributing radioactive drugs to multiple medical institutions. Thus, authorized nuclear pharmacists potentially impact the radiological safety of patients or human research subjects at many medical institutions. The effect of these training requirements will provide sufficient assurance that individuals satisfying these training criteria will safely prepare and distribute radioactive drugs.

In this section, the Commission is proposing two methods for an individual to qualify as an authorized nuclear pharmacist:

(1) In paragraph (a), the Commission is proposing to recognize certification by the Board of Pharmaceutical Specialties as a nuclear pharmacist as satisfying the training requirements.

(2) In paragraph (b), in lieu of board certification, an alternative method to qualify for an authorized nuclear pharmacist is proposed. A candidate would be required to: (i) Complete 700 hours in a structured educational program consisting of both didactic training and supervised experience in a nuclear pharmacy, and (ii) obtain a written certification from a preceptor that the candidate has achieved a level of competency sufficient to independently operate a nuclear pharmacy.

Implementation Plan and Agreement State Compatibility

The effective date of this amendment would be 6 months after the publication of the final amendment in the **Federal Register**.

On July 15 and 16, 1992, the NRC held a workshop with representatives of 23 Agreement States to discuss the draft rule language for the proposed rulemaking. The Agreement State participants expressed a clear consensus that this proposed rulemaking be either not an item of compatibility or the lowest level of compatibility possible.

However, because this amendment has safety significance for Agreement State licensees as well as NRC licensees, this proposed amendment would be an item of compatibility for the Agreement States. All definitions contained in §§ 30.4 and 35.2 would be Division 1 items of compatibility. The definitions contained in this rulemaking must be the same for all NRC and Agreement State licensees so that consistency will be maintained.

Additionally, the Commission believes that §§ 32.72, 35.6, 35.22(b)(2), 35.25, 35.50, 35.52, 35.53, 35.920, 35.972 and 35.980 should be Division 2 items of compatibility, because these requirements are necessary to ensure adequate protection of the public health and safety. For example, §§ 35.920 and 35.980 provide the radiation safety training and experience criteria for authorized users and authorized nuclear pharmacists that are important prerequisites for ensuring that byproduct material is handled safely. It should be noted that changing § 35.920 to a Division 2 item of compatibility would impact those authorized users who want to compound radioactive drugs as well as those authorized users who only want to perform imaging procedures currently allowed under § 35.200. The Agreement States would be allowed to establish requirements that are more stringent than NRC's requirements, but not less stringent.

It would be appropriate for Agreement States to adopt the remaining sections of part 35 in this proposed rulemaking, but it is not necessary to require any degree of uniformity between NRC and the States. Therefore, a Division 3 item of compatibility would be appropriate for such sections.

The Commission is currently reevaluating its practices concerning the implementation of the provision in the Atomic Energy Act which provides that the Agreement States' regulatory programs are to be compatible with NRC's. This reevaluation will include early and significant involvement of the Agreement States. At the conclusion of this effort, the Commission will implement generic guidance on the application of compatibility.

For comparison, the existing compatibility levels are as follows: definitions in § 30.4 are Division 1 items of compatibility; § 32.72 is a Division 2 item of compatibility; the definitions associated with the quality management rule and misadministrations in § 35.2 are Division 1 items of compatibility; §§ 35.32 and 35.33 are Division 2 items of compatibility; § 35.8 is a Division 4 item of compatibility; and all other sections of part 35 are Division 3 items of compatibility.

The NRC expects Agreement States to adopt rules required to maintain compatibility within three years after NRC's rules become effective. Some Agreement States, faced with administrative and resource constraints, may find the three year goal difficult to attain and may prefer that NRC extend flexibility in such cases to allow the States to implement the requirements through license conditions. The NRC requests public comment on permitting Agreement States flexibility in this regard, and if permitted, under what conditions.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that the proposed amendments, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. The proposed amendments would provide greater flexibility for physician authorized users to use byproduct material in the practice of medicine. The proposed amendments would also incorporate into the regulations the concept of authorized nuclear pharmacists to permit properly qualified pharmacists to prepare radioactive drugs containing byproduct material in the practice of pharmacy.

The proposed amendments would allow physician authorized users greater discretion to prepare and use radioactive drugs containing byproduct material. The proposed amendments would also allow authorized nuclear pharmacists greater discretion to prepare radioactive drugs containing byproduct material. It is expected that there will be no increase in radiation exposure to the public or to the environment beyond the exposures currently resulting from delivering the byproduct material or radiation from byproduct material to patients or human research subjects. The draft environmental assessment and finding of no significant impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft environmental assessment and the finding of no significant impact are available from Samuel Z. Jones or Anthony N. Tse (see **FOR FURTHER INFORMATION CONTACT** heading).

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The reduction in public burden for this collection of information is estimated to be a savings of 420 hours per year for 300 NRC licensees, or an average 1.4 hours per year per licensee, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0001, -0010, and -0120), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the benefits and impacts considered by the Commission. The draft regulatory analysis is available for inspection at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis are available from Samuel Z. Jones or Anthony N. Tse (see **FOR FURTHER INFORMATION CONTACT** heading).

The Commission requests public comments on the draft regulatory analysis. Comments on the draft regulatory analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that, if adopted, this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect medical use licensees including some private practice physicians. Some of these licensees would be considered small entities under the NRC's size standards (56 FR 56672; November 6, 1991). The proposed amendments would provide greater discretion for physician authorized users to use byproduct material in the practice of medicine. The proposed amendments would also incorporate into the regulations the concept of authorized nuclear pharmacists to allow properly qualified pharmacists greater discretion to prepare (including compound) radioactive drugs containing byproduct material for medical use. This rulemaking, if adopted, would reduce regulatory burdens on medical use licensees, including small entities.

Any small entity subject to this regulation who determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission by a letter that indicates the following:

(a) The licensee's size and how the proposed regulation would result in a significant economic burden or whether the resources necessary to implement this amendment could be more effectively used in other ways to optimize the safety of patients or human research subjects, as compared to the economic burden on a larger licensee;

(b) How the proposed regulation could be modified to take into account the licensee's differing needs or capabilities;

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulation were modified as suggested by the licensee;

(d) How the proposed regulation, as modified, could more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group;

(e) How the proposed regulation, as modified, would still adequately protect the public health and safety.

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed amendment because this amendment does not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1). Therefore, a backfit analysis is not required for this proposed amendment.

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalty, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 32

Byproduct material, Labeling, Nuclear materials, Criminal penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 35

Byproduct material, Criminal penalty, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the

Commission is proposing to adopt the following amendments to 10 CFR parts 30, 32, and 35.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.4, the definition of *medical use* is revised to read as follows:

§ 30.4 Definitions.

* * * * *

Medical use means the intentional internal or external administration of byproduct material or the radiation therefrom to patients or human research subjects under the supervision of an authorized user.

* * * * *

3. In § 30.8, paragraphs (b) and (c) are revised to read as follows:

§ 30.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 30.9, 30.11, 30.15, 30.19, 30.20, 30.32, 30.34, 30.35, 30.36, 30.37, 30.38, 30.41, 30.50, 30.51, 30.55, and Appendix A.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In §§ 30.32, 30.37, and 30.38, NRC Form 313 is approved under control number 3150–0120.

(2) In § 30.36, NRC Form 314 is approved under control number 3150–0028.

§ 30.34 [Amended]

4. Section 30.34 is amended by removing paragraph (i).

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

5. The authority citation for part 32 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

6. In § 32.8, paragraphs (b) and (c) are revised to read as follows:

§ 32.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 32.12, 32.14, 32.15, 32.16, 32.17, 32.18, 32.19, 32.20, 32.22, 32.25, 32.26, 32.29, 32.51, 32.51a, 32.52, 32.53, 32.54, 32.56, 32.57, 32.58, 32.61, 32.70, 32.71, 32.72, and 32.74.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In § 32.11, NRC Form 313 is approved under control number 3150–0120.

(2) [Reserved]

7. Section 32.72 is revised to read as follows:

§ 32.72 Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing byproduct material for medical use under part 35.

(a) An application for a specific license to manufacture, prepare, or transfer for commercial distribution radioactive drugs containing byproduct material for use by persons authorized pursuant to part 35 of this chapter will be approved if:

(1) The applicant satisfies the general requirements specified in 10 CFR 30.33;

(2) The applicant submits evidence that the applicant is at least one of the following:

(i) Registered or licensed with the U.S. Food and Drug Administration (FDA) as a drug manufacturer;

(ii) Registered or licensed with a state agency as a drug manufacturer;

(iii) Licensed as a pharmacy by a State Board of Pharmacy; or

(iv) Operating as a nuclear pharmacy within a Federal medical institution.

(3) The applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(4) A label is affixed to each container of a radioactive drug to be transferred for commercial distribution. The label must include the name of the radioactive drug or its abbreviation, quantity of radioactivity, and date and time of assay. In addition, the label for the syringe or syringe radiation shield must also contain the clinical procedure to be performed or the patient's or the human research subject's name. Furthermore, the label, or the leaflet or brochure that accompanies the radioactive drug must contain a statement that the U.S. Nuclear Regulatory Commission has approved distribution of the byproduct material to persons licensed to use byproduct material pursuant to 10 CFR 35.100, 35.200, or 35.300, as appropriate, and to persons who hold an equivalent license issued by an Agreement State. The label, or the leaflet or brochure must also note that other regulatory approvals may be required. NRC's labeling requirements are independent of requirements of the U.S. Food and Drug Administration (FDA).

(b) (1) A licensee described by paragraph (a)(2)(iii) or (iv) of this section may prepare radioactive drugs for medical use, as defined in 10 CFR 35.2, provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as defined in 10 CFR 35.2, or an individual under the supervision of an authorized nuclear pharmacist as specified in 10 CFR 35.25.

(2) In addition, for purposes of this section, an *authorized nuclear pharmacist* is a pharmacist who is currently licensed or registered by a state to practice pharmacy and designated, as of the effective date of the final rule, as an "authorized user" on a nuclear pharmacy license issued by the Commission under this part.

(3) A licensee shall provide to the Commission a copy of the individual's board certification, the license, or the permit, and the state pharmacy licensure or registration, respectively, for each individual within 30 days of the date that the licensee permits, pursuant to this section, the individual to work as an authorized nuclear pharmacist.

(c) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity

in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(1) Perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(2) Check each instrument for constancy and proper operation at the beginning of each day of use.

(d) Nothing in this section relieves the licensee from complying with applicable FDA, other Federal, and State requirements governing radioactive drugs.

§ 32.73 [Removed]

8. Section 32.73 is removed.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

9. The authority citation for part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

10. In § 35.2, the definitions of *authorized nuclear pharmacist* and *pharmacist* are added and the definitions of *authorized user, medical use*, paragraphs (1)(i), (2)(i), (3)(i), (4)(i), (5)(i), (6)(i), and (6)(ii) of the definition of *misadministration;* and the introductory sentence of the definition of *written directive* are revised to read as follows:

§ 35.2 Definitions.

* * * * *

Authorized nuclear pharmacist means a pharmacist who is:

(1) Currently board certified as a nuclear pharmacist by the Board of Pharmaceutical Specialties;

(2) Identified as an authorized nuclear pharmacist on a Commission or Agreement State license that authorizes the use of byproduct material in the practice of nuclear pharmacy; or

(3) Identified as an authorized nuclear pharmacist on a permit issued by a Commission or Agreement State specific licensee of broad scope that is authorized to permit the use of byproduct material in the practice of nuclear pharmacy.

Authorized user means a physician, dentist, or podiatrist who is:

(1) Board certified by at least one of the boards listed in paragraph (a) of §§ 35.910, 35.920, 35.930, 35.940, 35.950, or 35.960;

(2) Identified as an authorized user on a Commission or Agreement State license that authorizes the medical use of byproduct material; or

(3) Identified as an authorized user on a permit issued by a Commission or Agreement State specific licensee of broad scope that is authorized to permit the medical use of byproduct material.

* * * * *

Medical use means the intentional internal or external administration of byproduct material or the radiation therefrom to patients or human research subjects under the supervision of an authorized user.

* * * * *

Misadministration means the administration of:

(1) * * *

(i) Involving the wrong patient or human research subject, or wrong radiopharmaceutical; or

* * * * *

(2) * * *

(i) Involving the wrong patient or human research subject, wrong radiopharmaceutical, or wrong route of administration; or

* * * * *

(3) * * *

(i) Involving the wrong patient or human research subject, or wrong treatment site; or

* * * * *

(4) * * *

(i) Involving the wrong patient or human research subject, wrong mode of treatment, or wrong treatment site;

* * * * *

(5) * * *

(i) Involving the wrong patient or human research subject, wrong radioisotope, or wrong treatment site (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site);

* * * * *

(6) * * *

(i) Involving the wrong patient or human research subject, wrong radiopharmaceutical, wrong route of administration, or when the administered dosage differs from the prescribed dosage; and

(ii) When the dose to the patient or human research subject exceeds 5 rems effective dose equivalent or 50 rems dose equivalent to any individual organ.

* * * * *

Pharmacist means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice pharmacy.

* * * * *

Written directive means an order in writing for a specific patient or human research subject, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation, except as specified in paragraph (6) of this definition, containing the following information:

* * * * *

11. Section 35.6 is added to read as follows:

§ 35.6 Provisions for research involving human subjects.

A licensee may conduct research involving human subjects using byproduct material provided that the research is conducted, funded, supported, or regulated by another Federal Agency which has implemented the Federal Policy for the Protection of Human Subjects. Otherwise, a licensee shall apply for and receive approval of a specific amendment to its NRC license before conducting such research. Both types of licensees shall, at a minimum, obtain informed consent from the human subjects and obtain prior review and approval of the research activities by an "Institutional Review Board."

12. Section 35.7 is added to read as follows:

§ 35.7 FDA, other Federal, and State requirements.

Nothing in this part relieves the licensee from complying with applicable FDA, other Federal, and State requirements governing radioactive drugs or devices.

§ 35.8 [Amended]

13. In § 35.8, paragraph (b) is revised to read as follows:

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 35.6, 35.12, 35.13, 35.14, 35.21, 35.22, 35.23, 35.29, 35.31, 35.50, 35.51, 35.52, 35.53, 35.59, 35.60, 35.61, 35.70, 35.80, 35.92, 35.204, 35.205, 35.310, 35.315, 35.404, 35.406, 35.410, 35.415, 35.606, 35.615, 35.630, 35.632, 35.634, 35.636, 35.641, 35.643, 35.645, 35.647, and 35.960.

* * * * *

14. In § 35.11, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 35.11 License required.

(a) A person shall not manufacture, produce, acquire, receive, possess, use, or transfer byproduct material for medical use except in accordance with a specific license issued by the Commission or an Agreement State, or as allowed in paragraphs (b) or (c) of this section.

* * * * *

(c) An individual may prepare unsealed byproduct material for medical use in accordance with the regulations in this chapter under the supervision of an authorized nuclear pharmacist or authorized user as provided in § 35.25, unless prohibited by license condition.

15. In § 35.12, paragraph (e) is added to read as follows:

§ 35.12 Application for license, amendment, or renewal.

* * * * *

(e) An applicant that satisfies the requirements specified in 10 CFR 33.13 may apply for a Type A specific license of broad scope.

16. In § 35.13, paragraph (b) is revised to read as follows:

§ 35.13 License amendments.

* * * * *

(b) Before it permits anyone to work as an authorized user or authorized nuclear pharmacist under the license, except an individual who is:

(1) An authorized user certified by the organizations specified in paragraph (a) of §§ 35.910, 35.920, 35.930, 35.940, 35.950, or 35.960;

(2) An authorized nuclear pharmacist certified by the organization specified in paragraph (a) of § 35.980;

(3) Identified as an authorized user or an authorized nuclear pharmacist on a Commission or Agreement State license that authorizes the use of byproduct material in medical use or in the practice of nuclear pharmacy, respectively; or

(4) Identified as an authorized user or an authorized nuclear pharmacist on a permit issued by a Commission or Agreement State specific licensee of broad scope that is authorized to permit the use of byproduct material in medical use or in the practice of nuclear pharmacy, respectively.

* * * * *

17. Section 35.14 is revised to read as follows:

§ 35.14 Notifications.

(a) A licensee shall provide to the Commission a copy of the board certification, the license, or the permit for each individual within 30 days of the date that the licensee permits the individual to work as an authorized user or an authorized nuclear pharmacist pursuant to § 35.13(b)(1) through (b)(4).

(b) A licensee shall notify the Commission by letter within 30 days when:

(1) An authorized user, an authorized nuclear pharmacist, Radiation Safety Officer, or teletherapy physicist permanently discontinues performance of duties under the license or has a name change; or

(2) The licensee's mailing address changes.

(c) The licensee shall mail the documents required in this section to the appropriate address identified in § 30.6 of this chapter.

18. Section 35.15 is added to read as follows:

§ 35.15 Exemptions regarding Type A specific licenses of broad scope.

A licensee possessing a Type A specific license of broad scope for medical use is exempt from the following:

(a) The provisions of § 35.13(b);

(b) The provisions of § 35.13(e) regarding additions to or changes in the areas of use only at the addresses specified in the license;

(c) The provisions of § 35.14(a); and

(d) The provisions of § 35.14(b)(1) for an authorized user or an authorized nuclear pharmacist.

19. In § 35.22, paragraph (b)(2) is revised to read as follows:

§ 35.22 Radiation Safety Committee.

* * * * *

(b) * * *

(2)(i) Review, on the basis of safety and with regard to the training and experience standards in subpart J of this part, and approve or disapprove any individual who is to be listed as an authorized user, an authorized nuclear pharmacist, the Radiation Safety Officer, or a teletherapy physicist before submitting a license application or request for amendment or renewal; or

(ii) Review, pursuant to § 35.13(b)(1) through (b)(4), on the basis of the board certification, the license, or the permit identifying an individual, and approve or disapprove any individual prior to allowing that individual to work as an authorized user or authorized nuclear pharmacist;

* * * * *

20. In § 35.25, paragraph (b) is redesignated as paragraph (c) and a new paragraph (b) is added to read as follows.

§ 35.25 Supervision.

* * * * *

(b) A licensee that permits the preparation of byproduct material for medical use by an individual under the supervision of an authorized nuclear pharmacist or physician who is an authorized user, as allowed by § 35.11(c), shall require the supervising authorized nuclear pharmacist or physician who is an authorized user to:

(1) Instruct the supervised individual in the preparation of byproduct material for medical use and the principles of and procedures for radiation safety and in the licensee's written quality management program, as appropriate to that individual's use of byproduct material;

(2) Require the supervised individual to follow the instructions given pursuant to paragraph (b)(1) of this section and to comply with the regulations of this chapter and license conditions; and

(3) Periodically review the work of the supervised individual as it pertains to preparing byproduct material for medical use and the records kept to reflect that work.

* * * * *

§ 35.27 [Removed]

21. Section 35.27 is removed.

22. In § 35.32, paragraphs (a)(2) and (b)(1)(i) are revised to read as follows:

§ 35.32 Quality management program.

(a) * * *

(2) That, prior to each administration, the patient's or human research subject's identity is verified by more than one method as the individual named in the written directive;

* * * * *

(b) * * *

(1) * * *

(i) A representative sample of patient and human research subject administrations,

* * * * *

23. In § 35.33, paragraphs (a)(2), (a)(3), (a)(4), (b), and (c) are revised to read as follows:

§ 35.33 Notifications, reports, and records of misadministrations.

(a) * * *

(2) The licensee shall submit a written report to the appropriate NRC Regional Office listed in 10 CFR 30.6 within 15 days after discovery of the misadministration. The written report must include the licensee's name; the prescribing physician's name; a brief description of the event; why the event occurred; the effect on the patient or the human research subject; what improvements are needed to prevent recurrence; actions taken to prevent recurrence; whether the licensee notified the patient or the human research subject (or either individual's responsible relative or guardian), and if not, why not, and if the patient or the human research subject (or either individual's responsible relative or guardian) was notified, what information was provided to that individual. The report must not include the patient's or the human research subject's name or other information that could lead to identification of the patient or the human research subject.

(3) The licensee shall notify both the referring physician and the patient or the human research subject (or the patient's or the human research subject's responsible relative or guardian), of the misadministration no later than 24 hours after its discovery, unless the referring physician personally informs the licensee either that he will inform the patient or the human research subject (or either individual's responsible relative or guardian) or that, based on medical judgment, telling the patient or the human research subject (or either individual's responsible relative or guardian) would be harmful to the patient or the human research subject. The licensee is not required to notify the patient or the human research subject (or either individual's responsible relative or guardian) without first consulting the referring physician. If the referring physician or the patient or the human research subject (or the patient's or the human research subject's responsible relative or guardian) cannot be reached within 24 hours, the licensee shall notify the patient or the human research subject (or either individual's responsible relative or guardian) as soon as possible thereafter. The licensee may not delay any appropriate medical care for the patient or the human research subject, including any necessary remedial care as a result of the misadministration, because of any delay in notification.

(4) If the patient or the human research subject (or either individual's responsible relative or guardian) was notified, the licensee shall also furnish, within 15 days after discovery of the misadministration, a written report to the patient or the human research subject (or either individual's responsible relative or guardian) by sending either:

(i) A copy of the report that was submitted to the NRC; or

(ii) A brief description of both the event and the consequences as they may affect the patient or the human research subject, provided a statement is included that the report submitted to the NRC can be obtained from the licensee.

(b) Each licensee shall retain a record of each misadministration for five years. The record must contain the names of all individuals involved (including the prescribing physician, allied health personnel, the patient or the human research subject, and the patient's or human research subject's referring physician), the patient's or the human research subject's social security number or identification number if one has been assigned, a brief description of the misadministration, why it occurred, the effect on the patient or the human research subject, what improvements are needed to prevent recurrence, and the actions taken to prevent recurrence.

(c) Aside from the notification requirement, nothing in this section affects any rights or duties of licensees and physicians in relation to each other, patients or human research subjects (or either individual's responsible relative or guardian).

24. Section 35.49 is revised to read as follows:

§ 35.49 Suppliers for sealed sources or devices for medical use.

A licensee may use for medical use only:

(a) Sealed sources or devices manufactured, labeled, packaged, and distributed in accordance with a license issued pursuant to 10 CFR part 30 and § 32.74 or the equivalent regulations of an Agreement State; or

(b) Teletherapy sources manufactured and distributed in accordance with a license issued pursuant to 10 CFR part 30 or the equivalent regulations of an Agreement State.

25. In § 35.50, paragraphs (a), (b)(3), and (e)(2) through (e)(4) are revised to read as follows:

§ 35.50 Possession, use, calibration, and check of dose calibrators.

(a) A licensee shall possess and use a dose calibrator to measure the activity of dosages of photon-emitting radionuclides prior to administration to each patient or human research subject.

(b) * * *

(3) Test each dose calibrator for linearity upon installation and at least quarterly thereafter over the range of its use between the highest dosage that will be administered to a patient or human research subject and 1.1 megabecquerels (30 microcuries); and

* * * * *

(e) * * *

(2) For paragraph (b)(2) of this section, the model and serial number of the dose calibrator, the model and serial number of each source used, the identity of the radionuclide contained in the source and its activity, the date of the test, the results of the test, and the identity of the individual performing the test.

(3) For paragraph (b)(3) of this section, the model and serial number of the dose calibrator, the calculated activities, the measured activities, the date of the test, and the identity of the individual performing the test.

(4) For paragraph (b)(4) of this section, the model and serial number of the dose calibrator, the configuration of the source measured, the activity measured for each volume measured, the date of the test, and the identity of the individual performing the test.

26. Section 35.52 is added to read as follows:

§ 35.52 Possession, use, calibration, and check of instruments to measure dosages of alpha- or beta-emitting radionuclides.

(a) This section does not apply to unit dosages of alpha- or beta-emitting radionuclides that are obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or equivalent Agreement State requirements.

(b) For other than unit dosages obtained pursuant to paragraph (a) of this section, a licensee shall possess and use instrumentation to measure the radioactivity of alpha- or beta-emitting radionuclides. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha- or beta-emitting radionuclides prior to administration to each patient or human research subject. In addition, the licensee shall:

(1) Perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(2) Check each instrument for constancy and proper operation at the beginning of each day of use.

27. In § 35.53, the section heading and paragraphs (a), (b), (c)(2), and (c)(3) are revised as follows:

§ 35.53 Measurement of dosages of unsealed byproduct material for medical use.

* * * * *

(a) Measure the activity of each dosage of a photon-emitting radionuclide prior to medical use.

(b) Measure, by direct measurement or by combination of measurements and calculations, the activity of each dosage of an alpha- or beta-emitting radionuclide prior to medical use, except for unit dosages obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or equivalent Agreement State requirements;

(c) * * *

(2) Patient's or human research subject's name, and identification number if one has been assigned;

(3) Prescribed dosage and activity of the dosage at the time of measurement, or a notation that the total activity is less than 1.1 megabecquerels (30 microcuries);

* * * * *

28. In § 35.60, paragraphs (b) and (c) are revised to read as follows:

§ 35.60 Syringe shields and labels.

* * * * *

(b) To identify its contents, a licensee shall conspicuously label each syringe, or syringe radiation shield that contains a syringe with a radiopharmaceutical. The label must show the radiopharmaceutical name or its abbreviation, the clinical procedure to be performed, or the patient's or the human research subject's name.

(c) A licensee shall require each individual who prepares a radiopharmaceutical kit to use a syringe radiation shield when preparing the kit and shall require each individual to use a syringe radiation shield when administering a radiopharmaceutical by injection unless the use of the shield is contraindicated for that patient or human research subject.

29. Section 35.75 is revised to read as follows:

§ 35.75 Release of patients or human research subjects containing radiopharmaceuticals or permanent implants.

(a) A licensee may not authorize release from confinement for medical care any patient or human research subject administered a radiopharmaceutical until either:

(1) The measured dose rate from the patient or the human research subject is less than 5 millirems per hour at a distance of one meter; or

(2) The activity in the patient or the human research subject is less than 30 millicuries.

(b) A licensee may not authorize release from confinement for medical care of any patient or human research subject administered a permanent implant until the measured dose rate from the patient or the human research subject is less than 5 millirems per hour at a distance of one meter.

30. Section 35.100 is revised to read as follows:

§ 35.100 Use of unsealed byproduct material for uptake, dilution, and excretion studies.

A licensee may use for uptake, dilution, or excretion studies any unsealed byproduct material prepared for medical use that is either:

(a) Obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or equivalent Agreement State requirements; or

(b) Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in § 35.920, or an individual under the supervision of either as specified in § 35.25.

31. Section 35.200 is revised to read as follows:

§ 35.200 Use of unsealed byproduct material for imaging and localization studies.

A licensee may use for imaging and localization studies any unsealed byproduct material prepared for medical use that is either:

(a) Obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or equivalent Agreement State requirements; or

(b) Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in § 35.920, or an individual under the supervision of either as specified in § 35.25.

32. Section 35.300 is revised to read as follows:

§ 35.300 Use of unsealed byproduct material for therapeutic administration.

A licensee may use for therapeutic administration any unsealed byproduct material prepared for medical use that is either:

(a) Obtained from a manufacturer or preparer licensed pursuant to 10 CFR 32.72 or equivalent Agreement State requirements; or

(b) Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in § 35.920, or an individual under the supervision of either as specified in § 35.25.

33. In § 35.310, the introductory text of paragraph (a), and paragraphs (a)(1) and (a)(5) are revised to read as follows:

§ 35.310 Safety instruction.

(a) A licensee shall provide radiation safety instruction for all personnel caring for the patient or the human research subject receiving radiopharmaceutical therapy and hospitalized for compliance with § 35.75 of this chapter. To satisfy this requirement, the instruction must describe the licensee's procedures for:

(1) Patient or human research subject control;

* * * * *

(5) Notification of the Radiation Safety Officer in case of the patient's or the human research subject's death or medical emergency.

* * * * *

34. In § 35.315, the introductory text of paragraph (a), and paragraphs (a)(2), (a)(3), (a)(5), (a)(6), (a)(7), and (b) are revised to read as follows:

§ 35.315 Safety precautions.

(a) For each patient or human research subject receiving radiopharmaceutical therapy and hospitalized for compliance with § 35.75 of this chapter, a licensee shall:

* * * * *

(2) Post the patient's or the human research subject's door with a "Radioactive Materials" sign and note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or the human research subject's room;

(3) Authorize visits by individuals under age 18 only on a case-by-case basis with the approval of the authorized user after consultation with the Radiation Safety Officer;

* * * * *

(5) Either monitor material and items removed from the patient's or the human research subject's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle them as radioactive waste.

(6) Provide the patient or the human research subject with radiation safety guidance that will help to keep radiation dose to household members and the public as low as reasonably achievable before authorizing release of the patient or the human research subject.

(7) Survey the patient's or the human research subject's room and private sanitary facility for removable contamination with a radiation detection survey instrument before assigning another patient or human research subject to the room. The room must not be reassigned until removable contamination is less than 200 disintegrations per minute per 100 square centimeters; and

* * * * *

(b) A licensee shall notify the Radiation Safety Officer immediately if the patient or the human research subject dies or has a medical emergency.

35. Section 35.404 is revised to read as follows:

§ 35.404 Release of patients or human research subjects treated with temporary implants.

(a) Immediately after removing the last temporary implant source from a patient or a human research subject, the licensee shall make a radiation survey of the patient or the human research subject with a radiation detection survey instrument to confirm that all sources have been removed. The

licensee may not release from confinement for medical care a patient or a human research subject treated by temporary implant until all sources have been removed.

(b) A licensee shall retain a record of patient or human research subject surveys for three years. Each record must include the date of the survey, the name of the patient or the human research subject, the dose rate from the patient or the human research subject expressed as millirem per hour and measured at one meter from the patient or the human research subject, the survey instrument used, and the initials of the individual who made the survey.

36. In § 35.406, paragraphs (a), (b), and (c) are revised to read as follows:

§ 35.406 Brachytherapy sources inventory.

(a) Promptly after removing them from a patient or a human research subject, a licensee shall return brachytherapy sources to the storage area, and count the number returned to ensure that all sources taken from the storage area have been returned.

(b) A licensee shall make a record of brachytherapy source use which must include:

(1) The names of the individuals permitted to handle the sources;

(2) The number and activity of sources removed from storage, the patient's or the human research subject's name and room number, the time and date they were removed from storage, the number and activity of the sources in storage after the removal, and the initials of the individual who removed the sources from storage;

(3) The number and activity of sources returned to storage, the patient's or the human research subject's name and room number, the time and date they were returned to storage, the number and activity of sources in storage after the return, and the initials of the individual who returned the sources to storage.

(c) Immediately after implanting sources in a patient or a human research subject the licensee shall make a radiation survey of the patient or the human research subject and the area of use to confirm that no sources have been misplaced. The licensee shall make a record of each survey.

* * * * * *

37. In 35.410, the introductory text of paragraph (a), and paragraphs (a)(3) and (a)(5) are revised to read as follows:

§ 35.410 Safety instruction.

(a) The licensee shall provide radiation safety instruction to all personnel caring for the patient or the human research subject undergoing implant therapy. To satisfy this requirement, the instruction must describe:

* * * * *

(3) Procedures for patient or human research subject control;

* * * * *

(5) Procedures for notification of the Radiation Safety Officer if the patient or the human research subject dies or has a medical emergency.

* * * * *

38. In § 35.415, the introductory text of paragraph (a), and paragraphs (a)(1), (a)(2), (a)(3), (a)(5) and (b) are revised to read as follows:

§ 35.415 Safety precautions.

(a) For each patient or human research subject receiving implant therapy, a licensee shall:

(1) Not quarter the patient or the human research subject in the same room with an individual who is not receiving radiation therapy unless the licensee can demonstrate compliance with the requirements of § 20.105(b) or, for licensees implementing the provisions of §§ 20.1001 through 20.2401, § 20.1301(a) of this chapter at a distance of one meter from the implant;

(2) Post the patient's or human research subject's door with a "Radioactive Materials" sign and note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room;

(3) Authorize visits by individuals under age 18 only on a case-by-case basis with the approval of the authorized user after consultation with the Radiation Safety Officer; and

* * * * *

(5) Provide the patient or the human research subject with radiation safety guidance that will help to keep radiation dose to household members and the public as low as reasonably achievable before releasing the individual if the individual was administered a permanent implant.

(b) A licensee shall notify the Radiation Safety Officer immediately if the patient or the human research subject dies or has a medical emergency.

39. In § 35.610, paragraph (a)(1) is revised to read as follows:

§ 35.610 Safety instruction.

(a) * * *

(1) The procedure to be followed to ensure that only the patient or the human research subject is in the treatment room before turning the primary beam of radiation on to begin a treatment or after a door interlock interruption;

* * * * *

40. In § 35.615, paragraphs (d)(3) and (e) are revised to read as follows:

§ 35.615 Safety precautions.

* * * * *

(d) * * *

(3) A radiation monitor must be checked with a dedicated check source for proper operation each day before the teletherapy unit is used for treatment of patients or human research subjects.

* * * * *

(e) A licensee shall construct or equip each teletherapy room to permit continuous observation of the patient or the human research subject from the teletherapy unit console during irradiation.

41. In § 35.900, paragraphs (a)(6) and (a)(7) are added to read as follows:

§ 35.900 Radiation Safety Officer.

* * * * *

(a) * * *

(6) American Board of Medical Physics in radiation oncology physics; or

(7) Royal College of Physicians and Surgeons of Canada in Nuclear Medicine; or

* * * * *

42. In § 35.910, paragraph (a)(4) is added and paragraphs (b)(2)(i), (b)(2)(iii), and (b)(2)(v) are revised to read as follows:

§ 35.910 Training for uptake, dilution, and excretion studies.

* * * * *

(a) * * *

(4) Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(b) * * *

(2) * * *

(i) Examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

* * * * *

(iii) Administering dosages to patients or human research subjects and using syringe radiation shields;

* * * * *

(v) Patient or human research subject followup; or

* * * * *

43. In § 35.920, paragraph (a)(4) is added and paragraphs (b)(2)(iii), (b)(3)(i), (b)(3)(iii), and (b)(3)(v) are revised to read as follows:

§ 35.920 Training for imaging and localization studies.

* * * * *

(a) * * *

(4) Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(b) * * *

(2) * * *

(iii) Calculating and safely preparing patient or human research subject dosages;

* * * * *

(3) * * *

(i) Examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

* * * * *

(iii) Administering dosages to patients or human research subjects and using syringe radiation shields;

* * * * *

(v) Patient or human research subject followup; or

* * * * *

44. In § 35.930, the section heading and paragraph (a)(2) are revised to read as follows:

§ 35.930 Training for therapeutic use of unsealed byproduct material.

* * * * *

(a) * * *

(2) The American Board of Radiology in radiology, therapeutic radiology, or radiation oncology; or

* * * * *

45. In § 35.940, paragraph (a)(1) is revised to read as follows:

§ 35.940 Training for use of brachytherapy sources.

* * * * *

(a) * * *

(1) Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

* * * * *

46. In § 35.950, paragraph (a)(1) is revised and (a)(4) is added to read as follows:

§ 35.950 Training for use of sealed sources for diagnosis.

* * * * *

(a) * * *

(1) Radiology, diagnostic radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

* * * * *

(4) Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

* * * * *

47. In § 35.960, paragraphs (a)(1) and (b)(3)(iii) are revised to read as follows:

§ 35.960 Training for teletherapy.

* * * * *

(a) * * *

(1) Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

(b) * * *

(3) * * *

(iii) Calculating the teletherapy doses and collaborating with the authorized user in the review of patients' or human research subjects' progress and consideration of the need to modify originally prescribed doses as warranted by patients' or human research subjects' reaction to radiation; and

* * * * *

48. In § 35.961, paragraph (b) is redesignated as paragraph (c) and a new paragraph (b) is added to read as follows:

§ 35.961 Training for teletherapy physicist.

* * * * *

(b) Is certified by the American Board of Medical Physics in radiation oncology physics; or

* * * * *

49. Section 35.972 is revised to read as follows:

§ 35.972 Recentness of training.

The training and experience specified in this subpart must have been obtained within the seven years preceding the date of application or the individual must have had related continuing education and experience since the required training and experience was completed.

50. Section 35.980 is added to subpart J to read as follows:

§ 35.980 Training for an authorized nuclear pharmacist.

The licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

(a) Has current board certification as a nuclear pharmacist by the Board of Pharmaceutical Specialties, or

(b)(1) Has completed 700 hours in a structured educational program consisting of both:

(i) Didactic training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Chemistry of byproduct material for medical use; and

(E) Radiation biology; and

(ii) Supervised experience in a nuclear pharmacy involving the following:

(A) Shipping, receiving, and performing related radiation surveys;

(B) Using and performing checks for proper operation of dose calibrators, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

(C) Calculating, assaying, and safely preparing dosages for patients or human research subjects;

(D) Using administrative controls to avoid mistakes in the administration of byproduct material;

(E) Using procedures to prevent or minimize contamination and using proper decontamination procedures; and

(2) Has obtained written certification, signed by a preceptor authorized nuclear pharmacist, that the above training has been satisfactorily completed and that the individual has achieved a level of competency sufficient to independently operate a nuclear pharmacy.

Dated at Rockville, Maryland, this 10th day of June, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–14152 Filed 6–16–93; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 218

RIN 1010–AB83

Interest Rate Applicable to Late Payment or Underpayment of Monies Due on Solid Minerals and Geothermal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing to amend its Royalty Management Program (RMP) regulations governing the rate of interest charged to lessees and other royalty payors on late or underpayment of monies due to the Federal Government on solid minerals and geothermal leases. This amendment would provide consistency between all mineral leases since the same interest rate will be used for late or underpayment of monies due for all mineral leases. The interest rate used for solid minerals and geothermal leases is currently prescribed by the Department of the Treasury (Treasury) as the "Treasury Current Value of Funds Rate" and would be changed to reference section 6621 of the Internal Revenue Code of 1954 for the applicable interest rate.

DATES: Written comments must be received on or before August 16, 1993.

ADDRESSES: Written comments regarding the proposed rule should be mailed or delivered to the Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, Denver Federal Center, P.O. Box 25165, Mail Stop 3901, Denver, Colorado 80225–0165, Attention: David S. Guzy.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, (303) 231–3432.

SUPPLEMENTARY INFORMATION: The principal author of this proposed rulemaking is Dennis C. Whitcomb, Audit Division, RMP, MMS.

I. Background

The rate of interest charged to lessees and payors on late or underpayment of monies due to the Federal Government on solid minerals and geothermal leases is established under regulations at 30 CFR 218.202 and 218.302. These regulations were promulgated under the Secretary of the Interior's plenary authority to establish necessary and appropriate rules pursuant to the Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.) and the Geothermal Steam Act of 1970 (30 U.S.C. 1001, et seq.) The regulations established a uniform method for calculating late payment or underpayment charges applicable to all onshore and offshore Federal and Indian oil and gas, solid minerals, and geothermal leases. Under the existing regulations, in the absence of a lease or contract provision specifying a different interest rate, the Treasury's Current Value of Funds Rate is applied to late or underpaid royalty revenues on the simple interest method.

With enactment of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1721, on January 13, 1983, MMS implemented a new method to calculate late payment or underpayment charges for oil and gas leases. Sections 111 (a), (b), and (d) of FOGRMA provide that interest shall be "at the rate applicable" under section 6621 of the Internal Revenue Code of 1954, 26 U.S.C. 6621. Section 6621 establishes the rate of interest which must be applied to late or underpayment of taxes under 26 U.S.C. 6601(a).

The FOGRMA legislative history (H.R. Rep. No. 859, 97th Cong., 2d Sess. 36 (1982)), reprinted in 1982 U.S. Code, Congressional & Administrative News, 4268, 4290) provides the following reason for using the rate from the Internal Revenue Code:

> Imposition of such high penalties against those owing money to the United States is to remove the incentives such persons may have to hold the money owed and invest it rather than pay it on time to the MMS.

The inconsistency in late payment or underpayment charges between oil and gas leases versus solid minerals and geothermal leases was recently reported by the Department of the Interior's (Department) Office of Inspector General (OIG) to MMS. The OIG concluded that MMS:

> * * * Had not established an effective deterrent to discourage delinquent payments of royalties for solid minerals such as coal and for geothermal leases. Although MMS charges for delinquent oil and gas lease payments based on a daily compounding interest rate, MMS allows late payment charges on solid minerals and geothermal leases to be calculated using a low, noncompounding simple interest rate (the Current Value of Funds Rate). the **Code of Federal Regulations** (4 CFR 102.13 (c)) states that an agency has the authority to assess a higher rate (than the Current Value of Funds Rate) if it determines that higher rate is necessary to protect the interests of the United States. The MMS did not increase the interest charges because it did not correctly evaluate the dollar impact of charging the lower rate. As a result, MMS continues to experience a high level of delinquent payments * * * MMS adopted the Internal Revenue Service's interest rate in the Federal Oil and Gas Royalty Management Act of 1982 to deter delinquent payment of oil and gas royalties by charging an above-market daily compounding interest rate. In our opinion, the current method of calculating late charges for delinquencies on solid minerals and geothermal payments serves as an incentive for companies to underpay royalties, as well as to delay royalty payments.

The OIG report recommended that MMS amend the provisions of 30 CFR part 218 to change the method of calculating late payment and underpayment charges for solid minerals and geothermal leases by using the same rates and methodology used for oil and gas leases. The MMS believes consistency for late payment and underpayment charges for all mineral leases at the rate applicable under section 6621 of the Internal Revenue Code of 1954 is appropriate and would serve as an effective deterrent to discourage delinquent payments.

II. Discussion of Proposed Rule

As noted above, Congress intended that late and underpayment charges act and an incentive to royalty payors to make required payments timely. This intent was to be fulfilled by adopting a higher interest rate that would encourage prompt payment. The interest rate adopted in FOGRMA for oil and gas leases was based on the rate established in section 6621 of the Internal Revenue Code of 1954 and was codified in the implementing regulations at 30 CFR 218.54. The MMS believes that there should be an effective incentive to pay royalties on a timely basis for mineral leases for all products and is therefore proposing to amend 30 CFR 218.202 and 218.302 to adopt, for solid minerals and geothermal leases respectively, the language applied under 30 CFR 218.54 to oil and gas leases. Accordingly, the same interest rate in 30 CFR 218.54 pertaining to oil and gas leases is proposed for 30 CFR 218.202 and 218.302 for solid minerals and geothermal leases.

The policy of the Department is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the location identified in the **ADDRESSES** section of this preamble. Comments must be received on or before the date identified in the **DATES** section of this preamble.

Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department has determined that this document is not a major rule under E.O.12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The proposed rule is necessary to provide consistency in the existing regulations in applying the same interest rate for late payment or underpayment of monies due on solid minerals, geothermal, and oil and gas mineral leases.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference With Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of

Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to paragraph (2)(C) of Section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR part 218

Coal, Continental shelf, Electronic funds transfer, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: April 12, 1993.

Michael Dombeck,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 218 is proposed to be amended as set forth below:

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for part 218 is revised to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 3716; 31 U.S.C. 3720A; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Paragraphs (c) and (d) of § 218.202 under subpart E, Solid Minerals—General, are revised to read as follows:

§ 218.202 Late payment or underpayment charges:

* * * * * * *

(c) The interest charge on late payments shall be at the underpayment rate established by the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (Supp. 1987).

(d) Interest will be charged only on the amount of the payment not received by the designated due date. Interest will be charged only for the number of days the payment is late.

* * * * *

3. Paragraphs (c) and (d) of § 218.302 under subpart F, Geothermal Resources, are revised to read as follows:

§ 218.302 Late payment or underpayment charges.

* * * * *

(c) The interest charge on late payments shall be at the underpayment rate established by the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (Supp. 1987).

(d) Interest will be charged only on the amount of the payment not received by the designated due date. Interest will be charged only for the number of days the payment is late.

* * * * *

[FR Doc. 93–14288 Filed 6–16–93; 8:45 am]

BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period for Revised Program Amendment Number 60 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations. The amendment concerns the extraction of more than 250 tons of coal under an exploration permit and the commercial use or sale of coal extracted during exploration.

This document sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on July 2, 1993. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on June 28, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on June 24, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232. Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224. Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated January 15, 1993 (Administrative Record No. OH–1826), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment No. 60. In this amendment, Ohio proposed to revise Ohio Administrative Code (OAC) rule 1501:13–4–02 to make that rule as effective as the corresponding Federal rules in 30 CFR part 772 concerning coal exploration.

OSM announced receipt of proposed Program Amendment Number 60 in the March 26, 1993, **Federal Register** (58 FR 16388), and, in the same document, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on April 26, 1993. The public hearing scheduled for April 20, 1993, was not held because no one requested on opportunity to testify.

On April 30, 1993, representatives of OSM and Ohio met informally to discuss OSM's initial questions and comments about the proposed

amendment. In response to that meeting, Ohio submitted Revised Program Amendment Number 60 by letter dated May 27, 1993 (Administrative Record No. OH–1887). In this revised amendment, Ohio is proposing further revisions to OAC 1501:13–4–02. The substantive proposed revisions are discussed briefly below:

(1) Paragraph (C)(2): Ohio is revising this paragraph to clarify that, if the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) finds that the proposed exploration operation will substantially disturb the natural land surface, the person seeking to explore must submit an application for and be issued an exploration permit before beginning exploration. The Chief shall issue or deny the exploration permit within a reasonable period of time.

(2) Paragraph (D): Ohio is revising this paragraph to provide that any exploration under an exploration permit shall be subject to the requirements of paragraphs (E) to (L) of this rule.

(3) Paragraphs (E) and (E)(3): Ohio is revising these paragraphs to provide that applicants for exploration permits shall place an advertisement providing public notice of the filing of the application in a newspaper of general circulation in the county of the proposed exploration area. A copy of the advertisement shall be filed with the Chief and shall be made part of the complete application. Proof of publication of the advertisement must be filed with the Chief before the Chief can approve the application.

(4) Paragraph (H)(1): Ohio is revising this paragraph to provide that any person who conducts coal exploration operations that substantially disturb the natural ground surface shall comply with OAC 1501:13–4–02, OAC 1501:13–8–01, Ohio Revised Code Chapter 1513, OAC Section 1501, and any exploration permit terms or conditions imposed by the Chief.

(5) Paragraph (H)(3): Ohio is adding this new paragraph to provide that any person who conducts coal exploration operations in violation of OAC 1501:13–4–02 or of the other laws, rules, terms, or conditions referenced in paragraph (H)(1) shall be subject to the provisions of Ohio Revised Code Section 1513.99 (penalties) and OAC 1501:13–14–01 to 13–14–06 (inspections, enforcement, civil penalties, formal review, and informal conferences).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicate under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Person wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on June 24, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Person's wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 9, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–14312 Filed 6–16–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80, 86, 88 and 600

[AMS–FRL–4668–1]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Refueling Emission Regulations for Light-Duty Vehicles and Trucks and Heavy-Duty Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of change in date for public hearing and additional request for comment on proposed onboard refueling vapor recovery regulations.

SUMMARY: On May 27, 1993 (58 FR 30731), EPA published a **Federal Register** notice reopening the comment period on its 1987 proposed rule covering onboard control of vehicle refueling emissions and the scheduling of a public hearing to receive oral comment on materials related to the proposal (August 19, 1987, 52 FR 31162), an additional notice (September 3, 1991, 56 FR 46382) and the May 27, 1993 notice. This notice announces a delay of the hearing until July 22, 1993 and an extension of the public comment period until August 22, 1993. The time of day and location of the public hearing are unchanged. Interested readers should refer to the May 27, 1993 notice for more detail on the material to be discussed at the hearing.

EPA expects to promulgate an onboard requirement by January 22, 1994, and has entered into a proposed settlement agreement to this effect. For purposes of implementing the onboard requirement, EPA believes this date to be in the 1994 model year and asks for comment on this matter as part of the reopening of the comment period and public hearing.

DATES: The public hearing will be held on July 22, 1993. It will start at 9 a.m. and will continue throughout the day. Comments will be accepted until 30 days after the hearing (August 22, 1993).

ADDRESSES: The public hearing will be held at Domino's Farms Conference Facility, 24 Frank Lloyd Wright Dr., Ann Arbor, Michigan (313) 930–4258.

FOR FURTHER INFORMATION CONTACT: Mr. James G. Bryson, U.S. Environmental Protection Agency, Regulation

Development and Support Division, 2565 Plymouth Rd., Ann Arbor, MI 48105–2425, telephone: 313/741–7828.

SUPPLEMENTARY INFORMATION:

1. Change of Hearing Date and Extension of Public Comment Period

On May 27, 1993, EPA published a notice reopening the public comment period in this proceeding and scheduling a public hearing (58 FR 30731). EPA has since decided to afford all participants in this proceeding an extra month to prepare comments, and also to change the hearing date to reflect the longer comment period. Accordingly, the new hearing date is July 22, 1993 and EPA will accept public comment on issues raised in the May 27 notice until August 22, 1993.

2. Model Year in Which Standards Are Promulgated

Onboard refueling vapor recovery standards for light-duty vehicles take effect "beginning with the fourth model year after the model year in which the standards are promulgated." EPA has recently entered into a proposed settlement agreement (subject to the section 113(g) public notice and review process) whereby the Agency has agreed to promulgate the onboard standards required by section 202(a)(6) by January 22, 1994.[1] A copy of this proposed agreement is also available in the public docket. It is the Agency's view that a requirement promulgated on that date would be deemed to have been promulgated in the 1994 model year, and hence the onboard requirement would begin to be phased in with 1998 model year vehicles. EPA solicits comment on this matter as part of the reopened comment period in this proceeding. A brief memorandum addressing the question of model year is also available in the public docket.

Dated: June 14, 1993.

Michael H. Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–14364 Filed 6–15–93; 8:45 am]

BILLING CODE 6560–50–P

[1] Pursuant to section 113(g), EPA is accepting public comment on the proposed settlement in a separate proceeding, to be noticed soon in the Federal Register.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 397

[FHWA Docket No. MC–92–4]

RIN 2125–AC78

Federal Motor Carrier Safety Regulations; Transportation of Hazardous Materials

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA proposes to amend part 397 of the Federal Motor Carrier Safety Regulations (FMCSRs) by adding a new Subpart B, Motor Carrier Safety Permits. This rulemaking action implements parts of sections 8 and 15 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). Section 8 requires, among other things, the establishment of a motor carrier safety permit program, at a minimum, for motor carriers transporting class A and/or B explosives (new RSPA hazard classification, Division 1.1, 1.2, and 1.3; see 49 CFR 173.2, as amended), liquefied natural gas (new RSPA hazard classification, Division 2.1; see 49 CFR 173.2, as amended), hazardous materials designated as extremely toxic by inhalation (new RSPA hazard classification, Division 2.3, Hazard Zone A or Division 6.1, Packing Group I, Hazard Zone A; see 49 CFR 173.2, as amended), or highway route controlled quantity radioactive materials (new RSPA hazard classification, Class 7; see 49 CFR 173.2, as amended). Section 15 of the HMTUSA requires, in part, inspection of commercial motor vehicles transporting highway route controlled quantity radioactive materials before each trip. This requirement of section 15 would be incorporated into the proposed safety permit regulations. This proposed rule, if promulgated, would increase regulatory compliance, enhance motor carrier safety, and promote the safe transportation of the designated hazardous materials.

DATES: Comments must be received on or before August 16, 1993.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC 92–4, room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk in standard or high density formats containing files compatible with word processing programs such as WordPerfect, WordStar, or Microsoft "Word" for IBM systems, or WordPerfect or Microsoft Word for Macintosh. Commenters should clearly label the submitted disk(s) with the software format used (e.g., WordPerfect 5.0 [IBM] or Microsoft Word 4.0 [Mac]). All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Jackson, Hazardous Materials Programs Division (202) 366–4415, Mr. Neill L. Thomas, Office of Motor Carrier Standards; (202) 366–2981, or Mr. Raymond W. Cuprill, Office of Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1990, the President signed the HMTUSA (Pub. L. 101–615, 104 Stat. 3244), which established additional requirements in the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. app. 1801 *et seq.*) to reduce the risks to life, property, and the environment posed by unintentional releases of hazardous materials. Congress recognized that approximately 4 billion tons of regulated hazardous materials are transported each year and that approximately 500,000 movements of hazardous materials occur each day. Congress also found that the movement of hazardous materials is necessary to promote economic vitality and meet consumer demands, and should be conducted in a safe and efficient manner.

To this end, section 8 of the HMTUSA amends section 106 of the HMTA (49 U.S.C. app. 1805) to prohibit a motor carrier from transporting, by motor vehicle in commerce (interstate and intrastate), certain hazardous materials designated by the Secretary of Transportation, unless the motor carrier holds a "safety permit" issued by the Secretary and maintains a copy of the permit or proof of its existence in the motor vehicle used to provide such transportation. The section provides that the Secretary may only grant safety permits to carriers that are fit, willing, and able to (1) provide the

transportation to be authorized by the permit, (2) comply with existing Federal safety regulations and any applicable minimum financial responsibility laws and regulations, and (3) comply with any safety permit regulations and requirements of this title.

The revised section 106 also requires that the Secretary issue regulations implementing the safety permit requirements and establishing the types and quantities of hazardous materials subject to the regulations. The safety permit regulations are to cover, at a minimum, the transportation by motor carrier of quantities of (1) class A and/or B explosives (new RSPA hazard classification, Division 1.1, 1.2, and 1.3; see 49 CFR 173.2, as amended), (2) liquefied natural gas (new RSPA hazard classification, Division 2.1; see 49 CFR 173.2, as amended), (3) hazardous materials designated by the Secretary as extremely toxic by inhalation (new RSPA hazard classification, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A; see 49 CFR 173.2, as amended), and (4) highway route controlled quantity radioactive materials (new RSPA hazard classification, Class 7; see 49 CFR 173.2, as amended). For purposes of this notice we will refer to these hazardous materials as designated high risk hazardous materials. The regulations must also establish procedures applicable to permit application, content, fees, amendment, suspension or revocation, and standards for permit duration, conditions or limitations. This new permit requirement would, under section 13 of the HMTUSA (49 U.S.C. app. 1811), preempt any State permit requirement dealing with transportation of the same hazardous materials if compliance with both the State and Federal permit requirements is not possible, or if the State requirement creates an obstacle to the accomplishment of the HMTA and the regulations.

Section 8 of the HMTUSA also amended the HMTA to require shippers and motor carriers of certain types and quantities of hazardous materials to file a registration statement with the Secretary of Transportation. The registration requirements have been implemented by the Research and Special Programs Administration (RSPA) in a separate rulemaking action (57 FR 30620, July 9, 1992). Motor carriers transporting hazardous materials covered by the registration requirements are advised that they will need to file a registration statement with the RSPA and also obtain a safety permit from the FHWA. The filing of a registration statement with RSPA will not constitute an application for a safety permit. A separate permit application must be filed with the FHWA.

Additionally, the HMTUSA mandates other specific motor carrier and shipper responsibilities as follows.

Shipper Responsibility

Each person who offers any hazardous material for which a permit is required for motor vehicle transportation in interstate or intrastate commerce may offer that material to a motor carrier only if the carrier has a safety permit authorizing such transportation. It is anticipated that the RSPA will subsequently initiate rulemaking which will address shipper responsibility.

Inspection Requirements

Section 15 of the HMTUSA amends section 116 of the HMTA (49 U.S.C. app. 1813) to provide that the Secretary shall require by regulation that, before each use of a motor vehicle to transport in commerce (interstate or intrastate) any highway route controlled quantity radioactive material, such vehicle shall be inspected and certified to be in compliance with the HMTA and applicable Federal motor carrier safety laws and regulations. The amended section 116 further provides that the Secretary may require that inspections be carried out by duly authorized inspectors of the United States or in accordance with appropriate State procedures. The Secretary may also permit the shipper or transporter of any highway route controlled quantity radioactive material to inspect the vehicle if the individuals conducting the inspections meet the inspector qualification requirements issued by the Secretary.

The definition of "highway route controlled quantity" radioactive materials is found at 49 CFR 173.403. *Highway route controlled quantity* radioactive materials are generally quantities of materials that emit high levels of radioactivity. The regulatory and packaging requirements which apply to these materials are designed both to adequately identify the presence of these materials and to ensure that the packaging can withstand normal transportation conditions and foreseeable accidents, without a breach of containment integrity.

In considering development of inspection requirements for commercial motor vehicles transporting these materials and trying to determine what type of inspection criteria is needed, the FHWA examined the procedures contained in current inspection methods. This examination included a review of (1) the North American Uniform Driver/Vehicle Inspection Manual, published by the FHWA in September 1989, (2) a draft of a Commercial Vehicle Safety Alliance document entitled, "Recommended National Procedures for the Safety Inspection of Commercial Highway Vehicles Transporting Spent Fuel/Transuranic and High Level Radioactive Wastes" (March 1991), (3) "A Guide for the Inspection of Spent Nuclear Fuel Shipments by Motor Vehicle" (RSPA, November 1988), and (4) "A Guide for the Inspection of Radioactive Material Shipments by Motor Vehicle or at Freight Facilities" (RSPA, November 1988). Copies of these documents have been placed in the docket and are available for public review.

The FHWA is proposing the use of the general inspection requirements contained in part 396, "Inspection, Repair, and Maintenance," and the more detailed inspection standards found in appendix G to subchapter B, "Minimum Periodic Inspection Standards," to meet the requirement that a vehicle be inspected before each trip. Further, the FHWA believes that a Level 1 North American Uniform Driver/Vehicle Inspection can be used to satisfy the vehicle inspection requirement for the transportation of highway route controlled quantity radioactive materials, if the inspection is conducted by a qualified inspector. Accordingly, the FHWA proposes to apply the inspector qualification requirements specified in § 396.19, "Inspector qualifications," to ensure that any inspector performing these vehicle inspections is qualified. We specifically invite comments concerning the inspection criteria proposed herein and whether radiological monitoring should be included.

FHWA Proposed Rulemaking Action

Discussion of Proposed Requirements

I. Purpose and Scope

The purposes of this proposed rule are to enhance motor carrier safety and promote the safe transportation of designated high risk hazardous materials in both interstate and intrastate commerce. Subpart B of part 397 would require that Federal safety permits be issued to a motor carrier before engaging in the transportation of designated high risk hazardous materials. The conditions for obtaining and retaining the permit should provide motor carriers with additional incentives to safely operate their commercial motor vehicles.

The HMTUSA provides that the Secretary shall designate the types and quantities of hazardous materials

subject to permit requirements. The statute, however, requires that the safety permit regulations apply, at a minimum, to "all transportation by a motor carrier" of the four classes of high risk hazardous materials, discussed earlier in this document. The FHWA is aware that this requirement might be interpreted as requiring a safety permit for the transportation of any quantity of these four classes of high risk hazardous materials. However, administrative expedience dictates that the coverage of the safety permit program be phased-in based on the quantity of hazardous material being transported. Accordingly, we are proposing to limit the safety permit regulations to the transportation of the specific classes of hazardous materials set forth in the HMTUSA of 1990, subject to the quantities and phase-in periods discussed herein and defined in § 397.39 of this proposal. After the program is fully implemented and some experience is gained, the FHWA will decide whether to propose expanding the safety permit regulations to include other hazardous materials.

The HMTUSA requires that the safety permit regulations apply, at a minimum, to motor carriers transporting four specific types of hazardous materials. One of the types of designated high risk hazardous materials is class A and/or B explosives (new RSPA hazard classification, Division 1.1, 1.2, and 1.3; see 49 CFR 173.2, as amended). Different quantities of class A and/or B explosives are transported daily by a vast number of motor carriers, primarily private motor carriers of property. These carriers include operators from a diversity of industry groups, such as explosives magazine operators, quarry operators, farmers, and persons involved in fireworks displays. Immediate application of the safety permit requirements to these motor carriers might present an undue economic burden for these industries, especially when many are solely intrastate operations which have never been subject to the FHWA's regulations. Many of these motor carriers would be required to obtain financial responsibility coverage in the amount of $5 million. In addition, the large number of motor carriers applying for safety permits could result in administrative burdens which may adversely affect the successful implementation of the proposed program. The proposed regulations, therefore, would phase-in, over a 3-year period, the applicability of the safety permit requirement to motor carriers transporting class A and/or B explosives based on the quantities of these explosives being transported. The phase-in would be implemented as follows:

Effective date	Covered quantities of class A and/or B explosives
Nov. 16, 1993	454 kilograms (1,000 pounds) or more.
Nov. 16, 1994	227 kilograms (500 pounds) or more.
Nov. 16, 1995	25 kilograms (55 pounds) or more.

Motor carriers transporting 1,000 pounds or more of class A and/or B explosives on a single commercial motor vehicle would be required to obtain a safety permit by November 16, 1993. A year later (November 16, 1994) motor carriers transporting 500 pounds or more of class A and/or B explosives would be required to obtain a safety permit. On November 16, 1995, the transported quantity of class A and/or B explosives for which a safety permit is required would decrease to 55 pounds or more.

There will be no phase-in period, however, for the other three specific types of hazardous materials (liquified natural gas, hazardous materials designated as extremely toxic by inhalation, and highway route controlled radioactive materials). Unlike Class A and/or B explosives, the FHWA does not believe that immediate application of the safety permit requirements to carriers of these materials would present an undue economic burden on the motor carrier industry. There are far fewer carriers of these types of hazardous materials, as well as far fewer movements of these materials in interstate and intrastate commerce. Further, carriers of these three types of hazardous materials typically have greater financial responsibility coverage than would be required under this NPRM.

Carriers of these types of hazardous materials are currently subject to some form of Federal regulation (*e.g.*, intrastate carriers of these materials must comply with the packaging requirements of the Federal Hazardous Materials Regulations, 49 CFR 171–180). Therefore, due to their greater familiarity with the Federal regulatory system, it would be easier for them to obtain information on the proposed requirements and to comply with a new regulatory program.

The quantity provisions established and set forth in the definition of the term *designated high risk hazardous materials* are being coordinated with the efforts currently ongoing to implement the registration and routing requirements of the HMTUSA. This coordination will ensure that motor carriers requesting a safety permit are registered, have been issued a DOT identification number, are in the FHWA Motor Carrier Census File, and are aware of the Agency's routing requirements.

As stated above, a hazardous material designated as extremely toxic by inhalation is another type of designated high risk hazardous material covered by the safety permit provisions of the HMTUSA. The FHWA is proposing that safety permits be required for the transportation of hazardous materials extremely toxic by inhalation that meet the criteria of Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A (see 49 CFR 173.115 and 173.132), if transported in quantities of more than 1 liter (1.06 quarts). The FHWA is not considering the inclusion of Hazard Zone B hazardous materials that are extremely toxic by inhalation in the proposed permit program. Such action is consistent with the proposed registration requirements imposed by the RSPA (57 FR 30620, July 9, 1992). Hazard Zone B hazardous materials include such widely distributed chemicals as chlorine, hydrogen sulfide, ethylene oxide, and nitric oxide, to name a few. This transportation mostly involves quantities that are less than "in bulk" (a containment system that has a capacity in excess of 3,500 water gallons or 468 cubic feet). The FHWA is interested in obtaining information from the public and affected industries concerning the transportation of Hazard Zone B hazardous materials that are extremely toxic by inhalation. Specifically, should the safety permit program be expanded to include the transportation of Hazard Zone B hazardous materials?

II. Applicability

This proposal would establish safety permit requirements applicable to motor carriers which transport designated high risk hazardous materials in interstate or intrastate commerce. These requirements would apply to a motor carrier's officers, drivers, agents, representatives, and employees.

Section 8 of the HMTUSA applies to both interstate and intrastate hazardous materials motor carrier operations. Accordingly, the FHWA proposes to amend part 397 by adding a compliance section to ensure that interstate and intrastate motor carriers subject to part 397 are also subject to all applicable parts of the FMCSRs (49 CFR parts 350–399). This action is necessary since the FHWA intends to use the provisions of part 385, "Safety Fitness Procedures,"

in making determinations whether to issue, or deny, a request for a safety permit for either interstate or intrastate motor carriers. This determination will ensure that motor carriers engaged in the transportation of designated high risk hazardous materials in interstate or intrastate commerce meet the "fit, willing, and able" requirement of the HMTUSA.

Once these proposed rules have been promulgated and fully implemented, data will be collected and analyzed to assess the effectiveness of the safety permit program. Based upon its analysis of data collected, the FHWA will determine whether to propose to extend the applicability of the safety permit program to other classes and quantities of hazardous materials. Any subsequent action would be taken after notice and opportunity to comment have been provided.

III. Transportation Without a Safety Permit Prohibited

The HMTUSA provides that no motor carrier shall transport or cause to be transported any hazardous material for which a permit is required in interstate or intrastate commerce unless the motor carrier has obtained a safety permit which authorizes such transportation. Violation of that prohibition could result in civil penalties up to $25,000 per violation, per day, as provided for in the HMTA.

IV. Definitions

The FHWA believes it is important to define new terms which would be used in this proposed rule. Accordingly, definitions of the terms designated high risk hazardous materials, extremely toxic by inhalation materials, and in bulk are provided. The FHWA, in issuing a final rule, will ensure that the definitions used are consistent with the definitions used in the Hazardous Materials Regulations.

V. Application Procedures

A motor carrier would have to apply to the FHWA for a permit to transport the designated high risk hazardous materials. A motor carrier would be required, at a minimum, to submit a Motor Carrier Identification Report, Form MCS–150, to obtain a motor carrier safety permit from the FHWA.

A revised Form MCS–150 would be used by motor carriers as an application for a safety permit. The application would have to be signed by an official of the motor carrier and notarized, to comply with the provisions of the HMTUSA that require the permit application to be submitted under oath [49 U.S.C. app. 1805(d)(7)].

The application for a permit would be submitted to the Regional Director, Office of Motor Carriers, for the region in which the motor carrier has its principal place of business. See 49 CFR 390.27, Locations of regional motor carrier safety offices, for domestic and foreign motor carriers. This will help expedite the safety permit procedure since the in-depth compliance reviews used to gather safety fitness and other information are completed by the FHWA's field offices. Renewals would be handled similarly.

The safety rating notification letter currently being sent to a motor carrier would be modified to serve as the safety permit and would authorize the motor carrier to transport designated high risk hazardous materials. The letter would bear a safety permit number, which would be the motor carrier's DOT identification number required by § 390.21 of the FMCSRs. Motor carriers which have already been assigned DOT identification numbers would have to apply for a safety permit by submitting another Form MCS–150. Motor carriers which have never applied for a DOT identification number would be allowed to apply for an identification number and a safety permit simultaneously using a single Form MCS–150.

The HMTUSA requires that permit application procedures also provide for the assessment of fees necessary to recover the full costs of administering the motor carrier safety permit requirements. As discussed above, we are proposing to make extensive use of existing FHWA programs, forms, and procedures, and the program applicability would be initially limited to four specific groups of hazardous materials, therefore, reducing the number of motor carriers covered. Enforcement of the proposed safety permit requirements would be accomplished within the framework of existing programs (i.e., compliance reviews and roadside inspections). As a result, the FHWA has determined that no measurable cost would be attributable to the administration of the proposed motor carrier safety permit program. In addition, the collection of fees for the issuance of a permit would, in itself, add to the government's cost of administration. Accordingly, the FHWA proposes not to assess fees at this time, but will review the necessity to do so in the future as the program is fully implemented and expanded to include other motor carriers of hazardous materials. This will allow the FHWA to gain more information and experience, which would assist us in establishing an appropriate and correct fee structure. The FHWA welcomes public comment pertaining to the assessment of permit fees.

VI. Safety Permit Application Determinations

Determinations on safety permit applications would be based upon a safety fitness finding made pursuant to 49 CFR part 385. A "satisfactory" safety rating would be a prerequisite to the granting of a safety permit. A less than "satisfactory" safety rating would result in a denial of the permit application. The FHWA would have the discretion to issue a temporary safety permit to an unrated motor carrier pending a safety fitness determination. A temporary safety permit would remain in effect for up to 120 days from the date of issuance or until a "satisfactory" safety rating is assigned, whichever occurs first. Once the motor carrier is assigned a "satisfactory" safety rating, the temporary safety permit would be converted to a 3-year permit. If the motor carrier fails to achieve a "satisfactory" safety rating within 120 days, the temporary permit would expire. No safety permit would then be issued until a "satisfactory" safety rating is achieved.

Intrastate motor carriers (for-hire and private) and those motor carriers of foreign domicile conducting operations in the United States, which currently are not required to obtain a U.S. DOT identification number, would be required to submit a Form MCS–150 to apply for a safety permit. As this regulation would affect motor carriers in Canada and Mexico, we have completed a preliminary analysis of the United States-Canada Free-Trade Agreement (FTA) (19 U.S.C. 2112) and the U.S. obligations under the General Agreement on Tariffs and Trade (GATT). The FHWA believes that this proposed rulemaking would not violate either the FTA or the GATT. It is this agency's interpretation that the FTA does not constitute an impediment nor prohibit the implementation of this proposed regulation. The most relevant provision of the GATT is article III which addresses the National Treatment on Internal Taxation and Regulation. To violate article III of the GATT, there must be some degree of differentiation between the treatment of the products of a contracting party and either the products of another contracting party or the domestic party. This proposed rulemaking would not distinguish between U.S. and Canadian products, and the proposed permit requirement would treat all U.S. and foreign motor carriers and shippers transporting hazardous materials in the same manner.

A motor carrier which has not been assigned a safety rating or has not been subject to these Federal rules would be required to certify, in writing, that the motor carrier is operating in full compliance with the FMCSRs or comparable State regulations, including financial responsibility required by 49 CFR part 387 or by State regulation, whichever is applicable. It should be understood that during the 120-day temporary permit period, the motor carrier would have to bring its operation into full compliance with the Federal hazardous materials regulations, the Federal motor carrier safety regulations, and any applicable minimum financial responsibility laws and regulations. An official with authority to bind the motor carrier would be required to execute the certification. Motor carriers which have not been assigned a safety rating may, upon filing a properly executed Form MCS–150 and certification, obtain a temporary safety permit which would allow the motor carrier's operation to continue for the interim period of up to 120 days.

The FHWA's Motor Carrier Management Information System (MCMIS) would be modified to identify motor carriers that have been issued safety permits. Safety fitness and permit information would be available to Federal, State and local agencies and the public upon written, oral, or electronic request.

VII. Review of Safety Permit Denials

A safety permit application would be denied on the basis of a safety fitness determination and rating issued in accordance with 49 CFR part 385, Safety Fitness Procedures. Accordingly, any party whose safety permit application is denied would be able to obtain a review of FHWA's determination by requesting a change in the safety rating, pursuant to § 385.15 or § 385.17, whichever is applicable.

VIII. Failure to Report

Failure to file a Form MCS–150, Motor Carrier Identification Report (which would serve as the safety permit application), or furnishing false or misleading information in a Form MCS–150 or any document filed during a safety permit proceeding, would result in the denial or revocation of the safety permit and may subject the motor carrier to civil or criminal penalties.

IX. Conditions for Safety Permit

The FHWA has included in this proposal conditions which would apply to each safety permit issued. Motor carriers would have to clearly display the assigned safety permit numbers on the shipping paper or on the appropriate transportation document which contains the description of the hazardous materials being transported and for which a safety permit is required. A motor carrier holding a safety permit would also be required to display, on each commercial motor vehicle used to transport such hazardous materials, its name, city and State location, and its DOT identification number as required by 49 CFR 390.21. This would fulfill the requirement in the HMTUSA that a safety permit or proof of the existence of such a permit (permit number), issued by the FHWA, is maintained in the motor vehicle [49 U.S.C. app. 1805(d)(1)]. Also, 49 CFR 177.817, "Shipping papers," requires that the shipping paper be available on the motor vehicle for information purposes in the event of an accident or vehicle inspection. Since the shipping document is already required to be carried on the motor vehicle during transportation, the proposed requirement would minimize any additional paperwork burden placed upon the industry. The FHWA intends to establish an information system to provide immediate permit verification by enforcement officials at roadside, or by a shipper or the public. This will be done by adding a "permit" data base to the agency's existing information systems. Such action would require simple adjustments to existing programs with minimal costs involved.

Additional conditions specific to the transportation of highway route controlled quantity radioactive materials or class A and/or B explosives are also proposed. For example, safety permits issued for the transportation of highway route controlled quantity radioactive materials would require that each commercial motor vehicle be inspected before each trip. In addition, motor carriers would be required to maintain a written certification of each inspection, as performed by a qualified inspector meeting the requirements specified in § 396.19, Inspector qualifications, of the FMCSRs. This proposed requirement would satisfy the inspection and certification requirement of section 15(d)(1) of the HMTUSA.

X. Renewal of Safety Permits

Procedures would be provided for renewing a safety permit. The renewal process would continue to purge the system of motor carriers not currently operating under a permit, aid compliance and enforcement efforts, and serve as a timetable for routine monitoring of motor carrier operations continuing under a safety permit. Motor carriers would be required to renew their safety permits every 3 years. As part of its review of applications for permit renewals, the FHWA will check its motor carrier management information data base, State records, complaint registers, and other compliance information sources before a final decision concerning permit renewal is made. A decision to renew a permit will be made utilizing the factors considered in determining a safety rating set forth in 49 CFR 385.7. A safety compliance review may not be necessary or practical when reviewing applications for renewal. A compliance review will be conducted, however, wherever there is an indication of a compliance problem.

The Form MCS–150 would be used to initiate the renewal process. Where appropriate, supplementary information regarding current operations may be necessary to further process the safety permit renewal request. Depending upon the number of renewal applications received at any given time, the issuance of renewals may be delayed for a short period of time. Therefore, if a motor carrier files for renewal at least 90 days, but no more than 180 days, prior to the permit's expiration date, the safety permit would remain in force until the renewal process is completed and a determination is made. Accordingly, failure to file for renewal at least 90 days in advance of expiration may result in temporary loss of the permit.

XI. Penalties

The regulation proposed herein would be issued pursuant to the authority granted by the HMTA, as amended by the HMTUSA, and consequently any violation of its provisions would be subject to the civil and criminal penalties set forth in 49 U.S.C. 1809 (1991).

Rulemaking Analyses and Notices

Regulatory Impact

The proposals contained in this document would implement the congressional mandate of the HMTUSA which restricts the transportation of certain designated high risk hazardous materials in interstate and intrastate commerce to motor carriers that hold safety permits, issued by the FHWA, authorizing the transport of those hazardous materials. Further, transportation of highway route controlled quantity radioactive materials would be prohibited unless the commercial motor vehicle was inspected and certified to be in compliance with all applicable

regulations before each trip. The HMTUSA requires that regulations implementing its provisions must be issued by November 16, 1991, and that the permit requirements be effective November 16, 1992.

The permit and inspection requirements proposed herein would be merged into existing FHWA program areas (e.g., Safety Fitness Procedures, Selective Compliance and Enforcement Program) and would produce minimal additional burden on the regulated industry.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291, but is a significant regulation under the DOT regulatory policies and procedures because of substantial congressional and public interest. This interest is due to the potential for some motor carriers failing to obtain the required permit to transport certain designated high risk hazardous materials. A draft regulatory evaluation has been prepared and placed in the docket. As discussed in the draft regulatory evaluation, the anticipated economic impact of this proposed rulemaking on the interstate motor carrier industry will be minimal. At this time, the FHWA is unable to determine the precise impact of this proposed rulemaking on intrastate motor carrier operations because the agency has had no regulatory authority over intrastate carriage. The FHWA requests information identifying the intrastate motor carrier population to be affected by this proposed rule. This information will assist the agency in determining the economic impact on this portion of the motor carrier industry and any additional impact which may result from also having to come into compliance with the rest of the FMCSRs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this proposed rulemaking on small entities. Some small entities would be economically impacted by this rulemaking, if promulgated, and would not be allowed to transport certain designated high risk hazardous materials if they cannot obtain the required permit from the FHWA. However, the FHWA believes that relatively few small motor carriers will fail to obtain the required permit. Moreover, this rule will serve as a powerful incentive to gain compliance with the FMCSRs by such motor carriers who wish to avoid these adverse consequences. Thus, under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. While the congressional mandates required by the HMTUSA will require changes to be made to the FMCSRs, no changes will be required to the regulations governing the Motor Carrier Safety Assistance Program (MCSAP). Accordingly, the impact on the various States by the changes being proposed will be minimal. This new permit requirement would preempt only a State permit requirement dealing with transportation of the same hazardous materials and only to the extent such a State permit is based upon a demonstration of safety fitness. The various States are requested to submit comments on this proposal and advise the FHWA of the effect, if any, on their participation in the MCSAP.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, the reporting and recordkeeping provisions that are included in this proposed regulation are being submitted to the Office of Management and Budget for approval.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have an adverse effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 397

Hazardous materials transportation, Highways and roads, Motor carrier safety permits.

Issued on: June 9, 1993.

Rodney E. Slater,

Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subtitle B, chapter III, part 397, as follows:

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS

1. The authority citation for part 397 is revised to read as follows:

Authority: 49 U.S.C. app. 1801–1813.

2. Part 397 is amended by revising the heading to read "Transportation of hazardous materials," by adding a heading to subpart A (§§ 397.1 through 397.19) to read "Driving and parking rules," and by adding a new Subpart B to read as follows:

Subpart B—Motor Carrier Safety Permits

Sec.

397.31 Purpose and scope.
397.33 Applicability.
397.35 Compliance with Federal Motor Carrier Safety Regulations.
397.37 Transportation without a safety permit prohibited.
397.39 Definitions.
397.41 Application procedures.
397.43 Safety permit determinations.
397.45 Review of safety permit determinations.
397.47 Failure to file report.
397.49 Conditions for safety permit.
397.51 Renewal of safety permit application.
397.53 Penalties.

Subpart B—Motor Carrier Safety Permits

§ 397.31 Purpose and scope.

(a) The purpose of this subpart is to enhance motor carrier safety and to promote the safe transportation of designated high risk hazardous materials in interstate and intrastate commerce by requiring motor carriers to obtain a safety permit from the FHWA authorizing such transportation.

(b) This subpart prescribes minimum requirements for motor carriers to apply for and obtain safety permits to transport designated high risk hazardous materials, as defined in § 397.39.

§ 397.33 Applicability.

The provisions of this subpart shall apply to any motor carrier that transports or causes to be transported in interstate or intrastate commerce any designated high risk hazardous material,

as defined in § 397.39. Officers, drivers, agents, representatives, and employees of the motor carriers subject to this subpart shall comply with the provisions of this subpart and be knowledgeable of its requirements.

§ 397.35 Compliance with Federal Motor Carrier Safety Regulations.

Any motor carrier that transports or causes to be transported in interstate or intrastate commerce any designated high risk hazardous materials, as defined in § 397.39, shall comply with all applicable parts 350 through 399 of this subchapter.

§ 397.37 Transportation without a safety permit prohibited.

No motor carrier shall transport or cause to be transported any designated high risk hazardous material, as defined in § 397.39 in interstate or intrastate commerce, unless the motor carrier has obtained a safety permit, issued under this subpart, which authorizes such transportation.

§ 397.39 Definitions.

For the purposes of this subpart—

Designated high risk hazardous materials means highway route controlled quantity radioactive materials (new RSPA hazard classification, Class 7; see 49 CFR 173.2, as amended), liquefied natural gas in bulk (new RSPA hazard classification, Division 2.1; see 49 CFR 173.2, as amended), more than one liter (1.06 quarts) per package of a hazardous material extremely toxic by inhalation (new RSPA hazard classification, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A; see 49 CFR 173.2, as amended), and the following quantities of class A and/or B explosives, including packaging (new RSPA hazard classification, Division 1.1, 1.2, and 1.3; see 49 CFR 173.2, as amended):

(a) Effective on November 16, 1993, 454 kilograms (1,000 pounds);

(b) Effective on November 16, 1994, 227 kilograms (500 pounds); and

(c) Effective on November 16, 1995, 25 kilograms (55 pounds).

Extremely toxic by inhalation materials means those hazardous materials transported in quantities which exceed one liter (1.06 quarts) per package and meet the criteria of Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A (see 49 CFR 173.115 and 173.132).

In bulk means a containment system that has a capacity in excess of 3,500 water gallons or 468 cubic feet.

§ 397.41 Application procedures.

(a) A motor carrier shall submit a completed Motor Carrier Identification Report, Form MCS–150, to obtain a motor carrier safety permit authorizing the transportation of designated high risk hazardous materials. The Form MCS–150 (application form) shall be signed by an official of the motor carrier and notarized.

(b) The MCS–150 (application form) shall be submitted to the Regional Director, Office of Motor Carriers, Federal Highway Administration, in the region where the motor carrier's principal place of business is located. (See 49 CFR 390.27, Locations of regional motor carrier safety offices, for domestic and foreign motor carriers.)

(c) Application forms may be obtained by contacting any of the Federal Highway Administration's regional motor carrier safety offices.

§ 397.43 Safety permit determinations.

(a) Determinations concerning the granting, denial, suspension, or revocation of a safety permit shall be made pursuant to the Safety Fitness Procedures of part 385 of this subchapter and the provisions of this subpart. A "satisfactory" safety rating is a prerequisite to the granting of a safety permit. A less than "satisfactory" safety rating will result in a denial of the permit application, or revocation or suspension of a safety permit previously issued.

(b) A written notification of a "satisfactory" safety rating issued pursuant to § 385.11 of this subchapter shall serve as the safety permit and shall include the safety permit number assigned.

(c) A temporary safety permit may be issued to an unrated motor carrier pending a safety fitness determination, provided the motor carrier has certified in the permit application that it is operating in full compliance with the FMCSRs or comparable State regulations, including financial responsibility required by part 387 of this subchapter or by State regulation, whichever is applicable.

(d) A temporary safety permit shall remain in effect for no more than 120 days from the date of issuance or until a safety rating is assigned, whichever occurs first. If a motor carrier is assigned a "satisfactory" safety rating, a safety permit shall be issued in accordance with paragraph (b) of this section. If the motor carrier fails to obtain a "satisfactory" safety rating within 120 days, no safety permit shall be issued until a "satisfactory" safety rating is assigned.

§ 397.45 Review of safety permit determinations.

In obtaining a review of a safety permit determination made pursuant to § 397.43, the motor carrier shall follow the procedures established in § 385.15 or § 385.17 of this subchapter.

§ 397.47 Failure to file report.

Failure by a motor carrier to file a Motor Carrier Identification Report, Form MCS–150, pursuant to the provisions of § 385.23 of this subchapter, furnishing misleading information, or making false statements in the Form MCS–150 or any other document that may be required pursuant to this subpart will subject the motor carrier to the penalties prescribed in 49 U.S.C. 1809.

§ 397.49 Conditions for safety permit.

(a) Safety permits shall be issued for a period of 3 years.

(b) Safety permit numbers shall be clearly displayed on shipping papers or the appropriate transportation document which contains the description of the designated high risk hazardous materials which require a safety permit.

(c) All motor carriers must comply with the Federal hazardous materials regulations, the Federal motor carrier safety regulations, and any applicable minimum financial responsibility laws and regulations.

(d) Motor carriers must have and maintain a "satisfactory" safety rating issued by the FHWA, as prescribed in part 385 of this subchapter.

(e) Motor carriers transporting highway route controlled quantity radioactive materials shall be subject to the following additional conditions:

(1) The vehicle shall be inspected in accordance with Appendix G to subchapter B of this chapter before each trip;

(2) Inspections of the vehicle must be performed by a qualified inspector who meets the requirements specified in § 396.19 of this subchapter;

(3) Written certifications that each vehicle has been inspected in accordance with this paragraph must be prepared and retained for a period of one year;

(4) The certification statement shall include:

(i) The vehicle identification number;

(ii) Date of inspection;

(iii) Certification statement;

(iv) The qualified inspector's name;

(v) Signature of a motor carrier official; and

(5) The routing and training requirements of § 177.825 of this title must be complied with by both the carrier and the driver.

(f) Motor carriers transporting explosives for which a safety permit is required pursuant to this subpart shall be subject to the following conditions:

(1) The motor carrier shall comply with the requirements of § 397.9 of this part concerning written route plans; and

(2) The motor carrier shall comply with the attendance requirements of § 397.5 of this part.

§ 397.51 Renewal of safety permit application.

(a) A motor carrier shall submit a completed motor carrier safety permit application, Form MCS–150, Motor Carrier Identification Report, in order to renew a motor carrier safety permit authorizing the transportation of designated high risk hazardous materials.

(b) The Form MCS–150 (application form) used for renewal shall be submitted to the Regional Director, Office of Motor Carriers, in the region where the motor carrier's designated principal place of business is located. (See 49 CFR 390.27, Locations of regional motor carrier safety offices, for domestic and foreign motor carriers.)

(c) To permit timely consideration, an application for renewal should be submitted at least 90 days, but not more than 180 days, before the expiration date of the safety permit to be renewed.

(d) If a motor carrier files an application for renewal in accordance with paragraph (c) of this section which is complete and conforms with the requirements of this section, the existing safety permit will not be considered to have expired until the application for renewal has been approved, modified, or disapproved.

(e) If a motor carrier fails to file for a renewal of a safety permit at least 90 days prior to expiration, a temporary loss of the permit may result.

§ 397.53 Penalties.

Violations of any of the requirements imposed by this subpart are subject to penalties provided in 49 U.S.C. 1809 (1990), i.e., civil penalties of not more than $25,000 or less than $250 per violation, and criminal penalties for willful violations of up to $50,000 per violation or five (5) years, imprisonment, or both.

[FR Doc. 93–14255 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

[Docket No. 930233–3033]

RIN 0648–AD25

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to issue regulations authorizing and governing the taking of bottlenose and spotted dolphins incidental to the removal of oil and gas drilling and production structures in state waters and on the Outer Continental Shelf in the Gulf of Mexico from 1993 through 1997. The incidental taking of small numbers of marine mammals is allowed under section 101(a)(5) of the Marine Mammal Protection Act (MMPA) if certain findings are made and regulations are issued that include requirements for monitoring and reporting.

DATES: Comments should be received by August 16, 1993.

ADDRESSES: Director, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910. Send comments on the collection-of-information burden estimate to the Office of Information and Regulatory Affairs, Project 0648–0151, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas C. Eagle, Office of Protected Resources, NMFS, (301) 713–2319.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5) of the MMPA directs the Secretary of Commerce (Secretary) to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, and regulations are issued.

Permission may be granted for periods of up to 5 years if the Secretary finds that the taking will have a "negligible impact" on the species or stock and will not have an "unmitigable adverse impact" on the availability of the species or stock for subsistence uses. On September 29, 1989, (54 FR 40339) NMFS and the U.S. Fish and Wildlife Service published a final rule implementing amendments made to the MMPA in 1986 that allow a take of depleted, as well as non-depleted, marine mammals and also changed the conditions under which incidental takings are allowed.

Summary of Request

On October 30, 1989, NMFS received a request from the American Petroleum Institute (API) for an incidental take of bottlenose dolphins (*Tursiops truncatus*) and spotted dolphins (*Stenella frontalis*). API is representing operators who remove oil and gas drilling and production structures and related facilities in the Gulf of Mexico in state and Federal waters adjacent to the coasts of Texas, Louisiana, Mississippi, Alabama, and Florida. After an initial public comment period, API amended their request to address the comments. The amended request was received December 13, 1990.

API estimates that 670 structures will be removed in the Gulf of Mexico over the next 5 years. Most of the structures are in water less than 30.5m (100 ft.) deep. A longer range plan estimates that about 5,500 structures will be removed in a 35-year period. Some structures have already been removed using the methods described by the petitioners. The most frequently used procedure is to wash the soil from inside the piling, lower an explosive charge to 4.6m (15 ft.) below the mudline, and detonate the charge, which cuts the piling.

Under section 7 of the Endangered Species Act (ESA), NMFS has consulted on the effects upon endangered and threatened sea turtles of the removal of over 525 oil and gas structures in the Gulf of Mexico. As a result of these consultations NMFS required the Minerals Management Service (MMS) and the U.S. Army Corps of Engineers (Corps) to employ the following measures to minimize adverse impacts to listed species: The use of qualified observers; conduct 30-minute aerial surveys within 1 hour before and after detonation; if sea turtles are observed within 914m (1,000 yds.) of the blast site, delay of blast(s) until successful attempts remove the turtles at least 914m (1,000 yds.) from the site; detonation of explosives will occur no sooner than 1 hour following sunrise and no later than 1 hour prior to sunset; and charges are staggered by 0.9 seconds to minimize the cumulative effects of the blasts.

Bottlenose and spotted dolphins are not listed as threatened or endangered, but are under the authority of the MMPA; therefore, the applicants must receive an authorization under the

MMPA before a take is allowed. Similar to the case for sea turtles, impacts to dolphins would come from exposure to sound and pressure waves associated with detonating the explosives. API states that the most likely form of incidental take as a result of structure removals is harassment from low level sound and pressure waves. However, animals close enough to the detonation could be injured or killed as a result of tissue destruction. In recognition of this, removal operators have been employing the mitigation measures for sea turtles to protect dolphins as well, and API has filed the subject petition for the incidental taking of small numbers of bottlenose and spotted dolphins under the MMPA.

Summary of Proposed Rule

The proposed rule would authorize the incidental taking of bottlenose dolphins and spotted dolphins by U.S. citizens engaged in removing oil and gas drilling and production structures in state and Federal waters in the Gulf of Mexico adjacent to the coasts of Texas, Louisiana, Mississippi, Alabama, and Florida over the next 5 years.

The proposed rule would require that all activities be conducted in a manner that minimizes adverse effects on bottlenose dolphins and spotted dolphins and their habitat. Safeguards, monitoring, and reporting requirements would be consistent with those in place at the time of this proposal for the incidental take of endangered and threatened sea turtles authorized for the same activities under the ESA.

Description of Removal Activities

The technology most commonly used in the dismantling of platforms includes: Bulk explosives, shaped explosive charges, mechanical and abrasive cutters, and underwater arc cutters. The use of bulk explosives has become the industry's standard procedure for severing pilings, well conductors and related supporting structures. When using bulk charges, the inside of the structure can be washed out to at least 4.6 m (15 ft.) below the sediment floor to allow placement of explosives inside of the structure. Such placement results in a decrease in the impulse and pressure forces released into the water column upon detonation. The sizes of the explosive charges are generally 22.7 kg (50 lbs.) or less, but can be as much as 90.8 kg (200 lbs.) when necessary. The use of high velocity shaped charges is reported to have some advantages over bulk explosives and has been used in combination with smaller bulk charges. The cutting action obtained by a shaped charge is accomplished by focusing the explosive energy with a conical metallic liner. A major advantage associated with use of high velocity shaped charges is that a smaller amount of explosive charge is required to sever the structure, which also results in reductions in the impulse and pressure forces released into the water column. Use of mechanical cutters and underwater arc cutters is successful in some circumstances and does not produce the impulse and pressure forces associated with detonation of explosives; however, these methods are, in most instances, more time-consuming, costly and hazardous to divers. Furthermore, if the use of mechanical or arc cutters were to fail before the structure was completely severed, a larger charge may be necessary to remove the structure.

Bottlenose Dolphins in the Gulf of Mexico

Bottlenose dolphins are commonly found in nearshore waters throughout temperature and tropical waters of the world. It is the most common species of cetacean in coastal waters of the southeastern United States. Within the U.S. waters of the Gulf of Mexico, aerial survey data indicate that bottlenose dolphins number 35,000–45,000 and occur from backwater bays to offshore locations to depths of at least 200 m (660 ft.). Seasonal changes in distribution of bottlenose dolphins in the Gulf are not clear; however, some geographically localized populations show seasonally cyclical patterns in abundance, suggesting migration into and out of embayments.

Female bottlenose dolphins in Florida waters reach sexual maturity at 5–12 years and a length of 220–235 cm (7.2–7.7 ft.). Males reach sexual maturity at 10–13 years at lengths of 245-260 cm (8.0–8.5 ft.).

Little is known about life history parameters of bottlenose dolphins in the Gulf of Mexico. However, values consistent among populations occupying other waters may be true for those occupying the Gulf of Mexico as well. The minimum annual mortality rate of bottlenose dolphins along the Atlantic coast of central Florida has been estimated at 6.9 percent (9.2 percent if population size is adjusted for transient individuals). Transient individuals may have been included among the stranded dolphins on which the estimate was based, and inclusion of these individuals would increase the estimate of mortality. The mean annual survival rate of captive bottlenose dolphins was estimated to be 0.93, which is consistent with the lower mortality estimate for central Florida.

Stock or population structure of bottlenose dolphins in the Gulf of Mexico is not completely known. In the Atlantic Ocean and Gulf of Mexico, there appear to be two populations, nearshore and offshore; body size of the nearshore form is smaller than that of the offshore form. A model for stock structure in the Gulf of Mexico can be based on local, resident stocks in certain embayments and transient individuals (including offshore animals) that migrate to and from these embayments on a seasonal basis.

Generalized anatomy, catholic food habits, variable time budgets, intelligence, and flexible social structures contribute to the behavioral flexibility of bottlenose dolphins. This behavioral flexibility likely accounts for the wide distribution of bottlenose dolphins throughout most of the world's oceans. One of the most striking aspects of bottlenose dolphin behavioral flexibility is the species' adaptability to human activities in the environment (e.g., fishing activities for food and ships for bowriding).

Interactions between humans and bottlenose dolphins occur in many parts of the dolphins' range. The most commonly witnessed association involves dolphin attraction to the pressure waves created at the bows or the stern wake of vessels (the method used to remove dolphins from platform removal sites). Interactions with fisheries, especially shrimp fisheries, result in dolphins feeding behind actively trawling boats, on discarded fish after a trawl, or around non-working, anchored boats. Interactions with humans may result in injury or mortality of dolphins. Dolphins have been struck by propellers on occasion. In some areas, bottlenose dolphin populations may have declined as a result of human activities, including shipping.

Habitat degradation, including pollution, has also been suggested as a cause of decline, but has not been thoroughly investigated. High levels of toxic chemicals, including DDT and chlorinated hydrocarbons, have been found in the blubber of dolphins, thus indicating the presence of these chemicals in dolphin habitat.

Spotted Dolphins in the Gulf of Mexico

Alantic spotted dolphins are distributed in the western North Atlantic from southern New England, through the Gulf of Mexico, and into the Caribbean to Venezuela. Spotted dolphins have been found in all areas of the Gulf of Mexico surveyed, with most sightings off the west coast of Florida. Spotted dolphins are usually found

more than 5–12 miles (8–19 km) offshore. No abundance estimates are available for spotted dolphins within the Gulf, but they have been sighted commonly in offshore locations. Relatively frequent sightings suggest spotted dolphins are common offshore and may be the most common cetacean in offshore areas of the Gulf of Mexico.

Because spotted dolphins are found offshore rather than in coastal areas, little is available concerning their natural history. Sexual behavior has been observed in spotted dolphins from May to July, and a newly captured female gave birth in August. Surveys for marine turtles, birds, and mammals in 1980 and 1981 in the Gulf of Mexico yielded 810 observations of spotted dolphins, including 13 calves; however, these data should not be used to estimate reproductive rates because young dolphins are hard to spot during surveys, which may cause a downward bias in the estimate.

Potential Impact of Removal Activities on Bottlenose and Spotted Dolphins

The potential for injury to marine mammals in the vicinity of underwater explosions is associated with gas-containing internal organs, such as the lungs and intestines. The extent of potential injury decreases as: (1) Distance of the marine mammal from the explosion increases; (2) size of the marine mammal increases; (3) depth of the explosion and the affected marine mammal decreases; and (4) size of the explosive charge decreases. In addition, explosive charges confined in structure pilings below the mudline produce shock waves of lower pressure (at a given distance from the explosion) than free-water explosions.

A computer model, developed to predict the distances from which marine mammals would suffer only slight injury from underwater explosions, estimated that a bottlenose dolphin calf would receive only slight injury about 1,200 m (4,000 ft.) from a 544-kg (1,200-lb.) charge of TNT detonated in open water at 38 m (125 ft.). Most structures scheduled for removal are located in water less than 38 m deep. In most cases, charges are limited to 22.7 kg (50 lbs.) and are to be confined in the structure piles about 4.6 m (15 ft.) below the mudline. Therefore, it may be assumed that marine mammals more than 910 m (1,000 yds.) from structures to be removed would avoid serious injury caused by the explosions.

An increase in strandings of bottlenose dolphins in the northwestern Gulf of Mexico occurred in March and April 1986 following the explosive removal of oil and gas structures in the area. However, there is no evidence linking the strandings to the removal of the structures. Furthermore, observers at removals of more than 525 structures in the Gulf of Mexico reported no indication of injury or death to bottlenose or spotted dolphins, or any other marine mammal related to these structure removals.

For the reasons discussed above and in an environmental assessment (EA) prepared for this rulemaking, NMFS finds that the proposed activity would result in the taking of only small numbers of bottlenose and spotted dolphins; the total of such taking during a five-year period will have negligible impact on these species; and the takings will not have an unmitigable adverse impact on the availability of bottlenose and spotted dolphins for subsistence uses.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The regulations are not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Only about 10 small businesses are active in removing oil and gas structures in the Gulf of Mexico. These small businesses work under contract to major petroleum companies, which bear the costs of mitigation measures. Moreover, the mitigation measures required by this rule are identical to those already being followed by these small businesses during removal of oil and gas structures to protect endangered and threatened sea turtles. Accordingly, a regulatory flexibility analysis is not required.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. These requirements have been approved by the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act issued under OMB Control Number 0648–0151. Public reporting burden for this collection of information is estimated to average 27.5 hours per response, including the time to review instructions, search existing data sources, gather and maintain the data needed and complete and review the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator has determined that the proposed rule is consistent to the maximum extent practicable with the approved Coastal Zone Management Program of the States of Florida, Alabama, Mississippi, and Louisiana. This determination has been submitted for review by the responsible State agency under section 3.7 of the Coastal Zone Management Act.

NMFS prepared an EA for this rulemaking and concluded that there would be no significant impact on the human environment as a result of the proposed rule. Copies of the EA are available on request (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 228

Marine mammals, Reporting and recordkeeping requirements.

Dated: June 10, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

For the reasons set forth in the preamble, 50 CFR part 228 is proposed to be amended as follows:

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. A new subpart E is added to read as follows:

Subpart E—Taking of Bottlenose Dolphins and Spotted Dolphins Incidental to Oil and Gas Structure Removal Activities

Sec.

228.41 Specified activity and specified geographical region.
228.42 Effective dates.
228.43 Permissible means; mitigation.
228.44 Requirements for monitoring and reporting.
228.45 Letters of Authorization.

Subpart E—Taking of Bottlenose Dolphins and Spotted Dolphins Incidental to Oil and Gas Structure Removal Activities

§ 228.41 Specific activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of bottlenose dolphins and spotted dolphins by U.S. citizens engaged in removing oil and gas drilling and production structures in state waters and on the Outer Continental Shelf in the Gulf of Mexico adjacent to the coasts of Texas, Louisiana, Alabama, Mississippi, and Florida. The incidental, but not intentional, taking of bottlenose dolphins and spotted dolphins by U.S. citizens holding a Letter of Authorization is permitted during the course of severing pilings, well conductors, and related supporting structures, and other related activities.

§ 228.42 Effective Dates.

Regulation in this subpart are effective from [*insert date of publication of the final in the* **Federal Register**] through [*insert date 5 years from date of publication of the final rule in the* **Federal Register**].

§ 228.43 Permissible means; mitigation.

(a) The use of any of the following means in conducting the activities identified in § 228.41 is permissible: Bulk explosives, shaped explosive charges, mechanical or abrasive cutters, and underwater arc cutters.

(b) All activities identified in § 228.41 of this section must be conducted in a manner that minimizes, to the greatest extent practicable, adverse effects on bottlenose dolphins, spotted dolphins, and their habitat. When using explosive means, the following mitigation measures must be utilized:

(1) If bottlenose or spotted dolphins are observed in the vicinity of the platform (within 910 m (1,000 yds.) of the site) prior to detonating charges, detonation must be delayed until attempts (e.g., operating a vessel in the vicinity of the dolphins to stimulate bow riding, then steering the vessel away from the structure to be removed) are successful in removing them at least 910 m from the detonation site;

(2) Detonation of explosives must occur no earlier than 1 hour after sunrise and no later than 1 hour before sunset unless authorized by an on-site representative of the National Marine Fisheries Service; and

(3) Detonations must be staggered by 0.9 seconds for each group of charges;

§ 228.44 Requirements for monitoring and reporting.

(a) Observer(s) approved by NMFS in a Letter of Authorization must be used to monitor the area around the site prior to, during, and after donation of charges.

(b) Both before and after each detonation episode, 30-minute aerial surveys by NMFS-approved observers must be conducted within 1 hour of the detonation episode.

(c) During all diving operations (working dives as required in the course of the removals), divers must be instructed to scan the subsurface areas surrounding the platform (detonation) sites for bottlenose or spotted dolphins.

(d) A report summarizing the results of structure removal activities, mitigation measures, monitoring efforts, and other information as required by a Letter of Authorization, must be submitted to the appropriate U.S. Army Corps of Engineers District or the Minerals Management Service Gulf of Mexico Region within 15 working days of the removal. A copy of the report must be forwarded to NMFS, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

§ 228.45 Letters of Authorization.

(a) To incidentally take bottlenose and spotted dolphins pursuant to these regulations, each company operating or which operated an oil or gas structure in the geographical area described in § 228.41, and which is responsible for abandonment or removal of the platform, must apply for and obtain a Letter of Authorization in accordance with § 228.6.

(b) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of bottlenose and spotted dolphins.

[FR Doc. 93–14297 Filed 6–16–93, 8:45 am]
BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 115
Thursday, June 17, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 11, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Extension

• Food and Nutrition Service
Status of Claims Against Households
FNS–209
On occasion; Quarterly
State or local governments; 212 responses; 742 hours
Paul E. Jones (703) 305–2385
• Economic Research Service
Cotton Ginning Charges and Related Information
Annually
Business or other for-profit; 1,350 responses; 225 hours
Edward H. Glade, Jr.

Reinstatement

• Food and Nutrition Service
Monthly Report of Meal Counts for Title III: Nutrition Program for the Elderly—Quarterly Report of Monthly Meal Counts for Title IV: Nutrition Program for the Elderly
FNS–586A and FNS–586B
Recordkeeping; Monthly; Quarterly
State or local governments; 1,132 responses; 1,457 hours
Robert DeLorenzo (703) 305–2660

Larry K. Roberson,
Deputy Department Clearance Officer.

[FR Doc. 93–14278 Filed 6–16–93; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Exemption of Portal Creek Salvage Timber Sale Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project designed to recover bug-killed timber is exempted from appeals under the provisions of 36 CFR part 217.

SUMMARY: A mountain pine beetle epidemic has killed more than 14 million trees in the Gallatin Canyon area, of which Portal Creek is a part. This area is on the Bozeman Ranger District, Gallatin National Forest. The Gallatin National Forest Supervisor proposes a salvage timber sale to recover lodgepole pine killed in this epidemic. The Forest Supervisor has determined, through an environmental analysis documented in the Portal Creek Helicoptor Salvage Environmental assessment, that there is good cause to expedite this action to recover insect-killed timber and rehabilitate National Forest System lands. Salvage of the timber must be accomplished quickly to avoid loss of merchantable timber, reforest areas and minimize the accumulation of fuel in an area which already has a high danger of wildfire.

EFFECTIVE DATE: Effective on June 17, 1993.

FOR FURTHER INFORMATION CONTACT: Rita Beard, Project Coordinator; Gallatin National Forest; P.O. Box 130; Bozeman, MT 50771; Telephone 406–587–6748.

SUPPLEMENTARY INFORMATION: As early as 1979, expansion of the mountain pine beetle populations was observed in the lodgepole pine stands south of Bozeman reaching epidemic proportions by the late 1970's. Mature stands of lodgepole pine, like those in Portal Creek, are vulnerable to periodic outbreaks of mountain pine beetles. Most of the beetle-killed trees remain unharvested, and decay and rot are rapidly reducing their merchantability. Surveys in Portal Creek indicate that only 20 to 40 percent of the timber is still salvageable. It is estimated that these stands will lose commercial viability within the next 5 years. This proposal was designed to meet the following needs: (a) Reforest to diversify species composition to make stands more resistant to insect and disease, (b) rehabilitate timber stands through site preparation and planting, (c) reduce wildfire hazard by reducing fuel loading, and (d) salvage merchantable timber products and contribute to a continuous supply of timber before the timber deteriorates in value.

In June 1992, an interdisciplinary team was assembled to analyze the feasibility of salvaging the remaining beetle-killed trees in the Portal Creek area. The project was designed to harvest some of the remaining dead and dying lodgepole pine without constructing additional roads in an area which already has an extensive road system. The proposal was further designed to test the feasibility of salvaging dead trees using helicopter logging techniques. Sites would be planted to a mixture of conifer species to expedite regeneration of cover for wildlife and promote a more disease-resistant forest.

The ID Team, analyzed four separate alternatives, a no action and three different salvage alternatives. The selected alternative will harvest approximately 4.8 MMBF of timber from 1,173 acres. The majority of timber will be harvested by helicopter and no new roads will be constructed.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, • • •

when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based on the environmental analysis documented in the Portal Creek Helicopter Salvage Environmental Assessment and the Forest Supervisor's Decision Notice for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: June 10, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–14134 Filed 6–16–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Haystack Salvage Timber Sale From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project designed to rehabilitate the timber resource and contribute to watershed recovery is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: During routine forest surveys conducted in 1992, insect and disease mortality of commercial sawtimber was identified on 63 acres in the Haystack Salvage Planning Area. In 1992, the Wallace District Ranger, Idaho Panhandle National Forests, proposed rehabilitation action designed to salvage insect- and disease-killed sawtimber and contribute to watershed recovery in the affected area. The District Ranger has determined, through resource reports in the Haystack Salvage Timber Sale project file, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the affected area must be accomplished in 1993 to avoid further deterioration of sawtimber and to initiate the planting of tree species less susceptible to root disease and blister rust.

Management actions are also necessary to minimize the risk of potential damage to the stream channel due to peak flows and sediment delivery in the planning area. Immediate action is necessary to initiate watershed recovery. The use of Special Provision C6.604# in the timber sale contract is available in FY 1993 to contribute to watershed recovery.

EFFECTIVE DATE: Effective on June 17, 1993.

FOR FURTHER INFORMATION CONTACT: Steve E. Williams, District Ranger, Wallace Ranger District, Idaho Panhandle National Forests, Box 14, Silverton, Idaho 83867, Telephone 208–752–1221.

SUPPLEMENTARY INFORMATION: Routine forest surveys of insect and disease infestations conducted during 1992 on the Wallace Ranger District resulted in the identification of approximately 63 acres of salvageable commercial sawtimber in the Haystack and Falls Creek drainages. Root disease, bark beetles, and blister rust have been and will continue to cause mortality in the area.

The analysis of the watershed indicated that presently Haystack and Falls Creek stream channels are not in equilibrium. The analysis also indicated that the selected alternative will move the watershed and stream channel toward a more stable condition by decreasing peak flows and removing potential sediment sources. The affected area was designated as Management Area 1 by the Idaho Panhandle National Forests' Plan (IPNF Plan, 1987).

This proposal action was designed to meet the following needs: (a) salvage merchantable timber products; (b) protect against insect and disease; (c) improve the net growth and yield of timber resources; (d) rehabilitate timber stands that are understocked through site preparation and planting; (e) contribute to watershed recovery through application of management practices designed to minimize the potential damage to the channel due to peak flows; and (f) manage big-game habitat to achieve the goals of the IPNF Plan.

An interdisciplinary team (IDT) was convened, and scoping began in January 1993. In addition to the six extraordinary circumstances listed in 1909.15 (30.3), eight potential site-specific extraordinary circumstances were identified through the scoping process. These 14 extraordinary circumstances were the basis for the IDT analysis of environmental effects which were documented and included in the project file. Three alternatives were developed. Alternative 1 was No Action. Alternative 2 was the Proposed Action which described a need to treat 104 acres based on IPNF Plan objectives and common issues and concerns. Alternative 3 was the Modified Proposed Action and was the selected alternative. This alternative was developed to treat 63 acres to achieve the IPNF Plan and site-specific objectives. The analysis determined that the modified Proposed Action Alternative had no extraordinary circumstances. This allows it to be categorically excluded from documentation in an Environmental Impact Statement or Environmental Assessment, FSH 1909.15, 31.2(4).

The selected alternative will salvage approximately 169 MBF of individually marked dead and dying timber on 63 acres from existing roads with the exception of Unit #1. A 300-foot, non-system road will be constructed to two step-down landings to allow the unit to be skyline logged. No other roads will be constructed for this sale. Conifer species, less susceptible to root disease and/or blister rust, will be planted where openings are created.

The sale and accompanying rehabilitation work are designed to accomplish the objectives as quickly as possible. These objectives are (a) facilitate the prompt reforestation of openings requiring restocking, (b) minimize the risk of potential damage to the stream channel due to peak flows, and (c) maintain the existing road access restrictions. Prompt implementation of the salvage sale is necessary to recover potential volume while commercial value remains, put suitable timber sites back into production, initiate actions to contribute to future watershed recovery, and provide security for elk. Implementation of this proposed timber sale using Special Provision C6.604# Watershed Improvement (1/93) would contribute to the watershed improvement objective. This special authority was given to the IPNF to accomplish watershed improvement in conjunction with timber harvest operations of sales sold in FY 1993.

To expedite implementation of this decision, procedures outlined in 36 CFR part 217.4(a)(11) are being followed. Under this regulation the following may be exempt from appeal:

> "Decisions related to rehabilitation of National Forest System lands and recovery of forest resources from natural disasters or other natural phenomena * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part."

Based on the environmental consequences documented in the Haystack Salvage Timber Sale project file and the District Ranger's Decision Memo for this project, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under CFR 217.4.

Dated: June 11, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–14293 Filed 6–16–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Dodge Creek Helicopter Lodgepole Pine Salvage Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project designed to recover insect-killed timber is exempt from appeal under provisions of 36 CFR part 217.

SUMMARY: Mountain pine beetle activity has caused mortality of lodgepole pine trees in the Dodge Creek area on the Rexford Ranger District, Kootenai National Forest. The Rexford District Ranger proposed a salvage timber sale to recover dead timber, suitable as houselogs, scattered across 287 acres.

The District Ranger has determined, through the Environmental Assessment (EA) and supporting information, that there is good cause to expedite these actions in order to rehabilitate National Forest System lands and recover damaged resources. The selective salvage harvest must be accomplished quickly to avoid further deterioration of the dead timber precluding its marketability as houselogs and to reduce existing and future accumulations of fuel thereby reducing the risk of catastrophic wildfire.

EFFECTIVE DATE: Effective on June 17, 1993.

FOR FURTHER INFORMATION CONTACT: Drew Bellon, Rexford District Ranger, Kootenai National Forest, 1299 Hwy. 93 North, Eureka, MT 59917, Telephone: 406–296–2536.

SUPPLEMENTARY INFORMATION: Mountain pine beetle activity has killed lodgepole pine trees across the Rexford Ranger District of the Kootenai National Forest. The identified dead timber is located within lands designated as suitable for timber management and assigned to Management Area 12 (Kootenai Forest Plan, August 1987).

In December 1991, the Rexford District Ranger proposed the salvage of this dead timber. This proposal was designed to salvage dead lodgepole pine trees for houselogs prior to loss of value and minimizing effects on big game and the watershed. An Interdisciplinary Team was convened, and scoping began in December 1991. Environmental issues were identified and were the basis of environmental analysis disclosed in the EA. Four alternatives including the "Proposed Action" and "No Action" were analyzed in detail.

The select alternative would salvage, through selective harvests, approximately 10–40 dead lodgepole pine trees per acre by helicopter logging. Access would be from existing roads; no new road construction or reconstruction would occur.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible to recover a high value product, to improve big game habitat, to improve watershed values, and to reduce the accumulation of dead fuel. To expedite implementation of this decision, procedures outlined in 36 CFR part 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the information presented in the EA for Dodge Creek Helicopter Lodgepole Pine Salvage and District Ranger's Decision Notice, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: June 9, 1993.

Jack A. Blackwell,

Acting Deputy Regional Forester, Northern Region.

[FR Doc. 93–14012 Filed 6–16–93; 8:45 am]

BILLING CODE 3410–11–M

Bronco Beauty Resource Area; Idaho Panhandle National Forests, Kootenai County, ID; Intent To Prepare an Environmental Impact Statement

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The notice is hereby given that the Forest Service is gathering information in order to prepare an EIS (Environmental Impact Statement) for a proposal to harvest timber in a portion of the Bronco Beauty Resource Area. The area is located approximately 8 miles southeast of Coeur d'Alene, Idaho, and is approximately 8,000 acres in size. There would be approximately 25 timber harvest units, treating 446 acres. In an additional 15 units, rehabilitation would occur on approximately one-third of the unit's acres, for a total of approximately 200 acres of rehabilitation. No timber harvest would occur in those units.

A landscape-level approach would be utilized on the majority of the treated acres, with emphasis on rehabilitation of watersheds and timber stands. Of the 19 harvest units, approximately 202 acres (11 units) would be harvested under a seed tree prescription, with 131 acres (4 units) under a shelterwood prescription; 66 acres (1 unit) under a group shelterwood prescription; 34 acres (2 units) under a overstory removal prescription; and 13 acres (1 unit) under a clearcut prescription. There are no new roads proposed to access the harvest units. Approximately 5 miles of road would be reconditioned, with limited reconstruction.

Management activities would be administered by the Fernan Ranger District of the Idaho Panhandle National Forests in Kootenai County, Idaho. This EIS will tier to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area. The purpose and need for the proposed action encompasses a landscape-level approach to ecosystem management. Emphasis is on improving the condition of the watershed both in the short term by reducing the impact of mining and road construction, and over the long term, by improving the health and vigor of the timber stands. The proposed action would allow recovery of a portion of the timber that would be lost to root disease and other mortality if no action is taken, and would reduce the perceived visual impact of the existing units located on the north face of Mount Coeur d'Alene.

The Forest Service serves notice that the agency is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparing the Draft EIS. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

Preparation of an Environmental Assessment was initiated in February, 1992, to examine potential timber harvest in this area. Substantial public involvement and data collection activities have occurred. The level of concern expressed by the public indicated a high sensitivity level concerning water and wildlife resources, existing road density, and recreation opportunities. The work that occurred in preparation for the Environmental Assessment will be used as a basis for the Environmental Impact Statement. Many suggestions from the public helped to shape the preliminary alternatives under consideration. Those alternatives will not be disregarded in the EIS; they will be fully analyzed along with any additional alternatives, based on all significant issues identified during the EIS scoping process. The purpose of preparing the Environmental Impact Statement is not to circumvent the scoping, alternative development and analysis that has already occurred; the purpose is to provide the public with additional time to comment, to ensure that no significant concerns or suggestions are missed.

The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. For most effective use, comments should be sent to the agency within 45 days from the date of publication in the **Federal Register**. Written comments concerning the scope of the analysis must be received within 45 days from the date of publication in the **Federal Register**.

ADDRESSES: Send written comments to District Ranger, Fernan Ranger District, 2502 E. Sherman Avenue, Coeur d'Alene, ID 83814.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Sherri Lionberger, Acting Planning Staff Officer, Fernan Ranger District, Idaho Panhandle National Forests, 2502 East Sherman Avenue, Coeur d'Alene, ID 83814. Phone: (208) 769–3000.

SUPPLEMENTARY INFORMATION: The Forest Plan provides the overall guidance for management activities in the potentially affected area through its Goals, Objectives, Standards and Guidelines, and Management Area direction. The potentially affected area is within the following Management Areas:

Management Area 1: Consists of lands designated primarily for timber production, while providing for soil and water protection, wildlife habitat, dispersed recreation opportunities and visual quality.

Management Area 4: Consists of lands designated for timber production within big-game winter range.

Management Area 9: Consists of non-forest lands or lands not capable of timber production. Management goals are to maintain and protect existing improvements and resource productive potentials.

Management Area 16: Consists primarily of riparian areas. The goal is to manage riparian areas to feature riparian dependent resources (fish, water quality, maintenance of natural channels, and certain vegetation and wildlife communities) while producing other resource outputs.

A range of alternatives will be considered. One of these will be the "no-action" alternative, in which current management of the area would continue, and timber harvest and associated road building would be deferred. Other alternatives will examine the effects of timber harvest, varying in the volume harvested and silvicultural systems. The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives.

Public participation will be important during the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision, however, two periods of time are specifically identified for the receipt of comments: During the scoping process, and in the review of the Draft EIS (October, 1993).

During the scoping process, the Forest Service is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. Meetings with area residents, organizations, and other agencies will be scheduled as needed.

The draft environmental impact statement (DEIS) is expected to be available for public review in September, 1993. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by January, 1994. The Forest Service will respond to the comments received in the FEIS. The District Ranger is the responsible official for this EIS, and will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: June 8, 1993.

Donald J. Bright,

District Ranger, Fernan Ranger District, Idaho Panhandle National Forests.

[FR Doc. 93–14339 Filed 6–16–93; 8:45 am]

BILLING CODE 3410–11–M

North Lightning Analysis Area, Idaho Panhandle National Forests, Bonner County, ID; Cancellation of Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: On July 2, 1992, notice was published in the **Federal Register** [57 FR 29463] that an environmental impact statement would be prepared to document the analysis and disclose the environmental effects of proposed actions to harvest timber, build roads, improve existing stands of trees, and regenerate new stands of trees in Trout Creek, Kirby Creek, Trestle Creek, and Strong Creek drainages, which flow directly into the northern portion of Lake Pend Oreille. The analysis area is located on the Standpoint Ranger District, Idaho Panhandle National Forests.

That notice is hereby cancelled.

DATES: This action is effective upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Anthony Erba, NEPA Coordinator, Sandpoint Ranger District, 1500 Highway 2, Sandpoint, ID 83864–9509, (208) 263–5111.

Dated: June 8, 1993.

Claire Lavendel,

District Ranger, Sandpoint Ranger District, Idaho Panhandle National Forests.

[FR Doc. 93–14338 Filed 6–16–93; 8:45 am]

BILLING CODE 3410–11–M

Tailholt Administrative Research Study; Payette National Forest, Valley County, ID; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to study the impacts on water quality and fish habitat resulting from timber harvest and helicopter logging on sensitive soils in the South Fork Salmon River drainage.

DATES: Comments concerning the scope of the analysis should be received in writing by July 16, 1993.

ADDRESSES: Send written comments to Tailholt Administrative Study Team, Payette National Forest, P.O. Box 1026, McCall, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Rudy Verschoor, Environmental Coordinator, McCall Ranger District, (208) 634–0400.

SUPPLEMENTARY INFORMATION: The Tailholt Administrative Research Study is designed to analyze the impacts of timber harvesting without road construction and using helicopter logging methods on sensitive soils. The study proposes to harvest timber using various harvest methods on different slopes and aspects to determine what management practices can be used to reduce sediment production on sensitive soils to the point that timber harvest can be re-introduced into the South Fork Salmon River Drainage.

This Notice of intent initiates the formal scoping process as defined in the Council On Environmental Quality Regulations implementing the National Environmental Policy Act. Additional mailings will be sent to the project EIS mailing list. Articles announcing the beginning of scoping will be printed in local newspapers.

Preliminary issues already identified include potential impacts to watershed values, chinook salmon (a Threatened species), the Secesh roadless area, wildlife, and biodiversity. Alternatives being considered include the No Action alternative.

The Lead Agency will be the USDA Forest Service, Payette National Forest, cooperating with the Intermountain Research Station (USDA Forest Service).

Comments or suggestions are invited. Please contact those individuals identified above in this notice. The Responsible Official is David F. Alexander, Forest Supervisor, Payette National Forest. The draft EIS is scheduled for release to the public by October 1993, and the final EIS by February 1994.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. (See The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.)

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 [1978].) Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. (*City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. [980]). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: June 9, 1993.

Ralph H. Geibel, II,

Branch Chief, Engineering & Lands.

[FR Doc. 93–14340 Filed 6–16–93; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.

Title: Quarterly Report on the Loan or Sale of Aircraft Equipment Parts, Accessories, and Components by Airlines.

Agency Form Number: None but requirements are found at Section 776.8 of the Export Administration Regulations.

OMB Approval Number: 0694–0035.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 819 reporting/recordkeeping hours.

Number of Respondents: 191 respondents/recordkeepers.

Avg Hours Per Response: Avg hours per respondent is 30 minutes. Avg hours per recordkeeper is 4.3 hours.

Needs and Uses: This collection of information is primarily a recordkeeping requirement for airlines operating abroad that provide U.S. commodities for maintenance, repair, or operation of aircraft. In the event that the airline is prohibited by foreign government regulation or statute from permitting a U.S. Government representative to inspect these records, the airline must submit a report of such transactions at the end of each calendar quarter.

Affected Public: Businesses or other for–profit institutions; small businesses or organizations.

Frequency: On occasion; quarterly.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

Agency: Bureau of Export Administration.

Title: Foreign Availability Procedures and Criteria.

Agency Form Number: None but requirements are found at Section 791.5 of the Export Administration Regulations.

OMB Approval Number: 0694–0004.

Burden: 1,050 reporting/recordkeeping hours.

Number of Respondents: 10.

Avg Hours Per Response: 105 hours.

Needs and Uses: This information is collected in order to respond to requests by Congress and industry to make foreign availability determinations. Exporters are urged to submit data regarding the foreign product's technical characteristics and the availability of these products in foreign markets to determine if similar U.S. products should not be subject to export restrictions.

Affected Public: Businesses or other for–profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 14, 1993

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–14337 Filed 6–16–93; 8:45 am]

BILLING CODE: 3510–CW–F

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

An agenda for a public meeting of the North Pacific Fishery Management Council (Council) and its Advisory Committees, which are scheduled to meet on June 20, 1993, was published in the **Federal Register** at 58 FR 31509 on June 3, 1993. A new agenda item has been added; the agenda item to be added is listed below. All other information originally published at 58 FR 31509, remains unchanged.

Add Agenda Item

Discussion of whether to pursue consideration of exclusive registration proposals for the Gulf of Alaska.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, (907) 271–2809.

Dated: June 11, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–14276 Filed 6–16–93; 8:45 am]

BILLING CODE 3510–22–M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Pelagics Plan Team (Team) will hold a public meeting on June 28–29, 1993, beginning at 8:30 a.m. on each day. On June 28 the Team will meet in room 135 of the Hawaii Institute of Geophysics, University of Hawaii, 2525 Correa Road, Honolulu, HI. On June 29 it will meet in room 315 of the Marine Science Building, University of Hawaii, 1000 Pope Road, Honolulu, HI.

The Team will discuss, and possibly make recommendations to, the Council on the following: (1) The 1992 annual report; (2) The Council's preferred alternative for Amendment #7 (management alternatives to replace the current longline moratorium); (3) Amending the Fishery Management Plan to collect data from all user groups; (4) Program planning for pelagic issues; and (5) Other business.

For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: June 11, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–14277 Filed 6–16–93; 8:45 am]

BILLING CODE 3510–22–M

National Oceanic And Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Permits and an Amendment to a Permit.

On December 7, 1992 (57 FR 57823), September 22, 1992 (57 FR 43707), September 15, 1992 (57 FR 42552), April 12, 1993 (58 FR 19089), and February 9, 1993 (58 FR 7769) notice was published that applications had been filed by the Shoshone-Bannock Tribes (P510), the Idaho Power Company (P514), the NMFS Northwest Fisheries Science Center (P770 63), NMGS Northwest Fisheries Science Center (P770 65), and the Columbia River Inter-tribal Fish Commission (CRITFC) (P513), respectively, to take listed Snake River spring/summer and fall chinook salmon (*Oncorhynchus tshawytscha*).

On March 23, 1993 (58 FR 17383), CRITFC was issued Permit 825, under the authority of the Endangered Species Act of 1973 (ESA) (U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227), authorizing two of five projects proposed in their application.

The above applications were submitted for the purposes of scientific research, as authorized by the ESA and the NMFS regulations governing listed fish and wildlife permits.

Notice is hereby given that on June 9, 1993, as authorized by the provisions of the ESA, NMFS issued four permits and an amendment to Permit No. 825 for the above taking subject to certain conditions set forth therein.

Issuance of these permits, as required by the ESA, was based on a finding that such permits; (1) Were applied for a good faith; (2) will not operate to the disadvantage of the listed species which are the subject of these permits; (3) are consistent with the purposes and policies set forth in Section 2 of the ESA. These permits were also issued in accordance with and are subject to the NMFS regulations governing listed species permits.

The applications, permits, and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated: June 9, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–14237 Filed 6–16–93; 8:45 am]

BILLING CODE 3510–22–M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of application for Scientific Research Permit (P552A).

SUMMARY: Notice is hereby given that the following applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Fur Seal Act (16 U.S.C. 1151–1175), and the Fur Seal regulations at 50 CFR part 215.

(P552A) Michael T. Williams, University of Alaska Fairbanks, Department of Biology and Wildlife, 417 Irving Building, Fairbanks, AK 99775, requests a scientific research permit to tag and observe up to 100 breeding female fur seals (*Callorhinus ursinus*) during 1993 (50 each from North and South Rookeries on St. George Island, AK). Up to 500 seals of various ages and sexes, (200 from South Rookery and 300 from North Rookery on St. George Island, AK), will potentially be harassed during tagging and observational activities.

ADDRESSES: Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries,

NMFS, U.S. Department of Commerce, 1335 East-West Highway, room 7234, Silver Spring, MD 20910, within 30 days of the publication of this notice.

Documents submitted in connection with the above application are available for review by writing to, or by appointment, in the Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910, (301/713–2289); and,

Director, Alaska Region, NMFS, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802, (907/586–7221).

Dated: June 10, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–14296 Filed 6–16–93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service NMFS, NOAA Commerce.

ACTION: Issuance of Scientific Research Permit No. 845 (P394C).

On April 28, 1993, notice was published in the **Federal Register** (58 FR 25812) that an application had been filed by Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, AK 99826–0140, for a scientific research permit to conduct observational/photo-identification studies on humpback whales (*Megaptera novaeangliae*), minke whales (*Balaenoptera acutorostrata*), and killer whales (*Orcinus orca*) in Alaskan waters.

Notice is hereby given that on June 9, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543), and the regulations governing endangered species permits (50 CFR parts 217–222), the NMFS issued the requested Permit for the above activities subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973.

The Permit and other related documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, 1335 East West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, NMFS, Federal Annex, 9109 Mendenhall Mall Rd. suite 6, Juneau, AK 99802 (907/586–7221).

Dated: June 9, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–14294 Filed 6–16–93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of application for a Scientific Research Permit (P551).

Notice is hereby given that Ms. Daniela M. Feinholz, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039 and Dennis L. Kelly, Ph.D., Coastal Dolphin Research Project, Orange Coast College, Costa Mesa, CA 92628, request authorization to approach and inadvertently harass up to 125 bottlenose dolphins (*Tursiops truncatus*) annually, up to 4 times per week from March through October over a 4-year period during the course of observational/photo-identification studies. Activities will be carried out in California coastal waters.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NMFS, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices (by appointment):

Office of Protected Resources, NMFS, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, NOAA, 501 S. Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

Dated: June 10, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–14295 Filed 6–16–93; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0010]

Clearance Request for Progress Payments, SF 1443

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0010).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Progress Payments, SF 1443.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Certain Federal contracts provide for progress payments to be made to the contractor during performance of the contract. The requirement for certification and supporting information are necessary for the administration of statutory and regulatory limitation on the amount of progress payments under a contract. The submission of supporting cost schedules is an optional procedure that, when the contractor elects to have a group of individual orders treated as a single contract for progress payments purposes, is necessary for the administration of

statutory and regulatory requirements concerning progress payments.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .55 hours per response, including the time for reviewing instructions, searching exiting data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, 27,000; responses per respondent, 32; total annual responses, 864,000; preparation hours per response, .55; and total response burden hours, 475,200.

Obtaining Copies of Proposals: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0010, Progress Payments, SF 1443, in all correspondence.

Dated: June 9, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93–14343 Filed 6–16–93; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0080]

Clearance Request for Integrity of Unit Prices

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0080).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulations (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Integrity of Unit Prices.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 15.182–1(c) and the clause at FAR 52.215–26, Integrity of Unit Prices, require offerors and contractors under Federal contracts to identify in their proposals those supplies which they will not manufacture or to which they will not contribute significant value. The policies included in the FAR are required by section 501 of Public Law 98–577 (for the civilian agencies) and section 927 of Public Law 99–500 (for DOD and NASA). The rule eliminates reporting requirements on contracts with civilian agencies for commercial items.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 5 minutes per line item, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, 7,822; responses per respondent, 95; total annual responses, 743,090; preparation hours per response, .084; and total response burden hours, 62,420.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20745, telephone (202) 501–4755. Please cite OMB Control No. 9000–0080, Integrity of Unit Prices, in all correspondence.

Dated: June 9, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93–14344 Filed 6–16–93; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Supplemental Draft Environmental Impact Statement Relevant to an Application for a Section 404 Permit

AGENCY: U.S. Army Corps of Engineers, Sacramento District, DOD.

ACTION: Notice of intent.

SUMMARY: The Corps of Engineers, Sacramento District, will prepare a supplemental draft Environmental Impact Statement (sdEIS) relevant to an application for a section 404 permit to place fill material into wetlands adjacent to East Brush Creek in Eagle County, Colorado, for the construction of commercial/residential development attendant to a four-season resort. The applicant, Adam's Rib Recreation Area, has applied for a permit to fill approximately 25 acres of montane wetlands pursuant to the development which would include skiing for 9,000 skiers-at-one-time on Adam Mountain and Mount Eve, golfing, 250,000 square feet of commercial space, 4,281 residential units and 1,440 lodging rooms and employee housing.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and sdEIS should be directed to Larry Vinzant at U.S. Army Corps of Engineers, Regulatory Section-Room 1444, 1325 J Street, Sacramento, California 95814–2922, telephone (916) 557–5263.

SUPPLEMENTARY INFORMATION: The applicant proposes to fill approximately 25 acres of montane wetlands dominated by various species of willow, sedge and rush. Nearly all wetland fill would be located in Vassar Meadow; additional development would occur in Joe Goode Meadow, Woodrun, No Name drainage, adjecent to Brush Creek (i.e., golf course and residences) and on the ski mountains. The U.S. Forest Service issued a special use permit for the ski mountains in 1982. On March 3, 1987, the U.S. Army Corps of Engineers published a Notice of Intent in the **Federal Register** to prepare a draft EIS. A draft EIS titled "Adam's Rib Recreation Area, Eagle, Colorado" was published in October 1989. A notice of availability for this document was published in the **Federal Register** on November 3, 1989. The applicant's preferred alternative resulted in a request for a permit to fill approximately 50 acres of wetlands in the project area. This permit was subsequently denied in February 1993.

The applicant has since modified the proposal to reduce wetland fill and this sdEIS will supplement and supplant information currently available in the draft EIS.

Alternatives

Alternatives that will be considered for evaluation will include:

(1) Base area development near the confluence of East and West Brush Creeks.

(2) Base area development in the Woodrun area.

(3) Base area development in Vassar Meadow (applicant's preferred alternative).

(4) Reasonable variations to the applicant's preferred alternative that would reduce adverse impacts to wetlands.

Scoping

The Corps issued a scoping notice in conjunction with the Notice of intent to prepare the draft EIS in 1987. Additionally, the Corps accepted comments on the draft EIS, conducted a Public Hearing in February of 1990 in Gypsum, Colorado and has coordinated closely with resource agencies, cooperating agencies and the interested public. It is believed that additional scoping is unnecessary at this time. However, any additional substantive and new issues arising from comments to the sdEIS shall be thoroughly addressed in the final EIS.

Significant Issues

(1) Impacts to wetlands.

(2) Impacts to water quality.

(3) Impacts on fish and wildlife resources.

(4) Socio-economic effects.

(5) Cumulative impacts of developing a new ski area.

(6) Impacts on outdoor recreation.

(7) Visual impacts.

Other Environmental Review and Consultation

Required review and consultation which will be conducted during this National Environmental Policy Act process include sections 401 and 404 of the Clean Water Act, Fish and Wildlife Coordinating Act, National Historic Preservation Act and Executive Order 11988 (Flood Plain Management). Other statutes and regulations, as applicable, will also be complied with during the sdEIS process.

Availability of sdEIS

It is estimated that the sdEIS will be made available to the public in October of 1993.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–14341 Filed 6–16–93; 8:45 am]

BILLING CODE 3710–EH–M

Department of the Navy

CNO Executive Panel; Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel National Security Task Force will meet June 21, 1993, from 8:30 a.m. to 11:30 a.m. at 2805 Woodstock Road, Los Angeles, California, and June 22, 1993, from 9 a.m. to 5 p.m.; June 23, 1993, from 9 a.m. to 12 p.m. at Commander, U.S. Pacific Fleet, Pearl Harbor, Hawaii; and June 24, 1993, from 8 a.m. to 11:30 a.m. at the Hoover Institute of War, Revolution, and Peace, Stanford, California. The June 22-23, 1993, sessions will be closed to the public. The June 21, 1993; and June 24, 1993, sessions will remain open to the public.

The purpose of this meeting is to evaluate the role of the U.S. military in the Asian security environment. The entire agenda for the meeting will consist of discussion of key issues relating to naval capabilities, employment, and structure in the Pacific. Some of these matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the June 22-23, 1993, meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: J. Kevin Mattonen, Executive Secretary to the Executive Panel, 4401 Ford Avenue, suite 601, Alexandria, VA 22302-0268, Phone (703) 756-120.

Dated: June 4, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–14342 Filed 6–16–93; 8:45 am]

BILLING CODE 3810-AE-F

Naval Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Defense Conversion will meet on June 21, 22, and 23, 1993. The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8:30 a.m. and terminate at 5 p.m. on June 21, 22, and 23, 1993. The meeting will be open to the public.

The purpose of the meeting is to provide the Department of the Navy with an assessment of the current capability of the defense industry to economically move into the commercial sector, and assess the actions necessary on the part of the Department of the Navy and industry to carry out the provisions of the Defense Conversion, Reinvestment, and Transition Act of 1992.

The meeting will include briefings and discussions relating to Congressional national policy perspectives on defense conversion, technology deployment, Department of Commerce initiatives, and industry, Federal and local government, and Department of Defense perspectives and execution.

This Notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the Federal Register at least 15 days before the date of the meeting.

For further information concerning this meeting contact:Commander R. C. Lewis, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (703) 696-4870.

Dated: June 15, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-14433 Filed 6-16-93; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board.

ACTION: Amendment to published notice of Executive Committee meeting.

SUMMARY: Notice is hereby given of an amendment to the notice of a

teleconference meeting of the Executive Committee of the National Assessment Governing Board scheduled for June 19, 1993 published on June 10, 1993, 58 FR, page 32525. The meeting date is changed; the time and agenda are unchanged. The Committee will meet, in open session, on July 19, 1993 from 11 a.m. to 1 p.m., to determine the plans for the August meeting of the full Board.

Dated: June 14, 1993.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 93–14309 Filed 6–16–93; 8:45 am]

BILLING CODE 4000–01–M

Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of closed meeting; teleconference.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Achievement Levels Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

Date: June 28, 1993.

Time: 10 a.m. to 12 noon.

Location: 800 North Capitol Street, NW, Suite 825, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by Section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Achievement Levels Committee of the National Assessment Governing Board will hold a closed meeting on June 28, 1993 from 10 a.m. until 12 noon. The meeting will include review of the cut points for the Writing Achievement Levels and the formulation of a recommendation for Board action. The discussion will include references to specific items for the assessment, the disclosure of which may significantly frustrate implementation of the NAEP. This meeting must be closed to the public because reference may be made to data which may be misinterpreted, incorrect, or incomplete. Premature disclosure of this data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C.

A summary of the activities of this closed meeting and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: June 14, 1993.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 93–14310 Filed 6–16–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5797–002 Idaho]

B&C Energy, Inc.; Availability of Environmental Assessment

June 11, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Star Falls Hydroelectric Project, located on the Snake River in Twin Falls and Jerome Counties, Idaho, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, even with appropriate mitigative measures, would constitute a major federal action significantly affecting the quality of the human environment. The Commission's staff recommends the no-action alternative.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14265 Filed 6–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES93–39–000]

Citizens Utilities Co.; Application

June 11, 1993.

Take notice that on June 7, 1993, Citizens Utilities Company filed an application under section 204 of the Federal Power Act requesting authorization to effectuate a two-for-one stock split of its outstanding shares of Common Stock Series A and Common Stock Series B to be carried out by the issuance of a 100% stock dividend on all outstanding shares of Common Stock or in the alternative for an order from the Commission declining jurisdiction over such stock split under section 204 of the Federal Power Act.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14264 Filed 6–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–138–000]

Granite State Gas Transmission, Inc.; Petition for Temporary Waiver of Purchased Gas Cost Regulations

June 11, 1993.

Take notice that on June 8, 1993, Granite State Gas Transmission, Inc., 300 Friberg Parkway, Westborough, Massachusetts 01581 filed a Petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure for a Temporary Waiver of §§ 154.301 through 154.310 of the Regulations relating to purchased gas cost adjustment procedures.

Granite State states that it is a "downstream" pipeline and its principal upstream suppliers, Tennessee Gas Pipeline Company (Tennessee) and Algonquin Gas Transmission Company (Algonquin) are rapidly transitioning their services and operations under Order No. 636 compliance filings. According to Granite State, Tennessee in Docket No. RS92–23–000 and Algonquin in Docket No. RS92–28–000 have restructured tariffs and rates on file with Commission approval, effectively changing their former bundled sales services for Granite State into firm transportation services.

According to Granite State, its restructuring filing in Docket No. RS93–1–000 is still pending review by the Commission. It is further stated that, during the next several months, until its restructuring process has been completed, Granite State will encounter a series of changes in the rates for the services from its upstream suppliers as they convert from bundled sales transactions to transportation services for Granite State's account. During the interim period pending completion of its restructuring process, Granite State requests a Temporary Waiver of the Commission's purchased gas cost regulations to permit it to reflect in its purchased gas accounts and its purchased gas cost adjustment filings the transportation costs of its upstream suppliers that are in compliance with Order No. 636 as well as its projected gas costs.

Granite State further states that its Petition was served on its jurisdictional customers, Bay State Gas Company and Northern Utilities, Inc. and on the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14259 Filed 6–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–13–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

June 11, 1993.

Take notice that on June 9, 1993, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581 filed Seventh Revised Sheet No. 24 in its FERC Gas Tariff, Second Revised Volume No. 1, proposing changes in rates for effectiveness on July 10, 1993.

According to Granite State, its filing is submitted to passthrough to its customers the take-or-pay buydown and buyout costs directly billed to Granite State by Tennessee Gas Pipeline Company (Tennessee).

Granite State states that, on May 28, 1993, Tennessee filed revised tariff sheets to recover additional transition costs in Docket No. RP93–132–000. According to Granite State, its tariff sheet reflects the changes in Tennessee's allocation of take-or-pay costs to Granite State and also complies with the requirements of the reallocation of costs to small customers pursuant to Order No. 528–A.

According to Granite State the proposed rate changes are applicable to its jurisdictional sales services rendered to Bay State Gas Company and Northern Utilities, Inc. and to a sale to a direct customer, Pease Air Force Base. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14260 Filed 6–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–410–000]

K N Energy, Inc.; Request Under Blanket Authorization

June 11, 1993.

Take notice that on June 2, 1993, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood Colorado, 80228–8304, filed in Docket No. CP93–410–000 a request pursuant to §§ 157.205 and 157.211 of the Regulations under the Natural Gas Act for authorization to construct and operate sales taps for the delivery of gas to end users under the certificate issued in Docket No. CP83–140–000, et al., pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N requests authorization to construct and operate sales taps to various end users located along its jurisdictional pipelines. K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on its peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time

allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7(c) of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14261 Filed 6–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–432–000]

Panhandle Eastern Pipe Line Company Trunkline Gas Co.; Application

June 11, 1993.

Take notice that on June 7, 1993, Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline) referred to herein as "Applicants", P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP93–432–000, a joint application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon service under five individually certificated transportation and exchange agreements with Central Illinois Light Company (CILCO), United Gas Pipe Line Company (United), Central Illinois Public Service Company (CIPSCO), Mid-Louisiana Gas Company (Mid-Louisiana) and Columbia Gas Transportation Corporation (Columbia), all as more full set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicants state that they propose to abandon Panhandle's Rate Schedules TE–5, TE–8, T–14, T–40 and T–54; and Trunkline's Rate Schedules TE–9, TE–11, T–14, T–62 and T–85, respectively, contained in their FERC Gas Tariffs, Original Volume No. 2. Applicants further state that proper notices were given for the termination of the services under these rate schedules and none of the customers requested to convert to Panhandle's new restructured services.

No facilities are proposed to be abandoned herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 2, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14263 Filed 6–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT93–48–000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

June 11, 1993.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on May 25, 1993 certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2. The tariff sheets, included in appendix A attached to the filing, are proposed to be effective June 1, 1993.

As background to the filing, TGPL stated that it currently provides incremental firm transportation service on the Leidy Line to Algonquin Gas Transmission Company (Algonquin) under TGPL's Rate Schedule X–284 pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's regulations. In accordance with § 284.242 of the Commission's Regulations, Algonquin has assigned its Rate Schedule X–284 firm transportation capacity to its F–3 customers. Set forth in appendix B attached to the filing is a list of shippers who have been assigned such capacity and their respective daily contract demand entitlements. TGPL will render firm transportation service to such shippers pursuant to TGPL's Rate Schedule FT and part 284 of the Commission's regulations.

TGPL states that the purpose of the instant filing is to set forth in TGPL's Volume No. 1 Tariff the rates applicable to incremental Leidy Line annual firm transportation service which is assigned or converted from section 7(c) service to transportation under Part 284 and to terminate Rate Schedule X–284. The rates included therein reflect, in addition to the generally applicable charges under Rate Schedule FT (including fuel), a reservation rate surcharge. In that regard, TGPL believes that the rates filed therein are consistent with the Commission's policy that the rate for such assignments or conversions be the Rate Schedule FT rate which shall include a surcharge if the part 157 rate is higher than the FT rate.

TGPL states that it is serving copies of the filing to Algonquin and the shippers listed on appendix B attached to the filing who have been assigned Algonquin's X–284 capacity.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14258 Filed 6–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP91–1794–001]

Trunkline Gas Co. and United Gas Pipe Line Co.; Application

June 11, 1993.

Take notice that on June 10, 1993, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642 and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251, referred to herein as "Applicants", filed in Docket No. CP91–1794–001, a joint application pursuant to sections 7(b) and 7(c) of the

Natural Gas Act for an order (a) authorizing the amendment of existing capacity lease authorization wherein United, under the terms of an operating lease, will replace Tennessee Gas Pipeline Company (Tennessee) as lessor of pipeline capacity and to the extent required the abandonment of the capacity lease authorization between Trunkline and Tennessee; and (b) authorizing United to abandon, by lease, capacity to Trunkline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicants request authorization for the following:

(1) Authority to amend the authorization previously granted in Docket No. CP91–1794–000 in order to replace Tennessee as lessor with United pursuant to Trunkline's and United's new agreement, the United Lease;

(2) Authority for United to abandon by lease to Trunkline, 125,000 MMBtu per day of firm capacity upon the date of Commission approval through September 30, 1994, then increasing to 525,000 MMBtu of capacity, effective October 1, 1994, pursuant to the United Lease;

(3) Authority as may be required for the abandonment by Trunkline of the contractually terminated firm capacity lease agreement with Tennessee, effective September 30, 1994; and

(4) Such other authority as may be deemed necessary to implement these arrangements, including authority to treat these leases as "operating leases" pursuant to the Uniform System of Accounts for Natural Gas Companies, by which Trunkline shall record monthly lease payments to Account No. 858, and United shall record the monthly lease receipts to Account No. 489.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 28, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14266 Filed 6–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–439–000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

June 11, 1993.

Take notice that on June 8, 1993, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP93–439–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a delivery tap for service to Shell Oil Company (Shell), in Nueces County, Texas, under United's blanket certificate issued in Docket No. CP82–430–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to construct and operate the 12-inch meter station and associated facilities on its 14-inch Agua Dulce-Perryville Line for delivery on behalf of Shell to Corpus Christi Transmission Company's Banquet Station in Nueces County. The cost of installing the facilities, including the tap, 7,500 feet of 12-inch diameter pipeline, and a meter and regulator station, is estimated at $604,463. It is stated that United is authorized to transport up to 62,880 MMBtu equivalent of gas per day to Shell on an interruptible basis under United's Rate Schedule ITS. It is asserted that the tap would be used for deliveries made under a transportation agreement between United and Shell dated February 18, 1991. It is further asserted that the quantities delivered through the new tap would not exceed currently authorized total quantities for delivery by United to Shell. It is stated that United has sufficient capacity to deliver the volumes to Shell at this location.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14262 Filed 6–16–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4667–2]

Preliminary Findings of the Hydrogen Fluoride Study Required Under Section 112(n)(6) of the Clean Air Act as Amended

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is holding a public meeting to present and discuss the preliminary findings of a study of the uses and hazards of hydrogen fluoride. Under section 112(n)(6) of the Clean Air Act as amended in 1990, the Agency is required to complete a study of the commercial and industrial uses of hydrogen fluoride and the hazards it may present to public health and the environment. The study is to consider a range of events including worst case accidental releases and, when finalized, will include recommendations for the reduction of hazards if appropriate. EPA will not obtain consensus advice or recommendations during this meeting but rather seeks comments from individual attendees.

DATES: EPA will hold a public meeting on this study on July 12, 1993, from 8:30 a.m. to 4:30 p.m. EDT. Seating for the meeting is limited, and registration for the meeting is required. Individuals who wish to register for the meeting must call (703) 934–3422 by 4:30 p.m. EDT on July 7, 1993. Attendees will be admitted on a first-come first-served basis.

ADDRESSES: The public meeting will be held at the EPA Headquarters Auditorium, 401 M St., SW., Washington, DC 20460. Written meeting materials, including directions and the preliminary findings, are available from the Emergency Planning and Community Right-to-Know Information Hotline at (800) 535–0202.

Those who wish to provide written comments or who cannot attend the meeting but wish to comment on the preliminary findings can send their comments to Edward L. Freedman, Chemical Emergency Preparedness and Prevention Office, OS–120, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Written comments must be received by 4:30 p.m. EDT on July 12, 1993, and will also be accepted at the meeting.

FOR FURTHER INFORMATION CONTACT: Edward L. Freedman, (202) 260–7934, Chemical Emergency Preparedness and Prevention Office, OS–120, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, or the Emergency Planning and Community Right-to-Know Information Hotline at (800) 535–0202.

Jim Makris,

Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 93–14315 Filed 6–16–93; 8:45 am]

BILLING CODE 6560-50-P

[FRL–4657–6]

Public Water System Supervision Program; Program Revision for the State of Hawaii

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of decision and opportunity for hearing.

SUMMARY: Notice is hereby given that the State of Hawaii is revising its approved State Public Water System Supervision Program. Hawaii has adopted a revised drinking water regulation for total coliform bacteria. The state regulation corresponds to a revised National Primary Drinking Water Regulation promulgated by EPA on June 29, 1989 (54 FR 27544). EPA has determined that the state program revision is no less stringent than the corresponding federal rule. Therefore, EPA has tentatively decided to approve the state program revision.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by July 19, 1993 to the Regional Administrator at the address shown below. Insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become effective July 19, 1993.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, at the following offices: Hawaii Department of Health, Safe Drinking Water Program, Five Waterfront Plaza, suite 250, 500 Ala Moana Blvd., Honolulu, Hawaii 96813; and EPA, Region IX, Water Management Division, Water Supply Section (W–6–1), 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Corine Li, EPA, Region IX, at the San Francisco address given above or by telephone at (415) 744–1858.

(Sec. 1413 of the Safe Drinking Water Act as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: June 8, 1993.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 93–14317 Filed 6–16–93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL ELECTION COMMISSION

Clearinghouse on Election Administration; Meeting

This Notice of Meeting is submitted due to the wide interest of State and local election officials, advocates, Federal officials and other persons interested in the role of the FEC in assistance in implementing the National Voter Registration Act of 1993 (NVRA). This notice is not mandated by the Federal Advisory Committee Act (FACA) because this discussion group is not an advisory committee.

Name: FEC's discussion group.
Date: 25–26 June 1993.
Place: Hotel Washington, Pennsylvania Ave at 15th Street Washington, DC.
Time: 0900–1700 on 25 June 1993. 0900–1300 on 26 June 1993.

Summary of Topics

General Requirements of the National Voter Registration Act (NVRA); Comments and Concerns Relating to the Role of the Federal Election Commission; Requirements and Options Regarding:

—Motor Voter Provisions
—State and National Mail Registration
—Agency-Based Registration
—Registration List Verification and Confirmation
—Reporting Requirements.

If further information is needed, call for a detailed agenda on 202/219–3670 or 800–424–9530.

Purpose of Meeting

This session will be the first in a series of steps taken by the Commission pursuant to carrying out its responsibilities under the Act. The meeting will involve a detailed discussion of the Act in order to review its requirements, pinpoint what roles various Federal agencies will have in its administration and implementation and describe the range of options available to the States.

All communications regarding the NVRA discussion group should be addressed to Penelope Bonsall, National Clearinghouse on Election Administration, Federal Election Commission, 999 E Street NW, Washington DC 20463.

Dated: June 14, 1993.

Marjorie W. Emmons,

Secretary to the Commission.

[FR Doc. 93–14318 Filed 6–16–93; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; U.S. Atlantic/Brazil et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission,

Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–009847–031.
Title: U.S. Atlantic Coast/Brazil Agreement.
Parties:
Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritima Netumar
Companhia Maritima Nacional
Crowley American Transport, Inc.

Synopsis: The proposed amendment increases the carrying rate from 98 to 100 percent, thus suspends the future pooling of revenue under the Agreement.

Agreement No.: 212–009848–030.
Title: U.S. Gulf Ports/Brazil Agreement.
Parties:
Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
Crowley American Transport, Inc.

Synopsis: The proposed amendment increases the carrying rate from 98 to 100 percent, thus suspends the future pooling of revenue under the Agreement.

Agreement No.: 232–011417.
Title: Thompson/CIS Agreement.
Parties:
Thompson Shipping Co., Ltd.
Cayman Islands Shipping, Ltd.

Synopsis: The proposed Agreement permits the parties to charter vessels and space from one another, exchange equipment, agree on sailings and mutually agree on terminal operations in the trade between ports and points in Florida and ports and points in the Cayman Islands.

Dated: June 11, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 93–14267 Filed 6–16–93; 8:45 am]
BILLING CODE 6730–01–M

[Petition No. P25–93 and P26–93]

Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; Finn Container Cargo Services, Inc. and Transamericas T.I.S., Inc.

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from the June 4, 1993, electronic filing deadline for petitioners and/or petitioners' carrier clients. Petitioners state they are unable to comply with the June 4, 1993, deadline for filing of World Wide/Asian and South Pacific tariffs for a variety of reasons.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than June 23, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on petitioners or their representatives as follows:

P25–93—Carl Mikael Forsten, Finn Container Cargo Services, Inc., 2020 Southwest Freeway, suite 200, Houston, Texas 77098
P26–93—Gerard P. Wardell, President, TransAmericas T.I.S., Inc., 900 South Washington Street, suite 205, Falls Church, Virginia 22046

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,
Secretary.

[FR Doc. 93–14257 Filed 6–16–93; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Banc One Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 12, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio; to acquire Croghan & Associates, Inc., Boulder, Colorado, and thereby engage in providing data-processing services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. BB&T Financial Corporation, Wilson, North Carolina; to acquire up to 15 percent of the voting shares of Southeast Switch, Inc., Maitland, Florida, and thereby engage in providing data processing and transmission services to federally insured depository institutions who participate in its neutral shared electronic funds transfer network and providing related services, including the administration and promotion of the network and providing data processing transmission and related services to other EFT networks pursuant to § 225.25(b)(7); and providing bank management consulting advice to depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 11, 1993.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 93–14284 Filed 6–16–93; 8:45 am]
BILLING CODE 6210–01–F

Bankers Trust New York Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 7, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Bankers Trust New York Corporation, New York, New York; to engage *de novo* through its subsidiaries, BT Value Investors, Inc., New York, New York, and Liberty Street Management, Inc., New York, New York, in acting as an investment or financial adviser to a closed-end investment fund, such activity to include sponsoring, organizing and managing such fund pursuant to §§ 225.25(b)(4) and (b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14285 Filed 6–16–93; 8:45 am]

BILLING CODE 6210–01–F

Robert J. O'Halloran; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 7, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Robert J. O'Halloran, Trustee, Overland, Park, Kansas; to acquire an additional 7.63 percent of the voting shares of International Bancshares, Inc., Gladstone, Missouri, and thereby indirectly acquire First Bank of Gladstone, Gladstone, Missouri; The Bank of Saint Joseph, Saint Joseph, Missouri; and Citizens Bank and Trust Co., Smithville, Missouri.

Board of Governors of the Federal Reserve System, June 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14286 Filed 6–16–93; 8:45 am]

BILLING CODE 6210–01–F

Union Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 12, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Union Bancorp, Inc., Pottsville, Pennsylvania; to acquire 8.46 percent of the voting shares of The Peoples State Bank, East Berlin, Pennsylvania.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Charter Bancorp, M.H.C., Sparta, Illinois; to become a bank holding company by acquiring 51 percent of the voting shares of Charter Bank, S.B., Sparta, Illinois.

2. The National Bank of Indianapolis Corporation, Indianapolis, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Indianapolis, Indianapolis, Indiana, a *de novo* bank.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to merge with Ralston Bancshares, Inc., Omaha, Nebraska, and thereby indirectly acquire Ralston Bank, Ralston, Nebraska.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Citizens Holding Corp. and Bank ESOP, Keenesburg, Colorado; to acquire 30.3 percent of the voting shares of Citizens Holding Corporation, Keenesburg, Colorado, and thereby

indirectly acquire Citizens State Bank, Keenesburg, Colorado.

Board of Governors of the Federal Reserve System, June 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14287 Filed 6–16–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Asphalt Fume Fractionation and Identification of Genotoxic Components: Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Asphalt Fume Fractionation and Identification of Genotoxic Components.

Time and Date: 1 p.m.–5 p.m., June 28, 1993.

Place: Alice Hamilton Laboratory, Conference Room C, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of the meeting is to review a NIOSH project entitled, "Asphalt Fume Fractionation and Identification of Genotoxic Components." This project concerns the laboratory investigation to fractionate and identify specific compounds or classes of compounds that are genotoxic and may be associated with the observed carcinogenicity of the asphalt fumes used in previous NIOSH investigations. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Persons for Additional Information: Larry D. Olsen, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop R–7, Cincinnati, Ohio 45226, telephone 513/841–4269.

Dated: June 10, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–14290 Filed 6–16–93; 8:45 am]

BILLING CODE 4160–18–M

Workshop on Engineering Controls for Preventing Airborne Infections in Workers in Health Care and Related Facilities: Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Workshop on Engineering Controls for Preventing Airborne Infections in Workers in Health Care and Related Facilities.

Times and Dates: 8 a.m.–5 p.m., July 14, 1993; 9 a.m.–5 p.m., July 15, 1993; 9 a.m.–12 noon, July 16, 1993.

Place: Omni Netherland Plaza, Hall of Mirrors, 35 West Fifth Street, Cincinnati, Ohio 45202.

Status: Open to the public, limited only by the space available. The meeting room accommodates 400 people.

Purpose: The purpose of the meeting is to review the nature and extent of airborne transmission of infections in workers in health care and related facilities; review current data and new findings regarding the engineering control of airborne infections that may have relevance to occupational exposures in health care and other institutions; and identify knowledge gaps that might be filled by directed research. The workshop will emphasize aerosol characterization, source characterization and control, and building and ventilation designs. Two keynote papers will be presented. One will give an overview of the extent and types of airborne infections and mechanisms of transmission of airborne infectious organisms in health care and related facilities; the other will give an historical overview of ventilation and other methods of engineering controls for preventing transmission of airborne infectious organisms in health care and related facilities. Four plenary papers will be presented: Emphasizing aerosol characterization; source characterization and control; building designs; and ventilation designs. Four panels, each consisting of six to ten technical experts, will react to the keynote and plenary papers. Individual recommendations by these experts will be utilized by NIOSH in developing a national research agenda which, if implemented, would close the gaps and permit reliable recommendations for protecting workers.

Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Registration forms are available from the contact person shown below.

Contact Person for Additional Information: Rosalynd J. Kendall, NIOSH, CDC, 4576 Columbia Parkway, Mailstop R–2, Cincinnati, Ohio 45226, telephone 513/841–4321.

Dated: June 10, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–14291 Filed 6–16–93; 8:45 am]

BILLING CODE 4160–18–M

Prevention Centers Grant Review Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Prevention Centers Grant Review Committee.

Times and Dates: 8:30 a.m.–5 p.m., July 14, 1993; 8:30 a.m.–5 p.m., July 15, 1993; 8:30 a.m.–12 noon, July 16, 1993.

Place: Swissotel Atlanta, 3391 Peachtree Road, NE., Atlanta, Georgia 30326.

Status: Open 8:30 a.m.–9:30 a.m., July 14, 1993; Closed 9:30 a.m., July 14, through 12 noon, July 16, 1993.

Purpose: This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications relating to the support of health promotion and disease prevention centers.

Matters to be Discussed: Agenda items for the meeting will include announcements, discussion of review procedures, future meeting dates, and review of cooperative agreement applications. Beginning at 9:30 a.m., July 14, through 12 noon, July 16, the committee will conduct its review of cooperative agreement applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S. Code, and the determination of the Director, CDC, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Diane H. Jones, Ph.D., Project Officer, Office of the Director, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., Mailstop K–41, Atlanta, Georgia 30341–3724, telephone 404/488–5395.

Dated: June 10, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–14292 Filed 6–16–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 93N–0158]

Shulcon Industries, Inc.; Proposal to Withdraw Approval of a New Animal Drug Application; Opportunity for Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing an opportunity for hearing on a proposal to withdraw approval of a new animal drug application (NADA) for pregelatinized starch, held by Shulcon Industries, Inc., because the applicant has failed to submit the required annual reports.

DATES: Requests for hearing, including data, information, and analyses relied

on to justify a hearing, are to be submitted by July 19, 1993.

ADDRESSES: Requests for hearing, supporting data, and other comments in response to this notice should be identified with Docket No. 93N–0158 and sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William C. Keller, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8722.

SUPPLEMENTARY INFORMATION: In accordance with § 510.300 (21 CFR 510.300), an applicant for a new animal drug is required to submit periodic reports to FDA concerning each of its approved NADA's. Shulcon Industries, Inc., 4351 East Sarnac Dr., Tucson, AZ 86718, the holder of approved NADA 111–068 for the use of pregelatinized starch as an antidiarrheal in newborn calves, has not submitted the required annual reports for this NADA. In a letter dated March 15, 1989, to FDA, the Vice President of Shulcon Industries, Inc., stated that the firm no longer produces or markets the product.

Therefore, notice is given to Shulcon Industries, Inc., and to all other interested persons that the Director, Center for Veterinary Medicine, proposes to issue an order under section 512(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(e)) withdrawing approval of NADA 111–068 and all amendments and supplements thereto on the ground that the applicant has failed to submit the reports required under § 510.300. Upon withdrawal of approval of the application, the corresponding regulation (21 CFR 520.2155) will be revoked.

In accordance with section 512 of the act and the regulations promulgated under it (21 CFR parts 510 and 514), the applicant is hereby given an opportunity for a hearing to show why approval of NADA 111–068 should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug product named above.

An applicant who decides to seek a hearing shall file on or before July 19, 1993, a written notice of appearance, request for hearing, and the data, information, and analyses relied on to justify a hearing, as specified in § 514.200 (21 CFR 514.200).

The failure of an applicant to file a timely written notice of appearance and request for hearing as required by § 514.200 constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the action proposed for the drug product and a waiver of any contentions about the legal status of the drug product. The drug product may not thereafter lawfully be marketed, and FDA will begin appropriate regulatory action to remove it from the market. Any new animal drug product marketed without an approved NADA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that justifies a hearing. Reports submitted to remedy the deficiencies must be complete in all respects in accordance with § 510.300. If the submission is not complete or if a request for hearing is not made in the required format or with the required reports, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests a hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice must be filed in two copies. Except for information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512(e) (21 U.S.C. 360b(e))) and under authority delegated to the Director, Center for Veterinary Medicine (21 CFR 5.84).

Dated: June 4, 1993.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 93–14307 Filed 6–16–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92N–0425]

Steven F. Colton; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) denies Dr. Steven F. Colton's request for a hearing and issues a final order permanently debarring Dr. Steven F. Colton, 6942 East Briarwood Dr., Englewood, CO 80112, under section 306(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a(a)). FDA bases this order on a finding that Dr. Colton was convicted of a Federal felony for conduct (1) relating to the development and approval, including the process for development and approval, of a drug product; and (2) relating to the regulation of a drug product under the act.

EFFECTIVE DATE: June 17, 1993.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Megan L. Foster, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8041.

SUPPLEMENTARY INFORMATION:

I. Background

Dr. Steven F. Colton, a former Vice President and Director of Research and Development for Vitarine Pharmaceuticals, Inc. (Vitarine), pled guilty and was sentenced on September 6, 1991, for three counts of making a false statement in a matter within the jurisdiction of a Federal agency, a Federal felony offense under 18 U.S.C. 1001. The basis for this conviction was the finding that Dr. Colton made and caused to be made intentional fraudulent statements to FDA concerning bioequivalence studies of some of Vitarine's generic drug products. These studies purported to compare bioequivalency test results of Vitarine's product to the innovator product. However, the drug purporting to be Vitarine's product was, in fact, the disguised innovator product.

In a certified letter received by Dr. Steven F. Colton on January 8, 1993, FDA offered Dr. Colton an opportunity for a hearing on the agency's proposal to issue an order under section 306(a) of the act debarring Dr. Colton from providing services in any capacity to a person that has an approved or pending drug product application. FDA based the proposal to debar on its finding that Dr. Colton was convicted of a felony under Federal law for conduct relating to the development and approval, and the regulation of Vitarine's drug products.

The certified letter also informed Dr. Colton that his request for a hearing could not rest upon mere allegations or denials but must present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. The letter also noted that if it conclusively appeared from the face of the information and factual analyses in

his request for a hearing that there was no genuine and substantial issue of fact which precluded the order of debarment, FDA would enter summary judgment against him, making findings and conclusions, and denying his request for a hearing.

In a letter dated January 22, 1993, Dr. Colton responded to the certified letter by requesting a hearing.

II. Denial of Hearing

In his request for a hearing, Dr. Colton failed to present any arguments or information to show why he should not be debarred. Therefore, FDA finds that Dr. Colton has failed to identify any genuine and substantial issue of fact requiring a hearing. Accordingly, pursuant to 21 CFR 12.28, the agency denies Dr. Colton's request for a hearing.

III. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.20), finds that Dr. Steven F. Colton has been convicted of a felony under Federal law for conduct (1) relating to the development and approval, including the process for development and approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, Dr. Steven F. Colton is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective June 17, 1993, (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)). Any person with an approved or pending drug product application who knowingly uses the services of Dr. Colton in any capacity, during his period of debarment, will be subject to civil money penalties. If Dr. Colton, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application from Dr. Colton during his period of debarment.

Any application by Dr. Colton for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 92N–0425 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 2, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–14306 Filed 6–16–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0167]

DSM Engineering Plastics; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that DSM Engineering Plastics has filed a petition proposing that the food additive regulations be amended to provide for the safe use of Nylon 46 resins, which are manufactured by the condensation of 1,4-butanediamine and adipic acid, in membrane filters intended to contact alcoholic beverages.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B4374) has been filed by DSM Engineering Plastics, 501 Crescent Ave., Reading, PA 19512–5051. The petition proposes to amend the food additive regulations in § 177.1500 *Nylon resins* (21 CFR 177.1500) to provide for the safe use of Nylon 46 resins, which are manufactured by the condensation of 1,4-butanediamine and adipic acid, in membrane filters intended to contact alcoholic beverages.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 9, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–14305 Filed 6–16–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Clean Vessel Act: Waste Treatment and Pumpout Stations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public review of technical guidelines.

SUMMARY: These technical guidelines are being published in response to section 5605. Guidance and Notification, of the Clean Vessel Act of 1992 (Pub. L. 102–587, Subtitle F), which requires the issuance of draft technical guidelines for public comment within 3 months after the date of the enactment of this Act, and the issuance of final technical guidelines within 6 months after the date of enactment. The technical guidelines should be used by States to survey and develop plans for pumpout stations/waste treatment facilities, to develop education/information plans, and to construct stations/facilities.

DATES: The Fish and Wildlife Service is requesting comments on these proposed technical guidelines. Comments must be received on or before August 2, 1993.

ADDRESSES: Comments may be mailed to the Division of Federal Aid, Fish and Wildlife Service, U.S. Department of the Interior, 1849 C Street, NW (Mailstop 322 ARLSQ), Washington, D.C. 20240, or delivered to room 322, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Columbus Brown, Chief, Division of Federal Aid, (703) 358–2156.

SUPPLEMENTARY INFORMATION:

Background

Findings

The Congress found that there is currently an inadequate number of pumpout stations for Type III marine sanitation devices (MSD) (holding tanks) where recreational vessels normally operate; and, sewage discharged by recreational vessels, because of an inadequate number of pumpout stations, may be a substantial contributor to localized degradation of water quality in the United States.

Purpose of the Act

The purpose of this Act "is to provide funds to States for the construction,

renovation, operation, and maintenance of pumpout stations and waste reception facilities."

Purpose of the Technical Guidelines

The purpose of these guidelines to provide States with technical information on adequacy of and appropriate types and location of pumpout stations and waste reception facilities, disposal of sewage from these facilities, and waters most likely to be affected by the discharge of sewage from vessels. They also provide information to the States in completing the surveys, developing plans, and developing an education/information program. The guidelines will let States know what options are available and provide them with basic information upon which to base their choices. EPA regional offices, regulatory agencies, equipment suppliers and other marina operators are another valuable source of information. The guidelines, however, are not to be used as a design manual or a substitute for the preparation of a design for a specific facility.

Definitions

For the purposes of these technical guidelines the term:

(1) *Type III marine sanitation device (holding tank)* means any equipment for installation on board a vessel which is specifically designed to receive, retain, and discharge human body wastes;

(2) *Pumpout station* means a facility that pumps or receives human body wastes out of Type III marine sanitation devices installed on board vessels;

(3) *Recreational vessel* means a vessel (a) manufactured for operation, or operated, primarily for pleasure; or (b) leased, rented, or chartered to another for the latter's pleasure;

(4) *Waste reception facility* means an upland or floating facility specifically designed to receive wastes from portable toilets carried on vessels, and does not include restroom facilities;

(5) *Marina*, means a facility with ten or more wet slips and/or dry land storage;

(6) *Parking lot harbor* means harbor which is home port to many boats kept on swing moorings or in marina docks. Most of the time, most of the boats are unoccupied and unused;

(7) *Transient harbor* means "destination" harbor where boaters go during day trips or berth overnight;

(8) *Portable toilet* means toilets that are not installed toilets. They are designed to be removed from a vessel and their contents emptied into shoreside receptacles;

(9) *Coastal zone* has the same meaning that term has in Section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453 (1).

Consultation

As required in section 5605 of the Act, the Secretary of the Interior (Interior) has consulted with the Administrator of the Environmental Protection Agency, the Under Secretary of Commerce for Oceans and Atmosphere, and the Commandant of the Coast Guard, in the development of these guidelines. In addition, Interior has consulted with Coastal States, local municipalities, boat users, manufacturers of pumpout equipment, marina operators, conservation groups, and others in obtaining information necessary to develop these guidelines. Three scoping meetings were held in January, 1993, with various constituents. A scoping document was sent to nearly 100 people, and 45 comment letters were received.

Relationship to the grant process

The technical guidelines are interim guidelines that will be later codified. They should be used by coastal States in doing surveys, developing plans and education/information programs, and constructing stations/facilities. However, grant guidelines will be needed for States to properly apply for funds under this grant program. The grant guidelines will provide criteria for the Service to use in prioritizing grant proposals for funding. Such information as priorities, national logos symbols and other signs, fee restrictions, and monitoring success of projects, will be placed in the grant guidelines. Grant guidelines are being developed separately, and will be published shortly in the Federal Register. Funds will then be made available through a competitive process to coastal States to complete the surveys, develop plans, and, for all States, to apply for construction grants and education funds.

Technical Guidelines

The Fish and Wildlife Service will administer the Clean Vessel Act grant program through State agencies only. Both public and private marinas are eligible to participate in this program and should conform to these technical guidelines. Other marinas would not have to conform. These technical guidelines should be followed when doing surveys, developing a plan and education program, and constructing pumpout stations and waste reception facilities. Technical guidelines are presented here by Section. At the end of these guidelines, an information packet is presented, which contains a general discussion of each section, and defines terms in more detail.

Section 1. Waters Most Likely To Be Affected by the Discharge of Sewage From Vessels

Guidelines for States to use in identifying waters most likely to be affected by the discharge of sewage from vessels are those waters frequented by large numbers of boaters and include: (1) Sheltered waters that are generally poorly flushed systems; (2) Waters identified to be of National Significance; (3) Waters of significant recreational value; (4) Waters supporting designated shellfish harvest areas; (5) Nursery areas of indigenous aquatic life; (6) Waters designated by the EPA as "No Discharge Areas" under § 312(f)(3) and (4)(A) & (B) of the Clean Water Act, and, (7) Waters that do not meet State designated usage.

Section 2. Surveys of Pumpout Stations and Waste Reception Facilities

Only coastal States are required to do a survey. States should submit surveys to the Fish and Wildlife Service, same address as above.

Pumpout/waste reception facility survey: The survey should include the following for each facility: (1) Name and address of marina, moorage, dock, etc., telephone number and location of marina, etc., by county, water body and specific coordinates. Coordinates, i.e., latitude and longitude, should be reported in North American Datum 1983 (NAD 83) standard. Other alternatives include (a) State Plane Coordinate Values, and (b) A portion of a NOAA nautical chart identified by chart number, edition, and edition date that marks clearly the pumpout station/ waste reception facility; (2) Whether the marina has pumpout stations, waste reception facilities, or both; how many; and, whether they are operational.

Boat survey: The survey should include the following: (1) Total number of boats by water body and county; (2) How many boats have Type III MSD holding tanks; (3) How many boats have portable toilets.

A complete survey of all boaters is not necessary. States should obtain only as much information as is necessary to determine, within reasonable confidence limits, numbers of boats, how many boats have Type III MSD holding tanks or portable toilets, and where boaters are most likely to congregate by water body and county. Sample surveys are acceptable. Recent surveys are acceptable if they answer all the questions needed.

Section 3. What Constitutes Adequate and Reasonably Available Pumpout Stations and Waste Reception Facilities in Boating Areas

As a general guide, at least one pumpout station and waste reception facility should be provided for every 300 to 600 boats (not considering length or toilets). It is recommended that every marina accommodating over 50 boats with toilets should have access to a pumpout station and waste reception facility. Where marinas are adjacent (within two miles of each other), pumpout stations can be shared. However, such factors as boat size, boating use patterns, coastal water characteristics, sensitive areas, flushing capacity, etc., should play a large role in establishing needs for facilities. Due to the variability in each State, States must have the flexibility to provide criteria that addresses their specific needs. See the discussion below on this section for alternative approaches to determining need.

Waste reception facilities should be sited in conjunction with pumpout stations, but should also be located where boats with portable toilets congregate or are used, such as launching ramps.

Section 4. Plans for Constructing Pumpout Stations and Waste Reception Facilities

Only coastal States are required to develop a plan. States should work with the recreational marina industry and others in developing the plan. States should submit the plan to the Fish and Wildlife Service, same address as above. Following is an outline which should be used by States when developing the plan:

(1) Need. This section should establish the justification for the proposed work based on (a) the results of the surveys of existing pumpout stations and waste reception facilities and the number of recreational vessels; (b) that part of the guidance relating to determining the adequacy and reasonable availability of pumpout stations and waste reception facilities and, (c) that part of the Guidance describing the waters most likely to be affected by the discharge of sewage from vessels.

(2) Goals and Objectives. The purpose of the plan should be ensure the availability of adequate and reasonably available pumpout stations and waste reception facilities to the boating public throughout the coastal zone of a State.

(3) Expected Results or Benefits. This section should describe in general how water will be improved by making pumpouts and waste reception facilities available.

(4) Approach. In this section, describe the following: (a) How the plan addresses all coastal zone waters of the State, and gives priority to waters most likely affected; (b) How the plan complements plans of adjacent States for shared waters; (c) The strategy for locating and constructing, renovating and maintaining pumpouts and waste reception facilities. Include the general location and priority of projects; (d) How States will ensure that (i) waste will be disposed of properly, and (ii) that municipal waste treatment plants will accept waste; (e) The public/private partnerships that may be developed for siting, constructing and operating pumpout stations and waste reception facilities, and any issues/problems, such as legislative/regulatory barriers; (f) Innovative techniques to increase the availability and use of pumpout stations/waste reception facilities; (g) Approaches to educate and inform the public and the boating industry on the use of, and need for, disposal of vessel waste; and, (h) Total estimated cost of the Statewide plan.

Section 5. Education/Information

Guidelines for States to consider when developing an education/information plan include:

Audience: Consider six audiences when developing your education/information program regarding vessel sewage disposal, handling, and treatment, as follows: (1) Boat owners and operators; (2) Marina owners and operators; (3) Sewage treatment plant owners and operators; (4) Federal (where applicable), State and local governmental authorities and organizations; (5) Boating supply and retailers; (6) The general public.

Communication media: There are a variety of media that States may use for disseminating this information. Common methods to consider are; brochures, workshops/symposiums, educational videos, TV/radio, signs, boat shows, etc. Innovative methods are encouraged.

Distribution: States have options for distribution of educational information related to boating and pumpout issues. Options include magazines, radio public interest spots, environmental groups, association and federation newsletters, National Estuary Program forums, State and local education programs, local citizens groups, and student groups. New and innovative ways of educating the boating community and the general public are encouraged.

Section 6. Appropriate Methods for Disposal of Vessel Sewage From Pumpout Stations and Waste Reception Facilities

Disposal methods will vary among States depending on a number of factors, including: State and local sanitation codes; the number of recreational vessels and where the vessels are concentrated; the availability and geographic proximity of existing treatment facilities to boating centers; and hydrogeologic characteristics, including soil types and groundwater flows towards drinking water sources and these coastal waters. Depending on these factors, States may consider the following methods: (1) Off-site treatment: (a) Discharge to a public wastewater collection system and treatment facility; (b) discharge to a holding tank with removal and transport by a licensed septage hauler to a municipal septage receiving/treatment facility; (2) On-site treatment at marinas: (a) Discharge to a package treatment plant; (b) discharge to a septic system.

Section 7. Types of Marine Boat Sewage Pumpout Stations and Waste Reception Facilities That May Be Appropriate for Construction, Renovation, Operation, or Maintenance, and Appropriate Location of the Stations and Facilities Within a Marina or Boatyard

Pumpout stations and waste reception facilities should provide an efficient means of removing sewage from boats and a means of disposing of that sewage in a safe and sanitary manner. These facilities should include all the equipment, structures, and disposal facilities necessary to ultimately discharge or dispose of boat sewage in an efficient, safe and sanitary manner without causing an actual or potential public health hazard. Pumpout stations should include equipment for rinsing boat holding tanks. Pumpout stations and waste reception facilities should be adequate to meet the peak use demand for such services. Facilities should be operated and maintained to provide adequate service, and to be maintained to function as intended.

Pumpout stations and waste reception facilities should be reliable, corrosion resistant, easy to use, neat and tidy to clean and use, conveniently located, with low maintenance. Pumps should be specifically designed for handling sewage. Land-based restrooms are not an acceptable option for emptying portable toilets.

All pumps should be safe, functional and efficient. Pumps should be able to pump against the maximum head developed by elevation change and line

losses. In addition, the suction connection to the boat should be a tight fit and adjustable by adapters to service boat discharge connections. Pumps should be able to transport flows out of the holding tank. Pumps exceeding 45 gallons per minute may cause tanks to collapse.

Factors in determining pumpout station holding tank capacity include boat size and use patterns. Sizing should be done on a case-by-case basis using documented demand, if possible. Holding tanks should be designed and installed to meet local regulations.

For all vessels manufactured after December 31, 1994, a standard deck fitting for removal of sewage should be constructed to the "International standard ISO 4567 Shipbuilding—Yachts—Waste water fittings" for holding tanks, which is a female 38.1 mm (1½") pipe size with 11 threads per 25.4 mm (inch). These threads could utilize a quick-disconnect or cam lock fitting. For existing vessels, an adapter, such as a tapered cone, should be used for non-standard deck fittings. All pumpout connectors should fit the standard deck fitting.

For all vessels manufactured after December 31, 1994, because of possible confusion between waste, fuel and water deck fittings, the deck fittings should be identified with the words "WASTE", "GAS", "DIESEL", and "WATER", and color code the fittings with black caps for waste, red caps for gas and diesel, and blue caps for water.

The ultimate location for the station should be based on the unique conditions of the marina, boatyard, mooring field or other anchorage. Stationary pumpout stations should be located for the convenience of, and to encourage boaters to use the facility. Mobile pumpout stations should have reasonable access to boaters.

Section 8. Other Information (No Technical Guidelines)

Dated: March 19, 1993.

Bruce Blanchard,

Deputy Director, Fish & Wildlife Service.

Information Packet

This information packet is not technical guidelines. It has been recommended to provide additional information to States, and to marinas and others who may participate in this program. The information packet presents general information on surveys, plans, education/information, pumpout facilities and other information helpful in promoting establishment of facilities. It provides a more detailed discussion of the technical guidelines, with examples and explanations. This information packet is also by section, which corresponds to the sections in the technical guidelines.

Section 1. Waters Most Likely To Be Affected by the Discharge of Sewage From Vessels

The following coastal waters, including the Territorial Seas, estuaries, bays, and sounds, and then U.S. lakes and rivers as defined below, are considered waters most likely to be affected by the discharge of sewage from vessels. These definitions are not ranked in priority order.

(1) Sheltered waters that are generally poorly flushed systems.

(2) Waters of National significance: Waters identified by the Environmental Protection Agency under the National Estuary Program, waters identified by the National Oceanic and Atmospheric Administration under the Estuarine Reserve program, and Marine Sanctuaries programs where appropriate.

(3) Waters of significant recreational value: A water body with unusual value as a resource for outdoor recreation activities, e.g., fishing, boating, canoeing, water skiing, swimming, scuba diving, or nature observation. The significance may be in the intensity of present usage, in an unusual quality of recreational experience, or in the potential for unusual future recreational use or experience.

(4) Shellfish harvest waters: Waters designated as shellfish producing and harvesting areas.

(5) Nursery areas of indigenous aquatic life: Significant aquatic plant beds, wetlands, or any area used by the early-life stages of aquatic life during the period of rapid growth and development into the juvenile states.

(6) Waters designated by the EPA as "No Discharge Areas" under § 312(f)(3) and (4) (A) & (B) of the Clean Water Act.

(7) Waters that do not meet State designated usage.

Discussion of the effects of vessel sewage on these waters.

Waters previously designated by the EPA under the Clean Water Act as "No Discharge Areas" are eligible for renovation, maintenance and further construction funds under this program. The discharge of sewage from boats may degrade water quality by (1) Introducing microbial pathogens into the environment and (2) Locally increasing biological oxygen demand (U.S. EPA, 1985). While vessel sewage discharges represent only one of several sources of point and non-point pollution, the number of boats using coastal waters has increased substantially during the past decade. The contribution of boat sewage to total pathogen loadings and local biological oxygen demand has grown proportionately.

A potentially serious problem resulting from vessel sewage discharges is the introduction of disease-carrying microorganisms from fecal matter into the coastal aquatic environment. Humans are put at risk by eating contaminated shellfish and by swimming in contaminated waters. The major disease-carrying agents are bacteria and viruses, and the most common serious ailment is acute gastroenteritis. Other waterborne diseases include hepatitis, typhoid, and cholera (Milliken and Lee, 1990). The indicators used to detect sewage pollution are not the pathogens themselves, but, rather, coliform bacteria. These bacteria are always present in the human intestinal tract and are thus considered reliable indicators of the presence of human waste (U.S. EPA, 1985). Studies conducted in Puget Sound, Long Island Sound, Narragansett Bay, and Chesapeake Bay have demonstrated that boats can be a significant source of fecal coliform bacteria in coastal waters, particularly in areas with high boat densities and low hydrologic flushing (Milliken and Lee, 1990; JRB Associates, 1980). If coliform levels exceed allowable thresholds, shellfish beds and swimming beaches may be closed to minimize the threat of public health problems. In addition, shellfish beds and swimming beaches in the immediate vicinity of marinas are often closed because of the potential of contamination from vessel sewage discharges.

These organic-rich wastes also have the potential to depress oxygen levels as they decay in the marine environment. Biological oxygen demand (BOD) is a measure of the dissolved oxygen required to decompose the organic matter in the water by aerobic processes. When the loading of organic matter increases, the BOD increases, and there is a consequent reduction in the dissolved oxygen available for respiration by aquatic organisms (U.S. EPA, 1985). Although the volume of wastewater discharged from boats is relatively small, the organics in the wastewater are concentrated, and therefore the BOD (1700–3500 mg/l) is much higher than that of raw municipal sewage (110–400 mg/l) or treated municipal sewage (5–100 mg/l) (JRB Associates, 1981). Sewage discharged from holding tanks will thus increase the BOD in the vicinity of boats. When this occurs in poorly flushed waterbodies, the dissolved oxygen

concentrations of the water may decrease (Milliken and Lee, 1990).

Additional problems associated with boat sewage arise from the use of chemical additives such as chlorine, formaldehyde and zinc compounds to disinfect or control odors of on-board sewage. Of the two major disinfectant chemicals used—chlorine and formaldehyde—only chlorine has been shown to be toxic in the aquatic environment. While formaldehyde is considered a toxic substance, it is completely miscible in water and is readily degradable. Zinc salts are frequently used as bacteriostatic agents in holding tanks. Zinc has been reported to be lethal to fish and many aquatic plants, and is known to bioaccumulate. While a direct link between MSD holding tank disinfectants and effects on the environment has not been documented, the presence of these chemicals in sufficient concentrations may be of concern (JRB Associates, 1981). In addition, since the amounts of chemicals added are controlled by the boat owner or operator, excess use may occur.

Section 2. Surveys of Pumpout Stations and Waste Reception Facilities

The Clean Vessel Act of 1992 calls for surveys by coastal States within three months of notification to the States of the final technical guidelines to determine: (1) The number and location of all operational pumpout stations and waste reception facilities at public and private marinas, mooring areas, docks, and other boating facilities within the coastal zone of a State; and (2) The number of recreational vessels in the coastal waters of the State with type III marine sanitation devices (holding tanks) or portable toilets and the areas where those vessels congregate.

Survey information may be obtainable from the boat registration process or files; contacts with trade associations or boating organizations; from national surveys if available; or from mail or telephone surveys of boaters or marina/mooring field facility operators. Some States have surveyed boaters at marinas on high concentration days. The U.S. Coast Guard, telephone 202/267–1497, can provide the following information regarding Documented Vessels (5 net tons and larger): the vessel's port of documentation, vessel length, beam, net tonnage, and whether or not the vessel is equipped with mechanical propulsion.

Section 3. What Constitutes Adequate and Reasonably Available Pumpout Stations and Waste Reception Facilities in Boating Areas

Factors affecting pumpout use: Potential demand for pumpouts and/or waste reception facilities is a function of several variables. First is the number of boats of a size that use sewage holding tanks or portable toilets and where they are stored. Second, accessibility of pumpouts and waste reception facilities affects their use. Distance from routes of travel or from the home port as well as the likely waiting time once at the facility can affect the willingness of boaters to use pumpouts and waste reception facilities. A third factor to consider is boat use. High use at moorages is related to transient versus "parking lot" customers, year-round versus seasonal users, and the frequency of overnight use of boats. High boat use is seasonal, correlated with good weather, weekends and holidays. Fourth is the fee charged, with higher use related to lower fees.

High use of pumpouts and waste reception facilities has also been related to aggressive management practices, active enforcement of "No Discharge Areas", perception of need by the public (related to the environmental sensitivity of the area and educational efforts), and good maintenance.

Determining adequate and reasonably available station/facility needs: Boat numbers, boat size, boating use patterns, numbers and distribution of existing facilities, and where boats are kept during boating season (i.e., in a marina, yacht club, private dock, mooring, home or a trailer, etc.), determine the need for pumpout stations and waste reception facilities. Moorages that receive high transient use, have mooring fields for large boats, are visited by large numbers of boats for refueling, and/or have a large number of people sleeping overnight or living in their boats should have high priority. Yacht clubs, boatyards and large capacity private docks should also be considered for priority installation of pumpouts and waste reception facilities. Other situations that might be considered for the installation of facilities include marinas that provide fuel or service vessels equipped with MSD holding tanks. In addition to distributing stations/facilities in the above types of boating moorages, additional stations/facilities may be warranted where boat use impacts poorly flushed bays, coves, or sloughs and environmentally sensitive sites. After new facilities have been installed, subsequent patterns of use will indicate where and if additional pumpouts are needed. Periodic surveys should be conducted to ensure adequate numbers of pumpout stations and waste reception facilities exist for boaters in the future.

Requirements for pumpout and waste reception facilities vary by State and harbor. Some examples are as follows: Delaware requires a pumpout for marinas harboring 100 or more boats with marinas of 25–100 sharing a pumpout and those with less than 25 not required to install facilities. For New England, EPA Region I guidelines suggest a pumpout for 300–600 boats with toilets. A minimum of one pumpout per 300 boats with toilets is recommended in transient harbors with a high percentage of large vessels, while one pumpout per 600 boats with toilets should be provided in "parking lot" harbors where most boats are less than 25 feet long. In California's Richardson Bay, the pumpout guideline is one station for every 300 boats. Some States require installation of pumpouts for all new marinas or the expansion of existing marinas. Launching ramps, marinas, etc., that cater to small craft (under 26 feet) or are too shallow for larger vessels may not need pumpouts, but may still require waste reception facilities to receive portable toilet waste.

EPA's assessment (EPA, 1981) estimated that 20% of the boats between 16 and 26 feet, 50% of the boats between 26 and 40 feet, and all of the vessels over 40 feet had installed toilets with some type of marine sanitation device. So, if exact data are not available, an estimate could be calculated. The following is a method for estimating Statewide need for pumpout stations and waste reception facilities (McKiernan, pers. comm.). It is not intended as a guide for determining requirements for a specific marina or harbor. The following assumptions underlie this method and can be adjusted where statistically valid information is available relating to a State's unique boating population characteristics.

1. Given the availability of boat length information gathered during boat registration, assumptions can be made regarding the type of on-board sanitation equipment.

Boat length	Number with toilets (percent)	Type of system
16'–26'	20	Portable toilets.
26'–40'	50	Holding tanks.
40'+	100	Holding tanks.

2. It is assumed every boat which is occupied will require service once a

weekend and that the occupancy rate during peak periods is 45%.

3. This method also assumes facilities will be in operation for twelve hours per day during weekends and that the average time to service a boat's system will be 15 minutes for holding tanks and 5 minutes for portable toilets. Therefore:

Calculation for Estimating Need for Waste Reception Facilities:

$$\frac{\text{No. of Boats } 16'-26' \times \text{No. With Portable Toilets (20\%)} \times \text{Peak Occupancy Rate (45\%)} = \text{BOATS REQUIRING WASTE RECEPTION FACILITIES}}{\text{Boats Served Per Hour} \times \text{No. of Hours Of Operation Per Weekend} = \text{BOATS SERVED PER FACILITY}} = \text{WASTE RECEPTION FACILITIES REQUIRED}$$

$$\frac{\quad\quad\quad

pumpout waste; (7)(Where to locate pumpout and waste reception facilities; (8) Methods of encouraging boater compliance with pumpout requirements; (9) Types of pumpouts and waste reception facilities currently on the market; (10) Encourage manufacturers to provide demonstrations for and training of marina personnel responsible for operating these devices; (11) Highlighting those marinas who have done an excellent job in installing and maintaining facilities.

Wastewater collected from pumpout facilities must be discharged from the marina to an appropriate treatment facility. Waste treatment plant owners and operators should be made aware of the options available to them for receiving and treating waste from boat holding tanks and portable toilets. Issues for States to consider when developing education/information programs for wastewater treatment facility owners and operators include: (1) Effects of this waste stream on waste treatment plant's normal operations and how to mitigate any negative effects; (2) Volume of waste from boats in proportion to normal "house hold" loading standard; (3) Experience of waste system operators in areas designated "No Discharge".

The State may find it necessary to develop education/information programs that address issues related to Federal, State and local government agencies. Issues to consider for education/information programs for this audience include: (1) Awareness of environmental requirements and enforcement options for vessel sewage disposal and treatment (particularly for incoming harbor masters); (2) Encouraging the development of technical guidelines for design, installation, and use of pumpout facilities; (3) Encouraging the appropriate Federal agencies to support a national standard on pumpout and boat fittings; (4) Environmental benefits of reducing the amount of waste water discharged from boats in localized areas, i.e. shellfish beds; (5) Encouraging vessel manufacturers to include procedures for proper operation of vessel holding tanks and shoreside pumpout facilities in new owners manuals; (6) The value of enforcement in implementing this program; (7) Value of educating the public; (8) Informing Federal, State and local governments on how to access Federal informational sources, and encouraging them to do so; (9) Working with State and local governments to mandate, after a reasonable period of time, the installation of pumpout facilities at marina, as a condition of marina licensure or operation.

Education of the general public has an important role to play. Issues to consider for education/information of this audience include: (1) The environmental impacts of boater waste; (2) Importance of the coastal resource; (3) Efforts by the boating community to reduce waste discharges.

States have options for distribution of educational information related to boating and pumpout issues. Options include magazines, radio public interest spots, environmental groups, association and federation newsletters, National Estuary Program forums, State and local education programs, local citizens groups, and student groups. New and innovative ways of educating the boating community and the general public are encouraged.

Representatives of the various groups could meet together at the State/local level to determine what information and education materials and strategies are needed to accomplish the objective. Private conservation and education groups could provide suggestions and materials once the needs are defined.

Section 6. Appropriate Methods for Disposal or Vessel Sewage From Pumpout Stations and Waste Reception Facilities

Introduction: The safe and sanitary disposal of vessel sewage waste must be provided for when constructing and operating pumpout stations and waste reception facilities. Boaters will not want to spend time and money pumping out unless they can be assured that their effort will help improve water quality.

Vessel Sewage Characterization

Vessel sewage is more concentrated than domestic sewage for almost all the standard parameters used to measure the quality of wastewater, including suspended solids, biological oxygen demand (BOD), and total nitrogen. For example, the typical concentration of BOD in vessels is between 1700–3500 mg/l, while typical sanitary wastewater ranges from 110–400 mg/l for raw sewage and 5–100 mg/l for treated sewage. Raw municipal sewage has a lower concentration because people on land use more water for sanitary purposes than do people on boats. In addition, the proportion of gray water (defined as water from baths, showers and kitchens) is greater in municipal sewage, and municipal collection systems are subject to inflow and infiltration of storm water.

Another characteristic of vessel holding tank waste is the presence of chemical additives used to disinfect and deodorize the waste. These same additives are used to treat sanitary wastes in recreational vehicles (RVs), trains, and aircraft. Ideally, the odor-control chemicals should be biodegradable when diluted. These chemical additives commonly contain an active disinfectant along with dyes and perfumes. Some of the more common disinfectants include formaldehyde, paraformaldehyde, quaternary ammonium chloride, and zinc sulfate; formaldehyde is the most popular because of its effectiveness.

There is some concern from operators of small municipal and package sewage treatment plants and some marina operators with septic systems that vessel sewage holding tank waste may adversely affect performance of their sewage treatment systems by destroying the bacterial population, thereby reducing plant efficiency. A second concern, particularly of operators of municipal treatment plants operating at or near capacity, is that the additional volume of waste will cause the plant to exceed its capacity to treat wastewater effectively.

Research into the effects of chemical additives on sewage treatment processes indicates that these problems have been greatly overstated, and that, in general, most municipal sewage treatment plants can handle vessel holding tank waste without difficulty. In addition to relatively low volumes generated by sewage pumpout stations, the weekly and seasonal usage of marina facilities protects treatment systems from failing or exceeding capacity. Marinas receive their largest pumpout volumes on weekends and, in many parts of the country, only during the summer season. Therefore, treatment plants generally are able to assimilate such intermittent waste loading and no serious operational problem occurs.

Despite the negligible effects of holding tank additives on sewage treatment processes, general concern about toxic contaminants in the environment has led to the development of non-toxic, environmentally benign holding tank deodorants and disinfectants. States should encourage the use of these products through education and, if necessary, regulation.

Disposal Methods

Disposal methods will vary depending on a number of factors, including: State and local sanitation codes; the number of recreational vessels and where the vessels are concentrated; the availability and geographic proximity of existing treatment facilities to boating centers; and hydrogeologic characteristics,

including soil types and groundwater flows. Depending on these factors, States may consider the following methods:

(1) Off-site treatment: (a) Discharge to a public wastewater collection system and treatment facility; (b) discharge to a holding tank with removal and transport by a licensed septage hauler to a municipal septage receiving/treatment facility.

(2) On-site treatment at marinas: (a) Discharge to a package treatment plant with subsequent discharge back into coastal waters (an NPDES permit would be required); (b) discharge to a septic system, where no other alternative is available.

The following is a description of the relative merits of each of these methods. It should be noted that each State has its own regulations and policies regarding what it considers "appropriate" disposal methods. What one State considers appropriate or even desirable, another may prohibit.

Off-Site Treatment

There are hundreds of existing municipal wastewater treatment facilities serving coastal areas throughout the country. Most provide at least secondary treatment utilizing an activated sludge process, but they vary greatly in size and details of treatment structures, sludge handling capability, and success in meeting current permit terms and conditions. In addition, many also incorporate septage receiving and treatment facilities into the overall treatment system.

Septage receiving/treatment facilities are designed specifically to pretreat these wastes before introducing them to the wastewater treatment system. Because vessel holding tank and portable toilet waste is similar in nature to domestic septage, although more concentrated with variable amounts of organic chemicals, a properly operating municipal treatment plant with septage receiving/treatment facilities should not be adversely affected by the introduction of holding tank waste.

Modifications to Wastewater/Septage Treatment Facilities: Some wastewater treatment plants and septage receiving/treatment facilities may require modification to accommodate vessel sewage. These modifications may include increased capacity, construction of adequate septage receiving/treatment facilities, holding and bleed-in facilities, pretreatment facilities, and additional analytical capability. To determine which plants have the capability to effectively process holding tank waste, and whether additional facilities (or modifications to existing ones) are required, States may need to conduct a survey of the existing capabilities and limitations of their existing sewage treatment plants. A matrix to determine these capabilities might include the following elements, for which many States have available data as file information: (1) List all sewage treatment plants; (2) Eliminate plants that are over capacity, have operational problems, or violate permit conditions regularly; (3) Evaluate the balance for existing capacity and treatment methodology; (4) Estimate the available capacity; (5) Develop a short list of candidates for vessel sewage treatment; (6) Develop list of potential needs for modifications to those plants, including: (a) receiving stations; (b) holding/bleed-in tanks, and associated piping; (c) pretreatment needs; (d) associated sludge handling needs; and (e) additional staff and analytical capabilities.

On-Site Treatment

On-site treatment at a marina may be a viable alternative when the marina is not located near sewer lines, when transport of waste is prohibitively expensive, when the local sewage treatment plant is unable to accept additional discharges, and when groundwater and coastal waters can be protected. On-site treatment eliminates the need to transport waste. However, the proliferation of small, potentially troublesome treatment systems often creates more water quality problems than the collection of vessel sewage is intended to solve, including coastal and groundwater contamination.

Package Treatment Plants: Package treatment plants offer an alternative for the treatment of both vessel sewage and waste generated by marina restrooms and other shoreside sanitary facilities. Package treatment plants are usually small, prefabricated sewage treatment plants that provide secondary treatment, generally utilizing the extended air mode of operation. In this process, treatment is accomplished by introducing air into the wastewater to encourage the growth of aerobic bacteria which digest the sewage, providing a high degree of treatment.

Discharging vessel sewage to a package treatment plant should only be considered by boating facilities with large treatment systems that can handle the increased shock loading and chemical additives present in this type of waste. The typical problems with such systems are exacerbated by the nature of holding tank waste. Like septic systems, package plants are designed to deal with sewage with a low solids content, and the treatment process itself is highly dependent on an environment that is not toxic to the treatment bacteria. Holding tank waste is concentrated, which may raise treatment and sludge handling issues. Normal difficulties with treatment variability would be worsened by the slug flow nature of the discharges to a package treatment plant, though they can be eliminated by "bleeding" the influent into the plant. In addition, the waste may contain metals and hydrocarbons which can destroy the treatment process in a small plant.

Based on these concerns, States may not want to encourage the development of a multiplicity of small sewage treatment plants, due to the variability of effluent quality as well as substantial difficulty in ensuring proper operation and maintenance of the mechanical components of such systems.

Septic Systems: Septic systems are the conventional on-site sewage treatment systems throughout the United States. They consist of a septic tank where primary treatment (physical operations) predominate. These operations are floatation, settling, and the digestion of the sludge that accumulates in the bottom of the tank. Effluent from the tank is directed to a subsurface leaching system which provides additional treatment by establishment of a biological crust; its resultant permeability is a direct function of the biological oxygen demand (BOD) and suspended solids in the effluent stream. Once effluent leaves the crust zone it enters a soil environment where, if the septic system has been properly sited, a number of treatment processes will result in a high quality final effluent. The size and location of the leaching system (or drainfield) is extremely important because the quality of the final treatment is highly dependent on the type and quantity of the soil through which the effluent will pass.

In general, septic systems are not a favorable option for the disposal of vessel sewage, because they are not designed to treat the high solids content, high strength, and possibly toxic content of these wastes. They are not very effective at removing trace organic chemicals, and are ineffective at removing nutrients. The chemical additives used to disinfect and deodorize holding tank waste may kill the bacteria that aerobically digest the sewage, allowing solids to pass through the septic tank and causing the drainfield to clog and overflow. Nutrients leaching from the drainfield may stimulate algal growth in receiving waters, which can reduce the amount of sunlight necessary for submerged aquatic vegetation to grow and use up

oxygen needed for fish and other aquatic life. In marine waters nitrogen is the nutrient most likely to cause these adverse effects, while phosphorous is the problem in fresh water.

Vessel sewage should be discharged to a septic system only if no other options exist and the system is specifically designed and sited to receive such waste. This design includes: Using large tanks to manage and "bleed" in increased flows from pumpout stations; combining flows from ordinary bathroom facilities on-shore and the pumpout stations to dilute pumpout wastes; providing two septic tanks in series to help segregate solids in the first tank and increase retention time in the system; a large single drainfield or use of alternating drainfields, and proper siting to assure the leach field does not drain into the coastal waters or contaminate groundwater. In addition to following specific design criteria, septic systems should be inspected regularly and properly maintained.

Section 7. Types of Marine Boat Sewage Pumpout Stations and Waste Reception Facilities That May Be Appropriate for Construction, Renovation, Operation, or Maintenance, and Appropriate Location of the Stations and Facilities Within a Marina or Boatyard

There are four basic types of pumpout stations on the market. Each one has its advantages and disadvantages. Since every marina is unique, there is no one solution that will work in all cases. Therefore, each case should be examined individually, and the pumpout that will work best in any particular situation should be selected. Costs for equipment and installation can vary greatly, depending on need for sewage lift stations to accommodate widely fluctuating tides, need for special onshore holding tanks to hold concentrated waste, cost of connection to a sewer system, and other factors. Stationary or portable dockside pumps cost in the range of $2,000 to $10,000, and typical complete installations may be as high as $20,000. Following is a list of pumpout station types with a discussion of advantages and disadvantages.

(1) Stationary pumpout unit: Stationary units include a connector hose and pump, and are connected directly to a local or municipal sewage treatment facility or a holding tank. The unit is usually located at the end of a pier or floating dock, often near the fueling facilities. Vessels access the pumpout station by approaching and securing to the dock or pier. Advantages are convenience and efficiency. Principal disadvantage is that the unit restricts pumpout service to a single area of the marina, which may cause congestion.

(2) Portable pumpout unit on wheels: This unit may be a wheeled device, consisting of a holding tank, hose and mechanical or hand pump, that is pushed along a dock to the vessel's location to pump out vessel sewage. The advantage is the unit is brought to the boat rather than the boat to the station. When full of sewage, however, the unit can be heavy and cumbersome. Since it must be moved from boat to boat, the time required to complete the pumpout operation can be somewhat greater than that of fixed units. The unit is also limited by its storage capacity.

(3) Portable pumpout unit on a vessel: This unit is a boat with the pumpout station on board, consisting of a pump and holding tank, that may be radio-dispatched or respond to a signal flag, to pump vessel holding tanks. The advantage is the convenience of having the pumpout station come directly to the boat. Range of operation can be a problem.

(4) Remote operated multi-station system: This system has a pump which transports wastes via a main sewer to central collection and treatment. This unit can provide pumpout capabilities at any number of locations throughout the marina. This system, which provides wastewater collection anytime, combines the convenience and efficiency of fixed units with the versatility offered by portables. This system must be specifically designed to individual project requirements. In northern climates, freezing can be a problem.

There are five basic types of pumps used in pumpout systems. Following is a description of each.

(1) Centrifugal pump (rotary or impeller types): This pump works when sewage in its impeller is spun to the outside of the impeller by centrifugal force, which creates a low pressure area at the impeller as it pumps. Most centrifugal pumps require priming. This pump is usually employed in lift station situations.

(2) Reciprocating pump (diaphragm and piston types): This pump, mechanical or hand operated, creates suction by mechanically lifting a diaphragm up and pushing it down in a pump body. The diaphragm works in conjunction with two or four check valves. As the diaphragm lifts, the low pressure area under it causes sewage to be sucked into the body through the inlet check valve; when it is pushed down the pressure under the diaphragm closes the inlet check valve and forces sewage out the outlet check valve. This pump is self-priming.

(3) Vacuum pump: This pump does not directly contact sewage, but draws air out of a tank which creates the necessary low pressure area or vacuum to cause the sewage to flow in. When the accumulator tank is full, pressurized air enters the accumulator tank and the pressure pushes the sewage out to a sewer or holding tank. This pump allows pumping over longer distances.

(4) Flexible vein impeller pump: This pump has suction lift. It is easy to repair and needs no priming. A switch device is needed to prevent the pump from running dry and damaging the impeller.

(5) Progressive cavity pump: This pump consists of stainless steel rotor or screw surrounded by a tight fitting rubber sleeve. As the rotor turns the sewage is progressively moved to the discharge line. The pump is self-priming.

Equipment failure can occur with any of the above equipment. Most common causes are mechanical failure, followed by clogging of hose and/or pump, loss of hose prime, and hose failure.

In addition to pumpout stations, there are facilities to receive sewage waste from portable toilets. A waste reception facility consists of a receiving receptacle for sewage from portable toilets, and includes associated equipment and storage tank or sewer line connection. This facility is not a land-based or floating restroom, but can be made a part of such. Floating waste reception facilities should be considered at mooring fields and other strategic locations. The device typically includes a receiving basin, which should be a minimum of 12 inches in diameter, and with a lid that completely covers the receiving unit (to control odors and insect access), with provisions for rinsing the portable toilet following emptying of the contents. If the unit is designed to drain, the drain should be a minimum of 3 inches in diameter and equipped with an insect-tight cover. Waste reception facilities should be equipped with a washdown system to allow cleaning of the portable toilet. The washdown system should be clearly marked as unfit for drinking water. Wand attachments may be connected to a pumpout station to empty portable toilets, rather than building a separate facility.

Following is a description of other equipment that is part of the pumpout station.

Pumpout station holding tanks: Holding tanks should be sized appropriately for the volume of sewage generated and the frequency of removal of material from the holding tank. State

and local requirements may govern the size of holding tanks. Generally, a 1,500-gallon holding tank can serve up to 100 boats with holding tanks. In terms of the number of boats serviced with a normal removal schedule, the following minimum sizes are suggested:

Total number of boats serviced with holding tanks	Recommended holding tank volume (gallons)
1–20	300
21–40	600
41–60	900
61–80	1,200
81–100	1,500
100+	2,000

Pipes/hoses: Discharge piping should be rigid or noncollapsing flexible, with locking connections. Corrugated or ribbed hoses are not recommended. The line should be watertight and appropriately fastened or secured to the dock or pier. Local building codes should be checked for specific piping requirements, but the following materials are generally accepted for pumpout station service: Polyvinyl chloride (pvc), and polyethylene. Expansion joints should be included where appropriate. Force main systems may require "thrust blocks" and other security fastenings.

Fittings: Deck fitting (sewage removal fitting) is defined as: a flanged fitting permanently mounted on the vessel and connecting to the onboard holding tank. A connector is defined as: A nozzle or coupling permanently attached to the suction hose of a pumpout station. An adapter is defined as: a fitting designed to facilitate adapting a pumpout connector to a vessel deck fitting.

When the requirement for vessels with an installed toilet to have a certified marine sanitation device went into effect under 33 CFR 159 on January 30, 1975, there was a requirement for sewage removal fittings or adapters to be 1½" for boats less than 65 feet in length. The expected types of acceptable fittings included threaded, flanged, or quick disconnect fittings. However, 33 CFR 159 was amended on January 3, 1977 to allow holding tanks to be certified by definition if they store sewage and flushwater only at ambient air pressure and temperature. As a result, boats have been put on the market with many sizes of sewage removal connector fittings, requiring the use of adaptors in order to assure a clean, tight connection when a pumpout occurs.

There are several adapters on the market today. A black rubber nozzle is used by most boaters. Another adapter, the fuel hose fitting or cam-activated connector, consists of a male portion which fits into the connector, and a female portion which locks onto the male portion.

A suction nozzle or fitting such as a friction nozzle (right angle preferred) or cam-activated quick connector positive locking attachment should be provided on the end of the suction hose. Adapters should be provided to fit the 1.5 inch discharge connector. A valve should be provided on the suction hose at the nozzle. A valve should be provided on the pump end of the suction line if the line is to be installed in a manner such that sewage would discharge from the line when the pump is removed for service. Positive locking connections on the end of the discharge line should be provided to prevent it from coming loose during discharge. The discharge line should be protected from freezing, and prevented from leaking into the water. Suction hoses should be equipped with a clear tubing or a sight glass on the suction end of the hose to allow the pumpout station operator to determine when the pumping is complete.

Other factors that should be considered when installing pumpout stations/waste reception facilities include the following.

Convenient location enhances use. Stationary pumpout stations should generally be located as close to a boat off-loading point as possible and/or where boats need to maneuver the least. The end of a dock is a good location because it is accessible. Many facilities are located at the fuel dock, so boaters only have to go to one location for both of these activities. Water level changes should be considered when installing pumpout stations.

Operation and maintenance: Proper operation and maintenance of pumpout stations and waste reception facilities is critical to provide adequate and reasonable service. An individual should be assigned responsibility for operation and maintenance of pumpout and waste reception facilities. Consider appropriate protective clothing, such as gloves, and hand washing, to protect the operator. Washing facilities should be readily available.

Convenience for boaters and operators is a major factor. Hours of operation for pumpout stations should be keyed to general operating hours for vessels in the area. Specific maintenance and winter storage requirements depend on the system and the location. However, the following minimum maintenance is suggested to maintain sanitary conditions: flush hoses; pump clean water through the system, and empty into disposal area, never onto the ground or into the water; and disinfect suction connection.

An event or hour meter could be installed on the pump to monitor its use. Monitoring of pumpouts should be an integral part of a marina management program to ensure that the facilities are operating effectively. EPA has found the following to be representative of the types of practices that can be applied successfully to maintain pumpout facilities: Arrange maintenance contracts with contractors competent in the repair and servicing of pumpout facilities; develop regular inspection schedules; maintain a dedicated fund for the repair and maintenance of facilities.

Section 8. Other Information That Is Considered Necessary To Promote the Establishment of Pumpout Facilities To Reduce Sewage Discharge From Vessels and To Protect United States Waters

Public/private partnerships: Since approximately 80 per cent of the marinas in the United States are privately owned, States are encouraged to develop partnerships, within State laws and regulations, with private marinas to construct pumpout stations at these facilities.

"No Discharge Areas": Section 312 (f) (3) and (4)(A) (B) of the Clean Water Act of 1987 enables States to apply to the EPA for designation of certain water bodies as "No Discharge Areas". In doing so, States must meet specific criteria outlined in title 40, part 140, section 4, including, a State must demonstrate to the EPA Administrator that adequate and reasonably available facilities exist for the safe and sanitary removal of boat sewage. States should not consider "adequate and reasonably available" under the Clean Vessel Act to satisfy all requirements for determining "No Discharge Areas" under the Clean Water Act. A separate review and determination would have to be made by the EPA for Clean Water Act designation of a "No Discharge Area".

Holding tank bypass: Discharge of raw sewage from a vessel in U.S. Territorial Seas (within the three mile limit) is illegal. Holding tanks are frequently bypassed with the use of valves, commonly called Y-values. A valve may be installed on any marine sanitation device holding tank to provide for the direct discharge of raw sewage when the vessel is beyond the baseline of the Territorial Seas, which is more than three miles from shore. The valve must be secured in the closed position while operating in Territorial Seas. Use of a padlock, non-releasable wire-tie, or removal of the valve handle would be considered adequate securing of the

device. The method chosen must be one that presents a physical barrier to the use of the valve or the toilet. All Y-valves should be standardized, so that the handle points in the direction that the sewage flows and/or indicates the open and closed position. The Y-valve should be placed after the holding tank rather than between the toilet and holding tank.

Upland and floating restrooms: Clean, well-maintained restrooms are very desirable for boaters. Many boaters would rather use these when available than use holding tanks. Restrooms should be constructed at marinas and other strategic locations.

Rental Contracts: Marinas could add language in rental contracts to: (1) prohibit discharge of sewage into the marina; and, (2) require that all vessels be equipped with a holding tank.

Disinfectants, perfumes: Industry should produce only products which will not harm waste treatment plants or septic tanks. A symbol should be placed on the label of these products indicating they may be discharged into treatment plants or septic tanks if correctly used in a properly designed treatment system.

Additional information: For additional information on pumpout stations, refer to: (1) "A Guidebook For Marina Owners and Operators On the Installation and Operation of Sewage Pumpout Stations", Maryland Department of Natural Resources Boating Administration, Coastal Technology, Inc., February 1990; (2) "Commonwealth of Virginia Sanitary Regulations for Marinas and Boat Moorings", State Department of Health, Richmond, VA, 1990; (3) "Guidance for States and Municipalities Seeking "No Discharge Area" Designation for New England Coastal Waters", Rev. 4/92, U.S. Environmental Protection Agency, Region 1, Boston, MA; (4) "State of the Art Assessment of Boat Sewage Pumpout Program in Washington State", 12/91, Howard Edde, Inc., Bellevue, WA, for Washington State Parks and Recreation Commission, Olympia, WA. For further information on pumpout stations and waste reception facilities, consult "Marina Pump Out Facilities", Joseph Wettemann, 1/89, and "Types of Pump Out Facilities", Natchez, 7/92.

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Availability of a Draft Addendum to the Pacific Coast and Rocky Mountain/Southwest American Peregrine Falcon Recovery Plans for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft Addendum to the Pacific Coast and Rocky Mountain/Southwest Recovery Plans for the endangered American Peregrine falcon (*Falco peregrinus anatum*) in the 17 Western States. The Service solicits review and comment from the public on this draft Addendum, which complements the two original Recovery Plans.

DATES: Comments on the draft Addendum must be received on or before August 16, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Addendum may obtain a copy by contacting the Field Supervisor, Nevada Ecological Services Field Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C–125, Reno, Nevada 89502. Written comments and materials regarding the plan should be addressed to Mr. David L. Harlow, Field Supervisor, at the above Reno, Nevada address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Reno, Nevada address.

FOR FURTHER INFORMATION CONTACT: Dr. Patricia Zenone at the above Reno, Nevada address (telephone number 702–784–5227).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This draft Addendum is intended to complement and revise, with consideration of recent data, the original two Recovery Plans for American peregrine falcons in the Western States finalized in the early 1980's. It affects the population of American peregrine falcons found in Arizona, California, Colorado, Idaho, Kansas, Montana, North Dakota, Nebraska, New Mexico, Nevada, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming. This subspecies is presently listed under the Act as endangered throughout its range, which encompasses much of North America, from the subarctic boreal forest south into Mexico.

The principle cause of peregrine falcon decline was reproductive failure due to severe egg shell-thinning induced by widespread environmental application of dichloro diphenyl trichloroethane (DDT). Recovery efforts have focused on (1) restricting the use of DDT in the United States and Canada, (2) reestablishing peregrines in historic habitats, and (3) protection of existing peregrines under the Act. Since about 1985, the population of American peregrine falcons in the West has steadily increased. In 1991, approximately 560 pairs were known and 720 were estimated by State agencies, up from the 30 to 35 nests known in the West in 1975. This draft Addendum reviews recent (1991) data on American peregrine falcons in the West and submits revised criteria for reclassification of populations.

Public Comments Solicited

The Service solicits written comments on the draft Addendum described. All comments received by the date specified will be considered prior to approval of the Addendum.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 10, 1993.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 93–14298 Filed 6–16–93; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–779800

Applicant: Joseph M. Noto, Marlboro, NY.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by the government of Ciskei, Tsolwana Game Reserve, Tarkastad, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–779825

Applicant: Stephen C. Slack, Chanhassen, MN.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by L. Kock, "Verborgenfontein", Merriman, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–779822

Applicant: San Diego Zoological Society, San Diego, CA.

The applicant requests a permit to import multiple shipments of blood samples and skin biopsies from free-ranging black rhinoceros (*Diceros bicornis*) obtained opportunistically during dehorning programs conducted by the Department of National Parks and Wildlife Management, Zimbabwe, for the purpose of scientific research (genetic analysis and determination of virus seroprevalence).

PRT–776606

Applicant: Monk & Associates, Walnut Creek, CA.

The applicant requests a permit to live-trap and release salt marsh harvest mice (*Reithrodontomys raviventris*) in the San Francisco Bay Area, California, to determine their presence or absence proposed development sites.

PRT–778597

Applicant: Francis S. Carnes, Stevensville, MD.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Namibia to enhance the propagation and survival of the species.

PRT–777277

Applicant: Robert L. Killett, Sykesville, MD.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by L. Kock, "Verborgenfontein", Richmond, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–779834

Applicant: Gerald C. Wrobel, Fort Myers, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by M.G. Wienand, "Long Wood Farms", Bedford, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–777801

Applicant: Paul Bench-Layton, New York, NY.

The applicant requests a permit to import four captive hatched Indian pythons (*Python molurus molurus*) from the United Kingdom for the purpose of enhancement of propagation and survival of the species.

PRT–778844

Applicant: Richard Elliott, Grayville, IL.

The applicant requests a permit to import the sport-hunted trophy of one male leopard (*Panthera pardus*) from Ethiopia for the purpose of enhancement of survival of the species.

PRT–778568

Applicant: Bryan Mori, Watsonville, CA.

The applicant requests a permit to live-trap and release the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) in Northern Monterey County and Southern Santa Cruz County, CA, for biological survey purposes.

PRT–779674

Applicant: SWCA, Inc., Flagstaff, AZ.

The applicant requests a permit to harass the Least Bell's Vireo (*Vireo bellii bellii*) along Tijuana River in San Diego County, CA, for biological survey purposes.

PRT–690288

Applicant: Eddie Schmitt, Bradenton, FL.

The applicant requests a permit to export and reimport captive-bred tigers (*Panthera tigris*) and leopards (*Panthera pardus*) for circus performances, during which the applicant intends to inform the public of the tiger's and leopard's ecological role and conservation needs.

PRT–779710

Applicant: International Crane Foundation, Baraboo, WI.

The applicant requests a permit to import up to 10 blood/serum samples of the Hooded Crane (*Grus monachus*) from Daurski Nature Reserve, Russia, for enhancement of propagation or survival of the species.

PRT–779712

Applicant: International Crane Foundation, Baraboo, WI.

The applicant requests a permit to import up to 10 blood/serum samples of the White-naped crane (*Grus vipio*) from Daurski Nature Reserve, Russia, for enhancement of propagation or survival of the species.

PRT–779711

Applicant: International Crane Foundation, Baraboo, WI.

The applicant requests a permit to import up to 5 blood/serum samples of the Siberian crane (*Grus leucogeranus*) from Daurski Nature Reserve, Russia, for enhancement of propagation or survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281)

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–14282 Filed 6–16–93; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[ES–020–03–4110–05]

Extension of Public Comment Period on a Draft Environmental Impact Statement (DEIS) on a Proposed Exploratory Well, Broward County, FL

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of Public Comment Period on a Draft Environmental Impact Statement (DEIS) on a proposed exploratory well in Broward County, Florida.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, a DEIS has been prepared under the direction of the Bureau of Land Management (BLM), Jackson District and the Bureau of Indian Affairs (BIA), Eastern Area Office analyzing a proposed exploratory well on the Federal Miccosukee Indian Reservation in Broward County, Florida. A Notice of Availability (NOA) of the DEIS was published in the **Federal Register**, Vol. 58, No. 50, March 17, 1993. The NOA announced a public comment period that was open until May 18, 1993. This Notice extends the comment period to August 18, 1993. A copy of the DEIS summary is available upon request to the BLM, Jackson District Office. Public reading copies of the DEIS are available at the following locations:

Bureau of Land Management, Office of Public Affairs, Main Interior Building, room 5600, 18th & C Streets, NW., Washington DC 20240
Bureau of Land Management, 411 Briarwood Drive, suite 404, Jackson, Mississippi 39206
Bureau of Land Affairs, 3701 N. Fairfax Drive, suite 260, Arlington, Virginia 22203
Broward County Public Library, Government Documents Division, 100 South Andrews Avenue, Ft. Lauderdale, Florida 33301
Leon County Library, 200 West Park Avenue, Tallahassee, Florida 32301
Palm Beach County Library, 3650 West Summit Blvd., West Palm Beach, Florida 33406
State Library of Florida, Document Section, R.A. Gray Building, Tallahassee, Florida 32399

DATES: Written comments should be sent by August 18, 1993.

ADDRESSES: Requests for a copy of the DEIS summary and/or written comments on the document should be sent to the District Manager, Bureau of Land Management, 411 Briarwood Drive, suite 404, Jackson, Mississippi 39206; ATTN: Robert V. Abbey.

FOR FURTHER INFORMATION CONTACT:

Robert V. Abbey (BLM), (601) 977–5400 or Jim Harriman (BIA), (703) 235–3177.

Dated: June 10, 1993.

Sammy St. Clair,

Acting Jackson District Manager, BLM

[FR Doc. 93–14347 Filed 6–16–93; 8:45 am]

BILLING CODE 4310–GJ–M

[CO–070–0–4410–13–241A]

Grand Junction District Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Grand Junction District Advisory Council will meet on Tuesday, July 13, 1993. The meeting will convene at 9:00 a.m. in Conference Room of the Grand Junction District Office, 2815 H Road, Grand Junction, Colorado.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include (1) Opening Remarks, (2) Public Comment, (3) Departure for Rabbit Valley Field Tour, (4) Update on land exchanges, (5) RS2477 briefing, (6) Update from the Travel Management subcommittee, (7) Development of next agenda and new topics.

The meeting is open to the public. Interested persons may make oral statements to the Council between 1:30 and 2:45 p.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado, 81506 by July 1, 1993. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the meeting are available at the Grand Junction District Office thirty (30) days following the meeting.

FOR FURTHER INFORMATION CONTACT: Tim Hartzell, District Manager, Grand Junction District Office, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506, phone (303) 244–3000.

Tim Hartzell,

District Manager.

[FR Doc. 93–14245 Filed 6–16–93; 8:45 am]

BILLING CODE 4310–84–M

[ID–943–03–4210–04; IDI–22688, IDI–25636]

Exchanges and Order Providing for Opening of Public Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange and opening order.

SUMMARY: The United States has issued two exchange conveyance documents as shown below under Section 206 of the Federal Land Policy and Management Act. In addition to providing official public notice of the exchanges, this document contains an order which opens lands received by the United States to the public land, mining, and mineral leasing laws.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384–3163.

1. In two exchanges made under the provisions of Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been conveyed from the United States:

Boise Meridian

IDI–22688 (Conveyed to Salmon River Properties, Inc.)
T. 19 N., R. 21 E.,
Sec. 32, W½NE¼SE¼;
Sec. 33, W½SW¼SW¼ and SE¼SW¼SW¼.
IDI–25636 (Conveyed to Edward A. and Marsha A. DeSano)
T. 7 S., R. 35 E.,
Sec. 29, W½SE¼;
Sec. 32, N½NW¼.
Comprising 210.00 acres of public lands.

2. In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

(Acquired from Salmon River Properties, Inc.)
T. 18 N., R. 21 E.,
Sec. 4, S½ of lot 4;
Sec. 5, S½ of lot 1;
More particularly described as follows:
Commencing at the north quarter corner of said section 5, a distance of 1,318.98 ft. on a bearing of S. 89°41'07" E., to the northwest corner of said lot 1;
S. 0°02'45" E., 650.89 ft. to the real point of beginning;
S. 0°02'45" E., 650.89 ft. to the southwest corner of said lot 1;
S. 89°57'21" E., 1,318.30 ft. to the southeast corner of said lot 1;
S. 89°59'39" E., 1,318.28 ft. to the southeast corner of said lot 4;
N. 0°01'44" E., 643.28 ft.;
N. 89°47'55" W., 1,318.80 ft.;
N. 89°49'14" W., 1,318.64 ft. to the real point of beginning.
T. 18 N., R. 21 E.,
Sec. 5, NW¼ of lot 1, more particularly described as follows:
Commencing at the northeast corner of said section 5, a distance of 659.48 ft. N. 89°41'08" W., to the real point of beginning;
S. 0°01'53" E., 648.89 ft.;
N. 89°49'34" W., 659.31 ft.;
N. 0°02'45" W., 650.50 ft.;
S. 89°41'08" E., 659.48 ft. to the real point of beginning.
T. 19 N., R. 21 E.,
Sec. 32, SW¼SW¼SE¼.
(Acquired from Edward A. and Marsha A. DeSano)
T. 7 S., R. 35 E.,
Sec. 33, N½SE¼;
Sec. 34, W½SW¼.
Comprising 219.03 acres of private lands.

The purpose of the exchanges was to acquire non-Federal lands which have high public values for wildlife and riparian habitat and rangeland. The public interest was well served through completion of each exchange. The values of the Federal and private lands involved in the Salmon River Properties exchange were each appraised at $6,500.00. The values of the Federal and private lands involved in the DeSano Exchange were each appraised at $52,000.

3. At 9 a.m. on July 19, 1993, the reconveyed private lands described in paragraph 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 19, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on July 19, 1993, the reconveyed private lands described in paragraph 2 will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in paragraph 2 under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: June 9, 1993.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 93–14348 Filed 6–16–93; 8:45 am]

BILLING CODE 4310-GG-M

[AZ–020–03–5410–11–A007; AZA–25360]

Realty Action, Arizona; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In notice document 91–28625 appearing on page 61045 in the issue of Friday, November 29, 1991, in the second column, make the following corrections: in the land description, under Sec. 33, "All" should read "E½" and on line 46, "from the date of application, June 27, 1991", should read "from the date of publication of this notice, November 29, 1991".

Dated: June 10, 1993.

William T. Childress,

Acting District Manager.

[FR Doc. 93–14346 Filed 6–16–93; 8:45 am]

BILLING CODE 4310-32-M

[NM–038–4210–05; NMNM 83797]

Sale of Public Land in Socorro County, NM

AGENCY: Bureau of Land Management (BLM) Interior.

ACTION: Notice of realty action termination of classification.

SUMMARY: The following described public land has been examined and determined to be suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

New Mexico Principal Meridian

T. 5 S., R. 1 E.
Sec. 6, lot 31.
Containing 1.20 acres.

DATES: Interested parties may submit comments to the District Manager, BLM Las Cruces District, 1800 Marquess, Las Cruces, New Mexico 88005, on or before August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Jon Hertz, Realty Specialist, at the Socorro Resource Area Office, 198 Neel Avenue, Socorro, New Mexico 87801, or (505) 835–0412.

SUPPLEMENTARY INFORMATION: This land will be offered by direct sale to Socorro County for their use as a refuse transfer station.

The parcel is isolated, difficult, and uneconomical to manage as part of the public land and is not suitable for management by another Federal department or agency. The sale is consistent with the Bureau's planning efforts, and the public interest will be served by offering this land for sale.

The land will be conveyed with the following exceptions and reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral resources together with the right to prospect for, mine and remove the same.

Upon publication of this notice in the **Federal Register**, the lands described above will be segregated from appropriation under the public land laws, including the mining laws, except for sale under the provisions of FLPMA. The segregation will end upon issuance of patent or 270 days from the date of publication of this notice, whichever occurs first. Objections will be reviewed by the State Director who may sustain, modify, or vacate this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. Publication of this notice also terminates the existing Recreation and Public Purposes classification on a portion of the land within T. 5 S., R. 1 E., sec. 6, lot 31, New Mexico Principal Meridian.

Dated: June 8, 1993.

Stephanie Hargrove,

Associate District Manager.

[FR Doc. 93–14349 Filed 6–16–93; 8:45 am]

BILLING CODE 4310-FB-M

[UT–040–02–4212–14; UTU–68593]

Private Land Exchange

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management is proposing to exchange, under section 206 of the Federal Land Policy and Management Act of 1976, public land described as Salt Lake Meridian, T. 33 S., R. 8 W., sec. 1 lot 4, SW¼NW¼, NW¼SW¼, W½SW¼SW¼; sec. 3 lots 1, 5, and 11, SE¼NE¼; sec. 11 E½NE¼; SW¼NE¼, NW¼SE¼, containing 422.96 acres located in Iron County, Utah. The private land that would be acquired is described as T. 32 S., R. 8 W., sec. 36 NE¼, N½NW¼, SW¼, NW¼SE¼, containing 440.0 acres in Iron County, Utah. This exchange is between the United States Government and Robin K. Bradshaw, et al. The exchange would benefit the public by improving public land ownership patterns, by acquiring private land with valuable big game habitat and by providing legal access to public lands. The environmental assessment identifies no significant impacts.

DATES: Comments must be submitted on or before August 2, 1993. The exchange will be conducted no sooner than August 16, 1993.

ADDRESSES: All comments concerning this proposed exchange should be addressed to Gordon R. Staker, District Manager, Cedar City District, 176 East D.L. Sargent Drive, Cedar City, Utah 84720.

FOR FURTHER INFORMATION CONTACT: Arthur L. Tait, Area Manager, at 365 South Main, Cedar City, Utah 84720 (801) 586–2458.

SUPPLEMENTARY INFORMATION: The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action or on March 14, 1994, whichever occurs first. Only the surface estate will be exchanged. The patent, when issued, will contain a reservation for all minerals to the United States, together with the right to prospect for, mine and remove the minerals. There will also be reserved to the United States, a right-of-way for ditches or canals constructed by the authority of the United States. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: June 7, 1993.

Gordon R. Staker,

District Manager.

[FR Doc. 93–14240 Filed 6–16–93; 8:45 am]

BILLING CODE 4310–DQ–M

[CA–068–02–7123–54–6532]

Prohibition of Use of Glass Beverage Containers and Discharge of Firearms Within the Boundaries of the El Mirage Cooperative Management Area, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of the implementation of a supplementary rule banning the use of glass beverage and food containers and banning the discharge of firearms upon the public lands within the El Mirage Cooperative Management Area, San Bernardino County, California.

SUMMARY: Order: A supplementary rule will take effect that will ban the use of glass containers and the discharge of firearms in the El Mirage Project Area. The supplementary rule will be cited under 43 CFR 8365.1–6, Visitors Services, Rules of Conduct, Supplementary Rules. The text of these rules follows:

1. Ban on Glass Containers Within the El Mirage Cooperative Management Area.

(a) Due to an ongoing problem with broken glass from beverage containers causing damage to vehicles and a safety problem for the visitors to the El Mirage Cooperative Management Area, there is a demonstrated need for the removal of glass containers and elimination of their use within the management area.

(b) Upon the Public Lands within the established boundaries of the El Mirage Cooperative Management Area, no person shall bring in, dispose of or possess any glass beverage or food container."

2. "Ban on The Discharge of Any Firearm Within the Boundaries of the El Mirage Cooperative Management Area (Supplementary Rule as Per 43 CFR 8365.1–6).

Recreational shooting, including rifles, pistols, shotguns, paint guns, pellet and BB guns, bows and arrows, and/or any other firearm, is prohibited upon the Public Lands within the El Mirage Cooperative Management Area.

(a) Because a hazardous condition exists from the discharge of firearms in the El Mirage Area, there is an evident need to exclude the use of all firearms upon the Public Lands within the management area.

(b) Upon the Public Lands within the established boundaries of the El Mirage Cooperative Management Area, no person shall discharge a firearm for recreational shooting or hunting."

Background

The purpose of this supplemental rule is to protect visitors to the El Mirage Cooperative Management Area from serious injury to themselves as well as damage to their vehicles as a result of discharge from firearms and discarded and broken glass containers.

At this time, broken glass is evident in areas of concentrated use and around high traffic areas. This regularly results in tire damage to visitor's vehicles and to Bureau patrol vehicles. Falling or stepping on broken glass continues to be a hazard to campers who prefer to set up in well used camping areas.

EFFECTIVE DATE: These rules will take effect on the date of June 17, 1993.

FOR FURTHER INFORMATION CONTACT: Mike Moore, Chief Area Ranger, Barstow Resource Area, 150 Coolwater Lane, Barstow, California 92311, (619) 256–2729.

SUPPLEMENTARY INFORMATION: An area map, an El Mirage Cooperative Management Area brochure and copies of the Management Plan are available by contacting the above personnel.

Authority for this supplemental rule is found in 43 CFR 8365.1–6. Violation of this rule is punishable by a fine not to exceed $100,000/or imprisonment not to exceed 12 months.

Dated: June 4, 1993.

Lucia Kuizon,

Acting District Manager.

[FR Doc. 93–14239 Filed 6–16–93; 8:45 am]

BILLING CODE 4310–GG–M

[NM–010–4210–06/G3–0043; NMNM 90102]

Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw approximately 770.00 acres of National Forest System lands for the Sipapu Ski Area expansion. This notice closes the lands for up to 2 years from location and entry under the United States mining laws, subject to valid existing rights. The lands will remain open to all other uses which may be made of National Forest System lands.

DATE: Comments and requests for a public meeting should be received on or before September 15, 1993.

ADDRESSES: Comments and meeting requests should be sent to the Albuquerque District Manager, BLM, 435 Montano Road NE., Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Margie Martinez, BLM Albuquerque District Office, (505) 761–8907.

SUPPLEMENTARY INFORMATION: On May 10, 1993, the United States Department of Agriculture filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

New Mexico Principal Meridian

Carson National Forest

T. 22 N., R. 13 E.,

Sec. 8, E½SE¼NE¼ and E½NE¼SE¼, unsurveyed and within the Santa Barbara Grant Survey;

Sec. 9, S½S½N½N½, S½N½, SW¼, and N½SE¼, unsurveyed and within the Santa Barbara Grant Survey;

Sec. 10, lots 2 and 3, and approximately 23.01 acres in the SW¼NW¼ partly unsurveyed and within the Santa Barbara Grant Survey (excluding SHC Patent No. 883043), and approximately 5.01 acres of the NW¼SE¼ partly unsurveyed and within the Santa Barbara Grant Survey, and SW¼NE¼;

Sec. 15, SE¼NW¼ and N½SW¼, unsurveyed and within the Santa Barbara Grant Survey;
Sec. 16, NE¼NW¼ unsurveyed and within the Santa Barbara Grant Survey.

The areas described aggregate approximately 770.00 acres in Taos County.

The purpose of the proposed withdrawal is to protect the area and future investment in the proposed ski area expansion project.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Albuquerque District Manager of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Albuquerque District Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied, canceled, or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are land uses permitted by the Forest Service under existing laws and regulations, including, but not limited to construction and operation of the proposed ski area improvements.

Dated: June 9, 1993.

Michael E. Ford,

District Manager.

[FR Doc. 93–14351 Filed 6–16–93; 8:45 am]

BILLING CODE 4310–FB–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Records Management Officer, Renee' Poehls, (202) 736–4743, FA/AS/ISS/RM, room B930 NS, Washington, DC 20523.

Date Submitted: June 1, 1993
Submitting Agency: Agency for International Development
OMB Number: 0412–0017
Form Number: AID 1440–3
Type of Submission: Renewal
Title: Contractor's Certificate and Agreement with A.I.D.—Contractor's Invoice and Contract Abstract
Purpose: When A.I.D. is not a party to a contract which it finances, this form provides the means to collect information and to take appropriate action in the event contractors do not comply with A.I.D. requirements. The Invoice-and-Contract Abstract identifies the transaction being financed, provides information on the location of the contractor, and participation by small and minority-owned businesses. The information is used by the Agency to identify transactions in order to assure that statutory and regulatory requirements are met, and to provide a basis for requesting appropriate refund if requirements have not been met.
Annual Reporting Burden: Respondents: 60, annual responses: 12; average hours per response: .50; annual burden hours: 360
Reviewer: Jeffery Hill (202) 395–7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: June 2, 1993.

Elizabeth Baltimore,

Information Support Services Division.

[FR Doc. 93–14250 Filed 6–16–93; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill, on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis B. Arnold, on (202) 514–4305.

If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis B. Arnold, DOJ Clearance Officer, SPS/JMD, WCTR suite 850, Department of Justice, Washington, DC 20530.

This notice contains a collection for which an expedited review has been requested from the Office of Management and Budget (INS Form I–485). In an effort to fully inform the reporting public, this entry is printed in full, including instructions, at the end of this notice. Written comments concerning this form should be sent to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street NW., room 5304, Washington, DC 20536, Attention: Form I–751, within 15 days after the date of publication of this notice in the **Federal Register**.

Revision of Currently Approved Collection

An expedited review has been requested for this entry.

(1) Application to Register Permanent Residence or Adjust Status
(2) I–485, Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. This application and information will be used to request and determine eligibility for adjustment to permanent residence status or other granting of permanent residence to an alien already in the United States.
(5) 160,000 annual responses at 5.25 hours per response, 112,000 annual responses at 4.5 hours per response
(6) 1,316,000 annual burden hours
(7) Not applicable under 3504(h).

The instructions provided herein are a supplement to INS Form 485 and will be used in connection with the provisions of the Chinese Student Protection Act of 1992 (CSPA).

Public comment on these items is encouraged.

Dated: June 11, 1993.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

BILLING CODE 4410-10-M

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ADDITIONAL INSTRUCTIONS FOR THE FORM I-485

The Chinese Student Protection Act of 1992 (CSPA) allows certain persons to apply to adjust status regardless of whether a visa petition has been filed or an immigrant visa number is immediately available.

Who May File.
You may apply for adjustment of status under the CSPA if you were inspected and admitted or paroled into the United States and you:

- are a national of the People's Republic of China (PRC) described in section 1 of Executive Order No. 12711, as in effect on April 11, 1990;

- was in the United States at some time between June 5, 1989, and April 11, 1990, inclusive, or would have been in the United States during this time period except for a brief, casual, and innocent departure from this country;

- has resided continuously in the United States since April 11, 1990 (other than brief, casual and innocent absences);

- was not physically present in the PRC for longer than 90 days after April 11, 1990 and before October 9, 1992;

- is admissible to the United States as an immigrant, unless the basis for excludability has been waived;

- establishes eligibility for adjustment of status under all provisions of section 245 of the Act, unless the basis for ineligibility has been waived; and

- properly files an application for adjustment of status under section 245 of the Act.

If you are a PRC national who meets these requirements, you may apply for CSPA adjustment regardless of your age or marital status.

Please note that CSPA adjustment applicants are not required to have applied for benefits under Executive Order No. 12711.

Non-PRC Family Members.
A non-PRC spouse or non-PRC child of an eligible PRC national may also qualify for CSPA adjustment. If your relationship to the PRC national is based on a marriage, the marriage must have taken place before April 12, 1990, and must not have been terminated. You must also:

- meet the requirements of section 1 of Executive Order 12711;

- meet the continuous residence and physical presence requirements listed above; and

- have been unmarried and under the age of 21 on April 11, 1990, if you are applying as the child of an eligible PRC national.

Persons Who Are Ineligible.
Special rules apply to CSPA adjustments. You will not be eligible for CSPA adjustment if:

- you were not admitted or paroled following inspection by an immigration officer;

- you have A, E or G nonimmigrant status, or have an occupation which would allow you to have this status, unless you submit a completed Form I-508 to waive diplomatic rights, privileges and immunities;

- if you have A or G nonimmigrant status, unless you submit a completed Form I-566;

- you are already a conditional permanent resident; or

- you were admitted as a K-1 or K-2 fiance(e).

General Filing Instructions.

Read the General Filing Instructions on Form I-485, which provide more information about forms and evidence.

If required evidence is unavailable, you may submit secondary evidence. Due to the difficulties some CSPA applicants may encounter when attempting to obtain documents from the PRC, you may submit secondary evidence of your birth or marriage in the PRC even though you do not have evidence that you unsuccessfully tried to obtain a birth or marriage record from the appropriate authorities in the PRC.

All CSPA applicants should check "block **h** other" in Part 2 of Form I-485. PRC national applicants should write "CSPA-Principal" next to "block **h** other". Non-PRC national applicants should write "CSPA-Qualified Family Member" next to "block **h**".

Your Form I-485 must be accompanied by:

- a copy of your birth certificate or other record of your birth;

- evidence of your relationship to an eligible PRC national, if you are a non-PRC family member (see Form I-485 Instructions under "Initial Evidence - Evidence of eligibility based on your being the spouse or child of another adjustment applicant...");

- two (2) ADIT-style photographs (see Form I-485 Instructions under "General Filing Instructions");

- one (1) complete set of fingerprints on Form FD-258 (if you are between 14 and 75 years of age);

- a completed Form G-325A, Biographic Information Sheet (if you are between 14 and 79 years of age);

- an original medical examination report on Form I-693 completed by a physician authorized by your local INS office;

- a copy of your Form I-94, Arrival-Departure Record, or other evidence of inspection and admission or parole into the U.S.;

- an original letter of employment, a completed Affidavit of Support on Form I-134, or other evidence that you will not be likely to be a public charge in the U.S.;

- a photocopy of evidence that you have previously been found eligible for benefits under Executive Order 12711 such as deferred enforced departure (DED), employment authorization, and/or waiver of the two-year foreign residence requirement, if applicable;

- a photocopy of all pages of your most recent passport or an explanation of why you do not have a passport; and

- an attachment on a **plain piece of paper** showing:

  - the date you arrived in the U.S. (must be before April 11, 1990);

  - the date of each departure you made from the U.S. since that arrival,

  - the reason for each trip, and

  - the date you returned to the U.S. after each trip;

  - if you did not depart the U.S. after your intial date of arrival, write "I was in the United States on April 11, 1990, and I have not departed the United States since April 11, 1990; and

- an attachment on a **plain piece of paper** showing:

  - the date you arrived in the PRC; and

  - the date you left the PRC for each trip you made to the PRC between April 11, 1990 and October 9, 1992;

- if you did not go to the PRC, write "I was not in the PRC between April 11, 1990 and October 9, 1992".

Fee. CSPA adjustment of status applications must be submitted with the fee required by Form I-485.

When to File.
If the President of the United States determines and certifies to Congress before July 1, 1993, that conditions have changed so as to permit safe return to the PRC, **no applications for CSPA adjustments will be granted.**

You must file your CSPA adjustment application before July 1, 1994.

Where to File.
File your application for CSPA adjustment of status with the Service Center having jurisdiction over your place of residence.

• If you live in: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands or West Virginia, **mail your application to:**

USINS Eastern Service Center
75 Lower Welden Street
St. Albans, VT 05479-0001

• If you live in: Arizona, California, Guam, Hawaii or Nevada, **mail your application to:**

USINS Western Service Center
P.O. Box 10485
Laguna Niguel, CA 92607-0485

• If you live in: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, N. Carolina, Oklahoma, S. Carolina, Tennessee or Texas, **mail your application to:**

USINS Southern Service Center
P.O. Box 152122, Department A
Irving, TX 75015-2122

• If you live elsewhere in the U.S., **mail your application to:**

Northern Service Center
P.O. 82521
Lincoln, NE 68501-2521

Processing.
You must mail your application directly to the Service Center. A receipt will be mailed to you after your application is received. This receipt may ask you to go to the local INS office, where the

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fingerprint and signature needed for your alien registration card will be recorded on Form I-89. Take the receipt and your passport or other photo identification with you to the local INS office.

Applications may be approved without an interview. However, if you receive a notice requiring you to appear at a local INS office for an interview concerning your CSPA application, your application will not be approved until the interview has been completed.

Decision. After processing is completed, a notice of the decision will be mailed to you. Keep the decision notice for your records. If your application is approved, an alien registration card will be mailed to you within several months.

Travel Outside the U.S. If you plan to leave the U.S. to go to any other country, including Canada or Mexico, before a decision is made on your application, contact your local INS office. Leaving the U.S. without advance written permission may result in automatic termination of your application. You may also experience difficulty upon returning to the U.S. if you do not have written permission to reenter.

[FR Doc. 93-14269 Filed 6-16-93; 8:45 am]
BILLING CODE 4410-10-C

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; Estate of Nancy Miller, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Estate of Nancy Miller, et al.*, Civil Action No. C–89–886–S, was lodged on June 7, 1993, with the United States District Court for the Middle District of North Carolina. That action was brought against defendants pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for payment of past costs incurred by the United States at the JMC Furniture Site in Lexington, North Carolina. The decree requires three settlors to pay $446,000 towards the United States' past costs. It is estimated that the United States has incurred costs in excess of $1.2 million in connection with a removal action at the JMC Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Estate of Nancy Miller*, DOJ Ref. #90–11–3–505.

The proposed consent decree may be examined at the Office of the United States Attorney, 324 West Market Street, Greensboro, North Carolina 27402; at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–14246 Filed 6–16–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Minnesota Mining and Manufacturing Co.

Notice is hereby given that, on May 10, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Minnesota Mining and Manufacturing Company ("3M") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a research and development project in furtherance of a cooperative agreement issued by the Department of Commerce, National Institute of Standards and Technology (NIST) (Agreement No. 7ONANB3H1377) under NIST's Advanced Technology Program (ATP). The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are 3M, St. Paul, MN; and Sun Active Glass Electrochromics, Inc. ("SAGE"), Piscataway, NJ.

The nature and objectives of the research program are the development of electrochromic technologies for application to plastic and glass substrates. Plastic electrochromic devices and glass electrochromic devices are both designed for use in windows, such as architectural windows, to control the transmission of light and the radiation of heat through windows.

Under the proposed agreement, 3M would generally have exclusive rights under the technologies developed to commercialize plastic electrochromic devices and SAGE would generally have exclusive rights to commercialize glass electrochromic devices.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–14247 Filed 6–16–93; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological and Critical Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following two meetings:

Name: Special Emphasis Panel in Biological and Critical Systems.

Date and Time: July 8–9, 1993; 8:30 a.m. to 5 p.m.

Place: Room 523, National Science Foundation, 1800 G Street NW., Washington, DC.

Contact Person: Dr. Karen Mudry, Program Director, Division of Biological and Critical Systems, National Science Foundation, 1800 G St. NW., room 1132, Washington, DC 20550. Telephone: (202) 357–7955.

Agenda: To review and evaluate Cost Effective Health Care Technologies-Systems and Information proposals as part of the selection process for awards.

Name: Special Emphasis Panel in Biological and Critical Systems.

Date and Time: July 12–13, 1993; 8:30 a.m. to 5 p.m.

Place: Room 523, National Science Foundation, 1800 G Street NW., Washington, DC.

Contact Person: Dr. Karen Mudry, Program Director, Division of Biological and Critical Systems, National Science Foundation, 1800 G St. NW., room 1132, Washington, DC 20550. Telephone: (202) 357–7955.

Agenda: To review and evaluate Cost Effective Health Care Technologies-Devices proposals as part of the selection process for awards.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 14, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–14301 Filed 6–16–93; 8:45 am]

BILLING CODE 7535–01–M

Committee of Visitors of the Advisory Committee for Education and Human Resources; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: July 7, 1993 (9 a.m. to 5 p.m.); July 8, 1993 (9 a.m. to 3 p.m.).

Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Andrew Molnar, Program Director, Division of Research, Evaluation and Dissemination, room 1227, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) (357–7064).

Purpose of Meeting: To carry out Committee of Visitors (COV) review,

including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Applications of Advanced Technologies Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: June 14, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–14303 Filed 6–16–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: July 7–8, 1993, 8:30 a.m.–5 p.m.

Place: National Science Foundation, Division of Materials Research, (room 411), 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Robert J. Reynik, Head, Office of Special Programs in Materials, Division of Materials Research, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–9791.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support in the area of Cost Effective Health Care Technologies.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 14, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–14302 Filed 6–16–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mechanical and Structural Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following two meetings:

Name: Special Emphasis Panel in Mechanical and Structural Systems.

Date and Time: July 7–8, 1993; 8:30 a.m. to 5 p.m.

Place: St. James Hotel, the Embassy Conference Room, 950 24th Street, NW., Washington, DC.

Contact Person: Drs. Jerome L. Sackman and Huseyin Sehitoglu, Program Directors, Division of Mechanical and Structural Systems, National Science Foundation, 1800 G St. NW., room 1108, Washington, DC 20550. Telephone: (202) 357–9542.

Name: Special Emphasis Panel in Mechanical and Structural Systems.

Date and Time: August 3–4, 1993; 8:30 a.m. to 5 p.m.

Place: National Science Foundation Annex, Conference Rooms A & B, 1110 Vermont Avenue, NW., Washington, DC.

Contact Person: Dr. Devendra P. Garg, Program Director, Division of Mechanical and Structural Systems, room 1108, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9542.

Purpose of Meetings: To provide advice and recommendations concerning unsolicited proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Division of Mechanical and Structural Systems as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 14, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–14304 Filed 6–16–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 54th meeting on Friday, June 25, 1993, 8:30 a.m. until the conclusion of business room P–110, 7920 Norfolk Avenue, Bethesda, MD.

PURPOSE: The Advisory Committee on Nuclear Waste (ACNW) will meet to discuss a strategy for preparing a position response to recent direction from the Commission on the ACNW Charter and the renewal of appointments of members.

JUSTIFICATION OF CLOSURE: This meeting will be closed to the extent that it discusses organizational and personnel matters that relate solely to the personnel rules and practices of this advisory committee and the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c) (2) and (6).

JUSTIFICATION FOR LESS THAN 15-DAYS NOTICE: It is necessary to hold this meeting on an expedited bases in order to provide a timely response to recent direction from the Commission.

FOR FURTHER INFORMATION CONTACT: Dr. John T. Larkins, Executive Director, ACNW (telephone 301/492–4516) between 7:30 a.m. and 4:15 p.m.

Dated: June 11, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–14299 Filed 6–16–93; 8:45 am]

BILLING CODE 7590–01–M

Ratification of the Revised Procedural Agreement Between the Nuclear Regulatory Commission and the U.S. Department of Energy

"Identifying Guiding Principals for Interface During Geologic Site Investigation and Site Characterization" and the "Agreement Between the U.S. Department of Energy Office of Civilian Radioactive Waste Management and the Nuclear Regulatory Commission Division of High-Level Waste Management During Site Characterization Programs and Prior to the Submittal of an Application for Authorization to Construct a Repository."

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability of the ratification of the revised Procedural Agreement and Repository Project-Specific Agreement between NRC and the U.S. Department of Energy (DOE).

SUMMARY: On August 25, 1993, NRC published a **Federal Register** notice (Vol. 48, No. 166, pp. 38701–38702) regarding the ratification of the original Procedural Agreement between NRC and DOE. The Repository Project-Specific Agreement was subsequently ratified by both agencies in 1984. The purpose of these documents was to outline the procedures for staff consultation and exchange of information which NRC and DOE and its designated contractors would observe in connection with the characterization of sites for a geologic repository under the Nuclear Waste Policy Act of 1982, as amended. The purpose of this **Federal Register** notice is to announce the availability of the ratification of the revised Procedural

Agreement and the Repository Project-Specific Agreement that includes all changes to the original agreements concerning NRC and DOE staff interactions.

FOR FURTHER INFORMATION CONTACT: Robert Carlson, Project Manager, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504–2435.

FOR COPIES CONTACT: Anne Garcia, Licensing Assistant Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504–2438.

Dated at Rockville, Maryland, this 9th day of June, 1993

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Director, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–14300 Filed 6–16–93; 8:45 am]

BILLING CODE 7590–01–M

PEACE CORPS

Information Collection Request Under OMB Review

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*] this notice announces that the information collection request abstracted below has been forwarded to the Office of Management and Budget for review and is available for public review and comment. A copy of the information collection may be obtained from Ms. Laurie James, Office of World Wise Schools, Peace Corps of the United States, 1990 K Street, NW., Washington, DC 20526. Ms. James may be called at 202–606–3294. Comments on this information collection should be addressed to Mr. Jeff Hill, Desk Officer, Office of Management and Budget, Washington, DC 20503.

Information Collection Abstract

Title: World Wise Schools Enrollment Form.

Need for and Use of the Information: Peace Corps needs this information in order to enroll classrooms in the World Wise Schools Program.

Respondents: Teachers.

Burden on the Public

a. Annual reporting burden: 167 hours.

b. Annual recordkeeping burden: 100 hours.

c. Estimated average burden per response: 02 mins.

d. Frequency of response: on occasion.

e. Estimated number of likely respondents: 5,000.

This notice is issued in Washington, DC on June 14, 1993.

Joan Ambre,

Acting Associate Director for Management.

[FR Doc. 93–14332 Filed 6–17–93; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32451; File No. SR–CBOE–93–21]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing and Trading of European-Style, Cash-Settled Options Based on the Yields of Specified Treasury Bonds and Notes

June 11, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 26, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to provide for the listing and trading of European-style, cash-settled, yield-based options on individual issues of long-term Treasury bonds and notes. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enable the CBOE to list European-style, yield-based, cash-settled options on long-term Treasury bonds and notes of specified maturities. Currently, all of CBOE's cash-settled Treasury options are based on composite yields for a mix of Treasury securities. Although such options have attracted trading interest, according to the CBOE they are less suitable for investors who wish to establish options positions that closely track the yield on a particular Treasury issue. Through this rule change, investors will be able to trade cash-settled options based on yields that correlate directly with particular Treasury issues.

At the present time, the CBOE expects to list yield-based options on the 30-year Treasury bond and on the 10-year and 5-year Treasury notes. For each such yield-based option, the underlying reference instrument will be the note or bond of the given maturity that has the longest remaining time to maturity. On the valid exercise at expiration of any of these new options, the holder would receive a cash settlement payment that equals the closing value of the reported spot yield on the underlying reference instrument times a factor of ten and the relevant multiplier. For purposes of establishing exercise settlement amounts,[1] the CBOE will use the spot yield for each underlying issue as calculated daily by the Federal Reserve Bank of New York ("FRBNY").[2] In the

[1] For purposes of daily pricing, it is anticipated that the Exchange will appoint a designated reporting authority to calculate and update the current value of the options as frequently throughout the CBOE trading day as the information used by the reporting authority to calculate the value changes. Telephone conversation among Richard G. DuFour, Executive Vice President, CBOE, Richard L. Zack, Branch Chief, Division of Market Regulation, Commission, and Bradley S. Ritter, Staff Attorney, Division of Market Regulation, June 11, 1993.

[2] The spot yield is determined each business day by reference to the price and interest rate of the underlying reference instrument. Customarily, each time the Treasury issues a new note or bond, the new note or bond will become the reference instrument within its issue type. Substitution of the new issue as the reference instrument takes effect on the day following the Treasury's new issue

Continued

event the FRBNY does not generate a calculation for a particular trading day, the CBOE will poll five randomly-selected primary government securities dealers and average their spot yield calculations for the given Treasury security.

To accommodate the introduction of these new options, a number of changes to Chapter 23 of CBOE's Rules must be made. Most of the changes involve new definitions and revisions to existing definitions. In particular, the term "Interest Rate Measure" is defined to clarify the method used to derive yields to maturity. Similarly, the terms "Yield to Maturity," "Aggregate Settlement Value," "Treasury Security," "Short-Term Treasury Security" and "Long-Term Treasury Security" have been added to clarify specific characteristics and features of interest rate and yield-based options. The term "European Option" in Chapter 23 has been redefined to conform to the definition of that term in Chapter 1, Rule 1.1(uu).

In addition to new definitions, the proposed rule change includes new hedge exemption provisions in the position limit rule applicable to interest rate options on long-term Treasury securities. These new provisions track the hedge exemption provisions applicable to Standard & Poor's ("S&P") 500 Index Option positions under Rule 24.4, with three exceptions. First, the exempted contract limits applicable to interest rate options are 75,000 contracts for a single customer and 125,000 for a single money manager holding interest rate option positions in an aggregated account. These limits are lower than the exempted contract limits applicable to S&P 500 Index options. Second, a "qualified securities portfolio," for purposes of this hedge exemption, may contain Treasury securities of any maturity, not simply securities that correspond to the particular issues underlying the option. Also, unlike the provisions of Rule 24.4 that include concentration limits for portfolios hedged with S&P 500 Index options, no concentration limitations apply to Treasury securities in a qualified portfolio. Given the liquidity and price continuity of Treasury securities, the Exchange believes that a qualified Treasury securities portfolio may consist of a position in only one (or more) particular issue of Treasury securities. Third, yield-based options trade and settle with reference to a yield on, rather than the price of, the reference instrument. As a result, the hedge relationship between the option and the portfolio is inverted in comparison to, for example, index options and the underlying equity securities. The new provisions therefore invert the terms "put" and "call" as those terms appear in Rule 24.4.

Finally, new sections in Rule 23.5 make it clear that the CBOE has authority to list yield-based, cash-settled options on various individual Treasury securities as well as on a mix of Treasury securities.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) of the Act in particular by providing rules applicable to yield-based options on Treasury securities that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–21 and should be submitted by July 8, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14323 Filed 6–16–93; 8:45 am]

BILLING CODE 8010–01–M

suction. Occasionally, the most recently auctioned issue will not be the longest to maturity, and in that circumstance no substitution will occur.

[Release No. 34–32454; File No. SR–OCC–93–01]

Self-Regulatory Organization; the Options Clearing Corp.; Order Approving a Proposed Rule Change Relating to Scheduling of Board Meetings

June 11, 1993.

On February 8, 1993, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–93–01) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to allow OCC's Board of Directors ("Board") greater flexibility in scheduling regular Board meetings. Notice of the proposal was published in the **Federal Register** on March 11, 1993.[2] No comment letters were received. This order approves OCC's proposal.

I. Description

OCC's current By-Laws require the Board of Directors to hold regular meetings on a monthly basis. The By-Laws further require that unless the Board by resolution provides otherwise with respect to a particular meeting, regular meetings in even-numbered months are to be held at OCC's offices

[3] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78(b)(1) (1988).

[2] Securities Exchange Act Release No. 31961 (March 11, 1993), 58 FR 14459.

in Chicago, Illinois, and regular meetings in odd-numbered months are to be held at OCC's offices in New York, New York.

OCC has found that it is difficult to convene all of the Directors on a monthly basis. Moreover, it is costly and time consuming for OCC to prepare for and hold such frequent meetings of the Board. OCC has determined that the Board can fulfill its duties of managing the business and affairs of OCC with less frequent meetings. Accordingly, the proposed By-Law change eliminates the monthly meeting requirement and allows the Board to schedule regular meetings at such time as the Board shall provide by resolution.[3]

The proposed By-Law change also allows for more flexibility with respect to the site of the Board's regular meetings. The practice of alternating between New York and Chicago was originally adopted in order to make it more convenient for Member Directors who resided in New York to attend meetings. However, OCC's Member Directors now reside in all parts of the country. Accordingly, OCC believes that the Board should have the authority to select an appropriate site for each meeting. The proposed By-Law change grants that authority by allowing the Board to meet at such places as it shall provide by resolution.[4]

II. Discussion

Section 19(b)(2)(A) of the Act[5] requires that the Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the applicable rules and regulations thereunder. Section 17A(b)(3)(A) of the Act[6] requires that a clearing agency shall not be registered unless the Commission determines that such clearing agency is so organized and has the capacity to be able to comply with the provisions of section 17A of the Act and the rules and regulations thereunder. The Commission believes that because the proposed rule change will enable OCC to schedule regular Board meetings at times and places as needed to conduct the business affairs of OCC, it should enable OCC to function more efficiently without diminishing its ability to perform its statutory obligations as a registered clearing agency under section 17A of the Act.

III. Conclusion

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–OCC–93–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14324 Filed 6–16–93; 8:45 am]

BILLING CODE 8010–01–M

[3] OCC plans to hold regular Board meetings every other month. Telephone conversation between James C. Yong, Vice President and Deputy General Counsel, OCC, and Peter R. Geraghty, Attorney, Division of Market Regulation, Commission (April 19, 1993).

[4] All Board meetings are expected to be held in Chicago except for one meeting each year to be held in Washington, DC, and one meeting each year to be held at a site to be determined. *Id.*

[5] 15 U.S.C. 78s(b)(2)(A).

[6] 15 U.S.C. 78q–1(b)(3)(A).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[Release No. 34–32452; International Series Release No. 552; File No. SR–PHLX–93–02]

Self-Regulatory Organizations; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Friday Expirations for Foreign Currency Options

June 11, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 19, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the PHLX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX hereby proposes to amend Exchange Rule 1000(b)(21) in order to change the expiration date for foreign currency options ("FCOs")[1] so that they expire each month on the relevant Friday at 11:59 p.m. Eastern Standard Time ("E.S.T.") instead of Saturday at that time. The amendment will add subsections (i) and (ii) in order to address newly listed options which will expire on Friday as opposed to existing listed options which will still expire on Saturday. The text of the proposed rule change is available at the Office of the Secretary, the PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PHLX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Foreign currency options presently expire at 11:59 p.m. e.s.t. on the Saturday night preceding the third Wednesday of the expiration month. Month-end FCOs expire at 11:59 p.m. e.s.t. on the Saturday following the last Friday of the expiration month. The proposed amendment would allow both types of FCOs to expire 24 hours earlier each month.

The spot market price of a specific currency underlies an FCO. Although the PHLX currency options market closes for trading on an expiration Friday at 2:30 p.m. e.s.t., the spot market for the underlying currencies remains open for trading at different locations around the globe 24 hours a day. Because the options do not expire until 11:59 p.m. e.s.t. the next day, the writer of an option on a foreign currency bears the risk of assignment for more than 30 additional hours after the market for those options has closed.

The PHLX believes that price changes in the underlying spot market after 2:30 p.m. e.s.t. on Friday could significantly alter the option holder's exercise decision. Although the option writer must bear the risk of these potential price changes until 11:59 p.m. e.s.t. on Saturday, according to the Exchange, he/she has a very limited mechanism to hedge this risk since the PHLX options market is closed. According to the PHLX, users and potential users of FCO's have expressed concern that this risk is too great and have stated that it

[1] This proposal would include all foreign currency options traded on the Exchange, including cross-rate option contracts. Currently, the PHLX trades FCOs on eight currencies (Australian dollar, British pound, Canadian dollar, Deutsche mark, French franc, Japanese yen, Swiss franc, and European currency unit) and two cross-rate options (Deutsche mark/Japanese yen, and British pound/Deutsche mark). As discussed below, the PHLX trades options on these foreign currencies that expire both mid-month and end-of-month, in addition to long-term options on these currencies.

often hinders or curtails their interest in trading the product. The Exchange believes that by shortening the time period between the time when the market for the option closes and when the option expires, the option writers' risk will be more manageable.

If the proposed rule change is adopted, the first Friday expiration will occur at the October mid-month expiration. Although there will still be a few Saturday expirations occurring mid-month between October 1993 and December 1994, all month-end expirations beginning in October 1993 will occur on Friday.[2] After the December 1994 expiration, all subsequent expirations will occur on Fridays.

One limited exception to the rule is provided. Currently, a June 1994 and December 1994 long-term option is listed solely with a European-style expiration.[3] When those options convert to regular 12-month options in June and December 1993 respectively, a corresponding American-style option contract will be listed.[4] Because the European-style contract was listed with a Saturday expiration, the Exchange believes it is necessary to also list the comparable American-style contracts with a Saturday expiration in order to alleviate investor confusion. The Options Clearing Corporation ("OCC") has submitted a rule change explaining what relevant rules and processes will be changed in order to effect this new rule.[5] The Exchange will develop and distribute a calendar showing which expirations will occur on Friday and which will occur on Saturday through December 1994 for easy reference.[6] Additionally, the Exchange's Market Surveillance Department will distribute an informational memorandum each month during the week of expiration reminding members/participants on which day that month's options contracts will expire and explaining that the option that will be listed to replace the expiring one will have a Friday expiration. The informational memorandum will also show the expiration date for each month for which contracts are listed currently. Also, any time a new series is added to an existing option, a memorandum will be distributed reminding the public which expiration day is applicable.

The PHLX believes that the proposed rule change is consistent with section 6 of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act. The basis for the request is so the Exchange can list its long-term FCOs, which would expire June 1995 ("June 1995 FCOs"), with Friday expirations.[7] The PHLX argues that this would eliminate customer confusion when these options expire since, assuming this rule change is approved, all FCOs will have Friday expirations in 1995.

The commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, the requirements of section 6(b)(5) thereunder.[8] Specifically, the Commission finds that the proposal will foster just and equitable principles of trade by allowing option holders to limit their risk of assignment as a result of foreign currency fluctuations occurring after the close of the FCO market but prior to the actual expiration of the options. The Commission recognizes, however, that since the sole basis for the request for acceleration is to avoid customer confusion with respect to the June 1995 FCOs, this concern can be adequately addressed by granting partial accelerated approval of the proposed rule change by allowing the Exchange to list its June 1995 FCOs with Friday expirations.[9]

The Commission finds good cause for partially approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** to avoid customer confusion in the expiration of the June 1995 FCOs should the proposal be fully approved.

With respect to that portion of the proposed rule for which accelerated approval is not being granted, within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copy in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–93–02 and should be submitted by July 8, 1993.

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[2] In the event the last Friday of the expiration month is December 25 or December 31, the options expiring on those dates shall expire on the Friday immediately preceding December 24.

[3] European-style options may be exercised only during a specified period immediately prior to the expiration of the option.

[4] American-style options may be exercised by the holder at any time prior to expiration of the option.

[5] See File No. SR–OCC–93–9.

[6] See Information Circular: 086–93, from the PHLX Market Surveillance Department to Members, dated May 19, 1993.

[7] These long-term FCOs are expected to be listed by the PHLX on June 14, 1993.

[8] 15 U.S.C. 78f(6)(5) (1982).

[9] The Commission also recognizes that the possibility of customer confusion exists in any event if this rule change is approved since until the expiration of the December 1994 FCOs, there will be some FCOs with Friday expirations and some with Saturday expirations. The Commission believes, however, that this risk will be substantially reduced as a result of the agreement by the Exchange to distribute during expiration week and informational memorandum to its members describing the expiration day for each option. See supra note 5 and accompanying text.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[10] that for the sole purpose of allowing the Exchange to list long-term foreign currency options, which would expire in June 1995, with Friday expirations, the proposed rule change (SR–PHLX–93–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14322 Filed 6–16–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19523; 811–562]

Pine Street Fund, Inc.; Application for Deregistration

June 11, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Pine Street Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 30, 1993 and amended on June 8, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 6, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 140 Broadway, 42nd Floor, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, At (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company that was organized as a corporation under the laws of New York. On August 29, 1949, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective and applicant's initial public offering commenced on September 19, 1949.

2. On February 27, 1992, applicant's board of directors approved an agreement and plan of reorganization made with Winthrop Focus Funds ("Winthrop") on behalf of one of its series, the Growth and Income Fund (the "Agreement of Reorganization"). Wood, Struthers & Winthrop Management Corp. is investment adviser to both applicant and Winthrop. The board of directors determined and recorded in the minutes of its February 27, 1992 meeting the findings required by rule 17a–8 under the Act, which provides an exemption from the prohibitions of section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers. The board of directors also approved a plan of liquidation and dissolution (the "Plan of Liquidation") for the applicant at the same meeting.

3. On April 29, 1992, applicant mailed proxy materials to its shareholders. At a meeting held on June 15, 1992, applicant's shareholders approved the Agreement of Reorganization and the Plan of Liquidation.

4. Pursuant to the Agreement of Reorganization, on July 10, 1992, applicant transferred all of its assets to the Growth and Income fund in exchange for shares of the Growth and Income Fund having a net asset value equal to the assets and liabilities of applicant so transferred. Following the transfer, in order to effect a distribution of Growth and Income Fund shares to applicant's shareholders, Winthrop registered the *pro rata* interest in the Growth and Income Fund shares for each of applicant's shareholders. On the date of the reorganization, applicant had 3,834,332 shares outstanding, having an aggregate net asset value of $45,961,069 and a per share net asset value of $11.99.

5. All expenses incurred in connection with the reorganization will be borne by Wood, Struthers & Winthrop Management Corp.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant has filed a certificate of dissolution on March 19, 1993 with the Secretary of State of New York and, as of June 8, 1993, was awaiting the consent of the state tax commission.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14325 Filed 6–16–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25824]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 11, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 6, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing,

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[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3 (1993)

if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s) as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc., et al. (70–8207)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and American Electric Power Service Corporation ("AEPSC"), AEP's subsidiary service company, both located at One Riverside Plaza, Columbus, Ohio 43215, have filed an application-declaration under sections 6(a), 7 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

AEPSC proposes to issue and sell, from time to time through December 31, 1996, up to $25 million principal amount of unsecured promissory notes with a maturity of not less than nine months nor more than ten years ("Long-Term Notes") to commercial banks, financial institutions or other institutional investors pursuant to certain term loan agreements. In addition, AEPSC proposes to issue and sell, during such period, short-term notes with a maturity of not more than 270 days (but no later than June 30, 1997) to banks ("Short-Term Notes") in an aggregate amount not to exceed $15 million outstanding at any one time; provided that the total of such Short-Term Notes and Long-Term notes will not exceed $25 million outstanding at any one time. In order to induce a lender to purchase the Short-Term or Long-Term Notes from AEPSC, AEP proposes to unconditionally guarantee to pay any lender the amounts due and unpaid by AEPSC.

The Long-Term Notes would bear interest at a fixed rate, fluctuating rate, or some combination of fixed and fluctuating rates. The actual rate of interest of the Long-Term Notes will be subject to negotiation between AEPSC and the lender. Any fixed rate of interest of the Long-Term Notes will not be greater than 250 basis points above the yield at the time of issuance of the Long-Term Notes to maturity of United States Treasury obligations that mature on or about the date of maturity of the Long-Term Notes. Any fluctuating rate will not be greater than 200 basis points above the rate of interest announced publicly by a major United States bank from time to time as the base or prime rate.

No compensating balances shall be maintained with, or fees in the form of substitute interest paid to, a lender under the proposed term loan agreement. However, in the event a bank or financial institution arranges for a borrowing from a third party, such institution may charge AEPSC a placement fee, not to exceed 7/8% of the principal amount of such borrowing.[1]

In the event a Long-Term Note bearing interest at a fixed rate is paid prior to maturity in whole or in part and the fixed rate at that time exceeds the yield to maturity of certain United States Treasury securities maturing on or close to such Long-Term Note, AEPSC will be obligated to pay to the lender an amount based upon the present value of such prepaid amounts discounted at such treasury yield. The proposed term loan agreement may contain certain restrictive covenants.

Credit arrangements with the banks with respect to the Short-Term Notes generally do not require the maintenance of balances as compensation for the line of credit made available by the bank. Borrowings under the lines of credit would generally bear interest at an annual rate not greater than a bank's prime or base commercial rate in effect from time to time. Credit arrangements with the banks generally require the payment of a commitment fee that is equal to up to 1/2% per annum of the size of the line of credit. It is anticipated that AEPSC will participate in lines of credit shared by AEP and its subsidiaries. Commitment fees for shared lines of credit are generally borne by AEP and participating subsidiaries in proportion to their respective projected maximum need for such credit facilities.

The total annual cost of borrowings under all such bank lines is estimated to be not greater than the effective rate for borrowings bearing interest at the prime or base commercial rate with compensating balances of up to 10% of the line of credit. Although existing financial conditions do not necessitate the maintenance of such compensating balances, because of the volatility of the financial markets in the recent past, the maintenance of such compensating balances may be required during the time period for which authorization is sought herein. The effective annual interest cost under any of the above arrangements, assuming full use of the line of credit, will not exceed 125% of the prime commercial rate in effect from time to time.

[1] In such event, AEPSC requests an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5)

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14321 Filed 6–16–93; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Amistad DOT Venture Capital, Inc.; License Surrender

[License #02/02–5358]

Notice is hereby given that Amistad DOT Venture Capital, Inc. ("Amistad"), a Delaware corporation, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). Amistad was licensed by the Small Business Administration on February 26, 1979.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on April 21, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 11, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–14335 Filed 6–16–93; 8:45 am]

BILLING CODE 8025-01-M

[License #09/09–0314]

Ivanhoe Venture Capital Limited; License Surrender

Notice is hereby given that Ivanhoe Venture Capital Limited ("Ivanhoe"), a California limited partnership, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). Ivanhoe was licensed by the Small Business Administration on December 29, 1982.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on April 5, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 11, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–14336 Filed 6–16–93; 8:45 am]

BILLING CODE 8025–01–M

Kansas City District Advisory Council; Public Meeting

The U.S. Small Business Administration Kansas City District Advisory Council and its Springfield Branch Office will hold a public meeting from 10 a.m. to 1 p.m. on Thursday, July 8, 1993 in the Kansas City District Office Training Room, 323 West 8th, suite 501, Kansas City, Missouri, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Kurt Mueller, Acting Advisory Council Chairperson at (816) 474–5200, or Mr. Richard L. Osbourn, District Director, U.S. Small Business Administration, 323 West 8th, suite 501, Kansas City, Missouri 64105, (816) 374–6760.

Dated: June 11, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–14236 Filed 6–16–93; 8:45 am]

BILLING CODE 8025–01–M

Oklahoma City District Advisory Council; Public Meeting

The U.S. Small Business Administration Oklahoma City District Advisory Council will hold a public meeting from 9 a.m. to 12 noon on Tuesday, July 13, 1993, at the Granny Had One Restaurant, 113 W., Harrison, Guthrie, Oklahoma, to discuss such matters may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. W. Bruce Robinson, District Director, U.S. Small Business Administration, 200 NW. 5th Street, suite 670, Oklahoma City, Oklahoma 73102, (405) 231–5237.

Dated: June 11, 1993.

Dorothy A. Overal,

Acting Assistant Administrator Office of Advisory Councils.

[FR Doc. 93–14334 Filed 6–16–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Notice No. 93–1]

Halon Replacement Performance Testing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice announces a proposed research program to develop performance test methodologies which would lead to recommended airworthiness criteria for the evaluation of non halon fire suppression agents/systems to be used aboard airplanes and rotorcraft, and solicits alternate approaches, test methodologies and criteria.

DATES: Comments must be received on or before August 16, 1993.

ADDRESSES: Comments on this notice should be mailed to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Analysis Branch, AIR–120, 800 Independence Avenue SW, Washington, DC 20591. Comments may be examined in room 806 weekdays, between 8:30 a.m. and 5 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John J. Petrakis, Aircraft Engineering Division (AIR–120), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267–9274.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this research and development program by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the test procedures in this notice are also invited. Substantive comments can include cost estimates. Comments should identify the notice number and should be submitted to the address above. All comments received on or before the closing date will be considered by the Administrator before proceeding. The research program outlined in this notice may be changed in light of comments received. All comments will be available, both before and after the closing date for comments in the Technical Analysis Branch, for examination by interested persons. A report summarizing each substantive public comment concerning this notice will be filed in the Technical Analysis Branch. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Notice No. 93–1".

The postcard will be date stamped and mailed to the commenter.

Availability of Notice

Any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Ave. SW., Washington, DC 20591, or by calling (202) 267–3484. communications must identify the notice number.

Background

The FAA participated in the "International Symposium on Halon Replacement in Aviation" on February 9 and 10, 1993. The symposium held in Reston, Virginia was sponsored by the Aerospace Industry Association (AIA) and the Halon Alternatives Research Corporation (HARC), and was well attended by industry, particularly airframe and powerplant manufacturers. The symposium focused on the aviation industries concerns over the eventual discontinuance of the production of halon. The terms of the recent Copenhagen amendment to the United Nations 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, agreed to by the United States and other developed countries, were to cease the global production of Halons in January 1994. The affect the termination of halon production would have on the aviation industry was discussed by five working groups: certification requirements, research and development of alternate systems, implementation of alternate systems, collecting halon data, and recycling systems.

The symposium's preliminary conclusions regarding alternate agents/systems were as follows: The Federal Aviation Regulations (FARs)/Joint Airworthiness Regulations (JARs) do not specify the use of halon for fire suppression, except for hand fire extinguishers in the cabin; no regulatory action will be necessary for the certification of new fire suppression systems; fire hazards and test protocols defining the performance criteria for fire suppression systems must be developed by FAA/United States Air Force (USAF) research and development (R&D) programs; and guidance material for

approving non halon systems will be developed from the R&D performance criteria. Furthermore, alternate agents must be evaluated for their effectiveness, toxicity, corrosion and ozone depletion potential.

In addition, the symposium recommended that the FAA issue a public notice soliciting input from all segments of the industry, on the specifics of defining performance criteria for halon alternate agents/systems, and to invite international industry and JAA participation.

Discussion of FAA Halon Alternative Program

The objective of the FAA's technical program would be to develop acceptable performance test criteria to facilitate the approval of non halon fire extinguishment/suppression agents and systems.

To date, all required fixed fire suppression systems aboard transport category aircraft have employed Halon 1301 ($CBrF_3$) extinguishing agent. System applications include engine nacelles/auxiliary power units (APU's), cargo compartments and lavatory trash receptacles. The FAA also requires these aircraft to carry a minimum of two Halon 1211 ($CBrClF_2$) hand fire extinguishers.

Thus far, the replacement agents developed by industry carry a weight and volume penalty of a factor of two or three times that of halon. Because of the weight penalty and increased cost, the airlines and airframe manufacturers are concentrating their efforts on the use of reclaimed Halon 1301 for as long as possible. However, the eventual unavailability of reclaimed Halon 1301 and the possibility of future regulations that may forbid its use amplify the importance of developing credible alternative agents/systems and reasonable certification criteria.

The FAA program would concentrate on the four application areas, engine nacelles/APU's, cargo compartments, lavatory trash receptacles, and hand fire extinguishers. The basic approach would be to use full-scale evaluation fire tests to study the impact of various parameters on the level of protection provided by alternative agents/systems. Subsequently, a minimum acceptable level of performance would be defined with the research results. Standard performance tests would be developed and validated for each application and ultimately used as the basis for approval.

Promising new agents and systems would be evaluated to determine their relative effectiveness, as compared to halons, and acceptability in specific fire protection applications. The approach and level of effort for each of the application areas is relatively distinct and independent because the fire threat and environmental conditions are different. Finally, based on the research, acceptable compliance performance criteria would be established and recommended for the approval of non-halon agents and systems in the four aforementioned application areas.

This program will be coordinated with an aviation authorities management team to oversee the technical requirements for the airworthiness regulatory authorities and to ensure coordination and harmonization of alternative agent/system certification compliance criteria.

The major tasks of the program would be as follows:

- Develop Test Articles
- Conduct Evaluation Tests
- Develop Minimum Acceptable Levels of Performance
- Develop Standard Performance Tests
- Develop and Issue Certification Compliance Guidance

Develop Test Articles

The building and instrumenting of full-scale test articles is necessary to perform proper evaluation fire tests. The full-scale evaluation fire test results would be used to form the basis for defining agent/system performance criteria. The full-scale performance criteria would be critical to deriving more simplified compliance criteria.

Engine Nacelles: An engine nacelle simulator would be designed and constructed at the FAATC. The simulator would be capable of varying the nacelle volume in order to approximate the range of volumes of engines used on narrow and wide body airplanes. A large fan would provide a variable nacelle air flow rate. In addition, the simulator would be designed for heating the engine casing in order to examine hot surface ignition. Obstructions would be mounted in the nacelle area to simulate the effect of line and equipment "clutter" on agent penetration and extinguishing effectiveness. To validate the new engine simulator and gain confidence in the data collected, comparison, tests, using B–737 parameters, would be made with the Aircraft Engine Nacelle (AEN) Facility at Wright Paterson Air Force Base (WPAFB).

Cargo Compartment: Existing wide body (TC–10) and narrow body (B–707) fuselages in the FAATC Full-Scale Fire Test Facility would be utilized as cargo compartment test articles. Standard cargo containers and test containers also would be available. Thus, test articles would be available to examine the range of sizes and shapes of present cargo compartments.

Lavatory Trash Receptacles: Trash receptacles representative of the current transport fleet would be used as test articles. These receptacles are available in lavatories which were used during the "hidden fire program" (ref. FAA Report DOT/FAA/CT 91/2). The receptacles would be from narrow and wide body aircraft and would include surrounding hardware and materials such as the trash entrance chute.

Hand Extinguishers: A test article would be developed to evaluate the effectiveness of alternate agents used in hand extinguishers as compared to Halon 1211. The fire hazard against which the hand extinguisher must protect would be a hidden in-flight fire. It is envisioned that the hidden fire hazard would be patterned after the in-flight fire which occurred on a trans-Atlantic Delta L–1011 flight on March 17, 1991. In this incident, Halon extinguishers were blindly discharged into air return grills, successfully extinguishing a severe electrical fire beneath the floor that was spreading into the cabin, and likely saving the airplane and its 231 occupants. Although Halon 1211 extinguishers were originally required by the FAA for fighting a seat fire accelerated by spilled gasoline (a hijacking scenario), it is anticipated that a hidden fire hazard criterium would be recommended and the extinguishment capabilities of Halon 1211 would be maintained as the performance standard for hand fire extinguishers.

The hand extinguisher test article would use a symmetrical half of a fuselage cross section or a modified existing fuselage barrel section. A test article also would be required to examine the toxicity associated with an agents use on in-flight fires. A series of tests are envisioned similar to previous Halon 1211 FAATC tests that demonstrated the non-toxic affects during typical in-flight fire extinguishment (reference FAA Report DOT/FAA/CT–82/111).

Evaluation Tests

As previously mentioned, full-scale evaluation fire tests would provide the data that would be the primary basis for the development of performance criteria for agents and systems. Therefore, the design of the various test series, as well as the agreed-to minimum acceptable levels of performance, would dictate the severity of the performance criteria. Most critical to the performance criteria will be the nature of the fire tests or fire

hazard scenarios these agents/systems would be required to protect against. The crucial task would be to define these hazards/scenarios. The question to be resolved would be whether the fire hazard/scenario should be a worst case condition or a more typical situation which may have a greater probability of occurrence. Designing to the worst case scenarios would lead to more expensive replacement systems.

Engine Nacelles: Engine nacelle evaluation tests must cover the range of nacelle design and operational parameters as well as potential accidental fire conditions. Nacelle volume directly relates to the total quantity of agent required. Therefore, typical narrow body and wide nacelle volumes would be examined. Air velocity in the nacelle is an important parameter, since it impacts both the peak agent concentration and the length of time the agent remains present. The minimum concentration over a one-half second is specified in Advisory Circular (AC) 20–100, "General Guidelines for Measuring Fire-Extinguishing Agent Concentration in Powerplant Compartments", dated September 21, 1977. Therefore, maximum air velocities through the nacelle should be created in the simulator during evaluation tests. As with any fire test, realistic and repeatable conditions are necessary. Jet fuel, hydraulic fluid and lubricants, as appropriate, would be utilized as fuel sources at maximum leakage rates and critical failure points. From previous experimental studies, it is known that the preburn time and the amount of obstructions, i.e, "clutter", are also important parameters. Actual engine casing temperatures also would be considered and simulated as potential ignition sources.

Selected alternate agents/systems would be evaluated with respect to their ability to extinguish engine fires and prevent reignition. The test results would identify those agents and/or systems best suited as Halon 1301 replacements. Critical design parameters would also be identified.

Cargo Compartments: It is envisioned that cargo compartment evaluation tests would be conducted on three configurations: narrow body (Class C), wide body (Class C) and wide body-combi (Class B). This should bracket the applicable Halon 1301 fire suppression systems used in cargo compartments. At least, three general types of alternate agents/systems would be used and their effectiveness and characteristics against cargo fires evaluated. The types would include a low boiling point gaseous total flooding agent, water fog and dry powder. The latter is a recent development with total flooding characteristics. System designers have claimed the powder remains suspended in the air for long periods of time. Candidate alternate agent/systems would be determined from these evaluation tests. Another potential solution is a hybrid system comprised of water spray for initial fire knockdown and nitrogen, generated from gas separation membranes, for prolonged inerting. However, this approach will require significant development.

Multiple fire scenarios would be employed to cover the spectrum of potential fire conditions. Cargo fires in loaded standard cargo containers would be compared with pallet cargo fires. The location of the fire amongst cargo stacked on a pallet is very important. Whether the fire begins on the periphery, on the top or bottom, or deep within the center of the cargo, affects the characteristics of the fire, and possibly compromises the effectiveness of the suppression system. Ignition of peripheral cargo tends to produce early flaming whereas ignition of buried cargo is smokier and takes longer to produce open flaming.

The type of detector(s) used has a bearing on the effectiveness of a particular agent/system. Also, for some gaseous agents, it may be more difficult to suppress a fire that originates at the top of cargo near the ceiling of the cargo compartment. These agents will settle to the bottom of the compartment with time.

Another important parameter would be the volume of air surrounding the cargo. Currently approved Halon 1301 systems are required to measure agent concentrations inside an empty compartment. Systems with concentrations that exceed prescribed minimum levels have been approved. However, the addition of cargo raises the peak Halon concentration level following agent discharge because of the reduced volume of air. With higher agent concentrations and reduced air volumes, the rate of agent loss increases because the volumetric leakage rate is constant and is a greater fraction of the reduced air volume. Because of these factors, it is conceivable that the duration of protection in a fully loaded cargo compartment could be less than indicated by agent concentration measurements made inside empty cargo compartments. At least, two cargo volumetric loading configurations would be studied at 50 and 90 percent capacity. Furthermore, the more highly loaded configurations would make it more difficult to provide complete coverage with agents that may not behave the same as a true total flooding agent, e.g. water fog and dry powder.

Lavatory Trash Receptacles: Testing of alternate agents/systems for use in lavatory trash receptacles would be conducted to determine the minimum quantity of agent necessary to completely extinguish a known fire hazard. The standard fire scenario would be a paper towel fire in a typical trash receptacle. Because it is important to develop a realistic and repeatable standard fire scenario, a fixed quantity of paper towels filling a typical size trash receptacle would be used. The ignition source would be located at the bottom of the container to simulate a deep-seated fire challenge for the alternate agent/system.

Hand Extinguishers: Alternate agents for hand extinguishers would be expected to be equivalent to Halon 1211 in terms of their effectiveness against hidden fires. A full-scale test article, as described earlier, would be used to evaluate alternate agents/extinguishers. Full-scale test results would be used to develop a small-scale performance test for appraising agent/extinguisher effectiveness against hidden fires. The performance test would form the basis for certification approvals.

A crucial and challenging aspect of the full-scale test article is the development of a realistic and repeatable fire hazard. In the previously mentioned L–1011 incident, insulation batting, electrical wiring, flooring, and sidewall paneling were heavily involved in the fire, and the accumulation of debris and contamination from years of service contributed to the fire spread. It is very difficult to attain consistent burns, or even sustained burning in some cases, with such an array of complex, fire resistant materials.

In order for an agent/extinguisher to be effective against a hidden fire, it must possess properties that promote agent expansion and penetration into voids and throughout empty spaces. Gaseous or low boiling point agents such as the halons, are highly effective against this type of fire scenario. Unfortunately, some alternate agents are more toxic than Halon 1211. Therefore, agents that are found to be effective against hidden fires would be evaluated under full-scale conditions for their potential toxic threat during inflight firefighting. Virgin agent and agent decomposition products would be measured and their toxic threat to humans would be calculated based on available data and models. A worst case fire scenario that maximizes the agent's toxicity would be utilized.

Minimum Acceptable Levels of Performance

Before or concurrent with evaluation tests, the minimum acceptable levels of performance would be established. Consideration of how this would be accomplished is discussed below.

Engine Nacelles: For Halon 1301 engine fire extinguishing systems, the FAA certification basis has been a flight test demonstration that shows a specified halon concentration level has been attained at all measurement locations over a specific time. Within this level of performance is a safety factor for the quantity of halon needed to extinguish engine fires. However, it is recognized that smaller quantities of halon will extinguish engine fires. Therefore, the issue to be resolved is whether the minimum acceptable level of performance of alternative agents maintain the same safety factor, which will need to be determined for the particular alternative agent used, or should the quantity of alternate agent produce the minimum concentration levels necessary to extinguish typical engine test fires.

Cargo Compartments: The level of protection provided by cargo compartment fire suppression systems using alternate agents/systems also would be expected to be equivalent to current Halon 1301 systems. Unlike engine systems, the goal in cargo compartments is to suppress the fire, because it is virtually impossible to extinguish a deep-seated cargo fire with a fixed system. What constitutes suppression is open to interpretation and would be defined. Does suppression mean the extinguishment of any initial flames with no evidence of open flaming over the duration of protection, or does suppression require that the allowable thermal exposure of cargo liners and protected flight-critical components be set at some minimum level, irrespective of the incidence of open flames?

Lavatory Trash Receptacles: The level of protection required of a trash receptacle extinguishing system would be the complete extinguishment of a deep-seated paper towel fire. The need for complete extinguishment, as opposed to suppression, is justifiable based on the possibility, probability, and past experience of passengers illegally smoking in lavatories and disposing their smoking materials into the trash chute. Before the ban on lavatory smoking, a survey revealed that the trash receptacles were being improperly used for disposal of smoking materials. At least one aircraft accident was caused by a lavatory trash receptacle fire believed to have been started by a cigarette (Varig, Boeing 707, Paris, France, 1973, 123 fatalities).

Hand Extinguishers: Of the four application areas for alternative agents/systems, the issue of toxicity of Halon 1211 hand extinguishers is of paramount concern. The level of toxicity allowed during the discharge of alternate agent hand extinguishers when fighting an in-flight fire would be established. The toxicity associated with the discharge of halon hand extinguishers originally was determined with seat/gasoline fire extinguishment tests conducted by the FAA. These tests demonstrated that the effects of human exposure to the virgin agent and its decomposition products were insignificant. Consequently, what this program would resolve is whether to require the negligible toxic threat to be maintained by alternate agents or to allow an increase in toxicity, but below a harmful level, to assure the usage of an as effective alternate agent as Halon 1211 in hand extinguishers.

Standard Performance Tests

Engine Nacelles and Cargo Compartments: A standard performance test for gaseous alternate agent suppression systems for engine nacelles and cargo compartments is considered to be impractical. As in the past, flight test measurement of gaseous agent concentrations would be required for each aircraft and engine model to assess the effect of variations in the protected volume, airflow rates (engine nacelles) and leakage rates (cargo compartments), as well as any other model-to-model variables. Although not a standard performance test, a cargo compartment or engine nacelle mockup of a particular model may be acceptable if the applicant plans to use a non-gaseous agent (dry powder or water) and is fearful of the possibility of agent damage to the aircraft or costly cleanup, especially if successive tests are a distinct possibility.

Lavatory Trash Receptacles: A test method for lavatory trash receptacles would be developed using the test article typical of a trash receptacle and the standard paper towel fire source mentioned above. The pass/fail criteria would be the complete extinguishment of the fire source.

Hand Extinguishers: A standard small-scale performance test for hidden fire extinguishment using hand extinguishers would be developed.

The test being considered would define the essential elements which are a controlled fire source, a port or grille into which the extinguisher is discharged, and a convoluted enclosed path between the discharge point and fire source. The design of the performance test would be patterned after the full-scale hidden fire test article. A correlation of test data with the two devices would be established. Once a prototype performance test has been developed the next step would be its standardization.

In general, performance test criteria standardization would be accomplished with public participation. If need be, round robin testing would be used to assure conformity of results.

Certification Requirement Guidance

The final product would be the development and issuance of specific certification requirement guidance for the approval of alternate agents/systems. In each application area, the goal would be to develop a basis for approving methodologies that are similar to what is currently being used for approving halon systems. For example, approval of gaseous agent systems in cargo compartments and engine nacelles/APU's would be based on measured agent concentration profiles and whether prescribed minimum values are exceeded during flight tests (non-fire conditions). The prescribed values would be largely based on the full-scale evaluation test results. Hand extinguisher approval would follow current practices with the additional requirement of passing a hidden fire performance test. The approach that would be used for the approval of non-gaseous agents, such as water and dry powder, is unknown and open for consideration.

Monitor Developments

The number of halon replacement agent activities outside the civil transport arena requires a concerted effort to monitor new agent/system development and evaluation. FAATC personnel will continue to participate in National Fire Protection Association (NFPA) committees developing standards for Halon replacements. In addition, the activities of other government agencies, including Department of Defense (DOD), the Coast Guard and National Institute of Science and Technology (NIST) will be closely monitored and, if advantageous, cooperative programs will be established. Also, laboratory tests will be conducted to screen prospective new agents before consideration of full-scale fire test evaluations. Agent toxicity, corrosiveness, and other potential problems will be addressed. It may become necessary to develop a test article and test method for surge tank explosion suppression systems.

Issued in Washington, DC, on June 11, 1993.

David W. Ostrowski,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 93–14329 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee; GNSS Technology Subcommittee; Meeting

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–362; 5 U.S.C. App. I), notice is hereby given of a meeting of the GNSS Technology Subcommittee of the Federal Aviation Administration (FAA) Research, Engineering and Development (R,E&D) Advisory Committee to be held Tuesday, July 6, 1993, at 1 p.m. The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, in the MacCracken room (round room) on the tenth floor.

The agenda for this meeting will include: Review and discussion of the proposed task statement; organization of the effort to develop a report and recommendations; overview of current FAA technology plans and schedules associated with the U.S. global positioning system. This subcommittee will attempt to ensure that the FAA's program addresses all the right technology issues.

Attendance is open to the interested public but limited to space available. With the approval of the Subcommittee Co-Chairmen, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or plan to access the building to attend the meeting should contact Ms. Jan Peters in the Office of the Associate Administrator for System Engineering and Development, FAA/ASD–6, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8543.

Members of the public may present a written statement to the subcommittee at any time.

Issued in Washington, DC, on June 11, 1993.

Martin T. Pozsky,

Executive Director, Research, Engineering and Development Advisory Committee.

[FR Doc. 93–14328 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Johnson County, KS

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Johnson County, Kansas.

FOR FURTHER INFORMATION CONTACT: Johnny R. Dahl, Field Operations Engineer, FHWA, 3300 South Topeka Boulevard, suite 1, Topeka, Kansas 66611–2237, Telephone: (913) 267–7284; Warren Sick, P.E., Chief of Bureau of Design, Kansas Department of Transportation, Docking State Office Building, Topeka, Kansas 66612, Telephone: (913) 296–3525; James F. Pilley, P.E., Box 401, Courthouse, Olathe, Kansas 66061, Telephone: (913) 782–2640.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Kansas Department of Transportation, and Johnson County will prepare an Environmental Impact Statement for a proposed highway project known as the 21st Century Parkway. If constructed, the project would be primarily on new location and developed initially as a two-lane road (ultimately as a four-lane roadway). The study corridor begins at the existing K–7/Shawnee Mission Parkway interchange, passes to the east side of DeSoto, extends southerly along the west side of the Cedar Creek development and the Johnson County Industrial Airport, extends southeasterly to U.S. 169 north of Spring Hill, and then extends easterly across the southern part of Johnson County passing south of Stilwell and intersecting the State Line in the vicinity of 195th Street; a distance of approximately 57.9 kilometers (36 miles).

The project is intended to provide relief for projected traffic demands in western and southern Johnson County, Kansas. Several alternatives will be considered including the no build. Also incorporated into the study will be various alignments within the corridor.

One public information and two *Citizen's Group* meetings have been held to keep the local citizens informed of the study. These meetings have provided early coordination with appropriate Federal, State, local agencies and private organizations who have expressed interest in this proposed project.

Public hearing(s) will be held during the development of the Environmental Impact Statement. Public notice will be given for the time and place of the hearing(s) and where the Draft Environmental Impact Statement will be available for review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA, Johnson County, or the Kansas Department of Transportation at the addresses provided.

Johnny R. Dahl,

Division Administrator, Kansas Division.

[FR Doc. 93–14171 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[Docket No. RSAD–91–3]

Proposed Test Program to Evaluate Random Drug Testing Rate

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of second extension of test program.

SUMMARY: FRA will extend, for an additional 12 months, an experimental program designed to evaluate the extent to which the rate of random drug testing affects general deterrence. On July 1, 1991, three Class I freight railroads and one commuter railroad were allowed to begin testing at a 25 percent rate rather than the 50 percent rate required by FRA's alcohol and drug regulation. Three additional Class I freight railroads and one additional commuter railroad constituted a control group that continued to test at 50 percent. In the program's first year, positive test rates did not vary appreciably between the experimental and control groups. After extending the program for a second year, FRA has to date obtained an additional three quarters of data which continue to show no marked difference in deterrence between the two groups.

FRA believes that another program extension is necessary because the Department of Transportation is considering lowering the testing rate for its random drug testing programs for transportation employees. Extending FRA's experimental program for a third year would provide additional data for departmental study and could support future rulemaking activity.

DATES: (1) FRA intends to extend the current conditional waivers for one year effective July 1, 1993.

(2) Written comments should be received by August 1, 1993. Late filed comments will be considered to the extent practicable.

ADDRESSES: Comments shall be sent to Docket Clerk, Docket No. RSAD–91–3, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street SW., room 8201, Washington, DC, 20590. Persons wishing the FRA to acknowledge receipt of their comments should submit with those comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. RSAD–91–3." The postcard will be dated and time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons, between 8:30 a.m. and 6 p.m. Monday through Friday. To schedule an appointment to examine the docket, please contact Patricia McLaughlin, Docket Clerk (RCC–30) (Telephone: (202) 366–0635).

FOR FURTHER INFORMATION CONTACT: Walter C. Rockey, Executive Assistant (RRS–3), Office of Safety, FRA, Washington, D.C. 20590 (Telephone: (202) 366–0897) or Patricia V. Sun, Trial Attorney (RCC–30), Office of Chief Counsel, FRA, Washington, D.C. 20590 (Telephone: (202) 366–4002).

SUPPLEMENTARY INFORMATION:

Background

In February of 1991, the Association of American Railroads (AAR) filed a petition in accordance with 49 CFR 211.51, requesting that FRA implement a test program that would temporarily suspend compliance with 49 CFR 219.601(b)(2)(ii). This section, first published on November 21, 1988 [53 FR 47103], requires each railroad, in the second year of that railroad's random testing program, to conduct a sufficient number of random tests during the year to equal at least 50 percent of the number of its covered service employees. (Subsequent amendments to the alcohol and drug regulations, which did not affect Section 219.601(b)(2)(ii), were published on December 27, 1989 [54 FR 53238] and June 4, 1990 [55 FR 22791]). AAR proposed that FRA permit an experimental group of railroads to test at a 25 percent rate for one year, for comparison against a group of control railroads that would continue to test at a 50 percent rate. Data from the two groups of railroads would then be analyzed to determine the effect of different testing rates on deterrence.

FRA agreed with the AAR that an experimental program would be useful in evaluating the testing rate. FRA granted the four test railroads a waiver from the 50 percent testing requirements effective July 1, 1991. The four test railroads and the four control railroads were required to submit quarterly test data throughout the test year for monitoring by the FRA.

In the first year of the program, the test railroads conducted 10,629 random tests, with 89 positive for a rate of 0.90 percent. The control railroads conducted 17,152 tests and had 154 positive for a rate of 0.90 percent. The railroad industry, in calendar year 1991, conducted 50,436 tests and had 477 positive for a rate of 0.89 percent.

On June 15, 1992, the AAR requested that FRA continue the experimental program for another year, and the request was granted. In the first three quarters of the program's second year, the test railroads conducted 7,007 random tests, with 66 positive for a rate of 0.94 percent. The control railroads conducted 12,687 tests and had 107 positive for a rate of 0.84 percent. The railroad industry, in calendar year 1992, conducted 42,599 tests and had 336 positive for a rate of 0.79 percent.

FRA and the AAR agree that the difference in deterrent effect between those random testing programs conducted at the 50 percent level and those conducted at the 25 percent level shown by the above test results is not large enough to be significant. On May 20, 1993, the AAR submitted a request for an additional extension. Accumulation of additional data is especially desirable at this time because of a recent departmental initiative considering modification of DOT random drug testing programs. On December 15, 1992, FRA, along with the Office of the Secretary and the four other operating administrations that currently require random drug testing, published an Advance Notice of Proposed Rulemaking seeking public comment and data on whether other, less costly alternatives to the current 50 percent random testing program could maintain an adequate level of deterrence and detection of illegal drug use [57 FR 59778]. DOT has studied, and will continue to study, data from FRA's experimental program in its consideration of possible alternatives to the current DOT program.

Implementation

FRA will continue to require all participating railroads to comply with its previously established protocols covering test conditions and reporting requirements. FRA does not believe that further opportunity for oral presentation is necessary for this second program extension, but is providing an additional opportunity for written comments.

By letter granting an extension of the test program, FRA will extend the current conditional waivers for an additional year. FRA intends for the third year of this experiment to begin on July 1, 1993, and continue for at least four calendar quarters. FRA continues to reserve the right to terminate or modify the test program on 10 days notice if any party fails to comply with any conditions specified in the protocols, or if quarterly reports indicate a particularly serious degrading of performance by one or more of the experimental railroads (as reflected by the random testing positive rate and/or other information available to FRA). FRA also continues to reserve the right to terminate if FRA review of railroad alcohol/drug program administration indicates material deficiencies.

Authority: 45 U.S.C. 431(c), 437; 49 CFR 1.49(m), 211.43, 211.51.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 93–13949 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. 93–43; Notice 1]

Report on NHTSA's Cost Estimating Methodology

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of availability.

SUMMARY: NHTSA has prepared a detailed report explaining how the agency estimates the costs that arise from its safety standards and other regulations. This notice announces that this report is available to all interested parties.

ADDRESSES: Interested persons may examine this report and/or obtain a copy of it from: NHTSA Docket Section, room 5109, 400 Seventh Street SW., Washington, DC 20590. Requests for this report must refer to Docket No. 93–43; Notice 1. The NHTSA Docket Section is open to the public from 9:30 am through 4 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Rutland, Office of Vehicle Safety Standards, Engineering Systems Staff (NRM–13), room 5320, 400 Seventh Street SW., Washington, DC 20590. Mr. Rutland can be reached by telephone at (202) 366–6565.

SUPPLEMENTARY INFORMATION: NHTSA has prepared a report that describes in

detail the methodology the agency follows in estimating the costs that arise from this agency's safety standards and other regulations. The agency wants the public to be aware of this report and have the opportunity to review it.

Interested persons can examine this report and obtain a copy of it by going to the NHTSA Docket Section at the address shown in the ADDRESSES section of this notice. Copies can also be obtained by writing to the Docket Section and requesting a copy of the report. All requests for this report should refer to Docket No. 93–43; Notice 1.

Authority: 15 U.S.C. 1392, 1401, and 1402; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: June 11, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–14320 Filed 6–16–93; 8:45 am]

BILLING CODE 4910-06-M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before July 19, 1993.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11005–N	The Pathacura Company, New Haven, CT.	49 CFR 171.8, 172.101 Col. 8c, 173.197.	To authorize the transportation of regulated medical waste in red bags placed in DOT exempt containers overpacked in a refuse type leak/vermin proof locked container. (Mode 1.)
11020–N	HCI Advance Chemical Distributors, Inc., Catoosa, OK.	49 CFR 174.67 (i) and (j)	To authorize chlorine filled tank cars to remain attached during unloading without the physical presence of an unloader. (Mode 2.)
11021–N	Union Pacific RR Co. and Missouri Pacific RR Co., Omaha, NE.	49 CFR 173.318	To authorize the transportation of methane, classed in Division 2.1, in DOT–113C120W tank cars. (Mode 2.)
11022–N	A.B. Chance Co., Centralia, MO.	49 CFR 173.302	To authorize use of a non-DOT specification seamless moldedbiphenolic epoxy cylinder, for shipment of sulfur hexafluoride, classed in Division 2.2. (Modes 1, 3.)
11023–N	City of Houston, Houston, TX	49 CFR 174.67 (i) and (j)	To authorize chlorine filled tank cars to remain attached during unloading without the physical presence of an unloader. (Mode 2.)
11024–N	CITGO Petroleum Corporation, Lake Charles, LA.	49 CFR 174.67 (i) and (j)	To authorize chlorine filled tank cars to remain attached during unloading without the physical presence of an unloader. (Mode 2.)
11025–N	Mass Systems, Inc., Baldwin Park, CA.	49 CFR 173.302(a)(2), 175.3, 178.44.	To authorize the manufacture, mark and sell of non-DOT specification welded stainless steel cylinders having 200 cubic inches maximum water capacity and 3800 psi maximum service pressure for transporting various Division 2.2 commodities. (Modes 1, 2, 4, 5.)
11026–N	Elf Atochem North America Inc., Philadelphia, PA.	49 CFR 173.29(a)(c)(2)	To authorize a one-time shipment of a DOT specification ACFX19034 tank car, containing a chlorine residue, which is overdue for inspection. (Mode 2.)
11027–N	Hoechst Celanese Corporation, Charlotte, NC.	49 CFR 172.102 SPB14	To authorize the use of non-insulated MC330 and MC331 cargo tanks for transportation of sulfur dioxide, classed as Division 2.3. (Mode 1.)
11029–N	Olin Ordnance, St. Marks, FL	49 CFR 173.62(a)(b)+(c)	To authorize shipment of propellant explosives in water, classed as Division 1.3, in DOT MC–307, DOT–407, MC312 or DOT 412 cargo tanks having a minimum design pressure of 25 psig. (Mode 1.)
11031–N	Amfuel, Magnolia, AR	49 CFR Part 173, Subpart F	To authorize the manufacture, mark and sell of specially designed truck mounted cargo tank for use in transporting Class 9 material. (Mode 1.)
11032–N	L'Air Liquide—D.T.A., Sassenage, France.	49 CFR Part 173, Part 178	To authorize the manufacture, mark and sell of non-DOT specification ring shaped steel cylinder in emergency breathing equipment for use in transporting compressed oxygen classed in Division 2.2. (Modes 1, 2, 3, 4, 5.)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11033–N	Witco Corporation, Houston, TX.	49 CFR 173.302(a)(3)	To authorize the transport of compressed gas, flammable, n.o.s., classed in Division 2.1 in DOT specification 3AAX tube trailers. (Mode 1.)
11034–N	Arsynco, Inc., Carlstadt, NJ	49 CFR 173.34(e)(10)	To authorize the transport of propylene imine, inhibited, classed as Division 6.1, in DOT Specification 4B240 and 4BW240 cylinders. (Modes 1, 2, 3.)
11035–N	Miles, Inc., Pittsburgh, PA	49 CFR 172.103, Subpart B14 and B32.	To authorize the bulk transportation of thionyl chloride, classed in Division 8.6, UN 1836 in bulk cargo tank. (Mode 1.)
11037–N	Rohm & Haas Company, Bristol, PA.	49 CFR 172.101	To authorize maneb stabilized or maneb preparations, stabilized, Division 4.3, UN 2968 to be shipped as essentially nonregulated for domestic transportation. (Modes 1, 2, 3, 4, 5.)

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 11, 1993.

J. Suzanne Hedgspeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93–14326 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–60–M

Office of Hazardous Materials Safety; Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before July 2, 1993.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
9997–X	Hodgdon Powder Company, Inc., Shawnee Mission, KS (see footnote 1).	9997
10695–X	3M Company, St. Paul, MN (see footnote 2).	10695
10917–X	AEG Corporation, Basking Ridge, NJ (see footnote 3).	10917
11000–X	Aeropres Corporation, Shreveport, LA (see footnote 4).	11000
11010–X	Hickson Timber Products Ltd., Murrysville, PA (see footnote 5).	11010

[1] To modify exemption to provide for rail freight and cargo vessel as additional modes of transportation.

[2] To modify exemption to provide for cargo vessel as an additional mode of transportation for shipment of ethylene oxide in an aluminum cartridge overpacked in a 4G box.

[3] To authorize cargo vessel as an additional mode of transportation for the shipment of cells and batteries containing sodium Division 4.3 (UN3292).

[4] To reissue an exemption originally issued on an emergency basis is to authorize shipment of Dimethyl ether Division 2.1 in DOT Specification 112J340W and 112T340W tank car tanks.

[5] To reissue exemption originally issued on an emergency basis to authorize shipment of arsenical compounds liquid, n.o.s. in DOT specification 57 portable tanks which meets UN criteria for a "protected" 31A metal intermediate bulk containers.

Application No.	Applicant	Parties to exemption
5206–P	Vet's Explosives, Inc., Torrington, CT.	5206
6530–P	Gulf States Airgas, Inc., Mobile, AL.	6530
7951–P	Rich Products Corporation, Buffalo, NY.	7951
8451–P	Pacific Scientific, Energy Dynamics Division, Chandler, AZ.	8451
8554–P	Vet's Explosives, Inc., Torrington, CT.	8554
9275–P	Custom Essence, Inc., Somerset, NJ.	9275
9723–P	Northeast Environmental Services, Inc., Canastota, NY.	9723
10101–P	North East Welding Supply Corp., Auburn, MA.	10101
10277–P	Worthington Cylinder Corporation, Columbus, OH.	10277
10933–P	Clean Harbors Environmental Services, Inc., Quincy, MA.	10933
11033–P	Engineering Resources, Inc. (ERI), Fayetteville, AR.	11033

Application No..	Applicant	Parties to exemption
11037–P	E.I. Dupont de Nemours & Co., Inc. (Du Pont), Wilmington, DE.	11037
11037–P	Elf Atochem North America, Inc., Philadelphia, PA.	11037

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 11, 1993.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93–14327 Filed 6–16–93; 8:45 am]

BILLING CODE 4910–60–M

UNITED STATES INFORMATION AGENCY

Edmund S. Muskie Fellowship Program Washington Workshop

AGENCY: United States Information Agency.

ACTION: Request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from non-profit organizations with key staff based in the Washington, DC metropolitan area to assist in the administration of the Edmund S. Muskie Fellowship Program Washington Workshop to be held in Washington, DC. The grant recipient in conjunction with other organizations shall plan and implement a three- to five-day conference for approximately 150 Muskie Fellows in late January or early February 1994. The Workshop is subject to the availability of funds.

The overall goal of the Workshop is to provide the Fellows with a better understanding of democratic institutions in the U.S. Support is offered for a series of intensive seminars that will enhance Fellows' understanding of social, cultural, and political institutions and provide insight on such topics as the U.S. political system, U.S. economic policy, U.S. foreign policy, international trade and U.S. domestic policies.

In addition, the Workshop is intended to provide the following:

1. Opportunities for interaction among Fellows;
2. Opportunities for professional networking;
3. An introduction to the organizations responsible for implementing the Muskie Fellowship Program;
4. An opportunity to visit the nation's capital;
5. Opportunities to interact with the Members of Congress who made their U.S. experience possible.

DATES: Deadline for proposals: One original and 14 copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Wednesday, August 11, 1993. Faxed documents will not be accepted nor will documents postmarked on August 11, 1993, but received at a later date. It is the responsibility of each grant applicant to ensure that its proposals are received by the above deadline.

The grant awarded to an organization through this competition may extend through March 15, 1994.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Reference: Edmund S. Muskie Fellowship Program Workshop, Office of Grants Management, E/XE, room 336, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION: Interested U.S. organizations should write or call: Mr. Ted Kniker or Ms. Gina Lemley at the U.S. Information Agency, 301 4th Street SW., Academic Exchanges Division, European Branch, E/AEE, room 208, Washington, DC 20547; telephone (202) 619–5341, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world." Pursuant to the Bureau of Educational and Cultural Affairs' authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement."

The Edmund S. Muskie Fellowship Program was established in 1991 to provide opportunities for qualified citizens of Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan to study business administration, economics, law or public administration in the United States. The Program's overall goal is to encourage economic and democratic development in these countries. The program includes enrollment in one- or two-year degree programs at the master's level or professional development programs designed for individuals with two to five years of prior work experience in the field of study. Fellowships are granted through an open, merit-based competition on the basis of academic excellence, knowledge of the field of specialization, leadership potential and financial need.

Overview

The Edmund S. Muskie Workshop was established to bring together Muskie Fellows from across the United States for an intensive workshop in Washington, DC. The Workshop is intended to serve as an important supplement to the Fellows' on-going program of academic work and professional development. The Workshop is expected to provide the Fellows with a substantive look at the social, cultural, economic and political institutions in the U.S., and illustrate how these institutions functionally relate to the subject disciplines studied by the Fellows. Activities for the Workshop should include interactive panel discussions on various economic and democratic issues, an opportunity for the Fellows to meet the Members of Congress who made the Edmund S. Muskie Fellowship Program possible, opportunities for professional networking, an introduction to the organizations responsible for administering the Muskie Fellowship, and other activities that will reflect the local and national culture and history of the U.S. At the end of the Workshop, it is expected that the Fellows will have an enhanced understanding of U.S. democratic and economic systems so that they may better serve as the leaders

of economic development and democratic institution building in their home countries. In addition, it is anticipated that the Fellows will be able to establish long-lasting professional and personal contacts to lay the foundation for home country and regional support networks, professional associations, and ties to U.S. counterparts.

Guidelines

Eligibility

Non-profit organizations with key staff based in the Washington, DC metropolitan area and available for frequent meetings with Washington DC-based Agency staff are invited to submit proposals for a cooperative agreement award from the Agency. Organizations should also have experience in conference management, professional exchanges, and/or international exchanges.

Proposed Budget

Funding anticipated for the Workshop is estimated at $75,000, which includes all program and administrative costs. Funds for the Fellows' travel to Washington and per diem expenses have already been allocated. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. The Agency also reserves the right to revise programmatic and administrative functions without additional funding.

All organizations must submit a comprehensive line-item budget, the details and format of which are contained in the application packet. Budget requests should be presented in the format indicated in the application packet.

Allowable Costs

Grant-funded items of expenditure may include but are not limited to the following categories:

I. Administrative Expenses
- —Administration (salaries, benefits, communications, staff transportation), including administration of tax withholding and reporting as required by federal, state and local authorities;
- —Direct Costs (office supplies, postage and delivery, telephone and facsimile, equipment rental);
- —Indirect Costs.

II. Program Expenses
- —Accommodations (such as meeting rooms, breakout rooms and dining facilities) during Workshop;
- —Local transportation (including taxis, charter buses and charter vans);
- —Opening and closing events;
- —Coffee breaks, continental breakfasts, working lunches;
- —Keynote and Seminar at the Department of State;
- —Printing;
- —Speakers' expenses and honoraria;
- —Photographer.

The application should demonstrate cost-sharing (dollar and in-kind) in both program and administrative expenses.

No grants funded under this program will include profit or fee.

Gifts, gratuities, entertainment, or alcoholic beverages are unallowable.

Fellows' per diem will be reduced accordingly for any meals provided during the Workshop.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet, including the Guidelines for Preparing Proposals for the Edmund S. Muskie Fellowship Program Workshop and the Statement of Work. It is the responsibility of the applicant to ensure it has a copy of these Guidelines.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of program plan—The quality of the Workshop plan and adherence to criteria and conditions described in the application packet. Proposals should clearly demonstrate how the organization will meet the Workshop's objectives.

b. Institutional capacity—Proposed staffing levels and experience, as well as the quality and quantity of all institutional resources, should be adequate and appropriate for achieving the Workshop's goals.

c. Track record/potential—Proposal should describe the experience of the applicant organization. The Agency will consider the performance of previous and current USIA grant recipients in addition to the potential of new applicants. Demonstration of the organization's ability to achieve program goals will be evaluated.

d. Cost effectiveness—greatest return on each grant dollar. A key measure of cost-effectiveness is the unit cost to the Agency. This is the total request of USIA monies divided by the number of Fellows. The Agency also reviews the ratio of cost-sharing exhibited. Cost-sharing as well as institutional direct and in-kind funding contributions are strongly encouraged.

e. Adherence of proposed activities to the criteria and conditions described above.

f. Institutional commitment as demonstrated by financial and other support to the program.

g. Evaluation plan—proposals should provide a sound plan for evaluation to be undertaken by the selected organization.

Options for Renewal

Subject to the availability of funding for FY 1994 and the satisfactory performance of grant programs, USIA may invite grantees to submit proposals for renewals of awarded grants.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this request for proposals does not constitute an award commitment on the part of the government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified in writing of the results of the review process on or about October 15, 1993. All funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: June 10, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–14228 Filed 6–16–93; 8:45 am]

BILLING CODE [illegible]

Sunshine Act Meetings

Federal Register
Vol. 58, No. 115
Thursday, June 17, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

TIME AND DATE: Friday, June 25, 1993, from 9:30 a.m. to 4:30 p.m.

PLACE: The Green Room of the Golden Gate NCO Club at the Presidio in San Francisco, California.

STATUS: The meeting will be open to the public with the exception of the 11:30 a.m.–12:30 p.m. session, which will be closed to the public for the purpose of conducting deliberations on grant applications.

MATTERS TO BE CONSIDERED: The Board of Directors of the Commission on National and Community Service will meet on June 25, 1993 to discuss: (1) old business, (2) reports of the Executive Director and Executive Committee, (3) the National Service Trust Act of 1993, (4) the Community Works Progress Act, (5) funding decisions (closed meeting), (6) strategic planning, and (7) Summer of Service.

CONTACT PERSON FOR MORE INFORMATION: Terry Russell, General Counsel, Commission on National and Community Service, 529 14th Street, NW., Suite 452, Washington, DC 20045, (202) 724–0600.

Catherine Milton,

Executive Director, Commission on National and Community Service.

[FR Doc. 93–14415 Filed 6–15–93; 11:49 am]

BILLING CODE 6050-SA-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 93–13827.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 17, 1993, 10:00 a.m. Meeting Open to the Public.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Compliance Regulations—Notice of Proposed Rulemaking (continued from the meeting of June 9, 1993).

DATE AND TIME: Tuesday, June 22, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, June 24, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Report from FEC Administrative Division.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93–14418 Filed 6–15–93; 1:05 pm]

BILLING CODE 6715-01-M

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Corrections

Federal Register
Vol. 58, No. 115
Thursday, June 17, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-4625-7]

Protection of Stratospheric Ozone

Correction

In proposed rule document 93-10422 beginning on page 28094 in the issue of Wednesday, May 12, 1993, make the following correction:

On page 28094, in the first column, under **DATES**, in the third line, "June 21, 1993" should read "June 28, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984 Petroleum Environmental Research Forum

Correction

In notice document 93-12855 beginning on page 31416 in the issue of Wednesday, June 2, 1993, on page 31416, in the third column, in the first paragraph, beginning in the first line, "April 12, 1993" should read "April 21, 1993".

BILLING CODE 1505-01-D

federal register

Thursday
June 17, 1993

Part II

Office of Management and Budget

Budget Rescissions and Deferrals; Cumulative Report

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

June 1, 1993.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of one rescission proposal and 12 deferrals contained in five special messages for FY 1993. These messages were transmitted to Congress on October 1, and December 30, 1992, and on February 26, March 16, and April 20, 1993.

Rescissions (Attachments A and C)

As of June 1, 1993, one rescission proposal totaling $180.0 million is pending before Congress. Attachment C shows the status of this FY 1993 rescission proposal.

Deferrals (Attachments B and D)

As of June 1, 1993, $3,437.2 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1993.

Information From Special Messages

The special messages containing information on the rescission proposal and deferrals that are covered by this cumulative report are printed in the **Federal Register** cited below:

57 FR 46730, Friday, October 9, 1992
58 FR 3368, Friday, January 8, 1993
58 FR 16324, Thursday, March 25, 1993
58 FR 17298, Thursday, April 1, 1993
58 FR 27192, Thursday, May 6, 1993

Leon E. Panetta,
Director.

BILLING CODE 3110-01-M

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ATTACHMENT A

STATUS OF FY 1993 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	180.0
Rejected by the Congress.....	---
Funding never withheld.....	---
Currently before the Congress.....	180.0

ATTACHMENT B

STATUS OF FY 1993 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	4,467.5
Routine Executive releases through June 1, 1993....	-1,030.3
Overturned by the Congress.....	---
Currently before the Congress.....	3,437.2

ATTACHMENT C
Status of FY 1993 Rescission Proposals – As of June 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
INDEPENDENT AGENCIES:								
Board for International Broadcasting Israel relay station	R93–1	180,000 1/		4–20–93				
TOTAL RESCISSIONS		180,000	0		0		0	

1/ Funds have not been withheld from obligation.

ATTACHMENT D
Status of FY 1993 Deferrals – As of June 1, 1993
(Amounts in thousands of dollars)

ATTACHMENT D
Status of FY 1993 Deferrals – As of June 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 6–1–93
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D93–1	492,736		10–1–92					
	D93–1A		1,492,774	12–30–92	730,354				1,255,157
Foreign military financing grants	D93–8	1,487,000		12–30–92	43,000				1,444,000
Foreign military financing program	D93–9	149,200		12–30–92	138,997				10,203
Agency for International Development									
Demobilization and transition fund	D93–2	13,750		10–1–92	5,750				8,000
International disaster assistance, executive	D93–10	63,823		2–26–93	7,068				56,755
Sub–Saharan Africa assistance, executive	D93–11	67,188		2–26–93	14,000				53,188
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D93–3	364,582		10–1–92	33,151				331,431
Expenses, brush disposal	D93–4	40,241		10–1–92					
	D93–4A		5,835	12–30–92					
	D93–4B		8	3–16–93					46,084
Timber salvage sales	D93–12	222,994		2–26–93	20,000				202,994
DEPARTMENT OF DEFENSE – CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D93–5	2,175		10–1–92	955				1,220

ATTACHMENT D
Status of FY 1993 Deferrals – As of June 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 6–1–93
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D93–6	7,267		10–1–92					
	D93–6A		50	4–20–93					7,317
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D93–7	10,123		10–1–92					
	D93–7A		47,761	12–30–92	37,000				20,884
TOTAL, DEFERRALS		2,921,080	1,546,426		1,030,275	0	0		3,437,233

[FR Doc. 93–14352 Filed 6–16–93; 8:45 am]
BILLING CODE 3110–01–C

federal register

Thursday
June 17, 1993

Part III

Environmental Protection Agency

Memorandum of Understanding; Open Meeting; Notice

BILLING CODE 3110-01-C

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-00359; FRL-4630-8]

Memorandum of Understanding; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a meeting of the Environmental Protection Agency, the Food and Drug Administration, and interested parties to review and discuss the Memorandum of Understanding between the Food and Drug Administration, Public Health Service, Department of Health and Human Services and the Environmental Protection Agency regarding the regulation of liquid chemical germicides intended for use on medical devices. The meeting will be open to the public.

DATES: The meeting will take place on Wednesday, June 23, 1993, from 2 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at the: Environmental Protection Agency, Office of Pesticide Programs, Rm. 1126, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Juanita Wills (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 250, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (301) 305-6661.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document, along with the Memorandum of Understanding, is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. on the date of publication in the **Federal Register**. By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. This file is also available in Postscript, Wordperfect, and ASCII. The Memorandum of Understanding is available in Wordperfect and ASCII.

Dated: June 14, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division.

[FR Doc. 93-14419 Filed 6-16-93; 8:45 am]

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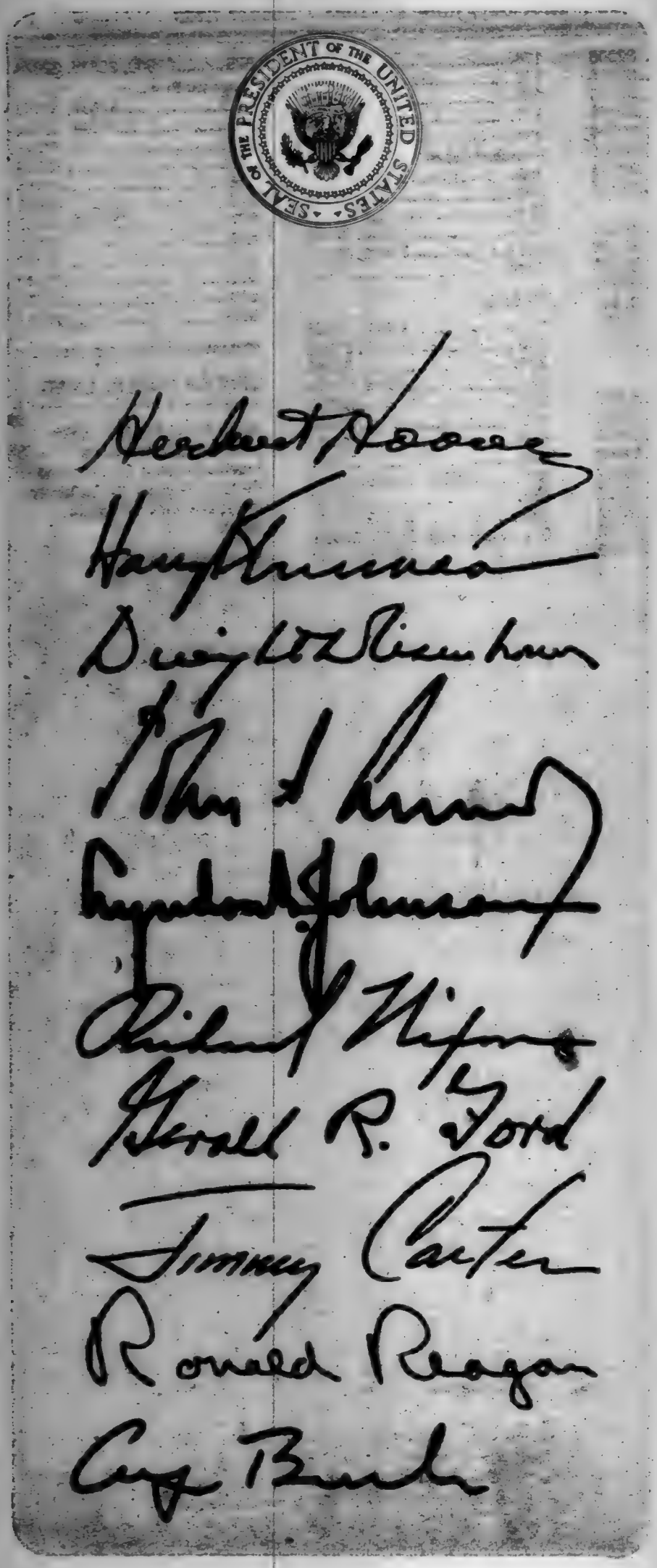

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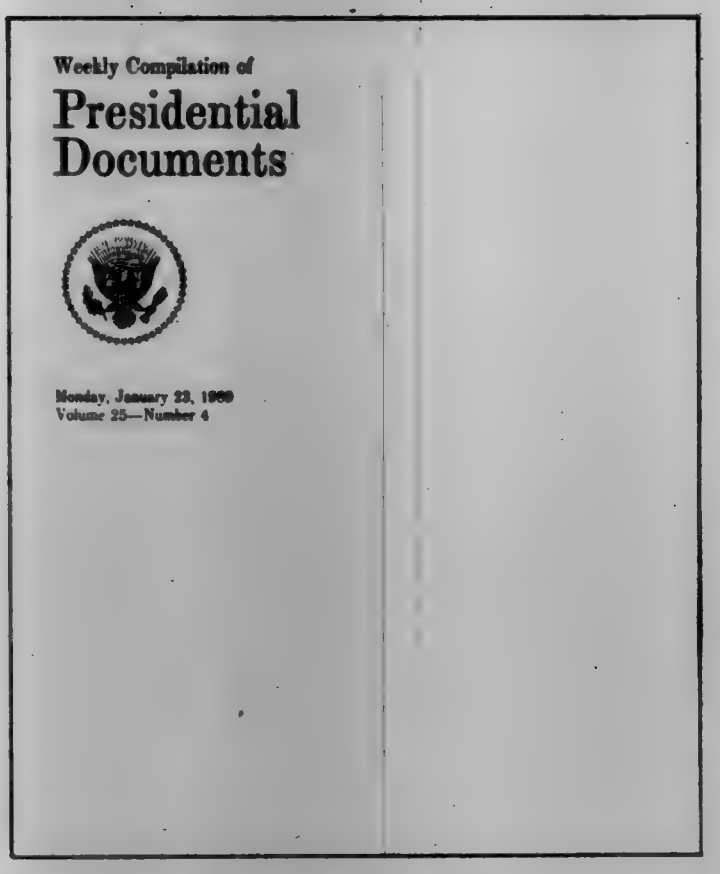

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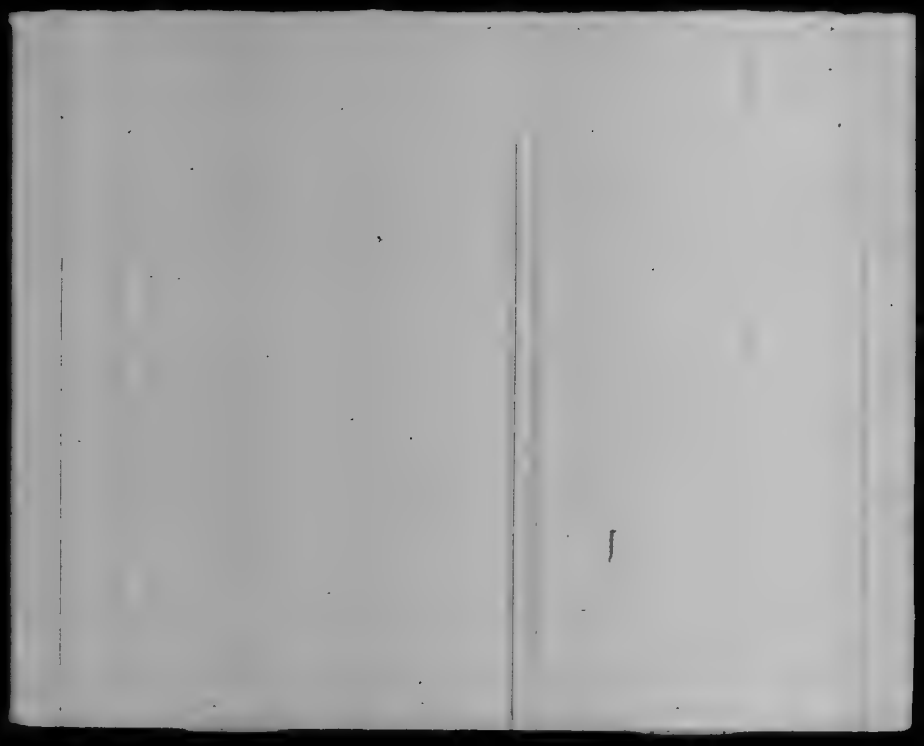

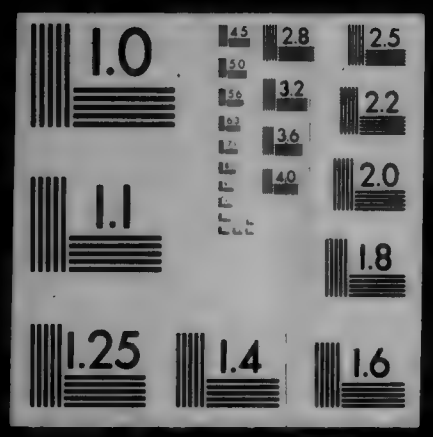
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Friday
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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC
(two briefings)

WHEN: July 15 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

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Rules and Regulations

Federal Register
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Friday, June 18, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531 and 550

RIN 3206–AF49

Changes in Metropolitan Area Definitions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM), in conformance with OMB Bulletin No. 93–05 of December 28, 1992, is issuing final regulations to (1) amend the definition of "Interim geographic adjustment area" for the purpose of interim geographic adjustments under section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), and (2) amend the definition of "Special pay adjustment area" for the purpose of special pay adjustments for law enforcement officers under section 404 of FEPCA. These regulations also correct an unintended limitation on the crediting of nonappropriated fund service for severance pay purposes.

EFFECTIVE DATES: The amendments to 5 CFR part 531 are effective on the first day of the first pay period beginning on or after December 31, 1992. The amendment to 5 CFR part 550 is effective on January 1, 1987.

FOR FURTHER INFORMATION CONTACT: James Weddel, (202) 606–2858.

SUPPLEMENTARY INFORMATION: On December 28, 1992, the Office of Management and Budget (OMB) published new metropolitan area definitions in OMB Bulletin No. 93–05. The new definitions changed the titles and geographic coverage of some metropolitan areas, effective December 31, 1992. These changes affected the entitlement of certain Federal employees to the payment of interim geographic adjustments (IGA's) under section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) and special pay adjustments for law enforcement officers under section 404 of FEPCA.

The title and geographic coverage of the San Francisco Consolidated Metropolitan Statistical Area (CMSA) and the San Diego Metropolitan Statistical Area (MSA) have not been changed. Although the title of the Los Angeles CMSA has been changed to the Los Angeles-Riverside-Orange County, CA CMSA, the geographic coverage has not been changed. Changes in metropolitan area definitions that affect entitlement to IGA's and special pay adjustments for law enforcement officers are summarized below.

Both the title and geographic coverage of the New York CMSA have been changed. The new title of this area is the New York-Northern New Jersey-Long Island, NY–NJ–CT–PA CMSA. Counties and towns that have been added to this area are:

- In New York State—Dutchess County;
- In New Jersey—Mercer and Warren Counties (Mercer County previously was part of the Philadelphia CMSA);
- In Connecticut—(a) in Litchfield County, the town of Washington; (b) in Middlesex County, the towns of Clinton and Killingworth; and (c) in New Haven County, the towns of Bethany, Branford, Cheshire, East Haven, Guilford, Hamden, Madison, North Branford, North Haven, Orange, Southbury, Wallingford, and Woodbridge, and the cities of Meriden, New Haven, and West Haven; and
- In Pennsylvania—Pike County.

It should be noted that OPM had previously exercised its authority under section 404(b) of FEPCA, as amended by the Technical and Miscellaneous Civil Service Amendments Act of 1992 (Pub. L. 102–378, October 2, 1992), to extend the payment of special pay adjustments for law enforcement officers to individuals meeting the definition of "law enforcement officer" in 5 U.S.C. 5541(3) whose duty stations are in New Haven County, Connecticut, effective on the first day of the first pay period beginning on or after December 18, 1992.

Both the title and geographic coverage of the Boston CMSA have been changed. The new title of this area is the Boston-Brockton-Nashua, MA–NH–ME–CT CMSA. Towns and cities that have been added to this area are:

- In Massachusetts—(a) in Bristol County, the towns of Acushnet, Berkeley, Dartmouth, Dighton, Fairhaven, and Freetown, and the cities of New Bedford and Taunton; (b) in Hampden County, the town of Holland; (c) in Middlesex County, the town of Ashby; (d) in Norfolk County, the town of Plainville; (e) in Plymouth County, the towns of Marion, Mattapoisett, Rochester, and Wareham; and (f) in Worcester County, the towns of Ashburnham, Auburn, Barre, Blackstone, Boylston, Brookfield, Charlton, Clinton, Douglas, Dudley, East Brookfield, Grafton, Holden, Leicester, Lunenburg, Millbury, Millville, Northboro, Northbridge, North Brookfield, Oakham, Oxford, Paxton, Princeton, Rutland, Shrewsbury, Southbridge, Spencer, Sterling, Sturbridge, Sutton, Templeton, Uxbridge, Webster, Westboro, West Boylston, West Brookfield, Westminster, and Winchendon, and the cities of Fitchburg, Gardner, Leominster, and Worcester;
- In New Hampshire—(a) in Hillsborough County, the towns of Bedford, Goffstown, Greenville, Mason, New Ipswich, and Weare, and the city of Manchester; (b) in Merrimack County, the towns of Allenstown and Hooksett; (c) in Rockingham County, the towns of Auburn, Candia, Chester, Epping, Exeter, Fremont, Greenland, Hampton, Hampton Falls, Kensington, New Castle, Newfields, Newington, Newmarket, North Hampton, Raymond, Rye, South Hampton, and Stratham, and the city of Portsmouth; and (d) in Strafford County, the towns of Barrington, Durham, Farmington, Lee, Madbury, Milton, and Rollinsford, and the cities of Dover, Rochester, and Somersworth;
- In Maine—in York County, the towns of Berwick, Eliot, Kittery, South Berwick, and York; and
- In Connecticut—in Windham County, the town of Thompson.

Both the title and the geographic coverage of the Chicago CMSA have been changed. The new title of this area is the Chicago-Gary-Kenosha, IL–IN–WI CMSA. DeKalb and Kankakee Counties in Illinois have been added to the Chicago CMSA.

Both the title and the geographic coverage of the Philadelphia CMSA

have been changed. The new title of this area is the Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD CMSA. Atlantic and Cape May Counties in New Jersey have been added to the Philadelphia CMSA. In addition, Mercer County, New Jersey, has been moved from the Philadelphia CMSA to the New York CMSA.

Both the title and the geographic coverage of the Washington, DC–MD–VA MSA have been changed. The new title of this area is the Washington, DC–MD–VA–WV Primary Metropolitan Statistical Area (PMSA). Counties and a city that have been added to this area are:

- In Virginia—the counties of Clarke, Culpeper, Fauquier, King George, Spotsylvania, and Warren, and the city of Fredericksburg; and
- In West Virginia—Berkeley and Jefferson Counties.

Accordingly, the definition of the term "Interim geographic adjustment area" has been revised in OPM regulations on IGA's by deleting the previously established titles of the metropolitan areas whose titles have changed and inserting the new titles established by OMB Bulletin No. 93–05. (See the revision of 5 CFR 531.101, below.) Also, the definition of the term "Special pay adjustment area," and a related section that includes a list of the covered areas, have been revised in OPM regulations on special pay adjustments for law enforcement officers by deleting the previously established titles of the metropolitan areas whose titles have changed and inserting the new titles established by OMB Bulletin No. 93–05. (See the revisions of 5 CFR 531.301 and 5 CFR 531.302(a), below.) Finally, a section of OPM regulations that provides requirements for establishing the effective date of an employee's entitlement to a special pay adjustment for law enforcement officers due to a change in the geographic area covered by a metropolitan area has been revised by adding that the requirements apply to changes in the geographic coverage of PMSA's. The current regulation refers only to CMSA's and MSA's. (See the revision of 5 CFR 531.304(g), below.)

None of the changes in metropolitan area definitions resulted in a loss or reduction of entitlement to interim geographic adjustments or special pay adjustments for law enforcement officers. The amendments to 5 CFR part 531 are being made effective on the first day of the first pay period beginning on or after December 31, 1992, because the revised names of the CMSA's, MSA's, and PMSA's cited in the regulations were made effective by OMB on December 31, 1992.

In addition, OPM is making a technical change in 5 CFR 550.708 at the request of an agency. This change corrects an unintended effect of the final regulations implementing the Portability of Benefits for Nonappropriated Fund Employees Act of 1990 (Pub. L. 101–508, November 5, 1990). Under the current regulations, the service of a nonappropriated fund employee of the Department of Defense or the Coast Guard may be credited for severance pay purposes under title 5, United States Code, when the employee moves to a General Schedule position in the Department of Defense or the Coast Guard, respectively, without a break in service of more than 3 days. An agency has identified additional categories of nonappropriated fund employees who may be moved to appropriated fund positions and, therefore, has requested that OPM provide a more generic description of the types of positions to which a former nonappropriated fund employee may move and receive credit for former nonappropriated fund service for severance pay purposes. This change will be retroactive to January 1, 1987, the effective date of the regulations implementing the Portability of Benefits for Nonappropriated Fund-Employees Act of 1990.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making these rules effective in less than 30 days. The amendments to 5 CFR part 531 are being made effective on the first day of the first pay period beginning on or after December 31, 1992, because the names and definitions of certain Consolidated Metropolitan Statistical Areas (CMSA's), Metropolitan Statistical Areas (MSA's), and Primary Metropolitan Statistical Areas (PMSA's) cited in the regulations have been changed by the Office of Management and Budget, effective on December 31, 1992. OPM regulations specify that in the event of a change in the geographic area covered by a metropolitan area described in the regulations on IGA's or special pay adjustments for law enforcement officers, the effective date of a change in an employee's entitlement to an IGA or a special law enforcement adjusted rate of pay shall be the first day of the first pay period beginning on or after the date on which a change in the definition is effective. (See 5 CFR 531.103(g) and 5 CFR 531.304(g).)

The amendment to 5 CFR part 550 is effective retroactively to January 1, 1987, the effective date of the final regulations implementing the Portability of Benefits for Nonappropriated Fund Employees Act of 1990.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, since it applies only to Federal employees and agencies.

List of Subjects

5 CFR Part 531

Government employees, Wages.

5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, OPM is amending parts 531 and 550 of title 5 of the Code of Federal Regulations as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5307, 5338, and chapter 54; E.O. 12748, 56 FR 4521, February. 4, 1991, 3 CFR 1991, Comp., p. 316;

Subpart A issued under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462, and E.O. 12786, 56 FR 67453, December 30, 1991, 3 CFR 1991 Comp., p. 376;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), 5402, and 7701(b)(2);

Subpart C issued under section 404 of Pub. L. 101–509, 104 Stat. 1466, and section 3(7) of Pub. L. 102–378 (October 2, 1992);

Subpart D also issued under 5 U.S.C. 7701(b)(2) and 5 U.S.C. 5335(g);

Subpart E also issued under 5 U.S.C. 5336.

2. In § 531.101, the definition of "Interim geographic adjustment area" is revised to read as follows:

§ 531.101 Definitions.

* * * * *

Interim geographic adjustment area means any of the following Consolidated Metropolitan Statistical Areas (CMSA's), as defined by the Office of Management and Budget (OMB):

(a) New York-Northern New Jersey-Long Island, NY–NJ–CT–PA;

(b) San Francisco-Oakland-San Jose, CA; or

(c) Los Angeles-Riverside-Orange County, CA.

* * * * *

3. § 531.301, the definition of "Special pay adjustment area" is revised to read as follows:

§ 531.301 Definitions.

* * * * *

Special pay adjustment area means any of the following Consolidated Metropolitan Statistical Areas (CMSA's), Primary Metropolitan Statistical Areas (PMSA's), or Metropolitan Statistical Areas (MSA's), as defined by the Office of Management and Budget (OMB):

(a) Boston-Brockton-Nashua, MA–NH–ME–CT CMSA;

(b) Chicago-Gary-Kenosha, IL–IN–WI CMSA;

(c) Los Angeles-Riverside-Orange County, CA CMSA;

(d) New York-Northern New Jersey-Long Island, NY–NJ–CT–PA CMSA;

(e) Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD CMSA;

(f) San Francisco-Oakland-San Jose, CA CMSA;

(g) San Diego, CA MSA; or

(h) Washington, DC–MD–VA–WV PMSA.

4. In § 531.302, paragraph (a) is revised to read as follows:

§ 531.302 Determining special law enforcement adjusted rates of pay.

(a) To determine the special law enforcement adjusted rate of pay, the scheduled annual rate of pay for a law enforcement officer whose official duty station is in one of the special pay adjustment areas listed below shall be multiplied by the factor shown for that area:

Special pay adjustment area	Factor
Boston-Brockton-Nashua, MA–NH–ME–CT CMSA	1.16
Chicago-Gary-Kenosha, IL–IN–WI CMSA	1.04
Los Angeles-Riverside-Orange County, CA CMSA	1.16
New York-Northern New Jersey-Long Island, NY–NJ–CT–PA CMSA	1.16
Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD CMSA	1.04
San Francisco-Oakland-San Jose, CA CMSA	1.16
San Diego, CA MSA	1.08
Washington, DC–MD–VA–WV PMSA	1.04

* * * * *

5. In § 531.304, paragraph (g) is revised to read as follows:

§ 531.304 Administration of special law enforcement adjusted rates of pay.

* * * * *

(g) In the event of a change in the geographic area covered by a CMSA, PMSA, or MSA described in § 531.301 of this chapter, the effective date of a change in an employee's entitlement to a special law enforcement adjusted rate of pay under this subpart shall be the first day of the first pay period beginning on or after the date on which a change in the definition of the CMSA, PMSA, or MSA is made effective.

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart G—Severance Pay

6. The authority citation for Subpart G continues to read as follows:

Authority: 5 U.S.C. 5595; E.O. 11257.

7. In § 550.708, paragraph (d) is revised to read as follows:

§ 550.708 Creditable service.

* * * * *

(d) Service performed by an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, as defined in 5 U.S.C. 2105(c), who moves to a position within the civil service employment system of the Department of Defense or the Coast Guard, respectively, without a break in service of more than 3 days.

[FR Doc. 93–14358 Filed 6–17–93; 8:45 am]

BILLING CODE 6325–01–M

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5 CFR Part 532

RIN: 3206–AF12

Prevailing Rate Systems; Definition of Otero County, CO, to a Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to add Otero County, Colorado, as an area of application to the El Paso, Colorado, Federal Wage System (FWS) Nonappropriated Fund (NAF) wage area. The Department of the Air Force anticipates hiring FWS NAF employees at Detachment 1, in La Junta, Colorado. Detachment 1 is located in Otero County, which is not currently defined for NAF pay-setting purposes. The purpose of this action is to assign Otero County to the proper NAF wage area for pay-setting purposes.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Brenda L. Roberts (202) 606–2848.

SUPPLEMENTARY INFORMATION: On November 12, 1992, OPM published a proposed rule to add Otero County, Colorado, to the El Paso, Colorado, wage area as an area of application (57 FR 53607). No comments were received during the 30-day comment period. The proposed rule, therefore, is being adopted as a final rule without any changes.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix D to subpart B is amended by revising the area of application listing for the El Paso, Colorado, wage area to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Colorado

* * * * *

El Paso

* * * * *

Area of Application. Survey area plus:
Colorado: Bent, Otero and Pueblo

* * * * *

[FR Doc. 93–14361 Filed 6–17–93; 8:45 am]

BILLING CODE 6325–01–M

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5 CFR Part 532

RIN 3206–AF48

Prevailing Rate Systems; Macomb, Michigan, NAF Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation to add Ottawa County, Michigan, as an area of application to the Macomb, Michigan, Federal Wage System (FWS) Nonappropriated Fund (NAF) wage area for pay-setting purposes. Ottawa County is not presently defined to a NAF wage area. However, OPM recently learned that there is now one NAF employee working at the Coast Guard Exchange, Grand Haven, located in Ottawa County, Michigan. The intent of this action is to officially assign Ottawa County to the proper NAF wage area for pay-setting purposes.

DATES: This interim rule becomes effective on June 18, 1993. Comments must be received by July 19, 1993.

ADDRESSES: Send or deliver comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Department of Defense notified OPM that the United States Coast Guard employs one NAF FWS worker at the Coast Guard Exchange, Grand Haven, Ottawa County, Michigan. As Ottawa County does not meet the regulatory criteria for establishing a new NAF wage area under 5 CFR 532.219, it must be defined as an area of application to an existing wage area.

The provisions of 5 CFR 532.219 list the following criteria for consideration when two or more counties are to be combined to constitute a single wage area:

(1) Proximity of largest activity in each county;

(2) Transportation facilities and commuting patterns; and

(3) Similarities of the counties in:

(i) Overall population;

(ii) Private employment in major industry categories; and

(iii) Kinds and sizes of private industrial establishments.

Ottawa County, along with Allegan, Kent, and Muskegon Counties, forms the Grand Rapids-Muskegon-Holland, MI, Metropolitan Statistical Area, an MSA not contiguous to any existing NAF wage area. Grand Haven is approximately 290 km (180 miles) from the host activity for the Macomb, Michigan, survey area (Selfridge Air National Guard Base, near Detroit). The distance is significantly greater (370 km (230 miles)) from Grand Haven to K.I. Sawyer Air Force Base, the survey host activity for Marquette, the only other NAF wage area in Michigan. The survey areas of both the Cook, Illinois, and Lake, Illinois, wage areas are about the same distance by road from Grand Haven as is Macomb, but are separated from Grand Haven by Lake Michigan and are, by road, two states away—through Indiana to Illinois.

Our analysis reveals that Ottawa County differs significantly from the survey areas of both NAF FWS wage areas in Michigan (Macomb and Marquette). For example, the Ottawa population is 171,300, compared to 71,300 in Marquette and 697,200 in Macomb. Total private employment in Ottawa is 70,535, compared to 17,482 in Marquette and 283,277 in Macomb. There are 4,287 business establishments in Ottawa, compared to 1,577 in Marquette and 16,446 in Macomb. These measures show Ottawa County to be much larger than Marquette County in terms of both population and employment. All of the other NAF area of application counties in the lower peninsula of Michigan are included in the Macomb wage area.

Our review brought to light no factors that would outweigh the considerations of geographic location in favoring the assignment of Ottawa County to the Macomb wage area. Based on this review, Ottawa County, Michigan, should be defined as an area of application to the Macomb, Michigan, wage area. Thus, the one Coast Guard employee in Grand Haven will continue to be paid from the Macomb, Michigan, wage schedule the Cost Guard has been using. It should be noted that with this change the Macomb, Michigan, wage area will include both Ottawa County, Michigan, and Ottawa County, Ohio.

The Federal Prevailing Rate Advisory Committee (FPRAC) reviewed this request and by consensus recommended approval.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because the wage survey for the Macomb wage area was recently completed and the new wage schedule was issued with a delayed effective date of June 1993.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix D to subpart B of part 532 is amended by revising the wage area listings for Macomb, Michigan, to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Michigan.

Macomb

Survey Area

Michigan:
  Macomb

Area of Application. Survey area plus

Michigan:
  Alpena
  Calhoun
  Crawford
  Grand Traverse
  Huron
  Iosco
  Leelanau
  Ottawa
  Saginaw
  Washtenaw
  Wayne

Ohio:
  Ottawa

* * * * *

[FR Doc. 93–14359 Filed 6–17–93; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 550

RIN 3206–AF25

Pay Administration (General); Payments During an Evacuation

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting as final the interim rule published in the **Federal Register** (57 FR 40070) on September 1, 1992. The interim rule removed the regulatory restriction on payments during an evacuation authorized under statute to permit Federal agencies to make such payments when the evacuation is occasioned by a natural disaster.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Jane Kuhl, (202) 606–2858.

SUPPLEMENTARY INFORMATION: On September 1, 1992, OPM published interim regulations removing and reserving section 550.405 of title 5, Code of Federal Regulations. When an evacuation had been occasioned by a natural disaster within the 48 contiguous States or the District of Columbia, section 550.405 had restricted (1) advance payments of up to 30 days pay, allowances, and differentials during an evacuation; (2) continued payment of pay, allowances, and differentials for certain periods; and (3) additional allowances necessary to offset direct added expenses.

Three subunits of one agency commented that the restriction on such payments should be removed when an evacuation occasioned by a natural disaster occurs within any of the 50 States, the District of Columbia, the Pacific Trust Territory, American Samoa, Guam, Puerto Rico, or the Virgin Islands. Since the interim rule removed *all* geographical restrictions for emergencies occasioned by a natural disaster, no other change in the regulations is needed.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR 550

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, under the authority of 5 U.S.C. 5527, the interim rule amending 5 CFR part 550, published at 57 FR 40070 on September 1, 1992, is adopted as a final rule without change.

[FR Doc. 93–14362 Filed 6–17–93; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 591

RIN 3206–AF13

Cost-of-Living Allowances (Nonforeign Areas)

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to increase certain cost-of-living allowance (COLA) rates paid to General Schedule, U.S. Postal Service, and certain other Federal employees in several nonforeign areas—namely, Guam, the Commonwealth of the Northern Mariana Islands, parts of Hawaii, and part of the Virgin Islands. The increases are based on living cost surveys conducted by Runzheimer International, under contract with OPM, during the summer of 1991.

EFFECTIVE DATES: These regulations are effective on the first day of the first pay period beginning on or after June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Phyllis G. Foley, (202) 606–3710.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 5941, certain Federal employees in nonforeign areas outside the 48 contiguous States are eligible for cost-of-living allowances (COLA's) when living costs are substantially higher than in the Washington, DC, area. Currently, COLA's are paid in the following areas: Alaska, Hawaii, Puerto Rico, the Virgin Islands, and Guam and the Commonwealth of the Northern Mariana Islands.

OPM contracted with Runzheimer International to conduct living cost surveys in the various allowance areas in 1991 and 1992. Alaska was surveyed during the winter of 1992, and all other allowance areas were surveyed in the summer of 1991. The Runzheimer surveys showed that adjustments in various COLA rates were warranted. This included reductions in 10 COLA rates in 7 allowance areas. However, a provision in the Treasury, Postal Service, and General Government Appropriations Act of 1992 (Public Law 102–141) bars OPM from reducing any COLA rate through December 31, 1995. Therefore, only the increases in COLA rates can be implemented.

The increases in COLA rates being implemented by this rulemaking are summarized in the table below:

INCREASES IN COLA RATES

Allowance area/category	Current rate	Proposed rate
City and County of Honolulu, Hawaii:		
Commissary/Exchange	12.5	15.0
County of Maui and County of Kalawao, Hawaii:		
All Employees	20.0	22.5
Territory of Guam and Commonwealth of the Northern Mariana Islands:		
Local Pricing	12.5	15.0
Commissary/Exchange	0	7.5
St. Thomas and St. John, The Virgin Islands:		
All Employees	12.5	15.0

On December 10, 1992, OPM published proposed regulations (57 FR 58554) to effect the above increases in COLA rates. On the same day, it published a notice (57 FR 58556) that included Runzheimer's "Report to OPM on Living Costs in Selected Nonforeign Areas and in Washington, DC Area, June 1992." In response to the proposed regulations and notice, OPM received comments from over 200 persons. An overview and evaluation of significant comments follows.

General Comments

A number of individual commenters raised concerns about whether the Runzheimer surveys accurately reflected their personal living costs. Many commenters stated that current COLA rates are too low.

Many of the goods and services cited by commenters as examples of high costs were among the items surveyed by Runzheimer. Many commenters focused on certain expenditure categories but not others. The overall COLA rate reflects the combining of average cost differences in a variety of expenditure categories.

In late 1992, OPM initiated a housing and living pattern survey of employees in the allowance areas and in the Washington, DC, area. This employee

survey will be used to evaluate many issues raised by commenters regarding the COLA model. Based on a review of employee survey results, OPM will consider changes to survey procedures and model assumptions.

Some commenters noted that inflation was high in their areas in recent years. They expressed the view that the cost comparisons are outdated. One commenter objected to the amount of time between living cost surveys and the proposed COLA rate increases and asked that the COLA increases be made effective retroactively to June 1991. (The commenter apparently believes that the surveys in the areas for which increases are being proposed were conducted in June 1991. In actuality, they were conducted from August to October 1991.)

OPM acknowledges the lag in time between the time and surveys were conducted and the publication of proposed adjustments. While some lag is inevitable, OPM will strive in the future to reduce the amount of time between survey completion and rate adjustments. OPM knows of no authority by which it could adjust COLA rates retroactively. Furthermore, OPM believes the practice of implementing COLA rate adjustments—both increases and decreases—prospectively, after review of survey results and public notice of proposed changes, is a sound one. Thus, these final regulations are being made effective on the first day of the first pay period beginning on or after the date of publication.

A number of commenters objected to the fact that their COLA rate was less than the rate in another allowance area. For example, a number of commenters in Guam asserted that their COLA rate should be at least as high as the rate payable in Honolulu, HI. Also, approximately 200 employees in St. Croix, Virgin Islands (VI), signed letters objecting to the fact that the COLA rate for St. Thomas, VI, and St. John, VI, was being increased above the rate for St. Croix.

Differences in the living cost indices computed by Runzheimer are based upon the results of annual surveys of the areas compared to a survey of the common reference area of Washington, DC. In comparing COLA rates for different allowance areas, it must be kept in mind that, because of the law barring COLA rate reductions through 1995, certain COLA rates currently do not correspond to the living cost indices, but are artificially high.

On commenter raised questions regarding the validity of the price data collected in St. Croix. OPM staff reviewed all COLA survey data for St. Croix and were satisfied that Runzheimer had followed appropriate procedures in collecting data in St. Croix.

A number of commenters from the Virgin Islands cited a recent living cost index produced by the American Chamber of Commerce Research Association (ACCRA), which showed high living cost indices for both St. Thomas and St. Croix (although the St. Thomas index was significantly higher than the St. Croix index).

For a variety of reasons, the ACCRA indices are not directly comparable to the Runzheimer indices. The ACCRA survey at issue was conducted in the third quarter of 1992, while the OPM-sponsored Runzheimer survey was conducted in the summer of 1991. The ACCRA survey was designed for "midmanagement" households (i.e., to reflect midmanagement standards of living and spending patterns), while the Runzheimer survey was designed to reflect three income levels with appropriate weights based on Federal employee distribution. The ACCRA survey has fewer and different survey items than the Runzheimer survey. The ACCRA survey compares each area's prices to the average price level for all participating areas, while the Runzheimer survey compares each allowance area's prices to prices in the Washington, DC, area. We note that, even if the ACCRA indices were used to compare St. Croix to Washington, DC, it would not result in an increase in the COLA rate from the current level of 12.5 percent.

Some commenters from St. Croix cited a local Department of Labor office December 1991 "food basket" survey, which showed that food costs were 25 percent higher in St. Croix compared to the Washington, DC, area. The OPM-sponsored Runzheimer survey for the summer of 1991 showed that the costs of "food at home" in St. Croix were about 33 percent higher than in the Washington, DC, area. (In contrast, the "food at home" costs were about 43 percent higher in St. Thomas than in the Washington, DC, area.) However, food at home is only one of the living cost categories in the COLA model. Due to the impact of other cost categories, OPM's total living costs index for St. Croix showed a differential of only about 8 percent.

Several commenters noted that employees in the allowance areas face extreme weather disturbances—in particular, typhoons or hurricanes. They noted that these weather disturbances create higher costs in home maintenance, home insurance, and/or utilities. Since many of the costs cited by commenters are of a type included in the living cost survey, OPM believes that the effects of weather disturbances on living costs will be reflected in the survey results. We note that Typhoon Omar, which hit Guam in August 1992, and Hurricane Iniki, which hit Kauai, Hawaii, in September 1992, occurred after the 1991 survey at issue. Cost increases associated with these two weather disturbances should be reflected in future surveys. In certain areas, such as home maintenance, OPM is seeking to improve survey assumptions regarding the frequency of various repairs or maintenance services (e.g., painting, roof replacement). OPM anticipates that data from its employee survey will be useful in this regard.

A number of employees from Puerto Rico and St. Croix expressed concern about the possible immediate reduction of their COLA's. As the proposed regulations explained, OPM is barred from reducing COLA rates through December 31, 1995. Individual letters were sent to a number of employees to clarify that OPM was proposing only increases in COLA rates at this time.

One commenter suggested that the COLA model and survey methodologies should be more specifically described in OPM regulations and that all of the data collected should be made public. The commenter objected to the use of assumptions not spelled out in the regulations. OPM believes its COLA regulations are adequately detailed and that any attempt to subject the complex COLA survey process to a set of overly detailed and inflexible rules would impair rather than improve the COLA program. The flexibility to make procedural adjustments as conditions warrant, or to make new or revised assumptions as new data are obtained, results in a more accurate COLA model. Before COLA rates are actually adjusted, OPM publishes in the Federal Register a detailed report on the survey results, including a description of the procedures followed, the key assumptions made, and survey data summaries.

Comments on Overall Living Cost Model

Some commenters stated that OPM's COLA model was inconsistent with Public Law 102–141, the Treasury, Postal, and General Government Appropriations Act of 1992, which was enacted on October 28, 1991. This law bars COLA rate reductions through 1995 and requires that OPM conduct a study and submit a report to Congress, by March 1995, on possible changes in the methodology for calculating COLA

rates, taking into account all costs of living. OPM does not believe it is required by Public Law 102–141 to make changes in the survey methodology prior to its report to Congress. In fact, the clear language of the law is that OPM shall submit a report "proposing" adjustments in the COLA methodology. Nevertheless, OPM will continue to consider immediate adoption of any methodology improvements that enhance the integrity of the COLA model without creating undue administrative burdens.

A few commenters cited the House Appropriations Committee report on Public Law 102–141 (Report No. 102–95). The report describes various aspects of the COLA model that the Committee felt should be modified. OPM accepts this report as an expression of congressional intent as to the issues that should be addressed in the OPM study and report to Congress. While not ruling out the possibility of making some changes prior to 1995, OPM believes that, given the degree of additional study needed and the requirement in Public Law 102–141 that OPM submit a report to Congress "proposing" changes, broader changes in the COLA model should be delayed until after the report to Congress.

Some commenters stated that the COLA rate-setting methodology should include a component to compensate employees for the allowance area's remoteness and isolation. For example, one commenter suggested that 5 percentage points be added to all COLA rates to reflect the "costs" of remoteness and isolation. There is no statutory requirement that OPM consider remoteness and isolation, in and of themselves, as a "cost of living" that must be assigned a value in setting COLA rates. OPM understands the term "living costs" in section 5941(a)(1) of title 5, United States Code (the provision authorizing COLA payments), to refer to actual dollar expenditures, not to intangible conditions of life that cannot be directly measured in monetary terms. OPM is examining the possibility of adjusting the COLA model to take into consideration tangible expenditures related to the remoteness and isolation of the allowance areas. Examples of such expenditures include air transportation, education, extraordinary medical expenses, and special housing maintenance costs. OPM will address these factors in its report to Congress due in 1995.

One commenter stated that OPM had misinterpreted the *Arana* settlement to mean that OPM was barred from pricing items needed in the allowance area but not needed in the Washington, DC, area. The commenter maintained that an item not needed in Washington, DC, should be priced only in the allowance area.

OPM has made changes in the COLA model to reflect so-called "need differences" in several areas (e.g., car maintenance) and will explore additional changes. In the case of the consumer goods component of the COLA survey, OPM believes that sound methodology requires construction of a representative market basket that is common to the allowance area under consideration and the Washington, DC, area. It is unavoidable that there will be differences in need for various items in the allowance area as opposed to the Washington, DC, area. If goods deemed "unique" to the allowance area are added to the allowance area survey, then one would also be compelled to consider goods "unique" to the Washington, DC, area. The inclusion of "unique" items would be inconsistent with OPM regulations at 5 CFR 591.205(b)(1)(i)), which require exact brands and models to be priced in each area whenever possible. Nevertheless, OPM intends to give this issue further study and will address it more fully in its report to Congress on the COLA program due in March 1995.

Some commenters objected to the use of national consumer expenditure patterns in the living cost model, believing they differed from the consumption patterns in their particular area. They questioned whether the right items were surveyed and whether the right weights were assigned to items. One commenter also stated that the spending pattern data were outdated.

In order to compare living costs in different areas, it is necessary to assign a common set of weights to various expenditure categories to derive comparative indices measuring overall living costs. Since living costs in the Washington, DC, area are the reference point for calculating COLA's, the COLA model would ideally use weights derived from DC area consumer expenditure patterns. While the Bureau of Labor Statistics produces Consumer Expenditure Survey (CES) data for the Washington, DC, area, those data are not arrayed by income level. (OPM's regulations require use of multiple income levels in calculating COLA rates, and the current COLA model uses three income levels.) As a surrogate for weights based on the Washington, DC, area spending patterns, OPM uses national CES data, which are arrayed by income level. The model currently employs 1988 national CES data; however, OPM is developing a methodology for gradually introducing more recent CES data into the model.

Some commenters seem to believe the COLA model should use allowance area spending patterns to establish the common weights. However, even if this approach were found acceptable, there are no CES data for most of the allowance areas. There are CES data for the metropolitan areas of Honolulu, HI, and Anchorage, AK; however, these data are not arrayed by income level.

One commenter suggested that the COLA model be simplified to use only one income level. The commenter believes that this would reduce survey costs and the number of subjective assumptions required. The COLA model uses multiple income levels because this approach recognizes that the gap in living costs can vary by income level. Generally, a more accurate measure of relative living costs for Federal employees can be derived by having multiple income-based indices that are weighted based on the actual salary-level distribution of Federal employees in the allowance area. Nevertheless, to the extent the multiple income levels require additional subjective assumptions, it is possible that the overall integrity of the model would not be impaired by using a single income level. OPM will examine this issue in conjunction with the study of the COLA program required by Public Law 102–141.

A commenter from Hawaii stated that the living cost survey ignores whether Hawaii's significantly higher prices force Federal employees to substitute lower-quality goods, services, and housing facilities than are available to Washington, DC, area employees. Consistent with the *Arana* settlement, OPM has directed Runzheimer to price exact brands and models of goods whenever possible. Similarly, OPM and Runzheimer have striven to ensure that services surveyed are comparable. With respect to housing, Runzheimer used selected criteria, such as square footage, to ensure that similar housing was being compared.

Some commenter stated that income taxes should be included in the living cost model. Several persons from Puerto Rico stated that Puerto Rico has the highest income tax rates of any area in the United States and that this cost of living should be considered. Several commenters also believed that the taxation of COLA payments by local governments in the allowance areas should also be taken into account in setting the COLA rates.

On the other hand, one commenter objected to including income taxes in the model on the grounds that it would unduly complicate the model. (This same commenter did state that, if

income taxes were included in the model, OPM should increase the COLA rate in areas where it is taxed.) Another commenter objected to including income taxes on the grounds that it would be necessary to compare the level of government services "purchased" with the taxes.

OPM has begun a study of whether and how income taxes might be taken into account in the COLA model. Incorporating income taxes in the COLA model would require revisions in OPM's regulations. Therefore, interested parties will have an opportunity for comment when and if any rule change is proposed. This issue will be discussed in OPM's report to Congress.

Comments on the Goods and Services Component

Some commenters questioned whether representative types of stores were surveyed in the allowance areas. They believe place-of-purchase patterns in the allowance areas could vary significantly from patterns in the Washington, DC, area due to the accessibility of various types of stores. OPM's employee survey includes questions regarding the types of stores where employees purchase various consumer goods. After review of the employee survey results, OPM will consider changes to the outlets from which goods and services data are collected.

One commenter expressed concern about the use of catalog pricing in the COLA survey. The commenter questioned whether OPM assumed that allowance area employees are more likely to make catalog purchases than Washington, DC, area employees. The COLA model makes no assumption regarding whether employees in the allowance areas make fewer or more purchases through catalogs. Catalog purchases were included in the COLA survey because catalogs are a common source of retail goods used by many persons. The catalog prices used in the survey reflect differences in shipping costs. As mentioned above, the employee survey will collect information on source of purchases (including catalogs), and this information may lead to future changes in survey procedures.

Comments on the Housing Component

Some commenters stated that the weight assigned to the housing component was too low—that housing expenditures were a significantly higher portion of their overall budget than indicated by the weight. For example, commenters from Hawaii asserted that Federal employees living in Hawaii spend a much larger percentage of their total expenditures on housing than the nationwide average.

The housing weight is an average. There will always be individuals whose housing costs are below or above such an average. People who have recently purchased their homes generally will have a high percentage of their income consumed by mortgage payments. On the other hand, people who purchased a home some time ago using a fixed-rate mortgage will generally have a lower percentage of their income spent on housing. The fact that an individual's own expenditure pattern is different than the average does not mean that the average is not appropriate. A review of CES data for the Honolulu and Washington, DC, areas revealed that housing costs, as a percentage of total household expenditures, are very close in the two areas.

A few commenters stated that the residential areas surveyed did not properly reflect where Federal employees live. A commenter from Hawaii stated that Runzheimer had classified middle-income communities as high-income communities and had excluded areas based on a faulty assumption that housing in the areas was too expensive for Federal employees. The commenter stated that many Federal employees live in the Hawaii Kai area (Honolulu), in which, according to the commenter, the median price of a home is $465,000. The same commenter also suggested that the areas selected in Hawaii did not conform with typical commuting patterns—that they were farther from the major work sites than is typical.

In the judgment of OPM and Runzheimer staff, the residential areas selected provide reasonably representative data regarding the comparative cost of housing at low, middle, and high income levels. The employee survey was designed to collect information regarding place of residence, total household income, and commuting time and distance. OPM will review community selections after the results of the employee survey have been analyzed. Of course, any new procedures or criteria used to make changes in residential areas surveyed can affect housing costs in the Washington, DC, area, as well as in the allowance areas. Whether the housing index for an allowance area increases due to changes in residential areas surveyed will depend not just on the changes in housing costs in the allowance area, but also on changes in housing costs in the Washington, DC, area.

A number of commenters asserted that climate conditions (such as high humidity, high rainfall, sunlight intensity, airborne salt, snow, cold weather) resulted in higher home maintenance costs than in the Washington, DC, area. For example, commenters stated that roofs deteriorate more rapidly and/or that exterior surfaces require more frequent painting. They also suggested that more frequent insect proofing is required. These commenters objected to the fact that in developing home maintenance costs, Runzheimer considered only costs incurred on an annual basis. They believe the living cost model should take into account the fact that some home maintenance costs are incurred more frequently in the allowance areas than in the Washington, DC, area (although not annually)—e.g., roof replacement.

OPM does not have definitive data on the frequency of major home maintenance expenses. However, OPM is collecting data on the frequency of major home maintenance expenses through the employee survey. After analysis of the employee survey data is complete, OPM will consider changes in the COLA model assumptions.

One commenter objected to the assumption that most Alaskans perform their own snow removal. The same commenter was under the impression that the cost of snowblowers was excluded from the survey, which would be inconsistent with the assumption that Alaskans perform snow removal themselves. The employee survey included questions on whether employees pay for various snow removal services on a periodic basis. Model changes may be made if the employee survey shows they are warranted. With respect to the snowblower issue, snowblowers were, in fact, included in the 1992 Alaska COLA survey.

Comments on the Transportation Component

A number of commenters stated that poor roads, rough terrain, salt air, and/or harsh weather increased automobile maintenance costs in the allowance areas and caused cars to depreciate faster. Similar comments were made in response to the previous Runzheimer report.

The OPM COLA model takes into consideration both higher car maintenance costs and greater depreciation. For example, the model includes a presumption that tires tend to have a shorter tread life in all the allowance areas. Also, Runzheimer found that replacement of CV joint

boots, which is one of the items used to determine car maintenance costs in Alaska, was performed at a higher frequency in the Alaska allowance areas than in the Washington, DC, area. This additional cost was captured in automobile maintenance costs. As stated in the Runzheimer report, based on research of used car values, Runzheimer determined that cars in Nome, AK, and Fairbanks, AK, depreciated in value at a more rapid rate than in the Washington, DC, area; therefore, it made adjustments in the calculation of car depreciation expenses in these two areas.

The employee survey now under way was designed to collect data related to car maintenance requirements, including the physical condition and terrain of roads on which employees drive, tire tread life, and the frequency of various repairs. The survey also collects data regarding the number of miles driven per year by Federal employees. OPM will consider changes in the COLA model based on the results of the employee survey.

A number of commenters also stated that car fuel economy was less than in the mainland United States due to poor roads, climate, and/or topography. As explained in the December 10, 1992, **Federal Register** notice (pages 58572–58573), Runzheimer took into account the factors of climate, road surface quality, and topography (gradient) in calculating fuel costs. OPM notes that on page 58573 of the **Federal Register** notice, Runzheimer erroneously stated that, in all allowance areas, the road surface quality subfactors were .94 for locally controlled roads and .97 for federally controlled roads. These factors actually applied only in Alaska. The respective subfactors in the other allowance areas were .96 and 1.00. (The lower subfactors for Alaska reflect the effects of snowy conditions.) The error was confined to the narrative text, and the correct factors were used in the calculations.

Several commenters specifically objected to the assumption that federally controlled roads typically have four lanes. OPM believes it is reasonable to assume that, on average, federally controlled roads support roughly twice as much traffic as locally controlled roads, regardless of whether the federally controlled roads have two or four lanes. OPM notes, however, that using an alternative assumption that federally and locally controlled roads bear the same amount of traffic would not have made a difference in the COLA rates derived from the survey because the increase in fuel costs resulting from the alternative assumption ranged from only $7 to $30 per year.

A commenter from Alaska maintained that the living cost model should be revised to include the cost of four-wheel drive capability in deriving the cost of new cars purchased in Alaska. One of the three types of vehicles used in the COLA survey to estimate car costs was a four-wheel drive Chevrolet Blazer truck, which is available in both Alaska and in the Washington, DC, area.

Some commenters seem to have been confused about the composition of the Public Transportation category. For example, some commenters from Puerto Rico and the Virgin Islands stated that the lack of an effective public mass transportation system compelled them to purchase cars or to use taxi services. Many of the commenters from St. Croix stated that there is no public transportation system on the island, just taxi vans and taxis.

As explained in the report, municipal mass transportation is no longer included in the survey. Air transportation is surveyed instead—i.e., the cost of a around-trip ticket from the allowance area or the Washington, DC, area to Los Angeles, CA. The confusion appears to be caused by the use of the term "Public Transportation" as the category title. This is consistent with the CES name for the category, but the category is not limited to municipal mass transportation. It includes air, boat, taxi, bus, subway, and other forms of commercial and municipal transportation. In future reports, OPM will use less confusing terminology and/or more clearly describe the composition of the Public Transportation category.

Several commenters objected to the selection of Los Angeles as the common destination point in comparing air travel costs. They stated that Los Angeles was the most competitive airline market in the United States, resulting in lower fares relative to other destinations. Many commenters suggested using other destinations, such as St. Louis, MO, or Chicago, IL.

As stated in the report, Los Angeles was selected because it is a common point within the continental United States that is roughly equidistant from each of the allowance areas and the Washington, DC area. St. Louis and Chicago, though popular destinations for air travelers, do not meet the equidistant criterion. The fact that the route may be highly competitive does not invalidate cost comparisons because OPM is measuring the relative cost of air travel. If competition reduces fares because of the volume of travel to Los Angeles, the reductions will be reflected in the Washington, DC, to Los Angeles fares as well as the allowance area to Los Angeles fares. Therefore, OPM believes the comparisons are appropriate.

Some commenters stated that including air transportation costs of a single recreational trip was not a true measure of the air transportation costs that allowance area employees incur. The OPM employee survey includes a number of questions regarding travel outside the area in which the employee lives for extended vacations or family visits, trips to and from a college or university, shopping, and medial treatment. OPM will consider revisions in the COLA model based on the survey data.

Comments on the Miscellaneous Component

One commenter objected to the COLA model assumption that certain expense items in the miscellaneous component (i.e., contributions, pensions, and other retirement vehicles) are equal in the allowance areas and in the Washington, DC, area. The commenter proposed that these items instead be adjusted using the index for the consumer goods and services component. OPM believes it is reasonable to assign equal cost value to the contributions category (including gifts to non-family members), since the size of such contributions is a matter of personal choice and since the best measure of the "cost" of a contribution is dollar value. Furthermore, OPM believes that it is reasonable to assign equal cost value to the category of pensions and other retirement income vehicles, since Federal employees in the allowance areas have the same basic retirement plans as those in the Washington, DC, area.

A number of commenters stated that certain medical services were not available in their area and that they had to fly to other areas to obtain those services. According to commenters in St. Croix, the local hospital is housed in a modular unit (since the former hospital building was destroyed by Hurricane Hugo in 1989) and is not accredited, forcing many Federal employees to fly to San Juan, Puerto Rico, or to the U.S. mainland (e.g., Miami, FL) for hospital services. Federal employees in St. Croix noted the cost of air travel for medical treatment. They also noted the cost of air ambulance service (or insurance to cover such service).

At OPM's request, Runzheimer conducted a preliminary study regarding the availability and cost of medical procedures in the allowance areas. In addition, OPM's employee

survey included questions regrading where Federal employees obtain medical services. OPM will analyze the Runzheimer study and the employee survey results as part of the study of the COLA program required by Public 102–141. OPM also will explore whether the COLA model should be modified for future surveys to include the costs of air ambulance insurance in areas such as St. Croix.

A number of commenters from the allowance areas stated that OPM should have considered the cost of private education in grades K through 12. They maintained that public schools in their areas were of poor quality, thus causing a high percentage of Federal employees to send their children to private schools. For example, a number of commenters from St. Croix stated that the public schools are not accredited. OPM and Runzheimer are studying whether and how private K through 12 education costs should be included in the COLA model. The employee survey now underway is collecting information about the number of children enrolled in private schools.

Some commenters wanted OPM to take into account the cost of sending children to out-of-area colleges and universities. They noted the cost of travel to and from the college, the cost of housing, and the need to pay tuition at the non-State resident rate. At OPM's request, Runzheimer conducted a preliminary study regarding the availability and cost of college and university educational opportunities for members of Federal employees' families in the allowance area. In addition, OPM's employee survey includes questions regarding where members of Federal employees' families obtain higher education. OPM will analyze the Runzheimer study and the employee survey results as part of the study of the COLA program required by Public 102–141.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, OPM is amending 5 CFR part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10,000, 3 CFR, 1943–1948 Comp., p. 792; E.O. 12510, 3 CFR 1985 Comp., p. 338.

2. Appendix A of subpart B of part 591 is revised to read as follows:

Appendix A of Subpart B—Places and Rates at Which Allowances Shall Be Paid

This appendix lists the places where a cost-of-living allowance has been approved and shows the allowance rate to be paid to employees along with any special eligibility requirements for the allowance payment. The allowance percentage rate shown is paid as a percentage of an employee's rate of basic pay.

Geographic coverage/allowance category	Authorized allowance rate (percent)
State of Alaska:	
City of Anchorage and 50 mile radius by road:	
Local Retail	25.0
Commissary/Exchange	17.5
City of Fairbanks and 50 mile radius by road:	
Local Retail	25.0
Commissary/Exchange	20.0
City of Juneau and 50 mile radius by road:	
Local Retail	25.0
Commissary/Exchange	25.0
Rest of the State:	
All Employees	25.0
State of Hawaii:	
City and County of Honolulu:	
Local Retail	22.5
Commissary/Exchange	15.0
County of Hawaii:	
All Employees	15.0
County of Kauai:	
Local Retail	17.5
Commissary/Exchange	17.5
County of Maui and County of Kalawao:	
All Employees	22.5
Territory of Guam and Commonwealth of the Northern Mariana Islands:	
All Locations:	
Local Retail	15.0
Commissary/Exchange	7.5
Commonwealth of Puerto Rico:	
All Locations:	
Local Retail	10.0
Commissary/Exchange	0.0
The Virgin Islands:	
St. Croix:	
All Employees	12.5
St. Thomas and St. John:	
All Employees	15.0

Definitions of Allowance Categories

The following definitions of the allowance categories identified in the tables in this appendix shall be used to determine employee eligibility for the appropriate allowance rate:

Allowance category	Definition
Local Retail	This category includes those employees who purchase goods and services from private retail establishments.
Commissary/Exchange.	This category includes those employees who shop at private retail establishments, but who, as a result of their Federal civilian employment, also have unlimited access to commissary and exchange facilities. This category is established only in those allowance areas that have these facilities.

Note: Eligibility for access to military commissary and exchange facilities is determined by the appropriate military department. If an employee is furnished with these privileges for reasons associated with his or her Federal civilian employment, he or she will have an identification card that authorizes access to such facilities. Possession of such an identification card—i.e., one issued by reason of his or her Federal civilian employment—is sufficient evidence that the employee uses the facilities.

[FR Doc. 93–14363 Filed 6–17–93; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

General Crop Insurance Regulations; Rice Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This rule provides for an option for those policyholders who aerially seed rice if such seed rice is not presoaked. The aerial seeding of rice

which is not presoaked will be insurable only by written agreement between the insured and the Federal Crop Insurance Corporation (FCIC).

DATES: Effective Date: March 31, 1993.

Comments: Comments must be received by August 17, 1993.

ADDRESSES: Comments should be sent to Mari L. Dunleavy, Acting Director, Regulatory and Procedural Development, Federal Crop Insurance Corporation, 14th & Independence Avenue SW., Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Acting Director, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the regulations affected by this rule under those procedures. Such a review is in process and a determination under those provisions will be shortly forthcoming. The present sunset review date established for these regulations is August 29, 1998.

Kathleen Connelly, Acting Manager, FCIC has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, state, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Kathleen Connelly also certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on a substantial number of small entities, or on the farmers served by this totally voluntary crop insurance program because this action does not require significant actions on their part. This action imposes no additional burden on the insured farmer, does not require participation in the program, or increase what is currently paid to gain insurance protection. Further, this action requires of the reinsured company or sales and service contractor what is considered normal and customary in the ordinary conduct of business. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Acting Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in section 2(a), and 2(b)(2) of Executive Order 12778.

This regulation revises a provision of the rice crop insurance policy issued under the Federal crop insurance program. The provisions of these policies clearly pre-empt all conflicting provisions of state law or regulation. The rule is effective retroactively to March 31, 1993, the sales closing date for the rice policy in most counties for the 1993 crop year. No party with standing is required to undertake an administrative proceeding before suit on the publication of the provision. However, administrative procedures are required before a policyholder may collect an indemnity under this provision.

Background

The Environmental Protection Agency (EPA) has determined that under certain circumstances, presoaking of rice seed which has been treated with a surface sterilant may be contrary to environmental protection rules. Further, the Extension Service has determined that the presoaking of rice seed is not the exclusively acceptable good farming practice for aerial seeding. Failure to allow for exception to the restriction requiring that all aerial seeded rice be presoaked would prohibit a large number of producers using acceptable methods of crop production from obtaining crop insurance on their rice crop. Therefore, good cause is found for publication of the rule without notice and comment pursuant to 5 U.S.C. 553. Comments on the interim rule will be for 60 days after publication in the Federal Register and will be taken into consideration when determining whether to make the rule final.

List of Subjects in 7 CFR Part 401

Crop insurance, Rice.

Accordingly, for the reasons set forth in the supplementary information, FCIC amends 7 CFR part 410 as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. § 401.120 is amended by revising paragraphs (a) and (b) of section 10 of the Rice Crop Insurance Endorsement, to read as follows:

§ 401.120 Rice endorsement.

* * * * *

10. Meaning of Terms:

(a) *Aerial seeding*—distribution of presoaked (unless agreed to by us in writing) rice seed onto a prepared seedbed covered by water under controlled flooding conditions by use of an airplane specifically modified for this purpose. The modification must ensure a sufficient distribution of the rice seed in the seed bed to assure a normal crop.

* * * * *

(f) *Planted*—the proper placement of the seed in a prepared seedbed by use of a drill, broadcasting, or by aerial seeding. Drill seeding and broadcast seeding other than aerial seeding, require mechanical incorporation of seed into the soil at the proper depth. Aerial seeding of presoaked seed onto the seedbed will be considered planted if a controlled flood of the seedbed exists at the time of planting and a uniform distribution of seed exists after removal of flood water. Planting in any other manner will be considered as a failure to follow recognized good farming practices for rice and any loss of production resulting will not be insured under the policy unless we agree, in writing, to allow another method of aerial seeding.

* * * * *

Issued in Washington, DC on April 2, 1993.

Kathleen Connelly,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 93–14402 Filed 6–17–93; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Parts 401, 406, 415, and 422

General Crop Insurance Regulations; Various Crop Endorsements

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the General Crop Insurance Regulations for the 1994 crop year only by extending the dates by which contract changes must be on file in the service office for forage production, barley, nursery, oats, potatoes, rye, sugarcane, and wheat crops. Since FCIC's appropriation has not been finalized, FCIC believes that delay of the contract change date will substantially lessen confusion.

DATES: Effective Date: May 31, 1993.

Comments: Comments must be received by August 17, 1993.

ADDRESSES: Mari L. Dunleavy, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the regulations affected by this rule under those procedures. The sunset review date established for these regulations is October 1, 1997.

Kathleen Connelly, Acting Manager, FCIC, has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, state, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Kathleen Connelly also certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on a substantial number of small entities, or on the individual served by the crop insurance program because this action does not require significant actions on their part. Since final appropriation language may require substantial program modification, this amendment will not cause an additional burden on participants and may substantially reduce any burden caused by changes in the program. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this interim rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This action is necessary to allow FCIC sufficient time to review and revise the crop insurance program regulations and to provide actuarially sound data in order to administer the program within the budget and appropriations prices for the 1994 Fiscal Year.

FCIC policies required that all crop insurance contract changes be available for inspection at service offices by a date specified in each applicable crop endorsement. FCIC's 1994 budget proposal may require further review and revision in the crop insurance program. The current contract change dates do not allow sufficient time to make necessary program revisions. Extending the date by which contract changes will be available in the policyholders' service offices to August 15, 1993, will allow FCIC adequate time to make any necessary program revisions. Extending the contract change date will still give current policyholders sufficient time to review changes in the crop insurance program and to determine the viability of insuring their fall crops for the 1994 crop year.

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action does have a retroactive effect for the 1994 Fall planted crops.

Therefore, each holder of an FCIC barley, wheat, forage production, oats, rye, nursery, sugarcane, or potatoes crop insurance policy will receive actual notice of the change. This interim rule will not preempt any state or local law, regulations, or policies, unless they are in conflict with this rule. Litigation involving claim for indemnities affected by this rule require that the administrative appeal process at 7 CFR part 400, subpart J be exhausted.

This rule does not adversely affect insureds although it will shorten the time for the insureds to make risk management decisions. A vast majority of decisions for the coming crop insurance year are made in the 30 days immediately preceding the sales closing date. The earliest sales closing date for these crops is September 30 which will still allow a minimum of 45 days in which to make a decision. The interim rule will also shorten the time for insurance companies to train personnel. However, we believe the disruption in the normal sales training will be minimal compared to what would be required if FCIC was required to cancel all policies and begin each program from the initial application after policy terms have been set. Notice and public comment procedures on the rule are impractical, unnecessary, and contrary to the public interest and good cause is shown for making this interim rule effective upon publication. FCIC is soliciting comments on this rule for 60 days after publication in the **Federal Register**. Comments received will be considered before this interim rule is made final.

List of Subjects in 7 CFR Parts 401, 406, 415, and 422

Barley, Crop insurance, Forage production, Nursery, Oats, Potatoes, Rye, Sugarcane, and Wheat.

Interim Rule

Accordingly, for the reasons set forth in the supplementary information, FCIC amends the Wheat, Barley, Oats, Rye, Sugarcane, Nursery, Forage Production, and Potatoes Crop Insurance Regulations (7 CFR parts 401, 406, 415, and 422), effective for the 1994 crop year only, in the following instances:

1. The authority citation for 7 CFR parts 401, 406, 415, and 422 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

§§ 401.101, 401.103, 401.105, 401.106, 401.133, 406.7, and 422.7 [Amended]

2. Sections 401.101, 401.103, 401.105, 401.106, 401.133, 406.7, and 422.7 are amended by removing the date "June 30" and adding, in its place, the date "August 15" in the following sections:

(a) Section 401.101 9. Contract Changes;

(b) Section 401.103 9. Contract Changes;

(c) Section 401.105 9. Contract Changes;
(d) Section 401.106 9. Contract Changes;
(e) Section 401.133 9. Contract Changes;
(f) Section 406.7 16. Contract Changes; and
(g) Section 422.7 16. Contract Changes.

§ 415.7 [Amended]

2. Section 415.7 is amended by removing the date "May 31" and adding, in its place, the date "August 15" in paragraph 16. Contract Changes.

Done in Washington, DC., on June 14, 1993.

Kathleen Connelly,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 93-14435 Filed 6-17-93; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 776, 785, 786, and 799

[Docket No. 930477-3077]

Conversion to the Metric System

June 14, 1993.

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) to convert units of weight and measure to the metric system. This complies with the 1988 Omnibus Trade and Competitiveness Act (OTCA), which amended the Metric Conversion Act of 1975. The OTCA designates the metric system of measurement as the preferred system of weights and measures for U.S. trade and commerce and requires each Federal agency, to the extent economically feasible, to use the metric system by the end of fiscal year 1992. This rule also reflects current international trade, which is conducted almost exclusively in the metric system. Although the new metric figures have been rounded for ease in application, the rounding has not altered the scope of control for the affected items.

This final rule converts data found in two entries on the Commerce Control List (ECCNs 9A92 and 9A93) as well as data found in other portions of the EAR to conform with the CCL. Almost all other measurements used in the EAR have already been converted to the metric system, except where other units are in general usage or specified by law.

EFFECTIVE DATE: This rule is effective June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy Crowe, Office of Technology and Policy Analysis, Bureau of Export Administration, P.O. Box 273, Washington, DC 20044, Telephone: (202) 482-4819.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule does not affect the burden hours associated with any collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 603(b)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Nancy Crowe, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Parts 776, 786, and 799

Exports, Reporting and recordkeeping requirements.

15 CFR Part 785

Exports.

Accordingly, parts 776, 785, 786, and 799 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

1. The authority citation for 15 CFR part 776 continues to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103-10, 107 Stat. 40); sec. 125, Pub. L. 99-64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

2. The authority citation for 15 CFR part 785 continues to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103-10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

3. The authority citation for 15 CFR parts 786 and 799 continues to read as follows:

Authority: Pub. L. 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93-153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94-163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94-258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95-372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103-10, 107 Stat. 40); sec. 125, Pub. L. 99-64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2,

1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

PART 776—[AMENDED]

4. Section 776.9 is amended by revising the phrase "40 feet in length" to read "12 m (40 ft) in length" in the introductory text of paragraph (b)(1)(iii) (two references), and in the introductory text of paragraph (b)(3)(iii) (two references).

PART 785—[AMENDED]

5. Section 785.4 is amended:

a. By revising the phrase "10,000 lbs. empty weight" in paragraph (d)(1)(vi) to read "4.5 t (10,000 lbs) empty weight" (two references);

b. By revising the phrase "10 tons" in paragraph (d)(1)(viii) to read "9 t (10 tons)"; and

c. By revising the parenthetical phrase "(greater than 400 horsepower)" in paragraph (d)(1)(ix) to read "(greater than 298 kW (400 horsepower))".

6. Section 785.7 is amended by revising the phrase "10 tons" in paragraph (c) to read "9 t (10 tons)".

PART 786—[AMENDED]

7. Section 786.7 is amended:

a. By revising the phrase "'lbs.', 'sq. ft.'" in the introductory text of paragraph (c)(1) to read "'kilograms', 'square meters'";

b. By revising the phrase "100,000 pounds" in the introductory text of paragraph (e)(1) to read "100,000 kg";

c. By revising the phrase "110,000 pounds" in paragraph (e)(1)(i) to read "110,000 kg"; and

d. By revising paragraphs (e)(1)(ii) and (e)(1)(iii) to read as follows:

§ 786.7 Shipping tolerance.

* * * * *

(e) * * *

(1) * * *

(ii) If the first shipment is for 40,000 kg, the second shipment may not exceed 66,000 kg (10% of the unshipped balance of 60,000 kg (6,000 kg) plus the unshipped balance), and the total cost of the second shipment shall not exceed $850,000—

$600,000	(the value of the unshipped balance of 60,000 kg)
+250,000	(25% of the original total value shown on the license)
=$850,000	

(iii) If the first shipment is for 40,000 kg and the second shipment is for 20,000 kg, the third shipment may not exceed 44,000 kg (10% of the unshipped balance of 40,000 kg (4,000 kg) plus the unshipped balance), and the total cost of the third shipment shall not exceed $650,000—

$400,000	(the value of the unshipped balance of 40,000 kg)
+250,000	(25% of the original total value on the license)
=$650,000	

* * * * *

PART 799—[AMENDED]

8. Section 799.1 is amended by adding a new paragraph (h) to read as follows:

§ 799.1 The commerce control list and how to use it.

* * * * *

(h) *Units of measure.* Most measurements used on the Commerce Control List are expressed in metric units, frequently followed by an approximate inch-pound measurement in parentheses, except where other units are in general usage or specified by law. Whenever there is difference between the metric and inch-pound figures, the metric standard will be used for classification or export licensing purposes.

9. Supplement No. 1 to § 799.1, Category 9, is amended by revising the headings to ECCNs 9A92F and 9A93F to read as follows:

9A92F Off highway wheel tractors of carriage capacity 9 t (10 tons) or more; and parts and accessories, n.e.s.

* * * * *

9A93F On-Highway tractors; with single or tandem rear axles rated for 9 t (20,000 lbs.) or greater and specially designed parts.

* * * * *

Dated: June 14, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93–14463 Filed 6–17–93; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 6a, 602

[T.D. 8476]

RIN 1545–AR05; 1545–AP09

Arbitrage Restrictions on Tax-Exempt Bonds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on the arbitrage and related restrictions applicable to tax-exempt bonds issued by State and local governments. Changes to the applicable law were made by the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Revenue Reconciliation Act of 1989, and the Revenue Reconciliation Act of 1990. These regulations affect issuers of tax-exempt bonds and provide guidance for complying with the arbitrage and related restrictions.

DATES: These regulations are effective on July 1, 1993.

For dates of applicability of these regulations to various bond issues, including certain elective retroactivity provisions and transition rules, see § 1.148–11 of these regulations.

FOR FURTHER INFORMATION CONTACT: Scott R. Lilienthal or William P. Cejudo at 202–622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545–1347.

The estimated annual burden per recordkeeper varies from 12 hours to 15 hours, depending on individual circumstances, with an estimated average of 13.5 hours.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require more or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed

to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

Explanation of Provisions

I. Background of Regulations

Section 148 provides rules restricting the use of proceeds of tax-exempt State and local bonds to acquire higher yielding investments. Section 148(a) provides generally that interest on a State or local bond is tax-exempt only if the issuer invests bond proceeds at a yield that is not materially higher than the yield on the bond issue. Section 148(f) provides that interest on a State or local bond is tax-exempt only if the issuer rebates to the Federal government certain arbitrage earnings derived from investing gross proceeds at a yield exceeding the yield on the bond issue.

Longstanding regulations relating to the arbitrage yield restriction rules are in §§ 1.103–13 through 1.103–15. On May 18, 1992, final regulations under section 148 were published at §§ 1.148–0 through 1.148–11 (the May 1992 regulations). At that time, the Internal Revenue Service and the Treasury Department announced that they would further simplify and clarify the regulations under section 148 by revising the arbitrage regulations and finalizing these rewritten regulations by June 1993. To evidence this commitment, the May 1992 regulations expire on June 30, 1993.

Proposed regulations were published at §§ 1.148–0 through 1.148–11, 1.149(d)–1, 1.149(g)–1, 1.150–1, and 1.150–2 in the **Federal Register** for November 6, 1992. The proposed regulations would replace the existing yield restriction and rebate regulations currently provided in §§ 1.103–13 through 1.103–15, § 1.103–13T, §§ 1.148–0 through 1.148–11, § 1.148–12T, and § 1.148–13T with coordinated, simplified regulations. The proposed regulations also propose to amend certain related regulations on advance refunding limitations in § 1.149–1(d), definitions in § 1.150–1, and reimbursement bonds in § 1.103–18. Written comments were received on the proposed regulations, and additional public comments were received at a public hearing held on February 2, 1993.

In addition, on October 10, 1990, proposed and temporary regulations under § 1.149(b)(3)–1T were published in the **Federal Register**. These regulations provide that certain investments in obligations issued by the Resolution Funding Corporation under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 are excepted from the prohibition on federal guarantees of tax-exempt bonds under section 149(b).

After consideration of the comments, the proposed regulations have been modified and are adopted in final form. Certain comments on the proposed regulations, and responses to those comments, are discussed below.

II. Comments on Proposed Regulations and Certain Changes in Final Regulations

A. *In general.* The proposed regulations substantially revise the arbitrage regulations on tax-exempt bonds to simplify those rules and to reduce administrative burdens. The proposed regulations provide greater coordination of the rules on yield restriction and rebate, more unified definitions, general anti-abuse rules in lieu of numerous special rules, clarification of ambiguous areas, and new guidance on many previously reserved topics. Although numerous modifications have been made to clarify the regulations in various technical respects in response to comments received, the general principles behind the proposed regulations have been retained in the final regulations.

B. *Section 1.148–1 Definitions and Elections.* 1. Computation Date and Computation Period. Rebate is computed over permitted computation periods occurring between computation dates. The proposed regulations generally provide issuers of variable yield issues with flexibility to choose computation dates and computation periods for computing yield on an issue for rebate purposes. Commentators requested clarification of the scope of this flexibility. The final regulations retain significant flexibility to choose these dates and periods until the date that the first required rebate payment must be made (i.e., 5 years after the issue date), but provide a more limited choice of permitted computation periods thereafter.

2. De Minimis Original Issue Discount or Premium. The proposed regulations generally permit issuers to value certain bonds and investments having standard features and not more than de minimis amounts of original issue discount or premium ("plain par bonds" and "plain par investments"), based on a simplified measure of outstanding principal amount. The definition of de minimis amount applies for a variety of purposes. De minimis original issue discount or premium is generally defined in the proposed regulations as an amount that does not exceed 0.25 percent multiplied by the product of the stated redemption price at maturity and the number of complete years to final maturity from the issue date.

To decrease complexity and to minimize certain identified distortions, the final regulations limit the measure of this de minimis amount for valuation purposes to a flat percentage of the stated redemption price at maturity. In a related change, the final regulations clarify that plain par bonds eligible for the simplified valuation rules include certain tender option bonds (i.e., "qualified tender bonds" under Notice 88–130, 1988–2 C.B. 543).

3. Program Investments. The proposed regulations change certain aspects of the existing definition of "program investments" under § 1.103–13(h). Commentators recommended that the existing definition generally be retained, particularly its treatment of multifamily housing loans as eligible program investments. The final regulations revise this definition to be more consistent with the existing definition.

4. Investment-Type Property. Whether an item financed with bond proceeds is investment property, including investment-type property, generally determines whether that item is subject to arbitrage restrictions under section 148. The proposed regulations provide a definition of investment-type property that includes certain prepayments based on the investment motivation for the prepayment. Commentators expressed concern that this provision was too broad and potentially covered common prepayments made for bona fide business reasons. The final regulations provide two exceptions to the general rule on prepayments. One exception focuses on whether the issuer has any commercially reasonable alternative to the prepayment. The other exception focuses on whether similar prepayments are customary among persons not eligible for tax-exempt financing.

5. Replacement Proceeds. The arbitrage restrictions apply to both proceeds received from the sale of bonds and amounts "replaced" by the proceeds. The proposed regulations generally provide that replacement proceeds include, but are not limited to, sinking funds, amounts that are pledged as security for an issue, working capital replacement funds, and amounts that are replaced because of their nexus to a governmental purpose of the issue. Commentators requested that the regulations provide a general definition of replacement proceeds. The final

regulations provide a general definition of replacement proceeds based on whether the amounts have a sufficient nexus to the governmental purpose of the issue. The final regulations also clarify that replacement proceeds may arise at any time, regardless of whether the creation of the replacement proceeds is reasonably expected by the issuer on the issue date.

Commentators also requested that the provision dealing with working capital replacement funds be revised or deleted. The final regulations do not include the working capital replacement fund rule. To reduce the arbitrage incentive to issue bonds with longer terms than necessary and to recognize the additional borrowing implicit in these issues, however, the final regulations generally provide that replacement proceeds arise if the term of an issue is reasonably expected to be longer than necessary to accomplish the governmental purpose of the issue and funds are expected to become available during the term of the issue. The final regulations provide two safe harbors against the application of this rule that apply if: (1) An otherwise-restricted working capital financing issue is not outstanding more than 2 years; or (2) a capital project financing issue has a weighted average maturity that does not exceed 120 percent of the economic life of the financed projects. These provisions are only safe harbors relating to the existence of replacement proceeds and are not intended to place a maturity limitation on tax-exempt bonds.

C. *Section 1.148–2 General Arbitrage Yield Restriction Rules.* 1. Reasonable Expectations. Under section 148(a), bonds are generally taxable arbitrage bonds if, as of the issue date, the issuer reasonably expects to invest the proceeds in higher yielding investments. The proposed regulations permit an issuer to certify its expectations. The proposed regulations also provide certain requirements as a prerequisite to the use of the certification that were intended to encourage more complete disclosure of facts and material tax issues. Commentators expressed concern that some of these requirements were unduly burdensome and created practical difficulties for issuers.

The final regulations significantly modify the certification requirements to address issuer concerns. The required complete disclosure of facts and material tax issues has been eliminated. The regulations clarify that the certification does not establish any presumptions about the reasonableness of an issuer's expectations. In general, this and other certifications referred to in the final regulations have no special evidentiary status.

2. Temporary Periods. Under section 148(c), proceeds may be invested at a materially higher yield during a reasonable temporary period until needed for the governmental purpose of the issue without causing the bonds of the issue to be arbitrage bonds.

Under the proposed regulations, an issuer must satisfy an expenditure test, a time test, and a due diligence test in order to qualify for the general 3-year temporary period for capital projects, and these tests apply separately to each capital project financed by an issue. Commentators expressed concern about the administrative burden associated with tracking individual capital projects and requested that these tests be applied on an aggregate basis to all capital projects financed by an issue. The final regulations generally adopt this comment, except in the case of certain pooled issues.

Commentators expressed concern that the 13-month temporary period for proceeds used for working capital expenditures was inadequate for certain issuers who, under local law, have a longer period between their annual budget cycle and the tax collections for that period. The final regulations provide a temporary period of up to 2 years after the issue date for this type of issue.

3. Minor Portion. In response to comments, the final regulations permit issuers to waive at any time the ability to invest amounts constituting a minor portion of an issue at an unrestricted yield.

D. *Section 1.148–3 General Arbitrage Rebate Rules.* 1. Computation Date Credit. The proposed regulations provide that, for purposes of computing rebate, an issuer is entitled to a computation date credit of $5,000 on the last day of each fifth bond year and on the final maturity date. In order to target the credit more closely to the periods associated with the computations, the final regulations change the credit to $1,000 for each bond year during which there are gross proceeds of the issue and for the final maturity date.

2. Bona Fide Debt Service Funds. In response to comments, the final regulations add a safe harbor relating to the statutory exception to the rebate requirement for certain bona fide debt service funds, based on a specified maximum average annual debt service on an issue.

E. *Section 1.148–4 Yield on an Issue of Bonds.* 1. Yield Recomputation for a Fixed Yield Issue. The proposed regulations generally provide that yield on a fixed yield issue is determined as of the issue date and, except in narrow circumstances involving hedging transactions, is not recomputed to take into account subsequent unexpected events. The final regulations generally retain this approach for rebate purposes.

Many commentators requested guidance on the Federal income tax consequences of an issuer's sale of a right associated with a bond, such as a call right, in a separate transaction from the original sale of the bond (e.g., so-called "detachable calls"). These comments included requests for guidance on whether the sale affects the yield on the bond for arbitrage purposes under section 148 and whether the sale results in a deemed retirement of the related bond and the deemed issuance of a new bond (a reissuance) under the tax-exempt bond rules or section 1001. The final regulations clarify that amounts received by the issuer from the sale of a detachable call are taken into account as additional issue price on the issue for rebate purposes. No implication is intended on whether the sale of a detachable call results in a reissuance of the issue under section 1001. It is anticipated that this issue will be addressed in regulations under section 1001.

2. Bonds Subject to Mandatory or Contingent Early Redemption. Under the proposed regulations, the yield on certain fixed yield bonds subject to mandatory early redemption is computed by treating those bonds as redeemed on the reasonably expected early redemption date for an amount equal to their value. The proposed regulations further provide that the outstanding stated principal amount (plus accrued interest) of the bond may be treated as its value if the original issue discount on the bond does not exceed a de minimis amount. The final regulations generally retain this rule, but further limit the permitted de minimis amount to an amount based on the number of years to the weighted average maturity date, rather than the final maturity date, of substantially identical bonds.

3. Bonds Subject to Optional Early Redemption. The proposed regulations contain a special rule for computing the yield on an issue containing bonds that are subject to optional early redemption and that have certain early redemption rights, significant premium, or so-called "stepped-coupons." The yield on an issue subject to this special rule is computed by treating the bonds as redeemed on the optional redemption date that would produce the lowest yield. The final regulations generally retain this rule, but exclude certain bonds if their assumed redemption has

only a minimal effect on the yield on the issue of which the bond is a part.

4. Qualified Guarantees. The proposed regulations provide simplified rules under which issuers may take into account certain fees for credit enhancement, such as bond insurance and letters of credit ("qualified guarantees") in computing yield on an issue. The final regulations clarify that certain liquidity arrangements may be qualified guarantees and provide a safe harbor for the allocation of qualified guarantee fees in variable yield issues.

5. Qualified Hedging Transactions. The proposed regulations permit issuers to take certain qualified hedging transactions into account for purposes of computing yield on an issue. Under the proposed regulations, a hedge is generally a qualified hedging transaction if the terms of the hedge closely correspond with the terms of the issue and if the hedge is adequately identified. Commentators requested that the types of qualified hedging transactions be expanded.

The final regulations generally expand the definition of a qualified hedging transaction in various respects. The final regulations permit hedges for less than the entire term of the issue and hedges relating to less than all of the bonds of an issue. The final regulations also treat certain additional hedging products (e.g., interest rate caps) as qualified hedging transactions. The final regulations generally treat issues that involve qualified hedging transactions as variable yield issues. Certain variable rate issues that use interest rate swaps involving no nonperiodic hedge payments, however, are treated as fixed yield issues. The final regulations amend the identification, accounting, and other technical rules on qualified hedging transactions.

F. Section 1.148–5 Yield and Valuation of Investments. 1. Yield on a Separate Class of Investments. The proposed regulations provide that the yields on individual investments within the same class of investments are blended together for purposes of applying the arbitrage yield restriction rules. Under the proposed regulations, the determination of whether investments are part of the same class is based on whether the investments are subject to the same definition of "materially higher" under the arbitrage yield restriction rules.

Commentators requested that issuers be given greater flexibility to blend the yields on individual investments for arbitrage yield restriction purposes. The final regulations provide expanded flexibility to blend yields on various categories of investments. The general anti-abuse rules in §1.148–10 clarify, however, that certain financing structures that improperly exploit these rules cause the bonds to be arbitrage bonds.

2. Yield Reduction Payments to the United States. The proposed regulations provide significant integration of the arbitrage yield restriction and rebate provisions by permitting certain payments to be made to the United States to reduce the yield on investments for yield restriction purposes. The proposed regulations permit these payments in specified circumstances in which arbitrage yield restriction creates administrative difficulties.

Commentators requested that the scope of the rule on yield reduction payments be expanded in various respects. The final regulations expand the ability of issuers to make yield reduction payments in additional circumstances involving certain variable yield issues and certain reserve funds. For purpose investments, the final regulations also delay the due date for these payments.

3. Administrative Costs of Investments. The proposed regulations permit reasonable direct administrative costs on all investments to be taken into account in computing yield on the investments and rebate on the issue. The proposed regulations further provide, however, that indirect costs such as general overhead may not be taken into account. Commentators requested clarification of the scope of permitted administrative costs. The final regulations provide additional examples of the types of qualifying and nonqualifying administrative costs. The final regulations also provide special rules for administrative costs on regulated investment companies, certain external commingled funds, and program investments.

G. Section 1.148–6 General Allocation and Accounting Rules. 1. Universal Cap on Value of Investments Allocated to an Issue. The proposed regulations generally retain the universal cap provided under the existing regulations that limits the amount of gross proceeds allocable to a bond issue. Commentators expressed concern that in some cases the application of the universal cap creates unnecessary administrative burdens. The final regulations reduce the frequency with which the universal cap must be applied and also permit issuers to disregard the universal cap altogether in specified circumstances.

2. Expenditures of Proceeds for Working Capital Purposes. For working capital expenditures, the proposed regulations generally retain the "proceeds-spent-last" accounting method from the existing regulations. Bond proceeds generally are not treated as spent under this rule until other available amounts have been spent. The proposed regulations permit an amount equal to 10 percent of the previous fiscal year's working capital expenditures to be treated as an unavailable, reasonable reserve. Commentators requested certain clarifications, including whether an issuer may, in effect, finance the permitted working capital reserve (e.g., by issuing bonds in an amount equal to the working capital reserve and spending those proceeds while accumulating a like amount to serve as the reserve).

Based on a review of these comments and re-consideration of this area in light of continuing policy concerns regarding the arbitrage incentives to issue larger working capital financings than necessary, the final regulations impose certain further limitations on working capital financings. The final regulations retain the approach of the existing and proposed regulations that measures the permitted working capital reserve by reference to the previous year's actual working capital expenditures. To further limit overissuance, the permitted working capital reserve has been reduced to 5 percent of the issuer's working capital expenditures for the prior year. In addition, the final regulations clarify that, except in the case of issues by certain small issuers and issues that are exempt from rebate under the section 148(f)(4)(B)(iii) rebate safe harbor, an issue indirectly used to finance a working capital reserve results in the creation of replacement proceeds that remain subject to the arbitrage rules. In a related change, the definition of "controlled group," which is relevant in determining the available amounts, has been narrowed. In addition, in response to comments, the final regulations also exclude from the amounts considered available for working capital purposes certain "quasi-endowment funds" held by hospitals, universities, or similar institutions.

H. Section 1.148–7 Spending Exceptions to the Rebate Requirement. The proposed regulations provide a new 18-month spending exception to the rebate requirement that is broadly applicable and requires prompt expenditure of bond proceeds under a prescribed, approximately level spending schedule. This new spending exception was introduced because of the difficulties many issuers had using the existing spending exceptions. Commentators were largely supportive of the new 18-month exception, but

requested that the spending percentage for the first 6-month period be reduced. The final regulations reduce the spending percentage for this period to 15 percent.

I. *Section 1.148–8 Small Issuer Exception to the Rebate Requirement.* For purposes of the small issuer exception to rebate, bonds issued by a subordinate entity are treated as also issued by each entity to which it is subordinate. The proposed regulations provide a definition of "subordinate entity" based on issuing authority and control. Commentators requested that the general section 150 definition of "controlled entity" be extended to define a "subordinate entity." The final regulations adopt this comment.

J. *Section 1.148–9 Arbitrage Rules for Refunding Issues.* 1. Transferred Proceeds Allocation Rule. The proposed regulations provide a "principal-to-principal" transferred proceeds allocation rule similar to that of the existing regulations, under which unspent proceeds of a prior issue become transferred proceeds of a refunding issue at the time that proceeds of the refunding issue discharge any of the outstanding principal amount of the prior issue. The proposed regulations generally do not include an "operating rule" (as under former § 1.103–14(e)(1)) to divide a prior issue into refunded and unrefunded portions for transferred proceeds purposes.

Commentators requested that an operating rule be included to provide simplification and greater certainty in the planning of refunding issues. The final regulations provide such a rule.

2. Multipurpose Issue Allocations. The proposed regulations contain a flexible multipurpose issue allocation rule that permits issues used for separate governmental purposes to be treated as separate issues for prescribed purposes. In the case of a multipurpose issue a portion of which is a refunding issue, the proposed regulations permit issuers to use only certain specified allocation methods to allocate bonds of the multipurpose issue to the refunding of the prior issue. Commentators expressed concern that, in certain circumstances, an issuer may have no practical way to use any of the required allocation methods under this rule. The final regulations add another allocation rule permitting allocations in proportion to the average economic lives of the facilities financed by the overall multipurpose issue. In addition, the final regulations permit an issuer to use another reasonable allocation method in limited circumstances based on state law, existing legal restrictions, or similar circumstances.

The final regulations expand the applicability of the multipurpose issue rule for an issue that refunds two or more prior issues and provide additional rules for allocating the proceeds of these issues. The final regulations also permit the application of the multipurpose issue rule to divide certain pooled issues for yield calculation purposes.

K. *Section 1.148–10* Anti-Abuse Rules and Authority of Commissioner. The proposed regulations provide a broad, general anti-abuse rule that treats bonds as taxable arbitrage bonds if the issuer uses an abusive device to obtain a material financial advantage based on arbitrage. This general anti-abuse rule proposes to replace the general artifice or device rules contained in § 1.103–13(j) and § 1.148–9(g) and numerous specific anti-abuse rules. Commentators expressed concern that the general anti-abuse rule in the proposed regulations is not sufficiently specific for issuers to determine whether a particular transaction violates the rule.

The final regulations retain a broad, general anti-abuse rule, but provide additional specific guidance intended to clarify further the scope of covered abusive transactions. In large part, the revised abusive arbitrage device provision is based on the existing artifice or device prohibition in § 1.103–13(j). The revised rule continues to focus on transactions that exploit the difference between tax-exempt and taxable interest rates and that overburden the tax-exempt bond market. Although many clarifications have been made to these rules, no implication is intended regarding the scope of the existing artifice or device rule or that the examples of abusive arbitrage devices do not involve artifices or devices.

L. *Section 149(d)–1 Limitations on Advance Refundings.* 1. General Rule. Section 149(d) provides limits on advance refundings, including limitations on the number of permitted tax-exempt advance refundings. The final regulations provide additional guidance relating to the requirement that the refunded bonds be retired on their first call date and the related savings test.

2. Sales of Tax-exempt Conduit Loans. The proposed regulations include a provision under the anti-abuse rules that treats tax-exempt purpose investments financed by a conduit financing issue as taxable investments if they are subsequently transferred to another party. Without some limitations on these transactions, issuers could effectively double the amount of tax-exempt bonds on the market for a single project. Commentators expressed concern that this provision is overly broad and recommended that these transactions instead be treated under a refunding analysis. The final regulations adopt this more direct approach by treating the actual issuer of the conduit financing and the conduit borrower as related parties for purposes of section 149(d). Thus, a later sale of the conduit loan is treated as a new issue the yield on which is determined based on the amounts derived from that sale. If the proceeds of that deemed new issue are used to pay debt service on the conduit financing issue, the conduit loan is treated as a refunding issue. Further, the abusive arbitrage device rules illustrate that this type of transaction may involve an exploitation of the difference between taxable and tax-exempt rates.

M. *Section 1.150–1 Definitions.* 1. Issue. The proposed regulations provide a new definition of issue for arbitrage and related purposes. In response to comments, and to promote simplification, the final regulations extend this definition to apply for all tax-exempt bond purposes. The final regulations provide additional guidance on whether obligations are issued at substantially the same time, sold pursuant to the same plan of financing, and are reasonably expected to be paid from the same source of funds. The final regulations generally provide that taxable and tax-exempt bonds are not part of a single issue and clarify the special rules for commercial paper and draw-down loans. The final regulations also provide that issuers may treat tax-exempt governmental bonds and private activity bonds as separate issues under specified circumstances.

2. Controlled Group. The proposed regulations provide a definition of controlled group that focuses on control of the governing board, budgetary control, and control over the ability to issue debt obligations. The final regulations narrow the definition of controlled group to focus on board control and financial control. The final regulations also provide that certain general purpose governmental units are not controlled by any other entity.

N. *Section 1.150–2 Proceeds of Bonds used for Reimbursement.* The proposed regulations provide simplified and expanded rules to determine when an allocation of bond proceeds to reimburse expenditures previously made by an issuer is treated as an expenditure of those bond proceeds. The proposed regulations require an issuer to reimburse past expenditures with bond proceeds within a prescribed

period that is not later than 3 years after the expenditure is paid. Commentators expressed concern that the 3-year overall limit on the reimbursement period may be too short for certain types of projects. The final regulations expand the maximum reimbursement period to 5 years for certain long-term construction projects. Commentators also requested that a rule under prior regulations excluding certain preliminary expenditures from the reimbursement rules be reinserted. The final regulations include such a preliminary expenditures exception.

Commentators also noted that the proposed regulations and § 1.103–8(a)(5) were duplicative and requested clarification of the continued application of § 1.103–8(a)(5). The final regulations eliminate the official action requirement of § 1.103–8(a)(5).

O. *Federal Guarantees.* The final regulations also finalize the regulations under § 1.149(b)(3)–1T relating to the exception from the section 149(d) prohibition against federal guarantees for certain investments in obligations issued by the Resolution Funding Corporation under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. In addition, the final regulations provide an expanded exception under which bonds are not federally guaranteed as a result of an investment in a refunding escrow.

P. Effective Dates. The final regulations generally apply to bonds issued after June 30, 1993. To simplify the area and promote compliance, the final regulations generally permit elective, retroactive application of the final regulations in whole, but not in part, to outstanding issues issued prior to July 1, 1993, that are subject to the rebate requirement. The 18-month spending exception, however, may not be applied retroactively. The final regulations also provide certain other transition and related rules. The final regulations also extend the due date for rebate payments due after June 30, 1993, to a date not earlier than September 1, 1993.

Finally, in order to not interfere with ongoing transactions, at the issuer's option, certain existing provisions may be applied to bonds issued before August 15, 1993.

Special Analyses

It has been determined that these final regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Scott R. Lilienthal, William P. Cejudo, Michael G. Bailey, Lon B. Smith, and John J. Cross III of the Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, and Mitchell H. Rapaport, Office of Tax Legislative Counsel, Department of the Treasury. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects

26 CFR Parts 1 and 6a

Income taxes, Reporting and recordkeeping requirements.

26 CFR 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 6a and 602 are amended as follows:

Paragraph 1. The authority citation for part 1 is amended by removing the entries for "Sections 1.148–0 through 1.148–9," "Section 1.148–10," "Section 1.148–11", "Section 1.148–12T" "Section 1.148–13T" and "Section 1.149(b)(3)–1T" and adding the following citations to read as follows:

Authority: 26 U.S.C. 7805 * * * Sections 1.148–0 through 1.148–11 also issued under 26 U.S.C. 148 (f), (g), and (i).

Section 1.149(b)–1 also issued under 26 U.S.C. 149(b)(3)(B) (v). * * *

Section 1.149(g)–1 also issued under 26 U.S.C. 149(g)(5). * * *

Par. 2. Section 1.103–8(a)(5) is revised to read as follows:

§ 1.103–8 Interest on bonds to finance certain exempt facilities.

(a) * * *

(5) *Limitation.* (i) A facility qualifies under this section only to the extent that there is a valid reimbursement allocation under § 1.150–2 with respect to expenditures that are incurred before the issue date of the bonds to provide the facility and that are to be paid with the proceeds of the issue. In addition, if the original use of the facility begins before the issue date of the bonds, the facility does not qualify under this section if any person or related person who is a substantial user of the facility during the 5-year period beginning on the issue date was a substantial user of the facility during the 5-year period ending on the issue date.

(ii) Except to the extent provided in § 1.150–2(j), this paragraph (a)(5) applies to bonds issued after June 30, 1993.

* * * * *

§§ 1.103–13, 1.103–13T, 1.103–14, 1.103–15 and 1.103–18 [Removed]

Par. 3. Sections 1.103–13, 1.103–13T, 1.103–14, 1.103–15, and 1.103–18 are removed.

Par. 4. Section 1.147(b)–1 is added to read as follows:

§ 1.147(b)–1 Bond maturity limitation-treatment of working capital.

Section 147(b) does not apply to proceeds of a private activity bond issue used to finance working capital expenditures.

Par. 5. Sections 1.148–0 through 1.148–11 are revised to read as set forth below:

§ 1.148–0 Scope and table of contents.

(a) *Overview.* Under section 103(a), interest on certain obligations issued by States and local governments is excludable from the gross income of the owners. Section 148 was enacted to minimize the arbitrage benefits from investing gross proceeds of tax-exempt bonds in higher yielding investments and to remove the arbitrage incentives to issue more bonds, to issue bonds earlier, or to leave bonds outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes for which the bonds were issued. To accomplish these purposes, section 148 restricts the direct and indirect investment of bond proceeds in higher yielding investments and requires that certain earnings on higher yielding investments be rebated to the United States. Violation of these provisions causes the bonds in the issue to become *arbitrage bonds*, the interest on which is not excludable from the gross income of the owners under section 103(a). The regulations in §§ 1.148–1 through 1.148–11 apply in a manner consistent with these purposes.

(b) *Scope.* Sections 1.148–1 through 1.148–11 apply generally for purposes of the arbitrage restrictions on State and local bonds under section 148.

(c) *Table of contents.* This paragraph (c) lists the table of contents for §§ 1.148–1 through 1.148–11.

§ 1.148–1 Definitions and elections.
(a) In general.
(b) Certain definitions.

(c) Definition of replacement proceeds.
(1) In general.
(2) Sinking fund.
(3) Pledged fund.
(4) Other replacement proceeds.
(d) Elections.
§ 1.148–2 General arbitrage yield restriction rules.
(a) In general.
(b) Reasonable expectations.
(1) In general.
(2) Certification of expectations.
(c) Intentional acts.
(d) Materially higher yielding investments.
(1) In general.
(2) Definitions of materially higher yield.
(3) Mortgage loans.
(e) Temporary periods.
(1) In general.
(2) General 3-year temporary period for capital projects and qualified mortgage loans.
(3) Temporary period for restricted working capital expenditures.
(4) Temporary period for pooled financings.
(5) Temporary period for replacement proceeds.
(6) Temporary period for investment proceeds.
(7) Other amounts.
(f) Reserve or replacement funds.
(1) General 10 percent limitation on funding with sale proceeds.
(2) Exception from yield restriction for reasonably required reserve or replacement funds.
(3) Certain parity reserve funds.
(g) Minor portion.
(h) Certain waivers permitted.
§ 1.148–3 General arbitrage rebate rules.
(a) In general.
(b) Definition of rebate amount.
(c) Computation of future value of a payment or receipt.
(d) Payments and receipts.
(1) Definition of payments.
(2) Definition of receipts.
(3) Special rules for commingled funds.
(e) Computation dates.
(1) In general.
(2) Final computation date.
(f) Amount of required rebate installment payment.
(1) Amount of interim rebate payments.
(2) Amount of final rebate payment.
(3) Future value of rebate payments.
(g) Time and manner of payment.
(h) Penalty in lieu of loss of tax exemption.
(1) In general.
(2) Interest on underpayments.
(3) Waivers of the penalty.
(4) Application to alternative penalty under § 1.148–7.
(i) Recovery of overpayment of rebate.
(1) In general.
(2) Limitations on recovery.
(j) Examples.
(k) Bona fide debt service fund exception.
§ 1.148–4 Yield on an issue of bonds.
(a) In general.
(b) Computing yield on a fixed yield issue.
(1) In general.
(2) Yield on certain fixed yield bonds subject to mandatory or contingent early redemption.
(3) Yield on certain fixed yield bonds subject to optional early redemption.
(4) Yield recomputed upon transfer of certain rights associated with the bond.
(5) Examples.
(c) Computing yield on a variable yield issue.
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(2) Payments on bonds included in yield for a computation period.
(3) Example.
(d) Conversion from variable yield issue to fixed yield issue.
(e) Value of bonds.
(1) Plain par bonds.
(2) Other bonds.
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(2) Interest savings.
(3) Guarantee in substance.
(4) Reasonable charge.
(5) Guarantee of purpose investments.
(6) Allocation of qualified guarantee payments.
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(g) Yield on certain mortgage revenue and student loan bonds.
(h) Qualified hedging transactions.
(1) In general.
(2) Qualified hedge defined.
(3) Accounting for qualified hedges.
(4) Certain variable yield issues treated as fixed yield issues.
(5) Authority of the Commissioner.
§ 1.148–5 Yield and valuation of investments.
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(b) Yield on an investment.
(1) In general.
(2) Yield on a separate class of investments.
(3) Investments to be held beyond issue's maturity or beyond temporary period.
(4) Consistent redemption assumptions on purpose investments.
(5) Student loan special allowance payments included in yield.
(c) Yield reduction payments to the United States.
(1) In general.
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(e) Administrative costs of investments.
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(3) Spending exceptions not mandatory.
(b) Rules applicable for all spending exceptions.
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(j) Election to treat portion of issue used for construction as separate issue.
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(k) One and one-half percent penalty in lieu of arbitrage rebate.
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(e) Transition rule regarding special allowance payments.
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(g) Extension of due date for rebate payments.
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§ 1.148–1 Definitions and elections.

(a) *In general.* The definitions in this section and the definitions under section 150 apply for purposes of section 148 and §§ 1.148–1 through 1.148–11.

(b) *Certain definitions.* The following definitions apply:

Accounting method means both the overall method used to account for gross proceeds of an issue (e.g., the cash method or a modified accrual method) and the method used to account for or allocate any particular item within that overall accounting method (e.g., accounting for investments, expenditures, allocations to and from different sources, and particular items of the foregoing).

Annuity contract means annuity contract as defined in section 72.

Available amount means available amount as defined in § 1.148–6(d)(3)(iii).

Bona fide debt service fund means a fund, which may include proceeds of an issue, that—

(1) Is used primarily to achieve a proper matching of revenues with principal and interest payments within each bond year; and

(2) Is depleted at least once each bond year, except for a reasonable carryover amount not to exceed the greater of:

(i) the earnings on the fund for the immediately preceding bond year; or

(ii) one-twelfth of the principal and interest payments on the issue for the immediately preceding bond year.

Bond year means, in reference to an issue, each 1-year period that ends on the day selected by the issuer. The first and last bond years may be short periods. If no day is selected by the issuer before the earlier of the final maturity date of the issue or the date that is 5 years after the issue date, bond years end on each anniversary of the issue date and on the final maturity date.

Capital project or capitol projects means all capital expenditures, plus related working capital expenditures to which the de minimis rule under § 1.148–6(d)(3)(ii)(A) applies, that carry out the governmental purposes of an issue. For example, a capital project may include capital expenditures for one or more buildings, plus related start-up operating costs.

Commingled fund means any fund or account containing both gross proceeds of an issue and amounts in excess of $25,000 that are not gross proceeds of that issue if the amounts in the fund or account are invested and accounted for collectively, without regard to the source of funds deposited in the fund or account. An open-end regulated investment company under section 851, however, is not a commingled fund.

Computation date means each date on which the rebate amount for an issue is computed under § 1.148–3(e).

Computation period means the period between computation dates. The first computation period begins on the issue date and ends on the first computation date. Each succeeding computation period begins on the date immediately following the computation date and ends on the next computation date.

Consistently applied means applied uniformly within a fiscal period and between fiscal periods to account for gross proceeds of an issue and any amounts that are in a commingled fund.

De minimis amount means—

(1) In reference to original issue discount (as defined in section 1273(a)(1)) or premium on an obligation—

(i) An amount that does not exceed 2 percent multiplied by the stated redemption price at maturity; plus

(ii) Any original issue premium that is attributable exclusively to reasonable underwriters' compensation; and

(2) In reference to market discount (as defined in section 1278(a)(2)(A)) or premium on an obligation, an amount that does not exceed 2 percent multiplied by the stated redemption price at maturity.

Economic accrual method (also known as the *constant interest method* or *actuarial method*) means the method of computing yield that is based on the compounding of interest at the end of each compounding period.

Fair market value means fair market value as defined in § 1.148–5(d)(6).

Fixed rate investment means any investment whose yield is fixed and determinable on the issue date.

Fixed yield bond means any bond whose yield is fixed and determinable on the issue date using the assumptions and rules provided in § 1.148–4(b).

Fixed yield issue means any issue if each bond that is part of the issue is a fixed yield bond.

Gross proceeds means any proceeds and replacement proceeds of an issue.

Guaranteed investment contract includes any nonpurpose investment that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, and also includes any agreement to supply investments on two or more future dates (e.g., a forward supply contract).

Higher yielding investments means higher yielding investments as defined in section 148(b)(1).

Investment means any investment property as defined in sections 148(b)(2) and 148(b)(3), and any other tax-exempt bond.

Investment proceeds means any amounts actually or constructively received from investing proceeds of an issue.

Investment-type property includes any property, other than property described in section 148(b)(2) (A), (B), (C), or (E), that is held principally as a passive vehicle for the production of income. Except as otherwise provided, a prepayment for property or services is investment-type property if a principal purpose for prepaying is to receive an investment return from the time the prepayment is made until the time payment otherwise would be made. A prepayment is not investment-type property if—

(1) The prepayment is made for a substantial business purpose other than investment return and the issuer has no commercially reasonable alternative to the prepayment, or

(2) Prepayments on substantially the same terms are made by a substantial percentage of persons who are similarly situated to the issuer but who are not beneficiaries of tax-exempt financing.

Issue price means, except as otherwise provided, issue price as defined in sections 1273 and 1274. Generally, the issue price of bonds that are publicly offered is the first price at which a substantial amount of the bonds is sold to the public. Ten percent is a substantial amount. The public does not include bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers. The issue price does not change if part of the issue is later sold at a different price. The issue price of bonds that are not substantially identical is determined separately. The issue price of bonds for which a bona fide public offering is made is determined as of the sale date based on reasonable expectations regarding the initial public offering price. If a bond is issued for property, the applicable Federal tax-exempt rate is used in lieu of the Federal rate in determining the issue price under section 1274. The issue price of bonds may not exceed their fair market value as of the sale date.

Issuer generally means the entity that actually issues the issue, and, unless the context or a provision clearly requires otherwise, each conduit borrower of the issue. For example, rules imposed on issuers to account for gross proceeds of an issue apply to a conduit borrower to account for any gross proceeds received under a purpose investment. Provisions regarding elections, filings, liability for the rebate amount, and certifications of reasonable expectations apply only to the actual issuer.

Multipurpose issue means an issue the proceeds of which are used for two or more separate purposes determined in accordance with § 1.148–9(h).

Net sale proceeds means sale proceeds, less the portion of those sale proceeds invested in a reasonably required reserve or replacement fund under section 148(d) and as part of a minor portion under section 148(e).

Nonpurpose investment means any investment property, as defined in section 148(b), that is not a purpose investment.

Payment means a payment as defined in § 1.148–3(d) for purposes of computing the rebate amount, and a payment as defined in § 1.148–5(b) for purposes of computing the yield on an investment.

Plain par bond means a qualified tender bond or a bond—

(1) Issued with not more than a de minimis amount of original issue discount or premium;

(2) Issued for a price that does not include accrued interest other than pre-issuance accrued interest;

(3) That bears interest from the issue date at a single, stated, fixed rate or that is a variable rate debt instrument under section 1275, in each case with interest unconditionally payable at least annually; and

(4) That has a lowest stated redemption price that is not less than its outstanding stated principal amount.

Plain par investment means an investment that is an obligation—

(1) Issued with not more than a de minimis amount of original issue discount or premium, or, if acquired on a date other than the issue date, acquired with not more than a de minimis amount of market discount or premium;

(2) Issued for a price that does not include accrued interest other than pre-issuance accrued interest;

(3) That bears interest from the issue date at a single, stated, fixed rate or that is a variable rate debt instrument under section 1275, in each case with interest unconditionally payable at least annually; and

(4) That has a lowest stated redemption price that is not less than its outstanding stated principal amount.

Pre-issuance accrued interest means amounts representing interest that accrued on an obligation for a period not greater than one year before its issue date but only if those amounts are paid within one year after the issue date.

Proceeds means any sale proceeds, investment proceeds, and transferred proceeds of an issue. Proceeds do not include, however, amounts actually or constructively received with respect to a purpose investment that are properly allocable to the immaterially higher yield under § 1.148–2(d) or section

143(g) or to qualified administrative costs recoverable under § 1.148–5(e).

Program investment means a purpose investment that is part of a governmental program in which—

(1) The program involves the origination or acquisition of purpose investments;

(2) At least 95 percent (90 percent for qualified student loans under section 144(b)(1)(A)) of the cost of the purpose investments acquired under the program represents one or more loans to a substantial number of persons representing the general public, States or political subdivisions, 501(c)(3) organizations, persons who provide housing and related facilities, or any combination of the foregoing;

(3) At least 95 percent of the receipts from the purpose investments are used to pay principal, interest, or redemption prices on issues that financed the program, to pay or reimburse administrative costs of those issues or of the program, to pay or reimburse anticipated future losses directly related to the program, to finance additional purpose investments for the same general purposes of the program, or to redeem and retire governmental obligations at the next earliest possible date of redemption;

(4) The program documents prohibit any obligor on a purpose investment financed by the program or any related party to that obligor from purchasing bonds of an issue that finance the program in an amount related to the amount of the purpose investment acquired from that obligor; and

(5) The issuer has not waived the right to treat the investment as a program investment.

Purpose investment means an investment that is acquired to carry out the governmental purpose of an issue.

Qualified administrative costs means qualified administrative costs as defined in § 1.148–5(e).

Qualified guarantee means a qualified guarantee as defined in § 1.148–4(f).

Qualified hedge means a qualified hedge as defined in § 1.148–4(h)(2).

Reasonable expectations or reasonableness. An issuer's expectations or actions are reasonable only if a prudent person in the same circumstances as the issuer would have those same expectations or take those same actions, based on all the objective facts and circumstances. Factors relevant to a determination of reasonableness include the issuer's history of conduct concerning stated expectations made in connection with the issuance of obligations, the level of inquiry by the issuer into factual matters, and the existence of covenants, enforceable by bondholders, that require implementation of specific expectations. For a conduit financing issue, factors relevant to a determination of reasonableness include the reasonable expectations of the conduit borrower, but only if, under the circumstances, it is reasonable and prudent for the issuer to rely on those expectations.

Rebate amount means 100 percent of the amount owed to the United States under section 148(f)(2), as further described in § 1.148–3.

Receipt means a receipt as defined in § 1.148–3(d) for purposes of computing the rebate amount, and a receipt as defined in § 1.148–5(b) for purposes of computing yield on an investment.

Refunding escrow means one or more funds established as part of a single transaction or a series of related transactions, containing proceeds of a refunding issue and any other amounts to provide for payment of principal or interest on one or more prior issues. For this purpose, funds are generally not so established solely because of—

(1) The deposit of proceeds of an issue and replacement proceeds of the prior issue in an escrow more than 6 months apart, or

(2) The deposit of proceeds of completely separate issues in an escrow.

Restricted working capital expenditures means working capital expenditures that are subject to the proceeds-spent-last rule in § 1.148–6(d)(3)(i) and are ineligible for any exception to that rule.

Sale proceeds means any amounts actually or constructively received from the sale of the issue, including amounts used to pay underwriters' discount or compensation and accrued interest other than pre-issuance accrued interest.

Stated redemption price means the redemption price of an obligation under the terms of that obligation, including any call premium.

Transferred proceeds means transferred proceeds as defined in § 1.148–9 (or the applicable corresponding provision of prior law).

Unconditionally payable means payable under terms in which—

(1) Late payment or nonpayment results in a significant penalty to the borrower or reasonable remedies to the lender, and

(2) It is reasonably certain on the issue date that the payment will actually be made.

Value means value determined under § 1.148–4(e) for a bond, and value determined under § 1.148–5(d) for an investment.

Variable yield bond means any bond that is not a fixed yield bond.

Variable yield issue means any issue that is not a fixed yield issue.

Yield means yield computed under § 1.148–4 for an issue, and yield computed under § 1.148–5 for an investment.

Yield restricted means required to be invested at a yield that is not materially higher than the yield on the issue under section 148(a) and § 1.148–2.

(c) *Definition of replacement proceeds*—(1) *In general.* Amounts are replacement proceeds of an issue if the amounts have a sufficiently direct nexus to the issue or to the governmental purpose of the issue to conclude that the amounts would have been used for that governmental purpose if the proceeds of the issue were not used or to be used for that governmental purpose. For this purpose, governmental purposes include the expected use of amounts for the payment of debt service on a particular date. The mere availability or preliminary earmarking of amounts for a governmental purpose, however, does not in itself establish a sufficient nexus to cause those amounts to be replacement proceeds. Replacement proceeds include, but are not limited to, sinking funds, pledged funds, and other replacement proceeds described in paragraph (c)(4) of this section, to the extent that those funds or amounts are held by or derived from a substantial beneficiary of the issue. A substantial beneficiary of an issue includes the issuer and any related party to the issuer, and, if the issuer is not a state, the state in which the issuer is located. A person is not a substantial beneficiary of an issue solely because it is a guarantor under a qualified guarantee.

(2) *Sinking fund. Sinking fund* includes a debt service fund, redemption fund, reserve fund, replacement fund, or any similar fund, to the extent reasonably expected to be used directly or indirectly to pay principal or interest on the issue.

(3) *Pledged fund*—(i) *In general.* A *pledged fund* is any amount that is directly or indirectly pledged to pay principal or interest on the issue. A pledge need not be cast in any particular form but, in substance, must provide reasonable assurance that the amount will be available to pay principal or interest on the issue, even if the issuer encounters financial difficulties. A pledge to a guarantor of an issue is an indirect pledge to secure payment of principal or interest on the issue. A pledge of more than 50 percent of the outstanding stock of a corporation that is a conduit borrower of the issue is not treated as a pledge for this purpose, unless the corporation is formed or

availed of to avoid the creation of replacement proceeds.

(ii) *Negative pledges.* An amount is treated as pledged to pay principal or interest on an issue if it is held under an agreement to maintain the amount at a particular level for the direct or indirect benefit of the bondholders or a guarantor of the bonds. An amount is not treated as pledged under this paragraph (c)(3)(ii), however, if—

(A) The issuer or a substantial beneficiary may grant rights in the amount that are superior to the rights of the bondholders or the guarantor; or

(B) The amount does not exceed reasonable needs for which it is maintained, the required level is tested no more frequently than every 6 months, and the amount may be spent without any substantial restriction other than a requirement to replenish the amount by the next testing date.

(4) *Other replacement proceeds*—(i) *Bonds outstanding longer than necessary*—(A) *In general.* Replacement proceeds arise to the extent that the issuer reasonably expects as of the issue date that—

(*1*) The term of an issue will be longer than is reasonably necessary for the governmental purposes of the issue, and

(*2*) There will be available amounts during the period that the issue remains outstanding longer than necessary. Whether an issue is outstanding longer than necessary is determined under § 1.148–10. Replacement proceeds are created under this paragraph (c)(4)(i)(A) at the beginning of each fiscal year during which an issue remains outstanding longer than necessary in an amount equal to available amounts of the issuer as of that date.

(B) *Safe harbor against creation of replacement proceeds.* As a safe harbor, replacement proceeds do not arise under paragraph (c)(4)(i)(A) of this section—

(*1*) For the portion of an issue that is to be used to finance restricted working capital expenditures, if that portion is not outstanding longer than 2 years;

(*2*) For the portion of an issue that is to be used to finance capital projects, if that portion has a weighted average maturity that does not exceed 120 percent of the average reasonably expected economic life of the financed capital projects, determined in the same manner as under section 147(b); or

(*3*) For the portion of an issue that is a refunding issue, if that portion has a weighted average maturity that does not exceed the remaining weighted average maturity of the prior issue, and the issue of which the prior issue is a part satisfies paragraph (c)(4)(i)(B) (*1*) or (*2*) of this section.

(ii) *Bonds financing a working capital reserve*—(A) *In general.* Except as otherwise provided in paragraph (c)(4)(ii)(B) of this section, replacement proceeds arise to the extent a working capital reserve is, directly or indirectly, financed with the proceeds of the issue (regardless of the expenditure of proceeds of the issue). Thus, for example, if an issuer that does not maintain a working capital reserve borrows to fund such a reserve, the issuer will have replacement proceeds.

(B) *Exception to creation of replacement proceeds.* Replacement proceeds do not arise under paragraph (c)(4)(ii)(A) of this section with respect to an issue—

(*1*) All of the net proceeds of which are spent within 6 months of the issue date under section 148(f)(4)(B)(iii)(I); or

(*2*) That is not subject to the rebate requirement under the exception provided by section 148(f)(4)(D).

(d) *Elections.* Except as otherwise provided, any required elections must be made in writing, and, once made, may not be revoked without the permission of the Commissioner.

§ 1.148–2 General arbitrage yield restriction rules.

(a) *In general.* Under section 148(a), the direct or indirect investment of the gross proceeds of an issue in higher yielding investments causes the bonds of the issue to be arbitrage bonds. The investment of proceeds in higher yielding investments, however, during a temporary period described in paragraph (e) of this section, as part of a reasonably required reserve or replacement fund described in paragraph (f) of this section, or as part of a minor portion described in paragraph (g) of this section does not cause the bonds of the issue to be arbitrage bonds. Bonds are not arbitrage bonds under this section as a result of an inadvertent, insubstantial error.

(b) *Reasonable expectations*—(1) *In general.* Except as provided in paragraph (c) of this section, the determination of whether an issue consists of arbitrage bonds under section 148(a) is based on the issuer's reasonable expectations as of the issue date regarding the amount and use of the gross proceeds of the issue.

(2) *Certification of expectations*—(i) *In general.* An officer of the issuer responsible for issuing the bonds must, in good faith, certify the issuer's expectations as of the issue date. The certification must state the facts and estimates that form the basis for the issuer's expectations. The certification is evidence of the issuer's expectations, but does not establish any conclusions of law or any presumptions regarding either the issuer's actual expectations or their reasonableness.

(ii) *Exceptions to certification requirement.* An issuer is not required to make a certification for an issue under paragraph (b)(2)(i) of this section if—

(A) The issuer reasonably expects as of the issue date that there will be no unspent gross proceeds after the issue date, other than gross proceeds in a bona fide debt service fund (e.g., *equipment lease* financings in which the issuer purchases equipment in exchange for an installment payment note); or

(B) The issue price of the issue does not exceed $250,000.

(c) *Intentional acts.* The taking of any deliberate, intentional action by the issuer or person acting on its behalf after the issue date in order to earn arbitrage causes the bonds of the issue to be arbitrage bonds if that action, had it been expected on the issue date, would have caused the bonds to be arbitrage bonds. An intent to violate the requirements of section 148 is not necessary for an action to be intentional.

(d) *Materially higher yielding investments*—(1) *In general.* The yield on investments is materially higher than the yield on the issue to which the investments are allocated if the yield on the investments over the term of the issue exceeds the yield on the issue by an amount in excess of the applicable definition of *materially higher* set forth in paragraph (d)(2) of this section. If yield restricted investments in the same class are subject to different definitions of *materially higher*, the applicable definition of *materially higher* that produces the lowest permitted yield applies to all the investments in the class. The yield on the issue is determined under § 1.148–4. The yield on investments is determined under § 1.148–5.

(2) *Definitions of materially higher yield*—(i) *General rule for purpose and nonpurpose investments.* For investments that are not otherwise described in this paragraph (d)(2), materially higher means one-eighth of 1 percentage point.

(ii) *Refunding escrows and replacement proceeds.* For investments in a refunding escrow or for investments allocable to replacement proceeds, materially higher means one-thousandth of 1 percentage point.

(iii) *Program investments.* For program investments that are not described in paragraph (d)(2)(iv) of this section, materially higher means 1 and one-half percentage points.

(iv) *Student loans.* For qualified student loans that are program

investments, materially higher means 2 percentage points.

(v) *Tax-exempt investments.* For investments that are tax-exempt bonds and are not investment property under section 148(b)(3), no yield limitation applies.

(3) *Mortgage loans.* Qualified mortgage loans that satisfy the requirements of section 143(g) are treated as meeting the requirements of this paragraph (d).

(e) *Temporary periods*—(1) *In general.* During the temporary periods set forth in this paragraph (e), the proceeds and replacement proceeds of an issue may be invested in higher yielding investments without causing bonds in the issue to be arbitrage bonds. This paragraph (e) does not apply to refunding issues (see § 1.148–9).

(2) *General 3-year temporary period for capital projects and qualified mortgage loans*—(i) *In general.* The net sale proceeds and investment proceeds of an issue reasonably expected to be allocated to expenditures for capital projects qualify for a temporary period of 3 years beginning on the issue date (the *3-year temporary period).* The 3-year temporary period also applies to the proceeds of qualified mortgage bonds and qualified veterans' mortgage bonds by substituting *qualified mortgage loans* in each place that *capital projects* appears in this paragraph (e)(2). The 3-year temporary period applies only if the issuer reasonably expects to satisfy the expenditure test, the time test, and the due diligence test. These rules apply separately to each conduit loan financed by an issue (other than qualified mortgage loans), with the expenditure and time tests measured from the issue date of the issue.

(A) *Expenditure test.* The expenditure test is met if at least 85 percent of the net sale proceeds of the issue are allocated to expenditures on the capital projects by the end of the 3-year temporary period.

(B) *Time test.* The time test is met if the issuer incurs within 6 months of the issue date a substantial binding obligation to a third party to expend at least 5 percent of the net sale proceeds of the issue on the capital projects. An obligation is not binding if it is subject to contingencies within the issuer's or a related party's control.

(C) *Due diligence test.* The due diligence test is met if completion of the capital projects and the allocation of the net sale proceeds of the issue to expenditures proceed with due diligence.

(ii) *5-year temporary period.* In the case of proceeds expected to be allocated to a capital project involving a substantial amount of construction expenditures (as defined in § 1.148–7), a 5-year temporary period applies in lieu of the 3-year temporary period if the issuer satisfies the requirements of paragraph (e)(2)(i) of this section applied by substituting "5 years" in each place that "3 years" appears, and both the issuer and a licensed architect or engineer certify that the longer period is necessary to complete the capital project.

(3) *Temporary period for restricted working capital expenditures*—(i) *General rule.* The proceeds of an issue that are reasonably expected to be allocated to restricted working capital expenditures within 13 months after the issue date qualify for a temporary period of 13 months beginning on the issue date. Paragraph (e)(2) of this section contains additional temporary period rules for certain working capital expenditures that are treated as part of a capital project.

(ii) *Longer temporary period for certain tax anticipation issues.* If an issuer reasonably expects to use tax revenues arising from tax levies for a single fiscal year to redeem or retire an issue, and the issue matures by the earlier of 2 years after the issue date or 60 days after the last date for payment of those taxes without interest or penalty, the temporary period under paragraph (e)(3)(i) of this section is extended until the maturity date of the issue.

(4) *Temporary period for pooled financings*—(i) *In general.* Proceeds of a pooled financing issue reasonably expected to be used to finance purpose investments qualify for a temporary period of 6 months while held by the issuer before being loaned to a conduit borrower. Any otherwise available temporary period for proceeds held by a conduit borrower, however, is reduced by the period of time during which those proceeds were held by the issuer before being loaned. For example, if the proceeds of a pooled financing issue loaned to a conduit borrower would qualify for a 3-year temporary period, and the proceeds are held by the issuer for 5 months before being loaned to the conduit borrower, the proceeds qualify for only an additional 31-month temporary period after being loaned to the conduit borrower. This paragraph (e)(4) does not apply to any qualified mortgage bond or qualified veterans' mortgage bond under section 143.

(ii) *Loan repayments*—(A) *Amount held by the issuer.* The temporary period under this paragraph (e)(4) for proceeds from the sale or repayment of any loan that are reasonably expected to be used to make or finance new loans is 3 months.

(B) *Amounts re-loaned to conduit borrowers.* Any temporary period for proceeds held by a conduit borrower under a new loan from amounts described in paragraph (e)(4)(ii)(A) of this section is determined by treating the date the new loan is made as the issue date and by reducing the temporary period by the period the amounts were held by the issuer following the last repayment.

(iii) *Construction issues.* If all or a portion of a pooled financing issue qualifies as a construction issue under § 1.148–7(b)(6), paragraph (e)(4)(i) of this section is applied by substituting "2 years" for "6 months."

(5) *Temporary period for replacement proceeds*—(i) *In general.* Except as otherwise provided, replacement proceeds qualify for a temporary period of 30 days beginning on the date that the amounts are first treated as replacement proceeds.

(ii) *Temporary period for bona fide debt service funds.* Amounts in a bona fide debt service fund for an issue qualify for a temporary period of 13 months. If only a portion of a fund qualifies as a bona fide debt service fund, only that portion qualifies for this temporary period.

(6) *Temporary period for investment proceeds.* Except as otherwise provided in this paragraph (e), investment proceeds qualify for a temporary period of 1 year beginning on the date of receipt.

(7) *Other amounts.* Gross proceeds not otherwise eligible for a temporary period described in this paragraph (e) qualify for a temporary period of 30 days beginning on the date of receipt.

(f) *Reserve or replacement funds*—(1) *General 10 percent limitation on funding with sale proceeds.* An issue consists of arbitrage bonds if sale proceeds of the issue in excess of 10 percent of the stated principal amount of the issue are used to finance any reserve or replacement fund, without regard to whether those sale proceeds are invested in higher yielding investments. If an issue has more than a de minimis amount of original issue discount or premium, the issue price (net of pre-issuance accrued interest) is used to measure the 10-percent limitation in lieu of stated principal amount. This rule does not limit the use of amounts other than sale proceeds of an issue to fund a reserve or replacement fund.

(2) *Exception from yield restriction for reasonably required reserve or replacement funds*—(i) *In general.* The investment of amounts that are part of

a reasonably required reserve or replacement fund in higher yielding investments will not cause an issue to consist of arbitrage bonds. A reasonably required reserve or replacement fund may consist of all or a portion of one or more funds, however labelled, derived from one or more sources. Amounts in a reserve or replacement fund in excess of the amount that is reasonably required are not part of a reasonably required reserve or replacement fund.

(ii) *Size limitation.* The amount of gross proceeds of an issue that qualifies as a reasonably required reserve or replacement fund may not exceed an amount equal to the least of 10 percent of the stated principal amount of the issue, the maximum annual principal and interest requirements on the issue, or 125 percent of the average annual principal and interest requirements on the issue. If an issue has more than a de minimis amount of original issue discount or premium, the issue price of the issue (net of pre-issuance accrued interest) is used to measure the 10 percent limitation in lieu of its stated principal amount. For a reserve or replacement fund that secures more than one issue (e.g. a parity reserve fund), the size limitation may be measured on an aggregate basis.

(iii) *Valuation of investments.* Investments in a reasonably required reserve or replacement fund may be valued in any reasonable, consistently applied manner that is permitted under § 1.148–5.

(iv) *150 percent debt service limitation on investment in nonpurpose investments for certain private activity bonds.* Section 148(d)(3) contains additional limits on the amount of gross proceeds of an issue of private activity bonds, other than qualified 501(c)(3) bonds, that may be invested in higher yielding nonpurpose investments without causing the bonds to be arbitrage bonds. For purposes of these rules, *initial temporary period* means the temporary periods under paragraphs (e)(2), (e)(3), and (e)(4) of this section and under § 1.148–9(d)(2)(i), (ii), and (iii).

(3) *Certain parity reserve funds.* The limitation contained in paragraph (f)(1) of this section does not apply to an issue if the master legal document authorizing the issuance of the bonds (e.g., a master indenture) was adopted before August 16, 1986, and that document—

(i) Requires a reserve or replacement fund in excess of 10 percent of the sale proceeds, but not more than maximum annual principal and interest requirements;

(ii) Is not amended after August 31, 1986 (other than to permit the issuance of additional bonds as contemplated in the master legal document); and

(iii) Provides that bonds having a parity of security may not be issued by or on behalf of the issuer for the purposes provided under the document without satisfying the reserve fund requirements of the indenture.

(g) *Minor portion.* Under section 148(e), a bond of an issue is not an arbitrage bond solely because of the investment in higher yielding investments of gross proceeds of the issue in an amount not exceeding the lesser of—

(1) 5 percent of the sale proceeds of the issue; or

(2) $100,000.

(h) *Certain waivers permitted.* On or before the issue date, an issuer may elect to waive the right to invest in higher yielding investments during any temporary period under paragraph (e) of this section or as part of a reasonably required reserve or replacement fund under paragraph (f) of this section. At any time, an issuer may waive the right to invest in higher yielding investments as part of a minor portion under paragraph (g) of this section.

§ 1.148–3 General arbitrage rebate rules.

(a) *In general.* Section 148(f) requires that certain earnings on nonpurpose investments allocable to the gross proceeds of an issue be paid to the United States to prevent the bonds in the issue from being arbitrage bonds. The arbitrage that must be rebated is based on the difference between the amount actually earned on nonpurpose investments and the amount that would have been earned if those investments had a yield equal to the yield on the issue.

(b) *Definition of rebate amount.* As of any date, the rebate amount for an issue is the excess of the future value, as of that date, of all receipts on nonpurpose investments over the future value, as of that date, of all payments on nonpurpose investments.

(c) *Computation of future value of a payment or receipt.* The future value of a payment or receipt at the end of any period is determined using the economic accrual method and equals the value of that payment or receipt when it is paid or received (or treated as paid or received), plus interest assumed to be earned and compounded over the period at a rate equal to the yield on the issue, using the same compounding interval and financial conventions used to compute that yield.

(d) *Payments and receipts*—(1) *Definition of payments.* For purposes of this section, payments are—

(i) Amounts actually or constructively paid to acquire a nonpurpose investment (or treated as paid to a commingled fund);

(ii) For a nonpurpose investment that is first allocated to an issue on a date after it is actually acquired (e.g., an investment that becomes allocable to transferred proceeds or to replacement proceeds) or that becomes subject to the rebate requirement on a date after it is actually acquired (e.g., an investment allocated to a reasonably required reserve or replacement fund for a construction issue at the end of the 2-year spending period), the value of that investment on that date;

(iii) For a nonpurpose investment that was allocated to an issue at the end of the preceding computation period, the value of that investment at the beginning of the computation period;

(iv) On the last day of each bond year during which there are amounts allocated to gross proceeds of an issue that are subject to the rebate requirement, and on the final maturity date, a computation credit of $1,000; and

(v) Yield reduction payments on nonpurpose investments made pursuant to § 1.148–5(c).

(2) *Definition of receipts.* For purposes of this section, receipts are—

(i) Amounts actually or constructively received from a nonpurpose investment (including amounts treated as received from a commingled fund), such as earnings and return of principal;

(ii) For a nonpurpose investment that ceases to be allocated to an issue before its disposition or redemption date (e.g., an investment that becomes allocable to transferred proceeds of another issue or that ceases to be allocable to the issue pursuant to the universal cap under § 1.148–6) or that ceases to be subject to the rebate requirement on a date earlier than its disposition or redemption date (e.g., an investment allocated to a fund initially subject to the rebate requirement but that subsequently qualifies as a bona fide debt service fund), the value of that nonpurpose investment on that date; and

(iii) For a nonpurpose investment that is held at the end of a computation period, the value of that investment at the end of that period.

(3) *Special rules for commingled funds.* Section 1.148–6(e) provides special rules to limit certain of the required determinations of payments and receipts for investments of a commingled fund.

(e) *Computation dates*—(1) *In general.* For a fixed yield issue, an issuer may treat any date as a computation date. For a variable yield issue, an issuer:

(i) May treat the last day of any bond year ending on or before the latest date on which the first rebate amount is required to be paid under paragraph (f) of this section (the *first required payment date*) as a computation date but may not change that treatment after the first payment date; and

(ii) After the first required payment date, must consistently treat either the end of each bond year or the end of each fifth bond year as computation dates and may not change these computation dates after the first required payment date.

(2) *Final computation date.* The date that an issue is discharged is the final computation date. For an issue retired within 3 years of the issue date, however, the final computation date need not occur before the end of 8 months after the issue date or during the period in which the issuer reasonably expects that any of the spending exceptions under § 1.148–7 will apply to the issue.

(f) *Amount of required rebate installment payment*—(1) *Amount of interim rebate payments.* The first rebate installment payment must be made for a computation date that is not later than 5 years after the issue date. Subsequent rebate installment payments must be made for a computation date that is not later than 5 years after the previous computation date for which an installment payment was made. A rebate installment payment must be in an amount that, when added to the future value, as of the computation date, of previous rebate payments made for the issue, equals at least 90 percent of the rebate amount as of that date.

(2) *Amount of final rebate payment.* For the final computation date, a final rebate payment must be paid in an amount that, when added to the future value of previous rebate payments made for the issue, equals 100 percent of the rebate amount as of that date.

(3) *Future value of rebate payments.* The future value of a rebate payment is determined under paragraph (c) of this section. This value is computed by taking into account recoveries of overpayments.

(g) *Time and manner of payment.* Each rebate payment must be paid no later than 60 days after the computation date to which the payment relates. Any rebate payment paid within this 60-day period may be treated as paid on the computation date to which it relates. A rebate payment is paid when it is filed with the Internal Revenue Service at the place or places designated by the Commissioner. A payment must be accompanied by the form provided by the Commissioner for this purpose.

(h) *Penalty in lieu of loss of tax exemption*—(1) *In general.* The failure to pay the correct rebate amount when required will cause the bonds of the issue to be arbitrage bonds, unless the Commissioner determines that the failure was not caused by willful neglect and the issuer promptly pays a penalty to the United States. If no bond of the issue is a private activity bond (other than a qualified 501(c)(3) bond), the penalty equals 50 percent of the rebate amount not paid when required to be paid, plus interest on that amount. Otherwise, the penalty equals 100 percent of the rebate amount not paid when required to be paid, plus interest on that amount.

(2) *Interest on underpayments.* Interest accrues at the underpayment rate under section 6621, beginning on the date the correct rebate amount is due and ending on the date 10 days before it is paid.

(3) *Waivers of the penalty.* The penalty is automatically waived if the rebate amount that the issuer failed to pay plus interest is paid within 180 days after discovery of the failure, unless, the Commissioner determines that the failure was due to willful neglect, or the issue is under examination by the Commissioner at any time during the period beginning on the date the failure first occurred and ending on the date 90 days after the receipt of the rebate amount. Generally, extensions of this 180-day period and waivers of the penalty in other cases will be granted by the Commissioner only in unusual circumstances.

(4) *Application to alternative penalty under § 1.148–7.* Paragraphs (h) (1), (2), and (3) of this section apply to failures to pay penalty payments under § 1.148–7 (*alternative penalty amounts*) by substituting *alternative penalty amounts* for *rebate amount* and *the last day of each spending period for computation date.*

(i) *Recovery of overpayment of rebate*—(1) *In general.* An issuer may recover an overpayment for an issue of tax-exempt bonds by establishing to the satisfaction of the Commissioner that the overpayment occurred. An overpayment is the excess of the amount paid to the United States for an issue under section 148 over the sum of the rebate amount for the issue as of the most recent computation date and all amounts that are otherwise required to be paid under section 148 as of the date the recovery is requested.

(2) *Limitations on recovery.* (i) An overpayment may be recovered only to the extent that a recovery on the date that it is first requested would not result in an additional rebate amount if that date were treated as a computation date.

(ii) Except for overpayments of penalty in lieu of rebate under section 148(f)(4)(C)(vii) and § 1.148–7(k), an overpayment of less than $5,000 may not be recovered before the final computation date.

(j) *Examples.* The provisions of this section may be illustrated by the following examples.

Example 1. Calculation and payment of rebate for a fixed yield issue. (i) *Facts.* On January 1, 1994, City *A* issues a fixed yield issue and invests all the sale proceeds of the issue ($40 million). There are no other gross proceeds. The issue has a yield of 7.0000 percent per year compounded semiannually (computed on a 30 day month/360 day year basis). City *A* receives amounts from the investment and immediately expends them for the governmental purpose of the issue as follows:

Date	Amount
2/1/1994	$3,000,000
4/1/1994	5,000,000
6/1/1994	14,000,000
9/1/1994	20,000,000
7/1/1995	10,000,000

(ii) *First computation date.* (A) City *A* selects a bond year ending on January 1, and thus the first required computation date is January 1, 1999. The rebate amount as of this date is computed by determining the future value of the receipts and the payments for the investment. The compounding interval is each 6-month (or shorter) period and the 30 day month/360 day year basis is used because these conventions were used to compute yield on the issue. The future value of these amounts, plus the computation credit, as of January 1, 1999, is:

Date	Receipts (payments)	FV (7.0000 percent)
1/1/1994	($49,000,000)	($69,119,339)
2/1/1994	3,000,000	4,207,602
4/1/1994	5,000,000	6,932,715
6/1/1994	14,000,000	19,190,277
9/1/1994	20,000,000	26,947,162
1/1/1995	(1,000)	(1,317)
7/1/1995	10,000,000	12,722,793
1/1/1996	(1,000)	(1,229)
Rebate amount (1/01/1999)		878,664

(B) City *A* pays 90 percent of the rebate amount ($790,798) to the United States within 60 days of January 1, 1999.

(iii) *Second computation date.* (A) On the next required computation date, January 1, 2004, the future value of the payments and receipts is:

Date	Receipts (payments)	FV (7.0000 percent)
1/1/1999	$878,654	$1,239,442
Rebate amount (1/01/2004)		1,239,442

(B) As of this computation date, the future value of the payment treated as made on January 1, 1999, is $1,115,499, which equals at least 90 percent of the rebate amount as of this computation date ($1,239,442 × 0.9), and thus no additional rebate payment is due as of this date.

(iv) *Final computation date.* (A) On January 1, 2009, City *A* redeems all the bonds, and thus this date is the final computation date. The future value of the receipts and payments as of this date is:

Date	Receipts (payments)	FV (7.0000 percent)
1/1/2004	$1,239,442	$1,748,355
1/1/2009	(1,000)	(1,000)
Rebate amount (1/01/2009)		1,747,355

(B) As of this computation date, the future value of the payment made on January 1, 1999, is $1,573,521 and thus an additional rebate payment of $173,834 is due. This payment reflects the future value of the 10 percent unpaid portion, and thus would not be owed had the issuer paid the full rebate amount as of any prior computation date.

Example 2. Calculation and payment of rebate for a variable yield issue. (i) *Facts.* On July 1, 1994, City *B* issues a variable yield issue and invests all of the sale proceeds of the issue ($30 million). There are no other gross proceeds. As of July 1, 1999, there are nonpurpose investments allocated to the issue. Prior to July 1, 1999, City *B* receives amounts from nonpurpose investments and immediately expends them for the governmental purpose of the issue as follows:

Date	Amount
8/1/1994	$5,000,000
7/1/1995	8,000,000
12/1/1995	17,000,000
7/1/1999	650,000

(ii) *First computation date.* (A) City *B* treats the last day of the fifth bond year (July 1, 1999) as a computation date. The yield on the variable yield issue during the first computation period (the period beginning on the issue date and ending on the first computation date) is 6.0000 percent per year compounded semiannually. The value of the nonpurpose investments allocated to the issue as of July 1, 1999, is $3 million. The rebate amount as of July 1, 1999, is computed by determining the future value of the receipts and the payments for the nonpurpose investments. The compounding interval is each 6-month (or shorter) period and the 30 day month/360 day year basis is used because these conventions were used to compute yield on the issue. The future value of these amounts and of the computation date credits as of July 1, 1999, is:

Date	Receipts (payments)	FV (6.0000 percent)
7/1/1994	($30,000,000)	($40,317,491)
8/1/1994	5,000,000	6,686,560
7/1/1995	(1,000)	(1,267)
7/1/1995	8,000,000	10,134,161
12/1/1995	17,000,000	21,011,112
7/1/1996	(1,000)	(1,194)
7/1/1997	(1,000)	(1,126)
7/1/1998	(1,000)	(1,061)
7/1/1999	3,000,000	3,000,000
7/1/1999	650,000	650,000
7/1/1999	(1,000)	(1,000)
Rebate amount (7/01/1999)		1,158,694

(B) City *B* pays 90 percent of the rebate amount ($1,042,824.60) to the United States within 60 days of July 1, 1999.

(iii) *Next computation date.* (A) On July 1, 2004, City *B* redeems all of the bonds. Thus, the next computation date is July 1, 2004. On July 30, 1999, City *B* chose to compute rebate for periods following the first computation period by treating the end of each fifth bond year as a computation date. The yield during the second computation period is 5.0000 percent per year compounded semiannually. The computation of the rebate amount as of this date reflects the value of the nonpurpose investments allocated to the issue at the end of the prior computation period. On July 1, 2004, City *B* sells those nonpurpose investments for $3,925,000 and expends that amount for the governmental purpose of the issue.

(B) As of July 1, 2004, the future value of the rebate amount computed as of July 1, 1999, and of all other payments and receipts is:

Date	Receipts (payments)	FV (5.0000 percent)
7/1/1999	$1,158,694	$1,483,226
7/1/1999	(3,000,000)	(3,840,254)
7/1/2000	(1,000)	(1,218)
7/1/2001	(1,000)	(1,160)
7/1/2002	(1,000)	(1,104)
7/1/2003	(1,000)	(1,051)
7/1/2004	(2,000)	(2,000)
7/1/2004	3,925,000	3,925,000
		1,561,439

(C) As of this computation date, the future value of the payment made on July 1, 1999, is $1,334,904 and thus an additional rebate payment of $226,535 is due.

(k) *Bona fide debt service fund exception.* Under section 148(f)(4)(A), the rebate requirement does not apply to amounts in certain bona fide debt service funds. An issue with an average annual debt service that is not in excess of $2,500,000 may be treated as satisfying the $100,000 limitation in section 148(f)(4)(A)(ii).

§ 1.148–4 Yield on an issue of bonds.

(a) *In general.* The yield on an issue of bonds is used to apply investment yield restrictions under section 148(a) and to compute rebate liability under section 148(f). Yield is computed under the economic accrual method using any consistently applied compounding interval of not more than one year. A short first compounding interval and a short last compounding interval may be used. Yield is expressed as an annual percentage rate that is calculated to at least four decimal places (e.g., 5.2525 percent). Other reasonable, standard financial conventions, such as the 30 days per month/360 days per year convention, may be used in computing yield but must be consistently applied. The yield on an issue that would be a purpose investment (absent section 148(b)(3)(A)) is equal to the yield on the conduit financing issue that financed that purpose investment. The Commissioner may permit issuers of qualified mortgage bonds or qualified student loan bonds to use a single yield for two or more issues.

(b) *Computing yield on a fixed yield issue—*(1) *In general—*(i) *Yield on an issue.* The yield on a fixed yield issue is the discount rate that, when used in computing the present value as of the issue date of all unconditionally payable payments of principal, interest, and fees for qualified guarantees on the issue and amounts reasonably expected to be paid as fees for qualified guarantees on the issue, produces an amount equal to the present value, using the same discount rate, of the aggregate issue price of bonds of the issue as of the issue date. Further, payments include certain amounts properly allocable to a qualified hedge. Yield on a fixed yield issue is computed as of the issue date

and is not affected by subsequent unexpected events, except to the extent provided in paragraphs (b)(4) and (h)(3) of this section.

(ii) *Yield on a bond.* Yield on a fixed yield bond is computed in the same manner as yield on a fixed yield issue.

(2) *Yield on certain fixed yield bonds subject to mandatory or contingent early redemption*—(i) *In general.* The yield on a fixed yield issue that includes a bond subject to mandatory early redemption or expected contingent redemption is computed by treating that bond as redeemed on its reasonably expected early redemption date for an amount equal to its value on that date. Reasonable expectations are determined on the issue date. A bond is subject to mandatory early redemption if it is unconditionally payable in full before its final maturity date. A bond is subject to a contingent redemption if it must be, or is reasonably expected to be, redeemed prior to final maturity upon the occurrence of a contingency. A contingent redemption is taken into account only if the contingency is reasonably expected to occur, in which case the date of occurrence of the contingency must be reasonably estimated. For example, if bonds are reasonably expected to be redeemed early using excess revenues from general or special property taxes or benefit assessments or similar amounts, the reasonably expected redemption schedule is used to determine yield. For purposes of this paragraph (b)(2)(i), excess proceeds calls for issues for which the requirements of § 1.148–2(e)(2) or (3) are satisfied, calamity calls, and refundings do not cause a bond to be subject to early redemption. The value of a bond is determined under paragraph (e) of this section.

(ii) *Substantially identical bonds subject to mandatory early redemption.* If substantially identical bonds of an issue are subject to specified mandatory redemptions prior to final maturity (e.g., a mandatory sinking fund redemption requirement), yield on that issue is computed by treating those bonds as redeemed in accordance with the redemption schedule for an amount equal to their value. Generally, bonds are substantially identical if the stated interest rate, maturity, and payment dates are the same. In computing the yield on an issue containing bonds described in this paragraph (b)(2)(ii), each of those bonds must be treated as redeemed at its present value, unless the stated redemption price at maturity of the bond does not exceed the issue price of the bond by more than one-fourth of one percent multiplied by the product of the stated redemption price at maturity and the number of years to the weighted average maturity date of the substantially identical bonds, in which case each of those bonds must be treated as redeemed at its outstanding stated principal amount, plus accrued, unpaid interest. Weighted average maturity is determined by taking into account the mandatory redemption schedule.

(3) *Yield on certain fixed yield bonds subject to optional early redemption*—(i) *In general.* If a fixed yield bond is subject to optional early redemption and is described in paragraph (b)(3)(ii) of this section, the yield on the issue containing the bond is computed by treating the bond as redeemed at its stated redemption price on the optional redemption date that would produce the lowest yield on the issue.

(ii) *Fixed yield bonds subject to special yield calculation rule.* A fixed yield bond is described in this paragraph (b)(3)(ii) only if it—

(A) Is subject to optional redemption within five years of the issue date, but only if the yield on the issue computed by assuming all bonds in the issue subject to redemption within 5 years of the issue date are redeemed at maturity is more than one-eighth of one percentage point higher than the yield on that issue computed by assuming all bonds subject to optional redemption within 5 years of the issue date are redeemed at the earliest date for their redemption;

(B) Is issued at an issue price that exceeds the stated redemption price at maturity by more than one-fourth of one percent multiplied by the product of the stated redemption price at maturity and the number of complete years to the first optional redemption date for the bond; or

(C) Bears interest at increasing interest rates (i.e., a *stepped coupon bond*).

(4) *Yield recomputed upon transfer of certain rights associated with the bond.* For purposes of § 1.148–3, as of the date of any transfer, waiver, modification, or similar transaction (collectively, a *transfer*) of any right that is part of the terms of a bond or is otherwise associated with a bond (e.g., a redemption right), in a transaction that is separate and apart from the original sale of the bond, the issue is treated as if it were retired and a new issue issued on the date of the transfer (*reissued*). The redemption price of the retired issue and the issue price of the new issue equal the aggregate values of all the bonds of the issue on the date of the transfer. In computing yield on the new issue, any amounts received by the issuer as consideration for the transfer are taken into account.

(5) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples.

Example 1. No early call—(i) *Facts.* On January 1, 1994, City *A* issues an issue consisting of four identical fixed yield bonds. The stated final maturity date of each bond is January 1, 2004, and no bond is subject to redemption before this date. Interest is payable on January 1 of each year at a rate of 6.0000 percent per year on the outstanding principal amount. The total stated principal amount of the bonds is $20 million. The issue price of the bonds $20,060,000.

(ii) *Computation.* The yield on the issue is computed by treating the bonds as retired at the stated maturity under the general rule of § 1.148–4(b)(1). The bonds are treated as redeemed for their stated redemption prices. The yield on the issue is 5.8731 percent per year compounded semiannually, computed as follows:

Date	Payments	PV (5.8731 percent)
1/1/1995	$1,200,000	$1,132,510
1/1/1996	1,200,000	1,068,816
1/1/1997	1,200,000	1,008,704
1/1/1998	1,200,000	951,973
1/1/1999	1,200,000	898,433
1/1/2000	1,200,000	847,903
1/1/2001	1,200,000	800,216
1/1/2002	1,200,000	755,210
1/1/2003	1,200,000	712,736
1/1/2004	21,200,000	11,883,498
		20,060,000

Example 2. Mandatory calls. (i) *Facts.* The facts are the same as in *Example 1.* In this case, however, the bonds are subject to mandatory sinking fund redemption on January 1 of each year, beginning January 1, 2001. On each sinking fund redemption date, one of the bonds is chosen by lottery and is required to be redeemed at par plus accrued interest.

(ii) *Computation.* Because the bonds are subject to specified redemptions, yield on the issue is computed by treating the bonds as redeemed in accordance with the redemption schedule under § 1.148–4(b)(2)(ii). Because the bonds are not sold at a discount, the bonds are treated as retired at their stated redemption prices. The yield on the issue is 5.8678 percent per year compounded semiannually, computed as follows:

Date	Payments	PV (5.8678 percent)
1/1/1995	$1,200,000	$1,132,569
1/1/1996	1,200,000	1,068,926
1/1/1997	1,200,000	1,008,860
1/1/1998	1,200,000	952,169
1/1/1999	1,200,000	898,664
1/1/2000	1,200,000	848,166
1/1/2001	6,200,000	4,135,942
1/1/2002	5,900,000	3,714,650
1/1/2003	5,600,000	3,327,647
1/1/2004	5,300,000	2,972,407
		$20,060,000

Example 3. Optional early call. (i) *Facts.* On January 1, 1994, City *C* issues an issue consisting of three bonds. Each bond has a stated principal amount of $10 million dollars and is issued for par. Bond *X* bears interest at 5 percent per year and matures on January 1, 1999. Bond *Y* bears interest at 6 percent per year and matures on January 1, 2002. Bond *Z* bears interest at 7 percent per year and matures on January 1, 2004. Bonds *Y* and *Z* are callable by the issuer at par plus accrued interest after December 31, 1998.

(ii) *Computation.* (A) The yield on the issue computed as if each bond is outstanding to its maturity is 6.0634 percent per year compounded semiannually, computed as follows:

Date	Payments	PV (6.0634 percent)
1/1/1995	$1,800,000	$1,695,299
1/1/1996	1,800,000	1,595,689
1/1/1997	1,800,000	1,503,814
1/1/1998	1,800,000	1,416,342
1/1/1999	11,800,000	8,744,830
1/1/2000	1,300,000	907,374
1/1/2001	1,300,000	854,595
1/1/2002	11,300,000	6,996,316
1/1/2003	700,000	408,190
1/1/2004	10,700,000	5,876,551
		30,000,000

(B) The yield on the issue computed as if all bonds are called at the earliest date for redemption is 5.9126 percent per year compounded semiannually, computed as follows:

Date	Payments	PV (5.9126 percent)
1/1/1995	$1,800,000	$1,698,113
1/1/1996	1,800,000	1,601,994
1/1/1997	1,800,000	1,511,315
1/1/1998	1,800,000	1,425,769
1/1/1999	31,900,000	23,762,809
		30,000,000

(C) Because the yield on the issue computed by assuming all bonds in the issue subject to redemption within 5 years of the issue date are redeemed at maturity is more than one-eighth of one percentage point higher than the yield on the issue computed by assuming all bonds subject to optional redemption within 5 years of the issue date are redeemed at the earliest date for their redemption, each bond is treated as redeemed on the date that would produce the lowest yield for the issue. The lowest yield on the issue would result from a redemption of all the bonds on January 1, 1999. Thus, the yield on the issue is 5.9126 percent per year compounded semiannually.

(c) *Computing yield on a variable yield issue*—(1) *In general.* The yield on a variable yield issue is computed separately for each computation period. The yield for each computation period is the discount rate that, when used in computing the present value as of the first day of the computation period of all the payments of principal and interest and fees for qualified guarantees that are attributable to the computation period, produces an amount equal to the present value, using the same discount rate, of the aggregate issue price (or deemed issue price, as determined in paragraph (c)(2)(iv) of this section) of the bonds of the issue as of the first day of the computation period. The yield on a variable yield bond is computed in the same manner as the yield on a variable yield issue. Except as provided in paragraph (c)(2) of this section, yield on any fixed yield bond in a variable yield issue is computed in the same manner as the yield on a fixed yield issue as provided in paragraph (b) of this section.

(2) *Payments on bonds included in yield for a computation period*—(i) *Payments in general.* The payments on a bond that are attributable to a computation period include any amounts actually paid during the period for principal on the bond. Payments also include any amounts paid during the current period both for interest accruing on the bond during the current period and for interest accruing during the prior period that was included in the deemed issue price of the bond as accrued unpaid interest at the start of the current period under this paragraph (c)(2). Further, payments include any amounts properly allocable to fees for a qualified guarantee of the bond for the period and to any amounts properly allocable to a qualified hedge for the period.

(ii) *Payments at actual redemption.* If a bond is actually redeemed during a computation period, an amount equal to the greater of its value on the redemption date or the actual redemption price is a payment on the actual redemption date.

(iii) *Payments for bonds outstanding at end of computation period.* If a bond is outstanding at the end of a computation period, a payment equal to the bond's value is taken into account on the last day of that period.

(iv) *Issue price for bonds outstanding at beginning of next computation period.* A bond outstanding at the end of a computation period is treated as if it were immediately reissued on the next day for a deemed issue price equal to the value from the day before as determined under paragraph (c)(2)(iii) of this section.

(3) *Example.* The provisions of this paragraph (c) may be illustrated by the following example.

Example. On January 1, 1994, City *A* issues an issue of identical plain par bonds in an aggregate principal amount of $1,000,000. The bonds pay interest at a variable rate on each June 1 throughout the term of the issue. The entire principal amount of the bonds plus accrued, unpaid interest is payable on the final maturity date of January 1, 2000. No bond year is selected. On June 1, 1994, 1995, 1996, 1997, and 1998, interest in the amounts of $30,000, $55,000, $57,000, $56,000, and $45,000 is paid on the bonds. From June 1, 1998, to January 1, 1999, $30,000 of interest accrues on the bonds. From January 1, 1999, to June 1, 1999, another $35,000 of interest accrues. On June 1, 1999, the issuer actually pays $65,000 of interest. On January 1, 2000, $1,000,000 of principal and $38,000 of accrued interest are paid. The payments for the computation period starting on the issue date and ending on January 1, 1999, include all annual interest payments paid from the issue date to June 1, 1998. Because the issue is outstanding on January 1, 1999, it is treated as redeemed on that date for amount equal to its value ($1,000,000 plus accrued, unpaid interest of $30,000 under paragraph (e)(1) of this section). Thus, $1,030,000 is treated as paid on January 1, 1999. The issue is then treated as reissued on January 1, 1999, for $1,030,000. The payments for the next computation period starting on January 1, 1999, and ending on January 1, 2000, include the interest actually paid on the bonds during that period ($65,000 on June 1, 1999, plus $38,000 paid on January 1, 2000). Because the issue was actually redeemed on January 1, 2000, an amount equal to its stated redemption price is also treated as paid on January 1, 2000.

(d) *Conversion from variable yield issue to fixed yield issue.* As of the first day on which a variable yield issue would qualify as a fixed yield issue if it were newly issued on that date (a *conversion date*), that issue is treated as if it were reissued as a fixed yield issue on the conversion date. The redemption price of the variable yield issue and the issue price of the fixed yield issue equal the aggregate values of all the bonds on the conversion date. Thus, for example, for plain par bonds (e.g., tender bonds), the deemed issue price would be the outstanding principal amount, plus accrued unpaid interest. If the conversion date occurs on a date other than a computation date, the issuer may continue to treat the issue as a variable yield issue until the next computation date, at which time it must be treated as converted to a fixed yield issue.

(e) *Value of bonds*—(1) *Plain par bonds.* Except as otherwise provided, the value of a plain par bond is its outstanding stated principal amount, plus accrued unpaid interest. The value of a plain par bond that is actually redeemed or treated as redeemed is its stated redemption price on the redemption date, plus accrued, unpaid interest.

(2) *Other bonds.* The value of a bond other than a plain par bond on a date is its present value on that date. The present value of a bond is computed

under the economic accrual method taking into account all the unconditionally payable payments of principal, interest, and fees for a qualified guarantee to be paid on or after that date and using the yield on the bond as the discount rate, except that for purposes of § 1.148–6(b)(2) (relating to the universal cap), these values may be determined by consistently using the yield on the issue of which the bonds are a part. To determine yield on fixed yield bonds, see paragraph (b)(1) of this section. The rules contained in paragraphs (b)(2) and (b)(3) of this section apply for this purpose. In the case of bonds described in paragraph (b)(2)(ii) of this section, the present value of those bonds on any date is computed using the yield to the final maturity date of those bonds as the discount rate. In determining the present value of a variable yield bond under this paragraph (e)(2), the initial interest rate on the bond established by the interest index or other interest rate setting mechanism is used to determine the interest payments on that bond.

(f) *Qualified guarantees*—(1) *In general.* Fees properly allocable to payments for a qualified guarantee for an issue (as determined under paragraph (f)(6) of this section) are treated as additional interest on that issue under section 148. A guarantee is a qualified guarantee if it satisfies each of the requirements of paragraphs (f)(2) through (f)(4) of this section.

(2) *Interest savings.* As of the date the guarantee is obtained, the issuer must reasonably expect that the present value of the fees for the guarantee will be less than the present value of the expected interest savings on the issue as a result of the guarantee. For this purpose, present value is computed using the yield on the issue, determined with regard to guarantee payments, as the discount rate.

(3) *Guarantee in substance.* The arrangement must create a guarantee in substance. The arrangement must impose a secondary liability that unconditionally shifts substantially all of the credit risk for all or part of the payments, such as payments for principal and interest, redemption prices, or tender prices, on the guaranteed bonds. Reasonable procedural or administrative requirements of the guarantee do not cause the guarantee to be conditional. In the case of a guarantee against failure to remarket a qualified tender bond, commercially reasonable limitations based on credit risk, such as limitations on payment in the event of default by the primary obligor or the bankruptcy of a long-term credit guarantor, do not cause the guarantee to be conditional. The guarantee may be in any form. The guarantor may not be a co-obligor. Thus, the guarantor must not expect to make any payments other than under a direct-pay letter of credit or similar arrangement for which the guarantor will be reimbursed immediately. The guarantor and any related parties together must not use more than 10 percent of the proceeds of the portion of the issue allocable to the guaranteed bonds.

(4) *Reasonable charge*—(i) *In general.* Fees for a guarantee must not exceed a reasonable, arm's-length charge for the transfer of credit risk. In complying with this requirement, the issuer may not rely on the representations of the guarantor.

(ii) *Fees for services other than transfer of credit risk must be separately stated.* A fee for a guarantee must not include any payment for any direct or indirect services other than the transfer of credit risk, unless the compensation for those other services is separately stated, reasonable, and excluded from the guarantee fee. Fees for the transfer of credit risk include fees for the guarantor's overhead and other costs relating to the transfer of credit risk. For example, a fee includes payment for services other than transfer of credit risk if—

(A) It includes payment for the cost of underwriting or remarketing bonds or for the cost of insurance for casualty to bond-financed property;

(B) It is refundable upon redemption of the guaranteed bond before the final maturity date and the amount of the refund would exceed the portion of the fee that had not been earned; or

(C) The requirements of § 1.148–2(e)(2) (relating to temporary periods for capital projects) are not satisfied, and the guarantor is not reasonably assured that the bonds will be repaid if the project to be financed is not completed.

(5) *Guarantee of purpose investments.* Except for guarantees of qualified mortgage loans and qualified student loans, a guarantee of payments on a purpose investment is a qualified guarantee of the issue if all payments on the purpose investment reasonably coincide with payments on the related bonds and the payments on the purpose investment are unconditionally payable no more than 6 months before the corresponding interest payment and 12 months before the corresponding principal payments on the bonds. This paragraph (f)(5) only applies if, in addition to satisfying the other requirements of this paragraph (f), the guarantee is, in substance, a guarantee of the bonds allocable to that purpose investment and to no other bonds except for bonds that are equally and ratably secured by purpose investments of the same conduit borrower.

(6) *Allocation of qualified guarantee payments*—(i) *In general.* Payments for a qualified guarantee must be allocated to bonds and to computation periods in a manner that properly reflects the proportionate credit risk for which the guarantor is compensated. Proportionate credit risk for bonds that are not substantially identical may be determined using any reasonable, consistently applied method. For example, this risk may be based on the ratio of the total principal and interest paid and to be paid on a guaranteed bond to the total principal and interest paid and to be paid on all bonds of the guaranteed issue. An allocation method generally is not reasonable, for example, if a substantial portion of the fee is allocated to the construction portion of the issue and a correspondingly insubstantial portion is allocated to the later years covered by the guarantee. Reasonable letter of credit *set up* fees may be allocated ratably during the initial term of the letter of credit. Upon an early redemption of a variable yield bond, fees otherwise allocable to the period after the redemption are allocated to remaining outstanding bonds of the issue or, if none remain outstanding, to the period before the redemption.

(ii) *Safe harbor for allocation of qualified guarantee fees for variable yield issues.* An allocation of non-level payments for a qualified guarantee for variable yield bonds is treated as meeting the requirements of paragraph (f)(6)(i) of this section if, for each bond year for which the guarantee is in effect, an equal amount (or for any short bond year, a proportionate amount of the equal amount) is treated as paid as of the beginning of that bond year. The present value of the annual amounts must equal the fee for the guarantee allocated to that bond, with present value computed as of the first day the guarantee is in effect by using as the discount rate the yield on the variable yield bonds covered by the guarantee, determined without regard to any fee allocated under this paragraph (f)(6)(ii).

(7) *Refund or reduction of guarantee payments.* If as a result of an investment of proceeds of a refunding issue in a refunding escrow, there will be a reduction in, or refund of, payments for a guarantee (*savings*), the savings must be treated as a reduction in the payments on the refunding issue.

(g) *Yield on certain mortgage revenue and student loan bonds.* For purposes of section 148 and this section, section 143(g)(2)(C)(ii) applies to the

computation of yield on an issue of qualified mortgage bonds or qualified veterans' mortgage bonds. For purposes of applying sections 148 and 143(g) to a variable yield issue of qualified mortgage bonds or qualified student loan bonds, the yield on that issue is computed over the term of the issue.

(h) *Qualified hedging transactions*—(1) *In general.* Payments made or received by an issuer under a qualified hedge (as defined in paragraph (h)(2) of this section) relating to bonds of an issue are taken into account (as provided in paragraph (h)(3) of this section) to determine the yield on the issue. Except as provided in paragraph (h)(4) of this section, the issue is treated as a variable yield issue. These hedging rules apply solely for purposes of section 148.

(2) *Qualified hedge defined.* A *qualified hedge* is a contract that satisfies each of the following requirements:

(i) *Hedge*—(A) *In general.* The contract is a *hedge* entered into primarily to reduce the issuer's risk of interest rate changes with respect to a borrowing. For example, the contract may be an interest rate swap, an interest rate cap, a futures contract, a forward contract, or an option.

(B) *No significant investment element.* A contract is not a hedge under paragraph (h)(2)(i)(A) of this section if it contains a significant investment element (i.e., an expected return). For example, variable rate bonds held by the issuer do not meet the requirements of this paragraph (h)(2)(i). A contract may contain a significant investment element if the payments under the contract do not correspond closely in time and amount to the interest payments on the bonds being hedged. For example, an interest rate swap generally contains a significant investment element if it requires any payments other than periodic payments, within the meaning of section 446 and the regulations thereunder (*periodic payments*) (e.g., an up-front payment for an off-market swap) before its termination date. Similarly, an interest rate cap generally contains a significant investment element if the cap rate is less than the on-market swap rate on the date the cap is entered into. For this purpose, the on-market swap rate is the single fixed rate for which the rate or index that is the subject of the cap could be swapped in an on-market interest rate swap that requires only periodic payments and that has a term equal to the term of the cap.

(ii) *Parties.* The contract is entered into between the issuer or the political subdivision on behalf of which the issuer issues the bonds (collectively referred to in this paragraph (h) as the *issuer*) and a provider that is not a related party (the *hedge provider*).

(iii) *Hedged bonds.* The hedge covers all of one or more groups of substantially identical bonds in the issue (i.e., all of the bonds having the same interest rate, maturity, and terms). If the hedge does not cover all interest payments on all of the substantially identical bonds being hedged, it must cover, in whole or in part, the same specific identifiable interest payments on each of the substantially identical bonds. Thus, for example, a qualified hedge may include a hedge of all or a pro rata portion of each interest payment on the variable rate bonds in an issue for the first five years following their issuance. For purposes of this paragraph (h), unless the context clearly requires otherwise, *hedged bonds* means the specific bonds or portions thereof (i.e., the specific interest payments) covered by a hedge.

(iv) *Interest based.* Changes in the value of the contract are based primarily on interest rate changes. For example, an interest rate swap or a futures contract on Treasury securities may qualify. A commodity swap or an option on a commodity futures contract, however, is not a qualified hedge.

(v) *Size.* The contract does not hedge an amount larger than the issuer's risk with respect to interest rate changes on the hedged bonds.

(vi) *Receipts.* The payments to the issuer under the contract correspond closely, in both time and amount, to the specific interest payments being hedged on the hedged bonds.

(vii) *Timing and duration.* Payments do not begin to accrue under the contract on a date earlier than the sale date of the hedged bonds and do not accrue longer than the hedged interest payments on the hedged bonds.

(viii) *Source of payments.* Payments to the hedge provider are reasonably expected to be made from the same source of funds that, absent the hedge, would be reasonably expected to be used to pay principal and interest on the hedged bonds.

(ix) *Identification.* The hedge is identified by the actual issuer on its books and records maintained for the hedged bonds on or before the later of the date on which the parties enter into the contract or the issue date of the hedged bonds. The identification specifies the hedge provider, the terms of the hedge, and the hedged bonds. The identification contains sufficient detail to establish that the requirements of this paragraph (h)(2) and, if applicable, paragraph (h)(4) of this section are satisfied. The existence of the hedge is noted on all forms filed with the Internal Revenue Service for the issue after the date on which the hedge is entered into.

(3) *Accounting for qualified hedges*—(i) *In general.* Except as otherwise provided in paragraph (h)(4) of this section, payments made or received by the issuer under a qualified hedge are treated as payments made or received, as appropriate, on the hedged bonds that are taken into account in determining the yield on those bonds. These payments are reasonably allocated to the hedged bonds in the period to which the payments relate, as determined under paragraph (h)(3)(iii) of this section. Payments made or received by the issuer include payments deemed made or received when a contract is terminated or deemed terminated under this paragraph (h)(3). Payments reasonably allocable to the reduction of risk of interest rate changes and to the hedge provider's overhead under this paragraph (h) are included as payments made or received under a qualified hedge.

(ii) *Exclusions from hedge.* Payments for services or other items under the contract that are not expressly treated as payments under the qualified hedge under paragraph (h)(3)(i) of this section are not payments with respect to a qualified hedge.

(iii) *Timing and allocation of payments.* The period to which a payment made by the issuer relates is determined under general Federal income tax principles, including, without limitation, section 446 and the regulations thereunder on notional principal contracts, and adjusted as necessary to reflect the end of a computation period and the start of a new computation period. Except as provided in paragraph (h)(3)(iv) of this section, a payment received by the issuer is taken into account in the period that the interest payment that the payment hedges is required to be made.

(iv) *Termination payments*—(A) *Termination defined.* A termination of a qualified hedge includes any sale, assignment, or other disposition of the hedge by the issuer, or the acquisition by the issuer of an offsetting hedge. A deemed termination occurs when the hedged bonds are redeemed.

(B) *General rule.* A payment made or received by an issuer to terminate a qualified hedge, including gain or loss realized or deemed realized, is treated as a payment made or received on the hedged bonds, as appropriate. The payment is reasonably allocated to the remaining periods originally covered by the terminated hedge in a manner that

reflects the economic substance of the hedge.

(C) *Special rule for terminations when bonds are redeemed.* Except as otherwise provided in this paragraph (h)(3)(iv)(C) and in paragraph (h)(3)(iv)(D) of this section, when a qualified hedge is deemed terminated because the hedged bonds are redeemed, the fair market value of the contract on the redemption date is treated as a termination payment made or received on that date. When hedged bonds are redeemed, any payment received by the issuer on termination of a hedge, including a termination payment or a deemed termination payment, reduces, but cannot exceed, the interest payments made by the issuer on the hedged bonds in the computation period ending on the termination date. The excess, if any, is reasonably allocated over the bond years in the immediately preceding computation period or periods to the extent necessary to eliminate the excess.

(D) *Special rules for refundings.* To the extent that the hedged bonds are redeemed using the proceeds of a refunding issue, the termination payment is accounted for under paragraph (h)(3)(iv)(B) by treating it as a payment on the refunding issue, rather than the hedged bonds. In addition, to the extent that the refunding issue, rather than the hedged bonds, has been redeemed, paragraph (h)(3)(iv)(C) applies to the termination payment by treating it as a payment on the redeemed refunding issue.

(4) *Certain variable yield issues treated as fixed yield issues*—(i) *In general.* Except as otherwise provided in paragraph (h)(4)(ii)(C) of this section, if the issuer of a variable yield issue enters into an interest rate swap that is a qualified hedge, the hedged bonds are treated as fixed yield bonds if—

(A) *Start date.* The date on which payments begin to accrue on the swap is not later than 15 days after the issue date of the hedged bonds;

(B) *Maturity.* The term of the swap is equal to the term of the hedged bonds or the entire period during which the hedged bonds bear interest at variable interest rates.

(C) *No nonperiodic payments.* Payments to be made or received under the swap are reasonably expected to correspond closely, in time and amount, to payments on the hedged bonds (i.e., no nonperiodic payments). Swap payments made within 15 days of the related payments on the hedged bonds generally so correspond.

(D) *Notional principal amount.* The notional principal amount used to compute both fixed and variable payments on the swap equals the principal amount of all the variable yield bonds in the issue.

(E) *Payments and interest rate.* Under the swap, the issuer makes level payments based on a fixed interest rate and receives payments based on a variable interest rate that is substantially the same as the interest rate on the hedged bonds. These interest rates are treated as substantially the same if they are reasonably expected to be substantially the same throughout the term of the hedge. For example, an objective 30-day tax-exempt variable rate index or other objective index (e.g., LIBOR, J.J. Kenney Index, PSA Municipal swap index) may be adjusted to correspond to an issuer's individual 30-day interest rate.

(ii) *Accounting*—(A) *In general.* If a hedged bond is treated as a fixed yield bond under this paragraph (h)(4), the fixed-rate payments made by the issuer on the swap are substituted for the actual interest payments on the hedged bonds for purposes of computing yield on that bond. For this purpose, the fixed-rate payments are the amounts determined by multiplying the notional principal amount by the fixed rate (i.e., the amount determined before netting the fixed and variable amounts due under the swap).

(B) *Effect of termination generally.* Except as otherwise provided in paragraph (h)(4)(ii)(C) of this section, for purposes of § 1.148–3, as of the termination date of a qualified hedge covered by this paragraph (h)(4), the issue of which the hedged bonds are a part is treated as if it were reissued on the termination date. The redemption price of the retired issue and the issue price of the new issue equal the aggregate values of all the bonds of the issue on the termination date. In computing the yield on the new issue, any termination payment is accounted for under paragraph (h)(3)(iv) of this section, applied by treating the termination payment as made or received on the deemed new issue under this paragraph (h)(4)(ii)(B).

(C) *Effect of early termination.* If the swap is terminated or deemed terminated within 5 years after the issue date of the issue of which the hedged bonds are a part, the general rules under this paragraph (h)(4) do not apply, and, for purposes of § 1.148–3, the hedged bonds are treated as variable yield bonds from the issue date.

(5) *Authority of the Commissioner*—(i) *In general.* A contract is not a qualified hedge if the Commissioner determines, based on all the facts and circumstances, that treating the contract as a qualified hedge would provide a material potential for arbitrage, or a principal purpose for entering into the contract is that arbitrage potential. For example, a contract that requires a substantial nonperiodic payment may constitute, in whole or part, an embedded loan, investment-type property, or other investment.

(ii) *Other qualified hedges.* The Commissioner, by publication of a revenue ruling or revenue procedure, may specify contracts that do not otherwise meet the requirements of paragraph (h)(2) of this section as qualified hedges.

(iii) *Recomputation of yield.* If an issuer enters into a hedge that is not properly identified or otherwise fails to meet the requirements of this section, the Commissioner may recompute the yield on the issue taking the hedge into account if the failure to take the hedge into account distorts that yield or otherwise fails to clearly reflect the economic substance of the transaction.

§ 1.148–5 Yield and valuation of investments.

(a) *In general.* This section provides rules for computing the yield and value of investments allocated to an issue for various purposes under section 148.

(b) *Yield on an investment*—(1) *In general.* Except as otherwise provided, the yield on an investment allocated to an issue is computed under the economic accrual method, using the same compounding interval and financial conventions used to compute the yield on the issue. The yield on an investment allocated to an issue is the discount rate that, when used in computing the present value as of the date the investment is first allocated to the issue of all unconditionally payable receipts from the investment, produces an amount equal to the present value of all unconditionally payable payments for the investment. For this purpose, *payments* means amounts to be actually or constructively paid to acquire the investment, and *receipts* means amounts to be actually or constructively received from the investment, such as earnings and return of principal. The yield on a variable rate investment is determined in a manner comparable to the determination of the yield on a variable rate issue. For an issue of qualified mortgage bonds, qualified veterans' mortgage bonds, or qualified student loan bonds on which interest is paid semiannually, all regular monthly loan payments to be received during a semiannual debt service period may be treated as received at the end of that period. In addition, for any conduit financing issue, payments made by the conduit borrower are not treated as paid

until the conduit borrower ceases to receive the benefit of earnings on those amounts.

(2) *Yield on a separate class of investments*—(i) *In general.* For purposes of the yield restriction rules of section 148(a) and § 1.148–2, yield is computed separately for each class of investments. For this purpose, in determining the yield on a separate class of investments, the yield on each individual investment within the class is blended with the yield on other individual investments within the class, whether or not held concurrently, by treating those investments as a single investment. The yields on investments that are not within the same class are not blended.

(ii) *Separate classes of investments.* Each of the following is a separate class of investments—

(A) Each category of yield restricted purpose investment and program investment that is subject to a different definition of *materially higher* under § 1.148–2(d)(2);

(B) Yield-restricted nonpurpose investments; and

(C) All other nonpurpose investments;

(iii) *Permissive application of single investment rules to certain yield restricted investments for all purposes of section 148.* Excluding those investments to which paragraph (b)(2)(iv) of this section applies, all yield restricted investments that are part of the same class may be treated as a single investment having a single yield, determined under this paragraph (b)(2), for all purposes of section 148.

(iv) *Mandatory application of single investment rules for refunding escrows for all purposes of section 148.* For all purposes of section 148, in computing the yield on yield restricted investments allocable to proceeds (i.e., sale proceeds, investment proceeds, and transferred proceeds) of a refunding issue that are held in one or more refunding escrows, the individual investments are treated as a single investment having a single yield, whether or not held concurrently. For example, this single investment includes both the individual investments allocable to sale and investment proceeds of a refunding issue that are held in one refunding escrow for a prior issue and the investments allocable to transferred proceeds of that refunding issue that are held in another refunding escrow.

(3) *Investments to be held beyond issue's maturity or beyond temporary period.* In computing the yield on investments allocable to an issue that are to be held beyond the reasonably expected redemption date of the issue, those investments are treated as sold for an amount equal to their value on that date. In computing the yield on investments that are held beyond an applicable temporary period under § 1.148–2, for purposes of § 1.148–2 those investments may be treated as purchased for an amount equal to their fair market value as of the end of the temporary period.

(4) *Consistent redemption assumptions on purpose investments.* The yield on purpose investments allocable to an issue is computed using the same redemption assumptions used to compute the yield on the issue. Yield on purpose investments allocable to an issue of qualified mortgage bonds and qualified veterans' mortgage bonds must be determined in a manner that is consistent with, and using the assumptions required by, section 143(g)(2)(B).

(5) *Student loan special allowance payments included in yield.* Except as provided in § 1.148–11(e), the yield on qualified student loans is computed by including as receipts any special allowance payments made by the Secretary of Education pursuant to section 438 of the Higher Education Act of 1965.

(c) *Yield reduction payments to the United States*—(1) *In general.* In determining the yield on an investment to which this paragraph (c) applies, any amount paid to the United States in accordance with this paragraph (c), including a rebate amount, is treated as a payment for that investment that reduces the yield on that investment.

(2) *Manner of payment*—(i) *In general.* Except as otherwise provided in paragraph (c)(2)(ii) of this section, an amount is paid under this paragraph (c) if it is paid to the United States at the same time and in the same manner as rebate amounts are required to be paid or at such other time or in such manner as the Commissioner may prescribe. The provisions of § 1.148–3(i) apply to payments made under this paragraph (c).

(ii) *Special rule for purpose investments.* For purpose investments allocable to an issue—

(A) No amounts are required to be paid to satisfy this paragraph (c) until the earlier of the end of the tenth bond year after the issue date of the issue or 60 days after the date on which the issue is no longer outstanding; and

(B) For payments made prior to the date on which the issue is retired, the issuer need not pay more than 75 percent of the amount otherwise required to be paid as of the date to which the payment relates.

(3) *Applicability of special yield reduction rule*—(i) *Covered investments.* This paragraph (c) applies to—

(A) Nonpurpose investments allocable to proceeds of an issue that qualified for one of the temporary periods available for capital projects, restricted working capital expenditures, pooled financings, or investment proceeds under paragraphs § 1.148–2 (e)(2), (e)(3), (e)(4), or (e)(6) of this section, respectively;

(B) Investments allocable to a variable yield issue during any computation period in which at least 5 percent of the value of the issue is represented by variable yield bonds, unless the issue is an issue of hedge bonds (as defined in section 149(g)(3)(A));

(C) Nonpurpose investments allocable to transferred proceeds of—

(*1*) A current refunding issue to the extent necessary to reduce the yield on those investments to satisfy yield restrictions under section 148(a); or

(*2*) An advance refunding issue to the extent that investment of the refunding escrows allocable to the proceeds, other than transferred proceeds, of the refunding issue in zero-yielding nonpurpose investments is insufficient to satisfy yield restrictions under section 148(a);

(D) Purpose investments allocable to qualified student loans under a program described in section 144(b)(1)(A);

(E) Nonpurpose investments allocable to gross proceeds of an issue in a fund that, except for its failure to satisfy the size limitation in § 1.148–2(f)(2)(ii), would qualify as a reasonably required reserve or replacement fund, but only to the extent that—

(*1*) The value of the nonpurpose investments in the fund is not greater than 15 percent of the stated principal amount of the issue, as computed under § 1.148–2(f)(2)(ii), or

(*2*) The amounts in the fund (other than investment earnings) are not reasonably expected to be used to pay debt service on the issue (e.g., a reserve fund for a revolving fund loan program);

(F) Nonpurpose investments allocated to replacement proceeds of a refunded issue as a result of the application of the universal cap to amounts in a refunding escrow (see § 1.148–11(c)(1)(ii)); and

(G) Investments described in § 1.148–11(f).

(ii) *Exception to yield reduction payments rule for advance refunding issues.* Paragraph (c)(1) of this section does not apply to investments allocable to gross proceeds of an advance refunding issue, other than transferred proceeds to which paragraph (c)(3)(i)(C) of this section applies and replacement proceeds to which paragraph (c)(3)(i)(F) of this section applies.

(d) *Value of investments*—(1) *In general.* Except as otherwise provided, the value of an investment (including a payment or receipt on the investment) on a date must be determined using one of the following valuation methods consistently for all purposes of section 148 to that investment on that date:

(i) *Plain par investment—outstanding principal amount.* A plain par investment may be valued at its outstanding stated principal amount, plus any accrued unpaid interest on that date.

(ii) *Fixed rate investment—present value.* A fixed rate investment may be valued at its present value on that date.

(iii) *Any investment—fair market value.* An investment may be valued at its fair market value on that date.

(2) *Mandatory valuation of yield restricted investments at present value.* Any yield restricted investment must be valued at present value. For example, a purpose investment or an investment allocable to gross proceeds in a refunding escrow after the expiration of the initial temporary period must be valued at present value. See, however, paragraph (b)(3) of this section.

(3) *Mandatory valuation of certain investments at fair market value*—(i) *In general.* Except as provided in paragraphs (d)(2), (d)(3)(ii), and (d)(4) of this section, an investment must be valued at fair market value on the date that it is first allocated to an issue or first ceases to be allocated to an issue as a consequence of a deemed acquisition or deemed disposition. For example, if an issuer deposits existing investments into a sinking fund for an issue, those investments must be valued at fair market value as of the date first deposited into the fund.

(ii) *Exception to fair market value requirement for transferred proceeds allocations, universal cap allocations, and commingled funds.* This paragraph (d)(3) does not apply if the investment is allocated to an issue or ceases to be allocated to an issue as a result of the transferred proceeds allocation rule under § 1.148–9(b) or the universal cap rule under § 1.148–6(b)(2). In addition, this paragraph (d)(3) does not apply to investments in a commingled fund (other than a bona fide debt service fund) unless it is a commingled fund described in § 1.148–6(e)(5)(iii).

(4) *Special transition rule for transferred proceeds.* The value of a nonpurpose investment that is allocated to transferred proceeds of a refunding issue on a transfer date may not exceed the value of that investment on the transfer date used for purposes of applying the arbitrage restrictions to the refunded issue.

(5) *Definition of present value of an investment.* Except as otherwise provided, present value of an investment is computed under the economic accrual method, using the same compounding interval and financial conventions used to compute the yield on the issue. The present value of an investment on a date is equal to the present value of all unconditionally payable receipts to be received from and payments to be paid for the investment after that date, using the yield on the investment as the discount rate.

(6) *Definition of fair market value*—(i) *In general.* The fair market value of an investment is the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's-length transaction. Fair market value generally is determined on the date on which a contract to purchase or sell the nonpurpose investment becomes binding (i.e., the trade date rather than the settlement date). Except as otherwise provided in this paragraph (d)(6), an investment that is not of a type traded on an established securities market, within the meaning of section 1273, is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value. The fair market value of a United States Treasury obligation that is purchased directly from the United States Treasury is its purchase price.

(ii) *Safe harbor for establishing fair market value for certificates of deposit.* This paragraph (d)(6)(ii) applies to a certificate of deposit that has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal. The purchase price of such a certificate of deposit is treated as its fair market value on the purchase date if the yield on the certificate of deposit is not less than—

(A) The yield on reasonably comparable direct obligations of the United States; and

(B) The highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(iii) *Safe harbor for establishing fair market value for guaranteed investment contracts.* The purchase price of a guaranteed investment contract is treated as its fair market value on the purchase date if—

(A) The issuer makes a bona fide solicitation for a specified guaranteed investment contract and receives at least three bona fide bids from providers that have no material financial interest in the issue (e.g., as underwriters or brokers);

(B) The issuer purchases the highest-yielding guaranteed investment contract for which a qualifying bid is made (determined net of broker's fees);

(C) The yield on the guaranteed investment contract (determined net of broker's fees) is not less than the yield then available from the provider on reasonably comparable guaranteed investment contracts, if any, offered to other persons from a source of funds other than gross proceeds of tax-exempt bonds;

(D) The determination of the terms of the guaranteed investment contract takes into account as a significant factor the issuer's reasonably expected drawdown schedule for the amounts to be invested, exclusive of amounts deposited in debt service funds and reasonably required reserve or replacement funds;

(E) The terms of the guaranteed investment contract, including collateral security requirements, are reasonable; and

(F) The obligor on the guaranteed investment contract certifies the administrative costs that it is paying (or expects to pay) to third parties in connection with the guaranteed investment contract.

(e) *Administrative costs of investments*—(1) *In general.* Except as otherwise provided in this paragraph (e), an allocation of gross proceeds of an issue to a payment or a receipt on an investment is not adjusted to take into account any costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire the investment (administrative costs). Thus, those administrative costs generally do not increase the payments for, or reduce the receipts from, investments.

(2) *Qualified administrative costs on nonpurpose investments*—(i) *In general.* In determining payments and receipts on nonpurpose investments, qualified administrative costs are taken into account. Thus, qualified administrative costs increase the payments for, or decrease the receipts from, the investments. Qualified administrative costs are reasonable, direct administrative costs, other than carrying costs, such as separately stated brokerage or selling commissions, but not legal and accounting fees, recordkeeping, custody, and similar costs. General overhead costs and similar indirect costs of the issuer such as employee salaries and office expenses and costs associated with computing the rebate amount under section 148(f) are not qualified administrative costs. In general, administrative costs are not reasonable unless they are comparable to administrative costs that would be charged for the same investment or a reasonably comparable investment if

acquired with a source of funds other than gross proceeds of tax-exempt bonds.

(ii) *Special rule for administrative costs of nonpurpose investments in certain regulated investment companies and commingled funds.* Qualified administrative costs include all reasonable administrative costs, without regard to the limitation on indirect costs under paragraph (e)(2)(i) of this section, incurred by:

(A) *Regulated investment companies.* A publicly offered regulated investment company (as defined in section 67(c)(2)(B)); and

(B) *External commingled funds.* A commingled fund in which the issuer and any related parties do not own more than 10 percent of the beneficial interest in the fund.

(iii) *Special rule for guaranteed investment contracts.* For a guaranteed investment contract, a broker's commission paid on behalf of either an issuer or the provider is not a qualified administrative cost to the extent that the commission exceeds 0.05 percent of the amount reasonably expected to be invested per year. This paragraph (e)(2)(iii) does not apply to an issue that satisfies section 148(f)(4)(D)(i).

(3) *Qualified administrative costs on purpose investments*—(i) *In general.* In determining payments and receipts on purpose investments, qualified administrative costs described in this paragraph (e)(3) paid by the conduit borrower are taken into account. Thus, these costs increase the payments for, or decrease the receipts from, the purpose investments. This rule applies even if those payments merely reimburse the issuer. Although the actual payments by the conduit borrower may be made at any time, for this purpose, a pro rata portion of each payment made by a conduit borrower is treated as a reimbursement of reasonable administrative costs, if the present value of those payments does not exceed the present value of the reasonable administrative costs paid by the issuer, using the yield on the issue as the discount rate.

(ii) *Definition of qualified administrative costs of purpose investments*—(A) *In general.* Except as otherwise provided in this paragraph (e)(3)(ii), qualified administrative costs of a purpose investment means—

(*1*) Costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire the investment; and

(*2*) Costs of issuing, carrying, or repaying the issue, and any underwriters' discount.

(B) *Limitation on program investments.* For a program investment, qualified administrative costs include only those costs described in paragraph (e)(3)(ii)(A)(*2*) of this section.

§ 1.148–6 General allocation and accounting rules.

(a) *In general*—(1) *Reasonable accounting methods required.* An issuer may use any reasonable, consistently applied accounting method to account for gross proceeds, investments, and expenditures of an issue.

(2) *Bona fide deviations from accounting method.* An accounting method does not fail to be reasonable and consistently applied solely because a different accounting method is used for a bona fide governmental purpose to consistently account for a particular item. Bona fide governmental purposes may include special State law restrictions imposed on specific funds or actions to avoid grant forfeitures.

(b) *Allocation of gross proceeds to an issue*—(1) *One-issue rule and general ordering rules.* Except as otherwise provided, amounts are allocable to only one issue at a time as gross proceeds, and if amounts simultaneously are proceeds of one issue and replacement proceeds of another issue, those amounts are allocable to the issue of which they are proceeds. Amounts cease to be allocated to an issue as proceeds only when those amounts are allocated to an expenditure for a governmental purpose, are allocated to transferred proceeds of another issue, or cease to be allocated to that issue at retirement of the issue or under the universal cap of paragraph (b)(2) of this section. Amounts cease to be allocated to an issue as replacement proceeds only when those amounts are allocated to an expenditure for a governmental purpose, are no longer used in a manner that causes those amounts to be replacement proceeds of that issue, or cease to be allocated to that issue because of the retirement of the issue or the application of the universal cap under paragraph (b)(2) of this section. Amounts that cease to be allocated to an issue as gross proceeds are eligible for allocation to another issue. Under § 1.148–10(a), however, the rules in this paragraph (b)(1) do not apply in certain cases involving abusive arbitrage devices.

(2) *Universal cap on value of nonpurpose investments allocated to an issue*—(i) *Application.* The rules in this paragraph (b)(2) provide an overall limitation on the amount of gross proceeds allocable to an issue. Although the universal cap generally may be applied at any time in the manner described in this paragraph (b)(2), it need not be applied on any otherwise required date of application if its application on that date would not result in a reduction or reallocation of gross proceeds of an issue. For this purpose, if an issuer reasonably expects as of the issue date that the universal cap will not reduce the amount of gross proceeds allocable to the issue during the term of the issue, the universal cap need not be applied on any date on which an issue actually has all of the following characteristics—

(A) No replacement proceeds are allocable to the issue, other than replacement proceeds in a bona fide debt service fund or a reasonably required reserve or replacement fund;

(B) The net sale proceeds of the issue—

(*1*) Qualified for one of the temporary periods available for capital projects, restricted working capital expenditures, or pooled financings under paragraphs § 1.148–2 (e)(2), (e)(3), or (e)(4), and those net sales proceeds were in fact allocated to expenditures prior to the expiration of the longest applicable temporary period; or

(*2*) were deposited in a refunding escrow and expended as originally expected;

(C) The issue does not refund a prior issue that, on any transfer date, has unspent proceeds allocable to it;

(D) None of the bonds are retired prior to the date on which those bonds are treated as retired in computing the yield on the issue; and

(E) No proceeds of the issue are invested in qualified student loans or qualified mortgage loans.

(ii) *General rule.* Except as otherwise provided below, amounts that would otherwise be gross proceeds allocable to an issue are allocated (and remain allocated) to the issue only to the extent that the value of the nonpurpose investments allocable to those gross proceeds does not exceed the value of all outstanding bonds of the issue. For this purpose, gross proceeds allocable to cash, tax-exempt bonds that would be nonpurpose investments (absent section 148(b)(3)(A)), qualified student loans, and qualified mortgage loans are treated as nonpurpose investments. The values of bonds and investments are determined under § 1.148–4(e) and § 1.148–5(d), respectively. The value of all outstanding bonds of the issue is referred to as the *universal cap.* Thus, for example, the universal cap for an issue of plain par bonds is equal to the outstanding stated principal amount of those bonds plus accrued interest.

(iii) *Determination and application of the universal cap.* Except as otherwise provided, beginning with the first bond year that commences after the second

anniversary of the issue date, the amount of the universal cap and the value of the nonpurpose investments must be determined as of the first day of each bond year. For refunding and refunded issues, the cap and values must be determined as of each date that, but for this paragraph (b)(2), proceeds of the refunded issue would become transferred proceeds of the refunding issue, and need not otherwise be determined in the bond year in which that date occurs. All values are determined as of the close of business on each determination date, after giving effect to all payments on bonds and payments for and receipts on investments on that date.

(iv) *General ordering rule for allocations of amounts in excess of the universal cap*—(A) *In general.* If the value of all nonpurpose investments allocated to the gross proceeds of an issue exceeds the universal cap for that issue on a date as of which the cap is determined under paragraph (b)(2)(iii) of this section, nonpurpose investments allocable to gross proceeds necessary to eliminate that excess cease to be allocated to the issue, in the following order of priority—

(*1*) First, nonpurpose investments allocable to replacement proceeds;

(*2*) Second, nonpurpose investments allocable to transferred proceeds; and

(*3*) Third, nonpurpose investments allocable to sale proceeds and investment proceeds.

(B) *Re-allocation of certain amounts.* Except as provided in § 1.148–9(b)(3), amounts that cease to be allocated to an issue as a result of the application of the universal cap may only be allocated to another issue as replacement proceeds.

(C) *Allocations of portions of investments.* Portions of investments to which this paragraph (b)(2)(iv) applies are allocated under either the ratable method or the representative method in the same manner as allocations of portions of investments to transferred proceeds under § 1.148–9(c).

(v) *Nonpurpose investments in a bona fide debt service fund not counted.* For purposes of this paragraph (b)(2), nonpurpose investments allocated to gross proceeds in a bona fide debt service fund for an issue are not taken into account in determining the value of the nonpurpose investments, and those nonpurpose investments remain allocated to the issue.

(c) *Fair market value limit on allocations to nonpurpose investments.* Upon a purchase or sale of a nonpurpose investment, gross proceeds of an issue are not allocated to a payment for that nonpurpose investment in an amount greater than, or to a receipt from that nonpurpose investment in an amount less than, the fair market value of the nonpurpose investment as of the purchase or sale date. For purposes of this paragraph (c) only, the fair market value of a nonpurpose investment is adjusted to take into account qualified administrative costs allocable to the investment.

(d) *Allocation of gross proceeds to expenditures*—(1) *Expenditures in general*—(i) *General rule.* Reasonable accounting methods for allocating funds from different sources to expenditures for the same governmental purpose include any of the following methods if consistently applied: a specific tracing method; a gross proceeds spent first method; a first-in, first-out method; or a ratable allocation method.

(ii) *General limitation.* An allocation of gross proceeds of an issue to an expenditure must involve a current outlay of cash for a governmental purpose of the issue. A *current outlay of cash* means an outlay reasonably expected to occur not later than 5 banking days after the date as of which the allocation of gross proceeds to the expenditure is made.

(2) *Treatment of gross proceeds invested in purpose investments*—(i) *In general.* Gross proceeds of an issue invested in a purpose investment are allocated to an expenditure on the date on which the conduit borrower under the purpose investment allocates the gross proceeds to an expenditure in accordance with this paragraph (d).

(ii) *Exception for qualified mortgage loans and qualified student loans.* If gross proceeds of an issue are allocated to a purpose investment that is a qualified mortgage loan or a qualified student loan, those gross proceeds are allocated to an expenditure for the governmental purpose of the issue on the date on which the issuer allocates gross proceeds to that purpose investment.

(iii) *Continuing allocation of gross proceeds to purpose investments.* Regardless of whether gross proceeds of a conduit financing issue invested in a purpose investment have been allocated to an expenditure under paragraph (d)(2) (i) or (ii) of this section, with respect to the actual issuer those gross proceeds continue to be allocated to the purpose investment until the sale, discharge, or other disposition of the purpose investment.

(3) *Expenditures for working capital purposes*—(i) *In general.* Except as otherwise provided in this paragraph (d)(3) or paragraph (d)(4) of this section, proceeds of an issue may only be allocated to working capital expenditures as of any date to the extent that those working capital expenditures exceed available amounts (as defined in paragraph (d)(3)(iii) of this section) as of that date (i.e., a "proceeds-spent-last" method). For this purpose, proceeds include replacement proceeds described in § 1.148–1(c)(4).

(ii) *Exceptions*—(A) *General de minimis exception.* Paragraph (d)(3)(i) of this section does not apply to expenditures to pay—

(*1*) Any qualified administrative costs within the meaning of §§ 1.148–5(e)(2)(i) or (ii), or § 1.148–5(e)(3)(ii)(A);

(*2*) Fees for qualified guarantees of the issue or payments for a qualified hedge for the issue;

(*3*) Interest on the issue for a period commencing on the issue date and ending on the date that is the later of three years from the issue date or one year after the date on which the project is placed in service;

(*4*) Amounts paid to the United States under sections 1.148–3, 1.148–5(c), or 1.148–7 for the issue;

(*5*) Costs, other than those described in paragraphs (d)(3)(ii)(A) (*1*) through (*4*) of this section, that do not exceed 5 percent of the sale proceeds of an issue and that are directly related to capital expenditures financed by the issue (e.g., initial operating expenses for a new capital project);

(*6*) Principal or interest on an issue paid from unexpected excess sale or investment proceeds; and

(*7*) Principal or interest on an issue paid from investment earnings on a reserve or replacement fund that are deposited in a bona fide debt service fund.

(B) *Exception for extraordinary items.* Paragraph (d)(3)(i) of this section does not apply to expenditures for extraordinary, nonrecurring items that are not customarily payable from current revenues, such as casualty losses or extraordinary legal judgments in amounts in excess of reasonable insurance coverage. If, however, an issuer or a related party maintains a reserve for such items (e.g., a self-insurance fund) or has set aside other available amounts for such expenses, gross proceeds within that reserve must be allocated to expenditures only after all other available amounts in that reserve are expended.

(C) *Exception for payment of principal and interest on prior issues.* Paragraph (d)(3)(i) of this section does not apply to expenditures for payment of principal, interest, or redemption prices on a prior issue and, for a crossover refunding issue, interest on that issue.

(D) *No exceptions if replacement proceeds created.* The exceptions provided in this paragraph (d)(3)(ii) do not apply if the allocation merely substitutes gross proceeds for other amounts that would have been used to make those expenditures in a manner that gives rise to replacement proceeds. For example, if a purported reimbursement allocation of proceeds of a reimbursement bond does not result in an expenditure under § 1.150–2, those proceeds may not be allocated to pay interest on an issue that, absent this allocation, would have been paid from the issuer's current revenues.

(iii) *Definition of available amount*—(A) *In general.* For purposes of this paragraph (d)(3), *available amount* means any amount that is available to an issuer for working capital expenditure purposes of the type financed by an issue. Except as otherwise provided, *available amount* excludes proceeds of the issue but includes cash, investments, and other amounts held in accounts or otherwise by the issuer or a related party if those amounts may be used by the issuer for working capital expenditures of the type being financed by an issue without legislative or judicial action and without a legislative, judicial, or contractual requirement that those amounts be reimbursed.

(B) *Reasonable working capital reserve treated as unavailable.* A reasonable working capital reserve is treated as unavailable. Any working capital reserve is reasonable if it does not exceed 5 percent of the actual working capital expenditures of the issuer in the fiscal year before the year in which the determination of available amounts is made. For this purpose only, in determining the working capital expenditures of an issuer for a prior fiscal year, any expenditures (whether capital or working capital expenditures) that are paid out of current revenues may be treated as working capital expenditures.

(C) *Qualified endowment funds treated as unavailable.* For a 501(c)(3) organization that is a hospital, university, or similar institution, a qualified endowment fund is treated as unavailable. A fund is a qualified endowment fund if—

(*1*) The fund is derived from gifts or bequests, or the income thereon, that were neither made nor reasonably expected to be used to pay working capital expenditures;

(*2*) Pursuant to reasonable, established practices of the organization, the governing body of the 501(c)(3) organization designates and consistently operates the fund as a permanent endowment fund or quasi-endowment fund restricted as to use; and

(*3*) There is an independent verification (e.g., from an independent certified public accountant) that the fund is reasonably necessary as part of the organization's permanent capital.

(D) *Application to statutory safe harbor for tax and revenue anticipation bonds.* For purposes of section 148(f)(4)(B)(iii)(II), *available amount* has the same meaning as in paragraph (d)(3)(iii) of this section, except that the otherwise-permitted reasonable working capital reserve is treated as part of the available amount.

(4) *Expenditures for grants*—(i) *In general.* Gross proceeds of an issue that are used to make a grant are allocated to an expenditure on the date on which the grant is made.

(ii) *Characterization of repayments of grants.* If any amount of a grant financed by gross proceeds of an issue is repaid to the grantor, the repaid amount is treated as unspent proceeds of the issue as of the repayment date unless expended within 60 days of repayment.

(iii) *Definition of grant. Grant* means a transfer for a governmental purpose of money or property to a transferee that is not a related party to or an agent of the transferor. The transfer must not impose any obligation or condition to directly or indirectly repay any amount to the transferor. Obligations or conditions intended solely to assure expenditure of the transferred moneys in accordance with the governmental purpose of the transfer do not prevent a transfer from being a grant.

(5) *Expenditures for reimbursement purposes.* In allocating gross proceeds of issues of reimbursement bonds (as defined in § 1.150–2)) to certain expenditures, § 1.150–2 applies. In allocating gross proceeds to an expenditure to reimburse a previously paid working capital expenditure, paragraph (d)(3) of this section applies. Thus, if the expenditure is described in paragraph (d)(3)(ii) of this section or there are no available amounts on the date a working capital expenditure is made and there are no other available amounts on the date of the reimbursement of that expenditure, gross proceeds are allocated to the working capital expenditure as of the date of the reimbursement.

(6) *Expenditures of certain commingled investment proceeds of governmental issues.* This paragraph (d)(6) applies to any issue of governmental bonds, any issue of private activity bonds issued to finance a facility that is required by section 142 to be owned by a governmental unit, and any portion of an issue that is not treated as consisting of private activity bonds under section 141(b)(9). Investment proceeds of the issue (other than investment proceeds held in a refunding escrow) are treated as allocated to expenditures for a governmental purpose when the amounts are deposited in a commingled fund with substantial tax or other revenues from governmental operations of the issuer and the amounts are reasonably expected to be spent for governmental purposes within 6 months from the date of the commingling. In establishing these reasonable expectations, an issuer may use any reasonable accounting assumption and is not bound by the *proceeds-spent-last* assumption generally required for working capital expenditures under paragraph (d)(3) of this section.

(7) *Payments to related parties.* Any payment of gross proceeds of the issue to a related party of the payor is not an expenditure of those gross proceeds.

(e) *Special rules for commingled funds*—(1) *In general.* An accounting method for gross proceeds of an issue in a commingled fund, other than a bona fide debt service fund, is reasonable only if it satisfies the requirements of paragraphs (e)(2) through (6) of this section in addition to the other requirements of this section.

(2) *Investments held by a commingled fund*—(i) *Required ratable allocations.* Not less frequently than as of the close of each fiscal period, all payments and receipts (including deemed payments and receipts) on investments held by a commingled fund must be allocated (but not necessarily distributed) among the different investors in the fund. This allocation must be based on a consistently applied, reasonable ratable allocation method.

(ii) *Safe harbors for ratable allocation methods.* Reasonable ratable allocation methods include, without limitation, methods that allocate these items in proportion to either—

(A) The average daily balances of the amounts in the commingled fund from different investors during a fiscal period (as described in paragraph (e)(4) of this section); or

(B) The average of the beginning and ending balances of the amounts in the commingled fund from different investors for a fiscal period that does not exceed one month.

(iii) *Definition of investor.* For purposes of this paragraph (e), the term *investor* means each different source of funds invested in a commingled fund. For example, if a city invests gross proceeds of an issue and tax revenues in a commingled fund, it is treated as two different investors.

(3) *Certain expenditures involving a commingled fund.* If a ratable allocation method is used under paragraph (d) of this section to allocate expenditures from the commingled fund, the same ratable allocation method must be used to allocate payments and receipts on investments in the commingled fund under paragraph (e)(2) of this section.

(4) *Fiscal periods.* The fiscal year of a commingled fund is the calendar year unless the fund adopts another fiscal year. A commingled fund may use any consistent fiscal period that does not exceed three months (e.g., a daily, weekly, monthly, or quarterly fiscal period).

(5) *Unrealized gains and losses on investments of a commingled fund*—(i) *Mark-to-market requirement for internal commingled funds with longer-term investment portfolios.* Except as otherwise provided in this paragraph (e), in the case of a commingled fund in which the issuer and any related party own more than 25 percent of the beneficial interests in the fund (an *internal commingled fund*), the fund must treat all its investments as if sold at fair market value either on the last day of the fiscal year or the last day of each fiscal period. The net gains or losses from these deemed sales of investments must be allocated to all investors of the commingled fund during the period since the last allocation.

(ii) *Exception for internal commingled funds with shorter-term investment portfolios.* If the remaining weighted average maturity of all investments held by a commingled fund during a particular fiscal year does not exceed 18 months, and the investments held by the commingled fund during that fiscal year consist exclusively of obligations, the mark-to-market requirement of paragraph (e)(5)(i) of this section does not apply.

(iii) *Exception for commingled reserve funds and sinking funds.* The mark-to-market requirement of paragraph (e)(5)(i) of this section does not apply to a commingled fund that operates exclusively as a reserve fund, sinking fund, or replacement fund for two or more issues of the same issuer.

(6) *Allocations of commingled funds serving as common reserve funds or sinking funds*—(i) *Permitted ratable allocation methods.* If a commingled fund serves as a common reserve fund, replacement fund, or sinking fund for two or more issues (a *commingled reserve*), after making reasonable adjustments to account for proceeds allocated under paragraph (b)(1) or (b)(2) of this section, investments held by that commingled fund must be allocated ratably among the issues served by the commingled fund in accordance with one of the following methods—

(A) The relative values of the bonds of those issues under § 1.148–4(e);

(B) The relative amounts of the remaining maximum annual debt service requirements on the outstanding principal amounts of those issues; or

(C) The relative original stated principal amounts of the outstanding issues.

(ii) *Frequency of allocations.* An issuer must make any allocations required by this paragraph (e)(6) as of a date at least every 3 years and as of each date that an issue first becomes secured by the commingled reserve. If relative original principal amounts are used to allocate, allocations must also be made on the retirement of any issue secured by the commingled reserve.

§ 1.148–7 Spending exceptions to the rebate requirement.

(a) *Scope of section*—(1) *In general.* This section provides guidance on the spending exceptions to the arbitrage rebate requirement of section 148(f)(2). These exceptions are the 6-month exception in section 148(f)(4)(B) (the *6-month exception*), the 18-month exception under paragraph (d) of this section (the *18-month exception*), and the 2-year construction exception under section 148(f)(4)(C) (the *2-year exception*) (collectively, the *spending exceptions*).

(2) *Relationship of spending exceptions.* Each of the spending exceptions is an independent exception to arbitrage rebate. For example, a construction issue may qualify for the 6-month exception or the 18-month exception even though the issuer makes one or more elections under the 2-year exception with respect to the issue.

(3) *Spending exceptions not mandatory.* Use of the spending exceptions is not mandatory. An issuer may apply the arbitrage rebate requirement to an issue that otherwise satisfies a spending exception. If an issuer elects to pay penalty in lieu of rebate under the 2-year exception, however, the issuer must apply those penalty provisions.

(b) *Rules applicable for all spending exceptions.* The provisions of this paragraph (b) apply for purposes of applying each of the spending exceptions.

(1) *Special transferred proceeds rules*—(i) *Application to prior issues.* For purposes of applying the spending exceptions to a prior issue only, proceeds of the prior issue that become transferred proceeds of the refunding issue continue to be treated as unspent proceeds of the prior issue. If the prior issue satisfies one of the spending exceptions, the proceeds of the prior issue that are excepted from rebate under that spending exception are not subject to rebate either as proceeds of the prior issue or as transferred proceeds of the refunding issue.

(ii) *Application to refunding issues*—(A) *In general.* The only spending exception applicable to refunding issues is the 6-month exception. For purposes of applying the 6-month exception to a refunding issue only, proceeds of the prior issue that become transferred proceeds of the refunding issue generally are not treated as proceeds of the refunding issue and need not be spent for the refunding issue to satisfy that spending exception. Even if the refunding issue qualifies for that spending exception, those transferred proceeds are subject to rebate as proceeds of the refunding issue unless an exception to rebate applied to those proceeds as proceeds of the prior issue.

(B) *Exception.* For purposes of applying the 6-month exception to refunding issues, those transferred proceeds of the refunding issue excluded from the gross proceeds of the prior issue under the special definition of gross proceeds in paragraph (c)(3) of this section, and those that transferred from a prior taxable issue, are generally treated as gross proceeds of the refunding issue. Thus, for the refunding issue to qualify for the 6-month exception, those proceeds must be spent within 6 months of the issue date of the refunding issue, unless those amounts continue to be used in a manner that does not cause those amounts to be gross proceeds under paragraph (c)(3) of this section.

(2) *Application of multipurpose issue rules.* Except as otherwise provided, if any portion of an issue is treated as a separate issue allocable to refunding purposes under § 1.148–9(h) (relating to multipurpose issues), for purposes of this section, that portion is treated as a separate issue.

(3) *Expenditures for governmental purposes of the issue.* For purposes of this section, expenditures for the governmental purpose of an issue include payments for interest, but not principal, on the issue, and for principal or interest on another issue of obligations. The preceding sentence does not apply for purposes of the 18-month and 2-year exceptions if those payments cause the issue to be a refunding issue.

(4) *De minimis rule.* Any failure to satisfy the final spending requirement of

the 18-month exception or the 2-year exception is disregarded if the issuer exercises due diligence to complete the project financed and the amount of the failure does not exceed the lesser of 3 percent of the issue price of the issue or $250,000.

(5) *Special definition of reasonably required reserve or replacement fund.* For purposes of this section only, a reasonably required reserve or replacement fund also includes any fund to the extent described in § 1.148–5(c)(3)(i)(E) or (G).

(6) *Pooled financing issue*—(i) *In general.* Except as otherwise provided in this paragraph (b)(6), the spending exceptions apply to a pooled financing issue as a whole, rather than to each loan separately.

(ii) *Election to apply spending exceptions separately to each loan*—(A) *In general.* At the election (made on or before the issue date) of the issuer of a pooled financing issue, the spending exceptions are applied separately to each conduit loan, and the applicable spending requirements for a loan begin on the earlier of the date the loan is made, or the first day following the 1-year period beginning on the issue date of the pooled financing issue. If this election is made, the rebate requirement applies to, and none of the spending exceptions are available for, gross proceeds of the pooled financing bonds before the date on which the spending requirements for those proceeds begin.

(B) *Application of spending exceptions.* If the issuer makes the election under this paragraph (b)(6)(ii), the rebate requirement is satisfied for proceeds used to finance a particular conduit loan to the extent that the loan satisfies a spending exception or the small issuer exception under § 1.148–8, regardless of whether any other conduit loans allocable to the issue satisfy such an exception. A pooled financing issue is an issue of arbitrage bonds, however, unless the entire issue satisfies the requirements of section 148. An issuer may pay rebate for some conduit loans and 1½ percent penalty for other conduit loans from the same pooled financing issue. The 1½ percent penalty is computed separately for each conduit loan.

(C) *Elections under 2-year exception.* If the issuer makes the election under this paragraph (b)(6)(ii), the issuer may make all elections under the 2-year exception separately for each loan. Elections regarding a loan that otherwise must be made by the issuer on or before the issue date instead may be made on or before the date the loan is made (but not later than 1 year after the issue date).

(D) *Example.* The operation of this paragraph (b)(6) is illustrated by the following example:

Example. Pooled financing issue. On January 1, 1994, Authority *J* issues bonds. As of the issue date, *J* reasonably expects to use the proceeds of the issue to make loans to City *K*, County *L*, and City *M*. *J* does not reasonably expect to use more than 75 percent of the available construction proceeds of the issue for construction expenditures. On or before the issue date, *J* elects to apply the spending exceptions separately for each loan, with spending requirements beginning on the earlier of the date the loan is made or the first day following the 1-year period beginning on the issue date. On February 1, 1994, *J* loans a portion of the proceeds to *K*, and *K* reasonably expects that 45 percent of those amounts will be used for construction expenditures. On the date this loan is made, *J* elects under paragraph (j) of this section to treat 60 percent of the amount loaned to *K* as a separate construction issue, and also elects the 1½ percent penalty under paragraph (k) of this section for the separate construction issue. On March 1, 1994, *J* loans a portion of the proceeds to *L*, and *L* reasonably expects that more than 75 percent of those amounts will be used for construction expenditures. On March 1, 1995, *J* loans the remainder of the proceeds to *M*, and none of those amounts will be used for construction expenditures. *J* must satisfy the rebate requirement for all gross proceeds before those amounts are loaned. For the loan to *K*, the spending periods begin on February 1, 1994, and the 1½ percent penalty must be paid for any failure to meet a spending requirement for the portion of the loan to *K* that is treated as a separate construction issue. Rebate must be paid on the remaining portion of the loan to *K*, unless that portion qualifies for the 6-month exception. For the loan to *L*, the spending periods begin on March 1, 1994, and the rebate requirement must be satisfied unless the 6-month, 18-month, or the 2-year exception is satisfied with respect to those amounts. For the loan to *M*, the spending periods begin on January 2, 1995, and the rebate requirement must be satisfied for those amounts unless the 6-month or 18-month exception is satisfied.

(c) *6-month exception*— (1) *General rule.* An issue is treated as meeting the rebate requirement if—

(i) The gross proceeds (as modified by paragraph (c)(3) of this section) of the issue are allocated to expenditures for the governmental purposes of the issue within the 6-month period beginning on the issue date (the *6-month spending period*); and

(ii) The rebate requirement is met for amounts not required to be spent within the 6-month spending period (excluding earnings on a bona fide debt service fund).

(2) *Additional period for certain bonds.* The 6-month spending period is extended for an additional 6 months in certain circumstances specified under section 148(f)(4)(B)(ii).

(3) *Amounts not included in gross proceeds.* For purposes of paragraph (c)(1)(i) of this section only, gross proceeds has the meaning used in § 1.148–1, except it does not include amounts—

(i) In a bona fide debt service fund;

(ii) In a reasonably required reserve or replacement fund (see § 1.148–7(b)(5));

(iii) That, as of the issue date, are not reasonably expected to be gross proceeds but that become gross proceeds after the end of the 6-month spending period;

(iv) Representing sale or investment proceeds derived from payments under any purpose investment of the issue; and

(v) Representing repayments of grants (as defined in § 1.148–6(d)(4)) financed by the issue.

(4) *Series of refundings.* If a principal purpose of a series of refunding issues is to exploit the difference between taxable and tax-exempt interest rates by investing proceeds during the temporary periods provided in § 1.148–9(d), the 6-month spending period for all issues in the series begins on the issue date of the first issue in the series.

(d) *18-month exception*—(1) *General rule.* An issue is treated as meeting the rebate requirement if all of the following requirements are satisfied—

(i) *18-month expenditure schedule met.* The gross proceeds (as defined in paragraph (d)(3) of this section) are allocated to expenditures for a governmental purpose of the issue in accordance with the following schedule (the *18-month expenditure schedule*) measured from the issue date—

(A) At least 15 percent within 6 months (the *first spending period*);

(B) At least 60 percent within 12 months (the *second spending period*); and

(C) 100 percent within 18 months (the *third spending period*).

(ii) *Rebate requirement met for amounts not required to be spent.* The rebate requirement is met for all amounts not required to be spent in accordance with the 18-month expenditure schedule (other than earnings on a bona fide debt service fund).

(iii) *Issue qualifies for initial temporary period.* All of the gross proceeds (as defined in paragraph (d)(3)(i) of this section) of the issue qualify for the initial temporary period under § 1.148–2(e)(2).

(2) *Extension for reasonable retainage.* An issue does not fail to satisfy the spending requirement for the third spending period as a result of a reasonable retainage if the reasonable retainage is allocated to expenditures

within 30 months of the issue date. Reasonable retainage has the meaning under paragraph (h) of this section, as modified to refer to net sale proceeds on the date 18 months after the issue date.

(3) *Gross proceeds*—(i) *Definition of gross proceeds.* For purposes of paragraph (d)(1) of this section only, *gross proceeds* means gross proceeds as defined in paragraph (c)(3) of this section, as modified to refer to "18 months" in paragraph (c)(3)(iii) of this section in lieu of "6 months."

(ii) *Estimated earnings.* For purposes of determining compliance with the first two spending periods under paragraph (d)(1)(i) of this section, the amount of investment proceeds included in gross proceeds of the issue is determined based on the issuer's reasonable expectations on the issue date.

(4) *Application to multipurpose issues.* This paragraph (d) does not apply to an issue any portion of which is treated as meeting the rebate requirement under paragraph (e) of this section (relating to the 2-year exception).

(e) *2-year exception*—(1) *General rule.* A construction issue is treated as meeting the rebate requirement for available construction proceeds if those proceeds are allocated to expenditures for governmental purposes of the issue in accordance with the following schedule (the *2-year expenditure schedule*), measured from the issue date—

(i) At least 10 percent within 6 months (the *first spending period*);

(ii) At least 45 percent within 1 year (the *second spending period*);

(iii) At least 75 percent within 18 months (the *third spending period*); and

(iv) 100 percent within 2 years (the *fourth spending period*).

(2) *Extension for reasonable retainage.* An issue does not fail to satisfy the spending requirement for the fourth spending period as a result of unspent amounts for reasonable retainage (as defined in paragraph (h) of this section) if those amounts are allocated to expenditures within 3 years of the issue date.

(3) *Definitions.* For purposes of the 2-year exception, the following definitions apply:

(i) *Real property* means land and improvements to land, such as buildings or other inherently permanent structures, including interests in real property. For example, real property includes wiring in a building, plumbing systems, central heating or air-conditioning systems, pipes or ducts, elevators, escalators installed in a building, paved parking areas, roads, wharves and docks, bridges, and sewage lines.

(ii) *Tangible personal property* means any tangible property other than real property, including interests in tangible personal property. For example, tangible personal property includes machinery that is not a structural component of a building, subway cars, fire trucks, automobiles, office equipment, testing equipment, and furnishings.

(iii) *Substantially completed.* Construction may be treated as substantially completed when the issuer abandons construction or when at least 90 percent of the total costs of the construction reasonably expected, as of that date, to be financed with the available construction proceeds have been allocated to expenditures.

(f) *Construction issue*—(1) *Definition. Construction issue* means any issue that is not a refunding issue if—

(i) The issuer reasonably expects, as of the issue date, that at least 75 percent of the available construction proceeds of the issue will be allocated to construction expenditures (as defined in paragraph (g) of this section) for property owned by a governmental unit or a 501(c)(3) organization; and

(ii) Any private activity bonds that are part of the issue are qualified 501(c)(3) bonds or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

(2) *Use of actual facts.* For the provisions of paragraphs (e) through (m) of this section that apply based on the issuer's reasonable expectations, an issuer may elect on or before the issue date to apply all of those provisions based on actual facts.

(3) *Ownership requirement*—(i) *In general.* A governmental unit or 501(c)(3) organization is treated as the owner of property if it would be treated as the owner for Federal income tax purposes. For obligations issued on behalf of a State or local governmental unit, the entity that actually issues the bonds is treated as a governmental unit.

(ii) *Safe harbor for leases and management contracts.* Property leased by a governmental unit or a 501(c)(3) organization is treated as owned by the governmental unit or 501(c)(3) organization if the lessee complies with the requirements of section 142(b)(1)(B). For a bond described in section 142(a)(6), the requirements of section 142(b)(1)(B) apply as modified by section 146(h)(2).

(g) *Construction expenditures*—(1) *Definition.* Except as otherwise provided, *construction expenditures* means capital expenditures (as defined in § 1.150–1) that are allocable to the cost of real property or constructed personal property (as defined in paragraph (g)(3) of this section). Except as provided in paragraph (g)(2) of this section, construction expenditures do not include expenditures for acquisitions of interests in land or other existing real property.

(2) *Certain acquisitions under turnkey contracts treated as construction expenditures.* Expenditures are not for the acquisition of an interest in existing real property other than land if the contract between the seller and the issuer requires the seller to build or install the property (e.g., a *turnkey contract*), but only to the extent that the property has not been built or installed at the time the parties enter into the contract.

(3) *Constructed personal property. Constructed personal property* means tangible personal property (or, if acquired pursuant to a single acquisition contract, properties) or specially developed computer software if—

(i) A substantial portion of the property or properties is completed more than 6 months after the earlier of the date construction or rehabilitation commenced and the date the issuer entered into an acquisition contract;

(ii) Based on the reasonable expectations of the issuer, if any, or representations of the person constructing the property, with the exercise of due diligence, completion of construction or rehabilitation (and delivery to the issuer) could not have occurred within that 6-month period; and

(iii) If the issuer itself builds or rehabilitates the property, not more than 75 percent of the capitalizable cost is attributable to property acquired by the issuer (e.g., components, raw materials, and other supplies).

(4) *Specially developed computer software. Specially developed computer software* means any programs or routines used to cause a computer to perform a desired task or set of tasks, and the documentation required to describe and maintain those programs, provided that the software is specially developed and is functionally related and subordinate to real property or other constructed personal property.

(5) *Examples.* The operation of this paragraph (g) is illustrated by the following examples:

Example 1. Purchase of construction materials. City A issues bonds to finance a new office building. *A* uses proceeds of the bonds to purchase materials to be used in constructing the building, such as bricks, pipes, wires, lighting, carpeting, heating equipment, and similar materials.

Expenditures by *A* for the construction materials are construction expenditures because those expenditures will be capitalizable to the cost of the building upon completion, even though they are not initially capitalizable to the cost of existing real property. This result would be the same if *A* hires a third-party to perform the construction, unless the office building is partially constructed at the time that *A* contracts to purchase the building.

Example 2. Turnkey contract. City *B* issues bonds to finance a new office building. *B* enters into a turnkey contract with developer *D* under which *D* agrees to provide *B* with a completed building on a specified completion date on land currently owned by *D*. Under the agreement, *D* holds title to the land and building and assumes any risk of loss until the completion date, at which time title to the land and the building will be transferred to *B*. No construction has been performed by the date that *B* and *D* enter into the agreement. All payments by *B* to *D* for construction of the building are construction expenditures because all the payments are properly capitalized to the cost of the building, but payments by *B* to *D* allocable to the acquisition of the land are not construction expenditures.

Example 3. Right-of-way. *P*, a public agency, issues bonds to finance the acquisition of a right-of-way and the construction of sewage lines through numerous parcels of land. The right-of-way is acquired primarily through *P*'s exercise of its powers of eminent domain. As of the issue date, *P* reasonably expects that it will take approximately 2 years to acquire the entire right-of-way because of the time normally required for condemnation proceedings. No expenditures for the acquisition of the right-of-way are construction expenditures because they are costs incurred to acquire an interest in existing real property.

Example 4. Subway cars. City *C* issues bonds to finance new subway cars. *C* reasonably expects that it will take more than 6 months for the subway cars to be constructed to *C*'s specifications. The subway cars are constructed personal property. Alternatively, if the builder of the subway cars informs *C* that it will only take 3 months to build the subway cars to *C*'s specifications, no payments for the subway cars are construction expenditures.

Example 5. Fractional interest in property. *U*, a public agency, issues bonds to finance an undivided fractional interest in a newly constructed power-generating facility. *U* contributes its ratable share of the cost of building the new facility to the project manager for the facility. *U*'s contributions are construction expenditures in the same proportion that the total expenditures for the facility qualify as construction expenditures.

Example 6. Park land. City *D* issues bonds to finance the purchase of unimproved land and the cost of subsequent improvements to the land, such as grading and landscaping, necessary to transform it into a park. The costs of the improvements are properly capitalizable to the cost of the land, and therefore, are construction expenditures, but expenditures for the acquisition of the land are not.

(h) *Reasonable retainage definition. Reasonable retainage* means an amount, not to exceed 5 percent of available construction proceeds as of the end of the fourth spending period, that is retained for reasonable business purposes relating to the property financed with the proceeds of the issue. For example, a reasonable retainage may include a retention to ensure or promote compliance with a construction contract in circumstances in which the retained amount is not yet payable, or in which the issuer reasonably determines that a dispute exists regarding completion or payment.

(i) *Available construction proceeds*—(1) *Definition in general. Available construction proceeds* has the meaning used in section 148(f)(4)(C)(vi). For purposes of this definition, earnings include earnings on any tax-exempt bond. Pre-issuance accrued interest and earnings thereon may be disregarded. Amounts that are not gross proceeds as a result of the application of the universal cap under § 1.148–6(b)(2) are not available construction proceeds.

(2) *Earnings on a reasonably required reserve or replacement fund.* Earnings on any reasonably required reserve or replacement fund are available construction proceeds only to the extent that those earnings accrue before the earlier of the date construction is substantially completed or the date that is 2 years after the issue date. An issuer may elect on or before the issue date to exclude from available construction proceeds the earnings on such a fund. If the election is made, the rebate requirement applies to the excluded amounts from the issue date.

(3) *Reasonable expectations test for future earnings.* For purposes of determining compliance with the spending requirements as of the end of each of the first three spending periods, available construction proceeds include the amount of future earnings that the issuer reasonably expected as of the issue date.

(4) *Issuance costs.* Available construction proceeds do not include gross proceeds used to pay issuance costs financed by an issue, but do include earnings on such proceeds. Thus, an expenditure of gross proceeds of an issue for issuance costs does not count toward meeting the spending requirements. The expenditure of earnings on gross proceeds used to pay issuance costs does count toward meeting those requirements. If the spending requirements are met and the proceeds used to pay issuance costs are expended by the end of the fourth spending period, those proceeds and the earnings thereon are treated as having satisfied the rebate requirement.

(5) *One and one-half percent penalty in lieu of arbitrage rebate.* For purposes of the spending requirements of paragraph (e) of this section, available construction proceeds as of the end of any spending period are reduced by the amount of penalty in lieu of arbitrage rebate (under paragraph (k) of this section) that the issuer has paid from available construction proceeds before the last day of the spending period.

(6) *Payments on purpose investments and repayments of grants.* Available construction proceeds do not include—

(i) Sale or investment proceeds derived from payments under any purpose investment of the issue; or

(ii) Repayments of grants (as defined in § 1.148–6(d)(4)) financed by the issue.

(7) *Examples.* The operation of this paragraph (i) is illustrated by the following examples:

Example 1. Treatment of investment earnings. City *F* issues bonds having an issue price of $10,000,000. *F* deposits all of the proceeds of the issue into a construction fund to be used for expenditures other than costs of issuance. *F* estimates on the issue date that, based on reasonably expected expenditures and rates of investment, earnings on the construction fund will be $800,000. As of the issue date and the end of each of the first three spending periods, the amount of available construction proceeds is $10,800,000. To qualify as a construction issue, *F* must reasonably expect on the issue date that at least $8,100,000 (75 percent of $10,800,000) will be used for construction expenditures. In order to meet the 10 percent spending requirement at the end of the first spending period, *F* must spend at least $1,080,000. As of the end of the fourth spending period, *F* has received $1,100,000 in earnings. In order to meet the spending requirement at the end of the fourth spending period, however, *F* must spend all of the $11,100,000 of actual available construction proceeds (except for reasonable retainage not exceeding $555,000).

Example 2. Treatment of investment earnings without a reserve fund. City *G* issues bonds having an issue price of $11,200,000. *G* does not elect to exclude earnings on the reserve fund from available construction proceeds. *G* uses $200,000 of proceeds to pay issuance costs and deposits $1,000,000 of proceeds into a reasonably required reserve fund. *G* deposits the remaining $10,000,000 of proceeds into a construction fund to be used for construction expenditures. On the issue date, *G* reasonably expects that, based on the reasonably expected date of substantial completion and rates of investment, total earnings on the construction fund will be $800,000, and total earnings on the reserve fund to the date of substantial completion will be $150,000. *G* reasonably expects that substantial completion will occur during the fourth spending period. As of the issue date, the

amount of available construction proceeds is $10,950,000 ($10,000,000 originally deposited into the construction fund plus $800,000 expected earnings on the construction fund and $150,000 expected earnings on the reserve fund). To qualify as a construction issue, *G* must reasonably expect on the issue date that at least $8,212,500 will be used for construction expenditures.

Example 3. Election to exclude earnings on a reserve fund. The facts are the same as *Example 2*, except that *G* elects on the issue date to exclude earnings on the reserve fund from available construction proceeds. The amount of available construction proceeds as of the issue date is $10,800,000.

(j) *Election to treat portion of issue used for construction as separate issue*—(1) *In general.* For purposes of paragraph (e) of this section, if any proceeds of an issue are to be used for construction expenditures, the issuer may elect on or before the issue date to treat the portion of the issue that is not a refunding issue as two, and only two, separate issues, if—

(i) One of the separate issues is a construction issue as defined in paragraph (f) of this section;

(ii) The issuer reasonably expects, as of the issue date, that this construction issue will finance all of the construction expenditures to be financed by the issue; and

(iii) The issuer makes an election to apportion the issue under this paragraph (j)(1) in which it identifies the amount of the issue price of the issue allocable to the construction issue.

(2) *Example.* The operation of this paragraph (j) is illustrated by the following example.

Example. City *D* issues bonds having an issue price of $19,000,000. On the issue date, *D* reasonably expects to use $10,800,000 of bond proceeds (including investment earnings) for construction expenditures for the project being financed. *D* deposits $10,000,000 in a construction fund to be used for construction expenditures and $9,000,000 in an acquisition fund to be used for acquisition of equipment not qualifying as construction expenditures. *D* estimates on the issue date, based on reasonably expected expenditures and rates of investment, that total earnings on the construction fund will be $800,000 and total earnings on the acquisition fund will be $200,000. Because the total construction expenditures to be financed by the issue are expected to be $10,800,000, the maximum available construction proceeds for a construction issue is $14,400,000 ($10,800,000 divided by 0.75). To determine the maximum amount of the issue price allocable to a construction issue, the estimated investment earnings allocable to the construction issue are subtracted. The entire $800,000 of earnings on the construction fund are allocable to the construction issue. Only a portion of the $200,000 of earnings on the acquisition fund, however, are allocable to the construction issue. The total amount of the available construction proceeds that is expected to be used for acquisition is $3,600,000 ($14,400,000 − $10,800,000). The portion of earnings on the acquisition fund that is allocable to the construction issue is $78,261 ($200,000×$3,600,000/$9,200,000). Accordingly, *D* may elect on or before the issue date to treat up to $13,521,739 of the issue price as a construction issue ($14,400,000 − $800,000 − $78,261). *D*'s election must specify the amount of the issue price treated as a construction issue. The balance of the issue price is treated as a separate nonconstruction issue that is subject to the rebate requirement unless it meets another exception to arbitrage rebate. Because the financing of a construction issue is a separate governmental purpose under § 1.148–9(h), the election causes the issue to be a multipurpose issue under that section.

(k) *One and one-half percent penalty in lieu of arbitrage rebate*—(1) *In general.* Under section 148(f)(4)(C)(vii), an issuer of a construction issue may elect on or before the issue date to pay a penalty (the *1½ percent penalty*) to the United States in lieu of the obligation to pay the rebate amount on available construction proceeds upon failure to satisfy the spending requirements of paragraph (e) of this section. The 1½ percent penalty is calculated separately for each spending period, including each semiannual period after the end of the fourth spending period, and is equal to 1.5 percent times the underexpended proceeds as of the end of the spending period. For each spending period, underexpended proceeds equal the amount of available construction proceeds required to be spent by the end of the spending period, less the amount actually allocated to expenditures for the governmental purposes of the issue by that date. The 1½ percent penalty must be paid to the United States no later than 90 days after the end of the spending period to which it relates. The 1½ percent penalty continues to apply at the end of each spending period and each semiannual period thereafter until the earliest of the following—

(i) The termination of the penalty under paragraph ( ) of this section;

(ii) The expenditure of all of the available construction proceeds; or

(iii) The last stated final maturity date of bonds that are part of the issue and any bonds that refund those bonds.

(2) *Application to reasonable retainage.* If an issue meets the exception for reasonable retainage except that all retainage is not spent within 3 years of the issue date, the issuer must pay the 1½ percent penalty to the United States for any reasonable retainage that was not so spent as of the close of the 3-year period and each later spending period.

(3) *Coordination with rebate requirement.* The rebate requirement is treated as met with respect to available construction proceeds for a period if the 1½ percent penalty is paid in accordance with this section.

(l) *Termination of 1½ percent penalty*—(1) *Termination after initial temporary period.* The issuer may terminate the 1½ percent penalty after the initial temporary period (a *section 148(f)(4)(C)(viii) penalty termination*) if—

(i) Not later than 90 days after the earlier of the end of the initial temporary period or the date construction is substantially completed, the issuer elects to terminate the 1½ percent penalty; provided that solely for this purpose, the initial temporary period may be extended by the issuer to a date ending 5 years after the issue date;

(ii) Within 90 days after the end of the initial temporary period, the issuer pays a penalty equal to 3 percent of the unexpended available construction proceeds determined as of the end of the initial temporary period, multiplied by the number of years (including fractions of years computed to 2 decimal places) in the initial temporary period;

(iii) For the period beginning as of the close of the initial temporary period, the unexpended available construction proceeds are not invested in higher yielding investments; and

(iv) On the earliest date on which the bonds may be called or otherwise redeemed, with or without a call premium, the unexpended available construction proceeds as of that date (not including any amount earned after the date on which notice of the redemption was required to be given) must be used to redeem the bonds. Amounts used to pay any call premium are treated as used to redeem bonds. This redemption requirement may be met by purchases of bonds by the issuer on the open market at prices not exceeding fair market value. A portion of the annual principal payment due on serial bonds of a construction issue may be paid from the unexpended amount, but only in an amount no greater than the amount that bears the same ratio to the annual principal due that the total unexpended amount bears to the issue price of the construction issue.

(2) *Termination before end of initial temporary period.* If the construction to be financed by the construction issue is substantially completed before the end of the initial temporary period, the issuer may elect to terminate the 1½ percent penalty before the end of the

initial temporary period (a *section 148(f)(4)(C)(ix) penalty termination*) if—

(i) Before the close of the initial temporary period and not later than 90 days after the date the construction is substantially completed, the issuer elects to terminate the 1½ percent penalty;

(ii) The election identifies the amount of available construction proceeds that will not be spent for the governmental purposes of the issue; and

(iii) The issuer has met all of the conditions for a section 148(f)(4)(C)(viii) penalty termination, applied as if the initial temporary period ended as of the date the required election for a section 148(f)(4)(C)(ix) penalty termination is made. That penalty termination election satisfies the required election for a section 148(f)(4)(C)(viii) termination.

(3) *Application to reasonable retainage.* Solely for purposes of determining whether the conditions for terminating the 1½ percent penalty are met, reasonable retainage may be treated as spent for a governmental purpose of the construction issue. Reasonable retainage that is so treated continues to be subject to the 1½ percent penalty.

(4) *Example.* The operation of this paragraph (l) is illustrated by the following example.

Example. City *I* issues a construction issue having a 20-year maturity and qualifying for a 3-year initial temporary period. The bonds are first subject to optional redemption 10 years after the issue date at a premium of 3 percent. *I* elects, on or before the issue date, to pay the 1½ percent penalty in lieu of arbitrage rebate. At the end of the 3-year temporary period, the project is not substantially completed, and $1,500,000 of available construction proceeds of the issue are unspent. At that time, *I* reasonably expects to need $500,000 to complete the project. *I* may terminate the 1½ percent penalty in lieu of arbitrage rebate with respect to the excess $1,500,000 by electing to terminate within 90 days of the end of the initial temporary period; paying a penalty to the United States of $135,000 (3 percent of $1,500,000 multiplied by 3 years); restricting the yield on the investment of unspent available construction proceeds for 7 years until the first call date, although any portion of these proceeds may still be spent on the project prior to that call date; and using the available construction proceeds that, as of the first call date, have not been allocated to expenditures for the governmental purposes of the issue to redeem bonds on that call date. If *I* fails to make the termination election, *I* is required to pay the 1½ percent penalty on unspent available construction proceeds every 6 months until the latest maturity date of bonds of the issue (or any bonds of another issue that refund such bonds).

(m) *Payment of penalties.* Each penalty payment under this section must be paid in the manner provided in § 1.148–3(g). See § 1.148–3(h) for rules on failures to pay penalties under this section.

§ 1.148–8 Small issuer exception to rebate requirement.

(a) *Scope.* Under section 148(f)(4)(D), bonds issued to finance governmental activities of certain small issuers are treated as meeting the arbitrage rebate requirement of section 148(f)(2) (the "small issuer exception"). This section provides guidance on the small issuer exception.

(b) *General taxing powers.* The small issuer exception generally applies only to bonds issued by governmental units with general taxing powers. A governmental unit has general taxing powers if it has the power to impose taxes (or to cause another entity to impose taxes) of general applicability which, when collected, may be used for the general purposes of the issuer. The taxing power may be limited to a specific type of tax, provided that the applicability of the tax is not limited to a small number of persons. The governmental unit's exercise of its taxing power may be subject to procedural limitations, such as voter approval requirements, but may not be contingent on approval by another governmental unit. See, also, section 148(f)(4)(D)(iv).

(c) *Size limitation*—(1) *In general.* An issue (other than a refunding issue) qualifies for the small issuer exception only if the issuer reasonably expects, as of the issue date, that the aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by it during that calendar year will not exceed $5,000,000; or the aggregate face amount of all tax-exempt bonds of the issuer (other than private activity bonds) actually issued during that calendar year does not exceed $5,000,000. For this purpose, if an issue has more than a de minimis amount of original issue discount or premium, *aggregate face amount* means the aggregate issue price of that issue (determined without regard to pre-issuance accrued interest).

(2) *Aggregation rules.* The following aggregation rules apply for purposes of applying the $5,000,000 size limitation under paragraph (c)(1) of this section.

(i) *On-behalf-of issuers.* An issuer and all entities (other than political subdivisions) that issue bonds on behalf of that issuer are treated as one issuer.

(ii) *Subordinate entities*—(A) *In general.* Except as otherwise provided in paragraph (d) of this section and section 148(f)(4)(D)(iv), all bonds issued by a subordinate entity are also treated as issued by each entity to which it is subordinate. An issuer is subordinate to another governmental entity if it is directly or indirectly controlled by the other entity within the meaning of § 1.150–1(e).

(B) *Exception for allocations of size limitation.* If an entity properly makes an allocation of a portion of its $5,000,000 size limitation to a subordinate entity (including an on behalf of issuer) under section 148(f)(4)(D)(iv), the portion of bonds issued by the subordinate entity under the allocation is treated as issued only by the allocating entity and not by any other entity to which the issuing entity is subordinate. These allocations are irrevocable and must bear a reasonable relationship to the benefits received by the allocating unit from issues issued by the subordinate entity. The benefits to be considered include the manner in which—

(*1*) Proceeds are to be distributed;

(*2*) The debt service is to be paid;

(*3*) The facility financed is to be owned;

(*4*) The use or output of the facility is to be shared; and

(*5*) Costs of operation and maintenance are to be shared.

(iii) *Avoidance of size limitation.* An entity formed or availed of to avoid the purposes of the $5,000,000 size limitation and all entities that would benefit from the avoidance are treated as one issuer. Situations in which an entity is formed or availed of to avoid the purposes of the $5,000,000 size limitation include those in which the issuer—

(A) Issues bonds which, but for the $5,000,000 size limitation, would have been issued by another entity; and

(B) Does not receive a substantial benefit from the project financed by the bonds.

(3) *Certain refunding bonds not taken into account.* In applying the $5,000,000 size limitation, there is not taken into account the portion of an issue that is a current refunding issue to the extent that the stated principal amount of the refunding bond does not exceed the portion of the outstanding stated principal amount of the refunded bond paid with proceeds of the refunding bond. For this purpose, *principal amount* means, in reference to a plain par bond, its stated principal amount plus accrued unpaid interest, and in reference to any other bond, its present value.

(d) *Pooled financings*—(1) *Treatment of pool issuer.* To the extent that an issuer of a pooled financing is not an ultimate borrower in the financing and the conduit borrowers are governmental units with general taxing powers and

not subordinate to the issuer, the pooled financing is not counted towards the $5,000,000 size limitation of the issuer for purposes of applying the small issuer exception to its other issues. The issuer of the pooled financing issue is, however, subject to the rebate requirement for any unloaned gross proceeds.

(2) *Treatment of conduit borrowers.* A loan to a conduit borrower in a pooled financing qualifies for the small issuer exception, regardless of the size of either the pooled financing or of any loan to other conduit borrowers, only if—

(i) The bonds of the pooled financing are not private activity bonds;

(ii) None of the loans to conduit borrowers are private activity bonds; and

(iii) The loan to the conduit borrower meets all the requirements of the small issuer exception.

(e) *Refunding issues*—(1) *In general.* Sections 148(f)(4)(D) (v) and (vi) provide restrictions on application of the small issuer exception to refunding issues.

(2) *Multipurpose issues.* The multipurpose issue allocation rules of § 1.148–9(h) apply for purposes of determining whether refunding bonds meet the requirements of section 148(f)(4)(D)(v).

§ 1.148–9 Arbitrage rules for refunding issues.

(a) *Scope of application.* This section contains special arbitrage rules for refunding issues. These rules apply for all purposes of section 148 and govern allocations of proceeds, bonds, and investments to determine transferred proceeds, temporary periods, reasonably required reserve or replacement funds, minor portions, and separate issue treatment of certain multipurpose issues.

(b) *Transferred proceeds allocation rule*—(1) *In general.* When proceeds of the refunding issue discharge any of the outstanding principal amount of the prior issue, proceeds of the prior issue become transferred proceeds of the refunding issue and cease to be proceeds of the prior issue. The amount of proceeds of the prior issue that becomes transferred proceeds of the refunding issue is an amount equal to the proceeds of the prior issue on the date of that discharge multiplied by a fraction—

(i) The numerator of which is the principal amount of the prior issue discharged with proceeds of the refunding issue on the date of that discharge; and

(ii) The denominator of which is the total outstanding principal amount of the prior issue on the date immediately before the date of that discharge.

(2) *Special definition of principal amount.* For purposes of this section, *principal amount* means, in reference to a plain par bond, its stated principal amount, and in reference to any other bond, its present value.

(3) *Relation of transferred proceeds rule to universal cap rule*—(i) *In general.* Paragraphs (b)(1) and (c) of this section apply to allocate transferred proceeds and corresponding investments to a refunding issue on any date required by those paragraphs before the application of the universal cap rule of § 1.148–6(b)(2) to reallocate any of those amounts. To the extent nonpurpose investments allocable to proceeds of a refunding issue exceed the universal cap for the issue on the date that amounts become transferred proceeds of the refunding issue, those transferred proceeds and corresponding investments are reallocated back to the issue from which they transferred on that same date to the extent of the unused universal cap on that prior issue.

(ii) *Example.* The following example illustrates the application of this paragraph of (b)(3):

Example. On January 1, 1995, $100,000 of nonpurpose investments allocable to proceeds of issue *A* become transferred proceeds of issue *B* under § 1.148–9, but the unused portion of issue *B*'s universal cap is $75,000 as of that date. On January 1, 1995, issue *A* has unused universal cap in excess of $25,000. Thus, $25,000 of nonpurpose investments representing the transferred proceeds are immediately reallocated back to issue *A* on January 1, 1995, and are proceeds of issue *A*. On the next transfer date under § 1.148–9, the $25,000 receives no priority in determining transferred proceeds as of that date but is treated the same as all other proceeds of issue *A* subject to transfer.

(4) *Limitation on multi-generational transfers.* This paragraph (b)(4) contains limitations on the manner in which proceeds of a first generation issue that is refunded by a refunding issue (a *second generation issue*) become transferred proceeds of a refunding issue (a *third generation issue*) that refunds the second generation issue. Proceeds of the first generation issue that become transferred proceeds of the third generation issue are treated as having a yield equal to the yield on the refunding escrow allocated to the second generation issue (i.e., as determined under § 1.148–5(b)(2)(iv)). The determination of the transferred proceeds of the third generation issue does not affect compliance with the requirements of section 148, including the determination of the amount of arbitrage rebate with respect to or the yield on the refunding escrow, of the second generation issue.

(c) *Special allocation rules for refunding issues*—(1) *Allocations of investments*—(i) *In general.* Except as otherwise provided in this paragraph (c), investments purchased with sale proceeds or investment proceeds of a refunding issue must be allocated to those proceeds, and investments not purchased with those proceeds may not be allocated to those proceeds (i.e., a *specific tracing method*).

(ii) *Allocations to transferred proceeds.* When proceeds of a prior issue become transferred proceeds of a refunding issue, investments (and the related payments and receipts) of proceeds of the prior issue that are held in a refunding escrow for another issue are allocated to the transferred proceeds under the ratable allocation method described in paragraph (c)(1)(iii) of this section. Investments of proceeds of the prior issue that are not held in a refunding escrow for another issue are allocated to the transferred proceeds by application of the allocation methods described in paragraph (c)(1) (iii) or (iv) of this section, consistently applied to all investments on a transfer date.

(iii) *Ratable allocation method.* Under the ratable allocation method, a ratable portion of each nonpurpose and purpose investment of proceeds of the prior issue is allocated to transferred proceeds of the refunding issue.

(iv) *Representative allocation method*—(A) *In general.* Under the representative allocation method, representative portions of the portfolio of nonpurpose investments and the portfolio of purpose investments of proceeds of the prior issue are allocated to transferred proceeds of the refunding issue. Unlike the ratable allocation method, this representative allocation method permits an allocation of particular whole investments. Whether a portion is representative is based on all the facts and circumstances, including, without limitation, whether the current yields, maturities, and current unrealized gains or losses on the particular allocated investments are reasonably comparable to those of the unallocated investments in the aggregate. In addition, if a portion of nonpurpose investments is otherwise representative, it is within the issuer's discretion to allocate the portion from whichever source of funds it deems appropriate, such as a reserve fund or a construction fund for a prior issue.

(B) *Mark-to-market safe harbor for representative allocation method.* In addition to other representative allocations, a specific allocation of a

particular nonpurpose investment to transferred proceeds (e.g., of lower yielding investments) is treated as satisfying the representative allocation method if that investment is valued at fair market value on the transfer date in determining the payments and receipts on that date, but only if the portion of the nonpurpose investments that transfers is based on the relative fair market value of all nonpurpose investments.

(2) *Allocations of mixed escrows to expenditures for principal, interest, and redemption prices on a prior issue*—(i) *In general.* Except for amounts required or permitted to be accounted for under paragraph (c)(2)(ii) of this section, proceeds of a refunding issue and other amounts that are not proceeds of a refunding issue that are deposited in a refunding escrow (a *mixed escrow*) must be accounted for under this paragraph (c)(2)(i). Those proceeds and other amounts must be allocated to expenditures for principal, interest, or stated redemption prices on the prior issue so that the expenditures of those proceeds do not occur faster than ratably with expenditures of the other amounts in the mixed escrow. If, however, the prior issue has unspent proceeds, these allocations must be ratable both between sources for expenditures (i.e., proceeds and other amounts) and between uses (i.e., principal, interest, and stated redemption prices on the prior issue).

(ii) *Exceptions*—(A) *Mandatory allocation of certain non-proceeds to earliest expenditures.* If amounts other than proceeds of the refunding issue are deposited in a mixed escrow, but before the issue date of the refunding issue those amounts had been held in a bona fide debt service fund or a fund to carry out the governmental purpose of the prior issue (e.g., a construction fund), those amounts must be allocated to the earliest expenditures from the mixed escrow.

(B) *Permissive allocation of non-proceeds to earliest expenditures.* Excluding amounts covered by paragraph (c)(2)(ii)(A) of this section and subject to any required earlier expenditure of those amounts, any amounts in a mixed escrow that are not proceeds of a refunding issue may be allocated to the earliest expenditures from the mixed escrow, provided that those expenditures occur before the date of any expenditure from the mixed escrow to pay any principal of the prior issue.

(d) *Temporary periods in refundings*—(1) *In general.* Proceeds of a refunding issue may be invested in higher yielding investments under section 148(c) only during the temporary periods described in paragraph (d)(2) of this section.

(2) *Types of temporary periods in refundings.* The available temporary periods for proceeds of a refunding issue are as follows:

(i) *General temporary period for refunding issues.* Except as otherwise provided in this paragraph (d)(2), the temporary period for proceeds (other than transferred proceeds) of a refunding issue is the period ending 30 days after the issue date of the refunding issue.

(ii) *Temporary periods for current refunding issues*—(A) *In general.* Except as otherwise provided in paragraph (d)(2)(ii)(B) of this section, the temporary period for proceeds (other than transferred proceeds) of a current refunding issue is 90 days.

(B) *Temporary period for short-term current refunding issues.* The temporary period for proceeds (other than transferred proceeds) of a current refunding issue that has an original term to maturity of 270 days or less may not exceed 30 days. The aggregate temporary periods for proceeds (other than transferred proceeds) of all current refunding issues described in the preceding sentence that are part of the same series of refundings is 90 days. An issue is part of a series of refundings if it finances or refinances the same expenditures for a particular governmental purpose as another issue.

(iii) *Temporary periods for transferred proceeds*—(A) *In general.* Except as otherwise provided in paragraph (d)(2)(iii)(B) of this section, each available temporary period for transferred proceeds of a refunding issue begins on the date those amounts become transferred proceeds of the refunding issue and ends on the date that, without regard to the discharge of the prior issue, the available temporary period for those proceeds would have ended had those proceeds remained proceeds of the prior issue.

(B) *Termination of initial temporary period for prior issue in an advance refunding.* The initial temporary period under § 1.148–2(e) (2) and (3) for the proceeds of a prior issue that is refunded by an advance refunding issue (including transferred proceeds) terminates on the issue date of the advance refunding issue.

(iv) *Certain short-term gross proceeds.* Except for proceeds of a refunding issue held in a refunding escrow, proceeds otherwise reasonably expected to be used to pay principal or interest on the prior issue, replacement proceeds not held in a bona fide debt service fund, and transferred proceeds, the temporary period for gross proceeds of a refunding issue is the 13-month period beginning on the date of receipt.

(e) *Reasonably required reserve or replacement funds in refundings.* In addition to the requirements of § 1.148–2(f), beginning on the issue date of a refunding issue, a reserve or replacement fund for a refunding issue or a prior issue is a reasonably required reserve or replacement fund under section 148(d) that may be invested in higher yielding investments only if the aggregate amount invested in higher yielding investments under this paragraph (e) for both the refunding issue and the prior issue does not exceed the size limitations under § 1.148–2 (f)(2) and (f)(3), measured by reference to the refunding issue only (regardless of whether proceeds of the prior issue have become transferred proceeds of the refunding issue).

(f) *Minor portions in refundings.* Beginning on the issue date of the refunding issue, gross proceeds not in excess of a minor portion of the refunding issue qualify for investment in higher yielding investments under section 148(e), and gross proceeds not in excess of a minor portion of the prior issue qualify for investment in higher yielding investments under either section 148(e) or section 149(d)(3)(A)(v), whichever is applicable. *Minor portion* is defined in § 1.148–2(g).

(g) *Certain waivers permitted.* On or before the issue date, an issuer may waive the right to invest in higher yielding investments during any temporary period or as part of a reasonably required reserve or replacement fund. At any time, an issuer may waive the right to invest in higher yielding investments as part of a minor portion.

(h) *Multipurpose issue allocations*—(1) *Application of multipurpose issue allocation rules.* The portion of the bonds of a multipurpose issue reasonably allocated to any separate purpose under this paragraph (h) is treated as a separate issue for all purposes of section 148 except the following—

(i) *Arbitrage yield.* Except to the extent that the proceeds of an issue are allocable to two or more conduit loans that are tax-exempt bonds, determining the yield on a multipurpose issue and the yield on investments for purposes of the arbitrage yield restrictions of section 148 and the arbitrage rebate requirement of section 148(f);

(ii) *Rebate amount.* Except as provided in paragraph (h)(1)(i) of this section, determining the rebate amount for a multipurpose issue, including subsidiary matters with respect to that

determination, such as the computation date credit under § 1.148–3(d)(1), the due date for payments, and the $100,000 bona fide debt service fund exception under section 148(f)(4)(A)(ii);

(iii) *Minor portion.* Determining the *minor portion* of an issue under section 148(e);

(iv) *Reasonably required reserve or replacement fund.* Determining the portion of an issue eligible for investment in higher yielding investments as part of a reasonably required reserve fund under section 148(d); and

(v) *Effective date.* Applying the provisions of § 1.148–11(b) (relating to elective retroactive application of §§ 1.148–1 through 1.148–10 to certain issues).

(2) *Rules on allocations of multipurpose issues*—(i) *In general.* This paragraph (h) applies to allocations of multipurpose issues, including allocations involving the refunding purposes of the issue. Except as otherwise provided in this paragraph (h), proceeds, investments, and bonds of a multipurpose issue may be allocated among the various separate purposes of the issue using any reasonable, consistently applied allocation method. An allocation is not reasonable if it achieves more favorable results under section 148 or 149(d) than could be achieved with actual separate issues. An allocation under this paragraph (h) may be made at any time, but once made may not be changed.

(ii) *Allocations involving certain common costs.* A ratable allocation of common costs (as described in paragraph (h)(3)(ii) of this section) among the separate purposes of the multipurpose issue is generally reasonable. If another allocation method more accurately reflects the extent to which any separate purpose of a multipurpose issue enjoys the economic benefit or bears the economic burden of certain common costs, that allocation method may be used.

(3) *Separate purposes of a multipurpose issue*—(i) *In general.* Separate purposes of a multipurpose issue include refunding a separate prior issue, financing a separate purpose investment, financing a construction issue (as defined in § 1.148–7(f)), and any clearly discrete governmental purpose reasonably expected to be financed by that issue. In general, all integrated or functionally related capital projects that qualify for the same initial temporary period under § 1.148–2(e)(2) are treated as having a single governmental purpose. The separate purposes of a refunding issue include the separate purposes of the prior issue, if any. Separate purposes may be treated as a single purpose if the proceeds used to finance those purposes are eligible for the same initial temporary period under section 148(c). For example, the use of proceeds of a multipurpose issue to finance separate qualified mortgage loans may be treated as a single purpose.

(ii) *Financing common costs.* Common costs of a multipurpose issue are not separate purposes. Common costs include issuance costs, accrued interest, capitalized interest on the issue, a reserve or replacement fund, qualified guarantee fees, and similar costs properly allocable to the separate purposes of the issue.

(iii) *Example.* The following example illustrates the application of this paragraph (h)(3).

Example. On January 1, 1994, Housing Authority of State *A* issues a $10 million issue (the *1994 issue*) at an interest rate of 10 percent to finance qualified mortgage loans for owner-occupied residences under section 143. During 1994, *A* originates $5 million in qualified mortgage loans at an interest rate of 10 percent. In 1995, the market interest rates for housing loans falls to 8 percent and *A* is unable to originate further loans from the 1994 issue. On January 1, 1996, *A* issues a $5 million issue (the *1996 issue*) at an interest rate of 8 percent to refund partially the 1994 issue. Under paragraph (h) of this section, *A* treats the portion of the 1994 issue used to originate $5 million in loans as a separate issue comprised of that group of purpose investments. *A* allocates those purpose investments representing those loans to that separate unrefunded portion of the issue. In addition, *A* treats the unoriginated portion of the 1994 issue as a separate issue and allocates the nonpurpose investments representing the unoriginated proceeds of the 1994 issue to the refunded portion of the issue. Thus, when proceeds of the 1996 issue are used to pay principal on the refunded portion of the 1994 issue that is treated as a separate issue under paragraph (h) of this section, only the portion of the 1994 issue representing unoriginated loan funds invested in nonpurpose investments transfer to become transferred proceeds of the 1996 issue.

(4) *Allocations of bonds of a multipurpose issue*—(i) *Reasonable allocation of bonds to portions of issue.* After reasonable adjustment of the issue price of a multipurpose issue to account for common costs, the portion of the bonds of a multipurpose issue allocated to a separate purpose must have an issue price that bears the same ratio to the aggregate issue price of the multipurpose issue as the portion of the sale proceeds of the multipurpose issue used for that separate purpose bears to the aggregate sale proceeds of the multipurpose issue. For a refunding issue used to refund two or more prior issues, the portion of the sales proceeds allocated to the refunding of a separate prior issue is based on the present value of the refunded debt service on that prior issue, using the yield on investments in the refunding escrow allocable to the entire refunding issue as the discount rate.

(ii) *Safe harbor for pro rata allocation method for bonds.* The use of the relative amount of sales proceeds used for each separate purpose to ratably allocate each bond or a ratable number of substantially identical whole bonds is a reasonable method for allocating bonds of a multipurpose issue.

(iii) *Safe harbor for allocations of bonds used to finance separate purpose investments.* An allocation of a portion of the bonds of a multipurpose issue to a particular purpose investment is generally reasonable if that purpose investment has principal and interest payments that reasonably coincide in time and amount to principal and interest payments on the bonds allocated to that purpose investment.

(iv) *Rounding of bond allocations to next whole bond denomination permitted.* An allocation that rounds each resulting fractional bond up or down to the next integral multiple of a permitted denomination of bonds of that issue not in excess of $100,000 does not prevent the allocation from satisfying this paragraph (h)(4).

(v) *Restrictions on allocations of bonds to refunding purposes.* For each portion of a multipurpose issue that is used to refund a separate prior issue, a method of allocating bonds of that issue is reasonable under this paragraph (h) only if, in addition to the requirements of paragraphs (h)(1) and (h)(2) of this section, the portion of the bonds allocated to the refunding of that prior issue—

(A) Results from a pro rata allocation under paragraph (h)(4)(ii) of this section;

(B) Reflects aggregate principal and interest payable in each bond year that is less than, equal to, or proportionate to, the aggregate principal and interest payable on the prior issue in each bond year;

(C) Results from an allocation of all the bonds of the entire multipurpose issue in proportion to the remaining weighted average economic life of the capital projects financed or refinanced by the issue, determined in the same manner as under section 147(b); or

(D) Results from another reasonable allocation method, but only to the extent that the application of the allocation methods provided in this paragraph (h)(4)(v) is not permitted under state law restrictions applicable

to the bonds, reasonable terms of bonds issued before, or subject to a master indenture that became effective prior to, July 1, 1993, or other similar restrictions or circumstances. This paragraph (h)(4)(v)(D) shall be strictly construed and is available only if it does not result in a greater burden on the market for tax-exempt bonds than would occur using one of the other allocation methods provided in this paragraph (h)(4)(v). (See also § 1.148–11(c)(2).)

(5) *Limitation on multi-generation allocations.* This paragraph (h) does not apply to allocations of a multipurpose refunded issue unless that refunded issue is refunded directly by an issue to which this paragraph (h) applies. For example, if a 1994 issue refunds a 1984 multipurpose issue, which in turn refunded a 1980 multipurpose issue, this paragraph (h) applies to allocations of the 1984 issue for purposes of allocating the refunding purposes of the 1994 issue, but does not permit allocations of the 1980 issue.

(i) *Operating rules for separation of prior issue into refunded and unrefunded portions*—(1) *In general.* For purposes of paragraph (h)(3)(i) of this section, the separate purposes of a prior issue include the refunded and unrefunded portions of the prior issue. Thus, the refunded and unrefunded portions are treated as separate issues under paragraph (h)(1) of this section. Those separate issues must satisfy the requirements of paragraphs (h) and (i) of this section. The refunded portion of the bonds of a prior issue is based on a fraction the numerator of which is the principal amount of the prior issue to be paid with proceeds of the refunding issue and the denominator of which is the outstanding principal amount of the bonds of the prior issue, each determined as of the issue date of the refunding issue. (See also paragraph (b)(2) of this section.)

(2) *Allocations of proceeds and investments in a partial refunding.* As of the issue date of a partial refunding issue under this paragraph (i), unspent proceeds of the prior issue are allocated ratably between the refunded and unrefunded portions of the prior issue and the investments allocable to those unspent proceeds are allocated in the manner required for the allocation of investments to transferred proceeds under paragraph (c)(1)(ii) of this section.

(3) *References to prior issue.* If the refunded and unrefunded portions of a prior issue are treated as separate issues under this paragraph (i), then, except to the extent that the context clearly requires otherwise (e.g., references to the aggregate prior issue in the mixed escrow rule in paragraph (c)(2) of this section), all references in this section to a prior issue refer only to the refunded portion of that prior issue.

§ 1.148–10 Anti-abuse rules and authority of Commissioner.

(a) *Abusive arbitrage device*—(1) *In general.* Bonds of an issue are arbitrage bonds under section 148 if an abusive arbitrage device under paragraph (a)(2) of this section is used in connection with the issue. This paragraph (a) is to be applied and interpreted broadly to carry out the purposes of section 148, as further described in § 1.148–0. Except as otherwise provided in paragraph (c) of this section, any action that is expressly permitted by section 148 or §§ 1.148–1 through 1.148–11 is not an abusive arbitrage device (e.g., investment in higher yielding investments during a permitted temporary period under section 148(c)).

(2) *Abusive arbitrage device defined.* Any action is an abusive arbitrage device if the action has the effect of—

(i) Enabling the issuer to exploit the difference between tax-exempt and taxable interest rates to obtain a material financial advantage; and

(ii) Overburdening the tax-exempt bond market.

(3) *Exploitation of tax-exempt interest rates.* An action may exploit tax-exempt interest rates under paragraph (a)(2) of this section as a result of an investment of any portion of the gross proceeds of an issue over any period of time, notwithstanding that, in the aggregate, the gross proceeds of the issue are not invested in higher yielding investments over the term of the issue.

(4) *Overburdening the tax-exempt market.* An action overburdens the tax-exempt bond market under paragraph (a)(2)(ii) of this section if it results in issuing more bonds, issuing bonds earlier, or allowing bonds to remain outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes of the bonds, based on all the facts and circumstances. Whether an action is reasonably necessary to accomplish the governmental purposes of the bonds depends on whether the primary purpose of the transaction is a bona fide governmental purpose (e.g., an issue of refunding bonds to achieve a debt service restructuring that would be issued independent of any arbitrage benefit). An important factor bearing on this determination is whether the action would reasonably be taken to accomplish the governmental purpose of the issue if the interest on the issue were not excludable from gross income under section 103(a) (assuming that the hypothetical taxable interest rate would be the same as the actual tax-exempt interest rate). Factors evidencing an overissuance include the issuance of an issue the proceeds of which are reasonably expected to exceed by more than a minor portion the amount necessary to accomplish the governmental purposes of the issue, or an issue the proceeds of which are, in fact, substantially in excess of the amount of sale proceeds allocated to expenditures for the governmental purposes of the issue. One factor evidencing an early issuance is the issuance of bonds that do not qualify for a temporary period under § 1.148–2(e)(2), (e)(3), or (e)(4). One factor evidencing that bonds may remain outstanding longer than necessary is a term that exceeds the safe harbors against the creation of replacement proceeds under § 1.148–1(c)(4)(i)(B). These factors may be outweighed by other factors, however, such as bona fide cost underruns or long-term financial distress.

(b) *Consequences of overburdening the tax-exempt bond market*—(1) *In general.* An issue that overburdens the tax-exempt bond market (within the meaning of paragraph (a)(4) of this section) is subject to the following special limitations—

(i) *Special yield restriction.* Investments are subject to the definition of *materially higher* yield under § 1.148–2(d) that is equal to one-thousandth of 1 percent. In addition, each investment is treated as a separate class of investments under § 1.148–5(b)(2)(ii), the yield on which may not be blended with that of other investments.

(ii) *Certain regulatory provisions inapplicable.* The provisions of § 1.148–5(c) (relating to yield reduction payments) and § 1.148–5(e) (2) and (3) (relating to recovery of qualified administrative costs) do not apply.

(iii) *Restrictive expenditure rule.* Proceeds are not allocated to expenditures unless the proceeds-spent-last rule under § 1.148–6(d)(3)(i) is satisfied, applied by treating those proceeds as proceeds to be used for restricted working capital expenditures. For this purpose, available amount includes a reasonable working capital reserve as defined in § 1.148–6(d)(3)(iii)(B).

(2) *Application.* The provisions of this paragraph (b) only apply to the portion of the issue that overburdens the market for tax-exempt bonds, except that, for an issue that is reasonably expected as of the issue date to overburden the market, these provisions apply to all of the gross proceeds of the issue.

(c) *Anti-abuse rules on excess gross proceeds of advance refunding issues*—(1) *In general.* Except as otherwise provided in this paragraph (c), an abusive arbitrage device is used and bonds of an advance refunding issue are arbitrage bonds if the issue has excess gross proceeds.

(2) *Definition of excess gross proceeds.* Excess gross proceeds means all gross proceeds of an advance refunding issue that exceed an amount equal to 1 percent of sale proceeds of the issue, other than gross proceeds allocable to—

(i) Payment of principal, interest, or call premium on the prior issue;

(ii) Payment of pre-issuance accrued interest on the refunding issue, and interest on the refunding issue that accrues for a period up to the completion date of any capital project for which the prior issue was issued, plus one year;

(iii) A reasonably required reserve or replacement fund for the refunding issue or investment proceeds of such a fund;

(iv) Payment of costs of issuance of the refunding issue;

(v) Payment of administrative costs allocable to repaying the prior issue, carrying and repaying the refunding issue, or investments of the refunding issue;

(vi) Transferred proceeds allocable to expenditures for the governmental purpose of the prior issue;

(vii) Interest on purpose investments;

(viii) Replacement proceeds in a sinking fund for the refunding issue; and

(ix) Qualified guarantee fees for the refunding issue or the prior issue.

(3) *Special treatment of transferred proceeds.* For purposes of this paragraph (c), all unspent proceeds of the prior issue as of the issue date of the refunding issue are treated as transferred proceeds of the advance refunding issue.

(4) *Special rule for crossover refundings.* An advance refunding issue is not an issue of arbitrage bonds under this paragraph (c) if all excess gross proceeds of the refunding issue are used to pay interest that accrues on the refunding issue before the prior issue is discharged, and no gross proceeds of any refunding issue are used to pay interest on the prior issue or to replace funds used directly or indirectly to pay such interest (other than transferred proceeds used to pay interest on the prior issue that accrues for a period up to the completion date of the project for which the prior issue was issued, plus one year, or proceeds used to pay principal that is attributable to accrued original issue discount).

(5) *Special rule for gross refundings.* This paragraph (c)(5) applies if an advance refunding issue (the *series B issue*) is used together with one or more other advance refunding issues (the *series A issues*) in a gross refunding of a prior issue, but only if the use of a gross refunding method is required under bond documents that were effective prior to November 6, 1992. These advance refunding issues are not arbitrage bonds under this paragraph (c) if—

(i) All excess gross proceeds of the series B issue and each series A issue are investment proceeds used to pay principal and interest on the series B issue;

(ii) At least 99 percent of all principal and interest on the series B issue is paid with proceeds of the series B and series A issues or with the earnings on other amounts in the refunding escrow for the prior issue;

(iii) The series B issue is discharged not later than the prior issue; and

(iv) As of any date, the amount of gross proceeds of the series B issue allocated to expenditures does not exceed the aggregate amount of expenditures before that date for principal and interest on the series B issue, and administrative costs of carrying and repaying the series B issue, or of investments of the series B issue.

(d) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Mortgage sale. In 1982, City issued its revenue issue (the *1982 issue*) and lent the proceeds to Developer to finance a low-income housing project under former section 103(b)(4)(A) of the 1954 Code. In 1994, Developer encounters financial difficulties and negotiates with City to refund the 1982 issue. City issues $10 million in principal amount of its 8 percent bonds (the *1994 issue*). City lends the proceeds of the 1994 issue to Developer. To evidence Developer's obligation to repay that loan, Developer, as obligor, issues a note to City (the *City note*). Bank agrees to provide Developer with a direct-pay letter of credit pursuant to which Bank will make all payments to the trustee for the 1994 issue necessary to meet Developer's obligations under the City note. Developer pays Bank a fee for the issuance of the letter of credit and issues a note to Bank (the *Bank note*). The Bank note is secured by a mortgage on the housing project and is guaranteed by FHA. The Bank note and the 1982 issue have different prepayment terms. The City does not reasonably expect to treat prepayments of the Bank note as gross proceeds of the 1982 issue. At the same time or pursuant to a series of related transactions, Bank sells the Bank note to Investor for $9.5 million. Bank invests these monies together with its other funds. In substance, the transaction is a loan by City to Bank, under which Bank enters into a series of transactions that, in effect, result in Bank retaining $9.5 million in amounts treated as proceeds of the 1994 issue. Those amounts are invested in materially higher yielding investments that provide funds sufficient to equal or exceed the Bank's liability under the letter of credit. Alternatively, the letter of credit is investment property in a sinking fund for the 1994 issue provided by Developer, a substantial beneficiary of the financing. Because, in substance, Developer acquires the $10 million principal amount letter of credit for a fair market value purchase price of $9.5 million, the letter of credit is a materially higher yielding investment. Neither result would change if Developer's obligation under the Bank note is contingent on Bank performing its obligation under the letter of credit. Each characterization causes the bonds to be arbitrage bonds.

Example 2. Bonds outstanding longer than necessary for yield-blending device. (i) *Longer bond maturity to create sinking fund.* In 1994, Authority issues an advance refunding issue (the *refunding issue*) to refund a 1982 prior issue (the *prior issue*). Under current market conditions, Authority will have to invest the refunding escrow at a yield significantly below the yield on the refunding issue. Authority issues its refunding issue with a longer weighted average maturity than otherwise necessary primarily for the purpose of creating a sinking fund for the refunding issue that will be invested in a guaranteed investment contract. The weighted average maturity of the refunding issue is less than 120 percent of the remaining average economic life of the facilities financed with the proceeds of the prior issue. The guaranteed investment contract has a yield that is higher than the yield on the refunding issue. The yield on the refunding escrow blended with the yield on the guaranteed investment contract does not exceed the yield on the issue. The refunding issue uses an abusive arbitrage device and the bonds of the issue are arbitrage bonds under section 148(a).

(ii) *Refunding of noncallable bonds.* The facts are the same as in paragraph (i) of this *Example 2* except that instead of structuring the refunding issue to enable it to take advantage of sinking fund investments, Authority will also refund other long-term, non-callable bonds in the same refunding issue. There are no savings attributable to the refunding of the non-callable bonds (e.g., a *low-to-high* refunding). The Authority invests the portion of the proceeds of the refunding issue allocable to the refunding of the non-callable bonds in the refunding escrow at a yield that is higher than the yield on the refunding issue, based on the relatively long escrow period for this portion of the refunding. The Authority invests the other portion of the proceeds of the refunding issue in the refunding escrow at a yield lower than the yield on the refunding issue. The blended yield on all the investments in the refunding escrow for the prior issues does not exceed the yield on the refunding issue. The portion of the refunding issue used to refund the noncallable bonds, however, was not

otherwise necessary and was issued primarily to exploit the difference between taxable and tax-exempt rates for that long portion of the refunding escrow to minimize the effect of lower yielding investments in the other portion of the escrow. The refunding issue uses an abusive arbitrage device and the bonds of the issue are arbitrage bonds.

(iii) *Governmental purpose.* In paragraphs (i) and (ii) of this *Example 2*, the existence of a governmental purpose for the described financing structures would not change the conclusions unless Authority clearly established that the primary purpose for the use of the particular structure was a bona fide governmental purpose. The fact that each financing structure had the effect of eliminating significant amounts of negative arbitrage is strong evidence of a primary purpose that is not a bona fide governmental purpose. Moreover, in paragraph (i) of this *Example 2*, the structure of the refunding issue coupled with the acquisition of the guaranteed investment contract to lock in the investment yield associated with the structure is strong evidence of a primary purpose that is not a bona fide governmental purpose.

Example 3. Window refunding. (i) Authority issues its 1994 refunding issue to refund a portion of the principal and interest on its outstanding 1985 issue. The 1994 refunding issue is structured using zero-coupon bonds that pay no interest or principal for the 5-year period following the issue date. The proceeds of the 1994 refunding issue are deposited in a refunding escrow to be used to pay only the interest requirements of the refunded portion of the 1985 issue. Authority enters into a guaranteed investment contract with a financial institution, *G*, under which *G* agrees to provide a guaranteed yield on revenues invested by Authority during the 5-year period following the issue date. The guaranteed investment contract has a yield that is no higher than the yield on the refunding issue. The revenues to be invested under this guaranteed investment contract consist of the amounts that Authority otherwise would have used to pay principal and interest on the 1994 refunding issue. The guaranteed investment contract is structured to generate receipts at times and in amounts sufficient to pay the principal and redemption requirements of the refunded portion of the 1985 issue. A principal purpose of these transactions is to avoid transferred proceeds. Authority will continue to invest the unspent proceeds of the 1985 issue that are on deposit in a refunding escrow for its 1982 issue at a yield equal to the yield on the 1985 issue and will not otherwise treat those unspent proceeds as transferred proceeds of the 1994 refunding issue. The 1994 refunding issue is an issue of arbitrage bonds since those bonds involve a transaction or series of transactions that overburdens the market by leaving bonds outstanding longer than is necessary to obtain a material financial advantage based on arbitrage. Specifically, Authority has structured the 1994 refunding issue to make available for the refunding of the 1985 issue replacement proceeds rather than proceeds so that the unspent proceeds of the 1985 issue will not become transferred proceeds of the 1994 refunding issue.

(ii) The result would be the same in each of the following circumstances:

(A) The facts are the same as in paragraph (i) of this *Example 3* except that Authority does not enter into the guaranteed investment contract but instead, as of the issue date of the 1994 refunding issue, reasonably expects that the released revenues will be available for investment until used to pay principal and interest on the 1985 issue.

(B) The facts are the same as in paragraph (i) of this *Example 3* except that there are no unspent proceeds of the 1985 issue and Authority invests the released revenues at a yield materially higher than the yield on the 1994 issue.

(C) The facts are the same as in paragraph (i) of this *Example 3* except that Authority uses the proceeds of the 1994 issue for capital projects instead of to refund a portion of the 1985 issue.

Example 4. Sale of conduit loan. On January 1, 1994, Authority issues a conduit financing issue (the *1994 conduit financing issue*) and uses the proceeds to purchase from City, an unrelated party, a tax-exempt bond of City (the *City note*). The proceeds of the 1994 conduit financing issue are to be used to advance refund a prior conduit financing issue that was issued in 1988 and used to make a loan to City. The 1994 conduit financing issue and the City note each have a yield of 8 percent on January 1, 1994. On June 30, 1996, interest rates have decreased and Authority sells the City note to D, a person unrelated to either City or Authority. Based on the sale price of the City note and treating June 30, 1996 as the issue date of the City note, the City note has a 6 percent yield. Authority deposits the proceeds of the sale of the City note into an escrow to redeem the bonds of the 1994 conduit financing issue on January 1, 2001. The escrow is invested in nonpurpose investments having a yield of 8 percent. For purposes of section 149(d), City and Authority are related parties and, therefore, the issue date of the City note is treated as being June 30, 1996. Thus, the City note is an advance refunding of Authority's 1994 conduit financing issue. Interest on the City note is not exempt from Federal income tax from the date it is sold to D under section 149(d), because, by investing the escrow investments at a yield of 8 percent instead of a yield not materially higher than 6 percent, the sale of the City note employs a device to obtain a material financial advantage, based on arbitrage, apart from the savings attributable to lower interest rates. In addition, the City note is not a tax-exempt bond because the note is the second advance refunding of the original bond under section 149(d)(3). The City note also employs an abusive arbitrage device and is an arbitrage bond under section 148.

Example 5. Re-refunding. (i) On January 1, 1984, City issues a tax-exempt issue (the *1984 issue*) to finance the cost of constructing a prison. The 1984 issue has a 7 percent yield and a 30-year maturity. The 1984 issue is callable at any time on or after January 1, 1994. On January 1, 1990, City issues a refunding issue (the *1990 issue*) to advance refund the 1984 issue. The 1990 issue has an 8 percent yield and a 30-year maturity. The 1990 issue is callable at any time on or after January 1, 2000. The proceeds of the 1990 issue are invested at an 8 percent yield in a refunding escrow for the 1984 issue (the *original 1984 escrow*) in a manner sufficient to pay debt service on the 1984 issue until maturity (i.e., an escrow to maturity). On January 1, 1994, City issues a refunding issue (the *1994 issue*). The 1994 issue has a 6 percent yield and a 30-year maturity. City does not invest the proceeds of the 1994 issue in a refunding escrow for the 1990 issue in a manner sufficient to pay a portion of the debt service until, and redeem a portion of that issue on, January 1, 2000. Instead, City invests those proceeds at a 6 percent yield in a new refunding escrow for a portion of the 1984 issue (the *new 1984 escrow*) in a manner sufficient to pay debt service on a portion of the 1984 issue until maturity. City also liquidates the investments allocable to the proceeds of the 1990 issue held in the original 1984 escrow and reinvests those proceeds in an escrow to pay a portion of the debt service on the 1990 issue itself until, and redeem a portion of that issue on, January 1, 2000 (the *1990 escrow*). The 1994 bonds are arbitrage bonds and employ an abusive device under section 149(d)(4). Although, in form, the proceeds of the 1994 issue are used to pay principal on the 1984 issue, this accounting for the use of the proceeds of the 1994 issue is an unreasonable, inconsistent accounting method under § 1.148–6(a). Moreover, since the proceeds of the 1990 issue were set aside in an escrow to be used to retire the 1984 issue, the use of proceeds of the 1994 issue for that same purpose involves a replacement of funds invested in higher yielding investments under section 148(a)(2). Thus, using a reasonable, consistent accounting method and giving effect to the substance of the transaction, the proceeds of the 1994 issue are treated as used to refund the 1990 issue and are allocable to the 1990 escrow. The proceeds of the 1990 issue are treated as used to refund the 1984 issue and are allocable to the investments in the new 1984 escrow. The proceeds of the 1990 issue allocable to the nonpurpose investments in the new 1984 escrow become transferred proceeds of the 1994 issue as principal is paid on the 1990 issue from amounts on deposit in the 1990 escrow. As a result, the yield on nonpurpose investments allocable to the 1994 issue is materially higher than the yield on the 1994 issue, causing the bonds of the 1994 issue to be arbitrage bonds. In addition, the transaction employs a device under section 149(d)(4) to obtain a material financial advantage based on arbitrage, other than savings attributable to lower interest rates.

(ii) The following changes in the facts do not affect the conclusion that the 1994 issue consists of arbitrage bonds—

(1) The 1990 issue is a taxable issue;

(2) The original 1984 escrow is used to pay the 1994 issue (rather than the 1990 issue); or

(3) The 1994 issue is used to retire the 1984 issue within 90 days of January 1, 1994.

(e) *Authority of the Commissioner to clearly reflect the economic substance of a transaction.* If an issuer enters into a transaction for a principal purpose of obtaining a material financial advantage based on the difference between tax-exempt and taxable interest rates in a manner that is inconsistent with the purposes of section 148, the Commissioner may exercise her discretion to depart from the rules of § 1.148–1 through § 1.148–11 as necessary to clearly reflect the economic substance of the transaction. For this purpose, the Commissioner may recompute yield on an issue or on investments, reallocate payments and receipts on investments, recompute the rebate amount on an issue, or otherwise adjust any item whatsoever bearing upon the investments and expenditures of gross proceeds of an issue.

(f) *Authority of the Commissioner to require an earlier date for payment of rebate.* If the Commissioner determines that an issue is likely to fail to meet the requirements of § 1.148–3 and that a failure to serve a notice of demand for payment on the issuer will jeopardize the assessment or collection of tax on interest paid or to be paid on the issue, the date that the Commissioner serves notice on the issuer is treated as a required computation date for payment of rebate for that issue.

(g) *Authority of the Commissioner to waive regulatory limitations.* Notwithstanding any specific provision in §§ 1.148–1 through 1.148–11, the Commissioner may prescribe extensions of temporary periods, larger reasonably required reserve or replacement funds, or consequences of failures or remedial action under section 148 in lieu of or in addition to other consequences of those failures, or take other action, if the Commissioner finds that good faith or other similar circumstances so warrant, consistent with the purposes of section 148.

§ 1.148–11 Effective dates.

(a) *In general.* Except as otherwise provided in this section, the provisions of § 1.148–1 through § 1.148–11 apply to all issues issued after June 30, 1993.

(b) *Elective retroactive application in whole*—(1) *In general.* Except as otherwise provided in this section and subject to the applicable effective dates of the corresponding statutory provisions, an issuer may apply the provisions of § 1.148–1 through § 1.148–11 in whole, but not in part, to any issue that is outstanding on June 30, 1993, and is subject to section 148(f) or to sections 103(c)(6) or 103A(i) of the Internal Revenue Code of 1954, in lieu of otherwise applicable regulations under those sections.

(2) *No elective retroactive application for 18-month spending exception.* The provisions of § 1.148–7(d) (relating to the 18-month spending exception) may not be applied to any issue issued on or before June 30, 1993.

(c) *Elective retroactive application of certain provisions and special rules*—(1) *In general.* An issuer may apply any of the following individual provisions of § 1.148–1 through § 1.148–11 to outstanding issues issued on or before August 15, 1993, in the indicated manner—

(i) *Certain commingled funds.* If paragraph (a) of this section applies to an issue, and that issue has a commingled fund to which the provisions of § 1.148–6(e)(6) (relating to commingled reserves) apply, that provision may be applied to all issues secured by that commingled reserve.

(ii) *Certain applications of the universal cap.* The provisions of § 1.148–5(c)(3)(i)(F) (and related provisions) may be applied to satisfy the requirements of section 148 (or applicable prior law) if the application of the universal cap results in amounts in a refunding escrow becoming replacement proceeds of an issue issued on or before June 30, 1993.

(2) *Certain allocations of multipurpose issues.* An allocation of bonds to a refunding purpose under § 1.148–9(h) may be adjusted as necessary to reflect allocations made between May 18, 1992, and August 15, 1993, in connection with the issuance of a refunding issue issued during that period if the allocations satisfied the corresponding prior provision of § 1.148–11(j)(4) under applicable prior regulations.

(3) *Special limitation.* The provisions of § 1.148–9 apply to issues issued before August 15, 1993, only if the issuer in good faith estimates the present value savings, if any, associated with the effect of the application of that section on refunding escrows, using any reasonable accounting method, and applies those savings, if any, to redeem outstanding tax-exempt bonds of the applicable issue at the earliest possible date on which those bonds may be redeemed or otherwise retired. These savings are not reduced to take into account any administrative costs associated with applying these provisions retroactively.

(d) *Transition rule excepting certain state guarantee funds from the definition of replacement proceeds*—(1) *Certain perpetual trust funds.* A guarantee by a fund created and controlled by a State and established pursuant to its constitution does not cause the amounts in the fund to be pledged funds treated as replacement proceeds if—

(i) Substantially all of the corpus of the fund consists of nonfinancial assets, revenues derived from these assets, gifts, and bequests;

(ii) The corpus of the guarantee fund may be invaded only to support specifically designated essential governmental functions (*designated functions*) carried on by political subdivisions with general taxing powers;

(iii) Substantially all of the available income of the fund is required to be applied annually to support designated functions;

(iv) The issue guaranteed consists of general obligations that are not private activity bonds substantially all of the proceeds of which are to be used for designated functions;

(v) The fund satisfied each of the requirements of paragraphs (d)(1)(i) through (d)(1)(iii) of this section on August 16, 1986; and

(vi) The guarantee is not attributable to a deposit to the fund made after May 14, 1989, unless—

(A) The deposit is attributable to the sale or other disposition of fund assets; or

(B) Prior to the deposit, the outstanding amount of the bonds guaranteed by the fund did not exceed 250 percent of the lower of the cost or fair market value of the fund.

(2) *Permanent University Fund.* Replacement proceeds do not include amounts allocable to investments of the fund described in section 648 of Public Law 98–369.

(e) *Transition rule regarding special allowance payments.* Section 1.148–5(b)(5) applies to any bond issued after January 5, 1990, except a bond issued exclusively to refund a bond issued before January 6, 1990, if the amount of the refunding bond does not exceed 101 percent of the amount of the refunded bond, and the maturity date of the refunding bond is not later than the date that is 17 years after the date on which the refunded bond was issued (or, in the case of a series of refundings, the date on which the original bond was issued).

(f) *Transition rule regarding applicability of yield reduction rule.* Section 1.148–5(c) applies to nonpurpose investments allocable to replacement proceeds of an issue that are held in a reserve or replacement fund to the extent that—

(1) Amounts must be paid into the fund under a constitutional provision, statute, or ordinance adopted before May 3, 1978;

(2) Under that provision, amounts paid into the fund (and investment earnings thereon) can be used only to pay debt service on the issues; and

(3) The size of the payments made into the fund is independent of the size of the outstanding issues or the debt service thereon.

(g) *Extension of due date for rebate payments.* Payments of rebate under section 148(f) that are otherwise due after June 30, 1993, and before September 1, 1993, may be paid by September 1, 1993.

(h) *Elective application of existing regulations.* For an issue issued after June 30, 1993 and before August 15, 1993, an issuer may apply the provisions of T.D. 7627, sections 1.103–13, 1.103–14, 1.103–15, 1979–2 C.B. 45, (see § 601.601(d)(2)(ii)(*b*)) of this chapter, as amended by T.D. 8418, 1992–1 C.B. 29; T.D. 8345, section 1.103–13T, 1991–1 C.B. 33; and T.D. 8418, sections 1.148–0 through 1.148–11, 1.149(d)–1 and 1.150–1, 1992–1 C.B. 29, in whole, but not in part, in lieu of applying these regulations under paragraph (a) of this section, without regard to § 1.148–0(b)(2)(ii)(D) of those provisions.

§§ 1.148–12T and 1.148–13T [Removed]

Par. 5a. Sections 1.148–12T and 1.148–13T are removed.

Par. 6. Section 1.149(b)–1 is added to read as follows:

§ 1.149(b)–1 Federally guaranteed bonds.

(a) *General rule.* Under section 149(b) and this section, nothing in section 103(a) or in any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond issued as part of an issue that is federally guaranteed.

(b) *Exceptions.* Pursuant to section 149(b)(3)(B), section 149(b)(1) and paragraph (a) of this section do not apply to—

(1) Investments in obligations issued pursuant to § 21B(d)(3) of the Federal Home Loan Bank Act, as amended by § 511 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, or any successor provision; or

(2) Any investments that are held in a refunding escrow (as defined in § 1.148–1).

(c) *Effective date.* This section applies to investments made after June 30, 1993.

§ 1.149(b)(3)–1T [Removed]

Par. 7. Section § 1.149(b)(3)–1T is removed.

Par. 8. Section 1.149(d)–1 is revised to read as follows:

§ 1.149(d)–1 Limitations on advance refundings.

(a) *General rule.* Under section 149(d) and this section, nothing in section 103(a) or in any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any bond issued as part of an issue described in paragraphs (2), (3), or (4) of section 149(d).

(b) *Advance refunding issues that employ abusive devices*—(1) *In general.* An advance refunding issue employs an abusive device and is described in section 149(d)(4) if the issue violates any of the anti-abuse rules under § 1.148–10.

(2) *Failure to pay required rebate.* An advance refunding issue is described in section 149(d)(4) if the issue fails to meet the requirements of § 1.148–3. This paragraph (b)(2) applies to any advance refunding issue issued after August 31, 1986.

(3) *Mixed escrows invested in tax-exempt bonds.* An advance refunding issue is described in section 149(d)(4) if—

(i) Any of the proceeds of the issue are invested in a refunding escrow in which a portion of the proceeds are invested in tax-exempt bonds and a portion of the proceeds are invested in nonpurpose investments;

(ii) The yield on the tax-exempt bonds in the refunding escrow exceeds the yield on the issue;

(iii) The yield on all the investments (including investment property and tax-exempt bonds) in the refunding escrow exceeds the yield on the issue; and

(iv) The weighted average maturity of the tax-exempt bonds in the refunding escrow is more than 25 percent greater or less than the weighted average maturity of the nonpurpose investments in the refunding escrow, and the weighted average maturity of nonpurpose investments in the refunding escrow is greater than 60 days.

(4) *Tax-exempt conduit loans.* For purposes of applying section 149(d) to a conduit financing issue that finances any conduit loan that is a tax-exempt bond, the actual issuer of a conduit financing issue and the conduit borrower of that conduit financing issue are treated as related parties. Thus, the issue date of the conduit loan does not occur prior to the date on which the actual issuer of the conduit financing issue sells, exchanges, or otherwise disposes of that conduit loan, and the use of the proceeds of the disposition to pay debt service on the conduit financing issue causes the conduit loan to be a refunding issue. See § 1.148–10(d), *Example 4.*

(c) *Unrefunded debt service remains eligible for future advance refunding.* For purposes of section 149(d)(3)(A)(i), any principal or interest on a prior issue that has not been paid or provided for by any advance refunding issue is treated as not having been advance refunded.

(d) *Application of arbitrage regulations*—(1) *Application of multipurpose issue rules.* For purposes of sections 149(d)(2) and (3)(A)(i), (ii), and (iii), the provisions of the multipurpose issue rule in § 1.148–9(h) apply.

(2) *General mixed escrow rules.* For purposes of section 149(d), the provisions of § 1.148–9(c) (relating to mixed escrows) apply, except that those provisions do not apply for purposes of section 149(d)(2) and (d)(3)(A) (i) and (ii) to amounts that were not gross proceeds of the prior issue before the issue date of the refunding issue.

(3) *Temporary periods and minor portions.* Section 1.148–9(d) and (f) contains rules applicable to temporary periods and minor portions for advance refunding issues.

(4) *Definitions.* Section 1.148–1 applies for purposes of section 149(d).

(e) *Taxable refundings*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, for purposes of section 149(d)(3)(A)(i), an advance refunding issue the interest on which is not excludable from gross income under section 103(a) (i.e., a taxable advance refunding issue) is not taken into account. In addition, for this purpose, an advance refunding of a taxable issue is not taken into account unless the taxable issue is a conduit loan of a tax-exempt conduit financing issue.

(2) *Use to avoid section 149(d)(3)(A)(i).* A taxable issue is taken into account under section 149(d)(3)(A)(i) if it is issued to avoid the limitations of that section. For example, in the case of a refunding of a tax-exempt issue with a taxable advance refunding issue that is, in turn, currently refunded with a tax-exempt issue, the taxable advance refunding issue is taken into account under section 149(d)(3)(A)(i) if the two tax-exempt issues are outstanding concurrently for more than 90 days.

(f) *Redemption at first call date*—(1) *General rule.* Under sections 149(d)(3)(A) (ii) and (iii) (the *first call requirement*), bonds refunded by an advance refunding must be redeemed on their first call date if the savings test under section 149(d)(3)(B)(i) (the *savings test*) is satisfied. The savings test is satisfied if the issuer may realize present value debt service savings

(determined without regard to administrative expenses) in connection with the issue of which the refunding bond is a part.

(2) *First call date. First call date* means the earliest date on which a bond may be redeemed (or, if issued before 1986, on the earliest date on which that bond may be redeemed at a redemption price not in excess of 103 percent of par). If, however, the savings test is not met with respect to the date described in the preceding sentence (i.e., there are no present value savings if the refunded bonds are retired on that date), the first call date is the first date thereafter on which the bonds can be redeemed and on which the savings test is met.

(3) *Savings test.* Except as provided below, the multipurpose issue allocation rules apply for purposes of the savings test. The savings test is satisfied and the first call requirement applies to a bond if the refunding of that bond increases the aggregate present value debt service savings on the entire refunding issue when compared with the aggregate present value debt service savings if that bond were not refunded.

(g) *Effective date*—(1) *In general.* Except as provided in paragraph (g)(2) of this section, this section applies to bonds issued after June 30, 1993, to which §§ 1.148–1 through 1.148–11 apply, including conduit loans that are treated as issued after June 30, 1993, under paragraph (b)(4) of this section. In addition, this section applies to any issue to which the election described in § 1.148–11(b)(1) is made.

(2) *Special effective date for paragraph (b)(3).* Paragraph (b)(3) of this section applies to any advance refunding issue issued after May 28, 1991.

Par. 9. Section 1.149(g)–1 is added to read as follows:

§ 1.149(g)–1 Hedge bonds.

(a) *Certain definitions.* Except as otherwise provided, the definitions set forth in § 1.148–1 apply for purposes of section 149(g) and this section. In addition, the following terms have the following meanings:

Reasonable expectations means reasonable expectations (as defined in § 1.148–1), as modified to take into account the provisions of section 149(f)(2)(B).

Spendable proceeds means net sale proceeds (as defined in § 1.148–1).

(b) *Applicability of arbitrage allocation and accounting rules.* Section 1.148–6 applies for purposes of section 149(g), except that an expenditure that results in the creation of replacement proceeds (other than amounts in a bona fide debt service fund or a reasonably required reserve or replacement fund) is not an expenditure for purposes of section 149(g).

(c) *Refundings*—(1) *Investment in tax-exempt bonds.* A bond issued to refund a bond that is a tax-exempt bond by virtue of the rule in section 149(g)(3)(B) is not a tax-exempt bond unless the gross proceeds of that refunding bond (other than proceeds in a refunding escrow for the refunded bond) satisfy the requirements of section 149(g)(3)(B).

(2) *Anti-abuse rule.* A refunding bond is treated as a hedge bond unless there is a significant governmental purpose for the issuance of that bond (e.g., an advance refunding bond issued to realize debt service savings or to relieve the issuer of significantly burdensome document provisions, but not to otherwise hedge against future increases in interest rates).

(d) *Effective date.* This section applies to bonds issued after June 30, 1993 to which §§ 1.148–1 through 1.148–11 apply. In addition, this section applies to any issue to which the election described in § 1.148–11(b)(1) is made.

Par. 10. Section 1.150–1 is revised to read as follows:

§ 1.150–1 Definitions.

(a) *Scope and effective date*—(1) *In general.* Except as otherwise provided, the definitions in this section apply for all purposes of sections 103 and 141 through 150.

(2) *Effective date.* This section applies to issues issued after June 30, 1993 to which §§ 1.148–1 through 1.148–11 apply. In addition, this section (other than paragraph (c)(3) of this section) applies to any issue to which the election described in § 1.148–11(b)(1) is made.

(b) *Certain general definitions.* The following definitions apply:

Bond means any obligation of a State or political subdivision thereof under section 103(c)(1).

Capital expenditure means any cost of a type that is properly chargeable to capital account (or would be so chargeable with a proper election or with the application of the definition of placed in service under § 1.150–2(c)) under general Federal income tax principles. For example, costs incurred to acquire, construct, or improve land, buildings, and equipment generally are capital expenditures. Whether an expenditure is a capital expenditure is determined at the time the expenditure is paid with respect to the property. Future changes in law do not affect whether an expenditure is a capital expenditure.

Conduit borrower means the obligor on a purpose investment (as defined in § 1.148–1). For example, if an issuer invests proceeds in a purpose investment in the form of a loan, lease, installment sale obligation, or similar obligation to another entity and the obligor uses the proceeds to carry out the governmental purpose of the issue, the obligor is a conduit borrower.

Conduit financing issue means an issue the proceeds of which are used or are reasonably expected to be used to finance at least one purpose investment representing at least one conduit loan to one conduit borrower.

Conduit loan means a purpose investment (as defined in § 1.148–1).

Governmental bond means any bond of an issue of tax-exempt bonds in which none of the bonds are private activity bonds.

Issuance costs means costs to the extent incurred in connection with, and allocable to, the issuance of an issue within the meaning of section 147(g). For example, issuance costs include the following costs but only to the extent incurred in connection with, and allocable to, the borrowing: underwriters' spread; counsel fees; financial advisory fees; rating agency fees; trustee fees; paying agent fees; bond registrar, certification, and authentication fees; accounting fees; printing costs for bonds and offering documents; public approval process costs; engineering and feasibility study costs; guarantee fees, other than for qualified guarantees (as defined in § 1.148–4(f)); and similar costs.

Issue date means, in reference to an issue, the first date on which the issuer receives the purchase price in exchange for delivery of the evidence of indebtedness representing any bond included in the issue. Issue date means, in reference to a bond, the date on which the issuer receives the purchase price in exchange for that bond. In no event is the issue date earlier than the first day on which interest begins to accrue on the bond or bonds for Federal income tax purposes.

Obligation means any valid evidence of indebtedness under general Federal income tax principles.

Pooled financing issue means an issue the proceeds of which are to be used to finance purpose investments representing conduit loans to two or more conduit borrowers, unless those conduit loans are to be used to finance a single capital project.

Private activity bond means a private activity bond (as defined in section 141).

Qualified mortgage loan means a mortgage loan with respect to an owner-occupied residence acquired with the proceeds of an obligation described in

section 143(a)(1) or 143(b) (or applicable prior law).

Qualified student loan means a student loan acquired with the proceeds of an obligation described in section 144(b)(1).

Related party means, in reference to a governmental unit or a 501(c)(3) organization, any member of the same controlled group, and, in reference to any person that is not a governmental unit or 501(c)(3) organization, a related person (as defined in section 144(a)(3)).

Taxable bond means any obligation the interest on which is not excludable from gross income under section 103.

Tax-exempt bond means any bond the interest on which is excludable from gross income under section 103(a). Tax-exempt bond includes an interest in a regulated investment company to the extent that at least 95 percent of the income to the holder of the interest is interest that is excludable from gross income under section 103(a).

Working capital expenditure means any cost that is not a capital expenditure. Generally, current operating expenses are working capital expenditures.

(c) *Definition of issue*—(1) *In general.* The provisions of this paragraph (c) apply for all purposes of sections 103 and 141 through 150. Except as otherwise provided in this paragraph (c), two or more bonds are treated as part of the same issue if all of the following factors are present:

(i) *Sold at substantially the same time.* The bonds are sold at substantially the same time. Bonds are treated and sold at substantially the same time if they are sold less than 15 days apart. For this purpose only, a variable yield bond is treated and sold on its issue date.

(ii) *Sold pursuant to the same plan of financing.* The bonds are sold pursuant to the same plan of financing. Factors material to the plan of financing include the purposes for the bonds and the structure of the financing. For example, generally—

(A) Bonds to finance a single facility or related facilities are part of the same plan of financing;

(B) Short-term bonds to finance working capital expenditures and long-term bonds to finance capital projects are not part of the same plan of financing; and

(C) Certificates of participation in a lease and general obligation bonds secured by tax revenues are not part of the same plan of financing.

(iii) *Payable from same source of funds.* The bonds are reasonably expected to be paid from substantially the same source of funds, determined without regard to guarantees from unrelated parties.

(2) *Exception for taxable bonds.* Taxable bonds and tax-exempt bonds are not part of the same issue under this paragraph (c). The issuance of tax-exempt bonds in a transaction (or series of related transactions) that includes taxable bonds, however, may constitute an abusive arbitrage device under § 1.148–10(a) or a device to avoid other limitations in sections 103 and 141 through 150 (for example, structures involving *windows* or unreasonable allocations of bonds).

(3) *Exception for certain bonds financing separate purposes*—(i) *In general.* Bonds may be treated as part of separate issues if the requirements of this paragraph (c)(3) are satisfied. Each of these separate issues must finance a separate purpose (e.g., refunding a separate prior issue, financing a separate purpose investment, financing integrated or functionally related capital projects, and financing any clearly discrete governmental purpose). Each of these separate issues independently must be a tax-exempt bond (e.g., a governmental bond or a qualified mortgage bond). The aggregate proceeds, investments, and bonds in such a transaction must be allocated between each of the separate issues using a reasonable, consistently applied allocation method. If any separate issue consists of refunding bonds, the allocation rules in § 1.148–9(h) must be satisfied. An allocation is not reasonable if it achieves more favorable results under sections 103 and 141 to 150 than could be achieved with actual separate issues. All allocations under this paragraph (c)(3) must be made in writing on or before the issue date.

(ii) *Exceptions.* This paragraph (c)(3) does not apply for purposes of sections 141(b)(5), 141(c)(1), 141(d)(1), 144(a), 148, 149(d), and 149(g).

(4) *Special rules for draw-down loans and commercial paper*—(i) *Draw-down loans.* Bonds issued pursuant to a draw-down loan are treated as part of a single issue. The issue date of that issue is the first date on which the aggregate draws under the loan exceed the lesser of $50,000 or 5 percent of the issue price.

(ii) *Commercial paper*—(A) *In general.* Short-term bonds having a maturity of 270 days or less (*commercial paper*) issued pursuant to the same commercial paper program may be treated as part of a single issue, the issue date of which is the first date the aggregate amount of commercial paper issued under the program exceeds the lesser of $50,000 or 5 percent of the aggregate issue price of the commercial paper in the program. A commercial paper program is a program to issue commercial paper to finance or refinance the same governmental purpose pursuant to a single master legal document. Commercial paper is not part of the same commercial paper program unless issued during an 18-month period, beginning on the deemed issue date. In addition, commercial paper issued after the end of this 18-month period may be treated as part of the program to the extent issued to refund commercial paper that is part of the program, but only to the extent that—

(*1*) There is no increase in the principal amount outstanding; and

(*2*) The program does not have a term in excess of—

(*i*) 30 years; or

(*ii*) The period reasonably necessary for the governmental purposes of the program.

(B) *Safe harbor.* The requirement of paragraph (c)(4)(ii)(A)(*2*) of this section is treated as satisfied if the weighted average maturity of the issue does not exceed 120 percent of the weighted average expected economic life of the property financed by the issue.

(5) *Anti-abuse rule.* In order to prevent the avoidance of sections 103 and 141 through 150 and the general purposes thereof, the Commissioner may treat bonds as part of the same issue or as part of separate issues to clearly reflect the economic substance of a transaction.

(d) *Definition of refunding issue and related definitions*—(1) *General definition of refunding issue. Refunding issue* means an issue of obligations the proceeds of which are used to pay principal, interest, or redemption price on another issue (a *prior issue*, as more particularly defined in paragraph (d)(5) of this section), including the issuance costs, accrued interest, capitalized interest on the refunding issue, a reserve or replacement fund, or similar costs, if any, properly allocable to that refunding issue.

(2) *Exceptions and special rules.* For purposes of paragraph (d)(1) of this section, the following exceptions and special rules apply—

(i) *Payment of certain interest.* An issue is not a refunding issue if the only principal and interest that is paid with proceeds of the issue (determined without regard to the multipurpose issue rules of § 1.148–9(h)) is interest on another issue that—

(A) Accrues on the other issue during a one-year period including the issue date of the issue that finances the interest;

(B) Is a capital expenditure; or

(C) Is a working capital expenditure to which the de minimis rule of § 1.148–6(d)(3)(ii)(A) applies.

(ii) *Certain issues with different obligors*—(A) *In general.* An issue is not a refunding issue to the extent that the obligor (as defined in paragraph (d)(2)(ii)(B) of this section) of one issue is neither the obligor of the other issue nor a related party with respect to the obligor of the other issue.

(B) *Definition of obligor.* The *obligor* of an issue means the actual issuer of the issue, except that the obligor of the portion of an issue properly allocable to an investment in a purpose investment means the conduit borrower under that purpose investment. The obligor of an issue used to finance qualified mortgage loans, qualified student loans, or similar program investments (as defined in § 1.148–1) does not include the ultimate recipient of the loan (e.g., the homeowner, the student).

(iii) *Certain special rules for purpose investments.* For purposes of this paragraph (d), the following special rules apply:

(A) *Refunding of a conduit financing issue by a conduit loan refunding issue.* Except as provided in paragraph (d)(2)(iii)(B) of this section, the use of the proceeds of an issue that is used to refund an obligation that is a purpose investment (a *conduit refunding issue*) by the actual issuer of the conduit financing issue determines whether the conduit refunding issue is a refunding of the conduit financing issue (in addition to a refunding of the obligation that is the purpose investment).

(B) *Recycling of certain payments under purpose investments.* A conduit refunding issue is not a refunding of a conduit financing issue to the extent that the actual issuer of the conduit financing issue reasonably expects as of the date of receipt of the proceeds of the conduit refunding issue to use those amounts within 6 months (or, if greater, during the applicable temporary period for those amounts under section 148(c) or under applicable prior law) to acquire a new purpose investment. Any new purpose investment is treated as made from the proceeds of the conduit financing issue.

(C) *Application to tax-exempt loans.* For purposes of this paragraph (d), obligations that would be purpose investments (absent section 148(b)(3)(A)) are treated as purpose investments.

(iv) *Substance of transaction controls.* In the absence of other applicable controlling rules under this paragraph (d), the determination of whether an issue is a refunding issue is based on the substance of the transaction in light of all the facts and circumstances.

(v) *Certain integrated transactions in connection with asset acquisition not treated as refunding issues.* If, within six months before or after a person assumes (including taking subject to) obligations of an unrelated party in connection with an asset acquisition (other than a transaction to which section 381(a) applies if the person assuming the obligation is the acquiring corporation within the meaning of section 381(a)), the assumed issue is refinanced, the refinancing issue is not treated as a refunding issue.

(3) *Current refunding issue. Current refunding issue* means:

(i) Except as provided in paragraph (d)(3)(ii) of this section, a refunding issue that is issued not more than 90 days before the last expenditure of any proceeds of the refunding issue for the payment of principal or interest on the prior issue; and

(ii) In the case of a refunding issue issued before 1986—

(A) A refunding issue that is issued not more than 180 days before the last expenditure of any proceeds of the refunding issue for the payment of principal or interest on the prior issue; or

(B) A refunding issue if the prior issue had a term of less than 3 years and was sold in anticipation of permanent financing, but only if the aggregate term of all prior issues sold in anticipation of permanent financing was less than 3 years.

(4) *Advance refunding issue. Advance refunding issue* means a refunding issue that is not a current refunding issue.

(5) *Prior issue. Prior issue* means an issue of obligations all or a portion of the principal, interest, or call premium on which is paid or provided for with proceeds of a refunding issue. A prior issue may be issued before, at the same time as, or after a refunding issue. If the refunded and unrefunded portions of a prior issue are treated as separate issues under § 1.148–9(i), for the purposes for which that section applies, except to the extent that the context clearly requires otherwise, references to a prior issue refer only to the refunded portion of that prior issue.

(e) *Controlled group* means a group of entities controlled directly or indirectly by the same entity or group of entities within the meaning of this paragraph (e).

(1) *Direct control.* The determination of direct control is made on the basis of all the relevant facts and circumstances. One entity or group of entities (the *controlling entity*) generally controls another entity or group of entities (the *controlled entity*) for purposes of this paragraph if the controlling entity possesses either of the following rights or powers and the rights or powers are discretionary and non-ministerial—

(i) The right or power both to approve and to remove without cause a controlling portion of the governing body of the controlled entity; or

(ii) The right or power to require the use of funds or assets of the controlled entity for any purpose of the controlling entity.

(2) *Indirect control.* If a controlling entity controls a controlled entity under the test in paragraph (e)(1) of this section, then the controlling entity also controls all entities controlled, directly or indirectly, by the controlled entity or entities.

(3) *Exception for general purpose governmental entities.* An entity is not a controlled entity under this paragraph (e) if the entity possesses substantial taxing, eminent domain, and police powers. For example, a city possessing substantial amounts of each of these sovereign powers is not a controlled entity of the state.

Par. 11. Section 1.150–2 is added to read as follows:

§ 1.150–2 Proceeds of bonds used for reimbursement.

(a) *Table of contents.* This table of contents contains a listing of the headings contained in § 1.150–2.

(a) Table of contents.
(b) Scope.
(c) Definitions.
(d) General operating rules for reimbursement expenditures.
(1) Official intent.
(2) Reimbursement period.
(3) Nature of expenditure.
(e) Official intent rules.
(1) Form of official intent.
(2) Project description in official intent.
(3) Reasonableness of official intent.
(f) Exceptions to general operating rules.
(1) De minimis exception.
(2) Preliminary expenditures exception.
(g) Special rules on refundings.
(1) In general—once financed, not reimbursed.
(2) Certain proceeds of prior issue used for reimbursement treated as unspent.
(h) Anti-abuse rules.
(1) General rule.
(2) One-year step transaction rule.
(i) Authority of the Commissioner to prescribe rules.
(j) Effective date.
(1) In general.
(2) Transitional rules.

(b) *Scope.* This section applies to reimbursement bonds (as defined in paragraph (c) of this section) for all purposes of sections 103 and 141 to 150.

(c) *Definitions.* The following definitions apply:

Issuer means—

(1) For any private activity bond (excluding a qualified 501(c)(3) bond, qualified student loan bond, qualified mortgage bond, or qualified veterans' mortgage bond), the entity that actually issues the reimbursement bond; and

(2) For any bond not described in paragraph (1) of this definition, either the entity that actually issues the reimbursement bond or, to the extent that the reimbursement bond proceeds are to be loaned to a conduit borrower, that conduit borrower.

Official intent means an issuer's declaration of intent to reimburse an original expenditure with proceeds of an obligation.

Original expenditure means an expenditure for a governmental purpose that is originally paid from a source other than a reimbursement bond.

Placed in service means, with respect to a facility, the date on which, based on all the facts and circumstances—

(1) The facility has reached a degree of completion which would permit its operation at substantially its design level; and

(2) The facility is, in fact, in operation at such level.

Reimbursement allocation means an allocation in writing that evidences an issuer's use of proceeds of a reimbursement bond to reimburse an original expenditure. An allocation made within 30 days after the issue date of a reimbursement bond may be treated as made on the issue date.

Reimbursement bond means the portion of an issue allocated to reimburse an original expenditure that was paid before the issue date.

(d) *General operating rules for reimbursement expenditures.* Except as otherwise provided, a reimbursement allocation is treated as an expenditure of proceeds of a reimbursement bond for the governmental purpose of the original expenditure on the date of the reimbursement allocation only if:

(1) *Official intent.* Not later than 60 days after payment of the original expenditure, the issuer adopts an official intent for the original expenditure that satisfies paragraph (e) of this section.

(2) *Reimbursement period*—(i) *In general.* The reimbursement allocation is made not later than 18 months after the later of—

(A) The date the original expenditure is paid; or

(B) The date the project is placed in service or abandoned, but in no event more than 3 years after the original expenditure is paid.

(ii) *Special rule for small issuers.* In applying paragraph (d)(2)(i) of this section to an issue that satisfies section 148(f)(4)(D)(i) (I) through (IV), the "18 month" limitation is changed to "3 years" and the "3-year" maximum reimbursement period is disregarded.

(iii) *Special rule for long-term construction projects.* In applying paragraph (d)(2)(i) to a construction project for which both the issuer and a licensed architect or engineer certify that at least 5 years is necessary to complete construction of the project, the maximum reimbursement period is changed from "3 years" to "5 years."

(3) *Nature of expenditure.* The original expenditure is a capital expenditure, a cost of issuance for a bond, an expenditure described in § 1.148–6(d)(3)(ii)(B) (relating to certain extraordinary working capital items), a grant (as defined in § 1.148–6(d)(4)), a qualified student loan, a qualified mortgage loan, or a qualified veterans' mortgage loan.

(e) *Official intent rules.* An official intent satisfies this paragraph (e) if:

(1) *Form of official intent.* The official intent is made in any reasonable form, including issuer resolution, action by an appropriate representative of the issuer (e.g., a person authorized or designated to declare official intent on behalf of the issuer), or specific legislative authorization for the issuance of obligations for a particular project.

(2) *Project description in official intent*—(i) *In general.* The official intent generally describes the project for which the original expenditure is paid and states the maximum principal amount of obligations expected to be issued for the project. A project includes any property, project, or program (e.g., *highway capital improvement program, hospital equipment acquisition,* or *school building renovation*).

(ii) *Fund accounting.* A project description is sufficient if it identifies, by name and functional purpose, the fund or account from which the original expenditure is paid (e.g., *parks and recreation fund—recreational facility capital improvement program*).

(iii) *Reasonable deviations in project description.* Deviations between a project described in an official intent and the actual project financed with reimbursement bonds do not invalidate the official intent to the extent that the actual project is reasonably related in function to the described project. For example, *hospital equipment* is a reasonable deviation from *hospital building improvements.* In contrast, a *city office building rehabilitation* is not a reasonable deviation from *highway improvements.*

(3) *Reasonableness of official intent.* On the date of the declaration, the issuer must have a reasonable expectation (as defined in § 1.148–1(b)) that it will reimburse the original expenditure with proceeds of an obligation. Official intents declared as a matter of course or in amounts substantially in excess of the amounts expected to be necessary for the project (e.g., *blanket declarations*) are not reasonable. Similarly, a pattern of failure to reimburse actual original expenditures covered by official intents (other than in extraordinary circumstances) is evidence of unreasonableness. An official intent declared pursuant to a specific legislative authorization is rebuttably presumed to satisfy this paragraph (e)(3).

(f) *Exceptions to general operating rules*—(1) *De minimis exception.* Paragraphs (d)(1) and (d)(2) of this section do not apply to costs of issuance of any bond or to an amount not in excess of the lesser of $100,000 or 5 percent of the proceeds of the issue.

(2) *Preliminary expenditures exception.* Paragraphs (d)(1) and (d)(2) of this section do not apply to any preliminary expenditures, up to an amount not in excess of 20 percent of the aggregate issue price of the issue or issues that finance or are reasonably expected by the issuer to finance the project for which the preliminary expenditures were incurred. Preliminary expenditures include architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred prior to commencement of acquisition, construction, or rehabilitation of a project, other than land acquisition, site preparation, and similar costs incident to commencement of construction.

(g) *Special rules on refundings*—(1) *In general—once financed, not reimbursed.* Except as provided in paragraph (g)(2) of this section, paragraph (d) of this section does not apply to an allocation to pay principal or interest on an obligation to reimburse an original expenditure paid by another obligation. Instead, such an allocation is analyzed under rules on refunding issues. See § 1.148–9.

(2) *Certain proceeds of prior issue used for reimbursement treated as unspent.* In the case of a refunding issue (or series of refunding issues), proceeds of a prior issue purportedly used to reimburse original expenditures are treated as unspent proceeds of the prior issue unless the purported reimbursement was a valid expenditure under applicable law on reimbursement expenditures on the issue date of the prior issue.

(h) *Anti-abuse rules*—(1) *General rule.* A reimbursement allocation is not an expenditure of proceeds of an issue under this section if the allocation employs an abusive arbitrage device under § 1.148–10 to avoid the arbitrage restrictions or to avoid the restrictions under sections 142 through 147.

(2) *One-year step transaction rule*—(i) *Creation of replacement proceeds.* A purported reimbursement allocation is invalid and thus is not an expenditure of proceeds of an issue if, within 1 year after the allocation, funds corresponding to the proceeds of a reimbursement bond for which a reimbursement allocation was made are used in a manner that results in the creation of replacement proceeds (as defined in § 1.148–1) of that issue or another issue. The preceding sentence does not apply to amounts deposited in a bona fide debt service fund (as defined in § 1.148–1).

(ii) *Example.* The provisions of paragraph (h)(2)(i) of this section are illustrated by the following example.

Example. On January 1, 1994, County *A* issues an issue of 7 percent tax-exempt bonds (the *1994 issue*) and makes a purported reimbursement allocation to reimburse an original expenditure for specified capital improvements. *A* immediately deposits funds corresponding to the proceeds subject to the reimbursement allocation in an escrow fund to provide for payment of principal and interest on its outstanding 1991 issue of 9 percent tax-exempt bonds (the *prior issue*). The use of amounts corresponding to the proceeds of the reimbursement bonds to create a sinking fund for another issue within 1 year after the purported reimbursement allocation invalidates the reimbursement allocation. The proceeds retain their character as unspent proceeds of the 7 percent issue upon deposit in the escrow fund. Accordingly, the proceeds are subject to the 7 percent yield restriction of the 1994 issue instead of the 9 percent yield restriction of the prior issue.

(i) *Authority of the Commissioner to prescribe rules.* The Commissioner may by revenue ruling or revenue procedure (see § 601.601(d)(2)(ii)(*b*) of this chapter) prescribe rules for the expenditure of proceeds of reimbursement bonds in circumstances that do not otherwise satisfy this section.

(j) *Effective date*—(1) *In general.* The provisions of this section apply to all allocations of proceeds of reimbursement bonds issued after June 30, 1993.

(2) *Transitional rules*—(i) *Official intent.* An official intent is treated as satisfying the official intent requirement of paragraph (d)(1) of this section if it—

(A) Satisfied the applicable provisions of § 1.103–8(a)(5) as in effect prior to July 1, 1993, (as contained in 26 CFR part 1 revised as of April 1, 1993) and was made prior to that date, or

(B) Satisfied the applicable provisions of § 1.103–18 as in effect between January 27, 1992, and June 30, 1993, (as contained in 26 CFR part 1 revised as of April 1, 1993) and was made during that period.

(ii) *Certain expenditures of private activity bonds.* For any expenditure that was originally paid prior to August 15, 1993, and that would have qualified for expenditure by reimbursement from the proceeds of a private activity bond under T.D. 7199, section 1.103–8(a)(5), 1972–2 C.B. 45 (see § 601.601(d)(2)(ii)(*b*)) of this chapter, the requirements of that section may be applied in lieu of this section.

PART 6a—TEMPORARY REGULATIONS UNDER TITLE II OF THE OMNIBUS RECONCILIATION ACT OF 1980

Par. 12. The authority for part 6a is revised to read as follows:

Authority: 26 U.S.C. 7805.

Sections 6a.103A–2(k), (l), and (m) also issued under 26 U.S.C. 103A(j) (3), (4), and (5).

Par. 13. Section 6a.103A–2 is amended by adding a new paragraph (i)(3)(v) to read as follows:

§ 6a.103A–2 Qualified mortgage bond.

* * * * *

(i) * * *

(3) * * *

(v) *Bonds issued after June 30, 1993.* Section 1.148–2(f)(2)(iv) applies to bonds issued after June 30, 1993, in lieu of this paragraph (i)(3).

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 14. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 15. Section 602.101(c) is amended by adding the following entries in numerical order to the table to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
* * * * *	
1.148–2	1545–1347
1.148–3	1545–1347
1.148–4	1545–1347
1.148–7	1545–1347
1.148–11	1545–1347
* * * * *	

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: June 4, 1993.

Leslie Samuels,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 93–14092 Filed 6–14–93; 9:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Montana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of informal conference.

SUMMARY: On May 28, 1993, the Acting Director, Office of Surface Mining Reclamation and Enforcement (OSM), notified the Montana Department of State Lands that OSM had reason to believe that serious problems exist which are adversely affecting the effective implementation, administration, maintenance, and enforcement of Montana's approved regulatory program.

By letter dated June 4, 1993, the Montana Department of State Lands requested that the Acting Director hold an informal conference to discuss the facts surrounding the Acting Director's notification. Accordingly, the Acting Director hereby notifies Montana and the public that OSM will hold an informal conference on June 30, 1993, at the address below.

DATES: OSM has scheduled an informal conference on June 30, 1993, at 9 a.m. All interested persons may attend the informal conference.

ADDRESSES: The informal conference will be held at: The Billings Sheraton, 27 North 27th Street, Billings, Montana 59101. Telephone: 406–252–7400.

Copies of documents referenced in this notice are available for public inspection and copying during normal business hours at:

Office of Surfacing Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol Street NW., Washington, DC 20240. Telephone: 202–343–5492.

Office of Surface Mining Reclamation and Enforcement, Casper Field Office, 100 East 'B' Street, room 2128, Casper, Wyoming 82601. Telephone: 307–261–5776.

Montana Department of State Lands, Capitol Station, 1625 Eleventh Avenue, Helena, Montana 59620. Telephone: (406)–444–2074.

FOR FURTHER INFORMATION CONTACT: Allen D. Klein, Assistant Director, Field Operations, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240. Telephone: (202)–208–2625; or Guy Padgett, Casper Field Office Director, Office of Surface Mining Reclamation and Enforcement, 100 East 'B' Street, room 2128, Casper, Wyoming 82601. Telephone: (307)–261–5776.

SUPPLEMENTARY INFORMATION: On April 1, 1980, the Secretary of the Department of the Interior conditionally approved the Montana program (45 FR 21560, April 1, 1980). On May 28, 1993, the Acting Director, OSM, notified the Administrator, Reclamation Division, Montana Department of State Lands (MDSL), that OSM had reason to believe that serious problems exist which are adversely affecting the effective implementation, administration, maintenance, and enforcement of Montana's approved permanent regulatory program under SMCRA.

Since the approval of the Montana program, and in keeping with its policy of working closely with the State, OSM has had numerous discussions with officials from the MDSL about the State's performance. Recent discussions and investigations have centered on inadequacies of MDSL's implementation of its approved program raised in a 30 CFR 733.12 petition filed March 1, 1993, as described below:

1. Administrative Rule Montana (ARM) 26.4.401(3) requires that, upon receipt of notice of MDSL's determination of administrative completeness, the applicant place an advertisement in a newspaper of general circulation in the locality of the proposed activity at least once a week for four consecutive weeks. The advertisement must contain, at a minimum, certain information listed in the regulations which serves to alert the public of the activity and explains the right of public comment and the time restriction for the comment period. The applicant in question, did not comply with this requirement. Although MDSL realized the applicant had not complied with this provision before the permit was approved, the MDSL did not require the applicant to comply.

2. ARM 26.4.401(5) requires MDSL, immediately upon issuance of a determination of administrative completeness, to issue written notification of the proposed activity requesting written comments to Federal, State, and local governmental agencies having an interest in the area; to governmental planning agencies; sewage and water treating agencies; and Federal or State agencies with authority to issue all other permits and licenses required by the applicant. MDSL did not comply with this requirement.

3. ARM 26.4.325(3)(f)(ii) requires that no permit may be approved by MDSL unless it finds in writing that the proposed operation will not interrupt, discontinue, or preclude farming on an alluvial valley floor and that the proposed operation will not materially damage the quantity or quality of water in surface and underground water systems that supply alluvial valley floors. MDSL approved the permit without making the written decision as required by this provision.

4. ARM 26.4.405(6) requires that MDSL may not approve an application unless it makes a written finding that the application is complete and accurate, the applicant has complied with the State Act and rules, and the applicant has demonstrated that reclamation can be accomplished. MDSL made such a written finding although the written record demonstrates (1) MDSL knew that the application was not complete concerning the protection of the alluvial valley floor's water supply, and (2) the applicant had not demonstrated that reclamation could be achieved.

5. ARM 26.4.409(2) and Montana Code Annotated (MCA) 82–4–221(3) provide for revisions to permits and require that an operator may not implement any revision before obtaining MDSL's approval. Item 3 under the terms of modification of the permit in question, allows authorized agents of MDSL to temporarily modify the plan, pending final approval by the Board of Land Commissioners.

6. ARM 26.4.912 requires MDSL to make a determination that subsidence will not cause material damage to the perennial streams within the permit. MDSL did not make the required determination.

7. ARM 26.4.405(6)(c) requires that MDSL may not approve an application unless it finds in writing that the cumulative hydrologic impacts will not result in material damage to the hydrologic balance outside the permit area. MDSL did not make this finding.

Pursuant to 30 CFR 733.12(b), the Acting Director specified a proposed schedule for MDSL to correct the deficiencies identified in its program.

30 CFR 733.12(c) requires, in part, that the Acting Director provide the State regulatory authority an opportunity for an informal conference within 15 days after the expiration of the time period specified at 30 CFR 733.12(b)(3). On June 4, 1993, the MDSL requested that the Acting Director hold such an informal conference. The informal conference may pertain to the facts or time period for accomplishing remedial actions as specified in the Acting Director's notification.

Subsequent to the informal conference and review of all available information, including the conference transcript, the Acting Director will publish his findings on the status of Montana's program implementation in accordance with the provisions of 30 CFR 733.12(e).

Conference Rules

The informal conference is an opportunity for the Acting Director to discuss the status of the implementation of Montana's program with Montana officials.

Minutes will be kept for the Administrative Record for review by interested parties.

Dated: June 15, 1993.

W. Hord Tipton,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 93–14407 Filed 6–17–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 2E4056/R1193; FRL–4580–7]

RIN 2070–AB78

Pesticide Tolerance for Paraquat

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the pesticide paraquat in or on the raw agricultural commodity cacao beans. This regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective June 18, 1993.

ADDRESSES: Written objections, identified by the document control

number, [PP 2E4056/R1193], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section, Registration Division (H7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: No. 1, 6th Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 10, 1993 (58 FR 13234), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 2E4056 to EPA on behalf of the Agricultural Experiment Station of Hawaii. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to establish a tolerance for residues of the herbicide paraquat (1,1'-dimethyl-4,4' bipyridinium-ion) derived from application of either the bis(methyl sulfate) or the dichloride salt (both calculated as the cation) in or on the raw agricultural commodity cacao beans at 0.05 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 3, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.205, by amending paragraph (a) in the table therein by adding and alphabetically inserting the commodity, to read as follows:

§ 180.205 Paraquat; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Cacao beans	0.05
* * * * *	

* * * * *

[FR Doc. 93-14421 Filed 6-17-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7576]

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: As shown in the fifth column of the tables below.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: James Ross MacKay, Acting Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures.

The communities listed in this document no longer meet the statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will

be suspended on the effective date in the fifth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirement, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and community name	County	Community No.	Effective date
Regular Program Conversions			
Iowa: Newell, city of	Buena Vista	190334	July 5, 1993.
Pennsylvania:			
Bristol, township of	Bucks	420984	Do.
Rockdale, township of	Crawford	422394	Do.
Roseville, borough of	Tioga	420826	Do.
South Shenango, township of	Crawford	422397	Do.
Turbot, township of	Northumberland	420744	Do.
Uniondale, borough of	Susquehanna	422584	Do.
Upper Oxford, township of	Chester	422276	Do.
Valley, township of	Chester	421206	Do.
Venango, township of	Crawford	421574	Do.
Woodcock, borough of	Crawford	422403	Do.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: June 14, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc 93–14409 Filed 6–17–93; 8:45 am]

BILLING CODE 6718–21–P

44 CFR Part 64

[Docket No. FEMA–7575]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker

serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20706, (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: James Ross MacKay, Acting Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 11291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
Nebraska: Table Rock, village of Pawnee County	310172	May 3, 1993	Sept. 25, 1979.
Oklahoma: Craig County, unincorporated areas	400540	.....do	Do.
Wyoming: Hot Springs County, unincorporated areas	560097	.....do	Do.
Texas: Briarcliff, village of Travis County	481649	May 12, 1993	Do.
New Hampshire: Albany, town of Carroll County	330174	May 17, 1993	Jan. 17, 1975.
Iowa: Reasnor, city of Jasper County	190167	May 24, 1993	Feb. 20, 1976.
Texas:			
Red Oak, city of Ellis County	481650	.....do	Do.
Westlake, town of Tarrant and Denton Counties[1]	480614	.....do	Do.
Colorado: Cedaredge, town of Delta County	080304	May 27, 1993	Do.
Illinois: Christian County, unincorporated areas	170926	.....do	Apr. 7, 1978.
Oklahoma: Blaine County, unincorporated areas	400011	May 28, 1993	Do.
New Eligibles—Regular Program			
Texas: Westminster, city of Collin County[2]	481648	May 10, 1993	Do.
Minnesota: Rushford Village, city of Fillmore County	270131	May 24, 1993	Sept. 4, 1987.
Texas: Rose City, city of Orange County	481061	.....do	Jan. 6, 1983.
Reinstatements—Regular Program			
Pennsylvania: New Milford, township of Susquehanna County.	422089	Jan. 26, 1976, Emerg.; Apr. 3, 1989, Reg.; Apr. 3, 1989, Susp.; May 3, 1993, Rein.	Apr. 3, 1989.
New York: Unadilla, town of Otsego County	361261	Jan. 2, 1976, Emerg.; Sept. 30, 1987, Reg.; Sept. 30, 1987, Susp.; May 12, 1993, Rein.	Sept. 30, 1987.
Illinois: Markham, city of Cook County	175169	Apr. 14, 1972, Emerg.; July 27, 1973, Reg.; Mar. 15, 1993, Susp.; May 19, 1993, Rein.	Apr. 17, 1984.
New Jersey: Mine Hill, township of Morris County	340555	Apr. 26, 1981, Emerg.; Sept. 17, 1982, Reg.; May 3, 1993, Susp.; May 20, 1993, Rein.	May 3, 1993.
Iowa: Ely, city of Linn County	190440	Apr. 29, 1991, Emerg.; Feb. 17, 1993, Reg.; Feb. 17, 1993, Susp.; May 27, 1993, Rein.	Feb. 17, 1993.

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
Minnesota: Litchfield, city of Meeker County	270285	July 18, 1975, Emerg.; Feb. 15, 1991, Reg.; Feb. 15, 1991, Susp.; May 27, 1993, Rein.	Feb. 15, 1991.
Pennsylvania: Elk, township of Tioga County	421154	Apr. 15, 1974, Emerg.; May 1, 1987, Reg.; Mar. 15, 1993, Susp.; May 27, 1993, Rein.	May 1, 1987.
Pennsylvania: Mercersburg, borough of Franklin County.	420471	Aug. 6, 1975, Emerg.; Mar. 1, 1976, Rein.; Sept. 3, 1992, Susp.; May 27, 1993, Rein.	Mar. 1, 1986.
Wisconsin: Wood County, unincorporated areas	550513	Mar. 5, 1971, Emerg.; Mar. 15, 1978, Reg.; Feb. 17, 1993, Susp.; May 28, 1993, Rein.	Feb. 17, 1993.
Regular Conversions—Region I			
Maine:			
Perry, town of Washington County	230319	May 3, 1993, suspension withdrawn	May 3, 1993.
Robbinston, town of Washington County	230321	.....do	Do.
Region V			
Michigan: Novi, city of Oakland County	260175	.....do	Do.
Ohio: Westerville, city of Franklin and Delaware Counties.	390179	.....do	Do.
Region IX			
California: Fontana, city of San Bernadino County	060274	.....do	Do.
Region III			
Virginia: Augusta County, unincorporated areas	510013	May 17, 1993, suspension withdrawn	May 17, 1993.
Pennsylvania: Springfield, township of Montgomery County.	425388	.....do	Do.
Region VI			
Louisiana: East Baton Rouge Parish, unincorporated areas.	220058	.....do	Do.
Region IV			
South Carolina: Manning, city of Clarendon County	450052	.....do	Apr. 15, 1986.
Region V			
Illinois: Pontoon Beach, village of Madison County	170447	.....do	Feb. 5, 1982.

[1] The Town of Westlake's FIRM will become effective on *June 2, 1993*. The town will be converted to the Regular Program effective June 2, 1993.

[2] The City of Westerminster has adopted Collin County's FIRM dated 9–4–91 for floodplain management and insurance purposes. The county's CID number is 480130.

Code for reading third column: Emer.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: June 14, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–14410 Filed 6–17–93; 8:45 am]

BILLING CODE 6718–21–P

44 CFR Part 64

[Docket No. FEMA–7577]

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: James Ross MacKay, Acting Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Regular Program Conversions—Region II				
New York:				
Schoharie, town of Schoharie County	361196	Oct. 10, 1975, Emerg.; May 1, 1985, Reg.; July 5, 1993, Susp.	July 5, 1993	July 5, 1993
Schoharie, village of Schoharie County.	361061	Sept. 11, 1975, Emerg.; Aug. 1, 1987, Reg.; July 5, 1993, Susp.	.....do	Do.
Region IV				
Georgia: Fannin County, unincorporated areas.	130249	Oct. 11, 1990, Emerg.; Aug. 19, 1991, Reg.; July 5, 1993, Susp.	.....do	Do.
Region I				
Maine: St. George, town of Knox County	230229	Mar. 30, 1976, Emerg.; Sept. 1, 1988, Reg.; July 19, 1993, Susp.	July 19, 1993	July 19, 1993
Region IV				
North Carolina: Cherokee County, unincorporated areas.	370059	July 18, 1979, Emerg.; Feb. 2, 1989, Reg.; July 19, 1993, Susp.	.....do	Do.
Tennessee: Rogersville, city of Hawkins County.	470086	Sept. 12, 1975, Emerg.; June 3, 1986, Reg.; July 19, 1993, Susp.	.....do	Do.
Region VI				
Oklahoma: Sand Springs, city of Tulsa and Sage Counties.	400211	Aug. 5, 1974, Emerg.; June 15, 1981, Reg.; July 19, 1993, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: June 14, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–14411 Filed 6–17–93; 8:45 am]

BILLING CODE 6718-21-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 76

[MM Docket No. 92–266; FCC 93–304]

Cable TV Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Temporary rule; deferral of effective date of final rules; extension of termination date.

SUMMARY: The Commission has adopted an Order deferring the effective date of its cable rate regulations until October 1, 1993, and continuing it rate freeze for regulated cable services. This action will provide time for the Commission and local authorities to implement the Commission's rate regulations adopted on April 1, 1993, in response to the Cable Act of 1992. This action will ensure that the freeze of regulated cable service rates that became effective on April 5, 1993, will continue through November 15, 1993.

DATES: The effective date of the amendments to parts 0 and 76 published at 58 FR 29737 (May 21, 1993) is deferred until October 1, 1993.

The amendment in this rule to § 76.1090(a), originally published at 58 FR 17530 (April 5, 1993), and the authority citation for part 76 is effective July 19, 1993.

The termination date of § 76.1090, originally published at 58 FR 17530 (April 5, 1993) and amended in this rule, is extended until November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Manner, (202) 632–7500.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order in MM Docket No. 92–266, FCC No. 93–304, adopted and released June 15, 1993.

The complete text of this Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC, and may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., at (202) 632–7513, room 246, 1919 M Street, NW., Washington, DC 20554. The complete text of this Order will also be published in the FCC Record.

Synopsis of the Order

I. Introduction

1. In this Order, we defer implementation of cable service rate regulation from June 21, 1993 until October 1, 1993,[1] and extend the "freeze" of regulated cable service rates from August 4, 1993 until November 15, 1993.[2] We additionally dismiss without prejudice petitions filed by Intermedia Partners ("Intermedia"), and the Coalition of Small System Operators and Prime Cable of Alaska, L.P. ("Coalition"), seeking a stay of implementation of cable rate regulation.

II. Deferral of Implementation of Cable Service Rate Regulation

2. In the Report and Order, the Commission adopted a comprehensive regulatory framework for the implementation of cable service rate regulation as required by the Cable Act of 1992 that imposes significant new responsibilities on the Commission.[3] These new responsibilities occur at a time when the Commission is already operating under a budget shortfall of $18 million for Fiscal Year 1993. As a result of this shortfall, we are projecting a potential need to furlough all employees for up to five days during Fiscal Year 1993. In order to meet the additional responsibilities of the Cable Act of 1992, the Commission has worked closely with the Office of Management and Budget to estimate its additional resource needs and requested $12 million in supplemental funding from Congress for Fiscal Year 1993. While our funding requests have made significant progress,[4] Congress has not yet enacted a supplemental appropriation. In addition, when supplemental funds are appropriated, it may take an additional period of time for the supplemental appropriation to be effectively utilized by the Commission. Therefore, the Commission will be unable as of the current effective date of cable service rate regulation, to fully implement the rate regulation provisions of the Cable Act of 1992.[5]

3. In addition, we believe that an additional period of time for implementation of cable service rate regulation will provide franchising authorities and cable operators greater opportunity to ensure a smooth transition to rate regulation. We recognize that rate regulation of cable service imposes significant new obligations on cable operators. In addition, cable systems will be taking a series of steps to notify subscribers of the changes being implemented under these regulations, and we continue to be concerned that these notices be given sufficiently in advance to minimize confusion and service disruption.[6] We believe that an additional period of time afforded to cable operators to establish compliance with rate regulation requirements, including any necessary rate reductions, and to prepare and disseminate subscriber notices, will

[1] *See* Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1993, Rate Regulation, *Report and Order and Further Notice of Proposed Rulemaking* ("*Report and Order*"), MM Docket 92–266, FCC 93–177 (released May 3, 1993), 58 Fed. Reg. 29736 (May 21, 1993), adopting regulations implementing Sections 623 (cable service rate regulation), 612 (commercial leased access), and 622(c) (subscriber bill itemization) of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992"). Those regulations are scheduled to become effective June 21, 1993.

[2] *See* Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation ("*Rate Freeze Order*"), MM Docket 92–266, 8 FCC Rcd 2921, 58 Fed. Reg. 17530 (April 5, 1993), *clarified*, 8 FCC Rcd 2917, 58 Fed. Reg. 21929 (April 26, 1993). In that *Order* we established a freeze of cable service rates from April 5, 1993 until August 4, 1993.

[3] For example, under the rate regulations adopted in the *Report and Order*, the Commission must, *inter alia*: print and distribute certification forms; process franchise certifications; review petitions for reconsideration and revocations of certification approvals; review showings by franchise authorities concerning their inability to regulate basic service rates; address cable operators' requests for effective competition data from competitors; process appeals from basic service rate determinations; regulate the basic service tier where local franchise authority certification is denied or revoked or where the authority is otherwise unable to regulate; print and distribute complaint forms for cable programming services; print and distribute Form 393, which cable operators will use to determine initial regulated rates; adjudicate complaints regarding cable programming services by reviewing benchmark and cost-of-service showings; publish and distribute forms used to determine external costs; review external cost showings; and adjudicate leased access rate complaints.

[4] On June 8, 1993, the Senate Appropriations Committee approved $11.5 million in supplemental funding for the Commission.

[5] We observe that in response to the Cable Act of 1992, we have initiated and/or completed numerous proceedings to prescribe regulations necessary for the implementation of the Act. By the end of this month, the Commission will have completed promptly and on schedule 32 formal actions under the Act, e.g. Notices of Proposed Rulemakings, Reports and Orders, clarifications. To finish implementation of this law, we estimate that we will have to complete at least 27 more formal actions in the next few months.

[6] Continental Cablevision, Inc. has filed a petition requesting a clarification as to whether cable operators may make retroactive charges and credits for the first full billing cycle occurring after the effective date of the Commission's rate regulations. Petition for Clarification or Reconsideration of Order of May 14, 1993, filed May 20, 1993 by Continental Cablevision, Inc. This petition raises issues that the Commission may need to address in connection with implementation of rate regulation on October 1, 1993. Therefore, the Commission is continuing to consider the Continental petition.

promote the purposes of the Cable Act of 1992 and facilitate the transition to rate regulation of cable service. An additional period of time prior to full implementation of cable service rate regulation will also afford local franchise authorities a further opportunity to prepare for exercise of their rate regulation responsibilities.

4. Accordingly, on reconsideration on our own motion of the effective date set forth in the Report and Order, we will defer the effective date of our cable service rate regulations until October 1, 1993.[7] This deferral will apply to all regulations adopted in the Report and Order.[8] Thus, the Commission will not accept until October 1, 1993 certifications by local franchising authorities to regulate the basic service tier or complaints invoking the Commission's regulatory oversight over cable programming service rates.[9] During this deferral period, we will continue to work with Congress to assure adequate funding for implementation of the Cable Act of 1992.[10]

III. Extension of the Rate Freeze

5. In the Rate Freeze Order, we froze until August 3, 1993 rates for cable service, other than premium channels and pay-per-view services, provided by systems subject to rate regulation under the Cable Act of 1992. We stated that we were concerned that during the period between adoption of our rules and the earliest practical opportunity for local franchising authorities to establish regulation of the basic service tier, and for consumers to file complaints with the Commission concerning rates for cable programming services, cable operators could raise rates. This could effectively undermine the statutory requirement that the Commission assure that rates for cable service are reasonable.[11] Given our deferral of the effective date of the rate regulations until October 1, 1993, we remain concerned that cable operators could unreasonably raise rates after the current expiration date of the freeze. Thus, in order to protect consumers during the period that we are deferring implementation of the cable rate regulations, we are extending the freeze established in the Rate Freeze Order through November 15, 1993.[12] This extension will provide sufficient time, as a legal and practical matter, for local franchising authorities to become certified to regulate the basic service tier and for consumers to be able to exercise their rights to invoke Commission oversight over cable programming services.[13] During the period of this freeze we will entertain petitions for emergency relief from cable operators who make detailed and particularized showings that the freeze would impose severe economic hardships or threaten the viability of continued cable service. We will endeavor to act on such petitions expeditiously.

IV. Intermedia and Coalition Requests for Stay

6. Coalition requests a stay of rate regulation pending reconsideration of the Commission's benchmark approach to rate regulation of cable service and the final promulgation of cost-of-service standards. Intermedia also requests the Commission to stay implementation of rate regulation pending adoption of cost-of-service standards. In view of our determination to defer implementation of cable service rate regulation until October 1, 1993, we do not find it necessary to address at this time the Coalition and Intermedia requests for stay of implementation of cable service rate regulation. Accordingly, we will dismiss without prejudice the Coalition and Intermedia petitions.

V. Ordering Clauses

7. Accordingly, it is ordered, pursuant to Sections 4 (i) and (j), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154 (i), (j), and 405, and Section 1.108 of the Commission's rules, 47 CFR Section 1.108, that the Commission's rules adopted in Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking ("Report and Order"), MM Docket 92–266, FCC 93–177 (released May 3, 1993), 58 FR 29736 (May 21, 1993), shall be effective October 1, 1993.

8. *It is further ordered*, that the freeze of cable service rates established in Order, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, MM Docket 92–266, 8 FCC Rcd 2921, 58 FR 17530 (April 5, 1993), *clarified*, 8 FCC Rcd 2917, 58 FR 21929 (April 26, 1993), is extended until November 15, 1993 and that effective 30 days from publication in the **Federal Register**, § 76.1090(a) of the Commission's rules is amended as set forth below.

9. *It is further ordered*, that the petitions for stay filed by Intermedia Partners and Coalition of Small System Operators and Prime Cable of Alaska, L.P. are dismissed without prejudice.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna Searcy,

Secretary.

Rule Change

Part 76 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION

1. The authority cite for part 76 is revised to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552 as amended, 106 Stat. 1460.

2. Section 76.1090(a) is revised to read as follows:

§ 76.1090 Temporary freeze of cable rates.

(a) The average monthly subscriber bill for services provided by cable operators subject to regulation under Section 623 of the Communications Act shall not increase above the average monthly subscriber bill determined

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[7] Under 47 CFR 1.108, the Commission may, on its own motion, reconsider and set aside any Commission action taken within thirty days from the date of public notice of the action. See 47 U.S.C. 405. Public notice of our rate regulations was published on May 21, 1993. 58 FR 29736 (May 21, 1993). See also 47 CFR 1.4(b)(1).

[8] See footnote 1, *supra*. The Commission will issue a separate order modifying those rate regulations (e.g. refund liability for basic and cable programming services) that include dates based on the June 21 effective date to conform to the new effective date. The effective dates of other regulations implementing the Cable Act of 1992 remain unchanged.

[9] Refund liability for the basic service tier will extend from the date the operator implements a prospective rate reduction back to October 1, 1993, or one year, whichever is shorter. For a cable programming services tier, refund liability will extend from the date the operator implements a prospective rate reduction back to the date a complaint was filed concerning the rate for the tier. The Commission will begin accepting such complaints on October 1, 1993.

[10] In Implementation of Sections of the Cable Television and Consumer Protection Act of 1992, Rate Regulation, Order, MM Docket No. 92–266, FCC 93–264, 58 FR 29553 (May 21, 1993), we denied a request for stay until August 3, 1993 of implementation of rate regulation filed by the National Cable Television Association. At that time, the Commission believed that the additional resources necessary to implement the Cable Act of 1992 could be available by June 21, 1993, or very shortly thereafter, to permit implementation of cable rate regulation on that date.

[11] Rate Freeze Order, para. 3.

[12] We observe that Intermedia and Coalition both state that the rate freeze properly could be extended in conjunction with their proposed stay, of cable service rate regulation. Coalition Petition for Stay, p. 15; Intermedia Petition for Stay, p. 21.

[13] This freeze is applicable to the basic service tier, the cable programming service tier (or tiers), and provision of regulated equipment.

under rates in effect on April 5, 1993, until November 15, 1993.

* * * * *

[FR Doc. 93–14464 Filed 6–14–93; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Final Rule To Delist the Plant Tumamoca Macdougalii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) removes *Tumamoca macdougalii* (Tumamoc globeberry) from the List of Endangered and Threatened Plants. The range of this species includes south-central Arizona and extends southward into southern Sonora, Mexico. Given the large range of the species, its non-specific habitat requirements, the number of known populations, the remote nature of much of the habitat, and the ability of the species to withstand some habitat degradation, the Service determines that the Tumamoc globeberry is not in danger of extinction throughout all or a significant portion of its range. This action removes the protection of the Endangered Species Act for the Tumamoc globeberry.

EFFECTIVE DATE: June 18, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85020.

FOR FURTHER INFORMATION CONTACT: Sue Rutman, at the above address (602/379–4720).

SUPPLEMENTARY INFORMATION:

Background

Tumamoca macdougalii was first collected on Tumamoc Hill, west of Tucson, Arizona, on July 31, 1908, by D.J. Macdougal, a scientist at the Carnegie Desert Laboratory. The specimen was sent to J.N. Rose, a botanist at the U.S. National Herbarium, who described it as a new genus and species in honor of the type locality and its collector (Rose 1912).

Tumamoca macdougalii is a delicate perennial vine in the gourd family (Cucurbitaceae). The plants are found under trees or shrubs, which act as nurse plants and provide physical support for the vines. The stems arise from large tuber-like roots, begin annual growth during the late summer in response to summer rains, and continue growing until the onset of cool weather and short days in November. The thin leaves have three main lobes, each divided into narrow segments. The flowers are small and pale greenish-yellow, with both male and female flowers occurring on a plant. The majority of flowers are produced in August. Mature fruits are spherical to ovoid, succulent, and bright red (Reichenbacher 1985a, F.W. Reichenbacher and Associates 1990).

In 1986, when the species was listed as endangered under the Endangered Species Act of 1973, as amended (Act), thirty isolated populations of Tumamoc globeberry had been located in Pima County, Arizona and five were known from Sonora, Mexico. The total number of known individuals was 2,300 in the U.S. and 60 in Mexico (April 29, 1986; 51 FR 15906). All populations were found in the Arizona Upland Subdivision of Sonoran Desertscrub Biotic Community. The eastern and western limits of the U.S. range of the species were known to include the Tucson area and extended west about 193 kilometers (120 miles) to the vicinity of Organ Pipe Cactus National Monument. The exact northern and southern range boundaries were unknown but extended about 400 kilometers (250 miles) south of the U.S./Mexico border to the vicinity of Guaymas, Sonora.

Surveys and studies completed after the May 1985 publication of the proposed rule to list *Tumamoca macdougalii* have improved our understanding of the range and ecology of this species (Reichenbacher 1985a, Reichenbacher 1985b, Tierra Madre Consultants and Cornett & Associates 1985, Reichenbacher 1987, Biosystems Analysis 1988). Numerous surveys have been conducted on smaller tracts of land. The locations of most populations are contained in the Non-game Data Management System of the Arizona Game and Fish Department.

A survey and study in the U.S. and Mexico contracted by the Bureau of Reclamation greatly increased our understanding of *Tumamoca macdougalii* (F.W. Reichenbacher and Associates 1990). The study was required by a June 30, 1986, jeopardy biological opinion under Section 7 of the Act on the Central Arizona Project (pipeline and canal) and was conducted during the summers of 1988 and 1989. The report summarized the current range, distribution, and ecological information on *Tumamoca*.

The U.S./Mexico survey extended the northern and southern boundaries of the known range of *Tumamoca* (F.W. Reichenbacher and Associates 1990), although the eastern and western boundaries were essentially unchanged. The southern boundary, while not yet fully defined, was extended south to within 80 kilometers (50 miles) of the northern border of Sínaloa, Mexico. The northern boundary was extended to include southern Pinal and Maricopa Counties, Arizona. The distance between the northern and southern boundaries is more than 643 kilometers (400 miles). F.W. Reichenbacher and Associates (1990) estimated the potential habitat of *Tumamoca* in the U.S. and Mexico to be 72,862 square kilometers (27,959 square miles).

Tumamoca is less habitat-specific than was believed at the time it was listed. The species occurs below 914 meters (3,000 feet) elevation in a variety of desert habitats and vegetation types, including the Arizona Upland, Lower Colorado Valley, Plains of Sonora, and Central Gulf Coast Subdivisions of the Sonoran Desertscrub Biotic Community and the Sinaloan Thornscrub Biotic Community (F.W. Reichenbacher and Associates 1990) (biotic communities defined by Turner and Brown 1982). The species is found associated with a variety of nurse plants and in soil types ranging from sandy soils of valley bottoms to rocky soils of upper bajada slopes (F.W. Reichenbacher and Associates 1990). In the U.S., *Tumamoca* occurs in isolated, discrete populations separated by large areas of apparently suitable but unoccupied habitat (Reichenbacher 1985a, F.W. Reichenbacher and Associates 1990). In Mexico, the species is widely scattered at a relatively low frequency throughout suitable habitat, with some areas of higher densities (F.W. Reichenbacher and Associates 1990). Depending on the site, habitat condition ranges from excellent or good to severely degraded or modified.

Surveys of potential habitat in the U.S. and Mexico showed the species to be more common than known at the time it was listed. Less than one percent of the potential habitat in the U.S. and Mexico was searched in 1988 and 1,242 plants were located (F.W. Reichenbacher and Associates 1990). This search involved 444 quadrats in Sonora and 261 in Arizona. All quadrats were approximately 8 hectare (20 acre) rectangles. *Tumamoca* was found in 6 Arizona quadrats (2 percent) and 89 Sonora quadrats (20 percent). The new

Tumamoca localities in Mexico were scattered fairly evenly throughout a 52,600 square kilometer (20,300 square mile) region. A statistically reliable extrapolation of the U.S./Mexico survey data can not be made due to sampling constraints; however, many more plants and populations almost certainly exist.

Most of the habitat of *Tumamoca* is remote desert, where few threats exist or are expected to occur. In more densely human populated areas of *Tumamoca's* range, habitat is being lost to urban and agricultural development, habitat conversion to livestock pasture, and off-road vehicle traffic. F.W. Reichenbacher and Associates (1990) estimates that only 2–3 percent of *Tumamoca* habitat has been lost to agriculture and urban expansion. This estimate does not include desertscrub in Mexico converted to livestock pasture. A substantial number of quadrats in Mexico had to be relocated from their originally intended sites because of unmapped, presumably recently developed, livestock pasture. Habitat degradation is occurring due to erosion from a variety of sources, including historic and present livestock overgrazing, cross-desert dikes, and roads. Nevertheless, the large range of *Tumamoca* and the extreme remoteness of much of the habitat in both the U.S. and Mexico strongly suggest that significant portions of the range are secure for the foreseeable future.

Javelina (*Dicotyles tajacu*) dig up the moisture-rich tuber-like roots and are an important source of *Tumamoca* mortality. Although this consumption may produce local population declines, it is unlikely javelina can seriously impact a species with such a broad range and widely scattered populations.

Federal government actions on this species began on December 15, 1980, when the Service published in the **Federal Register** (45 FR 82480) a notice of review covering plants being considered for classification as endangered or threatened. In that notice, *Tumamoca macdougalii* was included as a Category 1 candidate species. Category 1 candidates are those for which the Service presently has sufficient information on biological vulnerability and threats to support proposals to list them as threatened or endangered species.

Section 2(b)(1) of the 1982 amendments requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because the species included in the December 15, 1980, notice of review were considered under petition, all the taxa contained in the notice, including *Tumamoca macdougalii*, were treated as being newly petitioned on October 13, 1982.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on petitions within 12 months of their receipt. In 1983 and 1984, the Service found that the listing of *Tumamoca macdougalii* was warranted but precluded by other listing actions of higher priority and that additional data on vulnerability and threats were still being gathered. A proposed rule to list *Tumamoca macdougalii* as endangered, published on May 20, 1985 (50 FR 20806), found that the petitioned action was warranted in accordance with section 4(b)(3)(B)(ii) of the Act. The final rule listing *Tumamoca macdougalii* as endangered was published in the **Federal Register** on April 29, 1986 (51 FR 15906). Critical habitat was not designated.

Federal involvement with *Tumamoca* subsequent to listing has included population surveys, life history and biological studies, a transplanting project, and monitoring. These projects mostly resulted from Federal activities requiring either informal or formal consultation with the Service under section 7 of the Act. Bureau of Reclamation (BR) construction of the Central Arizona Project, Tucson Aqueduct, Phase B, has been the most significant Federal activity involving *Tumamoca*. To comply with reasonable and prudent alternatives of a jeopardy biological opinion for this project issued by the Service June 30, 1986, BR purchased a 32-hectare (80-acre) preserve for *Tumamoca*, transplanted plants in the path of aqueduct into the preserve, and monitored the success of the transplants for five years (Reichenbacher and Perrill 1991). After initial high mortality in the transplanted population, the rate of mature plant deaths declined to a number similar to the control population. Additionally, recruitment is occurring in the transplanted population and a prediction matrix analysis indicates the population should continue to rebound through the year 2000 when it will be 125 percent of the original 403 transplanted plants (Reichenbacher and Perrill 1991).

Surveys for *Tumamoca*, most often to comply with section 7 requirements, have been conducted throughout the predicted range of the species in the U.S. and Mexico. These surveys have shown *Tumamoca* to be more common and much more evenly distributed across its range than previously believed.

Summary of Comments and Recommendations

In the August 21, 1992, proposed rule (57 FR 37941) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Tucson Citizen* and *Arizona Daily Star* on September 4, 1992, which invited general public comment. Four comments were received and are discussed below. No public hearing was requested.

Comments on the proposal were received from the Arizona Game and Fish Department, the Arizona State Office of the BLM, the Papago Agency of the Bureau of Indian Affairs, and Dr. Dennis M. Kearns, Missouri Botanical Garden, an expert on the genus *Tumamoca*. The BLM indicated it will continue to treat *Tumamoca macdougalii* as a sensitive species, effective on the date of delisting, and would continue monitoring the species' demographic characteristics and other factors in the Safford and Phoenix Districts. Dr. Kearns noted that *Tumamoca macdougalii* is no longer a monotypic genus. A new species of *Tumamoca* has been discovered from Zacatecas, Mexico. The Service incorporated this information in the "Background" section of this final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Tumamoca macdougalii* should be removed from the List of Threatened and Endangered Plants (50 CFR 17.12). Procedures found at Section 4(a)(1) of the Act and promulgating regulations (50 CFR Part 424) to implement the listing provisions of the Act were followed. The Service's listing regulations provide for a review of the following five factors when delisting a species (50 CFR 424.11). These factors and their application to *Tumamoca macdougalii* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Tumamoca* populations are scattered throughout an estimated 72,862 square kilometers (27,959 square miles) of habitat in five different vegetation types. As might be expected, some habitat loss and degradation is occurring within this

area. However, F.W. Reichenbacher and Associates (1990) estimated less than three percent of *Tumamoca* habitat has been lost to agriculture and urban expansion. These losses tend to be concentrated along major watercourses or drainages, and urban centers such as Hermosillo, Sonora, and Tucson, Arizona.

Habitat loss from the Central Arizona Project was mitigated by the purchase and fencing of preserves and the transplanting and monitoring of plants that would have been lost to canal construction. The transplanting effort and subsequent monitoring have yielded valuable information on *Tumamoca* biology.

The Service has no information to indicate that *Tumamoca* is negatively affected when habitat is destabilized and erosion is accelerated. In fact, *Tumamoca* populations exist and are apparently stable in the Avra and Vekol Valleys (C. Button, Bureau of Land Management, pers. comm. 1991), where habitat conditions are poor and erosion is a serious problem.

Some areas in southern Arizona and Sonora are being converted from desertscrub to monotypic stands of buffelgrass (*Cenchrus ciliarus*) to provide livestock forage. Buffelgrass outcompetes native plant species, including *Tumamoca*. Conversely, natural grassy areas, especially savanna grasslands in central Sonora, have been denuded and replaced by desertscrub that may actually provide better habitat for *Tumamoca* than do grasslands (F.W. Reichenbacher and Associates 1990). This pattern of shrub encroachment due to overgrazing and conversion of desertscrub to pasture is expected to continue. Despite this habitat alteration, the future of *Tumamoca* should be secure in the large areas of undisturbed habitat that remain.

Recreation, which occurs mostly near large urban areas, has probably caused a small amount of habitat loss or degradation, mostly due to off-road vehicle use. A popular picnic area on the Coronado National Forest contains a population of *Tumamoca macdougalii*. Despite the heavy recreational use of this area, the population appears to be stable (Reichenbacher 1989).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The final rule to list this species identified scientific collection as a potentially significant threat due to the rarity of the species and the small size of many populations. *Tumamoca* is now more common than previously believed, and the amount of damage that could be caused to the species from possible scientific collecting is, therefore, proportionally less. No significant commercial, recreational, scientific, or educational overuse of this species is known to have occurred.

C. *Disease or predation.* Javelina uproot the *Tumamoca* tuber-like roots to eat the succulent tissues, which sometimes kills the plant or reduces its vigor or reproductive output. Significant damage is also done by lagomorphs and/or rodents. Many plants are found with their stems clipped at or above ground level. This is likely seldom fatal, but undoubtedly affects the ability of the plant to store photosynthate and moisture for the next growing season (Reichenbacher 1985a). These predators are all native species and *Tumamoca* has undoubtedly evolved to cope with the level of damage inflicted. Perhaps the scattered occurrences and absence of plants in apparently suitable habitat is, in part, a response to pressure from predators. Nonetheless, disease or predation are not considered a significant threat to the species at the population level.

D. *The inadequacy of existing regulatory mechanisms. Tumamoca macdougalii* currently receives the protection of the Arizona Native Plant Law and the Endangered Species Act. It is considered a sensitive species by the Forest Service and the BLM, a provision which offers some management protection. If *Tumamoca macdougalii* is removed from the Endangered Species List, the Forest Service and BLM have indicated the species will remain on their sensitive species lists. In addition, pursuant to section 4(g) of the Act, the Service is required to monitor delisted species for at least five years to ensure that any remaining threats or downward population trends will be detected.

E. *Other natural or manmade factors affecting its continued existence.* When *Tumamoca* was listed, low numbers and limited range were thought to make it vulnerable to natural stresses such as prolonged drought. With our present knowledge of distribution and abundance it seems doubtful any natural stresses would affect *Tumamoca* in more than a portion of its range.

The regulations at 50 CFR 424.11(d) state that a species may be delisted if (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service believes that the data supporting the original classification were incomplete. After conducting a review of the status of the species, the Service concludes that the best scientific and commercial data available at present show that removing *Tumamoca macdougalii* from the List of Endangered and Threatened Plants is warranted.

The Service has determined that the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become an endangered or threatened species within the foreseeable future throughout all or significant portion of its range. Given its large range, the number of known populations, the remote habitat, ability to withstand some habitat degradation, and non-specific habitat needs, the Service has determined that the Tumamoc globeberry does not warrant the protection of the Act.

In accordance with 5 U.S.C. 553(d), the Service has determined that this rule relieves an existing restriction and good cause exists to make the effective date of this rule immediate. Delay in implementation of this delisting would cost government agencies staff time and monies on conducting formal section 7 consultation on actions which may affect a species no longer in need of the protection under the Act. Relieving the existing restriction associated with this listed species, will enable Federal agencies to minimize any further delays in project planning and implementation for actions that may affect the Tumamoc globeberry.

Effect of Delisting

This action results in the removal of this species from the List of Endangered and Threatened Plants. Federal agencies will no longer be required to consult with the Service to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of *Tumamoca macdougalii*. Federal prohibitions under section 9 of the Act will no longer apply.

To fulfill the requirements to monitor the species for five years following delisting, a Service contractor will visit sites with known Tumamoc globeberry populations throughout the U.S. and Mexico. At each site, the contractor will note whether or not the population is still extant, take photographs of the surrounding landscape, and note whether or not any significant land use changes have occurred in the area during the monitoring period. The sites will be chosen to represent a variety of habitat types and be spread across the range of the species. A form for use by field workers will be prepared by the contractor, in cooperation with the Service. Visits will occur during years one, three, and five, of the monitoring period, with progress reports developed and provided to the Service upon completion of each field season.

The BLM has established permanent plots to monitor Tumamoc globeberry and is committed to continuing this

monitoring effort during the five-year post-delisting period. These plots are located on BLM-managed lands in the Avra and Vekol Valleys. The Coronado National Forest will continue to collect demographic data for the population in the Santa Catalina Mountains, which is the only population on National Forest lands.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Sue Rutman (See **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by removing the entry "*Tumamoca macdougalii*" under CUCURBITACEAE from the List of Endangered and Threatened Plants.

Dated: May 24, 1993.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–14360 Filed 6–17–93; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204 and 282

[Docket No. 930639–3139; I.D. 042893A]

RIN 0648–AE18

South Pacific Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS issues interim regulations to implement the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (Treaty) and the South Pacific Tuna Act of 1988 (Act).

On May 13, 1992, the Annexes to the Treaty were amended and extended for 10 years. This interim final rule implements the new licensing fee structure, places restrictions on the transshipment of tunas, changes vessel identification requirements, implements new requirements for reporting to the South Pacific Forum Fisheries Agency (FFA), and makes other revisions to the existing regulations implementing provisions required by the amended Treaty. This rule also eliminates NMFS' role as administrator of the industry fees required under the Treaty and terminates the license allocation system, which allocated licenses in the event that the number of applications received were greater than the number of available licenses.

DATES: This interim final rule is effective June 14, 1993. Comments are invited and will be accepted if received before August 13, 1993.

ADDRESSES: Comments, requests for license applications, copies of the Treaty and amended annexes, and further information should be addressed to Dr. Gary Matlock, Acting Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Mr. Svein Fougner, NMFS, (310) 980–4034.

SUPPLEMENTARY INFORMATION: NMFS issues interim regulations to implement the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (Treaty) and the South Pacific Tuna Act of 1988 (Act). The Act authorizes the Secretary of Commerce (Secretary) to issue regulations as may be necessary to carry out the purposes and objectives of the Treaty. Under the original 5-year Treaty, all U.S. fishing vessels, except those using trolling gear to fish for albacore tuna outside of the 200-nautical mile fisheries zones of the Pacific Island States, are required to obtain licenses from the South Pacific Forum Fisheries Agency (FFA) to fish for tuna in an area of the South Pacific Ocean, known as the Licensing Area, which is approximately 26 million km² (10 million square miles).

The South Pacific Tuna Treaty was amended and extended in May 1992, to ensure access for U.S. tuna purse seine vessels to fishing grounds in the South Pacific Ocean for at least 10 more years. Among the amendments going into effect June 15, 1993, are a new license fee structure, new reporting requirements, and new vessel and gear identification requirements with which license holders must comply. It is crucial to have interim regulations in place by June 15, 1993, to implement the new Treaty requirements.

The background and specifics of the Treaty have been published (54 FR 4033, Jan. 27, 1989; 56 FR 19312, Apr. 26, 1991) and are not repeated here. The Treaty has operated smoothly since it entered into force on June 15, 1988, and has proven to be of great benefit to the United States and the Pacific Island States. As a result, the U.S. Government and the Pacific Island States agreed, on May 13, 1992, to amend and extend the Treaty for 10 years from June 15, 1993. Under the original agreement, the United States provided the 16 island nations participating under the Treaty, known as the Pacific Island Parties, a cash grant of $50 million over 5 years to support economic development. In addition, the U.S. tuna fishing industry contributed $2 million in license fees and technical assistance during the first year of the Treaty, and subsequent annual payments of $250,000 in technical assistance and $50,000 per vessel in licensing fees. Under the amended Treaty, the Pacific Island Parties will receive a cash grant of $140 million over 10 years from the U.S. Government and annual payments from the U.S. tuna industry of (1) $4 million, which will cover technical assistance and any number of licenses up to 55; and (2) additional sums related to the observer program set out in part 7 of Annex I to the Treaty.

New provisions under the amended Treaty include the following:

(1) Operators of fishing vessels are required to provide 48 hours notice to the Treaty Administrator (Administrator) and the appropriate Pacific Island Party of an intent to transship any or all of the vessel's catch;

(2) Transshipment of tuna at sea may only occur at times and places authorized by the Pacific Island Parties and details regarding all transshipments must be included with telexed reports to the Administrator;

(3) Weekly reports must be sent to the Pacific Island Party in whose zone the vessel is located;

(4) The regional register number, trip commencement date, and intended action must be included in the weekly reports to the Administrator; and

(5) Vessels must be identified in accordance with the 1989 FAO standard specifications for the marking and identification of fishing vessels.

The U.S. Government will continue to forward complete vessel license applications to the FFA, investigate alleged violations, and enforce certain Treaty provisions. After June 15, 1993, however, NMFS will no longer be responsible for the collection and transfer of licensing fees (including technical assistance and contributions for observer costs) from vessel owners to the FFA. The vessel owners seeking licenses will coordinate the collection of all industry payments and their transfer to the FFA. Because the payment of fees was a key element in the license allocation system and NMFS will no longer have oversight of when or whether an applicant has paid the appropriate fees, the allocation system will be discontinued and questions regarding an applicant's priority in the application process will be settled by the FFA.

NMFS recognizes that the licenses are worth a great deal to tuna fishing enterprises and that concerns for arbitrariness and favoritism might arise in the absence of established procedures for license allocation. In the upcoming licensing period, the absence of a license allocation system is not expected to be critical because the number of license applications is not expected to exceed the number of available licenses. However, the number of applications may exceed the available licenses in the future. Therefore, NMFS specifically invites comments regarding the termination of the license allocation system and the direct payment of licensing, technical assistance, and observer fees by an industry-designated entity to the FFA.

Vessel licenses in § 282.3 were previously cleared for purposes of the Paperwork Reduction Act under OMB Control Number 0648–0218.

Title 50 CFR part 204 incorrectly associates the OMB control number for this part with § 282.4 Compliance with applicable national laws, rather than with § 282.5 Reporting requirements. This interim final rule corrects that reference.

Comments and Responses

Letters were received from three individuals commenting on the interim final rule (56 FR 19312, April 26, 1991) establishing the license allocation system. Although the license allocation system is discontinued, some of the comments dealt with administrative procedures for reviewing and forwarding license applications to the Department of State. Those comments are summarized and responded to below:

Comment 1: One commenter suggested that NMFS clarify the reconsideration provision for an applicant whose license application is not forwarded to the administrator.

Response: The reconsideration provision has been expanded and clarified. A license application that is not forwarded will be reconsidered by the Regional Director only if the applicant submits, within 15 days of notification, a petition for reconsideration accompanied by new or additional information.

Comment 2: One commenter noted that § 282.9(a)(6) is awkwardly written and suggested alternate language.

Response: NMFS agrees and has adopted much of the suggested language.

Comment 3: One commenter pointed out that under the current license application system, a situation might exist wherein a potential vessel owner would not be granted a loan to purchase a vessel if he or she does not have a license to fish in the Treaty area, and NMFS will not forward a license application if the applicant cannot provide vessel registry documentation, which requires proof of ownership.

Response: NMFS lacks the resources to review applications from applicants who are potential vessel owners and cannot approve and forward a license application without proof that the vessel is actually owned by the applicant and registered in the United States.

Comment 4: One commenter suggested that the vessel ownership interests of the vessels on the list should be published or be made available on a regular basis to non-vessel owners.

Response: NMFS does not collect information regarding ownership interests of corporations that may own vessels applying for licenses. The U.S. Coast Guard is responsible for implementing documentation law and makes available ownership information contained in the Certificate of Documentation. A complete list of vessels and registered owners is available upon request from the Regional Director (see **ADDRESSES**).

Classification

NMFS prepared an environmental assessment (EA) for the 1989 interim rule, which this action does not significantly alter. Therefore, this action is categorically excluded from the National Environmental Policy Act requirement to prepare an EA in accordance with NOAA Administrative Order 216–6.

This action is exempt from the provisions of Executive Order 12291 under section 1(a)(2) of that Order because this rule implements an international fisheries agreement now in force and, thus, involves a foreign affairs function of the United States.

Because it involves a foreign affairs function of the United States, this action also is not subject to section 553 of the Administrative Procedure Act. Thus, this rule may be made immediately effective.

Since notice and opportunity for comment is not required by law to be given for this rule, preparation of a regulatory flexibility analysis is not required by the Regulatory Flexibility Act and none was prepared.

This rule includes no changes in collection-of-information requirements subject to the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This rule does not affect the coastal zone of any state with an approved coastal management program.

List of Subjects

50 CFR Part 204

Reporting and recordkeeping requirements.

50 CFR Part 282

Fisheries, Reporting and recordkeeping requirements, Treaties.

Dated: June 14, 1993.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR parts 204 and 282 are amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980; 44 U.S.C. 3501–3520 (1982).

§ 204.1 [Amended]

2. In § 204.1(b), the table is amended by removing in the first column, "282.4" and adding, in its place, "282.5".

PART 282—SOUTH PACIFIC TUNA FISHERIES

3. The authority citation for part 282 continues to read as follows:

Authority: 16 U.S.C. 973–973r; TIAS 11,100, 26 I.L.M. 1048 (1987).

4. In § 282.2, a new definition for *Transship* is added in alphabetical order and the definitions of *Regional Director* and *Treaty* are revised to read as follows:

§ 282.2 Definitions

* * * * *

Regional Director means the Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213, telephone (310) 980–4001, or a designee.

* * * * *

Transship means to unload any or all of the fish on board a licensed vessel either ashore or onto another vessel.

Treaty means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed in Port Moresby, Papua New Guinea, April 2, 1987, and its Annexes, Schedules, and implementing agreements, as amended, May 13, 1992, in Auckland, New Zealand.

* * * * *

5. Section 282.3 is revised to read as follows:

§ 282.3 Vessel licenses.

(a) Each vessel fishing in the Licensing Area must have a license issued by the Administrator for the licensing period being fished, unless excepted by § 282.10. Each licensing period begins on June 15 and ends on June 14 of the following year.

(b) Upon receipt, the license or a duly certified copy, facsimile or telex confirmation must be carried on board the vessel when in the Licensing Area or Closed Areas and must be produced at the request of Authorized Officers, Authorized Party Officers, or Authorized Inspectors. Prior to receipt of the license, but after issuance, a vessel may be used to fish provided the number of the issued license is available on board.

(c) Application forms for licenses to use a vessel to fish in the Licensing Area may be requested from, and upon completion, must be returned to, the Regional Director. All of the information requested on the form and the following must be supplied before the application will be considered complete:

(1) The licensing period for which the license is requested;

(2) The name of an agent, located in Port Moresby, Papua New Guinea, who, on behalf of the license holder, will receive and respond to any legal process issued in accordance with the Treaty;

(3) Documentation from an insurance company showing that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance;

(4) If the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, reasonable assurances that the owner of charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines; and

(5) A copy of the vessel's U.S. Coast Guard Certificate of Documentation.

(d) The number of available licenses are set forth in schedule 2 of Annex II of the Treaty.

(e) Applications for vessels may be submitted at any time; complete applications will be forwarded to the Secretary of State for transmittal to the Administrator.

(f) The Secretary, in consultation with the Secretary of State, may determine that a license application for a vessel should not be forwarded to the Administrator if:

(1) The application is not in accord with the Treaty, Act, or regulations;

(2) The owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, and reasonable financial assurances have not been provided to the Secretary that the owner or charterer will be financially able to fulfill any and all responsibilities under the Treaty, Act, and regulations, including the payment of any penalties or fines;

(3) The owner or charterer has not established to the satisfaction of the Secretary that the vessel will be fully insured for the licensing period against all risks and liabilities normally covered by maritime liability insurance; or

(4) The owner or charterer has not paid any final penalty assessed by the Secretary in accordance with the Act.

(g) An applicant will be promptly notified if that applicant's license application will not be forwarded to the Administrator, and of the reasons therefor. Within 15 days of notification by the Regional Director that the application will not be forwarded, an applicant may request reconsideration by providing a petition for reconsideration accompanied by new or additional information.

6. In § 282.5, paragraph (a) is revised to read as follows:

§ 282.5 Reporting requirements.

(a) License holders shall comply with the reporting requirements of parts 4 and 5 of Annex I to the Treaty.

* * * * *

7. Section 282.6 is revised to read as follows:

§ 282.6 Vessel and gear identification.

While a vessel is in the Licensing Area, a Limited Area closed to fishing, or a Closed Area, a recent and up-to-date copy of the International Code of Signals (INTERCO) shall be on board and accessible at all times. The operator shall comply with the 1989 FAO standard specifications for the marking and identification of fishing vessels. The international radio call sign of the vessel

shall be painted in white on a black background, or in black on a white background, and be clear, distinct, and uncovered, in the following manner:

(a) On both sides of the vessel's hull or superstructure, with each letter and number being at least 1 m high and having a stroke width of 16.7 cm, with the background extending to provide a border around the mark of not less than 16.7 cm;

(b) On the vessel's deck, on the body of any helicopter and on the hull of any skiff, with each letter and number being at least 30 cm high, and having a stroke width of 5 cm with the background extending to provide a border around the mark of not less than 5 cm;

(c) On any other equipment being carried by and intended to be separated from the vessel during normal fishing operations, with each letter and number being at least 10 cm high and having a stroke width of 1.7 cm, with the background extending to provide a border around the mark of not less than 1.7 cm.

8. Section 282.8 is revised to read as follows:

§ 282.8 Radio monitoring.

The international distress frequency, 2.182 MHz, and 156.8 MHz (Channel 16, VHF) shall be monitored continuously from the vessel for the purpose of facilitating communication with the fisheries management, surveillance and enforcement authorities of the Parties.

9. In § 282.9, paragraph (a)(6) is revised and paragraph (a)(16) is added to read as follows:

§ 282.9 Prohibitions.

(a) * * *

(6) In any matter material to the administration of the Act, the Treaty, or any regulation promulgated pursuant to the Act: To falsify or conceal a material fact; to make any false, fictitious, or fraudulent statements or representations; to make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or, to fail to report to the Secretary immediately any change in circumstances that has the effect of rendering the information false, incomplete, or misleading;

* * * * *

(16) To transship fish on board a vessel that fished in the Licensing Area except in accordance with the conditions set out in parts 3 and 4 of Annex I to the Treaty.

* * * * *

10. In § 282.14, paragraph (a)(2) is revised to read as follows:

§ 282.14 Observers.

(a) * * *

(2) Without interfering unduly with the lawful operation of the vessel, to have full access to and use of facilities and equipment on board the vessel that the observer may determine are necessary to carry out observer duties; have full access to the bridge, fish on board, and areas that may be used to hold, process, weigh and store fish; remove samples; have full access to vessel's records, including its log and documentation for the purpose of inspection and copying; have reasonable access to navigation equipment, charts, and radios, and gather any other information relating to fisheries in the Licensing Area;

* * * * *

11. Section 282.15 is revised to read as follows:

§ 282.15 Other inspections.

The operator and each member of the crew of any vessel from which any fish taken in the Licensing Area is unloaded or transshipped shall allow, or arrange for, and assist any Authorized Inspector, Authorized Party Officer, or Authorized Officer to have full access to any place where the fish is unloaded or transshipped, to remove samples, to have full access to the vessel's records including its log and documentation for the purpose of inspection and photocopying, and to gather any other information relating to fisheries in the Licensing Area without interfering unduly with the lawful operation of the vessel.

[FR Doc. 93-14379 Filed 6-14-93; 5:07 pm]
BILLING CODE 3510-22-M

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50 CFR Part 630

[Docket No. 930530-3130; I.D. 042293A]

RIN 0648-AE82

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim final rule and request for comments.

SUMMARY: This action sets 1993 fishing year initial specifications for harvest of the Atlantic swordfish resource. NMFS announces that, as a result of its annual evaluation of the Atlantic swordfish resource, there will be no change for 1993 in the total allowable catch (TAC), the directed-fishery quota, the bycatch quota, bycatch limits in the non-directed fishery, and the harpoon gear set-aside. However, as a result of a correction in the historical catch data upon which the allocations between specific gears were based, this interim final rule changes the drift gillnet quota to 138,572 pounds (62,855 kg) and the longline and harpoon quota to 6,861,428 pounds (3,112,291 kg) (all weights are dressed weight). The intent of this action is to protect the swordfish resource while allowing harvests consistent with the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

DATES: Effective June 18, 1993. Written comments must be received on or before August 2, 1993.

ADDRESSES: Copies of documents supporting this action may be obtained from and comments on rule should be sent to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301-713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish (FMP) and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and the Atlantic Tunas Convention Act (ATCA).

Under the framework procedure of the FMP, NMFS has evaluated the TAC, the directed-fishery quota, the bycatch quota, bycatch limits in the non-directed fishery, and the harpoon gear set-aside. The evaluation was done in accordance with the factors and procedures specified in 50 CFR 630.24(d).

The 1992 stock assessment indicates some improvement in the status of the North Atlantic swordfish stock. Fishing mortality rates and catch levels have declined since 1988; however, the extent of discard mortality is unknown. The latest virtual population analysis (VPA) shows some improvement in adult stock size in the last year, and VPA projections indicate that 1991 catch levels could allow for some increase in age 5+ stock by 1993. The degree of potential increase depends on the relative strength of recent year classes, which are highly uncertain. Production model analyses indicate that 1991 North Atlantic catch is about 1,000 metric tons below the estimated maximum sustainable yield (MSY), but about the same as the estimated equilibrium yield at current stock sizes. The estimate of current stock biomass is 16 percent below the biomass level that can produce MSY. Production model estimates of the fishing mortality rate

indicate that the 1991 fishing mortality (F) was close to F_{MSY}, the rate of fishing mortality that produces the maximum average yield in the long term, while the VPA model estimates and yield per recruit analyses indicate that 1991 F was greater than $F_{0.1}$ and F_{max}, other commonly referenced fishing mortality rates. In either case, the assessment results do not take into account discard mortality of undersized fish and, therefore, could be overly optimistic. The assessment indicates that the population decline has slowed or stabilized. However, sustained higher levels of yield can probably be achieved in the long term under lower mortality rates.

Despite the more optimistic results of the latest assessment, NMFS remains concerned about the status of the resource, particularly given the uncertainties regarding recruitment levels and discard mortality. NMFS believes that a future reduction of fishing effort may still be necessary to rebuild the stock to the level that could produce MSY. NMFS will continue to pursue this position and establishment of an appropriate stock rebuilding target and rebuilding schedule through ICCAT.

Notwithstanding the above concern, NMFS is making no change in the TAC for the 1993 fishing year. At the 1992 ICCAT meeting, a resolution was approved to limit to current levels the catch levels or fishing capacity by all countries in 1993–1994. Therefore, TAC remains at the current level, 7.56 million pounds (3.43 million kg), for 1993.

Since the 1993 TAC remains at 7.56 million pounds (3.43 million kg), there is no change in the directed fishery quotas—except for minor corrections to the drift gillnet and longline/harpoon quotas resulting from a revised estimation of the 1988 (base year) drift gillnet landings.

NMFS has received documentation indicating that drift gillnet landings in 1988 were underestimated. Accordingly, NMFS has corrected the drift gillnet quota, consistent with the best available information and the established procedure for calculating the quotas. This correction increases the annual drift gillnet quota from 95,166 pounds (43,167 kg) to 138,572 pounds (62,856 kg); thus, the semiannual quotas are 69,286 pounds (31,428 kg). Because the increase associated with the correction involved a revised estimation of the percent taken by longline and drift gillnet fisheries in 1988 and not additional landings, the poundage necessary to accommodate the increase, 43,406 pounds (19,689 kg), is deducted from the longline/harpoon portion of the directed fishery quota. The resulting annual longline/harpoon quota is 6,861,428 pounds (3,112,323 kg), divided into semiannual quotas of 3,430,714 pounds (1,556,162 kg).

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this interim final rule is necessary for the conservation and management of the Atlantic swordfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator determined that this interim final rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Assistant Administrator finds that the changes in the directed fisheries quotas in this interim final rule are necessary to bring existing regulations into conformity with the recommendations of ICCAT. The Assistant Administrator also finds the changes must be finalized as early in the fishing year as possible to provide a firm basis for fishermen to plan their fishing activities. Accordingly, pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), the Assistant Administrator finds that good cause exists to conclude that prior notice and public comment on this rule are unnecessary and contrary to the public interest. For the same reasons, the Assistant Administrator, pursuant to section 553(d)(3) of the APA, finds that good cause exists not to delay for 30 days the rule's effective date.

Because this rule is being issued without prior public comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act and none has been prepared.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: June 14, 1993.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 630 is amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. In § 630.24, paragraphs (b)(1)(i) and (b)(1)(ii) are revised to read as follows:

§ 630.24 Quotas.

* * * * *

(b) * * *

(1) * * *

(i) For the semi-annual period January 1 through June 30—

(A) 69,286 pounds (31,428 kg), dressed weight, that may be harvested by drift gillnet; and

(B) 3,430,714 pounds (1,556,162 kg), dressed weight, that may be harvested by longline and harpoon.

(ii) For the semi-annual period July 1 through December 31—

(A) 69,286 pounds (31,428 kg), dressed weight, that may be harvested by drift gillnet; and

(B) 3,430,714 pounds (1,556,162 kg), dressed weight, that may be harvested by longline and harpoon.

* * * * *

[FR Doc. 93–14380 Filed 6–17–93; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 116
Friday, June 18, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Radiological Criteria for Decommissioning of NRC–Licensed Facilities; Generic Environmental Impact Statement (GEIS) for Rulemaking, Notice of Intent To Prepare a GEIS and To Conduct a Scoping Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to prepare a Generic Environmental Impact Statement (GEIS), to conduct a scoping process for the GEIS, and to conduct scoping meetings.

SUMMARY: The Commission is proposing to codify radiological criteria for termination of licenses and release of land and structures after levels of residual contamination have been appropriately reduced. This proposed action would provide a clear and consistent regulatory basis for determining the extent to which radioactive materials must be removed from lands and structures before a site can be released. This notice indicates the Commission's intent to prepare a Generic Environmental Impact Statement in conjunction with this proposed action and to conduct a scoping process that will include public scoping meetings.

DATES: Written comments on matters covered by this notice received by August 15, 1993, will be considered in developing the scope of the GEIS. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

Public scoping meetings will be held as follows:

July 21, 1993—Washington, DC, 2:30–5:30 p.m. and 7–10 p.m.

July 26, 1993—San Francisco, CA, 2:30–5:30 p.m. and 7–10 p.m.

July 27, 1993—Oklahoma City, OK, 2:30–5:30 p.m. and 7–10 p.m.

July 28, 1993—Cleveland, OH, 2:30–5:30 p.m. and 7–10 p.m.

ADDRESSES: Written comments on the matters covered by this notice and/or the Scoping Meetings should be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Scoping meetings to be held at:

Washington, DC—Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD.

San Francisco, CA—room 1194 of the State Building, 455 Golden Gate Avenue.

Oklahoma City, OK—Holiday Inn North, 12001 Northeast Expressway.

Cleveland, OH—Cleveland State University, University Center Auditorium, room 6, 212 Euclid Avenue.

FOR FURTHER INFORMATION CONTACT: Robert Meck, Office of Nuclear Regulatory Research, Washington, DC 20555, Telephone: 301–492–3737, or Frank Cardile, Office of Nuclear Regulatory Research, Washington, DC 20555, Telephone: 301–492–3774.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC) has the statutory responsibility for protection of health and safety related to the use of source, byproduct, and special nuclear material under the Atomic Energy Act. The NRC believes that one portion of this responsibility is to assure safe and timely decommissioning of nuclear facilities which it licenses. This responsibility can be partially fulfilled by providing guidance to licensees on how to plan for and prepare their sites for decommissioning. Decommissioning, as defined in the NRC's regulations in 10 CFR 30.4, 40.4, 50.2, 70.4, and 72.3, means to remove nuclear facilities safely from service and to reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license.

During licensed operations, radioactive contamination may spread into various areas within the facility by the movement of water or other fluids containing the radioactive materials through or along piping, equipment, walls, floors, drains, etc. In addition, sites surrounding buildings can become contaminated by the movement or placement of materials, equipment, and people into and out of the areas containing the radioactive material, although NRC's contamination control requirements tend to limit such spread of material.

Once licensed activities have ceased, licensees are required, in existing NRC regulations, to decommission their facilities so that their licenses can be terminated. This requires that radioactivity in buildings, equipment, soil, groundwater, and surface water resulting from the licensed operation be reduced to acceptably low levels that allow the property to be released for unrestricted use. Licensees must then demonstrate by a site radiological survey that residual contamination in all facilities and environmental media have been properly reduced or eliminated and that, except for any residual radiological contamination found to be acceptable to remain at the site, radioactive material has been transferred to authorized recipients. Confirmatory surveys are conducted by NRC, where appropriate, to verify that sites meet NRC radiological criteria for decommissioning.

Nuclear facilities licensed by the NRC that require decommissioning include those involved with the nuclear fuel cycle (e.g., activities related to the generation of electricity through nuclear power generation) and those licensed to use nuclear material for other non-fuel cycle related purposes (e.g., health care, research, and manufacturing). The types of nuclear fuel cycle facilities that require decommissioning include nuclear power plants, nonpower (research and test) reactors, fuel fabrication plants, uranium hexafluoride production plants, and independent spent fuel storage installations. Some effort to reduce radioactive contamination to acceptable levels will generally be necessary at these facilities before they can be safely released and the licenses terminated. Non-fuel cycle facilities include universities, medical institutions, radioactive source manufacturers, and companies that use radioisotopes for industrial purposes. Over 75% of NRC's non-fuel cycle materials licensees use either sealed radioactive sources or small amounts of short-lived radioactive materials. Decommissioning of these facilities

should be relatively simple because there is usually little or no residual radioactive contamination to be removed and disposed of.

Several hundred NRC and Agreement State licenses are currently terminated each year. The majority of these licenses involve limited operations, produce little or no radioactive contamination, and do not present complex decommissioning problems or potential risks to public health or the environment from residual contamination.

Need for Proposed Action

Current NRC regulations do not explicitly contain radiological criteria for decommissioning. At the present time, the NRC continues to use existing criteria and practices contained in several NRC guidance documents which have been in use for a number of years. This approach ensures protection of public health and safety by guiding decommissioning decisions and generally keeping potential radiological doses to a small fraction of NRC's public dose limit in 10 CFR part 20. However as the nuclear industry matures, it is expected that more and more of the larger nuclear facilities which have been operating for a number of years will reach the end of their useful lives and have to be decommissioned. Because both the number and complexity of facilities that will require decommissioning are expected to increase, NRC believes it is necessary to codify radiological criteria for decommissioning.

The Commission believes that codifying radiological criteria for decommissioning in its regulations is needed because it would—

(1) Result in more efficient use of NRC and licensee resources;

(2) Lead to more consistent and uniform regulation of decommissioning;

(3) Provide a more stable basis for decommissioning planning;

(4) Eliminate protracted delays in decommissioning which results as licensees wait for generic regulatory criteria before proceeding with decommissioning of their facilities; and

(5) Provide an opportunity to reassess the basis for the residual contamination levels contained in existing guidance in light of changes in basic radiation protection standards and decommissioning experience obtained during the past 15 years.

Pending completion of the rulemaking on radiological criteria for decommissioning, the NRC will continue to consider existing guidance, criteria and practices to determine whether contamination at sites listed on NRC's Site Decommissioning Management Plan (SDMP) has been sufficiently reduced so that they may be released for unrestricted use. These criteria are listed in NRC's Action Plan to Ensure Timely Cleanup of SDMP Sites, 57 FR 13389; April 16, 1992. The criteria will be applied on a site-specific basis with emphasis on residual contamination levels that are as low as is reasonably achievable (ALARA). If a licensee or responsible party has cleaned up a site, or was in the process of cleaning up a site, under an NRC-approved decommissioning plan, the NRC will not require the licensee to conduct additional cleanup in response to NRC criteria or standard established after NRC approval of the plan. An exception to this case would be in the event that additional contamination, or noncompliance with the plan, is found indicating a significant threat to public health and safety.

Description of Proposed Action

The Commission proposes to incorporate into its regulations radiological criteria for decommissioning of nuclear facilities. This proposed action would provide a clear and consistent regulatory basis for determining the extent to which radioactive contamination must be removed or reduced in lands and structures before a site can be released and the license terminated.

Preparation of Generic Environmental Impact Statement

Under the National Environmental Policy Act (NEPA), all Federal agencies must consider the effect of their actions on the environment. Section 102(1) of NEPA requires that the policies, regulations, and public laws of the United States be interpreted and administered in accordance with the policies set forth in NEPA. It is the intent of NEPA to have Federal agencies incorporate consideration of environmental issues into their decision-making processes. NRC regulations implementing NEPA are contained in 10 CFR part 51. To fulfill NRC's responsibilities under NEPA, the NRC intends to prepare a generic environmental impact statement (GEIS) by analyzing alternative courses of action and the costs and impacts associated with those alternatives.

This notice announces the NRC's intent to prepare a GEIS.

In keeping with the requirements of 10 CFR part 51, the GEIS will analyze alternatives for establishing radiological criteria for decommissioning of licensed nuclear facilities. The facilities included in the GEIS are those described in the "Background" section of this document. All reasonable alternatives associated with the proposed action, including "no action" will be analyzed to determine the impact and costs associated with the proposed action. The GEIS will not attempt to analyze site-specific issues which may arise in the licensing process involved with the decommissioning of specific facilities, rather its principal intent is to provide a decision analysis leading to the establishment of technical requirements regarding acceptable residual radioactive contamination levels for decommissioning. However, depending on the particular regulatory alternative that is ultimately selected, portions of the GEIS analysis may be applicable to the NEPA process for a specific site. The extent to which the GEIS may be applicable to the site specific NEPA process will be described in the draft GEIS and draft rulemaking.

The Scoping Process

The Commission's regulations in 10 CFR part 51 contain requirements for conducting a scoping process prior to preparation of a GEIS. It is indicated in 10 CFR 51.26 that whenever the NRC determines that an environmental impact statement will be prepared by NRC in connection with a proposed action that NRC will publish a notice of intent in the Federal Register stating that a GEIS will be prepared, and conduct an appropriate scoping process. In addition, 10 CFR 51.26 indicates that this scoping process may include the holding of a public scoping meeting.

In 10 CFR 51.27 requirements are indicated regarding the content of the notice of intent, in particular that it should describe the proposed action and, to the extent that sufficient information is available, also describe possible alternatives. In addition, the notice of intent is to describe the proposed scoping process, including the role of participants, whether written comments will be accepted, and whether a public scoping meeting will be held.

In accord with 10 CFR 51.26 and 51.27, the proposed action and possible alternative approaches are discussed below. The role of participants in the scoping process for this GEIS includes the following:

(1) Participants may attend and provide oral discussion on the proposed action and possible alternatives at any of eight separate public scoping meetings as follows:

Washington, DC—July 21, 1993, from 2:30 p.m. to 5:30 p.m. and again from 7 p.m. to 10 p.m. at the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD.

San Francisco, California—July 26, 1993, from 2:30 p.m. to 5:30 p.m. and again from 7 p.m. to 10 p.m. in room 1194 of the State Building, 455 Golden Gate Avenue.

Oklahoma City, Oklahoma—July 27, 1993, from 2:30 p.m. to 5:30 p.m. and again from 7 p.m. to 10 p.m. at the Holiday Inn North, 12001 Northeast Expressway.

Cleveland, Ohio—July 28, 1993, from 2:30 p.m. to 5:30 p.m. and again from 7 p.m. to 10 p.m. at the Cleveland State University, University Center Auditorium, room 6, 212 Euclid Avenue.

The NRC previously held seven workshops in Chicago, Philadelphia, Boston, San Francisco, Dallas, Atlanta, and Washington DC as part of the Enhanced Participatory Rulemaking process (see 58 FR 4363; January 14, 1993). While these workshops were not part of the scoping process, they discussed alternative regulatory approaches, and specifically discussed—

(a) The ways in which the alternative approaches protect human health, safety and the environment;

(b) The waste management implications of each alternative approach; and

(c) The extent that costs, technical capabilities, and other implementation considerations, including nonradiological risks and costs, should be considered in evaluating the alternative approaches.

The seven workshops and related comments will be considered during the scoping process and comments need not be resubmitted for this scoping process.

(2) The Commission will also accept written comments on the proposed action and alternatives from the public, as well as from meeting participants. Written comments should be submitted by August 15, 1993, and should be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland between 7:45 am and 4:15 pm on Federal workdays.

According to 10 CFR 51.29, the scoping process is to be used to address the topics which follow. Participants may make written comments, or verbal comments at the scoping meeting, on the following (current preliminary NRC staff approaches with regard to each topic are included for information):

(a) *Define the proposed action to be the subject of the GEIS.* The NRC is proposing to codify radiological criteria for decommissioning of lands and structures.

(b) *Determine the scope of the GEIS and the significant issues to be analyzed in depth.* The NRC is proposing to analyze the costs and impacts associated with alternative regulatory approaches to establish radiological criteria for decommissioning. The following proposed outline for the GEIS reflects the current NRC staff view on the scope and major topics to be dealt with in the GEIS and in this rulemaking:

Proposed Outline: Generic Environmental Impact Statement

Abstract—Executive Summary

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   - 3.1 Introduction
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     - (a) 112 nuclear power reactors
     - (b) 74 nonpower (research and test reactors) reactors
     - (c) 14 fuel fabrication plants
     - (d) 2 UF6 plants
     - (e) 49 uranium mill facilities (other than mill tailings disposal)
     - (f) 9 independent spent fuel storage installations
   - 3.3 Description of Non-fuel Cycle Nuclear Facilities to be Covered in the GEIS—includes buildings and site lands, contamination levels at shutdown, and decommissioning methodology. There are a total of about 7500 non-fuel cycle facilities licensed by NRC. In addition, NRC Agreement States license about 15,000 non-fuel cycle facilities. About 75% of these facilities use sealed radioactive sources or small amounts of short-lived radioactive materials. Of the remaining 25%, a small number (e.g., radioactive source manufacturers, radiopharmaceutical producers, and radioactive ore processors) conduct operations requiring significant efforts to remove or reduce residual contamination.
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   - 4.2 Alternatives Considered—each of the alternatives represent alternate regulatory actions directed at establishing radiological criteria for decommissioning. No consideration is being given to an alternative in which a licensee would abandon or leave a facility after operations without some remediation because this alternative was already rejected in a 1988 rulemaking which set general decommissioning requirements (53 FR 24018).
     - (a) Alternative 1, No Regulatory Change—would continue the current NRC practice of using existing NRC radiological guidance on a case-by-case basis in dealing with decommissioning of licensed facilities; therefore, under this alternative, NRC would not issue amended regulations explicitly containing radiological criteria for decommissioning.
     - (b) Alternative 2, Risk Limit—would establish a limit above which the risks to the public would be unacceptable and additional criteria to further reduce to the extent practical exposures to levels below the limit. In practical terms, this alternative would mean that the radioactivity remaining at the site must be at or below the limit established by the NRC's amended regulations, and that, in addition, exposures would be further reduced

below this limit to levels which are "As Low As is Reasonably Achievable" (ALARA) taking into account various factors of practical implementation (cost vs. benefit) and socioeconomic considerations. The risk limit would have to be quantified in terms of risk or dose, and methods for determining ALARA would have to be determined;

(c) Alternative 3, Risk Goal—would establish a goal at a level of public risk below which the risks are considered trivial, and require remediation to levels which are either below the goal or as close to the goals as practical. In practical terms, this alternative would mean that if the levels of residual radioactivity at the site were below the risk goal, the site would be acceptable for release for unrestricted use and no further remediation would be required even if feasible. Residual radioactivity levels remaining at the site that would pose a risk in excess of the goal would be acceptable if they were as close as reasonably achievable to the risk goal. The risk goal would have to be quantified in terms of risk or dose, and methods for determining allowable levels above the goal would have to be determined;

(d) Alternative 4, Best Effort—would establish criteria representing what is achievable using the "best" available technology and requiring the use of this technology in decommissioning. A site would be released for unrestricted use if the only residual radioactivity remaining at the site is that material which cannot be removed or measured using the best available technology.

(e) Alternative 5, Return to Background—would establish criteria requiring removal of all radioactivity attributable to licensed activities. A site would be released for unrestricted use if all radioactivity attributable to licensed activity were removed, and if it were demonstrated that background levels had been achieved.

(f) Alternative 6, Restricted use of some sites—would establish criteria that would allow for land use restrictions after decommissioning to ensure protection of humans and the environment by limiting exposure to residual radioactivity. This alternative would be a departure from the NRC's current requirement that sites be released for unrestricted use.

4.3 Method of Analysis of Regulatory Alternatives

(a) Define a range of alternative regulatory actions with regard to establishing radiological criteria (see Section 4.2);

(b) Evaluate the alternative regulatory actions with respect to: (1) The incremental impact to workers, members of the public, and the environment, both radiological and nonradiological, resulting from each alternative and (2) the costs associated with each regulatory alternative. For the alternatives involving limits or goals, incremental impacts and costs are evaluated for a subset of residual radioactivity dose/risk levels including the range of dose values discussed during the rulemaking workshops (e.g., 60 mrem/yr to 0.03 mrem/yr) corresponding to a range of lifetime risks of excess fatal cancer of approximately 2 in 1000 to 1 in 1,000,000. Evaluations of impacts and costs are contained in Sections 5 through 8 below;

(c) Perform a comparative evaluation of the regulatory alternatives based on the impacts and costs of each alternative from 4.4(b).

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   - 8.2 Results of Comparison of Impacts and Costs
9. Conclusion and Preliminary Recommendation Regarding Proposed Course of Action

(c) *Identify and eliminate from detailed study issues which are not significant or which are peripheral or which have been covered by prior environmental review.* The NRC has not yet eliminated any nonsignificant issues. However, NRC is considering elimination of the following issues from the scope of this GEIS because they have been previously analyzed in a previous GEIS (NUREG–0586) and included in an earlier rulemaking (53 FR 24018, June 28, 1988): (i) Planning necessary to conduct decommissioning operations in a safe manner; (ii) assurance that sufficient funds are available to pay for decommissioning; (iii) the time period in which decommissioning should be completed; and (iv) whether facilities should not be left abandoned, but instead remediated to appropriate levels. The GEIS presently being prepared will assess how current issues being addressed could affect the conclusions made in NUREG–0586 and in the 1988 rulemaking. In addition, requirements were recently proposed in a separate rulemaking regarding timeliness of decommissioning for 10 CFR parts 30, 40, and 70 licensees (58 FR 4099; January 13, 1993).

This GEIS is principally intended to provide a decision analysis establishing overall residual radioactive criteria for decommissioning of structures and lands. The GEIS does not analyze site-specific issues which may arise in the licensing process involved with the decommissioning of specific facilities. However, depending on the particular regulatory alternative that is ultimately selected, portions of the GEIS analysis may be applicable to the NEPA process for a specific site. The extent to which the GEIS may be applicable to the site specific NEPA process will be described in the draft GEIS and draft rulemaking. Also, criteria for release of contaminated equipment, components, piping, and other similar materials, are outside the scope of this rulemaking.

(d) *Identify any EAs or GEIS which are being or which will be prepared that are related but are not part of the scope of this GEIS.* A draft EA on the timeliness of decommissioning has been prepared as part of a separate rulemaking on decommissioning timeliness (58 FR 4099; January 13, 1993) and will be finalized.

(e) *Identify other environmental review or consultation requirements*

related to the proposed action. The NRC has contracted with Sanford Cohen and Associates to provide technical assistance in the preparation of the GEIS. In addition, the NRC has contracted with Battelle Pacific Northwest Laboratory to provide specific technical assistance regarding decontamination technology, and plans to obtain specific technical assistance regarding the capability of radiation survey instruments to practically and accurately detect radioactive contamination at levels near background. Discussions are underway with the Environmental Protection Agency involving their assuming cooperating agency status in preparation of the GEIS.

(f) *Indicate the relationship between the timing of the preparation of environmental analysis and the Commission's tentative planning and decision making schedule.* It is the NRC's intent to prepare and issue for public comment a draft GEIS in June 1994 simultaneous with publication of a proposed rule for public comment containing radiological criteria for decommissioning. The comment period would be for 90 days. The final rule and final GEIS are scheduled for publication in June 1995.

(g) *Describe the means by which the GEIS will be prepared.* It is anticipated NRC will prepare the draft GEIS according to its regulations in 10 CFR part 51. Specifically, in accord with 10 CFR 51.71, the draft GEIS will be prepared in accordance with considerations of the scoping process and will include a preliminary analysis which considers and balances the environmental and other effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental and other effects, as well as the environmental, economic, technical and other benefits of the proposed action.

In accomplishing the purpose of the scoping process, participants are invited to speak or submit written comments, as noted above, on any or all of the seven areas described above. In accordance with 10 CFR 51.29, at the conclusion of the scoping process, a concise summary of the determinations and conclusions reached, including the significant issues identified, will be prepared and a copy sent to each participant in the scoping process.

For the U.S. Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research

[FR Doc. 93–14442 Filed 6–17–93; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–220–AD]

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes Equipped With a Cargo Conversion Modification Installed in Accordance with Supplemental Type Certificate (STC) SA1802SO or SA421NW

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series airplanes, that currently requires a revision to the FAA-approved Airplane Flight Manual Supplement to include detailed procedures for use of the cargo door warning light system; and repetitive inspections of the cargo door warning system wiring to detect damage to the wiring or the door latching roller mechanism, and repair or replacement of damaged components. This action would revise the existing AD by requiring that the cargo door indicating light circuit breaker not be disabled. This proposal is prompted by the FAA's review of data indicating that disabling of that circuit breaker may deprive the flight crew of necessary information. The actions specified by the proposed AD are intended to prevent loss of the cargo door, damage to flight control surfaces, and reduced controllability of the airplane.

DATES: Comments must be received by August 16, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–220–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ozzie Lopez, Aerospace Engineer, Airframe Branch, ACE–120A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991–2910; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–220–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–220–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 23, 1991, the FAA issued AD 92–02–05, Amendment 39–8141 (57 FR 180, January 3, 1992), as a "final rule, request for comments." That AD requires a revision to the FAA-approved Airplane Flight Manual Supplement to include detailed procedures for use of the cargo door warning light system; and repetitive inspections of the cargo door warning system wiring to detect damage to the wiring or the door latching roller mechanism, and repair or replacement of damaged components. That action was prompted by two occurrences of

inadvertent in-flight openings of the cargo door on certain modified Model DC–8–63 series airplanes. The requirements of that AD are intended to prevent loss of the cargo door, damage to flight control surfaces, and reduced controllability of the airplane.

Paragraph (a) of AD 92–02–05 requires that the flight crew pull all cargo door circuit breakers prior to takeoff. In its comments submitted to the Rules Docket, one commenter requests that this requirement be revised to limit circuit breaker disabling to the door operating system only; the commenter states that the cargo door indicating light circuit breaker should not be disabled. The commenter asserts that the annunciator light can provide valuable information to the flight crew, both prior to takeoff and during flight. The commenter indicates that if the cargo door light illuminates prior to takeoff, the takeoff could be aborted, and if the cargo door light illuminates during flight, the airplane could be maneuvered safely to the nearest suitable airport.

The FAA has reviewed all data submitted and agrees that the cargo door indicating system should not be disabled. Consequently, paragraph (a) of this proposal would require that only the cargo door circuit breakers labeled "pump" and "valve" must be pulled prior to takeoff.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 92–02–05 to require a new revision to the FAA-approved Airplane Flight Manual Supplement to include detailed procedures for use of the cargo door warning light system; and to continue to require repetitive inspections of the cargo door warning system wiring to detect damage to the wiring or the door latching roller mechanism, and repair or replacement of damaged components. The proposed AD would limit circuit breaker disabling to the door operating system.

The FAA estimates that 58 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,190, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8141 (57 FR 180, January 3, 1992), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 92–NM–220–AD. Supersedes AD 92–02–05, Amendment 39–8141.

Applicability: Model DC–8–61, -62, -63, and -73 series airplanes equipped with a cargo conversion modification installed in accordance with Supplemental Type Certificate (STC) SA1802SO; and Model DC–8–21, -32, -33, and -51 series airplanes equipped with a cargo conversion modification installed in accordance with STC SA421NW; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent loss of the cargo door, damage to flight control surfaces, and reduced controllability of the airplane, accomplish the following:

(a) Within 7 days after the effective date of this AD, revise the Limitations Section of the appropriate FAA-approved Airplane Flight Manual Supplement (AFMS) by replacing item 5 in the AFMS for SA1802SO, and item 6 in the AFMS for SA421NW, with the following. (This may be accomplished by inserting a copy of this AD into the AFMS.)

"Prior to initiating the cargo door closing sequence, a flight crew member must verify that the cargo door warning light is illuminated. After the door closing sequence is complete, and visual verification has been made that the latches are closed and the lockpins are properly engaged, a flight crew member must verify that the cargo door warning light is extinguished, and then conduct a PRESS-TO-TEST of the warning light to ensure that the light is operational. Pull the cargo door circuit breakers labeled "pump" and "valve" prior to takeoff. Methods for documentation of compliance with the preceding procedures must be approved by the FAA Principal Maintenance Inspector (PMI)."

(b) Within 7 days after January 21, 1992 (the effective date of AD 92–02–05, Amendment 39–8141), and thereafter at intervals not to exceed 100 hours time-in-service, perform the following inspections:

(1) Inspect the cargo door wire bundle between the exit point of the cargo liner and the attachment point on the cargo door to detect crimped, frayed, or chafed wires; and inspect for damaged, loose, or missing hardware mounting components. Prior to further flight, repair any damaged wiring or hardware mounting components in accordance with FAA-approved maintenance procedures.

(2) Inspect the cargo door latch rollers in the lower sill of the cargo door opening of the airplane to ensure that all twelve rollers can be freely rotated by hand. Prior to further flight, replace any discrepant roller components found, and repair any rollers that cannot be rotated freely by hand, in accordance with FAA-approved maintenance procedures.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), ACE–115A, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 14, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–14390 Filed 6–17–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93-NM-61-AD]

Airworthiness Directives; Short Brothers, PLC, Model SD-3-30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Short Brothers Model SD3-30 series airplanes, that currently requires inspection and modification of various structural and system components, and replacement of damaged, worn, or corroded parts. That action was prompted by reports of fatigue cracking, corrosion, and/or wear in these structural and system components. The actions specified by that AD are intended to prevent reduced structural capability of the wing. This action would lengthen the intervals between inspections following repair of the rear or forward bay.

DATES: Comments must be received by August 16, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-61-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202-3719. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-61-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-61-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On August 21, 1992, the FAA issued AD 92-19-09, Amendment 39-8367 (57 FR 46772, October 13, 1992), to require (1) installation of a new closing panel in the aft baggage compartment; (2) inspection and sealing of the fuselage crown; (3) inspection and modification of the wing drag links, and replacement of damaged parts; (4) inspections to detect corrosion or wear in the horizontal stabilizer (tailplane)-to-fuselage fittings, pins, and bushings, and replacement of worn or corroded parts; (5) inspections to detect cracked or broken rib/skin attachment cleats, and repair, if necessary; and (6) modification of the power control circuit. That action was prompted by reports of fatigue cracking, corrosion, and/or wear in these structural and system components. The requirements of that AD are intended to prevent failure of the rib/skin attachment cleat, which could compromise the structural capability of the wing.

Since the issuance of that AD, the FAA has determined that, based on service history, cracking in the rib/skin attachment cleats can be detected in a timely manner following repair of the rear or forward bay, if the inspection intervals were lengthened from 4,800 hours time-in-service, as required by the existing AD, to 9,600 hours time-in-service. Analysis of new crack growth data for structure repaired in accordance with Part B or C of the Accomplishment Instructions in Fokker Service Bulletin SD3-57-10, Revision 1, dated October 11, 1982, indicates that the structural capability of the wings would not be compromised by extending the intervals for these inspections. Fatigue cracking, corrosion, and/or wear in these structural and system components, if not detected and corrected, could result in failure of the rib/skin attachment cleat, and subsequently, reduce the structural capability of the wing.

Short Brothers, PLC, has issued Service Bulletin SD3-57-10, Revision 2, dated January 4, 1993, that describes procedures for x-ray inspections to detect cracking in the upper skin flanges of the rib/skin attachment cleats at left wing station 160 and repair of the rear and forward bays on airplanes having serial numbers SH3002 through SH3090, inclusive. Stronger cleats have been installed, prior to delivery, on airplanes having serial numbers SH3091 and subsequent. The Civil Aviation Authority (CAA), which is the aviation authority for the United Kingdom, classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the United Kingdom CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the United Kingdom CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 92-19-09 to require inspections of the rib/skin attachment cleats following repair of the rear or forward bay at intervals of 9,600 hours time-in-service. This action would be required to be accomplished on airplanes having serial numbers SH3002 through SH3090, inclusive, in accordance with the revised service bulletin described previously or the original issue of the service bulletin.

This AD action would continue to require inspection and modification of various structural and system components, replacement of damaged, worn, or corroded parts on all Model SD3–30 series airplanes.

The FAA estimates that 22 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 180 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $3,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $283,800, or $12,900 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8367 (57 FR 46772, October 13, 1992), and by adding a new airworthiness directive (AD), to read as follows:

Short Brothers, PLC: Docket 93–NM–61–AD. Supersedes AD 92–19–09, Amendment 39–8367.

Applicability: All Model SD3–30 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraphs (a), (b), (c), and (f) of this AD restate the requirements of paragraphs A., B., C., and F. of AD 84–07–06 R1, Amendment 39–6036. As allowed by the phrase, "unless accomplished previously," if the requirements of paragraphs A., B., C., and F. of AD 84–07–06 R1 have been accomplished previously, paragraphs (a), (b), (c), and (f) of this AD do not require that they be repeated.

Note 2: Paragraph (d) of this AD restates the requirement for repetitive inspections contained in paragraph D. of AD 84–07–06 R1, and paragraph (e) of this AD restates the requirement for repetitive inspections contained in paragraph (e) of AD 92–19–09, Amendment 39–8367. The first inspection required by this AD must be performed within the specified repetitive inspection interval after the last inspection performed in accordance with paragraph D. of AD 84–07–06 R1 and paragraph (e) of AD 92–19–09.

To prevent reduced structural capability of the wing, accomplish the following:

(a) Within 180 days after November 3, 1988 (the effective date of AD 84–07–06 R1, Amendment 39–6036), install a new closing panel in the aft baggage compartment in accordance with Short Brothers Service Bulletin SD3–25–30, dated January 6, 1982.

(b) Within 180 days after November 3, 1988 (the effective date of AD 84–07–06 R1, Amendment 39–6036), inspect to detect fuel leakage and seal the fuselage crown in accordance with Short Brothers Service Bulletins SD3–53–01, Revision 2, dated January 19, 1977; SD3–53–18, dated November 25, 1977; and SD3–53–41, dated May 21, 1980.

(c) Within 600 hours time-in-service after November 3, 1988 (the effective date of AD 84–07–06 R1, Amendment 39–6036), or prior to the accumulation of 4,800 total hours time-in-service, whichever occurs later, inspect to detect cracking and modify the wing drag links in accordance with Short Brothers Service Bulletin SD3–53–48, Revision 1, dated January 5, 1983. Replace damaged parts prior to further flight in accordance with the service bulletin.

(d) Within 90 days after November 3, 1988 (the effective date of AD 84–07–06 R1, Amendment 39–6036), inspect to detect corrosion or wear in the horizontal stabilizer (tailplane)-to-fuselage fittings, pins, and bushings in accordance with Short Brothers Service Bulletin SD3–55–16, Revision 3, dated November 1987. For airplanes that have accumulated less than 4,800 total hours time-in-service and are less than 2 years old as of November 3, 1988 (the effective date of AD 84–07–06 R1, Amendment 39–6036), accomplishment of this inspection may be deferred until the affected airplane reaches 4,800 total hours time-in-service or 2 years of age, whichever occurs first. Replace any worn or corroded parts, prior to further flight, in accordance with the service bulletin.

(1) If no pin has been replaced with a new pin, and if there is no corrosion found on any attachment fitting, repeat this inspection, thereafter, at intervals not to exceed 1,200 flight hours or within 6 months following the immediately preceding inspection, whichever occurs first.

(2) If all the pins on one side have been replaced with new pins, repeat the inspection on that side within the next 4,800 flight hours or 2 years following replacement of the pins, whichever occurs first. Repeat this inspection, thereafter, at intervals not to exceed 2,400 flight hours or 1 year following the immediately preceding inspection, whichever occurs first.

(e) For airplanes having serial numbers SH3002 through SH3090, inclusive: Within 300 hours time-in-service after November 3, 1988 (the effective date of AD 84–07–06 R1, Amendment 39–6036), or prior to the accumulation of 4,800 total hours time-in-service, whichever occurs later, inspect to detect cracked or broken rib/skin attachment clents at left wing station 160 in accordance with Part A (Inspection) of paragraph 2.A. of the Accomplishment Instructions in Short Brothers Service Bulletin SD3–57–10, Revision 1, dated October 11, 1982; or Revision 2, dated January 4, 1993. Repeat this inspection, thereafter, within 2,400 hours time-in-service following the immediately preceding inspection, or within 300 hours time-in-service after November 17, 1992 (the effective date of AD 92–19–09, Amendment 39–8367), whichever occurs later.

(1) If no crack is found, repeat this inspection of each bay, thereafter, at intervals not to exceed 2,400 hours time-in-service.

(2) If any crack is found, prior to further flight, repair in accordance with Part B (Repair—Rear Bay) and/or Part C (Repair—Forward Bay) of paragraph 2.A. of the Accomplishment Instructions in the service bulletin; and repeat the inspection of the repaired bay, thereafter, at intervals not to exceed 9,600 hours time-in-service.

(f) Within 180 days after November 3, 1988 (the effective date of AD 84–07–06 R1, Amendment 39–6036), modify the power control circuit in accordance with Short Brothers Service Bulletin SD3–76–01, dated September 8, 1981.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be

obtained from the Standardization Branch, ANM–113.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 14, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–14389 Filed 6–17–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Permanent Regulatory Program; Remining; Preexisting Pollutional Discharges

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; withdrawal of proposed rule.

SUMMARY: OSM is announcing the withdrawal of proposed rule changes submitted by the State of Maryland to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biggi, Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, 4th and Market Streets, suite 3C, Harrisburg, PA 17101. Telephone (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background Information

The Secretary of the Interior approved the Maryland program on February 18, 1982. Information on the background of the Maryland program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214). Subsequent actions concerning amendments to the Maryland program are in 30 CFR 920.15 and 30 CFR 920.16.

II. Discussion of Proposed Amendment

By letter dated February 5, 1992, the Maryland Bureau of Mines (Maryland) submitted a program amendment to OSM (Administrative Record No. MD–524.02). The amendment provided for the remining of areas with preexisting pollutional discharges. The amendment included changes to the following sections of the Code of Maryland Administrative Regulations (COMAR):

Regulation	Subject
COMAR 08.13.09.29a	Definitions.
COMAR 08.13.09.29B	Scope.
COMAR 08.13.09.29C	Applicability.
COMAR 08.13.09.29D	Application for Authorization.
COMAR 08.13.09.29E	Approval or Denial of Application.
COMAR 08.13.09.29F	Special Performance Standards for Remining Areas with Pollutional Discharges.
COMAR 08.13.09.29G	Treatment of Discharges.
COMAR 08.13.09.29H	Criteria and Schedule for Bond Release.

On April 17, 1992, OSM published a notice in the **Federal Register** (57 FR 13682) announcing receipt of Maryland's proposed amendment to the Maryland program and inviting public comment on its adequacy. The public comment period ended on May 18, 1992. The public hearing was not held as no one requested an opportunity to testify.

By letter dated June 4, 1993, (Administrative Record No. MD–524.17), Maryland withdrew its February 5, 1992, submission of the proposed remining amendment.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 11, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–14437 Filed 6–17–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL–4668–6]

Open Meeting of the Architectural and Industrial (AIM) Maintenance Coatings Negotiated Rulemaking Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The AIM Negotiated Rulemaking Advisory Committee will meet in Washington, DC to attempt to reach consensus that can be used as the basis of a proposed rule.

DATES: The meeting will take place on July 1–2. On July 1, the meeting will start at 8:30 a.m. and run until completion. On July 2, it will start at 8:30 a.m., and end by 2 p.m.

ADDRESSES: The meeting will be held at the Stouffer Mayflower Hotel, 1127 Connecticut Ave NW., Washington, DC, 20036, [202] 347–3000.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the rule should call Ellen Ducey of EPA's Office of Air Quality Planning and Standards at 919–541–5408. Persons needing further information on meeting logistics should call Barbara Stinson the Committee Co-chair at 303–468–5822.

Dated: June 15, 1993.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 93–14425 Filed 6–17–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[IL 12–8–5166; FRL–4661–7]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On June 29, 1990, USEPA promulgated Federal stationary source volatile organic compound (VOC) control measures representing reasonably available control technology (RACT) for emission sources located in six northeastern Illinois (Chicago area) counties: Cook, DuPage, Kane, Lake, McHenry and Will. USEPA also took final rulemaking action on certain VOC RACT rules previously adopted and submitted by the State of Illinois for inclusion in its State Implementation Plan (SIP).

Included in USEPA's rule was a requirement that the adhesive lines at Allsteel Incorporated's (Allsteel) metal furniture manufacturing facility in Montgomery (Kane County) be subject to 40 CFR 52.741(u), the "generic" rule for miscellaneous fabricated product manufacturing. However, because USEPA had insufficient time to respond to Allsteel's highly technical comments, USEPA deferred the effective date of the applicable rules with regard to Allsteel for six months.[1] Similarly, USEPA

[1] As discussed later in this document, USEPA later concluded that it would not be able to

deferred action on a site-specific limit for Allsteel's adhesive lines submitted by the State of Illinois for inclusion as a revision to the Illinois SIP.

USEPA has considered the issues raised by Allsteel and is presenting in this **Federal Register** both a discussion of these issues and a newly proposed rulemaking applicable to Allsteel's adhesive operations. USEPA is also proposing rulemaking on a site-specific SIP revision for Allsteel that has been submitted by Illinois. USEPA solicits public comments both on the issues being considered and on USEPA's proposed rulemaking action.

DATES: Comments on this proposal must be received by July 19, 1993 at the address below. A public hearing, if requested, will be held in Chicago, Illinois. Requests for a hearing should be submitted to: J. Elmer Bortzer by July 19, 1993 at the address below. Interested persons may call Mr. Bortzer at (312) 886–1430 to see if a hearing will be held and the date and location of the hearing. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

ADDRESSES: Written comments on this proposed action should be addressed to J. Elmer Bortzer, Chief, Regulation Development Section (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604. Again, comments should be strictly limited to the subject matter of this proposal. Docket: Pursuant to section 307(d)(1) (B) and (N) of the Clean Air Act (CAA), 42 U.S.C. 7607(d)(1) (b) and (N) (1991), this action is subject to the procedural requirements of section 307(d). Therefore, USEPA has established a public docket for this action, 5–AR–92–6 which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the following addresses. We recommend that you contact Randolph O. Cano before visiting the Chicago location and Gloris Butler before visiting the Washington, D.C. location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region V, Regulation Development Branch, Eighteenth Floor, Southeast, 77 West Jackson Street, Chicago, Illinois 60604, (312) 886–6036.

U.S. Environmental Protection Agency, Docket No. 5–AR–91–2, Air Docket (LE–131), Room M1500, Waterside Mall, 401 M Street SW., Washington, DC 20460, (202) 245–3639.

FOR FURTHER INFORMATION CONTACT: Steve Rosenthal, Regulation Development Branch, U.S. Environmental Protection Agency, Region V, (312) 886–6052, at the Chicago address indicated above.

SUPPLEMENTARY INFORMATION:

I. Background

In an effort to comply with certain requirements under part D of the CAA, as amended in 1977, 42 U.S.C. 7401 *et seq.* (1990),[2] the Illinois Pollution Control Board (IPCB) adopted an organic emission "generic" rule on April 7, 1988. The purpose of the generic rule was to satisfy the USEPA's requirement that Illinois adopt rules for major (100 tons per year (TPY) and greater) non-CTG sources.[3] This requirement is discussed in the April 4, 1979, General Preamble for Proposed Rulemaking (44 FR 20372).

The Illinois Environmental Protection Agency (IEPA) first proposed to the IPCB to control VOCs through a "generic rule" on May 12, 1986. The first hearings on this rule were held in October 1986. A revised and second revised generic rule subsequently were submitted by IEPA. Hearings on the generic rule were held February 10 and 11, 1987, and April 23 and 24, 1987. At the April 23, 1987, hearing, IEPA presented a fourth proposal (alternative generic proposal), and recommended that it be adopted rather than the original or either of its two revisions.

On August 6, 1987, the IPCB adopted the IEPA's alternative generic proposal for First Notice of Adoption, which was published in the August 28, 1987, Illinois Register. On November 2, 1987, the Illinois Department of Energy and Natural Resources (DENR) filed an Economic Impact Study (EcIS). Two hearings were held on the EcIS (December 14, 1987, and December 18, 1987). On February 4, 1988, the IPCB adopted the alternative rule for Second Notice, and on April 7, 1988, the IPCB adopted, as a final rule, the alternative proposal.

Under the adopted generic rule, Subpart PP, "Miscellaneous Fabricated Product Manufacturing Processes," regulates the "curing of furniture adhesives in an oven which would emit in excess of 10 tons of volatile organic material per year if no air pollution control equipment were used." Subpart PP requires that sources either comply with a 3.5 pounds per gallon (lbs/gal) limit for volatile organic material (VOM) content or an 81 percent reduction in VOM emissions from uncontrolled levels;[4] or that they procure an adjusted RACT emission limitation from the IPCB.

Allsteel testified at the April 24, 1987, hearing on the generic rule and at the December 18, 1987, hearing on the EcIS. At both hearings and in subsequent submittals, Allsteel expressed its opinion that the Montgomery facility was using RACT in its fabrication processes and should be given an adjusted RACT standard under the miscellaneous fabricated product manufacturing process (MFPMP) rule. Further, on March 30, 1988, Allsteel filed a Motion for Correction, claiming that its panel slab curing ovens should be exempted from the rule. In response, the IPCB noted that if Allsteel "has particular problems with the control requirements imposed by the generic rule, it may petition the Board for an alternative controls via the generic rule's adjusted RACT procedures," and it denied Allsteel's motion.

On June 3, 1988, Allsteel filed a Notice of Intent to file a Petition for Adjusted RACT Emission Limitation, and on August 8, 1988, filed the petition. Under the generic rule's adjusted standards procedures, Allsteel was required to show that an 81% reduction in uncontrolled VOM emissions or a limit of 3.5 lbs/gal for coating materials is not RACT for Allsteel; and that the emission levels proposed by Allsteel are RACT and would not interfere with the State's plan for achieving ambient air quality standards.

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complete the review before the expiration of this six-month period. USEPA also agreed at that time to reconsider the rules applicable to Allsteel's adhesive operations and issued an administrative stay of the effectiveness of those rules, but only as necessary to complete reconsideration. See 56 FR 24722 (May 31, 1991).

[2] The Clean Air Act was amended on November 15, 1990. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. §§ 7401–7671q (1991). However, EPA's obligation to promulgate a federal implementation plan for the Chicago nonattainment area arose under the pre-amended Act, as did Illinois' obligation to submit the SIP RACT rules that the state submitted in 1988. Therefore, while EPA is procedurally subject to the amended Act in this proposed rulemaking, EPA must refer to the pre-amended Act requirements. To clarify these references, the amended Act will be referred to as the "Act" or the "CAA" and the pre-amended Act will be referred to as the "1977 Act" or the "1977 CAA."

[3] Control techniques guideline (CTG) documents have been prepared by USEPA to assist States in defining RACT for the control of VOC emissions from existing stationary sources. Each individual CTG recommends a presumptive norm of control considered reasonably available to a specific source category. Sources in categories for which no CTG exists are termed "non-CTG sources." See 44 FR 53762 (September 14, 1979). The Group I CTG documents were developed around 1977 and the Group II CTG documents were developed around 1978.

[4] The State of Illinois uses the term "VOM" in its regulations. For the purposes of this RACT analysis, this term is considered equivalent to USEPA's term "volatile organic compounds (VOC)".

On February 23, 1989, the IPCB ruled that an 81% reduction of uncontrolled emissions or a 3.5 lb/gal VOM limit upon adhesives would not constitute RACT for Allsteel's Montgomery facility, and that, instead, Allsteel's current emission levels constituted RACT.

At that time, the IPCB also adopted an adjusted standard for Allsteel (PCB AS–88–3) in which it set the following emission standards for Allsteel. "Allsteel shall not use adhesives which exceed 5.20 pounds per gallon (lb/gal) of VOM for adhesives which are applied as a spray and 5.55 lb/gal of VOM for adhesives which are applied by rollcoating." The IEPA submitted the standard to USEPA as a proposed revision to the Illinois SIP[5] on April 11, 1988.

On April 1, 1987, the State of Wisconsin filed a complaint in the United States District Court for the Eastern District of Wisconsin against USEPA and sought a judgment that USEPA, among other requested actions, be required to promulgate revisions to the Illinois ozone SIP for northeastern Illinois. Wisconsin v. Reilly, No. 87–C–0395, (E.D. Wis.). On January 18, 1989, the District Court ordered that USEPA promulgate an ozone implementation plan for northeastern Illinois within 14 months of the date of that order. On September 22, 1989, USEPA and the States of Illinois and Wisconsin signed a settlement agreement in an attempt to substitute a more acceptable schedule for promulgation of a plan for the control of ozone in the Chicago area. On November 6, 1989, the District Court vacated its prior order and ordered all further proceedings stayed, pending the performance of the settlement agreement.

The settlement agreement calls for the use of a more sophisticated air quality model, allows more time for USEPA to promulgate a Federal implementation plan (FIP) using the model, and requires interim emission reductions while the modeling study is being performed. The interim emission reductions consist of Federal promulgation of required VOM RACT rules for Illinois to remedy deficiencies in its State regulations.

On December 27, 1989 (54 FR 53080), USEPA proposed to disapprove the Illinois generic rules (Subparts AA, II, PP, QQ, RR) largely because the applicability criteria were not consistent with USEPA RACT guidance for major non-CTG sources. On that date, USEPA also proposed a number of RACT rules, including a generic MFPMP rule which covered all of Allsteel's adhesive manufacturing operations.

On June 29, 1990 (55 FR 26814), USEPA took final action to disapprove the Illinois generic rules and promulgate the proposed Federal rules, including the generic MFPMP rule. However, USEPA stated at that time that the need to promulgate Federal regulations, under the tight timeframe ordered by the District Court, had prevented the agency from being able to consider fully the merits of the proposed, alternative site-specific limits for Allsteel. Consequently, USEPA deferred the effective date of the applicable rules with regard to Allsteel for six months. 55 FR 26842.

On August 28, 1990, Allsteel filed a petition for review of USEPA's June 29, 1990, rulemaking in the United States Court of Appeals for the Seventh Circuit. Nine other parties filed petitions for review, which were ultimately consolidated by the Court as *Illinois Environmental Regulatory Group ("IERG") et al.* v. *Reilly*, No. 90–2778. In addition, on November 23, 1990, Allsteel filed a formal request that EPA stay the compliance date of the federal rules until a reasonable time after the Court's decision in *IERG* case. As a result, USEPA convened a proceeding for reconsideration pursuant to section 307(d)(7)(B) of the CAA, 42 U.S.C. 7607(d)(7)(B).

On January 4, 1991 (56 FR 460), USEPA announced a three-month partial stay pending reconsideration for Allsteel and two other petitioners. Elsewhere in the January 4, 1991, **Federal Register** (56 FR 463), USEPA proposed to extend the stay beyond the three-month period, only if and as necessary to complete reconsideration of the subject rules (including any appropriate regulatory action), pursuant to USEPA's authority to revise the federal rules by following rulemaking procedures in sections 110(c) and 301(a)(1) of the CAA, 42 U.S.C. 7410(c) and 7601(a)(1). One of the rules for which the stay was proposed was the MFPMP rule only as applied to Allsteel's adhesive application lines, codified at 40 CFR 52.741(u), as well as the July 1, 1991, compliance date, codified at 40 CFR 52.741(u)(4).

On May 31, 1991, (56 FR 24722), USEPA responded to public comments on the proposed extension of the partial stay, and took final action to extend the stay as long as necessary to complete reconsideration of the rules identified in the proposal. Today's notice, in effect, presents the results of USEPA's reconsideration of the issues involved in the case of the Federal generic rule as it applies to Allsteel, and proposes rulemaking based on these results. Technical support for USEPA's results is provided in an Allsteel RACT analysis, dated April 1992.

A. Processes at Allsteel

There are three process operations at Allsteel that are affected by the Federal generic manufacturing processes rule. These processes are the fabrication of panel slabs (for office dividers), the top line (desktops) operation, and the chair packaging (assembly) operation.[6] All three processes utilize solvent-based adhesives with VOM contents greater than the 3.5 lbs/gal limit set forth in the Federal generic rule.

USEPA has determined, based on information from the IEPA, that in 1988 Allsteel emitted approximately 137 TPY of VOM from the top line and the chair packaging operations mentioned above. These emissions result from the use of high solvent contact adhesives in bonding: (1) Paper core and laminates to steel and (2) foam to polypropylene, ABS plastic, wood, and fabric.

The following subsections describe these processes in more detail.

1. Top Line

The top line operation is where desktops are fabricated. The construction involves sandwiching a honeycomb paper core between steel top and bottom pans. The paper core is rollcoated on both sides with an adhesive (solvent content about 5.5 lbs/gal VOM). The two steel pans are then sprayed with another adhesive. The three separate pieces are heated in an oven, assembled, reheated, and then rolled together. Emissions from this operation in 1988 were approximately 58.2 TPY of VOM.

The pre-cut laminate is rollcoated with adhesive, heated in an oven, and is then joined to the steel slab. The side and end laminate strips are reactivated in small infrared ovens at the assembly stations just before being joined to the slab. The steel slab is rollcoated with adhesive in preparation for the laminate. The slab sides are rollcoated with an adhesive having a solvent content over 5.5 lbs/gal VOM. Emissions from the laminating operations in 1988 were approximately 58.8 TPY of VOM.

2. Chair Packaging

The chair packaging area is where materials are assembled to form the core

[5] Under Illinois' regulatory procedures, IEPA does not have the authority to adopt regulations, but must submit recommended proposals for adoption to the IPCB, an independent rulemaking body. IEPA is, however, responsible for submitting such regulations to USEPA as proposed SIP revisions.

[6] Allsteel confirmed in a December 6, 1991, letter to USEPA that all panel slab operations at the Illinois plant have been discontinued.

of office chairs. Substrates include wood, foam, polypropylene, ABS plastic, and fabric. Adhesives are kept in drums at a central location, and operators fill small containers in order to hand brush the adhesives onto the chair materials. Adhesives used have VOM contents of over 5 lbs/gal. Emissions from the chair packaging operation in 1988 are estimated at 19.9 TPY.

B. Allsteel's Comments

During the Federal rulemaking process, Allsteel provided comments to USEPA both at a public hearing held on January 15, 1990, and in writing on March 2, 1990. Allsteel's comments regarding USEPA's proposed action on the adhesive processes can be separated into two basic areas.

First, Allsteel claims that suitable complying adhesives are not available, and thus not RACT. More specifically, Allsteel states that it has tried to use reformulated adhesives, continued a seven-year testing program to identify low-solvent adhesives, and reduced adhesive usage by switching some applications from spray coating to roll coating. Allsteel further asserts that water-based adhesives failed all normally performed quality control testing. Finally, Allsteel claims that IEPA and the IPCB concur in Allsteel's conclusions concerning the lack of complying adhesives.

Second, Allsteel asserts that add-on control technology is economically infeasible and presents various technological and safety problems. More specifically, Allsteel calculated cost-effectiveness values ranging from approximately $2,400/ton to almost $7,000/ton for add-on control. Allsteel maintains that such costs are not RACT. In addition, Allsteel claims that the installation of control equipment in its crowded facility is not technically feasible and would raise safety and other operational concerns. For instance, according to Allsteel, there is not enough room above the ovens to install the control equipment inside the building. The existing furnace ducts would have to be relocated, and there is no place to move them. Equipment relocation would disrupt the efficient flow of materials in the production process.

USEPA has examined these comments. As discussed more fully below, USEPA has concluded that: (1) An emission limit of 3.5 lbs VOC/gallon represents RACT for Allsteel's chair packaging and top line operations, and Allsteel has failed to adequately document the unavailability of coatings meeting that limit; and (2) incineration, while not RACT for the chair packaging operation, is reasonably available for the top line operation (for emission points 1, 2, 10, 11, 12 and 13).

II. Basis for USEPA's Determination

The basis for USEPA's decision noted in the responses stated above is provided in this section. The discussion is broken into two parts, one which discusses the availability of complying adhesives and the other which deals with the feasibility of add-on control.

A. Complying Adhesives

1. Background

Based on USEPA's and Illinois' experience with various types of coaters, USEPA promulgated a coating limit, for major non-CTG sources, of 3.5 lbs VOC/gallon. This requirement is within the range of coating limitations contained in the Group I and Group II CTG documents. A 3.5 lbs VOC/gallon limitation is required for extreme performance miscellaneous metals coatings. This is probably the single most general coating limitation and is, therefore, a reasonable benchmark for evaluating a general major non-CTG limit. Such a conclusion is supported by the fact that the miscellaneous metals coating category contains 96,000 facilities, by far the largest of the groups covered by the nine coating CTGs. By contrast, the numbers of affected facilities for the other nine surface coating CTG source categories are as follows: cans (460), metal coil (180), fabrics (130), paper products (290), automobiles and light-duty trucks (47), metal furniture (1,400), magnet wire (30), large appliances (270), and flat wood paneling (394).

USEPA's approach to the development of the major non-CTG coating limit is similar to that used with the miscellaneous metal parts and products coating CTG, which includes (as stated in this CTG) "hundreds of small to medium sized industries for which written individual guideline documents would be impractical." The general applicability of the 3.5 lbs VOC/gallon limit is also supported by the use of that limit in Illinois' major non-CTG rule for miscellaneous fabricated product coating lines.

In addition, most of the emission limitations in the coating CTGs are less than (and therefore more stringent than) the 3.5 lbs VOC/gallon level. For example, coating limits for fabric (2.9 lbs/gal), automobile and light-duty trucks (3.0 lbs/gal), magnet wire (1.7 lbs/gal), and large appliance (2.8 lbs/gal) all fall below the "backstop" level of 3.5 lbs VOC/gallon. Therefore, USEPA believes that the 3.5 lbs VOC/gallon limitation is both a reasonable and conservative "presumptive norm" for major non-CTG coating sources.

Allsteel is attempting to establish a source-specific revision to this generic major non-CTG rule. Allsteel has presented information concerning its contention that the 3.5 lbs VOC/gallon requirement is inappropriate for its processes. Allsteel maintains that it has actively pursued the availability and use of alternative adhesives (VOM-based adhesives with lower VOM content, water-based adhesives, and exempt compound-based adhesives) that comply with the 3.5 lbs VOC/gallon requirement. Allsteel claims that, to date, none of these efforts have been successful.

For example, Allsteel has conducted a series of tests to assess several water-based adhesives as potential replacements for its solvent contact adhesives. Based on its 100 psi shear test, some production samples using the water-based contact adhesives failed. Because of these failures, Allsteel stopped testing water-based contact adhesives. In addition, Allsteel states that switching to water-based adhesives (assuming one could be found that meets Allsteel protocols) would result in increased cost to pre-heat the steel prior to applying adhesive and increased production cycle time due to longer curing. Allsteel claims these factors would affect costs significantly. Therefore, based on its efforts to find a complying adhesive and the failure of those efforts, Allsteel claims that RACT for its processes are emission limits of 5.20 lbs VOC/gallon for spray applications and 5.55 lbs VOC/gallon for rollcoating applications.

2. Criteria for Evaluating Availability of Complying Coatings

The USEPA has identified VOC control levels, in its CTGs and non-CTG control evaluations, that it presumes constitute RACT for various categories of sources. However, case-by-case RACT determinations may be developed that differ from USEPA's presumptive norm. The USEPA will approve these RACT determinations as long as a demonstration is made that they satisfy the CAA's RACT requirements based on adequate documentation of the economic and technical circumstances of the particular sources being regulated. To make this demonstration, it must be shown that the current SIP requirements do not represent RACT because pollution control technology necessary to reach the requirements is not and is not expected to be reasonably available. The USEPA will determine on

a case-by-case basis whether this demonstration has been made, taking into account all the relevant facts and circumstances concerning each case. A demonstration must be made that reasonable efforts were taken to determine and adequately document the availability of complying coatings or other kinds of controls, as appropriate. See, e.g., 44 FR 53762 (September 17, 1979).

If it is conclusively demonstrated that complying low-solvent coatings are unavailable, then USEPA would consider an alternative RACT determination. Actions that sources could perform to demonstrate the unavailability of complying coatings are contained in Appendix A of the November 9, 1988, **Federal Register** notice (53 FR 45287) dealing with Easco Aluminum Corporation. These include the following:

(1) An examination of the availability of complying (or lower VOC) coatings used by comparable companies.

(2) Contacting suppliers available to the source to determine if they have complying coatings or other controls.

(3) Contacting trade associations to determine if they know of complying coatings or other controls. This includes both trade associations of similar industries and trade associations representing a large number of manufacturers of low VOC coatings.

(4) A review of trade publications containing information concerning complying coatings or other controls.

(5) Placing two consecutive advertisements in each of three leading coatings trade journals (e.g., Industrial Finishings, Products Finishing, Modern Paint and Coatings, JCT-Journal of Coatings Technology, American Paint and Coatings Journal) and describing the application and product specifications for low solvent adhesives which they are seeking. This advertisement should solicit adhesive companies to provide low VOC products meeting those specifications.

It is not necessary that all of the above actions be taken for a source to demonstrate the unavailability of complying low solvent coatings. However, the extent to which these items were addressed, especially in total, bears upon the adequacy of Allsteel's search for complying coatings.

If a source finds that a complying coating is not available, then the source should identify the coating with the lowest level of VOC emissions that is available for that source. When reporting the response to an advertisement to USEPA, the source should report the lowest VOC content coating that is available for the particular job, even if that coating does not meet the CTG recommended limit (in this case, 3.5 lbs VOC/gallon).

Finally, appendix A notes that USEPA itself may make an independent assessment of the availability of such coatings and the compliance status of other sources in the same source category even if, after reasonable efforts are expended by the source, the source finds that no complying coatings are available.

3. Allsteel's Efforts To Find Complying Coatings

As noted earlier, Allsteel claims that it has actively pursued alternative adhesives. These alternative adhesives include those with lower VOM content, water-based adhesives, and exempt compound based adhesives. The specific alternative adhesives examined were supplied by six different suppliers. Several of these suppliers are current suppliers of solvent-based adhesives to Allsteel. No evidence was presented, however, that showed an effort by Allsteel to solicit widespread input through either the placement of advertisements in leading trade publications or the contact of a leading trade association. In addition, no evidence was presented to indicate that Allsteel had reviewed trade publications containing information concerning complying adhesives.

Through these six suppliers, Allsteel evaluated a number of alternative adhesives. With regard to lower VOM adhesives, Allsteel examined a urethane hot melt adhesive and increased solids adhesives. Allsteel worked with Swift adhesives and Pierce & Stevens on the development of a hot melt to be used on end and side strips. The increased solids adhesives were currently used solvent-based adhesives reformulated with a lower solvent content. Based on an April 7, 1986, internal Allsteel memorandum, it appears that at least two of the high solids, low solvent adhesives initially examined were supplied by National Starch and Wilsonart.

With regard to water-based adhesives, Allsteel initially examined nine different water-based adhesives, which were supplied by the six adhesive manufacturers referred to above. In addition, Allsteel examined a chlorinated solvent adhesive supplied by 3M as well as the use of a Bostik P.U.R. adhesive with a Meltex Spray Adhesive Machine.

As noted earlier, Allsteel states that all of these alternative adhesives were found to be unacceptable. The results of its testing, as discussed in a series of internal memoranda, were submitted to USEPA. Based on the information in these memoranda, the following paragraphs summarize the test results for each type of alternative adhesive.

a. *Hot Melt.* The results of the hot melt adhesive testing were identified in an October 28, 1986, memorandum. According to this memorandum, humidity, low temperature, and temperature shock tests were conducted on four partial tops. Each of the four partial tops passed Allsteel's requirement of no delamination of the laminate to the top under the humidity and the low temperature tests. Three of the four partial tops showed delamination of the laminate to the top upon completion of the temperature shock test. The testing was started on October 22, 1986, and completed on October 27, 1986.

b. *Low-Solvent Adhesives.* Based on information in an April 7, 1986, memorandum, Allsteel appears to have tested two low solvent adhesives along with a number of water-based adhesives (which are discussed below). Both adhesives were found to perform poorly in Allsteel's shear pull test. Of the 22 samples tested, 19 were reported as having failed the shear pull test.

c. *Water-Based Adhesives.* Top line samples using water-based adhesives were assembled and sent to Allsteel by six adhesive manufacturers. These samples were subjected to Allsteel's shear pull testing procedures. Of the 83 samples tested, 70 samples passed and 13 failed. Five of the water-based adhesives tested better than the adhesives used by Allsteel at the time of the testing. Of these five, Allsteel requested samples of three to begin the actual testing program. These three adhesives were chosen ". . . because of their shear test performance, their probable heat resistance, and their rollability."

The vendors of these three adhesives were requested to send 35-gallon drums of their water-based adhesives to Allsteel (May 1, 1986, memorandum). Allsteel then manufactured tops from four different adhesive samples on May 29, 1986. (May 30, 1986 memorandum; no information was provided that identified the fourth adhesive). These tops were roll-coated under the same process conditions encountered during actual production assembly operations using solvent-based contact adhesives. In a July 1, 1986, memorandum, the results of the first of several tests on the tops manufactured using the water-based adhesives were reported. According to this memorandum, the results from the first test (ST–18, Item 3.0, Shear Test) were "disappointing" in comparison to the "excellent" results

obtained during previous tests on the same adhesives.

According to this memorandum, the samples performed poorly with an average shear value for the laminate-to-steel bond of 53 lbs/square inch. Allsteel's minimum acceptable shear value is 100 lbs/square inch. Allsteel concludes that the first set of samples, which were prepared by their respective vendors, were not assembled under the same conditions encountered during actual assembly operations. Since all of these adhesive samples were incapable of passing this first test, Allsteel concluded that no further testing was required.

In a July 10, 1986, memorandum, Allsteel stated that the water-based adhesive project should still be pursued in spite of the poor results from the shear strength testing. Later memoranda (through May 26, 1987) indicate that Allsteel was still exploring possible reformulations of water-based adhesives, although no water-based adhesive had yet met Allsteel's requirements.

d. *Exempt-Compound Solvent Adhesive.* As reported in a May 26, 1987, memorandum, Allsteel tested a chlorinated solvent adhesive on the panel line and found that "values met or exceeded the standard." More extended testing was indicated as being planned for the future.

In addition, Allsteel also has investigated the possibility of utilizing a Bostik P.U.R. adhesive with a Meltex Spray Adhesive Machine.

4. *Performance Specifications*

The effect that a company's specifications for a product has on the determination of RACT must be considered on a case-by-case basis. Each case must attempt to differentiate between product and materials specifications that are simply desired by an applicant (which would generally not be considered necessary) and specifications that are required (e.g., an industry standard). It is not sufficient for a company to merely set performance specifications and say available coatings cannot meet them. Specifications that are required (e.g., an industry standard) or are necessary by the nature of the product may, however, be considered.

In addition, the lack of a complying coating that satisfies industry standard specifications does not imply that the RACT limit is not achievable. The source must still consider other compliance options (typically add-on control).

Allsteel rejected hot melt and water-based adhesives because of failure to meet internal specifications set by Allsteel. There are two issues associated with these "failures":

(1) The level of the standards that Allsteel uses to identify failures.
(2) The test procedures used to evaluate water-based adhesives.

The first issue concerns whether Allsteel's performance criteria are necessary for the production of a product that meets an industry standard. In the absence of an industry standard, a source needs to demonstrate that its specifications are necessary for successful use of the product under actual conditions for which the product is intended. Such a demonstration could include, for example, a reasonable showing by a company that its final product must meet certain durability and strength requirements. Allsteel has not provided any information that demonstrates that its specifications are either equivalent or near any industry standard or that its specifications are necessary for the successful use of the product under actual end use conditions.

The second issue involves the test methods used to determine whether water-based adhesives are successful. Allsteel currently uses solvent adhesives and not water-based adhesives. The production process is set-up to use solvent-based adhesives. Therefore, Allsteel's testing procedures may have been developed for solvent adhesives, and not water-based adhesives, under current production procedures. The "failure" of water-based adhesives may not be due to their inability to perform, but to the conditions under which they were applied. For example, if better metal surface preparation and increased drying time (two important criteria for the application of water-based adhesives) had been used, water-based adhesives may have passed Allsteel's stringent specifications. Allsteel has not justified retaining current solvent-based adhesive testing procedures, which may have been developed for solvent-based adhesives, when testing water-based adhesives. Nor has Allsteel modified its solvent-based adhesive testing procedures to accommodate testing water-based adhesives.

Two examples of Allsteel's solvent-based adhesive testing requirements include the deflection and destructive testing of cured complete desk tops. In deflection testing, the desk top is supported at the ends as a concentrated load on the center of the unsupported area of the desk top is increased to 600 pounds. At that point, the deflection at the center of the desk top is measured and, if found to be greater than 0.25 inches, the adhesive is deemed to have failed the test. Destructive testing requires the application of a minimum vertical load of 1,200 pounds to the unsupported center of a completed desk top. In order for the desk top to pass, it must be able to support the 1,200 pound load without suffering permanent deformation.

Edge crushing testing of finished tops is used to test the strength of the adhesive bond joining the steel pan construction and the top laminate. If there is permanent distortion of the edge after a 1-minute application of the 800 pound load and a 5-minute no load recovery time, the top is considered to have failed.

The standard for laminate bonding to steel involves driving a sharp ⅜ inch wide chisel between the laminate and the steel. The test is passed if the chisel cuts a ⅜ inch wide groove through the laminate covering without lifting the material on either side of the cut or in advance of the cut.

The ST–1B Shear Strength Test applies a shear load of 100 psi to test the adhesive shear strength between the laminate and the steel desk top. A 4-inch square sample of laminate bonded to steel is cut into an hourglass shape. The steel is cut completely at one end of the narrow section. The laminate is similarly cut, but on the opposite side of the sample and on the opposite end of the narrow section. A 200-pound load is applied, resulting in a 100 psi shear force applied to the adhesive.

USEPA believes that it is the solvent adhesive's strength that allows the above testing criteria as part of Allsteel's quality assurance program, not the actual performance requirements of the furniture. The solvent-base adhesive is being tested near its point of failure but where all properly assembled solvent adhesive samples will pass. Allsteel must demonstrate that the testing procedures are reasonable for the performance requirements for their furniture or else reestablish the testing standards based on market requirements or industry standards.

5. Discussion of Potentially Feasible Low VOM Adhesives

As noted earlier in the discussion on appendix A of the 11/9/88 FR notice dealing with Easco Aluminum, USEPA may wish to contact additional suppliers of coatings to investigate further the availability of complying coatings. In pursuing this avenue, several adhesives manufacturers and Steelcase, a major competitor of Allsteel, were contacted. A summary of the information obtained from the

adhesive manufacturers and Steelcase is provided below. It should be noted in the following discussion that no solvent (in an adhesive) means that the adhesive contains no VOM.

Several manufacturers including Pierce & Stevens Chemical Company (P&S), Wilsonart, Swift Adhesives, Locktite, Inc., 3M, H.B. Fuller, Imperial Adhesives, Platt and Lambert, and Adhesive Packaging Equipment, Inc. produce complying adhesives that are potentially feasible for Allsteel's operations. Most are water-based, contain no solvents or a low level of solvent and several have passed stringent testing by other manufacturers. These findings are discussed in more detail in the Allsteel Corporation RACT analysis.

Steelcase, Inc., a manufacturer of office furniture, is a major competitor of Allsteel. Allsteel and Steelcase compete in several lines of office desks, chairs, and office partitions. Steelcase opened a new office furniture manufacturing facility during the summer of 1991 in Grand Rapids, Michigan. It is using hot melt and water-based adhesives to bond medium density fiberboard to laminate, a process similar to Allsteel's panel slab operations. Hot melt adhesives are thermoplastic adhesives with no VOM emissions upon application. They can be used to join metals, laminated plastics, and textiles.

Allsteel's chair packaging line assembles the chair components using solvent adhesives with VOC contents of 5.1 to 5.56 lbs/gallon. Steelcase operates a similar operation in its plant near Anaheim, California. It uses hot melt spray, which contains no solvents, to hold chair components temporarily together before permanently assembling the office chairs with staples, which provide the final holding strength.

Steelcase also manufactures desks and office panels in the same plant using chlorinated (non-VOM) solvents. Steelcase anticipates that the California plant will have eliminated 97 percent of its VOM solvent usage by the end of 1991.

6. South Coast Air Quality Management District Rule 1168

In the area covered by the South Coast Air Quality Management District (SCAQMD), there are several thousand companies that use a wide variety of adhesives. In 1989, the SCAQMD adopted VOC limits for adhesives that required the use by January 1, 1991, (with final compliance for selected operations or substrates by January 1, 1993) of adhesives with a VOC content of 2.1 lbs/gal or less. These limits, which are contained in Rule 1168, Control of Volatile Organic Compound Emissions from Adhesive Applications, affect a large number of adhesive applications, including those applications with substrates similar to Allsteel's substrates (e.g., metal and metal-to-metal). Steelcase is subject to this rule. Thus, in the SCAQMD, sources like Allsteel have been required to meet a 2.1 lbs VOC/gallon limit since January 1, 1991.

On February 1, 1991, the SCAQMD in California held a public hearing on Rule 1168. The purpose was to discuss final solvent adhesive VOM reductions to 2.1 lbs VOC/gal for adhesive used to join metal to nonmetal and 0.3 lbs VOC/gal for adhesive used to join metal to metal. A representative of SCAQMD indicated that there was very little public comment on Rule 1168 at that meeting.

7. Allsteel's Program To Obtain Other Compliant Coatings Is Deficient

Criteria that USEPA may use to evaluate the acceptability of an investigation of complying coatings were discussed earlier under "Criteria for Evaluating Availability of Complying Coatings" (appendix A). These criteria and Allsteel's efforts are discussed below.

(a) Examine availability of complying (or lower VOC) coatings used by comparable companies.

Allsteel did not document any effort to determine the availability of complying coatings used by comparable companies.

(b) Contact suppliers available to the source to determine if they have complying coatings or other controls.

Allsteel conducted a number of tests on potential complying coatings from a number of suppliers, both current and potential.

(c) Contact trade associations to determine if they know of complying coatings or other controls.

Allsteel did not document any effort to contact trade associations to determine if they knew of complying coatings or other controls.

(d) Review trade publications containing information concerning complying coatings or other controls.

Allsteel did not document any effort to review trade publications containing information concerning complying coatings or other controls.

(e) Place two consecutive advertisements in each of three leading coating trade journals (e.g., Industrial Finishings, Products Finishing, Modern Paint and Coatings, JCT-Journal of Coatings Technology, American Paint and Coatings Journal) and describe the application and product specifications for low solvent adhesives which they are seeking. This advertisement should solicit adhesive companies to provide low VOC products meeting those specifications.

No evidence was provided by Allsteel to show that it had placed any such advertisements.

As discussed previously, it is not necessary that all of the above actions be taken for a source to demonstrate the unavailability of complying low solvent coatings. The above analysis merely addresses which actions Allsteel undertook. However, the extent to which these actions were performed, especially in total, bears upon the adequacy of Allsteel's search for complying coatings.

With the exception of contacting some available suppliers of complying coatings, Allsteel has failed to take the above-mentioned steps for determining the full potential of available complying coatings.

Several other items are of concern to USEPA regarding Allsteel's search for complying adhesives. First, a number of samples that provided good results were not investigated further It is possible that these would have ultimately provided satisfactory results.

In addition, the lack of comment on the SCAQMD's Rule 1168 suggests that sources in southern California do not have any serious objections to the stringent limits being imposed by the rule. The staff report to Rule 1168 identifies complying adhesives that could be evaluated by Allsteel.

Further, adhesives technology continues to evolve. The test data provided by Allsteel indicate that its testing occurred between 1985 and 1987. Based on USEPA review of adhesives manufacturers, there appear to be several recently developed adhesives that may allow Allsteel to comply with the 3.5 lbs VOC/gal limit through the use of compliant adhesives alone. For example, a number of manufacturers indicate they have no-solvent or low solvent adhesives that may be used by Allsteel in its production processes. These adhesives have become available since Allsteel did its testing. The USEPA believes that Allsteel needs to submit further evidence that it has investigated adhesives that have become available since that time frame.

Finally, two items of concern to USEPA regarding Allsteel's search for complying coatings are Allsteel's performance specifications used to evaluate a coating and the manufacturing conditions used by Allsteel to evaluate the low VOC (e.g., water-based) coatings. As stated earlier, Allsteel has not provided any

information that demonstrates that its specifications are either equivalent or near any industry standard or that its specifications are necessary for the successful use of the product under actual end use conditions. Thus, the performance specifications may be overly strict, to the point that the rejection of the tested water-based coatings is inappropriate.

Also, as stated earlier, it is reasonable to expect that Allsteel's testing procedures were developed for solvent adhesives, and not water-based adhesives, under current production procedures. The "failure" of water-based adhesives may not be due to their inability to perform, but to the production procedures under which they were applied. Allsteel has not justified retaining current solvent-based adhesive testing procedures when testing water-based adhesives. Nor has Allsteel modified its solvent-based adhesive testing procedures to accommodate testing water-based adhesives.

B. Add-On Control

Allsteel contends that the costs of add-on controls for controlling emissions from the application of adhesives in its chair packaging and top line operations are beyond what RACT requires (i.e., the cost-effectiveness of controls exceeds those generally associated with RACT). In addition, Allsteel identifies a number of technical issues associated with the feasibility of installing add-on controls within and on its buildings.

This section first presents the costs and technical feasibility issues as identified by Allsteel for each of the two adhesive operations. Following this discussion, the results of the analyses conducted by USEPA are presented.

Incinerators and carbon adsorbers are the most commonly used add-on control devices for VOC. As will be discussed further below, USEPA agrees with Allsteel that the use of carbon adsorbers does not constitute RACT for either of these two adhesive operations at Allsteel. USEPA also agrees with Allsteel that add-on controls do not constitute RACT for the chair packaging operation. Therefore, the analysis conducted by USEPA and the discussion of Allsteel's comments address the costs and feasibility of incinerators for controlling emissions from Allsteel's top line operation.

1. Allsteel's Analysis

Allsteel presented cost data on controlling emissions from its adhesive operations for the top line operation at its facility. Allsteel's cost information is primarily internally generated by its engineering group with some cost information provided by Enders Process Equipment (control costs and energy requirements). In addition, Allsteel made several assertions concerning the technical feasibility of installing add-on controls for the top line operation. For the top line operation, a brief description of the operation is presented followed by the technical feasibility issues and cost data associated with add-on control installation. Allsteel's comments on the chair packaging operation are also presented and discussed below.

a. *Top Line Operation.* Allsteel investigated the technical feasibility of controlling top line VOC emission sources under two scenarios: (1) Each VOC source with its own thermal incinerator, and (2) combining multiple top line VOC sources and ducting the VOCs to a single incinerator. It also evaluated the installation of thermal incinerators next to the process (interior), and on the roof above the VOC emission source and in the parking lot (exterior). The following summarizes Allsteel's position concerning the feasibility of interior and exterior installation of thermal incinerators for control of VOC emissions from the top line operation.

For interior installation, Allsteel claims that for the least congested oven, the structure height (including controls, exhaust fan, etc.) is such that the available clearance is only about 4 feet between the oven and the mezzanine located directly above the oven. Allsteel claims that the smallest available incinerator is 5 feet in diameter. In addition, Allsteel cites retrofit problems concerning lighting required for the assembly line and relocation problems involving existing ventilation ducts.

Allsteel further asserts that experience with the Office of Safety and Health Administration (OSHA) indicates the need to install the incinerator in an enclosure in order to contain fumes in case of an accident. According to Allsteel, there is inadequate room in the area for such an enclosure. Further, Allsteel claims that ducting to tie the three ovens together into an incinerator would create additional space and access problems. In addition, they believe access to the incinerator itself or to the ovens, for maintenance purposes, would be extremely difficult.

For exterior (on the roof) installation, Allsteel claims the need for extensive changes in the building structure, including new columns from the main floor to the roof (a distance of 35 feet, passing through a mezzanine) and special preparations necessary to support an incinerator with a weight of 25,000 to 30,000 pounds. Therefore, Allsteel claims that an incinerator mounted on the facility's roof would require excessive installation costs.

Setting aside the claimed problems of lack of physical space and retrofit, Allsteel supplied costs for the interior installation of an incinerator controlling emissions from the entire top line, both with and without heat recovery. These costs were based on a total flow of 78,000 standard cubic feet per minute (scfm) from all 13 (adhesive application and drying) VOM sources. Allsteel calculated the total flow from the rated exhaust taken from information plates located on the fans at all 13 top line emission points. Allsteel arrived at a cost-effectiveness value of $5,971/ton without heat recovery. This cost estimate does not include the cost of installation.

Allsteel claimed thermal heat recovery was not cost-effective as it could only use one percent of the total amount of recovered energy in other areas of the facility; although Allsteel later submitted a revised estimate in its comments on August 31, 1987, assuming 67 percent thermal energy recovery. Allsteel did not provide a basis for the revised (heat recovery) fuel cost. Allsteel recalculated the cost effectiveness with heat recovery and estimated it to be $2,378/ton. These cost-effectiveness figures are based upon total top line emissions of 123.4 TPY. The cost-effectiveness increases to $2,564/ton when the most recent emission estimate of 114.5 TPY (or a controlled rate of 92.7 TPY) is used.

Allsteel then costed an incinerator (interior installation) for collective control of just the 3 top line curing ovens (Nos. 2, 12, and 13). The calculated cost effectiveness is $4,111/ton. Allsteel did not provide a detailed explanation of its cost estimates for controlling the three curing ovens.

Allsteel also provided two cost estimates for the exterior (on the roof) installation of an incinerator. This incinerator was sized to control the No. 2 oven alone. Allsteel's calculations of an exterior installation are based on both a 300 percent installation cost, and a 200 percent installation cost. Allsteel's calculated cost effectiveness resulting from these installation costs are $6,996/ton and $5,628/ton, respectively.

At the request of IEPA, Allsteel recalculated the cost effectiveness for the installation of an incinerator controlling the 3 top line curing ovens, this time using the maximum emission rates measured during the stack tests. The maximum emission rate for the three top line curing ovens (emission

points 2, 12, and 13) was calculated by Allsteel to be 38.86 TPY as compared to Allsteel's original emission rate of 22.77 TPY. Allsteel reported new cost effectiveness values of $4,101/ton and $3,299/ton at 300 and 200 percent installation costs, respectively.

IEPA then requested Allsteel to calculate the cost effectiveness of controlling No.2 Oven and a smaller adjacent oven (which would not have been subject to Illinois Subpart PP) to provide control on a total of 15.7 TPY. The incinerator was to be installed at ground level at the building exterior. The cost-effectiveness for this 1,200 scfm incinerator, 400 feet from No. 2 oven, was calculated at $5,585/ton.

b. *Chair Packaging Operation.* The chair packaging operation involves joining chair seat components using solvent adhesive (VOM content 5.10 lbs/gal) from a one-gallon can with a hand brush at each work station. Materials bonded together are foam, polypropylene, plastic, wood, and fabric. The individual work stations are located at least twenty feet apart. The distance between work stations appears to be Allsteel's solution to minimizing VOM concentration levels. Only general ventilation is available in this area. There are no booths, hoods, or other devices designed to remove the estimated 19.9 TPY from this work area.

Allsteel claims that the cost, in dollars/ton, for controlling the emissions from the chair packaging operation would be higher than for the panel slab operation (calculated by Allsteel to be about $7,200/ton) because the chair packaging total VOC emissions were less than the panel slab operation, while the exhaust flow was greater. Therefore, Allsteel did not calculate the $/ton for thermal incineration of VOC emissions from the chair packaging operation.

2. USEPA Analysis

In this section, analysis of add-on controls applicable to Allsteel's top line operation is presented. As noted earlier, the individual work stations in the chair packaging operation are located about twenty feet apart. Only general ventilation is available in this area. For the specific situation at Allsteel's facility, the USEPA agrees that the level of emissions and its associated air flow are such that add-on controls are not feasible and, therefore, do not represent RACT for chair packaging.

In analyzing Allsteel's claims that add-on controls do not represent RACT for the top line operation, USEPA focused on examining the applicability of incinerators as a control device for the emission streams from this operation. The USEPA then conducted its own cost estimates of using incinerators to control the emissions. These costs were then compared to cost estimates in CTG documents that identify RACT for other source categories and with cost guidelines established by the IPCB. This analysis by EPA supported the feasibility of add-on controls (i.e., incinerators for the top line operation. The feasibility of incineration at Allsteel is further supported by a discussion of incineration systems, in various CTGs and used at several facilities, for control of gas streams with similar characteristics to those at Allsteel.

The technical issues raised by Allsteel with regard to the feasibility of interior and exterior installation of add-on controls are addressed following the cost analyses section.

a. *Cost-Effectiveness Analysis.* As noted earlier, Allsteel contends that add-on controls for any of its operations (top line and chair packaging) are not RACT due, in part, to economic infeasibility (i.e., high dollars/ton of control). Allsteel concludes that the dollars/ton of control exceeds the range normally considered reasonably available in past IPCB and USEPA actions. To evaluate the cost-effectiveness of add-on controls, USEPA conducted a cost analysis for the installation of incinerators to control emissions from the top line operation, subsequent to a plant visit to Allsteel's facility. This cost analysis relied heavily on the USEPA's Office of Air Quality Planning and Standard's (OAQPS) Control Cost Manual.

Using the OAQPS cost manual, a schedule of 40 hours of production per week at Allsteel, and a control efficiency of 81 percent, control cost data were calculated for controlling six emission points, three from adhesive curing ovens (emission points 2, 12, and 13) and three from adhesive application areas (emission points 1, 10, and 11). Costs were calculated both for controlling each emission point separately with its own incinerator and also for controlling all six emission points with one incinerator. These six emission points emit above ninety percent of the VOC from the top line operation. The option with the lowest cost per ton of VOC controlled was the use of a single thermal incinerator for all six emissions points. Connecting the six top line emission sources to an outside incinerator in the parking lot has a total capital cost of $806,367 (includes $236,220 for ductwork) with an annual cost of $250,652 to control 84 tons of VOM. The cost effectiveness is $2,984 per ton for the top line. These costs, which are conservative, include 500 feet of ductwork necessary to vent the emissions to one incinerator located outside in the parking lot.

These costs represent typical estimated costs applicable to custom installation of incinerators. This is in contrast to skid-mounted modular units, where total capital investment can be calculated at 125 percent of the total purchase price. Due to the uncertainty regarding the feasibility of interior control device installation, USEPA costed exterior installation in the parking lot. Exterior installation is probably the most costly and conservative installation alternative.

The calculated costs from the USEPA manual were then compared to vendor quotes obtained to verify the accuracy of the numbers. The costs calculated from the USEPA manual were consistently higher (and therefore more conservative) than the costs obtained from vendors.

b. *Bases for Establishing that Incineration Constitutes RACT.* As discussed earlier, CTGs developed by USEPA contain the presumptive norm for RACT for various source categories. In each CTG, USEPA evaluates various control technologies, including add-on control. These analyses include a determination of the cost effectiveness of using add-on controls to achieve RACT. The adhesive operations at Allsteel are subject to one of the "generic" Federal VOC rules, and thus are not specifically covered by a USEPA CTG. However, Allsteel claims that the cost-effectiveness of add-on controls is beyond what RACT requires. Therefore, the USEPA compared the cost effectiveness values reported in the two CTGs that are the most appropriate for comparison with Allsteel's adhesive operations with those determined for Allsteel.

The miscellaneous metal parts and products coating CTG is probably the most generic CTG in that it covers a wide range of metal coating operations. This CTG covers over 96,000 facilities, by far the largest of the groups covered by the nine coating CTGs. This CTG is applicable to hundreds of small to medium-sized industries for which written individual guideline documents would be impractical. One of the control techniques considered in this CTG is incineration. The range of cost effectiveness values specific to incineration of spray coating operations is $9,500 to $13,200 (1990 dollars) per ton of VOM. The cost effectiveness value calculated by the USEPA for the top line operation (i.e., $2,984/ton) is well below the range reported in this CTG for the application of incinerators

to the applications most similar to those found at Allsteel.

There is also a CTG for metal furniture coating that addresses some of the processes at Allsteel, although not specifically the adhesive operations at issue in this analysis. This 1978 document reports cost-effectiveness values for incineration that range from $1,510/ton to $4,910/ton (1990 dollars). The cost-effectiveness for Allsteel falls into this range, which is considered to be economically reasonable for the metal furniture industry.

In addition, the Illinois DENR compiled a document in February, 1988, on the economic impact of the potential generic rule (which was subsequently adopted by the IPCB) which states that the cost per ton of emission reduction that would be achieved under the proposed rule varies from a net savings to cost estimates of over $55,000 per ton. Seventy-four percent of the potential reduction is estimated to cost from $4,700 to $6,100 per ton. The IPCB adopted this rule on April 7, 1988, indicating that it considered these costs in relation to the associated emission reductions to be reasonable. The cost-effectiveness values calculated by USEPA for the topline operation ($2,984/ton) is below this range.

The IPCB is empowered by the State of Illinois to adopt rules, including rules intended to satisfy USEPA's VOC RACT requirements.

There are also various considerations related to technology transfer. In a memorandum to all regional administrators on December 9, 1976, Roger Strelow, formerly USEPA's Assistant Administrator for Air and Waste Management, issued guidance for determining the acceptability of SIP regulations in non-attainment areas. This policy established that RACT encompasses stringent, or even "technology forcing," requirements that go beyond simple "off-the-shelf" technology. RACT is the minimum USEPA can accept in non-attainment state plans. In every case, RACT should represent the toughest controls considering technological and economical feasibility that can be applied to a specific situation. Anything less than this is by definition less than RACT and is not acceptable for areas where it is not possible to demonstrate attainment.

The "technology forcing" nature of RACT leads USEPA to the investigation of potentially transferable control technologies. John Calcagni, Director of USEPA's Air Quality Management Division, in an August 29, 1988, memorandum to David Kee, Director of Air and Radiation Division, Region V, discussed the transfer of technology between source categories in determining lowest achievable emission rate (LAER).[7] The principles discussed are applicable in this case. There are two types of transfers: (1) gas stream controls, and (2) process controls and modifications. The first kind of transfer considers the class or category of sources to include any sources that produce similar gas streams that could be controlled by the same or similar technology. That is, for the purpose of evaluating the feasibility of control, a source making a different product or belonging to a different CTG category may be considered as belonging to the same source category as another source which has similar gas stream characteristics. The process that generates a VOC-laden gas stream is immaterial. What matters is whether the gas stream characteristics, such as composition and VOC concentration, are sufficiently similar to a stream from which incineration technology, for example, may be transferred.

To determine further the technical and economic feasibility of thermal incinerators, USEPA examined readily available information to verify the application of incinerators to similar emission streams, focusing on emission stream composition and total flow. Emissions from Allsteel's operations contain various compounds, including ketone, acetone, and methyl ethyl ketone (MEK). Flow rates for the six largest emission sources are between 430 and 20,000 standard cubic feet per minute (scfm) on an individual stream basis, and total approximately 28,500 scfm.

Use of pollution control devices to capture and remove VOCs found in Allsteel's emissions is well-documented and is based upon a wide variety of industrial experience. Controlling ketone, acetone, and MEK emissions is routinely handled in surface coating applications as described in the CTG documents for surface coating of cans, coils, paper, fabrics, and automobiles and light-duty trucks; metal furniture; large appliances; flatwood paneling; and graphic arts.

Pioneer Plastics Corporation in Auburn, Maine, manufactures a decorative laminate used for counter tops and furniture. Acetone, a VOC, is vaporized in dryers that are vented to an incinerator.

Eastern Fine Paper operates two coating lines that exhaust heptane, toluene, xylene, ethyl acetate, and MEK. The thermal incinerator with primary heat recovery is designed with an overall capture efficiency estimated to be in excess of 90 percent. The State of Maine has determined that this VOC control represents "best practical technology."

Connecticut Hard Rubber (CHR) Industries in New Haven, Connecticut, produces silicone rubber sheets, silicone coated fabrics, teflon coated glass cloth, and pressure sensitive coatings. All five of its coating lines are connected to an incinerator that handles 8,000 cubic feet per minute (cfm) of oven exhaust, although two of the five coating lines are operated off-line from the incinerator when they are coating with non-organic, water-based adhesives. Heat recovery is used to elevate the 200 °F dryer exhaust as high as 900 °F using a preheater, which recovers thermal energy from the hot incinerator flue gases.

Thermal incinerators are designed and built according to the waste stream flow rate. James River-Rochester, Inc., currently operates a 15,000 scfm thermal incinerator to control methanol, phenol, formaldehyde, and vinyl acetate. For more than 12 years, Supra Cote Inc., of Rancho Cucamonga, California, has operated a 30,000 scfm thermal incinerator with regenerative heat recovery. Reaco Regenerative Environmental Equipment Co., Inc., designs regenerative thermal incinerators such as Model "VF–C" ReTherm, which handles 9,125 scfm, and Model "E" ReTherm, which handles 36,500 scfm.

The Air Pollution Engineering Manual (AP–40) discusses successful partial and complete enclosure of roll coaters for desirable local ventilation. Also incorporated in the text is a full explanation of spray booth designs, relevant to Allsteel's equipment configurations.

USEPA considers 81 percent overall control to be a reasonable level of add-on control for coating sources. This is the level of control required when compliance with § 52.741(u), which covers miscellaneous fabricated product manufacturing processes, is to be achieved by an add-on control device (such as an incinerator). The feasibility of 81 percent control is discussed in more detail in the Allsteel RACT Analysis.

As noted earlier, Allsteel claims that the installation of incinerators is not technically feasible due to space limitations (for interior installation) and weight (for roof installation). The following paragraphs address these two claims.

Allsteel has vigorously maintained that there is insufficient space to install

[7] LAER is the level of control applicable to new sources in nonattainment areas.

an interior incinerator, claiming that the available clearance is only about four feet. However, the IEPA has determined there is sufficient room to install a 6-foot high, 2,800 scfm incinerator and still have 8 feet of clearance, based upon Allsteel's diagram showing a 14-foot ceiling height.

Allsteel asserts that incinerators weigh too much to rest on the roof, citing weights of 25,000 to 30,000 pounds to control the No. 2 oven only. Allsteel identified Enders Process Equipment as the source of this information. USEPA contacted Enders Process Equipment and was informed that a 1,000 cfm incinerator would weigh about 1,500 pounds and could easily be installed on the roof. Enders has recently quoted a 3,000 scfm incinerator without heat recovery that would fit on a roof and weigh between 3,500 and 4,000 pounds.

Allsteel also notes other difficulties (need for an enclosure on the incinerator, maintenance access problems, lighting problems, rerouting of ducts, more frequent replacement of the incinerator's interior insulation) associated with the interior installation of incinerators. While these other difficulties raised by Allsteel would need to be considered when designing and installing add-on controls, there is no evidence that indicates that they make the application of such controls technically or economically infeasible. Allsteel indicates that these difficulties would involve huge additional costs, but has not quantified the extent of these costs. USEPA, in costing the most conservative installation (an exterior incinerator 500 feet from the ovens) has concluded that thermal incineration for the six largest VOC sources found in the top line operation is technically and economically feasible.

III. Summary and Conclusions

The USEPA considers 3.5 lbs VOC/gallon and 81 percent overall control to be reasonable control requirements (RACT would only require compliance with 3.5 lbs VOC/gallon or 81 percent control) for major non-CTG coating sources. Allsteel contends that neither of these requirements are appropriate for its processes. Instead, Allsteel claims that RACT for its processes are emission limits of 5.2 lbs VOC/gallon for spray applications and 5.55 lbs VOC/gallon for rollcoating applications.

To support its contentions, Allsteel presented information on:

(1) Its efforts to find alternative adhesives (VOM-based adhesives with lower VOM content, water-based adhesives, and exempt compound-based adhesives) that comply with the 3.5 lbs VOC/gallon requirement, and

(2) The costs of using add-on controls. Allsteel claims that, to date, none of its efforts to find a complying adhesive have been successful and that the costs of add-on controls for controlling emissions from the application of adhesives in its chair packaging and top line operations are beyond those required under RACT (i.e., the cost-effectiveness of controls exceeds those generally associated with RACT). In addition, Allsteel identified a number of technical issues associated with the feasibility of installing add-on controls within and on its buildings.

The USEPA has evaluated these claims. For complying adhesives, USEPA examined closely the information submitted by Allsteel, and contacted adhesive manufacturers and the SCAQMD. For add-on controls, USEPA conducted its own cost estimates of using incinerators to control the emissions. These costs were compared to cost estimates in CTG documents that identify RACT for other appropriate source categories and with cost guidelines established by the IPCB. The feasibility of incineration at Allsteel was investigated further by examining the use of incineration systems for control of gas streams with similar characteristics to those at Allsteel.

Based on these analyses, the USEPA has determined that compliance with an emission limit of either 3.5 lbs VOC/gallon or 81 percent control represents RACT for Allsteel's adhesive operations. This finding is based on the following:

A. Availability of Complying Adhesives

(1) 3.5 lbs/gallon is a reasonable general coating limit.

(2) Rule 1168 of the SCAQMD requires 2.1 lbs VOC/gallon for sources similar to Allsteel's. This limit has been in effect since January 1, 1991.

(3) Other potentially feasible adhesives that have VOC contents of less than 3.5 lbs VOC/gallon are available.

(4) By all indications, a major competitor, Steelcase, is making similar products without exceeding 3.5 lbs VOC/gallon.

Further, Allsteel has failed to document that 3.5 lbs VOC/gallon is not RACT for its adhesive operations.

Specifically, Allsteel failed to:

(1) Examine the availability of complying (or lower VOC) coatings used by comparable companies.

(2) Contact trade associations to determine if they know of complying coatings or other controls.

(3) Review trade publications containing information concerning complying coatings or other controls.

(4) Place advertisements in leading paint and coating trade journals and describe the application and product specifications for low solvent adhesives which they are seeking.

Although it is not necessary for all of the actions in Appendix A of the Easco notice to be taken for a source to demonstrate the unavailability of complying low solvent coatings, the failure of Allsteel to have performed the above actions adversely bears upon the adequacy of its search for complying coatings.

In addition, Allsteel did not provide justification for the performance specifications to which it judged the performance of the water-based coatings. When complying coatings fail performance specifications it is the company's burden to show that these performance specifications are reasonable and necessary due to the nature of the product. However, Allsteel has not made such a showing. There is no evidence presented that indicates the performance specifications are equivalent or even near industry norms. Nor did Allsteel revise its test procedures to accommodate water-based adhesives. Using production procedures designed for the application of solvent-based adhesives to test water-based adhesives has not been shown to be appropriate. Finally, Allsteel's failure to document that it has conducted a comprehensive adhesive identification and evaluation program is further revealed by Allsteel's apparent failure to evaluate a number of complying adhesives identified in the Allsteel RACT analysis.

B. Add-On Controls

USEPA has determined that 81 percent reduction via add-on control technology is both technically and economically feasible for the top line operation (for emission points 1, 2, 10, 11, 12, and 13) at Allsteel's facility. Incineration of the top line operation emissions constitutes RACT because:

(1) The dollars/ton of control using incineration is within the range of values represented in the CTGs that are most appropriate for comparison with Allsteel's adhesive operations.

(2) The dollars/ton of control is within the range of values cited in the economic impact study for IPCB's generic rule.

(3) Incineration of gas streams with emission characteristics similar to those at Allsteel has been documented in CTGs and in actual use.

USEPA rejects Allsteel's claims that incinerator installation is technically infeasible for its top line operation. USEPA has determined that exterior installation is feasible for the top line operation when controlling emissions (from emission points 1, 2, 10, 11, 12, and 13) in a single incinerator.

Finally, USEPA agrees with Allsteel that add-on controls do not represent RACT for its chair packaging operation.

Therefore, USEPA is proposing that Allsteel's adhesive operations be subject to the 3.5 lbs/gal or 81 percent control requirement in 40 CFR 52.741(u), which covers miscellaneous fabricated product manufacturing processes.

Compliance with 40 CFR 52.741(u) is required one year from the date this action becomes final.

IV. SIP Revision Proposed by Illinois for Allsteel

On April 11, 1989, Illinois submitted a proposed revision to the Illinois SIP. This revision consists of an adjusted RACT Standard for Allsteel, docketed as AS–88–3 by the IPCB.

On February 23, 1989, the IPCB adopted a Final Opinion and Order for this proceeding. This IPCB Order prohibits Allsteel from using adhesives which exceed 5.20 pounds per gallon (lb/gal) of VOM for adhesives which are applied as a spray and 5.55 lb/gal of VOM for adhesives which are applied by rollcoating.

USEPA is proposing to disapprove this SIP revision request because it does not constitute RACT. The reasons are contained in the prior sections of this notice dealing with the reconsideration of Federal Rule 40 CFR 52.741(u), titled "Miscellaneous fabricated product manufacturing processes," as it applies to Allsteel's adhesive application lines.

Public comment is solicited on USEPA's proposed rulemaking actions discussed above. Public comments received by the date shown above will be considered in the development of USEPA's final rule.

Under 5 U.S.C. 605(b), I certify that this action will not have a significant impact on a substantial number of small entities (See 46 FR 8709). No new requirements are imposed and only a single entity is involved, Allsteel, Inc.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 26, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble title 40, part 52, of the Code of Federal Regulations is proposed to be amended as follows.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.741 is amended by revising paragraphs (u)(3), (u)(4), (z) introductory text and (z)(1) to read as follows:

§ 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry and Will Counties.

* * * * *

(u) * * *

(3) *Control Requirements.* Every owner or operator of an emission source subject to paragraph (u) of this section shall comply with the requirements of paragraph (u)(3)(i), (ii), (iii), or (iv) of this section:

(i) Emission capture and control techniques which achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent; or

(ii) For coating lines, the daily-weighted average VOM content shall not exceed 0.42 kg VOM/l (3.5 lbs VOM/gal) of coating as applied (minus water and any compounds which are specifically exempted from the definition of VOM) during any day. Owners and operators complying with this paragraph are not required to comply with § 215.301 of 35 Ill. Adm. Code 215 (incorporated by reference as specified in 40 CFR 52.742); or

(iii) An alternative control plan which has been approved by the Administrator as a SIP or FIP revision; or

(iv) The control measure specified in the second sentence of this paragraph (that is, (u)(3)(iv)) is only applicable to Allsteel, Incorporated's adhesive top lines at its metal furniture manufacturing operations in Kane County, Illinois. Emission capture and control techniques which achieve an overall reduction in uncontrolled VOM emissions of at least 81 percent from top line emission points 1, 2, 10, 11, 12, and 13.

(4) *Compliance Schedule.* Every owner or operator of an emission source subject to the control requirements of paragraph (u) of this section shall comply with the requirements of paragraph (u) of this section on and after July 1, 1991, unless an alternative compliance schedule is specified. Compliance with 40 CFR 52.741(u)(3) is required one year from the date of final action on reconsideration for Allsteel, Incorporated's adhesive lines at its metal furniture manufacturing operations in Kane County, Illinois.

* * * * *

(z) *Rules Stayed.* Not withstanding any other provision of this subpart, the effectiveness of the following rules is stayed as indicated below.

(1) The following rules are stayed from July 1, 1991, until USEPA completes its reconsideration as indicated: (i) 40 CFR 52.741(e)(1)(i)(M) (2), and (3), and 40 CFR 52.741(e)(5); (ii) 40 CFR 52.741 (u) and (v), including 40 CFR 52.741 (u)(4) and (v)(4) only as applied to Viskase Corporation's cellulose food casing manufacturing facility in Bedford Park, Illinois; and (iii) 40 CFR 52.741(u), including 40 CFR 52.741(u)(4), only as applied to Allsteel, Incorporated's adhesive lines at its metal furniture manufacturing operations in Kane County, Illinois. When USEPA concludes its reconsideration, it will publish its decision and any actions required to effectuate that decision in the **Federal Register**.

* * * * *

[FR Doc. 93–13940 Filed 6–17–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 55

[FRL–4667–7]

Outer Continental Shelf Air Regulations

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of proposed rulemaking ("NPR"); consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act ("the Act"), the Clean Air Act Amendments of 1990. The portion of the OCS air regulation that is being updated pertains to the requirements for OCS sources for which the San Luis Obispo County Air Pollution Control District (San Luis Obispo County APCD), the Santa Barbara County Air

Pollution Control District (Santa Barbara County APCD), and the Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The OCS requirements for the above Districts contained in the Technical Support Document are proposed to be incorporated by reference into the Code of Federal Regulations and listed in an appendix to the OCS air regulation. Proposed changes to the existing requirements are discussed below.

DATES: Comments on the proposed update must be received on or before July 19, 1993.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (A–5), Attn: Docket No. A–93–16, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105. Docket: Supporting information used in developing the proposed notice and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16. This docket is available for public inspection and copying Monday–Friday during regular business hours at the following locations:

EPA Air Docket (A–5), Attn: Docket No. A–93–16, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, room M–1500.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air and Toxics Division (A–5–3), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur: (1) At least annually; (2) upon receipt of a Notice of Intent (NOI) under § 55.4; and (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This NPR is being promulgated in response to the submittal of rules by three local air pollution control agencies. Public comments received in writing within 30 days of publication of this notice will be considered by EPA before promulgation of the final updated rule. EPA may choose in the future, however, to promulgate updates using direct-final rulemaking, to speed up the incorporation of state and local agency regulations into 40 CFR part 55.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

EPA Evaluation and Proposed Action

In updating 40 CFR part 55, EPA reviewed the state and local rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules.[2]

After review of the rules submitted by San Luis Obispo County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which San Luis Obispo County APCD is designated as the COA. None of the existing OCS requirements were deleted. Included is a revision to a rule that already applies to OCS sources and a rule submitted by the District to be added:

Rule 302 Schedule of Fees (Adopted 09/15/92)
Rule 417 Control of Fugitive Emissions of Volatile Organic Compounds (Adopted 02/09/93)

After review of the rules submitted by Santa Barbara County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule applicable to OCS sources for which Santa Barbara County APCD is designated as the COA. None of the existing OCS requirements were deleted. The following rule was submitted by the District to be added:

Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 11/13/90)

After review of the rules submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which Ventura County APCD is designated as the COA. None of the existing OCS requirements were deleted. Included are revisions to rules that already apply to OCS sources and rules submitted by the District to be added:

Rule 2 Definitions (Adopted 12/15/92)
Rule 24 Source Recordkeeping, Reporting and Emission Statements (Adopted 9/15/92) (completely revised and renamed)
Rule 42 Permit Fees (Adopted 12/22/92)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 11/17/92)
Rule 74.2 Architectural Coatings (Adopted 8/11/92)

The following rules were submitted by Ventura County APCD, but are not proposed for inclusion in the above

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations

[2] Upon delegation the onshore area will use its administrative and procedural rules as onshore. In those instances where EPA does not delegate authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

document because they are administrative and procedural:

Rule 26.5 New Source Review—Community Bank (Adopted 12/22/92)
Rule 26.7 New Source Review—Notification (Adopted 12/22/92
Rule 72.1 OCS Air Regulations (Adopted 12/22/92)

Administrative Requirements

A. Executive Order 12291 (Regulatory Impact Analysis)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Small entities include small businesses, organizations, and governmental jurisdictions.

As was stated in the final regulation, the OCS rule does not apply to any small entities, and in the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final OCS rulemaking dated September 4, 1992 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0249. This consistency update does not add any further requirements.

List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 10, 1993.
David P. Howekamp,
Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 et seq.) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii)(E), (e)(3)(ii)(F), and (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *
(3) * * *
(ii) * * *

(E) *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources.*

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

4. Appendix A to part 55 is proposed to be amended by revising paragraphs (b)(5), (b)(6), and (b)(8) under the heading, "California" to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) * * *

(5) The following requirements are contained in *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 103 Conflicts Between District, State and Federal Rules (Adopted 8/6/76)
Rule 104 Action in Areas of High Concentration (Adopted 7/5/77)
Rule 105 Definitions (Adopted 11/5/91)
Rule 106 Standard Conditions (Adopted 8/6/76)
Rule 108 Severability (Adopted 11/13/84)
Rule 113 Continuous Emissions Monitoring, except F. (Adopted 7/5/77)
Rule 201 Equipment not Requiring a Permit, except A.1.b. (Adopted 11/5/91)
Rule 202 Permits, except A.4. and A.8. (Adopted 11/5/91)
Rule 203 Applications, except B. (Adopted 11/5/91)
Rule 204 Requirements, except B.2. and C. (Adopted 11/5/91)
Rule 209 Provision for Sampling and Testing Facilities (Adopted 11/5/91)
Rule 210 Periodic Inspection, Testing and Renewal of Permits to Operate (Adopted 11/5/91)
Rule 213 Calculations, except E.4. and F. (Adopted 11/5/91)
Rule 302 Schedule of Fees (Adopted 9/15/92)
Rule 305 Fees for Acid Deposition Research (Adopted 7/18/89)
Rule 401 Visible Emissions (Adopted 8/6/76)
Rule 403 Particulate Matter Emissions (Adopted 8/6/76)
Rule 404 Sulfur Compounds Emission Standards, Limitations and Prohibitions (Adopted 12/6/76)
Rule 405 Nitrogen Oxides Emission Standards, Limitations and Prohibitions (Adopted 11/13/84)
Rule 406 Carbon Monoxide Emission Standards, Limitations and Prohibitions (Adopted 11/14/84)
Rule 407 Organic Material Emission Standards, Limitations and Prohibitions (Adopted 1/10/89)
Rule 411 Surface Coating of Metal Parts and Products (Adopted 1/10/89)
Rule 416 Degreasing Operations (Adopted 6/18/79)
Rule 417 Control of Fugitive Emissions of Volatile Organic Compounds (Adopted 2/9/93)
Rule 422 Refinery Process Turnarounds (Adopted 6/18/79)
Rule 501 General Burning Provisions (Adopted 1/10/89)
Rule 503 Incinerator Burning, except B.1.a. (Adopted 2/7/89)
Rule 601 New Source Performance Standards (Adopted 9/4/90)

(6) The following requirements are contained in Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:

Rule 102 Definitions (Adopted 7/30/91)
Rule 103 Severability (Adopted 10/23/78)
Rule 201 Permits Required (Adopted 7/2/79)
Rule 202 Exemptions to Rule 201 (Adopted 3/10/92)
Rule 203 Transfer (Adopted 10/23/78)
Rule 204 Applications (Adopted 10/23/78)
Rule 205 Standards for Granting Applications (Adopted 7/30/91)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 5/7/91)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306 Dust and fumes–Northern Zone (Adopted 10/23/78)

Rule 307 Particulate Matter Emission Weight Rate–Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems–Southern Zone (Adopted 10/23/78)
Rule 321 Control of Degreasing Operations (Adopted 7/10/90)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 7/20/90)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Storage of Petroleum and Petroleum Products (Adopted 12/10/91)
Rule 326 Effluent Oil Water Separators (Adopted 10/23/78)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 11/13/90)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems. Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (12/10/91)
Rule 342 Control of Oxides of Nitrogen (NO_x from Boilers, Steam Generators and Process Heaters) (03/10/92)
Rule 505 Breakdown Conditions Sections A.,B.1,. and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)

* * * * *

(8) The following requirements are contained in Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:

Rule 2 Definitions (Adopted 12/15/92)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 7/5/83)
Rule 11 Application Contents (Adopted 6/15/78)
Rule 12 Statement by Application Preparer (Adopted 6/16/87)
Rule 13. Statement by Applicant (Adopted 11/21/78)
Rule 14 Trial Test Runs (Adopted 5/23/72)
Rule 15 Permit Issuances (Adopted 7/5/83)
Rule 16 Permit Contents (Adopted 12/2/80)
Rule 18 Permit to Operate Application (Adopted 8/17/76)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 21 Expiration of Applications and Permits (Adopted 6/23/81)
Rule 23 Exemptions from Permits (Adopted 1/8/91)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 09/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 10/22/91)
Rule 26.2 New Source Review—Requirements (Adopted 10/22/91)
Rule 26.3 New Source Review—Exemptions (Adopted 10/22/91)
Rule 26.6 New Source Review—Calculations (Adopted 10/22/91)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 10/22/91)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Appendix II—A Information Required for Applications to the Air Pollution Control District
Appendix II—B Best Available Control Technology (BACT) Tables
Rule 42 Permit Fees (Adopted 12/22/92)
Rule 44 Exemption Evaluation Fee (Adopted 1/8/91)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 7/5/83)
Rule 56 Open Fires (Adopted 5/24/88)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 7/5/83)
Rule 66 Organic Solvents (Adopted 11/24/87)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 9/11/90)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/16/92)
Rule 72 New Source Performance Standards (NSPS) (Adopted 6/19/90)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 11/17/92)
Rule 74.2 Architectural Coatings (Adopted 08/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)
Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 9/5/89)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
Rule 74.11 Natural Gas-Fired Residential Water Heaters—Control of NO_x (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 5/16/89)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 3/28/89)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 75 Circumvention (Adopted 11/27/78)
Appendix IV—A Soap Bubble Tests
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Stack Monitoring (Adopted 6/4/91)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)

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[FR Doc. 93–14314 Filed 6–17–93; 8:45 am]

BILLING CODE [illegible]-50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 207

[FRA Docket No. RPO–1; Notice No. 1]

RIN 2130–AA69

Railroad Police Officers

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA proposes to implement section 1704 of the Crime Control Act of 1990. Section 1704 authorizes a railroad employee who is commissioned as a railroad police officer by any state to enforce, in accordance with DOT regulations, the laws of any state in which the railroad police officer's employer owns property for the purpose of protecting railroad property, personnel, passengers, and cargo.

DATES: Written comments must be received no later than July 30, 1993. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Persons who want to be notified that FRA has received their written comments should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will write or type the date the comment was received on the postcard and return the card to the addressee. Written comments will be available for examination during regular business hours in room 8201 of the Nassif Building.

FOR FURTHER INFORMATION CONTACT: Gareth W. Rosenau, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (202–366–9416).

SUPPLEMENTARY INFORMATION:

I. Background

Since 1855, railroads have employed railroad police officers to protect railroad property, personnel, passengers, and cargo. Today, there are approximately 3,000 railroad police officers throughout the United States, the majority of whom are commissioned by a state to perform the duties of a peace officer. Each state has its own set of rules governing railroad police officer conduct. Currently, railroad police officers may not enforce the laws of any state where they are not commissioned.

Railroad police officers provide protection against vandalism, trespassing, railroad property and cargo theft, sabotage, terrorism, and burglaries of company property. They also respond to emergencies involving fires, derailments, and railroad accidents and incidents. They are armed and authorized to make apprehensions and arrests. Their power to enforce laws is generally limited to the perimeters of the employing railroad's property. However, some states allow railroad police officers to pursue suspects off railroad property after witnessing a crime on railroad property.

Railroad police officers sometimes travel with cargo from the place of origin to final destination, even if this involves accompanying a train into states where the officers are not commissioned. A railroad generally has commissioned railroad police officers in each state where it conducts business and owns property; however, these commissioned railroad police officers may at times be unavailable when an accident or incident occurs. Under these circumstances, railroad police officers who are not commissioned in that state must resort to a citizen's arrest or wait until a commissioned railroad police officer or a state police officer arrives. Property damage or personal injuries may occur during the interim.

On October 27, 1990, Congress addressed these concerns by enacting section 1704 of the Crime Control Act of 1990, Public Law 101–647 (45 U.S.C. 446) which provides:

A railroad police officer who is employed by a rail carrier and certified or commissioned as a police officer under the laws of any State shall, in accordance with regulations issued by the Secretary of Transportation, be authorized to enforce the laws of any jurisdiction in which the rail carrier owns property, for the purpose of protecting——

(1) the employees, passengers, or patrons of the rail carrier;

(2) the property, equipment, and facilities owned, leased, operated, or maintained by the rail carrier;

(3) property moving in interstate or foreign commerce in the possession of the rail carrier; and

(4) personnel, equipment, and materials moving via railroad that are vital to the national defense, to the extent of the authority of a police officer properly certified or commissioned under the laws of that jurisdiction.

In response, the Secretary has delegated authority to the Federal Railroad Administrator to promulgate appropriate regulations.

Because the powers of police officers may vary somewhat from state to state, there may exist a need for a railroad police officer to receive training in the laws of each state where he is authorized to operate. FRA invites comments on officer training, particularly on whether this rule should address means for assuring appropriate officer knowledge through state-to-state agreements or other means of setting training standards acceptable to the coordinating states. FRA notes that training requirements tantamount to a state's full commissioning process would appear to frustrate Congress' intent, *i.e.*, that railroad police officers not have to be commissioned in each state in which they work.

The extent of authority granted to railroad police officers also varies from state to state. Some states limit their jurisdiction to railroad property; other states have no such restrictions. Because FRA seeks to ensure some uniformity of authority among the states, this proposed rule limits the jurisdiction of a railroad police officer to property owned by the officer's employing railroad, except in those states where officers are allowed to operate off railroad property in cases of hot pursuit. FRA invites comment on whether these proposed regulations should pre-empt any other state limitations on authority or whether they should include other conditions on railroad police officers' authority.

II. Regulatory Impact

These proposed regulations have been evaluated in accordance with existing regulatory policies and are considered to be non-major under Executive Order 12291. The proposed rules are considered significant under section 5(a)(2)(f) of DOT's Regulatory Policies and Procedures ("the Procedures")(44 FR 11034; February 26, 1979) because they implement a substantial regulatory program or change in policy.

In accordance with section 10(a) of the Procedures, FRA has determined that a draft Regulatory Analysis is not required because the proposed regulations do not meet any of the criteria mandating the preparation of such an analysis. In accordance with section 10(e), FRA has prepared a draft Regulatory Evaluation which includes a brief analysis of the economic consequences of the proposed regulation and analysis of its anticipated benefits and impacts. Copies of the evaluation are contained in the docket for this proceeding.

Regulatory Flexibility Act

FRA certifies that this rule will not have a significant impact on a substantial number of small entities. There are no substantial economic impacts for small units of government, businesses, or other organizations. FRA specifically requests comments on the impact of this rule on small entities.

Paperwork Reduction Act

This notice of proposed rulemaking contains information collection requirements. These requirements are being submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

FRA has endeavored to keep the burden associated with this rule as simple and minimal as possible. The only section that contains information collection requirements is section 207.4, which requires notice to state officials of each railroad police officer commission. The estimated time to fulfill the requirement is 15 minutes for each officer. This estimate includes time for reviewing instructions, searching existing data sources, gathering or maintaining data needed, and completing and reviewing the collection of information.

Environmental Impact

As required by the National Environmental Policy Act and related directives, FRA has evaluated this proposed regulation in accordance with FRA procedures for ensuring full consideration of the potential environmental impacts of FRA's actions. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

FRA certifies that this action has been analyzed in accordance with the principles, criteria and requirements contained in Executive Order 12612 and accords with the policies set forth therein. This rulemaking implements a general statutory mandate from Congress that provides the Secretary, acting through FRA, some discretion in formulating the statute's implementing regulations. Therefore, in accordance with Executive Order 12612, FRA has prepared a Federalism Assessment, which includes a brief analysis of the consequences of the proposed regulation upon the states' perogatives in commissioning railroad police officers. Copies of the evaluation are contained in the docket for this proceeding.

List of Subjects in 49 CFR Part 207

Investigations, Penalties, Railroad safety, Railroads.

III. The Proposed Rule

In consideration of the foregoing, FRA proposes to amend title 49 of the Code of Federal Regulations by adding new part 207 to read as follows:

PART 207—RAILROAD POLICE OFFICERS

Sec.
207.1 Application
207.2 Definitions
207.3 Designation and Commissioning
207.4 Notice to State Officials
207.5 Authority in States Where Officer Not Commissioned

Authority: 49 U.S.C. § 322; Section 1704 of Pub. L. 101–647; 49 CFR § 1.49(ff).

§ 207.1 Application.

This part applies to all railroads.

§ 207.2 Definitions.

As used in this part:

(a) *Railroad police officer* means a peace officer who is employed by a railroad and commissioned in his or her state of legal residence or state of primary employment to enforce state laws for the protection of railroad property, personnel, passengers, and/or cargo.

(b) *Commissioned* means that a state official has certified, commissioned, or otherwise designated a railroad employee as qualified under the licensing requirements of that state to act as a railroad police officer in that state.

(c) *Property* means rights-of-way, easements, appurtenant property, equipment, cargo, facilities, and buildings and other structures owned, leased, operated, maintained, or transported by a railroad.

§ 207.3 Designation and commissioning.

(a) A railroad may designate employees to be commissioned by a state authority as railroad police officers to serve in the states in which the railroad owns property.

(b) The designated railroad police officer shall be commissioned by the railroad police officer's state of legal residence or the railroad police officer's state of primary employment.

§ 207.4 Notice to state officials.

(a) After the designated railroad police officer is commissioned by a state or states, the railroad shall send written notice to appropriate officials of every other state in which the railroad police officer shall protect the railroad's property, personnel, passengers, and cargo. The notice of commission shall contain the following information:

(1) The name of the railroad police officer;

(2) The badge number, identification number, rank, code, or other identifying information assigned to the railroad police officer;

(3) The date of commission;

(4) The state or states where the railroad police officer is commissioned;

(5) The date the railroad police officer received training or retraining regarding the laws of such state or states;

(6) The name of the railroad official who designated the employee as a railroad police officer; and

(7) Color photographs of the types of badges, identification cards, and other identifying materials the railroad uses to identify its railroad police officers.

(b) The railroad shall keep copies of all such notices at a central location.

§ 207.5 Authority in states where officer not commissioned.

(a) A railroad police officer who is designated by a railroad and commissioned under the laws of any state is authorized to enforce the laws (as specified in paragraph (b) of this section) of any state in which the railroad owns property and to which the railroad has provided notice in accordance with § 207.4 of this part.

(b) Under the authority of paragraph (a) of this section, a railroad police officer may enforce only relevant laws for the protection of—

(1) The railroad's employees, passengers, or patrons;

(2) The railroad's property or property entrusted to the railroad for transportation purposes;

(3) The intrastate, interstate, or foreign movement of cargo in the railroad's possession or in possession of another railroad or non-rail carrier while on the railroad property; and

(4) The railroad movement of personnel, equipment, and materials vital to the national defense.

(c) The authority exercised under this section in any state by a commissioned railroad police officer shall be the same as that of a police officer or peace officer commissioned under the laws of that state.

(d) The commissioned railroad police officer's law enforcement powers shall apply only on railroad property, except that an officer may pursue off railroad property a person suspected of violating the law on railroad property, if permissible under state law.

Issued in Washington, DC, on June 10, 1993.

S. Mark Lindsey,

Acting Federal Railroad Administrator.

[FR Doc. 93–14254 Filed 6–17–93; 8:45 am]

BILLING CODE 4910–06–P

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49 CFR Part 209

[Docket No. RSEP–7, Notice No. 1]

RIN 2130–AA86

Remedial Actions Reporting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Pursuant to section 3 of the Rail Safety Enforcement and Review Act, FRA proposes a rule to require that any responsible company that is notified by this agency both that assessment of a civil penalty will be recommended against that company for a failure to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted, shall report to FRA, within 30 days after the end of the month in which such notification is received, actions taken to remedy that failure. The proposed rule also provides, pursuant to section 3, that if appropriate required remedial actions cannot be taken by a responsible company within such 30-day period, such company shall submit to FRA a written explanation of the reasons for any delay and a final report upon completion of the remedial actions. Interested parties are invited to submit comments for inclusion in the docket of this rulemaking.

DATES: (1) *Written comments:* Written comments must be received on or before October 29, 1993. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) *Public hearing:* A public hearing will be held at 10 a.m. on October 19, 1993. Anyone who desires to make an oral statement at the hearing must notify the Docket Clerk by telephone or mail on or before October 15, 1993, and must submit three copies of the oral statement that he or she intends to make at the hearing by October 15, 1993.

ADDRESSES: (1) *Written comments:* Written comments should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., room 8201, Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for written comments, during regular business hours in room 8201 of the Nassif Building at the above address.

(2) *Public hearing:* The public hearing noted above will be held in Room 2230 of the Nassif Building at the same street address. Persons desiring to make oral statements at the hearing should notify the Docket Clerk by telephone (202–366–0635) or by writing to: Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., room 8201, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Edward R. English, Director, Office of Safety Enforcement, FRA, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone number: 202–366–9252), or David H. Kasminoff, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590 (telephone number: 202–366–0635).

SUPPLEMENTARY INFORMATION:

Background

FRA's primary function is to promote safety within the railroad industry. In order to protect railroad employees, travelers, and the public at large, FRA must have a complete and accurate picture of the safety situation within the industry. FRA's safety mission can only be effective if its regulatory activities and limited resources are focused on real problems; thus, comprehensive and correct safety data is the cornerstone of an effective and efficient rail safety program. To build that data base, various FRA rail safety regulations already require that reports be filed with the agency, some on a periodic basis, and others upon the occurrence of a specified event.

In a study released on July 31, 1990 (GAO/RCED–90–194), the General Accounting Office (GAO) concluded that FRA had no assurance that railroads are correcting problems identified in FRA's routine inspections because there were no requirements that railroads respond in writing to indicate that an identified defect had been repaired. The GAO report acknowledged that, even in the absence of requirements to report corrective actions, railroads voluntarily respond in writing to FRA concerning most track and signal defects indicating that corrective actions have been taken. For example, in 1986 through 1988 FRA identified about 361,000 track defects, for which approximately 320,000, or 89 percent, had recorded a railroad response in the "Action" and "Date" columns of the railroad's copy of the Track Inspection Report. In the same period, FRA identified about 35,000 signal defects for which approximately 30,000, or 86 percent, had recorded a railroad response in the "Action" and "Date" columns of the railroad's copy of the Signal and Train Control Inspection Report. The GAO report further noted that, although some railroads also report corrective actions for equipment and operating practices defects, FRA maintains no record of these written responses and that FRA does not perform reinspections in every case to verify the correction of a safety defect. GAO recommended that FRA establish an effective follow-up program that would include (i) requiring railroads to report actions taken on FRA inspection findings, (ii) determining what reinspection levels are needed to ensure that railroads are responding to inspection findings, and (iii) assessing civil penalties for failure to report corrective actions.

On September 3, 1992, the President signed into law the Rail Safety Enforcement and Review Act (the Act), Public Law 102–365, 106 Stat. 972, which mandates certain rulemaking activities. In particular, section 3 of the Act provides as follows:

> (a) Regulations.—The Secretary of Transportation (hereafter in this Act referred to as the "Secretary") shall issue regulations to require that any railroad notified by the Secretary that assessment of a civil penalty will be recommended for a failure to comply with a provision of the Federal railroad safety laws, as such term is defined in section 212(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 441(e)), or any rule, regulation, order, or standard issued under such provision, shall report to the Secretary, within 30 days after the end of the month in which such notification is received, actions taken to remedy that failure.
>
> (b) Explanation of Delay.—Regulations issued under subsection (a) shall provide that, if appropriate remedial actions cannot be taken by a railroad within such 30-day period, such railroad shall submit to the Secretary an explanation of the reasons for any delay.
>
> (c) Schedule for Regulations.—The Secretary shall—(1) within 9 months after the date of enactment of this Act, issue a notice of proposed rulemaking for regulations to implement this section; and (2) within 2 years after the date of enactment of this Act,

issue final regulations to implement this section.

45 U.S.C. 437 note, Public Law No. 102–365, section 3, 106 Stat. 972. The Secretary has delegated these rulemaking responsibilities to the Federal Railroad Administrator. 49 CFR 1.49 (m).

As defined in section 212(e) of the Federal Railroad Safety Act of 1970 (the Safety Act), the term "Federal railroad safety laws" means the Safety Act (45 U.S.C. 421, 431 *et seq.*), "[t]he Hazardous Materials Transportation Act (49 App. U.S.C. 1801 *et seq.*), and those laws transferred to the jurisdiction of the Secretary of Transportation by subsection (e)(1), (2), and (6)(A) of section 6 of the Department of Transportation Act (49 App. U.S.C. 1655(e)(1), (2), and (6)(A))." 45 U.S.C. 441(e). Those laws which were transferred include, but are not limited to, the Safety Appliance Acts (45 U.S.C. 1–16), the Locomotive Inspection Act (45 U.S.C. 22–34), the Accident Reports Act (45 U.S.C. 38–43a), the Hours of Service Act (45 U.S.C. 61–64b), and the Signal Inspection Act (49 App. U.S.C. 26).

Although section 3 of the Act mandates issuance of rules requiring remedial actions reports only from railroads, the proposed rule expands the applicability of these regulations to include any "responsible company" (*i.e.*, a person other than an individual) that is notified both that assessment of a civil penalty will be recommended against that company and that a remedial actions report must be submitted. FRA's authority to expand the applicability of the proposed rule to include this larger group of entities derives from our rulemaking authority under section 202 of the Safety Act, in furtherance of our enforcement authority under the Hazardous Materials Transportation Act. See 49 CFR 1.49(m) and (s). As defined in the proposed § 209.3, "person" encompasses the definition of that word in both the Safety Act and the Hazardous Materials Transportation Act. The types of entities listed are illustrations, and the term is to be given its broadest meaning.

For purposes of the proposed Subpart E on remedial actions reporting, a "responsible company" informed both that assessment of a civil penalty will be recommended against that company and that preparation of a remedial actions report is required must submit such a report. Of course, FRA performs its safety inspections in order to monitor and enforce compliance with the Federal railroad safety laws by all entities subject to its jurisdiction. The entities themselves still retain ultimate responsibility for detecting, repairing, and avoiding violations of those laws. Nevertheless, the reporting requirement will assist FRA in monitoring followup actions by responsible companies with respect to conditions sufficiently serious to warrant possible future civil penalty actions. Moreover, the proposed rule permits FRA to develop more comprehensive safety data, better utilize its limited resources, and consistently treat all similarly situated violators of the Federal railroad safety laws, since it allows FRA to receive required reports of remedial actions taken to remedy failures to comply with Federal railroad safety laws from all entities informed that assessment of a civil penalty will be recommended, not just from railroads.

By expanding the applicability of the proposed rule, while at the same time limiting the applicability of these regulations to persons other than individuals, FRA's primary focus is to ensure that remedial actions reports are submitted by all entities with both the legal responsibility to submit the required reports, and with the ability to implement procedures by which employees properly prepare the reports on behalf of the entities. However, as the penalty provision in § 209.409 makes clear, any individual who willfully thwarts the reporting provisions of the proposed rule would be held individually liable for the violation. For example, a railroad receives written notification from FRA that a recommendation for the assessment of a civil penalty is being made pursuant to 49 CFR 213.109 for the failure of a 39-foot segment of track to have a sufficient number of crossties which in combination will hold gage within the limits prescribed in § 213.53(b), and instructs one of its employees to make all necessary repairs and prepare the remedial actions report. If the employee fails to make the repairs but willfully submits a report to FRA indicating that the repairs were made, thereby causing the railroad employer to submit a false report, the individual employee could be subject to individual liability for causing a violation of a requirement of the proposed subpart E.

Accordingly, if an FRA inspector, state inspector participating in investigative and surveillance activities under 49 CFR part 212, or other duly authorized official performing a safety inspection (hereinafter referred to collectively as "safety inspector") determines that a violation has occurred and decides to recommend the assessment of a civil penalty against any responsible company for a failure to comply with a provision of the Federal railroad safety laws, the inspector will first prepare an inspection report. Although the title of the inspection report will vary by safety discipline (*e.g.*, Track Inspection Report), all of the inspection reports provide essentially the same basic information to the subject responsible company. The inspection report identifies the name of the safety inspector, his or her identification number, the report number, the region where the inspector is based, the name and title of the representative of the responsible company served with the report, the responsible company's name and computer code (if any), the railroad division and subdivision (if applicable), and the inspection report date. Further, the inspection report also indicates if a "violation report" is being filed by the inspector. A violation report includes a recommendation for the assessment of a civil penalty.

Even if the inspector recommends the assessment of a civil penalty, which requires the submission to FRA's Office of Chief Counsel of a factual summary called a violation report, the current system does not require any person, including a shipper or railroad, to notify FRA of any actions taken to remedy the failure noted on the violation report. This information is often not provided until settlement negotiations are held with the Office of Chief Counsel.

The central requirement of the proposed rule is that any responsible company receiving notification on the current version of the inspection report (*e.g.*, the word "yes" is circled in the box stating "violation report filed") (i) that the safety inspector is recommending the assessment of a civil penalty for a failure by that company to comply with a provision of the Federal railroad safety laws and (ii) that a report of remedial actions must be filed, shall fill out the form specified by this rule and then return the form to the safety inspector designated on the form within 30 days after the end of the month in which such notification is received. The remedial actions report must include the name and job title of the individual completing the form on behalf of the responsible company and indicate the date(s) on which the remedial actions occurred. A copy of the proposed standard form on which to report to FRA remedial actions taken is appended to this NPRM.

Under the terms of the proposed rule, the duty to submit a remedial actions report does not arise merely upon notification that a recommendation for the assessment of a civil penalty will be made, but only if notification is also provided to the responsible company

that a remedial actions report for that specific failure must be submitted. Broadly construed, under one permissible interpretation of the reporting requirement of section 3 of the Act, the requirement could apply to all violations for which the assessment of a civil penalty is recommended. This would, of course, include all violations involving physical defects (*e.g.*, in track, equipment, and signals), where absent remedial actions, the physical defect continues to pose a safety hazard, *e.g.*, a defective wheel on a freight car. However, this would also include violations involving a defect in human performance, such as permitting a locomotive engineer to work in excess of 12 hours in violation of the Hours of Service Act. In that instance, the excess service creates a risk during the period of the excess service itself but does not carry a continuing threat to safety.

FRA believes that the intent of Congress in enacting section 3 of the Act was to require the reporting of remedial actions only for a failure to comply that could literally and specifically be corrected. Accordingly, under the terms of the proposed rule, FRA is interested in determining if responsible companies notified of specific violations that could still pose an ongoing risk to rail safety if not corrected (*e.g.*, operation of a freight car received in interchange in revenue service with a defective wheel) and/or can in fact be corrected, are in fact initiating prompt actions to minimize and correct these safety problems. For violations involving completed or past transactions that can no longer be remedied (*e.g.*, the particular defect in performance discussed above, or offering a freight car in interchange with a defective wheel that FRA identified to the receiving railroad as requiring repair), FRA would already expect the responsible company against whom a civil penalty is recommended to reassess its own overall policy and attitude toward future compliance, such as by reallocating its resources or providing additional employee training. In all these situations, of course, a civil penalty has already been recommended as an incentive toward such generally responsive actions. In this regard, to require a responsible company to inform FRA of remedial actions taken in response to a particular violation that can no longer be remedied by that company would be superfluous.

In light of FRA's interpretation of section 3 of the Act and in an effort to develop meaningful compliance data, the proposed rule applies the remedial actions regulations to only three general categories of failures to comply with a provision of the Federal railroad safety laws for which the assessment of a civil penalty is recommended. The three general categories consist of physical defects, recordkeeping and reporting violations, and filing violations.

Since a responsible company's duty to submit a remedial actions report does not arise unless specific notification to this effect is provided by FRA on the inspection report, the determination of whether or not a particular failure recommended for the assessment of a civil penalty falls under one of the above three general categories, and thus triggers the reporting requirement, clearly rests with FRA. The proposed rule neither compels nor permits any affected responsible company to decide for itself whether a particular recommendation to FRA for the assessment of a civil penalty results in the need to submit a remedial actions report. Consider, for example, a situation in which a railroad is informed that because of its operation of a locomotive with a plain bearing box having no visible free oil, in violation of 49 CFR 229.64, a recommendation will be made for the assessment of a civil penalty. However, the safety inspector neglects to include the requisite notification on the inspection report that submission of a remedial actions report is required. Although the inspector's omission would not affect the railroad's underlying obligation to pay any civil penalty assessed for the substantive locomotive violation, FRA's failure to provide the required notification would, under this proposed rule, mean that the railroad had no duty to file a remedial actions report regarding the substantive violation.

One permissible reading of the statute is that remedial actions reports are required for all categories of violations. Although FRA's reading of the statute is not so expansive, FRA encourages interested parties to submit their views on FRA's interpretation of section 3 of the Act, and specifically on whether the final rule should require responsible companies to submit remedial actions reports for all categories of failures to comply with a provision of the Federal railroad safety laws for which the assessment of a civil penalty is recommended, rather than for just the three general categories discussed above. Although a responsible company might only be able to indicate either that no action was possible or that general measures were taken to prevent violations similar to those involved in completed or past transactions, the information might assist FRA in allocating its scarce resources with respect to future inspection and enforcement activity. Any commenter that believes that such expansive reporting is required by the statute or inherently useful should recommend specific ways that such generally responsive actions could usefully be reported. FRA specifically leaves open the option of taking this more expansive approach in its final rule.

As set forth on the proposed standard form, each responsible company required to prepare a remedial actions report will first select the appropriate category code corresponding to the actions taken to remedy its failure to comply with the Federal Railroad safety laws and then write a brief description of these actions in column (c). The form is intended to include all of the typical types of remedial responses possible under each of the three general categories of failures for which a remedial actions report must be submitted. However, in the rare instance where no category code on the form properly corresponds to the specific remedial actions taken by the person required to submit a remedial actions report, the person must then check the box for the category code on the form marked "other" and instead just write the short narrative response.

For example, in the case of a violation of the Freight Car Safety Standards involving a broken plain bearing box lid, remedial actions might include (i) moving the car to a repair shop for either replacement or repair of the lid or (ii) scrapping the car. See 49 CFR 215.107. For a violation of the Track Safety Standards involving an insufficient number of nondefective crossties, remedial actions might include placing a slow order on the track segment, repairing the track segment, or taking the track segment out of service. See 49 CFR 213.5 and 213.109(c)(1). Further, for a violation of the Hazardous Materials Regulations involving a shipper of hazardous materials by rail who offers a tank car for transportation without placards, examples of remedial actions taken could include placarding the tank car itself or verifying that the railroad properly corrected the placarding problem. See 49 CFR 172.508(a). For all three examples of physical defects, the responsible company informed that a remedial actions report must be submitted would select the category code on the report form best describing the remedial actions taken, include a short narrative response, and return the report form to FRA.

To take an example from the accident/incident reporting regulations, if a railroad fails to submit to FRA a monthly report of railroad accidents/

incidents within 30 days after the expiration of the month during which the accidents/incidents occurred, an example of remedial action would be to file a late report with FRA for the relevant month. See 49 CFR 225.11 and 225.13. Or if, under the Railroad Operating Rules, a newly operating railroad fails to file with the Federal Railroad Administrator one copy of its code of operating rules, timetables, and timetable instructions, an example of remedial action would be to file the copy of the relevant documents as soon as possible after receiving the notification. See 49 CFR 217.7. For these examples of reporting and filing defects, respectively, each responsible company informed that a remedial actions report must be submitted would select the category code on the report form best describing the remedial actions taken, include a short narrative response, and return the report form to FRA.

Upon receipt of the remedial actions report, the safety inspector will first determine if the remedial actions taken were proper and adequate under the circumstances of the violation, and will contact the representative of the responsible company who filled out the report form for additional information if necessary. If the remedial actions report is sufficient, the inspector will submit a copy of this report to FRA's Office of Chief Counsel, which may make use of it during the penalty assessment and negotiation process. FRA's Office of Safety will then correlate the series of data entry codes representing the generic categories of remedial actions that responsible companies affected by the reporting requirement have undertaken. This computerized data will assist FRA in systematically targeting inspections by integrating available accident and injury data with inspection and compliance data, so as to better determine if affected responsible companies are minimizing and correcting safety problems. After reviewing the proposed standard form included in the appendix on which to report to FRA remedial actions taken, commenters are invited to submit additional examples of remedial actions category codes appropriate for each type of violation, such as motive power and equipment, track, signal, and operating practices, for inclusion in the final rule for each of the three general categories of failures. Commenters are also invited to submit examples of remedial actions category codes appropriate for violations involving completed or past transactions for which either no actions are now possible or for which only preventive measures may be taken.

Under certain unusual circumstances, a responsible company may be notified that assessment of a civil penalty will be recommended for a failure of that company to comply with a provision of the Federal railroad safety laws unless the company undertakes a specific programmatic response to the compliance problem. In such cases, although penalty action may be contingent, since it has been recommended submission of a remedial actions report would be required. Further, there are instances where a recommendation for the assessment of a civil penalty may be made, but later rejected by FRA's Office of Chief Counsel for procedural or evidentiary reasons. FRA considers the phrase "* * * that has received written notification from FRA that both assessment of a civil penalty will be recommended * * * and that a remedial actions report must be submitted * * *" as the triggering language that requires a responsible company to report its remedial actions to FRA within 30 days after the end of the month in which such notification is received. See 49 CFR 209.405. Accordingly, even if no civil penalty is ultimately assessed or collected by FRA, the proposed rule would still subject the responsible company to a civil penalty if it failed to properly report its remedial actions.

At this time, the proposed rule continues to utilize a different type of inspection report form specific to each discipline, but only one generic remedial actions report form is included, regardless of the rule, regulation, order, or standard involved, for use by all responsible companies required to report their remedial actions. However, during the rulemaking process FRA may also develop a number of specific remedial actions report forms unique to each discipline, either as part of, or as attachments to, the inspection reports themselves. Interested parties are welcome to submit their views on what characteristics the final report forms should ultimately contain. Since it is anticipated that the number of category codes, such as the codes on the proposed standard form appended to this NPRM (including the code for "other remedial actions"), will be sufficient to report remedial actions taken in response to each violation recommended for the assessment of a civil penalty, a responsible company will not be permitted the option of submitting its own version of a reporting form to FRA.

Section-by-Section Analysis

Section 209.3 would be reorganized, the definition of "person" would be revised, and definitions of three important terms employed in the remedial action regulations would be added. The first of the new defined terms is "responsible company." It is defined to mean all categories of entities covered under the revised definition of "person," with the exception of individuals. The remaining two of the new defined terms are "Federal railroad safety laws" and "railroad." The terms are defined as they are in the Federal Railroad Safety Act of 1970, except that for simplicity, "Federal railroad safety laws" is expanded to include rules, regulations, orders, and standards as well as the statutes themselves.

Section 209.401 describes the purpose and scope of the remedial action reporting regulations. The purpose is the adoption of rules to implement section 3 of the Act, to require a responsible company notified by FRA both that assessment of a civil penalty will be recommended for a failure to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted, to report to FRA within 30 days after the end of the month in which such notification is received, actions taken to remedy that failure.

Section 209.403 defines the applicability of these regulations. The regulations expand the number of entities affected by the reporting requirement beyond the single category required by the Act by applying not only to railroads but rather to all responsible companies (*i.e.*, all persons other than individuals) receiving written notification from FRA both that a recommendation for the assessment of a civil penalty is being made and that a remedial actions report must be submitted. The primary impact of this provision is to require hazardous materials shippers over which FRA exercises enforcement authority to report their remedial actions in the same manner as a railroad would have to do. For purposes of applying these regulations to a responsible company that offers a hazardous material for transportation or otherwise causes it to be transported, the term "responsible company" is intended to have the full breadth encompassed in the statutory definition of "person" found in section 103(11) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1802(11)). While the regulations do not directly apply to individuals, as the penalty provision in § 209.409 makes clear, any individual who willfully

thwarts the reporting provisions of the proposed rule would be held individually liable for the violation.

Section 209.405 requires in subsection (a) that upon receipt of written notification from FRA both that assessment of a civil penalty will be recommended for a failure to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted, each responsible company shall have 30 days after the calendar month in which the notification is received to report to FRA in writing all actions taken to remedy that failure. The duty to report to FRA in writing remedial actions taken is not triggered merely by receiving written notification from FRA that assessment of a civil penalty will be recommended, but only in conjunction with receiving written notification from FRA that a remedial actions report must be submitted.

Since a recommendation for the assessment of a civil penalty must be made before submission of a remedial actions report is required, the duty would never arise merely upon notification that a defect has been discovered. Alternatively, if a recommendation for the assessment of a civil penalty is made and a responsible company receives written notification that a remedial actions report must be submitted, but no civil penalty is later assessed either for policy or evidentiary reasons, the duty to report remedial actions taken pursuant to this section still exists. Accordingly, a railroad ultimately not required to pay a civil penalty as a result of a recommendation for the assessment of a civil penalty for a defect under the Railroad Locomotive Safety Standards, for example, could still be assessed a civil penalty under this section for failing to file a required remedial actions report.

Written notification that the submission of a remedial actions report is required will occur only when a failure to comply with a provision of a Federal railroad safety law for which the assessment of a civil penalty is recommended falls into one of three general categories. The three general categories consist of physical defects, recordkeeping and reporting violations, and filing violations, and represent types of violations that could still pose ongoing risks to rail safety if left uncorrected and/or can actually be specifically corrected. The obligation to determine whether a particular failure recommended for the assessment of a civil penalty triggers the requirement to submit a remedial actions report rests totally with FRA. Moreover, since a responsible company's duty to submit a remedial actions report arises only upon specific notification to this effect, no violation can occur under this section unless such notification is properly provided by FRA.

The 30-day time period is merely provided for the administrative convenience of the responsible company, so as to allow sufficient time to report its remedial actions by filling out the form provided to it. The pre-existing duty to correct the defect or take other appropriate remedial action would remain the same as it was before the effective date of these regulations. Accordingly, a railroad would be subject to a new recommendation for the assessment of a civil penalty for a willful violation if, for example, it operated a freight car subject to the Freight Car Safety Standards, except under the provisions of 49 CFR 215.9, knowing it to be defective, but with the intent to delay making repairs until the end of the 30-day reporting deadline. Indeed, under section 209(c) of the Safety Act, each day the violation continued would constitute a separate offense.

In an instance where the safety inspector hand delivers the written notification directly to an appropriate official, such as a foreman, trainmaster, or hazardous materials supervisor on duty at the location where the failure to comply with the provision of a Federal railroad safety law is either found or discovered, the date of actual delivery will be the operative date for reporting purposes. This provision is intended to affect the same categories of responsible companies that currently receive notification from FRA either that a defect exists and/or that a recommendation for the assessment of a civil penalty is being made. A responsible company receiving written notification by first class mail that a recommendation for the assessment of a civil penalty is being made would be deemed to have received such notification five business days after the date of mailing, as determined by the date accompanying the signature of the safety inspector.

This subsection also requires that the responsible company reporting remedial actions shall not simply indicate that corrective actions were taken, but shall report to FRA with the necessary level of specificity by selecting the appropriate reporting code along with a brief narrative description, to indicate what actions were taken, including the date of corrective actions. This subsection, together with the reporting code categories on the proposed standard form appended to this NPRM, makes it clear that although FRA does not expect a lengthy and technical step-by-step explanation of what remedial actions were taken, the regulations are intended to force a responsible company to be somewhat precise in its report. Consider an example from the Track Safety Standards: A railroad is informed that a recommendation for the assessment of a civil penalty is being made pursuant to 49 CFR 213.109 for the failure of a 39-foot segment of its track to have a sufficient number of crossties which in combination will hold gage within the limits prescribed in § 213.53(b). Although, under the wording of this subsection, a remedial actions report to FRA merely stating that "the defect was corrected" would be insufficient, a report with, for example, the category code for "replaced" selected, along with the brief description "four crossties were replaced at milepost 23.1 on 3/6/95" would fulfill the regulatory requirement.

Section 209.405(b) provides that each responsible company shall report in the manner prescribed on the form provided by FRA and shall return the form only to the person whose name and address are so designated. Although the proposed rule continues to employ a different type of inspection report specific to each discipline, the reporting form to be provided by FRA is the current version of a generic reporting form intended for use by all responsible companies required to report their remedial actions. The company is then expected to select the proper reporting code category on the reporting form, as required by § 209.405(a), and describe the remedial actions taken to remedy the failure to comply with a provision of the Federal railroad safety laws. The FRA inspector will submit a copy of the completed remedial actions report form to FRA's Office of Chief Counsel for use during the penalty assessment and negotiation process. Since it is anticipated that the number of category codes, such as the codes on the proposed standard form appended to this NPRM (including the code for "other remedial actions"), will be sufficient to report remedial actions taken in response to each violation recommended for the assessment of a civil penalty, a responsible company will not be permitted the option of submitting its own version of a reporting form to FRA, even if it contained the same information as the FRA form.

Section 209.405(c) requires a responsible company to submit its remedial actions report to FRA within the time limit specified in § 209.405(a), even if the company believes that a question exists as to the existence of

factual elements constituting a violation of the statute or regulation cited on the inspection report. The only exception to this requirement concerns a responsible company that is both unable to either initiate and/or complete remedial actions and complies with the "Delayed Reports" requirement of § 209.407. If a responsible company does contest the allegation, it may explain its reasons on the remedial action report form discussed in § 209.405(b). While FRA does not expect, for example, a railroad to make repairs to a component part that the railroad does not believe is broken or defective, this subsection does require the railroad to explain what actions it took to reach the conclusion that the allegation was incorrect. For example, consider a situation in which a railroad disagrees with an inspector's conclusion that the height of a wheel flange on a car, from the tread to the top of the flange, was 1½ inches or more, in violation of 49 CFR 215.103(b). Rather than select the category code corresponding to an actual repair job, the railroad would be expected to discuss what actions (e.g., repair shop inspection or measurement) it took to disprove the inspector's conclusion.

Section 209.407 sets forth in subsection (a) the procedure that must be followed by a responsible company if, upon receipt of written notification from FRA both that assessment of a civil penalty will be recommended for a failure by that company to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted, it is unable to either initiate and/or complete remedial actions within the time limit set forth in § 209.405. Each responsible company shall have 30 days after the calendar month in which the notification is received to report to FRA in writing the reasons for such delay and a good faith estimate of the date by which the remedial actions will be completed. For purposes of determining the calendar month in which written notification is received, the same analysis of § 209.405(a) applies to this subsection as well. Further, as explained in the analysis of § 209.405(a), the 30-day time period is provided for the administrative convenience of the responsible company, and the pre-existing duty to correct the defect or take other appropriate remedial actions would remain the same as it was before the effective date of these regulations.

This subsection also requires that the responsible company reporting a delay in either initiating and/or completing remedial actions in a timely manner pursuant to § 209.405, shall not simply indicate that corrective actions could not be taken, but shall report to FRA with the necessary level of specificity to indicate why these actions could not be taken. This subsection makes it clear that although FRA does not expect a lengthy and technical step-by-step explanation of why remedial actions could not be taken, the regulations are intended to force a responsible company to be somewhat precise in its report. Consider an example from the Track Safety Standards: A railroad is informed that a recommendation for the assessment of a civil penalty is being made pursuant to 49 CFR 213.109 for the failure of a 39-foot segment of its track to have a sufficient number of crossties which in combination will hold gage within the limits prescribed in § 213.53(b). Although, under the wording of this subsection, a written explanation to FRA merely stating that "the defect could not be corrected" would be insufficient, an explanation briefly stating either that "no crossties are currently in stock but will arrive within 45 days and be installed within three days after arrival" or "no funds are currently available to initiate repairs and track has been taken out of service; repairs will be completed in 60 days when funds are expected to become available" would fulfill the regulatory requirement. However, if immediately upon receiving written notification from FRA that a remedial actions report must be submitted, a railroad in the above example makes a business decision to permanently cease operations over a segment of track, the appropriate section under which to report this remedial action would be § 209.405.

Section 209.407(b) provides that each responsible company shall submit its explanation of the reasons for its delay in a manner that provides the same identifying heading information contained in the remedial actions report form referenced in § 209.405(b) and shall return the explanation to the person whose name and address are so designated. The responsible company must retain the remedial actions report form and, as soon as it finally takes all actions necessary to remedy its failure to comply with a provision of the Federal railroad safety laws, submit it to FRA in accordance with § 209.407(c).

Section 209.407 requires in subsection (c) that upon completing all actions necessary to remedy a failure to comply with a provision of the Federal railroad safety laws, each responsible company shall have 30 days after the calendar month in which the actions are completed to report to FRA in writing, in accordance with the reporting code procedures referenced in § 209.405(a) and (b). Unless good cause is shown, the responsible company is expected to complete its remedial actions within 90 days of receiving written notification of a failure to comply with a provision of the Federal railroad safety laws in accordance with § 209.405. Examples of why a responsible company may not be able to complete its remedial actions within a 90-day time period can include manufacturing problems related to the unavailability of a replacement part or a temporary unavailability of funds with which to undertake remedial actions (and the unavailability will exceed 90 days).

Section 209.407(d) requires a responsible company to submit its remedial actions report to FRA within the time limit specified in § 209.407(c), even if the company believes that a question exists as to the existence of factual elements constituting a violation of the statute or regulation cited on the inspection report. As set forth in the analysis of § 209.405(c), if a responsible company does contest the allegation, it may explain its reasons on the remedial action report form.

Section 209.409 identifies the penalties FRA may impose upon any person, including a responsible company, that violates any requirement of this subpart. These penalties are authorized by section 209 of the Safety Act. The penalty provision parallels penalty provisions included in numerous other regulations issued by FRA under authority of the Safety Act. Essentially, any person who violates any requirement of this subpart or causes the violation of any such requirement will be subject to a civil penalty of at least $500 and not more than $10,000 per violation. Civil penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury, a penalty not to exceed $20,000 per violation may be assessed. In addition, each day a violation continues will constitute a separate offense. Finally, a person may be subject to criminal penalties for knowingly and willfully falsifying reports required by these regulations. FRA believes that the inclusion of penalty provisions for failure to comply with the regulations is important in ensuring that compliance is achieved not only in terms of submitting the relevant reports of remedial actions taken, but also in development of more accurate inspection and compliance data so as to better determine if railroads are minimizing and correcting safety problems.

Environmental Impact

FRA has evaluated this proposed rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Regulatory Impact

Executive Order 12291 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures. It is considered to be non-major under Executive Order 12291 but significant under the DOT policies and procedures (44 FR 11034; February 26, 1979). Consequently, FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of the proposed rule. It may be inspected and photocopied at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., room 8201, Washington, DC 20590. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the above address.

FRA believes that, in general, the railroad industry performs repairs or takes other remedial actions in response to notification by FRA of defects and violations in a timely and complete manner. Especially where violations have been filed, failure to take corrective action could lead to vastly increased penalties and even individual liability. This rule may provide some additional incentive to take such corrective action where it otherwise might not be taken, but that potential benefit cannot be quantified. However, it is doubtful that this proposed rule alone will reduce the number of defective conditions in the industry, or that it will materially impact on the already declining rate of train accidents. Further, this proposed rule will not change the manner in which FRA enforces the Federal railroad safety laws; the types of violations for which safety inspectors currently recommend the assessment of a civil penalty will remain the same.

At this time, FRA is unable to quantify any direct or indirect safety benefit from this proposed rule. The potential benefit of this rule comes about by increasing the ability of the railroad industry to manage quality control, as well as by improving FRA's ability to efficiently and effectively manage its inspection resources. It is hoped that responsible companies, after being required by this proposed rule to report remedial actions taken in response to receiving written notification from FRA that a recommendation for the assessment of a civil penalty is being made (for which the submission of a remedial actions report is required) will create their own internal databases of these reports. Although not required by this proposed rule, an internal analysis of this information, in conjunction with other resource management data, might lead the management of responsible companies to take actions designed to reduce and/or effectively respond to defective conditions.

The proposed rule will assist FRA in monitoring follow-up actions by responsible companies with respect to conditions sufficiently serious to warrant possible future civil penalty actions. Moreover, the proposed rule holds particular potential for reducing the amount of time safety inspectors spend returning to an inspection location to check on the status of a violation for which a violation report had previously been submitted. Further, it permits FRA to develop more comprehensive safety data, better utilize its limited resources, and consistently treat all similarly situated violators of the Federal railroad safety laws.

The extent to which these potential benefits will be realized will become clearer over time as both the railroad industry and FRA learn how to best utilize the data required by this proposed rule. What appears clear at this time, however, is that it will not take the realization of many benefits to offset the relatively insignificant cost to society of approximately $75,000 per year ($66,500 to the railroad industry each year to fill out the required remedial actions reports and approximately $8,100 to FRA to review the reports).

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. In reviewing the economic impact of the rule, FRA concluded that it will have a minimal economic impact on a minor number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations; therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act. State rail safety agencies remain free to participate in the administration of FRA's rules, but are not required to do so.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This proposed rule has information collection requirements in §§ 209.405 and 209.407, stating that when a responsible company is notified in writing by FRA that a civil penalty will be recommended for a failure to comply with a provision of the Federal railroad safety laws, and that a remedial actions report must be submitted, that company will report to FRA all actions taken to remedy that failure. Section 209.407 has an additional information collection requirement, stating that any responsible company unable to either initiate and/or complete remedial actions within the time limit set forth in § 209.405 shall submit an explanation of the reasons for the delay and a good faith estimate of the date by which the remedial actions will be completed. FRA is submitting this information collection requirement to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980. The public reporting burden for this collection of information is estimated to average approximately 23 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Persons desiring to comment regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should submit their views in writing to: Ms. Gloria Swanson, Office of Safety, RRS–21, Federal Railroad Administration, 400 Seventh Street, SW., room 8314, Washington, DC 20590; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, attn: Desk Officer for FRA (OMB No. 2130–New), New Executive Office Building, 726 Jackson Place, NW., room 3201, Washington, DC 20503. Copies of any such comments should also be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., room 8201, Washington, DC 20590.

List of Subjects in 49 CFR Part 209

Railroad safety, Remedial actions reporting rules, Reporting and recordkeeping requirements.

Request for Public Comment

FRA proposes to add a new subpart E to part 209 of title 49, Code of Federal Regulations, as set forth below. FRA solicits comments on all aspects of the proposed rule and the analysis advanced in the explanation of the proposed rule, whether through written submissions or participation at the public hearing, or both. FRA may make changes in the final rule based on comments received in response to this notice.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend chapter II, subtitle B, of title 49, Code of Federal Regulations as follows:

PART 209—[AMENDED]

1. The authority citation for part 209 is revised to read as follows:

Authority: 45 U.S.C. 6, 10, and 13, as amended; 45 U.S.C. 34, as amended, 45 U.S.C. 43, 43a, as amended; 45 U.S.C. 64a, as amended; 45 U.S.C. 431, 437, 438 and 439, as amended; 49 U.S.C. 103(c); 49 App. U.S.C. 26(h), as amended; 49 App. U.S.C. 1655(e), as amended; 49 App. U.S.C. 1804, 1809, as amended; Pub. L. 100–342; Pub. L. 102–365; and 49 CFR 1.49(c), (d), (f), (g), (m) and (s).

2. By revising 209.3 to read as follows:

§ 209.3. Definitions.

As used in this part—

Administrator means the Federal Railroad Administrator, the Deputy Administrator of the FRA or the delegate of either.

Chief Counsel means the Chief Counsel, FRA, or his or her delegate.

Day means calendar day.

Federal railroad safety laws means the Federal Railroad Safety Act of 1970 (45 U.S.C. 421 *et seq.*), the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 *et seq.*), and those laws transferred to the jurisdiction of the Secretary of Transportation by subsection (e)(1), (2), and (6)(A) of section 6 of the Department of Transportation Act (49 App. U.S.C. 1655(e)(1), (2), and (6)(A)), and any rules, regulations, orders, or standards issued under a provision of those statutes by FRA. Those laws which were transferred include, but are not limited to, the Safety Appliance Acts (45 U.S.C. 1–16), the Locomotive Inspection Act (45 U.S.C. 22–34), the Accident Reports Act (45 U.S.C. 38–43a), the Hours of Service Act (45 U.S.C. 61–64b), and the Signal Inspection Act (49 App. U.S.C. 26).

FRA means Federal Railroad Administration, Department of Transportation.

Motion means a request to a presiding officer to take a particular action.

Person includes all categories of entities covered under 1 U.S.C. 1, including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor; and, with respect to a violation of the Hazardous Materials Regulations, person has the same meaning as in 49 App. U.S.C. 1802(11).

Pleading means any written submission setting forth claims, allegations, arguments, or evidence.

Presiding officer means any person authorized to preside over any hearing or to make a decision on the record, including an administrative law judge.

Railroad means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Respondent means a person upon whom the FRA has served a notice of probable violation, notice of investigation, or notice of proposed disqualification.

Responsible company means the person (other than an individual) who receives a notice that a remedial actions report must be filed under Subpart E of this part.

3. By adding a new Subpart E—Reporting of Remedial Actions, to read as follows:

Subpart E—Remedial Actions

§ 209.401. Purpose and scope.

(a) The purpose of this subpart is to require any responsible company notified by FRA both that assessment of a civil penalty will be recommended for a failure of that company to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted to report to FRA, within 30 days after the end of the month in which such notification is received, actions taken to remedy that failure.

(b) This subpart does not relieve the responsible company of the underlying responsibility to comply with a provision of the Federal railroad safety laws or this subchapter. The 30-day period after the end of the month in which notification is received is intended merely to provide the responsible company with an opportunity to prepare its report to FRA, and does not excuse continued noncompliance.

§ 209.403. Application.

This subpart applies to any responsible company that receives written notification from FRA both:

(a) That assessment of a civil penalty will be recommended for a failure by that company to comply with a provision of the Federal railroad safety laws; and

(b) That a remedial actions report must be submitted.

§ 209.405. Reporting of remedial actions.

(a) Each responsible company that has received written notification from FRA both that assessment of a civil penalty will be recommended for a failure to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted shall report to FRA in writing, within 30 days after the calendar month in which the notification is received, all actions taken to remedy that failure. If written notification to the responsible company is provided by FRA by first class mail, then for purposes of determining the calendar month in which notification is received, the company shall be presumed to have received the notification five business days following the date of mailing. In selecting the reporting code on the form that best describes the actions taken to remedy the failure, the responsible company shall not merely indicate that corrective action was taken, but shall select the reporting code that most accurately reflects what action was taken, such as repair or replacement of a defective component; movement of a car for repair (where permitted); completion of a required inspection; removal of a noncomplying item from service (where permitted); reduction of operating speed (where sufficient to achieve compliance); or any combination of

actions appropriate to remedy the noncompliance cited.

(b) Each responsible company shall submit such report in the manner prescribed on the report form provided to it by the FRA safety inspector, state inspector participating in investigative and surveillance activities under part 212 of this chapter, or other duly authorized official recommending the assessment of a civil penalty. The company shall return this report form only to the person whose name and address are designated on the form.

(c) Except as provided in § 209.407 of this subpart, a responsible company must submit its report to FRA within the time limit specified in paragraph (a) of this section. If the company believes that a question exists as to the existence of factual elements constituting a violation of the statute or regulation cited on the inspection report, the remedial actions report shall be submitted with an appropriate written explanation.

§ 209.407. Delayed reports.

(a) Upon receiving written notification from FRA both that assessment of a civil penalty will be recommended for a failure to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted, each responsible company that is unable to either initiate and/or complete remedial actions within the time limit set forth in § 209.405(a), shall submit to FRA in writing, within 30 days after the calendar month in which the notification is received, an explanation of the reasons for such delay and a good faith estimate of the date by which the remedial actions will be completed. If written notification to the responsible company is provided by FRA by first class mail, then for purposes of determining the calendar month in which notification is received, the company shall be presumed to have received the notification five business days following the date of mailing.

(b) Each responsible company required to submit an explanation of the reasons for its delay in taking all actions necessary to remedy its failure to comply with a provision of the Federal railroad safety laws shall do so in a manner that provides the same identifying heading information contained on the remedial actions report form referenced in § 209.405(b). The responsible company shall return the explanation only to the person whose name and address are designated on the form.

(c) As soon as the responsible company finally takes all actions necessary to remedy its failure to comply with a provision of the Federal railroad safety laws, it shall report to FRA in writing, within 30 days after the end of the calendar month in which the actions to remedy the failure are completed, in accordance with the reporting code procedures referenced in § 209.405(a) and (b). Except for good cause shown, the responsible company is expected to complete the remedial actions within 90 days after the end of the calendar month in which the notification of its failure to comply with a provision of the Federal railroad safety laws was originally received.

(d) If the responsible company believes that a question exists as to the existence of factual elements constituting a violation of the statute or regulation cited on the inspection report, the remedial actions report shall be submitted with an appropriate written explanation.

§ 209.409. Penalties.

Any person who violates any requirement of this subpart or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. A person may also be subject to the criminal penalties provided for in 45 U.S.C. 438(e) for knowingly and willfully falsifying reports required by this subpart.

Issued in Washington, DC, on June 11, 1993.

S. Mark Lindsey,

Acting Administrator.

BILLING CODE 4910-06-P

FEDERAL RAILROAD ADMINISTRATION
Remedial Actions Report
Required by Pub. Law 102–365

Page 1 of _____
OMB Approval

1. Safety inspector	2. I.D. No.	3. RPT. No.	4. Region	5. Name and local address of Responsible Company

6. Representative of Responsible Company served	7. Acknowledgement of receipt by individual receiving this report (Please print name and date)
8. ___ Date of hand delivery to Responsible Company; or, ___ Date of mailing to Responsible Company: / /	9. Date of inspection

Instructions:
1. Cease violating the Federal railroad safety laws immediately.
2. Report remedial actions within 30 days after the end of the month in which the notification of violation was received.
   Note: If remedial action cannot be taken within the 30 day period, an explanation of the reasons for the delay must be submitted to the address indicated on this report.
3. In column (a), list the item number from the attached inspection report.
4. In column (b), enter the type of remedial actions taken, using the codes below if one is applicable.
5. In column (c), briefly describe the remedial actions.
6. In column (d), report the completion date of the remedial actions.
7. The individual completing the remedial actions report for the responsible company must sign the form below attesting to the completion of the remedial actions.
8. Fold, staple or tape, affix proper postage, and mail to the address indicated on the opposite side of this form.

(a) Item	(b) Code	(c) Brief Description of Actions Taken	(d) Date of Remedial Actions

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

Endangered and Threatened Species

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of petition and request for information.

SUMMARY: NMFS has received a petition to list the central California coho salmon (*Oncorhynchus kisutch*) populations occurring in Scott and Waddell Creeks (Santa Cruz County, CA) as endangered under the Endangered Species Act (ESA). Based on the requirements of section 4 of the ESA, NMFS has determined that the petition presents substantial scientific information indicating that the action may be warranted. Therefore, NMFS is initiating a status review to determine if the petitioned action is warranted. To ensure that the review is comprehensive, NMFS is soliciting additional information and data regarding this action.

DATES: Comments and information should be received by August 2, 1993.

ADDRESSES: Copies of the petition are available from, and comments should be submitted to, Dr. Gary Matlock, Acting Regional Director, NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Jim Lecky, NMFS, Southwest Region, (310) 980–4015 or Margaret Lorenz, NMFS, Office of Protected Resources, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the ESA contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce to add or remove a species from the List of Endangered and Threatened Wildlife and designate critical habitat. Section 4(b)(3)(A) of the ESA requires that, to the extent practicable, within 90 days after receiving a petition, the Secretary (Interior or Commerce) must determine whether it presents substantial scientific or commercial information indicating that the action may be warranted.

Petition Received

On March 11, 1993, NMFS received a petition from the Santa Cruz County Planning Department to list the central California coho salmon populations occurring in Scott and Waddell Creeks (Santa Cruz County, CA) as endangered and to designate critical habitat. The Santa Cruz County Planning Department prepared the petition at the request of the Santa Cruz County Fish and Game Advisory Commission after a year of investigations and three local public hearings. The petition includes reports prepared by the California Department of Fish and Game and Dr. Jerry Smith of San Jose State University that provided recent information on the status of these coho populations. In addition, it presents information and discusses whether the populations qualify as a "species" under the ESA in accordance with NMFS "Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon" (November 20, 1991, 56 FR 58612).

Listing Factors and Basis for Determination

Under Section 4(a)(1) of the ESA, a species can be determined to be endangered or threatened for any of the following reasons: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data available after taking into account any efforts made by any state or foreign nation to protect the species.

Biological Information Solicited

To ensure that the review is complete and is based on the best available scientific and commercial data, NMFS is soliciting information and comments concerning the present and historic status of the coho salmon populations occurring in Scott and Waddell Creeks. NMFS is also soliciting information on whether these Pacific salmon populations qualify as a "species" under the ESA. Copies of the petition are available (see ADDRESSES).

It is important to note that unlike critical habitat designation, the determination to list a species is based solely on the basis of the best available scientific and commercial information regarding a species' status without reference to possible economic or other impacts of such a determination (50 CFR 424.11(b)).

Critical Habitat

NMFS is also requesting information on areas that may qualify as critical habitat for the coho salmon populations occurring in Scott and Waddell Creeks. Areas that include the physical and biological features essential to the recovery of the species should be identified. Areas outside the present distribution should also be identified if such areas are essential to the recovery of the species. Essential features should also be identified. Essential features include but are not limited to (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring; and generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, NMFS is requesting information describing (1) the activities that affect the area or could be affected by the designation and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation.

The economic cost to be considered in the critical habitat designations under the ESA is the probable economic impact "of the (critical habitat) designation upon proposed or ongoing activities" (50 CFR 424.19). NMFS must consider the incremental net costs specifically resulting from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

Data, information, and comments should include (1) supporting documentation such as maps, bibliographic reference, or reprints of pertinent publications and (2) the commentor's name, address and association, institutions, or business.

Dated: June 14, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 93–14384 Filed 6–17–93; 8:45 am]

BILLING CODE 3510-22-M

[FR Doc. 93–14256 Filed 6–17–93; 8:45 am]

BILLING CODE 4910–60–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on Petition To Revise Critical Habitat for Perdido Key Beach Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month determination of how it intends to proceed on a petition to revise critical habitat for the Perdido Key beach mouse, pursuant to the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, the Service has determined that the petitioned action is warranted but will be delayed until other higher priority actions to amend the lists of Endangered and Threatened Wildlife and Plants have been taken.

DATES: The finding announced in this notice was made on May 23, 1993. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216. The petition, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Michael M. Bentzien, Assistant Field Supervisor at the above address or telephone 904/232–2580.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(D)(ii) of the Act and the Service's listing regulations (50 CFR 424.14(c)(3)) require the Service, after receiving a petition to revise critical habitat presenting substantial information indicating that the requested revision may be warranted, to determine how it intends to proceed with the requested revision within 12 months, and to promptly publish notice of such intention in the Federal Register.

The Perdido Key Beach mouse (*Peromyscus polionotus trissyllepsis*) is a small, grayish-brown mouse restricted to coastal dunes on Perdido Key in Baldwin County, Alabama and Escambia County, Florida. It was listed as an endangered species, pursuant to the Endangered Species Act of 1973, as amended (Act), on June 6, 1985 (50 FR 23872), due to loss of coastal habitat from human development. One area in Alabama (the Perdido Key unit of Gulf State Park) and two areas in Florida were concurrently designated as critical habitat for the species.

On November 5, 1991, The Alabama Conservancy petitioned the Service to revise critical habitat for the Perdido Key beach mouse, through an emergency rule, to include lands north of Highway 182 at the northwestern end of Perdido Key, Baldwin County, Alabama. The petitioner maintained that this was necessary to prevent the permanent loss of crucial habitat for the species. The area in question includes both privately owned and State (Gulf State Park) lands. The petitioner asserted that private development would cause the loss of important habitat for the Perdido Key beach mouse, and cited a Biological Opinion, prepared by the Service pursuant to Section 7 of the Endangered Species Act, as evidence for this assertion.

Section 4(b)(3)(D)(i) of the Act, and the Service's listing regulations (50 CFR 424.14(c)(1)) require that with respect to petitions to revise critical habitat, the Service, to the maximum extent practicable, make a finding within 90 days as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Service's listing regulations (50 CFR 424.14(c)(2)(i)) further require that, in making a finding on a petition to add critical habitat, the Service shall consider whether the petition contains information indicating that areas petitioned to be added to critical habitat contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species involved.

After considering the petition and other available information, the Service found that the requested action to add lands north of Highway 182 and west of the Ono Island Bridge to critical habitat for the Perdido Key beach mouse may be warranted (57 FR 55219, November 24, 1992).

12-Month Determination of Intent

The information presented in the 90-day finding continues to be valid for the Service's 12-month finding. Despite the recent clearing of portions of the private lands in this area, there remains habitat north of Highway 182 that is occupied by beach mice and is also essential as a refugium from storms overwashing the designated critical habitat south of Highway 182. The Alabama Cooperative Fish and Wildlife Research Unit (Dr. Nicholas Holler, pers. comm., December 15, 1992) found tracks throughout the area north of Highway 182 in 1988, and trapped two beach mice. On March 8, 1992, staff of the Service's Daphne, Alabama Field Office trapped beach mice on State lands north of Highway 182 and west of the Ono Island Bridge. Personnel of the Alabama Cooperative Fish and Wildlife Research Unit (Dr. Holler, pers. comm., December 15, 1992) also trapped Perdido Key beach mice on the State lands during the summer and fall of 1992, capturing 12 mice and 23 mice, respectively. Mice were captured up to the boundary of adjacent private land, and there was as good or better habitat on some of the private land as on State land, indicating that beach mice do occur on uncleared private land in the area. All available evidence indicates that the area north of Highway 182 supports a viable beach mouse population.

In a memorandum dated March 30, 1992, the supervisor of the Daphne Field Office reemphasized the importance of areas north of the highway as habitat for the Perdido Key beach mouse, indicating that both State lands and uncleared private lands north of Highway 182 supported sea oats (*Uniola paniculata*) a primary food source for beach mice, and that the habitat was similar in appearance to habitat already designated for the Perdido Key Beach mouse south of Highway 182. There remain approximately 151.5 acres of uncleared land north of Highway 182, 132.5 of which either support or are likely to support beach mice. The area petitioned to be added to already designated critical habitat contains physical and biological features essential to the conservation of the Perdido Key beach mouse, and that may require special management.

Based on the above information, the Service finds that the petition to add lands north of Highway 182 and west of the Ono Island Bridge is warranted but precluded by work on numerous candidate species with high listing priority. On September 21, 1983, the Service published its priority system for listing species under the Act (48 FR 43098–43105). The system considers three factors (magnitude of threat, immediacy of threat, and taxonomic distinctiveness) in assigning species numerical priorities on a scale of 1 to 12. Although the priority system does not address critical habitat, the Service believes that the priority of revising critical habitat for the Perdido Key beach mouse is lower than actions to list category 1 species (species for which the

Service has adequate information to proceed with listing) that are under a high magnitude of imminent threat.

The Service already reviews Federal actions that may affect the Perdido Key beach mouse through the jeopardy standard of Section 7 of the Endangered Species Act (see discussion of Section 7 below). Revising critical habitat would not appreciably increase this protection.

Section 4(b)(7) of the Act and the Service's listing regulations (50 CFR 424.20) provide for the issuance of emergency regulations, for no longer than 240 days, effective immediately upon publication in the **Federal Register**, to respond to any emergency posing a significant threat to the well-being of any species of fish and wildlife or plants. Although emergency action is not petitionable under Section 4(b)(3) of the Endangered Species Act, such action is subject to consideration under the Administrative Procedure Act. The Service finds that an emergency response to this petition is unjustified, for the following reasons. Section 7 of the Act applies only to Federal agency actions; only Federal agencies are required to insure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat of such species. Therefore, inclusion of the State and private lands north of Highway 182 in designated critical habitat would not potentially affect use or development of these lands unless Federal permitting or funding were involved. If such agency involvement occurs, the Section 7 jeopardy standard still applies whether or not critical habitat is designated.

In the case of the Biological Opinion referenced in the petition, the Service made not only a jeopardy finding in an area outside of designated critical habitat, but found that the subject project would adversely modify nearby designated critical habitat. It is likely that similar projects in the area north of Highway 182 would also result in jeopardy/adverse modification Biological Opinions. Section 7 protection for habitat north of the designated critical habitat already exists, and there is no apparent regulatory benefit from revising critical habitat of the Perdido Key beach mouse on an emergency basis. Section 9 of the Act currently also prohibits take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) of Perdido Key beach mice, both within and outside designated critical habitat.

Author

The primary author of this notice is Dr. Michael M. Bentzien (see **ADDRESSES** section above).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: May 27, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–14446 Filed 6–17–93; 8:45 am]

BILLING CODE 4310-55-P

Notices

Federal Register
Vol. 58, No. 116
Friday, June 18, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Rocky Mountain Region; Telluride Ski Area Expansion, Grand Mesa, Uncompahgre and Gunnison National Forests, San Miguel County, Colorado; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on a proposal to develop six new ski lifts with associated ski runs, and as many as six restaurants on 950 acres at the Telluride Ski Area on the Grand Mesa, Uncompahgre, and Gunnison National Forests within San Miguel County, Colorado. All but 20 acres are within the existing ski area boundary. The 20 acres outside the existing ski area boundary are needed to accommodate one of the lifts. The ski area is presently operating under special use permit granted to the Telluride Ski Area, Inc. The proposal would roughly double the capacity of the Telluride ski area.

The expansion proposal is designed to help maintain Telluride's standing as a world class resort by enhancing skier capacity and the quality of the Telluride skiing experience.

DATES: Comments concerning the scope of the analysis should be received in writing by July 15, 1993. The draft EIS is scheduled for publication in September 1993 and the final EIS in January 1994.

ADDRESSES: Send written comments to Jeff Burch, Forest Planner, Grand Mesa, Uncompahgre, and Gunnison National Forests, 2250 Highway 50, Delta, Colorado 81416.

FOR FURTHER INFORMATION CONTACT: Jeff Burch, Forest Planner, (303) 874–7691 or Jim Hackett, Ski Area Administrator, (303) 327–4854.

SUPPLEMENTARY INFORMATION: The proposal for expansion at Telluride includes construction of six new lifts, associated ski runs, as many as six new restaurants, and access to expert skier terrain available until now only by walking. Skier capacity may as much as double on the mountain by the final completion of the project. Construction would occur in summers when snow is off.

It is important to remain clear about the decisions to be made on the Telluride expansion proposal. Much of what is proposed are 1980 and 1983 proposals, which have been previously analyzed in an environmental assessment and approved. We have an obligation to be sure, before we allow major construction to begin, that we have considered all environmental factors, analyzed to the latest standards. This EIS will accomplish this.

The San Joaquin, Novice, and part of the Gold Hill lifts, and the restaurants are portions of the proposal which are new. All of these except a portion of the San Joaquin lift and bowl are within the Ski area boundary. This area is allocated to ski area use and development in both the Forest Plan and the Regional Guide. Decisions to manage the area within the ski area boundary for ski area use and development will not be revisited, unless an effect that can not be mitigated, on some very significant resource is discovered through this analysis. At this point we do not anticipate any effects such as this.

The decisions to be made within the existing ski area boundary are exactly where and how lifts, runs and facilities will be placed to minimize negative environmental effects. Consideration of the San Joaquin lift and bowl will also include the decision as to whether or not to permit it.

A U.S. Army Corps of Engineers "404 Permit" for dredging and filling waters and/or wetlands may be required, depending upon which alternative is selected for implementation. The U.S. Fish & Wildlife Service will be consulted on possible effects to Threatened or Endangered plant and animal species. The Forest Service will request the U.S. Army Corps and U.S. Fish & Wildlife Service or cooperate in the environmental analysis, and may request cooperation from other Local, State, or Federal agencies.

The Forest Service invites comments and suggestions on the scope of the analysis to be included in the draft environmental impact statement (DEIS). A substantial amount of scoping has been completed for the Telluride expansion proposal. Information gained from that scoping effort was used to determine an EIS was needed. Major issues identified include: (1) Dispersed recreation displacement and development of the Bear Creek area in conjunction with construction of the San Jaoquin Bowl lift. (2) Increased demand for community services, transportation, & utilities. (3) Changes in visual quality. (4) Loss of wetlands. (5) Increasing air and noise pollution. (6) Loss of existing recreation opportunities. (7) Maintaining the integrity of Telluride's National Historic District (8) Changes in lifestyle or sense of community (9) Changes in ecosystem health or function and the effect on fish, wildlife, and vegetation.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day draft environmental impact statement comment period so that substantive

comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Please note that comments on the draft environmental impact statement will be regarded as public information.

The Deciding Official will be Robert L. Storch, Forest Supervisor, Grand Mesa, Uncompahgre and Gunnison National Forest, 2250 Highway 50, Delta, Colorado 81416.

Dated: June 11, 1993.

Robert L. Storch,

Forest Supervisor.

[FR Doc. 93–14386 Filed 6–17–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket A(32b1)-2–93]

Foreign-Trade Subzone 133A—Maytag Refrigerator Plant Galesburg, IL; Request for Removal of Restriction (Compressors)

A request has been submitted to the Foreign-Trade Zones (FTZ) Board pursuant to § 400.32(b)(1) of the Board's regulations for removal of a restriction relating to the use of compressors in manufacturing activity within Subzone 133A located at the Maytag Corporation plant in Galesburg, Illinois. It was formally filed on June 4, 1993.

The FTZ Board approved subzone status for the Maytag refrigerator/freezer manufacturing plant in Galesburg, Illinois, in 1989 (Subzone 133A; Board Order 448; 54 FR 47246; 11/13/89), subject to a restriction that required Maytag to elect privileged foreign status on refrigeration compressors admitted to the subzone. After reviewing a request from Maytag made in 1990 for a temporary suspension of the restriction based on changed circumstances, the Board authorized a suspension until December 31, 1993 (Board Order 485; 55 FR 37341; 9/11/90). There was no opposition to the request and the Board concluded that there was no indication of adverse effects, but the time limit was adopted because this was the first such activity involving compressors. Since 1990, there have been other operations of this nature authorized without time restrictions.

Maytag is now requesting that the restriction be permanently removed. This would allow Maytag to continue to choose the duty rate that applies to finished refrigerators/freezers (2.9%). The duty rate for compressors (HTSUS 8414.30) is 3.4 percent. The request indicates that the full use of zone procedures would continue to help the plant maintain its international competitiveness.

Public comment on the proposal is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 2, 1993.

A copy of the application and accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: June 11, 1993.

John J. De Pente, Jr.,

Executive Secretary.

[FR Doc. 93–14451 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[Docket No. 24–93]

Foreign-Trade Zone 161—Sedgwick County, KS (Wichita Area) Application for Subzone; Sanofi Winthrop Pharmaceutical Plant, McPherson, KS

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of County Commissioners of Sedgwick County, Kansas, grantee of FTZ 161, requesting special-purpose subzone status for the pharmaceutical manufacturing facility of Sanofi Winthrop L.P. (joint venture between Elf Sanofi (France) and Sterling Winthrop Inc./Eastman Kodak Company, hereinafter referred to as Sanofi Winthrop) in McPherson, Kansas, adjacent to the Wichita Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 8, 1993.

Sterling Winthrop is a global pharmaceutical firm whose primary product lines include: diagnostic imaging agents, hormonal products, cardiovasculars, analgesics, antihistamines and muscle relaxants. In 1991, Sterling Winthrop and Elf Sanofi, a French pharmaceutical and health care products company, formed the Sanofi Winthrop alliance to jointly develop, manufacture and market products worldwide. This proposal is part of an overall company cost reduction effort. (Applications are pending for plants in Barceloneta, Puerto Rico (FTZ Doc. 18–93, 58 FR 29192, 5–19–93) and Rensselaer, New York (FTZ Doc. 22–93). Another application is being submitted for its facility in Des Plaines, Illinois).

Sanofi Winthrop's Kansas plant (160 acres, 2 bldgs., 265,000 sq. ft.) is located at 1776 North Centennial Drive, McPherson (Mcpherson County), some 40 miles north of Wichita. The facilities (430 employees) are primarily engaged in the production of dental anesthetics such as "Carbocaine" and "Demerol" and radio diagnositc imaging agents, such as "Hypaque" and "Hypaque Meglumine". Company plans call for possible expansion of the plant's product lines to include cardiovascular, oncological and certain other diagnostic products. The company performs contract manufacturing at the plant, primarily "lyophilization" (freeze drying) for biotechnology firms. Foreign-sourced materials used at the plant account for, on average, 13 percent of the finished products' value and include primarily diatrizoate acid and diatrizoate meglumine at this time. The company may also purchase from abroad products in the following general categories: Empty pharmaceutical capsules, yttrium or scadium metal compounds, hydrocarbons, alcohols, phenols, ethers, epoxides, acetals, aldehydes, ketone function compounds, mono- and polycarboxylic acids, phosphoric esters, amine-, carboxymide, nitrile- and oxygen-function compounds, hydrazine or hydroxylamine, heterocyclic compounds, sulfonamides, vitamins, hormones, vegetable alkaloids, blood/vaccines/toxins/cultures, sugars, antibiotics, gelatins, enzymes, packaging, medical instruments/appliances and parts thereof, medicaments, and other pharmaceutical products.

Zone procedures would exempt Sanofi Winthrop from Customs duty payments on foreign materials used in

production at the McPherson plant for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free to 16.2%, with most falling in the 6.3%–6.9% range). The duty rates on foreign-sourced items range from duty-free to 23.5 percent, with most falling within the 3.7%–7.9% range. The application indicates that zone savings will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 17, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 1, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 151 N. Volutsia, Wichita, Kansas 67214–5160.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: June 11, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–14450 Filed 6–17–93; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

[A–428–061]

Barium Carbonate From Germany; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Intent to Revoke Antidumping Duty Order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on barium carbonate from Germany. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or Tom Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3814.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 1981, the Department of Commerce (the Department) published an antidumping duty order on barium carbonate from Germany (46 FR 52884). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by section 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than June 30, 1993, domestic interested parties, as defined in section 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14458 Filed 6–17–93; 8:45 am]

BILLING CODE 3510-DS-M

[A–122–601]

Brass Sheet and Strip From Canada; Final Affirmative Determination of Circumvention of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration.

ACTION: Notice of final affirmative determination of circumvention of antidumping duty order.

SUMMARY: On February 1, 1993, the Department of Commerce published a preliminary affirmative determination of circumvention of the antidumping duty order on brass sheet and strip from Canada. The circumvention inquiry covers the period September 1, 1990 through September 30, 1991.

We provided interested parties an opportunity to comment on the preliminary affirmative determination. After our analysis of the case and rebuttal briefs, we have determined that imports of brass plate from Canada used in the production of brass sheet and strip in the United States constitute circumvention of the antidumping duty order on brass sheet and strip from Canada within the meaning of section 781(a) of the Tariff Act of 1930, as amended. As a result, we determine that brass plate used in the production of brass sheet and strip falls within the scope of the antidumping duty order on brass sheet and strip from Canada.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Elisabeth Urfer or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 6615) a preliminary affirmative determination of circumvention of the antidumping duty order on brass sheet and strip from Canada (52 FR 1217, January 12, 1987). Pursuant to this determination, the Department instructed the U.S. Customs Service (Customs) to suspend liquidation of, and require cash deposits on, all entries of the imported product, brass plate, as defined in the "Scope of the Anti-circumvention Inquiry" section of this notice. In accordance with section 781(e) of the Tariff Act of 1930, as amended (the Tariff Act), the Department also notified the International Trade Commission (ITC) of

its preliminary affirmative determination. In response, the ITC notified the Department that consultations between the Department and the ITC on this matter were unnecessary because the Department's circumvention determination did not present a significant injury issue. (See Letter from ITC Chairman Don E. Newquist to Deputy Assistant Secretary Joseph A. Spetrini, dated March 29, 1993.)

The Department has now completed this review in accordance with section 781(a) of the Tariff Act, 19 U.S.C. 1677(j) and 19 CFR 353.29(e).

Scope of the Antidumping Duty Order

Imports covered by the antidumping duty order are shipments of brass sheet and strip, other than leaded brass and tin brass sheet and strip, from Canada. The chemical composition of the products covered is currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical composition is defined by other C.D.A. or U.N.S. series are not covered by this order.

The physical dimensions of the products covered by this order are brass sheet and strip of solid rectangular cross-section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thicknesses or gauge, regardless of width. Coiled, wound on reels (traverse wound), and cut-to-length products are included.

During the relevant period of this inquiry, such merchandise was classifiable under subheadings 7409.21.00 and 7409.29.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and for Customs purposes, our written description of the scope of this order remains dispositive.

Scope of the Anti-circumvention Inquiry

Products subject to the circumvention inquiry are entries of brass plate, also known as copper-zinc alloy plate, over 0.188 inches in gauge used in the production of brass sheet and strip covered by the antidumping duty order. The chemical composition of the products covered is currently defined in the C.D.A. 200 series or the U.N.S. C20000 series. Products whose chemical composition is defined by other C.D.A. or U.N.S. series are not covered by this inquiry. Such merchandise is classifiable under HTS subheadings 7409.21.00 and 7409.29.00.

Nature of the Anti-circumvention Inquiry

As set forth in our preliminary determination, we examined whether (1) brass sheet and strip sold in the United States is of the same class or kind of merchandise as that covered by the antidumping duty order on brass sheet and strip from Canada, (2) brass sheet and strip sold in the United States was completed or assembled from material imported from Canada, and (3) the difference between the value of brass sheet and strip and the value of brass plate manufactured in, and imported from, Canada was small, as required by section 781(a)(1) of the Tariff Act.

In reaching a conclusion as to whether the difference in value was small, we analyzed the nature of the brass sheet and strip industry and the value of the input components. Further, in determining whether to include the imported parts or components within the scope of the order, we analyzed the pattern of trade, the relationship between the respondents, and the volume of imports of brass plate, pursuant to section 781(a)(2). (See Brass Sheet and Strip from Canada; Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order, 58 FR 6615.)

Analysis of Comments Received

We invited interested parties to comment on the preliminary affirmative determination of circumvention on brass sheet and strip from Canada. We received case and rebuttal briefs from an exporter, Wolverine Tube Canada Inc. (Wolverine), an importer, Great Lakes Metals Corporation (Great Lakes), and petitioners (Hussey Copper Ltd., The Miller Company, Olin Corporation (Brass Group), Outokumpu American Brass, Revere Copper Products, the International Association of Machinists & Aerospace Workers, the International Union, Allied Industrial Workers of America (AFL-CIO), the Mechanics Educational Society of America (Local 56), and the United Steelworkers of America (AFL-CIO/CLC). We did not hold a public hearing in this matter as one was not requested by the parties. All comments and rebuttal arguments properly raised by the parties to the proceeding are discussed below.

Comment 1: Great Lakes asserts that the Department's "difference in value" calculation is distorted by the inclusion of the value of the copper, which severely diminishes the total value of the extensive operations Great Lakes performed in rerolling the brass plate at its U.S. facility.

Citing the ITC's Final Determination in Certain Brass Sheet and Strip from Brazil, Canada, and the Republic of Korea, ITC Final Determination (ITC Final), December 1986, at A–58, Great Lakes argues that there are two major components to the total selling price of brass sheet and strip: The value of the fabrication and the metal value of the product. Great Lakes cites the ITC final determination to support its point that the metal value generally accounts for at least half of the total selling price of brass sheet and strip. Great Lakes contends that just as the ITC found that the metal price is not indicative of price trends, the metal content of brass plate and strip is not relevant to what brass mills and Great Lakes do, which is to fabricate a product using metal that is purchased generally at world prices. Thus, Great Lakes argues, the Department should not consider the price of metal in analyzing the value of its U.S. operation. Great Lakes concludes that, were the Department to calculate the difference in value on the basis of fabrication costs alone, it would not find the difference in value to be "small" within the meaning of the statute.

Wolverine similarly argues that because the price of the metal is such a large component of the value of the product, the Department's calculation of the difference in value is distorted. Wolverine argues that, in traditional brass mill operations, the metal is a pass-through cost item. Second, Wolverine's price is based on the price of the metal in the commodity exchange market. Third, neither Wolverine nor Great Lakes has any influence over the metal value. Like Great Lakes, Wolverine contends that the Department should consider only the fabrication prices to calculate the difference in value.

Petitioners disagree with Great Lakes' and Wolverine's argument that only fabrication prices should be used to calculate the value added at Great Lakes' U.S. facility. Petitioners contend that the Department calculated the difference in value in accordance with the requirements of the statute. They further argue that it is irrelevant that metal value and fabrication value are quoted separately in the industry, that what is important is that the brass sheet and strip sold by Great Lakes and the brass plate sold by Wolverine were sold at prices that combined both the metal and fabrication values, and that the statute mandates use of the value of the merchandise *in toto*.

Petitioners further contend that metal is not necessarily a pass-through cost and that the respondents have not

demonstrated that they did not profit on the metal. They argue that the metal, just like the fabrication, can be dumped in the United States. Petitioners argue that the test established by Congress is whether the difference between the value of the brass sheet and strip sold by Great Lakes in the United States and the value of the brass plate sold by Wolverine to Great Lakes is "small." Thus, petitioners conclude that any special treatment of the metal value is prohibited by law.

Department's Position: We agree with petitioners. Great Lakes' and Wolverine's suggested approach of treating metal value separately from the value of other items necessary to make plate is contrary to the mandate of the statute. To determine whether circumvention of an antidumping order is occurring, section 781(a)(1)(C) of the Tariff Act directs the Department to measure the difference in value between the completed brass sheet and strip and the value of the components imported from Canada. The statute does not mandate a distinction of individual inputs from the order country, with the value of fabrication in the United States absent the imported inputs, as respondents have suggested. In this case, the value of the base metal is as much a part of the value of the imported plate as any other component of value, and must, therefore, be included in the value of the imported parts and components as directed by section 781(a)(1)(C) of the Tariff Act. The imported brass plate is one integral component, not several individual ones.

Moreover, the Department's treatment of the metal value in this circumvention inquiry is consistent with its treatment of metal value in every antidumping duty investigation and subsequent administrative review pertaining to brass sheet and strip not only from Canada, but from all other countries subject to an antidumping duty order on this product. (See Final Determination of Sales at Less Than Fair Value; Brass Sheet and Strip from Canada, December 9, 1986, 51 FR 44319, 44320; see also Final Determination of Sales at Less Than Fair Value; Brass Sheet and Strip From the Republic of Korea, November 10, 1986, 51 FR 40833, 40834.) In each segment of these antidumping proceedings, the Department consistently calculated dumping margins on a single product—*i.e.*, brass sheet and strip imported from the order country, which included both fabrication and metal value combined, except in cases of tolled sales. Only in tolled sale situations, where the U.S. customer supplied the metal to the Canadian producer, did the Department calculate margins based solely on fabrication value. In such cases, the metal is not considered an imported product from the order country since the metal was provided by the U.S. customer. Thus, in the case of tolling, only the fabrication would be subject to the order on brass sheet and strip. By contrast, for all non-tolled sales the Department did not treat metal value as a separate item, nor perform margin calculations on fabrication value alone. Rather, the Department treated both metal value and fabrication as comprising one product, brass sheet and strip.

Finally, contrary to Great Lakes' contention, the ITC also treated the metal value and fabrication value as comprising one product for non-tolled transactions. Although the ITC recognized, in its final determination, that the selling price of brass sheet and strip is comprised of two major components, a metal value and a fabrication price, which "may be quoted separately," it made price comparisons for non-tolled sales on the basis of the total selling price of brass sheet and strip because "the total selling price is the price that matters to a purchaser of brass sheet and strip." (See Certain Brass Sheet and Strip from Brazil, Canada, and the Republic of Korea, ITC Final, December 1986, at A–58.) Accordingly, the Department's current treatment of the metal value in this circumvention inquiry is consistent with the Department's and the ITC's past practice in antidumping duty investigations and administrative reviews, and the injury determination for brass sheet and strip.

Comment 2: Great Lakes contends that, in determining whether its operations constitute circumvention activities, the Department mistakenly compared Great Lakes' operations to those of both producers and fabricators. Great Lakes argues that the mining, smelting and refining of copper is performed by copper producers, which are not a part of the brass fabrication industry. Citing the Department's final negative circumvention determination in Portable Electric Typewriters from Japan (PETS) (56 FR 58031, 58036), Great Lakes points out that the Department has previously rejected comparisons of petitioners' production activities with those of respondents. Great Lakes asserts that, in the present inquiry, the Department went even further than comparing Great Lakes' activities to those of petitioners, and compared brass fabrication to copper production.

Wolverine similarly argues that the Department erred in its analysis of the industry. Wolverine argues that some rerolling is performed by fabricators, and rerolling is not only a secondary operation. Wolverine contends that it supplied only primary materials to Great Lakes. Wolverine argues that the cost to produce brass sheet and strip increases with the amount of gauge and width reduction, and that rerollers add only the last fraction of value, but that the processing at Great Lakes constituted a substantial fabrication operation. Thus, according to Wolverine, Great Lakes' operations were not indicative of rerollers in general. Wolverine asserts that, because of the lack of definition in the statute as to what is "small," the Department should evaluate the manner in which the industry operates.

Petitioners assert that the Department, in keeping with statutory guidance, accurately placed in context the value of the finished product and the role played by Great Lakes relative to the finished product. Petitioners argue that the brass plate purchased by Great Lakes from Wolverine was dedicated for sale in the United States as brass sheet and strip, and there was no valid commercial reason why Great Lakes needed to import brass plate over 0.188 inches in gauge.

Petitioners also argue that in the circumvention inquiry on PETs, the Department was presented with a situation that differed from this case. The petitioners point out that the difference in value between the portable electric typewriters completed and sold in the United States and the imported Japanese parts and components used in the production of PETs ranged from 69 percent to 80 percent, far above the 15 percent figure in this case. In an effort to have this value added deemed "small," the petitioner, in PETs, emphasized that the respondent performed only 100 production steps in the United States of some 6,000 necessary to produce a PET. The Department rejected this as inappropriate because it failed to account for a variety of factors affecting investment, and determined that this sort of comparative analysis of the companies involved in the manufacture of the product at issue was not contemplated by section 781(a) of the Tariff Act.

Department's Position: Upon further examination of the brass sheet and strip industry, we have concluded that a determination of whether the value added by Great Lakes' operations is small, in the context of this industry, requires a comparison of the processes performed at Great Lakes' facility in the United States during the period of

inquiry with those operations normally performed in the brass sheet and strip industry, as defined by the ITC in its final determination of injury.

According to the ITC, the manufacturing process for the brass sheet and strip industry involves casting, rolling, and finishing of brass sheet and strip. (See ITC Final at A–4.) Brass mills perform all of these functions and are thus known as vertically integrated producers. (See ITC Final at A–4, footnote 5.) Secondary mills, on the other hand, merely reroll brass strip to thinner gauges. (See The Metals Handbook, American Metals Society, Metals Park, Ohio, 1985 at 7–19.) According to the ITC, brass mills begin the process with the acquisition of raw materials. Subsequently, the raw materials are:

> Measured and placed in a melting furnace; samples of the melted material are then analyzed to ensure that correct compositions have been achieved. Then the melted material is poured into a holding furnace. When the holding furnace is sufficiently filled, the molten brass is directed from the holding furnace into single or multiple molds. These molds or dies are approximately 1 foot thick and are open at the bottom. The molds rest on a piston device that is enclosed in a water-filled cylinder. As a mold fills with molten brass, the piston is gradually lowered, and the brass cools and hardens as it is exposed to the water; hence the term "direct chill technique" is applied to this casting process. The casting operations produce brass ingots that are roughly 5 to 7 inches thick, 26 to 30 inches wide, 25 feet long, and weigh over 10,000 pounds. Once the ingots are cast, they are removed from the casting equipment. Before further processing, the ingots are trimmed and tested for structural integrity. (Id at A–5.)

At this point, brass mills begin what are termed "rolling" or reducing operations.

> The ingots are heated, rolled (reducing them in thickness from approximately 5 to 7 inches to less than 0.5 inch), cooled, and coiled. The material is then milled to eliminate surface irregularities and then is further reduced in thickness to 0.188 inch or less through cold-breakdown rolling. The extent of further processing is entirely dependent on customer requirements. In general, the material typically undergoes a variety of additional operations, such as annealing, cleaning, rolling to thickness on "four high" or "Sendzimir cluster" mills, tension leveling, slitting (to achieve a desired width), and cutting to length to meet customer specifications. Once all operations are completed, the material is packed and shipped. (*Id* at A–5)

The functions performed by brass mills, as set forth above, represent far more comprehensive operations in relation to the finished product than that of the rerolling processes, referred to above as "additional operations." Fundamentally, rerollers begin the process with brass strip, a product that, if imported from Canada, would already be within the scope of the order; whereas brass mill operations encompass all the manufacturing processes necessary to take the product from a raw material to brass sheet and strip, as defined by the order. Brass mills perform several operations requiring melting and casting functions. These operations are the primary operations for production of brass sheet and strip; whereas rerolling operations "add only the last fraction of value," as Wolverine has stated. (See Wolverine's case brief in the present inquiry, February 26, 1993, at 5.)

Unlike brass mills, Great Lakes performed no casting operations, and only minor fabrication operations, during the period of inquiry. Great Lakes did, however, perform rerolling operations which included all of the processes that rerollers perform, with one additional step, namely that of cold-breakdown rolling, a process referred to by Wolverine as fabrication. Great Lakes scrapped its old casters before new ones became operational, and thus was not performing any casting operations during the period of inquiry. As a result, Great Lakes imported brass plate, a product which was one rolling step short of constituting sheet and strip, prior to importation. As described by the ITC in its preliminary injury determination, the primary fabrication process is hot-breakdown rolling, whereby ingots are heated, rolled (from approximately 5 to 7 inches in thickness to less than 0.5 inch), and coiled. This material is then further reduced in thickness to 0.188-inch or less through cold-breakdown rolling. (See Certain Brass Sheets and Strips from Brazil, Canada, France, Italy, Korea, Sweden, and W. Germany, Inv. No. 701–TA–269, USITC Publication 1837, May, 1986, at A–2.) Great Lakes clearly did not perform hot-breakdown rolling. Rather, during the period of inquiry, Great Lakes' operations were strictly limited to performance of rerolling and finishing processes. The relatively small amount of Great Lakes' cold-breakdown rolling is insufficient for us to consider Great Lakes a fabricator. We therefore have considered Great Lakes to be a reroller during the period of inquiry.

We agree with Wolverine's claim that during the period of inquiry Great Lakes performed more rerolling functions than that of normal rerollers because Great Lakes rerolled thicker gauge brass, known as brass plate, while rerollers normally reroll thinner gauge brass, known as sheet and strip. We also believe that a comparison of Great Lakes' operations with only that of normal rerollers, as suggested by Great Lakes, is clearly inappropriate in this determination for two reasons. First, reroller activities represent only one segment of the brass sheet and strip industry as defined by the ITC. Thus, any comparison of operations using reroller activities as the appropriate standard would fail to provide both an accurate representation of the industry as a whole and a meaningful evaluation of Great Lakes' operations in particular. Rather, we must compare Great Lakes' activities to that of vertically integrated producers, such as brass mills, which cast, roll, and finish the product. Second, the operations of the rerollers cannot, by themselves, represent the brass sheet and strip industry when such rerollers purchase and use brass sheet and strip, a product already within the scope of the order, as the primary input in the production process. To define the industry based solely upon the operations of rerollers would not only misconstrue the definition of the brass sheet and strip industry as set forth by the ITC, but would also fail to take account of the activities of that segment of the industry actually responsible for producing the product as defined by the scope of the order.

Applying the ITC's definition of the brass sheet and strip industry as a standard by which to evaluate the operations of Great Lakes, we determine that during the period of this inquiry, the nature of these operations, in comparison to the entire set of operations in the brass sheet and strip industry, was small.

Comment 3: Great Lakes argues that of the three qualitative factors that the statute mandates the Department to consider (*i.e.*, pattern of trade, relationship of parties and increase in imports of components), only an increase in imports was found to indicate that circumvention activities may have occurred during the period of inquiry. Great Lakes argues that in the only other section 781(a) case in which circumvention was found, all three qualitative factors under section 781(a)(2) were found to indicate circumvention. (See Granular Polytetrafluorethylene Resin from Italy, Preliminary Affirmative Circumvention Determination, (PTFE), September 18, 1992, 57 FR 43218, 43221.)

Department's Position: While all three factors under section 781(a)(2) examined in the PTFE circumvention inquiry affirmatively indicated circumvention, the PTFE case should not be read to stand for the principle

that all qualitative factors must indicate circumvention in order for the Department to make an affirmative circumvention determination. To do so would run counter to the statute, which does not require that all three factors be present to find circumvention. Section 781(a)(2) of the statute states that in determining whether to include parts or components in the outstanding order, the administering authority "shall take into account" these factors. There is no indication that each factor need be present before making an affirmative circumvention determination. Indeed, if all three had to be affirmatively met, they would be mandatory criteria, such as those in section 781(a)(1), not "factors to consider," and there would be no need to separately list them in 781(a)(2). Furthermore, consistent with the determination in this case, the Department previously concluded, in two circumvention inquiries, that the three qualitative factors are not essential conditions for finding circumvention. (See Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore; Negative Preliminary Determination of Circumvention of Antidumping Duty Orders, December 19, 1990, 55 FR 52066, 52069; and Negative Final Determination of Circumvention of Antidumping Duty Order: Portable Electric Typewriters from Japan; November 15, 1991, 56 FR 58031, 58034.)

Comment 4: Great Lakes and Wolverine note that the Department found the pattern of trade to be inconclusive in indicating circumvention. Wolverine adds that the Department would have been completely justified in concluding that the pattern of trade does not indicate circumvention.

Petitioners assert that the Department found the pattern of trade to be inconclusive due to the absence of a basis upon which to compare Wolverine's activities prior to the imposition of the antidumping order, as Wolverine did not participate in the brass sheet and strip industry until November, 1988. Still, Petitioners assert that there is a pattern of trade which suggests circumvention. Citing the Department's preliminary determination, petitioners point out that Wolverine admitted that it did not export any brass sheet and strip to the United States from June 1989 through September 1991, and made no sales of brass plate to Great Lakes prior to September 1990. Petitioners further state that, according to Great Lakes' own admission, after the circumvention inquiry began it ceased importing brass plate from Wolverine, and resumed importing brass sheet and strip from Wolverine.

Department's Position: We maintain, as we found in the preliminary determination, that the pattern of trade is inconclusive. However, pattern of trade is not a threshold condition, but rather one of several factors which the Department considers when evaluating whether circumvention is occurring.

Comment 5: Great Lakes asserts that the Department did not explain the unusual circumstances that are present in this case that make it appropriate to find circumvention where no relationship between the exporter and the importer existed.

Great Lakes states that the importance of relationship between exporter and the importer was emphasized in Color Picture Tubes from Canada, Japan, Republic of Korea and Singapore, Final Negative Circumvention Determination, where the Department stated this factor was "key" and sometimes "critical." Great Lakes also states that the Department noted that circumvention is "more likely" when there is a relationship between the manufacturer and the exporter.

Petitioners assert that the relationship of parties is not a threshold condition for an affirmative finding, but also suggest that a relationship exists between Great Lakes and Wolverine. They note that Great Lakes is owned by a Korean firm and that both Korean and Canadian brass sheet and strip are subject to the dumping orders. Petitioners argue that Korean manufacturers have attempted to minimize the impact of the order against Korean brass sheet, and as Great Lakes and Wolverine share a common interest in avoiding the antidumping duties, that this relationship should not be disregarded.

Wolverine asserts that the Department's conclusion, in the preliminary determination that Wolverine and Great Lakes were not related is wholly supported by the record.

Department's Position: We disagree with petitioners' assessment of the relationship between Great Lakes and Wolverine. While both Great Lakes and Wolverine may share a common interest in avoiding the antidumping duty order, it does not necessarily follow that they have any relationship other than that of customer to supplier.

While we have noted that it is "more likely" for related parties to engage in circumvention activity, a relationship between the exporter and importer is not a necessary condition for finding circumvention. While circumvention may be more likely to occur between related parties, it is also possible for circumvention to occur between unrelated companies. In addition, the factor of relationship was not a "key" or "critical" factor in the circumvention inquiries on color picture tubes (CPTs). On the contrary, in the CPT circumvention inquiries the Department specifically investigated unrelated companies, and made negative determinations on other grounds. (See Color Picture Tubes from Canada, Japan, Republic of Korea, and Singapore; Negative Preliminary Determinations of Circumvention of Antidumping Duty Orders; December 19, 1990, 55 FR 52066, 52068.)

Comment 6: While petitioners agree with the Department that an increase in imports does show circumvention, petitioners argue that the Department should look beyond the ten-fold jump in imports of brass plate from Canada to the United States from 1990 to 1991, as reported in the preliminary determination. The Department characterized this increase as indicative that circumvention may have occurred during the period of inquiry. Petitioners suggest that the Department look at import volumes in 1985 and 1986, the two years preceding the order, in relation to import volume in 1991, rather than focusing on the two post-order years of 1990 and 1991. Petitioners point out that such an examination would show Canadian brass plate imports ballooning from a *de minimis* level in 1985 and 1986 to a post-order peak of 2.3 million pounds in 1991.

Wolverine argues that petitioners' methodology is flawed and, if used, would lead to confusion since a new tariff schedule went into effect on January 1, 1989. Wolverine argues that although there was a substantial increase of imports during the period of inquiry, and the data shows a large portion of that increase was attributable to Wolverine, if Wolverine's portion of the increase is subtracted, a large increase in imports, attributable to other exporters, still exists.

Great Lakes asserts that the Department's finding of circumvention is insupportable. As evidence of this, Great Lakes cites the Department's use of the word "may" in its statement that the increase in imports "indicates that circumvention activities may have occurred during the period of inquiry" (58 FR 6618).

Department's Position: We agree with Wolverine. Because of the change in the tariff systems from the Tariff Schedules of the United States to the HTS in 1989, we were unable to gather import information which would allow

appropriate comparisons between the period before the issuance of the antidumping duty order (pre-1989 period) and the post-1989 period. Thus, to obtain an accurate picture of the change in imports of brass plate, we compared imports of brass plate before and after the opening of Great Lakes' U.S. facility. The ten-fold increase in imports clearly indicates that circumvention may have occurred.

Finally, we disagree with Great Lakes concerning our characterization of this qualitative factor. In our preliminary determination, we stated that "a 10-fold increase in imports of parts and components may indicate that circumvention was occurring" (emphasis added) precisely because an increase in imported components alone cannot demonstrate conclusively that circumvention has occurred. (See Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Negative Final Determination of Circumvention of Antidumping Duty Order; February 21, 1990, 55 FR 6028, 6031, Comment 10.) Rather, the criteria set forth in section 781(a)(1) must indicate circumvention before the Department can make an affirmative circumvention determination.

Comment 7: Great Lakes argues that in its preliminary determination the Department failed to take into account the reasons for Great Lakes' purchase of material from Wolverine. Specifically, Great Lakes contends that before it could install its own casters and purchase cast material from PMX, a company which, at the time, was building a brass mill in the United States, petitioners and domestic producers refused to sell brass plate to Great Lakes. This compelled the company to purchase material from Wolverine. Great Lakes contends that petitioners attempted to impede Great Lakes' entry into the brass fabrication market by refusing to sell to it, and when this did not work, petitioners filed a petition for a circumvention inquiry. Great Lakes further argues that it did not intend to evade the antidumping order, as it purchased a plant that was in existence before the imposition of the antidumping order and modernized it into an integrated facility. Such modernization was completed after the period of inquiry in the anti-circumvention proceeding.

Wolverine similarly argues that the components for Great Lakes' operations were not available in the United States and, whether or not the value added is small, it cannot be said that circumvention occurred. Wolverine further contends that it only sold plate, a product not covered by the antidumping duty order, to a U.S. fabricator only when asked to do so, and that it had no intention of circumventing the antidumping order.

Petitioners argue that the sequence of activity by Great Lakes reveals a different set of circumstances than what Great Lakes contends. Petitioners contend that Great Lakes requested quotations from U.S. sources only after the circumvention inquiry was filed. Petitioners further argue that in the last quarter of 1991, Great Lakes decided to import brass sheet and strip in lieu of brass plate, which they contend indicates that Great Lakes had no commercial need for brass plate.

Department's Position: Such factors as intent to evade an order, unavailability of an input, and conspiracy to exclude a firm's entry into the U.S. market, are not bases for a circumvention determination, as enumerated by Congress. The motivations and purposes behind Great Lakes' importation and rerolling of brass plate are thus irrelevant to this proceeding. Indeed, companies may be circumventing an order without knowledge that such an order exists. The lack of knowledge or intent on the part of a respondent, however, does not constrain the Department from addressing such instances of circumvention. Congress clearly did not place upon petitioners or the Department the significant burden of showing that respondents intended to circumvent the order before an affirmative circumvention determination could be made. On the contrary, Congress set forth specific criteria for determining whether circumvention has occurred: whether the merchandise is of the same class or kind as that under the order, whether the parts or components are from the order country, and whether the difference in value is "small." Although other factors are considered by the Department in making its determination, it is clearly unnecessary for the Department to evaluate respondents' motivations or intent before an affirmative determination of circumvention is made. To make intent a factor in the Department's determination would require a massively intrusive inquiry far beyond anything done elsewhere in antidumping proceedings. While one might surmise that the criteria given by Congress are perhaps indirect indicia of intent, each is capable of independent analysis and are best seen as not only making a determination of intent unnecessary, but deliberately to be avoided. As directed by the statute, we have based our determination upon the criteria set forth in section 781(a) of the statute. (See PTFE from Italy, Final Affirmative Circumvention Determination, April 30, 1993, 58 FR 26100, 26112.)

Affirmative Final Determination of Circumvention

After consideration of the factors discussed above, we determine that circumvention, within the meaning of section 781(a) of the Tariff Act, of the antidumping duty order on brass sheet and strip from Canada has occurred. We base this determination on the following. First, the items produced at Great Lakes' facility and sold in the United States were of the class or kind of merchandise covered by the order, and were made of parts and components from Canada. Second, the difference in value between the brass sheet and strip sold in the United States and the brass plate imported into the United States from Canada was small. Finally, imports of Canadian brass plate increased ten-fold during the period of inquiry. As in the preliminary determination, we found that there was no relationship between the exporter and the importer, and that the pattern of trade was inconclusive with respect to circumvention. We note that our analysis of the difference in value and resulting determination of "small" in this case are not necessarily synonymous with such determinations that the Department will formulate in future anti-circumvention inquiries since Congress has directed us to make determinations regarding the difference in value on a case-by-case basis.

Suspension of Liquidation

In accordance with section 773(d) of the Tariff Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of Canadian brass plate, with the exception of brass plate manufactured by Ratcliffs/Severn Limited because the antidumping duty order on brass sheet and strip from Canada was revoked, in part, with respect to Ratcliffs/Severn (see 56 FR 57317). The merchandise subject to suspension of liquidation is brass plate, also known as copper-zinc base alloy plate, over 0.188 inches in thickness, as defined in the "Scope of the Circumvention Inquiry" section of this notice, used in the production of brass sheet and strip, as defined in the "Scope of the Antidumping Duty Order" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after February 1, 1993. The U.S. Customs Service shall require a cash deposit at the applicable rate. This suspension of liquidation will remain in effect until further notice.

Requirement of End-Use Certification

Considered within the scope of the antidumping duty order on brass sheet and strip are all imports of brass plate, as defined in the "Scope of the Inquiry" section of this notice, unless (1) manufactured by Ratcliffs/Severn Limited, or (2) accompanied by an end-use certificate stating that such brass plate will not be used in the production of brass sheet and strip, as defined in the "Scope of the Antidumping Duty Order" section of this notice.

Interested parties may request disclosure within five days of the date of publication of this notice.

This final affirmative determination of circumvention is in accordance with section 781(a) of the Tariff Act (19 U.S.C. 1677j(a)) and 19 CFR 353.29(e).

Dated: June 11, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-14449 Filed 6-17-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-583-505]

Oil Country Tubular Goods From Taiwan; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on oil country tubular goods from Taiwan. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: David Genovese or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-5253.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1986, the Department of Commerce (the Department) published an antidumping duty order on oil country tubular goods from Taiwan (51 FR 22098). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than June 30, 1993, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistnat Secretary for Compliance.

[FR Doc. 93-14460 Filed 6-17-93; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-604]

Certain Fresh Cut Flowers From Canada; Revocation of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty order.

SUMMARY: The Department of Commerce is revoking the antidumping duty order on certain fresh cut flowers from Canada because it is no longer of any interest to interested parties.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Joanna Schlesinger or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482-4733.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 11587) its intent to revoke the antidumping duty order on certain fresh cut flowers from Canada (52 FR 8491, March 18, 1987).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this duty order on each interested party on the service list. Interested parties who might object to the revocation were provided the opportunity to submit their comments not later than thirty days from the date of publication.

Scope of the Order

Imports covered by the review are shipments of certain cut flowers from Canada. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item number 7020.00.00. The HTS number is provided for convenience and Customs purposes. The written description remains dispositive.

The Department may revoke an antidumping order if the Secretary concludes that the duty order is no longer of any interest to interested parties. We conclude that there is no interest in an antidumping duty order when no interested party has requested an administrative review for four consecutive review periods (19 CFR 353.25(d)(4)(i)) and when no interested party objects to revocation.

In this case we have received no request for review for five consecutive review periods. Furthermore, no interested party has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping duty order covering certain fresh cut flowers from Canada is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping duty order in accordance with 19 CFR 353.25(d)(4)(iii).

This revocation applies to all unliquidated entries of certain fresh cut flowers from Canada entered, or withdrawn from warehouse, for consumption on or after March 1, 1993. Entries made during the period March 1, 1992 through February 28, 1993, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after March 1, 1993, without regard to

antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries.

This notice is in accordance with 19 CFR 353.25(d).

Dated: June 8, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14452 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–475–031]

Large Power Transformers From Italy; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on large power transformers from Italy. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1972, the Treasury Department published an antidumping finding on large power transformers from Italy (37 FR 11772). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than June 30, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14491 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–823]

Initiation of Antidumping Duty Investigation: Nitromethane From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Kate Johnson, (202) 482–4929, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

INITIATION OF INVESTIGATION:

The Petition

On May 24, 1993, we received a petition filed in proper form by Angus Chemical Company, filing on behalf of the domestic nitromethane industry (petitioner). We received a supplement to the petition on June 7, 1993.

In accordance with 19 CFR 353.12, the petitioner alleges that nitromethane from the People's Republic of China (PRC) is, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it is the only remaining producer of nitromethane in the United States. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigation

The product covered by this investigation is nitromethane, a chemical compound with the formula CH_3NO_2. Nitromethane is a nitroparaffin in which the nitro group is attached to the single carbon atom of that member of the alkane family known as methane. Nitroparaffins are any of a homologous series of compounds whose generic formula is $C_nH_{2n+1}NO_2$, the nitro groups being attached to a carbon atom through the nitrogen.

Nitromethane has numerous industrial uses, including as a solvent in polymers for coatings, as a component of special fuels for internal combustion engines, as a stabilizer for chlorinated hydrocarbons, and as an extraction solvent. Nitromethane is a raw material used in the synthesis of other useful chemicals including chloropicrin, a primary soil nematocide; tris (hydroxymethyl)-aminomethane, a pharmaceutical and diagnostic buffer; and bronopol, a preservative for nonwoven moist toilettes.

Nitromethane is classifiable under the subheading 2904.20.50.00 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading, a basket provision, is defined to include sulfonated, nitrated, or nitrosated derivatives of hydrocarbons, whether or not halogenated. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

United States Price and Foreign Market Value

Petitioner based United States Price for nitromethane on weight-averaged duty-paid and delivered prices paid by U.S. customers, as reported to ANGUS sales representatives. Petitioner made deductions to the U.S. prices, where appropriate, for ocean freight, U.S. customs duties, foreign inland freight, and U.S. inland freight.

Petitioner, alleging that the PRC is a non-market economy country within the meaning of section 773(c) of the Act, based foreign market value on the factors of production generally used in producing the subject merchandise in the PRC. To estimate the factors of production, petitioner used information it obtained from a March 23, 1993, report by Bechtel Corporation, a major

industrial construction firm that has experience in planning and building petrochemical facilities in India. To value the factors of production, petitioner selected India as the most comparable surrogate for the PRC. For purposes of this initiation, we have accepted India as having a comparable economy and being a significant producer of comparable merchandise, pursuant to section 773(c)(4) of the Act. Petitioner, therefore, first attempted to value the factors of production using Indian information. Where this was not possible, petitioner valued the factors of production based on its own experience. Petitioner obtained and valued the factors of production of the subject merchandise in the PRC as follows:

- For sodium nitrite, dimethyl sulfate, sulfuric acid, and 50 percent sodium hydroxide, petitioner used rates per metric ton, reported in U.S. dollars based on Indian prices as contained in the Bechtel Report.
- For steam, electricity, and water, petitioner estimated the quantities required to operate a nitromethane plant on a commercial scale. Petitioner valued these utilities in India based on the Bechtel Report.
- For labor, petitioner estimated the number of workers involved in producing nitromethane based on its own experience. Petitioner valued these labor figures in India based on the Bechtel Report.
- For depreciation, petitioner estimated the capital costs based on its own experience. Depreciation was based on a ten year period.
- For insurance and general plant overhead, petitioners used Indian percentage rates based on the Bechtel Report.
- For waste disposal, petitioners relied on the Richardson Index to obtain a percentage of raw material costs.
- For selling, general and administrative expenses (SG&A), petitioner used the statutory minimum of ten percent of the cost of manufacture.
- For profit, petitioner used the statutory minimum of eight percent of the cost of manufacture plus SG&A expenses.

Based on petitioner's calculations, the dumping margin is 233 percent. For purposes of this initiation, no adjustments were made to petitioner's calculations.

Initiation of Investigation

We have examined the petition on nitromethane from the PRC and have found that the petition meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of nitromethane from the PRC are being, or are likely to be, sold in the United States at less than fair value.

International Trade Commission (ITC) Notification

Section 732(d) of the Act requires us to notify the ITC of this action and we have done so.

Preliminary Determination by the ITC

The ITC will determine by July 8, 1993, whether there is a reasonable indication that imports of nitromethane from the PRC are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination will result in a termination of the investigation; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: June 14, 1993.

Joseph A. Spetrini

Acting Assistant Secretary for Import Administration

[FR Doc. 93-14448 Filed 6-17-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-588-706]

Nitrile Rubber from Japan; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on nitrile rubber from Japan. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Fred Baker, of Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-5256.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1988, the Department of Commerce (the Department) published an antidumping duty order on nitrile rubber from Japan (53 FR 22553). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than June 30, 1993, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93-14457 Filed 6-17-93; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-080]

Carbon Steel Plate From Taiwan Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on carbon steel plate from Taiwan. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department

of Commerce, Washington, DC 20230, telephone: (202) 482–5256.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1979, the Treasury Department published an antidumping finding on carbon steel plate from Taiwan (44 FR 33877). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

Not later than June 30, 1993, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such obligation should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353(25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14459 Filed 6–17–93; 8:45 am]

BILLING CODE [illegible]

[A–[illegible]]

64K Dynamic Random Access Memory Components From Japan; Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on 64K DRAMs from Japan. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3814.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1986, the Department of Commerce (the Department) published an antidumping duty order on 64K DRAMs from Japan (51 FR 21781). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than June 30, 1993, domestic interested parties, as defined in §§ 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14453 Filed 6–17–93; 8:45 am]

BILLING CODE [illegible]

[A–401–040]

Stainless Steel Plate From Sweden; Intent to Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on stainless steel plate from Sweden. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5256.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1973, the Treasury Department published an antidumping finding on stainless steel plate from Sweden (38 FR 15079). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than June 30, 1993, domestic interested parties, as defined in §§ 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary of Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the

finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14462 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–423–077]

Sugar From Belgium; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on sugar from Belgium. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1979, the Treasury Department published an antidumping finding on sugar from Belgium (44 FR 33878). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than June 30, 1993, domestic interested parties, as defined in §§ 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14456 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–427–078]

Sugar From France; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on sugar from France. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1979, the Treasury Department published an antidumping finding on sugar from France (44 FR 33878). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than June 30, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14454 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–428–062]

Sugar From Germany; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on sugar from Germany. Domestic interested parties who object to this revocation must submit their comments in writing no later than June 30, 1993.

EFFECTIVE DATE: June 18, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1979, the Treasury Department published an antidumping

finding on sugar from Germany (44 FR 33878). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than June 30, 1993, domestic interested parties, as defined in §§ 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Opportunity to Object

No later than June 30, 1993, domestic interested parties, as defined in §§ 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by June 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by June 30, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14455 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit (P211F).

SUMMARY: On April 9, 1993, notice was published in the **Federal Register** (58 FR 18376) that the Oregon Department of Fish and Wildlife, Marine Science Drive, Bldg. 3, Newport, Oregon 97365, had applied for a Permit to capture, handle, tag, hot brand, blood/tissue sample up to 200 Steller sea lion (*Eumetopias jubatus*) pups annually; capture, radio-tag, blood/tissue sample up to 5 adult female Steller sea lions; accidentally kill up to 2 pups and 2 adult female Steller sea lions during research activities; and incidentally harass up to 4,000 Steller sea lions incidental to the activities.

Notice is hereby given that on June 11, 1993, as authorized by the provisions of the Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361–1407), the NMFS issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, was based on the finding that such Permit: (1) Was applied for in good faith; (2) Will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) Is consistent with the purposes and policies set forth in Section 2 of the ESA. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit and accompanying documentation are available for review by writing to or appointment in the Permits Division, Office of Protected Resources, NMFS, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289);

Director, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115 (206/526–6150);

Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4015); and

Director, Alaska Fisheries Science Center, NMML, 7600 Sand Point Way, NE, BIN C15700, Bldg. 4, Seattle, WA 98115 (206/526–4047).

Dated: June 11, 1993.

William W. Fox, Jr., Ph.D,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–14383 Filed 6–17–93; 8:45 am]

BILLING CODE 3510–22

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 19, 1993.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 11, 1992, April 23, 30 and May 7, 1993, the Committee for Purchase from People Who Are Blind or Severely Disabled published notices (57 FR 58796, 58 FR 21706, 26125 and 27272) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the

commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodity and services proposed for addition to the Procurement List. Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Paper, Toilet Tissue
8540-00-530-3770
(Requirements for Palmetto, Georgia)

Services

Demilitarization of Military Hardware, Robins Air Force Base, Georgia
Food Service Attendant, Naval Weapons Station, Building 306, Charleston, South Carolina
Grounds Maintenance, Bureau of Reclamation, New Melones Lake Visitors Center, 6850 Studhorse Flat Road, Sonora, California
Janitorial/Custodial, Fort Ritchie, Maryland

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E. R. ALLEY, JR.,

Deputy Executive Director.

[FR Doc. 93-14440 Filed 6-17-93; 8:45 am]

BILLING CODE 6820-33-P

Procurement List Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 19, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List for production by the nonprofit agencies listed:

Commodities

Line, Multi-Loop
1670-01-062-6302
Nonprofit Agency: Industrial Opportunties, Inc., Marble, North Carolina
Folder, File
7530-00-707-8406
Nonprofit Agency: Lions Club Industries, Inc., Durham, North Carolina
Squeegee, Floor Cleaning
7920-00-530-5740
7920-00-965-4873
Nonprofit Agency: Lawrence Rehabilitation Services, Inc., Lawrence, Massachusetts

Services

Forms/Publication Storage and Distribution, Federal Aviation Administration Building, 1601 Lind Avenue SW., Renton, Washington
Nonprofit Agency: Northwest Center for the Retarded, Seattle, Washington
Janitorial/Custodial, Marine Corps Air Station, Kaneohe Bay, Hawaii,
Nonprofit Agency: Lanakila Rehabilitation Center, Honolulu, Hawaii

Deletion

It is proposed to delete the following commodity from the Procurement List:
Lead Seal With Cord Attachment
P.S. Item 0815

E. R. Alley, Jr.

Deputy Executive Director.

[FR Doc. 93-14441 Filed 6-17-93; 8:45 am]

BILLING CODE 6820-33-P

DEPARTMENT OF DEFENSE

Department of Navy

Marine Corps; Public Hearing for the Proposed Wastewater Treatment System Upgrade Marine Corps Base, Camp Lejeune, North Carolina

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500-1508) implementing procedural provisions of the National Environmental Policy Act, the Marine Corps has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for a proposed wastewater treatment system upgrade at Marine Corps Base Camp Lejeune, North Carolina.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held on July 13, 1993, beginning at 7 p.m., in the Jacksonville High School Auditorium, located at 1021 Henderson Drive, Jacksonville, North Carolina. Graphics showing alternatives considered and key issues of the proposed action will be available for review one hour prior to the hearing (6 p.m.).

The public hearing will be conducted by the Marine Corps. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral

comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by August 2, 1993, to become part of the official record.

The proposed action will remove three existing discharges to the most nutrient sensitive waters of the upper New River system, remove two existing discharges in proximity to high quality shellfishing waters of the lower New River, and remove an existing discharge to the Intracoastal Waterway. The project will be constructed in three phases. Phase I will construct transmission pipeline to consolidate flows from the existing plants to a single discharge point near an existing treatment plant in the Hadnot Point area. Phases II and III will be concurrent projects which will construct a new 15 million gallon per day (MGD) advanced treatment plant with a high level of nutrient removal. A river outfall diffuser pipe will be constructed to allow discharge of the treated effluent into the New River. Upon completion of the project, all existing wastewater treatment plants will be shut down.

In addition to the advanced treatment plant with river discharge, construction of an ocean outfall, a combination of advanced treatment with river discharge and limited land application, and no action were considered as alternatives.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. In addition, the DEIS is available for review at the following locations:

Onslow County Manager's Office, 521 Mill Avenue, Jacksonville, NC
Surf City Town Hall, 214 North New River Drive, Surf City, NC
Onslow County Public Library, 58 Doris Ave East, Jacksonville, NC
Sneads Ferry Public Library, 242 Sneads Ferry Road, Sneads Ferry, NC
Camp Lejeune Base Library, Holcomb Blvd, Bldg. 1220, Camp Lejeune, NC
North Topsail Beach Town, Hall, Highway 210, North Topsail Beach, NC
topsail Beach Town Hall, 820 South Anderson Blvd, Topsail Beach, NC
Richlands Public Library, Wilmington Street, Richlands, NC
Swansboro Public Library, Church Street, Swansboro, NC

A limited number of single copies are available at the address listed at the end of this notice.

Additional information concerning this notice may be obtained by contacting Pamela Anderson (Code 203), Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, Virginia 23511–2699.

Dated: June 8, 1993.

R. W. Watkins,

Colonel, U.S. Marine Corps Head, Land Use and Military Construction Branch Facilities and Services Division Installations and Logistics Department By Direction of the Commandant of the Marine Corps

Michael P. Rummel,

LCDR, JAGC, USN Federal Register Liaison Officer

[FR Doc. 93–14199 Filed 6–17–93; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 19, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: June 14, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Human Resources and Administration

Type of Review: New.
Title: Applicant Background Survey Form.
Frequency: On occasion.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 36,250.
Burden Hours: 3,021.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The U.S. Department of Education will request background information from applicants that are applying for employment with the Department. The information will be used to assess applicant flow data in evaluating the effectiveness of ED's recruitment efforts. The Department will use the information for statistical analysis and reporting to Equal Employment Opportunity Commission.

Office of Policy and Planning

Type of Review: New.
Title: Evaluation of the Tech-Prep Education Program.
Frequency: Annually.
Affected Public: Individuals or households; state or local governments; non-profit institutions.
Reporting Burden:
Responses: 1,651.
Burden Hours: 6,451.
Recordkeeping Burden:
Recordkeepers: 0.

Burden Hours: 0.
Abstracts: This study is designed to describe state and local tech-prep programs and activities funded under the National Tech-Prep Education Program, and to idenify best practices and effective approaches of local programs.

Office of Postsecondary Education

Type of Review: Revision.
Title: New and Noncompeting Continuation Application for Grants to Institutions and Consortia to Encourage Women and Minority Participation in Graduate Education.
Frequency: Annually.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 165.
Burden Hours: 2,760.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State Educational agencies to apply for funding under the Instructions and Consortia to Encourage Women and Minority Participation in Graduate Education Program. The Department will use the information to make grant awards.

[FR Doc. 93–14381 Filed 6–17–93; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Issuance of Proposed Decision and Order During the Week of May 31 Through June 4, 1993

During the week of May 31 through June 4, 1993, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: June 11, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

Duncan Thompson Petroleum, Inc., Atlanta, TX, LEE–0048

Duncan Thompson Petroleum, Inc. filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Reseller/Retailer's Monthly Petroleum Product Sales Report." In considering the request, the DOE tentatively found that the firm was not suffering a gross inequity or serious hardship. Accordingly, on June 4, 1993, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

[FR Doc. 93–14439 Filed 6–17–93; 8:45 am]
BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. ER93–692–000, et al.]

Potomac Electric Power Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 14, 1993.

Take notice that the following filings have been made with the Commission:

1. Potomac Electric Power Co.

[Docket No. ER93–692–000]

Take notice that on June 2, 1993, Potomac Electric Power Company (Pepco) submitted for filing revised sheets to the Delivery Point Supplement to Pepco FERC No. 34, its agreement to supply full requirements service to its customer, Southern Maryland Electric Cooperative, Inc. The revised sheets provide for the addition of Hawkins Gate Substation, a new delivery point under the agreement, as of November 1, 1992 as agreed between Pepco and its customer. Waiver of notice is requested.

Comment date: June 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Co.

[Docket No. ER93–630–000]

Take notice that on June 8, 1993, Northern States Power Company (Minnesota) filed a supplement to the above mentioned docket requesting that this proceeding be consolidated with Docket No. ER93–259–000 for purposes of rehearing. In Docket No. ER93–259–000 NSP filed a request for rehearing in which it (a) applied for rehearing of the Commission's finding on market-based rates and (b) asked the Commission to grant rehearing for purposes of further consideration to allow NSP time to discuss with the Staff and the customers a method of further consideration to allow NSP time to discuss with the Staff and the customers a method of cost-supporting the rates for 1994 and beyond. NSP requests that the filing in the present docket be given the same treatment.

Comment date: June 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. PSI Energy, Inc.

[Docket No. ER93–700–000]

Take notice that PSI Energy, Inc. (PSI), on June 8, 1993, tendered for filing an Interchange Agreement, dated January 29, 1993, between PSI and Blue Ridge Power Agency (Blue Ridge).

The Interchange Agreement provides for the following service between PSI and Blue Ridge:

1. Service Schedule A—Emergency Service
2. Service Schedule B—Short-Term Capacity and Energy
3. Service Schedule C—Economy Energy
4. Service Schedule D—Non-Displacement Energy
5. Service Schedule E—Limited-Term Capacity and Energy
6. Service Schedule F—Term Capacity and Energy

PSI and Blue Ridge have requested an effective date of August 4, 1993.

Copies of the filing were served on Blue Ridge Power Agency, the Virginia State Corporation Commission and the Indiana Utility Regulatory Commission.

Comment date: June 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

PSI Energy, Inc.

[Docket No. EL93–2–002]

Take notice that PSI Energy, Inc. (PSI) on June 8, 1993, tendered for filing its

compliance filing per the Commission's order, issued April 22, 1993, in Docket No. EL93–2–000.

PSI notes that it also filed a Motion for Clarification, Alternative Request for Rehearing and Motion for Extension of Time related to the above referenced docket on May 24, 1993.

Copies of the filing were served on Wabash Valley Power Association, Inc., the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: June 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Company

[Docket No. ER93–701–000]

Take notice that on June 9, 1993, Florida Power & Light Company (FPL) filed the Contract for Purchases and Sales of Scheduled Power and Energy Between Florida Power & Light Company and City of Tallahassee, Florida. FPL requests an effective date of July 1, 1993.

Comment date: June 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

Portland General Electric Company

[Docket No. ER93–703–000]

Take notice that on June 9, 1993, Portland General Electric Company (PGE) tendered for filing service agreements under FERC Electric Tariff, Original Volume No. 1 (PGE–1) with Louis Dreyfus Electric Power, Inc. copies of this agreement have been served on the parties included in the distribution list defined in the filing letter.

Comment date: June 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Midwest Power Systems Inc.

[Docket No. ER93–560–000]

Take notice that on June 8, 1993, Midwest Power Systems Inc. tendered for filing Amendment No. 1 to the filing of an executed Service Schedule Agreement for wholesale electric power and energy between Midwest Power Systems Inc. (MPSI) and the City of Wall Lake, Iowa (City), whereby MPSI will provide wholesale electric power and energy as required by the City above the amount provided by the Western Area Power Administration (Western). MPSI is filing this Agreement pursuant to the established Electric Tariff Volume No. 1, Original Issue Sheets Nos. 7, 8, and 9. Amendment No. 1 contains additional support data and information describing the relationship between MPSI and the City since 1983.

Copies of this filing has been sent to:

Mr. Raymond K. Vawler, Executive Secretary, Iowa Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319

Mr. H.F. Schroeder, Mayor, City of Wall Lake, 416 2nd Street, Wall Lake, Iowa 51466

Comment date: June 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14395 Filed 6–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–2107–004]

Arkla Energy Resources; Sale of Natural Gas

June 14, 1993.

Take notice that on May 27, 1993, Arkla Energy Resources (AER), P.O. Box 21734, Shreveport, Louisiana, 71151, submitted the following information regarding the sale of natural gas to be made to an affiliate under AER's Rate Schedule ISS, pursuant to the authorization granted by an order issued August 6, 1992, in Docket Nos. RP91–65–000, –006, and –007; and CP89–2107–000 (60 FERC ¶ 61,160).

(1) *Name of Buyer:* Arkla Energy Marketing

(2) *Location of Buyer:* Shreveport, Louisiana

(3) *Affiliation between AER and Buyer:* Both AER and Arkla Energy Marketing are subsidiaries of Arkla, Inc.

(4) *Nature of the Transaction:* Purchase for consumption.

(5) *Term of Sale:* June 1, 1993, to June 30, 1993.

(6) *Estimated Maximum Daily Quantity:* 30,000 MMBtu

Estimated Total Quantity: 900,000 MMBtu

(7) *Rates:*

Maximum: Current estimated weighted average cost of gas as stated in AER's latest PGA being charged.

Minimum: Spot price index for the month.

Rate to be Charged During the Billing Period: $1.80 per dry MMBtu, plus $0.2752 per MMBtu for transportation and the weighted average rate applicable to all AER points of receipt for gathering.

Arkla Energy Resources Company, Docket No. CP89–2107–004

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of August 6, 1992. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, AER may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14367 Filed 6–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR93–12–000]

Dow Intrastate Gas Co.; Petition for Rate Approval

June 14, 1993.

Take notice that on June 1, 1993, Dow Intrastate Gas Company (DIGCO) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.1057 per MMBtu plus 0.03% in-kind fuel reimbursement for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

DIGCO states that it is an intrastate pipeline within the definition of section 2(16) of the NGPA and that it owns and operates facilities in the State of Louisiana. DIGCO states in its petition that its last approved rate for

transportation on its system was $0.1328 per MMBtu plus a 0.3% in-kind fuel reimbursement level which was approved by the Commission in Docket No. PR90–6–000. (53 FERC ¶ 61,092)

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before June 29, 1993. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14370 Filed 6–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–140–000]

Gas Research Institute; Notice of Annual Application

June 14, 1993.

Take notice that on June 10, 1993, Gas Research Institute (GRI) filed an application requesting advance approval of its 1994–1998 Five-Year Research, Development and Demonstration (RD&D) Plan, 1994 RD&D Program, and the funding of its R&D activities for 1994, pursuant to the Natural Gas Act and the Commission's Regulations, particularly 18 CFR 154.38(d)(5).

In its application, GRI proposes to maintain its contract obligations at $201.8 million in 1994, which is the same amount as approved for 1993. GRI's application seeks to collect $191,696,000 through jurisdictional rates and charges during the twelve months ending December 31, 1994. This $191.7 million, plus additional funds collected on intrastate transactions, will provide the necessary cash to fund the 1994 RD&D program. GRI also intends to decrease its operating expenses and program management expenses in 1994.

GRI proposes to fund the 1994 R&D program through the following surcharges: (1) A demand/reservation surcharge on two-part rates of 21.8 cents/Dth -mo. for "high load factor customers"; (2) A demand/reservation surcharge on two-part rates of 13.4 cents/Dth -mo. for "low load factor customers"; (3) A volumetric commodity/usage surcharge of 0.85 cents/Dth -mo. for firm services involving two-part rates, and for one-part interruptible rates; (4) A special "small customer" surcharge of 2.0 cents/Dth on one-part, small customer service rates and the commodity/usage component of the two-part, small customer service rates; and (5) A surcharge of 1.57 cents/Dth -mo. for one-part, firm service outside the "small customer" class. GRI asserts that these surcharges comply with the Commission's March 22, 1993 "Order on Contested Settlement" approving, without modification, the "Stipulation and Agreement Concerning Post-1993 GRI Funding Mechanism" (S&A). The S&A, *Inter alia*, establishes a funding mechanism for the GRI program that will apply in 1994 and 1995.

The Commission Staff will analyze GRI's application and prepare a Commission Staff Report. This Staff Report will be served on all parties and filed with the Commission as a public document on or before August 6, 1993. Comments on the Staff Report and GRI's application by all parties, except GRI, must be filed with the Commission on or before August 20, 1993. GRI's reply comments must be filed on or before September 3, 1993.

Any person desiring to be heard or to protest GRI's application, except for GRI members and state regulatory commissions who are automatically permitted to participate in the instant proceedings as interveners, should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 1, 1993. All comments and protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party, other than a GRI member or a state regulatory commission, must file a motion to intervene. Copies of GRI's filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14372 Filed 6–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–245–002]

Iroquois Gas Transmission System, L.P.; Notice of Petition To Amend

June 11, 1993

Take notice that on May 26, 1993, Iroquois Gas Transmission System, L.P. (Iroquois), located at ONe Corporate Drive, Suite 606, Shelton, Connecticut 06484, filed in docket No. CP92–245–002 a petition to amend the certificate issued May 20, 1992 in Docket No. CP92–245–000 authorizing the construction and operation of a compressor station in Wright, New York, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Iroquois states that the turbines authorized in the Commission's Order are no longer available from the manufacturer. Iroquois states that it seeks to amend its authorization to allow it to install two Centaur H Gas turbines T–5702 (CS/MD) instead of the turbine model originally specified.

Any person desiring to be head or to make any protest with reference to said petition should, on or before June 18, 1993, file with the Federal Energy Regulatory Commission (Commission), 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14358 Filed 6–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR93–10–000]

Louisiana State Gas Corp.; Petition for Rate Approval

June 14, 1993.

Take notice that on May 17, 1993, Louisiana State Gas Corporation (LSGC) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.2553 per MMBtu for transportation of natural

gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

LSGC's petition states that it is a Louisiana corporation operating an intrastate pipeline in Louisiana and a wholly-owned subsidiary of LEDCO Inc.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before June 29, 1993. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14369 Filed 6-17-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR93-11-000]

Northern Illinois Gas Co.

Notice of Petition For Rate Approval

June 14, 1993.

Take notice that on May 28, 1993, Northern Illinois Gas Company (NI-Gas) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable maximum rates for the transportation and storage of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). NI-Gas requests Commission approval of an interruptible transportation rate of $0.0776 per MMBtu and an interruptible storage rate of $0.0622 per MMBtu per day.

NI-Gas states that it is an intrastate gas distribution public utility subject to the jurisdiction of the Illinois Commerce Commission under the Illinois Public Utilities Act and that it was issued a blanket certificate under § 284.224 in Docket No. CP92-481-000. In addition to the proposed interruptible transportation and storage services, NI-Gas has determined that its facilities can provide the basis for a major market hub or market center, connecting several pipelines and markets in the greater Chicago area.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before June 29, 1993. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 93-14371 Filed 6-17-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-48-024]

Transwestern Pipeline Co.; Compliance Filing

June 14, 1993.

Take notice that Transwestern Pipeline Company (Transwestern) on June 8, 1993, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, to be effective February 1, 1993:

2nd Revised Sheet No. 51B

Transwestern states that the above-referenced tariff sheet is being filed to comply with the Commission's letter order issued May 24, 1993 in Docket Nos. RP89-48-020, 021 and 023. The order required Transwestern to refile the revised tariff sheet within fifteen (15) days to remove the conflicting Production and Gathering (P&G) tariff language on Alternate 1st Revised Sheet No. 51B.

Transwestern states that copies of the filing were served on its jurisdictional customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825, North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14368 Filed 6-17-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-409-000]

Questar Pipeline Co. Notice of Application

June 14, 1993.

Take notice that on June 2, 1993, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP93-409-000 an application pursuant to § 7(c) of the Natural Gas Act requesting authority to construct and operate additional facilities required to increase the maximum certificated storage inventory level at Questar's Clay Basin Storage Field (Clay Basin) located in Daggett County, Utah, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar requests authority to (1) construct and operate (a) three additional 6,500 horsepower natural-gas turbine compressors immediately adjacent to its Kastler Compressor Station and (b) 3,850 lineal feet of 6-inch storage lateral within Clay Basin, and (2) increase the maximum certificated storage inventory level at Clay Basin from 100 to 110 Bcf.

Questar states that in order to reach to 110 Bcf storage inventory level, and maintain the current Minimum Required Deliverability concept, it anticipates increasing the current cushion-gas volume from 52.62 Bcf to 63.71 Bcf in order to support a 15.25 Bcf increase in working-gas capacity from 31 Bcf to 46.25 Bcf. Questar explains that the proposed increase in total storage inventory will decrease the Clay Basin cushion/working-gas ratio from 1.70:1.00 to approximately 1.38:1.00. Questar further states that it will only inject cushion-gas volumes in proportion to the level of working-gas volumes actually sold and that no additional injection/withdrawal wells and no observation wells are proposed to be drilled as a result of the proposed Clay Basin expansion.

Questar further explains that, consistent with its January 15 through February 12, 1993, open-season representations, it proposes to offer the expanded Clay Basin firm storage capacity at its currently effective Rate Schedule FSS rates. It is stated that the total cost of the proposed Clay Basin expansion, including compressors, storage laterals, associated dehydrators, heaters, valves, piping and other appurtenant facilities and cushion-gas volumes is approximately $49,600,000.

Questar further requests authority to allow it to honor, to the extent capacity remains available, the service requests tendered during the January 15 through February 12, 1993, open season. Questar clarifies that this authority is required to enable Questar to work its way down the open-season queue until the expansion capacity becomes fully subscribed, or until the open-season queue is exhausted. This could include tendering agreements after implementation of Order No. 636 on Questar's system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 24, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by §§ 7 and 15 of the NGPA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is timely filed, or if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Questar to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14394 Filed 6-17-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA93-1-49-001 and TM93-7-49-001]

Williston Basin Interstate Pipeline Co.; Corrected Tariff Filing

June 14, 1993.

Take notice that on June 9, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, tendered for filing Substitute Forty-eighth Revised Sheet No. 10 (Original Volume No. 2) to be substituted for the corresponding tariff sheet filed in its Annual Purchased Gas Cost Adjustment Filing (PGA) submitted June 1, 1993 pursuant to 18 CFR 154.301, et seq. of the Commission's Regulations and Sections 21, 30 and 35 of its FERC Gas Tariff (First Revised Volume No. 1 and Original Volume Nos. 1-A and 1-B, respectively).

The proposed effective date of the corrected tariff sheet is August 1, 1993.

Williston Basin states that in the course of the review of its June 1, 1993 PGA filing an inadvertent error was discovered in the Non-Gas Commodity Rate After Current Adj. Plus Surcharges for Rate Schedule X-3 on Forty-eighth Revised Sheet No. 10 (Original Volume No. 2). Thus, the instant filing contains only a corrected tariff sheet.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14386 Filed 6-17-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 93-52-NG]

Inland Natural Gas Marketing Ltd.; Order Granting Blanket Authorization to Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Inland Natural Gas Marketing Ltd. authorization to import a total of up to 50 Bcf and to export a total of up to 50 Bcf of natural gas from and to Canada over a two-year term beginning on the date of first import or export delivery.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 8, 1993.

Clifford P. Tomaszewkski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-14438 Filed 6-17-93; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4668-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Accidental Release Information Program, EPA ICR #1331.05 (OMB #2050–0065). This ICR requests renewal of the existing clearance.

Abstract: The Accidental Release Information Program (ARIP) collects data on the causes of chemical accidents and points to steps that could be taken by industrial facilities to prevent accidental releases. In this collection, refined ARIP criteria are used to obtain data on unique chemical accidents that pose a direct hazard to the public and environment. It will survey only those releases that involve injury and death to members of the general public and cause off-site consequences, such as evacuation, sheltering in place, or environmental damage. Fixed facilities responsible for the selected release are required to complete and return a questionnaire which asks for more detailed information on the causes and consequences of the accidental release, and the release prevention practices and technologies in place prior to and following the accident.

The collected information will serve to support a range of chemical accident prevention and preparedness efforts involving industry, local and state governments, as well as EPA regions and headquarters.

Burden Statement: Public reporting burden for this collection of information is estimated to average 25 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing the collection of information. There is no recordkeeping burden.

Respondents: Owners/operators of fixed facilities with accidental releases meeting selection criteria.

Estimated No. of Respondents: 125.

Estimated Total Annual Burden on Respondents: 3,140 hours.

Frequency of Collection: On occasion, when releases meet specific triggers.

Send comment regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460, and

Ron Minsk, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: June 11, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–14427 Filed 6–17–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4667–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 19, 1993.

FOR FURTHER INFORMATION, OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: FIFRA section 29–Annual Report on Conditional Registrations. (EPA ICR No: 0601.04; OMB No: 2070–0026). This is a request to extend the expiration date of a currently approved collection.

Abstract: Under section 29 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the EPA is required by Congress to monitor the conditional registration of pesticide products. The Agency grants conditional registration for products for which the submission of some supporting data has been deferred to a future date. However, as one of the conditions for this type of registration, registrants must submit an annual report to the EPA. The report must contain the amount (in gallons or pounds) of the pesticide product produced during the preceding fiscal year for each registered use and, in addition, registrants must keep records of these data. The EPA uses the information to track the number of applications submitted to the Agency each year, monitor productions, and compile these data into a report which, in compliance with section 29 of FIFRA, is submitted to Congress once every year.

Burden Statement: The public reporting burden for this collection of information is estimated to average 1.3 hours per response for reporting and 20 minutes for recordkeeping annually. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: Pesticide registrants.

Estimated No. of Respondents: 30.

Estimated No. of Responses Per Respondent: 2.

Estimated Total Annual Burden on Respondents: 84 hours.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: June 11, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–14424 Filed 6–17–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4668–5]

Access to Confidential Business Information by Ronson Management Corporation

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA is authorizing Ronson Management Corporation of Springfield, Virginia, for access to information which has been submitted to EPA under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Some of this information may be claimed or determined to be Confidential Business Information.

DATES: EPA will begin transferring data to Ronson five working days from the date of this notice.

ADDRESSES: Send or deliver written comments to Kevin Brittingham, Superfund Accounting Branch, Financial Management Division, Office of the Comptroller (PM–226F), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William Cooke, Acting Chief, Superfund Accounting Branch (PM–226F), Environmental Protection Agency, 401

M Street, SW., Washington, DC 20460. Telephone (202) 260–9268.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W3–0023 Ronson Management Corporation will provide support services and resources to the Environmental Protection Agency to: (1) Maintain Superfund original financial document files and Superfund site-specific files; (2) support the Financial Management Division's Superfund Cost Recovery Process which includes, but is not limited to, reviewing all financial documents and document files to identify and gather all needed Superfund financial information; verify its accuracy and identify corrective actions; prepare and summarize Superfund site-specific cost documentation packages and (3) perform other administrative functions in support of CERCLA in the Regional, Laboratory and Headquarters finance offices which includes, but is not limited to, indexing and scanning of documents into the Superfund Cost Recovery Imaging Processing System (SCRIPS); data preparation for data entry; data entry into local PC applications; document retrieval and quality assurance review.

In providing this support, Ronson Management Corporation employees will have access to Agency documents for the purpose of document processing, filing, abstracting, analyzing, inventorying, retrieving, tracking and more. The documents to which Ronson Management Corporation will have access potentially include all financial documents submitted under CERCLA. Some of these documents may contain information which may be claimed or determined to be CBI.

Pursuant to EPA regulations at 40 CFR Part 2, Subpart B, EPA has determined that Ronson Management Corporation requires access to Confidential Business Information to provide the support and services required under the contract. These regulations provide for five working days notice before contractors are given CBI.

Ronson Management Corporation will be required by contract to protect confidential information. These documents are maintained in EPA office and file space.

Dated: June 8, 1993.

Sallyanne Harper,

Acting Assistant Administrator for Administration and Resources Management.

[FR Doc. 93–14426 Filed 6–17–93; 8:45 am]

BILLING CODE 6560–50–F

(ER–FRL–4621–7)

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 31, 1993 Through June 04, 1993 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1993 (58 FR 18392).

DRAFT EISs

ERP No. D–SFW–A64055–00 Rating EC2, Refuges 2003—A Plan for the Future, National Wildlife Refuge Management Plan, Implementation.

Summary: EPA had environmental concerns regarding the proposed management plan. These concerns regarded the lack of specificity of the document, tiering of information 1 to future actions, monitoring and mitigation measures, and additional information on secondary uses of refuges.

Dated: June 15, 1993

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–14429 Filed 6–17–93; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4621–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed June 07, 1993 Through June 11, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930188, Draft EIS, SCS, KS, Upper Delaware River and Tributaries Watershed Plan, Flood Prevention and Watershed Protection, Funding and COE Section 404 and NPDES Permits, Atchison, Brown, Jackson and Nemaha Counties, KS, Due: August 02, 1993, Contact: James N. Habiger (913) 823–4565.

EIS No. 930189, Draft Supplement, AFS, ID, Cuddy Mountain Roadless Area, Grade/Dukes Timber Sale and Road Construction, New Information concerning Additional Modifications to the Blend Alternative, Implementation, Payette National Forest, Washington and Valley Counties, ID, Due: August 02, 1993, Contact: John Braglin (208) 549–2420.

EIS No. 930190, Draft EIS, AFS, MT, Big Mountain Ski and Summer Resort Expansion Project, Special-Use-Permit, Flathead National Forest, Tally Lake and Glacier View Ranger Districts, Whitefish, MT, Due: August 02, 1993, Contact: Bert Stout (406) 862–2505.

EIS No. 930191, Draft EIS, USN, NC, Camp Lejeune Marine Corps Base, Wastewater Treatment System Upgrading, Construction and Operation, NPDES, COE Section 10 and 404 Permits, Onslow County, NC, Due: August 02, 1993, Contact: Pam Anderson (804) 445–2334.

EIS No. 930192, DRAFT EIS, FHW, NY, Long Island Expressway (I–495)/ Seaford - Oyster Bay Expressway (NY–135) Interchange Project, Improvements between Exit 43 South Oyster Bay Road to Exit 46 Sunnyside Boulevard, Funding and NPDES Permit, Town of Oyster Bay, Nassau County, NY, Due: August 02, 1993, Contact: H.J. Brown (518) 472–3616.

EIS No. 930193, Draft EIS, FHW, WV, US 19 Corridor L Improvements from Nicholas County High School to I–79, Funding and COE Section 404 Permit, Nicholas and Braxton Counties, WV, Due: August 16, 1993, Contact: Billy R. Higginbotham (304) 348–3093.

EIS No. 930194, Draft EIS, FHW, NH, NH–16 and US 302, Transportation Improvements, Funding, COE Section 10 and 404 Permits, Villages of Conway and North Conway, Carroll Counties, NH, Due: August 27, 1993, Contact: William F. O'Donnell (603) 225–1608.

EIS No. 930195, Final EIS, FHW, AZ, AZ–87/Beeline Highway Upgrading, Saguaro Lake Road to near the Maricopa-Gila County Line, Funding, Land Exchange with the Forest Service and COE Section 404 Permit Issuance, Maricopa County, AZ, Due: July 19, 1993, Contact: Ken Davis (602) 379–3646.

EIS No. 930196, Final EIS, AFS, CA, 1992 Cleveland Watershed/Fire Recovery Project, Eldoredo National Forest, South Fork American River, Eldorado, Alpine and Amador Counties, CA, Due: July 19, 1993, Contact: Donald Yasuda (916) 644–2349.

EIS No. 930197, Final EIS, NPS, VT, Appalachian National Scenic Trail Protection from Deer Leap Mountain to the Mendon-Shrewsbury Town Line, Pico/Killington Section, Implementation, Rutland County, VT, Due: July 19, 1993, Contact: John F. Byrne (304) 535–6278.

EIS No. 930198, Final EIS, FHW, VA, Blacksburg/Roanoke Connector Improvements, US–460 Bypass South of the Town of Blacksburg to I–81 North to Roanoke, Funding, Montgomery County, VA, Due: July 19, 1993, Contact: James M. Tumlin (804) 771–2371.

Dated: June 15, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–14428 Filed 6–17–93; 8:45 am]

BILLING CODE 6560–50–U

[FRL–4648–7]

Science Advisory Board

Environmental Economics Advisory Committee; Open Meeting

Under Public Law 92–463, notice is hereby given that the Environmental Economics Advisory Committee (EEAC) of the Science Advisory Board will meet on Tuesday, July 13, 1993 at the Holiday Inn Georgetown (Wisconsin Room), 2101 Wisconsin Avenue NW., Washington DC 20007. The hotel telephone number is (202) 338–4600.

The meeting, which is open to the public, will start at 8:30 a.m., and adjourn no later than 5:30 p.m. Its main purpose is to review the economic issues and methodologies incorporated in the draft document Regulatory Impact Analysis (RIA) for the Final Rulemaking on Corrective Action for Solid Waste Management Units developed by the Office of Solid Waste. The Committee will address a variety of issues related to the quantification of benefits and costs, including the non-use values of groundwater as estimated by contingent valuation methodology.

Requests for copies of the draft RIA document should be directed to the Resource Conservation and Recovery Act (RCRA) Hotline (1–800–424–9346). The document is not available from the Science Advisory Board. Questions concerning its content should be addressed to Mr. Gary Ballard (OS–311), Regulatory Analysis Branch, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460 (202) 260–2429. Members of the public desiring additional information about the conduct of the meeting or the agenda should contact Mr. Samuel Rondberg, Designated Federal Official, Environmental Economics Advisory Committee, Science Advisory Board (A101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460, (202) 260–6552. Anyone wishing to make a presentation at the meeting should forward a written statement (35 copies) to Mr. Rondberg by July 6, 1993. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: June 8, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–14423 Filed 6–17–93; 8:45 am]

BILLING CODE: 6560–50–P

[PF–576; FRL–4627–2]

Rhone Poulenc Ag. Co.; Request for Extension of Tolerances for Thiodicarb

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Rhone Poulenc Ag. Co. requests to extend tolerances for the insecticide thiodicarb on leafy vegetables, broccoli, cabbage, and cauliflower.

ADDRESSES: By mail, submit written comments, identified by the document control number [PF-567], to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Edwards Jr., Product Manager (PM 19), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 201, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: EPA has received from the Rhone Poulenc Ag. Co., P.O. Box 12014, Research Triangle Park, NC 27709, requests to extend for 1 year a temporary tolerance that expires on July 15, 1994, for the combined residues of the insecticide thiodicarb (dimethyl *N,N'*-[thiobis[(methylimino) carbonyloxy]]bis [ethanimidothioate]) and its metabolite methomyl (*S*-methyl *N*-[(methylcarbamoyl)oxy]thioacetimidate) in or on leafy vegetables at 35 parts per million (ppm) under 40 CFR 180.407(b) and a temporary tolerance that expires on August 15, 1994, for the combined residues of the insecticide thiodicarb and its metabolite methomyl in or on broccoli at 7 ppm, cabbage at 7 ppm, and cauliflower at 7 ppm under 40 CFR 180.407(c).

Authority: 7 U.S.C. 346a and 371.

Dated: June 8, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–14420; Filed 6–17–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Crowley American Transport, Inc. et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–010386–025.

Title: Argentina/U.S. Atlantic & Gulf Ports Pool Agreement.

Parties: Crowley American Transport, Inc., Empresa Lineas Maritimas Argentinas S.A., Companhia de Navegacao Lloyd Brasileiro, Companhia Maritima Nacional, A. Bottacchi S.A. de Navegacion

Synopsis: The proposed amendment increases the carrying rate from 98 to 100 percent, thus suspending the future pooling of revenue under the Agreement. It also deletes A. Bottacchi S.A. de Navegacion as a party to the Agreement.

Agreement No.: 212–010388–020

Title: U.S. Atlantic & Gulf Ports/ Argentina Pool Agreement

Parties: Crowley American Transport, Inc., Empresa Lineas Maritimas Argentinas S.A., Companhia de Navegacao Lloyd Brasileiro, Companhia Maritima Nacional; A. Bottacchi S.A. de Navegacion

Synopsis: The proposed amendment increases the carrying rate from 98 to 100 percent, thus suspending the future pooling of revenue under the Agreement. It also deletes A. Bottacchi S.A. de Navegacion as a party to the agreement.

Agreement No.: 203–011418

Title: Bermuda Discussion Agreement

Parties: Bermuda Container Line Ltd., Bermuda International Shipping Limited

Synopsis: The proposed Agreement permits the parties to meet, discuss, exchange information and agree upon rates and other transportation and service matters in the trade between United States Atlantic Coast ports, and points within the Continental United States via such ports, and ports and points in Bermuda. Adherence to any agreement reached is strictly voluntary.

Dated: June 14, 1993.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–14365 Filed 6–17–93; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Princess Cruises, Inc., Princess Cruises Liberia, Inc., Birka Cruises Limited and Birka Line A B, 10100 Santa Monica Blvd., Los Angeles, California 90067–4189.

Vessel: GOLDEN PRINCESS.

Dated: June 15, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–14412 Filed 6–17–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Cargonauts, Inc, 7331 NW., 54th Street, Miami, FL 33166, Officers: Alberto Spencer, President, Claudio Vicuna, Director.

Venchi International Corp., 780 NW., 42nd Ave. Unit #9, Miami, FL 33126, Officer: Patricia Nazar, President/ Chairman/Stockholder.

L.C. Forwarding International Company, 150 Marine Street, Lake Charles, LA 70601, Officers: Belvin J. Monier, President/Treasurer, Daphne Rachelle Monier, Secretary.

Luma International Forwarding, Inc., 354 Royal Ponciana Blvd. Miami, FL 33126, Officer: Luz Carvajal, President.

Trans-Global Logistics, Corp., 3200 NW., 125th Street, Miami, FL 33167, Officers: Steven Hamersmith, President/Director/Stockholder, Cynthia L. Metcalf, V. President/ Director/Stockholder, Minda Hamersmith, Secretary/Stockholder, Henry Hamersmith, Treasury/ Stockholder, Cheryl Hamersmith, Stockholder.

Fast Way Services, Inc., 8405 NW., 70th Street, Miami, FL 33166, Officers, Juan C. Avendano, President/Director, Yesmin Avendano, Secretary/ Director, Manuel F. Bernal, Vice President of Operations.

All State International Freight Inc., 500 Carson Plaza Dr., Ste. 205, Carson, CA 90746, Officer: Jae Hoon Yoo, President.

A.T.I. USA, Inc., 242 Eyland Avenue, Succasunna, NJ 07876, Officers: Oscar Fufaro, Director/Stockholder, John J. Klingman, Vice President.

O.I.A. (Oregon International Airfreight Co.), 8440 NE. Alderwood Rd., Ste. A Portland, OR 97220, Officers: Junki Yoshida, Chairman, Steven M. Akre, President, Michael A. Temple, Vice President/Secretary, James Woodford Toms, Jr., Vice President, William D. Brady, Asst. Secretary.

Hemisphere Forwarding Inc., 6992 NW.. 50th Street, Miami, FL 33166, Officers: Michael Avnet, President/ Treasurer/Director, Lynn Zeunner, Secretary, Alicia Avnet, Vice President.

Ameripack Freight Systems, 7850 SW., 82nd Ave., Miami, FL 33143, Mayda Beatriz Sablon, Sole Proprietor.

"J.I.F." Jet International Forwarding, Inc., 4420 NW., 74th Ave., Miami, FL 33166, Officers: Francisco D. Ferrey, President, Christina Santana, Vice President, Jose Santana, Secretary.

John Kevin Lee, 685 Undercliff Ave., Edgewater, NJ 07020, Sole Proprietor.

U.S. Miami International Freight Forwarders, 8805 SW., 154th Terrace, Miami, FL 33157, Maurice C. Perry, Sole Proprietor.

Inteks Trans-International, Inc., 22431 So. Vermont Ave., Torrance, CA 90502, Officers: Eddie P.C. Yang, President/Chairman, Edmund Tsang, Director/Exec. Vice President, Arthur King, Secretary/Director.

Transport Partner (USA), Inc., 18 Broad Street, Ste. 803, Charleston, SC 29401, Officers: Wim Spinhoven, President, Kathy Morris, General Manager.

By the Federal Maritime Commission.

Dated: June 15, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–14443 Filed 6–17–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P27–93]

Petition of Paramount Tariff Service Ltd. on behalf of Various Carriers for Temporary Exemption From Electronic Tariff Filing Requirements

Notice is hereby given of the filing of a petition by the above named petitioner, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioner requests exemption from the June 4, 1993, electronic filing deadline on behalf of 108 carrier customers. Petitioner states it is unable to comply with the June 4, 1993, deadline for filing of World Wide/Asian and South Pacific tariffs for a variety of reasons.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than June 25, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on counsel for petitioner, Kathleen Mahon, Esq., Lillick & Charles, One World Trade Center, suite 950, Long Beach, California 90831–0959.

Copies of the petition are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–14444 Filed 6–17–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/RHYP 92–1]

Runaway and Homeless Youth Program: Fiscal Year 1993 Final Program Priorities, Availability of Financial Assistance for Fiscal Year 1993 and Request for Applications

AGENCY: Family and Youth Services Bureau, Administration on Children, Youth, and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: To correct an error in Appendix D.3: Drug Abuse Prevention Programs for Runaway and Homeless Youth, in the program announcement cited above.

SUMMARY: This notice amends program announcement ACF/ACYF/RHYP 92–1, published in the **Federal Register** on May 18, 1993, by correcting an error in the list of ineligible grantees listed in appendix D.3.

FOR FURTHER INFORMATION CONTACT: Terry Lewis (202) 205–8102.

SUPPLEMENTARY INFORMATION: On May 18, 1993, the Administration on Children, Youth and Families published the Runaway and Homeless Youth Program announcement in the **Federal Register** (Vol. 58, No. 94 29030).

The announcement solicited applications from eligible organizations and agencies to provide services to runaway and homeless youth under the Basic Center Program (BC), Drug Abuse Education and Prevention Program (DAPP), and the Transitional Living Program.

A list of ineligible grantees for the DAPP program was included in Appendix D.3 on page 29055 of the **Federal Register**. Some grantees who are eligible to apply for DAPP funds were inadvertently included on the list. Therefore, we are issuing this amendment to correct the list by indicating that the following grantees, whose name appear originally on the ineligible list, are in fact eligible and encourage to apply:

Region I

New Hampshire

Child and Family Services, 99 Hanover Street, Manchester, NH 03101, Reed Carver, (603) 668–1920

Rhode Island

Stopover Shelters, 3380 East Main Road, Portsmouth, RI 02871, Peter Marshall, (401) 683–1824

Region II

New Jersey

Crossroads, P.O. Box 321, Lumberton, NJ 08048, Mary Lou Bendit, (609) 261–5400

Ocean's Harbor House, 2445 Windsor Avenue, Toms River, NJ 08754, Albert Borris, (201) 929–0660

Somerset Youth Shelter, 49 Brahma Avenue, Bridgewater, NJ 08807, Jeffrey Fitzko, (201) 526–6605

Together, 7 State Street, Glassboro, NJ 08028, Susan Sasser, (609) 881–6100

New York

Center for Youth Services, 258 Alexander Street, Rochester, NY 14607, Roger Palma, (716) 473–2464

Covenant House, (Under 21), 460 West 41st Street, New York, NH 10036, Eleanor Miller, (212) 354–4323

Equinox, 214 Lark Street, Albany, NY 12210, Donna McIntosh, (518) 465–9524

The Salvation Army, 749 S. Warren Street, Syracuse, NY 13202, Roberta Schofield, (315) 479–1323

Puerto Rico

Centro De Servicios A La Juventud, Box 9368 Cotto Station, Arecbo, PR 00613, Nidra Torres-Martinez, (809) 878–6776

Region III

Virginia

Alternatives, Inc., 1520 Aberdeen Road, Hampton, VA 23666, Richard Goll, (804) 838–2330

Region IV

Georgia

Tri-County Protective Agency, P.O. Box 1937, Hinesville, GA 31313, Bryant Bradley, (912) 368–3344

North Carolina

Mountain Youth Resources, P.O. Box 2847, Cullowhee, NC 28723, Elizabeth Chambers, (704) 586–8958

Region V

Illinois

Omni Youth Services, 1111 Lake Cook Road, Buffalo Grove, IL 60089, Dennis Depcik, (708) 537–6878

Michigan

The Sanctuary, 1232 South Washington, Royal Oak, MI 48067, Meri Pohutsky, (313) 547–2260

Ohio

New Life Youth Services, 1527 Madison Road, Cincinnati, OH 45206, Robert Mecum, (513) 221–3350

Region VI

Oklahoma

Youth and Family Services of Canadian County, 2404 Sunset Srive, El Reno, OK 73036, Les Sparks, (405) 262–6555

Youth and Family Services of North Oklahoma, 2925 North Midway, Enid, OK 73701, Jane Webber, (405) 233–7220

Youth Services of Oklahoma County, 2915 N. Lincoln, Oklahoma City, OK 73105, Sharon Wiggins, (405) 235–7537

Texas

The Bridge Association, 115 West Broadway, Fort Worth, TX 76104, Jan Viles, (817) 877–1121

Region VII

Iowa

Youth Homes, Inc., P.O. Box 324, Iowa City, IA 52244, William McCarty, (319) 337–4523

Missouri

Youth In Need, 529 Jefferson, St. Charles, MO 63301, James Braun, (314) 946–0101

Region VIII

Montana

Yellowstone County (Tumbleweed Runaway Program, Inc.), P.O. Box 35000, 217 N. 27th Street, Billings, MT 59107

North Dakota

Mountain Plains Youth Services, 311 North Washington, Bismarck, ND 58501, Linda Wood, (701) 255–7229

Region IX

Arizona

Center for Youth Resources, 915 N. Fifth Street, Phoenix, AZ 85004, Michael Garvey, (602) 271–9849

The Navajo Nation, P.O. Box 1599, Window Rock, AZ 86515, Irving Toddy, (602) 871–5744

California

Community Service Program, 17200 Jamboree, Irvine, CA 92714, Margot Carlson, (714) 494–4311

Klein Bottle, 401 N. Milpes, Santa Barbara, CA 93103, David Edelman, (805) 564–7830

Los Angeles Free Clinic, 8405 Beverly Boulevard, Los Angeles, CA 90048, Andrea Sobbe, (213) 653–8622

Orange County Youth and Family Services, 12900 Garden Grove Blvd., Garden Grove, CA 92668, Kevin Meehan, (714) 978–6896

Santa Clara Social Advocates, 509 View Street, Mountain View, CA 94041, Paul Schutz, (408) 253–3540

Region X

Alaska

Alaska Youth and Parent Foundation, 3745 Community Park Loop, Anchorage, AK 99508, Sheila Geddis, (907) 274–6541.

(Catalog of Federal Domestic Assistance Program Number 93.657, Drug Abuse Prevention Program for Runaway and Homeless youth)

Dated: June 10, 1993.

Joseph Mottolar,

Acting Commissioner Administration on Children, Youth and Families.

[FR Doc. 93–14391 Filed 6–17–93; 8:45 am]

BILLING CODE 4184–01–M

Agency for Toxic Substances and Disease Registry

Agency for Toxic Substance and Disease Registry (ATSDR) Community Public Health Assessment Workshop; Meeting

ATSDR announces the following meeting.

Name: ATSDR-Community Public Health Assessment Workshop.

Times and Dates: 5 p.m.–6.m., July 27, 1993; 8 a.m.–5 p.m., July 28, 1993; 8 a.m.–12 noon, July 29, 1993.

Place: Omni Parker House, 60 School Street, Boston, Massachusetts 02108, (800/843–6664).

Status: Open to the public for observation and participation, limited only by the space available. The meeting room accommodates approximately 200 people.

Matters to be Considered: The meeting will convene a group of interested parties to discuss the ATSDR Public Health Assessment process as it addresses U.S. Department of Defense sites. The ATSDR Public Health Assessment is the evaluation of data and information on the release of hazardous substances into the environment in order to assess any current or future impact on public health, develop health advisories or other recommendations, and identify studies or actions needed to evaluate and mitigate or prevent human health effects. The group will consider such areas as the Public Health Assessment definition and purpose, its scope and limitations, how it is initiated, the roles of ATSDR staff, ATSDR-public interaction and community involvement, the steps and activities in a public health assessment, and possible follow-up health actions.

Contact Person for More Information: Chris Schmidt, Division of Health Assessment and Consultation, ATSDR, (MS E32), 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639–0605.

Dated: June 14, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 93–14388 Filed 6–17–93; 8:45 am]

BILLING CODE 4163–70–M

Centers for Disease Control and Prevention

CDC Advisory Committee on the Prevention of HIV Infection (CDC ACPHI): Subcommittee on Promoting Knowledge of Serostatus (Counseling, Testing, Referral, Partner Notification); Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: CDC ACPHI Subcommittee on Promoting Knowledge of Serostatus (Counseling, Testing, Referral, Partner Notification).

Time and Date: 3 p.m.–6 p.m., July 12, 1993.

Place: New York Society for Ethical Culture, 2 West 64th Street (on Central Park West), 1st Floor Auditorium, New York, NY 10023.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to discuss policies and issues related to HIV-antibody counseling, testing, referral, and partner notification programs and services.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/AIDS, CDC, 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333, telephone 404/639–2918.

Dated: June 14, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–14387 Filed 6–17–93; 8:45 am]

BILLING CODE 4160–18–M

CDC Advisory Committee on the Prevention of HIV Infection (CDC ACPHI): Subcommittee on Monitoring the HIV/AIDS Epidemic; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: CDC ACPHI Subcommittee on Monitoring the HIV/AIDS Epidemic.

Time and Dates: 8:30 a.m.–5 p.m., July 6–7, 1993.

Place: Swissotel Atlanta, 3391 Peachtree Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to continue to review current behavioral, exposure, infection, and disease surveillance systems and address information needs for monitoring behaviors and exposures to HIV.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/AIDS, CDC, 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333, telephone 404/639–2918.

Dated: June 14, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–14385 Filed 6–17–93; 8:45 am]

BILLING CODE 14385

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Allergenic Products Advisory Committee

Date, time, and place. July 20, 1993, 8:30 a.m., Holiday Inn Bethesda, Versailles Ballroom I, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 to 12:30 p.m.; closed committee deliberations, 12:30 p.m. to 5:30 p.m.; Jack Gertzog or Sandy Salins, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–295–8054.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of allergenic biological products intended for use in the diagnosis, prevention, or treatment of human disease.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 12, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will consider presentations on: (1) The Laboratories of Immunoregulation, Immunobiochemistry, Parasitology and Biochemistry, and Biophysics in the Center for Biologics Evaluation and Research's Division of Allergenic Products and Parasitology; (2) conversion of the radioallergosorbent test (RAST) inhibition assay to the enzyme-linked immunosorbent assay (ELISA); (3) the points to consider document for production and testing of allergenic products; (4) marker proteins, monoclonal antibodies and automation; and (5) conversion of standardized grass pollen extracts to biosequivalent allergy units.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending investigational new drug applications and product licensing applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. July 26, 1993, 1 p.m., Food and Drug Administration, Bldg. 29, Conference rm. 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open committee discussion, 1 p.m. to 1:30 p.m.; closed committee deliberations, 1:30 p.m. to 2:30 p.m.; open committee discussion, 2:30 p.m. to 3:30 p.m.; open public hearing, 3:30 p.m. to 4:30 p.m., unless public participation does not last that long; Nancy Cherry, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–295–9054.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 19, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the intramural scientific programs of the Laboratory of Bacterial Toxins, Center for Biologics Evaluation and Research, and vaccine initiatives for Fiscal Year 1994.

Closed committee deliberations. The committee will discuss the intramural scientific program. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a

clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: June 11, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 93–14392 Filed 6–17–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0187]

Animal Drug Export; Estradiol Benzoate Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Boehringer Ingelheim Animal Health, Inc., has filed an application requesting approval for the export of the animal drug estradiol benzoate injection for use in feedlot cattle to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of food-animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8646.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Boehringer Ingelheim Animal Health, Inc., 2621 North Belt Hwy., St. Joseph, MO 64506–2002, has filed an application requesting approval for the export of the animal drug estradiol benzoate injection to Canada. The product is intended to provide programmed release of estradiol in feedlot steers and heifers for increased rate of weight gain and improved feed efficiency. The application was received and filed in the Center for Veterinary Medicine on May 11, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 28, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: June 10, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–14393 Filed 6–17–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, May 14, 1993.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package)

1. Work Activity Report (Self-Employed Person) and Work Activity Report (Employee)—0960–0059. The information on forms SSA–820 and SSA–821 is used by the Social Security Administration to help determine if an individual meets the disability provisions for entitlement to benefits. The respondents are claimants for initial or continuing disability benefits who are or were engaging in substantial gainful activity.

Number of Respondents: 250,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 125,000 hours

2. Report on Individual with Mental Impairment—0960–0058. The information on form SSA–824 is used by the Social Security Administration to help determine the claimant's medical status prior to making a disability determination. The respondents are physicians, medical directors, medical record libraries, and other health care providers.

Number of Respondents: 50,000
Frequency of Response: 1
Average Burden Per Response: 36 minutes
Estimated Annual Burden: 30,000 hours

3. Report on Individual with Childhood Impairment—0960–0084. The information on form SSA–1323 is used by the Social Security Administration to determine the dates and results of psychometric testing and to determine how the impairment affects the individual's progress in school. The respondents are public and nonpublic schools and agencies which provide medical treatment to the claimant or applicant for benefits.

Number of Respondents: 7,000
Frequency of Response: 1
Average Burden Per Response: 20 minutes
Estimated Annual Burden: 2,333 hours
OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports, Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: June 9, 1993.
Charlotte Whitenight,
Reports Clearance Officer, Social Security Administration.

[FR Doc. 93–14094 Filed 6–17–93; 8:45 am]
BILLING CODE 4190–29–M

Public Health Service

Cooperative Agreements To Implement the "Put Prevention Into Practice" National Prevention Education Program

The Office of the Assistant Secretary for Health, on behalf of the agencies of the U.S. Public Health Service (PHS), announces the availability of Fiscal Year (FY) 1993 funds for cooperative agreements with national organizations of primary care providers to implement "Put Prevention Into Practice," a national program to help achieve selected health promotion and disease prevention objectives for the Nation established in Healthy People 2000.

The goal of "Put Prevention Into Practice" is to improve the delivery of clinical preventive services in primary care settings. Clinical preventive services include immunizations (e.g., influenza vaccination), appropriate screening tests for the early detection of disease (e.g., Pap smear), and counseling interventions for risk reduction (e.g., smoking cessation advice). The "Put Prevention Into Practice" campaign provides primary care clinicians with a kit of materials to assist them in the performance of a broad range of clinical preventive services for all of their patients. These materials have three major targets: patients, providers, and office system/staff.

The Public Health Service is committed to achieving the health promotion and disease prevention goals and objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This program announcement is related specifically to objectives of Healthy People 2000 that target the provision of clinical preventive services by primary care providers. Copies of Healthy People 2000 may be ordered from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–783–3238), stock number 017–001–00474–0.

This cooperative agreement program will be administered by the Office of Disease Prevention and Health Promotion (ODPHP) on behalf of the PHS. Located within the Office of the Assistant Secretary for Health, the mission of ODPHP is to provide leadership and coordination for prevention policy and programs undertaken by the PHS.

Awards

In FY 1993, the PHS expects to fund two to four cooperative agreements under this announcement, with awards ranging from $100,000 to $300,000, depending on scope of work and organizational size. PHS intends to award these funds in September 1993. It is anticipated that FY 1994 funds will be available to fund two to four additional cooperative agreements of the same size to organizations whose applications have been submitted and reviewed under this program announcement. PHS expects to award the FY 1994 cooperative agreements in October-December 1993.

Cooperative Agreement Activities

National primary care provider organizations receiving these cooperative agreements will be expected to:

- Develop and implement a strategy for efficient and effective dissemination of "Put Prevention Into Practice" (PPIP) materials. This should include creative ways to market the materials to members and to educate members in the use of the materials.
- Provide dedicated staff support to manage the implementation of the PPIP program in their organization.
- Develop public-private partnerships and cost-recovery mechanisms to defray the costs of production and dissemination of PPIP materials.
- Target minority, undeserved, disadvantaged, and/or rural populations to facilitate use of the PPIP materials by primary care providers serving these groups
- Evaluate the use of the PPIP materials by providers and their patients, as well as their effectiveness. Results of the evaluation should be used to develop recommendations both for revisions or additions to the materials to improve their effectiveness and for strategies to improve program implementation.

Eligibility Requirements

Cooperative agreements will be awarded only to national membership organizations of primary care providers, due to limitations on availability of funds. Requests to Congress for funds for the National Health Promotion Program have specified this limitation of applicant eligibility. As representatives of special constituencies, membership organizations are in a unique position to be able to identify realistic, appropriate, and effective strategies for reaching their members or the populations that their members represent.

Applicant organizations must meet all of the following requirements:

- Be a national, private, nonprofit organization of providers delivering comprehensive primary care services (including physicians, nurses/nurse practitioners, and physician assistants);
- Have a national membership, state/local chapters, and/or otherwise well-defined affiliate structure;
- Demonstrate an understanding of the current and potential role of their membership in health promotion and disease prevention efforts;
- Have in place a variety of communication channels that are appropriate for informing members and other constituencies about how to

become involved in meeting the objectives of the cooperative agreement; and

• Demonstrate top level support within the organization for the project and, where appropriate, demonstrate similar support from the membership.

For purposes of this announcement, national membership organizations are defined as organizations with individual members in more than one state and region of the United States. "Members" must voluntarily and expressly associate themselves with the organization, as through payment of a membership fee or other declaration of association (i.e. request and receipt of membership card or certificate of membership).

Period of Performance

Cooperative agreements under this announcement will be awarded for a nonrenewable period of up to 18 months.

Terms and Conditions

Federal funds allocated for cooperative agreements are not intended to cover all of the costs that will be incurred in the process of completing the proposed projects. Applicants should demonstrate a commitment of financial or in-kind resources to the project. Award recipients are encouraged to seek additional sources of funds from the public and private sectors to complement the activities of the proposed project. Organizations participating in the cooperative agreement program may use awarded funds to support salaries of individuals assigned to the project.

It is expected that awarded funds will not be use primarily to purchase "Put Prevention Into Practice" materials.

U.S. Public Health Service Involvement

The Public Health Service will:

• Provide a significant portion of the time of one or two professional staff to work with the award recipients on the cooperative agreement and to coordinate its activities with PHS activities.

• Make available both the printing mechanicals for production and customization of the "Put Prevention Into Practice" materials and sample materials.

• Facilitate technical assistance from and liaison with PHS, other Federal agencies, and other sources, as needed and appropriate.

Application Process

1. All applications must be submitted with a signed copy of PHS Form 5161 (revised July 1992), with the required information filled in appropriately. All potential applicants must request the required application form, instructions, and examples of the "Put Prevention Into Practice" materials from Ms. Carla Williams at the Office of Disease Prevention and Health Promotion, Department of Health and Human Services, Switzer 2132, 330 C Street SW., Washington, DC 20201. Telephone requests will be accepted at (202) 205–8660.

2. All applications must be either received or postmarked on or before 5 p.m. on August 17, 1993. Applications postmarked later than 5 p.m. (E.D.T.) on that day will be ineligible. Applications postmarked but not received by August 17, 1993 will be eligible only if they are received in time for orderly process and review.

3. Application packages should be mailed or delivered to: Ms. Carla Williams, ODPHP/PHS/DHHS, Switzer 2132, 330 C Street, SW., Washington, DC 20201.

4. Applications must be typed on one side of the page only.

5. The original and two copies of each application, with attachments and documentation, must be submitted.

6. Applications for projects that are national in scope are not required to carry out the provisions of Executive Order 12372. This announcement is exempt from the Public Health System Reporting Requirements.

Application Requirements

Applications must include the following information:

• A description of the organization and its membership and documentation that it meets all the eligibility requirements, with examples of the organization's prior efforts and activities to substantiate its capability to undertake the proposed project.

• A detailed delineation of the tasks that will be undertaken and the outcomes expected.

• A detailed budget for the proposal. Applicants should include in their budget funds for three one-day trips to Washington, DC to meet with project staff and other grantees.

• A timetable for the project.

• An evaluation plan that will show how the project and materials will be assessed on an ongoing basis.

• The background and qualifications of individuals who will manage and staff the project. If the individuals are not now known, provide a list of the qualifications that will be sought.

• If it is anticipated that any individuals or other organizations will be subcontracted, information about the role they will play and their qualifications.

• If organizations are collaborating on a proposal, information about the role each will play, along with complete eligibility information and specification of which will have leadership responsibility for overall project management. One organization should be identified as the lead to receive and manage funds.

Review and Selection Process

Applications will be screened by ODPHP upon receipt to assure that all eligibility requirements have been met. Applications meeting these requirements will be reviewed by a committee composed of PHS agency representatives who will make award recommendations to the Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion).

Evaluation Criteria

1. Understanding the Program—15

Understanding of the "Put Prevention Into Practice" materials and of barriers to the implementation of preventive care.

2. Methodology and Approach—50

Soundness, practicality, and feasibility of the technical approach to the work, including how the tasks are to be carried out, anticipated problems and proposed solutions. The potential for the project to make an innovative, significant impact on the delivery of preventive care. Feasibility and appropriateness of the proposed ongoing evaluation of project materials and activities.

3. Organizational Commitment and Experience—20

Commitment of management and members to the project, as demonstrated, in part, through commitment of financial or in-kind resources, to support the proposed project. Relevant experience of the organization in conducting similar projects.

4. Project Direction, Management, and Staffing—15

Qualifications and relevant experience of proposed staff and consultants both in the content and execution of proposed project. Management plan and advisory and supervisory structure for the project.

Further Information

This **Federal Register** Notice contains information collection required from respondents for the subject cooperative agreements. The information collection is approved under OMB control number 0937–0189.

To request additional copies of this notice, application materials, sample "Put Prevention Into Practice" materials or for further clarification, contact Ms. Carla Williams, (202) 205–8660. For business and grants management assistance, contact Ms. Cindy Oswald (301) 443–6826. For program assistance, contact Dr. Douglas Kamerow (202) 205–8660 or Dr. Hurdis Griffith (202) 205–8180.

(National Health Promotion Program, Catalog of Domestic Assistance Number 93.990)

Dated: May 21, 1993.

J. Michael McGinnis,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion).

[FR Doc. 93–14404 Filed 6–17–93; 8:45 am]

BILLING CODE 4160–17–M

Subcommittee of the National Vaccine Advisory Committee (NVAC), Public Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health (OASH) are announcing the forthcoming meeting of the NVAC Subcommittee on State and Local Level Impediments to Immunization Services.

DATES: Date, Time and Place: July 8, 1993, at 9 a.m. to 4:30 p.m., Parklawn Building, Conference room E, Third Floor, 5600 Fishers Lane, Rockville, Maryland. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Kenneth J. Bart, M.D., Executive Secretary, National Vaccine Advisory Committee, Natinal Vaccine Program Office, 5600 Fishers Lane, Parklawn Building, room 13A–56, Rockville, Maryland 20857, (301) 443–6264.

AGENDA: OPEN PUBLIC HEARING: Interested persons may formally present data, information, or views orally or in writing on issues to be discussed by the Subcommittee. Those desiring to make presentations should make a request to the contact person before July 1, and submit a brief description of the information they wish to present to the Subcommittee. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 10 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

OPEN SUBCOMMITTEE DISCUSSION: The Subcommittee acts in an advisory capacity to the NVAC to identify state and local impediments to the improvement of immunization services, i.e., policy and management barriers, health services gaps, barriers to efficiency, impact of rules and regulations pertaining to Federal entitlements and programs which deter immunization services. Detailed discussion will be structured around gaps and new issues, as well as the following specific issues:

- Federal guidance to States administering Federal programs involving immunization;
- State and local leadership in immunization service delivery;
- Sustainability of State and local level vaccine delivery infrastructure expansion;
- Immunization coverage under private insurance and Medicaid.

A Subcommittee report will be presented to the full NVAC later this year.

A list of Subcommittee members and the charter of the NVAC will be available at the meeting. Those unable to attend the meeting may request this information from the contact person.

Dated: June 9, 1993.

Kenneth J. Bart,

Executive Secretary, NVAC.

[FR Doc. 93–14403 Filed 6–17–93; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Environment and Energy

[Docket No. I–93–162]

Intended Environmental Impact Statement; Martin Luther King, Jr. Plaza Project, Oakland, CA

The Department of Housing and Urban Development gives notice that the City of Oakland, CA intends to prepare an Environmental Impact Statement (EIS) for a project at the former University High School and former Merritt College site and the construction of a Martin Luther King, Jr. Plaza Project.

The proposed project involves redevelopment, reuse and limited preservation of the former University High School and Merritt College site for multiple uses. The entire site is listed on the National Register of Historic Places. The City envisions the site used for housing (or alternatively, for a medical facility) in conjunction with community services, open space, and retail uses. Key objectives of the project include:

(1) Preservation of the main building on the site;

(2) Allocation of a significant portion of the existing building to community services;

(3) Inclusion of retail and job-producing functions in the mix of uses on the site;

(4) Preservation of existing neighborhood scale and density in new construction, particularly on the former athletic field, and

(5) Provision of a small neighborhood park.

The City of Oakland has acquired federal funds from the U.S. Department of Housing and Urban Development under Title 1 of the Housing and Community Development Act of 1974 (Pub. L. 93–383) to purchase the property described below and is now proposing a project for this site;

The combined environmental impact report/environmental impact statement (EIR/EIS) will analyze potential environmental effects of five alternative projects. The alternative projects described here are not intended to represent final development plans for the site (proposals for development of the site are currently being solicited), but illustrative of varying options for development, enabling an evaluation of the full range of potential environmental impacts in the EIR/EIS. The final development plan will represent a mix of uses which fall within the range of impacts identified within the EIR/EIS alternatives.

Alternative 1 is the No Project alternative, consideration of which is required by the California Environmental Quality Act (CEQA) and by the National Environmental Policy Act (NEPA). The project size would remain in its current unused state under this alternative. The existing buildings on the site would not be rehabilitated, nor would any portion of the buildings be demolished.

Alternative 2 would allow the highest density of conventional housing, along with the largest square footage of retail uses. It would provide 40,000 square feet of retail use in the southern portion of the building. The retail uses would consist of an "anchor" store, such as a large drug store, combined with small retail shops and services. Fifty-one one-bedroom units would be developed in the old academic building. Fourplexes, with a total of 84 two-bedroom units would be built on the former athletic field. A senior center, a child care

center, and 5,000 square feet of community space would also be developed. In addition, a small neighborhood park would be centered on the property.

Alternative 3 would involve a medical rehabilitation facility, along with a variety of community service uses. Alternative 3 would provide 15,000 square feet of retail use (local food and service shops), community service uses (including an education and training center, a senior center, and an ethnic cultural center), a health club/gymnasium, medical services (offices, medical library, public outpatient clinic), a two-story medical rehabilitation facility, 12 three-bedroom single-family units, and a small neighborhood park.

Alternative 4 would devote the majority of the academic building to housing for senior citizens. It would also provide 125 studio apartments for senior citizens, a senior center, a child care center, 3,000 square feet of community space, 70 two-bedroom units in duplexes on the site of the former athletic fields, and a neighborhood park.

Alternative 5 would preserve all existing buildings on the site, and would devote the site to low density housing and community services. This alternative involves development of 56 two-bedroom units in the academic building, a senior center, a child care center, community space, an auditorium within the existing auditorium, a gymnasium within the existing gymnasium building, 16 three-bedroom units on the site of the athletic fields, and a liner park extending along Martin Luther King, Jr. Way. This alternative would not require any building demolition.

Environmental effects of the proposed project include: Land use impacts; public policy conformity; visual and design factors; cultural resources effects; transportation effects, including circulation and parking; vegetation and wildlife impacts, air quality effects; noises impacts; geotechnical (geology and soils) effects; hydrologic impacts; hazardous materials, demands on municipal services and utilities; employment and housing effect; and cumulative effects.

It has been determined that the project may constitute an action significantly affecting the quality of the human environment and an Environmental Impact Statement will be prepared by the City of Oakland in accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–190) on such project.

Responses to this notice will be used to:

1. Determine significant environmental issues;

2. Identify data which the EIS should address; and

3. Identify agencies and other parties which will participate in the EIS process and the basis for their involvement.

This notice is in accordance with the regulations of the Council on Environmental Quality under its rule (40 CFR part 1500).

The Draft Environmental Impact Statement will be published and distributed about July 15, 1993 and a copy of same will be on file at 1330 Broadway, Third Floor, Oakland, CA. 94612 and available for public inspection, or copies may be attained at the same address, upon request.

All interested agencies, groups and persons are invited to submit written comments on the within-named project and the Draft Environmental Impact Statement to the City of Oakland, Office of Planning and Building, 1330 Broadway, Third Floor, Oakland, CA 94612. Such comments should be received by the office within 15 days of the publication of this notice in the **Federal Register** and all comments so received will be considered prior to the preparation and distribution of the Draft Environmental Impact Statement.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, major issues and data which the EIS should consider and recommended mitigating measures and alternatives associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interest should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

This notice shall be effective for 1 year. If 1 year after the publication of the notice in the **Federal Register** a Draft EIS has not been filed on a project, then the notice for that project shall be cancelled. If a draft EIS is expected more than 1 year after the publication of the notice in the **Federal Register** then a new and updated notice of intent will be published.

Dated: June 11, 1993.

Richard H. Broun,

Director, Office of Environment and Energy.

[FR Doc. 93–14436 Filed 6–17–93; 8:45 am]

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Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–36]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for

homeless use for a period of 60 days from the date of this notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P; Rm. 1E671, Pentagon, Washington, DC 20310–2600; (703) 693–4583; (this is not a toll-free number).

Dated: June 11, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 06/18/93

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. T00221
Fort McClellan
Fort McClellan Co: Calhoun AL 36205–5000
Location: Take left turn off Baltzell Gate Road.
Landholding Agency: Army
Property Number: 219110042
Status: Underutilized
Comment: 4125 sq. ft., 1-story wood frame; needs major rehab; termite infested; presence of asbestos; off-site use only.

Bldg. T00796
Fort McClellan
Fort McClellan Co: Calhoun AL 36205–5000
Location: Intersection of 19th and 20th Streets.
Landholding Agency: Army
Property Number: 219110043
Status: Unutilized
Comment: 1340 sq. ft.; 1-story wood frame; needs major rehab; presence of asbestos; off-site use only.

Bldg. T00883
Fort McClellan
3rd Avenue
Fort McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219110044
Status: Unutilized
Comment: 760 sq. ft.; 1-story wood frame; needs major rehab; presence of asbestos; off-site use only.

Bldgs. T01121, T01123, T01124
Fort McClellan
MacArthur Avenue
Fort McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Numbers: 219110048–219110050
Status: Unutilized
Comment: 2400 sq. ft. each; 2-story wood frame; needs rehab; presence of asbestos; off-site use only.

Bldg. T00108
Fort Rucker
6th Avenue
Fort Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219120270
Status: Unutilized
Comment: 24992 sq. ft., 1-story wood structure, most recent use—youth center gymnasium, possible asbestos, off-site use only.

Bldg. 8913, Fort Rucker
7th Avenue
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219140025
Status: Unutilized
Comment: 3100 sq. ft., 1-story wood, most recent use—chaplain's conference room, off-site use only.

Bldg. 8914, Fort Rucker
7th Avenue
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219140026
Status: Unutilized
Comment: 2250 sq. ft., 1-story wood, most recent use—chaplain's headquarters, off-site use only.

Bldgs. T03202–T03203, T03206–T03208, T03211, T03213, T03216–T03217:
Cowboy & Crusader Streets
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Numbers: 219210001–219210009
Status: Unutilized
Comment: 5310 sq. ft. each, 2-story wood structure, most recent use—barracks, presence of asbestos, off-site use only.

Bldg. T03214, Fort Rucker
Cowboy & Crusader Streets
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219230001
Status: Unutilized
Comment: 3306 sq. ft., 1-story wood structure, most recent use—storehouse, presence of asbestos, off-site use only.

Bldg. T03215, Fort Rucker
Cowboy & Crusader Streets
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219230002
Status: Unutilized
Comment: 3452 sq. ft., 1-story wood structure, most recent use—storehouse, presence of asbestos, off-site use only.

Bldg. 9014, Fort Rucker
5th Avenue
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219240772
Status: Unutilized
Comment: 25'x50', 1-story wood frame, needs rehab, most recent use—children's chapel, off-site use only.

Bldg. 9303, Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219310300
Status: Unutilized
Comment: 1250 sq. ft., 1-story wood structure, needs rehab, most recent use—storage, off-site use only.

Arizona

Bldg. T67208
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120113
Status: Unutilized
Comment: 2546 sq. ft., one story wood, most recent use—storage.

Bldg. T70224
U.S. Army Intelligence Center
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120149
Status: Unutilized
Comment: 1252 sq. ft., one story wood; most recent use—Administrative.

Bldgs. 70117–70120

Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Numbers: 219120306–219120309
Status: Excess
Comment: 3434 sq. ft. each, 1 story wood structures, presence of asbestos, most recent use—general instructional.

Bldg. 70225—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120310
Status: Excess
Comment: 3813 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83006—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120311
Status: Excess
Comment: 2062 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83007—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120312
Status: Excess
Comment: 2000 sq. ft., 2 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83008—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120313
Status: Excess
Comment: 2192 sq. ft., 2 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 83015—Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219120314
Status: Excess
Comment: 2325 sq. ft., 1 story wood structure, presence of asbestos, most recent use—admin. gen. purpose.

Bldg. 81001
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240720
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, most recent use—administrative, scheduled to become vacant in 6 months, off-site use only.

Bldg. 81017
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240721
Status: Unutilized
Comment: 2269 sq. ft., 1 story wood frame, possible asbestos, most recent use—classroom, scheduled to become vacant in 6 months, off-site use only.

Bldg. 81020
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240722
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, most recent use—administrative, scheduled to become vacant in 6 months, off-site use only.

Bldg. 67204
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240723
Status: Unutilized
Comment: 4332 sq. ft., 2 story wood frame, possible asbestos, most recent use—administrative, scheduled to become vacant in 6 months, off-site use only.

Bldg. 81010
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240724
Status: Unutilized
Comment: 1955 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 81013
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240725
Status: Unutilized
Comment: 1955 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 81024
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240726
Status: Unutilized
Comment: 1265 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 81025
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240727
Status: Unutilized
Comment: 1265 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 66151
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240728
Status: Unutilized
Comment: 4194 sq. ft., 2 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.

Bldg. 72219
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240729
Status: Unutilized
Comment: 2730 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.

Bldg. 72220
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240730
Status: Unutilized
Comment: 2879 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.

Bldg. 72221
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240731
Status: Unutilized
Comment: 3736 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.

Bldg. 85007
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240732
Status: Unutilized
Comment: 4385 sq. ft., 1 story wood frame, possible asbestos, most recent use—barracks, scheduled to become vacant in 6 months, off-site use only.

Bldg. 67108
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240733
Status: Unutilized
Comment: 2403 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 70226
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240734
Status: Unutilized
Comment: 1868 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 71116
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240735
Status: Unutilized
Comment: 3470 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 71215
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240736
Status: Unutilized
Comment: 4854 sq. ft., 1 story wood frame, possible asbestos, most recent use—classrooms, scheduled to become vacant in 6 months, off-site use only.

Bldg. 70110
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240739
Status: Unutilized

Comment: 2675 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70111
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240740
Status: Unutilized
Comment: 2800 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70113
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240741
Status: Unutilized
Comment: 2800 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70114
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240742
Status: Unutilized
Comment: 2544 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70115
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240743
Status: Unutilized
Comment: 2544 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70123
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240744
Status: Unutilized
Comment: 3298 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70124
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240745
Status: Unutilized
Comment: 3298 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70126
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240746
Status: Unutilized
Comment: 3343 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70210
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240747
Status: Unutilized
Comment: 3258 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70211
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240748
Status: Unutilized
Comment: 2966 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70221
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240749
Status: Unutilized
Comment: 2526 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 70222
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240750
Status: Unutilized
Comment: 1627 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 71214
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240751
Status: Unutilized
Comment: 3779 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 82013
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240752
Status: Unutilized
Comment: 2193 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 90327
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240753
Status: Unutilized
Comment: 279 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—offices, off-site use only.

Bldg. 71213
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240754
Status: Unutilized
Comment: 3779 sq. ft., 1 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only.

Bldg. 82007
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240755
Status: Unutilized
Comment: 4386 sq. ft., 2 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only.

Bldg. 82009
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219240756
Status: Unutilized
Comment: 2444 sq. ft., 2 story wood frame, possible asbestos, scheduled to become vacant in 6 months, most recent use—storehouse, off-site use only.

Bldg. 70216
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310287
Status: Excess
Comment: 3725 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70215
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310288
Status: Excess
Comment: 3706 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70214
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310289
Status: Excess
Comment: 3142 sq. ft., 1-story wood structure, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70212
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310290
Status: Excess
Comment: 3534 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70220
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310291
Status: Excess
Comment: 1249 sq. ft., 1-story wood, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 70218
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310292

Status: Excess
Comment: 3475 sq. ft., 1-story wood, presence of asbestos, most recent use—classroom, off-site use only.

Bldg. 70217
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310293
Status: Excess
Comment: 304 sq. ft., 1-story concrete block, presence of asbestos, most recent use—storage, off-site use only.

Bldg. 80010
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310294
Status: Excess
Comment: 2318 sq. ft., 1-story wood, presence of asbestos, most recent use—admin.

Bldg. 31211
Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310295
Status: Excess
Comment: 4459 sq. ft., 1-story wood, presence of asbestos and lead paint, most recent use—admin.

Bldg. 84103, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310296
Status: Excess
Comment: 984 sq. ft., 1-story, presence of asbestos and lead paint, most recent use—admin.

Bldg. 67101, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310297
Status: Excess
Comment: 2216 sq. ft., 1-story wood, presence of asbestos and lead paint, most recent use—classroom.

Bldg. 30012, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310298
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage.

Bldg. 90328, Fort Huachuca
Sierra Vista, AZ, Cochise, Zip: 85635–
Landholding Agency: Army
Property Number: 219310299
Status: Excess
Comment: 144 sq. ft., 1-story wood, most recent use—storage.

California

Bldg. 186
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120317
Status: Unutilized
Comment: 996 sq. ft., 1-story steel, off-site use only, most recent use—storage.

Bldg. 196
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120318
Status: Unutilized
Comment: 1029 sq. ft., stucco structure, off-site use only, most recent use—storage.

Bldg. 197
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120319
Status: Unutilized
Comment: 720 sq. ft., 1-story stucco structure, off-site use only, most recent use—storage, possible asbestos.

Bldgs. 262–263, 265, 268
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Numbers: 219120320–219120323
Status: Unutilized
Comment: 448 sq. ft., trailers, off-site use only, most recent use—storage.

Colorado

Bldgs. T–803, 2341, T–2440 Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Numbers: 219310269, 219310275, 219310276
Status: Excess
Comment: 1750 sq. ft. ea., 1-story wood, possible asbestos, needs rehab, most recent use—admin., off-site use only.

Bldg. T–1641, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310270
Status: Excess
Comment: 3663 sq. ft., 1-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. T–1818, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310271
Status: Excess
Comment: 5310 sq. ft., 2-story, possible asbestos, most recent use—admin., off-site use only.

Bldg. T–2241, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310272
Status: Excess
Comment: 4070 sq. ft., possible asbestos, most recent use—admin., off-site use only.

Bldg. T–2245, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310273
Status: Excess
Comment: 2508 sq. ft., possible asbestos, most recent use—admin., off-site use only.

Bldg. T–2340, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310274
Status: Excess
Comment: 3663 sq. ft. 1-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. 2342, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310276
Status: Excess
Comment: 2400 sq. ft., 1-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. 2345, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310277
Status: Excess
Comment: 8044 sq. ft., 2-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. T–2441, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310279
Status: Excess
Comment: 1150 sq. ft., 1-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. T–2442, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310280
Status: Excess
Comment: 3404 sq. ft., 1-story wood, possible asbestos, most recent use—admin., off-site use only.

Bldg. T–848, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310281
Status: Excess
Comment: 5419 sq. ft., 1-story wood, possible asbestos, needs repair, most recent use—classrooms, off-site use only.

Bldg. T–1444, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310283
Status: Excess
Comment: 3302 sq. ft., 1-story wood, possible asbestos, most recent use—chapel, off-site use only.

Bldg. T–3549, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310284
Status: Excess
Comment: 3030 sq. ft., 1-story wood, possible asbestos, excellent condition, most recent use—chapel, off-site use only.

Bldg. S–6233, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219310286
Status: Excess
Comment: 24800 sq. ft., 2-story concrete block, possible asbestos, needs repair, most recent use—storage, off-site use only.

Bldg. T–804, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army
Property Number: 219320203
Status: Unutilized
Comment: 18260 sq. ft., 1-story wood frame, needs rehab, off-site removal only, most recent use—motor pool.

Bldg. T–6017, Fort Carson
Colorado Springs, CO, El Paso, Zip: 80913–
Landholding Agency: Army

Property Number: 219320207
Status: Unutilized
Comment: 3663 sq. ft., 1-story wood frame, needs rehab, off-site removal only, most recent use—gym.

Georgia

Bldgs. 5390, 5392, 5391
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219010137, 219010151–219010152
Status: Unutilized
Comment: 2432 sq. ft. ea; most recent use—dining room; needs rehab.

Bldg. 5362
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219010147
Status: Unutilized
Comment: 5559 sq. ft.; most recent use—service club; needs rehab.

Bldg. 5363
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219010148
Status: Unutilized
Comment: 3759 sq. ft.; most recent use—recreation bldg.; needs rehab.

Bldg. 4605
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011493
Status: Unutilized
Comment: 915 sq. ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4487
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011681
Status: Unutilized
Comment: 1868 sq. ft.; most recent use—telephone exchange bldg.; needs substantial rehabilitation; 1 floor.

Bldg. 4484
Fort Benning, GA, Muscogee, Zip:
Landholding Agency: Army
Property Number: 219011682
Status: Unutilized
Comment: 1098 sq. ft.; most recent use—storehouse; needs substantial rehabilitation; 1 floor.

Bldg. 4319
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011683
Status: Unutilized
Comment: 2584 sq. ft.; most recent use—vehicle maintenance shop; needs substantial rehabilitation; 1 floor.

Bldg. 4481
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011685
Status: Unutilized
Comment: 1507 sq. ft.; most recent use—administrative (day room); needs substantial rehabilitation; 1 floor.

Bldg. 3400
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011694
Status: Unutilized
Comment: 2570 sq. ft.; most recent use—fire station; needs substantial rehabilitation; 1 floor.

Bldg. 2285
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011704
Status: Unutilized
Comment: 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor.

Bldg. 4092
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011709
Status: Unutilized
Comment: 336 sq. ft.; most recent use—inflammable materials storage; needs substantial rehabilitation; 1 floor.

Bldg. 4089
Fort Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219011710
Status: Unutilized
Comment: 176 sq. ft.; most recent use—gas station; needs substantial rehabilitation; 1 floor.

Bldg. 5266
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219012364
Status: Unutilized
Comment: 1400 sq. ft.; one story; most recent use—day room; in poor condition; needs major rehab.

Bldg. 5267–5271, 5283
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219012365–219012370, 219012396
Status: Unutilized
Comment: 2124 sq. ft. each; 2 story; most recent use—barracks; poor condition; needs major rehab.

Bldg. 4939
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219012392
Status: Unutilized
Comment: 1800 sq. ft.; one story; most recent use—classrooms; poor condition; needs major rehab.

Bldg. 5287
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219012411
Status: Unutilized
Comment: 1216 sq. ft.; 1 story; most recent use—arms building; poor condition; needs major rehab.

Bldgs. 1235, 1236
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219014887–219014888
Status: Unutilized
Comment: 9367 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.

Bldg. 1251
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014889
Status: Unutilized
Comment: 18385 sq. ft.; 1 story building; needs rehab; most recent use—Arms Repair Shop.

Bldg. 2591
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014906
Status: Unutilized
Comment: 1663 sq. ft.; 1 story building; needs rehab; most recent use—General storehouse.

Bldgs. 3005–3010
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219014907–219014912
Status: Unutilized
Comment: 7668 sq. ft. each; 2 story building; needs rehab; most recent use—Barracks.

Bldg. 3060
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014913
Status: Unutilized
Comment: 1372 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.

Bldg. 3081
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014914
Status: Unutilized
Comment: 2284 sq. ft.; 1 story building; needs rehab; most recent use—clinic.

Bldg. 4022
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014915
Status: Unutilized
Comment: 1712 sq. ft.; 1 story building; needs rehab; most recent use—Clinic.

Bldg. 4491
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014916
Status: Unutilized
Comment: 18240 sq. ft.; 1 story building; needs rehab; most recent use—Vehicle maintenance shop.

Bldg. 4633
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014919
Status: Unutilized
Comment: 5069 sq. ft.; 1 story building; needs rehab; most recent use—Training Building.

Bldg. 4634
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014920
Status: Unutilized
Comment: 5069 sq. ft.; 1 story building; needs rehab; most recent use—Training Building.

Bldg. 4649
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219014922
Status: Unutilized
Comment: 2250 sq. ft.; 1 story building; needs rehab; most recent use—Headquarters Building.

Bldg. 95
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120253
Status: Unutilized
Comment: 1006 sq. ft., 1 story, most recent use—fire station annex, needs rehab.

Bldg. 1234
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120254
Status: Unutilized
Comment: 16148 sq. ft., 2 story, most recent use—officer's club, needs rehab.

Bldg. 1684
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120255
Status: Unutilized
Comment: 2671 sq. ft., 1 story, needs rehab, most recent use—administration/general purpose.

Bldg. 1827
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 2190120257
Status: Unutilized
Comment: 943 sq. ft., 1 story, needs rehab, most recent use—general purpose warehouse.

Bldg. 2150
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120258
Status: Unutilized
Comment: 3909 sq. ft., 1 story, needs rehab, most recent use—general inst. bldg.

Bldgs. 2212, 2213
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219120259–219120260
Status: Unutilized
Comment: 4720 sq. ft. each, 2 story, needs rehab, most recent use—drug abuse center.

Bldg. 2214
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120261
Status: Unutilized
Comment: 2253 sq. ft., 1 story, needs rehab, most recent use—enlisted persons dining room.

Bldg. 2215
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120262
Status: Unutilized
Comment: 1844 sq. ft., 1 story, needs rehab, most recent use—day room.

Bldg. 2409
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120263
Status: Unutilized
Comment: 9348 sq. ft., 1 story, needs rehab, most recent use—general purpose warehouse.

Bldg. 2548
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120264
Status: Unutilized
Comment: 2337 sq. ft., 1 story, needs rehab, most recent use—clinic w/o beds.

Bldg. 2590
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120265
Status: Unutilized
Comment: 3132 sq. ft., 1 story, needs rehab, most recent use—vehicle maintenance shop.

Bldg. 3828
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120266
Status: Unutilized
Comment: 628 sq. ft., 1 story, needs rehab, most recent use—general storehouse.

Bldg. 5284, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219120267
Status: Unutilized
Comment: 5310 sq. ft; 2 story, needs rehab; most recent use—trainee barracks.

Bldgs. 3084, 3086, 3089, 3092, 3094, 3097, 2601
Ft. Benning GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220687–219220692, 219220704
Status: Unutilized
Comment: 4720 sq. ft. ea., 2 story, most recent use—barracks. needs major rehab, off-site removal only.

Bldg. 499, Fort Benning
Ft. Benning GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220693
Status: Unutilized
Comment: 840 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 1252, Fort Benning
Ft. Benning GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220694
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 1253, Fort Benning
Ft. Benning GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220695
Status: Unutilized
Comment: 617 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 1678, Fort Benning
Ft. Benning GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220697
Status: Unutilized
Comment: 9342 sq. ft.; 1 story; most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 1733, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220698
Status: Unutilized
Comment: 9375 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldgs. 3083, 3093, 3100, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Numbers: 219220699, 219220701–219220702
Status: Unutilized
Comment: 1372 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 3091, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220700
Status: Unutilized
Comment: 1635 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 3856, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219220703
Status: Unutilized
Comment: 4111 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4099, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220704
Status: Unutilized
Comment: 2740 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4216, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220705
Status: Unutilized
Comment: 9211 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4881, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220707
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only.

Bldg. 4941, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220708
Status: Unutilized
Comment: 2485 sq. ft., 1 story, most recent use—storehouse, needs repair, off-site removal only.

Bldg. 4943, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220709
Status: Unutilized

Comment: 960 sq. ft., 1 story, most recent use—storehouse, needs repair, off-site removal only.

Bldg. 4963, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220710
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, needs repair, off-site removal only.

Bldg. 5214, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220711
Status: Unutilized
Comment: 1520 sq. ft., 1 story, most recent use—storehouse, needs repair, off-site removal only.

Bldg. 2396, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220712
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 3011, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220713
Status: Unutilized
Comment: 2775 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 3012, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220714
Status: Unutilized
Comment: 2794 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 3085, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220715–219220716
Status: Unutilized
Comment: 2253 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only.

Bldg. 3087, 3095, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220717–219220718
Status: Unutilized
Comment: 1884 sq. ft., 1 story, most recent use—day room, needs major rehab, off-site removal only.

Bldg. 3246, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220719
Status: Unutilized
Comment: 973 sq. ft., 1 story, most recent use—tailor shop, needs major rehab, off-site removal only.

Bldg. 3730, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220720
Status: Unutilized
Comment: 13587 sq. ft., 1 story, most recent use—gym, needs major rehab, off-site removal only.

Bldg. 5261–5265, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220721–219220725
Status: Unutilized
Comment: 1750 sq. ft., 1 story, most recent use—day room, needs major rehab, off-site removal only.

Bldg. 2537, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220726
Status: Unutilized
Comment: 820 sq. ft., 1 story, most recent use—storage, needs major rehab, off-site removal only.

Bldg. 4882, 4967, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220727–219220728
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, needs repair, off-site removal only.

Bldg. 1230, 1231 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Federal Register Notice Date: 08/07/92
Landholding Agency: Army
Property Numbers: 219220729–219220730
Status: Unutilized
Comment: 4386 sq. ft., ea., 1 story, most recent use—general instruction bldg., needs major rehab, off-site removal only.

Bldg. 5394, 5396 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220733–219220734
Status: Unutilized
Comment: 10944 sq. ft., 1 story, most recent use—general instruction bldg., needs major rehab, off-site removal only.

Bldg. 247, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220735
Status: Unutilized
Comment: 1144 sq. ft., 1 story, most recent use—offices, needs major rehab, off-site removal only.

Bldg. 4977, 4978 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220736–219220737
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, needs repairs, off-site removal only.

Bldg. 3099, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220738
Status: Unutilized
Comment: 2794 sq. ft., 1 story, most recent use—administration, needs major rehab, off-site removal only.

Bldg. 4833, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220739
Status: Unutilized
Comment: 5088 sq. ft., 1 story, most recent use—administration, needs repairs, off-site removal only.

Bldg. 5153, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220740
Status: Unutilized
Comment: 8044 sq. ft., 1 story, most recent use—administration, needs major rehab, off-site removal only.

Bldg. 1240, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220741
Status: Unutilized
Comment: 1197 sq. ft., 1 story, most recent use—recreation, needs major rehab, off-site removal only.

Bldg. 3743, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220743
Status: Unutilized
Comment: 6954 sq. ft., 1 story, most recent use—recreation center, needs major rehab, off-site removal only.

Bldg. 3805, 3806 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220744–219220745
Status: Unutilized
Comment: 2330 sq. ft., 1 story, most recent use—recreation bldg., needs major rehab, off-site removal only.

Bldg. 4944, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220747
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need rehab, off-site removal only.

Bldg. 4946, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220748
Status: Unutilized
Comment: 3444 sq. ft., 1 story, most recent use—vehicle maintenance shop, needs major rehab, off-site removal only.

Bldgs. 4947–4949 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220749–219220751
Status: Unutilized
Comment: 3444 sq. ft., 1 story, most recent use—vehicle maintenance shop, needs major rehab, off-site removal only.

Bldg. 4960, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220752
Status: Unutilized
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 4969, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220753
Status: Unutilized
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only.

Bldg. 1724, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army

Property Number: 219220754
Status: Unutilized
Comment: 7873 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 1758, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220755
Status: Unutilized
Comment: 7817 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 1680, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220756
Status: Unutilized
Comment: 9243 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 1682, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220757
Status: Unutilized
Comment: 9250 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 3817, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220758
Status: Unutilized
Comment: 4000 sq. ft., 1 story, most recent use—warehouse, needs major rehab, off-site removal only.

Bldg. 3082, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220761
Status: Unutilized
Comment: 2794 sq. ft., 1 story, most recent use—headquarters bldg., needs major rehab, off-site removal only.

Bldg. 4884, 4964, 4966, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219220762–219220764
Status: Unutilized
Comment: 2000 sq. ft. ea., 1 story, most recent use—headquarters bldgs., need repairs, off-site removal only.

Bldg. 5105, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220765
Status: Unutilized
Comment: 2350 sq. ft., 1 story, most recent use—headquarters bldg., needs major rehab, off-site removal only.

Bldg. 5260, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220766
Status: Unutilized
Comment: 1750 sq. ft., 1 story, most recent use—headquarters bldg., needs major rehab, off-site removal only.

Bldg. 4679, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220767
Status: Unutilized
Comment: 8657 sq. ft., 1 story, most recent use—supply bldg., needs major rehab, off-site removal only.

Bldg. 4883, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220768
Status: Unutilized
Comment: 2600 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.

Bldg. 4965, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220769
Status: Unutilized
Comment: 7713 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only.

Bldg. 2513, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220770
Status: Unutilized
Comment: 9483 sq. ft., 1 story, most recent use—training center, needs major rehab, off-site removal only.

Bldg. 2526, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220771
Status: Unutilized
Comment: 11855 sq. ft., 1 story, most recent use— training center, needs major rehab, off-site removal only.

Bldg. 2589, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220772
Status: Unutilized
Comment: 146 sq. ft., 1 story, most recent use—training bldg., needs major rehab, off-site removal only.

Bldg. 4970, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220776
Status: Unutilized
Comment: 4912 sq. ft., 1 story, needs repairs, off-site removal only.

Bldg. 4971, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220777
Status: Unutilized
Comment: 1944 sq. ft., 1 story, needs repairs, off-site removal only.

Bldg. 4976, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220778
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—gas station, needs repairs, off-site removal only.

Bldg. 4945, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220779
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only.

Bldg. 4979, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220780
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house, needs repairs, off-site removal only.

Bldg. 5200, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220781
Status: Unutilized
Comment: 14934 sq. ft., 2 story, most recent use—theater, needs major rehab, off-site removal only.

Bldg. 5285, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220782
Status: Unutilized
Comment: 1520 sq. ft., 1 story, most recent use—arms bldg., needs major rehab, off-site removal only.

Bldg. 4215, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220785
Status: Unutilized
Comment: 11850 sq. ft., 1-story, most recent use—sales store, needs major rehab, off-site removal only.

Bldg. 4627, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220786
Status: Unutilized
Comment: 1676 sq. ft., 1-story, most recent use—sentry station, needs major rehab, off-site removal only.

Bldg. 5286, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219220788
Status: Unutilized
Comment: 1520 sq. ft., 1-story, most recent use—arms bldg., needs major rehab, off-site removal only.

Bldg. 517, Fort Gillem
Forest Park, GA, Clayton, Zip: 30051–
Landholding Agency: Army
Property Number: 219310314
Status: Underutilized
Comment: 455 sq. ft., 1-story concrete frame, needs rehab, most recent use—dispatch office, off-site use only.

Bldg. 611, Fort Gillem
Forest Park, GA, Clayton, Zip: 30051–
Landholding Agency: Army
Property Number: 219310315
Status: Underutilized
Comment: 3200 sq. ft., 1-story concrete/metal frame, needs rehab, most recent use—motor repair shop, off-site use only.

Bldg. 629, Fort Gillem
Forest Park, GA, Clayton, Zip: 30051–
Landholding Agency: Army
Property Number: 219310316
Status: Underutilized
Comment: 600 sq. ft., 1-story concrete frame, needs rehab, most recent use—storage, off-site use only.

Bldgs. 4114, 4117–4118, 4125–4126, 4129–4130, 4137–4138, 4140, Fort Benning
Fort Benning, GA, Muscogee, Zip: 31905–

Landholding Agency: Army
Property Numbers: 219310407–219310416
Status: Unutilized
Comment: 4425 sq. ft. ea., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldgs. 4002, 4004, 4006–4010, 4012, 4015, 4020, 4106, 4115–4116, 4127–4128, 4138, 4149–4150
Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310417–219310432
Status: Unutilized
Comment: 4720 sq. ft. ea., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldgs. 4030, 4029 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310433–219310434
Status: Unutilized
Comment: 7668 sq. ft. ea., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldg. 4017, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310435
Status: Unutilized
Comment: 7700 sq. ft., 2-story, needs rehab, most recent use—barracks, off-site use only.

Bldgs. 4112, 4119, 4124, 4141, 4136, 4131 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310436–219310441
Status: Unutilized
Comment: 1144 sq. ft. ea., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4108, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310442
Status: Unutilized
Comment: 1171 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 1835, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310443
Status: Unutilized
Comment: 1712 sq. ft., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldgs. 4013, 4007 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310444
Status: Unutilized
Comment: 1884 sq. ft. ea., 1-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 4107, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310446
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—day room, off-site use only.

Bldg. 3072, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310447
Status: Unutilized
Comment: 479 sq. ft., 1-story, needs rehab, most recent use—hdqtrs. bldg., off-site use only.

Bldgs. 4001, 4103 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310448–219310449
Status: Unutilized
Comment: 1635 sq. ft. ea., 1-story, needs rehab, most recent use—hdqtrs bldg., off-site use only.

Bldg. 3004, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310450
Status: Unutilized
Comment: 2794 sq. ft., 1-story, needs rehab, most recent use—hdqtrs bldg., off-site use only.

Bldgs. 4019, 4018, 3003, 3002 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310451–219310454
Status: Unutilized
Comment: 3270 sq. ft., 2-story, needs rehab, most recent use—hdqtrs bldg., off-site use only.

Bldg. 4019, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310455
Status: Unutilized
Comment: 2253 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4014, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310456
Status: Unutilized
Comment: 2794 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4006, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310457
Status: Unutilized
Comment: 3023 sq. ft., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldgs. 4135, 4123, 4111, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310458–219310460
Status: Unutilized
Comment: 3755 sq. ft. ea., 1-story, needs rehab, most recent use—dining facility, off-site use only.

Bldg. 4023, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310461
Status: Unutilized
Comment: 2268 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4024, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310462
Status: Unutilized
Comment: 3261 sq. ft., 1-story, needs rehab, most recent use—maintenance shop, off-site use only.

Bldg. 4040, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310463
Status: Unutilized
Comment: 1815 sq. ft., 1-story, needs rehab, most recent use—admin., off-site use only.

Bldg. 4026, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310464
Status: Unutilized
Comment: 2330 sq. ft., 1-story, needs rehab, most recent use—admin., off-site use only.

Bldg. 4067, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310465
Status: Unutilized
Comment: 4406 sq. ft., 1-story, needs rehab, most recent use—admin., off-site use only.

Bldg. 4025, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310466
Status: Unutilized
Comment: 4720 sq. ft., 2-story, needs rehab, most recent use—admin., off-site use only.

Bldgs. 4110, 4122, 4134 Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310467–219310469
Status: Unutilized
Comment: 1017 sq. ft. ea., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 4021, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310470
Status: Unutilized
Comment: 1416 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 2501, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310471
Status: Unutilized
Comment: 4073 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 4060, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310472
Status: Unutilized
Comment: 16,900 sq. ft., 1-story, needs rehab, most recent use—storehouse, off-site use only.

Bldg. 4113, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310473
Status: Unutilized
Comment: 4425 sq. ft., 2-story, needs rehab, most recent use—storage, off-site use only.

Bldg. 10439, Fort Benning

Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310474
Status: Unutilized
Comment: 1010 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10304, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310475
Status: Unutilized
Comment: 1040 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10847, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310476
Status: Unutilized
Comment: 1056 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 10768, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310477
Status: Unutilized
Comment: 1230 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 2683, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310478
Status: Unutilized
Comment: 1816 sq. ft., 1-story, needs rehab, most recent use—scout bldg., off-site use only.

Bldg. 2504, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310479
Status: Unutilized
Comment: 729 sq. ft., 1-story, needs rehab, most recent use—snack bar, off-site use only.

Bldg. 4035, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310480
Status: Unutilized
Comment: 3375 sq. ft., 1-story, needs rehab, most recent use—recreation, off-site use only.

Bldg. 4027, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310481
Status: Unutilized
Comment: 3750 sq. ft., 1-story, needs rehab, most recent use—recreation, off-site use only.

Bldg. 4066, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310482
Status: Unutilized
Comment: 4388 sq. ft., 1-story, needs rehab, most recent use—fire station, off-site use only.

Bldg. 2422, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310484
Status: Unutilized
Comment: 3228 sq. ft., 1-story, needs rehab, most recent use—fire station, off-site use only.

Bldg. 4205, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310485
Status: Unutilized
Comment: 3378 sq. ft., 1-story, needs rehab, most recent use—fire station, off-site use only.

Bldg. 4031, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Number: 219310486
Status: Unutilized
Comment: 2381 sq. ft., 1-story, needs rehab, most recent use—exchange branch, off-site use only.

Bldgs. 4121, 4133, 4143, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310487–219310489
Status: Unutilized
Comment: 1017 sq. ft., 1-story, needs rehab, most recent use—arms bldgs., off-site use only.

Bldgs. 4105, 4005, Fort Benning
Ft. Benning, GA, Muscogee, Zip: 31905–
Landholding Agency: Army
Property Numbers: 219310490–219310491
Status: Unutilized
Comment: 1416 sq. ft., 1-story, needs rehab, most recent use—arms bldgs., off-site use only.

Hawaii

P–68
Aliamanu Military Reservation
Honolulu Co: Honolulu, HI 96818
Location: Approx. 600 feet from Maine Gate on Aliamanu Drive
Landholding Agency: Army
Property Number: 219030324
Status: Unutilized
Comment: 45216 sq. ft. underground tunnel complex, pres. of asbestos, clean-up required of contamination, use of respirator required by those entering property, use limitations.

Indiana

Bldg. 703–1C
Indiana Army Ammunition Plant
Charleston Co: Clark, IN
Location: Gate 22 off Highway 22
Landholding Agency: Army
Property Number: 219013761
Status: Unutilized
Comment: 4000 sq. ft.; 2 story brick frame; possible asbestos; most recent use—exercise area.

Bldg. 1011 (Portion of)
Indiana Army Ammunition Plant
Charlestown Co: Clark IN
Location: East of State Highway 62 at Gate 3
Landholding Agency: Army
Property Number: 219013762
Status: Underutilized
Comment: 4040 sq. ft.; 1 story concrete block frame; possible asbestos; secured area with alternative access; most recent on the use—office.

Bldg. 1001 (Portion of)
Indiana Army Ammunition Plant
Charlestown Co: Clark IN
Location: South end of 3rd Street, East of Highway 62 at entrance gate.
Landholding Agency: Army
Property Number: 219013763
Status: Underutilized
Comment: 55630 sq. ft.; 1 story concrete block; possible asbestos; secured area with alternative access; most recently use—cloth beg manufacturing.

Bldg. 2542
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: Army
Property Number: 219240717
Status: Unutilized
Comment: 1954 sq. ft., 1 story concrete block, secured area w/alternate access, asbestos, most recent use—heating facility.

Bldg. 2531
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: Army
Property Number: 219240718
Status: Unutilized
Comment: 119746 sq., 1 story concrete block, secured area w/alternate access, asbestos, most recent use—storage.

Kansas

Bldg. T–2502, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219310244
Status: Unutilized
Comment: 3195 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. T–2520, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219310245
Status: Unutilized
Comment: 3059 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldgs. T–2532, T–2538, T–2539, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Numbers: 219310246, 219310248–219310249
Status: Unutilized
Comment: 1327 sq. ft. each, 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. T–2535, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219310247
Status: Unutilized
Comment: 3843 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. T–2540, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219310250
Status: Unutilized
Comment: 3186 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. T–2549, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army

Property Number: 219310251
Status: Unutilized
Comment: 3062 sq. feet, 1-story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldgs. T–2521—T–2528, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Numbers: 219310252—219310259
Status: Unutilized
Comment: 4826 sq. ft. each, 2-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Bldg. T–2533, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Landholding Agency: Army
Property Number: 219310260
Status: Unutilized
Comment: 1327 sq. ft., 1-story wood frame, needs rehab, presence of asbestos, most recent use—admin.

Bldgs. T–2541–2548, Fort Riley
Ft. Riley, KS, Geary, Zip: 66442–
Federal Register Notice Date: 06/18/93
Landholding Agency: Army
Property Numbers: 219310261–219310268
Status: Unutilized
Comment: 4826 sq. ft. each, 2-story wood frame, needs rehab, presence of asbestos, most recent use—barracks.

Kentucky

Bldg. 104
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219010937
Status: Underutilized
Comment: 15066 sq. ft.; two story; possible asbestos; most recent use—barracks.

Bldgs. 126, 141, 147, 149, 161, 165, 167, 169, 143
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219010938, 219010940–219010946, 219013139
Status: Underutilized
Comment: 12576 sq. ft. each; two story; possible asbestos; most recent use—storage/child care/administration.

Bldg. 122
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219010939
Status: Underutilized
Comment: 1488 sq. ft.; two story; possible asbestos; most recent use—storage and administration.

Bldg. 2244
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219010948
Status: Underutilized
Comment: 4248 sq. ft.; possible asbestos, two story; most recent use—storage.

Bldg. 3110
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219010950
Status: Unutilized
Comment: 1000 sq. ft.; one story; possible asbestos; most recent use—administration.

Bldgs. 5954, 5956, 5958, 5960
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219010953, 219010956, 219010958, 219010961
Status: Unutilized
Comment: 2179 sq. ft. each; one story; possible asbestos; most recent use—Military Vehicle Maintenance Shop, Organizational.

Bldg. 6605
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219010968
Status: Underutilized
Comment: 1968 sq. ft.; one story; most recent use—storage.

Bldg. 3148
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219013223
Status: Underutilized
Comment: 2200 sq. ft.; 1 story; possible asbestos; selected periods used for military/training exercises.

Bldg. 00837, Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219220447
Status: Unutilized
Comment: 2296 sq. ft., 1-story wooden structure with metal siding, presence of asbestos, most recent use—railroad repair shop, off-site removal only.

Bldg. 06864, 06866
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219240757, 219240759
Status: Unutilized
Comment: 1000 sq. ft. ea., 1 story wood frame, most recent use—storage, off-site use only.

Bldg. 06865
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219240758
Status: Unutilized
Comment: 1200 sq. ft., 1 story wood frame, most recent use—storage, off-site use only.

Bldg. 70
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219240760
Status: Unutilized
Comment: 979 sq. ft., 1 story wood frame, secured area w/alternate access, off-site use only.

Bldg. 0074
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219240761
Status: Unutilized
Comment: 5400 sq. ft., 2 story wood frame, secured area w/alternate access, off-site use only.

Bldgs. 2184, 2560, 2558
Fort Campbell
Fort Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Numbers: 219240762–219240764
Status: Unutilized
Comment: 5310 sq. ft. ea., 2 story wood frame, secured area w/alternate access, off-site use only.

Maryland

Bldgs. E5878, E5879
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Numbers: 219012652, 219012653
Status: Unutilized
Comment: 213 sq. ft. each; structural deficiencies; possible asbestos; and contamination.

Bldg. 10302
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012666
Status: Unutilized
Comment: 42 sq. ft.; possible asbestos; most recent use—pumping station.

Bldg. E5975
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012677
Status: Unutilized
Comment: 650 sq. ft.; possible contamination; structural deficiences most recent use—training exercises/chemicals and explosives; potential use—storage.

Bldg. 6599
Fort George G. Meade
Zimborski Road
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219014852
Status: Unutilized
Comment: 4173 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access.

Bldg. 6687
Fort George G. Meade
Mapes and Zimborski Roads
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219220446
Status: Unutilized
Comment: 1150 sq. ft., presence of asbestos, wood frame, most recent use—veterinarian clinic, off-site removal only.

Bldg. 584
Fort George G. Meade
Chamberlain Avenue
Ft. Mead Co: Anne Arundel MD 20755–5115
Landingholding Agency: Army
Property Number: 219310241
Status: Unutilized
Comment: 2284 sq. ft., 1 story wood frame, needs rehab, most recent use—child support center.

Bldg. 594
Fort George G. Meade
9th Street
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219310242
Status: Unutilized

Comment: 1828 sq. ft., 1 story wood frame, needs rehab, most recent use—admin/child support.
Bldg. 2833
Fort George G. Meade
Earnie Pyle Street
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219310243
Status: Unutilized
Comment: 7670 sq. ft., 2 story wood frame, needs rehab, most recent use—administrative.

Michigan

Bldg. 300, Arsenal Acres
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Number: 219220448
Status: Unutilized
Comment: 32 sq. ft., sentry station, secured area w/alternate access.
Bldg. 301, Arsenal Acres
24140 Mount Road
Warren, MI 48091
Landholding Agency: Army
Property Number: 219220449
Status: Unutilized
Comment: 3125 sq. ft., 2-story colonial style home, secured area w/alternate access
Bldgs. 302, 303
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Numbers: 219220450–219220451
Status: Unutilized
Comment: 2619 sq. ft. ea., 2-story colonial style home, secured area w/alternate access.
Bldgs. 304, 305
24140 Mound Road
Warren, MI 48091
Landholding Agency: Army
Property Numbers: 219220452–219220787
Status: Unutilized
Comment: 2443 sq. ft. ea., 2-story colonial style home, secured area w/alternate access.

Missouri

Bldg. T451
Fort Leonard Wood
Ft. Leonard Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219220568
Status: Underutilized
Comment: 4640 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, not handicapped accessible, most recent use—admin/general purpose.
Bldg. T3057
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219220580
Status: Underutilized
Comment: 2650 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, not handicapped accessible, most recent use—admin/general purpose.
Bldg. T2383
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230228
Status: Underutilized
Comment: 9267 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—general purpose.
Bldg. T1376
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski 65473
Landholding Agency: Army
Property Number: 219230237
Status: Underutilized
Comment: 1296 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—Hdqtrs building.
Bldg. T599
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230260
Status: Underutilized
Comment: 18270 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—storehouse.
Bldg. T1311
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230261
Status: Underutilized
Comment: 2740 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—storehouse.
Bldg. T1333
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Landholding Agency: Army
Property Number: 219230263
Status: Underutilized
Comment: 1144 sq. ft., 1 story, presence of asbestos, off-site use only, most recent use—storehouse.
Bldg. T3071
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219240719
Status: Underutilized
Comment: 2500 sq. ft., 1 story wood frame, possible asbestos, heating fuel storage tanks nearby, off-site use only, most recent use—mess hall.

Nebraska

Bldg. RG–1
Cornhusker Army Ammunition Plant
Old Potash Hwy
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210292
Status: Unutilized
Comment: 1080 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.
Bldg. RG–2
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210293
Status: Unutilized
Comment: 576 sq. ft., 1 story garage, secured area with alternate access.
Bldg. RG–3
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210294
Status: Unutilized
Comment: 936 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.
Bldg. RG–4
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210295
Status: Unutilized
Comment: 1040 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.
Bldg. RG–5
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210296
Status: Unutilized
Comment: 490 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.
Bldg. RG–6
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219210297
Status: Unutilized
Comment: 510 sq. ft., 1 story garage, possible asbestos, secured area with alternate access.

Nevada

Bldgs. 00425–00449
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Numbers: 219011946–219011952, 219011954, 219011956, 219011959, 219011961, 219011964, 219011968, 219011970, 219011974, 219011976–219011978, 219011980, 219011982, 219011984, 219011987, 219011990, 219011994, 219011996
Status: Unutilized
Comment: 1310–1640 sq. ft. each, one floor residential, semi/wood construction, good condition.

New York

Bldg. 503
Fort Totten
Ordnance Road
Bayside Co: Queens NY 11357–
Landholding Agency: Army
Property Number: 219012564
Status: Underutilized
Comment: 510 sq. ft., 1 floor, most recent use—storage, needs major rehab/no utilities.
Bldg. 323
Fort Totten
Story Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012567
Status: Underutilized
Comment: 30,000 sq. ft., 3 floors, most recent use—barracks & mess facility, needs major rehab.
Bldg. 304
Fort Totten
Shore Road

Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012570
Status: Underutilized
Comment: 9610 sq. ft., 3 floors, most recent use—hospital, needs major rehab/utilities disconnected.

Bldg. 211
Fort Totten
211 Totten Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012573
Status: Underutilized
Comment: 6329 sq. ft., 3 floors, most recent use—family housing, needs major rehab, utilities disconnected.

Bldg. 332
Fort Totten
Theater Road
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012578
Status: Underutilized
Comment: 6288 sq. ft., 1 floor, most recent use—theater w/stage, needs major rehab, utilities disconnected.

Bldg. 504
Fort Totten
Ordnance Road
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012580
Status: Underutilized
Comment: 490 sq. ft., 1 floor, most recent use—storage, no utilities, needs major rehab.

Bldg. 322
Fort Totten
322 Story Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012583
Status: Underutilized
Comment: 30,000 sq. ft., 3 floors, most recent use—barracks, mess & administration, utilities disconnected, needs rehab.

Bldg. 326
Fort Totten
326 Pratt Avenue
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012586
Status: Underutilized
Comment: 6000 sq. ft., 2 floors, most recent use—storage, offices & residential, utilities disconnected/needs rehab.

Bldg. 627
U.S. Military Academy—West Point
Pitcher Road, North Dock
Highland Co. Orange NY 10996–1592
Landholding Agency: Army
Property Number: 219030185
Status: Unutilized
Comment: 23,185 sq. ft.; 1 story wood frame; needs rehab; presence of asbestos; most recent use—storage warehouse.

Ohio

15 Units Military Family Housing
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266
Landholding Agency: Army
Property Number: 219230354
Status: Unutilized
Comment: 7–3 bedroom units (1824 sq. ft. ea.) 8–4 bedroom units (2430 sq. ft. ea.), 2 story wood frame, presence of asbestos, off-site use only.

7 Units Military Family Housing
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266
Landholding Agency: Army
Property Number: 219230355
Status: Unutilized
Comment: One-4 stall garage and Six-3 stall garages, off-site use only, presence of asbestos.

Oklahoma

Bldg. T–2545, Fort Sill
2544 Sheridan Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011255
Status: Unutilized
Comment: 1994 sq. ft.; asbestos; wood frame; 2 floors, no operating sanitary facilities; most recent use—barracks.

Bldg. T–2606
Fort Sill
2606 Currie Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011273
Status: Unutilized
Comment: 2722 sq. ft.; possible asbestos, one floor wood frame; most recent use—Headquarters Bldg.

Bldg. T–3507
Fort Sill
3507 Sheridan Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011315
Status: Unutilized
Comment: 2904 sq. ft.; possible asbestos; potential heavy metal contamination; wood frame; most recent use—chapel.

Bldgs. T–3779, T–3780
Fort Sill
3779 Currie Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Numbers: 219011343, 219011344
Status: Unutilized
Comment: 4720 sq. ft.; each; possible asbestos, wood frame, 2 floors, most recent use—barracks.

Bldg. T–4720
Fort Sill
4720 Hartell Blvd.
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219011405
Status: Unutilized
Comment: 13225 sq. ft.; visual asbestos; wood frame; 2 floors; most recent use—recreation bldg.

Bldg. T–4919
Fort Sill
4919 Post Road
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219014842
Status: Unutilized
Comment: 603 sq. ft.; 1 story mobile home trailer; possible asbestos; needs rehab.

Bldg. T–4523, Fort Sill
4523 Wilson Road
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219014933
Status: Unutilized
Comment: 1639 sq. ft., 1 story wood frame, needs rehab, possible asbestos, most recent use—storage.

Bldg. T–283, Fort Sill
283 Knox Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220608
Status: Unutilized
Comment: 2419 sq. ft., wood frame, 2 story, off-site removal only, most recent use—classroom.

Bldg. T–838, Fort Sill
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220609
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–3621, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220613
Status: Unutilized
Comment: 2265 sq. ft. ea., wood frame, 1 story, off-site removal only, most recent use—storage.

Bldg. P–7452, Fort Sill
Lake Elmer Thomas Rec Area
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219220619
Status: Unutilized
Comment: 450 sq. ft., metal frame, 1 story, off-site removal only, most recent use—garage.

Bldg. T–314, Fort Sill
314 Fowler Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240652
Status: Unutilized
Comment: 2798 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin supply.

Bldg. T–315, Fort Sill
315 Fowler Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240653
Status: Unutilized
Comment: 2787 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—training aids center.

Bldg. T–3541, Fort Sill
3541 Tracy Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240654
Status: Unutilized
Comment: 3873 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin/supply.

Bldg. T–2702, Fort Sill
2702 Thomas Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240655

Status: Unutilized
Comment: 5520 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin.

Bldg. T–3311, Fort Sill
3311 Naylor Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240656
Status: Unutilized
Comment: 1468 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—admin.

Bldg. T–3545, Fort Sill
3545 Tacy Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240657
Status: Unutilized
Comment: 1647 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—general instruction.

Bldg. T–942, Fort Sill
942 Quinette Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240658
Status: Unutilized
Comment: 149 sq. ft., 1 story metal frame, needs rehab, off-site use only, most recent use—gas station bldg.

Bldg. T–954, Fort Sill
954 Quinette Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240659
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop.

Bldg. T–1050, Fort Sill
1050 Quinette Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219240660–219240661
Status: Unutilized
Comment: 6240 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.

Bldgs. T–3703, thru T–3705, T–3709 Fort Sill
3703 Walker Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219240662–219240665
Status: Unutilized
Comment: 4524 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.

Bldg. T–5121, Fort Sill
5121 Post Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240666
Status: Unutilized
Comment: 8156 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—barracks.

Bldgs. T–2703, T–2704, Fort Sill
2703 Thomas Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Numbers: 219240667–219240668
Status: Unutilized
Comment: 5520 sq. ft. ea., 2 story wood frame, needs rehab, off-site use only, most recent use—barracks.

Bldg. T–2740, Fort Sill
2740 Miner Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240669
Status: Unutilized
Comment: 8210 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.

Bldg. T–2745, Fort Sill
2745 Miner Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240670
Status: Unutilized
Comment: 8288 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—enlisted barracks.

Bldg. T–2633, Fort Sill
2633 Miner Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240672
Status: Unutilized
Comment: 19,455 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—enlisted mess.

Bldg. T–2701, Fort Sill
2701 Thomas Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240673
Status: Unutilized
Comment: 5520 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. T–2907 Fort Sill
2907 Marcy Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240674
Status: Unutilized
Comment: 3861 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. T–2928 Fort Sill
2928 Custer Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240675
Status: Unutilized
Comment: 2315 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. T–4050 Fort Sill
4050 Pitman Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240676
Status: Unutilized
Comment: 3177 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. T–5110 Fort Sill
5110 Post Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240677
Status: Unutilized
Comment: 457 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storage.

Bldg. P–3032 Fort Sill
3032 Haskins Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240678
Status: Unutilized
Comment: 101 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—general storehouse.

Bldg. T–5115, Fort Sill
5115 Post Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240679
Status: Unutilized
Comment: 1260 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—storehouse.

Bldg. T–3302, Fort Sill
3302 Naylor Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240680
Status: Unutilized
Comment: 114 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—flammable storage.

Bldg. T–3325, Fort Sill
3325 Naylor Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240681
Status: Unutilized
Comment: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse.

Bldg. T–3540, Fort Sill
3540 Tacy Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240682
Status: Unutilized
Comment: 3833 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—classroom.

Bldg. T–3708, Fort Sill
3708 Walker Street
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240683
Status: Unutilized
Comment: 4526 sq. ft., 2 story wood frame, needs rehab, off-site use only, most recent use—day room.

Bldg. T–2911, Fort Sill
291 Craig Road
Lawton, OK, Comanche, Zip: 73503–5100
Landholding Agency: Army
Property Number: 219240684
Status: Unutilized
Comment: 2284 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—dispensary.

Bldg. T–260, Fort Sill
260 Corral Road
Lawton, OK, Comanche, Zip: 73503–5000
Landholding Agency: Army
Property Number: 219240776
Status: Unutilized
Comment: 4838 sq. ft., 2 story wood frame, off-site use only, possible asbestos, most recent use—admin.

Bldg. T–228, Fort Sill
228 Corral Road

Lawton, OK, Comanche, Zip: 73503–5000
Landholding Agency: Army
Property Number: 219240777
Status: Unutilized
Comment: 4884 sq. ft., 2 story wood frame, off-site use only, possible asbestos, most recent use—storage.

Bldg. T–2933, Fort Sill
2933 Marcy Road
Lawton, OK, Comanche, Zip: 73503–5000
Landholding Agency: Army
Property Number: 219240778
Status: Unutilized
Comment: 13545 sq. ft., 1 story wood frame, off-site use only, possible asbestos, most recent use—theatre w/stage.

Bldg. P–653, Fort Sill
Lawton, OK, Comanche, Zip: 73501–5100
Landholding Agency: Army
Property Number: 219310309
Status: Unutilized
Comment: 3680 sq. ft., 1 story wood frame, needs rehab, most recent use—garage, off-site use only.

Bldgs. T–3633, T–3655, T–3636, T–3649, T–3650, T–3652, T–3653
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Numbers: 219310304–219310310
Status: Unutilized
Comment: 5324 sq. ft. each, 2 story wood frame, needs rehab, most recent use—barracks, off-site use only

South Carolina

Bldgs. M2625–M2627, Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Numbers: 219310311–219310313
Status: Unutilized
Comment: 826 sq. ft. each, 1 story wood frame, needs rehab, most recent use—rental lodges, off-site use only

Tennessee

Robert Joel Ridings
US Army Reserve Center
920 Cherokee Avenue
Nashville Co: Davidson TN 37207–
Landholding Agency: Army
Property Number: 219011667
Status: Excess
Comment: 40,000 sq. ft.; 3.67 acres; concrete block; utilities disconnected; site vandalized.

Texas

Bldg. P–3350, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220397
Status: Underutilized
Comment: 992 sq. ft., 1-story wood structure, possible asbestos, off-site removal only.

Bldg. P–3824, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220398
Status: Unutilized
Comment: 2232 sq. ft., 1-story concrete structure, within National Landmark Historic District, off-site removal only.

Bldg. P–2340, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220435
Status: Underutilized
Comment: 6093 sq. ft., 1-story concrete and tile structure, off-site removal only.

Bldgs. 6202–6207, 6162–6165
Bradshaw Avenue, Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Numbers: 219240685–219240695
Status: Unutilized
Comment: 5400 sq. ft. ea., 2 story wood frame, 4-unit residences, needs rehab, off-site use only.

Bldgs. 6208, 6217–6219, 6209–6212, 6227, 6229, 6231, 6233, 6238, 6240, 6242, 6244
Bradshaw Avenue, Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Numbers: 219240696–219240711
Status: Unutilized
Comment: 5040 sq. ft. ea., 2 story wood frame, 4-unit residences, needs rehab, off-site use only.

Bldg. 4241, Fort Bliss
4241 Logan Heights
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 219240712
Status: Unutilized
Comment: 1383 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—administrative.

Bldg. 56301, Fort Hood
Ft. Hood, TX, Coryell, Zip: 76544–
Landholding Agency: Army
Property Number: 219310355
Status: Unutilized
Comment: 6766 sq. ft., 1-story, needs rehab, most recent use—hdqts. bldg., off-site use only

Bldg. 56304, Fort Hood
Ft. Hood, TX, Coryell, Zip: 76544–
Landholding Agency: Army
Property Number: 219310356
Status: Unutilized
Comment: 5760 sq. ft., 1-story, needs rehab, most recent use—admin. bldg., off-site use only

Bldg. 56314, Fort Hood
Ft. Hood, TX, Coryell, Zip: 76544–
Landholding Agency: Army
Property Number: 219310357
Status: Unutilized
Comment: 2295 sq. ft., 1-story, needs rehab, most recent use—admin. bldg., off-site use only

Bldg. 56502, Fort Hood
Ft. Hood, TX, Coryell, Zip: 76544–
Landholding Agency: Army
Property Number: 219310358
Status: Unutilized
Comment: 4396 sq. ft., 1-story, needs rehab, most recent use—clinic, off-site use only

Bldgs. 56807, 56806, 56803, 56801, 56826, 56823, 56821, 56811, 56841, 56831, 56827, 56846, 56843, 56851, 56847 Fort Hood
Ft. Hood, TX, Coryell, Zip: 76544–
Landholding Agency: Army
Property Numbers: 219310359–219310373
Status: Unutilized
Comment: 450 sq. ft. each, 1-story, needs rehab, most recent use—dining facilities, off-site use only.

Bldg. 4569, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310374
Status: Unutilized
Comment: 2154 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 4576, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310375
Status: Unutilized
Comment: 1803 sq. ft., 1-story wood frame, needs rehab, most recent use admin., off-site use only.

Bldg. 4580, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310376
Status: Unutilized
Comment: 2859 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 4622, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310377
Status: Unutilized
Comment: 1832 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 5349, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310378
Status: Unutilized
Comment: 916 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 5353, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310379
Status: Unutilized
Comment: 914 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 5354, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310380
Status: Unutilized
Comment: 1070 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 5416, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310381
Status: Unutilized
Comment: 129 sq. ft., 1-story metal frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 5418, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310382
Status: Unutilized
Comment: 1904 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 4625, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310383

Status: Unutilized
Comment: 1644 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 4637, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310384
Status: Unutilized
Comment: 1830 sq. ft., 1-story wood frame, needs rehab, most recent use—admin./storage, off-site use only.

Bldg. 4658, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Federal Register Notice Date: 6/18/93
Property Number: 219310385
Status: Unutilized
Comment: 949 sq. ft., 1-story wood frame, needs rehab, most recent use—store, off-site use only.

Bldg. 4660, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310386
Status: Unutilized
Comment: 972 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 4661, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310387
Status: Unutilized
Comment: 963 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 4675, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310388
Status: Unutilized
Comment: 2200 sq. ft., 1-story wood frame, needs rehab, most recent use—admin., off-site use only.

Bldg. 4690, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310389
Status: Unutilized
Comment: 1104 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 4775, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310390
Status: Unutilized
Comment: 2202 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 703, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310391
Status: Unutilized
Comment: 5330 sq. ft., 1-story wood frame, needs rehab, most recent use—instruction bldg., off-site use only.

Bldg. 1033, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310392
Status: Unutilized
Comment: 1713 sq. ft., 1-story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. 1034, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310393
Status: Unutilized
Comment: 2054 sq. ft., 1-story wood frame, needs rehab, most recent use—education facility, off-site use only.

Bldgs. 7180, 7193, 7183–7192, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Numbers: 219310394–219310405
Status: Unutilized
Comment: 645 sq. ft. each, 1-story, needs rehab, most recent use—auto garage, off-site use only.

Bldg. 7194, Fort Bliss
El Paso, TX, El Paso, Zip: 79916–
Landholding Agency: Army
Property Number: 219310406
Status: Unutilized
Comment: 1593 sq. ft., 1-story, needs rehab, most recent use—family housing, off-site use only

Virginia

Bldg. T–6015
U.S. Army Logistics Center & Fort Lee Shop Road
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219012376
Status: Unutilized
Comment: 2124 sq. ft., 2 story, most recent use—barracks; poor condition; needs major rehab.

Bldg. T–6018
U.S. Army Logistics Center and Fort Lee Shop Road
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219012396
Status: Unutilized
Comment: 1575 sq. ft., 1 floor, no utilities, possible asbestos, needs rehab, off site use only.

Bldg. T–229, Fort Monroe
Ft. Monroe VA 23651
Landholding Agency: Army
Property Number: 219310301
Status: Unutilized
Comment: 4364 sq. ft., 1 story wood frame, needs rehab, most recent use—storage, off-site use only.

Bldg. T–1069, Fort Story
Ft. Story Co: Princess Ann VA 23459–5000
Landholding Agency: Army
Status: Unutilized
Comment: 2095 sq. ft., 1 story wood frame, needs rehab, most recent use—storage, off-site use only.

Wisconsin

Bldgs. T–01069, T–01071—T–01080, T–01082—T–01084
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013502, 219013521–219013533
Status: Unutilized
Comment: 4829 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10122
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013436
Status: Unutilized
Comment: 1900 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10123
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013437
Status: Unutilized
Comment: 2405 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10127
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013440
Status: Unutilized
Comment: 1148 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. P–10137
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013442
Status: Unutilized
Comment: 192 sq. ft.; 1 story wood frame, possible asbestos; hospital/patient ward buildings; most recent use—power plant.

Bldg. T–01095–01097
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013453–219013455
Status: Unutilized
Comment: 5295 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10118
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013450
Status: Unutilized
Comment: 1250 sq.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10120
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013451
Status: Unutilized
Comment: 1250 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10113

Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013456
Status: Unutilized
Comment: 2393 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–10102–T–10103
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013461–219013462
Status: Unutilized
Comment: 3944 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10124
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013467
Status: Unutilized
Comment: 3115 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–10125–T10126
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013468–219013469
Status: Unutilized
Comment: 3590 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10110
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013470
Status: Unutilized
Comment: 2548 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—vehicle storage.

Bldgs. T–01085—T–01086
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013534–219013535
Status: Unutilized
Comment: 4686 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–01065—T–01067
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Numbers: 219013498–219013500
Status: Unutilized
Comment: 4793 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01068
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013501
Status: Unutilized
Comment: 4848 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10112
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013508
Status: Unutilized
Comment: 1273 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—morgue.

Bldg. T–01098
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013513
Status: Unutilized
Comment: 7133 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01081
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013541
Status: Unutilized
Comment: 7133 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. 2112, Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe Zip: 54656–
Landholding Agency: Army
Property Number: 219210310
Status: Underutilized
Comment: 582 sq. ft.; 1 story, most recent use—ice house, needs repair.

Bldgs. 440–442
Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Numbers: 219210348–210350
Status: Underutilized
Comment: 5310 sq. ft. ea., 2 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—housing.

Bldgs. 216–217, 226–227, 316–317, 405–406, 416–417
Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Numbers: 219210351–219210360
Status: Underutilized
Comment: 2950 sq. ft. ea., 1 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—mess halls.

Bldgs. 426–427, 439
Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Numbers: 219210361–219210362, 219210364
Status: Underutilized
Comment: 2350 sq. ft. ea., 1 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—mess halls.

Bldgs. 438, Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219210363
Status: Underutilized
Comment: 2500 sq. ft., 1 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—mess hall.

Bldgs. 221–222, 232–233, 321 333 401 411 421, 433
Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 5465–
Landholding Agency: Army
Property Numbers: 219210365–219210368, 219210371–219210375, 219210378
Status: Underutilized
Comment: 3250 sq. ft. ea., 2 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—office/storage.

Bldg. 234, Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219210369
Status: Underutilized
Comment: 2682 sq. ft., 2 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—office/storage.

Bldg. 240, Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Number: 219210370
Status: Underutilized
Comment: 1750 sq. ft., 1 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—office.

Bldgs. 422, 432, 443
Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Numbers: 219210376–219210377, 219210380
Status: Underutilized
Comment: 2750 sq. ft. ea., 2 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—office/storage.

Bldgs. 434, 444
Fort McCoy
US Highway 21
Ft. McCoy, WI, Monroe, Zip: 54656–
Landholding Agency: Army
Property Numbers: 219210379, 219210381
Status: Underutilized
Comment: 2682 sq. ft. ea., 2 story, possible asbestos, needs repair, selected periods reserved for military/training exercises, most recent use—office/storage.

Land (by State)

Kansas

Parcel 1

Fort Leavenworth
Combined Arms Center
Ft. Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012333
Status: Underutilized
Comment: 14.4+ acres.

Parcel 3
Fort Leavenworth
Combined Arms Center
Ft. Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012336
Status: Underutilized
Comment: 261+ acres; heavily forrested; no access to a public right-of-way; selected periods are reserved for military/training exercises.

Parcel 4
Fort Leavenworth
Combined Arms Center
Ft. Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012339
Status: Underutilized
Comment: 24.1+ acres; selected periods are reserved for military/training exercises; steep/wooded area.

Parcel 6
Fort Leavenworth
Combined Arms Center
Ft. Leavenworth Co: Leavenworth KS 66027–5020
Location: Extreme north east corner of installation in Flood Plain of the Missouri River.
Landholding Agency: Army
Property Number: 219012340
Status: Underutilized
Comment: 1280 acres; selected periods are reserved for military/training exercises.

Parcel F
Fort Leavenworth
Combined Arms Center
Fort Leavenworth Co: Leavenworth KS 66027–5020
Landholding Agency: Army
Property Number: 219012552
Status: Unutilized
Comment: 33.4 acres; area is land locked; heavily wooded; periodic flooding.

Minnesota

Land
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120269
Status: Underutilized
Comment: Approx. 25 acres, possible contamination, secured area with alternate access.

Nevada

Parcel A
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: At Foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Landholding Agency: Army
Property Number: 219012049
Status: Unutilized
Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem.

Parcel B
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: At foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Landholding Agency: Army
Property Number: 219012056
Status: Unutilized
Comment: 1920 acres; road and utility easements, no utility hookup, possible flooding problem.

Parcel C
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at Western edge of State Route 359
Landholding Agency: Army
Property Number: 219012057
Status: Unutilized
Comment: 85 acres; road and utility easements, no utility hookup.

Parcel D
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South-southwest of Hawthorne along HWAAP's South Magazine Area at western edge of State Route 359.
Landholding Agency: Army
Property Number: 219012058
Status: Unutilized
Comment: 955 acres; road and utility easements, no utility hookup.

New Jersey

Land—Camp Kilmer
Plainfield Avenue
Edison Co: Middlesex NJ 08817
Landholding Agency: Army
Property Number: 219230357
Status: Underutilized
Comment: approx. 10 acres in the center portion of site, most recent use—ballfields/recreation.

Land—Camp Kilmer
Plainfield Avenue
Edison Co: Middlesex NJ 08817–
Landholding Agency: Army
Property Number: 219230358
Status: Underutilized
Comment: approx. 10 acres in the southwest corner of site, most recent use—reserve training, wooded area.

Tennessee

Milan Army Ammunition Plant
Milan Co: Carroll TN 38358–
Location: Plant boundary in the northeast corner of the plant & housing area
Landholding Agency: Army
Property Number: 219010547
Status: Excess
Comment: 17.2 acres; right of entry legal constraint.

Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012338
Status: Unutilized
Comment: 8 acres; unimproved; could provide access; 2 acres unusable; near explosives.

Land
Milan Army Ammunition Plant
NE corner of plant & housing area
Milan Co: Carroll TN 38358
Landholding Agency: Army
Property Number: 219240780
Status: Unutilized
Comment: 17.2 acres, secured area w/ alternate access, most recent use—buffer zone.

Texas

Land Saginaw Army Aircraft Plt
Saginaw Co: Tarrant TX 76070–
Landholding Agency: Army
Property Number: 219014814
Status: Unutilized
Comment: 154.3 acres; includes buildings/structures/parking and air strip.

Vacant Land, Fort Sam Houston
All of Block 1800, Portions of Blocks 1900, 3100 and 3200
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219220438
Status: Unutilized
Comment: 250.33 acres, 85% located in floodplain, possibility of unexploded ordnance.

Suitable/Unavailable Properties

Buildings (by State)

Alaska

Bldgs. 240, 246, 260, 267, 502, 507
Fort Richardson
Ft. Richardson Co: Anchorage AK
Landholding Agency: Army
Property Numbers: 219240766–219240771
Status: Unutilized
Comment: 13059 sq. ft. ea., Status: 3 story wood frame, asbestos/lead paint, off-site use only, most recent use—residential.

California

Bldg. 60
Los Alamitos Armed Forces Reserve Center
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120315
Status: Unutilized
Comment: 1024 sq. ft., 2 story concrete/wood plaster, possible asbestos, off-site use only, most recent use—nose hanger

Bldg. 95
Los Alamitos Armed Forces Reserve Center
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 21912316
Status: Unutilized
Comment: 392 sq. ft., 1 story raised portable, off-site use only, most recent use—radar maint. shop

Colorado

Bldg. T–641, Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219310282
Status: Excess
Comment: 3030 sq. ft., 1 story wood frame, possible asbestos, need repairs, most recent use-Scout Bldg., off-site use only.

Bldg. T–6016, Fort Carson
Colorado Springs Co: El Pasco CO 80913
Landholding Agency: Army
Property Number: 219310285
Status: Excess
Comment: 2988 sq. ft., 1 story wood frame, possible asbestos, most recent use—family center, off-site use only.

Georgia

Bldg. 2500, Fort Benning
Ft. Benning Co: Muscogee GA 21905
Landholding Agency: Army
Property Number: 219310483
Status: Unutilized
Comment: 50390 sq. ft., 1 story, needs rehab, most recent use—laundry facility, off-site use only

Kentucky

Bldg. 2945
Fort Campbell
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219012543
Status: Unutilized
Comment: 4248sq. ft., 2 story; selected periods are reserved for military/training exercises; possible asbestos

Bldgs. 144, 145
Ft. Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Numbers: 219013140–219013141
Status: Underutilized
Comment: 12576 sq. ft., 2 story; possible asbestos; most recent use—basic training central issue facility.

Texas

Bldg. P–16, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220366
Status: Underutilized
Comment: 76,102 sq. ft., 2-story stone bldg., within National Landmark Historic District.

Bldg. P–44, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220367
Status: Unutilized
Comment: 95,332 sq. ft., 3-story concrete bldg., possible asbestos

Bldg. P–122, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220368
Status: Underutilized
Comment: 12,782 sq. ft., 1-story brick bldg., within National Landmark Historic District

Bldg. P–125, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220369
Status: Underutilized
Comment: 1593 sq. ft., 1-story brick bldg., within National Landmark Historic District

Bldg. P–126, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220370
Status: Underutilized
Comment: 12,445 sq. ft., 3-story brick bldg., within National Landmark Historic District

Bldg. P–127, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220371
Status: Underutilized
Comment: 1593 sq. ft., 1-story brick bldg., within National Landmark Historic District

Bldg. P–133, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220372
Status: Underutilized
Comment: 13,232 sq. ft., 2-story brick bldg., within National Landmark Historic District

Bldgs. P–135, P–140 Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Numbers: 219220373–219220374
Status: Underutilized
Comment: 1593 sq. ft. ea., 1-story brick bldg., within National Landmark Historic District

Bldg. P–142, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220375
Status: Underutilized
Comment: 4735 sq. ft., 3-story brick bldg., within National Landmark Historic District

Bldg. P–155, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220376
Status: Underutilized
Comment: 7374 sq. ft., 2-story brick bldg., within National Landmark Historic District

Bldg. P–198, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220380
Status: Underutilized
Comment: 5468 sq. ft., 3-story stucco bldg., within National Landmark Historic District

Bldg. P–252, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220381
Status: Underutilized
Comment: 1830 sq. ft., 1-story stucco bldg.

Bldgs. P–260, P–261 Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Numbers: 219220382–219220383
Status: Underutilized
Comment: 1749 sq. ft. ea., 1-story brick bldg., within National Landmark Historic District

Bldg. P–366, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220384
Status: Underutilized
Comment: 2844 sq. ft., 1-story stucco bldg.

Bldg. P–367, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220385
Status: Underutilized
Comment: 19,830 sq. ft., 1-story stucco bldg., possible asbestos

Bldg. P–369, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220386
Status: Underutilized
Comment: 10,361 sq. ft., 2-story concrete bldg.

Bldg. P–912, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220387
Status: Underutilized
Comment: 4390 sq. ft., 1-story stone bldg.

Bldg. P–1029, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220388
Status: Underutilized
Comment: 51,236 sq. ft., 3-story brick structure

Bldg. P–2000, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220389
Status: Underutilized
Comment: 49,542 sq. ft., 3-story brick structure, within National Landmark Historic District

Bldg. P–2001, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220390
Status: Underutilized
Comment: 16,539 sq. ft., 4-story brick structure, within National Landmark Historic District

Bldg. P–2007, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220391
Status: Underutilized
Comment: 13,058 sq. ft., 3-story brick structure, within National Landmark Historic District

Bldg. P–2267, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220392
Status: Underutilized
Comment: 7075 sq. ft., 2 story brick structure, within National Landmark Historic District

Bldg. P–2268, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220393
Status: Underutilized
Comment: 10,260 sq. ft., 2-story brick structure, within National Landmark Historic District, possible asbestos

Bldg. P–2289, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000

Landholding Agency: Army
Property Number: 219220394
Status: Underutilized
Comment: 4720 sq. ft., 2-story wood structure, possible asbestos

Bldg. P–2840, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220396
Status: Underutilized
Comment: 102,194 sq. ft., 4-story concrete structure

Bldg. T-189, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220402
Status: Underutilized
Comment: 11,949 sq. ft., 4-story brick structure, within National Landmark Historic District, possible lead contamination

Bldg. T-300, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220406
Status: Underutilized
Comment: 8352 sq. ft., 1-story wood structure, possible asbestos

Bldg. T-942, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220409
Status: Underutilized
Comment: 2740 sq. ft., 1-story wood structure, within National Landmark Historic District, possible asbestos

Bldg. T-2066, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220424
Status: Underutilized
Comment: 4720 sq. ft., 1-story wood structure, within National Landmark Historic District, possible asbestos

Bldg. T-2067, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220425
Status: Underutilized
Comment: 2664 sq. ft., 1-story wood structure, within National Landmark Historic District, possible asbestos

Bldg. T-2250, Fort Sam Houston
San Antonio, TX, Bexar, Zip: 78234–5000
Landholding Agency: Army
Property Number: 219220432
Status: Underutilized
Comment: 13,483 sq. ft., 3-story brick structure, within National Landmark Historic District, possible asbestos

Virginia

Bldg. T3004, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310317
Status: Unutilized
Comment: 2350 sq. ft., 1-story wood frame, needs repair, most recent use—clinic

Bldg. T3022—T3024 Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310318–219310320
Status: Unutilized
Comment: 5310 sq. ft., 2-story wood frame, needs repair, most recent use—barracks

Bldg. T3026, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310321
Status: Unutilized
Comment: 3550 sq. ft., 1-story wood frame, needs repair, most recent use—dining room

Bldg. T3025, T3040–T3041, T3049–T3050 Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824–
Landholding Agency: Army
Property Number: 219310322–219310326
Status: Unutilized
Comment: 2950 sq. ft., 1-story wood frame, needs repair, most recent use—dining room

Bldgs. T3029–T3030, T3037–T3039, T3042–T3048, T3051–T3054, T3027–T3028 Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824-
Landholding Agency: Army
Property Numbers: 219310327–219310344
Status: Unutilized
Comment: 5310 sq. ft. each, 2-story wood frame, needs repair, most recent use—barracks

Bldgs. T3031–T3036, T3057 Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824-
Landholding Agency: Army
Property Numbers: 219310345–219310351
Status: Unutilized
Comment: 2987 sq. ft. each, 1-story wood frame, needs repair, most recent use—admin./supply

Bldg. T3055, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824-
Landholding Agency: Army
Property Number: 219310352
Status: Unutilized
Comment: 2488 sq. ft., 1-story wood frame, needs repair, most recent use—admin./supply

Bldg. TT3001, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824-
Landholding Agency: Army
Property Number: 219310353
Status: Unutilized
Comment: 3302 sq. ft., 1-story wood frame, most recent use—chapel

Bldg. TA3002, Fort Pickett
Blackstone, VA, Nottoway, Zip: 23824-
Landholding Agency: Army
Property Number: 219310354
Status: Unutilized
Comment: 360 sq. ft., 1-story wood frame, most recent use—clinic

Suitable/To Be Excessed

Buildings (by State)

California

Bldg. 270
Los Alamitos Armed Forces Reserve Center
Main entrance on Lexington Dr.
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219120324
Status: Unutilized
Comment: 90 sq. ft., concrete/aluminum, off-site use only, most recent use—aircraft steam cleaning bldg.

Maryland

Bldg. 101
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery MD 20910-
Landholding Agency: Army
Property Number: 219012678
Status: Underutilized
Comment: 18438 sq. ft.; needs rehab; possible asbestos; building listed on National Historic Register.

Bldg. 104
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery MD 20910-
Landholding Agency: Army
Property Number: 219012679
Status: Underutilized
Comment: 12495 sq. ft., needs rehab; possible asbestos; building listed on National Historic Register.

Bldg. 107
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery MD 20910-
Landholding Agency: Army
Property Number: 219012680
Status: Unutilized
Comment: 4107 sq. ft.; possible structural deficiencies; possible asbestos; historic property.

Bldg. 120
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring Co: Montgomery MD 20910-
Landholding Agency: Army
Property Number: 219012681
Status: Underutilized
Comment: 2442 sq. ft., possible structural deficiencies; possible asbestos; historic property.

Unsuitable Properties

Buildings (by State)

Alabama

69 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 219014000, 219014003–219014005, 219014009, 219014012, 219014015–219014051, 219014057, 219014060, 219014068–219014080, 219014291–219014292, 219110109, 219120247–219120250, 219140614–219140615, 219230190
Status: Unutilized
Reason: Secured Area

Bldg. T00862
Fort McClellan
Off 21st Street between 2nd & 3rd Avenue
Fort McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219130019
Status: Unutilized
Reason: Extensive deterioration

Two Bedroom Apt.
Anniston Army Depot
Wherry Housing-Terrace Homes Apt.
Anniston Co: Calhoun AL 36201–
Landholding Agency: Army
Property Number: 219130108
Status: Excess
Reason: Extensive deterioration

77 Bldgs.
Alabama Army Ammunition Plant
110 Hwy. 235
Childersburg Co: Talladega AL 35044–
Landholding Agency: Army
Property Number: 219210018–219210094
Status: Excess
Reason: Secured Area

L006T1, L006T2, L006T3
Troy Municipal Airport
Troy Co: Pike AL 36081
Landholding Agency: Army
Property Number: 219220294
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 3403, 24201–24203, 620, 24112 Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219220341–219220344, 219310016, 219320001
Status: Unutilized
Reason: Extensive deterioration

27 Bldgs.
Phosphate Development Works
Muscle Shoals Co: Colbert AL 35660–1010
Landholding Agency: Army
Property Number: 219220789–219220815
Status: Unutilized
Reason: Extensive deterioration

9 Bldgs. Fort McClellan
Ft. McClellan Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219310006–219310014
Status: Unutilized
Reason: Extensive deterioration

Alaska

16 Bldgs.
Fort Greely
Ft. Greely AK 99790–
Landholding Agency: Army
Property Number: 219210124–219210125, 219220319–219220332
Status: Unutilized
Reason: Extensive deterioration

Bldg. 47022, Fort Richardson
Ft. Richardson Co: Anchorage AK 99505
Landholding Agency: Army
Property Number: 219220351
Status: Unutilized
Reason: Within airport runway clear zone

15 Bldgs. Fort Richardson
Ft. Richardson Co: Anchorage AK 99505
Landholding Agency: Army
Property Number: 219220352, 219220355, 219230185–219230186, 219240270–219240272, 219310015, 219320002–219320008
Status: Unutilized
Reason: Extensive deterioration (Some are in a secured area.)

Bldgs. 1126, 1578, Fort Wainwright
Ft. Wainwright Co: Fairbanks AK 99505
Landholding Agency: Army
Property Number: 219230183–219230184
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1144, Fort Wainwright
Ft. Wainwright Co: Fairbanks/North AK 99703
Landholding Agency: Army
Property Number: 219240273
Status: Unutilized
Reason: Secured Area—Within airport runway clear zone

Bldgs. 5001, 5002, Fort Wainwright
Ft. Wainwright Co: Fairbanks/North AK 99703
Landholding Agency: Army
Property Number: 219240274–219240275
Status: Unutilized
Reason: Secured Area—Floodway

Bldg. 1501, Fort Greely
Ft. Greely AK 99505
Landholding Agency: Army
Property Number: 219240327
Status: Unutilized
Reason: Secured Area

Bldg. 914, Fort Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 219240330
Status: Unutilized
Reason: Secured Area—Within airport runway clear zone—Structural Damage

Arizona

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014560–219014591
Status: Underutilized
Reason: Secured Area

10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40.
Landholding Agency: Army
Property Number: 219014592–219014601
Status: Underutilized
Reason: Secured Area

9 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–5000
Location: 12 Miles west of Flagstaff on I–40
Landholding Agency: Army
Property Number: 219030273–219030274, 219120175–219120181
Status: Unutilized
Reason: Secured Area

Bldgs. 22330, 84001
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219210016–219210017
Status: Excess
Reason: Extensive deterioration

Bldgs. T–2005, T–2006
Yuma Proving Ground
Yuma Co: Yuma/LaPaz AZ 85365–9104
Landholding Agency: Army
Property Number: 219320009–219320010
Status: Unutilized
Reason: Extensive deterioration

Arkansas

Fort Smith USAR Center
Fort Smith
1218 South A Street
Fort Smith Co: Sebastian AR 72901–
Landholding Agency: Army
Property Number: 219014928
Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Army Reserve Center
Hwy 79 North
Camden Co: Calhoun Ar 71701–3415
Landholding Agency: Army
Property Number: 219220345
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5169, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219230173
Status: Unutilized
Reason: Extensive deterioration

California

Bldgs. P–99, T–324
Fort Hunter Liggett
Jolon Co: Monterey Ca 93944–
Landholding Agency: Army
Property Number: 219012413, 219012420
Status: Unutilized
Reason: Latrine, detached structure.

Bldgs. P–177, P–178, 325, S–308, S–308A, T–308B
Fort Hunter Liggett
Jolon Co: Monterey CA 93928–
Landholding Agency: Army
Property Numbers: 219012414–219012415, 219012600, 219240284—219240285, 219240287
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material (Some are in a secured area.)

Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material—Secured Area

Bldgs. T–323, T–322
Fort Hunter Liggett
Mission Road
Jolon Co: Monterey CA 93928–
Landholding Agency: Army
Property Number: 219012601-219012602
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

11 Bldgs., Nos. 2–8, 158, 1, 120, 181
Riverbank Army Ammunition Plant
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219013582-219013588, 219013590, 219240444-219240446
Status: Underutilized
Reason: Secured Area

9 Bldgs.
Oakland Army Base
Oakland Co: Alameda CA 94626–5000
Landholding Agency: Army
Property Number: 219013903–219013906, 219120046–219120051, 219140568
Status: Unutilized
Reason: Secured Area

Bldgs. S–108, S–20, S–290
Sharpe Army Depot
Lathrop Co: San Joaquin CA 95331–
Location: Roth Road
Landholding Agency: Army

Property Number: 219014290, 219230178–219230179
Status: Underutilized
Reason: Secured Area

Bldg. S–184
Fort Hunter Liggett
Ft. Hunter Liggett Co: Monterey CA 93928–
Location: POL Road
Landholding Agency: Army
Property Number: 219014602
Status: Underutilized
Reason: Secured Area

16 Bldgs.
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219014705, 219014708–219014710, 219014713–219014717, 219014719–219014721, 219230180–219230182, 219320012
Status: Unutilized
Reason: Secured Area

Bldg. P–68
Sierra Army Depot
Fuel Oil Storage
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219014707
Status: Unutilized
Reason: Oil Storage Tank

Bldgs. 173, 177, 197
Roth Road—Sharpe Army Depot
Lathrop Co: San Joaquin CA
Landholding Agency: Army
Property Number: 219014940–219014942
Status: Unutilized
Reason: Secured Area

Bldgs. 13, 171, 178 Riverbank Ammun Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured Area

Bldg. 81
Los Alamitos Armed Forces Reserve Center
Los Alamitos Co: Orange CA 90720–5001
Location: Main entrance on Lexington Dr.
Landholding Agency: Army
Property Number: 219120276
Status: Unutilized
Reason: Detached latrine

10 Bldgs., Sharpe Site
Lathrop Co: San Joaquin CA 95331–
Landholding Agency: Army
Property Number: 219140262–219140266, 219240151–219240155
Status: Unutilized
Reason: Secured Area

Bldg. T–187, Fort Hunter Liggett
Ft. Hunter Liggett Co: Monterey CA 93928
Landholding Agency: Army
Property Number: 219240321
Status: Unutilized
Reason: Secured Area—Extensive deterioration

Bldg. 84, Sierra Army Depot
Herlong Co: Lassen CA 96113
Landholding Agency: Army
Property Number: 219320011
Status: Unutilized
Reason: Structural damage

Colorado

72 Bldgs.
Pueblo Army Depot
Pueblo Co: Pueblo CO 81001–
Location: 14 miles East of Pueblo City on Highway 50
Landholding Agency: Army
Property Number: 219012209, 219012211, 219012214, 219012216, 219012221, 219012223–219012224, 219012226–219012228, 219012230–219012237, 219012239–219012257, 219012260–219012275, 219012287, 219012290–219012298, 219012300, 219012743, 219012745, 219012747–219012748, 219120058–219120061
Status: Unutilized
Reason: Secured Area

26 Bldgs., Pueblo Depot Activity
Pueblo CO 81001
Landholding Agency: Army
Property Number: 219240466–219240482
Status: Unutilized
Reason: Secured Area—Extensive deterioration

Bldgs. T–317, T–412, 431, 433
Rocky Mountain Arsenal
Commerce Co: Adams CO 80022–2180
Landholding Agency: Army
Property Number: 219320013–219320016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material—Secured Area—Extensive deterioration

Bldgs. T–800, P–3291, T–1001
Fort Carson
Colorado Springs Co: El Paso CO 80913
Landholding Agency: Army
Property Number: 219320017–219320019
Status: Unutilized
Reason: Extensive deterioration

Georgia

Fort Stewart
Sewage Treatment Plant
Ft. Stewart Co: Hinesville GA 31314–
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Sewage treatment

Facility 12304
Fort Gordon
Augusta Co: Richmond GA 30905–
Location: Located off Lane Avenue
Landholding Agency: Army
Property Number: 219014787
Status: Unutilized
Reason: Wheeled vehicle grease/inspection rack

23 Bldgs.
Fort Gordon
Augusta Co: Richmons GA 30905–
Landholding Agency: Army
Property Number: 219140180, 219220264–219220269, 219220279, 219220281, 219220291–219220293, 219240319, 219320020–219320029
Status: Unutilized
Reason: Extensive Deterioration

11 Bldgs.
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219140182–219140184, 219140186–219140187, 219140189, 219140193–219140194, 219140203, 219140205–219140206
Status: Unutilized
Reason: Structural damage

Bldgs. GT001, GT002, GT003, GT004, 11726–11727
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219210136, 219210138–219210139
Status: Unutilized
Reason: Secured Area

8 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220333–219220340
Status: Unutilized
Reason: Detached lavatory

Bldg. 1673, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220742
Status: Unutilized
Reason: Extensive deterioration

25 Bldgs.
Fort Gillem
Forest Park Co: Clayton GA 30050
Landholding Agency: Army
Property Number: 219240280–219240283, 219310091–219310107, 219320030–219320033
Status: Unutilized
Reason: Extensive deterioration

Hawaii

PU–01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11
Schofield Barracks
Kolekole Pass Road
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219014836–219014837
Status: Unutilized
Reason: Secured Area

P–3384 East Range
Schofield Barracks
East Range Road
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219030361
Status: Unutilized
Reason: Secured Area

3 Bldgs., Fort Shafter
Honolulu Co: Honolulu HI 96819
Landholding Agency: Army
Property Number: 219230128, 219230133, 219320035
Status: Unutilized
Reason: Extensive deterioration

13 Bldgs, Schofield Barracks
Wahiawa Co: Wahiawa HI 96786
Landholding Agency: Army
Property Number: 219230135–219230146, 219320034
Status: Unutilized
Reason: extensive deterioration

Illinois

576 Bldgs. and Groups
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219010153–219010317, 219010319–219010407, 219010409–219010413, 219010415–219010439, 219011750–219011879, 219011881–219011908, 219012331, 219013076–

219013138, 219014722–219014781, 219030277–219030278, 219040354, 219140441–219140446, 219210146, 219240457–219240465
Status: Unutilized
Reason: Secured Area; many within 2000 ft. of flammable or explosive materials; some within floodway.

Bldg. 725
Fort Sheridan
Highwood Co: Lake IL 60037–5000
Landholding Agency: Army
Property Number: 219013769
Status: Underutilized
Reason: Secured Area

Bldgs. 58, 59 and 72, 69, 64, 105
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219110104–219110106
Status: Unutilized
Reason: Secured Area

Bldg. 133, Rock Island Arsenal
Gillespie Avenue
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 219210100
Status: Underutilized
Reason: Extensive deterioration

Bldgs. 250, 253, Savanna Army Depot Activity
Savanna Co: Carroll Il 61074
Landholding Agency: Army
Property Number: 219230126–219230127
Status: Unutilized
Reason: Extensive deterioration

Indiana

211 Bldgs.
Indiana Army Ammunition Plant (INAAP)
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219010913–219010919, 219010925–219010926, 219010929–219010936, 219010952, 219010955, 219010957, 219010959–219010960, 219010962–219010964, 219010966–219010967, 219010969–219010970, 219011449, 219011454, 219011456–219011457, 219011459–219011464, 219013764, 219013848, 219014608–219014620, 219014622–219014651, 219014653, 219014655–219014661, 219014663–219014683, 219030315, 219120168–219120171, 219140425–219140440, 219320036–219320111
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

6 Bldgs.
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219010920, 219010924, 219010927–219010928, 219014621, 219014652
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

58 Bldgs.
Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589–219011590, 219011592–219011627, 219011629–219011636, 219011638–219011641, 219210149–219210151, 219220220, 219230032–219230033
Status: Unutilized
Reason: Secured Area

29 Bldgs.
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219210152–219210155, 219230034–219230037
Status: Unutilized
Reason: Secured Area

2 Bldgs.
Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124–1096
Landholding Agency: Army
Property Number: 219230030–219230031
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2635, Indiana Army Ammunition Plant
Charlestown Co: Clark IN 471111
Landholding Agency: Army
Property Number: 219240322
Status: Unutilized
Reason: Secured area; Extensive deterioration

Iowa

13 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Numbers: 219012605–219012607, 219012609, 219012611, 219012613, 219012615, 219012620, 219012622, 219012624, 219120172–219120174
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

33 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA
Landholding Agency: Army
Property Numbers: 219013706–219013738
Status: Unutilized
Reason: Secured Area

26 Bldgs. Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Numbers: 219230005–219230029, 219310017
Status: Unutilized
Reason: Extensive deterioration

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Numbers: 219011909–219011945
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)

219 Bldgs.
Sunflower Army Ammunition Plant
35425 W. 103rd Street
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Numbers: 219040030, 219040045, 219040048–219040051, 219040053, 219040055, 219040063–219040067, 219040072–219040080, 219040086–219040099, 219040102, 219040111–219040112, 219040118–219040119, 219040121–219040124, 219040126, 219040128–219040133, 219040136–219040137, 219040139–219040140, 219040143, 219040149–219040154, 219040156, 219040160–219040165, 219040168–219040170, 219040180, 219040182–219040185, 219040190–219040191, 219040202, 219040205–219040207, 219040208, 219040210–219040221, 219040234–219040239, 219040241–219040254, 219040256–219040257, 219040260, 219040262–219040267, 219040270–219040279, 219040282–219040319, 219040321–219040323, 219040325–219040327, 219040329–219040335, 219040349, 219040353, 219140569–219140577, 219140580–219140591, 219140594, 219140599–219140601, 219140606–219140612
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Floodway; Secured Area

21 Bldgs.
Sunflower Army Ammunition Plant
35425 W. 103rd Street
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Numbers: 219040007–219040008, 219040010–219040012, 219040014–219040027, 219040030–219040031
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Floodway

Bldg. 9002
Sunflower Army Ammunition Plant
35525 W. 103rd Street
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219110073
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

5 Bldgs.
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219240032, 219240078–219240080, 219310207
Status: Unutilized
Reason: Extensive deterioration

11 Latrines
Sunflower Army Ammunition Plant
35425 West 103rd
Desoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219140578–219140579, 219140593, 219140595–219140598, 219140602–219140605
Status: Unutilized
Reason: Detached Latrine

219 Bldgs., Sunflower Army Ammunition Plant
DeSoto Co: Johnson KS 66018
Landholding Agency: Army
Property Number: 219240333–219240437
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material; Extensive deterioration

Kentucky

Bldg. 126
Lexington-Blue Grass Army Depot

Lexington Co: Fayette KY 40511–
Location: 12 miles northeast of Lexington, Kentucky.
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Secured Area; Sewage treatment facility

Bldg. 12
Lexington-Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles Northeast of Lexington Kentucky.
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Industrial waste treatment plant.

23 Bldgs., Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219320112–219320134
Status: Unutilized
Reason: Extensive deterioration

Bldgs., T05650, T06136, T06382, T06486
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219210132–219210135
Status: Unutilized
Reason: Secured Area
Comment: Extensive deterioration

17 Bldgs., Fort Campbell
Ft. Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219240450–219240456, 219320135–219320143, 219320259
Status: Unutilized
Reason: Extensive deterioration

Bldg. 06862, Fort Campbell
Ft. Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 219240782
Status: Unutilized
Reason: Detached latrine

Louisiana

26 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219011668–219011670, 219011700, 219011714–219011716, 219011735–219011737, 219012112, 219013571–219013572, 219013863–219013869, 219110124, 219110127, 219110131, 219110135–219110136, 219120290
Status: Unutilized
Reason: Secured Area: (Most are within 2000 ft. of flammable or explosive material)

Staff Residences
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219120284–219120286
Status: Excess
Reason: Secured Area

Bldg. A–102
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219230087
Status: Unutilized
Reason: Extensive deterioration

14 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023–
Landholding Agency: Army
Property Number: 219240137–219240150
Status: Unutilized
Reason: Secured Area

Bldg. T–2924, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219240323
Status: Unutilized
Reason: Extensive deterioration

Maryland

56 Bldgs.
Aberdeen Proving Ground
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219011406–219011417, 219012608, 219012610, 219012612, 219012614, 219012616–219012617, 219012619, 219012623, 219012625–219012629, 219012631, 219012633–219012635, 219012637–21912642, 219012645–219012651, 219012655–219012664, 219013773, 219014711–219014712, 219030316, 219110140, 219240329
Status: Unutilized
Reason: Most are in a secured area. (Some are within 2000 ft. of flammable or explosive material) (Some are in a floodway)

P501
Installation #24235
Ballast House
La Plata Co: Charles MD 20646–
Location: At the end of the access road
Landholding Agency: Army
Property Number: 219011643
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

1 Bldg.
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219014789
Status: Unutilized
Reason: Secured Area

Bldg. 10401
Aberdeen Proving Ground
Aberdeen Area
Harford Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219110138
Status: Unutilized
Reason: Seward treatment plant

Bldg. 10402
Aberdeen Proving Ground
Aberdeen Area
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219110139
Status: Unutilized
Reason: Sewage pumping station

Bldg. 142–146, USARC Gaithersburg
8510 Snouffers School Road
Gaithersburg Co: Montgomery MD 20879–1624
Landholding Agency: Army
Property Number: 219120009–219120013
Status: Unutilized
Reason: Secured Area

45 Bldgs. Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 219130059, 219140458, 219140460–219140461, 219140465–219140467, 219140472, 219140484, 219140493, 219140510, 219210123, 219220126–219220127, 219220142, 219220146–219220148, 219220153, 219220161, 219220171–219220173, 219220190–219220193, 219220195–219220197, 219240121, 219310021–219310033, 219320144
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 129, 144 Fort Ritchie
Ft. Ritchie Co: Washington MD 21719–5010
Landholding Agency: Army
Property Number: 219310058–219310059
Status: Underutilized
Reason: Secured Area

Bldg. 4900, Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219230089
Status: Unutilized
Reason: Within airport runway clear zone

Massachusetts

Material Technology Lab
405 Arsenal Street
Watertown CO: Middlesex MA 02132–
Landholding Agency: Army
Property Number: 219120161
Status: Underutilized
Reason: within 2000 ft. of flammable or explosive material Floodway Secured Area

Bldgs. T–102, T–110, T–111, Hudson Family Hsg
Natick RD&E Center
Bruen Road
Hudson Co: Middlesex MA 01749
Landholding Agency: Army
Property Number: 219220105–219220107
Status: Unutilized
Reason: Extensive deterioration

3462, Camp Edwards
Massachusette Military Reservation
Bourne Co: Barnstable MA 024620–5003
Landholding Agency: Army
Property Number: 219230095
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldgs. 3596, 1209–1211 Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 02462–5003
Landholding Agency: Army
Property Number: 219230096, 219310018–219310020
Status: Unutilized
Reason: Secured Area

Michigan

Bldgs. 602, 604
US Army Garrison Selfridge
Mt. Clemens Co: Macomb MI 48043–
Landholding Agency: Army
Property Number: 219012355–219012356
Status: Unutilized
Reason: Within airport runway clear zone; Floodway, Secured Area

Detroit Arsenal Tank Plant
28251 Van Dyke Avenue
Warren Co: Macomb MI 48090–
Landholding Agency: Army
Property Number: 219014605
Status: Underutilized

Reason: Secured Area

Bldgs. 5755–5756
Newport Weekend Training Site
Carleton Co: Monroe MI 48166
Landholding Agency: Army
Property Number: 219310060–219310061
Status: Unutilized
Reason: Secured Area; Extensive deterioriation

25 Bldgs.
Fort Custer Training Center
2501 26th Street
Augusta Co: Kalamazoo MI 49102–9205
Landholding Agency: Army
Property Number: 219014947–219014963, 219140447–219140454
Status: Unutilized
Reason: Secured Area

Minnesota

Bldgs. 113, 575, 598
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120165–219120167
Status: Unutilized
Reason: Secured Area

12 Bldgs.
Twin Cities Army Ammunition Plant
Old Highway 8
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219210014–219210015, 219220227–219220235, 219240328
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material

14 Bldgs.
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112
Landholding Agency: Army
Property Number: 219310055–219310056, 219320145–219320156
Status: Underutilized
Reason: Secured Area

Mississippi

Bldgs. 8301, 8303–8305, 9158
Mississippi Army Ammunition Plant
Stennis Space Center Co: Hancock MS 39529–7000
Landholding Agency: Army
Property Number: 219040438–219040442
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Missouri

Lake City Army Ammo. Plant 59, 59A, 59C, 59B
Independence Co: Jackson MO 64050–
Landholding Agency: Army
Property Number: 219013666–219013669
Status: Unutilized
Reason: Secured Area

Bldg. #1, 2, 3
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: St. Louis MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120069
Status: Unutilized
Reason: Secured Area

2 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219140422–219140423
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Nebraska

13 Bldgs.
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68802–
Location: 4 miles west (Potash Road)
Landholding Agency: Army
Property Number: 219013849–219013861
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldgs. 1L–10, 1CH19, 1P019, A0001, A0004
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219230092–219230094, 219310238–219310239
Status: Unutilized
Reason: Extenstive deterioration

Bldg. A0002
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803
Landholding Agency: Army
Property Number: 219310240
Status: Unutilized
Reason: Standby Generator Bldg.

Nevada

7 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219011953, 219011955, 219012061–219012062, 219012106, 219013614, 219230090
Status: Unutilized
Reason: Secured Area

Bldg. 396
Hawthorne Army Ammunition Plant
Bachelor Enlisted Qtrs W/Dining Facilities
Hawthorne Co: Mineral NV 89415–
Location: East side of Decatur Street—North of Maine Avenue
Landholding Agency: Army
Property Number: 219011997
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area

51 Bldgs.
Hawthorne Army Ammunition Plan
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Numbers: 219012009, 219012013, 219012021, 219012044, 219013615–219013651, 219013653–219013656, 219013658–219013661, 219013663, 219013665
Status: Underutilized
Reason: Secured Area (Some within airport run way clear zone; many within 2000 ft. of flammable or explosive material)

62 Concrete Explo. Mag. Stor.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: North Mag. Area
Landholding Agency: Army
Property Number: 219120150
Status: Unutilized
Reason: Secured Area

259 Concrete Explo. Mag. Stor.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Location: South & Central Mag. Areas
Landholding Agency: Army
Property Number: 219120151
Status: Unutilized
Reason: Secured Area

Facility No. 00169
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415
Landholding Agency: Army
Property Number: 219240278
Status: Unutilized
Reason: Extensive deterioration

New Jersey

183 Bldgs.
Armament Res. Dev. & Eng. Ctr.
Picatinny Arsenal Co: Morris NJ 07806–5000
Location: Route 15 north
Landholding Agency: Army
Property Number: 219010440–219010474, 219010476, 219010478, 219010639–219010667, 219010669–219010721, 219012423–219012424, 219012426–219012428, 219012430–219012431, 219012433–219012472, 219012474–219012475, 219013787, 219014306–219014307, 219014311, 219014313–219014321, 219030269, 219140617
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

18 Bldgs.
Armament Reserve Dev. and Engineering Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army
Property Number: 219012756–219012760, 219012763–219012767, 219230118–219230125
Status: Excess
Reason: Secured Area

12 Bldgs.
Fort Monmouth
Wall Co: Monmouth NJ 07719–
Landholding Agency: Army
Property Number: 219012829–219012833, 219012837, 219012841–219012842, 219013786, 219210102, 219230177, 219320157
Status: Unutilized
Reason: Secured Area

Bldgs. 13–14, 15A, 41, 100, 110–111
Military Ocean Terminal
Bayonne Co: Hudson NJ 07002–
Location: Foot of 32nd Street and Route 169.
Landholding Agency: Army
Property Number: 219013890–219013896
Status: Unutilized
Reason: Floodway; Secured Area

Bldgs. 820C, 3598
Armament Research, Dev & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219240315–219240316
Status: Unutilized
Reason: Secured Area; Extensive deterioration

New York

Bldgs. 10, 20, 40
Watervliet Arsenal
Watervliet Co: Albany NY 12189–4050
Landholding Agency: Army

Property Number: 219012514, 219012516, 219012519
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 25
Watervliet Arsenal
Watervliet Co: Albany NY 12189–4050
Landholding Agency: Army
Property Number: 219012521
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area
Comment: contamination

Bldg. 110
Fort Totten
110 Duane Road
Bayside Co: Queens NY 11359–
Landholding Agency: Army
Property Number: 219012589
Status: Unutilized
Reason: Other
Comment: contamination

Bldgs. 202, 204, Fort Totten
Bayside Co: Queens NY 11357–
Landholding Agency: Army
Property Number: 219210130–219210131
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 110, Seneca Army Depot
Romulus Co: Seneca NY 14541–5001
Landholding Agency: Army
Property Number: 219240439
Status: Unutilized
Reason: Secured Area

Bldgs. 143, 2084, 2105, 2110
Seneca Army Depot
Romulus Co: Seneca NY 14541–5001
Landholding Agency: Army
Property Number: 219240440–219240443
Status: Unutilized
Reason: Secured Area; Extensive deterioration

North Carolina

12 Bldgs. Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219230097, 219230099, 219310054, 219320158–219320166
Status: Unutilized
Reason: Extensive deterioration

Ohio

63 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219012476–219012507, 219012509–219012513, 219012515, 219012517–219012518, 219012520, 219012522–219012523, 219012525–219012528, 219012530–219012532, 219012534–219012535, 219012537, 219013670–219013677, 219013781, 219210143
Status: Unutilized
Reason: Secured Area

Bldgs. T–404, T–76, T–79, T–97, T–80, 309, 317
Defense Construction Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 219240331, 219310034–219310039
Status: Unutilized
Reason: Secured Area; (Some are extensively deteriorated.)

Oklahoma

547 Bldgs.
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–5000
Landholding Agency: Army
Property Number: 219011674, 219011680, 219011684, 219011687, 219012113, 219013792, 219013981–219013991, 219013994, 219014081–219014102, 219014104, 219014107–219014137, 219014141–219014159, 219014162, 219014165–219014216, 219014218–219014274, 219014336–219014559, 219030007–219030127, 219040004
Status: Underutilized
Reason: Secured Area; (Some are within 2000 ft. of flammable or explosive material)

P–3042, Fort Sill
3042 Austin Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130060
Status: Unutilized
Reason: Structurally unsound

19 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219140524, 219140525, 219140527–219140529, 219140535, 219140545, 219140548, 219140550–219140555, 219320167–219320169
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–3711, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219240082
Status: Unutilized
Reason: Detached latrine

Bldgs. 26, 55–56, 463, 97, 563
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501
Landholding Agency: Army
Property Number: 219310050–219310053, 219320170–219320171
Status: Unutilized
Reason: Secured Area

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012174–219012176, 219012178–219012179, 219012190–219012191, 219012197–219012198, 219012217, 219012229
Status: Underutilized
Reason: Secured Area

24 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219012195–219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 219014782, 219030362–219030363, 219120032, 219320201
Status: Unutilized
Reason: Secured Area

Pennsylvania

Defense Personnel Support Ctr.
2800 South 20th Street
Philadelphia Co: Philadelphia PA 19101–6419
Landholding Agency: Army
Property Number: 219011664
Status: Underutilized
Reason: Other environmental; Secured Area
Comment: Friable asbestos

Hays Army Ammunition Plant
300 Miffin Road
Pittsburgh Co: Allegheny PA 15207–
Landholding Agency: Army
Property Number: 219011666
Status: Excess
Reason: Secured Area

58 Bldgs.
Fort Indiantown GAP
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number: 219140267–219140324
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 82001, Reading USARC
Reading Co: Berks PA 19604–1528
Landholding Agency: Army
Property Number: 219320173
Status: Unutilized
Reason: Extensive deterioration

South Carolina

5 Bldgs. Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219310062–219310066
Status: Unutilized
Reason: Detached latrines

31 Bldgs. Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219310067–219310089, 219320174–219320181
Status: Unutilized
Reason: Extensive deterioration

Tennessee

Bldg. 100
Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton TN 37422–
Landholding Agency: Army
Property Number: 219010475
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

23 Bldgs.
Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton TN 37422–
Landholding Agency: Army
Property Number: 219010477, 219010479–219010500
Status: Underutilized
Reason: Secured Area. (Some are within 2000 ft. of flammable or explosive material).

23 Bldgs.
Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012304–219012309, 219012312, 219012314, 219012316–

219012317, 219012319, 219012325, 219012328, 219012330, 219012332, 219012334–219012335, 219012337, 219013789–219013790, 219030266, 219140613
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material).

30 Bldgs.
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37422
Landholding Agency: Army
Property Number: 219240127–219240136
Status: Unutilized
Reason: Secured Area.

Bldgs. I–156, J–52, K–6, T–1, T–2, T–10, T–104
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240447–219240449, 219320182–219320185
Status: Unutilized
Reason: Secured Area.

Bldg. Z–183A
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material.

Texas

Saginaw Army Aircraft Plant
Saginaw Co: Tarrant TX 76079–
Landholding Agency: Army
Property Number: 219011665
Status: Unutilized
Reason: Other
Comment: easement to city of Saginaw for sewer pipeline ending 5/15/2023.

18 Bldgs.
Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219012524, 219012529, 219012533, 219012536, 219012539–219012540, 219012542, 219012544–219012545, 219030337–219030345
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 0021A, 0027A
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661–
Location: State highway 43 north
Landholding Agency: Army
Property Number: 219012546, 219012548
Status: Unutilized
Reason: Secured Area

Bldg. 9042
Possum Kingdom Rec Area
Star Route, Box 200
Grayford Co: Palo Pinto TX 76045–
Landholding Agency: Army
Property Number: 219040397
Status: Unutilized
Reason: Detached latrine

Bldg. 9046
Possum Kingdom Rec Area
Star Route, Box 200
Grayford Co: Palo Pinto TX 76045–
Landholding Agency: Army
Property Number: 219040399
Status: Unutilized
Reason: Sewage treatment plant

Bldg. 9047
Possum Kingdom Rec Area
Star Route, Box 200
Grayford Co: Palo Pinto TX 76045–
Landholding Agency: Army
Property Number: 219040400
Status: Unutilized
Reason: Chlorine Building

12 Bldgs., Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219120064, 219130002, 219140255, 219230109–219230115, 219320193–219320194
Status: Unutilized
Reason: Secured Area

Bldg. T–5000
Camp Bullis
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219220100
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Swimming Pools
Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 219230108
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs., Fort Hood
Ft. Hood Co: Coryell TX 76544
Landholding Agency: Army
Property Number: 219310166–219310170
Status: Unutilized
Reason: Detached latrines

Bldgs. 4134, 4135, 4137, Fort Hood
Ft. Hood Co: Coryell TX 76544
Landholding Agency: Army
Property Number: 219310171–219310173
Status: Unutilized
Reason: Secured Area

7 Bldgs., Fort Hood
Ft. Hood Co: Bell TX 76544
Landholding Agency: Army
Property Number: 219320186–219320192
Status: Unutilized
Reason: Extensive deterioration

Utah

23 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012115, 219012138, 219012140, 219012150, 219012153, 219012159, 219012162, 219012165–219012166, 219012172, 219012752, 219030366, 2190120283, 219240263, 219310040–219310049
Status: Unutilized
Reason: Secured Area

17 Bldgs.
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012143–219012144, 219012148–219012149, 219012152, 219012155, 219012156, 219012158, 219012163, 219012171, 219012742, 219012751, 219014938, 2190120281, 219240265–219240267
Status: Unutilized
Reason: Secured Area

12 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219013998–219013999, 219130008, 219130011–219130013 219130015–2190130018
Status: Underutilized
Reason: Secured Area

8 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219014693, 219130009–21930010, 219130014, 219220204–219220207
Status: Unutilized
Reason: Secured Area

Bldg. 104
Tooele Army Depot, North Area
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219120014
Status: Unutilized
Reason: Extensive deterioration

17 Bldgs.
Tooele Army Depot, South Area
Tooele Co: Tooele UT 84074–5006
Landholding Agency: Army
Property Number: 219120015–219120027, 219240264, 219240268, 219320195–219320196
Status: Unutilized
Reason: Extensive deterioration

Virginia

164 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Location: State Highway 114
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010839, 219010842, 219010844, 219010847–219010890, 219010892–219010912, 219011521–219011577, 219011581–219011583, 219011585, 219011588, 219011591, 219013559–219013570, 219110142–219110143, 219120071, 219140618–219140633
Status: Unutilized
Reason: Within 2000 ft of flammable or explosive material; Secured Area

13 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Location: State Highway 114
Landholding Agency: Army
Property Number: 219010834–219010835, 219010837–219010838, 219010840–219010841, 219010843, 219010845–219010846, 219010891, 219011578–219011580
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area
Comment: Latrine, detached structure

30 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army

Property Number: 219120035–219120037, 219130006, 219230106, 219240083–219240118
Status: Unutilized
Reason: Extensive deterioration (Some are in a secured area.)

Bldg. T–221
Vint Hill Farms Station
Warrenton Co: Fauquier VA 22186–
Landholding Agency: Army
Property Number: 219210142
Status: Unutilized
Reason: Extensive deterioration

13 Bldgs.
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219220210–219220218, 219230100–219230103
Status: Unutilized
Reason: Secured Area

5 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801
Landholding Agency: Army
Property Number: 219220312, 219220314, 219220316–219220318
Status: Underutilized
Reason: Extensive deterioration

44 Bldgs., Fort A.P. Hill
Bowling Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 219240288–219240314
Status: Underutilized
Reason: Detached latrines

Bldg. B7103–01, Motor House
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219240324
Status: Unutilized
Reason: Secured Area; Within 2000 ft. of flammable or explosive material; Extensive deterioration

Bldg. 191, Fort Eustis
Newport News VA 23604
Landholding Agency: Army
Property Number: 219310090
Status: Underutilized
Reason: Extensive deterioration

32 Bldgs., Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 219310133–219310159, 219310161–219310165
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3311, Fort Eustis
Newport News Co: None VA 23604
Landholding Agency: Army
Property Number: 219320197
Status: Unutilized
Reason: gas chamber

Washington

Bldg. 209
Yakima Firing Center
Yakima Co: Yakima WA 98901–5000
Location: Exit 26 off I–82 on Yakima Firing Center Road
Landholding Agency: Army
Property Number: 219040363
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

27 Bldgs., Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219310108–219310132, 219320198–219320199
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated.)

Bldg. 785, Vancouver Barracks
Vancouver Co: Clark WA 98661–3896
Landholding Agency: Army
Property Number: 219240325
Status: Unutilized
Reason: Extensive deterioration

Bldg. T209, Fort Lawton Cemetary
Seattle Co: King WA 98199
Landholding Agency: Army
Property Number: 219240326
Status: Unutilized
Reason: Extensive deterioration

Wisconsin

6 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011094, 219011209–219011212, 219011217
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Other environmental; Secured Area
Comment: friable asbestos

154 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108–219011113, 219011115–219011117, 219011119–219011120, 219011122–219011139, 219011141–219011142, 219011144, 219011148–219011208, 219011213–219011216, 219011218–219011234, 219011236, 219011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011254, 219011256, 219011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304–219011311, 219011317, 219011319, 219011320–219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other environmental; Secured Area
Comment: friable asbestos

Bldg. P–10111
Fort McCoy
Army Hospital Complex
Sparta Co: Monroe WI 54656–5000
Landholding Agency: Army
Property Number: 219013443
Status: Unutilized
Reason: Structure is boiler plant for hospital.

4 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013871–219013873, 219013875
Status: Underutilized
Reason: Secured Area

3 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013876–219013878
Status: Unutilized
Reason: Secured Area

Bldgs. 6513–27, 6823–2, 6861–4
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219210097–219210099
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

142 Bldgs., Fort McCoy
US Hwy. 21
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 219210103–219210113, 219210115, 219240161–219240162, 219240164, 219240166–219240262, 219310206–219310237
Status: Unutilized
Reason: Extensive deterioration

17 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913
Landholding Agency: Army
Property Number: 219220295–219220311
Status: Unutilized
Reason: Secured Area

Bldg 2126, Fort McCoy
Ft. McCoy Co: Monroe WI 54656
Landholding Agency: Army
Property Number: 2193320200
Status: Underutilized
Reason: Detached latrine

Land (by State)

Alabama

23 acres and 2284 acres
Alabama Army Ammunition Plant
110 Hwy. 235
Childersburg Co: Talladega AL 35044–
Landholding Agency: Army
Property Number: 219210095–219210096
Status: Excess
Reason: Secured Area

Alaska

Campbell Creek Range
Fort Richardson
Anchorage Co: Greater Anchorage AK 99507
Landholding Agency: Army
Property Number: 219230186
Status: Unutilized
Reason: Inaccessible

Illinois

Group 66A
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219010414
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Parcel 1
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Location: South of the 811 Magazine Area, adjacent to the River Road.

Landholding Agency: Army
Property Number: 219012810
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Floodway

Parcel No. 2, 3
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219013796–219013797
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Floodway

Parcel No. 4, 5, 6
Joliet Army Ammunition Plant
Joliet Co: Will IL 60436–
Landholding Agency: Army
Property Number: 219013798–219013800
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Floodway

Homewood USAR Center
18760 S. Halsted Street
Homewood Co: Cook IL 60430–
Landholding Agency: Army
Property Number: 219014067
Status: Underutilized
Reason: Secured Area

36,000 sq. ft. & 4,000 sq. ft. of Land
Rock Island Arsenal
South Shore Moline Pool Miss. River
Moline Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219240317–219240318
Status: Unutilized
Reason: Floodway

Indiana

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219012360
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Maryland

Carroll Island, Graces Quarters
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012630, 219012632
Status: Underutilized
Reason: Floodway; Secured Area

Nebraska

Land
Cornhusker Army Ammunition Plant
Potash Road
Grand Island Co: Hall NE 68802–
Location: 4 miles west of Grand Island
Landholding Agency: Army
Property Number: 219013785
Status: Underutilized
Reason: Floodway

New Jersey

Land
Armament Research Development & Eng. Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured Area

New York

Watervliet Arsenal
Watervliet Co: Albany NY 12189–4050
Location: East of Main Arsenal Reservation
Landholding Agency: Army
Property Number: 219012508
Status: Excess
Reason: Easement to N.Y. State, 6-lane highway construction.

Oklahoma

McAlester Army Ammo. Plant
McAlester Army Ammunition Plant
McAlester Co: Pittsburg OK 74501–
Landholding Agency: Army
Property Number: 219014603
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Pennsylvania

Lickdale Railhead
Fort Indiantown Gap
Lickdale Co: Lebanon PA 17038–
Landholding Agency: Army
Property Number: 219012359
Status: Excess
Reason: Floodway

Tennessee

Land
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN
Landholding Agency: Army
Property Number: 219013791
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Volunteer Army Ammo. Plant
Chattanooga Co: Hamilton TN
Location: Area around VAAP—Outside fence in buffer zone.
Landholding Agency: Army
Property Number: 219013880
Status: Untilized
Reason: Withing 2000 ft. of flammable or explosive material; Secured Area

Utah

Land—32 Acres
Tooele Army Depot
Tooele Co: Tooele UT 84084
Landholding Agency: Army
Property Number: 219240269
Status: Unutilized
Reason: Secured Area

Virginia

Fort Belvoir Military Reservation—5.6 Acres
South Post located West of Pohick Road
Fort Belvoir Co: Fairfax VA 22060–
Location: Rightside of King Road
Landholding Agency: Army
Property Number: 219012550
Status: Unutilized
Reason: Within airport runway clear zone; Secured Area
Comment: 5.6 acres

Wisconsin

Land
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Location: Vacant land within plant boundaries.
Landholding Agency: Army
Property Number: 219013783
Status: Unitilized
Reason: Secured Area

[FR Doc. 93–14195 Filed 6–17–93; 8:45 am]
BILLING CODE 4310–30–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–02–4210–06; WYW101874]

Realty Action; Modified Competitive Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, modified competitive sale of public lands in Crook County.

SUMMARY: The following public surface estate has been determined to be suitable for disposal by modified competitive sale under Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976, (90 STAT. 2750; 43 U.S.C. 1713). The Bureau of Land Management (BLM) is required to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land for sale if the sale would not be consistent with FLPMA or other applicable law.

Sixth Principal Meridian

T. 54 N., R. 64 W.,
Sec. 27, SW¼SE¼.
40.00 acres.

FOR FURTHER INFORMATION CONTACT: Floyd Ewing, Area Manager, Bureau of Land Management, Newcastle Resource Area, 1101 Washington Blvd., Newcastle, Wyoming 82701, 307–746–4453.

SUPPLEMENTARY INFORMATION: This sale is consistent with Bureau of Land Management policies and the Newcastle Management Framework Plan. The purpose of this sale is to dispose of an isolated parcel of public land. The fair market values, planning document, and environmental assessment covering the proposed sale will be available for review at the Bureau of Land Management, Newcastle Resource Area, Newcastle, Wyoming.

The parcel will be offered by modified competitive sale to the adjoining landowners. The adjoining landowners will be required to submit proof of adjoining land ownership before a bid can be accepted.

The publication of this Notice of Realty Action in the Federal Register

shall segregate the above public lands from appropriation under the public land laws, including the mining laws. Any subsequent application shall not be accepted, shall not be considered as filed and shall be returned to the applicant if the Notice segregates the land from the use applied for in the application. The segregative effect of this Notice will terminate upon issuance of a conveyance document, 270 days, or when a cancellation Notice is published, whichever occurs first.

Sale Procedures

1. All bidders must be U.S. citizens, 18 years of age or older, corporations authorized to own real estate in the State of Wyoming, a state, state instrumentality or political subdivision authorized to hold property, or an entity legally capable of conveying and holding land or interests in Wyoming.

2. Sealed bidding is the only acceptable method of bidding. All bids must be received in the Newcastle Resource Area Office by 11 a.m., August 25, 1993, at which time the sealed bid envelopes will be opened and the high bid announced. The high bidder will be notified in writing within 30 days whether or not the BLM can accept the bid. The sealed bid envelope must be marked on the front lower left-hand corner with the words "Public Land Sale, (WYW101874), Sale held August 25, 1993."

3. All sealed bids must be accompanied by a payment of not less than 10 percent of the total bid. Each bid and final payment must be accompanied by certified check, money order, bank draft, or cashier's check made payable to: Department of the Interior-BLM.

4. Failure to pay the remainder of the full bid price within 180 days of the sale will disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of the sale. If the apparent high bidder is disqualified, the next highest qualified bid will be honored or the land will be reoffered under competitive procedures. If two or more envelopes containing valid bids of the same amount are received, supplemental sealed bidding will be used to determine the high bid. Additional sealed bids will be submitted to resolve all ties.

5. If the parcel fails to sell, it will be reoffered for sale under competitive procedures. For reoffered land, bids must be received in the Newcastle Resource Area Office by 11 a.m. on the fourth Wednesday of each month beginning September 22, 1993. Reoffered land will remain available for sale until sold or until the sale action is canceled or terminated. Reappraisals of the parcel will be made periodically to reflect the current fair market value. If the fair market value of the parcel changes, the land will remain open for competitive bidding according to the procedures and conditions of this notice.

Patent Terms and Conditions

Any patent issued will be subject to all valid existing rights. Specific patent reservations include:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals will be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated into the patent document, is available for review at the BLM Newcastle Resource Area Office.

3. Any conveyance will be subject to the grazing use of Neimans' 77 Ranches, Inc. The rights of Neimans' 77 Ranches, Inc. to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. GR49–8406 shall cease two years from their receipt of notification which was April 8, 1993. The successful bidder is entitled to receive annual grazing fees from Neimans' 77 Ranches, Inc. in an amount not to exceed that which would be authorized under the Federal grazing fee published in the **Federal Register**.

For a period of 45 days from the date of this notice published in the **Federal Register**, interested parties may subject comments to the BLM, District Manager, Casper District Office, 1701 East "E" Street, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become final.

Dated: June 9, 1993.

Karl S. Osvald,

Acting District Manager.

[FR Doc. 93–14357 Filed 6–17–93; 8:45 am]

BILLING CODE 4310–22–M

[OR–942–00–4730–02: GP3–260]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 16 S., R. 1 W., accepted May 7, 1993
(Sheets 1 & 2)
T. 24 S., R. 2 W., accepted May 17, 1993
T. 35 S., R. 3 W., accepted April 29, 1993
T. 32 S., R. 7 W., accepted April 28, 1993
T. 29 S., R. 9 W., accepted April 29, 1993
T. 28 S., R. 10 W., accepted May 3, 1993

Washington

T. 8 N., R. 13 E., accepted May 24, 1993
T. 23 N., R. 19 E., accepted April 29, 1993
T. 28 N., R. 15 W., accepted April 28, 1993
(Sheets 1 & 2)

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: June 8, 1993.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–14355 Filed 6–17–93; 8:45 am]

BILLING CODE 4310–33–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0055), Washington, DC 20503, telephone 202–395–7340.

Title: Rights of Entry, 30 CFR Part 877.
OMB Number: 1029–0055.
Abstract: This regulation establishes procedures for nonconsensual entry upon private lands by a regulatory authority for the purpose of reclamation activities or exploratory studies when the landowner's consent is refused or the landowner is not available.
Burean Form Number: None.
Frequency: On occasion.
Description of Respondents: Regulatory Authorities.
Estimated Completion Time: ½ hour.
Annual Responses: 130.
Annual Burden Hours: 65.
Bureau Clearance Officer: John A. Trelease, (202) 343–1475.

Dated: April 14, 1993.

Andrew F. DeVito,

Acting Chief, Division of Technical Services.

[FR Doc. 93–14406 Filed 6–17–93; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer; and to the Office of Management and Budget, Paperwork Reduction Project (1029–0091), Washington, DC 20503, telephone 202–395–7340.

Title: Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands—30 CFR part 750
OMB Approval Number: 1029–0091
Abstract: Operators who propose to conduct surface coal mining and reclamation operations on Indian lands must comply with the permitting and approval requirements of Part 750 which supplements the regulatory program by specifying additional requirements unique to Indian lands and outside the scope of the regulatory program.
Bureau form number: None.
Frequency: On occasion
Description of respondents: Surface coal mining companies
Estimated Completion Time: 22 hours
Annual Responses: 34
Annual Burden Hours: 72
Bureau Clearance Officer: John A. Trelease, 202–343–1475.

Dated: May 13, 1993.

Gene E. Krueger,

Chief Division of Abandoned Mine Land Reclamation.

[FR Doc. 93–14405 Filed 6–17–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–27,267 et al.]

Chevron U.S.A. Production Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification applicable to all workers of Chevron U.S.A. Production Company on July 19, 1992. The Notice was published in the **Federal Register** on August 4, 1992 (57 FR 34308).

The Department is amending the subject certification to reflect name changes resulting from a consolidation by the company.

The amended notice applicable to TA–W–27,267; TA–W–27,308; TA–W–27,310; TA–W–27,311; TA–W–27,312; TA–W–27,313; TA–W–27,316; TA–W–27,317; and TA–W–27,318 is hereby issued as follows:

All workers of Chevron U.S.A. Production Company operating at various Business Units and locations in the following cited States who became totally or partially separated from employment on or after the respective impact date listed below are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Impact Date of May 5, 1991

TA–W–27,267 Mid-Continent Business Unit—South Permian Profit Center, Midland, Texas
TA–W–27,267A Mid-Continent Business Unit—North Permian Profit Center, Midland, Texas
TA–W–27,267B Mid-Continent Business Unit—South Permian Profit Center, West Texas South of Midland, Texas
TA–W–27,267C Mid-Continent Business Unit—North Permian Profit Center, West Texas North of Midland, Texas
TA–W–27,267D Mid-Continent Business Units—North Permian Profit Center, New Mexico

Impact Date of May 19, 1991

TA–W–27,308 Western Business Unit, Bakersfield, California
TA–W–27,308A And operating at other locations in California
TA–W–27,310 Mid-Continent Business Unit—Central Profit Center Houston, Texas
TA–W–27,310A And operating at other locations in Texas
TA–W–27,310B Operating in Oklahoma
TA–W–27,310C Operating in North Dakota
TA–W–27,310D Operating in Mississippi
TA–W–27,310E Operating in Alabama
TA–W–27,310F Operating in Kansas
TA–W–27,310G Operating in Arkansas
TA–W–27,310H Operating in Louisiana
TA–W–27,311 Gulf of Mexico Business Unit, New Orleans, LA
TA–W–27,311A And operating at other locations in Louisiana.
TA–W–27,311B Operating in Texas
TA–W–27,312 Mid-Continent Business Unit, Englewood Colorado
TA–W–27,312A Mid-Continent Business Unit—Rangely Profit Center Colorado, (except Englewood, Colorado)
TA–W–27,312B Utah
TA–W–27,312C Evanston Profit Center, Wyoming
TA–W–27,312D North Dakota
TA–W–27,312E Evanston Profit Center, Colorado (exc. Englewood, Colo)
TA–W–27,313 Natural Gas Business Unit, Houston, Texas
TA–W–27,313A Operating at other locations in Texas
TA–W–27,313B Operating in Louisiana
TA–W–27,313C Operating in California
TA–W–27,316 Land Business Unit, Houston, Texas
TA–W–27,316A And operating at other locations in Texas
TA–W–27,316B Operating in Colorado
TA–W–27,316C Operating in California
TA–W–27,316D Operating in Louisiana
TA–W–27,316E Operating in Alaska
TA–W–27,317 Exploration Business Unit, Houston, Texas
TA–W–27,317A And operating at other locations in Texas
TA–W–27,317B Operating in California
TA–W–27,317C Operating in Colorado

TA–W–27,317D Operating in Louisiana
TA–W–27,317E Operating in Alaska
TA–W–27,318 Finance Division, Concord, California
TA–W–27,318A And operating at other locations in California

Signed in Washington, D.C., this 8th day of June, 1993.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–14414 Filed 6–17–93; 8:45 am]
BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than June 28, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 28, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 1st day of June, 1993.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Eddy Potash (USWA)	Carlsbad, NM	06/01/93	05/14/93	28,712	Potash.
Rohr, Inc. (UAW)	Hagerstown, MD	06/01/93	05/18/93	28,713	Aircraft parts.
Advanced Fabrications (workers)	Lansing, MI	06/01/93	05/19/93	28,714	Aircraft components.
New York Air Brake Corp. (IAMAW)	Watertown, NY	06/01/93	05/17/93	28,715	Rail braking systems.
Babco/Textron, Inc. (workers)	Danvers, MA	06/01/93	05/14/93	28,716	Jet engine parts.
Oberdorfer High Tex, Inc. (workers)	Sandpoint, ID	06/01/93	05/17/93	28,717	Forming fabrics for paper mills.
Cyprus Sierrita Corp. (workers)	Green Valley, AZ	06/01/93	05/13/93	28,718	Copper and molybdenum.
Celebrations, Inc. (workers)	Bronx, NY	06/01/93	05/03/93	28,719	Leather and vinyl cosmetic cases.
Capacitor & Power Protection (UERMW).	Fort Edward, NY	06/01/93	05/20/93	28,720	Capacitors.
Boeing Commercial Airplane Group (workers).	Seattle, WA	06/01/93	05/28/93	28,721	Airplanes.
Anchor Woven Label Co. (ACTWU)	Alcoa, TN	06/01/93	05/21/93	28,722	Woven labels.
Allied Signal Aerospace (workers)	Eatontown, NJ	06/01/93	05/20/93	28,723	Power generators.
Cherry-Burrell, Process Equip. (CBIU)	Little Falls, NY	06/01/93	05/19/93	28,724	Stainless steel tanks and vessels.
Schmitt Forge, Inc. (workers)	Portland, OR	06/01/93	05/19/93	28,725	Turnbuckles, chain and anchor shackles.
Rogue River National Forest (NFFE)	Medford, OR	06/01/93	04/29/93	28,726	Standing timber.
Ohio Edison/Penn Power (workers)	Lorain, OH	06/01/93	05/21/93	28,727	Electrical power.
Dayton Walther Corp. (Co)	Muncie, IN	06/01/93	05/17/93	28,728	Truck fifth wheels.
Mountain Fir Chip Co. (workers)	(The) Dalles, OR	06/01/93	05/12/93	28,729	Wood chips.
DeLong Sportswear (Co)	Harmony, ME	06/01/93	05/18/93	28,730	Ladies', Mens' and childrens' jackets.
Cleveland Pneumatic Co. (Co)	Cleveland, OH	06/01/93	05/21/93	28,731	Aircraft landing gears.
Cleveland Plating Co. (Co)	Cleveland, OH	06/01/93	05/21/93	28,732	Aircraft landing gears.

[FR Doc. 93–14413 Filed 6–17–93; 8:45 am]
BILLING CODE 4510–30

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects

to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

Florida
FL930055 (June 18, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama
AL930015 (Feb. 19, 1993)
AL930032 (Feb. 19, 1993)
Massachusetts
MA930010 (Feb. 19, 1993)
New Jersey
NJ930002 (Feb. 19, 1993)
NJ930003 (Feb. 19, 1993)
Pennsylvania
PA930001 (Feb. 19, 1993)
PA930002 (Feb. 19, 1993)
PA930008 (Feb. 19, 1993)
PA930022 (Feb. 19, 1993)

Volume II

Iowa
IA930007 (Feb. 19, 1993)
Illinois
IL930001 (Feb. 19, 1993)
IL930015 (Feb. 19, 1993)
Michigan
MI930001 (Feb. 19, 1993)
Missouri
MO930001 (Feb. 19, 1993)
MO930003 (Feb. 19, 1993)
MO930010 (Feb. 19, 1993)
Nebraska
NE930015 (Feb. 19, 1993)
NE930016 (Feb. 19, 1993)
NE930017 (Feb. 19, 1993)
NE930018 (Feb. 19, 1993)
NE930024 (Feb. 19, 1993)
NE930040 (Feb. 19, 1993)
NE930055 (Feb. 19, 1993)
NE930056 (Feb. 19, 1993)

Volume III

Arizona
AZ930002 (Feb. 19, 1993)
Washington
WA930001 (Feb. 19, 1993)
WA930002 (Feb. 19, 1993)
WA930005 (Feb. 19, 1993)
WA930006 (Feb. 19, 1993)
WA930008 (Feb. 19, 1993)

General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 11th day of June 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–14178 Filed 6–17–93; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE 93–056]

NASA Wage Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 21321, Notice Number 93–030, April 20, 1993.

PREVIOUSLY ANNOUNCED DATES AND ADDRESSES OF MEETING: June 30, 1993, 1:30 p.m. to 3:30 p.m. The National Aeronautics and Space Administration, room 3G38, Two Independence Square, 300 E. Street, SW., Washington, DC 20546–0001.

CHANGES IN THE MEETING: Dates changed to July 15, 1993, 10 a.m. to 12 Noon.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Green Glasco, Code FPP, National Aeronautics and Space Administration, Washington, DC 20546, (202/358–1218).

Dated: June 11, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–14445 Filed 6–17–93; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974; New System of Records

AGENCY: NATIONAL SCIENCE FOUNDATION (NSF).

ACTION: Add a system of records.

SUMMARY: The National Science Foundation (NSF) proposes to add a record system to its inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on July 18, 1993 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the NSF Privacy Act Officer, Division of Contracts, Policy, and Oversight, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Mr. Herman G. Fleming, Privacy Act Officer, at (202) 357–7335.

SUPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, notice is given that the NSF proposes to establish a system of records identified as NSF–57, entitled: Delinquent Debtors File.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be provided a 30-day period in which to comment on the new record system.

The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on June 7, 1993, to the Committee on Government Operations of the House of Representatives, the Committee on Government Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated December 12, 1985 (50 FR 52738, December 24, 1985).

Dated: June 15, 1993.

Herman G. Fleming,

Reports Clearance and Privacy Act Officer, National Science Foundation.

NSF–57

SYSTEM NAME:

Delinquent Debtors File.

SYSTEM LOCATION:

Division of Financial Management, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, panelists, recipients of fellowship stipends and others indebted and owing money to the National Science Foundation (NSF).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information varies depending on individual debtor. Normally, the name, Social Security Number, address, amount of debt or delinquent amount, basis of the debt, date debt arose, office referring debt, agency collection efforts, credit reports, debt collection letters, correspondence to or from the debtor relating to the debt and correspondence with employing agencies of debtors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966, Pub. L. 89–508; Debt Collection Act of 1982, Pub. L. 97–365; and E.O. 9397.

PURPOSE(S):

Information is used for the purpose of collecting monies owed NSF arising out of any administrative or program activities or service administered by NSF. The file represents the basis for the debt and amount of debt and actions taken by NSF to collect the monies owed under the debt. The credit report or financial statement provides an understanding of the individual's financial condition with respect to requests for deferment of payment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b)(3) of the Privacy Act, these records or information contained therein, may specifically be disclosed outside the agency as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows, provided that no routine use listed shall be construed to limit or waive any other routine use specified herein:

1. To the U.S. General Accounting Office (GAO), Department of Justice, United States Attorney, or other Federal agencies for further collection action on any delinquent account when circumstances warrant.

2. To a commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of debt collection.

3. To a debt collection agency for the purpose of collection services to recover indebtedness owed to NSF.

4. Debtor's name, Social Security Number, the amount of debt owed, and the history of the debt may be disclosed to any Federal agency where the individual debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect debts on NSF's behalf by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365).

5. To any other Federal agency including, but not limited to, the Internal Revenue Service (IRS) pursuant to 31 U.S.C. 3720A, for the purpose of effecting an administrative offset against the debtor of a delinquent debt owed to NSF by the debtor.

6. To the Internal Revenue Service by computer matching to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by NSF against the taxpayer pursuant to 26 U.S.C. 6103(m)(2) and in accordance with 31 U.S.C. 3711, 3217 and 3718.

Note: Redisclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other NSF purpose or disclosed to another Federal, state, or local agency which seeks to locate the same individual for its own debt collection purpose.

7. Data base information consisting of debtor's name, Social Security Number, and amount owed may be disclosed to the Defense Manpower Data Center (DMDC), Department of Defense, the U.S. Postal Service or to any other Federal, state, or local agency for the purpose of conducting an authorized computer matching program in compliance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, so as to identify and locate delinquent debtors in order to start a recoupment process on an individual basis of any debt owed NSF by the debtor arising out of any administrative or program activities or services administered by NSF.

8. Disclosure of personal and financial information from this record system on current, retired or former employees of NSF may be made to any creditor Federal agency seeking assistance for the purpose of that agency implementing administrative or salary offset procedures in the collection of unpaid financial obligations owed the United States government from an individual. An exception to this routine use is an individual's mailing address obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this record system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are automated and may also be maintained in file folders.

RETRIEVABILITY:

Records are retrieved by the name or Social Security Number.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. Records are kept in limited access areas during duty hours and in locked cabinets at all other times.

RETENTION AND DISPOSAL:

Records are disposed of when ten years old except documents needed for an ongoing investigation in which case the record will be retained until no longer needed in the investigation.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Financial Management, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Division of Financial Management, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.

Individual should furnish full name, Social Security Number, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Division of Financial Management, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.

Individual should furnish full name, Social Security Number, current address and telephone number.

CONTESTING RECORD PROCEDURES:

The National Science Foundation's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in NSF Manual No. 1; 45 CFR part 613; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system of records obtained from the individual, institution, award records, collections agencies, and other appropriate agencies, i.e., DMDC, IRS, GAO, USPS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 93-14447 Filed 6-17-93; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.160, "monitoring the Effectiveness of Maintenance at Nuclear Power Plants," provides guidance on meeting the Commission's rules on maintenance and on monitoring the effectiveness of maintenance in nuclear power plants. The maintenance rule, 10 CFR 50.65, "Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants," becomes effective on July 10, 1996.

The Regulatory Analysis and the Backfit Analysis prepared for Regulatory Guide 1.160 are available for inspection or copying in the NRC Public Document Room, 2120 L Street NW., Washington, DC. Copies of all regulatory guides are also available in the NRC Public Document Room. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 512-2249 or (202)512-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 4th day of June 1993.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director Office of Nuclear Regulatory Research.

[FR Doc. 93-14401 Filed 6-17-93; 8:45 am]

BILLING CODE 7590-01-M

Bingham Engineering

[Docket No. 40-6014]

Final Finding of No Significant Impact and Notice of Intent to Issue Source and Byproduct Material License SUA-1556 to Bingham Engineering, Salt Lake County, Utah, to Authorize Extraction and Testing of Mill Tailings Solution

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Final Finding of No Significant Impact and Intent to Issue a Source and Byproduct Material License.

1. Proposed Action

The proposed administrative action is to issue a source and byproduct material license which will authorize Bingham Engineering to extract leachate solution from mile tailings. A portion of the leachate solution will be used to test the hydraulic properties of clay material that would serve as a clay liner for a proposed disposal cell. Effluent from this test, as well additional unused leachate solution, will be transferred to an EPA-certified laboratory for further analyses.

2. Reasons for Final Finding of No Significant Impact

Bingham Engineering has been contracted by Envirocare of Utah to test that the clay liner for a proposed mill tailings disposal cell will adequately protect against leakage of tailings seepage. Upon review of the license application dated May 12, 1993, the Commission has determined that no significant impacts will result from the proposed activity, and that an Environmental Assessment is not warranted.

The following statements support the final Finding of No Significant Impact and summarize the project evaluation based on the license application.

A. The licensee will receive a small quantity (25 kg) of byproduct material in sealed containers. Throughout the testing procedures, the only exposure of byproduct material to the atmosphere will be during the initial transfer of material from the transportation containers to laboratory containers.

B. The licensee has committed to a Radiation Safety Program in conformance with Title 10 of the Code of Federal Regulations, part 20.

C. All waste, including processed materials and clothing, will be returned to the source of the byproduct material.

In accordance with 10 CFR 51.33(e), the Director, Uranium Recovery Field Office, made the determination to issue a final finding of no significant impact in the **Federal Register**. Concurrent with this finding, the staff will issue Source and Byproduct Material License SUA–1556 which authorizes Bingham Engineering to receive and handle 25 kg of byproduct material. The licensee is required to return any contaminated materials and waste developed from tests which employed the tested byproduct material back to the byproduct material source.

This finding, together with documents setting forth the bases for the finding, are available for public inspection and copying at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC.

Dated at Denver, Colorado, this 9th day of June 1993.

For the Nuclear Regulatory Commission.

Eamon E. Hall,

Director, Uranium Recovery Field Office, Region IV.

[FR Doc. 93–14400 Filed 6–17–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR–77 and DPR–79, issued to the Tennessee Valley Authority, licensee for the Sequoyah Nuclear Plant Units 1 and 2. The plants are located at the licensee's site in Hamilton County, Tennessee. The exemption was requested by the licensee by letter dated June 5, 1993.

Environmental Assessment

Identification of Proposed Action

The proposed action requests an exemption from certain requirements of 10 CFR 50.60, "Acceptance criteria for fracture prevention measures for light-water nuclear power reactors for normal operation," to allow application of an alternate methodology to determine the low temperature overpressure protection (LTOP) setpoint for the Sequoyah Nuclear Plant Units 1 and 2. The proposed alternate methodology is consistent with guidelines developed by the American Society of Mechanical Engineer (ASME) working Group on Operating Plant Criteria (WGOPC) to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. These guidelines have been incorporated into Code Case N–514, "Low Temperature Overpressure Protection," which has been approved by the ASME Code Committee. NRC endorsement of the WGOPC methodology, and publication of the Code Case, are expected in the near future.

The philosophy used to develop Code Case N–514 guidelines is to ensure that the LTOP limits are still below the pressure/temperature (P/T) limits for normal operation, but allow the pressure that may occur with activation of pressure-relieving devices to exceed the P/T limits, provided acceptable margins are maintained during these events. This philosophy protects the pressure vessel from LTOP events, and still maintain the Technical Specification P/T limits applicable for normal heatup and cooldown in accordance with Appendix G to 10 CFR part 50 and sections III and XI of the ASME Code.

The Need for the Proposed Action

10 CFR 50.60 states that all light-water nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR part 50. Appendix G to 10 CFR 50 defines P/T limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, to which the pressure boundary may be subjected over its service lifetime. 10 CFR 50.60(b) specifies that alternatives to the described requirements in Appendices G and H to 10 CFR part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent transients that would produce pressure excursions exceeding the Appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed an LTOP system. The LTOP system includes pressure relieving devices in the form of Power Operated Relief Valves (PORVs) that are set at a pressure low enough that if a transient occurred while the coolant temperature is below the LTOP enabling temperature, they would prevent the pressure in the reactor vessel from exceeding the Appendix G P/T limits. To prevent these valves from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint. The P/T limits and operability requirements for the LTOP system are incorporated into Technical Specification 3.4.12.

The licensee has determined that the generic methodology used by Westinghouse Electric Corporation to calculate the LTOP setpoint for Sequoyah is deficient since it did not account for the differential pressure across the reactor core during reactor coolant pump operation. The resultant errors consist of: (a) Static head differences between the reactor coolant system (RCS) wide range pressure transmitter sensing point and the referenced point of the Appendix G curves, (b) Flow velocity induced pressure drops throughout the RCS, and (c) nozzle differential pressure drop. As a result, the analytically determined maximum pressure limits for LTOP events for a certain design basis condition exceeded the pressure limits of the 10 CFR part 50 Appendix G curves. Therefore, the licensee proposed

that in determining the PORV setpoint for LTOP events for Sequoyah, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins required by Appendix G to 10 CFR part 50. The alternate methodology is consistent with ASME Code Case N–514 that is expected to be approved and published in the near future.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for LTOP considerations. By application dated June 5, 1993, the licensee requested an exemption from 10 CFR 50.60.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's application.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) Using a safety factor of 2 on the principal membrane (pressure) stresses, (b) Assuming a flaw at the surface with a depth of one quarter of the vessel wall thickness and a length of six times its depth, and (c) Using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Sequoyah reactor vessel material.

In determining the PORV setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, use of the proposed criteria will provide adequate margins of safety to the reactor vessel during LTOP transients. In addition, application of the Code Case would allow continued operation with the present PORV setpoints and Technical Specification requirements.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environment impact.

With regard to potential non-radiological impacts, the proposed change involves use of more realistic safety margins for determining the PORV setpoint during LTOP events. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of the Sequoyah Nuclear Plant, dated February 13, 1974.

Agencies and Persons Consulted

The NRC staff consulted with the state of Tennessee regarding the environmental impact of the proposed action. The state official had no comments.

Finding Of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated June 5, 1993, which is available for public inspection at the Commission's Public Document room, 2120 L Street, NW., Washington, DC and at the local public document room located at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 15th day of June 1993.

For the Nuclear Regulatory Commission

Frederick J. Hebdon,

Director, Project Directorate II–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–14399 Filed 6–17–93; 8:45 am]

BILLING CODE 7590–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Moon River, Indian River County, FL

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Moon River, located in Vero Beach, Indian River County, Florida, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until September 16, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Morris Bocian, Resolution Trust Corporation, c/o BEI/Ritz Asset Management, Department: VF, 3000 Hadley Road, South Plainfield, NJ 07080, (908) 412–9100; Fax (908) 412–9119.

SUPPLEMENTARY INFORMATION: The Moon River property is located along State Road A–1–A in Vero Beach, Indian River County, Florida. The site is situated within a floodplain and borders the Indian River Intercoastal Waterway. The Indian River-Malabar to Vero Beach State Aquatic Preserve comprises the adjacent waters and State lands known as Wabasso Island are located immediately west of the site. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The Moon River property consists of approximately 73.74 acres of land, 16 acres of which consist of developed condominium units. The remaining 57.74 acres is unimproved. The property is irregular in shape, generally level with a downward slope towards the shoreline, and located within a Flood Hazard Zone.

Property size: Approximately 73.74 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before September 16, 1993 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by September 16, 1993 to Mr. Morris Bocian at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: Moon River
Federal Register Publication Date: June 18, 1993
1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: June 15, 1993.

Resolution Trust Corporation.
William J. Tricarico,
Assistant Secretary.
[FR Doc. 93–14430 Filed 6–17–93; 8:45 am]
BILLING CODE 6714-01-M

Coastal Barrier Improvement Act; Property Availability; Mountain Lakes Estates, Passaic County, NJ

AGENCY: Resolution Trust Corporation.
ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Mountain Lakes Estates, located near Wanaque, Passaic County, New Jersey, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until September 16, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Michael Dunigan, Resolution Trust Corporation, c/o BEI/Ritz Asset Management, Department: Somerset, 3000 Hadley Road, South Plainfield, NJ 07080, (908) 412–9100; Fax (908) 412–9119.

SUPPLEMENTARY INFORMATION: The Mountain Lakes Estates property is located in Midvale on the south side of Conklintown Road and Linda Road, ¾ miles east of Ringwood and ¾ miles west of Skyline Drive. The property contains wetlands, Stephens Lake, and is adjacent to Ramapo Lake Natural Area and Ramapo Mountain State Forest. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The Mountain Lakes Estates property is irregular in shape and consists of approximately 138.3 acres of undeveloped land. The property contains several areas of wetlands, a small watercourse, and a large portion of wetlands on the east side of Stephens Lake. Elevations on the site range from 320 feet to 550 feet.

Property size: Approximately 138.3 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before September 16, 1993 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by September 16, 1993 to Mr. Michael Dunigan at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: Mountain Lakes Estates
Federal Register Publication Date: June 18, 1993.
1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: June 15, 1993.

Resolution Trust Corporation.
William J. Tricarico,
Assistant Secretary.
[FR Doc. 93–14431 Filed 6–17–93; 8:45 am]
BILLING CODE 6714-01-M

Coastal Barrier Improvement Act; Property Availability; Tract 17413–4 & Parcel 14 of PM 23910, Riverside County, CA

AGENCY: Resolution Trust Corporation.
ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Tract 17413–4 & Parcel 14 of PM 23910, located in Lake Elsinore, Riverside County, California, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until September 16, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. E. Ted Hine, Resolution Trust Corporation, California Field Office, 4000 MacArthur Blvd., Third Floor, East Tower, Newport Beach, CA 92660–2516, (714) 263–4648; Fax (714) 852–7770.

SUPPLEMENTARY INFORMATION: Tract 17413–4 & Parcel 14 of PM 23910 are located in Lake Elsinore, California, and consist of two parcels separated by a 200 foot wide strip of land owned by the Elsinore Valley Municipal Water District. The site has recreational value and one of the parcels is zoned for open space. Canyon Lake is also adjacent to the site and owned by the Elsinore Valley Municipal Water District. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: Tract 17413–4 & Parcel 14 of PM 23910 consist of approximately 103.9 total acres. The site is undeveloped and bisected by a riparian channel used for overflow water from Canyon Lake. Tract 17413–4 consists of hillside lots some of which overlook Canyon Lake Reservoir. Parcel 14 of PM 23910 consists of rock covered hills and is zoned for open space.

Property size: Approximately 103.9 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before

September 16, 1993 by the Elsinore Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal Government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by September 16, 1993 to Mr. E. Ted Hine at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: Tract 17413–4 & Parcel 14 of PM 23910

Federal Register Publication Date: June 18, 1993

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife, refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: June 15, 1993.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 93–14432 Filed 6–17–93; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32455; File Nos. SR-Amex-93–07; SR–BSE–93–08; SR–MSE–93–03; SR–NASD–93–11; SR–NYSE–93–13; SR–PSE–93–04; and SR-Phlx-93–09)]

Self-Regulatory Organizations; American Stock Exchange; Boston Stock Exchange; Midwest Stock Exchange; National Association of Securities Dealers; New York Stock Exchange; Philadelphia Stock Exchange; Pacific Stock Exchange; Order Approving Proposed Rule Changes Relating to the Book-Entry Settlement of Securities Transactions

June 11, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] the above mentioned self-regulatory organizations ("SROs") filed proposed rule changes[2] with the Securities and Exchange Commission ("Commission") regarding the book-entry settlement of securities transactions. The Commission published notice in the **Federal Register** to solicit comments on the proposed rule changes from interested persons.[3] No comments were received. This order approves the proposals.

I. Description

The proposed rule changes require members, member organizations, or affiliated members of SROs to use the facilities of a securities depository[4] for the book-entry settlement of all transactions in depository-eligible securities[5] with another financial intermediary (broker, dealer, or bank). In addition, the rules prohibit members, member organizations, or affiliated members of the SROs from effecting a delivery-versus-payment ("DVP") or receipt-versus-payment ("RVP") transaction in a depository-eligible security with an institutional customer unless the transaction is settled by book-entry using the facilities of a securities depository.[6] The proposed rules supersede any existing provisions of the SROs' rules that are inconsistent with the proposed rules.

The proposed rules do not apply to transactions in securities that are not depository-eligible or transactions in which settlement occurs outside the U.S.[7] The proposed rules also contain exceptions for transactions for same-day settlement where the deliverer cannot by reasonable efforts deposit the securities prior to a depository's cut-off time for same-day crediting of deposited securities and other special transactions where the deliverer cannot by reasonable efforts deposit the securities prior to a cut-off date that is established by a depository. With respect to the exception for transactions for same-day settlement, the NASD's form of the proposed rule change omits the phrase "cannot by reasonable efforts" and allows the exception only where the deliverer "is unable to" deposit the securities prior to a depository's cut-off time for same-day crediting of deposited securities and for other special transactions where the deliverer "is unable to" deposit the securities prior to a cut-off date that is established by a depository. In order to provide broker-dealers with sufficient time to implement internal systems and procedural changes for compliance with the book-entry settlement requirement,

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Proposed rule changes were filed with the Commission by each SRO in conjunction with substantially similar rule filings by the other SROs as follows: The American Stock Exchange ("Amex") on February 7, 1993; the Boston Stock Exchange ("BSE") on February 7, 1993; the Midwest Stock Exchange ("MSE") on February 17, 1993; the National Association of Securities Dealers ("NASD") on March 1, 1993; the New York Stock Exchange ("NYSE") on March 4, 1993; the Pacific Stock Exchange ("PSE") on March 5, 1993; and the Philadelphia Stock Exchange ("Phlx") on March 5, 1993. The PSE's and BSE's proposed rule changes as originally filed were designated as filings of the Boston Stock Exchange Clearing Corporation and the Pacific Clearing Corporation, respectively. On March 17, 1993, and March 18, 1993, the PSE and the BSE, respectively, amended their proposed rule changes to designate the rule changes as filings of the exchanges. Letter to Jack Drogin, Special Counsel, Division of Market Regulation, Commission, from Michael D. Pierson, Market Regulation, PSE, dated March 17, 1993; and letter to Jack Drogin from Karen A. Aluise, Attorney, BSE, dated March 18, 1993.

[3] Securities Exchange Act Release No. 32039 (March 23, 1993), 58 FR 16893.

[4] For purposes of this rule, the term "securities depository" means a securities depository registered as a clearing agency under section 17A of the Act.

[5] The term "depository-eligible securities" means securities that (i) are part of an issue (as identified by a single CUSIP number [CUSIP is the acronym for the Committee on Uniform Securities Identification Procedures] of securities that is eligible for deposit at a securities depository and (ii) with respect to a particular transaction, are eligible for book-entry transfer at the depository at the time of settlement of the transaction.

[6] Currently, the SRO rules require book-entry settlement of all depository-eligible securities transactions between a member firm and its institutional clients, *i.e.*, the rules effectively create an exception for book-entry settlement of transactions between member firms. One of the practical effects of this proposal will be to expand the requirement of book-entry settlement to securities transactions among member firms. See *e.g.*, NYSE Rule 387, NASD Uniform Practice Code Section 64, and MSE Rules, Article XV, Rule 5.

[7] The proposed rules are not intended to apply to or affect the manner in which member firms settle transactions with traditional retail customers. However, the rule will apply to transactions with retail customers if the transaction is designated as one that will settle on a DVP or RVP basis.

the proposed rule changes will become effective sixty days after Commission approval.

II. Discussion

The Commission believes that the proposed rule changes are consistent with section 6(b)(5) of the Act.[8] Section 6(b)(5), among other things, requires that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. Further, the Commission believes the proposals promote the purposes of section 17A of the Act.[9] In section 17A, Congress called for the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. In section 17A(e),[10] Congress directed the Commission to use its authority to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities.

Book-entry settlement of securities transactions has been a goal since Congress enacted the Securities Acts Amendments of 1975 ("1975 Amendments").[11] The 1975 Amendments were enacted in response to the "paperwork crisis" in the late 1960s which resulted from trading volumes that rose faster than the industry's ability to process transactions.[12] AT that time, securities processing was characterized by inefficient, duplicative, and manual broker-to-broker transaction processing.[13]

Since 1975, substantial progress has been made in reducing the flow of physical certificates for settlement of securities transactions.[14] The market breaks of October 1987 and 1989 again brought the physical transfer of certificates under close scrutiny. Recently, studies of the U.S. clearance and settlement system have recommended automating securities transfers to help reduce settlement time in the U.S. from five days to three days.[15] The proposed rule changes are designed to facilitate a move to T+3 by reducing the number of transactions in depository-eligible securities for which settlement is effected by the delivery of physical securities.[16] The Commission recently published for comment a proposed rule that, if adopted, would require most securities transactions to settle in three days.[17]

The proposal was developed through the efforts of the Legal and Regulatory Subgroup of the U.S. Working Committee, which included representatives of the Amex, MSE, NASD, NYSE, Phlx, DTC, the National Securities Clearing Corporation, the Municipal Securities Rulemaking Board, and the Commission's Division of Market Regulation. The Commission believes the proposed rule changes represent a significant step in removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The book-entry settlement requirement reduces cost, risk, and delays associated with the physical delivery of securities certificates. In addition, settlement of transactions by book-entry eliminates many of the labor intensive functions associated with physical delivery.[18]

The proposal reduces the potential cost to investors resulting from lost or misdirected certificates.[19] Furthermore, by requiring that transactions between member firms and transactions between member firms and institutional clients that settle on a DVP or RVP basis occur in a book-entry environment, the rule changes increase the efficiency of the U.S. clearance and settlement system and reduce the potential for systemic risk. Finally, the proposed rules reduce exception processing and the delay associated with certificate processing and physical delivery against payment. Thus, the proposed rules are consistent with the objectives of section 17A.

With respect to the exceptions contained in sections (g)(i) and (g)(ii) of the proposed rules[20] for transactions for sameday settlement, the NASD's form of the proposed rule will require such transactions to be settled by book-entry except when "* * * the deliverer *is unable to* deposit the securities in a securities depository prior to the cut-off time established by the depository for same-day crediting of deposited securities," or when "[t]he deliverer *is unable to* deposit the securities in a depository prior to a cut-off date established by the depository for that issue of securities." (emphasis added) The other SRO rules contain similar exceptions where the deliverer cannot *by reasonable efforts* deposit the securities prior to the cut-off time established by the depository. By excepting only those deliveries where the deliverer "*is unable to*" deposit securities in a securities depository, the

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[8] 15 U.S.C. 78f(b)(5) (1988).

[9] 15 U.S.C. 78q–1 (1988).

[10] 15 U.S.C. 78q–1(e) (1990).

[11] Public Law No. 94–29, 89 Stat. 97 (1975) (codified at 15 U.S.C. 77–80h (1982)). The 1975 Amendments included the adoption of section 17A. 15 U.S.C. 78q–1 (1988).

[12] Division of Market Regulation, Commission, Progress and Prospects: Depository Immobilization of Securities and Use of Book-Entry Systems (1985).

[13] *Id.*

[14] See Securities Exchange Act Release Nos. 20221 (September 23, 1983), 48 FR 45167 (order granting full registration to nine clearing agencies ["Full Registration Order"]); 19696 (April 15, 1983), 48 FR 17604 (order implementing The Depository Trust Company's ("DTC") Fast Automated Securities Transfer program); 30283 (January 23, 1992), 57 FR 3658 (order implementing DTC's Deposit/Withdrawal at Custodian program); and 30505 (March 20, 1992), 57 FR 10683 (order eliminating DTC's Certificate on Demand service for most corporate issues). The Commission also recently approved a proposed rule change that requires most interdealer transactions in depository-eligible municipal securities to be settled by book-entry through the facilities of a securities depository. Securities Exchange Act Release No. 31645 (December 23, 1992), 57 FR 62407.

[15] The proposal serves as a key element in the implementation in the U.S. of the recommendation of the Group of Thirty regarding settlement on the third business day following the trade date ("T+3"). See Group of Thirty, Clearance and Settlement Systems in the World's Securities Markets (March 1989). The Group of Thirty is an independent, non-partisan, non-profit organization established in 1978. In their March 1989 report, the Group of Thirty made nine recommendations for harmonizing clearance and settlement practices worldwide. A working committee, comprised of representatives from brokerage firms, banks, other financial intermediaries, and major industry organizations ("Working Committee"), was formed in the U.S. to study the existing U.S. clearance and settlement system and to recommend reforms consistent with the Group of Thirty recommendations. The Working Committee, after reviewing the nine Group of Thirty recommendations, concluded that the U.S. substantially complied with all but two of those recommendations—T+3 settlement and same-day funds settlement. In order to achieve T+3 settlement, the Working Committee recommended requiring book-entry settlement between financial intermediaries and between financial intermediaries and their institutional clients and depository eligibility for all new issuances. See Working Committee, Implementing the Group of Thirty Recommendations in the United States (November 1990). The Working Committee's recommendations were supported strongly by the report of the Bachmann Task Force. *See* Bachmann Task Force on Clearance and Settlement Reform in U.S. Securities Markets, Report Submitted to the Chairman of the Securities and Exchange Commission (May 1992).

[16] While the proposed rule changes will significantly reduce the number of transactions in depository-eligible securities for which settlement is effected by the delivery of physical certificates, the proposed rule changes will not eliminate the ability to obtain physical certificates after settlement of the transaction. Investors who wish to obtain physical certificates after settlement of the transaction may continue to do so.

[17] Securities and Exchange Commission Release Nos. 33–6976; 34–31904; IC–19282 (February 23, 1993), 58 FR 11806.

[18] For example, for affected transactions, it will not be necessary to determine whether certificates are in the proper denominations and in good deliverable form.

[19] See Ralph C. Ferrara and Konrad S. Alt, Immobilization of the Security Certificate: The U.S. Experience, Securities Regulation Law Journal, Vol. 15, No. 3 (1987).

[20] Securities Exchange Act Release No. 32039 (March 23, 1993), 58 FR 16893 (Exhibit A).

NASD intends to convey more clearly that the exception is available only in unusual circumstances. The Commission believes the NASD's version of this exception is consistent with the spirit of the exception in the other SRO book-entry settlement requirements. In both cases, the exception is intended to address corporate reorganizations and other extraordinary activities where a deliverer cannot meet a depository's established delivery cut-off time. The NASD's book-entry settlement rule will address such transactions while requiring transactions between member firms and transactions between member firms and institutional clients that settle on a DVP or RVP basis to occur, with rare exceptions, in a book-entry environment.

The Commission recognizes that some broker-dealers may need to make operational and procedural changes to settle their transactions by book-entry. In order to have a uniform commencement date and to allow broker-dealers time to make internal systems and operational changes, the proposal is to become effective sixty days following Commission approval. The deferred effectiveness should allow affected parties sufficient time to make the necessary changes to comply with the rule.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule changes are consistent with Sections 6 and 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[21] that the proposed rule changes be, and hereby are, approved. The proposed rule changes will take effect sixty days following Commission approval.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

[21] 15 U.S.C. 78s(b)(2) (1988).

[22] 17 CFR 200.30–3(a)(12) (1991).

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34–32457; File No. SR–MSE–93–14]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the Midwest Stock Exchange, Inc. Relating to an Extension of the Pilot Program for Stopped Orders in Minimum Variation Markets

June 11, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 1993, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The MSE has requested accelerated approval of the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE proposes to extend the pilot program for stopped orders in minimum variation markets through March 21, 1994.[3] This is the second requested extension of the pilot, originally approved in File No. SR–MSE–92–10 on January 14, 1992.[4] The first requested extension of the pilot was approved in File No. SR–MSE–93–04 by the Commission on March 10, 1993.[5] The pilot program was scheduled to expire on June 10, 1993.

The Exchange also requests permanent approval of this proposal based upon reports submitted to the Commission during the pilot program. The Exchange requests that the Commission consider this request for permanent approval during the pendency of the pilot program extension requested herein of the pilot procedures.

The Exchange requests accelerated effectiveness of this rule proposal in order to allow the pilot program to continue on an uninterrupted basis, and to allow the Commission adequate time to consider the Exchange's request for permanent approval of the pilot procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the MSE pilot program through March 21, 1994. The pilot program established a procedure regarding the execution of "stopped" market orders in minimum variation markets (usually an ⅛th point spread market). Exchange rules now require specialists to grant stops if an out-of-range execution would result,[6] regardless of the spread.[7] The Exchange also has an existing policy regarding the execution of stopped market orders generally.[8] However, the Exchange believes it is necessary to establish a separate policy for executing stopped

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] As originally filed with the Commission, the present proposal requested an extension of the pilot procedures for an additional three months. However, the MSE and the Commission have agreed to extend the pilot procedures through March 21, 1994. Telephone conversation between Dan Liberti, Associate Counsel, MSE, and Betsy Prout, Staff Attorney, Commission, on June 8, 1993.

[4] *See* Securities Exchange Act Release No. 30180 (January 14, 1992), 57 FR 2621 (January 22, 1992) (order approving MSE pilot program for stopped orders in minimum variation markets) ("January 1992 Approval Order").

[5] *See* Securities Exchange Act Release No. 31975 (March 10, 1993), 58 FR 14230 (March 16, 1993) (order granting accelerated approval of extension of pilot program for stopped orders in minimum variation markets) ("March 1993 Approval Order").

[6] The term "out-of-range" means either higher or lower than the price range in which the security traded on the primary market during a particular trading day.

[7] The Exchange's Rules require specialists to grant stops if an out-of-range execution would result, regardless of the spread. These rules were in effect prior to the commencement of the pilot program procedures, and currently work in concert with the pilot program procedures. *See* Exchange Rule 37 (Article XX).

[8] The policy is contained in the MSE "Blue Book Rules" Paragraph 13, which is found in the MSE Trading Floor Handbook (July, 1992).

market orders when there is a minimum variation market.

The Exchange's current policy regarding the execution of stopped orders is to execute them after the next primary market sale on a "next or no better" basis.[9] In a minimum variation market, this policy frequently causes the anomalous result of requiring the execution of all pre-existing orders even if those orders are not otherwise entitled to be filled.[10]

The Exchange's pilot program procedures will prevent unintended results by requiring the execution of stopped market orders in minimum variation markets after a transaction takes place in the primary market at the stopped price or higher, or after the applicable MSE share volume is exhausted. In no event will a stopped order be executed at a price inferior to the stopped price.[11]

The proposed pilot program procedures will continue to benefit customers because they might receive a better price than the stop price, yet it also protects MSE specialists by eliminating their exposure to executing potentially large amounts of bids or offers when such executions would otherwise not be required under Exchange rules.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR–MSE–93–14 and should be submitted by July 9, 1993.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the MSE proposal to extend the pilot program for stopped orders in minimum variation markets, through March 21, 1994, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5)[12] and section 11(b)[13] of the Act. Section 6(b)(5) requires, among other things, that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. Section 11(b) permits a specialist to effect only market or limited price transactions on the exchange as broker. The Commission believes that approving the proposal to extend, through March 21, 1994, the pilot program which amends MSE Article XX, Rule 37, should further the objectives of section 6(b)(5) and section 11(b) through the use of procedures designed to provide for the execution of stopped orders, in minimum variation markets, while still providing the possibility of price improvement to customers whose orders are granted a stop.

As discussed in the January 1992 Approval Order which initially approved the pilot procedures, and in the March 1993 Approval Order extending the pilot procedures through June 10, 1993, the Commission has been concerned about the practice of stopping stock for a number of years. Specifically, the Commission has voiced concern that the practice of stopping orders may cause customer limit orders on the book to be bypassed by the stopped orders, thereby compromising the specialist's fiduciary obligation to orders on the book.[14] Nevertheless, the Commission has allowed the practice of stopping stock in markets where the spread is twice the minimum variation because the possible harm to orders on the book would be offset by the possibility of price improvement to the stopped order when the spread between the bid and offer is reduced.[15] The Commission also has approved on-going New York Stock Exchange, Inc. ("NYSE") and American Stock Exchange, Inc. ("Amex") pilot programs which permit NYSE and Amex specialists, respectively, to stop stock in minimum variation markets under certain limited circumstances where there is an imbalance on the opposite side from the order being stopped, and the imbalance is of sufficient size, given the characteristics of the security, to

[9] "Next or no better" means that a customer who requests a stop at a specific price will not do any worse than that price and could do better.

[10] For example, assume the market in ABC stock is 20–20⅛; 50 x 50 (*i.e.* 5000 shares are bid at a price of 20 and 5000 shares are offered at a price of 20⅛). A transaction at 20⅛ would be out-of-range, and would therefore create a transaction at a price higher than any effected on the primary market that day. A customer places an order with the MSE specialist to buy 100 shares of ABC at the market. The specialist stops the order at 20⅛ (effectively guaranteeing that the customer bought the 100 shares at 20⅛ or at a better price to be determined) and the MSE specialist includes the order in his quote by bidding the 100 shares at 20. If the next sale on the primary exchange is for 100 shares at 20, MSE policy prior to the initiation of the pilot procedures requires the specialist to execute the stopped market order at 20. However, because the stopped market order does not have time or price priority, its execution would have triggered the requirement for the MSE specialist to execute all pre-existing bids (in this case 5,000 shares) based on the Exchange's rules of priority and precedence. This would have been so, even though the pre-existing bids were not otherwise entitled to be filled.

In the above example, Exchange Rule 37 (Article XX) would have required the MSE specialist to fill limit orders at the limit price only if such orders would have been filled had they been transmitted to the primary market. Therefore, the 100 share print at 20 in the primary market would have caused at most 100 of the 5,000 share limit order to be filled on the MSE. However, because the MSE's policy, prior to the initiation of the pilot procedures, regarding stopped orders would have required the 100 share stopped market order to be filled, all pre-existing bids at the same price would have been filled in accordance with Exchange Rule 16 (Article XX).

[11] Exchange Rule 28 (Article XX) states: An agreement by a member or member organization to "stop" securities at a specified price shall constitute a guarantee of the purchase or sale by him or it of the securities at the price or its equivalent in the amount specified.

If an order is executed at a less favorable price than that agreed upon, the member or member organization which agreed to stop the securities shall be liable for an adjustment of the difference between the two prices.

[12] 15 U.S.C. 78f(b)(5) (1988).

[13] 15 U.S.C. 78k(b) (1988).

[14] See notes 4 and 5, *supra*. See also SEC, Report of the Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. 95, 88th Cong., 1st Sess., Pt. 2 (1963).

[15] See New York Stock Exchange, Inc., Rule 116.30; American Stock Exchange, Inc., Rule 109(c).

suggest the likelihood of price improvement.[16]

The MSE has had a policy for the execution of orders in minimum variation markets. MSE Rule 37, Article XX, requires that a specialist grant a stop if requested by an MSE member firm if the execution would occur outside of the primary market range for the day. Thus, this rule generally operates to ensure that MSE customers receive executions on the MSE that are no worse than if executed on the primary market. While the pilot program adds new procedures for stopping stock, the MSE has limited this practice to situations where the specialist stopping orders would not violate his or her fiduciary obligation to orders on the book. As discussed above, the pilot procedures provide that the stopped stock will only be executed if the primary market trades at the stopped price (thus, creating a new range for the day in the primary market which includes the stopped price), or if all of the displayed bid (in the case of stopped orders to buy) or offer (in the case of stopped orders to sell) has been exhausted on the MSE.

The Commission believes that the proposal is consistent with section 11(b) of the Act. Section 11(b) was designed, in part, to address potential conflicts of interest which may arise as a result of the specialist's dual role as agent and principal in executing transactions. In particular, Congress intended to prevent specialists from unduly influencing market trends through their knowledge of market interest from the specialist's book and their handling of discretionary agency orders.[17] The Commission has stated that, pursuant to section 11(b), all orders other than market or limit orders are discretionary and therefore cannot be accepted by specialists.[18] In our order approving the initiation of the MSE pilot program for stopping orders in minimum variation markets, the Commission stated its belief that, under the pilot, a specialist's treatment of stopped orders as equivalent to limit orders is appropriate, and consistent with section 11(b) of the Act because the orders would be automatically executed after a transaction takes place on the primary market at the stopped price. The Commission, therefore, believes that the requirements imposed on the specialist for granting stops in minimum variation markets under the MSE pilot procedures provide sufficient guidelines to ensure that the specialist implements the procedures in a manner consistent with his or her Section 11(b) market making obligations.

The Commission believes that the proposal is consistent with Rule 11b–1(a)(2)(ii) of the Act.[19] Rule 11b–1(a)(2)(ii) requires that a specialist engage in a course of dealings for his or her account that assists in the maintenance, so far as practicable, of a fair and orderly market. The Commission believes that the proposal should further the objectives with Rule 11b–1(a)(2)(ii), because the procedures should help the specialist to provide an opportunity for price improvement to the customer whose order is granted a stop, without requiring execution of pre-existing bids or offers when such executions otherwise would not be required under Exchange rules.

The Commission believes that it is appropriate to extend the pilot program procedures through March 21, 1994, in order to provide both the Commission and the Exchange an opportunity to study the effects of the revised procedures. At the same time, the pilot program should provide a benefit to investors through the possibility of price improvement to customers whose orders are granted stops in minimum variation markets. In our March 1993 Approval Order, the Commission specifically requested that the MSE monitor the operation of the pilot procedures during the pilot program and report its findings to the Commission. The Commission stated that the report should include, among other things, the MSE's findings with respect to the percentage of stopped orders that are executed at the stop price and the percentage of such orders that receive a price that is better than the stop price. The Commission stated that the report also should contain an analysis of the impact on orders on the book resulting from the execution of stopped orders at a price that is better than the stopped price to determine if orders are being bypassed.

The MSE submitted its report to the Commission on June 1, 1993 ("June 1993 Report").[20] This report indicates that orders stopped in minimum variation markets continue to be improved at a 90% rate, the same rate as it experienced during the initial pilot period.[21] The MSE also indicates that, 52% of the time, when stopped orders received an improved price, there was an contra-side order at the stopped price that was not executed when the stop was granted. The March 1993 Report found that 26% of the time contra-side orders were not executed at the stop price.[22] The Exchange maintains that this increase in unexecuted orders is offset by the significant number of stopped orders that received price improvement. The MSE states that a significant number of these orders subsequently were executed when their limit price was in range.

The Commission is approving the use of the pilot procedures through March 21, 1994, to allow the Commission an opportunity to review further the MSE's data and to allow the Commission an opportunity to request any additional information from the MSE concerning the pilot program. During the pilot extension, the Commission expects that the MSE will continue to monitor the operation of the pilot program procedures, using the criteria described above. Although the Commission believes that the MSE's report provides certain useful information concerning the pilot program, the MSE must provide more substantial data before the Commission can fairly and comprehensively evaluate the MSF's use of the pilot procedures.

First, the June 1993 Report indicates that 90% of orders stopped in minimum variation markets received price improvement. The Commission, therefore, believes that the pilot procedures provide a benefit to investors by offering the possibility of price improvement to customers whose orders are granted stops in minimum variation markets. The Commission requests that the MSE continue to

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[16] See Securities Exchange Act Release Nos. 28999 (March 21, 1991), 56 FR 12964 (March 28, 1991) (order granting temporary accelerated approval to NYSE pilot program for stopping stock, File No. SR–NYSE–90–48); 30482 (March 16, 1992), 57 FR 10198 (March 24, 1992) (order extending for one year NYSE pilot program for stopping stock, File No. SR–NYSE–92–02); and 32031 (March 22, 1993) 58 FR 16563 (March 29, 1993) (order extending for one year NYSE pilot program for stopping stock). The NYSE pilot program for stopping stock is scheduled to expire on March 21, 1994. See also Securities Exchange Act Release Nos. 32185 (April 21, 1993), 58 FR 25681 (April 27, 1993) (order extending for one year Amex pilot procedures for stopping stock, File No. SR–Amex–93–10); and 30603 (April 17, 1992), 57 FR 15340 (April 27, 1992) (order temporarily approving Amex procedures for stopping stock, File No. SR–Amex–91–05). The Amex procedures for stopping stock are scheduled to expire on July 20, 1993.

[17] See H.R. No. 1383, 73rd Cong., 2d Sess. 22, S. Rep. 792, 73rd Cong., 2d Sess. 18 (1934).

[18] See note 14, *supra*

[19] 17 CFR 240.11b–1(a)(2)(ii) (1990).

[20] See letter from Roger D. Hendrick, Vice President, Corporate Marketing, MSE, to Diana Luka-Hopson, Branch Chief, Commission, dated May 28, 1993.

[21] *Id.* See also March 1993 Approval Order, *supra* note 5 for a description of the MSE's previous pilot report ("March 1993 Report"). The MSE June 1993 Report states that, during the week of May 17th through May 21st, approximately 975 market orders were stopped by MAX, the Exchange's automated order routing system. According to the MSE, 90% of those orders received improved execution prices, and the remaining orders received the price they would have received if the order had not been stopped.

[22] See March 1993 Approval Order, *supra* note 5, for a description of the MSE's March 1993 Report.

monitor the percentage of stopped orders executed at the stop price, as compared to the percentage of such orders receiving a better price. In order to determine whether small customer orders or larger orders receive the benefit of price improvement, the MSE should also calculate the percentage of stopped orders which are for 2,000 shares or less.

In terms of how the pilot program affected customer limit orders existing on the specialist's book, the MSE June 1993 Report only reports on one week of trading activity, and indicates that, 52% of the time, when stopped orders received an improved price, there was a contra-side order at the stopped price that was not executed when the stop was granted. Thereafter, the June 1993 Report merely states that a "significant number" of the unexecuted contra-side orders were subsequently executed when their limit price was in range.

As discussed above, the Commission historically has been concerned that book orders may get bypassed when stock is stopped. To reassure the Commission that the pilot program procedures do not harm public customers with orders on the specialist's book, the MSE should provide detailed facts supporting its conclusion, particularly with regard to orders on the book that are bypassed due to the procedures, that the MSE "experience has clearly demonstrated that the process has indeed improved execution prices for customers," as the MSE states in its June 1993 Report.

Specifically, the Commission requests that the MSE conduct a more rigorous review of this issue. The MSE should attempt to measure how often limit orders on the opposite side of the market from a stopped order are entitled to, but do not receive, immediate execution. At a minimum, the MSE should determine how often such limit orders are executed by the close of the day's trading, and the MSE should examine at least one full month's trading data, rather than one week. Finally, the MSE should conduct a one-day review of all book orders in the five stocks receiving the greatest number of stops, and should submit to the Commission both raw trade data for and a description of the final disposition of each such order.

The Commission notes that the pilot program procedures at hand primarily are designed to affect executions of orders on the same side of the market as the stopped order. However, the MSE has not provided the Commission with any data concerning the effect that the pilot program procedures has had on orders on the same side of the market as the stopped order. The Commission requests that the MSE include in its report a detailed analysis of the number of orders on the same side of the market as the stopped order, with all the orders' respective share volume, that would have been executed if the pilot procedures had not been in place. The Commission requests that this portion of the report examine at least one month's trading experience.

The Commission also requests that the MSE evaluate and report to the Commission on orders, if any, that are stopped by any specialists in a minimum variation market, but not through MAX. The Commission expects the MSE to monitor closely specialist compliance with the pilot procedures. Finally, the report should discuss whether, during the entire course of the pilot program, there have been any market surveillance investigations or customer complaints regarding the procedures, and if any, how those investigations or complaints have been resolved.

The Commission requests that the MSE report its finding on these matters by November 30, 1993. If the MSE determines to request an extension of the pilot program, the Commission requests that the MSE also submit a proposed rule change by November 30, 1993.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. This will permit the pilot program to continue on an uninterrupted basis. Further, the substance of the proposal has been noticed previously in the **Federal Register** for the full statutory period and the Commission did not receive any comments on it.[23]

It is therefore ordered, pursuant to section 19(b)(2) of the Act[24] that the proposed rule change is hereby approved for a pilot period expiring on March 21, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14417 Filed 6–17–93; 8:45 am]

BILLING CODE 8010–01–M

[23] See Securities Exchange Act Release No. 29868 (November 18, 1991), 56 FR 59309 (November 25, 1991) (notice of proposed rule change by MSE to initiate pilot procedures for stopping stock in minimum variation markets, File No. SR–MSE–91–10). No comments were received on the proposal.

[24] 15 U.S.C. 78s(b)(2) (1988).

[25] 17 CFR 200.30–3(a)(12) (1991).

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and To Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

June 14, 1993.

On June 9, 1993, the Midwest Stock Exchange, Inc. ("MSE") submitted an application for unlisted trading privileges ("UTP") Pursuant to Section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–10849	ZONE	Discovery Zone Inc., Common Stock, $.01 par value

The above-referenced issue is being applied for as a replacement for the following security, which forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act for the following issue:

File No.	Symbol	Issuer
7–10850	CGNE	Calgene Inc., Common Stock, $.001 par value

A replacement issue is being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before July 6, 1993, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP as well as the withdrawal of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the

development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14416 Filed 6–17–93; 8:45 am]

BILLING CODE 8010–01–M

[File No. 81–914]

Application and Opportunity for Hearing: Beverage Group Acquisition Corporation; Seven-Up/RC Bottling Company of Southern California, Inc.

June 14, 1993.

Notice is hereby given that Beverage Group Acquisition Corporation ("Beverage Group") and Seven-Up/RC Bottling Company of Southern California, Inc. ("Seven-Up/RC") have filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Beverage Group from certain reporting requirements under section 15(d) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person, not later than July 14, 1993, may submit to the Commission in writing his or her views or any substantial fácts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interests of the person submitting such information or requesting the hearing, the reasoning for such request, and the issues of fact or law raised by the application which he or she desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14374 Filed 6–17–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2648]

Oklahoma; Amendment #1, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency dated May 26, June 3, and June 7, 1993 to include the counties of Adair, Alfalfa, Atoka, Blaine, Caddo, Cotton, Craig, Creek, Custer, Dewey, Grant, Haskell, Jefferson, Kiowa, Lincoln, Love, Major, Marshall, McClain, Noble, Nowata, Okfuskee, Okmulgee, Pawnee, Pushmataha, Sequoyah, Wagoner, Washita, Woods, and Woodward in the State of Oklahoma as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding. This Declaration is further amended to establish the incident period as beginning on May 8 and continuing through May 26, 1993.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Beckham, Cherokee, Coal, Delaware, Ellis, Greer, Harper, Hughes, Jackson, Latimer, Le Flore, Mayes, McCurtain, McIntosh, Muskogee, Ottawa, Pittsburg, Roger Mills, and Tillman Counties in Oklahoma; Benton, Crawford, Sebastian, and Washington Counties in Arkansas; Barber, Cherokee, Comanche, Harper, and Labette Counties in Kansas; and Clay, Cooke, Lamar, Montague, and Wichita Counties in Texas.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

The economic injury number assigned to Arkansas is 791300.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 12, 1993 and for economic injury the deadline is February 14, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 10, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–14936 Filed 6–17–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 2649]

TEXAS; Declaration of Disaster Loan Area

Collin County and the contiguous counties of Dallas, Denton, Fannin, Grayson, Hunt and Rockwall in the State of Texas constitute a disaster area as a result of damages caused by severe thunderstorms and tornadoes which occurred on May 9, 1993. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 9, 1993, and for economic injury until the close of business on March 10, 1994, at the address listed below: Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Business and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 264912 and for economic injury the number is 791400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 10, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–14397 Filed 6–17–93; 8:45 am]

BILLING CODE 8025–01–M

[License #06/10–0096]

Walnut Street Capital Co.; Notice of License Surrender

Notice is hereby given that Walnut Street Capital Company ("Walnut Street"), a Louisiana limited partnership, has surrendered its license to operate as a small business

investment company under the Small Business Investment Act of 1958, as amended ("the Act"). Walnut Street was licensed by the Small Business Administration on February 1, 1962.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on March 25, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 11, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–14398 Filed 7–17–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended June 11, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48851.
Date filed: June 8, 1993.
Parties: Members of the International Air Transport Association.
Subject: Comp Telex Reso 024f, Local Currency Fare Change—Portugal.
Proposed Effective Date: July 1, 1993.

Docket Number: 48856.
Date filed: June 10, 1993.
Parties: Members of the International Air Transport Association.
Subject: Telex TC31 South Pacific revalidation.
Proposed Effective Date: October 1, 1993.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–14378 Filed 6–17–93; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 11, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48854.
Date filed: June 9, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 7, 1993.
Description: Application of Voyageur Airways Limited, pursuant to section 402 of the Act and Subpart Q of the Regulations, for a Foreign Air Carrier Permit to engage in Non-Scheduled Air Transportation of persons, property and mail between the United States and Canada.

Phyllis, T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–14377 Filed 6–17–93; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement: Honolulu, HI

AGENCY: Federal Highway Administration (FHWA), Dot.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Honolulu, Hawaii.

FOR FURTHER INFORMATION CONTACT: William R. Lake, Division Administrator, Federal Highway Administration, Office Address: 300 Ala Moana Boulevard, rm. 3202, Honolulu, Hawaii 96813; Mailing Address: P.O. Box 50206, Honolulu, Hawaii 96950. Telephone: (808) 541–2700.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Hawaii Department of Transportation, Highways Division will prepare an environmental impact statement (EIS) on a proposal to improve Nimitz Highway from Keehi Interchange to Pacific Street, a distance of approximately two miles. The project would improve the level of service in the presently heavily congested section of Nimitz Highway between Sand Island Access Road and Waiakamilo Road, and improve access to and from downtown Honolulu.

The need to improve traffic flow along Nimitz Highway is considered necessary to provide for the existing and projected traffic demand, since congestion already exists at peak times and future development projects are further likely to adversely affect the corridor. Alternatives under consideration include: (1) Taking no action; (2) Constructing a two-lane reversible viaduct, supported by single or double columns; (3) Widening the at-grade highway from its present 6 lanes to 8 lanes; and (4) Constructing two-grade separated interchanges, one at Sand Island Access Road and one at Waiakamilo Road.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State,and local agencies, and to private organizations and citizens who have appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of general public information meetings will be scheduled. In addition, a public hearing will be held after publication of the draft EIS. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments of questions concerning this proposed action and EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 10, 1993.

William R. Lake,

Division Administrator Hawaii.

[FR Doc. 93–14356 Filed 6–17–93; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 11, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this

information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0124
Form Number: None
Type of Review: Extension
Title: Disclosure of Information on Inward and Outward Vessel Manifest
Description: The information is used to grant a domestic importer's, consignee's and exporter' request for confidentiality of its identity from public disclosure.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 578
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: On occasion and annually
Estimated Total Reporting Burden: 289 hours
Clearance Officer: Ralph Meyer, (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–14376 Filed 6–17–93; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Object Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit "Joan Miro," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition of the objects at the Museum of Modern Art in New York, New York, from on or about October 13, 1993, to January 11, 1994, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–14283 Filed 6–17–93; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 116
Friday, June 18, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, June 23, 1993, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14575 Filed 6–16–93; 12:45 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, June 23, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposal under the Board's Payments System Risk Reduction Policy regarding daylight overdraft penalty fee for bankers' banks, Edge corporations, and limited purpose trust companies. (Proposed earlier for public comment; Docket No. R–0693).
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: June 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14576 Filed 6–16–93; 12:45 pm]

BILLING CODE 6210–01–P

POSTAL RATE COMMISSION

Change in Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 33144; June 15, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:00 P.M., June 23, 1993.

CHANGES IN THE MEETING: Additional item to be added to meeting: Issues in Docket No. A93-13.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW, Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 93–14490 Filed 6–15–93; 4:22 pm]

BILLING CODE 7710–FW–P

POSTAL RATE COMMISSION

TIME AND DATE: 10:00 a.m., June 25, 1993.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Issues in Docket No. MC93–1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW, Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 93–14491 Filed 6–15–93; 4:22 pm]

BILLING CODE 7710–FW–P–M

federal register

Friday
June 18, 1993

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Ch. I and Part 101
Dietary Supplements; General Requirements for Nutrition Labeling; Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 93N-0178]

RIN 0905-AD90

Regulation of Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is reviewing the manner in which it regulates dietary supplements, including products containing vitamins, minerals, amino acids, herbs, and other similar nutritional substances. FDA is requesting public comment on approaches, consistent with the requirements of the Federal Food, Drug, and Cosmetic Act (the act), for assuring the safety of such products offered as dietary supplements. FDA is announcing the agency's intention to bring amino acid-containing dietary supplement products into compliance with the law and requests manufacturers of these products to submit any additional information that may be available on the safety and use of individual amino acids or combinations of amino acids as ingredients in dietary supplements. FDA is also announcing the availability of a report entitled "Task Force on Dietary Supplements Final Report" and requests comment on the recommendations made in this report. This action is being taken in response to the Dietary Supplement Act of 1992 (the DS act), recent developments and events in the marketplace, and the report of an outside expert body on the safety of amino acid supplements.

DATES: Written comments by August 17, 1993.

ADDRESSES: Submit written requests for single copies of "Task Force on Dietary Supplements Final Report," to the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The "Task Force on Dietary Supplements Final Report," and comments received in response to this document are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Judith S. Kraus, Center for Food Safety and Applied Nutrition (HFS-456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5233.

SUPPLEMENTARY INFORMATION:

I. Background

A. Description of Dietary Supplements

Dietary supplements constitute a large and diverse class of products consumed in capsule, tablet, liquid, or powder form by a substantial portion of the American public. These supplements encompass a wide array of products that include vitamins, essential minerals, protein, amino acids, herbs, animal and plant extracts (e.g., garlic extracts and inert glandulars), fats and lipid substances (e.g., fish oils, sterols, and essential fatty acids), dietary fibers, and chemical compounds that may have biological activity but that are generally not recognized as nutrients under the traditional definition of that term (e.g., bioflavonoids, enzymes, nucleic acids, para-aminobenzoic acid, and rutin).

Many of the ingredients in dietary supplements are concentrated substances that occur naturally in plant and animal products that have a history of safe use as food. When these substances are prepared for incorporation into dietary supplements in tablet, capsule, or bulk powder form, significant differences from their conventional food forms may result. For example, a substance may be added to a supplement at a much higher concentration than naturally found in foods, making it easy to ingest the target substance in an amount that greatly exceeds the intake that is likely or possible from food in conventional food form. What is safe at low levels in foods may not necessarily be safe at higher levels or in more concentrated forms. The chemical form of the substance in dietary supplements may also differ from that commonly consumed in foods in conventional food form.

Supplement products are frequently sold in containers that look like, and that have label information resembling, drugs (e.g., expiration dates, lot numbers, cotton fillers, tamper proof caps). Product information leaflets bearing claims are often available on store shelves and at the point of purchase. Products or particular ingredients in products may also be promoted by sales person at health food and specialty nutrition stores.

B. Recent Developments Suggesting Need for a Review

Significant changes in the dietary supplement market and in consumers' use of supplements have occurred in recent years. Public interest in the potential effect of vitamins (e.g., vitamin E and other antioxidant vitamins) in lowering the risk of chronic disease, a wider marketing and promotion of amino acids (e.g., for body building), and a general growth in the herbal market have contributed to this changing market. Consumers have reported the use of dietary supplements for various reasons: Cultural and ethnic practices, perceived health and nutritive effects including emotional and psychological needs, and perceived insurance against dietary insufficiency (Refs. 1 and 2). There is wide variation in the use of these products according to age, lifestyles, socioeconomic status, and geographic location.

Dietary supplements are now readily obtainable at grocery stores, drug stores, health food stores, and specialty nutrition stores, as well as by mail order. These products are also widely advertised in health promotion or body building magazines. A recent survey of dietary supplement advertisements showed that 12 health and body building magazines contain advertisements for 311 dietary supplement products from 89 different companies (Ref. 4).

At the same time that dietary supplement use is growing, there have been at least two recent significant outbreaks of public health problems associated with dietary supplements. In 1989, at least 1,500 cases of eosinophilia myalgia syndrome (EMS), including 38 deaths, were associated with the use of L-tryptophan-containing dietary supplements. Within the last year, there also have been a number of reports of serious illnesses associated with certain herbal and other botanical supplements. These developments have raised significant public health concerns.

Another significant factor that has compelled FDA to review current regulatory policies is enactment by Congress of the DS Act (Pub. L. 102-571). This legislation imposed a 1-year moratorium on FDA implementation of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments (Pub. L. 101-535)) with respect to dietary supplements not in conventional food form, called for studies by the General Accounting Office and the Office of Technology Assessment of FDA's regulatory program for dietary

supplements, and ordered FDA to complete a new round of rulemaking by the end of 1993 implementing the 1990 amendments for dietary supplements.

In addition to rulemaking, FDA is developing a strategy to evaluate solutions to achieve its public health goals in keeping with the intent of the DS Act that contemplates a review of FDA's policies and actions with respect to dietary supplements.

C. FDA's Public Health Mission

FDA's public health mission includes assisting Americans in capitalizing on the scientific advances over the last 30 years that have expanded the understanding of the relationship between health and diet and of the role that diet can play in improving the health of Americans. FDA encourages positive changes in dietary habits and recognizes that access by consumers to adequate nutrition and health information is an important part of this process. The agency is committed to ensuring, consistent with applicable law, that consumers have access to information on nutrition and health. This goal was given particular prominence and importance by the passage of the 1990 amendments.

To fulfill its public health mission with regard to dietary supplements FDA must also ensure that these products are safe, and that claims made for their use are scientifically supported, truthful, not misleading, and otherwise in accord with applicable legal standards. Indeed, ensuring safety and proper labeling is FDA's most basic and traditional responsibility and will remain the agency's first priority with respect to dietary supplements.

D. Recent FDA Activities to Address the Issues

FDA is addressing the safety and labeling issues regarding dietary supplements. An agency task force on dietary supplements has produced a report that sets out its conclusions and recommendations. In addition, the agency has received a report on the availability of data to evaluate the safety of amino acids, which was prepared under an agency contract with the Life Sciences Research Office, Federation of American Societies of Experimental Biology (LSRO/FASEB). The conclusions and recommendations of both of these reports are discussed in detail in this document.

In response to the 1990 amendments and the DS act, FDA has prepared proposed regulations on nutrition labeling, nutrient content claims, and health claims for dietary supplements. These documents appear elsewhere in this issue of the **Federal Register**. In addition to these projects, FDA has established a dialogue with industry, public health, and consumer group representatives through a series of meetings on safety and labeling issues for dietary supplements.

E. Task Force on Dietary Supplements

In May 1991, following the EMS outbreak associated with consumption of L-tryptophan-containing dietary supplements, the Commissioner of Food and Drugs (the Commissioner) established an internal FDA task force to review the agency's regulatory program for dietary supplements and to recommend improvements. Known as the Dietary Supplement Task Force (the Task Force), it was composed of agency staff with experience and expertise in regulatory, nutritional, legal, and medical issues related to supplements. The Commissioner asked the Task Force to examine a number of issues, including whether safety concerns exist regarding dietary supplements and, if so, to recommend a regulatory framework to distinguish supplements that raise safety concerns from those that do not.

The Task Force attempted to balance the agency's statutory mandate to protect the public health with some accommodation of the desire of a substantial segment of the public to obtain dietary supplements, including ones with possibly little or no documented nutritive value. The Task Force focused on products sold in capsule, tablet, liquid, and powder form. To facilitate its deliberations, the Task Force divided supplements into three categories: (1) Vitamin- and mineral-containing products; (2) amino acid-containing products; and (3) products containing all other ingredients, a category that included herbs without a history of documented traditional food use, plant and animal extracts, and certain other substances.

The Task Force completed its work in May 1992 when it submitted a report with recommendations to the Commissioner (Ref. 2). The Task Force identified the safety of ingredients in dietary supplements as the overriding concern for FDA as it develops a regulatory framework to distinguish among dietary supplement products. Details of the Task Force report with respect to specific types of substances are discussed elsewhere in this document under the appropriate category headings.

FDA is making this report available and requests comments on the recommendations in this report, including comments about which recommendations should be considered for adoption by FDA.

F. LSRO/FASEB Report on Amino Acids

In 1990, in the aftermath of the L-tryptophan-associated EMS outbreaks, FDA sought an objective and accurate scientific assessment by LSRO/FASEB on the safety of amino acids. FDA sought this report to provide scientific information on the safety of amino acids. This information is needed by FDA in exercising its enforcement discretion with respect to supplements that contain these substances.

LSRO/FASEB reviewed the available scientific literature on the safety of each of the amino acids. The review gave special emphasis to metabolism, genetic influences on metabolism, and population groups at potentially higher risk for adverse health effects from use of amino acids in supplements.

The LSRO/FASEB report "Safety of Amino Acids Used as Dietary Supplements" was submitted to FDA in July 1992, and its availability was announced in the **Federal Register** of December 2, 1992 (57 FR 57067). LSRO/FASEB reached several conclusions:

1. It was not able to identify a safe level of intake in dietary supplements for any of the amino acids in the report.

2. There was particular concern about the use of dietary supplements containing amino acids by several subgroups of the general healthy population (e.g., women of childbearing age, especially if pregnant or lactating; infants, children and adolescents; the elderly; individuals homozygous or heterozygous for inherited disorders of amino acid metabolism; individuals who smoke; and persons with low dietary protein intakes) and by patients with certain diseases who were considered to be at higher risk for possible adverse effects. The report concluded that use of dietary supplements containing amino acids by these special groups requires responsible medical advice and supervision.

3. The use of D-amino acids in dietary supplements is inappropriate because they have not been shown to have nutritional function in humans.

4. There is an immediate need to label dietary supplements containing amino acids currently in the marketplace to provide accurate information on the chemical composition and purity of ingredients, isomeric identity, shelf life, suggested doses, and contraindications for use.

5. There is a need for additional information on consumption of dietary supplements that contain amino acids, and

6. Based on an evaluation of the limited data on patterns of amino acid use and adverse health effects, LSRO/FASEB concluded that the safety of unrestricted use of particular amino acids in dietary supplements cannot be assumed.

LSRO/FASEB recommended a systematic evaluation of certain effects of these substances, given the scarcity of safety data for the amino acids in dietary supplements. Specific details of the LSRO/FASEB report findings are discussed in the amino acids section elsewhere in this document.

G. Current Legal Framework for Dietary Supplements Under the Act

FDA's authority to regulate the safety and labeling of dietary supplements derives from both the food and the drug provisions of the act. A product is legally a food or a drug based on its intended use. Products primarily consumed for their taste, aroma, or nutritive value are foods under section 201(f) of the act (21 U.S.C. 321(f)) (*Nutrilab. Inc.* v. *Schweiker*, 713 F.2d 335 (7th Cir. 1983)). While many dietary supplements are foods under this definition, other products, although marketed as dietary supplements, fall within the drug definition (section 201(g) of the act) because they are intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or to affect the structure or a function of the body. The intended use of a product may be determined from labeling, advertising, or other sources.

Because dietary supplements are subject to regulation as foods, drugs, or both, there are a variety of statutory provisions that come into play in the regulation of these products. These provisions include the adulteration provisions for food and drugs (sections 402 and 501 of the act (21 U.S.C. 342 and 351)), the misbranding provisions (sections 403 and 502 of the act (21 U.S.C. 343 and 352)), as well as the provisions on food additives (section 409 of the act (21 U.S.C. 348)), prescription drugs (section 503 of the act (21 U.S.C. 353)), and new drug approvals (section 505 of the act (21 U.S.C. 355)).

Fundamental to how the agency ensures the safety of foods, including dietary supplements, are the food additive provisions of the act (sections 201(s), 402(a)(2)(C), and 409). Before 1958, a manufacturer could use an ingredient in food, and FDA had the burden of proving, subsequent to marketing, that the ingredient was harmful at some level. The 1958 Food Additives Amendment reflected a determination by Congress that marketers of processed foods should bear the burden of establishing the safety of the ingredients they use before exposing the public to them.

A food additive is broadly defined in section 201(s) of the act as any substance, the intended use of which results, or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food.[1] Thus, ingredients incorporated into dietary supplements (vitamins, minerals, amino acids, herbs, and other similar nutritional substances that are processed in tablet, capsule, powder, or liquid form) are food additives unless they are generally recognized as safe (GRAS), or prior-sanctioned.[2]

Section 409(b)(1) of the act requires the manufacturer to submit a petition to establish the safety of use of a food additive, which must include, among other information, data that establish that the additive will accomplish its intended physical or technical effect in the food. FDA is precluded under section 409(c)(4)(B) of the act (21 U.S.C. 348(a)) from issuing a food additive tolerance and under its regulation (21 CFR 184.1(b)) from affirming the GRAS status of a substance for which a technical effect has not been demonstrated.

Some food ingredients are marketed based on the manufacturers' independent determination that they are GRAS. Such manufacturers do so at the risk that the agency will disagree and bring a regulatory action against the product.

H. FDA's Regulatory Concerns

The broad spectrum of dietary supplement products present a range of safety and labeling issues. Most of the ingredients in dietary supplements, especially vitamins and essential minerals taken in moderate potencies, present few safety concerns. A smaller number of ingredients of dietary supplement products and of dietary supplement products themselves, however, do pose direct and indirect hazards.

Direct hazards are those adverse health effects directly attributable to the components of dietary supplement products. They may be the result of effects of one or more of the ingredients (be it the desired ingredient or a binder or filler), an interactive effect of components of the product, or an effect of a contaminant in one or more of the ingredients of the dietary supplement.

The agency is concerned about potential direct hazards of some dietary supplements because information on the safety or the nature of many of the ingredients used in dietary supplements is not available. For example, there is considerable natural variability in the constituents of herbs and other botanicals and of glandular ingredients, and methods to characterize many of these products and their constituents do not exist (e.g., to determine the identity and bioavailability of active ingredients or to measure the levels of heavy metals, pesticides, or microbial contaminants). Furthermore, there apparently are no generally accepted current good manufacturing practices (CGMP's) that address how supplement products are to be manufactured to ensure that they have the claimed potency, appropriate purity, and other quality and performance attributes that help to ensure safety.

Indirect hazards may occur if the use of a supplement product delays the diagnosis or treatment of a health disorder. This is a particular concern when exaggerated or unfounded claims are made regarding the benefits of a product in treating or preventing serious diseases, such as cancer and AIDS. These indirect hazards are ordinarily dealt with through FDA's health fraud program.

To facilitate a more detailed examination of these concerns the agency has divided this document into the following sections: "II. Vitamins and Minerals," "III. Amino Acids," "IV. Herbs," and "V. Other Components of Dietary Supplements".

II. Vitamins and Minerals

A. Use of Vitamin and Mineral Supplements

Vitamins and essential minerals are nutrients. They are essential for life and must be obtained from dietary sources because they cannot be synthesized by the body or are not present in the body in amounts adequate to maintain health. Vitamin and mineral dietary supplements have a long history of use at levels at the Recommended Dietary Allowances (RDA's), below the RDA's, or at low multiples of the RDA's, and are generally considered safe at these levels for the general population. Intakes above RDA levels, however, vary widely in their potential for adverse effects. For some nutrients, such as the mineral selenium, there is a small

[1] Recently, two courts of appeal have held that the named ingredient in a gelatin capsule that consists only of that ingredient, and the ingredients necessary to form the capsule, is not a food additive. FDA is considering seeking further review of these decisions.

[2] A substance is considered prior-sanctioned if its specific use in food was authorized by FDA or the Department of Agriculture prior to September 6, 1958.

difference between intake levels that are safe and levels that can be harmful. Other nutrients such as vitamin C and thiamin have considerably larger ranges of safe intake.

Sales of dietary supplements containing vitamins and minerals have increased dramatically during the past two decades (Ref. 3). In 1990, sales totaled $2.9 billion. In a 1990 survey of the dietary supplement market, multivitamins and minerals accounted for 42 percent of the market share in dollars, vitamin C and calcium accounted for 12 percent and 8 percent, respectively, and vitamin B complex and vitamin E each accounted for 9 percent (Ref. 5).

One of the most comprehensive surveys on the use of vitamin- and mineral-containing supplements by individuals was the National Health Interview Survey (NHIS) conducted in 1986 (Ref. 6). This survey covered 11,775 adults (18 years of age or older) and 1,877 children (2 to 6 years of age). A total of about 5,600 respondents reported using more than 3,400 different vitamin or mineral-containing supplement products (Ref. 7). The more than 3,400 products in this survey were manufactured or distributed by about 600 different companies. About 90 percent of these products were manufactured or distributed by national companies. The remaining 10 percent of the products were manufactured or distributed by a large number of local companies, which accounted for about half of the total number of companies identified in this survey. This survey also showed that the labeled potencies of vitamin and mineral-containing supplements varied widely. However, potencies of nutrients contained in children's and prenatal products fell within a narrow range, generally at or below 100 percent of the U. S. Recommended Daily Allowance (U.S. RDA) per dosage unit (Ref. 7).

Potencies of single-nutrient products (i.e., products intended for supplementing one specific nutrient) and general multinutrient products (i.e., products intended for supplementing two or more nutrients that were not targeted for use by children, or pregnant or lactating women) varied greatly. For example, potencies of single-nutrient supplements ranged from 34 percent to 12,500 percent of the U.S RDA per tablet for vitamin D; from 67 percent to 33,333 percent for thiamin (vitamin B_1); from 69 percent to 50,000 percent for vitamin B_6; from 17 percent to 33,333 percent for vitamin B_{12}; and from 100 percent to 5,000 percent for niacin. Potencies of general multi-nutrient supplements ranged from less than 0.5 percent to 55,333 percent of the U.S. RDA per tablet for vitamin B_1; from less than 0.5 percent to 15,000 percent for vitamin B_6; from 1 percent to 16,667 percent for vitamin B_{12}; and from less than 0.5 percent to 5,000 percent for pantothenic acid. As seen in the range of values, some of these products are extremely high potency, containing 5,000 to about 55,000 percent of the U.S. RDA of one or more nutrients per tablet (Ref. 7).

The 1986 NHIS data base also provided information on how supplement use varied among respondents that took supplements. About 5 percent of all self-prescribed adult users of vitamin or mineral-containing supplements, which represents about 3 million persons in the United States, reported using at least 5 different vitamin or mineral-containing products (Ref. 6).[3] For most vitamins, the median average daily intake of all users of these products was between 100 percent and 200 percent of the 1980 RDA's). However, 10 percent of adult users consumed amounts of several vitamins (thiamin, riboflavin, vitamins C, E, B_6, and B_{12}) ranging from 1,666 percent to 3,333 percent of the RDA or more from the supplements alone (Ref. 6). Maximum average daily intakes of thiamin, riboflavin, and vitamin B_6 were as high as about 78,600 percent, 68,700 percent, and 51,000 percent of the RDA, respectively (Ref. 8).

B. Regulatory History of Dietary Supplements of Vitamins and Minerals

The regulatory history of dietary supplements of vitamins and minerals goes back over 50 years. Details of this regulatory history are contained in the **Federal Register** of November 27, 1991 (56 FR 60366 at 60381). A brief discussion of its history follows.

In 1941, after passage of the act, FDA issued regulations for vitamin and mineral dietary supplements expressed as minimum daily requirements. By the early 1960's, however, the agency felt that these regulations were outdated. The agency's concerns focused on high potency vitamins and on whether the potencies of vitamins and mineral supplements should be limited to nutritionally rational levels when these products were marketed as foods.

In 1973, FDA adopted new regulations to govern the labeling and composition of dietary supplements and other foods that purported to be, or were represented for, special dietary use because of their vitamin or mineral properties. The 1973 regulations set forth definitions, standards of identity, and labeling statements for vitamin and mineral dietary supplements. The standards permitted only five basic types of preparations; prescribed the vitamin, mineral, and other ingredient composition of multinutrient supplements; and specified maximum and minimum potencies for vitamins and mineral ingredients. A lawsuit was filed challenging this action, and the reviewing court remanded the regulations to FDA. In 1975, FDA held an administrative hearing on the regulations.

While FDA was in the process of completing the hearing and revising the vitamin and mineral regulations pursuant to the instructions of the court, Congress enacted legislation (Pub. L. 94–278, Title V, April 22, 1976) that became section 411 of the act (21 U.S.C. 350) (known as the "Proxmire Amendment"). This amendment prevents the agency from using the food standards or misbranding provisions of the act to place maximum limits on the potency of vitamins or minerals in foods. It also prevents the agency from classifying any vitamin or mineral as a drug solely because it exceeds a potency level that is deemed to have a nutritionally sound rationale.

In the **Federal Register** of October 19, 1976 (41 FR 46156), the agency issued a final regulation that amended the 1973 regulations to comply with the court's 1974 remand instructions and with the Proxmire Amendment. Another lawsuit was filed, and in February 1978, the court remanded the case to FDA. In the **Federal Register** of March 16, 1979 (44 FR 16005), FDA revoked the 1976 regulations and reinstated certain portions of the 1973 regulations. The agency has not taken any further action on the 1976 regulations.

C. Current Regulatory Status of Vitamins and Minerals

Some vitamins and minerals that are intended for use as dietary supplements are listed as GRAS under part 182, subpart F (21 CFR part 182, subpart F). In most cases, the only limitation placed on the conditions of their use is CGMP as defined in § 182.1. Some vitamins and minerals are also listed for other intended uses, such as special dietary or nutritional additives (part 172, subpart D (21 CFR part 172, subpart D)), or as nutrients in processed foods (part 182, subpart I). In addition, several vitamins and minerals have been affirmed as GRAS under part 184 (21 CFR part 184) for uses other than as dietary supplements.

[3] "Self-prescribed users" refers to those who use supplements without a doctor's recommendation, excluding pregnant or lactating females.

D. Issues of Concern

FDA has identified certain public health issues related to dietary supplements of vitamins and minerals. These issues include: (1) The need for a comprehensive science-based evaluation of the potential toxicity of vitamins and minerals at various intake levels; and (2) in light of that review, the need to establish the levels of intake of vitamins and essential minerals that are safe.

Certain vitamins and minerals are safe when consumed at low levels but may have adverse effects when consumed daily at higher levels. For example, consumption of as little as 25,000 international units (IU's) per day of preformed vitamin A (U.S. RDA is 5,000 IU's) for periods of several months or more can produce multiple adverse effects, including hepatic cirrhosis, increased intracranial pressure, and possibly birth defects (Refs 9 and 10). Especially vulnerable groups include children, pregnant women, and persons with liver pathology caused by a variety of factors including alcohol, viral hepatitis, and severe protein-energy malnutrition (Ref. 9).

The preponderance of reports of adverse effects from excess vitamin B_6 (pyridoxine) supplementation have involved intakes above 200 milligrams per day (mg/day) and have been associated with symptoms of a sensory neuropathy. However, as little as 50 mg/day supplemental vitamin B_6 (U.S. RDA is 2 mg) has caused resumption of symptoms in an individual previously injured by higher intakes (Refs. 11 and 12).

Daily doses of 500 mg of niacin from a slow-release formulation and 750 mg from an unmodified niacin product have been associated with severe adverse effects. U.S. RDA is 20 mg. These severe side effects include gastrointestinal distress (burning pain, nausea, vomiting, bloating, cramping, and diarrhea) and mild to severe liver damage (Refs. 13, 14, and 15). Several reports have suggested that time-release formulations of niacin carry a higher risk of side effects than do unmodified niacin products (Ref. 13).

Ingestion of excess selenium can cause tissue damage, especially in tissues or organs that concentrate the element. The toxicity of selenium depends upon the chemical form of the ingested element. Human intoxications have occurred with high intakes after a period of a few weeks (Ref. 16).

Related topics on the safety of vitamin and mineral supplements have been addressed in three LSRO/FASEB reports published since 1980. The first report, entitled "Guidelines for Safety Evaluation of Nutrients" (Ref. 17), evaluated the types of scientific evidence needed to establish the safety of vitamin and essential mineral ingredients in supplements. This report stated that the comprehensive systems to evaluate the safety of food additives, food colors, and ingredients classified as GRAS have limited application to decisions on the safety of essential nutrients. For example, eliminating from the food supply substances that pose a potential health hazard to the public is not a feasible option for essential nutrients. Although the margin of safety between current levels of ingestion and toxic levels may be narrow for some nutrients, the report pointed out that the highest no-adverse-effect level for most nutrients is ill-defined. Accordingly, the report concluded that a system is needed to evaluate and compare data on essentiality and toxicity of nutrients at various levels of intake. This report further concluded that, in the absence of toxicological testing, nutrients cannot be assumed to be free of adverse effects even at intake levels possible from normal diets.

A second report, entitled "Feasibility of Identifying Adverse Effects of Vitamins and Essential Minerals in Man" (Ref. 18), concluded that studies with nonrandomized, self-selected treatment groups cannot be sufficiently definitive to establish a causal relationship between nutrient excess and subtle, long-term adverse effects. Furthermore, according to the report, data collected in national surveys on the normal consumption of vitamins and essential minerals by the general U.S. population, either as dietary components or as nutrient supplements, are of limited value for the design of clinical protocols. The report stated, however, that prospective clinical investigations of certain vitamins or essential minerals can help to provide a reliable and extensive data base that would be required for evaluating the competing risks of nutrient deficiency and toxicity. A prime objective of a clinical protocol would be the identification of early and sensitive indicators of toxicity associated with chronic ingestion of nutrient excesses. The report concluded that the study of potential adverse effects of vitamins and essential minerals would enhance the protection of public health.

The usefulness of a national nutrition survey data base for monitoring nutrient safety of the U.S. population was evaluated through a contract study entitled "Suggested Measures of Nutritional Status and Health Conditions for the Third National Health and Nutrition Examination Survey" (Ref. 19). This study's primary objective was to identify physiological measures useful to FDA for monitoring both the safety and adequacy of the food supply, for inclusion in the third National Health and Nutrition Examination Survey (NHANES III). The report identified specific clinical indices useful in a survey to identify the prevalence within population subgroups of adverse health effects related to excessive dietary intake of selected nutrients. Measures of the safety of vitamins A, D, and B6 and the minerals iron and selenium were suggested. Measures of the safety of other nutrients were not available or not considered useful for this survey.

E. FDA's Task Force Discussion on Vitamin and Mineral Supplements

The Task Force recognized that most vitamins and minerals are generally safe when their intake is limited to small multiples of the RDA's. However, the Task Force identified certain health risks at higher levels of intake.

The Task Force recommended that FDA use notice and comment rulemaking to establish safe levels of use for vitamins and essential minerals in dietary supplements. The Task Force recommended that these levels be the maximum daily safe supplemental intake for a given vitamin or essential mineral, called a "dietary supplement limit" (DSL). The Task Force discussed the consequences of regulating supplement products containing ingredients that are not GRAS. It stated that the agency generally has not been willing to pursue enforcement actions unless it could demonstrate some degree of toxicity or potential toxicity. The Task Force stated that FDA has declined to set safe levels for nutrients in dietary supplements because the industry has shown that setting such levels provides it with a cutoff point just below which FDA will not take action, even though such levels are high. Such levels then become the industry marketing norm. Nevertheless, the Task Force stated that setting such levels is appropriate to ensure safety. The Task Force recommended that to ensure the safety of products containing vitamins and minerals, the agency adopt a DSL for each vitamin and essential mineral.

The Task Force said that the agency should initiate rulemaking to establish these safe levels of use. Alternatively, it suggested that the agency could call for the submission of food additive or GRAS affirmation petitions on the use of vitamins or essential minerals in dietary supplements. One approach, the Task

Force suggested, would be for the agency to propose to affirm as GRAS (with certain specific exceptions) the highest RDA levels listed by the National Academy of Sciences. The Task Force stated that the burden would then shift to those commenting to submit evidence that would justify a higher level that represents safe use. Such an approach, the Task Force pointed out, would facilitate the prompt publication of a proposals and focus the work of agency scientists on preparing the final rules based on the evidence submitted.

The Task Force recommended such actions because it believed that it is appropriate for the agency to distinguish between those vitamin and essential mineral potencies in dietary supplements whose use is safe, and those whose use create public health concern.

F. Request for Public Comment on the Safety of Vitamin and Mineral Supplements

FDA requests comment on the appropriate procedures, both scientific and administrative, and types of data for establishing the safety of vitamins and essential minerals intended for consumption in dietary supplements in quantities significantly in excess of the amounts necessary to meet the known nutrient needs of practically all healthy people. As stated previously, the Task Force recommended one approach to a scientifically based determination of the upper levels of safe use of vitamin and essential mineral ingredients. FDA is soliciting comments on this recommendation as well as recommendations on other approaches.

In addition, FDA requests comments on the following questions concerning evaluation of the safety of vitamins and minerals, which may also be appropriate for the other ingredient categories:

1. How should the requirement under section 409 of the act that the tolerance limitation not be set higher than the level necessary to accomplish the additive's intended physical or other technical effect be satisfied?
2. If current safety evaluation procedures are followed, what safety factor or margin of safety is appropriate?
3. If safety factors or margins of safety are to be applied, how should adverse effects be identified against which these factors or margins will be applied?
4. Under what circumstances and how can data from nonexperimental adverse reaction reports and other sources be utilized?
5. Is it necessary to establish specifications and good manufacturing practices to assure the safety of vitamin and essential mineral products?

As a secondary issue, the agency does not know what assumptions and expectations consumers and health professionals have relative to the safety of ingredients of dietary supplements. FDA requests comments on what assumptions consumers make about the safety of ingredients in dietary supplement products, and on what information consumers should have on the label or in labeling to make informed choices about the safety of these products.

III. Amino Acids

A. Current Use of Amino Acid Supplements

Amino acids are available in the marketplace as single compounds, in mixtures (containing two or more amino acids), as components of protein powders, as chelated single compounds, or in chelated mixtures. These products are marketed for a variety of uses. LSRO/FASEB found that amino acids in dietary supplements are primarily used for nonnutritional purposes, i.e., for specific therapeutic effects (Ref. 10). Amino acids were reported to be the most frequently mentioned component on ingredient lists for dietary supplements advertised in a survey of body building magazines (Ref. 4).

LSRO/FASEB estimated the quantities of individual amino acids available for sale by members of a major trade association in the United States from 1987 to 1989 (Ref. 20). L-lysine and L-tryptophan (for 1987 to 1988) were available in the highest amounts, i.e., greater than 1,000,000 pounds per year for each. L-methionine had the next highest availability rate at more than 20,000 pounds per year. Data on the ingestion of amino acids by individuals have not been collected, but product labels recommended daily intakes (RDI's) ranging from 0.25 to 4.5 grams (g) for single amino acids, from about 1 to 15 g for partially digested protein blends (Ref. 20), and from 0.35 to 40.0 g for unspecified amino acids (Ref. 4).

B. Information on the Role of Amino Acids in Human Nutrition

Amino acids are the individual structural units of proteins and are precursors for, or may function as, biologically active molecules such as some neurotransmitters and hormones. Nine amino acids, histidine, isoleucine, leucine, lysine, methionine, phenylalanine, threonine, tryptophan, and valine, must be supplied in the diet because they are not synthesized by humans or synthesized only in amounts inadequate for normal growth or maintenance and are thus considered essential (Ref. 3). Other amino acids are nonessential because they are synthesized endogenously in amounts sufficient to support growth and nitrogen balance and are, therefore, not specifically required in the diet.

Most amino acids are supplied in the normal diet as constituents of protein, not as free amino acids. Consumption of foods containing intact proteins ordinarily provides sufficient amounts of amino acids for growth and development of children and maintenance of health of adults in the general U.S. population. Safety in these forms is generally not a concern.

Some amino acids, such as L-tryptophan and L-arginine, have been promoted and used for their claimed pharmacologic effects. The use of dietary supplements containing these free amino acids appears to be a common practice among individuals interested in increasing muscle mass and strength (Refs. 2, 4, and 20).

C. Regulatory History of Amino Acid Supplements

In 1945, FDA issued a Trade Correspondence stating that a food to which an amino acid is added would ordinarily be regarded as a food for special dietary use and must be so labeled, but may also in some cases be subject to the drug provisions of the act (Ref. 21). Subsequently, the 1958 Food Additives Amendment required the premarket approval of any substance whose intended use could reasonably be expected to result in its becoming a component of food, unless the use of the substance were GRAS or subject to a prior sanction. In 1960 (25 FR 880, February 2, 1960, and 25 FR 7332, August 4, 1960), FDA proposed to list a number of amino acids as GRAS for their intended use as "nutrients and/or dietary supplements" with no limitations codified at that time under 21 CFR 121.101(d)(5). This proposal was finalized in 1961 (26 FR 1444, February 18, 1961).

In the **Federal Register** of April 6, 1972 (37 FR 6938), FDA proposed to revoke the GRAS status of all amino acids for use as nutrients in foods and for use in dietary supplements because of safety concerns based on studies showing that excessive intakes of certain amino acids produced adverse effects in animals. FDA concluded that the available information was insufficient to support the GRAS status of amino acids. At the same time, FDA proposed conditions for the safe use of amino acids as food additives.

In the same issue of the Federal Register, FDA also proposed a food additive regulation to provide for the use of amino acids as nutrient fortificants for addition to intact protein-containing foods to improve the protein quality of these foods (37 FR 6938). To prevent the random addition of amino acids to foods, the agency proposed to limit the use of amino acids to foods that contain naturally occurring, primarily intact, protein that are considered significant dietary sources of protein. The agency also addressed the use of amino acids in special formulations for nutritional use in medical conditions.

In the Federal Register of July 26, 1973 (38 FR 20036), FDA published a final rule that revoked the GRAS status of amino acids for nutritive and dietary supplement purposes. FDA promulgated a food additive regulation that restricted the addition of amino acids as nutrients to foods only when needed to significantly improve the biological quality of the total protein in a food containing naturally occurring, primarily intact protein that is considered a significant dietary protein source. In addition, the agency stated that no action would be taken to alter the GRAS status of amino acids or their derivatives with recognized nonnutritive uses (e.g., as flavor enhancers or dough conditioners).

From 1974 through 1976, several amino acids were listed in 21 CFR 121.1002 as food additives. However, because of an editorial error in recodifying FDA's regulations, amino acids were listed as GRAS for use as "nutrients and/or dietary supplements" in the March 15, 1977, edition of title 21 of the Code of Federal Regulations. This error was corrected by a Federal Register notice dated October 28, 1977 (42 FR 56278 at 56279). In early 1977, prior to the correction, FDA brought a seizure action against L-tryptophan tablets on the grounds that the tablets contained an unapproved food additive. The court found that, despite the fact that FDA's error had been inadvertent, the manufacturer was entitled to rely on the GRAS regulations as published. In another seizure initiated in 1977 against L-tryptophan as a dietary supplement, FDA agreed to dismissal with prejudice on September 14, 1982.

D. Current Regulatory Status of Amino Acid Supplements

Amino acids, except L-cysteine and its hydrochloride salt, may only be used as ingredients of food in accordance with § 172.320 (21 CFR 172.320). L-cysteine and its hydrochloride salt (§§ 184.1271 and 184.1272) are affirmed as GRAS for use as dough strengtheners. Under § 170.50 (21 CFR 170.50), FDA has determined that the use of glycine and its salts for certain technical effects in human food is not GRAS. FDA considers all other uses of amino acids in food to represent unapproved, and therefore unlawful, uses of food additives.

E. Issues of Concern

Products containing amino acids warrant special attention by the agency because of several recent events, including: (1) The recent epidemic of EMS, a serious disease associated with consumption of L-tryptophan supplement products, (2) a recent report by an independent organization that concluded that data showing safety of amino acids in dietary supplements are lacking (Ref. 20), and (3) the task force report, which discussed amino acids and presented various options for regulating dietary supplements that contain amino acids.

1. EMS Outbreak from L-Tryptophan

The outbreak of EMS from the use of L-tryptophan-containing dietary supplements has prompted FDA to reexamine its enforcement posture regarding amino acid containing supplements. EMS is a systemic connective tissue disease characterized by eosinophilia (an increase in one type of the white blood cells), myalgia (severe muscle pain), and cutaneous (skin) and neuromuscular manifestations. This illness, which occurred in epidemic fashion in the United States in the summer and fall of 1989, is associated with the use of dietary supplements containing L-tryptophan (Ref. 39). To date, more than 1,500 cases, including 38 deaths, have met the Centers for Disease Control (CDC) case surveillance definition of the disease, although the true incidence of the disorder is thought to be much higher.

FDA first learned about problems with L-tryptophan in 1989, following a report from New Mexico about four cases of an illness manifested by myalgia and eosinophilia, in which the common denominator appeared to be the use of L-tryptophan. FDA subsequently issued a strong public warning on November 11, 1989 (Ref. 22), to discontinue the use of L-tryptophan. On November 17, 1989, in conjunction with CDC, FDA requested a nationwide recall of all over-the-counter dietary supplements containing 100 mg or more of L-tryptophan (Ref. 23). The agency also issued an Import Alert to detain all foreign shipments of L-tryptophan (Refs. 24 and 25). On March 22, 1990, the recall was extended to all marketed products containing added manufactured L-tryptophan because of a case of EMS in a patient consuming less than 100 mg daily (Ref. 26). (Products containing added L-tryptophan permitted by § 172.320 were excluded from this recall.) The net effect of the recall and import alert was a ban on the oral supplement forms of L-tryptophan because virtually all of the raw material used to formulate U.S. products was imported.

Despite recent intense research, the exact cause of EMS and an understanding of how it develops have not been established. Initial epidemiological studies implicated the L-tryptophan produced by a single Japanese manufacturer, Showa Denko K. K., and further noted that certain impurities were identifiable in batches of case-associated L-tryptophan. These findings suggested that some impurity or other component in these batches of L-tryptophan may have been responsible for EMS. However, both initial and subsequent epidemiological studies on the EMS epidemic have identified cases of EMS, and another related disease, eosinophilic fascitis, that occurred before the 1989 epidemic and that appear to be related to other batches or sources of L-tryptophan (Refs. 27, 40 and 41).

EMS and other related disorders are also reported to be associated with exposure to L–5-hydroxytryptophan, a related compound that is not manufactured using the biofermentation process that was used for production of L-tryptophan and is, therefore, not associated with the same impurities or contaminants. There is also some evidence for predisposing factors in some EMS patients. These data, as well as data from animal experiments (Ref. 28), indicate that L-tryptophan, either alone or in combination with some other component in the supplement products, may be responsible for some of the pathological features in EMS. Taken together, these findings support previous suggestions that the L-tryptophan-associated EMS was caused by several factors and is not necessarily related to a contaminant in a single source of L-tryptophan.

2. Summary of LSRO/FASEB (1992) Report on Amino Acids

As discussed earlier, LSRO/FASEB reviewed the available safety data for the following amino acids: branched-chain amino acids (leucine, isoleucine, and valine), histidine, lysine, methionine, L-phenylalanine, D-phenylalanine, threonine, L-tryptophan, D-tryptophan, alanine, arginine,

ornithine and citrulline, asparagine, aspartic acid, cysteine and cystine, glutamine, glutamic acid, glycine, proline and hydroxyproline, serine, and tyrosine.

For each of the amino acids, LSRO/FASEB reviewed the scientific literature from studies with experimental animals and humans. Special emphasis in the review was given to metabolism, genetic influences on metabolism, and groups with potentially higher risk for adverse health effects resulting from use of amino acids in supplements.

LSRO/FASEB reached several conclusions:

1. A safe level of intake for the amino acid-containing dietary supplements in the report could not be identified.

2. There is a basis for particular concern about the use of dietary supplements containing amino acids by several subgroups of the general healthy population (e.g., women of childbearing age, especially if pregnant or lactating; infants, children, and adolescents; the elderly; individuals homozygous or heterozygous for inherited disorders of amino-acid metabolism; individuals who smoke; and persons with low dietary protein intakes) and by patients with certain diseases who were considered to be at higher risk for possible adverse effects. The report concluded that use by these special groups of dietary supplements containing amino acids requires responsible medical advice and supervision.

3. The use of D-amino acids in dietary supplements is inappropriate because they have not been shown to have nutritional function in humans.

4. There is an immediate need to label dietary supplements containing amino acids to provide accurate information on chemical composition and purity of ingredients, isomeric identity, shelf life, suggested doses, and contraindications for use. LSRO/FASEB also noted the need for additional information on consumption of dietary supplements containing amino acids.

5. Based on an evaluation of the limited data on patterns of amino acid use and adverse health effects, LSRO/FASEB concluded that the safety of unrestricted use of particular amino acids in dietary supplements cannot be assumed. LSRO/FASEB recommended a systematic evaluation of certain effects of these substances, given the paucity of safety data on the amino acids in dietary supplements.

FDA has reviewed the LSRO/FASEB report and notes that it is consistent with the agency's previous determination that amino acids for nutritive purposes are not GRAS. FDA solicits comments on the report and submission of data that was not included in the report.

F. FDA's Task Force Discussion on Amino Acids

As discussed earlier, amino acids were one category of ingredients of dietary supplements considered by the Task Force. The Task Force suggested several options for the agency to consider in the regulation of amino acid-containing dietary supplements. One option is to regulate single amino acids and mixtures of amino acids as drugs when marketed for any use other than those specified in the GRAS and food additive regulations.

A second regulatory option identified in the report is to regulate amino acids in supplements as food additives or GRAS substances with a DSL low enough to ensure safety, unless drug claims are made, in which case the products would be drugs. The Task Force recognized that if the latter option were adopted by the agency, a DSL for each amino acid would have to be established.

The Task Force recommended that amino acid-containing dietary supplements be regulated as drugs. This recommendation was based, in part, on information presented indicating that the primary intended use of these products is for therapeutic rather than nutritional purposes. The Task Force pointed to the wide marketing of amino acids for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or to affect the structure of the body through such claims as "Nature's Tranquilizer," " * * * stimulates the immune system * * *," " * * * reduce craving for alcohol and sweets * * *," " * * * used in the treatment of alcoholism, * * * " and "used in the treatment of schizophrenia and senility."

G. Request for Public Comment on Regulatory Approach to Amino Acid Dietary Supplement Products

Based on the foregoing, it is clear that many amino acid products are being marketed in violation of the act because they are unapproved food additives, and adequate scientific evidence to ensure their safe use does not exist, or because they are being marketed for therapeutic uses, and the drug requirements of the act have not been satisfied for these uses.

FDA intends to bring amino acid-containing supplements into compliance with the law. As part of this effort, FDA is providing, with the publication of this document, an opportunity for interested persons to submit data and information on the safety and intended uses of amino acids, as well as support for claims being made for them.

Amino acid-containing supplements that are marketed for use as drugs must comply with the drug provisions of the act. In this regard, FDA will consider whether the drug uses of particular amino acids are so well established and widespread as to justify rulemaking to establish as a matter of law that these products are drugs.

For those amino acid supplements intended for food (nutritional) use, interested parties should provide FDA with data or other information that provide a basis upon which these products can be legally marketed under the food provisions of the act. Issues for consideration include how to satisfy the requirement under section 409 of the act "that intended effects be demonstrated," whether amino acids in dietary supplements have a nutritional purpose, and on what evidence the agency can determine that the use of amino acids in dietary supplements is safe.

FDA will consider any data and comments submitted in response to this document in forming its regulatory and enforcement strategy with respect to amino acid-containing products. However, FDA notes that while it will review the comments that it receives, the agency will continue to take regulatory action as appropriate to address safety or other consumer protection concerns.

IV. Herbs

A. Use of Herbal Dietary Supplements

Herbal and other botanical ingredients of dietary supplements include processed or unprocessed plant parts (bark, leaves, flowers, fruits, and stems) as well as extracts of essential oils. They are available in a variety of forms, such as teas, powders, tablets, capsules, and elixirs. Botanicals are marketed either as single substances or in combination with other materials, including vitamins and minerals, amino acids, and nonnutrient ingredients. They are marketed for children and adults. Data on the availability of, and consumer use of, botanical products are very limited.

B. Regulatory History and Current Regulatory Status of Herbs

Many herbs and other botanical ingredients have been used in foods as flavoring agents. However, there are also many herbs that have no known history of food use and, even without drug claims, are used for medical purposes. Many of these herbs have a history of

use as traditional medicines in many countries outside of the United States.

The GRAS and food additive regulations list a number of herbs and herbal products and vegetable gums. However, the data that were used to form the basis for most of these regulations were related to such intended uses as flavoring agent, stabilizer, thickener, formulation aid, emulsifier, or firming agent and did not necessarily reflect the levels at which, or forms in which, they have been used in dietary supplements.

Food-use herbs are subject to the food additive provisions of the act (sections 201(s) and 409 of the act). Because the act does not explicitly restrict marketing to substances whose safety has been determined by FDA, many of these substances are marketed without any safety review by the agency, based, presumably, on a GRAS determination by the marketer.

C. Issues of Concern

While many ingredients in herbal dietary supplements have not been associated with specific health concerns, some components contained in these products have been associated with reports of adverse health effects or toxicities in animals and humans. For example, recently, at least six documented cases of toxic hepatitis have been associated with the consumption of chaparral (*Larrea tridentata*) (Refs. 29, 30, 34, and 35). There have been several cases of adverse reactions associated with the consumption of dietary supplements containing *Lobelia inflata* (lobelia, Indian tobacco) (Ref. 36). Germander (genus *Teucrium*) has been recently implicated in at least seven cases of acute nonviral hepatitis in France (Ref. 32). Chronic renal failure has been reported to have occurred as the result of consumption of herbal powders containing *Stephania tetrandra* and *Magnolia officinalis* (Ref. 43).

The use of yohimbe (*Pausinystalia yohimbe*) in dietary supplements such as body building products appears to be increasing. The known pharmacologically active components of yohimbe are yohimbine and related alkaloids. Yohimbine causes vasodilation, thereby lowering blood pressure. Other actions of yohimbine include antagonism of neurotransmitters and their precursors. Its use is contraindicated for certain medical conditions or with concurrent use of drugs or foods that exhibit monamine oxidase activity because of increased potential for adverse effects.

Human toxicity, including fatalities, have been associated with consumption of the *Symphytum* (comfrey and Russian comfrey) *Heliotropium* and *Senecio* species (Ref. 33). The scientific literature documents the toxicity of these and other pyrrolizidine alkaloid (PA)-containing plants (Refs. 43 and 44). Some of these plant materials are taken as teas or in capsules for a variety of suggested medical effects or simply as beverages. There are reports that PA causes liver injury and failure secondary to veno-occlusive disease (i.e., blocking the veins that remove blood from the liver). There have been sporadic cases reported, as well as reported epidemics, involving many thousand of people, of serious liver injury from consumption of flours contaminated with pyrrolizidine alkaloid (Refs. 45 and 46). Toxicity associated with PA-containing plants can occur, and has occurred, after relatively short use (a few weeks and at relatively low doses). Liver failure, cirrhosis, and death (approximately 25 percent of 7,500 affected individuals in an outbreak in Afghanistan) can result. PA toxicity can even occur in newborns whose mothers have ingested PA-containing plant materials. Infants appear to be particularly sensitive to the effects of PA's, and fatal hepatic disease has been reported in a newborn infant whose mother consumed PA-containing products during pregnancy (Ref. 47). Several animal studies have demonstrated that the toxicity of PA's and PA-containing plants, including comfrey, can cause cancer in test animals (Refs. 48, 49, and 50).

D. Request for Public Comment

FDA requests data and information from marketers of herbal products and other interested parties that will assist the agency in evaluating the safety of particular herbal products and herbal products as a category. FDA intends to explore approaches to regulations that will enable it to ensure the safety of herbal products in an effective and efficient manner.

FDA's immediate goal with respect to herbal products is to ensure their safety and to remove hazardous products from the market. FDA is aware that many herbal products are marketed for drug uses without having complied with the drug approval requirements. When appropriate, FDA will take regulatory action against these products on a case-by-case basis in accordance with the priorities established in FDA's health fraud program.

FDA requests comments on the following questions:

1. How should the requirement under section 409 of the act that the tolerance limitation not be set higher than the level necessary to accomplish the additive's intended physical or other technical effect be satisfied?

2. Should FDA consider another approach to regulating the safety of herbs? If so, what should it be? What should the standard be for determining when the use of the herb is safe?

3. What types of data are necessary for establishing safe levels of use for herbs (e.g., no effect levels, clinical studies, reports of adverse effects)?

4. What information should be included on the label to assure safe use of herbal products?

5. It is necessary to establish specifications and good manufacturing practices to assure the safety of herbal products?

V. Other Components of Dietary Supplements

A. Use of "Other" Category Supplements

This category includes a broad array of substances that are offered for sale as components of dietary supplements, including fish and plant oils, fatty acids, fibers and vegetable gums, and carnitine. Some of the ingredients in this broad category are concentrated substances that occur naturally in plant and animal products. In addition, many of these substances have no recognized nutritive value or technical effects.

Fish and plant oil fatty acids and other lipids are available as ingredients in capsules or as oils. They include the ingredients menhaden oil, flax seed oil, black currant oil, oil of evening primrose, fish oils and omega-3-fatty acids, essential fatty acids, phytosterols, and others. A recent dietary supplement advertising survey (Ref. 4) found that lipid ingredients accounted for about 4 percent of the ingredients in products advertised in health magazines.

Dietary fiber is available in products either singly or as mixtures. Major types of fiber include cellulose, hemicellulose, pectins, mucilages, gums, algal polysaccharides, and lignins. Common sources of some of these substances are wheat bran, psyllium, guar gum, and apple pectin. Products containing dietary fiber have been offered for nonfood uses, e.g., as an appetite suppressant.

Data and information on the current marketing and use of these "other" dietary supplement products are sparse. The following discussion reflects the information that is available.

B. Regulatory History and Current Status of "Other" Category Supplements

The agency has considered these products to be subject to the food provisions of the act, except when

therapeutic, disease prevention, or structure/function claims not related to nutritive value are made about the products. As food ingredients, these substances are subject to the food additive provisions of the act (sections 201(s) and 409 of the act). However, because, as stated previously, the act does not restrict marketing to substances whose safety has been determined by FDA, many of these substances have been marketed without any safety review by the agency, although they are subject to regulatory action by the agency.

The GRAS regulations list a number of vegetable gums, but the data that were used as the basis for most of these regulations were related to intended uses such as stabilizer, thickener, formulation aid, emulsifier, or firming agent and did not necessarily reflect the amounts or forms in which they are used as sources of fiber in dietary supplements. For many of these ingredients, there are no GRAS or food additive regulations in effect, and FDA has no basis on which to determine if the ingredient is GRAS.

C. Issues of Concern

Products in this "other" category are readily available in the marketplace, even though generally very little is known about their safety. Although many of these products contain ingredients that are known to be present in the human body, these ingredients may be part of the normal diet. Some of these compounds have been associated with serious toxicity. For example, the compound gamma hydroxy butyrate (GHB) is ubiquitous in the human body, although its function is unknown. In the recent past, use of GHB in dietary supplements became popular as a sleep aid and also as a weightlifting aid. However, reports of serious adverse reactions observed in association with GHB became common throughout the country. These reports included respiratory depression, coma, seizures, and other serious reactions. As a result of these reports, FDA issued a consumer alert on this product.

Toxicity from chronic use of germanium supplements includes nephrotoxicity that has resulted in death. In surviving patients, renal function has improved after discontinuation of germanium supplementation. However, in no case has recovery been complete (Ref. 38).

D. Task Force Report on "Other Components"

The Task Force's description of the "all other substances" category included nonessential chemical compounds, herbs without a history of documented traditional food use, and plant and animal extracts. Dietary fiber and certain fatty acids were not considered in the Task Force report. The Task Force recommended that the agency find an effective means of ensuring safe use of this "other" category of ingredients. Among the possible options suggested by the Task Force were to continue regulating these ingredients as food additives, to require a description of the nutrient value on the label of foods containing these ingredients, and to bring actions against these substances when they are represented as drugs.

E. Request for Public Comment

FDA requests comment on the following:

1. How should the requirement under section 409 of the act that the tolerance limitation not be set higher than the level necessary to accomplish the additive's intended physical or other technical effect be satisfied?

2. If current procedures are followed, what safety factor or margin of safety is appropriate?

3. Should FDA consider another approach to regulating safety? If so, what should it be? What should the standard be for determining when the use of the substance is safe?

4. What types of data are necessary for establishing safe levels of use for these substances (e.g., no effect levels, clinical studies, reports of adverse effects)?

5. What information should be included on the label to assure safe use of these substances?

6. Is it necessary to establish specifications and good manufacturing practices to assure the safety of these substances?

FDA is also soliciting comments on the availability, sources, ranges, and current uses of "other" ingredients, as well as information/comments on changing patterns of use of these substances over the last 20 to 30 years. Additionally, FDA is seeking suggestions to further define this category of ingredients.

VI. Possible Future Actions

The agency will review the data and information that it receives in response to this document and will develop appropriate steps to assure the safety and proper labeling of dietary supplements. The agency will consider the array of options presented in this document and suggested in comments received to plan next steps. These next steps may include rulemaking, enforcement action, or other appropriate activities.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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20. LSRO/FASEB, "Safety of Amino Acids Used as Dietary Supplements," Bethesda, MD, July 1992.

21. FDC Act Trade Correspondence, TC–387, June 23, 1942.

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VIII. Comments

Interested persons may, on or before August 17, 1993, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This document is issued under sections 201, 301, 402, 403, 409, 501, 502, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 355, 371); and the Dietary Supplement Act (Pub. L. 102–571).

Dated: June 9, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–14271 Filed 6–15–93; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 85N–061D]

RIN 0905–AD96

Food Labeling; General Requirements for Health Claims for Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise its food labeling regulations to make dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances subject to the general requirements that apply to all other types of food with respect to the use of health claims that characterize the relationship of a substance to a disease or health-related condition on the label and in labeling, and the content of petitions for obtaining approval of such health claims. These rules are being proposed in response to provisions of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) and the Dietary Supplement Act of 1992 (the DS act) that bear on health claims.

DATES: Written comments by August 17, 1993. The agency is proposing that any final rule that may issue based upon this proposal become effective 6 months following its publication.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James R. Taylor, Jr., Center for Food Safety and Applied Nutrition (HFF–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5229.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1990, the President signed into law the 1990 amendments (Pub. L. 101–535). This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One of the notable aspects of the 1990 amendments is their confirmation of FDA's authority to regulate health claims on food labels and in food labeling. The new provisions amend the act by adding a provision, section 403(r)(1)(B) of the act

(21 U.S.C. 343(r)(1)(B)), that provides that a product is misbranded if it bears a claim that characterizes the relationship of a nutrient to a disease or health-related condition, unless the claim is made in accordance with sections 403(r)(3) of the act (which pertains to foods in conventional form) or 403(r)(5)(D) (which pertains to dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances (subsequently referred to in this preamble as "dietary supplements")).

Congress enacted the health claims provisions of the 1990 amendments to help U.S. consumers maintain healthy dietary practices and to protect these consumers from unfounded health claims. The House Report of June 13, 1990 states, "Health claims supported by a significant scientific agreement can reinforce the Surgeon General's recommendations and help Americans to maintain a balanced and healthful diet" (Ref. 1). In addition, the statement of the House Floor Managers noted that "There is a great potential for defrauding consumers if food is sold that contains inaccurate or unsupportable health claims" (Ref. 2). The House Report characterized the need for regulation of health claims as "compelling" (Ref. 1).

FDA's first step in support of the health claims goals of the 1990 amendments appeared in the form of a November 27, 1991, proposed health claims regulation (56 FR 60537) (hereinafter referred to as "the health claims proposal"). That document proposed to establish general requirements pertaining to the use of health claims that characterize the relationship of a substance to a disease or health-related condition on the labels and in labeling of both conventional foods and dietary supplements. The health claims proposal contained definitions to clarify the meaning of specific terms used in the regulations, preliminary requirements that a component of food must meet to be eligible to be the subject of a health claim, a scientific standard for assessing the validity of claims, general labeling requirements for health claims that are permitted by regulation, and prohibitions for certain types of health claims. The proposal also contained provisions pertaining to the required content of petitions for health claims.

In response to the health claims proposal, FDA received over 6,000 letters, each containing one or more comments, from consumers, health care professionals, universities, State and local governments, foreign governments, trade organizations, consumer advocacy organizations, research institutes, industry, and professional organizations. Many of the comments pertained to dietary supplements. The agency summarized and addressed the issues raised in the comments in the final rule on health claims that published in the **Federal Register** of January 6, 1993 (58 FR 2478) (hereinafter referred to as "the health claims final rule"). The health claims final rule became effective on May 8, 1993.

Although the health claims proposal pertained to dietary supplements as well as conventional food, the final rule applied only to foods in conventional food form. In October of 1992, Congress passed the DS act (Pub. L. 102–571), which imposed a moratorium on FDA implementation of the 1990 amendments with respect to dietary supplements not in conventional food form until December 15, 1993. The DS act provides that by June 15, 1993, FDA is to issue proposed rules to implement the 1990 amendments with respect to such dietary supplements, and that the agency is to issue final rules based on these proposals by December 31, 1993. The DS act also amended the 1990 amendments to state that if the agency does not meet the established timeframe for issuance of final rules with respect to health claims for dietary supplements, the proposed regulations are to be considered final regulations.

According to the managers' statements on the DS act (Ref. 3), the moratorium is intended to provide FDA with an opportunity to carefully consider how best to regulate dietary supplements. The Senate statement says that the agency is expected to develop a comprehensive approach for reforming the regulation of dietary supplements. That statement stresses the policy goal of the DS act:

> * * * [T]he American public must be assured that the dietary supplements they choose to consume are safe, made to quality standards, bear informative labeling, and that health or disease-related claims are properly supported.

(138 Congressional Record S 17240 (October 6, 1992).) FDA has considered how best to regulate health claims on dietary supplements in developing this proposal.

Implementation of the 1990 amendments with respect to dietary supplements occurs under section 403(r)(1)(B) and (r)(5)(D) of the act. The latter provision states that health claims made with respect to dietary supplements are not subject to section 403(r)(3) of the act, the general provision that applies to such claims, but instead are subject to a standard and procedure respecting the validity of such claims established by regulation by the Secretary of Health and Human Services (the Secretary) (and FDA, by delegation). As is explained fully in the preambles of the health claims proposal (56 FR 60537 at 60539 through 60540) and of the health claims final rule (58 FR 2478 at 2507), the absence of a specific standard or procedure in section 403(r)(5)(D) of the act gives the agency broad discretion in deciding what the appropriate standard and procedure should be. The purpose of this proposal is to set out the agency's tentative conclusions, and the basis for those tentative conclusions, as to how this fundamental issue with respect to health claims on dietary supplements not in conventional food form should be resolved.

This proposal does not pertain to any other products. FDA's determinations about the implementation of the 1990 amendments with respect to food in conventional form, as set forth in the health claims final rule (58 FR 2478), are not open to any reconsideration or revision in the rulemaking initiated by this proposal.

The 1990 amendments also require that the agency evaluate 10 specific nutrient/disease relationships. In the **Federal Register** of January 6, 1993 (58 FR 2537 through 2849), the agency issued regulations announcing its decisions on each of these 10 relationships with respect to foods in conventional food form. However, under section 202(a)(1) and (b) of the DS act, while dietary supplements could bear health claims that the agency authorized for conventional foods that applied to them, the agency could not act to deny claims on any of the 10 relationships for dietary supplements.

The agency is not at this time proposing to authorize specific health claims for dietary supplements. In the case of the nutrient/disease relationships for calcium and osteoporosis, sodium and hypertension, dietary fat and cancer, and dietary saturated fat and cholesterol and coronary heart disease, no further rulemaking is needed for dietary supplements because FDA has authorized health claims for these relationships for conventional food and, as mentioned above, section 202(b) of the DS act provides for such claims appearing on dietary supplements. FDA does, however contemplate further proceedings in the **Federal Register** where the nutrient/disease relationships have not been resolved with respect to dietary supplements (i.e., for dietary fiber and cardiovascular disease, dietary

fiber and cancer, folic acid and neural tube defects, zinc and immune function in the elderly, omega-3 fatty acids and coronary heart disease, and antioxidant vitamins and cancer). FDA intends to make additional efforts to ensure that the proposals that it issues are consistent with all available science. For example, to this end, the agency has initiated a review by its subcommittee of the Food Advisory Committee to assess the relationship of folic acid and neural tube defects.

II. Regulatory Approach

A. General Approach

In deciding how best to regulate health claims on dietary supplements the agency used as its starting point the legislative history of the 1990 amendments. The agency tried to identify those characteristics of health claims that Congress considered most significant in providing for their use. FDA found that these characteristics fall within three broad areas of concern—consumer protection from fraud, sound scientific principles, and public health.

1. Legislative History

a. *Consumer fraud.* Concern about misleading health claims is directly addressed in the legislative history of the 1990 amendments. House Report 101–538 (Ref. 1) states:

> The need for legislation regarding health claims on foods is equally compelling. While content claims about the amounts of nutrients in foods have been made for many years, very few, if any, disease claims were made prior to 1984. Until that time, the FDA took the position that the statement that a food could prevent a disease was tantamount to a claim that the food was a drug as defined in section 201(g)(1) of the FFDC Act, and therefore that its sale was prohibited until a new drug application had been approved pursuant to section 505 of the Act. 21 U.S.C. 321(g)(1), 355; 21 CFR 101.9(i).
>
> However, during the mid-1980's, companies began making health claims on foods, even though the FDA had not approved the claims through the drug approval process. These statements claimed that the food was valuable in the prevention or treatment of various diseases. Subsequently, the FDA published proposed regulations that sanctioned this practice by permitting manufacturers to make disease-specific claims that had not met the FFDC Act's requirements applicable to drugs. 52 Fed. Reg. 28,843 (August 4, 1987).
>
> In the meantime, health claims that the FDA had previously prohibited began appearing with increasing frequency, and the FDA brought virtually no enforcement actions.
>
> In a speech given to the National Food Policy Conference (March 7, 1990), Secretary Sullivan acknowledged that "unfounded health claims are being made in the marketplace * * *."

Mr. Waxman, one of the primary authors of the bill that ultimately became the 1990 amendments (H.R. 12953), stated:

> Health claims were not permitted on foods until the 1980's. But when the FDA relaxed enforcement of regulations during the early years of the Reagan administration, it lost control of the marketplace, and many unfounded claims began being used on foods. This bill will recognize the marketplace so that only truthful claims may be made on foods.

Moreover, in a statement shortly before final House passage of the 1990 amendments, the House Floor Managers noted that "There is a great potential for defrauding consumers if food is sold that contains inaccurate or unsupportable health claims" (Ref. 2). Similarly, one of the main sponsors of the legislation in the Senate, Senator Metzenbaum, listed consumer fraud as one of the primary concerns of any system to evaluate the validity of health claims (Ref. 5).

Thus, concern that health claims not be used to defraud or mislead consumers was a primary factor in Congress's decision that health claims should be regulated.

b. *Public health.* The debates in both the Senate and the House of Representatives that preceded passage of the 1990 amendments contain repeated references to the congressional goal of improvement of the public health through use of valid and understandable claims in food labeling. In the July 30, 1990, Congressional Record H 5843 (Ref. 4), Mr. Madigan, one of the primary authors of the bill that ultimately became the 1990 amendments (H.R. 3562), stated:

> In the past few years, important scientific evidence has been repeatedly reported that clearly links dietary habits to good health. For this reason, the need to provide consumers with better information about the foods they eat is important.

House Report 101–538 (Ref. 1), which addresses H.R. 3562, states:

> Health claims supported by significant scientific agreement can reinforce the Surgeon General['s] recommendations and help Americans to maintain a balanced and healthful diet. Similarly, statements regarding the level of these nutrients in foods will assist Americans in following the Surgeon General's guidelines. Therefore, legislation with respect to health claims is also both desirable and necessary.

In the October 24, 1990, Congressional Record at S 16608 (Ref. 5), Mr. Metzenbaum, one of the primary authors of the Senate amendments that were incorporated into the 1990 amendments, characterized this legislation as "a major step forward in enabling consumers to select foods to protect and improve their health." In this same Congressional Record at S 16610 (Ref. 5), Mr. Hatch, the other primary author of the Senate amendments stated:

> Heart disease, cancer, and stroke—our Nos. 1, 2, and 3 causes of death—still take an incredible toll in our society. In 1986, they took an estimated 1.6 million lives and cost $137 billion in medical care and lost productivity. Diet has been implicated as a factor in all three of these diseases as well as large number of others.

c. *Sound science.* Congress recognized that if health claims are to protect consumers from fraud and to help improve the public health, they must be based on sound science. Congressman Waxman stated:

> What we have sought to do is to permit health claims but only health claims based on scientifically valid information, and we hope by having that scientifically valid information upon which a health claim can by made, that health claims in the future will be healthful and not misleading.

(136 Congressional Record H 5844 (July 30, 1990).)

Senator Metzenbaum also listed sound scientific principles among the basic factors that must underlie any system for health claims (Ref. 5).

2. The Standard for Food in Conventional Food Form

In the case of food in conventional food form, Congress provided specific direction about the essential elements necessary to ensure that health claims are scientifically valid. Congress enacted a scientific standard in section 403(r)(3)(B)(i) of the act for these foods that provides that the Secretary (and FDA, by delegation) shall promulgate regulations authorizing nutrient health claims only if the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles) supports the claim, and there is significant scientific agreement among qualified experts that the claim is supported by such evidence.

In addition, where health claims can be justified for food in conventional food form, Congress enacted provisions about the manner in which the claims must be presented in labeling to ensure that they will be understandable. Section 403(r)(3)(B)(ii) of the act requires that a regulation authorizing a health claim describe the relationship between the nutrient and the disease or health-related condition and describe the significance of the nutrient in affecting the disease or health-related

condition. Section 403(r)(3)(B)(iii) of the act requires that the claim be

> * * * stated in a manner so that the claim is an accurate representation of the matters set out in subclause (ii) and so that the claim enables the public to comprehend the information provided in the claim and to understand the relative significance of such information in the context of a total daily diet.

Further, Congress added section 403(r)(3)(A)(ii) to the act to provide that health claims may only be made on foods that do not contain nutrients in an amount that increases "to persons in the general population the risk of a disease or health-related condition which is diet related, taking into account the significance of the food in the total daily diet * * *." However, this provision goes on to say that the Secretary may by regulation permit such a claim if he or she finds that such a claim would assist consumers in maintaining healthy dietary practices, and he or she provides for disclosure of the presence of the nutrient in conjunction with the claim. (An in-depth discussion of these statutory provisions appears in the health claims proposal (56 FR 60537 at 60539) and in the health claims final rule (see agency response to comments about general labeling requirements and prohibited health claims (58 FR 2478 at 2509 through 2522)).)

3. Treatment of Dietary Supplements

In the case of dietary supplements, however, Congress did not include a specific standard or specific elements as to how the claims are to be presented. Instead, Congress provided that the standard and procedure for such claims would be established by the Secretary (and FDA, by delegation) (section 403(r)(5)(D) of the act). The legislative history pertaining to this provision reveals that Congress thereby conveyed to FDA the flexibility to adopt the standard and procedure for dietary supplements that appears appropriate to the agency. The House Floor Managers statement on the 1990 amendments (Ref. 2), which was prepared by Mr. Waxman and Mr. Madigan, addresses section 403(r)(5)(D) of the act by stating, in part:

> The Senate version of the bill, which we are voting on today, retains this standard for all foods except vitamins, minerals, herbs, and other similar nutritional substances (referred to below as "vitamins"). The bill requires that vitamins that include claims defined under section 403(r)(1)(B) shall be subject to a "procedure and standard" defined by the Secretary in regulations that require an evaluation of the validity of the claim. The FDA is given the discretion to define both the procedure and the standard because the principals in the Senate could not agree on the appropriate procedure or the appropriate standard.
>
> It is obvious from the language that the agency could adopt the same procedure and standard that Congress has adopted for disease claims on food other than vitamins; it is also obvious that it could adopt a stronger standard for vitamins, minerals, herbs, and other similar nutritional substances.

In addition, the Metzenbaum-Hatch managers' statement in the Senate (Ref. 5) addresses section 403(r)(1)(B) of the act by stating, in part:

> The purpose for the different handling of conventional food products and dietary supplements is to provide the Secretary flexibility in the development of the procedure and standard for health claims for dietary supplements.

Thus, the Senate and the House of Representatives agreed that FDA has the flexibility to adopt the standard and procedure for dietary supplements that appears appropriate to the agency. Senator Hatch left no question about his position that FDA should use this flexibility to adopt a more lenient standard (Ref. 5):

> By the very nature, the dietary supplements must be marketed so that the consumer is informed of the health or disease-prevention benefits that may be conferred. Greater flexibility is thus required to permit communication of these benefits. This increased regulatory flexibility is also mandated by the very rapid pace of scientific advances here and abroad linking the prevention of long-term disease to improved nutritional supplementation. For these reasons, a more lenient standard for dietary supplement[s] is envisioned.

However, other members of Congress were equally clear about their position that FDA should not adopt a more lenient standard. In the October 24, 1990 Congressional Record at S 16608 (Ref. 5), Senator Metzenbaum, the other primary author of the Senate amendments, stated:

> * * * It is my view that there is no reason to do anything other than utilize the same procedure and standard for dietary supplements.
>
> Whatever approach the Secretary takes, he must establish a system that evaluates the validity of health claims for dietary supplements. The system must be based on the same considerations that guide other agency decisions: public health, sound scientific principles and consumer fraud.

Further, the House of Representatives clearly did not support a more lenient standard for dietary supplements. The statement of House Floor Managers that appears in the October, 26, 1990 Congressional Record at H 12953 (Ref. 2) states:

> * * * Whatever approach the agency takes, it must adopt a system that evaluates the validity of any disease claims made with respect to these substances. Its system must be based on considerations of public health and consumer fraud. As in every similar decision made by the agency today, we fully expect that the agency's evaluation of disease claims made with respect to vitamins will be based on sound scientific principles.
>
> There is a great potential for defrauding consumers if food is sold that contains inaccurate or unsupportable health claims. The potential is just as great for vitamins as it is for other products. In our view, vitamins and other substances covered by this provision should be subject to at least as strong a standard as is applicable to other foods that contain claims that the food will treat a disease or health condition.

Nothing in the DS act or its legislative history indicates in any way that Congress changed its position about its goals of the 1990 amendments with respect to prohibiting misleading health claims and improvement of the public health through use of valid and understandable claims in food labeling (Ref. 3).

4. Results of FDA's Review of the 1990 Amendments

Based on its review of the legislative history of the 1990 amendments, the agency has identified the following features that it believes should guide its choice of a standard and procedure for health claims for dietary supplements:

- The regulations are to deal only with the procedure and standard for health claims for the substances in dietary supplements. They are to have no bearing on the availability of any dietary supplements.
- The regulations must prohibit the use of health claims that are not authorized under their provisions.
- The regulations must ensure that any health claims that appear in labeling are scientifically valid.
- The regulations must ensure that any health claims that appear in labeling are understandable.
- The regulations should be such that all segments of the food industry are treated fairly and in a consistent manner, unless there is an appropriate basis on which to draw a distinction. This factor embodies a principle of equity implicitly in the act.

B. Alternative Approaches

A variety of approaches have come to FDA's attention about how health claims on dietary supplements would best be regulated under the 1990 amendments. These approaches have come to the agency's attention by various means, including the comments on the health claims proposal that addressed the most appropriate method for regulating dietary supplements,

testimony before Congress about implementation of the 1990 amendments with respect to dietary supplements, as well as other submissions to the agency.

FDA has carefully evaluated each of these approaches to determine how they compare with the factors that FDA has listed above.

1. Use of a Committee on Herb Petitions

One approach that has been suggested is that the agency should adopt a separate mechanism for evaluating the validity of claims for herbs. Under the suggested mechanism, an oversight committee would appoint an expert panel that would consist of a director and at least four scientists with training and experience related to herbal and botanical products. FDA would participate as a nonvoting member of the expert panel. The oversight committee, which would be charged with the responsibility of reviewing all health claims petitions pertaining to herb or botanical components, would relieve FDA of all responsibility for initial review of these petitions. The expert panel would conduct an evaluation of scientific data pertaining to the requested claim, subject the evaluation to peer review, and prepare a final recommendation about the claim. The recommendation and all supporting documents would then be forwarded to FDA, and the agency would be permitted 120 days to approve, disapprove, or modify the report. Under draft regulations prepared and submitted for FDA adoption by one comment that FDA has received, there would be a codified presumption in favor of the committee recommendation.

The comment that suggested this approach asserted that it would not involve a transfer of the agency's authority and obligation to enforce the act because the final authority for decisions would rest with FDA. Further, the comment asserted that there is precedent for the requested mechanism in FDA's past use of reviews of food and cosmetic ingredients that have been prepared by the Federation of American Societies for Experimental Biology (FASEB) and the Cosmetic Ingredient Review (CIR).

The agency advises that it has tentatively decided not to adopt the requested mechanism for evaluating the validity of claims for herbs and botanicals. The mechanism would involve a significant transfer of agency authority for health claims, and there is no basis under the act for such a transfer. Although the comment asserted that such a transfer would not take place because FDA would retain final authority for any decisions, the assertion is not correct. Because the codified provision would create a presumption in favor of the committee recommendation, the agency would be obligated to prove that the committee was wrong, or else it would be required to follow the committee's recommendation. In such circumstances, FDA could be forced to propose to authorize health claims that it was not satisfied were scientifically valid. Thus, there would, in fact, be a significant transfer of authority under the requested mechanism.

FDA's use of FASEB reviews of food ingredients does not provide a precedent for use of the requested mechanism. The FASEB review did not create a presumption in favor of the review recommendation. FDA contracted for these reviews as part of its GRAS Review in the early 1970's and then once to update information on sulfiting agents. FASEB only submitted a recommendation as to whether, and what, uses of a substance were GRAS. FDA conducted its own review of the evidence and was free to elect to use the FASEB review as it saw fit.

The CIR also do not provide a precedent for the use of the requested mechanism. These reviews are used primarily by industry to make self-determinations of cosmetic ingredient safety. The agency may, or may not, comment on any CIR. Even where FDA comments on a CIR, there would be little likelihood that agency rulemaking would result. In situations where such a review does serve as a stimulus for a rulemaking proceeding, the review would not be the sole reason for the proceeding.

Moreover, the committee suggested by the comment would be subject to the Federal Advisory Committee Act (5 U.S.C. app. 2). The burdens imposed on an agency by this statute are extremely heavy. FDA has limited resources for advisory committees, and it believes that it would be an inappropriate expenditure of those limited resources to commit them to the committee suggested by the comment. While FDA may use advisory committees in the future to review petitioned-for health claims, as it is currently doing with folic acid, the agency would expect such committees to be broader in scope than simply herbs. FDA does not have the resources to establish multiple committees based on the type of substance that is the subject of the claim.

Thus, FDA is not proposing to adopt the procedure suggested in this comment. The herb industry, as any other industry, may, if it desires, work through committees in preparing well-supported petitions for submission to FDA. FDA will cooperate with such committees at a scientific level by explaining the agency's requirements to them and sharing publicly available information. However, the agency sees no reason to require firms to use such committees. Moreover, FDA has the ultimate obligation to determine whether the petitioned-for claim is scientifically valid.

To clarify that the agency will consider all recommendations by such committees, FDA revised § 101.70(b) (21 CFR 101.70(b)) which describes the content of petitions for health claims, to provide that information that is submitted with petitions may include any findings, along with the basis of the findings, of an outside panel with expertise in the subject area at issue. While FDA will consider any findings of a committee included in a petition, the agency is not obligated to utilize those findings in making its decision.

2. Establishment of an Approach Based on a More Lenient Standard, a More Strict Standard, or the Same Standard

Many comments asserted that the best approach to the regulations of health claims for dietary supplements would involve the adoption of a more lenient standard. Some of these comments argued that such an approach is mandated by Congress and cited the statement of Senator Hatch, set forth above that "a more lenient standard for dietary supplement[s] is envisioned" (Ref. 5). A number of comments asserted that using the same standard and procedure for dietary supplements as for foods in conventional food form is counter to the intent of the 1990 amendments because Congress intended to make more, rather than less, information about the health benefits of foods available to consumers. Some comments asserted that, by not adopting an approach based on a more lenient standard, FDA would restrict the amount of health information available to consumers and stated that such information is important to consumers in deciding which products to buy.

Comments argued that restriction of this information will deny millions of Americans the dietary information that they need to improve their health and to help prevent deadly afflictions such as heart disease and cancer. The comments asserted that such restriction will cost the nation millions of dollars in health care expenditures that could have been saved through disease prevention. Comments suggested that FDA should place more weight on the potential benefits of the health

information than on eliminating all possibilities of consumer misunderstandings. A few of these comments advised that a more lenient standard would be appropriate for dietary supplements because they are being sold to educated consumers rather than to the general population. A number of comments asserted that use of the same standard and procedure for dietary supplements as for foods in conventional food form effectively renders section 403(r)(5)(D) of the act superfluous.

Some of the comments maintained that an approach based on a more lenient standard and procedure is needed because FDA is being unduly restrictive in its validity evaluations under the current standard for conventional food. Comments argued that these evaluations are being done in a manner that makes it more difficult for a food to get an approved health claim than to get a new drug claim approved.

Although not all comments provided specific suggestions about the way in which a more lenient approach could be implemented, a number of the comments did provide specific suggestions. Some comments argued that the approach should be sufficiently lenient to permit marketing of dietary supplements without any labeling restrictions. Some of these comments argued that dietary supplements needed no stringent requirements because dietary supplements could be adequately regulated under the requirement in section 403(a)(1) of the act that the labeling of a food must be truthful and not misleading.

Some comments provided an alternative standard and procedure to that in the statute for health claims on food in conventional food form. Under this alternative, claims for which there is substantial scientific evidence but not yet significant scientific agreement would be subject to a certification and notification procedure rather than rulemaking proceedings. Claims could be made for dietary supplements so long as: (1) The claim expressly discloses the absence of scientific agreement as to the relationship, (2) the manufacturer provides FDA with a fully documented certification by a panel of at least three qualified experts that there is substantial scientific evidence supporting the claim, and (3) FDA does not disapprove the claim within 90 days of receipt of the certification. (When additional information is needed, the 90 day period could be extended an additional 45 days.) Under the alternative, FDA would have an opportunity to participate in the selection of the expert panel.

The agency has also, however received other comments that argued that FDA should use an approach based on the same scientific standard and procedure for dietary supplements that the act provides for conventional foods. One comment noted that it is especially important to place dietary supplements under the same standard because they are marketed mainly on the basis of their purported health benefits. Another pointed out that use of the stand for food in conventional food form will facilitate purchasing decisions for consumers by reducing fraudulent labeling claims.

A few comments contended that FDA should establish a more stringent standard for substances in dietary supplements. One comment asserted that FDA has adequate authority to do so and asserted that the legislative history of the 1990 amendments supports a more stringent standard. The comment stated that FDA recognized, when it argued against allowing health claims for omega-3 fatty acids in a document that published in the Federal Register of January 6, 1993 (58 FR 2683), that it does make a difference whether one receives nutriment from food or from pills. In that docket, the comment maintained, FDA asserted that benefits have been shown for a food (fish) but not for substances (omega-3 fatty acids).

FDA knows of no standard and procedure for dietary supplements that would both be more lenient than the standard and procedure for foods in conventional food form and yet still have the characteristics that FDA considers necessary under the 1990 amendments and their legislative history. A standard for health claims for dietary supplements that is based only on section 403(a)(1) of the act, or that allows health claims based on the existence of substantial scientific evidence even though significant scientific agreement about the validity of the claim does not exist, would be inconsistent with Congress' desire to ensure that health claims that are made on dietary supplements, or on any other food, are scientifically valid. The absence of agreement would likely reflect inadequacies in the evidence supporting the claim or a substantial amount of conflicting evidence. In such circumstances, a significant possibility would exist that the claim would ultimately be found not to be valid. If FDA were to allow claims in the marketplace as to which there is not significant scientific agreement about their validity, it would undercut the credibility of those health claims as to which there is such agreement. Consumers would be left little better off, and no less confused, than they were, before the passage of the 1990 amendments. Although some comments asserted that claims not based on significant scientific agreement would not be confusing because consumers of dietary supplements are more knowledgeable than the general population, FDA points out that there is nothing that limits the purchasers of dietary supplements to "knowledgeable consumers."

The agency disagrees with arguments that use of the same approach for dietary supplements as for foods in conventional food form would deny millions of Americans dietary information that they need to improve their health and thereby cost the nation millions of dollars in health care expenditures that could have been avoided. In the absence of adequate data to establish that health claims are valid, assertions about costs associated with the lack of information in food labeling and about the benefits of consumption of substances in dietary supplements are highly speculative and highly questionable. FDA does not agree that it should place more weight on the potential benefits of the health information than on eliminating the possibility of consumer misunderstanding. FDA must weigh the public health impact of permitting a multitude of preliminary claims against the possibility that a significant portion of those claims will be determined to be not scientifically valid. The latter result would likely produce a perception among many consumers that food labels and health claims, even those that are valid, are not reliable. To the extent that, as a result, consumers do not change their dietary patterns to reduce their risk of disease, they will be less healthy, and there will be more needless deaths from disease and more costs to the national economy, rather than less. Thus, FDA disagrees with comments that asserted that claims without significant scientific agreement would be in the best interests of consumers.

Further, as is explained fully in response to the comment concerning a separate mechanism for approval of health claims for herbs, there are no provisions under the act to transfer agency authority for the control of health claims to organizations outside of FDA. The alternative suggested for dietary supplements that would not require rulemaking clearly involves a significant transfer of authority for the evaluation of the validity of health claims. Moreover, the approach suggested by this comment presents the same Federal Advisory Committee Act

problems that are discussed above. Finally, the system suggested would not be fair to consumers, who would be exposed to claims whose validity had not been evaluated by FDA, or to the manufacturers of foods in conventional food form, who would be subject to the much higher statutorily mandated standard. As a result, a more lenient standard for dietary supplements would also be contrary to the principle of fairness that is implicit in the act.

FDA also disagrees with assertions that it is conducting validity assessments for health claims in an unduly restrictive manner, and that health claims are more difficult to get approved than to get a new drug claim approved. To the contrary, as discussed in the health claims final rule (58 FR 2478 at 2506), the scientific standard for health claims is less stringent than the requirements for approval of a new drug. In the case of a new drug, section 505(d)(5) of the act (21 U.S.C. 355(d)(5)) states that the Secretary shall refuse to approve an application for approval of such a drug where there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling thereof. Section 505(d) of the act provides further that the term "substantial evidence" means evidence consisting of adequate and well-controlled investigations, including clinical investigations (human studies conducted in a controlled clinical setting), by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved. (The statutory term "substantial evidence" should not be confused with the same term used by some comments to refer to "more than a scintilla and less than a preponderance" of evidence.) Based on this statutory direction, the agency has identified a number of characteristics that are present in "adequate and well-controlled" studies in § 314.126 (21 CFR 314.126).

Section 403(r) of the act does not mandate requirements as stringent as those for drugs in section 505(d)(5) of the act. Section 403(r) of the act contains no mention of "substantial evidence," "adequate and well-controlled investigations," or of "clinical investigations." To the contrary, section 403(r) of the act contains far more flexibility than the drug provisions of the act because it provides FDA with authority to authorize claims based on "scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence "(section 403(r)(3)(B)(i) of the act).

Consistent with this flexibility, FDA did not prescribe a specific set, type, or number of studies as being sufficient to support a health claim in the January 6, 1993, health claims final rule. In that rule, the agency advised that it would consider all relevant data on a topic, including clinical studies, epidemiological data, and animal studies.

In addition, the 1990 amendments directed FDA to consider 10 nutrient-disease relationships. In the January 6, 1993, final rules, FDA authorized claims with respect to 7 of those 10 relationships (see 58 FR 2537, 2552, 2622, 2665, 2739, 2787, and 2820). An eighth, even though denied (58 FR 2606) remains under active consideration by the agency. Thus, FDA is not conducting validity assessments for health claims in an unduly restrictive manner.

The agency did not conclude in the omega-3 fatty acids and heart disease final rule (57 FR 2682) that it makes a difference whether one receives nutriment from food or from pills, as the comment suggested. While FDA did state in the summary of that docket that there is not adequate evidence to support a relationship between reduced risk of coronary heart disease and increased consumption of omega-3 fatty acids, and that there is some evidence that the benefit may be gained through the consumption of fish, the agency noted that benefits attributed to fish could not necessarily be ascribed to the presence of omega-3 fatty acids. The example, therefore, reflects the available science base, that there is a relationship between a dietary pattern and risk of heart disease, but the science is insufficient to identify a specific nutrient that is responsible in that relationship. This does not in any way imply that a substance is any more beneficial when it is in a conventional food than it is when it is not in a conventional food.

In light of the foregoing, FDA is proposing to subject dietary supplements to the same standard that applies to food in conventional food form. This approach strikes the appropriate balance between the congressional concern for consumer protection food fraud, public health, and sound science, on the one hand, and the desire to provide the consumer with information on the other. If FDA adopts this standard for dietary supplements, all foods will be regulated under the same standard.

Further, under the same procedure that applies with respect to claims for substances in food in conventional form, there is a premarket review that ensures the safety of the substances as well as the scientific validity of the claim. A claim linking a nutrient to a disease is typically intended to increase intake of that nutrient. Thus, it is important to ensure that such increased intake will not have adverse health consequences that would moot the significance of the health claim. Therefore, FDA is proposing to adopt the same procedure for health claims for dietary supplements as for foods in conventional food form.

Making dietary supplements subject to the same scientific standard and procedure as for foods in conventional food form does not render section 403(r)(5)(D) of the act superfluous. Section 403(r)(5)(D) requires that the agency consider what procedures and standard respecting the validity of claims is most appropriate. This the agency has done. The fact that the agency has tentatively found that, on balance, that the standard and procedure established for conventional foods are also the most appropriate for dietary supplements does not render the agency's efforts invalid or the underlying provision superfluous. The agency was charged with exercising its expertise and discretion, and that is what it is doing.

III. The Proposed Regulation

FDA is proposing to adopt the same regulatory approach to dietary supplements that it has adopted for foods in conventional food form. Thus, the agency is proposing to revise §§ 101.14 and 101.70 (21 CFR 101.14 and 101.70) to include dietary supplements.

A. Definitions

In the health claims proposal, FDA proposed definitions for "health claim," "substance," "nutritive value," and "dietary supplement" to serve as tools for clearly establishing the scope of the types of claims that would be subject to the regulations promulgated under section 403(r)(1)(B) of the act. In addition, the agency proposed a definition for "disqualifying nutrient levels" to establish limits on the amounts of certain nutrients that are known to increase the risk of a disease or health-related condition. Thus, if one of these nutrients is present in a food above the defined level that food would

be disqualified from bearing a health claim in its labeling (see section 403(r)(3)(A)(ii) of the act).

In the health claims final rule the agency adopted definitions for the terms "health claim," "substance," "nutritive value," and "disqualifying nutrient levels." However, as explained in the health claims final rule, these definitions were revised either in response to comments on the proposed definitions or in response to the DS act. Because of the DS act, the agency reserved the question as to whether these definitions would apply to dietary supplements. Moreover, the agency did not include a definition of "dietary supplement" in the final rule because of the moratorium imposed by the DS act. In addition, in the health claims final rule, FDA established a definition for the term "disease or health-related condition" (see § 101.14(a)(1), (a)(2), (a)(3), (a)(5), and (a)(6) in 58 FR 2478 at 2533).

In this document, FDA is proposing to apply the same regulatory approach to dietary supplements that it has established for foods in conventional food form. To reflect this tentative decision, the agency is proposing to revise the definitions established in § 101.14(a), as appropriate, to include coverage of dietary supplements. Specifically, FDA is proposing to revise the definition of "substance" and to establish a definition of "dietary supplement."

1. Substance

To clarify that all provisions of § 101.14 will apply to dietary supplements as well as foods in conventional food form, FDA is proposing to revise the definition of the term "substance" to mean a specific food or component of food, regardless of whether the food is in conventional food form or a dietary supplement of vitamins, minerals, herbs, or other similar nutritional substances.

Reference in the definition to "a dietary supplement of vitamins, minerals, herbs, or other similar nutritional substances" incorporates the statutory language from section 403(r)(5)(D) of the act, which directs the agency to establish a procedure and standard for health claims for dietary supplements.

2. Dietary Supplement

FDA is proposing in § 101.14(a)(4) to define the term "dietary supplement" as a food, not in conventional food form, that supplies a component to supplement the diet by increasing the total dietary intake of that component.

In the past, FDA has taken a position that the term "dietary supplement" applied only to supplements composed of essential nutrients. However, FDA is not proposing to limit the definition in § 101.14(a) in this way because section 403(r)(5)(D) of the act includes dietary supplements of herbs and other similar nutritional substances. Herbs generally contain few essential nutrients, and those that are present are seldom present in significant amounts on a per serving basis. Herbs have been considered foods because they have generally been used for flavor or aroma. In addition, the legislative history indicates that the term "other similar nutritional substances" could include a number of substances that have not been shown to be essential (Ref. 5), especially since the term "other similar nutritional substances" does not include vitamins and minerals.

FDA has limited this definition to foods not in conventional food form to reflect the approach taken by Congress in the DS act. The manager's statements for the DS act from the Senate and the House (Ref. 3) clearly state that the moratorium on the implementation of the 1990 amendments applies only to dietary supplements "not in the form of conventional food." FDA has traditionally felt that there could be dietary supplements in conventional food form (e.g. breakfast cereals). However, because these products were not covered by the DS act moratorium, the health claims regulations already apply to them. Consequently, FDA has tentatively concluded that it will reduce confusion if the agency limits the coverage of the term "dietary supplement" to foods not in conventional food form. Foods that are formulated to supplement the dietary intake of nutrients but that are in conventional food form will be considered to be in the category of foods that they resemble (e.g. cereals), although they will be free to reflect their characteristics in their common or usual name (e.g., vitamin and mineral supplement cereal).

In the November 1991 health claims proposal, FDA said as part of the definition of "dietary supplement" that the supplement supplies a component "with nutritive value." FDA received comments that protested that such a restriction would infringe on consumers' freedom of choice.

The purpose of this proposal is to ensure that health claims are valid and properly made, not to restrict freedom of choice. Dietary supplements are foods, and foods are consumed primarily for their taste, aroma, or nutritive value. *Nutilab, Inc.* v. *Schweiker*, 713 F.2d 335, 338 (7th Cir. 1983). Moreover, as explained below, FDA is proposing to make dietary supplements subject to § 101.14(b)(3)(i), which requires that, to be eligible to be the subject of a health claim, substances that are to be consumed at other than decreased dietary levels must contribute taste, aroma, or nutritive value to the food and retain that attribute when consumed at levels that are necessary to justify a claim. Therefore, FDA tentatively finds that it is not necessary to include the words "with nutritive value" in the definition of "dietary supplement."

A number of comments on the November 1991 health claims proposal suggested that the proposed definition for "dietary supplement" in § 101.14(a)(4) (56 FR 60537) should be revised to include foods as well as components in foods (e.g., herbs as well as components in herbs).

FDA advises that the proposed definition of "dietary supplement" covers foods. Therefore, the suggested revision is not necessary. Reference to a "component" is to the specific portion of the food, that is, of the dietary supplement, of which the consumers wishes to increase his or her total dietary intake.

B. Preliminary Requirements for a Claim

In the health claims proposal, FDA proposed several criteria in § 101.14(b) that must be met before a substance will qualify to be the subject of a health claim. The criteria provide that the substance must: (1) Be associated with a disease or health-related condition for which the general U.S. population is at risk (alternatively, the relevance of the claim may be explained within the context of the daily diet); (2) be a food; and (3) be safe and lawful under applicable food safety provisions of the act. These criteria reflect not only the requirements of section 403(r) of the act but also the fact that FDA is charged with ensuring that the food supply is safe, and that the food label is not misleading. Given that agency evaluations of the validity of a health claim will be resource intensive, FDA proposed not to make such an evaluation unless a petition for a health claim demonstrates that the preliminary requirements are met. While FDA proposed that these preliminary requirements cover substances in conventional food form as well as in dietary supplements, the provisions of the DS act precluded the agency from applying these preliminary requirements to substances in dietary supplements. Thus, the preliminary requirements established in the health

claims final rule apply only to substances in conventional food form.

The agency is proposing in this document to subject dietary supplements and their components to the same preliminary requirements in § 101.14(b) that apply to any other substance that is proposed as the subject of a health claim. Specific reference to dietary supplements in § 101.14 (b)(1) and (b)(2) is not necessary because the requirements in these paragraphs apply generally to any "substance," and FDA's proposed revision of the definition of "substance" in § 101.14(a)(2) will include dietary supplements and their components within the coverage of this term. FDA tentatively finds, however, that it is appropriate to add a specific reference to dietary supplements to § 101.14(b)(3)(i) to clarify that food can be in the form of a dietary supplement. The agency tentatively concludes that this action is appropriate because information available to the agency suggests that there is concern among some in the general public that dietary supplements are not included in the definition of "food" as provided in section 201(f) of the act (21 U.S.C. 321a(f)). Specifically, FDA proposes to add the phrase "regardless of whether the food is in conventional food form or dietary supplement form" to § 101.14(b)(3)(i).

1. Components of Food Within the Context of a Daily Diet

The preliminary requirement that a substance that is to be the subject of a health claim be a food appears in § 101.14(b)(2) and (b)(3)(i). If the substance is present at decreased dietary levels, as stated above under § 101.14(b)(2), it must be a nutrient that is required to be included in nutrition labeling (e.g., cholesterol, total fat). If the substance is present at other than decreased dietary levels, as stated above, under § 101.14(b)(3)(i), it must contribute taste, aroma, or nutritive value, or any other technical effect listed in § 170.3(o) (21 CFR 170.3(o)), to the food and must retain that attribute when consumed at levels that are necessary to justify a claim. This requirement is necessary to ensure that health claims are made for substances that are in fact foods. For example, some vitamins have therapeutic effects when consumed at levels far above those that are normally characteristic of food. When the vitamins are intended to be consumed at those levels to have those therapeutic effects, they are drugs and not foods. Also, other types of dietary supplements present similar concerns. When herbs are consumed primarily for their taste, aroma, or nutritive value, they are foods. If the herbs are intended to be consumed for their medicinal effects, however, they are drugs.

Numerous comments on the health claims proposal from producers and consumers of dietary supplements expressed concern that the proposed provisions requiring that a substance be a food represents an attack by the agency against dietary supplements. Some comments maintained that FDA lacks the legal authority to restrict approved health claims on dietary supplements that contain nutrients that are beyond daily diet limits. Other comments asserted that FDA intends to use regulations based on the proposal to ban health claims on dietary supplements wherever the dietary supplements contain a substance at a level above that normally present within the context of an ordinary daily diet.

Other comments stated that the agency would ban the dietary supplements themselves by making them available only by prescription or by limiting the potency of the dietary supplements. They strongly protested that any limits on potency would be in conflict with section 411 of the act (21 U.S.C. 350), which is sometimes referred to as the "Proxmire Amendment," and the 1990 amendments.

FDA disagrees with the comments' characterization of its actions. It does not agree that any conflict with section 411 of the act is presented by a requirement that, to be the subject of a health claim, the substance must be a food, that is, consumed primarily for its taste, aroma, or nutritive value. There is nothing in the health claims final rule or in the regulations proposed below that will affect in any way the availability of dietary supplements or the consumer's freedom to choose to purchase them. Rather, the regulations that FDA is proposing are intended to ensure that any claims that may be made for dietary supplements are scientifically valid. This is exactly what section 403(r)(5)(D) of the act directs FDA to do.

Nothing in these proposed regulations would necessarily prevent a supplement from bearing a health claim when it contains a level of a substance that exceeds the level achievable in the context of the daily diet. To the contrary, the final rule concerning calcium and osteoporosis, for example, which was published in the **Federal Register** of January 6, 1993 (58 FR 2665 at 2677), permits a calcium health claim for dietary supplements and requires only that the supplement labeling advise consumers that there is no known benefit from consuming more than 200 percent of the recommended daily intake for calcium.

Section 411 of the act does not authorize health claims for dietary supplements or in any way affect FDA's authority under section 403(r)(5)(D) of the act to regulate such claims. Under section 411(a)(1)(B) of the act, FDA may not classify a dietary supplement as a drug solely because it contains vitamins or minerals at levels that exceed the level of potency that the agency determines is nutritionally rational or useful. Nothing in these proposed regulations would do so. Absent a claim, FDA will not consider a dietary supplement to be a drug simply because it contains vitamins or minerals at levels above those normally found in food. However, a claim on a product is an indication of the product's intended use. If a claim reveals that the product is intended for a use other than for its taste, aroma, or nutritive value, then nothing in section 411 of the act would require that it be treated as a food.

The key to the assessment of any proposed health claim for a substance in a dietary supplement or in other food is a determination as to whether the claimed effect derives from the nutritive value of that substance. The term "nutritive value" is defined broadly in § 101.14(a)(3); however, it is not unlimited in its application. Under that regulation, "nutritive value" means a value in sustaining human existence by such processes as promoting growth, replacing essential nutrients, or providing energy. The preambles of the proposed and final rules on the general requirements for health claims (see 56 FR 60537, November 27, 1991; and 58 FR 2478, January 6, 1993, respectively) state that the codified definition is based on common definitions that include sustenance with food or nutriment by supplying that which is necessary for life, health, and growth. The agency structured the definition to be sufficiently flexible so that it does not become an unintentional barrier to the approval of legitimate health claims.

If the relationship between a substance and a disease that is the subject of a claim is based on the nutritive value of the substance, the claim is a health claim. However, if the relationship between a substance and a disease is based on some type of physiological process other than nutritive value, the claim about the relationship is likely not a claim about a food and thus not subject to the health claim provisions. The type of case-by-case analysis of exactly what is being asserted in a claim that describes the effect of a substance on a disease, and whether that effect is a function of the

substance's nutritive value, is illustrated by niacin.

Niacin has a well-established physiological function as an obligatory cofactor in metabolic processes which constitutes the basis on which it is a vitamin in the human dietary. However, there is also ample scientific evidence that this substance can act to reduce elevated blood cholesterol levels. Because high blood cholesterol levels are directly associated with an increased risk of cardiovascular disease, the question arises as to whether the effect of lowering elevated blood cholesterol provides the basis for a health claim for niacin.

Such a claim is not a health claim because a claim about niacin's effect on blood cholesterol levels is not a claim about how a nutrient affects a disease through normal dietary processes. Rather, it is a claim about how this substance, when consumed at very high levels, can be used to treat an abnormal condition, elevated blood cholesterol levels. The levels of niacin that are necessary to have this treatment effect are far in excess of those at which there is tissue saturation for niacin's vitamin function. Niacin consumed at the levels in question causes liver damage, an effect that in no way can be characterized as nutritive. Thus, consumption of niacin at these levels is not appropriate for most consumers. In view of the safety problems, a determination must be made before niacin is consumed at these levels as to whether the risks of treatment outweigh the benefits of the potential response to the treatment. Such determinations are not appropriate for a food. Thus, a claim for niacin's effect on lowering blood cholesterol levels is not a health claim.

Another comment asked for assurance that approved health claims appearing on dietary supplements will not automatically be considered drug claims. The comment noted that section 201(g)(1)(B) of the act exempts approved health claims on foods from consideration as drug claims and stated that dietary supplements should be afforded the same exemption under FDA regulations.

FDA agrees with the comment. As provided in section 201(g)(1)(B) of the act, any food, including dietary supplements, for which an authorized health claim is made in accordance with the requirements of section 403(r) of the act and of the regulations that FDA has adopted to implement that section of the act is not a drug under section 201(g)(1)(B) of the act solely because its label or labeling bears the claim. FDA considers this provision to provide the same type of assurance as that in sections 406, 408, and 409 of the act (21 U.S.C. 346, 346a, and 348) that foods containing substances used in accordance with regulations issued under those sections of the act are not subject to regulatory action under section 402(a)(1) of the act (21 U.S.C. 342). This provision does not create an exception to the "drug" definition, however. A product whose intended use is as a drug will continue to be subject to regulation as a drug.

Some comments asserted that FDA should permit the use of health claims on herbs whose only known use is for medicinal effects. A few of these comments objected that the herbs that FDA cited in the preamble of the proposal also have food uses.

As FDA explained fully in the preamble of the November 1991 health claims proposal (56 FR 60554), Congress clearly intended that the health claim provisions of the 1990 amendments apply only to foods. Whether a product is a food or a drug depends largely on its intended use. A product that is intended for medicinal effects, that is, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease, is a drug. Thus, there is no basis under the act for FDA to permit health claims for herbs whose intended known use is for medicinal effects.

Where an herb has use both as a food and a drug, the available information on the intended use of the product will determine whether FDA regulates the herb as a food, as a drug, or as both a food and a drug.

In this regard, the agency points out that the relationship of a food or a food component to a disease is quite different from that of a drug to a disease. The Surgeon General's Report on Nutrition and Health (Ref. 6) points out that, apart from classic disorders resulting from dietary deficiencies of essential nutrients (e.g., pellagra and niacin), it has proved difficult to demonstrate causal associations between specific dietary factors and chronic or other diseases (e.g., dietary fiber and cancer). The report goes on to state:

> Development of the major chronic disease conditions—coronary heart disease, stroke, diabetes, or cancer—is affected by multiple genetic, environmental, and behavioral factors among which diet is only one—albeit an important—component. These other factors interact with diet in ways that are not completely understood. In addition, foods themselves are complex; they may contain some factors that promote disease as well as others that are protective.

Thus, a claim that a substance can be used in the prevention, diagnosis, cure, mitigation, or treatment of a disease or symptom is inappropriate on a food (see § 101.9(k)(1) (21 CFR 101.9(k)(1))). Congress has said that these effects are the effects of a drug (section 201(g)(1)(B) of the act).[1] Claims that a substance will have any of these effects assert that the substance will have a direct effect on the disease. In contrast, as explained above, the effect of diet on disease is much more complex and must be described in different terms that reflect the multifactorial nature of the development of disease and the fact that diet may not address all the relevant factors.

2. Safety

Section 101.14(b)(3)(ii) provides that, to justify a claim for a substance that is to be consumed at other than decreased levels, the substance must be a food or a food ingredient or a component of a food ingredient whose use at the levels necessary to justify a claim has been demonstrated by the proponent of the claim, to FDA's satisfaction, to be safe and lawful under the applicable food safety provisions of the act.

The preamble of the November 1991 health claims proposal explained:

> * * * This showing can be based on: (1) A demonstration that the substance is generally recognized as safe (GRAS) within the meaning of § 170.30; (2) a listing of the substance as GRAS in 21 CFR part 182 or as affirmed as GRAS in 21 CFR part 184; (3) a food additive regulation; or (4) a sanction or approval granted by FDA or the United States Department of Agriculture prior to September 6, 1958. If the safety and lawfulness of the substance is not expressly recognized in an FDA regulation, the burden will rest on the claim's proponent, as a prerequisite to FDA's evaluation of the health claim, to submit all the scientific data and other relevant information required to demonstrate safety and lawfulness in accordance with applicable petition requirements. FDA will withhold review of the health claim until it is satisfied on these points.

(56 FR 60537 at 60546.) FDA reiterated this position in the health claims final rule (58 FR 2487,2502).

Many comments from the dietary supplement industry objected to the safety provisions as proposed. Many of these comments disagreed with the application of FDA's preliminary safety requirement to the ingredients of dietary supplements. Some of these comments asserted that the 1990 amendments do not require a separate showing of safety for substances that are the subjects of disease-related claim petitions, and that FDA should not add such a requirement to its regulation. The comments pointed out that many herbs and other

[1] Note that nothing in this document is intended to address the circumstances in which a substance may be a drug under section 201(g)(1)(C) of the act.

ingredients of dietary supplements have been used for thousands of years with no known ill effects. Requiring further evidence of safety for these products, the comments contended, would be superfluous and expensive. However, other comments agreed with FDA that it would be inappropriate to allow a health claim on a product that contains a substance that is not GRAS, is not the subject of a food additive regulation, or has not received a prior sanction.

FDA tentatively concludes that this preliminary requirement should apply to substances in dietary supplements. Sections of the act enacted by the 1990 amendments cannot be implemented independently of the remaining portions of the act (see section 9 of the 1990 amendments). The act must be considered as a whole, and FDA's responsibility for ensuring the safety of foods is explicitly provided for in other sections of the act (see sections 201(s), 402(a)(1) and (a)(2), and 409 of the act).

This fact is particularly significant because the agency will be specifically authorizing the health claims that will be made. In view of this affirmative action, FDA authorization of a health claim places the agency's imprimatur on the claim. It would be a violation of the agency's responsibility under the act to authorize a health claim about a substance, whether it be in dietary supplement or conventional food form, without being satisfied that the use of the substance is safe. Safety considerations are of particular importance with respect to health claims because such claims may well change the dietary patterns of many Americans.

The fact that some herbs and other ingredients of dietary supplements have been used for thousands of years does not necessarily justify a conclusion by FDA that their use is safe. While the proponents of claims for such substances are free to demonstrate that the use of those substances is generally recognized as safe based on their common use in food prior to 1958, the agency notes that much of the use of many of these substances has been as a drug, tonic, or folk remedy, rather than as food (see 53 FR 16545, May 10, 1988). As drugs, the levels and frequency of use of these substances may have been significantly different than the levels and frequency of use that will result from their use as foods. Thus, FDA needs to review data on the identity of the substance, the safety of the substance, the use of the substance in food, the cultural context of its use, and the dietary habits in the country where use of the substance occurred (see 50 FR 27295, July 2, 1985).

Even though there is no explicit provision in the 1990 amendments requiring a separate showing of safety, it must be kept in mind that the act "* * * is designed to ensure the safety of the food we eat * * *." (See *Les* v. *Reilly*, 968 F.2d 985 (9th Cir. 1992).) The requirement that a substance that is the subject of a health claim be safe is implicit in the 1990 amendments. Section 403(r)(3)(A)(ii) of the act states that a health claim may be made only for a food that does not contain any nutrient in an amount that increases the risk of a disease or health-related condition that is diet related to persons in the general population, taking into account the significance of the food in the total daily diet. FDA believes that, in addition to requiring establishment of disqualifying levels for total fat, saturated fat, cholesterol, and sodium in § 101.14(a)(5) (see 58 FR 2488 through 2498), this provision evidences a concern by Congress that a substance that is the subject of a health claim be used in a manner that is safe. This concern was reflected in the statements of the sponsors in both the House and the Senate (Refs. 2 and 5).

Further, section 9 of the 1990 amendments states that the amendments "shall not be construed to alter the authority of the Secretary of Health and Human Services * * * under the Federal Food, Drug, and Cosmetic Act * * *." Thus, FDA's responsibility for ensuring the safety of foods has in no way been diminished by the passage of the 1990 amendments. Thus, for all the foregoing reasons, FDA is proposing to make health claims for substances in dietary supplements, like claims for any other food, subject to § 101.14(b)(3)(ii).

In responding in the health claims final rule to concerns raised by comments suggesting that FDA recognize manufacturers' private GRAS determinations, the agency stated about § 101.14(b)(3)(ii):

> FDA acknowledges that the GRAS affirmation and food additive listing process can be lengthy. Thus, FDA designed § 101.14(b)(3)(ii) to provide flexibility with respect to the type of showing of safety that is necessary to make a substance eligible to be the subject of a health claim. GRAS affirmation and food additive listing are but two of the procedures by which a substance may meet this preliminary requirement.
>
> FDA intends to consider the basis of manufacturers' independent GRAS determinations where such determinations are submitted with petitions for health claims and may use its discretion to accept, without formal affirmation, the independent determination of GRAS where FDA believes that such action would be appropriate. As FDA pointed out in the previous comment, however, the agency would not be fulfilling its responsibilities under the act if it were to permit a substance to be the subject of a health claim without satisfying itself that the use of that substance is safe.
>
> Although FDA will consider all manufacturers' independent GRAS determinations where the basis for such determinations are submitted with petitions for health claims, the agency advises that it will generally not be possible for FDA to judge whether GRAS determinations based on complex scientific evidence are valid within the short timeframes mandated under the 1990 amendments for health claims petitions. Instead, agency agreement with an independent determination that a substance is GRAS will be most likely where the substance is an ingredient, or a component of a food ingredient, that was in common use in food prior to January 1, 1958, in a similar context. However, where such agreement occurs, the agreement does not constitute GRAS affirmation. Instead, the history of common use in food, coupled with the fact that FDA knows of no reason to question the safety of the food ingredient, means that the substance will be treated as if it is an unlisted GRAS substance (as provided for in §§ 170.30(d) and 182.1(a) (21 CFR 170.30(d) and 182.1(a))) in the manner provided for in the food ingredient list in 21 CFR part 182.
>
> (58 FR 2478 at 2502 through 2503)

Under this proposal, this statement would be fully applicable to substances in dietary supplements.

C. Scientific Standard

For reasons fully discussed previously in this preamble, FDA is proposing the same scientific standard for dietary supplements that has been established for conventional food. The scientific standard for health claims in § 101.14(c) states that FDA will promulgate regulations authorizing a health claim only when it determines, based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence.

Specific reference to dietary supplements in § 101.14(c) is not necessary because FDA's proposed revision in § 101.14(a)(2) of the term "substance" to include dietary supplements will link dietary supplements to the term "health claim," and § 101.14(c) sets forth the circumstances under which FDA will promulgate regulations authorizing such a claim.

Some comments urged FDA to consider with fairness any proposed health claim that relies on data derived from non-Western cultures.

The agency advises that it will consider the evidence submitted in support of a claim on its scientific merits and in the context of the totality of available evidence. It will not underrate any evidence on the basis of its cultural or geographic origin. Of course, however, FDA must consider the significance in the U.S. population of the effects of the disease or health-related condition and the relevance of studies done in other populations to the U.S. population.

D. General Labeling Requirements

In the health claims final rule, FDA established a number of general requirements for health claims for food in conventional food form in § 101.4(d) to ensure that consumers are provided with valid and reliable information about the value that ingestion (or reduced ingestion) of the particular substance, as part of a total dietary pattern, may have in affecting certain diseases or health-related conditions.

The agency is proposing in this document that dietary supplements be subject to the same general requirements that it has established for conventional food in § 101.14(d). Specific references to dietary supplements in § 101.14(d) are not necessary because FDA's proposed revision in § 101.14(a)(2) of the term "substance" to include dietary supplements will link dietary supplements to the term "health claim" for which § 101.14(d) prescribes general requirements.

1. FDA Commitments for Valid Claims

Section 101.14(d)(1) provides that when FDA determines that a health claim is valid, the agency will propose a regulation in subpart E of part 101 to authorize the use of the claim. Further, the provision states that if the claim pertains to a substance not provided for in § 101.9, FDA will propose amending those regulations to include declaration of the substance. To ensure that the provisions established in § 101.4(d)(1) apply to dietary supplements, the agency is proposing to revise § 101.14(d)(1) to reference, in addition to § 101.9, the provisions of proposed § 101.36 (21 CFR 101.36), that appear elsewhere in this issue of the **Federal Register**, which establish requirements for the nutrition labeling of dietary supplements of vitamins or minerals subject to section 411 of the act.

Several comments argued that FDA should not permit firms to place any health claims on the labels and in labeling of dietary supplements.

Through enactment of section 403(r) of the act, Congress has mandated that firms be permitted to place health claims on food labels and in their labeling when FDA finds that the claims are valid and establishes regulations authorizing their use. So long as a dietary supplement is a food, it is subject to section 403(r) of the act. Although the comments cited a wide variety of reasons to support their objections, FDA is not addressing these reasons because the 1990 amendments settled this issue. The agency is, therefore, not proposing any general limits on the use of health claims in dietary supplements in response to these comments.

2. General Requirements

Section 101.14(d)(2) requires that health claims on food: (1) Be consistent with the specific authorizing regulation for the claim; (2) be limited to describing the value that ingestion (or reduced ingestion) of the substance, as part of a total dietary pattern, may have on a particular disease or health-related condition; (3) be complete, truthful, and not misleading; (4) contain all required information for that claim in one place without other intervening material (except that the principal display panel of the label or labeling may bear a reference statement such as "See attached pamphlet for information about calcium and osteoporosis," with the entire claim appearing elsewhere on the other labeling); and (5) enable the public to comprehend the information provided and to understand the relative significance of such information in the context of a total daily diet. If the claim is about the effects of consuming the substance at decreased dietary levels, the level of the substance in the food must be sufficiently low to justify the claim (e.g., if a definition for use of the term "low" has been established for that substance, the substance must be present at a level that meets the requirements for use of that term, unless a specific alternative level has been established for the substance in the authorizing regulation). If the claim is about the effects of consuming the substance at other than decreased dietary levels, the level of the substance in the food must be sufficiently high and in an appropriate form to justify the claim (e.g., if a definition for use of the term "high" for that substance has been established, the substance must be present at a level that meets the requirements for use of that term, unless a specific alternative level has been established for the substance in the authorizing regulation). (See § 101.14(d)(2)(vii)(A) for additional requirements where the food meets the "high" or "low" requirements based on its reference amount customarily consumed and the labeled serving size differs from that amount. See § 101.14(d)(2)(vii)(B) for guidance about how a food can meet the "high" and "low" requirements where the food is sold in a restaurant).

FDA is proposing that dietary supplements be subject to these requirements to ensure that consumers are provided with scientifically valid, nonmisleading, and reliable information about the value that ingestion of the particular substance in the dietary supplement may have in affecting a disease or health-related condition. A specific reference to dietary supplements in § 101.14(d)(2) is not necessary because FDA's proposed revision in § 101.14(a)(2) of the term "substance" to include dietary supplements will bring dietary supplements within the coverage of § 101.14(d)(2).

3. Nutrition Labeling

Section 101.14(d)(3) requires that health claims on conventional food bear nutrition labeling in accordance with §§ 101.9 and 101.10 (21 CFR 101.10). The agency is proposing to revise § 101.14(d) to reference, in addition to §§ 101.9 and 101.10, the provisions of proposed § 101.36 that appear elsewhere in this issue of the **Federal Register**. In response to section 403(q)(5)(E) of the act, FDA is proposing in § 101.36 to establish requirements for the nutrition labeling of dietary supplements of vitamins or minerals subject to section 411 of the act. Elsewhere in this issue of the **Federal Register**, the agency is proposing to require that dietary supplements of herbs and of other similar nutritional substances bear nutrition labeling in accordance with § 101.9 because these products are not covered by section 411 of the act and therefore are not subject to section 403(q)(5)(E) of the act.

E. Prohibited Health Claims

In § 101.14(e) of the health claims final rule, FDA established a number of situations where health claims are prohibited. In that paragraph, FDA prohibits health claims unless: (1) The claim is specifically provided for in an authorizing regulations in subpart E of part 101; (2) the claim conforms to all general provisions of § 101.14 as well as to all specific provisions in the authorizing regulation; (3) none of the disqualifying levels identified in § 101.14(a)(5) is exceeded in the food, unless specific alternative levels have been established for the substance in the authorizing regulation, and the labeling bears a statement that complies with § 101.13(h) highlighting the nutrient

that exceeds the disqualifying level; (4) no substance for which a disqualifying nutrient level has not been established is present at an inappropriate level as determined in the specific provision authorizing the claim in subpart E of part 101; (5) the label does not represent or purport that the food is for infants and toddlers less than 2 years of age except if the claim is specifically provided for in subpart E of part 101; and (6) except for dietary supplements not in conventional food form, the food contains 10 percent or more of the Reference Daily Intake (RDI) or Daily Reference Value (DRV) for vitamin A, vitamin C, iron, calcium, protein, or fiber prior to any nutrient addition.

In this document, the agency is proposing that dietary supplements be subject to the general prohibitions that have been established for conventional food in § 101.14(e). The agency tentatively concludes that this action is appropriate because these prohibitions: (1) Reflect the statutory restriction in section 403(r)(1)(B) of the act that requires that health claims be made in accordance with the provisions of section 403(r)(5)(D) of the act for dietary supplements; (2) ensure that inappropriate, unsubstantiated, and fraudulent health claims are not made; and (3) reduce the potential for consumer confusion when confronted with a situation in which there would be health claims for substances when they are present in dietary supplements but not when they are present in conventional foods. Specific references to dietary supplements in § 101.14(e) generally are not necessary because FDA's proposed revision in § 101.14(a)(2) of the term "substance" to include dietary supplements will bring dietary supplements within the coverage of § 101.14(e).

FDA does believe, however, that a reference to dietary supplements is appropriate in the introductory sentence of § 101.14(e) to clarify that dietary supplements are considered food by the agency. Specifically, FDA is proposing to add the phrase "regardless of whether the food is in conventional food form or dietary supplement form" into that sentence to make clear that no expressed or implied health claim may be made on the label or in labeling of any food unless the conditions in that paragraph are met.

1. Claims not Authorized by FDA

Section 101.14(e)(1) and (e)(2) prohibit the use on a food label or in labeling of any claim that expressly or by implication characterizes the relationship of any substance to a disease or health-related condition unless: (1) The claim is specifically provided for in subpart E of part 101, and (2) the claim conforms to all general provisions of § 101.14 as well as to all specific provisions in the appropriate section of subpart E of part 101.

Numerous comments voiced support for or opposition to the proposal to prohibit unauthorized health claims.

FDA adopted §§ 101.14(e)(1) and (e)(2) for foods in conventional food form (58 FR 2478 at 2534) as originally proposed because they are explicitly required under section 403(r)(1)(B) and (r)(3) of the act. For dietary supplements, these provisions respond directly to the language in section 403(r)(1)(B) of the act, which provides that a food shall be deemed misbranded if a health claim is made in its label or labeling unless the claim is made in accordance with section 403(r)(5)(D). Section 403(r)(5)(D) of the act provides that such claims are subject to the requirements adopted by the Secretary (and FDA, by delegation) by regulation. In response to the provisions of section 403(r)(5)(D) of the act, FDA is proposing that dietary supplements be fully subject to § 101.14(e)(1) and (e)(2).

Many consumers asserted that dietary supplements, including supplements containing herbs, should be permitted to include all types of nutritional and dietary guidance in their labeling, including information based on folklore and historical use, provided that the claims are made truthfully. These comments maintained that such information is essential to making informed choices of such alternatives to conventional drug therapies.

FDA advises that dietary supplements that bear labeling that expressly or by implication characterizes the relationship of any substance to a disease or health-related condition will be subject to the provisions of section 403(r) of the act. However, if the claim reveals that the product is intended to be used in the diagnosis, cure, mitigation, treatment, or prevention of a disease, as would likely be the situation where the product is presented as an alternative to a conventional drug therapy, the product, like any other product that does so, is a drug under section 201(g)(1)(B) of the act and subject to the requirements for drugs in chapter V of the act.

However, supplement manufacturers, like all other food manufacturers, are welcome to submit health claim petitions that establish the validity of claims that characterize the relationship of a substance to a disease or a health related condition in a manner that is appropriate for a food (see section II.B.1. of this document). Any such petition that shows that the preliminary requirements in § 101.14(b) and the scientific standard for a health claim in § 101.14(c) are met will provide the basis for a proposal to authorize a claim in accordance with section 403(r)(4)(A)(i) of the act.

In addition, FDA advises manufacturers of dietary supplements that where a claim does not include one or both of the basic elements of a health claim, reference to a substance and to a disease or health-related condition, it constitutes dietary guidance that may be provided on the label or in labeling so long as it is presented in a truthful and nonmisleading manner (see 58 FR 2478 at 2487).

2. Additional Limits on Health Claims

Some comments on the November 1991 health claims proposal urged that the agency allow health claims only on foods that are consistent with dietary guidelines.

In the health claims final rule (58 FR 2478 at 2534), FDA adopted new § 101.14(e)(6) to require consistency with dietary guidelines by prohibiting health claims unless the food contains 10 percent or more of the RDI or DRV for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed prior to any nutrient addition. (A complete discussion of why these specific criteria were selected appears in the preamble of that document (see 58 FR 2478 at 2521 through 2522.) This provision stresses the importance of selecting foods so that dietary sources of calories are coupled with sources of nutrients. This approach incorporates established levels of significance for nutrients in food and is based on the amounts in foods of certain nutrients required to be listed on the label as part of mandatory nutrition labeling. As such, this approach applies to food in conventional food form.

FDA specifically exempted dietary supplements not in conventional food form from this requirement. Such supplements are intended only to provide nutritive value to the daily diet, and they make no pretense of serving as substitutes for conventional food. (Dietary supplements in conventional food form are, however, intended to serve as substitutes for conventional food.) As a result it would not be logical to hold such products to criteria designed to ensure consistency with dietary guidelines for conventional food. A dietary supplement that meets the qualifying criterion in § 101.14(d)(2)(vii) and that does not contain a nutrient at a disqualifying level specified in § 101.14(a)(5)

possesses nutritive value for a health claim irrespective of whether or not it may also provide calories. Accordingly, FDA is not proposing to make any change in the exemption for dietary supplements not in conventional food form from the provisions of § 101.14(e)(6). For consistency with the proposed definition of the term "dietary supplement," however, FDA is proposing to revise the wording for this exemption to remove the phrase "not in conventional food form" because the proposed definition of "dietary supplement" states that such foods are not in conventional food form.

F. Applicability

In the health claims final rule, FDA established a provision in § 101.14(g) stating that the requirements for health claims in § 101.14 apply to foods intended for human consumption that are offered for sale. FDA is proposing that dietary supplements also be covered by § 101.14(g). Again, FDA believes that additional reference to dietary supplements may be appropriate in § 101.14(g) to clarify that dietary supplements are considered food by the agency. Specifically, FDA proposes to revise § 101.14(g) to state that the requirements of § 101.14 apply to foods intended for human consumption that are offered for sale, regardless of whether the foods are in conventional food form or dietary supplement form.

G. Petitions

Consistent with the proposed approach of regulating dietary supplements in the same manner as foods in conventional food form, FDA tentatively finds that it is appropriate under section 403(r)(5)(D) of the act to make petitions for a regulation authorizing a health claim on the label or in labeling of dietary supplements subject to the procedure that has been established in § 101.70 for petitions for health claims on the label or in labeling of foods in conventional food form. FDA structured § 101.70 to ensure that the agency has the information that it needs to assess the validity of claims for substances in these foods. Thus, subjecting petitions for claims for substances in dietary supplements to the same standard as for petitions for claims of substances in foods in conventional food form will ensure that the former petitions will provide the necessary information.

Because FDA is proposing the same requirements for petitions on substances in dietary supplements as for substances in foods in conventional food form, it is not distinguishing between dietary supplements and foods in conventional food form in § 101.70. However, one conforming revision needs to be made in § 101.70 for dietary supplements. FDA is proposing that § 101.70(f) be revised so that the petitioner will reference section 403(r)(5)(D) of the act as the specific statutory provision under which a petition for a health claim for a dietary supplement is being submitted.

IV. Impact Statements

A. Economic Impact

FDA has examined the economic implications of the proposed rules amending 21 CFR part 101 as required by the Regulatory Flexibility Act and Executive Orders 12291 and 12612. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking. The agency finds that the proposed rules on dietary supplements, taken together, do not constitute a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (Pub. L. 96–354), FDA has explored whether these proposed rules may have a significant impact on small businesses and has tentatively concluded that they do not.

The costs of the proposed regulations on dietary supplements, taken as a whole, are estimated to be $20 million. The benefits are primarily those that result from standardizing the format of nutrition information already provided on vitamin and mineral supplements with that of conventional foods. However, because most vitamin and mineral supplements do not currently make health claims on their labels or labeling, FDA does not believe that this proposed rule will result in any significant change. Accordingly, there would be few benefits to the regulation. The agency has presented a more indepth analysis in the document covering mandatory nutrition labeling requirements for dietary supplements, published elsewhere in this issue of the **Federal Register**.

B. Environmental Impact

The agency has previously considered the environmental effects of this proposed rule when it was part of the proposed rule pertaining to both foods in conventional food form and to dietary supplements (November 27, 1991, **Federal Register** (56 FR 60537 at 60562)). At that time, FDA determined under 21 CFR 25.24(a)(8) and (a)(11) that the proposed action was of a type that does not individually or cumulatively have a significant impact on the human environment. No new information or comments have been received with respect to health claims for dietary supplements that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

C. Paperwork Reduction Act

Section 101.70, which FDA is proposing to extend to cover dietary supplements, contains requirements for submission of petitions to FDA that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3504(h) of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910–0287.

This proposal contains collection of information requirements that are subject to review by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Therefore, in accordance with 5 CFR part 1320, the title, description, and respondent descriptions of the proposed collection of information requirements are shown below with an estimate of the annual collection of information burden. Included in the estimate is the amount of time for reviewing instructions, searching existing data sources, gathering necessary information, and completion and submission of petitions.

Title: 21 CFR 101.70—Food Labeling; General Requirements for Health Claims for Food.

Description: Section 403(r)(4)(A)(i) of the act grants any person the right to petition the agency to issue a regulation authorizing a health claim on a substance-disease relationship. The agency is proposing to extend the coverage of § 101.70 as the general procedural regulation for health claims to include dietary supplements. In § 101.70, paragraphs (a) through (d) address general issues and requirements such as the incorporation of various types of information into the petition and standard FDA requirements pertaining to clinical and nonclinical studies submitted to the agency for review.

Section 101.70(f) sets forth the format for a health claim petition. It specifies the types of data and other requirements that are necessary to provide for an efficient review and to demonstrate that the proposed substance-disease relationship complies with the

requirements established under the 1990 amendments.

Description of Respondents: Persons and businesses, including small businesses.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
101.70	5	1	400	2000
Total				2000

FDA has submitted copies of this proposed rule to OMB for its review of this reporting requirement.

V. Comments

Interested persons may, on or before August 17, 1993, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

As mentioned previously in this preamble, the DS act requires that final rules implementing the 1990 amendments with respect to dietary supplements be issued by December 31, 1993. In order to meet this statutory timeframe, FDA must limit the comment period for this proposal to 60 days. FDA believes that the need to meet this timeframe constitutes good cause under 21 CFR 10.40(b)(2) of its procedural regulations for limiting the comment period. Thus, the agency is announcing that because of the short statutory timeframe, FDA will be unable to grant any extensions to the comment period. In addition, the agency will not consider the content of any comments received at Dockets Management Branch after the close of the 60-day comment period.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. House of Representatives, House Report 101–538, "Nutrition Labeling and Education Act of 1990," June 13, 1990.

2. 136 Congressional Record-House, H12951–12955, October 26, 1990.

3. 138 Congressional Record-House H12597, October 8, 1992; 138 Congressional Record-Senate S17236, October 7, 1992.

4. 136 Congressional Record—House, H5836–5845, July 30, 1990.

5. Congressional Record-Senate, S16607–16612, October 24, 1990.

6. U.S. Department of Health and Human Services, Public Health Service, "The Surgeon General's Report on Nutrition and Health," DHHS (PHS) Publication No. 88–50210 (GPO Stock No. 017–001–00465–1, U.S. Government 9Printing Office, Washington, DC), 1988.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 501, 502, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 355, 371); sec. 202(a)(2) of the Dietary Supplement Act (Pub. L. 102–571).

2. Section 101.14 is amended by revising paragraphs (a)(2); by adding new paragraph (a)(4); and by revising paragraphs (b)(3)(i), (d)(1), (d)(3), the introductory text of paragraph (e), and paragraphs (e)(6) and (g) to read as follows:

§ 101.14 Health claims: general requirements.

(a) * * *

(2) *Substance* means a specific food or component of food, regardless of whether the food is in conventional food form or a dietary supplement that includes vitamins, minerals, herbs, or other similar nutritional substances.

* * * * *

(4) *Dietary supplement* means a food, not in conventional food form, that supplies a component to supplement the diet by increasing the total dietary intake of that component.

* * * * *

(b) * * *

(3) * * *

(i) The substance must, regardless of whether the food is in conventional food form or dietary supplement form, contribute taste, aroma, or nutritive value, or any other technical effect listed in § 170.3(o) of this chapter, to the food and must retain that attribute when consumed at levels that are necessary to justify a claim; and

* * * * *

(d) * * *

(1) When FDA determines that a health claim meets the validity requirements of paragraph (c) of this section, FDA will propose a regulation in subpart E of this part to authorize the use of that claim. If the claim pertains to a substance not provided for in § 101.9 or § 101.36, FDA will propose amending that regulation to include declaration of the substance.

* * * * *

(3) Nutrition labeling shall be provided in the label or labeling of any food for which a health claim is made in accordance with § 101.9; for restaurant foods, in accordance with § 101.10; or for dietary supplements of vitamins or minerals, in accordance with § 101.36. The requirements of the introductory text of paragraph (d)(3) of this section are effective as of May 8, 1993, except:

(i) [Reserved]

(ii) [Reserved]

(iii) For dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances for which the requirements of paragraph (d)(3) of this section will be effective (insert date

6 months after date of publication of the final rule in the **Federal Register**).

(e) *Prohibited health claims.* No expressed or implied health claim may be made on the label or in labeling for a food, regardless of whether the food is in conventional food form or dietary supplement form, unless:

* * * * *

(6) Except for dietary supplements, the food contains 10 percent or more of the Reference Daily Intake or the Daily Reference Value for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed prior to any nutrient addition.

* * * * *

(g) *Applicability.* The requirements of this section apply to foods intended for human consumption that are offered for sale, regardless of whether the foods are in conventional food form or dietary supplement form.

3. Section 101.70 is amended in paragraph (f) in the sample petition for a health claim by adding the words "or 403(r)(5)(D)" after "403(r)(3)".

Dated: June 10, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 93-14272 Filed 6-15-93; 8:45 am]

BILLING CODE 4160-01-P

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21 CFR Part 101

[Docket No. 90N-135D]

RIN 0905-AD96

Food Labeling; General Requirements for Nutrition Labeling for Dietary Supplements of Vitamins, Minerals, Herbs, or Other Similar Nutritional Substances

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish regulations for the nutrition labeling of dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances. The action is in response to certain provisions of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) and the Dietary Supplement Act of 1992 (the DS act).

DATES: Written comments by August 17, 1993. The agency is proposing that any final rule that may issue based upon this proposal become effective 6 months following its publication.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Susan Thompson, Center for Food Safety and Applied Nutrition (HFS-165), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-205-5817.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1990, the President signed into law the 1990 amendments (Pub. L. 101-535). This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One of the notable aspects of the 1990 amendments is that they added section 403(q) to the act (21 U.S.C. 343(q)). This section requires that most foods bear nutrition labeling.

In response to section 403(q), FDA published a proposal on nutrition labeling in the **Federal Register** of November 27, 1991 (56 FR 60366 at 60393). The document proposed, among other things, a regulation specifically for the nutrition labeling of dietary supplements of vitamins or minerals (proposed § 101.36), and it proposed to make the nutrition labeling of dietary supplements of herbs or other similar nutritional substances subject to § 101.9 (21 CFR 101.9), the general regulation on nutrition labeling. This distinction reflects one that is created by section 403(q)(5)(E) of the act. This section provides that if a food to which section 411 of the act applies (i.e., a dietary supplement of vitamins or minerals—section 411, also known as "The Proxmire Amendment" limits FDA's ability to regulate the level of vitamins or minerals in food) contains one or more of the nutrients required to be listed in nutrition labeling, "the label or labeling of such food shall comply with requirements of subparagraphs (1) and (2) [of section 403(q) of the act] in a manner which is appropriate for such food and which is specified in regulations of the Secretary." Other dietary supplements are not subject to section 403(q)(5)(E) and thus are subject to regulation under section 403(q) as any other food.

In response to the proposed rule of November 27, 1991, on nutrition labeling, FDA received over 45 responses, each containing one or more comments, that pertained to the nutrition labeling of dietary supplements. Responses were received from consumers, health care professionals, universities, State and local governments, foreign governments, trade organizations, consumer advocacy organizations, research institutes, industry, and professional organizations. The agency summarized and discussed the issues in these comments in the preamble of the final rule that it issued on January 6, 1993 (58 FR 2079 at 2167), which was based on the November 27, 1991, proposed rule. The rule finalized the proposed rule on the nutrition labeling of food in conventional food form (§ 101.9) but did not finalize the proposed rule on the nutrition labeling of dietary supplements of vitamins or minerals (§ 101.36), or any provision on how dietary supplements of herbs or other nutritional substances are to be labeled, because of the DS act.

The DS act (Pub. L. 102-571) was signed into law on October 6, 1992. In section 202(a)(1), the DS act established a 1-year moratorium on the implementation of the 1990 amendments with respect to dietary supplements that are not in the form of conventional food. Section 202(a)(2) of the DS act requires the Secretary of Health and Human Services (the Secretary), and by delegation FDA, to issue new proposed regulations that are applicable to dietary supplements no later than June 15, 1993, and final regulations by December 31, 1993. In addition, section 203 of the DS act instructs FDA not to promulgate regulations that require the use of, or that are based upon, recommended daily allowances of vitamins or minerals before November 8, 1993 (other than regulations establishing the U.S. Recommended Daily Allowances (U.S. RDA), specified in § 101.9(c)(7)(iv) as in effect on October 6, 1992). FDA intends to address the issue of the appropriate values for Reference Daily Intakes (RDI's). However, the National Academy of Sciences (NAS) is in the process of reevaluating the basis on which Recommended Dietary Allowance (RDA) values are determined. They are addressing the issue of whether values should be selected to prevent deficiencies or to promote optimal wellness. The agency believes that its action should await completion of the NAS process. FDA is committed to working with NAS to help resolve this issue.

According to the manager's statement for the Senate (Ref. 1), the DS act is intended to provide FDA with an opportunity to carefully consider how best to regulate dietary supplements. The agency is expected to develop a comprehensive approach for reforming the regulation of dietary supplements.

The statement stresses the DS act's policy goal that:

> • • • [T]he American public must be assured that the dietary supplements they choose to consume are safe, made to quality standards, bear informative labeling, and that health or disease-related claims are properly supported.

(138 Congressional Record S 17240 (October 7, 1992))

This proposal satisfies the provision of the DS act that FDA issue new proposed regulations on dietary supplements with respect to nutrition labeling. The agency has arrived at the tentative judgments that are embodied in this proposal after carefully considering how best to provide for nutrition labeling on dietary supplements in the legal context established by the act. FDA is also issuing proposed regulations that address the use of nutrient content claims and health claims on dietary supplements in companion documents published elsewhere is this issue of the **Federal Register**.

II. Provisions of Proposed Regulations

The agency is proposing in § 101.36(a) that a dietary supplement of a vitamin or mineral that has an RDI as established in § 101.9(c)(8)(iv) or a Daily Reference Value (DRV) as established in § 101.9(c)(9) shall bear nutrition labeling in accordance with this section, as illustrated in the sample labels in proposed § 101.36(c)(8). FDA is also providing in proposed § 101.36 that dietary supplements of herbs and of other similar nutritional substances are required to bear nutrition labeling in accordance with § 101.9. (Although the agency previously considered that there could be dietary supplements in conventional food form, FDA is proposing in the document on health claims published elsewhere in this issue of the **Federal Register** to limit the coverage of this term to food not in conventional food form. FDA is reflecting this tentative position in this document. The agency notes that because the DS act did not cover foods in conventional food form, any products in conventional food form that had been considered to be dietary supplements are already covered by § 101.9.)

FDA recognizes that the position that it is taking in this proposal is somewhat different from the one it took in the November 27, 1991, proposed rule (56 FR 60366 at 60381). There the agency interpreted section 403(q)(5)(E) of the act to mean that a vitamin E supplement, for example, would not be subject to the special nutrition labeling provided for by that section because vitamin E, while a substance whose presence in a supplement would subject that supplement to section 411 of the act, was not one of the vitamins or minerals required to be listed in nutrition labeling under section 403 (q)(1) or (q)(2) of the act. Only vitamin A, vitamin C, calcium, and iron were required to be listed.

However, the agency has reconsidered this position in light of the fact that § 101.9(c)(8)(ii), as adopted in the January 6, 1993, final rule, provides that vitamins and minerals (other than vitamin A, vitamin C, calcium, and iron) must be declared when they are added as a nutrient supplement, or when a claim is made about them (58 FR 2079 at 2178). Thus, when vitamin E is added as a nutrient supplement (see § 170.3(o)(20) (21 CFR 170.3(o)(20))) to a food in conventional food form, it would have to be declared. FDA is aware of no reason to treat a dietary supplement of vitamins or minerals any differently. Therefore, all vitamins and minerals for which FDA has established RDI's or DRV's, when they are present in supplements, are "nutrients required to be listed in nutrition labeling" and thus come within section 403(q)(5)(E) of the act.

Furthermore, the agency believes that section 403(q)(5)(E) of the act covers vitamins and minerals for which FDA has established RDI's or DRV's, when they are present in supplements, such as rose hips, that are represented as a source of vitamins or minerals. Therefore, the agency considers a supplement that is represented to be a source of vitamins or minerals to be a food to which section 411 of the act applies and, thus, to be subject to proposed § 101.36. The agency recognizes that, in some cases, the determination of what supplements are covered by section 411 of the act is difficult, and the agency seeks comments on this issue.

Dietary supplements of herbs or other similar nutritional substances are not covered by section 411 of the act and are therefore not covered by section 403(q)(5)(E) of the act. Thus, it was apparently the intent of Congress that dietary supplements of herbs and other similar nutritional substances be fully subject to the requirements of section 403 (q)(1) and (q)(2) of the act. Thus, they are appropriately subject to nutrition labeling under § 101.9. As a result, under this proposal, dietary supplements of herbs and of other similar nutritional substances are subject to the same nutrition labeling rules that apply to foods in conventional food form. Under this proposal, nutrition label of these supplements will present the nutrition information required in § 101.9(c) in the format specified in § 101.9 (d) and (e). The simplified format in § 101.9(f) may be followed when a supplement of herbs or other nutritional substances contains insignificant amounts of 7 or more of the nutrients required to be listed in § 101.9(e). No nutrition label will be required when all of the nutrients required are absent as specified in § 101.9(j)(4).

To reduce consumer confusion and to ensure that it is readily observable and comprehensible to consumers, the agency is proposing that nutrition labeling on vitamin or mineral supplements be presented in a manner that is as similar as possible to the nutrition labeling of other foods (section 2(b)(1)(A) of the 1990 amendments). Thus, the agency is proposing in § 101.36(b) to require that the overall heading of the nutrition label be "Nutrition Facts." It is proposing that, consistent with § 101.9(d), the nutrition information be enclosed in a box by use of lines, be in black or one color type, and be printed on a white or other neutral contrasting background whenever practical.

A. Serving Size Information

The agency is proposing in § 101.36(b)(1) that "Serving Size" be placed under the heading of "Nutrition Facts" and aligned on the left side of the nutrition label of supplements. The agency points out that the 1990 amendments added section 403(q)(1)(A)(i) to the act, which specifies that the "* * * serving size * * * is an amount customarily consumed * * *." In addition, section 403(q)(5)(E) of the act provides that dietary supplements of vitamins or minerals shall comply with the requirements of section 403(q)(1) in a manner "* * * which is appropriate for such food and which is specified in regulations of the Secretary."

In attempting to develop a reference amount customarily consumed for dietary supplements, the agency was restricted by the lack of available data on the amounts of dietary supplements that are customarily consumed per eating occasion and by the wide variety of dietary supplements available to consumers, many of which could be expected to have different amounts customarily consumed. To circumvent this lack of data, FDA is proposing to define in § 101.12(b) (21 CFR 101.12(b)), Table 2, one serving of a dietary supplement of a vitamin or mineral, of an herb, or of other similar nutritional substances as the maximum amount recommended, as appropriate, on the label for consumption per eating

occasion, or, in the absence of recommendations, 1 unit, e.g., tablet, capsule, packet, teaspoonsful, etc. This proposal is based on the agency's belief that consumption of specific dietary supplement products is determined in large part by the amount recommended for consumption by the manufacturer on the label. The agency requests comments on this approach.

Thus, under this proposal, if label instructions recommend one tablet per day, the serving size is one tablet. If there is no amount recommended on the label, the serving size is one unit of the supplement. If one to three tablets are recommended per day, the serving size is one tablet based on the fact that there are three separate eating occasions per day. However, if two tablets are recommended per meal, the serving size is two tablets. If the label instructions recommend a range of consumption per eating occasion (e.g., take two to five tablets 4 times a day), the serving size will be assumed to be the maximum of the range specified (five tablets). If a product comes in a packet containing different tablets or capsules that are to be consumed at one time, the appropriate serving size is one packet (pac, package, or packette). The proposed reference amount in § 101.12(b) will apply to dietary supplements of vitamins or minerals that are proposed to be subject to nutrition labeling regulations in § 101.36 and to dietary supplements of herbs or of other similar nutritional substances that are proposed to be subject to § 101.9. Furthermore, the agency is proposing in § 101.36(b)(1) that for dietary supplements of vitamins or minerals, the procedure in § 101.9(b) be used for converting the reference amount to the label serving size.

In the proposed rule on nutrition labeling of November 27, 1991 (56 FR 60366 at 60382), the agency did not propose to require that serving sizes be declared on dietary supplements. Instead, the agency proposed that "units per day" be disclosed because it was proposing that nutrition information be presented on a "per unit" basis or, when label directions specified that more than one unit be consumed during a day, on the basis of "per day" (i.e., dual declaration).

As discussed in the January 6, 1993, final rule (58 FR 2079 at 2168), the agency received a number of comments opposing the dual declaration of nutrition information on supplements. Comments argued that dual declaration will confuse consumers, overcrowd labels, and discriminate against those supplements that are required to have it. Some of these comments stated that declaration should be only on a "per day" basis because it is the total amount of nutrients that is important. Other comments asserted that the declaration should be on a "per unit" basis because some consumers may deviate from the recommended intake, or the intake may be presented as a range (e.g., one to three tablets per day). Some of these comments pointed out that U.S. Pharmacopeia also favors a "per unit" basis.

In the January 6, 1993, final rule (58 FR 2079 at 2168), the agency agreed that dual declaration of nutrition information may create a readability problem for consumers. It deferred rulemaking because of the DS act but tentatively concluded that declaration on a "per unit" basis is more useful because consumers may not actually consume the amount indicated "per day." Based on that tentative conclusion, FDA questioned the usefulness of serving size information for supplements in the form of discrete units, such as tablets or capsules, concluding that it was sufficient to use the subheading "each unit contains:". The agency did state that it believed that serving size information should be provided for supplements in liquid or powdered form to give the consumer better information about the dosage unit.

The agency has been able to reexamine this issue during the moratorium imposed by the DS act but still believes that requiring dual declaration when more than one unit is to be consumed during a period of 1 day creates readability problems. Although the agency has been persuaded that a "per unit" approach is more useful than a "per day" approach, the agency is concerned that reporting information solely on a "per unit" basis could confuse consumers when more than 1 unit is to be consumed at one time (e.g., two capsules with each meal). If consumers do not notice or do not understand the heading that states "per unit," they might assume that the information is for the amount specified for consumption at one time (i.e, "per serving"), particularly because information for foods in conventional food form will be expressed on a "per serving" basis in accordance with section 403(q)(1) of the act. Also, the agency prefers one consistent method of labeling for the various forms of supplements and points out that "per unit" labeling is not as appropriate for supplements that do not come in discrete units (e.g., liquid or powdered supplements). For these reasons, the agency is proposing that declaration be on a "per serving" basis consistent with § 101.9.

Consequently, the agency tentatively concludes that serving size information must be provided to make it clear to the consumer the basis on which the nutrition information is reported (i.e., how many units are represented by the nutrient values given). Consistent with the November 27, 1991, proposed rule, the agency is proposing in § 101.36(b)(1) to allow the declaration of serving size in terms that are appropriate for the supplement, such as "tablets," "capsules," "packets," or "teaspoonfuls."

In regard to the requirement proposed in November 1991, that "units per day" be declared in the nutrition label of dietary supplements (56 FR 60366 at 60382), the agency received one comment stating that this information is not necessary. As discussed in its January 6, 1993, final rule (58 FR 2079 at 2168), FDA considered this comment and agreed that "units per day" could be confusing. The agency is concerned that if "units per day" is declared in the nutrition label, consumers might assume that the nutrient information is for the total number of units specified for consumption per day. To avoid the possibility for confusion, FDA is not providing for declaration of "units per day" on the nutrition label. If directions concerning the number of units to be consumed per day are to be provided, they should be given outside of the nutrition label.

B. Servings Per Container

FDA is proposing in § 101.36(b)(2) to require the listing of "servings per container" on the left side of the label under the listing of "serving size." This provision is similar to § 101.9(d)(3)(ii), which requires information on servings per container on the label of foods in conventional food form.

The agency proposed to require that "units per container" be declared on dietary supplements of vitamins or minerals in the November 27, 1991, proposed rule (56 FR 60366 at 60382). In response, the agency received a few comments that stated that this information is redundant and unnecessary because it is already required to be listed on the principal display panel of dietary supplements as part of the net quantity of contents declaration. In the January 6, 1993, final rule on nutrition labeling (58 FR 2079 at 2168), the agency agreed that since § 101.105(a) (21 CFR 101.105(a)) requires that the net quantity of contents declaration include a numerical count when appropriate, there is little benefit to be derived from information on the

number of units appearing in two different places on the label. Accordingly, when the serving is one unit, the number of servings per container would duplicate the number of units declared on the principal display panel. To avoid this redundancy, the agency is proposing in § 101.36(b)(2) that information on servings per container need not be provided when the identical information is stated in the net quantity of contents declaration. For the same reason, the agency is proposing to revise § 101.9(d)(3)(ii) to include a similar provision for all foods covered by that regulation, including foods in conventional food form and dietary supplements of herbs and of other similar nutritional substances. Current § 101.9(d)(3)(ii) allows "servings per container" to be omitted on single serving containers because it is redundant with the net quantity of contents declaration. This change provides the same opportunity to all foods when the declaration of "servings per container" would be redundant.

FDA considers that dietary supplements in liquid or powdered form will always have to declare "servings per container." The net quantity of contents information for dietary supplements in liquid or powdered form would be reported in measures, such as fluid ounces or grams, rather than in the measures used to express serving size, such as teaspoonfuls.

C. Nutrient Information

The agency is proposing in § 101.36(b)(3) that any vitamin or mineral listed in § 101.9(c)(8)(iv) or (c)(9), as well as any other nutrient listed in § 101.9(c) that is present in the supplement at more than insignificant amounts, be declared. FDA is proposing to define "insignificant amount" as an amount per serving that allows declaration of zero in nutrition labeling, except that for total carbohydrate, dietary fiber, and protein, an insignificant amount is the amount that allows a declaration of "less than 1 gram." This definition is consistent with that in § 101.9(f)(1) and (j)(4), and the agency is not aware of any basis on which to find that it would be appropriate to define this term differently for dietary supplements than for foods in conventional food form. The term "insignificant amount" was used in section 403(q)(5)(C) of the act in reference to when a food would be exempt from nutrition labeling and to when a food would qualify for the simplified format. Comments on the term are discussed in the final rule on nutrition labeling of January 6, 1993 (58 FR 2079 at 2141).

Thus, nutrients that are present in dietary supplements of vitamins or minerals in insignificant amounts are not required to be declared. This proposed requirement is different from that in § 101.9(f)(2)(i) for foods containing insignificant amounts of 7 or more nutrients required to be included in nutrition labeling in § 101.9(c), which provides that foods in conventional food form have to declare calories, total fat, total carbohydrate, protein, and sodium (i.e., the core nutrients) even when the amounts of these nutrients are insignificant. Because these core nutrients are not generally present in vitamin and mineral supplements, and FDA is not aware of any consumer expectations that they are present, FDA tentatively concludes that it is not necessary to declare them when the amounts are insignificant. The agency points out that it received no comments objecting to this provision when the agency first proposed it on November 27, 1991 (56 FR 60366 at 60382). The agency wishes to clarify that under § 101.9(j)(4) food containing insignificant amounts of all of the nutrients required to be included in nutritional labeling in § 101.9(c) are exempt from nutrition labeling.

By proposing to make dietary supplements of herbs or of other similar nutritional substances subject to § 101.9, the agency is proposing to also make them subject to § 101.9(f)(2)(i). Thus, under this proposal, the core nutrients will have to be declared on these products except when the products are exempt from nutrition labeling under § 101.9(j)(4). The agency recognizes that dietary supplements of herbs or of other similar nutritional substances may contain insignificant amounts of the core nutrients required to be declared under § 101.9(f)(2)(i). However, the agency tentatively concludes that it is appropriate to make these dietary supplements subject to § 101.9 because section 403(q)(5)(E) of the act applies only to foods that are covered by section 411 of the act. The agency does not believe that it has authority to propose requirements for these supplements that are different from those that apply to the other foods that are not subject to section 403(q)(5)(E) of the act. The agency requests comments on this issue.

The agency is also proposing in § 101.36(b)(3) to require that the name of each nutrient listed be immediately followed by the quantitative amount by weight of the nutrient, to be consistent with § 101.9(d)(7)(i). For this reason also, the agency is proposing to require that the information on names and amounts be presented in a column under the heading "Amount Per Serving," which shall be set off by a bar above and underneath it. The agency is proposing to require that the column be aligned on the left side of the nutrition label. The agency points out that the labels of many dietary supplements present the information on quantitative amount in a separate column, rather than immediately next to the name of the nutrient as is required in the new nutrition label for foods in conventional food form. In accordance with section 2(b)(1)(A) of the 1990 amendments, to ensure that the nutrition label on dietary supplements of vitamins or minerals is readily observable, comprehensible, and permits consumers to understand the significance of the information in the context of the total daily diet, FDA is proposing that this information be presented in a form that is as similar as possible to the nutrition information on foods in conventional food form. FDA believes that similarity will enhance the observability, comprehensibility, and understandability of the information. FDA requests comments on this issue.

The agency initially proposed that quantitative amounts by weight be presented for all nutrients in a dietary supplement of a vitamin or mineral in the proposed rule of November 27, 1991, on nutrition labeling (56 FR 60366 at 60393). As discussed in the January 6, 1993, final rule (58 FR 2079 at 2169), the agency received several comments on this issue in response to the November 27, 1991, proposed rule and to the format proposal of July 20, 1992 (57 FR 32058 at 32072). About half of the comments supported FDA's position on declaring amounts. Other comments opposed declaring amounts and argued that only percent of Daily Value should be mandatory, consistent with the labeling of vitamins and minerals on the labels of foods in conventional form. One comment asserted that a requirement for too much information is discriminatory against products with larger numbers of nutrients and might discourage the use of smaller packages that are less expensive to consumers.

The agency has reexamined the issue of whether the quantitative amount by weight of vitamins and minerals should be required. Although the agency is not requiring that the quantitative amount of vitamins and minerals be included in the nutrition label of foods in conventional food form, the agency believes that this information is necessary and useful on the labels of dietary supplements of vitamins or minerals by virtue of the way that such products are formulated, marketed, and used.

Dietary supplements are often formulated and marketed on the basis of offering specific amounts of certain vitamins and minerals to consumers. Some consumers try to maintain a certain quantitative intake of specific nutrients in their diets and use the product to meet this goal. The quantitative goals may be stated in terms of the absolute amount by weight of the nutrient or the percent of Daily Value that the amount represents. In addition, because these are supplements of vitamins or minerals, the quantitative amount of vitamins and minerals is essential to characterize the product. Finally, the agency points out that the labels of most dietary supplements currently include information on quantitative amount. Thus, the agency believes that continuation of provision of this type of information as part of nutrition labeling will help ensure that consumers are fully informed about the content of these products.

The agency is proposing in § 101.36(b)(3)(i) that the quantitative amounts should be expressed in the increments specified in § 101.9(c), using the units of measure and the level of significance as that given in § 101.9(c)(8)(iv) for that nutrient. The agency is not aware of any reason for treating dietary supplements of vitamins or minerals any differently in this regard than food in conventional food form. In addition, dietary supplements of herbs and of other nutritional substances will be treated in the same manner since they are subject to § 101.9. Therefore, FDA tentatively concludes that no special provision need be made for dietary supplements of herbs or of other similar nutritional substances.

For example, 2.775 milligrams (mg) of thiamin would be declared as 2.8 mg, whereas 2.775 mg of niacin would be declared as 3 mg. The agency proposed that the quantitative amounts of foods in conventional food form be expressed in this manner in the November 27, 1991, proposed rule (56 FR 60366 at 60383). One comment objected to the provision, stating that it would be potentially confusing to consumers for thiamin, for example, to be declared to the first decimal place, e.g., 100.0 mg, and niacin to be declared to the nearest whole number, e.g., 100 mg. The comment suggested that decimal places be dropped, and that all nutrients be listed to the nearest whole number when nutrient levels are 10 or more times the RDI.

As discussed in the preamble of the January 6, 1993, final rule, FDA is not persuaded that consumers would be confused by decimals for some nutrients and not others. In addition, requiring only whole numbers would introduce a large amount of imprecision in the declaration of some nutrients. For example, it would cause 1.5 mg of thiamin (i.e., 100 percent of the RDI) to be rounded up to 2 mg—a 33 percent increase. However, when the decimal is followed by a zero, the agency generally has no objection to the zero being dropped. The agency points out that the amount declared refers to the amount measured analytically and does not take into consideration the bioavailability of the nutrient.

With the exception of calcium and iron, FDA is proposing in § 101.36(b)(3)(ii) that nutrients declared in the nutrition labeling of vitamin or mineral supplements be listed in the order that nutrients are listed in the nutrition labeling of foods in conventional food form (i.e., as specified in § 101.9(c)). The agency is proposing that calcium and iron be listed after the listing of any vitamins that are present so that all of the vitamins will be grouped together. As a result, under this proposal, minerals will be listed in the following order when present in a dietary supplement: Calcium, iron, phosphorus, iodine, magnesium, zinc, and copper.

The agency points out that under this proposal, the order that nutrients are listed on foods in conventional food form is the order that they are to be listed on dietary supplements of herbs and of other similar nutritional substances, since these supplements are subject to § 101.9. Thus, no special provision need be made regarding the order of nutrients for dietary supplements of herbs or of other similar nutritional substances. The agency tentatively finds that following a consistent order will help consumers to more quickly locate information of interest to them on the label than would be the case if some other order were permitted.

The agency is proposing that the last nutrient to be listed be separated from the bottom of the nutrition label by a bar, as shown in the sample labels in proposed § 101.36(c)(8). This bar will enhance the consistency of appearance of the nutrition labels on dietary supplements of vitamins or minerals and on foods subject to § 101.9. Thus, it will help consumers of dietary supplements to readily observe the nutrition information and to comprehend its significance. Because, under this proposal, dietary supplements of herbs or of other similar nutritional substances are subject to § 101.9, they will have the same format as the format of nutrition labeling for foods in conventional food form. Therefore, no special provision regarding format need be made for dietary supplements of herbs or other similar nutritional substances.

FDA recognizes that for some dietary supplements of vitamins or minerals the content of separate servings is different (e.g., product has a packet containing an assortment of supplements to be taken in the morning and a packet with a different assortment of supplements for the afternoon). Under proposed § 101.36(b)(3)(iii), when such differences exist, the amount for each packet will have to be presented and clearly indicated, as illustrated in proposed § 101.36(c)(8)(iii), or the information for each separate serving will have to be presented in individual nutrition labels (i.e., "Nutrition Facts" panel) that are clearly identified. While the agency tentatively concludes that the manufacturer should have some flexibility in how nutrition information on these types of products is presented, the agency is including proposed § 101.36(b)(3)(iii) in the regulations to ensure that the information is presented in a comprehensible manner. Also, the agency is proposing to amend § 101.9(h)(2) to make a parallel provision that would allow dietary supplements of herbs or other similar nutritional substances to be labeled in a similar manner.

In proposed § 101.36(b)(3)(iv), the agency is providing that the percent of vitamin A that is present as β-carotene may be declared to the nearest whole percent immediately adjacent to or beneath the nutrient name, as illustrated in § 101.9(c)(8). This provision is similar to § 101.9(c)(8)(vi), which pertains to foods in conventional food form and which was added in response to a comment. As discussed in the January 6, 1993, final rule (58 FR 2079 at 2170), the agency believes that it is appropriate to voluntarily distinguish the amount of vitamin A that is present as β-carotene. The agency is proposing that β-carotene be declared to the nearest whole percent to be consistent with the proposed increments in which percent RDI's and percent DRV's are to be expressed, as discussed later in this document.

The agency points out that the specific source of the vitamin A must be shown in the ingredient list, even when β-carotene is listed in the nutrition label. One comment received in response to the November 27, 1991, proposed rule (56 FR 60366 at 60388), advocated the parenthetical listing of the source of each vitamin or mineral immediately following its declaration on the nutrition information panel in lieu of a separate ingredient list. The comment argued that this listing would

avoid confusion by enabling consumers to readily identify the nutrient source and would save limited label space.

As discussed in the January 6, 1993, final rule (58 FR 2079 at 2170), dietary supplements, like any food, are required to bear a complete list of ingredients under section 403(i)(2) of the act, and such list must be separate from the nutrition label. Ingredient listing, moreover, is needed for substances other than vitamins or minerals, like fillers, artificial colors, flavors, binders, and excipients. Therefore, the agency is not proposing to provide for the listing of the source of vitamins and minerals within the nutrition label. Consumers desiring to know the source of a nutrient can merely look at the list of ingredients, just as they would for a food in conventional food form.

Consistent with nutrition labeling of foods in conventional food form, FDA is proposing in § 101.36(b)(3)(v) to allow synonyms to be added in parentheses immediately following the name of certain nutrients. The synonyms that FDA is proposing to provide for are ascorbic acid for vitamin C, vitamin B_1 for thiamin, vitamin B_2 for riboflavin, folacin for folate, and calories (energy). Energy content per serving may be expressed in kilojoules units, added in parentheses immediately following the statement of caloric content.

The agency is proposing in § 101.36(b)(3)(vi) to require that all nutrients listed on the nutrition label for dietary supplements of vitamins or minerals be displayed with uniform type size, type style, color, and prominence. This proposed requirement is consistent with § 101.9(d) and is necessary to give all nutrients equal prominence. This provision will enhance the consistency of appearance of nutrition labeling under § 101.9 and under proposed § 101.36. Because, under this proposal, dietary supplements of herbs or other similar nutritional substances are subject to § 101.9, they will be covered by § 101.9(d). Thus, no special provisions need be made for dietary supplements of herbs or of other similar nutritional substances.

The agency is proposing in § 101.36(b)(4) that the percent of the Daily Value, where appropriate, be listed for all nutrients in the supplement that are declared under § 101.36(b)(3), as illustrated in proposed § 101.36(c)(8)(i). The labeling of most dietary supplements currently includes information on the percent of the U.S. RDA. The agency believes that continuation of this type of labeling will help to ensure that consumers are fully informed about the nutrient content of these products.

The agency points out that, under this proposal, the term "% U.S. RDA" will be replaced on labels by the term "% Daily Value." In a document entitled "Food Labeling; Reference Daily Intakes and Daily Reference Values" (58 FR 2206, January 6, 1993), FDA changed the name of the U.S. RDA's to RDI's. Because of the provisions of the DS act, the agency did not change the quantitative values from those that had appeared in § 101.9(c)(7)(iv). At the same time, FDA established DRV's for nutrients that are not addressed by NAS in "Recommended Dietary Allowances" (Ref. 2). The distinction between RDI and DRV nutrients remains necessary for regulatory purposes because the values were derived from separate sources, and because these nutrients play different roles under the imitation and substitute food regulations (21 CFR 101.3). However, there is no need to make consumers aware of the regulatory distinction between RDI and DRV. After soliciting comments concerning an appropriate single term that would refer to both RDI's and DRV's in the mandatory nutrition labeling proposal (55 FR 29487, July 19, 1990) and after using the term "Daily Value" in consumer research, FDA concluded that the term "Daily Value" is appropriate as a single term to refer to all reference values on the nutrition label (58 FR 2079 at 2125). The agency is not aware of any reason to take a different approach in the nutrition labeling of dietary supplements.

Proposed § 101.36(b)(4) requires that the percent of the RDI specified in § 101.9(c)(8)(iv) or of the DRV specified in § 101.9(c)(9), as appropriate, be declared for each nutrient listed in the nutrition label that has an RDI or DRV, except that the percent for protein may be omitted, consistent with § 101.9(c)(7). The agency is proposing that no percent be given for sugars because they do not have a reference value (i.e., DRV). Under this proposal, this information is to be presented in a column under the heading "% Daily Value." The headings "% Daily Value (DV)," "% DV," "Percent Daily Value," and "Percent DV" may be substituted for "% Daily Value." Under this proposal, the column shall be aligned to the right of the column of nutrient names and quantitative amounts by weight.

FDA is proposing in § 101.36(b)(4)(i) to require that the percent of Daily Value be calculated by dividing the declared quantitative amount (i.e., after rounding) for each nutrient by the RDI or DRV for the specified nutrient and multiplying by 100, except that the percent for protein shall be calculated as specified in § 101.9(c)(7)(ii). The numerical value is to be followed by the symbol for percent (i.e., %). Except for calculating percent of Daily Value after rounding the quantitative amount, this approach is consistent with the one FDA has adopted for calculating percent Daily Value for foods in conventional food form. The agency is not aware of any reason why an alternate approach would be more appropriate for dietary supplements of vitamins and minerals.

Using the declared quantitative amount to calculate percent of Daily Value rather than the actual amount (i.e., before rounding) will ensure that the percent of Daily Value declaration will be consistent for all products that list the same quantitative amount by weight. For example, a product that contains from 32.5 to 37.4 mg of sodium would declare that amount as 35 mg on the nutrition label. Dividing the quantitative amount by the Daily Value for sodium of 2,400 mg would result in a declaration of 1 percent of Daily Value at the lower end of the range and 2 percent at the upper end. Calculating the percent Daily Values on the declared amount avoids this inconsistency.

FDA is proposing in § 101.36(b)(4)(ii) that percent Daily Values be expressed to the nearest whole percent. This provision is consistent with the increments in § 101.9(d)(7)(ii), under which percent Daily Values based on DRV's are reported in nutrition labeling for foods in conventional food form, but it is inconsistent with the increments in § 101.9(c)(8)(iii) for expressing percent Daily Values for vitamins and minerals that are based on RDI's (i.e., to the nearest 2-percent increment up to and including the 10-percent level, to the nearest 5-percent increment above 10 percent and up to and including the 50-percent level, and to the nearest 10-percent increment above the 50-percent level). The agency is proposing for supplements that percent Daily Values for all nutrients be expressed to the nearest whole percent because it believes that greater precision is possible with formulated supplements as opposed to what is possible for naturally-occurring nutrients in foods in conventional food form. The agency believes that consumers will be interested in this precision on dietary supplements of vitamins or minerals. Additionally, the agency observes that many dietary supplements are currently labeled in this manner. The agency requests comments on this deviation from its approach for foods in conventional food form.

FDA is proposing in § 101.36(b)(4)(iii) to require that the percentages of RDI's

be based on RDI values for adults and children 4 or more years of age unless the product is represented or purported to be for use by infants, children less than 4 years of age, pregnant women, or lactating women. If the product is intended for such groups, FDA is proposing to require that the column heading clearly state the intended group.

If the product is for persons within more than one group, FDA is proposing to require that the percent of Daily Value for each group be presented in additional columns, as illustrated in § 101.9(c)(8)(ii). The agency notes that there are no RDI values codified specifically for infants, children under 4 years of age, or pregnant or lactating women. FDA had intended to codify RDI values for these groups but did not in accordance with section 203 of the DS act, which, as stated above, provided that the agency could not adopt recommended daily values before November 8, 1993. To provide guidance to manufacturers in lieu of codifying values, the agency published label reference values for these groups in the preamble of the final rule on RDI's and DRV's on January 6, 1993 (58 FR 2206 at 2213). The label reference values are based on the 1968 NAS' RDA's (Ref. 3) and were formerly contained in 21 CFR 105.3(b). The agency encourages manufacturers to use these values on the labels of products intended for use by groups other than adults or children over 4 years of age. FDA intends to revisit the issue of whether to establish RDI's for infants, children under 4 years of age, or pregnant or lactating women at the time it considers the broader question of the appropriate values for RDI's.

When the content of separate servings is different (e.g., the product has a packet containing an assortment of supplements to be taken in the morning and a packet with a different assortment of supplements for the afternoon), the agency is proposing in § 101.36(b)(4)(iv) to require that the percent of Daily Value for each packet be presented and clearly indicated, as illustrated in § 101.36(c)(8)(iii), or that the information for each separate serving be presented in individual nutrition labels (i.e, "Nutrition Facts" panel) that are clearly identified. As stated above with respect to proposed § 101.36(b)(3)(iii), FDA is providing for these alternative means because it considers some flexibility in the labeling of these products to be appropriate but considers some standard to be necessary to ensure that the information is presented in a comprehensible and readily observable manner

FDA is proposing to require in § 101.36(b)(4)(v) that if the percent of Daily Value is declared for total fat, saturated fat, total carbohydrate, dietary fiber, or protein, the value be followed by an asterisk that refers to a footnote at the bottom of the nutrition label that states: "Percent Daily Values are based on a 2,000 calorie diet." The agency tentatively finds that this statement is needed to enable consumers to evaluate the appropriateness of the percent of Daily Value for their personal needs. This statement is required in nutrition labeling for all foods in conventional food form, regardless of what format is used. In addition, foods subject to § 101.9 that bear the full nutrition label are required to list the Daily Values for 2,000 calories and similar values for 2,500 calories for the nutrients that have DRV's and that are present in the food (see § 101.9(d)(9)(i)). The agency tentatively concludes that it is not necessary to require the complete footnote for dietary supplements of vitamins or minerals because nutrients for which Daily Values can be adjusted to reflect caloric intake are not major components of most dietary supplements of vitamins or minerals.

D. Format

In order to have a consistent look for nutrition labels on all foods and thereby help consumers to find the information, the agency is proposing in § 101.36(c) that the information required in § 101.36(b) be presented in a manner that is similar to the requirements listed in § 101.9(d) for foods in conventional food form. Specifically, the agency is proposing to require in § 101.36(c)(1) that the title of "Nutrition Facts" be set in a type size larger than all other print size in the nutrition label and, unless impractical, be set the full width of the nutrition label. Under this proposed provision, the title and all headings are to be highlighted to distinguish them from other information in the nutrition label.

Additionally, in response to consumer comments about legibility of nutrition labeling, the agency is proposing in § 101.36(c)(2) through (c)(6), respectively, to require that all information within the nutrition label utilize a single easy-to-read type style, upper and lower case letters, at least one point leading (i.e., space between two lines of text), type that is kerned (i.e., has proximity of placement) no tighter than −4 setting, and type size no smaller than 8 point, except that type size no smaller than 6 point shall be used for the headings required by proposed § 101.36(b)(4) and (b)(4)(ii) (i.e., "Amount Per Serving," and "% Daily Value") and for the voluntary listing of the percent of vitamin A that is present as β-carotene as specified in proposed § 101.36(b)(3)(ii).

In contrast with type size requirements in § 101.9(d)(1)(iii), the agency is proposing that for dietary supplements of vitamins or minerals, 6 point type size be allowed for packages that have a total surface area available to bear labeling of 40 or less square inches. The agency believes that allowing 6 point type size for dietary supplements that have 40 square inches or less available for labeling is appropriate because of the limitations of such an amount of space and the large number of nutrients contained in many of these products. The agency is not proposing a parallel provision for dietary supplements of herbs or of other similar nutritional substances because it believes that generally the composition of these supplements is more similar to the composition of foods in conventional food form than to the composition of dietary supplements of vitamins or minerals. Moreover, such products are not likely to include a large number of nutrients. Thus, the agency believes it is appropriate that supplements of herbs and of other similar nutritional substances are subject to § 101.9(d)(1)(iii). Finally, in the interest of uniformity, FDA is suggesting in proposed § 101.36(c)(7) that nutrition information be presented using the graphic specifications set forth in Appendix B of part 101 (21 CFR part 101).

E. Other Provisions

FDA tentatively concludes that dietary supplements of vitamins or minerals should be subject to the same compliance policies as conventional processed foods. The agency is not aware of any reason why an alternate approach would be more appropriate for dietary supplements of vitamins or minerals. Therefore, it is proposing in § 101.36(d)(1) to require that compliance be determined in accordance with proposed § 101.9(g)(1) through (g)(8). When compliance is not technologically feasible, or some other circumstance makes it impracticable, FDA is proposing in § 101.36(d)(2) that alternative means of compliance or additional exemptions may be permitted by FDA in accordance with § 101.9(g)(9). Under this proposal, dietary supplements of herbs or of other similar nutritional substances are subject to § 101.9, and, thus, are also covered by § 101.9(g)(1) through (g)(9).

The agency is proposing in § 101.36(e) to require that the location of nutrition information on a label be in compliance

with § 101.2 (21 CFR 101.2), except that where the total surface area available to bear labeling is 40 or less square inches, nutrition information can be presented on any label panel as provided in § 101.36(g). These provisions are consistent with the requirements listed in § 101.9(i) and in § 101.9(j)(13)(ii)(D) for foods that are in conventional food form. Additionally, under this proposal, dietary supplements of herbs and of other similar nutritional substances are subject to § 101.9 and thus are subject to the same requirements.

F. Exemptions and Special Conditions

The agency is proposing in § 101.36(f) to make dietary supplements of vitamins or minerals subject to an exemption from nutrition labeling for small businesses that is identical to § 101.9(j)(1). Because the agency is proposing that dietary supplements of herbs and or of other similar nutritional substances are subject to § 101.9, these supplements are subject to the exemption in § 101.9(j)(1).

The agency emphasizes that the exemption for small businesses is allowed provided that the food bears no nutrition claims or other nutrition information on its label or labeling or in its advertising. Consistent with § 101.9(a), a nutrition claim or any other nutrition information on the label will negate any exemption. For example, the agency would exempt a product produced by a small business that states "Vitamin C 250 mg" in its statement of identity providing the label makes no claims or provides no other nutrition information. However, if the label of the product provides nutrition information, such as that each unit represents 417 percent of the Daily Value for vitamin C, the product would have to bear nutrition labeling. The agency believes that it is necessary for such products to bear nutrition labeling to ensure that consumers are fully informed about the nutrient content of such food. Failure to include such information would render the food misbranded under sections 201(n) and 403(a) of the act for failure to reveal a fact that is material in light of other representations made on the label.

The agency is proposing in § 101.36(g) that dietary supplements of vitamins or minerals are subject to the applicable special provisions that are provided in § 101.9(j) for foods in conventional food form. These provisions include: § 101.9(j)(5)(i) for foods, other than infant formula, for infants and children less than 2 years of age; § 101.9(j)(5)(ii) for food, other than infant formula, for infants and children less than 4 years of age; § 101.9(j)(9) for foods shipped in bulk form that are not for distribution to consumers; § 101.9(j)(13)(i) for foods in small packages that have a total surface area available to bear labeling of less than 12 square inches; § 101.9(j)(13)(ii) for foods in packages that have a total surface area available to bear labeling of 40 or less square inches; § 101.9(j)(15) for multiunit retail food packages; and § 101.9(j)(16) for foods sold in bulk containers. The agency believes that these provisions are appropriate for foods in general, as discussed in the nutrition labeling final rule (58 FR 2079 at 2144, January 6, 1993), and are appropriate for dietary supplements of vitamins and minerals because they are a subcategory of food. The agency points out that under this proposal, dietary supplements of herbs and of other similar nutritional substances are subject to § 101.9, and thus are subject to the special provisions that are provided in § 101.9(j).

G. Misbranding

The agency is proposing to require in § 101.36(h) that dietary supplements of vitamins or minerals that are labeled under the provisions of this section be labeled in accordance with § 101.9(k)(1) through (k)(6), which details types of nutrition-related claims that cause a food to be misbranded. The agency has tentatively concluded that these provisions are appropriate for foods in general (58 FR 2079 at 2166, January 6, 1993) and are appropriate for dietary supplements of vitamins or minerals because they are a subcategory of food. Dietary supplements of herbs and of other similar nutritional substances are also to be covered by these provisions because under this proposal they are subject to § 101.9. The agency points out that § 101.9(k)(1) and (k)(5), were revised in the January 6, 1993, final rules for health claims and mandatory nutrition labeling, respectively (58 FR 2478 at 2533 and 58 FR 2079 at 2188), but that § 101.9(k)(2) through (k)(4) and (k)(6) merely represented a redesignation of regulations that had been promulgated in the **Federal Register** of January 19, 1973 (38 FR 2125).

Section 101.9(k)(1) provides that a food is misbranded if its labeling represents, suggests, or implies that the food, because of the presence or absence of certain dietary properties, is adequate or effective in the prevention, cure, mitigation, or the treatment of any disease or symptom. FDA notes that this provision had long been in effect at the time Congress drafted the 1990 amendments. While Congress did enact provisions under the 1990 amendments that allow for health claims on foods, nothing in the 1990 amendments or in the legislative history of the 1990 amendments suggests that Congress intended for this provision to be deleted. In the January 6, 1993, final rule (58 FR 2478 at 2533), the agency revised § 101.9(k)(1) to state that information about the relationship of a dietary property to a disease or health-related condition may only be provided in conformance with the requirements of § 101.14 (21 CFR 101.14) and subpart E of part 101. No comments objected to this revision.

Section 101.9(k)(5) was revised by deleting its second and third sentences, which prohibited substances found in nature from being incorporated into nutritional products and listed on the label. The agency was persuaded by the comments that there is no reason to prohibit safe substances from being incorporated into foods in conventional food form or into dietary supplements as long as their presence is noted in the ingredient list, and the product's label or labeling does not state or imply that the food has special dietary properties because of the presence of the substances when, in fact, their usefulness has not been established. Section 411(b)(2) of the act provides that vitamin and mineral products may contain substances that are not vitamins or minerals as long as the substances are only identified as a part of the ingredient list. Consequently, the agency promulgated the first sentence of § 101.9(k)(5), which provides that a food shall be deemed to be misbranded if its label represents, suggests, or implies that the food has dietary properties when such properties have not been shown to have significant value or need in human nutrition.

III. Conforming Amendments

As discussed in section II. of this document, the agency is proposing to amend § 101.9(a), (d)(3)(ii), (h)(2), and (j)(6). Dietary supplements of herbs and of other similar nutritional substances are not covered by § 101.36 and thus must meet the requirements of § 101.9. FDA is proposing to amend section 101.9(a) to make clear that nutrition labeling must be provided for all food products whether in conventional food form or in dietary supplement form, unless an exemption is provided. The agency is proposing to amend section 101.9(d)(3)(ii) to specify that the statement "Serving Per Container" is not required when this information is stated in the net quantity of contents declaration. FDA is proposing to amend § 101.9(h) to provide in § 101.9(h)(2) for products that consist of two or more separately packaged foods that are

intended to be eaten individually and that are enclosed in an outer container. In addition, FDA is proposing to amend § 101.9(j)(6) to specify that dietary supplements that are covered by proposed § 101.36 are exempt from the requirements of § 101.9.

IV. Economic Impact

FDA has examined the economic implications of the proposed rules amending 21 CFR part 101 as required by the Regulatory Flexibility Act and Executive Orders 12291 and 12612. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking. The agency finds that the proposed rules on dietary supplements, taken together, do not constitute a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (P.L. 96–354), FDA has explored whether these proposed rules may have a significant impact on small businesses and has tentatively concluded that they do not.

A. Background

In the Federal Register of November 27, 1991 (56 FR 60366), FDA published a number of proposed food labeling regulations to implement the provisions of the 1990 amendments (Pub. L. 101–535). The agency also published a regulatory impact analysis (RIA) which preliminarily estimated the costs and benefits of the various proposed regulations and on which FDA asked for comments.

Final regulations that implemented the 1990 amendments except for dietary supplements were issued on January 6, 1993, including a final regulatory impact analysis (RIA) of those final regulations (58 FR 2927). In the RIA, FDA responded to the comments regarding dietary supplements with tentative conclusions.

In accordance with Executive Order 12291 and the Regulatory Flexibility Act, FDA is presenting one comprehensive analysis that presents the costs and benefits of all the labeling proposals regarding dietary supplements taken together.

Dietary supplements include products not in conventional food form that contain vitamins, minerals, herbs, and other similar nutritional substances. There may be over 25,000 such products. However, many products that contain herbs or other similar nutritional substances would not be subject to the nutrition label requirements because they do not contain the nutrients which must be declared. Moreover, some products marketed as "dietary supplements" have no recognized food function and would be unaffected by the NLEA health claim provisions. Disease claims on such products are subject instead to the drug provisions of the act.

There are approximately 150 dietary supplement manufacturers of products subject to these regulations. The source for this estimate is Dun and Bradstreet's Electronic Yellow Pages, which is a comprehensive data base of U.S. businesses. In a survey of consumers to determine vitamin and mineral usage, respondents reported use of 3,500 unique products. FDA recognizes that this number may not represent the universe of vitamin and mineral products marketed in the United States. Based on limitations in the survey and taking into account the number of products that do not contain the required nutrients, the agency estimates that there are about 5,000 vitamin, mineral, and other food supplement products marketed in the United States and approximately 15,000 labels that would be subject to the nutrition labeling proposal.

B. Costs

1. Relabeling

Categories of costs for relabeling include administrative, analytical, printing, inventory disposal, and reformulation. In all cost categories, except administrative costs, the costs of relabeling products produced and labeled in foreign countries cannot be separated from those products produced and labeled domestically. Thus, the administrative costs considered are domestic costs only, whereas the printing, inventory, and analytical costs considered are multinational.

The administrative costs associated with a labeling regulation result from the incremental administrative labor expended in order to comply with a regulation. The administrative activities which are anticipated to be undertaken in response to a change in regulation include: Identifying the underlying policy of the regulation, interpreting that policy relative to a firm's products, determining the scope and coverage related to product labels, establishing a corporate position, formulating a method for compliance, and managing the compliance method. Longer compliance periods decrease administrative costs because firm executives often delegate downward decisions that are less immediate. According to Research Triangle Institute (RTI), many firms estimate that administrative effort would be twice as high for a 6-month compliance period as for a 12-month compliance period (Ref. 4). FDA estimates that for a 6-month compliance period, manufacturers of dietary supplements will incur administrative costs of $850 per firm for each of 147 firms, or a total of $125,000.

Dietary supplement products will not undergo analytical testing as a result of these regulations if implemented as proposed. Dietary supplements of vitamins and minerals need only list those nutrients present in the supplement. The agency assumes that manufacturers of these types of products are already aware of the vitamin and mineral content of their vitamin and mineral products. As stated above, most herbs and other similar substances do not contain significant levels of the required nutrients and, therefore will not undergo testing or relabeling.

In the RIA of November 1991, FDA preliminarily determined that printing/redesign costs for dietary supplement manufacturers would be $250 per product. Comments, however, stated that supplement labels are more similar to labels for foods in conventional food form than FDA suggested and would incur a similar cost of printing and redesign. FDA assumed that the regulations covering foods in conventional food form were so comprehensive so as to cause manufacturers to redesign the entire label. However, the changes required on dietary supplements labels under these proposals are less comprehensive and will be comparable to a two color change. Therefore, for a 6-month compliance period, printing and redesign costs are estimated to be $1,000 per label for each of 15,000 labels, or a total of $15 million.

In the RIA of November 1991, FDA assumed that dietary supplement manufacturers would be able to use up existing label stock within the proposed 6-month compliance period. Comments objected to that assumption stating that the cost of discarding inventory would be over $25 million in order to implement the new requirements within 6 months, $15 million within a year, and $8 million within 2 years. However, these estimates were based on the incorrect assumption that all 25,000 products would be subject to these regulations. Given the proposed definition of a dietary supplement, the agency believes that the cost of inventory disposal for the 5,000 products that are likely to be subject to these regulations is approximately $5 million.

FDA has examined the impact of the proposed regulations on dietary

supplement manufacturers and has determined that administrative costs would be $125,000, printing and redesign costs would be $15 million, and inventory disposal costs would be $5 million. Therefore, total costs are estimated to be $20 million.

2. Health Claims

In a companion regulation, the Agency proposes to apply the same health claims defined for conventional foods to dietary supplements. These include for example the nutrient/disease relationships for calcium and osteoporosis, sodium and hypertension, dietary fat and cancer, and dietary saturated fat and cholesterol and coronary heart disease. The agency has not yet resolved certain other nutrient/disease relationships with respect to dietary supplements (i.e., folic acid and neural tube defects, zinc and immune function in the elderly, omega-3 fatty acids and coronary heart disease, antioxidant vitamins and cancer, dietary fiber and cancer, and dietary fiber and cardiovascular). The agency does not believe that most food dietary supplements make claims on their labels that would fall within the NLEA health claim provisions. Therefore, the health claims proposal will not result in any significant change.

C. Benefits of the Regulations

1. Mandatory Nutrition Labeling

The agency believes that, currently, almost all dietary supplements of vitamins or minerals contain substantial nutrition information—generally in as much detail as regulations already required for food. For example, most vitamin pills contain lists of ingredients, and amounts and the percent of the RDA for each. However, the format of nutrition information is not standardized. Because most supplements of vitamins and minerals already contain nutrition information, the benefits of the mandatory nutrition labeling requirements on these products are minimal. Thus, the agency's proposed regulations will benefit consumers by assuring that adequate nutrition information is provided accurately and consistently in order to aid consumers in their choices.

2. Nutrient Content Claims

Because adjectives such as "low" and "high" are a qualitative description of quantitative measurement, regulations defining nutrient content claims, in theory, will provide consumers the benefit of reduced search costs and concomitantly, an increased ability to accurately select product quality consistent with individual desires. However, as a practical matter, dietary supplements do not typically make nutrient content claims. Nor do most of the nutrient content claims that FDA is proposing to define make sense for use for dietary supplements. This proposed rule will not result in any change. Therefore, defining nutrient content claims will not result in any costs or benefits.

3. Health Claims

The agency believes that most supplements of vitamins and minerals do not currently make health claims on their labels or labeling. Of those that do, only calcium/osteoporosis claims are currently approved. The agency is proposing a standard for the scientific validity of health claims on dietary supplements. At this time, FDA is unable to present evidence that meets this standard for substances in dietary supplements. Therefore, FDA is unable to estimate the benefits of the health claims proposal. However, this standard will result in benefits to the extent that it creates a potential for future health claims by providing a framework which will allow scientifically valid claims.

D. Regulatory Options

1. Compliance Period Options

The 1990 amendments require that final regulations become effective 6 months after the date of promulgation of all final regulations. The 1990 amendments allow the Secretary to delay the effective date of the provisions for mandatory nutrition labeling and nutrient content claims for dietary supplements for up to 1 year if she finds compliance with the new provisions of the act would cause undue economic hardship. Therefore, the primary cost option available to the agency is to increase the amount of time firms have to comply with these provisions. Because the length of the compliance period affects all cost categories except analytical costs, extending the compliance period would result in significant savings. Extending the compliance period for 6 months would result in a cost savings of $6 million of the estimated $20 million in costs. If however, FDA were to extend the compliance period to the maximum allowable under the 1990 amendments to 18 months (a 1-year extension), total discounted costs would be $11 million with a cost savings of $9 million. FDA requests information regarding whether the costs of these regulations constitute an undue economic hardship.

2. Options for Nutrient Content and Health Claims

Because the 1990 amendments allow the agency to establish different standards for regulation of health claims and supplements than those used for conventional foods, the agency may adopt different standards. Standards for significant scientific agreement for dietary supplements could be less stringent to reflect the voluntary nature of consumption of these products. By their nature, dietary supplements are sold to promote health. For the most part, the efficacy of these products remains unproven despite their widespread appeal and decades of use. It is unclear that there will be a net societal benefit from relaxing the proposed standard.

E. Regulatory Flexibility

According to the Regulatory Flexibility Act, the definition of small business is a business independently owned and operated and not dominant in its field. The Small Business Administration (SBA) has set size standards for most business categories through use of four-digit Standard Industrial Classification codes. For most food processing industries, a business is considered small if it has fewer than 500 employees. For dietary supplements of vitamins and minerals, a business is considered small if it has fewer than 750 employees. Of the approximately 150 firms engaged in the production of dietary supplements of vitamins and minerals, virtually all meet the SBA definition of a small business.

The 1990 amendments granted an exemption from mandatory nutrition labeling for small businesses. The definition of a small business under section 403(q)(5)(D) of the act is a business with less than $500,000 annual gross sales or a business with annual gross sales of more than $500,000 but less than $50,000 in food sales. FDA does not have information to show how many firms or products would be exempted under this provision. The agency believes that very few firms will have sales low enough to meet this definition. Therefore, most or all of the businesses defined as small by the SBA will be subject to the rules if promulgated as proposed. The agency requests information regarding the number of products produced by small firms. Most of the costs associated with labeling regulations are fixed costs which are typically more burdensome for small firms than for large firms because of the smaller sales base on which to spread costs. However, the vitamin and mineral industry has

annual sales of $2.9 billion. Our estimated cost of $20 million is approximately 1 percent of this. In relation to the volume of sales, this does not appear to represent a significant cost.

An option available to the agency to reduce the impact on small businesses is to extend the compliance period as discussed above. Total costs could be reduced by as much as $9 million if the agency selected this option.

F. Summary

Total costs of these regulations have been estimated to be $20 million. These costs include administrative, analytical, printing, and inventory disposal costs. The benefits are primarily those that result from standardizing the format of nutrition information already provided on vitamin and mineral supplements with that of conventional foods. In addition, to the extent that nonvitamin and mineral supplements do not currently provide nutrition information, benefits are improved information with which consumers can refine their choices for health or other reasons. FDA is unable to quantify this benefit.

FDA has analyzed the costs and benefits of these proposals and has determined that the costs do not exceed the $100 million threshold, leading the agency to conclude that these proposals do not constitute a major rule as defined by Executive Order 12291.

FDA has also analyzed the impacts on small firms according to the Regulatory Flexibility Act and has determined that the proposed rules, if made final, will probably not have an adverse impact on a substantial number of small businesses. Nonetheless, there are burden-reducing options as discussed above and the agency requests comments on these.

V. Environmental Impact

The agency has previously considered the environmental effects of this proposed rule as announced in the **Federal Register** of November 27, 1991 (56 FR 60366). At that time the agency determined under 21 CFR 25.24(a)(11) that this proposed action was of a type that does not individually or cumulatively have a significant impact on the human environment. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VI. Effective Date

FDA is proposing to make this regulation effective 6 months after the publication of a final rule based on this proposal.

FDA notes, however, that in section 10(a)(3)(B) of the 1990 amendments, Congress provided that if the Secretary, and by delegation FDA, finds that requiring compliance with section 403(q) of the act, on mandatory nutrition labeling, or with section 403(r)(2) of the act, on nutrient content claims, 6 months after publication of the final rules in the **Federal Register** would cause undue economic hardship, they may delay the application of these sections for no more than 1 year. FDA requests comments and evidence that would permit the agency to make a determination as to whether there is "undue economic hardship" (see 58 FR 2070, January 6, 1993) for the dietary supplement industry.

VII. Comments

Interested persons may, on or before July 19, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

As mentioned previously in this preamble, the DS act requires that final rules implementing the 1990 amendments with respect to dietary supplements be issued by December 31, 1993. In order to meet this statutory timeframe, FDA must limit the comment period for this proposal to 60 days. FDA believes that the need to meet this timeframe constitutes good cause under § 10.40(b)(2) of its procedural regulations for limiting the comment period. Thus, the agency is announcing that because of the short statutory timeframe, FDA will be unable to grant any extensions to the comment period. In addition, the agency will not consider any comments received at the Dockets Management Branch after the close of the 60-day comment period.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Manager's Statement for the Senate on the DS Act of 1992, 138 Congressional Record S 17239 (October 7, 1992).

2. Subcommittee on the 10th Edition of the RDA's, Food and Nutrition Board, Commission on Life Sciences, National Research Council, "Recommended Dietary Allowances, 10th Ed.," Washington, DC, National Academy Press, 1989.

3. Food and Nutrition Board, Division of Biology and Agriculture, National Research Council, "Recommended Dietary Allowances, 7th ed., 1968," Publication 1694, Printing and Publishing Office, NAS, Washington, DC, 1968.

4. RTI, "Compliance Costs of Food Labeling Regulations," FDA Contract No. 223-87-2097, Project Officer—Richard A. Williams, Jr., December 1990.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 is revised to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 501, 502, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 355, 371); sec. 202(a)(2) of the Dietary Supplement Act (Pub. L. 102-571).

2. Section 101.9 is amended by revising the first sentence of paragraph (a) and by revising paragraphs (d)(3)(ii), (h)(2), and (j)(6) to read as follows:

§ 101.9 Nutrition labeling of food.

(a) Nutrition information relating to food shall be provided for all products intended for human consumption and offered for sale, whether in conventional food form or in dietary supplement form, unless an exemption is provided for the product in paragraph (j) of this section. * * *

* * * * *

(d) * * *

(3) * * *

(ii) "Servings Per Container": The number of servings per container, except that this statement is not required on single serving containers as defined in paragraph (b)(6) of this section or on other food containers when this information is stated in the net quantity of contents declaration.

* * * * *

(h) * * *

(2) If a product consists of two or more separately packaged foods that are intended to be eaten individually and that are enclosed in an outer container (e.g., variety packs of cereals or snack foods), the nutrition information shall:

(i) Be specified per serving for each food in a location that is clearly visible

to the consumer at the point of purchase; and

(ii) Be presented in separate nutrition labels or in one aggregate nutrition label with separate columns for the quantitative amount by weight and the percent Daily Value for each food.

* * * * *

(j) * * *

(6) Dietary supplements of vitamins and minerals that have an RDI as established in paragraph (c)(8)(iv) of this section or a DRV as established in paragraph (c)(9) of this section shall be labeled in compliance with § 101.36, except that dietary supplements of vitamins and minerals in food in conventional form (e.g., breakfast cereals), of herbs, and of other similar nutritional substances shall conform to the labeling of this section.

* * * * *

3. Section 101.12 is amended in paragraph (b), Table 2, by alphabetically adding a new entry under the subheading "Miscellaneous category" to read as follows:

§ 101.12 Reference amounts customarily consumed per eating occasion.

* * * * *

(b) * * *

TABLE 2.— REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1 2 3 4]

Product category	Reference amount	Label statement[5]
Miscellaneous category:		
Dietary supplements not in conventional food form.	The maximum amount recommended, as appropriate, on the label for consumption per eating occasion or, in the absence of recommendations, 1 unit, e.g., tablet, capsule, packet, teaspoonful, etc.	_____tablet(s), _____capsule(s), _____ packet(s), _____ tsp(s) (_____g), etc.

[1] These values represent the amount (edible portion) of food customarily consumed per eating occasion and were primarily derived from the 1977–1978 and the 1987–1988 Nationwide Food Consumption Surveys conducted by the USDA.

[2] Unless otherwise noted in the Reference Amount column, the reference amounts are for the ready-to-serve or almost ready-to-serve form of the product (i.e., heat and serve, brown and serve). If not listed separately, the reference amount for the unprepared form (e.g., dry mixes; concentrates; dough; batter; dry, fresh, and frozen pasta) is the amount required to make one reference amount of the prepared for. Prepared means prepared for consumption (e.g., cooked).

[3] Manufacturers are required to convert the reference amount to the label serving size in a household measure most appropriate to their specific product using the procedures in 21 CFR 101.9(b).

[4] Copies of the list of products for each product category are available from the Office of Food Labeling (HFF–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

[5] The label statements are meant to provide guidance to manufacturers on the presentation of serving size information on the label, but they are not required. The term "piece" is used as a generic description of a discrete unit. Manufacturers should use the description of a unit that is most appropriate for the specific product (e.g., sandwich for sandwiches, cookie for cookies, and bar for frozen novelties).

* * * * *

4. Section 101.36 is added to subpart C to read as follows:

§ 101.36 Nutrition labeling of dietary supplements of vitamins or minerals.

(a) The label and labeling of a dietary supplement of a vitamin or a mineral that has a Reference Daily Intake (RDI) as established in § 101.9(c)(8)(iv) or a Daily Reference Value (DRV) as established in § 101.9(c)(9), shall bear nutrition labeling in accordance with this regulation, as illustrated in paragraph (c)(8) of this section, unless an exemption is provided for the product in paragraph (f) of this section. Dietary supplements of herbs or of other similar nutritional substances shall bear nutrition labeling in accordance with § 101.9.

(b) The declaration of nutrition information on the label and in labeling shall contain the following information, using the headings and format specified, under the heading of "Nutrition Facts". The nutrition information shall be enclosed in a box by use of lines and shall be all black or one color type, printed on a white or other neutral contrasting background whenever practical.

(1) The subheading "Serving Size" shall be placed under the heading and aligned on the left side of the nutrition label. The serving size shall be determined in accordance with § 101.9(b) and § 101.12(b), Table 2. Serving size shall be expressed using a term that is appropriate for the form of the supplement, such as "tablets," "capsules," "packets," or "teaspoonfuls."

(2) The subheading "Servings per container" shall be placed under the subheading "Serving Size" and aligned on the left side of the nutrition label, except that this information need not be provided when it is stated in the net quantity of contents declaration.

(3) A listing of all nutrients required in § 101.9(c), including any vitamin or mineral listed in § 101.9(c)(8)(iv) or § 101.9(c)(9), that is present in the dietary supplement except that nutrients present at insignificant amounts per serving shall not be declared. Insignificant amounts shall be defined as amounts that allow declaration of zero in nutrition labeling as specified in § 101.9(c), except that for total carbohydrate, dietary fiber, and protein, it shall be that amount that allows a declaration of "less than 1 gram." The name of each nutrient listed shall be immediately followed by the quantitative amount by weight of the nutrient. Nutrient names and quantitative amounts shall be presented in a column under the heading of "Amount Per Serving" and aligned on the left side of the nutrition label. The heading "Amount Per Serving" shall be separated from other information on the label by a bar above and underneath it.

(i) These amounts shall be expressed in the increments specified in § 101.9(c) using the units of measure and the level of significance given in § 101.9(c)(8)(iv), except that zeros following decimal points may be dropped.

(ii) Nutrients that are present shall be listed in the order specified in § 101.9(c) except that calcium and iron, when present, shall be grouped with other minerals which shall be listed in the following order after the complete listing of vitamins: Calcium, iron, phosphorus, iodine, magnesium, zinc, and copper. A bar shall separate the last nutrient to be listed from the bottom of the nutrition label, as shown in the sample labels in paragraph (c)(8) of this section.

(iii) If the product contains two or more separately packaged dietary supplements of vitamins and minerals (e.g., the product has a packet of supplements to be taken in the morning and a different packet to be taken in the afternoon), the quantitative amounts may be presented as specified in paragraph (b)(3) of this section in individual nutrition labels or in one aggregate nutrition label with separate columns declaring the quantitative amounts for each package as illustrated in paragraph (c)(8)(iii) of this section.

(iv) The percent of vitamin A that is present as β-carotene may be declared, to the nearest whole percent, immediately adjacent to or beneath the nutrient name (e.g., "Vitamin A (90 percent as β-carotene)").

(v) The following synonyms may be added in parenthesis immediately following the name of these nutrients: Vitamin C (ascorbic acid), thiamin (vitamin B_1), riboflavin (vitamin B_2), folate (folacin) and calories (energy). Energy content per serving may be expressed in kilojoules units, added in parentheses immediately following the statement of caloric content.

(vi) All nutrients shall be displayed with uniform type size, style, color, and prominence.

(4) A listing of the percent of the Daily Value (i.e., the percent of the RDI as established in § 101.9(c)(8)(iv) or DRV as established in § 101.9(c)(9)), where appropriate, of all nutrients listed in the "Nutrition Facts," except that no percent shall be given for sugars and the percent for protein may be omitted as provided in § 101.9(c)(7). This information shall be presented in one column aligned under the heading of "% Daily Value." The headings "% Daily Value (DV)," "% DV," "Percent Daily Value," and "Percent DV" may be substituted for "% Daily Value." This column shall be aligned to the right of the column of nutrient names and amounts.

(i) The percent of Daily Value shall be calculated by dividing the declared amount (i.e., after rounding) for each nutrient by the RDI or DRV for the specified nutrient and multiplying by 100, except that the percent for protein shall be calculated as specified in § 101.9(c)(7)(ii). The numerical value shall be followed by the symbol for percent (i.e., %).

(ii) The percentages based on RDI's and on DRV's shall be expressed to the nearest whole percent.

(iii) The percent of Daily Values for vitamins and minerals shall be based on RDI values for adults and children 4 or more years of age unless the product is represented or purported to be for use by infants, children less than 4 years of age, pregnant women, or lactating women, in which case the column heading shall clearly state the intended group. If the product is for persons within more than one group, the percent of Daily Value for each group shall be presented in additional columns as shown in paragraph (c)(8)(ii) of this section.

(iv) If the product contains two or more separately packaged dietary supplements of vitamins and minerals (e.g., the product has a packet of supplements to be taken in the morning and a different packet to be taken in the afternoon), the percent of Daily Value may be presented as specified in paragraph (b)(4) of this section in individual nutrition labels or in one aggregate nutrition label with separate columns declaring the percent of Daily Value for each package as illustrated in paragraph (c)(8)(iii) of this section.

(v) If the percent of Daily Value is declared for total fat, saturated fat, total carbohydrate, dietary fiber, or protein, the value shall be followed by an asterisk that refers to another asterisk at the bottom of the nutrition label that states: "Percent Daily Values are based on a 2,000 calorie diet."

(c) Nutrition information specified in this section shall be presented as follows:

(1) The title of "Nutrition Facts" shall be set in a type size larger than all other print size in the nutrition label and, unless impractical, shall be set full width of the nutrition label. The title and all headings shall be highlighted to distinguish them from other information.

(2) All information within the nutrition label shall utilize a single easy-to-read type style.

(3) All information within the nutrition label shall utilize upper and lower case letters.

(4) All information within the nutrition label shall have at least one point leading (i.e., space between two lines of text).

(5) All information within the nutrition label shall have type that is kerned (i.e., has proximity of placement) no tighter than −4 setting.

(6) All information within the nutrition label shall have type size no smaller than 8 point, except that type size no smaller than 6 point type size shall be used for the voluntary listing of the percent of vitamin A that is present as β-carotene as specified in paragraph (b)(3)(ii) of this section, for the headings required by paragraphs (b)(4) and (b)(4)(ii) of this section (i.e., "Amount Per serving" and "% Daily Value), for the footnote required by paragraph (b)(4)(v) of this section, and, on packages that have a total surface area available to bear labeling of 40 or less square inches, all information.

(7) In the interest of uniformity of presentation, FDA urges that the information be presented using the graphic specifications set forth in Appendix B to part 101, as applicable.

(8) The following sample labels are presented for the purpose of illustration:

(i) Multiple vitamin.

Nutrition Facts

Serving Size 1 tablet

Amount Per Serving

	%Daily Value
Vitamin A 5000 I.U. (50% as Beta Carotene)	100%
Vitamin C 60 mg	100%
Vitamin D 400 I.U.	100%
Vitamin E 30 I.U.	100%
Thiamin 1.5 mg	100%
Riboflavin 1.7 mg	100%
Niacin 20 mg	100%
Vitamin B_6 2.0 mg	100%
Folate 0.4 mg	100%
Vitamin B_{12} 6 mcg	100%
Biotin 0.03 mg	10%
Pantothenic Acid 10 mg	100%

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(ii) Multiple vitamin for children and adults.

Nutrition Facts

Serving Size 1 tablet

Amount Per Serving

	%Daily Value for Children under 4 years of age	%Daily Value for Adults and Children over 4 years of age
Sugars less than 1g		
Vitamin A 2500 I.U. (50% as Beta Carotene)	100%	50%
Vitamin C 40 mg	100%	67%
Vitamin D 400 I.U.	100%	100%
Vitamin E 15 I.U.	150%	50%
Thiamin 1.1 mg	157%	73%
Riboflavin 1.2 mg	150%	71%
Niacin 14 mg	156%	70%
Vitamin B_6 1.1 mg	157%	55%
Folate 0.3 mg	150%	75%
Vitamin B_{12} 5 mcg	167%	83%

(iii) Multiple vitamins in packets.

Nutrition Facts

	AM Packet	PM Packet
Serving Size	1 packet	1 packet
Servings per container	10	10
Amount Per Serving		
	% Daily Value	% Daily Value
Vitamin A (50% as Beta Carotene)	2500 I.U. 50%	2500 I.U. 50%
Vitamin C	60 mg 100%	60 mg 100%
Vitamin D	400 I.U. 100%	
Vitamin E	30 I.U. 100%	
Thiamin	1.5 mg 100%	1.5 mg 100%
Riboflavin	1.7 mg 100%	1.7 mg 100%
Niacin	20 mg 100%	20 mg 100%
Vitamin B_6	2.0 mg 100%	2.0 mg 100%
Folate	0.2 mg 50%	0.2 mg 50%
Vitamin B_{12}	3 mcg 50%	3 mcg 50%
Biotin		0.03 mg 10%
Pantothenic Acid	5 mg 50%	5 mg 50%

(d)(1) Compliance with this section shall be determined in accordance with § 101.9 (g)(1) through (g)(8).

(2) When it is not technologically feasible, or some other circumstance makes it impracticable, for firms to comply with the requirements of this section, FDA may permit alternative means of compliance or additional exemptions to deal with the situation in accordance with § 101.9(g)(9). Firms in need of such special allowances shall make their request in writing to the Office of Food Labeling (HFS–150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

(e) Except as provided in paragraph (g) of this section, the location of nutrition information on a label shall be in compliance with § 101.2.

(f)(1) Dietary supplements of vitamins or minerals are exempt from this section when they are offered for sale by a manufacturer, packer, or distributor

who has annual gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers of not more than $50,000, *Provided*, That the food bears no nutrition claims or information on a label or labeling or in advertising.

(2) For purposes of this paragraph, calculation of the amount of sales shall be based on the most recent 2-year average of business activity. Where firms have been in business less than 2 years, reasonable estimates must indicate that annual sales will not exceed the amounts specified. For foreign firms that ship foods into the United States, the business activities to be included shall be the total amount of food sales, as well as other sales to consumers, by the firm in the United States.

(g) Dietary supplements of vitamins and minerals shall be subject to the special labeling conditions specified in § 101.9 (j)(5)(i) and (j)(5)(ii) for food, other than infant formula, represented or purported to be specifically for infants and children less than 2 years of age and 4 years of age, respectively; in § 101.9(j)(9) for food products shipped in bulk form that are not for distribution to consumers; in § 101.9(j)(13) for foods in small or intermediate-sized packages; in § 101.9(j)(15) for foods in multiunit food containers; and, in § 101.9(j)(16) for foods sold in bulk containers.

(h) Dietary supplements of vitamins and minerals shall be subject to § 101.9(k) on misbranding.

Dated: June 10, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 93–14274 Filed 6–15–93; 8:45 am]

[BILLING CODE 4160–01–F]

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21 CFR Part 101

[Docket No. 91N–384D]

RIN 0905–AD06

Food Labeling; Requirements for Nutrient Content Claims for Dietary Supplements of Vitamins, Minerals, Herbs, and Other Similar Nutritional Substances

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its food labeling regulations on nutrient content claims to include dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances under the coverage of the general principles for nutrient content claims; to provide for the use of expressed and implied nutrient content claims on labels or in labeling of dietary supplements; and to provide for petitions for nutrient content claims for dietary supplements. This action is in response to the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) and to the Dietary Supplement Act of 1992 (the DS act).

DATES: Written comments by August 17, 1993. The agency is proposing that any final rule that may issue based upon this proposal become effective 6 months following its publication.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Camille E. Brewer, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–205–5817.

SUPPLEMENTARY INFORMATION:

I. Regulatory History

A. Food Labeling Reform

In the **Federal Register** of August 8, 1989 (54 FR 32610), FDA published an advance notice of proposed rulemaking (ANPRM) that announced a major initiative of the U.S. Department of Health and Human Services to investigate the possible use of food labeling as a tool for promoting sound nutrition for the nation's consumers. FDA asked for public comment on five areas of food labeling, including the use of nutrient content claims, such as "low" or "free," to characterize foods.

FDA received over 2,000 written comments in response to the August 8, 1989, ANPRM, plus over 5,000 responses to a questionnaire that was distributed by a consumer organization. Among the comments there was nearly universal agreement that nutrient content claims should be defined, and that FDA needed to proceed quickly to develop regulatory definitions for all undefined nutrient content claims. Additionally, 4 national public hearings and 50 local consumer exchange meetings were held to discuss nutrition labeling and other issues related to food labeling, such as nutrient content claims.

The comments revealed a common concern about the unregulated use of nutrient content claims. Many comments stated that the proliferation of undefined terms had resulted in confusion for consumers and unfair competition for manufacturers. One comment stated that the terms were "meaningless in the way they are now used and are primarily used as marketing tools rather than as guides for the health conscious consumer."

B. The 1990 Amendments and Subsequent Proposals

On November 8, 1990, the President signed into law the 1990 amendments (Pub. L. 101–535) which significantly amended the Federal Food, Drug, and Cosmetic Act (the act). Most notably, the 1990 amendments confirmed FDA's authority to regulate nutrient content claims on food labels and in food labeling. Section 403(r)(1)(A) of the act (21 U.S.C. 343(r)(1)(A)), which was added by the 1990 amendments, provides that a product is misbranded if it bears a claim in its label or labeling that either expressly or implicitly characterizes the level of any nutrient of the type required to be declared as part of nutrition labeling, unless such claim has been specifically defined, or otherwise exempted, by regulation. The 1990 amendments also directed the Secretary of Health and Human Services (the Secretary) and, by delegation, FDA to promulgate regulations to define specific nutrient content claims including "free," "low," "light" or "lite," "reduced," "less," and "high" (section 3(b)(1)(A)(iii) of the 1990 amendments).

In the **Federal Register** of November 27, 1991 (56 FR 60421), FDA published two documents in which it proposed, among other things, to define nutrient content claims, to provide for their use on food labels, and to establish procedures for the submission and review of petitions regarding the use of nutrient content claims. These proposals grouped dietary supplements with conventional foods for the purpose of regulating nutrient content claims.

C. The DS Act and Final Labeling Rules

On October 6, 1992, the President signed the DS act (Pub. L. 102–571). Section 202(a)(1) of the DS act established a 1 year moratorium on the implementation of the 1990 amendments with respect to dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances (hereinafter referred to as "dietary supplements"). Section 202(a)(2) of the DS act required the Secretary, and by delegation FDA, to issue proposed regulations applicable to dietary supplements no later than June

15, 1993. In addition, section 203 of the DS act instructed FDA not to promulgate regulations that require the use of, or are based upon, recommended daily allowances of vitamins or minerals, other than regulations establishing the United States Recommended Daily Allowances specified in 21 CFR 101.9(c)(7)(iv) as in effect on October 6, 1992, before November 8, 1993.

FDA issued final regulations that implemented the 1990 amendments by defining specific nutrient content claims and providing for their use on food in the form of conventional food on January 6, 1993 (58 FR 2302) (hereinafter referred to as the "final rule on nutrient content claims").

II. FDA Authority

As stated above, section 3(b)(1)(A)(iii) of the 1990 amendments directs the Secretary to issue regulations on a variety of nutrient content claims. The final rule on nutrient content claims responded to that directive for foods in conventional food form. To comply with 3(b)(1)(A)(iii) of the 1990 amendments and with section 202(a)(2) of the DS Act for dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances, the agency is now proposing to amend its existing regulations on nutrient content claims to include provisions for such products.

FDA is proposing to establish the conditions under which claims may be made about the level of a nutrient in a dietary supplement. FDA is also proposing to define the circumstances in which the various terms defined in the final rule on nutrient content claims can be applied to dietary supplements. FDA has authority to take these actions regarding nutrient content claims under sections 201(n), 403(a), 403(r), and 701(a) of the act (21 U.S.C. 321(n), 343(a), 343(r), and 371(a)). These sections authorize FDA to adopt regulations that prohibit labeling that: (1) Is false or misleading in that it fails to reveal facts that are material in light of other representations made in the labeling or that are material with respect to the consequences that may result from use of the food and (2) uses terms to characterize the level of any nutrient in a food that have not been defined by regulation by FDA.

However, not all terms or phrases used to describe a dietary supplement are nutrient content claims. A term may describe some attribute of a dietary supplement other than its nutrient content, such as "contains no preservatives." Such claims are not to be subject to requirements for § 101.13 (21 CFR 101.13). These claims will be discussed later in this document.

III. Proposed Rules

A. Relationship to January 6, 1993, Final Rules

In response to the DS act, the agency has reviewed the final rule on nutrient content claims for foods in conventional food form to determine the extent to which the provisions of that final rule can be applied to dietary supplements. As part of this review, FDA also considered how best to regulate nutrient content claims on dietary supplements. As Congressman Waxman stated in discussing the DS act:

> As both statutory text and legislative records reveal, the NLEA primarily addresses food products. Because of the differences in the history of use and function of dietary supplements and conventional foods, it is appropriate for Congress to enact this moratorium so that the issue of how best to regulate dietary supplements may be carefully considered.

(Ref. 6)

A joint statement by Senators Hatch and Kennedy reiterated the importance of "informative labeling" and emphasized the roles of FDA, manufacturers, distributors, and suppliers in ensuring that dietary supplements are safe and are appropriately labeled (Ref. 7). The DS act and its associated legislative history direct the agency to identify ways in which dietary supplements are different from foods in conventional food form. This proposal is a partial response to that mandate.

The agency has tentatively determined that, in many respects, the regulations promulgated in the final rules for nutrient content claims for foods in conventional food form are directly applicable to dietary supplements. However, the agency has also tentatively concluded that several sections of the final rules require revision to ensure appropriate application to dietary supplements.

B. Consistency with Established Nutrient Content Claims

Dietary supplements differ from foods in conventional food form in their history of use and in their perceived function in the diet. Dietary supplements are formulations marketed to meet consumers' desires to include particular substances in their diets at particular levels. Because dietary supplements are generally formulated products, their content or composition is significantly more amenable to manipulation than that of some foods in conventional food form.

However, there is much about dietary supplements and about nutrient content claims that suggests that the rules that govern nutrient content claims for dietary supplements should be the same as the rules for nutrient content claims on foods in conventional food form. Dietary supplements that are not intended for use as drugs have traditionally been regulated as foods and, as such, must be evaluated within the context of the total daily diet. In addition, nutrients from dietary supplements serve the same physiological function as nutrients from foods in conventional food form. While some consumers seek to ensure that the nutrient content of their diet is adequate through foods in conventional food form, other consumers seek to ensure nutritional adequacy through the addition of dietary supplements to their diets (Ref. 8). Consistent use of terms on dietary supplements and on foods in conventional food form will thus help consumers to construct a nutritionally adequate total daily diet by allowing consumers to make meaningful comparisons among these products. It will also facilitate use of these terms by consumers.

Thus, FDA has tentatively concluded that it would be helpful to continue to minimize inconsistencies in nutrient content claims between dietary supplements and foods in conventional food form. FDA believes that consumers would be confused if they were confronted with a situation in which nutrient content claims were allowed for nutrients when they are present at a certain level in foods in conventional food form but not when they are present at the same level in dietary supplements, or vice versa.

C. Scope

1. Dietary Supplements of Vitamins, Minerals, Herbs, and Other Similar Nutritional Substances

Section 202(a)(2)(A) of the DS act amends the 1990 amendments (section 3(b)(1)(A)) to direct the Secretary to issue proposed regulations that are applicable to dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances. In response to this provision, FDA is proposing to prescribe the circumstances in which claims that characterize the level of a nutrient in a dietary supplement may be made on a label or in labeling of such a food. Because FDA has tentatively concluded that nutrient content claims for dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances should generally be subject

to the same requirements as other foods, FDA is proposing to amend § 101.13(a), which establishes the general requirements for its nutrient content claims on food, to include dietary supplements within its coverage.

2. Nutrient Content Claims—Expressed and Implied

Section 403(r)(1)(A) of the act provides that claims, either expressed or implied, that characterize the level of a nutrient that is of a type required to be declared in nutrition labeling may not be made on the label or in labeling of any food intended for human consumption that is offered for sale unless the claim is made in accordance with section 403(r)(2) of the act. FDA reflected this statutory language in § 101.13(b) of the final rule on nutrient content claims.

Section 101.13(b) specifically references § 101.9, the general regulation on nutrition labeling. In a companion document published elsewhere in this issue of the **Federal Register** entitled "Food Labeling; General Requirements for Nutrition Labeling for Dietary Supplements of Vitamins or Minerals," FDA is proposing to adopt § 101.36 (21 CFR 101.36) to govern nutrition labeling of dietary supplements of vitamins or minerals. A question is thus raised as to whether § 101.13(b) needs to be amended to also reference § 101.36 to reflect the coverage of dietary supplements of vitamins or minerals in this regulation. FDA finds that it need not be. Section 101.36 itself also references § 101.9 to delineate the nutrients that it covers (proposed § 101.36(b)(3)). Thus, FDA tentatively finds that no change in § 101.13(b) is necessary, and that the proposed amendments of § 101.13(a) is adequate to establish that dietary supplements are covered by this regulation.

While FDA is proposing, to the extent possible, consistent with law, to make the express claims (see § 101.13(b)(1)) that it has defined for foods in conventional food form applicable to dietary supplements, the resource constraints and strict timeframes under which this rulemaking is proceeding have made it impossible for FDA to develop proposed regulations that authorize any specific implied claims (see § 101.13(b)(2)) for dietary supplements at this time. In section IV.B.7. of this document, however, the agency does discuss implied nutrient content claims for dietary supplements at some length and solicits comment on this matter.

3. Dietary Supplements for Infants and Toddlers

Nutrient content claims for foods in conventional food form are typically based on dietary guidance, and such guidance is not generally intended for young children (Refs. 1, 2, and 3). The agency lacks evidence that more restrictive dietary patterns for nutrients, such as sodium or increased intakes for nutrients such as fiber or specific vitamins or minerals, are appropriate or recommended for infants and toddlers. Therefore, FDA limited the use of nutrient content claims on foods in conventional food form that are specifically intended for infants and toddlers less than 2 years of age. Section 101.13(b)(3) of the final rule on nutrient content claims states that except for statements about the percentage of the Recommended Daily Intake (RDI), nutrient content claims may not be made on food intended specifically for use by infants and children less than 2 years of age unless the claim is specifically provided for in parts 101, 105, or 107 (21 CFR parts 101, 105, or 107).

However, the agency is proposing to take a slightly different tack with respect to dietary supplements. FDA is proposing to add § 101.60(c)(4) (21 CFR 101.60(c)(4)) to allow nutrient content claims about sugars content for dietary supplements for infants and toddlers. This proposed amendment is discussed in detail in the section on nutrient content claims for sugar, section IV.B.4.d. of this document.

D. General Principles

1. Statements From the Nutrition Label

Section 403(r)(1) of the act specifically excludes statements that appear as part of the nutrition label from the coverage of the nutrient content claims provisions. This exclusion was included in the 1990 amendments to make it clear that the information required on the nutrition label, and the optional information that is permitted as a part of nutrition labeling, are not claims under section 403(r)(1) of the act and thus are not subject to the disclosure requirements in section 403(r)(2) of the act (136 Congressional Record H 5841 (July 30, 1990)).

FDA is proposing to amend § 101.13(c) to provide that information that is required or permitted to be declared in nutrition labeling of dietary supplements, as well as of foods in conventional food form, and that appears as part of the nutrition label, is not a nutrient content claim, and is not subject to the requirements of this section. To affect this proposed amendment, FDA is adding "or § 101.36, as applicable" to § 101.13(c). This action is consistent with FDA's tentative determination that it is appropriate to regulate nutrient content claims for dietary supplements, to the extent possible, in the same general manner that it regulates such claims made for foods in conventional food form.

The legislative history of the 1990 amendments specifically states, however, that information that is required or permitted within the nutrition label will be subject to the requirements of nutrient content claims if it is included in another portion of the label (136 Congressional Record H 5841 (July 30, 1990)). FDA reflected this fact in § 101.13(c). Under this proposal, this aspect of § 101.13(c) will apply equally to dietary supplements and to foods in conventional food form.

2. Substitute Foods

Under section 403(r)(2)(A)(ii) of the act, for a food to be labeled as "(nutrient) free," the nutrient must usually be present in the food or in a food that substitutes, as that term is defined by the Secretary (and by delegation, FDA), for the food. Accordingly, the agency defined "'substitute' foods" in § 101.13(d) in the January 6, 1993 final rule (58 FR 2302 at 2411) for the purpose of identifying the characteristics that substitute foods must have if they are to bear nutrient content claims that highlight differences between them and the foods for which they substitute. The definition states that a substitute food is one that may be used interchangeably with another food that it resembles, i.e., to which it is organoleptically, physically, and functionally (including shelf life) similar, and to which it is not nutritionally inferior unless it is labeled as an "imitation." In addition, in §§ 101.13(d)(1) and (d)(2), FDA sought to ensure that material differences between the use of the substitute food and the use of the original food are conspicuously stated on the label or labeling of the food, so that consumers can make fully informed judgments about their value and their usefulness in maintaining healthy dietary practices.

FDA has reviewed the applicability of these sections to dietary supplements and recognizes that there may be confusion as to the circumstances in which one dietary supplement may be considered to substitute for another dietary supplement or for a food in conventional food form. By extending the logic used in defining substitute foods for foods in conventional food form, FDA tentatively concludes that a

substitute dietary supplement is one that is used interchangeably with another dietary supplement that it resembles in its physical characteristics (e.g., chewable, liquid, or tablet), in its formulation (e.g., multivitamin, single vitamin, single mineral, or multivitamin plus iron), and in its intended target population (e.g., children).

For example, children's chewable multivitamin tablets generally contain sugar. Therefore, a children's chewable multivitamin that was formulated without sugar could function as a substitute for one with sugar. In such a case, it would be appropriate to allow a "sugar free" claim on the substitute product. However, if the substitute chewable multivitamin product contained less of a particular vitamin than any other product of that type on the market, and was therefore nutritionally inferior, § 101.13(d) would require that product to be labeled as an "imitation." The agency believes that the occurrence of such circumstances is extremely unlikely, because such products can easily be formulated to contain equivalent amounts of nutrients.

Based on the foregoing discussion, FDA tentatively finds § 101.13(d) appropriate for the regulation of nutrient content claims on dietary supplements.

3. Reformulation Requirements for "Low" and "Free" Claims

Section 101.13(e)(1) of the final rule on nutrient content claims provides that only foods that have been specially processed, altered, formulated, or reformulated so as to lower the amount of the nutrient in the food, remove the nutrient from the food, or not include the nutrient in the food may bear a "free" or "low" claim before the name of the food. Section 101.13(e)(2) provides that, when the food has not been specially processed, altered, formulated, or reformulated to qualify for that claim, any "free" or "low" nutrient content claim shall indicate that the food inherently meets the criteria and shall clearly refer to all foods of that type and not merely to the particular brand to which the labeling attaches.

FDA tentatively concludes that these provisions are directly applicable to dietary supplements. For example, because most, if not all, dietary supplements of vitamins and minerals contain no or physiologically insignificant amounts of fat, saturated fat, and cholesterol, the agency tentatively finds that it would be misleading to make a "free" claim for any of those nutrients (e.g., "fat free vitamin C supplement") without making it clear that the claim was true of all supplements of that type (e.g., "vitamin C, a fat-free supplement).

The agency tentatively concludes that this requirement is necessary to prevent the consumer from being misled by an implication that a particular food has been altered to lower its sodium content, for example, when in fact all foods of that type are free of, or low, in sodium. FDA is aware that the effect of this provision will be to allow "free" or "low" claims on dietary supplements that do not usually contain, or are usually low in, the nutrient (e.g., "Brand A multivitamin, a fat free supplement"). However, for the reasons stated above, the agency believes that this course is the appropriate one. FDA specifically requests comments on this aspect of the proposal.

E. Labeling Mechanics

1. Prominence

The 1990 amendments do not include specific limits on the prominence of nutrient content claims. Although FDA recognizes the importance that certain nutrient content claims can have in encouraging sound dietary practices, it also considers it important that individual foods be evaluated in the context of the total diet. Consequently, FDA concluded in the January 6, 1993, final rule that claims should not be used to overemphasize any one aspect of a particular food. Therefore, § 101.13(f) requires that a nutrient content claim be no larger in type size and style than two times that of the statement of identity.

This requirement ensures that nutrient content claims are not given undue prominence. This requirement was promulgated under section 403(f) and 403(r) of the act. Section 403(f) of the act states that a food is misbranded if any statement required by or under the authority of the act is not placed on the label with such conspicuousness, as compared to other words, statements, designs, or devices, as to render it likely to be understood by the ordinary consumer. This requirement ensures that importance of the information provided by the nutrient content claim is fully understood by consumers.

FDA tentatively finds that the section on claim prominence published in the January 6, 1993, final rule, § 101.13(f), is directly applicable to dietary supplements. The agency is not aware of any reason why a different rule should apply to dietary supplements, given the regulatory scheme established by the act.

Moreover, because consistency between foods in conventional food form and dietary supplements in how information is presented will facilitate the use of the information by consumers, FDA throughout this document will propose to use the same labeling mechanics for dietary supplements as for foods in conventional food form, unless there is an affirmative reason to take a different approach. The agency requests comment on this proposed requirement and on the ways in which labeling mechanics for nutrient content claims for dietary supplements should differ from those of foods in conventional food form, if at all. The agency is particularly interested in the impact of this proposal on dietary supplements that are packaged in small containers.

2. Referral Statements

Section 403(r)(2)(B) of the act states that if a nutrient content claim is made, the label or labeling of the food shall contain, prominently and in immediate proximity to such claim, the following statement: "See _____ for nutrition information" (hereinafter referred to as "the referral statement"). Under section 403(r)(2)(B)(i) of the act, the blank must identify the panel on which the information described in the statement may be found. FDA has incorporated this requirement in § 101.13(g) of the final rule on nutrient content claims. The agency tentatively finds that this requirement is applicable to dietary supplements. The agency is not aware of any basis that would justify a different rule under the act, nor does the agency believe that it has the authority to establish a different rule given the language of section 403(r)(2)(B) of the act.

3. Type Size and Style for Referral Statements

Section 403(r)(2)(B) of the act requires that the referral statement appear prominently, but it does not contain specific prominence requirements such as type size or style. The agency proposed in November of 1991 to require in § 101.13(g)(1) that the referral statement be one-half the size of the claim but in no case less than one-sixteenth of an inch. The agency did this because it has traditionally required that information be in a size that is reasonably related to the information that it modifies. When codified, this has been one half the size of the information modified.

Because of problems with label clutter, however, FDA modified section 101.13(g)(1) in the final rule to require that the referral statement be no less than that required by § 101.105(i) for net quantity of contents statements, except where the size of the claim is less than

two times the required size of the net quantity of the contents statement, in which case the referral statement must be no less than one-half the size of the claim but no smaller than one-sixteenth of an inch. The one-sixteenth of an inch requirement is the same as specified in § 101.2(c) as the minimum type size for most other mandatory information on the principal display panel or information panel (e.g., designation of ingredients, name and place of business, and warning and notice statements) and the minimum type size for certain net quantity of contents statements.

The agency sees no reason for alternate or additional requirements for dietary supplements. It recognizes that, because the available label space for many dietary supplements will be small, one-sixteenth of an inch will be the minimum size of the referral statement in many cases. Consequently, the agency tentatively concludes that the requirement for the size of the referral statement should be applicable to dietary supplements.

In addition, § 101.13(g)(1) states that the referral statement must be "in easily legible boldface print or type in distinct contrast to other printed or graphic matter." Section 403(r)(2)(B) of the act states that the referral statement for nutrient content claims should be "prominent". FDA tentatively finds that § 101.13(g)(1) is applicable to dietary supplements to ensure under section 403(f) that the referral statement is presented in a way that makes it likely to be read.

4. Proximity

Section 403(r)(2)(B) of the act provides that the referral statement shall be in immediate proximity to the claim. Although there is no specific guidance given as to what constitutes immediate proximity, FDA has traditionally defined immediate proximity as immediately adjacent with no intervening material present. For example, § 101.2(e) requires that there be no intervening material among the information that is required to appear on the information panel. By no intervening material, FDA means that there may be no printed matter, either pictorial or character, between the two pieces of information. FDA has taken a similar position in § 101.13(g)(2), requiring that the referral statement be immediately adjacent to the nutrient content claim.

However, a claim may be made immediately preceding or as part of the statement of identity. Under § 101.13(g)(2), when the nutrient content claim immediately precedes or is part of the statement of identity, the statement of identity or the nonclaim part of the statement of identity will not be considered intervening material. For example, if a product were labeled "Low sodium multivitamin; see side panel for nutrition information," and no pictorial or written material intervened, the agency would consider that the related statement and the referral statement were in immediate proximity to the nutrient content claim of "low sodium." The term "multivitamin" in this example would not be considered to be intervening material.

In addition, § 101.13(g)(2) provides that it is not necessary to include a referral statement if a claim is made on the panel containing nutrition information. In the final rule on nutrient content claims, the agency concluded that referral statements where not necessary when claims are made on the information panel because such claims would be made in view of the nutrition information cited in the referral statement.

FDA tentatively finds that § 101.13(g)(2) is directly applicable to dietary supplements. It is unaware of any basis on which to provide for a different rule for dietary supplements. Therefore, the agency sees no need to modify § 101.13(g)(2) for dietary supplements.

5. Referral Statements for Multiple Claims

Section 3(b)(1)(A)(v) of the 1990 amendments states that the Secretary and, by delegation, FDA shall provide that if multiple claims subject to the nutrient content claim regulations are made on a single panel of the food label or page of a labeling brochure, a single statement may be made to satisfy the requirements for referral statements. To ensure that this referral statement is adequately prominent, the agency promulgated § 101.13(g)(3) of the final rule on nutrient content claims which specifies that the statement is to be adjacent to the claim that is printed in the largest type on the panel. FDA adopted this provision because the claim in the largest type is the one most likely to initially be seen by the consumer.

The agency tentatively concludes that this provision is appropriate for dietary supplements. Given the small size of many supplement labels, requiring more than one referral statement on a panel would be unreasonable. However, section 403(r)(2)(B) of the act and section 3(b)(1)(A)(v) of the 1990 amendment read together require that there be at least one referral statement.

6. Disclosure Statements

Section 403(r)(2)(B)(ii) of the act states that if a food that bears a nutrient content claim "contains a nutrient at a level which increases to persons in the general population the risk of a disease or health-related condition which is diet related, taking into account the significance of the food in the total daily diet, the required referral statement shall also identify such nutrient," i.e., a disclosure statement.

The analysis that the agency performed in arriving at the circumstances where a disclosure statement on foods in conventional food form is required (i.e., disclosure levels) was based upon dietary guidelines, taking into account the significance of the food in the total daily diet. In the final rule on nutrient content claims (58 FR 2302 at 2308), the agency defined disclosure levels for sodium, fat, saturated fat, and cholesterol at 20 percent of the daily reference value (DRV) established by FDA. These disclosure levels stated in § 101.13(h) are 13 grams (g) of fat, 4 g of saturated fat, 60 milligrams (mg) of cholesterol, and 480 mg of sodium per reference amount customarily consumed, per labeled serving size, or for a food with a reference amount customarily consumed of 30 g or less or 2 tablespoons or less, per 50 g.

The agency believes that disclosure statements concerning fat, saturated fat, and cholesterol are of limited usefulness for dietary supplements. The agency believes that amounts of fat, saturated fat, and cholesterol are negligible in most dietary supplements. However, fish liver oils and grain oils (e.g., wheat germ oil) may contribute to daily total fat intake above the disclosure levels at the intake levels recommended in the labeling, and disclosure statements on these products when nutrient content claims are made may be useful in alerting consumers to the presence of these nutrients in such supplements.

The agency is aware that some nutrients found in dietary supplements may be formulated with sodium containing compounds (e.g., sodium ascorbate), and that the amounts of sodium in these various products can vary widely. The agency tentatively concludes that the amount of sodium in these products may possibly exceed disclosure levels. In such a case, the sodium content may be significant, particularly for persons on sodium restricted diets, making the disclosure statement important in calling the consumer's attention to the sodium level of the food.

Therefore, FDA tentatively finds that § 101.13(h)(1) is applicable to dietary supplements. This provision states that if a food contains more than 13 g of fat, 4 g of saturated fat, 60 mg of cholesterol, or 480 mg of sodium per reference amount customarily consumed, per labeled serving, or, for a food with a reference amount customarily consumed of 30 g or less or 2 tablespoons or less, per 50 g, then that food must disclose, as part of the referral statement, that the nutrient exceeding the specified level is present in the food (e.g., "See side panel for information about total fat and other nutrients").

Section 101.13(h)(2) and (h)(3) pertain to disclosure levels for meal products and to main dish products and are therefore not relevant to dietary supplements.

F. Statements About the Amount or Percentage of a Nutrient

The 1990 amendments provide, in section 3(b)(1)(A)(iv), that FDA shall permit statements describing the amount or percentage of nutrients in food if they are not misleading, and if they are consistent with the terms defined by the agency. As discussed in the proposal on general principles for nutrient content claims (56 FR 60421 at 60426), the legislative history of the 1990 amendments contemplates that the agency would define the circumstances by regulation "under which statements disclosing the amount and percentage of nutrients in food will be permitted" (136 Congressional Record, H 5841 (July 30, 1990)). Accordingly, in § 101.13(i) of its final regulations on nutrient content claims, FDA set out the conditions under which statements of the amount or percentage of nutrients would be permitted.

The agency believes that statements about the amount or percentage of nutrients would be equally useful to consumers on the labels or in labeling of dietary supplements as they are on foods in conventional food form for such purposes as calling attention to the level of a nutrient in the product and facilitating comparisons between two or more dietary supplements. Accordingly, FDA tentatively finds that § 101.13(i)(1) is appropriate for dietary supplements.

However, before specifying the situation in which such statements would be permitted, the agency made exceptions of amount or percentage statements provided for in § 101.9 or in § 101.13(q)(3). These exceptions are to clarify that amounts or percentages declared within the nutrition label are not subject to § 101.13(i), nor are statements that describe the percentage of a vitamin or mineral in the food (see § 101.13(q)(3)). While these exceptions are applicable to dietary supplements subject to § 101.9, dietary supplements of vitamins or minerals are not covered by the existing provision. Therefore, the agency is proposing to amend § 101.13(i) by adding an exception for § 101.36 to cover amounts and percentages declared within nutrition labels of dietary supplements of vitamins and minerals.

1. When the Amount or Percentage Statement Meet the Criteria for a Claim

In rulemaking to implement the 1990 amendments, FDA considered how to permit statements of amount or percent that implicitly characterize the level of a nutrient (e.g., "less than 140 mg of sodium per serving") in a manner that benefits consumers and also satisfies the requirements of the statute (56 FR 60421 at 60426; 58 FR 2302 at 2308). In § 101.13(i)(1) the agency concluded that these conditions could be met when such amount or percentage statements about a nutrient are made on foods that meet the criteria for any nutrient content claim provided for in subpart D of 21 CFR part 101, including relative claims. The agency is unaware of any reason not to make the same provision for dietary supplements. Therefore, FDA tentatively concludes that this same criterion is applicable for amount or percentage statements on labels or in labeling of dietary supplements.

2. When the Amount and Percentage Statement Does not Meet the Criteria for a Claim

The agency concluded in the final rule on nutrient content claims that in circumstances in which the level of a nutrient in a food does not meet the criteria for a claim, an amount or percentage statement that implicitly characterizes the level of a nutrient, appearing by itself might be misinterpreted (58 FR 2302 at 2308). Therefore, § 101.13(i)(2) of the final rule on nutrient content claims requires that when the label or labeling of a food contains a statement that characterizes the amount or percentage of a nutrient, and that statement is not consistent with a definition set forth in Subpart D, the label must carry a disclaimer adjacent to the statement stating that the food is not "low" in or a good source of the nutrient, such as "only 200 mg sodium per serving, not a low sodium food." This provision also states that the disclaimer must be in easily legible print or type and in a size no less than required by § 101.105(i) for statements of net quantity of contents, in which case the disclaimer should be no less than one-half the size of the claim but no smaller than one-sixteenth of an inch.

The agency is aware that similar situations might arise with respect to dietary supplements and is unaware of any reason to treat them any differently than it treats such situations that arise with respect to foods in conventional food form. Therefore, FDA tentatively concludes that this provision is entirely applicable to dietary supplements.

3. Amount or Percentage Statements That do not Characterize the Level of a Nutrient

In rulemaking implementing the 1990 amendments, FDA concluded that there are some circumstances in which an amount claim cannot be considered to characterize in any way the level of a nutrient in a food. For example, the statement "60 mg Vitamin C" on the principal display panel of a food would be a simple statement of amount that by itself conveys no implied characterization of the level of the nutrient. Section 101.13(i)(3) of the final rule on nutrient content claims states that amount or percentage statements may be made on the label or labeling of a food when the statement does not in any way implicitly characterize the level of the nutrient, and it is not false or misleading in any respect, in which case no disclaimer is required.

FDA tentatively concludes that § 101.13(i)(3) is also applicable to dietary supplements. The agency points out that such statements about the amount of a nutrient in a dietary supplement could apply to nutrients provided for in § 101.9 or, where applicable, § 101.36 for which FDA has established RDI's or DRV's as well as other vitamins or minerals of the same type for which RDI's have not been established (e.g., vitamin K, selenium, manganese, fluoride, chromium, molybdenum, and chloride). In this manner, amounts of vitamins or minerals that are not listed in § 101.9(c), and therefore which cannot be declared within the nutrition label, may be declared elsewhere on the label of the dietary supplement (e.g., "vitamin K—65 micrograms").

G. Relative Claims

In the final rule on nutrient content claims, the agency defined a relative claim in § 101.13(j) as a statement that compares the level of a nutrient in a food to the level of the same nutrient in a reference food These statements include "less" (or "fewer"), "light," "reduced," and "more" claims. These claims are termed "relative claims" to distinguish them from "absolute"

nutrient content claims such as "low." These terms are intended to help guide consumers to foods that may be useful in meeting current dietary recommendations. In addition, these terms provide a basis for comparing the level of a nutrient in one food to its level in another food.

The agency tentatively concludes that this definition is entirely appropriate for dietary supplements. The agency is unaware of any information that would lead to a different conclusion. The applicability of each currently authorized claim to dietary supplements will be discussed later in this document.

1. Reference Foods for Relative Claims

Because the nutrient profiles of similar foods may vary widely, a relative claim about the level of a nutrient in a food would be misleading if the food to which the labeled product was compared was not stated. Consequently, the agency concluded in the final rule on nutrient content claims that a food bearing a relative claim, but not the identity of the reference food, would be misbranded under sections 403(a) and 201(n) of the act because it would fail to reveal a fact that is material to understanding the significance of the claim. Specifically, information about the nature of the modification of the product, which would be essential in judging the usefulness of the product, would not be declared.

As previously discussed, the agency has defined a relative claim as a statement that compares the level of a nutrient in a food with the level of a nutrient in a reference food. The agency uses the term "reference food" to describe the food to which the labeled product is compared. Because a relative claim may be made with respect to a variety of reference foods, FDA has concluded that for such a claim to be complete and not misleading, the claim must be accompanied by a statement that compares the food for which the claim is made to a specified reference food. This information is important because the amount of a nutrient may vary widely among brands as well as types of food. As used in this discussion the term "reference food" includes dietary supplements, which are generally subject to regulation as foods.

Section 101.13(j)(1) states that to bear a relative claim about the level of a nutrient, the amount of that nutrient in the food must be compared to an appropriate reference food. Section 101.13(j)(1)(i)(A) states that for "less" (or "fewer") and "more" claims, the reference food may be a dissimilar food within a product category that can generally be substituted for one another in the diet (e.g., potato chips as reference for pretzels) or a similar food (e.g., a potato chip as reference for potato chips).

Section 101.13(j)(1)(i)(B) states that for "light," "reduced," "added," "fortified," and "enriched" claims, the reference food shall be a similar product (e.g., potato chips as reference for potato chips). FDA tentatively concludes that these provisions are appropriate for dietary supplements because they allow comparisons of nutrient content to a variety of categories of dietary supplements, as well as to foods in conventional food form. FDA is not aware of any information that would suggest a different conclusion.

Section 101.13(j)(ii)(A) states that for "light" claims, the reference food shall be representative of the type of food that includes the product that bears the claim. The nutrient values for the reference food shall be representative of a broad base of foods of that type, e.g., a value in a representative valid data base, an average value determined from the top three national or regional brands, a market basket norm, or when its nutrient value is representative of the food type, a market leader. Firms using such a reference nutrient value as a basis for a claim are required to provide specific information upon which the nutrient value was derived, on request to consumers and appropriate regulatory officials. Because of the limited calorie and fat levels in many dietary supplements, FDA considers this provision to have limited applicability to dietary supplements. To the extent it is applicable, however, FDA is not aware of any basis to find that a different position would be appropriate for dietary supplements. Therefore, FDA tentatively concludes that it is fully applicable to these products.

Section 101.13(j)(1)(ii)(B) states that for relative claims other than "light," including "less" and "more" claims, the reference food may be the same as that provided for "light" in paragraph (j)(1)(ii)(A) of this section, or it may be the manufacturer's regular product, or that of another manufacturer, that has been offered for sale to the public on a regular basis for a substantial period of time in the same geographic area by the same business entity or by one entitled to use its trade name. The nutrient value for a single manufacturer's product shall be the value declared in nutrition labeling on the product. FDA finds that this provision is directly applicable to dietary supplements, and therefore sees no need to modify this provision. A manufacturer's regular product provides a reference to a known specific food or dietary supplement and consequently provides a meaningful basis for claims that compare one product directly to another.

The agency tentatively concludes that the provisions discussed above are as appropriate for dietary supplements as they are for foods in conventional food form. The agency is unaware of any facts that would suggest that a different rule is appropriate for dietary supplements.

2. Accompanying Information for Relative Claims

In the final rule on nutrient content claims, the agency concluded that even though terms used in relative claims have been defined by regulation, the claims may be misleading unless they are accompanied by certain material facts that are necessary if consumers are to understand the change that has been made in the food. The agency considers that, in the presence of a relative claim, the percent of change in the nutrient level and the amount of the nutrient in the labeled food and the reference food are material facts under sections 403(a) and 201(n) of the act. Therefore, § 101.13(j)(2)(i) provides that the label or labeling must state the identity of the reference food and the percentage (or fraction) of the amount of the nutrient in the reference food by which the nutrient has been modified (e.g., "50 percent less sodium than (reference food)" or "⅓ less sugar than (reference food)"). The agency tentatively concludes that this provision is appropriate for dietary supplements. This provision facilitates comparison between brands of dietary supplements and allows manufacturers to demonstrate improvements in their products. Thus, it would assist consumers in maintaining health dietary practices.

Section 101.13(j)(2)(ii) provides that the information accompanying a relative claim is subject to the same type size and style requirements as prescribed for the referral statement (§ 101.13(g)(1)). This requirement ensures that consumers will be provided with the information that they need to understand the basis for the claim without overcrowding the label. FDA tentatively concludes that this requirement should apply equally to dietary supplements. The requirement is written in a way that accounts for space limitations that may exist on dietary supplement packages. Thus, FDA is unaware on any basis on which to adopt a different rule for these products.

The agency recognizes that the information required to accompany a relative claim is considerable, but this

information is necessary to ensure that the claim is not misleading. On the other hand, FDA also recognizes that a requirement that this information be included each time a relative claim is made would overburden the label to the point that the usability of the required information could be diminished. Therefore, the agency has provided in 101.13(j)(2)(iii) that the identity of the reference food and the percent (or fraction) of the change is only required to accompany the most prominent declaration of the claim on the food.

The determination of which use of the claim is in the most prominent location is based on the following facts, considered in order: (1) A claim on the principal display panel adjacent to the statement of identity (§ 101.13(j)(2)(iii)(A)), (2) a claim elsewhere on the principal display panel (§ 101.3(j)(2)(iii)(B)), (3) a claim on the information panel (§ 101.13(j)(2)(iii)(C)), or (4) a claim elsewhere on the label or labeling (§ 101.13(j)(2) (iii)(D)).

The agency tentatively finds that each of the above provisions is applicable to dietary supplements. The agency is unaware of any facts that would require a different approach for dietary supplements.

Section 101.13(j)(2)(iv)(A) of the final rule on nutrient content claims states that the label shall bear clear and concise quantitative information comparing the amount of the subject nutrient in the product per labeled serving with that in the reference food. To provide some flexibility in label arrangement, the agency has provided in § 101.13(j)(2)(iv)(B) that this statement be allowed to appear adjacent to the most prominent claim or on the information panel. Because these provisions provide for the provision of necessary information in a flexible manner, the agency tentatively concludes that these provisions are applicable to dietary supplements that make relative claims (e.g., "Contains 400 ug folate, Product X contains 180 ug folate"). Therefore, FDA is proposing to make nutrient content claims on dietary supplements subject to these requirements.

3. Relative Claims for Low Levels of Nutrients

The agency has previously expressed concern that relative claims that highlight a decrease in the amount of a nutrient will be made on products that normally contain only a small amount of that nutrient (56 FR 60421 at 60446 and 58 FR 2302 at 2348). In such products, a large percentage reduction would produce only a small change in the actual amount of the nutrient present. This concern extends to dietary supplements. For instance, a dietary supplement containing only 40 mg of sodium per serving could be reformulated to contain 20 mg of sodium per serving and thereby qualify to use a relative claim. The difference of 20 mg of sodium is not of nutritional significance, however, because the product was already low sodium. A claim for such a nutrient content difference would be misleading.

To address this concern, the agency provided in § 101.13(j)(3) that a relative claim for decreased levels of a nutrient may not be made on the label or in labeling of a food if the nutrient content of the reference food meets the requirement for a "low" claim for that nutrient (e.g., 3 g fat). FDA concluded that the definition for a "low" claim on a per serving basis should be used as such a limit because the value for "low" is the level above which the amount of a nutrient becomes significant relative to the total diet. After considering the relevance of this provision for claims on dietary supplements, the agency tentatively concludes, for the same reason that applies to food in conventional food form, that the level of "low" specified for foods in conventional food form is appropriate for limiting relative claims on dietary supplements.

4. "Modified"

The term "modified" is not a nutrient content claim and has not been defined by the agency. This term was developed for foods in conventional food form to be used as part of the statement of identity to reflect a change in a food (56 FR 60454). The term was not meant to be used alone, nor was the term meant to be used to describe products that had not been altered (58 FR 2302 at 2367 and 2412). The reference food used for the "modified" claim is intended to be one that was appropriate for a "reduced" claim (56 FR 60421 at 60454 and 58 FR 2302 at 2367). For example, a "modified fat cheddar cheese" would have as its reference a full fat version of cheddar cheese, not some other type of cheese.

Section § 101.13(k) of the final rule on nutrient content claim provides that the term "modified" may be used in the statement of identity of a food that bears a relative claim followed immediately by the name of the nutrient whose content has been altered (e.g., "Modified fat cheesecake"). This statement of identity must be immediately followed by the comparative statement such as "Contains 35 percent less fat than _____." The label or labeling must also bear the information required by paragraph (j)(2) of § 101.13 in the manner prescribed.

FDA is not aware of any application for this term for dietary supplements. The agency tentatively concludes that the authorized express claims (e.g., "low," "free") and the relative claims (e.g., "more," "less," "reduced") are sufficient to describe modifications for dietary supplements. However, while the use of this term as part of the statement of identity of dietary supplements is unlikely, the agency sees no reason not to extend the use of this term to dietary supplements if an appropriate situation arose. Therefore, FDA is not proposing to modify § 101.13(k) to preclude that use of "modified" on dietary supplements. Comment is requested on this tentative conclusion, on the appropriateness of authorizing the use of this term for dietary supplements, and on any situations in which the term may be useful for dietary supplements.

H. Meal Products and Main Dish Products

Section 101.13(l) and (m) of the final rule on nutrient content claims addresses meal products and main dish products and therefore has no application to dietary supplements.

I. Nutrition Labeling

Section 101.13(n) of the final rule on nutrient content claims states that nutrition labeling in accordance with § 101.9 or § 101.10, as applicable shall be provided for any food for which a nutrient content claim is made.

Nutrition labeling is necessary when a claim is made to ensure that other important nutritional aspects of the food are presented along with the aspect that is highlighted by the claim. This fact is recognized in section 403(r)(2)(B) of the act, which requires that any nutrient content claim be accompanied by a statement referring the consumer to the nutrition label. Thus, nutrition labeling in the labeling of a food that bears a claim will assist consumers in maintaining healthy dietary practices because it provides them with additional important information about the food. FDA tentatively concludes that the above analysis is as appropriate for dietary supplements as it is for foods in conventional food form. Therefore, the agency is proposing to amend § 101.13(n) to state that nutrition labeling in accordance with §§ 101.9, 101.10, or 101.36, as applicable, shall be provided for any food for which a nutrient content claim is made.

J. Analytical Methodology

Section 101.9(g)(2) of the final rule on nutrient content claims published January 6, 1993 (58 FR 2079 at 2183), states that foods shall be analyzed by appropriate methods as specified by the American Organization of Analytical Chemists (AOAC) International or by other reliable and appropriate analytical procedures. The agency believes that these methods as provided for in § 101.13(o) are appropriate for dietary supplements. The agency is not aware of any evidence that would suggest a different conclusion. Therefore, FDA is proposing to include dietary supplements in the coverage of this provision.

K. Reference Amounts

Section 101.13(p)(1) of the final rule on nutrient content claims states that unless otherwise specified, the reference amount customarily consumed set forth in § 101.12 (b) through (f) shall be used in determining whether a product meets the criteria for a nutrient content claim. Further, the provision states that if the serving size declared on the product label differs from the reference amount customarily consumed, and the amount of the nutrient contained in the labeled serving does not meet the maximum or minimum amount criterion in the definition for the nutrient content claim for that nutrient, the claim shall be followed by the criteria for the claim as required by § 101.12(g) e.g. "very low sodium, 35 mg or less per 240 milliliters (8 fl oz."). Section 101.13(p)(2) states that the criteria for the claim shall be immediately adjacent to the most prominent claim in easily legible print or type and in a size in accordance with § 101.13(g)(1).

The proposal for mandatory nutrition labeling for dietary supplements published elsewhere in this issue of the **Federal Register** contains a proposal to amend § 101.12(b) to define reference amounts customarily consumed for dietary supplements as "the amount recommended on the label for consumption per eating occasion or, in the absence of recommendations, 1 tablet, capsule, packet, or teaspoonful, as appropriate". The agency tentatively concludes that with the proposed addition of a reference amount for dietary supplements to § 101.12(b), the above provision is directly applicable to dietary supplements.

L. Exemptions

The 1990 amendments provide certain exemptions from the requirements for nutrient content claims. The exemptions that are provided for in § 101.13(q) are reviewed below in terms of their applicability to dietary supplements.

1. Claims in a Brand Name

Section 101.13(q)(1) of the final rule on nutrient content claims states that nutrient content claims not defined by regulation, appearing as part of a brand name that was in use prior to October 25, 1989, may be used on the label or in labeling of a food, provided they are not false or misleading under section 403(a) of the act. Section 403(r)(2)(C) of the act states:

> Subparagraph (2)(A) does not apply to a claim described in subparagraph (1)(A) and contained in the label or labeling of a food if such claim is contained in the brand name of such food and such brand name was in use on such food before October 25, 1989, unless the brand name contains a term defined by the Secretary under subparagraph (2)(A)(i). Such a claim is subject to paragraph (a).

Paragraph (a) refers to section 403(a) of the act which states that a food is misbranded if its labeling is false or misleading in any particular.

Manufacturers may continue to use brand names that include nutrient content claims that have not been defined by regulation so long as these claims appeared as part of a brand name before October 25, 1989, and are not false or misleading. Section 403(r)(2)(B) of the act, which requires the referral statement, does apply to foods whose brand name includes such claims. Consequently, the labeling of products whose brand name includes such terms will have to bear an appropriate referral statement.

FDA tentatively concludes that § 101.13(q)(1) is applicable to dietary supplements. The agency is aware of nothing in the statute, its legislative history, or the available evidence that would provide the basis for a different conclusion.

2. Soft Drinks

Section 101.13(q)(2) addresses soft drinks and therefore has no application to dietary supplements.

3. Percentage of Vitamins and Minerals

Section 403(r)(2)(E) of the act states:

> Subclauses (i) through (v) of subparagraph (2)(A) do not apply to a statement in the label or labeling of food which describes the percentage of vitamins and minerals in the food in relation to the amount of such vitamins and minerals recommended for daily consumption by the Secretary.

Accordingly, § 101.13(q)(3) of the final rule on nutrient content claims authorizes the use of statements on the label or in labeling of a food that describes the percentage of a vitamin or mineral in relation to the RDI as defined in § 101.9(c)(8)(iv) without specific regulations authorizing claims for each specific vitamin or mineral. Such claims are permitted unless they are expressly prohibited by regulation under section 403(r)(2)(A)(vi) of the act. Such claims have to be accompanied by a referral statement. FDA tentatively concludes that the above provision is fully applicable to dietary supplements.

4. Infant Formulas, Medical Foods, and Restaurant Foods

Section 101.13(q)(4) states that the requirements of this section do not apply to infant formulas subject to section 412(h) of the act (21 U.S.C. 350a) and to medical foods as defined by section 5(b) of the Orphan Drug Act. Section 101.13(q)(5) addresses specific provisions for restaurant foods. These sections have no application to dietary supplements.

5. Claims That are Part of the Common or Usual Name

Section 101.13(q)(6) of the final rule on nutrient content claims states that nutrient content claims that are part of the common or usual names of foods that were subject to a standard of identity on November 8, 1990, are not subject to the requirements for the definitions of expressed and implied nutrient content claims provisions, to the labeling mechanics provisions, and to the referral statement provisions. Because there are no standards of identity for dietary supplements, this provision is not relevant to dietary supplements.

6. Use of Terms Defined in Response to Petitions

Section 101.13(q)(7) of the final rule on nutrient content claims states that implied nutrient content claims may be used as part of a brand name, provided that the use of the claim has been authorized by FDA. Petitions requesting approval of such claims may be submitted under § 101.69(o).

Section 403(r)(4)(A) (ii) and (iii) of the act authorizes the agency to permit the use of certain types of claims in response to a petition, without requiring that the agency grant such approval by regulation. The claims covered by this section are those made by use of a term that is consistent with a nutrient content claim defined by the agency, i.e., a synonym, or by an implied claim made as part of a brand name. The act sets forth specific timeframes and procedures for FDA's handling of these petitions, which FDA codified in § 101.69.

FDA intends to list any approved synonyms in the regulation defining the underlying nutrient content claim. The regulations will be updated in the annual issuance of the Code of Federal Regulations. On the other hand, because brand name approvals apply to individual firms, the agency intends to retain a separate, publicly available list of approved implied nutrient content claims that may be made as part of a brand name.

FDA tentatively concludes that this provision is also applicable to dietary supplements. The agency is not aware of any information that would suggest that a different approach is appropriate for dietary supplements.

M. Fluoridation of Bottled Water

Section 101.13(q)(8) states that terms denoting the addition of fluoride may be used on the label or in the labeling of bottled water that contains fluoride. This provision is not relevant to dietary supplements.

IV. Definitions for Specific Nutrient Content Claims Terms

A. Basis for Definitions

1. January 6, 1993, Final Rule

FDA tentatively concludes that most, but not all, of the terms defined in the final rule on nutrient content claims (58 FR 2302 at 2410) are directly applicable to dietary supplements. Those terms authorized for use on labels of foods in conventional food form that the agency believes are not appropriate for dietary supplements include "unsalted," "lean," and "extra lean." The reasons that these are not appropriate for use with dietary supplements will be discussed in the sections that follow.

In response to its 1989 ANPRM, FDA received many comments asking for increased consistency among nutrient content claims to aid consumers in recalling and using the defined terms. In addition, the Institute of Medicine of the National Academy of Science in a report entitled "Nutrition Labeling, Issues and Directions for the 1990's," recommended that claims should have a consistent definition across food categories. For example, the report recommended that "low sodium" should have the same meaning whether it is applied to soup, frozen peas, or meat (Ref. 5). FDA accepted this reasoning in the final rule on nutrient content claims (58 FR 2302 at 2319). The agency tentatively concludes that the same reasoning applies to dietary supplements. Thus, "low sodium", for example, should have the same meaning on a dietary supplement as it does on foods in conventional food form. Accordingly, the definitions that FDA is proposing to authorize for nutrient content claims for dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances are those previously defined by the agency for foods in conventional food form as set forth in §§ 101.54, 101.60, 101.61, 101.62, and 101.65.

2. Use of RDI's and DRV's in Formulating Definitions

In a related final rule on food labeling that published in the **Federal Register** of January 6, 1993 (58 FR 2206), and consistent with the DS act, FDA replaced the term U.S. Recommended Daily Allowance ("U.S. RDA") with "RDI" and established DRV's for eight food components, including sodium, potassium, and dietary fiber.

The agency has limited the proposed definitions for nutrient content claims for dietary supplements to nutrients for which there are RDI's or DRV's. This approach has the advantage of linking nutrient content claims to established reference values, thereby providing a consistent and quantitative basis for defining terms. Additionally, these reference values were determined using established scientific reports (Ref. 4), as well as recognized consensus reports and dietary recommendations (Refs. 1, 2, and 3), ensuring that there is an appropriate scientific basis for these values.

The agency recognizes that there may be other nutrients (i.e., nutrients without RDI's) for which dietary supplement manufacturers might wish to make claims. As previously discussed, § 101.13(i)(3) provides for amount or percentage statements that do not characterize the level of a nutrient (including those nutrients without an RDI or DRV) and that are therefore not nutrient content claims but rather state amounts present. For example, while there is no RDI for vitamin K, this provision would allow a vitamin K supplement to declare the amount of the nutrient present (e.g., vitamin K 65 micrograms). FDA is not aware of any basis on which to characterize the levels of these substances. FDA requests comment on this issue. The agency is interested in comments on whether there is a need to allow nutrient content claims for nutrients without RDI's (e.g., vitamin K, selenium, manganese, fluoride, chromium, molybdenum, and chloride). If there is, comments should address how such claims can be defined in the absence of an RDI.

3. General Requirements for Nutrient Content Claims

Under section 403(r)(1)(A) of the act, a label claim that characterizes the level of a nutrient in a food may only be made in accordance with the regulations that FDA adopts under section 403(r)(2) of the act. This provision is reflected in the general requirements for each set of nutrient content claims in §§ 101.54(a), 101.56(a), 101.60(a), 101.61(a), and 101.62(a). These paragraphs state that such claims may only use terms that FDA has defined by regulation, must be made in accordance with general requirements for nutrient content claims in § 101.13, and must bear nutrition labeling according to § 101.9 or § 101.10. For the reasons stated above, the agency tentatively concludes that these provisions are appropriate for dietary supplements. However, because FDA is proposing a new § 101.36 in a separate document published elsewhere in this issue of the **Federal Register** that would address nutrition labeling of dietary supplements of vitamins or minerals, a modification of the above paragraph is needed to add a reference to § 101.36.

Therefore, the agency is proposing to amend several sections of Subpart D (§§ 101.54(a)(3), 101.56(a)(3), 101.60(a)(3), 101.61(a)(3), and 101.62(a)(3)) to state that the food for which the claim is made is labeled in accordance with §§ 101.9, 101.10, or 101.36, as applicable.

B. Specific Requirements for Nutrient Content Claims (21 CFR 101, Subpart D)—Applicability to Dietary Supplements

1. Nutrient Content Claims for "Good Source," "High," and "More." (§ 101.54)

a. *"Good source" and "high."* As directed by the 1990 amendments (section 3(b)(1)(A)(iii)(VI)), FDA defined the term "high" and the synonyms "rich in" and "excellent source of" for use on labels and in labeling in § 101.54 (58 FR 2302 at 4114). In the final rule on nutrient content claims, the agency stated that the term "good source" may be used to describe a food when a serving of the food contains 10 to 19 percent of the RDI or the DRV for a nutrient. Likewise, the agency stated that the term "high" may be used to describe a food when a serving contains 20 percent or more of the RDI or the DRV. FDA concluded that the use of these terms would permit a sufficient number of food items to bear "good source" and "high" claims to allow consumers to use the claims in selecting foods that are better sources of nutrients. The agency also pointed out that the specified levels provide an

appropriate basis for upper-level nutrient content claims on labels or in labeling of foods in conventional food form and can readily be used by consumers to implement current dietary guidelines (58 FR 2344).

Under the present definitions, most, if not all, dietary supplements of vitamins, minerals, potassium, and fiber would qualify for "good source" or "high" claims. Dietary supplements of vitamins and minerals are typically concentrated sources of nutrients that often meet or exceed 100 percent the RDI per serving except for nutrients such as biotin, an expensive nutrient whose cost constrains the amount usually added in a supplement, and fiber and calcium, whose mass limits the quantity that can be formulated into single servings in tablet form. However, multiple servings are often recommended for fiber and for calcium supplements to provide recommended daily intake levels.

Dietary supplements are intended to be, and are expected to be, concentrated sources of nutrients (Ref. 3). While "good source" and "high" nutrient content claims would be of limited utility in comparing the nutrient content among dietary supplements because virtually the entire class of products would qualify for such claims, these claims would be useful in comparing the nutrient content of dietary supplements with that of foods in conventional food form. Further, these terms would also be useful in highlighting the nutrient content of a few herbs and other similar nutritional substances that have nutrients at levels high enough to qualify for the definition of one of the above terms.

However, section 411(b)(2)(B) of the act (21 U.S.C. 350(b)(2)(B)) states that the labeling and advertising for dietary supplements of vitamins and minerals may not give prominence to or emphasize ingredients that are not vitamins or minerals or represented as a source of vitamins or minerals. This provision serves to limit the types of claims that can be made on dietary supplements of vitamins or minerals. Because of this provision, statements about ingredients that are not vitamins or minerals (e.g., "more fiber," "good source of fiber," "high protein") may not be made on dietary supplements of vitamins or minerals. Therefore, the agency is proposing to amend § 101.54(b), (c), and (e), by adding that the claims authorized in this section (i.e., "high," "good source," and "more") may not be used on dietary supplements of vitamins or minerals to characterize the level of any substance that is not a vitamin or mineral.

As previously discussed, maintaining consistency in definitions of nutrient content claims across the food supply is necessary to facilitate consumer use of the information. Accordingly, the agency tentatively concludes that with the proposed change in § 101.54(b), (c), and (e), and excluding the provisions pertaining to main dish and meal type products, all of the provisions of § 101.54 pertaining to the terms "good source," "high," and their synonyms are applicable to dietary supplements. Comments are requested on the usefulness of "good source" and "high" claims on dietary supplements and on the appropriateness of the proposed levels. If other levels are suggested, data in support of such levels are requested.

b. *"More."* Although the 1990 amendments do not require that FDA define the term "more," the agency recognized that there could be instances when a manufacturer could make a statement on the label or in labeling that a food contains more of a desirable nutrient than is in a reference food. FDA said that such claims could be useful to describe the level of vitamins, minerals, protein, potassium, and dietary fiber in a food (56 FR 60421 at 60453).

Section 101.54(e)(1)(i) of the final rule on nutrient content claims requires that a food contain at least 10 percent more of the RDI for vitamins or minerals or of the DRV for protein, dietary fiber, or potassium before a comparative claim using the term "more" would be permitted. As discussed in the final rule on nutrient content claims that published in the **Federal Register** of January 6, 1993 (58 FR 2302 at 2361), the agency concluded that a 10 percent or greater level of a nutrient relative to the RDI or DRV in a serving of a food is nutritionally significant and is also necessary to ensure that there is truly a nutritional difference in the foods being compared. This minimum difference corresponds to the minimum level of a nutrient that must be provided by a food for the food to meet the definition of "good source" described in § 101.54(c) (58 FR 2302 at 2414). Consistent with this requirement, a food must provide at least an additional 10 percent of the DRV or RDI compared to the reference food before it can be designated as a better source, i.e., having "more" of the nutrient.

The agency tentatively finds that this provision is applicable to dietary supplements, and that the definition of "more" and its synonyms can be extended to dietary supplements without revision. FDA points out that the difference must be on the basis of the RDI or DRV, rather than on a weight basis, for the relative difference to have nutritional significance. For example, consider a product containing 150 mg of calcium per serving. On a weight basis, it would have 50 percent more calcium than a product containing 100 mg and 100 percent more than a product containing 75 mg. However, in terms of the RDI for calcium (1 g), a serving of the three products contains 15, 10, and 7.5 percent of the RDI, respectively. While the first two products meet the definition of a "good source", i.e., at least 10 percent of the RDI per serving, the difference between them is not nutritionally significant and therefore, no one product can claim to contain "more" calcium than the other two.

2. Nutrient Content Claims for "Light" and "Lite" (§ 101.56)

Section 3(b)(1)(A)(iii)(III) of the 1990 amendments requires FDA to define "light" or "lite" unless it finds that the term is misleading. In its final rule on nutrient content claims, FDA concluded that while the term "light" or "lite" is primarily a relative claim that compares one food to another food, it is often used to directly describe the food itself in the way that an absolute claim such as "low sodium" is used. The agency defined the circumstances in which the term "light" can be used in § 101.56 of the final rule on nutrient content claims (58 FR 2302 at 2414). The definition of these terms is based on their calorie, fat, or sodium content.

Based on the agency's tentative conclusion that the definition of terms should be consistent for all foods, the agency is proposing to include dietary supplements in the coverage of § 101.56. Section 101.56(b)(4) states that a "light" claim may not be made on a food for which the reference food meets the definition of "low fat" and "low calorie." As previously discussed, the calorie and fat content of dietary supplements is generally negligible. Therefore, § 101.56(b)(4) is likely to preclude the use of the term "light" on labels or in labeling of dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances. However, the agency is not aware of any evidence that the term "light" or "lite" would be useful to consumers of dietary supplements, or that the term is currently used to describe dietary supplements.

Similarly, the term "lite in sodium" may not be used on a food for which the reference food meets the definition of "low in sodium" (§ 101.56(c)(2)(iii)). This provision is likely to preclude the use of the term "lite in sodium" on dietary supplements because the majority of dietary supplements meet the definition of "low in sodium." In

the case of sodium, the agency is proposing several nutrient content claims to describe the level of this nutrient, and the agency tentatively concludes that these items will be adequate to cover the likely range of variation of sodium content in dietary supplements.

3. "Less," "Reduced" and "Fewer" Claims—Background

Under section 3(b)(1)(A)(iii) (IV) and (V) of the 1990 amendments, FDA is required to define the terms "less" and "reduced." To ensure that the reductions that are the subject of these comparative claims are nutritionally meaningful, and that consumers are not misled by claims for reductions that are inconsequential, the agency determined that such claims on the label or in labeling of a food can be made only if the food has been formulated so that it contains at least 25 percent less of the nutrient than the reference food. The 25 percent reduction requirement is based on agency findings that products in which there has been a 25 percent or greater reduction in the amount of a nutrient will serve a useful role in the diet of those individuals who are attempting to limit their consumption of the nutrient. In addition, the agency concluded that because of variations in nutrient content within a food or class of food, any less of a reduction would not always ensure that the altered product contained less of the nutrient than the regular product. The agency included this requirement for a 25 percent reduction in the recent final regulations defining "fewer calories," "less sugars," "less sodium," "less fat," "less saturated fat," and "less cholesterol" (58 FR 2302 at 2414).

In the final rule on nutrient content claims, the agency determined that the terms "reduced" and "less," could be used to denote the same reduction in the level of a nutrient. However, the agency concluded that there were differences in the meaning of the two claims, as reflected in the provisions for the reference food to which the comparison drawn by each claim was made (58 FR 2362). The agency listed the terms "reduced" and "less" (in the case of calories the agency also included the term "fewer") as synonyms (subject to § 101.13(j)) in § 101.60(b)(4) for calories (58 FR 2302 at 2416), § 101.60(c)(4) for sugars (58 FR 2417), § 101.61(b)(6) for sodium (58 FR 2302 at 2418), § 101.62(b)(4) for fat (58 FR 2302 at 2418), (c)(4) for saturated fat (58 FR 2302 at 2419), and (d)(4) for cholesterol (58 FR 2302 at 2422). The agency will discuss each of these claims in detail in the discussion of claims involving each of these nutrients that follows.

4. Nutrient Content Claims for the Calorie Content of Foods (§ 101.60)

a. *"Calorie free."* Under section 3(b)(1)(A)(iii)(I) of the 1990 amendments, FDA is required to define the term "free," unless it finds that use of the term would be misleading. For a food to be labeled as a "(nutrient) free (product)," under section 403(r)(2)(A)(ii)(I) of the act, the nutrient must usually be present in the food or in a food for which it substitutes, as that term is defined by the Secretary (and by delegation FDA) (§ 101.13(d)).

In arriving at the definitions for "free" for the various nutrients, the agency chose the level of the nutrient that is at or near the reliable limit of detection for the nutrient and that is dietetically trivial or physiologically inconsequential. This approach is consistent with that used by the agency in the past for defining "free." FDA established a policy of using "free" as a nutrient content claim for physiologically insignificant components when it adopted a regulation for sodium nutrient content claims that published in the Federal Register of April 18, 1984 (49 FR 15510).

Based on the agency's tentative conclusion that the definition of terms should be consistent for all foods, the agency is proposing to include dietary supplements in the coverage of § 101.60. Section 101.60(b)(1) of the final rule on nutrient content claims defines "calorie free" and its synonyms as having less than 5 calories per reference amount. FDA defined "calorie free" because the ability to call attention to products free of calories provides useful guidance to consumers who are seeking to control their caloric intake. However, the agency recognizes that the majority of dietary supplements are typically devoid of calories or have negligible calories. Therefore, under this proposal, "calorie free" claims on these products will have to meet the requirements of § 101.60(b)(1)(ii). This section provides that a food that is inherently free of calories must disclose that calories are not usually present in the food (e.g., "cider vinegar, a calorie free food").

b. *"Low calorie."* i. *Background on "low" claims.* In its rulemaking on nutrient content claims, the agency defined "low" as a nutrient content claim for total fat, saturated fat, cholesterol, sodium, and calories (58 FR 60421 at 60438). The agency stated that it did not believe that the term "low" should necessarily mean that a nutrient is present in a food in an inconsequential amount, as with "free," but rather that the selection of a food bearing the term should assist consumers in assembling a daily diet that is consistent with recommendations to limit the intake of certain nutrients. The starting point for the definition of "low" was the level that FDA defined as a measurable amount of the nutrient in a serving of food. FDA defined this amount as 2 percent or more of the reference value (i.e., DRV), the level at which all of the nutrients in question can be measured in all or nearly all foods.

Because FDA believed that 2 percent of the DRV could be overly restrictive as a definition for "low" for those nutrients that are not contributed by all food categories or that are found in relatively few foods, the agency then adjusted the 2 percent definition according to the nutrient's estimated distribution across food categories (56 FR 60421 at 60440).

ii. *Application of the nutrient content claim "low calorie" to dietary supplements.* Section 101.60(b)(2) of the final rule on nutrient content claims defines "low calorie" as having no more than 40 calories per reference amount and, if the food has a reference amount of 30 g or less or two tablespoons or less (except for sugar substitutes), per 50 g. This definition represents 2 percent of the agency's reference calorie intake of 2,000 calories. Because calories are ubiquitous across food categories, no adjustment was necessary. This definition reflects the agency's long-established criterion of 40 calories per serving in the definition of "low calorie" (43 FR 43248, September 22, 1978). As previously discussed, the agency believes that, except in fish oils and certain herbal products, calories are negligible in dietary supplements. This term will thus likely be of limited usefulness and infrequently employed on the labels or in labeling of dietary supplements. However, FDA tentatively concludes that there is no reason to preclude the use of this term.

c. *"Reduced calories" and "fewer calories."* Section 101.60(b)(4) of the final rule on nutrient claims defines "reduced calories" and "fewer calories" and their synonyms as being at least 25 percent fewer calories per reference amount than an appropriate reference food. Because dietary supplements are negligible sources of calories, it is unlikely that this term will be used on the label or in labeling of dietary supplements. While FDA believes that these terms are likely to be of limited usefulness on the label and in labeling of these products, there may be some instances in which these terms are

applicable to particular brands or types of dietary supplements. Therefore, the agency tentatively concludes that there is no need to preclude the use of these terms.

d. *Nutrient content claims for sugar content.* i. *"Sugar free."* Section 101.60(c)(1) requires that for a food in conventional food form to make a "sugar free" claim, the food must contain less than 0.5 g of sugars per serving. The final rule on mandatory nutrition labeling (58 FR 2079 at 2098) defines "sugars" in § 101.9(c)(6)(ii) to include all free monosaccharides and disaccharides. Sugar alcohols are not included in the definition of "sugars" because they have metabolic effects different than sugars and have a history of being considered to be sugar substitutes rather than sugars.

Less than 0.5 g of sugar per serving is an amount that is consistent with the agency's policy of defining "free" claims at or near the reliable limit of detection and in an amount which is dietetically inconsequential. As a result, even frequent consumption of a food bearing a "sugar free" claim would not result in an intake of sugars that would affect the overall diet in any meaningful way. Further, the agency also considers it important that nutrient content claims correspond with the nutrition label, which serves as a source of specific information for consumers concerning the nutritional value of the food.

FDA is proposing to include dietary supplements within the coverage of this definition. The agency is taking this action based on its tentative conclusion that the definition of terms should be consistent for all foods. Moreover, this position is consistent with the position that FDA is taking with respect to sugars in the proposed rule on mandatory nutrition labeling for dietary supplements of vitamins or minerals which is published in a separate document in this issue of the **Federal Register** (see proposed § 101.36(b)(3)). Under that proposal, the nutrition label must contain information on sugars content when sugars are present in the dietary supplement in more than insignificant amounts, or when a claim is made. In that proposal, analytical values for sugar content that are less than 0.5 g are to be declared as zero on the nutrition label, thus providing consistency with this document.

As stated above, section 411 of the act states that the label or labeling of a dietary supplement of a vitamin or mineral may not give prominence to any ingredient that is not a vitamin or a mineral. Therefore, if a sugar was an ingredient in a dietary supplement of vitamins or minerals, claims about the sugars content would have to be restricted on the product. However, "sugar-free" is an absence claim which asserts that a sugar is not an ingredient. Therefore, FDA tentatively concludes that the use of this term is acceptable on dietary supplements for vitamins or minerals, as well as for other types of dietary supplements.

Section 101.60(c)(1)(ii) requires that the food contain no ingredient that is a sugar or that is generally understood by consumers to contain sugars, unless the listing of the ingredient in the ingredient statement is followed by an asterisk that refers to the statement below the list on ingredients, which states "adds a negligible amount of sugar" or "adds a dietarily insignificant amount of sugar." The agency tentatively concludes that this provision is not in conflict with section 411 of the act because any such amounts are dietarily insignificant. Moreover, such an approach is consistent with FDA's tentative conclusion that the definition of terms should be consistent for all foods.

Further, FDA believes that "sugar free" claims are appropriate on dietary supplements because of consumer interest in the sugars content of food; the fact that sugars are added to dietary supplements, particularly to chewable children's dietary supplements; and the agency's long-standing practice of providing for the use of descriptive terms intended to reflect the absence of sugars. Therefore, FDA tentatively finds that following synonyms for "sugar free" for foods in conventional food form are applicable to dietary supplements: "free of sugar," "no sugar," "zero sugar," "without sugar," "sugarless," "trivial source of sugar," "negligible source of sugar," and "dietarily insignificant source of sugar."

The agency recognizes that there are chewable dietary supplements marketed for very young children that are formulated with sugar or other sweeteners. While the amounts of other nutrients of public health importance in dietary supplements, such as sodium, may be quite small or nonexistent, the amount of sugars in dietary supplements in chewable form represents a potentially contributing factor to dental caries. As a result, the agency is proposing in new § 101.60(c)(4) to provide for absence claims for sugars on dairy supplements of vitamins or minerals that are intended specifically for use by infants and children less than 2 years of age. As a result, current § 101.60(c)(4) and (c)(5) are redesignated as § 101.60(c)(5) and (c)(6).

ii. *"Low sugar".* While the agency defined "sugar free," FDA did not define "low sugars" in its final rule on nutrient content claims. Unlike the claim "sugar free," which is based on the absence of sugars in a food, a definition for a "low" level of sugars in a food would relate to the total amount recommended for daily consumption. Because the available consensus documents do not provide quantitative recommendations for daily intake of sugars, FDA has not set a reference value for this nutrient (see 58 FR 2206 at 2220). The agency thus concluded that without a reference value for sugars, "low sugars" could not be defined (58 FR 2302 at 2335). For these reasons, the agency has tentatively concluded that "low sugar" cannot be defined for use on labels and in labeling of dietary supplements.

FDA is not aware of any new data that would provide a basis for defining a claim of "low sugar" for use on labels or in labeling of dietary supplements. Additionally, section 411 of the act specifies that ingredients of dietary supplements of vitamins or minerals, other than vitamins or minerals, cannot be highlighted or given prominence. Therefore, even if a definition of "low sugar" is eventually possible, under the act, its use could not be authorized on dietary supplements of vitamins and minerals.

iii. *"No added sugar."* Section 101.60(c)(2) states that the terms "no added sugar," "without added sugar," or "no sugar added" may be used only if: (1) No amount of sugars, as defined in § 101.9(c)(6)(ii), or any ingredient that contains sugars or that functionally substitutes for added sugars is added during processing or packaging, (2) the product does not contain an ingredient containing added sugars, and (3) the food that it resembles and for which it substitutes normally is formulated with sugars.

In a discussion of the nutrient content claim "no added sugars" in the November 1991 proposal on nutrient content claims (56 FR 60421 at 60437 and 60438), the agency summarized its position on the use of the terms "no added sugar," "no sugar added," and "without added sugar." FDA expressed concern that consumers may expect such products to be "low" or "reduced in calories" and has therefore required that statements that the food is not "low calorie" or "reduced calorie" accompany the claim unless the food meets the requirements for a "low" or "reduced calorie" claim.

In the final rule on nutrient content claims, the agency concluded that the use of a descriptive term that implies

that the product has been made without adding sugars would be more helpful to consumers in implementing dietary guidelines (i.e., "consume sugars only in moderation") (Ref. 1) than would a term that is limited only to sucrose (i.e., "sugar") (58 FR 2302 at 2326). Further, the agency concluded that to avoid misleading consumers, such terms should be limited to foods that would be expected to contain added sugars. Claims concerning the absence of added sugars in foods in conventional food form that would not normally contain added sugars (e.g., canned tuna or potato chips) are likely to mislead consumers into thinking that a particular brand may be more desirable when compared to other brands of the same product.

As previously discussed, FDA tentatively concludes that dietary supplements are negligible sources of calories. However, the agency believes that the declaration of the presence or absence of sugars in dietary supplements may be useful for consumers because of the relationship of sugars and dental caries and the fact that some dietary supplements are made with sugars

As is the case for foods in conventional food form, the agency believes that to avoid misleading consumers, the term "no added sugar" should be limited to dietary supplements that would be expected to contain added sugars. Claims concerning the absence of added sugars on products that would not normally contain added sugar (e.g., dietary supplements for adults) are likely to mislead consumers into thinking that a particular brand may be more desirable when compared to other brands of the same product. Accordingly, FDA tentatively concludes that § 101.60(c)(2) is applicable to dietary supplements in its entirety.

iv. "*Reduced sugar*" or "*less sugar.*" Section 101.60(c)(4), which FDA is proposing to redesignate as § 101.60(c)(5), defines "reduced sugar," "less sugar," and "lower sugar" as a reduction of at least 25 percent per reference amount. FDA tentatively concludes that these terms cannot be made on dietary supplements of vitamins and minerals because section 411 of the act states that labeling and advertising for dietary supplements of vitamins and minerals cannot give prominence to or emphasize ingredients that are not vitamins or minerals. Therefore, FDA is proposing to amend § 101.60(c)(5) by adding dietary supplements to the list of foods on which the use of the term "reduced" or its synonyms to describe the sugars content is not permissible.

However, under this proposal, these terms may be used on dietary supplements that are not subject to section 411 of the act, such as dietary supplements of fiber, of herbs, and of other similar nutritional substances. Section 411 does not preclude such claims and, as stated above, the agency has tentatively concluded that the definition of terms should be consistent for all foods at least to the extent permitted by law.

v. "*Unsweetened*" *and* "*no added sweeteners.*" In the September 22, 1978, final rule, on label statements for special dietary foods (43 FR 43248), FDA addressed the term "unsweetened" and "no added sweeteners." The agency concluded that "unsweetened" and "no added sweeteners" claims are factual statements about the organoleptic properties of the foods (i.e., they are "taste claims"). FDA received no comments to its November 27, 1991, proposed rules on nutrient content claims to change this view (58 FR 2302 at 2327). Unlike the terms "sugar free" or "no added sugars," these terms are not nutrient content claims for foods in conventional food form (see § 101.60(c)(3)).

The term "unsweetened" is meaningful for foods in conventional food form and is used primarily for foods with inherent sugars content (such as juices). Dietary supplements, however, generally do not have an inherent sugars content because they are generally formulated products. Therefore, the agency believes that there is no apparent usefulness in applying the terms "unsweetened" or "no added sweeteners" to dietary supplements. While the agency believes that the terms "sugar-free" and "no added sugar," and their synonyms, are sufficient to describe absence claims for sugar for dietary supplements, the agency tentatively concludes that there is no need to preclude the use of the term "unsweetened."

5. Nutrient Content Claims for the Sodium Content of Foods (§ 101.61)

a. "*Sodium free.*" In its April 18, 1984, regulation on sodium nutrient content claims (21 CFR 101.13), FDA defined a "sodium free" food as one containing less than 5 mg of sodium per serving. FDA established this definition to ensure that a food that meets this definition would contribute only a trivial amount of sodium to the total diet for all individuals (49 FR 15510). This definition was retained in the final rule on the nutrient content claims (58 FR 2302 at 2417) and codified at § 101.61(b)(1). This definition is consistent with the concept of a dietetically trivial amount used as the basis for determining "free" claims for foods in conventional food form.

As previously discussed in section IV.B.3.a. of this document on "calorie free" claims, the agency is concerned about potential consumer confusion if a food bearing a "nutrient free" claim lists that nutrient on the ingredient list. Section 101.61(b)(1)(ii) of the final rule on nutrient content claims states that the term "sodium free" may be used if the food contains no ingredient that contains sodium, unless the listing of the ingredient in the ingredient statement is followed by an asterisk that refers to the statement below the list of ingredients, which states: "Adds a trivial amount of sodium," "adds a negligible amount of sodium," or "adds a dietarily insignificant amount of sodium." The agency believes that, as in the case of "sugar free," such a disclosure statement will be helpful to avoid consumer confusion about the quantity of sodium in the food.

FDA is unaware of any evidence that would suggest that the definition for "sodium free" should be changed for dietary supplements. Thus, FDA tentatively concludes that § 101.61(b)(1) is applicable to dietary supplements

b. "*Low sodium*" *and* "*very low sodium.*" Section 101.61(b)(2) of the final rule on nutrient content claims states that the term "very low sodium" may be used on the label and in labeling of foods that contain 35 mg or less of sodium per reference amount and, if the food has a reference amount of 30 g or less per 2 tablespoons or less, per 50 g. Section 101.61(b)(4) states that the term "low sodium" may be used on the label and in labeling of foods that contain 140 mg or less of sodium per reference amount and, if the food has a reference amount of 30 g or less per 2 tablespoons or less, per 50 g. The synonyms for "low sodium" include "low in sodium," "contains a small amount of sodium," and "low source of sodium."

The descriptive terms "low sodium" and "very low sodium" have been defined and used for nearly 10 years, and the agency believes that consumers have become familiar with them. Given this fact and the agency's tentative conclusion that the definition of terms should be consistent for all foods, the agency tentatively finds that there is no reason to create different definitions for sodium for dietary supplements than for foods in conventional food form. Therefore, the agency tentatively finds that the provisions for "low sodium" and "very low sodium" in § 101.61 are appropriate for dietary supplements.

c. *"Reduced sodium."* Section 101.61(b)(6) defines "reduced sodium" claims and its synonyms. This section states that the food must contain at least 25 percent less sodium per reference amount than an appropriate reference food (§ 101.61(b)(6)(i)). Section 101.61(b)(6)(iii) states that the nutrient content claim "reduced sodium" and its synonyms may not be made on the label or in labeling of a food if the nutrient content of the reference food meets the definition for "low sodium."

Based on its tentative conclusion that the definition of terms should be consistent for all foods, the agency is proposing to include dietary supplements in the coverage of § 101.61(b)(6). The agency notes, however, that the use of this term on dietary supplements will be limited by § 101.61(b)(6)(iii) because the majority of likely reference foods for dietary supplements will meet the definition of "low sodium." However, the agency is not aware of any reason to preclude the use of this term on dietary supplements. Moreover, many dietary supplements may qualify for a "less sodium" claim. Thus the agency is proposing to provide for the use of these terms on dietary supplements.

d. *"Unsalted" and "salt free."* FDA has defined "salt free," "unsalted," "without added salt," and "no salt added" for foods in § 101.61(c) to prevent the use of these terms from being misleading to consumers. Section 101.61(c)(1) requires that any food bearing the claim "salt free" must meet the definition of "sodium free". As defined by § 101.61(c)(2), the terms "unsalted," "no salt added," or "without added salt" may be used only if no salt is added to the food during processing, and the food that it resembles and for which it substitutes is normally processed with salt (e.g., peanuts). In addition, a declaration on the food label that the food is not sodium free, if that is in fact the case, is required to avoid misleading consumers when claims that a food is unsalted or contains no added salt are made. The intent of these requirements is to aid consumers in maintaining healthy dietary practices by helping consumers identify foods with minimal sodium content.

Claims on the salt content of foods in conventional food form are meaningful because salt is the major source of sodium in food. Salt is added to food for flavor, for preservation, and as a processing aid. The agency has no evidence that salt is used in the formulation of dietary supplements. Further, § 101.61(c)(2)(ii) states that these terms may only be used when the food that it resembles or for which it substitutes is normally processed with salt.

Salt is not needed for preservation or as a processing aid in the manufacture of dietary supplements. Salt is unlikely to be used as a flavoring agent in dietary supplements because it would impart an undesirable salty taste. Therefore, the agency tentatively concludes that requirements for salt claims are not useful for, or applicable to, dietary supplements, and that the use of these terms is precluded by the provision cited above. Therefore, no other provisions are necessary to preclude the use of this term. Comments are requested on this tentative conclusion. The agency is also interested in any data on the presence of salt in dietary supplements.

6. Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Foods (§ 101.62)

a. *"Fat free," "low fat," and "reduced fat."* Section 101.62(b)(1)(i) states that a food may be labeled as "fat free" if the food contains less than 0.5 g of fat per reference amount. If the food contains less than that amount of fat without benefit of special processing, alteration, formulation, or reformulation, it must be labeled to disclose that fat is not usually present in the food (e.g., "broccoli, a fat free food").

Section 101.62(b)(2)(i) states that the terms "low fat" and its synonyms may be used on the label and in labeling of foods provided that the food contains 3 g or less of fat per reference amount and, if the food has a reference amount of 30 g or less or 2 tablespoons, per 50 g. Section 101.62(b)(2)(ii) provides that if the food meets these conditions without the benefit of special processing, alteration, formulation, or reformulation to lower fat, it shall be labeled to clearly refer to all food of its type and not merely to the particular brand to which the label attaches (e.g., "frozen perch, a low fat food").

Section 101.62(b)(4) states that the term "reduced fat" and its synonyms may be used on the label and in labeling of foods provided that the food contains at least 25 percent less fat per reference amount than an appropriate reference food, while § 101.62(b)(4)(iii) provides that the claim "reduced fat" cannot be made on the label or in labeling of a food if the nutrient content of the reference food meets the definition of "low fat."

Based on the agency's tentative conclusion that the definition of terms should be consistent for all foods, the agency is proposing to include dietary supplements in the coverage of these provisions. Although fat content is typically insignificant or nonexistent in dietary supplements, and "fat-free," "low-fat," and "reduced fat" claims are unlikely, there may be products for which these claims would appropriately apply. For example, some fish liver oils may qualify for a "low fat" claim depending on the labeled serving size. Further, the form of the claim allowed on foods naturally free of, or low in, fat (i.e., "a fat-free food") would be permitted under this rule. FDA requests comment and relevant data on the above tentative conclusion.

b. *Nutrient content claims for fatty acid content.* Section 101.62(c)(1)(i) states that the term "saturated fat free" and its synonyms may be used on the label or in labeling of a food if the food contains less than 0.5 g of saturated fat per reference amount and the level of trans fatty acids does not exceed 1 percent of the total fat. Section 101.62(c)(1)(iii) provides that the food must be labeled to disclose that saturated fat is not usually present in the food, if the food contains less than 0.5 g saturated fat without the benefit of special processing, alteration, formulation, or reformulation.

Section 101.62(c)(2)(i) states that the term "low in saturated fat" and its synonyms may be used on the label and in labeling of food if the food contains 1 g or less of saturated fatty acid per reference amount and not more than 15 percent of calories from saturated fatty acids. Section 101.62(c)(2)(ii) requires that the food must be labeled to refer to all foods of its type, not merely to a particular brand as being low in saturated fat, if the food meets the definition of "low in saturated fat" without the benefit of special processing, alteration, formulation, or reformulation (e.g., "raspberries, a low saturated fat food") (58 FR 2302 at 2338).

Section 101.62(c)(4)(i) states that the term "reduced saturated fat" and its synonyms may be used if the food contains at least 25 percent less saturated fat per reference amount than an appropriate reference food, and § 101.62(c)(4)(iii) states that a "reduced saturated fat" claim may not be made on the label or in labeling of a food if the nutrient meets the definition for "low saturated fat."

For the reasons set forth in the previous section on fat claims, even though saturated fat claims are likely to have limited application to dietary supplements, FDA is proposing to include dietary supplements in the coverage of § 101.62(c).

c. *Nutrient content claims for cholesterol.* Section 101.62(d)(1)(i) and

(d)(1)(ii) states that the term "cholesterol free" and its synonyms may be used provided that the food contains less than 2 mg of cholesterol per reference amount and per 50 g if the reference amount is 30 g or less or 2 tablespoons or less. In addition, the food must contain 2 g or less of saturated fat per serving.

Section 101.62 (d)(1)(i)(D) and (d)(1)(ii)(E) provides that if the food contains less than 2 mg of cholesterol per reference amount without the benefit of special processing, alteration, formulation, or reformulation to lower cholesterol content, then it must be labeled to disclose that cholesterol is not usually present in the food (e.g., "applesauce, a cholesterol-free food").

Other paragraphs in § 101.62(d) require that foods that contain more than 13 g of total fat per reference amount per labeled serving or per 50 g, if the reference amount is 30 g or less or 2 tablespoons or less, disclose the amount of fat in a serving. The agency is not aware of any dietary supplement that contains fat at this level and thus tentatively concludes that these paragraphs will have no application to dietary supplements. Comment is requested on this tentative conclusion.

Section 101.62 (d)(2)(i) and (d)(2)(ii) states that the term "low in cholesterol" and its synonyms may be used on the label and in labeling of foods provided that the food contains 20 mg or less of cholesterol per reference amount and, if the food has a reference amount of 30 g or less or 2 tablespoons or less, per 50 g. The food must also contain 2 g or less saturated fat per reference amount. Again, foods that contain 20 mg or less of cholesterol without the benefit of special processing, alteration, formulation, or reformulation to lower cholesterol content must be labeled to refer to all foods of that type and not merely to the particular brand (e.g., "low fat cottage cheese, a low cholesterol food").

Section 101.62(d)(4)(i) states that the term "reduced cholesterol" and its synonyms may be used on the label or in labeling of food if the food has been specifically formulated, altered, or processed to reduce its cholesterol content by 25 percent or more from the reference food for which it substitutes, that has a significant (i.e., 5 percent or more) market share, and the food contains 2 g or less of saturated fatty acid per reference amount.

As discussed previously, the agency has tentatively concluded that amounts of cholesterol, like total fat and saturated fat, are negligible in dietary supplements. Therefore, the cholesterol claims are likely to be of limited usefulness on dietary supplements. Other than the form of the claims allowed on foods naturally free of, or low in, a nutrient (e.g., "a fat-free food," "a low cholesterol food"), the use of cholesterol claims is unlikely. However, based on the agency's tentative conclusion that the definition of terms should be consistent for all foods, the agency is proposing to include dietary supplements in the coverage of § 101.62(d).

In summary, the agency tentatively concludes that subject to the proposed change in § 101.62(a)(3) and excluding the provisions that pertain to main dish and meal-type products, all of the provisions of § 101.62 pertaining to the fat, fatty acid, and cholesterol content of foods are applicable to dietary supplements.

d. *"Lean" and "extra lean."* The definitions for "lean" and "extra lean" in § 101.62(e) specify permitted levels of total fat, saturated fat, and cholesterol and limit the use of the terms to seafood or game meat, meal products and main dish products. Therefore, FDA tentatively concludes that, at least as currently defined, these terms have no application for dietary supplements. Accordingly, the agency is not proposing to extend the coverage of the terms "lean" or "extra lean" to dietary supplements.

7. Implied Nutrient Content Claims (§ 101.65)

a. *Claims that are not nutrient content claims.* Section 403(r)(1)(A) of the act provides that a food is misbranded if it bears a claim that "expressly or by implication characterizes the level" of a nutrient unless the claim is made in accordance with regulations established by FDA. Section 3(b)(1)(A)(i) of the 1990 amendments instructs the agency to establish regulations that identify claims described in section 403(r)(1)(A) of the act that comply with section 403(r)(2) of the act. Accordingly, FDA defined implied nutrient content claims in § 101.13(b)(2) (58 FR 2302 at 2411).

In § 101.65, FDA listed several types of statements that can be excluded from the requirements of section 403(r) of the act because they are not implied nutrient content claims (58 FR 2302 at 2423). These statements include: (1) Statements that facilitate avoidance, (2) statements about ingredients that do not serve nutritive purposes, (3) statements about ingredients that provide added value, (4) certain types of statements of identity, and (5) statements of special dietary usefulness. Section 101.65(b) states that these types of label statements about the nature of a product are not nutrient content claims when made on labels of foods, unless such statements are made in a context that would make them an implied claim under § 101.13(b)(2).

The agency acknowledges that in many instances, whether a label statement is an implied nutrient content claim can only be evaluated on a case-by-case basis, considering the entire label and the context within which the claim was made. Some ingredient statements are implied nutrient content claims, and some are not. The agency will evaluate ingredient statements in the context of the total label to determine whether they are implied nutrient content claims and therefore subject to section 403(r)(1)(A) of the act. The agency's focus will be on whether the ingredient statement identifies a nutrient explicitly or by implication, and whether it states or implies that the nutrient is absent, or that it is present in a certain amount.

The agency has tentatively concluded that the following statements are not nutrient content claims unless made in a context that would make them implied claims and are therefore not subject to § 101.13. FDA is proposing to make each applicable, either entirely or in part, to dietary supplements.

i. *Statements that facilitate avoidance.* Statements of the absence of an allergen are regulated under § 105.62 (21 CFR 105.62), which provides for labeling of foods for special dietary use by reason of the absence of an allergenic property. According to § 101.65(b)(1), statements that declare the absence of food components or ingredients that are intended to facilitate avoidance because of food intolerance (e.g., lactose free), religious beliefs, dietary practices such as vegetarianism (e.g., "100 percent milk free"), or other nonnutrition-related reasons are not nutrient content claims. The agency tentatively concludes that this paragraph is entirely applicable to dietary supplements. The agency is not aware of any facts that would provide the basis for a different conclusion. FDA requests comment on other examples that are appropriate for dietary supplements.

ii. *Claims about a substance that is nonnutritive.* In the final rule on nutrient content claims, the agency determined that claims about the absence of certain substances that do not function as nutrients, such as preservatives and artificial colors, provide important information to certain consumers but are not nutrient content claims because they are not claims about the level of a nutrient (58 FR 2302 at 2369). Consequently, such claims are subject to regulation under section 403(a) of the act to ensure that

they are truthful and not misleading but not section 403(r) of the act. Section 101.65(b)(2) of the final rule on nutrient content claims states that claims about a substance that is nonnutritive or that does not have a nutritive function, e.g., "contains no preservatives," or " no artificial colors," are not implied nutrient content claims.

Statements of this type are common on dietary supplements and do not reflect the level of a nutrient in a product. Therefore, the agency tentatively concludes that this provision is directly applicable to dietary supplements.

iii. *Claims about ingredients that provide added value.* Section 101.65(b)(3) of the final rule on nutrient content claims states that some ingredient claims would be useful as tools for the manufacturer to communicate to the consumer that the product is of high quality because preferred ingredients (i.e., those with an added value) have been used (58 FR 2302 at 2369). Such claims would generally not be considered nutrient content claims. However, where the added value statement is made in such a context that it would imply not only that a preferred ingredient is used, but that the food contains a certain level of a nutrient, such statements would be subject to section 403(r) of the act.

FDA tentatively concludes that this section of the final rule is applicable to dietary supplements of herbs or other similar nutritional substances. In regard to claims on labels of these types of dietary supplements, statements such as "contains rosehips" would be considered to be an ingredient statement, not a statement about the product's nutrient content. However, under section 411(b)(2) of the act, prominence cannot be given on the label or in labeling of dietary supplements of vitamins and minerals to ingredients that are not vitamins or minerals or that are represented as a source of vitamins or minerals. Therefore, while the statement "contains rosehips" could be made on a dietary supplement of vitamin C because rosehips are a source of this vitamin, the statement "contains chaparral" may not because this herb is not a source of vitamins or minerals. Accordingly, FDA is proposing to amend § 101.65(b)(3) to state that claims about the presence of any ingredients or component other than vitamins or minerals or ingredients that are represented as a source of vitamins or minerals are not permitted on labels or in labeling of dietary supplements of vitamins or minerals.

iv. *Statements of identity.* Section 101.65(b)(4) of the final rule on nutrient content claims states that when an ingredient constitutes essentially 100 percent of a food, so that the name of the ingredient is the statement of identity, the name of the ingredient does not constitute an implied nutrient content claim. In such circumstances, the name of the ingredient constitutes the common or usual name of the product as described in § 101.3.

FDA tentatively concludes that this provision is applicable to all dietary supplements. For example, a statement of identity for a dietary supplement in which an ingredient constitutes essentially 100 percent of a supplement, e.g., ("60 mg—vitamin C") is not a nutrient content claim. FDA is proposing to amend § 101.65(b)(4) to reflect this fact.

Similarly, the agency found in § 101.65(b)(5) that a statement of identity that names as a characterizing ingredient, an ingredient associated with a nutrient benefit (e.g., oat bran-dietary fiber supplement) is not a nutrient content claim, unless such a claim is made in a context in which label or labeling statements, symbols, vignettes, or other forms of communication suggest that a nutrient is absent or present in a certain amount. The agency tentatively concludes that this provision is also applicable to dietary supplements.

v. *Statements of special dietary usefulness.* Section 101.65(b)(6) of the final rule on nutrient content claims states that label statements made in compliance with a specific provision of 21 CFR part 105, solely to note that a food has special dietary usefulness relative to a physical, physiological, pathological, or other condition, where the claim identifies the special diet of which it is intended to be a part is not an implied nutrient content claim.

The agency tentatively concludes that this provision is appropriate for dietary supplements. The agency is not aware of any evidence that would suggest a different conclusion.

b. *Particular implied nutrient content claims.* Section 101.65(c) of the final rule on nutrient content claims states that claims about a food or an ingredient therein that suggests that a nutrient or an ingredient is absent or present in a certain amount (e.g., "high in oat bran") are implied nutrient content claims.

Other requirements under § 101.65(c) address additional ingredient and equivalency issues. A statement such as "contains as much fiber as an apple" is an implied claim about the fiber content of a food. This statement implies that an apple is a good source of fiber, and that by being equivalent in fiber to an apple, the labeled food is also a good source of fiber. Such a claim can be used to provide valid, valuable information to the consumer about the nature of a product in terms of another product that the consumer already understands. However, the agency has concluded that such a statement would be misleading if comparisons between the foods were not made on a common basis. Because a serving of the product is the amount customarily consumed in one eating occasion, the agency has concluded that comparisons using this type of claim should be made on a per serving basis.

FDA tentatively concludes that the provisions set forth in § 101.65(c) are applicable to dietary supplements. The agency is not aware of evidence that would suggest a different conclusion. Thus, under this proposal, the phrase "contains the same amount of the (nutrient) as a (supplement or other food)" may be used on the label or in the labeling of dietary supplements, provided that the amount of the nutrient in the reference food is enough to qualify as a "good source" (i.e., at least 10 percent of the RDI), and the labeled supplement, on a per serving basis, also contains at least 10 percent of the RDI of the nutrient (e.g., "Contains the same amount of Vitamin C as an 8 oz glass of orange juice"; "As much iron as 'brand X' "). The use of a 10 percent criterion is consistent with the definition of "more," in which the agency concluded that 10 percent is nutritionally significant, and is also necessary to ensure that there is truly a difference in the foods being compared.

c. *General nutritional claims.* In its final rule on nutrient content claims, FDA concluded that a claim that a food, because of its nutrient content, may be useful in maintaining healthy dietary practices is a claim that characterized the level of a nutrient in that food (58 FR 2302 at 2375). The claim is essentially saying that the level of nutrients in the food is such that the food will contribute to good health. Examples of such claims discussed in the preamble to the final rule included "healthy," "wholesome," and "nutritious." The agency concluded that these terms can be implied nutrient content claims when they appear in a nutritional context on a label or in labeling. FDA advised that it would consider these terms to appear in a nutritional context when they are presented in association with an explicit or implicit claim or statement about a nutrient. For example, in the statement "nutritious, contains 3 g of fiber," "nutritious" is an implied nutrient content claim because it suggests that the food may be useful in maintaining healthy dietary practices. Accordingly,

the agency provided in § 101.65(d)(1) that such statements are implied nutrient content claims and are subject to the requirements of section 403(r) of the act.

However, the agency also stated that when a term such as "healthy," "wholesome," and "nutritious" appears on a food label in a context that does not render it an implied nutrient content claim, it is not subject to the requirements of section 403(r) of the act (58 FR 2375). Under such conditions, the use of the term is subject to section 403(a) of the act, and FDA will determine whether it is misleading on a case-by-case basis.

FDA tentatively concludes that § 101.65(d)(1) is applicable to dietary supplements. Terms that are often encountered on labels or in labeling of dietary supplements that seem to imply that the dietary supplement will contribute to good health and that therefore might fall into this category include such terms as "high potency," "high absorption," and "balanced." The agency requests comment on whether there are established meanings for these terms, and, if so, whether they characterize the level of the nutrients in the food. If comments demonstrate that there are accepted definitions used in the dietary supplement industry for these terms that characterize the level of nutrients, and that these definitions will assist consumers in maintaining healthy dietary practices, FDA will proceed with further rulemaking to adopt those definitions or to propose new ones. Significantly, if FDA agrees that such terms are implied nutrient content claims, under the provisions of the statute, such implied claims would be prohibited after the effective date for final rules, until such time as the terms are defined by FDA by regulation.

If comments demonstrate that there are accepted definitions for these terms, and that they do not characterize the level of nutrients, in accordance with § 101.65(d)(1), such terms would not be subject to section 403(r) of the act unless used in a nutritional context in association with an explicit or implicit claim or statement about a food.

8. Petitions for Nutrient Content Claims (§ 101.69)

Section 403(r)(4) of the act provides that any person may petition the Secretary to make nutrient content claims that are not specifically provided for in FDA's regulations. This section describes procedures for petitions that seek to define additional nutrient content claims, to establish synonyms, and to use an implied nutrient content claim in a brand name.

The final rule on nutrient content claims provided for petitions for new claims. The final rule delineates the procedural requirements and evaluation criteria for nutrient content claim petitions, synonym petitions, and brand name petitions. Because FDA sees no reason why the same requirements should not apply to petitions for claims for substances in dietary supplements as to petitions for claims for substances in conventional foods, it is not distinguishing between dietary supplements and foods in conventional form in § 101.69. The agency tentatively finds that this section is directly applicable to dietary supplements.

V. Economic Impact

FDA has examined the economic implications of the proposed rules amending 21 CFR part 101 as required by the Regulatory Flexibility Act and Executive Orders 12291 and 12612. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. Executive Order 12291 compels agencies to use cost-benefit analysis as a component of decisionmaking. The agency finds that the proposed rules on dietary supplements, taken together, do not constitute a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (Pub. L. 96–354), FDA has explored whether these proposed rules may have a significant impact on small businesses and has tentatively concluded that they do not.

The costs of the proposed regulations on dietary supplements, taken as a whole, are estimated to be $20 million. The benefits are primarily those that result from standardizing the format of nutrition information already provided on vitamin and mineral supplements with that of conventional foods. However, because dietary supplements do not typically make nutrient content claims and most nutrient content claims that FDA is proposing to define to make sense for use for dietary supplements, this proposed rule will not result in any change. Therefore, defining nutrient content claims will not result in any benefits. The agency has presented a more in-depth analysis in the document covering mandatory nutrition labeling requirements for dietary supplements, published elsewhere in this issue of the **Federal Register**.

VI. Environmental Impact

The agency has previously considered the environmental effects of the proposed rule in the **Federal Register** of November 27, 1991 (56 FR 60421). At that time the agency determined under 21 CFR 25.24 (a)(8) and (a)(11) that these proposed actions were of the types that do not individually or cumulatively have a significant impact on the human environment. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment, and that an environmental impact statement is not required.

VII. Effective Date

FDA is proposing to make this regulation effective 6 months after the publication of a final rule based on this proposal. FDA notes, however, that in section 10(a)(3)(B) of the 1990 amendments, Congress provides that if the Secretary, and by delegation FDA, finds that requiring compliance with section 403(q) of the act, on mandatory nutrition labeling or with section 403(r)(2) of the act, on nutrient content claims, 6 months after publication of the final rules in the **Federal Register** would cause undue economic hardship, the Secretary, and by delegation FDA, may delay the application of these sections for no more than 1 year. FDA requests comments and evidence that would permit the agency to make a determination as to whether there is "undue economic hardship" (see 58 FR 2070, January 6, 1993) for the dietary supplement industry.

VIII. Comments

Interested persons may, on or before July 19, 1993, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

As mentioned previously in this preamble, the DS act requires that final rules implementing the 1990 amendments with respect to dietary supplements be issued by December 31, 1993. In order to meet this statutory timeframe, FDA must limit the comment period for this proposal to 60 days. FDA believes that the need to meet this timeframe constitutes good cause under 21 CFR 10.40(b)(2) of its procedural regulations for limiting the comment period. Thus, the agency is announcing that because of the short statutory timeframe, FDA will be unable to grant any extensions to the comment period.

In addition, the agency will not consider the content of any comments received at Dockets Management Branch after the close of the 60-day comment period.

IX. Paperwork Reduction Act of 1980

Section 101.69, which FDA is proposing to extend to cover dietary supplements, contains requirements for submission of petitions to FDA that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3504(h) of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910–0288.

This proposal contains collection of information requirements that are subject to review by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Therefore, in accordance with 5 CFR 1320, the title, description, and respondent descriptions of the proposed collection of information requirements are shown below with an estimate of the annual collection of information burden. Included in the estimate is the amount of time for reviewing instructions, searching existing data sources, gathering necessary information, and completion and submission of petitions.

Title: 21 CFR 101.69—Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms.

Description: The proposed rule provides the procedures for the submission of petitions to the agency. The information included in these petitions will be reviewed by the agency, and a decision will be made in accordance with the criteria specified in the proposed rule.

The 1990 amendments added section 403(r)(4) to the act. This section provides that any person may petition the Secretary to make nutrient content claims that are not specifically provided for in FDA's regulations. It describes the procedures for petitions that seek to define additional nutrient content claims, to establish synonyms, and to use an implied nutrient content claim in a brand name.

Nutrient Content Claim petitions—Section 403(r)(4)(A)(i) of the act grants to any person the right to petition FDA to issue a regulation to define a nutrient content claim that has not been defined in the regulations under section 403(r)(2)(A)(i) of the act. The statute requires that such a petition include an explanation of the reasons why the claim that is the subject of the petition meets the requirements of section 403(r) of the act and a summary of the scientific data that support those reasons. Section 101.69(m) sets forth the data requirements specific to nutrient content claim petitions. FDA is proposing to include dietary supplements within the coverage of this section.

Synonym petitions—Section 403(r)(4)(A)(ii) of the act grants the right to petition the FDA for permission to use terms in a nutrient content claim that are consistent (i.e., synonymous) with terms defined in regulations issued under section 403(r)(2)(A)(i) of the act. The petition requirements in § 101.69(n) are those that FDA has found to be necessary to demonstrate that use of a proposed synonym is not misleading and consistent with the purpose of the 1990 amendments. FDA is proposing to include dietary supplements within the coverage of this section.

Brand-name petitions—Section 403(r)(4)(A)(iii) of the act grants the right to petition FDA for permission to use an implied claim in a brand name that is consistent with terms defined by the Secretary under section 403(r)(2)(A)(i) of the act. Section 101.69(o) sets forth the data requirements that are specific to brand-name petitions. These requirements are those necessary for the petition to demonstrate that use of the proposed implied claim is not misleading and is consistent with the purpose of the 1990 amendments. FDA is proposing to include dietary supplements within the coverage of this section.

Description of Respondents: Persons and businesses, including small businesses.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
101.69(m)	2	1	200	400
101.69(n)	2	1	75	150
101.69(o)	1	1	75	75
Total				625

FDA has submitted copies of the proposed rule to OMB for its review of these reporting requirements.

Interested persons should send their comments regarding these estimated burdens, including suggestions for reducing these burdens, to the addressees given above.

X. References

The following references have been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. DHHS and USDA, "Nutrition and Your Health, Dietary Guidelines for Americans," 1990.

2. "The Surgeon General's Report on Nutrition and Health," DHHS (Public Health Service) Publication No. 88–50210 (Government Printing Office Stock No. 017–001–00465–1), U.S. Government Printing Office, Washington, DC, 1988.

3. Committee on Diet and Health, Food and Nutrition Board, Commission on Life Sciences, National Research Council, National Academy of Sciences, "Diet and Health, Implications for Reducing Chronic Disease Risk," National Academy Press, Washington, DC, 1989.

4. Subcommittee on the 10th Edition of the Recommended Dietary Allowances, Food and Nutrition Board, Commission on Life Sciences, National Research Council, "Recommended Dietary Allowances, 10th Ed.," Washington, DC, National Academy Press, 1989.

5. Committee on the Nutrition Components of Food Labeling, Food and Nutrition Board, Institute of Medicine, National Academy of Sciences, "Nutrition Labeling, Issues and Directions for the 1990's," Washington, DC, National Academy Press, 1990.

6. 138 Congressional Record—House, H 11730–H11731, October 5, 1992.

7. 138 Congressional Record—Senate S 17237–S17240, October 7, 1992.

8. Moss, A. J., Levy, A. S., Kim, I., Park Y., "Use of Vitamin and Mineral Supplements in the United States, Current Users, Types of Products and Nutrients, Advance Data from Vital and Health Statistics of the National

Center for Health Statistics," No. 174, July 18, 1989.

9. House of Representatives, House Report 101–538, "Nutrition Labeling and Education Act of 1990," June 13, 1990.

List of Subjects in 21 CFR Part 101

Food Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 501, 502, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 355, 371); sec. 202(a)(2) of the Dietary Supplement Act (Pub. L. 102–571).

2. Section 101.13 is amended by revising paragraph (a), the first sentence in paragraph (c), the introductory text of paragraph (i), and paragraph (n) to read as follows:

§ 101.13 Nutrient content claims—general principles.

(a) This section and the regulations in subpart D of this part apply to foods that are intended for human consumption and that are offered for sale, including foods in conventional food form and dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances.

* * * * *

(c) Information that is required or permitted by § 101.9 or § 101.36, as applicable, to be declared in nutrition labeling, and that appears as part of the nutrition label, is not a nutrient content claim and is not subject to the requirements of this section. * * *

* * * * *

(i) Except as provided in §§ 101.9 or 101.36, as applicable, or in paragraph (q)(3) of this section, the label or labeling of a product may contain a statement about the amount or percentage of a nutrient if:

* * * * *

(n) Nutrition labeling in accordance with §§ 101.9, 101.10, or 101.36, as applicable, shall be provided for any food for which a nutrient content claim is made.

* * * * *

3. Section 101.54 is amended by revising paragraphs (a)(3), (b)(1), (c)(1), and (e)(1) introductory text to read as follows:

§ 101.54 Nutrient content claims for "good source," "high," and "more."

(a) * * *

(3) The food for which the claim is made is labeled in accordance with §§ 101.9, 101.10, or 101.36, as applicable.

* * * * *

(b) * * * (1) The terms "high," "rich in," or "excellent sources of" may be used on the label or in the labeling of foods, except meal products as defined in § 101.13(l) and main dish products as defined in § 101.13(m) and except dietary supplements of vitamins or minerals to characterize the level of any substance that is not a vitamin or mineral, provided that the food contains 20 percent or more of the RDI or the DRV per reference amount customarily consumed.

* * * * *

(c) * * * (1) The terms "good source," "contains," or "provides" may be used on the label or in labeling of foods, except meal products as described in § 101.13(l) and main dish products as described in § 101.13(m) and except in dietary supplements of vitamins or minerals to characterize the level of any substance that is not a vitamin or mineral, provided that the food contains 10 to 19 percent of the RDI or the DRV per reference amount customarily consumed.

* * * * *

(e) * * * (1) A relative claim using the terms "more," fortified," "enriched," and "added" may be used on the label or in labeling of foods to describe the level of protein, vitamins, minerals, dietary fiber, or potassium, except as limited by § 101.13(j)(1)(i) and except meal products as defined in § 101.13(l) and main dish products as defined in § 101.13(m), and except dietary supplements of vitamins or minerals to characterize the level of any substance that is not a vitamin or mineral, provided that:

* * * * *

4. Section 101.56 is amended by revising paragraph (a)(3) to read as follows:

§ 101.56 Nutrient content claims for "light" or "lite."

(a) * * *

(3) The food for which the claim is made is labeled in accordance with §§ 101.9, 101.10, or 101.36, as applicable.

* * * * *

5. Section 101.60 is amended by revising paragraph (a)(3), redesignating paragraphs (c)(4) and (c)(5) as paragraphs (c)(5) and (c)(6), by adding new paragraph (c)(4), and by revising the introductory text of newly redesignated paragraph (c)(5) to read as follows:

§ 101.60 Nutrient content claims for the calorie content of foods.

(a) * * *

(3) The food for which the claim is made is labeled in accordance with §§ 101.9, 101.10, or 101.36, as applicable.

* * * * *

(c) * * *

(4) The claims provided for in paragraphs (c)(1) and (c)(2) of this section may be used on labels or in labeling of dietary supplements of vitamins or minerals that are intended specifically for use by infants and children less than 2 years of age.

(5) The terms "reduced sugar," "reduced in sugar," "sugar reduced," "less sugar," "lower sugar," or "lower in sugar" may be used on the label or in labeling of foods, except meal products as defined in § 101.13(l), main dish products as defined in § 101.13(m), and dietary supplements of vitamins or minerals, provided that:

* * * * *

6. Section 101.61 is amended by revising paragraph (a)(3) to read as follows:

§ 101.61 Nutrient content claims for the sodium content of foods.

(a) * * *

(3) The food for which the claim is made is labeled in accordance with §§ 101.9, 101.10, or 101.36, as applicable.

* * * * *

7. Section 101.62 is amended by revising paragraph (a)(3) to read as follows:

§ 101.62 Nutrient content claims for fat, fatty acid, and cholesterol content of foods.

(a) * * *

(3) The food for which the claim is made is labeled in accordance with §§ 101.9, 101.10, or 101.36, as applicable.

* * * * *

8. Section 101.65 is amended by revising paragraphs (a)(3), (b)(3), and (b)(4) to read as follows:

§ 101.65 Implied nutrient content claims and related label statements.

(a) * * *

(3) The food for which the claim is made is labeled in accordance with §§ 101.9, 101.10, or 101.36, as applicable.

(b) * * *

(3) A claim about the presence of an ingredient that is perceived to add value to the product, e.g., "made with real

butter," "made with whole fruit," or "contains honey," except that claims about the presence of ingredients other than vitamins or minerals, or ingredients that are represented as a source of vitamins or minerals, are not allowed on labels or in labeling of dietary supplements of vitamins or minerals that are not in conventional food form.

(4) A statement of identity for a food in which an ingredient constitutes essentially 100 percent of a food (e.g., "corn oil," "oat bran," "vitamin C 60 mg").

* * * * *

David A. Kessler,
Commissioner of Food and Drugs.

Dated: June 10, 1993.

Donna E. Shalala,
Secretary of Health and Human Services.

[FR Doc. 93–14273 Filed 6–15–93; 8:45 am]
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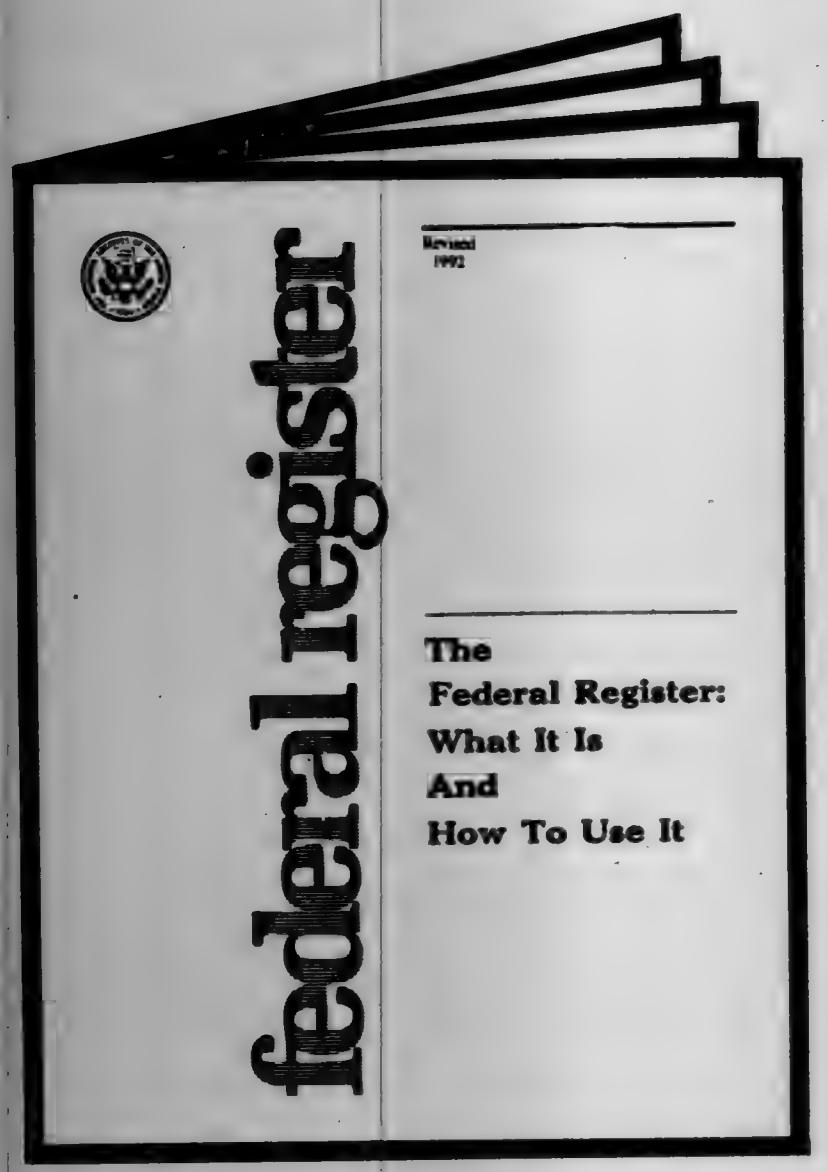

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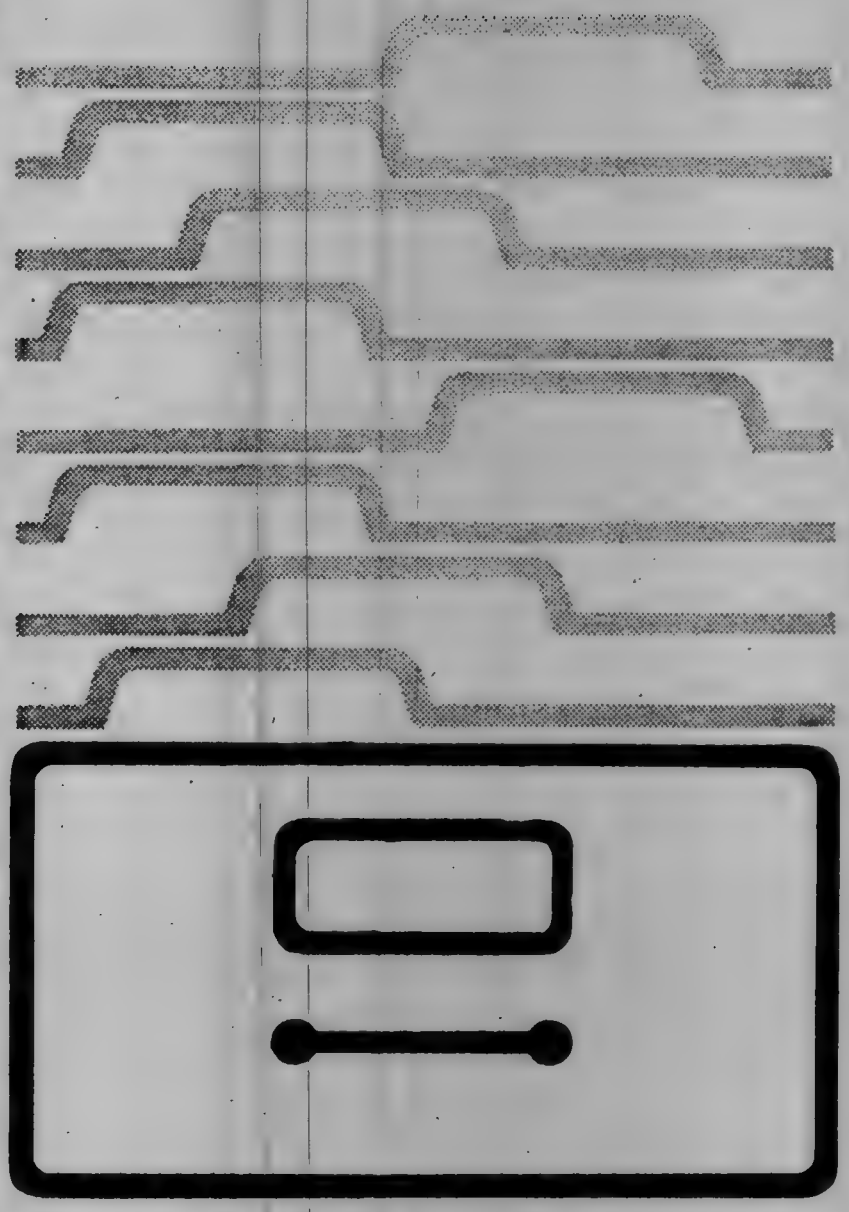

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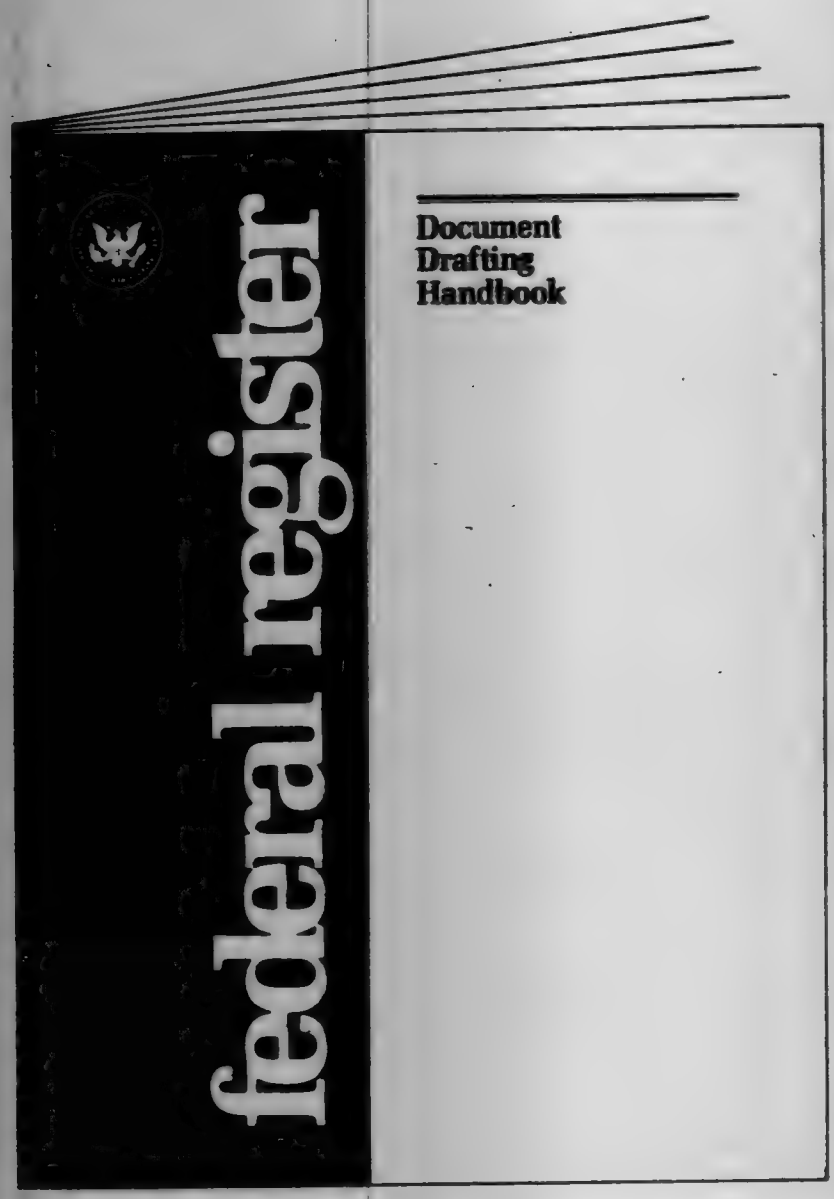

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Presidential Documents

Title 3—

The President

Proclamation 6573 of June 17, 1993

Father's Day, 1993

By the President of the United States of America

A Proclamation

Traditionally, the third Sunday in June is nationally designated as Father's Day. This year, on June 20th, I call upon all Americans to thank and honor fathers across the land for the love, nurturing, guidance, and sacrifices they have made in behalf of our Nation's daughters and sons.

A key prescription for building strong families is honoring one's parents. As Americans know and as history has witnessed, the acts of dedication to family are essential to our Nation's endurance and spiritual growth. Reaffirming our commitment to fathers is an invaluable element in nurturing the health of our Nation's families.

Fathers perform many roles, and they profoundly influence their children and our society. As co-creators of life, fathers—accepting responsibility for the welfare of their offspring—serve as economic providers, role-models, nurturers, coaches, counselors, and lifelong friends. They also help define and set standards for their children for personal, academic, and professional accomplishments.

Because fathers hold a very special place in our lives, it is fitting that we pay tribute to all fathers now living, as well as the memory of those now deceased. In that spirit, let us as Americans express and demonstrate to our fathers—through word and action—our appreciation for their love and for the contributions they have made to us and our Nation.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972 (36 U.S.C. 142a), do hereby proclaim Sunday, June 20, 1993, as "Father's Day." I call upon all Americans to observe this day by demonstrating our respect for and our gratitude to our fathers.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of June, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93-14716
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209–AA14

Post-Employment Conflict of Interest Restrictions; Revision of Agency Component Designations for the Executive Branch

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; amendments.

SUMMARY: At the request of two agencies, the Office of Government Ethics is issuing this rule to revoke the designation of an agency component and to change the name of another agency's component for purposes of the one-year statutory post-employment restriction applicable to former "senior" employees of the executive branch. These changes reflect the current organizational structure of the two agencies.

EFFECTIVE DATE: This rule is effective June 21, 1993, except for the removal of the listing for the Federal Emergency Management Agency which will be effective September 20, 1993.

FOR FURTHER INFORMATION CONTACT: Julia Loring Eirinberg, Office of Government Ethics, telephone (202/FTS) 523–5757, FAX (202/FTS) 523–6325.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion

The Director of OGE is authorized by 18 U.S.C. 207(h) to designate separate departmental and agency components in the executive branch for purposes of 18 U.S.C. 207(c), the one-year post-employment restriction applicable to former "senior" employees of the executive branch. The representational bar of 18 U.S.C. 207(c) usually extends to any department or agency in which a former senior employee served in any capacity during the one-year period prior to termination from senior service. However, eligible senior employees may be permitted to communicate to or appear before components of their former department or agency if those components have been designated as separate agencies or bureaus by OGE. Relevant criteria relating to designation are set forth in § 2641.201(e)(6).

Section 2641.201(e)(3)(ii) provides that a designated agency ethics official may recommend to the Director of OGE that a current component designation be revoked. Section 2641.201(e)(iii) states that the Director "shall by rule . . . revoke a component designation after considering the recommendation of the designated agency ethics official."

By letter of November 24, 1992, the designated agency ethics official for the Federal Emergency Management Agency (FEMA) recommended the revocation of the separate component status of the United States Fire Administration, FEMA's sole separate designated component. After reviewing FEMA's request in light of the criteria set forth in § 2641.201(e)(6), the Director of OGE has determined to revoke the designation of the United States Fire Administration as a distinct and separate FEMA component. As provided in § 2641.201(e)(4), the revocation of this designation shall be effective 90 days after the effective date of this rule, but shall not be effective as to any individuals who terminate senior service prior to the expiration of that 90-day period.

At the request of the Department of Transportation, appendix B of this part has also been amended to indicate that the name of the Urban Mass Transit Administration has been changed to the Federal Transit Administration.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, the Director of OGE finds that good cause exists for waiving the general notice of proposed rulemaking and 30-day delayed effective date. It is important that the designation or revocation by OGE of separate agency components be published in the Federal Register as promptly as possible. Furthermore, since this rule is interpretive in nature, it is exempt from the notice and delayed effectiveness requirements of 5 U.S.C. 553.

E.O. 12291, Federal Regulation

As Director of the OGE, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Director of the OGE, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rule does not contain an information collection requirement that requires the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: May 11, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2641 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2641—[AMENDED]

1. The authority citation for part 2641 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978, secs. 402 and 404), 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Appendix B is amended by removing the listing for the Federal Emergency Management Agency and the sole component thereunder, and by revising the listing for the Department of Transportation to read as follows:

Appendix B to 5 CFR Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

* * * * *

Parent: Department of Transportation

Components:

Federal Aviation Administration
Federal Highway Administration
Federal Railroad Administration

Federal Transit Administration
Maritime Administration
National Highway Traffic Safety Administration
Saint Lawrence Seaway Development Corporation
United States Coast Guard

* * * * *

[FR Doc. 93–14353 Filed 6–18–93; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV93–905–2]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule will authorize expenditures and establish an assessment rate for the 1993–94 fiscal year under Marketing Order No. 905. Authorization of this budget enables the Citrus Administrative Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective August 1, 1993, through July 31, 1994. Comments received by July 21, 1993, will be considered prior to any finalization on this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456 or by Facsimile (202) 720–5698. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: John R. Toth, Officer-In-Charge, Southeast Marketing Field Office, Fruit & Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone (813) 299–4770; or Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 690–0992.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 905, as amended [7 CFR part 905], regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, oranges, grapefruit, tangerines, and tangelos grown in Florida are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable citrus fruit during the 1993–94 fiscal year, beginning August 1, 1993, through July 31, 1994. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 citrus handlers subject to regulation under the marketing order covering fresh oranges, grapefruit, tangerines, and tangelos grown in Florida, and approximately 10,200 producers of these fruits in Florida. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of these producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal period shall apply to all assessable citrus fruit handled from the beginning of such period. An annual budget of expenses and assessment rate is prepared by the committee and submitted to the Department for approval. The committee members are handlers and producers of Florida citrus. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the expected cartons (⅘ bushels) of fruit shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The annual budget and assessment rate are usually recommended by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committee will have funds to pay its expenses.

The committee met April 27, 1993, and unanimously recommended a budget with expenditures of $200,000 for the 1993–94 fiscal year, which is the same expenditure amount approved for 1992–93 fiscal year. The expense items

in the 1993–94 budget are for the administration of the marketing order, and include such major expenditure items as employee salaries, telephone and facsimile use, and office operations expenses.

The committee also recommended a 1993–94 assessment rate of $0.00285 per ⅘ bushel carton of fresh fruit shipped, compared with $0.0003 established for 1992–93. Assessment income for 1993–94 is expected to total $182,400, based on estimated shipments of 64,000,000 cartons of assessable fruit. The 1992–93 comparable assessment income total was $187,500, based upon shipments of 60,500,000 cartons of assessable fruit. Interest income for 1993–94 is estimated at $2,500, compared with $4,000 estimated for the 1992–93 fiscal year. Funds in the reserve at the end of the 1993–94 fiscal year, estimated at $15,000, will be within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) this fiscal year begins on August 1, 1993, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable oranges, grapefruit, tangerines, and tangelos handled during the fiscal year; (3) handlers are aware of this action which was unanimously recommended by the committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 905.232 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 905.232 Expenses and assessment rate.

Expenses of $200,000 by the Citrus Administrative Committee are authorized, and an assessment rate of $0.00285 per ⅘ bushel carton of assessable fruit is established for the fiscal year ending July 31, 1994. Any unexpended funds may be carried over as a reserve.

Dated: June 14, 1993.

Robert C. Keaney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–14548 Filed 6–18–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 911 and 915

[Docket No. FV92–911–1FIR]

Expenses and Assessment Rates for the Marketing Orders Covering Limes and Avocados Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with appropriate changes, the provisions of the interim final rule authorizing expenditures and establishing assessment rates for the Florida Lime Administrative Committee and Avocado Administrative Committee (committees) under M. O. Nos. 911 and 915. This final rule authorizes an increased level of expenditures for the 1993–94 fiscal year. Authorization of these budgets enable the committees to incur expenses that are reasonable and necessary to administer their respective programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: April 1, 1993, through March 31, 1994.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 690–0992.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 911 (7 CFR part 911) regulating the handling of limes grown in Florida and 915 (7 CFR part 915) regulating the handling of avocados grown in Florida. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, limes and avocados grown in Florida are subject to assessments. It is intended that the assessment rates specified herein will be applicable to all assessable limes and avocados handled during the 1993–94 fiscal year, beginning April 1, 1993, through March 31, 1994. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity

is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of limes and 40 handlers of avocados regulated under the marketing orders each season and approximately 260 lime and 300 avocado producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The lime and avocado marketing orders, administered by the Department, require that the assessment rates for a particular fiscal year apply to all assessable limes and avocados handled from the beginning of such year. Annual budgets of expenses are prepared by the committees, the agencies responsible for local administration of their respective marketing orders, and submitted to the Department for approval. The members of the committees are lime and avocado handlers and producers. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The committees' budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rates recommended by the committees are derived by dividing the anticipated expenses by expected shipments of limes and avocados (in bushels). Because those rates are applied to actual shipments, they must be established at rates which will provide sufficient income to pay the committees' expected expenses.

The Florida Lime Administrative Committee initially met on December 9, 1992, and unanimously recommended total expenditures for the 1993–94 fiscal year of $106,346 with an assessment rate of $0.16 per bushel. The committee anticipates shipments of 450,000/55 lb. bushels of limes into fresh market channels, which should generate an estimated income of $72,000.

The Avocado Administrative Committee also met initially on December 9, 1992, and unanimously recommended total budget expenditures of $106,346 and an assessment rate of $0.16 per bushel for the 1993–94 fiscal year. Avocado shipments into fresh market channels are anticipated by the committee at 150,000/55 lb. bushels, generating an estimated income of $24,000.

This action was published as an interim final rule in the **Federal Register** (58 FR 8533, February 16, 1993) and provided a 30-day comment period which ended March 18, 1993. The following comment was received from the committees.

Each committee met again February 11, 1993, and unanimously recommended to increase budgeted expenditures for both limes and avocados to $108,346. The assessment rate for each commodity will remain the same. This $2,000 increase in expenditures for each committee is necessary to finance an aerial survey on which a tree count can be conducted, scheduled for March 1994. This survey is necessary due to the hurricane that hit the production area last August. The strong winds uprooted many lime and avocado trees and they needed to be set upright. The aerial survey will give a better idea of crop size for assessment and estimating purposes by the committees.

The projected crop estimate for limes has decreased from 450,000/55 lb. bushels to 400,000/55 lb. bushels which has caused the estimated income to decrease by $8,000 from $72,000 to $64,000. Also, the projected deficits for the lime and avocado committees are now $42,346 and $83,346, respectively; however, their available reserve funds plus earned interest are sufficient to cover their deficits.

In addition, this final rule corrects the effective date of the budgets to April 1, 1993, from February 1, 1993, as inadvertently misstated in the interim final rule.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committees and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S. C. 553). The committees need to have sufficient funds to pay their expenses. Such expenses are incurred on a continuous basis. The 1993–94 fiscal year for the committees begins April 1, 1993. Marketing Orders Nos. 911 and 915 require that any rates of assessment for a fiscal year apply to all assessable limes and avocados handled during that fiscal year. In addition, handlers are aware of this action which was recommended by the committees at public meetings. Comments received concerning the interim final rule have been incorporated into the final rule.

List of Subjects

7 CFR Part 911

Marketing agreements, Limes, Reporting and recordkeeping requirements.

7 CFR Part 915

Marketing agreements, Avocados, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 911 and 915 are amended as follows:

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 911 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 911.232 is revised to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 911.232 Expenses and assessment rate.

Expenditures of $108,346 by the Florida Lime Administrative Committee are authorized and an assessment rate of $0.16 per bushel of assessable limes is established for the fiscal year ending March 31, 1994. Unexpended funds from the 1992–93 fiscal year may be carried over as a reserve.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 915.232 is revised to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 915.232 Expenses and assessment rate.

Expenses of $108,346 by the Avocado Administrative Committee are authorized and an assessment rate of $0.16 per bushel of assessable avocados is established for the fiscal year ending March 31, 1994. Unexpended funds from the 1992–93 fiscal year may be carried over as a reserve.

Dated: June 14, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–14549 Filed 6–18–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 928

[Docket No. FV93–928–2]

Expenses and Assessment Rate for Papayas Grown in Hawaii

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule will authorize expenditures and establish an assessment rate for the 1993–94 fiscal year under Marketing Order No. 928. Authorization of this budget enables the Papaya Administrative Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective July 1, 1993, through June 30, 1994. Comments received by July 21, 1993, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, or by Facsimile (202) 720–5698. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kurt J. Kimmel, Officer-In-Charge, California Marketing Field Office, Fruit & Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone (209) 487–5901; or Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 690–0992.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 928, as amended (7 CFR part 905), regulating the handling of papayas grown in Hawaii, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, papayas grown in Hawaii are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable papayas handled during the 1993–94 fiscal year, beginning July 1, 1993, through June 30, 1994. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 120 papaya handlers subject to regulation under the marketing order covering fresh papayas grown in Hawaii, and approximately 300 producers of these fruits in Hawaii. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of these producers may be classified as small entities.

This marketing order, administered by the Department, requires that the assessment rate for a particular fiscal period shall apply to all assessable papayas handled from the beginning of such period. An annual budget of expenses and an assessment rate is prepared by the committee and submitted to the Department for approval. The committee members are handlers and producers of Hawaii papayas. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by the expected pounds of fruit shipped. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The annual budget and assessment rate are usually recommended by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment

rate approvals must be expedited so that the committee will have funds to pay its expenses.

The Papaya Administrative Committee met April 30, 1993, and on a vote of 7 in favor, 3 opposed, and 2 abstaining, recommended a budget with expenses of $700,580 for the 1993–94 fiscal year and an assessment rate of $0.0085 per pound of fresh papayas shipped. Three committee members were opposed to the expense amount and requested that it be lowered to $592,460 and to also lower the assessment rate to $.0065 per pound. Their request was defeated by the above vote. Budgeted expenses for the 1993–94 fiscal year are $122,870 less than the 1992–93 expense amount of $823,450, while the assessment rate remains unchanged.

The 1993–94 budget contains $352,220 for program administration, $303,360 for advertising and promotion, and $45,000 for research and development. In comparison, budgeted expenses for 1992–93 were $368,450 for program administration, $410,000 for advertising and promotion, and $45,000 for research and development.

Program income for 1993–94 is expected to total $701,660, with assessment income estimated at $493,000, based on projected shipments of 58,000,000 pounds of assessable papayas. Other income includes $120,000 in promotional grants from the Hawaii Department of Agriculture, $63,360 from the USDA's Foreign Agricultural Service, $7,800 from the Japan Inspection Program, and $17,500 from miscellaneous sources including interest income. The projected 1993–94 income over expenses ($1,080) will be placed in the committee's operational reserve. This reserve is projected at $78,845 on June 30, 1994, an amount well within the maximum authorized under the marketing order.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) this fiscal year begins on July 1, 1993, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable papayas handled during the fiscal year; (3) handlers are aware of this action which was recommended by the committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 905

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 928 is amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR part 928 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 928.223 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 928.223 Expenses and assessment rate.

Expenses of $700,580 by the Papaya Administrative Committee are authorized, and an assessment rate of $0.0085 per pound of assessable papayas is established for the fiscal year ending June 30, 1994. Unexpended funds may be carried over as a reserve.

Dated: June 14, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–14550 Filed 6–18–93; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 947

[Docket No. FV93–947–31FR]

Oregon-California Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures of $43,600 and establishes an assessment rate of $0.005 per hundredweight under Marketing Order No. 947 for the 1993–94 fiscal period. Authorization of this budget enables the Oregon-California Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective July 1, 1993, through June 30, 1994. Comments received by July 21, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204 (503) 326–2724, or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Oregon-California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and

has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect Oregon-California potato handlers are subject to assessments. Funds to administer the Oregon-California potato order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1993–94 fiscal period, beginning July 1, 1993, through June 30, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 550 producers of Oregon-California potatoes under this marketing order, and approximately 40 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Oregon-California potato producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 fiscal period was prepared by the Oregon-California Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Oregon-California potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Oregon-California potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met March 10, 1993, and unanimously recommended a 1993–94 budget of $43,600, $1,150 less than the previous year. Major expense items include Oregon Potato Commission contract agreement, annual report, Committee compensation, Committee expense, inspection fees, investigation and compliance, staff travel, office supplies, postage, and telephone. The Commission provides certain services to the Committee as specified in a memorandum of understanding.

The Committee also unanimously recommended an assessment rate of $0.005 per hundredweight, the same as last season. This rate, when applied to anticipated shipments of 7,425,000 hundredweight, will yield $37,125 in assessment income. This, along with $6,475 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1993–94 fiscal period, estimated at $10,500, will be within the maximum permitted by the order of one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on July 1, 1993, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 947.244 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 947.244 Expenses and assessment rate.

Expenses of $43,600 by the Oregon-California Potato Committee are authorized, and an assessment rate of $0.005 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1994.

Unexpended funds may be carried over as a reserve.

Dated: June 14, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–14551 Filed 6–18–93; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 948

[Docket No. FV93–948–2IFR]

Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures of $59,106 and establishes an assessment rate of $0.0036 per hundredweight of potatoes under Marketing Order No. 948 for the 1993–94 fiscal period. Authorization of this budget enables the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective September 1, 1993, through August 31, 1994. Comments received by July 21, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, Oregon 97204, telephone number 503–326–2724; or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone number 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Colorado potatoes are subject to assessments. Funds to administer the Colorado potato marketing order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1993–94 fiscal period beginning September 1, 1993, through August 31, 1994. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 285 producers of Colorado Area II potatoes under the marketing order and approximately 118 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Colorado Area II potato producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 fiscal period was prepared by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II), the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Colorado Area II potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area II potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

The Committee met on May 20, 1993, and unanimously recommended a 1993–94 budget of $59,106, which is $1,866 more than the previous year. This increase of $1,866 is for staff salaries, and is the only change from the 1992–93 approved budget.

The Committee also unanimously recommended an assessment rate of $0.0036 per hundredweight, the same as last season. This rate, when applied to anticipated potato shipments of 13,250,000 hundredweight, will yield

$47,700 in assessment income. This, along with $11,406 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds of $83,437 in the Committee's authorized reserve at the beginning of the 1992–93 fiscal period were within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on September 1, 1993, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 948.210 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 948.210 Expenses and assessment rate.

Expenses of $59,106 by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) are authorized, and an assessment rate of $0.0036 per hundredweight of assessable potatoes is established for the fiscal period ending August 31, 1994. Unexpended funds may be carried over as a reserve.

Dated: June 14, 1993.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 93–14547 Filed 6–18–93; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8479]

RIN 1545–AN42

Returns Relating to Cash in Excess of $10,000 Received in a Trade or Business

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that require a person who currently must report the receipt of cash in excess of $10,000 with respect to a transaction to make a report each time that cash payments received within any 12-month period with respect to the same transaction or a related transaction total more than $10,000. These regulations enable the Internal Revenue Service to ascertain the magnitude of large transfers of cash with respect to the same transaction. The regulations affect trades or businesses that are currently required to report large receipts of cash.

EFFECTIVE DATE: June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Philip Scott, 202–622–4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–0892. The estimated annual burden per respondent varies from 11 minutes to 26 minutes, depending upon individual circumstances, with an average of 18 minutes.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On July 9, 1990, the Internal Revenue Service published in the **Federal Register** a notice of proposed rulemaking by cross-reference to temporary regulations (55 FR 28061) and temporary regulations (55 FR 28021) amending the Income Tax Regulations (26 CFR part 1) under section 6050I of the Internal Revenue Code (Code).

Written comments responding to the notice were received. One request for a public hearing was received, but that request was withdrawn. After consideration of all comments, the temporary regulations are adopted as final regulations without substantive change by this Treasury Decision. However, some clarifying changes and changes in organization have been made.

Explanation of Provisions

In General

As amended by this Treasury decision, the regulations require a person engaged in a trade or business who receives, in the course of that trade or business, multiple cash payments with respect to a transaction (or two or more related transactions) to make a report each time that the person receives more than $10,000 in cash in any 12-month period. Thus, a person must make a report each time that the person receives a single cash payment of more than $10,000 and each time that the person receives a cash payment of

$10,000 or less that, combined with all previously unreportable cash payments received with respect to the same transaction (or a related transaction) within the preceding 12-month period, exceeds $10,000. The regulations apply to amounts received after December 31, 1989.

Comments

One commentator suggested that aggregation of payments of $10,000 or less for purposes of reporting under section 6050I should be based on a calendar year to facilitate recordkeeping by recipients. The Service is concerned, however, that such an aggregation rule might enable some persons to avoid reporting. Therefore, the suggestion has not been adopted.

Other comments addressed matters that pertain to portions of the existing regulations under section 6050I that do not relate to multiple payments and, therefore, are not pertinent to this document. The Service will consider those comments in the context of its continuing review of the rules promulgated under section 6050I and will provide additional guidance where necessary or appropriate.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Act Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Philip Scott of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The heading for part 1 is revised to read as set forth above.

Par. 2. The authority citation for part 1 is amended by removing the entry for "Section 6050I–1T". The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 6050I–1 also issued under 26 U.S.C. 6050I. * * *

Par. 3. Section 1.6050I–1 is amended by revising paragraphs (b) and (e)(1) to read as follows:

§ 1.6050I–1 Returns relating to cash in excess of $10,000 received in a trade or business.

* * * * *

(b) *Multiple payments.* The receipt of multiple cash deposits or cash installment payments (or other similar payments or prepayments) on or after January 1, 1990, relating to a single transaction (or two or more related transactions), is reported as set forth in paragraphs (b)(1) through (b)(3) of this section.

(1) *Initial payment in excess of $10,000.* If the initial payment exceeds $10,000, the recipient must report the initial payment within 15 days of its receipt.

(2) *Initial payment of $10,000 or less.* If the initial payment does not exceed $10,000, the recipient must aggregate the initial payment and subsequent payments made within one year of the initial payment until the aggregate amount exceeds $10,000, and report with respect to the aggregate amount within 15 days after receiving the payment that causes the aggregate amount to exceed $10,000.

(3) *Subsequent payments.* In addition to any other required report, a report must be made each time that previously unreportable payments made within a 12-month period with respect to a single transaction (or two or more related transactions), individually or in the aggregate, exceed $10,000. The report must be made within 15 days after receiving the payment in excess of $10,000 or the payment that causes the aggregate amount received in the 12-month period to exceed $10,000. (If more than one report would otherwise be required for multiple cash payments within a 15-day period that relate to a single transaction (or two or more related transactions), the recipient may make a single combined report with respect to the payments. The combined report must be made no later than the date by which the first of the separate reports would otherwise be required to be made.) A report with respect to payments of $10,000 or less that are reportable under this paragraph (b)(3) and are received after December 31, 1989, but before July 10, 1990, is due July 24, 1990.

(4) *Example.* The following example illustrates the application of the rules in paragraphs (b)(1) through (b)(3) of this section:

Example. On January 10, 1991, M receives an initial cash payment of $11,000 with respect to a transaction. M receives subsequent cash payments with respect to the same transaction of $4,000 on February 15, 1991, $6,000 on March 20, 1991, and $12,000 on May 15, 1991. M must make a report with respect to the payment received on January 10, 1991, by January 25, 1991. M must also make a report with respect to the payments totalling $22,000 received from February 15, 1991, through May 15, 1991. This report must be made by May 30, 1991, that is, within 15 days of the date that the subsequent payments, all of which were received within a 12-month period, exceeded $10,000.

* * * * *

(e) *Time, manner, and form of reporting*—(1) *Time of reporting.* The reports required by this section must be filed with the Internal Revenue Service by the 15th day after the date the cash is received. However, in the case of multiple payments relating to a single transaction (or two or more related transactions), see paragraph (b) of this section.

* * * * *

§ 1.6050I–1T [Removed]

Par. 4. Section 1.6050I–1T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. Section 602.101(c) is amended by removing from the table "1.6050I–1T * * * 1545–0892".

David G. Blattner,

Acting Commissioner of Internal Revenue.

Approved: June 4, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–14467 Filed 6–18–93; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 93–062]

Safety Zone: Boston Harborfest Fireworks Skyconcert, Boston Inner Harbor, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Boston Harborfest Fireworks Skyconcert. The safety zone will be in effect in the vicinity of the Coast Guard Support Center Boston, Boston Inner Harbor, on Friday, July 2, 1993, from 7:15 p.m. until 10:30 p.m. This safety zone in Boston Inner Harbor is needed to protect the boating public from the hazards associated with the exploding of pyrotechnics. The affected portion of the Boston Inner Harbor channel, and its intersection with the Charles and Mystic Rivers, is closed to vessel traffic while this zone is in effect. Entry into the zone is prohibited unless authorized by the Captain of the Port (COTP) Boston.

EFFECTIVE DATE: This regulation becomes effective on July 2, 1993, at 7:15 p.m. when the fireworks barge OCEAN 125 proceeds by tow from Mystic Pier 1, Charlestown, MA to a location just off the Coast Guard Support Center Boston in approximate position 42°22'13" N., 071°03'00" W. It terminates on July 2, 1993, at 10:30 p.m. local time, when the tug and barge are safely moored at Mystic Pier 1, Charlestown, MA, unless sooner terminated by the Captain of the Port Boston. A rain date of July 3, 1993, is planned, with all times remaining the same.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander E.O. Coates or MST1 Daniel Dugery, Coast Guard Marine Safety Office Boston, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principle persons involved in drafting this document are Lieutenant Commander E.O. Coates, project officer for the Captain of the Port Boston, and Lieutenant Commander Jeffrey Steib, project attorney, First Coast Guard District Legal Office.

Regulatory History

As amended by 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation, and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent injury and damage to the persons and vessels involved. The interest in the community in celebrating the 4th of July holiday is best served by proceeding with this temporary final rule. This action has been analyzed in accordance with principles and criteria of E.O. 12612, and it has been determined that there are not sufficient federalism implications to warrant other preparation of a federalism assessment.

Background and Purpose

On May 5, 1993, the Boston Harborfest Committee submitted a request to hold a fireworks program in Boston Inner Harbor on July 2, 1993. The fireworks display will take place from 10 p.m. to 10:30 p.m. in approximate position 42°22'13" N., 071°03'00" W. The safety zone will extend for two hundred yards in all directions around the fireworks barge OCEAN 125 and its attending tug while the vessels proceed to, from, and while on site for the fireworks display. The zone will be in effect from 7:15 p.m. July 2, 1993, to 10:30 p.m. local time, July 2, 1993. The zone is needed to protect the fireworks barge OCEAN 125 and its attending tug, spectator vessels, and personnel in the area from the safety hazard associated with the explosives on board the fireworks barge and with the fireworks display itself. Implementation of this zone will close to vessel traffic the affected portion of the Boston Inner Harbor, and its intersection with the Charles and Mystic Rivers. Entry into the zone is prohibited unless authorized by the COTP Boston. Coast Guard patrol craft will be on scene to enforce the safety zone. Details of this event will be published in the Local-Notice to Mariners and in a Safety Marine Information Broadcast.

Regulatory Evaluation

This rule is not major under Executive Order 12291 on Federal Regulation and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. Costs to the shipping industry from these regulations, if any, will be minor and have no significant adverse financial effect on vessel operators as the event will be of less than two hours duration. Commercial vessel traffic, fishing vessels, and tour boats may experience slight delays in departures or arrivals during the display; however, mariners can time their movements just ahead or just after the fireworks display.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded under section 2.B.2.c of Commandant Instruction M16475.1B this proposal is categorically excluded from further environmental documentation. Implementation of this rulemaking should help to reduce the risk of collision or other marine accidents. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES".

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

In consideration of the foregoing, 33 CFR part 165, is amended as follows:

1. The authority citation for part 165 continues to read:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5, 40 CFR 1.46.

2. A temporary § 165.T01–062 is added to read as follows:

§ 165.T01–062 Safety Zone: Boston Harborfest Fireworks Skyconcert, Boston Inner Harbor, Boston, MA.

(a) *Location.* The safety zone includes all waters around the fireworks barge OCEAN 125 and its attending tug—two hundred yards in all directions while the tug and barge proceed from Mystic Pier 1, Charlestown, MA to a location in the vicinity of the Coast Guard Support Center Boston Pier 2, in approximate position 42°22'13" N., 071°03'00" W., until the fireworks program is completed and the barge and tugs have returned to Mystic Pier 1, Charlestown, MA.

(b) *Effective date.* This regulation becomes effective on July 2, 1993, at 7:15 p.m. or when the fireworks barge OCEAN 125 and its attending tug depart Mystic Pier 1, Charlestown, MA. It terminates on July 2, 1993, at 10:30 p.m. or when the vessels return and are safely moored at Mystic Pier 1, Charlestown, MA, unless sooner terminated by the Captain of the Port Boston. A rain date of July 3, 1993 is planned, with all times remaining the same.

(c) *Regulations.* (1) No person or vessel may enter, transit, or remain in this safety zone during the effective period of regulation unless participating in the event as authorized by the Coast Guard Captain of the Port, Boston.

(2) All persons and vessels shall comply with instructions of the COTP or the designated on scene personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard.

(3) The general regulations governing safety zones in section 165.23 apply.

Dated: June 8, 1993.

G.W. Abrams,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 93–14556 Filed 6–18–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG11

Civil Liberties Act Amendments of 1992

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its rules concerning exclusions from income for the purposes of the section 306 and old law pension programs. This amendment will implement the provisions of the Civil Liberties Act Amendments of 1992, which provided that certain restitution payments made to Japanese-Americans interned by the United States during World War II are excluded from consideration as income or in determining net worth under any program administered by VA.

EFFECTIVE DATE: This regulation is effective August 10, 1988, the date authorized by Public Law 102–371.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 233–3005.

SUPPLEMENTARY INFORMATION: Title I of Public Law 100–383, the Civil Liberties Act of 1988, provided redress in the amount of $20,000.00 to certain individuals of Japanese ancestry who were interned or relocated by the Federal government during WWII. The bill expressly provided that these payments shall not be included as income or resources for determining eligibility to benefits described in 31 U.S.C. 3803(c)(2)(C). An opinion of VA's General Counsel (O.G.C. *Prec. 3–92*) held that these payments are not countable as income or for net worth determinations for the purposes of improved pension and parents' DIC, which are found in those chapters of title 38 U.S.C. referenced by the cited section of title 31. The opinion further stated that these payments were countable as income and net worth under 306 pension and old law pension, because these benefits are no longer in force under title 38, but under the savings provision (section 306) of Public Law 95–588, which introduced improved pension. In a previous regulatory amendment (RIN 2900–AD97) we amended 38 CFR §§ 3.261, 3.263, 3.262, 3.272, and 3.275 to implement Public Law 100–383 and the opinion of the General Counsel.

On September 27, 1992, the President signed Public Law 102–371, the Civil Liberties Act Amendments of 1992. This law amended Public Law 100–383 by extending the income exemption of the Japanese-American restitution payments to include exclusion from countable income or in determining net worth for any program administered by VA, effective August 10, 1988, the date of the original law. Our current rulemaking implements these provisions of Public Law 102–371. Since these amendments simply implement the provisions of the law, publication as a proposed rule for comment is not required.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), the amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more;

(2) It will not cause a major increase in costs or prices;

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.105.

List of subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: February 5, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended to read as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

§ 3.261 [Amended]

2. In § 3.261(a)(36), remove the word "Included" from the fourth and fifth columns of the table and add in its place in each column the word "Excluded."

3. In § 3.262, paragraph (u) and the authority citation are revised to read as follows:

§ 3.262 Evaluation of income.

* * * * *

(u) *Restitution to individuals of Japanese ancestry.* Effective August 10, 1988, for the purposes of old law pension, section 306 pension, parents' death compensation, and parents' dependency and indemnity compensation, there shall be excluded from income computation any payment made as restitution under Public Law 100–383 to individuals of Japanese ancestry who were interned, evacuated, or relocated during the period December 7, 1941, through June 30, 1946, pursuant to any law, Executive order, Presidential proclamation, directive, or other official action respecting these individuals.

(**Authority:** Sec. 105, Pub. L. 100–383; 102 Stat. 905; Sec. 6, Pub. L. 102–371; 106 Stat. 1167, 1168)

4. In § 3.263, paragraph (f) and the authority citation are revised to read as follows:

§ 3.263 Corpus of estate; net worth.

* * * * *

(f) *Restitution to individuals of Japanese ancestry.* Effective August 10, 1988, for the purposes of section 306 pension and parents' death compensation, there shall be excluded from the corpus of estate or net worth of a claimant any payment made as restitution under Public Law 100–383 to individuals of Japanese ancestry who were interned, evacuated, or relocated during the period December 7, 1941, through June 30, 1946, pursuant to any law, Executive order, Presidential proclamation, directive, or other official action respecting these individuals.

(**Authority:** Sec. 105, Pub. L. 100–383; 102 Stat. 905; Sec. 6, Pub. L. 102–371; 106 Stat. 1167, 1168)

[FR Doc. 93–14492 Filed 6–18–93; 8:45 am]
BILLING CODE 8320–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME–6–1–5521; A–1–FRL–4662–5]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Amendments to Chapter 100 "Definitions Regulation"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision consists of amendments to Maine's Chapter 100 "Definitions Regulation." The intended effect of this action is to approve of these amendments which clarify Maine's PM_{10} SIP and which revise Maine's definition of "volatile organic compound (VOC)" to be consistent with EPA's definition of this term. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective August 20, 1993, unless notice is received by July 21, 1993, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Jerry Kurtzweg, U.S. Environmental Protection Agency, 401 M Street, SW., (ANR–443), Washington, DC 20460; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: On April 20, 1992, the State of Maine submitted a formal revision to its State Implementation Plan (SIP). This SIP revision consists of amendments to Maine's Chapter 100 "Definitions Regulation." This revision was submitted in response to recent revisions to the federal definition of VOC (57 FR 3941) and due to the need for the terms "PM_{10} emissions" and "particulate matter emissions" to be defined in order to clarify Maine's PM_{10} SIP.

Maine's Revision

Maine's revision consists of amendments to Chapter 100 which include changes to the definitions of "federally enforceable" and "volatile organic compound (VOC)," as well as the adoption of the following two new terms: "particulate matter emissions" and "PM_{10} emissions."

The definition of "volatile organic compound (VOC)" was revised by adding five halocarbon compounds and four classes of perfluorocarbons to the list of organic compounds which are considered negligibly reactive and do not contribute to violations of the national ambient air quality standard (NAAQS) for ozone. The definition of "federally enforceable" was revised by adding specific reference to part 51 for clarification of the citation 40 CFR part 51, subpart I. The definitions of "particulate matter emissions" and "PM_{10} emissions" were added to Chapter 100 to clarify Maine's PM_{10} SIP.

EPA has evaluated these four definitions and has found that they are consistent with the applicable federal definitions codified at 40 CFR 51.100 paragraphs (pp), (rr), and (s), and 40 CFR 51.166(b)(17). The "PM_{10} emissions" and "particulate matter emissions" definitions are also consistent with SIP requirements codified at 40 CFR 51.212(c) and with EPA's "Interim Guidance on Emission Limits and Stack Test Methods for Inclusion in PM–10 SIPs," as stated in a December 24, 1990, memorandum from John Calcagni and William Laxton.

Maine's amendments to Chapter 100 and EPA's evaluation are detailed in a memorandum, dated May 14, 1992, entitled "Technical Support Document—Maine—Amendments to Chapter 100 Definitions Regulation." Copies of that document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective August 20, 1993, unless by July 21, 1993, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on August 20, 1993.

Final Action

EPA is approving amendments to Maine's Chapter 100 "Definitions Regulation" which include revisions to the definitions of "federally enforceable" and "volatile organic compound," as well as the adoption of the following two new terms:

"particulate matter emissions" and "PM_{10} emissions."

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214).

EPA has submitted a request for a permanent wavier for Tables 2 and 3 SIP Revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 20, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Particulate matter.

Note: Incorporation by reference of the State Implementation Plan for the State of Maine was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 24, 1992.

Paul Keough,

Acting Regional Administrator, Region I.

Editorial Note: This document was received in the Office of the Federal Register on June 15, 1993.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart U—Maine

2. Section 52.1020 is amended by adding paragraph (c)(31) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(31) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on April 20, 1992.

(i) Incorporation by reference.

(A) Letter from the Maine Department of Environmental Protection dated April 8, 1992 submitting a revision to the Maine State Implementation Plan.

(B) Chapter 100(54)(b) "particulate matter emissions," Chapter 100(57)(b) "PM_{10} emissions," and revisions to Chapter 100(28) "federally enforceable" and to Chapter 100(76) "volatile organic compound (VOC)" effective in the State of Maine on January 18, 1992.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

3. Table 52.1031 is amended by adding a new entry to state citation "100" to read as follows:

§ 52.1031 EPA-approved Maine regulations.

* * * * *

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	Federal Register	52.1020	
100	Definitions Regulations.	11/28/91	June 21, 1993	[Insert FR citation from published date].	(c)(31)	Revised "volatile organic compound (VOC)" and "federally enforceable." Added "particulate matter emissions" and "PM_{10} emissions."

[FR Doc. 93-14498 Filed 6-18-93; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[AL-030-2-5594; FRL-4668-8]

Approval and Promulgation of Implementation Plans Alabama: Prevention of Significant Deterioration (PSD) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rule.

SUMMARY: On April 22, 1993 (58 FR 21542), EPA published a document to approve without prior proposal the October 22, 1990, version of the revisions made by Alabama to the Alabama State Implementation Plan (SIP). These revisions established significance levels for Arsenic and Benzene for Prevention of Significant Deterioration (PSD) permit review. Although the Clean Air Act as amended in 1990 (CAA) exempts listed hazardous air pollutants (HAPs), including arsenic and benzene from federal PSD requirements, section 116 of the CAA allows states to continue to regulate selected HAPs under PSD if they so choose. EPA has subsequently received significant comments on the action. Upon further consideration, the State of Alabama has withdrawn the SIP revision and the Agency is withdrawing its direct-final approval.

EFFECTIVE DATE: The effective date of this withdrawal is June 21, 1993.

ADDRESSES: Copies of the materials submitted by Alabama may be examined during normal business hours at the following locations:

Public Information Reference Unit, Attn: Jerry Kurtzweg (AN-443), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365

Air Division, Alabama Department of Environmental Management, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109

FOR FURTHER INFORMATION CONTACT: Diane Altsman of the EPA Region IV Air Programs Branch at (404) 347-2864 and at the above address.

SUPPLEMENTARY INFORMATION: On October 22, 1990, the Alabama Department of Environmental Management (ADEM) submitted to EPA for approval revisions to the significance levels for Arsenic and Benzene for PSD permit review. These revisions were adopted by the Alabama Environmental Management Commission on September 19, 1990. The revisions became state effective November 1, 1990. The EPA reviewed this request for revision of the federally approved SIP for conformance with the 1990 CAA and determined that the actions conformed with the requirements of the CAA irrespective of the fact that the submittal preceded the date of enactment. EPA therefore published a notice to approve the revisions without prior proposal (58 FR 21542, April 22, 1993).

In the final rulemaking, EPA advised the public that the effective date of the action was deferred for 60 days (until June 21, 1993) to provide an opportunity to submit comments. EPA announced that if notice was received within 30 days of the publication of the final rule that someone wanted to submit adverse or critical comments, the final action would be withdrawn and a new rulemaking would begin by proposing a 30 day comment period. EPA had earlier published a general notice explaining this special procedure (56 FR 44477, September 4, 1991).

EPA has received comments on this action that address the fact that the revisions were submitted prior to the 1990 CAA and that the CAA exempts listed HAPs, such as arsenic and benzene, from the federal PSD requirements and that the revisions, therefore, are more stringent than what is federally required. In response to these comments, the ADEM withdrew the submitted revisions on May 28, 1993, in a letter from Leigh Pegues to Patrick Tobin. Accordingly, the EPA is today withdrawing its approval. No new rulemaking will be initiated with this request since it has been withdrawn by ADEM.

EPA is withdrawing this action without providing prior notice and opportunity for comment. The Agency finds that it has good cause within the meaning of 5 U.S.C. 553(b) to proceed without notice and comment. Notice and comment would be impracticable in this case because EPA needs to withdraw its approval as quickly as possible in order to consider the comments the public has submitted or may wish to submit. Moreover, further notice is not necessary because EPA has already informed the public that it would follow this procedure if it received a request for an opportunity to comment. For the same reasons, EPA finds that it has good cause under 5 U.S.C. 553(d) to make this withdrawal effective immediately.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: June 14, 1993.

Patrick M. Tobin,

Acting Regional Administrator.

Therefore the addition of new paragraph (c)(59) in § 52.520 appearing at 58 FR 21543, April 22, 1993, which was to become effective on June 21, 1993, is withdrawn.

[FR Doc. 93-14631 Filed 6-18-93; 8:45 am]
BILLING CODE 6560-50-P

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40 CFR Parts 72 and 73

[FRL-4667-1]

Acid Rain Allowance Allocations and Reserves; Correction

AGENCY: Environmental Protection Agency.

ACTION: Correction to final regulations.

SUMMARY: Title IV of the Clean Air Act Amendments of 1990 directs the EPA to establish an Acid Rain Program. The centerpiece of this control program is the allocation of allowances, or authorizations to emit SO_2, as published in the **Federal Register** of March 23, 1993. This document contains corrections to the final regulations (FRL-4603-8) for 40 CFR parts 72 and 73, which were published Tuesday, March 23, 1993, (58 FR 15634).

EFFECTIVE DATE: These corrections are effective June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Janice Wagner, (202) 233-9170. The mailing address is US EPA, (6204J), 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Background

The final regulations that are the subject of this action correct portions of 40 CFR parts 72 and 73 on the effective date. 40 CFR parts 72 and 73 were added to the CFR pursuant to Title IV of the Clean Air Act, 42 U.S.C. 7401, as amended by Pub. L. 101-549 (November 15, 1990).

II. Need for Correction

As published the final regulations contain errors which may prove to be

misleading and are in need of clarification.

EPA notes that the Marcus Hook Refinery in Pennsylvania was erroneously included in § 73.10 Table 2. This unit is an existing simple combustion turbine and should not be affected by the Acid Rain Program requirements. Therefore, this correction removes the unit from Table 2.

Also, § 73.10 Table 4 contained several erroneous transcriptions from Table 2. Those values are corrected today.

III. Correction of Publication

Accordingly, the publication on March 23, 1993 of the final regulations for 40 CFR parts 72 and 73 is corrected as follows:

PART 72—[CORRECTED]

§ 72.2 [Corrected]

1. On page 15647, third column, in § 72.2, the definition for *Independent Power Production Facility*, paragraph (2), lines 3 through 6, the language beginning with the first semicolon and ending with the word "percent" is removed and added to paragraph (3), line 3, following the word "Act".

PART 73—[CORRECTED]

§ 73.10 [Corrected]

1. On page 15687, Table 2 of § 73.10, line 4 of the table for the "Marcus Hook Refinery" in Pennsylvania, remove the entry.

2. On page 15704, § 73.10, Table 4, in entirety, is corrected to read as follows:

TABLE 4. — PHASE II ALLOWANCE ALLOCATIONS FOR §405(i)(2) ELIGIBLE UNITS [1]

State	Plant Name	Boiler	Allowances for years 2000–2009			Allowances for years 2010 and thereafter		
			(A) [2]	(B)	(C) [3]	(D) [4]	(E)	(F) [5]
			Unadjusted basic	Increment for §405(i)(2)	Unadjusted basic, less §405(i)(2) increment	Unadjusted basic	Increment for §405(i)(2)	Unadjusted basic, less §405(i)(2) increment
Florida	Anciote	1	11,740	1,403	10,337	11,737	1,403	10,334
Florida	Ancista	2	12,421	1,529	10,892	12,418	1,529	10,889
Michigan	Monroe	1	27,243	198	27,045	27,243	198	27,045
Michigan	Monroe	2	28,273	495	27,778	28,273	495	27,778
Michigan	Monroe	3	26,466	445	26,021	26,466	445	26,021
Michigan	Monroe	4	29,065	930	28,135	29,065	930	28,135

Notes:

[1] The unadjusted allowances shown in columns (A) and (D) for the units in this table and in columns (A) and (F) of Table 2 assume that these units fully qualify for §405(i)(2). If they do not, then they will receive the unadjusted basic allowances shown in columns (C) and (F) of this table. Please note that the unadjusted basic allowances shown will be adjusted to reach the 8.9 million ton overall cap on allowances, and furthermore that deductions for the Conservation and Renewable Energy Reserve, the Repowering Reserve, and the Special Allowance Reserve will also be deducted from the allowances shown herein.

[2] Equal to the unadjusted basic allowances shown in column (A) of Table 2.

[3] Equal to column (A) minus column (B).

[4] Equal to the unadjusted basic allowances shown in column (F) of Table 2.

[5] Equal to column (D) minus column (E).

§ 73.90 [Corrected]

1. On page 15716, first column, § 73.90, paragraph (a) introductory text, line 9, the citation "§ 72.13" is corrected to read "§ 73.13".

Dated: June 10, 1993.

Penelope Hansen,

Deputy Director, Acid Rain Division, Office of Air and Radiation, U.S. Environmental Protection Agency.

[FR Doc. 93–14568 Filed 6–18–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 8F3580/R2001; FRL–4626–9]

RIN No. 2070–AB78

Pesticide Tolerances for Carbon Disulfide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of the nematicide, insecticide, and fungicide carbon disulfide in or on the raw agricultural commodities (RACs) grapefruit, grapes, lemons, and oranges at 0.1 part per million (ppm) from the application of sodium tetrathiocarbonate. This regulation to establish the maximum permissible level of residues of the pesticide in or on these commodities was requested in a petition submitted by Unocal Corp.

EFFECTIVE DATE: This regulation becomes effective June 21, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 8F3580/R2001], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., St., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5540.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 12, 1988 (53 FR 39783), which announced that Unocal Corp., 461 S. Boyston C5, Los Angeles, CA 90017, had submitted a pesticide petition (PP 8F3580) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for residues of the nematicide, insecticide, and fungicide carbon disulfide in or on the raw agricultural

commodities (RACs) grapefruit, grapes, lemons, oranges, potatoes, and tomatoes at 0.1 part per million (ppm) from the application of sodium tetrathiocarbonate.

Sodium tetrathiocarbonate stoichiometrically converts to carbon disulfide, sodium hydroxide, hydrogen sulfide, and sulfur in the soil after application to the RACs. Carbon disulfide is the pesticide's active compound.

Unocal Corp. subsequently amended PP 8F3580 to delete the proposed tolerance for potatoes. The Agency is not at this time establishing a tolerance for tomatoes since this RAC is not proposed for registration with the concurrent application for registration under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended. Unocal Corp. will have to petition the Agency for establishment of a tolerance in tomatoes when it makes an application for registration under FIFRA for use on this RAC.

There were no comments received in response to the notice of filing.

The data submitted in the petition and all other relevant material have been evaluated. The toxicology data considered in support of the tolerances include:

1. A rat acute oral study with an LD_{50} of 587 milligrams (mg)/kilogram (kg) for females and 631 mg/kg for combined sexes for sodium tetrathiocarbonate. The LD_{50} for carbon disulfide is 456 mg/kg.

2. A developmental toxicity study in rats for sodium tetrathiocarbonate with a maternal no-observed-effect level (NOEL) of 150 mg/kg, and a lowest effect level (LEL) of 400 mg/kg (death), and a developmental NOEL of 450 mg/kg.

3. A developmental toxicity study in rabbits for sodium tetrathiocarbonate with a maternal NOEL of 75 mg/kg, and an LEL of 150 mg/kg (convulsions and prostration), and a developmental NOEL of 150 mg/kg, and an LEL of 185 mg/kg (increased resorption, post implantation loss, increase incidence 13th rib).

4. Sodium tetrathiocarbonate was negative in a bacterial gene mutation study with and without S9 activation, unscheduled mammalian DNA synthesis, and *in vitro* chromosomal aberration without S9 activation, but weakly positive with S9 activation.

5. In a 90-day rat inhalation study with carbon disulfide there was no NOEL for brain effects.

6. In a 90-day mouse inhalation study with carbon disulfide the NOEL was 300 ppm and the LEL was 800 ppm (lesions of peripheral nerves, spinal cord, kidney, and spleen).

The nature of residues is understood. Unocal has documented that the level of free or bound carbon disulfide or parent sodium tetrathiocarbonate is extremely low in the treated crops (less than 50 ppb). Carbon disulfide is a naturally occurring compound found in grapes and citrus at 5 to 20 parts per billion and up to 1 to 73 ppm in Shiitake mushrooms. The analytical method has been validated. A tolerance for carbon disulfide is established at the analytical level of quantification of 0.1 ppm. Dietary exposure to carbon disulfide from treatment of the RACs with sodium tetrathiocarbonate will not be appreciably different than the natural background levels. Therefore, further toxicity testing for carbon disulfide was not required, and the standard risk assessment approach of using the Reference Dose (RfD) based on systemic toxicity is not relevant to this petition.

The metabolism of carbon disulfide and sodium tetrathiocarbonate in plants is adequately understood. There is no reasonable expectation of secondary residues occurring in milk, eggs, and meat of livestock or poultry. An adequate analytical method, gas chromatography, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 242, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-305-4432).

The pesticide is considered useful for the purposes for which the tolerances are sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fees provided by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, and the requestor's contentions on each such issue, and a summary of the evidence relied upon by the objection (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve on or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: June 10, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart C, by adding new § 180.467, to read as follows:

§ 180.467 Carbon disulfide; tolerances for residues.

Tolerances are established for the nematicide, insecticide, and fungicide carbon disulfide, from the application of sodium tetrathiocarbonate, in or on the following raw agricultural commodities:

Commodity	Parts per million
Grapefruit	0.1
Grapes	0.1
Lemons	0.1
Oranges	0.1

[FR Doc. 93–14562 Filed 6–18–93; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP 1E3965/R1197; FRL–4585–4]

RIN 2070–AB78

Pesticide Tolerance for Pendimethalin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the herbicide pendimethalin and its metabolite in or on the raw agricultural commodity dry bulb onions. This regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective June 21, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 1E3965/R1197], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: No. 1, Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 14, 1993 (58 FR 19390), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 1E3965 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to establish a tolerance for residues of pendimethalin [*N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine] and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol in or on the raw agricultural commodity dry bulb onions at 0.1 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 10, 1993.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.361, paragraph (a) table is amended by adding and alphabetically inserting the raw agricultural commodity dry bulb onions, to read as follows:

§ 180.361 Pendimethalin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Onions, dry bulb	0.1
* * * * *	

* * * * *

[FR Doc. 93–14566 Filed 6–18–93; 8:45 am]
BILLING CODE 4310–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6983

[OR–943–4210–06; GP3–163; OR–19025, OR–19032]

Partial Revocation of Two Executive Orders Dated July 2, 1910, and Opening of Lands Subject to Section 24 of the Federal Power Act; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two executive orders insofar as they affect 362.17 acres of public lands withdrawn for the Bureau of Land Management's Powersite Reserve Nos. 26 and 66. This action will open approximately 82.17 acres to surface entry. This action will also open approximately 280 acres within Power Project No. 2030 to surface entry, subject to the provision of section 24 of the Federal Power Act. The

revocation and opening are needed to permit conveyance of the lands to the State of Oregon. The lands have been and will remain open to mineral leasing. The lands have been and will remain open to mining, except for the lands within Power Project No. 2030.

EFFECTIVE DATE: July 21, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–280–7162.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and pursuant to the determination by the Federal Energy Regulatory Commission in DVOR–618, it is ordered as follows:

1. The Executive Order dated July 1, 1910, which established Powersite Reserve No. 26, is hereby revoked insofar as it affects the following described land:

Willamette Meridian

T. 11 S., R. 12 E.,
Sec. 27, lot 2 and SW¼NW¼.

The area described contains 69.53 acres in Jefferson County.

2. The Executive Order dated July 2, 1910, which established Powersite Reserve No. 66, is hereby revoked insofar as it affects the following described lands:

Willamette Meridian

T. 11 S., R. 12 E.,
Sec. 22, lots 1, 2, and 3, and NE¼SE¼;
Sec. 28, lots 1, 2, 3, and 4.

The areas described aggregate 292.64 acres in Jefferson County.

3. At 8:30 a.m. on July 21, 1993, the lands described in paragraphs 1 and 2, except as provided in paragraph 4, will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m. on July 21, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 8:30 a.m. July 21, 1993, those portions of the following described lands that lie within the boundary of Power Project No. 2030 will be opened to conveyance to the State of Oregon, subject to the provisions of Section 24 of the Federal Power Act of June 10, 1920, 16 U.S.C. 818 (1988), as amended:

Willamette Meridian

T. 11 S., R. 12 E.,
Sec. 22, lots 1, 2, and 3, and NE¼SE¼;
Sec. 27, lot 2 and SW¼NW¼;
Sec. 28, lots 1, 2, 3, and 4.

The areas described aggregate approximately 280 acres in Jefferson County.

Dated: June 8, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–14531 Filed 6–18–93; 8:45 am]

BILLING CODE 4310–33–M

43 CFR Public Land Order 6984

[NM–930–4210–06; NMNM 055653]

Partial Revocation of Public Land Order No. 2051; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order insofar as it affects 210.17 acres of public lands withdrawn for New Mexico State University (formerly New Mexico College of Agriculture and Mechanic Arts) for research programs in connection with Federal programs. The lands are no longer needed for this purpose, and the revocation is needed to permit disposal of the lands through sale as directed by Public Law 100–559.

EFFECTIVE DATE: June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502, 505–438–7594.

By virtue of the authority vested in the Secretary of the Interior by Section 502 of Public Law 100–559, it is ordered as follows:

1. Public Land Order No. 2051, which withdrew public lands for use by the New Mexico College of Agriculture and Mechanic Arts, now New Mexico State University, for research programs in connection with Federal programs, is hereby revoked insofar as it affects the following described lands:

New Mexico Principal Meridian

T. 23 S., R. 2 E.,
Sec. 26, NE¼NE¼, E½NW¼NE¼, and S½NE¼;
Sec. 35, lots 6 and 7.

The areas described aggregate 210.17 acres in Dona Ana County.

2. The lands described above are hereby made available for conveyance as authorized and directed by Section 502 of Public Law 100–559.

Dated: June 8, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–14533 Filed 6–18–93; 8:45 am]

BILLING CODE 4310–FB–M

43 CFR Public Land Order 6985

[MT–930–4210–06; MTM 41179]

Partial Revocation of Executive Order Dated October 9, 1917; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes an executive order insofar as it affects 303 acres of National Forest System land withdrawn for Phosphate Reserve No. 30, Montana No. 7. The land is no longer needed for this purpose, and the revocation is needed to permit disposal of the land through exchange under the General Exchange Act of 1922. This action will open the land to such forms of disposition as may by law be made of National Forest System land. The land is temporarily closed to mining by a Forest Service exchange proposal. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: July 21, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Executive Order dated October 9, 1917, which withdrew National Forest System land as a phosphate reserve, is hereby revoked insofar as it affects the following described land:

Principal Meridian

Gallatin National Forest

T. 8 S., R. 4 E.,
Sec. 27, that portion of the W½ lying west of the Gallatin River.

The area described contains approximately 303 acres in Gallatin County.

2. At 9 a.m. on July 21, 1993, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: June 8, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–14532 Filed 6–18–93; 8:45 am]

BILLING CODE 4310–DN–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 92-165; FCC 93-260]

Expansion of the Restricted Bands of Operation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission is amending its rules to restrict the operation of low power, non-licensed transmitters within the frequency bands that were recently authorized for Global Maritime Distress and Safety System (GMDSS). This action will protect the frequency bands used by the GMDSS from harmful interference.

EFFECTIVE DATE: July 21, 1993.

FOR FURTHER INFORMATION CONTACT: Errol Chang, Technical Standards Branch, Office of Engineering and Technology, (202) 653-7316.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order (R&O)* in ET Docket No. 92-165, adopted on May 13, 1993 and released June 1, 1993. The full text of this *R&O* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 452-1422, 2100 M Street, NW., suite 204, Washington, DC 20036.

Summary of Report and Order

1. By this action, the Commission is amending part 15 of its rules to restrict the operation of low power, non-licensed transmitters within the frequency bands that were recently authorized for the Global Maritime Distress and Safety System (GMDSS). The GMDSS is an automated ship-to-shore distress alerting system that is an integral part of the maritime search and rescue operations.

2. On July 22, 1992, the Commission adopted a Notice of Proposed Rule Making (Notice) in this proceeding (57 FR 37939, August 21, 1992). The United States Coast Guard was the only party to file comments on the Notice.

3. After considering the comments, the Commission determined that it was in the public interest to adopt rules to protect certain GMDSS frequencies from low power, non-licensed transmitter operating under 47 CFR part 15.

4. Accordingly, it is ordered that pursuant to the authority contained in Section 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Section 154, 303 part 15 of the Commission's Rules is amended as set forth below. It is further ordered that this proceeding is terminated.

5. *Regulatory Flexibility Act.* The final Regulatory Analysis is contained in the complete *Report and Order* of this proceeding.

List of Subjects in 47 CFR Part 15

Communications equipment, Marine safety, Restricted bands.

Amended Text

PART 15—RADIO FREQUENCY DEVICE

1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 4, 301, 302, 303, 304 and 307.

2. Section 15.205 is amended by revising paragraph (a) to read as follows:

§ 15.205 Restricted bands of operation.

(a) Except as shown in paragraph (d) of this section, only spurious emissions are permitted in any of the frequency bands listed below:

MHz	MHz	MHz	GHz
0.090–0.110	16.42–423	399.9–410	4.5–5.25
[1] 0.495–0.505	16.69475–16.69525	608–614	5.35–5.46
2.1735–2.1905	16.80425–16.80475	960–1240	7.25–7.75
4.125–4.128	25.5–25.67	1300–1427	8.025–8.5
4.17725–4.17775	37.5–38.25	1435–1626.5	9.0–9.2
4.20725–4.20775	73–74.6	1645.5–1646.5	9.3–9.5
6.215–6.218	74.8–75.2	1660–1710	10.6–12.7
6.26775–6.26825	108–121.94	1718.8–1722.2	13.25–13.4
6.31175–6.31225	123–138	2200–2300	14.47–14.5
8.291–8.294	149.9–150.05	2310–2390	15.35–16.2
8.362–8.366	156.52475–156.52525	2483.5–2500	17.7–21.4
8.37625–8.38675	156.7–156.9	2655–2900	22.01–23.12
8.41425–8.41475	162.0125–167.17	3260–3267	23.6–24.0
12.29–12.293	167.72–173.2	3332–3339	31.2–31.8
12.51975–12.52025	240–285	3345.8–3358	36.43–36.5
12.57675–12.57725	322–335.4	3600–4400	[2]
13.36–13.41			

[1] Until February 1, 1999, this restricted band shall be 0.490–0.510 MHz.
[2] Above 38.6

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–14523 Filed 6–18–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 350, 355, 385, 390, 391, and 395

[FHWA Docket Nos. MC–116, MC–88–12, MC–91–2, MC–91–3, MC–90–2, and MC–92–12]

RIN 2125–AC48, RIN 2125–AC67

Federal Motor Carrier Safety Regulations; Technical Corrections

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical corrections.

SUMMARY: This document corrects final rules that appeared in the **Federal Register** on October 30, 1987, February 1, 1990, July 30, 1992, and February 2, 1993. The corrections are necessary to remove the descriptions for recording total mileage today, home terminal address, and origin and destination; change the references to the driver qualification file requirements; add a provision for motor carriers and drivers in the State of Alaska that was omitted when the exceptions, previously scattered, were consolidated; and make conforming changes to the references to accident reporting requirements.

EFFECTIVE DATE: June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: A final rule published in the **Federal Register** on February 2, 1993 (58 FR 6726) amended 49 CFR part 390 and removed part 394, Notification and Reporting of Accidents including § 394.3, Definition of "reportable accident." The remaining references to accident recordkeeping and "reportable" accidents in paragraph (2)(a) of appendix C to part 350, in the paragraph titled Driver Qualifications of appendix A to part 355, and in §§ 385.5(f), 385.7(f), 390.3(f)(2), 390.5, 391.85 and 391.113 are being removed or changed to conform to the new requirements.

In addition, 49 CFR part 391 was amended by an interim final rule published in the **Federal Register** on February 1, 1990 (55 FR 3546). Section 391.87(e) was redesignated § 391.87(f) in that amendment, but the cross reference to § 391.87(e) in § 391.89 was not amended. In the original final rule of November 21, 1988 (53 FR 47134), § 391.87(e) listed the specific drug testing information required to be retained in driver qualification files. Section 391.89 provided the conditions for release of this specific information, referencing § 391.87(e). The FHWA intended that the reference to this information remain unchanged. The FHWA is, therefore, making a conforming amendment to § 391.89 by changing the cross references from § 391.87(e) to § 391.87(f).

Also, 49 CFR part 395 was amended by a final rule published in the **Federal Register** on July 30, 1992 (57 FR 33638). This rule included technical amendments which consolidated various exceptions to the hours-of-service rules into a new § 395.1, Scope of the rules in this part. Section 395.1(i) should have included four subordinate provisions. The 20-hour rule exception for drivers in the State of Alaska was inadvertently omitted. The FHWA is, therefore, amending part 395 to add the omitted provision to § 395.1(i)(1).

Finally, 49 CFR part 395 was amended by a final rule published in the **Federal Register** on October 30, 1987 (52 FR 41718). The rule included amendments which eliminated the requirements to record total mileage today, home terminal address, origin, and destination on each day's record of duty status. These previously required items were removed from § 395.8(d), although the descriptions of how to record these items were not removed from § 395.8(f). The FHWA is, therefore, amending part 395 to remove §§ 395.8(f)(11), 395.8(f)(12) and 395.8(f)(15). The FHWA is revising § 395.8(f) accordingly.

Rulemaking Analyses and Notices

Regulatory Impact

Because this final rule makes only minor, technical changes to the Federal Motor Carrier Safety Regulations to delete provisions relating to earlier-removed sections on reportable accidents and driver's records of duty status, conform cross references to § 391.87(f) in § 391.89, and incorporate hours of service provision that was inadvertently omitted, prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B). In addition, notice and opportunity for comment are not required under the Department of Transportation's regulatory policies and procedures for the following reason. We anticipate that notice and comment would not result in the receipt of useful information because the FHWA is not exercising discretion in a way that could be meaningfully affected by public comment. Therefore, the FHWA is making these amendments final without notice and opportunity for comment.

We also believe that the minor, merely technical nature of these amendments constitutes good cause to dispense with the 30 day delayed effective date requirement of 5 U.S.C. 553(d). In addition, the restoration of the omitted 20-hour rule for motor carriers and drivers in the State of Alaska creates an exemption from the general rule that a driver of a commercial motor vehicle (CMV) is prohibited from driving after having been on duty for 15 hours following 8 consecutive hours off duty. Thus, this amendment relieves CMV operators driving in the State of Alaska from the 15 hour restriction which might otherwise apply.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. This rule merely (1) removes the references to reportable accidents, (2) removes cross references to § 391.87(e) and adds cross references to § 391.87(f) in § 391.89 to conform to the original regulations, (3) restores a portion of an exception for motor carriers and drivers operating in the State of Alaska which was omitted from a final rule that was previously published, and (4) removes the descriptions for recording certain information on the driver's record of duty status since the requirement for such entries was previously removed.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. With respect to the restoration of the exception to the 15-hour rule in the State of Alaska, we believe the impact of this action on small entities will be minimal. Because the 20-hour rule was omitted, the 15-

hour rule has applied to motor carriers and their drivers in the State of Alaska since August 31, 1992. No enforcement actions, however, have been brought against motor carriers in Alaska for alleged violations of the 15-hour rule since the 20-hour rule was omitted. As a result, the omission of the 20-hour rule has had little, if any, economic impact on the small carriers of Alaska. We therefore believe that the reinstatement of the 20-hour provision would have an equally limited impact on these small carriers.

After analyzing all of the regulatory amendments made by this rule, the FHWA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. Nothing in this document directly preempts any State law or regulation. This final rule does not limit the policymaking discretion of the States. States will, however, be required to adopt this amendment only for the enforcement of interstate operations. Therefore, the FHWA certifies that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action contains no information collection requirements for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RINs contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 350

Grant programs—transportation, Highway safety, Highways and roads, Motor vehicle safety.

49 CFR Part 355

Grant programs—transportation, Highways and roads, Highway safety, Motor vehicle safety.

49 CFR Part 385

Accidents, Motor carriers, Penalties.

49 CFR Part 390

Accidents, Highways and roads, Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 391

Drivers, Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 395

Driver's record of duty status, Hours of service of drivers, Recordkeeping and reporting requirements.

Issued on: June 15, 1993.

Rodney E. Slater,

Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, chapter III, subchapter B, parts 350, 355, 385, 390, 391 and 395 as follows:

PART 350—[AMENDED]

1. The authority citation for part 350 continues to read as follows:

Authority: 49 U.S.C. app. 2301–2304, 2505–2507; 49 U.S.C. 3102; sec. 15(d), Pub. L. 101–500, 104 Stat. 1213, 1219; secs. 4002 and 4009, Pub. L. 102–240, 105 Stat. 2140; and 49 CFR 1.48.

2. Paragraph 2(a) of appendix C to part 350 is revised to read as follows:

Appendix C to Part 350—Tolerance Guidelines for Adopting Compatible State Rules and Regulations

* * * * *

2. * * *

(a) States shall not be required to adopt 49 CFR parts 398, 399, 107, 171.15, 171.16 and 177.807 as applicable to either interstate or intrastate commerce. A State is not required to adopt 49 CFR part 178 only if the State can still enforce the standards contained therein.

* * * * *

PART 355—[AMENDED]

3. The authority citation for part 355 continues to read as follows:

Authority: 49 U.S.C. app. 2505–2508; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

4. In part 355, appendix A is amended by removing the word "reportable" from the paragraph entitled *Driver Qualifications.*

PART 385—[AMENDED]

5. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), and 3102; 49 U.S.C. app. 1814; 49 U.S.C. app. 2505 and 2512; sec. 15(b)(2), Pub. L. 101–500, 104 Stat. 1213, 1219; 49 CFR 1.48.

6. Paragraph (f) of § 385.5 is revised to read as follows:

§ 385.5 Safety fitness standard.

* * * * *

(f) Failure to maintain accident registers and copies of accident reports (part 390).

* * * * *

7. Paragraph (f) of § 385.7 is revised to read as follows:

§ 385.7 Factors to be considered in determining a safety rating.

* * * * *

(f) Frequency of accidents; hazardous materials incidents; accident rate per million miles; preventable accident rate per million miles; and other accident indicators; and whether these accident and incident indicators have improved or deteriorated over time.

* * * * *

PART 390—[AMENDED]

8. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. app. 2503 and 2505; 49 U.S.C. 3102 and 3104; and 49 CFR 1.48.

9. Paragraph (f)(2) of § 390.3 is revised to read as follows:

§ 390.3 General applicability.

* * * * *

(f) * * *

(2) Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States. The accident recordkeeping requirements of § 390.15 of this part remain applicable to the entities identified in this paragraph when engaged in the interstate charter transportation of passengers;

* * * * *

10. In § 390.5, the definition of "Principal place of business" is revised to read as follows:

§ 390.5 Definitions.

* * * * *

Principal place of business means a single location designated by the motor carrier, normally its headquarters, where records required by parts 387, 390, 391, 395, and 396 of this subchapter will be maintained. Provisions in this subchapter are made for maintaining certain records at locations other than the principal place of business.

* * * * *

PART 391—[AMENDED]

11. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. app. 2506; 49 U.S.C. 504 and 3102; and 49 CFR 1.48.

12. In § 391.85, the introductory text of the definition of "Non-suspicion-based post-accident testing" is revised to read as follows:

§ 391.85 Definitions.

* * * * *

Non-suspicion-based post-accident testing means testing of a commercial motor vehicle driver after an accident, as defined in § 390.5 of this subchapter:

* * * * *

13. Section 391.89 is revised to read as follows:

§ 391.89 Access to individual test results or test findings.

(a) No person may obtain the individual test results retained by a medical review officer, and no medical review officer shall release the individual test results of any employee to any person, without first obtaining written authorization from the tested employee. Nothing in this paragraph shall prohibit a medical review officer from releasing, to the employing motor carrier, the information delineated in § 391.87(f) of this subpart.

(b) No person may obtain the information delineated in § 391.87(f) of this part and retained by a motor carrier, and no motor carrier shall release such information about any employee or previous employee, without first obtaining written authorization from the tested employee.

14. Paragraph (a) in § 391.113 is revised to read as follows:

§ 391.113 Post-accident testing requirements.

(a) A driver shall provide a urine sample to be tested for the use of controlled substances as soon as possible, but not later than 32 hours, after an accident, as defined in § 390.5 of this subchapter, if the driver of the commercial motor vehicle receives a citation for a moving traffic violation arising from the accident.

* * * * *

PART 395—[AMENDED]

15. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 U.S.C. app. 2505; and 49 CFR 1.48.

16. Paragraph (i)(1) of § 395.1 is revised to read as follows:

§ 395.1 Scope of rules in this part.

* * * * *

(i) *State of Alaska.*

(1) The provisions of § 395.3 shall not apply to any driver who is driving a commercial motor vehicle in the State of Alaska. A driver who is driving a commercial motor vehicle in the State of Alaska must not drive or be required or permitted to drive—

(i) More than 15 hours following 8 consecutive hours off duty;

(ii) After being on duty for 20 hours or more following 8 consecutive hours off duty;

(iii) After having been on duty for 70 hours in any period of 7 consecutive days, if the motor carrier for which the driver drives does not operate every day in the week; or

(iv) After having been on duty for 80 hours in any period of 8 consecutive days, if the motor carrier for which the driver drives operates every day in the week.

* * * * *

17. Paragraph (f) of § 395.8 is revised to read as follows:

§ 395.8 Driver's record of duty status.

* * * * *

(f) The driver's activities shall be recorded in accordance with the following provisions:

(1) *Entries to be current.* Drivers shall keep their records of duty status current to the time shown for the last change of duty status.

(2) *Entries mode by driver only.* All entries relating to driver's duty status must be legible and in the driver's own handwriting.

(3) *Date.* The month, day and year for the beginning of each 24-hour period shall be shown on the form containing the driver's duty status record.

(4) *Total miles driving today.* Total mileage driven during the 24-hour period shall be recorded on the form containing the driver's duty status record.

(5) *Vehicle identification.* The carrier's vehicle number or State and license number of each truck, truck tractor and trailer operated during that 24-hour period shall be shown on the form containing the driver's duty status record.

(6) *Name of carrier.* The name(s) of the motor carrier(s) for which work is performed shall be shown on the form containing the driver's duty status record. When work is performed for more than one motor carrier during the same 24-hour period, the beginning and finishing time, showing a.m. or p.m., worked for each carrier shall be shown after each carrier name. Drivers of leased vehicles shall show the name of the motor carrier performing the transportation.

(7) *Signature/certification.* The driver shall certify to the correctness of all entries by signing the form containing the driver's duty status record with his/her legal name or name of record. The driver's signature certifies that all entries required by this section made by the driver are true and correct.

(8) *Time base to be used.* (i) The driver's duty status record shall be prepared, maintained, and submitted using the time standard in effect at the driver's home terminal, for a 24-hour period beginning with the time specified by the motor carrier for that driver's home terminal.

(ii) The term "7 or 8 consecutive days" means the 7 or 8 consecutive 24-hour periods as designated by the carrier for the driver's home terminal.

(iii) The 24-hour period starting time must be identified on the driver's duty status record. One-hour increments must appear on the graph, be identified, and preprinted. The words "Midnight" and "Noon" must appear above or beside the appropriate one-hour increment.

(9) *Main office address.* The motor carrier's main office address shall be shown on the form containing the driver's duty status record.

(10) *Recording days off duty.* Two or more consecutive 24-hour periods off duty may be recorded on one duty status record.

(11) *Total hours.* The total hours in each duty status: off duty other than in a sleeper berth; off duty in a sleeper berth; driving, and on duty not driving, shall be entered to the right of the grid, the total of such entries shall equal 24 hours.

(12) *Shipping document number(s) or name of shipper and commodity* shall be shown on the driver's record of duty status.

[FR Doc. 93–14511 Filed 6–18–93; 8:45 am]
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VOL 58 ISS 117 JE 21 1993 UMI

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Parts 611 and 672

[Docket No. 921107-3149; I.D. 052693B]

Foreign Fishing; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final 1993 initial specifications for Pacific ocean perch and the "other species" category, and closures to directed fishing.

SUMMARY: NMFS announces the final 1993 initial harvest specifications of total allowable catch (TAC) for Pacific ocean perch (POP) in the Gulf of Alaska (GOA), and a corresponding adjustment to the final TAC specifications for "other species." These actions are necessary to establish harvest limits for POP, and to adjust accordingly the TAC specifications for "other species" during the 1993 fishing year. NMFS also is closing specified areas to directed fishing for POP consistent with the final 1993 initial specifications for POP. These actions are intended to carry out management objectives contained in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: The final 1993 initial specifications for POP, the adjusted TAC specifications for "other species," and the specified closures to directed fishing for POP are effective at 12 noon, Alaska local time (A.l.t.), June 18, 1993. The closures to directed fishing are effective through 12 midnight, A.l.t., December 31, 1993.

ADDRESSES: Copies of a Final Environmental Assessment of 1993 Groundfish Total Allowable Catch Specifications for the Gulf of Alaska, dated February 1993 (EA), may be obtained from the Fisheries Management Division, Alaska Region, NMFS, Box 21668, Juneau, Alaska 99802. The Final Stock Assessment and Fishery Evaluation Report for the 1993 Gulf of Alaska Groundfish Fishery, dated November 1992 (SAFE Report), and the Analysis of Alternative Harvest Policies for Rebuilding Pacific Ocean Perch in the Gulf of Alaska, dated 20 May 1993, are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrat, Fishery Management Biologist, Alaska Region, NMFS, (907) 586-7230.

SUPPLEMENTARY INFORMATION:

Background

NMFS announces for the 1993 fishing year: (1) Acceptable biological catch (ABC) and total allowable catch (TAC) amounts for POP in the GOA and an apportionment of TACs among domestic annual processing (DAP), joint venture processing (JVP), and total allowable level of foreign fishing (TALFF); (2) inseason adjustment to the "other species" TAC specifications; and (3) specified area closures to directed fishing for POP. A discussion of each of these measures follows.

1. Specification of POP TAC

The North Pacific Fishery Management Council (Council) met December 8–13, 1992, to review current scientific information and consider public testimony regarding 1993 groundfish stocks and fisheries, and to recommend final 1993 specifications of TAC. Scientific information is contained in the SAFE Report, which was prepared and presented by the GOA Plan Team to the Council and the Council's Scientific and Statistical Committee (SSC) and Advisory Panel (AP). After consideration of Council recommendations and all other relevant information, NMFS, under 50 CFR 672.20(c)(1)(ii)(B), established final 1993 initial specifications for GOA groundfish, except for POP (58 FR 16787, March 31, 1993). For the reasons given below, NMFS requested that the Council reconsider its recommended specifications for POP at its April 1993 meeting.

The Council, at its December 1992 meeting, reviewed updated scientific information about POP life history, stock status, and commercial exploitation presented in the SAFE Report and in testimony to the Council and its committees, and recommended a 1993 POP ABC and TAC of 5,560 metric tons (mt) and 2,560 mt, respectively. The Council recommended the reduced TAC because scientific information indicates that POP stocks are depressed compared to historical, pre-exploitation levels, and that a high level of uncertainty is associated with stock assessment methodology. The Council believed that, on a Gulf-wide basis, the 2,560 mt TAC was anticipated to be sufficient to provide for unavoidable bycatch of POP in remaining trawl fisheries, and that a low TAC was necessary to rebuild POP stocks. The Council stated its desire to reduce the POP mortality, maintain non-POP fisheries, and avoid unnecessary waste and discards.

NMFS declined to specify an initial 1993 POP TAC at the time all other GOA groundfish TACs were specified (58 FR 16787, March 31, 1993) because of: (1) The requirements of the FMP at Section 2.1 to consider costs and benefits prior to undertaking of stock rebuilding plans; (2) the anticipated availability of additional biological and socioeconomic information on POP to be incorporated in a draft stock rebuilding analysis, scheduled to be reviewed by the Council at its April 1993 meeting; and (3) the potentially large value foregone to the trawl industry if the recommended TAC was implemented, as presented in testimony to the Council and in comments received by NMFS after the December 1992 meeting. NMFS instead referred the recommended specifications for POP back to the Council for reconsideration at its April 1993 meeting.

At its April 1993 meeting, the Council received public testimony and considered the draft analysis of alternatives for rebuilding POP stocks. Among other items, the POP rebuilding analysis presented information requested at earlier meetings by the Plan Team, SSC, AP, and an industry rockfish committee on an appropriate stock-recruitment relationship, optimal fishing exploitation rate (F_{MSY}), corresponding target biomass for rebuilding (B_{MSY}), and an evaluation of the economic costs and benefits associated with four stock rebuilding alternatives. In the normal course of events, this new information would not be incorporated in the stock assessment/specification process until the next annual cycle, here, the one for the 1994 groundfish specifications, when it could be reviewed and approved by the Plan Team. However, based on the new information and on comments by the SSC that, on the basis of the analysis, both the 1993 ABC and overfishing levels would have been set at F_{MSY} of 3,378 mt, the Council recommended that amount as both a new 1993 ABC and overfishing level. After public testimony, the Council also reiterated its original TAC recommendation of 2,560 mt as an appropriate harvest level for 1993.

The Council did not specifically address the distribution of POP ABC or TAC within the GOA at its April 1993 meeting. Groundfish ABCs and TACs have in the past been apportioned among the Regulatory areas and Districts in accordance with biomass distribution to reduce the potential for localized depletion and to make groundfish available to harvesters all over the GOA. This was also the Council

recommendation for the distribution of 1993 POP ABC and TAC in December 1992. However, distribution of the POP TAC based solely on biomass distribution would not fulfill Council expectations for POP management because the majority of trawl activity and highest need for POP bycatch is the Central Regulatory Area, while the highest abundance of POP occurs in the Eastern Regulatory Area. Therefore, insufficient amounts of POP would be available to support trawl fisheries in the Central Regulatory Area, and amounts excess to bycatch needs would be available in the other two areas. After attainment of the TAC in the Central Regulatory Area, continuing trawl fisheries would accrue additional POP, which would have to be discarded despite 100 percent mortality of these fish. In order to minimize such waste and discards and disruption of trawl fisheries, while at the same time reducing the risk of localized depletion of POP, NMFS is distributing the TAC among regulatory areas in another manner. TAC is distributed first, in accordance with the distribution of POP biomass; second, in accordance with anticipated bycatch needs; and last, as limited by the apportioned ABC for each regulatory area. The resultant apportionments of TAC for the Western, Central, and Eastern Regulatory Areas, respectively, are: 341 mt, 949 mt, and 1,270 mt (Table 1, Revised). NMFS estimates that in the Central Regulatory Area, additional amounts of POP may be caught during anticipated 1993 trawl fisheries, which could neither be retained nor survive to contribute to future recruitment of POP. However, overfishing has been established in a Gulf-wide basis and would not be reached solely on the basis of Central Regulatory Area fishing activities. As required by the FMP and implementing regulations, NMFS will take steps necessary to minimize waste, prevent overfishing while achieving the optimum yield (OY) of all groundfish species, including early curtailment of fisheries that have significant bycatches of POP in the GOA, and promote efficiency in resource utilization.

The Council previously recommended that DAP equal TAC for each groundfish species category, resulting in no TALFF or JVP apportionments for any groundfish for the 1993 fishing year.

Under 50 CFR 672.20(a)(2)(ii), the sum of the TACs for all species must fall within the combined OY range established for these species—116,000–800,00 mt. After specification of the 1993 initial TAC for POP, and adjustment of the specifications for "other species," the OY remains within this allowable range.

NMFS has reviewed the Council's recommendations for final 1993 POP ABC and TAC specifications and hereby approves these specifications under 50 CFR 672.20(c0(1)(ii)(B); the POP TAC is apportioned among regulatory areas within the GOA according to the stated goals of the Council and consistent with the best available scientific information about the POP resource.

2. Adjustment of TAC for "Other Species"

The FMP specifies that the TAC amount for the "other species" category is equal to 5 percent of the combined TACs for target species. The TAC of "other species" was previously specified for each regulatory area as 5 percent of the sum of all target groundfish TACs except POP, including 5 percent of the interim TAC for POP (58 FR 16787, March 31, 1993). The Director, Alaska Region (Regional Director) has adjusted the "other species" TAC for each regulatory area to reflect the final TAC specifications for POP. Resultant adjusted 1993 TACs of "other species" are shown in Table 1 (Revised).

3. Closures to Directed Fishing for POP

Notifications in the **Federal Register** of proposed and final 1993 interim specifications of groundfish and associated management measures for the GOA (57 FR 57982, December 8, 1992, and 58 FR 16787, March 1993, respectively), contained closures to directed fishing for POP during 1993. Under 50 CFR 672.20(c)(2)(ii), the Regional Director has determined that the TAC for POP specified for the Western, Central, and Eastern Regulatory Areas will be needed as incidental catch to support other anticipated groundfish fisheries during 1993. Although the estimated bycatch needs for POP in the Eastern Regulatory Area are substantially less than the available TAC, industry representatives have indicated that a fishery for the "other rockfish" category may expand significantly as a remedy to the lower availability of POP during 1993. The Regional Director has determined that available POP will be needed as bycatch to support other directed fisheries in that regulatory area. Therefore, the Regional Director is establishing directed fishing allowances of zero mt and prohibiting directed fishing for the remainder of the fishing year for POP in the Western, Central, and Eastern Regulatory Areas. Directed fishing standards may be found at 50 CFR 672.20(g). These closures to directed fishing could be rescinded if and when remaining POP is determined to no longer be needed as bycatch during 1993.

Response to Comments

Written comments on the proposed 1993 initial specifications and other management measures were requested until January 4, 1993. The Regional Director received four comments on the Council recommendations for 1993 rockfish TACs during the comment period. Comments on rockfishes other than POP were addressed in a previous **Federal Register** notice (58 FR 16787, March 31, 1993). Of the four letters, two expressed support for the Council's December 1992 recommendation of TAC for POP (2,560 mt), and two supported a higher TAC for POP. Because the Council at its April 1993 meeting again recommended a final 1993 POP TAC of 2,560 mt, those comments remain relevant to this action, and are summarized and responded to below.

Comment 1: The 1993 TAC recommended for POP by the Council (2,560 mt) is appropriate. POP stocks have been heavily exploited and remain depleted relative to historic pre-exploitation levels. The Magnuson Act mandates that regional councils rebuild depleted fish stocks. The recommended TAC was calculated using a reduced exploitation rate. It was the only stock projection presented to the Council at its December 1992 meeting that had a high probability of rebuilding the stocks to a commonly accepted reference level in a "reasonable" period of time.

Response: NMFS approved the Council's recommended TAC for POP. NMFS agrees that POP have been heavily exploited, and that the population is currently below historic "unfished" levels and may be in need of rebuilding. NMFS concurs with the Council's action to analyze alternatives for possible adoption of a stock rebuilding plan as required by the FMP.

Comment 2: The POP TAC recommended by the Council is unjustifiably low; TAC should be set at or slightly below ABC. The ABC adopted by the Council and recommended by its advisory bodies in December 1992 for 1993 (5,560 mt) is based on the best available scientific information and incorporates a conservative adjustment for the status of the POP population relative to a commonly accepted reference level. The population of POP is low but stable, and current fishing is not the cause of large declines in prior years. NMFS can effectively manage a TAC set at or near ABC. At current exploitation rates incorporated in the ABC, recruitment

will occur under favorable environmental conditions.

Response: NMFS believes that a reduced TAC for POP is justified on biological grounds because of uncertainties about the knowledge about rockfish biology, historic exploitation levels, and population status, and because the current ABC is 3,378 mt, equal to the overfishing level. The 1993 ABC for POP recommended in December 1992, 5,560 mt, was the product of a rigorous analysis of available data. However, after review of new information presented to the Council and its committees in April 1993 as part of an analysis of potential POP stock rebuilding programs, the SSC indicated that it would have adopted an ABC and overfishing level of 3,378 mt had that information been available in December 1992. The Council subsequently adopted 3,378 mt as the ABC and overfishing level. Additionally, current POP stock survey methodology will benefit from continual reevaluation of methods, and the spawn-recruit relationship for POP is not well understood. Finally, changes in biomass and recruitment patterns for species such as pollock and arrowtooth flounder may indicate large-scale changes in the GOA ecosystem. If such environmental changes limit environmental conditions favorable for POP, then all sources of mortality, including that from commercial fishing, could reduce the probability of successful recruitment. These factors support a conservative TAC to improve the probability of maintenance of the POP stocks.

Comment 3: The recommended TAC for POP establishes a "bycatch only" management regime and will result in unnecessary waste and discards of POP bycatch in other groundfish fisheries once TAC has been achieved and POP may no longer be retained.

Response: Estimation of bycatch needs for POP in 1992 groundfish fisheries indicates that the recommended 1993 TAC for POP will support non-POP trawl fisheries at levels experienced in 1992 (or at increased levels for some species), except in the Central Regulatory Area. NMFS distributed the recommended overall TAC among GOA Regulatory areas to accomplish the Council goals of decreasing POP fishing mortality with minimum disruption to existing groundfish fisheries, and to avoid unnecessary waste and discards.

Comment 4: The POP TAC recommended by the Council was politically motivated to limit trawl activity in the GOA.

Response: The POP TAC recommended by the Council is justifiable for conservation and management of the POP stock. Political or other motivations are not germane.

Classification

This action is authorized under 50 CFR 611.92 and 672.20 and complies with E.O. 12291.

NMFS prepared an EA on the 1993 TAC specifications. The Assistant Administrator for Fisheries, NOAA, concluded that no significant impact on the human environment will result from their implementation. The initial POP TAC, adjusted "other species" TAC, and sum of all 1993 groundfish TACs in the GOA are unchanged from those for which the EA was prepared, and the conclusion of that document remains valid.

Pursuant to section 7 of the Endangered Species Act (ESA), an informal consultation about effects of the final 1993 initial groundfish specifications on: (1) Steller sea lions was concluded on January 27, 1993; (2) listed species of Pacific salmon on April 21, 1993; and, (3) listed, proposed and candidate seabirds was concluded on February 1 and clarified on February 12, 1993. The Regional Director has determined that fishing activities conducted under this rule would not affect endangered or threatened species under the ESA in a manner not already considered in these information consultations concluded for the 1993 groundfish specifications.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 16, 1993.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

TABLE 1 (REVISED).—FINAL 1993 SPECIFICATIONS FOR OVERFISHING LEVELS, ACCEPTABLE BIOLOGICAL CATCHES (ABC), AND TOTAL ALLOWABLE CATCHES (TAC) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE SHUMAGIN (SH), CHIRIKOF (CH), KODIAK (KD), WEST YAKUTAT (WYK), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA (GW)

[Specifications of domestic annual processing (DAP) equal TAC. Values are in metric tons]

Species	Overfishing level	Area[1]	ABC	TAC=DAP
Pollock[2]	286,000	SH	34,068	24,087
		CH	36,737	25,974
		KD	86,195	60,939
		W/C	157,000	111,000
	9,020	E	3,400	3,400
		Total	160,400	114,400
Pacific cod[3]	.....	W	18,700	18,700
		C	35,200	35,200
		E	2,800	2,800
	78,100	Total	56,700	56,700
Deep water flatfish[4]	.....	W	2,020	1,740
		C	35,580	15,000
		E	7,930	3,000

TABLE 1 (REVISED).—FINAL 1993 SPECIFICATIONS FOR OVERFISHING LEVELS, ACCEPTABLE BIOLOGICAL CATCHES (ABC), AND TOTAL ALLOWABLE CATCHES (TAC) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE SHUMAGIN (SH), CHIRIKOF (CH), KODIAK (KD), WEST YAKUTAT (WYK), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA (GW)—Continued

[Specifications of domestic annual processing (DAP) equal TAC. Values are in metric tons]

Species	Overfishing level	Area [1]	ABC	TAC=DAP
	59,650	Total	45,530	19,740
Shallow water flatfish [6]		W	27,480	4,500
		C	21,260	10,000
		E	1,740	1,740
	70,650	Total	50,480	16,240
Flathead sole		W	12,580	2,000
		C	31,830	5,000
		E	5,040	3,000
	64,780	Total	49,450	10,000
Arrowtooth flounder		W	38,880	5,000
		C	253,330	20,000
		E	29,080	5,000
	451,690	Total	321,290	30,000
Sablefish [6]		W	2,030	2,030
		C	9,610	9,610
		WYK	3,830	3,830
		SEO	5,430	5,430
	27,750	Total	20,900	20,900
Northern rockfish [7]		W	1,000	1,000
		C	4,720	4,720
		E	40	40
	10,360	Total	5,760	5,760
Other rockfish [8]		W	330	214
		C	1,640	1,064
		E	6,330	4,105
	9,650	Total	8,300	5,383
Pacific ocean perch [9]		W	753	341
		C	949	949
		E	1,676	1,270
	3,378	Total	3,378	2,560
Shortraker/rougheye rockfish [10]		W	100	90
		C	1,290	1,161
		E	570	513
	2,900	Total	1,960	1,764
Pelagic shelf rockfish [11]		W	1,010	1,010
		C	4,450	4,450
		E	1,280	1,280
	11,300	Total	6,740	6,740
Demersal shelf rockfish [12]	1,600	SEO	800	800
Thornyhead rockfish	1,441	GW	1,180	1,062
Other species [13]		W	NA	3,053
		C	NA	9,721
		E	NA	1,628
	NA	Total	NA	14,602
Total			732,868	306,651

Footnotes:
[1] See figure 1 of § 672.20 for description of regulatory areas/districts.

TABLE 1 (REVISED).—FINAL 1993 SPECIFICATIONS FOR OVERFISHING LEVELS, ACCEPTABLE BIOLOGICAL CATCHES (ABC), AND TOTAL ALLOWABLE CATCHES (TAC) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE SHUMAGIN (SH), CHIRIKOF (CH), KODIAK (KD), WEST YAKUTAT (WYK), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA (GW)—Continued

[Specifications of domestic annual processing (DAP) equal TAC. Values are in metric tons]

Species	Overfishing level	Area [1]	ABC	TAC=DAP

[2] TAC for W/C Regulatory Area is 111,000 mt, representing the sum of the Shumagin (SH), Chirikof (CH), and Kodiak (KD) districts. The category pollock is allocated entirely to vessels catching pollock for processing by the inshore component after subtraction of an amount that is projected by the Regional Director to be caught by, or delivered to, the offshore component incidental to fishing for other groundfish species.

[3] The category Pacific cod is allocated 90 percent to vessels catching Pacific cod for processing by the inshore component and 10 percent to vessels catching Pacific cod for processing by the offshore component (Table 4).

[4] The category "deep water flatfish" means rex sole, Dover sole, and Greenland turbot.

[5] The category "shallow water flatfish" means flounders not including "deep water flatfish," flathead sole, or arrowtooth flounder.

[6] The category sablefish is allocated to trawl and hook-and-line gears (Table 2).

[7] The category Northern rockfish (*Sebastes polyspinis*) was previously part of the "Other rockfish" complex.

[8] The category "other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District includes slope rockfish, and demersal shelf rockfish as defined in #12 below. The category "other rockfish" in the Southeast Outside District includes only the slope rockfish.

Slope rockfish means all members of the genus *Sebastes* not defined as pelagic shelf rockfish, demersal shelf rockfish, or Pacific ocean perch, including the following:

Sebastes aurora (aurora rockfish), *S. melanostomus* (blackgill rockfish), *S. paucispinis* (bocaccio), (*S. goodei* (chilipepper rockfish), *S. crameri* (darkblotch rockfish), *S. elongatus* (greenstriped rockfish), *S. variegatus* (harlequin rockfish), *S. wilsoni* (pygmy rockfish), *S. proriger* (redstripe rockfish), *S. zacentrus* (sharpchin rockfish), *S. jordani* (shortbelly rockfish), *S. brevispinis* (silvergrey rockfish), *S. diploproa* (splitnose rockfish), *S. saxicola* (Stripetail rockfish), *S. miniatus* (Vermilion rockfish), and *S. reedi* (Yellowmouth rockfish).

[9] The category "Pacific ocean perch" means *Sebastes alutus*.

[10] The category "shortraker/rougheye rockfish" includes *Sebastes borealis* and *S. aleutianus*, respectively.

[11] The category "pelagic shelf rockfish" includes: *Sebastes melanops* (black rockfish), *S. mystinus* (blue rockfish), *S. ciliatus* (dusky rockfish), *S. entomelas* (widow rockfish), and *S. flavidus* (yellowtail rockfish).

[12] The category "demersal shelf rockfish" includes: *Sebastes pinniger* (canary rockfish), *S. nebulosus* (China rockfish), *S. caurinus* (copper rockfish), *S. maliger* (quillback rockfish), *S. babcocki* (redbanded rockfish), *S. helvomaculatus* (rosethorn rockfish), *S. nigrocinctus* (tiger rockfish), and *S. ruberrimus* (yelloweye rockfish).

[13] The category "other species" includes Atka mackerel, sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The TAC is equal to 5 percent of the sum of TACs of target species in each Regulatory Area.

[FR Doc. 93-14544 Filed 6-18-93; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 117
Monday, June 21, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 704 and 741

Organization and Operations of Federal Credit Unions: Corporate Credit Unions; Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Extension of comment period.

SUMMARY: On May 19, 1993, the NCUA issued a proposed rule allowing corporate credit unions more options in purchasing fidelity bond coverage. The proposed rule was published in the **Federal Register** on May 27, 1993 (see 58 FR 30719). The NCUA Board requested that comments on the proposed rule be postmarked by July 26, 1993. Due to a request made, the Board has decided to extend the comment period for four days, to July 30, 1993.

DATES: The comment period is being extended from July 26, 1993, to July 30, 1993. Comments must be postmarked by July 30, 1993.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, or Ron Alf, Corporate Specialist, Office of Examination and Insurance, 202–682–9640, or Allan Meltzer, Associate General Counsel, Office of General Counsel, 202–682–9630, at the above address.

Authority: The authority for this action is the general rulemaking authority of the NCUA Board, 12 U.S.C. 1766(a).

By the National Credit Union Administration Board on June 14, 1993.

Becky Baker,
Secretary of the Board.

[FR Doc. 93–14572 Filed 6–18–93; 8:45 am]
BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–93–11]

Petition for Rulemaking

Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received August 20, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 15, 1993.

Donald P. Byrne,
Assistant Chief Council for Regulations.

Petitions for Rulemaking

Docket No.: 27296
Petitioner: Mr. John W. Caulkins
Regulations Affected: 14 CFR 43.7(d)
Description of Rulechange Sought: To change the reference § 43.3(h) to 43.3(i) in the subject FAR.

Petitioner's Reason for the Request: The petitioner feels that the reference to § 43.3(h), contained in § 43.7(d), should read § 43.3(i).

[FR Doc. 93–14506 Filed 6–18–93; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 93–ANE–10]

Airworthiness Directives; Dowty Rotol (Now Dowty Aerospace Gloucester Ltd.) Propeller Models (c)R354/4–123–F/13, (c)R354/4–123–F/20, and (c)R375/4–123–F/21

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Dowty Rotol (now Dowty Aerospace Gloucester Ltd.) Propeller Model (c)R354/4–123–F/13 series, that currently requires a torque check of the propeller retention bolts for low torque; a magnetic particle inspection of the propeller retention bolts for cracks, and dye penetrant, ultrasonic, and eddy current inspections of the propeller hub backface for cracks. This action would require inspections of additional model propellers, require installation of an interface shim, and increase the repetitive inspection interval from 500 to 1500 hours time in service (TIS). This proposal is prompted by new test data and results of world-wide fleet operator service usage inspections. The actions specified by the proposed AD are intended to prevent possible loss of the propeller.

DATES: Comments must be received by August 20, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–10, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dowty Aerospace Gloucester Ltd., Anson Business Park, Cheltenham Road East, Gloucester GL2 9QN England. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Francis X. Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, telephone (617) 273–7066; fax (617) 270–2412.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–10." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–10, 12 New England Executive Park, Burlington, Massachusetts, 01803–5299.

Discussion

On May 11, 1988, the FAA issued AD 87–21–51, Amendment 39–5929 (53 FR 25139, July 5, 1988), applicable to Dowty Rotol (now Dowty Aerospace Gloucester Ltd.) Propeller Model (c)R354/4–123–F/13, installed on SAAB–SF340A and SAAB–SF340B series aircraft, to require a torque check of the propeller retention bolts for low torque; a magnetic particle inspection of the propeller retention bolts for cracks; and dye penetrant, ultrasonic, and eddy current inspections of the propeller hub backface for cracks. That action was prompted by reports of propellers with cracked hubs. These conditions, if not corrected, could result in possible loss of the propeller.

Since the issuance of that AD, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, has received reports of new test data and the results of world-wide fleet operator service usage inspections. The CAA submitted this data to the FAA and the FAA has reviewed this data and the findings of the CAA. The FAA has determined that AD action is necessary to increase the interval between repetitive inspections from 500 to 1500 hours time in service (TIS) after installation of a propeller hub/engine flange interface shim (Dowty Aerospace Gloucester Ltd. Modification (C) VP3336). Also, Dowty Aerospace Gloucester Ltd., made improvements to the original design, and gave these improvements different model numbers, which now must be included in the Applicability section of the AD. Current installations on the SAAB–SF340A, and SF340B, series aircraft include the following propeller hub assemblies Model Numbers: (c)R354/4–123–F/13, (c)R354/4–123–F/20, and (c)R375/4–123–F/21. These propeller models may have the following Dowty Aerospace Gloucester Ltd. hub assemblies Part Numbers (P/N) 660712279 or 660713281; P/Ns 660714200; or original hub assemblies P/Ns 660717279 and 650013650 and 660713281 and 650013650 that have been reworked in accordance with Dowty Rotol Service Bulletin No. SF340–61–33, Revision 1, dated May 23, 1988.

Dowty Aerospace Gloucester Ltd. has issued the following Service Bulletins (SB): SB No. SF340–61–57, dated February 15, 1991, that describes procedures for installing a shim at the propeller hub/engine flange interface (Dowty Aerospace Gloucester Ltd. Modification (C) VP3336); SB SF340–61–58, Revision 1, dated July 18, 1991, that describes procedures for torque checking propeller retention bolts for low torque and cracks, and dye penetrant, ultrasonic, and eddy current inspections of the hub backface for cracks; and SB SF340–61–61, Revision 1, dated October 19, 1992, that describes remarking applicable propeller model numbers after installing a newly designed hub assembly. Although not required by this AD, installing this newly designed hub assembly and remarking the propeller model numbers constitute a terminating action to the inspection requirements of this AD.

Since an unsafe condition has been identified that is likely to exist or develop on other propeller models of this same type design installed on aircraft registered in the United States, the proposed AD would supersede AD 87–21–51 to require torque checks of the propeller retention bolts for low torque magnetic particle inspections of the propeller retention bolts for cracks; dye penetrant, ultrasonic, and eddy current inspections of the hub backface for cracks; on Dowty Aerospace Gloucester Ltd., Model Number (c)R354/4–123–F/13, and the following additional propeller models: Dowty Aerospace Gloucester Ltd. Model Numbers (c)R354/4–123–F/20 and (c)R375/4–123–F/21. The proposed AD would also require installation of an interface shim (Dowty Aerospace Gloucester Ltd. Modification (C) VP3336), and increase the repetitive inspection interval from 500 to 1500 hours time in service (TIS).

The FAA estimates that 268 Dowty Aerospace Gloucester Ltd., Models (c)R354/4–123–F/13, (c)R354/4–123–F/20, and (c)R375/4–123–F/21 propellers of the affected design are installed on SAAB–SF340, and SAAB–SF340B series aircraft of U.S registry, that it would take approximately 8 work hours per propeller to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $35 per propeller. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $127,300.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows.

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5929 (53 FR 25139, July 5, 1988) and by adding a new airworthiness directive to read as follows:

Dowty Rotol (now Dowty Aerospace Gloucester Ltd.): Docket No. 93–ANE–10. Supersedes AD 87–21–51, Amendment 39–5929.

Applicability: Dowty Rotol (now Dowty Aerospace Gloucester Ltd.) Propeller Models (c)R354/4–123–F/13, (c)R354/4–123–F/20, and (c)R375/4–123–F/21 installed on SAAB–SF340A, and SAAB–SF340B series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible loss of the propeller, accomplish the following:

(a) For Dowty Rotol (now Dowty Aerospace Gloucester Ltd.) Model (c)R354/4–123–F/13 propellers, perform Dowty Aerospace Gloucester Ltd. Modification (C) VP3336 by installing interface shim Part Number (P/N) 660712669 in accordance with Dowty Aerospace Gloucester Ltd. Service Bulletin (SB) No. SF340–61–57, dated February 15, 1991, within 500 hours time in service (TIS) since the last torque check and inspections accomplished in accordance with AD 87–21–51.

(b) For Dowty Rotol (now Dowty Aerospace Gloucester Ltd.) Model R354/4–123–F/13 propellers, perform a torque check of the propeller retention bolts for low torque and a magnetic particle inspection of the propeller retention bolts for cracks; perform dye penetrant, ultrasonic, and eddy current inspections of the propeller hub backface for cracks. If propeller retention bolts or hubs are found to have cracks, remove from service prior to further flight, and replace with serviceable propeller retention bolts and hubs, within 500 hours TIS since the last torque check and cracking inspections accomplished in accordance with AD 87–21–51. These actions must be accomplished in accordance with Dowty Aerospace Gloucester Ltd. SB No. SF340–61–58, Revision 1, dated July 18, 1991.

(c) For Dowty Rotol (now Dowty Aerospace Gloucester Ltd.) Model (c)R354/4–123–F/20 and (c)R375/4–123–F/21 propellers, perform Dowty Aerospace Gloucester Ltd. Modification (C) VP3336 by installing interface shim P/N 660712669 in accordance with Dowty Aerospace Gloucester Ltd. SB No. SF340–61–57, dated February 15, 1991, within 100 hours TIS after the effective date of this AD; or 500 hours TIS since the last torque check and inspections accomplished in accordance with Dowty Aerospace Gloucester Ltd. SB No. SF340–61–58, Revision 1, dated July 18, 1991, or Dowty Aerospace Gloucester Ltd. SB No. SF340–61–21, Revision 4, dated October 1, 1987; or 500 hours TIS since new, whichever occurs latest.

(d) For Dowty Rotol (now Dowty Aerospace Gloucester Ltd.) Model (c)R354/4–123–F/20 and (c)R375/4–123–F/21 propellers, perform a torque check of the propeller retention bolts for low torque; a magnetic particle inspection of the propeller retention bolts for cracks; and dye penetrant, ultrasonic, and eddy current inspections of the propeller hub backface for cracks. Remove from service prior to further flight cracked propeller retention bolts and hubs, and replace with serviceable propeller retention bolts or hubs, within 100 hours TIS after the effective date of this AD; or 500 hours TIS since the last torque check and inspections accomplished in accordance with Dowty Aerospace Gloucester Ltd. SB No. SF340–61–58, Revision 1, dated July 18, 1991, or Dowty Rotol (now Dowty Aerospace Gloucester Ltd.) SB No. SF340–61–21, Revision 4, dated October 1, 1987; or 500 hours TIS since new, whichever occurs latest. These actions must be accomplished in accordance with Dowty Aerospace Gloucester Ltd, SB No. SF340–61–58, Revision 1, dated July 18, 1991.

(e) Thereafter, for propeller models identified in paragraphs (a) and (c) of this AD, perform a torque check of the propeller retention bolts for low torque; a magnetic particle inspection of the propeller retention bolts for cracks; and dye penetrant, ultrasonic, and eddy current inspections of the propeller hub backface for cracks. Remove from service prior to further flight cracked propeller retention bolts and hubs, and replace with serviceable propeller retention bolts or hubs at intervals not to exceed 1500 hours TIS since the last torque check and inspections performed in accordance with paragraph (b) or (d), as applicable, of this AD. These actions must be accomplished in accordance with Dowty Gloucester Aerospace Ltd. SB No. SF340–61–58, Revision 1, dated July 18, 1991.

(f) Installation of newly designed Dowty Aerospace Gloucester Ltd. propeller hub assembly P/N 660714241 and remarking of the propeller in accordance with Dowty Aerospace Gloucester Ltd. SB No. SF340–61–61, Revision 1, dated October 19, 1992, constitutes terminating action to the inspection requirements of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on June 14, 1993.

Michael H. Boritz,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–14497 Filed 6–18–93; 8:45 am]

BILLING CODE 4910–13–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Texas permanent regulatory program (hereinafter, the "Texas program" under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The

proposed amendment consists of revisions to the Texas rules pertaining to the mining of coal incidental to the extraction of other minerals; termination of jurisdiction; definitions; employee financial interests; lands unsuitable procedures; permitting procedures; coal exploration; geologic and hydrologic information, reclamation plans, and hydrologic balance standards; maps and plans; transportation facilities and roads; alluvial valley floors; archaeological resources; approval of permits; bonding requirements; use of explosives and blaster training and certification; backfilling and grading; coal processing waste disposal; protection of fish and wildlife and related environmental values; revegetation success; and individual civil penalties. Texas also proposed minor changes in wording, numbering, and punctuation of its rules. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Texas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.d.t. July 21, 1993. If requested, a public hearing on the proposed amendment will be held on July 16, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., c.d.t. on July 6, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Texas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, Oklahoma 74135–6548. Telephone: (918) 581–6430.

Railroad Commission of Texas, Surface Mining and Reclamation Division, Capitol Station, P.O. Drawer 12967, Austin, Texas 78711, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program can be found in the February 27, 1980 **Federal Register** (45 FR 12998). Subsequent actions concerning Texas' program and program amendments can be found at 30 CFR 943.15 and 943.16.

II. Proposed Amendment

By letter dated May 13, 1993 (administrative record No. TX–551), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to letters dated May 20, 1985; June 9, 1987; October 20, 1988; February 7, 1990; and February 21, 1990 (administrative record Nos. TX–358, TX–388, TX–417, TX–472, and TX–476) that OSM sent to Texas in accordance with 30 CFR 732.17(c) and in response to the required program amendments at 30 CFR 943.16 (k) through (q). The provisions of the Texas Administrative Code (TAC) at 16 TAC 11.221 that Texas proposes to amend are:

(1) Mining of Coal Incidental to the Extraction of Other Minerals

(a) At Texas Coal Mining Regulations (TCMR) 700.002(b)(4), Texas proposes to require that the incidental extraction of coal will be conducted in accordance with the rules proposed under part 702.

(b) At TCMR part 702, Texas proposes to add specific regulations concerning the scope, definitions, application requirements and procedures, contents of application for exemption, public availability of information, requirements for exemption, conditions of exemption, and right of inspection and entry, stockpiling of minerals, revocation and enforcement, and reporting requirements as they pertain to the exemption for coal extraction incidental to the extraction of other minerals.

(c) At TCMR 787.222(a), Texas proposes to provide an applicant for exemption under part 702 opportunity for a hearing on the Commission's decision.

(2) Termination of Jurisdiction

(a) At TCMR 700.002(f), Texas proposes to add a rule that the Commission may terminate jurisdiction over a surface coal mining and reclamation operation when all requirements have been completed or all bond has been released and may reassert jurisdiction if fraud, collusion, or misrepresentation have been demonstrated.

(3) Definitions

(a) At TCMR 701.008(4), Texas proposes to revise the definition of "affected area" to mean any land or water surface which is used to facilitate or which is physically altered by surface coal mining and reclamation operations.

(b) At TCMR 701.008(16), Texas proposes to define the term "coal mine waste" to include coal processing waste and underground development waste.

(c) At TCMR 701.008(19), Texas proposes to change the definition of "coal processing waste" by deleting specific requirements for the waste and including all earth materials separated from the coal and wasted during cleaning, concentrating, or other processing or preparation of coal.

(d) At TCMR 701.008(71), Texas proposes to revise the definition of "road" by deleting requirements for pioneer and construction roadways and by specifically excluding from the definition ramps and routes of travel within immediate mining or disposal areas.

(e) At TCMR 705.011(2), Texas proposes to revise the definition of "coal mining operation" to indicate that developing, producing, preparing, and loading of coal individually constitute a coal mining operation.

(f) At TCMR 705.011(3), Texas proposes to clarify the definition of "employee."

(4) Employee Financial Interests

(a) At TCMR 705.010(a)(3), Texas proposes to require the Commissioners to resolve prohibited financial interest situations by ordering or initiating remedial action or by reporting the violations to the Director who is responsible for initiating action to impose the penalties of the Federal Act.

(b) At TCMR 705.010(c), Texas proposes to require that members of advisory boards and commissions who perform a function under the Act shall recuse themselves from proceedings that may affect their financial interests.

(c) At TCMR 705.013(a), .014(a), .015(a), and .016(a), Texas proposes to require that members of advisory boards and commissions who perform a function under the Act must file a financial interest statement.

(d) At TCMR 705.014(b), Texas proposes to require that new employees

and new members of advisory boards and commissions must file a financial interest statement within 60 days of appointment unless the appointment date is within 60 days of February 1. Texas also proposes to delete TCMR 705.014(c), which required no subsequent annual filing if the annual filing date occurred within two months of the initial filing.

(5) Lands Unsuitable for Mining Procedures

(a) At TCMR 761.072(b)(2), Texas proposes to require notification of the National Park Service or U.S. Fish and Wildlife Service of requests for determinations of valid existing rights within boundaries of those agencies' jurisdictions, granting 30 days for response (with the options of granting a 30-day extension), and allowing the Commission the option of acting without a response if none was received by the end of the stated response time.

(6) Permitting Procedures

(a) At TCMR 770.101, Texas proposes to reinstate definitions of "applicant," "application," "complete application," "principal shareholder," "property to be mined," and "violation notice." These definitions had been inadvertently omitted in a previous rulemaking.

(7) Coal Exploration

(a) Texas proposes to add a new section TCMR 776.111(a)(3)(E) that requires an application for Commission approval to conduct coal exploration activities to include a description of measures to be taken to comply with applicable coal exploration performance standards.

(b) At TCMR 815.328(a), Texas proposes to revise the requirements pertaining to the protection of critical habitats during coal exploration activities.

(c) At TCMR 815.328, Texas proposes to revise the coal exploration performance standards rules by adding requirements for a permit in relation to coal exploration and testing. The new language states that no permit is required if the use or sale of the coal extracted is for testing purposes. New sections were added specifying what the exploration application must contain.

(8) Geologic and Hydrologic Information, Reclamation Plans, and Hydrologic Balance Standards

(a) At TCMR 779.127(b) and (c), Texas proposes to specify what results from the analysis of geologic samples must be included in the application and to allow the Commission to require the applicant to provide additional geologic information, if necessary.

(b) At TCMR 779.128(a)(4) and 783.174(a)(4), Texas proposes to modify the ground water information requirement to specify minimum parameters for analysis of the quality of subsurface water.

(c) At TCMR 779.129(b)(2) and 783.175(b)(2), Texas proposes to modify its rules on surface water information to: (1) Allow specific conductance as an option rather than total dissolved solids; (2) require more detail in subsection (iii) with the requirement for alkalinity information; and (3) limit the requirement for providing acidity and alkalinity information so that the information is required only when there is a potential for acid drainage.

(d) At TCMR 780.146(b) and (c), and 784.188(b) and (c), Texas proposes to: (1) Clarify the methodologies that may be used for water quality analysis, (2) require water quality descriptions to include dissolved iron, (3) require information on existing wells, springs, and other ground water sources, and (4) require that supplemental data shall be used to plan remedial and reclamation activities.

(e) At TCMR 780.148(c) and 784.190(c), Texas proposes to modify its permanent and temporary impoundment rules by replacing section (2) with the more specific requirement that ponds meeting the size criteria of the Mine Safety and Health Administration (MSHA) must comply with appropriate rules and adding section (3) in which a minimum static safety factor is imposed on ponds not meeting MSHA size criteria but for which failure could cause loss of life or serious property damage.

(f) At TCMR 783.173, Texas proposes to add new sections (d) and (e) to provide, respectively, for analysis of the engineering properties of the stratum immediately above and below the coal and for additional analyses if the Commission determines that more information is necessary.

(g) At TCMR 816.342(a)(4), Texas proposes to delete language that limits the findings that are required for approval of stream channel diversions to impacts within stream buffer zones.

(h) At TCMR 816.344(g), (h), (i), and (k), and 817.514 (g), (h), (i), and (k), Texas proposes to provide alternative designs for sedimentation pond spillways. Section (g) allows for a single specifically designed spillway as an alternative to designs with combination principal and emergency spillways and defines the design event for the single spillway. Section (h) provides an alternative to spillways by allowing ponds that rely entirely on storage for controlling sedimentation. Section (i) redefines the design event for ponds using a combination principal and emergency spillway. Section (k) provides that the settled embankment shall be one foot above the water surface in the pond with the emergency spillway or single spillway flowing at design depth.

(i) At TCMR 816.344(r) and 817.514(r), Texas proposes to require additional sedimentation pond design requirements when the pond impounds water or sediment to an elevation of five feet or more above the upstream toe of the structure and has a storage volume of 20 acre-feet or more. Texas also proposes to require ponds meeting these criteria to safely pass the 100-year, 6-hour event and to have a minimum seismic safety factor of 1.2.

(j) At TCMR 816.347(a)(1) and 817.517(a)(1), Texas proposes to require that permanent and temporary impoundments meeting the size criteria of 30 CFR 77.216(a) shall be designed to meet the requirements of that regulation. The designs must be submitted as part of the permit application.

(k) At TCMR 816.347(a)(4) and 817.517(a)(3), Texas proposes to modify its rules on permanent and temporary impoundments by adding a section to describe requirements for seismic, static, and seepage safety factors.

(l) At TCMR 816.347(a)(5) and 817.517(a)(5), Texas proposes to add a section to the rules on permanent and temporary impoundments to describe foundation and abutment stability designs and information requirements.

(m) At TCMR 816.347(a)(6) and 817.517(a)(6), Texas proposes to add a section to the rules on permanent and temporary impoundments to provide for slope protection.

(n) At TCMR 816.347(a)(7) and 817.517(a)(7), Texas proposes to add a section to the rules on permanent and temporary impoundments to require faces of embankments and surrounding areas to be vegetated, riprapped, or otherwise stabilized.

(o) At TCMR 816.347(b)(8) and 817.517(b)(8), Texas proposes to revise its rules on permanent impoundments to allow for alternatives in spillway designs and to redefine the design events.

(p) At TCMR 816.347(c) and 817.517(c), Texas proposes to require that for permanent and temporary impoundments that use combination principal and emergency spillways there shall be no flow through the emergency spillway resulting from the 10-year, 6-hour precipitation event.

(q) At TCMR 816.347(d) and 817.517(d), Texas proposes to modify its rule on temporary impoundments to correct the references to other rules and to add references to sections .347(b)(8) and .517(b)(8).

(r) At TCMR 816.347(e) and 817.517(e), Texas proposes to modify its rules on permanent and temporary impoundments to add the requirement that slopes shall be designed to be stable in all cases.

(s) At TCMR 816.347(i) and 817.517(i), Texas proposes to add a section to its temporary and permanent impoundment rules to require regular inspections of impoundments during construction and annual inspections until removal or bond release.

(t) At TCMR 816.347(k) and 817.517(k), Texas proposes to add certification requirements for temporary and permanent impoundments meeting the size requirements of 30 CFR 77.216(a).

(u) At TCMR 816.350(b) and 817.519(b), Texas proposes to replace section (b)(1) to require permit applications to contain a surface water monitoring plan based on the PHC and the baseline analyses of hydrologic, geologic, and other information contained in the permit application. Monitoring plans must also be based on the postmining land use and the effluent limitations from 40 CFR part 434.

(v) At TCMR 816.355(a), Texas proposes to revise the allowance for disturbance to stream buffer zones. Such disturbance can only be authorized if the Commission finds that there will be no adverse impact on the water quantity and quality or other environmental resources of the stream and, if a stream channel diversion is planned, it must comply with appropriate standards.

(w) At TCMR 817.509(a), Texas proposes to clarify the hydrologic balance requirements for underground mining activities.

(x) At TCMR 817.522(f), Texas proposes to require the applicant to demonstrate that any discharge into underground mine workings resulting from underground mining activities will minimize disturbance to the hydrologic balance.

(9) Maps and Plans

(a) At 780.142(c) and 784.197(c), Texas proposes to add a reference to the appropriate rules for the requirements for maps and plans and to delete the requirement that maps, plans, and cross sections for sediment ponds and spoil disposal facilities must be prepared only by a registered professional engineer.

(b) At TCMR 780.142(d) and 784.197(d), Texas proposes to require maps and plans for each support facility and to require that the maps and plans comply with applicable support facility requirements.

(10) Transportation Facilities and Roads

(a) At TCMR 780.154 and 784.198, Texas proposes to modify its transportation facility requirements by adding: (1) Section (a)(6) in which fords of streams must have approved drawings; (2) requirements for specifications in section (a)(7) in which each nonpermanent road must have plans for removal and reclamation; and (3) a requirement in section (b) for detailed plans and specifications for Class I and II roads to be prepared by, or under the supervision of, and certified by a qualified registered professional engineer.

(b) At TCMR 816.401(b) and 817.570(b), Texas proposes to add to its rules on location of Class I roads references to appropriate performance standards and to require that roads shall be located to minimize downstream sedimentation and flooding.

(c) At TCMR 816.402(d)(9) and 817.571(d)(9), Texas proposes to require that the minimum safety factor for Class I road embankments shall be 1.3, or greater as the Commission may specify.

(d) At TCMR 816.405 and 817.574, Texas proposes to revise its Class I road maintenance rules by changing "design standards" requirements in section (a) to "performance standards" requirements and deleting in section (c) the language that the road shall not be used until reconstruction is completed. Section (c) now states that Class I roads shall be repaired as soon as practicable.

(e) At TCMR 816.406(a)(4) and 817.575(a)(4), Texas proposes to revise its Class I road restoration rules to require removal of road surfacing materials that are incompatible with the postmining land use and revegetation requirements.

(f) At TCMR 816.408(b) and 817.577(b), Texas proposes to add to its rules on location of Class II roads references to appropriate performance standards and to require that roads shall be located to minimize downstream sedimentation and flooding.

(g) At TCMR 816.409(d)(9) and 817.578(d)(9), Texas proposes to require that the minimum safety factor for Class II road embankments shall be 1.3, or greater, as the Commission may specify.

(h) At TCMR 816.412 and 817.581, Texas proposes to revise its Class II road maintenance rules by changing "design standards" requirements in section (a) to "performance standards" requirements. Section (b) requires prevention of erosion, siltation, and air pollution, including road dust and dust from other exposed surfaces. This section also contains measures to be used to prevent air pollution. Section (c) was added to state that damaged roads shall be repaired as soon as practical.

(i) At TCMR 816.413(a)(4) and 817.582(a)(4), Texas proposes to revise its Class II road restoration rules to require the removal of road surfacing materials that are incompatible with the postmining land use and revegetation requirements.

(j) At TCMR 816.415(b) and 817.584(b), Texas proposes to add to its rules on location of Class III roads references to appropriate performance standards and to require that roads shall be located to minimize downstream sedimentation and flooding.

(k) At TCMR 816.419 and 817.588, Texas proposes to revise its Class III roads maintenance rules by adding the statement that maintenance is to prevent erosion, siltation, and air pollution, including road dust and dust from other exposed surfaces. This section also contains measures to be used to prevent air pollution. Section (c) was added to state that damaged roads shall be repaired as soon as practical.

(l) At TCMR 816.420(d) and 817.589(d), Texas proposes to revise its Class III road restoration rules to require the removal of road surfacing materials that are incompatible with the postmining land use and revegetation requirements.

(11) Alluvial Valley Floors

(a) At TCMR 785.202(b)(1)(i) and (b)(3), Texas proposes to replace the language requiring baseline data on preserving characteristics of alluvial valley floors with more specific language requiring baseline data on the essential hydrologic functions of the alluvial valley floor that might be affected.

(12) Archaeological Resources

(a) At TCMR 786.210(a)(3), Texas proposes to require that information contained in a permit application on the nature and location of archaeological resources must be kept confidential as required by the Archaeological Resources Protection Act of 1979.

(13) Approval of Permits

(a) At TCMR 786.216(e), Texas proposes to amend the criteria for permit approval to give the Commission the discretion to determine whether additional protection measures are required by the National Historic Preservation Act.

(b) At TCMR 786.216(p), Texas proposes to require the Commission to

determine that the applicant has, if applicable, satisfied the requirements for approval of long-term intensive agriculture postmining land use.

(c) At TCMR 786.220(d), Texas proposes to modify its rules on right-of-entry conditions on permits by replacing "permittee" with "operator" in designating who shall pay all reclamation fees.

(14) Bonding Requirements

(a) At TCMR 800.301(b)(2), Texas proposes to require that individual bond increments must be of sufficient size and configuration for efficient reclamation operations should reclamation by the Commission become necessary.

(15) Use of Explosives and Blaster Training and Certification

(a) At TCMR 816.330(f) and 817.500(f), Texas proposes to revise its signs and markers rules to also require blasting signs.

(b) At TCMR 816.357(c) and 817.526(c), Texas proposes to modify its use of explosives rules to require that a blaster and at least one other person are present at the firing of the blast.

(c) At TCMR 816.357(d) and 817.526(d), Texas proposes to revise its blast design standards to include additional kinds of buildings and facilities within 500 or 1000 feet of any blasting operations.

(d) At TCMR 816.358(a) and 817.527(a), Texas proposes to modify its use of explosives rules to broaden the preblasting survey area from within ½ mile of the blasting site to within ½ mile from any part of the permit area.

(e) At TCMR 816.360(a) and 817.528(a), Texas proposes to require that the blasting design include limitations based on minimum distances of 500 or 1000 feet from certain specified buildings and facilities and at TCMR 816.360(h) and (i) and 817.528(h) and (i) to correct paragraph references.

(f) At TCMR 816.362(d) and 817.530(d), Texas proposes to correct citations for other regulations.

(g) At TCMR 817.526(b), Texas proposes to require underground mining activities to comply with applicable State and Federal laws and regulations in the use of explosives.

(h) At TCMR 850.703(b)(1)(A), Texas propose to revise its blaster training and certification rules to add the requirement that training courses must cover storage and transportation of explosives as well as use.

(i) At TCMR 850.704(b), Texas proposes to revise its blaster training and certification rules by adding to the statement of recognition of other training courses that those courses must include the completion of the list of topics listed in section (a).

(j) At TCMR 850.706(a), Texas proposes to revise its blaster training and certification rules to add the requirement that the examination must cover storage and transportation of explosives as well as use.

(16) Backfilling and Grading

(a) At TCMR 816.385(b)(3) and 817.552(b)(3), Texas proposes to modify the backfilling and grading rules to delete the option to approve outslopes exceeding 1v:2h.

(17) Coal Processing Waste Disposal

(a) At TCMR 816.376(d), Texas proposes to modify its coal processing waste dams and embarkments rules to specifically require impoundment structures to meet the criteria of 30 CFR 77.216(a) and to redefine the design event for combination spillways to be the probable maximum precipitation of a 6-hour precipitation event or greater as specified by the Commission.

(b) At TCMR 816.378(a) and (c) and 817.545(a) and (c), Texas proposes to correct citations of other regulations and to revise the water removal requirements for impounding structures constructed of or impounding coal mine waste.

(c) At TCMR 817.538(c)(3), Texas proposes to modify its coal processing waste dams and embarkments rules by deleting the rule allowing for variations for the disposal of dewatered fine coal waste.

(d) At TCMR 817.543, Texas proposes to revise its underground mining coal processing waste dams and embarkments rules by adding, in section (b), requirements for the design plans for coal processing waste dams and embarkments to contain details on the stability of the structure and the potential impact of acid seepage. Section (c) was added to require each impounding structure constructed of coal mine waste intended to impound coal mine waste to be temporary and to be designed, constructed, and maintained in accordance with part 817 standards. Section (d) was added to require that the combination of principal and emergency spillways on coal waste impoundments meeting the MSHA requirements at 30 CFR 77.216(a) be able to safely pass the maximum 6-hour precipitation event.

(18) Protection of Fish and Wildlife and Related Environmental Values

(a) At TCMR 816.380(e)(10) and 817.547(e)(10), Texas proposes to modify its protection of fish and wildlife and related environmental values rules to delete the reference to cropland as an alternative postmining land use and to delete the reference to lands diverted from fish and wildlife premining land use.

(19) Revegetation Success

(a) At TCMR 816.395(a) and 817.560(a), Texas proposes to revise its vegetation success standards rules by adding new language to (1) tie success to the postmining land use, the amount of cover, and the requirements of sections .390 and .391 (2) and to provide standards for success and statistically valid sampling techniques.

(b) At TCMR 816.395(b) and 817.560(b), Texas proposes to revise its revegetation success standards rules by adding new language that more specifically addresses the requirements for various land uses.

(c) At TCMR 816.395(c) and 817.560(c), Texas proposes to revise its revegetation success standards rules by adding new language that describes the period of responsibility required for bond release and included the approved selective husbandry practices.

(d) At TCMR 816.396 and 817.561, Texas proposes to delete its rules on tree and shrub stocking for forest land by replacing these rules with the new language at TCMR 816.395 and 817.560.

(20) Individual Civil Penalties

(a) At TCMR 846.001(2), Texas proposes to revise its individual civil penalties rules to clarify that the definition of "violation, failure, or refusal" includes conditions of a permit as one of the examples of violations, failures, or refusals.

(b) At TCMR 846.004(c), Texas proposes to revise its civil penalties rules by adding procedures to allow service to be performed by mail or other means consistent with Texas law.

(21) Minor Changes in Wording, Numbering, Punctuation

(a) At various places throughout the proposed amendment, Texas proposes minor changes in wording, numbering, and punctuation to correct, order, and clarify the rules. None of these minor changes has an effect on the substantive nature of the rules.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program aproval criteria of 30 CFR 732.15. If the amendment is deemed

adequate, it will become part of the Texas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m., c.d.t. on July 6, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OBM) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary, and OMB regulatory review is not required.

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 14, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–144945 Filed 6–18–93; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, and 60

[AD–FRL–4669–4]

Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: New source performance standards (NSPS) and emission guidelines (EG) for municipal solid waste (MSW) landfills were proposed in the **Federal Register** on May 30, 1991 (56 FR 24468). This notice announces the availability of additional data and information on changes in the EPA's modelling methodology being used in the development of the final NSPS and EG for MSW landfills under the authority of section 111 (b) and (d) of the Clean Air Act (Act). The additional data and information are available for public inspection at the EPA's Air Docket. Comment on the data and information provided in Air Docket No. A–88–09, Category IV–M, received within the public comment period will be considered in selecting the final NSPS and EG. The public comment period for the original proposal has closed, and this notice pertains only to the new data and information discussed in this notice. Therefore, comments are not solicited on aspects of the proposed NSPS and EG other than the new information and data provided in Category IV–M.

DATES: *Comments.* Comments on these additional data must be received on or before July 21, 1993.

ADDRESSES: *Comments*, Comments should be submitted (in duplicate, if possible), to Air Docket (LE–131), ATTN: docket no. A–88–09, room M1500, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Docket. A special docket category IV–M has been established for this new data and information. The docket is available for public inspection and copying between the hours of 8:30 a.m. and 3:30 p.m. Monday through Friday, excluding Federal holidays, at the EPA's Air Docket, Waterside Mall, room M1500, 1st floor, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Dennis Doll, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5693.

SUPPLEMENTARY INFORMATION: On May 30, 1991, the EPA proposed NSPS and EG that would reduce air emissions from certain MSW landfills under the authority of section 111 of the Act (56 FR 24468). The intent of the proposed NSPS and EG is to require certain MSW landfills to control emissions to the level achievable by applying the best demonstrated system of continuous emission reduction considering costs, nonair quality health and environmental impacts, and energy requirements.

The 1991 proposal discussed the potential for energy recovery when meeting the NSPS and EG, but did not incorporate the use of energy recovery into the estimated nationwide impacts resulting from the proposed NSPS and EG. Public commenters on the proposal asserted that the potential for reduced cost of compliance due to the use of energy recovery was not adequately reflected in the nationwide impacts analysis. Many commenters recommended that energy recovery be incorporated into the nationwide impacts estimates and be considered in selecting the stringency level of the standard (i.e., the emission level at which the installation of a gas collection and control system would be required).

Additionally, several commenters asserted that the modeling of gas generation at landfills was highly theoretical, and suggested that additional data for assessing both gas generation and costs of control be gathered and considered in setting the final rules.

In the development of the proposed NSPS and EG, the EPA developed a pool of basic gas generation rate parameters including the methane generation rate constant (k), the methane generation potential (L_o), and the concentration of nonmethane organic compounds (C_{NMOC}). These parameters were used in the regulatory impacts analysis to estimate the nationwide impacts of applying gas collection and control to both new and existing landfills. These parameters were generated from a data base of landfill information from landfills for which there was sufficient site-specific data to perform the calculations (the k,L_o data base). The k,L_o data base was compiled using data from the available literature, State and local air pollution control agencies, and industry data obtained through the authority of section 114 of the Act.

The EPA received additional landfill data from within the Agency and from industry just before, and subsequent to, the proposal of the NSPS and EG. In light of the new data and commenters' requests for further evaluation of gas generation and energy recovery, the EPA has reviewed and updated the k,L_o data base. Additionally, the EPA has revised the modeling methodology for deriving k and L_o, and using the updated data base, has developed a revised data set of k,L_o pairs.

The additional data and modeling methodologies that will be considered in selecting the final NSPS and EG are: (1) An updated data base of site-specific landfill information from which k,L_o pairs are calculated and C_{NMOC} values are selected (the k,L_o data base); (2) revised modeling methodologies used to calculate k values which are then used to estimate nationwide impacts; and (3) the incorporation of energy recovery in the modeling of nationwide impacts.

The revised site-specific k,L_o data base was compiled using some of the original proposal data in conjunction with new data for various landfills received from data requests and surveys conducted by the Office of Research and Development (ORD). The revised k,L_o data base also contains updated landfill data for some of the original landfill sites. The EPA considers this data base to be more accurate and representative than the one used at proposal for determining landfill gas generation potential.

The revised modeling methodology includes a new procedure for deriving k,L_o pairs. The approach used at proposal assumed three default L_o values based on a literature review (high=8,120 cubic feet methane per megagram (ft^3 CH_4/Mg) of refuse, medium=6,350 ft^3 CH_4/Mg refuse, and low=2,100 ft^3 CH_4/Mg refuse) to calculate the corresponding k values for each landfill in the proposal k,L_o data base.

The high, medium, and low L_o values were used to represent the potential variation in methane generation potential between various waste streams. However, only one of the 3 k,L_o pairs was ever assigned to a given landfill when estimating nationwide impacts. This resulted in one-third of the landfills having a high L_o assigned and another one-third having a low L_o assigned, assuming it was equally as likely that a landfill may have a high, medium, or low L_o value. This methodology increases the likelihood that extreme combinations of k,L_o pairs and C_{NMOC} values could be assigned to the landfills in the data bases used to estimate nationwide impacts.

The new approach determines the average L_o for each landfill by calculating the minimum and maximum that may be solved for that landfill. These are used to determine an average L_o, provided that each value falls within a range of 2,000 to 7,000 ft^3 CH_4/Mg refuse. If the solvable maximum value falls outside the range, the maximum end point of the range (i.e., 7,000 ft^3 CH_4 methane/Mg refuse) is used in determining the average. The corresponding k value is calculated from this average L_o. Because gas generation rates are influenced by moisture content, the revised modeling also includes a procedure to generate a balanced set of k,L_o pairs from landfills in both arid and nonarid regions in roughly the same proportions as the amount of waste deposited in arid and nonarid regions on a nationwide basis (see *Anthropogenic Methane Emissions in the United States*. Report to Congress, EPA Global Change Division, Draft, October 1992; and Memorandum, R. Pelt, Radian Corporation, to D. Doll, "Methodology used to Revise the Model Inputs in the Municipal Solid Waste Landfills Input Databases, (Revised)", April 28, 1993.). This balanced set is applied to the landfills data base used in estimating the nationwide impacts. The approach allows the k,L_o pairs to differ based on site-specific information from landfills in both arid and nonarid areas and does not assume that high or low L_o values are equally likely to occur as an average value at any given landfill. This approach also reduces the potential for an extreme combination of both high (or low) L_o and C_{NMOC} values to be assigned to a given landfill.

As a result of the updated k,L_o data base and the revised modeling methodologies, the average value for k in the data base of existing landfills

increased from 0.0264 yr^{-1} at proposal to 0.0307 yr^{-1}, while the values for L_o and C_{NMOC} decreased from 6,288 ft^3 CH_4/Mg refuse and 2,561 parts per million by volume (ppmv) as hexane, at proposal, to 4,955 ft^3 CH_4/Mg refuse and 1,532 ppmv as hexane, respectively, in the current analysis. The average value for k in the data base of new landfills increased from 0.0265 yr^{-1} at proposal to 0.0306 yr^{-1}, while the values for L_o and C_{NMOC} decreased from 6,417 ft^3 CH_4/Mg refuse and 1,788 ppmv, as hexane at proposal, to 4,953 ft^3 CH_4/Mg refuse and 1,398 ppmv as hexane, respectively, in the current analysis.

As k increases, the total gas that may be released from a given quantity of refuse is released more quickly. Overall, this would result in a higher peak gas flow, and more landfills requiring control at a given stringency level. On the other hand, this change does not increase the total gas that may be released at a given landfill, but would result in a shorter control period at any landfill that already required control using the earlier k values.

The lower L_o values would decrease the total potential gas emissions as well as the nationwide annual emission rate and, therefore, would result in fewer landfills estimated to require control at a given stringency level when compared to the proposal analysis. It is possible, however, that the change is small enough that control would still be required, but for a shorter period. In the same way, lower C_{NMOC} values would also result in fewer landfills requiring control at a given stringency level, and a shorter control period for landfills requiring control when compared to the proposal analysis. Because the k,L_o pairs are randomly assigned independently from the C_{NMOC} values, there may be some mixing of these impacts on a landfill-by-landfill basis but, on average, it is expected that fewer landfills would require control at each stringency level than in the proposal analysis.

The third change to the modeling methodologies discussed in this notice pertains to the incorporation of energy recovery in the modeling of nationwide impacts. In the preamble to the proposed NSPS and EG, the EPA requested comments on whether energy recovery requirements should be considered in the selection of the stringency level of the NSPS and EG. In response to many comments suggesting that energy recovery should be considered in estimating the nationwide impacts that result from the NSPS and EG, the EPA decided to incorporate energy recovery in the nationwide impacts analysis for the final NSPS and EG. The revised analysis adds a method for selecting between control using energy recovery and control using flares only. The model now selects the control strategy which results in the least cost of control using either flares, internal combustion engines, or gas turbines over the control period required by the NSPS or EG. The cost basis for the energy recovery option was based on the use of internal combustion engines or gas turbines and compiled from information gathered prior to proposal, as well as additional information gathered from vendors and landfill operators subsequent to the proposal. (See Memorandum, M. Thomas, Radian Corporation, to D. Doll, Changes to the Municipal Solid Waste Landfills Nationwide Impacts Program Since Proposal, April 28, 1993.)

The energy recovery modeling also takes into account the potential for energy recovery to be installed at landfills in the absence of the NSPS and EG. This is accomplished by removing the same proportion of potentially profitable energy recovery landfills from the data base as are currently projected to use energy recovery over the next 10 years. (See Memorandum, K. Hogan, Office of Atmospheric Programs (OAP), to D. Doll, Office of Air Quality Planning and Standards (OAQPS), Landfill Rule Energy Recovery Cost Analysis; December 16, 1992.)

New items entered into the docket include: (1) Memorandum, R. Pelt, Radian Corporation, to D. Doll, Methodology used to Revise the Model Inputs in the Municipal Solid Waste Landfills Input Databases, (Revised), April 28, 1993; (2) Memorandum, M. Thomas, Radian Corporation, to Docket, Changes to the Municipal Solid Waste Landfills Nationwide Impacts Program Since Proposal, April 28, 1993; (3) Report to Congress, EPA Global Change Division, Anthropogenic Methane Emissions in the United States, Draft, October 1992; (4) Memorandum, K. Hogan, Office of Atmospheric Programs (OAP), to D. Doll, Office of Air Quality Planning and Standards (OAQPS), Landfill Rule Energy Recovery Cost Analysis, December 16, 1992; and (5) Memorandum, R. Pelt and S. Fields, Radian Corporation, to D. Doll, Revised Nationwide Impacts for Development of Regulatory Alternatives, June 4, 1993.

Dated: June 14, 1993.

Michael H. Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–14567 Filed 6–18–93; 8:45 am]

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40 CFR Part 721

[OPPTS–50600B; FRL–4186–1]

RIN 2070–AB27

Dialkyldialkoxysilane; Withdrawal of Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: EPA is withdrawing a significant new use rule (SNUR) proposed under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described generically as dialkyldialkoxysilane, which was the subject of premanufacture notification under section 5(a)(1) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E543–B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 19, 1992 (57 FR 37499), EPA issued a notice and comment non-5(e) SNUR for the substance described generically as dialkyldialkoxysilane. Based on a finding that the substance may present an unreasonable risk to human health, the SNUR proposed that manufacture, processing, or use of the substance without establishing a program whereby each worker who may be exposed to the substance by inhalation must wear a 19C supplied-air respirator would be a significant new use.

EPA received comments from four interested parties. Two of the commenters posed general questions on the Agency's interpretation of the toxicity of chemicals in the alkoxysilane category and certain provisions of the SNUR, and indicated their willingness to begin a dialogue with the Agency to work toward a better understanding of the toxicological concerns posed by the alkoxysilane class of chemicals. Another commenter asserted that, although it has implemented a respirator program in its own operations, it had not taken certain

notification steps which a SNUR would require. A fourth commenter, who was one of the original PMN submitters, provided the Agency with new vapor pressure data specific to the PMN substance which, when reviewed by the Agency, showed a much lower vapor pressure, which in turn resulted in much lower estimated exposures to workers, and a determination by the Agency that the predicted levels of worker exposure were low enough that an unreasonable risk was not expected (the "margin of exposure" was adequate).

Therefore, the Agency is withdrawing the proposed rule, based on the finding that the chemical substance may no longer be expected to pose an unreasonable risk.

II. Rulemaking Record

The record for the proposed SNUR which is being withdrawn by this document was established at OPPTS–50600. That record includes information considered by the Agency in developing the proposed rule, and includes the comments to which the Agency has responded with this notice of withdrawal. The docket control number for the withdrawal is OPPTS–50600B.

A public version of the record, without any confidential business information, is available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. NCIC is located in Rm. E–G102, 401 M St., SW., Washington, DC 20460.

List of Subjects in 40 CFR part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: June 3, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 93–14563 Filed 6–18–93; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

Atlantic Tuna Fisheries; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: NMFS will hold public hearings to receive comments on a proposed rule to amend the regulations governing the Atlantic tuna fisheries. The proposed rule would: Require Atlantic bluefin tuna (ABT) dealers to submit daily reports via FAX and replace the weekly report with a revised biweekly report; require permits for vessels fishing in the Angling category; require at-sea observer coverage on vessels taking Atlantic tunas, if so requested by NMFS; allow only authorized gear in the Atlantic tuna fisheries except when exempted as experimental; allow the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) to make inseason transfers of potentially underharvested quota between fishing categories; raise the amount of General category set-aside for the late season fishery from 40 metric tons (mt) to 100 mt; allow for inseason adjustments to the Angling category bag and boat limits for private, party and charter boats; and make other technical changes to enhance administration, management and enforcement.

DATES: Comments on the proposed rule that is the subject of these hearings must be received on or before July 8, 1993. See **SUPPLEMENTARY INFORMATION** for dates and times of the hearings.

ADDRESSES: Written comments should be sent to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Clearly mark the outside of the envelope "Tuna Comments." Copies of the proposed rule are available from the same address.

See **SUPPLEMENTARY INFORMATION** for addresses of the hearing locations.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347.

SUPPLEMENTARY INFORMATION: This is to announce the schedule of public hearings concerning the proposed rule on Atlantic tuna fisheries, published June 14, 1993, at 58 FR 32894.

This action is necessary to improve management and monitoring of the U.S. Atlantic tuna fisheries, to conform more closely to the 1991 International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations, and to enhance collection of data to improve assessment of the environmental, economic, and social impacts of the fisheries.

A complete description of the measures, and the purpose and need for the proposed action, are contained in the proposed rule and are not repeated here. Copies of the proposed rule may be obtained (see **ADDRESSES**).

The public hearing schedule is as follows:

June 29, 1993, Portsmouth, N.H., 7–10 p.m.

Elwyn (Urban) Forestry Center, 45 Elwyn Rd., Portsmouth, NH 03801, (603) 431–6774

June 30, 1993, New Bedford, MA, 7–10 p.m.

Seaport Inn, 110 Middle St., Fairhaven, MA 02719, (508) 997–1281

July 1, 1993, Toms River, N.J., 7–10 p.m.

Ocean County Community College Auditorium, College Drive, P.O. Box 2001, Toms River, NJ 08754–2001, (908) 255–0326

July 2, 1993, Ronkonkoma, NY, 7–10 p.m.

Holiday Inn (Airport), 3845 Veterans Memorial Highway, Ronkonkoma, NY 11779, (516) 585–9500

July 6, 1993, Norfolk, VA, 7–10 p.m.

Quality Inn, 6280 Northampton Blvd., Norfolk, VA 23502, (804) 461–6251

Dated: June 15, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–14493 Filed 6–15–93; 4:55 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 117
Monday, June 21, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Agricultural Science and Technology Review Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463, 86 Stat. 770–776), as amended, the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: Agricultural Science and Technology Review Board (hereafter referred to as the Review Board).

Date: July 14–16, 1993.

Time: July 14—8:30 a.m.–5:30 p.m.; July 15—8:30 a.m.–5:30 p.m.; July 16—8:30 a.m.–12 noon.

Place: Agricultural Research Center, Building 005, Room 21, Beltsville, Maryland 20705.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person named below.

Purpose: To write a technology assessment report on current and emerging agricultural research and technology transfer initiatives.

Contact Person for Agenda and More Information: Ms. Marshall Tarkington, Executive Director, Science and Education Advisory Committees, Room 432–A Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; Telephone (202) 720–3684.

Done in Washington, DC, this 11th day of June 1993.

John Patrick Jordan,

Administrator.

[FR Doc. 93–14546 Filed 6–18–93; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Exempt Decision for Fly Chip Salvage Sale From Appeal, Malheur National Forest, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Fly Chip Salvage Sale located on the Long Creek Ranger District of the Malheur National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: June 21, 1993.

FOR FURTHER INFORMATION CONTACT: John L. Shoberg, District Ranger, Long Creek Ranger District, Malheur National Forest, 528 E. Main Street, or Carol Cushing, Timber Management Planner, Long Creek Ranger District, 528 E. Main Street, John Day, Oregon 97845, ph. (503) 575–1731.

SUPPLEMENTARY INFORMATION: Starting in 1990, western spruce budworm have infested a major portion of the Malheur National Forest. Much of the infestation is in stands of white fir and Douglas-fir. In the summer of 1992, survey of the infested area was initiated to assess the damage to the resources. The survey identified about 400 acres needing treatment due to high insect damage and mortality.

Salvageable trees in the area average 12 inches in diameter. Rapid drying of insect-killed trees has caused cracking or "checking," especially of the smaller diameter trees, which is expected to quickly reduce the opportunity to recover merchantable sawlog material. Prompt salvage is needed to begin regeneration and restore desired stand health and wildlife habitat conditions.

An environmental analysis was started in September of 1992 for the Fly Chip Salvage Sale. After public letters, and contacts with individuals and State and Federal agencies, two major issues were identified. One was forest health, which includes effects on stand health, wildlife habitat, and utilization of dead small diameter timber. The second was water quality and fisheries habitat.

An interdisciplinary team of resource specialists developed three alternatives to analyze, including the No-Action Alternative. An environmental assessment has been prepared to disclose the effects of alternatives developed including the proposed action and their response to the major issues.

The proposed action would salvage about 263 acres of moderate to high insect-damaged stands. The proposal would prevent the loss of approximately 1.2 million board feet of commercial timber resources. No roads would be constructed.

Biological evaluations have been completed for all proposed, endangered, threatened, and sensitive plant, wildlife and fish species within project area. The biological evaluation indicates that the salvage could proceed as planned.

The Fly Chip Salvage Sale and accompanying work is designed to accomplish Forest Plan objectives and provide timely reforestation efforts. Based upon the environmental analysis and the need to expedite this salvage, I have determined that good cause exists to exempt this decision from administrative appeal (36 CFR part 217). Under this Regulation the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, the Decision Notice and Finding of No Significant Impact for the Fly Chip Salvage Sale may be signed by the District Ranger. This salvage sale will not be subject to review under 36 CFR part 217.

Dated: June 14, 1993.

Richard Ferraro,

Deputy Regional Forester.

[FR Doc. 93–14501 Filed 6–18–93; 8:45 am]

BILLING CODE 3410–11–M

Exempt Decision for Timber Salvage on the Spirit Fire Recovery Project from Appeal, Willamette National Forest, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decision from administrative appeal.

SUMMARY: This is a notification that the decision to implement a proposed timber salvage sale in the Spirit Fire Recovery Project, Oakridge Ranger District of the Willamette National Forest is exempted from appeal. This is in conformance with provisions of 36

CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989, (54 FR 3342).

EFFECTIVE DATE: June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Oakridge Ranger District, Al Brown, Planner, 46375 Highway 58, Westfir, Oregon 97492, phone (503) 782–2291.

SUPPLEMENTARY INFORMATION: On August 12, 1992, lightning ignited the High Spirit Fire that burned over 140 acres of timber on the Oakridge Ranger District of the Willamette National Forest. The 115 acres in the proposed timber salvage sale is not suitable as habitat for the Northern Spotted Owl, and therefore not under injunction. Exemption from appeal of the proposal to salvage fire-killed, dying, and damaged trees on the Spirit Fire Recovery Project is needed to facilitate rapid removal of the wood and recover timber value. The fire-damaged trees are true fir and hemlock species growing at high elevation, which deteriorate rapidly following mortality. Removal of this material by November of 1993 would recover commercial timber products without significant loss in value.

An interdisciplinary team began analysis of the impacts of this project in September of 1992. Public scoping meetings occurred in December of 1992 and into January of 1993. The proposed action identified the following activities:

—Salvage of fire-killed, dying, and damaged trees on 115 acres of the 140 acre High Spirit Fire area;
—Reforestation on 110 acres; and
—Recovery of soils, wildlife habitat, and other resources damaged in the High Spirit Fire.

Volume estimate for this salvage is approximately 1.7 million board feet of fire-killed, dying and damaged trees. The effects of the proposed action were analyzed and documented in a draft environmental impact statement (EIS) for the Spirit Fire Recovery Project. The draft EIS was released to the public on April 23, 1993.

This salvage timber sale is designed to accomplish the objectives as quickly as possible and minimize any further loss of volume and resources damage. Based upon the draft EIS and analyses for the Spirit Fire Recovery Project, I have determined that good cause exists to exempt this salvage decision from administrative appeal (36 CFR part 217). Under this Regulation, the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register** and at least 30 days after the Notice of Availability of the final EIS appears in the **Federal Register**, the Record of Decision for the Spirit Fire Recovery Project may be signed by the Forest Supervisor. Therefore, the timber salvage in the Spirit Fire Recovery Project will not be subject to review under 36 CFR part 217.

Dated: June 14, 1993.

Richard Ferraro,

Deputy Regional Forester.

[FR Doc. 93–14502 Filed 6–18–93; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Carolina

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will be held on July 14, 1993, from 1 to 5 p.m. at the Technology Center, Board of Directors Room, 15 T.W. Alexander Drive, Research Triangle Park, NC 27709. The purpose of the meeting is (1) to discuss the status of the Commission and SACs; (2) to hear reports on civil rights progress and problems in the State; (3) to discuss the current project on racial tensions in the State; and (4) to discuss racial tensions in the Research Triangle Park community with representatives and leaders.

Persons desiring additional information, or planning a presentation to the Committee, should contact Acting Committee Chairperson Asa Spaulding, Jr., 919–469–9099, or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 14, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–14536 Filed 6–18–93; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Circular Pipes and Tubes From Taiwan; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on circular pipes and tubes from Taiwan. Domestic interested parties who object to this revocation must submit their comments in writing no later than thirty days from June 21, 1993.

EFFECTIVE DATE: June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Pam Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 1984, the Department of Commerce (the Department) published an antidumping duty order on circular pipes and tubes from Taiwan (49 FR 19369). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than thirty days from June 21, 1993, domestic interested parties, as defined in § 353.2(k) (3); (4); (5); and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

No interested parties requested an administrative review in accordance with the Department's notice of

opportunity to request administrative review by the end of the anniversary month. If domestic interested parties do not object to the Department's intent to revoke within thirty days from June 21, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14586 Filed 6–18–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–056]

Impression Fabric of Man-Made Fiber From Japan; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on impression fabric of man-made fiber from Japan. Domestic interested parties who object to this revocation must submit their comments in writing no later than thirty days from June 21, 1993.

EFFECTIVE DATE: June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph Fargo or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 1978, the Treasury Department published an antidumping finding on impression fabric of man-made fiber from Japan (43 FR 22344). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than thirty days from June 21, 1993, domestic interested parties, as defined in § 353.2(k) (3); (4); (5); and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

No interested parties requested an administrative review in accordance with the Department's notice of opportunity to request administrative review by the end of the anniversary monthy. If domestic interested parties do not object to the Department's intent to revoke within thirty days from June 21, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14587 Filed 6–18–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–351–505]

Malleable Cast Iron Pipe Fittings From Brazil; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on malleable cast iron pipe fittings from Brazil. Domestic interested parties who object to this revocation must submit their comments in writing no later than thirty days from June 21, 1993.

EFFECTIVE DATE: June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Diminich or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1986, the Department of Commerce (the Department) published an antidumping duty order on malleable cast iron pipe fittings from Brazil (51 FR 18640). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity To Object

No later than thirty days from June 21, 1993, domestic interested parties, as defined in § 353.2(k) (3); (4); (5); and (5) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

No interested parties requested an administrative review in accordance with the Department's notice of opportunity to request administrative review by the end of the anniversary month. If domestic interested parties do not object to the Department's intent to revoke within thirty days from June 21, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14589 Filed 6–18–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–507]

Malleable Cast Iron Pipe Fittings, Other Than Grooved, From South Korea; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on malleable cast iron pipe fittings, other than grooved, from South Korea. Domestic interested parties who object

to this revocation must submit their comments in writing no later than thirty days from June 21, 1993.

EFFECTIVE DATE: June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Diminich or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 1986, the Department of Commerce (the Department) published an antidumping duty order on malleable cast iron pipe fittings, other than grooved, from South Korea (51 FR 18917). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than thirty days from June 21, 1993, domestic interested parties, as defined in § 353.2(k) (3); (4); (5); and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

No interested parties requested an administrative review in accordance with the Department's notice of opportunity to request administrative review by the end of the anniversary month. If domestic interested parties do not object to the Department's intent to revoke within thirty days from June 21, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14588 Filed 6–18–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–507]

Pipe Fittings From Taiwan; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Intent to Revoke Antidumping Duty Order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on pipe fittings from Taiwan. Domestic interested parties who object to this revocation must submit their comments in writing no later than thirty days from June 21, 1993.

EFFECTIVE DATE: June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Dennis Askey or Wendy Frankel, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 1986, the Department of Commerce (the Department) published an antidumping duty order on pipe fittings from Taiwan (51 FR 18918). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than thirty days from June 21, 1993, domestic interested parties, as defined in § 353.2(k) (3); (4); (5); and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

No interested parties requested an administrative review in accordance with the Department's notice of opportunity to request administrative review by the end of the anniversary month. If domestic interested parties do not object to the Department's intent to revoke within thirty days from June 21, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14590 Filed 6–18–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–247–003]

Portland Cement From The Dominican Republic; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on portland cement from the Dominican Republic. Domestic interested parties who object to this revocation must submit their comments in writing no later than thirty days from June 21, 1993.

EFFECTIVE DATE: June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph Fargo or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 1963, the Treasury Department published an antidumping finding on portland cement from the Dominican Republic (28 FR 4507). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than thirty days from June 21, 1993, domestic interested parties, as defined in § 353.2(k) (3); (4); (5); and (6)

of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

No interested parties requested an administrative review in accordance with the Department's notice of opportunity to request administrative review by the end of the anniversary month. If domestic interested parties do not object to the Department's intent to revoke within thirty days from June 21, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: June 3, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–14591 Filed 6–18–93; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[Docket No. 921231–2331; I.D. #102092B]

Pacific Halibut Fisheries; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Alaska Crab Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the groundfish, halibut, or crab fisheries of the North Pacific under future effort limiting management regimes.

SUMMARY: The North Pacific Fishery Management Council (Council) intends to develop a comprehensive rationalization plan (CRP) for the management of fisheries in the Council's area of authority. The Council has adopted and publicized a control date of June 24, 1992, after which any person or fishing vessel that enters the groundfish, halibut, or crab fisheries under the Council's management authority will be not be assured of future access to those fishery resources if a CRP is implemented that limits the number of participants or vessels in these fisheries. The Council has also published possible eligibility criteria for access to the groundfish, halibut, or crab resources. The Council is not prevented from selecting any other date for eligibility in these fisheries or another method of controlling fishing effort from being proposed and implemented. The Council's intention in announcing this control date is to notify the public that speculative entry into those fisheries after the control date will not assure continued access to those fishery resources if a limited access system is implemented.

FOR FURTHER INFORMATION CONTACT: Chris Oliver, Deputy Director, North Pacific Fishery Management Council, 907–217–2809, or Jay Ginter, Fishery Management Biologist, Alaska Region, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the exclusive economic zone of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands Area (BSAI) are managed by the Secretary of Commerce (Secretary) under the Fishery Management Plan (FMP) for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI. The commercial harvest of King and Tanner crabs in the BSAI are managed under the FMP for the King and Tanner Crab Fisheries of the BSAI. These FMPs were prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs for the GOA and BSAI groundfish fisheries are implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR parts 672 and 675, respectively. General regulations that also pertain to the U.S. groundfish fisheries are set forth at 50 CFR part 620. State of Alaska regulations governing fishing for King and Tanner crabs in the BSAI are set forth at 16 Alaska stat. §§ 34 and 35. Regulations governing fishing for Pacific halibut are set forth at 50 CFR part 301.

At the August 1990 Council meeting, the Council made a commitment to pursue a temporary moratorium on the entry of new vessels into the groundfish, crab, and halibut fisheries, based on the need for an interim measure to prevent continued growth in fishing capacity while the Council assessed alternative management measures under the CRP. The Council intends to manage the fishery resources of the GOA and BSAI under its authority in a rational manner. This approach has been termed the CRP.

A notice of a control date was published in the **Federal Register** on September 5, 1990, that gave notice of the Council's intent to develop a vessel moratorium and announced a date after which a vessel's participation in the groundfish, halibut, and crab fisheries might not ensure future access to those fisheries. The purpose of the September 1990 notice was to notify the public of the Council's intentions so that the fishing industry could plan their business activities accordingly.

During its June 1991 meeting, the Council voted to recommend to the Secretary amendments to the GOA and BSAI FMPs that would divide the total allowable catch (TAC) specification for pollock in the BSAI and GOA, and Pacific cod in the GOA between the inshore and offshore sectors of the fishing industry. That recommendation included a further commitment by the Council to pursue a vessel moratorium, and to develop by 1995, alternative management measures under a CRP.

On December 8, 1991, the Council voted to recommend to the Secretary an individual fishing quota (IFQ) management program for fixed gear fisheries in sablefish and halibut under its authority. The IFQ program allocates the fixed gear TAC of sablefish and halibut to vessel owners or lessees who made landings in those fisheries in 1988, 1989, or 1990, based on the amount of halibut they landed between 1984 and 1990, and the amount of sablefish landed between 1985 and 1990. The Council may consider a similar allocation scheme for managing fishing effort under a CRP.

On June 24, 1992, the Council voted to recommend that the Secretary implement the vessel moratorium program as a temporary measure until a CRP is implemented. The moratorium would apply for a period of 3 to 5 years from its effective date, or less if rescinded. In taking this action, the Council reiterated its intent to continue developing a CRP. This recommendation is still under the auspices of the Council and has not been transmitted to the Secretary.

At its June 24, 1992, meeting, the Council announced a control date of June 24, 1992, after which any person or fishing vessel will not be assured of future access to those fishery resources if a CRP is implemented that limits the number of participants or vessels in these fisheries. The Council recognizes that its action may discourage increased fishing effort in the affected fisheries for purposes of increasing individual catch histories because any landings in these fisheries made after June 24, 1992, may not count toward future allocations of TAC under a future CRP. The purpose of this notice is to inform the public through the **Federal Register** of the Council's announced intentions regarding future fisheries management actions.

The public should be aware that fishermen or vessels who made landings prior to this date are not necessarily guaranteed access under any future

management regime developed by the Council or the Secretary, because the Council may recommend additional criteria for qualifying fishermen or vessels as participants in these fisheries. Neither the Council nor the Secretary is committed to any particular management regime or priority criteria for access to the groundfish, halibut, or crab fisheries under the Council's authority. The Council may choose to take no further action to control entry or access to these fisheries. The Council may also choose any other date before or after June 24, 1992, as a criterion for future participation in these fisheries.

Dated: June 15, 1993.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–14545 Filed 6–18–93; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Notice of Teleconference

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council will hold a telephone conference on July 1, 1993, beginning at 9:30 a.m., Pacific Standard Time. The purpose of the telephone conference is to discuss allocation of Pacific whiting in 1994 and future years.

The Council's allocation measure for Pacific whiting for 1993 and beyond was substantially altered by the Secretary of Commerce, who implemented a one-year plan for 1993, which effectively provided 70 percent of the resource to the offshore sector. Unless further action is taken, there will be no allocation in place for future years; all vessels would compete in an "Olympic" fishery. It is unclear at this time if the Department of Commerce will entertain a Council-recommended allocation for 1994, or if that recommendation could deviate from the 1993 measure. The Department has been asked to provide guidance on this matter.

In order for the Council to have a Pacific whiting management plan in effect for 1994, the Council must adopt a preferred measure for public review at the September Council meeting in Portland and take final action at its November meeting in San Francisco. The Council will decide how to address Pacific whiting allocation for future years at the conference of July 1.

Members of the public that wish to participate in this conference may do so at the following locations:

NMFS, Northwest Region, 7600 Sand Point Way, NE, Bldg. 1, Seattle, WA

Pacific Fishery Management Council, 2000 SW. First Avenue, Suite 420, Portland, OR

Oregon Department of Fish and Wildlife, 2040 SE Marine Science Dr., Newport, OR

Fishermen's Marketing Association, 320 Second Street, Suite 2B, Eureka, CA

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: June 14, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–14472 Filed 6–18–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit No. 855 (P342C).

SUMMARY: On April 2, 1993, notice was published in the **Federal Register** (58 FR 17383) that an application had been filed by Mr. John Calambokidis, Cascadia Research Collective, Waterstreet Building, Suite 201, 218½ West Fourth Avenue, Olympia, WA 98501, for a scientific research permit to conduct photo-identification studies on humpback whales (*Megaptera novaeangliae*), blue whales (*Balaenoptera musculus*), and gray whales (*Eschrichtius robustus*) over a 5-year period in the waters of California, Oregon, Washington, and international waters of the North Pacific.

Notice is hereby given that on June 14, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (MMPA) (16 U.S.C. 1361 *et seq.*) and the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 *et seq.*) NMFS issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the ESA of 1973, is based on the finding that the Permit: (1) Was applied for in good faith; (2) Will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) Is consistent with the purposes and policies set forth in section 2 of the ESA.

The Permit and other related documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, 1335 East West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115 (206/526–6150); and

Director, Southwest Region, NMFS, 501 W. Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

Dated: June 14, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–14499 Filed 6–18–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

June 15, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: June 22, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 641 is being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 24597, published on June 10, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant

to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 15, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 5, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Indonesia and exported during the period July 1, 1992 through June 30, 1993.

Effective on June 22, 1993, you are directed to reduce the limit for Category 641 to 1,525,407 dozen,[1] as provided under the terms of the current bilateral agreement between the Governments of the United States and Indonesia.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–14585 Filed 6–18–93; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title, Applicable Form, and OMB Control Number: 1992 Reserve Components Survey of Spouses.

Type of Request: Expedited Processing—Approval Date Requested: July 21, 1993.

Number of Respondents: 35,408.

Responses per Respondent: 1.

Annual Responses: 35,408.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 11,802.

Needs and Uses: This survey of the spouses of members of reserve components focuses on family reactions to reserve and guard programs. This, and the companion survey of reservists, examines attrition and retention, reactions to programs, treatment by the Department of Defense, and impact on families.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: June 15, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–14470 Filed 6–18–93; 8:45 am]

BILLING CODE 5000-04-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 225, Foreign Acquisition; DFARS Subpart 252.2, Texts of Provisions and Clauses.

Type of Request: Emergency submission—Approval date requested: June 11, 1993.

Average Burden Hours/Minutes per Response: .5 Hours.

Reponse per Respondent: 6.

Number of Respondents: 300.

Annual Burden Hours: 900.

Annual Responses: 1,800.

Needs and Uses: The clause at DFARS 252.225–7026, Reporting of Overseas Subcontracts, presently used in contracts exceeding $500,000, requires contractors to submit a Subcontract Report of Foreign Purchases for each subcontract over $25,000, if the location of the producer of the supplies, or provider of the services, is outside the United States. This information is needed for annual exchanges of data between the United States and foreign countries, in accordance with reciprocal memoranda of understanding. Section 840 of the National Defense Authorization Act for Fiscal Year 1993 (Pub. L. 102–484) provides that any firm that is performing a DoD contract exceeding $10,000,000, or is submitting a bid or proposal for such a contract, shall notify DoD in advance of any intention of the firm or its first tier subcontractor to perform outside the United States and Canada any part of the contract that exceeds $500,000 in value and could be performed inside the United States or Canada. The clause at DFARS 252.225–7026 is being revised to incorporate the reporting requirement of section 840 of the National Defense Authorization Act for Fiscal Year 1993. The reports will be maintained in compiled form for a period of 5 years after the date of submission and will be made available for use in the preparation of the national defense technology and industrial base assessment carried out under 10 U.S.C. 2305.

Affected Public: Businesses or other for-profit organizations; Small businesses or organizations.

Frequency: On occasion.

Respondents Obligation: Mandatory.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia, 22202–4302.

Dated: June 15, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–14471 Filed 6–18–93; 8:45 am]

BILLING CODE 5000-04-M

[1] The limit has not been adjusted to account for any imports exported after June 30, 1992.

DEPARTMENT OF ENERGY

Availability of a Supplement to the Draft Environmental Impact Statement on the Proposed Expansion of the Strategic Petroleum Reserve

AGENCY: Strategic Petroleum Reserve (SPR), Department of Energy (DOE).

ACTION: Notice of availability of a supplement to a draft environmental impact statement and notice to conduct public hearings on the supplement.

SUMMARY: The Department of Energy (DOE) announces the availability of the Supplement to the Draft Environmental Impact Statement on the Expansion of the Strategic Petroleum Reserve (DOE/EIS–0165). The Draft Environmental Impact Statement (DEIS), issued in October 1992, assessed a proposed plan for expanding the Strategic Petroleum Reserve (SPR) from 750 million barrels to one billion barrels pursuant to Congressional directive (Pub. L. 101–383 and Pub. L. 101–512). The expansion plan is considering five candidate sites. The Supplement assesses an alternative method of brine disposal by underground injection at two of the five candidate sites—Cote Blanche salt dome in St. Mary Parish, Louisiana and Richton salt dome in Perry County, Mississippi.

Comments on the Supplement to the DEIS are invited from interested persons, organizations, and agencies. Public hearings will be held at locations near each of the two candidate sites considered in the Supplement.

DATES: Written comments to the DOE should be postmarked by July 26, 1993, to ensure consideration in evaluating the additional brine disposal methods at the two candidate sites discussed in the Supplement. Oral comments will be received at the public hearings to be held on July 7 and 8, 1993 (schedule and locations given below). Individuals wishing to make oral statements at a hearing should notify the DOE no later than one week prior to the hearing so that the DOE may arrange a schedule for presentations.

ADDRESSES: Requests for copies of the Supplement, requests to present oral comments at the hearings, and requests for further information concerning this Supplement may be directed to: Mr. Hal Delaplane, Strategic Petroleum Reserve (FE–423), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Requests for copies of the Supplement can be submitted by telephone at 703–934–3320. Requests to present oral comments at the hearings also will be accepted by facsimile at 703–934–9740 (Attention: DOE Public Hearings, Deborah Shaver). For general information on the procedures followed by the DOE in complying with the requirements of the National Environmental Policy Act (NEPA), contact: Carol Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202–586–4600 or 800–472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

The DEIS assessed the proposed plan to expand the SPR by 250 million barrels that involves the selection and development of two salt domes as sites for underground petroleum storage from five candidate salt domes being considered. These sites are located in Brazoria and Jefferson Counties, Texas; Iberia and St. Mary Parishes, Louisiana; and Perry County, Mississippi. To meet SPR petroleum distribution objectives, one site would be located in Texas and the other would be located in either Louisiana or Mississippi. All candidates are assessed at the same level of detail. No preferred alternative(s) has been selected at this time. The DEIS and the Supplement are documents which the DOE will use to select the preferred alternative(s) in the Final EIS.

All proposed storage facilities analyzed in the DEIS involve the development of underground salt caverns for petroleum storage which would be accomplished by solution mining of the salt. This process generates substantial quantities of saturated brine which must be disposed of in an environmentally acceptable manner. After site development, additional brine disposal will be required, but at substantially lower rates and quantities, for site fill and cavern pressure control.

The DEIS assessed the environmental impacts of brine disposal into the Gulf of Mexico as the principal brine disposal method for all sites. In addition, the DEIS assessed an alternative brine disposal configuration using underground brine injection wells in lieu of ocean discharge for the two Louisiana candidates —Weeks Island and Cote Blanche. For the Richton, Mississippi site, the DEIS assessed a single hybrid brine disposal configuration which would provide a combination of primary (high volume) brine disposal through a 96-mile pipeline into the Gulf of Mexico and secondary (low volume) brine disposal via underground injection. After completion of the site development, the 96-mile pipeline to the Gulf would be converted to oil distribution, and all subsequent brine disposal would be via the underground injection system.

Public hearings on the DEIS were held in December 1992 in Mississippi, Texas, and Louisiana. The comment period closed March 5, 1993. Among comments received by the DOE was a proposal for an underground injection system capable of meeting all of Richton's brine disposal requirements which was to be considered in lieu of ocean discharge due to perceived lower environmental impacts and costs.

In response to this comment, the DOE concluded that the proposal is reasonable for consideration. Therefore, consistent with 40 CFR 1502.9(c) of the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the DOE determined on March 11, 1993, that it would further the purposes of NEPA to discuss the proposal and circulate it for public review and comment in a Supplement to the DEIS. In addition, the Supplement provides information for public comment on a refinement to the brine injection alternative for Cote Blanche which substantially differs environmentally from that considered in the DEIS. The Supplement analyzes impacts to floodplains/wetlands, wildlife, surface water, and groundwater. The Supplement was approved by the DOE for publication and distribution on May 12, 1993.

II. Floodplains/Wetlands Notification

Pursuant to Executive Order 11988, Floodplain Management, and 11990, Protection of Wetlands, and to 10 CFR part 1022, Compliance with Floodplains/Wetlands Environmental Review Requirements, the DOE hereby provides notice that the construction and operation of the brine injection fields and associated pipelines at Cote Blanche, Louisiana and Richton, Mississippi would be located in the 100-year floodplain. Construction and operation would also impact wetlands at both candidate sites.

The DOE will prepare a floodplain and wetlands assessment for this proposed action. Implementation of this action would be done to avoid or reduce potential harm to or within these affected floodplains and wetlands. The potential environmental impacts are discussed in Chapter 5 of the Supplement to the DEIS. Any comments regarding the proposed plan's impact on floodplains and wetlands may be submitted to the DOE in accordance with the procedures described below. The assessment and a floodplain statement of findings will be included

in the Final Environmental Impact Statement.

III. Comment Procedures

A. Availability of the Supplement to the DEIS

Copies of the Supplement to the DEIS are available for inspection at the DOE's reading rooms at the information repositories in the vicinity of each of the five alternative sites evaluated in the DEIS. The locations where the Supplement to the DEIS may be found are as follows:

1. DOE Reading Rooms

—Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585
—SPR Project Management Office (c/o Mike Farley), 900 Commerce Road East, New Orleans, Louisiana 70123

2. Information Repositories

a. *Texas*

—Brazoria County Library, 401 East Cedar Lane, Angleton, Texas 77515
—Beaumont Public Library, 801 Pearl Street, Beaumont, Texas 77701

b. *Louisiana*

—Allen J. Ellender Memorial Library, Leighton Drive, Nicholls State University, Thibodaux, Louisiana 70310
—Dupre Library, 302 East St. Mary Blvd, University of Southwestern Louisiana, Lafayette, Louisiana 70504

c. *Mississippi*

—Library of Hattiesburg, 723 North Main Street, Hattiesburg, Mississippi 39401
—Pascagoula Public Library, 3214 Pascagoula Street, Pascagoula, Mississippi 39567

B. Written Comments

Interested parties are invited to provide comments on the content of the Supplement to the DEIS to the DOE at the above address. Envelopes should be marked "Attention: SPR Supplement to the DEIS Comments." Comments should be postmarked no later than July 26, 1993, to ensure consideration in evaluating the brine disposal methods at the two candidate sites discussed in the Supplement, should either be selected as a preferred alternative. Comments postmarked after July 26, 1993, will be considered to the extent practicable. Comments will not be accepted by telephone.

C. Public Hearings

1. Participation Procedures: The public is also invited to provide comments on the Supplement to the DEIS to the DOE at the scheduled public hearings. The purpose of the hearings is to receive substantive comments related to the Supplement. The hearings will not be judicial or evidentiary-type proceedings.

Persons who wish to speak at a hearing are advised to preregister by mail or by facsimile at the address or telephone number listed above. Preregistration requests will be accepted up to one week prior to the hearings. A separate request is required for each speaker. Registrants should confirm the time they are scheduled to speak at the registration desk at the hearing. Persons who have not preregistered may register at the door and will be accommodated on a first-come, first-served basis to the extent time allows. To ensure that as many persons as possible have the opportunity to speak, five minutes will be allotted to each. Additional sessions will be held after the scheduled date if the number of preregistrants indicates that there may be more persons wishing to speak than can be accommodated in the time available. Additional sessions will be announced prior to and at the scheduled hearings. Speakers are encouraged to provide the DOE with written copies of their comments at the hearing. In addition, persons at the hearing may submit written comments in lieu of speaking. Written comments will receive the same weight in the hearing record as oral comments.

2. Hearing Schedules and Locations: Hearings will be held from 7 to 10 p.m. at the following locations on the dates indicated:

Wednesday, July 7, 1993

C.E. Roy Center, 300 East 5th Street, Hattiesburg, Mississippi

Thursday, July 8, 1993

Franklin High School, 1401 Cynthia Street, Franklin, Louisiana

3. Conduct of the Hearings: The DOE's basic procedures for conducting the hearings will be announced by the presiding officer at the start of the hearings. Clarifying questions regarding statements made at the hearings may be asked only by DOE personnel conducting the hearings. There will be no cross-examination of persons providing statements. A transcript of the hearings will be prepared, and the entire record of each hearing, including the transcript, will be retained by the DOE for inspection at information repositories and DOE reading rooms listed above.

Issued in Washington, DC on June 16, 1993.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 93–14579 Filed 6–18–93; 8:45 am]

BILLING CODE 6450–01–P

Preparation of Nuclear Waste Management Plan Report

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) Office of Civilian Radioactive Waste Management hereby requests the views and comments of the Nuclear Regulatory Commission (NRC), the Environmental Protection Agency (EPA), and other interested parties on the Office of Civilian Radioactive Waste Management's Draft Nuclear Waste Management Plan Report. This report considers whether current programs and plans for management of nuclear waste, as mandated by the Nuclear Waste Policy Act of 1982, as amended, are adequate for management of any additional volumes or categories of nuclear waste that might be generated by any new nuclear power plants that might be constructed and licensed after the date of the enactment of the Energy Policy Act of 1992. Views and comments received in accordance with the instructions given in this notice will be considered by the Office of Civilian Radioactive Waste Management in preparation of the final Nuclear Waste Management Plan Report required under section 803 of the Energy Policy Act.

DATES: Comments on the draft report are to be submitted to the Office of Civilian Radioactive Waste Management at the address below no later than August 20, 1993. The meetings will be held on July 20, 1993, in Las Vegas, Nevada, beginning at 2 p.m. and on July 29, 1993, in Washington, DC, beginning at 9 a.m.

ADDRESSES: Comments should be addressed to: Dwight E. Shelor, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

The first public meeting will be held on July 20, 1993, from 2–10 p.m. (with a 5:30–6:30 p.m. dinner break) in the Board Room on the campus of the University of Nevada at Las Vegas (702) 736–3610. The second public meeting will be held on July 29, 1993, from 9 a.m.–5 p.m. (with a 12:30–1:30 p.m.

lunch break) at the Hilton Hotel at Connecticut Avenue and Columbia Road in Washington, DC (202) 483–3000.

FOR FURTHER INFORMATION CONTACT: For information and to receive a copy of the draft report, please contact Dwight E. Shelor, Office of Civilian Radioactive Waste Management, (202) 586–6046.

SUPPLEMENTARY INFORMATION:

Background

In development and preparation of the section 803 report, the Office of Civilian Radioactive Waste Management will solicit extensive public comment and conduct external review prior to submitting a final report to Congress. The first step in this process was a February 17, 1993, public meeting on the report's annotated outline.

Section 803 of the Energy Policy Act of 1992 (Pub. L. 102–486, October 24, 1992) states that the Secretary of Energy shall prepare the report for submission to the President and Congress within one year after the date of the enactment of the Energy Policy Act. The report shall examine any new relevant issues related to management of spent nuclear fuel and high-level radioactive waste that might be raised by the addition of new nuclear-generated electric capacity, including anticipated increased volumes of spent nuclear fuel or high-level radioactive waste, any need for additional interim storage capacity prior to final disposal, transportation of additional volumes of waste, and any need for additional repositories for deep geologic disposal. DOE evaluated programs and plans mandated by the Nuclear Waste Policy Act of 1982, as amended, specifically those implemented by the Office of Civilian Radioactive Waste Management. DOE believes that the current waste management programs and plans are adequate to manage additional radioactive materials that may be generated by the aforementioned nuclear power plants and other radioactive materials that are not part of our current programs, but may require disposal in a geologic repository.

The Energy Policy Act of 1992 requires DOE to evaluate its programs and plans to determine whether they are adequate to manage additional waste that may be generated by nuclear power plants constructed and licensed after October 24, 1992.

In addition to waste that may be generated by new nuclear power plants, the Department considered waste from other sources.

Since current programs and plans for the management of nuclear waste as mandated by the Nuclear Waste Policy Act of 1982, as amended, address spent nuclear fuel and high-level radioactive waste from both commercial and defense sources, the adequacy of these programs and plans could not be determined without considering both sources.

DOE has concluded that current waste management programs and plans are adequate for any additional volumes and categories of nuclear waste produced by new power plants. Those programs and plans are also adequate for managing potential volumes or categories of high-level radioactive waste resulting from the Department's waste stabilization and disposal programs. The analysis found that:

1. Radioactive materials from new nuclear power plants, and most other radioactive materials not managed as part of the current waste management system, will not be generated until well into the future. There will be sufficient time to modify the current programs and plans after the amount of additional waste to be generated by new plants is known. For example, the uppermost projection of new nuclear power plants operation would result in 35 percent more spent nuclear fuel by 2030 than provided for in current plans. Most of this increase would occur between 2020 and 2030, leaving ample time to make program adjustments.

2. Flexibility has been built into the current programs and plans. The system development process, the waste acceptance process, and the cost estimating and cost recovery programs can be adjusted to changing demands on the waste management system. Evaluation of potential additional waste that may be generated after October 24, 1992, indicates that any need for increased storage or disposal capacity can be handled by the current program planning process.

3. Development of the waste management system is at an early stage, allowing ample opportunity to accommodate changing needs. Major facilities for storage, transportation, and disposal have not been sited, and final designs for their construction have not been developed. Therefore, the system design can be adjusted to meet new requirements.

The requirement for additional disposal capacity to handle increased quantities of nuclear waste does not necessarily mean that additional repositories will be needed. Only when site characterization has provided enough data will it be possible to determine the first repository's disposal capacity, and only from that can we determine the need for a second repository. The Nuclear Waste Policy Act of 1982, as amended, requires an evaluation of the need for a second repository be done between 2007 and 2010. There is no need for an earlier evaluation.

These findings are based on an analysis of waste generation scenarios that generate the largest amount of waste. In order to perform a thorough evaluation of current programs and plans to manage potential waste generation, DOE developed two scenarios that would generate large amounts of waste at an early date using reasonable assumptions by authoritative sources.

The first scenario assumes the maximum amount of spent nuclear fuel from commercial plants and high-level radioactive waste from DOE activities. It assumes new nuclear power plants are introduced between 2006 and 2010, and that 70 percent of the existing plants renew their licenses for 20 years; this results in generation of 115,800 metric tons of spent nuclear fuel through 2030. The scenario also assumes that high-level radioactive waste, currently stored at the West Valley Demonstration Project (New York), the Savannah River site (South Carolina), the Idaho National Engineering Laboratory (Idaho), and the single- and double-shell tanks at the Hanford site (Washington), is solidified in 48,900 canisters.

The second scenario assumes the same amount of nuclear power is being generated as the first scenario, but 19 advanced liquid metal reactors are deployed between 2012 and 2030 in addition to other advanced light-water reactors. In this scenario, 40,900 metric tons of spent nuclear fuel are reprocessed to supply fuel for the advanced liquid metal reactors, resulting in generation of 74,900 metric tons of spent nuclear fuel through 2030. Reprocessing results in 46,100 packages of high-level radioactive waste, added to the 48,900 canisters in the first scenario for a total of 95,000 canisters and packages of high-level radioactive waste through 2030.

The scenarios were not developed to predict or endorse future activities. In reality, future waste generation will differ because actual conditions will not be the same as those assumed in the scenarios. However, DOE is confident that the findings would be valid over a wide range of actual conditions because the scenarios were developed to maximize waste generation and changes in assumptions would most likely result in less waste being generated. Changes in waste projections would not change the Department's findings that current programs and plans are adequate to

manage all of the spent nuclear fuel and solidified high-level radioactive waste projected.

Meetings

Both July meetings are open to the public and consist of two parts. The first part of each meeting (in the afternoon in Las Vegas, Nevada, and in the morning in Washington, DC), will include a brief presentation by the Office of Civilian Radioactive Waste Management on the section 803 report to a group of invited participants. The invited participants will interact with the authors of the section 803 report and provide input on a section-by-section basis. Representatives from Nevada, and affected counties; utility, environmental, and labor groups; other Federal agencies; regional energy boards; civic organizations; and others will be invited to participate. The second part of each meeting (in the evening in Las Vegas, Nevada, and in the afternoon in Washington, DC), will also include a brief presentation by the Office of Civilian Radioactive Waste Management. The public will be invited to participate in this information exchange that will include a question and answer session. This session would be educational in nature and designed to help meeting attendees better understand the report in order to assist them in the preparation of their written comments.

Issued in Washington, DC on June 16, 1993.

Jerome Saltzman,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 93–14582 Filed 6–18–93; 8:45 am]

BILLING CODE 6450–01–P

Public Road Work Draft Funding Policy

AGENCY: Department of Energy.

ACTION: Notice of availability of draft statement of policy.

SUMMARY: The Department of Energy (DOE) is announcing the availability of its draft policy for funding public road work off DOE-owned sites.

ADDRESSES: The draft policy can be obtained at the following address: Department of Energy, AD–141, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas Knox, Department of Energy, AD–141, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–1191.

SUPPLEMENTARY INFORMATION: This draft policy is in response to the Conference Report accompanying H.R. 2100, the National Defense Authorization Act for Fiscal Years 1992 and 1993 (H. Rept. 102–311). The draft policy sets forth the parameters that are proposed for governing DOE's funding of public road work off DOE-owned sites.

Issued in Washington, DC, June 15, 1993.

Linda G. Sye,

Acting Assistant Secretary for Human Resources and Administration.

[FR Doc. 93–14580 Filed 6–18–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Environment, Safety and Health

Radiological Health and Safety Policy

AGENCY: Department of Energy.

ACTION: Notice of publication of Radiological Health and Safety Policy.

SUMMARY: Today's notice publishes the Department's Radiological Health and Safety Policy. The Secretary signed the Policy Statement on June 8, 1993. This policy statement formally expresses the Department's fundamental policies and objectives on radiological health and safety, and is a key element in the Department's initiatives directed towards establishing DOE as a pacesetter in the area of radiological protection. This policy is applicable to all elements and activities conducting radiological operations within the Department.

FOR FURTHER INFORMATION CONTACT: C. Rick Jones, Director, Office of Health Physics/Industrial Hygiene Programs, EH–41, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 or telephone (301) 903–6061.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

It is the policy of the Department of Energy to conduct its radiological operations in a manner that ensures the health and safety of all its employees, contractors, and the general public. In achieving this objective, the Department shall ensure that radiation exposures to its workers and the public and releases of radioactivity to the environment are maintained below regulatory limits and deliberate efforts are taken to further reduce exposures and releases in accordance with a process that seeks to make any such exposures or releases as low as reasonably achievable. The Department is fully committed to implementing a radiological control program of the highest quality that consistently reflects this policy.

In meeting this policy, the Department shall:

1. Establish and maintain a system of regulatory policy and guidance reflective of national and international radiation protection standards and recommendations. The Assistant Secretary for Environment, Safety and Health (or the Director, Naval Reactors, for that program), has responsibility for promulgating and maintaining policies, standards, and guidance related to radiological protection. Departmental radiological protection requirements are, at a minimum, consistent with the Presidentially approved Radiation Protection Guidance to Federal Agencies developed by the Environmental Protection Agency in accordance with its mandated Federal guidance responsibilities. Departmental requirements often are more stringent and reflect, as appropriate, recommendations and guidance from various national and international standards-setting and scientific organizations, including the International Commission on Radiological Protection, the National Council on Radiation Protection and Measurements, the American National Standards Institute, and others. Departmental requirements related to radiological protection will be set forth, as appropriate, in rules and Department of Energy Orders, and guidance documents will be issued on acceptable means to implement these requirements.

2. Ensure personnel responsible for performing radiological work activities are appropriately trained. Standards shall be established to ensure the technical competency of the Department's work force, as appropriate, through implementation of standardized and mandated radiological training and development programs.

3. Ensure the technical competence of personnel responsible for implementing and overseeing the radiological control program. An appropriate level of technical competence gained through education, experience, and job-related technical and professional training is a critical component for achieving the goals of the Department's radiological control policy. Qualification requirements commensurate with this objective shall be established for technical and professional radiological control program positions and shall, at a minimum, be consistent with applicable industry standards and promote professional development and excellence in radiological performance.

4. Establish and maintain, from the lowest to the highest levels, line management involvement and accountability for departmental

radiological performance. The responsibility for compliance with departmental radiological protection requirements, and for minimizing personnel radiation exposure, starts at the worker level and broadens as it progresses upward through the line organization. The Department's line managers are fully responsible for radiological performance within their programs and the field activities and sites assigned to them, and shall take necessary actions to ensure requirements are implemented and performance is monitored and corrected as necessary.

5. Ensure radiological measurements, analyses, worker monitoring results and estimates of public exposures are accurate and appropriately made. The capability to accurately measure and analyze radioactive materials and workplace conditions, and determine personnel radiation exposure, is fundamental to the safe conduct of radiological operations. Policy, guidance, and quality control programs shall be directed towards ensuring such measurements are appropriate, accurate, and based upon sound technical practices.

6. Conduct radiological operations in a manner that controls the spread of radioactive materials and reduces exposure to the work force and the general public and that utilizes a process that seeks exposure levels as low as reasonably achievable. Radiological operations and activities shall be preplanned to allow for the effective implementation of dose and contamination reduction and control measures. Operations and activities shall be performed in accordance with departmental conduct of operations requirements and shall include reasonable controls directed towards reducing exposure, preventing the spread of radiological contamination, and minimizing the generation of contaminated wastes and the release of effluents.

7. Incorporate dose reduction, contamination reduction, and waste minimization features into the design of new facilities and significant modifications to existing facilities in the earliest planning stages. Wherever possible, facility design features shall be directed towards controlling contamination at the source, eliminating airborne radioactivity, maintaining personnel exposure and effluent releases below regulatory limits and utilizing a process that seeks exposure levels and releases as low as reasonably achievable. Radiological design criteria shall reflect appropriate consensus recommendations of national and international standards setting groups.

8. Conduct oversight to ensure departmental requirements are being complied with and appropriate radiological work practices are being implemented.

All departmental elements shall conduct their radiological operations in a manner consistent with the above policies and objectives.

Hazel R. O'Leary,

Secretary.

[FR Doc. 93-14581 Filed 6-18-93; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket Nos. EL93-43-000, et al.]

Alcoa Generating Corp., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 15, 1993.

Take notice that the following filings have been made with the Commission:

1. Alcoa Generating Corp.

[Docket No. EL93-43-000]

Take notice that on June 2, 1993, Alcoa Generating Corporation (AGC) tendered for filing a letter seeking reconsideration of the letter of August 25, 1992 denying its request that the Federal Energy Regulatory Commission waive the requirement that AGC file information on Form 423 for AGC's electric generating units in Warrick County Indiana. AGC further requests that in the event that the Commission determines that a formal petition for a declaratory order is appropriate, that AGC's filing be considered as made under Rule 207, 18 CFR 385.207 (1992).

Comment date: June 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Puget Sound Power & Light Co.

[Docket No. ER93-699-000]

Take notice that on June 8, 1993, Puget Sound Power & Light Company (Puget) tendered for filing the Average System Cost Rate Filing for the Exchange Period beginning October 1, 1992 and a Motion for Hearing and for Appointment of a Joint State Board to Review Average System Cost Rate.

Comment date: June 29, 1993, in accordance with Standard Paragraph E end of this notice.

3. Central Louisiana Electric Co., Inc.

[Docket No. ER93-659-000]

Take notice that on May 21, 1993, Central Louisiana Electric Company, Inc. (CLECO) tendered for filing a Notice of Cancellation of FPC Rate Schedule No. 2 between CLECO and the City of Franklin, Louisiana.

Comment date: June 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. PSI Energy, Inc.

[Docket No. ER92-653-000]

Take notice that PSI Energy, Inc. (PSI) on June 8, 1993, tendered for filing an amended Service Schedule to the FERC Filing in Docket No. ER92-653-000 to comply with a FERC Staff request.

Copies of the filing were served on Indianapolis Power and Light Company and the Indiana Utility Regulatory Commission.

Comment date: June 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. The United Illuminating Co.

[Docket No. ER93-365-000]

Take notice that on May 24, 1993, The United Illuminating Company (UI) tendered for filing supplemental information relating to UI's filing of an agreement to modify and extend the term of capacity exchange agreement between UI and The Connecticut Light and Power Company (CL&P).

UI states that the amendment was filed in response to a request by Commission Staff for additional information and that a copy of this filing has been mailed to CL&P.

UI requests that the rate schedule filed become effective May 1, 1993.

Comment date: June 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corp.

[Docket No. ER93-553-000]

Take notice that on May 27, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an amendment to its filing dated April 6, 1993 regarding the Marcy South Facilities Agreement with the Power Authority of the State of New York (NYPA).

Copies of the filing were served upon NYPA and the Public Service Commission of New York.

Comment date: June 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance

with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14512 Filed 6–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF89–126–004]

Cedar Bay Generating Co., Limited Partnership; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

June 16, 1993.

On June 7, 1993, Cedar Bay Generating Company, Limited Partnership (Applicant), 7475 Wisconsin Avenue, Bethesda, Maryland 20814–3422, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located in Jacksonville, Florida. The Commission originally certified the facility as a 249 MW qualifying cogeneration facility, *AES Cedar Bay, Inc.*, 46 FERC ¶ 62,284 (1989). Subsequently, the Commission granted recertification to AES Cedar Bay, Inc. for a 269 MW cogeneration facility, 54 FERC ¶ 62,018 (1991) and recertification to AES CB Limited Partnership to reflect a change in ownership from AES Cedar Bay, Inc. to AES CB Limited Partnership and the addition of a second steam customer, 58 FERC ¶ 62,253 (1992). The instant request for recertification is requested to reflect changes in ownership, one of the steam hosts and the operating and efficiency values.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14519 Filed 6–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF87–452–002]

Northampton Generating Co., L.P.; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

June 16, 1993.

On June 9, 1993, Northampton Generating Company, L.P. of 7475 Wisconsin Avenue, Suite 1000, Bethesda, Maryland 20814–3422, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located in the Borough of Northampton, Northampton County, Pennsylvania. The Commission previously certified the facility as an 84.1 MW old anthracite culm and silt-fired topping-cycle cogeneration facility. The instant request for recertification is due to a change in the facility's fuel supply sources, a change in the ownership structure, and an increase in the maximum net electric power production capacity to 98.0 MW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14513 Filed 6–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF93–104–000]

Southern California Gas Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

June 16, 1993.

On June 10, 1993, Southern California Gas Company (Applicant), P.O. Box 3249, M.L. 22HO, Los Angeles, California 90051–1249, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to Applicant, the topping-cycle cogeneration facility, which will be located at the applicant's Aliso Canyon Underground Natural Gas Storage Field in the Santa Susana Mountains north of Northridge, California, will consist of a combustion turbine generator, a separately fired heat recovery steam generator, and an extraction/condensing steam turbine-generator. Thermal energy in the form of steam will be used for compressed gas cooling using absorption chillers in the gas injection process, and gas dehydration in the gas withdrawal process. The primary energy source will be natural gas. The maximum net electric power production capacity will be 49.9 MW. The electric energy will be used by the Applicant and also sold to the Southern California Edison Company. Construction of the facility is expected to commence on August 1, 1994.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14518 Filed 6–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2544–001 Washington]

Washington Water Power Co.; Availability of Environmental Assessment

June 15, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new minor license for the existing Meyers Falls Hydroelectric Project, located on the Colville River in Stevens County, Washington, near the town of Kettle Falls, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing and potential future environmental effects of the project and concludes that approval of the project would not be a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14476 Filed 6–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–433–000, et al.]

Northern Natural Gas Company, et al., Natural Gas Certificate Filings

June 14, 1993.

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP93–433–000]

Take notice that on June 7, 1993, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed an application with the Commission in Docket No. CP93–433–000 pursuant to Section 7(c) of the Natural Gas Act (NGA) for authority to construct and operate certain pipeline and compression facilities in order to provide incremental firm transportation service to Iowa-Illinois Gas and Electric Company (Iowa-Illinois) and Cedar Falls Utilities (Cedar Falls), all as more fully set forth in the request which is open to public inspection.

Northern proposes to replace various minor pipeline compression equipment on its East Leg mainline, which extends from Ogden, Iowa, to Waterloo, Iowa, to Galena, Illinois, and terminates near Eagle, Wisconsin. Northern states that it would boost the maximum allowable operating pressure (MAOP) on the East Leg mainline from 960 psig to 991 psig between the Ogden and Waterloo compressor stations. Northern also states that the increase in MAOP on the East Leg would enable Northern to transport an additional 30,200 Mcf of natural gas per day.

Northern also proposes to install two rented 1,000 H.P. Saturn turbine compressors at the Waterloo compressor station in order to discharge the incremental natural gas volumes into the Cedar Rapids branchline. Northern states that it would use these compressors as branchline compressors to deliver approximately 30,000 Mcf of natural gas per day to Iowa-Illinois at the Cedar Rapids/Vinton, Iowa, town border station and approximately 200 Mcf of natural gas per day to Cedar Falls at the Cedar Falls, Iowa, delivery point. Northern also states that it would pay $505,200 annually to rent these compressors.

Northern states that it would cost approximately $725,000 to modify the East Leg mainline's MAOP and approximately $600,000 to install the two rental compressor units at the Waterloo compressor station. Northern proposes to finance the project with internally generated funds.

Northern would transport the 30,200 Mcf of natural gas per day for Iowa-Illinois and Cedar Falls under Northern's FERC Rate Schedule TF for terms of two and eight years, respectively, according to their precedent agreements.

Comment date: July 6, 1993, in accordance with Standard Paragraph F at the end of the notice.

2. United Gas Pipe Line Company

[Docket No. CP93–447–000]

Take notice that on June 10, 1993, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP93–447–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a 4-inch tap and appurtenant facilities to provide interruptible natural gas service to Murphy Oil Refinery (Murphy) in St. Bernard Parish, Louisiana, under United's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that the tap would be constructed on the Venice Junction-Chalmette 16-inch line at Index 293, St. Bernard Parish, Louisiana. United states further that the facilities would provide an estimated daily volume of 10,048 MMBtu of natural gas to Murphy.

It is said that the estimated cost of the facilities is $6,870 and that Murphy would reimburse United for such costs.

United states that the interruptible service to Murphy would have no impact on United's curtailment plan nor affect United's ability to serve its other customers.

Comment date: July 29, 1993, in accordance with Standard Paragraph G at the end of this notice.

3. Transcontinental Gas Pipe Line Corporation

[Docket No. CP93–442–000]

Take notice that on June 9, 1993, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251 filed in Docket No. CP93–442–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new point of delivery to Public Service Electric & Gas Company (PSE&G), all as more fully set forth in the request that is on file with the Commission and open to public inspection.

TGPL states that it will construct, install, own, operate and maintain a new delivery point to PSE&G (referred to as the "Hoechst Celanese Delivery Point") which shall include a 4-inch hot tap and appurtenant facilities at milepost 1798.00 on TGPL's existing 36-inch Caldwell "B" Lateral, all in Somerset County, New Jersey. PS&E construct, or cause to construct, appurtenant facilities to enable it to receive gas from TGPL at such delivery point.

The Hoechst Celanese Delivery Point will be used by PSE&G to receive up to a maximum daily delivery point entitlement of 3,000 Mcf per day of gas from TGPL on a firm interruptible basis in order to enable PSE&G to serve Hoechst Celanese Corporation, an incremental cogeneration customer of PSE&G that will use the gas as fuel for

its cogeneration plant. The authorized total transportation and sales service entitlement for PSE&G will not be altered from the current level, and the addition of the Hoechst Celanese Delivery Point will have no effect on TGPL's peak day or annual deliveries to PSE&G. Furthermore, TGPL has sufficient system delivery flexibility to accomplish deliveries at the Hoechst Celanese Delivery point without detriment or disadvantage of TGPL's other gas transportation sales customers, and, therefore, the addition of such point will have no effect on TGPL's peak day or annual deliveries to such other customers. Also, the addition of such delivery point is not prohibited by TGPL's FERC Gas Tariff. PSE&G will continue to have total firm mainline sales and transportation capacity of 430,549 Mcf per day.

Comment date: July 29, 1993, in accordance with Standard Paragraph G at the end of this notice.

4. Columbia Gulf Transmission Company

[Docket No. CP93-436-000]

Take notice that on June 7, 1993, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP93-436-000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon natural gas transmission facilities under Columbia Gulf's blanket certificate issued in Docket No. CP83-496-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia Gulf proposes to abandon its Carney Lateral by sale to Arkansas Oklahoma Gas Corporation (AOG). Columbia Gulf states that the Carney Lateral consists of approximately 11,024 feet of 6-inch pipeline and a single 3-inch measuring station and associated piping and dehydration equipment and rights-of-way connecting the Carney #1 Well to AOG's 8-inch pipeline in Sebastian County, Arkansas. Columbia Gulf further states that the facilities would be sold for $150,000 (as compared to a net depreciated book value of $279,832). It is indicated that the lateral would be purchased for continued use as a pipeline and not for salvage. Columbia Gulf advises that the sale of facilities would save approximately $15,900 yearly in operation and maintenance costs, as well as an estimated $40,000 in retirement costs.

It is stated that the Carney Lateral facilities were installed in 1981, under authorization issued in Docket No. CP80-281-000, to receive system supply for Columbia Gas Transmission Corporation (Columbia Transmission) and to transport the gas to AOG's system. It is alleged that Columbia Transmission is no longer purchasing natural gas production from the Carney #1 Well, and, since Columbia Transmission would have little if any sales function after its Order No. 636 restructuring proceedings, additional purchases of gas from the well would not be feasible.

Columbia Gulf states that no service currently is being provided through the facilities and it no longer has a use for the facilities. Columbia Gulf advises that Shippers purchasing gas production from the Carney #1 Well ship on a line owned by Ozark Gas Transmission System rather than incur an incremental transportation cost by using the Carney Lateral.

Comment date: July 29, 1993, in accordance with Standard Paragraph G at the end of this notice.

5. TransColorado Gas Transmission Company

[Docket No. CP90-1777-006]

Take notice that on June 7, 1993, TransColorado Gas Transmission Company (TransColorado), 12055 West 2nd Place, Lakewood, Colorado 80228, filed in Docket No. CP90-1777-006 pursuant to Section 7(c) an amendment to its application for a certificate of public convenience and necessity filed July 20, 1990, in Docket No. CP90-1777-000 requesting authority to conform the preliminary authorization received by TransColorado in the December 20, 1990, Preliminary Determination on Non-Environmental Issues (PD) issued in this docket with pipeline routing modifications made during the environmental review process and with the Commission's Order No. 636 restructuring rules, all as more fully set forth in the application, which is on file and open to public inspection.

In its amended application, TransColorado states that it seeks to incorporate pleadings and exhibits that reflect (1) the final pipeline route, (2) revised facility costs based upon the finalized pipeline route and a 1994 construction period, (3) a restatement of the proposed initial transportation rates reflecting updated facility costs and a straight fixed-variable (SFV) rate methodology consistent with the Commission's Order No. 636, and (4) a pro forma tariff consistent with the provisions of Order No. 636.

TransColorado requests authority to construct and operate the following facilities: (1) 251 miles of 22-inch O.D. pipeline extending from the Big Hole area of Rio Blanco County, Colorado, to Red Mesa, La Plata County, Colorado (approximately 19 miles less than the original proposal), (2) 41 miles of 24-inch O.D. pipeline extending from Red Mesa, La Plata County, Colorado, to Blanco, New Mexico, terminating at anticipated points of interconnection with the transmission systems of El Paso Natural Gas Company and Transwestern Pipeline Company located in San Juan County, New Mexico (unchanged from the original proposal), (3) One 4,750 HP turbine compressor station to be constructed near Olathe, Colorado (unchanged from the original proposal), (4) Two 2,700 HP reciprocating compressors to be constructed near Dolores, Colorado (unchanged from the original proposal), and (5) miscellaneous measuring and regulating facilities (unchanged from original proposal.)

TransColorado indicates that the revised total estimated cost of the proposed facilities, based on estimated 1994 dollars, including line pack, is $183,585,625.

TransColorado notes that it proposes no changes to its initial proposal to maintain a constant total cost of service and levelized rates over two distinct periods: Period I, years 1 through 15, and Period II, years 16 through 25. TransColorado states that a 25-year life is assumed for the project. The revised rates applicable to firm transportation service provided under Rate Schedule FT and interruptible service under Rate Schedule IT, TransColorado explains, are designed based upon the original financial parameters approved by the Commission in its December 20, 1990, PD.

TransColorado further explains that cost associated with providing firm transportation service were allocated between the reservation and usage components through application of the SFV rate methodology required by the Commission's Order No. 636 and that rates are based upon a 300,000 Mcf per day throughput level, a 95 percent load factor and peak summer-design conditions. Finally, TransColorado clarifies that upon receipt of permanent certificate authority in this proceeding, it will become a natural-gas company engaged in the transportation of natural gas in interstate commerce subject to the Commission's Natural Gas Act jurisdiction and, for this reason, submits a pro forma tariff intended to bring it into full compliance with the provisions of Order No. 636.

Comment date: July 6, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14482 Filed 6-18-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-10273T Wyoming-41]

Department of the Interior; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

June 15, 1993.

Take notice that on June 10, 1993, the United States Department of Interior, Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that a portion of the Lower Lewis Formation in Sweetwater County, Wyoming, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice covers certain Federal lands previously noticed in Docket No. JD92-01588T (Wyoming-11 Addition) in Sweetwater County, Wyoming and consists all or portions of the following acreage:

Township 24 North, Range 97 West, 6th P.M.

Section 15: All
Section 21-22: All
Section 27-28: All
Section 29: W/2 and SE/4
Section 33: W/2 and SE/4
Section 34: E/2 and SW/4
Section 35: All

The notice of determination also contains BLM's findings that the referenced portion of the Lower Lewis Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14480 Filed 6-18-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-8-63-001; TM93-8-63-001]

Carnegie Natural Gas Co.; Compliance Filing

June 15, 1993.

Take notice that on June 11, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, with a proposed effective date of June 1, 1993:

Sub Forty-Fourth Revised Sheet No. 8
Sub Forty-Fourth Revised Sheet No. 9

Carnegie states that it is filing the above tariff sheets in compliance with the Letter Order issued in these dockets on May 27, 1993 to reflect the correct rates of Carnegie's pipeline supplier, Texas Eastern Transmission Corporation (Texas Eastern). Carnegie states that it has revised its rates to incorporate the rates filed by Texas Eastern on May 14, 1993, in its restructuring proceeding in Docket No. RS92-11-000, pursuant to Texas Eastern's implementation of restructured services under Order No. 636, as authorized by the Commission to become effective June 1, 1993, citing *Texas Eastern Transmission Corp.*, 63 FERC ¶ 61,100 (1993). Accordingly, Carnegie states that the above substitute revised tariff sheets reflect an overall demand charge increase of $1.9123 per Dth, an overall commodity charge decrease of $0.7053 per Dth, and an overall DCA charge increase of $0.0629 per Dth in the adjusted sales rates under Rate Schedules CDS and LVWS, as well as a $0.6425 per Dth decrease in the maximum rate and a $.7091 per Dth decrease in the minimum rate for interruptible sales service under Carnegie's Rate Schedule SEGSS, all as compared with Carnegie's compliance filing in its last fully-supported PGA in Docket No. TQ93-7-63-000, as filed by Carnegie on June 3, 1993.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the

Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14478 Filed 6–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–489–000]

Columbia Gulf Transmission Co.; Request Under Blanket Authorization

June 16, 1993.

Take notice that on June 11, 1993, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP93–489–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to abandon and sell natural gas compression facilities located in Vermilion Parish, Louisiana, to Exxon Company U.S.A. (Exxon), under its blanket certificate issued in Docket No. CP83–496–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gulf states that it was authorized on Docket No. CP74–104–000 to construct an 1100 horsepower (HP) compressor station and appurtenances at Exxon's Pecan Island production facilities in Vermilion Parish, Louisiana. It is stated that the facilities were installed to enable Columbia Gulf's affiliate Columbia Gas Transmission Corporation (Columbia Gas) to fulfill its purchase obligation under a June 28, 1963 gas purchase contract. It is further stated that Columbia Gas has ceased purchasing natural gas from Exxon in the Pecan Island field and the facilities are no longer needed for system supply.

Columbia Gulf seeks to sell the compressor station and appurtenances to Exxon in order to save operation, maintenance and retirement costs. It is stated that Columbia Gulf will sell the facilities to Exxon at a cost of $40,000. Columbia Gulf maintains that it will save $90,000, annually, in operation and maintenance costs, as well as an estimated $482,000 in retirement costs as a result of the proposed sale to Exxon. Columbia Gulf states that it will continue to transport gas produced from the Pecan Island field through its 18-inch lateral.

Columbia Gulf states that it proposes to account for the abandonment by sale as a normal retirement in Account 108, Accumulated Provision for Depreciation of Gas Utility Plant. Columbia Gulf states, however, that the proposed accounting treatment does not recognize a loss on the sale of the compression facilities as provided for in Gas Plant Instruction 5 of the Uniform System of Accounts. Columbia Gulf requests a waiver of those requirements to the extent required.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14516 Filed 6–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–485–000]

East Tennessee Natural Gas Co.; Request Under Blanket Authorization

June 15, 1993.

Take notice that on June 11, 1993, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP93–485–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new point of delivery to Middle Tennessee Natural Gas Utility District (MTUD), under the blanket certificate issued in Docket No. CP82–412–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

East Tennessee proposes to construct and operate a hot tap, interconnection pipe and measurement facilities in Jackson County, Tennessee to permit deliveries to MTUD, one of its existing customers, of up to 3,000 Mcf per day of natural gas on a firm basis under Rate Schedule FT. East Tennessee estimates that the cost of the facilities would be $98,665, which would be reimbursed by MTUD. In support of the request, East Tennessee makes the following statements:

1. The total quantities to be delivered to MTUD after establishment of the delivery point would not exceed the total quantities authorized to be delivered.

2. Establishment of this delivery point is not prohibited by East Tennessee's tariff.

3. East Tennessee has sufficient capacity to accomplish deliveries at this point without detriment or disadvantage to East Tennessee's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14475 Filed 6–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ93–7–24–000 and TM93–4–24–000]

Equitrans, Inc; Proposed Change in FERC Gas Tariff

June 15, 1993.

Take notice that Equitrans, Inc. (Equitrans) on June 11, 1993, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with a proposed effective date of June 1, 1993:

Seventh Revised Sub Forty-Second Revised Sheet No. 10
Eighth Revised Thirteenth Revised Sheet No. 14

Equitrans states that this filing implements an Out-of-Cycle Purchased Gas Adjustment to reflect a decrease in Equitrans' Rate Schedule PLS commodity rate of $0.6590 per Dth and a decrease in the demand cost of $1.7019 per Dth. The purchased gas adjustment to the Rate Schedule ISS is a decrease of $0.8236 per Dth. The filing also implements a change in Equitrans' Account No. 858 transmission and compression costs by other tracker,

consisting of an increase in the demand rate of $1.9277 per Dth and a decrease in the commodity rate of $0.1720 per Dth.

Equitrans states that the proposed rate adjustments are intended to reflect the elimination of gas costs incurred on the system of Texas Eastern Transmission Corporation (TETCO) effective June 1, 1993 when TETCO terminated its merchant function, and the corresponding increase in Account No. 858 costs due to Equitrans' conversion of its firm sales entitlements to firm transportation entitlements on TETCO's system.

Equitrans requests that the Commission grant waivers as needed, including a waiver of the thirty-day notice requirement, to permit the tariff sheets to become effective on June 1, 1993.

Equitrans states that a copy of its filing has been served upon its affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 835 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions to intervene and protests should be filed on or before June 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14479 Filed 6–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–437–000]

Northwest Pipeline Corp.; Application

June 15, 1993.

Take notice that on June 7, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP93–437–000 an application, pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing an uprating in the horsepower of the existing compressor units at its Snohomish and Sumner Compressor Stations on its mainline transmission system in Washington, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest proposes to add 2,000 horsepower at its Snohomish Compressor Station by upgrading each of the two existing compressor units from 4,000 to 5,000 horsepower and to add 1,200 horsepower at its Sumner Compressor Station by upgrading the existing compressor unit from 4,000 to 5,200 horsepower. It is said that the estimated cost attributable to these horsepower upgrades totals approximately $1.6 million, which cost will be financed with fund on hand.

Northwest states that the proposed horsepower upratings will increase the capacity through these two compressor stations by about 30 MMcf per day under an off-peak design day flow scenario, which will enhance Northwest's operational capability to accommodate receipt point flexibility, especially switches from domestic gas to Canadian gas, under existing transportation agreements serving markets south of these compressor stations.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 6, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14474 Filed 6–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–702–000]

Philadelphia Electric Co., Notice of Filing

June 14, 1993.

Take notice that on June 9, 1993, Philadelphia Electric Company (PE) tendered for filing as a changed rate under section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, a Supplemental Agreement to the Interconnection Agreement between PE and Pennsylvania Power & Light Company (PL) dated January 15, 1963.

PE requests that the Commission allow this Agreement to become effective on August 12, 1993.

PE states that a copy of this filing has been sent to PL and will be furnished to the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 28, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14483 Filed 6–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–157–000]

Puget Sound Power and Light Co.; Filing

June 14, 1993.

Take notice that on June 9, 1993, Portland General Electric Company (PGE) tendered for filing an amendment

to its filing of April 9, 1993 under Docket No. ER93–157–000, related to the sale of the output of the Skookumchuck Hydroelectric Project to Puget Sound Power and Light. The amendment asks for waiver of the Commission's notice requirements to allow the agreements to take effect when service commenced.

Copies of this agreement have been served on the distribution list, as included in the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 28, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14473 Filed 6–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF92–186–002]

Rye Patch Limited Partnership; Amendment to Filing

June 15, 1993.

On June 9, 1993, Rye Patch Limited Partnership tendered for filing a supplement to its filing in this docket.

The supplement pertains to the ownership structure and technical aspects of its small power production facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by June 30, 1993, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14477 Filed 6–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–490–000]

Tennessee Gas Pipeline Co.; Request Under Blanket Authorization

June 16, 1993.

Take notice that on June 14, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed a prior notice request with the Commission in Docket No. CP93–490–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate an additional delivery point for a firm natural gas sales service to Greater Dickson Gas Authority (Greater Dickson), a local distribution company, under the blanket certificate issued in Docket No. CP82–413–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Tennessee proposes to construct and operate two 2-inch hot taps with a meter as a delivery point (Kingston Springs sales meter station) on its existing right-of-way in Cheatham County, Tennessee, for a firm natural gas sales service to Greater Dickson under a July 9, 1992, contract. Tennessee would deliver up to 3,942 dekatherms of natural gas daily and up to 659,727 dekatherms annually to Greater Dickson pursuant to Tennessee's FERC Rate Schedule GS–1. Tennessee states that Greater Dickson has requested this additional delivery point in order to provide natural gas service to two new customers, the cities of Kingston Springs and Pegram, Tennessee. Tennessee also states that Greater Dickson would reimburse Tennessee for the estimated $46,460 in construction costs for the delivery point and that Tennessee's FERC tariff allows the establishment of additional delivery points.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14517 Filed 6–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–443–000]

Transcontinental Gas Pipe Line Corp.; Notice of Application

June 16, 1993.

Take notice that on June 9, 1993, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251 filed in Docket No. CP93–443–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a firm transportation service to CNG Transmission Corporation (CNG), successor-in-interest to Consolidated Gas Supply Corporation (Corporation) under TGPL's Rate Schedule X–168, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

TGPL indicates that the transportation services are no longer desired by the relative parties and that the termination of the respective services would relieve both parties from contractual obligations of such agreements.

TGPL also contends that there will be no abandonment of facilities nor will the abandonment of the service proposed herein result in any abandonment of service to its other customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 7, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for TGPL to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14514 Filed 6–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–139–000]

Transwestern Pipeline Co; Notice of Proposed Changes in FERC Gas Tariff

June 15, 1993.

Take notice that on June 9, 1993, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of August 1, 1993:

Primary Tariff Sheets

102nd Revised Sheet No. 5
8th Revised Sheet No. 5A
4th Revised Sheet No. 5A.01
6th Revised Sheet No. 5B
Original Sheet No. 5D(viii)
2nd Revised Sheet No. 5E(v)
Original Sheet No. 5E(vi)
Original Sheet No. 5E(vii)
15th Revised Sheet No. 89
4th Revised Sheet No. 89A
14th Revised Sheet No. 90
11th Revised Sheet No. 90A

Alternative Tariff Sheet

Alternate Original Sheet No. 5D(viii)

Transwestern states that the above-referenced primary and alternative tariff sheets are being filed to modify its take-or-pay, buy-out and buy-down mechanism (Transition Cost Recovery or TCR mechanism) in order to recover certain take-or-pay, buy-out, buy-down, and contract reformation costs (Transition Costs) which qualify under the Litigation Exception provision of its tariff, and additional Transition Costs paid subsequent to the implementation of its Gas Inventory Charge (GIC), October 1, 1989, which do not qualify under the Litigation Exception provision of its tariff. Transwestern proposes to amortize such costs over a 39-month period ending October 31, 1996.

Transwestern states that it has incurred a total of $20,100,000 in additional settlement costs and interest (TCR Amount Thirteen) and is revising certain tariff sheets and requesting authority to begin recovery of portion of such amount.

Transwestern states that copies of the filing have been mailed to each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14481 Filed 6–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–486–000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

June 16, 1993.

Take notice that on June 11, 1993, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP93–486–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate facilities for deliveries of gas to Gas Resources, Inc. (Western) under United's blanket certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United proposes to install approximately 7,920 feet of 12-inch pipeline, a 12-inch tap, meter station and communications equipment to enable United to transport natural gas to serve Western. United States that upon execution of an open-access transportation agreement it will be authorized to provide interruptible service to Western, which would have no impact on its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14515 Filed 6–18–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4669–2]

Proposed Consent Decree; Onboard Refueling Vapor Recovery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113 (g) of the Clean Air Act ("Act"), notice is hereby provided of a proposed consent decree concerning litigation instituted against the Environmental Protection Agency ("EPA") regarding the fact that EPA has not promulgated a final rule to implement the mandate of the U.S. Court of Appeals for the District of Columbia Circuit in *Natural Resources Defense Council* v. *Reilly*, 983 F. 2d 259 (January 22, 1993). That decision held that EPA has a mandatory duty to promulgate onboard refueling vapor recovery standards for light duty motor vehicles pursuant to section 202(a)(6) of the Act. *Id.* at 261, 273. The proposed consent decree provides that,

by January 22, 1994, EPA is to promulgate the regulations required by section 202(a)(6) requiring onboard refueling vapor recovery systems capable of achieving at least 95 percent evaporative emission capture efficiency.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the consent decree. EPA or the Department of Justice may withhold or withdraw consent to the proposed consent decree if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the consent decree are available from Jerry Ellis, Air and Radiation Division (LE–132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7610. Written comments should be sent to Steven Silverman at the above address (mail code LE–132S) and must be submitted on or before July 21, 1993.

Dated: June 11, 1993.

Gerald H. Yamada,

Acting General Counsel.

[FR Doc. 93–14570 Filed 6–18–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4669–1]

Stipulation to Modify Prior Stipulated Settlement of Litigation; Suit to Establish Schedule for Promulgation of Ozone and Carbon Monoxide Federal Implementation Plans for the South Coast Air Quality Management District Under Clean Air Act Section 110(c)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed stipulated settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a Stipulation to Modify a prior (March 28, 1989) Stipulation and Agreement of Partial Settlement, to establish a schedule by which EPA must propose and promulgate ozone and carbon monoxide federal implementation plans ("FIPs") for the South Coast Air Quality Management District pursuant to section 110(c) of the Clean Air Act, 42 U.S.C. section 7410(c). *Coalition for Clean Air, Inc.* v. *EPA*, No. CV 88 4414 HLH (C.D. Cal.).

The parties to the litigation, desiring to settle the matter without extensive proceedings, entered into a Joint Stipulation that obligates the EPA Administrator to sign a Notice of Proposed Rulemaking by February 22, 1994, and to sign a Notice of Final Rulemaking no later than February 22, 1995. The Joint Stipulation has been approved by counsel and for all parties, and on June 7, 1993, was approved by the Court, with the knowledge that the section 113(g) process had not been completed.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed schedule.

Copies of the Joint Stipulation are available from Jerry Ellis, Air and Radiation Division (LE–132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7610. Written comments should be addressed to Jerry Ellis at the above address and must be submitted on or before July 21, 1993.

Dated: June 14, 1993.

Gerald H. Yamada,

Acting General Counsel.

[FR Doc. 93–14571 Filed 6–18–93; 8:45 am]

BILLING CODE 6560–50–M

[OPP–100123; FRL–4590–4]

Science Applications International Corporation, Dyncorp/Viar and Computer Science Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Science Applications International Corporation (SAIC) and its subcontractors Computer Science Corporation (CSC) and Dyncorp/Viar (CSC and Dyncorp/Viar) have been awarded a contract to perform work for the EPA Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SAIC and its subcontractors CSC and Dyncorp/Viar consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable SAIC and its subcontractors CSC and Dyncorp/Viar to fulfill the obligations of the contract.

DATES: SAIC and its subcontractors CSC and Dyncorp/Viar will be given access to this information no sooner than June 28, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 234, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259.

SUPPLEMENTARY INFORMATION: Under Contract Number 68–W1–0055, Delivery Order Number 050, SAIC and its subcontractors CSC and Dyncorp/Viar will provide technical support in the enhancement of Label Use Information System, an automated reference data base of pesticide use information. SAIC, CSC, and Dyncorp/Viar will also provide assistance in the enhancement of the system's operating software, in expanding the repertoire of the reports and in the integration with other existing OPP data base systems.

OPP has determined that the contract herein described involves work that is being conducted in connection with FIFRA and that access by SAIC and its subcontractors CSC and Dyncorp/Viar to information on all pesticide products is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.37(h)(3), the contract with SAIC and its subcontractors CSC and Dyncorp/Viar, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SAIC and its subcontractor CSC and Dyncorp/Viar are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of

information provided to this contractor will be maintained by the Delivery Order Manager for this contract in OPP. All information supplied to SAIC and its subcontractors CSC and Dyncorp/Viar by EPA for use in connection with this contract will be returned to EPA when SAIC and its subcontractors CSC and Dyncorp/Viar have completed its work.

Dated: June 4, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93–14564 Filed 6–18–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–100124; FRL–4590–5]

Science Applications International Corporation and Dyncorp/Viar; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Science Applications International Corporation (SAIC) and its subcontractor Dyncorp/Viar have been awarded a contract to perform work for the EPA Office of Compliance Monitoring (OCM), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SAIC and its subcontractor Dyncorp/Viar consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable SAIC and its subcontractor Dyncorp/Viar to fulfill the obligations of the contract.

DATES: SAIC and its subcontractor Dyncorp/Viar will be given access to this information no sooner than June 28, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 234, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6259.

SUPPLEMENTARY INFORMATION: Under Contract Number 68–W1–0055, Delivery Order Number 048, SAIC and its subcontractor Dyncorp/Viar will provide technical support to the Section Seven Tracking System (SSTS) which serves as the repository of pesticide production and facility information which is collected under section 7 of FIFRA.

The Office of Pesticide Programs (OPP) and OCM have determined that the contract herein described involves work that is being conducted in connection with FIFRA and that access by SAIC and its subcontractor Dyncorp/Viar to information on all pesticide products is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.37(h)(3), the contract with SAIC and its subcontractor Dyncorp/Viar, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SAIC and its subcontractor Dyncorp/Viar are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Delivery Order Manager for this contract in OPP. All information supplied to SAIC and its subcontractor Dyncorp/Viar by EPA for use in connection with this contract will be returned to EPA when SAIC and its subcontractor Dyncorp/Viar have completed its work.

Dated: June 4, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93–14565 Filed 6–18–93; 8:45 am]

BILLING CODE 6560–60–F

[OPP–50753B; FRL–4526–3]

Issuance of an Experimental Use Permit for Four Transgenic Plant Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Issuance and amendment.

SUMMARY: On April 29, 1993, EPA issued an Experimental Use Permit (EUP) to Monsanto Company to conduct field testing of four transgenic plant pesticides. EPA has determined that this permit may be of regional and national significance because it is the second EUP approved under the Federal Insecticide, Fungicide, and Rodenticide Act, for field testing altered plants having pesticidal properties. The Office of Pesticide Programs (OPP) within EPA is responsible for scientific review, risk assessment and issuance or denial of EUPs. OPP has evaluated the data submitted by Monsanto and, based on these data and other available data, can foresee no significant risks to humans or to nontarget organisms from this group of field tests as proposed by Monsanto. EPA's assessment, however, is based solely on the EUP; eventual commercialization of Monsanto's four transgenic potato pesticides may raise other issues not addressed with this EUP. The permit was assigned EUP number 524–EUP–79 and issued for 1 year, beginning April 29, 1993 and ending April 29, 1994; in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments. On April 23, 1993, just prior to issuance of the EUP, Monsanto applied to EPA for an amendment. This amendment was for the addition of two sites thereby increasing the acreage for this EUP an additional 0.03 acres; EPA has granted this amendment.

DATES: Written comments must be received on or before July 21, 1993.

ADDRESSES: Comments, in triplicate, should bear the docket control number OPP–50753B and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA, (703) 305–7690.

SUPPLEMENTARY INFORMATION: The permit was issued to Monsanto Agricultural Company, 700 Chesterfield Village Parkway, St. Louis, Missouri 63198. Monsanto is testing the Colorado Potato Beetle (CPB) control protein, delta-endotoxin, derived from the soil microbe *Bacillus thuringiensis* subspecies *tenebrionis* (B.t.t.), as expressed in plants and tubers of several lines of potato cultivars. According to the application, CPB control protein, B.t.t. delta-endotoxin, will be present at no more than .2 percent of the total weight of the potato plants or tubers.

Some of the potato cultivar lines will contain only the B.t.t. δ-endotoxin gene or an expression-enhancer fusion product of B.t.t. for mediating Colorado Potato Beetle resistance. Other potato cultivar lines have been modified to contain the B.t.t. gene mediating Colorado Potato Beetle resistance and genes expressing viral coat proteins mediating Potato Virus Y (PVY) or Potato Leaf Roll Virus (PLRV) resistance.

The δ-endotoxin as produced by the eight lines of genetically-engineered potato plants will be evaluated for effectiveness against the Colorado Potato Beetle (CPB), and its impact, if any, upon nontarget insect species. The experimental program is designed to evaluate the expressed CPB control proteins, from the B.t.t. CryIIIA gene or the expression enhancer-CryIIIA fusion product, for efficacy, agronomic evaluations, performance confirmation, host plant resistance and population dynamics. These experiments are designed to further evaluate the performance of the expressed δ-endotoxin proteins against the Colorado Potato Beetle in the various geographical areas in which potato is commercially grown.

In January of 1993, Monsanto amended their EUP application with the elimination of Hawaii as a test site. A FR Notice announcing this amendment was published on February 17, 1993. On April 23, 1993, Monsanto submitted a request to amend the EUP after its issuance, to include additional sites in Idaho and Maryland. Regarding Idaho, Monsanto is requesting to split the original acreage to make two separate sites in order to reduce the potential risk of frost damage and the possible spread of disease throughout the site if it were to occur. The addition of the Maryland site will increase the overall acreage of the EUP from 86.87 to 86.90 acres. According to the application, not more than 80 potato plants of Russet Burbank variety expressing vector PV-STBT02, which contains the B.t.t. gene only, will be planted at the Maryland site.

Monsanto's test sites are located in the following 13 States: Colorado, Idaho, Maine, Maryland, Michigan, Montana, New York, North Dakota, Ohio, Oregon, Pennsylvania, Washington and Wisconsin. A maximum of 15,000 plants or tubers will be planted per acre, each weighing approximately 5.6 grams per plant and 60 grams per tuber. Some of the potato cultivar lines will contain only the B.t.t. gene for mediating CPB resistance. Other potato cultivar lines have been modified to contain genes mediating both CPB and PYV or PLRV resistance. The total plant material, at planting, will contain 129.31 grams B.t.t. protein, with levels rising to a maximum of 39.4 kilograms of B.t.t. protein at harvest. Likewise, the amount of viral coat protein, at planting, will be approximately 0.005 grams of PLRV coat protein and 0.10 grams of PVY coat protein; how much would be present at harvest is not known, however, for the viral coat proteins.

Upon completion of testing, some potato plants and tubers will be collected and saved for future research, analyses or plantings. All other plant material will be destroyed. Because no plants or tubers will be used for food or feed, no tolerances for this EUP are requested.

The labeling states the following:

The package contains Colorado potato beetle resistant potato plants containing a *Bacillus thuringiensis* subspecies *tenebrionis* protein. Contains potato variety _____ containing vector PV-ST—TO—. For use only at an application site of a cooperator and in accordance with the terms and conditions of the Experimental Use Permit. This labeling must be in the possession of the user at the time of planting of the potato plants or tubers. Not for sale to any person other than a participant or cooperator of the EPA-approved Experimental Use Program.

1. *Product Label One.* Active Ingredient: IR-22, *Bacillus thuringiensis* subspecies *tenebrionis* δ- endotoxin as produced in potato by Cry IIIA gene and its controlling sequences and found in the following constructs:

PV-STBT02 .....0.01 - 0.2 %*
PV-STBT04 .....01 - 0.2 %*
PV-STMT01 .....0.01 - 0.2 %*

2. *Product Label Two.* Active Ingredient: IR-23, *Bacillus thuringiensis* subspecies *tenebrionis* δ-endotoxin as produced in potato by an expression enhancer-CryIIIA fusion product and its controlling sequences and found in the following construct:

PV-STBT05.....0.01 - 0.2 %*

3. *Product Label Three.* Active Ingredients: IR-22, *Bacillus thuringiensis* subspecies *tenebrionis* δ-endotoxin as produced in potato by Cry IIIA gene and its controlling sequences and found in the following constructs:

PV-STMT02.....0.01 - 0.2 %*
PV-STMT04.....0.01 - 0.2 %*
PV-STMT10.....0.01 - 0.2 %*
PV-STMT11.....0.01 - 0.2 %*
PV-STMT12.....0.01 - 0.2 %*
PV-STMT13.....0.01 - 0.2 %*
PV-STMT14.....0.01 - 0.2 %*

Potato Leaf Roll Virus (PLRV) coat protein as produced in potato by PLRV modCP gene and its controlling sequences and found in the following constructs:

PV-STMT02.....0.001 - 0.01 %*
PV-STMT04. .....0.001 - 0.01 %*
PV-STMT10.....0.001 - 0.01 %*
PV-STMT11 .....0.001 - 0.01 %*
PV-STMT12 .....0.001 - 0.01 %*
PV-STMT13 .....0.001 - 0.01 %*
PV-STMT14 .....0.001 - 0.01 %*

4. *Product Label Four.* Active Ingredients: IR-22, *Bacillus thuringiensis* subspecies *tenebrionis* δ-endotoxin as produced in potato by Cry IIIA gene and its controlling sequences and found in the following constructs:

PV-STMT15..... 0.01 - 0.2 %*
PV-STBT02 in combination with PV-STPY01....0.01 - 0.2 %*

Potato Y Virus (PYV) coat protein as produced in potato by PYV gene and its controlling sequences and found in the following constructs:

PV-STMT15 ..... 0.006 - 0.1 %*
PV-STPY01 in combination with PV-STBT02 .....0.006 - 0.1 %*

[The active ingredient percentages are each asterisked (*) to indicate that the values are percentages of total protein on a dry weight basis.] It is a violation of Federal law to use these plants or tubers in any manner inconsistent with this labeling. This plant material contains *Bacillus thuringiensis* subspecies *tenebrionis* insecticidal protein and may only be used according to the protocols as included in the approved EUP program for evaluation of the control of the following insect:
Colorado Potato Beetle/*Leptinotarsa decemlineata*

Cooperators must have a copy of each applicable protocol prior to initiating any research with these plants or tubers. Potatoes should be planted at a maximum of 15,000

plants or tubers per acre depending on the site variety. Do not contaminate water, food, or feed by storage and/or disposal. Store in cool dry place inaccessible to children. Any plants or tubers not used in these experiments must be returned to Monsanto or disposed of as specified in the field protocols. All plant material that is not saved for further research analyses or future plantings must be destroyed as specified in the field protocols. None of the plants or plant material may be sold or allowed to enter into commerce. Do not reuse bag. Discard in trash. Ensure that the bag is completely empty of plants before disposing in the trash.

EUP Program

The EUP program will include the following five experiments designed to evaluate the performance of the expressed protein against the Colorado Potato Beetle: Efficacy and Agronomic Evaluations; Performance Confirmation; Population Dynamics and Resistance Management. In addition, seed increase trials will be conducted in order to produce seed for future plantings. In keeping with acceptable agronomic practices for each region, fertilizer, herbicides, and fungicides will be used, if needed, to improve soil nutrient levels, and to control weeds and diseases. If CPB populations exceed economic threshold levels, additional insecticides will be applied in accordance with local Integrated Pest Management (IPM) practices to meet the objectives of the experiment. Any conventional pesticides used in this EUP program will be applied according to each pesticide's application rate as specified on its label.

The Agency has evaluated the potential for adverse effects on nontarget species and the environment as a result of this EUP. The Agency believes that the containment procedures as described by Monsanto in their EUP application, and subsequently modified by EPA are adequate to prevent any significant pesticide production outside of the test site.

The various toxins produced by *Bacillus thuringiensis* have been studied extensively. Pending further testing to fully evaluate any effect of the pesticidal toxin on human health and nontarget environmental species, OPP has evaluated the exposure potential to humans and nontargets only for this particular EUP. The amount of toxin produced on these field test sites is not sufficient to cause concern.

Monsanto's use of viral coat proteins potentially raises some issues; however, PVY viral coat protein requires an additional protein called Helper Factor for transmission of the virus particles by aphid vectors, and PLRV viral coat protein is believed to require the presence of a readthrough product of the coat protein gene for transmission by aphids; the additional protein and gene were not transferred during the transformation process. In addition, viral coat proteins are highly specific to plant viruses, and have no apparent effect on nonviral organisms. For these reasons, EPA believes that the PLRV and PVY coat proteins that will be expressed by the various lines of transgenic potato, for this EUP, present low potential risks. Because of the low exposure, due to the limited acreage and duration of the EUP, EPA believes that there will not be a situation warranting a formal review under the Endangered Species Act for any endangered mammals, birds, invertebrates, plants or aquatic species.

Based upon EPA's scientific review of Monsanto's proposed protocol and the scientific Peer Review recommendations, the Agency is requiring the following protocol modifications to Monsanto's Experimental Program.

1. Fields planted in 1994 with transgenic tubers remaining from the 1993 harvest, and/or fields which serve as a 1994 disposal area for 1993 tubers, be monitored for volunteers during the 1995 growing season and any such volunteers destroyed if containment of the potatoes to test sites is still required beyond the 1994 growing season.

2. Monitoring for volunteer potato plants during the 1995 growing season will require that the fields in which the tests were conducted during 1993 and the disposal areas for the 1993 tubers not be planted to nontransgenic potatoes in both 1994 and 1995.

3. Disposal of potatoes by burying should be at a depth of one foot or more to be effective.

Written Scientific Peer Review

The Monsanto EUP application and OPP's Preliminary Scientific Document were sent to four individuals in the scientific community having specific expertise in biotechnology to obtain a "peer review" of OPP's Scientific Position. For this EUP application, the Agency asked these individuals to address specific risk issues, containment provisions, and the protocol modifications recommended by OPP. The following individuals provided a written scientific peer review: George G. Kennedy, Ph.D., Department of Entomology, North Carolina State University; Kathleen H. Keeler, Ph.D., School of Biological Sciences, University of Nebraska, Lincoln; Dr. Peter Palukaitis, Ph.D., Department of Plant Pathology, Cornell University; Richard E. Wetzler, Ph.D., Center for Environmental Management, Tufts University.

Dr. Kennedy concurred "with finding of negligible environmental and health risks." Although Dr. Kennedy agreed with OPP's protocol modifications, he recommended that it be explicitly stated that the fields should not be planted to nontransgenic potatoes during the 1994 and 1995 growing seasons because of the difficulty in monitoring for transgenic volunteers. Dr. Kennedy's recommendations have been incorporated into EPA's protocol modifications.

Dr. Keeler stated that she doubted "there are meaningful problems associated with these field tests"; however, she did recommend that disposal of potatoes by burying should be at a depth of 1 foot or more to be effective. Dr. Keeler also recommended that additional data be collected to facilitate an environmental assessment; her recommendations have been incorporated into EPA's protocol modifications. Dr. Keeler's recommendations for additional data also have been forwarded to Monsanto.

Regarding plant viruses and their transgenically expressed coat proteins for this EUP—Dr. Palukaitis foresees "no problem with the application as described." In addition, Dr. Palukaitis described the inability of PLRV and PVY coat protein from being transferred to other plants in the ecosystem by aphid vectors due to the absence, in PVY, of an additional protein called Helper Factor and, in PLRV, of the readthrough product of the coat protein gene. Dr. Wetzler agreed with OPP's scientific position that "risks associated with proposed releases or potential accidental releases of the transgenic *Solanum tuberosum* (Potato) are minor." Dr. Wetzler concurred with Dr. Kennedy's recommendations to explicitly state that nontransgenic potatoes cannot be grown in the fields where testing will be conducted during the 1994 and 1995 growing seasons. Lastly, Dr. Wetzler made some suggestions regarding insect resistance testing and efficacy evaluation which have been forwarded to Monsanto.

Interagency Coordination

As per an August 11, 1987, Letter of Agreement, the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) and EPA have shared preliminary assessments of Monsanto's application for field testing the effectiveness and environmental impact of B.t.t. δ-endotoxin when produced by potato. APHIS assessed the potential for plant material to escape

into the environment and the possible effects an escape would have on other plant species; the APHIS assessment concurs with EPA's on these issues.

In addition, many States have passed biotechnology laws which require Monsanto to submit a state application for a permit prior to experimental use testing in the State. Monsanto has been advised to consult with the appropriate regulatory agency of each of the 13 States to determine if a State permit is necessary prior to the onset of field testing.

Public Involvement

Notice of receipt of Monsanto's EUP application was published in the **Federal Register** on December 14, 1992, and provided a 30–day public comment period. Concurrently, Monsanto's application, deleted of all "Confidential Business Information," was assigned public docket number OPP–50753 and was made available for public inspection in OPP's Public Docket Room. A second **Federal Register** Notice, which extended the public comment period for another 30 days, was published on February 17, 1993 (58 FR 8758), announcing Monsanto's amendment of their EUP application eliminating Hawaii as a site. An amendment Notice creates a secondary docket, and therefore, a companion docket was created using the Public Docket number OPP–50753A. As a consequence, the second amendment, which icreases the number of sites in Maryland and Idaho, creates the Public Docket number OPP–50753B.

Both of Monsanto's amendment requests, EPA's "Peer Review" comments, and EPA's Final Scientific Position document can be retrieved by the public using the docket numbers OPP–50753A and OPP–50753B. Because most of the aforementioned documents were not available for public review until after issuance of the EUP, the comment period has been extended an additional 30 days.

To date, only one comment was received by this Agency; the commenter, an independent research advocate living in the State of Washington, voiced concerns about applying "classical toxicology" to bioengineered organisms to ensure their safety. Regarding consumption of bioengineered foods containing pesticides, the commenter voiced concern that EPA is not taking into consideration in its risk assessment sensitive subpopulations, who may be allergic or suffer from digestive tract disorder whereby this technology could be life-threatening. The Tolerance Support and Science Analysis Branches of the Heatlh Effects Division of OPP have received copies of the commenter's letter and are evaluating the concerns. Moreover, the commenter's comments will be forwarded for consideration to FDA, USDA, and the Biotechnology Risk Assessment Research Planning Group for the EPA Office of Research and Development. Because this EUP will be conducted in a crop destruct fashion, the commenter's concerns regarding the consumption of bioengineered foods are not relevant to this EUP.

In addition to the above comment, APHIS provided EPA with a copy of comments they had received from the Director of the Division of Plant Industry of the Maine Department of Agriculture. The Director indicated that a subcommittee of the State of Maine's Commission of Biotechnology and Genetic Engineering had a number of reservations about the impact of [future] large-scale trials on the potential for the Colorado Potato Beetle developing resistance to the B.t.t. δ-endotoxin. They suggested that a risk assessment be performed before these products approach commercialization. The EPA has recently formed an OPP workgroup to examine the issue of resistance induction and to determine the best regulatory approach for EPA to adopt.

Dated: June 10, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–14561 Filed 6–18–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4669–3]

Estimation of Greenhouse Gas Emissions and Sinks for the United States: 1990

AGENCY: Environmental Protection Agency.

ACTION: Notice of document availability and request for comments.

SUMMARY: The Review Draft of Estimation of Greenhouse Gas Emissions and Sinks for the United States: 1990, will be made available for public review and comment on June 18, 1993. A summary of 1990 U.S. emissions by greenhouse gas is presented by source category and sector. The inventory contains estimates of CO_2, CH_4, N_2O, CO, NO_x, NMVOC, and CFC emissions. The approach used to produce emissions estimates for the greenhouse gases in various source categories was adapted from methodologies recommended by the Intergovernmental Panel on Climate Change. The U.S. greenhouse gas inventory will serve as part of the U.S. submission to the Secretariat of the International Negotiating Committee to the Framework Convention on Climate Change and will contribute to the revision of the U.S. National Action Plan for Global Climate Change. To ensure inclusion in the current review, comments should be received by July 16, 1993. However, comments received after that date will still be welcome.

DATES: The review draft will be available on June 18, 1993. Comments are requested by July 16, 1993.

ADDRESSES: Send request for document to: Environmental Protection Agency, Climate Change Division, OPPE/OPA, PM–221, 401 M Street, SW., Washington, DC 20460, or, telefax request to (202) 260–6405.

FOR FURTHER INFORMATION CONTACT: William G. Hohenstein, Environmental Protection Agency, Office of Policy Planning and Evaluation, Climate Change Division, (202) 260–7019.

Dated: June 9, 1993.

Approved:

Dennis A. Tirpak,

Director, Climate Change Division.

[FR Doc. 93–14569 Filed 6–18–93; 8:45 am]

BILLING CODE: 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1946]

Petitions For Reconsideration And Clarification Of Actions In Rulemaking Proceedings

June 11, 1993.

Petitions for reconsideration and clarification, have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed July 6, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service. (CC Docket No. 90–358) Number of Petitions filed: 3

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Bradenton and High Point, Florida) (MM Docket No. 92–59, RM Nos. 7923 & 8042) Number of Petitions Filed: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–14525 Filed 6–18–93; 8:45 am]

BILLING CODE 6712–01–M

Richard P. Bott II; Application

1. The Commission has before it the following application for assignment of an FM construction permit:

Applicant	City/state	File No.	MM docket
Richard Bott II, Assignor Western Communications, Inc., Assignee	Blackfoot, Idaho	BAPH–920917GO	93–155

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above application has been designated for hearing upon the issues set forth below.

(a) To determine whether Richard P. Bott II has misrepresented facts to or lacked candor with the Commission, either in connection with his integration pledge presented in the course of the Blackfoot, Idaho comparative proceeding, or in his opposition to the petition to deny filed in the instant proceeding.

(b) To determine, in light of the evidence adduced pursuant to issue (a), whether Richard P. Bott II is qualified to remain a Commission licensee.

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the captioned application should be granted.

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–14524 Filed 6–10–93; 8:45 am]

BILLING CODE 6712–01–M

Renewal Application Designated For Hearing

1. The Commission has before it the following application for renewal of license:

Applicant	City/state	File No.	MM docket No.
A. Moenkopi Communications, Inc	Moab, Utah	BR–900703YA	93–152

(Seeking a renewal of the license of Station KCNY (AM))

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above application has been designated for hearing in a proceeding upon whose issues are set forth below;

1. To determine whether Moenkopi Communications, Inc. has the capability and intent to expeditiously resume broadcast operations of KBZB(AM) consistent with the Commission's Rules.

2. To determine whether Moenkopi Communications, Inc. has violated §§ 73.1740 and/or 73.1750 of the Commission's Rules;

3. To determine, in light of the evidence adduced pursuant to the preceding issues, whether or not grant of the subject renewal of license application would serve the public interest, convenience and necessity.

A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 320), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–14526 Filed 6–18–93; 8:45 am]

BILLING CODE 6712–01–M

Renewal Applications Designated For Hearing

1. The Commission has before it the following applications for renewal of license:

Applicant	City/state	File No.	MM Docket No.
A. The Rex Company	Bisbee, AZ	BR–831115UA, BR–900420YB	93–151

(Seeking a renewal of the license of Station KBZB (AM))

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a proceeding upon whose issues are set forth below:

1. To determine whether the Rex Company has the capability and intent to expeditiously resume broadcast operations of KBZB (AM) consistent with the Commission's Rules.

2. To determine whether the Rex Company has violated §§ 73.1740 and/or 73.1750 of the Commission's Rules;

3. To determine, in light of the evidence adduced pursuant to the preceding issues, whether or not grant of the subject renewal of license applications would serve the public interest, convenience and necessity.

A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 320), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–14527 Filed 6–18–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–007540–065.

Title: United States Atlantic and Gulf/Southeastern Caribbean Conference.

Parties:

Crowley American Transport, Inc.

Puerto Rico Maritime Shipping Authority

Sea-Land Service, Inc.

Kirk Line, Ltd.

Seaboard Marine, Ltd.

Synopsis: The proposed amendment modifies the rules governing financial obligations of the member lines.

Agreement No.: 202–010424–022.

Title: United States Atlantic and Gulf Hispaniola Steamship Freight Association.

Parties:

Crowley American Transport, Inc.

Puerto Rico Maritime Shipping Authority

Sea-Land Service, Inc.

Kirk Line, Ltd.

Seaboard Marine, Ltd.

Synopsis: The proposed amendment modifies the rules governing financial obligations of the member lines.

Dated: June 16, 1993.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–14560 Filed 6–18–93; 8:45 am]

BILLING CODE 6730–01–M

Security For The Protection Of The Public; Financial Responsibility To Meet Liability Incurred For Death Or Injury To Passengers Or Other Persons On Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Club Med Sales, Inc., Services et Transports Cruise Lines 2 and Copropriete du Navire Club Med 2, 40 West 57th Street, New York, NY 10019

Vessel: CLUB MED 2

Dated: June 15, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–14503 Filed 6–18–93; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Club Med Sales, Inc. and Services et Transports Cruise Lines 2, 40 West 57th Street, New York, NY 10019

Vessel: CLUB MED 2

Dated: June 15, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–14504 Filed 6–18–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 88
Name: W.L. Richeson & Sons, Inc.
Address: 442 Canal St., Ste 405, Sanlin Bldg., New Orleans, LA 70150
Date Revoked: April 13, 1993
Reason: Surrendered license voluntarily

License Number: 1654
Name: Inter-Continental Customs Brokers, Inc.
Address: 1600 W. Lafayette, Detroit, MI 48216
Date Revoked: May 6, 1993
Reason: Surrendered license voluntarily.

License Number: 1505
Name: Frank Delgadillo dba Gateway Forwarders International
Address: 256 Putnam St., San Francisco, CA 94110
Date Revoked: May 7, 1993
Reason: Failed to furnish a valid surety bond.

License Number: 3517
Name: Leticia S. Redondo
Address: 718 Edinburgh St., San Francisco, CA 94112
Date Revoked: May 9, 1993
Reason: Failed to furnish a valid surety bond

License Number: 1531–R
Name: Glory International Forwarders, Inc.
Address: 1 Edgewater Plaza, Staten Island, NY 10305
Date Revoked: May 14, 1993
Reason: Surrendered license voluntarily.

License Number: 1208
Name: Hamilton Brothers, Inc.
Address: 1901 E. Second Ave., Ste. A, Tampa, FL 33605
Date Revoked: May 17, 1993
Reason: Surrendered license voluntarily.

License Number: 3662
Name: Ashley Shipping Company Inc.
Address: 7220 N.W. 36th St., Penthouse 624, Miami, FL 33166
Date Revoked: May 19, 1993
Reason: Failed to furnish a valid surety bond.

License Number: 1915
Name: Alfonso X. Soto dba Soto Forwarding Agency
Address: 3600 East 14th St., P.O. Box 4199, Brownsville, TX 78520
Date Revoked: May 19, 1993
Reason: Failed to furnish a valid surety bond.

License Number: 2243
Name: Williams International Forwarders, Inc.
Address: 332 W. Broadway, Ste. 1504, P.O. Box 832, Louisville, KY 40201
Date Revoked: May 19, 1993
Reason: Failed to furnish a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93–14559 Filed 6–18–93; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of Acquisition Policy (VP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0235, Multiple Award Schedule Policy Statements (MAS)—Discount Schedule and Marketing Data Sheets (DSMD) and Price Reductions. DSMD sheets are used to collect data about certain sales, discount and marketing. The data are used to determine the commerciality of items offered, set the Government's negotiation objective and determine price reasonableness. The Price Reductions clause ensures that the Government maintains its relationship with a MAS contractor's customer or category of customer upon which the MAS contract is predicated.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden:

DSMD sheets: 3,961 respondents; 10 average hours per response; 118,830 burden hours. Price Reductions clause: 6,127 respondents; 3 average hours per response; 36,762 burden hours.

FOR FURTHER INFORMATION CONTACT: Les Davison, (202) 501–4768. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F Street NW., Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: June 11, 1993.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 93–14542 Filed 6–18–93; 8:45 am]

BILLING CODE 6820–31–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–70]

Quarterly Public Health Assessments Completed and Public Health Assessments To Be Conducted in Response to Requests From the Public

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice contains the following: 1. A list of sites for which ATSDR has completed a public health assessment, or issued an addendum to a previously completed public health assessment, during the period January-March 1993. This list includes sites that are on, or proposed for inclusion on, the National Priorities List (NPL) and a non-NPL site for which ATSDR has prepared a public health assessment in response to a request from the public (petitioned site). 2. A list of sites for which ATSDR, during the same period, has accepted a request from the public to conduct a public health assessment. Acceptance for a request for the conduct of a public health assessment is based on a determination by the Agency that there is a reasonable basis for conducting a public health assessment at the site.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–0610.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments, public health assessments with addenda, and petitioned public health assessments which were accepted by ATSDR during October–December 1992, was published in the **Federal Register** on March 5, 1993, (58 FR 12586). The quarterly announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (42 CFR part 90). This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)], and appeared in the **Federal Register** on February 13, 1990, (55 FR 5136).

Availability

The completed public health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487–4650. There is a charge determined by NTIS for these public health assessments. The NTIS order numbers are listed in parentheses after the site name.

1. Public Health Assessments or Addenda Completed or Issued

Between January 1, 1993 and March 31, 1993, public health assessments or addenda to public health assessments were issued for the sites listed below:

NPL Sites

California

Sola Optical USA, Inc.—Petaluma—(PB93–142461)

Florida

Munisport Landfill—North Miami—(PB93–150365)

Georgia

Marine Corps Logistics Base—

Albany—(PB93–178804)

Minnesota

Freeway Sanitary Landfill—Burnsville—(PB93–178663)

New York

Circuitron Corporation—Farmingdale—(PB93–159317)
Colesville Municipal Landfill—Colesville—(PB93–174936)
Tri-Cities Barrel Company, Inc.—Fenton—(PB93–174910)

Ohio

Buckeye Reclamation—St. Clairsville—(PB93–178283)
Fultz Landfill—Byesville—(PB93–176147)

Pennsylvania

Crossley Farm/Hereford Groundwater—Hereford Township—(PB93–150357)

Rhode Island

University of Rhode Island (Plains Road) Disposal Area—South Kingstown—(PB93–164580)
West Kingston Town Dump/URI Disposal Area—South Kingstown—(PB93–164580)

South Carolina

Carolawn—Fort Lawn—(PB93–146249)
Palmetto Wood Preserving, Inc.—Cayce—(PB93–176220)
Sangamo/Twelve-Mile Creek/Hartwell PCB—Pickens—(PB93–160737)

Texas

French Limited—Crosby—(PB93–178721)
Petro-Chemical, Inc. (Turtle Bayou)—Liberty (PB93–178275)
United Creosoting Company—Conroe—(PB93–159200)

Washington

Vancouver Water Station No. 4 Contamination Area—Vancouver—(PB93–178267)

Petitioned Site—(Non-NPL Site)

Mississippi

Country Club Lake Estates—Hattiesburg—(PB93–149706)

2. Petitions for Public Health Assessments Accepted

Between January 1, 1993, and March 31, 1993, ATSDR determined that there was a reasonable basis to conduct public health assessments for the sites listed below in response to requests from the public. As of March 31, 1993, ATSDR initiated public health assessments at these sites.

Connecticut

Gallup's Quarry—Plainfield
Yaworski Dump—Canterbury
Yaworski Lagoon—Canterbury

Florida

Buckeye Cellulose—Perry

Georgia

Southwire Company—Carrollton
Southwire Copper Division—Carrollton

Ohio

U.S. Department of Energy Portsmouth Gaseous Diffusion Plant—Piketon.

Dated: June 15, 1993.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 93–14500 Filed 6–16–93; 8:45 am]
BILLING CODE 4160–70–P

Health Care Financing Administration

[BPO–103–FN]

Medicare Program; Data, Standards and Methodology Used To Establish Fiscal Year 1992 Budgets for Fiscal Intermediaries and Carriers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice is published in accordance with sections 1816(c)(1) and 1842(c)(1) of the Social Security Act which require us to publish the final data, standards and methodology used to establish budgets for Medicare intermediaries and carriers.

It announces that we are adopting as final without revision proposed data, standards, and methodology used to establish Medicare fiscal intermediary and carrier budgets for the fiscal year (FY) 1992, beginning October 1, 1991. It also contains our response to public comments on the proposal.

EFFECTIVE DATE: The data, standards and methodology are effective for the fiscal year beginning October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Tom Hessenauer, (410) 966–7542.

SUPPLEMENTARY INFORMATION:

I. Background

Summary of Proposed Notice

On January 2, 1992, we published in the **Federal Register** (57 FR 57) a proposed notice describing the data, standards and methodology we intended to use to establish budgets for Medicare program fiscal intermediaries and carriers for the Federal fiscal year (FY) beginning October 1, 1991. The notice was published in accordance with sections 1816(c)(1) and 1842(c)(1) of the Social Security Act, which require us to publish for public comment the data, standards and methodology we propose to use to establish budgets for Medicare intermediaries and carriers. Following the same format we have used in prior years' notices, the notice described the budget development process in general gave an overview of how we intend to use the contractor budget data, standards and methodology to establish the FY 1992 budgets; and identified the FY 1992 national Medicare contractor budget, standards and methodology.

In the proposed notice, we indicated that, as in the prior fiscal year, the Medicare contractor budget would be structured to coincide with the seven functional areas of responsibilities performed by intermediaries for part A and eight functional areas of responsibilities performed by carriers for part B. The functional area responsibilities for part A are: (1) Bills Payment; (2) Reconsiderations and Hearings; (3) Medicare Secondary Payer, (4) Medical Review and Utilization Review; (5) Provider Audit (Desk Reviews, Field Audits and Provider Settlements); (6) Provider Reimbursement; and (7) Productivity Investments. The functional area responsibilities for part B are: (1) Claims Payment; (2) Reviews and Hearings; (3) Beneficiary/Physician Inquiries; (4) Medical Review and Utilization Review; (5) Medicare Secondary Payer; (6) Participating Physicians; (7) Professional Relations; and (8) Productivity Investments. These functions are funded from the Hospital Insurance (HI) and Supplementary Medical Insurance (SMI) trust funds.

We proposed that final funding would be allocated based on current claims processing trends, legislative mandates, administrative initiatives, current year performance standards and criteria, and the availability of funds appropriated by the Congress. The FY 1992 Budget Performance Requirements (BPRs) give the contractors the authority to manage their budgets on a bottom-line basis. Previously, contractors were not allowed to shift more than 5 percent of funds from one line item to another in their budget. With the exception of Payment Safeguards, Productivity Investments, and the Other line items, we proposed that contractors have total flexibility in the use of their funds.

We announced that final BPRs were sent to each contractor in June 1991 to assist them in preparing their FY 92

budget requests. Intermediaries and carriers are expected to perform the work as described in the BPR package and in accordance with the standards included in the Contractor Performance Evaluation Program (CPEP) for FY 1992 which was published in the **Federal Register** on September 20, 1991 (56 FR 47758). While the contractors are preparing their budget requests, we develop preliminary budget allocations for the 15 functional areas based on historical patterns, workload growth, inflation assumptions, statistical forecasting reports, and any other available information.

A key step in the budget process is the development of contractor unit costs for processing part A bills and part B claims. The notice pointed out that FY 1992 is the first year in which we have developed a bottom-line unit cost for each individual contractor. These bottom-line unit costs encompass all contractor functions except Audit (part A only), Productivity Investments, and Other.

We noted that, also new in FY 1992 is the application of the Complexity Index (CI), which was designed to improve efficiency and reduce contractor-by-contractor cost inequities, and is based on the application of the Industrial Engineering (IE) Study we commissioned. The notice described in detail the development and application of the CI.

We developed the CI by identifying the contractor with the least complicated FY 1991 workload mix and, therefore, the lowest weighted unit cost. Each individual contractor's unit cost was divided by this contractor's unit cost to calculate its CI.

In order to develop each contractor's final bottom-line unit cost for FY 1992, we divided its Equivalency Work Units (EWUs) (the CI multiplied by the contractor's actual FY 1990 workload volume in order to weight the workload for the appropriate level of complexity) into its actual FY 1990 costs, adjusting for various savings and the postage increase. We then arrayed the contractors' unit costs per EWU and identified the contractor at the 70th percentile. Each contractor with a unit cost per EWU higher than the 70th percentile was held to this unit cost multiplied by the contractor's own CI. Each contractor at or below the 70th percentile retained its own unit cost per EWU multiplied by its own CI.

We proposed that the total FY 1992 budget (excluding Audit, Productivity Investments, and Other) for each contractor be established by multiplying the bottom-line unit cost by the contractor's projected workload volume. Each RO is responsible for allocating among its contractors the General Savings (as described in the BPRs) that we must realize to accommodate our budget limitations in FY 1992. Therefore, we proposed that, while the RO cannot exceed the bottom-line unit cost discussed above, it can adjust the unit costs downward to realize the General Savings.

II. Analysis of and Responses to Public Comments

In response to our request for comments, we received 6 timely items of correspondence. Comments were received from 1 provider association, 1 beneficiary advocacy association, 2 national specialty associations, 1 national health insurance association, and 1 insurance company.

The following are our responses to the comments and issues raised by those submitting comments on the data, standards and methodology.

Comment: Two commenters, noting that the proposed notice was published well after the beginning of FY 1992, expressed the view that the timing denied consumers and providers the opportunity to comment before implementation of the budget.

Response: We will do our best to publish all proposed notices as timely as possible. Although due to considerations in reviewing data and developing a budget, we did not publish the proposed notice before the beginning of the fiscal year, we provided adequate opportunity for all affected parties to comment on the data, standards and methodology and were fully prepared to issue revised Budget and Performance Requirements (BPRs) to intermediaries and carriers based on the comments received and renegotiate any affected areas of intermediary and carrier budgets within the levels of funding made available by the Congress if changes were warranted.

Comment: One commenter expressed the opinion that the notice lacks the specificity about the development of the contractor budgets that the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) was intended to elicit. The commenter also stated that most of the methodology described in the notice is general and could apply to any contractor budget year.

Response: The congressional intent was for us to provide sufficient description of the data, standards and methodology used in determining the annual budgets, and we believe the notices comply with the intent of the Congress. The commenter is correct that some methodologies are retained from year to year. However, we always apply the most recent data. Additionally, legislative changes and budget priorities or constraints affect the standards.

Comment: One commenter stated that the notice does not provide standards or methodology for physician payment reform (PPR) implementation and monitoring of that implementation. The commenter also believes that physician compliance with the limiting charge requirements of PPR (erroneously referred to as the "MAACs" in the proposed notice) should also be addressed in the final notice.

Response: These notices are intended to include only the data, standards and methodology to be used to establish budgets for fiscal intermediaries and carriers for that fiscal year. Specific instructions on how to implement and monitor certain initiatives (e.g., PPR) are presented through other means, such as program memoranda and manual instructions. A separate rule, Fee Schedule for Physicians' Services, was published on November 25, 1991 (56 FR 59502) detailing the specifics of PPR implementation policies and procedures.

Comment: One commenter was concerned about the statement in the proposed notice that contractors will have greater flexibility in managing their budgets through the ability to shift money from one line item of their budget to another. He was concerned that no payment safeguards have been built into the system to prevent a carrier from underspending in PPR related activities.

Response: PPR is categorized as a Productivity Investment (PI) in the FY 1992 budget. As stated in the notice, no more than 5 percent of the PI funding may be shifted to other functions. The PI line of the budget is treated as a whole, not by separate projects.

Comment: One commenter was concerned that the proposed notice did not indicate whether the figure used for Beneficiary and Physician Inquiries in FY 1992 includes the increase in workload that will occur due to PPR.

Response: The OBRA 1989 and 1990 provisions related to PPR were taken into consideration in determining beneficiary and physician inquiries workload.

Comment: Another commenter stated that the proposed notice does not indicate that the unique requirements of the first years of the new physician payment system—such as specialized training for carrier personnel—were even considered.

Response: In addition to PPR being included as a PI, funding for carrier and provider training was included under

another budget line item entitled, Professional Relations Activity.

Comment: Three commenters questioned whether the budgets will include funding for continuation of the toll-free beneficiary information lines.

Response: Contingency funds were released to fund continuation of the toll-free beneficiary telephone lines for FY 1992. Toll-free beneficiary lines will, therefore, not be eliminated.

Comment: One commenter questioned whether any safeguards will be built into the Automated Response Unit (ARU) systems to ensure that beneficiaries and providers are not precluded from having direct access to a carrier representative.

Response: The scripts voiced by the ARUs will be standardized, providing a uniform approach to beneficiary and provider communications. As part of this uniform script, there is an "opt-out" function that the caller may use to exit the ARU and hold for a service representative. In addition, if the caller stays on the line after the script has finished, the call will be directed to a service representative.

Comment: One commenter pointed out that the proposed notice outlines several general initiatives which are designed to improve the effectiveness of Medicare program administration. The commenter believes that in order to improve the effectiveness of Medicare program administration, the Explanation of Medicare Benefits (EOMB) form should be revised to include specific information on the balance billing limit.

Response: Beginning in 1993, the EOMB will include information on limiting charges.

Comment: One commenter stated that the Medicare carrier bonus system for FY 1992 should include criteria other than the carrier's ability to increase the rate of participation.

Response: The Medicare carrier incentive payment is structured consistent with the intent of the Congress. It is designed to reward carriers for their efforts in increasing either the rate of physician participation in the Medicare program or the proportion of payments for participating physicians' services. Other criteria such as speed and accuracy of claims processing are evaluated through the Contractor Performance and Evaluation Program and are unrelated to carrier efforts to increase either the rate of participation or the participating physician payment proportion. In addition, carriers currently receive funding for provider education and training functions with which they are encouraged to establish provider educational programs and distribute educational materials on the Medicare program to providers in their service area. Increased physician participation is a measure of the effectiveness of the carrier's overall provider education and training efforts.

Comment: The same commenter stated that when notifying physicians and suppliers of procedure changes prior to the effective date of changes, the term "prior" should be clearly specified.

Response: It has always been HCFA's policy to notify physicians and suppliers prior to the effective date, and, where possible, with sufficient lead time to plan for the changes.

Comment: One commenter believed that E.O. 12291 does apply to the proposed notice and that a regulatory impact analysis should have been published along with the notice. Specifically, the commenter stated that the aggregate contractor budget for FY '92 promulgated as a result of this notice totals $1,457 million, well beyond the $100 million limitation, and the revision to the notice, BPRs, or funding level referenced in the proposed notice (57 FR 58) would produce a change in either contractor activities or program activities.

Response: The Executive Order referenced by the commenter contains a number of requirements that apply to policy statements published by agencies in the **Federal Register**. Most importantly, agencies are to consider alternatives to regulating and weigh the cost to the public and major segments of the public against the benefits of the proposal. In structuring proposals, agencies strive to maximize benefits and minimize inappropriate burden.

In developing intermediary and carrier budgets, as we have explained, we operate within the constraints of budget appropriations and structure activities and priorities to carry out statutory requirements. Further, as we negotiate individual intermediary and carrier budgets, we strive to maximize efficiency in carrying out the functions of each contractor. Thus, some flexibility is needed, and all contracts have some variations. Although E.O. 12291 does not apply to this administrative process, the underlying principles are very similar. For example, development of efficient information systems by the contractors can result in less burden for providers.

The commenter is incorrect in asserting that the contractor budget is promulgated as a result of this notice. The purpose of our publication of the data, standards, and methodology is to share with the public baseline considerations used in developing contractor budgets. There are no costs or benefits associated with sharing this information, hence, we concluded that the impact threshold of $100 million is not met.

Comment: Several commenters addressed issues related to calculations of the unit cost targets (e.g., complexity index, general savings, etc.), suggesting that a more complete explanation be given.

Response: The national Medicare contractor administrative budget has been severely constrained over the last several years as a result of the Federal budget deficit. These budget restraints have presented a challenge to both the contractor community and us. It is our responsibility to ensure that available funding is distributed in a responsible and appropriate manner. In order to do this, we have provided unit cost targets for the Medicare contractors for the past several years.

For the past 3 years (FYs 1990–1992), we have used each individual contractor's most recent full-year's actual unit cost as the baseline unit cost for the upcoming fiscal year. In order to recognize the inherent differences in the costs that each contractor realizes by participating in the Medicare program, the basis for each contractor's FY 1992 unit cost target was its actual unit cost as reported on the FY 1990 Final Administrative Cost Proposal. This calculation confirms that our methodologies do consider the actual costs incurred by contractors in delivering required services.

In accordance with sections 1816 and 1842 of the Act, all of our methodologies were developed to provide each contractor with the incentive and direction needed to conduct its Medicare business in an efficient and economical manner. It is true that the majority of our contractors are in a cost contract arrangement with HCFA. However, it is our role to encourage the Medicare contractors to identify and institute more efficient (and less costly) ways of doing business. The unit cost targets do not supplant the cost contract arrangement, but rather provide direction to ensure that our own administrative initiatives will be fully considered by the contractors. We would be negligent in our responsibilities if we failed to encourage contractors to reduce administrative costs.

We believe we are acting within the authority of Medicare statutory sections, the Federal Acquisition Regulation (FAR), and the Medicare contracts. For example, in establishing intermediaries' administrative costs, section 1816(c)(1) of the Act explicitly provides that the

Secretary "... shall provide for payment of so much of the cost of administration of the agency or organization *as is determined by the Secretary to be necessary and proper* for carrying out the functions covered by the agreement." (Emphasis added.) Parallel language regarding carriers' administrative costs is set out in section 1842(c)(1).

Commenters infer that the imposed "target costs" for contractors, in effect, are intended to convert the contracts from a cost to a fixed-price basis. Again, referring to the FAR, we note that our actions are well within the definition of a cost-reimbursement type contract. Section 16.301–1 states that "Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total costs for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer." We believe that the use of the Complexity Index (CI) is in compliance with this section of the FAR.

The CI was developed because of a perception (both within and outside of HCFA) that too much variation exists among contractors' unit costs. There is also a perception that some contractors are realizing costs that are out of proportion to the difficulty of the workload they process.

Use of the CI has allowed us to grant contractors an extra degree of budget flexibility. We have been able to substitute the "micromanagement" of functional unit costs with the bottom-line concept. As previously mentioned, we believe that a contractor's costs are driven by its overall bill/claims workload mix. This workload mix also impacts other contractor functions such as Medicare Secondary Payer and Inquiries. We believe that it is appropriate, given the level of budget flexibility granted to the contractors, to provide a bottom-line budget with which contractors can finance their operations as they deem appropriate. It should also be noted that application of the CI allows us to identify high cost contractors within the context of the entire Medicare contractor community. If a contractor is experiencing an inordinately high level of inquiries, we want to provide an incentive for it to investigate the reason for the excessive volume.

Based on the results of the Industrial Engineering Study, we believe that the savings per bill/claim that we apply for increases in electronic media claims (EMC) volume are conservative. We do not believe that we have overstated the potential savings associated with EMC. Also, the discussion concerning the elimination of the toll-free telephone lines for beneficiary inquiries is now moot since the release of the FY 1992 contingency funds negated the need to eliminate this service. Full funding was reinstated to the contractor budgets.

Since the CI includes a full consideration of each individual contractor's workload mix and its actual costs as reported on the FY 1990 Final Administrative Cost Proposals, we believe that this methodology is an equitable and efficient method of formulating contractor unit cost targets.

The "General Savings" that are also included in the CI methodology represent an equitable distribution among all contractors of the existing shortfall within the national budget. It should be noted that the scope of work contained within the FY 1992 BPRs was developed to reflect the effectuation of the General Savings. Thus, the constraints of the unit cost targets are in keeping with the level of work that we expect the contractors to perform.

The use of unit cost targets does not preclude the negotiation process between the regional offices (ROs) and the contractors. As always, contractors should submit budget requests in keeping with their estimated administrative expenses. However, they also need to consider all of HCFA's administrative initiatives, including cost reduction initiatives, in formulating their budgets. Furthermore, the contractors identified as high cost should be investigating the reasons for their status and actively seeking to remedy these conditions.

III. Provisions of the Final Notice

Based on our review of the comments submitted, we are making no changes to the data, standards and methodology as published on January 2, 1992 (57 FR 57). Therefore, we are adopting as final, the data, standards and methodology as proposed.

IV. Collection of Information Requirements

This final notice contains no information collection requirements. Consequently, this notice need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

V. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless a final notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, fiscal intermediaries and carriers are not considered to be small entities. Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

As stated in our initial regulatory impact statement published in the **Federal Register** (January 2, 1992, 57 FR 65), this final notice fulfills our obligation under sections 1816(c) and 1842(c) of the Act, as amended by section 4035(a) of OBRA '87, to publish annually in the **Federal Register** the data, standards, and methodology to be used in establishing fiscal intermediary and carrier budgets. Since the purpose of this notice is informational, it is not a rule nor will it be a part of, or substitute for, any negotiations we intend to conduct with the intermediaries and carriers. Thus, this document, of itself, will not produce a change either in contractor operations or on program activities. For these reasons, this notice does not meet the $100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this final notice is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

With respect to the impact on contractors, providers, or beneficiaries, this notice describes data, standards, and methodology for FY 1992 that underlie a budget plan that is designed to give contractors greater flexibility in

developing their own budget plans and using their own resources to perform activities described in the BPRs. The notice will not affect provider or supplier reimbursement rates or fees, but describes the data, standards, and methodology underlying a process that is expected to result in improved contractor efficiency, which will be beneficial to both providers and beneficiaries. Thus, we have also determined, and the Secretary certifies, that this final notice will not result in a significant economic impact on a substantial number of small entities and will not have a significant economic impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Authority: Sec. 1816(c) and 1842(c) of the Social Security Act (42 U.S.C. 1395h(c) and 1395u(c)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 15, 1993.

William Toby,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 93–14469 Filed 6–18–93; 8:45 am]

BILLING CODE 4120–01–P

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Medicare Cataract Surgery Alternate Payment Demonstration Data Base" HHS/HCFA/ORD No. 09–70–0062. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice.

DATES: HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on June 14, 1993. Comments received within 30 days after the publication of this notice will be considered regarding any prospective alterations to the system. The new system of records, including routine uses, will become effective 60 days from the date submitted to OMB unless HCFA receives comments which require alteration to the system.

ADDRESSES: The public should address comments to Richard DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, HCFA, Room 2–H–4 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Anne Francoeur-Wilson, Project Officer, Medicare Cataract Surgery Alternate Payment Demonstration, Office of Research and Demonstrations, HCFA, Room 2302 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187. Her telephone number is (410) 966–6682.

SUPPLEMENTARY INFORMATION: The Medicare Cataract Surgery Alternate Payment demonstration data base will be developed and maintained for the purpose of evaluating the Medicare Cataract Surgery Alternate Payment demonstration.

To accomplish the evaluation, the data that are collected will be analyzed to:

- Assess the initial impact of the demonstration on Medicare costs, program provider patterns of practice; provider participation and beneficiary choice and selection;
- Determine the operational feasibility of the Medicare Cataract Surgery Alternate Payment demonstration; and
- Test the value of alternative appropriateness indicators in predicting successful outcomes of cataract surgery.

Given the variety of demonstration demands to be met, both evaluative and monitoring, the data base will be multipurpose in scope and longitudinal in design. The cataract demonstration data base will consist of:

- Claims data
- Clinical data
- Patient functional status data (preoperative and postoperative), and
- Patient satisfaction data.

The principal components of the system are:

- The *National Claims History (NCH)—Privacy Act System No. 09–70–0005.* This will serve as the primary data source for the analysis of Medicare costs, including volume and costs per episode of care for demonstration beneficiaries and a sample of control beneficiaries. Episodes constructed using these data will also be used to address utilization issues.
- *Clinical data.* This will be used to analyze the impacts of the demonstration on service utilization for each stage of the cataract episode (preoperatively, intraoperatively, and postoperatively) and on the quality and appropriateness of care. A clinical checklist will be completed for each demonstration and control beneficiary.
- A *beneficiary survey.* This will collect patient functional status prior to and after cataract surgery, as well as the patient's level of satisfaction with the process and the outcome of the surgery.

The demonstration evaluation will involve primary data collection of several types of data (measuring both preoperative and postoperative conditions). Clinical information, including visual acuity and results of preoperative tests will be collected using a clinical checklist. Best corrected visual acuity will be measured prior to surgery and following recovery from surgery. Functional status, health status, and patient satisfaction will be collected prior to and following surgery using a beneficiary survey and interview format. Two aspects of the overall health of the patient will be examined, including the patient's self-rated health, and the patient's symptoms related to the existing cataract. Patient satisfaction, probed during the postoperative patient interview, will focus on at least two areas: Satisfaction with the process of care and satisfaction with the outcome of care. A separate aspect of the data analysis will focus on the relationship among the various appropriateness indicators and between alternative measures of appropriateness and outcome.

The evaluation of the Medicare Cataract Surgery Alternate Payment Demonstration will measure the impact of the new payment methodology by addressing the following research questions:

- What is the impact of the demonstration on aggregate Medicare expenditures (including volume and per episode cost effects) for cataract surgery in demonstration areas?
- Are the practice patterns (the manner in and frequency with which services are delivered) of demonstration providers (with respect to both within-bundle services and outside-of-bundle services) altered in a manner that achieves efficiency without compromising quality after the demonstration begins?
- As with any prospective reimbursement system, the demonstration will create incentives for

providers to find ways to reduce the costs of providing medical services. Therefore, it will be important to determine the impact of the demonstration on quality of care. For example, are differences in complications rates, outcomes, or patient satisfaction identified?

- To the extent that demonstration providers are restricted in the fees they can charge for services included within the bundle definition, it is important to determine the susceptibility of the bundled payment system to "gaming." For example, do differences in indications for surgery, or the frequency, timing, or content of visits exist?
- What are the effects of "optional" elements of the negotiated bundled payment; e.g., volume-related discounts or treatment of complications?
- What is the impact of the demonstration on demonstration and nondemonstration providers? Do demonstration providers attract a difference type or mix of cataract surgery patients (e.g., demographically or clinically) than nondemonstration providers?
- What are the administrative costs associated with the bundled payment system? What can be inferred about the feasibility of the bundled payment system based upon demonstration provider involvement?

The Medicare Cataract Surgery Alternate Payment demonstration began in April, and it will last for approximately 3 years. Claims data on the beneficiary will be retrieved from the National Claims History on a quarterly basis. Checklists will be completed by Medicare providers as each episode of care is provided to the Medicare beneficiary. Beneficiary interviews will be conducted in the preoperative stage for patients participating in the demonstration only, and interviews will be conducted 4 months into the postoperative stage for both demonstration and control patients.

The Privacy Act permits us to disclose information without the consent of individuals for "routine uses," which means disclosures that are compatible with the purpose for which the information was collected. The proposed routine uses for this system meet the compatibility criteria since the information is collected for the purpose of conducting and evaluating a demonstration study under authority of 42 U.S.C. 1395b–1 (section 402 of the Social Security Amendments of 1967, Pub. L. 90–248). We anticipate that disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: June 7, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

09–70–0062

SYSTEM NAME:

Medicare Cataract Surgery Alternate Payment Demonstration Data Base, HHS/HCFA/ORD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The system will be maintained by the evaluation contractor selected by HCFA. Contact the System Manager for the location of the contractor. The system, or portions of the system, may also be maintained at the HCFA Data Center located at the Lyon Building, 7131 Rutherford Road, Baltimore, Maryland 21207–5187.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare beneficiaries who receive cataract surgery from certain participating demonstration providers in Cleveland, Ohio; Dallas and Forth Worth, Texas; and Phoenix, Arizona. In addition, a random sample of Medicare outpatient cataract surgery patients in Cincinnati, Columbus, and Dayton, Ohio; Houston, Texas; Tucson, Arizona; and Albuquerque, New Mexico will serve as "controls."

Two type of ophthalmologists will be identifiable in the system: (1) Those who provide cataract surgery under the demonstration, and (2) those who provide cataract surgery to Medicare "control" patients and agree to provide clinical information to HCFA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system will be identifiable through demographic information such as age and geographic location; medical utilization and cost data; clinical condition data; health, functional status, and satisfaction data; personal identifiers (name of Medicare beneficiary and Medicare health insurance claim number); and medical provider name and unique provider identification number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is 42 U.S.C. 1395b–1 (section 402 of the Social Security Amendments of 1967, Pub. L. 90–248).

PURPOSE(S):

The purpose of the data base system is to evaluate the impact of the Medicare Cataract Surgery Alternate Payment demonstration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosures may be made:

1. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.
2. To the Bureau of Census for use in processing research and statistical data directly related to the administration of Agency programs.
3. To the Department of Justice, to a court or other tribunal, or to another party before such court or other tribunal, when
   a. HHS, or any component thereof; or
   b. Any HHS employee in his or her official capacity; or
   c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee; or
   d. The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components;

is party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal, or the other party before such court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. To an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:
   a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained,
   b. Determines that the purpose for which the disclosure is to be made:
   (1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form,
   (2) Is of sufficient importance to warrant the very minor effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and
   (3) There is a reasonable probability that the objective for the use would be accomplished.
   c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual,

(b) For use in another research project, under these same conditions, and with written authorization of HCFA,

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law.

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

5. To a contractor for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in this system or for developing, modifying, and/or manipulating automated data processing (ADP) software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supposing records in the system.

6. The evaluation contractor, selected by HCFA, who will use this information to analyze the effects of the demonstration. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Records are retrieved by health insurance claim number, health care provider number, beneficiary name, and health care provider name.

SAFEGUARDS:

Access is limited to authorized HCFA personnel and HCFA contractor employees in the performance of their duties. HHS contractors and collaborating researchers are required to comply with the provisions of the Privacy Act and are required to sign Assurance of Confidentiality Forms (or Data Security Statements) which are kept on file by the contractor. For computerized records, safeguards established in accordance with Department standards and National Institute of Standards and Technology guidelines (e.g., security codes) will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular No. 10, Automated Information Systems Security Program, and HCFA Automated Information Systems (AIS) Guide, Systems Security Policies.

RETENTION AND DISPOSAL:

Hard copy data collection forms and magnetic tapes (or equivalent media) with identifiers will be retained in secure storage areas. Records will be retained for 2 years after the termination of the evaluation contract. The disposal techniques of degaussing will be used to strip magnetic tape (or equivalent media) of identifying names and numbers. Hard copy records with individual identifiers will be destroyed at this time.

SYSTEM MANAGER AND ADDRESS:

Joseph R. Antos, Ph.D., Director, Office of Research and Demonstrations, Health Care Financing Administration, Room 2230 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187.

NOTIFICATION PROCEDURE:

For the purpose of access, write the system manager, who will require the system name, health insurance claim number, and for verification purposes, name, address, date of birth, and sex, to determine whether the individual's record is in the system.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department regulation (45 CFR 5b.5(a)(2)).)

CONTESTING RECORD PROCEDURES:

Contact the system manager named above and reasonably identify the record and specify the information to be contested. State the corrective action being sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation (45 CFR 5b.7).)

RECORDS SOURCE CATEGORIES:

Medicare bill records; Medicare enrollment records; Medicare provider records (a) participating in the demonstration and (b) providing cataract surgery for a sample of Medicare enrollees selected as "controls."

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93–14537 Filed 6–18–93; 8:45 am]

BILLING CODE 4120–03–M

National Institutes of Health

National Institute of Mental Health; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meeting of a review committee of the National Institute of Mental Health for June 1993.

This meeting will be open to the public as indicated below for the discussion of NIMH policy issues and will include current administrative, legislative, and program developments.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301, 443–4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meeting may be obtained from the contact person indicated.

Committee Name: Clinical Subcommittee, Mental Health Special Projects Review Committee.

Contact: Phyllis L. Zusman, Parklawn Building, room 9C02, Telephone: 301, 443–3940.

Meeting Date: June 30, 1993.

Place: Bethesda Ramada Inn, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Open: June 30, 1993, 9 a.m.–10 a.m.

Closed: June 30, 1993, 10 a.m.–5 p.m.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.)

Dated: June 15, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–14489 Filed 6–18–93; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications and Small Business Innovation Research Program Applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meeting and roster of panel members.

Meeting to Review Individual Grant Applications

Scientific Review Administrator: Dr. Lillian Pubols (301) 594–7340
Date of Meeting: June 24, 1993
Place of Meeting: Westwood Bldg., Rm 306A, NIH, Bethesda, MD
Time of Meeting: 1 p.m.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 18, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–14487 Filed 6–18–93; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications and Small Business Innovation Research Program Applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meetings and rosters of panel members.

Meetings to Review Small Business Innovation Research Program Applications

Scientific Review Administrator: Dr. Teresa Levitin (301) 594–7141
Date of Meeting: July 1–2, 1993
Place of Meeting: Embassy Suites Hotel, Washington, DC
Time of Meeting: 4 p.m.
Scientific Review Administrator: Dr. Peggy McCardle (301) 594–7293
Date of Meeting: July 8–9, 1993
Place of Meeting: Holiday Inn, Chevy Chase
Time of Meeting: 8:30 a.m.
Scientific Review Administrator: Dr. Anita Sostek (301) 594–7358
Date of Meeting: July 15–16, 1993
Place of Meeting: Omni Shoreham Hotel, Washington, DC
Time of Meeting: 9 a.m.
Scientific Review Administrator: Ms. Carol Campbell (301) 594–7165
Date of Meeting: July 27, 1993
Place of Meeting: River Inn, Washington, DC
Time of Meeting: 9 a.m.
Scientific Review Administrator: Dr. Leonard Jacubczak (301) 594–7198
Date of Meeting: August 1–2, 1993
Place of Meeting: Marriott Pooks Hill, Bethesda
Time of Meeting: 8:30 a.m.
Scientific Review Administrator: Dr. Jane Hu (301) 594–7269
Date of Meeting: August 6, 1993
Place of Meeting: Holiday Inn, Chevy Chase
Time of Meeting: 9 a.m.

Meetings to Review Individual Grant Applications

Scientific Review Administrator: Dr. Bob Weller (301) 594–7340
Date of Meeting: July 8, 1993
Place of Meeting: Hyatt Regency, Bethesda
Time of Meeting: 9 a.m.
Scientific Review Administrator: Dr. Anita Sostek (301) 594–7358
Date of Meeting: July 9, 1993
Place of Meeting: Westwood Bldg., Rm 319C, NIH, Bethesda, MD (Telephone Conference)
Time of Meeting: 1 p.m.
Scientific Review Administrator: Dr. Anita Sostek (301) 594–7358
Date of Meeting: July 12, 1993
Place of Meeting: Westwood Bldg., rm 319C, NIH, Bethesda, MD (Telephone Conference)
Time of Meeting: 2 p.m.
Scientific Review Administrator: Dr. Peggy McCardle (301) 594–7293
Date of Meeting: July 14, 1993
Place of Meeting: Westwood Bldg., rm. 305, NIH, Bethesda, MD (Telephone Conference)
Time of Meeting: 9:30 a.m.
Scientific Review Administrator: Dr. Peggy McCardle (301) 594–7293
Date of Meeting: July 15, 1993
Place of Meeting: Westwood Bldg., rm 305, NIH, Bethesda, MD (Telephone Conference)
Time of Meeting: 1 p.m.
Scientific Review Administrator: Dr. Bob Weller (301) 594–7340
Date of Meeting: July 20, 1993
Place of Meeting: Westwood Bldg., room 307, NIH, Bethesda, MD (Telphone Conference)
Time of Meeting: 11 a.m.
Scientific Review Administrator: Dr. Bob Weller (301) 594–7340

Date of Meeting: July 28, 1993
Place of Meeting: Hyatt Regency, Bethesda, MD
Time of Meeting: 9 a.m.

This notice for the meeting July 1–9 is being published less than 15 days prior to the meetings due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 18, 1993.

Susan K. Feldman,
Committee Management Officer, NIH.

[FR Doc. 93–14488 Filed 6–18–93; 8:45 am]
BILLING CODE 4140–01–M

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.
ACTION: Notice.

SUMMARY: Notice is hereby given that the Public Health Service (PHS) is publishing information on closed investigations of alleged scientific misconduct in which there was a finding of misconduct and administrative actions have been taken. This information will include the name of the subject of the investigation, the name of the institution(s) involved, the nature of the misconduct, and the type and duration of the administrative actions. Corrections or retractions of scientific literature and any threats to public health arising from the scientific misconduct will also be identified. The PHS will publish the results of all investigations resulting in a finding of misconduct that were completed after May 29, 1992, the date the Secretary established the Office of Research Integrity. Following this initial notice of findings in fourteen cases, future notices will be published individually as cases are closed.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852.

SUPPLEMENTARY INFORMATION: The Public Health Service is fulfilling its responsibilities for maintaining integrity in Federally-supported research by developing policies and procedures for dealing with misconduct in science, overseeing the activities related to misconduct in science in PHS research agencies, reviewing final reports of investigations, imposing administrative actions where scientific misconduct has been confirmed and providing information about instances of scientific misconduct to the public and scientific and institutional communities for scientific, educational, and deterrent purposes. This information will also aid institutional officials in making informed decisions affecting their institution.

Closed Investigations of Scientific Misconduct

The Office of Research Integrity has issued findings of scientific misconduct and has imposed administrative actions in the following cases completed since May 29, 1992:

James H. Freisheim, Ph.D., Medical College of Ohio

An inquiry and an investigation conducted by the University found that Dr. Freisheim had submitted a research grant application to the National Institutes of Health which contained substantial portions plagiarized from another scientist's grant application. Dr. Freisheim had served as an assigned reviewer of the other scientist's application when it was reviewed about two years earlier by an NIH Study Section. During the inquiry, Dr. Freisheim produced a handwritten draft of the plagiarized material that he claimed he had written before the other scientist had submitted his grant application, and that therefore the other scientist had plagiarized Dr. Freisheim's work. The investigation reviewed the handwritten draft and concluded that it had been written much later than purported by Dr. Freisheim, possibly during the inquiry to establish the basis for his defense. The investigation also concluded that Dr. Freisheim and plagiarized material for two post-doctoral fellowship applications to the NIH. The ORI concurred in the University's findings, and Dr. Freisheim has been debarred from receiving Federal grant or contract funds for a period of 3 years beginning May 5, 1993. He had also been required for a 10 year period beginning May 5, 1993, to certify that future applications for research support submitted to the PHS are his own work, and he has been prohibited from serving on PHS Advisory Committees or review groups for the same period.

Judy Guffee, University of Miami

An investigation conducted by the University found that Ms. Guffee had fabricated data in a research project that was supported by a grant from the National Institutes of Health. Ms. Guffee admitted to falsifying the labeling of solutions alleged to contain polyclonal antiserum, when in fact she filled the tubes with fetal calf serum. The investigation concluded that this was done to hide the fact that the animal preparation used to generate the polyclonal antiserum had died before large quantities of antiserum could be produced. Records indicating collection of large quantities of serum from the animal over a two-year period were also fabricated. ORI concurred in the University's finding and has required, for a five year period beginning January 7, 1993, that she and the institution submit a certification with any PHS fellowship or grant application or contract proposal prepared by her attesting to the accuracy of the statements therein.

Raymond J. Ivatt, Ph.D., Cetus Corporation, Emeryville, CA

An investigation conducted by the Corporation found that Dr. Ivatt falsified progress reports in a research project grant supported by the National Institutes of Health. Dr. Ivatt reported progress from an earlier budget period, claiming that the work had been done during the period for which current funds were awarded. The ORI concurred with the Corporation's findings and has required that applications for PHS research support and reports of PHS sponsored research involving Dr. Ivatt be reviewed and certified by the sponsoring institution for the reliability and accuracy of the application, contract proposal, or report. Dr. Ivatt is also prohibited from serving on PHS Advisory Committees, boards, or peer review groups. These actions are effective for 3 years beginning February 28, 1993.

Mark M. Kowalski, M.D., Ph.D., Dana Farber Cancer Institute and Harvard University

An investigation conducted by the Institute found that Dr. Kowalski had plagiarized a complete grant application and submitted it to the National Institutes of Health. He copied the previously funded grant application of his former mentor and submitted it as his own work. The ORI concurred in the Institute's finding and has required that, for any PHS application, proposal or report prepared by Dr. Kowalski, a signed affirmation be submitted that all material is entirely his own work or accurately attributed to others. In addition, he has been prohibited by the ORI from serving on Public Health Service Advisory Committees, Boards, or review groups. These actions became effective January 6, 1993 for a three year period.

Paul F. Langlois, D.Sc.N., Laboratory of Clinical Investigation, National Institute of Allergy and Infectious Diseases

An inquiry by the NIAID and a subsequent investigation conducted by the former Office of Scientific Integrity at the National Institutes of Health concluded that Dr. Langlois, a former post-doctoral fellow in the laboratory, had falsified and fabricated data in immunological research. Dr. Langlois presented to his supervisor computer printouts and graphs for which primary data did not exist. Dr. Langlois admitted to fabricating the data. Dr. Langlois also admitted to manipulating the reagents used by other laboratory personnel in efforts to replicate his findings, spiking them with radioactive antibody to show positive results. The Public Health Service recommended that Dr. Langlois be debarred from receiving Federal grants or contract funds for a three year period, and that he be prohibited from serving on PHS Advisory Committees, Boards, or peer review groups for three years. Dr. Langlois appealed the term of the proposed debarment to a Research Integrity Adjudications Panel of the HHS Departmental Appeals Board, but the Panel upheld the PHS recommendation. Accordingly, Dr. Langlois has been debarred for three years beginning May 12, 1993, and is prohibited from serving on PHS Advisory Committees, Boards, or peer review groups for the same period. The fabricated and falsified data was never published in the scientific literature.

Tian-Shing Lee, M.D., Joslin Diabetes Center, Harvard Medical School

An investigation conducted by Harvard found that Dr. Lee, a former post-doctoral fellow at the Joslin Diabetes Center, fabricated and falsified data in research on diabetes supported by the National Eye Institute. Primary data was missing for almost half of the figures and tables in a series of published papers and manuscripts prepared by Dr. Lee. Many instances of data fabrication and falsification were found, including presenting data for cell counts that were never performed, indicating that multiple data points were determined when in fact only a single data point was obtained, eliminating the highest or lowest values in sets of experimental readings, alteration or transposition of data to achieve a desired experimental result, and misrepresentation of the time intervals at which data was collected. The Office of Research Integrity concurred in the University's findings. Dr. Lee has been debarred from receiving Federal grants or contracts and is prohibited from serving on Public Health Service Advisory Committees, Boards, peer review groups for a five year period beginning April 18, 1993. Harvard University notified the four scientific journals which had published papers containing data fabricated or falsified by Dr. Lee that the papers should be retracted. These papers are: "Differential regulation of protein kinase C and (Na,K)-adenosine triphosphatase activities by elevated glucose level in retinal capillary endothelial cell" *Journal of Clinical Investigation, 83:* 90–94, 1989; "Endothelin stimulates a sustained 1,2-diacylglycerol increase and protein kinase C activation in bovine aortic smooth muscle cells" *Biochemical and Biophysical Research Communications, 162:* 381–386, 1989: "Activation of protein kinase C by elevation of glucose concentration: Proposal for a mechanism in the development of diabetic vascular complications" *Proceedings of the National Academy of Sciences, 86:* 5141–5145, 1989; and "Characterization of endothelin receptors and effects of endothelin on diacylglycerol and protein kinase C in retinal capillary pericytes" *Diabetes, 38:* 1642–1646, 1989.

Anthony A. Paparo, Ph.D., Southern Illinois University

An investigation conducted by the University found that Dr. Paparo had falsified data in publications citing support by a grant from the National Institutes of Health. He used the same micrograph in two papers, while stating that the micrographs had been obtained from two different biological species of mussel. Multiple instances were found of other such falsification of micrographs and radioisotope data in published scientific articles which were not supported by the PHS. The ORI concurred in the University's finding and has prohibited Dr. Paparo from serving on Public Health Service Advisory Committees, Boards, or review groups for a three year period. He has also been debarred from receiving Federal grants or contracts for three years, effective April 5, 1993. The two published papers which cited PHS support are: "The effect of STH and 6–OH–DOPA on the SEM of the branchial nerve and visceral ganglion of the bivalve *Elliptio companata* as it relates to ciliary activity" *Comparative Biochemistry and Physiology, 51*: 169–173, 1975; "The effect of STH on the SEM and frequency response of the branchial nerve in *Mytilus Edulis* as it relates to ciliary activity" *Comparative Biochemistry and Physiology, 51*: 165–168, 1975. The University has notified the editor of this journal, and the editors of other journals in which Dr. Paparo published, about the problems identified in the investigation.

Leo A. Paquette, Ph.D., Ohio State University

An investigation conducted by the University found that Dr. Paquette had submitted a grant application to the National Institutes of Health in which sections of the research design were plagiarized from an unfunded grant application written by another scientist. Dr. Paquette had received the other scientist's application in confidence as a peer reviewer for the NIH. Dr. Paquette claimed that the inclusion of the other scientist's text was inadvertent; he said that he had given the other scientist's application to a postdoctoral fellow, whom Dr. Paquette refused to name, for an educational exercise, and that text had somehow been inadvertently used in his own application. The ORI concurred in the University's finding of misconduct. Dr. Paquette stated that he was accepting full responsibility for this occurrence. The ORI has required institutional certification of proper attribution in any future grant proposals to the PHS from Dr. Paquette and has prohibited him from serving on Public Health Service Advisory Committees, Boards, or review groups. These actions are effective for a ten year period beginning December 31, 1992.

Roger Poisson, M.D., St. Luc Hospital, Montreal, Canada

An investigation conducted by the Division of Research Investigations of the ORI found that Dr. Poisson had fabricated and falsified research data in clinical trials supported by a cooperative agreement from the National Institutes of Health. Dr. Poisson fabricated or falsified data related to laboratory tests and dates of procedures in 115 separate instances dating from 1977 through 1990. The ORI has prohibited Dr. Poisson from serving on Public Health Advisory Committees, Boards, or review groups for an eight year period. Dr. Poisson has also been debarred from receiving Federal grants or contracts for an eight year period. These actions became effective March 30, 1993. The National Cancer Institute cooperative clinical trials group which sponsored the clinical trials, the National Surgical Adjuvant Breast and Bowel Project (NSABP), plans to publish corrected analyses of affected studies.

Sheela Ramasubban, University of Houston

An investigation conducted by the University found that Ms. Ramasubban, a former Master's degree student in the Department of Biochemical and Biophysical Sciences, falsified and fabricated data in research on the biochemical basis of rhythmic behaviors, supported by a grant from the National Institute of Mental Health. Ms. Ramasubban admitted to the investigation committee that she had altered that data in her notebooks and fabricated data in a number of instances. A hearing conducted by the University upheld the investigative findings of scientific misconduct. The ORI concurred in the University's findings, and Ms. Ramasubban has been debarred from eligibility for and involvement in Federal grants and contracts for a three-year period beginning May 18, 1993. Ms. Ramasubban has also been required to provide special certification for the accuracy and reliability of any PHS research fellowship application or contract proposal for a three-year period beginning December 1, 1992. The falsified and fabricated data did not appear in any scientific publications.

Mitchell H. Rosner, National Cancer Institute

An inquiry conducted by the National Cancer Institute (NCI) and a subsequent investigation conducted by the Office of Research Integrity (ORI) found that Mr. Rosner, a Howard Hughes Medical Institute-NIH Scholar in residence at the NCI, falsified research on embryonic development in mice. Mr. Rosner diluted control samples that were injected into mouse germ cells so that the control material would have a different effect on embryonic development from the experimental samples. The results of these experiments were published in the journal *Cell*, demonstrating that a certain regulatory protein was essential for normal embryonic development. In later efforts by Mr. Rosner's collaborator and supervisors to replicate the original findings, Mr. Rosner again diluted control samples before their injection into mouse germ cells, in order to obtain the previous results. Mr. Rosner admitted to these acts of falsification, and has signed an agreement with the Office of Research Integrity that he will exclude himself for a five year period beginning April 1, 1992 from any Federal grants or contracts, and from serving on any Public Health Service advisory committees. The publication containing the falsified results (*Cell, 64*: 1103–1110, 1991) has been retracted by a notice in *Cell, 69*: 724, 1992.

Craig T. Shelley, M.D., University of Tennessee at Memphis

Dr. Shelley was a neurosurgical resident at the University of Tennessee and a former resident fellow at the National Institute of Neurological Disorders and Stroke, National Institutes of Health. The University of Tennessee conducted an inquiry into allegations that Dr. Shelley had fabricated and falsified data in research on brain tumors. A followup investigation by the former Office of Scientific Integrity (OSI) confirmed that Dr. Shelley had altered an autoradiographic slide so that data from a single tumor were made to look as though several tumors were tested. Dr. Shelley admitted to falsifying the slide and falsely reporting the source of a clonal cell line. He also admitted that he had created other data by improperly selecting tissues so the results presented would support his hypothesis. The Office of Research Integrity concurred in the University's findings and the OSI findings, and has prohibited Dr. Shelley from serving on Public Health Service advisory or review committees for a three year period beginning October 10, 1992. Dr. Shelley was also debarred from receiving Federal grants or contracts for a three year period, beginning April 7, 1993. The fabricated and falsified data did not appear in any publications.

Michael A. Sherer, M.D., Addiction Research Center (ARC), Institute on Drug Abuse

An investigation conducted by the former Office of Scientific Integrity found that Dr. Sherer had falsified the nature, quality and methodology for data collection and behavioral ratings as well as the descriptions in two publications arising from research at the ARC in 1989. The ORI has required institutional certification of the reliability of the proposed research and the underlying data for any future PHS grant applications and publications submitted by Dr. Sherer, and notification of the advisory council of the funding agency reviewing such applications about the finding of scientific misconduct. Dr. Sherer has also been prohibited from serving on Public Health Service Advisory Committees, Boards, or review groups. These actions are effective for a three year period, beginning November 9, 1992. Dr. Sherer has also been required to submit a letter of retraction for the article "Suspiciousness induced by four-hour intravenous infusions of cocaine", *Archives of General Psychiatry, 45*: 673–677, 1988, and a letter of correction for the article "Intravenous cocaine: Psychiatric effects", *Biological Psychiatry, 24*: 865–885, 1988.

Raphael B. Stricker, M.D., University of California at San Francisco

An investigation conducted by the University found that Dr. Stricker falsified data for a manuscript and a PHS-supported publication reporting research on AIDS. In the manuscript, Dr. Stricker selectively suppressed data that did not support his hypothesis, and reported consistently positive data whereas only one of four experiments had produced positive results. In the publication, Dr. Stricker reported that an antibody was found in 29 of 30 homosexuals, but not found in non-homosexuals. However, Dr. Stricker's control data, which he suppressed, showed the antibody in 33 of 65 non-homosexuals. The falsified data was used as the basis for a grant application to the National Institutes of Health. The ORI concurred in the University's finding. Dr. Stricker executed a Voluntary Exclusion and Settlement Agreement in which he has agreed not to apply for Federal grant or contract funds and will not serve on PHS advisory committees, boards or peer review groups for a three year period beginning April 1, 1993. The publication "Target platelet antigen in homosexual men with immune thrombocytopenia" in the *New England Journal of Medicine, 313*: 1315–1380, 1985 has been retracted (*New England Journal of Medicine, 325*: 1487, 1991).

Dated: June 1, 1993.

Lyle W. Bivens,

Acting Director, Office of Research Integrity.

[FR Doc. 93–14557 Filed 6–18–93; 8:45 am]

BILLING CODE 4160-17-M

Public Health Services

Announcement of Availability of Funds for Family Planning Service Grants

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Office of Population Affairs announces the availability of funds for FY 1994 family planning services grant projects under the authority of Title X of the Public Health Service Act (42 U.S.C. 300, *et seq.*) and solicits applications for competing grant awards to serve the areas set out below.

OMB Catalog of Federal Domestic Assistance: 13.217

DATES: Application due dates vary. See Supplementary Information below.

ADDRESSES: Additional information may be obtained from and completed applications should be sent to the appropriate Regional Administrator at the address below:

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont): DHHS/PHS Region I, John F. Kennedy Federal Building, Government Center, Room 1400, Boston, MA 02203.

Region II (New Jersey, New York, Puerto Rico, Virgin Islands): DHHS/PHS Region II, 26 Federal Plaza, room 3337, New York, NY 10278.

Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, W. Virginia): DHHS/PHS Region III, 3535 Market Street, Philadelphia, PA 19101.

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, N. Carolina, S. Carolina, Tennessee): DHHS/PHS Region IV, 101 Marietta Tower, Suite 1106, Atlanta, GA 30323.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin): DHHS/PHS Region V, 105 West Adams Street, 17th Floor, Chicago, IL 60603.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas): DHHS/PHS Region VI, 1200 Main Tower Building, Room 1800, Dallas, TX 75202.

Region VII (Iowa, Kansas, Missouri, Nebraska): DHHS/PHS Region VII, 601 East 12th Street, 5th Fl. W., Kansas City, MO 64106.

Region VIII (Colorado, Montana, N. Dakota, S. Dakota, Utah, Wyoming): DHHS/PHS Region VIII, 1961 Stout Street, Denver, CO 80294.

Region IX (Arizona, California, Hawaii, Nevada, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, Republic of the Marshall Islands): DHHS/PHS Region IX, 50 United Nations Plaza, Room 327, San Francisco, CA 94102.

Region X (Alaska, Idaho, Oregon, Washington): DHHS/PHS Region X, Blanchard Plaza, 2201 Sixth Avenue, M/S RX–20, Seattle, WA 98121.

FOR FURTHER INFORMATION CONTACT: Grants Management Officers, Region I: Mary O'Brien—617/565–1482; Region II: Steven Wong—212/264–4496; 404/331–2597; Region V: Lawrence Poole—312/353–8700; Region VI: Joyce Bailey—214/767–3879; Region VII: Michael Rowland—816/426–2924; Region VIII: Susan A. Jaworowski—303/844–4461; Region IX: Howard F. (Al) Tevis—415/556–5810; Region X: Jim Tipton—206/442–7997.

Program Officers, Region I: James Sliker—617/565–1452; Region II: Eileen Connolly—212/264–2571; Region III: Elizabeth Reed—215/596–6686; Region IV: Christino Rodriquez—404/331–5254; Region V: George Hockenberry—312/353–1700; Region VI: Paul Smith—214/767–3072; Region VII: Susan Moskosky—816/426–2924; Region VIII: John J. McCarty, Jr.—303/844–5955; Region IX: James Hauser—415/556/7117; Region X: Vivian Lee—206/442–1020.

SUPPLEMENTARY INFORMATION: Title X of the Public Health Service Act, 42 U.S.C. 300, *et seq.*, authorizes the Secretary of Health and Human Services (HHS) to award grants to public or private nonprofit entities to assist in the establishment and operation of voluntary family planning projects to provide a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents). The statute requires that, to the extent practicable, entities shall encourage family participation. Also, Title X funds may not be used in programs where abortion is a method of family planning. Implementing regulations appear at 42 CFR part 59 subpart A.

On February 5, 1993, HHS published at 58 FR 7462 an interim rule that suspends the 1988 Title X rules (popularly known as The "Gag Rule"), pending the promulgation of new regulations. The principle effect of this action was to suspend the definitions of "family planning," "grantee," "prenatal care," "Title X," "Title X Program," and "Title X Project" presently found at 42 CFR 59.2 and 42 CFR 59.7–59.10. Proposed rules were also published at 58 FR 7464 on the same date. During the pendency of rulemaking, the compliance standards that were in effect prior to the issuance of the 1988 rule, including those set out in the 1981 Family Planning Guidelines, will be used to administer the program.

The Administration's FY 1994 budget request for this program is $208 million which represents a 20 percent increase over the appropriation for FY 1993 of $173 million, of which $160 million was made available to Title X service grantees. Approximately 23 percent of the funds appropriated will be used for competitive grants. The remaining funds will be used for continuation grants. This program announcement is subject to the appropriation of funds and is a contingency action being taken to assure that, should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for the distribution of funds throughout the fiscal year. Since the precise funding levels for FY 1994 are uncertain at this point, the funding levels set out below are based on FY 1993 appropriation levels; it is our expectation that funding levels will be increased if the appropriation for FY 1994 increases.

Approximately $160 million nationwide will be awarded during FY 1993 for Title X services grants, which are normally awarded for 3 to 5-year project periods. The entire $160 million was allocated among the 10 departmental regions, and will be in turn awarded to public and private non-profit agencies located within the regions. Approximately $123 million of these funds will be awarded to fund projects throughout the Nation which will receive non-competing continuation grants in FY 1994. Each regional office is responsible for evaluating applications, establishing priorities, and setting funding levels according to criteria in 42 CFR 59.11.

This notice announces the availability of funds to provide services in 16 States, the U.S. Virgin Island and American Samoa. Applications are invited for the following areas:

Area(s) to be served	Number of grants to be awarded	FY 1993 funding level	Application due date	Grant funding date
Region II:				
US Virgin Islands	1	$253,000	6/1/94	9/30/94.
Region III:				
Delaware	1	595,000	12/1/93	4/1/94.
Maryland	1	2,764,000	3/1/94	7/1/94.
Central PA	1	1,797,000	3/1/94	7/1/94.
Northeastern PA	1	1,090,000	3/1/94	7/1/94.

Area(s) to be served	Number of grants to be awarded	FY 1993 funding level	Application due date	Grant funding date
Southeastern PA	1	2,781,000	3/1/94	7/1/94.
Western PA	1	2,361,000	3/1/94	7/1/94.
West Virginia	1	1,460,000	12/1/93	4/1/94.
Virginia	1	3,212,000	3/1/94	7/1/94.
Region V:				
Illinois	1	5,000,000	9/1/93	1/1/94.
Columbus and Central, OH	1	525,000	11/1/93	3/1/94.
Summit, Portage and Medina Counties, OH	1	600,000	3/1/94	7/1/94.
Balance of OH, excluding Cleveland	1	3,500,000	11/1/93	3/1/94.
Region VI:				
Louisiana	1	3,197,000	3/1/94	7/1/94.
Region VII:				
Kansas City-Wyandotte, Co. KS	1	164,000	8/1/93	12/1/94.
Region VIII:				
Colorado	1	1,702,000	9/1/93	1/1/94.
South Dakota	1	525,000	3/1/94	7/1/94.
Wyoming	1	539,000	11/1/93	3/1/94.
Region IX:				
Nevada	1	222,000	3/1/94	7/1/94.
American Samoa	1	67,000	3/1/94	7/1/94.
Region X:				
Anchorage, Alaska	1	213,000	3/1/94	7/1/94.
Oregon, 36 counties	1	1,487,000	3/1/94	7/1/94.
Washington, 26 counties	1	2,660,000	10/1/93	1/1/94.
Total	23	36,724,000		

Applications must be postmarked or, if not mailed, received at the appropriate Grants Management Office no later than close of business on application due dates listed above. Private metered postmarks will not be acceptable as proof of timely mailing. Applications which are postmarked or, if not sent by U.S. mail, delivered to the appropriate Grants Managements Office later than the application due date will be judged late and will not be accepted for review. (Applicants should request a legibly dated postmark from the U.S. Postal Service.) Applications which do not conform to the requirements of this program announcement or do not meet the applicable regulatory requirements at 42 CFR part 59, subpart A will not be accepted for review. Applicants will be so notified, and the applications will be returned.

Applications will be evaluated on the following criteria:

(1) The number of patients and, in particular, the number of low-income patients to be served;

(2) The extent to which family planning services are needed locally;

(3) The relative need of the applicant;

(4) The capacity of the applicant to make rapid and effective use of the Federal assistance;

(5) The adequacy of the applicant's facilities and staff;

(6) The relative availability of non-Federal resources within the community to be served and the degree to which those resources are committed to the project; and

(7) The degree to which the project plan adequately provides for the requirements set forth in the Title X regulations.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This announcement is related to the priority areas of Family Planning. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Application Requirements

Application kits (including the application form, PHS 5161) and technical assistance for preparing proposals are available from the regional offices. An application must contain: (1) A narrative description of the project and the manner in which the applicant intends to conduct it in order to carry out the requirements of the law and regulations; (2) a budget that includes an estimate of project income and costs, with justification for the amount of grant funds requested; (3) a description of the standards and qualifications that will be required for all personnel and facilities to be used by the project; and (4) such other pertinent information as may be required by the Secretary and specified in the application kit. In preparing an application, applicants should respond to all applicable regulatory requirements. (The information collections contained in this notice have been approved by the Office of Management and Budget and assigned control number 0937–0189.)

Application Review and Evaluation

Each regional office is responsible for establishing its own review process. Applications must be submitted to the appropriate regional office at the address listed above. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

Grant Awards

Grant projects are generally funded for 3 to 5 years with an annual non-competitive review of a continuation application to continue support. Non-competing continuation awards are subject to factors such as the project making satisfactory progress and the availability of funds. In all cases, continuation awards require a determination by HHS that continued funding is in the best interest of the Federal Government.

Review Under Executive Order 12372

Applicants under this announcement are subject to the review requirements of Executive Order 12372, State Review applications for Federal Financial Assistance, as implemented by 45 CFR

part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made by the applicant regarding the submission to the Grants Management Office of the appropriate region. State Single Point of Contact comments must be received by the regional office 30 days prior to the funding date to be considered.

When final funding decisions have been made, each applicant will be notified by letter of the outcome of its application. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, and terms and conditions of the grant award.

Dated: March 23, 1993.

Gerald J. Bennett,

Acting Deputy Assistant Secretary for Population Affairs.

[FR Doc. 93–14558 Filed 6–18–93; 8:45 am]

BILLING CODE 4160–17–M

Substance Abuse and Mental Health Services Administration

Supplemental Awards to Current Community Partnership Demonstration Program Grantees

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Availability of Supplemental Funds for Currently Funded Grantees in the Center for Substance Abuse Prevention's (CSAP) Community Partnership Demonstration Grant Program.

SUMMARY: This notice provides information to the public that CSAP is making available approximately $2 million in Fiscal Year 1993 for 40–50 supplemental awards to certain existing grantees in its Community Partnership Program (CPP) to improve current partnership efforts in building stronger mutually beneficial relationships with business, industry, labor, and related organizations. This initiative will build upon ongoing community partnership efforts to coordinate the delivery of employee assistance, health promotion, wellness and primary prevention programs in business and industry. Therefore, only currently funded CPP grantees whose applications included the business community in the partnership and specifically proposed to include a workplace-related component are eligible to apply for supplemental funding.

In order to receive a supplemental award, a grantee must have a minimum of one full project year remaining in the current grant as of September 30, 1993. Awards will be limited to one year and can not exceed $50,000 in direct costs plus allowable indirect costs. The receipt date for requests for supplemental funding is *July 16, 1993.* The application receipt and review and the award process will be handled in an expedited manner. Those applications judged by an objective review panel composed of Federal staff to have sufficient technical merit to warrant funding will receive awards no later than September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Godwin or Mr. Charles Williams, Workplace Community Prevention Branch, CSAP, Rockwall II, 5600 Fishers Lane, Rockville, MD 20857; Telephone (301) 443–0369.

Authority: Awards will be made under the authority of section 516 of the Public Health Service Act (42 U.S.C. 290bb–22), as amended by the ADAMHA Reorganization Act (Pub. L. 102–321).

The Code of Federal Domestic Assistance (CFDA) number for the CPP is 93.194.

Dated: June 15, 1993.

Joseph R. Leone,

Acting Deputy Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–14577 Filed 6–18–93; 8:45 am]

BILLING CODE 4162–20–M

Child and Adolescent Service System Program (CASSP), Infrastructure Development Demonstration Grants

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of availability of funds.

Introduction

The Center for Mental Health Services (CMHS) announces the availability of demonstration grants to States for developing the State and community infrastructure needed to provide comprehensive, coordinated, community-based services for children and adolescents with serious emotional, behavioral, or mental disorders, or those that have a probability of becoming more seriously emotionally disturbed, and their families. These demonstration grants are offered through the Child, Adolescent and Family Branch, CMHS.

Child and Adolescent Service System Program (CASSP) Infrastructure Development Demonstration Grants are intended to support the development, implementation, and evaluation of systems of care in local communities as part of an overall plan of statewide development. States at earlier stages of development may undertake necessary planning and strategy development activities, while States with well-defined strategic plans may proceed directly to local level implementation activities.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000.[1] This RFA is related to priority area 6, Mental Health Disorders. Specific subsections include: 6.3, "Reduce to less than 10 percent the prevalence of mental disorders among children and adolescents" and 6.14, "Increase to at least 75 percent the proportion of providers of primary care for children who include assessment of cognitive, emotional, and parent-child functioning, with appropriate counseling, referral, and follow-up, in the clinical practices."

Program Description

History

Since 1984, the Federal Government has supported the development of more accessible and appropriate services for the population of children and adolescents with serious emotional disturbance and their families through the Child and Adolescent Service System Program (CASSP), now organizationally located within CMHS.[2] This program offered grants to States to: (1) Improve interagency cooperation and coordination in providing the full range of services required by this population, (2) enhance the capacity of mental health agencies to respond to the needs of the population, (3) expand the role of families in planning and developing

[1] A copy of "Healthy People 2000" (Full Report; Stock Number 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock Number 017–001–00473–1) may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

[2] On October 1, 1992, the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) was reorganized into a new services agency called the Substance Abuse and Mental Health Services Administration (SAMHSA) within the Public Health Service of the Department of Health and Human Services (DHHS). SAMHSA consists of three Centers that administer the prevention and treatment services programs formerly in ADAMHA—the Center for Substance Abuse Prevention, Center for Substance Abuse Treatment, and Center for Mental Health Services. CMHS is responsible for coordinating the prevention and treatment of mental illnesses and the promotion of mental health.

service systems and in the care of their children, and (4) assure that services are provided in a culturally competent manner. First at the State level, and subsequently at the local level, CASSP emphasized the development of the infrastructure required for system improvement and for the development of an expanded array of community-based services. Infrastructure development efforts primarily involved the creation of structures and processes for system management and interagency coordination at State and local levels. The Infrastructure Development Demonstration Grants described in this RFA continue the CASSP focus on the development of the State-level system improvement activities and assists States in moving these strategies to the local level. These activities are intended to demonstrate the efficacy of various approaches to organizing the infrastructure and laying the foundation for actual services capacity expansion that provides comprehensive, coordinated, community-based services to children and adolescents with serious emotional disturbances.

The development of State and local infrastructure is a critical step in building community-based service systems and may prepare States and communities to develop systems of care through the new CMHS Child Mental Health Services Initiative. In 1992, Congress responded to the concern that there is a critical lack of services available to treat children and adolescents with serious emotional disturbances and that many communities continue to offer only the most expensive and restrictive forms of care. The CMHS Child Mental Health Services Initiative[3] encourages the delivery of intensive community-based services using a multi-agency, multi-disciplinary approach. The program provides funds to States, political subdivisions of a State, and Indian tribes or tribal organizations to build upon a previously developed infrastructure and provide the service array required to more fully meet the needs of the target population. CASSP Infrastructure Development Demonstration grants offer States the opportunity to demonstrate different approaches to organizing and financing the infrastructure necessary to prepare for community-based service development and delivery, which may be supported by the CMHS Child Mental Health Services Initiative or other funding sources.

Target Population[4]

The population of eligible children and adolescents with serious emotional, behavioral, or mental disorders is defined as follows:

Age. Client eligibility is limited to those under 22 years of age.

Diagnosis. Client eligibility requires the presence of an emotional, behavioral, or mental disorder diagnosable under DSM–III–R or their ICD–9–CM equivalents, or subsequent revisions [with the exception of DSM–III–R "V" codes, substance use disorders and developmental disorders, unless they co-occur with another diagnosable serious emotional disturbance].

Disability. Client eligibility should be defined on the basis of functional impairment which substantially interferes with or limits role functioning in family, school, or community activities. States may further define what level of impairment is required for eligibility.

Multi-agency Need. The level of disability defined by States should require multi-agency intervention. The children and adolescents should have service needs in two or more community agencies, such as mental health, substance abuse, health, education, juvenile justice, or social welfare.

Duration. Disability must be present for at least 1 year or, on the basis of diagnosis, is expected to last more than 1 year.

This population may include children and adolescents who, as a result of environmental and/or biological factors, have already experienced significant problems and who, without identification and early intervention, have a high probability of becoming more seriously emotionally disturbed as described above. Children and adolescents with serious emotional, behavioral, or mental disorders include but are not limited to:

- Those who are homeless, either as part of a family unit or alone; Those living with parents who are unable to provide adequate care and nurturance, including drug-addicted parents;
- Those who have been victims of violence;
- Those who abuse alcohol and/or other drugs;
- Those who are HIV infected;
- Those with a family history of psychiatric illness; and
- Those with multiple out-of-home placements.

Definitions

Community. For the purpose of this program, "community" is a geographic entity to be defined by the applicant; the scope and size of the community is left to State or local discretion. Thus, in planning and implementing infrastructure development strategies, States may focus on communities as small as single school districts or areas comprising one county or a group of contiguous counties.

System of Care. For the purpose of this program, "system of care" is defined as a comprehensive spectrum of mental health and other necessary services which are organized into a coordinated network to meet the multiple and changing needs of children and adolescents with serious emotional disturbance and their families. The creation of such systems of care involves a multi-agency, public/private approach to delivering services, an array of service options, and flexibility to meet the full range of needs of children, adolescents and their families. Mechanisms for managing, coordinating, and funding services are necessary. The system of care concept and philosophy developed through CASSP is delineated in the monograph, A System of Care for Severely Emotionally Disturbed Children and Youth.[5]

Program Goals

The goals of the CASSP Infrastructure Development Grant are to:

- Support interagency State-level structures and begin to create at the local level, structures and processes necessary for the development of systems of care in communities throughout the State consistent with the State Mental Health Plan;[6]
- Demonstrate different strategies for local systems of care development in multiple communities throughout the State including various approaches to organizing the infrastructure and

[3] The CMHS Child Mental Health Initiative (RFA No. SM 93–02) is available from the Child, Adolescent, and Family Branch, Division of Demonstration Programs, Center for Mental Health Services, 5600 Fishers Lane, Room 11C–09, Rockville, Maryland 20857 (Telephone 301–443–1333).

[4] Section 1912 (c) of the Public Health Service Act requires the Center for Mental Health Services to publish a definition of Children with a Serious Emotional Disturbance under the Community Mental Health Services Block Grant Program. Because this definition is for service planning, it includes multi-agency need and a broader age range of from birth up to age 22.

[5] Available through the CASSP Technical Assistance Center at the Georgetown University Child Development Center, 2233 Wisconsin Avenue, Suite 215, Washington, DC 20007 (Telephone 202–338–1831).

[6] The applicant must describe how the proposed system of care development strategies are consistent with the State's comprehensive community mental health services plan in accordance with the requirements of Section 1912 of the Public Health Service Act.

financing arrangements needed to prepare communities for service capacity expansion including a full array of community-based services options; and

• Evaluate the effectiveness of system building strategies in improving the availability and quality of local systems of care.

Project Requirements

Each applicant must demonstrate the impact on the design and effectiveness of the service system of various strategies for organizing and financing the infrastructure necessary for community based comprehensive services delivery including:

• Strategies for system of care development with the goal of developing local systems of care in every community throughout the State;

• Strategies for system development that address both the infrastructure needed for local systems of care and the development of increased service capacities;

• A relationship to State planning efforts for children and adolescents with serious emotional or mental disorders under section 1912 of the Public Health Service Act;

• Collaborative planning at State and local levels between mental health and other child service systems (including, but not limited to, education, child welfare, juvenile justice, health, and substance abuse) as demonstrated through interagency participation in the development of the application and the development of both State and local initiatives;

• Broad-based participation in planning and decisionmaking at State and local levels by such groups as health and human service agencies; paraprofessionals; professionals; provider organizations (including mental health centers, human service agencies, and alternative youth service agencies); and citizen, family, advocacy, and racial/ethnic minority groups concerned with human services;

• Flexibility of approach, so as to allow communities to develop systems in ways that reflect local needs and existing resources;

• Specific goals focusing on increasing the role of parents and the full participation of families in planning and implementing systems of care as well as in the planning and delivery of services to their own children;

• Assessment of the special needs of racial/ethnic minority children and youth, given the high percentage within the target population, and specific strategies for enhancing the cultural competence and gender appropriateness of services and systems of care;

• Adequate budgeting and provisions for obtaining approval for travel related to the grant, including at least three out-of-State trips annually for the project director and/or other key individuals to attend national program meetings; and

• Adequate budgeting for participation in a national evaluation of the grants funded under this announcement which will include both formative and outcome evaluations and which will expect the grantees to collect data as directed by the evaluator and to participate directly in evaluation-related interviews and activities.

Eligibility Requirements

All States and Territories that do not currently have, or are in the final year of, a CASSP Service System Demonstration Grant are eligible to apply for these grants. Those States in the final year of a CASSP grant that apply under this announcement must recognize that applications will only be accepted for new projects and cannot be extensions of current or previously funded projects. Each State and Territory may submit only one application.

Only State Mental Health Authorities, other State agencies in which the statewide responsibility for child mental health resides, or other State child services coordinating entities as designated by the Governor are eligible to apply for CASSP Infrastructure Development Demonstration grants. Applications from the latter organizations must be accompanied by a letter from the Governor making such a designation.

Potential applicants under this announcement are limited to State mental health authorities, or other appropriate State agencies, for several reasons. Because multiple agencies and providers must be involved in implementing these initiatives, centralized State assistance is needed to assure that sufficient resources and appropriate staff will be allocated to the project and that relevant agencies will be involved. Further, State agencies oversee a wide range of mental health services and other services to children and adolescents, and, therefore, are best qualified to undertake a leadership and coordination function. Additionally, prior Federal demonstration efforts under section 504 of the PHS Act have shown the eligible applicants under this RFA to be effective in coordinating services.

Availability of Funds

It is estimated that $1.9 million will be available in Fiscal Year 1993 for 10–12 projects. Actual funding levels will depend upon the availability of funds at the time of the award.

Period of Support

Support may be requested for up to three (3) years. Annual awards will be made subject to continued availability of funds and successful implementation of the proposal.

Special Requirements

Supplantation of Existing Funds

It is the intent of this RFA to support new or augmented services or programs. Therefore, award recipients may not use funds awarded under this RFA to replace funds that are currently supporting or are committed to support activities proposed in the application. A letter from the applicant entity which certifies that Federal funds will not be used to supplant or replace funds already committed for proposed services should be provided in the appendices.

Rapid Award of Federal Funds

For State applicants, the CMHS places considerable emphasis on rapid award of Federal funds by the State and implementation of individual projects by the sub-recipients. Projects in those states which provide a written assurance that funds will be awarded to sub-recipients within two (2) months following the date of Federal grant award will be considered in the CMHS Award decisionmaking process. For States that wish to make such an assurance, a letter from the director of the State applicant agency certifying rapid obligation of funds following the date of grant award should be included in the appendices.

Coordination With Other Federal/Non-Federal Programs

Applicants seeking support under this announcement are encouraged to coordinate with other programs. Program coordination helps to better serve the multiple needs of the client population, to maximize the impact of available resources, and to eliminate duplication of services. The extent to which applicants propose an integrated or coordinated approach to providing comprehensive mental health, education, child welfare, juvenile justice, health, substance abuse, and other related services will be considered in the review process. Applicants should identify the coordinating organizations by name and address and describe the process to be used for

coordinating efforts. Letters of commitment specifying the kinds and level of support from organizations (both Federal and non-Federal) which have agreed to work with the applicant should be included in the appendices.

Agencies and programs with which applicants may find coordination productive include:

- State and local agencies, both public and private, providing mental health, education, child welfare, juvenile justice, health, substance abuse, and other related services.
- other local services integration efforts that may be underway with State/local, public/private support (e.g. the Robert Wood Johnson Foundation Mental Health Services Program for Youth and the Annie E. Casey Foundation Child Mental Health Program).
- Ongoing Federal programs such as:

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

- Community Partnership Program, Center for Substance Abuse Prevention
- High Risk Youth, Center for Substance Abuse Prevention
- Critical Populations/Adolescents, Center for Substance Abuse Treatment

Health Care Financing Administration

- MEDICAID—Primary/Prenatal Care Services for low income pregnant women, infants, children, adolescents, and families with dependent children in any stage of HIV infection and adult males and females without children who have been determined to be disabled by HIV infection and/or AIDS.

Health Resources and Services Administration

Maternal and Child Health Bureau

- Special Projects of Regional and National Significance.

Administration on Children and Families

- Projects for Runaway and Homeless Youth, including drug education and Youth Shelters and Centers;
- Programs focused on reducing Child Abuse and Neglect; and
- Youth Gang Projects.

Department of Education

- Office of Special Education Programs;
- Projects funded under the Drug Free Schools Act; and
- Demonstration Program for Children with Serious Emotional Disturbances.

Intergovernmental Review (E.O. 12372)

Applications submitted in response to this announcement are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through HHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of and comment on applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application and to receive any necessary instruction on the State's applicable procedure. A current listing of SPOCs is included in the application kit. The SPOC should send any state process recommendations to the following address: Roger Straw, Ph.D., Acting Director, Office of Evaluation, Extramural Policy & Review; Center for Mental Health Services, 5600 Fishers Lane, Room 18C–07, Rockville, Maryland 20857, ATTN: SPOC.

The due date for State process recommendations is no later than 60 days after the deadline date for the receipt of applications. The CMHS does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Inclusion of Females and Minorities

The CMHS urges applicants to give added attention (where feasible and appropriate) to the inclusion of racial/ethnic minority groups and females in the program. If they are not included, a clear rationale for their exclusion should be provided. Racial/ethnic minority group and gender differences should be assessed and described.

Evaluation

The Center for Mental Health Services (CMHS) will conduct, under contract, a national evaluation of grants awarded under this program. Grantees will be expected to cooperate with the national evaluation including the collection and submission of data on strategies for and outcomes of developing State and community infrastructure needed to provide comprehensive, coordinated, community-based systems of care for children and adolescents with serious emotional, behavioral, or mental disorders, or those that have a high probability of becoming more seriously emotionally disturbed, and their families.

The grantees must provide written assurances that the organization will cooperate fully in the evaluation. CMHS will obtain OMB clearance of evaluation data collection plans prior to their implementation. The grantees should provide at least ½ FTE staff who will collect and enter data requested by the contractor. These costs should be included in the application budget.

Participant Protections/Human Subjects

Applicants and awardees are expected to develop and implement appropriate procedures to address confidentiality and other ethical issues pertinent to the protection of participants in proposed projects, including agreement, where applicable, to maintain the confidentiality of alcohol and drug abuse client data in accordance with 42 CFR part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

Appplication Procedures

All applicants must use application form PHS 5161–1 (Rev. 7/92), which contains Standard Form 424 (face page). The following information should be typed in Item Number 10 on the face page of the application form: CASSP Infrastructure Development Program.

Grant application kits (including Form PHS 5161–1 with Standard Form 424, complete application procedures, and accompanying guidance materials for the narrative approved under OMB No. 0937–0189) may be obtained from: Mr. Steve Hudak, Grants Management Officer, Center for Mental Health Services, 5600 Fishers Lane, room 7C–23, Rockville, MD 20857, (301) 443–4456.

Applicants must submit: 1) An original copy signed by the authorized official of the applicant organization, with the appropriate appendices; and 2) two additional legible copies of the application and all appendices to the following address: Center for Mental Health Services, Division of Research Grants, NIH, Westwood Building, room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892.*

*If an overnight carrier or express mail is used, the Zip Code is 20816.

Only one application seeking Public Health Service (PHS) support for the same programmatic service demonstration activities with the same population may be submitted to the Public Health Service, and that same application may be submitted in response to only one PHS Program Announcement or Request for Applications.

Appplication Receipt and Review Schedule

The schedule for receipt and review of applications under this announcement is as follows:

Receipt Date	July 30, 1993.
IRG Review	Aug 1993.
Start Date	Sept. 30, 1993.

Consequences of Late Submission

Applications received after the above receipt date will not be accepted and will be returned to the applicant without review. The DRG system requires that applications must be received by the published application receipt date(s). However, an application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and the proof-of-mailing date is not later than one week prior to the deadline date.

Review Process

Applications submitted in response to this RFA will be reviewed for technical merit in accordance with established PHS/Substance Abuse and Mental Health Services Administration (SAMHSA) peer review procedures for grants. The Division of Research Grants, NIH, serves as a central point for the receipt of applications. Applications will be screened for completeness and compliance with instructions for submission. An application will not be accepted for review and will be returned to the applicant if:

- It is received after the specified receipt date;
- It is incomplete;
- It is illegible;
- It exceeds the specified page limits;
- It does not conform to instructions for format, which include that it be typed single-spaced, using standard size black type not smaller than 15 characters per 1 inch or 2.5 centimeters, one column per page, with conventional border margins (1 inch or 2.5 centimeters), on only one side of standard size 8–1/2 x 11 paper that can be photocopied;
- It is nonresponsive to the announcement; or
- The material presented is insufficient to permit an adequate review.

Returned applications may not be resubmitted due to the single receipt date of this RFA.

Applications that are accepted for review will be assigned to an Initial Review Group (IRG) composed primarily of non-Federal experts. Notification of the IRG recommendation will be sent to the applicant upon completion of the initial review. In addition, the IRG recommendations on technical merit of applications will undergo a second level of review by the appropriate advisory council, when established, whose review may be based on policy considerations as well as technical merit.

Review Criteria

Each grant application is evaluated on its own merits. The following are the review criteria that will be used:

- Significance of the project plan;
- Appropriateness of goals and objectives;
- Feasibility, capability and commitment to project;
- Adequacy and appropriateness of the project management plan;
- Evidence of State readiness and commitment to the proposed project;
- Degree of interagency cooperation in the proposal;
- Commitment to family participation in system development and in the care of their children and adolescents;
- Degree of sensitivity to issues of cultural competence and attention to gender differences demonstrated;
- Qualifications and experience of applicant organization, project director, local project coordinators, consultants, and other key personnel;
- Reasonableness of the proposed budget and resource allocation;
- Adequacy of available resources; and
- Extensiveness of multi-agency integrated or coordinated approaches.

Award Criteria

Applications recommended for approval by the Initial Review Group will be considered for funding on the basis of their overall technical merit as determined through the review process. Other award criteria will include:

- Availability of funds;
- Geographic distribution to equitably allocate assistance among the principal geographical regions of the U.S.;
- Assurance of Rapid Award of Funds; and
- Focus on cultural and racial ethnic minority populations and females.

Terms and Conditions of Support

Allowable Items of Expenditure

Grant funds may be used only for expenses clearly related and necessary to carry out the approved activities, including both direct costs which can be specifically identified with the project and allowable indirect costs. In order to recover allowable indirect costs of a project, it may be necessary to negotiate and establish an indirect cost rate (unless such a rate has already been established for the applicant organization). For information and assistance regarding the timing and submission of an indirect cost rate proposal, applicants should contact the appropriate office of the DHHS Division of Cost Allocation referenced in the list of "Offices Negotiating Indirect Cost Rates," included in the application kit.

Funds cannot be used to supplant current funding for existing activities (see section on Supplantation of Existing Funds). Allowable items of expenditure for which grant support may be requested include:

- Salaries, wages, and fringe benefits of professional and other supporting staff engaged in the project activities;
- Travel directly related to carrying out service activities under the approved project;
- Supplies, communications, and rental of equipment and space directly related to approved project activities;
- Contracts for performance of activities under the approved project; and
- Other such items necessary to support approved project activities.

Funds cannot be used for the purchase of a facility to house any portion of the proposed program. Any funds proposed to be utilized for renovation expenses must be detailed and linked directly to programmatic activities. Any lease arrangements in association with the proposed program utilizing PHS funds may not extend beyond the project period or cover non-programmatic activities.

Alterations and Renovations

Costs for alterations and renovations (A&R) will be allowable only where such alterations and renovations are necessary for the success of the program. However, as subject to the Public Health Service (PHS) Grants Policy Statement, the maximum amount of funds budgeted or used for A&R under a single grant during three consecutive budget periods (whether or not the 3 years overlap two distinct competitive segments of support) cannot exceed the lesser of $150,000 or 25 percent of the total funds reasonably expected to be awarded by the PHS for direct costs for such 3-year period. (The maximum amount of PHS grant funds that may be applied to any single A&R project is $150,000.) Construction costs are not allowed.

Administrative Costs

Section 520A(d) of the Public Health Service Act specifies that a grant may not be made unless the applicant agrees that not more than 10 percent of the

grant award will be expended for administrative expenses.

Reporting Requirements

Annual and final progress reports and financial status and expenditure reports will be required and specified to awardees in accord with PHS Grants Policy requirements. The required yearly continuation application may be used in lieu of an annual report.

Contacts for Additional Information

Questions concerning program issues may be directed to: Judith Katz-Leavy, Child, Adolescent, and Family Branch, Division of Demonstration Programs, Center for Mental Health Services, 5600 Fishers Lane, room 11C–09, Rockville, MD 20857, (301) 443–1333.

Questions regarding grants management issues may be directed to: Steve Hudak, Grants Management Officer, Center for Mental Health Services, 5600 Fishers Lane, room 7C–23, Rockville, MD 20857, (301) 443–4455.

Questions concerning evaluation and data collection requirements may be directed to: Diane Sondheimer, Child, Adolescent, and Family Branch, Division of Demonstration Programs, Center for Mental Health Services, 5600 Fishers Lane, room 11C–09, Rockville, MD 20857, (301) 443–1333.

Authority and Regulations

Statutory Authority: Grants awarded under this RFA are authorized under Section 520A of the Public Health Service Act (42 U.S.C. 290bb-32).

Applicable Federal Regulations: Federal regulations at Title 45 CFR part 92, generic requirements concerning the administration of grants, are applicable to these awards.

PHS Grants Policy Statement: Grants must be administered in accordance with the PHS Grants Policy Statement (Updated September 1, 1991).

(*Catalog of Federal Domestic Assistance Number:* The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.125)

Dated: June 15, 1993.

Joseph R. Leone,

Acting Deputy Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–14578 Filed 6–18–93; 8:45 am]

BILLING CODE 4163-05-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–919–03–4830–02–ADVB]

Northern Alaska Advisory Council Public Meeting

The Northern Alaska Advisory Council will hold a field trip to BLM-managed land in the Stevens Village area on Wednesday, July 21, 1993, and to the White Mountains National Recreation Area-Nome Creek area Thursday, July 22, 1993. The council will hold a public meeting in Stevens Village in conjunction with the trip.

The public meeting will be July 21 from 2:30 p.m. to 5:30 p.m. in the Stevens Village Community Hall, Stevens Village, Alaska. The public comment period will be from 3 p.m. until the close of the meeting. Written comments may be submitted.

The council will discuss coordination of BLM activities and cooperative management of BLM and Native lands.

For information, contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709–3844, telephone (907) 474–2231.

Dated: June 2, 1993.

Dee R. Ritchie,

Designated District Manager.

[FR Doc. 93–14630 Filed 6–18–93; 8:45 am]

BILLING CODE 4310-JA-M

[OR–943–2300–02; GP3–254; OR–43444]

Order Providing for Opening of Lands: Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 16.85 acres of acquired lands to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described lands were acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management;

Willamette Meridian

T. 17 S., R. 4 W.,

Sec. 35, two parcels of land lying in the NW¼NW¼ further described as:

Parcel I: Beginning at a point on the West line of sec. 35, which is S. 00°21'W. 460.71' from the northwest corner of sec. 35; Thence S. 89°11'40" E., 30 feet to the intersection of the south line of West Fifth Avenue and the east line of Bailey Hill Road and the True Point of Beginning; Thence S. 00°21' W. 724.32 feet to the north line of West 7th Avenue; Thence S. 89°18' E. 961.15 feet to the Initial Point of Seneca Industrial Park, as platted and recorded in File 73, Slide 420, Lane County Plat Records; Thence N. 00°32'26" W. 722.46 feet along the west line of Seneca Industrial park to the south line of West Fifth Avenue; Thence N. 89°11'40" W. 963.59 feet to the True Point of Beginning.

Parcel II: lot 5, Block 2, Seneca Industrial Park, as platted and recorded in File 73, Slide 420, Lane County Plat Records, in the City of Eugene, Lane County, Oregon.

The areas described aggregate approximately 16.85 acres in Lane County.

At 8:30 a.m., on July 19, 1993, the above described lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on July 19, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on July 19, 1993, the above described lands will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on July 19, 1993, the above described lands will be opened to applications and offers under the mineral leasing laws.

Dated: June 3, 1993.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–14529 Filed 6–18–93; 8:45 am]

BILLING CODE 4310-GG-M

[CA-065-02-7123-54-8503]

Establishment of Supplementary Rule for Public Lands in the Imperial Sand Dunes Recreation Area Regarding the Use of Audio Devices

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of supplementary rules.

SUMMARY: The purpose of this notice is to establish a supplemental rule regulating the use of audio devices in the Imperial Sand Dunes Recreation Area. Therefore, no person shall operate or use any audio device, such as a radio, television, musical instrument, or other noise producing device or motorized equipment between the hours of 10 p.m. and 6 a.m. in a manner that makes unreasonable noise that disturbs other visitors; or operate or use a public address system without the written authorization from the El Centro Authorized Officer, or construct, erect or use an antenna or aerial for radiotelephone, radio or television equipment, other than on a vehicle or as an integral part of such equipment, within the Imperial Sand Dunes Recreation Area as defined in the Recreation Area Management Plan dated July 1987 by the Bureau of Land Management, Department of the Interior. Approximately, the affected area is bordered by Mammoth Wash on the north boundary, international boundary with Mexico on the south boundary, the old Coachella Canal on the west boundary, and the east boundary is bordered by the Southern Pacific Railroad for Mammoth Wash on the northeast corner to where it intersects with Ogilby Road to the south and Ogilby Road south to interstate 8. Easterly from interstate 8 approximately 2½ miles and then southerly to the US/Mexico border, along the boundary identified in the Imperial Sand Dunes Recreation Area Management Plan 1987.

BACKGROUND: Thousands of visitors use the Imperial Sand Dunes each year. Due to the limited number of improved facilities and the terrain itself (lack of hard packed parking areas), visitors are forced to camp in close proximity of each other. This leads to arguments and fights when one group chooses to play loud music or run generators late at night and early morning hours, disturbing nearby campers. This rule will enable to BLM to prevent fights and arguments by preventing the cause of such activity.

EFFECTIVE DATE: This restriction will be effective June 21, 1993 and will remain in effect until recinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Chief Area Ranger R.M. Zimmer, Bureau of Land Management, El Centro Resource Area, 1661 S. 4th St., El Centro, CA 92243, (619) 353–1060.

SUPPLEMENTARY INFORMATION: The authority for this restriction is provided in 43 CFR 8365.1–6. Violations of this restriction are punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

Dated: June 4, 1993.

Lucia Kuizon,

Acting District Manager.

[FR Doc. 93–14238 Filed 6–18–93; 8:45 am]

BILLING CODE 4310-40-M

CA-067-02-4740-01

Prohibition of Camping for a Distance of One Mile Outside the Boundaries of Pilot Knob and Hot Springs Long Term Visitor Areas in the El Centro Resource Area, Imperial County, and Midland and Mule Mountain Long Term Visitor Areas in the Palm Springs Resource Area, Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of prohibition of camping for a distance of one mile outside the boundaries of Pilot Knob and Hot Springs Long Term Visitors Areas in the El Centro Resource Area, Imperial County, California.

Notice of prohibition of camping for a distance of one mile outside the boundaries of Midland and Mule Mountain Long Term Visitor Areas in the Palm Springs Resource Area, Riverside County, California.

SUMMARY: Notice is hereby given that camping outside the boundaries for a distance within one mile of Pilot Knob and Hot Springs Long Term Visitor Areas in the El Centro Resource Area, Imperial County, California, is prohibited. Exceptions to the rule may be granted on a case by case basis at the El Centro Resource Area Manager's discretion.

Notice is hereby given that camping outside the boundaries for a distance within one mile of Midland and Mule Mountain Long Term Visitor Areas in the Palm Springs Resource Area, Riverside County, California, is prohibited. Exceptions to this rule may be granted on a case by case basis at the Palm Springs Resource Area Manager's discretion.

Order: As of the prescribed effective date, camping is prohibited outside the boundaries for a distance within one mile of Pilot Knob, Hot Springs, Midland and Mule Mountain Long Term Visitor Areas. For the purpose of this rule, "camping" means the erecting and use of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, motor home or trailer, or mooring of a vessel for the apparent purpose of overnight occupancy

All exemptions to this rule will be by written authorization of the El Centro and Palm Springs Resource Area Manager's. Persons seeking an exemption must submit a written request to the El Centro or Palm Springs Resource Area Manager's (1661 S. 4th St., El Centro, CA 9243, or 63–500 Garnet Ave, P.O. Box 2000, N. Palm Springs, CA 92258–2000.)

BACKGROUND: Permits are required for visitors to stay at Pilot Knob, Hot Springs, Midland and Mule Mountain Long Term Visitor Areas. On many occasions visitors camp immediately outside the boundaries of these Long Term Visitor Areas without needing the required permit. This causes concern among those visitors which are permitted inside the boundaries and enforcement problems for BLM personnel. Further, the Long Term Visitor Areas were created to concentrate camping in designated areas, thus limiting human impact to those areas.

EFFECTIVE DATE: This closure will be effective immediately upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT:

Walt Gabler, BLM Ranger, El Centro Resource Area, Bureau of Land Management, 1661 S. 4th St., El Centro, CA 92243, (619) 353–1060.

Fred DelCamp, BLM Ranger, Palm Springs Resource Area, Bureau of Land Management, 63–500 Garnet Ave., P.O. Box 2000, N. Palm Springs, CA 92258–2000.

SUPPLEMENTARY INFORMATION: The authority for this prohibition is found in 43 CFR 8365.1–6. Violation of this prohibition is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed one year.

Dated: June 4, 1993.

Lucia Kuizon,

Acting District Manager.

[FR Doc. 93–14360 Filed 6–18–93; 8:45 am]

BILLING CODE 4310-40-M

[NM-030-4410-02]

Availability of Mimbres Resource Management Plan Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: On April 30, 1993, the Record of Decision (ROD) for the Mimbres Resource Management Plan (RMP) was signed by acting Bureau of Land Management (BLM) State Director Monte Jordan. The ROD documents the approval of the plan described in the Mimbres Proposed RMP/Final Environmental Impact Statement of October 1992 as the land use plan for the Mimbres Resource Area.

The ROD designates 21 Areas of Critical Environmental Concern (ACECs) (including four existing ACECs) totalling 183,180 acres; four Research Natural Areas (including one existing) totalling 17,870 acres; and maintains one existing National Natural Landmark, Kilbourne Hole (5,480 acres).

The ROD also designates the Butterfield Trail Corridor (15,690 acres), the Continental Divide National Scenic Trail Corridor (48,450 acres) and four new wilderness study areas (Pena Blanca, Organ Needles, Gray Peak, and Apache Box [33,280 acres]). The Gila Box (2,480 acres) and the Gila Middle Box (760 acres) are designated as wild and scenic river study areas.

The ROD makes the following designations for vehicle use management in the Resource Area: 16,190 acres open; 2,371,630 acres limited to existing roads and trails; and 133,470 acres closed.

FOR FURTHER INFORMATION CONTACT: Jon Joseph, Area Manager, Mimbres Resource Area, 1800 Marquess, Las Cruces, NM 88005 or at (505) 525–4352.

SUPPLEMENTARY INFORMATION: The RMP will provide the framework to guide management decisions during the next 10–20 years in the Mimbres Resource Area. The Resource Area covers public land in Dona Ana, Luna, Grant, and Hidalgo counties and includes 3,053,820 of surface estate and 4,126,780 acres of Federal mineral estate.

The goal of the RMP is to provide for a combination of resource uses that will protect important environmental values and sensitive resources, and at the same time allow development of resources which produce commercial goods and services.

The ROD lists modifications and corrections that were made as a result of comments and protest on the Proposed Plan. These changes will be carried forward in the Approved Plan.

Copies of the ROD have been distributed to a mailing list of identified interested parties. Copies of the ROD may be obtained from the BLM Las Cruces District Office, 1800 Marquess, Las Cruces, NM 88005.

Dated: June 11, 1993.

Timothy M. Murphy,

Acting District Manager.

[FR Doc. 93–14534 Filed 6–18–93; 8:45 am]

BILLING CODE 4310-FB-M

[AK-932-4210-06-P; F-88329]

Proposed Withdrawal and Opportunity for Public Meeting, Amendment; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice amends the notice of proposed withdrawal for the Coldfoot Visitor Center, Administrative Site and Campground, Alaska.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, #13, Anchorage, Alaska 99513–7599, 907–271–5477.

SUPPLEMENTARY INFORMATION: The notice published on January 28, 1993, 58 FR 6417 & 6418, is amended as follows:

Page 6418, column two, line one, the sentence "No temporary land use will be permitted during this segregative period" is amended to read "The temporary uses which will be permitted during this segregative period would be for discretionary land use authorizations, as allowed by an Authorized Officer of the Bureau of Land Management".

Dated: June 9, 1993.

Sue A. Wolf,

Chief, Branch of Lands.

[FR Doc. 93–14496 Filed 6–18–93; 8:45 am]

BILLING CODE 4310-JA-P

National Park Service

Mississippi River Corridor Study Commission; Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Dates and Times:

July 15, 1993; 2 p.m. until 5 p.m.
July 16, 1993; 8 a.m. until noon

Addresses:

July 15—Plaza One, 17th Street and Third Avenue, Rock Island, Illinois 61201
July 16—Fort Armstrong Hotel, 1900 Third Avenue, Rock Island, Illinois 61201

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: David N. Given, Associate Regional Director, Planning and Resources Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221–3082.

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by Public Law 101–398, September 28, 1990.

Dated: June 9, 1993.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 93–14538 Filed 6–18–93; 8:45 am]

BILLING CODE 4310-70-P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 9, 1993, a proposed consent decree in *United States* v. *Pilot Industries of Texas, Inc. and Pilot Chemical Company* was lodged with the United States District Court for the Southern District of Texas. The civil action number of the case is H–93–1714.

The Complaint in this enforcement action was filed pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607, seeking reimbursement of costs incurred by the United States in responding to the release or threat of release of hazardous substances from the Geneva Industries Site located at 9334 Caniff Road, Houston, Texas. The proposed consent decree has been entered into between

the United States and Pilot Industries of Texas, Inc. and Pilot Chemical Company. Under the terms of the proposed consent decree, Pilot Industries of Texas, Inc. and Pilot Chemical Company will pay the United States $1.5 million to reimburse the United States for its response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Pilot Industries of Texas, Inc. and Pilot Chemical Company* (DOJ # 90–11–3–586).

The proposed Consent Decree may be examined at the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005, (202) 624–0892. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction costs), payable to the "Consent Decree Library."

John C. Cruden,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–14540 Filed 6–18–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Toxic Substances Control Act

In accordance with Department of Justice Policy set forth at 28 CFR 50.7, notice is hereby given that a proposed modification to the consent decree previously entered by the United States District Court for the Southern District of Texas in *United States* v. *Texas Eastern Transmission Corp. d/b/a/ Texas Eastern Gas Pipeline Co.* Civ. No. H–88–1917, has been lodged with this Court on May 21, 1993.

The proposed modification makes several changes to the consent decree based upon experience developed by Texas Eastern and the United States Environmental Protection Agency since entry of the original decree in October 1989. Since that time, Texas Eastern has been implementing the cleanup program set forth in the original decree. The proposed modifications will allow Texas Eastern additional flexibility in implementing the cleanup program without relaxing, in any significant way, the cleanup requirements of the original agreement.

One significant change proposed in the modification would give Texas Eastern the option to utilize emerging computer technology, rather than the sampling regime specified by the decree, to predict the probable areal and vertical extent of soil contamination. Should Texas Eastern elect this option, it would still need to verify that the computer predictions were accurate by means of actual soil sampling. Thus, the amounts of contaminated soils that would be excavated would not be affected by this modification.

Another significant change would allow EPA to issue waivers or agree to minor modifications of the decree in the future without seeking approval from the Court. The parties could utilize this new authority, however, only in cases in which the proposed waiver would not significantly affect the overall scope or performance of the remedial program. A third significant change would allow Texas Eastern to use as backfill soils with PCB concentrations of up to two parts per million, rather than the one part per million specified in the original decree. The Agency believes that such a modification is consistent with its present permitting provisions, which also specify soil PCB levels of two parts per million.

The modification makes a number of other very minor changes to the decree, involving insurance requirements, numbers of reports to be filed with the Agency and the appropriate persons to receive such reports. None of the changes proposed, however, would affect in any significant way the cleanup requirements imposed by the original decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments related to the proposed modification. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Texas Eastern Gas Pipeline Co.* DOJ Ref. #90–5–1–1–2820.

The proposed modification may be examined at the TSCA Public Docket Office, room NE–G004, Environmental Protection Agency, 401 M Street, SW Washington, DC 20460 and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005), 202–624–0892. A copy of the proposed modification may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005). In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environment and Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 93–14539 Filed 6–18–93; 8:45 am]

BILLING CODE 4410–01–M

National Institute of Corrections

Request for Applications; Resource Center for Jail and Mental Health Service Linkages

The Jails Division of the National Institute of Corrections (NIC) of the Department of Justice (DOJ) and the Substance Abuse Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) are seeking applications to establish and operate a jail resource center that can provide technical assistance to other jurisdictions regarding the development of linkages with the mental health system. A cooperative agreement for up to $35,000 will be awarded to the successful applicant for twelve months.

A selection will be made from applicants who operate ACA/CAC accredited county, municipal, or regional jails with an established mental health program that meets prevailing standards for mental health service delivery, and can serve as a national "Resource Center for Jail Mental Health Services Linkages". Applications must be received by close of business of July 23, 1993.

Applications should be submitted in six copies to the National Institute of Corrections, 320 First Street, NW., Washington, DC 20534. At least one copy of the application must bear the original signature of the applicant. A cover letter must identify the responsible audit agency for the applicant's financial accounts.

Applications must be prepared in accordance with the procedures included in the NIC Guidelines Manual: Instructions for Applying for Federal Assistance and submitted on OMB Standard Form 424, Federal Assistance. The applications should be concisely written and referenced by the title "Resource Center for Jail Mental Health Service Linkages."

Jail Mental Health Services Resources Center Development

A cooperative agreement for up to $35,000 will be awarded for a twelve

month period beginning September 1, 1993 and ending August 31, 1994. A noncompetitive renewal will be considered based on satisfaction of stated criteria and availability of funds. Applications must be received by July 16, 1993.

Background

Since 1977, the NIC Jails Division has been served as an identifiable resource for assistance to the nation's jails. Services offered by the Jails Division include, short and long term technical assistance and training.

The concept of a Jail Resource Center has evolved since its establishment in 1978. Several resource centers were developed to provide materials, regional training and technical assistance to jails with respect to jail design, operational, programmatic, food service and direct supervision issues. Since then, there has been a need to develop resource centers with a more specialized approach. As a result, NIC had developed Resource Centers in the area of objective jail classification, jail industries, direct supervision and policy and procedures.

Public Law 103–321 created CMHS which had previously been integrated into the National Institute of Mental Health (NIMH). This act mandates a vigorous Federal leadership role in mental health services delivery and policy development. CMHS assists States and communities in expanding the number and range of mental health and rehabilitative services for treatment and prevention, as well as improving the effectiveness of services.

Research, case studies, and administrative reports from program sites have shown an increased need to improve mental health service delivery in jails. In January 1993, the Directors of The National Institute of Justice (NIJ), NIC, and CMHS signed a Memorandum of Understanding (MOU). The purpose of this MOU is to foster a collaborative effect between the criminal justice and mental health communities. As part of this effort, a range of strategies and initiatives for dealing with persons/individuals with mental illness who are in jail will be developed and implemented.

The NIC Jails Division and CMHS will fund a Resource Center for mental health service linkages that will provide technical assistance to jurisdictions and agencies in the criminal justice and mental health areas interested in implementing or expanding mental health service linkages.

Program Description

The primary use of the resource center is to promote and facilitate technology transfer between local jurisdictions. The resource center will host onsite visits and events for criminal justice and mental health personnel from jurisdictions wishing to jointly implement mental health services in the jails. In addition, the resource center will facilitate subsequent on-site consultation at that jurisdiction.

It is anticipated that the Resource Center will be used by Sheriffs, Jail Administrators and State and Local Health Agencies and constituent groups in the following ways:

- The resource center will host structured site visit technical assistance events arranged through NIC or CMHS.

Site visit technical assistance will be coordinated between NIC and/or CMHS, the visiting jurisdiction, and the Resource Center. These visits will enable a jurisdiction to tour the Resource Center, observe programs, and interview staff and inmates on the effectiveness of services and programs. Specific objectives and activities will be established by NIC and/or CMHS and the visiting jurisdiction before the visit and approved by the Resource Center. NIC/CMHS will fund two individuals from a jurisdiction to travel to the Resource Center. In order to be eligible, the jurisdiction must be represented by one person from each of the criminal justice and mental health communities.

- Resource Center staff may travel to other jurisdictions at the expense of NIC and/or CMHS to provide technical assistance to other jails in the area of mental health services.

Again, this technical assistance event will be coordinated through NIC and/or CMHS, the Resource Center, and the jurisdiction prior to the event. All activities and assistance will be clearly established before the visit. These technical assistance events may include but is not limited to: a review of policy and procedures, staff training, and development of criteria for contracts with the mental health community. Other activities may be added as needed.

- The Resource Center staff will develop written materials and documents for other jurisdictions that support their technical assistance effort.

Materials include but is not limited to: pamphlets, brochures, sample program missions, sample policy and procedure manuals, audio-visual aids, and workshop materials.

- The Resource Center will provide written quarterly reports to CMHS and NIC.

These reports will include specific data on both site visit and on site technical assistance events. The specific requirements will be established with the Resource Center after the cooperative agreement has been awarded.

General Program Requirements

Grant applications will be reviewed by a team of NIC and CMHS staff. Among the criteria used to evaluate the applications are:

- Demonstrated effectiveness of jail/mental health system linkage program already in existence;
- Clearly defined and succinctly stated objectives for the resource center from both a criminal justice and mental health standpoint;
- Appropriateness of the proposed approaches for attaining stated objectives;
- Applicant's ability to clearly define the methods to be used to implement the program successfully;
- Estimated total costs of the project and clear budget narrative; and
- Ability to define the effectiveness of the resource center through the evaluation and measurement of the outcomes.

Use of Grant Funds: Use of grant funds will be restricted to off-setting direct administrative cost to the jurisdictions. Grant funds can be used in the following ways:

- Mental health and correctional staff training;
- Project materials and supplies (excluding equipment purchases, travel costs and construction cost);
- Professional standards accreditation fees;
- Programmatic enhancements.

Standards Compliance: Successful applicants must be accredited by The American Correctional Association, Commission on Accreditation for Corrections (ACA/CAC).

Geographical/Transportation Considerations: Preference will be given to jurisdictions located in areas close to major transportation centers.

Project Staff: The successful applicant must provide professional (jail and mental health staff) and support staff who will coordinate and support onsite technical assistance events. Staff travel to other agencies to provide technical assistance also may be required at NIC or CMHS expense.

Facilities: Successful applicants must have adequate space to accommodate onsite hosted activities.

Convenient Housing: Preference will be given to jurisdictions with convenient access to hotel or other suitable participant housing that falls within Federal per diem rates.

Program Evaluation: Preference will be given to jurisdictions with the ability to measure and evaluate the

effectiveness of their "Resource Center for Jail Mental Health Service Linkages" in terms of measures that include criminal justice and mental health objectives as well as client objectives.

Specific Program Requirements

Besides the general program requirements, applicants will be evaluated on these specific criteria:

- The agency will have mental health services provided by the local mental health community.
- The agency will provide documentation including, but not limited to, mission statements, policies and procedures, and initial evaluation screening standards.
- The agency will have comprehensive services, which include at a minimum:

—Initial screening tools for mental illness;
—Crisis intervention;
—Mental Health treatment Programs (including medication management);
—Transfer/discharge planning;
—Suicide Prevention.

- The agency will have implemented a cross training program to train mental health staff in correctional issues and correctional staff in mental health issues.
- The agency must provide a specific plan for collection of data, measurement of outcomes and evaluation of program effectiveness.

In addition to satisfaction of specific criteria, preference will be given to those facilities with the following:

- Agencies using a management information system in both the delivery and evaluation of the effectiveness of mental health services.
- Agencies that have established jail diversion programs.
- Agencies that employ a total systems model which include mental health involvement at the police level (i.e. mobile crisis unit).
- Agencies that have developed an articulated program/strategy regarding suicide prevention.

Application Format

The major components of the grant application must include, at a minimum, the following:

—A summary statement that clearly and succinctly summarizes the main features of the application.
—An introduction or introductory statement describing the applicant's qualifications and organization, and indication of the applicant's principal functions and responsibilities, and an indication of why the application is being submitted.
—A narrative statement of the problem or issue the applicant will deal with if the grant is awarded focusing on the applicant's needs, capabilities, problems to be overcome, and objectives that will be obtained if the grant is awarded.
—A clear statement of what the applicant will accomplish with the assistance, quantitatively and qualitatively described, if applicable.
—A statement describing the methods the applicant will use to carry out the project, including the names, backgrounds and roles of the significant personnel who will be involved, time charts (if helpful), sequencing of phases/events of the project, and resources that will be assigned to the various phases.
—A statement in which the applicant describes how it will evaluate the project or a plan describing how it will measure whether the objectives described earlier in the application were obtained.
—A budget broken out by object classes, giving a reasonable financial plan for carrying out the grant and, if necessary, showing the cost or internal contribution the applicant will make from its own resources or the resources of a third party.
—Evidence that the applicant has dealt appropriately with any priorities or special considerations requested by NIC and/or CMHS.

Project Monitoring

NIC Jails Division and CMHS staff will monitor the cooperative agreement through regular meetings and interim progress evaluation reports. Frequent written and oral communication between the NIC monitor and the grantee will be required to ensure program compatibility with NIC's mission of service delivery to local jails, and in keeping with prevailing mental health service standards.

Eligibility

All accredited local, county, and regional jails that have established mental health programs are eligible. Only programs will be considered that treat individuals/persons with dual diagnoses of mental illness and substance abuse and not programs that treat only substance abuse.

Documentation of the grantee's ability, commitment of resources and level of staff support for the successful implementation and operation of a Resource Center must be included in the application.

For more information about preparing a grant application, contact the NIC Jails Division, 1960 Industrial Circle, suite A, Longmont, Colorado 80301; 1–(800) 995–6429.

Issue Date: June 21, 1993.

Larry Solomon,

Acting Director, National Institute of Corrections.

[FR Doc. 93–14535 Filed 6–18–93; 8:45 am]

BILLING CODE 4410–36–M

NATIONAL SCIENCE FOUNDATION

Antarctic Tour Operators Meeting

The National Science Foundation announces the following meeting:

NAME: Antarctic Tour Operators Meeting.

DATE AND TIME: July 8, 1993, 9 a.m.–4 p.m.

PLACE: National Science Foundation, room 540, 1800 G Street, NW., Washington, DC 20550.

TYPE OF MEETING: Open.

CONTACT PERSON: Nadene G. Kennedy, Polar Coordination Specialist, Office of Polar Programs, National Science Foundation, Washington, DC 20550, Telephone: 202/357–7817.

PURPOSE OF MEETING: Pursuant to the National Sciences Foundation's responsibilities under the Antarctic Conservation Act (Pub. L. 95–541) and the Antarctic Treaty, the U.S. Antarctic Program Managers plan to meet with Antarctic Tour Operators to exchange information concerning dates and procedures for visiting U.S. Antarctic stations, review the latest Antarctic Treaty Recommendations concerning the environment and protected sites, and other items designed to protect the Antarctic environment.

Agenda

- Introduction and Overview
- Review of 1992–93 Visits to Palmer and McMurdo Stations
- Tour Operator's Comments on 1992–93 Season Visits
- 1993–94 Visits to Palmer Station
- 1993–94 Visits to McMurdo Station
- Cooperation with other National Antarctic Programs
- Report on IAATO Activities
- USAP Observers Reports
- 1993–94 Season Observer Program
- Antarctic Conservation Act
- Information Dissemination
- Tourism Impact Study and the Long-Term Ecological Research (LTER) Project
- Update on the *Bahia Paraiso*—tentative
- Status Report on Legislation and Implementation of the Protocol on Environmental Protection to the Antarctic Treaty

* Other Items

John B. Talmadge,

Head, Polar Coordination and Information Section, Office of Polar Programs.

[FR Doc. 93–14530 Filed 6–18–93; 8:45 am]

BILLING CODE 7555–01

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Materials and Metallurgy; Notice of Meeting

The ACRS Subcommittee on Materials and Metallurgy will hold a meeting on June 29, 1993, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, June 29, 1993—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review draft Regulatory Guides, DG–1023, "Evaluation of Reactor Pressure Vessels with Charpy Upper-Shelf Energy Less Than 50 ft-lb", and DG–1025, "Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence." The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Elpidio Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: June 14, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–14520 Filed 6–18–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Thermal Hydraulic Phenomena; Postponement

A meeting of the ACRS Subcommittee on Thermal Hydraulic Phenomena scheduled to be held on June 22, and June 23 (as necessary), 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, MD has been postponed. The meeting has been postponed due to schedular problems, and the need to obtain additional supporting documentation in a timely manner. Notice of this meeting was published in the **Federal Register** on Thursday, May 27, 1993 (58 FR 30820).

FOR FURTHER INFORMATION CONTACT: Mr. Paul Boehnert, cognizant ACRS staff engineer (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. (EDT).

Dated: June 14, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–14521 Filed 6–18–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32462; International Series Release No. 554; File No. SR–ISCC–93–02]

Self-Regulatory Organizations; International Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to an Amendment to the Linkage Agreement Between ISCC and the London Stock Exchange, and Establishment of a Custody Agreement Between ISCC and Citibank, N.A

June 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 27, 1993, International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice and order to solicit comments on the proposed rule change and to grant approval of the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would effect an amendment to the linkage agreement between ISCC and the London Stock Exchange ("SE") which acknowledges the discontinuation of the SE's custody services. The proposed rule change also establishes a custody agreement between ISCC and Citibank, N.A., London branch ("Citibank"), designed to offer custody services to ISCC members in place of the discontinued SE service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1986, ISCC and the SE entered into an Interim Linkage Agreement and an Interim Safe Custody Agreement pursuant to which ISCC could obtain comparison, settlement, and custody services in the United Kingdom from the SE on behalf of ISCC members. At the same time, ISCC filed an application to become registered as a clearing agency. While the application was pending, ISCC, by letter dated August 22, 1986,[2] sought advice from the Commission staff that the Division of Market Regulation would not recommend enforcement action against ISCC if it operated the link with the SE (the "London Link"). By letter dated September 10, 1986, the request was granted.[3]

Subsequently, ISCC and the SE renegotiated the linkage agreement and by letter dated December 23, 1988,[4] ISCC once again sought no-action relief with respect to providing clearance, settlement, and custody services in the United Kingdom. This was granted by letter dated March 12, 1990.[5]

The revised agreement (the "Linkage Agreement")[6] contemplated that either party could discontinue offering a service if it ceased to provide such service to all users. The SE has decided to discontinue providing custody services and has notified ISCC of such action. The SE, however, will continue to provide Checking (comparison) and Talisman (settlement) services.

In order to continue to provide London Link users with custody services, ISCC has contracted with Citibank. Citibank will provide custody services to ISCC upon essentially the same terms and conditions as the services provided by the SE. The service will cover all securities eligible for settlement through Talisman and such other securities as ISCC may request with the exception of Gilts,[7] including when required, foreign stocks held on United Kingdom register (e.g., South African and Australian).

Citibank will accept instructions from ISCC for the receipt or delivery of securities in the London market, free of payment, on behalf of ISCC members. Citibank will deposit securities received in the safekeeping account. If the securities received do not appear to be in order, Citibank will reject the deposit on the same day and notify ISCC. Citibank will deliver the securities, or make them available for pickup, in accordance with ISCC's instructions. In addition, Citibank will be responsible for the forwarding of information on any corporate action and for the execution of any ISCC member's instruction related thereto. Finally, Citibank will pay dividend and interest payments collected to a third party account and make available to ISCC members Citibank's Assured Income Service.[8]

The safe custody service provides ISCC members with a means to safekeep issues that settle through the SE's Talisman system. ISCC members were always given the option of using alternative safekeeping services if they so desired, and this option will continue to remain available. Since the custody account will be ISCC's,[9] members will not have to qualify as Citibank customers in order to obtain custody services.

In order to make daily settlement with the SE, ISCC established a banking relationship with Barclays Bank PLC ("Barclays"). Barclays was originally chosen because it is the bank utilized by the SE. Since ISCC will maintain a relationship with Citibank for the custody services, ISCC management believes that it will be beneficial to consolidate all banking functions and therefore has determined to move the money settlement arrangements from Barclays to Citibank.

As a result of this change, each ISCC member that uses the London Link will be required to open cash accounts (pounds sterling and dollars) with Citibank. The money settlement process that was used with Barclays will continue to be used by Citibank, *i.e.*, ISCC members' accounts will be debited and ISCC's account will be credited when the member has a payment obligation and *vice versa* when the member is in a credit position. Citibank will cause a payment to be made for the benefit of the SE if ISCC is in a net debit position, and if ISCC is in a net credit position, the SE will cause a payment to be made to Citibank for ISCC's benefit. Similar to the arrangement with Barclays, ISCC will have an overdraft facility in the event there are insufficient funds available to meet its obligations to the SE. The SE has agreed to the change in banking relationships, and this change is also included in the amendment to the Linkage Agreement.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule change will impose any burden upon competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were not and are not intended to be solicited with respect to the proposed rule change, and no written comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

ISCC requests the Commission find good cause for approving the proposed rule change on an accelerated basis prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause exists under section 19(b)(2) of the Act for granting accelerated approval in order to provide continuity in the settlement process. ISCC and SE have agreed that all deposits of securities must be removed from SE by June 15, 1993. Therefore, the agreement between ISCC and Citibank must be in effect prior to that date to avoid disruption of service.

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[10] The agreement with Citibank will permit ISCC to continue to provide custody services to its members on essentially the same terms as it had with the SE, without interruption of service. The consolidation of custody service and money settlement processing may permit ISCC to have increased efficiency in the clearance and settlement of securities transactions. The Commission therefore finds that ISCC's proposal is consistent with section 17A(b)(3)(F) of the Act.

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[2] Letter from Karen Saperstein, Associate General Counsel, ISCC, to Jonathan Kallman, Assistant Director, Commission (August 22, 1986).

[3] Letter from Jonathan Kallman, Assistant Director, Commission, to Karen Saperstein, Associate General Counsel, ISCC (September 10, 1986).

[4] Letter from Karen Saperstein, Associate General Counsel, ISCC, to Jonathan Kallman, Assistant Director, Commission (December 23, 1988).

[5] Letter from Jonathan Kallman, Assistant Secretary, Commission, to Karen Saperstein, Associate General Counsel (March 12, 1990).

[6] Linkage Agreement between ISCC and SE (December 22, 1988).

[7] Gilts are United Kingdom government bonds which are auctioned through the Bank of England.

[8] Under the Assured Income Service, all dividend and interest payments are paid to the member on the "payable date," rather than the date the payment is actually received by Citibank.

[9] The accounts will be in ISCC's name with subaccount designations for ISCC members.

[10] 15 U.S.C. 78q-1(b)(3)(F) (1988).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File Number SR–ISCC–93–02 and should be submitted by July 9, 1993.

V. Conclusion

On the basis of the foregoing, the Commission finds that ISCC's proposed rule change is consistent with the Act and, in particular, with section 17A of the Act.

It Is Therefore Ordered, under section 19(b)(2) of the Act, that the proposal (File No. SR–ISCC–93–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14485 Filed 6–18–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32458; International Series Release No. 553; File No. SR–OCC–93–09]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Relating to a Friday Expiration Date for Certain Foreign Currency Option Contracts.

June 11, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 20, 1993, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by OCC. On June 10, 1993, OCC filed Amendment No. 1, and on June 11, 1993, OCC filed Amendment No. 2 to the proposed rule change.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval through July 16, 1993, of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to have Friday instead of Saturday as the expiration date for certain foreign currency option contracts to be listed in the future.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to have the Friday immediately preceding the third Wednesday of the expiration month instead of the Saturday immediately preceding the third Wednesday of the expiration month as the expiration date for certain foreign currency option contracts listed for trading during or after June 1993. For end-of-month option contracts listed for trading during or after July 1993, the expiration date will be the last Friday of the expiration month instead of the last Saturday of the expiration month.

OCC is proposing to change the expiration date of these foreign currency option contracts in order to reduce the overtime costs associated with weekend expiration processing. The proposed change of the expiration date of foreign currency option contracts from Saturday to Friday will be implemented initially for foreign currency option contracts listed for trading during or after June 1993 and for end-of-month foreign currency option contracts listed for trading during or after July 1993. Two exceptions are built into the new expiration date.

First, if any expiration date for foreign currency option contracts falls on a day that the Exchange is not open for business, the expiration date for such option contracts will be the preceding day the Exchange is open for business.

Second, certain long term foreign currency option contracts listed before June 1993, most notably the June 1994 and December 1994 series, have Saturday expirations. To avoid investor confusion, all option contracts listed for trading in the future with expiration dates coincident with those existing contract months, June 1994 and December 1994, will continue to be listed with a Saturday expiration. Furthermore, OCC will make no changes to existing foreign currency option contracts. Such contracts will continue to expire on the Saturday immediately preceding the third Wednesday of the month.

In Article XV, Section 1 of the By-Laws, certain definitions are amended to reflect the proposed change in the expiration date. As described above, the definition of expiration date is amended to reflect that the expiration date for foreign currency option contracts listed before June 1993 and all foreign currency option contracts expiring in June 1994 and December 1994 will continue to be the Saturday immediately preceding the third Wednesday of the expiration month of such option contracts while the expiration date for foreign currency option contracts listed for trading during or after June 1993 will be the Friday immediately preceding the third Wednesday of the expiration month of such option contracts. Similarly, the definition of expiration date is amended to reflect that the expiration date for

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[1] 15 U.S.C. 78s (1988).

[2] The purpose of Amendment No. 1 is to amend Article XX of OCC's By-Laws and Chapter 21 of OCC's Rules so that the change in the expiration date of foreign currency options is applicable to cross-rate foreign currency options. In addition, the amendment adds language to rules 806 and 1603 to clarify the operational time frames to which Clearing Members must adhere with respect to the Expiration Date Exercise Procedures for foreign currency options expiring on Fridays. Letter from Jacqueline R. Luthringshausen, Attorney, OCC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation ("Division"), Commission (June 9, 1993).

In Amendment No. 2, OCC withdrew from Amendment No. 1 all proposed changes to Article XX of its By-Laws and Chapter 21 of its Rules. Therefore, this approval order does not provide for OCC to issue and clear any cross-rate foreign currency options with Friday expiration dates. Letter from Jim Yong, Vice President and Deputy General Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (June 10, 1993).

existing end-of-month option contracts listed for trading before July 1993 will continue to be the Saturday following the last Friday of the expiration month of such option contracts while the expiration date for end-of-month foreign currency option contracts listed for trading during or after July 1993 will be the last Friday of the expiration month of such option contracts.

Language is also being added to the definition of expiration date to provide that foreign currency option contracts and end-of-month foreign currency option contracts that otherwise would have an expiration date on a day that the Exchange is not open for business will expire on the preceding day that the Exchange is open for business. Lastly, Article XV, section 1 has been alphabetized to facilitate the referencing of terms contained in that section.

Paragraph (b) has been added to Rule 1603. Paragraph (a), which contains the current language of Rule 1603, provides that foreign currency option contracts expiring on Saturday generally shall utilize the expiration date exercise procedures set forth in Rule 805. In contrast, new paragraph (b) provides that foreign currency option contracts expiring on Friday generally shall utilize the expiration date exercise procedures set forth in Rule 806. Rule 806(b)(1) establishes timeframes for the issuance of reports by OCC and an operational cut-off time for exercises by Clearing Members.[3] The current language of Rule 1603 allows OCC's Board of Directors, with thirty days notice to all Foreign Currency Clearing Members, to make OCC's exercise-by-exception processing applicable to expiring foreign currency option contracts. This language has been retained in Rule 1603(a) but has been modified to apply only to foreign currency option contracts expiring on Saturday. A parallel provision has been added to Rule 1603(b) with respect to foreign currency option contracts expiring on Friday.

Finally, Rule 1606A has been amended to provide OCC with more flexibility in setting a cut-off time for the submission of Delivery Versus Payment Authorizations ("DVP Authorizations"). Currently, DVP Authorizations must be submitted to the Corporation by 12 p.m. Central Time on the date on which any Exercise and Assignment Report is made available. Currently, Exercise and Assignment Reports for foreign currency option contracts are made available on the Sunday following the Saturday expiration date, and accordingly, DVP Authorizations are required to be submitted by the cut-off time on that Sunday. However, with respect to newly listed foreign currency option contracts which will expire on Friday, OCC anticipates that the Exercise and Assignment Report will be made available on the Saturday following the expiration date even though for purposes of processing OCC does not need the DVP Authorization until Sunday.[4] Accordingly, Rule 1606A now provides that DVP Authorizations may be submitted on the date on which any Exercise and Assignment Report is made available or at such other times as OCC shall prescribe.

[3] At or before 8 p.m. Central Time (7 p.m. Eastern Time) on each business day that is an expiration date for a foreign currency option contract, OCC will make available to Clearing Members a report listing each expiring foreign currency option contract. A Clearing Member desiring to exercise foreign currency option contracts must return its exercise instructions to OCC by 8:30 p.m. Central Time (9:30 p.m. Eastern Time). Rule 1603(b)(1).

[4] OCC anticipates it may make systems changes in the future to allow for processing of DVP Authorizations on the Saturday following expiration. If such changes are made, OCC will file with the Commission a proposed rule change under section 19(b) of the Securities Exchange Act of 1934.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes OCC's proposal to have Friday instead of Saturday as the expiration date for certain foreign currency option contracts listed in the future is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies. In particular, sections 17A(b)(3)(A) and (F) of the Act require that a clearing agency be organized and that its rules be designated to promote the prompt and accurate clearance and settlement of securities transactions, to assure that safeguarding of securities and funds in the clearing agency's custody or control or for which it is responsible, and to protect investors and the public interest.[5] Additionally, section 17A(a)(1) of the Act sets forth Congress' finding that ineffective procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.[6] Furthermore, Friday expiration will permit OCC to reduce the overtime costs associated with weekend expiration processing and as a result to offer more efficient and less costly service to its Clearing Members.

OCC also has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. Accelerated approval will permit OCC to coordinate with the PHLX the implementation of the Friday expiration for foreign currency options listed during or after June 1993.[7] The Commission finds good cause for so approving the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities, and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–OCC–93–09 and should be submitted by July 9, 1993.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, [8] that the

[5] 15 U.S.C. 78q–1(b)(3)(A) and (F) (1988).

[6] 15 U.S.C. 78q–1(a)(1) (1988).

[7] On June 13, 1993, PHLX plans to list for trading long term option contracts expiring in June 1995 on the Australian Dollar, British Pound, Canadian Dollar, German Mark, French Franc, Swiss Franc, European Currency Unit, and Japanese Yen.

[8] 15 U.S.C. 78s–(b)(2) (1988).

proposed rule change (File No. SR–OCC–93–09) be, and hereby is, temporarily approach through July 16, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14484 Filed 6–18–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32463; File No. SR–CBOE–93–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Fees for Use of Exchange Installed Telephones

June 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 24, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to establish fees to be imposed on members who are approved to use or install telephones on the Exchange's equity options trading floor. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose Of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[9] 7 CFR 200.30–3(a)(12) (1992).

(A) Self-Regulatory Organization's Statement of the Purpose Of, and Statutory Basis For, the Proposed Rule Change

The purpose of the proposed rule change is to establish fees to be imposed upon members who are approved to use Exchange-installed telephones located on the equity options trading floor, or are approved pursuant to CBOE Rule 6.23 to install their own telephones on the equity options trading floor.[1] This action is being taken pursuant to CBOE Rule 2.22, which permits the Exchange to impose fees on members for the use of Exchange facilities or for any services or privileges granted by the Exchange.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[1] The CBOE has submitted a proposed rule change to incorporate Exchange policies governing the use of such telephones located at equity option trading posts on the floor of the Exchange. See File No. SR–CBOE–93–24. In addition, the CBOE has submitted a proposed rule change to establish user fees for members who are approved to use telephones on the equity options trading floor. See File No. SR–CBOE–93–27.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–14 and should be submitted by July 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14543 Filed 6–18–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1823]

Shipping Coordinating Committee, Subcommittee on Ocean Dumping; Meeting

The Subcommittee on Ocean Dumping of the Shipping Coordinating Committee will hold an open meeting on July 7, 1993 from 10 a.m. to 12 noon to obtain public comment on the issues to be addressed at the July 19–24, 1993 Intersessional Meeting of the Contracting Parties to the London Convention of 1972, which regulates ocean dumping.

The meeting will be held at the Environmental Protection Agency, West Tower, 401 M Street, SW., Washington, DC 20460, in the 8th Floor Conference Room. Interested members of the public are invited to attend, up to the capacity of the room.

For further information, please contact Ms. Linda Carey, Office of International Activities, telephone (202) 260–4875.

[2] 17 CFR 200.30–3(a)(12) (1993).

Dated: June 15, 1993.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 93–14573 Filed 6–18–93; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 93–037]

Chemical Transportation Advisory Committee (CTAC) Subcommittee on the Revision of the Regulations for Barges Carrying Bulk Liquid Hazardous Material Cargoes; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee on the Revision of the Regulations for Barges Carrying Bulk Liquid Hazardous Material Cargoes, title 46, Code of Federal Regulations (CFR), part 151, of the Chemical Transportation Advisory Committee will meet on Monday, July 12, 1993. This meeting will continue the Subcommittee's review of 46 CFR part 151 to determine areas in need of updating and revision, and make recommended changes.

FOR FURTHER INFORMATION CONTACT: Commander K.J. Eldridge or Lieutenant Commander R.F. Corbin, U.S. Coast Guard Headquarters (G–MTH–1), 2100 2nd Street, SW, Washington, DC 20593, (202) 267–1217.

SUPPLEMENTARY INFORMATION: The meeting will be held in the ABS Academy Room at the American Bureau of Shipping, 16855 Northchase Drive, Houston, Texas 77060. The meeting will begin at 9 a.m. and end at 5 p.m. Attendance is open to the public. Members of the public may present oral statements at the meetings.

Persons wishing to present oral statements should notify Lieutenant Commander R.F. Corbin, U.S. Coast Guard Headquarters (G–MTH–1) no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

Dated: June 9, 1993.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–14552 Filed 6–18–93; 8:45 am]

BILLING CODE 4910-14-M

[CGD 93–40]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 USC App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on July 14, 1993, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, New York, beginning at 10 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions.
2. Update of Marine Events.
3. Update of dredging operations in New York harbor.
4. Update on Vessel Traffic Service.
5. Update on Coast Guard regulatory initiatives: New York expansion regulations; VTS National Regulations NPRM; Tug assist NPRM for vessels.
6. "P.O.R.T.S." update.
7. Charter renewal update.
8. Topics from the floor.
9. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director no later than one day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander J. P. BENVENUTO, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, Vessel Traffic Service, Building 108, Governors Island, New York, NY 10004–5070; or by calling (212) 668–7429.

Dated: June 14, 1993.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York, NYHTMAC Executive Director.

[FR Doc. 93–14555 Filed 6–18–93; 8:45 am]

BILLING CODE 4910-14-M

[CGD 93–008]

Response Exercise Workshops; Change of Location

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Coast Guard is announcing a change in the location of the Response Exercise Workshops scheduled for July 1 and 2, 1993, and August 5, 1993. The original schedule listed the meeting locations as the Department of Transportation, Nassif Building, 400 7th St., SW., Washington, DC. The meetings have been relocated to the Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Crystal City, Virginia.

FOR FURTHER INFORMATION CONTACT: LCDR Rhae Giacoma, Office of Marine Safety, Security and Environmental Protection (G–MEP–4), (202) 267–2616.

SUPPLEMENTARY INFORMATION: In the March 5, 1993 **Federal Register** (58 FR 12624), the Coast Guard announced that it would conduct a series of four workshops covering various topics to solicit comments from the public and to serve as an open forum for the discussion of response exercises for Area Contingency Plans and vessel and facility response plans. The announced location of the last two workshops has been changed.

The updated public workshop schedule is as follows:

1. July 1 and 2, 1993; 9 a.m. to 4 p.m. each day; Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Crystal City, Virginia (703) 418–6800.
2. August 5, 1993; 9 a.m. to 4 p.m.; Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Crystal City, Virginia, (703) 418–6800.

Dated: June 11, 1993.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–14554 Filed 6–18–93; 8:45 am]

BILLING CODE 4910-14-M

[CGD 92–035]

Discontinuance of Navy Western Pacific Composite Fleet/General Morse Telegraphy Broadcast

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The United States Coast Guard has discontinued the Navy Western Pacific composite fleet/general Morse telegraphy broadcast of NAVAREA XII and meteorological information, designator GCMP, operated from Coast Guard Communication Station Guam in the high frequency radiotelegraphy band, effective June 1, 1993.

FOR FURTHER INFORMATION CONTACT: LT Bob Salmon, Telecommunications Management Division (G–TTM), Office of Command, Control and Communications, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001, telephone (202) 267–6837, telefax (202) 267–4106, or telex 892427 (COASTGUARDWSH). Normal office hours are between 7 a.m. and 3:30 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The composite fleet/general Morse telegraphy broadcasts were one means of merchant ship communications used by Military Sealift Command (MSC) ships. Widely dispersed transmitters were employed on various frequencies in the HF band to transmit navigational warnings and weather information to MSC and commercial ships at sea. The broadcasts were operated by U.S. Coast Guard Communication Stations.

Fortunately, more efficient telecommunication systems such as radiotelex, more commonly called Simplex Teletype Over Radio (SITOR), and INMARSAT–C SafetyNET are now available for merchant ship communications. Coast Guard Communication Stations use the SITOR, system, which is much less labor intensive than Morse telegraphy, requiring less operator intervention and specialized training. Communication Station Guam operates the Navy composite fleet/general SITOR broadcast, designator GSIT, for MSC ships on 12579.0 kHz, 16806.5 kHz, and 22376.0 kHz. This broadcast contains the same weather advisories and NAVAREA XII information as the GCMP Broadcast. Ships can obtain additional weather advisories and safety messages concerning the Western Pacific from INMARSAT–C SafetyNET.

D.E. Ciancaglini,

Rear Admiral, U.S. Coast Guard, Chief, Office of Command, Control and Communications.

[FR Doc. 93–14533 Filed 6–18–93; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–93–27]

Petitions For Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 12, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of section 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 15, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No: 23495
Petitioner: Colonel David G. Gwin
Section of the FAR Affected: 14 CFR 91.209
Description of Relief Sought: To extend and amend Exemption No. 3946 to allow the department of the Army to continue to conduct aviation night training operations without aircraft lights turned on up to an altitude of 500 feet above the ground level.

Docket No: 25307
Petitioner: Precision Airlines
Sections of the FAR Affected: 14 CFR 135.429(a) and 135.435
Description of Relief Sought: To extend and amend Exemption No. 4867 to allow Precision Airlines (PREA) to use certain foreign original equipment manufacturers and repair and overhaul facilities that do not hold appropriate U.S. foreign repair station certificates, to perform maintenance, preventive maintenance, and alterations outside the United States on components and parts used on PREA's foreign-manufactured aircraft.

Docket No: 25390
Petitioner: Airbus Industrie
Section of the FAR Affected: 14 CFR 145.35
Description of Relief Sought: To extend and amend Exemption No. 5120 to allow the production units of the members and associated partners of Airbus to be collectively certificated under Airbus as a U.S. foreign repair station to support operation of U.S.-registered A300, A310 and A320 aircraft; and request that the A321, A330 and A340 series be added to this exemption, subject to their having been granted FAA certification.

Docket No: 26897
Petitioner: Northwest Aerospace Training Corporation
Sections of the FAR Affected: 14 CFR 121.411(a), (a)(6); 121.413(d) and Appendix H of part 121
Description of Relief Sought: To amend Exemption No. 5538 to allow the Northwest Aerospace Training Corporation (NATCO) to designate simulator instructors as simulator check airmen employed by NATCO who no longer are able to maintain a Class III medical certificate.

Dispositions of Petitions

Docket No.: 23653
Petitioner: University of North Dakota
Section of the FAR Affected: 14 CFR 141, Appendix D, Paragraph 3(c)
Description of Relief Sought/Disposition: To all UND students, enrolled in certain curricula, to receive credit for more than 50 hours of solo practice while pilot in command of an airplane carrying

persons who are pilots assigned by the school to specific flight crew duties.
Denial, June 3, 1993, Exemption No. 5658

Docket No.: 26795
Petitioner: Becton Dickenson and Company
Section of the FAR Affected: 14 CFR 91.169(c)
Description of Relief Sought/ Disposition: To permit Becton to utilize the alternate airport weather minimums provided for part 121 and 135 operations when selecting an alternate airport on the flight plan of an instrument flight rule (IFR) flight.
Denial, June 2, 1993, Exemption No. 5656

Docket No.: 27081
Petitioner: Arnatuical, Inc.
Section of the FAR Affected: 14 CFR 61.45(a)
Description of Relief Sought/ Disposition: To permit Arnautical applicants for a flight instructor certificate and ratings to that certificate to use a flight simulator instead of an airplane for the practical tests specified in § 61.183.
Denial, June 4, 1993, Exemption No. 5660

Docket No.: 27117
Petitioner: Paragators, Inc.
Section of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/ Disposition: To allow non-student, foreign skydivers to participate in Paragators, Inc. sponsored parachuting events held at its facilities without having to comply with the parachute equipment requirements contained in the FAR.
Grant, June 7, 1993, Exemption No. 5659

Docket No.: 27122
Petitioner: Mr. Leland Snow
Section of the FAR Affected: 14 CFR 61.31(a)(1)
Description of Relief Sought/ Disposition: To amend Exemption No. 5651 to permit Air Tractor Inc. and pilots of the Air Tractor models AT–802 and AT–802A to operate these airplanes without a type rating although the maximum gross weight of these airplanes exceeds 12,500 pounds.
Grant, May 18, 1993, Exemption No. 5651A

Docket No.: 27305
Petitioner: Sun Jet International Airlines
Section of the FAR Affected: 14 CFR 121.358(c)(1)
Description of Relief Sought/ Disposition: To permit Sun Jet International Airlines to submit a request for approval of a retrofit schedule for installing windshear equipment to the Flight Standards Division Manager in the region of the certificate holding district office after the June 1, 1990, deadline.
Grant, June 3, 1993, Exemption No. 5657

Docket No.: 26349
Petitioner: Mr. Dan Murdaugh
Section of the FAR Affected: 14 CFR 147
Description of Relief Sought/ Disposition: To extend Exemption No. 5297 which allows students in FAA part 147 Aviation Technical Schools to participate in the Vocational Industrial Clubs of America (VICA) airframe and powerplant aviation skill competition at both state and national levels without the student or school being in violation of FAR 147.21 General Curriculum Requirements.
Withdrawn, June 4, 1993

Docket No.: 27025
Petitioner: Flight Review, Inc.
Sections of the FAR Affected: 14 CFR 135.293; 135.297; 135.299; 135.337(a)(2) and (3); 135.337(b)(2); 135.339(a)(2) and (c); and part 122, Appendix H
Description of Relief Sought: To allow Flight Review, Inc. (FRI) instructor pilots to provide initial and recurrent aircraft ground and flight training without meeting all the flight check requirements and training requirements and without FRI holding an air carrier operating certificate.
Denial, June 9, 1993, Exemption No. 5662

Docket No.: 27161
Petitioner: Air Transport Association of America
Section of the FAR Affected: 14 CFR 121.417(c)(2)(ii)(B)
Description of Relief Sought: To relieve Air Transport Association member airlines from the requirement to train crew members, initially and every 24 calender months, on the transfer of aircraft slide/raft packs from one door to another.
Withdrawn, June 3, 1993

[FR Doc. 93–14505 Filed 6–18–93; 8:45 am]
BILLING CODE 4910–13–M

[Summary Notice No. PE–93–26]

Petitions For Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.
DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 12, 1993.
ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 15, 1993.

Donald P. Byrne,
Assistant Chief Counsel for Regulations.

Docket No.: 27254
Petitioner: Andrews University
Sections of the FAR Affected: 14 CFR 141 Appendices A, C, D and H
Description of Relief Sought: To permit students enrolled in an Associate or Bachelor Degree Program with a flight major or minor to graduate from the appropriate pilot courses when they have been trained to a performance standard in lieu of meeting the minimum flight time requirements of part 141, with the exception of the minimum solo cross-country flight time requirement; also to permit 20 of the 40 hours of the solo cross-country

flight time requirement be kept as solo and that the other 20 hours may be as pilot in command of an airplane carrying pilots (not flight instructors) assigned by the school to specific flight crew duties and/or passengers who are not pilots.

Dispositions of Petitions

Docket No.: 24258
Petitioner: Delfort Training
Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); Appendix A of part 61 and Appendix H of part 121
Description of Relief Sought/ Disposition: To amend Exemption No. 4955C to allow simulator instructors to perform 4 hours of line-oriented flight training (LOFT) in a simulator instead of 2 hours of line-observation flight training in an aircraft.
Denial, June 9, 1993, Exemption No. 5663

Docket No.: 26608, 17709 and 23261
Petitioner: Alaska Airlines, Inc., British Petroleum Exploration, Atlantic Richfield Company
Sections of the FAR Affected: 14 CFR 43.3(f), 43.7(e), 91.213(a), 91.407(a)(2), 91.417(a)(2)(v), and 121.379
Description of Relief Sought/ Disposition: To renew Exemptions Nos. 2856 and 3614 and permit the petitioners to operate certain Boeing 727–90 and 727–100 series aircraft (N798AS, N753AS, N314AS, and N7829A), pursuant to lease agreements between ASA and BPX, and ASA and ARCO, using a FAA-approved minimum equipment list (MEL), and would allow ASA to maintain the aircraft in accordance with its FAA-approved continuous airworthiness maintenance and inspection program. The dispositions of petitions have been combined in this exemption, since they deal with the same aircraft and their subject matter is interrelated.
Grant, June 10, 1993, Exemption No. 5666

Docket No.: 26608
Petitioner: Alaska Airlines, Inc., British Petroleum Exploration, Atlantic Richfield Company
Sections of the FAR Affected: 14 CFR 43.3(f), 43.7(e), 91.213(a), 91.407(a)(2), 91.417(a)(2)(v), and 121.379
Description of Relief Sought/ Disposition: To allow ASA to perform maintenance and return to service Boeing 737–200 aircraft leased by ARCO and BPX, and would permit ARCO and BPX to use ASA's approved minimum equipment list (MEL).
Grant, June 11, 1993, Exemption No. 5667

Docket No.: 26691
Petitioner: American Cyanamid Company
Section of the FAR Affected: 14 CFR 135.247(a)(2)
Description of Relief Sought/ Disposition: To permit pilots to operate without complying with the night recency of experience requirements of § 135.247(a)(2)
Denial, June 9, 1993, Exemption No. 5664

Docket No.: 27084
Petitioner: American Flyers
Sections of the FAR Affected: 14 CFR 61.65(e)(1) and 61.123
Description of Relief Sought/ Disposition: To permit graduates of its approved instrument rating courses to apply for an instrument rating without meeting the minimum flight time requirements prescribed by part 61.
Denial, June 10, 1993, Exemption No. 5665

Docket No.: 27244
Petitioner: Kohler Company
Section of the FAR Affected: 14 CFR 45.29
Description of Relief Sought: To allow variance in the size and font requirements for nationality and registration marks set forth in § 45.29.
Denial, June 8, 1993, Exemption No. 5661

[FR Doc. 93–14507 Filed 6–18–93; 8:45 am]
BILLING CODE 4910–13–M

Flight Service Station At Anchorage, AK; Change in Facility Operation

Notice is hereby given that on or about June 19, 1993, the Flight Service Station at Anchorage, Alaska will be closed. Services to the general aviation public formerly provided by this facility will be provided by the Automated Flight Service Station at Kenai, Alaska. This information will be reflected in the FAA Organization Statement the next time it is reissued. Section 313(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Anchorage, Alaska, on June 10, 1993.

David F. Morse,
Deputy Regional Administrator, Alaskan Region.

[FR Doc. 93–14508 Filed 6–18–93; 8:45 am]
BILLING CODE 4910–13–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 117
Monday, June 21, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION:

TIME AND DATE: 11:00 a.m., Friday, July 2, 1993.

PLACE: 2033 K St., NW., Washington, DC., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–14665 Filed 6–17–93; 11:02 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 9, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–14666 Filed 6–17–93; 11:02 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 16, 1993.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–14667 Filed 6–17–93; 11:02 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 23, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–14668 Filed 6–17–93; 11:02 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, July 30, 1993.

PLACE: 2033 K St., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–14669 Filed 6–17–93; 11:02 am]

BILLING CODE 6351–01–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Board's meeting described below. The Board will also conduct a public hearing pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning current safety or health questions at defense nuclear facilities located at the Idaho National Engineering Laboratory (INEL).

TIME AND DATE: 5:00 p.m. July 13, 1993—Department of Energy presentations; 7:00 p.m.—Opportunity for interested persons to present oral comments.

PLACE: University of Idaho Auditorium, University Place, 1776 Science Center Drive, Idaho Falls, Idaho.

STATUS: Open.

MATTERS TO BE CONSIDERED: The open public meeting and hearing are being held to provide the Board with the latest and best information on a number of current health and safety questions at defense nuclear facilities at INEL, and to receive from members of the public any pertinent comments they wish to make on these or other INEL-related health and safety issues. The Department of Energy will take appropriate measures to safeguard any classified or controlled nuclear information it presents at this meeting. The public hearing portion is independently authorized by 42 U.S.C. 2286b.

CONTRACT PERSONS FOR MORE INFORMATION: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (202) 208–6400. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Requests to speak at the public hearing may be submitted in writing or by telephone. We ask that commentators describe the nature and scope of the oral presentation. Those who contact the Board prior to close of business on July 9, 1992, will be scheduled for time slots, beginning at approximately 7:00 p.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the entrance to the Auditorium, at the start of the 5:00 p.m. meeting. So that everyone who wishes to speak will have an opportunity, speakers will be limited to five minutes each. Anyone who wishes to comment, provide technical information or data may do so in writing, either in lieu of, or in addition to making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. The Board will hold the record open until July 23, 1993, for the receipt of additional materials. A transcript of the meeting will be made available by the Board for Inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office, at the Department of Energy Reading Room at Technical Library, Idaho National Engineering Laboratory, 1776 Science Center Drive, Idaho Falls, Idaho 83405–50778.

The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting, and otherwise exercise its powers as provided by law.

Dated: June 17, 1993.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 93–14635 Filed 6–17–93; 9:38 am]

BILLING CODE 6820–KD–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:00 a.m., Wednesday, June 23, 1993.

PLACE: Board Room Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. FHLBank System Reports
   A. Monthly Financial Report
   B. Monthly Membership Report
2. Affordable Housing Program (AHP) First Round Applications
3. Final Membership Regulation
4. FHLBank of Dallas Request for Finance Board Approval to Hold Federal National Mortgage Association (Fannie Mae) Affordable Mortgage Backed Security (MBS) in Excess of the Amount Currently Authorized
5. Approval of AHP Loan Fund Guidelines

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Approval of the May Board Minutes
2. System 2000
3. Board Management Issues

The above matters are exempt under one or more of sections 552b(c)(2) and (9)(B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93–14627 Filed 6–16–93; 8:45 am]

BILLING CODE 6725–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meetings

TIME AND DATE: The Legal Services Corporation Board of Directors and its Office of the Inspector General Oversight and Audit and Appropriations Committees will meet on June 28, 1993. The meetings will commence at 8:00 a.m. and continue in the following order until all business has been concluded.

1. Office of the Inspector General Oversight Committee;
2. Audit and Appropriations Committee; and
3. Board of Directors.

PLACE: The Peabody Hotel, 149 Union Avenue, The Memphis Ballroom "C", Memphis, TN 38103, (901) 529–4000.

OFFICE OF THE INSPECTOR GENERAL OVERSIGHT COMMITTEE MEETING:

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of February 21, 1993 Meeting.
3. Approval of Minutes of May 24, 1993 Meeting.
4. Consideration of Committee Request to the Inspector General for a Value and Financially-Focused Report on the Office of the Inspector General's Activities for the Past 18-Month Period.
5. Consideration of Inspector General's June 9, 1993 Memorandum to the Board Regarding Financial Management of the Corporation.
6. Consideration of the Inspector General's Request to Retain the Office of the Inspector General's Unexpended Fiscal Year 1993 Funds.
7. Consideration of the Inspector General's Request for Committee Guidance Regarding the Corporation's Fiscal Year 1993 Financial Audit.

AUDIT AND APPROPRIATIONS COMMITTEE MEETING:

STATUS TO MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Draft Minutes of May 24, 1993 Meeting.
3. Consideration of the Inspector General's June 9, 1993 Memorandum to the Board Regarding Financial Management of the Corporation.
4. Consideration of the Inspector General's Request for Committee Guidance Regarding the Corporation's Fiscal Year 1993 Financial Audit.
5. Consideration of the Inspector General's Request to Retain the Office of the Inspector General's Unexpended Fiscal Year 1993 Funds.
6. Consideration and Review of the Corporation's Consolidated Operating Budget, Expenses, and Other Funds Available for the Seven-Month Period Ending April 30, 1993.
7. Consideration of Staff Report on the Possible Use of Punitive Damage Awards, or Portions Thereof, for the Provision of Legal Services to the Indigent.
8. Consideration of Status Report on Leasing the Corporation's Former Headquarters Office Space.
9. Consideration of Status Report on Effort to Secure Corporation Funds.

BOARD OF DIRECTORS MEETING:

STATUS OF MEETING: *Open*, except that portion of the meeting will be closed pursuant to a vote of a majority of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board will consider and vote on approval of the draft minutes of the executive session held on May 24, 1993. The Board will hear and consider the report of the General Counsel on litigation to which the Corporation is, or may become, a party. Further, the Board will consult with the Inspector General on internal personnel, operational and investigative matters. Finally, the Board will consult with the President on internal personnel and operational matters. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2) (5), (6), (7), and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5 (a), (d), (e), (f), and (h)].[1] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, DC 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of May 24, 1993 Meeting.
3. Chairman's and Members' Reports.
4. Consideration of Discussion on the Adverse Impact of Current Budgetary Constraints on Legal Services Providers.
5. Consideration of Declination of Representation and Other Unmet Legal Needs Survey Data.
6. Consideration of Whether to Publish for Comment Proposed Changes to Part 1602 of the Corporations' Regulations.
7. Consideration of Operations and Regulations Committee Report.
8. Consideration of Office of the Inspector General Oversight Committee Report.
9. Consideration of Provision for the Delivery of Legal Service Committee Report.
10. Consideration of Audit and Appropriations Committee Report.
11. President's Report.
12. Inspection General's Report.

BOARD OF DIRECTORS MEETING: (Continued)

CLOSED SESSION:

13. Consultation by Board with the Inspector General on Internal Personnel, Operational and Investigative Matters.
14. Consultation by Board with the President on Internal Personnel and Operational Matters.
15. Consideration of the General Counsel's Report on Pending Litigation to which the Corporation is, or May Become, a Party.
16. Approval of Minutes of Executive Session Held on May 24, 1993.

OPEN SESSION: (Resumed)

17. Consideration of Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to

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[1] As to the Board's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the Federal Register notice(s) corresponding to that/those Board meeting(s).

accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Paticia Batie at (202) 336–8800.

Date Issued: June 17, 1993.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 93–14713 Filed 6–17–93; 3:10 pm]

BILLING CODE 7025–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS MEETINGS NOTICE

TIME AND DATE: The Legal Services Corporation Board of Director's Provision for the Delivery of Legal Services Committee will meet on June 27, 1993. The meeting will commence at 1:30 p.m.

PLACE: The Peabody Hotel, 149 Union Avenue, THE MEMPHIS BALLROOM "C", Memphis, TN 38103 (901) 529–4000

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of May 24, 1993 Meeting Minutes.
3. Consideration of Status Report on Request for Proposals for Migrant Ombudsman Demonstration Projects.
4. Consideration of Status Report on Grantee Attorney Recruitment and Retention Effort Review.
5. Consideration of Status Report on Timekeeping Grant Solicitation.
6. Consideration of Status Report on Meritorious and Innovative Grant Projects.
7. Consideration of Status Report on Law School Grant Solicitation.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: June 17, 1993.

Patricia D. Batie,

Corprate Secretary.

[FR Doc. 93–14712 Filed 6–17–93; 3:09 pm]

BILLING CODE 7025–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 24, 1993.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *VP–5 Mining Co.*, Docket No. VA 92–112–R, etc. (Issues include whether the judge erred in upholding two imminent danger orders of withdrawal issued to VP–5, pursuant to 30 U.S.C. § 817(a), alleging that the east gob at its mine contained explosive levels of methane and that VP–5 violated 30 CFR 75.316.)

TIME AND DATE: 10:00 a.m., Thursday, July 1, 1993.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Consolidation Coal Co.*, Docket No. WEVA 91–1965 (Issues include whether the judge erred in vacating a citation charging Consolidation with a violation of 30 CFR 75.1707, which requires that a separate intake air escapeway be maintained.)
2. *Energy West Mining Co.*, Docket No. WEST 91–251 (Issues include whether the judge erred in concluding that Energy West's violation of 30 CFR 75.503 was of a significant and substantial nature and in assessing a civil penalty for the violation.)

Any person attending these meetings who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 93–14714 Filed 6–17–93; 3:31 pm]

BILLING CODE 6735–01–M

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federal register

Monday
June 21, 1993

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 109 and 189

Lead-Soldered Food Cans and Lead in Evaporated Milk and Evaporated Skim Milk; Proposed Rules

VOL 58 ISS 117 JE 21 1993 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 189

[Docket Nos. 82P-0371 and 91N-0165]

Lead-Soldered Food Cans

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to prohibit the use of lead solder in cans that contain food. This prohibition, if adopted, will apply to both domestic and imported foods. While the agency is also proposing to find that a prior sanction exists for the use of lead solder in food cans, FDA tentatively concludes that available toxicological and lead exposure data demonstrate that this use of lead solder may be injurious to health. Exposure to very low lead levels has been associated with adverse health effects in fetuses, infants, and children. Moreover, the current daily dietary lead intakes of infants and children approach or may exceed the provisional total tolerable intake level (PTTIL) that the agency has established for lead for these population groups. Therefore, because the use of lead solder in food cans has been found to add lead to food, FDA is proposing not to codify in its regulations the prior sanction for this use of this ingredient. FDA is also responding to a citizen petition requesting that the agency require that warning labels be placed on food cans that contain lead solder.

Elsewhere in this issue of the Federal Register, the agency is announcing the withdrawal of a proposal that would have set a tolerance for lead in evaporated milk and evaporated skim milk packaged in lead-soldered cans.

DATES: Written comments by August 20, 1993. Proposed compliance date for all affected products initially introduced or initially delivered for introduction into interstate commerce is 6 months after date of publication of the final regulation in the Federal Register.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION:

I. Background

Lead is ubiquitous in the environment. Concern about lead toxicity is also ubiquitous in the deliberations and literature of governments and national and international health organizations. Several of these organizations are considering lowering or have lowered their tolerable levels for lead exposure for children. FDA supports a lower tolerable level for lead and believes that it is necessary to reduce the exposure to lead as a contaminant of foods. As part of this concern, the agency is reviewing the use of lead solder for cans that contain food.

FDA actions regarding the presence of lead in the diet and the agency's concerns with lead toxicity in humans date back to the 1930's, before the Federal Food, Drug, and Cosmetic Act (the act) was signed into law in 1938. In the 1930's, and during the years that followed, the agency was specifically concerned with controlling the use of: (1) Lead-containing pesticides on fruits and vegetables; (2) lead solder in the evaporated milk "venthole" can; and (3) lead solder with the standard sanitary or "tin" can. The agency issued guidelines for lead levels in food and developed a better methodology for detecting lead in food. The agency also developed programs for monitoring lead levels in food to assess the effect that various agency actions had on reducing the presence of lead in the food supply and to identify those food processing methods that could result in high levels of lead contamination of food.

In the early 1970's, FDA conducted surveys of domestic and imported pottery, enamelware, pewter, and ceramic dishes. The agency encouraged the industries that made these products to reduce lead use in these articles and to reduce the migration of lead from the articles to food. The agency also helped these industries to initiate lead self-surveillance programs. In direct response to concerns over dietary lead intake, FDA also published several Federal Register documents directed toward reducing and controlling the possible lead intake from the diet.

In the Federal Register of December 6, 1974 (39 FR 42740 at 42743), FDA published a proposed tolerance of 0.3 parts per million for lead in evaporated milk and evaporated skim milk to reduce the level of lead in these foods packaged in lead-soldered cans. FDA has decided to withdraw this proposed tolerance because, as the agency explains in a notice published elsewhere in this issue of the Federal Register, the agency has tentatively decided that the use of lead solder should be eliminated in all food cans. The evaporated milk industry has voluntarily stopped packaging evaporated milk and evaporated skim milk products in lead-soldered cans.

In the Federal Register of August 31, 1979 (44 FR 51233), FDA published an advance notice of proposed rulemaking (ANPRM) that described the sources of lead in the food supply, the health concerns arising from the presence of lead in food, and the agency's plan to reduce dietary lead intake from the use of lead solder in food cans. Additionally, the notice solicited information on the prior-sanctioned status of lead solder for use in food cans. FDA received many comments in response to this notice. The agency will respond in this document to the comments that dealt with the use of lead solder for food cans.

In the Federal Register of June 1, 1989 (54 FR 23485), the agency published a proposed rule to establish a regulatory limit for the amount of lead that leaches from ceramic food storage pitchers. The document also solicited comments and information on the need to decrease leachable lead from other ceramicware and the methods that may be employed for this purpose. In addition, FDA announced its intent to take appropriate additional measures to achieve further decreases in dietary lead intake.

In the Federal Register of July 6, 1992 (57 FR 29734), the agency announced the availability of revised Compliance Policy Guide (CPG) 7117.07, "Pottery (Ceramics); Imported and Domestic—Lead Contamination." The agency lowered its lead release guidelines for ceramic foodware in this CPG.

II. Lead Solder Prior-Sanctioned Status

A. Regulatory Status

The regulatory status of lead solder used in food cans has been an issue for over a decade. In the Federal Register of August 31, 1979 (44 FR 51233), FDA's ANPRM suggested that lead solder was a poisonous or deleterious substance, but that it could also be a food additive under section 409 of the act (21 U.S.C. 348) because the lead from a lead-soldered can seam migrates to food.

In the 1979 ANPRM, however, FDA did not act upon its suggestion that lead solder was a food additive. Instead, the agency requested information on whether a prior sanction existed for the use of lead solder in food cans. If there is a prior sanction, the lead solder is excepted from being a food additive under section 201(s)(4) of the act (21 U.S.C. 321(s)(4)). FDA inquired about a

prior sanction because it felt that it was reasonable to assume that lead solder had been used by the canning industry for many years, and that it had been in use before the enactment of the Food Additives Amendment of 1958.

Because the burden to establish that a prior sanction exists rests with the person who desires to rely on this exception to the food additive definition, in the 1979 ANPRM, FDA encouraged interested persons to submit pertinent documents and evidence that would support the existence of such a sanction or exemption. In addition to this request, the agency placed on file in the docket (Docket No. 79N–0200) records and letters in its possession that bore on the prior sanction question.

Based on information already in FDA's files and on information supplied in response to the August 31, 1979 ANPRM, the agency is proposing to find that a prior sanction exists for the use of lead solder in making metal containers for packaging food, although it is also proposing to revoke that sanction.

B. Early History of Canned Food

The metal can has been in continuous use since 1810, when King George III of England granted a patent to Peter Durand for the use of "vessels of glass, pottery, tin, or other metals of fit materials," originally called canisters, to preserve food. The groundwork for the patent was laid by the earlier invention by Nicholas Appert in France of a system for preserving food in glass jars. In the United States, William Underwood established the business of preserving foods in glass containers in Boston in 1819. Underwood was followed closely by Thomas Kensett, who canned oysters, meats, fruits, and vegetables in New York City and who received a patent for use of "vessels of tin" for food preservation from President James Monroe on January 19, 1825.

Before 1900, tin containers used commercially for foods were either the hand-soldered open top or the hole-and-cap style. The latter type of containers were supplied to the canner, together with the caps, in the center of which was a small hole or vent. Food was placed in the can and the cap sealed by a special soldering iron. The venthole was then closed or tipped with solder, and the can processed and cooled.

Steady improvements took place over the next 10 years in methods of manufacturing and sealing metal cans. In 1904, almost 100 years after the original invention, a notable advance occurred. The Sanitary Can Co. patented a can sealed by mechanically crimping the lid in place instead of soldering it on. This advance made possible rapid automatic closing operations. The side seam of the "sanitary" can was still sealed with solder.

Lead contamination of canned food results primarily from the solder used to seal the side seam. The can body, with its side seam mechanically crimped together, passes over a pot of molten solder, where a rotating roll transfers solder to the seam. The excess solder is wiped from the can, and the can is cooled to set the solder before further handling. Solder is not applied to the inside of the can, but some solder must be bled through the ends (laps) of the side seam to make a strong, leakproof can. The minute amount of solder that bleeds through the laps is one source of the lead in the canned food. Another is the solder dust in the vicinity of the solder pot and wiping station. Splashes sometimes occur at the wiping station. These latter two sources can be minimized, but not eliminated, by good mechanical design of equipment and by good housekeeping. In recent years the industry has made considerable progress in minimizing these sources of lead contact with food.

C. Prior Sanction

FDA defined the term "prior sanction" in § 170.3(l) (21 CFR 170.3(l)) as "an explicit approval granted with respect to use of a substance in food prior to September 6, 1958 * * *." Another FDA regulation, § 181.5(a) (21 CFR 181.5(a)) states that a prior sanction "shall exist only for a specific use(s) of a substance in food, i.e., the level(s), condition(s), product(s), etc., for which there was explicit approval * * *."

The term "prior sanction" derives from section 201(s)(4) of the act, which excepts from the definition of a food additive any substance "used in accordance with a sanction or approval granted prior to" September 6, 1958, the date of enactment of the Food Additives Amendment. Before that date, the agency had approved specific uses of various food-contact materials or food ingredients by issuing letters and other statements that stated that in FDA's view these substances were "not considered unsafe," that they did "not present a hazard," or that the agency "did not object to their use."

To determine whether a prior sanction exists, the agency reviews all of its records and documents that deal with the issue, and any information submitted from sources outside of FDA. This evidence must present an explicit approval of a particular use prior to 1958. The agency places little weight on affidavits or other post-1958 statements concerning the earlier intentions of the agency, except to the extent that they describe the general position of the agency on a subject or refer to pre-1958 documentation of specific approval for the use of a substance.

FDA has accepted several kinds of evidence of approval as evidence of a prior sanction, including correspondence dealing with a specific substance issued before 1958 by authorized agency officials, scientific articles authored by FDA officials, or other official FDA records in which the agency approved the use of the substance at issue. The inclusion of a substance in a food standard regulation promulgated before 1958 also shows that FDA explicitly approved the use of the substance.

D. Comments to the Advance Notice of Proposed Rulemaking

FDA received three comments in response to its request in the 1979 ANPRM for information on the prior sanction issue. Two comments were submitted by industry groups and one by a consumer organization.

The consumer organization's comment conceded that a prior sanction may exist for lead solder in "tin" cans but contended that recent scientific studies require that the amount of lead in the diet be limited to protect the public health. The comment supported FDA's efforts to regulate lead in the food supply and recommended that the agency establish dietary limits on lead that will adequately protect population groups, such as infants and the fetuses of pregnant women, that are particularly susceptible to the toxic effects of lead.

The agency agrees with this comment that dietary sources of lead pose a continuing problem for infants and young children because of their lower body weight and higher relative absorption of lead, and that potentially high percentages of their diet could be composed of canned foods. The agency also believes that infants, children, and women of childbearing age, particularly pregnant women, should not be exposed to lead migrating from lead-soldered food cans.

The two industry comments submitted documents as evidence that use of lead solder in cans for packaging food is prior-sanctioned. FDA has relied on this information, along with information in its own files, to reach its tentative conclusion that the use of lead solder in manufacturing cans for packaging food is prior-sanctioned. These comments made the following points.

Between 1939 and 1958, FDA issued final standards of identity for 29

different canned fruits, fruit juices, and vegetables. These standards of identity were often accompanied by standards of quality and standards of fill of container. Usually the process of developing these standards involved hearings that were announced and concluded by notices in the **Federal Register**.

The comments contended, and FDA agrees, that these standards constitute agency approval of the use of cans that were made with lead-soldered side seams. For example, in hearings held in 1939 for the establishment of a standard of identity, standard of quality, and standard of fill of container for canned tomatoes, the expert witness for the government testified that there were two types of containers for canned tomatoes: "the usual type is the ordinary sanitary 'tin' container; the lid is attached to the can by means of a double seam." (See 4 FR 1590 at 1592, April 12, 1939.) The history of canning discussed above makes it clear that the ordinary sanitary "tin" container with lid attached by means of a double seam had a lead-soldered side seam.

In addition, many of the food standard regulations contain specific wording that refers to the use of lead-soldered tin cans for standardized foods. For example, the standard for canned tomatoes (21 CFR 155.190) uses the term "container with lid attached by double seam" (4 FR 3320, July 18, 1939). The findings of fact for the standard of fill of container for canned tomatoes, published in the **Federal Register** of July 18, 1939 (4 FR 3321), refers to "[t]he fill of container for tin cans with lids of a double seam * * *" under Finding of Fact 2.

In the **Federal Register** of August 18, 1942 (7 FR 6458 at 6460), the standard for canned fruit cocktail uses the term "container with lid attached by double seam" under Finding of Fact 4 in the section on fill of container. The standard for canned pineapple states under Finding of Fact 4 that the broken slices may be "* * * packed in containers, usually No. 10 cans * * *." (21 FR 930, February 10, 1956.) The standard for canned corn, which was published in the **Federal Register** of August 4, 1951 (16 FR 7644 at 7647), states under Finding of Fact 23 that "[a] small portion of the corn canned in these styles is packed in large-size containers, commonly known as number 10 cans." Under Finding of Fact 3 (16 FR 7644 at 7645), this same standard explains that "the containers are sealed under conditions creating a high vacuum in the container * * *."

Besides the standards for canned fruits and vegetables, FDA's regulation providing for inspection of canned shrimp (4 FR 2397, June 14, 1939) also refers to "Tin" under the heading "kind of container" in the processing charts giving container dimensions and processing times for canned dry-pack and wet-pack shrimp. Additionally, an order published in the **Federal Register** of July 2, 1942 (7 FR 4944), establishing regulations for the standard of fill of container for canned wet-pack and dry-pack shrimp in nontransparent containers, explains that:

> * * * [w]ater capacity of the standard can varies slightly from can to can dependent upon the profile ring used in can manufacture and setting of the chucks in the double seamer used by the packer. Average figures for water capacity of the number one standard tin can, the container most commonly used in the shrimp canning industry, * * *.

(Finding of Fact 13.) Thus, there is ample evidence in the food standard regulations that, before 1958, FDA recognized and specifically approved the use of lead-soldered "tin" cans.

The industry comments also provided information on FDA's position prior to 1958 on the use of lead solder in food cans (Refs. 1 through 22). Agency officials sent a number of letters in response to inquiries on the use of lead-soldered "tin" cans for canning food and on the safety of lead in food (Refs. 2 through 5, 7, 8, 11 through 16, 18, 19, and 21). The agency also issued press releases (Refs. 1 and 20) and wrote scientific reports dealing with the subject (Refs. 6, 9, 10, and 17). The industry comments also submitted an affidavit from an official who was employed with FDA from 1934 to 1974 that discussed the agency's knowledge of the use of lead solder for food cans and its belief that this use was safe (Ref. 22).

It is clear from the correspondence that FDA was aware of the use of lead-soldered "tin" cans and monitored the levels of lead in food. Whenever anyone asked FDA whether solder containing lead could be safely used in food containers, FDA told the individual that lead solder was acceptable and was not unsafe if used in accordance with current good manufacturing practice (Refs. 3, 7, 8, 11 through 15, 18, 19, and 21). The following exchanges are typical of these letters.

In response to an inquiry of May 1, 1953, from Dewey and Almy Chemist Co. about the content of lead in canned foods, J.K. Kirk, Assistant to the Commissioner, responded (Ref. 15):

> As far as the solder used, consideration should be given to section 402(a)(6) of the act which declares food adulterated "if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health." Over a period of many years we have conducted a number of investigations under varying circumstances to ascertain whether a wide variety of food commercially produced and packaged in soldered cans were subject to contamination with lead derived from the soldered component. In unusual circumstances, fragments were observed in metallic form to contaminate the food, but we have found no instance of solvent action of food on exposed solder surfaces to contribute more than a trace contamination with lead.

In 1956, J.K. Kirk responded to a consumer letter inquiring about the solder used in sealing cans used for food. Citing section 402(a)(6) of the act (21 U.S.C. 342(a)(6)) and alluding to a number of investigations on foods commercially produced and packaged in soldered cans, he concluded that "We have found no evidence of harmful contamination of food from contact with exposed solder surfaces in the can" (Ref. 19).

A 1957 letter (Ref. 21) to Since Metal Co. from R.J. McConnell, Assistant to the Director of the Bureau of Enforcement, stated:

> Our Kansas City District has asked us to respond to your letter of November 16, 1957, regarding lead-bearing solder used in fabrication of food containers, and inquiring if solder made up to 75% tin and 25% lead could be used. * * * It is common knowledge that most cans in which food is packed are fabricated with aid of solder to some degree. A great deal of study has gone into development of modern technological practices in this regard, to the end that lead contamination of food be avoided. * * *

The agency also agrees, and the data in these comments demonstrate, that in addition to responses to consumer inquiries, official FDA acceptance of lead solder in food cans is evident in official pronouncements, issued separately or in conjunction with other reports or correspondence. Because of the tin shortage during World War II, the National Academy of Sciences/National Research Council (NAS/NRC) conducted considerable research to develop a solder containing higher lead levels that was both functional and safe. This effort resulted in a determination by the War Production Board that solders containing lead content up to 98 percent of the alloy were safe for use on metal food containers (Refs. 6, 9, and 10). Several FDA officials furnished technical advice to NAS/NRC and participated in the formulation of container orders by the War Production Board requiring reduction in the tin content of sanitary food can solder (see affidavit by Lowrie M. Beacham (Ref. 22)).

E. Conclusion

Based upon its evaluation of the evidence available and the comments submitted in response to the request for prior-sanctioned status, the agency tentatively finds that a prior sanction, as provided for in section 201(s)(4) of the act (21 U.S.C. 321(s)(4)), exists for lead solder used in metal containers for food packaging. However, the agency is proposing not to codify this prior sanction in 21 CFR part 181. Sections 181.1(b) and 181.5(c) provide that the agency may prohibit the use of a prior-sanctioned food ingredient where scientific data or information demonstrate that use of the prior-sanctioned food ingredient may be injurious to health and thus in violation of section 402 of the act. As explained in the following sections, the agency tentatively concludes that the available data demonstrate that lead solder used at any level in food packaging may cause the food that comes in contact with the packaging to be injurious to health. Therefore, lead-soldered food cans should be avoided.

III. Canned Food Lead Exposure Estimates

In its analysis of dietary lead exposure from canned food, the agency has considered the three general population groups that are at the greatest risk from lead intake: Infants, children, and women of childbearing age, particularly pregnant women. The dietary intake of infants under 6 months of age is used to reflect the dietary intake of all infants. The dietary intake of children 2 years of age is used to reflect the dietary intake of all children. The dietary intake of women 25 to 30 years old is used by the agency to reflect the dietary intake of all women of childbearing age but especially pregnant women. The women in this group are also considered surrogates for fetal exposure. The agency made the following dietary lead intake estimates for these groups.

For the infant under 6 months, FDA has very limited data on potential dietary lead intake. The agency recently contacted the Infant Formula Council concerning the use of lead-soldered cans for packaging infant formula. According to information submitted by the Council, because of the voluntary action of this industry, infant formula that includes milk and soy-based concentrate and ready-to-feed formula compositions have not been packaged in lead-soldered cans since 1982 (Ref. 23). Data available from the Infant Formula Council's Lead Quality Assurance Program show that during the period of May, 1981 through February, 1982 on the average (some samples having more, some less), infant formula contained less than 10 parts per billion (ppb) of lead or 10 micrograms (μg) of lead per liter of formula (Ref. 23). These levels of lead are expected because of the wide distribution of lead in the environment, and because of the possible presence of lead in other metals, such as tin used to manufacture cans for packaging formula.

Since 1982, the agency has also monitored lead levels in infant formula as part of the Total Diet Study and has conducted an average of four analyses each year of infant formula with and without added iron. On the average, FDA found that these samples had no lead at a detection level of 10 ppb.

Based on the Total Diet Study data and Infant Formula Council data, the agency finds that at least from 1981 to 1991, no lead was detectable in infant formula at a detection level of 10 ppb. To ensure that the levels of lead are not overestimated, the agency has not assumed that all infant formula is contaminated with lead at a concentration equal to the detection level. Instead, the agency believes that a value of one-half of the detection level, or 5 ppb, will account for the possibility that some infant formula samples will be contaminated at a concentration below the detection level by lead from the environment. Therefore, lead is estimated to be present in infant formula at a concentration of 5 ppb (Ref. 24).

The agency estimated that at a mean consumption rate, an infant under 6 months of age would consume 615 grams (g) of formula per day (/day), and at a 90th percentile consumption rate, an infant would consume 1,015 g/day of formula (Ref. 24). Thus, if the formula contained 5 ppb (or 0.005 μg/g) of lead, the estimated daily lead intake for an infant under 6 months of age who consumes infant formula as its sole source of nutrition is 3 μg/day of lead (or 0.005 μg/g of lead times 615 g of formula/day) at the mean level of consumption and 5 μg/day of lead for the 90th percentile of consumption. These intakes would occur even though can manufacturers are not using lead-soldered cans to package the formula.

The agency has also estimated the dietary lead intake for 2-year-old children (the representative group for all children). The agency estimated that 20 percent of the food consumed by 2-year-old children, or 236 g/day, is canned food (Ref. 25). As determined from FDA's Canned Food Survey, the average lead level in food packaged in nonlead-soldered cans is 40 ppb, and the average lead level in food packaged in lead-soldered cans is 210 ppb.[1] (The presence of lead in food packaged in nonlead-soldered cans results because lead is ubiquitous in the environment and because lead is present in other metals, such as tin, used to manufacture cans.)

The Can Manufacturers Institute (CMI) has informed FDA that domestic can manufacturers ceased production of lead-soldered cans in November, 1991. Further, CMI estimates that after the summer of 1992, no new domestically-produced canned foods will be packaged in lead-soldered cans. Therefore, lead exposure from lead seam solder in food cans would be eliminated, with the exception of the lead resulting from the small amount of imported lead-soldered food cans. Assuming that canned foods are packaged only in nonlead-soldered cans, FDA calculated the average lead intake from eating canned food from the above food intakes and lead concentration. These dietary lead intakes for children amount to 9.4 μg/day from consumption of food packaged in cans (Ref. 26).

FDA made a similar evaluation for women 25 to 30 years old, who as a group represent all women of childbearing age but especially pregnant women who are considered surrogates for fetal exposure. The agency estimated that 20 percent of the food consumed by these women, or 355 g/day, is canned food (Ref. 25). Using the same lead concentration given above, FDA calculated the average dietary lead intakes for women 25 to 30 years old to be 14.0 μg/day from consumption of canned food packaged only in nonlead-soldered cans (Ref. 26).

The agency has also estimated the dietary lead intake for individuals and their children, assuming that all of their canned food intake comes from lead-soldered cans. This situation would occur if individuals selectively ate foods imported from countries using only lead-soldered cans (e.g., ethnic diets). When the average lead concentration in these foods packaged in lead-soldered cans is 210 ppb, the average dietary lead intake for 2-year-old children would be 50 μg/day and for women 25 to 30 years old, 75 μg/day.

IV. Lead Toxicity

A safe level of lead intake for infants, children, or adults has not been determined. Lead that is absorbed into the blood can result in injury to

[1] Capar, S. G., "Survey of Lead and Cadmium in Adult Canned Foods Eaten by Young Children," *Journal of the Association of Official Analytical Chemists*, 73:357–364, 1990.

virtually every system of the human body. These effects are well documented and were discussed by the agency in its ANPRM (44 FR 51233) and its proposed rule on ceramic pitchers (54 FR 23485). The well-recognized primary targets for lead toxicity are the nervous system (both central and peripheral), red blood cells, and the renal system (Ref. 27).

Effects in adults from exposure to lead that is absorbed into the blood have been observed at as little as 30 µg/deciliter (dL) lead in the blood (Ref. 27). This blood lead level has been associated with a significant elevation in blood pressure, which may be expected to increase the incidence of hypertension-related diseases (Ref. 27). Peripheral nerve dysfunction and red blood cell protoporphyrin elevation also have been observed at this blood lead level (Ref. 27).

Infants and children are particularly sensitive to exposure to lead. The adverse health effects of lead exposure in these population groups occur at lower blood levels than in adults. Further, infants and children ingest and absorb a larger amount of lead per unit of body weight compared to adults, and they also retain a larger fraction of absorbed lead (Refs. 28 and 290). In particular, lead is harmful to the developing brain and nervous system of infants and children.

FDA has reviewed recent scientific literature to determine the lowest level of lead in infants and children that causes adverse health effects, i.e., the lowest observed effect level (LOEL). Lead levels of 10 to 15 µg/dL in the blood of these population groups are associated with decreased intelligence and slower neurobehavioral development. These lead-induced injuries to the central nervous system of children are considered to be largely irreversible (Refs. 28 and 29). A study published in *The New England Journal of Medicine* concluded that childhood exposure to lead resulted in damage to the central nervous system that persisted into young adulthood, evident as decreases in academic success and cognitive functioning (Ref. 30). Exposure to very low levels of lead also can affect the heme biosynthesis pathway (i.e., the production of the iron-containing component of hemoglobin) in children. The heme synthetic enzyme, gamma-aminolevulinic acid dehydrase, is inhibited at blood lead levels of less than 10 µg/dL. Further, inhibition of the enzyme pyrimidine-5'-nucleotidase, which is necessary for cellular energetics involved with the formation of mature red blood cells, also occurs at about 10 µg/dL of lead in the blood (Refs. 28 and 29).

Fetuses are also sensitive to dietary lead intake, particularly during the development of their nervous system. The available data show that a pregnant woman's placenta does not present a significant barrier to lead uptake by the fetus, and umbilical cord levels of lead as low as 10 µg/dL in fetuses have been reported to adversely affect fetal neurobehavioral development (Ref. 31). Further, shorter gestational period and lower birth weight have been associated with fetal blood lead levels of 10 to 15 µg/dL (Ref. 29).

In January 1985, the Centers for Disease Control (CDC) issued a statement on lead entitled "Preventing Lead Poisoning in Young Children," in which they established guidelines defining elevated blood lead levels and toxicity. CDC defined an elevated blood lead level to be 25 µg/dL. In their statement, CDC recommended that food cans, if possible, be designed so that lead does not leach from soldered seams.

In October 1991, CDC published a revision of their statement, in which they established new, multitier guidelines outlining actions to be taken for elevated blood lead levels in young children. This revision referenced scientific data revealing that much lower blood lead levels than 25 µg/dL produce adverse health effects (Ref. 32). As a result, CDC has lowered, to 10 µg/dL, the level at which action should be initiated to reduce children's blood lead levels. Ten µg/dL is currently the lower end of the range of lead levels at which adverse health effects are documented. Other Federal agencies, such as the Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD), as well as the World Health Organization (WHO) have concerns for the blood lead levels in sensitive population groups, and some agencies, including EPA and HUD, have developed plans that deal with aspects of the childhood lead exposure problem (Ref. 32).

In the proposed rule on ceramic pitchers (54 FR 23485), FDA announced a provisional tolerable daily intake range of 6 to 18 µg/day for lead for a 10-kilogram (kg) child (22 pounds). As explained in that proposal, the agency calculated the lower end of this range from an EPA health advisory for lead exposure in the blood. The blood lead level of concern to EPA was 10 µg/dL from all sources. FDA calculated the upper end of the range from the 25 µg/kg provisional tolerable weekly intake for lead from all sources established by the Joint Expert Committee on Food Additives of the Food and Agriculture Organization (FAO) and WHO.

The agency has considered the recent epidemiological and toxicological evidence regarding the adverse effects of lead at low blood levels and tentatively finds that this range is no longer reasonable. Because there are no known levels of lead intake at which adverse health effects do not occur (Ref. 27), the agency finds that the PTTIL of lead for infants and children should be based on the LOEL of lead in the blood. The PTTIL is the lead intake level that provides a reasonable margin of protection against the known adverse effects of lead. Considering that toxic effects have been well documented to occur at levels as low as 10 µg/dL in the blood of infants and children (Ref. 27), the agency tentatively finds that this level of lead in the blood should be used to set the PTTIL for these sensitive population groups. Because the LOEL of lead in the blood of fetuses is 10 µg/dL, the agency tentatively finds that this level should also be used for limiting the total lead intake for women of childbearing age who are pregnant.

The agency has calculated the total daily lead intake from all sources (e.g., air, soil, dust, water, and food), in µg/day, that would result in a blood lead level of 10 µg/dL, or the LOEL, in fetuses, infants, and children. These calculations were based on the estimates made by EPA that for every µg/day of lead intake, blood lead levels increase 0.16 µg/dL in children and 0.04 µg/dL in adults (Ref. 27). The agency has determined, therefore, that a total daily intake level for lead of 60 µg/day for infants and children under the age of 7 and 250 µg/day for women of childbearing age who are pregnant corresponds to the 10 µg/dL LOEL of lead in the blood.

In this document, FDA is proposing to establish a PTTIL for lead based upon the estimated total intake levels for lead and an uncertainty factor of 10. The use of an uncertainty factor is consistent with the procedure used by EPA in 1985 to calculate exposure numbers and incorporates an additional margin of protection in the PTTIL. In the 1989 proposed rule on ceramic pitchers (54 FR 23485), FDA used a factor of 5 because EPA had used this factor in 1985 in developing a health advisory and a recommended maximum contamination level for lead in drinking water (Ref. 33). However, EPA has discontinued its use of a factor of 5 for lead in drinking water (Ref. 33). Because FDA, EPA, and NAS have most commonly used an uncertainty factor of 10 to derive intake levels from human exposure data (Ref. 33), FDA has

tentatively decided that it is more appropriate to apply this usual uncertainty factor of 10 in the calculation of the PTTIL for lead. Therefore, FDA is proposing to establish a PTTIL for lead of 6 µg/day for infants and children and 25 µg/day for women of childbearing age, who are pregnant. These values are considered provisional because they are based on the current LOEL of lead in the blood, which may be reduced if additional research shows that even lower blood levels cause adverse health effects.

V. Proposal To Prohibit Use of Lead Solder in Food Cans

Based upon its evaluation of available evidence, the agency has tentatively found that a prior sanction exists for lead solder used in metal containers for food packaging. Section 201(s)(4) of the act states that any substance used in accordance with a prior sanction is exempt from the definition of a food additive, and therefore, lead solder used in food containers is not a food additive and not subject to regulation under section 409 of the act. However, the lead solder may be subject to regulation as an added poisonous or deleterious substance that is unsafe under section 406 of the act or as a prior-sanctioned food ingredient that may be injurious to health under 402(a)(1) of the act.

In the past, FDA has considered the possible establishment of a tolerance for lead from lead solder used for food cans under section 406 of the act (21 U.S.C. 346). This section allows the agency to set a tolerance for an added deleterious substance if the substance is required in the production of food or cannot be avoided by current good manufacturing practice. However, the agency now believes that it is unnecessary to seal food cans with lead solder because there are alternative processes available. Nonlead-solder techniques that exist for closing food cans include forge welding, wire welding, and the draw-redraw process which produces two-piece cans. Therefore, the agency finds that the use of lead solder in food cans is not required and can be avoided.

In addition, FDA has been in contact with the regulated industry concerning the elimination of the lead-soldered food can. On June 27, 1990, the National Food Processors Association (NFPA), which represents most of the major food processing companies in the United States, gave testimony before the Committee on Environment and Public Works in the U.S. Senate on the reduction of lead exposure. NFPA itself recommended that the food processing industry cease the production, packaging, and distribution of food in lead-soldered containers, including canned foods imported by its members. On December 6, 1991, CMI and NFPA announced that as of November 28, 1991, lead-soldered food cans were no longer produced in the United States. The agency recognizes the efforts and steps that the canning industry has taken to eliminate the use of lead solder in food packaging. For the above reasons, the agency is not proposing to establish a tolerance for lead in solder for food cans under section 406 of the act.

Any added poisonous or deleterious substance that may cause food to be injurious to health is considered to adulterate food under section 402(a)(1) of the act. The agency has reviewed available data to determine whether the use of lead solder in food cans may be injurious to health. In conjunction with this review, FDA is establishing a PTTIL for lead from all sources for infants, children, and women of childbearing age who are pregnant, as previously discussed in the lead toxicity section of this proposal. The PTTIL is 6 µg/day for infants and children, and 25 µg/day for women of childbearing age who are pregnant. The agency has compared these PTTIL levels for lead to the dietary lead intake experienced by infants, children, and pregnant women if food is packaged in lead-soldered cans or in cans without lead solder.

FDA estimates from available data that the dietary lead intake for an infant under 6 months of age is 3 µg/day for mean consumption and 5 µg/day for 90th percentile consumption of infant formula. The agency recognizes that infant formula is packaged in cans without lead solder, and that this lead dietary intake is based on reasonable estimates that infant formula contains 5 ppb of lead. Therefore, the dietary lead intake for infants consuming canned infant formula that is not packaged in lead-soldered cans would be very close to the PTTIL for lead exposure from all sources for infants (6 µg/day). Considering that the average lead concentration is 0.21 µg/g in all types of foods packaged in lead-soldered cans and 0.04 µg/g in foods packaged in nonlead-soldered cans (Ref. 25), the agency finds that packaging infant formula in lead-soldered cans is likely to result in increased lead levels in infant formula. Thus, it appears that infant formula packaged in lead-soldered cans will result in dietary lead intake levels greater than the PTTIL for infants, and there is a reasonable possibility that these levels will result in adverse health effects in infants consuming the formula. Thus, the agency tentatively concludes that the use of lead solder in cans for infant formula may cause the formula to become adulterated under section 402(a)(1) of the act.

The agency has also evaluated the dietary lead intake for 2-year-old children (the representative group for all children) and for women 25 to 30 years old (the representative group for all women of childbearing age but especially pregnant women who are considered surrogates for fetal exposure). As previously discussed in section III. of this proposal, FDA estimates the dietary lead intake levels for children and for women 25 to 30 years old to be 9.4 µg/day and 14.0 µg/day, respectively, from consumption of food packaged in nonlead-soldered cans. Thus, for children, the dietary lead intake from canned food is greater than the PTTIL for lead from all sources (6 µg/day), even if no lead solder is used.

The agency also estimated the dietary intake of lead that would result if all food cans were lead-soldered. This situation could occur if lead-soldered cans were not prohibited for use in contact with food. The dietary lead intake from eating canned foods only packaged in lead-soldered cans would be 50 µg/day for 2-year-old children and 75 µg/day for women 25 to 30 years old. Thus, the use of only lead-soldered food cans would result in a 5-fold increase in the dietary lead intake for children and women 25 to 30 years old from consumption of canned foods. The PTTIL for both of these sensitive population groups would be greatly exceeded if lead solder was permitted for use in cans intended for contact with food.

The agency also has reviewed the dietary lead levels measured as part of its Total Diet Study. The data demonstrate that from 1980 to 1988, the dietary lead intake was reduced from 34 µg/day to 5 µg/day for infants 6 to 11 months of age, and from 44 µg/day to 5 µg/day for children 2 years old (Ref. 34). This corresponds to reductions in dietary lead intake of 85 percent and 89 percent, respectively, for these sensitive population groups. For women 25 to 30 years old, the dietary lead intake was reduced from 30 µg/day in 1984 to 9 µg/day by 1988 (Ref. 34), which corresponds to a reduction in dietary lead intake of 70 percent. (Nineteen eighty-four is the earliest date for which data is available for this population group). Preliminary data for the period 1989 to 1990 indicates that reductions in dietary lead levels have either leveled off or are continuing to decrease at a low rate.

During the period from 1979 to 1992, the amount of domestically produced

cans using lead solder decreased from 90 percent to 0 percent (Ref. 34). Food processing is one of the major sources of lead in foods, and the major contribution of lead from food processing is from the use of lead solder in food cans. FDA and others have estimated that in the past, the contribution of lead solder from food cans to the dietary lead levels was from 14 percent to 45 percent (Ref. 34). Therefore, one of the main factors responsible for the reduction of lead levels in the diet from 1980 to 1988 is undoubtedly the reduction in the use of lead solder in food cans.

After reviewing the above information, the agency finds that the use of lead solder in food cans adds lead to food. The agency has determined that the PTTIL for children and women 25 to 30 years old would be greatly exceeded if lead solder was used in all food cans. Further, the daily lead intake for an infant under 6 months of age consuming canned infant formula that is not packaged in lead-soldered cans can be very close to the PTTIL for lead exposure for infants, and the use of lead-soldered cans to package infant formula may result in dietary lead intake levels greater than the PTTIL for infants. The agency also finds that levels of lead that exceed the PTTIL is likely to result in adverse health effects. Further, the PTTIL values are considered provisional because they are based on the current LOEL of lead in the blood, which may be reduced if additional research shows even lower levels cause adverse health effects. Currently, there are no known levels of lead at which adverse health effects do not occur.

In conclusion, the agency finds that there is a need to control the dietary lead intakes for all consumers, especially infants, children, and women of childbearing age, particularly pregnant women, and that lead from lead solder is an added deleterious substance that may render food injurious to health. However, the agency finds that lead solder is a prior-sanctioned ingredient, and that this finding excepts lead solder form consideration as a food additive under section 409 of the act. The agency also concludes that it cannot set a tolerance for lead in lead solder under section 406 of the act because of its finding that lead solder is not required and can be avoided as an option in making cans. However, the agency finds that food packaged in lead-soldered cans will be adulterated as a matter of law under section 402(a)(1) of the act, because these foods will contain lead, which may render them injurious to health. Therefore, the agency is proposing to revoke the prior sanction for lead solder used in food cans and to prohibit its use.

VI. Citizen Petition

On November 29, 1982, the agency received a citizen petition to require that warning labels be placed on cans soldered with lead (Docket No. 82P–0371/CP). The petitioners expressed their concern that lead migration into canned food from lead-soldered seams is greatly accelerated after the cans have been opened, at least for packaged acidic food such as tomatoes. The agency had already published an article reviewing this situation in 1978[2] and published an additional article in 1987.[3] Based upon this information, the petitioners requested that the agency promulgate a final rule that would provide for warning labels alerting consumers not to store acidic foods in opened cans. Specifically, the petitioner called for a requirement that all tin cans made with lead solder and packed with food at a pH of 4.6 or less bear the following label:

IMPORTANT: This food should not be stored in the can or in any other metal container after opening.

The petitioner also presented evidence that refrigerated stored canned juices develop increasing lead levels upon standing under refrigeration over a period of days.

FDA recognizes the petitioners' assertions and also recognizes that all manufacturers of infant juices have ceased to package these products in cans, as was discussed in the 1979 ANPRM (44 FR 51233 at 51237). Further, during the time since the agency received this citizen petition, FDA has monitored changes in the food industry as it converted food packaging that did not involve the use of lead solder. This voluntary action is a reason why the agency did not take action on this citizen petition. However, FDA finds that because the agency is proposing to prohibit the use of lead solder in all food cans in this proposal, further action on the citizen petition may no longer be necessary. If the agency adopts a final regulation that is consistent with this proposal, FDA will have responded fully to the concerns expressed in this citizen petition, and the specific request to use the suggested warning label will be moot.

[2] Capar, S.G., "Changes in Lead Concentration of Foods Stored in Their Opened Cans," *Journal of Food Safety*, 1:241–245, 1978.

[3] Capar, S.G., and M. Luges, "Lead Content of Foods Stored in Cans after Opening," *Journal of Food Safety*, 8:187–197, 1987.

VII. Imported Lead-Soldered Cans

The agency has also considered the potential exposure to lead from imported foods and the effect that this proposal may have on those countries that export food to the United States. Although it is true that much food that is imported is not packaged in lead-soldered cans, the importation of food in lead-soldered cans will also be prohibited if the agency adopts this proposal.

In an effort to alert countries that are engaged in trade with the United States and that export food in lead-soldered cans, and to learn about the different practices that exist in other countries with regard to the use of lead solder, the agency sent letters to over 65 nations (Ref. 35). The agency asked about: (1) The relative proportion of canned food in lead-soldered cans versus food in nonlead-soldered cans; (2) the types of food canned in lead-soldered cans; (3) the regulatory limits that the country has for the amount of lead in food and especially canned foods; and (4) any programs the country has adopted to reduce dietary lead intake.

FDA advised these countries that much of the canned food industry in the United States has reduced or eliminated uses of the lead-soldered can in favor of cans that are manufactured and sealed without the use of lead solder. The agency also informed these countries that in a relatively short time, based on information that the agency has, the American canning industry would voluntarily stop packaging food commodities in lead-soldered cans. With the eventual elimination of the lead-soldered can from domestic markets, FDA is concerned and has talked to other national food departments about lead intake in the United States resulting from consumption of food in lead-soldered cans imported from their countries.

Most of the nations that responded were aware of, and concerned about, the presence of lead solder in food cans. Most of these nations have established their own limits for the presence of lead in food, and some others have adopted the Codex Alimentarius (FAO/WHO) limits for lead in individual foods. All of the responding countries are aware of the toxicity of lead and the problems of low dietary lead intake. Additionally, all are either continually attempting to reduce lead levels or are monitoring lead levels in food in their countries.

The agency believes that through these letters, this proposal, and other discussions held at world forums over the past few years on reducing lead in the diet, it has provided notice of its

concerns about lead-soldered cans to those exporters who may need to convert their can manufacturing plants away from using this substance. The agency urges the elimination of the use of the lead-soldered can for food packaging worldwide.

VIII. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

IX. Economic Impact

FDA has examined the economic implications of the proposed rule to amend 21 CFR part 189 as required by the Regulatory Flexibility Act (Pub. L. 96–354) and Executive Orders 12291 and 12612. The agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In accordance with Pub. L. 96–354, FDA has also determined that this proposed rule will not have a significant adverse impact on a substantial number of small businesses. Finally, FDA finds that there is no substantial Federalism issue which would require an analysis under Executive Order 12612.

A. Options Considered

1. Warning Label

As discussed in section VI, the agency has received a citizen petition asking that warning labels be placed on cans soldered with lead. The petitioners requested that the agency promulgate a final rule that would provide for warning labels alerting consumers not to store acidic foods in opened cans. However, the agency has not taken action on this citizen petition because many manufacturers have voluntarily discontinued packaging in lead soldered cans, and because it considers the statute to compel another course of action.

2. Ban the Use of Lead Solder in Food Cans

Because serious health effects are associated with exposure to very low lead levels in the diets of infants, children, and pregnant women (fetuses), and because lead soldered cans tend to leach large amounts of lead into the can contents, a ban would eliminate this source of lead in the diet.

3. Establish Tolerance Levels for Lead Leaching Into Food

Some countries have adopted maximum contaminant levels ranging from 0.1 ppm to 6 ppm for any canned solid food. For example, the use of lead-soldered cans is allowed in Denmark and the Benelux countries only if the can has extra inner protection, such that the contamination of foodstuffs by lead may not increase by canning (Ref. 36). However, because lead is a poisonous substance, and lead solder is not required in the production of cans and thus is avoidable in food, under section 406 of the act, a tolerance level for leachable lead into food cannot be set.

B. Costs

1. Domestic Impact

No additional cost to domestic manufacturers should result from prohibiting the use of lead solder in food cans because lead soldered can production in the United States has been eliminated (Ref. 37).

2. International Impacts

According to data from The Almanac of the Canning, Freezing, and Preserving Industries (Table 1), the United States imports approximately 2.3 billion pounds of canned food (annually) worth $1.67 billion (Ref. 38).

As discussed in section VII, in an effort to alert other countries that currently export food in lead-soldered cans to the United States and to learn about their canning practices, the agency sent letters to 65 nations that might be affected by this proposal. Seventeen nations responded that they no longer use lead solder in cans intended for export to the United States. The volume of canned food exported to the United States packaged in other than lead-soldered cans, reported by six of the respondents, totaled 0.5 billion pounds.

Other respondents, including Australia, Belgium, Denmark, France, and Guatemala (see Table 1), noted that canned meat exported to the United States was packaged in lead-soldered cans. Of these, Australia and France have stated to FDA that no regulatory change will take place in their countries in the near future. In addition, Australia has informed FDA that the costs of switching to another canning process may be considerable (Ref. 39). Guatemala exports low-acid food in lead-soldered cans but will change to nonlead packaging in 1992 (Ref. 40).

TABLE 1

Country	Volume of lead soldered canned food exported to the U.S. (1,000 pounds)	Costs of switching to other methods
Australia	6,400	Considerable (Ref. 39).
Denmark	66,360	Unknown (Ref. 41).
France	80	Unknown (Ref. 42).
Guatemala	1,440	$1.5 million (Ref. 40).
Belgium	Unknown	Unknown.

The remaining 43 countries have not responded. Consequently, their manufacturing practices and their importance as sources of canned food for the United States are not known.

Information on Canadian and Mexican exports to the United States was gathered separately. No major impact is expected in Canada as a result of this regulation because 98 to 99 percent of Canadian industry does not use lead-soldered cans (Ref. 43). Also, no major impact is expected in Mexico because according to Mexican health officials, the use of lead-soldered cans for packaging food will be prohibited by January, 1993 (United States of Mexico, Official Mexican Norm NOM–EE–225–19992). They also stated that their industry is committed to eliminate the use of lead-soldered cans by October, 1992.

The exact amount of food in lead-soldered cans imported to the United

States is not known. However, FDA believes that at most 10 percent (230 million pounds) of imported canned food is packaged in lead-soldered cans (Ref. 44). To estimate the number of food cans involved, the agency assumes that the average weight of one can is 1 pound. Thus, approximately 230 million lead-soldered cans are imported to the United States annually.

There are three possible replacements for lead-soldered cans: Tin soldered cans, two-piece (drawn) cans, and welded cans.

(1) *Tin soldered cans.* Any firm that switches to tin solder would have to pay $5.20 per pound of tin. Lead solder costs $0.58 per pound. One pound of tin or lead will solder 500 cans. If one line makes 64 million cans annually (266 cans/minute × 60 minutes × 16 hours × 250 working days), the incremental cost of switching from lead solder to tin solder is $590,000 per year. Given the magnitude of the cost change (896 percent increase), and that it is a recurring cost, firms are unlikely to chose this option.

(2) *Two-piece (drawn) cans.* Switching to two-piece cans carries a one-time cost of $12 million to $15 million in equipment per can-manufacturing line. This type of process is used mainly to produce very large numbers of cans that are the same size such as soda cans. Firms needing to convert from the use of lead-soldered cans are unlikely to choose this option because not only is this choice costly, but it is impossible to adjust the line to make different sizes of cans (Ref. 45).

(3) *Welded cans.* Welded cans use less metal than the same size two-piece cans and do not need the tin coating used for soldered cans. An estimated 425 to 450 welding lines can match the output of 740 soldered-can lines. Any firm needing to convert its equipment to welding technology would incur a one-time cost ranging from $700,000 to $1.5 million per line. Because of lower long-run costs, firms who would have to convert will most likely choose welding technology (Ref. 45).

Banning lead soldered cans will result in increased demand for welded cans by food processors who export canned food to the United States. To the extent that welded can manufacturers have excess capacity to meet this increased demand, there will be no additional costs. However, FDA has no data on the existing capacity of individual welded can manufacturers. In order to determine the costs of this proposal, FDA considers two scenarios, that of excess capacity and no excess capacity.

Because demand for welding equipment has increased during the last 10 years, the number of can manufacturers who switched to welding technology may have increased so that excess capacity may exist. For every soldering line replaced by a welding line, capacity will have increased by a factor of 1.7 per line. Therefore, if the capacity of one soldering line is 10 million, a welding line makes 17 million cans. With excess capacity of welded can production, increased demand for welded cans will cause very small cost increases for exporting countries.

If foreign manufacturers don't have enough production capacity of welded cans to meet the increased demand, but have soldering lines, they will need to convert some soldering lines to welding lines. As mentioned earlier, converting a line will have a one-time cost of $700,000 to $1.5 million. If for example, in order to meet their respective increase in demand, each of the 47 countries (43 who have not responded, plus Australia, Denmark, France, and Belgium, which are currently exporting lead soldered food cans to the United States) replaces at most one soldering line with a welding line, the total costs will range from $33 million to $70 million.

Although FDA is aware of the large volume of lead-soldered canned food imported from Denmark, the costs of switching to other canning methods are not known. FDA requests comments regarding costs on this matter.

C. Benefits

The benefits of the proposed action to ban lead-soldered cans in the United States will be reduced adverse health effects in fetuses, infants, and children who are particularly sensitive to exposure to lead. The adverse health effects of lead exposure in these population groups occur at lower blood levels than in adults.

As discussed in section IV, the agency finds that the total exposure to lead for infants and children should be based on the LOEL of lead in blood, or 10 µg/dL. Exposure to this level of lead can pose adverse health effects such as hampered development of the brain and nervous system.

Benefits will be estimated for children age one to six and pregnant women (who are considered surrogates for fetal exposure) who are at risk of reaching blood lead levels greater than 10 µg/dL. Except for infants born from pregnant women with blood lead levels over 10 µg/dL, infants under 1 year of age are not likely to be directly affected by this regulation because they consume either infant formula or breast milk. According to the Infant Formula Council, infant formula has not been packaged in lead-soldered cans since 1982 (Ref. 23). Also, little or no imported infant formula is used in the United States.

To assess monetary benefits, this analysis uses a study by CDC, which looked at the effect of lead reduction on lifetime earnings (Ref. 46). The CDC study analyzed three pathways to estimate the change in lifetime earnings that would result from a change in blood lead level of 1 µg lead/dL. Each pathway included an estimate of a quarter of an IQ point decrease for each 1 µg lead/dL of blood increase. The first pathway used a measured effect from a change in blood lead to a change in IQ to a change in wages (0.125 percent). The second pathway added the decreased educational attainment (grade reached before quitting) from increased lead intake as measured by tooth lead levels and the subsequent change in wages (0.197 percent). The third looked at the effects in labor force participation rates resulting from a failure to graduate from high school as a result of higher tooth lead levels (0.118 percent). To normalize from tooth lead to blood lead, a factor of 0.25 was used in the latter two studies. To estimate the change in the present value of life-time earnings, CDC researchers added the three pathway estimates and multiplied the sum by the average discounted change in lifetime earnings.

However, although each of the pathways purportedly measures effects between a change in blood lead and a change in lifetime income, adding the benefits from each of the three pathways overestimates the total effect. Under statistical principles, the changes in wage rates for the three pathways can be added only if the variables are mutually exclusive. The total benefit estimated by adding the three pathways is inappropriate because they are correlated (Ref. 47). In order to estimate the independent effects of IQ changes, changes in school quit rates and changes in labor force participation rates, one data set must be used, which in effect, holds constant contributory independent variables. Thus, this study will use the upper-bound estimate from the second pathway (0.197 percent). Therefore, from an expected change in lifetime earnings of $260,000 (Ref. 46), the decrease in the net present value of lifetime earnings from a 1 µg/dL change in blood lead levels will be $512 (0.197 percent × 260,000). As there may be other independent effects of lead on lifetime earnings, this may be considered the lower-bound for benefits. Also, benefits are underestimated because this (the human capital) approach, unlike the willingness-to-pay

approach, does not include utility from having a higher IQ in nonlabor activities.

The current regression estimates, based on a small number of studies, do not preclude extrapolating the effect of lead and IQ through the origin. However, the calculations in this analysis only estimate benefits for children and pregnant women with blood lead levels above 10 μg/dL. Because the agency does not have a "best fit" curve for effects below that level, they will not be included in this analysis.

The following table shows preliminary estimates of the current lead incidence levels in the two populations of concern (Ref. 48). These values show the estimated incidence for individuals that are predicted to exceed the blood lead level of concern.

TABLE 2.—BACKGROUND INCIDENCE OF LEAD LEVELS

Population group	Blood lead level	Estimated incidence
Children, age 2.	10 μg/dL ..	9.1 percent.
Women of childbearing age.	10 μg/dL ..	1.9 percent.

Using these estimates to determine current dietary exposure, and assuming the same risk exists for children ages one through six as for 2 years old, then approximately 2 million children between the ages of 1 and 6 have blood lead levels greater than 10 μg/dL blood.

Approximately 32 billion pounds of canned food are consumed in the United States annually, of which approximately 2.3 billion pounds (7.2 percent) are imported. As in the cost estimate, it will be assumed that, at most, 10 percent (230 million pounds) of imported canned food consumed is packaged in lead-soldered cans. This is equivalent to 0.7 percent of all canned food consumed in the United States.

To find the amount of lead attributable to cans, the average lead level in food packaged in lead-soldered cans was determined by FDA's Canned Food Survey to be 210 ppb as opposed to 40 ppb in all other types of canned food. Thus, the lead solder contribution of lead in canned food is 170 ppb. Also, from the same studies, children consume an average of 236 g/day of canned food. If, as was assumed above, 0.7 percent or 1.6 g/day of canned food consumed is from imported lead-soldered cans, the dietary lead intake would be 0.27 μg lead/day (1.6 g/day × 170 ppb). By using an absorption rate factor for lead of 0.16 for children, 0.27 μg lead/day ingested will result in a blood lead level of 0.04 μg/dL.

As discussed above, the net present value of lifetime earnings from a 1 μg/dL change in blood levels will be $512 (0.197 percent × 260,000). Thus, assuming risk is linear, the benefit of reducing blood levels by 0.04 μg lead/dL of blood for the 2 million children estimated to be at risk annually would be $41 million ($20 per child).

These benefits will continue into the future although not at the same rate. As the Federal government's lead abatement program continues, fewer children will be at risk of having blood lead levels exceeding 10 μg lead/dL. Assuming that half of the problem is solved each year, total discounted benefits (at 6 percent) over the next 20 years would be $78 million.

As discussed in section IV, fetuses are very sensitive to dietary lead intake, especially during the development of their nervous system. There is no clear evidence that the placenta represents a significant barrier to lead uptake by the fetus. Umbilical cord lead levels as low as 10 μg lead/dL blood in fetuses have been reported to adversely affect their neurobehavioral development. Lower birth weight and shorter gestational age have been associated with fetal blood lead levels as low as 10 to 15 μg/dL.

Benefits to fetuses, from reduced blood lead levels, are reduced risk of infant mortality, resulting from lower birth weight and shorter gestational age. The effect of lead reduction on lifetime earnings will also be assessed for the surviving fetuses (neonates).

There are approximately 58 million women between the ages of 15 and 44 (childbearing age) per year. Of these women, an average of 3.6 million (6.2 percent) are pregnant. Using the incidence estimates in Table 2, 68,400 of these pregnancies are estimated to be at risk for adverse health effects from maternal lead (>10 μg/dL).

Dietary exposure to lead for pregnant women has been evaluated in a manner similar to that used for children. According to agency estimates, 355 g/day in a woman's diet is from canned food of which 2.4 g are from lead soldered canned food. At 170 ppb, the lead contribution from lead soldered cans would be 0.4 μg lead/day. Using the maternal (adult) absorption rate of 0.04, the blood lead level in the fetus (attributed to lead-soldered canned food) would be 0.016 μg lead/dL blood.

From the CDC study, it is assumed that reducing the maternal blood lead levels by 1 μg lead/dL results in a decrease in the risk of infant mortality of 10^{-4} (or 0.0001) (Ref. 46). Using $3 million per life saved, a 1 μg lead/dL decrease in maternal blood lead levels would then result in a $300 benefit per individual. Thus, the average benefit of reducing the blood lead level of 68,400 pregnant women at risk by 0.016 μg/dL is $330,000 per year. Since the risk reduction of infant mortality from this regulation is so small, the reduction in cognitive damage and its effect on lifetime earnings will be assessed using the same estimates as for children and will be added in the benefits for the surviving fetuses and neonates. Assuming 68,400 fetuses have blood lead level reductions of 0.016 μg lead/dL, the increase in the value of lifetime earnings is $560,000 ($8 per neonate).

Thus, the total benefit of reducing maternal blood lead levels by 0.016 μg lead/dL is $900,000 annually. Assuming that the Federal government's lead abatement program solves half the problem each year, the total discounted benefits (at 6 percent) over the next 20 years would be $2 million.

In summary, the reduction in blood lead levels due to ingestion of food packaged in lead-soldered cans has a total annual benefit of $80 million.

D. Summary

FDA has determined that, as a result of this regulation, there will be little or no additional cost imposed on domestic can manufacturers and food processors since most of them no longer make or use lead soldered cans. In addition, countries which now export lead-soldered canned goods to the United States are likely to convert to welding technology. Based on the assumption that substantial excess capacity exists in these countries, the one-time, upper-bound costs range from $33 million to $70 million.

Assuming that: (1) The population growth rate in the United States continues to be near the replacement rate; (2) at most, 10 percent of imported canned food is packed in lead-soldered cans; and (3) half of the lead problem is reduced each year due to Federal efforts, the reduction of blood lead levels due to ingestion of food packed in lead-soldered cans yields a monetary benefit (discounted for the next 20 years at a 6 percent interest rate) of $80 million in increased lifetime earnings.

X. Effective Date

The agency is proposing to prohibit imported and domestically manufactured lead-soldered food cans from being introduced or delivered for introduction into interstate commerce 6 months after publication in the **Federal Register** of a final rulemaking on this action. However, the agency will allow

for the use of existing stocks of lead-soldered canned foods to be offered for sale within 1 year of the date of publication of the final rulemaking.

XI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. References 1 through 25 were submitted in response to the agency's August 11, 1979, proposal by the Evaporated Milk Association (EMA) and NFPA/CMI, to establish the prior sanction for lead-soldered food cans.

1. "Contamination of Foods with Arsenic and Lead," FDA Press Release dated December 14, 1935 (EMA Ex. 1; NFPA/CMI Sec. VI. App. IA1 and IB1) (cited in refs. 13 and 14).
2. Letter from W. G. Campbell (FDA) to National Testing Laboratories, Inc., dated January 31, 1938 (NFPA/CMI Sec. VI. App. IA2).
3. Letter from H. J. Wichmann (FDA) to McKeesport Tin Plate Corp., dated February 17, 1938 (NFPA/CMI Sec. VI App. IA3).
4. Letter from P. G. Dunbar (FDA) to W. L. Rockwell, dated April 1, 1938 (NFPA/CMI Sec. VI App. IA4).
5. Letter from H. O. Calvery (FDA) to A. D. Hirschfelder, dated March 28, 1941 (EMA Ex. 7; NFPA/CMI Sec. VI App. IA5).
6. "Progress Report on Non-Toxicity of Lead-Silver Solder for Canned Milk," NAS/NRC Advisory Committee on Metals and Minerals, September 30, 1942 (EMA Ex. 5).
7. Letter from R. F. Segur to W. B. White (FDA), dated April 15, 1943 (NFPA/CMI Sec. VI App. IB2).
8. Letter from W. B. White (FDA) to R. F. Segur, dated April 21, 1943 (NFPA/CMI Sec. VI App. IB2).
9. "Final Report on Non-Toxicity of Lead-Silver Solder for Canned Milk and Other Foods," NAS/NRC War Metallurgy Committee, June 21, 1943 (EMA Ex. 6).
10. "Safe Substitute Solder for Food Cans, A Report to the War Production Board," War Metallurgy Committee, dated August, 1943 (NFPA/CMI Sec. VI App. IVH).
11. Letter from L. D. Elliott (FDA) to Mrs. J. B. McGaughy, dated September 5, 1944 (EMA Ex. 8).
12. Letter from M. M. Randall (FDA) to Mrs. D. Thomas, dated August 29, 1947 (EMA Ex. 9; NFPA/CMI Sec. VI App. IB3).
13. Letter from J. K. Kirk (FDA) to D. A. Stadtner, dated July 19, 1948 (EMA Ex. 10) (cites Ref. 1).
14. Letter from W. B. White (FDA) to W. L. Rowlands, dated February 20, 1950 (EMA Ex. 11; NFPA/CMI Sec. VI App. IB4) (cites Ref. 1)
15. Letter from J. K. Kirk (FDA) to Dewey and Almy Chemical Co., dated May 15, 1953 (NFPA/CMI Sec. VI App. IB5).
16. Letter from J. K. Kirk to J. Brozek, dated June 15, 1954 (NFPA/CMI Sec. VI App. IA6).
17. Memorandum from E. P. Laug to J. K. Kirk, dated January 21, 1955 (NFPA/CMI Sec. VI App. IB6).
18. Letter from F. A. Vorhes (FDA) to H. Young, dated February 28, 1956 (NFPA/CMI Sec. VI App. IB7).
19. Letter from J. K. Kirk (FDA) to A. A. Steffel, dated March 27, 1956 (EMA Ex. 12; NFPA/CMI Sec. VI App. IB8).
20. FDA Administration Information Letter No. 331, dated April 13, 1956 (EMA Ex. 13).
21. Letter from R. J. McConnell (FDA) to H. D. Mayer, dated December 16, 1957 (NFPA/CMI Sec. VI App. IB9).
22. Affidavit of former FDA official, Lowrie M. Beacham, dated February 20, 1980 (NFPA/CMI Sec. VI App. IVB).
23. Letter from Robert C. Gelardi (Infant Formula Council) to Ken Falci (FDA), dated October 23, 1990.
24. Memorandum dated February 27, 1991, from Food and Color Additives Review Section to Indirect Additives Branch, "Lead in Infant Formula—Exposure Estimate, DFCA request of November 7, 1990."
25. Memorandum dated March 12, 1991, from Food and Color Additives Review Section to Indirect Additives Branch, "Lead-Soldered Food Cans: Draft Amendment to Part 189 of the Food Additive Regulations. Response to Pesticides and Industrial Chemicals Branch (HFF–426) memorandum of March 1, 1991."
26. Memorandum dated May 4, 1992, from Food and Color Additives Review Section to Indirect Additives Branch, "Lead-soldered Food Cans: Draft Amendment to Part 189 of the Food Additive Regulations," revised exposure estimate to lead from food cans, CMI submission of March 24, 1992.
27. Memorandum dated November 16, 1990, from Contaminants Team, Division of Toxicological Review and Evaluation to Division of Regulatory Guidance, "Provisional Tolerable Exposure Levels for Lead."
28. Memorandum dated August 4, 1987, from Contaminants Standards and Monitoring Branch to Division of Regulatory Guidance, "Revision of Action Level for Lead (Pb) in Large Ceramic Hollowware."
29. Agency for Toxic Substances and Disease Registry, Public Health Service, "The Nature and Extent of Lead Poisoning in Children in the United States: A Report to Congress," part 3, Chs. II–IV, July 1988.
30. Needleman, H. L. et al., "The Long-Term Effects of Exposure to Low Doses of Lead in Childhood: An 11-Year Follow-Up Report," *New England Journal of Medicine*, 322:83–88, 1990.
31. Bellinger, D. et al., "Longitudinal Analyses of Prenatal and Postnatal Lead Exposure and Early Cognitive Development," *New England Journal of Medicine*, 316:1037–1043, 1987.
32. Department of Health and Human Services, Public Health Service, CDC, "Preventing Lead Poisoning in Young Children," October 1991.
33. Memorandum dated January 15, 1991, from Contaminants Team, Division of Toxicological Review and Evaluation, to Division of Regulatory Guidance, "Uncertainty Factor for Tolerable Lead Intake Derivation."
34. Bolger, P. M. et al., "Reductions in Dietary Lead Exposure in the United States," *Chemical Speciation and Bioavailability*, 3:31–36, 1991.
35. FDA letter to nations potentially importing food into the United States in lead-soldered cans.
36. Letter from R. Van Havere (Food Inspection Service, Ministry of Public Health, Belgium) to Richard A. Williams, Jr. (FDA), dated March 20, 1991.
37. Letter from R. Budway (Can Manufacturers Institute) to Jerry Burke (FDA), dated March 24, 1992.
38. Edward E. Judge and Sons, Inc., *The Almanac of the Canning, Freezing, Preserving Industries, 1990–91*, Westminster, MD, pp. 614–621.
39. Letter from Frank Bulley (Australian Quarantine & Inspection Service, Commonwealth Department of Primary Industries and Energy, Australia) to Richard A. Williams, Jr. (FDA), dated April 15, 1991.
40. Letter from Alberto Rodas Maltez (Alimentos Kern de Guatemala) to Economics Staff (FDA), dated April 24, 1991.
41. Letter from Erik Klindt Andersen (Agricultural Section, Royal Danish Embassy) to Richard A. Williams, Jr. (FDA), dated March 14, 1991.
42. Letter from Jean-Baptiste Danel (Services de L'expansion Economique, French Embassy) to Richard A. Williams, Jr. (FDA), dated May 5, 1991.
43. Memorandum of telephone conversation between Beverly Housten (Health and Welfare Canada) and Richard A. Williams, Jr. (FDA), January 9, 1992.
44. Memorandum of telephone conversation between Bob McDonnel (FDA, Los Angeles District Office) and Cristina Ford (FDA), January 23, 1992.
45. Memorandum of telephone conversation between Bob Polich (Crown Cork and Seal, Inc.) and Cristina Ford (FDA), March 31, 1992.
46. Department of Health and Human Services, Public Health Service, CDC, "Strategic Plan for the Elimination of Childhood Lead Poisoning," Appendix II, February 1991.
47. Memorandum dated February 21, 1992, from Biometrics and Risk Assessment Branch to Economic Section, Office of Compliance, "Comments on 'Benefits of Preventing Lead Exposure in the United States and Costs and Benefits of Lead-based Abatement'."
48. Carrington, C., "Risk Analysis of Dietary Lead Exposure," presented at symposium on "Lead in Adults," sponsored by EPA, Durham, NC, December 9 through 11, 1991. Proceedings of symposium to be published.

XII. Comments

Interested persons may, on or before August 20, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 189

Food ingredients, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 189 be amended as follows:

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

1. The authority citation for 21 CFR part 189 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. New § 189.240 is added to subpart C to read as follows:

§ 189.240 Lead solders.

(a) Lead solders are alloys of metals that include lead and are used in the construction of the metal ends of food cans.

(b) Food packaged in any container that makes use of lead in can solder is deemed to be adulterated and in violation of the Federal Food, Drug, and Cosmetic Act, based upon an order published in the **Federal Register** of June 21, 1993.

Editorial Note: This document was received at the Office of the Federal Register on June 15, 1993.

Dated: November 20, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–14465 Filed 6–18–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 109

[Docket No. 85N–0361]

Lead in Evaporated Milk and Evaporated Skim Milk; Withdrawal of Proposal

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; withdrawal of notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing its proposal to establish a tolerance for lead in evaporated milk and evaporated skim milk that it published in the **Federal Register** of December 6, 1974 (39 FR 42740). FDA proposed this tolerance in 1974 because these milk products were packaged in lead-soldered cans, and the agency sought to limit consumer exposure to lead from these sources. The agency is withdrawing this proposal because the evaporated milk industry has voluntarily stopped packaging evaporated milk and evaporated skim milk products in lead-soldered cans.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 6, 1974 (39 FR 42740), FDA proposed a tolerance under section 406 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 346) of 0.3 part per million (ppm) for lead in evaporated milk and evaporated skim milk packaged in lead-soldered cans. This proposal was one of a series of documents concerned with the regulation of unavoidable poisonous or deleterious substances under section 406 of the act published in that issue of the **Federal Register**. At that time, the agency determined that dairy products were the major source of dietary lead for infants and young children, and that a proposed 0.3 ppm lead tolerance in evaporated milk and evaporated skim milk would provide adequate protection for these population groups.

The agency published the proposal on evaporated milk and evaporated skim milk in response to investigations conducted in early 1972 that found lead levels in canned evaporated milk ranging from 0.21 to 1.10 ppm. These detected lead levels were higher than those that would be expected from simply concentrating raw milk. The agency concluded that a substantial portion of the lead in evaporated milk was introduced during, or because of processing, and that the majority of the lead resulting from processing was directly attributable to the use of lead solder in evaporated milk cans.

FDA received a number of comments on the December 6, 1974, proposal. The comments endorsed lowering the lead content in food but stated that the proposed level for lead in evaporated milk was too high. They stated that a tolerance for lead should not be established, that the use of lead-soldered cans should be prohibited, that alternatives to lead-soldered cans should be used, that the public should not be exposed to such hazards, and that FDA should reduce the level of harmful substances in food.

In the **Federal Register** of August 31, 1979 (44 FR 51233), FDA published an advance notice of proposed rulemaking (ANPRM) that discussed, among other things, the agency's tentative plan to reduce lead levels in food, including evaporated milk products. The ANPRM stated that the agency intended to withdraw the December 6, 1974 (39 FR 42740), proposal to establish lead tolerances for evaporated milk products and, instead, intended to establish action levels for evaporated milk. The agency stated that action levels were appropriate because the rapid technological changes in food processing had significantly reduced the amount of lead in evaporated milk, and further reductions were likely in the near future.

The agency received only one comment on this ANPRM that specifically addressed the agency's intention to set action levels for lead in evaporated milk and evaporated skim milk. The comment recommended that action levels for evaporated milk products be established at the 1974 proposed tolerance levels and claimed that the evaporated milk industry would experience great economic hardship if lower levels were established.

Since publication of the proposed tolerance for lead in evaporated milk in 1974 and the ANPRM in 1979, there have been two significant developments that affect the agency's intent to establish a tolerance or action level for lead in evaporated milk and evaporated skim milk packaged in lead-soldered cans. First, the evaporated milk industry improved product handling during the last decade to limit lead contamination in these products.[1] Second, the industry converted its production facilities from lead-soldered venthole cans to lead-free welded cans in 1986.[1] Thus, the industry no longer packages these products in lead-soldered cans.

These voluntary actions resulted in a significant reduction of the lead levels in evaporated milk products. The average lead level in evaporated milk was 0.52 ppm in 1972, and in fiscal year 1985/1986 an FDA survey found an average lead level of 0.006 ppm in canned evaporated milk.[1] In addition, no lead was detected in canned evaporated milk samples from the FDA Total Diet Study conducted in 1989 using an analytical method with a quantitation limit of 0.02 ppm.

As a consequence of these developments, FDA concludes that the issues raised in the December 6, 1974, proposal concerning the tolerance for lead in evaporated milk products and

[1] Capar, S.G. and Rigsby, E.J., "Survey of Lead in Canned Evaporated Milk," *Journal of the Association of Official Analytical Chemists*, 72:416–417, 1989.

the issues and comments raised in the August 31, 1979, ANPRM concerning the establishment of an action level for lead in evaporated milk products are moot.

The agency, therefore, is withdrawing the proposal that it published in the **Federal Register** of December 6, 1974 (39 FR 42740), to establish a tolerance for lead in evaporated milk and evaporated skim milk and is terminating the rulemaking proceeding initiated by that proposal.

The agency has determined under 21 CFR 25.24(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The proposal is withdrawn under the authority of secs. 306, 402, 406, 408, 409, 701 (21 U.S.C. 336, 342, 346, 346a, 348, 371) of the act and authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Because adverse health effects are associated with exposure to very low lead levels in fetuses, infants, and children, and because current dietary intakes of lead in infants and children exceed, or are close to, the provisional total tolerable intake levels for lead that the agency has established for these population groups, the agency is taking several other actions to reduce or eliminate lead levels in food. Elsewhere in this issue of the **Federal Register**, the agency is proposing to prohibit the use of lead-soldered food cans. In addition, the agency recently proposed to prohibit the use of tin-coated lead foil capsules on wine bottles (i.e., coverings for the cork and neck area) (57 FR 55485, November 25, 1992).

Editorial Note: This document was received at the Office of the Federal Register on June 15, 1993.

Dated: November 20, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–14466 Filed 6–18–93; 8:45 am]

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Monday
June 21, 1993

Part III

Department of Transportation

Federal Highway Administration

49 CFR Part 383

Commercial Motor Vehicles: Training for All Entry Level Drivers; Proposed Rule

VOL 58 ISS 117 JE 21 1993 UMI

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 383

[FHWA Docket No. MC–93–12]

RIN 2125–AD05

Training for All Entry Level Drivers of Commercial Motor Vehicles (CMVs)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FHWA is requesting comments from interested parties concerning the need to require training of all entry level drivers of commercial motor vehicles (CMVs). This action is in response to section 4007 of the Motor Carrier Act of 1991. If the FHWA determines that it is not in the public interest to issue a rule that requires training of all entry level drivers, section 4007 requires the agency to submit a report to Congress on the reason for the decision, together with the results of a cost-benefit analysis conducted as part of the rulemaking proceedings.

DATES: Comments must be received on or before August 20, 1993.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–93–12, room 4232, HCC–10, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry L. Robin, Driver Standards Division, Office of Motor Carrier Standards (202) 366–2985, or Mr. Charles Medalen, Office of Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: Section 4007(a)(2) of the Motor Carrier Act of 1991 directs the FHWA to issue a rulemaking on the need to require training of all entry level drivers of CMVs. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, Section 4007, 105 Stat. 1914, 2151. This rulemaking proceeding must be completed by December 18, 1993. If the FHWA determines that it is not in the public interest to issue a rule that requires training for all entry level drivers, the FHWA must submit to Congress a report explaining that decision by January 18, 1994, together with the results of a cost-benefit analysis of a training requirement. Section 4007(a)(1) requires an additional report to Congress on the effectiveness of private sector efforts to ensure adequate training of entry level drivers of CMVs. The FHWA will consider the information developed for the latter report in this rulemaking and will consider any information submitted to the docket on this rulemaking in preparation of the required report.

The FHWA is responsible for promulgating Federal regulations designed to ensure the safe operation of CMVs. To date, the FHWA has not mandated minimum training standards for operators of CMVs because of the substantial progress being made by the motor carrier industry in voluntarily implementing the FHWA's "Model Curriculum for Training Tractor-Trailer Drivers" (1985, GPO Stock No. 050–001–00293–1), as more fully discussed below. However, the FHWA has initiated an ANPRM related to training standards of longer combination vehicle (LCV) operators as directed by section 4007(b) of the Motor Carrier Act of 1991. This ANPRM was published at 58 FR 4638 on January 15, 1993.

All LCVs, defined in sections 1023(b) and 4007(f) of the ISTEA as "any combination of a truck tractor and two or more trailers or semitrailers which operate on the Interstate System at a gross vehicle weight greater than 80,000 pounds," are necessarily CMVs. However, because of the separate LCV training requirements rulemaking, LCV drivers will not be considered here. Although transit buses (designed to transport 16 or more passengers) also meet the definition of a CMV, they will not be considered either because these vehicles are almost all operated by municipalities or other public agencies. Since the ISTEA specifies that the FHWA report on the effectiveness of "private sector efforts" to ensure adequate training of CMV drivers, we believe Congress intended to exclude training of transit bus drivers from this rulemaking. We have also decided not to study the specific training requirements for drivers of vehicles transporting placardable quantities of hazardous materials. The Department of Transportation's Research and Special Programs Administration adopted training requirements for these drivers in 1992 (57 FR 20944, May 15, 1992) which are codified at 49 CFR 177.800, 177.816 and 177.825.

Applicability

As defined in 49 CFR 383.5, a CMV is a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle—

(a) Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or

(b) Has a gross vehicle weight rating of 26,001 or more pounds; or

(c) is designed to transport 16 or more passengers, including the driver; or

(d) is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

Although the definition of a CMV in the Motor Carrier Safety Act of 1984 included a weight threshold of 10,001 pounds or more (49 CFR 390.5), the FHWA believes any potential CMV training standard should be considered an additional CDL requirement and thus subject to the higher jurisdictional threshold of that program.

Background

In the early 1980's the FHWA determined that a need existed for technical guidance in the area of truck driver training. Research at that time showed that many driver training schools offered little or no structured curricula or uniform training plans.

To help address this situation, the FHWA developed, and in 1985 issued, the "Model Curriculum for Training Tractor-Trailer Drivers" which is based on FHWA's "Proposed Minimum Standards for Training Tractor-Trailer Drivers" (1984). The Model Curriculum, as it is known in the industry, is a broad set of recommendations which incorporates standardized minimum core curriculum requirements and training materials, as well as standards pertaining to vehicles, facilities, instructor hiring practices, graduation requirements, and student placement. The Curriculum content includes the following: basic operation, safe operating practices, advanced operating practices, vehicle maintenance, and nonvehicle activities. In essence, the Model Curriculum addresses all the critical aspects of entry level truck driver training. It is designed so students who successfully complete it

can be expected to perform actual tractor-trailer driving skills competently and safely.

In 1986, the Professional Truck Driver Institute of America (PTDIA) was created by the motor carrier industry to certify acceptable training programs offered by the truck driver training schools. The Model Curriculum, although modified to meet the administrative needs of the PTDIA, is the basis for the PTDIA's certification criteria. The FHWA research report (Dec. 1989) entitled "Survey of Tractor-Trailer Driver Training Courses" indicates on page 8:

> The influence and acceptability of the FHWA/[Office of Motor Carriers (OMC)] truck driver training guidelines and materials among the schools and training programs surveyed in this project is obvious. Organizations have revised their courses, rebuilt or remodeled their programs and implemented curriculum changes, many of them major, in their attempt to follow and meet the FHWA/OMC "recommended practices". The FHWA/OMC influence is spread across all the courses surveyed. Progress in meeting the salient point of the FHWA/OMC model is obviously being made. The most significant aspect of this influenced progress is that it is being achieved through voluntary rather than mandatory action.

A copy of the report will be included in the docket for review.

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA), although not directly targeted at driver training, was intended to improve highway safety. 49 U.S.C. app. 2301–2316. Its goal is to ensure that drivers of large trucks and buses possess the knowledge and skills to safely operate those vehicles on public highways. The CMVSA established the CDL program and directed the FHWA to establish minimum national standards which States must meet when licensing CMV drivers. The CMVSA applies to anyone who operates a CMV in intrastate, interstate, or foreign commerce, including most employees of Federal, State, and local governments.

In accordance with the CMVSA, all drivers of CMVs were required to obtain a valid CDL by April 1, 1992, in order to be properly qualified to operate the vehicle(s) they drive. In addition to passing the CDL knowledge and skills tests required for the basic vehicle group, all persons who operate or expect to operate the following vehicles, which have special handling characteristics, must obtain endorsements under 49 CFR 383.93: double/triple trailers, tank vehicles, passenger vehicles, or CMVs required to be placarded for hazardous materials. For the passenger vehicle endorsement, the driver must pass knowledge and skills tests. For all other vehicle endorsements, the driver is required to pass only a knowledge test.

The CDL standards, however, do not require the comprehensive training proposed in the Model Curriculum since the CDL is a "licensing standard" as opposed to a "training standard." Although there are no prerequisite Federal or State training requirements to obtain a CDL, the driver must demonstrate the required minimum knowledge and/or skills necessary to operate a CMV. To date, the States and the District of Columbia have issued over 6 million CDLs.

In an effort to meet the requirements of section 4007(a) of the ISTEA, the FHWA recently contracted with Applied Science Associates, Incorporated (ASA), in part to assess the effectiveness of private sector efforts to ensure adequate training of entry level drivers of CMVs. The objectives of this phase of the project focused on entry level driver training are to determine (1) the scope and content of entry level CMV driver training in the private sector and (2) the effectiveness of private sector efforts to ensure adequate training of entry level drivers of CMVs. The FHWA will use the information generated by this research project, which is expected to be completed by the Fall of 1994, to formulate the report required by section 4007(a)(1) of the ISTEA. In addition, the FHWA will make the information submitted to the rulemaking docket on this ANPRM available to ASA for appropriate analysis and use in the research effort.

Rulemaking and Questions for Comment

To fully understand the various issues related to training for all entry level CMV drivers and in conjunction with the ASA study, the FHWA is soliciting comments on the following areas. Respondents are encouraged to submit additional information they believe relevant to this rulemaking.

On the Adequacy of Entry Level Training Provided

1. How can the adequacy of training be defined? What mechanisms exist to measure adequacy?

2. What standards exist to ensure that training provided by schools and employers is adequate for entry level truck driver training?

3. What should an adequate truck driver training program include (for example night driving, behind-the-wheel training, and classroom instruction)? What is the minimum amount of time (or number of hours) that should be devoted to each of these components?

4. Can governmental or private standards that guide the training of entry level drivers be used to determine the adequacy of entry level driver training? Why are these standards appropriate?

5. To obtain a CDL, a CMV driver must demonstrate knowledge and skills needed to operate a CMV. Are these tests sufficiently comprehensive to accurately measure a driver's performance? Please explain why or why not. Provide information on specific deficiencies.

6. Should training requirements for entry level CMV drivers be federally-mandated?

Number of Drivers Trained

7. What is an "entry level CMV driver?"

8. What industry-wide initiatives or policies, if any, reasonably assure that the majority of all entry level drivers are trained?

9. How many truck driver training schools and motor carrier programs train entry level drivers? What percentage of those enrolled successfully completes such training?

10. Is the successful completion of an entry level CMV driver training program (either before or after hiring) a requirement for the drivers employed by your company?

11. Describe the training opportunities available for drivers of smaller trucking companies/owner-operators. What percentage of those enrolled successfully completes such training?

Entry Level Driver Training Cost/ Benefits

12. Describe the expected benefits and estimated dollar costs for the following types of training:

a. Resident training at public and private truck driver training schools, including trade, vocational and community college programs;

b. Home study or correspondence courses in combination with hands-on behind-the-wheel training;

c. Training by motor carriers through:

—Formal school setting

—On-the-job training (*i.e.*, learning by working with an experienced driver as a trainer); and

d. Externships (*i.e.*, combination truck driver training schools and motor carrier operations).

Other Than Entry Level Driver Training

13. Although the primary purpose of this ANPRM is to gather information on entry level truck driver training, the FHWA would like to collect some information on the training experienced

drivers receive. Please describe the type and frequency of training, if any, that you offer or financially support for the more experienced CMV drivers of your company. Is this training required at certain specific intervals or provided only on an "as needed" basis?

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA is unable to determine whether this action is major within the meaning of Executive Order 12291 due to the preliminary nature of this rulemaking. However, because of the public interest in commercial motor vehicle safety, this notice is considered significant within the meaning of Department of Transportation regulatory policies and procedures.

Given the lack of necessary information on costs to the motor carrier industry, the FHWA is unable to evaluate the economic impact of a regulatory requirement for mandatory training for entry level CMV drivers. The information received in response to this notice will be used to evaluate the costs and benefits associated with various alternative requirements. Comments, information, and data are solicited on the economic impact of this rulemaking.

Regulatory Flexibility Act

A rule requiring training for entry level drivers could have a significant economic effect on a substantial number of small entities. The information solicited in this ANPRM will be used to evaluate that effect, and a more detailed statement as required by the Regulatory Flexibility Act (5 U.S.C. 601–612) will be included in the next rulemaking document on this subject. Specific comments, information and data are solicited on the economic impact of this rulemaking on small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the FHWA certifies that the policies contained herein do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980. (44 U.S.C. 3501–3520).

National Environmental Policy Act

This agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 383

Commercial driver's license testing and licensing standards, Highways and roads, Motor vehicle safety.

(Section 4007, Pub.L. 102–240, 105 Stat. 1914, 2151; 23 U.S.C. 315; 49 CFR 1.48)

Issued on: June 15, 1993.

Rodney E. Slater,

Administrator.

[FR Doc. 93–14510 Filed 6–18–93; 8:45 am]

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Federal Register

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Alteration of the Kansas City, MO Terminal Control Area; Proposed Rule

VOL 58 ISS 117 JE 21 1993 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-AWA-1]

RIN 2120-AE72

Proposed Alteration of the Kansas City, MO, Terminal Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to alter the Kansas City, MO, Terminal Control Area (TCA). This proposal would maintain the altitude of the upper limit of the TCA at 8,000 feet mean sea level (MSL) and redefine several existing subareas to improve air traffic procedures. The primary goal of this modification to the TCA is to improve safety while providing the most efficient use of the terminal airspace. This action would improve the flow of traffic and increase safety in the Kansas City terminal area.

DATES: Comments must be received on or before August 20, 1993.

ADDRESSES: Send comments on the proposal in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Airspace Docket No. 92-AWA-1, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue SW., Washington, DC, weekdays, except Federal holidays, between 8:30 am. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AWA-1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will also be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published Amendment 91-78 to part 91 of the Federal Aviation Regulations (35 FR 7782) which provided for the establishment of TCA's.

On February 3, 1987, the FAA published a final rule which established requirements pertaining to the use, installation, inspection, and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S transponders in U.S.-registered civil aircraft (53 FR 3380). The rule did not affect the requirement to have an operable transponder in a TCA.

On June 21, 1988, the FAA published a final rule which requires Mode C equipment when operating within 30 nautical miles of any designated TCA primary airport from the surface up to 10,000 feet MSL, except for operations by certain aircraft types which were specifically excluded (53 FR 23356).

On October 14, 1988, the FAA published a final rule which revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) Established a single-class TCA; (b) requires the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and (c) eliminated the helicopter exception from the minimum navigational equipment requirement.

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under VFR and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by giving air traffic control (ATC) increased capability to provide aircraft separation service; this minimizes the mix of controlled and uncontrolled aircraft.

To date, the FAA has established a total of 29 TCA's; the Kansas City TCA was established on August 1, 1975 (40 FR 18414). The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

Pre-NPRM Public Input

A pre-NPRM airspace meeting was held on September 4, 1991, in Kansas City, MO, to allow local interested airspace users an opportunity to present

input on the design of the proposed alteration of the Kansas City TCA.

One letter was received prior to the informal airspace meeting from a private airport owner who wanted to make sure that the FAA would provide a cutout for his airport which is located about 4.5 miles northwest of the Kansas City Airport. The FAA agreed to include the requested cutout in the proposed TCA modification.

Fourteen persons attended the informal airspace meeting. The only comment was from another private airport owner who wanted a cutout for his airport which is located about 5 miles west of the Kansas City Airport.

The FAA responded by stating that a cutout would be proposed for all private airports located within the 6-mile arc of the Kansas City International Airport.

The Proposal

The FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Kansas City TCA. The decision to pursue modification to the existing TCA was based on safety and operational needs. The FAA's responsibility is to manage efficiently the airspace surrounding the Kansas City area, while providing the level of safety expected by the flying public. The number of enplaned passengers for 1990 was 3,477,529; this number is projected to increase to 5.8 million by the year 1995 and to further increase to 7.8 million by the year 2000. This volume of traffic cannot be accommodated by the present configuration of the TCA airspace. A new Runway 1R/19L is under construction and is scheduled for completion in the fall of 1993. The Kansas City TCA modification would encompass operations for the new runway. The proposed alteration is depicted in the attached chart.

Section 91.131 of part 91 of the Federal Aviation Regulations (14 CFR part 91) defines TCA's and prescribes operating rules for aircraft in airspace designated as a TCA. The TCA rule provides, in part, that prior to entering the TCA, any pilot arriving at any airport within the TCA or flying through the TCA must: (1) Obtain appropriate authorization from ATC; (2) comply with applicable procedures established by ATC for pilot training operations at an airport within a TCA; and (3) hold at least a private pilot certificate; or (4) meet the requirements of § 61.95 of the Federal Aviation Regulations (14 CFR part 61) if the aircraft is operated by a student pilot.

Any person operating an aircraft arriving at any airport within a TCA or flying through a TCA must have the aircraft equipped with an operable two-way radio capable of communications with ATC on appropriate frequencies for that TCA, and the applicable operating transponder and automatic altitude-reporting equipment specified in paragraph (b)(1) of § 91.215 of the Federal Aviation Regulations. Unless otherwise authorized by ATC, all large, turbine-powered aircraft operating to or from a TCA-primary airport must be operated above the designated floors of the TCA. The pilot of any aircraft departing from an airport located within a TCA is required to receive a clearance from ATC prior to takeoff.

All aircraft operating within a TCA are required to comply with all ATC clearances and instructions. However, the TCA rule permits ATC to authorize deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in a TCA may only be conducted under the terms of an ATC authorization.

Definitions and operating requirements applicable to TCA's may be found in § 71.12 (14 CFR part 71) and § § 91.1 and 91.90 (14 CFR part 91).

The standard configuration of a TCA consists of 3 concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles respectively. The vertical limits of the TCA are 10,000 feet MSL, with the floor established at the surface in the inner area and at levels appropriate to containment of operations in the outer areas. Variations of these criteria may be authorized contingent upon terrain, adjacent regulatory airspace, and factors unique to the terminal area. The airspace configuration proposed herein is the result of an extensive staff study conducted by the FAA after obtaining public input from informal airspace meetings, written comments, and coordination with the FAA regional office. The FAA has determined that the proposed alteration of airspace for the Kansas City TCA would be consistent with TCA objectives. The proposed configuration considers the present terminal area flight operations and terrain.

The following proposed modification of the Kansas City TCA reflects public comments and represents user group inputs:

Area A. That airspace extending from the surface up to and including 8,000 feet MSL within a 6-mile radius of the Kansas City International Airport, excluding that airspace within a 1-mile radius of Noah's Ark Airport, within a 1-mile radius of Elton Airport, within a 1-mile radius of Platte Valley Airport, and that area between the 5-mile radius arc and the 6-mile radius arc of Kansas City International Airport, bounded on the south by a line parallel to and 2 miles north of the Kansas City International Airport Runway 9 ILS localizer course and on the north by a line parallel to and 2 miles west of the Kansas City International Airport Runway 19 localizer course.

This airspace would be necessary to contain large turbine-powered aircraft within the TCA while operating to and from the primary airport and allow for ingress/egress to secondary airports.

Area B. That airspace extending from 2,400 feet MSL up to and including 8,000 feet MSL within a 10-mile radius of the Kansas City International Airport excluding that airspace within a 1½-mile radius arc of the Fort Leavenworth Sherman Army Airfield and that airspace described in Area D.

This airspace would be required to provide sufficient airspace for vectoring aircraft that are arriving at and departing from the primary airport.

Area C. That airspace extending from 3,000 feet MSL up to and including 8,000 feet MSL within a 15-mile radius of the Kansas City International Airport excluding that airspace described in Area D.

This airspace configuration would provide an area to contain aircraft during climb and descent maneuvers to transition between the terminal and en route structures.

Area D. That airspace extending from 4,000 feet MSL up to and including 8,000 feet MSL within a 20-mile radius of the Kansas City International Airport and including that airspace within the 10-mile and 15-mile radius arcs defined by Interstate Highway 635 from the 15-mile radius arc extending northward to a point where it intersects the 10-mile radius arc and then direct to lat. 39°11′30″ N. long. 94°37′00″ W., then direct to lat. 39°12′57″ N., long. 94°24′51″ W.

This airspace would be required to provide an area to contain aircraft using Kansas City International during climb or descent profile while also allowing sufficient airspace for VFR operations underneath the TCA floor.

The TCA listed in this document is published in § 71.401(b) of FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The amended designation of the TCA listed in this document would be published subsequently in this Order when the regulation is promulgated.

Regulatory Evaluation Summary

This section summarizes the regulatory evaluation prepared by the FAA on the proposed amendments to 14 CFR part 71—to alter the Kansas City Terminal Control Area, Kansas City, Mo. This summary and the full regulatory evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, and Federal, State, and local governments as well as anticipated benefits.

Executive Order 12291, February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The Executive Order requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition, or that is highly controversial.

The FAA has determined that this proposed rule is not "major" as defined in the executive order; therefore, a full regulatory impact analysis that includes the identification and evaluation of cost-reducing alternatives to this proposed rule has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this proposed rule without identifying alternatives. In addition to a summary of the regulatory evaluation this section also contains a Regulatory Flexibility Determination required by the Regulatory Flexibility Act (Pub. L. 96–354) and an International Trade Impact Assessment. If more detailed information is desired, the reader may examine the regulatory evaluation contained in the docket.

The Kansas City TCA was established in 1975 (40 FR 18414) to reduce the risk of a mid-air collision in congested airspace surrounding the airport. This high density terminal area presents complex air traffic conditions resulting from a mix of large turbine-powered air carrier aircraft with other aircraft of varying performance characteristics and from a mix of IFR and VFR traffic operating in the same airspace. As the traffic in the given airspace increases, so does the risk of a midair collision. The Kansas City TCA was originally established to reduce this risk. Since then, construction commenced on a new runway 1R/19L. Modifying the existing TCA would meet future needs and would make sufficient TCA airspace available for simultaneous approach operations to the new runway. It would allow turboprop departures to accelerate to speeds exceeding 200 knots and present a less complex TCA design for the VFR pilots.

The proposed modifications of the Kansas City TCA are the result of a staff study conducted by the local FAA authority. The staff's goal was to determine a viable TCA design that would enhance the level of aviation safety. This process began with an informal airspace meeting that was announced in a letter sent to all pilots and airport managers within 100 miles of the Kansas City International Airport. The airspace design proposal reflects user feedback and information obtained during this meeting held in the Kansas City area on September 4, 1991.

In analyzing the proposed modifications, the FAA considered two options. The first option, no change, is not recommended due to projected traffic increases and operational requirements needed for simultaneous approach operations. The existing TCA floors are inadequate to contain all operations, especially heavily laden turboprop departures which are restricted pursuant to 14 CFR 91.117(c) to 200 knots maximum indicated airspeed in the airspace underlying the TCA. In addition, a less complex TCA design is desired. The second design would modify the existing TCA. It would provide sufficient TCA airspace to conduct simultaneous approach operations, contain departures as they accelerate to speeds exceeding 200 knots while climbing, and present a less complex TCA design for VFR pilots.

Benefit Analysis

The proposed rule would enhance safety by reducing the risk of midair collisions. The risk of a midair collision would be reduced by increasing the positive control airspace around Kansas City.

Due to the proactive nature of the proposed changes (i.e., safety-enhancing changes would be made when symptoms of a problem appear, to prevent rather than react to an accident), the potential safety benefits are difficult to quantify in monetary terms. The symptoms in this case are the increased complexity in aircraft operations within the present configuration of the Kansas City TCA, and the projected increase in aircraft operations as the following discussion shows.

The Kansas City TCA was established in 1975. It has been modified once, in 1980, to accommodate nonparticipating users of the system and to assure that aircraft landing at Kansas City International Airport were contained within the TCA. Since that time, the volume of traffic has varied dramatically primarily because of the bankruptcies of at least three major airlines. Kansas City International Airport had 206, 602 operations in fiscal year 1986 and 168,193 operations in fiscal year 1991. This is a decrease of over 38,000 operations. The major reason for the decrease was the bankruptcy of a major airline that was hubbing at the airport. Nevertheless, based on regional economic forecasts, increased usage could result in annual operations for 1995 increasing to 251,000, and by the year 2000 to 340,000. Over 3.4 million passengers were enplaned at the Kansas City International Airport during 1990. This number is expected to increase to 5.8 million by the year 1995 and to 7.8 million by the year 2000.

There are approximately 4,500 active pilots and 1,350 aircraft located in the Kansas City area. They use several private use airports and two controlled airports that are within approximately 10 nautical miles of the Kansas City International Airport. Kansas City Downtown Airport has a full time air traffic control tower (ATCT). It had over 157,000 total operations during 1991. Sherman Army Airfield is a joint use airport with a part-time ATCT. It has approximately 42,000 airport operations during fiscal year 1991.

Fortunately, there have been no midair collisions within the Kansas City TCA. Without the experience of an actual midair collision, estimating the probability of a potential occurrence in the absence of a proposed rule cannot be reliably determined. Due to the projected increase in traffic, there is an incipient safety problem, although it is not yet critical. Without the proposed rule, aviation safety in the Kansas City area could be significantly reduced in the future, which could lead to catastrophic consequences.

Cost Analysis

There would be little or no administrative costs to the Agency associated with implementation of the proposed rule. There would be no additional costs for either personnel or equipment.

The FAA's controller workforce would be trained in the aspects and procedures of the proposed TCA during regularly scheduled briefing sessions, thus no additional costs for controller training would be incurred. The Kansas City sectional chart and the Kansas City terminal area chart would have to be revised, but the required changes would

be made at the time that those charts are routinely updated. These changes are considered part of the ordinary cost of chart revision; therefore, no additional costs would be incurred by the FAA. Because pilots are required to use current charts, they would not incur any additional costs either; as the charts become obsolete, pilots would replace them with charts that depict the modified TCA.

VFR operators who do not routinely fly inside the TCA may be slightly inconvenienced by having to participate (*i.e.*, contact ATC and follow operational rules) in the TCA, if they operate in the areas of the proposed TCA expansion. However, the FAA concluded that most VFR operators would not be significantly inconvenienced because they are already participating in the TCA, either by voluntarily contacting ATC when in areas adjacent to or under the TCA or by monitoring ATC frequencies.

Those VFR aircraft operators who wish to avoid the TCA could face circumnavigational costs. These costs include the additional fuel needed, additional wear and tear on the aircraft, and added flying time. However, these costs would be negligible. First, the proposed increase in size of the existing TCA is small. Second, there are no topographical features or other TCAs that prevent VFR aircraft from flying over, under, or around the TCA.

Thus, the enhancement of safety through the reduced risk of midair collisions greatly outweighs the negligible administrative and operational costs that would flow from the proposed modification.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

The small entities that the proposed rule could potentially affect are unscheduled operators of aircraft for hire owning nine or fewer aircraft. These unscheduled air taxi operators would be affected only when they were operating under VFR. Since these operators fly regularly into airports with established radar approach control services, the FAA believes that unscheduled air taxi operators are already equipped to fly IFR and because they would fly IFR instead of VFR, the proposed rule would not have a significant economic impact on any of them.

International Trade Impact Assessment

The proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed rule would neither impose costs on aircraft operators nor on U.S. or foreign aircraft manufacturers.

Federalism Implications

This proposed regulation would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

In view of the estimated negligible costs to some general aviation (GA) operators, coupled with benefits in the forms of enhanced aviation safety and increased airspace to VFR aircraft operators, the FAA believes that the proposed rule to modify the Kansas City TCA is cost-beneficial. For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air), Terminal control areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Section 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, A Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.401(b) Terminal Control Areas

* * * * *

ACE MO TCA Kansas City, MO [Revised]

Primary Airport
Kansas City International Airport
(lat. 39°17'57" N., long. 94°43'04" W.).

Boundaries.

Area A. That airspace extending from the surface up to and including 8,000 feet MSL within a 6–mile radius of the Kansas City International Airport, excluding that airspace within a 1–mile radius of Noah's Ark Private Airport (lat. 39°13'50" N., long. 94°48'15" W.) and that airspace within a 1-mile radius of Elton Private Airport (lat. 39°20'05" N., long. 94°48'45" W.) and that airspace within a 1-mile radius of Platte Valley Private Airport (lat. 39°22'03" N., long. 94°45'41" W.) and that area between the 5-mile radius arc and 6-mile radius arc of Kansas City International Airport, bounded on the south by a line parallel to, and 2 miles north of the Kansas City International Airport Runway 9 ILS localizer course, and on the north by a line parallel to, and 2 miles west of the Kansas City International Airport Runway 19 ILS localizer course.

Area B. That airspace extending from 2,400 feet MSL up to and including 8,000 feet MSL within a 10-mile radius of the Kansas City International Airport excluding that airspace within a 1½-mile radius arc of the Fort Leavenworth, Sherman Army Airfield (lat. 39°22'06" N., long. 94°54'52" W.) and that airspace described in Area D.

Area C. That airspace extending from 3,000 feet MSL up to and including 8,000 feet MSL within a 15-mile radius of the Kansas City International Airport excluding that airspace described in Area D.

Area D. That airspace extending from 4,000 feet MSL up to and including 8,000 feet MSL within a 20-mile radius of the Kansas City International Airport and including that airspace within the 10-mile and 15-mile radius arcs defined by Interstate Highway 635 from the 15-mile radius arc extending northward to a point where it intersects the 10-mile radius arc and then direct to lat. 39°11'30" N., long. 94°37'00" W., then direct to lat. 39°12'57" N., long. 94°24'51" W.).

* * * * *

Issued in Washington, DC, on June 14, 1993.

Willis C. Nelson,

Manager, Airspace-Rules and Aeronautical Information Division.

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869–019–00002–0)	17.00	[1] Jan. 1, 1993
4	(869–019–00003–8)	5.50	Jan. 1, 1993
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Subscription (mailed as issued)		223.00	1993
Individual copies		2.00	1993

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1992. The CFR volume issued July 1, 1989, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1992. The CFR volume issued July 1, 1991, should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 1991 to September 30, 1992. The CFR volume issued October 1, 1991, should be retained.

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Tuesday
June 22, 1993

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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(two briefings)

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV93-916-1IFR]

Expenses and Assessment Rates for the Marketing Order Covering Nectarines and Fresh Peaches Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes assessment rates for the Nectarine Administrative Committee and the Peach Commodity Committee (committees) under M.O. Nos. 916 and 917 for the 1993–94 fiscal year. Authorization of these budgets enable the committees to incur expenses that are reasonable and necessary to administer their programs. Funds to administer these programs are derived from assessments on handlers.

DATES: Effective beginning March 1, 1993, through February 28, 1994. Comments received by July 22, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, or by Facsimile (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487–5901; or Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 690–0992.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 916 (7 CFR part 916) regulating the handling of nectarines grown in California and Marketing Agreement and Order No. 917 (7 CFR part 917) regulating the handling of fresh peaches grown in California. The agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, nectarines and peaches grown in California are subject to assessments. It is intended that the assessment rates specified herein will be applicable to all assessable nectarines and peaches handled during the 1993–94 fiscal year, which began March 1, 1993, through February 28, 1994. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 handlers of nectarines and peaches regulated under the marketing orders each season and approximately 1,800 producers of these fruits in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The nectarine and peach marketing orders, administered by the Department, require that the assessment rates for a particular fiscal year apply to all assessable nectarines and peaches handled from the beginning of such year. Annual budgets of expenses are prepared by the committees, the agencies responsible for local administration of their respective marketing order, and submitted to the Department for approval. The members of the committees are nectarine and peach handlers and producers. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The committees' budgets are formulated and discussed in

public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rates recommended by the committees are derived by dividing the anticipated expenses by expected shipments of nectarines and peaches. Because these rates are applied to actual shipments, they must be established at rates which will provide sufficient income to pay the committees' expected expenses.

The Nectarine Administrative Committee met on April 30, 1993, and unanimously recommended total expenses of $3,804,962, with an assessment rate of $0.1825 per box for the 1993–94 fiscal year. In comparison, the 1992–93 fiscal year expenses amounted to $4,106,247. This represents a $302,059 decrease in expenses from the 1992–93 fiscal year with the assessment rate remaining unchanged.

Major expense categories for the 1993–94 nectarine budget include $330,539 for salaries and benefits, $1,827,970 for market research, $1,050,000 for inspection, and $128,225 for sizing research. Funds in the reserve at the end of the 1993–94 fiscal year, estimated at $221,704, will be within the maximum permitted by the order of one fiscal year's expenses.

The Peach Commodity Committee also met April 30, 1993, and on a seven to two vote recommended total expenses of $3,853,545, with an assessment rate of $0.19 per box for the 1993–94 fiscal year. Two committee members were opposed to the $0.19 per box assessment rate and requested that it be lowered to $.1850 per box. Their request was defeated by a four to five vote. In comparison, the 1992–93 fiscal year expenses totaled $3,925,512 with an assessment rate of $0.19 per box of peaches.

Major expense categories for the 1993–94 fiscal period are $330,497 in salaries and benefits, $1,827,970 for market development, $1,105,000 for inspection, and $128,225 for sizing research. Funds in the reserve at the end of the 1993–94 fiscal year, estimated at $458,948, will be within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committees and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) the fiscal year for the committees began March 1, 1993, and the marketing orders require that the rates of assessment for the fiscal year apply to all assessable nectarines and peaches handled during the fiscal year; (3) handlers are aware of this action which was recommended by the committees at public meetings and which are similar to budgets issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 916 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 916.231 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 916.231 Expenses and assessment rate.

Expenses of $3,804,962 by the Nectarine Administrative Committee are authorized and an assessment rate of $0.19 per box on assessable nectarines is established for the fiscal year ending February 28, 1994. Unexpended funds may be carried over as a reserve.

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

3. The authority citation for 7 CFR part 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

4. A new § 917.255 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 917.255 Expenses and assessment rate.

Expenses of $3,853,545 by the Peach Commodity Committee are authorized and an assessment rate of $0.19 per box on assessable peaches is established for the fiscal year ending February 28, 1994. Unexpended funds may be carried over as a reserve.

Dated: June 14, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–14624 Filed 6–21–93; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AC61

1993—Crop Peanuts; National Average Support Levels for Quota and Additional Peanuts; and Minimum Commodity Credit Corporation Export Edible Sale Price for Additional Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule codifies the following determinations with respect to the 1993 peanut crop: The national average support level for quota peanuts of $674.93 per short ton (st); the national average support level for additional peanuts of $131.09 per st; and the minimum Commodity Credit Corporation (CCC) export edible sale price for additional peanuts of $400 per st. The determinations on the national average support levels for quota and additional peanuts were made pursuant to the statutory requirements of the Agricultural Act of 1949 (the 1949 Act), as amended by the Food, Agriculture, Conservation, and Trade Act of 1990. The determination of the minimum CCC export edible sale price for additional peanuts is a discretionary determination

made to facilitate the marketing of additional peanut contract negotiations.

EFFECTIVE DATE: February 12, 1993.

FOR FURTHER INFORMATION CONTACT: Ronald W. Holling, Tobacco and Peanuts Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), room 3739, South Building, USDA, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–7477.

SUPPLEMENTARY INFORMATION:

Impact Analysis

A final regulatory impact analysis describing this final rule and its impacts is available from the above-named person.

Executive Order 12291 and Department Regulation 1512–1

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" as the matter under consideration will not result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individuals, industries, Federal, State or local governments, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Federal Assistance Program

The titles and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies, are: Commodity Loans and Purchases—10.051.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order No. 12372 relating to intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a proposed rule or notice of proposed rulemaking with respect to the subject of these determinations.

Paperwork Reductions Act

This final rule does not require clearance under the Paperwork Reduction Act in that it does not create or impose information collection requirements subject to the provisions of 44 U.S.C. Chapter 35.

Statutory Background

This rule is issued pursuant to the provisions of the 1949 Act. On February 12, 1993, the Secretary announced the national average support levels for 1993-crop quota and additional peanuts and the minimum CCC export edible sales price for 1993-crop additional peanuts.

The 1949 Act provides that the Secretary shall determine the rate of loans, payments, and purchases for the 1991–1995 crops of commodities without regard to the requirements for notice and public participation in rulemaking as prescribed in 5 U.S.C. 553 or in any directive of the Secretary.

The announcement of the national support levels for the 1993 crop of quota and additional peanuts was required to be made by the Secretary no later than February 15, 1993.

Determinations

A. Quota Peanuts Support Level

In accordance with section 108B(a)(2) of the 1949 Act, the national average price support level for 1993 crop quota peanuts must be the corresponding 1992-crop price support level adjusted to reflect any increases in the national average cost of peanut production (excluding any changes in the cost of land) during the calendar year immediately preceding marketing year (MY) 1993, except that the MY 1993 price support level cannot exceed the MY 1992 support level by more than 5 percent. In the event of a reduction in these costs of production, the MY 1993 price support level for quota peanuts would be unchanged from MY 1992. The MY 1992 quota peanut price support level is $674.93 per st. The MY 1993 support level for quota peanuts was determined based on the following estimates:

PEANUT COST ESCALATOR CALCULATIONS

Variable/Component	1991 crop	1992 crop
Total cash expenses (less interest on real estate), capital replacement, and unpaid labor[1]	$538.67/acre	$505.11/acre
Trend yields	2,500 lbs./acre	2,500 lbs./acre
Adjusted costs per pound	$0.215468	$0.202044
	Dollars per st	
	1991	1992
Adjusted costs per st	430.94	404.09
	1993 Quota Calculations	
	Dollars per st	
Change during 1992 in the average cost of producing peanuts	−26.85	
Price support escalator[2]	0.00	
1993 Quota Support Level (1992 Support + escalator)	674.93 + 0.00 = 674.931	

[1] Economic Research Service estimates.
[2] Statute does not permit reduction in price support level.
Source: TPAD/ASCS/January 1993.

As indicated, relevant peanut production costs decreased from calendar year 1991 to 1992. The MY 1993 quota peanut price support level is accordingly established at $674.93 per st, unchanged from MY 1992.

B. Additional Peanut Support Level

Section 108B(b)(1) of the 1949 Act, provides that price support shall be made available for additional peanuts at

such level as the Secretary determines will ensure no losses to CCC from the sale or disposal of such peanuts, taking into consideration the demand for peanut oil and peanut meal, expected prices of other vegetable oils and protein meals, and the demand for peanuts in foreign markets.

The MY 1993 price support level for additional peanuts is established at $131.09 per st to ensure no losses to CCC from the sale or disposal of such peanuts, unchanged from MY 1992. Peanuts pledged as collateral for a price support loan are sold to recover the loan and related costs. Based on a consideration of the statutory factors it was determined that there would not be a material change in the expected return and costs to CCC on additional peanuts placed for price support loan and it was determined accordingly a $131.09 per st support level would continue, if adopted for the 1993 crop, to provide a reasonable margin of error to prevent losses to the CCC on the sale and disposition of additional peanuts. Before making this determination, the following information was considered.

1. The domestic use of peanut oil during MY 1993 is forecast to be 87,500 st, down 5.4 percent from MY 1992 projected domestic use. MY 1993 peanut oil beginning stocks are expected to be 20,000 st, up 23 percent from MY 1992. The MY 1993 average peanut oil price is expected to be $0.31 per pound, up $0.02 per pound from MY 1992.

2. The domestic use of peanut meal during MY 1993 is forecast to be 125,000 st, down 25,000 st from MY 1992 projected domestic use. MY 1993 peanut meal beginning stocks are expected to be 5,000 st, unchanged from MY 1992. The MY 1993 average peanut meal price is expected to be $173.50 per st, up $13.50 per st from MY 1992.

3. The domestic disappearance of soybean oil during MY 1993 is forecast to be 6,425,000 st, up 1.4 percent from projected MY 1992 domestic disappearance. MY 1993 soybean oil beginning stocks are expected to be 750,000 st, up 33.0 percent from MY 1992. The MY 1993 average soybean oil price is expected to be $0.23 per pound, up $0.02 per pound from MY 1992.

4. The domestic disappearance of cottonseed oil during MY 1993 is forecast to be 515,000 st, down 0.5 percent from projected MY 1992 domestic disappearance. MY 1993 cottonseed oil beginning stocks are expected to be 35,000 st, down 10.3 percent from MY 1992. The MY 1993 average cottonseed oil price is expected to be $0.24 per pound, unchanged from MY 1992.

5. The domestic disappearance of soybean meal during MY 1993 is forecast to be 24,250,000 st, up 1.3 percent from projected MY 1992 domestic disappearance. MY 1993 soybean meal beginning stocks are expected to be 300,000 st, up 30.4 percent from MY 1992. The MY 1993 average soybean meal price is expected to be $173.50 per st, down $6.50 per st from MY 1992.

6. The domestic disappearance of cottonseed meal during MY 1993 is forecast to be 1,760,000 st, up 0.9 percent from projected MY 1992 domestic disappearance. MY 1993 cottonseed meal beginning stocks are expected to be 50,000 st, up 16.2 percent from MY 1992. The average cottonseed meal price for MY 1993 is expected to be $133.50 per st, down $21.50 per st from MY 1992.

7. The world use of peanuts for MY 1992 is expected to be 22.16 million metric tons, down 0.9 percent from MY 1991. World peanut production for MY 1992 is forecast to be 22.06 million metric tons, down 0.5 percent from MY 1991. Ending stocks for MY 1992 are forecast at 0.60 million metric tons, down 14.3 percent from MY 1991.

C. Minimum CCC Export Edible Sales Price for Additional Peanuts

The minimum price at which additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is a discretionary action that, by practice, is announced at the same time as quota and additional peanut support levels to facilitate the negotiation of additional peanut contracts by producers and handlers.

A proposed rule setting forth the MY 1993 minimum CCC export edible sales price of $400 per st was published on November 24, 1992 (57 FR 55151). Six comments were received during the public comment period that ended on December 11, 1992. Comments were submitted by four producer associations, one sheller association, and one State farm bureau. All comments supported the proposed $400 per st minimum CCC export edible sales price.

For the reasons given in the proposed rule, the minimum price at which 1993-crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is established at $400 per st.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs—agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Final Rule

Accordingly, 7 CFR part 1421 is amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

2. Section 1421.7(c)(8)(iii) is added to read as follows:

§ 1421.7 Adjustment of basic support rates.

* * * * *

(c) * * *

(8) * * *

(iii) 1993 Peanuts, Quota—$674.93 per short ton; Additional—$131.09 per short ton.

* * * * *

3. Section 1421.27(a)(2)(ii) is revised and (a)(2)(iii) is added to read as follows:

§ 1421.27 Producer-handler purchases of additional peanuts pledged as collateral for a loan.

(a) * * *

(2) * * *

(ii) The 1992 minimum CCC sales price for additional peanuts sold for export edible use is $400 per short ton; and

(iii) The 1993 minimum CCC sales price for additional peanuts sold for export edible use is $400 per short ton.

* * * * *

Signed at Washington, DC on June 14, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–14265 Filed 6–21–93; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

RIN 3150–AE00

Licensing Requirements for Land Disposal of Radioactive Wastes

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations containing licensing

requirements for low-level radioactive waste (LLW) disposal facilities. These amendments clarify that these regulations also apply to the licensing of above-ground disposal facilities; replace the phrase "quality control program" in these regulations with the phrase "quality assurance program," tailored to LLW disposal; update the Paperwork Reduction Act Statement in the regulations, and identify the correct NRC recipient of copies of the licensee's annual reports. The changes are intended to simplify LLW disposal facility licensing interactions for NRC, the NRC Agreement States, and potential applicants for LLW disposal licenses.

EFFECTIVE DATE: July 22, 1993.

ADDRESSES: Copies of the regulatory analysis, the environmental assessment and finding of no significant impact, and the comments received on the rule may be examined at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mel Silberberg, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 492–3810.

SUPPLEMENTARY INFORMATION:

Background

The NRC published a proposed rule in the **Federal Register** on March 6, 1992, (57 FR 8093–8096) that proposed to make four specific changes to 10 CFR part 61 (hereafter referred to as "part 61" or "the regulation"). Part 61 sets out licensing requirements, licensing procedures, and performance objectives for the land disposal of LLW waste. A review of part 61 against the backdrop of current State and Compact efforts to site and develop LLW disposal facilities identified the need to modify the regulations as follows: (1) Clarify that 10 CFR part 61 also applies to above-ground disposal facilities; (2) replace the phrase "quality control program" in § 61.12(j) with the phrase "quality assurance program," tailored to LLW disposal; (3) update the Paperwork Reduction Act Statement in § 61.8; and (4) identify the correct NRC recipient of copies of the licensee's annual reports. A 30-day comment period expired on April 6, 1992. Comments were received from six respondents.

Summary and Analysis of Public Comments

Two of the letters came from States, one from a citizens group, one from an environmental consulting company, one from a LLW facility developer, and one from a private citizen. Three of the respondents provided no actual comments but only wrote to indicate their support for the proposed rulemaking. Two of the actual commenters, the State of Illinois and the consulting company, objected to certain provisions of the proposed rule and provided comments on those provisions. The objections raised by these two commenters focused on the change which clarifies that part 61 also applies to above-ground LLW disposal facilities. The developer commented on a part of the rule that was not being revised. One of the commenters raised a concern about shallow land burial that was not germane to this rulemaking.

Issue: Abandonment of the Systems Approach

The State of Illinois and the consulting company expressed concern that the proposed amendments to clarify the applicability of part 61 to above-ground disposal amounted to more than simple clarification. These two commenters took the view that the proposed amendments constituted a significant change in, or even abandonment of, the regulatory concept that was the foundation of part 61 and referred to as the "systems approach." The consulting company stated that two of the basic concepts of the systems approach in part 61 were that "the site should make a significant contribution to the long-term isolation of the wastes," and "as reliance on the long-term performance of engineered features decreases over time, reliance on the site must increase over time in order to compensate." The same commenter stated that the site would play a significantly less important role in assuring the long-term isolation of the waste for above-ground disposal facilities without soil covers than it would for disposal facilities built into the ground with soil covers. The commenter stated that there would have to be overwhelming reliance on the above-ground engineered structures not only to contain the wastes over the short term, but to provide long-term isolation as well. The commenters argued that this situation is an abandonment by NRC of the system approach to LLW disposal.

Response

The systems approach to safe disposal of LLW was and still is the foundation of licensing under part 61. The NRC is not abandoning that regulatory concept in the process of clarifying that part 61 can be used to license above-ground disposal facilities. In pursuing the concept of the systems approach during the development of part 61, NRC assumed that for LLW disposal facilities to meet the performance objectives in subpart C, there would have to be an integrated performance of all of the disposal system components (i.e. the site, the waste form, the engineering or facility design, the operation, and the closure of the facility). Each component of the disposal system would make some particular contribution to the containment or isolation of the waste, albeit dependent upon the particular design. As an integrated system the components would work with each other to protect the public health and safety. This assumption applies to any LLW disposal facility, whether it is in the ground or above-ground. As noted in the Statement of Considerations for the proposed rule, technical criteria, analogous to those presently in 10 CFR part 61 but specific to above-ground disposal, do not exist. Nor is the NRC providing either technical criteria or guidance for above-ground disposal designs in this rulemaking. It is expected that should NRC receive an application for above-ground disposal, criteria will be developed on a case-by-case basis.

In any case, whether an LLW facility is in the ground or above ground, it will have to meet the part 61 performance objectives to be licensed for LLW disposal, and performance assessments will evaluate the interactions of the site, design, etc., to determine if they will result in a safe facility.

Issue: NRC Promotion of an Unproven and Questionably Safe Disposal Technology

The public health and safety implications of the proposed action were also a major concern to the consulting company. That commenter objected to the proposed rule on the grounds that the NRC could not ensure that the public health and safety would be protected because the Agency had not evaluated the safety of an above-ground disposal facility over the 500 years during which there would be a radiological hazard at such a facility. The commenter also asserted that the NRC had not demonstrated through the proposed rule that an overall disposal system of such a design could, with reasonable assurance, meet the performance objectives of subpart C, as such a facility would be required to do before an LLW license could be granted. In addition, the commenter stated that above-ground disposal technology was not specifically evaluated in the Environmental Impact Statement (EIS) for the existing part 61 and noted that no additional assessment was offered as part of the proposed rulemaking. From

this commenter's perspective, by proposing the changes to authorize the use of above-ground disposal, NRC is promoting an unproven and questionably safe disposal technology.

Response

The structure of part 61 is that all land disposal facilities must meet the performance objectives of subpart C. The subpart C performance objectives are the safety objectives, intended to protect the general population from releases of radioactivity, to protect individuals from inadvertent intrusion, and to protect individuals during facility operations. The license application for any LLW land disposal facility must demonstrate compliance with these objectives. If NRC received a license application for an aboveground facility, NRC would perform a safety evaluation as a necessary part of the licensing process to determine if the required performance objectives would be fulfilled. NRC's analysis and evaluation for such a facility would be based on site-specific information and data obtained during the licensing process to assess compliance with the performance objectives. Additionally, in accordance with 10 CFR 51.80(a), the NRC will prepare an EIS for the facility as it is required to do for any LLW disposal facility license issued under 10 CFR part 61.

Issue: Lack of Technical Requirements for Above-Ground Disposal—More Complicated Licensing Process

The two commenters who objected to the proposed rule also objected because it did not contain technical requirements for above-ground disposal. Part 61 contains detailed technical requirements specifically for near-surface disposal facilities but no equivalent technical requirements for above-ground facilities are present in the existing part 61, nor were any proposed through the rulemaking. The commenters maintain that it is not desirable to promulgate a rule extending the applicability of Part 61 to above-ground disposal facilities without appropriate technical guidance.

The consulting company also objected to the proposed rule because the commenter believes that NRC's intentions to develop technical requirements after an application is received would increase uncertainty and complicate, rather than simplify, the licensing process. The commenter stated that developing the requirements at the same time a license application is under review would expose the license review to undesired debate about the adequacy of the regulations and the manner in which they were developed. The commenter argued that NRC should develop the technical requirements for above-ground disposal now, as part of this rulemaking.

Response

The NRC continues to support its earlier decision not to issue technical criteria for above-ground disposal with this rulemaking. While some States have considered above-ground disposal, no State has actually decided to build such a facility. Thus, NRC may not even receive an application to license an above-ground facility. Therefore, NRC believes that it is a more efficient use of NRC resources to develop technical criteria when there are actual plans for an above-ground facility rather than speculate at this time as to how such a facility might be designed.

Although the decision to defer development of the technical criteria for an above-ground disposal facility will introduce some uncertainty into the licensing process, the Commission does not believe that this deferral will substantially interfere with the development of a license application for such a facility or the NRC review of such a license application. As noted previously, the performance objectives of subpart C must still be met, and furthermore, the near-surface disposal requirements currently in § 61.50, § 61.51, and § 61.52 may be useful to a potential license applicant in preparing a license application for an above-ground disposal facility.

Issue: Increased Regulatory Uncertainty for Above-Ground Disposal

The consulting company expressed concern that if an Agreement State receives an application for above-ground disposal and NRC has not developed technical requirements, the Agreement State will have to develop its own technical requirements which could be different from those developed by another Agreement State or by the NRC. The commenter's view is that the differences in requirements could raise issues that would ultimately have to be resolved by NRC or by the courts.

Response

NRC recognizes that different States and the NRC might utilize different technical criteria appropriate to the particular design proposed to them. The NRC will provide assistance to the extent practical to facilitate States' efforts in developing and utilizing criteria. In any case, as noted previously by the Commission, the performance objectives of subpart C must still be met. Any differences in technical approaches should not give rise to proceedings before NRC or the Courts.

Issue: LLW Licensing on an Ad Hoc Basis

According to one of the commenters, the proposed changes which include facility review and criteria development on a case-by-case basis, raise the specter of above-ground disposal facilities that are designed, licensed, constructed, operated, and closed, on an ad hoc basis. The commenter believes such licensing would be a retreat to the method of licensing used before the promulgation of part 61.

Response

The NRC does not believe that the term "ad hoc" accurately describes the licensing decisions it will make on above-ground disposal. NRC has dealt with and will continue to deal with many specific licensing issues on a case-by-case basis. However, since the promulgation of part 61, the licensing process for LLW disposal is directed at attaining reasonable assurance that the licensed facility will meet the performance objectives of subpart C. Granted there will likely be new and different issues associated with licensing an above-ground facility, but NRC will deal with these issues as it has in the past, making sure that adequate conservatism has been incorporated in the design or the siting of the facility to ensure the public safety.

Issue: Not Disposal but Long-Term Storage

One of the commenters objected to the concept of above-ground disposal as nothing more than a 500-year hold-for-decay, storage facility. The commenter notes that long-term storage of LLW is inconsistent with Commission policy. The commenter urged NRC to make a clear case that an above-ground disposal facility without an earthen cover is substantially different from a 500-year storage facility.

Response

The NRC would not treat an above-ground disposal facility as a storage facility. A performance assessment would need to demonstrate long-term performance and stability as required by part 61. The facility would be licensed as a permanent disposal facility and would be evaluated for compliance with the Performance Objectives in subpart C.

Issue: Lack of Public Role in the Regulatory Process

Another issue raised was that the approach NRC intends to use to license

above-ground disposal will not ensure adequate opportunity for public involvement in the regulatory process. The commenter noted that in the proposed rule NRC specified its intent to develop technical requirements for above-ground disposal facilities after an application is received and on a case-by-case basis. The commenter assumed that such an approach would not afford the public the opportunity to be actively involved in the development and review of such requirements.

Response

There has been opportunity for public participation in the establishment of the performance objectives in subpart C, which were established by rulemaking. In addition, there will be opportunity for the public to be involved in the regulatory process related to licensing an above-ground disposal facility. As discussed previously, the technical review criteria for an above-ground disposal facility will be developed on a case specific basis after a license application is received for such a facility. On a case specific basis the Commission will determine what mechanism to use to establish the technical requirements for the facility license and the method for involving the public in the development of such requirements. In similar situations where the technical criteria for licensing has not been established by rule, the Commission has provided an opportunity for parties to the hearing on the license application for the facility, the opportunity to comment on the licensing criteria. This occurred in the Envirocare license application for a specialized high-volume, low-activity thorium and uranium waste disposal facility (56 FR 2959) 1991 and in the Louisiana Energy Services license application for the design, construction, and operations of unique uranium enrichment facilities. (56 FR 23310) 1991.

Participation by a member of the public in the licensing process is described in NUREG–1274 including procedures for compliance with 10 CFR part 2, NRC's "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders." **Federal Register** Notices (FRN) are published when an application is tendered, when an application is determined to be acceptable for docketing, when the Draft Safety Evaluation Report (DSER) and Draft Environmental Impact Statement (EIS) are completed, and when public hearings are scheduled. NRC will also publish a Notice of Intent to issue a license and a Notice of Issuance. The public, States, tribes, and local governments can petition to participate in the licensing process and can request hearings to provide further involvement.

Issue: Shallow Land Burial Facilities Could be Considered Geologic Repositories

The developer commented that the second sentence of the definition "land disposal facility" which reads, "For purposes of this chapter, a geologic repository as defined in part 60 is not considered a land disposal facility" might be construed to preclude shallow land burial as a permissible method for LLW disposal. The commenter noted that while the exclusion of geologic repositories is supposed to decouple LLW facilities from deep geologic facilities for high-level waste (HLW) disposal, the definition of geologic repository in part 60 (NRC's HLW disposal regulations) is very general, and that a "shallow land burial facility" for LLW could be considered a geologic repository under the part 60 definition.

Response

NRC staff believes that this comment reflects a misunderstanding regarding NRC's proposed changes to the definition of "land disposal facility," and it addresses an issue which is outside of the intended scope of the rulemaking. From the developer's comments, it could be that the developer incorrectly believed that the second sentence of the definition was being added, or at least changed, as part of NRC's proposed revision to part 61. However, neither was the case. The language identified in this comment is already part of the definition of "land disposal facility" in part 61 and has been since the original rule was promulgated in 1982. For purposes of presenting the entire definition as it would appear when the revisions were promulgated, the NRC staff included the second sentence in what was referred to as the proposed definition for "land disposal facility" for the proposed rulemaking. Even though NRC was not proposing to add or change that sentence, NRC staff considered the developer's comment to determine if the wording of the second sentence could be used to exclude typical shallow land burial as an acceptable design for disposal of LLW.

The staff does not believe that there should be any difficulty in differentiating between a geologic repository that is licensed under the requirements of part 60 for disposal of HLW and a land disposal facility licensed under the requirements of part 61 for disposal of LLW. The definition of a geologic repository must be read within the context of the purpose and scope of 10 CFR 60.1. This section applies to a geologic repository that is only licensed to the U.S. Department of Energy (DOE) in accordance with the Nuclear Waste Policy Act of 1982. Moreover, § 60.1 specifically states that part 60 "does not apply to any activity licensed under another part of this chapter." Therefore, a shallow land burial facility licensed under part 61 would not come within the scope of § 60.1, but instead would fit within the scope of part 61. The staff concludes that no change is required to the second sentence in the definition for "land disposal facility" in part 61 to address the developer's comment.

Based on the analysis of public comments and further staff review, the staff has prepared this final rule. As described below, there are some editorial differences between the proposed definition for "land disposal facility" and the definition to be promulgated in the final rule.

Discussion of the Revisions

1. Amend the definition of "land disposal facility" in § 61.2 to clarify that the term refers to LLW disposal facilities which are on or protrude through the earth's surface and do not have an earthen cover, in addition to those that are in the ground and have an earthen cover. The purpose of this change is to clarify the regulatory applicability of part 61 to the licensing of "above-ground" disposal designs like the "above-ground vault," in particular, and the applicability of the performance objectives of part 61 to these designs.

The definition of "land disposal facility" offered in the proposed rule read "land disposal facility" means the land, buildings, and equipment which are intended to be used for the disposal of radioactive wastes on the surface or into the subsurface of the land. For purposes of this Chapter, a 'geologic repository' as defined in part 60 is not considered a 'land disposal facility'."

For the final rule, the wording of the definition of "land disposal facility" has been modified slightly from the language of the proposed definition in order to better clarify that part 61 can be used by NRC to license above-ground LLW disposal facilities. The final definition of land disposal reads "land disposal facility means the land, buildings and structures, and equipment which are intended to be used for the disposal of radioactive wastes. For purposes of this Chapter, a "geologic repository" as defined in part 60 is not considered a "land disposal facility." In the final definition, the words "on the surface or into the subsurface of the

land" have been deleted to eliminate confusion regarding the kinds of facilities to which these terms apply. The word "structures" has been added since that term better describes the types of engineered features likely to be constructed at an above-ground LLW disposal facility. The Commission believes the final definition is not a substantive change but a modification to simplify the definition so that it is easier to understand.

At this time, the NRC is not issuing specific technical criteria for above-ground disposal facilities that are analogous to the near-surface disposal requirements of §§ 61.50(a), 61.51(a), and 61.52(a) of subpart D because of the special technical characteristics of above-ground disposal facilities. Only those portions of the regulation that apply generically to "land disposal facilities" are directly applicable to the licensing of above-ground disposal facilities. Specifically, this means that the overall performance objectives of subpart C will apply to above-ground disposal facilities, as well as the part 61 administrative and procedural requirements, the environmental monitoring requirements, the financial assurance requirements, the waste transfer and manifest requirements, and the general institutional requirements.

Establishing the applicability of the subpart C performance objectives to above-ground disposal is particularly important. Any applicant for a license for an above-ground disposal facility under part 61 will have to demonstrate to the NRC that the proposed facility can meet the same safety requirements and dose limits that apply to any LLW disposal facility that has an earthen cover. The demonstration of compliance will have to address the unique features of the above-ground design, the special technical considerations associated with those features, their potential health and safety consequences, and reconcile them with the subpart C performance objectives.

Even though some of the requirements in subpart D are only applicable to near-surface disposal, the Commission still believes they would be useful to a prospective license applicant as guidance for planning an above-ground facility and to the NRC or Agreement States in the development of technical requirements for such facilities.

To provide further clarification regarding the applicability of part 61 to the licensing of above-ground disposal facilities, NRC also is amending the "Disposal Facility" discussion in the Concepts Section—61.7. The change to § 61.7(a)(1) clarifies the distinction made by the NRC between near-surface disposal and above-ground disposal, to emphasize that near-surface LLW disposal facilities built partially or totally above-grade have protective earthen covers, while similar facilities constructed without earthen covers are considered to be "above-ground disposal facilities."

NRC is not providing either technical criteria or guidance for above-ground disposal designs with these amendments. It is expected that, should NRC receive an application for above-ground disposal, criteria will be developed on a case-by-case basis.

II. Replace the term "quality control program" in § 61.12(j) with the term "quality assurance program, tailored to LLW disposal." The purpose of this change is to clarify what steps an applicant for an LLW disposal facility license must take in order to assure that the facility will perform as intended, and also to assure that the necessary records and documentation are available for evaluation and performance assessment by NRC or an Agreement State at the time of license submittal. Quality assurance is a broad term that encompasses quality control and also includes managerial controls and audits.

III. Revise § 61.8 to indicate that the NRC requested and obtained OMB approval for the information collection requirements in part 61. Under the OMB guidelines that were in effect when the original part 61 was issued, OMB approval of the part 61 information collection requirements was not necessary because the regulation was expected to affect less than 10 licensees. Subsequently the OMB guidelines changed, and part 61 was no longer exempt from the OMB approval requirement. Accordingly, NRC submitted part 61 for OMB review and obtained the OMB clearance that is required by the Paperwork Reduction Act. The purpose of this change is to update § 61.8 to correctly reflect this approval.

IV. Revise § 61.80(i)(1) to identify the correct NRC headquarters recipient of copies of the annual report.

Issue of Compatibility for Agreement States

Under existing NRC policy and guidelines, two of the changes adopted in this rulemaking would be matters of compatibility for the NRC Agreement States. The change to the definition of land disposal facility in § 61.2 is a matter of Division I compatibility, and the "QC" to "QA" change in § 61.12(j) is a matter of Division II compatibility. This means that those Agreement States that have assumed NRC's regulatory authority for the disposal of LLW under section 274 of the Atomic Energy Act (AEA) of 1954, as amended, normally would be required to incorporate the new definition of "land disposal facility" essentially verbatim directly into their State regulations for LLW disposal. However, States who have already selected a disposal technology and adopted a more narrow regulatory definition of "land disposal facility" to reflect that selected technology, will not be required to amend their regulatory definition to conform to this revision, provided the selected technology falls within the scope of 10 CFR part 61 and the definition is not inconsistent with the NRC definition.

The incorporation of the Division II change is also required; however, the Agreement States have more flexibility than for the Division I change. For the Division II change, the language adopted need not be identical to the NRC regulations, but the effect cannot be less stringent.

Based on the existing guidelines, the changes would have to be incorporated within 3 years after this final rule is issued.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969 as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. Three of the proposed changes—the "quality control" to "quality assurance" change in § 61.12(j), the update of the Paperwork Reduction Act Statement in § 61.8, and the correction of the organizational inconsistency in § 61.80(i)(1) are the types of actions described in categorical exclusion § 51.22(c)(2). As such they are considered by the Commission to be corrective and nonsubstantive in nature and will not have an impact on the environment. The remaining changes, which clarify the applicability of part 61 to the licensing of above-ground LLW disposal, also will not have an impact on the environment in that these amendments do not change the required level of overall performance for LLW disposal facilities. Furthermore, any environmental impact of operating such a facility will be addressed as a part of the licensing action for that specific facility under 10 CFR part 51. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document

Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3877.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0135.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the alternatives considered by the Commission and explains the decision to revise part 61. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Mark Haisfield, (301) 492–3877.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The changes made to part 61 in this rule will only affect those entities that decide to apply for a license to build and operate an LLW disposal facility. In the Low-Level Radioactive Waste Policy Act of 1980 (LLRWPA) and the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA), Congress mandated that the individual States or groups of States called compacts should provide the LLW disposal capacity for the LLW generated within each of their borders. Thus the licensees for LLW disposal facilities will either be States or private operators which are not small entities under the size standards established by the Nuclear Regulatory Commission on November 6, 1991 (56 FR 56671). In addition, this rule will not have a significant economic impact because the changes to part 61 are clarifying in nature, and only a small number of licensees are likely to be affected.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 61

Criminal penalty, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 61.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

1. The authority citation for part 61 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246, (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851).

2. In § 61.2, the definition of *land disposal facility* is revised to read as follows:

§ 61.2 Definitions.

As used in this part:

* * * * *

Land disposal facility means the land, buildings and structures, and equipment which are intended to be used for the disposal of radioactive wastes. For purposes of this chapter, a "geologic repository" as defined in part 60 is not considered a "land disposal facility."

* * * * *

3. In § 61.7, paragraph (a)(1) is revised to read as follows:

§ 61.7 Concepts.

(a) *The disposal facility.* (1) Part 61 is intended to apply to land disposal of radioactive waste and not to other methods such as sea or extraterrestrial disposal. Part 61 contains procedural requirements and performance objectives applicable to any method of land disposal. It contains specific technical requirements for near-surface disposal of radioactive waste, a subset of land disposal, which involves disposal in the uppermost portion of the earth, approximately 30 meters. Near-surface disposal includes disposal in engineered facilities which may be built totally or partially above-grade provided that such facilities have protective earthen covers. Near-surface disposal does not include disposal facilities which are partially or fully above-grade with no protective earthen cover, which are referred to as "above-ground disposal." Burial deeper than 30 meters may also be satisfactory. Technical requirements for alternative methods may be added in the future.

* * * * *

4. Section 61.8 is revised to read as follows:

§ 61.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). OMB has approved the information collection requirements contained in this part under control number 3150–0135.

(b) The approved information collection requirements contained in this part appear in §§ 61.3, 61.6, 61.9, 61.10, 61.11, 61.12, 61.13, 61.14, 61.15, 61.16, 61.20, 61.22, 61.24, 61.26, 61.27, 61.28, 61.30, 61.31, 61.53, 61.55, 61.57, 61.58, 61.61, 61.62, 61.63, 61.72, and 61.80.

5. In § 61.12, paragraph (j) is revised to read as follows:

§ 61.12 Specific technical information.

* * * * *

(j) A description of the quality assurance program, tailored to LLW disposal, developed and applied by the applicant for the determination of natural disposal site characteristics and for quality assurance during the design, construction, operation, and closure of the land disposal facility and the receipt, handling, and emplacement of waste.

* * * * *

6. In § 61.80, (i)(1) is revised to read as follows:

§ 61.80 Maintenance of records, reports, and transfers.

* * * * *

(i)(1) Each licensee authorized to dispose of waste materials received from other persons, pursuant to this part, shall submit annual reports to the appropriate Commission regional office shown in appendix D of part 20 of this chapter, with copies to the Director, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Reports must be submitted by the end

of the first calendar quarter of each year for the preceding year.

* * * * *

Dated at Rockville, Maryland, this 16th day of June 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93-14648 Filed 6-21-93; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-ASW-45; Amendment 39-8575; AD 92-27-21]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 205A-1, and 205B Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 92-27-21 that was sent previously to all known U.S. owners and operators of Bell Helicopter Textron, Inc. (BHTI) Model 205A-1 and 205B series helicopters by individual letters. This AD requires inspection of the tail rotor drive shaft (drive shaft) to ensure its airworthiness and to ensure there is adequate clearance between the drive shaft and the tail rotor drive shaft tunnel (drive shaft tunnel). An inspection is also required after each removal and reinstallation of the starter generator. This amendment is prompted by a report of damage to the drive shaft as a result of interference between the drive shaft and the forward end of the drive shaft tunnel. The actions specified by this AD are intended to prevent failure of the drive shaft, loss of tail rotor control, and subsequent loss of control of the helicopter.

DATES: Effective July 7, 1993. To all persons except those persons to whom it was made immediately effective by Priority Letter AD 92-27-21, issued on January 7, 1993, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 7, 1993.

Comments for inclusion in the Rules Docket must be received on or before August 6, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ASW-45, 4400 Blue Mound Road, Fort Worth, Texas 76106.

The applicable service information may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas 76106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, FAA, Rotorcraft Certification Office, ASW-170, 4400 Blue Mound Road, Fort Worth, Texas 76106, telephone (817) 624-5177, fax (817) 740-3394.

SUPPLEMENTARY INFORMATION: On January 7, 1993, the FAA issued Priority Letter AD 92-27-21, applicable to Bell Helicopter Textron, Inc. (BHTI) Model 205A-1 and 205B series helicopters with increased diameter drive shaft, part number (P/N) 204-040-620-011, installed, which requires an inspection of the drive shaft to ensure that it is airworthy and to ensure there is no interference between the drive shaft and the drive shaft tunnel. Additionally, an inspection for adequate clearance is also required each time the starter generator is installed after maintenance. That action was prompted by a report of damage to the drive shaft as a result of interference between the drive shaft and the forward end of the drive shaft tunnel. An investigation indicated that interference could occur as a result of damage to the upper side of the drive shaft tunnel when conducting maintenance on the starter generator. This condition, if not corrected, could result in failure of the drive shaft, loss of tail rotor control, and subsequent loss of control of the helicopter.

The FAA has reviewed and approved BHTI Alert Service Bulletin (ASB) 205-92-49 and ASB 205B-92-13, both dated October 5, 1992, that describe procedures for an inspection of the drive shaft, replacement of unairworthy parts, and reassembly of the drive shaft and drive shaft tunnel to provide adequate clearance between the drive shaft and the drive shaft tunnel. Additionally, these ASB's require an inspection for adequate clearance between the drive shaft and the drive shaft tunnel each time the starter generator is installed after maintenance.

Since the unsafe condition described is likely to exist or develop on other helicopters of the same type design, the FAA issued priority letter AD 92-27-21 to prevent failure of the drive shaft, loss of tail rotor control, and subsequent loss of control of the helicopter. The AD requires a one-time inspection of the drive shaft to ensure there is adequate clearance between the drive shaft and the drive shaft tunnel and inspections for adequate clearance after each removal and reinstallation of the starter generator. The actions are required to be accomplished in accordance with BHTI ASB 205-92-49 and ASB 205B-92-13, both dated October 5, 1992 described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on January 7, 1993, to all known U.S. owners and operators of BHTI Model 205A-1 and 205B series helicopters. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this final rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ASW–45." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AD 92–27–21 Bell Helicopter Textron, Inc. (BHTI): Amendment 39–8575. Docket Number 92–ASW–45.

Applicability: Model 205A–1 and 205B series helicopters, with increased diameter tail rotor drive shaft (drive shaft), P/N 204–040–620–011, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the drive shaft, loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours' time-in-service after the effective date of this AD:

(1) Conduct a one-time inspection of the helicopter and the drive shaft in accordance with paragraphs 1 through 4 of the Accomplishment Instructions of BHTI Alert Service Bulletin (ASB) 205–92–49, dated October 5, 1992, for BHTI Model 205A–1 helicopters, and ASB 205B–92–13, dated October 5, 1992, for BHTI Model 205B helicopters.

(2) Reassemble the tail rotor drive shaft assembly in accordance with paragraph 5 of the pertinent ASB to ensure a minimum of 0.50 inch clearance is obtained between the tail rotor drive shaft tunnel (drive shaft tunnel) and the drive shaft.

(b) Each time the starter generator is installed after maintenance, ensure a minimum of 0.50 inch clearance is maintained between the drive shaft tunnel and the drive shaft. Adjust the position of the drive shaft tunnel in accordance with paragraph 5 of the pertinent ASB to obtain proper clearance.

(c) Remove unairworthy parts found during the inspection required in paragraph (a) and replace with airworthy parts before further flight.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate, Fort Worth, Texas 76193–0170. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The inspection, removal, and replacement, if necessary, and reassembly shall be done in accordance with the applicable BHTI ASB 205–92–49 or 205B–92–13, both dated October 5, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 7, 1993, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 92–27–21, issued January 7, 1993, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on May 6, 1993.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–14640 Filed 6–21–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–195–AD; Amendment 39–8595; AD 93–11–04]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 series airplanes, that requires a one-time high frequency eddy current inspection to detect cracks in the outer flap center hinge fitting, and repair of the outer flap center hinge. This amendment is prompted by a recent analysis of loading spectra, which revealed that the actual loads of the outer flap center hinge on these airplanes is heavier than originally calculated, resulting in a fatigue life of less than 90,000 landings for certain center hinges. The actions specified by this AD are intended to prevent premature failure of the outer flap center hinge due to fatigue, which could result in reduced structural integrity of the outer flap.

DATES: Effective July 22, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket,

1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Timothy J. Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F27 series airplanes was published in the Federal Register on March 11, 1993 (58 FR 13430). That action proposed to require a one-time high frequency eddy current inspection to detect cracks in the outer flap center hinge fitting, and repair of the outer flap center hinge.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 25 airplanes of U.S. registry will be affected by this AD, that it will take approximately 74 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $7,082 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $278,800, or $11,152 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–11–04 Fokker: Amendment 39–8595. Docket 92–NM–195–AD.

Applicability: Model F27 series airplanes (except Model F27 Mark 050 series airplanes); serial numbers 10102 and 10105 through 10240, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent premature failure of the outer flap center hinge due to fatigue, which could result in reduced structural integrity of the outer flap, accomplish the following:

(a) For airplanes on which Fokker Service Bulletin SBF27/57–22 has not been accomplished and that have accumulated 72,000 or more total landings as of the effective date of this AD: Within 1,000 landings or 6 months after the effective date of this AD, whichever occurs first, perform a high frequency eddy current inspection of the outer flap center hinges to detect cracks, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–66, dated October 11, 1991.

(1) If no crack is found, repair the outer flap center hinge within 2,800 landings or 2 calendar years following the inspection required by paragraph (a) of this AD, whichever occurs first, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–66, dated October 11, 1991.

(2) If any crack is found, repair the outer flap center hinge, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–66, dated October 11, 1991, at the times specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) If the crack length inside the bore is less than 5 mm, and if no crack is found on any of the faces around the bore: Repair within 300 landings following the inspection required by paragraph (a) of this AD.

(ii) If the crack length inside the bore is equal to or more than 5 mm; or if the crack length inside the bore is less than 5 mm, and the crack is also present in one of the faces around the bore: Repair prior to further flight.

(b) For airplanes on which Fokker Service Bulletin SBF27/57–22 has been accomplished and that have accumulated 55,000 or more total landings as of the effective date of this AD: Within 1,000 landings or 6 months after the effective date of this AD, whichever occurs first, perform a high frequency eddy current inspection of the outer flap center hinges to detect cracks, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–66, dated October 11, 1991.

(1) If no crack is found, repair the outer flap center hinge within 2,800 landings or 2 calendar years following the inspection required by paragraph (b) of this AD, whichever occurs first, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–66, dated October 11, 1991.

(2) If any crack is found, repair the outer flap center hinge in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/57–66, dated October 11, 1991, at the times specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(i) If the crack length inside the bore is less than 5 mm, and if no crack is found on any of the faces around the bore: Repair within 300 landings following the inspection required by paragraph (b) of this AD.

(ii) If a crack inside the bore is located on the grease nipple bore half of the hinge; or if the crack length inside the bore is equal to or more than 5 mm; or if the crack length inside the bore is less than 5 mm and the crack is also present in one of the faces around the bore: Repair prior to further flight.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and repairs shall be done in accordance with Fokker Service Bulletin F27/57–66, dated October 11, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 22, 1993.

Issued in Renton, Washington, on June 1, 1993.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-14639 Filed 6-21-93; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 92-NM-205-AD; Amendment 39-8599; AD 93-11-09]

Airworthiness Directives; de Havilland, Inc., Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all de Havilland Model DHC-7 series airplanes, that requires replacement of six MS rivets with high-strength Hi-Lok fasteners, in the drag strut attachment fitting of the nose landing gear. This amendment is prompted by reports of incidents involving corrosion and fatigue cracking in commuter-class airplanes that are approaching or have exceeded their economic design goal. These incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by this AD are intended to prevent degradation of the structural capabilities of the affected airplanes.

DATES: Effective July 22, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sol Maroof, Aerospace Engineer, Airframe Branch, ANE-172, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6220; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all de Havilland Model DHC-7 series airplanes was published in the **Federal Register** on March 16, 1993 (58 FR 14187). That action proposed to require replacement of six MS rivets with high-strength Hi-Lok fasteners, in the drag strut attachment fitting of the nose landing gear.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 48 airplanes of U.S. registry will be affected by this AD, that it will take approximately 24 workhours per airplane to accomplish the required actions, and that the average labor rate is $55 per workhour. The cost of parts is expected to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $63,360, or $1,320 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-11-09 De Havilland, Inc.: Amendment 39-8599. Docket 92-NM-205-AD.

Applicability: All Model DHC-7 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the structural capabilities of the affected airplanes, accomplish the following:

(a) For all affected airplanes: Within 6 months after the effective date of this AD, replace the six MS rivets with hi-strength Hi-Lok fasteners, Modification 7/2572, in the drag strut attachment fitting of the nose landing gear, in accordance with de Havilland Service Bulletin S.B. 7-53-32, dated March 15, 1991.

(b) For airplanes having serial numbers 3 through 27, inclusive: Installation of a new outer drag strut attachment fitting, Modification 7/1328, in accordance with de Havilland Service Bulletin 7-53-31, dated December 15, 1989, as revised by Notice of Status Change 7-53-31-1, dated April 20, 1990, constitutes an acceptable alternative method of compliance with the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement shall be done in accordance with de Havilland Service Bulletin S.B. 7–53–32, dated March 15, 1991. The installation shall be done in accordance with de Havilland Service Bulletin 7–53–31, dated December 15, 1989; and Notice of Status Change 7–53–31–1, dated April 20, 1990, for de Havilland Service Bulletin 7–53–51, dated December 15, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 22, 1993.

Issued in Renton, Washington, on June 3, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–14642 Filed 6–21–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–122–AD; Amdt. 39–8597; AD 93–11–07]

Airworthiness Directives; McDonnell Douglas Model DC–6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–6 series airplanes, that requires the implementation of a supplemental structural inspection program either by the accomplishment of specific inspections or by the revision of the FAA-approved maintenance program to include such a program. This amendment is prompted by a structural reevaluation, which has identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original design life. Fatigue cracks in these areas, if not detected and corrected in a timely manner, could compromise the structural integrity of these airplanes.

DATES: Effective July 22, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5324; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–6 series airplanes was published in the **Federal Register** on January 14, 1993 (58 FR 4367). That action proposed to require the implementation of a supplemental structural inspection program either by the accomplishment of specific inspections or by the revision of the FAA-approved maintenance program to include such a program.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter suggests that, in proposing this AD, the FAA has not followed the guidelines for development and implementation of an AD action, as prescribed in 14 CFR part 39 ("Airworthiness Directives"), § 39.1. The commenter interprets that section of the CFR to mean that an AD is appropriate only when there is an urgent safety problem involved. Since the proposed AD does not support such urgency and does not affect the immediate safety of aircraft, the commenter contends that the proposed AD is not appropriate. The FAA does not concur. According to § 39.1, the issuance of an AD is based on the finding that an unsafe condition exists and is likely to exist or develop in other aircraft of the same type design. That section does not specify that an "unsafe condition" is necessarily of an urgent nature, as the commenter has done. In some cases, an unsafe condition may be of a critical nature, affecting the immediate safety of flight and requiring that operators take prompt action in order to prevent or preclude it; however, in other cases, an unsafe condition may be of a nature that is not so critical, such that immediate action is not as imperative as is long-term monitoring (inspection) and repair.

The FAA's finding that an unsafe condition exists in the context of this AD is based on the fact that, as an airplane approaches or exceeds its original design service life, fatigue damage becomes a significant factor affecting the continued operational safety of the airplane. The "original design service life" of an airplane is typically considered to be the period of service, after which a substantial increase in the maintenance costs is expected to take place in order to assure continued operational safety. A review of the U.S. fleet of Model DC–6 series airplanes indicates that the number of airplanes that have exceeded this design service life is quite large.

Further, the type design approval of Model DC–6 series airplanes does not include a damage tolerance assessment. The manufacturer has demonstrated, by fatigue testing and analysis, that for the period during the design service life of airplanes normally operated and adequately maintained, there should be no detrimental crack or failure of the structural elements. However, metal fatigue is a known phenomenon and, once the airplane has exceeded its design service life period, cracks could be expected to develop in the structure. Service history has proven that normal maintenance routines, as conducted during the design service life of an airplane, may not be adequate to detect fatigue and other time-related damage once the airplane has exceeded its design service life. An aging airplane requires more attention during maintenance procedures and, at times, more frequent inspections of structural components in order to detect damage due to environmental deterioration, accidental damage, and fatigue. The actions specified in the DC–6 Supplemental Inspection Document (SID) and this AD clearly address the

necessary inspections of critical structural elements. Should (fatigue) cracks develop in these structural elements and go undetected, the structural integrity of the airplane would be compromised.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 75 McDonnell Douglas Model DC–6 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 57 airplanes of U.S. registry will be affected by this AD. Of these 57 airplanes, 13 are operated pressurized and 44 are operated non-pressurized.

For the 13 pressurized airplanes, the FAA estimates that it will take approximately 330 work hours per airplane to accomplish the inspection actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators of pressurized Model DC–6 series airplanes is estimated to be $235,950, or $18,150 per airplane.

For the 44 non-pressurized airplanes, the FAA estimates that it will take approximately 210 work hours per airplane to accomplish the inspection actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators of non-pressurized Model DC–6 series airplanes of $508,200, or $11,550 per airplane.

Based on the figures discussed above, the total cost impact of the AD on U.S. operators is estimated to be $744,150. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–11–07 McDonnell Douglas: Amendment 39–8597. Docket 92–NM–132–AD.

Applicability: Model DC–6, DC–6A, DC–6B, C–118A, and R6D–1 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

(a) Except as provided by paragraph (b) of this AD, inspect each Principal Structural Element (PSE) defined in chapter 1, section 6, and chapter III, of McDonnell Douglas Corporation Report No. L26–014, DC–6 Supplemental Inspection Document (SID), dated January 1992 (hereafter referred to as "the SID"), in accordance with the non-destructive inspection (NDI) methods set forth in chapter II of the SID, and in accordance with the schedule specified in paragraphs (a)(1) and (a)(2) of this AD:

(1) Complete the initial inspection of each PSE specified in chapter I, section 6, and chapter III of the SID as follows:

(i) For PSE's that have not yet reached their inspection threshold as of one year after the effective date of this AD, the initial inspection must be accomplished no later than the threshold specified.

(ii) For PSE's that have exceeded their inspection threshold as of one year after the effective date of this AD, the initial inspection must be accomplished within on repeat (R) interval for the PSE, measured from a date one year after the effective date of this AD.

(2) Subsequent inspections must be accomplished at intervals not to exceed the intervals specified in chapter III, section 1, of the SID for the specific NDI sequence code used at the previous inspection.

(b) As an alternative to the requirements of paragraph (a) of this AD: Within one year after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection of the PSE's defined in chapter I, section 6, and chapter III of the SID. The NDI techniques set forth in the SID provide acceptable methods for accomplishing the inspections required by this AD.

(c) Discrepant structure detected during the inspections required by this AD must be replaced or repaired prior to further flight, in accordance with the McDonnell Douglas DC–6 Structural Repair Manual; or in accordance with data approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate.

(d) All inspection results (positive or negative) must be reported to the McDonnell Douglas Corporation in accordance with the instructions in the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections and reporting requirements shall be done in accordance with McDonnell Douglas Corporation Report No. L26–014, DC–6 Supplemental Inspection Document (SID), dated January 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(h) This amendment becomes effective on July 22, 1993.

Issued in Renton, Washington, on June 3, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–14644 Filed 6–21–93; 8:45 am]

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14 CFR Part 39

[Docket No. 92–NM–46–AD; Amendment 39–8553; AD 93–11–01]

Airworthiness Directives; McDonnell Douglas Model DC–9–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10 series airplanes, which currently requires a revision to the Airplane Flight Manual (AFM) to specify that takeoff may not be initiated unless the flight crew verifies that a visual and physical check of the leading edge and upper wing surfaces have been accomplished and the wing is clear of all ice/frost/snow accumulation. This amendment adds a requirement to modify the wing leading edge bleed air anti-ice system so that it can operate on the ground to prevent ice reformation after deicing procedures have been accomplished. This amendment is prompted by several accidents in which airplanes experienced loss of lift when attempting takeoff with ice contamination on their wings. The actions specified by this AD are intended to prevent ice contamination, which could result in the degradation of wing lift, and could result in the airplane stalling at lower than normal angles-of-attack during takeoff.

DATES: Effective July 22, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5336; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 92–03–01, Amendment 39–8155 (57 FR 2013, January 17, 1992), which is applicable to certain McDonnell Douglas Model DC–9–10 series airplanes, was published in the Federal Register on April 14, 1992 (57 FR 12888). The action proposed to require modifying the wing leading edge bleed air anti-ice system so that it can operate on the ground to prevent ice reformation after deicing procedures have been accomplished.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

Several commenters request that the compliance time for modification of the bleed air anti-ice system be extended from the proposed 90 days. One commenter requests that the compliance time be revised in accordance with the following schedule: 25% fleet compliance within 6 months, 50% fleet compliance within 12 months, and 100% fleet compliance within 18 months. This commenter considers that this compliance schedule is more appropriate, since it would allow for initial system installation and subsequent in-service operation and testing in order to evaluate the on-wing reliability of the proposed ground anti-ice system. The commenter adds that, before all operators of Model DC–9–10 series airplanes are required to modify the bleed air anti-ice system, there should be time for operators to develop maintenance and flight crew procedures prior to actual operation of the modified bleed air anti-ice system.

Another commenter requests that the compliance time be extended from the proposed 90 days to 210 days, because this commenter estimates that it would take 7 days to modify each airplane and 210 days to modify its entire fleet. This commenter considers that modifying more than one airplane at a time would pose an operational burden.

Another commenter requests that the compliance time be extended from the proposed 90 days to 12 months to allow modification during regularly scheduled "C" checks. This commenter estimates that it would take a minimum of 72 workhours to install and test the ground anti-ice system; therefore, the proposed compliance time would not allow sufficient time to modify the existing bleed air anti-ice system. In addition, this commenter considers that the pre-flight check of the wing leading edge surfaces, as required by AD 92–03–01, would provide an adequate level of safety in the interim until the modification is accomplished.

One commenter, the McDonnell Douglas Corporation, notes that there have been problems and delays in the development of a relevant modification, and additional delays could arise in making the modification kit available to affected operators. This commenter suggests that a compliance time of 180 days would be reasonable in order to ensure a fleetwide modification of the bleed air anti-ice system.

The FAA concurs with the request to extend the compliance time for the modification. At the time the proposal was issued, a relevant modification had not yet been developed and approved. In selecting the proposed compliance time of 90 days, the FAA considered the probable timeframe in which a suitable modification would be available for installation, and in which the majority of the affected U.S. fleet could be modified. In consideration of the actual amount of time that was necessary for designing, approving, and making available a suitable modification, the FAA now acknowledges that the proposed compliance time was inadequate. The FAA has determined that 9 months is a more practicable interval. Such an extension of the compliance time will allow time not only for the orderly modification of the affected U.S. fleet, but for the training of maintenance and flight crews in the proper operation of the ground bleed air anti-ice system. The FAA has confirmed that the additional time also will assure the availability of the modification kit from McDonnell Douglas to all affected U.S. operators. Further, the extension of the compliance time will provide time for the modification to be tested in service prior to the commencement of the next icing season.

In the interim, other measures have been initiated recently which will assure that the problems associated with on-ground icing will be addressed. Specifically, the FAA recently issued an amendment to Federal Aviation Regulation (FAR) Part 121 (Section

121.629, "Operation in icing conditions") that requires certificate holders to have an FAA-approved ground deicing/anti-icing program in their operations specifications. Among other things, this program must address holdover timetables (the estimated time that deicing/anti-icing fluid will remain effective in preventing the accumulation of ice/frost/snow on the protected surfaces of an aircraft), pretakeoff contamination checks, and training of flight crewmembers and other affected personnel in the specific duties and responsibilities of the program. In consideration of all of these factors, the FAA has revised the final rule to specify a compliance time of 9 months for the required modification.

Several commenters request that the requirement for a physical (hands-on) check of the wing leading edge be eliminated if the ground anti-ice system is operable. One commenter states that this inspection of the wing leading edge is costly and time consuming, and that a modified bleed air anti-ice system would provide sufficient heat to the wing leading edge during on-ground icing conditions. Another commenter states that the physical check should be reserved as a Minimum Equipment List (MEL) requirement if the ground anti-ice system is inoperable.

The FAA partially concurs. The FAA has determined that, in order to positively address the problem of detection of ice/frost/snow accumulation on the wing leading edge, some type of procedure is necessary to ensure that ground deicing is accomplished when needed. The proposed physical (hands-on) check of the wing is one acceptable method of determining that the wing is clear of such accumulation. As discussed previously, since the notice was issued, the FAA has issued an amendment to FAR 121.629 that requires certificate holders to have an FAA-approved ground deicing/anti-icing program in their operations specifications. The FAA has determined that a ground deicing/anti-icing program that meets the requirements of FAR 121.629(c) would also be an acceptable method of complying with this portion of the AD. Under such a program, a determination that the wing is adequately deiced when needed is accomplished by requiring detailed procedural requirements, specifically assigning responsibilities, personnel training requirements, and pre-takeoff checks. For airplanes operating under such a program, a physical (hands-on) check may be eliminated. The final rule has been revised to provide "credit" for airplanes operating under such programs.

Several commenters request that issuance of this AD be delayed until such time that the proposed modification has been successfully installed on certain Model DC–9 series airplanes, and until the modification has been used successfully in service during icing conditions. The commenters state that the proposed modification should be evaluated to verify its reliability. Several commenters note that design problems of the modification already exist. One commenter states that, with the addition of a ground operable wing leading edge bleed air anti-ice system on the airplane, it has reservations as to whether the total system will be sufficient to operate to reasonable dispatch reliability standards. One commenter notes that it would have to train maintenance and flight crew personnel in the operation of the newly-modified bleed air anti-ice system in order to avoid uninformed decisions by these personnel. The FAA does not agree that delaying this AD action is appropriate. The ground bleed air anti-ice system required by this AD uses the same technology as the currently-installed in-flight anti-ice system, and the reliability of that system has already been proven; therefore, the FAA does not consider that service experience and subsequent evaluation of the on-ground bleed air anti-ice system is warranted. Further, as discussed previously, the compliance time for the required modification has been extended to provide for the implementation of crew training procedures. To delay this action further would be inappropriate, since the FAA has determined that an unsafe condition exists and that the modification must be accomplished to positively address that condition and ensure continued operational safety.

Several commenters request that the FAA withdraw the proposed AD. These commenters cite the following reasons as justification for this request:

1. Heat generated as a result of use of the ground bleed air anti-ice system may damage the wing leading edge.

2. Complexity of the modification and lack of in-service testing could lead to operational problems.

3. Water from the melted ice could refreeze as it travels aft on the wing.

4. The visual and physical (hands-on) checks of the wing leading edge are adequate to identify ice/frost/snow accumulation on the wing leading edge after deicing procedures have been accomplished.

5. Reliance on the ground bleed air anti-ice system would provide a false sense of security because this system does not provide complete protection from post deicing ice/frost/snow accumulation.

6. Flickering lights from the anti-ice system within the cockpit would be distracting to the flight crew.

The FAA does not concur with these requests for withdrawal, and responds to the itemized comments as follows:

As for Item 1, above, the FAA notes that, to protect the wing leading edges from excessive heat, either the right or left wing temperature sensor activates the auto-shutdown. A secondary auto-shutdown senses high-bleed air pressure and protects against high temperature; bleed air pressure and temperature advance together.

As for Item 2, as discussed previously, the technology and components of the proposed modification are similar to the currently-installed in-flight bleed air anti-ice system. Therefore, the reliability of this system, in effect, has already been evaluated.

As for Item 3, the ground operable anti-ice system is designed in a manner that will allow minimal water runoff. The FAA has determined that safe operation of the airplane can take place if this water refreezes on any part of the wing other than the wing leading edge.

As for Item 4, the FAA has determined that the problem of ice/snow/frost accumulation on the wing leading edge after deicing procedures only can be addressed adequately by: (1) Either accomplishing a physical (hands-on) check, or implementing a ground deicing/anti-icing program in accordance with FAR 121.629(c) to ensure that the wing has been properly deiced; and (2) installing the modified bleed air anti-ice system to ensure that no additional contamination occurs between aircraft deicing and takeoff. However, neither the physical check nor the deice/anti-ice program alone is adequate. It is widely recognized in the aviation community that the Model DC–9–10 wing is particularly susceptible to loss of lift due to ice on the wing; reliance on procedures that may be suitable for other aircraft is not satisfactory for the Model DC–9–10. Minute amounts of ice on the wing leading edges on these airplanes are significant and can accumulate quickly. With the variability and inconsistency of weather conditions, the reliance on crew observations or weather reports is not acceptable in determining that no ice could accumulate. Additionally, the reliance solely on wing deicing holdover times developed under a FAR 121.629(c) program would not be prudent for this airplane. The successful use of holdover charts has been based on an airline fleet that is not as susceptible to loss of lift from leading

edge contamination as is the Model DC–9–10. Charts, that are readily available to operators for holdover time references (the "SAE/ISO charts"), are presented as guidelines only and are subject to individual interpretation as to the weather conditions that actually exist. Consequently, the FAA does not consider, at this time, that operation of Model DC–9–10 series airplanes solely in accordance with these charts is an adequate substitute for the heated wing leading edge.

As for Item 5, the FAA considers that complete reliance on any one airplane system is inappropriate in any case. Proper training in and operation of any system is needed to ensure safe operation. This AD requires the implementation of appropriate operating procedures relative to the operation of the modification. Such implementation necessarily would involve the training of maintenance and flight crews to operate the modification correctly.

As for Item 6, the FAA notes that the system's amber-colored flickering lights are not warning lights and are not accompanied by any audio warning signal. These lights are the same lights that will illuminate when the pilot engages the in-flight anti-ice system prior to takeoff and are not considered a hazardous distraction to the pilot.

Several commenters request that the proposed AD be revised to allow the use of alternative anti-ice systems other than the system proposed in the notice. The commenters specifically mention use of electro-thermal systems that could operate on the ground independent of engine operation, function from landing-to-next-takeoff, and allow for the application of continuous heat on the wing leading edge. This system would regulate the temperature and eliminate the possibility of excessive heat on the wing leading edge. This system would be relatively easy to install and would create only minimal additional workload for the flight crew. The FAA does not concur with the request to include this installation in the final rule as an alternative modification, since sufficient data and justification were not provided. Under the provisions of paragraph (e) of the final rule, however, operators may apply for the approval of an alternative method of compliance if sufficient data are presented to the FAA to justify the use of an alternative on-ground anti-ice system.

Since issuance of the notice, the FAA has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 30–65, dated October 8, 1992, which describes procedures for installing a supplemental on-ground wing leading edge ice protection system. This modification entails installing new wiring to facilitate installation of the system; installing diode, pressure switches, bracket, and pipe assemblies in the aft accessory compartment left side at station Y=880.000; and installing resistors, relays, and a bracket in the electrical/electronics compartment at station Y=133.000. Providing wing leading edge ice protection, following anti-icing and de-icing procedures, will aid in keeping wing leading edges free of ice/frost/snow accumulations. The FAA has revised paragraph (c) of the final rule to include this service bulletin as an alternative source of service information for modifying the currently-installed in-flight bleed air anti-ice system.

The new service bulletin also provides an estimate of approximately 95 work hours per airplane that would be required for accomplishing the modification of the bleed air anti-ice system. The FAA notes that the work hour estimate that was presented in the proposal was approximately 300 work hours per airplane. In addition, required parts will cost approximately $16,000 per airplane, rather than $10,000 per airplane, as specified in the proposal. The economic impact information, below, has been revised to reflect these revised work hours and parts costs estimates.

The notice would have required that, following modification of the bleed air anti-ice system, appropriate operating procedures be specified in the Limitations Section of the FAA-approved AFM in accordance with an FAA-approved method. However, since issuance of the notice, the FAA has identified certain specific operating procedures that would be appropriate for inclusion in the AFM. Therefore, the final rule has been revised to provide operators with the option of either revising the AFM in accordance with these specific operating procedures or in accordance with another FAA-approved method.

The FAA notes that the description of the addressed unsafe condition, as discussed in the proposal, implied that the condition is a result of icing effects on both the wing upper surface and the wing leading edge. That language was inaccurate; the unsafe condition is likely to occur as the result of icing effects on the wing leading edge, not the wing upper surface. The final rule has been revised to clarify this point.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 119 McDonnell Douglas Model DC–9–10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 89 airplanes of U.S. registry will be affected by this AD, that it will take approximately 95 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $16,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,889,025, or $21,225 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8155 (57 FR 2013, January 17, 1992), and by adding a new airworthiness directive (AD), amendment 39–8593, to read as follows:

93–11–01 McDonnell Douglas: Amendment 39–8593. Docket 92–NM–48–AD. Supersedes AD 92–03–01, Amendment 39–8155.

Applicability: Model DC–9–11, –12, –13, –14, –15, and –15F series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of lift due to ice accumulation on the wing leading edge, accomplish the following:

(a) Except as provided by paragraph (b) of this AD, within 10 days after January 17, 1992 (the effective date of AD 92–03–01, Amendment 39–8155), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

"*Wing De-icing Prior to Takeoff*

Caution

The Model DC–9–10 series airplane has a wing design with no leading edge high lift devices, such as slats. Wings without leading edge devices are particularly susceptible to loss of lift due to wing icing. Minute amounts of ice or other contamination (equivalent to medium grit sandpaper) on the leading edges or wing upper surfaces can cause a significant reduction in the stall angle-of-attack. This can increase the stall speed up to 30 knots. The increased stall speed can be well above the stall warning (stick shaker) activation speed. [*End of cautionary note*]

The leading edge and upper wing surfaces must be physically checked for ice/frost when the airplane has been exposed to conditions conducive to ice/frost formation. Takeoff may not be initiated unless the flight crew verifies that a visual check and a physical (hands-on) check of the leading edge and upper wing surfaces have been accomplished, and that the wing is clear of ice/frost/snow accumulation. Icing/frost/snow conditions exist when the Outside Air Temperature (OAT) is below 6 degrees C (42 degrees F); and either the difference between the dew point temperature and OAT is less than 3 degrees C (5 degrees F), or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present.

Note

This limitation does not relieve the requirement that aircraft surfaces are free of ice, frost, and snow accumulation as required by Federal Aviation Regulations Sections 91.527 and 121.629. [*End of note*]"

(b) Paragraph (a) of this AD does not apply to any airplane that is both operated in accordance with Federal Aviation Regulation (FAR) 121.629(c), Amendment 121–231, and modified in accordance with either paragraph (c)(1) or (c)(2) of this AD.

(c) Within 9 months after the effective date of this AD, accomplish the procedures specified in either paragraph (c)(1) or (c)(2) of this AD:

(1) Modify the bleed air anti-ice system so that it can operate on the ground to prevent ice reformation on the wing leading edges after ground equipment has been utilized to properly deice the airplane, and to minimize the effect of undetected ice/frost/snow contamination. Accomplish the modification in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Or

(2) Install a supplemental on-ground wing leading edge ice protection system in accordance with McDonnell Douglas DC–9 Service Bulletin 30–65, dated October 8, 1992.

(d) Upon the accomplishment of the modification required by paragraph (c) of this AD, revise the AFM in accordance with either paragraph (d)(1) or (d)(2) of this AD:

(1) Revise the Limitations section to include appropriate operating procedures relative to operation of the modification required by paragraph (c) of this AD. These operating procedures must be approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Or

(2) Revise the Limitations section to include the following operating procedures relative to the operation of the modification required by paragraph (c) of this AD. This may be accomplished by inserting a copy of this AD in the AFM.

"*Use of Bleed Air Anti-Ice System*

Caution

The Model DC–9–10 series airplane has a wing design with no leading edge high lift devices, such as slats. Wings without leading edge devices are particularly susceptible to loss of lift due to wing icing. Minute amounts of ice or other contamination (equivalent to medium grit sandpaper) on the leading edges or wing upper surfaces can cause a significant reduction in the stall angle-of-attack. This can increase the stall speed up to 30 knots. The increased stall speed can be well above the stall warning (stick shaker) activation speed. [*End of cautionary note*]

The bleed air anti-ice system must be on whenever icing conditions exist or are anticipated, including on-ground operation."

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The installation of a supplemental on-ground wing leading edge ice protection system shall be done in accordance with McDonnell Douglas DC–9 Service Bulletin 30–65, dated October 8, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on July 22, 1993.

Issued in Renton, Washington, on May 26, 1993.

David G. Hinsel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–14641 Filed 6–21–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–ANE–05; Amendment 39–8558; AD 93–09–17]

Airworthiness Directives; Teledyne Continental Motors Model O–470, IO–470, IO–520, TSIO–520 and IO–550 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Teledyne Continental Motors (TCM) Model O–470, IO–470, IO–520, TSIO–520 and IO–550 series engines, that requires inspection to ensure installation of the correct oil pick-up tube, and, if necessary, removal and replacement of the oil pick-up tube and oil sump. This amendment is prompted by reports that certain TCM rebuilt and overhauled engines may have been assembled using the incorrect oil pick-up tube. The actions specified by this AD are intended to prevent engine failure.

DATES: Effective August 23, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, Small Airplane Directorate, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; telephone (404) 991–3810; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Teledyne Continental Motors (TCM) rebuilt and overhauled Model O–470, IO–470, IO–520, TSIO–520, and IO–550 series engines that were assembled with the incorrect oil pick-up tube installed was published in the **Federal Register** on August 19, 1992 (57 FR 37480). That action proposed to require inspection for the installation of the incorrect oil pick-up tube, in accordance with TCM Service Bulletin M91–10, Revision 1, dated November 27, 1991, and, if necessary, replacement of incorrect oil pick-up tube and oil sump with serviceable parts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 180 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per engine to accomplish the proposed actions including replacing the tube and sump, and that the average labor rate is $55 per work hour. Required parts would cost approximately $1,350 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $272,700.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–08–17 Teledyne Continental Motors (TCM): Amendment 39–8565. Docket 92–ANE–05.

Applicability: Teledyne Continental Motors (TCM) rebuilt and overhauled Model O–470, IO–470, IO–520, TSIO–520, and IO–550 series engines listed by serial number in TCM Service Bulletin (SB) No. M91–10, Revision 1, dated November 27, 1991, installed on but not limited to Cessna, Piper, and Beechcraft aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an engine failure, accomplish the following:

(a) Within the next 50 hours time in service after the effective date of this AD, inspect engines for an incorrect oil pick-up tube in accordance with the instructions of TCM SB No. M91–10, Revision 1, dated November 27, 1991.

(b) If an incorrect oil pick-up tube is installed, prior to further flight remove the oil pick-up tube and oil sump, and replace with serviceable parts.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection of the installation of the oil pick-up tube shall be done in accordance with the following service bulletin:

Document No.	Pages	Revision	Date
TCM M91–10	1–3	1	Nov. 27, 1991.

Total Pages: 3.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 23, 1993.

Issued in Burlington, Massachusetts, on April 23, 1993.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93-14643 Filed 6-21-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 92-NM-69-AD; Amendment 39-8598; AD 93-11-06]

Airworthiness Directives; de Havilland, Inc., Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-7 series airplanes, that requires inspection of certain rivets on the ground spoiler actuator attachment brackets to ensure the integrity of the rivets and to detect fuel leakage; and modification of the ground spoiler actuator attachment brackets. This amendment is prompted by reports of incidents involving corrosion and fatigue cracking in commuter-class airplanes that are approaching or have exceeded their economic design goal. These incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by this AD are intended to prevent degradation of the structural capabilities of the affected airplanes.

DATES: Effective July 22, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sol Maroof, Aerospace Engineer, Airframe Branch, ANE-172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6220; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC-7 series airplanes was published in the Federal Register on March 16, 1993 (58 FR 14189). That action proposed to require inspection of certain rivets on the ground spoiler actuator attachment brackets to ensure the integrity of the rivets and to detect fuel leakage; and modification of the ground spoiler actuator attachment brackets.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 15 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. The cost for required parts will be minimal. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,650, or $110 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-11-06 De Havilland, Inc.: Amendment 39-8598. Docket 92-NM-69-AD.

Applicability: Model DHC-7 series airplanes; serial numbers 1 through 30, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a one-time inspection of the lower two securing rivets on the left- and right-hand ground spoiler actuator attachment brackets to ensure the integrity of these rivets and to detect signs of fuel leakage, in accordance with de Havilland Service Bulletin 7-57-12, dated January 15, 1982.

(1) If any loose or damaged rivet is found, or if there is evidence of fuel leakage, prior to further flight, modify the ground spoiler actuator attachment brackets (Modification No. 7/1827), in accordance with the service bulletin.

(2) If no loose or damaged rivet and no evidence of fuel leakage is found, within 6 months after accomplishing the inspection required by paragraph (a) of this AD, modify the ground spoiler actuator attachment brackets (Modification No. 7/1827), in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and modification shall be done in accordance with de Havilland Service Bulletin 7–57–12, dated January 15, 1982. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 22, 1993.

Issued in Renton, Washington, on June 3, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–14637 Filed 6–21–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–204–AD; Amendment 39–8595; AD 93–11–06]

Airworthiness Directives; de Havilland, Inc., Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–7 series airplanes, that requires modification of the wing inboard leading edge and support structure. This amendment is prompted by reports of incidents involving corrosion and fatigue cracking in commuter-class airplanes that are approaching or have exceeded their economic design goal. These incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by this AD are intended to prevent degradation of the structural capabilities of the affected airplanes.

DATES: Effective July 22, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sol Maroof, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–7 series airplanes was published in the **Federal Register** on March 16, 1993 (58 FR 14182). That action proposed to require modification of the wing inboard leading edge and support structure.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 32 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,040, or $1,760 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–11–06 De Havilland, Inc.: Amendment 39–8595.

Docket 92–NM–204–AD.

Applicability: Model DHC–7 series airplanes; serial numbers 3 through 37, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the wing inboard leading edge and support structure (Modification No. 7/1632), in accordance with de Havilland Service Bulletin 7–57–14, dated June 25, 1982.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through

an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with de Havilland Service Bulletin 7–57–14, dated June 25, 1982. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 22, 1993.

Issued in Renton, Washington, on June 3, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–14638 Filed 6–21–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–81–AD; Amendment 39–8609; AD 93–12–03]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires modification of the plumbing on the forward spar of the tail fuel tank, pressure checking of the fuel shroud drain system, repair or replacement of any failed fuel shroud drain line with a serviceable or new line, and replacement of fuel contaminated insulation blankets with serviceable blankets. This amendment is prompted by reports of failure of the drain pipe in the shroud drain system of the tail fuel tank. The actions specified in this AD are intended to prevent fuel leakage into the center cargo bilge area that could lead to a fire in the cargo compartment.

DATES: Effective July 7, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 7, 1993.

Comments for inclusion in the Rules Docket must be received on or before August 23, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–81–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–141L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5262; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: Recently, several operators of McDonnell Douglas Model MD–11 series airplanes reported failures of the drain pipes in the shroud drain system of the tail fuel tank. In one reported instance, such failure of the drain pipe resulted in an uncontained fuel leak that contaminated the insulation blankets in the center cargo bilge area. Investigation revealed that damaged O-rings in the coupling at the aft pressure bulkhead resulted in fuel leakage in the shroud drain system. Subsequently, the fuel escaped containment through a failed drain line.

Further investigation revealed that water can accumulate and enter the fuel shroud drain system through the three tail tank transfer pump fuel drain trays. The water may freeze, expand, and consequently, rupture drain lines. Failed drain lines, if not corrected, could result in fuel leakage into the center cargo bilge area that could lead to a fire in the cargo compartment.

The FAA has reviewed and approved McDonnell Douglas MD–11 Alert Service Bulletins A28–56, dated May 25, 1993, and Revision 1, dated June 14, 1993, that describe procedures for modification of the plumbing on the forward spar of the tail fuel tank, pressure checking of the fuel shroud drain system, and repair or replacement of any failed fuel shroud drain line with a serviceable or new line. This modification entails removal of four pipe assemblies and three check valves and bushings, and installation of three caps, which would preclude the possibility for water to enter the shroud drain system. Further, Revision 1 describes procedures for replacement of any fuel contaminated insulation blankets with serviceable blankets.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–11 series airplanes of the same type design, this AD is being issued to prevent fuel leakage into the center cargo bilge area that could lead to a fire in the cargo compartment. This AD requires modification of the plumbing on the forward spar of the tail fuel tank, pressure checking of the fuel shroud drain system, repair or replacement of any failed fuel shroud drain line with a serviceable or new line, and replacement of any fuel contaminated insulation blankets with serviceable blankets. The actions are required to be accomplished in accordance with the service bulletins described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in

evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-81-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-12-03 McDonnell Douglas: Amendment 39-8609. Docket 93-NM-81-AD.

Applicability: Model MD-11 series airplanes, as listed in McDonnell Douglas MD-11 Alert Service Bulletin A28-56, Revision 1, dated June 14, 1993, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leakage into the center cargo bilge area that could lead to a fire in the cargo compartment, accomplish the following:

(a) Within 30 days after the effective date of this AD, modify the plumbing on the forward spar of the tail fuel tank in accordance with the Accomplishment Instructions of McDonnell Douglas MD-11 Alert Service Bulletin A28-56, dated May 25, 1993, or Revision 1, dated June 14, 1993.

(b) Immediately following the modification, prior to further flight, perform a pressure check of the fuel shroud drain system in accordance with the Accomplishment Instructions of McDonnell Douglas MD-11 Alert Service Bulletin A28-56, dated May 25, 1993, or Revision 1, dated June 14, 1993.

(1) If the fuel shroud drain system fails the pressure check, prior to further flight, accomplish the requirements in paragraph (b)(1)(i) and (b)(1)(ii) of this AD.

(i) Repair, or replace the failed line with a serviceable or new line and repeat the pressure check of the fuel shroud drain system in accordance with the Accomplishment Instructions of either service bulletin.

(ii) Inspect the insulation blankets in the center cargo bilge area to detect fuel contamination and replace any fuel contaminated insulation blanket with a serviceable blanket in accordance with the Accomplishment Instructions of McDonnell Douglas MD-11 Alert Service Bulletin A28-56, Revision 1, dated June 14, 1993.

(2) If the fuel shroud drain system passes the pressure check, no further action is required by this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modification, pressure check, and repair or replacement shall be done in accordance with McDonnell Douglas MD-11 Alert Service Bulletin A28-56, dated May 25, 1993; or McDonnell Douglas MD-11 Alert Service Bulletin A28-56, Revision 1, dated June 14, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 7, 1993.

Issued in Renton, Washington, on June 16, 1993.

David G. Hsiai,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-14684 Filed 6-21-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-02-AD; Amendment 39-8607; AD 93-12-02]

Airworthiness Directives; SAAB-SCANIA Model SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to certain SAAB-SCANIA Model SF340A and SAAB 340B series airplanes, that requires the installation of an additional protective shield between the existing heat protection and the air cycle machine in the environmental control system (ECS) compartment of the fuselage. This amendment is prompted by two in-flight incidents in which leakage of hot air from the air cycle machine in the ECS occurred and was not detected. The

actions specified by this AD are intended to prevent reduced structural integrity of the fuselage, possible rupture, and subsequent decompression of the airplane.

DATES: Effective July 22, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 22, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from SAAB–SCANIA AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain SAAB–SCANIA Model SF340A and SAAB 340B series airplanes was published in the Federal Register on March 19, 1993 (58 FR 15116). That action proposed to require the installation of an additional protective shield between the existing heat protection and the air cycle machine in the environmental control system (ECS) compartment of the fuselage.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 188 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer to operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $206,800, or $1,100 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–12–02 SAAB-SCANIA: Amendment 39–8607. Docket 93–NM–02–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers 004 through 159, inclusive; Model SAAB 340B series airplanes, serial numbers 160 through 252, inclusive, and 254 through 258, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage, accomplish the following:

(a) Within 3,000 hours time-in-service after the effective date of this AD, install an additional protective shield between the existing heat protection and the air cycle machine, in accordance with SAAB 340 Service Bulletin SAAB 340–53–028, dated August 20, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with SAAB 340 Service Bulletin SAAB 340–53–028, dated August 20, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB-SCANIA AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 22, 1993.

Issued in Renton, Washington, on June 14, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–14636 Filed 6–21–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Docket No. 27297, Amendment No. 91–20]

Establishment of the East Coast Low and Amendment to the Atlantic Low and South Florida Low Additional Control Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Atlantic Low by redesignating a portion of the airspace area as the East Coast Low, with a floor of 2,000 feet MSL, and excludes the East Coast Low and Federal Airways from the Atlantic Low. Further, the southern boundary of the

Atlantic Low is redesignated as latitude 34°00'00" North rather than the current latitude of 28°00'00" North. Concurrently, the northern boundary of the South Florida Low is redesignated as latitude 34°00'00" North rather than the existing latitude of 28°00'00" North. This action ensures that certain air traffic control (ATC) operations are conducted in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c. July 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron L. Boxer, ATP-230, Air Traffic Rules Branch, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Background

The Offshore Airspace Reconfiguration Final Rule published March 2, 1993, (58 FR 12128), amended the Federal Aviation Regulations (FAR), in pertinent part, by designating additional control areas as offshore airspace areas or en route domestic airspace areas, as appropriate. Further, the offshore airspace areas were divided into high and low areas. In addition to combining and simplifying the offshore airspace areas, an effort was made to establish a uniform floor of 5,500 feet MSL, to the extent practicable. However, just before the change was to become effective, it was discovered that not every specific ATC operation that requires controlled airspace could be conducted inside controlled airspace unless the offshore airspace areas were amended.

On April 5, 1993, the FAA temporarily amended the base altitude of the Atlantic Low additional control area from 5,500 feet MSL to 2,000 feet MSL. The amendment reinstated the base altitude that existed in this offshore airspace area prior to the promulgation of the Offshore Airspace Reconfiguration Final Rule. This action enabled the FAA to conduct a microreview of the ATC operations conducted within this airspace area to determine the amount of controlled airspace necessary to contain certain ATC operations. The microreview as completed on April 22, 1993, and revealed that not every instrument procedure or air traffic practice and operation on the east coast could be contained in controlled airspace without further amendment. For example, the sequencing of arrivals and departures within the New York and Boston metroplexes and providing IFR services to military aircraft transiting to/from coastal bases and the warning areas required the amount of controlled airspace previously designated. Consequently, raising the floor of the Atlantic Low to 5,500 feet MSL would have had a significant adverse impact on traffic flow on the east coast.

On May 14, 1993, the FAA proposed to amend 14 CFR part 71 to amend the Atlantic Low by redesignating a portion of the airspace area as the East Coast Low, with a floor of 2,000 feet MSL, and to exclude the East Coast Low and Federal Airways from the Atlantic Low (58 FR 29370). Further, the FAA proposed to redesignate the southern boundary of the Atlantic Low as latitude 34°00'00" North rather than the current latitude of 28°00'00" North. Concurrently, the FAA proposed to redesignate the northern boundary of the South Florida Low as latitude 34°00'00" North rather than the existing latitude of 28°00'00" North. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA.

The FAA received no comments objecting to the proposal. Except for editorial changes, this amendment is the same as that proposed in the notice. The Atlantic Low and South Florida Low additional control areas were published in FAA Order 7400.7A—Supplement dated February 24, 1993, and effective April 1, 1993, which is incorporated by reference in 14 CFR 71.1. The additional control areas listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Atlantic Low by redesignating a portion of the airspace area as the East Coast Low with a floor of 2,000 feet MSL. The southwest corner of the East Coast Low will begin 12 miles from the coast of the United States approximately abeam Atlantic City, NJ and proceed northward 12 miles from and parallel to the U.S. shoreline to approximately abeam Portland, ME. At its widest point in the southeast, the area will be approximately 70 miles east of New Jersey and 50 miles south of Long Island, NY. In the area between eastern Long Island, NY, and Nantucket, MA, the southern boundary will be approximately 10 miles at the widest point. A small segment approximately five miles wide has been added between Nantucket and Chatham, MA, to accommodate instrument arrivals into Nantucket. The eastern boundary off the coasts of Massachusetts, New Hampshire, and Maine is generally a north/south line 25 miles east of Boston, MA. The northern boundary of the South Florida Low will be moved from latitude 28°00'00" North to latitude 34°00'00" which has the effect of moving the southern boundary of the Atlantic Low to the north. This action also excludes Federal Airways from the Atlantic Low and South Florida Low. The East Coast Low will become Class E airspace effective September 16, 1993.

The FAA has determined that this regulation: (1) Is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

The following amendments are to part 71 currently in effect:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.7A—Supplement dated February 24, 1993, and effective April 1, 1993, is amended as follows:

Section 71.163 Designation of Additional Control Areas

* * * * *

Atlantic Low [Revised]

That airspace extending upward from 5,500 feet MSL bounded on the east by the Moncton FIR and the New York Oceanic CTA/FIR, on the south by lat. 34°00'00"N., on the west and north by a line 12 miles from and parallel to the U.S. shoreline, excluding Federal Airways and the East Coast Low offshore airspace area.

East Coast Low [New]

That airspace extending upward from 2,000 feet MSL bounded on the west and

north by a line 12 miles from and parallel to the U.S. shoreline and on the south and east by a line beginning at lat. 39°25'46"N., long. 74°02'34"W.; to lat. 39°02'05"N., long. 73°39'30"W.; to lat. 40°04'20"N., long. 72°30'00"W.; to lat. 40°37'14"N., long. 72°30'00"W.; and that airspace north of a line beginning at lat. 40°40'59"N., long. 72°17'22"W. thence along the northern boundary of warning areas W–106 and W–105 to lat. 41°06'52"N., long. 70°22'51"W.; and that airspace west of a line beginning at lat. 41°16'00"N., long. 69°41'15"W.; to lat. 41°43'00"N., long. 69°39'30"W.; and that airspace west and north of a line beginning at lat. 42°15'31"N., long. 70°00'00"W.; to lat. 43°17'00"N., long. 70°00'00"W.; to lat. 43°33'56"N., long. 69°29'12"W.

* * * * *

South Florida Low [Revised]

That airspace extending upward from 2,700 feet MSL bounded on the west by the Houston Oceanic CTA/FIR; bounded on the north from west to east by the Jacksonville Air Route Traffic Control Center boundary, a line 12 miles from and parallel to the U.S. shoreline and lat. 34°00'00"N., bounded on the east by the New York Oceanic CTA/FIR and the San Juan Oceanic CTA/FIR; bounded on the south from east to west by the Santa Domingo FIR, the Port-Au-Prince CTA/FIR and the Havana CTA/FIR.

* * * * *

The following amendments are to part 71 in effect as of September 16, 1993:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9—Supplement dated February 24, 1993, and effective September 16, 1993, is amended as follows:

Section 71.71(e) Offshore airspace areas.

* * * * *

Atlantic Low [Revised]

That airspace extending upward from 5,500 feet MSL bounded on the east by the Moncton FIR and the New York Oceanic CTA/FIR, on the south by lat. 34°00'00"N., on the west and north by a line 12 miles from and parallel to the U.S. shoreline, excluding Federal Airways and the East Coast Low offshore airspace area.

* * * * *

East Coast Low [New]

That airspace extending upward from 2,000 feet MSL bounded on the west and north by a line 12 miles from and parallel to the U.S. shoreline and on the south and east by a line beginning at lat. 39°25'46"N., long. 74°02'34"W.; to lat. 39°02'05"N., long. 73°39'30"W.; to lat. 40°04'20"N., long. 72°30'00"W.; to lat. 40°37'14"N., long. 72°30'00"W.; and that airspace north of a line beginning at lat. 40°40'59"N., long. 72°17'22"W. thence along the northern boundary of warning areas W–106 and W–105 to lat. 41°06'52"N., long. 70°22'51"W.; and that airspace west of a line beginning at lat. 41°16'00"N., long. 69°41'15"W.; to lat. 41°43'00"N., long. 69°39'30"W.; and that airspace west and north of a line beginning at lat. 42°15'31"N., long. 70°00'00"W.; to lat. 43°17'00"N., long. 70°00'00"W.; to lat. 43°33'56"N., long. 69°29'12"W.

* * * * *

South Florida Low [Revised]

That airspace extending upward from 2,700 feet MSL bounded on the west by the Houston Oceanic CTA/FIR; bounded on the north from west to east by the Jacksonville Air Route Traffic Control Center boundary, a line 12 miles from and parallel to the U.S. shoreline and lat. 34°00'00"N., bounded on the east by the New York Oceanic CTA/FIR and the San Juan Oceanic CTA/FIR; bounded on the south from east to west by the Santa Domingo FIR, the Port-Au-Prince CTA/FIR and the Havana CTA/FIR.

* * * * *

Issued in Washington, DC, on June 17, 1993.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93–14694 Filed 6–21–93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 89C–0480]

Listing of Color Additives for Coloring Contact Lenses; Vinyl Alcohol/Methyl Methacrylate-C.I. Reactive Red 180 Reaction Product; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of February 9, 1993, for the final rule that amended the color additive regulations to provide for the safe use in coloring contact lenses of the reaction product formed by chemically bonding the dye C.I. Reactive Red 180 [5-(benzoylamino)-4-hydroxy-3-((1-sulfo-6-((2-(sulfooxy)ethyl)sulfonyl)-2-naphthalenyl)azo)-2,7-naphthalenedisulfonic acid, tetrasodium salt] (CAS Reg. No. 98114–32–0) to the vinyl alcohol/methyl methacrylate copolymeric lens material.

DATES: Effective date confirmed: February 9, 1993.

FOR FURTHER INFORMATION CONTACT: Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 8, 1993 (58 FR 3225), FDA amended 21 CFR part 73 by adding § 73.3127 to provide for the safe use in coloring contact lenses of the reaction product formed by chemically bonding the dye C.I. Reactive Red 180 [5 (benzoylamino)-4-hydroxy-3-((1-sulfo-6-((2-(sulfooxy)ethyl)sulfonyl)-2-naphthalenyl)azo)-2,7-naphthalenedisulfonic acid, tetrasodium salt] (CAS Reg. No. 98114–32–0) to the vinyl alcohol/methyl methacrylate copolymeric lens material.

FDA gave interested persons until February 8, 1993, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of January 8, 1993, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 706 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the January 8, 1993, final rule. Accordingly, the amendments promulgated thereby became effective February 9, 1993.

Dated: June 14, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–14615 Filed 6–21–93; 8:45 am]

BILLING CODE 4160-01-F

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Permanent Regulatory Program; Hydrologic Balance; Ponds and Sediment Control Measures; Civil Penalties

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with one exception, of a proposed program amendment to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment modifies the Code of Maryland Regulations (COMAR) dealing with hydrologic balance, ponds and sediment control measures, and civil penalties. The amendment was filed in response to the required amendments set forth at 30 CFR 920.16(b)–(g).

EFFECTIVE DATE: June 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, PA 17101, Telephone (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214–7217). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 920.12, 920.15, and 920.16.

II. Submission of Amendment

By letter dated February 7, 1992 (Administrative Record Number MD–549.00), Maryland submitted a proposed program amendment containing modifications to the Code of Maryland Regulations (COMAR) regarding hydrologic balance, ponds and sediment control measures, and civil penalties. The amendment was intended to respond to Federal rulemaking published on August 9, 1991 (56 FR 37851), in which the Director found that certain aspects of Maryland's program were not as effective as their Federal counterparts, and required Maryland to correct these deficiencies as set forth at 30 CFR 920.16(b)–(g).

OSM announced receipt of the proposed amendment in the April 17, 1992, **Federal Register** (57 FR 13680), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 18, 1992.

By letter dated February 19, 1993 (Administrative Record Number MD–549.16), Maryland submitted additional information to both support and modify its proposed amendment. The additional information was submitted in response to an issue letter dated June 24, 1992, from OSM (Administrative Record Number MD–549.08).

OSM announced receipt of the revisions to the previously proposed amendment in the March 26, 1993, **Federal Register** (58 FR 16386) and in the same notice, reopened the public comment period and provided opportunity for a public hearing. The comment period closed on April 12, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendment to the Maryland program.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. COMAR 08.13.09.23 Hydrologic Balance

Maryland, as required by 30 CFR 920.16(b), has revised COMAR 08.13.09.23E(5) to require an operator to demonstrate that the operations prevented material damage to the hydrologic balance outside the permit area, before the regulatory authority may modify surface-water monitoring requirements. However, in making this revision, Maryland eliminated the requirement that "the water rights of other users have been protected or replaced". This requirement is part of the counterpart Federal rules as set forth at 30 CFR 816.41(e)(3). In response to an OSM request for clarification (Administrative Record Number MD–549.08), Maryland submitted a revision to this provision (Administrative Record Number MD–549.16) requiring the operator to demonstrate that postmining water quantity and quality is not adversely impacting identified water users, is not expected to adversely impact identified water users, and the water supply of any adversely impacted water users has been replaced. This revised provision is substantively identical to the Federal rule set forth at 30 CFR 816.41(e)(3). Therefore, the Director finds that the proposal is no less effective than its Federal counterpart and satisfies the requirement of 30 CFR 920.16(b).

B. COMAR 08.13.09.24 Ponds and Sediment Control Measures

1. Maryland, as required by 30 CFR 920.16(c), has revised COMAR 08.13.09.24H(11)(a) to require that an impoundment be inspected by a professional engineer or other qualified specialist experienced in the construction of impoundments. The Director finds that COMAR 08.13.09.24(H)(11)(a), as revised, is no less effective than the provisions of its Federal counterpart at 30 CFR 816.49(a)(10), and satisfies the requirements of 30 CFR 920.16(c).

2. Maryland, as required by 30 CFR 920.16(d), has revised COMAR 08.13.09.24H(3)(c) [formerly .24H(2)(c)], in order to clarify the engineering design standards that ensure stability comparable to 1.3 minimum static safety factor for impoundments not meeting the size or other criteria of 30 CFR 77.216(a), except for coal mine waste impounding structures, and located where failure would not be expected to cause loss of life or serious property damage. As modified and resubmitted on February 19, 1993 (Administrative Record Number MD–549.16), the proposed rule sets forth the following engineering design standards:

—The embankment is not constructed of organic soil or clay of high plasticity; and

—The existing slope of the foundation area is not steeper than the slope provided in the following chart for the soil type to be used to construct the embankment.

Soil type	Classification	Slope
Clay (low to medium plasticity)	CL	30%
Clay-Silt Mixture	CL-ML	30%
Silt	ML	30%
Clayey Sand	SC	25%

OSM has reviewed the proposed engineering design standards, as revised in Maryland's February 19, 1993, submission and feels that the following clarifications are necessary to ensure that the design standards found in COMAR 08.13.09.24H(3)(c) will ensure stability as required in 30 CFR 780.25(c)(3).

—The soil strength values used in the stability analysis conducted by Maryland have defined dry density and optimum moisture content values associated with them. Therefore, the moisture content of the fill material should be specified as adequate to achieve the required dry density through compaction.

—The phreatic surface defined in the analysis does not appear to reflect normal pool conditions under a "worst case" scenario. Therefore, the normal pool elevation and associated phreatic surface should be justified as "worst case" conditions expected in the field.

Therefore, the Director finds that COMAR 08.13.09.24H(3)(c) remains less effective than the Federal regulations and he is not approving the proposed Maryland rule under which impoundments meeting the criteria of COMAR 08.13.09.24H(1) and H(3)(b) would be deemed to meet a minimum static safety factor of 1.3 for a normal pool with steady state seepage condition.

Since this proposal represents an optional approach to the general rule set forth in COMAR 08.13.09.24H(3)(b), and is not required to be part of Maryland's program under 30 CFR 816.49(a)(3)(ii), no action is required of Maryland, and the required amendment at 30 CFR 920.16(d) is being removed. If Maryland wishes to include such an option in its regulations, a proposed program amendment should be submitted, which incorporates the items of clarification discussed above.

3. Maryland, as required by 30 CFR 920.16(e), has revised COMAR 08.13.09.24H by adding a new section H(8) which provides for a certified report to the Bureau after each inspection made during, and upon completion of construction, certifying that the impoundment is being constructed in accordance with the approved plan and regulations at COMAR 08.13.09.24. Maryland was also required, pursuant to 30 CFR 920.16(e), to specify the information to be contained in the certified reports, consistent with the requirements set forth in the Federal rule at 30 CFR 816.49(a)(10)(ii). Based upon a further review of Maryland's proposal, OSM has determined that, when taken collectively, specified construction related and maintenance inspection report requirements include the full scope of items addressed in the Federal rules. The Maryland program proposals at COMAR 08.13.09.24H(11)(b) governing maintenance inspections and COMAR 08.13.09.24H(8) governing construction and post-construction inspections, in concert provide inspection report provisions as effective as the Federal rules at 30 CFR 816.49(a)(10)(ii). Therefore, the Director finds that the proposal is no less effective than its Federal counterpart and satisfies the requirements of 30 CFR 920.16(e).

4. Maryland, as required by 30 CFR 920.16(f), proposes to revise COMAR 08.13.09.24I by requiring the operator to ensure that all temporary structures are removed and reclaimed before abandoning a permit area or seeking final bond release. The Director has determined that this proposal is no less effective than its Federal counterpart at 30 CFR 816.56, and satisfies the requirement set forth at 30 CFR 920.16(f).

C. COMAR 08.13.09.41 Civil Penalties

Maryland, as required by 30 CFR 920.16(g), proposes to revise COMAR 08.13.09.41C(1) to allow a person against whom a penalty has been assessed, 30 days from the date a Notice of Proposed Assessment is served to request an assessment conference. The Director has determined that this proposal is no less effective than its Federal counterpart at 30 CFR 845.18(a), and satisfies the requirement set forth at 30 CFR 920.16(g).

IV. Summary and Disposition of Comments

Public Comments

The public comment periods and opportunity to request public hearings were announced in the April 17, 1992, Federal Register (57 FR 13680), and the March 26, 1993, Federal Register (58 FR 16386). The public comment periods closed on May 18, 1992, and April 12, 1993, respectively. No comments were filed and no one requested an opportunity to testify at the scheduled public hearings so no hearings were held.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various government agencies with an actual or potential interest in the Maryland program. The Fish and Wildlife Service, Soil Conservation Service, and the Maryland Historical Trust concurred in the proposed amendment.

The U.S. Corps of Engineers commented on COMAR 08.13.09.24H(1)(a), (f), (g) and (h). However, these provisions of Maryland's Ponds and Sediment Control Measures regulations were approved by the Director on August 9, 1991 (56 FR 37843), and are not part of the proposed amendment currently being considered.

V. Director's Decision

Based upon the above findings, the Director is approving, with one exception, the program amendment filed by Maryland on February 7, 1992, and revised and resubmitted on February 19, 1993. As discussed in Finding B.2. herein, the Director is not approving proposed COMAR 08.13.09.24H(3)(c).

The Federal rules at 30 CFR part 920 codifying decisions concerning the Maryland program are being amended to implement this decision. The Director is approving these State rules with the understanding that they be promulgated in a form identical to that submitted to OSM and reviewed by the public. Any differences between these rules and the State's final promulgated rules will be processed as a separate amendment subject to public review at a later date. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Maryland program, the Director will recognize only the statutes, regulations

and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Maryland of only such provisions.

EPA Concurrence

In accordance with 30 CFR 732.17(h), OSM solicited EPA's concurrence in the approval of Maryland's program amendment. EPA concurred (Administrative Record Number MD–549.14) with the State's proposed amendments as they can be implemented consistent with applicable Clean Water Act (CWA) requirements. However, EPA expressed concern with COMAR 08.13.09.23E(5)(a) which discusses the conditions under which surface water monitoring may be modified. EPA pointed out that "water quality must continue to meet applicable federal and State water quality standards * * *". In addition, EPA pointed out that the provisions of COMAR 08.13.09.24H(14)(b) which provides for the creation of permanent impoundments of water should also apply to temporary impoundments, and the creation of any impoundment in the waters of the United States does not itself remove those waters from the definition of the waters of the United States under the Clean Water Act.

The Director acknowledges these concerns, but notes that neither the cited Maryland regulations nor their Federal counterparts in 30 CFR part 816, can be construed as superseding, amending or repealing the Clean Water Act. Furthermore, the Director is only approving the cited Maryland regulations with the understanding and on the basis that they do not supersede applicable CWA requirements.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 14, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. 30 CFR 920.15, is amended by adding a new paragraph (w) to read as follows:

§ 920.15 Approval of amendments to State regulatory program.

* * * * *

(w) The amendments submitted to OSM on February 7, 1992, and modified and resubmitted on February 19, 1993, are approved, with the exception noted herein, effective June 22, 1993. The approved amendment consists of modifications to the following Maryland regulations (COMAR):

08.13.09.23E	Surface Water Monitoring.
08.13.09.24H	Impoundments [Except for COMAR 08.13.09.24H(3)(c)].
08.13.09.24I	Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments and Treatment Facilities.
08.13.09.41C	Informal Review.

§ 920.16 [Amended]

3. In 30 CFR 920.16, paragraphs (b), (c), (d), (e), (f) and (g) are removed and reserved.

[FR Doc. 93–14658 Filed 6–21–93; 8:45 am]
BILLING CODE 4310-05-M

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rules

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed Program Amendment Number 64 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to make the Ohio program as effective as the

corresponding Federal regulations. The amendment concerns the definitions of "previously mined area" and "pre-existing discharge."

EFFECTIVE DATE: June 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

On January 8, 1993 (58 FR 3466), OSM revised its definition of the term "previously mined area" at 30 CFR 701.5. In response to this Federal rule change, the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed Program Amendment Number 64 by letter dated April 5, 1993 (Administrative Record No. OH–1857). Ohio is proposing in this amendment to revise the State definitions of the terms "previously mined area" and "pre-existing discharge" in two rules in the Ohio Administrative Code (OAC).

OSM announced receipt of proposed Program Amendment Number 64 in the April 20, 1993, **Federal Register** (58 FR 21274), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on May 20, 1993. The public hearing scheduled for May 17, 1993, was not held as no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

1. OAC 1501:13–1–02, Previously Mined Area

Ohio is revising OAC section 1501:13–1–02 paragraph (HHHH) to provide that the term "previously mined area" means land affected by coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of Chapter 1513 of the Ohio Revised Code, as effective September 1, 1981, and thereafter. The Ohio program currently defines "previously mined area" as land disturbed or affected by earlier coal mining operations that was not reclaimed in accordance with the requirements of chapter 1513 of the Revised Code, as effective August 3, 1977, and thereafter. On January 8, 1993 (58 FR 3466), OSM revised its definition of the term "previously mined area" at 30 CFR 701.5 to include land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the performance standards of 30 CFR chapter VII. The revised Federal definition of "previously mined area" limits the applicability of 30 CFR 816.106 and 817.106, which allow for partial elimination of pre-existing highwalls, to those areas mined prior to August 3, 1977, that are either unreclaimed or reclaimed to lesser standards than those prescribed by SMCRA. The revised Federal definition also ensures that a previously mined area that had been fully and satisfactorily reclaimed cannot be remined and then reclaimed to the lesser standards applicable to remining operations at 30 CFR 816.106 and 817.106. The Ohio Revised Code, the equivalent to SMCRA, went into effect on September 1, 1981. The Director finds, therefore, that the proposed revision is substantively identical to and no less effective than the corresponding Federal definition at 30 CFR 701.5.

2. OAC 1501:13–4–15, Pre-existing Discharge

The current definition of "pre-existing discharge" at OAC section 1501:13–4–15 paragraph (B)(5) contains language that mirrors Ohio's existing definition of previously mined area. Ohio, therefore, is revising OAC section 1501:13–4–15 paragraph (B)(5) to provide that the term "pre-existing discharge" means a discharge from surface or subsurface waters which is located on previously mined areas as defined in proposed OAC section 1501:13–1–02. As this provision is consistent with the proposed revised definition of "previously mined area," the Director finds that it will not render the Ohio rule less effective than the Federal regulations.

3. OAC 1501:13–4–15 Paragraphs (I)(2)(a) and (I)(3)(d)

Ohio is revising these paragraphs to delete two paragraph notations made obsolete by the reorganization of OAC section 1501:13–9–15 as proposed in Ohio's January 12, 1993, submission of Revised Program Amendment Number 56 (OH–1803). Ohio is proposing to cite OAC section 1501:13–9–15 as a whole rather than to cite specific paragraphs within that rule. Since Ohio's deletion of these paragraph references does not affect the content of the rule requirement, the Director finds that this revision is nonsubstantive in nature and will not render the Ohio rule less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the April 20, 1993, **Federal Register** closed on May 20, 1993. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. The U.S. Department of Agriculture, Soil Conservation Service, and the U.S. Department of Labor, Mine Safety and Health Administration, responded without comment. No other comments were received.

V. Director's Decision

Based on the above findings, the Director is approving Ohio Program Amendment Number 64, as submitted by Ohio on April 5, 1993.

The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the

Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore, unnecessary.

VI. Procedural Determinations

Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of the Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decision on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 15, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (nnn) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(nnn) The following amendment to the Ohio regulatory program, as submitted to OSM on April 5, 1993, is approved, effective June 22, 1993: Amendment Number 64 which consists of revisions to the Ohio Administrative Code at sections 1501:13–1–02 (HHHH) and 1501:13–4–15(B)(5) concerning the definitions of "previously mined area" and "pre-existing discharge," respectively, and 1501:13–4–15(I)(2)(a) and (I)(3)(d) concerning the deletion of paragraph notations made obsolete by the reorganization of 1501:13–9–15 in Revised Program Amendment Number 56 submitted on January 12, 1993.

[FR Doc. 93–14659 Filed 6–21–93; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH24–1–5291; FRL–4668–9]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On March 29, 1989, USEPA proposed to disapprove a revision to the Ohio State Implementation Plan (SIP) for ozone. The requested revision request is for an alternative emission control plan (bubble) with weekly averaging for volatile organic compounds (VOC) involving two facilities of the General Motors Corporation, Inland Division (Inland): The six motor mount parts coating lines at the Dayton facility and the four seat pad molding lines at the Vandalia Facility. The two facilities are located in Montgomery County, Ohio, an area designated as moderate nonattainment for ozone. No comments were received during the public comment period; therefore, USEPA is finally disapproving this SIP revision request because: There are not sufficient emission reduction credits to offset the excess emissions; the requested revision does not conform to USEPA's averaging time policy; the State did not demonstrate that the revision would not interfere with timely attainment and maintenance of the ozone National Ambient Air Quality Standard (NAAQS); and weekly averaging would allow relaxation of RACT, which is prohibited by the General Savings Clause of the amended Clean Air Act (CAA).

EFFECTIVE DATE: This final rulemaking becomes effective on July 22, 1993.

ADDRESSES: Copies of the SIP revision request and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Bonnie Bush at (312) 353–6684, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Bonnie J. Bush, Air and Radiation Division (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6684.

SUPPLEMENTARY INFORMATION:

1. Summary of State Submittal

On October 31, 1985, the Ohio Environmental Protection Agency (OEPA) submitted a proposed bubble with long-term averaging for VOC emissions between the Dayton facility's six motor mount parts coating lines and the Vandalia facility's four seat pad molding lines. The submitted bubble variance includes the following emission limitations:

A. For the combined lines at the Dayton facility:
1. The weekly volume-weighted average VOC content of coatings used is not to exceed 8.82 pounds of VOC per gallon (lbs VOC/gal) coating, excluding water.
2. The total daily VOC emissions shall not exceed 2,419 pounds (lbs).
3. The total annual VOC emissions shall not exceed 302.36 tons.

B. For the combined lines at the Vandalia facility:
1. The total daily VOC emissions from waxes applied to the top and bottom of mold cavities shall not exceed 8,488 lbs.
2. The total annual VOC emissions from waxes applied to the top and bottom of old cavities shall not exceed 1,056 tons.
3. The total annual VOC emission from waxes applied to mold lids shall not exceed 0 lbs.

On January 13, 1986, the USEPA notified the OEPA that the October 31, 1985, submittal was deficient for reasons set forth in USEPA's December 6, 1985, technical support document (TSD). The OEPA submitted additional information on February 12, 1986. The additional information, however, did not correct the deficiencies cited by USEPA.

On March 29, 1989 (54 FR 12929), USEPA proposed to disapprove this bubble with weekly averaging for the two Inland facilities. No comments were submitted to the USEPA on the proposed rulemaking notice.

Current Ozone SIP

Prior to November 1989, Montgomery County was designated nonattainment for ozone and had an approved Part D SIP. On November 8, 1989, a SIP call letter was sent to the Governor of Ohio, calling for revisions to the ozone SIP for areas including Montgomery County. Under the CAA, Montgomery County was designated moderate nonattainment for ozone, effective November 15, 1990, and is now lacking a demonstration of attainment. While previously approved portions of the SIP remain federally enforceable, Montgomery County's ozone SIP is considered to be inadequate.

Under the federally approved SIP, the Inland Dayton motor mount part coating lines are subject to the control requirements contained in Ohio Administrative Code (OAC) Rule 3745–21–09(U) for surface coating of miscellaneous metal parts and products. The OAC Rule 3745–21–09(U) limits the VOC content of extreme performance coatings to 3.5 pounds of VOC per gallon of coating, minus water. For the motor mount coating line at the Dayton Facility, this limit corresponds to allowable emissions of 15 tons VOC per year (based on 1982 production levels). The actual emissions, on the same basis, were 302.36 tons per year.

The Inland Vandalia seat pad molding operation is not subject to Ohio's VOC RACT I or II regulations, but is subject to the control requirements in OAC Rule 3745–21–07(G), which limits emissions of organic material from a broader range of sources that use "photochemically reactive" material. OAC Rule 3745–21–01(C)(5) contains a definition of "photochemically reactive" material. Because the solvent used in the seat pad molding operations, Naphthol 66, is not included in this definition, this operation is considered by the OEPA to be in compliance with OAC Rule 3745–21–07(G). USEPA approved OAC 3745–21–01 and OAC 3745–21–07 on October 31, 1980 (45 FR 72122), and June 29, 1982 (47 FR 28097), and these two rules are part of Ohio's approved SIP. OAC Rule 3745–21–01(C)(5) does not define Naphthol 66 as a "photochemically reactive" material; therefore it is exempt from control under this rule. However, USEPA does now consider it reactive, and the OEPA has used replacement of Naphthol 66 to generate credit for a bubble. In lieu of the RACT requirements for the Inland Dayton motor mount part coating lines, the OEPA has submitted the proposed bubble with weekly averaging for the two Inland facilities as a revision to the Ohio SIP.

Deficiencies in the Bubble

The ETPS provides that only surplus emission reductions are creditable. In order for emission reductions to be considered surplus in a nonattainment area with an approved and adequate Part D SIP, as Montgomery County was until November 15, 1990, the reductions cannot have been assumed as part of the area's demonstration of RFP and attainment. This prevents "double-counting" of reductions.

The 1979 Montgomery County ozone SIP lists Inland's Vandalia facility as having VOC emissions of 891 tons in 1977. The RACT-level emissions for 1982 and 1987 are listed as 851 tons and 1 ton (by switching to water-based mold release) per year, respectively.

The emissions reductions from the Vandalia plant that Inland claims are surplus have already been included in the 1979 ozone SIP for Montgomery County. The proposed 1,056 tons/year emission limit is higher than either the base year (1977) or control year (1982) emissions. Therefore, the bubble is not approvable because there are not sufficient emission reduction credits from the Vandalia plant to offset the excess emissions from the Dayton motor mount coating lines.

Weekly Averaging of Emissions

OAC Rule 3745–21–09(B) requires compliance to be determined on a daily basis. The Inland revision, however, would permit compliance determinations on a weekly basis for all the coating lines.

Generally, USEPA guidance specifies the use of daily averaging of a source's VOC emissions. In USEPA's view, the use of daily averaging for sources is generally necessary to assure timely attainment and maintenance of the short-term ozone NAAQS, and to achieve equivalence to RACT-level control requirements. Under certain specific circumstances, however, USEPA will allow longer averaging periods of up to 30 days. USEPA's current policy concerning averaging times for VOC sources is set forth in a January 20, 1984, memorandum: "Averaging Times for Compliance with VOC Emission Limits." For extended averaging times, this policy requires either a demonstration that the application of RACT is not technically or economically feasible on a daily basis or a demonstration that daily VOC emissions cannot be determined. The OEPA has not submitted any documentation showing that the application of RACT is infeasible on a daily basis or that daily VOC emissions cannot be determined.

In addition, the memorandum states that sources in areas lacking approved SIPs or in areas with approved SIPs, but showing measured violations, cannot be considered for averaging periods longer than 24 hours, until the State demonstrates that long-term averaging will not interfere with timely attainment and maintenance of the NAAQS for ozone. This is required because a change from daily to weekly averaging will allow an increase in emissions on some days, and an area with measured violations may need to preserve the reduction produced by daily averaging limits to attain and maintain the

standards. In light of the designation of Montgomery County as nonattainment, Ohio must demonstrate that the higher daily emissions that could result from weekly averaging would not make it more difficult for the Dayton area to attain and maintain the ozone standard as expeditiously as practicable. Ohio has not done so. Absent such a showing, USEPA must conclude that the shift from daily to weekly averaging may result in an increase in daily emissions and thereby deteriorate, rather than improve the area's current air quality.

As noted above, the USEPA considers daily emissions averaging to be necessary to achieve RACT unless the requirements of the "Averaging Times for Compliance with VOC Emission Limits" policy are met. Thus, in this case, weekly averaging would allow relaxation of RACT. Any relaxation of RACT in nonattainment areas, without at least equivalent emission reductions, is prohibited by the General Savings Clause of the CAA, subpart 6, section 193, which states:

> Each regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator under this Act, as in effect before the date of the enactment of the Clean Air Act Amendments of 1990 shall remain in effect according to its terms, except to the extent otherwise provided under this Act, inconsistent with any provision of this Act, or revised by the Administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of the enactment of the Clean Air Act Amendments of 1990 in any area which is a nonattainment area for any air pollutant may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

This SIP revision request contains no plan to offset potential daily emission increases that would be allowed with weekly averaging with equivalent or greater emission reductions, so no such relaxation of RACT can be approved. Therefore, USEPA disapproves the SIP revision request for Inland's two facilities for this reason as well.

II. Public Comment/USEPA Response

No comments were submitted to the USEPA on the proposed rulemaking notice.

III. Rulemaking Action

USEPA disapproves the SIP revision for Inland because:

(1) There are not sufficient emission reduction credits from the Vandalia seat pad molding lines to offset the excess emissions from the Dayton motor mount coating lines;

(2) The OEPA did not demonstrate that the application of RACT is infeasible on a daily basis or that daily VOC emissions cannot be determined;

(3) The State did not demonstrate that the shift from daily to weekly VOC emissions averaging would not interfere with timely attainment and maintenance of the ozone NAAQS; and

(4) Weekly averaging would allow relaxation of RACT which is prohibited by the General Savings Clause of the amended Clean Air Act.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action does not conform with the statute as amended and must be disapproved. The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law to this revision.

Today's action makes final the action proposed at 54 FR 12929, March 29, 1989. As noted elsewhere in this notice, USEPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 2 under the processing procedures established at 54 FR 2214, January 19, 1989. On January 6, 1989, the Office of Management and Budget (OMB) waived Tables Two and Three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waive until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action affects only one source, General Motors Corporation, Inland Division. General Motors Corporation, Inland Division is not a small entity. Therefore, USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities.

USEPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, USEPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waved Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 23, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671(q).

Dated: January 21, 1993.

Editorial Note: This document was received by the Office of the Federal Register on June 17, 1993.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 93–14632 Filed 6–21–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-294; RM-8129; RM-8190]

Radio Broadcasting Services; Seaside and Cannon Beach, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ken's Corporation, allots Channel 255A to Seaside, Oregon, as the community's second local FM service, and, at the request of Contour Communications, allots Channel 243A to Cannon Beach, as the community's first local FM service. See 58 FR 60783, December 22, 1993. Channel 255A can be allotted to Seaside with a site restriction of 6.1 kilometers (3.8 miles) south, at coordinates 45–56–45; 123–56–07, to avoid a short-spacing to Station KEZX–FM, Channel 255C, Seattle, Washington. Channel 243A can be allotted to Cannon Beach without the imposition of a site restriction, at coordinates 45–53–42; 123–56–36. Canadian concurrence has been received since Seaside and Cannon Beach are located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective August 2, 1993. The window period for filing applications for Channel 255A at Seaside, Oregon, and Channel 243A at Cannon Beach, Oregon, will open on August 3, 1993, and close on September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–294, adopted June 3, 1993, and released June 16, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Cannon Beach, Channel 243A, and adding Channel 255A at Seaside.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–14596 Filed 6–21–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–155; RM–8020, RM–8095, RM–8096]

Radio Broadcasting Service; Blair, Nebraska, Ames, Alta, Denison, Lake City, Perry, Sac City and Storm Lake, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sunrise Broadcasting of Nebraska, Inc., substitutes Channel 268C3 for Channel 292A at Blair, Nebraska, and modifies Station KBWH (FM)'s license to specify operation on the higher class channel, substitutes Channel 269C1 for Channel 268C1 at Storm Lake, Iowa, and modifies the license of Station KAYL to specify the alternate channel, substitutes Channel 288A for Channel 289A at Perry, Iowa, and modifies the license of Station KDLS–FM to specify the alternate channel, and substitutes Channel 284A for unoccupied and unapplied—for Channel 286A at Sac City, Iowa. At the request of Blair Communications, the Commission allots Channel 247C3 to Blair, Nebraska, as the community's second local FM service. See 57 FR 33478, July 29, 1992. At the request of Marjorie K. and Theodore H. Mahn, the Commission allots Channel 248A to Alta, Iowa, as the community's first local FM service. At the request of Ames Broadcasting Company, the Commission substitutes Channel 286C3 for Channel 296A at Ames, Iowa, modifies the license of Station KCCQ to specify the higher class channel, and allots Channel 294C3 to Lake City, Iowa, as the Community's first local FM service. See also Supplementary Information, infra.

DATES: Effective August 2, 1993. The window period for filing applications for Channel 247C3 at Blair, Nebraska, Channel 248A at Alta, Iowa, and Channel 294C3 at Lake City, Iowa, will open on August 3, 1993, and close on September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–155, adopted June 3, 1993, and released June 16, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Channel 268C3 can be allotted to Blair, Nebraska, with a site restriction of 17.8 kilometers (11.1 miles) northwest to accommodate Sunrise's desired transmitter site, at coordinates 41–38–52; 96–17–55. Channel 247C3 can be allotted to Blair with a site restriction of 22.6 kilometers (14.1 miles) northwest to avoid short-spacings to Station KZKX, Channel 245C1, Seward, Nebraska, KDMI, Channel 247C1, Des Monies, Iowa, KPAT, Channel 247C1, Sioux Falls, South Dakota, KLRB, Channel 247C2, Aurora, Nebraska, at coordinates 41–42–43; 96–17–20. Channel 288A can be allotted to Perry at the site specified in its outstanding application (File No. BPH–910812IH), at coordinates 41–50–03; 94–02–12. Channel 269C1 can be allotted to Storm Lake at the licensed site of Station KAYL, at coordinates 42–38–05; 95–10–10. Channel 284A can be allotted to Sac City with a site restriction of 14.9 kilometers (9.3 miles) northeast to avoid short-spacings to Stations KESY–FM, 283C, Omaha, Nebraska, KKLS–FM, Channel 284C, Sioux Falls, South Dakota, and KJJG, Channel 285A, Spencer, Iowa, at coordinates 42–30–37; 94–52–14. Channel 248A can be allotted to Alta with a site restriction of 1.0 kilometers (0.6 miles) northeast, at coordinates 42–40–25; 95–17–25. Channel 286C3 can be allotted to Ames with a site restriction of 4.4 kilometers (2.7 miles) north-northwest to accommodate ABC's requested site, at coordinates 42–04–05; 93–38–13. Channel 294C3 can be allotted to Lake City with a site restriction of 9 kilometers (5.6 miles) northwest, at coordinates 42–19–08; 94–49–08, to avoid a short-spacing to the pending application (File No. BPH–910314MI) for Channel 294C2, Grinnell, Iowa.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continue to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Alta, Channel 248A, by removing Channel 296A and adding Channel 286C3 at Ames, by adding Lake City, Channel 294C3, by removing Channel 269A and adding Channel 288A at Perry, by removing Channel 286A and adding Channel 284A at Sac City, and by removing Channel 268C1 and adding Channel 269C1 at Storm Lake.

3. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 292A and adding Channel 247C3 and Channel 268C3 at Blair.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–14597 Filed 6–21–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–290; RM–8127; RM–8199]

Radio Broadcasting Services; Colfax and Fairbury, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 225A to Colfax, Illinois, as that community's first local FM service, at the request of Livingston County Broadcasters, Inc., and Channel 299A to Fairbury, Illinois, as that community's first local FM aural service at the request of McLean County Broadcasters, Inc. See 57 FR 61037, December 23, 1992. Channel 225A can be allotted to Colfax in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 225A at Colfax are North Latitude 40–33–54 and West Longitude 88–36–54. Channel 299A can be allotted to Fairbury in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 299A at Fairbury are North Latitude 40–44–42 and West Longitude 88–30–42. With this action, this proceeding is terminated.

DATES: Effective August 2, 1993. The window period for filing applications for Channel 225A at Colfax, Illinois, and Channel 299A at Fairbury, Illinois, will open on August 3, 1993, and close on September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–290, adopted June 3, 1993, and released June 16, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Colfax, Channel 225A, and by adding Fairbury, Channel 299A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–14595 Filed 6–21–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 106, 107, 110, 130, 171, 172, 173, 174, 176, 178, and 180

[Docket Nos. HM–214 and PC–1]

RIN 2137–AC31

Oil Spill Prevention and Response Plans

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of agenda for public meeting.

SUMMARY: On June 16, 1993, RSPA issued an interim final rule, requested comment, and announced a public meeting. This notice sets forth the agenda for that meeting.

DATES: The public meeting will be held on June 28, 1993, from 9:30 a.m. to 5 p.m. The meeting may conclude prior to 5 p.m. if all persons wishing to present oral comments have been heard.

ADDRESSES: The public meeting will be held in room 2230 of the Department of Transportation headquarters building (Nassif Building), 400 Seventh Street, SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Diane La Valle, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553. Any person planning to attend the meeting should notify Ms. La Valle, by telephone or in writing.

SUPPLEMENTARY INFORMATION: In an interim final rule (IFR) (58 FR 33302; June 16, 1993), RSPA removed the "hazardous materials" designation of oils that, before February 2, 1993, had not been designated as hazardous. In addition, the IFR requires comprehensive response plans for oil in shipments in bulk packagings in quantities greater than 42,000 gallons and basic response plans for petroleum oil shipments in bulk packagings having capacities of 3,500 gallons or more. The IFR also imposes prevention requirements for petroleum oil shipments in bulk packagings having capacities of 3,500 gallons or more and for non-petroleum oil shipments in bulk packagings in quantities greater than 42,000 gallons. RSPA requested comment on the IFR and announced a public meeting.

The purpose of the meeting is to obtain information from the public concerning the IFR. The meeting is intended to provide a dialogue among RSPA and interested parties. Anticipated discussion topics include:

A. Elimination of Hazardous Materials Designation
  1. Preemption
  2. Enforcement
B. Definition of "Petroleum oil"
C. Comprehensive Response Planning
  1. Threshold for "substantial harm"
  a. Petroleum oils
  b. Non-petroleum oils
  2. Response plan requirements
D. Basic Response Planning
  1. Threshold
  a. Petroleum oils
  b. Non-petroleum oils
  2. Response plan requirements
E. Prevention
  1. Threshold

a. Petroleum
b. Non-petroleum
2. Packaging
3. Communication document
4. Duty to instruct
F. Response Plan Implementation

The meeting will be chaired by a facilitator and RSPA will be represented by a panel. To facilitate discussion, in lieu of providing an oral statement on the entire IFR, participants are requested to address the issues noted in this agenda on an issue-by-issue basis.

RSPA will consider all comments and will make changes to this rule if public comments indicate a change is necessary. Interested persons are invited to participate in the meeting. Any person who wishes to take part in the discussion of any of these topics should notify Ms. Diane La Valle at (202) 366–8553 by June 24, 1993, and identify which issues they wish to address at the meeting.

Issued in Washington, DC, on June 18, 1993, under authority delegated in 49 CFR part 1.

Rose A. McMurray,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 93–14819 Filed 6–18–93; 2:20 pm]

BILLING CODE 4910-60-P

VOL 58 ISS 118 JE 22 1993 UMI

Proposed Rules

Federal Register
Vol. 58, No. 118
Tuesday, June 22, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–31–AD]

Airworthiness Directives: Ayres Corporation S2D and S2R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Ayres Corporation (Ayres) S2D and S2R series airplanes. The proposed action would require inspecting the existing aluminum outboard wing huckbolts for damage (cracks, fatigue, or shearing), replacing the aluminum outboard wing huckbolts with steel huckbolts immediately if damaged huckbolts are found or, if no damaged huckbolts are found, replacing the huckbolts within a certain amount of airplane usage. An investigation of a recent incident where an Ayres Model S2R airplane lost stiffness in the outboard wing section while in flight revealed shearing of 23 aluminum outboard wing huckbolts that hold the top main spar cap to the spar web. The actions specified by the proposed AD are intended to prevent structural damage to the wing caused by damaged huckbolts, which could result in loss of control of the airplane.

DATES: Comments must be received on or before August 31, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–31–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Ayres Corporation, P.O. Box 3090, Albany, Georgia 31708; Telephone (912) 883–1440. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Lorenzen, Aerospace Engineer, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–2910; Facsimile (316) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–31–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–31–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

An Ayres Model S2R airplane was recently involved in an incident where the outboard wing lost stiffness while in flight. Fortunately, the pilot was able to safely land the airplane. Inspection of the incident airplane revealed 23 sheared aluminum outboard wing huckbolts that hold the top main spar cap to the spar web.

Ayres has issued Service Bulletin (SB) No. SB-AG–33, dated February 24, 1993, which specifies procedures for accomplishing the following on certain Ayres S2D and S2R series airplanes:

(1) Inspecting the aluminum outboard wing huckbolts for shearing; and

(2) Replacing the aluminum outboard wing huckbolts with steel huckbolts.

After examining the circumstances and reviewing all available information related to the incident described above including the referenced service information, the FAA has determined that AD action should be taken to prevent structural damage to the wing caused by damaged aluminum outboard wing huckbolts, which could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Ayres S2D and S2R series airplanes of the same type design, the proposed AD would require repetitively inspecting the existing aluminum outboard wing huckbolts for damage (cracks, fatigue, or shearing), replacing the aluminum outboard wing huckbolts with steel huckbolts immediately if any damaged huckbolts are found or, if no damaged huckbolts are found, replacing the aluminum huckbolts with steel huckbolts within a certain amount of airplane usage. The proposed actions would be accomplished in accordance with the Accomplishment Instructions section of Ayres SB No. SB–AG–33, dated February 24, 1993.

The FAA estimates that 1,700 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 11 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $40 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,096,500. These figures take into account that none of

the affected airplane operators have accomplished the proposed actions.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Ayres Corporation: Docket No. 93–CE–31–AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial numbers
S2D	All serial numbers.
S2R	5000 through 5099, 1380R, and 1416R through 2582R.
S2R–R1340.	R1340–001 through R1340–028 (with or without DC suffix).
S2R–R3S	R3S–001 through R3S–011 (with or without DC suffix).
S2R–R1820.	R1820–001 through R1820–035 (with or without DC suffix).
S2R–T11	T11–001 through T11–005 (with or without DC suffix).
S2R–T15	T15–001 through T15–029 (with or without DC suffix); and T27–001 through T27–029 (with or without DC suffix).
S2R–T34	6000 through 6049, T34–001 through T34–143, T34–145, T34–147 through T34–167, T34–170, T34–171, and T34–180 (with or without DC suffix); and T41–001 through T41–143, T41–145, T41–147 through T41–167, T41–170, T41–171, and T41–180 (with or without DC suffix).
S2R–T45	T45–001 (with or without DC suffix).

Compliance: Required as indicated, unless already accomplished.

Note 1: The compliance times specified in this AD take precedence over those referenced in Ayres Service Bulletin (SB) No. SB–AG–33, dated February 24, 1993.

To prevent structural damage to the wing caused by damaged aluminum outboard wing huckbolts, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 50 hours time-in-service after the effective date of this AD, inspect the existing aluminum outboard wing huckbolts for cracks, shearing, or fatigue in accordance with the *Accomplishment Instructions: I.* Inspection, section of Ayres SB No. SB–AG–33, dated February 24, 1993.

(1) If sheared, cracked, or fatigued aluminum outboard wing huckbolts are found, prior to further flight, replace the last 13 vertical rows of aluminum huckbolts with NAS 1103 steel bolts or with steel huckbolts in accordance with the Accomplishment Instructions: II. Repair, section of Ayres Service Bulletin (SB) No. SB–AG–33, dated February 24, 1993.

(2) If no cracked, sheared, or fatigued huckbolts are found, reinspect at intervals not to exceed 100 hours TIS. Accomplish no more than five 100-hour inspection repetitions before replacing the huckbolts as required by paragraph (b) of this AD.

Note 2: The FAA established the compliance times of the initial inspection and the repetitive inspections to coincide with the replacement compliance time specified in paragraph (b) of this AD.

(b) Within the next 650 hours TIS after the effective date of this AD, unless already accomplished in accordance with paragraph (a)(1) of this AD, replace the last 13 vertical rows of aluminum huckbolts with NAS 1103 steel bolts or with steel huckbolts in accordance with the Accomplishment Instructions: II. Repair, section of Ayres Service Bulletin (SB) No. SB–AG–33, dated February 24, 1993.

Note 3: The FAA established the replacement compliance time by estimating airplane operation rates in order to allow the operator the opportunity to accomplish the action during the next annual maintenance inspection.

(c) Replacing the huckbolts as specified in paragraph (b) of this AD eliminates the inspection requirement of this AD and may be accomplished prior to 650 hours TIS.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Ayres Corporation, P.O. Box 3090, Albany, Georgia 31706; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 4, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–14634 Filed 6–21–93; 8:45 am]

BILLING CODE 4910–13–U–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public workshop.

SUMMARY: The Mineral Management Service (MMS) is reviewing blowout preventer (BOP) testing and maintenance requirements for operations in the Outer Continental Shelf (OCS). These requirements are contained in the regulations found at 30 CFR 250.57, 250.86, and 250.106. This notice announces a workshop to examine BOP testing, inspection, and maintenance requirements and methods to optimize BOP performance in the OCS.

DATES: September 14, 1993, from 9 a.m. to 5 p.m. The workshop may continue

on September 15, 1993, depending upon public interest.

ADDRESSES: The workshop will be held at the Gulf of Mexico Regional Office, Minerals Management Service, room 111, 1201 Elmwood Park Boulevard, New Orleans, Louisiana, 70123–2394. Please address requests to make presentations to William S. Hauser, Engineering and Technology Division, MS–4700, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070–4817.

FOR FURTHER INFORMATION CONTACT: William S. Hauser, Engineering and Technology Division, MS–4700, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070–4817, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: The MMS recently received comments from the oil and gas industry about BOP testing requirements for operations in the OCS. Most significantly, industry requested MMS to consider extending the minimum testing interval for BOP equipment to 14 days versus the 7 days required by the current regulations. In response to the comments, MMS is making a comprehensive review of its BOP testing and maintenance requirements and is evaluating methods to optimize BOP performance. The MMS may propose revisions to the BOP requirements pending the review's findings.

The MMS will hold a workshop to gain additional input and data about BOP testing, maintenance, and performance. The workshop will be held on September 14, 1993, at the MMS's Gulf of Mexico regional office in New Orleans, Louisiana. All interested parties are invited to attend.

The workshop offers participants an opportunity to discuss and exchange BOP testing, maintenance, and performance data with MMS. The MMS asks participants to present data and information on BOP reliability and downtime, component failure rates, and BOP maintenance practices. Data from OCS operations are of primary interest; however, data from international offshore operations are welcome. The MMS encourages all interested parties to submit relevant BOP data and information to MMS.

Discussion Topics

The workshop will provide an opportunity for discussion of the following topics:

—Methods to optimize BOP performance;
—Data to support changes in BOP testing frequencies;
—BOP and component failure rates;
—BOP testing procedures and recordkeeping;
—Comparisons between surface and subsurface BOP failure rates, testing frequencies, maintenance practices; and
—Additional safeguards for longer BOP test intervals.

Presentations

Requests by parties interested in making a formal presentation at the workshop should be accompanied by a summary of the material to be covered by the presenter and an estimate of the amount of time required. If time constraints dictate, a time limit may be placed on individual presentations. If the number of presentations warrants, MMS may extend the workshop to a second day. Please address requests to make a presentation to William S. Hauser, Engineering and Technology Division, MS–4700, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070–4817. Requests must be received by close of business on August 20, 1993. Approved presenters will be notified prior to the workshop.

Registration

There is no registration fee for this workshop. However, to assess the probable number of participants, MMS requests participants to register with William S. Hauser at the above address prior to the meeting. Seating is limited and will be on a first-come-first-seated basis.

Proceedings

Proceedings of the workshop will be available for public inspection and copying at the Minerals Management Service, 381 Elden Street, Herndon, Virginia.

Dated: June 14, 1993.

Jim Workman,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 93–14692 Filed 6–21–93; 8:45 am]

BILLING CODE 4310–MR–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–159, RM–8240]

Radio Broadcasting Services; Kalispell, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Cloud Nine Broadcasting, Inc. proposing the substitution of Channel 292C2 for Channel 292A at Kalispell, Montana, and modification of the construction permit for Channel 292A to specify operation on Channel 292C2. The coordinates for Channel 292C2 are 48–10–34 and 114–20–53. Canadian concurrence will be requested for this allotment. We shall propose to modify the construction permit for Channel 292A in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before August 9, 1993, and reply comments on or before August 24, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John F. Garziglia, Pepper & Corazzini, 1776 K Street, NW., Suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–159, adopted May 25, 1993, and released June 16, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–14599 Filed 6–21–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–270, RM–8110]

Radio Broadcasting Services; Liberty, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: The Commission denies the request of Michael S. Celenza seeking the allotment of Channel 271A to Liberty, New York, as the community's second local FM transmission service. See 57 FR 56540, November 30, 1992. The Commission found that Channel 271A could not be allotted to Liberty in compliance with the Commission's Rules which require that a station provide the community with a 70 dBu signal level. The Commission also dismisses the counterproposal filed by Preston Mark and Susan Lea Pollack to allot Channel 271A to Jeffersonville, New York, since the Pollacks failed to include an engineering study demonstrating that the channel could be allotted in compliance with the Commission's minimum distance separation requirements. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–270, adopted May 26, 1993, and released June 16, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–14598 Filed 6–21–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 74

[MM Docket No. 93–154, FCC 93–289]

Radio Broadcasting Service: Aural Broadcast Auxiliary Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its Aural Broadcast Auxiliary Rules to allow use of non-authorized equipment for backup purposes. This would avoid burdening licensees with unnecessary expenditures.

DATES: Comments must be filed by August 9, 1993, and reply comments must be filed on or before August 24, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hank VanDeursen, Mass Media Bureau. Engineering Policy Branch, (202) 632–9660.

SUPPLEMENTARY INFORMATION:

In the Matter of Amendment of Part 74–E Rules

Adopted: June 1, 1993; *Released:* June 16, 1993

Comment Date: August 9, 1993

Reply Date: August 24, 1993

By the Commission:

Introduction

1. By this Notice of Proposed Rule Making, we propose to amend Section 74.550 of our rules to permit certain unapproved transmitters in the band 944–952 MHz [1] to be used for backup purposes at Aural Broadcast Auxiliary Stations operating in accordance with part 74 subpart E.

Background

2. In 1985, the Commission adopted a Report and Order in MM Docket No. 85–36 which required all new transmitters for aural studio transmitter-link/intercity relay (STL/ICR) operation in the 944–952 MHz frequency band to be approved prior to marketing. The order also grandfathered transmitters manufactured before 1985 to allow their use for a five year period ending on July 1, 1990. At the end of 1989 the Society of Broadcast Engineers (SBE) and National Public Radio (NPR) requested that the Commission extend the 1990 deadline until July 1, 1993. Both parties argued that unforeseen developments in the broadcast marketplace had led to less congestion than was originally anticipated, so that the requested relief would not cause undue harm. On January 12, 1990, the Chief, Mass Media Bureau granted the requested deadline extension in an Order, 5 FCC Rcd 738. That Order emphasized that all existing STL/ICR transmitters in use after July 1, 1993 must be approved under the Commission's equipment approval process. In view of the considerable time that has been allowed for compliance with this requirement, we do not believe any further extension of the July 1, 1993 deadline for primary equipment is necessary.

Discussion

3. After July 1, 1993, all part 74, subpart E Aural Broadcast Auxiliary Service Station [2] transmitters operating in the 944–952 MHz band that have not been approved under the Commission's equipment authorization procedures may no longer be used for regular day-to-day service. However, it is our understanding that many broadcast station licensees install backup auxiliary service station equipment to avoid undue disruption in programming should the regular auxiliary transmitter fail or require servicing. Strict compliance with § 74.550 would require that all aural service station transmitters not in use, and which have not been approved under the Commission's equipment authorization program, be entirely removed from service by July 1, 1993. This would also require licensees to bear the cost of replacing their infrequently used backup equipment with approved transmitters.

4. Various parties have suggested informally that the Commission should permit the use of unapproved aural transmitters for backup purposes. This would avoid burdening licensees with unnecessary expenditures, would permit the installation of backup facilities in situations which have not previously been reasonable, and would conserve both public and private resources which would otherwise have to be spent on requests for waivers to use unapproved equipment for backup purposes.

5. In light of the above, we propose to allow all transmitters removed from

[1] The scope of this upgrade requirement also includes grandfathered stations operating on the previously authorized frequency band 942–944 MHz. In this regard, the 942–944 MHz frequency band remains available for use by aural STL/ICR stations operating in Puerto Rico. See § 74.502(a). These users are also required to bring their equipment into compliance by July 1, 1993. We propose to allow use of non-complying equipment for backup purposes by these stations as well.

[2] An aural broadcast auxiliary station is a fixed station used to transmit aural program material between the studio and the transmitter of a broadcasting station, between various types of broadcasting facilities, or between relay points. See § 74.531

such primary service to be retained for backup purposes, provided that such transmitters will not be used for more than 720 cumulative hours per year without explicit Commission authority. This use of non-approved equipment will also be restricted to those situations where no interference will be caused to existing aural broadcast service stations and where there will be no impediment to the establishment of new aural broadcast service stations. By "backup purposes" we mean temporary use necessary to restore and maintain regular service because the primary transmitter unit has failed or requires servicing. The 720 hour figure equals 30 full days and mirrors the time permitted under § 74.24 for short-term operations. We believe that this period of time is ample enough to allow for backup use, yet short enough not to undermine the intent of the rule or to encourage abuses. Any licensee wanting to use unapproved equipment for a period greater than 720 hours would have to receive explicit Commission approval in advance.

6. In view of the short time remaining before the July 1, 1993, deadline, we will suspend enforcement of § 74.550 to the extent that it requires the use of approved transmitters for backup purposes. In this way, licensees will be relieved of the burden of spending scarce funds on the replacement of infrequently used backup equipment. It will also allow licensees to retain unapproved equipment for backup purposes until final action is taken in this proceeding, and thereafter if the proposed rule is adopted.

Procedural Matters

7. *Ex Parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte, presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

8. *Regulatory Flexibility.* We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendments are promulgated, there will not be a significant negative economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. Public Law No. 96–354.94 Stat. 1164.5 U.S.C. 601 *et seq* (1981).

9. *Comment Dates.* Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 9, 1993 and reply comments on or before August 24, 1993. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street NW., Washington, DC 20554.

10. *Paperwork Reduction Act*—The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new modified information collection requirement on the public.

11. *It is ordered,* pursuant to section 4(i) of the Communications Act of 1934, as amended, that effective upon publication of this Notice of Proposed Rule Making in the **Federal Register,** enforcement of § 74.550 of the Commission's rules is suspended, in part, to the extent that it prohibits the use of unauthorized equipment operating in the band 944–952 MHz for backup purposes; provided, however, that such use may cause interference to, or impede the establishment of other aural broadcast auxiliary links, and is not used for more than 720 cumulative hours per year.

List of Subjects in 47 CFR Part 74

Radio broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amendatory Text

It is proposed to amend part 74 of title 47 of the Code of Federal Regulations as follows:

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority citation for part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307.

2. It is proposed to revise § 74.550 to read as follows:

§ 74.550 Equipment authorization.

Each authorization for aural broadcast STL, ICR, and booster stations shall require the use of notified or type accepted equipment, except that operation of 944–952 MHz equipment, which has not been type approved under the equipment authorization program may continue until July 1, 1993, after which equipment must be approved. Equipment which has not been type approved under the equipment authorization program and which was in service prior to July 1, 1993, may be used after July 1, 1993, solely for temporary uses necessary to restore or maintain regular service provided by approved equipment, because the main or primary unit has failed or requires servicing. Such temporary uses may not interfere with or impede the establishment of other aural broadcast auxiliary links, and may not occur during more than 720 cumulative hours per year. Requirements for obtaining a grant of equipment authorization are contained in subpart J of part 2 of this chapter. Equipment designed exclusively for fixed operation shall be authorized under notification procedure (see § 2.904(d) of this chapter).

Note: Consistent with the note to § 74.502(a), grandfathered equipment in the 942–944 MHz band and STL/ICR users of these frequencies in Puerto Rico are also required to come into compliance by July 1, 1993. The backup provisions described above apply to these stations also.

[FR Doc. 93–14655 Filed 6–21–93; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 58, No. 118
Tuesday, June 22, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Beef Carcass Trimming Versus Washing Study: Fiscal Year 1993

AGENCY: Cooperative State Research Service, USDA.

ACTION: Solicitation of applications and applications guidelines for cooperative agreements.

Introduction

The Cooperative State Research Service (CSRS), in support of the Food Safety and Inspection Service (FSIS) inspection activities, announces the availability of Fiscal year 1993 funds for a cooperative agreement to determine whether trimming or washing is more efficient to remove fecal contamination from beef carcass surface. This agreement is to be competitively awarded.

CSRS facilitates the advancement of science and technology in the nationwide agricultural research system, including the research that will be the object of the cooperative agreement hereunder, by providing Federal resources, participating in cooperative program planning and evaluation, and developing a forum for coordination among various research entities.

FSIS assures that meat and poultry products moving in interstate and foreign commerce for use as human food are safe, wholesome, unadulterated, and accurately labeled under the authority of the Federal Meat Inspection Act and the Poultry Products Inspection Act. FSIS oversees more than 7,400 Federal food inspectors and veterinarians who perform inspection in meat and poultry slaughtering and processing plants. FSIS also establishes inspection standards and develops inspection procedures which meet the continually evolving public expectations of safe, wholesome, unadulterated, and properly labeled meat and poultry products.

Authority

The Cooperative Agreement under this program will be entered into pursuant to section 1472(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, 7 U.S.C. 3318(b). This section authorizes the Secretary of Agriculture to use a cooperative agreement as the legal instrument reflecting a relationship between the Secretary and a State Cooperative Institution, State Department of Agriculture, college, university, other research or educational institution or organization, Federal or private agency or organization, individual, or any other party, so long as the parties have a mutual interest in the agreement objectives and all parties contribute resources.

Availability of Funds

Approxiamtely $100,000 is available in Fiscal Year 1993. The award is expected to be made on or about September 15, 1993, following a peer review of submitted proposals and selection of the proposal for award. The period of performance shall conclude 12 months from the date of award. Additional awards may be made in Fiscal Year 1994 and thereafter depending upon the results of the 1993 award and availability of funding.

Section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, 7 U.S.C. 3319, prohibits the charging of indirect costs or tuition remission against funds in connection with cooperative agreements between the Department of Agriculture and State Cooperative Institutions entered into pursuant to the authority of 7 U.S.C. 3318(b).

Section 712 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1993, Public Law 102–341, authorizes the payment of indirect costs not exceeding of 10% direct costs under cooperative arrangements with non-profit institutions not covered by 7 U.S.C. 3319, where the purpose of the arrangement is to carry out a program of mutual interest to the parties.

Purpose

The purpose of this program is to determine whether trimming or washing is a better method to remove localized areas of fecal contamination on beef carcass surfaces. Relevant questions to be explored include:

1. Does washing remove fecal contamination and the concomitant bacteria?
2. Does washing spread contamination?
3. Which method, trimming or washing, is the superior means of removing fecal contamination and the concomitant bacteria from beef carcasses?

Recent congressional, public, and consumer concerns over contaminated beef carcasses has prompted to need to study methods to decontaminate carcasses. Currently, FSIS policy requires the removal of visible contamination such as feces, ingesta, pus, exudate, and milk from red meat carcasses by trimming before inspection. Water rinsing of carcasses is allowed as a last step in the slaughter process before animals enter the cooler. 9 CFR 310.18 (a) states, "Carcasses, organs, and other parts shall be handled in a sanitary manner to prevent contamination with fecal material, urine, bile, hair, dirt, or foreign matter; however, if contamination occurs, it shall be promptly removed in a manner satisfactory to the inspector."

Definitions

As used in this document:

(a) *Administrator* means the Administrator of CSRS and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(b) *Department* means the Department of Agriculture.

(c) *Principal investigator* means a single individual designated by the applicant in the application and approved by the Administrator who is responsible for the scientific and technical direction of the project.

(d) *Cooperator* means the entity designated in the cooperative agreement award document as the responsible legal entity to whom a cooperative agreement is awarded under this solicitation.

(e) *Research project* means the award by the Administrator of funds to a cooperator as a contribution towards meeting the costs of conducting an identified project of mutual interest to the Cooperator and CSRS intended and designed to establish, discover, elucidate, or confirm information or the

underlying mechanisms relating to the research project area identified in this solicitation.

(f) *Project* means the particular activity within the scope of the project area identified in this solicitation supported through a cooperative agreement award under this solicitation.

(g) *Project period* means the total time that is approved by the Administrator for conducting the research project as outlined in an approved application.

(h) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(i) *Awarding official* means the Administrator and any other officer or employee of the Department to whom the authority to issue or modify research project award instruments has been delegated.

(j) *Peer review group* means an assembled group of experts or consultants qualified by training or experience in particular scientific or technical fields to give expert advice on an individual basis, in accordance with the provisions of this solicitation, on the scientific and technical merit of applications in those fields.

(k) *Ad hoc reviewers* means experts or consultants qualified by training or experience in particular scientific or technical fields to render special expert advice on an individual basis, whose individual written evaluations of applications are designed to complement the expertise of the peer review group, in accordance with the provisions of this solicitation, on the scientific or technical merit of applications in those fields.

(l) *Research* means any systematic study directed toward new or fuller knowledge and understanding of the subject studied.

(m) *Methodology* means the project approach to be followed and the resources needed to carry out the project.

Eligibility Requirements

(a) Except where otherwise prohibited by law, State agricultural experiment stations, State Departments of Agriculture, all colleges and universities, other research or educational institutions and organizations, Federal and private agencies and organizations, individuals, and any other party either foreign or domestic, that has a demonstrated interest in the research to be conducted under the cooperative agreement shall be eligible to apply for and to receive the cooperative agreement award under this solicitation, provided that the applicant qualifies as a responsible recipient under the criteria set forth in paragraph (b) of this section.

(b) To qualify as responsible, an applicant must meet the following standards as they relate to this project:

(1) Have adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain such (including through proposed subagreements);

(2) Be able to comply with the proposed or required completion schedule for the project;

(3) Have a satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under cooperative agreements, grants, and contracts from the Federal government;

(4) Have an adequate financial management system and audit procedure which provides efficient and effective accountability and control of all property, funds, and other assets; and

(5) Be otherwise qualified and eligible to receive a research project award under applicable laws and regulations.

(c) Any applicant who is determined to be not responsible will be notified in writing of such findings and the basis therefor.

Project Requirements

A. Cooperator Responsibilities

1. The Cooperator shall contribute unreimbursed resources towards accomplishment of the objectives of this program. The Cooperator's contribution shall be reflected in its application for award.

2. The Cooperator shall perform a comprehensive literature review on the efficacy of washing with water and other chemical solutions fecal material (and concomitant bacteria) from beef carcasses and summarize the relevant literature on (1) washing versus trimming of fecal material; (2) the mechanisms of bacterial attachment to meat surfaces by major meat pathogens; and, (3) evaluate the adequacy of the study designs used in those past investigations on these issues. The literature review should provide the basis for the experimental design submitted for this cooperative agreement.

3. The Cooperator shall investigate the efficacy of carcass washing versus trimming to remove fecal contamination and concomitant bacteria from hot beef carcasses during slaughter. This study must be designed to show removal of a known concentration of marker pathogenic bacteria including *Escherichia coli*, especially *Escherichia coli* (0157:H7 and *Salmonella typhimurium* by washing with water and other chemical solutions versus trimming procedures. Sample size must be sufficient to determine the statistical significance between the efficacy of the methods.

This study should be performed at a research abattoir, with the understanding that a marker bacterial strain may be introduced onto carcass portions on the premises. Since the objective is to simulate removal of fecal contamination on hot carcasses, it is important that the carcasses be inoculated and treated as soon as possible after the carcass is split. Any carcass tissue that is exposed to the inoculum may not enter commerce.

The Cooperator shall submit an experimental design that is fully delineated including the selected marker organisms, proposed carcass site to be tested, method of fecal inoculation of carcass, proposed sampling sites to compare effects of washing versus trimming, sample size, microbial tests to evaluate these methods, and the procedure to be used for trimming and washing, including well defined washing parameters.

Set out below is a sample study design. The experimental design submitted by the Cooperator should include the parameters listed in the "experimental design" statement contained in the preceding paragraph, and must be equal to or better than the sample study design set out below. Innovative approaches that will reduce both the cost and time required to carry out this investigation are desired.

B. CSRS and FSIS Responsibilities

1. CSRS will coordinate Cooperator activities.

2. FSIS, through CSRS shall contribute approximately $100,000 towards accomplishment of the objectives set out in this program. CSRS shall administer the resulting cooperative agreement without total reimbursement from FSIS for such administrative expenses.

3. CSRS and FSIS will review the progress of the study and provide recommendations for any enhancements, changes, or other modifications that may be needed because of new program requirements.

4. FSIS will provide expertise and knowledge gained from previous or on-going studies.

Sample Study Design

Carcass Selection

Paired beef chucks will be separated from the remainder of the carcass at a

point on the slaughter floor just subsequent to carcass splitting (carcasses should not be washed or decontaminated in any manner). Carcasses should be from fed steers or heifers typical of those entering the American meat supply chain.

Inoculum Preparation

1. A strain of *E. coli* having a recognizable marker characteristic (such as resistance to a particular antibiotic) will be used. The marker trait should be rare in naturally-occurring *E. coli* found in animals and slaughter houses and on carcasses.

2. A fecal suspension should be prepared from fresh bovine feces. The feces should be inoculated with the marker organism at a rate of 10^8 CFU/g feces; it is important that the marker organism be homogeneously distributed throughout the feces. A quantity of 10 grams of inoculated feces should then be dampened with sufficient sterile saline to make a thick paste.

3. A portion of the inoculated fecal suspension should be assayed to determine the number of marker organisms per gram. This can be done by plating serial dilutions of the suspension onto *E. coli* selective media containing the antibiotic at which the marker is directed.

4. Record the weight on the remaining inoculated fecal suspension and aseptically place half of the suspension in a separate sterile plastic bag or tube.

Carcass Inoculation and Measurement of Background Flora

1. Using edible grader's ink, mark off a square measuring 20 cm on a side on the lateral surface of each chuck, and let the ink dry. This will delineate a 400 cm^2 surface area. Repeat the process for the other chuck.

2. Locate the area surrounding the marked-off square. Aseptically sample that area using cork-borers of known diameter, sterile forceps, and scalpel. Take three or more samples from each chuck or carcass and composite those coming from a particular chuck. This represents the background count of marker organisms already present on the carcass. Repeat the process for the other chuck.

3. Inoculate the marked-off area on one chuck using a spatula or similar instrument and one of the portions of the fecal suspension prepared in step 4 of the "Inoculum Preparation". Repeat the process for the other chuck.

Sampling the Inoculated Area

Sample the marked-off inoculated area on each chuck by taking three or more cork-borer samples. Taking samples from various locations within the inoculated area and compositing them will give a more representative sample. This will give information on the level of the marker on the inoculated surfaces.

Application to Treatment and Collection of Samples

A quarter will be either washed OR trimmed.

Trimming: Sample the marked-off inoculated area after trimming by taking three or more cork-borer samples. Next sample the tissue *below* the plugs which were just removed; these lower tissue strata represent the "trimmed" tissue.

Washing: Washing off fecal contamination involves spraying an undetermined amount of water at various pressures until contamination is no longer visible. It is necessary to specify the water volume, pressure, and temperature. Next, take three more cork-borer samples from the washed inoculated area.

Collection of Samples From Neighboring Tissue

Areas boarding on the inoculated and treated area will be sampled to determine if contamination has been spread by the treatment. All areas surrounding the inoculated tissue should be considered, but especially the area below the inoculated area (and likely to be contaminated when wash water runs down over it).

From the chuck that has been trimmed: Take three (preferably more) cork-borer samples from the area surrounding the marked-off inoculated space.

From the chuck which has been washed: Take three (preferably more) cork-borer samples from the area surrounding the marked-off inoculated washed area.

Programmatic Contacts

For additional information on the project solicitation, please contact:

Dr. Clark R. Burbee, Cooperative State Research Service, U.S. Department of Agriculture, Ag Box 2210, Washington, DC 20250–2210, Tel: (202) 401–4772, Fax: (202) 401–1706.

OR

Dr. Ann Marie McNamara, Director, Microbiology, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th St., SW., Washington, DC 20250, Tel: (202) 205–0212, Fax: (202) 720–4662.

How To Obtain Application Materials

An *Application Kit* and a copy of this solicitation will be made available upon request. The *Kit* contains required forms, certifications, and instructions for preparing and submitting the application in response to this Notice. Copies may be obtained from: Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, Ag Box 2245, Washington, DC 20250–2245, (202)–401–5048.

How To Apply for a Cooperative Agreement

(a) This project solicitation contains information sufficient to enable all eligible applicants to prepare proposals and will be as complete as possible with respect to:

(1) Descriptions of specific research projects which the Department proposes to support during the fiscal year involved, including anticipated funds to be awarded;

(2) Deadline dates for having proposal packages postmarked;

(3) Name and address where proposals should be mailed;

(4) Number of copies to be submitted;

(5) Forms required to be used when submitting proposals; and

(6) Special requirements.

(b) Application Kit. An Application Kit will be made available to any potential applicant who requests a copy. This kit contains required forms, certifications, and instructions applicable to the submission of proposals. See Section identified as How to Obtain Application Materials.

(c) The following format applies for research proposals:

(1) *Application for Funding.* All research proposals submitted by eligible applicants should contain an Application for Funding Form (CSRS–661), which must be signed by the proposing principal investigator(s) and endorsed by the cognizant authorized organizational representative who possesses the necessary authority to commit the applicant's time and other relevant resources.

(2) *Proposal Length.* The proposal body should be a maximum of 12 pages, including any figures and tables. Literature citations should be a maximum of 2 pages. Curriculum vitae principal investigators and professional personnel should be a maximum of 2 pages each. Type and paper size should be no smaller than 12 characters/inch, typed single spaced on one side of 8½"×11" paper.

(3) *Title of Project.* The title of the project must be brief (80-character maximum), yet represent the major thrust of the research. This title will be used to provide information to the Congress and other interested parties who may be unfamiliar with scientific

terms; therefore, highly technical words or phraseology should be avoided where possible. In addition, phrases such as "investigation of" or "research on" should not be used.

(4) *Objectives.* Clear, concise, complete, enumerated, and logically arranged statement(s) of the specific aims of the research must be included in all proposals.

(5) *Procedures.* The procedures or methodology to be applied to the proposed research plan should be stated explicitly. This section should include but not necessarily be limited to:

(i) A description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out;

(ii) Techniques to be employed, including their feasibility;

(iii) Kinds of results expected;

(iv) Means by which data will be analyzed or interpreted;

(v) Pitfalls which might be encountered; and

(vi) Limitations on proposed procedures.

(6) *Justification.* This section should describe:

(i) The importance of the problem to the needs of the Department and to the Nation, including estimates of the magnitude of the problem;

(ii) The importance of starting the work during the current fiscal year; and

(iii) Reasons for having the work performed by the proposing organization.

(7) *Current research.* The relevancy of the proposed research to ongoing and, as yet, unpublished research of both the applicant and any other institutions should be described.

(8) *Facilities and equipment.* All facilities, including laboratories, that are available for use or assignment to the proposed research project during the requested period of support, should be reported and described. Any materials, procedures, situations, or activities, whether or not directly related to a particular phase of the proposed research, and which may be hazardous to personnel, must be explained fully, along with an outline of precautions to be exercised. All items of major instrumentation available for use or assignment to the proposed research project during the requested period of support should be itemized. In addition, items of nonexpendable equipment needed to conduct and bring the proposed project to a successful conclusion should be listed.

(9) *Collaborative arrangements.* If the proposed project requires collaboration with other research scientists, corporations, organizations, agencies, or entities, such collaboration must be explained fully and justified. Evidence should be provided to assure peer reviewers that the collaborators involved agree with the arrangements. It should be specially indicated whether or not such collaborative arrangements have the potential for any conflict(s) of interest. Proposals that indicate collaborative involvement must state which applicant is to receive any resulting cooperative agreement award, since only one eligible applicant, as provided in this solicitation, may be the recipient of a research project cooperative agreement award under one proposal.

(10) *Research timetable.* The applicant should outline all important research phases as a function of time.

(11) *Personnel support.* All personnel who will be involved in the research effort must be identified clearly. For each scientist involved, the following should be included:

(i) An estimate of the time commitments necessary;

(ii) Vitae of the principal investigator(s), senior associate(s), and other professional personnel to assist reviewers in evaluating the competence and experience of the project staff. This section should include curricula vitae of *all* key persons who will work on the proposed research project, whether or not Federal funds are sought for their support. The vitae are to be no more than two pages each in length, excluding publication listings; and

(iii) A chronological listing of the most representative publications during the past five years shall be provided for each professional project member for whom a curriculum vitae appears under this section. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

(12) *Budget.* A copy of Form CSRS–55, along with instructions for completion, is included in the Application Kit and may be reproduced as needed by applicants. Applicants should note the special instructions shown below when completing Form CSRS–55 (i.e., Items D, F, I, and O). A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested is allowable under applicable Federal cost principles and can be identified as necessary for successful conduct of the proposed research project. As stated previously, each cooperative agreement applicant shall contribute resources to the project. See the Authority section of this solicitation for the restrictions and limitations for indirect costs and tuition remission costs for purposes of this project solicitation.

Item D. "Nonexpendable Equipment." Requested items of equipment must be itemized (by description and cost) on a separate sheet of paper attached to Form CSRS–55, or in the body of the proposal. The need for all requested equipment must be fully justified in the proposal.

Item F. "Travel." The type and extent of travel and its relationship to project objective should be described and justified.

Item I. "All Other Direct Costs." Subawards are to be shown on each budget sheet of the primary budget. Subaward budgets should be provided on separate forms in the same detail.

Item J. "Cost Sharing." An annotated or attached budget should be submitted with details on the cost items and amount of the contribution to each.

(13) *Research involving special considerations.* A number of situations encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If such situations are anticipated, the proposal must so indicate. Applicable and necessary research proposals may involve the following:

(i) *Recombinant DNA molecules.* All key personnel identified in a proposal and all endorsing officials of a proposed performing entity are required to comply with the guidelines established by the National Institutes of health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. The Application Kit contains Form CSRS–662, which should be used for such certification of compliance.

(ii) *Human subjects at risk.* Responsibility for safeguarding the rights and welfare of human subjects used in any research project supported with award funds provided by the Department rests with the performing entity. Regulations have been issued by the Department under 7 CFR part 1c, Protection of Human Subjects. In the event that a project involving human subjects at risk is recommended for award, the applicant will be required to submit a statement certifying that the research plan has been reviewed and approved by the Institutional Review Board at the proposing organization or institution. The Application Kit contains Form CSRS–662, which should be used for such certification.

(iii) *Laboratory animal care.* The responsibility for the humane care and treatment of any laboratory animal, which has the same meaning as "animal" in section 2(g) of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2132(g)), used in any research project supported with these project solicitation funds, rests with the performing organization. In this regard, all key personnel identified in a proposal and all endorsing officials of the proposed performing entity are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR parts 1, 2, 3, and 4. In the event that a project involving the use of a laboratory animal is recommended for award, the applicant will be required to submit a statement certifying such compliance. The Application Kit Contains Form CSRS–662 which should be used for such certification.

(14) *Compliance with the National Environmental Policy Act (NEPA).* As outlined in 7 CFR part 3407 (CSRS regulations implementing the National Environmental Policy Act of 1969), environmental date for any proposed project is to be provided to CSRS so that CSRS may determine whether any further action is needed. The applicant shall review the following categorical exclusions and determine if the proposed project may fall within one of the categories.

(a) Department of Agriculture Categorical Exclusions. (7 CFR 1b.3)

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and,

(vii) Activities related to trade representation and market development activities abroad.

(b) CSRS Categorical Exclusions. (7 CFR 3407.6) Based on previous experience, the following categories of CSRS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

A. Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

B. Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

C. Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSRS to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, a separate statement must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the project proposed falls within the categorical exclusions, the specific exclusion must be identified. The information submitted shall be identified as "NEPA Considerations" and the narrative statement shall be placed after the coversheet of the proposal. Even though a project may fall within the categorical exclusions, CSRS may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

(15) *Current and pending support.* All proposals must list any other current public or private research support, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This section must also contain analogous information for all projects underway and for pending research proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other Departmental programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice its review or evaluation by the Administrator or experts or consultants engaged by the Administrator for this purpose. The Application Kit contains Form CSRS–663, which should be used for listing current and pending support.

(16) *Additions to project description.* Each project description is expected by the Administrator, members of peer review groups, and the relevant program staff to be complete in itself. However, in those instances in which the inclusion of additional information is necessary, the number of copies submitted should match the number of copies of the application requested. Each set of such materials must be identified with the title of the research project as it appears in the Application for Funding and the name(s) of the principal investigator(s). Examples of additional materials may include photographs which do not reproduce well, reprints, and other pertinent materials which are deemed to be unsuitable for inclusion in the proposal.

(17) *Organizational management information.* Specific management information relating to an applicant shall be submitted on a one-time basis prior to the award of a research project cooperative agreement identified under this solicitation if such information has not been provided previously under this or another program for which CSRS is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by CSRS once a research project has been recommended for funding.

What to Submit

Submit one (1) original and twelve (12) copies securely stapled in the upper left corner. This number of copies is necessary to permit thorough, objective peer evaluation of all applications received before funding decisions are made.

Each copy of each proposal must include a Form CSRS–661, "Application for Funding"; Form CSRS–55, "Budget"; Form CSRS–662, "Assurance Statements"; and Form CSRS–663, "Current and Pending Support". The original must contain pen-and-ink signatures of the authorized

organizational representative. All the required forms as listed, applicable certifications, and instructions are contained in the Application Kit. It should be noted that the September 1992 version of the Application Kit must be used, as previous versions are obsolete.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Where and When to Submit

All copies of a proposal must be mailed in one package. Proposals submitted through the regular mail must be postmarked by July 30, 1993, and must be sent to the following address: Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, Ag Box 2245, Washington, DC 20250–2245.

Hand-delivered proposals or proposals delivered by overnight express service, must be submitted (received) by close of business on July 30, 1993, to the following address: Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Center, 901 D Street, SW., Washington, DC 20024.

Evaluation and Disposition of Applications

(a) *Evaluation.* All proposals received from eligible applicants in accordance with the deadline established herein shall be evaluated by the Administrator through such officers, employees, and others as the Administrator determines are particularly qualified in the area of research represented by the project. To assist in equitably and objectively evaluating proposals and to obtain the best possible balance of viewpoints, the Administrator may solicit the individual opinions of peer scientists, *ad hoc* reviewers, or others who are recognized specialists in the research program area covered by the applications received. Specific evaluations will be based upon the criteria established herein. The overriding purpose of such evaluations is to provide information upon which the Administrator can make an informed judgment in selecting a proposal for ultimate support. Incomplete, unclear, or poorly organized applications will work to the detriment of applicants during the peer evaluation process. To ensure a comprehensive evaluation, all applications should be written with the care and thoroughness accorded papers for publication.

(b) *Disposition.* On the basis of the Administrator's evaluation of an application in accordance with paragraph (a) of this section, the Administrator will (1) approve support using currently available funds, (2) defer support due to lack of funds or a need for further evaluations, or (3) disapprove support for the proposed project in whole or in part. With respect to the approved project, the Administrator will determine the project period during which the project may be supported. Any deferral or disapproval of an application will not preclude its reconsideration or a reapplication during subsequent fiscal years.

Proposal Review

(a) All research applications for funding will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to the request for proposals (e.g., relationship of application to this research project area). Proposals that do not fall within the guidelines as stated in this project solicitation will be eliminated from competition and will be returned to the applicant. Proposals whose budgets exceed the maximum allowable amount may be considered as lying outside the guidelines.

(b) All applications will be reviewed carefully by the Administrator, qualified officers or employees of the Department, peer review panels, and *ad hoc* reviewers, as required. Individual written comments will be solicited from *ad hoc* reviewers when required, and individual written comments and in-depth discussions will be provided by peer review group members prior to recommending applications for funding.

(c) Except to the extent otherwise provided by law, individual recommendations by peer reviewers and *ad hoc* reviewers are advisory only and are not binding on program officers or on the awarding official.

Selection Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. Quality of Technical Proposal (50%)

- Demonstrated understanding of the objectives of this project, including demonstrated knowledge of prior research.
- Adequacy of the statistical analysis design.
- Practicality and feasibility of the proposed methodology to accomplish the study objectives, including a discussion of difficulties likely to be encountered and how they will be resolved.

B. Personnel Qualifications and Experience (25%)

- Evidence of training and experience of project staff to perform the proposed research.
- Availability of proposed staff and commitment of sufficient time to carry out the project.

C. Organizational Experience (15%)

- Evidence that the recipient has the resources and experience to manage capably the proposed project. Resources will include an assessment of the adequacy of facilities and equipment necessary to complete the project.

D. Schedule (10%)

- Proposed schedule is reasonable and consistent with the proposed approach.

Cooperative Agreement Awards

(a) *General.* Within the limit of funds available for such purpose, the awarding official shall make a research project cooperative agreement award to the responsible, eligible applicant whose proposal is judged most meritorious from this project solicitation under the evaluation criteria and procedures set forth herein. The date specified by the Administrator as the beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. All funds awarded under this solicitation shall be expended solely for the purpose for which the funds are awarded in accordance with the approved application and budget, the provisions of this solicitation, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations.

(b) *Cooperative Agreement award document and notice of award.*

(1) *Cooperative Agreement award document.* The award document shall include at a minimum the following:

(i) Legal name and address of performing organization or institution to whom the Administrator has awarded the cooperative agreement under the terms of this solicitation;

(ii) Title of project;

(iii) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(iv) Identifying award number assigned by the Department;

(v) Project period, which specifies how long the Department intends to support the effort without requiring recompetition for funds;

(vi) Total amount of Departmental financial assistance approved by the Administrator during the project period;

(vii) Legal authority(ies) under which the research project is awarded to accomplish the purpose of the law;

(viii) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the research project award; and

(ix) Other information or provisions deemed necessary by the Department to carry out the purpose of the research project under this program.

(2) *Notice of award.* The notice of award, in the form of a letter, will be prepared and will provide any pertinent instructions or information to the awardee that is not included in the award document.

(c) *Obligation of the Federal government.* Neither the approval of any application nor the award of any research project cooperative agreement shall commit or obligate the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

Use of Funds; Changes

(a) *Delegation of fiscal responsibility.* The cooperator may not delegate or transfer in whole or in part, to another person, institution, or organization the responsibility for use or expenditure of cooperative agreement funds.

(b) *Change in project plans.*

(1) The permissible changes by the cooperator, principal investigator(s), or other key project personnel in the approved research project shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the projects' approved goals. If the cooperator or the principal investigator(s) is uncertain as to whether a change complies with this provision, the question shall be referred to the Administrator for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the cooperator and approved in writing by the Department *prior to effecting such changes.* In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the Department *prior to effecting such changes.*

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the cooperator and approved in writing by the Department *prior to effecting such changes,* except as may be allowed in the terms and conditions of a cooperative agreement award.

(c) *Changes in project period.* The project period as determined pursuant to the Evaluation and Disposition of Applications Section, may be extended by the Administrator without additional financial support, for such additional period(s) as the Administrator determines may be necessary to complete, or fulfill the purposes of, an approved project. Any extension, when combined with the originally approved or amended project period, shall be conditioned upon prior request by the cooperator and approval in writing by the Department, unless prescribed otherwise in the terms and conditions of the award.

(d) *Changes in approved budget.* The terms and conditions of a cooperative agreement will prescribe circumstances under which written Departmental approval will be requested and obtained prior to instituting changes in an approved budget.

Other Federal Statutes and Regulations that Apply

Note that although neither 7 CFR part 3015 nor 7 CFR part 3016, by their terms, generally apply to cooperative agreements under 7 U.S.C. 3318(b), for purposes of the cooperative agreement under this solicitation those provisions and several other Federal statutes and/or regulations shall apply. These include but are not limited to:

7 CFR Part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects;

7 CFR Part 1.1—USDA implementation of Freedom of Information Act;

7 CFR Part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964;

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance;

7 CFR Part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

7 CFR Part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

7 CFR Part 3407—CSRS procedures to implement the National Environmental Policy Act;

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR Part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.* —Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

Other Conditions

The Administrator may, with respect to the research project cooperative agreement, impose additional conditions prior to or at the time of award when, in the Administrator's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of award funds.

Conflicts of Interest

Members of peer review groups covered by this solicitation are subject to relevant provisions contained in title 18 of the United States Code relating to criminal activity, Department regulations governing employee responsibilities and conduct (7 CFR part O), and Executive Order No. 11222, as amended.

SUPPLEMENTARY INFORMATION: For reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 CFR 29115, June 24, 1993), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)), the collection of information requirements contained in

this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington DC on this 17th day of June 1993.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 93–14677 Filed 6–21–93; 8:45 am]

BILLING CODE 3410–27–M

Forest Service

Wild and Scenic River Suitability Study for Rock Creek, Killamacue Creek, and Dutch Flat Creek, Wallowa-Whitman National Forest; Baker County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to conduct a wild and scenic river study.

SUMMARY: The USDA, Forest Service will conduct a wild and scenic river study to determine the eligibility and address the suitability of the sections of Rock Creek, Killamacue, and Dutch Flat Creeks within the Wallowa-Whitman National Forest boundary in Baker County, Oregon, for inclusion in the National Wild and Scenic Rivers System. The Forest Service invites written comments and suggestions on management of these river sections and the scope of this analysis. The Agency gives notice of the full environmental analysis and decisionmaking process that will occur on this study so that interested and affected people are aware of how they may participate and contribute to the final recommendation to Congress.

DATES: Comments concerning the study of this river should be received by July 15, 1993.

ADDRESSES: Send written comments and suggestions concerning the management of these rivers to Robert M. Richmond, Forest Supervisor, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814.

FOR FURTHER INFORMATION CONTACT: Steve Davis, Wild & Scenic River Planning Team Leader, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814; telephone (503) 523–6391.

SUPPLEMENTARY INFORMATION: The USDA, Forest Service agreed to study the eligibility and suitability (if eligibility is confirmed) of Rock Creek, Killamacue Creek, and Dutch Flat Creek for possible inclusion in the National Wild and Scenic Rivers System. Section 5(d)(1) of The Wild and Scenic Rivers Act of 1968 (Pub. L. 90–542, 82 Stat. 906, as amended; 16 U.S.C. 1271–1287) directs the Federal agencies to conduct studies for potential additions to the wild and scenic rivers system. Section 5(d)(1) states "In all planning for the use and development of water and related land resources, consideration shall be given by all Federal agencies involved to potential national, wild, scenic, and recreational river areas". The study will consider within the Wallowa-Whitman National Forest boundary a 7.5-mile segment of the main stem of Rock Creek, a 2.5-mile segment of the mainstem of Killamacue Creek to its confluence with Rock Creek, and a 6.5-mile segment on the main stem of Dutch Flat Creek, to include lands generally within ¼ mile from each stream bank. Preliminary alternatives include wild and scenic designation for each segment for the length of the proposal, and an unsuitable for designation alternative.

Robert M. Richmond, Forest Supervisor, Wallowa-Whitman National Forest is responsible for conducting the suitability study. Mike Espy, Secretary of Agriculture, U.S. Department of Agriculture, room 200–A, Administration Building, Washington, DC 20250 is the responsible official for recommendation of wild and scenic river designation.

Public participation is especially important at several points in the study process. The first point is the scoping process (40 CFR 1501.7). The Forest Service is seeking information comments, and assistance from Federal, State, and local agencies, affected Indian tribes, individuals and organizations who may be interested in or affected by the proposed action. The public input will be used in preparation of the draft LEIS.

Initial scoping has occurred. Public meetings have been held and comments have been solicited by letters and newspaper articles, starting in July of 1991. Federal, State, and local agencies as well as the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, user groups, and other organizations participated in scoping the issues that should be considered. Additional comments concerning the study of these rivers are encouraged.

The draft study and LEIS is expected to be filed with the Environmental Protection Agency (EPA), and available for public review by August 1993. At that time, the EPA will publish a notice of availability of the draft study and LEIS in the **Federal Register**.

The comment period on the draft study and LEIS will be 90 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the study of these rivers participate at that time. To be most helpful, comments on the draft study and LEIS should be as specific as possible, and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of a draft study and LEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft LEIS state but that are not raised until after completion of the final LEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1988) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 f. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final study and LEIS.

After the comment period ends on the draft study and LEIS, comments will be analyzed and considered by the Forest Service in preparing the final study and LEIS. In the final study and LEIS, the Forest Service will respond to comments received (40 CFR 1503.4). The final study and LEIS is scheduled to be completed by the end of December 1993. The Secretary will consider the comments, responses, and consequences discussed in the study, applicable laws regulations, and policies in making a recommendation to the Congress regarding the suitability of these river segments for inclusion into the National Wild and Scenic Rivers System. The final decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the Congress of the United States.

Dated: June 16, 1993.

David E. Ketcham,

Acting Deputy Chief, Programs and Legislation.

[FR Doc. 93–14651 Filed 6–21–93; 8:45 am]

BILLING CODE 3411–10–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Surrender of Exploration License

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of surrender of Deep Seabed Mining Exploration License USA–4 from the Kennecott Consortium.

SUMMARY: Pursuant to section 115(a) of the Deep Seabed Hard Mineral Resources Act and 15 CFR 971.803(a), which was published at 54 FR 514, January 6, 1989, notice is hereby given that the National Oceanic and Atmospheric Administration (NOAA) received on May 21, 1993, formal notification of surrender of Deep Seabed Exploration License USA–4 issued by NOAA on October 29, 1984, to the Kennecott Consortium, c/o Flambeau Mining Company, N4100, Highway 27, Ladysmith, Wisconsin 54848.

FOR FURTHER INFORMATION CONTACT: Betty Rosser, Ocean Minerals and Energy Division (N/ORM1), Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, 1305 East West Highway, Silver Spring, MD 20910, (301) 713–3159.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 93–14408 Filed 6–21–93; 8:45 am]

BILLING CODE 3510–12–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

June 16, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending a limit.

EFFECTIVE DATE: June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to continue the restraint limit on Categories 340/640 for an additional twelve-month period, beginning on June 30, 1993 and extending through June 29, 1994.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Qatar, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 40174, published on September 2, 1992.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 16, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 30, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Qatar and exported during the twelve-month period beginning on June 30, 1993 and extending through June 29, 1994, in excess of 299,644 dozen.

Imports charged to this category limit for the period June 30, 1992 through June 29, 1993 shall be charged against the level of restraint to the extent of any unfilled balance. Goods in excess of that limit shall be subject to the limit established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–14693 Filed 6–21–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Base Closure and Realignment Commission

AGENCY: Defense Base Closure and Realignment Commission, DOD.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 101–510, as amended, the Defense Base Closure and Realignment Commission announces clarification to the agenda for its public hearing schedule (previously noticed on May 25, 1993 (58 FR 30028)).

The Commission will hold an open, public hearing on Thursday, June 17, 1993, to hear testimony from representatives of the Department of Defense and the Services on potential base closures and realignments. The hearing will be held in room #G–50 of the Dirksen Senate Office Building in Washington, DC, beginning at 10 a.m. (or at such other time and location in the Washington, DC, area as may need to be determined).

The Commission will hold open, public hearings on Friday, June 18 and Wednesday, June 23 through Saturday, June 26, 1993 (or Sunday, June 27, 1993, if necessary) for deliberations and votes on the Commission's recommendations to the President. The Commission anticipates that votes on the recommendations will occur on Wednesday, June 23 through Saturday, June 26, 1993 (or Sunday, June 27, 1993, if necessary). These hearings will be held in the Washington, DC, area at times and locations to be determined.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Houston, Director of Communications, at (703) 696–0504. Please contact the Commission to confirm any last-minute changes in schedules for, and dates, times, and locations of, all upcoming hearings. Any person requiring special accommodations at any of the aforementioned hearings should contact the Commission no later than five (5) business days prior to the hearing.

Dated: June 16, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 93–14652 Filed 6–21–93; 8:45 am]

BILLING CODE 5000–04–M

Membership of the Performance Review Board

AGENCY: Office of the Inspector General, Department of Defense (OIG, DoD).

ACTION: Notice of membership to the Performance Review Board, OIG, DoD.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) for the OIG, DoD as required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings, performance awards and recertification to the Inspector General.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Peterson, Chief, Employee Relations and Development Division, Personnel and Security Directorate, Office of the Assistant Inspector General for Administration and Information Management, OIG, DoD, 400 Army Navy Drive, Arlington, VA 22202, (703) 693–0257.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the appointed members of the PRB for the OIG, DoD are identified in the enclosures. They will serve until further notice.

Dated: June 16, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer.

Performance Review Board Office of the Inspector General, Department of Defense

Derek J. Vander Schaaf—Deputy Inspector General, OIG, DoD

Nancy L. Hendricks—Director, Financial Management Directorate, Office of the Assistant Inspector General for Auditing, OIG, DoD

David A. Brinkman—Assistant Inspector General for Analysis and Followup, OIG, DoD

Katherine A. Brittin—Assistant Inspector General for Inspections, OIG, DoD

Donald E. Davis—Assistant Inspector General for Audit Policy and Oversight, OIG, DoD

Edward R. Jones—Deputy Assistant Inspector General for Auditing, OIG, DoD

Robert J. Lieberman—Assistant Inspector General for Auditing, OIG, DoD

Nicholas T. Lutsch—Assistant Inspector General for Administration and Information Management, OIG, DoD

Donald Mancuso—Assistant Inspector General for Investigations, OIG, DoD

William F. Thomas—Director, Readiness and Operational Support Directorate, Office of the Assistant Inspector General for Auditing, OIG, DoD

Donald E. Reed—Director, Acquisition Management Directorate, Office of the Assistant Inspector General for Auditing, OIG, DoD

William G. Dupree—Deputy Assistant Inspector General for Investigations, OIG, DoD

Stephen A. Whitlock—Director, Inspections Directorate, Office of the Assistant Inspector General for Inspections, OIG, DoD

C. Frank Broome—Deputy Assistant Inspector General for Administration and Information Management

David K. Steensma—Director, Contract Management Directorate, Office of the Assistant Inspector General for Auditing, OIG, DoD

Michael B. Suessmann—Assistant Inspector General for Departmental Inquiries

Shelton R. Young—Director, Logistics and Support Directorate, Office of the Assistant Inspector General for Auditing, OIG, DoD

John F. Keenan—Director, Investigative Operations, Office of the Assistant Inspector General for Investigations, OIG, DoD

William F. Thomas—Director, Readiness and Operational Support Directorate, Office of the Assistant Inspector General for Auditing, OIG, DoD

Joel Leson—Assistant Inspector General for Criminal Policy and Oversight, OIG, DoD

Stephen A. Trodden—Inspector General, Department of Veteran Affairs

Charles R. Gilliam—Deputy Inspector General, Department of Agriculture

Michael Zimmerman—Deputy Inspector General, Department of Commerce

Robert Ashbaugh—Deputy Inspector General, Department of Justice

[FR Doc. 93–14653 Filed 6–21–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Patent License; Brantner & Associates

AGENCY: Department of the Navy.

ACTION: Intent to grant exclusive patent license; Brantner & Associates.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Brantner & Associates a revocable, nonassignable, exclusive license in the United States to practice the invention described in U.S. Patent No. 4,874,326 entitled "Elastomeric Electrical Isolation Membrane" and U.S. Patent No. 4,909,751 entitled "Underwater Mateable Electrical Connector".

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Chief of Naval Research (Code 1230), Ballston Tower One, Arlington, Virginia 22217–5660.

DATE: June 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Chief of Naval Research (Code 1230), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: June 9, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–14600 Filed 6–21–93; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Chicago Operations Office; Determination of Non-Competitive Financial Assistance; Mississippi State University

AGENCY: Department of Energy.

ACTION: Determination of non-competitive financial assistance.

SUMMARY: The Department of Energy (DOE), DOE Chicago Operations Office, announces that pursuant to the DOE Financial Assistance Rule, 10 CFR 600.7(b)(2)(ii), a non-competitive financial assistance grant is planned to be awarded to Mississippi State University. The objective of the work provided by this grant will be to utilize optical diagnostics in three areas of hazardous waste reduction: (1) Plasma torch waste reduction, (2) supercritical water reactors, and (3) real-time hazardous waste control. The Diagnostic Instrumentation and Analysis Laboratory of the University has the knowledge of existing diagnostic measurement instrumentation, and the ability to develop these diagnostic systems which is a key factor in attaining program objectives.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Webster, CH/WMTD, Department of Energy, Chicago Operations Office, Waste Management and Technology Development, 9800 South Cass Ave., Argonne, Illinois 60439, (708) 252–2822.

SUPPLEMENTARY INFORMATION: The Diagnostic Instrumentation and Analysis Laboratory (DIAL) of Mississippi State University has the necessary highly skilled personnel, unique facilities, and other resources to fully perform the work set forth in the grant. This activity to be funded is a natural continuation of research currently being funded at DIAL which has been actively engaged in developing and applying advanced optical diagnostic techniques and instrumentation systems to high temperature, coal-fired gas streams for over fifteen years. DIAL's personnel are uniquely experienced in using measurement systems in the field on large scale facilities. DIAL's application of modern diagnostic measurement techniques provides the means to characterize thermal, chemical, and flow properties essential for process optimization. A unique resource within DIAL is a 500-kw oil-fired test facility. The test facility serves a vital purpose in the evaluation of the advanced instrumentation prior to application to large scale facilities. Based on experience and on unique facilities the applicant has the exclusive domestic capability to perform the activity successfully. This application is meritorious based on the programmatic evaluation that when the team at DIAL is focused towards solving the DOE's hazardous waste processing needs, it will serve as a national resource for state-of-the-art waste stream diagnostics and controls and effluent monitoring systems. The public will benefit from this research because it provides support for industrial development which will improve U.S. industrial competitiveness through technology transfer and/or technological development. This application represents a natural continuation of research currently being funded, and exclusive domestic capability to perform the activity successfully which would not be eligible for financial assistance under a recent, current, or planned solicitation, and, DOE has, as a consequence thereof, determined that, a competitive solicitation would be inappropriate. The project period for this grant is a five year period expected to begin June 30, 1993. DOE plans to provide funding in the amount of $24,027,000 for this project period.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 93–14689 Filed 6–21–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Assistance Award to Advanced Fuel Research

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to an unsolicited financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14, is announcing its intention to enter into a cooperative agreement with Advanced Fuel Research for an adaptation of an in-situ Fourier transform infrared (FT–IR) combustion monitoring system to black liquor recovery boilers for use in the kraft pulping process in the paper industry.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: M.A. Barron, Contract Specialist. The Contracting Officer is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: Advanced Fuel Research, Inc. (AFR) has successfully performed in-situ diagnostics within operating furnaces using FT–IR emission and transmission spectroscopy. The FT–IR spectra yield information on the gases (concentration and temperature), particles (size, concentration, and temperature), and walls (temperature). AFR has also successfully demonstrated the use of FT–IR tomography to convert multiple lines-of-sight into spatially resolved information. AFR will attempt to adapt this technology to black liquor recovery boilers in order to improve their efficiency and safety through better understanding and control of the combustion processes in the boiler.

The application has been found to be meritorious based on a general evaluation. This project represents a unique and innovative idea and approach in that a unique and innovative patented device previously demonstrated to be effective for coal combustion is now to be used for combustion of black liquor from the Kraft pulping process.

This project is not eligible for financial assistance under a recent, current, or planned solicitation and a competitive solicitation would not be appropriate because of the patent position held by AFR.

The project is estimated to cost $899,000 of which DOE will provide $699,000. The project is expected to be completed in four years.

Issued in Chicago, Illinois, on June 10, 1993.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 93–14686 Filed 6–21–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Assistance Award to Vladimir Hlavacek

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office, through the New York Support Office (NYSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Mr. Valadimir Hlavacek, Ceramics and Materials Processing, Inc., to prove his patented Chemical Vapor Deposition method can incorporate aerosols to rapidly place thick ultrahard coatings on cutting tools and nozzles to save energy and processing time.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Mr. Vladimir Hlavacek, Ceramics and Materials Processing, Inc. would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(i). The advantages of this invention over current technology are that the time and energy necessary to apply ultrahard coatings to surfaces of irregular shapes can be greatly reduced. The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation and a competitive solicitation would be inappropriate. The extent of the energy savings would depend upon the number of products which can benefit from this patentable technology.

The project period for the grant award is 24 months, expected to begin in June 1993. DOE plans to provide funding in the amount of $99,350.

FOR FURTHER INFORMATION CONTACT: Charles F. Baxter, U.S. Department of Energy, New York Support Office, 26 Federal Plaza, room 3437, New York, NY 10278.

Issued in Chicago, Illinois on June 10, 1993.

Johnnie D. Greenwood

Director, Contracts Division.

[FR Doc. 93–14688 Filed 6–21–93; 8:45 am]

BILLING CODE 6450–01–M

Intent To Award a Noncompetitive Assistance Action; Regulatory Assistance Project

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: Pursuant to 10 CFR 600.7(b)(2), the Department of Energy, through the Boston Support Office, intends to award a grant to Regulatory Assistance Project (R.A.P.). The grant will provide initial funding in the amount of $175,000 for an assistance effort aimed at state regulatory officials. The work proposed will enhance a project currently supported by the U. S. Environmental Protection Agency and the Pew Charitable Trusts which provides training sessions to some ten sate regulatory agencies in the United States regarding Least Cost Integrated Resource Planning. The enhancement will provide the project with the addition of a renewable resource expert to the R.A.P. staff, allow for the conversion of workshop materials into simple, individual handbooks on key regulatory topics, improve the quality of written and visual materials used in the workshops, and provide funds for bringing outside speakers (experts) into the workshops.

DOE knows of no other entity that is conducting or planning to conduct such an effort. This project is suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a recent, current, or planned solicitation.

The initial term of this grant will be twelve (12) months from the date of award for a possible project period of five years from the initial date of award. Possible additional funding in future years will be based on satisfactory completion of the initial term, and availability of funds.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Boston Office, Attn: Mr. Hugh Saussy, Jr., One Congress Street, Boston, MA 02114–2021.

Issued in Chicago, Illinois on June 3, 1993.

Dated: June 3, 1993.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 93–14690 Filed 6–21–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Assistance Award to THERMECON

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office, through the New York Support Office (NYSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to THERMECON of Rouses Point, New York, Mr. Milan Rybak, principal investigator, for the purpose of testing for safety and efficiency and the development of a pre-production prototype of the "Recuperator of Flue Gas Heat" (RFGH).

SUPPLEMENTARY INFORMATION: DOE announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to THERMECON would be based on acceptance of an unsolicited application, meeting the criteria of 10 CFR 600.14(e)(i). The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation and a competitive solicitation process would be inappropriate. The extent of the energy savings would be significant in the residential sector. The project period for the grant award is 18 months, expected to begin as soon as possible. DOE plans to provide funding in the amount of $79,214.

FOR FURTHER INFORMATION CONTACT: Charles F. Baxter, Department of Energy, New York Support Office, 26 Federal Plaza, room 3437, New York, NY 10278.

Issued in Chicago, Illinois on June 10, 1993.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 93–14687 Filed 6–21–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Assistance Award to James Welch

AGENCY: Department of Energy.

ACTION: Notice of intent to make an award based on an unsolicited application.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Kansas City Support Office (KCSO), announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to Mr. James Welch, to design and produce the intermediate prototype Metal Oxide Semiconductor Field Effect Transistors (MOSFETS) and the final Combined Metal Oxide Semiconductors (CMOS). To accomplish this goal, he will use the principles of his patented invention which is a one-mask, one-etch process that will save energy by eliminating repetitive manufacturing steps to produce low-power consuming chips.

SUPPLEMENTARY INFORMATION: The Department of Energy announces further that pursuant to 10 CFR 600.(6)(2), this discretionary financial assistance award to Mr. James Welch would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Advantages over current technology are that less energy and costs will be used in the high-speed production of CMOS with reduced waste product.

Thus, the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The invention is using a technique for which a patent has been issued. The extent of the energy savings will depend upon the number of licenses who will use the process, the number of chips that will be included in each application and the number of applications that can be brought to market. The project period for the grant award is 24 months. DOE plans to provide funding in the amount of $85,000.

FOR FURTHER INFORMATION CONTACT: Ronald Brown, U.S. Department of Energy, Kansas City Support Office, 911 Walnut Street, 14th floor, Kansas City, MO 64106.

Issued in Chicago, Illinois, on June 2, 1993.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 93–14691 Filed 6–21–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 2532–005 Minnesota]

Minnesota Power Co.; Availability of Environmental Assessment

June 16, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new major license for the existing Little Falls Hydroelectric Project, located on the Mississippi River in Morrison County, Minnesota, in the town of Little Falls, and has prepared an

Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14678 Filed 6–21–93; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 14, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0479.

Title: Evaluation of the Syndication and Financial Interest Rules—Second Report and Order, MM Docket No. 90–162.

Action: Revision of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Semi-annual reporting requirement and recordkeeping requirement.

Estimated Annual Burden: 6 responses, 182 hours average burden per response, 1,092 hours total reporting burden; 25 recordkeepers, 12 hours average burden per recordkeeper, 300 hours total recordkeeping requirement; 1,392 hours total annual burden.

Needs and Uses: On 4/1/93, the Commission adopted a Second Report and Order in MM Docket No. 90–162, Evaluation of the Syndication and Financial Interest Rules. In this Second R&O the Commission amends its financial interest and syndication rules in accordance with the Court remand, the record in this proceeding, and ongoing changes in the video marketplace. Section 73.661(a) requires television networks to maintain reports identifying all network prime time entertainment programs and all first-run non-network programs in which the network holds or acquires financial interest or syndication rights. For the programs identified under this subsection, networks must maintain reports that identify the independent syndicator who holds the active syndication rights, the date such rights were obtained, and the network's owned and operated and affiliated stations that have obtained the program for exhibition from the independent syndicator § 73.661(c). Section 73.661(b) requires each television network that actively syndicates prime time entertainment programming or any first-run programs to maintain reports that list the sales to broadcast stations of any such programming it actively syndicates. Section 73.661(d) requires each television network to certify in writing that it is in compliance with the financial interest and syndication rules. Any "emerging" networks (as defined in § 73.662(g)) will be exempted from these reporting/recordkeeping requirements until it provides 16 hours or more of prime time programming to interconnected affiliates. Section 73.661(f) requires networks to file these reports/certifications on a semi-annual basis with the Commission and to place copies in the public inspection file of each station owned and operated by the network. These requirements will be eliminated two years after the entry of an order by the U.S. District Court, Central District of California, which lifts the restrictions of the consent decrees that now supplement the Commission's financial interest and syndication rules. The Commission shall conduct a review of the market effect of the changes in the financial interest and syndication rules and consent decree restrictions 18 months after entry of the District Court order. Six months after commencement of this review, proponents of any remaining restrictions must persuade the Commission further retention is justified, or the remaining rules automatically expire.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–14656 Filed 6–21–93; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 15, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0139.

Title: Request for Antenna Height Clearance and Obstruction Marking and Lighting Specifications.

Form Number: FCC Form 854.

Action: Revision of a currently approved collection.

Respondents: Individuals or households, non-profit institutions and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 250 responses; .50 hours average burden per response; 125 hours total annual burden.

Needs and Uses: Section 303(q) of the Communications Act authorizes the Commission to require the painting and/or illumination of radio towers if and when in its judgement such towers constitute, or there is a reasonable possibility that they may constitute a hazard to air navigation. This form will be used to evaluate the requirements for painting and/or illumination of Amateur, Civil Air Patrol and Satellite Radio antenna that will exceed 200 feet or 1/100 of the minimum distance between the antenna site and any aircraft landing area, and approval for the applicant to construct the antenna. The FCC Form 854 has been revised to change the Commission mailing address, to add a question regarding which North American Datum was used

to determined coordinates, to clarify whether Notice of Proposed Construction has been filed with the FAA, and to request the height of building (supporting structure). This additional information will assist the antenna clearance examiners in clearing the antenna site. In addition, the FAA address locations and phone numbers have been updated to agree with the current FAA Form 7460–1 (1/93 edition).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–14657 Filed 6–21–93; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 93–86; DA 93–633]

Private Land Mobile Radio Services; New Mexico Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for New Mexico (Region 29). As a result of accepting the Plan for Region 29, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: June 11, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: June 2, 1993; *Released:* June 11, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer

1. On February 2, 1993, Region 29 (New Mexico) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in New Mexico.

2. The New Mexico Plan was placed on Public Notice for comments due on May 3, 1993, 58 FR 17399 (April 2, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for New Mexico and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the *Report and Order* in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in New Mexico.

4. Therefore, we accept the New Mexico Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in New Mexico may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–14592 Filed 6–21–93; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 93–77; DA 93–630]

Private Land Mobile Radio Services; North Dakota Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for North Dakota (Region 32). As a result of accepting the Plan for Region 32, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: June 11, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: June 2, 1993; *Released:* June 11, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer

1. On January 13, 1993, Region 32 (North Dakota) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in North Dakota.

2. The North Dakota Plan was placed on Public Notice for comments due on April 28, 1993, 58 FR 16192 (March 25, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for North Dakota and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the *Report and Order* in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in North Dakota.

4. Therefore, we accept the North Dakota Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in North Dakota may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–14593 Filed 6–21–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Transatlantic Policing Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011419.

Title: Transatlantic Policing Agreement.

Parties:

Atlantic Container Line AB
DSR–Senator Joint Service
Mediterranean Shipping Co.
Nedlloyd Lijnen BV
P&O Containers Limited
Orient Overseas Container Line (UK) Ltd.,
Hapag Lloyd AG
Sea-Land Service, Inc.
A. P. Moller-Maersk Line
Nippon Yusen Kaisha Line
Neptune Orient Lines Ltd.

Synopsis: The proposed Agreement provides for a regional independent neutral body self-policing system of the activities of the parties in the transatlantic trades between ports and points in the United States, and ports and points in Europe (including ports in

the United Kingdom and the Republic of Ireland), but excluding non-Baltic ports in Russia, Mediterranean ports and ports in Spain and Portugal. This Agreement supersedes Agreement 11160 which is scheduled to expire on July 18, 1993. The parties have requested a shortened review period.

Dated: June 16, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–14618 Filed 6–21–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P28–93]

Petition of Caribe Basin Services Inc. for Temporary Exemption From Electronic Tariff Filing Requirements; Filing of Petition

Notice is hereby given of the filing of a petition by the above named petitioner, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioner requests exemption from the June 4, 1993, electronic filing deadline, stating it is unable to comply with the June 4, 1993, deadline for filing of World War/Asian and South Pacific tariffs.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than June 25, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on Neil B. Mooney, President, Caribe Basin Services, Inc., 1550 NW. 96th Avenue, Miami, Florida 33172.

Copies of the petition are available for examination at the Washington, D.C. office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–14617 Filed 6–21–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Cass Commercial Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 12, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Cass Commercial Corporation, St. Louis, Missouri; to engage *de novo* through its subsidiary, Cass Logistics, Inc., Bridgeton, Missouri, in providing data processing and data transmission services, facilities, data bases, and access thereto, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

2. Mercantile Bancorporation, Inc., St. Louis, Missouri; to acquire *de novo* through its subsidiary, Mercantile Trust Company National Association, St. Louis, Missouri, in activities of a fiduciary, agency/or custodial nature pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted in the State of Missouri.

Board of Governors of the Federal Reserve System, June 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14660 Filed 6–21–93; 8:45 am]

BILLING CODE 6210–01–F

John Andrew Rainier Grimaldi, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 12, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. John Andrew Rainier Grimaldi, Tampa, Florida; Raul Roque, Temple Terrace, Florida; and Edward Simmon, Temple Terrace, Florida; to acquire 28.3 percent of the voting shares of University State Bank Corp., Tampa, Florida, and thereby indirectly acquire University State Bank, Tampa, Florida.

Board of Governors of the Federal Reserve System, June 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14661 Filed 6–21–93; 8:45 am]

BILLING CODE 6210–01–F

Marshall & Ilsley Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of

Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 6, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Marshall & Ilsley Corporation, Milwaukee, Wisconsin; to acquire the item processing and data processing activities of Barnett Bank, Incorporated, Jacksonville, Florida, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14662 Filed 6–21–93; 8:45 am]

BILLING CODE 6210–01–F

National City Corporation, et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 16, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. National City Corporation, Cleveland, Ohio; to merge with Ohio Bancorp, Youngstown, Ohio, and thereby indirectly acquire The Dollar Savings and Trust Company, Youngstown, Ohio; The Potters Bank and Trust Company, East Liverpool, Ohio; The Miners and Mechanics Trust Company, Steubenville, Ohio; Bank 2000, Minerva, Ohio; Peoples Banking Company, Martins Ferry, Ohio; and up to 10 percent of the voting shares of Cortland Bancorp, Cortland, Ohio, and thereby indirectly acquire The Cortland Savings and Banking Company, Cortland, Ohio.

In connection with this application, Applicant also proposes to acquire Florida Trust Services of Ohio Bancorp, Naples, Florida, and thereby engage in providing trust and fiduciary services pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted throughout the State of Florida.

Board of Governors of the Federal Reserve System, June 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14663 Filed 6–21–93; 8:45 am]

BILLING CODE 6210–01–F

Shawmut National Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 16, 1993.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Shawmut National Corporation, Hartford, Connecticut; to acquire 100 percent of the voting shares of Shawmut New Hampshire Corporation, Manchester, New Hampshire, and thereby indirectly acquire New Dartmouth Bank, Manchester, New Hampshire. In connection with this application, Shawmut New Hampshire

Corporation has applied to become a bank holding company by acquiring New Dartmouth Bank.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Barnett Banks, Inc., Jacksonville, Florida; to acquire 100 percent of the voting shares of The Citizens and Peoples National Bank of Pensacola, Pensacola, Florida.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Citizens Banking Corporation, Flint, Michigan; to acquire 100 percent of the voting shares of Royal Bank Group, Inc., Royal Oak, Michigan, and thereby indirectly acquire National Bank of Royal Oak, Royal Oak, Michigan.

2. HeartWay Bancorporation, Wayland, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Wayland State Bank, Wayland, Iowa.

3. Smithdown Investments, Inc., Lake Forest, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Hinsdale Bank & Trust Company, Hinsdale, Illinois, a *de novo* bank.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Sioux National Company, Lincoln, Nebraska; to merge with Crawford State Company, Lincoln, Nebraska, and thereby indirectly acquire Crawford State Bank, Crawford, Nebraska.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Independent Bankshares, Inc., Abilene, Texas, and Independent Financial Bankshares, Inc.; to acquire 94.22 percent of the voting shares of The Winters Bank, Winters, Texas. In connection with this application, Independent Financial Corp., Dover, Delaware, has applied to become a bank holding company by acquiring 94.22 percent of the voting shares of The Winters State Bank, Winters, Texas. **Comments on this application must be received by July 1, 1993.**

3. Industry Bancshares, Inc., Industry, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Industry State Bank, Industry, Texas.

F. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. First Savings Bank of Washington Bancorp, Walla Walla, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of First Savings Bank of Washington, Walla Walla, Washington.

2. Pioneer Bancorporation, Reno, Nevada; to become a bank holding company by acquiring 100 percent of the voting shares of Pioneer Citizens Bank of Nevada, Reno, Nevada.

Board of Governors of the Federal Reserve System, June 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-14664 Filed 6-21-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N-0034]

The Stevan M. Rogers Farm; Withdrawal of Approval of an Application for Medicated Animal Feeds

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Center for Veterinary Medicine (CVM), Food and Drug Administration (FDA), is withdrawing approval of a medicated feed application (MFA) held by the Stevan M. Rogers Farm for animal feeds bearing or containing the new animal drug carbadox. This action is being taken because the firm failed to respond to a notice of opportunity for a hearing proposing to withdraw approval of the application.

EFFECTIVE DATE: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Karen A. Kandra, Center for Veterinary Medicine (HFV-246), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8765.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 2, 1993 (58 FR 17412), CVM provided a notice of opportunity for a hearing on a proposal to withdraw approval of MFA F128-508 held by the Stevan M. Rogers Farm, Rural Rt. 1, P.O. Box 89, Chrisman, IL 61924, for the manufacture of swine feeds bearing or containing the new animal drug carbadox which is used for control of dysentery, enteritis, and as a growth promotant in swine. The application was approved January 19, 1981.

The notice of opportunity for a hearing stated that CVM was proposing to issue an order under section 512(m)(4)(B)(i) and (m)(4)(B)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(m)(4)(B)(i) and (m)(4)(B)(ii)) withdrawing approval of the MFA and all amendments and supplements thereto, on the grounds that new information, evaluated together with the evidence available when the MFA was approved, showed that the methods used in, or the facilities and controls used for, the manufacturing, processing, and packing of such animal feeds were inadequate to ensure and preserve the identity, strength, quality, and purity of the new animal drug therein, and were not made adequate within a reasonable time after receipt of written notice from FDA specifying the matters complained of. The firm was provided until May 3, 1993, to file a written notice of appearance and a request for a hearing (58 FR 17412 at 17413). Stevan M. Rogers Farm failed to file such an appearance and request for a hearing.

Under § 514.200 *Contents of notice of opportunity for a hearing* (21 CFR 514.200), the failure of the sponsor to file a written appearance in answer to a notice of opportunity for a hearing constitutes a waiver of the right to a hearing and is grounds for CVM to summarily enter a final order withdrawing approval of the MFA.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of MFA F128-508 and all amendments and supplements thereto is hereby withdrawn, effective July 2, 1993.

Dated: June 11, 1993.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 93-14616 Filed 6-21-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92N-0418]

Jan T. Sturm; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under section 306(a)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a(a)(2))

permanently debarring Mr. Jan T. Sturm, 6845 Sewells Orchard Dr., Columbia, MD 21045, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Sturm was convicted of a felony under Federal law for conduct relating to the development and approval, including the process for development and approval, of a drug product; and relating to the regulation of a drug product under the act. Mr. Sturm has failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

EFFECTIVE DATE: June 22, 1993.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Diane M. Sullivan, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8041.

SUPPLEMENTARY INFORMATION:

I. Background

On February 16, 1990, the United States District Court for the District of Maryland entered judgment against Mr. Jan T. Sturm for receiving an unlawful gratuity, a Federal felony offense under 18 U.S.C. 201(c)(1)(B).

As a result of this conviction, FDA served Mr. Sturm by certified mail on March 19, 1993, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application and offered him an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(A) and (a)(2)(B) of the act, that he was convicted of a felony under Federal law for conduct (1) relating to the development and approval, including the process for development and approval, of a drug product; and (2) relating to the regulation of a drug product under the act. Mr. Sturm did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

II. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.20), finds that Mr. Jan T. Sturm has been convicted of a felony under Federal law for conduct (1) relating to the development and approval, including the process for development and approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, Mr. Jan T. Sturm is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (*insert date of publication in the* **Federal Register**) (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Sturm in any capacity, during his period of debarment, will be subject to civil money penalties. If Mr. Sturm, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application from Mr. Sturm during his period of debarment.

Any application by Mr. Sturm for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 92N–0418 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 10, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–14645 6–21–93; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

National Institutes of Health; Statement of Organization, Functions and Delegations of Authority

Part H, chapter HN (National Institutes of Health) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 58 FR 19466, April 14, 1993), is amended to reflect the following changes within the National Center for Nursing Research (NCNR) (HN2): (1) Retitle the National Center for Nursing Research (HN2) as the National Institute of Nursing Research (NINR) (HN2) and revise its functional statement; and (2) establish the Office of the Director (HN21) in the National Institute of Nursing Research (OD/NINR). This reorganization will strengthen the image of nursing research in the scientific community and will have no adverse impact on the NINR's ability to conduct and support research and research training related to nursing and patient care.

Section HN–B, Organization and Functions, is amended as follows: Under the heading National Center for Nursing Research (HN2), delete the title and functional statement in their entirety and insert the following:

National Institute of Nursing Research (HN2). The National Institute of Nursing Research (NINR) provides leadership for nursing research, and supports and conducts research, research training, and dissemination of results to build a scientific base for nursing practice and patient care and to promote health and ameliorate effects of illness on the American people.

Office of the Director (HN21). The Office:

(1) Plans, directs, coordinates, and evaluates the development and progress of programs and activities of the National Institute of Nursing Research (NINR);

(2) Develops major policies and program decisions based on an evaluation of the status of support and accomplishments of the Institute's program areas;

(3) Provides staff support to the National Advisory Council for Nursing Research (NACNR), through the Office of Review;

(4) Provides oversight of the initial scientific merit review of grant applications by NINR initial review groups, through the Office of Review;

(5) Collaborates with other NIH Institutes, Centers, and Divisions (ICDs) in the identification of ongoing activities and planned new directions in nursing research and research training as they relate to the overall NIH mission;

(6) Maintains requisite liaison with other government, voluntary, and private organizations and groups nationally and internationally;

(7) Promotes nursing research by outreach and responsiveness to scientific and lay publics, including Congress, the media, the nursing community, and the general public; and

(8) Establishes and maintains effective internal control systems to maximize responsible stewardship, ensure compliance with pertinent regulations, and minimize cases of fraud and/or abuse.

Dated: June 14, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–14675 Filed 6–21–93; 8:45 am]

BILLING CODE 4149–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Westside Irrigation Project, Wyoming

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of cancellation of a draft environmental impact statement.

SUMMARY: The Bureau of Reclamation (Reclamation) is canceling the draft environmental impact statement (DEIS) on the Westside Irrigation Project, Wyoming, field with the Environmental Protection Agency on September 20, 1988.

FOR FURTHER INFORMATION CONTACT: Mike Whittington, Regional Planning Officer, Bureau of Reclamation, Great Plains Region, PO Box 36900, Billings, MT 59107–6900; telephone: (406) 657–6517.

SUPPLEMENTARY INFORMATION: Reclamation published a Notice of Intent to prepare a DEIS for the Westside Irrigation Project, Wyoming, in the Federal Register, 50 FR 6410, February 15, 1985. A scoping meeting was held in Worland, Wyoming, on March 5, 1985.

The DEIS, Westside Irrigation Project, Wyoming, was filed with the Environmental Protection Agency on September 20, 1988, and the Notice of Availability was published in the Federal Register, 53 FR 37060, September 23, 1988.

Due to a number of public concerns and declining interest in the Project proposal, it was decided not to finalize the DEIS. Consequently, no further work was accomplished on the document, and none is anticipated. Due to the amount of time that has elapsed since the filing of the DEIS, a new document would be prepared and distributed if planning were to resume at some future time.

Dated: June 15, 1993.

J. William McDonald,

Assistant Commissioner, Resources Management.

[FR Doc. 93–14633 Filed 6–21–93; 8:45 am]

BILLING CODE 4310–09–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 12, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 7, 1993.

Patrick Andrus,

Acting Chief of Registration, National Register.

ARIZONA

Apache County

Colter Ranch Historic District, Street jct. of 4th St. and School Bus Rd., Eagar vicinity, 93000626

Eagar School, 174 S. Main St., Eagar, 93000624

Eagar Townsite Historic District, Roughly bounded by Central Ave., Main St., 1st Ave. and Eagar St., 2nd Ave and Harless St., 3rd Ave. and Eagar St., Eagar, 93000625

DELAWARE

New Castle County

Armstrong Lodge No. 26, A. F. & A. M. (Newport Delaware MPS), 112–114 E. Market St., Christiana Hundred, Newport, 93000628

Collison House (Newport Delaware MPS), 21 N. Walnut St., Christiana Hundred, Newport, 93000635

Galloway-Walker House (Newport Delaware MPS), 107 John St., Christiana Hundred, Newport, 93000633

Kilgore Hall (Newport Delaware MPS), 101 N. James St., Christiana Hundred, Newport, 93000630

Kilgore, Joseph, House (Newport Delaware MPS), 107 N. James St., Christiana Hundred, Newport, 93000627

Newport National Bank (Newport Delaware MPS), 100 E. Market St., Christiana Hundred, Newport, 93000634

Tatnall, Joseph, House (Newport Delaware MPS), S. James St., W side, near Christiana Cr., Christiana Hundred, Newport, 93000631

Weldin, Lewis, House (Newport Delaware MPS), 7–9 W. Market St., Christiana Hundred, Newport, 93000632

Woman's Club of Newport (Newport Delaware MPS), 15 N. Augustine St., Christiana Hundred, Newport, 93000629

FLORIDA

Polk County

East Lake Morton Residential District, Roughly bounded by Orange St., Ingraham Ave., Palmetto St., Lake Morton Dr. and Massachusetts Ave., Lakeland, 93000621

MICHIGAN

Eaton County

Vermontville Opera House, 120 E. First St., 219 S. Main St., Vermontville, 93000620

Houghton County

Painsdale, Area encompassing Painsdale streets and the Champion Mine, Painsdale, 93000623

Jackson County

Collins Manufacturing—Jackson Automobile Company Complex, 2301 E. Michigan Ave., Jackson, 93000622

SOUTH CAROLINA

Kershaw County

English, Thomas, House, SC 92, 0.6 mi. W of jct. with SC 93, Camden 82003871

WEST VIRGINIA

Cabell County

Masonic Temple—Watts, Ritter, Wholesale Drygoods Company Building, 1100B–110 E. Third Ave., Huntington, 93000614

Hancock County

Johnson-Traux House, 209 Seneca St., Wierton, 93000611

Jefferson County

Media Farm, Address Restricted, Charles Town vicinity, 93000616

Marshall County

Cameron City Pool—PWA Project 1196, Park St., Cameron, 93000612

Nicholas County

Brock Hotel, 1400 Webster Rd., Summersville, 93000615

Preston County

Hagans Homestead, WV 26, 1 mi. N of jct. with I–68E (Exit 23), Brandonville, 93000617

McGrew, James Clark, House, 100 E. Main St., Kingwood, 93000618

Tyler County

Middlebourne Historic District, Main, East, and Dodd Sts., Middlebourne, 93000613

Upshur County

Post, William, Mansion, 8 Island Ave., Buckhannon, 93000619

[FR Doc. 93–14614 Filed 6–21–93; 8:45 am]

BILLING CODE 4310–70–M

Final Environmental Impact Statement/ General Management Plan/ Development Concept Plan, Grant-Kohrs Ranch National Historic Site, Montana

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of final environmental impact statement/general management plan/development concept plan for Grant-Kohrs Ranch National Historic Site.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a Final Environmental Impact Statement/ General Management Plan/Development Concept Plan (FEIS/GMP/DCP) for Grant-Kohrs Ranch National Historic Site, Montana.

DATES: A 30-day no-action period will follow the Environmental Protection Agency's notice of availability of the FEIS/GMP/DCP.

ADDRESSES: Public reading copies of the FEIS/GMP/DCP will be available for review at the following locations:

Office of the Superintendent, Grant-Kohrs Ranch National Historic Site, P.O. Box 790, Deer Lodge, Montana 59722. Telephone: (406) 846–2070.

Division of Planning and Compliance, Rocky Mountain Regional Office, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80225. Telephone: (303) 969–2828

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW., Washington, DC 20240. Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION: The DEIS/GMP analyzes three alternatives to provide for the preservation of historic resources and for visitor use. The overall intent of the proposed action is to manage the park as a working ranch, giving priority to rehabilitation and adaptive use of historic structures over new construction and consolidation of administrative, maintenance and curatorial storage functions on park lands, where feasible. Alternative A would emphasize management of the park as a working ranch, while minimizing non-historic uses. Emphasis would be placed on removing all non-historic uses from the park's historic zone, with special attention to the ranch house complex. Alternative B (no action) displays existing management strategies for the park, as outlined in current planning documents and a discussion of the park's existing conditions.

The DEIS/GMP/DCP in particular evaluates the environmental consequences of the proposed action and the other alternatives on water resources, soils and vegetation, wildlife, air quality, historic and ethnographic resources, archeological resources, visitor use, socioeconomic resources and other federal agencies.

FOR FURTHER INFORMATION CONTACT: Superintendent, Grant-Kohrs Ranch National Historic Site, at the above address and telephone number.

Dated: June 3, 1993.

Michael D. Snyder,

Acting Regional Director, Rocky Mountain Region, National Park Service.

[FR Doc. 93–14670 Filed 6–21–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32272]

Maine Coast Railroad Corp. (Operation Exemption); Maine Central Railroad Co. and Springfield Terminal Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the requirements of 49 U.S.C. 11343–11345 the operation by Maine Coast Railroad Corporation of 5.76 miles of rail line in Brunswick, ME, between (1) milepost 29.40, at Rock Junction, and milepost 33.79, at Hardings, and (2) milepost 28.03, at Church Road, and milepost 29.40. The State of Maine owns the physical properties and has the right (subject to certain limitations) to select the operator under an agreement with Maine Central Railroad Company and Springfield Terminal Railway Company, who retain common carrier obligations.

DATES: This exemption will be effective on July 22, 1993. Petitions to stay must be filed by July 2, 1993. Petitions to reopen must be filed by July 12, 1993.

ADDRESSES: Send pleadings, referring to Finance Docket No. 32272, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: James E. Howard, Kirkpatrick & Lockhart, One International Place, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610. (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: June 11, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–14674 Filed 6–21–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement

In the matter of United States v. Primestar Partners, L.P.; ATC Satellite, Inc.; Comcast Corporation; Comcast DBS, Inc.; Continental Cablevision, Inc.; Continental Satellite Company, Inc.; Cox Enterprises, Inc.; Cost Satellite, Inc.; GE American Communications, Inc.; GE Americom Services, Inc.; Newhouse Broadcasting Corporation; New Vision Satellite; Tele-Communications, Inc.; TCI K–1, Inc.; Time Warner Inc.; United Artists K–1 Investments, Inc.; Viacom Inc.; Viacom K-Band, Inc.; and Warner Cable SSD, Inc.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Southern District of New York in United States v. Primestar Partners, L.P.; ATC Satellite, Inc., Comcast Corporation; Comcast DBS, Inc.; Continental Cablevision, Inc.; Continental Satellite Company, Inc.; Cox Enterprises, Inc.; Cox Satellite, Inc.; GE American Communications, Inc.; GE Americom Services, Inc.; Newhouse Broadcasting Corporation; New Vision Satellite; Tele-Communications, Inc.; TCI K–1, Inc.; Time Warner, Inc.; United Artists K–1 Investments, Inc.; Viacom Inc.; Viacom K-Band, Inc.; and Warner Cable SSD, Inc., Civil Action No. 93–CIV–3913. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

The Complaint in this case alleges that Primestar Partners, L.P.; its partners; and the partners' corporate parents, including seven multiple cable system operators (the "MSO

defendants"), have engaged in a continuing agreement, combination and conspiracy to restrain competition in the provision of multichannel subscription television service in violation of Section 1 of the Sherman Act. The Complaint alleges that the defendants agreed to establish Primestar Partners, L.P. with the specific purpose to delay, if not preempt, and to raise barriers to entry by other firms into direct broadcast satellite ("DBS"), a multichannel subscription television service. It also alleges that the defendants intended to restrain the availability of certain programming to other DBS entrants or possible entrants, as well as to facilitate coordinated retaliation by the MSO defendants to DBS entry by others.

The proposed Final Judgment would enjoin the defendants from enforcing any provision of the Primestar partnership agreement that affects the availability, price, or terms or conditions of availability of programming to any provider of multichannel subscription television. It would also prohibit each MSO defendant and Primestar from entering into any form of retaliation or threatened retaliation against a person that provides programming to or invests in any provider of multichannel subscription television for the purpose of deterring or preventing such provision of programming or investment. Among its other provisions, the proposed Final Judgment would prohibit the MSO defendants from reaching certain types of agreements with each other relating to the licensure of programming, or the entering into or renewing of any agreements with specified programming services that contain exclusive rights that would limit the rights of such programming services to deal with other providers of multichannel subscription television.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Richard L. Rosen, Chief, Communications and Finance Section, Antitrust Division, Department of Justice, room 8104, 555 Fourth Street, NW., Washington, DC 20001 (202–514–5621).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

United States District Court, Southern District of New York

Civil Action No.: 93–CIV–3913
Judge Sprizzo
Filed: June 9, 1993.

United States of America, Plaintiff, v. Primestar Partners, L.P.; ATC Satellite, Inc.; Comcast Corporation; Comcast DBS, Inc.; Continental Cablevision, Inc.; Continental Satellite Company, Inc.; Cox Enterprises, Inc.; Cox Satellite, Inc.; GE American Communications, Inc., GE Americom Services, Inc.; Newhouse Broadcasting Corporation; New Vision Satellite; Tele-Communications, Inc.; TCI K–1, Inc.; Time Warner Inc.; United Artists K–1 Investments, Inc.; Viacom Inc.; Viacom K-Band, Inc.; and Warner Cable SSD, Inc., Defendants.

Final Judgment

Plaintiff, United States of America, filed its Complaint on June 9, 1993. Plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence or admission by any party with respect to any issue of fact or law. Therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

Ordered, Adjudged and Decreed

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against each defendant under Section I of the Sherman Act, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

(A) *Control* means an ownership interest of 50% or greater or the right, contractual or otherwise, to direct the management decisions of an entity. Entities under "common control" are entities that have the same ultimate parent entity as that term is defined in 16 CFR 801.1 on the date of entry of this decree.

(B) *MSO defendants* are Comcast Corporation; Continental Cablevision, Inc.; Cox Enterprises, Inc.; Newhouse Broadcasting Corporation; Tele-Communications, Inc.; Time Warner, Inc.; and Viacom Inc. "MSO defendants" does not include GE Americom Services, Inc.; GE American Communications, Inc.; and Primestar Partners, L.P.

(C) *Multichannel subscription television* means a service providing multiple channels of video programming to consumers by any of various methods, and for which a periodic subscription fee is charged.

(D) *Partnership Agreement* is the Limited Partnership Agreement of K Prime Partners, L.P., entered into on or about February 8, 1990, including any subsequent amendments, additions, or deletions.

(E) *Primestar Partners, L.P. ("Primestar")* is a partnership organized and existing under the laws of the State of Delaware, with its principal office in Bala Cynwyd, Pennsylvania. Primestar is a joint venture partnership formed by ten partners, all of which are subsidiaries of defendant GE American Communications, Inc. and of the MSO defendants. Primestar was formed on or about February 8, 1990, under the name K Prime Partners, L.P. On February 13, 1991, the Certificate of Limited Partnership of K Prime Partners, L.P. was amended to change the name of the partnership to Primestar Partners, L.P.

III. Applicability

This Final Judgment shall apply to each defendant and each of their affiliates, subsidiaries, officers, directors, employees, agents, successors, and assigns.

IV. Prohibited Conduct

A. Each defendant is enjoined and restrained from adhering to, carrying out or enforcing any provision of the Partnership Agreement that affects the availability, price, terms or conditions of provision, sale, or licensure of programming to any provider of multichannel subscription television, including Primestar Partners, L.P., or that in any way affects the status or partnership interest of a partner as a consequence of the provision, sale, or licensure of programming to any provider of multichannel subscription television, including but not limited to relevant portions of sections 7.14 and 10.06 of the Partnership Agreement.

B. Defendant Primestar and the MSO defendants are each enjoined and restrained from entering into any understanding or agreement of any kind, written or oral, with any other defendant with which it is not under common control regarding any form of retaliation, actual or threatened, against a person that provides, sells, or licenses programming to or invests in, or attempts or plans to provide, sell, or license programming to or invest in, any provider of multichannel subscription television for the purpose of deterring or preventing such person from providing programming to or investing in such other provider of multichannel subscription television or punishing such person for doing so.

C. Absent prior approval of the Department of Justice (the "Department") or this Court, each MSO defendant is enjoined and restrained:

(1) With respect to each programming service controlled by or under common

control with that MSO defendant, or controlled by that MSO defendant and any other MSO defendants, from entering into any agreement or understanding with any programming service that is not controlled by or under common control with that MSO defendant or with that same group of MSO defendants with respect to the terms or conditions on which either service will sell, provide or license, or refuse to sell, provide or license, programming to any provider of multichannel subscription television.

(2) With respect to each cable system controlled by or under common control with that MSO defendant, or controlled by that MSO defendant and any other MSO defendants, from entering into any agreement or understanding, directly or indirectly, with any cable system that is not controlled by or under common control with that MSO defendant or with that same group of MSO defendants to purchase, procure, or license programming, whereby such purchase, procurement or license is subject to any condition that prohibits the purchase or directly affects the availability, price, terms, or conditions of, the purchase, procurement or licensing of that programming by any other provider of multichannel subscription television.

(3) (a) With respect to any cable system it controls, either individually or collectively with any other MSO defendants, from entering into, directly or indirectly, any agreements or contracts that contain exclusive distribution provisions or from renewing existing exclusivity provisions with any national video programming service that is listed on Exhibit A, or with any existing or new regional sports service, that restrict or limit the rights of such programming service to deal with any direct-to-home satellite service (C-band, Ku-band, or Direct Broadcast Satellite ("DBS")), Multichannel Multipoint Distribution Service (MMDS), Satellite Master Antenna Television Service (SMATV), or cable operator. Each MSO defendant is further enjoined and restrained from enforcing any existing contract terms that restrict, limit or condition the rights of such a programming service to deal with any DBS provider. Nothing in this decree shall prohibit any MSO defendant from maintaining or obtaining exclusive distribution rights to any present or future pay-per-view programming or pay-per-view programming service, or from obtaining exclusive distribution rights with respect to any new national or regional non-sports service not providing programming service to the public as of May 1, 1992. Nothing in this decree shall prohibit or limit in any way the right of any MSO defendant to exercise any contractual rights that it has to renew or to extend any existing distribution contract or agreement so long as such renewal or extension does not include any exclusive distribution rights prohibited by this decree. Nothing in this decree shall prevent any MSO defendant from obtaining or negotiating the right to obtain or to renew non-exclusive rights with respect to any programming service. Nothing in this decree shall prohibit any MSO defendant from entering into, during a period beginning three months prior to the termination of this decree, an exclusivity provision or exclusive distribution agreement which will become effective upon the termination of this decree.

(b) For the purposes of this decree a "national video programming service" shall not include pay-per-view programming or programming services or interactive programming or programming services or distant independent broadcast signals ("superstations").

(c) For purposes of this decree, the term "cable operator" means an entity authorized pursuant to section 621 of the Communications Act of 1934 (47 U.S.C. 541), as it reads on the date of entry of this decree, to provide video programming to subscribers over a cable system and (i) Which directly or through one or more affiliates owns a significant interest in a cable system or systems or (ii) which otherwise controls or is responsible for the management and operation of a cable system or systems. For the purposes of this decree, a cable operator shall not include a common carrier, subject in whole or in part to title II of the Communications Act of 1934 (47 U.S.C. 201–224), as it reads on the date of entry of this decree, or an affiliate owned by, operated by or under common control with the common carrier that provides video programming to subscribers in its telephone service area, except to the extent that, on the date of entry of this decree, such carrier provides telephone exchange service in a rural area and is authorized by the Federal Communications Commission to provide video programming to subscribers in such rural area.

D. Primestar is enjoined from licensing for itself, and each defendant is enjoined from licensing to Primestar, any exclusive rights to any national video programming service existing as of May 1, 1992; provided, however, that if a competing DBS venture obtains any exclusive programming, Primestar may, upon sixty (60) days prior written notice to the Department, obtain a reasonably comparable amount of programming of a reasonably comparable type and quality on a reasonably comparable exclusive basis. (The amount of programming shall be measured by subscriber data as of December 31 of the immediately preceding year as set forth in the Kagan Cable TV Financial Data Book, or as obtained directly from the programming service in question).

V. Sanctions

Nothing in this Final Judgment shall bar the United States from seeking, or the Court from imposing, against any defendant or person any relief available under any applicable provision of law.

VI. Plaintiff Access

(A) To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the relevant defendant, be permitted:

(1) Access during that defendant's office hours to inspect and copy all records and documents in its possession or control relating to any matters contained in this Final Judgment; and

(2) To interview that defendant's officers, employees, trustees, or agents, who may have counsel present, regarding such matters. The interviews shall be subject to the defendant's reasonable convenience and without restraint or interference from any defendant.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, a defendant shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be reasonably requested.

(C) No information or documents obtained by the means provided in this section VI shall be divulged by the plaintiff to any person other than a duly authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VII. Further Elements of Decree

(A) This Final Judgment shall expire 5 years from the date of entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for

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further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge.

Exhibit A

National Video Programming Services—Serving Subscribers as of May 1, 1992

American Christian TV System ("ACTS")
America's Disability Channel ("ADC")
American Movie Classics ("AMC")
Arts & Entertainment Network
Black Entertainment Network ("BET")
Bravo
Canal SUR
Cinemax
Country Music Television ("CMT")
Consumer News & Business Channel ("CNBC")
Cable News Network ("CNN")
Comedy Central
Courtroom Television Network ("Court TV")
Cable Satellite Public Affairs Network ("C-SPAN")
Cable Satellite Public Affairs Network 2 ("C-SPAN 2")
The Discovery Channel
The Disney Channel
Encore
E! Entertainment Television
ESPN
Eternal Word TV Network ("EWTN")
The Family Channel
FoxNet
Galavision/ECO
Home Box Office ("HBO")
Home Shopping Network ("HSN I")
Home Shopping Network II ("HSN II")
Home Shopping Network Entertainment ("HSNE")
Headline News
The International Channel
The Learning Channel
Lifetime
Mind Extension University: The Education Network ("MEU")
The Monitor Channel
The Movie Channel
MTV: Music Television
NASA Select Television
National Jewish Television
The New Inspirational Network
NICK at NITE
Nickelodeon
Nippon Golden Network
Nostalgia Television
Playboy at Night
QVC Fashion Network
SCOLA
Showtime
Silent Network
SportsChannel America
TBN
Telemundo
TNN: The Nashville Network
Turner Network Television ("TNT")
The Travel Channel
TV JAPAN
Univision
USA Network
The Vacation Network
Video Hits One ("VH-1")
VISN Network
The Weather Channel

Regional Sports Services—Serving Subscribers as of May 1, 1992

Arizona Sports Programming Network
Empire Sports Network
Home Sports Entertainment
Home Team Sports
KBL Sports Network
Madison Square Garden—Inner
Madison Square Garden—Outer
Meadows Racing Network
Midwest Sports Channel
New England Sports Network ("NESN")
Niagra Frontier Sports Network
Pacific Sports Network
Pro Am Sports System ("PASS")
Portland Trail Blazers
Prime Sports Network—Intermountain West
Prime Sports Network—Midwest
Prime Sports Network—North West
Prime Sports Network—Rocky Mountain
Prime Sports Network—Upper Midwest
Prime Ticket Network
San Diego Cable Sports Network
PRISM
SportsChannel—Bay Area
SportsChannel—Chicago
SportsChannel—Cincinnati
SportsChannel—Florida
SportsChannel—Los Angeles
SportsChannel—New England
SportsChannel—New York
SportsChannel—Ohio
SportsSouth—Network
Sunshine Network
TSC—The Sports Channel

United States District Court, Southern District of New York

Civil Action No.: 93-CIV-3913
Judge Sprizzo
Filed: June 9, 1993.

United States of America, Plaintiff, v. Primestar Partners, L.P.; ATC Satellite, Inc.; Comcast Corporation; Comcast DBS, Inc.; Continental Cablevision, Inc.; Continental Satellite Company, Inc.; Cox Enterprises, Inc.; Cox Satellite, Inc.; GE American Communications, Inc., GE Americom Services, Inc.; Newhouse Broadcasting Corporation; New Vision Satellite; Tele-Communications, Inc.; TCI K-1, Inc.; Time Warner Inc.; United Artists K-1 Investments, Inc.; Viacom Inc.; Viacom K-Band, Inc.; and Warner Cable SSD, Inc., Defendants.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties to this Stipulation consent that a Final Judgment in the form attached may be filed and entered by the Court, upon any party's or the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice on the defendants and by filing that notice with the Court;

2. If plaintiff withdraws its consent or the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and its making shall be without prejudice to any party in this or any other proceeding;

3. This Stipulation and the Final Judgment to which it relates are for settlement purposes only and do not constitute an admission by defendants in this or any other proceeding that section 1 of the Sherman Act, 15 U.S.C. 1, or any other provision of law, has been violated.

Davis Polk & Wardwell.
By: Arthur F. Golden, AG-6980.
450 Lexington Avenue, New York, N.Y. 10017, (212) 450-4000.

By: Scott Sacks.
Antitrust Division, U.S. Department of Justice, 555 Fourth Street, NW., Washington, DC 20001 (202) 514-5811.

Attorneys for Primestar Partners, L.P.
Morgan, Lewis & Bockius.
By: Stephen Paul Mahinka.
1800 M Street, NW., Washington, DC 20036, (202) 467-7000.

Attorneys for Comcast Corporation and Comcast DBS, Inc.
By: Robert J. Sachs.
Continental Cablevision, Inc. and Continental Satellite Company, Inc. Pilot House, Lewis Wharf, Boston, MA 02110, (617) 742-9500.

Dow, Lohnes & Albertson.
By: James A. Treanor III, JT-4626.
1255 23rd Street, NW., Suite 500, Washington, DC 20037, (202) 857-2500.

Attorneys for Cox Enterprises, Inc., and Cox Satellite, Inc.
Hogan & Hartson.
By: David J. Saylor.
Columbia Square Building, 555 13th Street, NW., Washington, DC 20004, (202) 637-5600.

Attorneys for GE Americom Services, Inc. and GE American Communications, Inc.
Sullivan & Cromwell.
By: Yvonne S. Quinn, YQ-3678.
125 Broad Street, New York, N.Y. 10004, (212) 558-4000.

Attorneys for New Vision Satellite and Newhouse Broadcasting Corporation.
Jones, Day, Reavis & Pogue.
By: Joe Sims.
Metropolitan Square Building, 1450 G Street, NW., Washington, DC 20005, (202) 979-3939.

Attorneys for Tele-Communications, Inc; TCI K-1, Inc, and United Artists K-1 Investments, Inc.
Cravath Swaine & Moore.
By: Robert Joffe, RJ-6825.
World Wide Plaza, 825 Eighth Avenue, New York, N.Y. 10019, (212) 474-1000.

Attorneys for ATC Satellite, Inc.; Time Warner Inc., and Warner Cable SSD, Inc.
Simpson Thacher & Bartlett.
By: Kenneth R. Logan, KL–7745.
425 Lexington Avenue, New York NY 10017.
Attorneys for Viacom K-Band, Inc. and Viacom Inc.

United States District Court, Southern District of New York

Civil Action No: 93–CIV–3913
Judge Sprizzo
Filed: June 9, 1993.

United States of America, Plaintiff, v. Primestar Partners, L.P., ATC Satellite, Inc.; Comcast Corporation; Comcast DBS, Inc.; Continental Cablevision, Inc.; Continental Satellite Company, Inc.; Cox Enterprises, Inc.; Cox Satellite, Inc.; GE American Communications, Inc., GE Americom Services, Inc.; Newhouse Broadcasting Corporation; New Vision Satellite; Tele-Communications, Inc.; TCI K–1, Inc.; Time Warner Inc.; United Artists K–1 Investments, Inc.; Viacom Inc.; Viacom K–Band, Inc.; and Warner Cable SSD, Inc., Defendants.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of The Proceeding

On June 9, 1993, the United States filed a civil antitrust complaint against defendant Primestar Partners, L.P. ("Primestar"), a joint venture partnership formed by subsidiaries of seven of the largest cable multiple systems operators ("MSOs") in the United States (in terms of subscribers) and GE American Communications, Inc. ("GEA"), a subsidiary of General Electric Company. The seven MSOs are Tele-Communications, Inc.; Time Warner, Inc.; Continental Cablevision, Inc.; Comcast Corporation; Cox Enterprises, Inc.; Newhouse Broadcasting Corporation; and Viacom, Inc. ("MSO defendants"). The complaint alleges that Primestar, its ten partners and its partners' corporate parents, have engaged in a continuing agreement, combination and conspiracy in restraint of competition in the provision of multichannel subscription television service, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The complaint seeks injunctive relief to assure that Primestar does not restrain the availability of programming to multichannel subscription television service competitors of the MSO defendants, or does not deter entry into multichannel subscription television by others by serving as a device to facilitate a coordinated retaliatory response by the MSO defendants.

The complaint alleges that on or about February 8, 1990, the MSO defendants and GEA agreed to form a joint venture to use a GEA satellite, known as the K–1, to offer a direct broadcast satellite ("DBS") multichannel subscription television service to consumers and to delay, if not preempt, and to raise barriers to entry by other firms into DBS by, among other things, restraining the availability, or the terms and conditions of availability, of partner-controlled or owned programming to possible entrants, discouraging other, nondefendant programmers from making their programming available to other DBS entrants or potential DBS entrants, and facilitating a coordinated retaliatory response by the MSO defendants to DBS entry by others. The effect of the Primestar agreement has been to delay and make more difficult potentially cable-competitive entry into DBS by imposing unreasonable restraints on the availability of cable programing to DBS entrants.

The United States and the defendants have stipulated to the entry of a proposed Final Judgment, designed to remedy the anticompetive effects of the Primestar venture, after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

II. Events Giving Rise to the Alleged Violations

Multichannel subscription television service is a service providing multiple channels of video programming to consumers for which a periodic subscription fee is charged. Cable television service, transmitted via wires directly to the home, is the predominant type of multichannel subscription television service. Other alternatives include direct-to-home satellite, Multichannel Multipoint Distribution Service ("MMDS"), and Satellite Master Antenna Television Systems ("SMATV"), but none of these alternatives has provided substantial competition to cable. Until the implementation of Primestar, direct-to-home satellite service involved the use of large, 8 to 12 foot diameter dishes receiving a fairly low power C-band frequency signal that primarily is used in rural areas. Because of its high installed cost and the size of the receiving dish required, C-band satellite service is a poor alternative to cable television service for most current or potential cable subscribers. MMDS has technological limitations, including line-of-sight requirements, that limit its availability and attractiveness as an alternative to cable television service for most current or potential cable subscribers. SMATV is essentially a private cable system fed through satellite dishes for apartment building or other high-density dwellings. C-band satellite, MMDS and SMATV have a combined total of less than 4 million subscribers, compared to more than 55 million cable subscribers.

Medium-power direct broadcast satellite (DBS) service utilizes a medium-power fixed service Ku-band frequency satellite, which can transmit to a dish between 2½ and 5 feet in diameter and can be installed more cheaply than the larger dish. Medium-power DBS was seen as a potential advance over lower power C-band direct-to-home satellite service and as a service that might be more competitive with cable.

High-power DBS service is planned for 1994–95, when satellites are expected to be launched that will use the higher frequency direct broadcast portion of the Ku-band and operate at much higher power levels, allowing delivery of multichannel subscription television service to a dish as small as 18 inches across which is expected to have even lower installation costs. Largely because of its small dish size and lower installation cost, high-power DBS is considered to be a potential competitive threat to cable.

On or about February 8, 1990, the defendants executed agreements forming a partnership to offer a DBS service using GE Americom's medium-power, Ku-band satellite known as the K–1. The partners included subsidiaries of seven MSOs, among which are the nation's five largest MSOs in terms of subscribers (Tele-Communications, Inc.; Time Warner Inc.; Continental Cablevision, Inc.; Comcast Corporation; and Cox Enterprises, Inc.) and two other large MSOs (Newhouse Broadcasting Corporation and Viacom Inc.).[1] Together the MSO defendants serve more than 50% of the nation's cable subscribers. In addition, two MSO defendants, Time Warner and Viacom, are major suppliers of multichannel subscription television programming, including such popular services as Home Box Office, Cinemax, Showtime, The Movie Channel, MTV, Nickelodeon, Comedy Channel, E! Entertainment Television and others.

[1] One of the partners, Viacom, has ceased meeting capital calls and its partnership share has been diluted. Viacom claims that it has withdrawn from the partnership, while the other partners maintain that Viacom is still a partner. The Department takes no position on this dispute, but views Viacom as a proper defendant due to its participation in the violation alleged in the complaint, and as properly subject to the relief imposed by the proposed Final Judgment at least until its status is decided by the parties or a court.

Various MSO defendants also hold substantial interests, individually and collectively, in other programming suppliers, including Turner Broadcasting (the supplier of Cable News Network, Turner Network Television and other services), The Discovery Channel, Lifetime and Black Entertainment Television. The other joint venturer, GEA, operates the K–1 satellite that the Primestar joint venture utilizes to transmit its DBS service.

The formation of Primestar followed the passage of the Satellite Home Viewer Act (Pub. L. 100–667, 102 Stat. 3949 (1988)). This Act created a compulsory copyright license scheme that mandated access to "superstations" at a reasonable price for any direct-to-home satellite service. Thus, any entrant could be assured of at least some proven programming upon which to build a multichannel subscription television service. At about the same time, GEA was actively soliciting users for its K–1 satellite, launched in 1986.

The threat of cable-competitive entry into medium or high-power DBS motivated the MSO defendants to form with GEA what was then called K Prime Partners, L.P., the predecessor to Primestar Partners, L.P., in order to delay, if not prevent, entry into DBS by other firms. In addition to using the only suitable satellite then available for medium-power DBS (there were no satellites then available for high-power DBS), the partnership agreement contains provisions that were intended to, and have had the effect of, making it more difficult for other potential DBS competitors to obtain programming. Because the Primestar partners own or control a significant amount of popular cable programming, restrictions on access to such programming impedes competitive entry into DBS service.

The partnership agreement contains programming access guarantees in the form of a "most favored nation" provision that provides that a partner programmer must offer its programming to Primestar on terms no less favorable than those offered to any other person, and that Primestar has at least three years in which to accept the offered programming. This clause makes it more difficult for any other DBS service to obtain popular programming because it forces any Primestar partner that makes such a sale to disclose the fact and the terms of sale to its joint venture partners, and forces that partner to offer the programming on equivalent or better terms to Primestar. In any event, the MSO could not provide programming to another venture on an exclusive basis.[2]

Moreover, the Primestar venture reduces the ability and incentives of each MSO defendant to deal with or invest in another DBS venture. It simultaneously serves to assure each of the MSO defendants that no other defendant MSO is likely to invest in or sell programming on attractive terms to another DBS venture. It also facilitates their ability to coordinate a retaliatory response(s) to any cable programmer that sells programming on attractive terms to a competing DBS service. Because the MSO defendants collectively control access to a majority of cable households, any cable programmer who would provide programming to a DBS competitor would do so only at the risk of coordinated retaliation from the MSO defendants. Such retaliation could be in the form of refusing to promote the programmer's programming within the MSO defendant's franchise areas, assigning an unfavorable service tier or channel position to the programming, charging a high price for the programming or failing to promote it if it is a premium service, and sometimes, refusing to carry the programming at all.

III. Explanation of the Proposed Final Judgment

The United States and the defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act (APPA), 15 U.S.C. 16(b)–(h). The stipulation provides that entry of the Final Judgment does not constitute any evidence or admission by any party with respect to any issue of fact or law. Under the provisions of the APPA, 15 U.S.C. 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. The Department believes that the proposed Final Judgment provides an adequate remedy for the alleged violation and is in the public interest. The term of the proposed Final Judgment is 5 years. This term is shorter than the more typical 10 year term, and reflects the Department's recognition of the major technological changes occurring in the industry, as well as recent legislative change affecting the subjects of the proposed Final Judgment. The following is a summary of the substantive provisions.

Section IV(A) of the proposed Final Judgment prohibits each defendant from enforcing any provision of the Primestar agreement that affects the availability, price, or terms or conditions of availability of programming to any provider of multichannel subscription television, or that could penalize a partner as a consequence of the provision of programming to any provider of multichannel subscription television. This would nullify the "most favored nation" provision of the Primestar agreement, section 7.14, which prevents a partner from offering exclusive programming to a third party or providing such programming to a third party on terms more favorable than those given to Primestar. It would also nullify a portion of Section 10.06 of the Primestar agreement to the extent that the provision places the partnership interest of GEA at risk in the event that the National Broadcasting Company, also a subsidiary of General Electric Company, did not similarly grant Primestar "most favored nation" status. Elimination of these restrictions should remove some of the impediments to the acquisition of programming by competitors of the defendants.

Section IV(B) prohibits each MSO defendant and Primestar from entering into any form of agreement with any other defendant regarding any form of retaliation or threatened retaliation against a person that provides programming to or invests in any provider of multichannel subscription television for the purpose of deterring or preventing such provision of programming or investment.

Section IV(C)(1) prohibits each programming service controlled by one or more MSO defendants from entering into any agreement or understanding with any other programming service not under common control with respect to the terms or conditions on which either service will deal with any provider of multichannel subscription television. The Section is intended to prevent agreements between program suppliers that might restrict the availability of programming to competitors of defendants. For example, it would prohibit an agreement between programming service A, controlled by MSO defendant X, and programming service B, controlled by MSO defendants Y and Z, that neither would supply programming to a DBS service. It would also prohibit a similar agreement between a programming service controlled by MSO defendant X and a programming service jointly

[2] Under the partnership agreement, a programming affiliate of General Electric Company (GEA's parent), such a NBC, is not bound by this provision. However, in the event that NBC were to make programming available to a DBS competitor and not grant most favored nation treatment to Primestar under the same terms as the MSO defendants, the MSO defendants could buy out GE's partnership interest.

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controlled by MSO defendants X, Y and Z. It would not, however, prohibit such agreements between programming services under common control, *e.g.*, programming service C, controlled by MSO defendants X, Y and Z, and programming service D, also controlled by MSO defendants X, Y and Z.

Section IV(C)(2) prohibits each cable system controlled by one or more defendants from entering into any agreement or understanding with any other cable system not under common control to purchase programming on conditions that prohibit the purchase or directly affect the availability, price, terms or conditions under which any other provider of multichannel subscription television may obtain such programming. This would complement section IV(C)(1) by prohibiting agreements between cable systems that would restrict the availability of programming to competitors of defendants. For example, it would prohibit an agreement between cable system A, controlled by MSO defendant X, and cable system B, controlled by MSO defendant Y, that neither would purchase or license programming from any programming service that supplied programming to a DBS service. As in the case of section IV(C)(1), agreements between cable systems controlled by the same defendant or the same groups of defendants are exempt from this prohibition.

Section IV(C)(3) prohibits any cable system controlled by one or more MSO defendants from entering into or from renewing any agreements with any specified national programming service (those existing as of May 1, 1992), or any existing or new regional sports service, that contain exclusive distribution provisions that would limit the rights of such programming service to deal with other providers of multichannel subscription television, including any direct-to-home satellite service, MMDS, SMATV, or cable operator. Each MSO defendant is prohibited from enforcing any existing contract provisions that would limit the rights of such a programming service to deal with any DBS provider.

These provisions complement the prohibitions of sections IV(c) (1) and (2) by prohibiting the MSO defendants from entering into or renewing program supply agreements that preclude competing suppliers of multichannel subscription television from gaining access to programming services that are most likely to be important to the success of potential competitors. In addition, existing contract provisions restricting a programming service from dealing with DBS providers will be enjoined upon entry of the Final Judgment.

At the same time, the proposed Final Judgment does not prohibit any MSO defendant from obtaining exclusive distribution rights to any present or future pay-per-view programming or pay-per-view programming service or obtaining exclusive distribution rights to any new national or regional non-sports programming service, nor does it prohibit the renewal or extension of an existing distribution agreement so long as such renewal or extension does not include any prohibited exclusive distribution rights. The Department's investigation did not establish that such exclusive arrangements had been or were likely to be detrimental to competition.

Section IV(D) enjoins Primestar from obtaining any exclusive distribution rights to any specified programming service (those existing as of May 1, 1992), except that if a competing DBS venture obtains any exclusive programming, Primestar may upon 60 days prior written notice to the Department obtain a reasonably comparable amount of programming of a reasonably comparable type and quality on a reasonably comparable exclusive basis. This provision is intended to prevent Primestar from using exclusive distribution rights to programming as a means to prevent competitive entry into DBS, while assuring that Primestar will be able to offer competitive programming when it faces DBS competition.

By prohibiting the MSO defendants from combining to restrict the availability of programming to competitors of their cable systems, or from coordinating a retaliatory response to competitive entry, the proposed Final Judgment fully addresses the antitrust violation alleged in the complaint. By restricting certain exclusive contracting practices of the MSO defendants, the proposed Final Judgment provides further assurance that the violation will be remedied and that the MSO defendants will not coordinate their behavior through the ostensibly unilateral conduct of vertically integrated firms with common interests. At the same time, it does not restrict those exclusive arrangements that have not been shown to threaten competitive harm.

In addition to the proposed Final Judgment, two other developments will provide additional assurances that access to programming will not be unreasonably restricted by the defendants and others in the cable television industry. Various provisions of the Cable Television Consumer Protection and Competition Act, Pub. L. No. 102–385, 106 Stat, 1460 (1992) ("Cable Act of 1992" or "the Act"), enacted last year, are intended to prevent unreasonable restrictions on access to programming. For example, section 12 of the Act directs the Federal Communications Commission ("FCC") to establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors, to prohibit practices that would restrict the availability of programming. Section 19 of the Act prohibits unfair methods of competition the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite-delivered programming to subscribers.

The second development is that many states are filing a complaint and consent judgment the same day as the Department's complaint in this matter. The states' complaints encompass a wider range of conduct than the Department's, and the scope of the judgments is broader than the Department's, requiring, *inter alia*, that the Primestar partners make their programming available to DBS or MMDS providers on reasonable terms as described.

IV. Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Final Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Richard L. Rosen, Chief, Communications and Finance Section, U.S. Department of Justice, Antitrust Division, 555 Forth Street, NW., room 8104, Washington, DC 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the

Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment filed with this Court, litigation to seek an injunction to block the operation of Primestar and the enforcement of the Primestar agreement. The United States rejected that alternative because the relief in proposed Final Judgment should prevent Primestar from having significant anticompetitive effects on competition in the provision of multichannel subscription television service through its control of and influence over programming. As noted above, in addition to the terms of the proposed Final Judgment, the enactment of the Cable Act of 1992 and the consent agreement between the defendants and the states provide substantial added assurance that the defendants cannot use Primestar as a device to make access to programming more difficult for entrants into multichannel subscription television. Under these circumstances, enjoining the operation of Primestar would serve only to remove from the market the only operational Ku-band satellite provider of multichannel services, serving more than 50,000 households with the potential and resources to provide DBS services on a much larger scale.

VII. Determinative Documents

No documents were determinative in the formulation of the proposed Final Judgment. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Dated: June 9, 1993.

Respectfully submitted,

Richard L. Rosen,

Chief, Communications & Finance Section.

Rebecca P. Dick,

Assistant Chief, Communications & Finance Section.

N. Scott Sacks,

Trial Attorney, United States Department of Justice, Antitrust Division, 555 Fourth Street, NW., Washington, DC 20001 (202) 514–5811.

Certificate of Service

I, N. Scott Sacks, an attorney in the Antitrust Division of the U.S. Department of Justice, certify that on this date I have caused to be served by hand and by first class mail the attached Complaint, Stipulation, Proposed Final Judgment, and Competitive Impact Statement upon the attached list of counsel for defendants in the matter of United States of America v. Primestar Partners, L.P., et. al.

Dated: June 9, 1993.

N. Scott Sacks.

Service List

Arthur F. Golden, Esq., Davis Polk & Wardwell, 450 Lexington Avenue, New York, NY 10017
Attorney for Primestar Partners, L.P.

Stephen Paul Mahinka, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 10036
Attorney for Comcast Corporation and Comcast DBS, Inc.

Robert J. Sachs, Esq., Continental Cablevision, Inc., Pilot House, Lewis Wharf, Boston, MA 02110,
Attorney for Continental Cablevision, Inc. and Continental Satellite Company, Inc.

James A. Treanor III, Esq., Dow, Lohnes & Albertson, 1255 23rd Street, NW., Suite 500, Washington, DC 10037
Attorney for Cox Enterprises, Inc., and Cox Satellite, Inc.

David J. Saylor, Esq., Hogan & Hartson, Columbia Square Building, 555 13th Street, NW., Washington, DC 20004
Attorney for GE Americom Services, Inc. and GE American Communications, Inc.

Yvonne S. Quinn, Esq., Sullivan & Cromwell, 25 Broad Street, New York, NY 10004
Attorney for New Vision Satellite and Newhouse Broadcasting Corporation

Joe Sims, Esq., Jones, Day, Reavis & Pogue, Metropolitan Square Building, 1450 G Street, NW., Washington, DC 20005
Attorney for Tele-Communications, Inc.; TCI K–1, Inc., and United Artists K–1 Investments, Inc.

Robert Joffe, Esq., Cravath Swaine & Moore, World Wide Plaza, 825 Eighth Avenue, New York, NY 10019
Attorney for ATC Satellite, Inc.; Time Warner Inc., and Warner Cable SSD, Inc.

Kenneth R. Logan, Esq., Simpson Thacher & Bartlett, 425 Lexington Avenue, New York, NY 10017
Attorney for Viacom K-Bank, Inc. and Viacom Inc.

[FR Doc. 93–14541 Filed 6–21–93; 8:45 am]
BILLING CODE 4410–01–M

Cable Television Laboratories, Inc. et al.; Notice Pursuant to the National Cooperative Research Act of 1984

In the matter of Cable Television Laboratories, Inc.; Cable Television Laboratories, Inc. and PCN America, Inc.; Cable Television Laboratories, Inc./Tele-Communications, Inc./Viacom International, Inc./Public Broadcasting Service; Cable Television Laboratories, Inc./General Instrument Corp. and Nexus Engineering; Cable Television Laboratories, Inc., and General Instrument Corp.; Cable Television Laboratories Inc. and Advanced Television Test Center, Inc., and Cable Television Laboratories, Inc./General Instrument Corporation and Scientific-Atlanta, Inc.; Cable Television Laboratories, Inc./COM21, Inc.; Cable Television Laboratories, Inc./Sony Corp. of America, Inc.; Cable Television Laboratories, Inc./Les Enterprises Videoway Itee; Cable Television Laboratories, Inc./ Digital Equipment Corp.

Notice is hereby given that, on April 23, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following parties have become members of CableLabs: Cogeco, Inc., Montreal, Quebec, Canada; The News, Press & Gazette Co., St. Joseph, MO; The World Company, Lawrence, KS; and Classic Communications Limited, Richmond Hill, Ontario, Canada.

Rifkin & Associates, Inc. has withdrawn its membership in CableLabs.

No other changes have been made in either the membership or planned activity of CableLabs. The membership remains open.

On August 8, 1988, CableLabs filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on October 1, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 28, 1992 (57 FR 61604).

This submission will also serve as notification with respect to the following joint research ventures to which CableLabs is a member although there is no change in membership of any of the joint research ventures:

Cable Television Laboratories, Inc./PCN America, Inc.
Date of original notification: March 25, 1991
Federal Register notice: June 14, 1991 (56 FR 27539)
Most recent **Federal Register** notice: July 9, 1992 (57 FR 30510)
Cable Television Laboratories, Inc./Tele-Communications, Inc./Viacom International, Inc./Public Broadcasting Service
Date of original notification: November 27, 1991
Federal Register notice: February 3, 1992 (57 FR 4061)
Most recent **Federal Register** notice: July 9, 1992 (57 FR 30510)
Cable Television Laboratories, Inc./ General Instrument Corp./NEXUS Engineering
Date of original notification: June 27, 1991
Federal Register notice: July 25, 1991 (56 FR 34075)
Most recent **Federal Register** notice: July 24, 1992 (57 FR 33012)
Cable Television Laboratories, Inc./ General Instrument Corp.
Date of original notification: September 20, 1990
Federal Register notice: November 1, 1990 (55 FR 46111)
Most recent **Federal Register** notice: July 9, 1992 (57 FR 30509)
Cable Television Laboratories, Inc./ Advanced Television Test Center, Inc.
Date of original notification: October 2, 1989
Federal Register notice: November 8, 1989 (54 FR 46997)
Most recent **Federal Register** notice: July 9, 1992 (57 FR 30508)
Cable Television Laboratories, Inc./ General Instrument Corp./Scientific-Atlanta, Inc.
Date of original notification: June 21, 1991
Federal Register notice: August 1, 1991 (56 FR 36847)
Most recent **Federal Register** notice: July 9, 1992 (57 FR 30509)
Cable Television Laboratories, Inc./ COM21, Inc.
Date of original notification: October 8, 1992
Federal Register notice: January 13, 1993 (58 FR 4185)
Cable Television Laboratories, Inc./Sony Corporation of America, Inc.
Date of original notification: October 16, 1992
Federal Register notice: December 21, 1992 (57 FR 60536)
Cable Television Laboratories, Inc./les Enterprises Videoway Itee
Date of original notification: October 16, 1992
Federal Register notice: December 21, 1992 (57 FR 60536)
Cable Television Laboratories, Inc./ Digital Equipment Corporation
Date of original notification: December 4, 1992
Federal Register notice: March 4, 1993 (58 FR 12371)

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–14601 Filed 6–21–93; 8:45 am]

BILLING CODE 4410–01–M

Center for Emissions Control, Inc.; Notice Pursuant to the National Cooperative Research Act of 1984

Notice is hereby given that, on April 14, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Center for Emissions Control, Inc. ("CEC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become members of the CEC: Acurex, Inc., Anaheim, CA; Air Canada, Inc., Dorval, Quebec, CANADA; AT&T Corporation, Basking Ridge, NJ; Brulin & Company, Inc., Indianapolis, IN; Camco International, Inc., Houston, TX; Chattanooga Group, Inc., Hixson, TN; Chemtron, Inc., Avon, OH; Connor Formed Metal Products, Inc., San Jose, CA; Crest Ultrasonics Corporation, Trenton, NJ; Delta Omega Technologies, Inc., Lafayette, LA; Detrex Corporation, Birmingham, MI; Dunlee, Inc., Bellwood, IL; Electrostatis Technology, Inc., Branford, CT; Envirosolv, Inc., Jacksonville, FL; European Chlorinated Solvents Assoc., Inc., Bruxelles, BELGIUM; Exxon Chemical Canada, Inc., Toronto, Ontario, CANADA; Glidco Organics Corporation, Jacksonville, FL; Great Western Chemical Company, Inc., Portland, OR; Hahn and Kolb (USA), Inc., Chandler, AZ; HCC Indust./ Hermetic Seal Corp., Rosemead, CA; Joslyn Power Products Corporation, Alsip, IL; Kelsey-Hayes Corporation, Fenton, MI; Mill Creek Company, Inc., Houston, TX; Napo, Inc., Terryville, CT; NUCON International, Inc., Columbus, OH; Oakite Products, Inc., Newark, NJ; Ques Industries, Inc., Cleveland, OH; Ranco, Inc., Plain City, OH; Risdon Corporation, Naugatuck, CT; S&K Products International, Inc., Chestnut Ridge, NY; Safety Kleen Equipment Systems, Inc., Des Plaines, IL; Shell Chemical Company, Inc., Houston, TX; Swenson Company, Inc., Redgranite, WI; Teledyne Relays, Inc., Hawthorne, CA; Textile Chemical Company, Inc., Reading, PA; Thomson Industries, Inc., Port Washington, NY; UOP, Inc., Des Plaines, IL. Additionally, the following two parties are no longer members of the CEC: Eli Lilly and Company, Inc. and LCP Chemicals and Plastics, Inc.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CEC intends to file additional written notification disclosing all changes in membership.

On May 13, 1991, the CEC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 31, 1991, 56 FR 24843.

The last notification was filed with the Department on September 23, 1991. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 5, 1991, 56 FR 56528.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–14610 Filed 6–21–93; 8:45 am]

BILLING CODE 4410–01–M

Hewlett-Packard Co. ("Fibre Channel Systems Initiative"); Notice Pursuant to the National Cooperative Research Act of 1984

Notice is hereby given that, on May 4, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act") Hewlett-Packard Company ("HP") has filed written notifications on behalf of HP, International Business Corporation ("IBM"), and Sun Microsystems, Inc. ("SUN") simultaneously with the Attorney General and the Federal Trade Commission describing an initiative entitled "Fibre Channel Systems Initiative" (the "Initiative") and disclosing (1) the identities of the parties and (2) the nature and objectives of the Initiative. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are HP, Palo Alto, CA; IBM, Armonk, NY; and Sun, Mountain View, CA. HP, IBM and Sun entered into an agreement effective as of February 19, 1993, to advance the development and interoperability of Fibre Channel technologies as a communications option and thereby make available to the information technology user a means to interoperate and more effectively utilize workstation-

class systems/products in a multivendor environment. The parties' goal is to achieve this purpose, in part, by developing, publishing, and publicizing certain technical profiles which detail the physical, service, performance, software, and system interface specifications for: (1) Mass storage interconnect; (2) computer to computer and computer to peripheral connection through a switching fabric; (3) computer to external data communications networks such as FDDI, Ethernet, Token Ring, ATM, SONET; and (4) others as appropriate. In addition, it is the parties' goal that their efforts result in: (1) Publicity for and advancement of Fibre Channel technologies as a communications alternative available to information technology users; (2) encouragement of the development of independent testing facilities for demonstrating Fibre Channel interoperability; and (3) cooperation with Fibre Channel industry associations.

Joseph H. Widmar,

Director of Operations, Antitrust Division

[FR Doc. 93–14602 Filed 6–21–93; 8:45 am]

BILLING CODE 4410–01–M

National Center for Manufacturing Sciences, Inc.; Notice Pursuant to the National Cooperative Research Act of 1984

Notice is hereby given that, on May 14, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies were recently accepted as active members of NCMS: Microlithics Corporation, Golden, CO; Sarcos, Inc., Salt Lake City, UT; and Systems Modeling Corporation, Sewickley, PA. In addition, the following organization was recently accepted as an affiliate member of NCMS: University of Detroit Mercy, Detroit, MI. Moreover, the following companies recently resigned from active membership in NCMS: Advanced Technology Materials, Inc., Chemtronics, Inc., Concord Communications, Inc., Daxus Corporation, Fanamation, Inc., Flexis Control Incorporated, Hardinge Brothers, Inc., Hydro-Abrasive Machining, Inc., May Day Manufacturing Co., Midwest Brake Bond Company, Moore Special Tool Company, Inc., MSM Industries, Snow-Taft Pierce Manufacturing Company, Thermwood Corporation, W.D. Johnson, Inc., and Walker Magnetics Group, Inc. Lastly, the following organization recently resigned from affiliate membership in NCMS: Arizona Department of Education.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987, (52 FR 8375).

The last notification was filed with the Department on February 3, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 11, 1993, (58 FR 13504).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–14604 Filed 6–21–93; 8:45 am]

BILLING CODE 4410–01–M

News in the Future Consortium; Notice Pursuant to the National Cooperative Research Act of 1984

Notice is hereby given that, on May 18, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Massachusetts Institute of Technology ("MIT"), on behalf of News in the Future ("NIF") Consortium, filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are: Aamulehti Group, Ltd., Helsinki, FINLAND; ABC Radio Networks and Capital Cities/ABC Publishing Group, New York, NY; Advance Publications, Inc. and Newhouse Broadcasting Corp., Jersey City, NJ; BellSouth Enterprises, Inc., Atlanta, GA; Gannett Co., Inc., Arlington, VA; Globe Newspaper Co., Boston, MA; Grupo Consolidado, Miami, FL; Hearst Corp., New York, NY; International Business Machines, Cambridge, MA; Knight-Ridder, Inc., Miami, FL; Televisa s.a. de c.v., Piso, MEXICO; Times Mirror Co., Los Angeles, CA; Tribune Co., Chicago, IL; and MIT, Cambridge, MA.

The NIF venture will conduct research into three broad areas within the news process: machine understanding of content; computer modeling of process and individuals; and automatic collecting and presenting. This research will include, but will not be limited to, investigation of representations of text, including keyword/indexing systems, analogy-based reasoning, portable knowledge representation, structuring broadcast audio, interface agents for personalizing news, consumer modeling, personalized advertising, storyteller systems, news as a tool for learning, media objects, media transcoding, tools for listening, automatic design and layout, and creating a substitute for newsprint.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–14606 Filed 6–21–93; 8:45 am]

BILLING CODE 4410–01–M

Petroleum Environmental Research Forum; Notice Pursuant to the National Cooperative Research Act of 1984

Notice is hereby given that, on May 6, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Petroleum Environmental Research Forum ("PERF") Project No. 91–14, entitled "Reducing Desalter Environmental Impact," has filed written notifications simultaneously with Attorney General and the Federal Trade Commission disclosing a change in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following party has become a participant in PERF Project No. 91–14: Shell Development Co., Houston, TX. The nature and objectives of the research program to be carried out in accordance with this project is to investigate practical methods for reducing the environmental impact of the crude oil desalting process.

No other changes have been made in either the membership or planned activities of PERF Project No. 91–14. Membership in PERF Project No. 91–14 remains open, and the participants intend to file additional written notification disclosing all changes in membership.

On December 4, 1992, PERF Project No. 91–14 filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 12, 1993, (58 FR 3980).

Information regarding participation in the project may be obtained from R.D. Andrew, Engineering Dept., Mobil Research & Development Corp., P.O. Box 1026, Princeton, NJ 08543.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–14603 Filed 6–21–93; 8:45 am]

BILLING CODE 4410–01–M

Petroleum Environmental Research Forum; Notice Pursuant to the National Cooperative Research Act of 1984

Notice is hereby given that, on May 1, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Petroleum Environmental Research Forum ("PERF") Project No. 90–07, titled "Dry Powder HF Aerosol Mitigation Studies," has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are: Exxon Research & Engineering Company, Florham Park, NJ; Mobil Research and Development Corporation, Princeton, NJ; Phillips Petroleum Company, Bartlesville, OK; and Texaco Inc., Port Arthur, TX. The nature and objectives of the research program include investigation of practical methods for reduction and control of aerosol-forming tendencies by Hydrofluoric Acid through the use of dry powder sprays. The achievement of this objective will include selection of candidate dry powders for reactivity with and potential to control HF aerosols, correlation of the performance of the dry powders with water spray mitigation efficiency, and development of a computer model to describe the impact of tested and untested variables on the efficiency of the dry powder spray in a field application.

Participation in this project will remain open until issuance of the final project report. The participants intend to file additional written notifications disclosing all changes in its membership.

Information regarding participation in the project may be obtained from: Dr. K.W. Schatz, Engineering Department, Mobil Research and Development Corporation, P.O. Box 1026, Princeton, NJ 08543.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–14605 Filed 6–21–93; 8:45 am]

BILLING CODE 4410–01–M

Petroleum Environmental Research Forum; Notice Pursuant to the National Cooperative Research Act of 1984

Notice is hereby given that, on May 6, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Petroleum Environmental Research Forum ("PERF") Project No. 91–07, entitled "Development of an Ex-Situ Soil Washing Technique to Remediate Brine Contaminated Soils," has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following party has become a participant in PERF Project No. 91–07: Exxon Production Research Co., Houston, TX. The nature and objective of this project are the development of soil washing technology to remediate brine and hydrocarbon contamination of soils.

No other changes have been made in either the membership or planned activities of PERF Project No. 91–07. Membership in PERF Project No. 91–07 remains open, and the participants intend to file additional written notification disclosing all changes in membership.

On February 10, 1992, PERF Project No. 91–07 filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 2, 1992, (57 FR 11383).

Information regarding participation in the project may be obtained from Dr. Raymond J. Jan, Mobil Exploration and Producing Services, Inc., 13777 Midway Rd., Dallas, TX 75244.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–14607 Filed 6–21–93; 8:45 am]

BILLING CODE 4410–01–M

Petroleum Environmental Research Forum; Notice Pursuant to the National Cooperative Research Act of 1984

Notice is hereby given that, on April 29, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the Petroleum Environmental Research Forum ("PERF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the project membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the notifications stated that Elf Aquitaine, Inc., New York, NY, a subsidiary of Societe Nationale Elf Aquitaine, Paris, FRANCE, has become a member of PERF.

No other changes have been made in either the membership or planned activities of PERF. Membership in PERF remains open, and PERF intends to file additional written notification disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on March 19, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 22, 1993 (58 FR 21598).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–14611 Filed 6–21–93; 8:45 am]

BILLING CODE 4410–01–M

PowerOpen Association, Inc.; Notice Pursuant to the National Cooperative Research Act of 1984

Notice is hereby given that, on April 22, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), PowerOpen Association, Inc. (the "Association"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Apple Computer, Inc., Cupertino, CA; Cognos, Inc., Ottawa, Ontario,

CANADA; Compagnie des Machines Bull, Billerica, MA; Computer Program Designers, McKinney, TX; International Business Machines Corporation, Austin, TX; Motion Works International, Inc., Vancouver, BC, CANADA; Motorola, Inc., Austin, TX; Oracle, Redwood Shores, CA; Thomson-CSF/CETIA, Toulon, FRANCE, Xcelerated Systems, Inc., San Diego, CA.

The Association's purpose is to provide an open forum for computer suppliers and users to participate in the research and development of specifications to extend and enhance existing specifications for the PowerOpen Environment and to foster the availability of a greater variety of systems and applications based on the PowerOpen Environment from a number of vendors. The PowerOpen Environment is intended to provide a set of consistent programming and user interface specifications for computer systems to enable better compatibility and interoperability between the offerings of different suppliers. Planned activities include providing a means for member input into the future definition of key specifications; providing technical support to members in complying with the PowerOpen Application Binary Interface ("ABI"); assisting independent software vendors in developing application programs for the PowerOpen Environment; licensing and promoting the PowerOpen trademark to demonstrate that products comply with the PowerOpen ABI; conducting research into the design of interfaces required to enable interoperability in the PowerOpen Environment; and conducting research and development regarding conformance and interoperability testing in the PowerOpen Environment.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–14608 Filed 6–21–93; 8:45 am]

BILLING CODE 4410–01–M

Petroleum Environmental Research Forum Project No. 91–17; Notice Pursuant to the National Cooperative Research Act 1984

Notice is hereby given that, on April 23, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4310 *et seq.* ("the Act"), the participants in the Petroleum Environmental Research Forum Project No. 91–17 filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Amoco Oil Company, Naperville, IL; Chevron Research and Technology Company, Richmond, CA; Exxon Research and Engineering Company, Florham Park, NJ; Mobil Research and Development Corporation, Paulsboro, NJ; and Texaco, Inc., Port Arthur, TX. The nature and objectives of the research program are to perform plant tests of valve packings under controlled conditions to evaluate differences in fugitive emission performance of the packings. The program will include plant tests of different packing materials selected by the original participants.

Information about participation in the project may be obtained from: Ms. K.L. McNeal, Exxon Research and Engineering Company, P.O. Box 101, Florham Park, NJ 07932–0101.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–14613 Filed 6–21–93; 8:45 am]

BILLING CODE 4410–01–M

Texas School District Cooperative Research Project: Cost Effectiveness of Alternative Fuels Using Life-Cycle Cost Benefit Analysis; Notice Pursuant to the National Cooperative Research Act of 1984

Notice is hereby given that, on May 25, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Southwest Research Institute ("SwRI") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership status of the "Texas School District Cooperative Research Project: Cost Effectiveness of Alternative Fuels Using Life-Cycle Cost Benefit Analysis." The notifications were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following parties have become new members of the project: East Central Independent School District, San Antonio, TX; Spring Independent School District, Spring, TX; and Huntsville Independent School District, Huntsville, TX.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the members intend to file additional written notification disclosing all changes in membership.

On August 28, 1992, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 27, 1992 (57 FR 48636).

The last notification was filed with the Department on March 8, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 3, 1993 (58 FR 26351).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–14609 Filed 6–21–93; 8:45 am]

BILLING CODE 4410–01–M

United States Automotive Materials Partnership; Notice Pursuant to the National Cooperative Research Act of 1984

Notice is hereby given that, on April 26, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), General Motors Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Chrysler Corporation, Highland Park, MI; Ford Motor Company, Dearborn, MI; and General Motors Corporation, Detroit, MI. The parties intend to identify opportunities for joining aspects of their joint research and development efforts pertaining to polymer-based composites and other materials new to the automotive industry and new uses for current automotive materials, all for use in future vehicles. The objectives are to avoid duplication of effort and expense, improve general scientific knowledge in this area by answering fundamental questions, and accelerate the development of pertinent technology. To meet these objectives, the partnership will collect, exchange and analyze research information regarding these automotive techniques for use in proof of theories and concepts in the relevant topics; interact with domestic or international entities involved in other issues of recycling research; develop, build and test automotive components using these materials and demonstrate their utility in production-

ready vehicles; and perform further acts allowed by the Act that would advance the partnership's objectives in this area. Included in this partnership's work will be the future efforts of the Automotive Polymer-based Composites Joint Research and Development Partnership, a partnership of the same parties whose notice was published on August 4, 1988 (53 FR 29396).

Information concerning the project may be obtained from: Steven J. Cernak, General Motors Corporation, Legal Staff, 3031 West Grand Boulevard, P.O. Box 33122, Detroit, MI 48232.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–14612 Filed 6–21–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

BACKGROUND: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.
The title of the recordkeeping/reporting requirement.
The OMB and/or Agency identification numbers, if applicable.
How often the recordkeeping/reporting requirement is needed.
Whether small businesses or organizations are affected.
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ([202] 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3001, Washington, DC 20503 ([202] 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Employment and Training Administration
Request for Additional UI Contingency Staff Years for the Quarter 1205–0169; ETA 2103
State or local governments
53 respondents; 1 hour per response; 212 total hours; 1 form

The ETA 2103 report serves as a worksheet to develop the data needed for the UI–3 to provide the States with administrative resources to perform duties relating to processing unemployment insurance claims workload.

Extension

Occupational Safety and Health Administration
1218–0010
Vinyl Chloride
On Occasion
Business or other for-profit; small business or organizations 30 respondents; 2.03 hours per response; 470 total burden hours

The purpose of this standard is to provide protection for employees from the adverse health effects associated with occupational exposure to Vinyl Chloride. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Vinyl Chloride standard.

Signed at Washington, DC, this 15th day of June 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–14681 Filed 6–21–93; 8:45 am]

BILLING CODES 4510–26–P and 4510–30–P

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

BACKGROUND: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.
The title of the recordkeeping/reporting requirement.
The OMB and/or Agency identification numbers, if applicable.
How often the recordkeeping/reporting requirement is needed.
Whether small businesses or organizations are affected.
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ([202] 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of

Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ([202] 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New

Employment and Training Administration

Evaluation of the 1993 JTPA Summer Youth Employment and Training Program

One-time survey

State or local governments; Non-profit institutions

Type	Number of respondents	Average hours per response	Total hours
Mail Survey SDA	475	1.0	475
Case Studies SDA	50	6.0	300
Academic Program Coordinators	100	1.0	100
Program Operators	100	1.25	125
Worksite Supervisors	200	1.0	200
Program Participants	400	1.0	400
Teachers	200	1.0	200
Community Leaders	150	1.0	150
Participant/Worksite Supervisor Exit Questionnaires	2,500	.2	500
Fall Follow-up Mail Survey	100	0.5	50
Total Burden Hours	.....	.....	2,500

The information collected for this evaluation will provide the Department of Labor and the public with a comprehensive description and assessment of the Summer Youth Employment and Training Program, including descriptive data, best practices, and recommendations for specific program improvements.

Signed at Washington, DC this 16th day of June 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–14682 Filed 6–21–93; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before July 22, 1993.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–606–8494) and Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–606–8494) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are reinstatements of a previously approved collection for which approval has expired. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries is subject to 44 U.S.C. 3504(h).

Category: Reinstatement

Title: NEH—Division of Fellowships and Seminars—Guidelines and Application Instructions for Directors, Summer Seminars for School Teachers Program.

Form Number: 3136–0095.

Frequency of Collection: Collection occurs once yearly, according to individual program application deadline.

Respondents: University and college faculty.

Use: The guidelines and application instructions provide direction for preparing narrative and budgetary parts of applications for grant funds and request additional information regarding grants recently received by applicants.

Estimated Number of Respondents: 580.

Frequency of Response: Once.

Estimated Hours for Respondents To Provide Information: 4 per respondent.

Estimated Total Annual Reporting and Recording Burden: 2354.5 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 93–14619 Filed 6–21–93; 8:45 am]

BILLING CODE 7536–01–M

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before July 22, 1993.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–606–8494) and Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania, NW., room 310, Washington, DC 20506 (202–606–8494) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are reinstatements of a previously approved collection for which approval has expired. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries is subject to 44 U.S.C. 3504(h).

Category: Reinstatement

Title: NEH—Division of Fellowships and Seminars—Guidelines and Application Instructions for Participants, Summer Seminars for School Teachers Program.

Form Number: 3136–0097.

Frequency of Collection: Collection occurs once yearly, according to individual program application deadline.

Respondents: School Teachers and other school personnel.

Use: The guidelines and application instructions provide direction for preparing applications for grant funds and request additional information regarding grants recently received by applicants.

Estimated Number of Respondents: 10,140.

Frequency of Response: Once.

Estimated Hours for Respondents To Provide Information: 3 per respondent.

Estimated Total Annual Reporting and Recording Burden: 30,964.5 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 93–14620 Filed 6–21–93; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by July 16, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357–7817.

SUPPLEMENTAL INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

Applicant

Mr. Langdon B. Quetin, 6185 Barrington Drive, Goleta, California 93117.

Activity for Which Permit Requested

Taking. Import into USA. The applicant is requesting permission to collect guano samples from south polar skuas nesting on Bonaparte Point, near Palmer Station from the arrival of the skuas on their territories through April. The samples will be used for testing hypotheses regarding the Palmer Long-Term Ecological Research project. The guano samples contain parts of the prey items, like bones, otoliths (fish ear bones), some crustacean remains. On Bonaparte Point there are over 24 pairs of south polar skuas nesting in an area that can be covered in a long afternoon. This concentration of skuas allows us to collect the guano samples routinely and efficiently. The collection technique involves observing where an individual deposits fresh guano and picking up the fresh guano with spoons and brushes. We expect that due to their territorial nature the south polar skuas will react aggressively to our presence.

Location

Bonaparte Point, near Palmer Station.

Dates

September 1993 to April 1996.

Thomas F. Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–14626 Filed 6–21–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–206]

Portland General Electric Co., et al., Trojan Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Facility Operating License No. NPF–1, issued to Portland General Electric Company (the licensee), for operation of the Trojan Nuclear Plant located in Columbia County, Oregon, on the bank of the Columbia River.

Environmental Assessment

Identification of Proposed Action

The proposed action would allow exemptions from the requirements of 10 CFR 50.54(y) for the operation of Trojan Nuclear Plant in response to the licensee request dated January 27, 1993. Trojan Nuclear Plant was permanently shut down on November 9, 1992, and defueling of the reactor completed on January 27, 1993. On March 24, 1993, the NRC staff issued an order confirming the licensee February 17, 1993 commitment not to move fuel back into the containment without prior NRC staff approval. On May 5, 1993, the NRC staff issued an amendment to Facility Operating License No. NPF–1 modifying the operating license to a possession only license. The licensee Certified Fuel

Handler Training and Retraining Program was approved by the staff on April 27, 1993. Amendment No. 191 to the Trojan license permitted the licensee to replace the 10 CFR part 55 licensed operator program at the Trojan Nuclear Plant with the approved Certified Fuel Handler Training and Retraining Program. Senior Reactor Operators are no longer required at Trojan Nuclear Plant. The non-licensed Certified Fuel Handler position is the highest level of defueled plant operator, analogous to a licensed senior operator at an operational facility.

The Need for the Proposed Action

The underlying purpose of 10 CFR 50.54(x) is to permit personnel to take emergency actions in response to abnormal conditions which may not have been considered when the License Conditions and Technical Specifications were formulated. However, for the Trojan Nuclear Plant, these emergency actions could not be permitted by 10 CFR 50.54(y) due to the absence of licensed operators following implementation of license Amendment No. 191, the approved Certified Fuel Handler Technical Specification change.

Environmental Impact of the Proposed Action

There are no environmental impacts of the proposed action. The proposed exemption is an administrative change that is a means by which the licensee will assure that the underlying purpose of 10 CFR 50.54(y) is fulfilled by establishing administrative controls requiring that any emergency action permitted by 10 CFR 50.54(x) be approved, as a minimum, by a Certified Fuel Handler prior to taking the action. Since the proposed exemption does not otherwise affect radiological plant effluents or cause any significant occupational exposures, the Commission concluded that there are no radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR part 20. The proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

The Commission has concluded that there are no measurable environmental impacts associated with the proposed exemption. The principal alternative would be to deny the requested exemption. This denial would not reduce environmental impacts of plant operation and may result in unnecessary expense, unnecessary radiation exposure to operating personnel and delay.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Trojan Nuclear Plant, dated August 1973.

Agencies and Persons Consulted

The NRC staff consulted with a representative of the State of Oregon regarding the environmental impact of the proposed action. The State representative had no comment.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee application for exemption dated January 27, 1993, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room for the Trojan Nuclear Plant at the Branford Price Miller Library, Portland State University, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 16th day of June 1993.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–14646 Filed 6–21–93; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on July 7, 1993, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to the personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, July 7, 1993—1:30 p.m. Until 4:00 p.m.

The Subcommittee will discuss proposed ACRS activities, practices and procedures for conduct of Committee business, and organizational and personnel matters relating to ACRS and its staff. The purpose of this meeting will be to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on request for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Dr. John T. Larkins (telephone 301/492–4516) between 7:30 a.m. and 4:15 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: June 15, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–14649 Filed 6–21–93; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Policies and Practices; Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on July 7, 1993, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, July 7, 1993—1 p.m. Until the Conclusion of Business

The Subcommittee will review the report of the NRC Regulatory Review Group. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: June 15, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–14650 Filed 6–21–93; 8:45 am]

BILLING CODE 7590–01–M

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) this notice announces that the information collection requests abstracted below have been forwarded to the Office of Management and Budget for review and are available for public review and comment. A copy of the information collection may be obtained from Mr. Chris Kent, Office of the Associate Director for Volunteer Recruitment and Selection, United States Peace Corps, 1990 K Street, NW., Washington, DC 20526. Mr. Kent may be called at 202–606–3994. Comments on these forms should be addressed to Jeff Hill, Desk Officer, Office of Management and Budget, Washington, DC 20503.

Information Collection Abstract

Title: Peace Corps Volunteer Application.

Need for and Use of the Information: Peace Corps needs this information in order to process applicants for Volunteer service. The information is used to determine qualifications and potential for placement of applicants.

Respondents: Individuals who apply for Peace Corps Volunteer service.

Burden on the Public

a. Annual reporting burden: 45,000 hours.

b. Annual recordkeeping burden: 0 hours.

c. Estimated average burden per reponse: 3 hours.

d. Frequency of response: On occasion.

e. Estimated number of likely respondents: 15,000.

This notice is issued in Washington, DC, on June 15, 1993.

Larry Lesser,

Director, Planning and Policy Analysis.

[FR Doc. 93–14574 Filed 6–21–93; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32472; File No. SR–AMEX–93–18]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to its S&P MidCap Index Options

June 16, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 20, 1993, the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the AMEX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

For its S&P MidCap Index ("MID") options, the AMEX has submitted a proposal to (i) increase position and exercise limits, (ii) increase permissible hedge and facilitation exemptions for such limits, and (iii) provide for an aggregation exemption for money managers. The text of the proposed rule change is available at the Office of the Secretary, the AMEX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the AMEX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The AMEX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Position and Exercise Limits

Currently, Exchange rules provide for MID positions and exercise limits of 25,000 contracts on the same side of the market with a "telescoping" proviso

that no more than 15,000 of such contracts be held in series with the nearest expiration month. According to the AMEX, active participants in the MID options market have included institutional and professional investors with large stock portfolio holdings who use MID options as a mechanism to hedge those holdings. With trading interest continuing to grow, the Exchange has received some complaints from member firms that current MID position limits are too restrictive and have caused some users to go to the over-the-counter derivatives market to fashion contracts to meet their hedging needs.[1] Therefore, the Exchange proposes to:

(i) Increase MID position and exercise limits to 45,000 contracts on the same side of the market (providing that no more than 25,000 of such contracts are used for index arbitrage);

(ii) Eliminate the "telescoping" requirement that option positions be reduced in the nearest term month; and

(iii) Increase the number of MID contracts for permissible hedge exemptions from 75,000 to 150,000 contracts on the same side of the market.

The AMEX believes that increasing MID's position limits and permissible hedge exemptions from current limits will increase institutional use of this product which will benefit not only the beneficiaries of assets managed by these institutions but also the market as a whole through increased liquidity. Moreover, the AMEX further believes that the elimination of the "telescoping" provision will further enhance liquidity by removing the requirement that option positions be immediately reduced prior to entering the near-term month.

In July and October of 1992, the Commission approved similar increases in position and exercise limits for the Exchange's Institutional Index ("XII") options[2] and the Chicago Board Options Exchange, Inc.'s ("CBOE") Standard & Poor's 500 Index ("SPX") options.[3] These increases were made in conjunction with both the XII and SPX moving from afternoon settlement (based on closing prices of component stocks) to morning settlement (based on opening prices of component stocks). Specifically, these moves to morning settlement were made in response to concerns about stock market volatility experienced on the four Fridays per year (each known as a "triple witching day") when individual stock options, stock index options, stock index futures, and options on such futures all expire together. Since its introduction in February of 1992, however, the MID has always had a morning settlement feature, which, according to the Exchange, negates any "triple witching day" concerns which could be attributed to increased position limits. Moreover, the AMEX believes that increases in MID position and exercise limits will result in little or no attendant risk to the marketplace since the 400 components in the MID are extremely liquid and represent mid-size stocks from a broad cross section of industries throughout the United States.

Facilitation Exemption

The Exchange currently has the authority to grant exemptions from index option position and exercise limits to specialists and options traders in order to facilitate their transactions. Both the AMEX and the CBOE were granted similar authority to permit member organizations exemptions from XII and SPX position limits when taking positions to facilitate customer orders as long as such position do not exceed 100,000 contracts on the same side of the market.[4] The rule change being proposed by the AMEX proposes a similar exemption to member firms for the facilitation of customer orders for MID positions. The AMEX believes that this exemption will enable institutions and other large investors to better and more appropriately utilize MID options as a hedging vehicle. The AMEX further believes that the ability to exempt member organizations in this fashion will better serve the needs of the investing public and result in the distribution of risk of large customer transactions. Additionally, the Exchange has established safeguards to insure that these transactions are documented.

Aggregation Exemption for Money Managers

Lastly, similar to exemptions granted for XII and SPX option,[5] the Exchange proposes an aggregation exemption which will permit money managers using MID options on behalf of multiple customers to request a hedge exemption of up to 250,000 contracts in opening-settled MID option contracts, provided no more than 135,000 contracts are held in a single account. Money managers using this exemption must conform to the strategy rule and approval policy described in the customer hedge exemption proposed above.

Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The AMEX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others.

No written comments were solicited with respect to the proposed rule change, however, the AMEX did receive three letters from interested parties pertaining to the proposed rule change.[6]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[1] See Letter from Bruce Hackett, Managing Director and Member of Executive Committee, Salomon Brothers, to Howard Baker, Vice President, AMEX, dated April 12, 1993; Letter from William S. Diskin, Managing Director, Furman Selz Incorporated, to Howard Baker, Vice President, AMEX, dated March 19, 1993; Letter from Tom Peters, Managing Director, Susquehanna Investment Group, to Howard Baker, Vice President, AMEX, dated March 22, 1993.

[2] See Securities Exchange Act Release No. 31330 (October 16, 1992), 57 FR 48408 (order approving File No. SR–AMEX–92–13).

[3] See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (order approving File No. SR–CBOE–92–09).

[4] See *supra* notes 2 and 3.

[5] See *supra* notes 2 and 3.

[6] See *supra* note 1.

Communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the AMEX. All submissions should refer to File No. SR–AMEX–93–18 and should be submitted by July 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14671 Filed 6–21–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 16, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Blackrock New Jersey Investment Quality Municipal Trust, Inc.
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10851)
Blackrock New York Investment Quality Municipal Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–10852)
Trinet Corporate Realty Trust
Common Stock, $.01 Par Value (File No. 7–10853)
Van Kampen Merritt California Value Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10854)
Van Kampen Merritt New York Value Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10855)
Van Kampen Merritt Pennsylvania Value Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10856)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 8, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–14622 Filed 6–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32473; File No. SR–NASD–93–26]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating To Release of Additional Information Regarding Disciplinary History of Members and Their Associated Persons Via Toll-Free Telephone Listing

June 16, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 15, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1]

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change, as amended. Proposed new language is italicized.

Notice to Membership and Press of Suspensions, Expulsions, Revocations, and Monetary Sanctions and Release of Certain Information Regarding Disciplinary History of Members and Their Associated Persons

The Association, shall, in response to a written inquiry or telephonic inquiry via a toll-free telephone listing, release certain information as contained in its files regarding the employment and disciplinary history of members and their associated persons, including information regarding past and present employment history with NASD members, *all* final disciplinary actions taken by federal or state securities agencies or self-regulatory organizations that relate to securities or commodities transactions; *all pending disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and have been reported on Form BD or U–4 and all foreign government or self-regulatory organization disciplinary actions that are securities or commodities related and reported on Form BD or U–4;* and *all* criminal *indictments, informations or* convictions reported on Form BD or Form U–4. *The Association will also release information concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This proposed rule change will permit the NASD to release certain additional information contained in the Central Registration Depository ("CRD") System regarding the disciplinary history of its members and their associated persons in response to telephonic inquiries from the general public via its existing toll-free telephone listing service plan. The

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[7] 17 CFR 200.30–3(a)(12) (1993).

[1] The NASD filed the initial rule on April 28, 1993. The current amendment replaced the original rule filing in its entirety. Subsequently on June 16, 1993, the NASD made a technical amendment to the rule filing. See letter from Craig Landauer, Associate General Counsel, NASD to Selwyn Notelovitz, Branch Chief, SEC dated June 16, 1993.

NASD presently has in place its 800 Number Service Plan (the "Plan") which was approved by the Commission in April 1992. (Securities Exchange Act Rel. No. 30629 (April 23, 1992): File No. SR–NASD–91–39). Under this Plan the NASD reports past and present employment history with NASD members, all final disciplinary actions [2] taken by federal, state or self-regulatory organizations which relate to securities or commodities transactions and all criminal convictions reported on Form BD or Form U–4.

The proposed rule change will allow the NASD to release information on all pending formal disciplinary proceedings initiated by federal or state securities agencies and self-regulatory organizations,[3] as well as pending and final disciplinary actions taken by foreign governments or foreign regulatory authorities, criminal indictments or informations, and civil judgments and arbitration decisions in securities disputes involving public customers. The NASD will disclose final arbitration decisions involving only public customers that are reported on Form U–4 or that are available through the NASD's existing arbitration data base. This data base captures all member and associated person arbitration decisions issued after May 1, 1989. On July 1, 1993, the NASD will disclose arbitration decisions disclosed on Form U–4 and only those arbitration decisions from the database that date back to September 1990. On September 1, 1993, the NASD will add arbitration decisions from the database that date back to May 1, 1989.[4]

The NASD procedures for the release of this information call for a copy of this information to be sent to the person requesting it and to the subject of the request. Each member firm receives a monthly print-out with the number of requests that have been made concerning its associated persons and the names of those associated persons on whom the requests have been made. Each such associated person receives a report with all the information that has been sent out by the NASD to the requestor. The name and address of the requestor is redacted from these reports and is not revealed to either the member firm or its associated person.

The NASD is requesting that the proposed rule change be effective on July 1, 1993. The NASD believes the proposed rule change is consistent with section 15A(i) under the Act. In pertinent part, section 15A(i) mandates that a national securities association (1) establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons, and (2) promptly respond to such inquiries in writing. The NASD believes the proposed rule change will further the goals of this section of the Act inasmuch as the increased disclosure will enhance the access of members of the public to information that will help them to determine whether or not to conduct or continue to conduct business with an NASD member or any of the member's associated persons. The NASD believes this rule change constitutes good faith compliance with the requirements of this section.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14621 Filed 6–21–93; 8:45 am]

BILLING CODE 8010–01–M

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[2] The term disciplinary action as used by the NASD includes, but is not limited to, questions 7 B, C, D, E, and F on Form BD; and questions 22 C, D, E, F, and G on Form U–4.

[3] In addition to the information disclosed on Forms BD or U–4, all pending NASD initiated disciplinary actions whether or not disclosed on Forms BD or U–4 also will be provided by the toll-free number.

[4] The NASD notified its membership through a Notice to Members 93–37 (June 1993), that all arbitration decisions will not be disclosed effectively July 1, 1993, but that the disclosure of information will be phased in over time. In addition the NASD's toll-free number operators will alert callers to this fact.

[Release No. 34–32477; File No. SR–NASD–93–25]

Self-Regulatory Organizations; Filing of Proposed Rule Change by The National Association of Securities Dealers, Inc. Relating to the Eligibility of Certain Equity Securities for Quotation in the OTC Bulletin Board Service.

June 16, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on April 22, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby files this proposed rule change pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder, to permit more rapid inclusion in the OTC Bulletin Board Service ("OTCBB") of equity securities being delisted either

from the New York or American Stock Exchanges ("NYSE" and "AMEX", respectively) for non-compliance with exchange maintenance-of-listing standards. Specifically, whenever the NYSE or AMEX suspends trading in an equity security pending its delisting from that market, the NASD proposes to permit its member firms to initiate quotations for the security in the OTCBB before the exchange delisting takes effect. Such firms would, however, be fully subject to Rule 15c2–11 under the Act, and be required to demonstrate compliance by filing the information specified in section 4 of Schedule H to the NASD By-Laws before commencing to quote the security in the OTCBB.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Through this proposal, the NASD seeks the Commission's approval of a minor modification to the definition of equity securities eligible to be quoted in the OTCBB. At present, only equities that are not listed on Nasdaq or a national securities exchange may be quoted in the OTCBB. With respect to exchange listings, the NASD has applied this standard strictly and not allowed inclusion of a security in the OTCBB during the period of a trading suspension pending final delisting from a primary stock exchange for non-compliance with exchange maintenance-of-listing standards.[1] Under this rule proposal, equity securities that are undergoing delisting from the NYSE or AMEX would become eligible for quotation in the OTCBB starting on the first business day of the exchange's trading suspension preceding actual delisting. Broker-dealers choosing to initiate quotations in the OTCBB would be required to immediately file Form 211 and the requisite issuer information for review by the NASD, in accord with Section 4 of Schedule H to the NASD By-Laws. Assuming that the broker-dealer demonstrates compliance with Rule 15c2–11, the NASD would then authorize the firm to enter quotations for the security into the OTCBB. At present, this process does not occur until after the exchange has effected the delisting.

In particular, the NASD believes that this initiative will facilitate maintenance of public markets in the securities of distressed companies involved in delisting proceedings. Currently, when the NYSE or AMEX signals delisting action with a trading suspension, NASD members can no longer utilize the Consolidated Quotation Service ("CQS") to reflect their market making interest in the affected security. At the same time, the security is no longer eligible for transaction reporting via the Consolidated Tape.[2] Today, while a delisting-related suspension remains in effect, over-the-counter market makers are only permitted to quote the security in a printed interdealer quotation medium; they cannot access an electronic medium to disseminate their quotations to one another or retail firms and their customers. Moreover, the only transactional data being collected is the price range and aggregate volume data submitted to the NASD for regulatory purposes under Section 4 of Schedule H to the NASD By-Laws; the latter information is not disseminated. The NASD acknowledges that delisting action by the NYSE or AMEX often follows a severe downturn in a company's business that renders it unable to meet the exchange's maintenance criteria. Nonetheless, after full dissemination of these adverse developments, it is appropriate to accommodate trading interest in the company's stock not just through a printed medium, as is presently done, but through an electronic quotation medium that offers broad dissemination of firm, real-time quotations originated by market makers and direct oversight by a self-regulatory organization.

The NASD believes that the proposed rule change is consistent with sections 15A(b)(6) and 15A(b)(11) of the Act. Section 15A(b)(6) requires, *inter alia*, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and facilitate transactions in securities. To the extent that NASD members determine to quote (via the OTCBB) issues that the NYSE or AMEX has suspended pending delisting for failure to meet maintenance standards, the NASD will have access to quotation information along with Schedule H information to monitor over-the-counter trading in these securities. Additionally, section 15A(b)(11) authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter. Such rules should produce fair and informative quotations, prevent misleading quotations, and promote orderly procedures for collecting and disseminating quotations. Inclusion in the OTCBB of securities being delisted from the NYSE or AMEX will enable the dissemination of broker-dealers' quotations in these securities at a time when they are no longer "Eligible Securities" under the national market system plans governing real-time dissemination of quotation and last sale information. Accordingly, this should facilitate greater price discovery and the execution of retail orders at the best available price, while enhancing the NASD's regulatory ability to verify compliance with best execution requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

[1] Exchange trading suspensions initiated pending delisting of a security do not preclude NASD member firms from engaging in over-the-counter market making/trading in the security being delisted.

[2] Part VI(c) of the Consolidated Tape Plan provides that a security shall cease to be an "Eligible Security" whenever (i) such security does not substantially meet the requirements in effect for continued listing on the NYSE (as to Network A of the Consolidated Tape) or the AMEX (as to Network B of the Consolidated Tape), or (ii) such security has been suspended from trading on any national securities exchange because the issuer thereof is in liquidation, bankruptcy or other similar type proceeding.

organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14672 Filed 6–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32471; International Series Release No. 555; File No. SR–NASD–92–54]

Self-Regulatory Organizations; National Association of Securities Dealers; Order Approving Proposed Rule Change Modifying the Operational Rules, Primarily Those Applicable to the Market Maker Participants, Governing the Nasdaq International Service

June 16, 1993.

I. Introduction

The National Association of Securities Dealers ("NASD") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change[1] on December 16, 1992, pursuant to section 19(b)(1)[2] of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder. The proposed rule change would modify the operational rules ("International Rules"), primarily as they relate to market makers, governing the Nasdaq International Service ("Service" or "NIS").

Notice of the filing of the proposal appeared in the Federal Register on January 25, 1993.[3] No comment letters were received. For the reasons discussed below, the Commission has determined to approve the proposal.

II. Background

The Service is primarily designed to accommodate international trading by institutional investors in the United States, United Kingdom, and other parts of Europe. It consists of the basic automation services previously provided during the Domestic Session to support market making by NASD members in Nasdaq, Nasdaq/NMS and exchange-listed securities. The Service currently supports an early trading session that runs from 3:30 a.m. to 9 a.m. e.s.t. on each U.S. business day ("European Session"), that coincides with the business hours of the London financial markets.[4] Participation in the Service is open to NASD member firms, as well as approved affiliates of members that maintain market making operations in the United Kingdom ("UK").[5] The Service and the International Rules have been implemented on a pilot basis, for a term of two years,[6] pursuant to an order issued by the Commission in October, 1991.[7]

III. Description

The NASD proposal consists of a series of largely technical changes to the International Rules that would:

(1) Establish two additional openings for the market providing broker-dealers the option to participate as Service market makers for shorter time periods; and

(2) Eliminate distinctions between Nasdaq/NMS and Nasdaq Small-Cap securities for purposes of the trade reporting requirements applicable to the Service.

A. Multiple Openings

Currently, broker-dealers that participate in the NIS as market makers assume the obligation to maintain continuous, two-sided quotations in their registered securities during the entire European Session (*i.e.*, from 3:30 a.m. to 9 a.m. e.t. on each U.S. business day). Thus, a participating firm must be willing to staff its trading facility during this time period that overlaps the business hours of the London markets. From the outset of the Service's operation, a small number of NASD member firms have participated as market makers through an approved affiliate based in London.[8] Although NASD members can also participate directly in the NIS by using their U.S. trading facilities and personnel, no firm has done so since April of 1992. Accordingly, the NASD proposes to allow two additional openings, one at 5:30 a.m. and a second at 7:30 a.m. e.t., to encourage participation by U.S. based firms during a portion of the European Session.

Under this proposal, Service market makers could elect to participate starting from 3:30 a.m., 5:30 a.m. or 7:30 a.m. e.t. This election would be made on a security-by-security basis at the time a firm registers with the NASD as a Service market maker. Regardless of the opening chosen, the subject firm would be required to fulfull all the obligations of a Service market maker from that time (*i.e.*, either 3:30 a.m., 5:30 a.m. or 7:30 a.m. e.t.) until the European Session closes at 9 a.m. e.t. Although

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[1] File No. SR–NASD–92–54.

[2] 15 U.S.C. 78s(b)(1).

[3] See Securities Exchange Act Release No. 31731 (January 14, 1993), 58 FR 6030.

[4] The domestic NASDAQ market continues to be open from 9:30 a.m. to 4 p.m. e.s.t. ("Domestic Session"), and the NASD rules governing the session are not altered by the approval of this filing.

[5] Access to these services for market making during the European Session is available exclusively through Nasdaq Workstation units.

[6] The approval order stipulated the filing of monitoring reports every six months, showing the following information for each business day: (1) Number of market makers; (2) number of securities; and (3) share volume, transaction volume, and dollar volume (with average daily balances). The intra-day trading data was also to be broken down into half hourly segments and a comparative analysis of bid/ask spreads and continuity and depth respecting securities quoted in the Service and the NASD's domestic market session was to be analyzed. The above information for the first two six-month terms (1/20/92–7/20/92) and (07/21/92–1/20/93) were received by the Commission. See Letters from Michael J. Kulczak, Associate General Counsel, NASD, to Elizabeth MacGregor, Branch Chief, National Market System, Division of Market Regulation, SEC, dated September 21 and 24, 1992 and March 25, 1993.

[7] See Securities Exchange Act Release No. 29812 (October 11, 1991), 56 FR 52282. See also Securities Exchange Act Release No. 28223 (July 18, 1990), 55 FR 30338.

[8] Section 2(g) of the International Rules defines an "approved affiliate" to be a broker-dealer that meets all of the following requirements: (i) It is not admitted to membership in the NASD or any registered national securities exchange; (ii) it is authorized to conduct securities business in the United Kingdom in accord with all applicable provisions of the Financial Services Act 1986; (iii) it controls, is controlled by, or is under common control with an NASD member (hereinafter referred to as a "control relationship"); and (iv) it has been approved by the NASD to participate as a SERVICE market maker, in an agency capacity, on behalf of the NASD member with whom it has a control relationship.

mainly intended to foster market maker participation from the U.S., the multiple opening feature would be equally available to approved affiliates operating from the U.K. By providing greater flexibility to current and prospective participants, the NASD believes that the multiple opening feature will stimulate an expansion of market maker participation and an increase in the number of securities quoted in the NIS.

B. Elimination of Distinctions Between Nasdaq/NMS and Nasdaq Small-Cap Securities for Trade Reporting Requirements

The proposal further seeks certain changes in sections 8 and 12 of the International Rules. Section 8 will be modified to remove the requirement for end-of-European Session volume reporting by Service market makers in certain Nasdaq Small-Cap securities that qualify for inclusion in the NIS. A parallel change in the section 12(a)(ii) definition of "Service security" would expand that definition to include this subset of Nasdaq securities. As a result, a Service market maker would have the same trade reporting obligations in all categories of securities that qualify for inclusion in the Service.[9]

IV. Discussion

The Commission has determined that the NASD's proposal is consistent with sections 11A(a)(1)(B)–(C), [10] and 15A(b)(6) [11] of the Act. Subsections (B) and (C) of section 11(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, broader availability of information with respect to quotations for securities, and the execution of investor orders in the best market through the use of advanced data processing and communication techniques. Among other things, section 15A(b)(6) provides that the NASD rules be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.

The addition of two openings to the European Session would offer additional liquidity and provide expanded opportunities for order execution before the domestic market session commences at 9:30 a.m. e.t. According to the most recent report submitted to the Commission by the NASD ("Report"), the international session continues to exhibit much less activity than the domestic session.[12] The sample group of issues covered by the Report averaged 2,524,089 shares per day in the domestic session compared to 20,520 shares per day in the international session. Currently, moreover, only market makers with approved U.K. affiliates have participated in the international session.[13] The proposal however, would permit U.S. based firms to participate without a significant additional commitment of staff resources by providing flexibility in terms of the starting times for daily participation in the European Session and, at the same time, maintaining the same market making requirements regardless of the opening selected.

Modification to sections 8 and 12 of the International Rules will also promote use of the international session. By removing the requirement for end-of-European Session volume reporting by Service market makers in certain Nasdaq Small-Cap securities that qualify for inclusion in the NIS and expanding the definition of "Service security" to include this subset of Nasdaq securities, a Service market maker will have the same trade reporting obligations in all categories of securities that qualify for inclusion in the Service. Lifting these encumbrances will make market maker participation less onerous and, as a result, will encourage activity in the international session.

V. Conclusion

In view of the above, the Commission has concluded that the proposed rule change is consistent with the requirements of the Act, including sections 11A and 15A and the rules and regulations thereunder, and that it is appropriate to approve the multiple openings of the Nasdaq International service and the proposed changes in sections 8 and 12 of the International Rules for the remainder of the pilot period.[14]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and is hereby approved for the remainder of the pilot period ending October 11, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14673 Filed 6–21–93; 8:45 am]

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[9] It should be noted that the Commission's approval of the International Rules predated the extension of real-time transaction reporting to Nasdaq Small-Cap securities during U.S. market hours. Currently, the Service has no market making positions in qualified Nasdaq Small-Cap securities.

[10] 15 U.S.C. 78k-1 (1990).

[11] 15 U.S.C. 78o-3 (1987).

[12] Letter from Michael J. Kulczak, Associate General Counsel, NASD, to Elizabeth MacGregor, Branch Chief, National Market System, Division of Market Regulation, SEC, dated March 25, 1993.

[13] *Id.*

[14] The pilot period ends October 11, 1993. See Securities Exchange Act Release No. 29812 (October 17, 1991), 56 FR 52082.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 16, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Smith (A.O.) Corporation
Common Stock, $1 Par Value (File No. 7–10857)
Smith (A.O.) Corporation
Class A Common Stock, $5 Par Value (File No. 7–10858)
Van Kampen Merritt California Value Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10859)
Van Kampen Merritt New York Value Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10860)
Van Kampen Merritt Pennsylvania Value Municipal Income Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10861)
National Westminster Bank Plc
American Depositary Shares, each representing One Non Cum Dollar Preference Share (File No. 7–10862)
Department 56, Inc.
Common Stock, $.01 Par Value (File No. 7–10863)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 8, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications

are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-14623 Filed 6-21-93; 8:45 am]

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DEPARTMENT OF STATE

Office of Supply and Transportation

[Public Notice: 1821]

Proposed Modification to Transportation Procurement Procedures for the International Shipment of Household Effects

AGENCY: Office of Supply and Transportation, Transportation Division, State.

ACTION: Notice of intent.

SUMMARY: The Department of State plans to modify the IW-92 ITGBL Tender to an import/export tender for each of the 21 channels that are currently represented. The new tender, IWS-94, will be from/to the greater Washington, DC Metropolitan Area and from/to selected overseas destinations. Notice addresses the international, door to door movement of containerized shipments of household effects transported via common-user ocean carrier (Code 4) using single factor rates. Interested parties are invited to comment.

DATES: Comments should be received on or before July 16, 1993.

ADDRESSES: Inquiries or comments may be mailed to Office of Supply and Transportation Division, U.S. Department of State, Attn: OPR/ST/TD, Washington, DC 20520-1244.

FOR FURTHER INFORMATION CONTACT: Ed Davis, Office of Supply and Transportation, Transportation Division, U.S. Department of State, Attn: OPR/ST/TD Room 1056, Washington, DC 20520-1244, (202) 647-4091 or FAX (202) 647-4958.

SUPPLEMENTARY INFORMATION:

Department of State (DOS) plans to initiate an International Through Government Bill of Lading Program for import/export of surface shipments of household effects to/from selected overseas destinations and to/from the Greater Washington, DC Metropolitan Area using single factor rates. This program will supplement the existing Direct Procurement Method (DPM) Program which is currently used by DOS to obtain transportation and related services for the international shipment of household effects. Rates for DOS will be solicited through the above mentioned address. Unlike the two previous solicitations, this will be a year long cycle and not submitted through a Personal Property Rate Solicitation for DOD through MTMC. The ITGBL Program for DOS is completely separate and distinct, having its own Terms, Conditions, and Rules as well as a DOS unique Tender of Service. The continuation of this ITGBL Program is a part of a larger overall program to improve service, reduce costs and to facilitate the transportation and traffic management of household effects within the Department of State. Initial service under this change to the DOS ITGBL Program is scheduled to begin on October 1, 1993 and run through September 30, 1994. Copies of the estimated volume, DOS Tender of Service and the associated Terms, Conditions and Rules may be obtained from the Office of Supply and Transportation, Transportation Division, U.S. Department of State, Attn: OPR/ST/TD Room 1056, Washington, DC, 20520-1244 or by telephoning Ed Davis (202) 647-4091 or FAX (202) 647-4958.

Dated: June 10, 1993.

Steven G. Hartman,

Chief, Transportation Division.

[FR Doc. 93-14157 Filed 6-21-93; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 93-6-22; Docket 48702]

Application of Fine Airlines, Inc. for Issuance of Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Fine Airlines fit, willing, and able, and (2) awarding it a certificate of public convenience and necessity to engage in foreign scheduled air transportation of property and mail between Miami, Florida, and Santo Domingo, Dominican Republic, to expire on November 13, 1993.

DATES: Persons wishing to file objections should do so no later than July 1, 1993.

ADDRESSES: Objections and answers to objections should be filed in Docket 48702 and addressed to the Documentary Services Division (C-55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Lawyer, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: June 16, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93-14683 Filed 6-21-93; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Availability of Draft Management Plan for Explosive Detection System Certification Testing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The FAA announces the availability of a draft Management Plan for Explosive Detection System Certification Testing. It outlines the framework for certification testing and the associated requirements for manufacturers to provide information on the equipment to be tested.

DATES: Comments must be received on or before July 22, 1993.

ADDRESSES: Comments on this draft management plan should be mailed, in duplicate to: Aviation Security R&D Service (Attn: ACA-1A), Federal Aviation Administration, Technical Center, Atlantic City, NJ, 08405.

FOR FURTHER INFORMATION CONTACT: Mr. Lok Y. Koo, EDS Certification Test Director, Aviation Security R&D Service, FAA Technical Center, Atlantic City, NJ, telephone (609) 485-4849.

SUPPLEMENTARY INFORMATION:

Availability of Draft Management Plan

Individuals wishing to obtain a copy of the draft document should submit a written request to the Aviation Security R&D Service (Attn: ACA-1A), Federal Aviation Administration, Technical Center, Atlantic City, NJ, 08405, or facsimile (609) 485-4973.

Background

On November 4, 1992, the FAA issued proposed criteria for certifying an explosive detection system (EDS) (Explosive Detection Systems; Proposed Criteria for Certification, Notice No. 92-16 (58 FR 52698)). The FAA is finalizing

the certification criteria as part of its efforts to move expeditiously to deploy EDS equipment to combat the technological challenges of terrorism and criminal acts against civil aviation. The final criteria are expected to be published in the near future and will address the comments received from the public on the initial proposal. The release of the final certification criteria is an essential component in implementing section 108 of the Aviation Security Improvement Act of 1990, which requires the Administrator to certify such systems prior to mandating their deployment.

As the next step in the process leading to certifying and deployment of EDS equipment, the FAA has developed a draft Management Plan for EDS Certification Testing (draft management plan) which is designed to facilitate the efforts of manufacturers and system integrators to develop, combine and test such systems. The draft management plan is based upon the general testing protocols developed independently for the FAA by the National Academy of Sciences, National Materials Advisory Board (Detection of Explosives for Commercial Aviation Security, Appendix A, A General Testing Protocol for Bulk Explosive Detection Systems, final report 1993) and the anticipated final certification criteria.

The draft management plan provides the necessary information and guidelines to EDS vendors, system integrators and others interested in the process that the FAA will use to evaluate and certify the performance of an EDS developed for screening international checked baggage. The draft management plan addresses the entire process for certification of an EDS, from the initial vendor request for certification to final FAA certification. The draft management plan would permit vendors to submit an explosive detection device (EDD) for FAA evaluation. While an EDD submitted for evaluation will not be certified, the FAA will attest to the capabilities of an EDD, based upon the test results.

The FAA is making the draft management plan available for review and comment to assist the agency in establishing:

(1) The prerequisites for candidate EDS equipment to be eligible for certification testing; and

(2) The procedures to conduct testing of the explosive detection equipment.

Issued in Washington, DC, on June 17, 1993.

Bruce R. Butterworth,

Director, Office of Civil Aviation Security, Policy and Planning, ACP-1.

[FR Doc. 93-14679 Filed 6-21-93; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given of the exemptions granted in OCTOBER 1992 THRU MARCH 1993. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

MODIFICATION AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
1862-X	DOT-E 1862	Greer Hydraulics, Inc., Santa Fe Springs, CA.	49 CFR 173.302(a)(1), 175.3.	To modify exemption to provide for additional accumulation not to exceed 5 gallons with a design pressure not to exceed 3,000 for use in transporting nitrogen. (Modes 1, 2, 3, and 4.)
1862-X	DOT-E 1862	Greer Hydraulics, Inc., Santa Fe Springs, CA.	49 CFR 173.302(a)(1), 175.3.	To modify exemption to provide for change in design pressure of welded accumulators having a capacity not over 1 gallon, not exceeding 3000 psig and provide fortional accumulators not to exceed 5 gallons. (Modes 1, 2, 3, and 4.)
3095-P	DOT-E 3095	Foster Testing Co., Inc., Perryton, TX.	49 CFR 173.119(a), (b), 173.245(a), 173.249(a), 173.263(a), 173.264, 173.283, 173.289, 178.342-5, 178.343-5.	To become a party to exemption 3095. (Modes 1, 3.)
4453-P	DOT-E 4453	Paige-IRECO, Inc., Duffield, VA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 2.)
4453-P	DOT-E 4453	Pacific Power Company, Olympia, WA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 2.)
4884-P	DOT-E 4884	Praxair, Inc., Danbury, CT	49 CFR 173.119(m), 173.136, 173.247, 173.251, 173.3(a), 173.302(a)(1), 173.304, 175.3, 178.61.	To become a party to exemption 4884. (Modes 1, 2, and 3.)
5820-X	DOT-E 5820	ICI Americas, Inc., Wilmington, DE.	49 CFR 173.315(a)	To authorize two additional nonflammable compressed gases (refrigerants) and to provide for uprating the tanks to 280 psig and 57,320 pounds capacity. (Modes 1, 2, and 3.)

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MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6418–P	DOT–E 6418	W.S. Clark & Sons, Inc., Tarboro, NC.	49 CFR 173.357(b)	To become a party to exemption 6418. (Mode 1.)
6418–P	DOT–E 6418	Harvey Fertilizer & Gas Co., Kinston, NC.	49 CFR 173.357(b)	To become a party to exemption 6418. (Mode 1.)
6610–X	DOT–E 6610	ARCO Chemical Company, Newton Square, PA.	49 CFR 173.225(e)	To modify proper shipping name to read organic peroxide; change regulation affected, eliminate tank car as authorized container provide for MC–312 cargo tank in addition to MC–307 and to eliminate visual inspection after each trip. (Mode 1.)
6614–X	DOT–E 6614	Hasa, Inc., Saugus, CA ...	49 CFR 173.245, 173.263(a)(28) and 173.277(a)(6).	To authorize shipment of hydrochloric acid or hypochlorite solutions, contained in one gallon polyethylene bottles overpacked in a polyethylene box to beg shipped as a corrosive waste when partially emptied and returned for disposal and refill. (Mode 1.)
6614–P	DOT–E 6614	B's Pool Supplies, Ontario, CA.	49 CFR 173.245, 173.263(a)(28) and 173.277(a)(6).	To become a party to exemption 6614. (Mode 1.)
6614–P	DOT–E 6614	Inter Valley Pool Supply Azusa, CA.	49 CFR 173.245, 173.263(a)(28) and 173.277(a)(6).	To become a party to exemption 6614. (Mode 1.)
6614–P	DOT–E 6614	AB-Chem Industries, El Cajon, CA.	49 CFR 173.245, 173.263(a)(28) and 173.277(a)(6).	To become a party to exemption 6614. (Mode 1.)
6657–P	DOT–E 6657	Midwest Airgas, Inc., Fairfield, IA.	49 CFR 173.34(e)(15)(i), 175.3.	To become a party to exemption 6657. (Modes 1, 2, 3, 4, and 5.)
6691–P	DOT–E 6691	Post Welding Supply Company Birmingham, AL.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4, and 5.)
6691–P	DOT–E 6691	Standard Welders Supply, Memphis, TN.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4, and 5.)
6691–P	DOT–E 6691	Midwest Airgas, Inc., Fairfield, IA.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4, and 5.)
6691–P	DOT–E 6691	Knox Industrial Gases, Inc., Knox, IN.	49 CFR 173.34(e)(15)(i), Part 107, Subpart B, Appendix B.	To become a party to exemption 6691. (Modes 1, 2, 3, 4, and 5.)
6971–P	DOT–E 6971	Eastman Chemical Company, Kingsport, TN.	49 CFR Parts 100–199	To become a party to exemption 6971. (Modes 1, 2, 3, 4, and 5.)
7052–P	DOT–E 7052	Celtic Trading of Florida, Inc., Seminole, FL.	49 CFR 172.101, 172.400, 175.3.	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)
7052–P	DOT–E 7052	Mine Safety Appliances Co., Sparks, MD.	49 CFR 172.101, 172.400, 175.3.	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)
7052–P	DOT–E 7052	Hughes Missile Systems Company, San Diego, CA.	49 CFR 172.101, 172.400, 175.3.	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)
7052–P	DOT–E 7052	Lockheed Corporation, Calabasas, CA.	49 CFR 172.101, 172.400, 175.3.	To become a party to exemption 7052. (Modes 1, 2, 3, and 4.)
7605–P	DOT–E 7605	Lockheed Corporation Calabasas, CA.	49 CFR 173.101, 173.102, 173.113, 173.87, 173.92, 175.3, 176.83, 177.848.	To become a party to exemption 7605. (Modes 1, 3, and 4.)
7616–P	DOT–E 7616	Canadian Pacific Limited, Montreal, Quebec, Canada.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To become a party to exemption 7616. (Mode 2.)
7616–P	DOT–E 7616	Delaware & Hudson Railway Company, Clifton Park, NY.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To become a party to exemption 7616. (Mode 2.)
7616–P	DOT–E 7616	Fox Valley & Western Ltd., Rosemont, IL.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To become a party to exemption 7616. (Mode 2.)
7616–P	DOT–E 7616	MidSouth Corporation, Jackson, MS.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To become a party to exemption 7616. (Mode 2.)

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7616–P	DOT–E 7616	Sabine River & Northern Railroad, Orange, TX.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To become a party to exemption 7616. (Mode 2.)
7835–P	DOT–E 7835	ABCO Welding & Industrial Supply, Inc., Waterford, CT.	49 CFR 177.848, Part 107, Appendix (B)(1).	To become a party to exemption 7835. (Mode 1.)
7835–P	DOT–E 7835	T.W. Smith Corp., Brooklyn, NY.	49 CFR 177.848, Part 107, Appendix (B)(1).	To become a party to exemption 7835. (Mode 1.)
7835–P	DOT–E 7835	Voltaix, Inc., North Branch, NJ.	49 CFR 177.848, Part 107, Appendix (B)(1).	To become a party to exemption 7835. (Mode 1.)
7840–P	DOT–E 7840	Lockheed Corporation, Calabasas, CA.	49 CFR 173.87, 175.3, 176.83.	To become a party to exemption 7840. (Modes 1, 2, 3, 4, and 5.)
7909–P	DOT–E 7909	DowElanco, Indianapolis, IN.	49 CFR 172.203, 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 173.345(a), 173.359(c), 173.364(a), 173.370(b), 173.370(d), 173.377(f), 175.3, 175.30, 175.33.	To become a party to exemption 7909. (Modes 1. 2.)
7943–P	DOT–E 7943	HASA of Arizona, Inc., Eloy, AZ.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To become a party to exemption 7943. (Mode 1.)
7969–P	DOT–E 7969	Foss Environmental Services Co., Portland, OR.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To become a party to exemption 7969. (Modes 1.)
8009–P	DOT–E 8009	FleetStar of Texas, L.C., Dallas, TX.	49 CFR 173.301(d)(2), 173.302(a)(3).	To become a party to exemption 8009. (Mode 1.)
8009–P	DOT–E 8009	Enfuels Corporation, Houston, TX.	49 CFR 173.301(d)(2), 173.302(a)(3).	To become a party to exemption 8009. (Mode 1.)
8009–P	DOT–E 8009	FleetStar, Inc., Austin, TX	49 CFR 173.301(d)(2), 173.302(a)(3).	To become a party to exemption 8009. (Mode 1.)
8074–P	DOT–E 8074	GenEx, Ltd., Des Moines, IA.	49 CFR 173.34(d), 175.3 .	To become a party to exemption 8074. (Modes 1, 2, 3, and 4.)
8141–P	DOT–E 8141	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.101, 173.206, 173.247.	To authorize party status and modify exemption to provide for DOD packaging for use in transporting cryogenically frozen lithium batteries. (Modes 1, 3.)
8214–P	DOT–E 8214	Diamond-Star Motors, Normal, IL.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8214. (Modes 1, 2, 3.)
8236–P	DOT–E 8236	Cass River Coatings, Inc., Vasser, MI.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To become a party to exemption 8236. (Modes 1, 2, 3, and 4.)
8426–P	DOT–E 8426	Rich Sand Ethridge Company, San Ardo, CA.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To become a party to exemption 8426. (Mode 1.)
8426–P	DOT–E 8426	Foss Environmental Services Co., Portland, OR.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To become a party to exemption 8426. (Mode 1.)
8445–P	DOT–E 8445	Franklin Environmental Services, Inc., Wrentham, MA.	49 CFR Part 173, Subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8445–P	DOT–E 8445	Republic Environmental Systems, Hatfield, PA.	49 CFR Part 173, Subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8445–P	DOT–E 8445	Alliance Transportation Services, Inc., Milwaukee, WI.	49 CFR Part 173, Subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8445–P	DOT–E 8445	Mineral Springs Corporation, Port Washington, WI.	49 CFR Part 173, Subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1.)
8445–P	DOT–E–8445	DowBrands L.P., Indianapolis, IN.	49 CFR Part 173, Subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1).
8445–P	DOT–E–8445	Pollution Control Industries of Indiana, Inc., East Chicago, IL.	49 CFR Part 173, Subparts D, E, F, H.	To become a party to exemption 8445. (Mode 1).

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8518–P
8526–P
8554–P
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MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8451–P	DOT–E–8451	ECONEX Incorporated, Pittsfield, IL.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, 3, and 4.)
8451–P	DOT–E–8451	AAI Corporation, Hunt Valley, MD.	49 CFR 173.65, 173, 86(e), 175.3.	To authorize party status and modify exemption to provide for shipment of limited quantities of Class B explosives contained in a steel pipe configuration. (Modes 1, 2, 3, and 4.)
8451–P	DOT–E–8451	Gencorp Aerojet Ordance Chino Hills, CA.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, 3 and 4.)
8451–P	DOT–E–8451	KDI Precision Products, Inc. Cincinnati, OH.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, 3, and 4.)
8451–P	DOT–E–8451	Automotive Systems Laboratory, Inc., Farmington Hills, MI.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, 3 and 4.)
8451–P	DOT–E–8451	Accurate Arms Company, Inc. McEwen, TN.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, 3, and 4.)
8451–P	DOT–E–8451	Universal Propulsion Company, Phoenix, AZ.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, and 3, 4.)
8451–P	DOT–E–8451	Loral Vought Systems, Dallas, TX.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, 3, and 4.)
8451–P	DOT–E–8451	Molecular Dynamics, Grand Prairie, TX.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, 3, and 4.)
8451–P	DOT–E–8451	BEI Defense Systems Company, Inc., Eulees, TX.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, 3, and 4.)
8451–P	DOT–E–8451	Inflation Systems, Inc. LaGrange, GA.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, 3, and 4.)
8451–P	DOT–E–8451	Hitech, Inc. East Camden, AR.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, 3, and 4.)
8451–P	DOT–E–8451	Holston Defense Corporation, Kingsport, TN.	49 CFR 173.65, 173.86(e), 175.3.	To become a party to exemption 8451. (Modes 1, 2, 3, and 4.)
8458–P	DOT–E–8458	Welland Chemical Inc., Newell, PA.	49 CFR 173.31, Table 1, 179.202–12(b).	To become a party to exemption 8458. (Mode 2.)
8518–P	DOT–E 8518	Chemical Waste Management, Inc., Benicia, CA.	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To become a party to exemption 8518. (Mode 1.)
8526–P	DOT–E 8526	Decker Transport Co., Inc., Riverdale, NJ.	49 CFR 177.834(L)(2)(i) ..	To become a party to exemption 8526. (Mode 1.)
8554–P	DOT–E 8554	Hermitage Explosives Corporation, Nashville, TN.	49 CFR 173.114a, 173.154, 173.93.	To become a party to exemption 8554. (Modes 1, 3.)
8554–P	DOT–E 8554	Lilly Explosives Company, Pemberton, WV.	49 CFR 173.114a, 173.154, 173.93.	To become a party to exemption 8554. (Modes 1, 3.)
8569–P	DOT–E 8569	Lockheed Cororation, Calabasas, CA.	49 CFR 172.101 Column 6(b), 173.276, 175.3.	To become a party to exemption 8569. (Modes 1, 2, and 4.)
8573–P	DOT–E 8573	HASA of Arizona, inc., Eloy, AZ.	49 CFR 173.217(a)(8)	To become a party to exemption 8573. (Modes 1, 2, and 3.)
8748–P	DOT–E 8748	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.101, 173.302, 175.3.	To become a party to exemption 8748. (Modes 1, 2, 3, and 4.)
8786–P	DOT–E 8786	AVM, Inc., Marion, SC	49 CFR 173.306(f)(2)(iii), 173.306(f)(3), 175.3.	To become a party to exemption 8786. (Modes 1, 2, 3, 4, and 5.)
8814–X	DOT–E 8814	Structural Composites Industries, Pomona, CA.	49 CFR 173.302(a)(1), 175.3.	To modify the exemption to increase the maximum service pressure from 3000 to 5000 psig. for cylinders with higher service pressure in the water capacity range of 100 to 200 lbs, for shipment of certain flammable or nonflammable gas. (Modes 1, 2, 3, and 4.)
8845–P	DOT–E 8845	Pengo Wireline of California, Inc., Bakersfield, CA.	49 CFR 173.110(c)(1), 173.60(b), 173.60(c).	To become a party to exemption 8845. (Modes 1, 4.)
8937–P	DOT–E 8937	Kaiser Aluminum Specialty Products, Tulsa, OK.	49 CFR 173.178	To become a party to exemption 8937. (Modes 1, 2, and 3.)
8944–P	DOT–E 8944	Advanced Silicon Materials Inc., Moses Lake, WA.	49 CFR 173.302(c)(2), 173.302(c)(3), 173.302(c)(4), 173.34(e) the introductory paragraph, the Table, Part 107, Appendix B.	To become a party to exemption 8944. (Modes 1, 3.)
8958–P	DOT–E 8958	WASAG USA, Inc., Wilmington, DE.	49 CFR 172.101, 173.60 .	To become a party to exemption 8958. (Modes 1, 2.)

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8865–X	DOT–E 8865	Pressed Steel Tank Co., Inc., Milwaukee, WI.	49 CFR 173.302(a), 175.3	To increase the water capacity of non-DOT specification fiber reinforced plastic, hoop wrapped cylinders from 350 pounds to 400 pounds for shipment of certain flammable or nonflammable gases. (Modes 1, 2, 3, 4, and 5.)
8966–P	DOT–E 8966	Aqua Tri, Irvine, CA	49 CFR 173.263(a)(15), 173.277(a)(1), 178.205.	To become a party to exemption 8966. (Mode 1.)
9015–P	DOT–E 9015	Occidental Chemical Corp., Dallas, TX.	49 CFR 173.217	To become a party to exemption 9015. (Modes 1, 2, 3.)
9108–P	DOT–E 9108	Beta Chemicals, Inc., Carrtos, CA.	49 CFR 173.77	To authorize party status and provide for additional packaging consisting of 70 pounds of 25% water wetted PEDN, classed as initating explosive, Class A explosive, 4 mil polyethylene bag overpacked in 21C115 fiber drum. (Modes 1, 3.)
9184–P	DOT–E 9184	Timminco Metals, Buffalo Grove, IL.	49 CFR 173.178	To authorize party status and shipment of substances which in contact with water emit flammable gases, solid, n.o.s. as an additional commodity for shipment in polyethylene lined collapsible bags. (Modes 1, 2.)
9271–P	DOT–E 9271	Gateway Western Railway, Fairview Heights, IL.	49 CFR 174.90	To become a party to exemption 9271. (Mode 2.)
9275–P	DOT–E 9275	Scent Overnight, Inc., Port Washington, NY.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, and 5.)
9275–P	DOT–E 9275	Indopco, Inc., Mount Olive, NJ.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, and 5.)
9275–P	DOT–E 9275	Parfums International, Ltd., Roanoke, VA.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, and 5.)
9275–P	DOT–E 9275	Haarmann & Reimer Corp., Springfield, NJ.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, and 5.)
9275–P	DOT–E 9275	Mitee Inc., Pittsburgh, PA	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, and 5.)
9275–P	DOT–E 9275	Creations Aromatiques, Inc., Woodside, NY.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, and 5.)
9275–P	DOT–E 9275	Shaw Mudge & Company, Stamford, CI.	49 CFR Parts 100–199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, and 5.)
9346–P	DOT–E 9346	Texasgulf, Inc., Aurora, NC.	49 CFR 174.67(a)(2)	To become a party to exemption 9346. (Mode 2.)
9374–X	DOT–E 9374	Poly Processing Company, Inc., Monroe, LA.	49 CFR 173.114a(h)(3), 173.199, 173.256, 173.266, 173.268, 176.415, 176.83, 178.19, 178.253, Part 173, Subpart F.	To modify the exemption to authorize shipment of isothiazilone formulations without a need for venting or a restriction against bottom outlets. (Modes 1, 2, and 3.)
9381–P	DOT–E 9381	Atlas Pacific Corporation, Colton, CA.	49 CFR 173.154	To become a party to exemption 9381. (Modes 1, 2.)
9498–P	DOT–E 9498	Degussa Corporation, Ridgefield Park, NJ.	49 CFR 173.365, 173.367, 173.370.	To become a party to exemption 9498. (Modes 1, 2, and 3.)
9579–P	DOT–E 9579	Pacific Powder Company, Olympia, WA.	49 CFR 173.154(a)(18)	To become a party to exemption 9579. (Mode 1.)
9607–P	DOT–E 9607	Liz Claiborne Cosmetics, Dayton, NJ.	49 CFR Parts 100–199	To become a party to exemption 9607. (Modes 1, 4, and 5.)
9607–P	DOT–E 9607	Exxsl/Atmos, Inc., Somerset, NJ.	49 CFR Parts 100–199	To become a party to exemption 9607. (Modes 1, 4, and 5.)
9723–P	DOT–E 9723	Drug and Laboratory Disposal, Inc., Plainwell, MI.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1)
9723–P	DOT–E 9723	Frank's Vacuum Truck Service, Inc., Niagara Falls, NY.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	Republic Environmental Systems, Hatfield, PA.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	J.B. Hunt Special Commodities, Inc., Lowell, AR.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	Ozinga Transportation Systems, Inc., Alsip, IL.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	PWN Environmental, Vista, CA.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	Pollution Control Industries of Indiana, East Chicago, IN.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)

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9769–P
9781–P
9841–P
9941–X
9953–P
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10107–P
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MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9723–P	DOT–E 9723	Bechem Transport, Inc., New Haven, CT.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	All Chemical Disposal, Inc., San Jose, CA.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	Hazchem Environmental Corporation, Lombard, IL.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	Chemical Conservation Corporation, Orlando, FL.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	EOG Environmental, Inc., Milwaukee, WI.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9723–P	DOT–E 9723	Clean Harbors Environmental Services, Inc., Quincy, MA.	49 CFR 177.848(b)	To become a party to exemption 9723. (Mode 1.)
9736–P	DOT–E 9736	Mineral Springs Corporation, Port Washington, WI.	49 CFR 173, Subparts D, E, F, H.	To become a party to exemption 9736. (Mode 1.)
9739–P	DOT–E 9739	Pure Gro Company, Stockton, CA.	49 CFR 173.245	To become a party to exemption 9739. (Mode 1.)
9750–P	DOT–E 9750	Pacific Powder Company, Olympia, WA.	49 CFR 173.154(a)(18)	To become a party to exemption 9750. (Mode 1.)
9769–P	DOT–E 9769	Brown Chemical Services, Inc., Barceloneta, PR.	49 CFR 176.83, 177.848	To become a party to exemption 9769. (Modes 1, 2, and 3.)
9769–P	DOT–E 9769	Advanced Environmental Technology Corporation, Flanders, NJ.	49 CFR 176.83, 177.848	To become a party to exemption 9769. (Modes 1, 2, and 3.)
9769–P	DOT–E 9769	California Advanced Environmental Technology Corp., Hayward, CA.	49 CFR 176.83, 177.848	To become a party to exemption 9769. (Modes 1, 2, and 3.)
9769–P	DOT–E 9769	Pollution Control Industries of Indiana, East Chicago, IL.	49 CFR 176.83, 177.848	To become a party to exemption 9769. (Modes 1, 2, and 3.)
9781–P	DOT–E 9781	Brights Associates, Inc., Tonawanda, NY.	49 CFR 173.304(a)(2), 173.34(d), (e)..	To become a party to exemption 9781. (Mode 1.)
9841–P	DOT–E 9841	Stolt Tank Containers, Inc., Monrovia, Liberia.	49 CFR 173.315, 178.245–1(b).	To become a party to exemption 9841. (Modes 1, 2, and 3.)
9941–X	DOT–E 9941	Thiokol Corporation—Huntsville Division, Huntsville, AL.	49 CFR 172.101, 173.86(e)(2)(ii), 173.92(a)(l), 173.92(b).	To modify exemption to authorize shipment of two additional Rocket Motor assemblies (Castor IVA) and Rocket Motor (Castor IVB). (Modes 1, 3, and 4.)
9953–P	DOT–E 9953	BIRKO Corporation, Henderson, CO..	49 CFR 177.834(i)(2)(i)	To become a party to exemption 9953. (Mode 1.)
10001–P	DOT–E 10001	The Jimmie Jones Company, Tulsa, OK.	49 CFR 173.316, 173.320	To become a party to exemption 10001. (Mode 1.)
10001–P	DOT–E 10001	CryoGas Corp., Syracuse, NY.	49 CFR 173.316, 173.320	To become a party to exemption 10001. (Mode 1.)
10032–P	DOT–E 10032	Ermetainer S.A., Geneve, France.	49 CFR 173.315, 178.245	To become a party to exemption 10032. (Modes 1, 2, and 3.)
10084–X	DOT–E 10084	Old Bridge Chemicals, Inc., Old Bridge, NJ.	49 CFR 173.119(a) & (m), 173.346(a), 178.340, 178.342 and 178.343, Part 173, Subpart F as applicable.	To convert a manufacture, mark and sell type exemption issued to Composite Trailer, Inc., to an offer type, and provide for the shipment of certain hazardous materials in non-DOT specification glass fiber reinforced plastic cargo tanks. (Mode 1.)
10101–P	DOT–E 10101	Findley Welding Supply, Inc., Youngstown, OH.	49 CFR 173.301(c), 173.34(e)(15).	To become a party to exemption 10101. (Mode 1.)
10107–P	DOT–E 10107	AEG Corporation, Basking Ridge, NJ.	49 CFR 173.206	To become a party to exemption 10107. (Mode 1.)
10770–P	DOT–E 10114	Mesa Airlines d/b/a/United Express, Denver, CO.	49 CFR 172.200, 175.10(a)(7).	To become a party to exemption 10114. (Mode 5.)
10193–P	DOT–E 10193	Stolt Tank Containers, Inc., Monrovia, Liberia.	49 CFR 173.119, 173.315 and 178.245.	To become a party to exemption 10193. (Modes 1, 2, and 3.)
10272–X	DOT–E 10272	Olin Corporation, Charleston, TN.	49 CFR 172.101 Table, Column 1, 173.315.	To authorize a DOT Specification MC–331 cargo tank for flammable gas to be lined with a PVCF or equivalent lining; to provide optional valve and authorize a second manway without appurtenances and cover. (Mode 1.)
10288–X	DOT–E 10288	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.31(c), 179.101–1(a).	To modify exemption to provide for additional tank cars for transporting various hazardous materials classed as flammable liquids. (Mode 2.)

MODIFICATION AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10303–P	DOT–E 10303	Alaska Air Guides, Inc., Anchorage, AK.	49 CFR 172.101 (Hazardous Materials Table, Column 6(a), 173.306, 175.30, 175.75(a)(1), (2).	To become a party to exemption 10303. (Mode 5.)
10336–X	DOT–E 10336	Morton International, Inc., Ogden, UT.	49 CFR 173.93(a)(9)	To modify exemption to provide for 3⅛ gallon reusable plastic shipping container for use in transporting propellant explosives, solid, Class B. (Mode 1.)
10340–X	DOT–E 10340	Schutz Container Systems, Inc., North Branch, NJ.	49 CFR 173.118a, 173.119, 173.125, 173.245, 176.340, Part 173, Subpart F.	To modify exemption to provide for an alternative overpack with tubular steel frame enclosure for use in transporting corroeive liquids, flammable liquids, and combustible liquids in polyethylene tanks. (Modes 1, 2, and 3.)
10340–X	DOT–E 10340	Schutz Container Systems, Inc., North Branch, NJ.	49 CFR 173.118a, 173.119, 173.125, 173.245, 176.340, Subpart F.	To modify the exemption to provide for a smaller polyethylene portable tank with a 169 gallon capacity to be used in transporting various material, flammable, combustible and corroeive liquids. (Modes 1, 2, and 3.)
10346–P	DOT–E 10346	James River Corporation, Camas, WA.	49 CFR 174.67(i) and (j), Part 107, Appendix B.	To become a party to exemption 10346. (Mode 2.)
10413–P	DOT–E 10413	Occidental Chemical Corporation, Dallas, TX.	49 CFR 173.163 and 176.131.	To reinstate exemption to authorize a one time shipment of approximately 148 non-DOT specification drums containing sodium chlorate, solid, classed as an oxidizer. (Mode 1.)
10441–P	DOT–E 10441	Rinchem Company, Inc., Albuquerque, NM.	49 CFR 177.848	To become a party to exemption 10441. (Mode 1.)
10441–P	DOT–E 10441	Chemical Conservation Corporation, Orlando, FL.	49 CFR 177.848	To become a party to exemption 10441. (Mode 1.)
10441–P	DOT–E 10441	Pollution Control Industries of Indiana, Inc., East Chicago, IL.	49 CFR 177.848	To become a party to exemption 10441. (Mode 1.)
10537–X	DOT–E 10537	Quality Manufacturing of Eunice, Inc., Eunice, LA.	49 CFR 172.331, 173.154, 173.164, 173.178, 173.182, 173.204 and 173.217, 173.234, 173.245(b), 173.365, 173.366, 173.367.	To modify the exemption to include cargo vessel as an additional mode of transportation. (Modes 1, 2, and 3.)
10631–P	DOT–E 10631	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.243, 173.244	To become a party to exemption 10631. (Mode 1.)
10670–P	DOT–E 10660	Sigma Chemical Company, St. Louis, MO.	49 CFR 172.402(a)(1), 172.403(e), 173.4(a)(1)(i–iii), 173.4(a)(1)(iv).	To become a party to exemption 10660. (Modes 1, 4, and 5.)
10709–P	DOT–E 10709	Dowell Schlumberger, Inc., Tulsa, OK.	49 CFR 173.119(m)	To become a party to exemption 10709. (Modes 1, 3.)
10717–P	DOT–E 10717	General American Transportation Corporation, Chicago, IL.	49 CFR 173.31 RETEST TABLE 1, Retest Table 1.	To become a party to exemption 10717. (Mode 2.)
10781–X	DOT–E 10781	Mobil Chemical Company, Princeton, NJ.	49 CFR 173.187	To reissue an exemption originally issued on an emergency basis to authorize shipment of a pyrophoric solid material, UN2846, division 4.2, with a nitrogen gas pad contained in DOT Specification 4BA cylinders. (Mode 1.)
10630–X	DOT–E 10630	Allied-Signal Inc., Morristown, NJ.	49 CFR 173.34(d), 178–65–10, Part 107, Appendix B, Paragraph 1.	To reissue exemption originally issued on an emergency basis to authorize the return shipment of numerous DOT Specification cylinders, containing certain refrigerant gases, which are equipped with pressure relief services that do not meet the specification. (Mode 1.)
10670–X	DOT–E 10670	Anderson Products, Inc., Chapel Hill, SC.	49 CFR 172.101, 172.400, 172.504, 173.323, 174.81 and 177.848.	To reissue exemption originally issued on an emergency basis to authorize the transportation of ethylene oxide packaged in glass ampoules within a fiberboard box and to authorize cargo aircraft as an additional mode. (Modes 1, 2, 4, and 5.)
10682–P	DOT–E 10682	Espar Products Incorporated, Mississauga, Ontario, CN.	49 CFR 177.834(l)(2)(i)	To become a party to exemption 10682. (Mode 1.)

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Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10882–P	DOT–E 10882	Esper Incorporated, Trumansburg, NY.	49 CFR 177.834(i)(2)(i)	To become a party to exemption 10882. (Mode 1.)
10916–X	DOT–E 10916	Nalco Chemical Company, Naperville, IL.	49 CFR Part 173, Subpart F and 178.251–2(a).	To modify exemption to provide for cargo vessel as an additional mode of transportation for use in transporting those materials authorized to be shipped in portable tanks meeting DOT Specification 57 except for non-metallic discharge valves. (Modes 1, 2.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10169–N	DOT–E 10169	Carolina Power & Light Company (CP&L), New Hill, NC.	49 CFR 174.715	Authorize applying the contamination limits allowed in 49 CFR 173.443(d) for closed transport vehicle by highway to be applied to rail shipments in closed transport vehicles. (Mode 2.)
10283–N	DOT–E 10283	Hoyer GMBH Internationale Fachspedition, West Germany.	49 CFR 173.318	To authorize use of a vacuum insulated, non-DOT specification portable tank in an ISO frame for the transportation of certain refrigerated liquids, all classed as a Division 2.2 gas. (Modes 1, 2, and 3.)
10527–N	DOT–E 10527	Ekohwerks Company, Eastlake, OH.	49 CFR 178.36–11, Part 107, Appendix B, Paragraph 1.	To authorize the manufacture, marking and sale of a non-DOT specification cylinder which complies in part with the DOT Specification 3A cylinder. (Modes 1, 2, 3, 4, 5.)
10583–N	DOT–E 10583	GE Nuclear Energy, San Jose, CA.	49 CFR 173.244, 178.245	To authorize a one-time shipment of a non-DOT specification ASME code "U" stamped portable tank for the shipment of a flammable solid. (Mode 1.)
10644–N	DOT–E 10644	Ulrich Chemical, Inc., Terre Haute, IN.	49 CFR 174.67(i) and (j), Part 107, Appendix B.	To authorize tank cars, containing chlorine, to remain standing with unloading connections attached when no product is being transferred. (Mode 2.)
10647–N	DOT–E 10647	The McGregor Co., Colfax, WA.	49 CFR 174.67(i) and (j), Part 107, Appendix B.	To authorize tank cars, containing anhydrous ammonia, to remain standing with unloading connections attached while no product is being transferred. (Mode 2.)
10649–N	DOT–E 10649	The Narragansett Bay Commission, Providence, RI.	49 CFR 174.67(i) and (j), Part 107, Appendix B.	To authorize tank cars, containing chlorine, to remain standing with unloading connections attached while no product is being transferred. (Mode 2.)
10650–N	DOT–E 10650	United Agri Products/ Transbas, Incorporated, Greeley, CO.	49 CFR 174.67(i) and (j), Part 107, Appendix B.	To authorize tank cars, containing various hazardous materials, to remain standing with unloading connections attached while no product is being transferred. (Mode 2.)
10653–N	DOT–E 10653	Florida West Airlines, Miami, FL.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize the carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
10674–N	DOT–E 10674	ConAir Corporation, Carson City, NV.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize the carriage of certain Class A, B, and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
10683–N	DOT–E 10683	Schering AG D–4709, Bergkamen, Germany.	49 CFR 173.242, 178.245–1(a).	To authorize the use of a non-specification packaging similar to a DOT Specification 51 portable tank for shipment of certain pyrophoric liquid and flammable liquids. (Modes 1, 2, and 3.)
10689–N	DOT–E 10689	DPC Industries Company Houston, TX.	49 CFR 174.67 (i) and (j), Part 107, Appendix B.	To authorize tank cars, containing chlorine or sulfur dioxide, to remain standing with unloading connections attached when no product is being transferred. (Mode 2.)
10690–N	DOT–E 10690	DX Systems Company, Houston, TX.	49 CFR 174.67 (i) and (j), Part 107, Appendix B.	To authorize tank cars, containing chlorine or sulfur dioxide, to remain standing with unloading connections attached when no products is being transferred. (Mode 2.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10691–N	DOT–E 10691	DXI Industries, Inc., Houston, TX.	49 CFR 174.67 (i) and (j), Part 107, Appendix B.	To authorize tank cards, containing chlorine and sulfur dioxide, to remain standing with unloading connection attached when no product is being transferred. (Mode 2.)
10692–N	DOT–E 10692	Technical Manufactured Products, Jasper, GA.	49 CFR 178.61–11, 178.61–15, 178.61–20, 178.61–5, 178.61–8(c)(2).	To authorize the manufacture, marking and sell of non-DOT specification welded pressure vessel for transportation of petroleum gas, liquefied, or liquefied petroleum gas. (Mode 1.)
10693–N	DOT–E 10693	Vertex Chemical Corporation, Saint Louis, MO.	49 CFR 174.67 (i) and (j), Part 107, Appendix B.	To authorize tank cars, containing chlorine, to remain standing with unloading connections attached when no product is being transferred. (Mode 2.)
10700–N	DOT–E 10700	J.H. Products, Inc., Lockport, NY.	49 CFR 174.67 (i) and (j), Part 107, Appendix B.	To authorize tank cars, containing chlorine to remain standing with unloading connections attached when no product is being transferred. (Mode 2.)
10702–N	DOT–E 10702	Grow Group, Inc., Havre de Grace, MD.	49 CFR 174.67 (i) and (j), Part 107, Appendix B.	To authorize tank cars, containing chlorine, to remain standing with unloading connections attached when no product is being transferred. (Mode 2.)
10710–N	DOT–E 10710	Hawkins Chemical Inc., Minneapolis, MN.	49 CFR 174.67 (i) and (j), Part 107, Appendix B.	To authorize tank cars, containing chlorine, to remain standing with unloading connections attached when no product is being transferred. (Mode 2.)
10712–N	DOT–E 10712	City of Grand Rapids, Grand Rapids, MI.	49 CFR 174.67 (i) and (j), Part 107, Appendix B.	To authorize tank cars, containing chlorine, to remain standing with unloading connections attached when no product is being transferred. (Mode 2.)
10724–N	DOT–E 10724	Buffalo Sewer Authority Wastewater Treatment Plant, Buffalo, NY.	49 CFR 174.67 (i) and (j), Part 107, Appendix B.	To authorize tank cars, containing chlorine, to remain standing with unloading connections attached when no product is being transferred. (Mode 2.)
10731–N	DOT–E 10731	Amoco Petroleum Additives Company, Wood River, IL.	49 CFR 174.67 (i) and (j), Part 107, Appendix B.	To authorize tank cars, containing oleum (containing less than 30% free sulfur trioxide), to remain standing with unloading connections attached when no product is being transferred. (Mode 2.)
10735–N	DOT–E 10735	J.R. Simplot Company, Helm, CA.	49 CFR 174.67 (i) and (j), Part 107, Appendix B.	To authorize tank cars, containing phosphoric acid, to remain standing with unloading connections attached when no product is being transferred. (Mode 2.)
10736–N	DOT–E 10736	General Chemical Corporation, Parsippany, NJ.	49 CFR 174.67 (i) and (j), Part 107, Appendix B.	To authorize tank cars, containing anhydrous ammonia, to remain standing with unloading connections attached when no product is being transferred. (Mode 2.)
10745–N	DOT–E 10745	Air Transport International, Inc., Little Rock, AR.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize the carriage of certain Class A, B, and C explosives that are not permitted for shipment by air, or are in quantities greater than than those prescribed for shipment by air. (Mode 4.)
10755–N	DOT–E 10755	Minnesota Mining and Manufacturing Company (3M), St. Paul, MN.	49 CFR 172.203, 172.400, 172.402, 172.504, 173.150, 173.151, 173.152, 173.153, 173.154, 173.201, 173.202, 173.203, 173.211, 173.212, 173.25, 173.4 and 173.211, 174.213, 175.25, 175.3, 175.33.	To authorize the manufacture, mark, and sell of specially designed composite type packaging for use in transporting limited quantities of various classes of hazardous materials without labels and placards. (Modes 1, 2, 3, 4, and 5.)
10758–N	DOT–E 10758	PML Microbiologicals, Spokane, WA.	49 CFR 172.101, 172.400(b), 172.504(a).	To authorize the shipment of sodium borohydride, which is not included in the limited quantity exceptions of the regulations, to be shipped as a limited quantity when contained in an specially designed packaging. (Modes 1, 2, 3, and 4.)
10762–N	DOT–E 10762	Advanced Monobloc Corporation, Hermitage, PA.	49 CFR 173.304(a), 175.3, 178.65.	To authorize the manufacture, mark and sell of a non-DOT specification cylinder which meets the requirements of a DOT Specification 39 cylinder with certain exceptions for the transportation of chlorodifluoromethane. (Modes 1, 2, 3, and 4.)

Application No.
10790–N
10798–N
10803–N
10804–N
10810–N
10818–N
10821–N
10824–N
10827–N
10828–N
10833–N
10834–N
10837–N
10839–N

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10790–N	DOT–E 10790	Kalitta Flying Service, Inc., Ypsilanti, MI.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize the carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
10796–N	DOT–E 10798	Olin Corporation, Stamford, CT.	49 CFR 174.67(i) and (j), Part 107, Appendix B.	To authorize tank cars, containing chlorine, to remain standing with unloading connections attached when no products is being transferred. (Mode 2.)
10803–N	DOT–E 10803	Western Electric Corporation.	49 CFR 172.203(A), 177.834(i)(2)(i).	To authorize the manufacture, mark and sell of motor vehicles, equipped with specific propane-operated hearing equipment, engaged in the transportation of certain flammable liquids and gases. (Mode 1.)
10804–N	DOT–E 10804	PPG Industries, Inc., Pittsburgh, PA.	49 CFR 173.31(d)	To authorize the one-time shipment of four multi-unit tank car tanks over due for periodic testing for cleaning and disposal. (Mode 1.)
10810–N	DOT–E 10810	U.S. Department of the Army, Kingsport, TN.	49 CFR 173.62(E–6(a), (b).	To authorize the transportation of cyclotrimethylenetrinitramine (RDX), cyclotetramethylenetetranitramine (HMX) and mixture thereof wet with 10% by mass of water and 5% by mass of alcohol. (Modes 1, 2.)
10818–N	DOT–E 10818	Bionomics, Inc., Providence, RI.	49 CFR 173.197	To authorize the use of non-DOTpecification roll-off steel shuttles as outer packagings for the transportation of regulated medical waste in dual packagings. (Mode 1.)
10821–N	DOT–E 10821	MedX, Inc., Miami, FL	49 CFR 173.197	To authorize the use of non-DOT specification steel roll-off containers as outer packaging for the transportation of regulated medical waste in dual packagings. (Mode 1.)
10824–N	DOT–E 10824	Sun Refining and Marketing Company, Philadelphia, PA.	49 CFR 173.31(c)(1)	To authorize the one-time shipment of tank cars, SUNX 24535, containing residual hazardous material from Toledo, Ohio to a repair shop in Sayre, Pennsylvania to perform an overdue coil retest. (Mode 2.)
10827–N	DOT–E 10827	Shannon Packaging Company, Covina, CA.	49 CFR 173.12(b)(1), 49 CFR Part 107.	To authorize the manufacture, mark and sell of a qyad-wall fiberboard box with fitted barrier liner for use as the outer packaging for lab pack applications. (Mode 1.)
10828–N	DOT–E 10828	Enicon, Division of Ameri-Kart Corp., Bristol, TN.	49 CFR 173, 173.119, 173.125, 173.245, 173.249, 173.249(a), 173.250(a), 173.256, 173.257, 173.262, 173.263, 173.264, 173.265, 173.266, 173.269, 173.272, 173.276, 173.277, 173.283, 173.287, 173.288, 173.289, 173.292, 173.297, 173.299(a).	To authorize the manufacture, marking and sale of non-DOT specification rotationally molded polyethylene portable tank enclosed within a protective wire frame for the shipment of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, 2.)
10833–N	DOT–E 10833	Health Care Waste Services, Corp., Bronx, NY.	49 CFR 173.197	To authorize the use of non-DOT specification steel roll-off containers as outer packagings for the transportation of regulated medical waste in dual packaging. (Mode 1.)
10834–N	DOT–E 10834	Ethyl Corporation, Baton Rouge, LA.	49 CFR 173.249	To authorize a one-time shipment of bromine in a DOT specification IM–101 portable tank which is loaded less than 88% full. (Mode 1.)
10837–N	DOT–E 10837	Mini Mobile Systems, Inc., Boca Raton, FL.	49 CFR 173.197	To authorize the manufacture, mark and sale of a molded fiberglass modules as outer packagings (roll-on/roll-off modules) for the transportation of regulated medical waste in dual packagings. (Mode 1.)
10839–N	DOT–E 10839	Ross Aviation, Inc., Albuquerque, NM.	49 CFR 172.101, 172.204(c)(3), 173.27, 173.54(j), 175.30(a)(1), 175.320(b), 175.75 Part 107, Appendix B.	To authorize the carriage of certain Class A, B, and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)

NEW EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10845–N	DOT–E 10845	PPG Industries, Inc., Pittsburgh, PA.	49 CFR 173.29(c)(2) and 173.31(c).	To authorize the transportation of DOT Specification 105A500W tank cars which are overdue for tank and safety valve tests to the nearest facility capable of conducting the required tests. (Mode 2.)
10857–N	DOT–E 10857	Ansul Fire Protection, Marinette, WI.	49 CFR 173.302, 49 CFR 172.400, Part 174 (except section 174.24), Part 177 (except section 177.817), Subpart F of Part 172.	To authorize the shipment of certain compressed gases in non-DOT specification containers called spill control agent applicators used to contain, neutralize, and/or solidify chemical spills. (Modes 1, 2, 3, 4, and 5.)
10861–N	DOT–E 10861	General Chemical Corporation, Parsippany, NJ.	49 CFR 173.29(c)(2) and 173.31(c).	To authorize the transportation of DOT Specification 111A100W2 tank cars which are overdue for tank tests to the nearest facility capable of conducting the required tests. (Mode 2.)
10865–N	DOT–E 10865	Robert Gas Cylinder Company, Inc., Carolina, PR.	49 CFR 173.34(1), 175.30, Part 107, App. B, Subparagraphs 1, 2, 3.	To authorize the rebuilding and selling of DOT Specification 4B, 4BA and 4BW cylinders, for transporting compressed gases, flammable liquids, corrosive materials and other hazardous materials authorized to be shipped in 4 series cylinders. (Modes 1, 2, 3, 4, and 5.)
10866–N	DOT–E 10866	American Medical Waste Systems, Inc., Hicksville, NY.	49 CFR 173.197	To authorize shipment of regulated medical waste in dual packagings with outer packagings. (Mode 1.)
10874–N	DOT–E 10874	MedX, Inc., Miami, FL	49 CFR 173.197	To authorize the use of MedX aluminum exchange cart as the outer packaging for the transportation of regulated medical waste in dual packagings. (Mode 1.)
10882–N	DOT–E 10882	J. Eberspacher, Esslingen, Germany.	49 CFR 177.834(1)(2)(i) ..	To authorize the manufacture, mark and sell of motor vehicles, equipped with diesel-fueled heating equipment, for the transportation of certain flammable liquids or flammable gases. (Mode 1.)
10883–N	DOT–E 10883	Cart Service Systems, Clifton, NJ.	49 CFR 173.197	To authorize the manufacture, mark and sell of high density polyethylene injection molded bins as outer packagings for the transportation of regulated medical waste in dual packagings. (Mode 1.)
10885–N	DOT–E 10885	U.S. Department of Energy, Washington, DC.	49 CFR 172.101 Col. 9(b), 172.204(c)(3), 173.27(b)(2) and (3), 173.27(f) Table 2, 175.30(a)(1).	To authorize the transportation of Class 1 materials, that are not permitted for shipment by air or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
10889–N	DOT–E 10889	Safe Way Disposal Systems, Inc., Middletown, CT.	49 CFR 173.197	To authorize the use of SWDS Model 1800 carts as outer packagings for the highway transportation of regulated medical waste packaged in dual packagings. (Mode 1.)
10893–N	DOT–E 10893	Olin Corporation, Stamford, CT.	49 CFR 173.29(c)(2) and 173.31(c).	To authorize the transportation of DOT Class 105 tank cars which are overdue for tank and safety valve tests to be shipped to the nearest facility capable of conducting the required tests. (Mode 2.)
10916–N	DOT–E 10916	Nalco Chemical Company, Naperville, IL.	49 CFR Part 173, Subpart F and 178.251–2(a).	To authorize certain hazardous materials which are authorized in the HMR to be shipped in a DOT Specification 57 portable tank to hazardous materials authorized for shipment in DOT specification 57 portable tanks. (Modes 1, 2.)
10917–N	DOT–E 10917	Ford Motor Company, Dearborn, MI.	49 CFR 172.101, 172.301, 172.400, 173.212, 173.213.	To authorize the transportation of certain batteries and cells containing sodium (liquid or solid), and which may contain sulfur (liquid or solid). (Modes 1, 2, and 4.)
10934–N	DOT–E 10934	LaRoche Industries Inc., Atlanta, GA.	49 CFR 172.203(a), 173.242(a), 173.243(a), 179.100–7(a) and 179.101–1(a), Part 107, Subpart B, Appendix B Paragraph (2).	To authorize the transportation in commerce of a Division 5.1 of Class 8 material in tank car tanks conforming to a DOT Specification 105J100W or 105J200W except that they are constructed from ASTM A240 T316L stainless steel. (Mode 2.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 2709–P	DOT–E 2709	TOPTH, Inc., Long Beach, CA.	49 CFR 173.62, 173.93, 176.76(h), 177.821, 177.834(l)(1), 177.835(k), 46 CFR Part 148.	To become a party to exemption 2709. (Modes 1, 3.)
EE 5704–P	DOT–E 5704	TOPTH, Inc., Gardena, CA.	49 CFR 173.62, 173.93(e)	To become a party to exemption 5704. (Modes 1, 2, and 3.)
EE 6614–X	DOT–E 6614	Mid-State Chemical & Supply Corp., Indianapolis, IN.	49 CFR 173.245, 173.263(a)(28) and 173.277(a)(6).	To authorize the use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
EE 6614–X	DOT–E 6614	Chem-Bright Industries, Brighton, MI.	49 CFR 173.245, 173.263(a)(28) and 173.277(a)(6).	To authorize the use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids. (Mode 1.)
EE 7616–X	DOT–E 7616	Illinois Central Gulf Railroad Company, Chicago, IL.	49 CFR 172.200(a), 172.204(a), 172.204(d), 174.12, 174.24(a), 174.25(b)(2), 174.3.	To authorize the carrier to certify the shipping paper on behalf of the shipper when transporting hazardous materials by rail. (Mode 2.)
EE 7891–X	DOT–E 7891	Farchan Laboratories, Inc., Gainesville, FL.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504 Table 1, 172.504(a), 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	To authorize the transport of packages hearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W. (Modes 1, 2, 4, and 5.)
EE 7946–X	DOT–E 7946	Union Pacific Resources Company, Wilmington, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize the manufacture, marking and sale of non-DOT specification cargo tanks for shipment of flammable and corrosive waste materials. (Mode 1.)
EE 8214–X	DOT–E 8214	Ford Motor Company, Detroit, MI.	49 CFR 171.11 (see paragraph 8.d.), 173.153, 173.154, 175.3.	To authorize the shipment of inflators and modules, containing a Class C explosive classed as a flammable solid for passive restraint systems use automobiles. (Modes 1, 2, and 3.)
EE 8554–X	DOT–E 8554	Pepin-Ireco, Inc., Ishpeming, MI.	49 CFR 173.114a, 173.154, 173.93.	To authorize the transport of propellant explosives and blasting agents in DOT Specification MC–306, MC–307, and MC–312 cargo tanks. (Modes 1, 3.)
EE 8723–X	DOT–E 8723	Mt. State Bit Service, Inc., Morgantown, WV.	49 CFR 172.101, 173.114a(h)(3), 173.154, 176.415, 176.83.	To authorize the use of non-DOT specification motor vehicles for bulk shipment of certain blasting agents. (Modes 1, 3.)
EE 8995–X	DOT–E 8995	Insta-Foam Products, Inc., Joliet, IL.	49 CFR 173.315(a)(1), 173.346, 174.63(b).	To authorize the use of non-DOT specification steel portable tanks for transportation of certain nonpoisonous, nonflammable compressed gases. (Modes 1, 2, and 3.)
EE 9228–X	DOT–E 9228	Southern California Chemical, Santa Fe Springs, CA.	49 CFR 173.245, 173.263, 178.340, 178.343.	To authorize the use of non-DOT specification cargo tanks, for transportation of corrosive materials. (Mode 1.)
EE 9275–X	DOT–E 9275	Upjohn Company, Kalamazoo, MI.	49 CFR Parts 100–199	To authorize further exceptions to specification packaging, marking and labeling requirements for certain ethyl alcohol formulations. (Modes 1, 2, 3, 4, and 5.)
EE 9346–X	DOT–E 9346	IMC Fertilizer, Inc., Mulberry, FL.	49 CFR 174.67(a)(2)	To authorize setting of the brakes and blocking the wheels of the first and last tank cars on up to a 12 tank car assembly, instead of each individual car, when engaged in unloading crude oil and petroleum. (Mode 2.)
EE 9381–X	DOT–E 9381	Western Zinc Corporation, Rancho Dominguez, CA.	49 CFR 173.154	To authorize the transportation of a water reactive solid, which evolves hydrogen slowly when wet, in open packagings such as drums, hooper trucks and gondola cars. (Modes 1, 2.)
EE 9581–P	DOT–E 9581	Bionomics Inc., Kingston, IN.	49 CFR 173.416(e)	To become a party to exemption 9581. (Mode 1.)
EE 10227–X	DOT–E 10227	Minnesota Valley Engineering, Inc., New Prague, MN.	49 CFR 173.316, 175.3, 178.57(8)(b), 178.57–2, 178.57–8(c).	To authorize the manufacture, marking and sale of insulated non-DOT specification cylinders for shipments of liquid oxygen. (Mode 1.)
EE 10783–X	DOT–E 10783	Sun Refining and Marketing Company, Philadelphia, PA.	49 CFR 173.29(c)(1) and 174.67(k).	To authorize the transportation of a DOT Specification 111A100W1 tank car which has defective interior heating coils for shipment of petroleum naphtha. (Mode 2.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 10870–X	DOT–E 10870	Anderson Products, Inc., Chapel Hill, SC.	49 CFR 172.101, 172.400, 172.504, 173.323, 174.81 and 177.848.	To authorize domestic transportation by rail and highway of ethylene oxide packaged in glass ampoules within a fiberboard box with a flammable gas (Division 2.1) label instead of both poison gas (Division 2.3) and flammable gas labels. (Modes 1, 2, 4, and 5.)
EE 10881–X	DOT–E 10881	The TACC International Corporation, Rockland, MA.	49 CFR 173.32	To authorize the shipment of an adhesive, with a flash point of less than 0 degrees Fahrenheit, classed as a flammable liquid, contained in DOT Specification 37C drums of 5 gallons capacity. (Mode)
EE 10885–N	DOT–E 10885	U.S. Department of Energy, Washington, DC.	49 CFR 172.101 Col. 9(b), 172.204(c)(3), 173.27(b)(2) and (3), 173.27(f) Table 2, 175.30(a)(1).	To authorize the transportation of Class A, B and C explosives which are forbidden or exceed the quantity limitations authorized for shipment by air. (Mode 4.)
EE 10886–N	DOT–E 10886	Eco-Pak, Incorporated, Elizabeth, TN.	49 CFR 173.201, 173.202, 173.203, 173.226 and 173.227.	To authorize the use of a specially designed UN1A1W packaging for the shipment of materials poisonous by inhalation and other hazardous materials which fall in packing Groups I, II, and III. (Modes 1, 2, 3, 4, and 5.)
EE 10886–X	DOT–E 10886	Eco-Pak, Inc., Elizabethton, TN.	49 CFR 173.201, 173.202, 173.203, 173.226 and 173.227.	To authorize the use of a specially designed UN1A1W packaging for the shipment of materials poisonous by inhalation and other hazardous materials which fall in packing Groups I, II, and III. (Modes 1, 2, 3, 4, and 5.)
EE 10886–X	DOT–E 10886	Eco-Pak, Inc., Elizabethton, TN.	49 CFR 173.201, 173.202, 173.203, 173.226 and 173.227.	To authorize the use of a specially designed UN1A1W packaging for the shipment of materials poisonous by inhalation and other hazardous materials which fall in packing Groups I, II, and III. (Modes 1, 2, 3, 4, and 5.)
EE 10894–N	DOT–E 10894	3V, Incorporated, Georgetown, SC.	49 CFR Part 107, Appendix B(1), 173.204.	To authorize the one-time shipment of trichloro-s-triazinetrione, dry in woven polypropylene bags (flexible intermediate bulk containers) of 2,200 pound capacity each. (Mode 1.)
EE 10897–N	DOT–E 10897	U.S. Department of Defense, Washington, DC.	49 CFR 172.301 and 172.400.	To authorize the transportation of a water reactive material in special packaging without being labeled or marked with the proper shipping name. (Modes 1, 2, 3, and 4.)
EE 10902–N	DOT–E 10902	Airco Industrial Gases, Murray Hill, NJ.	49 CFR 173.249(b)(1), 178.320(a)(3).	To authorize the transportation of an AAR Specification 204W tank car with a leaking gauge line connection. (Mode 2.)
EE 10908–N	DOT–E 10908	Maxwell Laboratories, Inc., San Diego, CA.	49 CFR 173.416(c), Part 107, Appendix B to Subpart B, Paragraph (1).	To authorize the one-time domestic shipment of two packages of radioactive materials which are certified only for import and export shipment. (Mode 1.)
EE 10910–N	DOT–E 10910	Passaic Valley Water Commission, Clifton, NJ.	49 CFR 173.29(a)	To authorize the transportation of DOT Specification 105A500W tank car which is overdue for tank and safety relief valve tests. (Mode 2.)
EE 10930–N	DOT–E 10930	Suburban Propane, Whippany, NJ.	49 CFR 173.24(b)(1), 174.50(a).	To authorize the transportation of two DOT Specification 112J34oW tank cars, containing liquefied petroleum gas, which are leaking trace amounts of product from the liquid and vapor valve flanges. (Mode)
EE 10935–N	DOT–E 10935	Degussa Corporation, Ridgefield Park, NJ.	49 CFR 173.24, 178.251 and 178.252–3.	To authorize the shipment of stainless steel DOT Specification 56 portable tanks containing sodium cyanide from a public warehouse in Reno, Nevada to a plant site in Theodore, Alabama. (Mode 1.)
EE 10935–X	DOT–E 10935	Degussa Corporation, Ridgefield Park, NJ.	49 CFR 173.24, 178.251 and 178.252–3.	To authorize the shipment of stainless steel DOT Specification 56 portable tanks containing sodium cyanide from a public warehouse in Reno, Nevada to a plant site in Theodore, Alabama. (Mode 1.)
EE 10937–N	DOT–E 10937	Occidental Chemical Corporation, Dallas, TX.	49 CFR 173.31(b)	To authorize the transportation of a DOT Specification 111A100W1 tank car, containing molten sulfur, with a patched hole in the center top of the tank. (Mode 2.)
EE 10940–N	DOT–E 10940	Farmland Industries, Incorporated, Kansas City, KS.	49 CFR 173.31(c)(1) & (3); 173.29(c)(2); 173.245.	To authorize the transportation of forty-four (44) DOT Specification 111A100W3 tank cars, containing phosphoric acid, meeting all DOT requirements except that the tank car interior heater systems are overdue for retest. (Mode 2.)

EMERGENCY EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 10943–N	DOT–E 10943	Worthington Cylinder Corporation, Columbus, OH.	49 CFR 173.34(d) and 1.78.65–10.	To authorize the use of certain DOT Specification 39 cylinder, which may have pressure relief devices not in conformance with the specification requirements, to be filled with helium. (Mode 1.)
EE 10947–N	DOT–E 10947	CSX Transportation, Jacksonville, FL.	49 CFR 173.31(c)(1) and 173.29(c)(2).	To authorize the transportation of A DOT Specification 105J400W tank car, containing liquefied petroleum gas, meeting all DOT requirements except that the tank car tank is overdue for retest. (Mode 2.)
EE 10948–N	DOT–E 10948	Stolt-Nielsen, Incorporated, Perth Amboy, MJ.	49 CFR 173.29(c)(1)	To authorize the one-time shipment of a combustible liquid in a DOT Specification 111A100W1 tank car with a leaking bottom outlet valve flange. (Mode 2.)
EE 10955–N	DOT–E 10955	Rhone-Poulenc, Triangle Research Park, NC.	49 CFR 173.331(b)(1), 174.47(b).	To authorize the transportation of a DOT Specification 105A500W tank car tank with a defective angle valve, contained in an emergency kit for the transportation of Sulfur dioxide. (Mode 2.)
EE 10956–N	DOT–E 10956	Carmer Associates, Incorporated, Pelzer, SC.	49 CFR 173.29(c)(1), (2) and 173.31(c)(1).	To authorize the transportation of six DOT Specification 111A100W2 tank cars, containing residue of sulfuric acid, meeting all requirements except that the tank car tanks are overdue for retest and one tank car has three of eight manway bolts inoperable. (Mode 2.)
EE 10960–N	DOT–E 10960	Hughes Space and Communications Company, Los Angeles, CA.	49 CFR 172.101 Table, Column (9)(b), 173.244 and 173.314.	To authorize the shipment of residual amounts of dinitrogen tetroxicde, liquefied, Division 2.3 and methylhydrazine, Division 6.1, in specially designed fuel tanks by cargo aircraft. (Modes 1, 4.)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6902–X	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.314(c), 179.300–15	To authorize the shipment of a liquefied nonflammable compressed gas in a modified DOT Specification 110A800W multi-unit tank car tank. (Modes 1, 2.)
7909–P	ECOFLO, Inc., Greensboro, NC.	49 CFR 172.203, 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 173.345(a), 173.359(c), 173.364(a), 173.370(b), 173.370(d), 173.377(f), 175.3, 175.30, 175.33.	To become a party to exemption 7909 (Modes 1, 2.)
8445–P	S&W Waste Inc., South Kearny, NJ.	49 CFR Part 173, Subparts D, E, F, H	To become a party to exemption 8445 (Mode 1.)
8465–X	Chase Packaging Corporation, Greenwich, CT.	49 CFR 173.182(b)(6)(i), 173.234, 178.241.	To authorize manufacture, marking and sale of non-DOT specification plastic bags (comparable to a DOT Specification 44P), for shipment of ammonium nitrate fertilizers and sodium nitrite mixtures. (Modes 1, 2, and 3.)
8465-X	Bag Merger Corporation, Wayne, NJ.	49 CFR 173.182(b)(6)(i), 173.234, 178.241.	To authorize manufacture, marking and sale of non-DOT specification plastic bags (comparable to a DOT Specification 44P), for shipment of ammonium nitrate fertilizers and sodium nitrite mixtures. (Modes 1, 2, and 3.)
8554–P	Mt. State Bit Service, Inc., Morgantown, WV.	49 CFR 173.114a, 173.154, 173.93	To become a party to exemption 8554 (Modes 1, 3.)
8923–X	Union Carbide Industrial Gases, Inc. Danbury, CT.	49 CFR 173.119(m), 173.3(a)	To authorize the transport of a flammable liquid which is also corrosive in DOT Specification 51 portable tanks. (Mode 1.)
9771–X	Honewell Inc., New Brighton, MN.	49 CFR 172.101, 173.86	To authorize shipment of unclassed waste explosive scrap, for disposal, packaged in specialty designed containers. (Mode 1.)
10509–N	IRECO, Incorporated, Salt Lake City, UT.	49 CFR 173.154(a)(17)	To authorize shipment of ammonium nitrate solution (containing 35% or less water) in DOT-Specification stainless steel 111.A100W6 tank cars. (Mode 2.)
10530–N	Rochester Midland, Rochester, NY.	49 CFR 173.286(b)2 and (b)3	To comingle limited quantities of hazardous materials of various classifications in glass jars or plastic bottles individually wrapped with absorbent material overpacked in single wall corrugated containers with inner plastic liner, and described as chemical kits. (Modes 1, 2, 3, and 4.)

WITHDRAWAL EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10752–N	Miami Products and Chemical Company, Dayton, OH.	49 CFR 172.300, 172.400, 177.848, 178	To authorize the transportation of corrosive material and oxidizers exempted from segregation criteria. (Mode 1.)
10846–N	Ireco Incorporated, Salt Lake City, UT.	49 CFR 172.101	To authorize the transportation of ammonium nitrate, liquid (containing 35% or less water) classed as an oxidizer, in 111A100W6 stainless st tank cars. (Mode 2.)
10905–N	United Parcel Service Co., Louisville, KY.	49 CFR 172.204(c)(2), 175.30(a)(2), 175.35(a).	To authorize the air carrier engaged in transporting hazardous materials to collect one copy of the shipper certification, instead of the required two copies and provide for the five past shipping paper form as a substitute for the certificate to travel with the shipment. (Mode 4.)

DENIALS

10395–N	Request by Cryogenic Services Incorporated Canton, GA to authorize highway transportation of methane, refrigerated liquid, classed as flammable gas in non-DOT specification cylinders built to 4L specification denied March 3, 1993.
10836–N	Request by Fibre Drum Technical Council Washington, DC to authorize the manufacture, mark and sale of open-head fiber drums not to exceed 55 gallon capacity which do not meet the performance oriented packaging standards required under Docket HM–181 for the shipment of certain hazardous materials denied January 12, 1993.
10854–N	Request by Matheson Gas Products Secaucus, NJ to authorize transportation of silicon tetrachloride, classed as corrosive material in DOT specification 5A steel/stainless steel drums denied December 16, 1992.

Issued in Washington, DC, on June 14, 1993.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93–14629 Filed 6–21–93; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 15, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0146.
Form Number: IRS Form 2553.
Type of Review: Revision.
Title: Election by a Small Business Corporation.
Description: Filed by a qualifying corporation to elect to be an S corporation as defined in Code section 1361. The information obtained is necessary to determine if the election should be accepted by the IRS. When the election is accepted, the qualifying corporation is classified as an S corporation and the corporation's income is taxed to the shareholders of the corporation.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 500,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—6 hours, 13 minutes.
Learning about the law or the form—2 hours, 59 minutes.
Preparing, copying, assembling, and sending the form to the IRS—3 hours, 13 minutes.
Frequency of Response: Other (Nonrecurring, one-time filing to elect to be an S corporation).
Estimated Total Reporting/ Recordkeeping Burden: 6,205,000 hours.
OMB Number: 1545–1119.
Form Number: IRS Forms 8804, 8805 and 8813.
Type of Review: Extension.
Title: Annual Return for Partnership Withholding Tax (Section 1446) (8804); Foreign Partner's Information Statement of Section 1446 Withholding Tax (8805); and Partnership Withholding Tax Payment (Section 1446) (8813).
Description: Code section 1446 requires partnerships to pay a withholding tax if they have effectively connected taxable income that is allocable to foreign partners. Forms 8804, 8805 and 8813 are used by withholding agents to provide IRS and affected partners with data to assure proper withholding, crediting to partner's accounts, and compliance.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeeper: 5,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

	8804	8805	8813
Recordkeeping	59 min.	59 min.	26 min.
Learning about the law or the form	58 min.	54 min.	40 min.
Preparing the form	31 min.	17 min.	31 min.
Copying, assembling, and sending the form to the IRS	20 min.	17 min.	10 min.

Frequency of Response: On occasion, Quarterly, Annually.
Estimated Total Reporting/ Recordkeeping Burden: 125,750 hours.
OMB Number: 1545–1186.
Form Number: IRS Form 8825.
Type of Review: Extension.
Title: Rental Real Estate Income and Expenses of a Partnership or an S Corporation.
Description: Form 8825 is used to verify that partnerships and S corporations have correctly reported their income and expenses from rental estate property. The form is filed with either Form 1065 or Form 1120S.
Respondents: Farms, Businesses, or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 705,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—6 hours, 28 minutes.
Learning about the law or the form—22 minutes.
Preparing the form—1 hour, 25 minutes.
Copying, assembling, and sending the form to the IRS—16 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 6,006,600 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93–14685 Filed 6–21–93; 8:45 am]
BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1987 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit, "Vatican Treasures: 2000 Years of Art and Culture in the Vatican and Italy," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition of the objects at the Colorado History Museum in Denver, Colorado from on or about July 3, 1993, to August 31, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: June 18, 1993.
R. Wallace Stuart,
Acting General Counsel.
[FR Doc. 93–14751 Filed 6–21–93; 8:45 am]
BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 118
Tuesday, June 22, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION, DOE

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: June 14, 1993, 58 FR 32989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 16, 1993, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers and Company have been added to Item CAG–55 on the Agenda scheduled for June 16, 1993:

Item No., Docket No., and Company

CAG–55—CP80–223–002 and CP84–306–002, CNG Transmission Corporation

Lois D. Cashell,

Secretary.

[FR Doc. 93–14780 Filed 6–18–93; 11:27 am]

BILLING CODE 6717–03–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 28, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 18, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14823 Filed 6–18–93; 2:24 pm]

BILLING CODE 6210–01–P

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, June 24, 1993

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, June 24, 1993, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—Common Carrier—Title: Revision to Price Cap Rules for AT&T. Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* concerning whether to propose changes to the price cap regulations for AT&T.

2—Common Carrier—Title: Price Cap Performance Review for AT&T (CC Docket No. 92–134. Summary: The Commission will consider adoption of a *Report* concerning AT&T's performance during the first four years of price cap regulation.

3—Office of Engineering and Technology—Title: Preparation for International Telecommunication Union World Radiocommunication Conferences. Summary: The Commission will consider adoption of a *Notice of Inquiry* concerning issues for discussion at the 1993 World Radiocommunication Conferences.

4—Office of Engineering and Technology—Title: Amendment of the Commission's Rules to Establish New Personal Communications Services (ET Docket No. 92–100 and GEN. Docket No. 90–314). Summary: The Commission will consider action concerning allocation of spectrum, adoption of rules, and pioneer's preference requests for 900 MHz narrowband personal communications services.

5—Private Radio—Title: Amendment of the Commission's Rules to Permit Private Carrier Paging Licensees to Provide Service to Individuals (PR Docket No. 93–38). Summary: The Commission will consider adoption of a *Report and Order* concerning the eligibility of individuals to obtain paging service from private carrier paging (PCP) licensees.

6—Private Radio—Title: Amendment of Part 87 of the Commission's Rules to Implement Technical Requirements Applicable to Instrument Landing System Receivers and VHF Omnirange Radio Receivers Adopted by the International Civil Aviation Organization (RM–7610). Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* concerning the implementation of International Civil Aviation Organization technical requirements for instrument landing system and VHF Omnirange Radio receivers for U.S. aircraft.

7—Mass Media—Title: Implementation of Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992–Home Shopping Station Issues (MM Docket No. 93–8). Summary: The Commission will consider adoption of a *Report and Order* regarding the licensing and mandatory cable television carriage of the signals of broadcast "home shopping" stations.

8—Mass Media—Title: Implementation of Sections 11 and 13 of the Cable Television Consumer Protection Act of 1992 (MM Docket No. 92–264). Summary: The Commission will consider adoption of a *Report and Order* addressing provisions of sections 11 and 13 of the cable television consumer protection act of 1992.

9—Mass Media—Title: Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992 (PP Docket No. 93–21). Summary: The Commission will consider an *Interim Report* to Congress regarding the migration of video sports programming from broadcast television to subscription television services.

10—Mass Media—Title: Implementation of Section 22 of the Cable Television Consumer Protection and Competition Act of 1992—Equal Employment Opportunities (MM Docket No. 92–261). Summary: The Commission will consider adoption of a *Report and Order* concerning implementation of the EEO provisions of the Cable Act of 1992.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Dated: June 17, 1993.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–14765 Filed 6–18–93; 10:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:12 p.m. on Thursday, June 17, 1993, the Corporation's Board of Directors determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice

to the public, of a memorandum and resolution regarding delegation of authority to the Director of the Division of Liquidation to make finding of worthlessness of claims against receiverships.

By the same majority vote, the Board determined that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: June 17, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–14750 Filed 6–18–93; 9:48 am]

BILLING CODE 6714–01–M

NUCLEAR REGULATORY COMMISSION

DATES: Weeks of June 21, 28, July 5, and 12, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, MD.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 21

Thursday, June 24

8:30 a.m.
Briefing on Status of Pacific Northwest Laboratories (PNL) Study of Decommissioning Costs (Public Meeting) (Contact: Cheryl Trottier, 301–492–3640)

10:00 a.m.
Briefing on Status of Design Basis Threat Reevaluation (Public Meeting) (Contact: Robert Burnett, 301–504–3365)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing on Internal Management Review of NRC Program for Medical Use of Byproduct Material (Public Meeting) (Contact: Carl Paperiello, 301–504–2659)

Friday, June 25

9:30 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting) (Contact: William Bateman, 301–504–1711)

2:00 p.m.
Discussion of Management-Organization, Internal Personnel, and Investigative Matters (Closed—Ex. 2, 5, 6 and 7)

Week of June 28—Tentative

Thursday, July 1

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 5—Tentative

Thursday, July 8

2:00 p.m.
Briefing by Nuclear Safety Research Review Committee (NSRRC) (Public Meeting) (Contact: George Sege, 301–492–3904)

3:30 p.m.
Affirmation/Discussion and vote (Public Meeting) (if needed)

Week of July 12—Tentative

Thursday, July 15

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: June 18, 1993.

William M. Hill, Jr.,

SECY Tracing Officer, Office of the Secretary.

[FR Doc. 93–14826 Filed 6–18–93; 2:25 pm]

BILLING CODE 7590–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote To Amend Agenda

At the June 7, 1993, meeting of the Board of Governors, noticed in the **Federal Register** on May 26, 1993, (58 FR 30219) the members voted unanimously to add to the agenda of the meeting consideration of management's request for additional funding for the Murray Hill Station project in New York, NY, approved by the Board at the June 1, 1987, meeting, and that no earlier public announcement of the new item on the agenda was possible. The Governors were of the opinion that public access to the discussion would likely disclose information, the premature disclosure of which would significantly frustrate proposed property settlement claims.

Accordingly, the members unanimously determined that, pursuant to section 522b(c)(9)(B) of title 5, United States Code, and section 7.3(i) of title 39, Code of Federal Regulations, discussion of the matter was properly closed to public observation.

David F. Harris,

Secretary.

[FR Doc. 93–14823 Filed 6–18–93; 2:23 pm]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 58, No. 118
Tuesday, June 22, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 930772-3045]

RIN 0693-AB05

Approval of Federal Information Processing Standards Publication 127-2, Database Language SQL

Correction

In notice document 93-12918 beginning on page 31364 in the issue of Wednesday, June 2, 1993, make the following corrections:

1. On page 31364, in the third column, under the heading **Federal Information Processing Standards Publication 127-2**, in paragraph 3., in the eighth line, "Transmittal" should read "Transitional".

2. On page 31367, in the first column, in paragraph d., in the fourth line, "FIPS SQL." should read "Full SQL."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Permanent Regulatory Program

Correction

In rule document 93-13852 beginning on page 32847 in the issue of Monday, June 14, 1993, make the following corrections:

1. On page 32854, in the third column, in amendatory instruction 2., in the second line, "paragraph (1)" should read "paragraph (l)".

§ 916.15 [Corrected]

2. On the same page, in the same column, under the heading **§ 916.15 Approval of regulatory program amendments.**, in the second line, "(1)" should read "(l)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-43-92]

RIN 1545-AR65

Credit for Qualified Electric Vehicles and Deduction for Clean-Fuel Vehicles and Certain Refueling Property

Correction

In proposed rule document 93-13483 appearing on page 32317 in the issue of Wednesday, June 9, 1993, make the following correction:

In the first column, under **DATES:**, in the third line, "July 9, 1993." should read "August 9, 1993."

BILLING CODE 1505-01-D

federal register

Tuesday
June 22, 1993

Part II

Department of Labor

Employment and Training Administration

Job Corps Program; Notice of Selection of Sites for Centers

VOL 58 ISS 118 JE 22 1993 UMI

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Job Corps Program; Selection of Sites for Centers

AGENCY: Employment and Training Administration, Labor.

SUMMARY: The Department of Labor requests assistance in identifying sites for locating new Job Corps Centers. This notice specifies the requirements and criteria for selection.

DATES: Proposals are requested by September 20, 1993.

ADDRESSES: Proposals shall be addressed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., room N4508, Washington, DC 20210. Attention: Peter E. Rell, Director, Office of Job Corps.

FOR FURTHER INFORMATION CONTACT: Peter E. Rell, Director, Office of Job Corps. Telephone: (202) 219–8550 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Labor (Department) is soliciting proposals for sites to establish new Job Corps centers. The Job Corps program is designed to serve disadvantaged young women and men, 16 through 24, who are in need of additional educational, vocational and social skills training, and other support services in order to gain meaningful employment, return to school or enter the Armed Forces. The program is primarily a residential program operating 24 hours per day, 7 days per week with non-resident enrollees limited by legislation to 20 percent of national enrollment. However, while the 20 percent level should be used as a guideline, the percentage of non-residents can vary from center to center, depending upon local needs.

From this solicitation, the Department intends to select a minimum of five localities with the possibility of selecting sites for 11 additional centers, depending upon availability of funding. One of the initial five localities will be a replacement site in California for the Mt. Laguna, California, site, which was selected through a competitive process for the establishment of a Job Corps center when Congress authorized six new centers in 1988. The Mt. Laguna site was subsequently withdrawn for environmental considerations. Another of the localities chosen will be a replacement site for the Chesapeake Job Corps Center, which was located in Maryland and was closed for reasons unrelated to performance in 1989.

This solicitation is for site selection only and not for the operation of these Job Corps centers. A competitive contract procurement for selection of a center operator at each site will be initiated and completed well after the site selection process has been completed.

Congress appropriated $24 million in the FY 1992 and 1993 Department of Labor Appropriations Acts to initiate the effort for four sites. The accompanying congressional report language described the use of a competitive process in selecting these sites and said that the Department should give priority for site selection to those localities which serve rural as well as urban at-risk youth and have an existing facility that could be economically utilized. The determination of need for urban/rural at-risk young women and men will be made by analyzing state-level poverty rates for youth, ages 16 through 24, using standardized uniform data available through federal agencies, such as 1990 Census data, and existing Job Corps center slots and locations. With regard to facilities in proposed sites, both the cost and suitability of existing structures as well as need for new construction will be assessed.

In addition to the requirements in the appropriations language, the Department will assess each jurisdiction's plan to use State and local resources, both public and private, through contributions/linkages that will enhance services to youth enrolled in Job Corps and/or reduce the Federal cost of operating a center. Such contributions/linkages may include, but not be limited to, the provision of child care services by local jurisdictions, arrangement of health services, referral of eligible youth to Job Corps, and job placement assistance after leaving Job Corps, as well as arrangements with public school systems, community college networks, social service agencies, business and industry, and other training programs to provide such services as classroom training, vocational training, advanced learning opportunities, and alcohol and drug counseling. Contributions of this nature will make maximum use of available statewide and community resources in meeting the needs of these youth.

Eligible applicants for proposing sites are units of State and/or local governments. Federal agencies may also propose sites to the extent that such sites are located on public land which is under the jurisdiction of the agency. In addition, proposals submitted by Federal agencies must have the support of appropriate State and local governments. Interested eligible applicants which have a military base closure in their locality are encouraged to pursue the use of these bases to the extent they meet the requirements set forth below and may be economically modified to meet Job Corps center requirements. Special consideration will be given to the use of such bases, based on cost and appropriateness. At a minimum, such applicants should ascertain the availability, appropriateness and process for obtaining the property at no cost. This information can be obtained by contacting the community liaison person identified on the attached list of base closures announced by the Department of Defense in 1988 and 1991.

The Job Corps legislation indicates that priority for non-resident enrollees should be given to single parents. Where a proposed site for a Job Corps center includes substantial enrollment of single parents, an important factor considered in the site selection process will be the contribution of the State/local jurisdiction to the operation or provision of a child care center serving infant through pre-school children.

Since Job Corps is primarily a residential program and provides academic education, vocational training, and extensive support services, space and facilities suitable for the following types of utilization are required for a Job Corps center.

- *Residential*—Adequate housing, including bath and lounge facilities, as well as appropriate administrative space.
- *Academic Education*—Space for classrooms, computer labs, and library resources.
- *Vocational Training*—Classroom and shop space to satisfy the needs of specific vocational training areas (*e.g.*, carpentry, clerical, painting, culinary arts, health education). The configuration of the vocational area with regard to classroom and shop areas is determined by the ultimate vocational mix offered at the center. In this regard, heavy trades, such as construction and automotive, require shop areas, while lighter trades, such as clerical and retail sales, require only classroom space.
- *Food Services*—Cafeteria, including food preparation and food storage areas.
- *Medical/Dental*—Medical examining rooms, nurses' station, infirmary space for male and female students, and dental facilities.
- *Recreation*—Gymnasium/multi-purpose recreational facility and large level outdoor area.
- *Administration*—General office and conference space.

• *Storage/Support*—Warehousing and related storage including operations and maintenance support.

• *Parking*—Sufficient for a minimum of 70 vehicles.

Other factors that influence the suitability and cost of facilities necessary to operate a Job Corps center include the following:

Configuration of Facility

The preferred configuration of a facility is a campus-type environment permitting a self-contained center with all space requirements located on-site. Low-rise buildings such as those commonly found in public school and college settings are preferred.

The Office of Job Corps has developed prototype designs for selected facilities where new construction is necessary. Parties interested in obtaining copies of these designs may do so by contacting the Office of Job Corps at the address shown above.

Location of Facilities

Facilities should be located in areas where neighbors are supportive and no major pervasive community opposition exists. Past experience indicates that commercial, light industrial and rural locations are most desirable in this regard, while high-value residential locations are the least conducive to community acceptance. In addition, access to emergency medical services, fire and law enforcement assistance should be within reasonable distances. If non-residential enrollment is planned, direct and easy access to the center by public transportation is an important consideration. Moreover, proposed sites should be within reasonable commuting distance of planned linkages with other programs and services. Locations with major environmental issues, zoning restrictions, flood plain and storm drainage requirements, or uncertainty regarding utility connections that cannot be resolved efficiently and in a timely manner are less than desirable. Likewise, a facility with buildings which are eligible under the National Historical Preservation Act may receive less than favorable consideration, due to restrictions on and costs for renovation.

Own/Lease

Ownership is preferred over leased facilities, since most facilities will require a substantial investment of construction funds to make the site suitable for Job Corps utilization. Exceptions are long-term (e.g., 25 years or longer) leases at a nominal cost (e.g., $1/year).

Size

The size (capacity) of Job Corps centers can vary substantially. However, centers with a capacity of less than approximately 275 students are relatively cost-inefficient in terms of operating cost. Centers above approximately 500 students are less desirable from a programmatic and management standpoint.

The following table shows the approximate gross square feet (GSF) required for the various types of buildings. The examples shown are for centers with 100 percent residential capacity of 275 and 500 students, respectively. The substitution of non-resident for resident students will decrease the dormitory space requirements but will not affect other buildings.

Building type	GSF per student	GSF per 275 students	GSF per 500 students
Housing	175	48,125	87,500
Education/Vocation	85	23,375	42,500
Food Services	44	12,100	22,000
Recreation	82	22,550	41,000
Medical/Dental	12	3,300	6,000
Administration	26	7,150	13,000
Storage/Support	57	15,675	28,500
Sub-Total		132,275	240,500
Child Care Center (40 children)		5,760	5,760
Sub-Total		138,035	246,260
Single Parent Dorm (minimum 28)		9,894	9,894
Total		147,929	256,154

Note: Space requirements for child care and single parent dormitories are included in the event these activities are proposed.

Land Requirements

Listed below is the acreage needed for centers with 275 and 500 students, respectively.

	GSF per 275 students	GSF per 500 students
Acreage ..	15–19 acres	23–27 acres.

Availability of Utilities

Since the majority of students are residential, it is critical that all basic utilities (i.e., sewer, water, electric and gas) are available and in proximity to the site and in accordance with EPA standards.

Safety, Health and Accessibility

Job Corps is required to comply with the requirements of the Occupational Safety and Health Act (OSHA), the Environmental Protection Act (EPA), and the Uniform Federal Accessibility Standards (UFAS). The cost involved in complying with these requirements is an important factor in determining the economic feasibility of utilizing a site. For example, a site which contains an excessive amount of asbestos probably would not be cost-effective due to associated removal costs. Further, sites with any environmental hazard that cannot be corrected economically will be at a disadvantage.

Cost

The availability of low-cost facilities is a major consideration in light of resource limitations. In evaluating facility costs, the major items that must be considered are:

• Site acquisition or lease costs,

• Site/utility work,

• Architectural and engineering services,

• New construction requirements,

• Rehabilitation and modifications of existing buildings, and

• Equipment requirements.

An assessment of these initial capital costs as well as consideration of future repair, maintenance and replacement costs will be used in evaluating the economic feasibility of a particular facility. Consideration will be given to the use of raw land which is suitable for a Job Corps center and on which facilities can be constructed economically.

Proposal Submission

In preparing proposals, eligible applicants should identify sites which meet the evaluation criteria and guidelines specified above. Proposals should address each area with as much detail as practicable to enable the Department to determine the suitability of locating a Job Corps center at the proposed site. In this regard, proposals must contain, at a minimum, the specific information and supporting documentation as described below.

Facilities

Submissions must provide a full description of existing buildings, including a building site layout, square footage, age, and general condition of each structure. Included in the description must be a discussion of its current or previous use, the number of years unoccupied if appropriate, and the condition of sub-systems such as heating, ventilation and air conditioning systems, plumbing, and electrical. Any building documents, such as blueprints, should be available for review should the Department decide to conduct a site inspection. Documentation in the nature of photographs of the property and/or facilities must be submitted as well. In addition, a videotaped presentation of the site may be provided. The proposal must identify the extent to which hazardous materials such as asbestos, PCB, and underground storage tanks are present at the site or, if appropriate, confirm that contaminants do not exist. The results of any environmental assessment for the proposed site, if one has been done, must be provided. The proposal must address the availability and proximity of utilities to the proposed site, including electrical, water, gas, and sanitary sewer and runoff connections. It must also describe whether the water and sewer utilities for existing buildings are connected to the municipal system or operated separately. A statement on current zoning classification and any zoning restrictions for the proposed site must also be included. Use of the site as a Job Corps center should be compatible with surrounding local land use and also with local zoning ordinances. Confirmation must be provided as to whether or not any buildings at the site are on a Federal or State Historical Preservation Register. The proposal must also describe the available acreage at the site, and the nature of the surrounding environment including whether it is commercial, industrial, light industrial, rural, or residential. With regard to military bases, the configuration and size of these installations must be considered in assessing their suitability for establishing a Job Corps center. Most bases are so large that only a portion of the facilities would be appropriate for a center having a capacity of 275 to 500 students. This could result in a joint-use situation, which may or may not be compatible with providing a quality training environment for young women and men. Finally, the proposal must address the cost of acquiring the site, which may involve transferring the site to the government at no cost, entering into a low-cost long-term lease agreement or arranging for a negotiated purchase price based on a fair market appraisal. Estimated acquisition costs along with the basis for the estimate must be included in the proposal.

Contributions/Linkages

An important aspect of any proposal will be its description of how State and local resources will be used to contribute to enhanced services to Job Corps youth and/or to reduce Federal operating costs. In view of this, proposals should provide a comprehensive description of the service to be provided, the specific benefits to Job Corps students and the estimated annual value of the contribution. The description of the proposed contribution(s) should provide a full explanation of what is involved in the linkage, including the long-term prospects for continuation of the commitment. The proposal should identify the name of the agency/organization(s), address, telephone number and contact person. Included in the description should be an indication of how many students will be served, over what period of time, and a projected listing of resources that will be involved such as staff, equipment, and/or materials. Any limitations associated with the linkage should also be described, such as eligibility restrictions or limited hours of service. The level of commitment underlying the proposed contribution should be described and should include appropriate documentation and/or letters of support which provide evidence that the resources will be available to Job Corps. The documentation should address timeframes and steps involved in firming up the linkage, if appropriate, including obtaining State or local legislation, fitting into other planning cycles, or securing other agreements or arrangements which may be necessary to assure provision of the service. The submission should also indicate the accessibility or proximity of the linkage resource to the proposed site. Further, the proposal should identify how Job Corps students will benefit from the proposed contributions both while in Job Corps and after leaving the program. Finally, the estimated annual value of each contribution should be provided, including the basis on which the estimates were determined.

Other Information

Proposals should include any other information the applicant believes pertinent to the proposed site for consideration by the Department. This information may include: letters of community support from elected officials, government agencies, community leaders and neighborhood associations; access to cultural/recreation activities in the community; and unique features in the surrounding area which would enhance the location of a Job Corps center at that site.

The Job Corps legislation provides the Governor with the opportunity to veto the establishment of a center within a State. It is important that, before proposing the use of any particular location, appropriate clearances are obtained from local and State political leadership.

With regard to timeframes for choosing sites for the establishment of Job Corps centers, the site selection process normally takes 9 months to complete. This allows sufficient time for eligible applicants to prepare and submit proposals, the Department to conduct a preliminary site assessment of all proposed facilities as well as a comprehensive site utilization study for those sites having high potential for the establishment of a Job Corps center, based on the preliminary assessment results. Governors of states in which high-potential sites are identified will be provided written notification by the Department, in accordance with section 435(c) of the Job Training Partnership Act, that these sites are in a final phase of consideration. Each Governor will be provided a 30-day time period to approve or reject further consideration of establishment of a Job Corps center at the identified site(s).

The Department hereby requests eligible proposers to submit proposals to be received no later than September 20,

1993 using the guidance provided above.

Signed in Washington, DC the 16th day of June, 1993.

Carolyn M. Golding,

Acting Assistant Secretary of Labor.

MILITARY BASE CLOSURES RESULTING FROM 1988 AND 1991 BASE CLOSURE COMMISSION'S FINAL LISTS

Community	State	Base	Community liaison contact	Close date
AIR FORCE				
Denver	CO	Lowry AFB	Kay Miller, Lowry Economic Recovery Project, (303) 676–5282	Sep. 94.
Peru	IN	Grissom AFB	Richard Blair, Coordinator, Grissom Community Redevelopment Authority, (317) 689–0159.	Sep. 94.
Alexandria	LA	England AFB	James Holderread, England Industrial Airpark and Community, (318) 449–3504.	Dec. 92.
Caribou	ME	Loring AFB	Chuck Connell, Program Dir., Loring Readjustment Committee, Northern Maine Regional Planning Committee, (207) 496–6736.	Sept. 94.
Oscoda	MI	Wurstmith, AFB	Carl Sachs, Director, OEA, Box 69, Oscoda, MI 48750, (517) 739–6999	Jun. 93.
Blytheville	AR	Eaker AFB	Lynn Kusy, Blytheville Goenell Development Authority, (301) 532–2100	Dec. 92.
Mesa	AZ	Williams, AFB	Richard Andrews, (602) 998–1301	Sep. 93.
Merced	CA	Castle AFB	Dick Martin, Exec. Dir., Castle Joint Powers Auth., (209) 357–3370	Sep. 95.
Victor Valley	CA	George AFB	Peter D'Errico, Dir., Victor Valley Econ. Dev. Auth., (619) 246–5892	Dec. 92.
Sacramento	CA	Mather AFB	R. Dee Reynolds, SADOM–C, (916) 440–5892	Dec. 93.
San Bernardino	CA	Norton AFB	William Bopf, Dir., Island Valley Dev. Agency, (714) 885–4832	Apr. 94.
Rantoul	IL	Chanute AFB	Ray M. Roudreaux, Reuse Coord., Chanute Redevelopment Committee, (217) 893–1661.	Dec. 93.
Kansas City/Belton	MO	Richards-Gebaur Air Reserve Sta.	John D. Solomon, Dir. of Aviation at Richards-Gebaur, (816) 243–5207	Sep. 94.
Franklin County	OH	Richenbacker Air Nat'l. Guard Base.	Lawrence D. Garrison, Exec. Dir., Rickenbacker Port Authority, (614) 492–2423.	Sep. 94.
Myrtle Beach	SC	Myrtle Beach AFB	Cliff Rudd, Coordinator, Myrtle Beach Air Base Redevelopment Commission, (803) 238–0385.	Mar. 93.
Austin	TX	Bergstrom AFB	Peter Rieck, Mgr., Bergstrom Task Force, (512) 455–7541	Sep. 93.
Forth Worth	TX	Carswell AFB	Ann Diveley, Asst. Dir. of Economic Development, (817) 871–6130	Sep. 93.
Portsmouth & Newington.	NH	Pease AFB	George "Skip" Jones, Exec. Dir. Pease Development Authority (603) 433–6250.	Mar. 91.
ARMY				
Indianapolis	IN	Ft. Benjamin Harrison.	Mayor Tom Schneider, Chairman, Ft. Benjamin Harrison Reuse Comm., (317) 545–6191.	Jul. 97.
Ayer, Harvard, Shirley, Lancaster.	MA	Ft. Devens	Jeffrey Simon, Ft. Devens Project Officer, Massachusetts Gov't. Land Bank, (508) 356–4669.	Jun. 96.
Ft. Chaffee	AR	Ft. Chaffee	Strih Boynton, (501) 996–2201	Sep. 94.
Seaside, Marina, Monterey Co.	CA	Ft. Ord	Joe Cavanaugh, Staff Coord., Ft. Ord Task Force, (408) 384–0605	Sep. 96.
Sacramento	CA	Sacramento Army Depot.	Tim Johnson (City Dept. of Dev. and Planning) Sacramento, (916) 449–1223.	Sep. 97.
Highland Park, Lake County.	IL	Ft. Sheridan	William Barron, Lake County, Administration, (708) 360–6475	Dec. 93.
Madison	IN	Jefferson PG	Bob Grewe, JPG Regional Dev. Board, (812) 689–5505	Dec. 95.
Lexington	KY	Lexington Depot	Theodore R. Broida, Lexington Depot Redevelopment Comm., (506) 266–1751.	Dec. 95.
Watertown	MA	Army Mat'l. Lab	Mark Boyle, Dir., Community Development & Planning, (517) 972–6417	Dec. 95.
Burlington Co	NJ	Ft. Dix	Lewis Negy, Exec. Dir., Burlington Co. Econ. Dev. Depot, (609) 265–5055.	Dec. 93.
Gallup	NY	Ft. Wingate	George Galanis, Mayor, Ft. Wingate Redev. Commission, (505) 863–1223.	May 93.
Alexandria	VA	Cameron Sta.	Sheldon Lynn, Dir. of Planning, (703) 838–4666	Sep. 95.
NAVY				
Tustin	CA	MCAS Tustin	Christine Shingleton, Asst. City Manager, (714) 544–8890	Sep. 91.
Long Beach	CA	NS/NH Long Beach.	Gerald R. Miller, Manager, Economic Development Bureau, (310) 590–6097.	Oct. 96.
Philadelphia	PA	NH/NSY Philadelphia.	Gerrie Greene, Proj. Mgr., City of Philadelphia (Commerce Dept.), (215) 686–7504.	Sep. 96.
N. Kingstown	RI	Naval CBC Davisville.	Marilyn Cohen, Dir./Planning, N. Kingstown	Sep. 94.

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Community	State	Base	Community liaison contact	Close date
Beeville	TX	NAS Chase Field	Brad Arvin, Exec. Dir., Beeville/Bee County Redev. Council, (512) 358–4541.	Sep. 93.
Seattle	WA	NAVSTA Puget Sound (Sand Point).	Elsie Crossman, City of Seattle Planning Dept.	Oct. 95.
Bucks County	PA	NAWC Warminster.	Georgia Masters, (215) 346–6430	Dec. 96.
Brooklyn	NY	NS New York (Brooklyn).	Marian Di Giamarino, (215) 595–0762	Dec. 96.
	CA	Moffett Field		Jul. 94.
	CA	NAVSTA Treasure Island Hunter Point Annex.		Closed.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AE55

Monitoring the Effectiveness of Maintenance at Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations for monitoring the effectiveness of maintenance programs at commercial nuclear power plants. The current regulations require that nuclear power plant licensees evaluate performance and condition monitoring activities and associated goals and preventive maintenance activities at least annually. This amendment changes the time interval for conducting evaluations from a mandatory once every year to at least once every refueling cycle, but not to exceed 24 months.

EFFECTIVE DATE: July 10, 1996.

ADDRESSES: Copies of comments received on the proposed rule may be inspected and copied for a fee at the Public Document Room located at 2120 L Street, NW. (Lower Level), Washington, DC.

Single copies of the environmental assessment are available from Joseph J. Mate, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 292–3795.

FOR FURTHER INFORMATION CONTACT: Joseph J. Mate, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3795.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1991 (56 FR 31324) the NRC published the final rule "Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants" (§ 50.65). The final rule, which will become effective July 10, 1996, requires commercial nuclear power plant licensees to monitor the effectiveness of maintenance activities for safety-significant plant equipment in order to minimize the likelihood of failures and events caused by the lack of effective maintenance. Section 50.65 (a)(3) requires nuclear power plant licensees to evaluate the overall effectiveness of their maintenance activities on an annual basis. An industry consensus guidance document and a regulatory guide to provide an acceptable methodology for implementing the final rule are expected to be published by June 30, 1993.

Discussion

Since the Maintenance Rule was published in July 1991, two events have occurred that led the Commission to reconsider the annual evaluation requirements in § 50.65(a)(3).

First, in the Summer of 1991, the Nuclear Management Resources Council (NUMARC) Steering Group was formed to develop an industry guide for implementing the Maintenance Rule. While developing the guide, the Steering Group suggested to the NRC in a public meeting held on February 26, 1992, that instead of annual assessment requirements, the NRC should consider assessments based on a refueling cycle interval. The NUMARC Steering Group stated that:

(1) Significantly more data would be available during refueling cycles than is available on an annual basis;

(2) Key data from some surveillance tests can only be obtained during refueling outages and is not available on an annual basis; and

(3) Adjustments to maintenance activities that may be made after such an evaluation would be typically performed after a refueling outage.

The NUMARC Steering Group further added that the evaluation process is a time consuming activity and that with limited data available, the annual evaluation would not provide for meaningful results. With only limited data, changes to maintenance programs will likely not be made because there would not be sufficient information available for spotting trends or doing trend analysis.

Second, the NRC conducted a regulatory review to eliminate or revise unnecessarily burdensome regulations and published a final rule on August 31, 1992 (57 FR 39353) that amended several regulations identified by its Committee to Review Generic Requirements (CRGR). One of those amended regulations was 10 CFR 50.71 (e) (Final Safety Analysis Report Updates) where the frequency of licensee reporting to the NRC was changed from annually to once per refueling cycle. The change was made because the use of a refueling cycle interval provided a more coordinated and cohesive update since a majority of design changes and major modifications were performed during refueling outages. In addition, it had no adverse impact on the public health and safety and reduced the regulatory burden on the licensees.

The Commission is now changing the required frequency of maintenance activity evaluations from annually to once per refueling outage. Evaluation of data collected over the period of a refueling cycle will provide a substantially better basis for detecting problems in degraded performance of structures, systems, and components (SSC's) and weakness in maintenance practices. Evaluations conducted on a refueling cycle basis would also consider and integrate data available only during refueling outages with the data available during operations; under the existing requirements this may not occur depending on whether the annual assessment coincides with the refueling outage. Furthermore, evaluations of data accumulated over the period of a refueling cycle, as opposed to the shorter annual period required by the rule, will provide a more meaningful basis for the recognition and interpretation of trends. The Commission understands that a normal frequency of refueling outage ranges from 15 to 18 months; however, the conditions may vary from plant to plant. In order to ensure that an indefinite period of time does not occur between maintenance evaluations, the Commission is establishing an upper limit of 24 months between the

maintenance evaluations. This would address those licensees that have extended their refueling cycle beyond 24 months for any reason including numerous short outages or extended shutdown periods. Although the Commission believes that it is generally the case that maintenance evaluations will be more effective if conducted in conjunction with refueling outages, licensees would still have the option of conducting them more frequently.

In light of the above discussion, the NRC is changing the requirement for evaluation of the overall effectiveness of maintenance activities to be performed once per refueling cycle provided the interval between evaluations does not exceed 24 months.

Summary and Analysis of Public Comments

On March 22, 1993 (58 FR 15303), the NRC published a notice of the proposed rulemaking for public comment. The comment period expired on May 6, 1993. The NRC received 17 comments on the proposed rule. All of the comments except for one favored the change identified in the proposed rule. The comments on the proposed rule came primarily from public utilities with comments also received from a public utilities representative and a private citizen. The NRC has identified and grouped all comments into six broad issues. For each broad issue, the NRC has included a summary of the comments received and their resolution as follows:

1. *Comment.* One commenter stated that the proposed change in the rule would unfairly require nuclear plants on an annual refueling cycle to perform twice as many evaluations as plants on a 24-month cycle. The commenter believes that the NRC should consider a fixed maximum period of 2 years and give the utilities the latitude to manage the timing of the evaluation within that framework.

Response. The intent of the proposed modification of the maintenance rule is to allow sufficient flexibility in the scheduling of Maintenance Programs evaluations so that the additional information available from the refueling activities could be factored into the evaluation. The refueling cycle has also been adopted as the basis for FSAR updates. It is recognized that those licensees who refuel more frequently will have to conduct these activities more frequently than others. The Commission believes that this is neither an undue burden nor one that is outside the control of the licensee to impact by reducing the frequency of refueling.

2. *Comment.* Some commenters stated that, as a result of the verification and validation program to test the proposed industry guidelines, it was determined that several systems are neither risk-significant nor able to be monitored for performance by currently known plant level performance criteria. Some commenters believe that these systems have no public health or safety significance and that they should be excluded from the scope of the rule and the rule modified accordingly.

Response. The suggestion to change the scope of the rule to exclude those systems that have no public health or safety significance or that have no current plant level performance criteria is clearly beyond the scope of the rule, and cannot be considered at this time. However, if, as a result of any further verification and validation programs, changes to the rule or regulatory guidance are warranted, the NRC will consider such changes at that time.

3. *Comment.* One commenter stated, "one of the clear lessons learned from the recently completed verification and validation program is that the major expense of the rule's implementation will be the detailed documentation (for NRC audit purposes) of performance monitoring * * *".

Response. The documentation developed by a licensee in response to 10 CFR 50.65 is that level which the licensee determines necessary to support the program developed by the licensee to monitor performance of a structure, system or component. The purpose of this rule modification is not to address the level of documentation required for NRC audit purposes. It is merely to provide more flexibility in the timing of Maintenance Program evaluations.

4. *Comment.* One commenter stated that "The NRC is mesmerized by a suggestion by NUMARC (Nuclear Management and Resources Council), to extend the annual assessment of plant maintenance from an annual schedule to a refueling outage schedule." The commenter further stated that the extension does not provide an improvement in safety and may help hide maintenance that was improperly deferred.

Response. As stated earlier, the NRC decided to make the proposed change in the assessment requirement for the following reasons: (1) Evaluation of data collected over the period of a refueling cycle will provide a substantially better basis for detecting problems in degraded performance of SSC's and weakness in maintenance practices; (2) Evaluations conducted on a refueling cycle basis would also consider and integrate data available only during refueling outages with the data available during operations; under the existing requirements this may not occur depending on whether the annual assessment coincides with the refueling outage; and (3) Evaluation of data accumulated over the period of a refueling cycle, as opposed to the shorter annual period required by the rule, will provide a more meaningful basis for the recognition and interpretation of trends. In addition, adjustments to maintenance activities that may be made after such a review and evaluation would be typically performed after a refueling outage. Periodic evaluation of maintenance activities is a time consuming process and with limited data available, the annual evaluations not conducted in conjunction with a refueling would not provide for as meaningful a result. These conclusions have been reached based on the NRC's independent assessment. Therefore, the commenter incorrectly implies that the NRC simply accepts NUMARC's suggestions without independent review and consideration.

Another reason for changing the annual assessment of plant maintenance concerned a change made by the NRC in August of 1992. As part of the regulatory review to eliminate or revise unnecessary burdensome regulations, the NRC revised the frequency of licensee reporting of the Final Safety Analysis Reports from annually to once per refueling cycle. This change was made because the NRC believes that the use of a refueling cycle interval provided a more coordinated and cohesive update since the majority of the design changes and modifications were made during refueling outages. This was not a rationale relied upon by NUMARC and further contradicts the commenter's view that the NRC accepts the suggestions of NUMARC without independent consideration.

In summary the Commission disagrees with the commenter's view that the extension does not improve safety. The change in requirements will improve the quality of assessments by ensuring that each assessment will include a review of all maintenance activities conducted during the refueling cycle including the refueling outage.

5. *Comment.* One commenter stated that effective maintenance is an ongoing duty and need and that allowing licensees to put off monitoring the effectiveness of maintenance from annually to 18 to 24 months sends the wrong message that the NRC does not care about safety.

Response. The NRC agrees that effective maintenance is an ongoing duty and need. The NRC does not agree, however, that the rule change allows licensees to put off monitoring the effectiveness of maintenance. Section 50.65 (a)(1) which is not being changed, requires licensees to monitor the performance or conditions of SSC's against licensee-established goals, in a manner sufficient to provide reasonable assurance that these SSC's are capable of fulfilling their intended functions. It also requires appropriate corrective action to be taken when the performance of the SSC does not meet established goals. The only thing that is being changed is the frequency of the periodic evaluation of the maintenance program. The NRC does care about safety and it does not agree with the commenter that changing the evaluation cycle sends the wrong message to the industry. The NRC believes that this additional flexibility will not result in any increase in risk to public health and safety, and in fact, should result in a more effective maintenance and improved plant safety.

6. *Comment.* One of the commenters stated that the amendments' maximum time period of 24 months would be restrictive for those plants planning to increase their refueling cycle to 24 months. The commenter explained that the Standard Technical Specification, Revision 0, retains the option for performance of surveillance requirements within 1.25 times the interval specified and thus, could extend the refueling outage interval of plants with a 24-month refueling cycle by upwards of 6 months. Accordingly, the refueling cycle for these plants would not meet the maximum time period of 24 months allowed by the amendment. Another commenter stated that this rule could be further improved by the elimination of the requirement for a specific time interval.

Response. The NRC believes that it is necessary to assure that maintenance effectiveness is periodically assessed and that this period is not unacceptably long nor indefinite. Thus, a balance was necessary between obtaining the improved reviews associated with assessments conducted during refueling outages and the extended or indefinite periods associated with plants with extended plant cycles or experiencing extended plant shutdown or outages. In weighing this balance, the Commission established an upper limit of 24 months between maintenance evaluations in order to obtain improved evaluations for the majority of the plants having a frequency of refueling cycle from 15 to 18 months, and yet not allow maintenance effectiveness to continue without being assessed for periods in excess of 2 years. The NRC does not agree that the rule could be improved further by elimination of the requirement of a specific time interval.

Finding of No Significant Environmental Impact: Availability

The Commission has determined that, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, is not a major Federal action that significantly affects the quality of the human environment and therefore an environmental impact statement is not required.

The final amendment does not require any change to nuclear power plant design or require any modifications to a plant. Nor does the rule change the scope of the maintenance rule or affect the nature of the activities to be performed, e.g., monitoring, corrective action, and assessments of compliance. The final rule change only extends the time period for performing evaluations of the effectiveness of licensees' maintenance program from at least once a year to at least once every refueling cycle, not to exceed 24 months. The extension should not result in any significant or discernible reduction in the effectiveness of a licensee's maintenance program; rather the change will increase the meaningfulness and quality of the maintenance evaluations. For these reasons, the Commission finds that the final amendment will not result in any significant increase in either the probability of occurrence of an accident or the consequences of an accident and therefore concludes that there will be no significant effect on the environment as a result of the amendment.

The environmental assessment is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Single copies of the environmental assessment are available from Joseph J. Mate, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–3795.

Paperwork Reduction Act Statement

This final rule amends the information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Because the rule relaxes existing requirements related to the assessment of maintenance activities, the public burden for this collection of information is expected to be reduced by 150 hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the estimated burden reduction or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Nuclear Regulatory Commission has considered the costs and benefits of the final rule. With respect to benefits, the amendment will allow those licensees who choose to exercise the option to perform evaluations of their maintenance program in conjunction with refueling outages but no less frequently than every 24 months. The Commission believes that this additional flexibility will not result in any increase in risk to the public health and safety, and may result in a more effective maintenance and improved plant safety.

Under the rule, the frequency of periodic assessments would change from annually to at least once per refueling cycle but not to exceed 24 months. Because most refueling outages normally occur in the 15- to 18-month range, the time between periodic assessments assuming a 16-month average would be increased by about 33 percent. Therefore, the licensee staff hours to accomplish a periodic assessment under the proposed rule would be reduced from approximately 460 steff hours to about 310 staff hours per plant. This would save the licensee approximately 150 staff hours per plant. There are no additional changes in costs to be incurred by the NRC. The foregoing constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Nuclear Regulatory Commission certifies that, this rule will not have a significant economic impact on a substantial number of small entities. This rule affects only the operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of

"small entities" as set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in the regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule and, therefore, that a backfit analysis is not required for this final rule because this amendment does involve any provisions which would impose backfits as determined in 10 CFR 50.109.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552, 553, the NRC is adopting the following amendment to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.65, paragraph (a)(3) is revised to read as follows:

§ 50.65 Requirements for monitoring the effectiveness of maintenance at nuclear power plants.

(a) * * *

(3) Performance and condition monitoring activities and associated goals and preventive maintenance activities shall be evaluated at least every refueling cycle provided the interval between evaluations does not exceed 24 months. The evaluations shall be conducted taking into account, where practical, industry-wide operating experience. Adjustments shall be made where necessary to ensure that the objective of preventative failures of structures, systems, and components through maintenance is appropriately balanced against the objective of minimizing unavailability of structures, systems, and components due to monitoring or preventative maintenance. In performing monitoring and preventative maintenance activities, an assessment of the total plant equipment that is out of service should be taken into account to determine the overall effect on performance of safety functions.

* * * * *

Dated at Rockville, Maryland, this 9th day of June 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 93–14759 Filed 6–22–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA11

Safety Standards for Underground Coal Mine Ventilation; Extension of Effectiveness

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Extension of effectiveness.

SUMMARY: This notice postpones the expiration date of three ventilation standards for underground coal mines to allow the completion of any necessary rulemaking action concerning the provisions in them.

EFFECTIVE DATE: Effective June 23, 1993, the effectiveness of 30 CFR 75.314, 75.315, and 75.345 is extended until July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: On May 15, 1992, MSHA published a final rule revising its safety standards for ventilation of underground coal mines (57 FR 20868). These standards were to take effect on August 16, 1992. To allow mine operators sufficient time to effectively plan and implement necessary changes, the effective date of the rule was delayed until November 16, 1992 (57 FR 34683).

On November 13, 1992, as a result of discussions with the mining community, MSHA delayed the effective date of §§ 75.313 and 75.344(a)(1) until July 1, 1993 (57 FR 53856). This notice also provided that §§ 75.314, 75.315, and 75.345 were to continue in effect until July 1, 1993. On June 7, 1993 (58 FR 31908), MSHA extended the stay of §§ 75.313 and 75.344(a)(1) until July 1, 1994. The June 7, 1993, extension of stay, however, did not specifically provide that §§ 75.314, 75.315, and 75.345 would remain in effect during the stay.

By this notice, MSHA is clarifying that §§ 75.314, 75.315, and 75.345 will remain in effect until July 1, 1994.

This document is issued under 30 U.S.C. 811.

Dated: June 17, 1993.

Edward C. Hugler,

Acting Assistant Secretary for Mine Safety and Health.

[FR Doc. 93–14773 Filed 6–22–93; 8:45 am]

BILLING CODE 4510–43–P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket Nos. RM93–2 and MC91–1; Order No. 979]

Amendments to Domestic Mail Classification Schedule: Pre-barcoded Flats Discounts, 1991

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: In accordance with the May 5, 1992, decision by the Governors of the Postal Service approving the Commission's Docket No. MC91–1 recommended decision, the Commission is publishing the changes made in the Domestic Mail Classification Schedule (DMCS). As a result of the Docket No. MC91–1 proceeding, a number of changes were made in the classification provisions for postal services. The Commission is also taking this opportunity to correct a number of typographic errors in the

Domestic Mail Classification Schedule as it appears in the Code of Federal Regulations.

EFFECTIVE DATE: September 20, 1992.

ADDRESSES: Correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street, NW., suite 300, Washington, DC 20268–0001 (telephone: 202/789–6840).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Acting Legal Advisor, 1333 H Street, NW., suite 300, Washington, DC 20268–0001 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION: On June 21, 1991, the Postal Service initiated a proceeding, pursuant to 39 U.S.C. 3622–23, requesting classification and rate changes for certain categories of pre-barcoded flat-shaped mail. The Commission invited interested parties to comment and participate in the proceeding. 56 FR 29983 (July 1, 1992). Twenty-eight intervenors and the Commission's Office of the Consumer Advocate participated. The Commission held three sets of formal, on-the-record hearings, receiving testimony from twelve witnesses. In addition to oral argument, interested parties submitted briefs and reply briefs.

The rate and classification changes provide discounts for mailers of First-, second- and third-class mailers who put a barcode on their flat-size pieces before presenting them for entry into the mailstream. Flats have larger dimensions than letters, but are small enough to be processed through the Postal Service's flat sorting machines. The presence of the barcode assists the Postal Service in its plans to increase efficiency through the use of automation.

The amendments to the DMCS which are published in this order reflect the Governors' decision of May 5, 1992. The Commission is also taking this opportunity to correct a number of typographic errors in the Domestic Mail Classification Schedule as it appears in the Code of Federal Regulations. Consistent with the Commission's explanation in the rulemaking (Docket No. RM85–1) which led to the publication of the DMCS in the **Federal Register**, this addition is published as a final rule, since procedural safeguards and ample opportunities to have different viewpoints considered have already been afforded to all interested persons.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

PART 3001—RULES OF PRACTICE AND PROCEDURES

1. The authority citation for 39 CFR part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662, 84 Stat. 759–762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

Appendix A to Subpart C—[Amended]

The following changes in the Domestic Mail Classification Schedule published as appendix A to subpart C (39 CFR 3001.61 through 3001.68) of the Commission's rules of practice and procedure are adopted:

2. In the table of contents for appendix A, revise the first line to read as follows: General Definitions—Sections .01 through .11.

3. Revise the entry for 500.02 in the table of contents for appendix A to read as follows: 500.02 Description of Services.

4. Under the heading "GENERAL DEFINITIONS," delete the semicolon following "b. The preferred rates" under ".08 Phased Rates."

5. Revise 100.020 to read as follows:

100.020 Regular Mail

Regular First-Class Mail consists of mailable matter posted at First-Class Mail regular rates, weighing 11 ounces or less, and not mailed or eligible for mailing under sections 100.0201, 100.0203, 100.0204, 100.0205, 100.0206, 100.021, 100.0211, or 100.023.

6. Add new 100.0205 and 100.0206 to read as follows:

100.0205 Nonpresorted Pre-barcoded Flats

Nonpresorted pre-barcoded First-Class Mail flats consist of properly prepared First-Class Mail flat size pieces which are presented in mailings of 250 or more pieces, bear a barcode as prescribed by the Postal Service, and meet the flats machinability and address readability specifications of the Postal Service. Such flats must be presented for mailing in a manner which does not require cancellation.

100.0206 Presorted Pre-barcoded Flats

Presorted pre-barcoded First-Class Mail flats consist of properly prepared First-Class Mail flat size pieces which are presented in mailings of 500 or more pieces, bear a barcode as prescribed by the Postal Service, are presorted to the 5-digit ZIP Code level in a manner prescribed by the Postal Service, and meet the flats machinability and address readability specifications of the Postal Service. Such flats must be presented for mailing in a manner which does not require cancellation.

7. In 100.021ciii, delete all the material following "and uniform."

8. Revise 100.041 to read as follows:

100.041 First-Class Mail mailed under sections 100.0203, 100.0204, 100.0206, 100.0214 and 100.0232 must be presorted in accordance with regulations prescribed by the Postal Service.

9. Revise 100.042 to read as follows:

100.042 First-Class Mail mailed under sections 100.0203, 100.0204, 100.0206, 100.0214 and 100.0232 must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service that preserves the presort and uniform orientation of the pieces.

b. All pieces in a mailing must bear markings identifying them as presorted First-Class Mail, as required by the Postal Service.

10. Revise 100.047 to read as follows:

100.047 Pieces mailed under sections 100.0201, 100.0202, 100.0203, 100.0204, 100.0205, 100.0206, 100.0211, and 100.023 must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service.

b. All pieces in a mailing must bear markings as required by the Postal Service.

c. Pieces not within the same postage increment may be mailed at ZIP + 4 rate category or pre-barcoded ZIP + 4 presorted mail rates or presorted pre-barcoded flat rates only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

d. Pieces mailed at presorted ZIP + 4 rate category or pre-barcoded ZIP + 4 presorted mail rates or presorted pre-barcoded flat rates must be properly prepared and presorted as prescribed by the Postal Service.

11. Revise 100.100 to read as follows:

100.100 A presorted mailing fee as set forth in Rate Schedule 1000 must be paid once each year at each office of mailing by any person who mails presorted mail, including presorted ZIP + 4 rate category mail and pre-barcoded ZIP + 4 presorted mail.

12. Delete the footnote reference "1" in section 200.0201b.

13. Revise the first two sentences of section 200.042 to read as follows:

200.042 First- or third-class mail may be attached to or enclosed with second-class mail if additional postage is paid for the attachment or enclosure as if it had been mailed separately. If postage is not paid at the appropriate First- or third-class rate, the combined piece is subject to the next higher rate which can be applied to the attachment or enclosure. * * *

14. Revise 200.043 to read as follows:

200.043 Second-class mail must be identified as required by the Postal Service.

15. Add a new 200.098 to read as follows:

200.098 Pre-barcoded Flats

Pre-barcoded second-class mail flats which are properly prepared and presorted, which bear a barcode as prescribed by the Postal Service, and which meet the flats

machinability and address readability specifications of the Postal Service, are eligible for the applicable discounts for pre-barcoded second-class flats set forth in Rate Schedules 200, 201, 202, and 203.

16. Revise the second full sentence of 300.02121e to read as follows: "The organization may further and advance agricultural interests through educational activities; the holding of agricultural fairs; the collection and dissemination of information concerning cultivation of the soil and its fruits or the harvesting of marine resources; the rearing, feeding, and management of livestock, poultry, and bees, or other activities relating to agricultural interests."

17. Revise the first sentence of 300.02122 to read as follows:

300.02122 An organization authorized to mail at the special bulk third-class rates for qualified nonprofit organizations may mail only its own matter at these rates. * * *

18. Revise 300.023 to read as follows:

300.023 Bulk Rate Presort Categories

Bulk rate mail sent under section 300.021 must meet the conditions of sections 300.0231, 300.0232, 300.0233, 300.0234, 300.0235, 300.0236, 300.0237, 300.0238, 300.0239, 300.02310, or 300.02311 to be eligible for the applicable presort level rate.

19. Add a new 300.0238 to read as follows:

300.0238 Pre-barcoded Flats

Pre-barcoded third-class mail flats consist of bulk rate third-class mail flat size pieces which are properly prepared and presorted, bear a barcode as prescribed by the Postal Service, and meet the flats machinability and address readability specifications of the Postal Service. Such flats must be presented for mailing in a manner which does not require cancellation.

20. Revise 400.021i to read as follows:

"Looseleaf pages and binders therefor, consisting of medical information for distribution to doctors, hospitals, medical schools, and medical students."

21. Revise the second paragraph of 400.0221 to read as follows:

"The following are the types of organizations or associations which may qualify as authorized nonprofit organizations or associations:".

22. Revise 400.080c to read as follows:

c. COD.....SS–6

23. Revise the word "through" in 6.0201c to read "though."

24. Revise 14.020 to read as follows:

14.020 Registered mail service is available to mailers of prepaid mail sent under Classification Schedule 100 except that registered mail must meet the minimum requirements for length and width regardless of thickness.

25. Revise 14.023a to read as follows:

"All delivery points because of the high security required for registered mail; in addition, not all delivery points will be available for registry and liability is limited in some geographic areas."

26. Revise the "Letters" section of Rate Schedule 100 to read as follows:

Letters
Nonpresort
  First ounce
  Basic
  ZIP + 4 Letters [2,3]
  Nonstandard surcharge
  Additional ounce [4]
  Pre-barcoded Flats [9]
Presort [5]
  First ounce
  3 and 5 Digit [6]
  Basic
  ZIP + 4 Letters [3]
  Pre-barcoded Letters—3 Digit
  Pre-barcoded Letters—5 Digit
  Pre-barcoded Flats—⅗ Digit
  Carrier Route
Nonstandard Surcharge
Additional ounces [4]

* * * * *

[1] * * *

[2] Nonpresorted ZIP + 4 mail must be properly prepared and submitted in mailings of at least 250 pieces.

[3] ZIP + 4 mail must be properly prepared and submitted in a single mailing of at least 250 pieces, except where the presort minimum of 500 applies. ZIP + 4 rates are not available for carrier route presort mail.

[4] Rate applies through 11 ounces. Heavier pieces are subject to Priority Mail rates.

[5] For presorted mailings weighing more than 2 ounces, subtract 4.2 cents per piece.

[6] Mail presorted to ZIP code and prepared in mailings of 500 pieces or more as prescribed by the Postal Service.

* * * * *

[9] Nonpresorted pre-barcoded flat mail must be properly prepared and submitted in mailings of at least 250 pieces.

27. Revise the word "Country" in the title of Rate Schedule 200 to read "County".

28. Revise the Automation Discounts section of Rate Schedule 200 to read as follows:

Rate Schedule 200—Second-Class Mail: * * *

* * * * *

Automation Discounts for Automation Compatible Mail [10]
From Required:
  ZIP + 4 Letter Size; Piece
  Pre-barcoded Letter Size; Piece
  Pre-barcoded Flats; Piece
From 3/5 Digit:
  ZIP + 4 Letter Size; Piece
  3-Digit Pre-barcoded Letter Size; Piece
  5-Digit Pre-barcoded Letter Size; Piece
  Pre-barcoded Flats; Piece

* * * * *

[10] For automation compatible mail meeting applicable Postal Service regulations.

29. Revise the Automation Discounts section of Rate Schedule 201 to read as follows:

Rate Schedule 201—Full Rates—* * *

* * * * *

Automation Discounts for Automation Compatible Mail [4]
From Required:
  ZIP + 4 Letter Size
  5-Digit Pre-barcoded Letter Size
  3/5 Digit Pre-barcoded Flats

* * * * *

[4] For automation compatible pieces meeting applicable Postal Service regulations.

30. Revise the Automation Discounts section of Rate Schedule 202 to read as follows:

Schedule 202—Full Rates— * * *

* * * * *

Automation Discounts for Automation Compatible Mail [8]
From Required:
  ZIP + 4 Letter Size; Piece
  Pre-barcoded Letter Size; Piece
  Pre-barcoded Flats; Piece
From 3/5 Digit:
  ZIP + 4 Letter Size; Piece
  3-Digit Pre-barcoded Letter Size; Piece
  5-Digit Pre-barcoded Letter Size; Piece
  Pre-barcoded Flats; Piece

* * * * *

[8] For automation compatible mail meeting applicable Postal Service regulations.

31. Revise the Automation Discounts section of Rate Schedule 203 to read as follows:

Rate Schedule 203—Full Rates—* * *

Automation Discounts for Automation Compatible Mail [8]
From Required:
  ZIP + 4 Letter Size; Piece
  Pre-barcoded Letter Size; Piece
  Pre-barcoded Flats; Piece
From 3/5 Digit:
  ZIP + 4 Letter Size; Piece
  3-Digit Pre-barcoded Letter Size; Piece
  5-Digit Pre-barcoded Letter Size; Piece
  Pre-barcoded Flats; Piece

* * * * *

[8] For automation compatible mail meeting applicable Postal Service regulations.

32. Revise the Non-Letter Size section of Rate Schedule 301 to read as follows:

Rate Schedule 301—Third-Class Mail: * * *

* * * * * [1]

Non-Letter Size:
  Piece Rate [6]
Discounts (per piece)
Destination Entry
  BMC
  SCF
  Delivery Office [2]
Presort Level
  3/5 Digit
  Carrier Route

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125-Piece Walk Sequence
Saturation
Automation[7]
Barcode[4]
Basic
3/5 Digit

[1] All footnotes to appear at end of table.

	Piece rates (cents)	Pound rates (cents)
Pound Rate[6]		
Pound Rate plus per Piece Rate		
Discounts		
Destination Entry (per pound)		
BMC		
SCF		
Delivery Office[2]		
Presort Level (per piece)		
3/5 Digit		
Carrier Route		
125-Piece Walk Sequence		
Saturation		

[1] * * *

[2] Applies only to carrier route presort, 125-piece walk sequence and saturation mail.

* * * * *

[4] Among ZIP + 4 and barcode discounts, only one discount may be applied.

* * * * *

[6] Mailer pays either the piece or the pound rate, whichever is higher.

[7] For flat-size pieces meeting applicable Postal Service regulations.

33. Revise the Non-Letter Size section of Rate Schedule 302 to read as follows:

Rate Schedule 302—Full Rates—[1] * * *

* * * * * [1]

Non-Letter Size
Piece Rate[6]
Discounts (per piece)
Destination Entry:
BMC
SCF
Delivery Office[2]
Presort Level
3/5 Digit
Carrier Route
125-Piece Walk Sequence
Saturation
Automation[7]
Barcode
3/5 Digit

[1] Footnotes to appear at end of table.

	Piece rate (cents)	Pound rate (cents)
Pound Rate[6]		
Pound Rate plus Per-Piece Rate		
Discounts		
Destination Entry (per pound):		
BMC		
SCF		
Delivery Office[2]		
Presort Level (per piece)		
3/5 Digit		
Carrier Route		
125-Piece Walk Sequence		
Saturation		
Automation (per piece)[7]		
Barcode[4]		
Basic.		
3/5 Digit.		

[1] * * *

[2] Applies only to carrier route presort and saturation mail.

* * * * *

[4] Among ZIP + 4 and barcode discounts, only one discount may be applied.

* * * * *

[6] Mailer pays either the piece or the pound rate, whichever is higher.

[7] For flat-size pieces meeting applicable Postal Service regulations.

Issued by the Commission on June 9, 1993.

Cyril J. Pittack,
Acting Secretary.

[FR Doc. 93-14730 Filed 6-22-93; 8:45 am]

BILLING CODE 7715-FE-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-930-4210-06; COC-28584]

43 CFR Public Land Order 6987

Opening of Lands, Under Section 24 of the Federal Power Act, in the Executive Order Dated July 2, 1910, Which Established Powersite Reserve No. 92; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order opens, subject to the provisions of Section 24 of the Federal Power Act, 0.96 acre withdrawn by an Executive Order which established Power Site Reserve No. 92. This action will permit disposal of two parcels of land by sale and retain the power rights to the United States. The lands have been and continue to be open to mineral leasing and, under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining.

EFFECTIVE DATE: July 23, 1993.

FOR FURTHER INFORMATION CONTACT: Bob Barbour, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, 303-239-3708.

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818 (1988), and pursuant to the determinations by the Federal Energy Regulatory Commission in DVCO-537 and DVCO-538, it is ordered as follows:

1. At 9 a.m. on July 23, 1993, the following described parcels of land withdrawn by Executive Order dated July 2, 1910, which established Powersite Reserve No. 92, will be opened to disposal subject to the provisions of section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission in determinations DVCO-537 and DVCO-538, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law:

Sixth Principal Meridian

T. 11 S., R. 79 W.,
Sec. 31, lot 79.
T. 13 S., R. 79 W.,
Sec. 24, lot 1 (formerly a part of W½SE¼).

The areas described aggregate approximately 0.96 acre in Lake and Chaffee Counties.

2. The State of Colorado has waived its 90-day preference right to file, under any statute or regulation applicable thereto, an application for a public highway right-of-way or material site for the lands described in this order.

Dated: June 14, 1993.

Bob Armstrong,
Assistant Secretary of the Interior.

[FR Doc. 93-14720 Filed 6-22-93; 8:45 am]

BILLING CODE 4310-JB-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93-45; RM-8156]

Radio Broadcasting Services; Kealakekua, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 268C1 for Channel 268C3 at Kealakekua, Hawaii, at the request of Visionary Related Entertainment, Inc. See 58 FR 15461, March 23, 1993. Channel 268C1 can be allotted to Kealakekua in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.8 kilometers (13.6 miles) north of the community. The coordinates for Channel 268C1 at Kealakekua are North Latitude 19-42-56 and West Longitude 155-55-00. With this action, this proceeding is terminated.

DATES: Effective August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–45, adopted June 4, 1993, and released June 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by removing Channel 268C3 and adding Channel 268C1 at Keelakekua.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–14701 Filed 6–22–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–204; RM–8058, RM–8081, RM–8126]

Radio Broadcasting Services; Chenoa, Lincoln and Pontiac, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 230B1 for Channel 230A at Lincoln, Illinois, and modifies the license for Station WESZ(FM) to specify operation on Channel 230B1; and substitutes Channel 229B1 for Channel 229A at Pontiac, Illinois, and modifies the license for Station WJEZ(FM) to specify operation on Channel 229B1 at the request of L & M Broadcasting Company, Inc. and Livingston County Broadcasters, Inc., respectively. See 57 FR 41912, September 14, 1992. Channel 230B1 can allotted to Lincoln in compliance with the Commission's minimum distance separation requirements with a site restriction 19.1 kilometers (11.9 miles) southwest in order to avoid a short-spacing to Station WKZW(FM), Channel 227B, Peoria, Illinois. The coordinates for Channel 230B1 at Lincoln are North Latitude 40–00–00 and West Longitude 89–29–00. Channel 229B1 can be allotted to Pontiac in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.2 kilometers (8.2 miles) south, in order to avoid short-spacing to Station WJTW(FM), Channel 228A, Joliet, Illinois, and Station WGFA(FM), Channel 231B, Watseka, Illinois. The coordinates for Channel 229B1 at Pontiac are North Latitude 40–45–53 and West Longitude 88–35–28. With this action, this proceeding is terminated.

DATES: Effective August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–204, adopted June 4, 1993, and released June 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 230A and adding Channel 230B1 at Lincoln, and by removing Channel 229A and adding Channel 229B1 at Pontiac.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–14703 Filed 6–22–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–83; RM–8191]

Radio Broadcasting Services; Pocomoke City, MD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 223A to Pocomoke City, Maryland, as that community's second FM service, in response to a petition filed by Robert L. Purcell. See 58 FR 16644, March 30, 1993. The coordinates for Channel 223A at Pocomoke City are 38–04–30 and 75–34–12. With this action, this proceeding is terminated.

DATES: Effective August 2, 1993. The window period for filing applications for Channel 223A at Pocomoke City, Maryland, will open on August 3, 1993, and close on September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–83, adopted June 7, 1993, and released June 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NM, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Maryland, is amended by adding Channel 223A at Pocomoke City.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–14698 Filed 6–22–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 921106-3100; 020693B]

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations implementing Amendment 3 to the American Lobster Fishery Management Plan (FMP). This rule modifies the language of the existing regulations to allow lobster traps not constructed entirely of wood to contain a ghost panel with a specified degradable door fastener. The intent is to provide codified regulations to replace an interim action that is effective through July 1, 1993.

EFFECTIVE DATE: July 1, 1993.

ADDRESSES: Copies of Amendment 3, which incorporates the environmental assessment and the regulatory impact review, are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Rt. 1), Saugus, Massachusetts 01906.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones (Resource Policy Analyst, Northeast Region, NMFS), 508-281-9273.

SUPPLEMENTARY INFORMATION: The American lobster fishery is managed under the FMP prepared by the New England Fishery Management Council (Council) and its implementing regulations at 50 CFR part 649 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations governing the American Lobster FMP require that lobster traps contain a ghost panel to allow for the escapement of lobster after a trap has been abandoned or lost. Section 649.21(d)(1)(iii) allows the use of the door of the lobster trap to serve as the ghost panel if fastened with a material described in § 649.21(d)(1)(ii); and § 649.21(d)(2) provides the Director, Northeast Region, NMFS (Regional Director), the authority to approve alternative designs and/or materials, at the request of, or after consultation with, the Council's Lobster Oversight Committee (Committee).

This alternative will allow lobster fishermen to comply with the degradable escape panel requirements and allow escapement of lobster after a trap has been abandoned or lost, as well as codify the fastening alternative to the ghost panel regulations. An interim rule was published in the **Federal Register**, (57 FR 30684, July 10, 1992) to implement this alternative, and a regulatory amendment was proposed to provide codified regulations to replace the interim action (57 FR 58781, December 11, 1992). The background and the process followed to authorize this procedure was discussed in the preamble to the proposed rule on December 11, 1992, and is not repeated here.

Comments and Responses

No comments were received during the comment period.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the American lobster fishery and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator has determined that this rule is consistent with the FMP. The economic effects of this rule on fishermen are contained within the Regulatory Impact Review (RIR) for Amendment 3. This rule further clarifies the intent of the regulations that implemented Amendment 3. A determination was made for the final rule for Amendment 3 from review of the RIR that the rule was not a major rule under Executive Order 12291.

An environmental assessment (EA) was prepared which concluded that the regulations will not have a significant adverse effect upon the human environment. This rule does not alter the scope or intent of Amendment 3, and the effects of this rule are contained in the EA for Amendment 3. Therefore, this action is categorically excluded from the requirement to prepare an EA by NOAA Administrative Order 216-6.

The General Counsel of the Department of Commerce has concluded that this regulation would not have a significant economic impact on a substantial number of small entities.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Assistant Administrator has determined that this rule is consistent with the approved Coastal Zone Management Program of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia. The reason for this determination is that this rule agrees with the intent of the final rule for Amendment 3 implementing the ghost panel requirements. Thus, it was not necessary to submit this rulemaking for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain regulatory provisions with federal implications sufficient to warrant preparation of a federalism assessment.

The Assistant Administrator has determined that good cause exists to make this final rule effective on July 1, 1993, pursuant to section 553(b)(B) of the Administrative Procedure Act, thereby waiving part of the 30-day delayed effectiveness period required by section 553(d) of the Administrative Procedure Act. Lobster fishermen are already familiar with the regulation because it was implemented on a temporary basis from July 10, 1992, through July 1, 1993. A 30-day delay in the implementation of this rule would interrupt continuity in the fishery. There is also good cause to waive part of the 30-day cooling off period before the effectiveness of this rule because it relieves a restriction on lobster fishermen by offering an alternative to the fastener requirement for lobster traps on a permanent basis.

List of Subjects in 50 CFR Part 649

Fisheries.

Dated: June 17, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 649 is amended as follows:

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for 50 CFR part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 649.21 paragraph (d)(1)(iii) is revised to read as follows:

§ 649.21 Gear identification and marking, escape vent, and ghost panel requirements.

* * * * *

(d) * * *

(1) * * *

(iii) The door of the trap may serve as the ghost panel if fastened with:

(A) A bungee cord that is attached with untreated non-stainless/uncoated ferrous metal not greater than 3/32 inches (0.24 cm) in diameter which can serve as the fastener of the trap door. The bungee cord must be attached so that when the untreated material degrades, the door of the trap will pivot open freely; or

(B) A material specified in paragraph (d)(1)(ii) of this section.

* * * * *

[FR Doc. 93–14775 Filed 6–22–93; 8:45 am]
BILLING CODE 3510–22–M

50 CFR Part 672

[Docket No. 921107–3068; I.D. 061793C]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 62 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 18, 1993, through 12 noon, A.l.t., July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The second quarterly allowance of pollock TAC in Statistical Area 62 is 5,918 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1993 second quarterly allowance of pollock TAC in Statistical Area 62 will soon be reached. The Regional Director established a directed fishing allowance of 5,326 mt, and has set aside the remaining 592 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 62 is prohibited, effective from 12 noon A.l.t., June 18, 1993, through 12 noon, A.l.t., July 1, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 17, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–14774 Filed 6–18–93; 1 10 pm]
BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 119
Wednesday, June 23, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Ch. VI

Statement on Regulatory Burden

AGENCY: Farm Credit Administration.

ACTION: Notice of intent; request for comment.

SUMMARY: The Farm Credit Administration is requesting comments regarding the appropriateness of the requirements it imposes on the Farm Credit System. This action is being taken to improve the regulatory environment in which the Farm Credit System operates. Comments are sought on the requirements that duplicate other governmental requirements, are not effective, or impose a burden that is greater than the benefit derived.

DATES: Comments must be submitted on or before September 21, 1993.

ADDRESSES: Comments should be mailed or delivered (in triplicate) to Patricia W. DiMuzio, Division Director, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all comments received will be available for examination by interested parties in the Regulation Development Division, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Eric Howard, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4481, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The Farm Credit Administration (FCA) is the Federal agency responsible for regulating the institutions that comprise the Farm Credit System (FCS). As a government-sponsored enterprise (GSE), the FCS primarily provides loans to farmers, ranchers, aquatic producers, and agricultural cooperatives. The FCS institutions also provide loans for rural housing and rural utilities.

Several Federal regulatory agencies responsible for the commercial banking and savings and loan industries recently announced plans to reduce loan documentation requirements for their highest quality lenders. They did so in response to expressed concerns that certain regulatory requirements have contributed to limited credit availability. Specifically, the concern is that the financial regulators have gone too far in their efforts to promote safety and soundness by making loan documentation and other requirements too burdensome, resulting in (1) A significant financial cost to lenders, and (2) an increased reluctance to lend. The Board of the FCA has considered whether or not it should adopt an approach similar to that recently adopted by the other regulators.

The FCA Board has decided to focus its attention on the broader concerns of the efficiency and the cost effectiveness of regulation of the FCS in general. Marginal modifications to the loan documentation program for a select few institutions do not seem to adequately address the problems and needs of the FCS. Moreover, the FCS, as a GSE, has statutory limitations on the use of its funds, making it difficult to correlate loan documentation that varies from institution to institution and from borrower to borrower, to a reluctance to lend money. Accordingly, the FCA is interested in hearing from the public, as outlined in this statement, about requirements it imposes that duplicate other governmental requirements, are not effective, or impose a burden that is greater than the benefit derived.

Loan Documentation

The FCA is interested in identifying those documents required by the FCA that exceed those necessary to carry out the Farm Credit Act of 1971, as amended, in a safe and sound manner. We request the comments focus on the FCA regulations, bookletters, or examination guidance that impose excess loan documentation requirements, as opposed to statutory requirements or lender procedures that the FCA does not control. For comments to be most helpful, they should be specific and identify the burden created by the documentation requirement. Commenters are asked to suggest alternatives to existing regulations and procedures that could achieve safe and sound underwriting objectives more efficiently.

Regulatory Burden

Efforts to reduce unnecessary regulatory burden have been underway for some time. For example, the FCA has reduced the number of matters requiring its "prior approval" by more than 70 percent over the last 5 years. Most remaining matters requiring agency "prior approval," such as charter and funding approvals, are required by statute. Nevertheless, the FCA continues to be interested in learning of any regulatory requirements that the public believes are duplicative, unneeded, or not cost justified.

Please note that there are some regulations which have been through a comment period. Also, a number of the FCA's regulations have recently been published for a public comment period or are about to be published for public comment. These regulations are described below. The FCA would like to receive comments on the regulatory burden of the listed regulations during their designated comment periods. Comments on the effect of other regulations would be especially helpful at this time as the FCA seeks to reduce regulatory burden.

REGULATIONS UNDER CONSIDERATION

Issue	Explanation	Progress to date	Next action expected
Capital Regulation	Would implement permanent capital-related provisions of the statute pertaining to agreements between Farm Credit Banks and associations on where to count certain allocated equities, held by the Farm Credit Banks, for purposes of computing permanent capital.	The FCA Board adopted the proposed rule in May 1993.	The regulation will be published for a 30-day public comment period in mid-June, and the Board expects to vote on the final rule in the fall of 1993.
Other High Risk Assets ..	Would update accounting and reporting requirements, promote consistency with industry practices, and ensure that the regulations are consistent with GAAP. The proposed regulations eliminate the term "nonperforming" and the categories of "other high risk loans" and "other restructured and reduced rate loans.".	An announcement of proposed rulemaking was published in late 1992, comments were received and considered by the agency. The proposed regulation was published for a 30-day public comment period which closes on July 8, 1993. (58 FR 32071).	The Board expects to vote on the final regulation in the fall of 1993, to be effective December 31, 1993.
General Financing Agreements.	Would clarify existing regulations to provide uniform guidelines for developing and executing general financing agreements between Farm Credit Banks and direct lending institutions.	Three meetings held—one with association representatives and two with bank representatives in 1992.	A regulatory impact analysis is in progress and the Board anticipates considering the proposed regulation in the fall of 1993.
Distressed Loan Notification.	Would amend the regulations regarding the content of borrower rights notices for distressed loans.	The Board adopted the proposed rule in June 1993. It will be published for a 30-day public comment period in mid-July 1993.	The Board expects to vote on a final regulation in the fall of 1993.
Termination of Large Associations and Banks.	Would establish regulations under which a bank or large association could terminate its charter as provided for in the Farm Credit Act of 1971, as amended.	The Board adopted the proposed rule in February 1993. The comment period closed in April 1993. (58 FR 15099).	The Board will consider a resolicitation of public comments on the proposed regulation.

In a related matter, other financial regulators proposed to modify their appraisal rules, (Real Estate Appraisals, 58 FR 31878, June 4, 1993). The FCA Board has directed staff to (1) Analyze this proposal and report to the Board by July 15, 1993, on how the proposed amendments impact the regulated institutions and (2) recommend proposals appropriate to the FCS.

Information Requirements

Finally, the FCA believes that a key issue for the FCS is the data which must be provided by the FCS institutions to the FCA on a periodic basis. It has been some time since a comprehensive review of the reporting requirements has been undertaken. In some cases, this data is specifically required by statute. It should be noted that the FCA is in the very early stages of a review of information reporting requirements; nevertheless, we are interested in any preliminary comments you might have as they will assist us in planning our future activities.

In conclusion, the FCA believes that the efforts outlined above, in conjunction with those already underway, will work to improve the regulatory environment within which the FCS must operate by targeting areas for more focused study and revising rules where comments present strong evidence that an FCA requirement is unjustified.

Date: June 16, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–14583 Filed 6–22–93; 8:45 am]

BILLING CODE 6705–01–P

12 CFR Part 615

[RIN 3052–AB44]

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), proposes for public comment amendments to part 615 relating to the components of permanent capital for Farm Credit System (Farm Credit or System) banks and associations. These proposed regulations implement amendments to the Farm Credit Act of 1971 (1971 Act), made by the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act). The effect of the proposed regulations is to establish requirements for the agreement between a Farm Credit Bank (FCB) and its related direct lender associations specifying where the earnings held by the FCB and allocated to associations may be counted as permanent capital, specify how these earnings would be counted in the absence of an agreement, provide a date certain for the exclusion from capital of payments by Farm Credit institutions to the Farm Credit System Financial Assistance Corporation (FAC) made in connection with the repayment of Treasury-paid interest, and make other conforming changes to implement the statutory amendments.

DATES: Comments must be received by July 22, 1993.

ADDRESSES: Comments should be submitted in writing, in triplicate, to Patricia W. DiMuzio, Division Director, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested

parties in the Office of Examination, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Robert S. Child, Policy Analyst, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444, or Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Section 4.3(a) of the 1971 Act requires the FCA to cause System institutions to achieve and maintain adequate capital by establishing minimum levels of permanent capital for System institutions. On September 28, 1988, the Board adopted final regulations amending 12 CFR part 615 that, among other things, established such minimum permanent capital standards. See 53 FR 39229 (October 6, 1988).

Section 615.5210 of those regulations sets forth the method for the computation of the permanent capital ratio. Paragraph (d)(2) provides that, until the end of 1997, an FCB and the direct lender associations in its district may adopt a districtwide plan specifying a percentage allocation of an association's investment in the bank between the bank and the association for the sole purpose of computing the permanent capital ratio. The regulation establishes what the minimum percentage allocation to the bank will be in the years 1993 through 1997. After 1997, all of the association's investment in the bank is considered to be capital of the bank in the permanent capital ratio computation.

On August 13, 1992, the FCA Board suspended those provisions of § 615.5210(d)(2) pertaining to the percentage allocation. See 57 FR 38250 (August 24, 1992). The suspension became effective on October 7, 1992. On October 28, 1992, the 1992 Act was enacted. Section 101 of the 1992 Act amended the definition of "permanent capital" in section 4.3A(a)(1)(B) of the 1971 Act to provide that "earnings allocated in any form by a System bank to any association or other recipient and retained by the bank, shall be considered, in whole or in part, permanent capital of the bank or of any such association or other recipient as provided under an agreement between the bank and each such association or other recipient." A further amendment to the statutory definition of permanent capital added subparagraph (E) in section 4.3A(a)(1), which authorizes the FCA to define as permanent capital "any debt or equity instruments or other accounts that the [FCA] determines appropriate to be considered permanent capital."

Section 301 of the 1992 Act added section 6.9(e)(3)(D) to the 1971 Act to require each bank to enter into or continue an agreement with the FAC under which the bank will make annual annuity-type payments to the FAC in connection with the Capital Preservation Agreements. Subparagraph (D)(ii) provides that the agreement "shall not require payments to be made to the extent that making a particular payment or part of a payment would cause the bank to fail to satisfy applicable regulatory permanent capital requirements, but shall provide for recalculation of subsequent payments accordingly."

Section 304 of the 1992 Act amended section 6.26(c)(5) of the 1971 Act to require banks to make annual annuity-type payments to the FAC in connection with the FAC's repayment of Treasury-paid interest. An FCB may (and must, if necessary to enable the bank to satisfy its obligations) pass on to its related associations all or part of the assessments "either directly, or indirectly through loan pricing or otherwise," based on the proportionate average accruing retail loan volumes for the preceding year. Subparagraph (G) of that section provides that, until the date that is 5 years prior to the date on which the FAC is required to repay the Secretary of the Treasury for Treasury-paid interest, *i.e.*, until September 27, 2005, all assessments paid by banks to the FAC for the purpose of repaying the Treasury-paid interest, and any part of the obligation to pay future assessments that is recognized as an expense on the books of any System bank or association, shall be included in the capital of the bank or association for purposes of determining its compliance with regulatory capital requirements. Furthermore, 100 percent of the expenses paid or booked will be treated as capital from now until September 27, 2000. In the subsequent 2 years, 60 percent and 30 percent, respectively, will be included; after September 27, 2002, no part of such payments or future payments will be included in capital.

To implement these statutory changes, the Board proposes the following amendments to the regulations:

A. Allocation Agreement

Under the amendments made by 1992 Act, FCBs and direct lender associations may continue to utilize the allocation agreements permitted by existing regulations, but they also have some flexibility to make other arrangements. In addition, the 1992 Act authorizes Federal land bank associations, as well as direct lender associations, to enter into agreements with the FCB.

1. *Individual association agreements.* Whereas the existing regulation requires the allocation plan to be on a districtwide basis, the 1992 Act authorizes each individual association to enter into an agreement with its affiliated bank. This means that the terms and conditions of the agreements to which the FCB is a party, particularly the term specifying a percentage allocation, may vary from association to association. For this reason, § 615.5210(e)(2)(ii)(D) of the proposed regulations provides that each agreement must be disclosed to all affiliated associations that are not parties to the agreement. The Board believes that such disclosure among all of these associations will result in an equitable treatment of all parties to the agreements.

The Board notes that neither the 1992 Act nor the proposed regulations would prohibit an FCB and its affiliated associations from entering into or continuing a districtwide agreement.

2. *Application of agreement to allocated equities only.* The allocation agreements permitted by the 1992 Act pertain to allocated earnings, not purchased equities. Therefore, § 615.5210(e)(2)(i) of the proposed regulation continues the existing requirement that all equities of an FCB that have been purchased by other Farm Credit institutions must be counted as capital by the FCB.

3. *Term of agreement.* The proposed regulation would permit agreements for a period of 1 or more years, to be entered into at least 30 days prior to, and commencing on the first day of, the second quarter of the bank's fiscal year. If no agreement is signed at least 30 days prior to the expiration of an existing agreement, and if neither party notifies the FCA of its objection, the existing allocation agreement would be automatically extended for 1 additional year. If one party does notify the FCA of its objection, the agreement would not be extended. Should this occur, the allocation would be determined according to the formula as discussed below.

4. *Amendments.* An agreement may not be amended more frequently than annually, unless the prior written approval of the FCA is received. The Board anticipates that it would grant such approval only under extraordinary circumstances, such as a reorganization or merger of the institutions involved. However, as described more fully below, the parties may be required to

amend their percentage allocation in order to enable a bank to make a payment to the FAC in connection with the Capital Preservation Agreements.

5. *Absence of agreement.* While the Board contemplates that FCBs and direct lender associations will enter into allocation agreements, some institutions may be unable to reach agreement. The existing regulation provides that, in the absence of an allocation agreement, 20 percent of the allocated investment shall be counted as permanent capital for the purpose of computing the permanent capital ratio of the FCB and the remaining 80 percent is counted as permanent capital of the association. This provision was originally intended to be in effect only from 1988 until the end of 1992. It is the Board's view that this allocation for nonagreeing associations is appropriate as a temporary arrangement, but that a permanent provision should be more flexible. Therefore, the Board proposes to replace the existing percentage allocation with a formula whose primary objective is to enable each institution to meet its minimum permanent capital requirement to the extent possible.

The proposed formula would first allot the allocated investment based on what each institution needs to bring its permanent capital ratio to 7 percent. Any remaining amount of allocated investment would then be equally divided between the bank and the association. However, in the event that it is not possible to bring the permanent capital ratios of the FCB and each nonagreeing association up to at least 7 percent, the bank would have priority in achieving the minimum capital requirement based on a *pro rata* allotment from nonagreeing associations.

In the absence of an agreement, there are good reasons for allocating the investment so that the bank reaches its minimum capital requirement. First, a failure of the FCB to meet its minimum permanent capital requirement could have a potential adverse impact on funding costs for the entire System. Second, ensuring service continuity within a district is important. There is no reason to disrupt the operations of an entire district when a limited number of associations fail to agree on an allotment formula and have an equity position below the regulatory minimum. Third, the failure of a FCB to meet minimum capital requirements could have an adverse impact on the operations of any agent Federal land bank association (FLBA) in the district. The prohibition on retirement of the FCB stock in such circumstances would mean that no pass-through stock purchased in connection with a loan made through an FLBA could be retired; consequently, the FLBA would probably be unable to retire a borrower's FLBA stock. Finally, there could also be an adverse impact on all the associations in the district if the FCB's permanent capital ratio dropped below 7 percent because the banks' Contractual Interbank Performance Agreement could require the FCB to make penalty payments to the FAC that may never be reimbursed. Thus, it is in the best interest of the System to have the capital allocated to the bank to the extent necessary to enable it to meet its minimum permanent capital requirements.

The Board recognizes that the inability of an association to meet its minimum permanent capital ratio could adversely affect the operations of that association, by for example, preventing the association from redeeming its stock, which could result in some borrower flight. Nonetheless, it is the Board's view that the potential detrimental effects on the district as a whole are greater when the FCB fails to meet its minimum permanent capital requirement than when individual associations fall below the minimum requirement.[1] Consequently, it is appropriate to prefer the FCB over individual associations when there is not enough capital for the FCB and all nonagreeing associations to have permanent capital ratios of at least 7 percent.

The proposed formula would operate as outlined in the following steps:

Step 1. The permanent capital ratio of the FCB would be calculated, including all of the allocated investments it may count as capital under existing allocation agreements but excluding the allocated investments of all nonagreeing associations. The permanent capital ratio of each nonagreeing association would be calculated excluding any of its allocated investment.

Step 2. If, under these calculations, the FCB's permanent capital ratio is 7 percent or above, the allocated investment of each nonagreeing association whose ratio is 7 percent or above would be evenly split between the FCB and the association. The allocated investment of each nonagreeing association whose ratio is below 7 percent would be attributed to the association until the association's ratio reaches 7 percent or all of the investment is attributed to the association, whichever occurs first, and any remaining investment would be evenly split between the FCB and the association.

Step 3. If the FCB's permanent capital ratio is below 7 percent when calculated according to step 1, a proportionate amount of each nonagreeing association's allocated investment would be attributed to the FCB sufficient to raise the FCB's capital ratio to 7 percent.[2] Then, with respect to each nonagreeing association, a sufficient amount of the allocated investment not yet attributed, if any, would be attributed to the association to raise the association's capital ratio to 7 percent or until all the remaining allocated investment is attributed, whichever occurs first. If there is any remaining allocated investment after the FCB and the nonagreeing association have each met the minimum capital requirements, such remainder would be divided evenly between the FCB and association for capital computation purposes.

The Board wishes to emphasize that the proposed allocation formula would be applied only to associations that have not entered into allocation agreements with the FCB. The formula has no direct impact on associations that have entered into agreements with the FCB and does not affect the allocations set forth in those agreements.

The Board also considered other formulas for determining where capital would be counted in the absence of an allocation agreement. One formula would, in effect, equalize the capital ratios of the FCB and the nonagreeing associations to the extent possible; the advantage of this option would be that it favors neither the bank nor the associations. Another formula would, like the formula in the proposed regulation, first provide that the FCB meets its minimum capital requirements when possible, but would also ensure that the largest possible number of nonagreeing associations meet their minimum capital requirements. In other words, this formula would potentially require a proportionately larger allotment to the FCB from well-capitalized associations than from poorly capitalized associations in order to enable such associations to keep their

[1] The Board notes that a large majority of associations currently meet the 7-percent capital requirement even when an amount of capital equal to their investment in the bank is excluded. Such associations are less likely to be affected than other associations by a formula that ultimately favors the bank.

[2] The total amount required for the FCB to reach the minimum capital ratio would be computed, as well as the percentage that amount represents of the total allocated investments of all nonagreeing associations. That percentage of each nonagreeing association's allocated investment would be attributed to the FCB.

permanent capital ratios above 7 percent.

In selecting the proposed formula, the Board has attempted to balance the various interests of the institutions involved, as well as the district as a whole, without making the allocation process too unwieldy. However, the Board recognizes that any means of determining where capital will be counted in the absence of an agreement may have the effect of providing incentives to one party or the other to enter into an agreement or to reject an agreement. Therefore, the Board specifically seeks comment on the proposed formula for the allocation and also seeks suggestions regarding other ways to allocate the capital in the absence of an agreement, such as, for example, using the alternative formulas described in the previous paragraph; mandating that the FCA shall make the decision as to where capital would be counted; or using a straight percentage allocation that would achieve the Board's objectives consistent with the Act. Should suggestions be made about other methods of allocation, the Board requests that the commenter provide any necessary procedural details.

6. *Assessments paid to the FAC in connection with the Capital Preservation Agreements.* The 1992 Act permits an FCB to skip a payment to the FAC in connection with the FAC's payment of the Capital Preservation Agreements if the payment would cause the bank to fail to meet its minimum permanent capital standards. If a payment is not made, there must be a recalculation of subsequent payments to make up for it. While the Board does not think it likely, an agreement could allot such a large percentage of the associations' investments to the associations that the bank would be unable to make—or would be able to avoid making—the annual payment to the FAC. Consequently, § 615.5210(e)(2)(ii)(G) of the proposed regulations provides that the bank and the association must re-allot the investment to enable the FCB to pay the assessment, provided that the association would still be able to meet its own minimum capital standards. The FCA Board may, at the request of one of the parties, waive this requirement. The FCA Board specifically seeks comments on this proposal.

7. *Other recipients.* The amendment to the definition of "permanent capital" refers to earnings allocated by a "System bank" to associations and "other recipients." Since FCBs allocate earnings to other financing institutions (OFIs), FCBs are now permitted to enter into agreements with affiliated OFIs specifying which institution counts the investment as permanent capital. Furthermore, the reference to "other recipients" could include not just OFI relationships, but also certain relationships between System institutions. The statutory term "System bank" could include a bank for cooperatives (BC) as well as an FCB, and the term "other recipient" could, arguably, include another System institution that is not an association. Thus, the new statutory language covers a situation where an FCB or a BC has a stock investment in another FCB or another BC.

Therefore, proposed § 615.5210(e)(3) provides that, when a System bank and an "other recipient" enter into an allocation agreement, the provisions that apply to an FCB/association agreement are also applicable to such agreement. However, in the absence of an agreement, 100 percent of the allocated investment would be included in the capital of the allocating bank.

B. Payments to the FAC

1. *Assessments paid to the FAC in connection with the Capital Preservation Agreements.* This is discussed under item 6 above.

2. *Assessments paid or booked as expenses in connection with Treasury-paid interest.* As described above, all assessments paid or booked to repay the FAC for Treasury-paid interest may be fully included as capital by banks or associations (where the bank has "passed through" the assessment) until September 2000, and part of the assessments are included in capital until 2002. Part or all of the assessments may be passed on by FCBs to their affiliated associations, either directly or indirectly (through loan-pricing or otherwise). If a bank passes on the cost of the assessment directly to an association, the portion of the bank's assessment that may be included in the association's capital (and that may not be included in the bank's capital) will be the amount paid by the association. The Board notes that, if the cost of the bank's assessment is passed on to the association indirectly, this amount must be reported in the Call Reports of both the bank and the association.

C. Definition of Permanent Capital

The Board proposes to revise the definition of permanent capital in existing § 615.5201(h) to implement the changes to the statutory definition of permanent capital made by the 1992 Act. As stated above, the FCA now has authority to define as permanent capital any debt or equity instruments or other accounts that it determines are appropriate to be considered as permanent capital. At this time, the Board does not believe that any debt or equity presently issued and outstanding, other than that already considered to be permanent capital, has the requisite "permanence" to be considered as permanent capital. However, it has provided in the proposed regulation that, if the FCA deems such inclusion appropriate on a case-by-case basis, financial assistance that may be provided in the future by the Farm Credit System Insurance Corporation (FCSIC), pursuant to the FCSIC's authority under section 5.61(a)(1) of the Act, will be considered to be permanent capital.

Furthermore, the Board is considering specifying by regulation that subordinated debt or other securities issued by a Farm Credit institution to the FCSIC will be considered to be permanent capital. The Board solicits comments on the appropriateness of designating these securities as permanent capital and, if so, what types of requirements and limitations might also be appropriate. The Board also seeks comments on whether there are other debt or equity instruments or other accounts, other than those issued to the FCSIC, that could appropriately be defined by regulation to be permanent capital.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26 of the Farm Credit Act; 12 U.S.C. 2013, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6; sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart H—Capital Adequacy

2. Section 615.5201 is amended by redesignating paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) as paragraphs (b), (c), (d), (e), (f), (g), (i), (j), (k), (l), (m), and (n) consecutively; adding new paragraphs (a) and (h); and

revising newly designated (j) to read as follows:

§ 615.5201 Definitions.

* * * * *

(a) *Allocated investment* means earnings allocated by a System bank to an association or other recipient and retained by the bank.

* * * * *

(h) *Nonagreeing association* means an association that has not entered into an allocation agreement with a Farm Credit Bank pursuant to § 615.5210(e).

* * * * *

(j) *Permanent capital* means—

(1) Current year retained earnings;

(2) Allocated and unallocated earnings (which, in the case of earnings allocated in any form by a System bank to any association or other recipient and retained by the bank, shall be considered, in whole or in part, permanent capital of the bank or of any such association or other recipient as provided under an agreement between the bank and each such association or other recipient);

(3) All surplus;

(4) Stock issued by a System institution, except—

(i) Stock that may be retired by the holder of the stock on repayment of the holder's loan, or otherwise at the option or request of the holder;

(ii) Stock that is protected under section 4.9A of the Act or is otherwise not at risk;

(iii) Preferred stock issued to the Farm Credit System Financial Assistance Corporation to the extent it is issued to offset an impairment of equities protected under section 4.9A of the Act;

(iv) Farm Credit Bank equities required to be purchased by Federal land bank associations in connection with stock issued to borrowers that is protected under section 4.9A of the Act;

(v) Capital subject to revolvement, unless:

(A) The bylaws of the institution clearly provide that there is no express or implied right for such capital to be retired at the end of the revolvement cycle or at any other time; and

(B) The institution clearly states in the notice of allocation that such capital may only be retired at the sole discretion of the board in accordance with statutory and regulatory requirements and that no express or implied right to have such capital retired at the end of the revolvement cycle or at any other time is thereby granted;

(5) Payments to, or obligations to pay, the Farm Credit System Financial Assistance Corporation to the extent permitted by section 6.26(c)(5)(G) of the Act and § 615.5210(d); and

(6) Financial assistance provided by the Farm Credit System Insurance Corporation that the Farm Credit Administration determines appropriate to be considered permanent capital.

* * * * *

3. Section 615.5210 is amended by redesignating paragraphs (d) and (e) as paragraphs (e) and (f); adding a new paragraph (d); and revising newly designated paragraphs (e)(2) and (e)(3) to read as follows:

§ 615.5210 Computation of the permanent capital ratio.

* * * * *

(d) Until September 27, 2002, payments of assessments to the Farm Credit System Financial Assistance Corporation, and any part of the obligation to pay future assessments to the Farm Credit System Financial Assistance Corporation that is recognized as an expense on the books of a bank or association, shall be included in the capital of such bank or association for the purposes of determining its compliance with regulatory capital requirements, to the extent allowed by section 6.26(c)(5)(G) of the Act. If the bank indirectly passes on all or part of the payments to its affiliated associations pursuant to section 6.26(c)(5)(D) of the Act, such amounts shall be included in the capital of the associations and shall not be included in the capital of the bank. After September 27, 2002, no payments of assessments or obligations to pay future assessments may be included in the capital of the bank or association.

(e) * * *

(2) Where a Farm Credit Bank is owned by one or more Farm Credit System institutions, the double counting of capital shall be eliminated in the following manner:

(i) All equities of a Farm Credit Bank that have been purchased by other Farm Credit institutions shall be considered to be permanent capital of the bank.

(ii) Each Farm Credit Bank and each of its affiliated associations may enter into an agreement that specifies, for the purpose of computing permanent capital only, a percentage allotment of the association's allocated investment between the bank and the association. The following conditions shall apply:

(A) The agreement shall be for a term of 1 or more years and shall become effective on the first day of the second quarter of the bank's fiscal year.

(B) The agreement shall be entered into at least 30 days prior to the beginning of the second quarter of the bank's fiscal year.

(C) The agreement may be amended according to its terms, but no more frequently than annually without the prior written approval of the Farm Credit Administration.

(D) A certified copy of the agreement, and any amendments thereto, shall be forwarded to the office of the Farm Credit Administration responsible for examining the institution within 3 days of adoption of the agreement or any amendments by the Farm Credit Bank and the association. A copy shall also be sent within 3 days of adoption to the bank's other affiliated associations.

(E) If the bank and the association have not entered into a new agreement at least 30 days prior to the expiration of an existing agreement, the existing agreement shall automatically be extended for another fiscal year, unless either party notifies the Farm Credit Administration of its objection to the extension prior to the beginning of such fiscal year.

(F) In the absence of an agreement between a Farm Credit Bank and one or more associations, or in the event that an agreement expires and at least one party objects to the continuation of the terms of its agreement, the following formula shall be applied with respect to the allocated investments held by those associations with which there is no agreement (nonagreeing associations), and shall not be applied to the allocated investments held by those associations with which the bank has an agreement (agreeing associations):

(*1*) The permanent capital ratio of the Farm Credit Bank shall be computed excluding the allocated investment from nonagreeing associations but including any allocated investments of agreeing associations that are attributed to the bank under such allocation agreements. The permanent capital ratio of each nonagreeing association shall be computed excluding its allocated investment in the bank.

(*2*) If the permanent capital ratio for the Farm Credit Bank calculated in accordance with paragraph (e)(2)(ii)(F)(*1*) of this section is 7 percent or above, the allocated investment of each nonagreeing association whose permanent capital ratio calculated in accordance with paragraph (e)(2)(ii)(F)(*1*) of this section is 7 percent or above shall be attributed 50 percent to the bank and 50 percent to the association.

(*3*) If the permanent capital of the Farm Credit Bank calculated in accordance with paragraph (e)(2)(ii)(F)(*1*) of this section is 7 percent or above, the allocated investment of each nonagreeing association that is below 7 percent shall be attributed to

the association until the association's capital ratio reaches 7 percent or until all of the investment is attributed to the association, whichever occurs first. Any remaining unattributed allocated investment shall be attributed 50 percent to the Farm Credit Bank and 50 percent to the association.

(*4*) If the permanent capital of the Farm Credit Bank calculated in accordance with paragraph (e)(2)(ii)(F)(*1*) of this section is less than 7 percent, the amount of additional capital needed by the bank to reach a permanent capital ratio of 7 percent shall be determined, and an amount of the allocated investment of each nonagreeing association shall be attributed to the Farm Credit Bank as follows:

(*i*) If the total of the allocated investments of all nonagreeing associations is greater than the additional capital needed by the bank, the allocated investment of each nonagreeing association shall be multiplied by a fraction whose numerator is the amount of capital needed by the bank and whose denominator is the total amount of allocated investments of the nonagreeing associations, and such amount shall be attributed to the bank. A sufficient amount of unattributed allocated investment shall then be attributed to each nonagreeing association to increase its permanent capital ratio to 7 percent, or until all such investment is attributed to the association, whichever occurs first. Any remaining unattributed allocated investment shall be attributed 50 percent to the bank and 50 percent to the nonagreeing association.

(*ii*) If the additional capital needed by the bank is greater than the total of the allocated investments of the nonagreeing associations, all of the remaining allocated investments of the nonagreeing associations shall be attributed to the bank.

(G) If a payment or part of a payment to the Farm Credit System Financial Assistance Corporation pursuant to section 6.9(e)(3)(D)(ii) of the Act would cause a Farm Credit Bank to fall below its minimum permanent capital requirement, the bank and one or more associations shall amend their agreement to increase the allotment of the association's investment to the bank sufficiently to enable the bank to make the payment to the Farm Credit System Financial Assistance Corporation, provided that the association would continue to meet its minimum permanent capital requirement. In the absence of an allocation agreement, the Farm Credit Administration shall require a revision of the percentage allotment sufficient to enable the bank to make the payment to the Farm Credit System Financial Assistance Corporation, provided that the association would continue to meet its minimum permanent capital requirement. The Farm Credit Administration Board may, at the request of one or more of the institutions affected, waive the requirements of paragraph (e)(2)(ii)(G) of this section if the Board deems it is in the overall best interest of the institutions affected.

(3) A bank and a recipient, other than a direct lender association, of allocated earnings from such bank, may enter into an agreement specifying a percentage allotment of the recipient's allocated earnings in the bank between the bank and the recipient. Such agreement shall comply with the provisions of paragraph (e)(2) of this section, except that, in the absence of an agreement, the allocated investment shall be allotted 100 percent to the allocating bank and 0 percent to the recipient. All equities of a bank that are purchased by a recipient shall be considered as permanent capital of the allocating bank.

* * * * *

Dated: June 15, 1993.

Curtis Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–14494 Filed 06–22–93; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–54–AD]

Airworthiness Directives; Aerospatiale Model ATR42–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–200 and –300 series airplanes. This proposal would require modification of the autopilot disengagement wiring. This proposal is prompted by reports that flight crews attempted to use the pitch trim control while the autopilot was engaged, which caused the autopilot to move the elevator control in the opposite direction of trim movement. The actions specified by the proposed AD are intended to prevent a severe out-of-trim condition, which could lead to reduced controllability of the airplane.

DATES: Comments must be received by August 17, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–54–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–54–AD." The

postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–54–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale ATR42–200 and –300 series airplanes. The DGAC advises that there have been several instances in which the flight crew attempted to use the pitch trim control while the autopilot was engaged. This action can cause the autopilot to move the elevator control in the opposite direction of trim movement, and may cause a severe out-of-trim condition if the autopilot is later disconnected. This condition, if not corrected, could lead to reduced controllability of the airplane.

Aerospatiale has issued Service Bulletin ATR42–22–0012, dated April 2, 1990, and Revision 1, dated October 12, 1992, that describe procedures for modifying the autopilot disengagement wiring located at shelf 82VU. Modification of such wiring will reduce the effects of manual use of the pitch trim control while the autopilot is engaged. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 92–197–049(B), dated September 30, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the autopilot disengagement wiring. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 126 airplanes of U.S. registry would be affected by this AD. The FAA has been advised that all 126 affected airplanes have been modified in accordance with the requirements of this AD. Therefore, currently, this AD action imposes no additional economic burden on any U.S. operator.

However, should an unmodified airplane be imported and placed on the U.S. Register in the future, it would take approximately 4 work hours per airplane to accomplish the proposed actions, at an average labor rate of $55 per work hour. Required parts would be supplied by the manufacturer to the operators at no cost. Based on these figures, the total cost impact of the AD is estimated to be $220 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 93–NM–54–AD.

Applicability: Model ATR42–200 and –300 series airplanes; serial numbers 3 through 179, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a severe out-of-trim condition, which could lead to reduced controllability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the autopilot disengagement wiring located at shelf 82VU, in accordance with Aerospatiale Service Bulletin ATR42–22–0012, dated April 2, 1990; or Revision 1, dated October 12, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 17, 1993.

David G. Hsial,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–14747 Filed 6–22–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 103, 129, 165, and 184

[Docket No. 86P–0030]

Beverages; Bottled Water; Consumer Surveys; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is announcing the

availability of two surveys concerning consumer perception of spring water which FDA received in response to a proposal that published in the Federal Register of January 5, 1993 (58 FR 393), to establish a standard of identity for bottled water. The Mountain Valley Spring Co. and the Crystal Geyser Water Co. submitted the surveys. FDA is reopening the comment period for 30 days to give interested persons a fair opportunity to comment specifically on these surveys.

DATES: Written comments by July 23, 1993.

ADDRESSES: Submit written comments and requests for single copies of the surveys to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Comments and requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist the branch in processing your requests. After the comment period shown above, copies of the surveys will be available at cost from the Freedom of Information Staff (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857. The surveys and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5112.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 5, 1993 (58 FR 393), FDA published a proposal to establish a standard of identity in proposed § 165.110 for bottled water. Among other things, the agency proposed to define "artesian water," "distilled water," "mineral water," "purified water," "spring water," and "well water." FDA proposed these actions in response to a petition submitted by the International Bottled Water Association. Interested persons were initially given until March 8, 1993, to comment on the proposal. In the Federal Register of March 9, 1993 (58 FR 13041), the comment period was extended to April 7, 1993.

FDA is announcing that it has received the results of two recent surveys by private companies pertaining to consumer perception of what constitutes spring water. The Mountain Valley Spring Co. submitted a report entitled "Consumer Research Report on Bottled Water" on April 7, 1993 (C302 in this docket). The Crystal Geyser Water Co. submitted a report entitled "Topline Analysis of Alpine Spring FDA Research" at a meeting with the agency on April 14, 1993 (MM5 in this docket).

FDA is reopening the comment period for 30 days to allow interested persons the opportunity to comment specifically on these surveys. Only comments pertaining to the surveys will be considered. FDA is taking this action because the Mountain Valley Spring Co. submitted its survey on the last day of the comment period, and the Crystal Geyser Water Co. submitted its survey after the comment period had ended. This action will not delay the issuance of a final rule.

Interested persons may, on or before July 23, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 17, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–14756 Filed 6–18–93; 10:29 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL–4569–6]

Wood Furniture Manufacturing Industry Negotiated Rulemaking Advisory Committee; Establishment and Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Establishment of advisory committee and notice of open meeting.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (FACA), EPA is giving notice of the establishment and first meeting of an advisory committee to develop specific recommendations with respect to rules for hazardous air pollutants (HAP's) under section 112 and control techniques guidelines (CTG's) to control volatile organic compounds (VOC's) under section 183 of the Clean Air Act, as amended. EPA has determined that the establishment of this committee is in the public interest and will assist the Agency in performing its duties under sections 112 and 183 of the Clean Air Act as amended. Copies of the Committee's charter have been filed with the appropriate committees of Congress and the Library of Congress in accordance with section 9(c) of FACA.

The Committee solicits anyone who believes their interest would be significantly affected by a rule and/or CTG for wood furniture manufacturing, who also believes that interest is not adequately represented on the Committee, to apply for membership on it.

DATES: The Committee will meet on July 8 and 9, 1993. The meeting will run from 9 a.m. until 5 p.m. on the first day, and from 8:30 a.m. until 3 p.m. on the second. Applications for membership must be postmarked by the close of business on July 23, 1993.

ADDRESSES: The meeting will be held at the Raleigh Marriott Crabtree Valley, 4500 Marriott Drive, Raleigh, NC 27612, (919) 781–7000.

A docket has been established for the advisory committee. Comments concerning the committee and its work should be submitted (in duplicate if possible) to Air Docket Section, Attention Docket A–93–10, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A copy should also be sent to Madeleine Strum, Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27111. This docket contains materials relevant to this advisory committee, and it may be inspected in room 1500M, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC, between 8:30 a.m. and noon, and 1:30 p.m. until 3:30 p.m. on weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Anyone wanting further information on the substantive matters related to the rule or CTG should call Madeleine Strum, Office of Air Quality Planning and Standards at 919–541–2383. Anyone wanting further information on administrative matters such as committee arrangements or procedures should contact the committee's independent co-facilitators, Susan Wildeau of John Lingelbach, at (303) 442–7367.

SUPPLEMENTARY INFORMATION: The subject of the negotiation is a proposed national Emission Standard for Hazardous Air Pollutants [NESHAP] targeting reductions in HAP's, and a CTG, to assist the States in achieving

VOC emission reductions from wood furniture manufacturing operations. The agency has conducted informal discussions to review emissions data, the cost of various compliance activities, and their economic impact. The discussions have gone well, and the participants have proposed developing specific recommendations to the agency concerning the regulations and CTG's under the CAAA. EPA now believes that using an advisory committee to make specific recommendations with respect to the Wood Furniture Industry rule and/or CTG would help the agency achieve its statutory mandate. It is therefore establishing the Wood Furniture Manufacturing Industry Negotiated Rulemaking Advisory Committee.

Background

The wood furniture industry is expected to include facilities that have operations which fall under the following SIC codes: 2434, 2511, 2512, 2519, 2521, and 2541. The scope will include consideration of traditional limitations, and market-based approaches.

The EPA has expended a considerable effort to develop a CTG for the industry. Chapters from a preliminary draft CTG were presented at a public hearing in 1991. In addition, the EPA has undertaken an extensive information gathering effort to characterize HAP emissions from the wood furniture industry for the purpose of developing a NESHAP.

Based on available data, the EPA estimates the wood furniture industry contributes on the order of 90,000 tons of HAPs per year nationwide, and 60,000 tons of VOC emissions in non-attainment areas. This NESHAP will achieve a reduction in HAP emissions, and the CTG will achieve reductions in VOC emissions in non-attainment areas.

A negotiated rulemaking, whereby development of the data base and regulatory approaches is carried out jointly with the industry, States, environmental groups, and other interested parties affords the opportunity to develop more innovative environmentally effective, and pragmatic approaches. In addition, it permits simultaneously developing the NESHAP and the CTG, two interrelated statutory requirements.

Statutory Provisions

The EPA is developing a NESHAP for the wood furniture industry under section 112 of the CAAA. Under section 112(d)(2), the EPA is charged to establish a NESHAP that requires "* * * the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies * * *" The wood furniture NESHAP is required to be finalized no later than November 1994.

Section 183(a) of the CAAA requires the EPA to develop 11 CTG's by November 1993. A CTG is a guidance document developed to assist the states in determining "reasonable available control technology" or RACT for a given source category. A State, through regulation, applies RACT to control VOC emissions from a particular source in an effort to bring the State's non-attainment areas into attainment of the national ambient air quality standard for ozone. Each CTG contains a "presumptive norm" for RACT for the specific source category, based on EPA's evaluation of the capabilities and problems general to that category. The CTG for the wood furniture industry is being developed as one of the 11 CTG's to help fulfill the requirements of the CAAA.

The Committee and Its Process

In early 1993, EPA contracted with professional convenors to help determine if the regulatory negotiation approach was feasible and desirable for rules impacting the wood furniture manufacturing industry. In addition to numerous individual contacts with potentially interested parties and interest groups, EPA held five public meetings: December 15, 16; January 26, 27; March 25, 26; May 4, 5; and June 3, 4. EPA and the meeting participants felt the exchanges were mutually beneficial. As a result, EPA now believes it is appropriate to charter an Advisory Committee to make specific regulatory recommendations for implementing sections 112 and 183 of the Clean Air Act with regard to the wood furniture manufacturing industry. EPA has therefore established the Wood Furniture Manufacturing Industry Negotiated Rulemaking Advisory Committee to do so.

The Negotiated Rulemaking Act of 1990 contemplates a "convening" process during which potential parties and issues are identified, publishing a notice of intent to form the committee, waiting 30 days for comments to be submitted responding to the notice, and only then proceeding with the establishment of the committee provided it meets the criteria of the Act. The convening process and five public meetings have accomplished those ends. Significantly affected public and interest groups have been identified, and the issues in controversy have been defined. The convening discussions and public meetings have enabled the agency to determine that the criteria for negotiating rules, as spelled out in the Negotiated Rulemaking Act and the ones that have guided EPA in the past are met for this rule—

- The National Emission Standard for Hazardous Air Pollutants (NESHAP) and CTG is needed, since they are *required* by the CAAA.
- A limited number of identifiable interests will be significantly affected by the rule. Those parties are large, medium and small sized manufacturers, coating manufacturers, environmental organizations, and State and local air pollution control officials.
- Representatives can be selected to adequately represent these interests, as reflected above.
- The interests are willing to negotiate in good faith to attempt to reach a consensus on a proposed rule and/or CTG. This committee is established to enable them to do just that.
- There is a reasonable likelihood that the committee will reach consensus on a proposed rule, and/or CTG within a reasonable time. This determination has been made following the data discussions, and hence is built on the developments to date.
- The use of the negotiation will not delay the development of the rule and/or CTG if time limits are placed on the negotiation. Indeed, its use will expedite it and the ultimate acceptance of the rule and/or CTG.

EPA is not proposing to issue a separate notice of intent to form a negotiated rulemaking committee for this rule. Given the evolution of this committee, the publication of such a notice would only slow down the rulemaking process, and its functions have either already been met or are provided for in this notice. Moreover, section 581 of the Act [Pub. L. 101–648, 11–29–90] specifically provides that its provisions are not mandatory.

The Act does anticipate outreach to ensure that people who were not contacted during the convening of the committee can come forward to explain why they believe they would be significantly affected and yet not represented on the committee or to argue why they believe the rule should not be negotiated. As discussed below,

anyone who believes they meet these criteria are invited to apply for membership on the committee.

Committee Membership

Industry Representatives

Business and Institutional Furniture
William Deal, Bernhardt Furniture Company
Susan E. Perry, Business & Institution Furniture Manufacture Association
Kitchen Cabinets
Paul J. Eisele, Ph.D., MASCO Corporation
Richard Titus, Kitchen Cabinet Manufacture Association
Residential Furniture
Bill Sale, Broyhill Furniture
Mike Soots, Kincaid Furniture, Inc.
Coatings
G.M. Currier, AKZO Coatings Inc.
William Dorris, Lilly Industries
Andy Riedell, PPG Industries
Resins
John P. DeVido, Aqualo
Peter Nicholson, Rohm and Haas
Medium Sized Furniture Companies
Randall B. Shepard, McGuire Furniture
Small Business Representatives
Jack Burgess, Pridgen Cabinet Works, Inc.
David Rothermel, Stylecraft Corporation
John Zeltsman, Architectural Woodwork Institute

Federal Agencies

Jack Edwardson, Emission Standards Division, U.S. EPA

States

Terry Black, Planning Section, Pa. Dept. of Environmental Resources
Jon Heinrich, Wisconsin Department of Natural Resources
Alan Klimek, North Carolina Department of Environment
Gary Hunt, North Carolina Office of Waste Reduction

Environmental and Public Interest Groups

Freeman Allen, Sierra Club
Janet Vail, West Michigan Environmental Action Council
Stephen Wilcox, American Lung Association of North Carolina
Brian Morton, North Carolina Environmental Defense Fund

Application for Membership and Opportunity to Comment

Anyone who would like to comment on the wisdom of proceeding by negotiation is invited to do so. Anyone who believes they would be significantly affected by a National Emission Standard or CTG for the Wood Furniture Industry, and who believes their interest would not be adequately represented by the committee described above, is invited to apply for membership on the committee or to nominate someone else for membership. An application for membership should include:

1. The name of the applicant or nominee and a description of the interest(s) such person will represent.

2. Evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person proposes to represent.

3. A commitment that the applicant or nominee will actively participate in good faith in the development of the standards.

4. The reason that the members of the committee who are described above do not adequately represent the interests of the person submitting the application or nomination.

To be considered, any comments or applications must be received by the close of business on July 23, 1993. Send comments and applications to Madeleine Strum, Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711.

EPA will give full consideration to all comments, applications, and nominations. The decision to add a person to the committee will be based on whether an interest of that person will be significantly affected by the proposed rules, whether that interest is already adequately represented on the committee, and if not, whether the applicant or nominee would adequately represent it.

Schedule

The committee will meet on July 8 and 9, 1993 at the times and location indicated earlier in this notice. Additional meetings are scheduled for August 25–27 and October 21–22. We will announce the precise locations and starting and ending times of these meetings in separate advance notices. All meetings are open to the public without advance registration. Members of the public may attend, make statements during the meeting to the extent time permits, and submit written documents to the committee for its consideration. On each day the committee will work to fashion specific recommendations with regard to National Emission Standards and CTG for the Wood Furniture Manufacture Industry.

Dated: June 16, 1993.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 93–14584 Filed 6–22–93; 8:45 am]

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40 CFR Part 86

[FRL–4670–5]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Regulations Requiring On-Board Diagnostic Systems on 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency.

ACTION: Notice of public workshop and reopening of comment period.

SUMMARY: This notice announces that on July 14, 1993, the Environmental Protection Agency (EPA) will hold a public workshop to address certain issues that have been raised in connection with EPA's Notice of Proposed Rulemaking (NPRM) for On-Board Diagnostic Systems (OBD) that was published in the **Federal Register** on September 24, 1991. The public workshop is being conducted so that EPA and interested parties can discuss certain issues pertaining to the requirement of section 202(m)(5) of the Clean Air Act (CAA) that emission-related repair information be made available to "any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines." Specifically, the issues to be discussed will include the following: The use of the National Technical Information Service (NTIS) as a clearinghouse for service information; clarification of certain terms, including Programmable Read Only Memory (PROM) computer chips, engine calibration, component calibration, recalibration, reprogramming, data stream information, indirect information, functional control strategies, and bi-directional control; emission-related service information to be made available; the organization of service information in electronic format; and the availability of manufacturers' enhanced diagnostic equipment and the use of an electronic data interchange (EDI) system. This notice also announces that the docket in this proceeding shall be reopened for thirty days following the workshop for the filing of written comments pertaining to issues discussed at the workshop.

DATES: The workshop will convene at 9 a.m. on July 14, 1993, and will adjourn after the time necessary to complete the

presentations and discussion, but no later than the close of business on July 14, 1993. Persons interested in making presentations at the workshop should notify the Agency contact person listed below at least five days prior to the workshop so that a final agenda can be prepared. At the workshop, issues will be addressed individually in the order in which they appear in this notice. Persons who want to make presentations are asked to come prepared to address each issue separately and bring with them 50 copies of their presentations. Individual presentations on any one issue will be limited to ten minutes. Interested parties may submit written comments pertaining to the issues addressed at the public workshop on or before August 13, 1993.

ADDRESSES: The workshop will be held at the Domino's Farms Conference Facility, Ulrich Room, Lobby E, 24 Frank Lloyd Wright Dr., Ann Arbor, Michigan 48105, (313) 930–4258. Written comments must be sent in duplicate to: EPA Air Docket LE–131, Attention: Docket No. A–90–35, U.S. Environmental Protection Agency, room M–1500, 401 M Street SW., Washington, DC 20460, (202) 382–7548. This docket is located at the above address on the first floor of Waterside Mall and is open for public inspection weekdays from 8:30 to 12 noon and from 1:30 p.m. to 3:30 p.m. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for copying services.

FOR FURTHER INFORMATION CONTACT: Cheryl F. Adelman, Certification Division, U.S. EPA National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313) 668–4434.

SUPPLEMENTARY INFORMATION: EPA is holding this workshop to provide EPA and the public with an opportunity to further discuss EPA's proposals regarding certain issues related to the availability of emission-related service, diagnostic and repair information, and for the public to offer suggestions or alternatives to EPA's proposals. These issues were discussed previously at a public hearing that was held on November 6, 1991, and in a workshop held on June 30, 1992. Copies of the transcripts of the hearing and the workshop are available in the docket. A court reporter will be present at the workshop announced here to make a written transcript of the proceedings and a copy will be placed in the docket following the workshop.

1. Background

Section 202(m) of the CAA directs EPA to promulgate a rule that requires all light-duty vehicles and light-duty trucks manufactured in model years 1994 and thereafter to contain an on-board diagnostic (OBD) system which will monitor emission-related components for malfunction or deterioration. To assure the repair and service industry will have the information needed to perform necessary emission-related repairs, section 202(m)(5) of the CAA directs EPA to promulgate regulations that require "manufacturers to provide promptly to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines * * * any and all information needed to make use of the emission control diagnostics system * * * and such other information including instructions for making emission-related diagnosis and repairs." On September 24, 1991, EPA published an NPRM in the Federal Register proposing regulations to implement section 202(m) of the Act, including regulations to implement section (202)(m)(5) of the Act (56 FR 48272). Based on the comments received in response to both the proposal and the June 30 workshop, EPA believes that certain issues related to the proposed regulations implementing section 202(m)(5) require clarification by EPA and a further opportunity for public comment.[1] These issues will be discussed below.

First, EPA requests comment on the use of the National Technical Information Service (NTIS) as a clearinghouse for service information. EPA received numerous comments regarding the use of an information clearinghouse to distribute information. While several manufacturers and one information publisher opposed the use of an information clearinghouse, a few manufacturers and many sectors of the aftermarket supported the establishment of a clearinghouse.

Second, EPA requests comment on the definitions and/or descriptions of certain terms used throughout the NPRM. These terms include the following: PROM computer chips; engine calibration; component calibration; recalibration; reprogramming; data stream information; functional control strategies; bi-directional control; and indirect information. Based on the comments received, EPA believes that these terms warrant further clarification to ensure that there is a uniform understanding throughout the automotive industry as to their meaning in the context of this rulemaking. Such clarification will also help reduce questions regarding what service, repair and diagnostic information vehicle manufacturers are required to make available pursuant to section 202(m)(5) of the CAA.

Third, EPA requests comment on the extent of emission related service information to be provided by vehicle manufacturers to the aftermarket. Based on comments received, EPA believes that some confusion exists within the industry as to the systems, components and parts for which emission-related information must be made available. Clarification is needed to ensure that the aftermarket receives all of the information needed to service, diagnose and repair emission-related problems.

EPA proposes that emission-related service, diagnostic and repair information would include, but not be limited to, any system, component or part of a vehicle that controls emissions and any system, components and/or part associated with the powertrain system, including, but not limited to, the fuel system and ignition system. Information would also have to be provided for any system, component, or part that could have a reasonably foreseeable impact on emissions, such as transmission systems.

Fourth, EPA requests comment on issues related to the organization of service information in electronic format. First, EPA requests comment on whether it should wait to adopt SAE recommended practice J2008 when it is finalized or whether EPA should develop its own electronic format for the organization of service information. EPA is concerned that delays in the adoption of J2008 could impede the conversion of information to an electronic format. Second, in accordance with section 202(m)(5), vehicle manufacturers are required to provide the same information to the aftermarket as they provide to their dealerships. Therefore, it is proposed that if vehicle manufacturers "deeply tag" the electronic service information provided to their dealerships, i.e., provide information at a more specific level than the organizational level required by J2008, they will be required to provide the same "deeply tagged" information to the aftermarket.

Last, EPA requests comment on whether each vehicle manufacturer should be required to make available to the aftermarket its enhanced diagnostic equipment. Technicians who use enhanced diagnostic equipment will be

[1] A Final Rule implementing the remainder of section 202(m) was published in the Federal Register on February 10, 1993 (58 FR 9468).

able to diagnose and repair vehicles more effectively and efficiently than technicians who do not have such equipment. Therefore, EPA believes that all technicians should have access to enhanced diagnostic equipment. EPA also believes that vehicle manufacturers should have the option of providing repair and diagnostic information through an EDI or similar system. EDI is a means of transmitting business transactions between computers in standard data formats.

A. The NTIS as an Information Clearinghouse

The proposed regulations require manufacturers to ensure that emission-related service and repair information, whether distributed by the manufacturer or an intermediary, is reasonably accessible to all persons who service and repair motor vehicles. In response to this proposal, EPA received several comments on the use of a clearinghouse to receive and distribute service information. While some commenters opposed the use of an information clearinghouse, a few manufacturers and many sectors of the aftermarket (e.g., independent technicians) supported the establishment of a clearinghouse. EPA believes that some of the adverse comments indicated that the commenters had concerns as to the entity that would serve as the clearinghouse and whether that entity could adequately handle the large volumes of rapidly changing information.

EPA believes that the use of a clearinghouse would be beneficial to the Agency, the vehicle manufacturers, and the aftermarket. A clearinghouse would enable EPA to verify, by going to one source, that manufacturers are providing the required information. As discussed below, vehicle manufacturers would benefit from the use of a clearinghouse as it would eliminate or modify several of the responsibilities proposed to be required of the manufacturers. A clearinghouse would also benefit the aftermarket as the aftermarket would know where to obtain information needed to service vehicles.

EPA proposes the use of the NTIS as a clearinghouse for service information. The NTIS is a self-sustaining clearinghouse established by the U.S. Department of Commerce. It is the central source for the public sale of U.S. Government-sponsored research, development, and engineering reports, and for sales of foreign technical reports and other analyses prepared by national and local government agencies and their contractors or grantees. It has the capacity to collect, reproduce and distribute the large quantity of service information generated by the vehicle manufacturers.

Vehicle manufacturers would be required to provide initial service, repair, diagnostic and parts information to the NTIS within thirty days of providing it to their franchised dealerships or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. Service, repair, diagnostic and parts information, such as technical service bulletins and troubleshooting manuals, issued to dealerships during any subsequent thirty day period would be sent to the NTIS at the end of each such thirty day period.

The NTIS would not amend or otherwise alter the service information it receives prior to distribution—it would only reproduce information in the form in which it was received. As the NTIS' per page reproduction costs are reduced as the volume of information requested increases, the NTIS may require that the public request information in relatively complete sets. For example, for manuals, this could mean that a purchaser must request at least a chapter from a manual or an entire manual. For technical service bulletins, purchasers may have to request the entire bulletin.

To determine what information the NTIS has available, purchasers could either access the NTIS' on-line bulletin board or request a printed list. In the case of printed materials, the cost charged by the NTIS for each information request would be related to the number of pages reproduced.

Each vehicle manufacturer would be required to provide one copy of all information required under the regulations to the NTIS. EPA is proposing that each manufacturer would be required to provide the information to the NTIS free of charge pursuant to a copyright release or other agreement. Vehicle manufacturers could receive royalties for subsequent distribution of the information by the NTIS based on prearranged agreements.

The workshop will allow interested parties the opportunity to present ideas regarding possible royalty arrangements for purchases of information from the NTIS by end users, such as independent technicians, and by intermediaries who intend to condense or otherwise alter the information for resale. For example, where the information is sold to an intermediary who resells the information, the royalty arrangement could be between the intermediary and the vehicle manufacturer and could be at a different percentage than that for information sold by the NTIS to an end user. Another option would be to have the NTIS only provide information to end users, while vehicle manufacturers would provide information directly to intermediaries under separate arrangements. The workshop will allow interested parties the opportunity to present ideas regarding whether the amount of the royalty should be tied to certain factors, such as the format in which the information is provided to the NTIS and the number of requests for a vehicle manufacturer's materials.

By using the NTIS as a clearinghouse, several requirements which were proposed to be the responsibility of the vehicle manufacturers would be deleted or amended. First, vehicle manufacturers would not be responsible for information distributed by intermediaries or other parties. This is due to the fact that all persons would have access to the NTIS which would have a complete library of information. Second, vehicle manufacturers would not be required to continually inform the aftermarket about the availability of their service information through advertisements or other efforts, since the aftermarket would, within a short period of time, become aware through their associations or other channels that service information can be obtained from the NTIS. Third, by using the NTIS as a clearinghouse, vehicle manufacturers would not be required to submit a detailed certification plan. EPA and other interested parties would be able to determine whether the required information is being made available by reviewing the information supplied to one source, the NTIS. Fourth, the requirement that vehicle manufacturers provide information in a timely manner would be satisfied by providing information to the NTIS on the designated schedule as described above. Last, the requirement that information be provided at a reasonable cost could, at least in part, be addressed by the NTIS' sale of information. Whether the cost requirement would be satisfied depends on whether and to what extent royalties are paid to vehicle manufacturers and the ability of the NTIS to provide its services at an affordable price, taking into consideration the amount of information requested by various parties.

Although EPA would require submission of information to the NTIS, vehicle manufacturers would not be precluded from providing service information through any other distribution mechanism. Manufacturers would still have the option of selling information directly to intermediaries, dealerships or the aftermarket. The

workshop will allow interested parties the opportunity to present their ideas regarding the use of the NTIS as an information clearinghouse.

B. Descriptions/Definitions

At the time the NPRM was published, EPA believed that certain terms used in the NPRM had descriptions and/or definitions that were widely recognized and accepted throughout the automotive industry. These terms include the following: PROM computer chips; engine calibration; component calibration; recalibration; reprogramming; data stream information; functional control strategies; bi-directional control; and indirect information.

Based on the comments received, however, it appears that there is some confusion within certain sectors of the industry as to the meaning of these terms. As a result, EPA believes some confusion exists as to the service information that is required to be provided pursuant to section 202(m)(5) and service information that is proprietary. To eliminate such confusion, EPA is proposing descriptions and/or definitions for these terms to ensure that there is a uniform understanding throughout the automotive industry as to the information that vehicle manufacturers will be required to make available.

In describing and/or defining the terms below, EPA has indicated that it believes certain categories of information are proprietary. The workshop will allow interested parties the opportunity to present their ideas as to which of the following terms include proprietary information, what that proprietary information is, why it is or isn't proprietary, and why the information should or shouldn't be made available.

PROM Computer Chips: PROM is a form of memory for a vehicle's engine control computer ("module"). It is stored on a computer chip within the module and contains the instructions the module uses for operating many of the engine systems (e.g., fuel, spark, and emission). The instructions in a PROM consist of preset values and algorithms and are permanently stored (i.e., unchangeable) within the computer chip.

Erasable PROMs (EPROM) are the same as PROMs, except that the preset values and algorithms found in the instructions can be erased and replaced with new values. An EPROM can only be erased by removing it from a vehicle and exposing it to ultraviolet light.

Electronically Erasable PROMs (EEPROM) are the same as an EPROM, except that the preset values and algorithms can be erased and replaced electronically. The values and algorithms on EEPROMs can be completely or selectively erased.

"Flash" Electronically Erasable PROMs ("Flash" EEPROM) are the same as EPROMs, except that all information contained in the computer chip, including the instructions (values and algorithms), are erased and replaced electronically, rather than by ultraviolet light.

Engine Calibration: An engine calibration is the set of instructions the module uses for operating many of the engine systems (e.g., fuel, spark, and emission). These instructions are made up of preset values and algorithms that are located in a computer chip. The preset values are normally in the form of look-up tables. Look-up tables are tables that typically list a set of variables or values (i.e., X and Y) that express some type of relationship between the values. An example of a look-up table is a table for cold engine starting that compares fuel injector pulsewidth values (X) with engine temperature values (Y). The module uses the preset calibration values along with predetermined algorithms (i.e., equations) in processing input data from various engine sensors to determine instructions to be sent to various vehicle actuators, e.g., fuel injectors, EGR valves, etc. Pursuant to sections 202(m)(5) and 208(c) of the CAA, engine calibrations are proprietary, unless that information is made available by vehicle manufacturers to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines.

Component Calibrations: Component calibrations are the mechanical, electrical or electromechanical attributes of a component necessary for that component to perform its specific design function. This also includes a description of components' specifications or physical attributes, e.g., size, shape, material, etc. An example of a component calibration for a Manifold Absolute Pressure sensor would include a curve of required voltage output with tolerances versus engine manifold vacuums (i.e., the module would interpret a specific voltage level as a particular manifold vacuum level).

Recalibration: Recalibration is the act of revising the preset values and/or algorithms for an existing engine calibration in a particular vehicle model/engine configuration. An example of a recalibration would be a change made to the existing calibration for vehicle models/engine configurations experiencing start-up problems during excessively cold weather. The recalibration would change some of the pre-set values for a specific look-up table that compares the amount of fuel injector pulsewidth with engine coolant temperature. By changing the calibration so that a longer pulsewidth occurs at a specific temperature, additional fuel will be added at the engine coolant temperature where the start-up problem occurs and alleviate the problem.

Recalibrations are design changes to vehicle model/engine configurations performed by engineers at engineering facilities, not changes to specific vehicles performed at service centers. Vehicle manufacturers typically develop recalibrations to address driveability or emission problems. Some vehicle manufacturers and aftermarket part manufacturers also develop recalibrations to enhance vehicle performance. Pursuant to sections 202(m)(5) and 208(c), recalibrations are proprietary, unless that information is made available by vehicle manufacturers to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines.

Reprogramming: Reprogramming is the act of installing a "new" engine calibration (i.e., a recalibration) into the module of a specific vehicle. If the calibration exists on a PROM computer chip, it means the physical removal of the existing chip and replacing it with a chip that has the "new" calibration or the complete replacement of the module with a new module that contains the new PROM and its calibration. To change the engine calibration on EEPROM or "Flash" EEPROM computer chips, the calibration must be erased and replaced electronically. No physical hardware changes are required to reprogram a recalibration into an EEPROM or "Flash" EEPROM.

Data Stream Information: Data stream information are messages transmitted between a network of modules and/or intelligent sensors (i.e., a sensor that contains and is controlled by its own module) connected in parallel with either one or two communication wires. Messages on the communication wires can be broadcast by any module or intelligent sensor.

Data stream information generally consists of messages and parameters originated within the vehicle by a module or intelligent sensors. The information is broadcast over the communication wires for use by other modules (e.g., chassis, transmission, etc.) to conduct normal vehicle operation or for use by diagnostic tools.

Data stream information does not include engine calibration related information.

Functional Control Strategies: Functional control strategies are descriptions of how and when various engine systems operate. Typically, it is a written explanation or flow diagram that describes the interaction of the module and the various sensors and actuators as proscribed by the engine calibration. An example of a functional control strategy would be that for a particular fuel system, the fuel system does not go into closed-loop operation until: (1) The engine coolant temperature has reached 180F; (2) the module observes an active oxygen sensor signal; (3) and 30 seconds has elapsed after reaching that temperature.

Bi-Directional Control: Bi-directional control is the capability of a diagnostic tool to send messages on the data bus that temporarily overrides the module's control over a sensor or actuator and gives control to the diagnostic tool operator. An example of bi-directional control is the ability to increase or decrease the idle speed by using the diagnostic tool to vary the idle by-pass motor. This allows a technician to quickly verify that the idle by-pass motor responds to commands from the module. Bi-directional controls do not create permanent changes to engine or component calibrations.

Indirect Information: Indirect information is any information that is not specifically contained in the service literature, but is contained in items such as parts or other equipment provided to franchised dealers (or others).

The workshop will provide interested parties the opportunity to comment on these definitions and descriptions.

C. Emission-Related Service Information

Based on the comments received in response to the NPRM and the June 30, 1992 workshop, EPA believes that clarification is warranted as to the systems, components and parts for which emission-related service, diagnostic and repair information must be provided by the vehicle manufacturers to the aftermarket. For purposes of this rule, EPA proposes that emission-related service, diagnostic and repair information would include, but not be limited to, any system, component or part of a vehicle that controls emissions and any system, components and/or part associated with the powertrain system, including, but not limited to, the fuel system and ignition system. Information would also have to be provided for any system, component, or part that could have a reasonably foreseeable impact on emissions, such as transmission systems.

In addition, EPA will monitor the results of inspection and Maintenance programs [2] for failures resulting from systems, components, or parts other than those described here. If EPA determines that a substantial number of I/M failures are occurring due to systems, components, or parts other than those described here, the extent of emission-related service information will be expanded in a subsequent rulemaking to include such items.

D. Electronic Format

EPA proposed that beginning in model year 1996 vehicle manufacturers would be required to use the service information format being developed by SAE. Entitled "Recommended Organization of Service Information" (J2008), this format establishes a recommended practice for organizing service information within an electronic data base.

Due to various factors, SAE has not yet adopted J2008. EPA anticipates that SAE will adopt J2008 by mid-1994. If J2008 is adopted in a form that meets the needs of EPA, EPA would propose to incorporate J2008 into the service information regulations after further notice and comment. However, if J2008 is not adopted by mid-1994, or if the final version of J2008 does not meet the needs of EPA, EPA may propose to adopt its own format that vehicle manufacturers would be required to follow. EPA believes that such action could be necessary to prevent delays in the conversion of service information to an electronic format.

Further, in accordance with section 202(m)(5), vehicle manufacturers are required to provide the same information to the aftermarket as they provide to their dealerships. Therefore, in the rulemaking specifying whether J2008 or another electronic format will be required, EPA will propose that if vehicle manufacturers "deeply tag" the electronic service information provided to their dealerships, i.e., provide information at a more specific level than is required under J2008, they will be required to provide the same "deeply tagged" information to the aftermarket.

The workshop will provide interested parties the opportunity to present suggestions regarding the adoption of J2008 and the additional requirement for aftermarket distribution of "deeply tagged" information.

[2] 56 FR 52950, November 5, 1992.

E. Availability of Enhanced Diagnostic Equipment

According to section 202(m)(5) of the CAA, emission-related information provided by vehicle manufacturers indirectly to franchised dealers must also be provided to any person engaged in the repairing or servicing of motor vehicles. Some vehicle manufacturers are or will be providing their dealers the ability to diagnose malfunctions and/or reprogram vehicle modules via enhanced diagnostic equipment. This equipment will not allow dealers to view the recalibrations, but will allow them to reprogram vehicles using the recalibrations.

EPA believes that the enhanced diagnostic equipment provides franchised dealers indirectly with information that is needed to make emission-related diagnosis and repairs. EPA believes that vehicle manufacturers should provide this information to the aftermarket in the same form in which it is provided to franchised dealers. Therefore, EPA proposes to require that vehicle manufacturers offer their enhanced diagnostic equipment for sale to the aftermarket. This would enable vehicle manufacturers to comply with the requirements of section 202(m)(5) that information be made available to the aftermarket if it is made available to dealerships or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines while simultaneously protecting the proprietary interest of the vehicle manufacturers. It would also provide the aftermarket with the same capabilities as dealerships without divulging proprietary engine calibrations or recalibrations.

EPA proposes that manufacturers' enhanced diagnostic equipment must be made available to the aftermarket at the same price at which it is sold to authorized dealerships. As EPA discussed in the September 24, 1991 NPRM, the requirement that information be made available to the aftermarket entails a corollary requirement that the information be made available at a reasonable price. In this case, EPA believes that a reasonable price to charge the aftermarket is the same price at which the equipment is offered to franchised dealerships.

Based on previous comments provided to EPA, vehicle manufacturers' enhanced diagnostic equipment is sold to dealerships independent of their franchise agreements. Therefore, the cost of such equipment can be readily determined. If this is not the case for some manufacturers, the workshop will provide an opportunity for those

manufacturers to provide suggestions for determining the price of their equipment. EPA proposes to give vehicle manufacturers a one-year lead time to prepare for aftermarket sales of enhanced equipment.

EPA expects that dealerships will provide effective and timely reprogramming services to independent technicians who elect not to purchase vehicle manufacturer enhanced diagnostic equipment.

EPA also proposes that vehicle manufacturers should have the option of providing service, repair and diagnostic information through an EDI or similar system.

II. Issues

EPA believes that given the issues discussed above, the following subject areas are likely to be discussed at the workshop:

—Factors to be considered in using NTIS as a clearinghouse for service information.

—The extent to which vehicle manufacturers should receive royalties from the NTIS (to ensure that the cost of information remains reasonable and, therefore, available but to avoid unreasonable interference with manufacturers' copyright protection).

—Descriptions and definitions of terms.

—Exactly what information is proprietary and reasons why such information should or should not be considered proprietary.

—Adoption of J2008.

—Providing deeply tagged information to the aftermarket.

—Availability of vehicle manufacturers' enhanced diagnostic equipment.

—Other issues that EPA may identify.

III. Format of Workshop

The workshop will be conducted informally. EPA will make a presentation highlighting the information availability provisions in the September 1991 NPRM. After EPA's presentation, attendees will be encouraged to make oral presentations and participate in a discussion of issues in the order that they are presented in this workshop notice. A court reporter will be present to make a written transcript of the proceedings. A copy of the transcript and all documents received at the workshop will be placed in the docket. The docket in this proceeding shall be reopened for thirty days following the workshop for comments pertaining to issues discussed at the workshop.

Dated: June 17, 1993.

Michael H. Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–14812 Filed 6–22–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–4668–4]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 15

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list.

The Environmental Protection Agency ("EPA") proposes to add new sites to the NPL. This 15th proposed revision to the NPL includes 7 sites in the General Superfund section and 10 in the Federal Facilities section. The identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This action does not affect the 1,199 sites currently listed on the NPL (1,076 in the General Superfund Section and 123 in the Federal Facilities Section). However, it does increase the number of proposed sites to 71 (51 in the General Superfund Section and 20 in the Federal Facilities Section). Final and proposed sites now total 1,270.

DATES: Comments must be submitted on or before July 23, 1993, for South Weymouth Naval Air Station (Weymouth, Massachusetts), Materials Technology Laboratory (U.S. Army, Watertown, Massachusetts), and Portsmouth Naval Shipyard (Kittery, Maine). For the remaining sites in this proposal, comments must be submitted on or before August 23, 1993.

ADDRESSES: Mail original and three copies of comments (no facsimiles) to Docket Coordinator, Headquarters; U.S. EPA CERCLA Docket Office; OS–245; Waterside Mall; 401 M Street, SW., Washington, DC 20460; 202/260–3046. For additional Docket addresses and further details on their contents, see Section I of the "Supplementary Information" portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (OS–5204G), U.S. Environmental Protection Agency, 401 M Street, SW. Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424–9346 or (703) 920–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Purpose and Implementation of the NPL
III. Contents of This Proposed Rule
IV. Regulatory Impact Analysis
V. Regulatory Flexibility Act Analysis

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act") in response to the dangers of uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99–499, 100 stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions, most recently on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action." As defined in CERCLA section 101(24), remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release.

Mechanisms for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA (commonly referred to

as the "Superfund") and financed by other persons are included in the NCP at 40 CFR 300.425(c) (55 FR 8845, March 8, 1990). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which is appendix A of 40 CFR part 300. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances, pollutants, and contaminants to pose a threat to human health or the environment. Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2), requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed whether or not they score above 28.50, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

Based on these criteria, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA promulgates a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is appendix B of 40 CFR part 300, is the National Priorities List ("NPL"). CERCLA section 105(a)(8)(B) defines the NPL as a list of "releases" and as a list of the highest priority "facilities." The discussion below may refer to the "releases or threatened releases" that are included on the NPL interchangeably as "releases," "facilities," or "sites." CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1).

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on October 14, 1992 (57 FR 47180).

The NPL includes two sections, one of sites being evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites being addressed by other Federal agencies (the "Federal Facilities Section"). Under Executive Order 12580 and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining if the facility is placed on the NPL. EPA is not the lead agency at these sites, and its role at such sites is accordingly less extensive than at other sites. The Federal Facilities Section includes those facilities at which EPA is not the lead agency.

Deletions/Cleanups

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e) (55 FR 8845, March 8, 1990). To date, the Agency has deleted 50 sites from the General Superfund Section of the NPL, most recently the Woodbury Chemical Co., Commerce City, Colorado (58 FR 15287, March 22, 1993).

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Sites qualify for the CCL when:

(1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved;

(2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or

(3) The site qualifies for deletion from the NPL. Inclusion of a site on the CCL has no legal significance.

In addition to the 50 sites that have been deleted from the NPL because they have been cleaned up (the Waste Research and Reclamation site was deleted based on deferral to another program and is not considered cleaned up), an additional 112 sites are also in the NPL CCL, all but one from the General Superfund Section. Thus, as of April 1992, the CCL consists of 161 sites.

Cleanups at sites on the NPL do not reflect the total picture of Superfund accomplishments. As of March 30, 1993, EPA had conducted 568 removal actions at NPL sites, and 1,921 removal actions at non-NPL sites. Information on removals is available from the Superfund hotline.

Pursuant to the NCP at 40 CFR 300.425(c), this document proposes to add 17 sites to the NPL. The General Superfund Section includes 1,076 sites, and the Federal Facilities Section includes 123 sites, for a total of 1,199 sites on the NPL. Final and proposed sites now total 1,270. These numbers reflect EPA's decision to remove the Hevi-Duty Electric Co., in Goldsboro, North Carolina, and the Court's removal of the Tex-Tin Corp. site, in Texas City, Texas, from the NPL.

Public Comment Period

The documents that form the basis for EPA's evaluation and scoring of sites in this rule are contained in dockets located both at EPA Headquarters and in the appropriate Regional offices. The dockets are available for viewing, by appointment only, after the appearance of this rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact individual Regional dockets for hours. Note that the Headquarters docket, although it will be moving during the comment period, will remain open for viewing of sites included in this rule.

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, OS–245, Waterside Mall, 401 M Street, SW., Washington, DC 20460, 202/260–3046.

Ellen Culhane, Region 1, U.S. EPA Waste Management Records Center, HES-CAN 6, J.F. Kennedy Federal Building, Boston, MA 02203–2211, 617/573–5729.

Bon Conetta, Region 2, 26 Federal Plaza, 7th Floor, Room 740, New York, NY 10278, 212/264–6696.

Diane McCreary, Region 3, U.S. EPA Library, 3rd Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597–7904.

Beverly Fulwood, Region 4, U.S. EPA Library, Room G–6, 345 Courtland Street, NE., Atlanta, GA 30365, 404/347–4216.

Cathy Freeman, Region 5, U.S. EPA, Records Center, Waste Management Division 7-J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604, 312/886–6214.

Bart Canellas, Region 6, U.S. EPA 1445 Ross Avenue, Mail Code 6H-MA, Dallas, TX 75202–2733, 214/655–6740.

Steven Wyman, Region 7, U.S. EPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/551–7241.

Greg Oberley, Region 8, U.S. EPA, 999 18th Street, Suite 500, Denver, CO 80202–2466, 303/294–7598.

Lisa Nelson, Region 9, U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105, 415/744–2347.

David Bennett, Region 10, U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop HW–114, Seattle, WA 98101, 206/553–2103.

The Headquarters docket for this rule contains HRS score sheets for each proposed site; a Documentation Record for each site describing the information used to compute the score; pertinent information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record. Each Regional docket for this rule contains all of the information in the Headquarters docket for sites in that Region, plus the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS scores for sites in that Region. These reference documents are available only in the Regional dockets. Interested parties may view documents, by appointment only, in the Headquarters or the appropriate Regional docket or copies may be requested from the Headquarters or appropriate Regional docket. An informal written request, rather than a formal request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

EPA considers all comments received during the comment period. During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the Regional docket on an "as received" basis.

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values. See *Northside Sanitary Landfill v. Thomas*, 849 F.2d 1516 (D.C. Cir. 1988). EPA will make final listing decision after considering the relevant comments received during the comment period.

In past rules, EPA has attempted to respond to late comments, or when that was not practicable, to read all late comments and address those that brought to the Agency's attention a fundamental error in the scoring of a site. (See, most recently, 57 FR 4824 (February 7, 1992).) Although EPA intends to pursue the same policy with sites in this rule, EPA can guarantee that it will consider only those comments postmarked by the close of the formal comment period. EPA cannot delay a final listing decision solely to accommodate consideration of late comments.

II. Purpose and Implementation of the NPL

Purpose

The legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96–848, 96th Cong., 2d Sess. 60 (1980)) states the primary purpose of the NPL:

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation. Finally, listing a site may, to the extent potentially responsible parties are identifiable at the time of listing, serve as notice to such parties that the Agency may initiate CERCLA-financed remedial action.

Implementation

After initial discovery of a site at which a release or threatened release may exist, EPA begins a series of increasingly complex evaluations. The first step, the Preliminary Assessment ("PA"), is a low-cost review of existing information to determine if the site poses a threat to public health or the environment. If the site presents a serious imminent threat, EPA may take immediate removal action. If the PA shows that the site presents a threat but not an imminent threat, EPA will generally perform a more extensive study called the Site Inspection ("SI"). The SI involves collecting additional information to better understand the extent of the problem at the site, screen out sites that will not qualify for the NPL, and obtain data necessary to calculate an HRS score for sites which warrant placement on the NPL and further study. EPA may perform removal actions at any time during the process. To date EPA has completed approximately 34,000 PAs and approximately 17,000 SIs.

The NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990) limits expenditure of the Trust Fund for remedial actions to sites on the NPL. However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of CERCLA removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.415(b)(2) (55 FR 8842, March 8, 1990). EPA's policy is to pursue cleanup of NPL sites using all the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities prior to undertaking response action, proceed directly with Trust Fund-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for CERCLA-financed response action and/or enforcement action through both State and Federal initiatives. EPA will take into account which approach is more likely to accomplish cleanup of the site most expeditiously while using CERCLA's limited resources as efficiently as possible.

Although the ranking of sites by HRS scores is considered, it does not, by itself, determine the sequence in which EPA funds remedial response actions, since the information collected to develop HRS scores is not sufficient to

determine either the extent of contamination or the appropriate response for a particular site (40 CFR 300.425(b)(2), 55 FR 8845, March 8, 1990). Additionally, resource constraints may preclude EPA from evaluating all HRS pathways; only those presenting significant risk or sufficient to make a site eligible for the NPL may be evaluated. Moreover, the sites with the highest scores do not necessarily come to the Agency's attention first, so that addressing sites strictly on the basis of ranking would in some cases require stopping work at sites where it was already underway.

More detailed studies of a site are undertaken in the Remedial Investigation/Feasibility Study ("RI/FS") that typically follows listing. The purpose of the RI/FS is to assess site conditions and evaluate alternatives to the extent necessary to select a remedy (40 CFR 300.430(a)(2) (55 FR 8846, March 8, 1990)). It takes into account the amount of contaminants released into the environment, the risk to affected populations and environment, the cost to remediate contamination at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of response action to be taken at these sites are made in accordance with 40 CFR 300.415 (55 FR 8842, March 8, 1990) and 40 CFR 300.430 (55 FR 8846, March 8, 1990). After conducting these additional studies, EPA may conclude that initiating a CERCLA remedial action using the Trust Fund at some sites on the NPL is not appropriate because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

RI/FS at Proposed Sites

An RI/FS may be performed at sites proposed in the **Federal Register** for placement on the NPL (or even sites that have not been proposed for placement on the NPL) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.415. Although an RI/FS generally is conducted at a site after it has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a site proposed for placement on the NPL in preparation for a possible Trust Fund-financed remedial action, such as when the Agency believes that a delay may create unnecessary risks to public health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

Facility (Site) Boundaries. The purpose of the NPL is merely to identify releases or threatened releases of hazardous substances that are priorities for further evaluation. The Agency believes that it would be neither feasible nor consistent with this limited purpose for the NPL to attempt to describe releases in precise geographical terms. The term "facility" is broadly defined in CERCLA to include any area where a hazardous substance has "come to be located" (CERCLA section 101(9)), and the listing process is not intended to define or reflect boundaries of such facilities or releases. Site names are provided for general identification purposes only. Knowledge of the geographic extent of sites will be refined as more information is developed during the RI/FS and even during implementation of the remedy.

Because the NPL does not assign liability or define the geographic extent of a release, a listing need not be amended if further research into the contamination at a site reveals new information as to its extent. This is further explained in preambles to past NPL rules, most recently February 11, 1991 (56 FR 5598).

Limitations on Payment of Claims for Response Actions

Sections 111(a)(2) and 122(b)(1) of CERCLA authorize the Fund to reimburse certain parties for necessary costs of performing a response action. As is described in more detail at 58 FR 5460 (January 21, 1993), 40 CFR part 307, there are two major limitations placed on the payment of claims for response actions. First, only private parties, certain potentially responsible parties (including States and political subdivisions), and certain foreign entities are eligible to file such claims. Second, all response actions under sections 111(a)(2) and 122(b)(1) must receive prior approval, or "preauthorization," from EPA.

III. Contents of This Proposed Rule

Table 1 identifies the 7 NPL sites in the General Superfund Section and table 2 identifies the 10 NPL sites in the Federal Facilities Section being proposed in this rule. Both tables follow this preamble. All these sites are proposed based on HRS scores of 28.50 or above. The sites in table 1 are listed alphabetically by State, for ease of identification, with group number identified to provide an indication of relative ranking. To determine group number, sites on the NPL are placed in groups of 50; for example, a site in Group 4 of this proposal has a score that falls within the range of scores covered by the fourth group of 50 sites on the General Superfund Section of the NPL. Sites in the Federal Facilities Section are also presented by group number based on groups of 50 sites in the General Superfund Section.

Statutory Requirements

CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. Where other authorities exist, placing sites on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen not to place certain types of sites on the NPL even though CERCLA does not exclude such action. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may place them on the NPL.

The listing policies and statutory requirements of relevance to this proposed rule cover sites subject to the Resource Conservation and Recovery Act ("RCRA") (42 U.S.C. 6901–6991i) and Federal facility sites. These policies and requirements are explained below and have been explained in greater detail in previous rulemakings (56 FR 5598, February 11, 1991).

Releases From Resource Conservation and Recovery Act (RCRA) Sites

EPA's policy is that non-Federal sites subject to RCRA Subtitle C corrective action authorities will not, in general, be placed on the NPL. However, EPA will list certain categories of RCRA sites subject to Subtitle C corrective action authorities, as well as other sites subject to those authorities, if the Agency concludes that doing so best furthers the aims of the NPL/RCRA policy and the CERCLA program. EPA has explained these policies in detail in the past (51 FR 21054, June 10, 1986; 53 FR 23978, June 24, 1988; 54 FR 41000, October 4, 1989; 56 FR 5602, February 11, 1991).

Consistent with EPA's NPL/RCRA policy, EPA is proposing to add one site to the General Superfund Section of the NPL that may be subject to RCRA Subtitle C corrective action authorities,

the Alcoa (Point Comfort)/Lavaca Bay site in Point, Comfort, Texas. Material has been placed in the public docket establishing that portions of the site formerly were operated as an "interim status" facility under RCRA (referred to in the NPL/RCRA deferral policy as "converters), and that the full extent of EPA's authority to address off-site contamination under RCRA is untested. Listing of the Lavaca Bay site on the NPL under these circumstances is consistent with EPA's NPL/RCRA deferral policy.

Releases From Federal Facility Sites

On March 13, 1989 (54 FR 10520), the Agency announced a policy for placing Federal facility sites on the NPL if they meet the eligibility criteria (e.g., an HRS score of 28.50 or greater), even if the Federal facility also is subject to the corrective action authorities of RCRA Subtitle C. In that way, those sites could be cleaned up under CERCLA, if appropriate.

This rule proposes to add ten sites to the Federal Facilities Section of the NPL.

IV. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to placement on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of the economic implications of today's proposal to add new sites to the NPL. EPA believes that the kinds of economic effects associated with this proposed revision to the NPL are generally similar to those identified in the regulatory impact analysis ("RIA") prepared in 1982 for revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Costs

This proposed rulemaking is not a "major" regulation because it does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine any party's liability for site response costs. Costs that arise out of responses at sites in the General Superfund Section result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs that may be associated with responding to all sites in this rule. The proposed listing of a site on the NPL may be followed by a search for potentially responsible parties and an RI/FS to determine if remedial actions will be undertaken at a site. Selection of a remedial alternative, and design and construction of that alternative, may follow completion of the RI/FS, and operation and maintenance ("O&M") activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may enter into consent orders or agreements to conduct or pay the costs of the RI/FS, remedial design and remedial action, and O&M, or EPA and the States may share costs up front and subsequently bring an action for cost recovery.

The State's share of site cleanup costs for Trust Fund-financed actions is governed by CERCLA section 104(c). For nonpublicly-operated sites, EPA will pay from the Trust Fund for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs of the remedial action, leaving 10% to the State. For sites operated by a State or political subdivision, the State's share is at least 50% of all response costs at the site, including the cost associated with the RI/FS, remedial design, and construction and implementation of the remedial action selected. After construction of the remedy is complete, costs fall into two categories:

- For restoration of ground water and surface water, EPA will pay from the Trust Fund a share of the start-up costs according to the cost-allocation criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years. 40 CFR 300.435(f)(3). After that, the State assumes all O&M costs. 40 CFR 300.435 (f)(1).
- For other cleanups, EPA will pay from the Trust Fund a share of the costs of a remedy according to the cost-allocation criteria in the previous paragraph until it is operational and functional, which generally occurs after one year. 40 CFR 300.435(f)(2), 300.510(c)(2). After that, the State assumes all O&M costs. 40 CFR 300.510(c)(1).

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average-per-site and total cost basis. EPA will continue with this approach, using the most recent (1988) cost estimates available; these estimates are presented below. However, costs for individual sites vary widely, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site [1]
RI/FS	1,300,000
Remedial Design	1,500,000
Remedial Action	[3] 25,000,000
Net present value of O&M [2]	3,770,000

[1] 1988 U.S. Dollars
[2] Assumes cost of O&M over 30 years, $400,000 for the first year and 10% discount rate
[3] Includes State cost-share

Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA, Washington, DC.

Possible costs to States associated with today's proposed rule for Trust Fund-financed response action arise from the required State cost-share of:

(1) For privately owned sites at which remedial action involving treatment to restore ground and surface water quality are undertaken, 10% of the cost of constructing the remedy, and 10% of the cost of operating the remedy for a period up to 10 years after the remedy becomes operational and functional;

(2) For privately-owned sites at which other remedial actions are undertaken, 10% of the cost of all remedial action, and 10% of costs incurred within one year after remedial action is complete to ensure that the remedy is operational and functional; and

(3) For sites publicly-operated by a State or political subdivision at which response actions are undertaken, at least 50% of the cost of all response actions. States must assume the cost for O&M after EPA's participation ends. Using the assumptions developed in the 1982 RIA for the NCP, EPA has assumed that 90% of the non-Federal sites proposed for the NPL in this rule will be privately-operated and 10% will be State- or locally-operated. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial planning and actions at all non-Federal sites in today's proposed rule, but excluding O&M costs, would be approximately $28 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share costs for up to 10 years for restoration of ground water and surface water, and it is not known how many sites will require this treatment and for how long. However, based on

past experience, EPA believes a reasonable estimate is that it will share start-up costs for up to 10 years at 25% of sites. Using this estimate, State O&M costs would be approximately $25 million. As with the EPA share of costs, portions of the State share will be borne by responsible parties.

Placing a site on the NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, these effects cannot be precisely estimated. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this proposed amendment to the NCP are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this proposal on output, prices, and employment is expected to be negligible at the National level, as was the case in the 1982 RIA.

Benefits

The real benefits associated with today's proposal to place additional sites on the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Proposing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate before the RI/FS is completed at these sites.

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule proposes to revise the NCP, it is not a typical regulatory change since it does not automatically impose costs. As stated above, proposing sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's proposed inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only the firm's contribution to the problem, but also its ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

NATIONAL PRIORITIES LIST PROPOSED RULE NO. 15

General Superfund Section

State	Site name	City/county	NPLGr[1]
MS	Chemfax, Inc.	Gulfport	11
OH	North Sanitary Landfill	Dayton	4/5
OR	McCormick & Baxter Creosoting Co. (Portland Plant)	Portland	1
PA	UGI Columbia Gas Plant	Columbia	4
TX	Alcoa (Point Comfort)/Lavaca Bay	Point Comfort	4/5
WA	Vancouver Water Station 1 Contamination	Vancouver	4/5
WI	Fipon City Landfill	Fond Du Lac County	11

Number of Sites Proposed to General Superfund Section: 7

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

NATIONAL PRIORITIES LIST PROPOSED RULE NO. 15

Federal Facilities Section

State	Site name	City/county	NPLGr[1]
AK	Fort Richardson (US Army)	Anchorage	4/5
AL	Redstone Arsenal (US Army/NASA)	Huntsville	4/5
MA	Naval Weapons Industrial Reserve Plant	Bedford	4/5
MA	South Weymouth Naval Air Station	Weymouth	4/5
MA	Materials Technology Laboratory (US Army)	Watertown	5

NATIONAL PRIORITIES LIST PROPOSED RULE NO. 15—Continued

Federal Facilities Section

State	Site name	City/county	NPLGr[1]
ME	Portsmouth Naval Shipyard	Kittery	1
OR	Fremont National Forest/White King & Lucky Lass Uranium Mines (USDA).	Lake County	4/5
WA	Jackson Park Housing Complex (US Navy)	Kitsap County	4/5
WA	Port Hadlock Detachment (US Navy)	Indian Island	4/5
WV	Allegany Ballistics Laboratory (US Navy)	Mineral County	4/5

Number of Sites Proposed to Federal Facilities Section: 10

[1]Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Authority: 42 U.S.C. 9605-9657; 33 U.S.C. 1321(c)(2); E.O. 11777, 56 FR 54757, 3 CFR, 1971—1975 Comp., p. 793; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: June 14, 1993.

Richard Guimond,

Assistant Surgeon General, USPHS Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 93-14422 Filed 6-18-93; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 59

Standards of Compliance for Abortion-Related Services in Family Planning Service Projects

AGENCY: Public Health Service, DHHS.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: The Public Health Service is reopening for 45 days the public comment period on the rules proposed to establish compliance standards for abortion-related services provided by family planning projects funded under title X of the Public Health Service Act. The proposed rules were published in the **Federal Register** on February 5, 1993. DHHS is taking this action in response to requests from the public for further information on prior policies and to obtain more helpful public comment on the proposed rules. DHHS will make a statement of the prior policies available as set forth below.

DATES: Written comments must be received on or before August 9, 1993.

ADDRESSES: *Written comments:* Submit written comments to Mr. Gerald Bennett, Acting Deputy Assistant Secretary for Population Affairs, DHHS, P.O. Box 23783, Washington, DC 20036-3783.

Policy statement: A statement of the policies will be available for inspection and copying at the following regional and central office locations which appear in the Supplementary Information section.

Written comments will be available for public inspection during normal business hours at 200 Independence Ave., SW., room 736E, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Bennett, 202-690-8335.

SUPPLEMENTARY INFORMATION: On February 5, 1993, the Department of Health and Human Services published in the **Federal Register**, at 58 FR 7464, a notice of proposed rulemaking which proposed revised standards of compliance to replace the so-called "Gag Rule" issued on February 2, 1988, at 53 FR 2922. The proposed rule would re-establish for family planning projects funded under title X of the Public Health Service Act, 42 U.S.C. 300 *et seq.*, the standards for compliance with section 1008 of that Act, 42 U.S.C. 300a-6, that applied prior to February 2, 1988. Also published on February 5 was an interim rule which, in part, made applicable to title X projects the pre-1988 policies during the pendency of the rulemaking. As explained in the notice of proposed rulemaking, those policies derive from previous guidelines and opinions of the Department concerning section 1008.

A statement of the policies will be available for inspection and copying at the following regional and central office locations:

Regional Offices

DHHS/PHS Region I (CT, ME, MA, NH, RI, VT), JFK Federal Bldg. Rm. 1826, Government Center, Boston, MA 02203

DHHS Region II (NJ, NY, PR, VI), 26 Federal Plaza, Rm. 3337, New York, NY 10278

DHHS Region III (DE, D.C., MD, PA, VA, WV), 3535 Market St., Rm. 10200, Philadelphia, PA 19104

DHHS Region IV (KY, MS, TN, AL, FL, GA, SC), 101 Marietta Tower, Suite 1106, Atlanta, GA 30323

DHHS Region V (IL, IN, MI, MN, OH, WI), 105 West Adams, 17th Floor, Chicago, IL 60603

DHHS Region VI (AR, LA, NM, OK, TX), 1200 Main Tower Bldg., Rm. 1800, Dallas, TX 75202

DHHS Region VII (IA, KS, MO, NE), Federal Office Building, 601 East 12th Street, Rm. 501, Kansas City, MO 64106

DHHS Region VIII (CO, MT, ND, SD, UT, WY), Federal Building, 1961 Stout Street, Room 498, Denver, CO 80294

DHHS Region IX (AZ, CA, HI, NV, GU, AS, Trust Territories), 50 United Nations Plaza, Rm. 327, San Francisco, CA 94102

DHHS Region X (AK, ID, OR, WA), Blanchard Plaza, 2201 Sixth Avenue, Rm. 710A, Seattle, WA 98121-2500

Washington, DC

Office of Population Affairs, 200 Independence Ave., SW., Room 736E, Washington, DC 20201

The policy statement will be available for public inspection and copying during normal business hours at the above addresses.

The comment period on the proposed rules closed on April 6, 1993. During the comment period, the Department received several requests for further information on the specific details of the pre-1988 policies. The Department agrees that provision of the information requested would promote more informed and helpful public comment on the proposed rules. Accordingly, in order to provide the policies in a convenient and complete manner and to facilitate a more informed public comment on the issues, the Department is making available a statement of those policies for public inspection and copying at the above addresses and reopening the public comment period for an additional 45 days.

Dated: May 20, 1993.
Donna E. Shalala,
Secretary.
[FR Doc. 93–14676 Filed 6–22–93; 8:45 am]
BILLING CODE 4160–17–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–160, RM–8238]

Radio Broadcasting Services; Window Rock, AZ

AGENCY: Federal Communications Commission.
ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Western Indian Ministries, Inc., permittee of Station KHAC–FM, Channel 276A, Window Rock, Arizona, seeking the substitution of FM Channel 274C1 for Channel 276A and modification of its authorization accordingly. Coordinates for this proposal are 35–35–00 and 109–02–00.

Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 274C1 at Window Rock, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before August 9, 1993, and reply comments on or before August 24, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Western Indian Ministries, Inc., Attn: Laurence Harper, General Director, P.O. Box F, Window Rock, Arizona 86515.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–160, adopted May 25, 1993, and released June 16, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Michael C. Ruger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 93–14705 Filed 6–22–93; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–158, RM–8239]

Radio Broadcasting Services; Hazlehurst, Utica and Vicksburg, MS

AGENCY: Federal Communication Commission.
ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by St. Pe' Broadcasting, Inc., proposing the substitution of Channel 265C3 for Channel 225A at Utica, Mississippi, and modification of the license for Station WJXN(FM) to specify operation on the higher class channel. The coordinates for Channel 265C3 at Utica are 32–06–09 and 90–29–56. In accordance with Section 1.420(g) of the Commission's Rules we shall propose to modify the license for Station WJXN(FM) as requested. However, should another party indicate an interest in the C3 allotment, the modification cannot be implemented unless an equivalent class channel is also allotted. To accommodate the upgrade at Utica, we shall propose to substitute Channel 267A for Channel 266A at Vicksburg, Mississippi, at coordinates 32–21–34 and 90–50–08 and substitute Channel 225A for Channel 265C3 at Hazlehurst, Mississippi, at coordinates 31–53–34 and 90–24–08.

DATES: Comments must be filed on or before August 9, 1993, and reply comments on or before August 24, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Timothy K. Brady, P.O. Box 986, Brentwood, Tennessee 37027–0986.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–158 adopted May 25, 1993, and released June 16, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., suite 140, Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Michael C. Ruger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 93–14704 Filed 6–22–93; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–165, RM–8247]

Radio Broadcasting Services; Athens, OH

AGENCY: Federal Communications Commission.
ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by James Phillips seeking the allotment of Channel 240A to Athens, Ohio, as the community's second local commercial

FM service. Channel 240A can be allotted to Athens in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.6 kilometers (7.2 miles) east-northeast, at coordinates North Latitude 39–22–08 and West Longitude 81–58–42, to avoid a short-spacing to Station WHOK, Channel 238B, Lancaster, Ohio, and Station WKWS, Channel 241B, Charleston, West Virginia. Canadian concurrence in the allotment is required since Athens is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before August 9, 1993, and reply comments on or before August 24, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Arthur V. Belendiuk, Esq., Smithwick & Belendiuk, P.C., 1900 M Street, NW., Suite 510, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–165, adopted June 4, 1993, and released June 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–14699 Filed 6–22–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–163; RM–8251]

Radio Broadcasting Services; Wilson Creek, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Wilson Creek Broadcasting Company seeking to substitute Channel 277C3 for Channel 277A at Wilson Creek, Washington, and the modification of Station KVYF–FM's construction permit accordingly. Channel 277C3 can be allotted to Wilson Creek in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.6 kilometers (16.6 miles) southeast at the petitioner's requested site. The coordinates for Channel 277C3 at Wilson Creek are North Latitude 47–22–00 and West Longitude 119–00–30. Since Wilson Creek is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been requested. See Supplementary Information *infra*.

DATES: Comments must be filed on or before August 9, 1993, and reply comments on or before August 24, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brett E. Miller, 11608 Blossomwood Court, Moorpark, California 93021 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–163, adopted June 4, 1993, and released June 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 277C3 at Wilson Creek or require the petitioner to demonstrate the availability of an additional equivalent class channel.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–14072 Filed 6–22–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–164; RM–8248]

Radio Broadcasting Services; Williamstown, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by James Phillips seeking the allotment of Channel 245A at Williamstown, West Virginia, as its first local aural transmission service. Channel 245A can be allotted to Williamstown in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.9 kilometers (4.3 miles) southwest of the community to avoid a short-spacing to Station WRRK, Channel 245B, Braddock, Pennsylvania. The coordinates for Channel 245A at Williamstown are North Latitude 39–22–18 and West Longitude 81–31–04. Since Williamstown is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government been requested.

DATES: Comments must be filed on or before August 9, 1993, and reply comments on or before August 24, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Arthur V. Belendiuk, Esq., Smithwick & Belendiuk, P.C., 1990 M Street NW., suite 510, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–164, adopted June 4, 1993, and released June 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–14700 Filed 6–22–93; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 58, No. 119
Wednesday, June 23, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

Facility No.	Name and location of stockyard	Date of posting
CA–175	Barstow Sales Yard, Barstow, CA.	July 1, 1981.
CA–141	Los Angeles Producers Stockyards, Ontario, CA.	Dec. 31, 1970.
NC–149	Gus Z. Lancaster Stockyards, Inc., Dunn, NC.	Oct. 18, 1978.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and is effective upon publication in the **Federal Register**.

Done at Washington, DC this 17th day of June, 1993.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 93–14733 Filed 6–22–93; 8:45 am]

BILLING CODE 3410–KD–M

Proposed Posting of Stockyards

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

CA–185 .... Dairyman's & Cattleman's Beef Auction, Bakersfield, CA.
CA–186 .... Newman Livestock Market, Newman, CA.
LA–144 .... Avoyelles Cattle Co., Inc. Avoyelles Parish, LA.
LA–145 .... Stanley Brothers Livestock, Inc., Bastrop, LA.
NY–171 .... Town & Country Auction Service, Schuylerville, NY.
TN–190 .... H Bar M Horse Auction, Athens, TN.
VA–160 .... Abingdon Stockyard Exchange, Inc., Abingdon, VA.

Pursuant to the authority under section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, room 3408-South Building, U.S. Department of Agriculture, Washington, DC 20250 by July 2, 1993.

All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC this 17th day of June, 1993.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 93–14731 Filed 6–22–93; 8:45 am]

BILLING CODE 3410–KD–M

Posting of Stockyards

Pursuant to the authority provided under section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below are stockyards as defined by section 302(a). Notice was given to the stockyard owners and to the public as required by section 302(b), by posting notices at the stockyards on the dates specified below, that the stockyards are subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

Facility No.	Name and location of stockyard	Date of posting
DE–101	Dill's Auction Service, Wyoming, DE.	Dec. 11, 1991.
NC–162	Walking Acres Auction, Plymouth, NC.	Oct. 23, 1991.
TN–188	Burrell Horse Auction, Inc., Cleveland, TN.	May 26, 1993.
VA–159	Courtland Stockyard, Inc., Courtland, VA.	Dec. 22, 1992.

Done at Washington, DC this 17th day of June, 1993.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 93–14732 Filed 6–22–93; 8:45 am]

BILLING CODE 3410–KD–M

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Department of Agriculture et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93–007. *Applicant:* U.S. Department of Agriculture,

Greenbelt, MD 20770–1433. *Instrument:* Mass Spectrometer and Elemental Analyzer System, Model OPTIMA. *Manufacturer:* VG Isogas, Ltd., United Kingdom. *Intended Use:* See notice at 58 FR 14559, March 18, 1993. *Reasons:* The foreign instrument provides: (1) internal precision of 0.03 per mil for 3 bar µl samples of CO_2, (2) sensitivity to 1 ion detected per 1500 molecules of CO_2 and (3) an elemental analyzer. *Advice Received From:* National Institutes of Health, May 4, 1993.

Docket Number: 93–024. *Applicant:* University of Alabama at Birmingham, Birmingham, AL 35294. *Instrument:* Mass Spectrometer, Model API III. *Manufacturer:* Perkin Elmer-Sciex, Canada. *Intended Use:* See notice at 58 FR 17863, April 6, 1993. *Reasons:* The foreign instrument provides: (1) triple quadrupole MS, (2) atmospheric pressure ionization, (3) liquid chromatography at flow rates to 200 µl per minute and (4) mass range to 2400. *Advice Received From:* National Institutes of Health, May 4, 1993.

Docket Number: 93–018. *Applicant:* Saint Louis University, St. Louis, MO 63103. *Instrument:* Seismograph. *Manufacturer:* G. Streckeisen, Switzerland. *Intended Use:* See notice at 58 FR 17862, April 6, 1993. *Reasons:* The foreign instrument provides: (1) a bandwidth of 0.003 to 5.0 Hz, (2) a dynamic range of 140 dB and (3) deployment on the surface of the earth. *Advice Received From:* U.S. Bureau of Mines, March 6, 1993 (comparable case).

Docket Number: 93–029. *Applicant:* University of Colorado, Boulder, Boulder, CO 80309–0449. *Instrument:* Field Portable Spectrometer, Model PIMA II. *Manufacturer:* Integrated Spectronics Pty. Ltd., Australia. *Intended Use:* See notice at 58 FR 21973, April 26, 1993. *Reasons:* The foreign instrument provides in situ measurements in the 1.3 to 2.5 µm region with acquisition time less than 30s, 200 channels, a built-in light source and spectral resolution to 10.0 nm. *Advice Received From:* U.S. Geological Survey, May 25, 1993.

The National Institutes of Health, U.S. Bureau of Mines and U.S. Geological Survey advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–14822 Filed 6–22–93; 8:45 am]

BILLING CODE 3510–DS–F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 93–010. *Applicant:* Children's Medical Center, 5300 East Skelly Drive, Tulsa, OK 74135. *Instrument:* Cytoscan Computer Processor. *Manufacturer:* Applied Imaging, United Kingdom. *Intended Use:* The instrument will be used for the studies of chromosomes from cancer cells in experiments which relate to the examination of several common human cancers (breast, colon, ovarian and malignant melanoma) for the location of recurring sites of chromosome change. In addition, the instrument will be used for teaching purposes in the course Cancer Genetics and Cytogenetics, Cancer Biology which primarily emphasizes the role played by chromosomal alterations in human cancers (i.e. cytogenetics). *Application Received by Commissioner of Customs:* February 5, 1993.

Docket Number: 93–047. *Applicant:* State University of New York, Research Foundation, Stony Brook, NY 11794. *Instrument:* In-Situ Large Volume Filtration System. *Manufacturer:* Challenger Oceanic Systems and Services, United Kingdom. *Intended Use:* The instrument will be used to measure the naturally occurring isotopes of thorium which are present in very low concentrations dissolved in seawater and on suspended particles. *Application Received by Commissioner of Customs:* May 6, 1993.

Docket Number: 93–048. *Applicant:* University of Maryland Baltimore County, 5401 Wilkens Avenue, Baltimore, MD 21228–5398. *Instrument:* Spectrofluorimeter System, Model SF-61. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* The instrument will be used for the determination of kinetic parameters pertaining to enzymatic or other biological reactions which are carried out with the biological test samples generated by students and faculty in the Chemical Engineering Department. In addition, the instrument will be used for educational purposes in the courses ENCH 468 - Undergraduate Research, ENCH 648 - Special Problems in Chemical Engineering, ENCH 799 - M.S. Thesis Research and ENCH 899 - Ph.D. Thesis Research. *Application Received by Commissioner of Customs:* May 6, 1993.

Docket Number: 93–050. *Applicant:* Lamont-Doherty Earth Observatory of Columbia University, Rte. 9W, Palisades, NY 10964. *Instrument:* Multi-Sensor Core Logger. *Manufacturer:* GEOTEK, United Kingdom. *Intended Use:* The instrument will be used to conduct studies of deep-sea, lake and other terrestrial sediments and geological material in efforts to further the understanding of earth systems related to climate change and its affect on the environment, oceanography, geochemistry and associated fields. Students in graduate programs will also have access to the instrument in the pursuit to their thesis work. *Application Received by Commissioner of Customs:* May 12, 1993.

Docket Number: 93–055. *Applicant:* LSU-Pennington Biomedical Research Center, 6400 Perkins Road, Baton Rouge, LA 70808. *Instrument:* Xenon Flashlamp System, Model XF-10. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* The instrument will be used to study the effects of release of biologically active compounds inside the individual living cells. Specifically, the system will allow the release of caged compounds, such as enzymes and active compounds, inside cells where the effects can be studied. *Application Received by Commissioner of Customs:* May 20, 1993.

Docket Number: 93–057. *Applicant:* Hampden-Sydney College, Department of Chemistry, Hampden-Sydney, VA 23943. *Instrument:* Electron Spin Resonance Spectrometer, Model JES-RE1X. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used in four chemistry laboratory courses for educational purposes of developing scientific inquiry skills by having third- and fourth-year students

engage in a series of four one-semester research-style projects. *Application Received by Commissioner of Customs:* May 21, 1993.

Docket Number: 93–059. *Applicant:* University of Colorado at Boulder, Department of EPO Biology, 122 Ramaley, Boulder, CO 80309–0334. *Instrument:* Portable Chlorophyll Fluorometer and Accessories, Model PAM-2000. *Manufacturer:* Heinz Walz GmbH, Germany. *Intended Use:* The instrument will be used for the examination of plants and other photosynthetic organisms under natural conditions and in the laboratory, assessing the parameters, the functioning of the photosynthetic apparatus, the reduction state of photosystem II, the photodamage to the photosynthetic apparatus, and the photoprotection through thermal energy dissipation associated with the xanthophyll cycle and other potential processes. Experiments will be conducted to learn more about the functioning of the photosynthetic apparatus under various environmental conditions. In addition, the instrument will be used in the laboratory courses to accompany Plant Ecophysiology and Ecophysiology of Photosynthesis course to show students how the non-intrusive determination of the above parameters can be used to assess the status and response of the photosynthetic apparatus to various environmental factors including light, water availability and temperature. *Application Received by Commissioner of Customs:* May 28, 1993.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–14825 Filed 6–22–93; 8:45 am]

BILLING CODE 3510-DS-F

Good Samaritan Hospital and Medical Center et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 92–180. *Applicant:* Good Samaritan Hospital and Medical Center, Portland, OR 97202–1595. *Instrument:* Motion Analysis System, Model Elite. *Manufacturer:* Bioengineering Technology and Systems, Italy. *Intended Use:* See notice at 58 FR 7546, February 8, 1993. *Reasons:* The foreign instrument provides measurement of movement patterns based on infrared light without connecting wires.

Docket Number: 92–187. *Applicant:* Mary Free Bed Hospital and Rehabilitation Center, Grand Rapids, MI 49503. *Instrument:* Kinematic Analysis Instrumentation, Model Elite 3D. *Manufacturer:* Bioengineering Technology and Systems, Italy. *Intended Use:* See notice at 58 FR 7547, February 8, 1993. *Reasons:* The foreign instrument provides: (1) A 100 Hz scanning rate, (2) 1.0 mm accuracy and (3) less than 1.0 mm precision at 2800 mm field of view.

Docket Number: 92–189. *Applicant:* Scripps Clinic and Research Foundation, La Jolla, CA 92037. *Instrument:* Mass Spectrometer, Model API III. *Manufacturer:* PE Sciex, Canada. *Intended Use:* See notice at 58 FR 7547, February 8, 1993. *Reasons:* The foreign instrument provides: (1) Triple quadrupole mass spectrometry, (2) liquid chromatography with flow rates to 200 ml per minute and (3) mass range to 2400.

Docket Number: 93–005. *Applicant:* Centers for Disease Control and Prevention, Atlanta, GA 30333. *Instrument:* Mass Spectrometer, Model API III. *Manufacturer:* PE/Sciex, Canada. *Intended Use:* See notice at 58 FR 14559, March 18, 1993. *Reasons:* The foreign instrument provides: (1) Superior selectivity and sensitivity, (2) a heated nebulizer, (3) a flow rate of 1.0 ml per minute and (4) 100 samples per day throughput.

Docket Number: 93–006. *Applicant:* University of Wisconsin-Milwaukee, Milwaukee, WI 53201. *Instrument:* Light Isotope Ratio Mass Spectrometer, Model Delta S. *Manufacturer:* Finnigan MAT GmbH, Germany. *Intended Use:* See notice at 58 FR 14559, March 18, 1993. *Reasons:* The foreign instrument provides an internal precision of 0.006 per mil for 100 bar µl samples of CO_2.

The National Institutes of Health advises in its memoranda dated May 4, 1993, that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–14827 Filed 6–22–93; 8:45 am]

BILLING CODE 3510-DS-F

University of Georgia Research Foundation et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93–004. *Applicant:* University of Georgia Research Foundation, Athens, GA 30602–7411. *Instrument:* GC/IR Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 58 FR 17862, April 6, 1993. *Reasons:* The foreign instrument provides an internal precision of 0.005 per mil for 70 bar µl samples of CO_2 and a 6-element collector array.

Docket Number: 93–019. *Applicant:* Washington State University, Pullman, WA 99164. *Instrument:* Gas Source Isotope Ratio Mass Spectrometer, Model Delta S. *Manufacturer:* Finnigan, MAT, Germany. *Intended Use:* See notice at 58 FR 17863, April 6, 1993. *Reasons:* The foreign instrument provides: (1) A 6-element multicollector, (2) an automated bank of inlet ports, (3) superior linearity and (4) an internal precision of 0.006 per mil for 20 bar µl samples of CO_2.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent

scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–14824 Filed 6–22–93; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

[Docket Number 930497–3097A]

Announcement of Opportunities for Research Funding in the National Estuarine Research Reserve System for Fiscal Year 1994

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The Sanctuaries and Reserves Division of the Office of Ocean and Coastal Resource Management is soliciting proposals for funding research within the National Estuarine Research Reserve System. The focus of funding for the upcoming annual grant period is the assessment of the effect of non-point source pollution on estuarine and estuarine-like ecosystems. This notice sets forth funding priorities, selection criteria, and procedures for proposal submission.

DATES: Pre-proposals must be submitted and be postmarked no later than July 15, 1993. Notification regarding the disposition of the pre-proposals will be issued on or about September 1, 1993. Final proposals must be postmarked no later than November 1, 1993.

FOR FURTHER INFORMATION CONTACT: For further information on research opportunities under the National Estuarine Research Reserve System, contact the on-site personnel listed in Appendix I or CAPT Francesca M. Cava of the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, 1305 East-West Highway, SSMC4, #12520, Silver Spring, MD 20910, Attn: FY94 NERRS Research; 301–713–3125.

SUPPLEMENTARY INFORMATION:

I. Authority and Background

Section 315 of the Coastal Zone Management Act (CZMA), (16 U.S.C. § 1461), establishes the National Estuarine Research Reserve System (NERRS). Subsection 315(e)(1)(B) authorizes the Sanctuaries and Reserves Division (SRD) of the Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA), to make grants to any public or private person or coastal state for purposes of supporting research within the NERRS. This program is listed in the Catalog of Federal Domestic Assistance under "Coastal Zone Management Estuarine Research Reserve," Number 11.420.

II. Information on Established National Estuarine Research Reserves

The NERRS consists of estuarine areas of the United States which are designated, developed, and managed for research and educational purposes. Each National Estuarine Research Reserve (Reserve) within the NERRS is chosen to reflect regional differences and to include a variety of ecosystem types in accordance with the classification scheme of the national program as presented in 15 CFR part 921.

Each Reserve is suited to support a wide range of beneficial uses of ecological, economic, recreational, and aesthetic value which are dependent upon maintenance of a healthy ecosystem. Each site provides habitat for a wide range of ecologically and commercially important species of fish, shellfish, birds, and other aquatic and terrestrial wildlife. Each Reserve has been designed to ensure its effectiveness as a conservation unit and as a site for long-term research and monitoring. As part of a national system, the Reserves collectively provide an excellent opportunity to address research questions and estuarine management issues of national significance. For a detailed description of the sites, contact individual site Managers and/or Research Coordinators. The on-site contacts and addresses of the National Estuarine Research Reserves are provided in appendix 1.

III. Availability of Funds

Funds are available on a competitive basis to any public or private university, qualified public or private institution, individual, or coastal state (including Great Lakes States, Puerto Rico, Virgin Islands, Guam, American Samoa, and the Northern Marianas) to conduct research within National Estuarine Research Reserves. NERRS research funds are normally awarded through a cooperative agreement. Managers and Research Coordinators at NERRS sites are ineligible to submit competitive research proposals under this Announcement. In FY92 and 93, SRD provided funding in the amount of approximately $700,000, each year, for research in the NERRS. The approximate range of funding per successful project in recent years has been between $30,000 and $60,000. In FY94, it is expected that approximately $300,000 will be available for funding new one-year projects at similar levels. Federal funds requested must be matched by the applicant by at least 30% of the total cost of the project, not just the Federal share. For example, if the total project cost is $10,000, the Federal share is $7,000, match is $3,000.

Note: The match requirement was decreased from 50% to 30% by Coastal Zone Act Reauthorization Amendments of 1990.

The required match must be with cash or the value of goods and services directly benefiting the project in accordance with 15 CFR part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments," or OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." It is anticipated that projects receiving funding under this announcement will begin in the spring/summer of 1994. Earliest anticipated start date is May 1. Applicants not familiar with the requirements of a cooperative agreement or who need additional information on application requirements are encouraged to contact the applicable Reserve Manager or SRD.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) A negotiated repayment schedule is established and at least one payment is received; or (3) Other arrangements satisfactory to the Department of Commerce are made. In addition, any researchers who are past due for submitting acceptable final reports of any previous SRD-funded research will be ineligible to be considered for new awards until final reports are received, reviewed and deemed acceptable by SRD. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

IV. Purpose and Priorities

Research funds are used to support management-related research that will enhance scientific understanding of Reserve environments, provide

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information needed by Reserve Managers and coastal zone decision makers, and improve public awareness of estuaries and estuarine management issues. Research projects may be oriented to specific Reserves; however, projects that will benefit more than one Reserve in the national system will be given a higher priority than Reserve-specific projects.

The ten-year primary research objective is the study of natural and anthropogenically-induced change in the ecology of estuarine and estuarine-like ecosystems that comprise the NERRS. All research funded through SRD should be designed to provide information of significant value to the development and implementation of management policy governing the U.S. coastal zone, for which NOAA's Office of Ocean and Coastal Resource Management has management and regulatory responsibilities. Five two-year research priority categories will serve as foci for the SRD competitive research program over this ten-year period. The first of the two-year research priorities began in FY93 (see below). Every two years, beginning in FY94, SRD will review (and if necessary, revise) its next ten-year set of research priorities. This procedure will ensure a continuous decade-long research agenda which, in turn, will provide the basis for long-term research and monitoring in the NERRS. This procedure will also facilitate long-term interaction with other Federal and state agencies, as well as the academic research community.

NERRS Research Priorities for FY 1993–2002

FY 1993, 1994: Non-point Source Pollution (pollution inputs from non-focused or non-identifiable sources).

FY 1995, 1996: Habitat Restoration (restoration of coastal habitats that have been altered by anthropogenic activities and/or inputs).

FY 1997, 1998: Alterations in Habitat Utilization by Coastal Biota (exotic species, commercial species, non-commercial species).

FY 1999, 2000: Alterations in Water Circulation, Transportation and Quality (tidal exchange, fresh water diversion, hydrological budgets, ground water intrusion, biotic species transportation).

FY 2001, 2002: Anthropogenic Inputs and Activities (focused and identifiable human impacts—e.g., dredge spoils, hazardous materials, recreational uses, commercial uses).

Each year's research proposals should be designed to answer the same standardized, management-oriented question. In FY 1994 the question to be addressed is: *"How will non-point source pollution affect estuarine or estuarine-like ecosystems in terms of (a) functional biodiversity, (b) functional ecology, (c) human health, (d) eutrophication, and/or (e) commercial fisheries?"*

Research proposals submitted in response to this announcement must address coastal management issues identified as having regional or national significance, must relate them to the National Research Priorities described in this announcement, and be conducted (at least partially) within one or more designated NERRS sites. Research projects are normally funded for a duration of either one or two years. Multi-year funding will always be initiated in the first year of a two-year priority. One year projects may be submitted in either year of a two-year priority. This will ensure that no site is automatically locked out of research funds in the second year of a priority period and will ensure infusion of "fresh ideas" each year. Therefore, all proposals submitted under this announcement for FY 94 funding must be of one year duration.

If an application is selected for funding, the Department of Commerce (DOC) has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the sole discretion of DOC. However, funding priority will be given to the second year of multi-year proposals upon satisfactory completion of the first year of research.

The research topic and the Reserve must be carefully chosen to ensure that the resource management issues of primary concern to the Reserve and the NERRS are addressed. Thus, it is very important that all prospective researchers contact the appropriate Reserve manager of research coordinator before submitting a proposal responding to this announcement.

V. Guidelines for Proposal Preparation, Proposal Review and Evaluation and Reporting Requirements

Applicants for SRD research funds must follow the guidelines presented herein when preparing pre-proposals and proposals for research in Reserves. Pre-proposals and proposals not following these guidelines will be returned to the applicant without further review.

Proposals for research in the NERRS are solicited annually for award the following fiscal year. Proposal due dates and other pertinent information are contained in this announcement of research opportunities. All proposals sent to SRD must cite and reference this **Federal Register** notice. Proposers must submit an original and two (2) copies of each proposal and all supporting documents (curricula vitae, literature referenced, etc.).

Each proposal will be reviewed only as a one-year project. Applicants whose pre-proposals are approved for further review must submit an original and two (2) copies of their full proposals as well. Those researchers funded for multi-year projects under the FY 93 announcement must re-submit all NOAA forms, certifications, detailed budgets with justifications, milestone schedules, and any changes in the Statement of Work for second year funding by the full proposal deadline (November 1, 1993).

A. Pre-proposals

Pre-proposals will be used by SRD to evaluate the applicability of the research plan with regard to the goals of this announcement. Pre-proposals may not exceed 8 double-spaced pages including the abstract, introduction, objectives, statement of hypothesis, brief methods description, and discussion of anticipated results and benefits. A discussion of coordination with other research in progress or proposed would also be helpful. Each pre-proposal must include a cover page which lists principal investigator(s) name(s), address(es) and telephone number(s), proposal title, name of institution providing matching funds, amount of Federal funds requested and amount of match, requested start date (month), and site(s) where research is to be conducted. Curricula vitae (not to exceed 3 pages each) for each researcher must be included. The 8 double-spaced pages do not include budget description showing matching funds, cover page, curriculum vitae, literature cited section, and any tables or figures. No Federal forms need be submitted with a pre-proposal. The original and 2 copies of the pre-proposal and additional sections should be submitted to: CAPT Francesca M. Cava, Chief, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, SSMC4, #12520, Silver Spring, MD 20910; Attn: FY94 NERRS Research. All pre-proposals must be postmarked no later than July 15, 1993. Receipt of all pre-proposals will be acknowledged and a copy sent to the appropriate Reserve Manager. All pre-proposals will be reviewed by SRD research staff, the SRD Headquarters Regional Managers and their staff, and the Reserve Manager, Research Coordinator, and their research advisory committees. Pre-proposals will be rated using the criteria

listed in section C below, "Proposal Review and Evaluation." Applicants will be notified by mail as to the disposition of their pre-proposals on or about September 1, 1993. Applicants whose research projects are deemed by SRD to warrant further consideration will be requested to submit a full proposal.

Incomplete pre-proposals will be returned to the Principal Investigator without further review.

B. Full Proposals

Full proposals may be submitted only by those individuals requested to do so following review of pre-proposals. Unsolicited full proposals will be returned without review. Full proposals must be postmarked no later than November 1, 1993. One (1) original and two (2) copies of the proposal (including all forms, curricula vitae, etc.) must be submitted to the same address as the pre-proposals. The proposal may not exceed 20 double-spaced pages, excluding Federal forms, table of contents, title page, literature cited, curricula vitae, and figures and tables. Incomplete proposals will be returned without further review.

Proposal Content

1. Cover Sheet. A Standard Form 424 (revised 4/88) with all blocks completed must be submitted as a cover sheet to the proposal. An SF–424A and SF–424B, Budget and Assurances must also be submitted. These forms will be supplied upon request for a full proposal. Specification of a proposed starting date does not ensure receiving an award by that date. Therefore, work on a project should not begin before the effective date on the official notification of the award from the NOAA Grants Officer. If any costs are incurred prior to an award being made, the applicant does so at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

A proposal must be signed and dated by the organizational official authorized to contractually obligate the submitting organization and by the principal investigator.

2. Peer Reviewers. Applicants are requested to include the names, addresses, and telephone numbers of five (5) individuals who, in their opinion, are especially well qualified to evaluate the proposal objectively.

3. Title Page. Each proposal must include a title page which lists principal investigator(s) name(s), address(es) and telephone number(s), proposal title, name of institution providing matching funds, amount of Federal funds requested and amount of match, requested start date (month), and site(s) where research is to be conducted.

4. Table of Contents, Lists of Figures and Tables. These should list the major contents of the proposal and the appropriate page numbers.

5. Abstract. A one-page abstract must be included. The abstract should state the research objectives, scientific methods to be used, the significance of the project to a particular Reserve, the NERRS program, and the national research priorities.

6. Project Description. The main body of the proposal should be a detailed statement of the work to be undertaken, and include the following headings and components:

(a) Introduction. This section should introduce the reviewer to the research setting and environment. It should include a brief review of pertinent literature, and describe the research problem in relation to relevant coastal management issues and the FY94 research priority identified in this Request for Proposals.

(b) Objectives. This section should discuss the overall study objectives, the specific research objectives, and the relationship of research project objectives to site-specific and NERRS program objectives. This section should also present the primary hypothesis upon which the project is focused, as well as any additional or component hypotheses which will be addressed by this research.

(c) Methods. This section should state the methods(s) to be used to test the hypotheses and accomplish the specific research objectives including a systematic discussion of what, when, where, and how the data are to be collected, analyzed, and reported. Field and laboratory methods should be scientifically valid and reliable and accompanied by a statistically sound sampling scheme. Methods should be well documented and described in sufficient detail to enable other scientists to evaluate their appropriateness and their possible impact on the environment. Methods chosen should be justified and compared with other methods employed for similar work.

Techniques should allow the testing of the hypotheses, but also provide baseline data that may be used in answering related ecological and management questions concerning the Reserve environment. Methods should be described concisely and techniques should be reliable enough to allow comparison with those made at different sites and times by different investigators. If the project is envisioned as the initial phase of a long-term effort (e.g., a monitoring program), the methods selected must be stable enough that it is unlikely that they will change drastically over the next 10–15 years. The methods must have proven their utility and sensitivity as indicators for natural or human-induced change. Unproven or newly-devised methods should be field-tested to evaluate their soundness and likely success before applying for SRD research funds.

Analytical methods and statistical tests applied to the data should be documented, thus providing a rationale for choosing one set of methods over alternatives. Quality control measures also should be documented (e.g., statistical confidence levels, standards of reference, performance requirements, internal evaluation criteria). The proposal should indicate by way of discussion how data are to be synthesized, interpreted and integrated into final work products, and how and where the data are to be catalogued and stored for ready retrieval at later dates.

A map clearly showing the study location and any other features of interest must be included. Use a U.S. Geological Survey topographic map, or an equivalent, in constructing the location map for the proposal. Consultation with Reserve personnel to identify existing maps is strongly recommended.

(d) Project Significance. This section should discuss how the proposed research effort will enhance or contribute to improving the state of knowledge of the estuary and assist coastal zone management decision making; i.e., why is the proposed research important and how can the results be used to manage coastal resources? This section must also discuss, in detail, the relation of the proposed research to the research priorities stated in this research announcement. In addition, the applicant must provide a clear discussion of how the proposed research addresses state and national estuarine and coastal resource management issues and how the results can be utilized by policy makers. Applicability of research findings to other sites in the NERRS should be given special mention. If the research is to be conducted at more than one Reserve, the applicant must provide copies of correspondence with the appropriate Reserve Managers indicating consultation with the Managers and their support for the proposed project.

(e) Milestone Schedule. A milestone schedule is required in the proposal. This schedule should show, in table form, anticipated dates for completing field work and data collection, data analysis, progress reports, the draft technical report, the final technical report and other related activities. Use "Month 1, Month 2," rather than June, July, etc., in preparing these charts. (SRD Headquarters requires at least 6 weeks from time of receipt to review draft technical reports.)

(f) Personnel and Project Management. The proposal must include a complete description of how the project will be managed, including the name and expertise of the principal investigator and the name(s), expertise, and task assignments of team members. Evidence of ability to successfully complete the proposed research should be supported by reference to similar efforts performed. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. Curricula vitae (not to exceed 3 pages for each investigator) listing qualifications related to professional and technical personnel should be provided. All non-profit and for-profit applicants are subject to a name check review process as required by Department of Commerce regulations. The proposal should discuss and explain any portion of work expected to be subcontracted, and identify subcontractor(s).

(g) Literature Cited. This section should provide complete references for current literature, research, and other appropriate published and unpublished documents cited in the text of the proposal.

(h) Budget. The applicant may request funds under any of the categories listed below as long as the costs are reasonable and necessary to perform research and are determined to be in accordance with the previously mentioned 15 CFR part 24 and OMB Circulars A–21, A–122, A–87, and A–110. The amount of Federal funds requested must be matched by the applicant by at least 30% of the total project cost. Cash or the value of goods and services, except land, directly benefiting the research project may be used to satisfy the matching requirements. Overhead costs may also be used as match.

Funds from other Federal agencies and NERRS Research Coordinator salaries may not be used as match. General guidelines for the non-Federal share are contained in 15 CFR part 24 and OMB Circular A–110.

The budget should contain itemized costs with appropriate narratives justifying proposed expenditures. Budget categories are to be broken down as follows, clearly showing both Federal and non-Federal shares *side by side*:

—Salaries and Wages. Salaries and wages of the principal investigator and other members of the project team constitute direct costs in proportion to the effort devoted to the project. The number of full-time person months or days and the rate of pay (hourly, monthly, or annually) should be indicated. Salaries requested must be consistent with the institution's regular practices. The submitting organization may request that salary data remain confidential information.

—Fringe Benefits. Fringe benefits (i.e., social security, insurance, retirement) may be treated as direct costs as long as this is consistent with the institution's regular practices.

—Equipment. While not their primary purpose, research funds may be approved for the purchase of major equipment only if the following conditions are met: (a) A lease versus purchase analysis has been conducted by the applicant or the applicant's institution and the findings determine that purchase is the most economical method of procurement; and (b) the equipment does not exist at the recipient's institution or the Reserve site and is essential for the successful completion of the project.

The justification must discuss each of these points along with the purpose of the equipment and a justification for its use, and include a list of equipment to be purchased, leased, or rented by model number and manufacturer, where known. At the termination of the contract, disposition of equipment acquired costing $300 or more with a life expectancy of 2 years or more will be determined by SRD.

—Travel. The type, extent, and estimated cost of travel should be explained and justified in relation to the proposed research. Travel expense is limited to round trip travel to field research locations and should not exceed 40 percent of total direct costs. Requests for funds to travel to conferences are discouraged and will not be approved unless a clear justification is provided.

—Other Direct Costs. Other anticipated costs should be itemized under the following categories: Materials and Supplies. The budget should indicate in general terms the types of expendable materials and supplies required and their estimated costs; Research Vessel or Aircraft Rental. Include purpose, unit cost, duration of use, and justification; Laboratory Space Rental. Funds may be requested for use of laboratory space at research establishments away from the grantee's institution while conducting studies specifically related to the proposed effort; Telecommunication Services and Reproduction Costs. Include expenses associated with telephone calls; facsimile, copying, reprint charges, film duplication, etc.; Consultant Services and Subcontracts. Consultant services should be disclosed and justified in the proposal. Funds may be requested for transportation and subsistence, and for consultant's travel. Travel costs, per diem and other related costs must be listed. Furnish information on consultant's expertise, primary organizational affiliation, daily compensation rate, and number of days of service; Computer Services. The cost of unusual or costly computer services may be requested and must be justified.

—Indirect Costs. Include fees and overhead costs based on the negotiated rate agreement by the cognizant agency on behalf of the Federal Government. A copy of the negotiated indirect cost rate must also be included. Reduced indirect costs may be used as match.

Note: Indirect costs may not exceed direct costs.

(i) Requests for Reserve Support Services. On-site Reserve personnel sometimes can provide limited logistical support for research projects in the form of manpower, equipment, supplies, etc. Any request for Reserve support services should be approved by the Reserve Manager prior to proposal submission and be included as part of the proposal package in the form of written correspondence.

(j) Coordination with other Research in Progress or Proposed. SRD encourages collaboration and cost-sharing with other investigators to enhance scientific capabilities and avoid unnecessary duplication of effort. Proposals should include a description of how the proposed effort will be coordinated with other research projects that are in progress or proposed, if applicable.

(k) Other Sources of Financial Support. List all current or pending research to which the principal investigator or other key personnel have committed their time during the period of the proposed work, regardless of support. Indicate the level of effort or percentage of time devoted to these projects.

In addition to their required non-Federal match, SRD encourages investigators to seek other sources of

financial support to supplement Federal funds. If the proposal submitted to SRD is being submitted to other possible sponsors, list them and describe the extent of support being sought. Disclosure of this information will not jeopardize chances for Federal funding.

(1) Permits. The applicant must apply for any applicable state or Federal permits. A copy of the permit application and supporting documentation should be attached to the proposal as an appendix. SRD must receive notification of the approval of the permit application before funding can be approved.

7. Federal Forms. Federal forms SF–424, SF–424A, SF–424B, CD–511, CD–512 (copy where applicable), SF–LLL (where applicable), negotiated indirect cost rate and audit information must all be submitted with the application. These forms are described in this section and Section VI. Other Requirements, below. All forms will be provided to the applicant upon request for full proposal.

C. Proposal Review and Evaluation

All full proposals will be reviewed by SRD research staff, and by at least two outside individuals who are acknowledged experts in the particular field represented by the proposal. Each full proposal is also forwarded to the appropriate SRD Regional and Reserve staff for their comments. Once SRD award recommendations are authorized by the NOAA Grants Management Division and the cooperative agreement is awarded, verbatim copies of the reviews, excluding the names of reviewers, are mailed, upon request, to each Principal Investigator/Project Director.

In order to provide for the fair and equitable selection of the most meritorious research projects for support, SRD has established specific criteria for their review and evaluation. These criteria are intended to be applied to all research proposals in a balanced and judicious manner, in accordance with the SRD Research Priorities set forth in this announcement. The criteria used in both pre-proposal review and the peer review process to aid SRD in its final selection of research projects are listed below, together with the elements that constitute each criterion and the relative weight (in parenthesis):

1. Scientific Merit (20%). This criterion is used to evaluate whether the objectives of the proposal or of the observations are important to the field, and to assess the likelihood that the research will improve the scientific understanding of estuarine processes within the Reserve as well as in other similar estuaries.

2. Technical approach (20%). This criterion is used to assess the technical feasibility of the proposed effort, the reasonableness of the hypotheses, the degree to which the proposed timeline is realistic, the appropriateness and scientific validity of the proposed analytical methods, the degree to which the proposal demonstrates an understanding of the Reserve environment and management needs, the current state of knowledge in the particular field of research interest, and the total research requirements.

3. Utility to Reserve Management and to Regional Coastal Management Issues (20%). This criterion is used to assess the likelihood that results of this research will be important to management of the Reserve (Does it address management issues relevant to the site and the region?) and for addressing coastal management issues of regional importance (Will the results of this study significantly enhance a coastal zone manager's ability to wisely manage coastal resources?).

4. Relevance to National Research Priorities and Utility to National Coastal Management Issues (20%). This criterion is used to assess the relationship between the objectives of the proposed project and the National Research Priorities established by NOAA, and the likelihood that results of this research will be important to national coastal management issues.

5. Qualifications of P.I. and Key Personnel (10%). This criterion relates to the experience and past performance of the principal investigator and key personnel, their familiarity with the geographic area of the proposed study, and their publication record.

6. Institutional Support and Capabilities (5%). This criterion relates to the extent of the applicant institution's support for and commitment to the proposed research and what facilities, equipment, and other resources are available to the principal investigator and key personnel from his/her institution for use in accomplishing the proposed work.

7. Budget (5%). This criterion is used to determine whether the budget is realistic and reasonable for accomplishing the proposed tasks.

D. Reporting Requirements

Awards for research are usually made during the third or fourth quarter of the fiscal year (April through September). Semi-annual performance and financial reports, a draft technical report, and a final technical report are required as conditions of the award. The format for semi-annual reports will be sent to investigators with notification of award.

Performance reports are summaries of all work performed during the preceding 6 months and show the overall progress against the milestone schedule in the approved proposal. A statement of the milestones reached, data compiled, and analyses completed must be included. In addition, a summary of any significant technical, manpower, schedule, or cost problems encountered during the preceding quarter, an assessment of their probable impact on the project's approved milestone schedule, and a statement of any corrective action taken or proposed is also required. Any presentations at scientific meetings (or publications including theses, dissertations, and journal articles) that occurred should be highlighted. Also required is a summary of major work activities scheduled for the next quarter and any questions or problems regarding the applicant's work that requires discussion with, or resolution by, SRD. The semi-annual performance reports should not exceed 3 pages in length. Principal Investigators are encouraged to routinely discuss (via telephone, personal visits, FAX, etc.) progress of their research with the Reserve Manager and/or Research Coordinator and SRD headquarters research staff.

Financial reports should be filed at the same time as technical and performance reports, cover the same periods, and show the status of the project's financial operations.

SRD's "Guidelines for Preparing Technical Reports of Research in National Estuarine Research Reserves," which will be sent with notification of award, should be followed in preparing draft and final technical reports.

All final reports are due 90 days after the project end date.

VI. General Requirements

Cooperative agreements for Federal financial assistance are subject to all Federal laws and Federal and DOC regulations, policies, and procedures applicable to Federal assistance awards, such as the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and other laws and regulations prohibiting discrimination; patent and copyright requirements; cost sharing; the use of U.S.-flag carriers for international travel; and the use of foreign currency as appropriate to accomplish the objectives of a project. All non-profit and for-profit applicants, with the exception of accredited colleges or universities, are subject to a name-check review process.

The requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," are applicable to the awards of grants and cooperative agreements under this notice. However, the requirements of the Executive Order apply to individuals only if a state or local government is the provider of the non-Federal funds.

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matter; Drug-Free Workplace Requirements and Lobbying," and applicants should be advised about the following:

1. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form;

2. *Drug-Free Workplace.* Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form;

3. *Anti-Lobbying.* Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater;

4. *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

5. *Lower Tier Certifications.* Subcontracts that become necessary after a cooperative agreement has been made must be submitted to SRD for approval. The proposed performance statement and budget, a statement indicating the basis for selection of the contractor, and a justification of the proposed arrangement must be provided. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," and disclosure form SF–LLL, "Disclosure of Lobbying Activities." The original form CD–512 is intended for the use of recipients; a copy should be included with the application. SF–LLL submitted by any tier recipient or subrecipient should be submitted to SRD in accordance with the instructions contained in the award document.

VII. Classification

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this notice is not a major action requiring a regulatory impact analysis under Executive Order 12291 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, and local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law because this notice concerns grants, benefits and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This notice contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0121.

(Federal Domestic Assistance Catalog Number 11.420, Coastal Zone Management Estuarine Research Reserves)

Dated: June 17, 1993.

W. Stanley Wilson,

Assistant Administrator, Ocean Services and Coastal Zone Management.

APPENDIX I. NERRS ON-SITE STAFF

Alabama

Mr. Thomas McAlpin, Manager, Weeks Bay National Estuarine Research Reserve, 10930–B, U.S. Highway 98, Fairhope, AL 36532, (205) 928–9792.

California

Mr. Steve Kimple, Manager, Dr. Andrew deVogelaere, Research Coordinator, Elkhorn Slough National Estuarine Research Reserve, 1700 Elkhorn Road, Watsonville, CA 95076, (408) 728–2822.

Mr. Paul Jorgensen, Manager, Tijuana River National Estuarine Research Reserve, 301 Caspian Way, Imperial Beach, CA 92032, (619) 575–3613.

Florida

Mr. Woodard Miley II, Manager, Mr. Lee Edmiston, Research Coordinator, Apalachicola River National Estuarine Research Reserve, 261 7th Street, Apalachicola, FL 32320, (904) 653–8063.

Mr. Gary Lytton, Manager, Dr. Thomas Smith, Research Coordinator, Rookery Bay National Estuarine Research Reserve, 10 Shell Island Road, Naples, FL 33942, (813) 775–8845.

Georgia

Dr. Fred Marland, Manager & Research Coordinator, Sapelo Island National Estuarine Research Reserve, Department of Natural Resources, P.O. Box 19, Sapelo Island, GA 31327, (912) 485–2251.

Hawaii

Mr. William Stormont, Manager, Waimanu Valley National Estuarine Research Reserve, Department of Land and Natural Resources, Division of Forestry & Wildlife, 1151 Punchbowl Street, Honolulu, HI 96813, (808) 587–0051.

Maine

Mr. James List, Manager, Dr. Michelle Dionne, Research Coordinator, Wells National Estuarine Research Reserve, RR #2, Box 806, Wells, ME 04090, (207) 646–1555.

Maryland

Ms. Mary Ellen Dore, Manager, Chesapeake Bay National Estuarine Research Reserve in Maryland, Dept. of Natural Resources, Tawes State Office Building, B–3, 580 Taylor Avenue, Annapolis, MD 21401, (410) 974–2784.

Massachusetts

Ms. Christine Gault, Manager, Dr. Richard Crawford, Research Coordinator, Waquoit Bay National Estuarine Research Reserve, Dept. of Environmental Management, P.O. Box 92W, Waquoit, MA 02536, (508) 457–0495.

New Hampshire

Mr. Peter Wellenberger, Manager, Great Bay National Estuarine Research Reserve, New Hampshire Fish and Game Department, 37 Concord Road, Durham, NH 03824, (603) 868–1095.

New York

Ms. Elizabeth Blair, Manager, Mr. Chuck Nieder, Research Coordinator, Hudson River National Estuarine Research Reserve, New York State Department of Environmental Conservation, c/o Bard College Field Station, Annandale-on-Hudson, NY 12504, (914) 758–5193.

North Carolina

Dr. John Taggart, Manager, Dr. Steve Ross, Research Coordinator; North Carolina National Estuarine Research Reserve, University of North Carolina at Wilmington, 7205 Wrightsville Avenue, Wilmington, NC 28403, (919) 256–3721.

Ohio

Mr. Eugene Wright, Manager, Dr. David Klarer, Research Coordinator, Old Woman Creek National Estuarine Research Reserve, 2514 Cleveland Road, East, Huron, OH 44839, (419) 433–4601.

Oregon

Mr. Michael Graybill, Manager, Dr. Steve Rumrill, Research Coordinator, South Slough National Estuarine Research Reserve, P.O. Box 5417, Charleston, OR 97420, (503) 888–5558.

Puerto Rico

Ms. Anaisa Delgado-Hyland, Manager, Mr. Carlos J. Cianchini, Research Coordinator, Jobos Bay National Estuarine Research Reserve, Dept. of Natural Resources, P.O. Box 1170, Guayama, PR 00655, (809) 864–0105.

Rhode Island

Mr. Al Beck, Manager, Narragansett Bay National Estuarine Research Reserve, Dept. of Environmental Management, Box 151, Prudence Island, RI 02872, (401) 683–5061.

South Carolina

Mr. Michael D. McKenzie, Manager, Dr. Elizabeth Wenner, Research Coordinator, Ashepoo-Combahee-Edisto (ACE) Basin, South Carolina Wildlife and Marine Resources Department, P.O. Box 12559, Charleston, SC 29412, (803) 762–5052.

Dr. Dennis Allen, Manager, North Inlet-Winyah Bay, Baruch Marine Field Laboratory, P.O. Box 1630, Georgetown, SC 29442, (803) 546–3623.

Virginia

Dr. Maurice P. Lynch, Manager, Dr. Jeffrey Shields, Research Coordinator, Chesapeake Bay National Estuarine Research Reserve in Virginia, Virginia Institute of Marine Science, College of William and Mary, P.O. Box 1347, Gloucester Point, VA 23062, (804) 642–7135.

Washington

Mr. Terry Stevens, Manager, Dr. Douglas Bulthuis, Research Coordinator, Padilla Bay National Estuarine Research Reserve, 1043 Bayview-Edison Road, Mt. Vernon, WA 98273, (206) 428–1558.

Sites Expected To Be Designated in 1993

Delaware

Mr. Lee Emmons, Manager, Dr. Bill Meredith, Research Coordinator, Delaware NERR, Department of Natural Resources and Environmental Control, P.O. Box 1401, Dover, DE 19903, 302–739–6444.

[FR Doc. 93–14752 Filed 6–22–93; 8:45 am]

BILLING CODE 3510–08–M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will hold a public meeting on June 29–30, 1993, at the King's Grant Inn, Route 128 and Trask Lane, Danvers, MA; telephone: 508–774–6800. The meeting will begin at 10 a.m. on June 29 and at 8:30 a.m. on June 30.

On the first day the meeting will begin with introductions and announcements. A Groundfish Oversight Committee report will follow. The Committee intends to present its final recommendations for management measures that will comprise Amendment #5 to the Northeast Multispecies Fishery Management Plan. The Council's deliberations on groundfish will continue through the morning of June 30. On the second day, the Marine Mammal and Endangered Species Committee will also report and discuss harbor porpoise management measures relative to their inclusion in Groundfish Amendment #5.

The Lobster Committee report will focus on the development of Amendment #5 to the Fishery Management Plan for American Lobster being prepared jointly by the Council and the Atlantic States Marine Fisheries Commission. There will be a review of issues associated with an industry proposal under consideration and possible discussion of policy issues relative to the amendment.

The Habitat and Environmental Committee will present habitat recommendations for Council approval and inclusion in Amendment #4 to the Scallop Plan. The Atlantic Sea Scallop Committee will briefly update the Council on the details associated with the submission of Scallop Amendment #4.

A review of issues discussed at the recent Council Chairmen's meeting will take place on the afternoon of June 30. Some portion of the discussion will be devoted to Council positions on Magnuson Act reauthorization issues.

The meeting will conclude with reports from: the Council Chairman, the Executive Director, the National Marine Fisheries Service Regional Director, the Northeast Fisheries Science Center liaison, the Mid-Atlantic Fishery Management Council liaison, and representatives from the Department of State, the Coast Guard, the Fish and Wildlife Service, and the Atlantic States Marine Fisheries Commission.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–14745 Filed 6–22–93; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of issuance of a modification to Scientific Research Permit No. 777 (P496); U.S. Army Corps of Engineers (COE), Coastal Ecology Group, Environmental Laboratory, Waterways Experiment Station.

On April 27, 1992 (57 FR 15286), the U.S. Army Corps of Engineer's Coastal Ecology Group was issued a Scientific Research Permit No. 777 under the authority of the Endangered Species Act of 1973 (ESA) (U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife (50 CFR parts 217–227).

On May 5, 1993 (58 FR 26739) notice was given that the COE applied for a Modification to Permit No. 777 to authorize the addition of two locations to those already included in the Permit, including York Spit Channel and Cape Henry Channel within the Chesapeake Bay, Virginia. The objectives of adding these two channels are: (1) To establish baseline relative abundance data of sea turtles in the channels; and (2) to use the information gathered to determine months with the least potential for sea turtle impingement by the hopper dredge. The additional take authorized consists of up to 25 loggerhead, eight Kemp's ridley, and five green turtles for measurements, photographs, blood sampling, tagging, and release during May through November 1993.

Notice is hereby give that on June 14, 1993, pursuant to the provisions of the ESA and the NMFS regulations governing listed fish and wildlife and the Conditions hereinafter set out, the COE was issued a Modification authorizing the above take.

Documents pertaining to this Modification and the original Permit are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., room 7324, Silver Spring, Maryland 20910; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702.

Dated: June 14, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–14725 Filed 6–22–93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Receipt of application for Scientific Research Permit (P77²#63).

SUMMARY: Notice is hereby given that the following Applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543), and the regulations governing endangered fish and wildlife (50 CFR parts 217–222).

(P77²#63) The NMFS, Southwest Fisheries Science Center, P.O. Box 271, La Jolla, CA 92038, requests a scientific research permit to incidentally harass (through vessel approach, helicopter photogrammetry and photographic identification) and collect tissue biopsy samples from several marine mammal species during vessel surveys in the eastern Pacific Ocean. These surveys, which will be conducted off the coasts of California and Mexico during 1993–95, will be used to assess the status of cetaceans and to address issues associated with defining population structures.

ADDRESSES: Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NMFS, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice.

Documents submitted in connection with the above application are available for review by writing to, or by appointment, in the Permits Division, Office of Protected Resources, NMFS, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, VA 90802–4213 (310/980–4016).

Dated: June 16, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–14748 Filed 6–22–93; 8:45 am]

BILLING CODE 3510-22-M

CONSUMER PRODUCT SAFETY COMMISION

Technical Advisory Group for Cigarette Fire Safety; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Technical Advisory Group for Cigarette Fire Safety will meet on July 9, 1993, in Gaithersburg, Maryland. The purpose of the meeting is to discuss the final report of the advisory group on implementation of the Fire Safe Cigarette Act.

DATES: The meeting will be from 9 a.m. to 4 p.m. on July 9, 1993.

ADDRESSES: The meeting will be in room B245, Building 224, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR A RECORDED MESSAGE CONTAINING THE LATEST INFORMATION ABOUT THE TIME AND LOCATION OF THE MEETING CALL: (301) 504-0709.

FOR FURTHER INFORMATION CONTACT: Beatrice M. Harwood, Directorate for Epidemiology, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504-0470.

SUPPLEMENTAL INFORMATION: The Fire Safe Cigarette Act of 1990 (FSCA) (Pub. L. 101-352, 104 Stat. 405) directs the Commission, with assistance from the National Institute of Standards and Technology (NIST) and the Department of Health and Human Services, to conduct research concerning the feasibility of a performance standard to address the propensity of cigarettes to act as an ignition source. The FSCA also establishes an advisory committee, the Technical Advisory Group for Cigarette Fire Safety, to advise and work with the Commission and NIST in the implementation of that act.

The Technical Advisory Group for Cigarette Fire Safety will meet on July 9, 1993, to discuss the Technical Advisory Group's final report to the Chairman of the Consumer Product Safety Commission concerning implementation of the FSCA. The agenda for the meeting also includes discussion of a study of air flow effects on cigarette ignition propensity prepared by Battelle Laboratories.

The meeting will be open to observation by members of the public, but only members of the Technical Advisory Group may participate in the discussion. Persons who desire to submit written statements or questions for consideration by the Technical Advisory Group, before or after the meeting, should address them to the Technical Advisory Group for Cigarette Fire Safety, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 93-14800 Filed 6-22-93; 8:45 am]

BILLING CODE 6355-01-F

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Deepwater Port in Corpus Christi, TX

AGENCY: U.S. Army Corps of Engineers, Galveston District, DOD.

ACTION: Notice.

SUMMARY: A draft and final Environmental Impact Statement (EIS) will be prepared for the proposed deepwater port at Corpus Christi, Texas. The proposed project, called SAFEHARBOR, is intended to provide an alternative method to lightering for handling crude imports utilizing Very Large Crude Carriers (VLCC's) that is both more economical and environmentally sound.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the preparation of this DEIS should be addressed to Cynthia Wood, Project Manager, U.S. Army Engineer District, Galveston, P.O. Box 1229, Galveston, Texas 77553–1229, telephone (409) 766–3980.

SUPPLEMENTARY INFORMATION: This project will not involve federal funds but will be financed by the Port of Corpus Christi Authority (PCAA) and participants in private industry.

1. Project Need: The SAFEHARBOR project has been conceived to addressing the following: Meet supply needs of Corpus Christi refineries and supplement the supply needs of other Texas coastal refineries by providing a less costly method of shipment; provide a method that is less risky from an environmental standpoint than the present practice of offshore lightering and cross-bay traffic; and sustain industrial activities associated with present imports to protect economic and environmental investments.

The project is conceptualized to handle in excess of 750,000 barrels of crude per day. Of the 750,000 barrels received daily, it is anticipated that about 50% would be utilized by Corpus Christi refineries. The balance would be

transported to other refineries in Freeport, Texas City, and Houston, etc.

2. Project Alternatives: A key aspect of the work to be done will be the analysis of project alternatives. Alternatives include but are not limited to: An in-shore, deepdraft port, dredged to between 65–80 feet; an offshore monobuoy; lightering; transshipment; and an offshore island.

The deepdraft port alternative has advanced through a prefeasibility analysis and has been described as the Application Alternative in the application for a Department of the Army Permit submitted by the Port of Corpus Christi Authority. This alternative will include dredging an 80–foot channel and a basin and constructing a pipeline from the SAFEHARBOR site to Texas City.

3. Potential Environmental Issues: A number of environmental issues are expected to result from any undertaking of this magnitude. Several potential environmental issues have been brought to our attention and will be addressed in the EIS along with others that may become apparent during the scoping process. These issues include:

a. Dredging of approximately 70 million cubic yards of material and its disposal.

b. Turbidity.

c. Oil spill risk.

d. Endangered species and ecosystem preservation, both in project and dredged disposal areas as well as the potential pipeline corridors.

e. Hydrodynamic regime changes including salinity, storm and vessel surges, current patterns and bay flushing.

f. Potential impacts on fisheries and other economic concerns.

g. Potential changes in demand for natural resources, including land, water, and energy.

Each of these issues will be investigated by qualified persons or firms to determine existing conditions, level of significance and the possible effects associated with each of the alternatives.

4. Public Involvement: A series of public workshops, presented by the Port of Corpus Christi Authority, were held in the Corpus Christi vicinity in May 1993. A formal Scoping Meeting will be held in Corpus Christi, Texas prior to the initiation of the draft EIS. A public notice announcing this meeting will be published in the near future. Appropriate Federal, State and local agencies will be asked to attend the scoping meetings. Other interested private and public organizations will also be invited. Concerns expressed shall be considered in the scoping process.

5. DEIS Preparation: The anticipated date of availability of the DEIS for public review is August 1994.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–14723 Filed 6–22–93; 8:45 am]

BILLING CODE 3710-GX-M

Department of the Navy

CNO Executive Panel; Cancelled Meeting

Notice was published Friday May 28, 1993, at 58 FR 31018, that the Chief of Naval Operations (CNO) Executive Panel National Security Task Force was scheduled to meet on June 15, 1993, from 9 a.m. to 5 p.m., in Alexandria, Virginia. That Meeting has been cancelled. In accordance with 5 U.S.C. 552b(e)(2), the meeting cancellation is publicly announced at the earliest time.

For further information concerning this meeting contact: J. Kevin Mattonen, Executive Secretary to the (CNO) Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: June 14, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-14729 Filed 6-22-93; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meetings

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of closed meeting; teleconference.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: July 8, 1993.

TIME: 10 a.m. to 12 noon.

LOCATION: 800 North Capitol Street, NW., Suite 825, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational progress (NAEP). The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The National Assessment Governing Board will convene, via telephone conference, in closed session from 10 a.m. to 12 noon, on July 8, 1993. The Board will review the recommendation from the Achievement Levels Committee regarding "cut points" for the writing assessment and take final action on this matter. The meeting will be closed to the public because the Board's deliberations will involve the review of preliminary unreleased data from the writing assessment. The discussion will include references to specific items from the assessment, the disclosure of which would significantly frustrate implementation of NAEP. The results of the assessment must be presented in closed session because reference may be made to data which may be incorrect, incomplete, or misinterpreted. Premature disclosure of these data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C.

A summary of the activities of this closed meeting and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: June 17, 1993.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 93–14717 Filed 6–22–93; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF ENERGY

Privacy Act of 1974; Notice to Establish a New Routine Use

AGENCY: Department of Energy (DOE).

ACTION: Proposed revision to routine use of Privacy Act systems of records.

SUMMARY: In accordance with the requirement of the Privacy Act of 1974, 5 U.S.C. 552a, DOE is publishing a proposed revision to existing systems of records. This revision establishes a new routine use for systems of records DOE–1, DOE Personnel and General Employment Records; DOE–5, Personnel Records of Former Contractor Employees; DOE–13, Payroll and Leave Records; DOE–33, Personnel Medical Records; DOE–34, Employee Assistance Program (Alcohol and Drug Abuse Program); DOE–35, Radiation Exposure Records; DOE–38, Occupational and Industrial Accident Records; DOE–39, Labor Standards Complaints and Grievances; DOE–41, Legal Files (Claims, Litigation, Criminal Violations, Patents and Others); DOE–42, Personnel Security Clearance Index; and DOE–72, The Department of Energy Radiation Study Registry. The new routine use permits the disclosure of records to the United States Enrichment Corporation (USEC) pertaining to individuals that will be employed by USEC and that are maintained in these systems of records.

DATES: This new routine use will become effective without further notice 30 days after this publication (July 23, 1993), unless comments are received on or before that date which would result in a contrary determination and a notice is published to that effect.

ADDRESSES: Comments should be addressed to Denise Diggin, AD–621, Chief, Freedom of Information and Privacy Acts Branch, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Denise Diggin, Chief, Freedom of Information and Privacy Acts Branch, AD–621, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5955;

Jane Greenwalt, Privacy Act Officer, Oak Ridge Operations Office, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831–8510, (615) 576–1216; or

Abel Lopez, Office of General Counsel, GC–43, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8618.

SUPPLEMENTARY INFORMATION: The responsibility for operating DOE's uranium enrichment activities will transfer from the DOE to the USEC on July 1, 1993. The USEC is a wholly owned Government corporation subject to Title 31, United States Code, chapter 91 (the Government Corporation Control Act), whose purposes include but are not limited to: Leasing DOE uranium enrichment facilities; enriching uranium, providing for uranium to be enriched by others, or acquiring enriched uranium, including low-enriched uranium derived from highly enriched uranium; marketing and selling enriched uranium and related services; conducting those research and development activities related to processes and activities the USEC considers necessary or advisable; maintaining a reliable and economical domestic source of uranium enrichment services; maintaining the USEC as a commercial enterprise operating on a profitable and efficient basis; carrying out Presidential directions and authorizations under chapter 91; and conducting other functions now being conducted by the DOE.

The USEC will use records maintained in the aforementioned systems of records to make decisions on the hiring, retention, or other actions regarding present or former DOE and DOE contractor employees; to carry out functions related to civil and criminal litigation; to comply with requests from members of Congress; to determine entitlement to unemployment compensation or other benefits; to issue a license or other benefit; to assist DOE employees who transfer employment to the USEC and are receiving counseling to resolve alcohol and/or drug abuse problems; to monitor radiation exposure of employees at facilities; to process insurance claims and accident reporting; to facilitate the processing of complaints and grievances filed by employees of contractors against contractors and labor unions; to ascertain the status of access authorizations of employees and applicants for employment with the USEC and its contractor to work at facilities; and, to identify specific populations for use in epidemiological and clinical studies performed by NIOSH and conduct medical surveillance during the lifetime of individuals employed at the facilities now owned by DOE but to be leased by the USEC.

The system locations affected by establishing this new routine use:

Those locations where the records are now maintained according to the relevant system notice.

The Privacy Act provides that, a record may be disclosed, without the prior written consent of the individual to whom the records pertain, pursuant to a routine use. A routine use, with respect to disclosure of a record, is a use which is compatible with the purpose for which the record was collected. It has been determined that the proposed routine use is compatible because the USEC will be performing the same functions in the aforementioned areas as the Department now performs.

For the text of the system notices, see Publication of System Notices, 47 FR 14284, April 2, 1982, and revisions at 54 FR 47808, November 17, 1989.

Issued in Washington, DC, this 18th day of June 1993.

Linda G. Sye,

Acting Assistant Secretary for Human Resources and Administration.

Accordingly, the Routine Uses section of each system of records named above is revised to add the following:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

United States Enrichment Corporation to perform functions related to activities transferred from the Department of Energy in the Energy Policy Act of 1992.

[FR Doc. 93–14799 Filed 6–22–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. JD93–10506T Texas–141]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

June 17, 1993.

Take notice that on June 14, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Travis Peak, Trawick, E. Field, underlying Nacogdoches County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 6 and consists of approximately 1,680 acres in all or portions of the following surveys:

Survey	Abstract No.	Acres
Seth Caison	A-163	418
Wm. Wooton	A-598	27
Jasper N. Bell	A-106	239
John E. Kolb	A-332	61
Laban Rasco	A-472	150
Henry Kraber	A-327	87
John Hyde	A-251	69
Lucinda Vaught	A-581	155
Mariano Sanchez	A-51	379
M. Jones	A-318	9
Enoch Spivey	A-528	86

The notice of determination also contains Texas' findings that the referenced portion of the Travis Peak Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14738 Filed 6-22-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-10505T Texas-140]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

June 17, 1993.

Take notice that on June 14, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Travis Peak, Blackfoot S.W. Field, underlying Anderson County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 6 and consists of approximately 1,063 acres in portions of the following surveys:

Survey	Abstract No.	Acres
Polly Scritchfield	A-61	343
I. & G.N.R.R.	A-424	34
James Welch	A-835	645
Wm. Chairs	A-162	41

The notice of determination also contains Texas' findings that the referenced portion of the Travis Peak Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275,204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14739 Filed 6-22-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-441-000]

Black Marlin Pipeline Co.; Application for Abandonment

June 17, 1993.

Take notice that on June 9, 1993, Union Carbide Chemicals and Plastics Company Inc. (UCCP),[1] 39 Old Ridgebury Road, Danbury, Connecticut 06817, filed an application pursuant to section 7(b) of the Natural Gas Act and part 157 of the Commission's Regulations for an order authorizing the abandonment of certificated service provided by Black Marlin Pipeline Company (BMP) pursuant to the Commission's Order in Docket No. CP66-333-001,[2] and the transportation service agreement between BMP and UCCP dated December 1, 1987. UCCP states that gas is no longer being transported by BMP; and that since April 1, 1992, it has continued to pay reservation charges to BMP. UCCP's application is on file with the Commission and open to public inspection.

UCCP states that it entered into the transportation agreement with BMP for the sole purpose of transporting natural gas it purchased from Pelto Oil Company, Challenger Minerals Inc. and Santa Fe Energy Company (collectively referred to as Pelto). UCCP states that BMP transported the gas from the Outer Continental Shelf High Island Area Block 105, under BMP's Rate Schedule T-1, for use in UCCP's Texas City plant or for resale to ENRON's Cogeneration Plant #1 adjoining UCCP's Texas City plant property. UCCP states that the term of the transportation contract was for 15 years or the life of the High Island Block reserves, as dictated by the then existing requirements of section 315(a)(3) of the Natural Gas Policy Act of 1978.

UCCP states that on April 1, 1992, it exercised its contractual rights to terminate the gas purchase agreement with Pelto, thus, eliminating its need for transportation service by BMP. UCCP states that since April 1, 1992, it has continued to pay reservation charges to BMP, but that it believes that the transportation service agreement with BMP should have expired when the Pelto gas sales agreement expired and that BMP has been compensated for its insignificant investment in constructing and operating the sub-sea tap related to BMP's service. UCCP further states that if BMP can demonstrate unrecouped costs, that amount could provide a basis for an appropriate negotiated exit fee. UCCP also states that relieving it of its obligation to pay reservation charges for capacity it cannot use will not adversely affect other BMP customers and that it is no longer in the present or future public convenience and necessity for UCCP to have to pay BMP reservation charges for capacity through December 1, 2002 (the fixed term of the transportation agreement) for transportation of gas that UCCP no longer purchases.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 8, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the

[1] Union Carbide Chemicals and Plastics Company Inc. is a wholly-owned subsidiary of Union Carbide Corporation. Hereafter, UCCP and Union Carbide Corporation will be used interchangeably.

[2] Black Marlin Pipeline Company, 41 FERC ¶ 62,084 (1987).

time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for UCCP to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14736 Filed 6-22-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-39-001]

The Inland Gas Co., Inc.; Refund Report

June 17, 1993.

Take notice that on April 16, 1993, The Inland Gas Company, Inc. (Inland) filed with the Federal Energy Regulatory Commission (Commission) a report of refunds in compliance with Commission order issued June 26, 1992. Inland states that the Commission directed it to flow through to its customers refunds of overcollections of upstream take-or-pay charges within 60 days of the receipt of such refunds. Inland states that it received a refund from Tennessee Gas Pipeline Company on February 1, 1993, and that it flowed through the amount to its customers on March 19, 1993, plus interest, for a total refund of $618,295.27.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before June 28, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14744 Filed 6-22-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-111-002]

Natural Gas Pipeline Co. of America; Filing of Revised Tariff Sheets in Compliance With Commission Order

June 17, 1993.

Take notice that on June 14, 1993, Natural Gas Pipeline Company of America (Natural) filed with the Federal Energy Regulatory Commission revised tariff sheets to be effective June 1, 1993.

Natural states that the Commission, by Order issued May 28, 1993, accepted for filing to be effective June 1, 1993, Natural's April 30, 1993, filing in Docket No. RP93-111-000, subject to Natural refiling revised tariff sheets to (1) provide that imbalances disputed as of March 15, 1994, will not be cashed out by that date; (2) establish a mechanism for addressing disputed balances; (3) provide that netting of imbalances will be done on a monthly basis; and (4) give shippers under Rate Schedule FTS secondary receipt and delivery points within the zones for which they are paying a reservation fee.

Natural states that the tariff sheets submitted as part of Appendix A of the filing reflect the first three revisions required by the Order. Natural further states that it is concurrently filing with the Commission for waiver and rehearing of the secondary receipt point issue for FTS agreements. In the event rehearing were to be granted, Natural has also included as Appendix B to the filing those tariff sheets which reflect Natural's original proposal to give FTS shippers all secondary points within the transportation paths created by primary points.

Natural states that copies of the filing have been served on all of its jurisdictional transportation customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 24, 1993.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14741 Filed 6-22-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-141-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 17, 1993.

Take notice that Northern Natural Gas Company (Northern) on June 14, 1993, tendered for filing to become part of Northern's FERC Gas Tariff the following tariff sheets, proposed to be effective August 1, 1993:

Fourth Revised Volume No. 1

Fifteenth Revised Sheet No. 56
Fifteenth Revised Sheet No. 57
Fifteenth Revised Sheet No. 58

Original Volume No. 2

135 Revised Sheet No. 1C

Northern states that the tariff sheets are being filed by Northern to revise its Reconciliation Adjustment Charge (RA) for the period August 1, 1993 through October 31, 1993. Northern states that the reason for the change is that the RA put into effect on November 1, 1992, was based on an estimated pre-July 1, 1991 Account 191 balance and projected billing units. Northern further states that the actual balance and billing demand units are known at this time and therefore the RA is being adjusted to recover such actual balance.

Northern states that copies of the filing were served upon all of Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 24, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14742 Filed 6-22-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-142-000]

Northwest Pipeline Corp.; Final Rate Schedule T-1 Compliance Report and Cost of Service Study

June 17, 1993.

Take notice that on June 14, 1993, Northwest Pipeline Corporation (Northwest) tendered for filing its final Rate Schedule T-1 Compliance Report and Cost of Service Study.

Northwest states that the purpose of this filing is to file its final Compliance Report and Cost-of-Service Study relating to Rate Schedule T-1 as a result of the rolled-in treatment of the T-1 facilities in Docket No. RP93-5.

Northwest states that copies of this filing are being served upon Pacific Interstate Transmission Company and upon all jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 24, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14743 Filed 6-22-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER91-195-006, ER91-195-007, ER91-195-008 and ER91-195-009]

Western Systems Power Pool; Informational Filing

June 17, 1993.

Take notice that on June 14, 1993 the Western Systems Power Pool (WSPP) filed certain information as required by May 13, 1993 letter order in the above-referenced proceeding. Copies of WSPP's informational filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14737 Filed 6-22-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-109-002]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 17, 1993.

Take notice that Williams Natural Gas Company (WNG) on June 14, 1993, tendered for filing Substitute Original Sheet No. 264D to its FERC Gas Tariff, First Revised Volume No. 1.

WNG states that this filing is being made in compliance with Commission order issued May 28, 1993 in Docket No. RP93-109-000. The order required WNG to file additional explanation for several of its proposed tariff changes within 15 days. WNG was also required to file Substitute Original Sheet No. 364D reflecting the elimination of the tariff provision that provides for tracking of any changes in the federal income tax rates, within 30 days.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 24, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14740 Filed 6-22-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Efficiency and Renewable Energy

[Case No. F-056]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of York International From the DOE Furnace Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to York International (York) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's P1UK, PAKU, P1UH, PAKM, XEU02, XEH02, P1CD, PAND, and XED11 residential furnaces.

Today's notice also publishes a "Petition for Waiver" from York. York's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. York seeks to test using a blower delay time of 30 seconds for its P1UK, PAKU, P1UH, PAKM, XEU02, XEH02, P1CD, PAND, and XED11 residential furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data and information not later than July 23, 1993.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F-056, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3012.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-9507

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On March 24, 1993, York filed an Application for Interim Waiver regarding blower time delay. York's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, York requests the allowance to test using a 30-second blower time delay when testing its P1UK, PAKU, P1UH, PAKM, XEU02, XEH02, P1CD, PAND, and XED11 residential furnaces. York states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings. Since current DOE test procedures do not address this variable blower time delay, York asks that the Interim Waiver be granted.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; Ducane Company, 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting York an Interim Waiver for its P1UK, PAKU, P1UH, PAKM, XEU02, XEH02, P1CD, PAND, and XED11 residential furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to York was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, June 16, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

June 16, 1993.

Mr. Thomas J. Wolowicz, *Engineering Manager, Residential Furnaces, York International, 5005 Interstate Drive North, Norman, OK 73039.*

Dear Mr. Wolowicz: This is in response to your March 24, 1993, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for the York International (York) P1UK, PAKU, P1UH, PAKM, XEU02, XEH02, P1CD, PAND, and XED11 residential furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; Ducane Company, 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

York's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage York will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, York's Application for an Interim Waiver from the DOE test procedure for its P1UK, PAKU, P1UH, PAKM, XEU02, XEH02, P1CD, PAND, and XED11 residential furnaces regarding blower time delay is granted.

York shall be permitted to test its P1UK, PAKU, P1UH, PAKM, XEU02, XEH02, P1CD, PAND, and XED11 residential furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

York International, 5005 Interstate Drive North, Norman, OK 73039. (405) 364–4040 Phone (405) 366–7286 Fax

March 24, 1993.

Mr. J. Michael Davis,

Assistant Secretary, Office of Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Dear Mr. Davis: Please consider this Petition for Waiver and Application for Interim Waiver pursuant to 10 CFR 430.27.

Waiver is requested from the test procedures covering gas furnaces found in appendix N to subpart B of part 430. The current heat-up test procedure requires a 90 second delay between burner on and blower on conditions, and a 90 sec blower cool down period after the main burner is turned off.

Central Environmental Systems, YORK International will manufacture the following models: P1UK, PAKU, P1UH, PAKM, XEU02, XEH02, P1CD, PAND, XED11 of residential furnaces with electronic controls. This control starts the blower 30 seconds after the main burner starts. The improved energy efficiency and therefore higher AFUE ratings are achieved by reducing the cycle losses. The current test procedures do not give credit for the saved energy, thus providing an inaccurate comparison which is not representatives of actual operation.

YORK requests an interim waiver to permit calculation based on actual timed blower operation. Several other manufacturers have been granted waivers for this operation.

Thomas J. Wolowicz,

Engineering Manager, Residential Furnaces.

[FR Doc. 93–14797 Filed 6–22–93; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 93–56–NG]

Texas International Gas & Oil Co.; Application for Blanket Authorization to Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on June 3, 1993, by Texas International Gas & Oil Company (TI) requesting blanket authorization to export up to 29.2 billion cubic feet of natural gas to Mexico over a two-year period. The authorization would begin on the date of first delivery after November 29, 1993, the expiration date of TI's existing export authorization granted by DOE/FE Opinion and Order No. 319 on June 19, 1989 (1 FE ¶ 70,228). TI states that it will use existing pipeline facilities to transport the gas and will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time July 23, 1993.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–0394

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–6667

SUPPLEMENTARY INFORMATION: TI, a Texas company with its principal place of business in El Paso, Texas, does business as Service-Gas. TI proposes to purchase natural gas produced in the United States Southwest, including the States of New Mexico and Texas, and export it to Mexico for sale to purchasers under short-term and spot market transactions, either on TI's own behalf or as the agent for others. All sales would be individually negotiated at competitive prices. TI asserts that there is no current need in the United States for the gas that would be exported under the proposed arrangement.

TI's export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy to promote competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those who may oppose the application, should comment on these matters as they relate to the requested export authority. Parties opposing this arrangement bear the burden of overcoming TI's assertion that the domestic gas exported would be surplus to the United States needs.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Anyone who wants to become a party to this proceeding and to have their written comments considered as the basis for the decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of TI's application is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 17, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–14798 Filed 6–22–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4669–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 23, 1993.

FOR FURTHER INFORMATION, OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Ms. Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Electric Utility Steam Generating Units (Subpart Da)–Information Requirements (EPA ICR No. 1053.04; OMB No. 2060–0023). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of Electric Utility Steam Generating Units capable of combusting more than 73 megawatts heat input of fossil fuel must provide EPA, or the delegated State regulatory authority, with one-time notifications and reports, and must keep records, as required of all facilities subject to the general NSPS requirements. In addition, facilities subject to this subpart must install a continuous monitoring system (CMS) to monitor SO2, NOx and opacity, and must notify EPA or the State regulatory authority of the date upon which demonstration of the CMS performance commences. Owners or operators must submit quarterly reports indicating whether compliance data was obtained in accordance with approved methods and whether compliance was achieved, and their assessment of monitoring system performance. The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 14.5 hours per response for reporting, and 182.5 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of electric utility steam generating units capable of combusting more than 73 megawatts heat input of fossil fuel.

Estimated Number of Respondents: 81.5.

Estimated Number of Responses Per Respondent: 4.

Estimated Total Annual Burden on Respondents: 19,597 hours.

Frequency of Collection: One-time notifications and reports for new facilities; quarterly reporting for existing facilities.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency,Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: June 16, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–14813 Filed 6–22–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4664–2]

Public Water Supply Supervision Program; Program Revision for the State of Idaho

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Idaho is revising its approved State Public Water Supply Supervision Primacy Program. Idaho has adopted drinking water regulations for public notification, total coliforms, the treatment of surface water, lead and copper, and certain volatile organic chemicals, synthetic organic chemicals and inorganic chemicals. EPA has determined that these State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted July 23, 1993, to the Regional Administrator at the EPA address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by July 23, 1993. A public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective July 23, 1993.

Any request for a public hearing shall include the following:

(1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and

(3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Idaho Department of Health & Welfare, Division of Environmental Quality, 1410 North Hilton Street, Boise, Idaho 83706; and Environmental Protection Agency, Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Wendy Marshall, EPA, Region 10, Ground Water and Drinking Water Branch, WD–132, 1200 Sixth Avenue, Seattle, Washington 98101; telephone (206) 553–1890.

Dated: May 26, 1993.

Jane S. Moore,

Acting Regional Administrator.

[FR Doc. 93–14815 Filed 6–22–93; 8:45 am]

BILLING CODE 6560–60–P

[OPPTS–00141; FRL 4631–5]

Biotechnology Science Advisory Committee; Subcommittee on Plant Pesticides; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1–day meeting of the Biotechnology Science Advisory Committee's (BSAC) Subcommittee on plant pesticides, including transgenic plant pesticides. The meeting will be open to the public.

DATES: The meeting will be held on Tuesday, July 13, 1993, starting at 9 a.m. and ending at 5 p.m.

ADDRESSES: The meeting will be held at the: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Creavery Lloyd, Committee Management Specialist, Biotechnology Science Advisory Committee (TS–788), Office of Prevention, Pesticides and Toxic Substances, Rm. E627, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–6900.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Federal Advisory Committee Act which requires that timely notice of each meeting of a Federal Advisory Committee be published in the **Federal Register**. This notice announces such a meeting. Attendance by the public will be limited to available space.

The Subcommittee will review a set of scientific issues being considered by the Agency in determining whether a pesticidal substance produced in a plant is exempt from the requirement of a food tolerance if it is an inherent plant pesticide derived from a known food source and meets certain other criteria. The Subcommittee will also be asked to comment on the feasibility of using *in vitro* digestibility studies as toxicity assays. Copies of the issues to be addressed at the meeting can be obtained by contacting Creavery Lloyd at the phone number listed above.

Dated: June 17, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 93–14816 Filed 6–23–93; 8:45 a.m.]

BILLING CODE 6560–50–F

[FRL–4670–3]

Notice of Proposed Administrative Settlement

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Revised notice of proposed administrative settlement; request for public comment.

SUMMARY: In accordance with the requirements of section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), notice is hereby given of a proposed administrative cost recovery settlement concerning the Sunbelt Site in Dallas, Texas, and Houston, Texas. The proposed settlement was entered into under the authority granted the U.S. EPA in section 122(h) of CERCLA and requires thirty-three (33) Respondents to pay $81,408.50 in past costs to the Hazardous Substances Superfund. The money will be used to reimburse the U.S. EPA for costs incurred in connection with the U.S. EPA's removal actions at the Sunbelt site.

Notice of this settlement was published previously in the **Federal Register** on May 5, 1993 (58 FR 26783); however, the May 5, 1993 notice incorrectly listed only thirty-one (31) of the Respondents to the administrative settlement. The two additional Respondents are Hampstead Associates, Inc. and Oak Creek Partners, Ltd.

DATES: Comments on this proposed settlement must be received on or before July 23, 1993.

ADDRESSES: A copy of the proposed settlement is available at the following address for review: U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas, 75202.

Comments on the proposed settlement should be addressed to: Mr. Geert Aerts, Cost Recovery Section (6C–EC), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas, 75202.

FOR FURTHER INFORMATION CONTACT: Geert Aerts at (214) 655–6733.

Dated: June 15, 1993.

W.B. Hathaway,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 6.

[FR Doc. 93-14817 Filed 6-22-93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[RAO Letter 22 DA 93-661]

Responsible Accounting Officers: Uniform Accounting for Postemployment Benefits in Part 32

The purpose of this letter is to provide guidance with respect to adopting Statement of Financial Accounting Standards No. 112 (SFAS-112), "Employers' Accounting for Postemployment Benefits" in Part 32, Uniform System of Accounts for Telecommunications Companies.

SFAS-112 was issued by the Financial Accounting Standards Board (FASB) in November 1992, and covers accounting for benefits listed in paragraphs 4 and 5 of the Statement. It requires the accrual method of accounting for these benefits instead of the pay as you go method and is mandatory for fiscal years beginning after December 15, 1993, although the FASB encourages earlier implementation. Therefore, to be in compliance with generally accepted accounting principles (GAAP), companies must account for postemployment benefits on the accrual basis on or before January 1, 1994.

The Ameritech Operating Companies (Ameritech) and US West Communications, Inc. (US West) on December 22, 1992, and February 22, 1993, respectively, filed notices of intent to adopt SFAS-112. These notices were filed pursuant to Section 32.16 of the Commission's rules, which requires carriers to apply new standards adopted by the FASB and provides for automatic Commission approval unless the Commission notifies carriers otherwise within 90 days after receiving a notice.[1]

We allowed Ameritech to adopt SFAS-112 for regulatory purposes under the automatic approval provision of § 32.16. We did not object to Ameritech's notice because the carrier was adopting SFAS-112 pursuant to the requirements set forth in SFAS-112 and was doing so at the same time it was adopting SFAS-112 for financial reporting purposes. We denied the US West notice, however, in a letter dated April 26, 1993, because the US West proposal requested permission to use a three year phase-in instead of the flash-cut approach that is required by SFAS-112.

To avoid any confusion that could occur as a result of the above actions, this letter provides directions for adoption of SFAS-112. Carriers that have not yet adopted SFAS-112 are required to do so under the provisions of § 32.16.

Timing of Adoption. Carriers will adopt SFAS-112 for regulatory accounting purposes using the same effective date they use for financial reporting purposes, but no later than January 1, 1994.

Notification. Each carrier shall file a notice of intent to adopt SFAS-112 90 days prior to adopting the standard, with October 1, 1993, being the last day to file notice in order to meet the January 1, 1994, mandatory adoption date. This notice shall provide us with the interstate revenue requirement impact for the current year and a projection for the next three years. An example of the format to be used in making this revenue requirement filing is attached.

Accounts to be Utilized. Carriers shall use the following accounts to record entries related to SFAS-112.

1. Catch-up Entry. To record the effects of the catch-up entry, carriers should charge Account 6728, Other general and administrative, and credit Account 4310, Other long term liabilities.

2. Cash payments. Cash payments made during the year for postemployment benefits will be charged to Account 6728, Other general and administrative, for all items not specifically required to be charged to the expense matrix, pursuant to § 32.5999(f). The payroll related postemployment cash payments currently subject to the Expense matrix requirements in § 32.5999(f) shall continue to be recorded through the matrix.

3. Annual Liability Adjustment. The postemployment liability recorded in Account 4310, Other long term liabilities, will be adjusted at least annually based on claims data with contra entries to Account 6728, Other general and administrative.

This letter is issued pursuant to authority delegated under Section 0.291 of the Commission's Rules, 47 CFR 0.291. Applications for review under Section 1.115 of the Commission's Rules, 47 CFR 1.115, must be filed within 30 days of the date of this letter. See 47 CFR 1.4(b)(2).

Sincerely,

Kenneth P. Moran,

Chief, Accounting and Audits Division, Common Carrier Bureau.

Carrier_____

ESTIMATED INTERSTATE REVENUE REQUIREMENT IMPACT RESULTING FROM IMPLEMENTATION OF SFAS 112 (POSTEMPLOYMENT BENEFITS)

(In millions)

	1994	1995	1996	1997
1. SFAS No. 112 Accrual Amounts.				
2. Pay-As-You Go Amounts.				
3. Incremental Expense.				
4. Incremental Revenue Requirement.				

[FR Doc. 93-14706 Filed 6-22-93; 8:45 am]

BILLING CODE 6712-01-M

[PR Docket No. 93-81; DA 93-634]

Private Land Mobile Radio Services; Alaska Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Alaska (Region 2). As a result of accepting the Plan for Region 2, licensing of the 821-824/866-869 MHz band in that region may begin immediately.

EFFECTIVE DATE: June 14, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632-6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: June 2, 1993.
Released: June 14, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On January 28, 1993, Region 2 (Alaska) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Alaska.

2. The Alaska Plan was placed on Public Notice for comments due on

[1] 47 CFR 32.16.

April 30, 1993, 58 FR 16672 (March 30, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Alaska and find that it conforms with the National Public Safety Plan. The Plan includes all the necessary elements specified in the *Report and Order* in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Alaska.

4. Therefore, we accept the Alaska Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in Alaska may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–14707 Filed 6–22–93; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 93–80; DA 93–629]

Private Land Mobile Radio Services; Hawaii Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Hawaii (Region 11). As a result of accepting the Plan for Region 11, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: June 11, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: June 2, 1993.
Released: June 11, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On January 28, 1993, Region 11 (Hawaii) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Hawaii.

2. The Hawaii Plan was placed on Public Notice for comments due on April 29, 1993, 58 FR 16408 (March 26, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Hawaii and find that it conforms with the National Public Safety Plan. The Plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Hawaii.

4. Therefore, we accept the Hawaii Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in Hawaii may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–14695 Filed 6–22–93; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 93–82; DA 93–635]

Private Land Mobile Radio Services; Puerto Rico Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Puerto Rico (Region 47). As a result of accepting the Plan for Region 47, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: June 14, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: June 2, 1993.
Released: June 14, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On January 29, 1993, Region 47 (Puerto Rico) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Puerto Rico.

2. The Puerto Rico Plan was placed on Public Notice for comments due on April 30, 1993, 58 FR 16672 (March 30, 1993). The Commission received no comments in this processing.

3. We have reviewed the Plan submitted for Puerto Rico and find that it conforms with the National Public Safety Plan. The Plan includes all the necessary elements specified in the *Report and Order* in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Puerto Rico.

4. Therefore, we accept the Puerto Rico Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in Puerto Rico may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–14706 Filed 6–22–93; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 93–78; DA 93–631]

Private Land Mobile Radio Services; South Carolina Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for South Carolina (Region 37). As a result of accepting the Plan for Region 37, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: June 11, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: June 2, 1993.
Released: June 11, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On January 27, 1993, Region 37 (South Carolina) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in South Carolina.

2. The South Carolina Plan was placed on Public Notice for comments due on April 28, 1993, 58 FR 16192 (March 25, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for South Carolina and find that it conforms with the National Public Safety Plan. The Plan includes all the necessary elements specified in the *Report and Order* in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in South Carolina.

4. Therefore, we accept the South Carolina Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in South Carolina may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–14696 Filed 6–22–93; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 93–79; DA 93–628]

Private Land Mobile Radio Services; West Virginia Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for West Virginia (Region 44). As a result of accepting the Plan for Region 44, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: June 11, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: June 2, 1993.
Released: June 11, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On January 21, 1993, Region 44 (West Virginia) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in West Virginia.

2. The West Virginia Plan was placed on Public Notice for comments due on April 29, 1993, 58 FR 16408 (March 26, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for West Virginia and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in West Virginia.

4. Therefore, we accept the West Virginia Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in West Virginia may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–14710 Filed 6–22–93; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 92–273; DA 93–632]

Private Land Mobile Radio Services; Wisconsin Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Wisconsin (Region 45). As a result of accepting the Plan for Region 45, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: June 11, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: June 2, 1993.
Released: June 11, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On August 18, 1992, Region 45 (Wisconsin) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Wisconsin.

2. The Wisconsin Plan was placed on Public Notice for comments due on December 28, 1992, 7 FCC Rcd 7700 (1992). The Commission received one comment from Region 22 (Minnesota). The comment was subsequently withdrawn on May 10, 1993 and it was agreed that any frequency conflicts would be resolved on the local level.

3. We have reviewed the Plan submitted for Wisconsin and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the *Report and Order* in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Wisconsin.

4. Therefore, we accept the Wisconsin Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in Wisconsin may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–14697 Filed 6–22–93; 8:45 am]

BILLING CODE 6712–01–M

Renewal and Transfer of Control Applications Designated for Hearing

1. The Commission has before it the following applications for renewal of license and for transfer of control:

Applicant	City/state	File No.	MM docket No.
The Petroleum V. Nasby Corporation	Shelby, Ohio	BRH–890601VB	93–135

Applicant	City/state	File No.	MM docket No.
(Seeking a renewal of the license of Station WSWR (FM)) The Petroleum V. Nasby Corporation	Shelby, Ohio	BTCH–921019HX, BTCH–921019HY.	93–135
(Seeking to transfer control of The Petroleum V. Nasby Corporation).			

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding (MM Docket No. 93–135) upon the issues set forth below:

1. To determine the effect of Thomas L. Root's federal and state convictions on the basic qualifications of The Petroleum V. Nasby Corporation.

2. To determine, pursuant to section 310(d) of the Communications Act of 1934, as amended, and section 73.3540 of the Commission's Rules, whether Thomas L. Root and Kathy G. Root, engaged in the unauthorized transfer of control of The Petroleum V. Nasby Corporation.

3. To determine, in light of the evidence adduced pursuant to the above issues, whether grant of the renewal application of The Petroleum V. Nasby Corporation will serve the public interest, convenience and necessity.

4. To determine, in light of the foregoing, whether approval of the pending applications seeking to transfer control of The Petroleum V. Nasby Corporation will serve the public interest, convenience and necessity.

3. A copy of the complete Hearing Designation Order in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M St. NW., suite 140, Washington, DC 20037 (Telephone [202] 857–3800).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–14772 Filed 6–22–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–988–DR]

Maine; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maine, (FEMA–988–DR), dated May 11, 1993, and related determinations.

EFFECTIVE DATE: June 15, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Maine dated May 11, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 11, 1993: Cumberland, Hancock, and Lincoln for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–14778 Filed 6–22–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–992–DR]

New Mexico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Mexico (FEMA–992–DR), dated June 7, 1993, and related determinations.

EFFECTIVE DATE: June 7, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 7, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of New Mexico, resulting from severe storms and flooding on January 5, 1993, through February 27, 1993, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of New Mexico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Leland R. Wilson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Mexico to have been affected adversely by this declared major disaster:

Catron, Grant, Hidalgo, and McKinley Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93–14779 Filed 6–22–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–991–DR]

Oklahoma; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA–991–DR), dated May 12, 1993, and related determinations.

EFFECTIVE DATE: June 7, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oklahoma dated May 12, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 12, 1993:

Bryan, Canadian, Carter, and Kay for Public Assistance. (Already designated for Individual Assistance.)

Adair, Alfalfa, Atoka, Cotton, Craig, Creek, Custer, Dewey, Grant, Haskell, Jefferson, Kiowa, Love, Major, Marshall, McClain, Noble, Okfuskee, Okmulgee, Pawnee, Pushmataha, Wagoner, Washita, Woods, and Woodward for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–14777 Filed 6–22–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–985–DR]

Oregon; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oregon, (FEMA–985–DR), dated April 26, 1993, and related determinations.

EFFECTIVE DATE: June 4, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oregon dated April 26, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 26, 1993:

Washington County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–14776 Filed 6–22–93; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Indiana Port Commission, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200506–001.

Title: Burns International Harbor General Cargo Terminal Operating Agreement.

Parties:

Indiana Port Commission

Lakes and Rivers Transfer, a Division of Jack Gray Transport, Inc.

Synopsis: The amendment exempts barge general cargoes from the $1.00 per ton throughput charge currently required under the Agreement.

Dated: June 17, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–14734 Filed 6–22–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

CoreStates Financial Corp., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 13, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. CoreStates Financial Corp., Philadelphia, Pennsylvania; to engage *de novo* through its subsidiary, CoreStates Community Development Corporation, Philadelphia, Pennsylvania, in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in the

States of Pennsylvania, New Jersey, and Delaware.

Board of Governors of the Federal Reserve System, June 18, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-14784 Filed 6-22-93; 8:45 am]

BILLING CODE 6210-01-F

First Alabama Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 16, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Alabama Bancshares, Inc., Birmingham, Alabama; to acquire First Federal Enterprises, Inc. Marianna, Florida, and thereby indirectly acquire First Federal Savings Bank, Marianna, Florida, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted throughout the State of Florida.

Board of Governors of the Federal Reserve System, June 18, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-14786 Filed 6-22-93; 8:45 am]

BILLING CODE 6210-01-F

F.N.B. Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 16, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. F.N.B. Corporation, Hermitage, Pennsylvania; to acquire 100 percent of the voting shares of The Metropolitan Savings Bank of Youngstown, Youngstown, Ohio.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. BB&T Financial Corporation, Wilson, North Carolina; to acquire 100 percent of the voting shares of Citizens Savings Bank, SSB, Inc., Newton, North Carolina.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Chemical Financial Corporation, Midland, Michigan; to acquire 100 percent of the voting shares of Key State Bank, Owosso, Michigan.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Commercial Corporation, Little Rock, Arkansas; to acquire at least 80 percent of the voting shares of Texas Commerce Bank - Longview, N.A., Longview, Texas, and Stone Fort National Bank of Nacogdoches, Nacogdoches, Texas.

2. Magna Group, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Mega Bancshares, Inc., St. Ann, Missouri, and thereby indirectly acquire Mega Bank of St. Ann, St. Ann, Missouri; Mega Bank of St. Louis County, Chesterfield, Missouri; and Mega Bank of St. Charles County, St. Charles, Missouri.

3. New South Capital Corporation, Batesville, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of New South Bank for Savings, SSB, Batesville, Mississippi.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to merge with Winner Bancshares, Inc., Winner, South Dakota, and thereby indirectly acquire Farmers State Bank, Winner, South Dakota.

2. Otto Bremer Foundation and Bremer Financial Corporation, St. Paul, Minnesota; to acquire 100 percent of the voting shares of Valley Bancshares, Inc., Grand Forks, North Dakota, and thereby indirectly acquire Valley Bank & Trust Company, Grand Forks, North Dakota.

F. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Cherokee County Bancshares, Inc., Hulbert, Oklahoma; to become a bank holding company by acquiring First State Bank, Hulbert, Oklahoma.

2. FNB Financial Services Holding Company Employee Stock Ownership Plan, Durant, Oklahoma; to become a bank holding company by acquiring 30 percent of the voting shares of FNB Financial Services Holding Company, Durant, Oklahoma, and thereby indirectly acquire The First National Bank, Durant, Oklahoma.

G. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. D Bancorp, Inc., Desoto, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of D Bancshares, Inc., Wilmington, Delaware, and thereby indirectly acquire Bank of Desoto, N.A., Desoto, Texas. In connection with this application, D Bancshares, Inc., Wilmington, Delaware, has applied to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Desoto, N.A., Desoto, Texas.

H. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. First Interstate Bancorp, Los Angeles, California; to merge with Cal Rep Bancorp, Bakersfield, California, and thereby indirectly acquire California Republic Bank, Bakersfield, California.

2. ValliCorp Holdings, Inc., Fresno, California; to merge with Pacific Bancorporation, Fresno, California, and thereby indirectly acquire Community First Bank, Bakersfield, California.

Board of Governors of the Federal Reserve System, June 18, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-14785 Filed 6-22-93; 8:45 am]

BILLING CODE 6210-01-F

Jerry Richard Haskin, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 13, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Jerry Richard Haskin, and Karen Mae Haskin, New Orleans, Louisiana; to acquire 24.85 percent of the voting shares of Commerce Corporation, St. Francisville, Louisiana, and thereby indirectly acquire Bank of Commerce & Trust Company, St. Francisville, Louisiana.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Morris T. Friedell, to acquire 85 percent of the voting shares of First National Corporation of Aitkin, Inc., Aitkin, Minnesota, and thereby indirectly acquire First National Bank of Aitkin, Aitkin, Minnesota.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Bobby Crowell, Royse City, Texas, to acquire an additional 11.34 percent for a total of 17.01 percent; James Dudney, Rockwall, Texas, to acquire an additional 11.34 percent for a total of 17.01 percent; John Pullen, Royse City, Texas, to acquire an additional 11.34 percent for a total of 17.01 percent; O.T. Stanfield, Garland, Texas, to acquire an additional 7.73 percent for a total of 10.57 percent; Grace Tipton, Mesquite, Texas, to acquire an additional 9.28 percent for a total of 14.95 percent; and J.L. Williams, Coppell, Texas, to acquire an additional 5.67 percent for a total of 8.51 percent of the voting shares of Citizens State Bank, Royse City, Texas.

Board of Governors of the Federal Reserve System, June 18, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-14787 Filed 6-22-93; 8:45 am]

BILLING CODE 6210-01-F

J.P. Morgan & Co. Inc., New York, NY; Application to Engage in Nonbanking Activities

J.P. Morgan & Co. Incorporated, New York, New York (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through a wholly owned subsidiary, J.P. Morgan Futures, Inc., New York, New York (Company), a futures commission merchant registered under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), in executing and clearing, clearing without executing, executing without clearing, brokering, and providing investment advisory services with regard to the following energy-related contracts on the following exchanges: Light Sweet Crude Oil Futures, Options on Light Sweet Crude Oil Futures, Sour Crude Oil Futures, Gulf Coast Unleaded Gasoline Futures, New York Harbor Unleaded Gasoline Futures, Options on New York Harbor Unleaded Gasoline Futures, Heating Oil Futures, Options on Heating Oil Futures, Propane Futures, Natural Gas Futures, and Options on Natural Gas Futures on the New York Mercantile Exchange; and High Sulphur Fuel Oil Futures and Gas Oil Futures on the Singapore International Monetary Exchange Limited. Applicant proposes to conduct these activities throughout the United States and the world.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity, that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity, or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

Applicant believes that the proposed activities are closely related to banking or managing or controlling banks. The Board previously has approved, by regulation and order, acting as a futures commission merchant in the execution and clearance on major commodity exchanges of futures contracts and

options on futures contracts in financial commodities, such as gold and silver bullion and coins, foreign exchange, government securities, certificates of deposit and money market instruments that banks may buy and sell for their own accounts, and stock and bond indices, as well as providing related investment advice. *See* 12 CFR 225.25(b)(18), (19); *Republic New York Corporation*, 63 Federal Reserve Bulletin 951 (1977); *The Sanwa Bank, Limited*, 74 Federal Reserve Bulletin 578 (1988); *The Long-Term Credit Bank of Japan, Limited*, 74 Federal Reserve Bulletin 573 (1988). The Board also previously has approved, by order, the provision of investment advice with respect to trading futures and options on futures in non-financial commodities, such as agricultural and energy commodities. *See* Swiss Bank Corporation, 77 Federal Reserve Bulletin 126 (1991).

The Board has not previously approved the proposed activities with respect to acting as an FCM in executing, clearing, and brokering futures contracts and options on futures contracts in non-financial commodities. Applicant asserts that the proposed activities are essentially identical to activities previously approved by the Board. In this regard, Applicant believes that the execution and clearance of futures and options on futures in financial and non-financial commodities is functionally indistinguishable. Furthermore, Applicant states that the volatility of non-financial futures and options is not materially different than that for financial futures and options. Applicant also believes that Company's extensive experience in trading futures and options on futures in financial commodities makes it particularly well suited to engage in the proposed activities in non-financial commodities.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition. Applicant also believes that approval of this application will allow Company to provide a wider range of services and added convenience to its customers, and to offer its customers securities not otherwise available for purchase in the United States. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 21, 1993. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, June 18, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-14788 Filed 6-22-93; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Public Building Service; Environmental Assessment or Environmental Impact Statement for the Proposed Federal Courthouse Building, Located in Seattle, WA

AGENCY: General Services Administration.

ACTION: Notice of intent to prepare an environmental assessment or environmental impact statement.

SUMMARY: The General Services Administration (GSA) hereby gives notice it intends to prepare either an Environmental Assessment (EA) or an Environment Impact Statement (EIS) in accordance with the National Environmental Policy Act of 1969 (NEPA) for the proposed Federal Courthouse building in Seattle, Washington. A decision on whether to prepare an EIS will be made following the public comment period. The EA/EIS would evaluate the proposed project, other reasonable alternatives, and the no-action alternative identified in the scoping process. Scoping would be accomplished by correspondence, through a public scoping meeting, and through individual meetings with interested persons, neighborhood groups, organizations, and federal, state, and local agencies.

ADDRESSES: Written comments on the scope of alternatives and potential impacts should be sent to the GSA's contractor, The Austin Company, at the following subconsultant's address: Dames & Moore, Inc., 2025—1st Avenue, Suite 500, Seattle, Washington, **Attention:** Katy Chaney.

DATES: Written comments should be sent to Dames & Moore by August 4, 1993. Comments will also be accepted at a public open house from 2 p.m. to 5:30 p.m., and at a public scoping meeting from 5:30 p.m. to 8 p.m. on July 21, 1993 at the location indicated below.

PUBLIC SCOPING MEETING: Comments and suggestions will be solicited at a public open house and scoping meeting to be held at:

Washington State Convention and Trade Center, 800 Convention Place, Room #402 and #403, Seattle, Washington.

Both the open house and the scoping meeting will be held on July 21, 1993. The open house will be held from 2 p.m. to 5:30 p.m., during which time interested persons can discuss and comment on the proposed project. At 5:30 p.m., a group meeting will be convened which would include a brief presentation to include an overview of the proposed project and the EA/EIS process. At this time, there will be an opportunity to make comments in a group setting. All comments received throughout the day will be made part of the administrative record for the EA/EIS and will be evaluated as part of the scoping process.

FOR FURTHER INFORMATION CONTACT: Katy Chaney at Dames & Moore, Inc., 2025—1st Avenue, Suite 500, Seattle, Washington 98121, (206) 728–0744, or Donna M. Myers, General Services Administration, (206) 931–7713.

SUPPLEMENTARY INFORMATION: The GAS, assisted by the EA/EIS contractor, is considering preparation of a federal NEPA environmental assessment (EA) or an environmental impact statement (EIS) on a proposal to design and construct a new federal courthouse in Seattle, Washington. The scoping

process would determine whether an EA or EIS will be prepared, the scope of issues to be addressed in the environmental document, and identify the significant issues related to the proposed project. Scoping will be conducted consistent with NEPA guidelines. GSA will serve as lead agency for the preparation of the EA or EIS pursuant to § 1501.5(a) of the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (CEQ Regulations 40 CFR parts 1500–1508).

Scoping

GSA invites interested individuals, organizations, and federal, state, and local agencies to participate in defining the reasonable alternatives to be evaluated in the EA/EIS, and in identifying any significant social, economic, or environmental issues related to the alternatives. Scoping comments can be made verbally at the public open house, public scoping meeting, or in writing (see DATES and ADDRESSES sections above for location and time of open house and scoping meeting). During scoping, comments should focus on identifying specific impacts to be evaluated and suggesting alternatives that minimize adverse impacts while achieving similar objectives. Comments may also identify issues which are not significant or which have been covered by prior environmental review. Scoping should be limited to commenting on alternatives and not indicating preferences. There will be an opportunity to comment on preferences upon completion of a Draft EIS.

Additional Information

A project information packet will be available at the public open house and scoping meeting, or can be obtained by contacting Katy Chaney at Dames & Moore. The packet will describe in more detail the proposed project, alternatives, and the EA and EIS process.

Mailing List

If you wish to be placed on the mailing list to receive further information as the EA/EIS process develops, contact Dames & Moore at the address listed above.

Project Purpose, Historical Background, and Project Description

A new Federal Courthouse is needed in Seattle to consolidate existing judicial functions and to accommodate the projected space needs of the Federal Courts and court-related agencies. The existing Federal Courthouse, at 1010 5th Street is listed on the National Register of Historic Places along with the lawn area.

The Administrative Office of the U.S. Courts (AOC) has requested GSA provide a building based on the Long Range Facility Plan for the Western District of Washington. The new Courthouse would provide for 16 courtrooms for use by the Ninth Circuit Court of Appeals, the U.S. District, and the U.S. Magistrate judges. The facility would be designed to accommodate nine additional courtrooms for the long term requirements of the Courts. The U.S. Bankruptcy Court would utilize a portion of the existing Courthouse. Court and court-related as well as executive agency offices would occupy the remainder of the space in the building(s).

At occupancy, the new facility is expected to house approximately 1,400 occupants, of which 475 will be U.S. Court and related agency personnel. This is a net increase of 224 of those now employed at the existing Federal Courthouse and various lease locations in downtown Seattle. The remaining 924 occupants would be employees of Federal executive agencies who are currently located in leased space in downtown Seattle; they would occupy the facility until the space is needed for additional courtroom expansion. Development would involve construction of one or more buildings comprising approximately 747,900 square feet of gross floor area, and parking for 275 vehicles. In the long-term the U.S. Courts and related agencies would occupy 100 percent of the facility.

Alternatives

The EA or EIS would consider a no-action alternative and action alternatives. Due to the unique requirements for courtrooms, chambers, and security considerations, GSA has found it is impractical to consider the use of an existing office building to meet these needs. GSA is proposing to construct the building on one or several full block sites adjacent to the existing U.S. Courthouse in downtown Seattle, Washington, defined as follows:

1. A build alternative to construct on feasible full block sites adjacent to the existing Federal Courthouse, bounded on the north by Seneca Street, on the east by 6th Avenue, by Marion Street on the south, and on the west by 4th Avenue.

2. A build alternative of constructing over two blocks of the Interstate I–5 Freeway, (adjacent to both the existing Federal Courthouse and the Stouffer-Madison Hotel) bounded on the north by Spring Street, on the east by 7th Avenue, just past the southerly line of Marion Street on the south, and by 6th Avenue on the west.

3. A no-action (no-build) alternative would continue the use of the existing Federal Courthouse supplemented by the continued use of leased space throughout the downtown Seattle area.

Probable Effects

GSA will evaluate significant environmental, social, and economic impacts of the alternatives in the EA or EIS. Potential impacts include, but are not limited to, changes in the social environment, changes in land use, air quality, aesthetics, changes in traffic and transportation patterns, economic impacts, and conformance to City planning and zoning requirements. The impacts will be evaluated both for the construction period and for the life of the project. Measures to mitigate significant adverse impacts will be addressed.

Procedures

The EA or Draft EIS will be prepared based on the scoping report. After its publication, GSA will make a decision whether an EIS will be required. If an EIS is to be prepared, a Draft EIS will be available for public and agency review and comment, and a public hearing would be held. A Final EIS would be prepared following the Draft EIS to address any comments on the Draft EIS.

Dated: June 4, 1993.

John T. Myers,

Acting Regional Administrator (10A).

[FR Doc. 93–14722 Filed 6–22–93; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for the reinstatement of a previously approved information collection for the Children's Bureau of the Administration for Children and Families (ACF). This request for reinstatement for a short term approval will allow the Children's Bureau to complete data collection by September 1993. This information collection titled: "National Study of Protective, Preventive, and Reunification Services

Delivered to Children and Their Families," was approved under OMB Control Number 0980–0233. The approval expired on January 31, 1993.

ADDRESSES: Copies of the information collection request may be obtained from Steven R. Smith, Office of Information Systems Management, ACF, by calling (202) 401–6964.

Written comments and questions regarding the requested approval for this information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: National Study of Protective, Preventive, and Reunification Services Delivered to Children and Their Families

OMB No. 0980–0233

Description: The data collection instruments—there are three major components—will be used by the Children's Bureau within the Administration for Children, Youth and Families (ACYF) of the Administration for Children and Families (ACF) to conduct a pilot study for the National Study of Protective, Preventive, and Reunification Services Delivered to Children and Families.

The purposes of the pilot study are to: (1) Describe and determine the number and percentage of children and families receiving protective, preventive, reunification/out-of-home services, and after-care services; and (2) obtain national data on the number, types, and dynamics of the services provided to children and their families.

The findings of the study will provide a basis upon which child welfare policy can be developed and refined throughout the next decade. Other benefits derived from the pilot study will provide standardized services definitions for protective, preventive, reunification services and for the target populations eligible to receive them. The study will identify services provided by child welfare agencies across the country and develop standardized service definitions across agencies.

Annual Number of Respondents: 150

Annual Frequency: 4

Average Burden Hours Per Response: .75

Total Burden Hours: 450

Dated: June 15, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–14727 Filed 6–22–93; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

[93–003]

Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) to develop innovative ways for collecting urine from infants for subsequent analysis for the presence of viruses. CDC's primary responsibility will be to develop the diagnostic test. The collaborator will specially design a new diaper or diaper insert.

It is anticipated that all inventions which may arise from this CRADA will be licensed on a royalty-bearing basis to the collaborator with whom the CRADA is made.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. There is a single restriction in this exchange: CDC May Not Provide Funds to the other participants in a CRADA. This opportunity is available until 30 days after publication of this notice. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION CONTACT: Technical: James G. Dobbins, Ph.D., Division of Viral and Rickettsial Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mailstop G–18, Atlanta, GA 30333, telephone (404) 639–3096 or 639–1306 (Dr. Marion Koopmans).

Business: Lisa Blake-DiSpigna, Technology Transfer Representative, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mailstop C–19, Atlanta, GA 30333, telephone (404) 639–2897.

SUPPLEMENTARY INFORMATION: Congenital cytomegalovirus (CMV) disease is one of the leading causes of birth defects. Primary prevention of this disease will require new knowledge of its epidemiology, including studies of infected and uninfected infants. Secondary prevention will also require identification of infected and uninfected infants. Other congenital viral infections can also cause infections that may be inapparent at birth yet progress to cause severe complications at a later stage.

In order to identify infected infants, urine from newborn infants has to be collected and cultured for the presence of virus. Currently urine is collected by placing a urine bag on an infant—a time-consuming and expensive procedure. Culturing virus from urine is also time-consuming and expensive, and usually has to be done in a specialized laboratory.

The goal of this CRADA is to develop a screening test which would be less time consuming and more cost effective for determining whether an infant is infected with CMV or other specified viral infection. The collaborator will develop a diaper or diaper insert that would enable a diagnostic strip to be placed in it which could be used for the purpose of rapidly detecting the presence of infectious agents or antibody to such agents in the urine.

CDC will identify the optimal method for testing for the presence of infection; refine the procedure using known CMV-positive and CMV-negative urine; and supply a diagnostic strip (or spot) based on this test for the collaborator to incorporate into prototype diapers or diaper inserts.

CDC will evaluate the prototype diaper insert and diagnostic strip using data from hospital-based studies of CMV, comparing test results from the insert with those obtained from culturing the urine. Diagnostic tests for other congenital infections will also be evaluated for inclusion in the diagnostic strip.

Applicants will be judged according to the following criteria:

1. Soundness of the analytic approach and research plan;

2. Evidence of appropriate personnel to complete the project in a timely fashion or evidence of a plan to recruit and fund personnel appropriate for the project;

3. Evidence of scientific credibility; and

4. Evidence of commitment and ability to develop an innovative design for urine collection and testing.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act: Pub. L. 99–502.

The responses must be made to: Nancy C. Hirsch, Technology Transfer Coordinator, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mailstop C–19, Atlanta, GA 30333.

Dated: June 17, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–14749 Filed 6–22–93; 8:45 am]

BILLING CODE 4160–18–F

Food and Drug Administration

[Docket No. 93F–0165]

R.T. Vanderbilt Co., Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that R.T. Vanderbilt Co., Inc., has filed a petition proposing that the food additive regulations be amended to correct an error in nomenclature. The amendment would add dipentamethylenethiuram hexasulfide for use as an accelerator in the production of rubber articles intended for repeated food-contact use, and remove the erroneous listing of dipentamethylenethiuram tetrasulfide from the regulation.

FOR FURTHER INFORMATION CONTACT: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B4370) has been filed by R.T. Vanderbilt Co., Inc., P.O. Box 5150, Norwalk, CT 06856–5150. The petition proposes that the food additive regulations in § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) be amended to correct an error in nomenclature. The amendment would list dipentamethylenethiuram hexasulfide for use as an accelerator in the production of rubber articles intended for repeated food-contact use, and remove the erroneous listing of dipentamethylenethiuram tetrasulfide from the regulation.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 15, 1993.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–14764 Filed 6–22–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0180]

Sumitomo Chemical America, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sumitomo Chemical America, Inc., has filed two petitions proposing that the food additive regulations be amended to provide for the safe use of 2,4-di-*tert*-pentyl-6-[1-(3,5-di-*tert*-pentyl-2-hydroxyphenyl) ethyl]phenyl acrylate as an antioxidant in the manufacture of polypropylene and styrene block polymers that contact food.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that two petitions (FAP 3B4357 and 3B4359) have been filed by Sumitomo Chemical America, Inc., 345 Park Ave., New York, NY 10154. The petitions propose to amend the food additive regulations to provide for the safe use of 2,4-di-*tert*-pentyl-6-[1-(3,5-di-*tert*-pentyl-2-hydroxyphenyl)ethyl]phenyl acrylate as an antioxidant in the manufacture of polypropylene and styrene block polymers that contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 15, 1993.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–14763 Filed 6–22–93; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Final Notice Regarding Section 602 of the Veterans Health Care Act of 1992 Duplicate Discounts and Rebates on Drug Purchases

AGENCY: Public Health Service, HHS.

ACTION: Final notice.

SUMMARY: Section 602 of Public Law 102–585, the "Veterans Health Care Act of 1992," enacted section 340B of the Public Health Service Act, "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides discounts on covered outpatient drugs to eligible entities. Section 340B(a)(5)(A) provides that a drug purchase shall not be subject to both a discount under section 340B and a Medicaid rebate under section 1927 of the Social Security Act. The Department is directed to establish a mechanism to assure that covered entities comply with this prohibition. The purpose of this notice is to announce the final mechanism to prevent duplicate discounts and rebates.

The proposed mechanism was announced in the **Federal Register** at 58 FR 27293 on May 7, 1993. A comment period of 30 days was established to allow public comment on the proposed mechanism. Two comments were received. Both comments concerned issues involving implementation of the mechanism and did not raise substantive issues concerning the mechanism itself; therefore, we will address both comments in the Effective Date section. The mechanism, in its final form, is adopted as proposed.

FOR FURTHER INFORMATION CONTACT: Marsha Alvarez, R.Ph., Director, Office of Drug Pricing Program, Bureau of Primary Health Care, Health Resources and Services Administration, Room 7A–55, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Phone: (301) 443–0004

DATES: The Department proposed to begin implementation of the mechanism on July 1, 1993, if the Public Health Service (PHS) could provide the State Medicaid agencies with the Medicaid

provider numbers for all covered entities. One comment addressed the necessity for a date by which PHS could, with certainty, provide the numbers to the States.

The Department has developed an implementation plan which involves providing covered entity Medicaid provider numbers to the State Medicaid agencies on a monthly basis for July, August, and September, 1993. From October, 1993, until June 30, 1994, the files will be updated on a quarterly basis. Thereafter, the files will be updated annually.

As outlined in the first notice, all State Medicaid drug utilization data for the third calendar quarter, due to manufacturers by November 30, 1993, would exclude rebates for discounted drugs sold to PHS covered entities. For claims paid by Medicaid prior to July 1, 1993, State agencies will bill manufacturers for rebates on all drugs paid by Medicaid.

SUPPLEMENTARY INFORMATION: The other comment dealt with entity participation in the PHS drug discount program prior to their exclusion from the Medicaid rebate program. Entities that utilize Medicaid billing systems that include pharmacy in their all-inclusive rates or do not submit Medicaid claims for covered outpatient drug reimbursement do not generate Medicaid rebates and have no need to participate in the mechanism to prevent duplicate discounts and rebates. These entities may request drug discounts retroactive to December 1, 1992, and may accept further drug discounts as soon as possible.

Those entities which bill Medicaid separately for covered outpatient drugs can only accept a discount on those drugs for which no claims for Medicaid reimbursement were sent to their respective State Medicaid agencies. They may accept the discounted price once their Medicaid provider numbers are received by the Drug Pricing Program, and the Program provides these numbers to the respective State Medicaid agencies.

Dated: June 16, 1993.

William A. Robinson,

Acting Administrator, Health Resources and Services Administration.

[FR Doc. 93–14767 Filed 6–22–93; 8:45 am]

BILLING CODE 4160–15–M

Substance Abuse and Mental Health Services Administration

Peer Review Appeals System

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice

SUMMARY: This Notice provides the procedures for an appeals process that the Substance Abuse and Mental Health Services Administration (SAMHSA) will use to resolve concerns that arise from perceived shortcomings or errors in the substance or procedure of expert peer review of grant and cooperative agreement applications.

ADDRESSES: The public is invited to provide written comments on these procedures; written comments should be sent to Jane A. Taylor, Ph.D., Deputy Director for Review Policy and Extramural Operations, Office of Extramural Programs, SAMHSA, 12C–26 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; telephone 301–443–4266.

SUPPLEMENTARY INFORMATION: Public Law 102–321, the ADAMHA Reorganization Act of 1992, enacted on July 10, 1992, amended the Public Health Service (PHS) Act to establish the SAMHSA. Section 504 of the PHS Act, as amended, provides for the conduct of peer and Advisory Council review of grants and cooperative agreements for substance abuse and mental health services prevention and treatment programs in SAMHSA.

The mission of SAMHSA is to reduce the incidence and prevalence of mental disorders and substance abuse and improve treatment outcomes for persons suffering from addictive and mental health problems and disorders.

The Administrator is authorized to award grants to, and enter into cooperative agreements with, public and private nonprofit entities to support demonstration projects, evaluations, systems improvements, services delivery, and the dissemination of information on substance abuse and mental health services for the delivery of these services.

SAMHSA has instituted an appeals policy to allow applicants the opportunity to request an examination of their concerns about the referral and peer review of their applications for grants and cooperative agreements. The policy is implemented through a two-tiered process and applies to the referral and review of all competing applications for grants and cooperative agreements. The policy does not apply to funding decisions. This Notice provides a summary of the procedures for operation of the SAMHSA Peer Review Appeals System.

SAMHSA Peer Review Appeals System

Substance Abuse and Mental Health Services Administration
Center For Substance Abuse Prevention (CSAP)
Center For Substance Abuse Treatment (CSAT)
Center For Mental Health Services (CMHS)

The SAMHSA has initiated a two-tiered appeals process whereby applicants may request an examination of their concerns about the referral and peer review of their applications for grants and cooperative agreements.

This process is intended to resolve those concerns which arise from perceived shortcomings or errors in the substance or procedure of peer review, i.e., from receipt and assignment of an application through its review by a National Advisory Council. Such concerns may involve refusal to accept an application; a disputed assignment of the application to an initial review group or to a particular Center; perceived insufficient expertise on the initial review group or site visit team or conflict of interest on the part of one or more members; apparent factual errors, oversights, or bias associated with the review of an application at the initial or advisory council review; and perceived inappropriate handling of the review of the application.

However, the appeals process is not intended to resolve differences of opinion between peer reviewers and the project director; to provide a mechanism for allowing project directors to submit information that should have been presented in the original proposal; or to provide a forum for disputing priority score determinations in the absence of specific and substantive evidence pointing to a flawed review.

The appeals process will not supersede or bypass the peer review process, but if serious shortcomings are found to have occurred in the review of an application, they will be rectified by one of the following actions: review by the same or another initial review group; special consideration by the National Advisory Council; or administrative action authorized by the Center Director or designated staff.

Applicants are strongly urged to communicate and discuss their concerns regarding peer review with appropriate staff. However, if applicants are still dissatisfied after a response is received to their communications, they also may request a further examination of these concerns.

Under the appeals system, all concerns must first be communicated to the unit which, at the time, is responsible for the application. Appropriate officials will thoroughly examine the applicants' concerns,

frequently with the help of the initial reviewers or other experts, and, if shortcomings are found to have occurred, every effort will be made to rectify them in a timely manner.

If the applicant disagrees with the resolution of his/her concerns by the responsible Center staff, an appeal, jointly signed by the applicant (grantee) organization official, may be sent to the designated Center Appeals Officer whose name and address appears below. The appeal must include documentation of the original dispute, previous communications and interactions with staff in relation to the dispute, and a clear statement of the reasons for disagreeing with the resulting decision. To allow for a complete and independent examination of the appeal, the application will be withdrawn from the regular review process until the appeal is resolved. If the applicant submits an amended application during consideration of the appeal, $AMHSA will review the amended application and inactivate the original application and the accompanying appeal. The Center Director will render the Center's decision on the appeal and communicate it to the applicant and the applicant organization.

In the event that an appellant disagrees with the decision made by the Center Director, he or she and the applicant organization may initiate a secondary appeal to the SAMHSA Administrator. In these cases, the Administrator's decision is final.

How to Use the Appeals System:

Communication Before the Initial Review

After being notified about the assignment of an application to the initial review group and the awarding Center, the applicant may direct his/her serious concerns about eligibility determination and the assignment of the application to the Center Referral Officer. Concerns about the pending review of the application should be directed to the Review Administrator of the assigned initial review group.

Communications After the Initial Review

After having received the summary statement, the applicant may direct his/her questions about the review to the Review Administrator, who will respond or refer the communication to the appropriate person for response. Communications may be submitted at any time, including after National Advisory Council review, but applicants are encouraged to communicate their concerns as early as possible.

Appeals

After the reply to a communication regarding a concern about the referral to peer review and/or the resulting review of a discretionary grant or cooperative agreement application is received, and if the applicant disagrees with the decision by the relevant Center staff about the handling of the referral/review, he/she and the applicant (grantee) organization official may appeal by submitting the necessary documentation to the appropriate Center Appeals Officer:

CSAP Sylvia Quinton, J.D., Office of the Director, CSAP, Rockwall II Building, 5600 Fishers Lane, Rockville, MD 20857.

CSAT Lionel Fernandez, Ph.D., Office of Policy Coordination, CSAT, Rockwall II Building, 5600 Fishers Lane, Rockville, MD 20857.

CMHS Jeffrey A. Buck, Ph.D., Office of Policy, Planning, and Legislation, CMHS, 15C–26 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Should the applicant and the applicant (grantee) organization desire to request a secondary appeal, a written request for re-review within 30 days of the date of the Center Director's decision must be provided to the SAMHSA Administrator. This secondary appeal request should be submitted to the OA Appeals Officer: Jane A. Taylor, Ph.D., Office of Extramural Programs, SAMHSA, 12C–26 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The Agency will assure that each appeal will be processed and the case decided according to its merits, regardless of the availability of funds/timing of an appeal.

Effective Date

This appeals system is effective upon issuance of this notice for applications received and/or reviewed since October 1, 1992.

Dated: June 16, 1993.

Joseph R. Leone,

Acting Deputy Administrator, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–14771 Filed 6–22–93; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. D–93–1025; FR–3440–D–01]

Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Mortgagee Review Board within the Federal Housing Administration of the Department of Housing and Urban Development is redelegating to the Director, Office of Lender Activities and Land Sales Registration, the authority to issue an order withdrawing approval of mortgagees and Title I lenders for participation in HUD/FHA programs and the authority to enter into settlements with such mortgagees and Title I lenders. The Director, Office of Lender Activities and Land Sales Registration, may exercise these authorities when mortgagees and Title I lenders fail to submit an acceptable annual audit report within 90 days of the close of their fiscal year, fail to maintain the required net worth for approval or fail to pay the required annual fee. The Director, Office of Lender Activities and Land Sales Registration, is also redelegated the authority to reinstate such mortgagees and Title I lenders.

EFFECTIVE DATE: June 16, 1993.

FOR FURTHER INFORMATION CONTACT: William Heyman, Director, Office of Lender Activities and Land Sales Registration, Department of Housing and Urban Development, 451 Seventh Street SW., room 9146, Washington, DC 20410, (202) 708–1824. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Section 202(c)(1) of the National Housing Act established the Mortgagee Review Board within the Federal Housing Administration of the Department of Housing and Urban Development. The Board is empowered to initiate the issuance of a letter of reprimand, or the probation, suspension, or withdrawal of the approval of any mortgagee or Title I lender found to be engaging in activities in violation of Federal Housing Administration requirements or the non-discrimination requirements of the Equal Credit Opportunity Act, the Fair Housing Act, or Executive Order 11063.

The Board's regulations at 24 CFR 25.2 provide that the Board may redelegate its authority to impose administrative actions on mortgagees and Title I lenders on the grounds specified in 24 CFR 25.9(e), where they fail to submit an acceptable annual audit report within 90 days of the close of their fiscal year, on the grounds specified in § 25.9(h), where they fail to maintain the required net worth for approval, or on the grounds specified in § 25.9(u), where they fail to pay the required annual fee. This redelegation is necessary so that the Board may more efficiently carry out its responsibilities under section 202(c) of the National Housing Act.

In this Redelegation of Authority, the Mortgagee Review Board is redelegating to the Director, Office of Lender Activities and Land Sales Registration, the authority to issue an order withdrawing approval of mortgagees and Title I lenders for participation in HUD/FHA programs, as provided by § 25.5(d)(1), and the authority to enter into settlements with such mortgagees and Title I lenders, as provided by § 25.5(e). The Director, Office of Lender Activities and Land Sales Registration, may exercise these authorities when mortgagees and Title I lenders fail to submit an acceptable annual audit report within 90 days of the close of their fiscal year, fail to maintain the required net worth for approval, or fail to pay the required annual fee. The Director, Office of Lender Activities and Land Sales Registration, is also delegated the authority to reinstate such mortgagees and Title I lenders as provided under § 25.5(d)(3)(ii).

Accordingly, the Mortgagee Review Board redelegates the following authority:

Section A. Authority Redelegated

The Director, Office of Lender Activities and Land Sales Registration, is redelegated authority, pursuant to 24 CFR 25.2, to identify HUD-approved mortgagees and Title I lenders which have failed to:

A. Submit to the Department an acceptable annual audit report within 90 days of the close of their fiscal year;
B. Maintain the required net worth for approval; or
C. Pay the required annual fee.

The Director, Office of Lender Activities and Land Sales Registration, is also redelegated the authority to execute an order withdrawing approval of such mortgagees and Title I lenders for participation in HUD/FHA programs, pursuant to 24 CFR 25.5(d)(1), or to enter into settlements with such mortgagees and Title I lenders, pursuant to 24 CFR 25.5(e). The Director, Office of Lender Activities and Land Sales Registration, may exercise these authorities when mortgagees and Title I lenders fail to submit an acceptable annual audit report within 90 days of the close of their fiscal year, pursuant to 24 CFR 25.9(e), fail to maintain the required net worth for approval, pursuant to 24 CFR 25.9(h), or fail to pay the required annual fee, pursuant to 24 CFR 25.9(u). The Director, Office of Lender Activities and Land Sales Registration, is also redelegated the authority to reinstate such mortgagees and Title I lenders, as provided under 24 CFR 25.5(d)(3)(ii).

Section B. No Further Redelegation

The authority granted under Section A may not be further redelegated by the Director, Office of Lender Activities and Land Sales Registration.

Authority: Sec. 202(c) of the National Housing Act, 12 U.S.C. 1708; Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 16, 1993.

Nicolas Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 93–14709 Filed 6–22–93; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Salmon District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: The Salmon District Advisory Council will meet on Wednesday, July 14, 1993, at McRea's Double E Cafe, Leadore, Idaho. The meeting will convene at 10 a.m.

SUPPLEMENTARY INFORMATION: The meeting is held in accordance with Public Laws 92–463 and 94–579. The purpose for the meeting is to discuss the Challis Resource Management Plan and Wild and Scenic River Study, and current Salmon District Issues.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11 a.m. and 11:30 a.m. or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the Salmon District Office by July 9, 1993.

Summary minutes to the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to Roy S. Jackson, District Manager, Salmon District BLM, Box 430, Salmon, Idaho 83467.

Dated: June 14, 1993.

Roy S. Jackson,

District Manager.

[FR Doc. 93–14754 Filed 6–22–93; 8:45 am]

BILLING CODE 4310–GG–M

[OR 49276; OR–060–03–4212–05; GP3–266]

Realty Action; Proposed Recreation and Public Purposes Act Conveyance

June 14, 1933.

The following described public land has been examined and determined to be suitable for classification for conveyance out of Federal ownership to The Nature Conservancy under the authority of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.):

Willamette Meridian Oregon,

T. 9 N., R. 7 W.,
Sec. 32, Lot 8.

The above-described parcel contains 0.72 acres in Clatsop County.

The Nature Conservancy proposed to add the parcel to its 672-acre "Blind Slough Swamp Preserve". The parcel is not required for any Federal purpose or program. Conveyance of the parcel is consistent with current BLM land use planning and will be in the public interest.

The patent, when issued, will be subject to the following:

1. A reservation to the United States for rights-of-way for ditches or canals under the Act of August 20, 1890 (26 Stat. 391; 43 U.S.C. 945);

2. A reservation to the United States of all mineral deposits, together with the right to prospect for, mine, and remove such deposits under applicable law and such regulations as the Secretary of the Interior may prescribe;

3. The reversionary requirements of 43 CFR 2741.9.

Detailed information concerning this action is available for review at the Salem District Office, 1717 Fabry Road SE., Salem, Oregon 97306, or at the Tillamook Resource Area Office, 4610 Third Street, Tillamook, Oregon 97141.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of

appropriation under the public land laws, including the mining laws, except the mineral leasing laws and for lease or conveyance under the Recreation and Public Purposes Act.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Tillamook Area Manager, Salem District Office, at the above address. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dean E. Shuford,

Tillamook Area Manager.

[FR Doc. 93–14728 Filed 6–22–93; 8:45 am]

BILLING CODE 4310–33–M

[OR–943–4210–06; GP3–253; WASH–04282]

Proposed Continuation of Withdrawal; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that a portion of the land withdrawal for a recreation area continue for an additional 20 years and requests that the land involved remain closed to mining and opened to surface entry.

DATES: July 19, 1992. Comments should be received by September 21, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: The Forest Service proposed that the existing land withdrawal made by Public Land Order No. 3336 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988).

Wenatchee National Forest

Rock Island Recreation Area, 40 acres in Sec. 1, T. 24 N., R. 15 E., W.M., Chelan County, approximately 15 miles west of Leavenworth.

The purpose of the withdrawal is to protect the recreation area. The withdrawal currently segregates the land from surface entry and mining. The Forest Service requests no changes in the purpose or segregative effect of the withdrawal except that the land be opened to such forms of disposition as may by law be made of National Forest System land.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination of the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: June 3, 1993.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–14724 Filed 6–22–93; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Gene F. Pfeiffer, Evansville, IN, PRT–779889

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Ciskei Government, "Tsolwana Game Reserve", Queenstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 18, 1993.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–14746 Filed 6–22–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Meeting of History Areas Committee of National Park System Advisory Board

AGENCY: National Park Service.

ACTION: Notice of Meeting of History Areas Committee of National Park System Advisory Board.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the History Areas Committee of the Secretary of the Interior's National Park System Advisory Board will be held at 9 a.m. on the following date and at the following location.

DATE: July 13, 1993.

LOCATION: Department of the Interior Secretary's Conference Room 7000–B, Main Interior Building, 1849 C Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ben Levy, Senior Historian, History Division, National Park Service, P.O. Box 37127, suite 310, Washington, DC 20013–7127. Telephone (202) 343–8164.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the History Areas Committee of the Secretary of the Interior's National Park System Advisory Board is to evaluate studies of historic properties in order to advise the full National Park System Advisory Board meeting on August 11, 1993, of the qualifications of properties being proposed for National Historic Landmark (NHL) designation, and to recommend to the full Board those properties that the Committee finds meet the criteria of the National Historic Landmarks Program. The members of the History Areas Committee are:

Dr. Holly Anglin Robinson, Chairperson
Mr. F.C. Duke Zeller, Vice-Chairman
Lt. Governor Connie B. Binsfeld
Mr. Paul F. Cole
Ms. Carrel Cowan-Ricks
Dr. Stuart Kaufman
Mr. Karl A. Komatsu
Hon. Jim Smith
Judge Robert Flynn Orr, *ex officio*

The meeting will include presentations and discussions on the national historic significance and the integrity of a number of properties being

nominated for National Historic Landmark designation. These nominations are:

Five properties in the theme of Women's History:

Marie Webster House, Marion, Indiana;
Philadelphia School of Design for Women, Philadelphia, Pennsylvania;
Elmshaven (Ellen White House), St. Helena, California;
Race Street Meetinghouse, Philadelphia, Pennsylvania;
New Century Guild, Philadelphia, Pennsylvania;

Two properties in maritime history:

L.A. Dunton, Mystic, Connecticut;
Tug Baltimore, Baltimore, Maryland;

Four properties in the history of the science of geology:

Pulpit Rocks, Huntingdon, Pennsylvania;
Thomas A. Greene Memorial Museum, Milwaukee, Wisconsin;
University of Wisconsin Science Hall, Madison, Wisconsin;
Soldier's Home Reef, Milwaukee, Wisconsin;

Five individual properties:

Opana Radar Site, Oahu, Hawaii;
Little Tokyo Historic District, Los Angeles, California;
Roma Historic District, Roma, Texas;
University of Wisconsin Armory & Gymnasium, Madison, Wisconsin;
Naulakha (Rudyard Kipling House), Dummerston, Vermont;

Two properties in the history of engineering:

Detroit River Railroad Tunnel, Detroit, Michigan;
Holland Tunnel, Connecting New York City, New York, and Jersey City, New Jersey;

One designation:

Samuel Elmore Cannery, Astoria, Oregon;

Six archeological properties from the theme study on the Historic Contact period:

St. Mary's City Historic District NHL (Additional Area of Significance), St. Mary's City, Maryland;
Camden NHL (Additional Area of Significance), Port Royal, Virginia;
Old Fort Niagara NHL (Additional Area of Significance), Youngstown, New York;
Fort Orange Archeological Site, Albany, New York;
Schuyler Flatts Archeological District, Town of Colonie, New York;
Mohawk Upper Castle Archeological District, Danube Township, New York;

Two individual archeological properties:

Julien Dubuque's Mines, Dubuque, Iowa;
Caguana, Utuado, Puerto Rico;

One boundary enlargement:

Los Adaes NHL, Natchitoches Parish, Louisiana.

The Committee will also review and may make recommendations on the following special resource studies:

Birmingham Industrial Heritage Corridor, Alabama;
Bramwell, West Virginia;
New Orleans Jazz, Louisiana;
West Virginia Coal Heritage, West Virginia.

The Committee may also review and make recommendations on various other special resource studies for sites in Louisiana, Ohio, and Kansas, in addition to status reports on the special resource studies program for fiscal years 1993 and 1994.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Committee a written statement concerning matters to be discussed. Written statements may be submitted to Ben Levy, Manager, National Historic Landmarks Survey, History Division (418), National Park Service, P.O. Box 37127, suite 310, Washington, DC 20013–7127.

Dated: June 17, 1993.

Rowland T. Bowers,

Deputy Associate Director, Cultural Resources, National Park Service, WASO.

[FR Doc. 93–14820 Filed 6–22–93; 8:45 am]

BILLING CODE 4310–70–M

Sudbury, Assabet and Concord Rivers Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1 section 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, July 22, 1993.

The Committee was established pursuant to Public Law 101–628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in section 5 (a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will be held at 7:30 p.m. Costin Room, Framingham Public Library, 49 Lexington Street, Lexington, Massachusetts. (Driving directions: From intersection of Routes 9 and 126, go south on Route 126 (Concord St.). After four traffic lights, turn right on Lincoln St. Take first left onto Pearl St., then turn right at Union. Lexington is the first street on the right.)

Agenda

I. Welcome, introductions, and comments—Bill Sullivan
II. Approval of minutes from 5/27 meeting
III. Brief questions and comments from public
IV. Subcommittee Reports—Subcommittee Chairs
  A. Water Resources Subcommittee: Water Resources Study
  B. River Conservation Planning Subcommittee
  C. Public Participation Subcommittee
V. Discussion—Study Direction and Progress
VI. Discussion—Issues of Local Concern
VII. Opportunity for public questions and comments
VIII. Other Business
  A. Next meeting dates and locations.

Dated: June 16, 1993.

John C. Reed,

Acting Regional Director.

[FR Doc. 93–14821 Filed 6–22–93; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–349]

Certain Diltiazem, Hydrochloride and Diltiazem Preparations; Commission Determination Not To Review An Initial Determininations Amending The Complaint and Notice of Investigation To Add A Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) (Order No. 6) in the above-captioned investigation amending the complaint and notice of investigation to add Plantex U.S.A., Inc. of Englewood Cliffs, New Jersey as a respondent.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3098.

SUPPLEMENTARY INFORMATION: On May 21, 1993, the ALJ issued an ID granting a motion by complainants Marion Merrell Dow, Inc. and Tanabe Seiyaku Co., Ltd. to amend the complaint and notice of investigation to add Plantex

U.S.A., Inc. as a respondent in the investigation. Plantex is allegedly an importer of allegedly infringing diltiazem hydrochloride. No petitions for review or government agency comments were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. section 1337), and section 210.53(h) of the Commission's Interim Rules of Practice and Procedure (19 C.F.R. § 210.53(h)).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: June 16, 1993.

By order of the Commission.

Paul R. Bardos

Acting Secretary.

[FR Doc. 93–14782 Filed 6–22–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 303–TA–23 (Final) 731–TA–568 and 570 (Final)]

Ferrosilicon From Russia and Venezuela

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to sections 303 and 735(b) of the Tariff Act of 1930 (19 U.S.C. sections 1303 and 1673d(b)) (the Act), that an industry in the U.S. is materially injured by reason of subsidized imports from Venezuela and less-than-fair-value (LTFV) imports from Russia and Venezuela of ferrosilicon,[2] provided for in subheadings 7202.21.10, 7202.21.50, 7202.21.75, 7202.21.90, and 7202.29.00 of the Harmonized Tariff Schedule of the United States. The Commission also unanimously determines, pursuant to section 735(b)(4) (A) of the Act, that critical circumstances do not exist with respect to ferrosilicon imports from Russia; thus, the retroactive imposition of antidumping duties is not necessary.

Background

The Commission instituted these investigations effective December 21, 1993, following preliminary determinations by the Department of Commerce that imports of ferrosilicon were being subsidized by Venezuela and sold at LTFV from Russia and Venezuela within the meaning of sections 303 and 703(b) of the Act (19 U.S.C. sections 1303 and 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of December 29, 1992, (57 FR 61919). The hearing was held in Washington, DC, on January 22, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on June 16, 1993. The views of the Commission are contained in USITC Publication 2650 (June 1993), entitled "Ferrosilicon from Russia and Venezuela: Determinations of the Commission in Investigations Nos. 303–TA–23 (Final) and 731–TA–568 and 570 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: June 17, 1993.

By order of the Commission.

Paul R. Bardos

Acting Secretary.

[FR Doc. 93–14781 Filed 6–22–93; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR section 207.2(f)).

[2] For purposes of these investigations, the subject product is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than 8 percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorus, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

[Investigation No. 332–343]

Annual Report: U.S. Imports of Textiles and Apparel Under the Multifiber Arrangement

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: June 15, 1993.

SUMMARY: The Commission initiated investigation No. 332–343 under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)), for the purpose of compiling and publishing data on U.S. imports of textiles and apparel under the Multifiber Arrangement (MFA). The Commission has published similar data on an annual basis since 1981, although not pursuant to an investigation under section 332. The Commission is scheduled to issue its latest report—with 1992 data—in June 1993. The annual reports for 1993 and for 1994 are scheduled to be published in April of 1994 and 1995, respectively.

CONTACT FOR FURTHER INFORMATION: Information on the report may be obtained from Robert W. Wallace, Office of Industries (202–205–3458). The media should contact Peg O'Laughlin, Director, Office of Public Affairs (202–205–1819). Requests for a copy of the 1992 MFA report should be addressed to the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing impaired persons should contact the TDD terminal on 202–205–1810.

Background

The annual reports will provide statistics on U.S. textile and apparel imports, by fibers, broad product groups, regional country groups, and individual countries, for the most recent year and at least 3 preceding years. In addition, detailed data will be presented for each of the top 35 supplying countries in terms of the nearly 150 product categories used to administer the U.S. textile and apparel trade agreements program. The data in these annual reports will be similar to those published by the Commission in "U.S. Imports of Textiles and Apparel Under the Multifiber Arrangement: Annual Report for 1991" (USITC publication 2561).

Issued: June 16, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–14783 Filed 6–22–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments; Burlington Northern Railroad Co.

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce

Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–5750 or (202) 927–6245.

Comments on the following assessment are due 30 days after the date of availability: AB–6 (Sub-No. 349X), Burlington Northern RR. Abandonment between MP–183.40 near Springfield Airport, and MP–153.00 near Bolivar in Greene and Polk Counties, Missouri. EA available June 18, 1993.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–14769 Filed 6–22–93; 8:45 am]

BILLING CODE 7035–01–M

[EX PARTE NO. 290 (Sub No. 5) (93–3)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved a third quarter 1993 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The third quarter RCAF (Unadjusted) is 1.013. The third quarter RCAF (Adjusted) is 0.846, a decrease of 0.2 percent from the second quarter 1993 RCAF (Adjusted) of 0.848. Maximum third quarter 1993 RCAF rate levels may not exceed 99.8 percent of maximum second quarter 1993 RCAF rate levels.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: John C. Pertino, (202) 927–6229 or Robert C. Hasek, (202) 927–6239. TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: June 17, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–14770 Filed 6–22–93; 8:45 am]

BILLING CODE 7035–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–312]

Sacramento Municipal Utility District; Rancho Seco Nuclear Generating Station; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering approving a Sacramento Municipal Utility District (SMUD) proposed decommissioning plan for its Rancho Seco Nuclear Generating Station (RSNGS) and issuing and order authorizing decommissioning of RSNGS. The decommissioning plan proposed by SMUD involves placing and maintaining Rancho Seco in a condition that allows it to be safely stored (SAFSTOR) until the year 2008, then dismantlement and removal of the reactor pressure vessel, core internals, and contaminated systems and structures.

Description of Proposed Action

On June 6, 1989, voters of Sacramento, California decided by non-binding referendum that SMUD should no longer operate Rancho Seco. On June 7, 1989, Ranch Seco was shut down after approximately 15 years of operation. All nuclear fuel was removed from the reactor and is presently being stored in the Rancho Seco spent fuel pool. Approval of the decommissioning plan will allow SMUD to implement the SAFSTOR decommissioning alternative.

Summary of the Environmental Assessment

The purpose of decommissioning a nuclear facility is to take the facility safely from service, and to reduce residual radioactivity to levels that permit release of the property for unrestricted use and license termination. The NRC staff has reviewed the proposed SMUD decommissioning plan, and supplemental environmental report prepared in accordance with 10 CFR 51.53(b). To document its review, the staff has prepared an environmental assessment (EA) consistent with 10 CFR 51.95(b), which examined decommissioning alteratives, non-radiological and radiological impacts of decommissioning, and effects of postulated accidents. The alternatives available for decommissioning—DECON, ENTOMB, SAFSTOR, and No Action—are evaluated and discussed in the "Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities, "NUREG–0586, dated August 1988 (GEIS). Based on its review of the proposed SMUD decommissioning plan, the staff has determined that the environmental impacts associated with the decommissioning of RSNGS in accordance with that plan are either bounded by the conditions evaluated in the GEIS or in the NRC Final Environmental Statement related to the operation of Rancho Seco, or are in compliance with 10 CFR part 50 appendix I annual design objectives for offsite releases or 10 CFR part 20.

Finding of No Significant Impact

The staff has reviewed the proposed decommissioning plan in accordance with the requirements of 10 CFR part 51. The staff has concluded that there are no significant environmental impacts associated with the proposed action and that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement.

For further details with respect to this action, see: (1) The licensee application for authorization to decommission the facility, dated May 20, 1991, as supplemented April 15, August 6, and August 31, 1992, January 7, April 7, and April 19, 1993, and (2) Environmental Assessment. These documents are available for public inspection at the NRC Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95825. Copies may be requested from the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Seymour H. Weiss, Director of Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support.

Dated at Rockville, Maryland this 16th day of June 1993.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation

[FR Doc. 93–14760 Filed 6–22–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–445 and 50–446]

Comanche Peak Steam Electric Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of amendments to Facility Operating License Nos. NPF–87 and NPF–89, issued to Texas Utilities Electric Company, et al., (the licensee) for the Comanche Peak Steam Electric Company (CPSES), Units 1 and 2 located in Somervell County, Texas.

Environmental Assessment

Identification of Proposed Action

By letter dated October 16, 1992, as supplemented by letter dated March 17, 1993, the licensee proposed to change the technical specifications (TSs) to allow an increase in fuel enrichment (Uranium 235) to 4.3 weight percent. The present TSs permit a maximum enrichment of 3.5 weight percent. Associated with the change is the allowance of fuel irradiation up to 60,000 megawatt days/metric ton of Uranium (MWD/MTU).

The Need for Proposed Action

The licensee intends, in the future, to use the more highly enriched fuel to operate with 18 month fuel cycles. Currently, TS 5.3.1 limits the storage and use of fuel to an enrichment of 3.5 weight percent. Before the licensee extends plant operating cycles, it plans on receiving shipments of 4.3 weight percent fuel in July 1993. Thus, the change to the TSs was requested.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed revision to TSs and concludes that storage and use of fuel enriched with U–235 up to 4.3 weight percent at the CPSES, Units 1 and 2, is acceptable. The safety considerations associated with higher enrichments have been evaluated by the NRC staff and the staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. There will be no change to authorized power level. The change to the fuel burnup is bounded by NRC staff generic review (discussed below). As a result, there is no significant increase in individual or cumulative radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment and extended irradiation are discussed in the staff assessment entitled "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation." This assessment was published in the **Federal Register** on August 11, 1988 (53 FR 30355) as corrected on August 24, 1988 (53 FR 32322) in connection with the Shearon Harris Nuclear Power Plant, Unit 1: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of an increase in fuel enrichment of up to 5 weight percent U–235 and irradiation limits of up to 60,000 MWD/MTU are either unchanged, or may in fact be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). These findings are applicable to these proposed amendments for CPSES, Units 1 and 2. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed changes involve systems located within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 20, 1993 (58 FR 21323). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. The staff considered denial of the proposed action; however, this would not reduce environmental impacts of plant operation and would result in reduced operational flexibility. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the CPSES, Units 1 and 2, dated September 1981 (NUREG 0775) and Supplement dated October 1989.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request. The staff consulted with the State of Texas regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for license amendments dated October 16, 1992, and supplemental letter dated March 17, 1993. Copies are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room located at the University of Texas at the Arlington Library, Government Publications/ Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 16th day of June 1993.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Director, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–14761 Filed 6–22–93; 8:45 am]

BILLING CODE 7590–01–M

Nuclear Safety Research Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Revised notice of meeting.

This revision of the meeting notice published May 27, 1993 (58 FR 30820) reflects modification of the meeting schedule and the location of the July 8 afternoon part of the meeting, to accommodate a meeting of the Committee with the Commissioners at 2 to 3:30 p.m. on July 8. In other respects, there is no substantial change of the previously published agenda.

The Nuclear Safety Research Review Committee (NSRRC) will hold its next meeting on July 7–8, 1993. The location of the meeting will be the Delaware Room at the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD, except for the meeting of the Committee with the Commissioners, schedule for 2 to 3:30 p.m. on July 8, which will take place in the Commissioners' Conference Room at the Nuclear Regulatory Commission's (NRC's) headquarters building, One White Flint North, 11555 Rockville Pike, Rockville, MD, and the Committee discussion scheduled for 3:45 p.m. to 5 p.m. on July 8, which will

be held in Room 2F17 of One White Flint North. The meeting will be held in accordance with the requirements of the Federal Advisory Committee Act (FACA) and will be open to public attendance. The NSRRC provides advice to the Director of the Office of Nuclear Regulatory Research (RES) on matters of overall management importance in the direction of the NRC's program of nuclear safety research.

The purpose of this meeting is to conduct a general review of the NRC's nuclear safety research programs.

The planned schedule is as follows:

Wednesday, July 7, 1993

8:30 a.m.–8:45 a.m.—Opening remarks: NSRRC Chairman, RES Director

8:45 a.m.–12:15 p.m.—General overview of NRC nuclear safety research

1:30 p.m.–5:30 p.m.—Update review of particular research program areas, including aging of nuclear power plant structures, systems, and components; advanced reactors; advanced instrumentation and control and human factors; severe accidents; high-level waste; and seismic issues.

Thursday, July 8, 1993

8 a.m.–12 noon—Committee discussion

2 p.m.–3:30 p.m.—Meeting with the Commissioners, in accordance with the Commission's practice of holding periodic discussions with the agency's advisory committees. For the NSRRC, this is the first such meeting since the Committee's formation in 1988. The discussion is expected to include issues raised in the Committee's review of NRC's nuclear safety research programs and other items of timely importance. Location, for this item only: Commission Conference Room, One White Flint North building, Rockville.

3:45 p.m.—5 p.m.—Committee discussion. Location, for this item only: room 2P17, One White Flint North building, Rockville.

Participants in the presentations to and discussions with the Committee will include representatives of the NRC staff, and may include other invited participants from research organizations.

Members of the public may file written statements regarding any matter to be discussed at the meeting. Members of the public may also make requests to speak at the meeting, but permission to speak will be determined by the Committee chairperson in accordance with procedures established by the Committee. A verbatim transcription will be made of the NSRRC meeting and a copy of the transcript will be placed in the NRC's Public Document Room in Washington, DC.

Inquiries regarding this notice, any subsequent changes in the status and schedule of the meeting, the filing of written statements, requests to speak at the meeting, or for the transcript, may be made to the Designated Federal Officer, Mr. George Sege (telephone: 301/492–3904), between 8:15 a.m. and 5 p.m.

Dated at Rockville, Maryland, this 17th day of June, 1993.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–14755 Filed 6–22–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings that have been scheduled and meetings that have been postponed or cancelled since the last list of proposed meetings was published May 26, 1993 (58 FR 30188). Those meetings that are firmly scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS and ACNW full Committee meetings are designated by an asterisk (*) will be closed in whole or in part to the public. The ACRS and ACNW full Committee meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS and ACNW full Committee meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the July 1993 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., (EDT).

ACRS Subcommittee Meetings

Materials and Metallurgy, June 29, 1993, Bethesda, MD. The Subcommittee will review draft Regulatory Guides, DG–1023, "Evaluation of Reactor Pressure Vessels with Charpy Upper-Shelf Energy Less Than 50 ft-lb", and DG–1025, "Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence." *Regulatory Policies and Practices*, July 7, 1993, Bethesda, MD (1 p.m.—5 p.m.). The Subcommittee will review the report of the NRC Regulatory Review Group.

Planning and Procedures, July 7, 1993, Bethesda, MD (1:30 p.m.—4 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Portions of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

Computers in Nuclear Power Plant Operations, July 21, 1993, Bethesda, MD. The Subcommittee will review the progress in developing requirements for Analog to Digital retrofits and the Environmental Qualification research on digital instrumentation and control systems.

Thermal Hydraulic Phenomena, July 22–23, 1993, Bethesda, MD. The Subcommittee will begin its review of both the Westinghouse analytical and separate effects programs being conducted in support of the AP600 design certification effort. Portions of this meeting may be closed to discuss material deemed proprietary by the Westinghouse Electric Corporation.

Auxiliary and Secondary Systems, July 27–28, 1993, Bethesda, MD. The Subcommittee will review the LaSalle Fire PRA, the proposed resolution of Generic Issue–57, "Effects of Fire Protection System Actuation on Safety-Related Equipment," and SECY–93–143, "NRC Staff Actions to Address the Recommendations in the Report on the Reassessment of the NRC Fire Protection Program."

Materials and Metallurgy, August 4, 1993, Bethesda, MD—Postponed.

Improved Light Water Reactors, August 4, 1993, Bethesda, MD. The Subcommittee will review the status of resolution of the open items in the draft safety evaluation report for the EPRI passive LWR Utility Requirements document. It will also discuss NRC staff response to ACRS comments on recommendations related to certain policy, technical, and licensing issues pertaining to evolutionary and advanced reactor designs, and certain remaining policy issues for passive plant designs.

Planning and Procedures, August 4, 1993, Bethesda, MD (2 p.m.—4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Portions of this meeting may be

closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

Advanced Boiling Water Reactors, October 26–27, 1993, Bethesda, MD. The Subcommittee will continue its review of the GE ABWR Standard Safety Analysis Report and the associated NRC staff's Final Safety Evaluation Report.

Advanced Boiling Water Reactors, November 16–17, 1993, Bethesda, MD. The Subcommittee will continue its review of the GE ABWR Standard Safety Analysis Report and the associated NRC staff's Final Safety Evaluation Report.

ACRS Full Committee Meetings

399th ACRS Meeting, July 8–10, 1993, Bethesda, MD. During this meeting, the Committee plans to consider the following:

A. *Draft Regulatory Guide, DG–1025, Calculational and Dosimetry methods for Determining Pressure Vessel Neutron Fluence*—Review and comment on a draft regulatory guide on the methodology for determining pressure vessel neutron fluence. Representatives of the NRC staff will participate.

B. *Draft Regulatory Guide, DG–1023, Evaluation of Reactor Pressure Vessels with Charpy Upper-Shelf Energy Less Than 50 ft-lb*—Review and comment on a draft regulatory guide on the evaluation of reactor pressure vessels with Charpy upper-shelf energy less than 50 ft-lb. Representatives of the NRC staff will participate.

C. *NRC Regulatory Review Group Report*—Review and comment on the report of the NRC Regulatory Review Group. Representatives of the NRC staff will participate.

D. *Plans for Completing the Review of the Advanced Boiling Water Reactor Standard Safety Analysis Report (SSAR)*—Discuss the schedule for completion of the ACRS review of the SSAR for the ABWR design. Representatives of the NRC staff will participate, as appropriate.

E. *Debris Plugging of Emergency Core Cooling Suction Line Strainers*—Hear a briefing by and hold discussions with representatives of the NRC staff on the potential for debris plugging of emergency core cooling suction line strainers. In addition, hear an update on the NRC staff activities to evaluate the need for actions by U.S. licensees to address this issue as a result of the lessons learned from the Barseback event in Sweden. Representatives of the industry will participate, as appropriate.

F. *Application of Probabilistic Risk Assessment Methods for Ranking Motor-Operated Valves (MOV)*—Hear a briefing by and hold discussions with representatives of the NRC staff on the preliminary results from a research program to prioritize the risk importance of MOVs. Representatives of the industry will participate, as appropriate.

G. *Organizational Behavior and Factors* (Tentative)—Hear a briefing by and hold discussions with Dr. Leamon, ACRS consultant, on the subject of organizational behavior and organizational factors. Representatives of the NRC staff will participate, as appropriate.

H. *Reactor Operating Experience*—Hear a briefing by and hold discussions with representatives of the NRC staff on a recent event at Sequoyah Nuclear Power Plant Unit 2 that involved a rupture of an extraction steam header line.

I. *Resolution of ACRS Comments and Recommendations*—Discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

*J. *ACRS Subcommittee Activities*—Hear reports and hold discussions regarding the status of ACRS subcommittee activities, including a report of the Planning and Procedures Subcommittee involving matters related to the status of appointment of new members and organizational and personnel matters relating to ACRS staff members. A portion of this session may be closed to public attendance pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of this Committee and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

K. *Future ACRS Activities*—Discuss topics proposed for consideration by the full Committee during future meetings.

L. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of matters and specific issues that were not completed during previous meetings as time and availability of information permit.

400th ACRS Meeting, August 5–7, 1993, Bethesda, MD. Agenda to be announced.

401st ACRS Meeting, September 9–11, 1993, Bethesda, MD. Agenda to be announced.

402nd ACRS Meeting, October 7–9, 1993, Bethesda, MD. Agenda to be announced.

403rd ACRS Meeting, November 4–6, 1993, Bethesda, MD. Agenda to be announced.

404th ACRS Meeting, December 9–11, 1993, Bethesda, MD. Agenda to be announced.

ACNW Full Committee and Working Group Meetings

55th ACNW Meeting, July 21–22, 1993, Bethesda, MD. During this meeting, the Committee plans to consider the following:

A. *High Level Waste Management Quality Assurance*—Hear a briefing by and hold discussions with representatives of the NRC staff on the status of High Level Waste Management Quality Assurance.

B. *Canadian Whiteshell Nuclear Laboratory Report*—Hear a report by ACNW Members who visited the Canadian Whiteshell Nuclear Laboratory and the Underground Research Laboratory In Manitoba, Canada.

C. *Resolution of ACNW Comments and Recommendations*—Discuss responses from the NRC Executive Director for Operations to recent ACNW comments and recommendations.

*D. *Committee Activities*—Discuss anticipated and proposed Committee activities, future meeting agenda, and organizational and personnel matters. A portion of this session may be closed to public attendance pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of this Committee and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

E. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

56th ACNW Meeting, August 25–26, 1993, Bethesda, MD. Agenda to be announced.

57th ACNW Meeting, September 22–23, 1993, Bethesda, MD. Agenda to be announced.

58th ACNW Meeting, October 27–28, 1993, Las Vegas, NV. Agenda to be announced.

59th ACNW Meeting, November 22–23, 1993, Bethesda, MD. Agenda to be announced.

60th ACNW Meeting, December 15–16, 1993, Bethesda, MD. Agenda to be announced.

Dated: June 17, 1993.
John C. Hoyle,
Advisory Committee Management Officer.
[FR Doc. 93–14758 Filed 6–22–93; 8:45 am]
BILLING CODE 7590–01–M

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 31, 1993, through June 11, 1993. The last biweekly notice was published on June 9, 1993 (58 FR 32376).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By July 23, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to

relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: December 29, 1992

Description of amendments request: The proposed amendments to the Technical Specifications (TS) would revise the Type A test acceptance criterion for the as found containment integration leakage rate from 0.75 La to 1.0 La (and 0.75 Lt to 1.0 Lt) which represent the maximum allowable containment leakage rate.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The limitations on primary containment leakage rates ensure that the total containment leakage volume will not exceed the value assumed in the accident analysis at the peak accident pressure of 49 psig. Revising the Technical Specification value for the as found containment integrated leakage rate will not impact the accident evaluations discussed in Chapter 15 of the UFSAR [Updated Final Safety Analysis Report]. This is because the revised as found value is equal to the maximum allowed leakage, or La, as is assumed in the accident analyses.

Therefore, the proposed amendments will not involve a significant increase in the probability of an accident previously evaluated.

Since the containment is restricted by Technical Specifications to the proposed maximum allowable leakage rate, La, then it can be concluded that the proposed amendments are still bounded by the existing accident analyses. While the 1.0 La/Lt limit represents a slightly higher containment leakage test tolerance, this is the bounding limit in the Chapter 15 analysis for accident consequences in Chapter 15. As such, the proposed amendments do not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

In revising the Technical Specification restrictions on the as found containment leakage, the proposed amendments will not modify any safety-related equipment or safety functions and will not alter plant operation. In addition, the proposed amendments do not change surveillance frequencies for Type A testing (which could give rise to malfunctions due to prolonged surveillance (i.e., maintenance)) nor are the corrective actions for excessive as found leakage being changed. Allowing (1.0) La as the maximum as found containment leakage will not create new plant transients since La is within (i.e., equal to) the criterion of the maximum as found value as defined in 10 CFR [Part] 100 and referenced in Appendix J. Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendments do not involve a significant reduction in the margin of safety.

While the proposed amendments revise the Technical Specification as found leakage by increasing the value from 0.75 La to (1.0) La, this increase is not significant. This is because La is the maximum containment leakage as defined by 10 CFR [Part] 100, referenced in Appendix J, and as currently defined in the BSEP [Brunswick Steam Electric Plant, Units 1 and 2] Technical Specifications. As such, the proposed amendments will not alter any plant design margins. The 0.75 La value is unduly conservative and has resulted in unnecessary "penalty" testing for Unit 2. Revising the Technical Specification value to La will render the penalty testing less probable and, as such, will not subject the containment to unnecessary structural stresses and burdens of additional Type A testing. Therefore, the proposed amendments will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: July 29, 1992, as supplemented January 14, 1993, and February 16, 1993

Description of amendment request: Commonwealth Edison Company (CECo) has initiated a Technical Specification Upgrade Program (TSUP) to improve the quality of the current Technical Specifications (TS) for Dresden and Quad Cities. In 1991, CECo performed a comparison study between the existing Quad Cities Technical Specifications and the technical specifications used at newer operating plants. The study identified requirements which are no longer consistent with current industry practices and the need for potential improvements in clarifying requirements. As a result CECo has committed to upgrade the current Dresden and Quad Cities TSs, in their entirety, to more closely follow the provisions of the BWR Standard Technical Specifications. Wherever possible (except for design differences) the TSUP for both Dresden and Quad Cities will be identical.

The entire TSUP will be submitted by CECo in a total of 12 packages, and will address both Dresden and Quad Cities. The first of these packages was submitted in a letter dated July 29, 1992, and included proposed upgrades to TS Section 1.0 (Definitions), Section 3/4.0 (Limiting Condition for Operation), and Section 3/4.3 (Reactivity Control). The staff intends to review each package as it is submitted and issue a Safety Evaluation (SE) that addresses the acceptability of the proposed TS upgrades. After all the upgraded TS Sections have been submitted and evaluated by the staff, CECo will submit an additional package that addresses all the open items identified by the staff during the course of its review. Once all the sections of the TSUP have been approved and all the open items resolved, the staff will issue the entire TSUP TS for each site as a package that will become effective at a date that is supportable by CECo.

The proposed changes to the Definitions section for both Dresden and Quad Cities include: new definitions that have the STS format, modification of the definitions currently in the TS to adopt the STS definitions or a definition from a generic letter (GL), and the transfer of several definitions to the Applicability section of the TS. In addition, two new tables "Surveillance Frequency Notation" and "Operational Modes," that follow STS format with notations and operational modes based on present Dresden and Quad Cities allowances which are consistent with STS guidelines, have been added.

The present Limiting Condition for Operation (LCO) section addresses actions to be taken if an LCO can not be satisfied, delineates the additional conditions which must be satisfied to permit continued operation when a normal or emergency power source is not available, and subscribes that the above actions and conditions are not applicable in the refuel or shutdown modes. The proposed amendment retains these provisions and adds requirements not currently delineated in the TS that are in conformance with the STS and GL. Specifically the proposed amendment will: provide guidance regarding LCO compliance and associated action statements, define noncompliance with a specification and the required actions with LCO restoration, define actions for those circumstances not directly provided for in the specification, provide guidance for entry into an operational mode or other specified condition when in an LCO, specify when surveillance requirements shall be met and time intervals for performance of surveillance requirements, specify when entry into operational modes is permissible, and relocate the Inservice Inspection and Inservice Testing requirements of ASME Code Class components from Section 4.6.F in the current TS.

The proposed changes to the Reactivity Control section include: deletion of the present objective statements and the inclusion of applicability and action statements and additional surveillances in accordance with STS guidelines, reordering of and retitling within the section, the addition of three new sub-sections related to scram insertion times that follow STS guidelines as replacements for the current TS requirements, and a rewrite of numerous subsections of the current TS in accordance with STS guidelines.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

CECo's proposed changes to the definitions (Section 1.0) are made to clarify present requirements, allow changes that have been adopted at other operating BWRs, promote consistency in understanding of the definition of terms, and to add definitions for terms used in the Dresden and Quad Cities TSs that are not currently defined.

The addition of new terms to Section 1.0 provides readily accessible definitions that are currently accepted by other operating BWRs and are applicable to Dresden and Quad Cities. New Tables 1-1 and 1-2 allow arrangement of present Dresden and Quad Cities requirements or interpretation of requirements into an STS format for ease of use and availability. Proposed Table 1-1, "Surveillance Frequency Notation," uses some of the present Dresden and Quad Cities requirements or interpretations of surveillance frequencies and does not relax or modify any existing testing intervals. Proposed Table 1-2, "Operational Modes," takes present requirements that are located in individual specifications and uses a STS format for arrangement of these provisions.

The changes to the limiting condition for operation (Section 3/4.0) are more restrictive than present TS requirements. These more restrictive requirements will help to ensure that the intent of plant operating philosophy embodied in the STSs is included in the Dresden and Quad Cities TSs. The inclusion of these requirements will also provide clarification to the plant operating staff and help to prevent misinterpretations. The changes are modeled after those of the present BWR STS as modified by GLs (primarily GL 87-09).

The proposed changes to the reactivity control (Section 3/4.3) represent the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Implementation of these changes will provide increased reliability of equipment assumed to operate in the current safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.

Some of the proposed changes represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. These proposed changes are consistent with the current safety analyses and

have been previously determined to represent sufficient requirements for the assurance of reliability of equipment assumed to operate in the safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits.

Since this amendment request primarily clarifies the requirements of the present TS through the adaption of the STS format, adds more restrictive requirements, incorporates changes based on generic guidance or previously approved provisions for other stations, and provides administrative changes to correct inconsistencies with the STS, there is no significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new of different kind of accident from any previously evaluated because:

The proposed changes to Section 1.0 leave intact present operating philosophy and only implement new provisions where necessary to clarify and ensure that present allowances are understood and maintained.

The addition of new definitions to the TSs is an enhancement to present provisions. STS guidelines are used for the new definitions and have been evaluated and found to be in agreement with present usage at Dresden and Quad Cities. New Tables 1-1 and 1-2 follow the STS format for implementing present Dresden and Quad Cities surveillance frequencies and operational modes.

The proposed changes to Section 3/4.0 are a complete adoption of the STS and GLs 87-09 and 89-14 LCOs and surveillance requirements. The changes embody present operating philosophy contained in the individual specifications and add GLs 87-09, 88-01, and 89-14 provisions which have been evaluated by the NRC and found acceptable for inclusion in the TSs.

The proposed changes to Section 3/4.3 represent the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. These changes do not involve revision in the operation of the station; however, these changes provide additional restrictions which are in accordance with the current safety analyses, or are to provide for additional testing or surveillances which will not introduce new failure mechanisms beyond those already considered in the current safety analyses.

Since either present provisions are retained or present interpretation of requirements are maintained, no new modes of plant operation are introduced, any relaxation of current requirements are based on generic guidance or previously approved NRC staff provisions, and any operation changes involve additional restrictions which are in accordance with the current safety analyses, the changes do not create the possibility of a new of different kind of accident from any previously evaluated.

(3) Involve a significant reduction in the margin of safety because:

The proposed changes to the definitions in Section 1.0 provide clarifications, implement proven changes from operating BWRs that are applicable at Dresden and Quad Cities, and include present provisions and interpretations presented in STS format. Present margins of safety are retained and improved by clarifying requirements that are subject to interpretation or are not presented in an easy to understand format.

The new definitions added apply to terms in current use in the Dresden and Quad Cities TSs and this addition improves understanding of requirements. New Tables 1-1 and 1-2 follow the STS in format with notations and operational modes based on present Dresden and Quad Cities TS requirements, interpretation of requirements, or STS guidelines that are applicable to Dresden and Quad Cities.

The more restrictive provisions proposed to be added to Section 3/4.0, will increase the margin of safety by clearly defining to the plant operating personnel the governing LCO and surveillance requirement provisions. These new provisions will help to prevent misinterpretation where no requirements are presently stated.

The proposed changes to Section 3/4.3 represent the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. Some of the latter individual items may introduce minor reductions in the margin of safety when compared to the current requirements. However, other individual changes are the adoption of new requirements which will provide significant enhancement of the reliability of the equipment assumed to operate in the safety analysis, or provide enhanced assurance that specified parameters remain with their acceptance limits. These enhancements compensate for the individual minor reductions. The proposed changes are intended to improve readability, usability, and the understanding of TS requirements while maintaining acceptable levels of safe operation. The proposed changes have been evaluated and found to be acceptable for use at Dresden and Quad Cities based on system design, safety analysis requirements, and operations performance.

Since the proposed amendment incorporates more restrictive requirements in addition to minor reductions of current requirements which taken together will not significantly reduce the margin of safety, the provisions of the GLs that are being adopted have been evaluated by the NRC staff and found acceptable, the proposed changes are based on NRC accepted provisions at other operating plants that are applicable at Dresden and Quad Cities and maintain necessary levels of system, component or parameter operability, and the proposed changes implement present Dresden and Quad Cities allowances in a STS format and follow proven allowances at other operation plants that are acceptable for use at Dresden and Quad Cities, there is no reduction in the margin of safety.

Additional basis for proposed No Significant Hazards Consideration Determination.

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7744). The examples include:

"(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature,'

"(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specification, e.g. a more stringent surveillance requirement," and

"(vii) A change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations."

The TSUP proposed changes are primarily a combination of administrative changes, changes that conform to changes in the regulatory requirements, and changes that result in additional limitations, restrictions, or controls.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Local Public Document Room location: for Dresden, the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450, and for Quad Cities, the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: April 22, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications by changing the Limiting Safety System Settings and Limiting Conditions for Operation related to the Source and Intermediate Range Neutron Flux instrumentation channels.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the changes involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The installation of the Gamma Metrics detectors and instruments will not change the function, operation or capability of the Source Range and Intermediate Range detectors as described in the UFSAR [Updated Final Safety Analysis Report]. Additionally, there is no effect on any of the accident analyses in UFSAR Chapter 15 because operation of the Intermediate and Source Range Channels and associated trips and permissives is not credited as primary protection in the accident analyses. The proposed typographical and administrative changes are being made to clarify the Technical Specifications with no change of intent. As such, the proposed changes do not represent a significant increase in the probability of occurrence or consequences of accidents previously evaluated.

2. Do the changes create the possibility of a new or different kind of accident from any previously analyzed?

Installation of Gamma Metrics detectors and instruments will not change the basic function, operation or use of either the Source Range or the Intermediate Range instruments or the associated high flux trips and the permissives that determine when these trips are functional. The setpoints for the Intermediate Range and Source Range high flux trips and associated permissives are functionally equivalent to the existing setpoints. The proposed typographical and administrative changes are being made to clarify the Technical Specifications with no change of intent presented. Therefore, there is no possibility that the proposed changes create a new or different kind of accident from any previously analyzed in the Updated Safety Analysis Report.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Installation of the Gamma Metrics detectors and instruments will not change the basic function, operation or use of either the Source Range or the Intermediate Range instruments or the associated high flux trips and the permissives that determine when these trips are functional. The setpoints for the Intermediate Range and Source Range high flux trips and associated permissives are functionally equivalent to the existing setpoints. The protection trips associated with the source and intermediate range neutron flux detectors are not credited as primary protection for any analyzed event. The proposed typographical and administrative changes are being made to clarify the Technical Specifications with no change of intent. Therefore, the proposed changes do not create a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: May 18, 1993

Description of amendment request: The proposed amendment will revise the Haddam Neck Technical Specifications to allow a relaxation in the pressurizer safety valve (PSV) setpoint tolerance from plus or minus 1 percent to +3 percent and -1 percent.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change in the PSV tolerance does not affect any initiating event or affect the consequences of the previously evaluated design basis accidents. The new safety valve setpoints are bounded by the assumptions in the safety analysis. Also, the change in the PSV "as-found" tolerance does not affect radiological releases. Therefore, there is no increase in the probability or consequences of accidents previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change does not increase the possibility of an accident of a different type since it cannot be an initiating event, and it does not modify plant response to accidents to such a degree that it would be considered an event not previously analyzed. This is simply a setpoint tolerance change that reflects the fact that "drift" occurs during the operating cycle. The setpoint tolerance is acceptable because it is within the analysis assumptions.

3. Involve a significant reduction in a margin of safety.

The design basis loss-of-load analysis assuming a +3 percent setpoint tolerance resulted in a maximum pressure for the [reactor coolant system] RCS of 2690 psia which is below the acceptance criterion of 2750 psia. The proposed change does not impact the other physical protective boundaries nor degrade the performance of any safety system. Therefore, there is no decrease in the margin of safety because the "as-left" tolerance of [plus or minus] 1 percent is unchanged. The increase in the "as-found" tolerance to +3 percent simply reflects the fact that the drift of the setpoint by this much over a cycle is acceptable.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: May 24, 1993

Description of amendment request: The proposed change will revise the Technical Specifications (TS) to accommodate the replacement of the "TE" General Electric CB-RE11 breakers with "TED" breakers in the Reactor Protection System.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the proposed change involve a significant increase in probability or consequences of an accident previously evaluated?

The Final Hazards Summary Report (FHSR) Accident and Transient analyses do not take credit for CB-RE11 operation during any of the previously evaluated accidents. Therefore, the proposed change will have no significant effect on the probability or consequences of accidents that have been previously evaluated at the facility.

2. Will the proposed change(s) create the possibility of a new or different kind of accident from any accident previously evaluated?

The replacement breakers contain an additional test mechanism designed with linkages to mechanically simulate over-current trips. This device provides a means of exercising the breaker. In the event that the mechanism were to fail the breaker in the open or closed position, the overall common mode failures, as previously evaluated, remain the same.

3. Will the proposed change involve a significant reduction in the margin of safety?

There is no basis provided in the Technical Specifications for the setting and tolerance of the CB-RE11s. The Current Licensing Basis and Facility Design Basis Documents have been researched, and do not define a basis for the 52 plus or minus 20 setting and tolerance. The setting appears to be based on the undervoltage release device coil and mechanism designed with the lower limiting setpoint established at "greater than or equal to 32 Vac".

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: L. B. Marsh

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: February 23, 1993, as supplemented May 4, 1993

Description of amendment request: The proposed amendments would delete Table 4.4-1, List of Penetrations with 10 CFR 50, Appendix J Test Requirements, from the Technical Specifications (TS). The list of penetrations would then be relocated to the Selected Licensee Commitments Manual. This would permit administrative control of changes to the list of penetrations without having to process a license amendment. The licensee justifies the changes to the TS and associated Bases on the basis of the guidance in NRC Generic Letter 91-08. The licensee's letter of May 4, 1993, provides clarifying changes to TS 3.6.3.c and TS 3.6.4. These changes are administrative in nature and do not affect significant hazards considerations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Duke Power has determined that this proposed amendment involves a "no significant hazards consideration" based on the standards of 10 CFR 50.92. The following describes the reasons for this determination:

The proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

Each accident analysis addressed within the Oconee Final Safety Analysis Report (FSAR) has been reviewed with respect to the proposed amendment. The Technical Specifications will continue to require the containment penetrations to be operable. Relocation of the list of containment penetrations from the Technical Specifications to the Selected Licensee Commitments Manual is an administrative change and does not involve a change in any system, structure, or component nor any change in facility operation that would have an effect on the previous accident analyses. This change is not an initiator or contributor to any accident analysis addressed in the Oconee FSAR.

The proposed change to TS 3.6.3.c would allow penetration flow paths (except for the Reactor Building Purge flow path) to be unisolated intermittently under administrative controls. This does not involve a significant increase in the probability or consequences of an accident, because: (1) this situation is expected to occur for only very short durations, and the probability of an accident occurring during the exact period of time that a penetration flow path is unisolated is remote, and (2) the use of administrative controls can reasonably be expected to prevent a significant increase in consequences during any accident that may occur during this period of time. In addition, this provision is consistent with the provisions in the Standard Technical Specifications for containment isolation valves.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated:

Operation of Oconee in accordance with these Technical Specifications will not create any failure modes not bounded by previously evaluated accidents. Consequently, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety:

The proposed Technical Specifications will continue to require operation within the same safety limits as the existing TS. The proposed change is consistent with the guidance provided in Generic Letter (GL) 91-08 and the Standard Technical Specifications. Therefore, existing margins of safety are maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 7, 1993

Description of amendment request: The proposed change would reduce the maximum allowable linear power level-high trip setpoints associated with inoperable steam line safety valves (listed in Technical Specification (TS) Table 3.7-1) and revise the associated Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequence[s] of an Accident Previously Evaluated.

To prevent overpressurizing the Main Steam Header during a turbine trip coincident with a loss of condenser heat sink, the Main Steam Line Safety Valves must provide relief capacity equal to the steam flow from the Steam Generators. This change reduces the allowable Linear Power Level when one or more Main Steam Line Safety Valves are inoperable to ensure that the steam flow from the Steam Generators does not exceed the steam relief capacity of the remaining operable valves. With the reduced Linear Power Level-High Trip Setpoint, steam production in excess of relief capacity is precluded by actuation of the Reactor Protection System.

This change further restricts operational limits on the allowed Linear Power Level

when one or more main steam line code safety valves are inoperable. The proposed change does not provide any relief from the requirements of the TS. Since this change implements more conservative restrictions on plant operations, this change does not significantly increase the probability or consequence[s] of any previously analyzed accident.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from Any Previously Evaluated.

This change does not create any new plant configuration or operational mode. The proposed amendment does not change the design or configuration of the plant. The reduction in allowable Linear Power Level when one or more Main Steam Line Safety Valves are inoperable further restricts plant operation.

The proposed change introduces no new modes of operation but further restricts existing plant operational modes. Since the proposed amendment does not change plant design or configuration and does not relax plant operational requirements, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in a Margin of Safety.

This change further restricts Linear Power Level when one or more Main Steam Line Safety Valves are inoperable to ensure that during the most severe anticipated operational transient, the Secondary System pressure will not exceed 110% of design pressure. This reduction in Maximum Allowable Linear Power Level ensure[s] that adequate steam relief capacity will be available to prevent overpressurizing the Secondary System during the most severe anticipated operational transient.

The proposed change does not adversely affect margins of safety, since more stringent setpoints will be applied to the Reactor Trip System. Since the proposed amendment will improve the plant's capability to mitigate the consequences of accidents, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Terence L. Chan (Acting)

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 7, 1993

Description of amendment request: The proposed change would reduce the specified minimum safety injection tank (SIT) boron concentration from 2500 ppm to 2200 ppm, revise the related Actions to allow one SIT to be inoperable due to boron concentration alone for 72 hours and to allow one SIT to be inoperable due to any other reason for 1 hour, revise a surveillance requirement to specify sampling of the affected SIT within 6 hours of a 5% indicated tank level increase that is not the result of addition from the refueling water tank (RWT), revise a surveillance requirement reference to the reactor coolant system pressure from 700 psig to 700 psia, and revise the associated Bases to reflect these changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 -Does not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The SITs are passive components and are not considered to be accident initiators, therefore, these changes do not involve a significant increase in the probability of an accident previously evaluated. The proposed value for minimum SIT boron concentration is bounded by the current accident analysis assumed value of 2000 ppm and does not result in a significant increase in the consequences of an accident previously evaluated.

The SIT boron requirements are based on the average boron concentration of the total volume of three SITs. With one SIT inoperable due to boron concentration outside of the specified limits, the entire volume of the affected SIT is still available for injection in the unlikely event of a LOCA [loss-of-coolant accident]. Although the ability to maintain subcriticality may be slightly reduced, the reduced concentration effects on core subcriticality during reflood are minor. Boiling of the ECCS [emergency core cooling system] water in the core concentrates the boron in the saturated liquid that remains in the core. Boron precipitation is a long term issue and is dependent upon the total soluble boron inventory added to the system during the event, a quantity that is dominated by the RWT contribution through HPSI [high-pressure safety injection], and possible LPSI [low-pressure safety injection]. The proposed 72 hour completion time allows the Operator sufficient time to restore an affected SIT boron concentration to within limits while maintaining the specified nitrogen overpressure and tank volume requirements and therefore, does not result in a significant increase in the consequences of an accident previously evaluated.

Allowing 1 hour to restore an inoperable SIT to OPERABLE status for any reason other than boron concentration removes any uncertainty associated with the completion time of "immediately" in the current specification. This requires restoration of SIT cover pressure, volume, or isolation valve position within one hour to assure SIT availability for injection in the unlikely event of a LOCA and therefore, does not result in a significant increase in the consequences of an accident previously evaluated.

SIT volume is indicated in the Control Room as a percentage of tank level. Specifying the volume increase requiring verification of boron concentration as a percentage of tank level presents this limit in a form consistent with the available indication. Normal SIT makeup is from the RWT which has a boron concentration range of 2500 to 3000 ppm. As the normal water source for makeup to the SITs is within the proposed range of specified SIT concentration, the probability for dilution of a SIT below the minimum specified concentration is minimized. Sampling the affected SIT within 6 hours after a 5% indicated tank level increase from sources other than the RWT will identify whether inleakage or makeup has caused a reduction in boron concentration which would challenge the accident analysis value of 2000 ppm. The maximum specified boron concentration for both the RWT and the SITs remains at the currently specified value of 3000 ppm. A potential dilution, consisting of water containing no boron, resulting in a level increase from the minimum specified volume of 1413 ft^3 to a volume of 1493.75 ft^3, a 5% indicated tank level increase, would result in a final boron concentration of 2081.1 ppm boron, still above the value assumed in the accident analysis. Since the accident analysis value assumptions are not challenged by this change, there is no significant increase in the consequences of an accident previously evaluated.

Changing the Surveillance Requirement specified value from 700 psig to 700 psia assures operability of the SIT isolation valve automatic circuitry in the required Mode of Applicability.

Therefore, the changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

Because the proposed changes do not change the design, configuration, or method of operation of the plant, they do not create the possibility of a new or different kind of accident. The proposed changes revise the administrative controls associated with the SITs, and are bounded by the existing LOCA analysis. The SITs are passive components and are not considered to be accident initiators, therefore, these changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

Reducing the specified SIT minimum boron concentration to 2200 ppm does not involve a change in the accident analysis value of 2000 ppm, which remains bounding.

The lower minimum concentration and the 72 hour completion time will not require the operator to drain the affected SIT below the minimum specified level prior to filling the SIT with a higher concentration boron source following a dilution event to return the affected SIT boron concentration to within limits. This maintains the entire specified volume of the SIT available for injection even though the boron concentration may be below the specified volume. Since the boron requirements assumed in the accident analysis are based upon the average boron concentration of the total volume of three SITs, the consequences of the boron concentration outside of the specified range are less severe than they would be if the entire specified volume of one SIT were not available for injection. The proposed 72 hour completion time allows the Operator sufficient time to restore an affected SIT boron concentration to within limits while maintaining the specified nitrogen overpressure and tank volume requirements.

Allowing a 1 hour completion time to return a SIT that is inoperable for any reason other than boron concentration assures that prompt action will be taken to open the SIT isolation valve, or restore the proper water volume or nitrogen cover pressure to return the inoperable SIT to Operable status. This completion time minimizes the exposure of the plant to a LOCA in these conditions, allows the operator sufficient time to evaluate and correct the cause of the inoperability, and removes the ambiguity associated with the completion time of "immediately."

SIT volume is indicated in the Control Room as a percentage of tank level. Specifying the volume increase requiring verification for boron concentration as a percentage of tank level presents this limit in a form consistent with the available indication. Normal SIT makeup is from the RWT which has a boron concentration range of 2500 to 3000 ppm. As the normal water source for makeup to the SITs is within the proposed range of specified SIT concentration, the probability for dilution of a SIT below the minimum specified concentration is minimized. Sampling the affected SIT within 6 hours after a 5% indicated tank level increase from sources other than the RWT will identify whether inleakage or makeup has caused a reduction in boron concentration which would challenge the accident analysis value of 2000 ppm. The maximum specified boron concentration for both the RWT and the SITs remains at the currently specified value of 3000 ppm. A potential dilution, consisting of water containing no boron, resulting in a level increase from the minimum specified volume of 1413 ft^3 to a volume of 1493.75 ft^3, a 5% indicated tank level increase, would result in a final boron concentration of 2061.1 ppm boron, still above the value assumed in the accident analysis.

The change in the Surveillance Requirement specified value from 700 psig to 700 psia assures the operability of the SIT isolation valve automatic circuitry in the required Mode of Applicability.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Terence L. Chan (Acting)

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 7, 1993

Description of amendment request: The proposed amendment would correct typographical errors that were introduced in the original Technical Specifications (TS) and in subsequent amendments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequence[s] of an Accident Previously Evaluated.

These changes do not affect the intent of any specification. Also, the proposed changes do not provide any relief from the requirements of the TS, or change the intended operation or administrative requirements of the plant or its design basis.

The proposed changes clarify the existing specification requirements and are administrative in nature. Since they are administrative in nature, these changes do not significantly increase the probability or consequence[s] of any previously analyzed accident occurring.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from Any Previously Evaluated.

The proposed changes do not involve any design changes, plant modifications or changes in plant operation; rather, they only reflect a more accurate description of the specification requirements.

The proposed changes clarify the existing specification requirements and are administrative in nature. Since they are administrative in nature, these changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in a Margin of Safety.

The proposed changes only clarify the existing requirements. They do not relax any specification requirements.

The proposed changes are administrative in nature and do not affect any plant safety parameters, accident mitigation capabilities, or margin of safety. Since these changes are administrative in nature, they do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Terence L. Chan (Acting)

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 20, 1993

Description of amendment request: The proposed amendment requests changes to the Onsite Power Distribution Systems - Distribution, for both the Operating and Shutdown Technical Specifications (TS). The proposed changes remove operability requirements for the automatic test feature of the Load Shedding and Sequencing (LSS) System and increase the allowed outage time (AOT) for the inoperable LSS system from 8 to 24 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

The auto-test feature functions to provide additional assurance [that] the LSS system is capable of responding to valid accident conditions and performing its specified safety function. The auto-test feature is independent of this safety function and is terminated upon receipt of a valid LSS actuation signal. In fact, disabling the auto-test feature has no affect on the LSS system's ability to perform its specified safety function. The manual LSS logic test retained

in Surveillance Requirement 4.8.3.1.2 and 4.8.3.2.2 provides for simulating actual LSS panel operating conditions by simulating real panel inputs utilizing test switches on the control panel, and verifying system status by observing control panel indicators. Although the manual LSS logic test does not examine all of the LSS logic circuitry, it is equivalent to testing of comparable equipment which cannot be actuated during plant operation. This test, inconjunction with surveillances performed per TS 4.8.1.1.2.d.4.a.2, 4.8.1.1.2.d.7.a.2 and 4.8.1.1.2.d.15, is sufficient to demonstrate LSS system operability. Therefore, removal of the auto-test feature from the Technical Specifications requirements for LSS system operability does not significantly increase the probability or consequences of an accident previously evaluated.

No safety-related equipment or function will be altered as a result of this change. The increase in the allowed outage time from eight hours to 24 hours provides a period of time to correct LSS system problems commensurate with the importance of maintaining system operability. This change has no influence or impact on the probability or consequences of any accident or malfunction evaluated in the GGNS Updated Final Safety Analysis Report (UFSAR).... No accident or malfunctions evaluated are affected; therefore, the consequences of these have not significantly increased.

Based on the above, the proposed changes do not significantly increase the probability or consequences of any accident previously evaluated.

2. The proposed changes would not create the possibility of a new or different kind of accident from any previous analyzed.

No new plant equipment or new modes of operation or accident modes are introduced or created by removing the auto-test feature from the TS. The auto-test feature cannot, by its design, initiate or block an LSS system function. Disabling the auto-test feature cannot initiate or block an LSS function. Increasing the AOT to from eight to 24 hours has no influence on, nor does it contribute in any way, to the possibility of a new or different kind of accident or malfunction from those previously analyzed. As stated above, no safety-related equipment or safety functions are altered as a result of these changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The function of the auto-test feature is to provide a level of assurance that the LSS test feature, the proven reliability of the LSS system, and the system testing retained in the TS, adequately establish operability of the LSS system. Removal of the auto-test feature from the TS operability requirements does not affect the system's ability to perform its safety function when required and, therefore, does not involve a significant reduction in a margin of safety.

The proposed 24 hour AOT for the LSS system ensures that the probability of an accident requiring LSS system operability occurring during periods the system is inoperable is minimal. The margin of safety afforded by the proposed AOT is not significantly less than that provided by the current eight hour AOT. Therefore the margin of safety provided by the current TS is not significantly reduced.

Therefore, the proposed changes do not result in a significant reduction in a margin of safety.

Based on the above evaluation, operation in accordance with the proposed amendment involves no significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: Terence L. Chan (Acting)

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 20, 1993

Description of amendment request: The proposed amendment requests the removal of unnecessary operability requirements for the Intermediate Range Monitors (IRMs) and the Average Power Range Monitors (APRMs) during plant shutdown operations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

Not requiring Intermediate Range Monitor[s] (IRMs) or Average Power Range Monitors (APRMs) to be operational when the unit is shutdown and all control rods are inserted will not increase the probability of inadvertent reactor criticality during refueling operations. The Refueling Interlocks (RIs) and procedural restrictions provide assurance that inadvertent criticality does not occur due to the simultaneous withdrawal or removal of two control rods or due to the inadvertent insertion of a fuel bundle into a core location with a control blade removed. In addition, the Source Range Monitors (SRMs) will continue to be available to monitor neutron flux and provide appropriate action during Operational Condition (OPCON) 5.

The Updated Final Safety Analysis Report (UFSAR) Section 15.4.1 discusses the potential for a control rod withdrawal error during refueling and start-up operations. The discussion concludes that the withdrawal of one control rod does not require a safety action because the total worth of one control rod is not sufficient to cause criticality. The attempted withdrawal of two control rods would result in a control rod block initiated by the RIs. The SRMs and IRMs, which will continue to be required by Technical Specifications (TS) to be operable while in OPCON 5 and any control rod is removed from a fueled cell, are designed to generate a rod block or reactor scram on high neutron flux and will, therefore, continue to provide backup protection for the RIs during refueling.

During OPCON 5, the IRMs, when any control rod is removed from a fueled cell, and the SRMs will continue to be required by TS to be operable to support the safety design bases of the Reactor Protection System (RPS) and the control rod block system. The SRMs provide the plant operator with neutron flux levels from startup conditions to the IRM operating range. The SRMs and IRMs are designed to respond to local core conditions and would indicate and respond (control rod block or scram) to an accident condition to mitigate the transient. Thus, the APRMs are not necessary to be operable when the plant is shutdown. The proposed TS change will not alter the current requirements that the APRMs be operable during shutdown margin demonstrations.

The consequences of an accident will not be increased by the proposed TS change because of the existing lines of defense assumed in the UFSAR to prevent and mitigate an inadvertent criticality event during refueling, e.g., administrative restrictions, refueling procedures, licensed plant operators, and RIs. Furthermore, the SRMs and IRMs will continue to provided an additional layer of protection and should the number of operable IRM or SRM channels be less than that required by TS, the TS require that core alteration activities be suspended and all insertable control rods be inserted into the core.

The changes requested by this submittal are consistent with NUREG-1434, Revision 0, "Improved Standard Technical Specifications,"...although editorial changes have been made in the presentation of the requirements to maintain consistency with the current GGNS [Grand Gulf Nuclear Station] TS. This requested change also relocates the operability requirements for the APRMs and the IRMs associated with the Control Rod Block System to be controlled by plant procedures consistent with NUREG-1434.

The relocation of the requirements for these instruments associated [with the] Control Rod Block System involves no substantive changes (other than changes in the OPERABILITY requirements consistent with the changes requested for the RPS functions of the instrumentation) to the surveillance and operability requirements

currently contained in the GGNS TS. Deletion of the TS requirements is complemented by the incorporation of that information into plant procedures. This information will be adequately controlled via the administrative requirements specified in TS 6.8 and TS 6.5.3. Those requirements include review of changes for unreviewed safety questions in accordance with the provisions of 10CFR50.59. Such changes are reported to the NRC in the annual report submitted pursuant to 10CFR50.59. GGNS adheres to a policy of verbatim compliance with all plant procedures. These changes, therefore, constitute an administrative revision only.

The changes requested for the RPS function of the IRMs are consistent with the requirements contained in NUREG-1434 in only requiring the IRMs to be operable when the unit is shutdown if a control rod is withdrawn from a fueled cell in OPCON 5. The changes requested for the APRMs are consistent with NUREG-1434 in removing the operability requirements for the APRMs as part of the RPS in OPCON 3 and restricting the operability requirements for the APRMs as part of the RPS during OPCON 5.

The requested change to the APRM operability requirements differs from the requirements identified in NUREG-1434 Revision 0 in that NUREG-1434 identifies that the neutron flux and inoperative trips of the APRMs should be operable in OPCON 5 any time that a control rod is withdrawn. The requested change would only require that these APRM trip functions be operable during the shutdown margin demonstrations allowed by TS 3.10.3. This modification in APRM operability requirements has been previously requested by another utility and granted by the NRC.... The Owners Group Technical Specification Improvement Committee proposed a line item improvement to NUREG-1434 consistent with the requested APRM operability requirements in the Industry/NRC meeting in Dallas on 2/19/93. This improvement was accepted by the NRC in the Industry/NRC meeting in New Orleans on 3/18/93.

Therefore, there is no increase in the probability or consequences of a previously evaluated accident due to the proposed changes.

b. This change would not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes to the TS will remove the IRM and APRM operability requirements while the unit is shutdown (except in OPCON 5 when any control rod is withdrawn from a fueled cell for the IRMs and during shutdown margin demonstration testing for the APRMs); however, the SRMs and IRMs will still be required to be operable whenever the unit is shutdown and their RPS trip functions or control rod block functions could affect core reactivity.

The IRMs and SRMs are designed to detect and respond to increases in neutron flux with the local core regions. Any inadvertent increases in neutron flux during refueling would originate at a local core location, i.e., rod withdrawal error or fuel bundle insertion. TS will continue to require IRM and SRM operability and these systems will continue to generate a scram signal or control rod block if neutron flux increased to the setpoint when the scram signal or control rod block would affect core reactivity.

No new types of accidents would be introduced since the SRMs and IRMs are available and required to be operable when their RPS trip functions or control rod block functions could affect core reactivity. Both SRMs and IRMs would indicate and provide a control rod block or scram signal, as appropriate, to an increase in neutron flux to mitigate a transient event. Furthermore, should the number of operable IRM or SRM channels be less than that required by the TS, the TS require that core alteration activities be suspended and all insertable control rods be inserted into the core.

The proposed changes do not introduce any new modes of plant operation, make any physical changes, or alter any operational setpoints. When the unit is shutdown, removing the IRM operability requirement except when a control rod is withdrawn from a fueled cell and APRM operability except during shutdown margin demonstrations will not affect the response of safety-related equipment as previously evaluated in the UFSAR.

The relocation of the requirements for these instruments associated Control Rod Block instrumentation involve[s] no substantive changes (other than changes in the OPERABILITY requirements consistent with the changes requested for the RPS functions of the instrumentation) to the surveillance and operability requirements currently contained in the GGNS TS. Deletion of the TS requirements is complemented by the incorporation of that information into plant procedures. This information will be adequately controlled via the administrative requirements specified in TS 6.8 and TS 6.5.3. Those requirements include review of changes for unreviewed safety questions in accordance with the provisions of 10CFR50.59. Such changes are reported to the NRC in the annual report submitted pursuant to 10CFR50.59. GGNS adheres to a policy of verbatim compliance with all plant procedures. These changes, therefore, constitute an administrative revision only.

Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

c. This change would not involve a significant reduction in the margin of safety.

The Bases for TS 3/4.3.1, "Reactor Protection System Instrumentation" identifies that one of the functions of the RPS is to prevent inadvertent criticality. When the unit is shutdown, the revised specification will still ensure that the RPS will be able to prevent an inadvertent criticality event. The specification provides this assurance by requiring SRM operability during OPCON 5, IRM operability during OPCON 5 any time a control rod is withdrawn from a fueled cell, and APRM operability during shutdown margin demonstrations. This will insure that a scram signal is generated if neutron flux increased to the applicable setpoint when the scram signal would affect core reactivity.

The Bases for TS 3/4.3.6, Control Rod Block Instrumentation identifies that the operability of the control rod block instrumentation in OPCON 5 is to provide diversity to the one-rod-out interlock. During refueling operations, the operability requirements for the SRMs and the relocated requirements for the IRMs when a control rod is withdrawn from a fueled cell, and the APRMs during shutdown margin demonstrations will still ensure that this diversity is maintained.

The proposed TS changes do not involve a significant reduction in a margin of safety. The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: Terence L. Chan (Acting)

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 6, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications to increase the voltage during load rejection tests on the emergency diesel generator (EDG). The increase will take into account the increase in reactive power load which results in a higher steady state voltage for the EDG.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Maintaining EDG voltage during a load rejection test verifies the ability of the voltage regulator to respond to a sudden loss of load. The ability of the voltage regulator to limit the voltage to a specific value indicates proper operation and prevents electrical component damage.

The EDG voltage during load rejection is not part of any limiting accident previously evaluated. While the EDG is not expected to experience this transient during an event and continues to be available, the response ensures that the EDG is not degraded for future application, including reconnection to the bus if the trip initiator can be corrected or isolated.

The proposed change will have no negative impact on the reliability or performance of the EDG. Therefore, the proposed change will not

involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed technical specification change to the EDG voltage limit will accommodate conditions such as reactive power loading during load rejection. The present conditions assume the EDG steady state voltage will be 4160V [volts]. However, with the EDG parallel to the grid, operating at rated real and reactive power may not be possible with unfavorable grid conditions. Thus, to test the EDG within its capability, the voltage limit during load rejection must be changed to allow for increased reactive power loading recommended by IN [Information Notice] 91-13. This technical specification change does not involve a change in design, function, method of testing, or operation of the EDG. The proposed amendment will not alter the plant or the manner in which it is operated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed technical specification change is to allow the EDG voltage limit during load rejection to account for increased reactive power loading recommended by IN 91-13.

This change will have no adverse impact on protective boundaries or safety limits. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynods, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: Terence L. Chan (Acting)

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 7, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to allow a one-time extension of the interval for the third Type A containment integrated leak rate test (CILRT) to 54 months, instead of the current maximum of 50 months. The proposed amendment will be preceded by an exemption to 10 CFR Part 50, Appendix J, Section III.D.1(a). The proposed exemption was submitted by letter dated May 7, 1993.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This one-time exemption to extend the CILRT interval approximately four months beyond the maximum TS allowance within the first 10-year service period will not adversely impact plant safety. The majority of leakage from the containment is through penetrations and isolation valves. The schedule for performing the Type B and C LLRTs [local leak-rate tests] is not affected. The allowable containment leakage used in accident analysis for offsite doses is L_a, 0.5 wt. %/day. For conservatism the leakage is limited to 75% of L_a to account for possible degradation of the containment leakage barriers between tests.

Based on the leaktight integrity of the containment, as demonstrated by previous CILRT test results, the additional time period added to the third testing interval will not adversely impact the containment leakage barriers to a point where degradation would cause leakage to exceed that assumed in accident analysis.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

There are no design changes being made that would create a new type of accident or malfunction. The proposed change will not alter the plant or the manner in which it is operated. The change proposes a one-time exemption to extend the time interval for performing the third CILRT. The purpose of the CILRT is to provide periodic verification by test of the leaktight integrity of the primary reactor containment, and systems and components which penetrate containment. The tests assure that leakage through containment, and systems and components penetrating containment will not exceed the allowable leakage rate values associated with conditions resulting from a loss-of-coolant accident. The additional time period added to the third CILRT interval will not adversely affect the containment integrity in the event of a loss-of-coolant accident. Therefore, the proposed change will not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change is a one-time request to extend a surveillance interval and does not reduce, the margin of safety assumed in accident analysis for release of radioactive materials from the containment atmosphere into the environment, or any margin of safety preserved by the Technical Specifications. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: Terence L. Chan (Acting)

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 7, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to remove reference to Radioactive Effluent Release Reports being issued on a semiannual basis. The 10 CFR 50.36(a)(2) is now amended to require these reports on an annual basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This change is administrative in nature and makes the TSs consistent with the amended requirement of 10 CFR 50.36(a)(2). There is no change to plant design, operation, or significant increase in the probability or consequences of an accident previously evaluated.

This change is administrative in nature and makes the TSs consistent with the amended requirement of 10 CFR 50.36(a)(2). There is no change to plant design, operation, or configuration. Therefore, this change does not create the possibility of a new or different type of accident from any accident previously evaluated.

This change is administrative in nature and makes the TSs consistent with the amended requirement of 10 CFR 50.36(a)(2). There is no change to plant design, operation, or configuration. Therefore, there is no reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: Terence L. Chan

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: March 19, 1993

Description of amendment request: The reactor pressure vessel pressure-temperature limits are contained in Technical Specification Figures 3.1-1 and 3.1-2. This amendment would extend the effectiveness of those figures from 10 effective full-power years (EFPY) to 32 EFPY but the curves (limits) would remain the same.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The design basis event related to this change is nonductile failure of the reactor coolant pressure boundary. The updated pressure/temperature limits have been established in accordance with the requirements of 10 CFR 50, Appendix G. Extending the curves for applicability to thirty-two (32) EFPY is based on maintaining the design margin assumed in the original curves. Operation of the facility in accordance with the proposed amendment provides assurance of protection against nonductile failure of the reactor coolant pressure boundary for operation of thirty-two (32) EFPY. Therefore, operation of the facility in accordance with the proposed amendment does not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different accident from any previously evaluated. The design basis event related to the change is nonductile failure of the reactor coolant pressure boundary. The proposed amendment provides assurance of protection against nonductile failure of the reactor coolant pressure boundary for operation of 32 EFPY and is unrelated to the possibility of creating a new or different kind of accident.

3. Operation of the facility in accordance with the proposed amendment would not involve any reduction in a margin of safety since the design margin assumed in the original curves is still maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: April 16, 1993

Description of amendment request: For Units 1 and 2, the proposed amendment would change Technical Specifications (TS) 6.9.1.8 and 6.9.1.9, "Semi-Annual Radioactive Effluent Release Report," following the provisions provided in 10 CFR 50.36a. This proposed change would extend the Radioactive Effluent Release Report submittal frequency from semiannual to annual as provided in NRC's final ruling published in the Federal Register, August 31, 1992, on reducing regulatory burden on nuclear licensees. Additionally, for both units, the proposed request would change TS 6.5.2.2, "Composition," 6.5.2.3, "Alternate Members," 6.5.2.9, "Authority," and 6.5.2.10, "Records," to reflect membership change in the Nuclear Safety and Design Review Committee (NSDRC). The NSDRC membership change is effected by a change in corporate organization caused by the retirement of one of its members.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change in effluent release reporting requirement is administrative in nature and makes the TS consistent with the amended requirement of 10 CFR 50.36a(a)(2). The change in the NSDRC membership is also administrative in nature and makes the TS consistent with the guidance provided in Standard Review Plan 13.4.II. There is no change to plant design, operation, or configuration. Therefore, there is no significant increase in the probability or consequence of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated. The change in effluent release reporting requirement is administrative in nature and makes the TS consistent with the amended requirement of 10 CFR 50.36a(a)(2). The change in the NSDRC membership is also administrative in nature and makes the TS consistent with the guidance provided in Standard Review Plan 13.4.II. There is no change to plant design, operation, or configuration. Therefore, there is no significant increase in the probability or consequence of an accident previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant reduction in the margin of safety. The change in effluent release reporting requirement is administrative in nature and makes the TS consistent with the amended requirement of 10 CFR 50.36a(a)(2). The change in the NSDRC membership is also administrative in nature and makes the TS consistent with the guidance provided in Standard Review Plan 13.4.II. There is no change to plant design, operation, or configuration. Therefore, there is no significant increase in the probability or consequence of an accident previously evaluated.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Acting Project Director: W. M. Dean.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: May 21, 1993

Description of amendment request: The proposed changes would revise

Technical Specification (TS) Table 2.2.1-1, "Reactor Protection System Instrumentation Setpoints," to increase the setpoints for the Average Power Range Monitor (APRM) Flow-Biased Simulated Thermal Power - Upscale Scram. In addition, the proposed changes would revise TS 3/4.2.2, "Average Power Range Monitor Setpoints;" Table 3.3.6-1, "Control Rod Block Instrumentation;" Table 3.3.6-2, "Control Rod Block Instrumentation Setpoints;" Table 4.3.6-1, "Control Rod Block Instrumentation Surveillance Requirements;" and TS 6.9.1.9, "Core Operating Limits Report," to delete references to APRM rod block instrumentation. These changes are required to facilitate operation in the Extended Load Line Limit region. The licensee has also proposed an editorial change to Table 3.3.6-2 and changes to Bases Section 3/4.2.2, "APRM Setpoints," to reflect the deletion of references to APRM rod block instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

APRM Flow-Biased Simulated Thermal Power Upscale Scram Setpoint

The proposed change will enhance utilization of the expanded operating domain by relaxing the restrictions imposed by the APRM flow-biased scram trip setpoint. The proposed formulation of the APRM flow-biased scram trip equation provides the same operating margin for the ELLLA [Extended Load Line Limit Analysis] region as the current equation provided at the rated flow condition. Further, the change to the flow-biased APRM scram trip does not affect any accident precursors or initiators. The trip serves to terminate certain transients. Therefore, the proposed change does not affect the probability of any accident. The transient analyses for NMP2 [Nine Mile Point Nuclear Station, Unit 2] use a fixed analytical value of 117% for the APRM flow-biased simulated thermal power trip, corresponding to the maximum nominal trip setpoint of 113.5%. Since the analytical value of 117% is not changing, the proposed change does not impact the results of any transient analyses. MCPR [Minimum Critical Power Ratio] operating and safety limits are not affected, and therefore there is no increase in the consequences of any accident. MCPR values calculated based on the current setpoint bound those for the proposed setpoint. Thus, the proposed changes do not adversely affect the response to previously analyzed accidents.

APRM Flow-Biased Neutron Flux-Upscale Rod Block Instrumentation System

The probability of accidents is not a function of the APRM rod block instrumentation since the failure of this system does not initiate or help to initiate any accident. Therefore, removing reference to the APRM rod block instrumentation from the Technical Specifications will not increase the probability of any accident previously evaluated. The APRM flow-biased rod block is not used to mitigate any accident in the USAR [Updated Safety Analysis Report]. While actuation of the APRM rod block can result in early termination of some slow pressurization transient events, USAR transient analyses take no credit for APRM rod block and the resulting [delta] CPR [Critical Power Ratio] will not cause CPR to exceed its safety limit. Further, during a fast flux transient a reactor scram without a preceding APRM rod block or alarm has no safety impact since the operator would not have enough time to initiate a corrective action even with an alarm.

Other events such as a general operator error of withdrawing control rods beyond the upper rod line produce only very mild power increases. The downscale and neutron flux upscale, startup (i.e., setdown) rod blocks can alert the operator to these conditions, however the primary protection for local power effects is provided by the RBM [Rod Block Monitor]. Essentially, all safety aspects associated with control rod withdrawal errors are addressed by the RBM. Finally, the APRM inoperative rod block actuates concurrent with the APRM inoperative scram and any transient resulting in an APRM inoperative rod block would also initiate a scram. Therefore, removing reference to the APRM rod block instrumentation will not increase the consequences of any transient previously evaluated.

Editorial Change

The proposed change to the Technical Specifications addresses only capitalization. Editorial changes by their nature do not change the intent or interpretation of the Technical Specifications and have no effect on accident probabilities or consequences.

The changes to the RPS will not affect plant response to previously analyzed transients or accidents. The MCPR limits previously evaluated remain valid. Therefore operation of Nine Mile Point Unit 2, in accordance with this proposed change, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

APRM Flow-Biased Simulated Thermal Power Upscale Scram Setpoint

Operation with the proposed APRM flow-biased scram line setpoint does not affect the assumptions (initial conditions) used in existing analyses and does not provide any new accident modes. Changing the formulation of the flow-biased APRM scram trip setpoint does not change its respective functions. The APRM scram trip setpoint will continue to initiate the scram if the power flow condition exceeds that specified by the APRM rod block setpoint. Modifying the APRM flow-biased upscale trip does not create any new (1) operating modes, (2) accident scenarios, (3) equipment failure modes, or (4) fission product release paths.

APRM Flow-Biased Neutron Flux-Upscale Rod Block Instrumentation System

The proposed changes remove reference to the APRM rod block instrumentation system from the Technical Specifications. Deletion of the APRM rod block reference does not create any new (1) operating modes, (2) accident scenarios, (3) equipment failure modes, or (4) fission product release paths. The APRM rod block functions are essentially backup functions and, while not used in any licensing basis event, will still be functional to assist operators during certain transients. In addition, the RBM will still actuate to terminate control rod withdrawal errors. Therefore, the effect of the proposed change on operator action to correct unexpected situations is insignificant.

Editorial Change

Editorial changes by their nature do not change the intent or interpretation of the Technical Specifications. The proposed change addresses only capitalization. The proposed change has no effect on any accident, analyzed or unanalyzed.

The aggregate affect of these proposed changes has been evaluated and found to have no resulting impact on system reliability or performance. Thus, the proposed changes do not adversely affect the response of any component or system to previously analyzed accidents. The response to previously evaluated accidents remains within previously assessed limits of temperature and pressure. Further, all safety-related systems and components remain within their applicable design limits. Thus, system and component performance is not adversely affected by these changes, thereby assuring that the design capabilities of those systems and components are not challenged in a manner not previously assessed so as to create the possibility of a new or different kind of accident. Therefore, operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any previously assessed.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

APRM Flow-Biased Simulated Thermal Power Upscale Scram Setpoint

The proposed change will facilitate utilization of the expanded operating domain by relaxing the restrictions imposed by the formulation of the APRM flow-biased simulated thermal power scram trip setpoint. The transient analyses for NMP2 use a fixed analytical value of 117% for the APRM flow-biased trip, corresponding to the maximum nominal trip setpoint of 113.5%. Since the analytical value of 117% is not changing and remains below the fixed neutron flux trip value, the proposed change does not impact the results of any transient analyses. In addition, the APRM flow-biased trip setpoint remains below the APRM Fixed Neutron Flux - Upscale trip setpoint. MCPR values

calculated based on the current setpoint bound those for the proposed setpoint. Since MCPR operating and safety limits are not affected, there is no significant decrease in any margin of safety.

APRM Flow-Biased Neutron Flux-Upscale Rod Block Instrumentation System

Relocation of the APRM rod block references will not alter plant response to any transient. Fast flux transients, such as MSIV [Main Steam Isolation Valve] closure, are terminated by the APRM scram without any operator action and therefore are not affected by this change. The APRM flow-biased rod block will still be available to respond to slow pressurization transients such as loss of feedwater heating and provide time for proper operator action. However, should operators fail to respond or the rod block fail to actuate, the APRM scram will still terminate the transient before any safety limits are impacted. Other events such as a general operator error of withdrawing control rods beyond the upper rod line produce only very mild power increases. The downscale and neutron flux upecale, startup (i.e., setdown) rod blocks can alert the operator to these conditions, however the primary protection for local power effects is provided by the RBM. In addition, the APRM inoperative rod block actuates concurrent with the APRM scram. Therefore, any transient which would result in an APRM inoperative rod block would also initiate a scram signal. Since operability of the APRM scram functions and the RBM is still assured under these proposed changes, MCPR operating and safety limits are not affected. Therefore, the proposed change will not involve a reduction in a margin of safety.

Editorial Change

The wording of the Technical Specifications has not changed. The proposed change addresses only capitalization. Editorial changes by their nature do not change the intent or interpretation of the Technical Specifications and do not affect any margin of safety.

The aggregate affect of these proposed changes has been evaluated and found to have no impact on plant response to transients and accidents. The proposed changes do not affect the basis for any Technical Specification and previously established safety limits remain valid. Therefore, the operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: April 7, 1993

Description of amendment request: The proposed amendment would redefine the requirements for an operable Service Water System (SWS) and would combine the SWS Technical Specification (TS) requirements with the TS requirements for the ultimate heat sink. The changes would affect TSs 3/4.7.4 and 3/4.7.5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because they do not affect the safety functions of the SWS and ultimate heat sink. No physical changes to facility structures, systems, or components are involved, and the SWS and ultimate heat sink will continue to meet the single failure criteria. A Probabilistic Risk Assessment (PRA) Evaluation of the proposed changes, submitted with the proposed amendment, shows that the increase in core damage frequency would be small.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the function of any facility structure, system or component, nor do they affect the manner by which the facility is operated. The proposed changes do not introduce any new failure mode.

C. The proposed changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because they do not affect the manner by which the facility is operated or involve changes to equipment or features which affect the operational characteristics of the facility. A PRA Evaluation of the proposed changes shows that the increase in core damage frequency would be small.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston Massachusetts 02110-2624.

NRC Project Director: John F. Stolz

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: April 8, 1993

Description of amendment request: Technical Specification 2.1, Figure 2.1-1 specifies the allowable conditions of highest operating loop average temperature and fraction of rated core power for various Reactor Coolant System (RCS) pressure. The proposed amendment would revise Figure 2.1-1, Reactor Core Safety Limit - Four Loops in Operation, to provide curves that correctly represent the loci of calculated design values. This safety limit ensures that the Departure from Nucleate Boiling Ratio (DNBR) will be at least 1.3 and the average enthalpy of reactor coolant at the vessel exit is no greater than that of saturated liquid. The existing figure does not reflect the design values accurately in the region of 80% to 110% of rated power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed change merely corrects the figure to accurately reflect the loci of calculated design values for the core safety limit to provide protection for the core as originally assumed in the design analysis. The current curve does not assure the design minimum DNBR when operating in the region of 80% to 110% of rated power. The change does not affect the operation or function of any engineered safety system or the Reactor Protection System, does not involve any physical modification to the facility, and does not affect the manner in which the facility is operated.

B. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because it does not affect the manner by which the facility is operated as assumed in the design analysis or Safety Evaluation,

involve any changes to equipment or features which affect the operational characteristics of the facility, or introduce a new failure mode. The proposed change merely corrects Figure 2.1-1 to provide protection for the core limits as originally assumed in the design analysis.

C. The change does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because it does not affect the manner by which the facility is operated as assumed in the design analysis or Safety Evaluation, involve any changes to equipment or features which affect the operational characteristics of the facility. The proposed change will continue to ensure that the reactor is protected against a low DNBR and excessive enthalpy at the vessel exit by defining the allowable conditions of highest operating loop average temperature and fraction of rated core power for various RCS pressures.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston Massachusetts 02110-2624.

NRC Project Director: John F. Stolz

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: May 7, 1993

Description of amendment request: The amendment would change Technical Specification (TS) 3/4 6.1 relating to primary containment integrity. Specifically, Limiting Condition for Operation (LCO) 3.6.1.7 would be changed to delete the requirements applicable to the 36-inch containment shutdown purge supply and exhaust isolation valves in the containment air purge (CAP) system. LCO 3.6.1.7 would retain the current requirements for the 8-inch containment purge supply and exhaust valves. Surveillance Requirement (SR) 4.6.1.7.1 and associated footnote and SR 4.6.1.7.2, which are applicable only to the 36-inch valves, also would be deleted.

Editorial changes would be made to Actions b and c (which would be redesignated a and b), to SR 4.6.1.7.3. and 4.6.1.7.4 (which would be redesignated 4.6.1.7.1 and 4.6.1.7.2), and to SR 4.6.1.2 f to maintain document consistency.

The changes described above will support a design modification to the CAP system that would replace the 36-inch containment shutdown purge supply and exhaust isolation valves located outside of containment (CAP-V1 and CAP-V4) with testable blind flanges. The blind flanges would be part of the containment pressure boundary for the penetration when in Modes 1, 2, 3, and 4. This modification would render operability requirements for the 36-inch valves unnecessary.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)). The changes support a planned modification to the CAP system that would replace the 36-inch butterfly containment purge supply and exhaust isolation valves that are outside containment (CAP-V1 and CAP-V4) with testable blind flanges during operational Modes 1, 2, 3, and 4. With this modification, the 36-inch butterfly valves no longer are required for containment isolation in Modes 1, 2, 3, and 4. The blind flanges will continue to provide the containment isolation function now provided by the 36-inch butterfly valves, and they will be more reliable because they will not be susceptible to resilient seal degradation inherent with the operation of the 36-inch butterfly valves. Therefore, since the reliability of the containment function will not be reduced, the probability or consequences of any accident previously evaluated is not increased.

B. The changes do not create the possibility of a new or different kindof accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the only safety function of the CAP during operational Modes 1, 2, 3, and 4 is to provide containment isolation. The CAP system does not directly affect the operation of any other safety system. Since the containment isolation function of the CAP system will be more reliable following the CAP modification, no possibility is created for a new or different kind of accident.

C. The changes do not involve a significant reduction in a margin ofsafety (10 CFR 50.92(c)(3)) because the planned replacement of the 36-inch butterfly valves with testable blind flanges will maintain the isolation function. The blind flanges, existing weld neck flanges, and bolting material will be classified ASME Section III, Code Class MC (the same as for the equipment and personnel hatches and the fuel transfer tube hatch). The CAP penetrations will be tested as Type B penetrations in accordance with the requirements of the Updated Final Safety Evaluation Report section 6.2.6.2 and 10 CFR 50 Appendix J, Section III.B. Therefore, the isolation function reliability will not be reduced, therefore, there is no reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston Massachusetts 02110-2624.

NRC Project Director: John F. Stolz

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: May 14, 1993

Description of amendment request: The proposed amendment would change the footnote on page 1 of License NPF-86 to reflect that EUA Power Corporation has changed its name to Great Bay Power Corporation. EUA Power Corporation has been under the protection of Chapter 11 of Title 11 of the United States Bankruptcy Code since February 28, 1991. Great Bay Power Corporation is the reorganized entity that emerges from bankruptcy pursuant to the Plan for Reorganization which has been confirmed by the United States Bankruptcy Court for the District of New Hampshire.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)). The proposed change merely reflects the

new name of the reorganized entity emerging from bankruptcy. The change does not affect the manner by which the facility is operated or involve any changes to equipment or features which affect the operational characteristics of the facility. No other provisions of the license and no Technical Specification are affected, and all plans and programs in effect at the Seabrook Station remain unchanged.

B. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the change does not affect the manner by which the facility is operated or involve any changes to equipment or features which affect the operational characteristics of the facility.

C. The change does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed change does not affect the manner by which the facility is operated or involve equipment or features which affect the operational characteristics of the facility.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Attorney for licensee: John A. Ritsher, Esquire, Ropes & Gray, One International Place, Boston Massachusetts 02110-2624, and Mark N. Polebaum, Esquire, Hale and Dorr, 60 State Street, Boston, Massachusetts 02109.

NRC Project Director: John F. Stolz

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 21, 1993

Description of amendment request: The proposed amendment to the Technical Specifications would increase the maximum bypass pressure for the steam generator low-pressure signal (SGLS) trip setting as contained in Table 1.1 (page 1-10a), Table 2-1 (page 2-64a), Table 2-2 (page 2-67), Table 2-4 (page 2-69), and Table 3-2 (page 3-12) from 550 psia to 600 psia.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change to the Technical Specifications for the increase of the Steam Generator Low pressure Signal (SGLS) bypass to 600 psia does not involve a significant hazards consideration because the operation of the Fort Calhoun Station in accordance with this change would not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence does not increase since the limiting postulated accident, Main Steam Line Break has been analyzed and is within the design basis of the plant. The consequences, as reported in the Updated Safety Analysis Report, do not increase since the accident is bounded by a hot full power case and would not be considered limiting. The consequences of an accident, when analyzed at 550 psia versus 600 psia, do not increase significantly. The proposed change would still require that the SGLS is enabled prior to the reactor being made critical (except for the physics tests, the technical specifications do not require SGLS to be operable during physics testing below 10% power). Therefore, the proposed change will not significantly increase the probability or consequences of an accident previously evaluated in the Updated Safety Analysis Report.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

It has been determined that a new or different type of accident is not created because no new or different modes of operation are proposed for the plant. The continued use of the Technical Specification administrative controls prevents the possibility of a new or different kind of accident.

3) Involve a significant reduction in a margin of safety.

These changes will not reduce the margin of safety since the SGLS trip is still automatically enabled prior to the reactor being made critical. The 50 psia increase would not change any of the safety analyses for Fort Calhoun since the limiting transients occur at Hot Full Power and Hot Zero Power for the Main Steam Line Break.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue, N.W., Washington, D.C. 20009-5728

NRC Project Director: Terence L. Chan (Acting)

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: January 14, 1991 and March 3, 1992

Description of amendment request: The amendments would change the Susquehanna Steam Electric Station (SSES), Units 1 and 2 Technical Specifications (TS) to delete the temperature leak detection system isolation function (ambient and differential) in the Residual Heat Removal (RHR) pump rooms.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Small leaks are not specifically analyzed in the FSAR, but FSAR Sections 15.6.2 (Instrument Line Break) and 15.6.4 (Steam System Piping Break Outside Containment) evaluate the effects of larger leaks. Section 15.6.4 provides the bounding analysis of leakage outside containment. Deleting the automatic isolation function of RHR shutdown cooling does not affect the probability of a leak from the system. The existing temperature setpoints do not provide timely response to a shutdown cooling leak. The proposed change will improve the responsiveness of the steam leak detection system as it will allow the alarm setpoint to be lowered.

Flood detection also provides a reliable method of detecting small leaks. For a 25 gpm leak, the level in the pump rooms would reach the alarm setpoint in less than 4 hours.

The temperature switches are redundant and failure of a single switch to detect a leak does not preclude detection by the other switch. The reliability of the temperature switches is not affected by deleting the isolation signal. In addition to room water level, flow and reactor water level instruments provide additional means of leak detection, primarily for large leaks.

The propose[d] change does not, therefore, increase the probability of occurrence or the consequences of a malfunction of equipment related to safety as previously evaluated in the FSAR.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The deletion of temperature based isolation does not affect the ability to detect leakage from RHR shutdown cooling as required by GDC 30, Reg. Guide 1.45 and the Standard Review Plan (NUREG 0800). These regulations require only detection and do not require automatic isolation of leakage. Temperature based alarms and the other means of leak detection satisfy the safety requirements of the system.

The proposed change does not affect any system other than leak detection and does not affect the ability to detect leakage. It is bounded by the analysis in FSAR Sections 15.6.2 and 15.6.4. The proposed change does not, therefore, create the possibility of an accident or malfunction of a different type than any evaluated previously in the FSAR.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed action will delete the temperature switches and setpoints from Technical Specification Section 3.3.2. "Isolation Actuation Instrumentation." The existing instruments are unable to satisfy the bases statement that "the setpoints ... are established at a level away from the normal operating range to prevent inadvertent actuation of the system involved." Temperature measurement is not discussed in the basis for Technical Specification 3.4.3, "Reactor Coolant System Leakage." Technical Specification 3.4.9, "Residual Heat Removal" requires that both loops of RHR be operable and that at least one loop be in operation. System isolation due to a actual leak or to false indication of a leak renders both loops inoperable.

The proposed change will eliminate the possibility of unnecessary isolation of Shutdown Cooling due to inadvertent actuation of the leak detection temperature switches and will thereby avoid reducing the margin defined in the bases for Technical Specifications 3.3.2 and 3.4.9. The change does not, therefore, reduce the margin of safety defined in the basis for any Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Charles L. Miller

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: May 17, 1993

Description of amendment request: This amendment would make changes to the Technical Specifications to revise the logic which controls the automatic transfer of the High Pressure Coolant Injection (HPCI) pump suction source on high suppression pool level.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

All pertinent [Final Safety Analysis Report] FSAR and [Design Analysis Report] DAR evaluations were reexamined based on the proposed modification. The probability of a failure of the new relay has been minimized by the use of the same type already in use in Engineered Safety Feature control systems. Further, its operability will be confirmed through periodic testing. A probabilistic evaluation based on a review of reliability studies performed for the Susquehanna [Individual Plant Evaluation] IPE considered failures of the F042 and F006 valves to open. This evaluation determined that the increase in failure rate due to the addition of the relay falls within the error band of the predicted failure rate of the valves without the additional relay installed. The new relay has no interconnections with any other components which could impact safety. Therefore, the proposed change will not significantly increase the probability of previously evaluated events.

With regard to the consequences of previously evaluated events, as stated earlier, HPCI failure is bounded by the operation of [Automatic Depressurization System] ADS by design. If rather than HPCI failure, a pipe break is assumed while HPCI is aligned for pressure control with suppression pool level potentially greater than 24 feet, the resulting loads on safety-related components and structures are bounded by existing analysis as discussed previously. Based on the above, the consequences are bounded by existing analysis, and therefore, do not constitute any increase in the consequences of previously evaluated events.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Postulated failures of the new design, as described above, could result in the loss of the HPCI [Emergency Core Cooling System] ECCS function. However, the ADS system exists as part of the design basis for this purpose. Other failures postulated while HPCI is operating in pressure control mode are bounded by previously evaluated events as described in 1. above. Therefore, the proposed change will not create the possibility of a new or different kind of event.

3. Involve a significant reduction in a margin of safety.

The motivation for proposing this modification is to improve the operators' ability to control level and pressure in the reactor after an [Main Steam Isolation Valve] MSIV closure event. [Pennsylvania Power & Light Company] PP&L believes this will improve the safe operation of Susquehanna SES. It will not significantly reduce any margin of safety because:

- It will continue to ensure that HPCI realigns to the suppression pool for HPCI injection if suppression pool level approaches the Technical Specification limit and injection into the vessel is required.
- Failure of the new relay will prevent the above realignment when required, but other single failures exist which can create this effect, and we have determined that the increase in failure rate due to the new relay is within the error band of the currently predicted failure rate (without the relay installed).
- When HPCI is in pressure control mode the change does not prevent operation of suppression pool level above the Technical Specification limit as long as HPCI is not required to inject. However, based on consideration of worst case single failures while in pressure control mode, it is concluded that the impact of such events on containment analysis results is bounded by previous analysis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Charles L. Miller

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: June 1, 1993

Description of amendment request: The amendments would change the Susquehanna Steam Electric Station (SSES), Units 1 and 2 Technical Specifications (TS) to revise the reporting frequency of the Semiannual Radioactive Effluent Release Report from semiannual to annual pursuant to the revised 10 CFR 50.36a, which the Commission published in the Federal Register on August 31, 1992.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature and do not involve any change to

the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident nor alter the conditions or assumptions in any of the Final Safety Analysis Report (FSAR) accident analyses. Since the FSAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes. Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident previously evaluated.

No new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed changes. Also, there will be no change in the types or increase in the amount of effluents released offsite. Therefore, it can be concluded that the proposed changes do not create the possibility of a new or different kind of accident from those previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature and do not adversely impact the plant's ability to meet applicable regulatory requirements related to liquid and gaseous effluents, and solid waste releases. The proposed change would also eliminate any unnecessary burden of governmental regulation without reducing protection for public health and safety. Therefore, it can be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Charles L. Miller

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: April 19, 1993

Description of amendment request: The amendments would revise the Technical Specifications (TS) contained in Appendix A of the Operating Licenses to extend the surveillance test intervals (STIs) and allowed outage times (AOTs) for the containment isolation actuation instrumentation (IAI). Specifically, these changes propose to minimize testing and remove restrictive AOTs that could potentially degrade the overall plant safety and availability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes increase the STIs and AOTs for the IAI. In addition, several administrative changes are necessary. These include revision of two Index pages to correct inconsistencies and to reflect the addition of LTR and SER [NEDC-31677P-A, July 1990 and NRC Safety Evaluation dated June 18, 1990] references in the TS Bases, which caused the location of several Bases sections to change, and an administrative modification of TS page 3/4 3-9, 3/4 3-16, and the associated TS Table 4.3.2.1-1 notes.

There are no changes in any of the affected systems themselves. Since there are no such changes, there can be no change in the probability of occurrence of an accident or the consequences of an accident or the consequences of malfunction of equipment. Regarding the probability of malfunction of equipment, Reference 1 [NEDC-31677P-A, July 1990] showed that there is a small increase in the unavailability of the total containment isolation function frequency. This increase in containment isolation failure frequency is less than the established acceptance criterion. The NRC, in its review of Reference 1 [NEDC-31677P-A, July 1990], concurred with this conclusion. The changes proposed are consistent with [those] appproved by the NRC in Reference 2 [NRC Safety Evaluation dated June 18, 1990]. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not create the possibility for an accident or malfunction of a different type than any evaluated previously in the Updated Final Safety Analysis Report (UFSAR). The proposed changes increase the STIs and AOTs for the IAI, revise index pages to reflect the addition of references in the TS Bases, and modify table notes to be consistent with the proposed changes. There are no changes to any systems. Since there are no such changes, there is no possibility for an accident or malfunction of a different type than any evaluated previously.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed TS changes do not reduce the margin of safety as defined in the basis for any TS. The proposed TS changes do not change any setpoints of the IAI or its level of redundancy. IAI setpoints are based upon the drift occurring during the 18 month calibration interval. The proposed changes extend STIs and AOTs, and are discussed in Reference 1 [NEDC-31677P-A, July 1990, and] are bounded by the Analyses in Reference 1 [NEDC-31677P-A, July 1990]. These analyses, which were reviewed and approved by the NRC, examined the effects of extending STIs and AOTs, and found that the proposed changes do not involve a reduction in a margin of safety. The administrative changes proposed cannot affect safety and therefore do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: April 23, 1993

Description of amendment request: The amendments would revise the Technical Specifications (TS) contained in Appendix A of the Operating Licenses to modify the requirement for individuals filling certain plant management positions to hold a Senior Reactor Operator (SRO) License. Specifically, these changes propose to: 1) require that the Plant Manager or the Superintendent-Operations or Assistant Superintendent-Operations hold an SRO License; and 2) delete the requirement for the Superintendent-Technical or the Technical Engineer to hold an SRO License. However, the proposed change will continue to satisfy the ANSI Standard ANSI/ANS-3.1-1978, "Standard for Selection and Training of Personnel for Nuclear Power Plants."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence of an accident is based in part on the training and qualification requirements applicable to the personnel filling key plant management positions. Accordingly, the qualifications and scope of responsibilities applicable to plant management positions relative to the guidance in ANSI/ANS-3.1-1978, as described in UFSAR Section 13.1, "Conduct of Operations," were originally reviewed and approved by the NRC during the initial plant licensing. Specifically, LGS [Limerick Generating Station] Updated Final Safety Analysis Report (UFSAR) Section 13.1.3, "Qualification of Nuclear Plant Personnel," details the following correspondence between plant management positions and the criteria in ANSI/ANS-3.1-1978.

Plant Manager 4.2.1 Plant Manager

Superintendent-Operations 4.2.1 Plant Manager

Assistant Superintendent-Operations 4.2.2 Operations Manager

Superintendent-Technical 4.2.4 Technical Manager

Section 4.2.1, "Plant Managers," of ANSI/ANS-3.1-1978 states in part that "... The plant manager shall have acquired the experience and equivalent training normally required to be eligible for a Senior Reactor Operator's license "..." unless the plant organization includes one or more persons who are designated as principal alternatives for the plant manager and who meet the nuclear power plant experience and training requirements established for the plant manager. As shown above, the Superintendent-Operations is designated as the Plant Manager's principal alternative. ANSI/ANS-3.1-1978, Section 4.2.2, "Operations Manager," states in part that at the time of "...appointment to the position... the operations manager shall hold a Senior Reactor Operator's license...." Requiring the Plant Manager or the Superintendent-Operations, or the Assistant Superintendent-Operations to hold a[n] SRO License will continue to ensure conformance with this criterion. ANSI/ANS-3.1-1978, Section 4.2.4, "Technical Manager," does not include any recommendation that the Technical Manager have the training to be eligible for, or hold, a[n] SRO License.

The proposed TS change involves changing the current TS requirement that 1) the Plant Manager or the Superintendent-Operations, and the Assistant Superintendent-Operations, and 2) the Superintendent-Technical or the Technical Engineer, hold a[n] SRO License, to the following: a) the Plant Manager or the Superintendent-Operations or the Assistant Superintendent-Operations hold a[n] SRO License, and b) delete the requirement for the Superintendent-Technical or the Technical Engineer to hold a[n] SRO License. This proposed change would continue to require that one of the individuals in the management chain of command responsible for the management of plant operations as well as day-to-day operating activities and conformance to the operating license, TS, and operating procedures demonstrate detailed operating knowledge and successfully complete training required to obtain and hold a[n] SRO License, while deleting the unnecessary requirement that the Superintendent-Technical or the Technical Engineer hold a[n] SRO License. Also, licensed plant shift operators will continue to report to a management position filled by an individual who holds a[n] SRO License.

Operations management and Technical management personnel would continue to maintain cognizance of pertinent plant, procedure, and TS changes by virtue of the responsibilities of their plant management positions, TS required PORC [Plant Operations Review Committee] membership, and roles in the Emergency Response Organization (ERO). These responsibilities include review and/or approval of proposed new or revised operating procedures and oversight of licensed operator requalification training. Therefore, the qualifications of the Operations and Technical management personnel, in the chain of command to the Plant Manager, will remain at the currently required level. Furthermore, those key plant management individuals who will no longer be required to hold a[n] SRO License will be able to devote the time now spent in LOR [Licensed Operator Requalification] training to increase their overview and involvement in plant operating and planning activities. Accordingly, the probability of occurrence of an accident previously evaluated based on the training and qualification of key plant management personnel, is not increased by the proposed change to the current requirements concerning managers who must hold a[n] SRO License.

This proposed change does not involve any changes to plant systems, structures, or components (SSC). Therefore, no physical changes that could change the probability of occurrence of an accident previously evaluated would be made to the plant in order to implement this proposed change. The impact of the change to administrative requirements resulting from the implementation of this proposed TS change is discussed above, and has been determined to not increase the probability of occurrence of an accident previously evaluated.

The consequences of an accident previously evaluated could be affected by the qualifications of plant management personnel to which the plant operators report via the chain of command. As explained above, the proposed TS change to require at least one individual in the Operations organization chain of command to hold a[n] SRO License will continue to meet guidance provided by the applicable criteria in ANSI/ANS-3.1-1978.

The proposed TS change does not involve any physical changes to plant SSC, or in the manner in which plant SSC are operated, maintained, modified, tested, or inspected. Therefore, the proposed TS change does not increase the consequences of accidents previously evaluated.

Accordingly, as explained above, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change involving the qualifications (e.g., obtain and hold a[n] SRO License) of key plant management personnel [cannot] create the possibility of a new or different type of accident than previously evaluated since no substantive change to the current requirements is involved as discussed above. Also, since the proposed TS change does not involve physical changes to plant SSC, the possibility of creating a different type of accident than previously evaluated in the SAR [cannot] be created. Therefore, the possibility of a new or different type of accident than previously evaluated in the SAR is not created.

3) The proposed changes do not involve a significant reduction in a margin of safety.

The margin of safety of overall plant operating activities is based in part on the TS requirements that personnel serving in key plant management positions satisfy qualification criteria specified in ANSI/ANS-3.1-1978. The proposed change to the TS does not reduce these established qualifications that key plant management personnel must currently satisfy. In addition, implementation of the proposed TS changes will allow the affected plant management individuals to use the time now spent in LOR training (i.e., approximately one week out of every six week period throughout the year) to increase their involvement in plant operational matters and planning activities. Therefore, the proposed TS change does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: May 6, 1993

Description of amendment request: The amendments would revise the Technical Specifications (TS) contained in Appendix A of the Operating Licenses to extend the surveillance test intervals (STIs) and allowed outage

times (AOTs) for selected actuation instrumentation. Specifically, these changes propose to minimize STIs and remove restrictive AOTs that could potentially degrade the overall plant safety and instrument-data availability. Also, the amendment proposes several editorial changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes increase the STIs and AOTs for selected BWR actuation instrumentation. In addition, several editorial corrections are proposed. There are no changes in any of the affected systems themselves. Since there are no such changes, there can be no change in the probability of occurrence of an accident or the consequences of an accident or the consequences of malfunction of equipment. Regarding the probability of malfunction of equipment, [BWR Owners Group Report GENE-770-06-1] showed that actuation instrumentation system unavailability was increased slightly. However, this increase in unavailability is less than the established acceptance criterion. The NRC, in its review of [GENE-770-06-1], concurred with this conclusion. The changes proposed are consistent with the NRC issued SER . . . Therefore, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not create the possibility for an accident or malfunction of a different type than any previously evaluated. The proposed changes increase the STIs and AOTs for selected BWR actuation instrumentation and make several editorial corrections. There are no changes to any systems. Since there are no such changes, there is no possibility for an accident or malfunction of a different type than any evaluated previously.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed TS changes do not reduce the margin of safety as defined in the basis for any TS. The proposed TS changes do not change any setpoints of the selected BWR actuation instrumentation or their level of redundancy. Setpoints are based upon the drift occurring during the 18 month calibration interval. The proposed changes extend STIs and AOTs, and are bounded by the analyses in [GENE-770-06-1]. The [GENE-770-06-1 Reports] analyses reviewed and approved by the NRC, examined the effects of extending STIs and AOTs and found that the proposed changes do not involve a reduction in a margin of safety. The remaining proposed changes are editorial. Since they are editorial in nature, the changes will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: March 16, 1993

Description of amendment request: The proposed amendment, by Portland General Electric Company, PGE or the licensee, would relocate those portions of the Trojan Technical Specifications (TS) that are related to the Trojan Fire Protection Program from the TS to Topical Report PGE-1012, "Trojan Nuclear Plant Fire Protection Plan."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee have provided their analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with the requirements of 10 CFR 50.92, Issuance of Amendment, this license amendment request is judged to involve no significant hazards consideration based upon the following:

1. The requested license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This amendment merely relocates the fire protection program elements from the Trojan Technical Specifications (TTS) to PGE-1012. No change is being made to the content of the TTS being relocated. Operating limitations will continue to be imposed, and required surveillances will continue to be performed in accordance with written procedures and instructions auditable by the NRC.

Although proposed future changes to the fire protection program elements previously located in the TTS will no longer be controlled by 10 CFR 50.90, proposed changes to the TS requirements relocated to PGE-1012 will be evaluated by a safety evaluation in accordance with the requirements of 10 CFR 50.59 to determine whether an unreviewed safety questions exists. Changes that do represent an unreviewed safety question will receive prior NRC approval before implementation.

Thus, programmatic controls will continue to assure that this change will not have the effect of permitting future proposed fire protection program changes to create an unreviewed safety question. It is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The requested license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

PGE-1012, incorporated by reference in Trojan FSAR Section 9.5.1, contains the Trojan fire hazards analysis. This amendment merely relocates the fire protection TS requirements from the TTS to PGE-1012. No change to the fire protection TS requirements is being made and thus the change does not create the possibility of a new or different accident from those previously evaluated.

As noted above, proposed changes to the TS requirements relocated to PGE-1012 will be evaluated by a safety evaluation in accordance with the requirements of 10 CFR 50.59 to determine whether an unreviewed safety question exists. Changes that do represent an unreviewed safety question will receive prior NRC approval before implementation.

3. The requested license amendment does not involve a significant reduction in a margin of safety.

This change does not involve a reduction to the approved fire protection program or TS fire protection requirements. The TS fire protection requirements are being relocated, without alteration to PGE-1012. Since there is no change to the requirements, there is no reduction in the margin of safety.

As noted above, proposed changes to the TS requirements relocated to PGE-1012 will be evaluated by a safety evaluation in accordance with the requirements of 10 CFR 50.59 to determine whether an unreviewed safety question exists. Changes that do not represent an unreviewed safety question will receive prior NRC approval before implementation.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Attorney for licensees: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRR Project Director: Seymour H. Weiss

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: May 4, 1993

Description of amendment request: The licensee has requested an amendment to the Technical Specifications (TS) to revise TS Section 3.2 (Chemical and Volume Control System), TS Section 3.3 (Engineered Safety Features), and TS Section 4.1 (Operational Safety Review) to eliminate all references to the Boron Injection Tank (BIT). In addition, the requested amendment would revise TS Section 4.4 (Containment Tests) to remove the containment temperature reference in the containment leak test acceptance criteria.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the requirements of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

The proposed changes do not involve a significant increase in the probability of a previously-analyzed accident. These changes involve systems relied on to mitigate the consequences of an accident. In one accident case, analyses performed by Westinghouse show a higher [resulting] core power. This arises because the safety injection system must purge more water (conservatively assumed to be at 0 ppm boron) before injecting boron into the cold leg and the boron source (refueling water storage tank (RWST)) is both colder (T_{RWST} [less than] 40°F assumed) and contains a lower boron concentration than the BIT. This causes the power to initially rise to a higher peak owing to the delay and to subsequent decay at a slower rate after the boron reaches the core. However, the consequences of this increase in core power during a postulated accident clearly show adequate margins of safety within acceptable NRC criteria. The analyses performed demonstrate that it is acceptable to bypass, eliminate, or reduce the boric acid concentration of the Indian Point 3 Boron Injection Tank. The changes to the leak rate acceptance criteria and associated basis do not involve a significant increase in the probability or consequences of any accident. The leak rate test is not performed at the peak calculated temperature. The current postulated peak accident Containment pressure and temperature will be 42.29 psig and 261.5°F, which are clearly within design values. The new peak values are below the Containment design pressure and temperature of 47 psig and 271°F and the equipment qualification temperature of 290°F, and the leak rate acceptance criteria of 42.42 psig is conservative with respect to the current peak calculated pressure of 42.29 psig.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed changes, as analyzed, do not involve new or different kinds of accidents from those previously evaluated. The proposed changes involve existing systems and do not have un-analyzed affects on the ability to mitigate the consequences of postulated accidents. The consequences of postulated accidents involving these systems are presently described in the FSAR. The Westinghouse analyses only present the affects of the proposed changes on these consequences and the intended modifications of the systems to allow continued safe operation and increased plant availability and reliability. The changes to the leak rate acceptance criteria and associated basis will not change the overall system operation or testing.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The elimination of the Boron Injection Tank (BIT) does not involve a significant reduction in a margin of safety. The analyses performed to increase the ultimate heat sink allowed temperature (Reference 4 [to licensee's letter dated May 4, 1993]) assumed a 0 ppm boron concentration in the BIT. For the Mass and Energy/Containment Pressure analysis, the impact of the BIT elimination was addressed to assure the containment pressure and temperature remain below design limits. For cases including increases in core power, Departure from Nucleate Boiling (DNB) analyses show that the DNB design basis is met and that no consequential fuel failures are expected. For the changes to the leak rate acceptance criteria and associated basis both the peak temperature and pressure of the latest analysis remain within design values, and the leak rate acceptance criteria of 42.42 psig is conservative with respect to the current peak calculated pressure of 42.29 psig.

In the April 6, 1983 Federal Register, Vol. 048, No. 67, Page 14870, the NRC published a list of examples of amendments that are not likely to involve a significant hazards concern. Example (vi) of that list applies to the elimination of the BIT and states:

(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: May 18, 1993

Description of amendment request: The licensee commenced operating on a 24-month fuel cycle, instead of the previous 18-month fuel cycle, with fuel cycle 9. Fuel cycle 9 started in August 1992. In order to accommodate operation on a 24-month cycle, the licensee requested an amendment to the Technical Specifications (TS) and Environmental Technical Specifications (ETS) to incorporate the changes listed below:

(1) The licensee proposed changing the boric acid tank level calibration frequency (specified in TS Table 4.1-1) to accommodate operation on a 24-month cycle.

(2) The licensee proposed changing the boric acid makeup flow channel calibration frequency (specified in TS Table 4.1-1) to accommodate operation on a 24-month cycle.

(3) The licensee proposed changing the city water connection to charging pumps and boric acid piping testing frequency (specified in TS Table 4.1-3) to accommodate operation on a 24-month cycle.

(4) The licensee proposed changing the primary water storage tank channel calibration and functional testing frequency (specified in ETS Table 3.1-1) to accommodate operation on a 24-month cycle.

These proposed changes follow the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," as applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the requirements of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response:

The proposed changes do not involve a significant increase in the probability or consequences of any accident previously analyzed. These changes propose extending the surveillance intervals for chemical and volume control system testing. The changes do not involve any physical changes to the plant, nor do they alter the way any equipment functions. An evaluation of past equipment performance and other system testing (e.g., monthly tests) provides assurance that the longer surveillance intervals will not degrade system performance.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response:

The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed. These changes propose extending the surveillance intervals for chemical and volume control system testing. The changes do not involve any physical changes to the plant, nor do they alter the way any equipment functions. An evaluation of past equipment performance and other system testing (e.g., monthly tests) provides assurance that the longer surveillance intervals will not degrade system performance.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed changes do not involve a significant reduction in a margin of safety. These changes propose extending the surveillance intervals for chemical and volume control system testing. The changes do not involve any physical changes to the plant, nor do they alter the way any equipment functions. An evaluation of past equipment performance and other system testing (e.g., monthly tests) provides assurance that the longer surveillance intervals will not degrade system performance.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: May 6, 1993

Description of amendment request: This license change request would eliminate the requirement to place the filtration, recirculation, and ventilation system (FRVS) in operation when the reactor vessel level instrumentation is inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

PSE&G has, pursuant to 10 CFR 50.92, reviewed the proposed amendment to determine whether our request involves a significant hazards consideration. We have determined that operation of the Hope Creek Generating Station in accordance with the proposed changes:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

FRVS is an engineered safety features (ESF) system designed to reduce offsite doses significantly below 10CFR100 guidelines during a loss of coolant accident, a refueling accident, or a high radioactivity event in the reactor building. FRVS is therefore intended to mitigate the consequences of various accidents but has no impact relative to initiation of any accident scenario. As a result, changes to FRVS requirements may impact the consequences of previously analyzed accidents, but would not be expected to affect the probability of any previously analyzed accident.

Operation of FRVS is credited in the evaluation of the radiological consequences of a fuel handling accident and a loss of coolant accident (LOCA); however, initiation of FRVS on Level 2 is applicable only for LOCA mitigation.

The proposed changes remove the requirement to operate FRVS when the reactor level instrumentation is inoperable as long as the reactor level is maintained at least 22 feet 2 inches over the top of the reactor pressure vessel flange, the suppression pool level is maintained at greater than or equal to 5 inches indicated level, at least one channel of the suppression pool high level alarm is operable, and the spent fuel pool gates are removed. The intent of the requirement to place FRVS in operation in this situation is to compensate for the loss of the automatic Level 2 FRVS initiation signal.

Other measures are also available to compensate for the loss of the Level 2 signal. These include: (1) the capability to detect a significant loss of vessel inventory and the associated capability to manually initiate FRVS from the control room and (2) the other automatic FRVS initiation signals. We believe that, during flood-up conditions, these measures would provide adequate assurance that FRVS would already be in operation if the Level 2 setpoint were to be reached. As a result, the assumptions made relative to FRVS in the evaluation of the radiological consequences for the accident scenarios analyzed in the Hope Creek UFSAR [i.e., updated final safety analysis report] are unaffected and the proposed changes will therefore not significantly increase the consequences of any previously analyzed accident.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Deletion of the FRVS start with inoperable level instrumentation has no effect on the function or operation of any plant system nor does it involve any type of plant modification. Additionally, no new modes of plant operation are involved with these changes. The proposed changes therefore will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

As noted in Criterion 1 above, other measures are available to compensate for the loss of the Level 2 FRVS initiation signal. PSE&G believes that, with at least 22 feet 2 inches over the top of the reactor pressure vessel flange, the suppression pool level maintained at greater than or equal to 5 inches indicated level, at least one channel of the suppression pool high level alarm is operable, and the spent fuel pool gates removed, the level of assurance that FRVS would already be in operation if the Level 2 setpoint were to be reached is comparable to that provided by the Level 2 signal itself. We therefore conclude that the proposed changes will not significantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library; 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: May 18, 1993

Description of amendment request: The proposed amendment would revise the surveillance requirements of Technical Specification 4.4.1.2, Reactor Coolant Recirculation System Jet Pumps such that: (1) The acceptance criteria for

the indicated diffuser-to-lower plenum differential pressure of any individual jet pump will be increased from 10% to 20% from established patterns. (2) During single loop operation, the surveillance requirement to demonstrate operability of the jet pumps at least once every 24 hours will be revised to be applicable only to the jet pumps for the operating loop. (3) The footnote associated with Technical Specification 4.4.1.2 that requires the gathering of baseline data for two-loop or single-loop operation during startup following any refueling outage is proposed to be deleted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

PSE&G has, pursuant to 10CFR50.92, reviewed the proposed changes to determine whether our request involves a significant hazards consideration. We have determined that operation of Hope Creek Generating Station in accordance with the proposed change:

1. Will not involve a significant increase in the probability or consequences of an accident [. . .] previously evaluated.

Increasing the acceptance criteria from 10% to 20% for the diffuser-to-lower plenum D/P [differential pressure] of any individual jet pump is consistent with the recommendations of GE SIL 330.

This criterion, along with the other criteria of Surveillance Requirement 4.4.1.2, will ensure that possible jet pump degradation is detected.

Degradation of an inactive jet pump during single loop operation is not considered credible due to significantly reduced stresses applied to the jet pump beam. Surveillance testing of the operating jet pumps and any surveillance testing completed prior to removing a recirculation loop from operation will continue to ensure that jet pump integrity is maintained. This will ensure that the core can be reflooded to a level of two thirds of the core height following a LOCA [loss of coolant accident].

Baseline data collection will be performed when single loop operation is entered for the first time during an operating cycle. Previous operating cycle baseline data for single loop operation will be utilized until new baseline data analysis can be completed. This previous data, along with surveillance results taken during two loop operation will provide the same degree of confidence that jet pump integrity is maintained. This will ensure that the core can be reflooded to a level of two thirds of the core height following a LOCA.

Therefore, the operation of Hope Creek Generating Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident or malfunction of equipment important to safety previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendment to the jet pump surveillance requirements will continue to ensure that any significant jet pump degradation will be detected prior to jet pump failure. Failure of an inactive jet pump located in an inactive recirculation loop during single loop operation is not considered credible as discussed above. Therefore, the possibility of a new or different kind of accident previously evaluated is not created.

3. Will not involve a significant reduction in a margin of safety.

The proposed amendment to the jet pump surveillance requirements will continue to ensure that any significant jet pump degradation will be detected prior to jet pump failure. Jet pump integrity will be maintained thereby assuring the ability to allow reflooding of the core to a level of two-thirds core height during the reflood phase of a LOCA as well as maintain the assumed blowdown flow during a LOCA.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: May 21, 1993

Description of amendment request: The licensee is proposing to revise surveillance requirement 4.8.1.1.2.h.3 to increase the voltage limit to 4785 volts (from 4580 volts) when performing the 18-month diesel full load rejection test.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

PSE&G has pursuant to 10CFR50.92, reviewed the proposed amendment to determine whether our request involves a significant hazards consideration. We have determined that:

1. The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change will not involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed change affects a surveillance requirement of the diesel generators which is performed along with various other tests to demonstrate operability. The operability of the diesel generators ensures that sufficient power will be available to supply the safety related equipment required for the safe shutdown of the facility and the mitigation and control of accident conditions within the facility during power operation. The operability during shutdown and refueling ensures that the facility can be maintained in the shutdown or refueling condition for extended time periods and ensures sufficient instrumentation and control capability is available for monitoring and maintaining the unit status.

The purposes for diesel generator operability as described above do not involve the probability of accidents that are already evaluated, but rather the diesel generators can impact the consequences of an accident (e.g. if one were to fail). This change, however, does not affect the diesels' ability to mitigate an accident nor does it affect its operability.

The purpose of performing a full load rejection test is to demonstrate that the engine will remain available (i.e., will not trip) if for some reason the generator output breaker were to open with the engine carrying all the design safety loads or for some other event that would cause a simultaneous loss of all loads. If this rejection were to occur, closing the output breaker and reloading the generator as quickly as possible would be desirable. Since there is no trip involved with a high voltage condition that might be experienced on a load rejection, the reason for having such a criteria is to demonstrate that the voltage regulator is capable of maintaining the generator stable.

The second parameter used as an acceptance criteria to demonstrate stability on a load rejection is engine speed. This tests the operation of the governor and the ability to adequately maintain engine control. Though 115% of nominal speed is given in the Committed Regulatory Guides as the acceptance criteria, engine speed is independent of voltage and is not part of this LCR [license change request].

The change being performed increases the acceptable voltage by 5% (205 volts) that the generator might experience on a loss of full load. Thus, the total acceptable value would be 15% (625 volts) over the nominal rating of 4160 volts. There is no detrimental effects on the generator if 4785 volts would be experienced. During the initial manufacturer's acceptance test, a high-pot on the generator was performed with a voltage of 1.5 times the nominal rating (6240 volts) applied to the unit. On the load rejection, the subsequent increase in voltage is a momentary spike as the voltage regulator will return the voltage to a lower steady state unloaded value. Operating the generator with a high voltage would have an effect on the

loads being supplied. However, this does not need to be evaluated since at the time the voltage spike would be experienced there would be no loads connected to the diesel generator. Only the generator would experience the increase in voltage and not the associated loads. The effect of this slight increase in voltage would have a negligible effect on the machine. The windings are able to withstand voltage values that are substantially higher. The point at which the insulation and connections break down (e.g. BIL value) are also substantially higher.

It can therefore be concluded that the increased voltage value on which the testing acceptance is based will not have an effect on the diesel generator operability. Since operability of the diesels is not effected, there is no increase in the consequences of an accident previously evaluated.

2. The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change involves an increase in the upper limit for a test acceptance criteria. There are no physical changes that are to be performed to the plant as a result of this change to the Technical Specifications nor is there a change to the manner in which the plant is operated. As discussed above, this new value does not affect the operability of the diesel generators. Therefore, no new or different kind of accident is created by this change.

3. The operation of Hope Creek Generating Station (HCGS) in accordance with the proposed change does not involve a significant reduction in a margin of safety.

The change does not affect the diesel generators' ability to mitigate the consequences of any loss of power accident. Allowing the generator an additional 205 volts increase for a loss of continuous rated load does not affect the ability to recover from the anticipated transient. All design requirements and parameters of the emergency diesel generators will be maintained. It [is] concluded that this change does not involve a significant reduction in safety margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Sacramento Municipal Utility District (SMUD, the licensee), Docket No. 50-312, Rancho Seco Nuclear Generating Station (RSNGS), Unit No. 1, Sacramento, California

Date of amendment request: January 19, 1993, and revised May 14, 1993

Description of amendment request: This proposed change would modify the SMUD nuclear organization that would oversee the operation of RSNGS at least through the Custodial SAFSTOR phase of the RSNGS decommissioning project. SMUD proposed the following nuclear organization and Rancho Seco Permanently Defueled Technical Specification (PDTS) changes:

1. Replace the Deputy Assistant General Manager (AGM), Nuclear position with a new position, the Manager, Plant Closure & Decommissioning (Plant Manager). The Plant Manager would take over the Rancho Seco site management responsibilities, previously held by the Deputy AGM, Nuclear, and be directly responsible for the overall day-to-day safe operation and maintenance of the Rancho Seco nuclear facility during the Permanently Defueled Mode (PDM).

2. Create a new corporate position, the Deputy AGM, Operations. The SMUD General Manager, through the AGM & Chief Operations Officer and the Deputy AGM, Operations would have the ultimate corporate responsibility for the overall safe operation of the Rancho Seco nuclear facility. The new position, Deputy AGM, Operations, is taking over the direct corporate responsibilities that the AGM & Chief Operations Officer had for ensuring the overall safe operation of the Rancho Seco nuclear facility during the PDM.

3. Combine PDTS Sections D6.2.1d and D6.2.1e into one specification in accordance with the guidance contained in NRC Generic Letter 88-06, "Removal of Organization Charts from Technical Specification Administrative Control Requirements." The individuals that carry out quality assurance functions would report to the appropriate on-site manager and shall have organizational freedom to ensure their independence from operating pressures. Furthermore, the licensee proposes to add a sentence to Specification D6.2.1d to clarify the relationship between the Quality organization supervisor and the Plant Manager and Deputy AGM, Operations, and indicate how the quality assurance functions are maintained independent from operating pressure.

4. The Management Safety Review Committee (MSRC) would report to and advise the new corporate position directly responsible for the Rancho Seco nuclear facility, the Deputy AGM, Operations.

5. The Plant Review Committee (PRC) would report to and advise the new management position directly responsible for the overall day-to-day operation and maintenance of the facility, the Plant Manager. The Plant Manager would replace and take over the duties previously performed by the Deputy AGM, Nuclear.

6. A change is to be made to the description of the position, under whom audits of facility activities are performed. The specific title, Manager, Nuclear Quality Assurance, is changed to the more generic position description, Quality organization supervisor.

7. Reference to the Radiation Protection Manager (RPM) is to be editorially modified to clarify that the individual assigned the RPM function will meet the RPM qualification requirements specified in NRC Regulatory Guide 1.8, September 1975, as required by PDTS Section D6.3, Facility Staff Qualifications.

The licensee also proposes to make the following editorial changes:

1. Reference in the PDTS to the Updated Safety Analysis Report (USAR) and the Operating License (OL) are to be changed to the Defueled Safety Analysis Report (DSAR) and the Rancho Seco Possession-Only License (POL), respectively, and

2. A wording change is to be made to PDTS Section D6.5.1.4 (PRC Meeting Frequency) to ensure Specification D6.5.1.4 clearly states that the PRC may convene more frequently than once per month at the discretion of the PRC Chairman or the Plant Manager.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

• A significant increase in the probability or consequences of an accident previously evaluated in the SAR will not be created, because the proposed organization changes continue to provide the management oversight features that are important to ensure overall safe operation of the Rancho Seco nuclear facility during the PDM, through the Custodial SAFSTOR decommissioning phase.

• The proposed amendment will not create the possibility of a new or different type of accident than previously evaluated in the SAR, because the changes are administrative in nature, maintain the appropriate organization relationships that will ensure safe plant operation in the PDM, and do not provide any new mechanisms by which an accident can occur.

• The proposed PDTS amendment will not involve a significant reduction in the margin of safety, because the District will continue to maintain the appropriate administrative controls, organizational relationships, and corporate and on-site line management responsibilities necessary to ensure Rancho Seco is operated safely during the PDM.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822

Attorney for licensee: Jan Schori, Esquire, Sacramento Municipal Utility

District, 6201 Street, P.O. Box 15870, Sacramento, California 95813

NRC Project Director: Seymour H. Weiss

Southern California Edison Company, et al, Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: May 12, 1993

Description of amendment request: This proposed change would replace in its entirety the existing set of Technical Specifications incorporated in

Facility Operating License No. DRP-13 as Appendix A with a set of Permanently Defueled Technical Specifications (PDTS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

Only two of the accidents that are evaluated in Chapter 15 of the UFSAR remain applicable for the permanently defueled plant: (1) a loss of offsite power (LOP) and (2) a fuel handling accident. The other Chapter 15 accidents are not applicable during the defueled condition. Maintaining the permanently defueled plant in accordance with the proposed PDTS does not affect the probability of occurrence of an LOP, but the probability of a fuel handling accident will be reduced. The consequences of both accidents will be reduced during the Permanently Defueled Mode. Additionally, the ability of the fuel storage facility to withstand other applicable UFSAR events, natural phenomena, and fires is either unchanged from the existing licensing basis or is improved during the defueled condition.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

Operating the permanently defueled plant in accordance with the proposed PDTS does not create the possibility of a new or different kind of accident from any previously considered. Most of the existing plant systems and functions will not be operational during the Permanently Defueled Mode since power operations are not allowed and all of the fuel at SONGS 1 is stored in the spent fuel pool. However, all systems and components that are necessary for safe fuel handling and storage activities will be maintained operable during the permanently defueled condition. The proposed PDTS provide operation and surveillance requirements and administrative controls which are sufficient to ensure that the required systems and components will be operable during the Permanently Defueled Mode.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The proposed PDTS are sufficient to ensure no reduction in a margin of safety, in part, because of the reduced range of design basis accidents against which the plant must be protected once the plant is permanently defueled. Only the LOP and fuel handling Chapter 15 accidents are relevant during the Permanently Defueled Mode. The margins of safety for both of these accidents will be improved by maintaining the plant in accordance with the proposed PDTS. None of the other Chapter 15 accidents are applicable since power operation will not occur during the defueled condition. Additionally, the margins of safety for other applicable UFSAR events, natural phenomena, and fires are either improved during the Permanently Defueled Mode or remain unchanged from the plant's current licensing basis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: Seymour H. Weiss

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: March 5, 1993

T3

Description of amendment requests: The licensee proposes to revise Technical Specification (TS) 3/4.7.1.1, "Turbine Cycle." This proposed change will increase the as-found setpoint tolerance for the Main Steam Safety Valves (MSSVs) from +/-1% to +2%/-3%. The existing ACTION statement will be revised to require HOT STANDBY instead of HOT SHUTDOWN. Table 3.7-2 will be revised to require a reduction in steady state operating power with MSSVs INOPERABLE. Also included in this proposed TS change are several editorial, format, and Bases changes which clarify the intent of this TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:No

The proposed change to increase the as-found setpoint tolerance of the Main Steam Safety Valves (MSSVs) to +2%/-3% maintains safety analysis requirements. Because the upper limit lift pressures are higher, peak primary and secondary pressures are affected. However, reanalyses of the limiting overpressure events, which are the Loss of Condenser Vacuum (LOCV) and Feedwater Line Break (FWLB), demonstrate that the proposed upper limits do not significantly affect peak primary or secondary pressures. Therefore, the proposed upper limits maintain the MSSVs within safety analysis limits. Also, margin between the as-left setpoints and the upper limit of the as-found setpoint tolerance is maintained by the proposed footnote to Limiting Condition For Operation 3.7.1.1 and Table 3.7-1.

If the MSSVs are set below the upper limit lift pressures, acceptable overpressure results are obtained. Therefore, lowering the minimum allowable lift pressure to -3% below each setpoint maintains valve setpoint staggering, safety analysis requirements, and sufficient margin between MSSV lift pressures and peak operating pressure. Also, a setpoint tolerance of -3% for the lowest set pair of valves maintains the current dose assumption associated with a Steam Generator Tube Rupture.

The proposed as-found setpoints have a marginal effect on transient Departure from Nucleate Boiling Ratio (DNBR). However, TS 3/4.2.4 reserves adequate DNBR overpower margin to ensure specified acceptable fuel design limits are not exceeded in the event of an Anticipated Operational Occurrence. The limiting required overpower margin is not adversely affected by this proposed change to MSSV setpoints.

Because this change still requires MSSVs to be set within safety analysis limits, there is no significant increase in the probability or consequences of a previously evaluated accident.

The change to ACTION statement a requires entry into HOT SHUTDOWN conditions within 12 hours instead of COLD SHUTDOWN within 30 hours. Reducing the completion time to 12 hours is more conservative than the existing requirements. Furthermore, the MSSVs are not required to be OPERABLE in HOT SHUTDOWN. Therefore, there is no significant increase in the probability or consequences of a previously evaluated accident due to this change.

Revising the title of column 2 of Table 3.7-2 to "Maximum Allowable Steady State

Power" requires reduction of Steady State Thermal Power instead of reduction of linear power high trip setpoints when one or more MSSVs are inoperable. The allowable power values are based on sufficient overpressure mitigation and decay heat removal capacities for the number of operable MSSVs. Reducing the allowable steady state powers from existing values provides margin for power indication error and is more conservative than existing allowable steady state power values. Reactor trip for overpressure events is maintained through a high pressurizer pressure trip. Analysis of the Control Element Assembly (CEA) Ejection and Withdrawal events initiated at reduced power levels demonstrates sufficient relief capacities with normal trip setpoints. Therefore, there is no significant increase in the probability or consequences of a previously evaluated accident due to this change.

The additional ACTION statement is a clarification to provide more explicit guidance to the operators for all configurations of inoperable MSSVs. Therefore, this change does not involve a significant increase in the probability or consequences of a previously evaluated accident.

Deleting the orifice size column from Table 3.7-1 is an editorial change only. This information is not used by the operators, nor do they have any control over MSSV orifice size. Therefore, removing this information does not significantly increase the probability or consequences of a previously evaluated accident.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No

MSSVs are designed to provide overpressure protection and decay heat removal during design basis events. Therefore, widening the as-found setpoint tolerance to +2%/-3% for the MSSVs affects only those previously evaluated events which require MSSV actuation. The only effect MSSV setpoints have on normal plant operation is inadvertent opening of a valve due to a low setpoint. The minimum lift pressure of 1067 psia is sufficiently higher than peak secondary operating pressures so that the probability of inadvertent MSSV opening is not increased. Therefore, this proposed change will not create the possibility of a new or different type of accident from any accident previously evaluated.

Requiring HOT SHUTDOWN entry instead of COLD SHUTDOWN entry in Action a is acceptable because there is no credible event different from any previously evaluated requiring MSSV operation in HOT SHUTDOWN. Therefore, this proposed change will not create the possibility of a new or different type of accident from any accident previously evaluated.

Requiring reduced steady state power levels with one or more inoperable MSSV instead of reducing linear power level high trip setpoints is acceptable because reactor trip for overpressurization events occurs on high pressurizer pressure for all events. For the CEA Ejection or Withdrawal events, sufficient relief capacity is maintained by operating according to Table 3.7-2 with normal high power trip setpoints. A trip on reduced high linear power is unnecessary. Normal administrative controls provide reasonable assurance that the power limits for operation with INOPERABLE MSSVs are not exceeded. Therefore, there is no possibility of a new or different type of accident from any accident previously evaluated.

The additional action statement to require a mode reduction when less than five MSSVs are OPERABLE for any steam generator is a clarification to provide explicit guidance to the operators for all configurations of inoperable MSSVs. This is more conservative than the existing requirements. Therefore, this change does not create the possibility of a new or different type of accident from those previously evaluated.

Deleting the orifice size column from Table 3.7-1 is an editorial change only. This information is not used by the operators, nor do they have any control over MSSV orifice size. Therefore, removing this information does not create the possibility of a new or different type of accident from those that have been previously evaluated.

3. Will operation of the facility according to this proposed change involve a significant reduction in a margin of safety?

Response: No

The only margin of safety affected by this change is the increase in peak primary and secondary pressure due to raising the upper limit of allowable lift pressures. The limiting overpressure events, FWLB and LOCV were reanalyzed with the proposed upper limits and peak primary and secondary pressures remain within design limits. Therefore, there is no significant reduction in a margin of safety.

The change to a +2%/-3% expanded as-found setpoint tolerance maintains safety analysis requirements. The change requiring HOT SHUTDOWN entry instead of COLD SHUTDOWN entry is more appropriate than the existing specification. The change requiring a reduction in steady state power level instead of reducing the linear power level high trip setpoint continues to maintain the plant at a power level based on the operability of MSSVs. The additional ACTION statement is a clarification to provide explicit guidance to the operators for all configurations of inoperable MSSVs. Deleting the orifice size column from Table 3.7-1 is an editorial change only. Therefore, there is no significant reduction in a margin of safety as a result of this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770

NRC Project Director: Theodore R. Quay

Southern California Edison Company, et al., Docket No. 50-362, San Onofre Nuclear Generating Station, Unit No. 3, San Diego County, California

Date of amendment requests: April 30, 1993

T3

Description of amendment requests: The licensee proposes to revise Technical Specifications (TS) 3/4.4.8.1. "Pressure-Temperature Limits," TS 3.4.8.3.1, "Overpressure Protection Systems-RCS Temperature less than or equal to 302°F," and TS 3.4.8.3.2, "Overpressure Protection Systems-RCS Temperature ≤302°F," and associated Figures and Bases. The proposed change will revise the Reactor Coolant System (RCS) Pressure-Temperature (P-T) limit curves and the Low Temperature Overpressure Protection (LTOP) enable temperatures to be effective until 8 effective full power years (EFPY) of operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

To compensate for any increase in the reactor vessel nil ductility reference temperature(RT_{NDT}) caused by neutron irradiation, limits on pressure-temperature (P-T) relationships are periodically changed in accordance with 10 CFR 50, Appendix G. This allows the materials for the pressure-retaining components of the reactor coolant pressure boundary to stay within their stress limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, over its service lifetime.

The updates to [TS] Figures 3.4-2, 3.4-4, and 3.4-5 incorporate the changes to the P-T limits calculated using conservative fluence values. The new P-T limit curves (Figures 3.4-6 and 3.4-7) for Remote Shutdown cooldown operation incorporate the higher Total Loop Uncertainties (TLUs) for pressure for shutdown instruments on the Remote Shutdown panel as compared to the lower TLUs for pressure for Control Room shutdown instruments. The temperature TLUs for both the Remote Shutdown instruments and the Control Room shutdown instruments are equal. These updates maintain margins of safety against nonductile

failure of the reactor pressure vessel based on the results of the Unit 3 surveillance capsule analysis and the updated material properties evaluated in response to GL 92-01, Revision 1 "Reactor Vessel Structural Integrity." Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change to the Low Temperature Overpressure Protection (LTOP) enable temperatures is in accordance with NUREG-0800 Branch Technical Position [BTP] RSB 5-2, Revision 1, "Overpressurization Protection of Pressurized Water Reactors While Operating at Low Temperatures." The results of the most limiting energy addition transient which is driven by the differential temperature between the Reactor Coolant System (RCS) and the steam generator are not changed by this revision to the LTOP. As such the proposed change is bounded by the original analysis. Therefore, the proposed LTOP enable temperature change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change incorporates the change in reactor vessel RT_{NDT} from different irradiation stages to reflect the accumulation of fast neutron exposure. Any increase in RT_{NDT} due to irradiation is compensated for by limiting pressure-temperature relationships in accordance with 10 CFR 50 Appendix G to ensure pressure-retaining components of the reactor coolant pressure boundary stay within their stress limits over their service lives. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

All LTOP design basis energy addition and mass addition transients have been previously evaluated and remain bounding. The proposed changes do not result in any system configuration changes which would affect the capability of the Shutdown Cooling System (SDCS) Relief Valve to respond to design basis transients. Operation of the plant in accordance with TSs 3.4.1.3, "Hot Shutdown," and 3.4.1.4.1, "Cold Shutdown-Loops Filled," remain unchanged. Therefore, the proposed LTOP enable temperature changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in the margin of safety?

Response: No.

The purpose of the P-T limit curves is to limit thermal stresses induced by the normal load transients, reactor trips, and unit startup and shutdown operations. The proposed revision to the P-T limit curves incorporates the effects of neutron-induced embrittlement in the pressure-retaining component materials to preserve the margin of safety required by 10 CFR 50, Appendix G. Therefore, the proposed change will not involve a significant reduction in a margin of safety

The proposed LTOP enable temperatures of 267°F for heatup, and 250°F for normal and Remote Shutdown cooldown meet the recommendations of NUREG-0800 Branch Technical Position RSB 5-2, Revision 1. The proposed LTOP enable temperatures will assure the SDCS Relief Valve will be aligned to the RCS system to mitigate the consequences of low temperature overpressure events. Furthermore, the maximum RCS pressure used in the analysis bounds the worst case scenario of the postulated overpressurization event. Hence, it is assured that the P-T limits will not be exceeded by overpressurization transients. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770

NRC Project Director: Theodore R. Quay

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: March 19, 1993 (TS 332)

Description of amendment request: The proposed amendment changes the surveillance frequency for emergency diesel generator maintenance inspections from once per year to 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequence of any accident previously evaluated.

The proposed surveillance interval has been determined by the manufacturer to be adequate to detect wear prior to any significant reduction in either capability or availability of the emergency diesel generators; therefore, the accident mitigation capability of the plant has not been adversely affected. Emergency diesel generator availability is expected to increase as a result of reduced outage time. Other surveillances which are specifically related to emergency diesel generator capability are not being changed. The accident mitigation capability of plant features is not reduced and the proposed amendment does not cause or allow the reactor plant to be operated under different conditions than currently licensed. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident which has been previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed amendment does not create or cause any new modes of operation. External conditions required for operations are not changed by the amendment. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The wear, corrosion and aging acceptance criteria associated with diesel generator inspection are not being changed. The reduction in the ability to detect wear has been evaluated by the manufacturer to be insignificant because the wear rate is small relative to the inspection interval under normal nuclear plant standby service. The availability of the diesel generators is expected to improve because of a reduction in maintenance outage time. For the above reasons, the capability and availability of the diesel generators to perform protective actions is not significantly reduced. Since the diesel generators remain capable of performing protective actions when required and before any plant parameters approach safety margins, the proposed amendment does not change any accident or transient analyses which has been used as a plant licensing basis. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: March 25, 1993 (TS 322)

Description of amendment request: The proposed amendment revises

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technical specifications 3.1/4.1, 3.2/4.2, and 3.7/4.7 to eliminate reactor scram and main steamline isolation valve closure requirements associated with the Main Steamline Radiation Monitors (MSRM).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence of these accidents is based on initial conditions and assumptions which are not dependent on the use of or interactions with the MSRM system. Elimination of the scram and isolation function on a high radiation signal will not affect operation of other Reactor Protection System or primary containment isolation functions.

The analysis of the control rod drop accident is described in Section 14.6.2 of the BFN [Browns Ferry Nuclear Plant] Updated Final Safety Analysis Report (UFSAR). This analysis takes credit for closure of the MSIVs [Main Steam Isolation Valves] upon receipt of a MSRM high radiation signal. This closure signal limits the release of radioactivity via the condenser. Removal of the MSRM high radiation trip signal will delay the MSIV closure, allowing more radioactivity to reach the condenser and eventually be released. Although the resulting offsite doses calculated in the BWROG report are higher than those previously reported in the BFN UFSAR, they are not a significant increase and remain well below the limits of 10 CFR Part 100.

[The licensee has also provided information to support its claim that the performance of the Browns Ferry Nuclear Plant if the MSRM functions are modified as proposed will be bounded by a generic analysis performed by the General Electric Company. This analysis is described by a General Electric Licensing Topical Report, NEDO-31400, "Safety Evaluation For Eliminating The Boiling Water Reactor Main Steam Line Radiation Monitor." The NRC staff provided a safety evaluation of NEDO-31400 on May 15, 1987.]

In addition the Unit 2 specific calculation supports the change to the MSRMs calibration frequency of once/18 months.

Therefore, the proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from an accident previously evaluated.

This amendment affects the trip functions of the MSRMs. The sole purpose of these trip functions is to mitigate the consequences of a control rod drop accident (CRDA), a previously analyzed event. Removal of the high radiation trip signal was justified by NEDO-31400 which has been reviewed and accepted by the NRC. The Unit 2 specific calculation supports the change to the MSRMs calibration frequency of once/18 months. Therefore, the possibility of an accident of a new or different type is not created by this change.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The BFN Technical Specification Bases state that these monitors were provided to detect gross fuel failure resulting from the CRDA and provide MSIV closure to maintain radiological releases below 10 CFR Part 100 limits. As discussed in the NRC's SER approving NEDO-31400, the calculated radiological release consequences of the bounding CRDA are well within the acceptable dose limits as specified in 10 CFR Part 100. The Unit 2 specific calculation supports the change to the MSRMs calibration frequency of once/18 months. Unit 1 and 3 calculations will be performed prior to their restart to confirm their calibration frequency. Therefore, these changes will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: February 17, 1993

Description of amendment request: The proposed amendment would change some of the trip setpoints and the allowable values contained in Technical Specification (TS) 3/4.3.2.1, "Safety Features Actuation System Instrumentation," and TS 3/4.3.2.2, "Steam and Feedwater Rupture Control System Instrumentation." The changes would incorporate revised instrument string error allowances based on the methodology of the Instrument Society of America Standard, ISA S67.04-1982, "Setpoints for Nuclear Safety Related Instrumentation." Also, an increase in the containment high radiation trip is proposed to provide margin to accommodate changes in background radiation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1a. The proposed change will not involve a significant increase in the probability of an accident previously evaluated because the analyses were performed using an industry standard that has been endorsed by the NRC in Regulatory Guide 1.105, Revision 2, "Instrument Setpoints for Safety Related Instrumentation."

1b. The proposed change will not involve a significant increase in the consequences of an accident previously evaluated because the licensee's analyses show that the increase due to a letdown line break event as a result of changing the reactor coolant system pressure - low setpoint is small and still meets the NRC Standard Review Plan acceptance criteria that doses be below 10% of 10 CFR Part 100 guideline values. Also, the analyses show that the remaining setpoint changes do not increase the radiological consequences.

2. The proposed change will not create the possibility of a new or different kind of accident from any previously evaluated accident because there are no design modifications or hardware changes being made.

3. The proposed change will not involve a significant reduction in a margin of safety because it is based on analyses performed using an industry standard that has been endorsed by the NRC in Regulatory Guide 1.105, Revision 2.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037

NRC Project Director: John N. Hannon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: May 6, 1993

Description of amendment request: The proposed amendment would change the reporting frequency requirements of Technical Specification (TS) 6.9.1.11 and related TS from semiannually to annually for submission to the NRC of the Radioactive Effluent Release Report consistent with the recent revision to 10 CFR 50.36a, "Technical Specifications on Effluents from Nuclear Power Reactors." Also, the proposed changes would clarify the reporting requirements contained in TS 4.4.5.5c, TS Table 4.4-2, and associated Bases 3/4.4.5 regarding notification to the NRC of steam generator tube inspection Category C-3 results. This would make the reporting requirements consistent with the New Standard Technical Specifications, NUREG-1430, Revision 0, TS 5.9.2. Finally, an editorial correction is also proposed to TS 4.4.5.2a.3 regarding the definition of a steam generator tube inspection.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no initiators or assumptions for a previously evaluated accident are affected by the proposed administrative reporting requirement changes to TS 4.4.5.5c, Table 4.4-2, 1.32, 3.3.3.9, 3.11.1, 6.5.1.6s, 6.9.1.11 and 6.15, and Bases 3/4.4.5, or by the proposed editorial correction to TS 4.4.5.2a.3.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no equipment, accident conditions, or assumptions which could lead to an increase in administrative reporting requirement changes or editorial correction.

2a. Not create the possibility of a new kind of accident from any accident previously evaluated because no new accident initiators are being introduced, no new hardware changes are being made, no new testing is being instituted and no new operating manipulations requirement changes or editorial correction.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because no different accident initiators are being introduced, no changes in hardware are being made, no different testing is being instituted, and no different plant manipulations are being created by these proposed administrative reporting requirement changes or editorial correction.

3. Not involve a significant reduction in a margin of safety because the proposed changes do not reduce or adversely affect the capabilities of any plant structures, systems or components, and involve only administrative reporting requirements and an editorial correction.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037

NRC Project Director: John N. Hannon

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: December 15, 1992

Description of amendment request: The proposed amendment would make an administrative change to the SRM/IRM Surveillance Requirement for "Detector Not Fully Inserted" trip function and make "note 6" under calibration, "NA."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change to correct the "Detector Not Fully Inserted" calibration interval from "not to exceed once per week" to "NA" reflects what is considered to be a correction to the Technical Specifications. The proposed calibration interval is consistent with that which appears in the BWR Standard Technical Specifications and the Technical Specifications of some other BWRs. The procedures currently performed to assure the "Detector Not Fully Inserted" Function is operable are actually covered by functional testing and equipment maintenance. This existing testing and maintenance, which will not change, has demonstrated that it is appropriate to assure reliable operation of the subject trip functions. The proposed change does not result in any system hardware modification or new plant configuration. The requested change to the existing calibration interval does not impact any FSAR safety analysis involving the Control Rod Block System. Operability is still assured and Control Rod Block Functions are still provided as required. Therefore, it is concluded that there is not a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed change to correct the calibration interval for control rod block instrumentation meets the intent of Technical Specification requirements for assuring operation of equipment as designed. This change does not relieve the operation of the Control Rod Block Instrumentation from existing requirements and this instrumentation system is still bounded by the assumptions used in the safety analysis. Based upon past operational history, current functional testing and maintenance performed at Vermont Yankee adequately assure operation as designed. The proposed change does not involve any change in Technical Specification setpoints, plant operation, redundancy, protective function or design basis of the plant. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Changing the calibration interval for the SRM and IRM "Detector Not Fully Inserted" Function from "not to exceed once per week" to "NA" does not affect any existing safety margins. Operation, testing and maintenance of this control rod block instrumentation will remain the same. The change is considered an Administrative change since it is believed to be correcting an error. None of the surveillances and testing presently performed on the instrumentation will change. Also, there are no additional surveillances required to be performed on this instrumentation. System function and design basis is maintained. Assurance that Control Rod Block Instrumentation operates within limits determined to be acceptable continues to be provided. Based upon the above, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The Commission has provided guidance for the application of the standards in 10CFR50.92 by providing certain examples of (51FR7751, dated March 6, 1986) of actions likely to involve no significant hazards consideration. One of these examples (i) is a purely administrative change to the Technical Specifications; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. This proposed change falls within the scope of this Commission example since it involves correcting a Technical Specification entry but not deleting any of the present surveillance or testing performed on the subject equipment.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One

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International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 8, 1993, as supplemented by letter dated June 2, 1993.

Description of amendment request: The proposed amendment would delete Technical Specification Section 3.3.3.7, Chlorine Detection Systems, and the associated Bases as a result of a future plant modification to remove the one-ton chlorine storage containers from the site. This proposed change would be made effective upon the removal of the one-ton chlorine storage containers from the site.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves deletion of the chlorine detection system technical specification based on a plant modification to remove the one-ton chlorine storage containers from the site. Therefore, there would be no increase in the probability of a chlorine release event. The worst case scenario per USAR [Updated Safety Analysis Report] Section 2.2.3.1.7 is eliminated by this change. Release of chlorine from a 150 lb. container at a distance of 100 meters or more from the control room normal air intake will not impair the control room operators before manual isolation of the ventilation system could be performed per Regulatory Guide 1.95. Therefore, the change would not involve an increase in the consequences of a chlorine release event.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change involves only the deletion of the chlorine detection system technical specifications based on a plant modification to remove the one-ton chlorine storage containers from the site. The release of 150 lbs. of chlorine from the Shop Building is bounded by Regulatory Guide 1.95, Section C.2 in that manual isolation capability for the control room ventilation system is acceptable. Therefore, the proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change would not alter the margins of safety provided in the existing USAR analysis for chlorine release events since the bases for the existing margin of safety, which are the Regulatory Guide 1.95 requirements, would not be altered by the change. The Regulatory Guide defines design requirements for chlorine release mitigation systems under various conditions of chlorine quantity and location (distance from the control room normal air intake) of chlorine storage/use areas. The proposed change to delete Technical Specification 3.3.3.7 would not result in a condition that conflicts with the Regulatory Guide. In fact, by eliminating the one-ton chlorine containers, this actually increases the margin of safety. Therefore, the proposed change would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: Suzanne C. Black

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 1, 1993

Description of amendment request: The amendment request proposes revising Technical Specification Section 6.9.1.7, Semiannual Radioactive Effluent Release Report, and associated reporting requirements in Technical Specification Sections 3.11 and 6.14 to extend the reporting period from semiannually to annually. The annual report submission date is proposed to be before May 1 of each year.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. These changes involve an administrative change and as such, have no effect on plant equipment or accident evaluations.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. These changes either do not impact any administrative controls nor involve physical alterations to the plant with respect to radioactive effluent. These changes do not involve any change to the installed plant systems or the overall operating philosophy of WCGS [Wolf Creek Generating Station].

3. Do the proposed changes involve a significant reduction in the margin of safety.

The proposed changes are an administrative change and do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: Suzanne C. Black

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 1, 1993

Description of amendment request: The request proposes a change to Technical Specification 3.8.3.1, Onsite Power Distribution, related to the allowable outage time for two motor control centers associated with the essential service water system. The proposed change would make the allowable outage time for the two motor control centers consistent with the limiting conditions of Technical Specification 3.7.4, Essential Service Water System.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated.

The implementation of the proposed technical specification change does not

involve any modifications to the physical plant or any change to the methods of operation of plant systems. The proposed change revises the limiting conditions for the essential service water system (ESWS) motor control centers (MCCs) contained within the technical specification covering the on-site A.C. power distribution system and eliminates inconsistent requirements for the ESWS. This change will not lessen the requirements imposed on ESWS operability. Therefore, this proposed change will not increase the probability or consequences of any accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated.

The implementation of the proposed technical specification change does not involve any modifications to the physical plant or any change to the methods of operation of plant systems. As noted above, the proposed change eliminates inconsistent requirements from the technical specifications, but does not lessen the requirements on ESWS operability imposed by the technical specifications. Therefore, the proposed change does not create the possibility of any new or different kind of accident from those previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety.

The proposed change revises the existing 8 our limiting condition to 72 hours for the ESWS MCCs contained in the technical specification covering the on-site A.C. power distribution system and thereby eliminates inconsistencies with the requirements of the technical specification sections explicitly governing the ESWS. The requirements imposed by the technical specifications on ESWS operability are in no way lessened by this change. Therefore, this proposed change does not involve a reduction in any margin of safety.

The staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: Suzanne C. Black

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: June 30, 1992

Brief description of amendment: The amendment revised Technical Specifications 3.3.1, "Reactor Protection System Instrumentation," and 6.9.1.9, "Core Operating Limits Report (COLR)," to transfer the specific value of the simulated thermal power time constant from the Technical Specifications to the COLR.

Date of issuance: May 28, 1993

Effective date: May 28, 1993

Amendment No. 48

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 19, 1992 (57 FR 37561)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 28, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: February 26, 1993

Brief description of amendments: The amendments revise the surveillance interval for the channel functional test of the Reactor Protection System Electrical Protective Assemblies (RPS-EPA units) per the guidance provided by Generic Letter 91-09, "Modification of Surveillance Interval for the Electrical Protective Assemblies in Power Supplies for the Reactor Protection System." The proposed change would eliminate the potential for inadvertent reactor trip caused by testing the RPS-EPA units during power operation.

Date of issuance: May 28, 1993

Effective date: May 28, 1993

Amendment Nos.: 142 and 137

Facility Operating License Nos. DPR-29 and DPR-30. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 31, 1993 (58 FR 16855)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 28, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: November 12, 1992, as supplemented on February 8, 1993, and April 23, 1993.

Brief description of amendment: The amendment revises the Technical Specifications to delete requirements to demonstrate, by testing, that a redundant system/component is operable when a system/component is declared inoperable. The testing of alternate emergency diesel generators is deleted only if the emergency diesel generator is taken out of service for planned maintenance or testing.

Date of issuance: June 7, 1993

Effective date: June 7, 1993

Amendment No.: 163

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 23, 1992 (57 FR 61109)

The April 23, 1993, submittal withdrew proposed changes to Technical Specification Section 1.3, Definition of OPERABLE-OPERABILITY, on the basis that the change was not necessary.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 7, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: September 28, 1992.

Brief description of amendment: This amendment revises Technical Specifications 4.8.1.1.2.c and d to update the standards used to specify the test methods for the emergency diesel generator fuel oil.

Date of issuance: June 7, 1993

Effective date: The date of issuance with the full implementation within 30 days of issuance.

Amendment No.: 90

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 12, 1992 (57 FR 53785)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 7, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: February 19, 1993, as supplemented March 31 and April 19, 1993.

Brief description of amendments: The amendments revise the Appendix A Technical Specifications relating to reactor thermal design flow (TDF). The amendments reduce the minimum required TDF by about 1.5 percent.

Date of issuance: June 1, 1993

Effective date: As of date of issuance and to be implemented within 60 days of issuance.

Amendment Nos.: 172 and 51

Facility Operating License Nos. DPR-66 and NPF-73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1993(58 FR 16224)

The March 31 and April 19, 1993 submittals provided additional information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 1, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: December 30, 1992 as supplemented on March 12, 1993.

Brief description of amendments: The amendments revise the Appendix A Technical Specifications (TSs) relating to steam generator (SG) tubing. The amendments permit sleeving of SG tubes at the tube support plate and tube sheet regions in accordance with the process performed by the vendor Babcock and Wilcox (B&W). TS 4.4.5.2 through 4.4.5.5 and Bases section 4.4.5 have been revised to reflect the sleeving option and to make minor editorial corrections.

Date of issuance: June 1, 1993

Effective date: June 1, 1993

Amendment Nos.: 173 and 52

Facility Operating License Nos. DPR-66 and NPF-73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 6, 1993 (58 FR 17912)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 1, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: April 8, 1993

Brief description of amendments: The amendments modify the Technical Specifications by reducing the value of the peak containment pressure calculated for design basis accidents.

Date of issuance: June 2, 1993

Effective date: To be implemented within 30 days of issuance

Amendment Nos.: 63 and 42

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1993 (58 FR 25856)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 2, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: December 22, 1992

Brief description of amendments: The amendments revise the qualification requirements of the Independent Safety Engineering Group.

Date of issuance: June 7, 1993

Effective date: To be issued within 30 days from the date of issuance.

Amendment Nos.: 64 and 43

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8773)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 7, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: January 22, 1993

Brief description of amendments: The amendments modify the Technical Specifications by revising the statistical summation of errors (≥Z'' value) assumed in analyses for steam generator level setpoints.

Date of issuance: June 7, 1993
Effective date: To be issued within 30 days from the date of issuance
Amendment Nos.: 65 and 44
Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16861)
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 7, 1993.
No significant hazards consideration comments received: No
Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: March 3, 1993
Brief description of amendment: The amendment reduces the setpoint on the ninth (highest) safety valve from 1230 to 1221 psig.
Date of issuance: June 7, 1993
Effective date: June 7, 1993
Amendment No.: 164
Facility Operating License No. DPR-16. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16861). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 7, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: October 28, 1992, as supplemented on May 12, 1993.
Brief description of amendment: The amendment deletes the requirement to place the plant in COLD SHUTDOWN condition when one Emergency Core Cooling System is inoperable for more than 72 hours. Instead, the plant would be placed in HOT SHUTDOWN when this condition exists.
Date of issuance: June 9, 1993
Effective date: June 9, 1993
Amendment No.: 174
Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 9, 1992 (57 FR 58246)

The May 12, 1993 submittal provided additional information which did not change the initial proposed no significant hazards consideration determination.The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 9, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: November 24, 1992

Brief description of amendment: The amendment revises the Administrative Controls section of the NMP-1 TS. The revisions incorporate changes in the composition, alternates and quorum requirements of the Station Operations Review Committee. The Safety Review and Audit Board quorum requirements are revised to require a majority of the actual membership rather than only the Chairman or the Chairman's designated alternate and at least three members. A reference to a no longer existent "Appendix A" to 10 CFR Part 55 is deleted from TS 6.4.1 and replaced with a requirement for the retraining and replacement training program to include "familiarization with relevant industry operational experience."

Date of issuance: June 3, 1993

Effective date: June 3, 1993

Amendment No.: 141

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 23, 1992 (57 FR 61115)

The Commission's related evaluation of the amendment is contained in aSafety Evaluation dated June 3, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: November 24, 1992
Brief description of amendment: The amendment revises Section 6.0, "Administrative Controls," of the Technical Specifications (TSs). TS 6.5.1 is revised to reflect changes in the size and composition of the Station Operations Review Committee (SORC) that are intended to improve the efficiency of the station review function. TS 6.5.3.6 is revised to change the quorum requirements for the Safety Review and Audit Board (SRAB) to ensure membership continuity during scheduled meetings. TSs 6.3 and 6.4 are revised to delete several references and thereby improve consistency with 10 CFR Part 55.
Date of issuance: June 3, 1993
Effective date: June 3, 1993
Amendment No.: 42
Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** January 6, 1993 (58 FR 597)
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 3, 1993.
No significant hazards consideration comments received: No
Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: March 30, 1993, as supplemented by letters dated April 20 and 27, 1993.
Brief description of amendment: The amendment revises the Technical Specifications to extend the interval for surveillance testing of 42 instrumentation and control items presently required to be tested by June 13, 1993, or later, until the next refueling outage, but no later than September 30, 1993.
Date of issuance: June 8, 1993
Effective date: June 8, 1993
Amendment No.: 79
Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 6, 1993 (58 FR 26988)
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 8, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: April 5, 1993

Brief description of amendment: The amendment revised the Technical Specifications to change the isolation signal for suppression pool cleanup line valves HV-15766 and HV-15768 from reactor vessel low water level 3 (+13") or high drywell pressure to reactor vessel low water level 2 (-38") or high drywell pressure.

Date of issuance: June 7, 1993

Effective date: June 7, 1993

Amendment No.: 125

Facility Operating License No. NPF-14: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1993 (58 FR 25862)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 7, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 5, 1993

Brief description of amendments: The amendments change Technical Specifications (TS) Section 5.5.D concerning fuel storage criteria. The revised TS allow the use of the maximum k-infinity method of demonstrating compliance with fuel storage criticality limits, replacing the current U-235 loading/enrichment method by a k-infinity method.

Date of issuance: May 28, 1993

Effective date: May 28, 1993Amendments Nos.: 175 and 178

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 3, 1993 (58 FR 12266)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 28, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: December 20, 1991

Brief description of amendments: These amendments revise Technical Specifications (TS) 3/4.4.8.3.1, 3/4.1.2.3 and 3/4.5.3, and the Basis for TS 3/4.4.8 to implement the recommendations of Generic Letter 90-06. In addition, these amendments correct an unrelated spelling error in TS 3/4.5.4.

Date of issuance: June 1, 1993

Effective date: June 1, 1993

Amendment Nos.: 105 and 94

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8780)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 1, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: December 24, 1992

Brief description of amendments: The licensee proposes to revise Technical Specifications (TS) 3/4.4.1.4.1, "Cold Shutdown - Loops Filled," TS 3/4.4.1.4.2, "Cold Shutdown - Loops Not Filled," TS 3/4.9.8.1, "Shutdown Cooling and Coolant Circulation-Low Water Level," TS 3/4.9.8.2, "Shutdown Cooling and Coolant Circulation-Low Water Level," and associated Bases. This will allow for the use of Containment Spray (CS) pumps in place of Low Pressure Safety Injection (LPSI) pumps to perform Shutdown Cooling (SDC) during Modes 5 and 6 of operation.

Date of issuance: June 4, 1993

Effective date: June 4, 1993

Amendment Nos.: 106 & 95

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8786)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 4, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: March 26, 1993

Brief description of amendment: The amendment revises Technical Specification Section 6.0 to add and revise NRC-approved methodologies which will be used to generate cycle-specific limits in the Vermont Yankee Core Operating Limits Report (COLR) for Cycle 17.

Date of issuance: May 28, 1993

Effective date: To be implemented within 30 days from the date of issuance.

Amendment No.: 135

Facility Operating License No. DPR-28. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1993 (58 FR 25866)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 28, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: October 15, 1991, as supplemented May 20, 1992 and July 28, 1992.

Brief description of amendment: The proposed amendment increases the surveillance test intervals and allowable outage times for the reactor core isolation cooling (RCIC) system actuation instrumentation.

Date of issuance: June 10, 1993

Effective date: 30 days from the date of issuance

Amendment No.: 116

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 13, 1992 (57 FR 20520)

The additional information contained in the supplemental letters dated May 20, 1992 and July 28, 1992, was clarifying in nature and thus within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: March 10, 1993, with additional information provided on March 24, 1993.

Brief description of amendment: The amendment modifies the TS to implement replacement of the current noble gas monitor and grab sample system with an in-line, continuously operating post-accident sampler.

Date of issuance: June 10, 1993

Effective date: June 10, 1993

Amendment No.: 117

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1993 (58 FR 25866)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 1993.

Public comments on proposed no significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Dated at Rockville, Maryland, this 16th day of June 1993.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[FR Doc. 93-14647 Filed 6-22-93; 8:45 am]

BILLING CODE 7590-01-F

[Docket Nos. 70-00270; 30-02278-MLA; TRUMP-S Project]

The Curators of the University of Missouri (Byproduct License No. 24-00513-32; Special Nuclear Materials License No. SNM-247); Notice of Appointment of Adjudicatory Employee

Pursuant to 10 CFR 2.4 (1993), notice is hereby given that Mr. Rex G. Wescott, a Commission employee in the Office of Nuclear Material Safety and Safeguards, has been appointed as a Commission adjudicatory employee within the meaning of § 2.4 in order to advise the Commission with respect to issues related to the pending appeals of LBP-91-31, and LBP-91-34, 34 NRC 29 and 159 (1991). Mr. Wescott has not previously been engaged in the performance of any investigative or litigating function in connection with this or any factually-related proceeding.

Until such time as a final decision is issued in this matter, parties to the proceeding shall not communicate with Mr. Wescott with regard to the merits of this case.

It Is So Ordered.

Dated at Rockville, Maryland, this 17th day of June 1993.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93-14757 Filed 6-22-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312]

Sacramento Municipal Utility District, Rancho Seco Nuclear Generating Station; Withdrawal of Consideration of Issuance of Exemption

On May 14, 1992 (57 FR 20718), the U.S. Nuclear Regulatory Commission (NRC) published a Notice of Consideration of Issuance of Exemption from the requirements of 10 CFR 50.75(e)(1)(ii) to the Sacramento Municipal Utility District (SMUD). The proposed action requested on July 24, 1990, as supplemented on March 26 and July 19, 1991, would have exempted SMUD from the requirement to have full decommissioning funding at the time of termination of operations and would have allowed SMUD to accumulate necessary decommissioning funds up to the end of its operating license in 2008.

On July 9, 1992, the final rule on decommissioning funding for prematurely shut down power reactors (57 FR 30383) was issued. This rule, which became effective on August 10, 1992, amended the NRC regulation regarding the timing of collection of funds for decommissioning for prematurely shut down power reactors. The amendment to 10 CFR 50.82 permits the NRC to evaluate, on a case-by-case basis, decommissioning funding plans for power reactors that shut down prematurely. The rule further requires that the NRC evaluation take into account unique safety and financial situations at each power plant.

The NRC has evaluated the SMUD decommissioning funding plan in accordance with 10 CFR 50.82, and found that the licensee financial assurance plan offers adequate assurance that funds will be available to decommission the Rancho Seco Nuclear Generating Station in a manner that protects the public health and safety. This finding pursuant to the amended regulation makes the licensee request for an exemption moot.

Therefore, the NRC is withdrawing its consideration of issuance of an exemption to SMUD from 10 CFR 50.75(e)(1)(ii). The staff evaluation of the SMUD decommissioning funding plan, dated June 16, 1993, considered relevant public comments received on the May 14, 1992, Notice of Consideration of Issuance of Exemption.

Dated at Rockville, Maryland, this 16th day of June 1993.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93-14762 Filed 6-22-93; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Medical Reports
(2) *Form(s) submitted:* G-3EMP, G-250, G-250a, G-260, GL-12, RL-11b and RL-11d
(3) *OMB Number:* 3220-0038
(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval
(5) *Type of request:* Revision of a currently approved collection
(6) *Frequency of response:* On occasion

(7) *Respondents:* State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
(8) *Estimated annual number of respondents:* 27,300
(9) *Total annual responses:* 60,950
(10) *Average time per response:* .41324 hours
(11) *Total annual reporting hours:* 25,187
(12) *Collection description:* The Railroad Retirement Act provides disability annuities for qualified railroad employees whose physical or mental condition renders them incapable of working in their regular occupation (occupational disability) or any occupation (total disability). The medical reports obtain information needed for determining the nature and severity of the impairment.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,
Clearance Officer.

[FR Doc. 93–14728 Filed 6–22–93; 8:45 am]
BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32478; File No. SR–CBOE–93–18]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Floor Broker Requirements for Trading FLEX Options

June 16, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 19, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules respecting Flexible Exchange Options ("FLEX Options") to eliminate the minimum net liquidating equity requirement for floor brokers.[1]

The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enable the Exchange to increase the number of its floor brokers who are eligible to trade FLEX Options, thereby enhancing competition and increasing the potential for exchange member participation in the FLEX Options market. This change would be achieved by eliminating paragraph (b) from Rule 24A.13.

Under current Rule 24A.13(b), any CBOE member acting as a floor broker must maintain at least $100,000 in net liquidating equity to be eligible to effect FLEX Option transactions. At the same time, Rule 24A.15(b) separately requires each floor broker that participates in FLEX Options trading to obtain a letter of authorization from a clearing member specifically accepting responsibility for the clearance of the floor broker's FLEX Options transactions. Based on the CBOE's experience with FLEX Options trading, the Exchange believes that the clearing member letter of authorization requirement, by itself, is sufficient to assure the financial integrity of floor brokers. The separate minimum net liquidating equity requirement appears to the CBOE to be superfluous. No similar requirement applies to floor brokers acting in respect of any other currently-traded CBOE product, as to which clearing member letters of authorization have proven sufficient, in the opinion of the Exchange, for financial responsibility and performance assurance purposes. Accordingly, the CBOE maintains that the only effect of the existing minimum net equity requirement is to give the larger floor brokers exclusive access to the FLEX Options market, without any regulatory justification for that limitation. As a result, the CBOE is now proposing to eliminate the minimum net liquidating equity requirement applicable to floor brokers.

The CBOE believes that the proposed rule change is consistent with section 6(b)(5) of the Act because it is designed to remove an unnecessary regulatory impediment to a free and open market and an unnecessary burden on competition among CBOE members, thereby promoting just and equitable principles of trade and promoting the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determinate whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

[1] See Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (FLEX Options approval order).

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by July 14, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14735 Filed 6–22–93; 8:45 am]

BILLING CODE 8010-01-M

[2] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–32481; File No. 600–27]

Self-Regulatory Organizations; Clearing Corporation for Options and Securities; Notice of Filing of Application for Exemption From Registration As a Clearing Agency

June 16, 1993.

On December 14, 1992, the Clearing Corporation for Options and Securities ("CCOS")[1] filed with the Securities and Exchange Commission ("Commission" or "SEC") an application for exemption from registration as a clearing agency pursuant to section 17A of the Securities Exchange Act of 1934 ("Act")[2] and rule 17Ab2–1 thereunder.[3] The Commission is publishing this notice to solicit comments from interested persons.

I. Introduction

CCOS is proposing to provide clearance and settlement services for government securities transactions executed through Chicago Board Brokerage, Inc. ("CBB").[4] CCOS's application for exemption, filed on Form CA–1, includes rules, procedures, and guidelines for the clearance and settlement of government securities. BOTCC, as sole owner and parent of CCOS, will guarantee CCOS's obligations arising under CCOS's rules, and the clearance and settlement services of CCOS will be modeled after established procedures currently utilized by BOTCC.

CCOS is seeking an exemption from registration as a clearing agency to permit CCOS to provide what it believes to be an innovative and important service related to the futures markets and the market for U.S. Treasury securities ("cash securities"). CCOS intends to file an application for registration as a clearing agency in the near future.[5]

A. Trade Clearance and Settlement

As noted above, CCOS is proposing to provide clearance and settlement facilities for trades executed by CBB and its customers in the CBB trading system. The CBB trading system is designed to offer CBOT members an opportunity to execute a customized package of transactions related to Treasury futures contracts currently traded on the CBOT. CBB will execute the transaction as riskless principal, becoming the counterparty both to the buyer and to the seller. All trades will be effected through the CBB's electronic network.[6]

The system will permit the trading of cash securities, independently and in conjunction with CBOT futures on cash securities (also known as "basis contracts"),[7] and repurchase and reverse repurchase agreement contracts involving cash securities ("Dollar Rolls")[8] in cash securities. Under the CBB proposal, therefore, CBOT traders in cash securities will be able to buy and sell securities underlying CBOT futures contracts and through Dollar Rolls execute trades that help position and inventory management.

The cash securities listed for purchase or sale will consist of Treasury bills (with more than fourteen days to maturity), notes, and bonds, in their various maturities, deliverable under financial futures contracts traded on the CBOT. The settlement date for outright purchase and sale transactions will be the next business day, except for when-issued ("WI") securities,[9] which will

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[1] CCOS is a wholly-owned subsidiary of the Board of Trade Clearing Corporation ("BOTCC") which provides clearing services for futures and commodities transactions executed on the Board of Trade of the City of Chicago ("CBOT").

CCOS previously filed two applications for registration as a clearing agency. In its first application, filed on October 14, 1988, CCOS proposed to clear exchange-traded options issued by The Options Clearing Corporation. *See* Securities Exchange Act Release No. 27083 (August 1, 1989), 54 FR 32410. That application subsequently was withdrawn. Letter from Dennis Dutterer, Executive Vice-President and General Counsel, BOTCC, to Jerry Carpenter, Branch Chief, Division of Market Regulation, Commission (November 6, 1991). In the second application, filed on October 21, 1991, CCOS proposed to clear over-the-counter options on government securities. This application also has been withdrawn. Letter from Dennis Dutterer, General Counsel, CCOS, to Jonathan Kallman, Associate Director, Division of Market Regulation, Commission (December 11, 1992).

In this regard, the Commission staff will discuss the issues raised by this application, which involves transactions in and clearing of related cash government securities and futures positions, with the Commodity Futures Trading Commission, the Board of Governors of the Federal Reserve System and the Department of the Treasury. This release does not address the application of the Commodity Exchange Act to issues discussed in this release.

[3] 17 CFR 240.17Ab2–1 (1992).

[4] CBB will be a registered broker-dealer under the Act and is a wholly-owned subsidiary of the CBOT. As discussed below, CBB will execute trades in government securities (unmatured, marketable debt securities in book-entry form that are direct obligations of the United States Government).

[5] The Commission will publish notice of that filing in accordance with Section 19(a)(1) of the Act at the appropriate time.

[6] Each participant of CBB will obtain trading terminals having a CPU, video display monitor, specialized keyped, and a printer, which will be linked by datalines to a central computer facility operated by EJV Partners, L.P. ("EJV"). In order to obtain a terminal, the CCOS participant or non-CCOS CBOT member will be required to enter into a "customer agreement" with CBB which sets out the terms and conditions of access to and use of the terminals. In addition, an employee of a CCOS participant firm or a non-CCOS CBOT member or its employee obtaining a terminal will be required to obtain a certification that the CCOS participant clearing its transactions will be responsible for the acts of the CCOS participant employee, non-CCOS CBOT member, or non-CCOS CBOT member employee. Because each terminal is uniquely identified in its communications with the central site, CBB will know the identity of the customer entering each order through a terminal, *i.e.*, the identity of the CCOS participant, CCOS participant employee, non-CCOS CBOT member, or non-CCOS CBOT member employee to which the terminal has been made available. CCOS participants or non-CCOS CBOT members may establish agent terminals designed to enter quotations for multiple customers who are identified by subaccount numbers. CBB will maintain complete, time-sequenced electronic audit trails on all orders entered on, and all transactions executed through, the system. The recorded activity will indicate, for a given order or transaction, the identity of the customer entering, changing or cancelling orders, and the time and terminal through which such entry or change was effected, and the date, time, volume, security, customer, and price of each transaction executed through the system. Upon execution of an order, the customer will receive an electronic confirmation of the transaction, which can be printed out in hard copy on a dedicated printer connected to the customer's terminal.

[7] A basis trade is a trade in which the participants agree to simultaneously buy/sell cash securities against the offsetting equivalent CBOT Treasury futures contract. The basis represents the price differential between a cash security and the futures delivery price.

[8] In a Dollar Roll transaction, the seller of the contract delivers notes or bonds to the buyer in exchange for cash. Settlement occurs the same day. At the time of execution, the seller and buyer also agree to reverse the transaction at a price that includes a financing interest amount, with settlement occurring the next day.

[9] CBB will offer WI securities for forward purchase and sale. WI securities are those securities that the U.S. Treasury has announced it will sell in a public auction on a specific date in the near future or that have been auctioned but not settled. WI securities trade in the secondary market from the

Continued

settle on the day of issuance by the U.S. Treasury.

The system will permit users to execute basis trades as a single transaction where the price will reflect the spread in basis points between the futures contract and the underlying cash securities; the cash securities will be priced at a certain number of basis points above or below the futures contract.[10]

Dollar Roll transactions are designed to facilitate the financing of cash securities or the loaning of excess funds in exchange for cash securities.[11] Dollar Rolls will result in the creation of two simultaneous outright cash trades. For trades executed during the morning session, the first leg will be for same day ("T") settlement and the second leg will be for next day ("T+1") settlement. Dollar Rolls executed in the afternoon session will settle the first leg on T+1 and the second leg on the following business day ("T+2"). CBB will have one trading session for Dollar Rolls from the opening of trading, 8:00 a.m. to 11 a.m., and an afternoon session for Dollar Rolls from 3:15 p.m. to 5 p.m.[12]

Under the proposal, CBB will submit computer matched trades to CCOS on a real time basis so that trade data executed through CBB immediately flows to CCOS. CCOS will perform all clearance and settlement functions for transactions in cash securities, including: delivery versus payment processing, position consolidation, and original and variation margin calculation and processing as discussed below. BOTCC will enter into a cross-margining agreement with CCOS that will allow common participants to combine cash securities and futures positions for cross-margaining purposes.[13] BOTCC will act as guarantor of CCOS's obligations arising under CCOS's rules and will provide collection and payment services for CCOS variation and original margin payments.

CCOS will net for each participant all delivery obligations of the same CUSIP number. All delivery versus payment calculations will be monitored and controlled by CCOS, and the delivery instructions sent to the settlement bank (The Bank of New York) will reflect the daily settlement value marked to the market. Delivery and payment will occur through the Fedwire system. Thus, all CCOS participants must establish clearing arrangements with a bank having access to Fedwire. CCOS will carry forward any fails to deliver securities on a cumulative basis, after marking those obligations to market value and collecting, as necessary, additional variation margin.

The settlement prices for cash securities will be based upon the cash market indications at the close of futures trading (3:00 p.m.) plus the accrued interest amounts for each security.[14] CCOS will mark all net cash deliverable positions[15] to the settlement values.

B. System Safeguards

(1) Participation Standards

Participants in CCOS will be required to meet initial and continuing financial and operational standards, as determined by the CCOS board of directors and administered by CCOS management. CCOS will monitor each participant's financial condition as measured by its financial stability, the level and quality of its earnings, and other generally accepted measures of liquidity, capital adequacy, and profitability. In addition, CCOS will require each member to maintain personnel and facilities adequate to ensure the expeditious and orderly transaction of business with CCOS or other participants. Participation in CCOS will be limited to members of BOTCC and members of the CBOT that are affiliated with members of BOTCC.[16]

(2) Margin Payment/Collection

CCOS proposes to adopt, as one of its principal safeguards, a practice of collecting original and variation margin on participant obligations. CCOS proposes to adopt, in essence, the margin calculation and payment time frames currently used by BOTCC in connection with its clearance of CBOT futures contracts, modified to address specific aspects of the government securities market. Thus, for risk management purposes, CCOS[17] will convert cash securities to futures contract equivalents and then calculate original and variation margin. CCOS will calculate margin requirements at least twice daily, reflecting activity from 8 a.m. to 1:30 p.m. and activity from

time the U.S. Treasury announces their scheduled auction through the actual issuance of the securities. The Treasury announces the auction date, the maturity date of the securities, and the par amount to be auctioned. WI securities trade on the basis of yield to first call, instead of price, because the coupon rate for the securities is not determined until the auction.

[10] The futures leg of the basis trade will take the last reported trade price from the CBOT trading floor as the futures transaction price. The transaction ticket for the cash leg of basis trades will include the commission charges and accrued interest. Settlement for the cash leg will occur on the next business day in the same manner as outright cash trades.

[11] The CBB terminals will list the Dollar Roll spreads by bidding and offering financing rates reflecting the annualized interest rate paid or received on the transaction. The transaction amount or value price on the trade date will reflect the settlement value of the first leg of the Dollar Roll. The settlement value is the funds required to make or take delivery of the security. The transaction amount for the second leg of the Dollar Roll will reflect the fact that the holder of the overnight bond will not earn the coupon interest during the term of the transaction.

[12] Unless otherwise noted, all times stated are Eastern Standard Time.

[13] All cash securities positions traded through CBB will be held in the participants cross-margin account at CCOS. Futures positions generated by CBB basis trades for proprietary accounts are automatically placed in the cross-margin account at BOTCC while futures positions from customer basis trades executed through CBB by participants will not be permitted to be placed in the cross-margin account but will be transferred to the participants' BOTCC customer account. Participants may allocate futures from their BOTCC proprietary futures account to their BOTCC/CCOS cross-margin account to hedge unsettled cash securities, thereby reducing risk and original margin requirements.

[14] Initially, the cash market indications for settlement prices will be provided by EJV.

[15] The net cash deliverable position will reflect all outstanding cash positions, including outright trades, cash legs from basis trades, and Dollar Rolls. These positions will be reported to members by CUSIP number and settlement date. CCOS will have two daily processing cycles for determining net cash positions, mid-day and end of day. A participant with a same day delivery requirement because of a Dollar Roll transaction will be considered to have delivered in that position and the net cash deliverable position for that security will not be included in the mid-day original margin calculations. Any failed same day delivery obligations will be accounted for in the end of day processing cycle.

[16] BOTCC's by-laws require BOTCC members to be CBOT members, approved by the CBOT board of directors for BOTCC membership. In addition, the BOTCC board of directors sets, from time to time, BOTCC membership requirements, including, but not limited to, financial and operational requirements, continuing compliance with CBOT and BOTCC rules, financial and other reporting, and such other factors as the BOTCC board may consider necessary or appropriate in assessing an applicant's suitability for participation in BOTCC. BOTCC also has the authority to require additional capital on a discretionary basis and parental guarantees on member proprietary positions. *See, e.g.*, BOTCC By-Law 401.

Minimum financial requirements for CBOT futures commission merchants ("FCMs") include Adjusted Net Capital (as defined in CBOT's rules) of the greater of $250,000 or 4 percent of the funds required to be segregated and the foreign futures and options secured amount pursuant to the Commodities Exchange Act, 7 U.S.C. §§ 1, *et seq.* (1988), exclusive of the market value of commodity options purchased by option customers on or subject to the rules of a contract market up to the amount of customer funds in such option customer's account, plus an amount equal to guarantee deposits with clearing organizations, other than the CBOT, to the extent those assets cannot be used for margin purposes. The minimum financial requirements for CBOT broker-dealer/FCM members are similar to those for FCMs, although the broker dealer/FCMs also are subject to Commission rule 15c3–1(a), 17 CFR 240.15c3–1(a) (1992), limitations. CBOT Rules, Chapter 2, Rule 201.

[17] BOTCC, as facilities manager, will perform all margin calculations pursuant to a cross-margining agreement on positions in the cross-margining account for the benefit of both CCOS and BOTCC.

1:30 p.m. to 5 p.m. CCOS [18] will collect margin deficiencies from participants at 4 p.m. and 7:40 a.m. on T+1, and will retain the authority to collect additional margin at any time.

Original margin is a performance bond on all positions that will be delivered and not otherwise offset before delivery. The performance bond for all trades generally will be collected at 7:40 a.m. to T+1. The second requirement, variation margin, is a mark to the market payment, collected on a twice daily basis to account for changes in the value of the positions before the delivery process.

Original margin requirements will be calculated at 2:30 p.m. for trades executed from the 8 a.m. opening until 1:30 p.m. The original margin will be updated at 4 a.m. on T+1 to include trades executed from 1:30 p.m. on T until 4 a.m. on T+1,[19] and the total original margin requirement will be collected at 7:40 a.m. on T+1. In the event a clearing member fails to perform obligations to CCOS, the original margin will be used to cover any financial liabilities which may result from the failed obligation.

For mid-day processing at 3 p.m., CCOS will establish a settlement value for cash securities trades executed between 8 a.m. and 1:30 p.m. CCOS will mark new positions from their transaction value, established at the execution of the trade, to the settlement value,[20] reflecting gains or losses in the interim period, and CCOS will mark open positions that were previously marked to the prior day's settlement value to the new settlement value.[21] CCOS will calculate each participant's variation margin pay/collect amount and transmit the data to BOTCC for margin payment or collection. Payment or collection amounts for each participant will include the combined variation effects of the cash and futures positions in the participant's cross-margined account. Participants will pay or collect mid-day variation margin in same-day funds by 4 p.m. each day, through their settlement banks. BOTCC will pay out 80% of variation gains in excess of original margin deficits [22] and will collect 100% of variation losses.

Trades executed from 1:30 p.m. through the end of the day's trading session, 5 p.m., will be marked to the 3 p.m. settlement value, and the variation margin on the entire position will be calculated at the end of the day. Participants will pay or collect the second variation margin obligation the following morning at 7:40 a.m. CCOS will send delivery instructions for normal settlement of cash securities transactions executed on T to the participants' settlement banks at 11:30 a.m. on T+1.[23]

(3) Margin Calculation

CCOS believes cross-margined cash securities and futures products have essentially the same market and credit risks. Therefore, in establishing the original margin (or performance bond) for (cash securities it clears, CCOS will use the original margin rates for futures contracts [24] established by the Board of Governors of BOTCC following recommendations of the BOTCC Margin Committee.[25]

Original margin represents a performance bond that both buyers and sellers must post when entering the market to assure that their respective contractual obligations will be satisfied. In order to margin cash securities and futures positions in a parallel fashion, CCOS will convert cash securities to their futures-equivalents prior to original margin determination. CCOS will convert cash securities positions to futures-equivalents based upon conversion factors, as published by the CBOT, for the nearest futures delivery month and the futures contract par amounts (face values).[26] CCOS will net the futures-equivalent positions of all cash securities deliverable into each futures contract to produce a net cash futures-equivalent position for each futures contract.[27] An example of the effect of the proposed margin system on a hypothetical portfolio is attached as Exhibit A.

(4) Credit Enhancement

In addition to collecting margin from participants for open positions, CCOS proposes to rely on the assets and credit of its parent, BOTCC, to meet any

[18] BOTCC, as facilities manager, will perform all margin collection/payment functions on behalf of CCOS. CCOS will collect commissions and settlement payments through its agent, the Bank of New York.

[19] Up until 4 a.m., CCOS will permit transactions executed on the Globex Trading System to be included in the cross-margin account for the regular 7:40 a.m. original and variation margin pay/collect.

[20] Settlement values will reflect the settlement price established twice a day (obtained from EJV) and will include accrued interest, but will not include commissions and finance charges from Doller Rolls.

[21] The transaction value provided by CBB to CCOS will include the accrued interest paid or received on each transaction. For normal deliveries the accrued interest at the time of the transaction and at marking to market are the same amount, but for failed deliveries the seller will have to pay the incremental accrued interest for each day the fail continues. The daily variation margin payments will include this incremental accrued interest.

[22] CCOS will withhold distribution of any variation margin gain from participants with original margin requirement deficits.

[23] Participants may transact Doller Rolls (with same-day settlement for the first leg) between 8 a.m. and 11 a.m. on T+1 to offset delivery obligations due to settle on T+1.

[24] BOTCC collects clearing member margin on a portfolio, or net, basis, reflecting the overall risk to the clearing corporation associated with the totality of contracts in that clearing member's portfolio. BOTCC uses a portfolio-based simulation model, the Standard Portfolio Analysis ("SPAN") system, which establishes parameters to collect original margins based on the simulated losses of clearing member portfolios under various scenarios.

[25] The BOTCC Margin Committee is comprised of five of the nine Governors of the BOTCC Board of Governors. All nine Governors are owners or officers of BOTCC clearing member firms. The BOTCC Margin Committee meets once a month or at the call of the BOTCC Board Chairman or the Margin Committee Chairman. The Committee bases its recommendation upon review by BOTCC and CBOT staff of the conditions of the market place, including: statistical analysis of central tendencies, dispersion, and correlations between price changes of different commodities. Additionally, the Committee draws upon the experiences of its members and uses their judgement to predict market conditions in the near future. From this information, the Margin Committee will typically set margin rates that cover approximately the 95th percentile of absolute daily price changes over the previous one, three, and six month periods.

[26] The formula for the conversion of cash securities is:

$$\text{Futures-Equivalents} = \frac{\textit{Cash Par Amounts} \times \textit{Conversion Factor}}{\text{Futures Par Amount}}$$

[27] Futures on cash securities act as an index of the many bonds deliverable into them. Treasury bonds ("T-bonds") having at least fifteen years remaining to maturity are deliverable into the T-bond future. Ten-year Treasury notes ("T-notes") must have maturities between six and one-half and ten years to be deliverable into the ten-year T-note future. Five-year T-note futures accept Treasury notes with time to maturity between four years, three months and five years, three months. Two-year notes having maturities between one year, nine months and two years are deliverable into the two-year T-note future.

Since bonds being delivered into futures contract obligations will have greater or lesser value than the futures, the conversion factor is a means of equating bonds with various coupons and maturity dates with the standard bond set by BOTCC. The standard bond, which is equal to the corresponding future, has an 8% coupon and a conversion factor of 1.

For example, assume there are three bonds, Bond X, Bond Y, and Bond Z. Bond X is the standard bond having an 8% yield to maturity and conversion factor of 1 (Bond X is equal to the corresponding future). Bond Y is worth 1.5 times Bond X and Bond Z is worth 1.75 times Bond X (Bonds Y and Z could have greater coupon rates or longer periods to maturity). If the future is trading at 85 then Bond X is worth 85 and Bond Y is worth 1.5 times 85. Therefore, 1.5 is the conversion factor for Bond Y and 1.75 is the conversion factor for Bond Z. In order to determine the number of futures that equate with Bond Y, the face amount of Bond Y is multiplied by the conversion factor, producing the futures value amount. The futures value amount when divided by 100,000 (each futures contract equals $100,000) yields the number of futures contracts equal to the bond.

liquidity demands CCOS may incur. Under the proposed system, BOTCC will guarantee all of CCOS's obligations to participants arising under CCOS's rules. CCOS intends for the BOTCC guarantee to take the place of a clearing fund composed of participant contributions of cash or liquid securities.[28]

III. Public Interest Statement

CCOS believes that granting CCOS an exemption from clearing agency registration during the period before full registration is granted is critical to enabling CBB to enter the cash government securities business. CCOS maintains that the CCOS/CBB business plan will provide increased access to the cash securities markets through an integrated electronic transaction and margin system, which, CCOS believes, lowers transaction costs, creates processing and cash flow efficiencies, provides credit enhancement, ensures fairness and price transparency, and provides a complete audit trail. CCOS asserts that these efficiencies are created because of the computerization that will eliminate back-office paperwork and shorten settlement cycles by decreasing the time required for order entry, trade matching, netting, and telecommunication to the appropriate clearing agency.

CCOS believes that the CCOS/CBB trading and clearance systems will enable persons other than primary dealers to participate in the government securities market while controlling counterparty risk. Also, the CCOS/CBB system will preserve a key feature of the existing interdealer broker system: Anonymous trading without substantial counterparty risk.

CCOS believes further that the ability to net (cross-margin) original and variation margin with respect to futures positions cleared at BOTCC and cash securities positions cleared at CCOS will eliminate duplicative performance bond requirements that do not reflect collective market risk, exemplifying the type of link mandated by section 17A(a)(1)(D) of the Act.[29] Furthermore, CCOS believes that these links are consistent with Congress's direction to the SEC in the Market Reform Act of 1990[30] to facilitate linked or coordinated facilities for clearance and settlement of securities, options, futures, options on futures, and commodity options. Also, by applying same-day margining and cash flow conventions of the futures market to cash transactions, CCOS believes it will further "the development of a modern, nationwide system for the safe and efficient handling of securities transactions in a manner which best serves the financial community and investing public."[31] Finally, because the SEC will impose and monitor certain volume limits during the period CCOS operates under exemption from registration, CCOS believes that its operations will not present increased risk to the marketplace.

IV. Specific Request for Comments

A. Statutory Standards

Section 17A of the Act directs the Commission to develop a national clearance and settlement system through, among other things, the registration and regulation of clearing agencies. The statutory scheme contemplates that clearing agencies not only provide clearance and settlement functions consistent with statutory goals, but also that those clearing agencies, as self-regulatory organizations, exercise certain regulatory functions in furtherance of other statutory goals. In fostering the development of a national clearance and settlement system generally and in overseeing clearing agencies in particular, Section 17A authorizes and directs the Commission to promote and facilitate certain goals with due regard for: the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers, dealers, clearing agencies, and transfer agents.[32] Further, section 17A, as amended by the Market Reform Act, directs the Commission to use its authority to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options.[33]

Section 17A(b)(1) of the Act authorizes the Commission to exempt applicants from some or all of the requirements of Section 17A if it finds such exemptions are consistent with the public interest, the protection of investors, and the purposes of section 17A, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds. Historically, the Commission has never exercised its authority to exempt an applicant entirely from the requirements of Section 17A of the Act. The Commission has, however, granted newly registered clearing agencies narrowly drawn, temporary exemptions from specific statutory requirements imposed by section 17A, in a manner that achieves statutory goals.[34]

The Commission recognizes that clearing agencies, more than other self-regulatory organizations, pose systemic safety and soundness concerns. Accordingly, the Commission has published standards for clearing agency registration and exercises significant continuing oversight of all aspects of clearing agency operations and functions.[35] The market crash in

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[28] BOTCC, as a commodities clearing corporation, guarantees the settlement of all futures and options contracts traded on the CBOT and cleared by BOTCC. BOTCC will extend this guarantee to the obligations of CCOS. BOTCC has total shareholders' equity of over $110 million, including current assets of over $109 million with the large majority in U.S. Treasury bills and notes. Its current liabilities are approximately $3.5 million. In addition, BOTCC has credit enhancement facilities in place in the form of lines of credit totalling $300 million. *See* 1992 BOTCC Annual Report [File No. 600–27].

As a general rule, the Commission has recommended that a clearing agency have a clearing fund which (1) is composed of contributions based on a formula applicable to all users; (2) is in cash or highly liquid securities; and (3) is limited in the purpose for which it may be used. Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920. Its use should be limited to protecting participants and the clearing agency from participant defaults and unusual, significant clearing agency losses. *Id.*

The Commission has permitted a clearing agency, Delta Government Options Corp. ("Delta"), to register without a clearing fund. There, the Commission relied on other factors to determine that Delta's risk management system was adequate despite the lack of a clearing fund. *See* Securities Exchange Release No. 26450 (January 12, 1989), 54 FR 2010.

[29] 15 U.S.C. 17A(a)(1)(D) (1988).

[30] Market Reform Act of 1990, Pub. L. No. 101–432, 104 Stat. 963 (1990) ("Market Reform Act").

[31] Conference Report to Accompany S. 249, H.R. Rep. No. 229, 94th Cong., 1st Sess. 102 (May 19, 1975).

[32] For legislative history concerning Section 17A of the Act, *see, e.g.*, Report of Senate Comm. on Housing and Urban Affairs, Securities Acts Amendments of 1975: Report to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 4 (1975); Conference Comm. Report to Accompany S. 249, Joint Explanatory Statement of Comm. of Conference, H.R. Rep. No. 229, 94th Cong., 1st Sess., 102 (1975).

[33] Market Reform Act of 1990, § 5, amending § 17A(a)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78q–1 (1990).

[34] *See, e.g.*, order approving Government Securities Clearing Corporation's ("GSCC") temporary registration as a clearing agency where the Commission temporarily exempted GSCC from compliance with Section 17A(b)(3)(C) of the Act. Securities Exchange Act Release No. 25749 (May 24, 1988), 53 FR 19839.

[35] *See* Securities Exchange Act Release Nos. 16900 (June 17, 1980), 45 FR 41920 (announcement of standards for the registration of clearing agencies ("Standards Release")) and 20221 (September 23, 1983), 48 FR 45167 (omnibus order granting full registration as clearing agencies to The Depository Trust Company, Stock Clearing Corporation of Philadelphia, Midwest Securities Trust Company, The Options Clearing Corporation, Midwest Clearing Corporation, Pacific Securities Depository, National Securities Clearing Corporation, and Philadelphia Depository Trust Company).

October 1987 and decline in October 1989 demonstrated the central role of clearing agencies in U.S. securities markets in reducing risk, improving efficiency, and fostering investor confidence in the markets.[36]

In light of the foregoing, the Commission preliminarily believes it is appropriate for applicants requesting exemption from clearing agency registration to meet the standards substantially similar to those required of registrants to assure that the fundamental goals of the Act (*i.e.*, safe and sound clearance and settlement) will not be undermined. Thus, the Commission invites commentators to address whether the Commission should apply those standards, subject to appropriate modifications, in considering CCOS's application for exemption from clearing agency registration while assuring achievement of the goals of section 17A of the Act.

The Commission also invites commentators to address whether granting the proposed exemption would further the goals of section 17A and whether attaching specific conditions to that exemption, if any, would be appropriate to further specific statutory goals. Specifically, would granting the exemption further the development of a national clearance and settlement system, promote linked and coordinated clearing facilities (among options, futures, and securities), and promote the maintenance of fair competition?

B. Fair Competition

Section 17A of the Act requires the Commission, in exercising its authority under that Section, to have due regard for the maintenance of fair competition among clearing agencies.[37] In addition, no clearing agency may be registered, if its rules "impose any burden on competition not necessary or appropriate in furtherance of the purposes" of the federal securities law.[38] The Commission therefore must consider an applicant's likely affect on competition and on the nation's securities markets in its review of any application to register as a clearing agency.[39] Accordingly, to the extent that approval of CCOS's application for exemption from registration will restrain competition and, at the same time, benefits other statutory goals, the Commission must balance those benefits against the resulting restraint on competition. The Commission emphasizes that within the constraints of this balancing test, the Commission consistently has demonstrated its strong preference for eliminating barriers to competition. Where possible, the Commission has looked to regulatory or market discipline to create an atmosphere where competition may be expanded.

Consistent with this approach, the Commission invites commentators to address whether registration of CCOS would result in increased competition among broker-dealers, including greater access to the government securities market by persons other than primary dealers, and among clearing agencies, such as GSCC, in the clearing of transactions in government securities.[40] Such competition may result in the development of improved systems capabilities, new services offered, and perhaps lower prices to participants.

The Commission invites commentators to address whether the proposal would impose any burden on competition that is inappropriate under the Act. In particular, would CCOS's ability to offer cross-margin facilities to members for inter-market trades involving cash securities and futures have such a result if GSCC cannot offer its members cross-margin facilities on the same terms and conditions as CCOS offers its members? If such a result would ensue, what if any steps should the Commission take to facilitate a level field of competition between CCOS and other clearing agencies? For example, should the Commission take steps to ensure that GSCC is given reasonable access to the open interest in particular futures or futures options products held by BOTCC or to any cross-lien arrangement for cash securities and futures products entered into between BOTCC and CCOS?

C. Common Clearing of Government Securities

As stated above, Section 17A directs the Commission to develop a national system for the prompt and accurate clearance and settlement of securities transactions. In carrying out this responsibility, the Commission is authorized and ordered to facilitate the establishment of linked or coordinated facilities for the clearance and settlement of securities, securities options, contracts of sale for future delivery and options thereon, and commodity options.[41] This is largely because, as the Act states, "the linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and on behalf of investors."[42]

CCOS's application, in effect, raises the question of whether the establishment of multiple government securities clearing corporations is consistent with section 17A of the Act and one-account settlement. The introduction of multiple clearing

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See also Section 19 of the Act, 15 U.S.C. 78s (1988), and Rule 19b–4, 17 CFR 240.19b–4 (1992), setting forth certain procedural requirements for registration and continuing Commission oversight of clearing agencies and other self-regulatory organizations.

[36] Gerald Corrigan, President of the Federal Reserve Bank of New York ("FRBNY"), noted: "[T]he greatest threat to the stability of the financial system as a whole [during the 1987 market break] was the danger of a major default in one of these clearing and settlement systems." Luncheon Address: Perspectives on Payment System Risk Reduction by E. Gerald Corrigan, President, FRBNY, *reprinted in The U.S. Payment System: Efficiency, Risk and the Role of the Federal Reserve* 129–30 (1990).

[37] 15 U.S.C. 78q–1(a)(2) (1988).

[38] 15 U.S.C. 78q–1(b)(3)(I) (1988).

[39] *See* Bradford National Clearing Corporation v. S.E.C., 590 F.2nd 1085 (D.C. Cir., 1978). The court noted:

> to the extent the legislative history provides any guidance to the Commission in taking competitive concerns into consideration in its deliberations on the national clearing system, it merely requires the [Commission] to "balance" those concerns against all others that are relevant under the statute. *Id* at 1105.

[40] Currently, the only registered clearing agency that offers a centralized, automated system for the clearance and settlement of trades in cash government securities is GSCC. GSCC offers comparison and netting services to members and functions as a risk assessment, credit risk reduction, and risk containment facility for eligible trades in government securities that are submitted to GSCC for comparison and netting. *See* Securities Exchange Act Release No. 25749 (May 24, 1988), 53 FR 19639 (order approving the temporary registration of GSCC as a clearing agency).

[41] 15 U.S.C. 78q–1(a)(2)(A)(ii) (1988).

[42] 15 U.S.C. 78q–1(a)(1)(D) (1988). Past Commission actions support this approach. For example, in 1973, the Commission directed the exchanges to develop a centralized system for the clearance and settlement of standardized options either through the formation of a resulting single clearing entity or through multiple interfaced entities. *See* Securities Exchange Act Release No. 11144 (December 19, 1974), 39 FR 45333. (The exchanges proposed and the Commission approved the establishment of OCC as the sole entity for the clearance and settlement of standardized options.) The Commission believed the resulting single entity approach was consistent with Commission policy favoring one-account settlement. *See* Securities Exchange Act Release No. 10631 (February 7, 1974), 39 FR 9717.

The Commission next addressed the structure of the national system for corporate debt and equity securities traded on exchanges, through NASDAQ facilities, and over-the-counter. In 1977, the New York Stock Exchange, American Stock Exchange, and the National Association of Securities Dealers clearing facilities merged into one entity, the National Securities Clearing Corporation ("NSCC"). In balancing the goal of clearing organization competition against enhanced broker-dealer competition, the Commission chose to place greater emphasis on the latter and to permit the proposed merger to occur, subject to the condition, among others, that NSCC establish interfaces, without fees, with other competing clearing organizations in support of the one-account settlement concept.

agencies into the government securities markets could increase the risks entailed in liquidating defaulting participants. One of the benefits of a single clearing agency is centralized default administration. Accordingly, fragmentation of the government securities clearance and settlement system, particularly in light of the netting of government securities by GSCC, could impede the prompt resolution of member defaults.[42] As the October 1987 market break illustrated, an unexpected market move may cause a clearing member to default on its obligations to its clearing organization. Based on its experience in October 1987 and October 1989, the Commission believes that coordinating the prompt resolution of such a default is critical to maintaining the stability of a clearing corporation and its members.[44]

In addition, the Commission seeks comment on whether or not one-account settlement can be achieved if CCOS's application is approved. Specifically, the Commission seeks comment on whether or not the different forms of netting by GSCC and CCOS[45] would preclude one-account settlement. Therefore, the Commission requests comment on whether it should approve or deny the CCOS application, which, if granted, would result in multiple clearing facilities for government securities.

Commentators should discuss applicable law and the costs and benefits of single versus multiple clearing facilities for government securities, including whether the risk exposure to individual clearing organizations would be increased by the fragmentation in the netting of cash securities. Finally, commentators should address the effects that market stress (*e.g.*, high volume and volatility) likely would have on such a multiple clearing system.

[43] Expeditious transfer of customer accounts, for example, may be more difficult with two government securities clearing agencies. This is but one example of areas where coordination will be more difficult.

[44] *See* Division of Market Regulation, Market Analysis of October 13 and 16, 1989, Chapter 5 [December 1990].

[45] In its effort to manage systemic risk in the clearance and settlement of government securities, GSCC seeks to reduce net settlement positions of participants by netting offsetting government securities transactions in the same CUSIP number, thereby eliminating delivery obligations. CCOS intends to hedge futures positions held by participants with the participant's futures-equivalent cash government securities which have not settled, thereby recognizing for margining purposes the offsetting risks of the positions.

D. Linkage of Multiple Clearing Systems

Section 17A(a)(2)(A)(ii) of the Act[46] specifically requires the Commission to "facilitate the establishment of a national system of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for futures delivery and options thereon, and commodity options." The Commission requests comment on the manner in which multiple clearing facilities for cash securities and affiliated clearing facilities for cash securities and futures contracts on those securities could efficiently integrate those systems. Commentators should address, without limitation: the manner in which clearing organizations would assure payment of obligations to other clearing organizations, the manner in which multiple clearing systems should respond to common member defaults and the default of a clearing organization, the manner in which multiple clearing systems should allocate costs associated with integration and services performed for one another, and the manner in which multiple clearing systems should operate net money settlement with their members and among themselves.

Specifically, the Commission asks that commentators address, without limitation, the proposed margin calculations and procedures, operational safeguards, and legal and other policy issues related to linking these markets. In this regard, commentators are asked to state specifically any benefits or risks the proposed system may pose to the clearance and settlement of government securities.

E. Risk Management

As described in detail above, CCOS will treat cash securities, for risk management purposes, as futures contract equivalents, and then calculate original and variation margin. Consistent with this approach, CCOS intends to cross-margin cash securities positions it clears with futures contracts cleared by BOTCC. Commentators are asked to consider the proposed margin calculations and procedures, and address the perceived benefits and risks of the proposal. The Commission also seeks comment on whether, during the exemptive period, the Commission should require that CCOS impose margin rate floors below which the margin rates may not be lowered. The margin rate floors would apply to all original and maintenance margin rates for all futures, futures-equivalent cash securities, and basis spreads, and include limits on intercommodity spread credits provided by CCOS. Further, the Commission invites commentators to address whether, given the unique role of BOTCC as a clearing agency for the futures contract market, it would be prudential and appropriate for BOTCC to represent that it will maintain minimum levels of margin during the exemptive period to insure safety and soundness in the clearance and settlement of government securities.

The CCOS application would expand the group of participants trading in the government securities market. As discussed above, CCOS participants and non-CCOS CBOT members will be able to access the cash market through terminals located on the floor of the CBOT. Commentators are asked to address the perceived benefits and risks associated with expanding the perceived benefits and risks associated with expanding the base of participants in the government securities market. Commentators also should address the perceived risks posed to the national clearance and settlement system from permitting participants with relatively smaller capital bases than at present to trade in government securities.[47]

Like other clearing corporations, CCOS will assume all counterparty credit risk by guaranteeing all matched trades executed through CBB. The Commission believes that a clearing agency should be an adequately funded entity capable of providing the guarantee and performing risk management functions. While Section 17A does not set standards for clearing agency capitalization, the Commission has required other clearing agencies to meet certain minimum requirements.[48] As discussed above, the Commission generally recommends that a clearing agency have a clearing fund, use of which is limited to protecting participants and the clearing agency from participant defaults and unusual, significant clearing agency losses.[49] In

[46] 15 U.S.C. 78q–1(a)(2)(A)(ii) (1991).

[47] *Supra* note 16 and accompanying text.

[48] *E.g.*, prior to its original temporary registration, GSCC represented to the Commission that the capital from its initial stock offering was intended to exceed $5 million. In addition to its contributed capital, GSCC maintains a clearing fund designed to: (1) have on deposit from each netting member cash or other collateral sufficient to satisfy a loss as a result of that member's default and subsequent close-out of settlement positions; (2) maintain total assets in an amount sufficient to satisfy potential losses to GSCC resulting from the default of more than one member; and (3) ensure that GSCC has sufficient liquidity at all times to meet its payment and delivery obligations. Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19830 and 27006 (July 7, 1989), 54 FR 29798.

[49] *Supra* note 28.

lieu of such clearing fund, BOTCC proposes to guarantee all of CCOS's obligations arising under CCOS's rules, and CCOS, therefore, proposes to rely on the assets and credit of its parent, BOTCC, to meet any liquidity demands CCOS may incur.[50] Commentators are asked to address the perceived risks of relying on BOTCC as guarantor of CCOS's obligations, rather than a clearing fund or similar alternatives to ensure system liquidity. Specifically, the Commission seeks comment on appropriate levels of capitalization for CCOS and whether the BOTCC guarantee is sufficient, considering the extent of BOTCC's guaranteed obligations in the futures contract markets and other obligations, to meet the Commission's standards ensuring the safeguarding of securities and funds.

Finally, given the heightened concerns of safety and soundness in the approval of an application for exemption from registration as a clearing agency, the Commission seeks comment on whether an order granting an exemption should contain certain clearing volume limits. Such limits could provide a measure of protection during the exemptive period so that the clearance and settlement system for government securities would not be subject to unnecessary risks. Specifically, commentators should address the structure of such volume limits and the appropriate level of such limits.

V. Solicitation of Comments

You are invited to submit written data, views, and arguments concerning the foregoing application by July 23, 1993. Such written data, views, and arguments will be considered by the Commission in deciding whether to grant CCOS's request for exemption from registration. Persons desiring to make written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. 600–27. Copies of the application and all written comments will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

[50] Although most clearing agencies employ some form of risk mutualization among participants, risk mutualization is not mandated by the Act. In those cases where the Commission has not required a clearing fund or risk mutualization, there have been credit enhancement facilities maintained by such clearing agency. *See* Securities Exchange Act Release No. 27611 (January 12, 1990), 55 FR 1890 [File No. 600–24] (order granting temporary registration as a clearing agency to Delta Government Options Corporation).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[51]

Margaret H. McFarland,

Secretary.

Exhibit A

As an example of the original margin calculation, assume a participant had both cash securities and futures contract positions in 30-year T-bonds and futures contract positions in 10-year T-notes, as follows:

T-bonds

Long 100 30-year T-bonds with an 8% annual yield (cash securities)
Long 75 futures contracts, expiring in June, 1993, on 30-year T-bonds with an 8% annual yield
Short 80 futures contracts, expiring in September, 1993, on 30-year T-bonds with an 8% annual yield
Short 20 futures contracts, expiring in December, 1993, on 30-year T-bonds with an 8% annual yield
Long 10 futures contracts, expiring in March, 1994, on 30-year T-bonds with an 8% annual yield

T-notes

Short 150 futures contracts, expiring in March, 1994, on 10-year T-notes with an 8% annual yield

First, BOTCC will examine the 30-year T-bond futures and 30-year T-bond futures-equivalent positions:

Month 0+100
June+75
September −80
December −20
March (1994)+10

The Month 0 futures are the cash securities stated as futures-equivalent positions, which are assumed, for this example, to convert 1:1 into futures positions. BOTCC will net the monthly futures and cash futures-equivalent positions to arrive at a net futures position (100+75 − 80 − 20+10=85).[1] Next, the margin amount per future set by the BOTCC Margin Committee (currently, $1,500/30-year T-bond future) is multiplied by the net futures/futures-equivalent position.[2]

(A) +85×$1,500=$127,500

The $127,500 is defined by BOTCC as the Maximum Loss on the participant's position in 30-year T-bonds and futures on 30 year T-bonds.

Second, BOTCC will examine the participant's ten-year T-note and T-note futures position. As stated above, the participant has a 10 year T-note position of -150 March futures. Assume that the BOTCC Margin Committee has set a margin requirement of $1000/10-year T-note future. The presumed "Maximum Loss" on the 10-year T-note futures would be:

(B) 150×$1000=$150,000

Third, BOTCC will calculate an additional risk margin, accounting for futures spreads (*i.e.*, intermonth netting) of 30 year T-bond futures positions, to reflect divergence in the correlation among futures contracts with different delivery dates. Excluding Month 0 T-bond futures-equivalents,[3]

(June), +75 March 1994 +10 versus
September, −80 December −20 = +85
versus −100

there is a total of 85 T-bond futures spreads in the intermonth netting and 15 naked short T-bond futures positions. Assuming the BOTCC Margin Committee has set a risk margin for intermonth spreads at $100 per spread, the additional margin for the intermonth spreads will be:

(C) 85×$100=$8,500 (included in the final margin requirement)

Fourth, BOTCC will determine if any basis spreads exist in 30 year T-bond futures by matching T-bond futures with the cash futures-equivalent positions. In this example, the remaining -15 T-bond futures (naked short positions) are not offset against the cash futures-equivalents[4] to determine the margin for any basis spreads that exist in the portfolio. This reflects the potential divergence between cash and futures positions.

-15 (T-bond futures) versus +100 (Month 0 futures [cash T-bonds])

Because there are more than 15 Month 0 futures contracts to offset the -15 futures contracts, there are 15 basis spreads for which, currently, the BOTCC Margin Committee has set a $50 per spread basis risk margin requirement.

(D) 15×$50=$750 (included in final margin requirement)

Fifth, BOTCC then conducts the same analysis for 10 year T-note futures. Because the portfolio in this example does not include cash or multi-month futures positions in 10 year T-notes, this step yields no change in margin requirements.

Sixth, BOTCC will determine if the exposure in T-bond and T-note futures and futures-equivalent positions interact to reduce overall portfolio exposure. Thus, BOTCC will compare the participant's net commodity positions[5] in 30-year T-bonds and 10-year T-notes and provide a margin

[51] 17 CFR 200.30–3(a)(16) (1992).

[1] Since bonds being delivered into futures contract obligations will have greater or lesser value than the futures, the conversion factor is a means of equating bonds with various coupons and maturity dates with the standard bond set by BOTCC. The standard bond, which is equal to the corresponding future, has an 8% coupon and a conversion factor of 1. *See supra* note 27.

[2] The commodity margin rate is the same for long or short positions, so the charge for a fixed number of contracts will be the same regardless of market position. For cash securities positions, the charge will apply to the positions after the conversion to futures-equivalents.

[3] The Month 0 futures are the futures-equivalents of the cash 30-year T-bonds, after conversion, pursuant to the above formula. *Supra* note 26. Because the positions generally are subject to next-day delivery and have been accounted for in other parts of the margin calculation process, BOTCC has excluded these position from the intermonth spread additional margin calculations.

[4] +100 from the example above.

[5] The net commodity positions in T-bonds or T-notes are the positions remaining after the intermonth futures spreads and futures/futures-equivalents basis spreads have been netted out of the T-bond or T-note positions.

credit [6] for any offsets due to correlated short or long cash positions and short or long futures positions. [7] For purposes of this example, assume that the BOTCC Margin Committee has calculated a 1:2 correlation in price volatility between futures on 30 year T-bonds and futures on 10 year T-notes (*i.e.*, futures on the 30-year T-bonds are twice as volatile as, and are positively correlated with, futures on 10 year T-notes).[8] In the example above, this operation results in 75 spreads between the futures-equivalents of the 30 year T-bonds and the futures-equivalents of the 10-year T-notes.

+85 30 year T-bonds versus −150 10-year T-notes
= +85 T-bonds, versus −75 T-bonds (two 10-year T-notes = 1 30 year T-bond)
= 75 spreads, +10 outright T-bond futures-equivalents

Thus, 75 T-bond futures-equivalents and 150 T-note futures are eligible for intercommodity spread credits. To address the potential for divergence in assumed correlations, BOTCC reduces the allowable credit by applying a ten percent deduction against the applicable original margin requirement. Thus, the intercommodity spread credit in the above example would be:

(E) 75 × $1350=$101,250 (T-note futures offset on T-bond futures)

(F) 150 × $900=$135,000 (T-bond futures offset on T-note futures)

Summary: the margin requirement would be:

(A) $127,500 (Maximum Loss on +85 T-bonds including cash positions on T-bonds)

(B) $150,000 (Maximum Loss on −150 T-notes, including cash positions on T-notes)

(C) $8,500 [85 intermonth T-bond futures spreads, not including cash positions on T-bonds]

(D) $750 (15 basis spreads [naked futures versus cash])

(E) −$101,250 (30-year T-bond margin credit, applying T-note futures positions to reduce futures margin requirements)

(F) −$135,000 (10-year T-note margin credit, applying T-bond futures and cash positions to offset T-note futures margin requirements).

= $50,500 Total Margin Requirement

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[6] BOTCC will examine all of the clearing member's positions, including the five-year T-notes, and two-year T-notes that the member holds. In the above example, the clearing member holds only 30 year T-bonds, futures on 30-year T-bonds, and futures on 10 year T-notes.

[7] In order to establish the intercommodity spread credit, BOTCC staff analyzes the correlations between the various bills, notes, and bonds deliverable into the futures to determine their respective relationships. BOTCC and CCDS will review the margin rates on a monthly basis, and as needed, to respond to changes in market conditions.

[8] BOTCC would pair each long position in one 30-year T-bond to two short positions in 10-year notes.

[Release No. 34–32484; File No. SR–MSE–93–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Midwest Stock Exchange, Incorporated Seeking Permanent Approval of SuperMAX and a Two-Tiered Fill-Size Parameter for SuperMAX Issues

June 16, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 5, 1993, the Midwest Stock Exchange, Incorporated ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The MSE proposes to establish its SuperMAX system on a permanent basis [1] and to amend the current SuperMAX "fill size" parameters for eligible issues by establishing a two-tiered system for SuperMAX fills. The two-tiered system will consist of (1) the top 500 most actively traded issues, which will have an increased fill size parameter set at 1099 shares; and (2) all other issues, which will continue at the current fill size parameter of 599 shares.

SuperMAX, which is currently operating as pilot program, provides that the guaranteed execution price of small agency market orders received over the Midwest Automated Execution System (MAX) are automatically improved from the consolidated best bid or offer according to certain pre-defined criteria. For a period of time, the MSE operated SuperMAX and an "Enhanced" version of SuperMAX concurrently as pilot programs. However, the Exchange recently determined to continued with only SuperMAX as its system of choice.[2]

[1] The Exchange initially established SuperMAX as a pilot program on May 14, 1990. (See, Release No. 34–28014, May 14, 1990, Order approving SR–MSE–90–5). The Exchange initially sought permanent approval for SuperMAX in its filing SR–MSE–90–17; however, that request was held in abeyance while the Exchange operated both the SuperMAX and the Enhanced SuperMAX pilot program.

[2] The pilot program for Enhanced SuperMAX expired on April 14, 1993. The Exchange did not seek permanent approval for Enhanced SuperMAX at any time, nor does it seek permanent approval here.

The Exchange seeks Commission approval of SuperMAX on a permanent basis while continuing to operate SuperMAX as a voluntary system, by specialist, on a stock by stock basis. The Exchange also seeks approval of the two-tiered system for fill size parameters for SuperMAX eligible issues with tier-one set at a 1099 fill size and tier-two set at a 599 fill size.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSE has prepared summaries, set forth in section (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed filing is to seek permanent approval of the Exchange's SuperMAX system on a voluntary basis and to raise the fill size parameters for certain SuperMAX issues. By increasing the fill-size parameters for SuperMAX issues in the top 500 most actively traded issues to 1099 shares (while keeping the fill size for other SuperMAX issues at 599), a larger universe of agency market orders are eligible for SuperMAX executions. Because SuperMAX allows for small agency market orders to be guaranteed an execution at a price that is better than the consolidated best bid or offer according to certain pre-defined criteria, this change works to increase the number of agency market orders that could benefit from better price executions through SuperMAX.

As is now the case during the SuperMAX pilot program, the Exchange seeks to continue participation in SuperMAX on a voluntary basis, by specialist, on a stock by stock basis. SuperMAX will apply to agency market orders in Dual Trading System issues according to the two-tiered system for fill size parameters outlined above.

MAX executes agency market orders through the SuperMAX program without any specialist intervention based upon the following criteria:

(1) Both buy and sell orders in markets quoted with a minimum variation (⅛th spread) or orders which do not meet the criteria in 2 or 3 below

will be executed based upon the consolidated best bid or offer.

(2) Buy orders in markets quoted with more than ⅛th spread will be executed at a price ⅛th better than the consolidated best offer if (a) an execution at the consolidated best offer would create a double up-tick based upon the last sale in the primary market or (b) an execution at the consolidated best offer would result in a greater than a ⅛th price change from the last sale in the primary market.

(3) Sell orders in markets quoted with more than ⅛th spread will be executed at a price ⅛th better than the consolidated best bid if (a) an execution at the consolidated best bid would create a double down-tick based upon the last sale in the primary market or (b) an execution at the consolidated best bid would result in a greater than a ⅛th price change from the last sale in the primary market.

For example, the execution price for a market buy order in a ¼–½ quoted market is as follows:

Tick/last sale	Execution price
+½	½
+⅜	⅜
−⅜	½
−¼	⅜
+¼	⅜ (if in range)

The execution price for a market buy order in a ¼–⅜ quoted market, is as follows:

Tick/last sale	Execution price
+⅝	⅝
+½	½
+⅜	½
−½	⅝
−⅜	½
−¼	½
+¼	½

The execution price for a market sell order in a ¼–½ quoted market is as follows:

Tick/last sale	Execution price
−¼	¼
−⅜	⅜
+⅜	¼
+½	⅜

Any eligible order in a stock included in SuperMAX which is manually presented at the specialist post by a floor broker must also be guaranteed an execution by the specialist pursuant to the above listed criteria. In the event that a contra side order which would better a SuperMAX execution is presented at the post, the incoming order which is executed pursuant to the SuperMAX criteria must be adjusted to the better price.

SuperMAX will operate during the trading day from 8:30 a.m. (CST) until the close. During volatile periods, individual stocks or all stocks may be removed from SuperMAX with the approval of two members of the Committee on Floor Procedure.

In support of its request seeking permanent approval, and consistent with the Commission's interest in receiving information regarding SuperMAX, the Exchange's Specialist participation in SuperMAX is approximately 80 percent for the 900 issues traded over the SuperMAX system, or about 40 percent of the total issues traded on the Exchange. While the Exchange cannot provide historical information regarding the number of times an execution is bettered through SuperMAX, there is never an instance where SuperMAX provides an inferior fill to a regular MAX execution. However, when a market is quoted with a one quarter point spread, or more, and an execution would result in a double up-tick or double down-tick, or in an execution more than ⅛ point away from the last sale, customers receive price improvement 100% of the time.[3]

The MSE believes the proposed rule change is consistent with Section 6 of the Act in that it will promote just and equitable principles of trade and will help to perfect the mechanism of a free and open market and a national market system and will foster competition among markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The MSE does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange's Floor Procedure Committee approved the proposal creating the two-tiered fill size parameters and supports SuperMAX on a permanent, voluntary basis.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period as (i) the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, an all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the MSE. All submissions should refer to the file number in the caption above and should be submitted by July 14, 1993.

For the Commission by the Division of Market Regulations, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14794 Filed 6–22–93; 8:45 am]

BILLING CODE 8010–01–M

[3] For example, if the market in ABC stock is ¼–½ with the last sale at ⅜ on an uptick, and an agency market order is received to buy 200 shares of ABC at the market, the order would automatically be filled at ⅜.

[Release No. 34–32483; File No. SR–MSRB–93–7]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Use of the CDI Pilot System by Issuers

June 16, 1993.

On May 17, 1993, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–93–7), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder. The proposed rule change is described in Items I, II, and III

below, which Items have been prepared by the Board. The Board has designated this proposal as one concerned solely with the administration of the self-regulatory organization under Section 19(b)(3)(A) of the Act, which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested people.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed rule change to accelerate the implementation of the second phase of its Continuing Disclosure Information Pilot ("CDI Pilot" or "Pilot") system in order to accept disclosure notices from issuers.[1] In an earlier filing with the Commission (which was approved on April 6, 1992), the Board stated that it would implement the CDI Pilot system in phases: During the first six months of operation (which currently is in progress), the system accepts disclosure notices only from trustees. After this initial phase, the system also will accept disclosure notices from issuers.[2] The Board wishes to accelerate the second phase of this schedule so that issuers may begin immediately submitting disclosure notices to the Pilot system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On April 6, 1992, the Commission approved the CDI Pilot system for an 18-month period.[3] The Pilot system began operating on January 21, 1993, and functions as part of the Board's Municipal Securities Information Library TM ("MSIL" TM) system.[4] The Pilot system accepts and disseminates voluntary submissions of official disclosure notices relating to outstanding issues of municipal securities, *i.e.*, continuing disclosure information. The CDI Pilot system is scheduled to be implemented in phases: During its first phase of operation, which currently is in progress (and originally scheduled for a six-month period), the system accepts disclosure notices only from trustees. During its second phase, the system also will accept disclosure notices from "issuers of municipal securities," as that term is defined in SEC Rule 15c2–12.[5] The Board wishes to accelerate the implementation of this second phase, and begin accepting voluntary submissions of disclosure notices from issuers as of May 17, 1993. The Board is confident in its ability to manage an increased number of submitters to the Pilot system by accepting and disseminating such disclosure notices. Moreover, the Board believes that delaying the implementation of the second phase of the Pilot system for another few months would serve no useful purpose. As the Commission noted in its order approving the CDI Pilot system:

> Currently, a number of municipal securities issuers are experiencing financial difficulties. In such an environment, disclosure mechanisms become especially important to investors and potential investors in these securities * * *. [G]reater availability of CDI will reduce the risk of sales practice fraud and manipulation in the municipal market by making investors more informed and better able to detect such practices.[6]

The CDI Pilot system currently accepts only short submissions (one to three pages in length, or the equivalent in electronic form) by mail, facsimile, and electronically by computer modem, using specific submission procedures. Issuers who wish to submit documents to the system for dissemination will follow the same submission and verification procedures that trustee submitters currently utilize.[7]

The Pilot system uses two methods of dissemination to subscribers: (1) CDI that has been submitted to the system by mail or facsimile is disseminated by facsimile transmission; and (2) CDI that has been submitted to the system electronically by computer modem is disseminated electronically. In addition, after the Board processes and transmits the disclosure notices to subscribers, it makes these documents available at its Public Access Facility ("PAF") in Alexandria, Virginia, where any interested person may review the documents free of charge and copy the documents at $.20 per page (plus sales tax).

The Board will continue to operate the output side of the Pilot system to ensure that the information is available to any party who wishes to subscribe to the service. As with all MSIL system services, this service is available, on equal terms, to any party who requests the service.

(b) The Board believes the proposed rule change is consistent with Section 15B(b)(C) of the Act, which provides that the Board's rules shall:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

In addition, section 15B(b)(2)(I) authorizes the Board to adopt rules which provide for the operation and administration of the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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[1] The CDI Pilot system was approved in Securities Exchange Act Release No. 30556 (April 6, 1992). A full description of the system is contained in that approval order.

[2] *See* File No. SR–MSRB–90–4 Amendment No. 1 (Oct. 7, 1991), which was approved in Securities Exchange Act Release No. 30556 (April 6, 1992).

[3] Securities Exchange Act Release No. 30556.

[4] The MUNICIPAL SECURITIES INFORMATION LIBRARY System and the MSIL System are trademarks of the Board. The MSIL system, which was approved in Securities Exchange Act Release No. 29296 (June 13, 1991), is a central facility through which information about municipal securities is collected, stored and disseminated.

[5] As noted in its prior filing, at the end of each phase of the Pilot, the Board will evaluate and address any technical, policy and cost issues which arise during that phase, prior to committing the Pilot system to greater capacity. The Board will report to the Commission on each phase after it is completed. The first such report was provided to the Commission on May 17, 1993. In addition, the Board will report to the Commission at the end of the pilot period, and any changes or requests for permanent approval will be filed under SEC Rule 19b–4. *See* File No. SR–MSRB–90–4 Amendment No. 1 (Oct. 7, 1991), and Securities Exchange Act Release No. 30556 (April 6, 1992).

[6] Securities Exchange Act Release No. 30556 at 25–28 (April 6, 1992).

[7] For a full description of the Pilot system's submission and verification procedures, *see* Securities Exchange Act Release No. 30556 (April 6, 1992).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Board has designated this proposal as one concerned solely with the administration of the self-regulatory organization under section 19(b)(3)(A) of the Act, which renders the proposal effective upon receipt of this filing by the Commission. At any time within 60 days of filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested people are invited to submit written data, views, and arguments concerning the foregoing. People making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–93–7 and should be submitted by July 14, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200–30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14793 Filed 6–22–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33482; File No. SR–MSRB–93–8]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Fees for Backlog Document Collections of the MSIL System

June 16, 1993.

On May 26, 1993, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–93–8), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Board has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A) of the Act, which renders the fee effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested people.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed rule change to establish prices for backlog document collections relating to its Official Statement/Advance Refunding Document ("OS/ARD") subsystem of the Municipal Securities Information Library TM (MSIL TM) system [1] (hereinafter referred to as the "proposed rule change"). The Board will charge $7,000 (plus postage or delivery charges) for a collection of 1992 documents, and $6,000 (plus postage or delivery charges) for a collection of 1990 documents.[2] The purposed fees are structured to defray the Board's dissemination costs. The Board does not expect or intend to make a profit from the MSIL system, and will review the MSIL system fees annually to ensure that dissemination costs are paid for from user fees. The Board will file any new or modified fees with the Commission, pursuant to section 19(b)(1) of the Act.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The OS/ARD subsystem, which was activated on April 20, 1992, is a central electronic facility through which information collected and stored pursuant to MSRB rule G–36 [3] is made available electronically and in paper form to market participants and information vendors.[4] The annual subscription fee for the OS/ARD system is $12,000.[5] The fees contemplated for backlog document collections are substantially less because, while an annual subscription requires the Board to send a computer tape to the subscriber each business day whether or not the tape is completely filled, the purchase of a backlog collection will require fewer tapes.[6]

In its prior filings with the Commission, the Board stated that it intends to use its general revenues for collecting, indexing and storing the OS/ARD subsystem's documents, and that the costs of producing and disseminating magnetic tapes (and paper copies) would be paid for by user fees.[7] Thus, the Board is establishing fees to defray its cost of disseminating backlog tapes. This is consistent with the Commission's policy that self-regulatory organizations' fees be based on expenses incurred in providing

[1] The Municipal SECURITIES INFORMATION LIBRARY system and the MSIL system are trademarks of the Board. The MSIL system, which was approved in Securities Exchange Act Release No. 29298 (June 13, 1991), is a central facility through which information about municipal securities is collected, stored and disseminated.

[2] The Board is in the process of imaging its 1991 documents, and plans to make that collection available by the end of the year. All collections will consist of imaged documents on magnetic tapes.

[3] Rule G–36 requires underwriters to provide copies of final official statements and advance refunding documents within certain specified timeframes for most new issues issued since January 1, 1990.

[4] The Commission approved the OS/ARD subsystem and the MSIL system on June 13, 1991. Securities Exchange Act Release No. 29298.

[5] Securities Exchange Act Rel. No. 30308 (Jan. 30, 1992).

[6] Currently, it takes two to three business days' worth of documents to fill one optical disk.

[7] Securities Exchange Act Rel. No. 28197 (July 12, 1990).

information to the public.[8] The Board believes that employing cost-based prices is in the public interest since it will ensure that a complete collection of vital information will be available, at fair and reasonable prices, for the life of the municipal securities.

(b) The Board believes the proposed rule change is consistent with section 15B (b)(2)(C) of the Act, which provides that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSIL system is designed to increase the integrity and efficiency of the municipal securities market by, among other things, helping to ensure that the price charged for an issue in the secondary market reflects all available official information about that issue. The Board believes that the fees are fair and reasonable in light of the costs associated with disseminating the information, and that the services provided by the MSIL system are available on reasonable and non-discriminatory terms to any interested person.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since the fees will apply equally to all persons.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The rule change is effective upon filing, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder, because the proposal is "establishing or changing a due, fee or other charge." At any time within 60 days of filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested people are invited to submit written data, views, and arguments concerning the foregoing. People making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–93–8 and should be submitted by July 14, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14795 Filed 6–22–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32486; File No. SR–NYSE–93–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by New York Stock Exchange, Inc. Relating to Streamlined Listing Procedures for Debt Securities

June 17, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 26, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On June 14, 1993, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change in order to clarify certain aspects thereof.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to streamline the listing process for debt securities offerings. For that purpose, it proposes to amend Paragraph 501.06 (Bond Signatures), Paragraph 702.02 (Timetable for Original Listing), Paragraph 702.04 (Supporting Documents), Paragraph 703.01 (General Information) and Paragraph 703.06 (Debt Securities Offerings Listing Process) of its *Listed Company Manual*. The proposal would eliminate the indemnification agreement requirement and generally make the listing process easier for issuers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to streamline its existing process for the listing of debt securities offerings. In particular, the Exchange seeks to eliminate the indemnification agreement requirement and to revise the list of supporting documents that an applicant must file in support of its listing application. The Exchange intends that, by making the application process less burdensome for issuers, the Exchange will make its bond trading

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[8] *See e.g.*, Securities Exchange Act Release No. 20874 (April 17, 1984) *aff'd, NASD v. SEC*, 801 F. 2d 1415 (D.C. Cir. 1986).

[1] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated June 11, 1993 ("Amendment No. 1"). Amendment No. 1 would add specificity to the content of the opinion of counsel that the Exchange requires in connection with a debt listing application and would clarify the proposed rule change by adding cross-references and other language to make the text of the *Listed Company Manual* easier to follow.

and reporting systems more readily accessible for issuers.

Indemnification Agreement

Where an issuer authorizes the facsimile signatures of two authorized officers of the issuer to effectuate the execution of a debt security, Paragraph 501.06 of the Listed Company Manual currently requires the issuer to enter into an agreement in which it: (1) Requires an authorized officer of the trustee or of the authenticating agent of the trustee to manually authenticate the security; (2) authorizes innocent purchasers for value to rely on the facsimile signatures; and (3) agrees to indemnify and hold harmless those purchasers and the Exchange for damages that result from a reliance upon the authenticity of the facsimile signatures.

In light of the availability of other legal remedies and the fact that neither depositories, clearing agencies nor other exchanges that trade debt securities require similar indemnities, the Exchange proposes to eliminate the indemnification agreement requirement.[2]

Even without the agreement, the Exchange anticipates that manual authentication of the facsimile signatures by an authorized agent of the trustee or of the authenticating agent of the trustee will remain standard industry practice for debt securities.

As a result, the Exchange proposes to delete from Paragraph 501.06 of the Listed Company Manual the references to the eliminated indemnification agreement requirement.

Supporting Documentation

The Exchange is proposing to change the list of documents that the Exchange requires an issuer to provide in support of a listing application for any debt security, as follows:

(1) *Distribution Information:* The Exchange proposes to delete the requirement that the issuer provide distribution information.

(2) *Notice of Availability:* The Exchange currently requires the issuer to have its transfer agent notify the Exchange of the availability of eligible securities for trading. The Exchange proposes to limit that requirement to debt securities that have been issued within the past 30 days. The Exchange believes that after 30 days the availability of securities should be readily apparent.

(3) *Prospectus:* Currently, the Exchange requests the applicant to provide four copies of both the preliminary and final prospectuses. The proposed rule change would eliminate the preliminary (but not the final) prospectus requirement. In addition, where an issue has been outstanding for more than one year, the proposed rule change would allow the applicant to satisfy the requirement by supplying either the final prospectus or an issue term sheet describing such relevant information as the coupon rate and payment dates, maturity, denominations and conversion price (if applicable).[3]

(4) *Mortgage or Indenture:* The proposed rule change seeks to allow the issuer of multiple issues to satisfy the indenture requirement by providing copies of the master indenture and of the separate indenture provisions specific to each issue.

(5) *Indemnification Agreement:* Elimination of the indemnification agreement requirement of Paragraph 501.06 obviates the need for the issuer to provide the indemnification agreement in connection with the listing process.

(6) *Registration Statement:* The Exchange notes that it has currently pending before the Commission a request to exempt from the registration requirements of the Act the debt securities of an issuer that has any securities that are registered under section 12(a) of the Act or that has a reporting obligation under section 15(d) of the Act.[4] The proposed rule change does not propose to eliminate the registration statement requirement in the "exempt debt security" context. However, if the Commission acts to grant all or any part of that exemption, the Exchange will make conforming changes to the Listed Company Manual.

(7) *Listing Fee Agreement and Listing Agreement:* The Exchange is eliminating the need to provide listing fee agreements and listing agreements in recognition of the fact that the Exchange does not require those agreements in connection with the listing of debt securities, although it does require them in connection with the listing of equity securities.

(8) The Exchange will no longer subject debt securities to advance notice in the Weekly Bulletin.[5]

Having proposed to streamline the listing process pursuant to Paragraph 703.06, the Exchange also proposes to amend Paragraphs 702.02, 702.04 and 703.01 to further the process of making the listing process less burdensome and to conform to the proposed Paragraph 703.06 changes. Thus, because the Exchange proposes to have Paragraph 703.06 govern the timetable and supporting documentation aspects of debt security listings exclusively, the Exchange proposes to amend Paragraphs 702.02, 702.04 and 703.01 to remove their application to those aspects of debt security listings.

By streamlining the listing process for debt securities, as provided in the proposed rule change, the Exchange hopes to increase the number of debt listings. The Exchange believes that such an increase serves the public interest because it will make a greater number of bond issues accessible to the Exchange's trading and disclosure systems.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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[2] The Exchange is not proposing to eliminate the indemnification agreement requirement in the context of the listing process for equity securities.

[3] According to the NYSE, once an issue has been outstanding for six months to a year, the information in the prospectus may be too dated to be helpful in the listing process. If so, the NYSE will allow the applicant to satisfy the prospectus requirement by submitting another document that sets forth the relevant terms of the issue. The NYSE has indicated that there will be no standardized form for this "issue term sheet;" instead, the Exchange will work with each applicant, on a case-by-case basis, to develop an appropriate document. Telephone conversation between Fred Siesel, Director, Fixed Income Markets, NYSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on June 1, 1993.

[4] *See* letter from Donald J. Solodar, Executive Vice President, Fixed Income, Options and Administration, NYSE, to William H. Heyman, Director, Division of Market Regulation, SEC, and Linda C. Quinn, Director, Division of Corporation Finance, SEC, dated April 7, 1992.

[5] The Commission notes that, in addition to the changes set forth above, the NYSE is proposing to revise the content of another supporting document: the opinion of counsel (*i.e.*, the representations about the company and its securities that the issuer's attorney is required to make). *See* Amendment No. 1, *supra*, note 1. According to the NYSE, the content of the revised opinion of counsel would be a combination of the current requirements for original and subsequent listing applications, except that any provisions specifically for equity securities would be deleted. Telephone conversation between Fred Siesel, Director, Fixed Income Markets, NYSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on June 11, 1993.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–21 and should be submitted by July 14, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14701 Filed 6–22–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32405; File No. SR–PSE–93–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Listing and Trading of Quarterly Index Expiration Options Based on the Wilshire Small Cap Index

June 17, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 21, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission or Sec") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to amend its rules to permit the trading of quarterly index expiration ("QIX") options based on the Wilshire Small Cap Index").[1]

The text of the proposed rule change is available at the Office of the Secretary, PSE, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange is seeking approval to trade QIX options based on the Wilshire Index.[2] The PSE proposes that these options will expire on the last business day of each calendar quarter, will have a European-Style Exercise,[3] and the index value will be derived from the closing prices of the component securities on the last trading day prior to expiration ("P.M.-settled"). In addition, the Exchange proposes to retain the flexibility to assign an index multiplier for these options other than the customary 100 up to a maximum of 500, in order to allow the Exchange to accommodate the needs of larger portfolios.

The PSE further proposes that QIX options on the Wilshire Index will be aggregated with positions in other option contracts based on the Wilshire Index for purposes of Exchange position and exercise limits. In particular, the Exchange proposes that Wilshire Index QIXs be subject to the 37,500 contract limit requested for "regular" Wilshire Index options,[4] without the 22,500 contract limit or "telescoping requirement" for the series with the nearest expiration date applicable to regular Wilshire Index options. Under the proposal, regular Wilshire Index options would be aggregated with Wilshire Index QIXs, so that the aggregate of all options contracts based on the Wilshire Index could not exceed 37,500 contracts on the same side of the market. Regular Wilshire Index options, however, would remain subject to the 22,500 contract telescoping requirements.[5]

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

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[1] The Commission has recently approved similar QIX option proposals based on the Standard & Poor's ("S&P") Corporation 100 and 500 Indexes and on the Major Market, Institutional, and S&P 400 MidCap Indexes. *See* Securities Exchange Act Release Nos. 31800 (February 1, 1993), 58 FR 7274 and 31844 (February 9, 1993), 58 FR 8798 respectively.

[2] The Commission approved the PSE's proposal to list and trade options on the Wilshire Index on November 3, 1992. *See* Securities Exchange Act Release No. 31397 (November 3, 1992), 57 FR 53368. Options on the Wilshire Index commenced trading on the Exchange on January 11, 1993 simultaneously with the commencement of trading at the Chicago Board of Trade ("CBOT") of futures contracts and options on futures contracts on the Wilshire Index.

[3] A European-style option is one that may be exercised only during a specified period prior to the expiration of the option.

[4] *See* Securities Exchange Act Release No. 31793 (January 29, 1993), 58 FR 7283 (notice of File No. SR–PSE–92–45).

[5] The Exchange believes that regular Wilshire Index options, which are A.M.-settled, should not be subject to a telescoping requirement because the index value is derived from opening prices of the component securities comprising the index rather than from closing prices. *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33378. Accordingly, the Exchange may in the future file a separate proposal with the Commission that would eliminate the telescoping requirement applicable to regular Wilshire Index options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to the File No. SR–PSE–93–07 and should be submitted by July 14, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

[6] 17 CFR 200.30–3(a)(12) (1992).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 93–14790 Filed 6–22–93; 8:45 am]
BILLING CODE 8010–01–M

[Rel. No. IC–19526; 812–8078]

Affiliated Fund, Inc. et al.; Notice of Application

June 17, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Affiliated Fund, Inc., Lord Abbett Bond-Debenture Fund, Inc., Lord Abbett California Tax-Free Income Fund, Inc., Lord Abbett Cash Reserve Fund, Inc., Lord Abbett Developing Growth Fund, Inc., Lord Abbett U.S. Government Securities Fund, Inc. (formerly Lord Abbett Income Fund, Inc.), Lord Abbett Tax-Free Income Fund, Inc., Lord Abbett Value Appreciation Fund, Inc. (collectively, the "Original Applicants"), Lord Abbett Fundamental Value Fund, Inc., Lord Abbett Global Fund, Inc., Lord Abbett Series Fund, Inc., Lord Abbett Equity Fund, Lord Abbett Tax-free Income Trust, Lord Abbett Research Fund, Inc., (collectively, the "Additional Applicants," and collectively with the Original Applicants, the "Lord Abbett Funds"), and Lord, Abbett & Co.

RELEVANT ACT SECTIONS: Conditional, amended order requested under section 6(c) of the Act granting an exemption from sections 13(a)(2), 18(f)(1), 22(f), and 22(g), and under section 17(d) and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional, amended order under sections 6(c) and 17(d) of the Act, and rule 17d–1 thereunder, permitting certain registered open-end investment companies to enter into deferred compensation arrangements with their directors or trustees who are not interested persons of such companies within the meaning of section 2(a)(19).

FILING DATE: The application was filed on September 2, 1992, and amended on February 6, 1993, May 6, 1993, and June 15, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 12, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 767 Fifth Avenue, New York, New York 10167.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Lord, Abbett & Co. is the sponsor and investment adviser of the Lord Abbett Funds.

2. Each director and trustee of the Lord Abbett Funds who is not an interested person of the Lord Abbett Funds within the meaning of section 2(a)(19) of the Act earns fees from the Lord Abbett Funds (except, currently, from Lord Abbett Research Fund, Inc.) for service as director or trustee or, where applicable, for service on audit committees.

3. The SEC issued an order in 1986 (the "Existing Order"),[1] permitting the Original Applications to enter into deferred compensation arrangements with their non-interested directors. Applicants request an amendment to the Existing Order extending the relief granted therein to the Additional Applicants and to other registered open-end investment companies for which Lord, Abbett & Co., or any successor thereof by way of reorganization from a partnership to another form of business entity and/or under the laws of different states, is or becomes the sponsor and investment adviser (the Additional Applicants and such other registered investment companies are collectively referred to herein as the "Funds"). Under the amended order, the Funds would enter into deferred compensation arrangements (the "Arrangements") with their non-interested directors and trustees (the "Participants") substantially in conformity with the terms and conditions applicable to the

[1] Investment Company Release Nos. 14835 (Dec. 9, 1985) (notice) and 14884 (Jan. 3, 1986) (order).

deferred compensation arrangements entered into by the Original Applicants pursuant to the Existing Order.

4. The Arrangements would permit the Participants to elect to defer receipt of their fees so that they may defer payment of income taxes on such fees, and for other reasons. The deferred fees will be accrued to each Participant's benefit on a monthly basis, based on the annual compensation rate for the Participant in effect from time to time during the year. The fees for attending meetings of a board or of a committee will be accrued on the business day following such meeting.

5. Each Participant's deferred fee will be credited to an account on the applicable Fund's books established for the Participant. The value of each account will be determined by reference to the number of shares of the applicable Fund that the deferred fee would have purchased on the date it is credited to the Participant's account, and the value of the shares that would have been acquired through the reinvestment of dividends and capital gains distributions. Thus, the account will be subject to the same expenses, income, and capital changes as a shareholder's account, although no shares will actually be issued to fund the account. Each Fund's obligations to make payments of amounts accrued under the Arrangements will be general unsecured obligations, payable solely from the general assets and property of the respective Fund.

6. The Arrangements will be evidenced by deferred compensation plans which are the same in all substantive respects (except for the inclusion of provisions permitting a Participant to change a previous election as to the timing and manner of distributions) as the plans adopted by the Original Applicants pursuant to the Existing Order, and will be substantially similar in their provisions to such plans as they recently have been amended.

7. Each Participant's right to receive payment under the applicable Arrangement would be nontransferable, except that in the event of the death of the Participant, amounts payable to him or her under the Arrangement would be payable to his or her designated beneficiary or to his or her estate.

8. Certain of the Additional Applicants have implemented deferral of directors' and trustees' compensation on a basis similar to that proposed under the Arrangements. Those Additional Applicants will not transfer any amounts under such existing deferred fee arrangements to the Arrangements in reliance upon any order issued in connection with this application.[2]

Legal Analysis

1. Applicants contend that the proposed Arrangements possess none of the characteristics of senior securities which led Congress to enact sections 13(a) and 18 of the Act. They assert that there would be no "borrowing" under the Arrangements in the sense which concerned Congress, and all liabilities created under the Arrangements would be offset by essentially equal assets of the Funds that would not exist if the fees were paid on a current basis. Applicants contend that the Arrangements would not induce speculative investments by the Funds or provide opportunity for manipulation of the Funds' expenses and profits.

2. Section 22(f) bars undisclosed restrictions on transferability or negotiability of redeemable securities by open-end investment companies. Applicants contend that restrictions on transferability of Participants' accounts are included primarily to benefit the Participants and would not affect the interests of the Participants or of any shareholder of the Funds adversely.

3. Section 22(g) prohibits registered open-end investment companies from issuing securities for services or for property other than cash or securities. This provision prevents the dilution of equity and voting power that can result when securities are issued for consideration that is not readily valued. Applicants contend that the Arrangements will not have the effect of diluting the equity or voting power of shareholders as prohibited by section 22(g). They also argue that the Arrangements may be viewed as being issued not in return for services, but in return for not being required to pay such fees on a current basis.

4. Applicants submit that the proposed Arrangements meet the standards for an order under rule 17d–1(c). Each Fund would determine its general obligations accruing under the proposed Arrangement as though the deferred fees were invested in its shares. As such, applicants contend that the income, realized gain or loss on investments, and unrealized appreciation or depreciation of assets attributed to the account of a Participant would be identical in amount to the income, realized gain or loss, and appreciation or depreciation received by the applicable Fund's shareholders. The Participants neither directly nor indirectly would receive a benefit which would otherwise inure to a Fund or its shareholders.

5. Applicants contend that the deferral of fees would have a negligible impact on the Funds' assets, liabilities, net assets, and net income per share, because the total fees paid to each Participant are *de minimis* in comparison to the size of each Fund's assets.

6. Applicants submit that the proposed amended order is appropriate because the ability of the Funds to recruit and retain highly qualified directors or trustees will be enhanced by the Funds' ability to defer payment of Participants' fees.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14792 Filed 6–22–93; 8:45 am]

BILLING CODE 8010–01–M

[2] The staff notes that applicants have not requested, and any order will not grant, an exemption to allow the implementation or continuance of existing deferred compensation arrangements which were not adopted pursuant to the Existing Order.

DEPARTMENT OF STATE

[Public Notice 1822]

U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT), U.S. National Committee and Study Group A; Meeting

The Department of State announces that the National Committee and Study Group A, U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on July 21, 1993 at the Department of State, 2201 C Street, NW., Washington DC 20520. The U.S. National Committee will meet from 9 a.m. to 12 p.m. in room 1105. U.S. Study Group A will meet from 1 p.m. to 4 p.m. in room 1105.

The agenda for the National Committee meeting will include a report of the June meeting of the Telecommunication Standards Advisory Group (TSAG) and preparations for the continuation of TSAG tasks. Intellectual property policies may also be discussed. The Study Group A meeting will include reports and discussion of the results of recent ITU-TS Study Group 2 and Study Group 3 meetings, and any other matters within the purview of Study Group A.

Members of the general public may attend these meetings and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the

Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meetings. Persons who plan to attend should advise the Office of Earl Barbely, Department of State, (202) 647–0201, FAX (202) 647–7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Please bring 50 copies of documents to be considered at these meetings. If the document has been mailed to the membership, bring only 10 copies.

Dated: June 10, 1993.

Earl Barbely,

Director, Telecommunications and Information Standards, Chairman, U.S. CCITT National Committee.

[FR Doc. 93–14721 Filed 6–22–93; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

[Order 93–6–23; Docket 48871]

Order Establishing a Proceeding for Guam/Saipan-Osaka Service

AGENCY: Department of Transportation.

ACTION: Institution of the Guam/Saipan-Osaka Combination Service Proceeding to select two U.S. carriers to provide this service.

SUMMARY: Two U.S. carriers can provide scheduled combination service between Guam/Saipan and Osaka under the aviation agreement between the United States and Japan. When a new Osaka airport opens in late 1994, U.S. carriers will be able to exercise these rights that are now precluded by environmental constraints at the existing airport. Three carriers—Continental Micronesia, United Air Lines and Northwest Airlines—have applied for either new authority and/or designations under the agreement to activate their dormant authority.

The Department has decided to institute a non-oral, evidentiary proceeding to select two carriers to serve these markets. The Department has also dismissed the requests of Continental Micronesia and United for immediate exemption authority and deferred their designation requests pending a final decision in the case.

DATES: Applications, amended applications, motions to consolidate, petitions for leave to intervene and petitions for reconsideration are due not later than June 29, 1993. Answers are due not later than July 6, 1993.

ADDRESSES: Applications, amended applications, motions to consolidate, petitions for leave to intervene and petitions for reconsideration should be filed in Docket 48871 addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., room 4107, Washington, DC 20590, and should be served on all parties in Docket 48871.

Dated: June 16, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Aviation.

[FR Doc. 93–14801 Filed 6–22–93; 8:45 am]

BILLING CODE 4910–62–M

National Highway Traffic Safety Administration

Announcing the First Meeting of the Motor Vehicle Titling, Registration and Salvage Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Meeting announcement.

SUMMARY: This notice announces the first meeting of the Motor Vehicle Titling, Registration, and Salvage Advisory Committee. The Committee was established as required by section 140 of the Anti Car Theft Act of 1992, Public Law 102–519, and in accordance with the Federal Advisory Committee Act, for the purpose of studying problems related to motor vehicle titling, registration, and controls over motor vehicle salvage which may affect the motor vehicle theft problem. The committee will develop and submit a report to the President, the Congress, and the chief executive of each State concerning the results of this study, which will include recommendations to solve these problems. The purpose of this meeting is to discuss the issues and topics related to this problem and to develop and agenda for the Committee to follow. At this meeting the Committee will discuss definitions of salvage and junk and title branding of salvage, junk, and reconstructed or rebuilt vehicles.

DATES AND TIME: The meeting is scheduled to begin at 9 a.m. on Tuesday, July 20, 1993, and conclude at 4 p.m. on Wednesday, July 21, 1993.

ADDRESSES: The meeting will be held in room 4234–38 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In April 1993, the Motor Vehicle Titling, Registration, and Salvage Advisory Committee was established as required by section 140 of the Anti Car Theft Act of 1992, Public Law 102–519. The purpose of the Committee is to study problems which relate to motor vehicle titling, registration, and vehicle salvage controls, including the lack of uniformity in State laws, which may contribute to motor vehicle theft and fraud problems.

The Committee will prepare a report containing the results of the study, including appropriate recommendations to solve the problems identified. The report shall be submitted to the President, the Congress, and to the chief executive officer of each State not later than April 1994.

This meeting is open to the public; however, participation will be determined by the Committee Chairperson.

A public reference file (P.F. 93–001) has been established to contain products of the Committee and will be open to the public during the hours of 9:30 a.m. to 4 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in room 5108 at 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–2678.

FOR FURTHER INFORMATION CONTACT: Richard C. Morse, Odometer Fraud Staff, Office of the Associate Administrator for Enforcement, National Highway Traffic Safety Administration, NEF–20, room 5321, 400 Seventh Street, SW., Washington, DC 20590, Phone: 202–366–4761.

Issued on: June 18, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–14766 Filed 6–22–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–24; Notice 2]

Determination That Nonconforming 1990 Mercedes-Benz 300TE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1990 Mercedes-Benz 300TE passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1990 Mercedes-Benz 300TE passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for

importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1990 Mercedes-Benz 300TE), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective June 23, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) petitioned NHTSA to determine whether 1990 Mercedes-Benz 300TE passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on April 26, 1993 (58 FR 22014) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP # 40 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1990 Mercedes-Benz 300TE (Model ID 124.090) not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1990 Mercedes-Benz 300TE originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 17, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–14718 Filed 6–22–93; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 93–25; Notice 2]

Determination That Nonconforming 1989 Toyota Camry Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1989 Toyota Camry passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1989 Toyota Camry passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified vision of the 1989 Toyota Camry), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective June 23, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

J.K. Motors, Inc. of Kingsville, Maryland (Registered Importer No. R–90–006) petitioned NHTSA to determine whether 1989 Toyota Camry passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on April 26, 1993 (58 FR 22016) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP

#39 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1989 Toyota Camry not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1989 Toyota Camry originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 17, 1993

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–14719 Filed 6–22–93; 8:45 am]

BILLING CODE 4910-59-M

Denial of Motor Vehicle Noncompliance Petition

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

Mr. Frederick E. Grim, P.E., petitioned the agency to determine that the 1990 Dodge Shadow vehicle and other makes and model years of Chrysler vehicles equipped with a tilt steering column, fail to comply with Federal Motor Vehicle Safety Standards (FMVSS) No. 203, "Impact protection for the driver from the steering control system," No. 204, "Steering control rearward displacement," and No. 208, "Occupant crash protection." Mr. Grim included with his petition information and photographs of two vehicles involved in real-world crashes, characterized by Mr. Grim as low speed collisions, in which the steering wheel separated from the tilt steering column. The petitioner believes that the steering wheel separation is caused by the rearward displacement of the steering shaft in a crash, causing the tilt mechanism to fracture prior to proper air bag deployment and operation.

Specifically, this petition requests NHTSA to commence a proceeding to determine whether to issue an order requiring owner notification and remedy of a failure of the subject vehicles to comply with the aforementioned FMVSS. To address the merits of the petition, the agency wrote to Chrysler Corporation (Chrysler), requesting information and data from all tests used by Chrysler in the assessment of vehicle performance relative to the requirements of FMVSS Nos. 203, 204, and 208. Separately, the agency procured a Dodge Shadow vehicle with the subject tilt steering column and tested the vehicle to the requirements of the applicable standards. Based on NHTSA's review of all available information, as discussed below, there are no data to suggest the subject vehicles did not comply with the applicable standards. Thus, the petition for the commencement of a proceeding to determine whether to issue an order regarding failure of the subject vehicles to comply with the applicable standards is denied. However, the information obtained during the course of the analysis pertaining to the subject petition indicated that it would be appropriate to consider whether the subject vehicles contain a safety-related defect related to the design and performance of the steering column. Accordingly, a defect investigation has been initiated.

Concerning the petitioner's request regarding compliance to the safety standards, it is noted that FMVSS No. 203 does not apply to vehicles which use a driver position air bag to meet the frontal crash protection requirements of FMVSS No. 208. All Dodge Shadow and Plymouth Sundance vehicles, beginning with model year 1990, were equipped with a driver's air bag. Therefore, no basis exists for conducting a determination of compliance with respect to FMVSS No. 203.

Review of all information and data available indicates that these vehicles meet the requirements of FMVSS Nos. 208 and 204. Chrysler submitted the results of 14 tests used to certify compliance to the requirements of FMVSS No. 208. In each of the tests, the vehicle met the injury criteria established in FMVSS No. 208. In addition, Chrysler submitted the results of nine non-certification tests on vehicles with the subject tilt column design. These developmental tests indicated that compliance with standards 204 and 208 was not affected by the tilt steering column design. NHTSA conducted a compliance test of a 1993 Dodge Shadow to assess its performance relative to FMVSS No. 208. FMVSS No. 208 requires that the Head Injury Criteria (HIC) not exceed 1,000, the chest acceleration not exceed 60 g's, the chest deflection not exceed 3 inches and the compression loads in the upper legs not exceed 2,250 lb. The driver dummy in the Dodge Shadow, restrained by an air bag measured a HIC of 186, a chest acceleration of 34 g's, a chest deflection of 1.1 inches and upper leg loads of less than 1,100 lb. These data indicate a large margin of compliance with the performance measures established in FMVSS No. 208. Based on the data submitted by Chrysler and the NHTSA compliance test, there are no data to suggest a noncompliance with the requirements of FMVSS No. 208.

Concerning FMVSS No. 204, the standard requires that the steering control may not have a horizontal rearward displacement of more than 5 inches when the vehicle is impacted into a barrier at 30 mph. Chrysler submitted data on two vehicle crash tests to support the compliance of the subject vehicles to the requirements of FMVSS No. 204. THe maximum displacement of the steering control was 3.9 inches. In NHTSA's FMVSS No. 208 compliance test mentioned above, photographic measurement indicated the rearward displacement complied with the requirements of FMVSS No. 204. Again, there are no data to suggest a noncompliance of the subject vehicles with the requirements of FMVSS No. 204.

Although the analysis of all available data indicate that the subject vehicles comply with the performance requirements of FMVSS No. 208 and FMVSS No. 204, the review indicated several instances of tilt column damage in laboratory crash tests. While this damage did not adversely affect compliance with the subject safety standards, NHTSA concluded that further review of tilt steering column safety performance was warranted. Accordingly, the agency has initiated a defect investigation to assess the safety performance of the steering column in these vehicles. This investigation, EA93–009, is ongoing and no conclusions have been reached.

In consideration of all available information, it was concluded that there was not a reasonable possibility that an order concerning noncompliance in relation to the petitioner's allegations would be issued at the conclusion of an investigation. Further commitment of resources to determine whether a noncompliance exists does not appear to be warranted. Therefore, the petition was denied.

Authority: Sec. 124, Public Law 93–492: 88 Stat. 1470 (15 U.S.C. 1401a); delegations of authority at 49 CFR 1.5 and 501.8.

Dated: June 17, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93-14715 Filed 6-22-93; 8:45 am]

BILLING CODE 4910-60-M

VOL 58 ISS 119 JE 23 1993 UMI

Sunshine Act Meetings

Federal Register
Vol. 58, No. 119
Wednesday, June 23, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 24, 1993.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the public.

1. Pride in Public Service

The Commission will present the Pride in Public Service Award to June's recipient.

2. Loperamide

The staff will brief the Commission on a final rule under the Poison Prevention Packaging Act to require child-resistant packaging for products containing more than 0.045 milligrams of loperamide in a single package.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, (301) 504–0800.

Dated: June 18, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–14926 Filed 6–21–93; 2:59 pm]
BILLING CODE 6355–01–M

Corrections

Federal Register
Vol. 58, No. 119
Wednesday, June 23, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 75

[FRL-4543-5]

Acid Rain Program: General Provisions and Permits, Allowance System, Continuous Emissions Monitoring, Excess Emissions and Administrative Appeals

Correction

In rule document 93-1 beginning on page 3590 in the issue of Monday, January 11, 1993, make the following corrections:

§ 75.1 [Corrected]

1. On page 3702, in the first column, in § 75.1(b), in the last line, "appendix C" should read "appendix G".

§ 75.6 [Corrected]

2. On page 3703, in the second column, in § 75.6(a)(12), in the last line, "the part" should read "this part".

§ 75.12 [Corrected]

3. On page 3705, in the third column, in § 75.12(c)(1), in the third line, "fact or" should read "factor".

§ 75.14 [Corrected]

4. On page 3706, in the third column, in § 75.14(d), in the second line, "*engines*" should read "*engine*".

§ 75.15 [Corrected]

5. On page 3707, in the first column, in § 75.15(a)(3)(iii), in the third line, "the outlet" should read "and outlet".

5. On the same page, in the same column, in § 75.15(b), in the first line, "SO^2" should read "SO_2".

§ 75.16 [Corrected]

6. On page 3708, in the third column, in § 75.16(b)(2)(i), in the first line, after "from" insert "each".

§ 75.17 [Corrected]

7. On page 3709, in the second column, in § 75.17(b), in the second line, "*units(s)*" should read "*unit(s)*".

§ 75.20 [Corrected]

8. On page 3710, in the first column, in § 75.20(a)(1), in the first line, "*Notification*" was misspelled.

§ 75.33 [Corrected]

9. On page 3716, beginning in the first column, in § 75.33(c)(2)(ii)(B), remove the text beginning with subparagraph (2) at the bottom of the page and ending with subparagraph (B) in the second column at the top of the page.

§ 75.41 [Corrected]

10. On page 3718, in the second column, in § 75.41(b)(2)(i), under "(Eq. 13)":

a. "*X*" should be lowercased each time it appears in the next three lines.

b. In the first line, after "value at" insert "hour".

c. In the third line, before the equal sign, insert an end parenthesis.

11. On page 3720, in the first column, in § 75.41(c)(2)(ii), the phrase "(Eq. 27)" should be removed.

§ 75.48 [Corrected]

12. On the same page, in the third column, in § 75.48(a)(3)(vii), in the second line, "§ 7.6.4" should read "section 7.6.4".

§ 75.50 [Corrected]

13. On page 3721, in the third column, in § 75.50(c)(3)(ii), in the first line, "emission" should read "emissions".

Appendix A to Part 75 [Corrected]

14. On page 3727, in the third column, in **Appendix A to Part 75—Specifications and Test Procedures**, under the heading *1.2 Flow Monitors*, in the eighth line, "Text" should read "Test".

15. On the same page, in the third column, under the heading 1.2.2 Alternative Monitoring Location, in the first paragraph, in the second line, "grater" should read "greater".

16. On page 3730, in the 1st column, under the heading 2.1.4 Flow Monitors, in the 1st full paragraph, in the 13th line, "fmp" should read "fpm".

17. On the same page, in the third column, under the heading *3.2 Linearity Check*, in paragraph (2), in the last line, "restrictive" was misspelled.

18. On page 3736, in Figure 2., in footnote 3, "of" should read "or".

Appendix C to Part 75 [Corrected]

19. On page 3741, in the first column, in **Appendix C to Part 75—Missing Data Estimation Procedures**, in paragraph 1.2.4.6, delete the first through sixth lines.

20. On the same page, in the second column, in paragraph 2.2.1, in the heading to Table C—1, "Loan" should read "Load".

21. On page 3742, in paragraph 2.1.3, in the second column, in the seventh line, "§ 6.5.2" should read "section 6.5.2".

22. On the same page, in the third column, in paragraph 2.2.6, in the eighth line, "or" should read "of".

23. On page 3743, in the third column, in paragraph 2.1.2.2, in the sixth line, remove "fuel" after "dual-fuel".

24. On the same page, in the same column, in paragraph 2.1.2.3, in the third line, "Methods 7E of 3A" should read "Methods 7E and 3A".

Appendix F to Part 75 [Corrected]

25. On page 3747, in the third column, **Appendix F to Part 75—Conversion Procedures**, in paragraph 4.3, in the entry for H_R, in the first line, "emissions" was misspelled.

26. On page 3748, in the first column, in paragraph 5.2.2, in the second line, "concentrations" should read "concentration".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Permanent Regulatory Program

Correction

In rule document 93-13852 beginning on page 32847 in the issue of Monday, June 14, 1993, make the following correction:

On page 32855, in the first column, amendatory instruction 3. should read:

"3. Section 916.16 is amended by revising paragraph (a); amending paragraph (b) by revising the introductory text, removing and

reserving paragraphs (b)(1) through (7), (b)(9), (b)(11) through (16), (b)(18) through (23), (b)(25) through (29), (b)(31) through (42), and revising paragraphs (b)(8), (10), (17), (24), and (30); and by adding paragraph (c) as follows:"

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Wednesday
June 23, 1993

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 58 and 92
HOME Investment Partnerships Program; Interim Rule

VOL 58 ISS 119 JE 23 1993 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 58 and 92

[Docket No. R-93-1658; FR-3410-I-01]

RIN 2501-AD49

HOME Investment Partnerships Program

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This rule amends the existing interim rule for the HOME Investment Partnerships Program by making conforming changes required by the Housing and Community Development Act of 1992 and by implementing program changes, in response to public comment, that would facilitate the operation of the program. It also provides specifically for its applicability to the HOME program, and to broaden, where appropriate, current program-specific references to various activities, responsibilities and categorical exclusions so that they apply to activities and participants under the HOME program.

DATES: *Effective date:* July 23, 1993.

Comment due date: Comments on these amendments to the interim rule must be submitted on or before August 23, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. FAXES will not be accepted.

FOR FURTHER INFORMATION CONTACT: Concerning 24 CFR part 92, subparts A–L: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2470, TDD (202) 708–2565. (These are not toll-free numbers.)

Concerning 24 CFR part 92, subpart M: Dominic Nessi, Director, Office of Indian Housing, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW. room 4140, Washington, DC 20410, telephone (202) 708–1015. A telecommunications device for speech and hearing impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

Concerning 24 CFR part 58: Richard H. Broun, Director, Office of Environment and Energy, room 7240, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2894, TDD (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements for the HOME Program have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, and have been assigned OMB Control Number 2501–0013. This rule, through the elimination of certain provisions, reduces information collection requirements. Information on these requirements is provided as follows:

ANNUAL REPORTING AND RECORDKEEPING BURDEN

Regulation section	Number of respondents	Record-keeping hours	Reporting hours	Estimated annual burden hours
92.51 (deleted)	50	0	−5	−250
92.208 (deleted)	.....	.....	.....	.....
92.209 (deleted)	54	−4	0	−216
92.210 (revised)	.....	.....	.....	.....
92.222 (revised)	330	0	−5	−1,650
Total Annual Reporting and Recordkeeping Burden Reduction	.....	.....	.....	−2,116

II. Background

The HOME Investment Partnerships Program (HOME) was enacted under title II (42 U.S.C. 12701–12839) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101–625, approved November 28, 1990). On March 19, 1991, the Department published a proposed rule (56 FR 11592) to implement the HOME Program. The Department received 119 public comments in response to the proposed rule. After reviewing and considering these comments, HUD published an interim rule on December 16, 1991 (56 FR 65313), inviting additional comments on the program.

The Department received 118 public comments on the interim rule. In partial response to these comments and HUD's experience in implementing the program, a rule to make necessary changes on an expedited basis to the December 16, 1991 interim rule was developed. In addition, the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992) included a substantial number of amendments to the HOME program. A memorandum dated November 9, 1992 and signed by the Acting Assistant Secretary summarizing the HCDA 1992 amendments to the HOME program was mailed to all participating jurisdictions (PJs) soon after the passage of HCDA 1992. Most of the HCDA 1992 amendments to the HOME program were determined by the Department to be immediately effective, requiring only conforming amendments to the HOME rule to bring it into accord with the statutory changes. Other HCDA 1992 chances were determined to require the publication of a proposed rule (58 FR 26048, April 29, 1993) with an opportunity for public notice and comment before they could be implemented. Some of the HCDA 1992 amendments that were determined to be immediately effective were included in the "necessary changes" interim rule, which was published on December 22, 1992 (57 FR 60960). The Department has received 27 public comments on this rule. Since the publication of the interim rules, the Department has also conducted more than thirty HOME Program training sessions across the country which also served as forums for airing issues and comments concerning the rules.

The remaining changes to the HOME rule necessary to make it conform to the additional HCDA 1992 amendments determined to be immediately effective are being implemented in this interim rule. The Department is also using this interim rule to implement additional changes that are being made in response to comments on both the December 16, 1991 and December 22, 1992 interim rules, and that will improve the operation of the HOME program. Amendments applicable to subpart M, HOME funds for Indian tribes, are also being made in this rule.

A. HCDA 1992 Amendments

Currently, a jurisdiction must receive $750,000 through formula distribution to become a participating jurisdiction, or must receive at least $500,000 by formula and "make up the difference" to $750,000. These thresholds are amended by HCDA 1992 section 202 to provide that, in years where Congress appropriates less than $1.5 billion for title II of NAHA (e.g., Fiscal Year 1993), jurisdictions must receive at least $335,000 by formula and meet a threshold of $500,000 in order to participate. A new § 92.50(f) is being added to provide for the use of the alternate $335,000 formula threshold, and § 92.102 and § 92.103(b) are being amended to include references to the new alternate participation threshold amount of $500,000. In addition, because the redistribution calculations under the allocation formula begin at one-half the threshold amount, § 92.50(f) also provides for the use of $167,500 in redistribution calculations when the alternate formula threshold of $335,000 applies. These new thresholds were reflected in the FY 1993 Notice of Fund Availability (NOFA) for the HOME Program, published in the Federal Register on January 27, 1993 (58 FR 6289).

Section 202 of HCDA 1992 also creates new thresholds, applicable only in years when the HOME appropriation falls below $1.5 billion, under which a PJ's designation may be revoked. HUD may revoke a jurisdiction's designation as a PJ if its allocation drops below $500,000 for three consecutive years, $410,000 for two consecutive years and $335,000 for any one year. These new thresholds are being added to § 92.107(b).

The rental production set-aside and all restrictions for new construction activities, including the new construction list and the special justifications for new construction under neighborhood revitalization and special needs housing are eliminated by HCDA 1992 section 203. Site and neighborhood standards, 24 CFR 92.202, still apply to new construction. In addition, these statutory changes eliminate the 36 month commitment deadline for rental housing production set aside funds. Now, all HOME funds (including FY 1992 allocations) must be committed within 24 months. Accordingly, §§ 92.51 Establishing list of participating jurisdictions that may use funds for new construction and rental housing production set-aside, § 92.208 New construction: HUD authorized, and § 92.209 New construction: Neighborhood revitalization, are being removed and reserved; §§ 92.52, 92.102(b)(2), and 92.500(d)(2) are being revised to remove references to the rental production set-aside or new construction; and § 92.210, currently entitled New Construction: Special needs, is re-titled, Tenant-based rental assistance: Security deposits, and is being completely revised to reflect HCDA 1992 section 204(a), which permits HOME funds to be used for security deposits, whether or not HOME funds are provided for other forms of tenant-based rental assistance.

The revised § 92.210 enables the participating jurisdiction to define the term "security deposit" for purposes of the HOME program, with the additional requirements that the security deposit may not exceed the equivalent of two months' rent. Only tenants, not landlords, are permitted to apply for this form of assistance. Since the use of HOME funds for security deposits is a form of tenant-based rental assistance, the tenant lease protection provisions of § 92.253 (a) and (b) are applicable. Conforming changes are also being made to include security deposits in the definition of tenant-based rental assistance at § 92.2; as a part of program description at § 92.150(b)(6); in the listing of eligible activities at § 92.205(a)(1) and eligible costs at § 92.206(e); and as a component of § 92.211 Tenant-based rental assistance.

Section 205 of HCDA 1992 provides that permanent housing for disabled homeless persons, transitional housing and single-room occupancy housing (SRO) are included in the term "affordable housing." The only effect of this provision is to add transitional housing as an eligible HOME activity, since all permanent and SRO housing is currently eligible under the HOME interim rule. A definition of "transitional housing" is being added at § 92.2. Transitional housing is designed to provide housing and appropriate supportive services. Its purpose is to facilitate the movement of individuals to independent living within a period prescribed by the PJ or project owner. Because this specified time limitation is applicable to transitional housing, § 92.253(c) is revised to permit the termination of tenancy after the prescribed period. Section 92.205(a)(1) is being revised to specify HOME assisted housing must be permanent or transitional housing and includes housing for disabled homeless persons, and single-room occupancy housing. Emergency shelters are not transitional or permanent housing and are not eligible for the HOME program, and the definition of "housing" at § 92.2 is amended to clarify this point.

HCDA 1992 section 207 permits each PJ to use an amount equal to 10 percent of its HOME allocation for administrative and planning costs, including salaries of staff persons involved in the administration and management of HOME-assisted activities, incurred on or after October 28, 1992, the effective date of HCDA 1992. Section 92.206(f) is being amended to reflect this use of HOME funds. The Department will also allow PJs to use up to ten percent of any return on the investment of HOME funds, as defined in section 92.503, for administrative and planning costs.

Section 207 also provides that no administrative costs will be recognized as match, and eliminates the seven percent match credit for administrative costs paid with State, and local or CDBG funds. The conforming change to § 92.220(a)(5) to eliminate administrative costs as an eligible form of match is being implemented in the HOME proposed rule for HCDA 1992 amendments. The proposed rule would revise this section by replacing administrative costs with bond proceeds, newly eligible as a form of match in accordance with HCDA section 210(b).

In § 92.218 Amount of matching contribution, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to clarify that HOME funds used for administrative expenses and for operating expenses and capacity building of community housing development organizations do not have to be matched. Section 92.221 Match credit is also being revised by removing the text of paragraph (a) and moving up the texts of paragraphs (b) and (c), with conforming changes to delete references to administrative expenses. Section 92.221(a)(6) has been reserved to accommodate changes to be made by the proposed rule.

Section 207(g) of HCDA 1992 permits a participating jurisdiction in the HOME program to use up to five percent of its

HOME allocation for the payment of operating expenses for community housing development organizations (CHDOs). To implement this section, the Department has defined operating expenses at § 92.2. The definition seeks to be as inclusive as possible while still focusing on eligible operating expenses, as opposed to project costs. HOME funds for operating expenses may not be used to pay the administrative costs incurred by a CHDO acting as a subrecipient or contractor of a PJ to administer any or all of a PJ's HOME program activities. A PJ may use its administrative funds under the 10% cap for this purpose. Operating expenses for CHDOs are added to the list of eligible activities at § 92.206(g). To encourage the development of HOME-assisted projects by CHDOs, a new section is added at § 92.300(e) to explain that if funds for operating expenses are provided under § 92.206(g) and the CHDO is not also receiving CHDO set-aside funds to develop, own, or sponsor housing, the participating jurisdiction must enter into a written agreement with the community housing development organization. The written agreement must provide that the CHDO is expected to receive CHDO set-aside funds within 24 months of receiving the funds for operating expenses, and sets forth the terms and conditions upon which this expectation is based. In § 92.302(d)(1) "operating budget" is changed to read "operating expenses," and the text of this entire paragraph is being moved to a new paragraph established at § 92.300(f), and § 92.302(d) has been renumbered to accommodate this change. Moving this text, which deals with limitations on the assistance that may be provided to CHDOs, is necessary because the limitation applies to all operating expenses, and not just to housing education and organizational support under § 92.302. The new § 92.300(f) also reflects HCDA 1992 section 212(c), which limits the amount of HOME assistance for operating expenses to the greater of 50 percent or $50,000 of the organization's fiscal year total operating budget, without regard to other Federal assistance being provided.

The tiered match requirements have been amended by HCDA section 210(a). PJs must now provide the same 25 percent match (rather than 33 percent) for substantial rehabilitation as for rental assistance and rehabilitation; and a 30 percent match (rather than 50 percent) for new construction. These match requirements apply to any HOME funds drawn down on or after October 1, 1992, the beginning of FY 1993. The rule at § 92.218(a) is amended to substitute these new match requirements.

Section 92.220(a)(6) is added to the rule to include as an eligible match the value of site preparation and construction materials, and donated or voluntary labor, in connection with site preparation and construction or rehabilitation of affordable housing, as permitted by HCDA 1992 section 210(b). For the purpose of valuation, a single rate will be applicable for all donated or voluntary labor. The labor rate for FY 1993 is $10/hour. The labor rate will be reviewed each year, and be specified in the notice of funding availability announcing the formula allocation amounts as specified at 92.52, and the participating jurisdictions that receive a reduction of the matching contribution requirement. Donated materials are credited as match at the time they are used for the affordable housing, and donated or voluntary labor is credited at the time the work is performed, as specified in new § 92.221(a)(6).

HCDA 1992 section 210(c) amended the requirements for reduction of the match requirement. To implement these amendments, the current match reduction procedures at § 92.222(a), which permit a percentage reduction of the match over a three year period, are stricken and replaced by procedures described below. Section 210(c) requires the reduction of the match on the basis of the fiscal distress of the PJ, with some variation depending upon whether a State or local PJ is involved. A PJ other than a State is entitled to a 50 percent match reduction during any fiscal year that it is determined to be in fiscal distress, or a 100 percent match reduction during any fiscal year that it is determined to be in severe fiscal distress. The statute provides two distress criteria for local PJs, one based on the poverty rate of a PJ, the other based on a PJ's per capita income, each using data made available by the Bureau of the Census for the calendar year immediately preceding the PJ's match reduction fiscal year. The statute defines "fiscal distress" to mean that one of the distress criteria has been satisfied; "severe fiscal distress" means that both criteria have been satisfied. Because the statute does not establish distress criteria for States, and requires the Department to take into consideration a State's fiscal capacity and expenditure needs, a separate procedure for State PJs will be issued in a proposed rule for HCDA 1992 amendments to the HOME program. Section 92.222(a)(2) is reserved to this interim rule to accommodate the State procedure.

Although these fiscal distress criteria for local governments are specified in the statute, the information for these indicators is not updated by the U.S. Bureau of the Census any more frequently than every two years. The most current available data from this source will, therefore, be used. The Department will compute and publish distress determinations for PJs on an annual basis, even though new data may not be available each year, because additional jurisdictions may be eligible to participate in the program, or the configuration of existing PJs may change, which could result in different distress determinations. Because the Department will be making and publishing the distress determinations, it will not be necessary for a PJ to submit a certification of distress.

A PJ will meet the first criterion if its percent of families in poverty is 125 percent or more of the United States average; and a PJ will meet the second criterion of distress if its per capita income is less than 75 percent of the United States average. The Department has made available a list of local PJs that meet the distress criteria for FY 1993, and in the future will provide the list annually in the HOME Notice of Funding Availability (NOFA).

In order to permit the full benefit on the match reduction to be taken into account for planning purposes by participating jurisdictions, the reduction will be effective for the fiscal year in which the distress determination is published and for the next fiscal year. A 100 percent match reduction will, in every instance, be effective for this two year period. However, if in the second year of a 50 percent match reduction period the published distress determination indicates severe fiscal distress, a new two year 100 percent match reduction period is initiated and becomes immediately effective, superseding the second year of the 50 percent match reduction.

Section 210(c) of HCDA 1992 also permits the Department to reduce the match requirement by up to 100 percent for a PJ located in an area in which a declaration of major disaster is made under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. If a participating jurisdiction is located in an area in which a declaration of major disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act is made, HUD may reduce the matching requirement by up to 100 percent of the fiscal year in which the declaration of major disaster is made and the following fiscal year for a local participating jurisdiction, and for the State participating jurisdiction, by

up to 100 percent for the fiscal year in which the declaration of major disaster is made and the following fiscal year with respect to any HOME funds expanded in an area to which the declaration of a major disaster applies. Since the inclusion of the match reduction for disaster areas in HCDA was prompted by several disasters in 1992, the Department will allow these jurisdictions to apply for the match reduction, which would count for FY 1993 and FY 1994. To request a reduction, a participating jurisdiction must submit to the local HUD Field Office a copy of the disaster declaration. The provisions of this new match reduction replace the current text at § 92.222(b), which contained the procedures for implementing the match reduction provisions eliminated by HCDA 1992.

Section 210 of HCDA 1992 also amends the match requirements with respect to contribution made to affordable housing and contributions made from bond proceeds. These amendments have been determined to require notice and comment rulemaking, and will be separately published in a proposed rule.

Under HCDA 1992 section 212(a), the time period in which jurisdictions must reserve at least 15 percent of their HOME allocations for community housing development organizations (CHDOs) has been extended from 18 months to 24 months, and the conforming change is being made to § 92.300(a). This is the same time period in which funds must be committed to projects under 24 CFR 92.500(d)(2). This deadline for project commitments remains unchanged.

If during the first 24 months of its participation in the HOME Program a PJ cannot identify a sufficient number of capable CHDOs, HCDA 1992 section 212(b) provides that up to 20 percent of the minimum CHDO setaside of 15 percent (but not more than $150,000 during the 24 month period) may be made available to develop the capacity of CHDOs in the jurisdiction. These funds may be used for this purpose as soon as the PJ determines there are an insufficient number of capable CHDOs. These funds are not available for this purpose after the initial 24 months. This provision is being added to § 92.300(b) of the rule.

Section 213(a) of HCDA 1992 permits the use of technical assistance funds provided through intermediary organizations to support community land trusts (CLTs) and community groups establishing community land trusts, and to support groups involved in construction to support women in the homebuilding professions. A new § 92.302(c)(6), titled Community Land Trusts, is being added, to provide that intermediary technical assistance funds to support CLTs may be used for organizational support, technical assistance, education and training, and continuing support. A CLT must meet the definition of a CHDO (except the requirements in section 104(6) (C) and (D) of NAHA) in addition to several other statutory criteria, outlined in this section.

Section 213(b) provides that technical assistance may be made available through intermediaries to businesses, unions, and organizations involved in construction and rehabilitation of housing in low- and moderate-income areas to assist women residing in the area to obtain jobs involving such activities. This might include facilitating access by women to, and providing apprenticeship and other training programs regarding non-traditional skills, recruiting women to participate in such programs, providing support for women at job sites, counseling and educating businesses regarding suitable work environments for women, providing information to such women regarding opportunities for establishing small housing construction and rehabilitation businesses. Up to ten percent of these technical assistance funds devoted to this purpose may be used to provide materials and tools for training such women.

Assistance to facilitate access for women in the homebuilding professions may be made available to community-based organizations, as defined in the Job Training Partnership Act, or a public housing agency with demonstrated experience in this activity. New paragraphs 92.302 (a)(3), (b)(1)(v), and (c)(7) are being added to include the section 213(b) provisions in the rule.

The law in section 214 creates an additional purpose for which funds designated for capacity building may be used: to facilitate the establishment and efficient operation of programs, under which title to vacant and abandoned parcels of real estate located in or causing blighted neighborhoods is cleared for use consistent with the purposes of HOME. This, however, does not mean that HOME funds may be used for land banking. Acquisition of vacant land is predicated upon construction of affordable housing, which must commence within 12 months of committing HOME funds for acquisition. A new paragraph (a)(6) is being added for this purpose to § 92.400 Coordinated federal support for housing strategies.

Section 92.500(a) has been amended to implement HCDA 1992 section 218(a) to allow joint projects between contiguous jurisdictions.

The definition of "first-time homebuyer" is amended by HCDA 1992 section 219 to provide that "an individual shall not be excluded from consideration as a first-time homebuyer on the basis that the individual owns or owned, as a principal residence during such 3-year period, a dwelling unit whose structure is—

(i) Not permanently affixed to a permanent foundation in accordance with local or other applicable regulations, or

Not in compliance with State, local, or model building codes, or other applicable codes, and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure."

This second provision has wide application beyond owners of manufactured housing and applies to individuals living in units that do not meet applicable standards and cannot be rehabilitated cost-effectively, as described in paragraph (ii), above, in the documented judgment of the PJ. The definition of First-time homebuyer" at § 92.2 is being revised to include this amendment.

B. Amendments Made in Response to Comments on the December 16, 1991 and December 22, 1992 Interim Rules

As discussed, above, in addition to bringing the HOME rule into conformity with the remaining effective HCDA 1992 provisions, this interim rule is implementing certain changes in the HOME program in response to comments submitted on the December 16, 1991 and December 22, 1992 interim rules. Taking into account those comments, comments received at HOME Program training sessions and the Department's experience with the program, the Department has determined that these changes are appropriate to simplify and expedite the administration of the HOME program. They are being implemented here in this interim rule because the notice and comment requirements of 24 CFR part 10 have already been satisfied with the publication of the December 16, 1991 and December 22, 1992 interim rules. These changes would have been issued in final rule form, but for the fact that the complete text of the HOME rule is not yet ready for publication as a final rule.

The definition of "first-time homebuyer" at § 92.2 is revised to clarify that an individual, in addition to an individual and his or her spouse (as

the definition currently reads], is included within its scope.

This rule amends one of the provisions relating to consortia at § 92.101(c). The HOME regulation had required that the consortium qualification period must be coterminous with that of urban county members. However, since some consortia have multiple urban counties which themselves have noncoterminous, three year, urban county qualification cycles, and since the CDBG statute precludes adjustments of the urban county cycles, the rule could not be complied with in these cases. Consequently, this interim rule deletes the coterminous requirement, but permits a consortium with one or more urban counties which have qualification cycles that are not coterminous with the consortium, to get in sync with an urban county by shortening a consortium qualification period to less than three fiscal years. The subsequent consortium qualification period will then revert to the usual three fiscal years cycle set forth in the rule. This interim rule also clarifies that the failure of an urban county consortium member to requalify under the CDBG program as an urban county for a fiscal year included in the consortium's qualification period terminates the period. This is consistent with the requirement that no included unit of general local government may withdraw from a consortium during a qualification period.

The Department received thirty comments requesting modification of the current provision in the rule that sets the maximum value of homeowner properties eligible for HOME assistance. Section 215(b)(1) of NAHA (42 U.S.C. 12745(b)(1)) provides that "Housing that is for homeownership shall qualify as affordable housing * * * only if the housing has an initial purchase price that does not exceed 95 percent of the median purchase price for the area * * *." By regulation, at 24 CFR 92.254, the Department imposes the section 203(b) FHA mortgage limits as a proxy for 95 percent of the median purchase price. These limits apply both to first-time homebuyers' purchases and to existing homeowners' rehabilitation.

The section 203(b) cap applies even for those PJs where 95 percent of the median area purchase price is actually much higher. HUD adopted this policy since it seemed inappropriate for a low-income HOME-assisted family to be able to purchase a home with a higher value than a non-subsidized middle-income family could purchase using FHA mortgage insurance under section 203(b). However, the effect of using these FHA limits has been to impede the full implementation of HOME activities in high-cost jurisdictions, as pointed out in eighteen comments received and as noted by the Department in its administration of the program.

In approximately 30 percent of the HOME PJs, the existing section 203(b) mortgage limits are capped well below 95 percent of the median purchase price. Commenters noted that in many of these areas, there are very few properties whose purchase price are under the section 203(b) limits. PJs in these areas are prevented from using HOME funds to assist firt-time homebuyers. In addition, by applying the section 203(b) limits to properties owned by low-income homeowners, particularly elderly, most homes are ineligible for rehabilitation assistance because the market value of the property (even before rehabilitation) often exceeds the section 203(b) limits.

For these reasons, this rule is revising paragraphs (a)(1) (i), (a)(1) (ii), and (b) of § 92.254, "Qualification as affordable housing: Homeownership", to track the statute and delete any reference to section 203(b) mortgage limits. This permits housing to qualify as affordable housing even if the initial purchase price or after rehabilitation value exceeds the FHA mortgage limits, as long as the value remains within 95 percent of the area's median purchase price.

This 95 percent limit will be implemented in accordance with procedures already in place. At present, the Department determines the median purchase for every metropolitan statistical area (MSA) in the nation based on data from the Federal Housing Finance Board and the WEFA Group, a private national economic forecasting organization. Within the statutory dollar amount limit, the section 203(b) limits are set at a level of 95 percent of median purchase price for most communities in the nation, and these limits will be used in the HOME program. However, for communities whose section 203(b) limits are capped below 95 percent of median purchase price because of the overall statutory limit, the Department will use the actual 95 percent of median purchase price figure for determining value in the HOME program. At the time of distribution of the section 203(b) limits, the Department will notify the capped communities of the 95 percent of median purchase price limits that will be used for HOME program purposes.

Because information on the median purchase price is available only on the MSA level, it may not necessarily reflect an accurate median purchase price for each jurisdiction in a MSA. The Department accepts appeals of its section 203(b) determinations from cities if they can submit current data to demonstrate that the Department's median purchase price figure is inaccurate. This procedure will be followed in the HOME program for jurisdictions that claim their HUD-determined 95 percent level is inaccurate. The appeals process, and data required, is outlined at 24 CFR 203.18(b). The Department publishes all appeals granted and reviews and adjusts them annually.

Section 92.254(a)(4)(i)(B) was promulgated in the interim rule published in the **Federal Register** on December 22, 1992 to address the concern that the continuance of HOME long-term affordability requirements upon foreclosure would act as a significant disincentive to private lending institutions to make loans to HOME projects. This section, in general, provides for the suspension of the affordability requirements upon foreclosure by a lender or other transfer in lieu of foreclosure. To promote a consistent approach between the HOME program and a soon-to-be-published final rule on mortgage assumability and release requirements for the Single Family Mortgage Insurance Program, particularly regarding assignment of an FHA insured mortgage to HUD, § 92.254(a)(4)(i)(B) is being amended by this rule. The amendment provides that the affordability restrictions must terminate, rather than be suspended, upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. However, the affordability restrictions are revived according to the original terms if, during the original affordability period, the owner of record before the termination event reacquires title to the property.

Another change that relates to the definition of affordability is being implemented in this rule. Section 92.254(a)(4)(ii)(B) was also amended in the interim rule published on December 22, 1992. There, the first-time homebuyer resale affordability provisions were amended to increase the maximum monthly housing payment (principal, interest, taxes and insurance) allowable for subsequent purchasers with an income between 76 and 80 percent of median to 30 percent of adjusted gross income. However, this change merely made adjustments to the

30 percent of income limitation used for affordability purposes.

Upon further consideration of several comments and the actual operation of the program, the Department agrees that the 30 percent limitation does not permit adjustment of the affordability standard in response to changes in the factors that determine affordability, such as home prices, market interest rates, local economic conditions, and the individual buyer's credit and payment history. This rule amends § 92.254(a)(4)(ii)(B) to permit the individual PJ, based upon relevant local factors, to establish a reasonable affordability standard and adjust it as necessary in response to changing circumstances. The new provision eliminates the 30 percent limitation, and instead requires that each participating jurisdiction define affordability for purposes of homebuyer resale in its HOME Program.

Section 209 of HCDA 1992 enables participating jurisdictions administering a program for first-time homebuyers to recapture HOME assistance and reinvest those funds to assist other first-time homebuyers, in lieu of restricting resale of that property to another low-income buyer, except where there are no net proceeds or where the net proceeds are insufficient to recapture the full HOME investment. In its interim rule of December 22, 1992 the Department implemented this provision and further required PJs to recapture the full net proceeds, when they are insufficient to repay the full HOME subsidy. The interim rule, at § 92.254(a)(4)(ii), defined "net proceeds" as the sales price minus loan repayments and closing costs.

Three commenters noted that this provision in the December 22, 1992 interim rule does not allow a PJ to permit the homeowner to recover his or her investment in affordable housing. The Department agrees with these commenters that PJs should have the option to allow the homeowner to recover the amount of his/her investment (i.e., downpayment, principal payments and any capital improvements), or some portion of it. This option is particularly important in steady or depreciating real estate markets where recapture of the total HOME investment does not allow the homeowner to recover any of his/her investment from the sale of the property.

Therefore, this interim rule amends § 92.254(a)(4)(ii) to provide the PJ this option. When the net proceeds are less than the amount of the HOME investment plus the homeowner's investment, the PJ may reduce a proportion of the HOME investment to be recaptured that is equivalent to the proportion of the amount of time the homeowner occupied the unit to the affordability period. For example, if the homeowner occupies for five years a unit with a fifteen year period of affordability, the PJ may reduce by one-third the HOME investment that is recaptured.

Example

A PJ provides a second mortgage to a first-time homebuyer for the acquisition of a unit that requires no rehabilitation. The total cost of acquisition is $50,000, financed as follows:

$25,000	First mortgage, private lender.
21,000	HOME second mortgage.
4,000	Homeowner downpayment.
50,000	

The period of affordability for this unit is fifteen years, and the homebuyer must sell it in year five, due to a job change. During its tenancy, the family added a bath to the basement and constructed a deck, investing a total of $10,000 in improvements. The values in the neighborhood have been steady, but have not appreciated and the unit sells for $52,000. No payments have been made on the HOME loan and closing costs and principal payments by the homeowner are negligible.

The PJ has specified in its recapture guidelines approved by HUD, that where the net proceeds are less than the HOME investment plus the homeowner's investment it will reduce the share of the HOME investment that is proportional to the length of occupancy by the first-time homebuyer relative to the period of affordability.

Step one: Determine the net proceeds. For this transaction, the net proceeds are:

$52,000	Sale price.
−25,000	Repayment of first mortgage and closing costs.
27,000	Net proceeds.

Step two: Determine that the net proceeds are less than the HOME investment plus the homeowner's investment.

$21,000	HOME investment.
+14,000	Homeowner's investment ($4,000 down payment + $10,000 improvements).
35,000	Combined investment.

Since $27,000 net proceeds is less than $35,000 combined investment, the PJ may pro-rate the amount of the HOME subsidy that must be recaptured based on the family's occupancy. Since the first-time homebuyer occupied the unit for one-third of the affordability period (5 of the 15 years), the PJ may forgive up to one-third of the HOME subsidy amount, or $7,000. It must recapture at least $14,000 of the HOME investment.

Step three: Determine distribution of sales proceeds. The proceeds of sale would be distributed as follows:

$52,000	Sale price.
−25,000	First mortgage repayment.
−14,000	HOME investment that must be recaptured.
13,000	Balance to be retained by homeowner.

By retaining the balance of sale proceeds, the initial owner is able to recover most of his $14,000 investment. At the same time, this method ensures the recapture of $14,000 of the HOME investment to be used by another first-time homebuyer.

In addition, § 92.254(a)(4)(ii) clarifies that the HOME assistance subject to the recapture provision is the assistance provided to enable the homebuyer to purchase the unit. In most instances this will be the direct assistance to the homebuyer, such as soft second mortgages, downpayment and closing cost assistance. Generally, when HOME assistance is provided for development costs (new construction or rehabilitation) it need not be recaptured. In some cases, particularly in low-income neighborhoods where property values are deflated, development costs may well exceed the property's market value. The portion of HOME funds invested in costs of such "overdevelopment" are never required to be recaptured. However, when development subsidies are used to reduce the purchase price below market value, and therefore to make the unit affordable to the homebuyer, the difference between market value and the purchase price is subject to recapture.

Example

A PJ acquires and rehabilitates a property as part of a neighborhood preservation and revitalization program. Total development costs ($30,000 for acquisition and $30,000 for rehabilitation) are $60,000. The market value is $50,000, but to make the unit affordable, the PJ sells it to a low-income family for $42,000. The $10,000 difference between development cost and market value is not subject to recapture, but the $8,000 write-down of the purchase price below market value is subject to recapture.

Conforming amendments are being made to § 92.150(b)(5) and § 92.152 to include recapture guidelines in the contents of program descriptions and amendments to program descriptions.

Section 92.254(a)(4)(ii) is amended to permit recapture of the HOME investment, as described above.

Another area in which a program correction is being made is in the way assets are included in income calculations for eligibility purposes. The HOME regulation, at § 92.203, currently requires that participating jurisdictions make determinations of annual income, adjusted income, monthly income and monthly adjusted income, as those terms are defined in 24 CFR part 813 (i.e., in accordance with the U.S. Housing Act of 1937). The definition of "annual income" in part 813 includes "net family assets" which, in turn, includes the passbook value of the equity in a house as part of the calculation when determining annual income.

Twenty commenters expressed concern about the use of this definition of "annual income" for homeowner rehabilitation programs. They point out that including the passbook value of the equity in a house as part of annual income has a negative effect on house-rich but income-poor individuals and families, who are frequently elderly. In rapidly appreciating markets, including the value of land and a substandard structure in the determination of income prohibits many needy, otherwise eligible, owners from receiving rehabilitation assistance. PJs should be allowed to assist these owners to live in a safer, standard environment. The inability to rehabilitate the deteriorating homes of owners excluded by this provision also defeats many revitalization strategies where the aim is to treat a neighborhood and upgrade the housing units as well as the infrastructure. In particular, this provision tends to severely limit or exclude owner-occupied rehabilitation programs in many communities in New England, the Washington metropolitan area and California. Many public comments were received from these areas.

The Department agrees with these commenters. To remedy this situation, § 92.203 Income determinations, is being amended to exclude the value of equity in the homeowner's principal residence, as required under part 813, when determining the income of an existing homeowner for an owner-occupied rehabilitation program. The passbook value of the equity in a house will continue to be included when determining the income of an applicant for rental assistance.

A change is also being made to § 92.252(a)(5), which requires the HOME rental projects remain affordable for required periods "pursuant to deed restrictions or covenants running with the land," to allow participating jurisdictions to adopt other legal mechanisms for ensuring long-term affordability of HOME projects, with HUD approval. This change is made in response to several public comments.

This change will provide additional flexibility by allowing a PJ that developed an alternative mechanism to preserve affordability to implement it. However, the requirement for prior HUD approval enables HUD to review whether the PJ's alternative mechanism would meet the statutory requirement in section 215(a)(1)(E) of NAHA to preserve the affordability requirement without regard to the term of the mortgage or to transfer of ownership, thereby reducing the likelihood that a PJ would have to repay HOME funds because it was unable to enforce long-term affordability requirements.

This rule also amends the environmental procedures contained in 24 CFR part 58, which implements statutory provisions that provide for the assumption by program recipients of responsibilities for environmental review, decision making and action pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), and other related provisions of law specified by the Secretary of HUD. Section 288 of NAHA provides for the assumption of these responsibilities by PJs under the HOME program and § 92.352 requires PJs to comply with environmental requirements in part 58. Part 58, however, is currently written only to apply to the Community Development Block Grant, Rental Rehabilitation, and Housing Development Grant programs, and there has been some confusion concerning the applicability of part 58 to the HOME program. Accordingly, part 58 is being updated to clarify its applicability to the HOME program, and to broaden, where appropriate, current program-specific references to various activities, responsibilities and categorical exclusions so that they apply to activities and participants under the HOME program. Part 58 is also being amended to reflect specifically its applicability to homeless assistance programs under title IV of the Stewart B. McKinney Homeless Assistance Act, as amended. This amendment complies with section 443 of that Act, which provides for assumption of environmental review by recipients in accordance with regulations applicable under section 104(g) of the Housing and Community Development Act of 1974, as amended (*i.e.*, in accordance with part 58). The Department has consulted with the Council on Environmental Quality and the Environmental Protection Agency by providing them with advance review copies of this interim rule. When a final rule is issued, it will take into consideration the comments and recommendations of these agencies along with the other comments submitted on the interim rule.

Part 58 is also being amended to remove and relocate from § 58.5 certain statutory and regulatory provisions from the list of laws and authorities in § 58.5 for which recipients must assume environmental responsibilities in accordance with Section 288 of NAHA and similar statutory provisions. Three authorities including: (1) The Flood Disaster Protection Act (FDPA), (2) Coastal Barrier Resources Act (CBRA), and (3) the notice to purchasers of property in airport/airfield runway clear zones and clear zones required in 24 CFR part 51, would be retained, but relocated from § 58.5 to a new § 58.6. HUD has determined that, intrinsically, these three authorities are not like the other authorities listed in § 58.5 that trigger the environmental certification, public notice and release of funds procedures. FDPA pertains to mandatory purchase of flood insurance protection; CBRA pertains to the direct prohibition against use of any funds in designated coastal barriers; and the notice to purchasers of property in runway clear zones is a disclosure requirement. Accordingly, a new § 58.6 is being added to part 58 to provide for continued recipient responsibility for these requirements outside the statutory scheme in section 288 and similar provisions.

Part 58 is further amended to incorporate categorical exclusions from NEPA review and statements regarding the inapplicability of other environmental laws with respect to certain activities for which comparable provisions are already made in 24 CFR part 50. Part 50 applies to programs under which HUD itself is responsible for performing environmental reviews, and it would be anomalous to require a different standard of review for recipients where similar activities are carried out under programs covered by part 58. An additional categorical exclusion and statement regarding inapplicability of related laws is provided specifically for activities to assist homeownership of existing dwelling units, which is an important activity under the HOME program. This provision derives from the current categorical exclusion from NEPA review for most individual actions on one- to four-family properties in most cases under part 50, and from HUD's

determination that related laws and authorities requiring environmental reviews do not apply to such homeownership assistance. The provision in part 58 regarding limitations on actions pending environmental clearance is also being revised to more closely reflect (1) the already applicable statutory prohibition against premature commitment of HUD funds, and (2) the already applicable provision in regulations of the Council on Environmental Quality (CEQ) (40 CFR 1506.1) prohibiting premature undertaking of activities that have adverse environmental impact or limit the choice of reasonable alternatives. Finally, other clarifying and editorial revisions are made to part 58.

This rule, in response to four public comments and a recognition of more appropriate and realistic time frames, amends the definition of commit to a specific local project or commitment to extend the period between the signing of the agreement and the start of new construction or rehabilitation from six months to twelve months. In addition, at 92.205(a)(2) the Department is deleting the provision that requires a construction commitment prior to property acquisition or demolition. Public comment strongly indicated that obtaining financing without site control is extremely difficult. However, the Department expects the construction to commence within twelve months of commitment of the HOME funds for acquisition or demolition.

The definition of single room occupancy is also being revised to clarify the applicability of its requirements for sanitary or kitchen facilities. Currently, the definition provides that the unit may contain either, or both, food preparation or sanitary facilities. As revised, the definition specifies that the unit must contain either food preparation or sanitary facilities if the project consists of new construction, conversion of non-residential space, or reconstruction. For acquisition or rehabilitation of an existing residential structure, neither is required in the unit. However, the Department strongly encourages PJs to provide a higher level of amenities whenever possible, to contribute to the continued marketability of the standard housing stock in the future. The definition continues to exclude facilities for students. This change is made in response to public comment that installing plumbing when rehabilitating an existing residential structure is cost prohibitive. Nonetheless, the Department believes that for new construction, reconstruction and conversion, a higher level or amenities is appropriate and desirable.

An interim rule for HOME program requirements applicable to insular areas was published on December 11, 1992 (57 FR 58862). In the preamble to that rule, the Department stated it would continue to examine aspects of the rule in response to comments. HCDA of 1992 section 211 removed the requirement that insular areas receiving HOME funds prepare a housing strategy. Therefore, the requirement to submit an approved housing strategy certification is deleted in § 92.61(c)(5). Conforming changes are made to §§ 92.61(b)(2), 92.62, and 92.63.

Section 92.220(a)(3), which concerns the value of real property as a form of matching contribution, is being corrected to clarify that only the appraised value minus any debt burden, lien, or other encumbrance is recognized for match purposes.

Section 92.350, which addresses equal opportunity and fair housing issues, is revised to reflect the changes made to section 3 of the Housing and Urban Development Act of 1968 by section 915 of HCDA 1992. The section 3 statement of policy, as expressed in HCDA section 915, replaces all of the current text of § 92.350(a)(4).

The Department received comments concerning the status and requirements applicable to State housing finance agencies that are not part of the State government, but which the State would like to have administer all or a part of the State's HOME program. Under the statute and regulations, State housing finance agencies that are not a part of the State government are not the "State" and cannot be designated as the participating jurisdiction. However, the regulation permits the State to select the State housing finance agency as a subrecipient. One State housing finance agency commented that the written agreement required by § 92.504(b) presents obstacles to the use of State housing finance agencies due to the detailed requirements concerning the use of the HOME funds and the required budget. The Department agrees that the written agreement between a State and an instrumentality of the State that is a subrecipient need not contain the same detailed information as is required of other entities receiving HOME funds. Therefore, § 92.504 has been amended to simplify the written agreement for such subrecipients.

C. Amendments Applicable to Subpart M, HOME Funds for Indian Tribes

Conforming changes to subpart M of the HOME rule, which contains the requirements of the Indian HOME program, are also being made in this interim rule. A summary of the HCDA 1992 amendments that affected the Indian HOME program was included as appendix 2 in the NOFA for Indian applicants under the HOME program that was published on February 23, 1993 (58 FR 11102).

Section 204 of HCDA 1992 made the use of HOME funds for security deposits an eligible form of tenant-based rental assistance. A new paragraph (i) is being added to § 921.613 Tenant-based rental assistance that parallels the language of revised § 92.210 concerning security deposits. Conforming changes are made in the listing of eligible activities at § 92.611(a)(1) and eligible costs at § 92.612(e).

Conforming changes made necessary by HCDA 1992 section 205 that parallel those made to § 92.205(a)(1) (to specify HOME assisted housing must be permanent or transitional housing and includes housing for disabled homeless persons, and single-room occupancy housing) and § 92.253(c) (to permit the termination of tenancy in transitional housing after the period prescribed by the PJ or project owner) are being made to §§ 92.611(a)(1) and 92.622(c), respectively.

Conforming changes for HCDA 1992 section 208 made to the HOME regulation in the December 22, 1992 interim rule are being made here for subpart M. Under HCDA section 208, rental housing shall qualify as affordable if the rents are not greater than (i) the Fair Market Rent for comparable units or (ii) a rent that does not exceed 30 percent of the adjusted income of a family at 65 percent of median income for the area, *adjusted for the number of bedrooms in the unit.* This adjustment replaces the adjustment for smaller and larger families in § 92.614(a)(1)(ii). Section 208 also provides that tenants who occupy HOME-assisted housing, and who no longer qualify as low-income because of increases in their income shall pay as rent the lesser of 30 percent of the family's adjusted monthly income, as recertified annually, or *"the amount payable by the tenant under State or local law."*

[Note: Only italicized section is new.]

For rental housing with Low Income Housing Tax Credits and for units under local rent controls, when a tenant's income increases, the tenant's rent will not have to be adjusted to 30 percent of the family's income. Changes for these purposes are made in § 92.614(c). Finally, HCDA 1992 section 208 provides that rental housing must remain affordable except "upon foreclosure by a lender, (or upon other

transfer in lieu of foreclosure), if such action recognizes the legal rights of public agencies, nonprofits, or others to take actions that would not avoid termination of low-income affordability in the case of foreclosure or transfer in lieu of foreclosure, and is not for the purpose of avoiding low-income affordability restrictions." Section 92.614(a)(5) incorporates this change.

HCDA 1992 section 209 permits an Indian tribe grantee to meet the resale restrictions created in the original law, "or recapture its HOME investment, provided it uses the recaptured funds to assist other persons in accordance with the requirements of this subsection [in other words, to assist first-time homebuyers], except where there are not net proceeds or where the net proceeds are insufficient to repay the full amount of the assistance." A conforming change is made to § 92.615(a)(4)(ii) for this purpose.

The definition of "first-time homebuyer" is amended by HCDA section 219, and as discussed above, the definition of "first-time homebuyer" in § 92.2 is amended accordingly. This provision has wider application beyond owners of manufactured housing and applies to individuals living in units not meeting applicable standards which can not be rehabilitated cost-effectively in the documented judgment of the Indian tribe. A new § 92.615(c) is added to the regulation for purposes of section 219 of HCDA 1992.

Section 92.610 is being amended to exclude the value of equity in the homeowner's principal residence, as required under part 913, when determining the income of an existing homeowner for an owner occupied rehabilitation program. The passbook value of the equity in a house will continue to be included when determining the income of an applicant for rental assistance. This change conforms to the change being made in § 92.203.

Several changes are being made to subpart M to conform with changes made in the December 22, 1992 interim rule. In response to comments, § 92.206(c)(5) was amended to make initial operating reserves for substantial rehabilitation projects a HOME-eligible soft cost, and a conforming change is made here to § 92.612(a)(4).

Section 92.211(a)(2) was amended to implement a HCDA 1992 amendment that replaces the use of the Section 8 waiting list as the selection criterion for families eligible to receive HOME-funded tenant-based rental assistance. This assistance is now provided in accordance with written tenant selection policies and criteria that are consistent with the purposes of providing housing to very low- and low-income families and are reasonably related to preference rules established under section 6(c)(4)(A) of the Housing Act of 1937. Section 92.211(a)(2) was also amended to permit participating jurisdictions to provide HOME-funded tenant assistance to eligible families residing in housing acquired with HOME funds without requiring that the families meet the written tenant selection policies and criteria. The rule previously allowed this only in the case of housing to be rehabilitated with HOME funds. A conforming change for these purposes is being made to § 92.613(a).

Section 92.251 was amended to allow purchase of a property, but not occupancy, before health and safety violations are corrected, provided that certain procedures are followed. A conforming change is made here to § 92.622.

The December 22, 1992 interim rule added §§ 92.252(e) and 92.254(c) to explain the requirements that manufactured housing units must meet to qualify as affordable rental or homeownership housing under the HOME program. Conforming changes are made to subpart M by adding §§ 92.614(e) and 92.615(c).

The December 22, 1992 interim rule also clarified § 92.252(a)(2) by specifying that the requirement that a rental housing project must have not less than 20 percent of the units occupied by very low-income families in order to qualify as affordable housing applies only to projects consisting of three or more rental unit and to owners of multiple one or two unit projects with a total of three or more rental units. A conforming change is being made to § 92.614(a)(2).

As discussed above in relation to § 92.254, the references to the section 203(b) limits for purpose of qualifying as affordable housing under the HOME program are being deleted. Conforming changes are being made to § 92.615(a)(1)(i), (a)(1)(ii) and (b). The changes discussed with regard to § 92.254(a)(4)(i)(B), made to ensure that the housing will remain affordable, pursuant to deed restrictions, covenants running with the land, or other similar mechanisms to ensure affordability, to a reasonable range of low-income homebuyers (and that these affordability restrictions must terminate upon the occurrence of a termination event) are also being made to § 92.615(a)(4)(i)(B).

A number of conforming and clarifying corrections are implemented in this rule. Additional clarifying guidance as to the scope of subpart M is provided by adding a sentence to the end of § 92.600 to provide that, unless otherwise indicated, only subparts A and M of 24 CFR part 92 apply to grants to Indian tribes. A new § 92.616, which provides for a list of prohibited activities similar to § 92.214, is added. A technical correction is being made to § 92.642(b)(2), which erroneously refers to § 92.644. This reference is corrected to refer to § 92.640.

The Department specifically seeks comments, particularly from tribes, Indian housing authorities, and other Native American organizations, that evaluate the implementation of the HOME program for Indian tribes and make recommendations for its improvement.

III. Findings and Certifications

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Impact on the Economy

Although the HOME Program interim rule published December 16, 1991 was found to be a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981, and a regulatory impact analysis (RIA) was prepared, this amending interim rule does not constitute a "major rule." Analysis of this rule, which only makes limited adjustments to the rule for which a RIA was prepared, indicates that it would not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certified that this rule does not have a significant economic impact on a substantial

number of small entities, because jurisdictions that are statutorily eligible to receive formula allocations are relatively larger cities, counties or States.

Regulatory Agenda

This rule was listed as item number 1393 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24398) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that this rule does not have federalism implications concerning the division of local, State, and federal responsibilities. While the HOME Program interim rule published December 16, 1991 and amended by this rule was determined to be a rule with federalism implications, and the Department submitted a Federalism Assessment concerning the interim rule to OMB, this rule only makes limited adjustments to the interim rule and does not significantly affect any of the factors considered in the Federalism Assessment for the interim rule.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that this rule would not have significant impact on family formation, maintenance, and general well-being. Assistance provided under the rule can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the means to live independently in mainstream American society. The rule would not, however, affect the institution of the family, which is requisite to coverage by the Order. Even if the rule had the necessary family impact, it would not be subject to further review under the Order, since the provision of assistance under the rule is required by statute, and is not subject to agency discretion.

List of Subjects

24 CFR Part 58

Community development block grants, Environmental impact statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 92

Grant programs—housing and community development, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

The Catalog of Federal Domestic Assistance Number for the HOME Program is 14.239.

Accordingly, the Department amends parts 58 and 92 of title 24 of the Code of Federal Regulations as follows:

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR RECIPIENTS ASSUMING HUD RESPONSIBILITIES

1. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 1437o(i)(1) and (2), 3535(d), 4332, and 5304(g).

2. Section 58.1 is revised to read as follows:

§ 58.1 Purpose, scope and applicability.

(a) *Purpose.* This part provides instructions and guidance to recipients of HUD assistance for conducting an environmental review for a particular project or activity and obtaining approval of a Request for Release of Funds, under statutes that authorize HUD to provide for assumption of environmental responsibilities by recipients.

(b) *Scope.* The environmental responsibilities of recipients of HUD assistance are described in this part pursuant to the National Environmental Policy Act of 1969 (NEPA); the NEPA regulations of the Council on Environmental Quality (40 CFR parts 1500 through 1508); Executive Order 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by Executive Order 11991, May 24, 1977; and the related Federal authorities listed in § 58.5 of this part.

(c) *Applicability.* This part applies to activities and projects where specific statutory authority exists for recipients to assume environmental responsibilities. Programs subject to this part include:

(1) Community Development Block Grant programs authorized by title I of the Housing and Community Development Act of 1974, in accordance with section 104(g) (42 U.S.C. 5304(g));

(2) The Rental Rehabilitation program and Housing Development Grant program authorized by section 17 of the United States Housing Act of 1937, in accordance with section 17(i)(1) and 17(i)(2) (prior to the repeal of section 17 as of October 1, 1991) (42 U.S.C. 1437o(i)(1) and (2));

(3) The Emergency Shelter Grant program, Supportive Housing program (and its predecessors, the Supportive Housing Demonstration program (both Transitional Housing and Permanent Housing for Homeless Persons with Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance, authorized by title IV of the Stewart B. McKinney Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402); and

(4) The HOME Investment Partnerships Program authorized by title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA), in accordance with section 288 (42 U.S.C. 12838).

3. Section 58.2 is revised to read as follows:

§ 58.2 Terms, abbreviations and definitions.

(a) For the purposes of this part, the following definitions shall supplement the uniform terminology provided in 40 CFR part 1508:

(1) *Activity* means an action that a grantee or recipient puts forth as part of an assisted project, regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.

(2) *Certifying Officer* means the official that is authorized to execute the Request for Release of Funds and Certification and that has the legal capacity to carry out the responsibilities of § 58.13.

(3) *Project* means an activity, or a group of integrally related activities, designed by the grant recipient to accomplish, in whole or in part, a specific goal.

(4) *Recipient*—

(i) With respect to programs subject to this part other than the HOME program, *recipient* means:

(A) A State that does not distribute HUD assistance under the program to a unit of general local government;

(B) A Territory;

(C) A unit of general local government; or

(D) An Indian tribe.

(ii) With respect to the HOME program, *recipient* means a participating jurisdiction as defined in 24 CFR part 92.

(5) *Urban renewal project* means a project as defined in section 110(c) of the Housing Act of 1949, as amended, or a neighborhood development program as defined in section 131(b) of the Housing Act of 1949, as amended.

(b) The following abbreviations are used throughout this part:

HUD—Department of Housing and Urban Development
CDBG—Title I of the Housing and Community Development Act of 1974, as amended
NEPA—National Environment Policy Act of 1969, as amended
CEQ—Council on Environmental Quality
EA—Environmental Assessment
EIS—Environmental Impact Statement
FONSI—Finding of No Significant Impact
ERR—Environment Review Record
NOI/EIS—Notice of Intent to Prepare an EIS
ROD—Record of Decision
ROF—Release of Funds
RROF—Request for Release of Funds
NOI/RROF—Notice of Intent to Request Release of Funds
SOA—Statement of Activities
UDAG—Urban Development Action Grants
RRP—Rental Rehabilitation Program
HDG—Housing Development Grant
NAHA—Cranston-Gonzalez National Affordable Housing Act of 1990
HOME—HOME Investment Partnerships Program

4. Section 58.4 is revised to read as follows:

§ 58.4 HUD legal authority.

(a) *Authority for regulations.* These regulations are issued under the statutory provisions cited in §§ 58.1(c) and 58.6 and under section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

(b) *Assumption authority for recipients: General.* Recipients shall assume the responsibility for environmental review, decisionmaking, or action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified in § 58.5. Recipients, other than units of general local government that receive assistance from a State, assume these responsibilities by execution of either a grant agreement with HUD or a legally binding document such as a Request for Release of Funds (HUD Form 7015.15), certifying to the assumption of environmental responsibilities. When a State distributes funds to recipients, the State must provide for appropriate procedures by which these recipients will evidence their assumption of environmental responsibilities.

(c) *Particular responsibilities of the States.* (1) States that are recipients for purposes of directly undertaking a State project must assume the environmental review responsibilities for the State's activities and those of any participants that may be related to the project. The State must submit the certification and RROF to HUD, except that under the HOME program the State shall prepare a certification and RROF and shall itself determine whether to approve the RROF.

(2) In accordance with § 58.18 of this part, State program agencies are authorized to exercise HUD's responsibilities with respect to approval action on a local government recipient's environmental certification and RROF for a HUD assisted project funded through the State, except for projects assisted by Section 17 Rental Rehabilitation assistance and Housing Development Grants. Approval by the State of a local recipient's certification and RROF satisfies the Secretary's responsibilities under NEPA and the related laws cited in § 58.5 of this part.

(3) For section 17 Rental Rehabilitation projects and Housing Development Grants, the State program agency shall meet the responsibilities set forth in § 58.18 of this part. However, for section 17 projects, the State lacks authority to approve RROFs and therefore must forward to the responsible HUD Field Office the local recipient's certification and RROF, any objections to the release of funds submitted by another party, and the State's recommendation as to whether HUD should approve the certification and the RROF.

5. In § 58.5, the heading, the introductory paragraph, and paragraph (i) are revised, paragraph (b)(1) is removed, paragraphs (b)(2) and (b)(3) are redesignated as (b)(1) and (b)(2), and paragraph (c) is revised to read as follows:

§ 58.5 Related Federal laws and authorities.

In accordance with the provisions of law cited in § 58.1(c), the recipient must assume responsibilities for environmental review, decisionmaking and action that would apply to HUD under the following specified laws and authorities. The recipient must comply with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

* * * * *

(b) *Floodplain management and wetland protection.* (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951 *et seq.*); particularly section 2(a).

(2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 *et seq.*); particularly sections 2 and 5.

(c) *Coastal Zone Management.* The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*), as amended; particularly sections 307 (c) and (d) (16 U.S.C. 1456 (c) and (d)).

* * * * *

(i) *HUD environmental standards.* Environmental Criteria and Standards (24 CFR part 51), other than the runway clear zone and clear zone notification requirement in 24 CFR 51.303(a)(3).

6. A new § 58.6 is added, to read as follows:

§ 58.6 Other requirements.

In addition to the duties under the laws and authorities specified in § 58.5 for assumption by recipients under the laws cited in § 58.1(c), recipients must comply with the following requirements. Applicability of the following requirements does not trigger the certification and release of funds procedure under this part or preclude exemption of an activity under § 58.34(a)(10) and (b). However, the recipient remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, regardless of whether the activity is exempt under § 58.34.

(a)(1) Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards; and

(ii) Flood insurance is obtained as a condition of approval of the assistance.

(2) Recipients assisting acquisition and construction (including rehabilitation) located in an area identified by FEMA as having special flood hazards are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

(3) Paragraph (a) of this section does not apply to Federal formula grants made to a State.

(b) Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), Federal financial assistance may not be used for activities undertaken in the Coastal Barrier Resources System.

(c) In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone as defined in 24 CFR part 51, the recipient shall advise the buyer that the property is in a Runway Clear Zone or

Clear Zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

7. In § 58.10, the first sentence is revised to read as follows:

§ 58.10 Basic environmental responsibility.

In accordance with the provisions of law cited in § 58.1(c), the recipient must assume the responsibility for carrying out all its projects under programs cited in § 58.1(c) in accordance with the procedural provisions of NEPA and the CEQ regulations (40 CFR parts 1500 through 1508), as well as the procedures set forth in this part. * * *

8. Section 58.13 is revised to read as follows:

§ 58.13 Responsibilities of the certifying officer.

Under the terms of the certification required by § 58.71 of this part, a recipient's certifying officer is the "responsible Federal official" as that term is used in section 102 of NEPA and in statutory provisions cited in § 58.1(c) of this part. The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA, those statutory provisions cited in § 58.1(c), and related sections in 40 CFR parts 1500 through 1508, and the related federal authorities listed in § 58.5 of this part. The Certifying Officer must also:

(a) Represent the recipient and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court. Reasonable defense costs, including the fees of attorneys and experts incurred in litigation relative to the recipient's compliance with this part, may be eligible administrative costs under some programs.

(b) Ensure that the recipient reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program; and

(c) Perform all the coordination functions required under this part and generally prescribed in 40 CFR parts 1500 through 1508 and the other provisions of law and authorities cited in § 58.5 of this part.

9. In § 58.14, the third sentence is revised to read as follows:

§ 58.14 Interaction with State, Federal and non-Federal entities.

* *The recipient must prepare its EISs so that they comply with the environmental review requirements of both Federal and State laws unless otherwise specified or provided by law.* * *

10. In § 58.15, paragraph (a) is revised to read as follows:

§ 58.15 Responsibilities for environmental review for activities related to urban renewal closeouts.

* * * * *

(a) Activities within an active urban renewal project are to be funded under a program listed in § 58.1(c).

* * * * *

11. The title of subpart C is revised to read as follows:

Subpart C—General Policy: States Assuming HUD Responsibilities.

12. Section 58.18 is revised to read as follows:

§ 58.18 Responsibilities.

(a) States that elect to administer the CDBG Small Cities program under section 106(d) of the Housing and Community Development Act of 1974, a homeless assistance program under title IV of the McKinney Act, or a HOME Program under NAHA shall ensure that the program complies with the provisions of NEPA and the related Federal laws and authorities in § 58.5 and § 58.6 of this part. The State must:

(1) Designate the State agency or agencies which will be responsible for carrying out the requirements and administrative responsibilities set forth in subpart J of this part and which will:

(i) Develop a monitoring and enforcement program for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.

(ii) Receive public notices, RROFs and certifications from recipients pursuant to §§ 58.70 and 58.71; accept objections from the public and from other agencies (§ 58.73); and perform other related responsibilities regarding releases of funds.

(2) Fulfill the State role in subpart J relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

(b) States administering section 17 programs shall assume the responsibilities set forth in this subpart C for overseeing the State recipient's performance and compliance with NEPA and related Federal authorities as set forth in this part, including receiving RROFs and environmental certifications for particular projects from State recipients and objections from government agencies and the public in accordance with the procedures contained in Subpart J. The State shall forward to the responsible HUD Field Office the environmental certification, the RROF and any objections received, and shall recommend whether to approve or disapprove the certification and RROF.

13. In § 58.22, the first three sentences are revised to read as follows:

§ 58.22 Limitations on activities pending clearance.

A recipient may not commit HUD assistance funds under a program listed in § 58.1(c) on an activity or project until HUD or the State has approved the recipient's RROF and related certification. In addition, except for payment for exempt activities and other activities that would not have an adverse environmental impact or limit the choice of reasonable alternatives, a recipient may not expend any funds before the approval of the RROF. If an activity is exempt under § 58.34, no RROF is required and a recipient may undertake the activity immediately after the award of the assistance. * * *

* * * * *

14. Section 58.23 is revised to read as follows:

§ 58.23 Financial assistance for environmental review.

The costs of environmental reviews, including costs incurred in complying with any of the related laws and authorities cited in § 58.5 and § 58.6, are eligible costs to the extent allowable under the HUD assistance program regulations.

15. Section 58.31 is revised to read as follows:

§ 58.31 Initiation of environmental review.

The environmental review process should begin as soon as a recipient determines the projected use of the HUD assistance and how the activities will be combined into projects for environmental review purposes.

16. In § 58.32, the third sentence of paragraph (a) is revised to read as follows:

§ 58.32 Project aggregation.

(a) * * * This applies even if some of the activities are to be funded by programs other than those listed in § 58.1(c) or carried out by someone else.

* * * * *

17. Section 58.35 is amended by revising the first sentence in paragraph (a)(1) introductory text, revising paragraph (a)(2), revising paragraph (a)(4) introductory text, adding new paragraphs (a)(7) and (a)(8), revising the first sentence in paragraph (b), revising paragraph (c), and adding a new paragraph (d), to read as follows:

§ 58.35 Categorically excluded activities.

(a) * * *

(1) The acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, including these activities carried out as part of an economic development project in conjunction with the special economic development activities eligible under 24 CFR 570.203(a). * * *

* * * * *

(2) Special projects directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly and handicapped persons.

* * * * *

(4) Acquisition and/or rehabilitation of buildings and improvements (except renovation of closed school buildings), when the following conditions are met:

* * * * *

(7) An individual action on a one-to-four family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site.

(8) Acquisition of an existing structure, provided that the property to be acquired is in place and will be retained in the same use.

(b) *Environmental requirements other than NEPA.* Even though a project is categorically excluded from NEPA requirements, a recipient must still comply with the requirements of the other related laws and authorities cited at § 58.5 (except in the case of activities listed in paragraph (c) of this section) and § 58.6 * * *

(c) *Categorically excluded activities not subject to § 58.5 of this part.* The Department has determined that the activities listed in this section would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in § 58.5. Since these activities are also categorically excluded from a NEPA review, the recipient does not have to publish a FONSI and a NOI/RROF or submit a certification and a RROF to HUD (or the State) except in the circumstances described in paragraph (d) of this section. Following the award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (d) applies. However, the recipient must document in writing in its ERR its determination that each activity meets the conditions specified for inclusion in this category of activity. The recipient also remains responsible for carrying out any applicable requirements under § 58.6. These activities include the following, when they do not have a physical impact on a structure or property:

(1) Information services;

(2) Resource identification and planning to establish and coordinate strategies, including feasibility studies, environmental studies and testing;

(3) Tenant-based rental assistance;

(4) Supportive services including, but not limited to, health care, housing services (such as housing counseling), permanent housing placement, inspections and tenant selection, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;

(5) Operating costs including maintenance, security, operation, insurance, utilities, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs;

(6) Administrative expenses; and

(7) Activities to assist homeownership of existing dwelling units, including closing costs and downpayment assistance to homebuyers, interest buydowns, and similar activities that result only in the transfer of title to a property.

(d) *Circumstances requiring NEPA review.* If a recipient determines that an activity or project identified in paragraph (a) or (c) of this section, because of specific circumstances and conditions at the location of the activity or project, may have a significant environmental effect, it shall comply with the NEPA requirements of this part.

18. In § 58.52, the second sentence is revised to read as follows:

§ 58.52 Adoption of other agencies' EISs.

* * * If the recipient adopts an EIS prepared by another recipient for a project subject to this part or by a Federal agency, the procedure in 40 CFR 1506.3 shall be followed. * * *

19. In § 58.66, the second sentence is revised to read as follows:

§ 58.66 Coordination Under Federal laws and authority.

* * * Pursuant to 40 CFR 1502.25, the environmental review documents for a project that is subject to this part will be used to document the recipient's compliance with the requirements of the related laws and authorities that apply to the project. * * *

20. Section 58.71 is revised to read as follows:

§ 58.71 Request for release of funds and certification.

The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable). This request shall be executed by the recipient's Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required under the applicable statute cited in § 58.1(c). The RROF and certification must be in a form specified by HUD.

21. In § 58.77, paragraph (a), and the last sentence in paragraph (b) are revised to read as follows:

§ 58.77 Effect of approval of certification.

(a) *Responsibilities of HUD and States.* HUD's (or, where applicable, the State's) approval of the certification shall be deemed to satisfy the responsibilities of the Secretary under NEPA and related provisions of law cited in § 58.5 insofar as those responsibilities relate to the release of funds as authorized by the applicable provisions of law cited in § 58.1(c).

(b) *Public and agency redress.* * * * Remedies for noncompliance are set forth in program regulations.

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

22. In part 92, the authority citation continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

23. In § 92.2, the definitions of *commit to a specific local project* or *commitment paragraph (1)(c), first-time homebuyer, housing, single room occupancy,* and *tenant-based rental assistance* are revised, and the newly defined terms *operating expenses* and *transitional housing* are added in alphabetical order, to read as follows:

§ 92.2 Definitions.

* * * * *

Commit to a specific local project or *commitment* means:

(1) * * *

(i) If the project is for rehabilitation or new construction, a written legally binding agreement between the participating jurisdiction and the project owner under which the participating jurisdiction (or other entity receiving HOME funds directly from HUD, state recipient, or subrecipient) agrees to provide HOME assistance to the owner for an identifiable project as defined in this part that can reasonably be expected to start construction within twelve months of the agreement and in

which the owner agrees to start construction within that period.

* * * * *

First-time homebuyer means an individual or an individual and his or her spouse who have not owned a home during the 3-year period before the purchase of a home with HOME assistance, except that—

(1) Any individual who is a displaced homemaker (as defined in this section) may not be excluded from consideration as a first-time homebuyer under this paragraph on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse;

(2) Any individual who is a single parent (as defined in this section) may not be excluded from consideration as a first-time homebuyer under this paragraph on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse; and

(3) An individual may not be excluded from consideration as a first-time homebuyer under this paragraph on the basis that the individual owns or owned, as a principal residence during the 3-year period before the purchase of a home with HOME assistance, a dwelling unit whose structure is—

(i) Not permanently affixed to a permanent foundation in accordance with local or other applicable regulations; or

(ii) Not in compliance with State, local, or model building codes, or other applicable codes, and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

* * * * *

Housing includes manufactured housing and manufactured housing lots. Housing does not include emergency shelters.

* * * * *

Operating expenses means reasonable and necessary costs for the operation of the community housing development organization. Such costs include salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; and equipment, materials and supplies.

* * * * *

Single room occupancy (SRO) housing means housing consisting of single room dwelling units that is the primary residence of its occupant or occupants. The unit must contain either food preparation or sanitary facilities (and may contain both) if the project consists of new construction, conversion of non-residential space, or reconstruction. For acquisition or rehabilitation of an existing residual structure, neither food preparation or sanitary facilities is required to be in the unit. If the units do not contain sanitary facilities, the building must contain sanitary facilities that are shared by tenants. SRO does not include facilities for students.

* * * * *

Tenant-based rental assistance is a form of rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance. Tenant-based rental assistance under this part also includes security deposits for rental of dwelling units.

Transitional housing means housing that—

(1) Is designed to provide housing and appropriate supportive services to persons, including (but not limited to) deinstitutionalized individuals with disabilities, homeless individuals with disabilities, and homeless families with children; and

(2) Has as its purpose facilitating the movement of individuals and families to independent living within a time period that is set by the participating jurisdiction or project owner before occupancy.

* * * * *

24. In § 92.50, paragraph (f) is added to read as follows:

§ 92.50 Formula allocation.

* * * * *

(f) For the purpose of determining the formula allocation in fiscal years in which Congress appropriates less than $1.5 billion of HOME funds, $335,000 is substituted for $500,000 each time it appears in this section, and $167,500 is substituted for $250,000 each time it appears in this section.

§ 92.51 [Removed]

25. Section 92.51 is removed and reserved.

26. Section 92.52 is revised to read as follows:

§ 92.52 Publishing formula allocation.

Not later than 20 days after funds become available to HUD, HUD will allocate HOME funds and will then promptly publish a **Federal Register** notice listing all jurisdictions receiving a formula allocation and the amount of each jurisdiction's formula allocation.

27. In § 92.61, paragraphs (b)(2), (b)(4), (b)(5), (c)(2) and (c)(5) are revised to read as follows:

92.61 Program description and housing strategy.

* * * * *

(b) * * *

(2) The estimated use of HOME funds and a description of projects and eligible activities, including number of units to be assisted, estimated costs, and tenure type (rental or owner occupied) and, for tenant assistance, households assisted;

* * * * *

(4) If the insular area intends to use HOME funds for first-time homebuyers, the guidelines for resale or recapture as required in § 92.254(a)(4);

(5) If the insular area intends to use HOME funds for tenant-based rental assistance, a description of how the program will be administered consisted with the minimum guidelines described in §§ 92.210 and/or 92.211.

* * * * *

(c) * * *

(2) If the insular area intends to provide tenant-based rental assistance, the certification required by § 92.210 or § 92.211.

* * * * *

(5) A certification that the insular area will use HOME funds in compliance with all requirements of this part;

* * * * *

28. In § 92.62, paragraphs (a) and (b) are revised to read as follows:

§ 92.62 Review of program description and certifications.

(a) *Review of program description.* The responsible HUD Field Office will review an insular area's program description and will approve the description unless the insular area has failed to submit information sufficient to allow HUD to make the necessary determinations required by § 92.61 (b)(4), (b)(6), and (b)(7), if applicable, or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs. If the insular area has not submitted information on § 92.61 (b)(4), (b)(6), and (b)(7), if applicable, or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, the insular area may be required to furnish such further information or assurances as HUD may consider necessary to find the program description and certifications satisfactory. The HUD Field Office shall work with the insular area to achieve a complete and satisfactory program description.

(b) *Review period.* The HUD Field Office will notify the insular area if determinations cannot be made under

§ 92.61 (b)(4), (b)(6), or (b)(7) with the supporting information submitted, or if the proposed projects or activities are beyond currently demonstrated capability, within 30 days of receipt. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information or to revise the proposed projects or activities in its program description.

* * * * *

29. Section 92.63 is revised to read as follows:

§ 92.63 Amendments to program description.

An insular area must submit to HUD for approval any substantial change in its HUD-approved program description that it makes during the fiscal year and must document any other changes in its file. A substantial change involves a change in the guidelines for resale (§ 92.61(b)(4)), other forms of investment (§ 92.61(b)(6)), minority and women business outreach program (§ 92.61(b)(7)), or a change in tenure type of the project or activities, or a funding increase to a project or activity of $100,000 or 50% (whichever is greater). The HUD Field Office will notify the insular area if its program description, as amended, does not permit determinations to be made under § 92.61 (b)(4), (b)(6), or (b)(7), or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, within 30 days of receipt. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information to revise the proposed projects or activities in its program description.

30. In § 92.101, paragraph (c) is revised to read as follows:

§ 92.101 Consortia.

* * * * *

(c) The consortium's qualification as a unit of general local government continues for a period of three successive Federal fiscal years, or until HUD revokes its designation as a participating jurisdiction, or until an urban county member fails to requalify under the CDBG program as an urban county for a fiscal year included in the consortium's qualification period, whichever is shorter. However, if a member urban county's three year CDBG qualification cycle is not the same as the consortium, the consortium may elect a shorter qualification period than three years to get in sync with the urban county. During the period of qualification, additional units of general local government may join the consortium, but no included unit of general local government may withdraw from the consortium.

31. In § 92.102, paragraph (b)(2) is revised, and paragraph (c) is added to read as follows:

§ 92.102 Participation threshold amount.

* * * * *

(b) * * *

(2) The state has authorized HUD to transfer to the unit of general local government a portion of the state's allocation or the state, the unit of general local government, or both, has made available its own resources such that the sum of the amounts transferred or made available are equal to or greater than the difference between the unit of general local government's formula allocation and $750,000. A state, subject to the distribution of assistance requirements in § 92.201, may authorize such a transfer even if the state is not designated a participating jurisdiction. If the state is not designated a participating jurisdiction or does not receive an allocation, it may only make transfers to units of general local government in the amount necessary for the respective units of general local government to meet the $750,000 participation threshold.

(c) In fiscal years in which Congress appropriates less than $1.5 billion for this part, $500,000 is substituted for $750,000 each time it appears in this section.

32. In § 92.103, paragraph (b) introductory text is revised to read as follows:

§ 92.103 Notification of intent to participate.

* * * * *

(b) A unit of general local government that has a formula allocation of less than $750,000, or less than $500,000 in fiscal years in which Congress appropriates less than $1.5 billion for this part, must submit, with its notice, one or more of the following, as appropriate, as evidence that it has met the threshold allocation requirements in § 92.102(b):

* * * * *

33. In § 92.107, paragraph (b) is revised to read as follows:

§ 92.107 Revocation of designation as a participating jurisdiction.

* * * * *

(b) The jurisdiction's formula allocation, plus funds provided under § 91.102(b), falls below $750,000 (or below $500,000 in fiscal years in which Congress appropriates less than $1.5 billion for this part) for three consecutive years, below $625,000 (or below $410,000 in fiscal years in which Congress appropriates less than $1.5 billion for this part) for two consecutive years, or the jurisdiction does not receive a formula allocation in any one year.

* * * * *

34. In § 92.150, paragraphs (b)(5) and (6) are revised, paragraphs (c)(2) and (3) are removed, paragraphs (c)(4) through (9) are redesignated as paragraphs (c)(2) through (7), and redesignated (c)(2) is revised to read as follows:

§ 92.150 Submission of program description and certifications.

* * * * *

(b) * * *

(5) If the participating jurisdiction intends to use HOME funds for first-time homebuyers, the guidelines for resale or recapture must be described as required in § 92.254(a)(4);

(6) If the participating jurisdiction intends to use HOME funds for tenant-based rental assistance, a description of how the program will be administered consistent with the minimum guidelines described in § 92.211, or with the requirements of § 92.210 if the participating jurisdiction intends to use HOME funds for tenant-based rental assistance solely for security deposits.

* * * * *

(c) * * *

(2) If the participating jurisdiction intends to provide tenant-based rental assistance, the certification required by § 92.211, or, if the participating jurisdiction intends to provide tenant-based rental assistance solely in the form of security deposits, the certification required by § 92.210;

* * * * *

35. Section 92.152 is revised to read as follows:

§ 92.152 Amendments to program description.

In general, a participating jurisdiction is not required to submit to HUD amendments to its program description that it makes during the fiscal year. The participating jurisdiction must document amendments in its file, and if the amendments affect future allocations, must include these amendments in the program description for the following fiscal year. However, a participating jurisdiction must submit any amendments to the following for HUD approval: guidelines for resale or recapture (see § 92.150(b)(5)); other forms of investment (see § 92.150(b)(7); and minority and women business outreach program (§ 92.150(b)(8)).

36. Section 92.203 is revised to read as follows:

§ 92.203 Income determinations.

Whenever a participating jurisdiction makes a determination under this part based on family income or adjusted family income, it must use the definitions of annual income, adjusted income, monthly income, and monthly adjusted income, as those terms are defined in part 813 of this title, except when determining the income of a homeowner for an owner-occupied rehabilitation project, the equity in the homeowner's principal residence is excluded from "Net Family Assets."

37. In § 92.205, paragraphs (a)(1) and (2) are revised to read as follows:

§ 92.205 Eligible activities: general.

(a) *Eligible activities.* (1) HOME funds may be used by a participating jurisdiction to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to first-time homebuyers), new construction, reconstruction, or moderate or substantial rehabilitation of non-luxury housing with suitable amenities, including real property acquisition, site improvement, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations, to provide tenant-based rental assistance, including security deposits; to provide payment of reasonable administrative and planning costs; and to provide for the payment of operating expenses of community housing development organizations. The housing must be permanent or transitional housing, and includes permanent housing for disabled homeless persons, and single-room occupancy housing. The specific eligible costs for these activities are set forth in § 92.206.

(2) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing.

* * * * *

38. In § 92.206, paragraphs (e) and (f) are revised and paragraph (g) is added to read as follows:

§ 92.206 Eligible costs.

* * * * *

(e) *Costs related to tenant-based rental assistance.* Eligible costs are the rental assistance and security deposit payments made to provide tenant-based rental assistance for a family.

(f) *Administrative and planning costs.* A participating jurisdiction may expend for its HOME administrative and planning costs an amount of HOME funds that is not more than ten percent of the fiscal year HOME basic formula allocation plus any funds received in accordance with § 92.102(b) to meet or exceed participation threshold requirements that fiscal year. A State that transfers any HOME funds in accordance with § 92.102(b) must exclude these funds in calculating the amount it may expend for administrative and planning costs. A participating jurisdiction may also use up to ten percent of any return of the HOME investment, as defined in § 92.503, calculated at the time of deposit in its local HOME account, for administrative and planning costs.

(g) *CHDO operating expenses.* Up to 5 percent of a participating jurisdiction's fiscal year HOME allocation may be used for the operating expenses of community housing development organizations (CHDOs). These funds may not be used to pay operating costs incurred by a CHDO acting as a subrecipient or contractor under the HOME Program. The requirements and limitations on the receipt of these funds by CHDOs are set forth in § 92.301(e) and (f).

§ 92.208 [Removed]

39. Section 92.208 is removed and reserved.

§ 92.209 [Removed]

40. Section 92.209 is removed and reserved.

41. Section 92.210 is revised to read as follows:

§ 92.210 Tenant-based rental assistance: security deposits.

(a) A participating jurisdiction may use HOME funds provided for tenant-based rental assistance to provide loans or grants to very low- and low-income families for security deposits for rental of dwelling units whether or not the participating jurisdiction provides any other tenant-based rental assistance under § 92.211.

(b) The relevant state or local definition of "security deposit" in the jurisdiction where the unit is located is applicable for the purposes of this part, except that the amount of HOME funds that may be provided for a security deposit may not exceed the equivalent of two month's rent for the unit.

(c) Only the prospective tenant may apply for HOME security deposit assistance, although the participating jurisdiction may pay the funds directly to the tenant or to the landlord.

(d) The lease between a tenant and an owner of rental housing for which HOME security deposit assistance is provided must comply with the requirements of § 92.253 (a) and (b).

(e) HOME funds for security deposits may be provided as a grant or as a loan. If they are provided as a loan, the provisions at § 92.503(b) on repayment of HOME investment apply.

(f) The provisions at § 92.211 (a), (b), (d), (e) and (g), applicable to tenant-based rental assistance, are applicable to HOME security deposit assistance.

42. In § 92.211, paragraph (b) is revised to read as follows:

§ 92.211 Tenant-based rental assistance.

* * * * *

(b) *Program operation.* A tenant-based rental assistance program must be operated consistently with the requirements of this section and § 92.210, if applicable. The participating jurisdiction may operate the program itself, or may contract with a PHA or other entity with the capacity to operate a rental assistance program. The tenant-based rental assistance may be provided through an assistance contract to an owner that leases a unit to an assisted family or directly to the family.

* * * * *

43. In § 92.218, paragraph (a) is revised, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added, to read as follows:

§ 92.218 Amount of matching contribution.

(a) Each participating jurisdiction must make contributions to affordable housing assisted with HOME funds, throughout a fiscal year. The contributions must total not less than:

(1) Thirty percent of the total funds drawn from the jurisdiction's HOME Investment Trust Fund Treasury account in that fiscal year for new construction projects; and

(2) Twenty-five percent of the total funds drawn from the jurisdiction's HOME investment Trust Fund Treasury account in that fiscal year for tenant-based rental assistance, housing rehabilitation projects, and acquisition projects of standard housing that does not constitute new construction.

* * * * *

(c) HOME funds used for administrative and planning costs (pursuant to § 92.206(f)), operating expenses (pursuant to § 92.206(g)) and capacity building (pursuant to § 92.300(b)) of community housing development organizations are not required to be matched.

* * * * *

44. In § 92.220, paragraph (a)(3) is revised, and a new paragraph (a)(6) is added to read as follows:

§ 92.220 Form of matching contribution.

(a) * * *

(3) The value, before the HOME assistance is provided and minus any debt burden, lien, or other encumbrance, of land or other real property, not acquired with federal resources, as appraised in conformance with established and generally recognized appraisal practice and procedures in common use by professional appraisers. Opinions of value must be based on the best available data properly analyzed and interpreted. The appraisal of land and structures must be performed by an independent, certified appraiser.

* * * * *

(6) The reasonable value of any site-preparation and construction materials, not acquired with federal resources, and any donated or voluntary labor (see § 92.354(b)) in connection with the site-preparation for, or construction or rehabilitation of, affordable housing.

(i) The value of site-preparation and construction materials is to be determined in accordance with the participating jurisdiction's cost estimate procedures.

(ii) A single rate will be applicable for determining the value of donated or voluntary labor. The rate will be published annually in the notice of funding availability (NOFA) for the HOME program.

* * * * *

45. Section 92.221 is revised to read as follows:

§ 92.221 Match credit.

(a) Contributions are credited on a fiscal year basis at the time the contribution is made, as follows:

(1) A cash contribution is credited when the funds are expended.

(2) The grant equivalent of a below-market interest rate loan is credited at the time of the loan closing.

(3) The value of state or local taxes, fees, or other charges that are normally and customarily imposed but are waived, forgone, or deferred is credited at the time the state or local government officially waives, foregoes, or defers the taxes, fees, or other charges and notifies the project owner.

(4) The value of land or other real property is credited at the time ownership of the property is transferred.

(5) The cost of investment in infrastructure directly required for affordable housing assisted with HOME funds is credited at the time funds are expended for the infrastructure or at the time the HOME funds are committed to the affordable housing if the infrastructure was completed before the commitment of HOME funds.

(6) Donated material is credited as match at the time it is used for affordable housing; donated or voluntary labor is credited at the time the work is performed.

(b) *Excess match.* Contributions made in a fiscal year that exceed the participating jurisdiction's match liability for the fiscal year in which they were made will be carried over and applied to future fiscal years match liability.

46. Section 92.222 is revised to read as follows:

§ 92.222 Reduction of matching contribution requirement.

(a) *Reduction for fiscal distress*—(1) *Distress criteria for local government participating jurisdictions.* As determined and published annually by HUD, if a local government participating jurisdiction satisfies both of the distress factors in paragraphs (a)(1) (i) and (ii) of this section, it is in severe fiscal distress and its match requirement will be reduced 100% for the period specified in paragraph (a)(3) of this section. If a local government participating jurisdiction satisfies either distress factor in paragraphs (a)(1) (i) or (ii) of this section, it is in fiscal distress and its match requirement will be reduced by 50 percent, for the period specified in paragraph (a)(4) of this section.

(i) *Poverty rate.* The average poverty rate in the participating jurisdiction was equal to or greater than 125 percent of the average national poverty rate during the calendar year for which the most recent data are available, as determined according to information of the Bureau of the Census.

(ii) *Per capita income.* The average per capita income in the participating jurisdiction was less than 75 percent of the average national per capita income, during the calendar year for which the most recent data are available, as determined according to information of the Bureau of the Census.

(2) [Reserved.]

(3) *Period of match reduction for severe fiscal distress.* A 100% match reduction is effective for the fiscal year in which the severe fiscal distress determination is published and for the following fiscal year.

(4) *Period of match reduction for fiscal distress.* A 50% match reduction is effective for the fiscal year in which the fiscal distress determination is published and for the following fiscal year, except that if a severe fiscal distress determination is published in that following fiscal year, the participating jurisdiction starts a new two-year match reduction period in accordance with the provisions of paragraph (a)(3) of this section.

(b) *Reduction of match for participating jurisdictions in disaster areas.* If a participating jurisdiction is located in an area in which a declaration of major disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act is made, HUD may reduce the matching requirement specified in § 92.218 by up to 100 percent for the fiscal year in which the declaration of major disaster is made and the following fiscal year for a local participating jurisdiction, and for a State participating jurisdiction, by up to 100 percent for the fiscal year in which the declaration of major disaster is made and the following fiscal year with respect to any HOME funds expended in an area to which the declaration of a major disaster applies. [Participating jurisdictions for which a declaration of major disaster was made in FY 1992 are permitted to request a match reduction for FY 1993 and FY 1994.] To request a reduction, a participating jurisdiction must submit to the local HUD Field Office a copy of the disaster declaration.

47. In § 92.252, the text of paragraph (a)(5) is revised (the table remains unchanged) to read as follows:

§ 92.252 Qualification as affordable housing and income targeting: rental housing.

(a) * * *

(5) Will remain affordable, pursuant to deed restrictions, covenants running with the land, or other mechanisms approved by HUD that will ensure that the property will remain affordable without regard to the term of any mortgage or the transfer of ownership, for not less than the appropriate period, beginning after project completion, as specified in the following table, without regard to the term of the mortgage or to transfer of ownership, except that, upon foreclosure by a lender or other transfer in lieu of foreclosure, the affordability period shall be terminated if the foreclosure or other transfer recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid the termination of low-income affordability. However, the affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure or other transfer, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property, the affordability period shall be revived according to its original terms. In addition, when HOME funds are used in connection with

multifamily housing in which acquisition, new construction, or rehabilitation is financed with a mortgage insured by HUD under chapter II of this title, the minimum period of affordability is the term of the HUD-insured mortgage. * * *

* * * * *

48. In § 92.253, paragraph (c) is revised to read as follows:

§ 92.253 Tenant and participant protections.

* * * * *

(c) *Termination of tenancy.* An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; for completion of the transitional housing tenancy period; or for other good cause. Any termination or refusal to renew must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action.

49. In § 92.254, paragraphs (a)(1) (i) and (ii), (a)(4), (b) introductory text and (b)(1) are revised to read as follows:

§ 92.254 Qualification as affordable housing: homeownership.

(a) * * *

(1)(i) Has an initial puchase price that does not exceed 95% of the median purchase price for the type of single family housing (1- to 4-family residence, condominium unit, cooperative unit, combination manufactured home and lot, or manufactured home lot) for the jurisdiction as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18(b); and

(ii) Has an estimated appraised value at acquisition, if standard, or after any repair needed to meet property standards in § 92.251, that does not exceed the limit described in paragraph (a)(1)(i) of this section.

* * * * *

(4) Is subject, for a period of 20 years for newly constructed housing or otherwise for 15 years, to resale restrictions or recapture provisions that are established by the participating jurisdiction and determined by HUD to be appropriate to either:

(i) Make the housing available for subsequent purchase only to a low income family that will use the property as its principal residence; and

(A) Provide the owner with a fair return on investment, including any improvements, and

(B) Ensure that the housing will remain affordable, pursuant to deed restrictions, covenants running with the land, or other similar mechanisms to ensure affordability, to a reasonable range of low-income homebuyers. The affordability restrictions must terminate upon occurrence of any of the following termination events: Foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property; or

(ii) Recapture the full HOME investment out of the net proceeds, except as provided in paragraph (a)(4)(ii)(B) of this section.

(A) Net proceeds means the sales price minus loan repayment and closing costs.

(B) If the net proceeds are not sufficient to recapture the full HOME investment plus enable the homeowner to recover the amount of the homeowner's downpayment, principal payments, and any capital improvement investment, the participating jurisdiction's recapture provisions may allow the HOME investment amount that must be recaptured to be reduced. The HOME investment amount may be reduced prorata based on the time the homeowner has owned and occupied the unit measured against the required affordability period; except that the participating jurisdiction's recapture provisions may not allow the homeowner to recover more than the amount of homeowner's downpayment, principal payments, and any capital improvement investment.

(C) The HOME investment that is subject to recapture is the HOME assistance that enabled the first-time homebuyer to buy the dwelling unit. The recaptured funds must be used to assist other first-time homebuyers.

(b) *Rehabilitation not involving purchase.* Housing that is currently owned by a family qualifies as affordable housing only if—

(1) The value of the property, after rehabilitation, does not exceed 95% of the median purchase price for the type of single family housing (1- to 4-family residence, condominium unit, combination manufactured home and lot, or manufactured home lot) for the jurisdiction as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18(b); and

* * * * *

50. Section 92.300 is revised to read as follows:

§ 92.300 Set-aside for community housing development organizations (CHDOs).

(a) For a period of 24 months after the allocation (including, for a state, funds reallocated under § 92.451(c)(2)(i) and, for a unit of general local government, an allocation transferred from a state under § 92.102(b)) is made available to a participating jurisdiction, the participating jurisdiction must reserve not less than 15 percent of these funds for investment only in housing to be developed, sponsored, or owned by community housing development organizations. The funds must be provided to a community housing development organization and the funds are reserved when a participating jurisdiction enters into a written agreement with the community housing development organization. If a community housing development organization's involvement in a project is as an owner it must have control of the project, as evidenced by legal title or a valid contract of sale. If it owns the project in partnership, it or its wholly owned for-profit subsidiary must be the managing general partner. In acting in any of the capacities specified, the community housing development organization must have effective management control.

(b) Each participating jurisdiction must make reasonable efforts to identify community housing development organizations that are capable, or can reasonably be expected to become capable, of carrying out elements of the jurisdiction's approved housing strategy and to encourage such community housing development organizations to do so. If during the first 24 months of its participation in the HOME Program a participating jurisdiction cannot identify a sufficient number of capable CHDOs, up to 20 percent of the minimum CHDO setaside of 15 percent specified in paragraph (a) of this section, above, (but not more than $150,000 during the 24 month period) may be expended to develop the capacity of CHDOs in the jurisdiction.

(c) Up to 10 percent of the HOME funds reserved under this section may be used for activities specified under § 92.301.

(d) HOME funds required to be reserved under this section are subject to reduction, as provided in § 92.500(d).

(e) If funds for operating expenses are provided under § 92.206(g) to a community housing development

organization that is not also receiving funds under paragraph (a) of this section for housing to be developed, sponsored or owned by the community housing development organization, the participating jurisdiction must enter into a written agreement with the community housing development organization that provides that the community housing development organization is expected to receive funds under paragraph (a) of this section within 24 months of receiving the funds for operating expenses, and specifies the terms and conditions upon which this expectation is based.

(f) *Limitation.* A community housing development organization may not receive HOME funding for any fiscal year in an amount that provides more than 50 percent or $50,000, whichever is greater, of the community housing development organization's total operating expenses in that fiscal year. This includes organization support and housing education provided under § 92.302(c)(1), (c)(2), and (c)(6), as well as funds for operating expenses provided under § 92.206(g) and administrative funds provided under § 92.206(f) (if the community housing development organization is a subrecipient or contractor of the participating jurisdiction).

51. In § 92.302, paragraphs (a)(2), (b)(1)(iv), (d), (e), and (f) are revised, and paragraphs (a)(3), (b)(1)(v), (c)(6) and (c)(7) are added, to read as follows:

§ 92.302 Housing education and organizational support.

(a) * * *

(2) To promote the ability of community housing development organizations, including community land trusts, to maintain, rehabilitate and construct housing for low-income and moderate-income families in conformance with the requirements of this part; and

(3) To achieve the purposes under paragraphs (a)(1) and (2) of this section by helping women who reside in low- and moderate-income neighborhoods rehabilitate and construct housing in the neighborhoods.

(b) * * *

(1) * * *

(iv) Has described the uses to which such assistance will be put and the intended beneficiaries of the assistance;

(v) In the case of activities under paragraph (c)(7) of this section, is a community based organization as defined in section 4 of the Job Training Partnership Act or a public housing agency which has demonstrated experience in preparing women for apprenticeship training in construction or administering programs for training for construction or other nontraditional occupations (in which women constitute 25 percent or less of the total number of workers in the occupation); or

* * * * *

(c) * * *

(6) *Community Land Trusts (CLTs).* HOME funds may be made available to CLTs for organizational support, technical assistance, education and training, and continuing support; and to community groups for the establishment of CLTs. A community land trust is a community housing development organization that:

(i) Is not sponsored by a for-profit organization;

(ii) Is established, and undertakes activities to:

(A) Acquire parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;

(B) Transfer ownership of any structural improvements located on such leased parcels to the lessees; and

(C) Retain a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low- and moderate-income families in perpetuity;

(iii) Has a corporate membership open to any adult resident of a particular geographic area specified in the bylaws of the organization;

(iv) Whose board of directors includes a majority of members who are elected by the corporate membership and is composed of equal numbers of lessees, corporate members who are not lessees, and any other category of persons described in the bylaws of the organization; and

(v) Is not required to have a demonstrated capacity for carrying out HOME activities or a history of serving the local community within which HOME-assisted housing is to be located.

(7) *Facilitating women in homebuilding professions.* Technical assistance may be made available to businesses, unions, and organizations involved in construction and rehabilitation of housing in low- and moderate-income areas to assist women residing in the area to obtain jobs involving such activities. This might include facilitating access by women to, and providing, apprenticeship and other training programs regarding non-traditional skills, recruiting women to participate in such programs, providing support for women at job sites, counseling and educating businesses regarding suitable work environments for women, providing information to such women regarding opportunities for establishing small housing construction and rehabilitation businesses. Up to ten percent of the funds made available for this activity may be used to provide materials and tools for training such women.

(d) *Limitations.* Contracts under this section with any one contractor for a fiscal year may not—

(1) Exceed 20 percent of the amount appropriated for this section for such fiscal year; or

(2) Provide more than 20 percent of the operating budget (which may not include funds that are passed through to community housing development organizations) of the contracting organization for any one year.

(e) *Single-state contractors.* Not less than 40 percent of the funds made available for this section in an appropriations Act in any fiscal year must be made available for eligible contractors that have worked primarily in one state. HUD shall provide assistance under this section, to the extent applications are submitted and approved, to contractors in each of the geographic regions having a HUD regional office.

(f) *Notice of funding.* HUD will publish a notice in the **Federal Register** announcing the availability of funding under this section, as appropriate. The notice need not include funding for each of the eligible activities, but may target funding from among the eligible activities.

52. In § 92.350, paragraph (a)(4) is revised to read as follows:

§ 92.350 Equal opportunity and fair housing.

(a) * * *

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) the purpose of which is to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very-low-income persons, particularly those who are recipients of government assistance for housing.

* * * * *

53. In § 92.400, paragraphs (a)(4) and (a)(5) are revised, and paragraph (a)(6) is added, to read as follows:

§ 92.400 Coordinated federal support for housing strategies.

(a) * * *

(4) Improve the ability of states and units of general local government,

community housing development organizations, private lenders, and for-profit developers of low-income housing to incorporate energy efficiency into the planning, design, financing, construction, and operation of affordable housing;

(5) Facilitate the establishment and efficient operation of employer-assisted housing programs through research, technical assistance, and demonstration projects; and

(6) Facilitate the establishment and efficient operation of land bank programs, under which title to vacant and abandoned parcels of real estate located in or causing blighted neighborhoods is cleared for use consistent with the purposes of the HOME program.

* * * * *

54. In § 92.500, the first sentence of paragraph (a) and paragraph (d)(2) are revised to read as follows:

§ 92.500 The HOME investment Trust Fund.

(a) *General.* A HOME Investment Trust Fund consists of the accounts described in this section solely for investment in eligible activities within the participating jurisdiction's boundaries, or within the boundaries of contiguous local jurisdictions in joint projects which serve residents from both jurisdictions, in accordance with the provisions of this part. * * *

* * * * *

(d) * * *

(2) Any funds in the United States Treasury account that are not committed within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement (HUD will make the notification on the date HUD executes the agreement);

* * * * *

55. In § 92.504, paragraph (c) introductory text is revised, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added, to read as follows:

§ 92.504 Participating jurisdiction responsibilities; written agreements; monitoring.

* * * * *

(c) *Provisions in written agreement.* At a minimum, the written agreement (except for a written agreement under paragraph (d) of this section between a State and a State housing finance agency, or other State instrumentality, that is a subrecipient of the State) must include provisions concerning the following items:

* * * * *

(d) *Agreement between a State and a State housing finance agency, or other instrumentality of the State.* The written agreement between a State and a State housing finance agency, or other instrumentality of the State, which is a subrecipient of the State must include provisions concerning the following items:

(1) The total amount to be administered, i.e., the entire State allocation, a percentage of the allocation, or a dollar amount, and whether the amount covers repayment income;

(2) A statement that the subrecipient is subject to the same requirements as are applicable to the State in 24 CFR part 92;

(3) A listing of the reports and other information that the subrecipient must provide to the State;

(4) A statement that the agreement remains in effect during the period that the subrecipient has control over HOME funds;

(5) The conditions that constitute a breach of the agreement, and the remedies for a breach, including a statement that suspension or termination may occur if the subrecipient materially fails to comply with any term of the agreement, and that the agreement may be terminated for convenience in accordance with 24 CFR 85.44; and

(6) A statement that, upon expiration of the agreement, the subrecipient must transfer to the participating jurisdiction any HOME funds and any accounts receivable attributable to the use of HOME funds on hand at the time of expiration.

* * * * *

56. In § 92.508, paragraph (a)(1)(ii) is revised, paragraphs (a)(2)(iii) and (a)(2)(iv) are removed, paragraphs (a)(2)(v) through (a)(2)(vii) are redesignated as paragraphs (a)(2)(iii) through (a)(2)(v) respectively, and new paragraphs (a)(4) (iv) and (v) are added, to read as follows:

§ 92.508 Recordkeeping.

(a) * * *

(1) * * *

(ii) Records for a unit of general local government receiving a formula allocation of less than $750,000 (or less than $500,000 in fiscal years in which Congress appropriates less than $1.5 billion for this part) that demonstrate that funds have been made available (either by the state or the unit of general local government, or both) equal to or greater than the difference between its formula allocation and $750,000 (or less than $500,000 in fiscal years in which Congress appropriates less than $1.5 billion) for this part as required by § 92.102.

* * * * *

(2) * * *

(iii) Records supporting the participating jurisdiction's certification under §§ 92.210 and 92.211 (tenant-based rental assistance, including security deposits; the waiting list; determinations of rent reasonableness; calculations of HOME subsidy for each tenant assisted).

(iv) Records for income targeting required by § 92.216 and § 92.217.

(v) Records, including individual project records and a running log, demonstrating compliance with the matching requirements in § 92.218 through § 92.221 including the type and amount of contributions by project.

* * * * *

(4) * * *

(iv) Records regarding the use of community housing development organization setaside funds to develop the capacity of community housing development organizations pursuant to § 92.300(b) if the jurisdiction could not identify a sufficient number of capable community housing development organizations.

(v) Records of the written agreement the participating jurisdiction must enter into under § 92.300(e) with the community housing development organization if funds for operating expenses are provided under § 92.206(g) to the community housing development organization that is not also receiving funds under § 92.300(a).

* * * * *

57. Section 92.600 is revised to read as follows:

§ 92.600 General.

For each fiscal year, HUD will provide funds to Indian tribes, totaling one percent (or such other percentage or amount as authorized by Congress) of the amount appropriated for the HOME program to expand the supply of affordable housing. The funds will be awarded competitively by HUD Field Offices that have responsibility for the HOME Indian program and will be made available each fiscal year pursuant to a notice of funding availability (NOFA) published in the Federal Register, in accordance with the requirements of subpart M of this part. Except as otherwise stated in this part, only subparts A and M apply to grants to Indian tribes.

58. Section 92.610 is revised to read as follows:

§ 92.610 Income determinations.

Whenever an Indian tribe makes a determination under this part based on

family income or adjusted family income, it must use the definitions of annual income, adjusted income, monthly income, and monthly adjusted income, as those terms are defined in part 913 of this title, except when determining the income of a homeowner for an owner-occupied rehabilitation project, the equity in the homeowner's principal residence is excluded from "Net Family Assets."

59. In § 92.611, paragraph (a)(1) is revised to read as follows:

§ 92.611 Eligible activities.

(a) *Eligible activities.* (1) HOME funds may be used by an Indian tribe to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to first-time homebuyers), new construction, reconstruction, or moderate or substantial rehabilitation of non-luxury housing with suitable amenities, including real property acquisition, site improvement, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; to provide tenant-based rental assistance, including security deposits; to provide payment of reasonable administrative and planning costs; and to provide for the payment of operating expenses of community housing development organizations. The housing must be permanent or transitional housing, and includes permanent housing for disabled homeless persons, and single-room occupancy housing. The specific eligible costs for these activities are set forth in § 92.612.

* * * * *

60. In § 92.612, paragraphs (a)(4) and (e) are revised to read as follows:

§ 92.612 Eligible costs.

* * * * *

(a) * * *

(4) For new construction or substantial rehabilitation, the cost of funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of project rent-up (not to exceed 18 months) and which may only be used to pay operating expenses, reserve for replacement payments, and debt service. Any HOME funds placed in an operating deficit reserve that remain unexpended when the reserve terminates must be returned to the Indian tribe's local HOME account.

* * * * *

(e) *Costs related to tenant-based rental assistance.* Eligible costs are the rental assistance and security deposit payments made to provide tenant-based rental assistance for a family.

* * * * *

61. In § 92.613, paragraph (a) is revised, and a new paragraph (i) is added, to read as follows:

§ 92.613 Tenant-based rental assistance.

(a) *General.* An Indian tribe may use HOME funds for tenant-based rental assistance only if the Indian tribe selects families in accordance with written tenant selection policies and criteria that are consistent with the purpose of providing housing to very low- and low-income families and are reasonably related to preference rules established under section 6(c)(4)(A) of the Housing Act of 1937. The Indian tribe may select eligible families currently residing in units that are designated for rehabilitation or acquisition under the tribe's HOME program without requiring that the family meet the written tenant selection policies and criteria. Families so selected may use the tenant-based assistance in the rehabilitated or acquired unit or in other qualified housing.

* * * * *

(i) *Security deposits.* (1) An Indian tribe may use HOME funds provided for tenant-based rental assistance to provide loans or grants to very low- and low-income families for security deposits for rental of dwelling units whether or not the Indian tribe provides any other tenant-based rental assistance under this section.

(2) The relevant tribal, state or local definition of "security deposit" in the jurisdiction where the unit is located is applicable for the purposes of this part, except that the amount of HOME funds that may be provided for a security deposit may not exceed the equivalent of two month's rent for the unit.

(3) Only the prospective tenant may apply for HOME security deposit assistance, although the Indian tribe may pay the funds directly to the tenant or to the landlord.

(4) The lease between a tenant and an owner of rental housing for which HOME security deposit assistance is provided must comply with the requirements of § 92.622 (a) and (b).

(5) HOME funds for security deposits may be provided as a grant or as a loan. If they are provided as a loan, the provisions at § 92.643(b) or repayment of HOME investment apply.

(6) The provisions of paragraphs (a), (b), (d), (e) and (g) of this section are applicable to HOME security deposit assistance.

62. In § 92.614, paragraph (a)(1)(ii), (a)(2) introductory text, the text of (a)(5) (the table remains unchanged), and (c) are revised, and a new paragraph (e) is added, to read as follows:

§ 92.614 Qualification as affordable housing and income targeting: rental housing.

(a) * * *

(1) * * *

(ii) A rent that does not exceed 30 percent of the adjusted income of a family whose gross income equals 65 percent of the median income for the area, as determined by HUD, with adjustment for number of bedrooms in the unit, except that HUD may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of HUD's fundings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or Indian tribe must subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the tenant. HUD will provide average occupancy per unit and adjusted income assumptions to be used in calculating the maximum rent allowed under this paragraph (a)(1)(ii) of this section;

(2) Has, in the case of projects with three or more rental units, or in the case of an owner of multiple one or two unit projects with a total of three or more rental units, not less than 20 percent of the rental units—

* * * * *

(5) Will remain affordable, pursuant to binding commitments satisfactory to HUD that will ensure that the property will remain affordable without regard to the term of any mortgage or the transfer of ownership, for not less than the appropriate period, beginning after project completion, as specified in the following table, except that upon foreclosure by a lender or other transfer in lieu of foreclosure, the affordability period shall be suspended if the foreclosure by a lender or other transfer in lieu of foreclosure recognizes any contractual or legal rights of public agencies, nonprofit sponsors, or others to take actions that would avoid termination of low-income affordability. However, if at any time following transfer by foreclosure or transfer in lieu of foreclosure, but still during the term of the affordability period, the owner of record prior to the foreclosure or transfer in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or

property, the affordability period shall be revived according to its original terms. * * *

* * * * *

(c) *Increases in tenant income.* Rental housing qualifies as affordable housing despite a temporary noncompliance with paragraph (a)(2) or (a)(3) of this section, if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected. Tenants who no longer qualify as low-income families must pay as rent the lesser of the amount payable by the tenant under tribal, State or local law or 30 percent of the family's adjusted monthly income, as recertified annually. The preceding sentence shall not apply with respect to funds made available under this part for units that have been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of the Internal Revenue Code 1986.

* * * * *

(e) *Manufactured housing.* Purchase and/or rehabilitation of a manufactured housing unit qualifies as affordable housing only if, at the time of project completion, the unit—

(1) Is situated on a permanent foundation;

(2) Is connected to permanent utility hook-ups;

(3) Is located on land that is held in a fee-simple title, land-trust, or long-term ground lease with a term at least equal to that of the appropriate affordability period;

(4) Meets the construction standards established under 24 CFR 3280;

(5) Meets all requirements of this section.

63. In § 92.615, paragraphs (a)(1) (i) and (ii), (a)(4), (b) introductory text and (b)(1) are revised, and a new paragraph (c) is added, to read as follows:

§ 92.615 Qualification as affordable housing: homeownership.

(a) * * *

(1)(i) Has an initial purchase price that does not exceed 95% of the median purchase price for the type of single family housing (1- to 4-family residence, condominium unit, cooperative unit, combination manufactured home and lot, or manufactured home lot) for the area as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18(b); and

(ii) Has an estimated appraised value at acquisition, if standard, or after any repair needed to meet property standards in § 92.621, that does not exceed the limit described in paragraph (a)(1)(i) of this section.

* * * * *

(4) Is subject, for a period of 20 years for newly constructed housing or otherwise for 15 years, to resale restrictions or recapture provisions that are established by the Indian tribe and determined by HUD to be appropriate to either—

(i) Make the housing available for subsequent purchase only to a low income family that will use the property as its principal residence; and

(A) Provide the owner with a fair return on investment, including any improvements, and

(B) Ensure that the housing will remain affordable, pursuant to deed restrictions, covenants running with the land, or other similar mechanisms to ensure affordability, to a reasonable range of low-income homebuyers. The affordability restrictions must terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The Indian tribe may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event reacquires title to the property; or

(ii) Recapture the full HOME investment out of the net proceeds, except as provided in paragraph (a)(4)(ii)(B) of this section.

(A) Net proceeds means the sales price minus loan repayment and closing costs.

(B) If the net proceeds are not sufficient to recapture the full HOME investment plus enable the homeowner to recover the amount of the homeowner's downpayment, principal payments, and any capital improvement investment, the Indian tribe's recapture provisions may allow the HOME investment amount that must be recaptured to be reduced. The HOME investment amount may be reduced pro rata based on the time the homeowner has owned and occupied the unit measured against the required affordability period; except that the Indian tribe's recapture provisions may not allow the homeowner to recover more than the amount of the homeowner's downpayment, principal payments, and any capital improvement investment.

(C) The HOME investment that is subject to recapture is the HOME assistance that enabled the first-time homebuyer to buy the dwelling unit. The recaptured funds must be used to assist other first-time homebuyers.

(b) *Rehabilitation not involving purchase.* Housing that is currently owned by a family qualifies as affordable housing only if—

(1) The value of the property, after rehabilitation, does not exceed 95% of the median purchase price for the type of single family housing (1- to 4-family residence, condominium unit, combination manufactured home and lot, or manufactured home lot) for the area as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18(b); and

* * * * *

(c) *Manufactured housing.* Purchase and/or rehabilitation of a manufactured housing unit qualifies as affordable housing only if, at the time of project completion, the unit—

(1) Is situated on a permanent foundation (except when assisting existing unit owners who rent the lot on which their unit sits);

(2) Is connected to permanent utility hook-ups;

(3) Is located on land that is held in a fee-simple title, land-trust, or long-term ground lease with a term at least equal to that of the appropriate affordability period;

(4) Meets the construction standards established under 24 CFR 3280 if produced after June 15, 1976. If the unit was produced prior to June 15, 1976, it must comply with applicable tribal, State or local codes;

(5) Meets all of the requirements of paragraphs (a) and (b) of this section, as applicable. In cases where the owner of a manufactured housing unit does not hold fee-simple title to the land on which the unit is located, the owner may be assisted to purchase the land under paragraph (b) of this section.

64. A new § 92.616 is added to read as follows:

§ 92.616 Prohibited activities.

(a) HOME funds may not be used to—

(1) Provide a project reserve account for replacements, a project reserve account for unanticipated increases in operating costs, or operating subsidies;

(2) Provide nonfederal matching contributions required under any other federal program; or

(3) Provide assistance (other than tenant-based rental assistance or assistance to a first-time homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the Indian tribe under

§ 92.614 or § 92.615. However, additional HOME funds may be committed to a project up to one year after project completion (see § 92.642), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.620.

(4) Pay impact fees.

(b) Indian tribes may not charge monitoring, servicing and origination fees in HOME-assisted projects. However, tribes may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications.

65. Section 92.620 is revised to read as follows:

§ 92.620 Maximum per-unit subsidy amount.

The amount of HOME funds that an Indian tribe may invest on a per-unit basis in affordable housing may not exceed the total development cost standard for the area, as issued by HUD under 24 CFR 905.213. These total development cost standards are available from HUD Indian Field Offices.

66. Section 92.621 is revised to read as follows:

§ 92.621 Property standards.

(a) Housing that is assisted with HOME funds, at a minimum, must meet the housing quality standards in § 882.109 of this title. In addition, housing that is newly constructed or substantially rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances. The Indian tribe must have written standards for rehabilitation. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials. Substantially rehabilitated housing must meet the cost-effective energy conservation and effectiveness standards in 24 CFR part 39.

(b) The following requirements apply to housing for homeownership that is to be rehabilitated after transfer of the ownership interest:

(1) Before the transfer of the homeownership interest, the Indian tribe must:

(i) Inspect the housing for any defects that pose a danger to health; and

(ii) Notify the prospective purchaser of the work needed to cure the defects and the time by which defects must be cured and applicable property standards met.

(2) The housing must be free from all noted health and safety defects before occupancy and not later than 6 months after the transfer.

(3) The housing must meet the applicable property standards (at a minimum, the housing quality standards in § 882.109 of this title) not later than 2 years after transfer of the ownership interest.

67. In § 92.642, paragraph (b)(1) is revised to read as follows:

§ 92.642 Cash and Management Information System; disbursement of HOME funds.

* * * * *

(b) * * *

(1) After HUD completes any environmental review required by part 50 of this title and the Indian tribe executes HOME Investment Partnership Agreement and submits the appropriate banking and security documents, the Indian tribe may identify (set up) specific investments in the C/MI System. Investments that require the set-up of projects in the C/MI System are the acquisition, new construction, or moderate or substantial rehabilitation of real property, and investments of HOME funds to provide tenant-based rental assistance. Within 12 calendar days of project set-up, the Indian tribe is required to submit a Project Set-Up Report to HUD for each project set up in the C/MI System. Until an acceptable Project Set-Up Report is received and entered in the C/MI System, HOME funds for the project are not considered committed (as defined in § 92.2), and, therefore, are subject to recapture and reallocation to the extent authorized by § 92.640.

* * * * *

Dated: March 26, 1993.

Henry G. Cisneros,

Secretary.

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Part III

Department of Health and Human Services

Social Security Administration

Supplemental Security Income Program for the Aged, Blind, and Disabled; Outreach Demonstration Program; Announcement of Fiscal Year 1993 Availability of Cooperative Agreement Funds and Request for Applications; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Supplemental Security Income (SSI) Program for the Aged, Blind, and Disabled; Outreach Demonstration Program; Announcement of Fiscal Year (FY) 1993 Availability of Cooperative Agreement Funds and Request for Applications

AGENCY: Social Security Administration (SSA), HHS.

ACTION: Announcement of the availability of FY 1993 funds and a request for applications under the SSI Outreach Demonstration Program.

SUMMARY: The Principal Deputy Commissioner of Social Security announces the opening of the SSI Outreach Demonstration Program for FY 1993. Applications will be accepted for cooperative agreements which increase outreach efforts to needy aged, blind, and disabled individuals who are potentially eligible for the SSI program. Section 1110 of the Social Security Act (the Act) authorizes the Secretary of Health and Human Services to establish projects that assist in promoting the objectives or facilitate the administration of the SSI program. The goal of these outreach demonstration projects will be to demonstrate effective, efficient, ongoing and transferable approaches for identifying and assisting potentially eligible individuals in filing for SSI benefits.

DATES: The closing date for receipt of cooperative agreement applications under this announcement is August 23, 1993.

FOR FURTHER INFORMATION CONTACT: SSA, Office of Supplemental Security Income, Division of Program Management and Analysis, SSI Outreach Branch, 3–R–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235. The fax number is (410) 966–1337. The telephone number is (410) 965–9798. The SSI Outreach Branch is available to provide you with general program information, the location of a servicing SSA field office, and to schedule attendance at a Technical Assistance Workshop (see Section I.G. for the schedule).

SUPPLEMENTARY INFORMATION:

General

For the purpose of our SSI Outreach Demonstration Program, we define outreach efforts to mean identifying potentially eligible individuals, helping them understand the benefits of participating in the SSI program, and assisting them in the application process. Assistance in the SSI application process may include, depending upon the project model, providing translation services or transportation, assisting in the completion of the SSI application forms, obtaining nonmedical and medical evidence, providing or arranging for any necessary medical examinations and assisting in finding representative payees.

This announcement consists of three sections:

- Section I provides background information, discusses the purpose of the SSI Outreach Demonstration Program and briefly describes the application process.
- Section II describes the programmatic priorities under which the SSA is requesting applications for funding.
- Section III describes in detail the application process.

We encourage applicants to become knowledgeable about SSA's operations as well as the eligibility rules of the SSI program, and the Qualified Medicare Beneficiary (QMB) and Specified Low-Income Medicare Beneficiary (SLMB) programs. Pamphlets and other public information materials may be obtained from any local Social Security field office (see Section I.D. on how to obtain this information).

Section I

A. The SSI Program

SSI is a Federal program administered by SSA. The program is financed from general revenue funds of the U.S. Treasury and provides monthly benefit payments to aged, blind, and disabled people who have limited resources and income. In 1993, the Federal benefit rate for an individual is $434 per month and $652 per month for a couple. In addition, many States supplement the Federal benefit; the supplementary benefit amounts and the categories of persons eligible for these benefits vary from State to State. In most States, eligibility for SSI means eligibility for Medicaid; the extent of the Medicaid coverage varies by State. SSI recipients may also be eligible to receive Food Stamps in all States but California, where the State's supplementary payments are considered to include the value of Food Stamps.

To be eligible for SSI benefits, a person must be age 65 or older or disabled or blind, have limited resources and income, and meet certain other requirements. An adult (age 18 or over) is considered disabled if a physical or mental impairment or combination of impairments prevents the person from doing any substantial gainful work and is expected to last for at least 12 months or result in death. A child (under age 18) is considered disabled if he or she suffers from a physical or mental impairment of comparable severity to that which would make an adult disabled. SSA works cooperatively with the States, which are responsible for making disability and blindness determinations through their Disability Determination Services (DDS). SSA takes a detailed medical history from the applicant during the initial interview and sends that information to the DDS. The DDS then secures medical records and, if needed, arranges an additional medical examination. Based upon this evidence, a disability or blindness determination is then made.

In addition to age, disability, or blindness, an individual or couple must meet resource, income, and residency requirements. In 1993, the resource limits are $2,000 for an individual and $3,000 for a couple. If a disabled or blind child lives with a parent, some of the parent's income and resources may be counted as the child's. However, not everything that a person owns is counted as a resource.

An individual or couple may have earned or unearned income and still be eligible for the SSI program. A certain amount of income is disregarded in determining eligibility and computing the SSI benefit amount. People who live in a State that supplements the Federal payment may have higher amounts of income and still may qualify for State supplementary benefits.

Except for some children of military personnel, to be eligible for SSI a person must reside in the U.S. or the Northern Mariana Islands and be a U.S. citizen, an alien lawfully admitted for permanent residence, or an alien permanently residing in the U.S. under "color of law" (PRUCOL). PRUCOL is defined in the Code of Federal Regulations at title 20, part 416, § 416.1618.

Approximately 5.6 million persons received a Federal SSI benefit and/or a federally administered State supplement in December 1992. Of these, 1.5 million are aged recipients whose eligibility is based on being age 65 or over, and 4.1 million are blind or disabled recipients. Of the 4.1 million blind or disabled recipients, approximately 610,000 are now age 65 or over, and 620,000 are under age 18 (disabled children).

B. Qualified Medicare Beneficiary (QMB) and Specified Low Income Medicare Beneficiary (SLMB) Programs

Applicants need to be familiar with the QMB program and the eligibility process. Since the eligibility rules for QMB are similar to those for SSI, but have higher income and resource limits, in certain cases it may be appropriate to refer individuals for QMB eligibility determinations when SSI eligibility is precluded.

QMBs are Medicare beneficiaries who have income at or below the Federal poverty level and countable resources of $4,000 ($6,000 per couple) or less. The QMB program is administered by the States under the oversight of the Health Care Financing Administration. In most States, the QMB program became effective in January 1989.

If an individual qualifies as a QMB, the State will pay Medicare premiums, deductibles and coinsurance. Beginning in January 1993, for SLMBs, the State will pay the Medicare Part B premium amounts but not the coinsurance and deductibles. SLMBs are individuals who meet the QMB eligibility requirements except for income in excess of the QMB limit but less than 110 percent of the Federal poverty level. Recent studies suggest that many individuals who might qualify are not aware of these benefits. For additional information, see the fact sheet on QMBs and SLMBs in the application kit.

C. Purpose of the SSI Outreach Demonstration Program

SSA will award a number of SSI outreach demonstration projects. The goal of these projects will be to demonstrate effective, efficient, ongoing, and transferable approaches for identifying potentially eligible needy aged, blind, and disabled individuals and assisting these individuals in the application process. By effective, we mean methods that result in significant increases in SSI awards to underserved populations. By efficient, we mean those methods that find and assist the largest number of potentially eligible individuals, minimizing the burden of application for them while conserving both public and private resources. By ongoing, we mean methods that can continue after the cooperative agreement and grant funding from SSA end. By transferable, we mean that the methods are not dependent on the special conditions existing in one locale but can be used by other organizations in other places. These projects will expand upon the ideas being tested in the cooperative agreements previously funded, will test new methods, and will target additional underserved populations.

The SSI Outreach Demonstration Program was first announced in April 1990. Following an independent review process, 33 cooperative agreements in 44 sites were approved for the development of models of SSI outreach. The projects used a wide range of methodologies and concentrated on several target populations: Urban and rural elderly, the disabled in general, people with AIDS, the homeless, and minority and ethnic communities. Many of these projects have completed their outreach activities and are now being evaluated.

The second SSI Outreach Demonstration Program was announced in September 1991. Following an independent review process, 49 cooperative agreements in 52 sites were approved in August 1992 for the development of models of SSI outreach. The projects use a wide range of methodologies and concentrate on underserved target populations: African Americans, Native Americans, other minority/ethnic groups such as Hispanics and Asians, disabled children, severely mentally ill adults, and homeless adults. These projects are still actively engaged in outreach activities, and have not entered the evaluation phase.

D. Cooperative Agreements

Legislative authority for the Outreach Demonstration Program is in section 1110 of the Act, which provides, in part, for projects that assist in promoting the objectives or facilitate the administration of the SSI program. The regulatory requirements that govern the administration of all Department of Health and Human Services cooperative agreements are in the Code of Federal Regulations at title 45, parts 74 and 92. Applicants are urged to review the requirements in the applicable regulations.

SSA may suspend or terminate any cooperative agreement in whole or in part at any time before the date of expiration, whenever it determines that the awardee has materially failed to comply with the terms of the cooperative agreement. SSA will promptly notify the awardee in writing of the determination and the reasons for the suspension or termination together with the effective date.

A cooperative agreement anticipates substantial involvement between SSA and the applicant during the performance of the project. All awards made under this program will be made in the form of cooperative agreements. This involvement will include collaboration or participation by SSA in the management of the activity as determined at the time of the award. For example, SSA will be involved in decisions involving strategy, hiring of personnel, deployment of resources, selection of contractors, release of public information materials, etc. The Social Security field office will provide SSI program training and ongoing technical assistance to those organizations awarded cooperative agreements in order to establish effective referral procedures. Since the outreach process requires linkage with Social Security field offices and, in some approaches, the DDS, grantees will need to develop detailed procedures for working with these offices. To this end, SSA strongly encourages all applicants to contact their local Social Security field office to obtain additional information on the SSI program and on local outreach efforts. However, letters of commitment should not be requested from Social Security field offices or State DDSs. For the location of your local Social Security field office, please contact the SSI Outreach Branch by fax at (410) 966–1337 (see Section III, Part E—"FAX Inquiry Form"), or by telephone at (410) 965–9798. Do not use that FAX Inquiry Form or this telephone number to request application kits. Instructions for requesting application kits are contained in Section III.D. (Availability of Forms).

E. Number, Size, and Duration of Projects

Approximately $5.45 million is available for the awarding of cooperative agreements under this announcement. SSA expects to fund up to 40 demonstration projects that cost between $50,000 and $350,000 with budget periods of 3 to 17 months. However, SSA may fund some projects at higher or lower amounts. Also, applicants may submit applications for multiyear funding not to exceed 36 months in duration under the following priority areas only:

002 Aging Network Collaborations and Intake Modifications
003 One-Stop Service
005 Outreach Worker
006 Discharge Planning Technical Assistance

F. Fiscal Year 1993 Cooperative Agreement Application Process

The cooperative agreement application process for FY 1993 consists of a one-stage, full application. The program narrative (Part III of SSA–96–BK) is limited to 20 double-spaced pages (excluding resumes, forms, etc.) and will be reviewed by independent

reviewers against the evaluation criteria established for review of applications (see Section III). Applications will also be reviewed against others in the same priority area; for example, all applications focusing on "targeted mailings" will be competitively reviewed against each other.

In making the funding award decisions, SSA will pay particular attention to applications seeking to eliminate multiple barriers to eligibility and targeting areas of the U.S. where the number of individuals with incomes at or below the Federal poverty level is high.

Each project will work with one or more local Social Security field offices and/or DDSs to carry out the approved methodology. Local Social Security field offices process the applications for benefits resulting from outreach efforts. State DDSs make the disability and blindness determinations for SSI claims. Therefore, geographic dispersion will be a factor in the selection process to minimize the administrative burden to any one Social Security field office or State DDS

G. Technical Assistance Workshops for Prospective Applicants

SSA will hold workshops to provide guidance and technical assistance to prospective applicants. Please send your request to attend a specific workshop to the SSI Outreach Branch by fax at (410) 966–1337 (see Section III, Part E), or call the SSI Outreach Branch at (410) 965–9796, at least 7 days prior to the workshop for further information.

Date	Location
Tuesday, July 20	Chicago, IL.
Wednesday, July 21	Atlanta, GA.
Thursday, July 29	San Francisco, CA.
Thursday, July 15	Denver, CO.
Wednesday, July 21	Dallas, TX.
Thursday, July 29	New York, NY.

Section II

A. *Overview.* The SSI Outreach Demonstration Program will help SSA demonstrate the feasibility of special approaches and services to identify and assist needy individuals in filing for SSI benefits. SSA is most interested in approaches that will result in significant numbers of potentially eligible individuals being awarded SSI benefits. In the cooperative agreement application, the project methodology should describe how referrals to social services or other benefit programs (e.g., QMBs and SLMBs) will be made when they are appropriate. Further, effective outreach includes not only identifying potentially eligible individuals; it also means facilitating the process of applying for benefits and ensuring that benefits continue through, for example, the provision of representative payee services.

This section of the program announcement lists the priority outreach approaches to be tested to address the barriers to SSI eligibility.

B. *Barriers to Filing for Benefits.* Barriers exist that prevent potentially eligible individuals and couples from filing for SSI benefits. Some of the barriers are (not in priority order):

—Lack of correct information about the SSI program within the target population and outside organizations that provide services to these persons,
—Inability to handle one's own financial affairs, which may require another individual to assist in making application and, when an applicant is eligible, to receive the benefits as a representative payee,
—Difficulty with reading and/or spelling the English language,
—Limited exposure to traditional communications media,
—Disabilities which limit mobility and connection with social services organizations,
—Reluctance to accept/admit disability as a permanent condition,
—Fear/stigma associated with disability, such as AIDS, cancer, mental illness, mental retardation, and substance abuse,
—Homelessness often coupled with mental illness or drug addiction/alcoholism,
—Perceived welfare stigma of receiving SSI benefits,
—Distrust or fear of government bureaucracy,
—Concern that eligibility will preclude work or future work attempts,
—Lack of transportation and/or access to a telephone,
—Lack of understanding about how to contact Social Security field offices,
—Lack of current connection with social service organizations, and
—Homebound status due to age or infirmity.

C. *Priority outreach areas.* SSA believes that a significant number of people are potentially eligible for SSI benefits but, for the reasons cited in B. and others, have not become eligible for them. These potentially eligible individuals fall into all SSI eligibility groups; i.e., aged, blind, or disabled adults and children, in both urban and rural areas.

This announcement identifies six outreach priority areas to be tested. These areas build upon experience gained in prior cooperative agreements. They appear to be the most promising in terms of success in overcoming the barriers listed above, potential numbers of new awards, and improved service to hard-to-access populations through an efficient use of resources. However, these areas need to be tested further to determine specifically their effectiveness in reaching a wide range of populations and their efficiency as to both public and private resources.

001 Targeted Mailings
002 Aging Network Collaborations and Intake Modifications
003 One-Stop Service
004 Strike Teams
005 Outreach Worker
006 Discharge Planning Technical Assistance

In addition to these 6 priority areas, SSA will consider innovative proposals that may encompass other methodologies designed to address specific barriers to eligibility. These should be submitted in a seventh category "other."

Applications utilizing the 6 priority areas should be filed under priority areas 001 through 006. File an application under priority area 007 "other" only when the outreach effort is not one of those described in areas 001 through 006. If you are proposing more than one area, such as targeted mailings and aging network intake modifications, you must file a separate application for each priority area. Do not file an application that covers more than one priority area.

SSA is interested in applications from a wide range of entities, including: Medical providers; social service providers; State or local governments; Native American tribal governments; academic institutions; or advocacy groups and legal aid societies which provide services to hard-to-access populations.

Any proposal that includes activities by another organization must include a letter of commitment from that other organization, a description of the nature of the past relationship with that organization and the length of time that relationship has existed.

Please note that the scope of this grant announcement is limited to services at the initial claims level. Through this announcement SSA seeks to improve the administrative process so that, to the extent possible, complete, well-documented claims are received at the earliest possible point. Therefore, SSA is not funding activities in support of appeals of adverse decisions.

Following is a description of each priority area:

001: *Targeted Mailings*—SSA is interested in applications from the aging

network or other community-based agencies to provide assistance to individuals potentially eligible for SSI in responding to a letter sent by SSA to title II (Social Security retirement and disability) beneficiaries with low benefit amounts living in high poverty areas.

Following the award of cooperative agreements from this announcement, SSA will send letters to elderly and disabled title II beneficiaries with low benefit amounts who are potentially eligible for SSI and who live in high poverty areas within the service area of the grantee. (Although the grantee will produce the letter on its stationery, SSA must send the letter, rather than providing mailing information to the grantee, in order to protect the privacy of the beneficiary.) The letter will be standard, based on input from a variety of sources, including grantees. It will inform beneficiaries of the SSI program and refer them to the grantee for assistance. The grantee will: provide initial eligibility screening; contact SSA to protect the individual's filing date for SSI benefits; complete an application for SSI through a home visit or by telephone; assist SSA with any follow-up mailings, if applicable; provide transportation and translation services for the individual, as needed; and assist the applicant in securing supporting documentation, as needed.

In order for SSA to reach the neediest among title II beneficiaries in the most efficient manner, the applicant's service area must include areas of high poverty, defined for purposes of this announcement as areas at least as large as a ZIP code area in which more than 15 percent of the residents have incomes at or below the poverty level. Since SSA's intent is for the applicant's service area to include a very large number of title II beneficiaries with low benefit amounts, an applicant's service area should be a metropolitan area with a population of one million or more. Applicants whose organizations serve smaller populations may need to form coalitions with surrounding service providers to serve a larger population to be considered under this priority area. For example, applicants serving more rural areas or States which do not contain major metropolitan areas might need to form a Statewide coalition or even a coalition of several Statewide organizations in order to be considered.

The grant period for targeted mailing projects will be 9 months, including a short start-up phase followed by active outreach and assistance. We anticipate that these projects will begin in early 1994 in order to stagger the mailings over the spring and summer of 1994; this time frame will allow the Social Security field offices involved to provide appropriate levels of support to the grantees. Applicants should plan for the use of volunteers, whenever possible, to provide initial screening to those individuals who respond to the letter. The project budget should provide for a full-time project director as well as at least one full-time outreach worker to complete SSA's applications. Applicants serving very large urban areas with high concentrations of persons living in poverty may need to budget for an additional outreach worker. Applicants proposing to serve large rural areas may need to consider employing several part-time employees located in different parts of the service area to add up to one full-time equivalent position. Project budgets should also include amounts to cover the costs of production and postage for the letters.

SSA expects to award projects not to exceed 9 months in duration with a funding range of $75,000–$100,000.

002: *Aging Network Collaborations and Intake Modifications*—SSA is interested in applications from the aging network, and other organizations and providers of social services for the elderly, to target the elderly, particularly the isolated and/or frail elderly, on a municipal, county, or statewide basis. These projects will continue SSA's interest in finding potentially eligible individuals through organizations that provide a range of services to the elderly.

The grantee will collaborate with other aging service organizations within a municipality, county, or State and develop and test standard SSI screening practices in this network, which may include the development and testing of automated SSI screening. This screening will target the aged, but may include disabled/blind adults and children who are part of the client base. The grantee will screen existing client rolls and new intakes, modify intake procedures to screen routinely for SSI, and conduct training on the SSI program throughout the network. To conduct successful outreach in this priority area, the client database must provide a sufficient number of potential SSI applicants to support the project staff and justify the project budget, and contain sufficient income and resources information to permit effective screening for SSI eligibility—without having to interview those on the client rolls.

Although not a requirement in this priority area, SSA is interested in grantees who are able to take a complete SSI application package that will permit SSA to process claims quickly and accurately, and provide high-quality service to hard-to-serve populations in a cost-effective manner. Taking a complete SSI application includes completing the form SSA–8000 BK, the form on which all detailed information about the nonmedical factors of SSI eligibility are covered.

The grantee must agree to continue to use these procedures at the conclusion of the cooperative agreement if the procedures are successful. In addition, the grantee should make recommendations to SSA at the conclusion of the project as to how this effort could be replicated in other areas.

Applicants may submit applications for multiyear funding not to exceed 36 months in duration. The applications should include a budget for the first budget period only (not to exceed 12 months). If the application is approved, a grant will be awarded for the initial 12-month budget period. Funding will be subsequently provided for two additional 12-month budget periods dependent upon satisfactory performance of the initial or second 12-month budget period, continued relevance of the project to the goals and objectives of the SSI Outreach Demonstration Program and the availability of funds.

SSA expects to award projects with a funding range of $150,000–$200,000 for the initial 12-month budget period.

003: *One-Stop Service*—SSA is interested in applications from a variety of medical providers, such as: hospitals; outpatient centers; community mental health centers; tertiary care medical institutions; and Health Care for the Homeless providers. SSA will also consider proposals from other entities, such as school districts and disability advocacy organizations, which collaborate with medical providers.

The target populations for this model are disabled/blind adults and children. These projects will combine SSA's interest in finding potential eligibles with organizations that consider the full range of needs of the individual, including the eventual entry or return of the individual to a productive and economically self-sufficient lifestyle.

A. There are certain functions that all grantees in this category must perform. The grantees are expected to do all of the following:

- Screen new clients and existing client databases to identify potential eligibles. (To conduct successful outreach in this priority area, the client base must provide a sufficient number of potential SSI applicants to support the project staff and justify the project budget, and contain sufficient income and resources information to permit effective screening for SSI eligibility—

without having to interview those on the client rolls.);

• Complete the SSI application including the SSA–3368 BK "Disability Report" or SSA–3820 BK "Disability Report" (the forms on which SSA records an adult's or child's detailed medical history);

• Provide existing medical evidence in its records (with appropriate authorization by the client);

• Perform any necessary medical examinations, or establish a collaborative relationship with an organization that will perform any necessary medical examinations. (How effective an organization is in this priority area may be related to the range of medical specialties of the physicians and other medical professionals who will do the examinations.);

• Maintain contact with the client throughout the initial application process, and work closely with the servicing Social Security office and the DDS to obtain all required evidence. (SSA and DDS personnel will have to make all determinations.); and

• Perform other functions that are routinely within the capability of the organization, considering its resources, facilities, existing links to other agencies, geography, etc. These functions include translation services, referrals for housing assistance, linkage to the Food Stamp and Medicaid programs, and linkage to other Federal, State, and community-based programs.

B. There are certain additional functions that SSA will expect a grantee to perform, depending on the grantee's target population:

• If the grantee's target population includes persons who require representative payee services, the grantee must either agree to assume the responsibilities of a representative payee, or commit to finding persons or organizations who can serve as representative payee; or

• If the grantee's target population includes disabled adults, or disabled children who are ready for transition to a work environment, the grantee must have or develop a linkage with a program in which the person can receive the benefits of the SSI work incentives provisions. The grantee must provide work training or work opportunities, or arrange for the person to enroll in another agency's program.

For more information about representative payee responsibilities and the work incentives provisions, please refer to the resource material contained in the application kit.

The grantee must agree to continue to use these procedures for SSI outreach at the conclusion of the cooperative agreement if they prove successful. In addition, the grantee should make recommendations to SSA at the conclusion of the project as to how this effort could be replicated in other areas.

Applicants may submit applications for multiyear funding not to exceed 36 months in duration. The applications should include a budget for the first budget period only (not to exceed 12 months). If the application is approved, a grant will be awarded for the initial 12-month budget period. Funding will be subsequently provided for two additional 12-month budget periods dependent upon satisfactory performance of the initial or second 12-month budget period, continued relevance of the project to the goals and objectives of the SSI Outreach Demonstration Program and the availability of funds.

SSA expects to award projects with a funding range of $150,000–$350,000 for the initial 12-month budget period.

004: *Strike Teams*—SSA is interested in cooperative agreement applications from organizations such as State and local governments, tribal governments, Alaska Native Corporations, medical providers, and community-based social service providers to test the use of a "strike team" approach. Such teams will include all parties to the disability claims process collaborating within a limited time frame to take applications; collect medical evidence; perform medical examinations, as needed; and make determinations on eligibility. The grantee should focus on reaching out to individuals who would be filing for SSI on the basis of disability; however, applications filed on the basis of age could be processed in addition to disability claims through strike team initiatives.

The "strike team" approach provides a mechanism to focus on "pockets" of elderly and disabled people underserved by SSI. Many of these "pockets" of people are either geographically or socially isolated through language and/or cultural barriers.

The grantee will be responsible for organizing all members of the strike team. Because SSA and DDS personnel must make all determinations, the grantee will be responsible for coordinating its efforts with those of these personnel as part of the team. However, SSA and the DDSs will work with the grantee on the details of these arrangements after grant awards have been made. Applicants should not solicit cooperation from local SSA or DDS components as a part of the application process.

Because the grantee will be responsible for identifying and screening potential eligibles, completing SSA's application forms, collecting existing medical evidence, and performing medical examinations to document the existence and severity of the claimant's impairments, applicants must demonstrate the capability of their organizations to perform each of these aspects. If each aspect of the process cannot be accomplished within the applicant organization, the alternative is an application from one agency that proposes to collaborate with other agencies and organizations which are able, in combination, to perform all aspects of the process. Such applications must document a well-defined relationship between the applicant and collaborating organization(s) and include letters of commitment from each collaborating organization that specifically set forth the aspects of the process to be accomplished by each.

There are other functions that would be valuable for outreach in this priority area: Translation services; provision of transportation; working with the DDS; serving as a representative payee or having another organization serve as a representative payee; and assisting individuals in using the SSI work incentives provision.

The physicians and other medical professionals will be required to perform examinations to document the signs, symptoms, and medical findings associated with the client's impairments. SSA will arrange for the DDSs to provide training on the documentation requirements for these examinations at the beginning of the project. (The application kit contains the "Listing of Impairments" contained in appendix 1 to subpart P of the Code of Federal Regulations, title 20, part 404 to acquaint the applicant with the types of signs, symptoms, and findings that the examinations should elicit.)

This model proposes to deliver SSA services to underserved populations by means of intensive claims activity over brief periods of time, e.g., a one-week period. The grant periods for these projects will therefore be short, from 3 to 6 months. The actual length will depend on the size of the population to be served. Applicants expecting to serve large numbers of individuals may propose a series of initiatives spread over the course of the budget period. The grantee will be responsible for locating potentially eligible individuals and arranging for them to be present at the time of claims interviews and medical examinations. This will necessitate having a relationship with

the underserved population or working through community leadership to identify claimants and ensure their participation.

The application must show that the organization can provide high-quality, expedited service at a reasonable cost. For a description of how a strike-team worked in the State of Arizona, please refer to the application kit. In addition, the grantee should make recommendations to SSA at the conclusion of the project as to how this effort could be replicated in other areas.

SSA has begun to test this approach in rural areas, but is also interested in applications from grantees who would test this approach in urban sites. To avoid adding to the burden of already heavily-impacted metropolitan field offices and DDSs, SSA may assign the workload produced by this outreach initiative to other Social Security field offices and DDSs; this, however, should not influence the design of the project.

SSA expects to award projects not to exceed 6 months in duration with a funding range of $50,000–$100,000.

005: *Outreach Worker*—SSA is interested in applications from community-based social service providers, advocates, State and local government agencies, and employers of workers under title V of the Older Americans Act to do peer outreach activities.

SSA seeks projects that target ethnic or linguistic minority groups. These projects must employ culturally sensitive approaches to overcoming such barriers as English and/or native language illiteracy, social isolation, and fear or distrust of government institutions.

In this model, the outreach worker(s) will use his/her organization's existing databases and enrollment information as the primary source for identifying potential SSI applicants. To be effective, the grantee will need to have a client base that has been shown to have potential SSI eligibles. The outreach worker(s) may be a volunteer, title V worker, or worker paid with grant money, and will be stationed part of the time in the local Social Security field office.

The outreach worker(s) will perform a variety of duties to assist the grantee's clients through the application process, such as eligibility screening, translation, provision of transportation to the Social Security field office or consultative medical examination, working with the DDS to obtain medical evidence, establishing linkages with social service providers, and (where appropriate) arranging for representative payee services. If a client is unable to come into the local Social Security field office, the worker(s) will assist the grantee's clients to complete the SSI application forms (SSA–8000 BK, SSA–3368 BK, or SSA–3820 BK).

The grantee must agree to continue to use these procedures for SSI outreach at the conclusion of the cooperative agreement if they prove successful. In addition, the grantee should make recommendations to SSA at the conclusion of the project as to how this effort could be replicated in other areas.

Applicants may submit applications for multiyear funding not to exceed 36 months in duration. The applications should include a budget for the first budget period only (not to exceed 12 months). If the application is approved, a grant will be awarded for the initial 12-month budget period. Funding will be subsequently provided for two additional 12-month budget periods dependent upon satisfactory performance of the initial or second 12-month budget period, continued relevance of the project to the goals and objectives of the SSI Outreach Demonstration Program and the availability of funds.

SSA expects to award projects with a funding range of $150,000–$200,000 for the initial 12-month budget period.

006: *Discharge Planning Technical Assistance*—SSA is interested in proposals that enhance SSI outreach in the discharge process in government institutions that serve significant numbers of persons potentially eligible for SSI throughout a State or a major metropolitan area. Private institutions that serve potential SSI recipients may also be included. The objective of such projects is to significantly enhance procedures that allow recipients to maintain SSI eligibility or to receive expedited payments upon release. The procedures are intended to prevent homelessness.

The grantee will provide technical assistance to institutions, so that they can identify potentially eligible persons, assist in completing the applications and related forms, provide medical and non-medical evidence from the institutions' records, and communicate effectively with the proper Social Security field offices and DDSs.

The grantee will develop a protocol to be used by institutions that adapts SSA's procedures for handling notices of admissions and developing prerelease agreements. The protocol will be implemented by the target institutions. The grantee will monitor implementation, evaluate the implementation, modify the protocol as necessary, and assist institutions in overcoming problems with implementation. A final protocol will be established for ongoing use by institutions and SSA. Applicants should clearly describe how the technical assistance to be provided will improve upon any procedures already in place in the area to be served. Applicants must include letters of commitment from the managing agencies (e.g., the Department of Mental Health, Department of Corrections, Board of Directors of a private institution) for all institutions that will participate, agreeing to the time line specified by the applicant and to training and other staff resource requirements of the proposal. Institutions must also agree to the data collection requirements specified in section II.D.

A valuable part of outreach in this priority area would be for the grantee, where appropriate, to arrange for representative payees.

The grantee must agree to continue to use these procedures for SSI outreach at the conclusion of the cooperative agreement if they prove successful. In addition, the grantee should make recommendations to SSA at the conclusion of the project as to how this effort could be replicated in other areas.

Applicants interested in this approach should refer to the relevant procedures as stated in SSA's Program Operations Manual System contained in the application kit.

Applicants may submit applications for multiyear funding not to exceed 36 months in duration. The applications should include a budget for the first budget period only (not to exceed 12 months). If the application is approved, a grant will be awarded for the initial 12-month budget period. Funding will be subsequently provided for two additional 12-month budget periods dependent upon satisfactory performance of the initial or second 12-month budget period, continued relevance of the project to the goals and objectives of the SSI Outreach Demonstration Program and the availability of funds.

SSA expects to award projects with a funding range of $50,000–$100,000 for the initial 12-month budget period.

007: *Other*—SSA will entertain grant applications that offer other promising approaches to outreach. The funding will depend on the nature of the proposal but may not exceed 17 months in duration. All applications filed under this priority area should include "hands-on" outreach, i.e., screening and application taking or assistance in the application process (obtaining medical evidence, providing translation or transportation, arranging for representative payee services, etc.).

However, SSA is not interested in applications that:

- Propose the production of pamphlets, but do not include "hands-on" outreach; or
- Propose to conduct training or general public information initiatives that are not followed by hands-on outreach; or
- Propose to screen and refer potential SSI eligibles to SSA, but do not include more in-depth assistance in the application process—such as the completion of the application forms and the SSA–3368 BK or SSA–3820 BK, or assistance in obtaining existing medical evidence.
- Duplicate prior and current SSI Outreach Demonstration Program projects. (The application kit includes a description of these projects.)
- Duplicate prior and current SSA field office projects. (Contact your local Social Security field office for this information.)

D. *Content of proposals.* All funded projects must use the SSA evaluation protocol, which is included in the application kit. The SSA protocol is the minimum amount of required project information. Projects are responsible for screening for SSI eligibility, collecting data according to the guidelines provided and producing a final evaluation report which analyzes the successes and/or failures of the methodology used to identify potentially eligible individuals and assist them in obtaining benefits.

The data collection requirement includes providing to SSA ongoing data on the number of contacts of potentially eligible individuals by project personnel, and the number of individuals referred to Social Security field offices. All projects must agree to use SSA-designed consent forms (consent forms permit SSA to provide person-specific benefit status information to project personnel) and intake forms. Samples of both forms are in the application kit.

SSA will provide feedback to each approved project on a regular basis of the number of applications received through project efforts, and, of those applications, the number of individuals awarded benefits. SSA will not provide feedback on eligibility for other program benefits which result from project referrals since such records are maintained by the States or other organizations, e.g., QMB and SLMB referrals.

If the proposal includes a collaborative agreement with another organization, information must be provided in the application showing how collaborative activities could continue once the cooperative agreement terminates. In addition, the information should show, if applicable, how these activities could be permanently integrated with local Social Security field office activities.

If the proposal is filed under category 007—"Other"—the application must clearly state which barriers to filing for benefits will be reduced or eliminated through the demonstration project.

Section III

A. Eligible Applicants

For all of the priority outreach approaches, any State or local government, public or private organization, nonprofit or for-profit organization, or agency, hospital, or educational institution may apply for a cooperative agreement under this announcement. Applications will not be accepted from applicants which do not meet the above eligibility criteria at the time of submission of applications.

Individuals are not eligible to apply. For-profit organizations may apply with the understanding that no cooperative agreement funds may be paid as profit to any cooperative agreement recipient. Profit is considered as any amount in excess of the allowable costs of the grant recipient. A for-profit organization is a corporation or other legal entity which is organized or operated for the profit or benefit of its shareholders or other owners and must be distinguishable or legally separable from that of an individual acting on his/her own behalf.

B. Reimbursement of Costs

Federal cooperative agreement funds may be requested for reimbursement of allowable costs incurred by awardees in conducting the demonstrations. These funds, however, are not intended to cover costs that are reimbursable under an existing public or private program. Also, for-profit organizations may not use funds to purchase equipment under the cooperative agreement. Equipment means tangible, nonexpendable personal property having a useful life of more than one (1) year and an acquisition cost of $300 or more per unit.

Medical examinations, testing, and associated reports may be reimbursable under Federal cooperative agreements, especially when such examinations can be performed very early in the SSI application process and when reports can be specifically directed at types of information needed to adjudicate claims for disability. We are particularly interested in reports/examinations which can be built into a provider's already existing intake and medical records processes. In formulating budgets for cooperative agreements involving medical examinations and reporting, applicants should calculate the incremental cost of including information required by SSA in existing procedures and include only these incremental costs in the budget submission. If there should be a need later on in the SSI application process to purchase a consultative examination (e.g., if information obtained earlier is not sufficient), consultative examinations will be funded using normal DDS procedures.

C. Grantee Share of the Project Cost

Recipients of a cooperative agreement are required to contribute towards the cost of each project. Generally, 5 percent of the total cost is considered acceptable. Recipients' contributions may be cash or in-kind (property or services) or third party cash or in-kind contributions. SSA will not provide total funding for any project.

D. Availability of Forms

An application kit containing all instructions and forms needed to apply for a cooperative agreement under this announcement may be obtained by writing or telephoning the Grants Management Staff; Division of Contract and Grant Operations, OAG, DCFAM; Social Security Administration; 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, Maryland 21207. The fax number is (410) 966–1261. You may also telephone (410) 965–9500, 965–9501, 965–9502, 965–9503, or 965–9262.

When requesting an application kit, please refer to project announcement number SSA-OSSI–93–1 and the date of this announcement to ensure receipt of the proper kit. Also, provide your name, organization, address, and telephone number including area code.

Resource material. The following resource materials are available in the application kit for use in preparing an application:

- All necessary forms and instructions;
- The SSI Outreach Demonstration Program evaluation protocol (including project intake form and project consent form);
- Description of past and current outreach demonstration projects;
- A list of existing public information materials;
- "Understanding SSI," a seminar package prepared for training outside organizations and agencies about SSI. This publication includes an overview of the SSI program and the organization of SSA, and special sections on the

work incentives provision, representative payee responsibilities, and other provisions;

• QMB/SLMB fact sheet ("Help for Low Income Medicare Beneficiaries");

• Forms SSA–8000, SSA–8001, SSA–3368 BK, and SSA–3820 BK;

• The "Listing of Impairments" contained in appendix 1 to subpart P of the Code of Federal Regulations, title 20, part 404. (This is relevant to Priority Areas 003, 004, 005.);

• Description of how a strike team worked in Arizona. (This is relevant to Priority Area 004.);

• Program Operations Manual System sections relating to institutions. (This is relevant to Priority Area 006.):

Part 4: DI, Chapter 235, Subchapter 30, 23530.001–.005;

Part 5: SI, Chapter 005, Subchapter 20, A00520.106 and 00520.300–.330.

• "A Guide to SSI for Groups and Organizations," a pamphlet summarizing the SSI program;

• "A Desktop Guide to SSI Eligibility Requirements;"

• "Social Security Administration Organization Structure" fact sheet; and

• "Working While Disabled," a work incentives pamphlet.

E. FAX Inquiry Form (Do not use to request application kits for cooperative agreements.)

SOCIAL SECURITY ADMINISTRATION, BALTIMORE, MD

Addressee	From
OSSI, DPMA SSI Outreach Branch	Name:
3–R–1 Operations Bldg.	Address:
Tel. No. (410) 965–6796	Tel. No. ( )
Facsimile Telephone No. (410) 966–1337	Facsimile Telephone No. ( )
	Total No. of Pages: Cover +
	Date:

SUBJECT: SSA–OSSI–93–1—FY 1993 SSI Outreach Project

Please: (check all that apply)

[ ] Tell me which Social Security field office services zip code(s)_____, which is the area(s) I propose to target for outreach.

[ ] I want to reserve [ ] seats at the Technical Assistance Workshop in

[ ] Atlanta
[ ] Chicago
[ ] Dallas
[ ] Denver
[ ] New York City
[ ] San Francisco
[ ] Other

F. Application Submission

All applications requesting Federal funds for cooperative agreement projects must be submitted on the standard forms provided in the application kit. The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the cooperative agreement award.

An original and a minimum of two signed copies of the application material must be submitted to the address indicated. Submittal of six additional copies is optional but will expedite processing; there is no penalty for not submitting the additional copies.

G. Application Consideration

Applications are initially screened for relevance to this announcement. If judged irrelevant, the applications are returned to the applicants.

Applications that are complete and conform to the requirements of this announcement will be reviewed competitively against the evaluation criteria specified in section III, part I, of this announcement and evaluated by Federal and non-Federal personnel. The results of this review and evaluation will assist SSA in considering competing applications. Although the results of this review are a primary factor considered in making the decisions about applications, review scores are not the only factor used.

All cooperative agreement proposals must describe a priority outreach approach, state the barriers that will be reduced or eliminated, and provide demographic information to support their numerical goals. Geographic dispersion of grants is required to

expand the program throughout the nation as well as to equalize the resulting workload on Social Security field offices, and will be considered in the final selection. Further, SSA is not interested in certain kinds of proposals—see the descriptions at the end of the discussion above regarding Priority Area 007.

All projects must use the SSA evaluation protocol, which is included in the application kit. The SSA protocol is the minimum amount of required project information. Projects are responsible for screening for SSI eligibility, collecting data according to the guidelines provided and producing a final evaluation report which analyzes the successes and/or failures of the methodology used to identify potentially eligible individuals and assist them in obtaining benefits.

The data collection requirement includes providing to SSA ongoing data on the number of contacts of potentially eligible individuals by project personnel, and the number of individuals referred to Social Security field offices. All projects must agree to use SSA-designed consent forms (consent forms permit SSA to provide person-specific benefit status information to project personnel) and intake forms. Samples of both forms are in the application kit.

Information must be provided showing how collaborative activities will continue once the cooperative agreement terminates. In addition, the information should show, if applicable, how these activities can be permanently integrated with local Social Security field office activities.

H. Application Approval

Cooperative agreement awards will be issued within the constraints of available Federal funds. The official award document is the "Notice of Cooperative Agreement Award." It will provide the amount of funds awarded, the purpose of the award, the budget period for which the funding is given, the total project period for which support is contemplated, the amount of grantee financial participation, and any special terms and conditions of the cooperative agreement. All projects must be operational within 60 days from the date of the issuance of the cooperative agreement award.

I. Criteria for Screening and Review of Applications

All applications that meet the deadline will be screened to determine completeness and conformity to the requirements of this announcement. Complete and conforming applications will then be evaluated.

1. Application Screening Requirements: For an application to be in conformance, it must meet all of the following requirements:

a. Priority Area: The applicant must indicate on the application (item 11; face page) the priority area in which it is filing.

b. Number of Copies: The applicant must submit an original signed application and two signed copies. Six additional copies are optional but will expedite processing.

c. Length: The program narrative portion of the application (Part III of the SSA–96–BK) MAY NOT EXCEED 20 DOUBLE SPACED PAGES (OR 10 SINGLE SPACED PAGES) on one side of the paper only, using standard size (8½" × 11") paper. Attachments that support the program narrative count within the 20-page limit.

2. *Application Evaluation Criteria:* Applications which pass the screening will be independently reviewed by at least three (3) individuals, who will score the applications based on the evaluation criteria.

The evaluation of each application has two parts:

- *Part I is tailored to the specific elements of each priority area.*
- *Part II will be used for every application.*

The total score for each application is the sum of the scores for Part I and Part II.

Following are the "Part I" criteria for priority areas 001 through 007:

Priority Area 001: Targeted Mailings

Part I

Criteria and Points (Maximum 75)

Target Population—

a. High Poverty—Is the applicant's service area at least as large as a ZIP code area in which more than 15 percent of the residents have incomes at or below the poverty level? and

b. Sufficient Number of Title II Beneficiaries—Does the applicant's service area have a population of 1 million or more, or is the applicant proposing a coalition that would cover such an area? 25 points.

Screening—

a. Does the applicant propose to do initial screening for SSI eligibility? 10 points.

b. Are its plans clearly defined, are volunteers used whenever possible, and does it appear these plans will be effective? 0–10 points.

SSI Applications—

a. Does the applicant propose to have at least one full-time worker to take the full SSI application (the SSA–8000 or SSA–8001)? 15 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–10 points.

Other Services—

a. Does the applicant propose to offer services such as translation, transportation, securing documentation, or other followup services related to SSI eligibility? and

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–5 points.

Priority Area 002: Aging Network Collaborations and Intake Modifications

Part I

Criteria and Points (Maximum 75)

Collaborative Efforts—

a. Does the applicant propose to collaborate with other agencies serving older persons throughout a municipality or geographic area or State? 10 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–10 points.

Screening—

a. Does the applicant or collaborator(s) have an existing client database (either automated or paper) from which to do initial screening for SSI eligibility? 10 points.

b. Are its plans clearly defined, and does it appear these plans will be effective:

- Does the database provide a sufficient number of potential SSI applicants to support the project staff?
- Does the database contain sufficient income and resources information to permit effective screening for SSI eligibility—without having to interview those on the client rolls? 0–10 points.

Technical Assistance/Training—

a. Does the applicant propose to provide technical assistance/training throughout the network? 5 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–5 points.

Intake Procedures—

a. Does the applicant explain how modification to current intake procedures will be made to screen routinely for SSI, and does it propose to institutionalize these modifications? 5 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–5 points.

SSI Applications—

a. Does the applicant propose to take the full SSI application, including (when appropriate) the SSA–3368 BK? and

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–5 points.

Automation of Screening—

If proposed, does the applicant have the ability to automate SSI screening procedures? 0–5 points.

Project Replication—

a. Does the applicant explain adequately how the project activities will be continued

at the project site, and what additional sources of funding will be sought to continue the project once Federal funding ceases at the conclusion of the cooperative agreement?

b. Does the proposal explain adequately how the project activities could be replicated in other areas by similar organizations once the project has been terminated? 0–5 points.

Priority Area 003: One-Step Service

Part I

Criteria and Points (Maximum 75)

Screening—

a. Does the applicant or coalition have an existing client database (either automated or paper) from which to do initial screening for SSI eligibility? 10 points.

b. Are its plans clearly defined, and does it appear these plans will be effective:

- Does the database provide a sufficient number of potential SSI applicants to support the project staff?
- Does the database contain sufficient income and resources information to permit effective screening for SSI eligibility—without having to interview those on the client rolls? 0–10 points.

SSI Applications—

a. Does the applicant propose to take the full SSI application (the SSA–8000 or SSA–8001), including the SSA–3368 BK or SSA–3820 BK? 10 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–5 points.

Medical Evidence—

a. Does the applicant propose to provide existing medical evidence from its records? 10 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–5 points.

Medical Examinations—

a. Does the applicant propose to conduct medical examinations and/or arrange for them to be conducted by another organization? 10 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? For example, if it proposes to conduct the examinations, does the application set forth the range of medical specialties of the physicians and other medical professionals who will do the examinations? 0–5 points.

Other Functions—

a. Does the applicant propose to do any or all of the following: translate; work with the DDS to obtain medical evidence; serve as a representative payee or have another organization perform this function; assist individuals in using the SSI work incentives provision, make all other appropriate social service referrals? and

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–5 points.

Project replication—

a. Does the applicant explain adequately how the project activities will be continued in the project site, and what additional sources of funding will be sought to continue the project once Federal funding ceases at the conclusion of the cooperative agreement? and

b. Does the proposal explain adequately how the project activities could be replicated in other areas by similar organizations once the project has been terminated? 0–5 points.

Priority Area 004: Strike Teams

Part I

Criteria and Points (Maximum 75)

Target Population—

Does the applicant describe a target population of persons likely to be eligible for SSI and that is isolated geographically or socially? Does the applicant have linkages in this population? 10 points.

SSI Applications—

a. Does the applicant propose to take the full SSI application (the SSA–8000 or SSA–8001), including the SSA–3368 BK and SSA–3820 BK? 10 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–5 points.

Medical Evidence—

a. Does the applicant propose to provide existing medical evidence from its records? 10 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–5 points.

Medical Examinations—

a. Does the applicant propose to arrange for medical examinations to be conducted? 10 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? For example, if it proposes to conduct the examinations, does the application set forth the range of medical specialties of the physicians and other medical professionals who will do the examinations? 0–5 points.

Collaborative Efforts—

a. Does the applicant propose to coordinate the organization of a "strike team" or enter into a collaborative arrangement with other organizations/agencies to form a strike team of all parties to the disability claims process? 5 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–5 points.

Other Functions—

a. Does the applicant propose to do any or all of the following: translate; provide transportation; serve as a representative payee or have another organization perform this function; assist individuals in using the SSI work incentives provision? and

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–5 points.

Project replication—

Does the proposal explain adequately how the project activities could be replicated in other areas by similar organizations once the project has been terminated? 0–5 points.

Priority Area 005: Outreach Worker

Part I

Criteria and Points (Maximum 75)

Target Population—

a. Is the target population an ethnic or linguistic minority group? 15 points.

b. Are the applicant's plans clearly defined, and does it appear these plans will be effective? Does the applicant have a record (over 2 years) of providing services to that group (other than purely social activities)? 0–10 points.

Screening—

a. Does the applicant have an existing client database (automated or paper) from which to do initial screening for SSI eligibility, and/or will it establish linkages with social service organizations that have such a database? 10 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–10 points.

SSI Application—

a. Does the applicant propose to take the full SSI application (the SSA–8000 or SSA–8001), including the SSA–3368 BK and SSA–3820 BK? 5 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–5 points.

Other Functions—

a. Does the applicant plan to translate, and/or provide transportation, and/or provide medical evidence in its records if it is a medical provider, and/or provide for representative payee services? 5 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–10 points.

Project Replication—

a. Does the applicant explain adequately how the project activities will be continued in the project site, and what additional sources of funding will be sought to continue the project once Federal funding ceases at the conclusion of the cooperative agreement?

b. Does the proposal explain adequately how the project activities could be replicated in other areas by similar organizations once the project has been terminated? 0–5 points.

Priority Area 006: Discharge Planning Technical Assistance

Part I

Criteria and Points (Maximum 75)

Target Population—

a. Does the applicant propose to work with institutions that serve a significant number of persons—i.e., the larger institutions in a geographic area or State? 10 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–10 points.

Technical Assistance/Training—

a. Does the applicant propose to provide technical assistance/training to the institutions on the SSI prerelease provision and the continuation of benefits provision? 10 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–10 points.

Protocol—

a. Does the applicant propose to develop a protocol to be used by institutions for handling notices of admissions and developing prerelease agreements? 10 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–5 points.

Monitoring—

a. Does the applicant propose to monitor and evaluate implementation of the protocol, modify the protocol as necessary, and assist the institutions in implementation? 5 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–5 points.

Representative Payee—

a. Does the applicant plan to develop representative payee services? and

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–5 points.

Project Replication—

a. Does the applicant explain adequately how the project activities will be continued in the institutions, and what additional sources of funding will be sought to continue the project once Federal funding ceases at the conclusion of the cooperative agreement?

b. Does the proposal explain adequately how the project activities could be replicated in other areas once the project has been terminated? 0–5 points.

Priority Area 007: Other

Part I

Criteria and Points (Maximum 75)

Outreach Approach—Is it significantly different from outreach efforts described in Priority Areas 001 through 006 (or any combination of them)? Does it address specific barriers to SSI eligibility? 15 points.

Screening—

a. Does the applicant have an existing client database (automated or paper) from which to do initial screening for SSI eligibility, and/or will it establish linkages with social service organizations that have such a database? 10 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–10 points.

SSI Application—

a. Does the applicant propose to take the full SSI application (the SSA–8000 or SSA–8001), including the SSA–3368 BK and SSA–3820 BK? 10 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–10 points.

Medical Evidence—

a. Does the applicant propose to provide existing medical evidence from its records? 5 points.

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–5 points.

Other Functions—

a. Does the applicant plan to translate, and/or provide transportation, and/or work with the DDS, and/or provide for representative payee services? and

b. Are its plans clearly defined, and does it appear these plans will be effective? 0–5 points.

Project Replication—

a. Does the applicant explain adequately how the project activities will be continued in the project site, and what additional sources of funding will be sought to continue the project once Federal funding ceases at the conclusion of the cooperative agreement?

b. Does the proposal explain adequately how the project activities could be replicated in other areas by similar organizations once the project has been terminated? 0–5 points.

Following are the "Part II" criteria, which are used to evaluate all applications:

Part II: General

Criteria and Points (Maximum 25)

Applicant's Capability—

a. Does the applicant have the capability and organizational structure to perform the functions stated in the priority area in which it is applying?

b. Does the applicant demonstrate knowledge and experience with the SSI program and related programs (including the QMB and SLMB programs) for older persons and/or disabled adults or children?

c. If the applicant will enlist the services of another organization to perform functions in the priority area (whether for payment as a contractor, or for nonpayment in a collaborative arrangement):

- Does the application justify the other organization's role—is it clear why a contractor is needed?
- Are the other organization's skills and experience appropriate for the work to be performed in the priority area?
- Does the application include a letter of commitment from the other organization, a description of the nature of the past relationship with that organization, and the length of time the relationship has existed?

Letters of commitment should not be requested from Social Security field offices or State Disability Determination Services. 0–5 points.

Personnel—

a. Does the application adequately describe the functions and role of the staff?

b. Does the application include position descriptions or resumes describing qualifications that are appropriate for the work to be performed in the priority area?

c. If the applicant proposes to use volunteers, are they to be used appropriately, with supervision, training, and support from project staff?

d. Does the applicant propose for there to be a full-time on-site manager responsible for overall project management?

e. Does the applicant, if it intends to serve linguistic minorities, provide adequate bilingual staff? 0–5 points.

Budget—

Does the applicant adequately explain the budget and is sufficient justification given in support of the project? Does the applicant appropriately budget for all elements in the project design? 0–5 points.

Expected Outcomes—

a. Does the applicant estimate the number of contacts it plans to make with potential eligibles, and how many inquiries and SSI applications will come to the applicant organization? Does it estimate the number of benefit awards that will result from the project? (SSA is not interested in percentage increases over prior SSI application rates without concomitant increases in awards.) and

b. Are these estimates credible? 0–5 points.

Evaluation—

Does the project management plan incorporate the SSA evaluation protocol? Will additional project-specific data be gathered? If so:

- Are the criteria for evaluation linked to the objectives of the project?
- Are the evaluation measures and instruments appropriate, practical, and complete? Are the measures statistically sound?
- Does the proposal explain in detail how the additional data will be gathered? 0–5 points.

J. Closing Date for Receipt of Applications

The closing date for submittal of applications under this announcement is August 23, 1993. Applications must be mailed or hand-delivered to: Grants Management Staff, Division of Contract and Grant Operations, OAG, DCFAM, Social Security Administration, Attention: SSA OSSI–93–1, Priority Area: _____, 1–E–4 Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, MD 21207.

Hand-delivered applications are accepted during the hours of 8 a.m. to 5 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

1. Received on or before the deadline date at the above address; or

2. Mailed through the U.S. Postal Service or sent by commercial carrier on or before the deadline date and received in time to be considered during the competitive review and evaluation process. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier as evidence of timely mailing. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the above criteria are considered late applications. SSA will notify each late applicant that its application will not be considered.

Note: Facsimile copies will not be accepted.

Paperwork Reduction Act

This notice contains reporting requirements in "The Application

Process" section. However, the information is collected using Form SSA–96–BK, Federal Assistance, which has Office of Management and Budget clearance number 0960–0184.

Executive Order 12372—Intergovernmental Review of Federal Programs.

This program is not covered by the requirements of Executive Order 12372 relating to the Federal policy for consulting with State and local elected officials on proposed Federal financial assistance.

(Catalog of Federal Domestic Assistance: Program No. 93.812, Social Security—Research and Demonstration.)

Approved: June 14, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

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Part IV

Department of Education

Educational Media Research, Production, Distribution, and Training Program; Notice

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DEPARTMENT OF EDUCATION

Educational Media Research, Production, Distribution, and Training Program; Proposed Funding Priorities

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for fiscal year 1994.

SUMMARY: The Secretary proposes priorities for fiscal year 1994 under the Educational Media Research, Production, Distribution, and Training Program. The Secretary takes this action to focus Federal financial assistance on those areas of greatest need. These priorities are intended to ensure the continued availability of closed-captioned television sports programming, expand on the number of video-described projects, include research on video description and research on captioning technology as a language development tool, continue the video captioning process, and explore the future direction of captioned media programs.

DATES: Comments must be received on or before July 23, 1993.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Joseph Clair, U.S. Department of Education, 400 Maryland Avenue SW., room 4620, Switzer Building, Washington, DC 20202–2644.

FOR FURTHER INFORMATION CONTACT: Joseph Clair. Telephone: (202) 205–9503. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169; or the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This notice contains seven proposed priorities under the Educational Media Research, Production, Distribution, and Training Program authorized under Part F of the Individuals with Disabilities Education Act (IDEA). The purposes of the program are to promote the general welfare of deaf and hard of hearing individuals and individuals with visual impairments, and to promote the educational advancement of individuals with disabilities.

One priority proposed in this notice would provide cooperative agreements to ensure the continued availability of closed-captioned sports programming. In addition, other proposed priorities would expand on the types of video-described projects to include (1) broadcast and cable video description, (2) described home videos, and (3) research on video description. The proposed priorities would also provide (1) research on captioning technology as a language development tool and (2) a symposium to explore the future directions of captioned media programs.

An additional proposed priority in this notice would provide for a cooperative agreement to assist in the provision of video captioning services such as obtaining, screening, evaluating, and captioning educational videos and related media.

This program supports the National Education Goals by assisting those with disabilities in meeting Goal 1, school readiness, and Goal 5, adult literacy.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by comments received in response to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the content of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priorities. The Secretary proposes to fund under these competitions only those applications that meet these absolute priorities:

Proposed Absolute Priority 1—Closed-Captioned Sports Programs

Background

This proposed priority would support cooperative agreements to continue and expand closed-captioning of major national sports programs shown on national commercial broadcast or cable television networks. Captioning provides a visual representation of the audio portion of the programming and enables persons who are deaf or hard of hearing to participate in the shared educational, social, and cultural experiences of national sporting events.

Priority

To be considered for funding under this proposed priority, a project must—

(1) For selecting programs to be captioned, include criteria that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational, social, and cultural experiences of individuals with hearing impairments;

(2) Determine the total number of hours and the projected cost per hour for each program to be captioned;

(3) For each proposed program to be captioned, identify the source of private or other public support and the projected dollar amount of that support;

(4) Identify the methods of captioning to be used for each hour—indicating whether captioning is provided in real-time or offline—and the projected cost per hour for each method used;

(5) Provide and maintain back-up systems that would ensure successful, timely captioning service;

(6) Demonstrate the willingness of major national commercial broadcast or cable networks to permit captioning of their programs; and

(7) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Proposed Absolute Priority 2—Broadcast and Cable Video Description

Background

This proposed priority would support one cooperative agreement for the video description of television programming shown on national commercial or public broadcast networks or cable networks, as well as syndicated programs, in order to make television programming more accessible to persons with visual impairments. The intent of this proposed priority is to provide continued and expanded access to described television programming in order to enhance shared educational, social, and cultural experiences for persons who are visually impaired.

Currently, there are two types of described broadcast television available to persons with visual impairments: (1) WGBH's descriptive video services (DVS), which offers described video as part of its PBS programming, using the Second Audio Program (SAP) and (2) Narrative Television Network (NTN), which produces and airs described videos via the Nostalgia Channel cable service and affiliated stations. Commercial networks and local stations are unwilling to broadcast DVS (using the SAP) at this time, due to the required equipment modification and extensive equipment operations.

Alternative approaches must be explored.

Priority

To be considered for funding under this proposed priority, a project must—

(1) For selecting programs to be video described, include criteria that take into account the preference of consumers for particular programs, the diversity of programming available, and the contribution of programs to the general educational, social, and cultural experiences of individuals with visual impairments;

(2) Determine the total number of hours and the projected cost per hour for each program to be described;

(3) For each program to be described, identify the source of private or other public support and the projected dollar amount of that support;

(4) Identify the methods to be used in the provision of described video;

(5) Demonstrate the willingness of major national commercial or public broadcast networks or cable networks, as well as providers of syndicated programming, to permit video description of their programs; and

(6) Implement procedures for monitoring the extent to which an accurate description is provided and use this information to make refinements in the video description operations.

Proposed Absolute Priority 3—Described Home Video

Background

This proposed priority would support one cooperative agreement for describing and making available described home videos in order to enhance shared social, educational, and cultural experiences for persons who are visually impaired.

Priority

To be considered for funding under this proposed priority, a project must—

(1) For selecting videos to be described, include criteria that take into account the preference of consumers for particular titles or subjects, the diversity of video titles available, and the contribution of the videos to the general social, educational, and cultural experience of individuals with visual impairments;

(2) Determine the total number of videos and the projected cost per original video to be described;

(3) For each proposed video to be described and made available, identify the source of private or other public support and the projected dollar amount of that support;

(4) Show evidence that copyright holders would permit video description and distribution of their videos;

(5) Identify strategies for making described home videos available to persons with visual impairments, including any public awareness activities used to inform persons with visual impairments about described home videos; and

(6) Evaluate the effectiveness of the methods and technologies used in providing this service, barriers encountered, and impact on intended populations.

Proposed Absolute Priority 4—Research on Video Description

Background

This proposed priority would support research projects on video description services for persons who are visually impaired. Issues to be explored by projects funded under this priority would include, but not be limited to, the incidence of visual impairment within the general population; demographics of the target population; the extent of consumer interest in video description services; the degree of awareness of the availability of video description services; the percentage of visually impaired individuals with stereo televisions; and the feasibility of alternative methods of distribution, including cablecast open descriptions, broadcast descriptions inserted within the vertical blanking interval, simulcast descriptions, and the Second Audio Programming channel (SAP).

Research resulting from these projects would make major contributions to the body of knowledge regarding video description, would produce findings regarding the impact and relative effectiveness of various distribution methods, and may provide alternative technologies for broadcast distribution.

Priority

To be considered for funding under this proposed priority, a project must—

(1) Address all of the issues identified in the background to this proposed priority, and may also address any related issues;

(2) Identify specific strategies that would be used in the investigation;

(3) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the strategies to be studied, the research design, and target population;

(4) Collect, analyze, and report (a) a variety of descriptive and demographic data, including information regarding the potential target population, settings, and the service providers; and (b) outcome data on the effects of different distribution methods on the provision of video description services;

(5) Conduct the research using methodological procedures that would (a) produce unambiguous findings regarding the effects of the identified issues and alternative approaches; and (b) permit use of the findings in policy analyses; and

(6) Design the research activities in a manner that would lead to improved video-described services for individuals with visual impairments.

Proposed Absolute Priority 5—Research on Captioning As a Language Development Tool

Background

This proposed priority would support research projects on the effectiveness of captioning as a language development tool for enhancing the reading and literacy skills of individuals who are deaf or hard of hearing, as well as the reading and literacy skills of individuals with other disabilities. Issues to be explored by projects funded under the proposed priority could include, but are not limited to (1) captioning standards currently being developed or studied; (2) captioning features as effective educational tools; and (3) the use of captions with other media and multimedia technologies such as interactive videodiscs and CD-ROMs.

Priority

To be considered for funding under this proposed priority, a project must—

(1) Address any of the issues identified in the background to this proposed priority or closely related issues;

(2) Identify specific technological approaches that would be investigated;

(3) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the strategies to be studied, the research design, and target population;

(4) Collect, analyze and report (a) characteristics and outcomes data, including the settings, the service providers, and the individuals targeted by the project (e.g., age, disability, level of functioning, membership in a special population, if appropriate); and (b) multiple, functional outcome data on the individuals who are the focus of the technological approaches;

(5) Conduct the research in a variety of settings, such as residential or integrated schools or colleges, or in community settings, as appropriate;

(6) Conduct the research using methodological procedures that would

(a) produce unambiguous findings regarding the effects of the approaches and interaction effects between particular approaches and particular groups of individuals or particular settings; and (b) permit use of the findings in policy analyses; and

(7) Design the research activities in a manner that would lead to improved services for individuals with hearing impairments or with other disabilities, as may apply.

Proposed Absolute Priority 6—Symposium on Exploring New Strategies for Providing Captioned Media Services

Background.

This proposed priority would support one cooperative agreement for a three-day symposium to determine the best strategy or strategies for expanding the availability of captioned media, including captioned videos and closed-captioned television programs, to deaf and hard of hearing individuals in various educational and non-educational settings.

The Captioned Films Loan Service for the Deaf Program (CFD) was created in 1958 by Public Law 85–905 with the original purpose of giving people who are deaf access to motion pictures and enhancing the cultural, educational, and general welfare of that population. At that time most students who are deaf were educated at residential schools. Therefore, when CFD expanded to include the distribution of captioned educational films to students who are deaf, film depositories were established on, though not limited to, some of those campuses.

The depository system has changed little since that time, although deaf and hard of hearing students are now educated primarily in more integrated and local settings. The Secretary is particularly interested in seeking more effective means of providing educational media services to this population while continuing to serve students in residential settings.

During the 1970's closed-captioned television was included among CFD's projects. In 1972 a contract was awarded to develop and test Line 21 concepts and, eventually, prototype decoders. Closed-captioned television, which was entirely supported with Federal funds, officially began in 1980, and the first real-time closed-captioned broadcast took place in October 1982. The number of captioning hours of prime time television started with 16 hours in 1981. Currently all prime time programming, all Saturday morning children's programs, and many daytime and late night programs are closed captioned.

Closed-captioned television is an example of cooperative efforts between the public and private sectors. Department of Education funding provides approximately 40 percent of the current captioning available. The networks currently provide approximately 30 percent, and corporate advertisers, foundations, and contributions account for the remaining 30 percent. Meanwhile, there has been a significant increase in the number of programs being captioned. Further, the Television Decoder Circuitry Act of 1990 mandates that, after July 1993, all television sets with screens 13 inches and larger manufactured in the United States or imported for use in the United States must have built-in circuitry designed to display closed captioning. This Act, along with the increase in the number of available captioned programs, the increase in the number of private funding sources, and the expanded array of television programming options combine to make it necessary to consider the most effective ways to ensure full access to expanded captioned programs in the future.

Thus, the proposed symposium would aim to explore strategies that the Department may consider making captioned videos available to a wider number of deaf and hard of hearing individuals, especially those attending local or mainstreamed schools, and strategies for expanding captioned television programming in light of future technology that will increase the number of available channels to 500.

Priority

To be considered for funding under this proposed priority, the project must—

(1) Conduct pre-symposium activities, including reviewing reports and recommendations that resulted from previous evaluation studies of the Captioned Films Program, closed-captioned television, and related materials;

(2) Conduct a symposium that offers at least six work sessions, led by professionals or experts in areas including, but not limited to (a) educational media and technology, (b) television captioning technology, (c) special education administration, covering both mainstream and residential programs, (d) media distribution, (e) consumer advocacy, and (f) film and television post-production services;

(3) Make arrangements for participants to discuss and respond to issues and strategies that would be raised at the symposium—particularly strategies for improving services for deaf and hard of hearing consumers;

(4) Conduct post-symposium activities, including refining formally presented papers, reflecting group discussions and concerns expressed at the symposium, as well as potential strategies and directions for improved services i.e., for better delivery of captioned videos and expanding the availability of closed-captioned television programming; and

(5) Publish a proceedings document and distribute this document to symposium participants and relevant clearinghouses and organizations.

Proposed Absolute Priority 7—Educational Video Selection and Captioning

Background

This proposed priority would support one cooperative agreement that would screen, evaluate, close caption, and make available educational videos, including classics and special interest titles, for use by students and other individuals who are deaf or hard of hearing, parents of deaf and hard of hearing individuals, and other individuals directly involved in activities promoting the advancement of deaf and hard of hearing individuals in the United States. This activity includes the preparation of caption scripts. This proposed priority would ensure that students and other individuals with hearing impairments may benefit from the same educational videos used to enrich the educational experiences of students and other individuals without hearing impairments.

Priority

To be considered for funding under this proposed priority, the project must—

(1) Develop strategies and procedures to be used in determining curricular needs of deaf and hard of hearing students in all types of school settings for captioned videos;

(2) Develop and implement an on-going evaluation program for incorporating the reaction and suggestions of users into the selection and captioning process;

(3) Establish liaison with and obtain videos from film and video distributors for viewing and evaluation. Select from among submitted video titles those that closely match the curricular needs identified under paragraph (1) of this proposed priority, taking into account the videos most commonly used in school districts across the Nation for all students;

(4) Develop and implement criteria and procedures for screening and evaluating selected titles;

(5) Make arrangements with respective producers and distributors to have selected videos close-captioned and made available through general distribution mechanisms (such as video sales catalogues), as well as through the captioned film and video loan service authorized under Part F of IDEA and 34 CFR part 330 (by purchasing up to 100 copies of each captioned title);

(6) Conduct caption script writing sessions for selected titles. These caption scripts would take into account the age and reading levels of the likely target audience;

(7) Identify, select, and, if necessary, provide training to video evaluators and caption script writers;

(8) Develop and implement quality control guidelines and procedures for checking videocassettes after they are captioned; and

(9) Prepare and make available to potential consumers information about the availability of captioned videos, including information about the captioned film and video loan service, regulations governing the use of captioned films and videos in the collection, procedures for applying for these services, and descriptions of the videos available.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment:

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period, in room 4620, Switzer Building, 330 C Street SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR parts 330, 331, and 332.

Program Authority: 20 U.S.C. 1451, 1452.

(Catalogue of Federal Domestic Assistance Number: 84.026, Educational Media Research, Production, Distribution, and Training Program)

Dated: April 30, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–14803 Filed 6–22–93; 8:45 am]

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Part V

Department of Education

Services for Children With Deaf-Blindness Program; Notice

VOL 58 ISS 119 JE 23 1993 UMI

DEPARTMENT OF EDUCATION

Services for Children With Deaf-Blindness Program; Proposed Funding Priorities

AGENCY: Department of Education.

ACTION: Notice of proposed funding priority for fiscal years 1994 and 1995.

SUMMARY: The Secretary proposes a priority for fiscal years 1994 and 1995 under the Services for Children with Deaf-Blindness Program. The Secretary takes this action to focus Federal financial assistance on an identified national need. This proposed priority is intended to provide Federal support for research validation and implementation activities to enhance services to infants, toddlers, children, and youth who are deaf-blind.

DATES: Comments must be received on or before July 23, 1993.

ADDRESSES: All comments concerning this proposed priority should be addressed to Joseph Clair, U.S. Department of Education, 400 Maryland Avenue SW., room 4622, Switzer Building, Washington, D.C. 20202–2644.

FOR FURTHER INFORMATION CONTACT: Joseph Clair. Telephone: (202) 205–9503. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

SUPPLEMENTARY INFORMATION: This notice contains one proposed priority in the Services for Children with Deaf-Blindness Program. The purpose of the program is to assist States in assuring the provision of early intervention, special education, and related services to infants, toddlers, children, and youth with deaf-blindness; and to support research, development, replication, preservice and inservice training, parental involvement activities, and other activities to improve services to children with deaf-blindness.

This proposed priority responds to the need to improve educational practice by supporting research validation and implementation projects that fill the gap between knowledge and practice for infants, toddlers, children, and youth who are deaf-blind. Projects would build capacity to effectively provide (1) educational services to these children in school and community settings alongside their peers without disabilities, or (2) early intervention services to these children in home and community settings.

Through the provision of improved services and better trained service providers, this proposed priority supports National Education Goals 1 and 5 by assisting infants, toddlers, children, and youth who are deaf-blind to enter school ready to learn, and when they become adults, to compete in a global economy.

The Secretary will announce the final priority in a notice in the Federal Register. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. Further, priorities proposed for FY 1995 could be affected by enactment of legislation reauthorizing this program. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this program will be published in the Federal Register concurrent with or following publication of the notice of final priority.

Proposed Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this program only applications that meet this absolute priority:

Proposed Absolute Priority—Research Validation and Implementation Projects for Children Who Are Deaf-Blind

Background

Educational researchers and practitioners have long acknowledged the time lag between the discovery of new knowledge and the implementation of that knowledge in applied settings. In addition, new research findings, including those related to hearing impairment, visual impairment, and other disabilities have not been rapidly or systematically applied to children who are deaf-blind.

Factors that impede the implementation of research findings are numerous and include the following: (1) Failure to describe research findings in a manner or form that practitioners can easily understand and use; (2) inadequate or insufficient field tests of research findings to determine the effectiveness of the new practices with children who are deaf-blind; (3) failure to examine how contextual factors affect the implementation of the new practice with children who are deaf-blind (e.g., small, diverse population of children; implementation costs; personnel training requirements; school and community attitudes toward the practice); and (4) insufficient attention to demonstrating new practices in schools that welcome visitors from other local educational agencies and, thereby, promote the dissemination and use of research findings.

This proposed priority, therefore, would support projects that validate relevant research findings by translating those findings into procedures usable by personnel serving children who are deaf-blind, implementing new educational procedures in typical classroom settings, implementing new early intervention procedures in home and community settings, and evaluating the effectiveness of the new procedures in meeting the early intervention and educational needs of children who are deaf-blind.

The Secretary anticipates supporting a variety of projects that address different early intervention and educational needs of children who are deaf-blind. Relevant areas of investigation may include findings that could improve techniques to enhance cognitive development, physical development, communication skills (e.g., use of augmentative devices and assistive technology), social skills (including social interaction and friendship formation skills), independent living skills (including self-determination, mobility and other community living skills), and use of recreation or leisure time, as well as more traditional skill areas including academic achievement and transition and employment skills.

The Secretary also anticipates that projects would, if appropriate for the planned activities, form a consortium with one or more research institutions at other locations. This type of approach may be necessary to (1) validate the new approaches with multiple children and in multiple settings or (2) replicate initial evaluation findings.

Proposed Priority

To be considered for funding under this proposed priority, a research validation and implementation project must—

(1) Address one or more of the relevant areas of investigation identified in the background section of this proposed priority or a closely related issue;

(2) Identify specific research findings—and the interventions or strategies based on those findings—that would be implemented and evaluated;

(3) Translate research findings into demonstrable practice that provides the informational bridge necessary to (a)

move research into practice, and (b) reduce the time lag between research and implementing practice for children who are deaf-blind;

(4) Design the project activities in a manner that would lead to improved services for children who are deaf-blind and their families;

(5) Conduct the project activities in typical school and community settings;

(6) Carry out the project activities within a conceptual framework that provides a basis for the research findings selected, the interventions or strategies to be implemented and evaluated, the evaluation design, and the target population;

(7) Conduct the evaluation activities using methodological procedures that would produce unambiguous findings (a) regarding the effects of the interventions or strategies and interaction effects between particular approaches and particular groups of children or particular contexts; and (b) for use in national, State, and local policy analysis contexts; and

(8) Produce a variety of descriptive and outcome data, including (a) information regarding the settings, the service providers, the children, and, if applicable, their families, targeted by the project (e.g., age, disabilities, skill and ability levels, and membership in a special population, if appropriate); and (b) multiple, performance outcome data regarding the children and families who are the focus of the interventions or strategies.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period in room 4092, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

34 CFR part 307.

Program Authority: 20 U.S.C. 1422.

(Catalog of Federal Domestic Assistance Number: Services for Children with Deaf-Blindness 84.025)

Dated: April 30, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93-14804 Filed 6-22-93; 8:45 am]

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Part VI

Department of Education

Early Education Program for Children With Disabilities; Notice

VOL 58 ISS 119 JE 23 1993 UMI

DEPARTMENT OF EDUCATION

Early Education Program for Children With Disabilities; Proposed Funding Priorities

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for Fiscal Years 1994 and 1995.

SUMMARY: The Secretary proposes priorities for fiscal years 1994 and 1995 under the Early Education Program for Children with Disabilities. The Secretary takes this action to focus Federal financial assistance on an identified national need for improving early intervention and special education services for young children with disabilities and their families. These proposed priorities would build the capacity of individuals and agencies to effect change with this population of children and families.

DATES: Comments must be received on or before July 23, 1993.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202–2644.

FOR FURTHER INFORMATION CONTACT: Joseph Clair. Telephone: (202) 205–9503. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

SUPPLEMENTARY INFORMATION: This notice contains four proposed funding priorities intended to advance the purpose of the Early Education Program for Children with Disabilities. The purpose of the program is to support projects designed to (a) address the special needs of children with disabilities, birth through age eight, and their families; and (b) to assist State and local entities in expanding and improving programs and services for these children and their families. These proposed priorities would support projects for demonstration, outreach, training, and a research institute.

The proposed priorities would support National Education Goal 1 by assisting young children with disabilities to enter school ready to learn through the provision of improved services and better trained service providers.

The Secretary will announce the final priorities in a notice in the Federal Register. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. Further, priorities proposed for FY 1995 could be affected by enactment of legislation reauthorizing this program. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these proposed priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Proposed Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet any one of the following proposed priorities. The Secretary proposes to fund under this program only applications that meet these absolute proposed priorities:

Proposed Absolute Priority 1—Model Demonstration Projects for Young Children With Disabilities

Background

This proposed priority would support projects that develop, implement, evaluate, and disseminate new or improved approaches for serving young children with disabilities (infants, toddlers, and children ages birth through eight) and their families. Projects supported under this proposed priority are expected to be major contributors of models or components of models for service providers and for outreach projects under the program.

The Secretary anticipates funding projects for a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. Projects supported for an initial three-year period may be eligible for an additional two years of funding to field test the viability of their models at other site locations. In determining whether to continue funding for the fourth and fifth years of the project period, the Secretary, in addition to applying the requirements of 34 CFR 75.253(a), considers the recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day site visit, are to be performed during a project's third year and may be included in that year's annual evaluation required under 34 CFR 75.590. The three-plus-two-year funding period is expected to determine whether models yielding positive results at an original site can be successfully replicated at other locations.

Proposed Priority

A model demonstration project considered for funding under this proposed priority must—

(a) Address a specific service problem or issue;

(b) Address specific components or strategies and the rationale—based on theory, research, or evaluation—for those components or strategies;

(c) Delineate a specific population of children—i.e., by age, disability, diagnosis, level of functioning, and membership in a special population, if appropriate—and their families;

(d) Produce detailed procedures and materials that would enable others to replicate the model as implemented at the original site;

(e) As appropriate, develop and evaluate the model in integrated, age-appropriate settings that facilitate the interaction between project participants and their peers without disabilities, including models developed for use in homes or in hospitals settings (such as neonatal intensive care units); and

(f) Evaluate the model at the original model development site and—if approved for funding beyond the initial three years of the project period—at other sites to determine whether the model can be adopted by other sites and yield similar positive results. In its evaluation, a project must use multiple outcome measures to determine the effectiveness of the model and its component strategies, including measures of multiple, functional child and family outcomes, other indices of the effects of the model, and cost data associated with implementing the model.

In determining whether to continue a project for the fourth and fifth years of the project period, in addition to considering factors in 34 CFR 75.253(a), the Secretary considers the following:

(a) The degree to which the model developed by the project is, or would be by the end of year three, designed soundly and replicable by other agencies, and provides state-of-the-art interventions for the target population.

(b) The extent to which dissemination of the model would meet a significant or unique service need in other geographic locations.

(c) The degree to which the project has initially produced compelling, quantifiable evidence of the effectiveness of the model as implemented at the original development site.

(d) Availability of funding for the model from sources other than the Early Education Program for Children with Disabilities to support the operation of the model at the original development site during years four and five.

(e) The extent to which the project has documented the commitment of other agencies not affiliated with the original grant to adopt its model and participate in evaluation of the model during years four and five of the project period.

(f) The extent to which the project has sound plans for aiding in replication and for evaluating its model at replication sites during years four and five of the project period.

A project that applies for funding for the fourth and fifth years must set aside in its budget for the third year funds to cover costs associated with the services to be performed by the review team appointed by the Secretary to evaluate the project in the third year. These funds are estimated to be approximately $4,000.

Competitive Priority

Within this proposed absolute priority 1, the Secretary, under 34 CFR 75.105(c)(2)(i), proposes to give preference to applications that meet the following competitive priority. The Secretary proposes to award up to 10 points to applications that meet this competitive priority in a particularly effective way. These points would be in addition to any points the applications earn under the selection criteria for the program:

Projects that would develop, implement, evaluate, and disseminate models that (1) incorporate the appropriate use of assistive technology to enhance services to young children with disabilities; or (2) address the unique needs of young children with low incidence disabilities, such as deaf-blindness.

Proposed Absolute Priority 2—Outreach Projects for Young Children With Disabilities

Background

This proposed priority would support projects that build the capacity of educational and other agencies to adopt and implement proven models—including inservice training models—or components of those models based on specific needs. At this time States are striving to provide improved services to young children with disabilities (infants, toddlers, and children ages birth through eight) and their families. Thus, State agencies and local service agencies need information about and assistance in accessing the range of available, successful practices, curricula, and products.

The models or components of models selected for outreach need not have been developed through this program. Projects may disseminate and help replicate multiple models or components of models that were not developed by the applicant. To enhance the visibility of the model or model components and to increase the impact of outreach activities, projects are encouraged to select sites in multiple States.

For projects planning to conduct outreach activities in multiple States, the plan of operation should only include plans concerning specific sites and activities for the initial year. During the first year of outreach funding, the contractor for the early childhood technical assistance development system funded under section 623(c) of the Individuals with Disabilities Education Act (IDEA) would contact States regarding outreach projects funded under this priority. The contractor would assist States and projects in matching needs with projects' resources. Outreach projects would use the information provided by States to propose plans for years two and three of the project period. These proposed plans would be finalized during negotiation of grant awards for years two and three of the project period.

Proposed Priority

An outreach project considered for funding under this proposed priority must—

(a) Disseminate information about and assist in replicating a proven model or models—or proven components of models—that provide or improve services for young children with disabilities and their families;

(b) Coordinate its dissemination and replication activities with the lead agency for part H of the IDEA for early intervention services or the State educational agency for special education, as well as with relevant technical assistance, information, and personnel development networks within the State;

(c) Include approaches relevant to programming in natural or least restrictive environments; effective involvement of families in the design, implementation, and evaluation of project activities; and interagency coordination if multiple agencies are involved in the provision of services;

(d) Ensure that the model or components of models are consistent with part B and part H of IDEA, are state-of-the-art, match the needs of the proposed sites, and have recent unambiguous evaluation information supporting their effectiveness;

(e) Employ activities that include, but need not be limited to, public awareness, product development and dissemination, site development, training, and technical assistance;

(f) Describe the effects of model components (e.g., expected costs, needed personnel, staff training, equipment) on potential users, sequence of model implementation activities, and criteria for selecting cooperating sites; and

(g) Evaluate the outreach activities to determine their effectiveness. The evaluation must include measures of types and numbers of sites where outreach activities are conducted, number of persons trained, types of follow-up activities, number of children and families served at the site where models were adopted or adapted, child and family progress, and changes in the model made by sites.

Competitive Priority

Within this proposed absolute priority 2, the Secretary, under 34 CFR 75.105(c)(2)(i), proposes to give preference to applications that meet the following competitive priority. The Secretary proposes to award up to 10 points to applications that meet this competitive priority in a particularly effective way. These points would be in addition to any points applications earn under the selection criteria for the program:

Projects that would build the capacity of educational and other agencies to adopt and implement proven models or components of models that (1) address the needs of groups of infants, toddlers, or young children with disabilities and their families from cultural, linguistic, or racial minority groups; or (2) address the unique needs of young children with low incidence disabilities, such as deaf-blindness.

Proposed Absolute Priority 3—Early Childhood Model Inservice Training Projects

Background

This proposed priority would support capacity building projects that develop, demonstrate, evaluate, and disseminate inservice training models and accompanying materials. The purpose of these models is to prepare professionals and paraprofessionals to provide, coordinate, or enhance early intervention, special education, and related services. These services would target infants, toddlers, and preschool-aged children with disabilities, birth

through eight years of age, and their families including children with disabilities who may be from cultural, linguistic, or racial minority groups.

Proposed Priority

A model inservice training project considered for funding under this proposed priority must—

(a) Identify the target population to be trained, including their roles and responsibilities, and the national needs addressed by the model;

(b) Delineate a conceptual framework upon which the training model is to be based, including the changes in personnel roles and responsibilities and the skills needed to implement the new roles or responsibilities;

(c) Identify the content of training and the format for delivery of training and other activities of the model;

(d) Develop and demonstrate an inservice training model for professionals, paraprofessionals, or both, who are currently providing services to infants, toddlers, and preschool-aged children with disabilities and their families, or to those individuals who through retraining could provide those services;

(e) Include within the model an array of follow-up and support activities that ensure that personnel participating in the training acquire the skills being taught and use that knowledge in meeting the service needs of young children with disabilities and their families;

(f) Coordinate with the State agencies responsible for the Comprehensive System of Personnel Development (CSPD) under part H or part B of IDEA, and arrange for credit to be granted to trainees by appropriate agencies, organizations, or institutions of higher education; and

(g) Evaluate the inservice training model through direct assessment of participants' skills following the training and, after a period of time, include some direct observation measures of trainees in the service setting using standardized observational rating techniques.

Competitive Priority

Within this proposed absolute priority 3, the Secretary, under 34 CFR 75.105(c)(2)(i), proposes to give preference to applications that meet the following competitive priority. The Secretary proposes to award up to 10 points to applications that meet this competitive priority in a particularly effective way. These points would be in addition to any points applications earn under the selection criteria for the program:

Projects that would develop, demonstrate, evaluate, and disseminate models that; (1) Incorporate collaborative, multi-disciplinary, team training approaches to personnel development; or (2) focus on paraprofessionals and address their unique training needs.

Proposed Absolute Priority 4—Early Childhood Research Institute on Integration

Background

This proposed priority would support an Early Childhood Research Institute to (1) identify administrative, attitudinal and programmatic barriers to integrating young children with disabilities three through five years of age in preschool, day care, and other programs; (2) develop and test strategies that would overcome those barriers; (3) identify and test approaches to service delivery that would maximize the combined effects of special education and related services, individualized planning and instruction, developmentally appropriate practice, and organized interactions between children with disabilities and peers without disabilities in integrated settings; and (4) conduct preliminary studies to identify strategies that would facilitate the participation of young children with disabilities and their families in the broader array of services and events available in the community, including social and recreational activities accessed by all families with young children.

To address these issues, the Institute would conduct a program of research consisting of studies carried out at the service delivery level (preschool, day care and other service settings), at the community level, and at the systems level. The Secretary requires the Institute to coordinate its research activities with other relevant efforts sponsored by the Office of Special Education Programs, including State-wide Systems Change Projects and research institutes supported under the Program for Children and Youth with Severe Disabilities (part C of the Individuals with Disabilities Education Act).

The Secretary anticipates funding one cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the Institute for the fourth and fifth years of the project period, the Secretary, in addition to applying the requirements of 34 CFR 75.253(a), considers the recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day visit to the project, are to be performed during the last half of the Institute's second year and may be included in that year's annual evaluation required under 34 CFR 75.590.

Proposed Priority

The Early Childhood Research Institute considered for funding under this proposed priority must—

(a) Conduct a program of research that addresses the issues identified above;

(b) Identify specific interventions or strategies that would be investigated;

(c) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the interventions or strategies that would be studied, the research methods and instrumentation that would be used, and the specific target populations and settings that would be studied;

(d) Collect, analyze, and report a variety of descriptive and outcome data, including: (1) Specific information on the settings, the service providers, the children and families targeted by the project (e.g., age, disability, level of functioning and membership in a special population, if appropriate), and (2) multiple, functional outcome data for the children and families who are the focus of the interventions or strategies;

(e) Conduct the research in typical, integrated school and community settings;

(f) Conduct the research using methodological procedures that would produce unambiguous findings regarding the effects of the interventions or strategies, as well as any findings on interaction effects between particular strategies and particular characteristics of participants or settings. These findings would be rendered through appropriate sample selection and adequate sample size to permit use of the findings in policy analyses;

(g) Design the research activities in a manner that would lead to improved services for children with disabilities and their families, including those who are members of cultural, linguistic, or racial minority groups;

(h) Develop and field test a variety of products that can be used for training and technical assistance activities with policymakers, administrators, community leaders, parents, and service providers that would facilitate the integration of young children with disabilities and young children without disabilities;

(i) Coordinate research activities with other relevant efforts sponsored by the Office of Special Education Programs, including State-wide Systems Change Projects and research institutes supported under the Program for Children and Youth with Severe Disabilities (part C of IDEA); and

(j) Provide research training and experience for at least 10 graduate students annually.

In determining whether to continue the Institute for the fourth and fifth years of the project period, in addition to considering factors in 34 CFR 75.253(a), the Secretary considers the following:

(a) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Institute.

(b) The degree to which the Institute's research designs and methodological procedures demonstrate the potential for producing significant new knowledge and products.

In applying for funding for years four and five, the Institute must set aside in its budget for the second year, funds to cover costs associated with the services to be performed by the review team appointed by the Secretary to evaluate the project in the second year. These funds are estimated to be approximately $4,000.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period in room 4092, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR part 309.

Program Authority: 20 U.S.C. 1423.

(Catalog of Federal Domestic Assistance Number: Early Education Program for Children with Disabilities 84.024)

Dated: April 19, 1993.

Richard W. Riley,

Secretary of Education.

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Part VII

Department of Education

Secondary Education and Transitional Services for Youth With Disabilities Program; Notice Inviting Applications

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DEPARTMENT OF EDUCATION

Secondary Education and Transitional Services for Youth With Disabilities Program; Proposed Funding Priorities

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for Fiscal Years 1994 and 1995.

SUMMARY: The Secretary proposes priorities for fiscal years 1994 and 1995 under the Secondary Education and Transitional Services for Youth with Disabilities Program. The Secretary takes this action to focus Federal financial assistance on identified national needs. These proposed priorities are intended to increase student involvement in transition planning, to develop alternative programs for youth who have dropped out of school or are at risk of dropping out, and to replicate exemplary models or components of models in multi-district sites. The proposed priorities would also assist State and local entities in complying with the transition requirements of part B of the Individuals with Disabilities Education Act (IDEA).

DATES: Comments must be received on or before July 30 1993.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202–2644.

FOR FURTHER INFORMATION CONTACT: Joseph Clair. Telephone: (202) 205–9503. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

SUPPLEMENTARY INFORMATION: The purpose of this program is (1) to assist youth with disabilities in the transition from secondary school to postsecondary environments, such as competitive or supported employment, and (2) to ensure that secondary special education and transitional services result in competitive or supported employment for youth with disabilities. The proposed priorities in this notice would provide support for demonstration, outreach, and research projects.

The proposed priorities would support the National Education Goals 2 and 5 by assisting students with disabilities in developing competitive workplace skills through improved services and better trained service providers.

The Secretary will announce the final priorities in a notice in the Federal Register. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. Further, priorities proposed for FY 1995 could be affected by enactment of legislation reauthorizing this program. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under this program will be published in the Federal Register concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priorities. The Secretary proposes to fund under this program only applications that meet these absolute priorities:

Proposed Absolute Priority 1 Research Projects on Student Involvement in Transition Planning

Background

This proposed priority would support research projects on the active participation of students with disabilities in the transition planning process. These projects would (1) identify factors that facilitate student involvement, and (2) develop material for national dissemination on effective interventions and strategies for increasing student involvement.

The Secretary is proposing this priority because the recent part B regulations published at 57 FR 44794 (September 29, 1992) implementing the Individuals with Disabilities Education Act (IDEA) amendments pertaining to transition require that all students, beginning no later than age 16 and at a younger age, if determined appropriate be invited to attend the individualized education program (IEP) meeting at which a transition plan is to be developed (34 CFR 300.344(c)). Section 602(a)(19) of IDEA further requires that transition services be based on the individual student's needs, taking into account the student's preferences and interests (See 34 CFR 300.18(b)(1)). Projects supported under this priority would develop interventions and strategies to help students identify their preferences and interests.

Material developed through two different efforts may be useful in developing interventions and strategies to increase student involvement. Since the original part B regulations were published in 1977, information and training material has been developed to maximize the participation of parents, teachers, and building supervisors, as well as related services personnel, in the IEP meeting. A second source of relevant information is being generated by projects funded to identify and teach skills necessary for self-determination, including decision-making, goal setting, and the ability to express preferences and make choices.

Proposed Priority

A research project on student involvement in transition planning must—

(1) Identify the factors and barriers associated with the participation of students with disabilities in the transition process;

(2) Identify specific interventions and strategies that are likely to lead to the increased participation of all students with disabilities. Interventions and strategies must consider alternative methods for eliciting student involvement, taking into account the severity level of a disability and the individual student's ability to communicate including use of augmentative communication devices;

(3) Carry out the research using a conceptual framework and research design that is based on previous research or theory and that provides a basis for the interventions and strategies to be studied. The research design must include difficult-to-serve groups. This framework must build upon existing materials developed (a) for other participants in the transition planning or IEP process, and (b) for teaching the skills necessary for self-determination relative to the IEP process;

(4) Conduct the research in a range of typical school settings;

(5) Conduct the research using methodological procedures that would produce unambiguous findings (a) regarding the effects of all interventions and strategies, as well as any findings on interaction effects between particular approaches and particular characteristics of students or settings; and (b) for use in national, State, and local implementation and policy making;

(6) Produce and analyze a variety of descriptive and outcome data, including information regarding (a) student participation in the development of IEP content (goals, objectives, activities, and

services); and (b) satisfaction of students with their transition plan;

(7) Prepare draft implementation guides containing all the proposed interventions and strategies for increasing student involvement in the transition planning or IEP process or, if appropriate, both;

(8) Implement a plan to field test the draft implementation guides in a range of school districts; and

(9) Prepare and disseminate findings, including final implementation guides, as well as information about the student participation materials, to school districts through the State educational agencies and to other organizations.

Proposed Absolute Priority 2 Model Demonstration Projects to Identify and Develop Alternatives for Youth With Disabilities Who Have Dropped Out of School or Are at Risk of Dropping Out of School

Background

This proposed priority would support model demonstration projects that develop, implement, evaluate, and disseminate new or improved components or strategies to identify, recruit, train, and place youth with disabilities who have dropped out of school or are at risk of dropping out of school.

Proposed Priority

A model demonstration project must—

(1) Build upon specific components or strategies based on theory, research, or evaluation. These components or strategies must include procedures to identify youth who are at risk of dropping out of school and to recruit youth with disabilities who have already dropped out of school;

(2) Include alternatives for engaging students in programs that provide functional literacy skills and employment training and for serving students who refuse to return to their previous school;

(3) Develop working relationships with the private sector, especially employers, rehabilitation personnel, and local Private Industry Councils authorized by the Job Training Partnership Act;

(4) Target services to specific students (i.e., by age, disability, level of functioning, and membership in a special population, if appropriate);

(5) Produce detailed procedures and materials that would enable others to successfully replicate the model as implemented in the original site; and

(6) Evaluate the model at the original model development site and, when implemented at other sites, at those sites to determine whether the model can be adopted by other sites and yield similar results. The project must determine the effectiveness of the model and its component or strategies, including multiple, functional student outcomes measures, other indices of the effects of the model, and cost data associated with implementing the model.

Invitational Priority

Within proposed absolute priority 2 the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects that would serve minority youth (e.g., black, Hispanic, American Indian or Alaskan Native, Asian or Pacific Islander) or youth from urban areas with recognized high dropout rates.

Proposed Absolute Priority 3 Outreach Projects for Services for Youth with Disabilities

Background

This proposed priority would support projects that assist in the adoption of proven models, components of models, or other exemplary practices designed to improve secondary education and transition services for youth with disabilities in areas such as continuing education, self-determination, vocational education and training, supported competitive employment, leisure and recreation, and independent living.

Section 602(a)(20)(D) of the Individuals with Disabilities Education Act (IDEA) requires that a statement of needed transition services be included in the individualized education program for each student beginning no later than age 16 and that the services be updated on an annual basis. Currently, States are striving to provide improved transitional services to students with disabilities. Thus, State agencies and local service agencies need information and assistance in accessing the range of available, successful practices, curricula, and products.

The models, components of models, or exemplary practices selected for outreach need not have been developed through this program. Projects may disseminate and help replicate multiple models, components of models, or exemplary practices that were not developed by the applicant. To enhance the impact of outreach activities, projects are encouraged to select sites in multiple States.

Proposed Priority

An outreach project for services must—

(1) Disseminate information about and assist in replicating proven models, components of models, or exemplary practices that provide or improve transition services for students with disabilities based on the specific needs of the sites selected for outreach;

(2) Develop written plans for implementation;

(3) Coordinate its dissemination and replication activities with relevant State and local educational agencies, consumer organizations, administrative entities established in the service delivery area under the Job Training Partnership Act, and, if appropriate, projects funded under the State Systems for Transition Services for Youth with Disabilities Program, as well as with technical assistance, information, and personnel development networks within the State;

(4) Include (a) services in community-based settings; (b) effective involvement of students and adults with disabilities in the design, implementation, and evaluation of project activities; (c) coordination with schools, vocational rehabilitation agencies, adult service providers, and potential employers, if appropriate; and (d) assistance in identifying funding for assistive devices and services;

(5) Ensure that the model, components of models, or exemplary practices are consistent with part B of the IDEA, are state-of-the-art, and have recent, unambiguous evaluation information supporting their effectiveness;

(6) Employ activities that include, but need not be limited to, public awareness, product development and dissemination, site development, training, and technical assistance;

(7) Describe the effects of model components (e.g., expected costs, needed personnel, staff training, equipment) on potential users, the sequence of implementation activities, and the criteria for selecting cooperating sites; and

(8) Evaluate the outreach activities to determine their effectiveness. The evaluation designs must include but need not be limited to measures of types and numbers of sites where outreach activities are conducted, number of persons trained, types of follow-up activities, number of youth and families served at the site where models were adopted or adapted, youth and family

progress information, and changes in the model made by sites.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period in room 4092, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

34 CFR part 326.

Program Authority: 20 U.S.C. 1425.

(Catalog of Federal Domestic Assistance Number: Secondary Education and Transitional Services for Youth with Disabilities Program 84.158)

Dated: April 30, 1993.

Richard W. Riley,

Secretary of Education.

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Part VIII

Department of Education

Program for Children With Severe Disabilities; Notice

VOL 58 ISS 119 JE 23 1993 UMI

DEPARTMENT OF EDUCATION

Program for Children With Severe Disabilities

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for fiscal years 1994 and 1995.

SUMMARY: The Secretary proposes funding priorities for fiscal years 1994 and 1995 under the Program for Children with Severe Disabilities. The Secretary takes this action to focus Federal financial assistance on an identified national need for the development and implementation of effective practices to enhance services to infants, toddlers, children, and youth with severe disabilities, including deaf-blindness. These proposed priorities would build the capacity of individuals and agencies to effect change with this population of children and their families.

DATES: Comments must be received on or before July 23, 1993.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202–2644.

FOR FURTHER INFORMATION CONTACT: Joseph Clair. Telephone: (202) 205–9503. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

SUPPLEMENTARY INFORMATION: This notice contains five proposed funding priorities intended to advance the purpose of the Program for Children with Severe Disabilities. The purpose of the program is to provide Federal financial assistance for demonstration or development, research, training, and dissemination activities for children with severe disabilities, including deaf-blindness. These proposed priorities would support projects for system change, outreach, training, research, and a research implementation institute.

Through the provision of improved services and better trained service providers, these proposed priorities support National Education Goals 1 and 5 by assisting infants, toddlers, children, and youth with severe disabilities to begin school ready to learn, and, when they become adults, to compete in a global economy.

The Secretary will announce the final priorities in a notice in the Federal Register. The final priorities will be determined based on responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. Further, priorities proposed for FY 1995 could be affected by enactment of legislation reauthorizing this program. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under this program will be published in the Federal Register concurrent with or following publication of the notice of final priorities.

Proposed Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet any one of the following priorities. The Secretary proposes to fund under this program only applications that meet these absolute priorities:

Proposed Absolute Priority 1—Research Projects for Educating Children with Severe Disabilities in Inclusive Settings

Background

This proposed priority would support projects that would conduct research to identify new or improved strategies that address the educational and related service needs of children and youth with severe disabilities in inclusive general education settings and, if appropriate, related activities in the community (e.g., employment training settings, and school and community recreation activities).

The field of severe disabilities has moved dramatically toward inclusive educational models within the past five years. Innovative strategies that promote inclusion in academic and social contexts have generated high interest among parents, professionals, employers, and individuals with severe disabilities. Despite the fact that the field has learned a great deal about how to produce positive outcomes for individuals with severe disabilities, many critical issues need to be further addressed. Although a number of strategies have been developed to enable full inclusion of children with disabilities in preschool programs and elementary schools, more research is needed to identify strategies for inclusive practices at the middle school and secondary school levels.

Additional research is needed to (1) determine the relative effectiveness of existing strategies, (2) identify more specifically the supports and conditions that must be present, (3) validate procedures that would ensure adequate student progress in inclusive settings, (4) refine procedures that promote positive and effective social interactions among same-aged peers, (5) determine what peer-mediated strategies promote the active and effective involvement of classmates in inclusive educational programs, (6) identify principles that can be effectively applied in modifying curricula, classroom activities, and instructional materials to ensure meaningful student participation and meet multiple instructional needs, (7) determine optimal use of personnel resources, and determine how use of personnel changes over time, and (8) identify strategies that promote inclusion in out-of-school settings and activities, including employment training settings and community recreational activities.

Priority

To be considered for funding under this proposed priority, a research project must—

(1) Address one or more of the issues identified in the background section of this proposed priority;

(2) Identify specific interventions or strategies that would be investigated;

(3) Design the research activities in a manner that would lead to improved services for students with severe disabilities and, if appropriate, their families;

(4) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the interventions or strategies to be studied, the research design, and the target population;

(5) Conduct the research in typical, inclusive school and, if appropriate, community settings;

(6) Conduct the research using methodological procedures that would produce unambiguous findings (a) regarding the effects of the interventions or strategies and interaction effects between particular approaches and particular groups of students or particular contexts; and (b) for use in national, State, and local policy analysis contexts; and

(7) Produce a variety of descriptive and outcome data, including (a) information regarding the settings, the service providers, the students, and, if applicable, their families, targeted by the project (e.g., age, disabilities, skill and ability levels, and membership in a special population, if appropriate); and (b) multiple, performance outcome data regarding the students who are the focus of the interventions or strategies.

Competitive Preference Priority

Within this proposed absolute priority 1, the Secretary, under 34 CFR 75.105(c)(2)(i), proposes to give preference to applications that meet the following competitive priority. The Secretary proposes to award up to 10 points to an application that meets this competitive priority in a particularly effective way. These points would be in addition to any points the application earns under the selection criteria for this program:

Research projects that would identify effective interventions or strategies enabling students with severe disabilities to be educated in general education classes (a) at the middle or secondary school levels, or (b) in urban or rural school districts, or both.

Proposed Absolute Priority 2—Model Inservice Training Projects to Prepare Personnel to Educate Students with Severe Disabilities in General Education Classrooms and Community Settings

Background

This proposed priority would support capacity building projects that develop, demonstrate, evaluate, and disseminate inservice training models and accompanying materials. The purpose of these models is to prepare administrators, teachers, paraprofessionals, and related service personnel to provide, coordinate, and enhance services that result in students with severe disabilities being educated in general education classrooms and, if appropriate, community settings.

One of the major issues facing special education today is the lack of qualified personnel to meet the educational needs of individuals with severe disabilities. Inservice training is one strategy for meeting the needs of existing personnel by specifically targeting training to identified needs. This strategy can be used to (1) enhance the skills of personnel currently working with students with severe disabilities; (2) supplement training to regular educators; or (3) train personnel who have not previously worked with students with severe disabilities.

This proposed priority is being established to meet the immediate need for trained personnel in inclusive general education and community settings. Because students with severe disabilities are a very heterogenous and low incidence group of students, personnel working with these students in general education classrooms and community settings must often demonstrate a broad array of competencies. These competency areas include, but are not limited to (a) instructional technology for teaching students in a variety of instructional situations, including cooperative learning groups and community-referenced or community-based instruction; (b) curriculum adaptation; (c) assistive technology to enhance participation and communication; (d) strategies for facilitating interactions between students with severe disabilities and their peers without disabilities; and (e) nonaversive behavior management.

In addition, personnel working with students with severe disabilities must have the skills to work collaboratively with a variety of other people (e.g., general and special education teachers, parents, paraprofessionals, related service providers, administrators, transition specialists) who are interested in the education of the these students.

Priority

To be considered for funding under this proposed priority, a model inservice training project must—

(1) Identify the target population to be trained, including their roles and responsibilities, and the national needs addressed by the model;

(2) Delineate a conceptual framework on which the training model is to be based, including changes in personnel roles and responsibilities and the skills needed to implement the new roles or responsibilities;

(3) Identify the content of training, the format for delivery of training, and other activities of the model;

(4) Develop and demonstrate an inservice training model for professionals, paraprofessionals, or both, who are currently providing services to children or youth with severe disabilities and their families, or for those individuals who, through retraining, could provide those services;

(5) Include within the model an array of follow-up and support activities that ensure that personnel participating in the training acquire the skills being taught and use that knowledge in meeting the service needs of students with severe disabilities and their families;

(6) Coordinate with the State agency responsible for the Comprehensive System of Personnel Development (CSPD) under the Individuals with Disabilities Education Act (IDEA) and arrange for credit to be granted to trainees by appropriate agencies, organizations, or institutions of higher education;

(7) Evaluate the inservice training model through direct assessment of participants' skills following the training and, after a period of time, and include some direct observation measures of trainees in the service setting using standardized observational rating techniques; and

(8) Package the inservice training model to include all materials validated during the training effort so that the training can easily be replicated.

Invitational Priority

Within this proposed absolute priority 2, the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Model inservice training projects that would provide training to teams of general education, special education, and related service personnel.

Proposed Absolute Priority 3—Outreach Projects: Serving Children with Severe Disabilities in General Education and Community Settings

Background

This proposed priority would support projects that build the capacity of educational and other agencies to adopt and implement proven models, or components of those models based on specific needs. At this time States are striving to provide improved services to children with severe disabilities in general education and community settings. Thus, State agencies and local service agencies need information and assistance in accessing the range of available, successful practices, curricula, and products. The models or components of models selected for outreach need not have been developed through this program. In addition, projects may disseminate and help replicate multiple models or components of models that were not developed by the applicant.

The practices to be implemented during the outreach activities may focus on, but are not limited to, transition from school to adult life, the use of activity-based curricula, non-aversive behavior management, facilitating social relationships in school and community settings, or strategies that facilitate the inclusion of children with severe disabilities into their neighborhood schools and local communities. To increase their visibility and to enhance the impact of outreach activities, projects are encouraged to establish adoption sites in multiple States.

Priority

To be considered for funding under this proposed priority, an outreach project must—

(1) Disseminate information about and assist in replicating a proven model or models—or proven components of models—that provide or improve services for children with severe disabilities;

(2) Coordinate its dissemination and replication activities with (a) the lead agency for part H of the IDEA for early intervention services or the State educational agency for special education, as well as (b) technical assistance, information, and personnel development networks within the State;

(3) Include (a) approaches relevant to programming in general education and local community settings; (b) active involvement of children and their families in the design, implementation, and evaluation of project activities; and (c) interagency coordination if multiple agencies are involved in the provision of services;

(4) Ensure that the model or components of models are consistent with part B of the IDEA, are state-of-the-art, match the needs of the proposed sites, and have recent unambiguous evaluation information supporting their effectiveness;

(5) Use activities that include, but need not be limited to, public awareness, product development and dissemination, site development, training, and technical assistance;

(6) Describe the effects of model components (e.g., expected costs, needed personnel, staff training, equipment) on potential users, the sequence of implementation activities, and the criteria for selecting cooperating sites; and

(7) Evaluate the outreach activities to determine their effectiveness. The evaluation must include measures on the number of children and families served at each site, child and family progress, types and numbers of sites where outreach activities are conducted, number of persons trained, types of follow-up activities, and any changes in the model made by sites.

Competitive Priority

Within this proposed absolute priority 3, the Secretary, under 34 CFR 75.105(c)(2)(i), proposes to give preference to applications that meet the following competitive priority. The Secretary proposes to award up to 10 points to an application that meets this competitive priority in a particularly effective way. These points would be in addition to any points the application earns under the selection criteria for this program:

Outreach projects that would establish implementation sites in urban or rural areas, or both.

Proposed Absolute Priority 4—Statewide Systems Change: Children with Severe Disabilities

Background

This proposed priority would support projects that enhance the capacity of States to serve children with severe disabilities—including children who are deaf-blind—in (a) developing, in conjunction with the IDEA part B and part H State Plans, activities to improve the quality of early intervention, special education, and related services in the State for children with severe disabilities, birth through 21 years of age; and (b) changing the delivery of these services from segregated to general education settings and natural environments in the child's neighborhood. It is expected that projects would significantly increase the number of children with severe disabilities the State serves in general education settings, alongside children of the same age without disabilities.

Projects funded under this proposed priority have been most successful in States that, prior to applying for funds, had already made the commitment to change the delivery of services for children with severe disabilities from segregated to general education settings. Therefore, the Secretary anticipates that projects proposed under this proposed priority would show that such a commitment is already in place. Projects that have been most successful have also been characterized by a broad-based approach to systems change involving a variety of groups with a direct interest.

Although it is recognized that States are at different stages of changing the delivery of services from segregated to general education settings, the Secretary encourages projects to include representatives from the following groups in all planning and implementation activities: students and adults with severe disabilities and their families, early intervention personnel, general education and special education teachers, support personnel, related service personnel, school administrators, community agencies, institutions of higher education faculty, State legislators, and a variety of State agency staff.

Priority

To be considered for funding under this proposed priority, a Statewide systems change project must—

(1) Establish a project advisory board that (a) is responsible for providing significant recommendations on project planning, implementation, and evaluation activities; and (b) has representation by parents of children participating in the project, service providers (both general education and special education, and providers of related services), institutions of higher education, relevant professional organizations, and State agency staff;

(2) Determine the resources, both human and fiscal, available at the community level to provide quality services to children with severe disabilities as well as resources available through other agencies or parties;

(3) Carry out activities that would assist children with severe disabilities to achieve their highest potential outcomes in general education settings within their neighborhoods—or, in the case of infants and toddlers, in natural environments including nonsegregated settings—by implementing planned, capacity building activities that result in systematic and systemic change. These activities must include, but need not be limited to—

(a) Policy analysis and, if necessary, policy revision or further policy development including development of necessary interagency agreements;

(b) Public awareness;

(c) Product development and dissemination;

(d) Site development;

(e) Staff and parent training;

(f) Technical assistance; and

(g) Analysis and, if necessary, revision of existing teacher training programs, including inservice training of faculty of institutions of higher education;

(4) Disseminate formal, written policies and procedures to relevant State agencies, institutions of higher education, local education agencies, other relevant community agencies, and professional and parent organizations for coordinating services to the target population of children with severe disabilities;

(5) Coordinate activities with the State and Multi-State Services Projects for Children with Deaf-Blindness, the State educational agency (including the State coordinator of services for children with severe disabilities, the coordinator for the comprehensive system of personnel development, and the State's transition project, if the State has a federally funded grant under State Systems for Transition Services), the lead agency for Part H of IDEA for early intervention services, other relevant State agencies, and institutions of higher education; as well as with technical assistance, information, and personnel development networks within the State, the Early Childhood Research Institute on Integration, the National Early Childhood Technical Assistance

System, and the Institute on Implementing Inclusive Education for Children with Severe Disabilities; and

(6) Implement an evaluation plan that includes performance measures for—

(a) Changes in the delivery of special education and related services to the target population, and, in the case of infants and toddlers, changes in the delivery of early intervention services;

(b) The movement of children and youth with severe disabilities in the State from segregated settings to neighborhood general education settings—alongside their peers of the same age—and, in the case of infants and toddlers, to natural environments;

(c) The effectiveness of the training and technical assistance products and procedures; and

(d) The types and numbers of sites where activities are conducted, number and types of persons trained, types of follow-up activities, and number of children and families served at the site where activities were conducted.

Competitive Priority:

Within this proposed absolute priority 4, the Secretary, under 34 CFR 75.105(c)(2)(i), proposes to give preference to applications that meet the following competitive priority. The Secretary proposes to award up to 10 points to an application that meets this competitive priority in a particularly effective way. These points would be in addition to any points the application earns under the selection criteria for this program:

Statewide Systems Change projects from States that have not received a new Statewide System Change award since fiscal year 1987.

Proposed Absolute Priority 5—Institute on Implementing Inclusive Education for Children with Severe Disabilities

Background

During the past five years research and demonstration activities related to inclusive education have expanded dramatically. Increasing numbers of State and local education agencies are involved in school reform and inclusion efforts to ensure that all students, including those with severe disabilities, are provided with equitable opportunities to receive effective educational and related services in their neighborhood schools. This priority is designed to help bridge the gap between the knowledge base and the state of practice by (a) translating theory and research about inclusive education into educational practices, and (b) increasing the capacity of State and local education agencies to provide inclusive educational opportunities.

The Secretary would require the Institute to coordinate its activities on an on-going basis with other relevant efforts sponsored by the Office of Special Education Programs (OSEP), including the Early Childhood Research Institute on Integration.

The Secretary anticipates funding one cooperative agreement with a project period of up to 60 months, subject to the requirements of 34 CFR 75.253(a) for continuation awards. In addition, in determining whether to continue the Institute for the last two years of the project period, the Secretary considers the recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day visit to the project, are to be performed during the last half of the Institute's second year, and may be included as that year's annual evaluation that the recipient is required to perform under 34 CFR 75.590.

Priority

To be considered for funding under this proposed priority, an Institute on Implementing Inclusive Education project must—

(1) Present a synthesis of the relevant extant inclusion theory and research to serve as the conceptual and empirical basis for institute activities;

(2) Translate this knowledge base into inclusive educational practices and materials for use by program implementers and policy makers at the State, district, building, and classroom levels;

(3) Provide training and technical assistance for the adoption, use, and maintenance of inclusive educational practices to interested projects funded under Statewide Systems Change and to other education agencies interested in systems change activities;

(4) Evaluate the effectiveness of the Institute's activities in assisting with the implementation of inclusive educational practices by assessing (a) the types and numbers of sites where activities are conducted, (b) the number and types of people trained, (c) follow-up activities, and (d) the number of children with severe disabilities who are served in inclusive educational programs;

(5) Produce a variety of evaluation data, including (a) factors that contribute to the successful adoption, use, and maintenance of inclusive educational efforts; (b) descriptions of the instructional contexts and settings, classroom instructional supports, school organizational and administrative patterns, and the attitudes of school administrators, school personnel, families, and students; (c) information about student outcomes and the social validity of project activities; (d) information about how project activities are included in broader school reform efforts at State and local levels; (e) information about expected costs related to the successful adoption, use and maintenance of inclusive educational practices; and (f) analysis of policies and procedures at the State and local level;

(6) Provide training and technical assistance on inclusive educational practices to other OSEP-sponsored technical assistance entities and clearinghouses, including the National Early Childhood Technical Assistance System, the Federal and Regional Resource Centers, the Transition Network, the State and Multi-State Services to Children with Deaf-Blindness technical assistance project, and Technical Assistance to Parent Program projects;

(7) Establish linkages and collaborative relationships among OSEP-sponsored research projects, including projects funded under Developing Innovations for Educating Children with Severe Disabilities Full-Time in General Education Classrooms, the Early Childhood Research Institute on Integration, and the Social Relationships Research Institute for Children and Youth with Severe Disabilities;

(8) Provide training and experience in translating research to practice, materials development, technical assistance, dissemination, and program evaluation for five graduate students annually;

(9) Conduct topical meetings and other activities on strategies and emerging practices in inclusive education; and

(10) Collect and ensure timely dissemination to policymakers and program implementers of information on inclusion, systems change, school reform and restructuring initiatives.

In determining whether to continue the Institute for the fourth and fifth years of the project, in addition to considering factors in 34 CFR 75.253(a), the Secretary considers the following:

(a) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Institute; and

(b) The degree to which the Institute's technical assistance, evaluation, and dissemination activities demonstrate the potential for significantly increasing the capacity of local school districts and State educational agencies to serve children with severe disabilities in

inclusive school and community settings.

In applying for funding for years four and five, the Institute must set aside, in its budget for the second year, funds to cover costs associated with the services to be performed by the review team appointed by the Secretary to evaluate the project in the second year. These funds are estimated to be approximately $4,000.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period in room 4092, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

34 CFR part 315.

Program Authority: 20 U.S.C. 1424.

Dated: April 30, 1993

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number: Program for Children with Severe Disabilities 84.086)

[FR Doc. 93–14807 Filed 6–22–93; 8:45 am]

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Wednesday
June 23, 1993

Part IX

Department of Education

Special Projects and Demonstrations for Supported Employment Services and Technical Assistance Projects; Notice

VOL 58 ISS 119 JE 23 1993 UMI

DEPARTMENT OF EDUCATION

Special Projects and Demonstrations for Providing Supported Employment Services to Individuals With the Most Severe Disabilities and Technical Assistance Projects—Statewide Supported Employment Demonstration Projects; Proposed Priority

AGENCY: Department of Education.

ACTION: Notice of Proposed Priority for Fiscal Year 1994.

SUMMARY: The Secretary proposes a priority for fiscal year (FY) 1994 under the program of Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with the Most Severe Disabilities and Technical Assistance Projects authorized by title III, section 311(c) of the Rehabilitation Act, as amended. The Secretary takes this action to focus Federal financial assistance on areas of identified national need. This proposed priority is intended to expand and improve supported employment services to individuals with the most severe disabilities.

DATES: Comments must be received on or before July 23, 1993.

ADDRESSES: All comments concerning this proposed priority should be addressed to Mark Shoob, U.S. Department of Education, 400 Maryland Avenue SW., room 3228 Switzer Building, Washington, DC 20202–2575.

FOR FURTHER INFORMATION CONTACT: Fred Isbister, U.S. Department of Education, 400 Maryland Avenue SW., room 3228 Switzer Building, Washington, DC 20202–2575. Telephone: (202) 205–9297. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This notice contains information regarding a proposed priority to fund additional statewide supported employment demonstration projects. This priority is established under the program of Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with the Most Severe Disabilities and Technical Assistance Projects authorized by title III, section 311(c) of the Rehabilitation Act, as amended. The proposed priority furthers National Education Goal 5 for adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The Secretary will announce the final priority in a notice in the Federal Register. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the Federal Register concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Proposed Priority—Statewide Supported Employment Demonstration Projects

Background

The purpose of the statewide supported employment demonstration program is to stimulate the development of statewide systems change in order to increase supported employment options for individuals with the most severe disabilities. System change grants assist States in addressing the most difficult developmental issues related to the supported employment initiative, such as establishing or improving the necessary infrastructure and training and personnel needs, serving "difficult-to-serve" populations, and providing long-term funding for extended services. These projects cannot use their Federal funding for the direct provision of client services.

National data collected by the Virginia Commonwealth University (VCU) on the supported employment program indicate that those States that received grants to conduct statewide supported employment demonstration projects generally achieved a greater capacity to develop supported employment options within their States than those States that did not receive grants. For example, VCU data showed that 75.7 percent of the total number of individuals in supported employment in fiscal year 1990 were served in the 27 States that had been awarded five-year statewide system change grants in fiscal years 1985 and 1986. The remaining 24.3 percent of these individuals were served by States that received only title VI, part C funding.

Priority

The purpose of statewide supported employment demonstration projects is to stimulate the development of systems changes to increase supported employment options for individuals with the most severe disabilities. Authorized activities under these projects include the following: (1) Securing or facilitating the conversion of State dollars under existing programs to fund extended services. (2) Providing technical assistance and training to agencies developing supported employment programs and to employers, parents, and consumers. (3) Promoting interagency collaboration and agreements to support the provision of supported employment services.

The Secretary has funded 44 grants to 38 different States in FY 1985, FY 1986, and FY 1990. To date, 12 States have not received grants under this program for statewide supported employment demonstration projects. Only those 12 States are eligible to apply under this competition. The States are Alabama, Hawaii, Idaho, Massachusetts, Mississippi, Missouri, Ohio, Rhode Island, South Carolina, South Dakota, Texas, and West Virginia.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3238 Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR part 380.

Program Authority: 29 U.S.C. 777a(d).

(Catalog of Federal Domestic Assistance Number 84.128, Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with the Most Severe Disabilities and Technical Assistance Projects)

Dated: June 17, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–14806 Filed 6–22–93; 8:45 am]

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Part X

Environmental Protection Agency

40 CFR Ch. I

Technical Amendments to OMB Approval Numbers; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[OPPTS-00140; FRL-4587-1]

Technical Amendments to OMB Approval Numbers

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: EPA is publishing technical amendments to various EPA regulations to consolidate the display of the Office of Management and Budget control numbers issued under the Paperwork Reduction Act for EPA regulations with information collection requirements.

DATES: The effective date of this rule is June 23, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer, Environmental Protection Agency, Information Policy Branch (PM-223), 401 M St., SW., Washington, DC 20460, Telephone: (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. on the date of publication in the **Federal Register**. By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1 and ASCII.

On April 7, 1993, EPA issued a notice (58 FR 18014) to announce review of the status of EPA information collection requests (ICRs) under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501-3520), and to amend various EPA regulations to add references to their current OMB ICR control numbers.

On May 10, 1993, EPA issued another notice (58 FR 27472), to create a consolidated table of the OMB control numbers for various EPA regulations with information collection requirements promulgated under the Safe Drinking Water Act and the Clean Air Act. This table will be codified in 40 CFR part 9. EPA believes that presenting the OMB control numbers in this table format will improve its management of the PRA and make it easier for the public to identify the corresponding OMB control numbers for these EPA regulations.

Today, EPA is issuing these technical amendments to place in the table the OMB ICR control numbers for various EPA regulations issued under the Federal Insecticide, Fungicide and Rodenticide Act, the Toxic Substances Control Act, and section 313 of the Emergency Planning and Community Right-to-Know Act. The affected regulations are codified at 40 CFR Parts 150 - 189, 372, and 700 - 799. These amendments will convert all existing parenthetical notes and individual sections in the CFR which cite OMB ICR control numbers, and add other OMB ICR control numbers, so that all the control numbers appear in the consolidated table.

The ICRs for the OMB control numbers included in these technical amendments were previously subject to public notice and comment prior to OMB approval. As such, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553) to issue this technical amendment without prior notice and comment. Due to the technical nature of the table, further notice and public comment would be unnecessary. For the same reason, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3).

For additional information, see 58 FR 18014, April 7, 1993, and 58 FR 27472, May 10, 1993.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 152

Administrative practice and procedure, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 153

Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 155

Administrative practice and procedure, Confidential business information, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 156

Labeling, Occupational safety and health, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 157

Administrative practice and procedure, Infants and children, Packaging and containers, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 158

Confidential business information, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 166

Administrative practice and procedure, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 167

Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 170

Administrative practice and procedure, Labeling, Occupational safety and health, and Pesticides and pests.

40 CFR Part 171

Indians-lands, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 177

Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 372

Air pollution, Chemicals, Hazardous assistance, Hazardous waste, Imports, Intergovernmental relations, Natural resources, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

40 CFR Part 700

Chemicals, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 704

Chemicals, Confidential business information, Environmental protection, Hazardous substances, Imports, Reporting and recordkeeping requirements.

40 CFR Part 707

Chemicals, Environmental protection, Exports, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 710

Chemicals, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 712

Chemicals, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 716

Chemicals, Confidential business information, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 717

Chemicals, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 720

Chemicals, Environmental protection, Hazardous substances, Imports, Reporting and recordkeeping requirements.

40 CFR Part 721

Administrative practice and procedure, Chemicals, Environmental protection, Hazardous substances, Imports, Labeling, Occupational safety and health, Reporting and recordkeeping requirements.

40 CFR Part 723

Chemicals, Environmental protection, Hazardous substances, Photographic industry, Reporting and recordkeeping requirements.

40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls (PCB's), Reporting and recordkeeping requirements.

40 CFR Part 763

Administrative practice and procedure, Asbestos, Confidential business information, Environmental protection, Hazardous substances, Imports, Intergovernmental relations, Labeling, Occupational safety and health, Reporting and recordkeeping requirements, Schools.

40 CFR Part 766

Dibenzo-para-dioxins/dibenzofurans, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 790

Administrative practice and procedure, Chemicals, Confidential business information, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 799

Chemicals, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 17, 1993.

Carol M. Browner,

Administrator.

Therefore, 40 CFR Chapter I is amended as follows:

PART 9—[AMENDED]

1. In part 9:

a. The authority citation is revised to read as follows:

Authority: 7 U.S.C. 136–136y; 21 U.S.C. 331j, 346a, 348; 15 U.S.C. 2601–2671; 31 U.S.C. 9701; 42 U.S.C. 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, 7401, 7412, 7414, 7416, 7601, 7671–7671q, 11023, 11048.

b. Section 9.1 is amended by adding new entries to the table to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Pesticide Registration and Classification Procedures	
152.46	2070–0060
152.50	2070–0024, 2070–0040 and 2070–0060
152.80	2070–0040 and 2070–0060
152.85	2070–0040 and 2070–0060
152.98	2070–0060
152.122	2070–0060
152.132	2070–0044
152.135	2070–0060
152.142	2070–0057 and 2070–0107
152.164	2070–0060
152.404	2070–0040 and 2070–0060
152.406	2070–0040 and 2070–0060
152.412	2070–0040 and 2070–0060
152.414	2070–0040 and 2070–0060
Registration Policies and Interpretations	
part 153, subpart D	2070–0039
Registration Standards	
155.30	2070–0057
Labeling Requirements for Pesticides and Devices	
156.36	2070–0052
156.206	2070–0060
156.208	2070–0060
156.210	2070–0060
156.212	2070–0060
Packaging Requirements for Pesticides and Devices	
157.22	2070–0052
157.24	2070–0052
157.34	2070–0052
157.36	2070–0052
Data Requirements for Registration	
158.30	2070–0040, 2070–0057, 2070–0060 and 2070–0107
158.32	2070–0040, 2070–0053, 2070–0057, 2070–0060 and 2070–0107
158.34	2070–0040, 2070–0057, 2070–0060 and 2070–0107
158.45	2070–0040, 2070–0057, 2070–0060 and 2070–0107
158.75	2070–0040, 2070–0057, 2070–0060 and 2070–0107
158.101	2070–0040, 2070–0057, 2070–0060 and 2070–0107
158.155	2070–0040, 2070–0057, 2070–0060 and 2070–0107
158.160	2070–0040, 2070–0057, 2070–0060 and 2070–0107
158.162	2070–0040, 2070–0057, 2070–0060 and 2070–0107
158.165	2070–0040, 2070–0057, 2070–0060 and 2070–0107
158.167	2070–0040, 2070–0057, 2070–0060 and 2070–0107
158.170	2070–0040, 2070–0057, 2070–0060 and 2070–0107
158.175	2070–0040, 2070–0057, 2070–0060 and 2070–0107

40 CFR citation	OMB control No.
158.180	2070–0040, 2070–0057, 2070–0060 and 2070–0107
158.190	2070–0040, 2070–0057, 2070–0060 and 2070–0107
158.240	2070–0057, 2070–0060 and 2070–0107
158.290	2070–0057, 2070–0060 and 2070–0107
158.340	2070–0057, 2070–0060 and 2070–0107
158.390	2070–0057, 2070–0060 and 2070–0107
158.440	2070–0057, 2070–0060 and 2070–0107
158.490	2070–0057, 2070–0060 and 2070–0107
158.540	2070–0057, 2070–0060 and 2070–0107
158.590	2070–0057, 2070–0060 and 2070–0107
158.640	2070–0057, 2070–0060 and 2070–0107
158.690	2070–0057, 2070–0060 and 2070–0107
158.740	2070–0057, 2070–0060 and 2070–0107
Good Laboratory Practice Standards	
part 160	2070–0024, 2070–0032, 2070–0040, 2070–0055, 2070–0057, 2070–0060 and 2070–0107
State Registration of Pesticide Products	
162.153	2070–0055
Certification of Usefulness of Pesticide Chemicals	
163.4	2070–0060 and 2070–0024
163.5	2070–0060 and 2070–0024
Exemption of Federal and State Agencies for Use of Pesticides Under Emergency Conditions	
166.20	2070–0032
166.32	2070–0032
166.43	2070–0032
166.50	2070–0032
Registration of Pesticide and Active Ingredient Producing Establishments, Submission of Pesticide Reports	
part 167	2070–0078
Statements of Enforcement Policies and Interpretations	
168.65	2070–0027
168.75	2070–0027
168.85	2070–0027, 2070–0028, and 2070–0078
Books and Records of Pesticide Production and Distribution	
169.2	2070–0028
Worker Protection Standards for Agricultural Pesticides	
170.112	2070–0060
Certification of Pesticide Applicators	
171.7	2070–0029
171.8	2070–0029
171.9	2070–0029
171.10	2070–0029
171.11	2070–0029
Experimental Use Permits	
172.4	2070–0040
172.8	2070–0040
Issuance of Food Additive Regulations	
177.81	2070–0024
177.92	2070–0024
177.98	2070–0024
177.99	2070–0024
177.102	2070–0024
177.105	2070–0024
177.110	2070–0024
177.116	2070–0024
Tolerances and Exemptions from Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities	
180.7	2070–0024
180.8	2070–0024
180.9	2070–0024
180.31	2070–0024
180.32	2070–0024
180.33	2070–0024
Toxic Chemical Release Reporting: Community Right-to-Know	
part 372	2070–0093
Toxic Substances Control Act: General	
700.45	2070–0012 and 2070–0038
Reporting and Recordkeeping Requirements	
704.5	2010–0019 and 2070–0057
704.11	2010–0019 and 2070–0067
704.25	2070–0067
704.30	2070–0067
704.33	2070–0067
704.43	2070–0067
704.45	2070–0067
704.95	2070–0067
704.102	2070–0067
704.104	2070–0067
704.175	2070–0067
part 704, subpart C	2010–0019
part 704, subpart D	2010–0019
Chemical Imports and Exports	
707.20	1515–0173
707.65	2070–0030
707.67	2070–0030
707.72	2070–0030
Inventory Reporting Regulations	
part 710, subpart B	2070–0070
Chemical Information Rules	
712.5	2070–0054
712.7	2070–0054
712.20	2070–0054
712.28	2070–0054
712.30	2070–0054
Health and Safety Data Reporting	
716.5	2070–0004
716.10	2070–0004
716.20	2070–0004
716.25	2070–0004
716.30	2070–0004
716.35	2070–0004
716.40	2070–0004
716.45	2070–0004
716.50	2070–0004
716.60	2070–0004
716.65	2070–0004
716.105	2070–0004
716.120	2070–0004
Records and Reports of Allegations that Chemical Substances Cause Significant Adverse Reactions to Health or the Environment	
717.5	2070–0017
717.7	2070–0017
717.12	2070–0017
717.15	2070–0017
717.17	2070–0017
Premanufacture Notification	
720.1	2070–0012
720.22	2070–0012
720.25	2070–0012
720.30	2070–0012
720.36	2070–0012
720.38	2070–0012
part 720, subpart C	2070–0012
720.62	2070–0012
720.75	2070–0012
720.78	2070–0012
720.80	2070–0012
720.85	2070–0012
720.87	2070–0012
720.90	2070–0012
720.102	2070–0012
part 720, Appendix A	2070–0012

40 CFR citation	OMB control No.
Significant New Uses of Chemical Substances	
part 721, subpart A	2070–0012 and 2070–0038
721.72	2070–0012 and 2070–0038
721.125	2070–0012 and 2070–0038
721.160	2070–0012 and 2070–0038
721.170	2070–0012 and 2070–0038
721.185	2070–0012 and 2070–0038
721.225	2070–0012
721.275	2070–0012
721.325	2070–0012
721.370	2070–0012
721.390	2070–0012
721.400	2070–0012
721.415	2070–0012
721.430	2070–0012
721.445	2070–0012
721.460	2070–0012
721.490	2070–0012
721.505	2070–0012
721.520	2070–0012
721.530	2070–0012
721.540	2070–0012
721.550	2070–0012
721.575	2070–0012
721.600	2070–0012
721.625	2070–0012
721.650	2070–0038
721.700	2070–0012
721.750	2070–0012
721.775	2070–0012
721.805	2070–0012
721.840	2070–0012
721.875	2070–0012
721.925	2070–0012
721.950	2070–0012
721.1000	2070–0012
721.1025	2070–0038
721.1050	2070–0012
721.1075	2070–0012
721.1120	2070–0012
721.1150	2070–0012
721.1175	2070–0012
721.1210	2070–0012
721.1225	2070–0012
721.1240	2070–0012
721.1300	2070–0012
721.1325	2070–0012
721.1350	2070–0012
721.1375	2070–0012
721.1425	2070–0038
721.1450	2070–0012
721.1500	2070–0012
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721.1575	2070–0012
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721.1675	2070–0012
721.1700	2070–0012
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721.1745	2070–0012
721.1750	2070–0012
721.1765	2070–0012
721.1775	2070–0012
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721.1850	2070–0012
721.1875	2070–0012
721.1900	2070–0012
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721.1950	2070–0012
721.2000	2070–0012
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721.2050	2070–0012
721.2075	2070–0012
721.2086	2070–0012
721.2120	2070–0012
721.2140	2070–0012
721.2175	2070–0012
721.2225	2070–0012
721.2250	2070–0012
721.2275	2070–0012
721.2340	2070–0012
721.2380	2070–0012
721.2420	2070–0012
721.2460	2070–0012
721.2475	2070–0012
721.2520	2070–0012
721.2540	2070–0012
721.2560	2070–0012
721.2600	2070–0038
721.2625	2070–0012
721.2650	2070–0012
721.2675	2070–0012
721.2725	2070–0038
721.2750	2070–0012
721.2800	2070–0038
721.2825	2070–0012
721.2840	2070–0012
721.2860	2070–0012
721.2880	2070–0012
721.2900	2070–0012
721.2920	2070–0012
721.2940	2070–0012
721.2980	2070–0012
721.3000	2070–0012
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721.3040	2070–0012
721.3060	2070–0012
721.3080	2070–0012
721.3100	2070–0012
721.3120	2070–0012
721.3140	2070–0012
721.3160	2070–0038
721.3180	2070–0012
721.3200	2070–0012
721.3220	2070–0038
721.3240	2070–0012
721.3249	2070–0012
721.3254	2070–0012
721.3260	2070–0012
721.3320	2070–0012
721.3340	2070–0012
721.3360	2070–0012
721.3380	2070–0012
721.3420	2070–0012
721.3440	2070–0012
721.3460	2070–0012
721.3480	2070–0012
721.3500	2070–0012
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721.3629	2070–0012
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721.3720	2070–0012
721.3740	2070–0012
721.3764	2070–0012
721.3780	2070–0012
721.3800	2070–0012
721.3840	2070–0012
721.3860	2070–0012
721.3870	2070–0012
721.3880	2070–0012
721.3900	2070–0012
721.4000	2070–0012
721.4020	2070–0012
721.4040	2070–0012
721.4060	2070–0012
721.4100	2070–0012
721.4128	2070–0012
721.4133	2070–0012
721.4140	2070–0038
721.4160	2070–0038
721.4180	2070–0038
721.4200	2070–0012
721.4220	2070–0012
721.4240	2070–0012
721.4260	2070–0012
721.4270	2070–0012
721.4280	2070–0012
721.4300	2070–0012
721.4320	2070–0012
721.4340	2070–0012
721.4360	2070–0038
721.4380	2070–0012
721.4390	2070–0012
721.4400	2070–0012
721.4420	2070–0012
721.4460	2070–0012
721.4480	2070–0012
721.4500	2070–0012
721.4520	2070–0012
721.4560	2070–0012
721.4600	2070–0012
721.4620	2070–0012
721.4640	2070–0012
721.4660	2070–0012
721.4680	2070–0012
721.4700	2070–0012
721.4720	2070–0012
721.4740	2070–0038
721.4780	2070–0012
721.4790	2070–0012
721.4800	2070–0012
721.4820	2070–0012
721.4840	2070–0012
721.4880	2070–0012
721.4925	2070–0038
721.5050	2070–0012
721.5200	2070–0012
721.5225	2070–0012
721.5250	2070–0012
721.5275	2070–0012
721.5300	2070–0012
721.5325	2070–0012
721.5350	2070–0012

40 CFR citation	OMB control No.
721.5375	2070–0012
721.5400	2070–0012
721.5425	2070–0012
721.5450	2070–0012
721.5475	2070–0012
721.5500	2070–0012
721.5525	2070–0012
721.5550	2070–0012
721.5575	2070–0012
721.5600	2070–0038
721.5660	2070–0012
721.5700	2070–0012
721.5740	2070–0012
721.5760	2070–0012
721.5780	2070–0012
721.5800	2070–0012
721.5820	2070–0012
721.5840	2070–0012
721.5860	2070–0012
721.5880	2070–0012
721.5900	2070–0012
721.5960	2070–0012
721.5980	2070–0012
721.6000	2070–0038
721.6020	2070–0012
721.6060	2070–0012
721.6080	2070–0012
721.6100	2070–0012
721.6120	2070–0012
721.6140	2070–0012
721.6160	2070–0012
721.6180	2070–0012
721.6186	2070–0012
721.6193	2070–0012
721.6200	2070–0012
721.6220	2070–0012
721.6440	2070–0012
721.6470	2070–0012
721.6480	2070–0012
721.6500	2070–0012
721.6520	2070–0012
721.6540	2070–0012
721.6560	2070–0012
721.6580	2070–0012
721.6600	2070–0012
721.6620	2070–0012
721.6625	2070–0012
721.6640	2070–0012
721.6660	2070–0012
721.6680	2070–0012
721.6700	2070–0012
721.6720	2070–0012
721.6740	2070–0012
721.6760	2070–0012
721.6780	2070–0012
721.6820	2070–0012
721.6840	2070–0012
721.6880	2070–0012
721.6900	2070–0012
721.6920	2070–0012
721.6940	2070–0012
721.6960	2070–0012
721.6980	2070–0012
721.7000	2070–0012
721.7020	2070–0012
721.7040	2070–0012
721.7060	2070–0012
721.7100	2070–0012
721.7140	2070–0012
721.7160	2070–0012
721.7180	2070–0012

40 CFR citation	OMB control No.
721.7200	2070–0012
721.7210	2070–0012
721.7220	2070–0012
721.7240	2070–0012
721.7260	2070–0012
721.7280	2070–0012
721.7300	2070–0012
721.7320	2070–0012
721.7340	2070–0012
721.7360	2070–0012
721.7370	2070–0012
721.7400	2070–0012
721.7420	2070–0012
721.7440	2070–0012
721.7460	2070–0012
721.7480	2070–0012
721.7500	2070–0012
721.7560	2070–0012
721.7540	2070–0012
721.7580	2070–0012
721.7600	2070–0012
721.7620	2070–0012
721.7660	2070–0012
721.7680	2070–0012
721.7780	2070–0012
721.7720	2070–0012
721.7700	2070–0012
721.7740	2070–0012
721.7760	2070–0012
721.8075	2070–0012
721.8100	2070–0012
721.8125	2070–0012
721.8175	2070–0012
721.8225	2070–0012
721.8250	2070–0012
721.8275	2070–0012
721.8300	2070–0012
721.8325	2070–0012
721.8350	2070–0012
721.8375	2070–0012
721.8400	2070–0012
721.8425	2070–0012
721.8450	2070–0012
721.8475	2070–0012
721.8500	2070–0012
721.8525	2070–0012
721.8550	2070–0012
721.8575	2070–0012
721.8600	2070–0012
721.8675	2070–0012
721.8750	2070–0012
721.8775	2070–0012
721.8700	2070–0012
721.8825	2070–0012
721.8850	2070–0012
721.8875	2070–0012
721.8900	2070–0012
721.8965	2070–0012
721.9075	2070–0012
721.9220	2070–0012
721.9240	2070–0012
721.9260	2070–0012
721.9280	2070–0012
721.9300	2070–0012
721.9320	2070–0012
721.9360	2070–0012
721.9400	2070–0012
721.9420	2070–0012
721.9460	2070–0012
721.9480	2070–0012
721.9500	2070–0012

40 CFR citation	OMB control No.
721.9520	2070–0012
721.9525	2070–0012
721.9527	2070–0012
721.9530	2070–0012
721.9540	2070–0012
721.9550	2070–0012
721.9570	2070–0012
721.9630	2070–0012
721.9675	2070–0012
721.9700	2070–0012
721.9720	2070–0012
721.9730	2070–0012
721.9740	2070–0012
721.9760	2070–0012
721.9780	2070–0012
721.9800	2070–0012
721.9820	2070–0012
721.9850	2070–0012
721.9870	2070–0012
721.9900	2070–0012
721.9920	2070–0012
721.9930	2070–0038
721.9940	2070–0012
721.9975	2070–0012
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723.50	2070–0012
723.175	2070–0012
723.250(m)(1)	2070–0012
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part 749, subpart D	2060–0193
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761.20	2070–0008 and 2070–0021
761.20(e)	2050–0047
761.30	2070–0003, 2070–0008 and 2070–0021
761.60	2070–0011
761.65	2070–0112
761.70	2070–0011
761.75	2070–0011
761.80	2070–0021
761.125	2070–0112
761.180	2070–0112
761.185	2070–0008
761.187	2070–0008
761.193	2070–0008
761.202	2070–0112
761.205	2070–0112
761.207	2070–0112
761.207(a)	2050–0039
761.208	2070–0112
761.209	2070–0112
761.210	2070–0112
761.211	2070–0112
761.215	2070–0112
761.218	2070–0112
Asbestos	
part 763, subpart D	2070–0059
part 763, subpart E	2070–0091
part 763, subpart F	2070–0091
part 763, subpart G	2070–0072
part 763, subpart I	2070–0082
Dibenzo–para–dioxin/Dibenzofurans	
766.35(b)(1)	2070–0054

40 CFR citation	OMB control No.
766.35(b)(2)	2070–0054
766.35(b)(3)	2070–0017
766.35(b)(4)(iii)	2070–0054
766.35(c)(1)(i)	2070–0054
766.35(c)(1)(ii)	2070–0054
766.35(c)(1)(iii)	2070–0017
766.35(d) Form	2070–0017
766.38	2070–0054
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790.5	2070–0033
790.42	2070–0033
790.45	2070–0033
790.50	2070–0033
790.55	2070–0033
790.60	2070–0033
790.62	2070–0033
790.68	2070–0033
790.80	2070–0033
790.82	2070–0033
790.85	2070–0033
790.99	2070–0033
Good Laboratory Practice Standards	
part 792	2010–0019, 2070–0004, 2070–0017, 2070–0033, 2070–0054 and 2070–0067
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795.232	2070–0033
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799.500	2070–0033
799.925	2070–0033
799.940	2070–0033
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799.1052	2070–0033
799.1053	2070–0033
799.1054	2070–0033
799.1250	2070–0033
799.1285	2070–0033
799.1550	2070–0033
799.1560	2070–0033
799.1575	2070–0033
799.1645	2070–0033
799.1650	2070–0033
799.1700	2070–0033
799.2155	2070–0033
799.2175	2070–0033
799.2200	2070–0033
799.2325	2070–0033
799.2475	2070–0033
799.2500	2070–0033
799.2700	2070–0033
799.3175	2070–0033
799.3300	2070–0033
799.3450	2070–0033
799.4000	2070–0033
799.4360	2070–0033
799.4400	2070–0033
799.4440	2070–0033
799.5000	2070–0033
799.5025	2070–0033
799.5055	2070–0033

PART 152—[AMENDED]

2. In part 152:

a. The authority citation for part 152 continues to read as follows:

Authority: 7 U.S.C. 136–136y. Subpart U is also issued under 31 U.S.C. 9701.

§§ 152.46, 152.50, 152.80, 152.85, 152.135, 152.142, 152.404, 152.406, 152.412, and 152.414 [Amended]

b. Sections 152.46, 152.50, 152.80, 152.85, 152.135, 152.142, 152.404, 152.406, 152.412, and 152.414 are amended by removing the parenthetical statement containing the OMB control number at the end of each section.

PART 153—[AMENDED]

3. In part 153:

a. The authority citation for part 153 continues to read as follows:

Authority: 7 U.S.C. 136–136y.

§ 153.79 [Removed]

b. Section 153.79 is removed.

PART 155—[AMENDED]

4. In part 155:

a. The authority citation for part 155 continues to read as follows:

Authority: 7 U.S.C. 136 through 136y.

§ 155.30 [Amended]

b. Section 155.30 is amended by removing the parenthetical statement containing the OMB control number at the end of the section.

PART 156—[AMENDED]

5. In part 156:

a. The authority citation for part 156 continues to read as follows:

Authority: 7 U.S.C. 136–136y.

§§ 156.36, 156.206, 156.208, 156.210, and 156.212 [Amended]

b. Sections 156.36, 156.206, 156.208, 156.210, and 156.212 are amended by removing the parenthetical statement containing the OMB control number at the end of each section.

PART 158—[AMENDED]

6. In part 158:

a. The authority citation for part 158 continues to read as follows:

Authority: 7 U.S.C. 136–136y.

§§ 158.30, 158.34, 158.75, 158.101, 158.190, 158.240, 158.340, 158.390, 158.440, 158.490, 158.540, 158.590, 158.640, 158.690, and 158.740 [Amended]

b. Sections 158.30, 158.34, 158.75, 158.101, 158.190, 158.240, 158.340, 158.390, 158.440, 158.490, 158.540, 158.590, 158.640, 158.690, and 158.740 are amended by removing the parenthetical statement containing the OMB control number at the end of each section.

PART 166—[AMENDED]

7. In part 166:

a. The authority citation for part 166 continues to read as follows:

Authority: 7 U.S.C. 136–136y.

§§ 166.20, 166.32, 166.43, and 166.50 [Amended]

b. Sections 166.20, 166.32, 166.43, and 166.50 are amended by removing the parenthetical statement containing the OMB control number at the end of each section.

PART 167—[AMENDED]

8. In part 167:

a. The authority citation for part 167 continues to read as follows:

Authority: 7 U.S.C. 136 (e) and (w).

§§ 167.20 and 167.85 [Amended]

b. Sections 167.20 and 167.85 are amended by removing the parenthetical statement containing the OMB control number at the end of each section.

PART 171—[AMENDED]

8. In part 171:

a. The authority citation for part 171 continues to read as follows:

Authority: 7 U.S.C. 136b and 136w.

§ 171.11 [Amended]

b. Section 171.11 is amended by removing the parenthetical statement containing the OMB control number at the end of the section.

PART 177—[AMENDED]

9. In part 177:

a. The authority citation for part 177 continues to read as follows:

Authority: 21 U.S.C. 348, 371(a) 331(j); Reorganization Plan No. 3 of 1970.

§§ 177.102, 177.105, 177.110, and 177.116 [Amended]

b. Sections 177.102, 177.105, 177.110, and 177.116 are amended by removing the parenthetical statement containing the OMB control number at the end of each section.

PART 372—[AMENDED]

10. In part 372 by revising the authority citation to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

PART 700—[AMENDED]

11. In part 700:

a. The authority citation for part 700 continues to read as follows:

Authority: 15 U.S.C. 2625.

§ 700.45 [Amended]

b. Section 700.45 is amended by removing the parenthetical statement containing the OMB control number at the end of the section.

PART 704—[AMENDED]

12. In part 704:

a. The authority citation for part 704 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

§§ 704.11, 704.33, 704.45, 704.95, 704.102, 704.104, and 704.175 [Amended]

b. Sections 704.11, 704.33, 704.45, 704.95, 704.102, 704.104, and 704.175 are amended by removing the parenthetical statement containing the OMB control number at the end of each section.

PART 707—[AMENDED]

13. In part 707:

a. The authority citation for part 707 continues to read as follows:

Authority: 15 U.S.C. 2611(b) and 2612.

§§ 707.65, 707.67, 707.70, 707.72, and 707.75 [Amended]

b. Sections 707.65, 707.67, 707.70, 707.72, and 707.75 are amended by removing the parenthetical statement containing the OMB control number at the end of each section.

PART 710—[AMENDED]

14. In part 710:

a. The authority citation for part 710 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

§§ 710.5 and 710.37 [Amended]

b. Sections 710.5 and 710.37 are amended by removing the parenthetical statement containing the OMB control number at the end of each section.

PART 712—[AMENDED]

15. In part 712:

a. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

§ 712.30 [Amended]

b. Section 712.30 is amended by removing the parenthetical statement containing the OMB control number at the end of the section.

PART 716—[AMENDED]

16. In part 716:

a. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d) and 2625(c).

§ 716.120 [Amended]

b. Section 716.120 is amend by removing the parenthetical statement containing the OMB control number at the end of the section.

PART 717—[AMENDED]

17. In part 717:

a. The authority citation for part 717 continues to read as follows:

Authority: 15 U.S.C. 2607(c).

§§ 717.12, 717.15, and 717.17 [Amended]

b. Sections 717.12, 717.15, and 717.17 are amended by removing the parenthetical statement containing the OMB control number at the end of each section.

PART 720—[AMENDED]

18. In part 720:

a. The authority citation for part 720 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2613.

§§ 720.1, 720.25, 720.38, 720.40, 720.62, 720.75, 720.78, 720.80, 720.90, 720.120, and Appendix A [Amended]

b. Sections 720.1, 720.25, 720.38, 720.40, 720.62, 720.75, 720.78, 720.80, 720.90, 720.120, and Appendix A to the part are amended by removing the parenthetical statement containing the OMB control number at the end of each section.

PART 721—[AMENDED]

19. In part 721:

a. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§§ 721.47, 721.72, 721.185, 721.225, 721.275, 721.325, 721.390, 721.400, 721.415, 721.460, 721.490, 721.505, 721.520, 721.530, 721.540, 721.550, 721.575, 721.600, 721.625, 721.700, 721.750, 721.775, 721.805, 721.840, 721.875, 721.925, 721.950, 721.1000, 721.1025, 721.1050, 721.1075, 721.1120, 721.1150, 721.1175, 721.1210, 721.1225, 721.1300, 721.1325, 721.1350, 721.1375, 721.1425, 721.1450, 721.1500, 721.1525, 721.1550, 721.1575, 721.1600, 721.1625, 721.1650, 721.1675, 721.1700, 721.1725, 721.1735, 721.1745, 721.1765, 721.1775, 721.1790, 721.1800, 721.1825, 721.1850, 721.1875, 721.1900, 721.1925, 721.1950, 721.2025, 721.2050, 721.2075, 721.2086, 721.2120, 721.2140, 721.2175, 721.2225, 721.2250, 721.2275, 721.2340, 721.2380, 721.2420, 721.2460, 721.2475, 721.2540, 721.2560, 721.2600, 721.2625, 721.2650, 721.2675, 721.2725, 721.2750, 721.2800, 721.2825, 721.2840, 721.2860, 721.2880, 721.2900, 721.2920, 721.2940, 721.2960, 721.3000, 721.3020, 721.3040, 721.3060, 721.3080, 721.3100, 721.3120, 721.3140, 721.3160, 721.3180, 721.3200, 721.3220, 721.3240, 721.3260, 721.3320, 721.3340, 721.3360, 721.3380, 721.3420, 721.3440, 721.3460, 721.3480, 721.3500, 721.3520, 721.3540, 721.3560, 721.3580, 721.3620, 721.3625, 721.3640, 721.3680, 721.3700, 721.3720, 721.3740, 721.3764, 721.3800, 721.3840, 721.3860, 721.3870, 721.3880, 721.3900, 721.4000, 721.4020, 721.4040, 721.4060, 721.4100, 721.4140, 721.4160, 721.4180, 721.4200, 721.4220, 721.4240, 721.4260, 721.4270, 721.4280, 721.4300, 721.4320, 721.4340, 721.4360, 721.4380, 721.4400, 721.4420, 721.4460, 721.4480, 721.4500, 721.4520, 721.4600, 721.4620, 721.4640, 721.4660, 721.4680, 721.4700, 721.4720, 721.4740, 721.4780, 721.4790, 721.4800, 721.4820, 721.4840, 721.4860, 721.4925, 721.5050, 721.5200, 721.5225, 721.5250, 721.5275, 721.5300, 721.5325, 721.5350, 721.5375, 721.5400, 721.5425, 721.5450, 721.5475, 721.5500, 721.5525, 721.5550, 721.5575, 721.5600, 721.5625, 721.5660, 721.5700, 721.5740, 721.5760, 721.5780, 721.5800, 721.5820, 721.5840, 721.5860, 721.5880, 721.5900, 721.5960, 721.5980, 721.6000, 721.6020, 721.6060, 721.6080, 721.6100, 721.6120, 721.6140, 721.6160, 721.6180, 721.6200, 721.6220, 721.6440, 721.6480, 721.6500, 721.6520, 721.6540, 721.6560, 721.6580, 721.6600, 721.6620, 721.6640, 721.6660, 721.6680, 721.6700, 721.6720, 721.6740, 721.6760, 721.6780, 721.6820, 721.6840, 721.6860, 721.6900, 721.6920, 721.6940, 721.6960, 721.6980, 721.7000, 721.7020, 721.7040, 721.7060, 721.7100, 721.7140, 721.7160, 721.7180, 721.7200, 721.7210, 721.7220, 721.7240, 721.7260, 721.7280, 721.7300, 721.7320, 721.7340, 721.7360, 721.7400, 721.7420, 721.7440, 721.7460, 721.7480, 721.7500, 721.7540, 721.7560, 721.7580, 721.7600, 721.7620, 721.7660, 721.7680, 721.7700, 721.7720, 721.7740, 721.7760, 721.7780, 721.8075, 721.8100, 721.8125, 721.8225, 721.8250, 721.8275, 721.8300, 721.8325, 721.8350, 721.8375, 721.8400, 721.8425, 721.8450, 721.8475, 721.8500, 721.8525, 721.8550, 721.8575, 721.8600, 721.8675, 721.8700, 721.8750, 721.8775, 721.8825, 721.8850, 721.8875, 721.8900, 721.9220, 721.9240, 721.9260, 721.9280, 721.9300, 721.9320, 721.9360, 721.9400, 721.9420, 721.9460, 721.9480, 721.9500, 721.9525, 721.9530, 721.9550, 721.9570, 721.9630, 721.9675, 721.9700, 721.9720, 721.9740, 721.9760, 721.9780, 721.9800, 721.9820, 721.9850, 721.9870, 721.9900, 721.9920, 721.9930, 721.9940, and 721.9975 [Amended]

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PART 723—[AMENDED]

20. In part 723:

a. The authority citation for part 723 continues to read as follows:

Authority: 15 U.S.C. 2604.

§§ 723.50 and 723.250 [Amended]

b. Sections 723.50 and 723.250(m) are amended by removing the parenthetical statement containing the OMB control number at the end of each section.

PART 761—[AMENDED]

21. In part 761:

a. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614 and 2616.

§§ 761.20, 761.30, 761.65, 761.180, 761.185, 761.187, 761.193, 761.205, 761.209, 761.210, 761.211, and 761.215 [Amended]

b. Sections 761.20, 761.30(a)(1)(xii), 761.65, 761.180, 761.185, 761.187, 761.193, 761.205, 761.209, 761.210, 761.211, and 761.215 are amended by removing the parenthetical statement containing the OMB control number at the end of each section.

PART 763—[AMENDED]

22. In part 763:

a. The authority citation for part 763 continues to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c).

§§ 763.124 and 763.178 [Amended]

b. Sections 763.124 and 763.178 are amended by removing the parenthetical statement containing the OMB control number at the end of each section.

PART 766—[AMENDED]

23. In part 766:

a. The authority citation for part 766 continues to read as follows:

Authority: 15 U.S.C. 2603 and 2607.

§ 766.35 [Amended]

b. Section 766.35 is amended by removing and reserving paragraph (e).

PART 790—[AMENDED]

24. In part 790:

a. The authority citation for part 790 continues to read as follows:

Authority: 15 U.S.C. 2603.

§§ 790.5, 790.50, and 790.80 [Amended]

b. Sections 790.5, 790.50, and 790.80 are amended by removing the parenthetical statement containing the OMB control number at the end of each section.

PART 795—[AMENDED]

25. In part 795:

a. The authority citation for part 795 continues to read as follows:

Authority: 15 U.S.C. 2603.

§§ 795.45 and 795.232 [Amended]

b. Sections 795.45 and 795.232 are amended by removing the parenthetical statement containing the OMB control number at the end of each section.

PART 799—[AMENDED]

26. In part 799:

a. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

§§ 799.500, 799.925, 799.940, 799.1051, 799.1052, 799.1053, 799.1054, 799.1250, 799.1285, 799.1550, 799.1560, 799.1575, 799.1645, 799.1650, 799.1700, 799.2155, 799.2175, 799.2200, 799.2325, 799.2475, 799.2500, 799.2700, 799.3175, 799.3300, 799.4000, 799.4360, 799.4400, 799.4440, 799.5000, and 799.5055 [Amended]

b. Sections 799.500, 799.925, 799.940, 799.1051, 799.1052, 799.1053, 799.1054, 799.1250, 799.1285, 799.1550, 799.1560, 799.1575, 799.1645, 799.1650, 799.1700, 799.2155, 799.2175, 799.2200, 799.2325, 799.2475, 799.2500, 799.2700, 799.3175, 799.3300, 799.4000, 799.4360, 799.4400, 799.4440, 799.5000, and 799.5055 are amended by removing the parenthetical statement containing the OMB control number at the end of each section.

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Part XI

The President

Proclamation 6574—Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Formulate or Implement Policies That Are Impeding the Transition to Democracy in Zaire or Who Benefit From Such Policies

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The President

Proclamation 6574 of June 21, 1993

Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Formulate or Implement Policies That Are Impeding the Transition to Democracy in Zaire or Who Benefit From Such Policies

By the President of the United States of America

A Proclamation

In light of the political and economic crisis in Zaire, I have determined that it is in the interests of the United States to restrict the entrance into the United States as immigrants and nonimmigrants of certain Zairian nationals who formulate or implement policies that impede Zaire's transition to democracy or who benefit from such policies, and the immediate families of such persons.

NOW, THEREFORE, I, WILLIAM J. CLINTON, by the power vested in me as President by the Constitution and laws of the United States of America, including section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code, hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation would, except as provided for in section 2 or 3 of this proclamation, be detrimental to the interests of the United States. I, therefore, do proclaim that:

Section 1. The entry into the United States as immigrants and nonimmigrants of persons who formulate, implement, or benefit from policies that impede Zaire's transition to democracy, and the immediate family members of such persons, is hereby suspended.

Sec. 2. Section 1 shall not apply with respect to any person otherwise covered by section 1 where entry of such person would not be contrary to the interests of the United States.

Sec. 3. Persons covered by sections 1 and 2 shall be identified pursuant to procedures established by the Secretary of State, as authorized in section 6 below.

Sec. 4. Nothing in this proclamation shall be construed to derogate from United States Government obligations under applicable international agreements.

Sec. 5. This proclamation is effective immediately and shall remain in effect until such time as the Secretary of State determines that it is no longer necessary and should be terminated.

Sec. 6. The Secretary of State shall have responsibility to implement this proclamation pursuant to procedures the Secretary may establish.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of June, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

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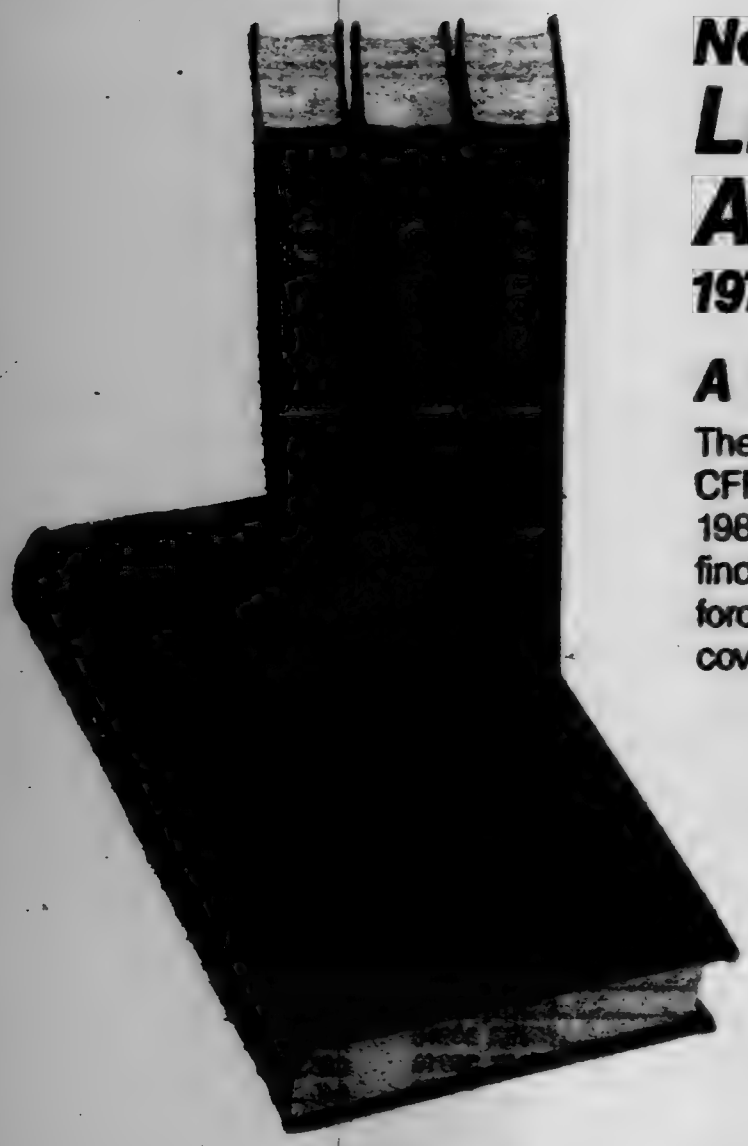

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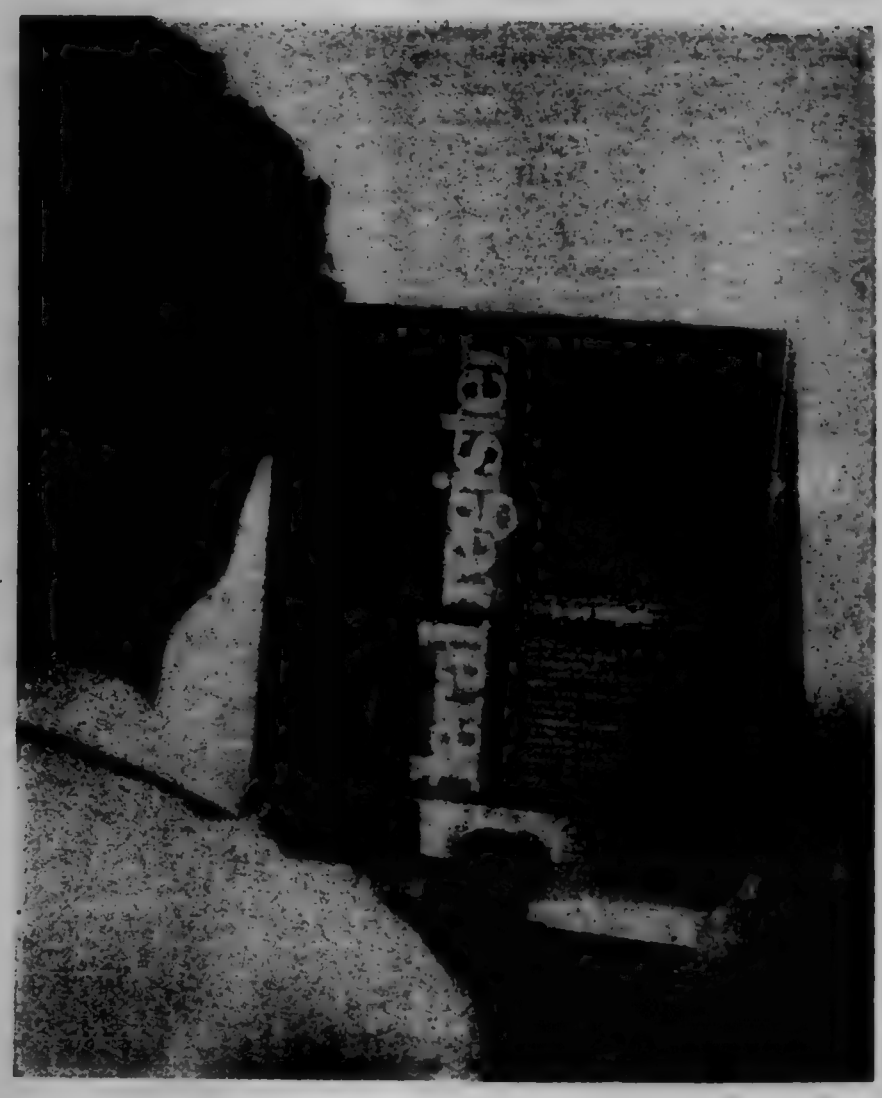

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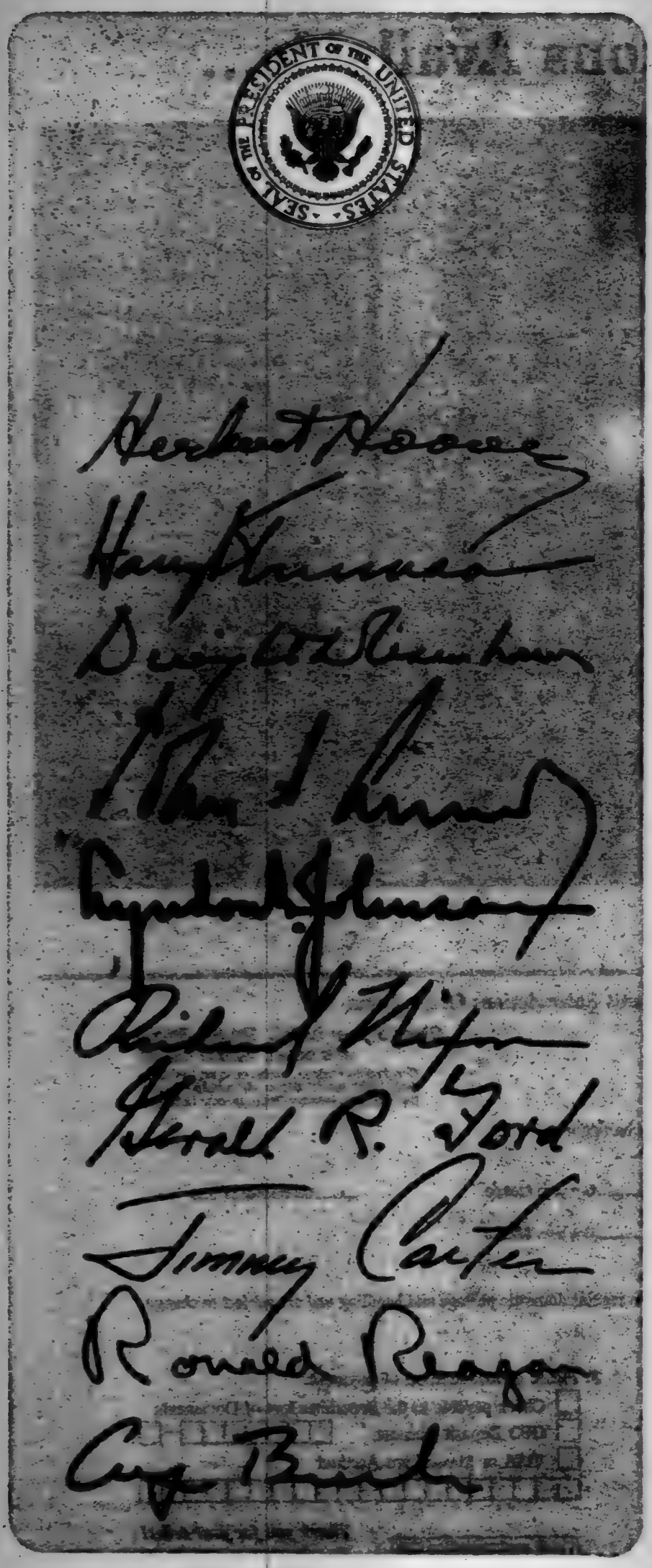

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DEPARTM

Bureau of

15 CFR Pa

[Docket No.

Revisions List; Navig

AGENCY: Bu Administra

ACTION: Int

SUMMARY: Commerce Export Ad (EAR) by r Satellite (C controlled 7A25B, an 7A94F tha Positionin under the of Commer the jurisdi controlled

DATES: Thi 1993. Com July 26, 19

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Rules and Regulations

Federal Register
Vol. 58, No. 120
Thursday, June 24, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 921245–2345]

Revisions to the Commerce Control List; Navigation and Avionics

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Commerce Control List (CCL) of the Export Administration Regulations (EAR) by removing Global Positioning Satellite (GPS) receiving equipment controlled by ECCNs 7A05A and 7A25B, and adding a note to ECCN 7A94F that clarifies which Global Positioning Satellite (GPS) receivers are under the jurisdiction of the Department of Commerce. All GPS receivers under the jurisdiction of Commerce are now controlled under ECCN 7A94F.

DATES: This rule is effective June 24, 1993. Comments must be received by July 26, 1993.

ADDRESSES: Nancy Crowe, Office of Technology and Policy Analysis, P.O. Box 273, Bureau of Export Administration, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Jerald Beiter, Office of Technology and Policy Analysis, Electronic Components Technical Center, Bureau of Export Administration, Telephone: (202) 482–1641.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation, and directed various other export control measures including the removal from the USML of all items contained on the COCOM dual-use list, unless such removal would significantly jeopardize U.S. national security. To implement this part of the directive, a space technical working group was established, consisting of representatives from the Departments of State, Commerce, and Defense, as well as other U.S. government agencies. The group is empowered to recommend the transfer of commercial satellites and related articles identified by the COCOM Industrial List from the USML to the CCL.

On April 27, 1992, the Department of State published a final rule establishing a new Category XV on the USML for Spacecraft Systems and Associated Equipment. On January 16, 1992, State published a proposed rule on military GPS receivers, and followed with a final rule on September 9, 1992, that formally moved military GPS receivers into Category XV on the USML. That rule creates a new paragraph under Category XV that describes GPS receiving equipment specifically designed, modified or configured for military use. The GPS equipment that had been controlled by ECCN 7A05A and much of the equipment that had been controlled by ECCN 7A25B are now in Category XV of the USML. Any GPS equipment not meeting the definition of military GPS receiving equipment described in Category XV is considered commercial in nature. All commercial GPS receiving equipment is under the jurisdiction of the Department of Commerce, and is classified under ECCN 7A94F on the CCL.

This interim rule amends the EAR to clarify which GPS receiving equipment is under the jurisdiction of the Department of Commerce.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.)*. These collections have been approved by the Office of Management and Budget under control numbers 0694–0005 and 0694–0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close July 26, 1993. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available

for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–5653.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

PART 799—[AMENDED]

The authority citation for part 799 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

In Supplement No. 1 to § 799.1, Category 7 is amended by removing ECCNs 7A05A and 7A25B and by adding a Note directly following the Requirements sections of ECCN 7A94F, to read as follows:

7A94F Other navigation direction finding equipment, radar, airborne communication equipment, all aircraft inertial navigation systems, and other avionic equipment, including parts and components, n.e.s.

Requirements

Validated License Required: SZ, Iran, Syria and South African military and police.
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

Note: Global Positioning Satellite receivers having the following characteristics are under the jurisdiction of the Department of State, Office of Defense Trade Controls:

a. Designed for encryption or decryption (e.g. Y-code) of GPS precise positioning service (PPS) signal;

b. Designed for producing navigation results above 60,000 feet altitude and at 1,000 knots velocity or greater;

c. Specifically designed or modified for use with a null-steering antenna or including a null-steering antenna designed to reduce or avoid jamming signals; or

d. Designed or modified for use with unmanned air vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km. (GPS receivers designed or modified for use with military unmanned air vehicle systems with less capability are considered to be specially designed, modified or configured for military use and therefore covered under Category XV, paragraph (c), of the ITAR).

N.B.: Manufacturers or exporters of equipment under DOC jurisdiction are advised that the U.S. Government does not assure the availability of the GPS P-code for civil navigation.

Dated: June 21, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93–14923 Filed 6–23–93; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Civil Money Penalties

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to FDA officials by adding a new delegations section concerning the issuance of notices and orders relating to the administrative imposition of civil money penalties under various statutes.

EFFECTIVE DATE: June 24, 1993.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: In recent legislation, Congress has provided for the administrative imposition by FDA of civil money penalties as a means of law enforcement. This legislation has included the National Childhood Vaccine Injury Act of 1986, the Prescription Drug Marketing Act of 1988, the Safe Medical Devices Act of 1990, and the Generic Drug Enforcement Act of 1992. In this document, the authority to perform certain functions necessary to the implementation of the authority to impose civil money penalties is being redelegated from the Commissioner to the Deputy Commissioner for Operations, the Associate Commissioner for Regulatory Affairs, and the Directors and Deputy Directors of the Center for Devices and Radiological Health (CDRH), the Center for Drug Evaluation and Research (CDER), and the Center for Biologics Evaluation and Research (CBER). Accordingly, FDA is adding new § 5.99 to the regulations.

Further redelegation of authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the

Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.99 is added to subpart B to read as follows:

§ 5.99 Issuance of notices and orders relating to the administrative imposition of civil money penalties under various statutes.

(a) The Center Director and Deputy Director of the Center for Drug Evaluation and Research (CDER), the Center Director and Associate Director, Policy Coordination and Public Affairs of the Center for Biologics Evaluation and Research (CBER), and the Center Director and Deputy Director of the Center for Devices and Radiological Health (CDRH) are authorized to issue notices of opportunity for hearings pursuant to § 12.21(b) of this chapter in all administrative civil money penalties proceedings involving the jurisdiction of their respective centers.

(b) The Associate Commissioner for Regulatory Affairs is authorized to issue notices of hearing pursuant to § 12.35 of this chapter for all administrative civil money penalties proceedings.

(c) In all administrative civil money penalties proceedings, the Deputy Commissioner for Operations is authorized, pursuant to § 12.130 of this chapter, to issue the final decision for the Commissioner, which constitutes final agency action.

(d) In all administrative civil money penalties proceedings, the Deputy Commissioner for Operations is authorized to issue all orders denying hearings and granting summary judgment pursuant to § 12.28 of this chapter where such orders are issued prior to the issuance of the notice of hearing.

Dated: June 17, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–14836 Filed 6–23–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 207, 213, 220, 221, 232, 241, 242, and 244

[Docket No. R–93–1662; FR–3224–I–01]

RIN 2502–AF64

Effect of Acquisition of Title by Mortgagee or the Secretary on a Title Insurance Policy

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule, request for public comment.

SUMMARY: This rule removes a provision in current HUD regulations requiring that any title insurance policy obtained in connection with the insurance of multifamily mortgages must provide that, upon acquisition of title by the mortgagee or the Secretary, "it will become an owner's policy running to the mortgagee or the Secretary, as the case may be" and substitutes the provision "it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be". The purpose of this rule is to remove a regulatory restriction and to adopt in its place a more efficient procedure.

DATES: Effective date: July 26, 1993. Comment due date: August 23, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Gaines E. Hopkins, Managing Attorney, Multifamily Mortgage Division, Office of General Counsel, room 9228, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–4090, TDD (202) 708–3259. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 207.36 of Title 24 of the code of Federal Regulations requires a mortgagee to furnish a survey and a policy of title insurance or its equivalent as a prerequisite to the closing of an insured multifamily housing loan. Where a title policy is to be furnished, the regulation requires that the policy name the mortgagee and HUD as the insured and also provide that, upon acquisition of title by either the mortgagee or HUD, the policy will become an owner's policy running to either the mortgagee or HUD.

If a mortgage default occurs and a mortgagee elects to exercise its right to assign the mortgage to HUD, it must comply with 24 CFR 207.258(b)(4)(ii). This provision requires that all policies of title insurance or evidences of title submitted to HUD have the original title coverage extended to include the date of the assignment of the mortgage. If the mortgagee elects to foreclose on the mortgage itself, or if it accepts a deed-in-lieu of foreclosure from the mortgagor, the requirements set out in §§ 207.258(c)(8) and 207.258a apply. These sections provide that if title insurance was utilized at the time of endorsement, the mortgagee will be required to submit an owner's title policy in favor of HUD that is effective on the date that the project is conveyed to the Secretary. If, however, an abstract and attorney's opinion were originally accepted at the time of endorsement, they are again acceptable. It should be noted that the aforementioned regulations either are incorporated into, or have a counterpart in, all parts of Title 24 of the Code of Federal Regulations that are applicable to multifamily and health care mortgage insurance programs.

There are two basic title insurance policy formats, one for owners/mortgagors and a second for lenders/mortgagees. Each is used in both commercial and residential transactions. The standard title policies have been written and promulgated by the industry trade organization, American Land Title Association (ALTA), for use in all jurisdictions except for a few notable exceptions, such as New York and Texas, that by statute require a local variation. For the last two decades, HUD has accepted the 1970 ALTA format, and no other ALTA format under the aforesaid regulatory requirements, in those jurisdictions that do not otherwise require the use of a particular title policy. (In jurisdictions that mandate a particular format, HUD has deferred to state law and accepted the state-mandated format.)

Periodically, ALTA has revised its approved standard title policy to provide for what it perceives as changing legal and market conditions. At the request of ALTA, HUD has

reviewed each new policy format to assess its positive or negative impact upon the specific title insurance needs of the Department. In 1987, ALTA published a new title policy that was reviewed and subsequently approved by HUD, but only upon the condition that, in multifamily and health care cases, title companies add an endorsement to the lender's policy providing that it will automatically "convert" to an owner's policy if HUD becomes the owner of the FHA-insured project as a result of foreclosure. The HUD Office of General Counsel expressed the opinion that a "conversion" endorsement is necessary to comply with the requirement in § 207.36(a)(1) "that upon acquisition of title by the mortgagee or the Secretary, [the title policy] will become an owner's policy * * *." This endorsement condition has been strongly resisted by ALTA and some of its individual corporate members, resulting in situations where it was only with considerable difficulty that title insurance was obtainable.

Title Industry Position

The title industry argues that a lender's policy cannot be "converted" to an owner's policy as HUD has requested and raises arguments relating to (1) distinctions between the two formats that bear directly upon the "value" of the coverage; (2) cost schedules that are on file with state insurance commissioners; (3) the unavailability of coverage to other mortgagees or private mortgage insurers; (4) the prior practice of FHA; (5) a different interpretation of the regulation; and (6) the opinion that either HUD or the lender should pay the entire cost of a new owner's policy. Inasmuch as HUD, by this rule, is removing the regulatory restriction, it is not necessary to set forth the relative merits and demerits of this industry position.

Current HUD Procedure

At present, HUD acquires title to a project pursuant to one of several procedures. The most common procedure is for the mortgagee to assign the mortgage to HUD when there is a default. As part of the assignment process, the mortgagee is required, at its own expense, to extend the coverage of the original mortgagee policy to include the time period between the dates of original endorsement for insurance and the assignment. This is usually accomplished by a limited title search and a "date-down" endorsement of the existing title policy, but may also be done through the purchase of an entirely new lender's policy. After assignment of a mortgage, if the default continues, it is HUD's policy to employ an attorney who practices in the jurisdiction where the project is located to act as a commissioner or trustee in the foreclosure. It is the responsibility of the foreclosure commissioner to perform a limited title search covering the time period between the assignment of the mortgage to HUD and the institution of proceedings under the Federal Foreclosure Act. Even though no title policy is obtained by HUD as a result of the foreclosure commissioner's findings and report, HUD would have the power to bring a malpractice action against the licensed attorney who acted as the foreclosure commissioner if the work product were flawed.

A lender also may elect not to assign, but to institute foreclosure proceedings on its own or to take title from the mortgagor by a deed-in-lieu of foreclosure and to convey title directly to HUD. After the lender obtains title to the project by means of foreclosure or a deed-in-lieu, it is entitled to transfer title directly to HUD. If the lender chooses to proceed in this manner, § 207.258a requires that it purchase, at its own expense, an owner's title policy "effective on or after the date of the recording of the conveyance to the Commissioner."

It should also be noted that section 207(k) of the National Housing Act and the implementing regulations also give HUD the option of either proceeding to foreclosure or taking a deed-in-lieu of foreclosure directly from the mortgagor, following the assignment of the project mortgage to the Secretary.

HUD Response

Title insurance is necessary in virtually all primary and secondary mortgage market transactions. Although individual title companies may still be willing to issue the 1970 ALTA lender's title policy on a case-by-case basis in those states where they are not forbidden by state regulation from doing so, the 1990 ALTA lender's policy format now represents the only title policy format that has the official approval of the title industry's trade association for use by title companies nationwide. The Department has determined that it is necessary to change its regulations so that the 1990 ALTA title policy format can be accepted by HUD for use in FHA-insured multifamily mortgage transactions.

The Department's regulations must be revised to remove the requirement that the Secretary, in every case, be issued an owner's title policy. HUD would retain the flexibility, however, to make such a determination on a case-by-case basis. Accordingly, in this rule HUD is revising 24 CFR 207.36(a)(1) and conforming other relevant sections by removing the phrase "it will become an owner's policy running to the mortgagee or the Secretary as the case may be," and substituting "it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be".

As a consequence of having removed the regulatory requirement in § 207.36 requiring the purchase of an owner's policy, HUD could either purchase an owner's title policy after acquisition of title, or HUD could choose to self-insure after acquisition of title. After this rule takes effect HUD will decide on a case-by-case basis either to purchase an owner's policy at its own expense, or to self-insure for the time period after acquisition of title.

II. Need for an Interim Rule

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessarily. The removal of the current regulatory requirement will not have adverse impact upon any party and will permit real estate transactions to go forward that are not being unnecessarily delayed because of confusion about the current regulatory provision.

III. Findings and Certifications

Regulatory Agenda

This rule was listed in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24414) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major

increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before its publication and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule effectively liberalizes title insurance requirements which must be met if a mortgage insurance claim is being made against HUD. Its impact on small entities will be minimal and any such impact will be beneficial.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. The rule does not significantly change existing roles and relationships between federal, state and local governments in any of the programs to which it applies.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being.

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

List of Subjects

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 220

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 241

Energy conservation, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 244

Health facilities, Mortgage insurance, Reporting and recordkeeping requirements.

The Catalog of Federal Domestic Assistance Numbers are: 14.112, 14.126, 14.128, 14. 129, 14.134, 14.135, 14.138, 14.139 and 14.155.

Accordingly, chapter II, title 24 of the Code of Federal Regulations is amended as follows:

PART 207—MULTIFAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 207 is revised to read as follows:

Authority: 12 U.S.C. 1713, 1715b; 42 U.S.C. 3535(d). Sections 207.258 and 207.258b are also issued under 12 U.S.C. 1701z–11(e).

2. Paragraph (a) of § 207.36 is revised to read as follows:

§ 207.36 Title evidence.

(a) Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to the Commissioner, and a policy of title insurance covering the property, as provided in paragraph (a)(1) of this section. If, for reasons the Commissioner considers to be satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (a)(2), (3), or (4) of this section, as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be.

(2) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of the title, signed by an attorney at law experienced in the examination of titles.

(3) A Torrens or similar title certificate.

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

3. The authority citation for 24 CFR part 213 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715e; 42 U.S.C. 3535(d).

4. Paragraph (a) of § 213.44 is revised to read as follows:

§ 213.44 Title evidence.

(a) Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to the Commissioner, and a policy of title insurance covering the property, as provided in paragraph (a)(1) of this

section. If, for reasons the Commissioner considers to be satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (a)(2), (3), or (4) of this section as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be.

(2) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of the title, signed by an attorney at law experienced in the examination of titles.

(3) A Torrens or similar title certificate.

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

* * * * *

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

5. The authority citation for 24 CFR part 220 is revised to read as follows:

Authority: 12 U.S.C. 1713, 1715b, 1715k; 42 U.S.C. 3535(d).

6. The introductory text of the section and paragraph (a) of § 220.580 are revised to read as follows:

§ 220.580 Title evidence.

When the principal amount of the loan exceeds $40,000, the lender, without expense to the Commissioner, shall furnish to the Commissioner a policy of title insurance as provided in paragraph (a) of this section, or if the lender is unable to furnish the policy for reasons satisfactory to the Commissioner, the lender, without expense to the Commissioner, shall furnish such evidence of title as provided in paragraph (b) of this section as the Commissioner may require. The following are the requirements covering the title insurance and abstract of title:

(a) The policy of title insurance shall be issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the lender and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the lender or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the lender or the Secretary, as the case may be.

* * * * *

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

7. The authority citation for CFR part 221 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715*l*; 42 U.S.C. 3535(d). Section 221.544(a)(3) is also issued under 12 U.S.C. 1707(a).

8. Paragraph (a) of § 221.563 is revised to read as follows:

§ 221.563 Title evidence.

(a) Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to the Commissioner, and a policy of title insurance covering the property, as provided in paragraph (a)(1) of this section. If, for reasons the Commissioner considers to be satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (a)(2), (3), or (4) of this section as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Committee, it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be.

(2) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of the title, signed by an attorney at law experienced in the examination of titles.

(3) A Torrens or similar title certificate.

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

* * * * *

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

9. The authority citation for 24 CFR part 232 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715w; 42 U.S.C. 3535(d).

10. The introductory text of the section and paragraph (a) of § 232.94 are revised to read as follows:

§ 232.94 Title evidence.

Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to the Commissioner, and a policy of title insurance covering the property, as provided in paragraph (a) of this section. If, for reasons the Commissioner considers to be satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (b) or (c) of this section as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(a) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be.

* * * * *

11. The introductory text of the section and paragraph (a) of § 232.600 are revised to read as follows:

§ 232.600 Title evidence.

The lender, without expense to the Commissioner, shall furnish to the Commissioner a policy of title insurance, or if the lender is unable to

furnish a policy for reasons satisfactory to the Commissioner, the lender, without expense to the Commissioner, shall furnish an abstract of title. The following are the requirements covering the title insurance and abstract of title:

(a) The policy of title insurance shall be issued by a company, and in a form, satisfactory to the Commissioner. The policy shall name as the insureds the lender and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the lender or the Secretary, the policy of title insurance will continue to provide the same coverage as the original policy, and will run to the lender or the Secretary, as the case may be.

* * * * *

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

12. The authority citation for 24 CFR part 241 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–6); 42 U.S.C. 3535(d).

13. Paragraph (a)(1) of § 241.85 is revised to read as follows:

§ 241.85 Title evidence.

(a) * * *

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name the lender and the Secretary of Housing and Urban Development, as their respective interests may appear, as the insured. The policy shall provide that upon acquisition of title by the lender or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the lender upon its acquisition of the property in extinguishment of the debt, and to the Secretary upon acquisition of the property pursuant to the loan insurance contract.

* * * * *

14. Paragraph (a)(1) of § 241.600 is revised to read as follows:

§ 241.600 Title evidence.

(a) * * *

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name the lender and the Secretary of Housing and Urban Development, as their respective interests may appear, as the insured. The policy shall provide that upon acquisition of title by the lender or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the lender upon its acquisition of the property in extinguishment of the debt, and to the Secretary upon acquisition of the property pursuant to the loan insurance contract.

* * * * *

15. Paragraph (a)(1) of § 241.1085 is revised to read as follows:

§ 241.1085 Title evidence.

(a) * * *

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name the lender and the Secretary of Housing and Urban Development, as their respective interests may appear, as the insured. The policy shall provide that upon acquisition of title by the lender or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the lender upon its acquisition of the property in extinguishment of the debt, and to the Secretary upon acquisition of the property pursuant to the loan insurance contract.

* * * * *

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

16. The authority citation for 24 CFR part 242 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715n(f), 1715z–7; 42 U.S.C. 3535(d).

17. The introductory text of the section and paragraph (a) of § 242.91 are revised to read as follows:

§ 242.91 Title evidence.

Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgage property, satisfactory to the Commissioner, and a policy of title insurance covering the property, as provided in paragraph (a) of this section. If, for reasons the Commissioner considers to be satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (b) or (c) of this section as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(a) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be.

* * * * *

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES (TITLE XI)

18. The authority citation for 24 CFR part 244 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1749aaa–5); 42 U.S.C. 3535(d).

19. The introductory text of the section and paragraph (a) of § 244.182 are revised to read as follows:

§ 244.182 Title evidence.

Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to the Commissioner, and a policy of title insurance covering the property, as provided in paragraph (a) of this section. If, for reasons the Commissioner considers to be satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (b) or (c) of this section as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of evidence are:

(a) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be.

* * * * *

Dated: June 16, 1993.

Nicholas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–14628 Filed 6–23–93; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. H–004L]

RIN 1218–AB34

Occupational Exposure to Lead in Construction; Approval of Information Collection Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Interim final rule.

SUMMARY: On May 4, 1993, OSHA published a final interim rule governing occupational exposure to lead in the construction industry (58 FR 26590). This standard is designed to reduce the risks from exposure to lead. At that time, OSHA submitted the information collection requirements to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) of 1980. This document amends the May 4, 1993, **Federal Register** document to properly display the OMB control number.

DATES: This amendment became effective June 3, 1993. The OMB clearance expires May 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N3637, 200 Constitution Ave., NW., Washington, DC 20210 Telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: The PRA provisions on information collection are triggered when an OSHA compliance officer asks an employer to produce certain records and, in some circumstances, when an employer goes out of business. The interim final lead in construction standard requires that OSHA have access to the employer's compliance plan (§ 1926.62(e)(2)(iv)), employee information and training records (§ 1926.62(l)(3)(ii)), as well as the employee's medical and monitoring records (§ 1926.62(n)(5)). If an employer ceases business operation and there is no successor employer to receive these records, the employer is required to notify the Director of the National Institute for Occupational Safety and Health at least three months prior to disposal of the records and transmit the records to the Director if he or she requests them § 1926.62(n)(6)(ii–iv).

Public reporting burden for collection of information is estimated to average .09 hour per employer to account for OSHA access to the employer's records, and transfer of records to NIOSH.

OMB reviewed the collection of information requirements for occupational exposure to lead in construction in accordance with the PRA, 44 U.S.C. 3501 et seq., and 5 CFR part 1320. On May 5, 1993, OMB approved all information requirements contained in 29 CFR 1926.62 under OMB clearance number 1218–0189 for three years, the maximum period authorized by the Paperwork Reduction Act.

Authority and Signature

This document was prepared under the direction of David C. Zeigler, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is being taken under section 1031 of the Housing and Community Development Act of 1992 (section 1031, Title X, 106 Stat. 3924 (42 U.S.C. 4853)), Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR part 1911.

Signed at Washington, DC this 16th day of June 1993.

David C. Zeigler,

Acting Assistant Secretary for Occupational Safety and Health.

Part 1926 of title 29 of the Code of Federal Regulations is hereby amended as follows:

PART 1926—[AMENDED]

1. The authority citation for subpart D of part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable.

Section 1926.59 also issued under 5 U.S.C. 553 and 29 CFR part 1911.

Section 1926.62 issued under Sec. 1031 of the Housing and Community Development Act of 1992 (Sec. 1031, Title X, 106 Stat. 3924 (42 U.S.C. 4853)).

2. In § 1926.62 by adding a parenthetical, as follows, at the end of the regulatory text:

§ 1926.62 Lead.

* * * * *

(Approved by the Office of Management and Budget under control number 1218–0189.)

[FR Doc. 93–14832 Filed 6–23–93; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with one exception, of proposed amendments to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 92–8) consists of revisions to Indiana's Surface Coal Mining and Reclamation Rules concerning ownership and control. The amendment defines what constitutes ownership and control of a surface coal mining operation; establishes actions to be taken to identify and correct improvidently issued permits; and establishes actions to be taken to resolve outstanding violations. The amendment is intended to revise the Indiana program to be no less effective than the corresponding Federal regulations.

EFFECTIVE DATE: June 24, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are

identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

By letter dated May 11, 1989 (Administrative Record No. IND–0644), OSM informed Indiana of changes to the Federal regulations concerning ownership and control which may necessitate changes in the Indiana program. Indiana responded on May 11, 1992 (Administrative Record No. IND–1080), when the Indiana Department of Natural Resources (DNR) submitted a proposed amendment to the Indiana program at 310 Indiana Administrative Code (IAC) 12–0.5, 12–3, and 12–6.

By letter dated August 26, 1992, OSM requested that Indiana correct and/or clarify certain provisions in the proposed amendment (Administrative Record No. IND–1137).

By letter dated November 13, 1992, Indiana submitted a revised amendment concerning ownership and control (Program Amendment 92–8) and requested that the amendment submitted on May 11, 1992 (Program Amendment 92–3), be withdrawn (Administrative Record No. IND–1167). OSM published a Notice of Withdrawal on December 2, 1992 (57 FR 57039).

By letter dated December 3, 1992 (Administrative Record No. IND–1178), Indiana submitted a change to the proposed amendments. AT 310 IAC 12–3–119.6(c), the citation which reads "IC 4–21.5–3–6" is revised to read "IC 4–21.5–3." Indiana explained that Indiana Code (IC) 4–21.5–3 is the proper reference for the initiation of appeal and will reduce the possibility of confusion. During the course of OSM's review of the proposed amendment, OSM informed Indiana of various concerns with the proposed amendments. Indiana responded to OSM concerns on April 23, 1993 (IND–1236), May 7, 1993 (IND–1243), and May 17, 1993 (IND–1245).

OSM announced receipt of the proposed amendment in the January 12, 1993, **Federal Register** (58 FR 3928), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on February 11, 1993. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program.

A. Revisions to Indiana's Rules That Are Substantively Identical to the Corresponding Federal Regulations

State regulation	Subject	Federal counterpart
310 IAC 12–0.5–72.5	Definition of MSHA	30 CFR 701.5.
310 IAC 12–0.5–80.5	Definition of Owned or Controlled and Owns and Controls	30 CFR 773.5.
310 IAC 12–3–19.1	Identification of Interests	30 CFR 778.13.
310 IAC 12–3–20	Compliance Information	30 CFR 778.14.
310 IAC 12–3–111(a), (a)(1)(A), and (b)(2)	Review of Permit Applications	30 CFR 773.15 (a)(1), (b)(2).
310 IAC 12–3–112(a), (a)(1), (a)(2), (a)(3)(A), (a)(4), (a)(5), (a)(7) through (12).	Permit Approval or Denial	30 CFR 773.15(c).
310 IAC 12–3–119.5(a), (b), (c), (d)(1) and (e)	Improvidently Issued Permits	30 CFR 773.20.
310 IAC 12–3–119.6(a), (a)(2) through (a)(4), and (c)	Improvidently Issued Permits—Rescission Procedures	30 CFR 773.21.
310 IAC 12–6–5 (a) through (g), and (i) through (j)	Cessation Orders	30 CFR 843.11 (a)(1), (3), (b)(1), (c)(4), (f).

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Indiana's proposed rules are no less effective than the Federal regulations.

B. Revisions to Indiana's Rules That Are Not Substantively Identical to the Corresponding Federal Regulations

Revisions which are not discussed below concern nonsubstantive wording changes, or revise paragraph notations to reflect organizational changes resulting from this amendment.

1. 310 IAC 12–3–111 Review of Permit Applications

(a) In subsection 111(a)(1)(B), the new language provides that if no informal conference is held under 310 IAC 12–3–109, or no hearing is held pursuant to IC 13–4.1–4–2(c), the permit decision shall be made within 180 days from the date the administratively complete application is submitted to the director of IDNR.

The Federal regulations at 30 CFR 773.15(a) provide that such permit decisions be made within a reasonable time set by the regulatory authority. The Director finds that the proposed 180-day period set by Indiana is reasonable and that the proposed provision is no less effective than the Federal regulations. The Director notes that there was a word missing and an extraneous word in the original submittal of this provision. These errors were corrected in the January 1, 1993, printing of the proposed rules in the Indiana Register.

(b) In subsection 111(a)(2), the new language provides that the applicant for a permit or revision of a permit shall have the burden of establishing that the application is in compliance with all requirements of 310 IAC 12. The counterpart Federal regulations at 30 CFR 773.15(b)(2) provide that the applicant shall have the burden of establishing that the application is in compliance with the regulatory program. That is, to be no less effective than the Federal regulation, the applicant must be responsible for compliance not only with 310 IAC 12, but also with IC 13–4.1, and any other applicable Indiana statutes and rules, directives, policy memos, and code of regulations which, together, constitute the Indiana regulatory program.

In response to OSM's comments about this provision, Indiana will amend the proposed provision to require the applicant to establish that the application is in compliance with all requirements of 310 IAC 12 "and the approved regulatory program." The Director finds that with the added language quoted above, the provision is substantively identical to and no less effective than the counterpart Federal regulations. Therefore, the Director is approving 310 IAC 12–3–111(a)(2) with the understanding that Indiana will add, prior to final promulgation of this rule, that the applicant must establish that the application is in compliance with all requirements of the approved regulatory program.

(c) In subsection 111(b)(1), most of the pre-existing language has been deleted and replaced with new language. As

revised, subsection 111(b)(1) is substantively identical to the counterpart Federal regulations at 30 CFR 773.15(b)(1).

In the Federal regulations at 30 CFR 773.15(b)(1), OSM interprets the word "State" (as in "Federal and State failure-to-abate cessation orders," and "unabated Federal and State imminent harm cessation orders") to mean any and all State cessation orders, not just those issued by Indiana. In response to OSM's inquiry about Indiana's interpretation of its rule, Indiana stated that Indiana interprets the word "state" (non-capitalized) to mean all states. Therefore, with this interpretation of Indiana's use of the word "state," the Director finds that the proposed language is substantively identical to and no less effective than the Federal language at 30 CFR 773.15(b)(1).

The proposed language contains an apparent typographical error. The Indiana rule incorrectly identifies section 518 of SMCRA as "30 U.S.C. 1232." The correct codification of section 518 of SMCRA is "30 U.S.C. 1268." Indiana will correct this citation during final rule promulgation.

(d) The several general references to SMCRA which appear in the proposed rules and cite "30 U.S.C. 1232" are incorrect.

These incorrect citations appear at 310 IAC 12–3–111(b)(1) and (c), and 310 IAC 12–3–112(a) (1) and (2). The correct citation is " 30 U.S.C. 1201–1328." Indiana will correct these citations during final rule promulgation.

(e) At subsection 111(b)(1), Indiana provides the following:

> In the absence of a failure to abate cessation order, the director may presume that a notice of violation issued pursuant to rule 6 of this article or under a federal or state program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application, or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties.

In litigation relating to 30 CFR 773.15(b)(1) before the U.S. District Court for the District of Columbia, the Secretary of the Department of the Interior advised the court that he would reconsider the issue of whether, in the absence of a failure to abate cessation order (FTACO), the regulatory authority may presume that a notice of violation (NOV) has been or is being corrected. *National Wildlife Federation* v. *Lujan*, No. 88–3117 (consolidated) (Memorandum of Points and Authorities in Support of the Federal Defendants Cross-Motion for Summary Judgment and In Opposition to Plaintiffs' Motion for Summary Judgment, pp. 89–90). Subsequently, on September 6, 1991, OSM published a proposed rule in the **Federal Register** (56 FR 45780) to revise 30 CFR 773.15(b)(1) to delete the presumption that, in the absence of a FTACO, an NOV has been or is being corrected. As a consequence of the proposed Federal rule, OSM is deferring its decision concerning the proposed language quoted above. The remainder of subsection 111(b)(1) is substantively identical to and no less effective than the Federal regulations and is approved.

(f) Subsection 111(c) has been amended to mirror the Federal regulations at 30 CFR 773.15(b)(3). In the course of its review of the proposed language, OSM asked Indiana if Indiana interprets the proposed rule such that the citation of SMCRA includes all State regulatory programs. (OSM interprets reference to "the Act" (SMCRA) at 30 CFR 773.15(b)(3) to include all State regulatory programs under SMCRA.) In response to OSM, Indiana stated that the IDNR interprets subsection 111(c) to require consideration of a demonstrated pattern of willful violations in states outside Indiana the same as it requires for demonstrated patterns of willful violations within Indiana. With this interpretation, subsection 111(c) is substantively identical to and no less effective than the Federal regulations at 30 CFR 773.15(b)(3). The Director finds, with the understandings noted above, and except as noted in 1(e) above, that 310 IAC 12–3–111 is substantively identical to and no less effective than the Federal regulations at 30 CFR 773.15.

2. 310 IAC 12–3–112 Permit Approval or Denial

(a) At subsection 112(a)(3)(B), the proposed new language provides that no permit application or application for a significant revision of a permit shall be approved unless the proposed permit area is shown not within an area designated as unsuitable for mining pursuant to 310 IAC 12–2–1. The new language is substantively identical to the counterpart Federal regulations at 30 CFR 773.15(c)(3)(ii) except that the proposed citation of 310 IAC 12–2–1 is not a complete counterpart to the Federal citation of "Parts 762, 764, and 769." To be no less effective than the Federal counterpart, Indiana should cite 310 IAC "12–2" rather than "12–2–1." In response to OSM's comments concerning this provision, Indiana stated that the citation will be corrected to read "310 IAC 12–2" as the final rule is promulgated. The Director finds, therefore, with the understanding that the citation of "12–2–1" will be changed prior to final promulgation to read "12–2," that the proposed language is no less effective than the Federal regulations.

(b) At subsection 112(a)(6), the proposed new language provides that no permit application or application for a significant revision of a permit shall be approved unless the applicant has demonstrated that any existing structure will comply with the applicable performance standards of 310 IAC 12–5–5 through 12–5–72, and 310 IAC 12–3–113. The new language is substantively identical to the counterpart Federal regulations at 30 CFR 773.15(c)(6) except that the proposed rule does not require compliance with the Indiana rules for underground mining as is required by the Federal rule. In response to OSM's comments concerning this provision, Indiana stated that the citation will be corrected during final promulgation. The Director finds, therefore, with the understanding that the rule will be changed prior to final promulgation to also require compliance with Indiana's underground mining rules, that the proposed language is no less effective than the Federal regulations.

3. 310 IAC 12–3–119.5(d)(2) Improvidently Issued Permits—General Procedures

This new provision is substantively identical to the counterpart Federal language at 30 CFR 773.20(b)(3) except that the proposed language uses the word "during" where the Federal language uses "under." Since use of the word "during" would render the rule less effective than the Federal language, OSM advised Indiana that the word "during" should be replaced by "under." In response, Indiana stated that the correction will be made during final rule promulgation. The Director finds, with the understanding that prior to final rule promulgation, the word "during" will be replaced with "under," that the proposed language is no less effective than the Federal regulations.

4. 310 IAC 12–3–119.6 Improvidently Issued Permits-Rescission Procedures

(a) At new subsection 119.6(a), Indiana provides that proposed suspension and rescission of a permit will become effective unless the permittee submits proof, and the Director of IDNR makes any of the findings provided at subsection 119.6(a) (1) through (4). The proposed language at subsection 119.6(a)(1) states the following: "[t]he finding of the director under section 119.5 (b) of this rule was erroneous." The proposed language is substantively identical to the Federal

regulations at 30 CFR 773.21(a)(1) except that the Indiana citation of 310 IAC 12–3–119.5 (b) is not the complete counterpart to the Federal citation of 30 CFR 773.20(b) which is cross-referenced at 30 CFR 773.21(a)(1). To be no less effective than the Federal regulations, the Indiana rule should cite 310 IAC 12–3–119.5 (b) through (d) as the counterpart to 30 CFR 773.20(b). In response to OSM's comments concerning this provision, Indiana stated that the provision will be changed to cite 310 IAC 12–3–119.5 (b) through (d). The Director finds, with the understanding that prior to final rule promulgation, the citation will be amended to read "119.5 (b) through (d)," that the proposed language is no less effective than the Federal regulations.

(b) At new subsection 119.6(b), the proposed language is substantively identical to the counterpart Federal regulations at 30 CFR 773.21(b) concerning cessation of operations, with one exception. Where the Federal regulation states "[a]fter permit suspension or rescission" the Indiana rule states "[a]fter permit cessation of rescission." In Indiana's rule, the word "cessation" should read "suspension." This change would render the Indiana language no less effective than 30 CFR 773.21(b) and would provide consistency with Indiana's rule at 310 IAC 12–3–119.6(a). In response to OSM's comment concerning this provision Indiana stated that the correct wording, "permit suspension or rescission," has been inserted and will be part of the rule when promulgated. The Director finds, with the understanding that the final promulgated language of this provision will read "permit suspension or rescission," that 310 IAC 12–3–119.6(b) is no less effective than the Federal Regulations.

5. 310 IAC 12–6–5 Cessation Orders

(a) The Indiana rule at subsection 5(h) does not provide for the termination of a cessation order written under 310 IAC 12–6–5(b) concerning lack of a valid permit. In response to OSM's comment concerning this provision, Indiana stated that the rule will be revised to provide for the termination of a cessation order under 310 IAC 12–6–5 (a) or (b). The Director finds, with the understanding that 310 IAC 12–6–5(h) will be revised prior to final promulgation to cite subsection "(a) or (b)" of 310 IAC 12–6–5, that 310 IAC 12–6–5(h) is no less effective than the Federal regulations at 30 CFR 843.11(f).

(b) In subsection 5(k), the new language is substantively identical to the counterpart Federal regulations at 30 CFR 773.17(i) with one exception. The Federal regulation applies to cessation orders issued under either 30 CFR 843.11 or the Indiana program. The Indiana provision at subsection 5(k), however, excludes cessation orders issued under 30 CFR 843.11 by referring only to cessation orders issued under 310 IAC 12–6–5. To be no less effective than the Federal regulations, 310 IAC 12–6–5(k) must apply to both Indiana and Federal cessation orders. In response to OSM's comments concerning this provision, Indiana stated that the provision will be revised to also include cessation orders issued under the Federal requirements at 30 CFR 843.11. The Director finds, with the understanding that 310 IAC 12–6–5(k) will be revised prior to final promulgation to include Federal cessation orders under 30 CFR 843.11, that 310 IAC 12–6–5(k) is no less effective than the Federal regulations at 773.17(i).

(c) In subsection 5(l), the new language is substantively identical to the Federal regulations at 30 CFR 843.11(g) with one exception. The proposed reference to subsection "(h)" of 310 IAC 12–6–5 is incorrect and should be changed to read "(k)." 310 IAC 12–6–5(k) is the counterpart to 30 CFR 773.17(i) which is cited in the Federal regulation. In response to OSM's comment, Indiana stated that this error will be corrected during final rule promulgation. The Director finds, with the understanding that prior to final rule promulgation, the reference to subsection "(h)" will be changed to "(k)," that 310 IAC 12–6–5(l) is no less effective than 30 CFR 843.11(g).

6. 310 IAC 12–3–19 Identification of Interests

Indiana has repealed this section and replaced it with 310 IAC 12–3–19.1 concerning identification of interests. As noted above in the Director's findings at A., the proposed Indiana rules at 310 IAC 12–3–19.1 are identical in meaning and no less effective than the corresponding Federal regulations at 30 CFR 778.13. Therefore, the Director finds the deletion of 310 IAC 12–3–19 from the Indiana rules does not render the Indiana program less effective than the Federal regulations and is approved.

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The U.S. Fish and Wildlife Service (FWS) recommended that the wording of 310 IAC 12–3–112(a)(10) be changed to state that no permit shall be approved which would "jeopardize" the continued existence of a listed species, and that a permit which may "affect" a listed species not be issued until consultation with the FWS has been completed.

FWS stated that section 7 of the Endangered Species Act prohibits actions by a Federal agency (or its official designee) which would "jeopardize" the continued existence of a listed species. Also, section 7 of the Endangered Species Act requires consultation with the FWS if a Federal/designee action may "affect" a listed species (50 CFR 402.14). Therefore, FWS asserts, the proposed wording (and that of the Federal counterpart) is confusing. In response, the Director notes that Indiana's proposed language at 310 IAC 12–3–112(a)(10) is identical to the counterpart Federal regulations at 30 CFR 773.15(c)(10). According to the Federal regulations at 30 CFR 732.17(h)(10), the applicable criteria for approval or disapproval of State program amendments is set forth in 30 CFR 732.15. 30 CFR 732.15(a) provides that (among other criteria) the Secretary shall not approve a State program (or in this case an amendment to a State program) unless the Secretary finds the program amendment provides for the State to carry out the provisions and meet the purposes of SMCRA and the Federal regulations at title 30, chapter VII and that the State's laws and regulations are in accordance with SMCRA and consistent with the requirements of title 30, chapter VII. As stated above, Indiana's proposed language is identical to the counterpart Federal language.

Public Comments

The public comment period and opportunity to request a public hearing was announced in the January 12, 1993, **Federal Register** (58 FR 3928). The comment period closed on February 11, 1993. No comments were received during the comment period, and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

V. Director's Decision

Based on the findings above, and except as noted below, the Director is approving Indiana's program amendment number 92–6 as submitted by Indiana on November 13, and revised on December 3, 1992. As discussed above in Finding B.1.(e), the Director is deferring decision on proposed language at 310 IAC 12–3–111(b)(1) concerning

presumption that an NOV has been or is being corrected. The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required. However, by letters dated December 18, 1992 (Administrative Record Number IND–1197), and January 13, 1993 (Administrative Record Number IND–1206), EPA concurred without comment.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

ated: June 17, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 914.15, paragraph (tt) is added to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(tt) The following amendment (Program Amendment Number 92–8) to the Indiana program as submitted to OSM on November 13, 1992, and revised on December 3, 1992, is approved, except as noted below, effective June 24, 1993: 310 IAC 12–0.5 concerning the definitions of "MSHA," and "Owned or controlled" and "owns or controls;" the deletion of 310 IAC 12–3–19 concerning identification of interests; 310 IAC 12–3–19.1 concerning identification of interests; 310 IAC 12–3–20 concerning compliance information; 310 IAC 12–3–111 concerning review of permit applications except that decision on 310 IAC 12–3–111(b)(1) concerning presumption that an NOV has been or is being corrected, is deferred; 310 IAC 12–3–112 concerning permit approval or denial; 310 IAC 12–3–119.5 concerning improvidently issued permits—general; 310 IAC 12–3–119.6 concerning improvidently issued permits—rescission procedures; and 310 IAC 12–6–5 concerning cessation orders.

[FR Doc. 93–14889 Filed 6–23–93; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–93–30]

Special Local Regulations for Marine Events; Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements 33 CFR 100.509 for the Welcome America Fireworks Display. The display will be launched from barges anchored off Penn's Landing, Delaware River, Philadelphia, Pennsylvania on July 2, 1993. The regulations are needed to control vessel traffic in the immediate vicinity of the event due to the confined nature of the waterway and expected spectator craft congestion during the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.509 are effective from 8:30 p.m. to 11 p.m., July 2, 1993. If inclement weather causes the postponement of the

event, the regulations are effective from 8:30 p.m. to 11 p.m., July 4, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Philadelphia (215) 271–4825.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR Christopher Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Pennsylvania Convention and Visitors Bureau submitted an application dated May 19, 1993 to hold the Welcome America Fireworks Display. The display will be launched from barges anchored off Penn's Landing, Delaware River, Philadelphia, Pennsylvania. Since many spectator vessels are expected to be in the area to watch the fireworks, the regulations in 33 CFR 100.509 are being implemented for this event. The fireworks will be launched from within the regulated area. The waterway will be closed during the display. Since the closure will not be for an extended period, commercial traffic should not be severely disrupted.

Dated: June 7, 1993.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93–14693 Filed 6–23–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Wilmington, NC Regulation 93–02]

Safety Zone Regulations; Eagle Island Fireworks Display, Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Cape Fear River in the vicinity of the Battleship USS North Carolina Memorial in the waterfront area of downtown Wilmington, North Carolina. The safety zone is needed to protect people, vessels, and property from safety hazards associated with the launching of fireworks from Eagle Island. Entry into this zone is prohibited unless authorized by the Captain of the Port, Wilmington, North Carolina, or his designated representative.

EFFECTIVE DATE: This regulation is effective from 8 p.m. to 10 p.m. on July 4, 1993, unless sooner terminated by the Captain of the Port, Wilmington, North Carolina.

FOR FURTHER INFORMATION CONTACT: LCDR R.W. Muth, USCG, c/o U. S. Coast Guard Captain of the Port, suite 500, 272 N. Front Street, Wilmington, North Carolina 28401–3907, Phone: (919) 343–4881.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would not have been possible since the USS North Carolina Battleship Commission did not request Coast Guard assistance until May 28, 1993.

Drafting Information

The drafters of this regulation are JTJG G.A. Howard, project officer for the Captain of the Port, Wilmington, North Carolina, and LCDR C.A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The City of Wilmington has requested that the Coast Guard provide a safety zone for the event. There will be a fireworks display from 9 p.m. to 9:30 p.m. on July 4, 1993. The launching of commercial fireworks constitutes a potential safety hazard to the people, vessels, and property in the vicinity. This safety zone is needed to protect the public from the potential hazards near the fireworks display and to insure a smooth launching operation. It will consist of an area of water 200 yards wide and 667 yards long.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T0531 is added, to read as follows:

§ 165.T0531 Safety Zone: Eagle Island Fireworks Display, Cape Fear River, Vicinity of Battleship USS NORTH CAROLINA Memorial, Wilmington, North Carolina.

(a) *Location.* The following area is a safety zone:

(1) The waters of the Cape Fear River circumscribed by a line drawn from the following navigational points: Latitude 34°14′12″ North, longitude 77°57′10″ West, then east to latitude 34°14′12″ North, longitude 77°57′06″ West, then south to latitude 34°13′54″ North, longitude 77°57′00″ West, then west to latitude 34°13′54″ North, longitude 77°57′06″ West, then to the beginning.

(2) The safety zone boundary can be described as follows: The zone starts at the stern of the Battleship USS North Carolina, across the Cape Fear River to the north end of the Coast Guard moorings, down along the east bank of the Cape Fear River to the bow of the tug Captain John Taxis Memorial (Chandler's Wharf), back across the Cape Fear River to Eagle Island, and then up along the west bank of the Cape Fear River to the stern of the Battleship USS NORTH CAROLINA.

(b) *Effective date.* This regulation is effective from 8 p.m. to 10 p.m. on July 4, 1993, unless sooner terminated by the Captain of the Port, Wilmington, North Carolina.

(c) *Local regulations.* Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(1) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(2) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of the section, but may not block a navigable channel.

(d) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Wilmington, North Carolina to act on his behalf. The following officers have or will be designated by the Captain of the Port: The Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone,

and the Duty Officer at the Marine Safety Office, Wilmington, North Carolina.

(1) The Captain of the Port and the Duty Officer at the Marine Safety Office, Wilmington, North Carolina can be contacted at telephone number (919) 343–4895.

(2) The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channels 16 and 81.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Dated: June 10, 1993.

C.F. Eisenbeis,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, NC.

[FR Doc. 93–14890 Filed 6–23–93; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG31

Resumption and Payment of Withheld Benefits; Incompetents $1,500 Estate Cases

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning the resumption and payment of withheld benefits of certain incompetent veterans whose estates exceed $1,500. This amendment is necessary because the United States Court of Veterans Appeals (COVA) invalidated a portion of the regulations as exceeding the regulation-prescribing authority of the Secretary of Veterans Affairs. The intended effect of this amendment is to bring the regulations into conformance with the COVA decision.

EFFECTIVE DATE: This amendment is effective March 11, 1993, the date that COVA rendered the decision.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 5503(b)(1)(A) precludes the payment of compensation when a veteran is without spouse or child; is receiving hospital treatment, institutional care, or domiciliary care without charge or otherwise from the U.S. or any political subdivision of the U.S.; is rated incompetent by the Secretary in accordance with regulations; and his or her estate (excluding, generally, the value of his or her home) exceeds $1,500. While subparagraph (A) requires suspension of compensation when all four prerequisites exist, if the veteran is held competent by VA for a period of six months, subparagraph (B) imposes the additional requirement that the suspended benefits be paid in a lump sum.

The Secretary has prescribed at 38 CFR 3.558(c)(2) an additional requirement that a veteran rated competent for six months or longer and thereafter re-rated as incompetent must have a spouse or child in order to be eligible for the lump-sum payment. In *Felton* v. *Brown*, U.S. Vet. App. No. 90–965, COVA held that the requirement found at 38 CFR 3.558(c)(2) is an unauthorized limitation on the scope of 38 U.S.C. 5503, and is, therefore, neither "appropriate to carry out" nor "consistent with" the law under 38 U.S.C. 501(a). We have amended § 3.558 to delete paragraph (c)(2) effective March 11, 1993, the date of the COVA decision.

Additionally, we have amended the remaining text of § 3.558 to clarify that the sole criterion for determining whether a veteran is entitled to a lump-sum payment is that he or she must have been subsequently rated competent by VA for a period of not less than six months. VA believes that this interpretation of the statute is consistent with the COVA decision in *Felton* v. *Brown*, which held that 38 U.S.C. 5503(b)(1)(B) clearly mandates a lump-sum payment after the expiration of a six-month period following competency.

VA is issuing a final rule to implement the decision of COVA in *Felton* v. *Brown*. Because this amendment implements a COVA decision invalidating a portion of a regulation, publication as a proposal for public notice and comment is unnecessary.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. sections 601–612. This amendment will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: May 25, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.558, paragraph (c) is revised to read as follows:

§ 3.558 Resumption and payment of withheld benefits; incompetents $1,500 estate cases.

* * * * *

(c) Any amount not paid because of the provisions of § 3.557(b), and any amount of compensation or retirement pay withheld pursuant to the provisions of § 3.551(b) (and/or predecessor regulatory provisions) as it was

constituted prior to August 1, 1972, and not previously paid because of the provisions of § 3.557(b), will be awarded to the veteran if he or she is subsequently rated competent by VA for a period of not less than six months.

(Authority: 38 U.S.C. 5503)

[FR Doc. 93–14909 Filed 6–23–93; 8:45 am]
BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI29–01–5744; FRL–4664–4]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is taking action to approve Wisconsin's air quality planning procedures as a revision to Wisconsin's State Implementation Plan (SIP) for ozone. USEPA's action is based upon a revision request that was submitted by the State to satisfy the requirements of Section 174 of the Clean Air Act (CAA), which requires the State and elected officials of affected local governments containing ozone nonattainment areas to prepare SIP revisions under the continuing transportation air quality planning process described in Section 108(e) of the CAA. Section 174 allows the State to recertify the Lead Planning Organization (LPO) and to indicate which agency or agencies will be responsible for developing, adopting, and implementing each element of the revised SIP.

DATES: This action will be effective August 23, 1993 unless notice is received by July 26, 1993 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Michael Leslie at (312) 353–6680, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Air Toxics and Radiation Branch, Regulation Development Section (AT–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6680.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On November 15, 1992, the Wisconsin Department of Natural Resources (WDNR) submitted a SIP revision to the USEPA, which certified the responsible air quality planning organization and updated the air quality planning procedures in existence prior to enactment of the 1990 CAA amendments.

Section 174 of the CAA requires the State and elected officials of affected local governments containing ozone nonattainment areas to prepare SIP revision under the continuing transportation air quality planning process described in Section 108(e) of the CAA. The 1992 Transportation and Air Quality Planning Guidelines, issued pursuant to Section 108(e), defines the LPO for the State. WDNR was designated the State LPO responsible for air quality planning in the Wisconsin nonattainment areas prior to the 1990 amendments. WDNR will continue as the LPO for the State of Wisconsin. Its responsibilities include developing, submitting, and implementing air quality plans for the State of Wisconsin. WDNR has created seven workgroups made up of State and local governments that are charged with analyzing ozone control strategies for Wisconsin. WDNR has also formed a 16 member Clean Air Task Force to promote public participation in developing Wisconsin's regulatory and programmatic response to the 1990 CAA amendments. The Clean Air Task Force is made up of representatives of industry, government, civic, environmental, and transportation groups.

The WDNR held public hearings on the Section 174 planning procedures on January 12 and 13, 1993.

II. Review Criteria/Results of Review

USEPA has reviewed the submittal for the recertification of the LPO, as interpreted in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498, 13559 (April 16, 1992). USEPA's analysis has shown that the Wisconsin submittal addresses the criteria for recertification of the LPO for the Wisconsin nonattainment area.

III. Rulemaking Action

USEPA approves the revision to the Wisconsin's ozone SIP for Section 174 Planning Procedures.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on August 23, 1993. However, if we receive notice by July 26, 1993 that someone wishes to submit adverse comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, 54 FR 2214–2225. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic

reasonableness of the State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

The Agency has reviewed this request for revision of the federally-approved State Implementation Plan for conformance with the provisions of the 1990 Amendments of the CAA enacted on November 15, 1990.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 23, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See Section 307(b)(2).

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Ozone.

Dated: May 25, 1993.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2585 is amended by adding paragraph (c) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(c) Approval—On November 15, 1992, the Wisconsin Department of Natural Resources submitted a revision to the ozone State Implementation Plan. The submittal pertained to the recertification of the planning organization responsible for developing, adopting, and implementing air quality plans for the State of Wisconsin.

* * * * *

[FR Doc. 93–14839 Filed 6–23–93; 8:45 am]

BILLING CODE [illegible]

40 CFR Part 52

[WI27–01–5742; FRL–4664–3]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is taking action to approve Wisconsin's conformity process as a revision to Wisconsin's State Implementation Plan (SIP) for ozone. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of Section 176(c)(4)(C) of the Clean Air Act (CAA), which requires a revision to an implementation plan for assessing the conformity of any federally-funded plan, program, or project with the SIP.

DATES: This action will be effective August 23, 1993, unless notice is received by July 26, 1993, that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the Wisconsin 176(c)(4)(C) SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Michael Leslie at (312) 353–6680 before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Air Toxics and Radiation Branch, Regulation Development Section (AT–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6680.

SUPPLEMENTARY INFORMATION:

I. Background/Summary of State Submittal

On November 15, 1992, The Wisconsin Department of Natural Resources (WDNR) submitted a SIP revision to the USEPA, which contains a plan for developing a process for assessing conformity of any federally-funded transportation and other federally-funded projects in the Wisconsin nonattainment area with Wisconsin's ozone SIP.

The WDNR held public hearings on the Section 176(c)(4)(C) Conformity submittal on January 12 and 13, 1993.

The State of Wisconsin's conformity process that is currently in place was reviewed by the USEPA and the United States Department of Transportation (USDOT) and determined to be consistent with the June 7, 1991, joint USEPA/USDOT guidance entitled "Guidance For Determining Conformity of Transportation Plans, Programs, And Projects With Clean Air Act Implementation Plans During Phase 1 of the Interim Period." On October 24, 1991, USEPA and USDOT jointly issued futher guidance indicating that the June 7, 1991, guidance would continue until the agencies promulgate the final conformity regulations.

Wisconsin is currently working on the development of a permanent conformity process. A Memoranum of Understanding between the affected agencies will be developed in accordance with the upcoming Federal conformity regulations. Wisconsin anticipates finalizing the conformity process within 1 year of final publication of the Federal conformity regulations as required by the CAA.

II. Review Criteria/Results of USEPA Review

USEPA reviewed the submittal against the criteria outlined in the above noted USEPA/USDOT conformity guidance. USEPA's analysis of the Wisconsin submittal has shown that the Wisconsin conformity process described therein is consistent with the criteria outlined in the joint USEPA/USDOT guidance.

III. Rulemaking Action

USEPA approves the revision to the Wisconsin ozone SIP for Wisconsin's Section 176(c)(4)(C) conformity procedures.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective August 23, 1993. However, if we receive notice by July 26, 1993 that someone wishes to submit adverse comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors

and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The Agency has reviewed this request for revision of the federally-approved State Implementation Plan for conformance with the provisions of the 1990 Amendments to the CAA, enacted on November 15, 1990.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 23, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and it shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Hydrocarbons, Intergovernmental relations, Ozone.

Dated: May 25, 1993.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart YY—Wisconsin

2. Section 52.2585 is amended by adding paragraph (d) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(d) Approval—On November 15, 1992, the Wisconsin Department of Natural Resources submitted a revision to the ozone State Implementation Plan. The submittal pertained to the development of a process for assessing conformity of any federally-funded transportation and other federally funded projects in the nonattainment area.

* * * * *

[FR Doc. 93-14841 Filed 6-23-93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 52

[MI13-01-5751; FRL-4664-9]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is taking action to approve a revision to Michigan's State Implementation Plan (SIP) for ozone. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of section 174 of the Clean Air Act, as amended. Section 174 requires the State to establish and certify an organization which will review and update as necessary planning procedures adopted before November 15, 1990, and which will determine which agency or agencies will be responsible for developing, adopting, and implementing each element of the revised SIP.

DATES: This action will be effective August 23, 1993, unless notice is received by July 26, 1993, that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the SIP revision and USEPA's analysis are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Telephone Michael Leslie at (312) 353-6680 before visiting the Region 5 Office.

Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Air Toxics and Radiation Branch, Regulation Development Section (AT-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353-6680.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On November 13, 1992, the Michigan Department of Natural Resources (MDNR) submitted to the USEPA a SIP revision, indicating the agency or agencies which will be responsible for developing, adopting, and implementing each element of the revised SIP. The State will establish and certify an organization, consisting of elected officials of the affected nonattainment areas, representatives of the State air quality planning agency and transportation planning agencies, and metropolitan planning organization. The organization will prepare the required components of the SIP.

Governor's Executive Order 1976-8 gave MDNR overall responsibility for the development, adoption, and the implementation of all control measures included in the Michigan SIP. MDNR retains overall responsibility for the Michigan SIP. Further, the Michigan Department of Transportation (MDOT) was given responsibility for managing the local transportation planning activities required by the State Air Pollution Act (Act 348, 1965, as amended).

The State's submittal contains three Memoranda of Understanding (MOU) for Michigan's three ozone nonattainment areas: the Detroit-Ann Arbor ozone nonattainment area, the

Muskegon ozone nonattainment area, and the Grand Rapids ozone nonattainment area.

In the Detroit-Ann Arbor ozone nonattainment areas, Southeast Michigan Council of Governments (SEMCOG) has been recertified as the Lead Planning Organization (LPO) for air quality planning in the Detroit metropolitan area. SEMCOG, in cooperation with MDNR and MDOT, is responsible for technical aspects as they relate to mobile sources in Southeast Michigan.

In the Muskegon ozone nonattainment areas, the West Michigan Shoreline Regional Development Commission (WMSRDC) has been certified as the LPO for air quality planning in the Muskegon metropolitan area. MDOT, acting through WMSRDC, is responsible for technical aspects as they relate to mobile sources in the Muskegon nonattainment area.

In the Grand Rapids ozone nonattainment areas, the Grand Rapids and Environs Transportation Study has been recertified as the LPO for air quality planning in the Grand Rapids metropolitan area. MDOT and MDNR, in cooperation with; the Grand Valley Metropolitan Council, the Macatawa Area Coordinating Council, and the Ottawa County Planning Commission where appropriate, are responsible for technical aspects of the SIP as they relate to mobile sources in the Grand Rapids nonattainment area.

The MDNR held a public hearing on the section 174 Planning Procedures on November 10, 1992.

II. Review Criteria/Results of Review

Section 174 of the CAA requires the State and affected local agencies in, among others, ozone nonattainment areas to prepare or revise SIP requirements. Section 174(b) further mandates that the preparation and revision of SIP provisions pursuant to section 108(e) of the CAA take into account the requirements of section 174. The General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498, 13559 (April 16, 1992)) suggests that States can satisfy the requirements of Section 174 through continued use of previously certified planning organizations or certification of new planning organizations.

III. Rulemaking Action

USEPA approves the revision to the Michigan's ozone SIP for section 174 Planning Procedures.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on August 23, 1993. However, if we receive notice by July 26, 1993, that someone wishes to submit adverse comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 23, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Ozone.

Dated: May 28, 1993.

Valdas V. Adamkus,

Regional Administrator.

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C 7401–7671q.

Subpart X—Michigan

2. Section 52.1174 is amended by adding paragraph (b) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(b) Approval—On November 13, 1992, the Michigan Department of Natural Resources submitted a revision to the ozone State Implementation Plan. The submittal pertained to the re/certification of the planning organization responsible for developing, adopting, and implementing air quality plans for the State of Michigan.

* * * * *

[FR Doc. 93–14842 Filed 6–23–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 90–258, FCC 92–489]

Limited Transfers and Assignments of Applications in Rural Service Areas

AGENCY: Federal Communications Commission.

ACTION: Correction to summary of report and order.

SUMMARY: This document provides the Final Regulatory Analysis which was previously omitted from the Summary of the Report and Order in CC Docket 90–258 (FCC 92–489) (Report and Order), which was published on Tuesday, December 1, 1992 (57 FR

56859). The Report and Order amended the prohibition against the alienation of interests in cellular applications prior to the issuance of a construction permit.

EFFECTIVE DATE: December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph Weber, Mobile Services Division, Common Carrier Bureau (202) 632–6450.

SUPPLEMENTARY INFORMATION:

Background

The Report and Order which is the subject of this correction amended § 22.922 of the Commission's Rules to specify exceptions from the prohibition against transfers and assignments of interest in applications for cellular Rural Service Areas prior to the issuance of construction authorization.

Need for Correction

The summary of the Report and Order did not contain a reference to the Commission's compliance with the Regulatory Flexibility Act, as required by section 604(b) of the Regulatory Flexibility Act, 5 U.S.C. 604(b).

Correction of Publication

Accordingly, the publication on December 1, 1992, of the Report and Order and the final rules [92–489], which were the subject of FR Doc. 92–28999, is corrected as follows:

Add a new subheading and new paragraph 3 in column 2 on page 56859:

Final Regulatory Analysis

3. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's Final Analysis is as follows:

I. Need and Purpose of This Action

This Order modifies the rules to prevent unnecessary delays in processing cellular applications. The new rule adopted in this proceeding reflects our increased experience in regulating cellular carriers and furthers our objective of providing excellent service to the public in the most efficient, uncomplicated, timely, and courteous manner possible.

II. The Initial Regulatory Flexibility Analysis

There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered

The Notice in this proceeding proposed to exempt wireline cellular applicants from the requirements of section 22.922. Certain commenters expressed concern that enforcing different regulations upon wireline and non-wireline carriers would harm the non-wireline carriers competitively. Upon review, we determined that the establishment of equal treatment under our Rules for all applicants is the most efficient and fair manner to regulate the transfers of cellular applicants.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–14830 Filed 6–23–93; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 58, No. 120
Thursday, June 24, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1098

[DA-92-41]

Milk in the Nashville, Tennessee, Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend for the month of July 1993 certain provisions of the Nashville, Tennessee, milk marketing order. The proposed suspension would make inoperative the requirement that producers be paid on the basis of a base and excess payment plan for the month of July 1993. A proprietary handler requested the suspension because the current provisions tend to discourage milk production at a time when milk production is declining.

DATES: Comments are due no later than 7 days after date of publication in the **Federal Register**.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P. O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would tend to encourage milk production during the month of July which is a month of declining milk production.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act, as amended (7 U.S.C. 601–674) ("the Act"), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Nashville, Tennessee, marketing area is being considered for July 1993.

1. In § 1098.61(a), the words "for each of the months of August through February".

2. In § 1098.61(a)(5), the words "in the months of August through February".

3. In § 1098.61, paragraph (b).

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures by the July 1993 suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR § 1.27(b)).

Statement of Consideration

The proposed suspension would make inoperative the requirement that producers be paid on the base and excess plan for the month of July 1993. The proposal was submitted by Fleming Companies, Inc.(Fleming), a proprietary handler operating a distributing plant that is regulated under the Nashville order.

In support of its proposal, Fleming said the suspension is needed to remove a conflict which currently exists between the order provisions and the need for additional milk in this market for the month of July. The current order provisions provide that producers, for the months of March through July, be paid a base and excess price. The plan was designed to encourage milk production during the base-building months of September through January when a greater volume of milk is needed for fluid use, and to discourage additional production (excess milk) during the months of March through July when the additional milk production is not needed for fluid use.

Fleming said that marketing conditions have changed since those provisions were adopted in the Nashville order. In recent years, milk production during the month of July has been in short supply. In view of this, Fleming argues that production should not be discouraged during the month of July. Many non-member producers submitted letters stating that they support the request for the suspension.

Accordingly, it may be appropriate to suspend the aforesaid provisions for the month of July 1993.

List of Subjects in 7 CFR Part 1098

Milk marketing orders.

The authority citation for 7 CFR part 1098 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: June 18, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–14860 Filed 6–23–93; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB92

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Four Ferns From the Hawaiian Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for four plants: *Asplenium fragile* var. *insulare* (no common name (NCN)), *Ctenitis squamigera* (pauoa), *Diplazium molokaiense* (NCN), and *Pteris lidgatei* (NCN). *Asplenium fragile* var. *insulare* is currently known only from the island of Hawaii; *Pteris lidgatei* is known only from the island of Oahu. The two other species are reported from more than one island: *Ctenitis squamigera* is known from Oahu, Lanai, and Maui, and *Diplazium molokaiense* is known from Oahu and Maui. The four plant taxa and their habitats have been variously affected or are threatened by one or more of the following: Habitat degradation and/or predation by feral goats, sheep, cattle, axis deer, and pigs; and competition for space, light, water, and nutrients from alien plants. Because of the small number of extant individuals and their severely restricted distributions, populations of these taxa are subject to an increased likelihood of extinction from stochastic events. This proposal, if made final, would implement the Federal protection and recovery provisions provided by the Act. If made final, it would also support State regulations protecting these plants as endangered species. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by August 23, 1993. Public hearing requests must be received by August 9, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

Asplenium fragile var. *insulare*, *Ctenitis squamigera*, *Diplazium molokaiense*, and *Pteris lidgatei* are endemic to the Hawaiian Islands. *Asplenium fragile* var. *insulare* is currently known only from the island of Hawaii and *Pteris lidgatei* is known only from the island of Oahu. The other two species are reported from more than one island: *Ctenitis squamigera* is known from Oahu, Lanai, and Maui, and *Diplazium molokaiense* is known from Oahu and Maui.

The vegetation of the Hawaiian Islands varies greatly according to elevation, moisture regime, and substrate. Major vegetation formations include forests, woodlands, shrublands, grasslands, herblands, and pioneer associations on lava and cinder substrates. There are lowland, montane, and subalpine forest types. Coastal and lowland forests are generally dry or mesic, and may be open- or closed-canopied, with the canopy generally under 10 meters (m) (30 feet (ft)) in height. Of the four fern taxa proposed for listing, three have been reported from lowland forest habitat. *Ctenitis squamigera* is typically found in lowland mesic forest, and *Pteris lidgatei* seems to be restricted to lowland wet forest. *Diplazium molokaiense* grows in lowland to montane forests in mesic to wet settings. Montane forests, occupying elevations between 1,000 and 2,000 m (3,000 and 6,500 ft) are dry to mesic on the leeward (southwest) slopes of Maui and Hawaii. On those islands, as well as Oahu and Lanai, mesic to wet montane forests occur on the windward (northeast) slopes and summits. The canopy of dry and mesic forests may be open or closed, and may exceed 20 m (65 ft) in height. *Asplenium fragile* var. *insulare* occurs in montane dry and mesic forest habitats. *Diplazium molokaiense* is also found in montane mesic forests, as well as montane wet forests. At high montane and subalpine elevations, above 2,000 m (6,500 ft) elevation, the forests are usually open-canopied, and exist in mosaic of grasslands and shrublands. Subalpine forests and associated ecosystems are known only from East Maui and the island of Hawaii. *Asplenium fragile* var. *insulare* occurs in subalpine dry forest and shrubland habitat (Gagne and Cuddihy 1990).

The land that supports these four plant taxa is owned by the State of Hawaii, the Federal government, and private entities. The State agencies that own land occupied by these taxa are the Department of Land and Natural Resources (including land within the natural area reserves system, forest reserves, and State parks) and the Department of Hawaiian Home Lands. Federally owned land occupied by these taxa consists of Hawaiian Volcanoes National Park, Pohakuloa Training Area on the island of Hawaii, and Schofield Barracks Military Reservation on Oahu. The latter two facilities are under jurisdiction of the U.S. Army.

Discussion of the Four Taxa Proposed for Listing

The Hawaiian plants now referred to as *Asplenium fragile* var. *insulare* were originally considered by William Hillebrand (1888) to be conspecific with *Asplenium fragile* from Central and South America. A subsequent treatment by Robinson (1913) considered the Hawaiian plants to be a distinct endemic species, *Asplenium rhomboideum* Brack. The currently accepted name *Asplenium fragile* var. *insulare*, was published by Morton (1947), who considered the Hawaiian plants to be distinct at the varietal level from the extra-Hawaiian plants of *Asplenium fragile*.

Asplenium fragile var. *insulare*, a member of the spleenwort family (Aspleniaceae), is a fern with a short suberect stem. The leaf stalks are 5 to 15 centimeters (cm) (2 to 6 inches (in)) long. The main axis of the frond is dull gray or brown, with two greenish ridges. The fronds are thin-textured, bright green, long and narrow, 23 to 41 cm (9 to 16 in) long, 2 cm (0.8 in) wide above the middle, and pinnate with 20 to 30 pinnae (leaflets) on each side. The pinnae are rhomboidal, 0.8 cm (0.3 in) wide, and notched into two to five blunt lobes on the side toward the tip of the frond. The sori (spore-producing bodies) are close to the main vein of the pinna, with one to two on the lower side and two to four on the upper side (Hillebrand 1888, Wagner and Wagner 1992). The Hawaiian fern species most similar to *Asplenium fragile* var. *insulare* is *Asplenium macraei*. The two can be distinguished by a number of

characters, including the size and shape of the pinnae and the number of sori per pinna (Wagner and Wagner 1992).

Asplenium fragile var. *insulare* was known historically from East Maui, where it was recorded from the north slope of Halekala and Kanahau Hill (Hawaii Heritage Program 1992a6, Hillebrand 1888). On Hawaii Island, the taxon was found historically below Kalaieha, Laumaia, and Puu Moana on Mauna Kea (HHP 1992a12, 1992a14, 1992a15), Puuwaawaa on Hualalai (HHP 1992a4), west of Keawewai, above Kipuka Ahiu on Mauna Loa (HHP 1992a3, 1992a5), and near Hilo (HHP 1992a2). This fern is now known from eight populations on Hawaii between 1,600 and 2,375 m (5,250 and 7,000 ft) elevation (HHP 1992a7, Shaw 1992). These populations are on Federal, State, and private land. The populations are located at Keanakolu, Puu Huluhulu, Pohakuloa Training Area, Kulani Correctional Facility, Keauhou, the Mauna Loa Strip in Hawaii Volcanoes National Park, Kapapala Forest Reserve, and the summit area of Hualalai (HHP 1992a1, 1992a7 to 1992a11, 1992a13; Shaw 1992; Paul Higashino, The Nature Conservancy of Hawaii, Daniel Palmer, naturalist, and Warren H. Wagner, Jr., University of Michigan, pers comms., 1992). The 8 known populations total about 295 plants (Shaw 1992; P. Higashino, D. Palmer, and W. Wagner, pers. comms., 1992). This fern is found in *Metrosideros* ('Ohi'a) Dry Montane Forest, *Dodonaea* ('A'ali'i) Dry Montane Shrubland, *Myoporum/Sophora* (Naio/Mamane) Dry Montane Forest, and 'ohi'a/*Acacia* (koa) forest (HHP 1992a9, Shaw 1992). *Asplenium fragile* var. *insulare* grows almost exclusively in lava tubes, pits, and deep cracks, with at least a moderate soil or ash accumulation, associated with mosses and liverworts. Infrequently, this fern has been found growing on the interface between younger 'a'a lava flows and much older pahoehoe lava or ash deposits (Shaw 1992). The primary threats to *Asplenium fragile* var. *insulare* are browsing by feral sheep (*Ovis aries*) and goats (*Capra hircus*) and competition with the alien plant *Pennisetum setaceum* (fountain grass). Stochastic extinction due to the relatively small number of existing individuals is also of concern.

Ctenitis squamigera was first published as *Nephrodium squamigerum* by Hooker and Arnott in 1832. The species was subsequently placed in the genera *Lastraea*, *Aspidium*, and *Dryopteris*. In 1947 it was transferred to the genus *Ctenitis*, resulting in the currently accepted combination *Ctenitis squamigera* (Degener and Degener 1957).

Ctenitis squamigera, a member of the spleenwort family (Aspleniaceae), has a rhizome (horizontal stem) 5 to 10 millimeters (mm) (0.2 to 0.4 in) thick, creeping above the ground and densely covered with scales similar to those on the lower part of the leaf stalk. The leaf stalks are 20 to 60 cm (8 to 24 in) long and densely clothed with tan-colored scales up to 1.8 cm (0.7 in) long and 1 mm (0.04 in) wide. The leafy part of the frond is thin, dark green, deltoid to ovate-oblong, and twice pinnate to thrice pinnatifid (leaflet sections). The sori are tan-colored when mature and in a single row one-third of the distance from the margin to the midrib of the ultimate segments (Degener and Degener 1957). *Ctenitis squamigera* can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its fronds (Wagner and Wagner 1992).

Historically, *Ctenitis squamigera* was recorded from six islands, in the following areas: above Waimea on Kauai (HHP 1992b3); Kaluanui, southeast of Kahana Bay, Pauoa, Nuuanu, Niu, and Wailupe in the Koolau Mountains of Oahu (HHP 1992b4 to 1992b5, 1992b9 to 1992b12); at Kaluaaha Valley on Molokai (HHP 1992b6); in the mountains near Koele on Lanai (HHP 1992b7); in the Honokohau Drainage on West Maui (HHP 1992b1); and at "Kalua" (Kailua?) on Hawaii Island (HHP 1992b13). The seven populations that have been observed within the last 50 years are in the Waianae Mountains of Oahu, and on Lanai and East and West Maui. The two Waianae Mountain populations are in the East Makaleha/Kaawa area and at Schofield Barracks (HHP 1991, 1992b2; W. Wagner, pers. comm., 1992). On Lanai, *Ctenitis squamigera* is known from the Waiapaa-Kapohaku area on the leeward side of the island, and Lopa Gulch and Waiopa Gulch on the windward side (HHP 1991). The West Maui population is in Iao Valley (Joel Lau, HHP, pers. comm., 1992). The East Maui population is at Manawainui Stream, 3.5 kilometers (km) (2.2 miles (mi)) north of Kaupo Village (HHP 1992b8). The 7 known populations are on State, Federal, and private land and total approximately 80 plants (J. Lau and W. Wagner, pers. comms., 1992). This species is found in the understory of forests at elevations of 380 to 915 m (1,250 to 3,000 ft) (HHP 1991, 1992b8) in 'Ohi'a/*Diospyros* (Lama) Mesic Forest and diverse mesic forest (HHP 1991). Associated plant species include *Myrsine* (kolea), *Psychotria* (kopiko), and *Xylosma* (maua) (HHP 1991; J. Lau, pers. comm., 1992). The primary threats to *Ctenitis squamigera* are habitat degradation by feral pigs (*Sus scrofa*), goats, and axis deer (*Axis axis*); competition with alien plant species; and stochastic extinction due to the small number of existing populations and individuals.

Diplazium molokaiense was published by Winifred Robinson (1913) as a new name for the Hawaiian plants that had previously been referred to the extra-Hawaiian species, *Asplenium arboreum* Willd., by Hillebrand (1888).

Diplazium molokaiense, a member of the spleenwort family (Aspleniaceae), has a short prostrate rhizome. The leaf stalks are 15 to 20 cm (6 to 8 in) long and green or straw-colored. The frond is thin-textured, ovate-oblong, 15 to 50 cm (6 to 20 in) long and 10 to 15 cm (4 to 6 in) wide, truncate at the base, and pinnate with a pinnatifid apex. The sori are 0.8 to 1.3 cm (0.3 to 0.5 in) long and lie alongside the side veins of the pinnae (Hillebrand 1888, Wagner and Wagner 1992). *Diplazium molokaiense* can be distinguished from other species of *Diplazium* in the Hawaiian Islands by a combination of characters, including venation pattern, the length and arrangement of the sori, frond shape, and the degree of dissection of the frond (Wagner and Wagner 1992).

Historically, *Diplazium molokaiense* was found on five islands: at Kaholuamano on Kauai (HHP 1992c7); Makaleha on Oahu (HHP 1992c3); Kalae, Kaluaaha, Mapulehu, and the Wailau Trail on Molokai (HHP 1992c5, 1992c11 to 1992c13); Mahana Valley and Kaiholena on Lanai (HHP 1992c8, 1992c9); and Wailuku (Iao) Valley and Waikapu on West Maui (HHP 1992c1, 1992c4). However, within the last 50 years, it has been recorded from only one location on Oahu and three on East Maui. The Oahu population is at Schofield Barracks in the Waianae Mountains (HHP 1992c2). The three Maui populations are on the slopes of Haleakala: two populations on the north slope at Ainahou and Maliko Gulch (HHP 1992c6, 1992c10), and the third on the south slope at Waiopai Gulch (Robert Hobdy, Hawaii Division of Forestry and Wildlife, and J. Lau, pers. comms., 1992). The currently known populations of *Diplazium molokaiense* are between 850 and 1,680 m (2,800 and 5,500 ft) in elevation (HHP 1992c6, 1992c10) in lowland to montane habitats, including Montane Mesic 'Ohi'a/Koa Forest (R. Hobdy, pers. comm., 1992). The 4 populations are on private, State, and Federal land and total 23 individuals (R. Hobdy and W. Wagner, pers. comms., 1992). The primary threats to *Diplazium molokaiense* are habitat degradation by

feral goats, *Bos taurus* (cattle), and pigs; competition with alien plant species; and stochastic extinction due to the extremely small number of populations and individuals.

Cheilanthes lidgatei was described in 1883 on the basis of a specimen collected on Oahu. Hillebrand (1888) erected the genus *Schizostege* for this anomalous species. In 1897 it was placed in the genus *Pteris* by H. Christ, resulting in the currently accepted combination *Pteris lidgatei* (Wagner 1949).

Pteris lidgatei, a member of the maidenhair fern family (Adiantaceae), is a coarse herb, 0.5 to 1 m (1.6 to 3.3 ft) tall. It has a horizontal rhizome 1.5 cm (0.6 in) thick and at least 10 cm (3.9 in) long when mature. The fronds, including the leaf stalks, are 60 to 95 cm (24 to 37 in) long and 20 to 45 cm (8 to 18 in) wide. The leafy portion of the frond is oblong-deltoid to broadly ovate-deltoid, thick, brittle, and dark gray-green. The sori are apparently marginal in position, either fused into long linear sori, or more typically separated into distinct shorter sori, with intermediate conditions common (Wagner 1949). *Pteris lidgatei* can be distinguished from other species of *Pteris* in the Hawaiian Islands by the texture of its fronds and the tendency of the sori along the leaf margins to be broken into short segments instead of being fused into continuous marginal sori (Wagner and Wagner 1992).

Historially, *Pteris lidgatei* was found at Olokui on Molokai (HHP 1992d4) and Waihee on West Maui (HHP 1992d5). The species was also recorded historically at three locations in the Koolau Mountains of Oahu: Waiahole, Lulumahu Stream, and Wailupe (HHP 1992d1, 1992d2, 1992d6). Only one population has been seen within the past 50 years. This population, containing 13 plants, is on State-owned land in the Kaluanui Stream drainage on the windward side of the central Koolau Mountains at 530 to 590 m (1,750 to 1,930 ft) elevation (HHP 1992d3; W. Wagner, pers. comm., 1992). The Kaluanui population grows on steep stream banks in wet 'ohi'a forest with mosses and other ferns, including *Cibotium chamissoi* (hapu 2i), *Dicranopteris linearis* (uluhe), *Elaphoglossum crassifolium, Sadleria squarrosa* ('ama'u), and *Sphenomeris chusana* (pala'a) (HHP 1992d3). The primary threats to *Pteris lidgatei* are the alien plant *Clidemia hirta* (Koster's curse), habitat destruction by feral pigs, and stochastic extinction; because this fern is known from only one population, a single human-caused or natural event could destroy all remaining individuals.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Asplenium fragile* var. *insulare*, *Diplazium molokaiense*, and *Pteris lidgatei* were considered to be endangered. *Ctenitis squamigera* was considered to be extinct. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including all of the above taxa considered to be endangered or thought to be extinct. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposals are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these three notices, *Pteris lidqatei* was treated as a Category 1 candidate for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. In the 1980 and 1985 notices, *Asplenium fragile* var. *insulare*, *Ctenitis squamigera*, and *Diplazium molokaiense* were considered Category 1* species. Category 1* taxa are those which are possibly extinct. Because new information indicated their current existence, *Asplenium fragile* var. *insulare* (as *Asplenium fragile*) and *Diplazium molokaiense* were given Category 1 status in the 1990 notice. In that notice, *Ctenitis squamigera* was still considered a Category 1* species. However, because the species was rediscovered within the past 2 years, it is included in this proposed rule.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these taxa was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the present proposal constitutes the final 1-year finding for these taxa.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered species due to one or more of the five described in section 4(a)(1). The threats facing these four taxa are summarized in Table 1.

TABLE 1.—SUMMARY OF THREATS

Species	Feral animal activity					Alien plants	Fire	Human impacts	Limited No.[1]
	Goats	Sheep	Cattle	Axis deer	Pigs				
Asplenium fragile var. *insulare*	X	X	.....	.....	.....	X	P	P	.....
Ctenitis squamigera	X	.....	.....	X	X	X	P	.....	X
Diplazium molokaiense	X	.....	X	.....	X	X	P	.....	X
Pteris lidgatei	.....	.....	.....	.....	X	X	.....	.....	X

X=Immediate and significant threat.
P=Potential threat.

[1] No more than 100 individuals and/or fewer than 10 populations.

These factors and their application to *Asplenium fragile* Presl var. *insulare* Morton (no common name (NCN)), *Ctenitis squamigera* (Hook. & Arnott) Copel. (pauoa), *Diplazium molokaiense* W.J. Robinson (NCN), and *Pteris lidgatei* (Baker) Christ (NCN) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Native vegetation on all of the main Hawaiian Islands has undergone extreme alteration because of past and present land management practices including ranching, deliberate animal and alien plant introductions, and agricultural development (Cuddihy and Stone 1990, Wagner *et al.* 1985). The primary threats facing the four taxa proposed for listing include ongoing and threatened destruction and modification of habitat by feral animals and competition with alien plants. All four proposed taxa are threatened by feral animals. Pigs, goats, sheep, and cattle were introduced either by the early Hawaiians or more recently by European settlers for food and commercial ranching activities. Over the 200 years following their introduction, their numbers increased and the adverse impacts of these ungulates on native vegetation have become increasingly apparent.

First introduced to Maui in 1793 (Stone and Loope 1987), goats became established on other Hawaiian islands by the 1820s (Cuddihy and Stone 1990, Culliney 1988). Far from controlling their numbers, the era of trade in goatskins (mid-1800s) saw the feral goat population increase into the millions (Culliney 1988). As a result of their agility, they were able to reach more remote areas than other ungulates (Culliney 1988). Feral goats now occupy a wide variety of habitats, from dry lowland forests to alpine grasslands, where they consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (Cuddihy and Stone 1990, Stone 1985, Stone and Loope 1987).

Three of the proposed fern taxas are threatened by habitat degradation caused by goats. On Oahu, goats contribute to the decline of a population of *Ctenitis squamigera* at East Makaleha/Kaawa in the Mokuleia region of the Waianae Mountains (HHP 1991). On Maui, large populations of feral goats persist on the south slope of Haleakala, outside of Haleakala National Park, where they threaten the population of *Diplazium molokaiense* at Waiopai (R. Hobdy, pers. comm., 1992). Goats have reduced the species' habitat at that site to small remnants. On the island of Hawaii, feral goats are also present in large numbers within Pohakuloa Training Area (PTA) in the saddle between Mauna Loa and Mauna Kea, where they threaten *Asplenium fragile* var. *insulare* through habitat degradation (J. Lau, pers. comm., 1992).

Feral sheep have become firmly established on the island of Hawaii (Tomich 1986) since their introduction almost 200 years ago (Cuddihy and Stone 1990). Like feral goats, sheep roam the upper elevation dry forests of Mauna Kea (above 1,000 m (3,300 ft)), including PTA, causing damage similar to that of goats (Stone 1985). The presence of sheep at PTA contributes to the degradation of the habitat of *Asplenium fragile* var. *insulare*.

Large-scale cattle ranching in the Hawaiian Islands began in the middle of the 19th century on the islands of Kauai, Oahu, Maui, and Hawaii. Ranches tens of thousands of acres in size developed on East Maui and Hawaii (Cuddihy and Stone 1990), where most of the State's large ranches still exist. Degradation of native forests used for ranching activities became evident soon after full-scale ranching began. The negative impact of cattle on Hawaii's ecosystems is similar to that described for goats and sheep (Cuddihy and Stone 1990, Stone 1985). Cattle ranching is the primary economic activity on the west and southwest slopes of East Maui, where a population of *Diplazium molokaiense* exists at Waiopai (R. Hobdy, pers. comm., 1992).

Habitat degradation caused by axis deer is now considered to be a major threat to the forests of Lanai (Culliney 1988). Deer browse on native vegetation, destroying or damaging the habitat. Their trampling removes ground cover, compacts the soil, promotes erosion, and open areas, allowing alien plants to invade (Cuddihy and Stone 1990, Culliney 1988, Scott *et al.* 1986, Tomich 1986). Extensive red erosional scars caused by decades of deer activity are evident on Lanai. Axis deer are presently actively managed for recreational hunting by the State Department of Land and Natural Resources. All three of the Lanai populations of *Ctenitis squamigera* are negatively affected to some extent by axis deer (HHP 1991).

Feral pigs have invaded primarily wet and mesic forests and grasslands of Kauai, Oahu, Molokai, Maui, and Hawaii. Pigs damage the native vegetation by rooting and trampling the forest floor, and encourage the expansion of alien plants in the newly tilled soil (Stone 1985). Pigs also disseminate alien plant seeds through their feces and on their bodies, accelerating the spread of alien plants through native forest (Cuddihy and Stone 1990, Stone 1985). On Oahu, populations of *Ctenitis squamigera*, *Diplazium molokaiense*, and *Pteris lidgatei* have sustained loss of individual plants and/or habitat as a result of feral pig activities. The following Oahu populations are threatened by pigs: *Ctenitis squamigera* at Schofield Barracks and nearby East Makaleha-Kaawa, *Diplazium molokaiense* at Schofield Barracks (HHP 1991; J. Lau, pers. comm., 1992), and, in Kaluanui Valley, the only extant population of *Pteris lidgatei* (HHP 1992d3; W. Wagner, pers. comm., 1992). On East Maui, feral pigs threaten populations of *Diplazium molokaiense* at both Ainahou and Waiopai (R. Hobdy and J. Lau, pers. comms., 1992).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Although not currently known to be a factor, unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity and could seriously impact three of the taxa proposed for listing. *Ctenitis squamigera*, *Diplazium molokaiense*, and *Pteris lidgatei* each number fewer than 100 individuals and 10 populations, making them especially vulnerable to human disturbance. Such disturbance could promote erosion and ingression of alien plant species.

C. Disease or Predation

No evidence of disease has been reported for the four proposed taxa. Predation by feral goats and/or sheep has been documented for *Asplenium fragile* var. *insulare* at PTA (Shaw 1992). Because no fern colonies have been completely decimated by the animals, they apparently do not seek out this plant. However, further predation could occur if their preferred forage is not available. Predation by feral goats is a potential threat to the other two sizable known populations of this fern, at Keauhou and Kulani (Linda Cuddihy, Hawaii Volcanoes National Park, pers. comm., 1992).

D. The Inadequacy of Existing Regulatory Mechanisms

Two of the proposed taxa have populations located on privately owned land. All four also occur on State land, and three occur on Federal land. There are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of these plants on private land. However, Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State Government agencies. State regulations prohibit the removal, destruction, or damage of plants found on State lands. However, the regulations are difficult to enforce because of limited personnel. Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the Endangered Species Act [of 1973] shall be deemed to be an endangered species under the provisions of this chapter." Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, Sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of these four plant taxa would therefore reinforce and supplement the protection available under State law. The Act would also offer additional protection to these four taxa because if they were to be listed as endangered or threatened, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The small number of populations and of individual plants of these taxa increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only known extant population. For example, *Pteris lidgatei* is known from a single population numbering 13 plants. Only 4 populations of *Diplazium molokaiense* are known, totaling 23 individuals. *Ctenitis squamigera* is known from seven populations, and *Asplenium fragile* var. *insulare* from eight populations. Three of the proposed taxa are estimated to number no more than 100 known individuals and the fourth (*Asplenium fragile* var. *insulare*) numbers fewer than 300 known individuals.

Three of the four fern taxa proposed for listing are threatened by competition with one or more alien plant species. Koster's curse, a noxious shrub first reported on Oahu in 1941, had spread through much of the Koolau Mountains by the early 1960s, and spread to the Waianae Mountains by 1970 (Cuddihy and Stone 1990). This shrub replaces native plants of the forest understory and poses a serious threat to the only remaining population of *Pteris lidgatei*, located in Kaluanui Valley in the Koolau Mountains (J. Lau, pers. comm., 1992). It also poses a threat to populations of *Ctenitis squamigera* and *Diplazium molokaiense* in the Waianae Mountains (HHP 1991; J. Lau, pers. comm., 1992).

Noxious alien plants such as *Schinus terebinthifolius* (Christmasberry) have invaded the dry to mesic lowland regions of the Hawaiian Islands. Introduced to Hawaii before 1911, Christmasberry forms dense thickets which shade out and displace other plants (Cuddihy and Stone 1990). Both of the Oahu populations of *Ctenitis squamigera*, the West Maui population, and one of the Lanai populations are negatively affected by this invasive plant, as is the population of *Diplazium molokaiense* at Schofield Barracks (HHP 1991; J. Lau, pers. comm., 1992). *Psidium cattleianum* (strawberry guava), a shrub or small tree, has become naturalized on all of the main Hawaiian islands except Niihau and Kahoolawe. Like Christmasberry, strawberry guava is capable of forming dense stands that exclude other plant species (Cuddihy and Stone 1990). This alien plant grows primarily in mesic and wet habitats and provides food for several alien animal species, including feral pigs and game birds, that disperse the plant's seeds through the forest (Smith 1985, Wagner *et al.* 1985). Strawberry guava is considered one of the greatest alien plant threats to Hawaii's wet forests and is known to pose a direct threat to the populations of *Ctenitis squamigera* and *Diplazium molokaiense* in the Waianae Mountains on Oahu (J. Lau, pers. comm., 1992). It also threatens the populations of *Ctenitis squamigera* on Lanai and East Maui (HHP 1991; J. Lau, pers. comm., 1992).

Fountain grass is a fire-adapted bunch grass that has spread rapidly over bare lava flows and open areas on the island of Hawaii since its introduction in the early 1900s. Fountain grass is particularly detrimental to Hawaii's dry forests because it is able to invade areas once dominated by native plants, where it interferes with plan regeneration, carries fires, and increases the likelihood of fires (Cuddihy and Stone 1990, Smith 1985). Fountain grass threatens the native vegetation at PTA, competing with *Asplenium fragile* var. *insulare* (J. Lau, pers. comm., 1992).

Toona ciliata (Australian read cedar) is a fast-growing tree that has been extensively planted and has become naturalized in mesic to wet forests (Wagner *et al.* 1990). This tree threatens populations of *Ctenitis squamigera* and *Diplazium molokaiense* in the Waianae Mountains of Oahu (HHP 1991; J. Lau, pers. comm., 1992). Those same populations are threatened by *Syzygium cumini* (Java plum), a large evergreen tree that forms a dense cover, excluding other species. Java plum is an aggressive invader of undisturbed lowland mesic and dry forests (Smith 1985). *Myrica faya* (firetree) has attracted a great deal of attention and concern for its recent explosive increase on several Hawaiian islands. It is capable of forming a dense, nearly monospecific stand (Cuddihy

and Stone 1990). Because of its ability to fix nitrogen, it outcompetes native species and enriches the soil so that other alien plants can invade (Wagner *et al.* 1990). The Lanai populations of *Ctenitis squamigera* are threatened by the invasion of firetree (HHP 1991; J. Lau, pers. comm., 1992). Although not yet widespread in the Hawaiian Islands, *Cinnamomum burmanii* (Padang cassia) could become a dominant component of Hawaiian mesic forests (J. Lau, pers. comm., 1992). A dense and enlarging stand of it threatens a population of *Ctenitis squamigera* on Lanai (HHP 1991).

Fire constitutes a potential threat to three of the proposed fern taxa growing in dry to mesic grassland, shrubland, and forests on the islands of Oahu and Hawaii. On Oahu, fire is a potential threat to *Ctenitis squamigera* and the population of *Diplazium molokaiense* on Schofield Barracks Military Reservation. These populations are located near an area currently utilized as a military firing range. Fires originating on the firing range have the potential of spreading into the native forest habitat of the two fern species (J. Lau, pers. comm., 1992). Fire is also a potential threat to the population of *Asplenium fragile* var. *insulare* at PTA on the island of Hawaii (Shaw 1992), where military exercise utilizing live ammunition are conducted. The presence of fountain grass at PTA increases the potential for fire. Habitat disturbance caused by human activities such as military construction and road building could also detrimentally impact *Asplenium fragile* var. *insulare* at PTA (Shaw 1992).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to propose this rule. Based on this evaluation, the preferred action is to list four taxa, *Asplenium fragile* var. *insulare*, *Ctenitis squamigera*, *Diplazium molokaiense*, and *Pteris lidgatei*, as endangered. Three of the 4 taxa proposed for listing either number no more than 100 individuals or are known from fewer than 10 populations. The four taxa are threatened by one or more of the following: habitat degradation and/or predation by feral goats, sheep, cattle, deer, and pigs, and competition from alien plants. Small population size and limited distribution make these taxa particularly vulnerable to extinction from stochastic events. Because these four taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Critical habitat is not being proposed for the four taxa included in this rule, for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is listed endangered or threatened. The service finds that designation of critical habitat is not presently prudent for these taxa. Such a determination would result in no known benefit to the taxa. All of the taxa have extremely low total populations and face anthropogenic threats. The publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers as required in a proposal for critical habitat would increase the degree of threat to these plants from take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. The listing of these taxa as endangered publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowners have been notified of the general location and importance of protecting the habitat of these taxa. Protection of the habitat of the taxa will be addressed through the recovery process and through the section 7 consultation process.

There are three known Federal activities within the currently known habitat of the plants proposed for listing, involving the National Park Service and Department of Defense. One taxon is found in Hawaii Volcanoes National Park, where Federal law protects all plants from damage or removal. Three taxa are located on land owned or leased by the Department of Defense or on nearby State lands. Two species are found on Scholfield Barracks Military Reservation. Although military and ordnance training takes place on this federally owned property, the impact areas and buffer zones for these activities are outside the area where the taxa occur. One taxon is known from Phakuloa Training Area on the Island of Hawaii. The fern grows in areas unsuitable for infantry training (Shaw 1992). The Army is aware of the presence and location of this taxon, and any Federal activities that may affect the continued existence of these plants will be addressed through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for these taxa is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of these taxa.

Available Conservation Measures

Conservation measures provided to species listed as endangered under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

A population of *Asplenium fragile* var. *insulare* is located in Hawaii Volcanoes National Park. Laws relating to national parks prohibit damage or removal of any plants growing in the parks. Another population of *Asplenium fragile* var. *insulare* is located within Pohakuloa Training Area. The fern grows in areas unsuitable for infantry training (Shaw 1992). The Army is aware of the location of this taxon, and any Federal activities that may affect the continued existence of these plants will be addressed through the section 7 consultation process. *Ctenitis squamigera* and *Diplazium molokaiense* are found on Schofield Barracks

Military Reservation. These plants are not located inside impact or buffer zones for ordnance training, and thus are not likely to be directly affected by military activities. There are no other known Federal activities that occur within the present known habitat of these four plant taxa.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to the four plant taxa proposed to be listed as endangered, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the taxa are not common in cultivation nor in the wild.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104, FAX 703/358–2281).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these four taxa;

(2) The location of any additional populations of these taxa and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these taxa; and

(4) Current or planned activities in the subject area and their possible impacts on these taxa.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for at least one public hearing on this proposal, if requested. Hearing requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (See **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Office (See **ADDRESSES** section).

Author

The primary authors of this proposed rule are Joan E. Canfield and Derral R. Herbst, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749). Substantial data were contributed by Joel Lau of the Hawaii Heritage Program.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, and by adding a new family, "Adiantaceae—Maidenhair fern family," in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
•	•	•	•	•	•	•
Adiantaceae—Maidenhair fern family:						
Pteris lidgatei	None	U.S.A. (HI)	E		NA	NA

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• •	•	• •	•	•		•
Aspleniaceae—Spleenwort family:						
• •	•	• •	•	•		•
Asplenium fragile var. *insulare*	None	U.S.A. (HI)	E		NA	NA
• •	•	• •	•	•		•
Ctenitis squamigera	Pauoa	U.S.A. (HI)	E		NA	NA
• •	•	• •	•	•		•
Diplazium molokaiense	None	U.S.A. (HI)	E		NA	NA
• •	•	• •	•	•		•

Dated: May 14, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–14895 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 930236–3036]

Threatened Fish and Wildlife; Proposed Designation of Critical Habitat for the Steller Sea Lion

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearing and reopening of comment period on proposed rule.

SUMMARY: On April 1, 1993, NMFS proposed to designate critical habitat for the Steller sea lion under the Endangered Species Act (ESA), and provided a 60-day comment period on the proposed rule. NMFS announces that, due to a request for a public hearing, and another request to extend the comment period to allow for further review of the proposed designation, the comment period has been reopened, and a public hearing has been scheduled.

DATES: A public hearing has been scheduled for July 9, 1993. Written comments on the proposed designation must be received by NMFS on, or before, July 19, 1993.

ADDRESSES: The public hearing will be held at 1:30 p.m. at the Wilda Marston Theater at the Loussac Library, 3600 Denali Street, Anchorage, AK. Written comments should be addressed to Director, Office of Protected Resources, 1335 East-West Highway, room 8268, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michael Payne, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, (301) 713–2322, or Dr. Steven Zimmerman, NMFS, Alaska Regional Office, Juneau, AK 99802, (907) 586–7235.

SUPPLEMENTARY INFORMATION: On April 1, 1993, NMFS proposed to designate critical habitat for the Steller sea lion under the ESA (58 FR 17181). Requests for public hearings on the proposed rule had to be received by NMFS by May 17, 1993. NMFS received a request for a public hearing on May 14, 1993, that was consigned by representatives of five organizations representing commercial fisheries interests. However, this request was withdrawn on May 28, 1993. Also on May 28, 1993, NMFS received a request from ARCO Alaska, Inc., to convene a public hearing on the proposed designation, and to extend the comment period for the proposed rule for 2 weeks.

To accommodate the requests by ARCO, Inc., NMFS will convene a public hearing at the Loussack Library in Anchorage, Alaska, on July 9, 1993. A summary of record of the hearing will be prepared. Participants are requested to provide written copies of testimony for the record. NMFS is hereby extending the comment period on the proposed rule to designate critical habitat for the Steller sea lion under the ESA to accommodate this public hearing until July 19, 1993.

Dated: June 18, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 93–14864 Filed 6–23–93; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 120
Thursday, June 24, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 18, 1993.

The Department of Agricultural has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250 (202) 690–2118.

Revision

• Farmers Home Administration
7 CFR 1980–A, Guaranteed Loan Program (General)
FmHA 449–14, 30, 35, 36, 1980–19, 22, 41, 43, and 44
On occasion
Individuals or households; businesses or other for-profit; 119,635 responses; 239,430 hours
Jack Holston (202) 720–9736

• Farmers Home Administration
7 CFR 1980–B, Guaranteed Farmer Program Loans
FmHA 449–11, 1980–15, 24, 25, 38, 58, 54
On occasion
Individuals or households; State or local governments; farms; businesses or other for-profit; 158,140 responses; 235,427 hours
Jack Holston, (202) 720–9736

Extension

• Forest Service
Application for Prospecting Permit Form
RI–FS–2820–12
On occasion
Individuals or households; businesses or other for-profit; 20 responses; 5 hours
Leslie Vaculik, (406) 329–3592

Reinstatement

• Farmers Home Administration
7 CFR 1924–A, Planning and Performing Construction and Other Development
FmHA 1924–1, 2, 3, 5, 6, 7, 9, 10, 11, 12, 13, 18, 19, and CC–257
Recordkeeping; on occasion
Individuals or households; farms; businesses or other for-profit; non-profit institutions; small businesses or organizations; 391,108 responses; 138,045 hours
Jack Holston (202) 720–9736

New Collection

• Farmers Home Administration
7 CFR 1944–B, Housing Application Packaging Grants
Recordkeeping; on occasion
Individuals or households; State or local governments; non-profit institutions; 1,200 responses; 1,800 hours
Jack Holston, (202) 720–9736

• Human Nutrition Information Service
National Nutrient Data Base for Child Nutrition Programs
On occasion
Businesses or other for-profit; small businesses or organizations; 1,500 responses; 5,250 hours
Rena Cutrufelli, (301) 436–5639

Larry K. Roberson,
Deputy Department Clearance Officer
[FR Doc. 93–14861 Filed 6–23–93; 8:45 am]
BILLING CODE 3410–01–M

Cooperative State Research Service

Small Business Innovation Research Grants Program for Fiscal Year 1994; Solicitation of Applications

Notice is hereby given that under the authority of the Small Business Innovation Development Act of 1982 (Pub. L. 97–219), as amended (15 U.S.C. 638) and section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Public Law 99–591, 100 stat. 3341, the U.S. Department of Agriculture (USDA) expects to award project grants for certain areas of research to science-based small business firms through Phase I of its Small Business Innovation Research (SBIR) Grants Program. This program will be administered by the Office of Grants and Program systems, Cooperative State Research Service. Firms with strong scientific research capabilities in the topic areas listed below are encouraged to participate. Objectives of the three-phase program include stimulating technological innovation in the private sector, strengthening the role of small businesses in meeting Federal research and development needs, increasing private sector commercialization of innovations derived from USDA-supported research and development efforts, and fostering and encouraging participation of women-owned and socially and economically disadvantaged small business concerns in technological innovation.

The total amount expected to be available for Phase I of the SBIR Program in fiscal year 1994 is approximately $3,000,000. The solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications by the closing date of September 1, 1993. The research to be supported is in the following topic areas:

1. Forests and Related Resources
2. Plant Production and Protection
3. Animal Production and Protection
4. Air, Water and Soils
5. Food Science and Nutrition
6. Rural and Community Development
7. Aquaculture
8. Industrial Applications

The award of any grants under the provisions of this solicitation is subject to the availability of appropriations.

This program is subject to the provisions found at 7 CFR part 3403, as amended. These provisions set forth procedures to be followed when submitting grant proposals, rules

governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects. In addition, USDA Uniform Federal Assistance Regulations, as amended (7 CFR part 3015), Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-free Workplace (Grants) (7 CFR part 3017), New Restrictions on Lobbying (7 CFR part 3018), and Managing Federal Credit Programs (7 CFR part 3) apply to this program. Copies of 7 CFR part 3403, 7 CFR part 3015, 7 CFR part 3017, 7 CFR part 3018, and 7 CFR part 3 may be obtained by writing or calling the office indicated below.

The solicitation, which contains research topic descriptions and detailed instructions on how to apply, may be obtained by writing or calling the office indicated below. Please note that applicants who submitted SBIR proposals for fiscal year 1993 or who have recently requested placement on the list for fiscal year 1994 will automatically receive a copy of the fiscal year 1994 solicitation. Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, Ag Box 2245, Washington, DC 20250–2245. Telephone: (202) 401–5048.

Done at Washington, DC, this 18th day of June 1993.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 93–14859 Filed 6–23–93; 8:45 am]

BILLING CODE 3410-22-M

Forest Service

South Fork Granite Creek Timber Sale; Idaho Panhandle National Forests, Washington and Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice; cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: On July 10, 1992, notice was published in the **Federal Register** (FR 30712) that an environmental impact statement would be prepared to document the analysis and disclose the environmental impacts of proposed actions to harvest timber, build roads, improve existing stands of trees, and regenerate new stands of trees in TillicumCreek and South Fork of Granite Creek drainages. These drainages flow into the North Fork of Granite Creek at the eastern edge of the analysis area is located on the Priest Lake Ranger District, Idaho Panhandle National Forests.

That notice is hereby cancelled.

Analysis of this project began on schedule, but was cancelled because of the need to do more analysis prior to determining the scope and the purpose and need for the project.

DATES: This action is effective June 24, 1993.

FOR FURTHER INFORMATION CONTACT: David Asleson, NEPA Coordinator, Priest Lake Ranger District, HCR 5 Box 207, Priest River, ID 83856 (208) 443–2512.

Dated: June 17, 1993.

Kent Dunstan,

District Ranger, Priest Lake Ranger District, Idaho Panhandle National Forests.

[FR Doc. 93–14884 Filed 6–23–93; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Five Points Area Watershed, Macon, Houston, and Dooly Counties, GA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Regulations (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Five Points Area Watershed, Macon, Houston, and Dooly Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: Hershel R. Read, State Conservationist, Soil Conservation Service, Federal Building, Box 13, 355 East Hancock Avenue, Athens, Georgia 30601; telephone: 706–546–2116.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action, developed by the Soil Conservation Service, indicates that the project will not cause significant local, regional, or national impacts on the environment.

As a result of these findings, Hershel R. Read, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this Project.

The project purpose is watershed protection for improvement of water quality and includes reduction of agricultural animal waste related pollution and accelerated land treatment. The planned improvements include cost sharing and technical assistance to:

1. Develop and install 29 animal waste management plans that will include lagoons, fencing, pasture and hayland planting, stream crossing, stack houses, flush down systems, water supply wells, diversion/curbing, filter strips, collection basins, waste utilization pump and piping, and heavy use protection area.

2. Install water disposal systems, contour farming, filter strips, conservation tillage and crop residue use on about 11,550 acres of cropland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Dr. Hershel R. Read.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: June 16, 1993.

Hershel R. Read,

State Conservationist.

[FR Doc. 93–14881 Filed 6–23–93; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 8129–01]

Klaus Westphal, Respondent; Decision and Order

On April 1, 1993, the Respondent petitioned, through his counsel, that the Decision and Order entered against him by default on April 27, 1989, and affirmed and made final by the then-Acting Under Secretary for Export Administration on May 24, 1989, be set aside, the Order vacated and the proceeding be resumed based on pleadings submitted with the petition.

On May 18, 1993, the Administrative Law Judge (ALJ) entered his recommendation that the petition of the

Respondent be denied. The recommended Decision of the ALJ, a copy of which is attached hereto and made a part hereof, adequately and properly sets forth both the relevant facts and the arguments of the parties to this matter. The recommended Decision of the ALJ has been referred to me for final action.

Based on my review of the entire record, I agree with the ALJ that good cause has not been shown to vacate the Final Order entered on May 24, 1989. Accordingly, I affirm the recommended Decision of the Administrative Law Judge. The Respondent's petition to set aside the Decision and Order on Default, to vacate the Order and to proceed on the basis of the submitted answer is denied.

This constitutes final agency action regarding this particular appeal.

Dated: June 18, 1993.

Sue E. Eckert,

Acting Under Secretary for Export Administration.

Order Denying Petition To Set Aside Default

A. Background

On April 1, 1993, counsel for Klaus Werner Erwin Westphal (the Respondent) petitioned pursuant to § 788.8(b) of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 [1991]) (the Regulations) that the Decision and Order entered against him by default in the above-captioned case on April 27, 1989, and affirmed and made final by the then-Acting Under Secretary for Export Administration on May 24, 1989,[1] be set aside, the Order vacated and that the proceeding be resumed on the basis of an answer to the December 22, 1988, charging letter issued against him. The proffered April 1993 answer to the charging letter, with which the Respondent now seeks to reopen this proceeding, is the first such answer to be submitted in this proceeding. The December 1988 charging letter, issued by the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (The Department or Agency), pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 [1991, Supp. 1992, and Public Law 103–10, March 27, 1993]) (the Act), originally alleged that the Respondent, in his capacity as managing director of Veeco GmbH, had committed four separate violations of § 787.6 of the Regulations. However, on April 21, 1989, Agency Counsel withdrew three of the alleged counts so that the Respondent, in his aforesaid managing director capacity, continued to be charged with a single violation of § 787.6 of the Regulations. This remaining allegation was that the Respondent, on December 23, 1983, had reexported from the Federal Republic of Germany to Czechoslovakia, a U.S.-origin Microetch Machine without having obtained from the Department the reexport authorization required by § 774.1 of the Regulations.

The Respondent admits both that he had received service of the original December 1988 charging letter and that he did not file an answer within thirty days after such service, as required by the Regulations. The Respondent's only communication in that period was an April 15, 1989, letter to the Department in which he reported that he was seeking counsel from officials and lawyers in connection with the charging letter.

As noted, on May 24, 1989, the Acting Under Secretary issued her Final Order affirming Administrative Law Judge Thomas W. Hoya's April 27, 1989, Decision and Order on Default recommending that the Respondent's export privileges be denied for a period of ten years. Now, four years after its issuance, the Respondent seeks to set aside the Acting Under Secretary's Final Order.

B. The Parties' Positions

The Respondent argues that the reasons now put forward for his failure to have appeared and answered the charging letter constitute good cause within the meaning of § 788.8(b) of the Regulations.[2] Asserted reasons include that, in 1989, the Respondent did not have sufficient knowledge of the English language to understand the charging letter and its implications; that, by letter, dated October 23, 1986, the Respondent's German counsel, Peter Kanis, had advised that a proceeding instituted against the Respondent in Germany by the Regional Tax Office concerning the instant December 1983 reexport to Czechoslovakia was being discontinued, thereby leading both the Respondent and his counsel to believe that the Respondent had been cleared of all charges concerning that transaction; that attorney Kanis, having reviewed the instant charging letter shortly after its receipt, by January 23, 1989, letter, had informed the Respondent that the matter was legally concluded in Germany and that the Respondent need only be concerned if he travelled to the United States, but had not conveyed to the Respondent the implications of his continuing to represent U.S. companies and of his continued handling of U.S.-origin goods;[3] and that the Respondent's above April 15, 1989, letter to the Department had resulted from attorney Kanis' advisement that the Respondent not reply to any of the questions, but that he merely confirm receipt of the charging letter and notify the Department of a change of address. In further support of his Petition, the Respondent cites difficulties assertedly experienced at the hands of a United States attorney he had retained at some undisclosed date in 1989. The Respondent had forwarded his file of original documents in this matter to this attorney who, in spite of the Respondent's asserted persistent early inquiries, did not take action on the Respondent's behalf and, in 1993, informed the Respondent that he no longer had possession of the original documents that had been delivered to him approximately four years before.

The Respondent now is motivated to seek vacation of the default Order because of recent business exigencies. As the Respondent represents, when the default Order was entered, he was a salesman and a 14 percent owner of the stock of CJT-Vacuum-Technik Produktions-& Vertriebs GmbH (CJT), in Germany. The Respondent and the majority owner of CJT, Peter Czermak, then consulted with several U.S. companies with whom CJT was dealing and were told that the Department's Order would not affect their ability to

[1] 54 FR 23241 (May 31, 1989). The Acting Under Secretary's Order provided that the Respondent and, in effect, all his business associates, be denied export privileges for a period of ten years commencing May 24, 1989.

[2] Section 788.8(b), Petition to Set Aside Default, is as follows:

(1) Procedure. Upon petition filed by a respondent against who a default order has been issued, which petition is accompanied by an answer meeting the requirements of § 788.7(b), the administrative law judge may, after giving all parties opportunity to comment, and for good cause shown, set aside the default and vacate the order entered thereon and resume the proceedings.

(2) Time limits. A petition under this section must be made either within one year of the date of entry of the order which the petition seeks to have vacated, or before the expiration of any administrative sanctions imposed thereunder, whichever is later.

Since the administrative sanctions imposed by the Under Secretary's Final Order have not yet expired, the Respondent's Petition is timely-filed under § 788.8(b)(2), above.

[3] Mr. Kanis' January 23, 1989, letter, in relevant part, was as follows:

This matter has been legally concluded in Germany and since the police power of the United States ends at its borders, it does not extend to Europe.

It is recommended, however, that should the possibility of your traveling to America arise, you retain an attorney there so that you do not run the risk of being detained on the basis of this proceeding upon entering the country.

export to CJT since they were doing business with CJT and not directly with the Respondent. On January 17, 1992, CJT entered into a joint German-based venture known as CKL Vacuum-Technik Vertriebs GmbH (CKL) with a U.S. company, Kurt J. Lesker Company (KJLC). The Respondent, Mr. Czermak and a representative of KJCL were named as Geschaftfuhrers (managers) of CKL. The Respondent also acted as a sales engineer for CKL. KJLC was not informed of the existence of the Order against the Respondent based on CJT's earlier discussions with the U.S. companies and had no actual knowledge of the Order until December 21, 1992. On that date, KJLC was informed by a vendor that the Department had denied the Respondent export privileges for a period of ten years. KJLC immediately stopped all exports to CKL pending investigation and consultation with counsel. As a result of the revelation concerning this Order, and subsequent discussions with business associates, the Respondent ended all relationships with CKL and with CJT, including termination of his sales engineer position and status as a manager with CKL and his stock ownership in CJT. The Respondent asserts that he first fully understood the nature and implications of the charging letter and the resultant Order in discussions with new counsel only in December 1992 and January 1993, and took immediate measures to pursue this Petition.

Summarizing, the Respondent basically argues that the Decision and Order on Default entered against him four years ago now should be set aside and the Order vacated because he had not understood the English language used in the charging letter and the charging letter's implications, and because he had been ineffectively represented by counsel both in Germany and in the United States.

Agency Counsel, in his May 4, 1993, Response to the Petition, asserts that neither of the Respondent's principal contentions based (1) on lack of understanding of the English language contained in the charging letter or its implications, and (2) the ineffective assistance assertedly rendered by German and U.S. counsel, constitute good cause to warrant setting aside the Decision and Order on Default entered herein.[4] As indicated by Agency Counsel, the respondent has acknowledged receipt of the charging letter and that he did not file an answer thereto within the time period permitted by the Regulations. Agency Counsel argues that, as the respondent does not claim the existence of newly-discovered evidence affecting allegations of the charging letter, and that, as the Respondent concedes, all the evidence submitted with his Petition was available to him at the time he received the charging letter, there is no good cause within the meaning of § 788.8(b) of the Regulations for reopening this proceeding.[5]

C. Discussion and Conclusions

With respect to the Respondent's contention that, as a resident of Germany, he had been unable to understand the charging letter because written in English, § 788.7(e) of the Regulations, entitled English Language Required, establishes that proceedings arising under the Act shall be conducted in the English language.[6] Knowledge of this provision's requisite, and the requirements of the Act and Regulations in general, must be imputed to the Respondent because the facts in question were open to discovery and it was his duty while engaged in the business of reexporting U.S.-origin equipment to inform himself of them. The Act, its implementing Regulations and the law, in general, cannot retain efficacy if subject to circumvention by Respondents who, having failed in their responsibility to become informed, consequently plead ignorance as a defense. As the facts here make clear, when finally motivated by the Order's impact, the Respondent, with his April 1 Petition and supporting documents, proved capable of penetrating the barriers of language, comprehension and even of time.

Similarly, I do not find the Respondent's assertions concerning ineffective representation by German and U.S. counsel to provide good cause for the relief sought. As the U.S. Court of Appeals held in *Nemaizer* v. *Baker*,[7] cited by Agency Counsel;

> * * * We have consistently declined to relieve a client * * * of the 'burdens of a final judgment entered against him due to the mistake or omission of his attorney by reason of the latter's ignorance of the law or other rules of the court, or his inability to efficiently manage his caseload.' *United States* v. *Cirami*, 535 F. 2d 736, 739 (2d Cir. 1976); *United States* v. *Erdoss*, 440 F.2d 1221 (2d Cir.), cert. denied sub nom *Horvath* v. *United States*, 404 U.S. 849, 92 S. Ct. 83, 30 L.Ed. 88 (1971); *Schwarz* v. *United States*, 384 F.2d 833 (2d Cir. 1967). This is because a person who selects counsel cannot thereafter avoid the consequences of the agent's acts or omissions. *Link* v. *Wabash Railroad Co.*, 370 U.S. 626, 633–34, 82 S. Ct. 1386, 1390, 8 L. Ed. 734 (1962) * * *
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> More particularly for our purposes, an attorney's failure to evaluate carefully the legal consequences of a chosen course of action provides no basis for relief from a judgment. See (*United States* v. *O'Neil*, 709 F. 2d (361) at 373 (5th Cir. 1983); *Chick Kam Choo* v. *Exxon Corp.*), 699 F. 2d (693) at 696–97 (5th Cir.) (cert. denied sub nom. *Chick Kam Choo* v. *Esso Oil Co.*, 464 U.S. 826, 104 S. Ct. 98, 78 L. Ed. 2d 103 (1983)).

The above authority makes clear that the Respondent is bound by his selection of legal counsel and by the advice received therefrom, and that the asserted ineffectiveness of Respondent's German and U.S. attorneys in this matter cannot provide a basis for reopening this proceeding.

The Respondent's factual account does not support his contention that it was not until consultation with new counsel as late as December 1992 and January 1993 that he understood the nature and implications of the charging letter and Order and could take appropriate action in this proceeding. Any sense that the Respondent might have had in 1986 of having been cleared of all possible charges with respect to the subject transaction when notified of the discontinuation that year of the Regional Tax Office proceeding against him must have ended when he received the above January 23, 1989, correspondence from his German Attorney, Peter Kanis, after Mr. Kanis' review of the December 22, 1988, charging letter. Mr. Kanis, while noting that the matter had been legally concluded in Germany, left no doubt about the existence of a continuing legal obligation in the United States, from which the Respondent, in Europe, might feel secure "since the police power of the United States ended at its borders and did not extend to Europe." Mr. Kanis recommended, however, that should the Respondent travel to America, he retain an attorney there so that he did not risk being detained upon entering that country on the basis of this proceeding. Accordingly, having been advised by counsel in January 1989 that the charging letter that had been issued against him during the preceding month involved alleged violation of United States law of sufficient seriousness to possibly result in his detention should he travel to the United States, but that

[4] As Agency Counsel correctly indicates, there is no direct precedent for the granting of petitions to set aside default orders under § 788.8(b) of the Regulations. Accordingly, whether the Respondent has shown good cause to set aside the default order in this matter is one of first impression.

[5] Other arguments raised by Agency Counsel will be considered in the discussion.

[6] § 788.7(e) is as follows:

The answer, and all other documentary evidence, must be submitted in English or translations into English must be filed at the same time.

[7] 793 F.2d 58, 62 (C.A. 2, 1986).

the United States police power could not reach him in Germany, the Respondent elected not to respond to the charging letter.[8]

After the May 1989 Order was entered, the Respondent continued to evidence awareness of its significance. Subsequent to its entry, the Respondent and his senior shareholder in CJT, Peter Czermak, consulted with several U.S. companies with whom CJT did business and were reassured that the Order, for above-noted reasons, would not effect their ability to export to CJT. When, on January 17, 1992, the Respondent and Mr. Czermak, as principals of CJT, entered with KJLC into the joint venture, CKL, KJLC's principals were not informed of the existence of the Order, which the Respondent and Mr. Czermak saw fit to conceal, assertedly on the basis of their above consultations with the several U.S. companies.[9] The Respondent and two others were appointed managers of the new joint venture, and the Respondent also gained employment with CKL as a sales engineer. This arrangement might have continued indefinitely except that on December 21, 1992, a vendor informed KJLC that the Respondent had been denied export privileges for a period of ten years. As a result of this revelation and the discussions that followed, the Respondent discontinued all relationships with CKL and CJT, including termination of his manager's status and employment as a sales engineer with CKL and his stock ownership in CJT. Contrary to the Respondent's assertions, the record as outlined above indicates that he understood the implications of the Order well before December 1992 and January 1993. By his and Mr. Czermak's earlier consultations with the U.S. companies and subsequent concealment of the Order's existence from the partners in the joint venture, the Respondent had acted to circumvent its effect. It was only in December 1992, after the vendor unexpectedly disclosed the Order, causing events to close in, that the Respondent became motivated to try to go forward with this proceeding. I find from the above facts that the Respondent was moved to petition four years after default, not because he misunderstood the proceeding's implications, but because he felt the Order's delayed impact.[10]

As Agency Counsel points out, "* * * final judgments should not 'be lightly reopened.'"[11] The U.S. Supreme Court in *Ackermann* v. *United States*[12] noted, "There must be an end to litigation * * *, and free, calculated, deliberate choices are not to be relieved from."

Here, the charging letter was served and, although the Respondent had ample time and had been apprised by counsel of the seriousness of the allegations, he chose not to file an answer. I agree with Agency Counsel that this is not a case where there is a claim of newly-discovered evidence that might affect the allegations of the charging letter, and all material evidence the Respondent has submitted in support of his present Petition was available when the charging letter was served, except, of course, the effect on his career of the resultant Final Order. The Respondent, in 1989, freely chose not to answer the charging letter. His current and probably sincere regret over the resultant Order's sanctions and, consequently, his earlier failure to have timely responded to the charging letter, in the context of the above findings, does not provide "good cause" to vacate the final judgment entered herein in 1989. Accordingly, upon careful consideration it hereby is

Ordered That the Respondent's Petition to Set Aside the Decision and Order on Default, to Vacate the Order and to proceed on the submitted answer be, and the same hereby is, denied.

Dated: May 18, 1993.

Robert M. Schwarzbart,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Acting Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Acting Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 93-14924 Filed 6-23-93; 8:45 am]

BILLING CODE 3510-DT-M

[8] The Respondent's statement that attorney Kanis, in his January 1989 letter, had disserved the Respondent by not pointing out the implications of the Respondent's continuing to represent U.S. companies and to handle U.S.-origin goods is difficult to understand. Implicit in Mr. Kanis' letter is the premise that it might be difficult to do either if a fugitive from the United States.

[9] The Respondent, in not informing his new partners from KJLC about the outstanding Order denying him export privileges for ten years, for whatever reasons, withheld disclosure of a material fact and deprived those parties of any opportunity to exercise judgment concerning the Order's significance to the joint venture prior to its establishment. It is most unlikely that the Respondent would have so consulted and concealed without awareness of the Order's implications. The Respondent's concerns in this regard were vindicated by the reaction of the KJLC officials when they later learned of the Order.

[10] The Respondent understates his corporate roles in asserting that he did not understand until later the implications of the charging letter and Order on his position as a sales engineer. As a 14 percent shareholder of CJT and as a manager of CKL, he was a principal and/or senior official of these companies.

[11] *Nemaizer* v. *Baker*, 793 F.2d, *supra*, at 61.

[12] 340 U.S. 193, 198, 71 S.Ct. 209, 211-12 (1950).

International Trade Administration

(A-307-807 and A-821-804)

Antidumping Duty Orders: Ferrosilicon From Venezuela and the Russian Federation.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 24, 1993.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Kimberly Hardin, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230: (202) 482-1776 or 482-0371, respectively.

Scope of Orders

The merchandise subject to these antidumping duty orders is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this order. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this order is dispositive.

Antidumping Duty Orders

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on May 3, 1993, and May 13, 1993, respectively, the Department of Commerce (Department) made its final determinations that ferrosilicon from Venezuela and the Russian Federation is being sold at less than fair value (58 FR 27522, May 10, 1993, and 58 FR 29192, May 19, 1993, respectively). On June 16, 1993, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that such imports materially injure a U.S. industry.

Suspension of Liquidation

In accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of ferrosilicon from Venezuela and the Russian Federation. These antidumping duties will be assessed on all unliquidated entries of ferrosilicon from Venezuela and the Russian Federation entered, or withdrawn from warehouse, for consumption on or after December 29, 1992, the date on which the Department published its preliminary determination notices in the **Federal Register** (57 FR 61879 and 57 FR 61876, respectively). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposit for the subject merchandise.

Manufacturer/producer/exporter	Margin percentage
The Russian Federation:	
All manufacturers/producers/exporters	104.18
Venezuela:	
CVG-Venezolana de Ferrosilicio (CVG Fesilvin)	9.55
All others	9.55

Regarding the investigation of ferrosilicon from the Russian Federation, in its final determination, the Department found that critical circumstances exist with respect to exports of ferrosilicon from the Russian Federation. However, on June 16, 1993, the ITC notified the Department that retroactive assessment of antidumping duties is not necessary to prevent recurrence of material injury from massive imports over a short period. As a result of the ITC's determination, pursuant to section 735(c)(3) of the Act, we shall order Customs to terminate the retroactive suspension of liquidation and to release any bond or other security and refund any cash deposit required under section 733(d)(2) with respect to entries of subject merchandise entered or withdrawn from warehouse, for consumption prior to December 29, 1992.

This notice constitutes the antidumping duty order with respect to ferrosilicon from Venezuela and the Russian Federation, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

These orders are published in accordance with section 736(a) of the Act and 19 CFR § 353.21.

Dated: June 17, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-14920 Filed 6-23-93; 8:45 am]

BILLING CODE 3510-DS-P

Texas A&M University, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 93-016. *Applicant:* Texas A&M University, College Station, TX 77843. *Instrument:* Submersible Fluorimeter and Accessories, Model AQUATRACKA MkIII. *Manufacturer:* Chelsea Instruments Ltd., United Kingdom. *Intended Use:* See notice at 58 FR 17862, April 6, 1993.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides (1) a single 4-decade logarithmic range for measuring widely varying chlorophyll densities and (2) deployment to a depth of 6000m. The National Oceanic and Atmospheric Administration and a private research institution advise that (1) these capabilities are pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93-14921 Filed 6-23-93; 8:45 am]

BILLING CODE 3510-DS-P

National Oceanic and Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service, (NMFS) NOAA, Commerce.

ACTION: Issuance of an amendment to permit No. 823; Idaho Department of Fish and Game (P503C).

On February 17, 1993 notice was published (58 FR 8740) that an application (P503C) had been filed by the Idaho Department of Fish and Game (IDFG), to take listed Snake River fall and spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and listed Snake River sockeye salmon (*O. nerka*) for the purposes of scientific research as authorized by the Endangered Species Act (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

On April 1, 1993 (58 FR 18205), IDFG was issued Permit No. 823 under the authority of the ESA and the NMFS regulations governing listed fish and wildlife permits, authorizing three of seven projects proposed in their application.

Notice is hereby given that on June 16, 1993 IDFG was issued an amendment to Permit No. 823 for the above taking subject to certain conditions set forth therein.

Issuance of this Permit, as required by the ESA, was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of this Permit; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This Permit was also issued in accordance with and is subject to the NMFS regulations governing listed species permits.

The application, Permit, Amendment, and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated: June 16, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–14877 Filed 6–23–93; 8:45 am]

BILLING CODE 3510-22-M

[Docket No. 930650–3150]

Affirmation of Vertical Datum for Surveying and Mapping Activities

SUBAGENCY: National Ocean Service, Coast & Geodetic Survey, National Oceanic and Atmospheric Administration, DOC.

ACTION: Notice.

SUMMARY: This Notice announces a decision by the Federal Geodetic Control Subcommittee (FGCS) to affirm the North American Vertical Datum of 1988 (NAVD 88) as the official civilian vertical datum for surveying and mapping activities in the United States performed or financed by the Federal Government, and to the extent practicable, legally allowable, and feasible, require that all Federal agencies using or producing vertical height information undertake an orderly transition to NAVD 88.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Stem, N/CG1x4, SSMC3, Station 9357, National Geodetic Survey, NOAA, Silver Spring, Maryland 20910; telephone: 301–713–3230.

SUPPLEMENTARY INFORMATION: The Coast and Geodetic Survey (C&GS), National Geodetic Survey (NGS), has completed the general adjustment portion of the NAVD 88 project, which includes approximately 80 percent of the previously published bench marks in the NGS data base. The remaining "posted" bench marks which comprise approximately 20 percent of the total will be published by October 1993. Regions of significant crustal motion will be analyzed and published as resources allow.

NAVD 88 supersedes the National Geodetic Vertical Datum of 1929 (NGVD 29) which was the former official height reference (vertical datum) for the United States. NAVD 88 provides a modern, improved vertical datum for the United States, Canada, and Mexico. The NAVD 88 heights are the result of a mathematical least squares general adjustment of the vertical control portion of the National Geodetic Reference System and include 80,000 km of new U.S. Leveling observations undertaken specifically for this project.

NAVD 88 height information in paper or digital form is available from the National Geodetic Information Branch, N/CG174, SSMC3, Station 9202, National Geodetic Survey, NOAA, Silver Spring, Maryland, 20910; telephone: 301–713–3242.

Dated: June 21, 1993.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA.

[FR Doc. 93–14922 Filed 6–23–93; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title and OMB Control Number: DoD FAR Supplement, part 223, Environment, Conservation, Occupational Safety, and Drug-Free Workplace, and related clauses at 252.223; OMB Control Number 0704–0272

Type of Request: Reinstatement

Number of Respondents: 1,401

Responses per Respondent: 1

Annual Responses: 1,401

Average Burden per Response: 3.89 hours

Annual Burden Hours: 5,451

Needs and Uses: DoD FAR Supplement, part 223 prescribes policies and procedures for contracting for ammunition and explosives. The information generated by these requirements is used by Federal Government personnel to determine if contractors take reasonable precautions in handling ammunition and explosives so as to minimize the potential for mishaps.

Affected Public: Business or other for-profit, non-profit institutions, and small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: June 21, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–14898 Filed 6–23–93; 8:45 am]

BILLING CODE 5000-04-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title and OMB Control Number: DoD FAR Supplement, part 205, Publicizing Contract Actions, and the clause at 252.205–7000; OMB Control Number 0704–0286

Type of Request: Revision
Number of Respondents: 1,800
Responses Per Respondent: 1
Annual Responses: 1,800
Average Burden Per Response: 1.3 hours
Annual Burden Hours: 2,340
Needs and Uses: DoD FAR Supplement, part 205 and the clause at 252.205–7000, Provision of Information to Cooperative Agreement Holders, requires defense contractors, awarded a contract in excess of $500,000 to provide entities holding cooperative agreements with the Defense Logistics Agency (DLA), upon their request, a list of appropriate employees, their business address, telephone number, and area of responsibility, who have responsibility for awarding subcontracts under defense contracts. This language implements Section 957 of Public Law 99–500.
Affected Public: Businesses or other for-profit, non-profit institutions, and small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: June 21, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–14899 Filed 6–23–93; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on August 11, 1993, and from 8:30 a.m. to 4:30 p.m. on August 12, 1993. The meeting will be held at the Monterey Plaza Hotel, 400 Cannery Row, Monterey, CA. The purpose of the meeting is to review planned changes in the Department of Defense's Student Testing Program and progress in developing paper-and-pencil and computerized enlistment tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management and Personnel), room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 695–5525, no later than August 2, 1993.

Dated: June 21, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–14901 Filed 6–23–93; 8:45 am]

BILLING CODE 5000–04–M

Meetings

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS), DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review unresolved resolutions made by the Committee at the DACOWITS 1993 Spring Conference; review the Subcommittee Issue Agenda; review the proposed agenda for the DACOWITS 1993 Fall Conference; and discuss issues relevant to women in the Services. All meeting sessions will be open to the public.

DATES: September 13, 1993, 8:30 a.m.–4 p.m.

ADDRESSES: SECDEF Conference 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Captain Kari L. Everett, Office of the DACOWITS and Military Women Matters, OASD (Force Management and Personnel), the Pentagon, room 3D769, Washington, DC 20301–4000; telephone (703) 697–2122.

Dated: June 21, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–14902 Filed 6–23–93; 8:45 am]

BILLING CODE 5000–04–M

Performance Review Board Membership

AGENCY: Defense Finance and Accounting Service.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Board for the Defense Finance and Accounting Service.

EFFECTIVE DATE: July 15, 1993.

FOR FURTHER INFORMATION CONTACT: Beverley McDaris, Defense Finance and Accounting Service, DAO-Arlington, DFAS–CL–BJH, 1931 Jefferson Davis Highway, Arlington, VA 22240–5280.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

Gary Amlin, Deputy Director for Finance, Defense Finance and Accounting Service—Headquarters
John Barber, Director, Military and Civilian Pay Directorate (Finance), Defense Finance and Accounting Service—Headquarters
Charles Coffee, Director, Contract Pay and Disbursing Directorate (Finance), Defense Finance and Accounting Service—Headquarters
John Cooley, Director, Reporting and Performance Directorate (Accounting), Defense Finance and Accounting Service—Headquarters
William Daeschner, Deputy Director for Information Management, Defense Finance and Accounting Service—Headquarters
Carroll Dennis, Director for External Affairs and Management Support (Resources Management), Defense Finance and Accounting Service—Headquarters
Douglas Farbrother, Assistant Deputy Director for Resource Management, Defense Finance and Accounting Service—Headquarters
Lorraine Lechner, Deputy Director for Resource Management, Defense Finance and Accounting Service—Headquarters
John Mester, General Counsel, Defense Finance and Accounting Service—Headquarters
Daniel Turner, Deputy Director for Accounting, Defense Finance and Accounting Service—Headquarters
Arnold Weiss, Deputy Director for Business Information Management, Defense Finance and Accounting Service—Headquarters
Jay Williams, Director, Cleveland Center, Defense Finance and Accounting Service

Phyllis Hudson, Deputy Director, Cleveland Center, Defense Finance and Accounting Service
Ronald Hovell, Director, Columbus Center, Defense Finance and Accounting Service
Bernard Gardetto, Deputy Director, Columbus Center, Defense Finance and Accounting Service
John Nabil, Director, Denver Center, Defense Finance and Accounting Service
Jerome Coleman, Deputy Director, Denver Center, Defense Finance and Accounting Service
James McQuality, Director, Security Assistance Accounting Center, Defense Finance and Accounting Service—Denver Center
Michael Wilson, Director, Indianapolis Center, Defense Finance and Accounting Service
Thomas McCarty, Deputy Director, Indianapolis Center, Defense Finance and Accounting Service
Gregory Bitz, Director, Kansas City Center, Defense Finance and Accounting Service

Dated: June 21, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–14900 Filed 6–23–93; 8:45 am]
BILLING CODE 5000–04–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 93–4]

DOE's Management and Direction of Environmental Restoration Management Contracts

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning health and safety factors associated with DOE's management and direction of Environmental Restoration Management Contracts. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before July 26, 1993.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208–6400.

Dated: June 21, 1993.

John T. Conway,

Chairman.

DOE's Management and Direction of Environmental Restoration Management Contracts

Dated: June 16, 1993.

The Board and its staff have been monitoring the efforts of the Department of Energy (DOE) in technically managing the Uranyl Nitrate Hexahydrate (UNH) stabilization project at the Fernald Environmental Management Project since DOE began preparations for operational testing in early 1992. The stabilization project was initiated after the UNH solution was declared waste in 1991. The purpose of the project is to process the UNH into a filter cake for interim nuclear waste storage onsite pending final disposition.

In addition to maintaining a focus on the technical aspects affecting safety at Fernald, the Board has a high interest in DOE's use of its new Environmental Restoration Management Contractor (ERMC) approach to defense nuclear waste storage, treatment, disposal, and site decommissioning/restoration at this site. Experience acquired at Fernald can prove valuable to the Department and its future ERMCs for defense nuclear sites. Of particular interest to the Board is how, under this approach, DOE and the ERMC will ensure adequate protection of the health and safety of the public and the onsite workers involved in storage and processing of nuclear waste at Fernald.

The Board's staff has visited Fernald to review the UNH stabilization project in five separate occasions since March 1992. Topics for review have included technical management arrangements, operator training, start-up test plans, radiation protection, nitrogen dioxide releases, and the testing of system operability. The Board forwarded observations from the March 1992 Fernald visit to the Assistant Secretary for Environmental Restoration and Waste Management (EM–1) in a letter dated July 8, 1992. Observations from a staff trip in April of this year were forwarded to EM–1 in a letter dated May 11, 1993. These reviews at Fernald have shown weaknesses in DOE's technical direction of contractor performance, the contractor's conduct of operations, and the level of knowledge of personnel. With respect to the first weakness, a lack of technical vigilance on the part of DOE-Fernald (DOE–FN) allowed the ERMC contractor to start operations at the UNH project in April 1993 without (1) conducting a DOE–FN-required readiness review and without (2) informing and obtaining the approval of either the DOE–FN manager or the DOE headquarters project office to start the operation.

Most recently, incidents involving the improper transfer of UNH solution into a treatment system sump, and the resultant release of approximately 30 gallons of UNH solution to the environment, have again shown how inadequate procedures, inadequate knowledge of systems and procedures on the part of operators, and absence of an appropriate level of discipline in the conduct of operations can contribute to unsafe operations. These incidents were logged in DOE's occurrence reporting system in reports ORO—WMCO–FMPC–1993–0027 AND ORO—WMCO–FMPC–1993–0028, respectively. Furthermore, the Board has noted recent events at other facilities under the cognizance of EM, including the Defense Waste Processing Facility at SRS and the Uranium Oxide Plant at Hanford, that appear to indicate fundamental safety problems resulting from defective discipline of operations.

The incidents at Fernald and at other sites, taken together, also suggest that DOE's technical management and oversight structure for ERMC contracts are in need of upgrading. As the defense nuclear complex moves more rapidly toward long-term storage, environmental restoration, and cleanup, new contractors at other sites will be engaged using the ERMC approach, as is being used at Fernald. Based upon observations of the Fernald project, the Board has concern stemming from health and safety considerations that: (1) DOE may not have sufficient numbers of competent, trained headquarters and field personnel to technically manage such contracts, and (2) contracts may be negotiated and signed before DOE has developed internal plans on how to carry out its technical management and oversight responsibilities.

The Board is aware that you have recently announced initiatives to reform DOE contract management. These initiatives are directed largely at more effective financial management and program implementation. The Board would encourage, in the interests of public and worker health and safety, that the planned review of contracting mechanisms and practices also encompass the DOE technical direction and oversight structure. The Board believes that competence and effectiveness in technical aspects of management are essential to assure that

contract services are provided in a manager which meets health and safety objectives.

The Board believes that DOE should formalize and strengthen its technical management of ERMC contracts. A straightforward step toward achieving this objective is for DOE to develop, in parallel with the drafting and negotiation of a new contract, a separate document which will provide detailed project and technical management plans and allocate qualified technical personnel to manage that contract at both HQ and the field location. Such a plan would in effect be a functions and responsibilities document. It would lay out management expectations for those assigned the technical monitoring, direction, and oversight of the contracted services, and identify the interfaces with other DOE resources managing the non-technical aspects of the contract. The contractor would normally not be allowed to commence operations involving radioactive materials until DOE's plan for technical management of site activities has been put into effect. This means, among other things, that the relevant DOE site and headquarters offices have been adequately staffed with qualified persons to provide competent technical direction, guidance, and oversight of the contractor's operations. In addition, the principles contained in applicable DOE Orders and in previous Board recommendations on such topics as DOE facility representatives (92–2), operational readiness reviews (92–6), and training (92–7) should be incorporated, where appropriate, into DOE's plan.

Such advance planning for technical management of ERMC contracts would have the following beneficial impacts: (1) Timely identification and commitment of adequate technical resources to manage new contracts and projects; (2) up front identification for DOE technical managers of expectations deriving from DOE responsibilities for protection of health and safety of workers and the public; and (3) assurance that DOE's technical line management and safety oversight organizations are involved early in the contracting process.

In summary, the Board believes that improvement of DOE's capability to provide technical management and oversight of ERMCs across a board front is necessary to ensure adequate protection of the public health and safety. Therefore, the Board recommends that:

1. DOE develop and implement a technical management plan for Fernald and all future ERMC contracts. For Fernald, the technical management plan should be developed and implemented expeditiously. For future ERMC contracts, such a plan should be readied prior to contractor selection, and should be implemented at the initiation of contracted services.

2. Each plan for technical management of contracted services include as a minimum:

(a) A clear statement of functions and responsibilities of those in DOE assigned the task of technical direction, monitoring, or oversight of the contracted efforts, both at headquarters and the relevant operations offices;

(b) Definition of the technical and managerial qualifications required of DOE's technical management staff at each level of responsible DOE line and oversight units;

(c) Identification of the principal interfaces with the non-technical DOE personnel involved in the contract management;

(d) Identification, by name, of the key technical personnel selected to perform the requisite technical direction, monitoring, and oversight functions;

(e) Identification of policies, practices, orders, and other key instructions that represent a basic framework to be used in DOE technical management of the contractor in ensuring public and work safety and adequate environmental protection; and

(f) A detailed program to ensure compliance with applicable statutes and DOE Orders, standards, rules, directives, and other requirements related to public and worker safety and environmental protection.

3. DOE consider the insights gained from addressing recommendations 1 and 2 above for ERMC contracts in pursuing the broader initiatives for reforming contract management you recently announced.

To assist DOE in resolving the broader-based safety issues addressed in the previous recommendations, the Board recommends that the following additional actions be taken at Fernald:

4. DOE headquarters complete an independent review of the recent incidents at Fernald, identifying the root causes for those incidents and the corrective actions required to remedy the underlying problems, and translate the Fernald findings into lessons learned applicable to other facilities.

5. DOE establish a clear process with an appropriate set of requirements and clear definitions of the line of authority for approval to start the UNH stabilization project. The set of requirements should identify the type and scope of readiness reviews DOE will require for the start of the UNH stabilization runs. For the type and scope of the reviews, consideration should be given to the standards set forth in previous Board recommendations on this subject (i.e. 90–4, 91–3, 91–4, 92–1, 92–3, and 92–6) and account for the known safety considerations for this operation. This process should also include identification of the appropriate DOE official(s) responsible for ensuring that public and worker health and safety are adequately protected and for giving final start-up approval.

6. DOE immediately establish a group of technically qualified Facility Representatives at Fernald to monitor the ongoing activities of daily operations at the site. DOE's "Guidelines for Establishing and Maintaining a Facility Representative Program at DOE Nuclear Facilities," issued in March, 1993, may be a useful basis for quickly establishing such a program at Fernald.

John T. Conway,
Chairman.

Appendix—Transmittal Letter to Secretary of Energy

John T. Conway, Chairman
A.J. Eggenberger, Vice Chairman
John W. Crawford, Jr.
Joseph J. DiNunno
Herbert John Cecil Kouts

Defense Nuclear Facilities Safety Board
625 Indiana Avenue, NW., Suite 700,
Washington, DC 20004 (202) 208–6400
June 16, 1993.

The Honorable Hazel R. O'Leary,
Secretary of Energy, Washington, DC 20585.

Dear Secretary O'Leary: On June 16, 1993, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), unanimously approved Recommendation 93–4 which is enclosed for your consideration. Recommendation 93–4 deals with health and safety factors associated with DOE's management and direction of Environmental Restoration Management Contracts.

42 U.S.C. 228d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161–68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,
Chairman.

[FR Doc. 93–14894 Filed 6–23–93; 8:45 am]
BILLING CODE 6820–KD–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 26, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: June 18, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Vocational and Adult Education

Type of Review: New
Title: National Workplace Literacy Program Reporting Requirements
Frequency: Semi-annually
Affected Public: State or local governments; businesses or other for-profit; non-profit institutions; small businesses or organizations
Reporting Burden:
Responses: 50
Burden Hours: 2,400
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The data will be requested from awardees for the National Workplace Literacy Program. The data will be used to monitor performance through the grant period and assist ED program staff in determining the viability of the National Workplace Literacy program.

[FR Doc. 93–14874 Filed 6–23–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. F057]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Consolidated Industries From the DOE Furnace Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Consolidated Industries (Consolidated) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's MBA series of furnaces.

Today's notice also publishes a "Petition for Waiver" from Consolidated. Consolidated's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Consolidated seeks to test using a blower delay time of 30 seconds for its MBA series of furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than July 26, 1993.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–057, Mail Stop EE–90, room 6B–025, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–3012.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE

for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On April 7, 1993, Consolidated filed an Application for Interim Waiver regarding blower time delay. Consolidated's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Consolidated requests the allowance to test using a 30-second blower time delay when testing its MBA series of furnaces. Consolidated states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.8 percent. Since current DOE test procedures do not address this variable blower time delay, Consolidated asks that the Interim Waiver be granted.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; Ducane Company, 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Consolidated an Interim Waiver for its MBA series of furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Consolidated was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, June 16, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

June 16, 1993.

Mr. Gerald K. Gable,

Vice President of Engineering, Consolidated Industries Corporation, P.O. Box 7800, Corner of Brady and Concord, Lafayette, IN 47903–7800

Dear Mr. Gable: This is in response to your April 7, 1993, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for the Consolidated Industries (Consolidated) MBA series of furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; Ducane Company, 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Consolidated's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Consolidated will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Consolidated's Application for an Interim Waiver from the DOE test

procedure for its MBA series of furnaces regarding blower time delay is granted.

Consolidated shall be permitted to test its MBA series of furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Robert L. San Martin

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

April 7, 1993

Assistant Secretary of Conservation and Renewable Energy,

U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Gentlemen: This Petition for Waiver and Application for Interim Waiver is submitted in compliance with title 10 CFR 430.27. This request is for modification to the Test Procedures for Measuring the Energy Consumption of Furnaces found in appendix N to subpart B of part 430.

The current test procedure uses a 1.5 minute time delay between the burner start-up and the blower start-up. Consolidated Industries' MBA series of furnaces utilizes a 30 second non-adjustable fixed time delay between the burner ignition and blower start-up. For the MBA series of furnaces, Consolidated Industries is requesting that the fixed time delay be substituted for the current test procedure's 1.5 minute time delay.

We submit that the test procedure using 1.5 minute blower start-up time delay requires a bypass of the furnace safety limit switch and does not represent the true product performance and efficiency. The MBA furnace series has a light weight, compact heat exchanger that was designed to heat up very quickly with an ensuing blower start-up time optimized at 30 seconds. The advanced heat exchanger design along with improved operating controls has improved the efficiency of this furnace in such a way that the current standard does not credit Consolidated Industries for the true efficiency improvements to this furnace. The product performance will be more accurately depicted using the proposed ASHRAE Standard 103–1988 which accounts for the design flexibility and improvement without the penalty incurred by using the current test procedure. The test results show an average of 0.8% improvement in AFUE using the 30 second fixed time delay.

Other manufacturers have been granted similar waivers for similar reasons.

Data and documentation can be supplied at your request.

This waiver request letter has been sent to GAMA and gas furnace manufacturers that market similar products.

Sincerely,

Gerald K. Gable,

Vice President of Engineering, Consolidated Industries Corp.

[FR Doc. 93–14796 Filed 6–23–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. ER–93–157–000, et al.]

PacifiCorp, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 17, 1993.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER93–157–000]

Take notice that PacifiCorp, on June 14, 1993, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, an amendment to its filing under the above referenced docket.

Copies of the filing amendment were supplied to the owners of the Skookumchuck Project including Puget Sound Power & Light Company, The Washington Water Power Company and Portland General Electric Company.

Comment date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Consumers Power Co.

[Docket No. ER93–695–000]

Take notice that on June 3, 1993, Consumers Power Company (Consumers) tendered for filing a revision to the annual charge rate for charges due Consumers from Northern Indian Public Service Company (Northern), under the terms of the Barton Lake-Batavia Interconnection Facilities Agreement (designated Consumers Power Company Electric Rate Schedule FERC No. 44).

The revised charge is provided for in Subsection 1.043 of the Agreement, which provides that the annual charge rate may be redetermined effective May 1, 1993 using year-end 1992 data with a new annual charge rate. As a result of the redetermination, the monthly charges to be paid by Northern were reduced from $17,277.00 to $16,917.00.

Consumers requests an effective date of May 1, 1993, and therefore requests waiver of the Commission's notice requirements.

Comment Date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. PacifiCorp

[Docket No. ER93–583–000]

Take notice that PacifiCorp on June 14, 1993, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, a fully executed Joint Use and Interconnection Agreement (Agreement) dated May 20, 1993 between PacifiCorp and Dixie Escalante Rural Electric Association, Inc. (Dixie Escalante).

The Agreement provides for the installation, interconnection and joint use of transmission facilities to serve PacifiCorp's and Dixie Escalante's loads in Iron and Washington Counties, Utah. PacifiCorp submitted an unexecuted draft of the Agreement in its initial filing which was subsequently revised by Dixie Escalante and PacifiCorp.

PacifiCorp requests a waiver of prior notice pursuant to 18 CFR part 35.11 of the Commission's Rules and Regulations for an effective date not later than sixty days from the date that PacifiCorp's initial filing was received by the Commission.

Copies of this filing were supplied to Dixie Escalante, the Public Utility Commission of Oregon and the Utah Public Service Commission.

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Comment date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Thermo Power and Electric, Inc.

[Docket No. QF85–110–003]

On June 3, 1993, and June 15, 1993, Thermo Power and Electric, Inc. (Applicant) tendered for filing supplemental information to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to the technical data and the ownership of the facility.

Comment Date: July 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Bangor Hydro-Electric Co.

[Docket No. ER93–606–000]

Take notice that on June 14, 1993, Bangor Hydro-Electric Company (Bangor) tendered for filing information requested by the Commission Staff as an amendment to its April 30, 1993 filing in this docket.

Comment Date: July 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Idaho Power Co.

[Docket No. ER93–148–000]

Take notice that on June 14, 1993, Idaho Power Company (IPC) tendered for filing Amendment to its filing in this matter to submit additional information regarding cost of service.

Comment Date: July 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Idaho Power Co.

[Docket No. ER93–491–001]

Take notice that on June 14, 1993, Idaho Power Company (IPC) tendered for filing a revision of rates and a refund report in the above-referenced docket with regard to Public Utility District No. 1 Snohomish County and City of Tacoma Department of Public Utilities Light Division.

Comment Date: July 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Columbus Southern Power Co.

[Docket No. ER93–637–000]

Take notice that American Electric Power Service Corporation, on behalf of Columbus Southern Power Company (CSP), on June 14, 1993, tendered for filing additional information in Docket No. ER93–637–000 to comply with a FERC Staff request.

A copy of the filing was served upon the City of Columbus, Ohio, American Municipal Power-Ohio Inc., and the Public Utility Commission of Ohio.

Comment Date: July 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Georgia Power Co.

[Docket No. EC93–15–000]

Take notice that on June 15, 1993, Georgia Power Company (GPC) tendered for filing an application for an Order pursuant to Section 203 of the Federal Power Act authorizing it to sell certain transmission facilities located in Georgia, to the City of Dalton, Georgia. GPC proposes to sell such facilities on July 1, 1993.

Comment Date: July 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Connecticut Light and Power Co.

[Docket No. ER93–482–000]

Take notice that on June 10, 1993, Connecticut Light and Power Company tendered for filing an amendment in the above-referenced docket.

Comment Date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corp.

[Docket No. ER93–670–000]

Take notice that on June 15, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Commission a signed Service Agreement between Niagara Mohawk and Orange & Rockland Utilities, Inc. (O&R) for sales of system capacity and/or energy or resource capacity and/or energy under Niagara Mohawk's proposed Power Sales Tariff in Docket No. ER93–313–000. Niagara Mohawk filed its Power Sales Tariff on January 11, 1993 and requested an effective date of March 13, 1993 for the Tariff. In its May 24, 1993 filing of the proposed Service Agreement with O&R, Niagara requests an effective date for this Service Agreement of May 24, 1993 the date of filing with FERC.

A copy of this filing has been served upon O&R and the New York State Public Service Commission.

Comment date: July 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corp.

[Docket No. ER93–690–000]

Take notice that on June 15, 1993, Niagara Mohawk Power Corporation (Niagara) tendered for filing with the Commission a signed Service Agreement between Niagara Mohawk and Delmarva Power for sales of system capacity and/or energy or resource capacity and/or energy under Niagara Mohawk's proposed Power Sales Tariff in Docket No. ER93–313–000. Niagara Mohawk filed its Power Sales Tariff on January 11, 1993 and requested an effective date of March 13, 1993 for the Tariff. In its May 25, 1993 filing of the proposed Service Agreement with Delmarva, Niagara Mohawk requests an effective date for the Service Agreement of May 25, 1993 the date of filing with FERC.

A copy of this filing has been served upon Delmarva and the New York State Public Service Commission.

Comment date: July 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corp.

[Docket No. ER93–657–000]

Take notice that on June 15, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Commission a signed Service Agreement between Niagara Mohawk and Long Island Lighting Company (LILCO) for sales of system capacity and/or energy or resource capacity and/or energy under Niagara Mohawk's proposed Power Sale Tariff in Docket No. ER93–313–000. Niagara Mohawk filed its Power Sales Tariff on January 11, 1993 and requested an effective date of March 13, 1993 for the Tariff. In its May 14, 1993 filing of the proposed Service Agreement with LILCO, Niagara Mohawk requests an effective date for this service Agreement of May 14, 1993 the date of filing with FERC.

A copy of this filing has been served upon LILCO and the New York State Public Service Commission.

Comment date: July 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. Eagle Point Cogeneration Partnership

[Docket No. QF86–1061–004]

On May 19, 1993, and June 10, 1993, Eagle Point Cogeneration Partnership (Applicant) tendered for filing supplements to its filing in this docket.

The supplements provide additional information pertaining to the ownership and technical aspects of its cogeneration facility. No determination has been made that the submittals constitute a complete filing.

Comment date: July 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

15. San Joaquin Valley Energy Partners I, L.P.

[Docket Nos. QF87–354–002, QF87–634–003, QF87–689–004]

On June 14, 1993, San Joaquin Valley Energy Partners I, L.P. (Applicant) tendered for filing amendments to its filings in these dockets. No determination has been made that these submittals constitute complete filings.

The amendments provide additional information pertaining primarily to the ownership of the El Nido, Chowchilla II, and Madera facilities.

Comment date: July 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

16. Pacific Gas and Electric Co.

[Docket No. ER93–705–000]

Take notice that on June 11, 1993, Pacific Gas and Electric Company (PG&E) tendered for filing proposed changes in the rate schedule covering services rendered by PG&E under the agreement entitled "Comprehensive Agreement Between State of California Department of Water Resources (DWR) and Pacific Gas and Electric Company" (Comprehensive Agreement) dated April 22, 1982. The Comprehensive Agreement was initially filed under FERC Docket No. ER83–142–000 and was assigned Rate Schedule FERC No. 77.

The Comprehensive Agreement provides for firm transmission service between Points of Receipt and Points of Delivery as shown in its Table II–1 of Exhibit II. One rate schedule change is the addition of the Northern California Power Agency (NCPA) as a Point of Delivery with a maximum delivery of 100 MW to NCPA.

PG&E is also filing two Letter Agreements between the Parties for transmission studies to identify transmission and interconnection alternatives for DWR's proposed Los Banos Grandes Facilities Project and to provide for Firm Transmission Service for DWR's Coastal Branch Aqueduct Project.

Copies of this filing were served upon DWR and the California Public Utilities Commission.

Comment date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

17. Orange and Rockland Utilities, Inc.

[Docket No. ER93–707–000]

Take notice that on June 11, 1993, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing pursuant to the Federal Energy Regulatory Commission's order issued January 15, 1988, in Docket No. ER88–112–000, an executed Service Agreement between Orange and Rockland and Reynolds Metals Company.

Comment date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

18. New England Power Pool

[Docket No. ER93–708–000]

Take notice that on June 14, 1993, the New England Power Pool (NEPOOL) Executive Committee filed an amendment to the NEPOOL Agreement, dated as of May 1, 1993 (AMENDMENT), which changes provisions of the NEPOOL Agreement (NEPOOL FPC No. 2), dated as of September 1, 1971, as previously amended by twenty-eight amendments.

The NEPOOL Executive Committee states that the AMENDMENT is intended to modify capability responsibility and energy billing determinations for pool participant generation resources other than hydroelectric units, whose annual hours of operation are restricted by regulatory requirements, contract terms or engineering or operating constraints.

Comment date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

19. Puget Sound Power & Light Co.

[Docket No. ER93–709–000]

Take notice that on June 14, 1993, Puget Sound Power & Light Company (Puget) tendered for filing an unsigned Emergency Interconnection Agreement between the United States of America Department of Energy—Bonneville Power Administration (BPA) and Puget dated as of June 10, 1993. Under the Agreement, Puget is to interconnect with BPA's substation in order to provide Puget with emergency backup service.

Copies of the filing were served upon BPA.

Comment date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

20. Green Mountain Power Corp.

[Docket No. ER93–710–000]

Take notice that on June 14, 1993, Green Mountain Power Corporation (GMP) tendered for filing revised Service Agreements and Certificate of Concurrences under FERC Electric Tariff No. 2, known as GMP's Opportunity Transactions Tariff (Tariff). The revised Service Agreements allow FERC jurisdictional utilities to conduct transactions with GMP pursuant to the Tariff that includes exchange units. No terms or conditions of the Tariff are affected by the revised form of service agreement.

Comment date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

21. Wisconsin Electric Power Co.

[Docket No. ER93–697–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on June 7, 1993, tendered for filing a Service Facilities Agreement between itself and the Village of Slinger, Wisconsin (Slinger). The Agreement provides for the establishment of a second delivery point.

Wisconsin Electric respectfully requests an effective date of coincident with the initial receipt of service through the new delivery point, which is estimated to occur on June 10, 1993. Wisconsin Electric is authorized to state that Slinger joins in the requested effective date.

Copies of the filing have been served on Slinger, The Wisconsin Public Power Inc. SYSTEM, and the Public Service Commission of Wisconsin.

Comment date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14851 Filed 6–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 6059–003, et al.]

Hydroelectric Applications [Hydro Development Group, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection·

1 a. *Type of Application:* Amendment to Project Design.
b. *Project No:* 6059–003.
c. *Date Filed:* 05/17/93.
d. *Applicant:* Hydro Development Group, Inc.
e. *Name of Project:* Fowler #7 Water Power Project.
f. *Location:* On the Oswegatchie River, in the Town of Fowler, St. Lawrence County, New York.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* John T. Bedard, P.O. Box 58, Dexter, NY 13634, (315) 639–6700.
i. *FERC Contact:* Mohamad Fayyad, (202) 219–2665.
j. *Comment Date:* July 26, 1993.
k. *Description of Amendment:* Licensee proposes to amend the license as follows: (1) Replace the original three generating units with newer more efficient units, which would increase the project's installed capacity by 555 kW and hydraulic capacity by 405 cfs; (2) Alter the forebay/intake configuration, install new trashracks, and install a downstream sluice to pass fish; (3) Other related modifications to project's structures; and (4) Extension of license term by 10 years.
l. This notice also consists of the following standard paragraphs: B, C1, and D2.

2 a. *Type of Application:* Subsequent License.
b. *Project No.:* 2490–001.
c. *Date Filed:* December 31, 1991.
d. *Applicant:* Central Vermont Public Service Corporation.
e. *Name of Project:* Taftsville Project.
f. *Location:* On the Ottauquechee River in Windsor County, Vermont.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Robert de R. Stein, Central Vermont Public, Service Corporation, 77 Grove Street, Rutland, VT 05701, (802) 773–2711.
i. *FERC Contact:* Charles T. Raabe (202) 219–2811.
j. *Deadline Date:* See attached paragraph D6.
k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D6.
l. *Description of Project:* The existing Taftsville Project's principal features consist of a dam structure, a powerhouse, an impoundment, a transmission line, and appurtenant facilities. The existing project has a generator capacity of 500 kilowatts (kW), a hydraulic capacity range of 95 to 370 cubic feet per second (cfs), and an average annual generation of about 1.691 megawatt-hours (MWH).

The applicant has proposed to change the existing operation of daily peaking to a run-of-river operation. The applicant would maintain 0.5- to 1-inch-height of water passing over the spillway and into two bypass reaches. This amount of water is equivalent to flows of 5 to 15 cfs. The bypass reaches are 100 feet long and 135 feet long.

In detail, the project is described as follows:

(1) A concrete gravity dam consisting of a spillway section, 194 feet long by 16 feet high, with a crest elevation of 637.12 feet mean sea level (msl), topped with 1.5-foot-high flashboards;

(2) A powerhouse, equipped with one vertical Kaplan hydroelectric generating unit with (a) a rated capacity of 500 kilowatts (KW); (b) a hydraulic capacity range of 95 to 370 cubic feet per second (cfs); (c) an average annual generation of 1.691 megawatthours (MWH); and (d) a gross head of 20 feet;

(3) An impoundment having (a) a surface area of 20.5 acres (AC); (b) a useable storage capacity of 30 acre-feet (AF); and (c) a normal headwater elevation of 638.6 feet msl and tailwater elevation of 618.6 feet msl;

(4) Three 46-kilovolt (kV), transmission lines; and

(5) Appurtenant facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and D6. (August 9, 1993)

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT, 05701.

3 a. *Type of Application:* Subsequent Minor License.
b. *Project No.:* 2348–001.
c. *Date Filed:* December 17, 1991.
d. *Applicant:* Wisconsin Power and Light Company.
e. *Name of Project:* Beloit Blackhawk Hydro Project.
f. *Location:* On the Rock River in Rock County, Wisconsin.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Norman E. Boys, Vice President, Power Production, Wisconsin Power and Light Company, P.O. Box 192, 222 West Washington Avenue, Madison, WI 53701, (608) 252–3086.
i. *FERC Contact:* Ed Lee (202) 219–2809.
j. *Deadline Date:* See paragraph D9. (August 10, 1993)
k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.
l. *Description of Project:* The project as licensed consists of the following: (1) An existing concrete non-overflow dam, 38.5 feet long, with a sluiceway; (2) an existing reinforced concrete Tainter gate and stop-log section, 91.1 feet long, containing (a) two steel Tainter gates, each 30 feet long by 15.75 feet high, and (b) four foot stop-logs; (3) an existing needle section, 81.2 feet long; (4) an existing slide gate section, 101.6 feet long with nine slide gates; (5) an existing reservoir with a surface area of 485 acres and total storage volume of 3,255 acre-feet at the normal maximum surface elevation of 744.7 feet NGVD; (6) an existing concrete and brick powerhouse, approximately 37 feet by 34.5 feet, containing (a) a vertical shaft propeller turbine with a hydraulic capacity of 725 cfs, manufactured by Allis-Chalmers Company, and (b) a single three-phase, 60-cycle, generator, manufactured by Electric Machinery and rated at 480 kW; (7) and existing appurtenant facilities. No change are being proposed for this new license. The applicant estimates the average annual generation for this project would be 3,214 MWH. The dam and existing project facilities are owned by the applicant.
m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.
n. *This notice also consists of the following standard paragraphs:* A4 and D9.
o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Power and Light Company, P.O. Box 192, 222 West Washington, Avenue, Madison, WI or by calling (608) 252–3086.

4 a. *Type of Application:* Preliminary Permit.
b. *Project No.* 11368–000.
c. *Date filed:* December 28, 1992.
d. *Applicant:* BAE Energy, Inc.
e. *Name of Project:* Sherburne Dam Hydroelectric Project.

f. *Location:* On Swift Current River in Glacier County, Montana, near the town of Browning. T.36N, R.15W., sections 21, 27, 28, 31, 32, 33, 34, 35 and 36.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. Jerry Boggs, BAE Energy, Inc., Box D–9 DBSR, Cut Bank, MT 59427, (406) 873–2497.

Ted Sorenson, P.E., 550 Linden Drive, Idaho Falls, ID 83401, (208) 522–8069.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Comment Date:* August 16, 1993.

k. *Description of Project:* The proposed project would consist of: (1) An intake structure at the Bureau of Reclamation's Sherburne Dame; (2) a 3.25-mile-long existing canal; (3) a 15-inch-diameter, 0.75-mile-long penstock; (4) a powerhouse containing two generating units with a total installed capacity of 40,000 kW, producing an estimated average annual energy output of 90,000 MWH; (5) a tailrace; and (6) a 69-kV, 23-mile-long transmission line tying into an existing line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $85,000. No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power would be sold to a local utility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

5 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11369–000.

c. *Date filed:* December 28, 1992.

d. *Applicant:* BAE Energy, Inc.

e. *Name of Project:* Upper Saint Mary Canal Hydroelectric Project.

f. *Location:* On Saint Mary River in Glacier County, Montana, near the town of Browning. T.36N, R.14W., sections 27, 22, 15, 16, 10, 9, 3 and 4; T.37N, R.14W., sections 35, 34, 26, 25 and 24; T.37N. R.15W., sections 30 and 19.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. Jerry Boggs, BAE Energy, Inc., Box D–9 DBSR, Cut Bank, MT 59427, (406) 873–2497.

Ted Sorenson, P.E., 550 Linden Drive, Idaho Falls, ID 83401, (208) 522–8069.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Comment Date:* August 16, 1993.

k. *Description of Project:* The proposed project would consist of: (1) 8.5 miles of the Bureau of Reclamation's Upper Saint Mary Canal, to be enlarged; (2) an 84-inch-diameter, 1,700-foot-long penstock; (3) a powerhouse containing two generating units with a total installed capacity of 6,000 kW, producing an average annual energy output of 41,000 MWh; (4) a tailrace; and (5) a 69-kV, 5-mile-long transmission line tying into an existing line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $50,000. No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power would be sold to a local utility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

6 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11370–000.

c. *Dated filed:* December 28, 1992.

d. *Applicant:* BAE Energy, Inc.

e. *Name of Project:* Leishman Drop Hydroelectric Project.

f. *Location:* On the Saint Mary Canal system in Glacier County, Montana, near the town of Browning. T.37N, R.11W., sections 4, 5, 9 and 10.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. Jerry Boggs, BAE Energy, Inc., Box D–9 DBSR, Cut Bank, MT 59427, (406) 873–2497.

Ted Sorenson, P.E., 550 Linden Drive, Idaho Falls, ID 83401, (208) 522–8069.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842

j. *Comment Date:* August 16, 1993

k. *Description of Project:* The proposed project would consist of : (1) A diversion structure; (2) a 1.5-mile-long penstock, to parallel the existing Saint Mary Canal; (3) a 9.5-foot-diameter, 0.25-mile-long penstock; (4) a powerhouse containing two generating units with a total installed capacity of 3,500 KW, producing an average annual energy output of 21,000 MWh; (5) a tailrace; and (6) a 12.5-kV, 3-mile-long transmission line tying into an existing line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $35,000. No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power would be sold to a local utility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

7. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11404–000.

c. *Date filed:* April 14, 1993.

d. *Applicant:* Wilton Hydro Electric Company, Inc.

e. *Name of Project:* Village Falls Hydro Electric Project.

f. *Location:* On the Souhegan River, near Merrimack, in Hillsboro County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. Jason M. Hines, P.O. Box 76, Amherst, New Hampshire 03031, (603) 654–2016.

i. *FERC Contact:* Mary Golato (202) 219–2804.

j. *Comment Date:* August 16, 1993.

k. *Description of Project:* The proposed project would consist of: (1) an existing dam 20 feet high and 195 feet long; (2) an existing reservoir with a surface area of approximately 10 acres and a volume of 85 acre-feet; (3) a proposed 7-inch-diameter, 150-foot-long penstock; (4) a proposed powerhouse containing two turbine-generator units at a total rated capacity of 975 kilowatts; (5) a proposed 300-foot-long, 12.47 kilovolt transmission line; and (6) appurtenant facilities. The total average annual generation will be 3,000,000 kilowatthours. The cost of the studies is $45,000. The owner of the dam is Pennichuck Water Works, Inc.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

8 a. *Type of Application:* Transfer of License.

b. *Project No.:* 7664–011.

c. *Date Filed:* June 4, 1993.

d. *Applicant:* East Bench Irrigation District and Island Power Company, Inc.

e. *Name of Project:* Clark Canyon Dam.

f. *Location:* At the Bureau of Reclamation's Clark Canyon Dam on the Beaverhead River in Beaverhead County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Jay and Lance Bingham, Island Power Company, Inc., 5160 Wiley Post Way, suite 220, Salt Lake City, UT 84116, (801) 532–2520.

Jay Chamberlin, East Bench Irrigation District, 1100 Highway 41, Dillon, MT 59725, (406) 683–2307.

i. *FERC Contact:* Mark Hooper, (202) 219–2680.

j. *Comment Date:* August 2, 1993.

k. *Description of Transfer:* East Bench Irrigation District would like to transfer their license to Island Power Company, Inc. (Island). Island would then need to commence construction on or before September 17, 1993.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

9 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11413–000.

c. *Date Filed:* May 5, 1993.

d. *Applicant:* Bryant Mountain Hydroelectric Associates.

e. *Name of Project:* Bryant Mountain Hydroelectric Pumped Storage Project.

f. *Location:* Partially on lands administered by the Bureau of Land Management, approximately 3 miles northeast of the town of Malin, in Klamath County, Oregon. Sections 1, 2, 11, 12, and 14 in T41S, R12E; sections 22, 23, 26, 27, 35, and 36 in T40S, R13E; sections 19, 20, 29, 30, and 31 in T40S, R13E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Bryant Mountain Hydroelectric Associates, Mr. Patrick E. Slattery, 20 Briargate Place, Greenville, South Carolina 29615, (803) 271–8112.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* August 23, 1993.

k. *Description of Project:* The proposed pumped storage project would consist of: (1) an 80-foot-high dam and 40-foot-high dam forming a 500-acre upper reservoir; (2) a 35-foot-diameter, 16,570-foot-long power tunnel connecting the upper reservoir with a lower reservoir; (3) a 65-foot-high dam forming the 570-acre lower reservoir; (4) a powerhouse containing four generating units with a combined installed capacity of 1,000 MW; (5) a 4-mile-long transmission line interconnecting with an existing Pacific Southwest transmission line; and (6) appurtenant facilities.

No new access roads will be needed to conduct the studies. The approximate cost of the studies would be $3,000,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

10 a. *Type of Application:* Revise Recreation Plan.

b. *Project No.:* 349–029.

c. *Date filed:* May 26, 1993.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Martin Dam Project.

f. *Location:* Elmore, Coosa, and Tallapoosa Counties.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Barry Lovett, Alabama Power Company, 600 North 18th Street, Post Office Box 2641, Birmingham, AL 35291–0364, (205) 250–1268.

i. *FERC Contact:* Dan Hayes, (202) 219–2660.

j. *Comment Date:* August 5, 1993.

k. *Description of Project:* Alabama Company, licensee for the Martin Dam Project, has filed an application to revise its project recreation plan. The plan would change the recreation development scheme for the entire reservoir and the schedule of recreation development. The licensee believes the revision will minimize use conflicts, optimize recreation site maintenance and security operations by consolidating several currently planned sites, minimize impacts to wetland areas, and provide more convenient access to visitors. The plan will result in a change in land classifications.

l. *This notice also consists of the following standard paragraphs:* B, C2, and D2.

11 a. *Type of Application:* Major License.

b. *Project No.:* 10729–002.

c. *Date filed:* June 3, 1993.

d. *Applicant:* Murphy Hydro Company, Inc.

e. *Name of Project:* Murphy Dam Hydroelectric Project.

f. *Location:* On the Connecticut River, in Pittsburgh and Clarksville Townships, Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* John R. Asp, 33 Roosevelt Drive, Derby, CT 06418, (203) 732–3525.

i. *FERC Contact:* Mary C. Galato (202) 219–2804.

j. *Comment Date:* 60 days from the filing date in paragraph C. (August 2, 1993)

k. *Description of Project:* The proposed project consists of the following features: (1) an existing dam 2,100 feet long and 100 feet high; (2) an existing reservoir with a surface area of 2,020 acres and a gross storage capacity of 99,300 acre-feet; (3) an proposed 524-foot-long, approximately 8-foot-diameter penstock; (4) a proposed powerhouse containing one turbine-generator unit having a total generating capacity of 3.0 megawatts; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 12,400,000 kilowatthours. The dam and reservoir are owned by the State of New Hampshire and all proposed hydroelectric facilities would be owned and operated by Murphy Hydro Company, Inc.

l. With this notice, we are initiating consultation with the New Hampshire State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

12 a. *Type of Application:* Transfer of License.

b. *Project No.:* 7660–032.

c. *Date Filed:* May 14, 1993.

d. *Applicant:* Borough of Point Marion, Pennsylvania, and Noah Corporation.

e. *Name of Project:* Point Marion Lock and Dam Project.

f. *Location:* On the Monongahela River in Fayette County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Licensee Contacts:*

Louis Rudolph, Mayor, Borough of Point Marion, 15 Main Street, Point Marion, PA 15474, (412) 725–5256.

James B. Price, President, Noah Corporation, 120 Calumet Court, Aiken, SC 29801, (803) 642–2749.

i. *FERC Contact:* Patricia A. Massie, (202) 219–2681.

j. *Comment Date:* July 21, 1993.

k. *Description of Transfer:* The Borough of Point Marion, Pennsylvania, and Noah Corporation (joint licensees) jointly and severally apply for transfer of the license for the Point Marion Lock and Dam Project from Borough of Point Marion and Noah Corporation as joint licensees to Borough of Point Marion as the sole licensee.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to

file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D6. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (August 9, 1993 for Project No. 2490–001). All reply comments must be filed with the Commission within 105 days from the date of this notice. (September 21, 1993 for Project No. 2490–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to

which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (August 10, 1993 for Project No. 2348–001). All reply comments must be filed with the Commission within 105 days from the date of this notice. (September 24, 1993 for Project No. 2348–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: June 18, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14843 Filed 6–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–434–000]

Arkla Energy Resources Co.; Application

June 18, 1993.

Take notice that on June 7, 1993, Arkla Energy Resources Company (AER), 525 Milam Street, Shreveport, Louisiana 71101, filed in Docket No. CP93–434–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to UtiliCorp United, Inc. (UtiliCorp) certain of its jurisdictional pipeline facilities located in Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, AER proposes to abandon 204 miles of transmission line, one 615 horsepower compressor station, the Collinson Storage Field and appurtenant equipment and facilities. Certain minor facilities in Sumner County, Kansas, would be retained by AER, it is stated. AER also proposes to abandon jurisdictional services for Kansas customers provided through the facilities; individually certificated exchange and transportation services provided to Williams Natural Gas Company (Williams) under Rate Schedules XE–29, XE–30, XE–34, XT–27 and XT–28; and Rate Schedule G–2 sales service to Greeley Gas Company (Greeley).

AER states that UtiliCorp, through its Peoples Natural Gas Company division (PNG), currently owns and operates natural gas distribution facilities in Kansas and that PNG would operate the acquired facilities as a natural gas distribution utility to provide retail gas services to the current customers of Arkansas Louisiana Gas Company. It is further stated that PNG has advised that it will make available transportation or other substitute services to those customers currently receiving jurisdictional services through AER's Kansas facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 9, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for AER to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14846 Filed 6–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–143–000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 18, 1993.

Take notice that on June 16, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, with proposed effective date of July 1, 1993:

First Revised Sheet No. 11
Original Sheet No. 11A
Fifth Revised Sheet No. 138
Second Revised Sheet No. 139

Carnegie states that it is filing the above tariff sheets as a limited application pursuant to section4 of the Natural Gas Act and the Commission's Order No. 636–A to permit Carnegie to flow through to its customers, on an interim basis, amounts direct billed to Carnegie by upstream pipelines as Account No. 191 costs and other costs authorized by the Commission to be direct billed Carnegie by upstream pipelines in conjunction with such upstream pipelines' restructuring under Order No. 636, including amounts direct billed to Carnegie pursuant to limited section 4 applications filed by Texas Eastern Transmission Corporation (Texas Eastern) in Docket No. RP93–112–000 on April 30, 1993, in Docket No. RP93–122–000 on May 26, 1992, and in Docket No. RP93–128–000 on May 28, 1993.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 25, 1993. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14849 Filed 6–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ93–6–22–000 and TM93–5–22–000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 18, 1993.

Take notice that CNG Transmission Corporation (CNG), on June 15, 1993, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with proposed effective date of June 1, 1993:

1st Revised Thirty-First Revised Sheet No. 31
1st Revised Twenty-Third Revised Sheet No. 32
1st Revised Twenty-Seventh Revised Sheet No. 34
1st Revised Twenty-Second Revised Sheet No. 35

CNG states that the tariff sheets reflect the same rates that CNG filed in Docket No. TF93–4–22–000 on May 25, 1993. In a letter order issued June 7, 1993, the Commission rejected CNG's filing that included both a PGA and a TCRA rate change in a PGA interim adjustment as a violation of § 154.309 of its regulations.

CNG states that the instant filing is both an out-of-cycle PGA and a separate tracking filing to properly change both the PGA and TCRA components of CNG's rates.

CNG also seeks various waivers of the regulations to permit its filing to become effective as proposed.

CNG states that copies of the filing are being served upon CNG's customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 25, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14845 Filed 6–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11102–002]

Olson Electric Development Co., Inc. Withdrawal of Request

June 18, 1993.

By order of June 19, 1991, the Director, Division of Project Review, Office of Hydropower Licensing (Director), issued a preliminary permit to Olson Electric Development Co., Inc. (Olson) to study the feasibility of the proposed 1,300 kilowatt Middlesex Dam Project No. 1102, to be located on the Concord River in Lowell, Middlesex County, Massachusetts.[1] On March 31, 1993, the Director canceled the permit, citing Olson's failure to file a required six-month progress report.[2] On April 23, 1993, Olson filed a request for rehearing of the Director's action.

On April 22, 1993, the Director rescinded the cancellation of Olson's preliminary permit for Project No. 11102. On May 25, 1993, Olson accordingly withdrew its request for rehearing of the Director's March 31, 1993 order.

No one filed a motion in opposition to the notice of withdrawal, and the Commission took no action to disallow the withdrawal. Accordingly, pursuant to Rule 216 of the Commission's Rules of Practice and Procedure,[3] the withdrawal became effective on June 9, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14855 Filed 6–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–494–000]

Ozark Gas Transmission System; Application

June 18, 1993.

Take notice that on June 14, 1993, Ozark Gas Transmission System (Ozark), 1700 Pacific Avenue, Dallas, Texas 75201, filed in Docket No. CP93–494–000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of metering and associated measurement and control facilities in Franklin County, Arkansas to provide a delivery point into the NOARK Pipeline System, Limited Partnership (NOARK), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

[1] 55 FERC ¶62,263.

[2] 62 FERC ¶62,228. Article 8 of the preliminary permit requires the permittee to file a progress report every six months during the term of the permit.

[3] 18 CFR 385.216.

Ozark states that it seeks this authorization to construct a six (6) inch meter run and associated measurement and control facilities to deliver natural gas to NOARK, located in Township 9N, Range 26W in Franklin County, Arkansas. According to Ozark, the construction of these facilities would provide Ozark's shippers with an additional outlet from which to market and/or transport natural gas. Ozark estimates that it would cost $96,100 to construct the proposed facilities, to be financed with equity funds and aid-in-construction funding from NOARK.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 9, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Ozark to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14848 Filed 6-23-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-497-000]

Tennessee Gas Pipeline Co.; Application

June 18, 1993.

Take notice that on June 16, 1993, Tennessee Gas Pipeline Company (Tennessee) P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP93-497-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange and transportation service it provides for Columbia Gas Transmission Company (Columbia Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that Columbia Gulf Transmission Company, Columbia Gas and Tennessee were authorized in Docket No CP85-388-000 to transport and exchange up to 115,000 Mcf of natural gas per day on a no fee basis. Tennessee has been providing its service under its Rate Schedule No. X-69, it is stated. Tennessee asserts that, by letter dated March 8, 1993, Columbia Gas has requested abandonment of this service.

Tennessee further states that no facilities will be abandoned in conjunction with the abandonment of this service.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 9, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14847 Filed 6-23-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-4-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 18, 1993.

Take notice that Williams Natural Gas Company (WNG) on June 15, 1993, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with proposed effective date of June 1, 1993:

Second Revised Fifteenth Revised Sheet No. 6

Second Revised Sixteenth Revised sheet No. 6A

Second Revised Seventeenth Revised Sheet No. 9

WNG states that it is filing an Out-of-Cycle Purchased Gas Adjustment filing to decrease its rates effective June 1, 1993 to reflect a decrease of $.0541 in the Cumulative Adjustment consistent with its revised service agreements approved July 17, 1992 in Docket No. GT92-21-000.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 25, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14844 Filed 6–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2113–022, et al.]

In the Matter of Wisconsin Valley Improvement Co., Weyerhaeuser Paper Co., Tomahawk Power & Pulp Co., Nekoosa Papers, Inc., Consolidated Water Power Co., Wisconsin Public Service Corp.; Project Nos. 2113–022, 2212–001, 2239–004, 2255–003, 2256–001, 2291–001, 2292–001, 2476–001, 2590–001 Wisconsin/Michigan.

Wisconsin Valley Improvement Co., et al.; Intention To Conduct Public Scoping Meetings

June 18, 1993.

The Federal Energy Regulatory Commission (FERC) will hold public and agency scoping meetings on July 13, 15, and 16, 1993, pursuant to its preparation of an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) for the Wisconsin Valley Project No. 2113, Rothschild Project No. 2212, Kings Dam Project No. 2239, Centralia Project No. 2255, Wisconsin Rapids Project No. 2256, Port Edwards Project No. 2291, Nekoosa Project No. 2292, Jersey Project No. 2476, and Wisconsin River Division Project No. 2590 located on the Wisconsin River and its tributaries in Vilas, Wood, Oneida, Forest, Portage, Marathon, and Lincoln Counties, Wisconsin, and Gogebic County, Michigan.

In the May 6, 1993, **Federal Register**, the Commission published a notice of its intent to prepare an EIS for the above listed projects (58 FR 26969).

Scoping Meetings

FERC staff will conduct two public scoping meetings and one agency scoping meeting. The public scoping meetings are primarily for public input while the agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS. The times and locations of these meetings are as follows:

Public Scoping Meeting 1, Tuesday July 13, 1993, 7 p.m.–10 p.m., University of Wisconsin Marathon Center, North Hall 330, 518 South 7th Avenue, Wausau, WI 54401.

Public Scoping Meeting, Thursday July 15, 1993, 7 p.m.–10 p.m., James Williams Junior High School, 915 Acacia Lane, Rhinelander, WI 54501.

Agency Scoping Meeting, Friday July 16, 1993, 10:30 a.m., Wisconsin Department of Natural Resources, North Central District Headquarters, 107 Sutliff, Rhinelander, WI 54501.

To help focus discussions, a preliminary scoping document outlining subject areas to be addressed at the meeting will be distributed by mail to interested parties on the FERC mailing list. Copies of the preliminary scoping document will also be available at the scoping meetings.

Site Visits

Site visits will be held at the various projects; anyone with question regarding the site visits should contact the appropriate contact person listed below. All participants must furnish there own transportation. The date and time of the site visits are as follows:

Date/time	Project	Contact
Monday July 12, 1993, 8 a.m	Port Edwards, Nekoosa, Centralia	Richard Grund, Nekoosa Papers, 715–887–5481.
2:30 p.m	Wisconsin Rapids	Roy Urban CWPCo, 715–422–3481.
Tuesday July 13, 1993, 8 a.m.	Wisconsin River Division	Roy Urban, CWPCo, 715–422–3481.
11 a.m	Rothschild	William Dohr, Weyer- haeuser, 715–359–3101.
2 p.m	Big Eau Pleine	Phil Valipchka, WVIC 715–848–2976.
Wednesday July 14, 1993, 8 a.m	Spirit	Phil Valipchka, WVIC 715–848–2976.
1 p.m	Jersey	Ron Felix, WPSC, 715–536–7289.
2:30 p.m	Kings Dam	John Laughlin, Tomahawk Power & Pulp, 715–842–4613.
Thursday July 15, 1993, 8 a.m	Willow, Rice, Rainbow	Phil Valipchka, WVIC 715–848–2976.
Friday July 16, 1993, 2 p.m	Natural Lakes	Phil Valipchka, WVIC, 715–848–2976.
Saturday July 17, 1993, 8 a.m	Natural Lakes	Phil Valipchka, WVIC, 715–848–2976.

The location of the site visits will be as follows:

Project	Location
Port Edwards Nekoosa Centralia	Nekoosa Papers Mill Entrance, Point Bass Avenue and Market Street, Nekoosa, WI.
Wisconsin Rapids	CWPCO Power Services Parking Lot, 610 High Street, Wisconsin Rapids, WI.
Wisconsin River Division	Consolidated Papers Parking Lot, 2627 Whiting Road, Stevens Point, WI.
Rothschild	Weyerhaeuser Paper Company, 200 Grand Avenue, Wausau, WI.
Big Eau Pleine	Boat landing adjacent to fill on south end off CTH O: Big Eau Pleine Reservoir. Directions: From Mosinee go west on STH 153 to CTH O, go south on CTH O to the site.
Spirit	WVIC Office, 2301 North Third, Wausau, WI.
Jersey	Wisconsin Public Service Corporation, Jersey Dam Site. Directions: ⅛ mile north of CTH CC on northwest side of the village of Tomahawk.
Kings Dam	Tomahawk Power & Pulp, N1099 Kings Road, Tomahawk, WI. Directions: From STH 51 exit CTH D, west ⅛ mile to Kings Dam Road, north ½ mile to site.
Willow Rice Rainbow	WVIC Office, 2301 North Third, Wausau, WI.
Natural Lakes	Wisconsin DNR Office, 107 Sutliff, Rhinelander, WI.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned EIS; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue, (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff's preliminary views, (4) determine the relative depth of analysis for issues to be addressed in the EIS, and (5) identify resource issues that are not important and do not require detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the projects under consideration. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issued to be addressed in the EIS.

Participants wishing to make oral comments in the public meeting are asked to keep them to five minutes to allow everyone the opportunity to speak.

Persons choosing not to speak at the meetings, but who have views on the issues, may submit written statements for inclusion in the public record at the meeting. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, Dc 20426, until August 20, 1993. All correspondence should clearly show the appropriate caption on the first page as follows:

Wisconsin Valley Project No. 2113
Rothschild Project No. 2212
Kings Dam Project No. 2239
Centralia Project No. 2255
Wisconsin Rapids Project No. 2256
Port Edwards Project No. 2291
Nekoosa Project No. 2292
Jersey Project No. 2476
Wisconsin River Division Project No. 2590

All those that are formally recognized by the Commission as intervenors in the above projects' proceedings are asked to refrain from engaging the staff in discussions of the merits of the projects outside of any announced meetings.

Further, parties are reminded of the Commission's Rules of Practice and Procedure, which require parties or interceders (as defined in 18 CFR 385.2010) filing documents with the Commission, to serve a copy of the document on each person whose name is on the official service list for the proceeding. See 18 CFR 4.34(b).

For further information please contact Sabina Joe at (202) 219–1648.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14850 Filed 6–23–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–55–NG]

Tennessee Gas Pipeline Co.; Application For Blanket Authorization To Export Natural Gas To Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Tennessee Gas Pipeline Company (Tennessee) on May 28, 1993, as amended June 17, 1993, requesting blanket authorization to export up to 100 Bcf of natural gas to Mexico over a two-year period. The authorization will begin on the date of first delivery after August 13, 1993, the expiration date of Tennessee's existing export authorization granted by DOE/FE Opinion and Order No. 434 on October 9, 1990 (1 FE ¶70,360). Tennessee states that it will use existing pipeline facilities to transport the gas, and that it will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 23, 1993.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Susan K. Gregersen, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–070, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0063.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Tennessee is a Delaware corporation with its principal place of business located in Houston, Texas. Tennessee's export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export arrangement is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy to promote competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangement. Parties, especially those who may oppose this application, should comment on these matters as they relate to the requested export authority. Tennessee asserts the domestic gas that would be exported under the proposed arrangement would not be needed in the United States market. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Anyone who wants to become a party to this proceeding and to have their written comments considered as the basis for the decision of the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of

intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

Tennessee's application is available for inspection and copying in the Office of Fuels Programs docket room 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 17, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–14917 Filed 6–23–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4669–8]

Charter Extension for Certain EPA Advisory Committees

Charters for the EPA advisory committees listed below are being extended to September 30, 1993, pending the completion of a comprehensive review by OMB of all Government advisory committees under the Federal Advisory Committee Act (FACA). This review is being conducted in accordance with Executive Order 12838, dated February 10, 1993, entitled "Termination and Limitation of Federal Advisory Committees" and OMB Bulletin No. 93–10, "Termination of Federal Advisory Committees." Pending the results of the review, renewal charters will be filed as appropriate. The EPA advisory committees being extended are:

Clean Air Scientific Advisory Committee
Drinking Water Disinfection By-Products Negotiated Rulemaking
Environmental Financial Advisory Board
Management Advisory Group to the Assistant Administrator for Water

Dated: June 14, 1993.

Kathy Petruccelli,

Management & Organization Division.

[FR Doc. 93–14814 Filed 6–23–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 17, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0392

Title: Sections 1.1401–1.1415, Pole Attachment Complaint Procedures

Action: Extension of a currently approved collection

Respondents: State or local governments and businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 14 responses; 3 hours average burden per response; 42 hours total annual burden

Needs and Uses: Congress mandated pursuant to 47 U.S.C. 224 that the FCC ensures that the rates, terms and conditions under which cable television operators attach their hardware to utility poles are just and reasonable. Section 224 also mandates establishment of an appropriate mechanism to hear and resolve complaints concerning the rates, terms and conditions for pole attachments. Sections 1.1401–1.1415 contained in subpart J of part 1 were promulgated to implement section 224. Cable television system operators may file a Petition for Temporary Stay of actions to which would require the removal of facilities or termination of service or which would increase their rates pursuant to the requirements contained in § 1.1403. Section 1.1404 specifies the requirements for filing a complaint with the Commission. Responses and replies to complaints are governed by § 1.1407. States that regulate the rates, terms and conditions for pole attachments must certify to the Commission that they in fact regulate the rates, terms and conditions for pole attachments and have the authority to consider and do consider the interests of the subscribers of cable television services as well as the interests of the consumers of the utility service. The information will be used by FCC to hear and resolve complaints as mandated by section 224. Information filed pursuant to § 1.1404 will be used to determine the merits of the complaint including calculating the maximum rate under the Commission's formula, if applicable. If the collection of information is not conducted, the FCC will not be able to adequately comply with the Congressional mandate that the Commission ensure that the rates, terms and conditions under which cable television operators attach their hardware to utility poles are just and reasonable.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 93–14897 Filed 6–23–93; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Listing of Controlled Carriers Under the Shipping Act of 1984

AGENCY: Federal Maritime Commission.
ACTION: Amendments to list of controlled carriers.

SUMMARY: The Federal Maritime Commission is adding International Transport Enterprise Co. (GETDD) Ltd. and Shanghai Hai Hua Shipping Company to the list of controlled carriers, subject to the advance tariff filing and other regulatory requirements of section 9 of the Shipping Act of 1984. The Commission is also amending the nationality for the four former Soviet Union carriers that appear on the list.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001. (202) 523–5740.

SUPPLEMENTARY INFORMATION: Sections 3(8) and 9 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1702(8) and 1708, provide for the identification and regulation of certain state-controlled carriers operating in the waterborne foreign commerce of the United States. The Federal Maritime Commission ("Commission") has determined that International Transport Enterprise Co. (GETDD) Ltd. ("International Transport"), headquartered in Guangzhou, People's Republic of China ("PRC"), and Shanghai Hai Hua Shipping Company ("Shangha Hai"), headquartered in Shanghai, PRC, meet the definition of a controlled carrier under section 3(8) of the 1984 Act, and are, therefore, being added to the list of controlled carriers.

Upon inquiry by the Commission, International Transport responded that all of its assets are directly or indirectly owned by the PRC Government. Further, International Transport reported that the PRC Government has the right to appoint or disapprove the appointment of International Transport's board of directors, managers, and other principal officials. In addition, International Transport confirmed that it operates PRC-flag vessels.

Shanghai Hai did not respond to the Commission's inquiry on its status as a controlled carrier. The Commission has learned, however, that Shanghai Hai is owned and controlled directly or indirectly by the PRC Government and that the government has the right to appoint or disapprove the appointment of the carrier's board of directors, managers, and other principal officials.

The Commission is also amending the nationality for the four former Soviet Union carriers that appear on the list. Specifically, Baltic Shipping Company, Far Eastern Shipping Company, and Murmansk Shipping Company (Arctic Line) are Russian carriers and Black Sea Shipping Company is Ukrainian.

The Commission's list of controlled carriers was previously published in the **Federal Register** on June 20, 1989 (54 FR 25903). The amended list is shown below:

Baltic Shipping Company—Russia
Bangladesh Shipping Corp.—Bangladesh
Black Sea Shipping Company—Ukraine
Black Star Line—Ghana
Ceylon Shipping Corporation—Sri Lanka
China Ocean Shipping Co.—People's Republic of China
China Resources Transportation & Godown Co., Ltd.—People's Republic of China
Chu Kong Shipping Co., Ltd.—People's Republic of China
Compagnie Maritime Zairoise—Zaire
Compagnie Marocaine de Navigation (COMANAV)—Morocco
Compagnie Nationale Algerienne de Navigation—Algeria
Companhia de Navegacao Lloyd Brasileiro—Brazil
Compania Anonima Venezolana de Navegacion (Venezuela Line)—Venezuela
Compania Peruana de Vapores (Peruvian State Line)—Peru
Egyptian National Line—Egypt
Far East Enterprising Co. (H.K.), Ltd. (Farenco)—People's Republic of China
Far Eastern Shipping Company—Russia
Flota Bananera Ecuatoriana S.A.—Ecuador
Guangdong International Shipping Co., Ltd.—People's Republic of China
International Transport Enterprise Co. (GETDD) Ltd.—People's Republic of China
MISR Shipping Company—Egypt
Murmansk Shipping Company (Arctic Line)—Russia
National Shipping Corporation of the Philippines—Philippines
Nauru Pacific Line—Nauru
Nigerian National Shipping Line Limited—Nigeria
P.T. Djakarta Lloyd—Indonesia
Pakistan National Shipping Corporation—Pakistan
Pharaonic Shipping Co. (S.A.E.)—Egypt
Polish Ocean Lines—Poland
Romanian Shipping Company Constanta (NAVROM)—Romania
Shanghai Hai Hua Shipping Company—People's Republic of China
Shipping Corporation of India—India
Societe Nationale Malgache de Transports Maritimes—Madagascar
Sudan Shipping Line Limited—Sudan
Tientsen Marine Shipping Company—People's Republic of China
Transportes Navieros Ecuatorianos (Transnave)—Ecuador
Zhu Sheng Transportation Co., Ltd.—People's Republic of China

The process of identification and classification of controlled carriers is continuous. This list as shown will be amended as circumstances warrant.

By the Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 93–14856 Filed 6–23–93; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Solicitation of Nominations for Membership

AGENCY: Board of Governors of the Federal Reserve System.
ACTION: Notice.

SUMMARY: The Board is inviting the public to nominate qualified individuals for appointment to its Consumer Advisory Council, which is comprised of representatives both of consumer and community interests and of the financial services industry. Seven new members will be selected for three-year terms that will begin in January 1994. The Board expects to announce the selection of new members by year-end 1993.

DATE: Nominations should be received by August 31, 1993.

ADDRESSES: Nominations should be submitted in writing to Dolores S. Smith, Associate Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System. Information about nominees will be available for inspection upon request.

FOR FURTHER INFORMATION CONTACT: Bedelia Calhoun, Staff Specialist, Division of Consumer and Community Affairs, (202/452-6470); or for Telecommunications Device for the Deaf (TDD) users *only*, Dorothea Thompson (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Consumer Advisory Council was

established in 1976 at the direction of Congress to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer-related matters. The Council by law represents the interests both of consumers and of the financial community. Members serve three-year terms that are staggered to provide the Council withcontinuity.

New members will be selected for terms beginning January 1, 1994, to replace members whose terms expire this year. **Nominations should include the address and telephone number of the nominee, information about past and present positions held, and a description of special knowledge, interests or experience related to consumer credit or other consumer financial services.** Persons may nominate themselves as well as other candidates.

The Board is interested in candidates who have some familiarity with consumer financial services and candidates who are willing to express their viewpoints. Candidates do not have to be experts on all levels of consumer financial services, but they should possess some basic knowledge of the area. In addition, they should be able to make the necessary time commitment to prepare for and attend meetings (usually two days long including committee meetings) three times a year.

In making the appointments, the Board will seek to complement the qualifications of continuing Council members in terms of affiliation and geographic representation, and to ensure the representation of women and minority groups. The Board expects to announce its selection of new members by year-end.

Council members whose terms end on December 31, 1993, are:

Veronica E. Barela, Executive Director, NEWSED Community Development Corporation, Denver, CO
Toye L. Brown, Deputy Secretary of Transportation and Construction, Boston, MA
Denny D. Dumler, President, CEO and Chairman Rocky Mountain BankCard System, Denver, CO
Donald A. Glas, President, First State Federal Savings and Loan Association, Hutchinson, MN
Joyce Harris, President & CEO, Telco Community Credit Union, Madison, WI
Julia E. Hiler, Executive Vice President, Sunshine Mortgage Corporation, Marietta, GA
Henry Jaramillo, Jr., President, Ranchers State Bank, P.O. Box 545, Belen, NM 87002

Other Council members, whose terms continue through 1994 and 1995, are listed below (together with the expiration date of each one's term of office).

Barry A. Abbott, Partner, Morrison & Foerster, San Francisco, CA, December 31, 1994
John R. Adams, Corporate Vice President and Compliance Officer, CoreStates Financial Corporation, Philadelphia, PA, December 31, 1994
John A. Baker, Senior Vice President, Equifax, Inc., Atlanta, GA, December 31, 1994
Mulugetta Birru, Executive Director Urban Redevelopment Authority of Pittsburgh, Pittsburgh, PA, December 31, 1994
D. Douglas Blanke, Director of Consumer Policy Office of the Attorney General, St. Paul, MN, December 31, 1995
Genevieve Brooks, Deputy Borough President, Office of the Bronx Borough, President, Bronx, NY, December 31, 1994
Cathy Cloud, Enforcement Program Director, National Fair Housing Alliance, Washington, DC, December 31, 1994
Michael D. Edwards, President, Prairie Security Bank, Yelm, Washington, December 31, 1994
Michael Ferry, Staff Attorney, Consumer Unit, Legal Services of Eastern, Missouri, Inc., St. Louis, MO, December 31, 1995
Norma L. Freiberg, Executive Director, New Orleans Neighborhood Development Foundation, New Orleans, LA, December 31, 1995
Lori Gay, Executive Director, Los Angeles Neighborhood Housing Services, Los Angeles, CA, December 31, 1995
Bonnie Guiton, Dean, McIntire School of Commerce University of Virginia, Charlottesville, VA, December 31, 1995
Gary S. Hattem, Vice President, Community Development Group Bankers Trust Company, New York, NY, December 31, 1994
Ronald A. Homer, Chairman and CEO, Boston Bank of Commerce, Boston, MA, December 31, 1995
Edmund Mierzwinski, Consumer Advocate, U.S. Public Interest Research Group, Washington, DC, December 31, 1994
Jean Pogge, Vice President, Development Deposits, South Shore Bank, Chicago, IL, December 31, 1994
John V. Skinner, President & CEO, Jewelers Financial Services, Inc., Irving, TX, December 31, 1994
Lowell N. Swanson, President (Retired), United Finance Co., Portland, OR, December 31, 1994
Michael W. Tierney, Director, Local Initiatives Support Corporation, Washington, DC, December 31, 1994
Grace W. Weinstein, Financial Writer and Consultant, Englewood, NJ, December 31, 1995
James L. West, President, Jim West Financial Group, Inc., Tijeras, NM, December 31, 1995
Robert O. Zdenek, National Congress for Community Economic Development, Washington, D.C., December 31, 1995

Board of Governors of the Federal Reserve System, June 18, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-14838 Filed 6-23-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 39409-24, August 31, 1982, as amended most recently in pertinent part at 58 FR 19137, April 12, 1993) is amended to reflect the transfer of the equipment and telecommunications function within the Bureau of Primary Health Care, Health Resources and Services Administration (HRSA).

Under HB-20, Organization and Functions, amend the Bureau of Primary Health Care (HBC), as follows:

(1) delete the functional statement for the Office of Data Management (HBC15) in its entirety and substitute the following: Office of Data Management (HBC15). Directs and coordinates all data systems management activities. Specifically: (1) Assists in the direction, the design, the development, and the monitoring of data systems and data collection activities; (2) represents the Director and the Associate Director for Evaluation, Research and Analysis on systems and data matters external to the Bureau; (3) conducts training for staff on data systems; (4) interfaces with all data systems support organizations; (5) coordinates data reporting to common PHS data systems.

(2) delete the functional statement for the Office of Operations and Management (HBC17) in its entirety and substitute the following: Office of Operations and Management (HBC17). Plans, directs, coordinates, and evaluates Bureau-wide administrative and management activities; coordinates and monitors program policy implementation; and maintains close liaison with officials of the Agency, the Office of the Assistant Secretary for Health, and the Office of the Secretary on matters relating to these activities. Specifically: (1) Provides or serves as liaison for providing program support services and resources, including procurement of equipment and supplies, printing, property, etc.; (2) provides leadership on intergovernmental activities of the Bureau which require central director or which cross program lines; (3) provides liaison between the Bureau Director and the Regional Health Administrator; (4) coordinates the activities of Headquarters program divisions and regional staff; (5) directs, conducts, and coordinates manpower management activities and advises on the allocation of personnel resources; (6) provides organization and management analysis, develops policies and procedures for internal operations, and interprets and implements the Bureau's management policies, procedures, and systems; (7) develops and coordinates program and administrative delegations of authority activities; (8) is responsible for the Bureau's paperwork management functions, including the development and maintenance of manual issuances; (9) is responsible for planning, directing, coordinating, and evaluating Bureau-wide grants management activities; (10) coordinates the development and processing of procurement activities and maintains liaison with the Division of Grants and Procurement Management, HRSA, and with the Office of the Assistant Secretary for Health; (11) develops and carries out a full range of financial management activities, including the development of the annual budget; (12) in cooperation with the Division of Personnel, HRSA, coordinates personnel activities for the Bureau; (13) conducts Bureau-wide activities associated with the management of national committees; (14) directs, designs, develops, and implements data systems; and (15) supervises the operation of the Bureau's Local Area Network and of the Bureau's Wide Area Network interfaces.

This transfer is effective upon the date of signature.

Dated: June 4, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93-14880 Filed 6-23-93; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-93-3641]

Office of Administration; Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 17, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Proposal: Report on Section 8 Program Utilization—New Construction, Substantial Rehabilitation, Section 202, Property Disposition, and Loan Management Set Aside.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The data collected will be used to monitor the following: the rate at which Section 8 programs are leased; minimized exposure to vacancy losses; project vacancy rates; identify and document cases where a reduction in the number of contracted units are leased to elderly, handicapped, or disabled tenants; and retrieve information to answer questions.

Form Number: HUD-52684.

Respondents: State or Local Government, businesses or other for-project, non-profit institutions and small businesses or organizations.

Frequency of Submission: Quarterly and annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD-52684	31,937		1		.25		7,984

Total Estimated Burden Hours: 7,984.
Status: Revision.
Contact: James J. Tahash, HUD, (202) 708–3944; Angela Antonelli, OMB, (202) 395–6880.

Dated: June 17, 1993.

Proposal: Family Self-Sufficiency Addendum.

Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: The information collected on Form HUD–50058–FSS is used by HUD to evaluate the effectiveness of the program in helping families who have relied on Federal Housing Assistance to become economically independent.
Form Number: HUD–50058–FSS.
Respondents: States or Local Government.
Frequency of Submission: On occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD–50058–FSS	600		60		.25		9,000

Total Estimated Burden Hours: 9,000.
Status: New.
Contact: Susan Loritz, HUD, (202) 708–0477; Angela Antonelli, OMB, (202) 395–6880.

Dated: June 1, 1993.

Proposal: Public Housing Management Assessment Program (PHMAP) Indicators.

Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: Indicators and Standards will be used to assess the management performance of Public Housing Agencies (PHAs), designate troubled PHAs and mod-troubled PHAs, address deficiencies through a memorandum of agreement for each troubled and mod-troubled PHA, and annually submit to Congress a report on the status of troubled and mod-troubled PHA's.
Form Number: HUD–50072.
Respondents: State or Local Governments and non-profit institutions.
Frequency of Submission: On occasion and recordkeeping.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
1–99 Unit PHAs	1,608		1		1.9		3,055
100–499 Unit PHAs	1,274		1		2.1		2,675
500–1,249 Unit PHAs	244		1		3.1		756
1,250–3,999 Unit PHAs	102		1		3.7		377
4,000+ Unit PHAs	40		1		4.5		180
Recordkeeping	3,268		1		.1		327

Total Estimated Burden Hours: 7,371.
Status: Reinstatement.
Contact: Wanda Funk, HUD, (202) 708–0970; Angela Antonelli, OMB, (202) 395–6880.

Dated: June 11, 1993.

Proposal: Mortgagee's Application for Partial Settlement (MF Mortgage).
Office: Housing
Description of the Need for the Information and Its Proposed Use: The data on form HUD–2537 is needed to process a partial claim settlement. The partial settlement immediately upon conveyance of title or assignment of the mortgage.
Form Number: HUD–2537.
Respondents: Businesses or other for-profit.
Frequency of Submission: On occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–2537	600		1		.166		100

Total Estimated Burden Hours: 100.
Status: Extension.
Contact: Randy M. Starcher, HUD, (202) 708–3448; Angela Antonelli, OMB, (202) 395–6880.

Dated: June 11, 1993.

Proposal: Public and Indian Housing Waiver of Eligibility Requirements for Police Officers and Security Personnel (FR–2972).
Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: The rule amends 24 CFR, parts 905 and 960, permitting public housing agencies (PHA) and Indian Housing Authorities (IHA) to allow police officers and other security personnel not otherwise eligible for residence to occupy PHA/IHA dwellings under a plan designed to increase security for housing residents.
Form Number: None.
Respondents: State or Local Governments.
Frequency of Submission: On occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	800		1		2		1,600

Total Estimated Burden Hours: 1,600.

Status: New.

Contact: Earl Simons, HUD, (202) 708–0744; Angela Antonelli, OMB, (202) 395–6880.

Dated: June 10, 1993.

Proposal: Public Housing Drug Elimination Program-Technical Assistance—Notice of Funding Availability (NOFA).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: The information is needed so that the applicants can apply and compete for funding opportunities under this NOFA. The information provided by the applicants will be reviewed by HUD and evaluated against rating criteria for possible funding. The applicants will be notified of their selection/rejection.

Form Number: None.

Respondents: Individuals or households, State or Local Governments and non-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection (Sections of NOFA Affected):							
3.1	400		1		24		9,600
4.1(b)	400		1		16		6,400
4.2	400		1		1		400
5.3	300		1		16		4,800

Total Estimated Burden Hours: 21,200.

Status: Revision.

Contact: Elizabeth A. Cocke, (202) 708–1197; Angela Antonelli, OMB, (202) 395–6880.

Dated: May 28, 1993.

Proposal: HOME Program Evaluation-Round I Data Collection.

Office: Policy Development and Research.

Description of the Need for the Information and Its Proposed Use: This evaluation will identify the effects of the HOME program's requirements on its implementation, including how the program is being administered and which housing units, household, and neighborhoods are being assisted. This first phase of data collections will survey representative of participating state and local governments and non-profit organizations.

Form Number: None.

Respondents: State or Local Governments and non-profit institutions.

Frequency of Submission: Other (Phase I of 3 Phase Survey).

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	554		1		.75		416

Total Estimated Burden Hours: 416.

Status: New.

Contact: Ruth Alahydoian, HUD, (202) 708–0640; Angela Antonelli, OMB, (202) 395–6880.

Dated: May 25, 1993.

[FR Doc. 93–14873 Filed 6–23–93; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Magazine Mountain Shagreen for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Magazine Mountain shagreen (*Mesodon magazinensis*). This species occurs in wooded talus slopes near the summit of Magazine Mountain, Logan County, Arkansas. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 15, 1993, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed

species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species considered in this draft recovery plan is the Magazine Mountain shagreen (*Mesodon magazinensis*), a small terrestrial snail known only from the summit slopes of Magazine Mountain, Logan County, Arkansas. This species was listed as threatened in 1989 due to its restricted range and potential threats to its known habitat.

The recovery objective of the proposed plan is to delist the Magazine Mountain shagreen. Delisting will be accomplished by establishing that the snail population is stable or increasing, and by establishing a management agreement with the Forest Service, the primary landowner, that ensures long-term protection of habitat.

This Plan is being submitted for agency review. After consideration of comments received during the review period, it will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 15, 1993.

Robert Bowker,

Complex Field Supervisor.

[FR Doc. 93–14835 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Draft Revised Recovery Plan for the Whooping Crane for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft revised recovery plan for the whooping crane (*Grus americana*) which the Service listed as threatened with extinction in 1967 (FR Vol. 32, Number 48, March 11) and as endangered in 1970 (FR Vol. 35, Number 199, October 13). Critical habitat was designated in 1978 (FR Vol. 43, Number 94, May 15). Recovery is implemented cooperatively by Canada and the United States. This bird currently exists in 3 wild populations and at 5 captive locations, totaling approximately 240 individuals. The only self-sustaining population (136 individuals) winters on the Gulf of Mexico coast of Texas near Austwell and nests in the Northwest Territories of Canada. During migration, this population passes through Oklahoma, Kansas, Nebraska, South Dakota, Montana, and North Dakota. Nine birds reside in the Kissimmee Prairie of Florida where the Service is endeavoring to establish a nonmigratory population. An experimental migratory population exists in the Rocky Mountains area where eight birds winter in New Mexico and summer in Idaho, Wyoming, and Montana, migrating through Utah and Colorado. The Rocky Mountain population was established through foster-rearing, placing whooping crane eggs in sandhill crane nests. Whooping cranes occur in captivity at the: Patuxent Wildlife Research Center, Laurel, Maryland; International Crane Foundation, Baraboo, Wisconsin; San Antonio Zoological Gardens, San Antonio, Texas; Calgary Zoo, Calgary, Alberta, Canada; and Rio Grande Zoological Park, Albuquerque, New Mexico. The Service solicits review and comment from the public on this draft plan. The original recovery plan was approved January 23, 1980, and the first revision was approved December 23, 1986.

DATES: Comments on the draft recovery plan must be received on or before July 26, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, Whooping Crane Coordinator, P.O. Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–2914. Written comments and materials regarding the plan should be addressed to the Whooping Crane Coordinator at the above address. Comments and materials received will be available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. James C. Lewis, U.S. Fish and Wildlife Service biologist; at the above phone number or address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site-specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft revised recovery plan is the whooping crane (*Grus americana*) whose existence is threatened primarily by the destruction and/or degradation of suitable migration and wintering habitat. Other hazards include shooting, disease, predation, and collision with power lines and fences. The emphases for recovery action are to ensure continued growth of the population wintering in Texas, to build three captive populations to the level where they can produce sufficient young to use in reintroduction programs, and to

establish additional self-sustaining wild populations. Habitat preservation and maximizing genetic diversity in wild and captive populations are also important objectives of recovery. The objective of the recovery plan is to restore the species to the point that its continued existence is no longer endangered and it can be delisted. Downlisting criteria are presented in that draft plan. The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 18, 1993.

James A. Young,

Regional Director.

[FR Doc. 93–14910 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–55–M

[RIN 1018]

Preparation of a Programmatic Environmental Impact Statement; on the Natural Community Conservation Plan/Habitat Conservation Plan To Maintain Viability of Habitats in the Coastal Sage Scrub Ecosystem for the California Gnatcatcher, a Federally Listed Threatened Species, and for the Cactus Wren and Orange-Throated Whiptail Lizard, Candidate Species for Federal Listing, in the Coastal and Central Subregion of Orange County, CA

AGENCY: Environmental Management Agency, County of Orange, California; Fish and Wildlife Service; Interior.

ACTION: Notice of intent and meeting.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has been notified by the Emergency Management Agency, of the County of Orange (County), California, that the County intends to prepare a Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) to conserve coastal sage scrub (CSS) and adjacent habitats in the Coastal and Central Subregion of the County. The NCCP/HCP would be prepared pursuant to the State of California's Natural Community Conservation Planning Act of 1991 and the Endangered Species Act of 1973, as amended (Act). The proposed NCCP/HCP would identify those actions necessary to maintain the viability of the remaining CSS habitat for the three "target species" residing in CSS habitats. The target species are the threatened California gnatcatcher (*Polioptila californica californica*), and Category 2 candidate species the cactus wren (*Campylorhynchus brunneicapillus*) and orange-throated whiptail (*Cnemidophorus hyperythrus beldingi*). The NCCP/HCP would treat the three target species as listed species and would be subject to the standards set forth in section 10(a)(1)(B) of the Act 50 CFR 17.32(b) and 17.22(b). In addressing the habitat needs of the three target species, the NCCP/HCP would benefit other CSS species, and it would function as a multiple species, conservation plan that could establish the basis for maintaining the viability of the remaining CSS ecosystem at the community level.

If the NCCP/HCP is approved by the Service, the Service would authorize incidental take of the California gnatcatcher through the issuance of a section 10(a)(1)(B) permit. The NCCP/HCP coupled with an Implementation Agreement could form the basis for issuing an incidental take permit for the cactus wren and orange-throated whiptail lizard should these species be listed. If an alternative process for authorizing incidental take becomes available through the special rule for the gnatcatcher, proposed under section 4(d) of the Act, the County of Orange may request the Service to authorize take associated with the NCCP/HCP in accordance with the special rule. However, this alternative authorization would not alter the requirement that the NCCP/HCP be prepared consistent with the standards noted above.

DATES: A joint public scoping meeting will be held on the following date and at the specified location to discuss the Central and Coastal Subregion NCCP/HCP and the adjacent South Subregion NCCP/HCP: Tuesday July 7, 1993 (7 p.m.–9:30 p.m.) Irvine Ranch Water District Headquarters, 15600 Sand Canyon Avenue, Irvine, California 92716–6025.

Written comments related to the scope and content of the NCCP/HCP and Joint EIR/EIS will be accepted by the Service at the address below until 30 days after publication of this notice. A separate Notice of Intent is being published for the South Subregion NCCP/HCP and Joint EIR/EIS.

ADDRESSES: Information, comments, or questions related to preparation of the NCCP/HCP and Joint EIR/EIS and the National Environmental Policy Act process should be submitted to Mr. Gail Kobetich, California Planning Manager, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E–1803, Sacramento, CA 95825–1846.

FOR FURTHER INFORMATION CONTACT: Persons wishing to review background material may obtain it by contacting the County of Orange Environmental Management Agency, Planning and Zoning Administrator, 300 N. Flower Street, Santa Ana, CA 92702. Documents also will be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m. Monday–Friday) at the above address or by telephone (714–834–6105).

Interested persons are encouraged to attend the public meeting to identify and discuss issues and alternatives that should be addressed in the EIR/EIS. The proposed agenda for the facilitated public scoping meeting includes a summary of the proposed action, status of and threats to subject species, tentative issues, concerns, opportunities, and alternatives.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1993, the Service issued a Final Rule declaring the California gnatcatcher to be a threatened species (50 CFR part 17). The Final Rule was accompanied by a proposed special rule, "Proposed Special Rule to Allow Take of the California Gnatcatcher", pursuant to section 4(d) of the Act. The purpose of the proposed special rule is to define the conditions under which take of the California gnatcatcher resulting from specific land use activities regulated by state and local government would not violate section 9 of the Act. In the proposed special rule the Service recognized "* * * the significant efforts undertaken by the State of California through the Natural Community Conservation Planning Act of 1991 * * *" and encouraged "* * * holistic management of listed species, like the coastal California gnatcatcher, and other sensitive species * * *." The Service declared its intent to permit incidental take of the California gnatcatcher associated with land use activities covered by an approved subregional Natural Communities Conservation Plan prepared under the Natural Community Conservation Plan Program, provided the Service determines that the subregional Natural Community Conservation Plan meets the issuance criteria of an incidental

take permit pursuant section 10(a)(1)(B) of the Act to 50 CFR § 17.32(b)(2). While the County of Orange currently intends to obtain the Service's approval of the NCCP/HCP through a section 10(a)(1)(B) permit, if the special rule, when finalized, provides an alternative process for take authorization, the County may request the Service's approval of the NCCP/HCP through the special rule process.

The County of Orange's proposed Coastal and Central Subregion NCCP/HCP and Joint EIR/EIS is being prepared pursuant to California's Natural Community Conservation Planning Act of 1991. The purpose of the statewide Natural Community Conservation Plan program is to provide for subregional and regional protection of natural diversity while allowing compatible and appropriate development within the Natural Community Conservation Plan subregion. The Natural Community Conservation Plan Program intends that these goals be achieved through the development and implementation of Natural Community Conservation Plans. The Program is designed to provide an alternative to current single species conservation efforts by formulating regional, natural community based habitat protection programs to protect the numerous species inhabiting each of the targeted natural communities. The Natural Community Conservation Plan process is sponsored jointly by the California Resources Agency and California Department of Fish and Game (CDFG), and conducted in cooperation with the Service pursuant to a Memorandum of Understanding between CDFG and the Service dated December 4, 1991.

Persons attending the Scoping Meeting will have an opportunity to discuss the specific CSS conservation goals and conservation planning alternatives, as well as other aspects of the proposed NCCP/HCP and related Joint EIR/EIS. Submittal of independent written comments is encouraged.

Dated: June 18, 1993.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 93–14886 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–55–M

[RIN 1018]

Preparation of a Programmatic Environmental Impact Statement; Natural Community Conservation Plan/Habitat Conservation Plan To Maintain Viability of Habitats in the Coastal Sage Scrub Ecosystem for the California Gnatcatcher, a Federally Listed Threatened Species, and the Cactus Wren and Orange-Throated Whiptail Lizard, Candidate Species in the South Subregion of Orange County, CA

AGENCY: Environmental Management Agency, County of Orange, California; Fish and Wildlife Service; Interior.

ACTION: Notice of intent and meeting.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has been notified by the Emergency Management Agency, of the County of Orange (County), California, that the County intends to prepare a Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) to conserve coastal sage scrub (CSS) and adjacent habitats in the South Subregion of the County. The NCCP/HCP would be prepared pursuant to the State of California's Natural Community Conservation Planning Act of 1991 and the Endangered Species Act of 1973, as amended (Act). The proposed NCCP/HCP would identify those actions necessary to maintain the viability of the remaining CSS habitat for the three "target species" residing in CSS habitats. The target species are the threatened California gnatcatcher *(Polioptila californica californica)*, and Category 2 candidate species the cactus wren *(Campylorhynchus brunneicapillus)* and orange-throated whiptail *(Cnemidophorus hyperythrus beldingi)*. The NCCP/HCP would treat the three target species as listed species and would be subject to the standards set forth in section 10(a)(1)(B) of the Act, and 50 CFR § 17.32(b) and § 17.22(b). In addressing the habitat needs of the three target species, the NCCP/HCP would benefit other CSS species. It would function as a multiple species, conservation plan that could establish the basis for maintaining the viability of the remaining CSS ecosystem at the community level.

If the NCCP/HCP is approved by the Service, the Service would authorize incidental take of the California gnatcatcher through the issuance of a section 10(a)(1)(B) permit. The NCCP/HCP coupled with an Implementation Agreement could form the basis for issuing an incidental take permit for the cactus wren and orange-throated whiptail lizard should these species be listed. If an alternative process for authorizing incidental take becomes available through the special rule for the gnatcatcher, proposed under section 4(d) of the Act, the County may request the Service to authorize take associated with the NCCP/HCP in accordance with the special rule. However, this alternative authorization would not alter the requirement that the NCCP/HCP be prepared consistent with the standards noted above.

DATES: A joint public scoping meeting will be held on the following date and at the specified location to discuss the South Subregion NCCP/HCP and the adjacent Coastal and Central Subregion NCCP/HCP: Tuesday July 7, 1993, (7 p.m.–9:30 p.m.), Irvine Ranch Water District Headquarters, 15600 Sand Canyon Avenue; Irvine, California 92716–6025.

Written comments related to the scope and content of the NCCP/HCP and EIR/EIS will be accepted by the Service at the address below until 30 days after publication of this notice. A separate Notice of Intent is being published for the Coastal and Central Subregion NCCP/HCP and Joint EIR/EIS.

ADDRESSES: Information, comments, or questions related to preparation of the NCCP/HCP and Joint EIR/EIS and the National Environmental Policy Act process should be submitted to Mr. Gail Kobetich, California Planning Manager, U.S. and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E–1803, Sacramento, CA 95825–1846.

FOR FURTHER INFORMATION CONTACT: Persons wishing to review background material may obtain it by contacting the County Environmental Management Agency, Planning and Zoning Administrator, 300 N. Flower Street, Santa Ana, CA 92702. Documents also will be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m. Monday–Friday) at the above address or by telephone (714–834–6105).

Interested persons are encouraged to attend the public meeting to identify and discuss issues and alternatives that should be addressed in the EIR/EIS. The proposed agenda for the facilitated public scoping meeting includes a summary of the proposed action, status of and threats to subject species, tentative issues, concerns, opportunities, and alternatives.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1993, the Service issued a Final Rule declaring the California gnatcatcher to be a threatened species (50 CFR part 17). The Final Rule was

accompanied by a proposed special rule, "Proposed Special Rule to Allow Take of the California Gnatcatcher", pursuant to section 4(d) of the Act. The purpose of the proposed special rule is to define the conditions under which take of the California gnatcatcher, resulting from specific land use activities regulated by State and local government, would not violate section 9 of the Act. In the proposed special rule the Service recognized "* * *the significant efforts undertaken by the State of California through the Natural Community Conservation Planning Act of 1991 * * *" and encouraged "* * * holistic management of listed species, like the coastal California gnatcatcher, and other sensitive species * * *." The Service declared its intent to permit incidental take of the California gnatcatcher associated with land use activities covered by an approved subregional Natural Communities Conservation Plan prepared under the Natural Community Conservation Plan Program, provided the Service determines that the subregional Natural Community Conservation Plan meets the issuance criteria of an incidental take permit pursuant to section 10(a)(1)(B) of the Act and 50 CFR 17.32(b)(2). The County currently intends to obtain the Service's approval of the NCCP/HCP through a section 10(a)(1)(B) permit. However, if the special rule, when finalized, provides an alternative process for take authorization, the County may request the Service's approval of the NCCP/HCP through the special rule process.

The County's proposed South Subregion NCCP/HCP and Joint EIR/EIS is being prepared pursuant to California's Natural Community Conservation Planning Act of 1991. The purpose of the statewide Natural Community Conservation Plan Program is to provide for subregional and regional protection of natural diversity while allowing compatible and appropriate development within the Natural Community Conservation Plan subregion. The Natural Community Conservation Plan Program intends that these goals be achieved through the development and implementation of Natural Community Conservation Plans. The Program is designed to provide an alternative to current single species conservation efforts by formulating regional, natural community based habitat protection programs on a regional basis to protect the numerous species inhabiting each of the targeted natural communities. The Natural Community Conservation Plan process is sponsored jointly by the California Resources Agency and California Department of Fish and Game (CDFG), and is conducted in cooperation with the Service pursuant to a Memorandum of Understanding between CDFG and the Service dated December 4, 1991.

Persons attending the Scoping Meeting will have an opportunity to discuss the specific CSS conservation goals and conservation planning alternatives, as well as other aspects of the proposed NCCP/HCP and related Joint EIR/EIS. Submittal of independent written comments is encouraged.

Dated: June 18, 1993.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 93–14868 Filed 6–23–93; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Federal Geographic Data Committee (FGDC); Meeting on Means to Coordinate Activities to Develop the National Spatial Data Infrastructure

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: The FGDC is a co-convener of a meeting to discuss means by which Federal, State, and local governments, and the private sector can coordinate their activities to speed the development of the National Spatial Data Infrastructure (NSDI). The purpose of the meeting is to discuss options for developing these means. The discussion will focus on the roles of various sectors and organizations in developing the NSDI.

DATES: July 24–25, 1993. Meeting times are tentatively set for noon to 5 p.m. on July 24, and 8:30 a.m. to noon on July 25.

ADDRESSES: The meeting will be held in conference room 2 of the Inforum, 250 Williams Street, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Persons planning to attend the meeting or requesting background materials should provide their name and address to Marge Dunlap, FGDC Secretariat, U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092; telephone (703) 648–4150; facsimile (703) 648–5755; Internet "gdc@usgs.gov".

SUPPLEMENTARY INFORMATION: Admittance will be limited to the seating available. Persons planning to attend the meeting should contact Ms. Dunlap at the above address.

The National Geo-Data Policy Forum was held in early May, 1993. Nearly 750 attendees debated various policy concerns related to the development and evolution of the NSDI. Issues such as public access, data fees, copyright, liability, privacy, and roles of government and the private sector were discussed in plenary, panel, and small group sessions. The need for a meeting to continue the dialog and to plan a mechanism to coordinate public and private sector activities was recommended by the participants at the Forum.

Among the agencies and organizations endorsing and participating in these continuing discussions are the Association of American Geographers, the Atlanta Regional Commission, the Environmental Systems Research Institute, the Intergraph Corporation, the National Center for Geographic Information and Analysis, the National States Geographic Information Council, and the Urban and Regional Information Systems Association. The annual conference of the Urban and Regional Information Systems Association will immediately follow the meeting.

Dated: June 16, 1993.

Allen H. Watkins,

Chief, National Mapping Division.

[FR Doc. 93–14865 Filed 6–23–93; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

Utah; Filing of State Indemnity Selection

On May 12, 1993, the State of Utah filed a state indemnity selection application, UTU–71695, to have 200.00 acres of Federally-owned land and interest in land transferred to the State of Utah pursuant to sections 2275 and 2276 of the Revised Statutes, as amended, (43 U.S.C. 851–852).

The lands containing the Federally-owned lands and interests in land included in this application are described as follows:

Salt Lake Meridian

T. 21 S., R. 19 W.,
Sec. 29, W½SW¼, E½SE¼, SW¼SE¼.

The filing of this application segregates the Federally-owned lands and interests in land in the above-described lands from settlement, sale, location, or entry under the public land laws, including the mining laws but not the mineral leasing laws. This segregative effect shall terminate upon the issuance of a document of conveyance to these Federally-owned lands and interests in lands, or upon the application in the Federal Register of a notice of termination of the segregation,

or upon the expiration of two years from the date of the filing of this application, whichever occurs first.

JoAn Robbins,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–14862 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–09–M

[OR–020–4410–02; G3–286]

Proposed Amendment to the Andrews Management Framework Plan, Harney County, Oregon

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice of availability.

SUMMARY: A proposed amendment to the Andrews Management Framework Plan and Environmental Assessment has been prepared outlining a comprehensive plan for management of recreation on and access to public lands in the vicinity of the Loop Road on Steens Mountain in south central Harney County, Oregon. The preferred alternative would continue to keep the Steens Mountain Loop Road open in its entirety to allow motorized access to the major scenic attractions on Steens Mountain. The Loop Road would be covered with a gravel layer 4 to 6 inches thick to provide a roadbed which would hold up under the present levels of traffic and reduce maintenance costs. The Loop Road and secondary access roads to overlooks and campgrounds would be protected from the effects of heavy vehicle traffic and severe weather by application of bentonite clay as a binding agent to hold gravel on the roadway. The Loop Road would continue to be maintained to protect persons and property from undue damage which can be caused by a deteriorated roadbed. Several sources of rock would be developed to provide gravel for the Loop Road. These actions would continue to complement the status of the Steens Mountain Loop Road National Bank Country Byway. Proposed actions in the preferred alternative would also provide for protection and enjoyment of historical resources at the Riddle Brothers Ranch Historic District. Improved campground facilities would be provided along the southern segment of the Loop Road at the turnoff to the trail leading to Big Indian Gorge, for increased public enjoyment, health, and safety and to protect soil and vegetative resources. Facilities would be provided at overlooks to improve education/information opportunities as well as reduce impacts on the natural environment and improve public safety. Limited access would be allowed for motorized and non-motorized winter sports along the north segment of the Loop Road. Parking for a trailhead on newly acquired property near the mouth of Wildhorse Canyon would be developed with a trail leading up to the canyon.

DATES: The protest period for this proposed plan amendment will commence on June 30, 1993. Protests must be submitted to the Director of the BLM on or before July 30, 1993. Copies of the proposed plan amendment will be mailed to all known interested parties on the Steens mailing list by June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Glenn T. Patterson, Andrews Resource Area Manager, Bureau of Land Management, at the Burns District Office, HC–74, 12533 Highway 20 West, Hines, Oregon, 97738 or telephone (503) 573–5241. Additional copies of the proposed plan amendment can be obtained from the Burns District Office during regular office hours.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610. The planning amendment is subject to protest from any adversely affected party who participated in the planning process. A protest must be made in accordance with the provisions of 43 CFR 1610.5–2. Protests to the Director (760), Bureau of Land Management, 1849 C Street NW, Washington, DC 20240 must be post marked on or before July 30, 1993.

Dated: June 14, 1993.

Michael T. Green,

District Manager.

[FR Doc. 93–14833 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–33–M

[Docket No. UT–040–03–4212–14]

Intent to Amend the Vermilion Management Framework Plan, Kane County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) is proposing to amend the Vermillion Management Framework Plan (VMFP) and prepare the associated Environmental Assessment (EA) for lands located in Kane County, Utah.

DATES: The comment period for this proposed plan amendment will commence with the date of publication of this notice. Comments must be submitted on or before July 26, 1993.

FOR FURTHER INFORMATION CONTACT: Verlin L. Smith, Area Manager, Kanab Resource Area Office, 318 North 100 East, Kanab, Utah 84741. Existing planning documents and information are available at the above address or telephone (801) 644–2672. Comments on the proposed plan amendment should be sent to the above address.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the VMFP approved October 28, 1981, which includes public land in Kane County, Utah,. The purpose of the amendment would be to make identified lands within the city limits of Kanab, Utah, available for noncompetitive sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 and the Omnibus Public Lands and National Forest Adjustments Act of 1988 (Public Law 100–699).

The lands identified for sale comprise 240 acres described as follows:

Salt Lake Meridian, Utah

T. 43 S., R. 6 W.,
Sec. 23, S½SE¼
Sec. 26, Lots 7, 8, S½SE¼NE¼, NE¼SW¼, E½SE¼.

The existing plan does not identify these lands for disposal. However, the City of Kanab has made a proposal to purchase the described public lands and this proposal appears to have merit and may be in the public interest. An EA will be prepared to analyze the impact of this proposal and alternatives.

G. William Lamb,

Acting State Director.

[FR Doc. 93–14863 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–DQ–M

California Desert District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, in accordance with Public law 94–579, title IV, section 403, that a public meeting of the California Desert District Grazing Advisory Board will be held on Thursday, July 22, 1993 from 10 a.m. to 4 p.m. in the conference room of the California Desert Information Center, 831 Barstow Road, Barstow, California.

The agenda for the meeting will include:

—Wild Horse and Burro Management
—U.S. Fish and Wildlife Service Section 7 Consultations

—Rangeland Management and Improvements
—Rangeland Monitoring

The meeting is open to the public, with time allotted for public comment after each agenda subject has been presented.

Summary minutes of the meeting will be maintained in the California Desert District Office, 6221 Box Springs Boulevard, Riverside, California 92507, and will be available there for public inspection during regular business hours—7:45 a.m. to 4:30 p.m. (p.s.t.)—within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, California Desert District Office, Larry Morgan, 6221 Box Springs Boulevard, Riverside, California 92507, (909) 697–5370.

Dated: June 16, 1993.

Henri R. Bisson,

District Manager.

[FR Doc. 93–14872 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–40–M

[WY–920–41–5700; WYW91670]

Proposed Reinstatement of Terminated Oil and Gas Lease

June 17, 1993.

Pursuant to the provisions of 30 U.S.C. 188(d), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW91670 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW91670 effective April 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Florence R. Speltz,

Supervisory Land Law Examiner.

[FR Doc. 93–14879 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–JB–M

[OR–943–2300–02; GP3–270; OR–48521]

Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 2,451.24 acres of acquired lands to surface entry, and 623.60 acres to mining, and mineral leasing. Of the balance, 227.64 acres are already open to mining and mineral leasing, and the mineral estate in 1,600 acres is not in Federal ownership.

EFFECTIVE DATE: August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: 1. Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described lands were acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 37 S., R. 24 E.,
  Sec. 1, lots 1, 2, and 3, SW¼SW¼, and SE¼SE¼;
  Sec. 2, lots 1 and 2;
  Sec. 12, lots 2, 3, 5, and 6.
T. 33 S., R. 25 E.,
  Sec. 36.
T. 34 S., R. 25 E.,
  Sec. 35, S½SE¼;
  Sec. 36, lots 4, 5, and 6.
T. 35 S., R. 25 E.,
  Sec. 1, lots 3, 4, 5, 6, 11, and 12.
T. 33 S., R. 26 E.,
  Sec. 16.
T. 34 S., R. 26 E.,
  Sec. 10, SW¼;
  Sec. 16, lot 1, NW¼, N½SW¼, and SE¼SW¼.

The areas described aggregate 2,451.24 acres in Lake County.

2. At 8:30 a.m., on August 2, 1993, the above described lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on August 2, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

3. At 8:30 a.m., on August 2, 1993, the following described lands will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts:

Willamette Meridian

T. 37 S., R. 24 E.,
  Sec. 1, lot 1.
T. 34 S., R. 25 E.,
  Sec. 35, lots 4, 5, and 6, and S½SE¼.
T. 35 S., R. 25 E.,
  Sec. 1, lots 3, 4, 5, 6, 11, and 12.
T. 34 S., R. 26 E.,
  Sec. 10, SW¼;
  Sec. 16, lot 1 and SE¼SW¼.

The areas described aggregate 623.60 acres in Lake County.

4. At 8:30 a.m., on August 2, 1993, the lands described in paragraph 3 will be opened to applications and offers under the mineral leasing laws.

Dated: June 16, 1993.

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–14875 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–33–M

[ID–943–02–4210–04; IDI–28559]

Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to Central Idaho Title, Inc. as Trustee for FLEX Northwest, Inc., of McCall, Idaho, under section 206 of the Federal Land Policy and Management Act.

EFFECTIVE DATE: June 24, 1993.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384–3163.

1. In an exchange made under the provisions of section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been conveyed from the United States.

Boise Meridian

T. 35 N., R. 2 E.,
  Sec. 4, lots 3 and 4;
  Sec. 5, lots 1 to 3, inclusive and SE½NW¼

Comprising 244.59 acres of public land.

2. In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

T. 31 N., R. 3 W.,
Sec. 14, W½;
Sec. 23, SE¼NE¼ and E½SE¼;
Sec. 24, S½NW¼ and SW¼, less the east 70 ft. of the SE¼NW¼ and the east 70 ft. on the SW¼;
Sec. 25, S½ of lot 2.

Comprising 695.61 acres of private land.

The purpose of the exchange was to acquire non-Federal land which has high public values for recreation and wildlife. The public interest was well served through completion of the exchange. The values of the Federal and private lands in the exchange were each appraised at $200,000.

Dated: June 17, 1993.

Willima E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 93–14886 Filed 6–23–93; 8:45 am]

BILLING CODE 4310-66-M

[NV–040–4210–03; N–57067]

Realty Action: Recreation and Public Purposes Act, White Pine County, NV

ACTION: Notice.

SUMMARY: The BLM Ely District Office is proposing to patent the below-listed public lands to White Pine County, Nevada, under the provisions of the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869, *et seq.* The subject lands will be used by the county for a non-hazardous solid waste disposal facility.

DATES: Written comments concerning this proposed realty action must be submitted and post marked no later than August 13, 1993. No public hearings concerning this realty action are scheduled at this time.

ADDRESSES: Written comments should be addressed to: Gene L. Drais, Area Manager, Egan Resource Area, Bureau of Land Management, Ely District, HC 33, Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Darrell Winter, Realty Specialist, at the above address or telephone (702) 289–4865.

SUPPLEMENTARY INFORMATION: The BLM Ely District is proposing to classify 480 acres for disposal to White Pine County, Nevada pursuant to the Recreation and Public Purposes Act for a non-hazardous solid waste disposal facility. The subject lands are located at:

Mount Diablo Meridian, Nevada

T. 17 N., R. 61 E.,
Sec. 23, SE¼NE¼, E½SE¼,
Sec. 24, SW¼NE¼, S½NW¼, SE¼, W½SE¼.

The subject lands are not needed for Federal purposes. Disposal to White Pine County is consistent with the Egan Resource Management Plan approved February 3, 1987, and would be in the public interest. The subject lands are within the Copper Flat grazing allotment. Approximately 56 AUMs would no longer be available as a result of this action. The permittee has been sent a two year notice.

The patent, when issued, will contain the following terms, conditions and reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

3. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

4. Power line right-of-way N–5638 issued to Mt. Wheeler Power, Inc.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws except for disposal under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. This segregation shall be in effect until patent is issued or for 18 months. If, after 18 months following the effective date of classification, patent has not been issued, the segregative effect of the classification shall automatically expire and the lands classified shall return to their former status without further action by the authorized officer. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed classification and conveyance of the lands to the Area Manager, Egan Resource Area, address listed above. Any adverse comments will be reviewed by the State Director. In absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: June 11, 1993.

Kenneth G. Walker,

District Manager.

[FR Doc. 93–14834 Filed 6–23–93; 8:45 am]

BILLING CODE 4310-HC-M

[ES 35121]

Transfer of Lands, Sawyer County, Wisconsin; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction of legal description.

SUMMARY: This notice corrects the legal description previously published in the **Federal Register** on January 24, 1986, (51 FR 3265) for the transfer of submarginal lands (transferred to the Lac Courte Oreilles Band of Chippewa Indians) in Sawyer County, Wisconsin. Under T. 38 N., R. 7 W., the description that now reads "Sec. 6., W½W¼ (70.77)," should be corrected to read "Sec. W½NW¼ (70.77)."

If you have further questions or concerns, please contact A. Nate Felton at (703) 440–1548.

Denise P. Meridith,

State Director.

[FR Doc. 93–14854 Filed 6–23–93; 8:45 am]

BILLING CODE 4310-GJ-M

[NV–060–4410–02]

Draft Tonopah Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability. The Draft Tonopah Resource Management Plan (RMP) and Environmental Impact Statement (EIS) is available for a 90 day public review period. This is also a "Notice" of the consideration of 10 areas of critical environmental concern (ACECs) as discussed in the alternatives of this draft RMP.

SUMMARY: Pursuant to section 202(f) of the Federal Land Policy and Management Act (FLPMA) of 1976, section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, and Title 43 Code of Federal Regulations (CFR), part 1610, a draft RMP and EIS for the Tonopah Resource Area, Battle Mountain District, Nevada has been prepared and is available for review and comment.

The draft RMP and EIS describes and analyzes future options for managing approximately 6,091,101 acres of public land and mineral estate in Esmeralda County and Nye County, Nevada. It also examines the proposed designation of 10 ACECs and their restrictions on various resource uses within the Tonopah Resource Area.

Final approved decisions generated during this planning process will

supersede current land use planning guidance presented in the Tonopah Management Framework Plan (MFP) of 1983 and the Esmeralda-Southern Nye RMP of 1986. They are being developed to meet the changing public land use demands in the Tonopah Resource Area.

DATES: All written comments on the draft RMP and EIS must be submitted and postmarked no later than September 30, 1993. Oral and written comments may also be presented at five scheduled public meetings. All meetings will start at 7 p.m. each evening. A time limit may need to be placed on oral statements. The meeting dates and locations are listed below:

Tuesday, August 17, 1993, Carson City District Office, 1535 Hot Springs Road, suite 300, Carson City, Nevada.
Thursday, August 19, 1993, Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada.
Tuesday, August 24, 1993, Beatty Community Center, A Avenue, Beatty, Nevada.
Wednesday, August 25, 1993, Goldfield Community Center, corner of Crook and Euclid, Goldfield, Nevada.
Thursday, August 26, 1993, Tonopah Convention Center, 301 Brougher, Tonopah, Nevada.

ADDRESSES: Written comments should be addressed to: Tonopah Area Manager, Bureau of Land Management, P.O. Box 911, Tonopah, NV 89049. Copies of the draft document may be obtained through writing to the above address or by obtaining one in person at Building 102, Military Circle, Tonopah, Nevada.

FOR FURTHER INFORMATION CONTACT: Tonopah Area Manager at the above addresses or telephone (702) 482–7800.

SUPPLEMENTARY INFORMATION: The draft RMP and EIS was prepared as a single planning document to provide management goals, objectives and direction where needed for the Tonopah Resource Area. It will also bring forward valid existing management strategies from the current land use plans.

Four alternatives were considered in detail in the draft RMP and EIS. Alternative 1 is the No Action Alternative. Management is a continuation of the current level and systems of resource use as described in the Tonopah MFP and the Esmeralda-Southern Nye RMP. These land use plans contain a full array of multiple resource uses. However, because some resources and uses were not articulated in those plans, some of the management direction that is assumed for the No Action Alternative was derived by extrapolating from past management actions. Alternative 2 provides opportunities for private economic development and economic diversity through utilization of a wide range of resources. Lands will be made available for expansion and development while providing mitigation to sensitive resource values. Alternative 3 provides for private economic development and economic diversity which is constrained by environmental safeguards designed for the preservation and enhancement of environmental systems and for species diversity. Alternative 4 is the Preferred Alternative; it provides for the development of renewable and non-renewable resources while ensuring the preservation and enhancement of fragile and unique resources.

While the alternatives establish broad management guidelines and firm direction, considerable flexibility is maintained through continued site and project specific compliance with NEPA and other laws and regulations. This draft RMP is the first step in developing an approved plan that will provide management guidance to BLM for the next 20 years.

ACECs nominated by the public, as well as those recommended by BLM, that met the "relevance" and "importance" criteria as defined in 43 CFR 1610.7–2(a) resulted in 10 ACECs being considered for designation in the Tonopah Resource Area. The proposed sizes, resource limitations and their impacts have been analyzed in the alternatives of the draft RMP and EIS. Of the 10 potential ACECs, seven are identified in the Preferred Alternative. The following is a list of the ACECs and their size as discussed in the Preferred Alternative:

Amargosa-Oasis	490 acres.
Cane Man Hill	680 acres.
Lone Mountain	14,400 acres.
Lunar Crater	39,680 acres.
Railroad Valley	15,470 acres.
Rhyolite	460 acres
Tybo-McIntyre	80 acres

Because of the complexity of displaying the resource limitations of each proposed ACEC in this "Notice," we ask the public to refer to the Special Management Areas sections of each alternative, especially the Preferred Alternative, in the draft RMP and EIS.

Public participation has occurred throughout the RMP process to date. A "Notice of Intent" to do the RMP was filed in the **Federal Register** of February 12, 1990. Since that time, several public meetings and mailings were conducted to solicit comments and ideas. Comments presented throughout the process have been considered in the development of this draft RMP. Copies of the draft RMP and EIS may be obtained from the Tonopah Resource Area Office. Public reading copies will be available at the public libraries of Esmeralda and Nye Counties, all government document repository libraries and at the following BLM locations: Public Room, Office of External Affairs, Main Interior Building, room 5000, 18th and C Streets NW., Washington, DC; Nevada State Office, 850 Harvard Way, Reno, Nevada; Battle Mountain District Office, 50 Bastian Way, Battle Mountain, Nevada; and Tonopah Resource Area Office, 102 Military Circle, Tonopah, Nevada.

Background information and maps used in developing the draft RMP and EIS are available at the Tonopah Resource Area Office.

Dated: June 18, 1993.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 93–14867 Filed 6–23–93; 8:45 am]

BILLING CODE 4310-HC-M

[CO–942–93–4730–12]

Colorado: Filing of Plats of Survey

June 18, 1993.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., June 18, 1993.

The plat representing the dependent resurvey of portions of the east boundary, subdivisional lines, and Tract lines, and the subdivision of sections 23 and 24, T. 8 N., R. 88 W., Sixth Principal Meridian, Colorado, Group No. 946, was accepted April 27, 1993.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 19, 28, and 34, T. 8 N., R. 87 W., Sixth Principal Meridian, Colorado, Group No. 946, was accepted April 27, 1993.

The supplemental plat, correcting lots 2 and 14 in the NW¼ of section 22 on sheets 1 and 4, T. 4 S., R. 75 W., Sixth Principal Meridian, Colorado, was accepted May 25, 1993.

The supplemental plat, creating new lots 127, 128, 129 and 130, in the NE¼SW¼ section 18, T. 1 N., R. 71 W., Sixth Principal Meridian, Colorado, was accepted May 25, 1993.

The supplemental plat, correcting the bearing error between Cor. No's. 10 to 10A and 34 to 35, T. 14 S., R. 94 W., Sixth Principal Meridian, Colorado, was accepted May 25, 1993.

The supplemental plat, correcting the bearing error between Cor. No. 85 to Cor. No. 1, T. 14 S., R. 95 W., Sixth

Principal Meridian, Colorado, was accepted May 25, 1993.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the metes-and-bounds survey of Lot 1, Section 12, T. 2 N., R. 76 W., Sixth Principal Meridian, Colorado, Group No. 1035, was accepted May 27, 1993.

The plat representing the metes-and-bounds surveys of Lot 1, Section 12 and Lot 1, Section 33, T. 3 N., R. 76 W., Sixth Principal Meridian, Colorado, Group No. 1035, was accepted May 27, 1993.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 93-14883 Filed 6-23-93; 8:45 am]

BILLING CODE 4310-JB-M

[CO-930-4214-10; COC-25792]

Proposed Withdrawal; Transfer of Jurisdiction; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw and transfer administrative jurisdiction of 40 acres of public land located within the Picket Wire Canyonlands. This 40-acre parcel was inadvertently omitted from Public Law 101-510 which transferred the Canyonlands from the Secretary of Defense to the Secretary of Agriculture for administration. This parcel will be closed to operation of all the public land laws including the mining and the mineral leasing laws and will be managed as a part of the Picket Wire Canyonlands. This notice will segregate the land for up to two years.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before September 22, 1993.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215-7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303-239-3706.

SUPPLEMENTARY INFORMATION: The Department of Agriculture, Forest Service, has filed application to withdraw and transfer administrative jurisdiction of the following described public land from operation of all the public land laws, including the mining and the mineral leasing laws:

Sixth Principal Meridian

T. 28 S., R. 55 W.,
Sec. 17, SE¼NW¼.

The area described contains 40 acres of public land in Las Animas County.

The purpose of this proposed action is to withdraw and transfer administrative jurisdiction of a parcel of public land which was inadvertently omitted from Public Law 101-510 which created the Picket Wire Canyonlands and transferred them to the Department of Agriculture for management of palaeontological and archaeological features, wildlife, vegetation and aquatic life.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with the Bureau of Land Management Manual, section 2351.16B.

This application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period of two years from the date of publication in the **Federal Register**, the land will be segregated from operation of all of the public land laws, including the mining and the mineral leasing laws, unless the application is denied or cancelled or the withdrawal is approved prior to that date. This action does not authorize any temporary uses of this land.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 93-14885 Filed 6-22-93; 8:45 am]

BILLING CODE 4310-JB-M

[OR-943-4210-05; GP3-263; OR-49274]

Filing of Application for State Indemnity Selections

AGENCY: Bureau of Land Management, Oregon.

ACTION: Notice.

SUMMARY: The State of Oregon has filed an application for selection of 329.91 acres of public lands for State Indemnity selections pursuant to sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852), section 102(a) of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701, 1712), and sec. 7 of the Taylor Grazing Act of 1934 (43 U.S.C. 315f).

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments in writing regarding the application for State Indemnity Selections of the lands described below. Any adverse comments will be reviewed by the State Director.

ADDRESSES: Submit comments to the Oregon/Washington State Director, BLM, Attn: Chief, Branch of Lands and Minerals Operations (943.3), P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Bill Bliesner, BLM Oregon State Office, 503-280-7157.

SUPPLEMENTARY INFORMATION: The State of Oregon has filed an application for selection of public lands for State Indemnity selections for the following described lands:

Willamette Meridian

T. 15 S., R. 6 W.,
Sec. 34, SE¼SE¼.
T. 16 S., R. 6 W.,
Sec. 12, SW¼NE¼ and NE¼NW¼.
T. 40 S., R. 8 W.,
Sec. 32, SE¼NE¼.
T. 9 S., R. 9 W.,
Sec. 19, W½ of lot 29.
T. 35 S., R. 14 W.,
Sec. 18, lot 1.
T. 19 S., R. 1 E.,
Sec. 26, W½NE¼NE¼ and NW¼NE¼.
T. 13 S., R. 3 E.,
Sec. 9, NE¼NE¼.
T. 32 S., R. 3 E.,
Sec. 19, lot 32.

The areas described aggregate 329.91 acres in Curry, Jackson, Josephine, Lane, Linn, and Lincoln Counties, Oregon.

Dated: June 11, 1993.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-14876 Filed 6-23-93; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are

grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collections

(1) Systematic Alien Verification for Entitlements (SAVE) User Satisfaction Survey

(2) No form number. Immigration and Naturalization Service

(3) One-time survey

(4) State or local governments. This survey will be used to determine the satisfaction of SAVE program users, which consist of the State Benefit Granting Agencies

(5) 2,000 annual responses at .25 hours per response

(6) 500 annual burden hours

(7) Not applicable under 3504(h)

Public comment on these items is encouraged.

Dated: June 18, 1993.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 93–14840 Filed 6–23–93; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[93–057]

NASA Advisory Council; Space Science and Applications Advisory Committee; Space Station Science and Applications Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee; Space Station Science and Applications Advisory Subcommittee.

DATES: July 6, 1993, 8:30 a.m. to 5 p.m.; July 7, 1993, 8 a.m. to 5 p.m.; July 8, 1993, 8 a.m. to 5 p.m.; and July 9, 8 a.m. to 3 p.m.

ADDRESSES: J. Erik Jonsson Woods Hole Center, National Academy of Sciences, 314 Quissett Avenue, Woods Hole, MA 02543–0086.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond M. Reeves, Code US, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2150.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room, approximately 75, including members of the Subcommittee. The agenda for the meeting is as follows:

—Proposed Space Station Approach

—International Partner Elements

—User Input to Station Redesign Process

—Operations and Utilization

—Comparisons: Previous Space Station; User Requirements; Proposed Design

—International Coordination

—User Assessment

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 18, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–14878 Filed 6–23–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before July 26, 1993.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–606–8494) and Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 606–8498 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Guidelines and Application Forms for the Conferences Program

Form Number: Not applicable
Frequency of Collection: Twice annually
Respondents: Humanities institutions
Use: Application for funding
Estiated Number of Respondents: 58 per year
Frequency of Response: Once
Estimated Hours for Respondents to Provide Information: 60 hours per respondent
Estimated Total Annual Reporting and Recordkeeping Burden: 5,240 hours

Thomas S. Kingston,
Assistant Chairman for Operations.

[FR Doc. 93–14852 Filed 6–23–93; 8:45 am]
BILLING CODE 7536–01–M

Cooperative Agreement for a Literature Field Overview Study

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for a Literature Field Overview Study designed to target and define the changing needs of the Literature field. The study will be aimed at identifying and defining: (1) The field en masse and its components/affiliates; (2) the dynamic state and evolving needs of the field system; (3) the ways in which current programs and support activities view their relationship to audiences, writers, texts, and one another; and (4) goals and possible strategies for achieving them. Those interested in receiving the Solicitation package should submit a written request and include two (2) self-addressed labels, referencing Program Solicitation PS 93–17. Verbal requests for the Solicitations will not be honored.

DATES: Program Solicitation PS 93–17 is scheduled for release approximately July 12, 1993 with proposals due on August 12, 1993.

ADDRESS: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW. Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW. Washington, DC 20506 (202/682–5482).

William I. Hummel,
Director, Contracts and Procurement Division.

[FR Doc. 93–14882 Filed 6–23–93; 8:45 am]
BILLING CODE 7537–01–M

Humanities Panel Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on 202/606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* July 12, 1993.
Time: 9:00 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Public Challenge Grants program for the May 1, 1993 deadline, submitted to the Division of Public Programs, for projects beginning after December 1, 1993.

2. *Date:* July 16, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Classical, Medieval, and Renaissance Studies, submitted to the Division of Fellowship and Seminars, for projects beginning after January, 1994.

3. *Date:* July 19, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Anthropology, Sociology, and Psychology, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

4. *Date:* July 19, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in European History, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

5. *Date:* July 20, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Music, Dance, Theater, Film History and Criticism, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

6. *Date:* July 20, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in British Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

7. *Date:* July 21, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Romance Languages and Literatures, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

8. *Date:* July 21, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1994.

9. *Date:* July 22, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Art History I, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1994.

10. *Date:* July 22, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Art History I, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1994.

11. *Date:* July 26, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Anthropology, submitted to the Division of

Fellowships and Seminars, for projects beginning after January 1994.

12. *Date:* July 26, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in British Literature; Criticism; Rhetoric and Composition, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1994.

13. *Date:* July 26, 1993.
Time: 9:00 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for the Public Challenge Grants programs for the May 1, 1993 deadline, submitted to the Division of Public Programs, for projects beginning after December 1, 1993.

14. *Date:* July 27, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Languages and Literatures I, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1994.

15. *Date:* July 27, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Languages and Literatures II, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1994.

16. *Date:* July 29, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in American History I, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

17. *Date:* July 30, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Art History II, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1994.

18. *Date:* July 30, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Fellowships for University Teachers applications in American History and Studies I, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

19. *Date:* July 30, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Fellowships for University Teachers applications in Art History II, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1994.

David C. Fisher,
Advisory Committee Management Officer.

[FR Doc. 93–14853 Filed 6–23–93; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Notice To Extend Expiration Dates of NSF Advisory Committees

Charters of the advisory committees listed below are scheduled to expire on June 30, 1993. This document serves to extend the expiration date of these committees so that a comprehensive review being conducted of NSF committees by NSF, OMB, and the GSA Committee Management Secretariat can be completed. This review is being conducted in accord with Executive Order 12838, dated 2–10–93, entitled "Termination and Limitation of Federal Advisory Committees" and OMB Bulletin No. 93–10, "Termination of Federal Advisory Committees". Upon completion of the review, new charters will be filed accordingly.

Therefore, in consultation with the GSA Committee Management Secretariat, I have determine that the renewal of the following committees until September 30, 1993, is necessary and in the public interest.

Advisory Committee for Astronomical Sciences
Advisory Committee for Atmospheric Sciences
Advisory Committee for Biological & Critical Systems
Advisory Committee for Biological Sciences
Advisory Committee for Chemical & Thermal Systems
Advisory Committee for Chemistry
Advisory Committee for Design & Manufacturing Systems
Advisory Committee for Earth Sciences
Advisory Committee for Education & Human Resources
Advisory Committee for Electrical & Communications Systems
Advisory Committee for Engineering
Advisory Committee for Industrial Innovation Interface
Advisory Committee for Mathematical Sciences
Advisory Committee for Mechanical & Structural Systems
Advisory Committee for Ocean Sciences
Advisory Committee for Physics
Advisory Committee for Polar Programs
Advisory Committee for Archaeology
Advisory Panel for Archaeometry & Systematic Anthropological Collections
Advisory Panel for Biochemistry & Molecular Structure & Function
Advisory Panel for Cell Biology
Advisory Panel for Cultural Anthropology
Advisory Panel for Decision, Risk & Management Science
Advisory Panel for Developmental Mechanisms
Advisory Panel for Ecology
Advisory Panel for Economics
Advisory Panel for Ecosystem Studies
Advisory Panel for Equipment & Facilities for Research at Biological Field Stations & Marine Labs
Advisory Panel for Ethics & Values Studies
Advisory Panel for Genetics & Nucleic Acids
Advisory Panel for Geography & Regional Science
Advisory Panel for History & Philosophy of Science
Advisory Panel for Human Cognition & Perception
Advisory Panel for Instrumentation & Instrument Development
Advisory Panel for Law & Social Science
Advisory Panel for Linguistics
Advisory Panel for Neuroscience
Advisory Panel for Physical Anthropology
Advisory Panel for Physiology and Behavior
Advisory Panel for Political Science
Advisory Panel for Population Biology
Advisory Panel for Social Psychology
Advisory Panel for Sociology
Advisory Panel for Systematic Biology
Alan T. Waterman Award Committee
Earth Sciences Proposal Review Panel
Materials Research Advisory Committee
Ocean Sciences Review Panel
Special Emphasis Panel in Science and Technology Infrastructure
Special Emphasis Panel in Science Resources Studies

Dated: June 21, 1993.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 93–14904 Filed 6–23–93; 8:45 am]
BILLING CODE 7555–01–M

Committee of Visitors of the Advisory Committee for Earth Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Committee of Visitors of the Advisory Committee for Earth Sciences.
Date and Time: July 12 and 13, 1993; 8:30 a.m.-5 p.m.
Place: Room 1242, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.
Contact Person: Dr. Ian D. MacGregor, Section Head, Special Projects Section, Division of Earth Sciences, room 602, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357–9591.
Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.
Agenda: To provide oversight review of the Petrology and Geochemistry Program.
Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: June 21, 1993.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 93–14905 Filed 6–23–93; 8:45 am]
BILLING CODE 7555–01–M

Committee of Visitors of the Advisory Committee for Education and Human Resources; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Dates and Times: July 15, 1993 (9 a.m. to 5 p.m.); July 16, 1993 (9 a.m. to 3 p.m.)
Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC.
Type of Meeting: Closed.
Contact Person: Dr. Larry Suter, Program Director, Division of Research, Evaluation and Dissemination, room 1249, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) (357–7425).
Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.
Agenda: To provide oversight review of the Studies and Indicators Program.
Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: June 21, 1993.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 93–14906 Filed 6–23–93; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical and Communications Systems.
Dates and Times: July 14, 1993; 8:30 a.m. to 5 p.m.
Place: Room 1151, 1800 G Street, NW., Washington, DC.
Type of Meeting: Closed.
Contact Person: Brian J. Clifton, Program Director, ECS, room 1151, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9618.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Optical Communications proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 21, 1993.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 93–14903 Filed 6–23–93; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the Following meeting:

Name: Special Emphasis Panel in Undergraduate Education.
Date and time: July 12, 1993; 7:30 p.m. to 9 p.m., July 13, 1993; 8:30 a.m. to 5 p.m., July 14, 1993; 8:30 a.m. to 5 p.m., July 15, 1993; 8:30 a.m. to 3 p.m.
Place: The Grand Hotel, 2350 M Street, NW., Washington, DC 20037.
Type of Meeting: Closed.
Contact Person: Dr. Herbert Levitan, Section Head, National Science Foundation, 1800 G Street, NW., rm. 1210, Washington, DC 20550. Telephone: (202) 357–7292
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate unsolicited proposals submitted to the Undergraduate Course and Curriculum Development Program.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: June 21, 1993.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 93–14907 Filed 6–23–93; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Correction

Notice that the 54th meeting of the Advisory Committee on Nuclear Waste (ACNW) would be held on Friday, June 25, 1993, beginning at 8:30 a.m. was published in the **Federal Register** on Thursday, June 17, 1993 (58 FR 33470). The meeting schedule has been changed such that the meeting will now begin at 2 p.m. on June 25, 1993 and be continued until the conclusion of business on that day. If necessary the meeting will be continued on Saturday, June 26, 1993, 8:30 a.m. until the conclusion of business. The meeting will be held in room P–110, 7920 Norfolk Avenue, Bethesda, MD for both days of the meeting. All other items pertaining to this meeting remain the same as published previously. The entire meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Dr. John T. Larkins, Executive Director, ACNW (telephone 301/492–4516) between 7:30 a.m. and 4:15 p.m.

Dated: June 18, 1993.
John C. Hoyle,
Advisory Committee Management Officer.
[FR Doc. 93–14888 Filed 6–23–93; 8:45 am]
BILLING CODE 7555–01–M

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority (Sequoyah Nuclear Plant Units 1 and 2); Exemption

I.

The Tennessee Valley Authority (the licensee) is the holder of Facility Operating License Nos. DPR–77 and DPR–79, which authorize operation of the Sequoyah Nuclear Plant Units 1 and

2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facilities consist of two pressurized water rectors, Sequoyah Nuclear Plant Units 1 and 2, at the licensee's site located in Hamilton County, Tennessee.

II.

Title 10 CFR 50.60, "Acceptance criteria for fracture prevention measures for lightwater nuclear power reactors for normal operation," states that all lightwater nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR part 50. Appendix G to 10 CFR part 50 defines pressure/temperature (P/T) limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime. 10 CFR 50.60(b) specifies that alternatives to the described requirements in Appendices G and H to 10 CFR part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent low temperature overpressure transients that would produce pressure excursions exceeding the Appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed a low temperature overpressure (LTOP) system. The system includes pressure relieving devices called Power Operated Relief Valves (PORVs). The PORVs are set at a pressure low enough so that if an LTOP transient occurred, the mitigation system would prevent the pressure in the reactor vessel from exceeding the Appendix G P/T limits. To prevent the PORVs from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint.

Based on information supplied by Westinghouse Electric Corporation, the licensee has determined that the generic methodology used by Westinghouse to calculate the LTOP setpoint for Sequoyah is deficient since it did not account for certain flow-induced differential pressures and piping losses. As a result, the analytical maximum pressure limits for LTOP events for a certain design basis condition exceed the pressure limits of the 10 CFR part 50 Appendix G curves. In addition, in order to start a reactor coolant pump, the operator must maintain a differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The licensee LTOP analysis indicates that using the Appendix G safety margins to determine the PORV setpoint would result in a pressure setpoint within its operating window, but there would be no margin for normal operating pressure surges. Therefore, operating with these limits would likely result in the lifting of the PORVs during normal operation.

The licensee proposed that in determining the design setpoint for LTOP events for Sequoyah Units 1 and 2, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins currently required by Appendix G, 10 CFR part 50. Designated Code Case N–514, the proposed alternate methodology, is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. Code Case N–514, "Low Temperature Overpressure Protection," has been approved by the ASME Code Committee. NRC has reviewed the Code Case and endorsement is expected soon.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for the LTOP setpoint. By application dated June 5, 1993, the licensee requested an exemption from 10 CFR 50.60 for this purpose.

By letter dated June 14, 1993, the licensee supplied additional information that described administrative constraints that would be necessary to ensure that sufficient LTOP margins are maintained during certain evolutions, assuming that the exemption was not granted. The information showed that the operational constraints would preclude the use of administrative controls to ensure sufficient LTOP margins.

III.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *".

The underlying purpose of 10 CFR 50.60 Appendix G is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of this appendix requires that the reactor vessel be operated with P/T limits at least as conservative as those obtained by following the methods of analysis and the required margins of safety of Appendix G of the ASME Code.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) Using a safety factor of 2 on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one quarter of the vessel wall thickness and a length of six times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Sequoyah reactor vessel material.

In determining the setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, the proposed

criteria will provide adequate margins of safety to the reactor vessel during LTOP transients and will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements.

Using the licensee's proposed safety factors instead of Appendix G safety factors to calculate the LTOP setpoint will permit a higher LTOP setpoint than would otherwise be required and will provide added margin to prevent normal operating surges from lifting the PORVs. The result would be continued use of the present setpoint.

IV.

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), such that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants the Tennessee Valley Authority an exemption from the requirements of 10 CFR 50.60 such that in determining the setpoint for LTOP events, the Appendix G curves for P/T limits are not exceeded by more than 10 percent in order to be in compliance with these regulations. This exemption is applicable only to LTOP conditions during normal operation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (58 FR 33676, June 18, 1993).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 18th day of June 1993.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–14887 Filed 6–23–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF GOVERNMENT ETHICS

Proposed Part-Time Career Employment Policy Directive

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice soliciting comments on a proposed Office of Government Ethics internal Part-Time Career Employment Program.

SUMMARY: The Office of Government Ethics is proposing to establish an internal program to promote part-time career employment within OGE. This program will be implemented in an internal agency personnel policy directive of the OGE Personnel Manual.

DATES: Comments must be received on or before July 26, 1993.

ADDRESSES: Comments should be sent to the Office of Government Ethics, Office of Administration, suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Mrs. Justine L. Norman. Mrs. Norman will also provide a copy of the proposed OGE policy directive, free of charge, upon request.

FOR FURTHER INFORMATION CONTACT: Mrs. Justine L. Norman, Office of Government Ethics, telephone (202/FTS) 523–5757, extension 1148; FAX (202/FTS) 523–6325.

SUPPLEMENTARY INFORMATION: The Federal Employees Part-Time Career Employment Act of 1978 (5 U.S.C. 3401 et seq.) requires that each agency establish and maintain a Part-Time Career Employment Program. The purposes of this program are to: promote the as yet not fully realized capabilities and potential of individuals in society who may possess great productive potential but are unable to work on a full-time basis; provide employment opportunities to handicapped individuals or others who require a reduced workweek; provide parents with opportunities to balance family responsibilities with the need for added income; provide older individuals with a gradual transition into retirement; and to assist students who must finance their own education or vocational training.

Guidance from the Office of Personnel Management (OPM) states that an agency's program under this law can be established in an internal policy directive. See Federal Personnel Manual, chapter 340, subchapter 1, paragraph 1–3. 5 U.S.C. 3402 and the OPM guidance provide that before such a directive can be issued in final, a notice is to be published in the **Federal Register** so that there is an opportunity for interested parties to present written comments and, where practicable, oral comments on the directive.

The Office of Government Ethics has determined to issue its final policy on Part-Time Career Employment, after publishing this notice in the **Federal Register**, as an internal policy directive, given the relatively small size and limited budget of this Agency. The directive will be in the OGE Personnel Manual, chapter 340, subchapter 1 on Part-Time Career Employment. A summary of the proposed directive follows.

The Office of Government Ethics' proposed policy directive describes the purpose for establishing a Part-Time Career Employment Program within OGE as well as the policy of the Agency for promoting part-time opportunities. Another proposed provision of the policy directive defines the terms frequently used in the directive. The criteria under which an individual may be excluded from the 16 to 32 hours per week tour of duty and health insurance prorating provisions are also described in the proposed directive. In addition, the proposed OGE directive outlines the plans and procedures that are to be used in connection with establishing or converting positions for part-time career employment. Another proposed provision addresses making changes to the work schedule/tour of duty of a part-time employee. It also stipulates that there is no specific prohibition against an individual holding two part-time positions either in the same or different agencies. A separate provision, as proposed, authorizes job sharing as an appropriate arrangement for meeting the needs of the Agency and employees.

Basic principles concerning position classification and pay are outlined in one proposed provision. Other proposed provisions describe entitlement for leave and holidays, how service credit is determined, and the various benefits that are afforded to eligible part-time employees. A further proposed provision of the OGE directive requires that the reassignment, detail, and/or promotion of a part-time employee be done in the same manner and under the same circumstances as other career or career-conditional employees. Another proposed provision states that a part-time employee will be placed in a separate competitive level from comparable full-time employees in a reduction in force situation and that when released from competitive level, they may only compete for other part-time jobs. As proposed, one provision allows the part-time employee the same protection as a full-time employee in the event of an adverse action and also states that they are covered by OGE's

grievance procedures. Another proposed provision states that paid straight- time hours worked by part-time employees will count against OGE's Full-Time Equivalent (FTE) personnel ceiling. Finally, the proposed directive sets forth the requirement for the continuing review and evaluation of OGE's Part-Time Career Employment Program which will be accomplished by the designated Part-Time Employee Program Coordinator.

Approved: June 15, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 93–14818 Filed 6–23–93; 8:45 am]

BILLING CODE 6345-01-U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Receipt of Petition for Consultations With Russia, Belarus and Ukraine Pursuant to Section 406(d) of the Trade Act of 1974 and Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of receipt of petition for consultations with Russia, Belarus and Ukraine pursuant to section 406(d) of the Trade Act of 1974; request for public comment.

SUMMARY: The United States Trade Representative (USTR) is providing notice that it has received a petition filed by Eddy Potash, Inc., Horizon Resources Corporation, Mississippi Chemical Corporation and New Mexico Potash Corporation pursuant to section 406(d) of the Trade Act of 1974, codified at 19 U.S.C. § 436(d) (the Act). These companies, all U.S. producers of potassium chloride (KC1), have requested that the President initiate consultations with Russia, Belarus and Ukraine because they allege that imports of KC1 from these countries have caused market disruption (as defined in section 406(e) of the Act) to exist with respect to an article produced by a domestic industry. USTR invites written comments from the public on the information contained in this petition.

DATES: Written comments from the public are due on or before July 13, 1993.

FOR FURTHER INFORMATION CONTACT: Catherine A. Novelli, Director for Eastern Europe and Independent States, (0) 395–3074.

SUPPLEMENTARY INFORMATION: Eddy Potash, Inc., Horizon Resources Corporation, Mississppi Chemical Corporation and New Mexico Potash Corporation (collectively, the Petitioners) have filed a petition with USTR pursuant to section 406(d) of the Trade Act of 1974, 19 U.S.C. 436(d). In the petition, the Petitioners allege that imports of KC1 from Russia, Belarus and Ukraine are causing market disruption to exist such that the imports of KC1 from these countries are a significant cause of material injury, or threat thereof, to the domestic KC1 industry. Further, they urge the President to initiate consultations with these countries to alleviate such disruption. Pursuant to section 406(d)(), if the President determines that there are reasonable grounds to believe that imports of KC1 from these countries are causing market disruption, he shall initiate consultations with these countries pursuant to section 406(d). Section 406(e) of the Act defines market disruption to exist within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

Copies of the public version of the petition are available for public inspection in the USTR Reading Room: room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 0506. Appointments may be made from 10 a.m. to 1 noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (0) 395–6186.

Interested persons are invited to submit written comments on the information contained in this section 406(d) petition. Comments must be filed by July 13, 1993. Comments must be in English and provided in twenty copies to: Carolyn Frank, Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, room 414, 600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page on each of the twenty copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the file which is open to public inspection.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 93–14925 Filed 6–23–93; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32488; File No. SR–MSE–93–13]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Midwest Stock Exchange, Inc., Relating to Amendments to Its Certificate of Incorporation and Constitution To Effect a Name Change

June 18, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 21, 1993, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE proposes to amend its Certificate of Incorporation and Constitution in order to change the name of the MSE to Chicago Stock Exchange, Inc., effective as of July 8, 1993.[1] The text of the proposed rule change is available at the Office of the Secretary, MSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] On June 16, 1993, the MSE submitted a separate proposal under Rule 19b-4, see File No. SR–MSE–93–16, to make conforming changes to its rules.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The MSE was originally organized as the Chicago Stock Exchange and opened for trading on May 15, 1882. It operated under the name of the Chicago Stock Exchange unit 1949, when it merged with the stock exchanges of St. Louis, Cleveland and Minneapolis-St. Paul to form the MSE. A decade later the New Orleans Stock Exchange became part of the MSE. From the very beginning of the MSE and through today, the support and encouragement of the business and financial communities of the midwest region has been vital to the continued success of the MSE.

The Exchange's influence extends far beyond the region, however. Advances in telecommunications have made MSE's activities truly national, and even international, in scope. Today, orders are sent to the MSE from all over the country and the MSE trades securities listed on all three major listing markets: The New York Stock Exchange, the American Stock Exchange and NASDAQ, for a total of 2,800 different securities. Measured by total dollar volume, the MSE is the largest stock exchange in the United States outside of New York and is the eleventh largest stock exchange in the world.[2]

Another important aspect of the MSE's business scope has been the establishment of clearing links with foreign exchanges such as the Vancouver and London Stock Exchanges, as well as SICOVAM, a securities depository located in Paris. MSE's systems innovations are recognized internationally as well. The Exchange has set up trading systems using its technology at the Amsterdam Stock Exchange, the Stock Exchange of Thailand and the Makati Stock Exchange in Manila, Philippines.[3]

In summary, the MSE has expanded far beyond its historically regional role to be a vital element in the nation's capital markets. In keeping with the MSE's expanding role, the members of the Exchange and the Board of Governors have deemed it advisable that the name of the Exchange be changed from the Midwest Stock Exchange, Inc. to the Chicago Stock Exchange, Inc.[4] The name would (1) reduce any outmoded regional connotation that may exist with the use of the current name, (2) better identify the location of the Exchange and (3) be in keeping with the way most of the major exchanges in the world are identified, i.e., by the city in which they are located.

The name change will become effective on July 8, 1993.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(1) of the Act in that it helps to assure that the Exchange is so organized and has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The members of the Exchange overwhelmingly approved the name change at a special meeting of members held on May 11, 1993.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon submission pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR–MSE–93–13 and should be submitted by July 15, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14911 Filed 6–23–93; 8:45 am]

BILLING CODE 8010–01–M

[2] MSE ranked the stock exchanges based on their total dollar volume. Telephone conversation between J. Craig Long, Vice President, General Counsel and Secretary, MSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC. on May 27, 1993.

[3] Specifically, the MSE customized its MAX system to suit the foreign country's trading rules and then licensed the technology to these exchanges. Telephone conversation between J. Carig Long, Vice President, General Counsel and Secretary, MSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on June 2, 1993.

[4] The MSE is not changing the names of any of its subsidiaries at this time. Telephone conversation between J. Craig Long, Vice President, General Counsel and Secretary, MSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on May 27, 1993.

[Release No. 34–32489; File No. SR–MSE–93–16]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Midwest Stock Exchange, Inc., Relating to Amendments to Its Rules to Make Conforming Changes in Accordance With Its Name Change to Chicago Stock Exchange, Inc.

June 18, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 16, 1993, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE proposes to amend its rules in accordance with the Exchange's name change.[2] The text of the proposed rule change is available at the Office of the Secretary, MSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make conforming changes to the rules of the Exchange to correspond with the Exchange's name change to Chicago Stock Exchange, Inc. in its Certificate of Incorporation and Constitution, which will be effective as of July 8, 1993.[3]

The MSE was originally organized as the Chicago Stock Exchange and opened for trading on May 15, 1882. It operated under the name of the Chicago Stock Exchange until 1949, when it merged with the stock exchanges of St. Louis, Cleveland and Minneapolis-St. Paul to form the MSE. A decade later the New Orleans Stock Exchange became part of the MSE. From the very beginning of the MSE and through today, the support and encouragement of the business and financial communities of the midwest region has been vital to the continued success of the MSE.

The Exchange's influence extends far beyond the region, however. Advances in telecommunications have made MSE's activities truly national, and even international, in scope. Today, orders are sent to the MSE from all over the country and the MSE trades securities listed on all three major listing markets: The New York Stock Exchange, the American Stock Exchange and NASDAQ, for a total of 2,800 different securities. Measured by total dollar volume, the MSE is the largest stock exchange in the United States outside of New York and is the eleventh largest stock exchange in the world.[3]

Another important aspect of the MSE's business scope has been the establishment of clearing links with foreign exchanges such as the Vancouver and London Stock Exchanges, as well as SICOVAM, a securities depository located in Paris. MSE's systems innovations are recognized internationally as well. The Exchange has set up trading systems using its technology at the Amsterdam Stock Exchange, the Stock Exchange of Thailand and the Makati Stock Exchange in Manila, Philippines.[4]

In summary, the MSE has expanded far beyond its historically regional role to be a vital element in the nation's capital markets. In keeping with the MSE's expanding role, the members of the Exchange and the Board of Governors have deemed it advisable that the name of the Exchange be changed from the Midwest Stock Exchange, Inc. to the Chicago Stock Exchange, Inc.[5] The name would (1) reduce any outmoded regional connotation that may exist with the use of the current name, (2) better identify the location of the Exchange and (3) be in keeping with the way most of the major exchanges in the world are identified, i.e., by the city in which they are located.

The name change, and the corresponding changes herein, will become effective on July 8, 1993.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(1) of the Act in that it helps to assure that the Exchange is so organized and has the capacity to be able to carry out the purposes of the act and to comply, and to enforce compliance by its members, with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon submission pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR–MSE–93–16 and should be submitted by July 15, 1993.

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[1] On May 21, 1993, the Exchange submitted File No. SR–MSE–93–13, proposing to amend the Certificate of Incorporation and Constitution of the Exchange to change the Exchange's name to Chicago Stock Exchange, Inc., to take effect on July 8, 1993.

[2] See File No. SR–MSE–93–13.

[3] MSE ranked the stock exchanges based on their total dollar volume. Telephone conversation between J. Craig Long, Vice President, General Counsel and Secretary, MSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on May 27, 1993.

[4] Specifically, the MSE customized its MAX system to suit the foreign country's trading rules and then licensed the technology to these exchanges. Telephone conversation between J. Craig Long, Vice President, General Counsel and Secretary, MSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on June 2, 1993.

[5] The MSE is not changing the names of any of its subsidiaries at this time. Telephone conversation between J. Craig Long, Vice President, General Counsel and Secretary, MSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on May 27, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14915 Filed 6–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19527; 812–8098]

Massachusetts Investors Trust, et al.; Application for Exemption

June 18, 1993.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Massachusetts Investors Trust, MFS Research Fund, Massachusetts Investors Growth Stock Fund, MFS Capital Development Fund, Massachusetts Cash Management Trust, MFS Fixed Income Trust, MFS Emerging Growth Fund, Massachusetts Financial High Income Trust, MFS Special Fund, MFS Total Return Fund, MFS Government Mortgage Fund, MFS Government Premium Fund, MFS Government Securities Fund, MFS Income & Opportunity Fund, MFS California Municipal Bond Fund, MFS High Yield Municipal Bond Fund, MFS Multi-State Municipal Bond Trust, MFS Managed Municipal Bond Trust, MFS Managed Sectors Fund, MFS Utilities Fund, MFS Municipal Bond Trust, MFS Worldwide Government Fund, MFS Worldwide Total Return Fund, MFS Lifetime Capital Growth Fund, MFS Lifetime Emerging Growth Fund, MFS Lifetime Worldwide Equity Fund, MFS Lifetime Gold & Natural Resources Fund, MFS Lifetime Government Mortgage Fund, MFS Lifetime Government Securities Fund, MFS Lifetime High Income Fund, MFS Lifetime Intermediate Income Fund, MFS Lifetime Municipal Bond Fund, MFS Lifetime Managed Sectors Fund, MFS Lifetime Money Market Fund, MFS Lifetime Total Return Fund, and MFS Institutional Trust (including all existing and future series thereof) (the "Trusts"); and future open-end management investment company (including all series thereof) for which Massachusetts Financial Services Company ("MFS"), Lifetime Advisers, Inc. ("Lifetime"), or any majority-owned subsidiary of MFS is the investment adviser or for which MFS Financial Services, Inc. ("FSI") or any majority-owned subsidiary of MFS is the principal underwriter; any existing open-end management investment company (and all existing and future series thereof) not currently advised by MFS, Lifetime, or any majority-owned subsidiary of MFS or underwritten by FSI or any majority-owned subsidiary of MFS for which MFS, Lifetime, or any majority-owned subsidiary of MFS may in the future serve as investment adviser or for which FSI or any majority-owned subsidiary of MFS may serve as principal underwriter (collectively, with the Trusts, the "Funds"); MFS, Lifetime, and FSI.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds to issue multiple classes of shares representing interests in the same portfolio of securities (the "Multiple Distribution System"), and to permit the Funds to assess and, under certain circumstances, waive, defer, or reduce a contingent deferred sales charge ("CDSC") on certain redemptions of their shares.

FILING DATE: The Application was filed on September 21, 1992, and amended on October 7, 1992, January 28, 1993, April 23, 1993, and June 18, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 13, 1993, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons that wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2263, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trusts are open-end management investment companies registered under the Act. MFS serves as the investment adviser to all the Trusts except those in the MFS Lifetime Investment Program; Lifetime serves as investment adviser to these Trusts. FSI is the principal underwriter for each Trust except Massachusetts Cash Management Trust ("MCM"), a money market fund, and MFS Institutional Trust ("MFIT"), a fund designed primarily for institutional investors. Each Trust (other than MFIT) also has entered into a shareholder servicing agreement with MFS Service Center, Inc. ("MFSC"), a wholly owned subsidiary of MFS, pursuant to which MFSC performs transfer agency and recordkeeping functions.

2. The Trusts, except for MCM, MFIT, and the Trusts in the MFS Lifetime Investment Program, currently are offered with a front-end sales load (except on sales of $1 million or more). The Trusts in the MFS Lifetime Investment Program currently are offered subject to a CDSC of up to six percent. MCM and MFIT currently are offered without a sales load. Some of the Trusts impose a rule 12b–1 fee.

3. Applicants propose to establish a Multiple Distribution System enabling each Fund to offer investors the option of purchasing shares (a) subject to a front-end sales load (except for MFS Lifetime Money Market Fund ("LMM") and for sales of $1 million or more) and, in some cases, a distribution and/or service fee pursuant to a rule 12b–1 plan ("Class A Shares"), (b) without a front-end sales load, but subject to a CDSC, a distribution fee and/or a service fee pursuant to a rule 12b–1 plan, and a conversion feature as described below ("Class B Shares"), or (c) without a front-end sales load, but subject to a CDSC (which is lower than, and for a shorter period of time than, the CDSC for the Class B shares), a distribution fee and/or service fee pursuant to a rule 12b–1 plan, but no conversion feature ("Class C Shares"). Any distribution arrangement of a Fund, including rule 12b–1 fees and front-end and deferred sales loads, will comply with article III, section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

4. Applicants also seek authority to create one or more additional classes of shares in the future, the terms of which differ from the Class A, Class B, and Class C shares only in the following respects: (a) any such class may bear different or no service and distribution fees and any other cost relating to

implementing or amending the rule 12b–1 plan for such class, (b) any such class may bear any incremental difference in shareholder servicing fees,[1] (c) any such class may bear different class designation, (d) any such class will have exclusive voting rights with respect to any rule 12b–1 plan adopted exclusively with respect to such class except as provided in condition fifteen below, (e) any such class may bear any other incremental expenses subsequently identified that should be properly allocated to such class which shall be approved by the SEC pursuant to an amended order, (f) any such class may have different conversion features, (g) any such class may have different exchange privileges, (h) any such class may be sold under different sales arrangements, including selling only a particular type of investor and (i) any such class may bear different printing and postage expenses relating to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements ("Printing and Postage Expenses") relating to that class of shares.

5. After a shareholder's Class B shares remain outstanding for a specified period of time (not to exceed eight years), they will automatically convert to Class A shares of the same Fund at the relative net asset values of each of the classes and will thereafter be subject to the lower fee under the Class A rule 12b–1 plan. For purposes of conversion to Class A, all shares in a shareholder's account purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares will be considered to be held in a separate sub-account. Each time any Class B shares in the shareholders's account convert to Class A, a proportional amount of Class B shares in the sub-account will also convert to Class A.

6. Any other class of shares may provide that shares in that class (the "Purchase Class") will, after a period of time, automatically convert into another class of shares (the "Target Class") on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge provided that after conversion, the converted shares would be subject to an asset-based sales charge and/or service fee (as those terms are defined in article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and/or service fee to which the Purchase Class shares were subject prior to the conversion. Such a conversion feature will be described in the relevant prospectus. (The term "Purchase Class" hereafter refers to any class of shares, including Class B shares, with a conversion feature.)

7. Any conversion of shares of one class to shares of another class is subject to the continuing availability of a ruling of the Internal Revenue Service or an opinion of counsel to the effect that the conversion of shares does not constitute a taxable event under federal income tax law. Any such conversion may be suspended if such a ruling or opinion is no longer available.

8. Under the Multiple Distribution System, all expenses incurred by a Fund will be borne proportionately by each class based on the relative net assets attributable to each such class, except for the different (a) distribution and service fees, and any other costs relating to implementing a rule 12b–1 plan or an amendment to such plan (including obtaining shareholder approval of a rule 12b–1 plan or an amendment to such plan), (b) Printing and Postage Expenses; and (c) possibly shareholder servicing fees (and any other incremental expenses properly attributable to a class which the SEC shall approve by an amended order) attributable to a class, which will be borne directly by each respective class.

9. To the extent exchanges are permitted, such exchanges will comply with all applicable provisions of rule 11a–3 under the Act.

10. Applicants also request relief to permit the Funds to assess a CDSC on certain redemptions of shares of Funds, and, as described below, to permit the Funds to waive, reduce, or defer the CDSC with respect to certain types of redemptions.[2] The amount of the CDSC to be imposed will depend on the amount of time since the investor purchased the shares being redeemed, as set forth in each Fund's prospectus. The amount of any applicable CDSC will be based upon the lower of the net asset value at the time of purchase or at the time of redemption as required by proposed rule 6c–10(a)(1)(i) of the Act. If a shareholder does not specify which class of shares of a Fund are to be redeemed, the following order of redemption will apply: (a) Shares of a Fund not subject to a CDSC and subject to the highest rule 12b–1 fee in effect on the date of redemption will be redeemed first (provided, however, that if such shares of the Fund are subject to the same rule 12b–1 fee then shares of the Fund without a conversion feature will be redeemed before shares of the Fund with a conversion feature), then (b) shares of the Fund subject to the lowest CDSC will be redeemed, provided that if such shares of the Fund are subject to the same CDSC, shares of the Fund with the highest rule 12b–1 fee in effect on the date of redemption will be redeemed first. If such shares of the Fund are subject to the same rule 12b–1 fee then shares of the Fund without a conversion feature will be redeemed before shares of the Fund with a conversion feature.

11. The Funds are also requesting the ability to waive or reduce the CDSC in the following instances: (a) On redemptions following the death, disability, or financial hardship of a shareholder, as relevant; (b) in connection with certain distributions from an IRA or other retirement plan as described below; (c) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Fund; (d) redemptions pursuant to the Funds' right to liquidate accounts or charge an annual small account fee; (e) redemptions of shares acquired as a result of investment of distributions from shares of a class of one Fund into shares of the same class of another Fund; and (f) in connection with shares sold to certain individuals or groups or in certain situations, as described below: (i) Officers of a Fund, provided the shares are resold to the Fund; (ii) any of the subsidiary companies of Sun Life Assurance Company of Canada ("Sun Life"), provided the shares are resold to the Fund; (iii) directors, officers, employees (including retired and former employees), and agents of Lifetime, MFS, Sun Life, or any of their subsidiary companies, and any trust, pension, profit-sharing, or any other benefit plan for such persons, provided that the shares are resold to the Fund; (iv) trustees and retired trustees of any

[1] The phrase "shareholder servicing fees" means fees paid by the Funds to their shareholder servicing agent for transfer agency, account maintenance, or dividend disbursing functions, or for administering dividend reinvestment or systematic investment plans. "Shareholder servicing fees" does not refer to service fees paid under a rule 12b–1 plan.

[2] Certain applicants are currently parties to CDSC exemptive relief. See Massachusetts Investors Trust, Investment Company Act Release Nos. 18044 (Mar. 14, 1991) (notice) and 18090 (Apr. 11, 1991) (order) (permitting certain investment companies to impose and, under certain circumstances, waive a CDSC on purchases of $1 million or more). See also, MFS Lifetime Gold & Natural Resources Fund, Investment Company Act Release Nos. 19268 (Feb. 16, 1993) (notice) and 19338 (Mar. 16, 1993) (order), Investment Company Act Release Nos. 18554 (Feb. 14, 1992) (notice) and 18607 (Mar. 11, 1992) (order), 16491 (July 22, 1988) (notice) and 16529 (Aug. 17, 1988) (order), and Lifetime Money Market Trust, 15515 (Dec. 31, 1986) (notice) and 15555 (Jan. 28, 1987) (order) (permitting investment companies in the MFS Lifetime Investment Program to impose and, under certain circumstances, waive a CDSC).

investment company for which FSI serves as principal underwriter, and to immediate family members of such individuals and their spouses, provided that the shares are resold to the Fund; (v) employees or registered representatives of any dealer that has a dealer agreement with FSI or any other subsidiary of MFS, immediate family members of such employee or representative and his or her spouse, and any trust, pension, profit-sharing, or any other retirement plan for the sole benefit of such employee or representative; (vi) clients of MFS Asset Management Group (or any other MFS organization that manages funds for institutional clients); (vii) in connection with the acquisition or liquidation of the assets of other investment companies or personal holding companies; (viii) where the amount invested through a dealer represents redemption proceeds from a registered open-end management investment company not distributed or managed by FSI or its affiliates, if such redemption has occurred no more than sixty days prior to the purchase of shares of the Fund and the shareholder either (a) paid an initial sales charge or (b) was at some time subject to, but did not actually pay, a deferred sales charge with respect to the redemption proceeds; (ix) insurance company separate accounts; (x) retirement plans where third party administrators of such plans have entered into arrangements with FSI or its affiliates provided that no commission is paid to dealers; and (xi) shares of a Fund purchased by 401(k) plans with more than 1,500 participants where the purchase is in an amount of $5 million or more and where the dealer and FSI enter into an agreement in which the dealer agrees to return any commission paid to it on the sale (or a *pro rata* portion thereof) if the shareholder redeems his or her shares within a certain time.

12. In connection with waiver category (b) above, the CDSC will be waived or reduced for redemptions in connection with (a) distributions to participants or beneficiaries of plans qualified under sections 401(a) or 401(k) of the Internal Revenue Code (the "Code"), as amended from time to time, custodial accounts under Code section 403(b)(7), individual retirement accounts ("IRA") under Code section 408(a),[3] deferred Compensation plans under Code section 457, and other employee benefit or retirement plans (collectively, "plans"), (b) return of excess contributions to these plans, and (c) distributions representing borrowings from these plans. (The Funds may, however, consider repayments of borrowings to constitute new sales for purposes of assessing a CDSC.) Further, the Funds may waive or reduce the CDSC with respect to investors that are tax-exempt employee benefit plans, in connection with redemptions as a result of the enactment or promulgation of any law or regulation pursuant to which continuation of the investment in the Funds would be improper. This proposed waiver or reduction would be subject to applicants' right to require an opinion of counsel to the effect that the continuation of such an investment would be improper.

13. In connection with waiver category (viii) above, applicants will take such steps as may be necessary to determine that the shareholder has not paid a deferred sales load, fee, or other charge in connection with the redemption of shares of the other open-end investment company, including, without limitation, requiring the shareholder to provide a written representation that neither a deferred sales load, fee, nor other charge was imposed upon the redemption, and, in addition, either (a) requiring such shareholder to provide an activity statement reflecting the redemption that supports the shareholder's representation or (b) reviewing a copy of the current prospectus of the other open-end investment company and determining that such company does not impose a deferred sales load, fee, or other charge in connection with the redemption of shares.

14. The Funds also request the ability to defer from time to time the CDSC for distributions representing borrowings from the plans mentioned in paragraph 11(b) above. Upon a borrowing from a plan, no CDSC will be assessed, but the length of time that the money is borrowed from the plan will not be included in calculating the amount of any CDSC upon any subsequent redemption.

15. If the Funds waive, defer, or reduce the CDSC for a particular class, such waiver, deferment, or reduction will be uniformly applied to all offerees in a class with similar qualifications. In waiving, deferring, or reducing a CDSC, the Funds will comply with the requirements of rule 22d-1 under the Act. If a Fund that has been waiving, deferring, or reducing its CDSC for a particular class pursuant to any items set forth above discontinues such waiver, deferment, or reduction, (a) such waiver, deferment, or reduction will continue to apply to shares of such Fund then outstanding, and (b) the disclosure in that Fund's prospectus relating to that class will be revised appropriately.

16. Applicants also propose to permit FSI to provide a credit (i.e., a reimbursement) for any CDSC paid by a redeeming shareholder followed by a reinvestment in any shares of the same class of the same Fund or, as permitted by FSI from time to time, the same class of another Fund, effected within such number of days of the redemption as may be specified, from time to time, in a Fund's prospectus (such number of days shall in no event be fewer than thirty days). Upon redemption thereafter, when calculating the amount of the CDSC (if any), the shares will be deemed to have been held for one continuous period from purchase through redemption and reinvestment until such shares are finally redeemed.

17. No CDSC will be imposed on shares issued prior to the date of the requested order except CDSCs imposed pursuant to the orders listed in footnote two; provided, however, that the above-described CDSC waivers, deferrals, and CDSC credit may apply to shares issued prior to the date of the requested order.

Applicants' Legal Conclusions

1. Applicants request an order under section 6(c) exempting the Funds' proposed issuance and sale of multiple classes of securities to the extent that such issuance and sale might be deemed to result in a "senior security" within the meaning of section 18(g) of the Act and be prohibited by section 18(f)(1), and to violate the equal voting provisions of section 18(i).

2. The creation of multiple classes does not present the concerns that section 18 was designed to address. The proposed arrangement does not involve borrowings, affect any Fund's existing assets or reserves, nor increase the speculative character of any Fund shares. The Funds' capital structures under the proposed arrangement will not induce any group of shareholders to invest in higher risk securities to the detriment of any other group of shareholders since the investment risks of each Fund will be borne equally by all of its shareholders.

3. Mutuality of risk will be preserved with respect to each class of shares in

[3] Because the process of transferring accounts among IRA customers may take up to thirty days, the CDSC may be waived or credited where assets in excess of the amount requested are erroneously transferred into or from a Fund account, provided, however, that the redemption or reinvestment of the excess amount occurs no more than thirty days from the date of the transfer. In addition, in conformity with Federal tax laws, an IRA account may be revoked within a certain number of days of the initial purchase. In such case, the CDSC may be waived.

a Fund. Further, (a) since each class of shares will be redeemable at all times, (b) since no class of shares will have any preference or priority over any other class in the Fund, and (c) since the similarities and dissimilarities of the classes of shares will be disclosed in the Funds' prospectuses, investors will not be given misleading impressions as to the safety or risk of any class of shares, and the nature of the shares will not be rendered speculative.

4. The Funds' capital structures under the proposed arrangement will not enable insiders to manipulate expenses and profits among the various classes of shares since the Funds are not organized in a pyramid fashion and since all the expenses and profits of a particular Fund (except the different fees of any rule 12b–1 plan applicable to a class of shares, any higher incremental shareholder servicing fees, and Printing and Postage Expenses attributable to a class of shares and any other incremental expense subsequently identified that should be properly allocated to a particular class which shall be approved by the SEC pursuant to an amended order) will be borne *pro rata* by all the shares of the Fund, irrespective of class, and all shareholders will have equal voting rights except with respect to matters pertaining to the 12b–1 plans and related agreements. The concerns that a complex capital structure may facilitate control without equity or other investment and may make it difficult for investors to value the securities of the Funds are not present.

5. The proposed arrangement will permit the Funds to facilitate both the distribution of their securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs. Moreover, owners of each class of shares may be relieved of a portion of the fixed costs normally associated with investing in mutual funds since such costs would potentially be spread over a greater number of shares than they would be otherwise.

Applicants' Multiple Class Conditions

Applicants agree that the order of the SEC granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences among the various classes of shares of the same Fund will relate solely to: (a) The impact of the different distribution and service fee payments associated with any rule 12b–1 plan relating to a particular class of shares and any other costs relating to the implementation of such Plan or any amendments thereto (including obtaining shareholder approval of such Plan or any amendment thereto) which will be borne solely by shareholders of such classes, any incremental shareholder servicing fees attributable solely to a particular class of shares of the Fund, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order; (b) the voting rights on matters that pertain to rule 12b–1 plans except as provided in the condition fifteen below; (c) the different exchange privileges of each class of shares; (d) the designation of each class of shares of the Fund; (e) the differences in conversion features of each class of shares; and (f) any differences in Printing and Postage Expenses of each class of shares.

2. The trustees of each Fund, including a majority of the trustees who are not "interested persons" of the Fund, as that term is defined in section 2(a)(19) of the Act ("Independent Trustees"), will approve the Multiple Distribution System for a particular Fund prior to its implementation by such Fund. The minutes of the meetings of the trustees of each Fund regarding the deliberations of the trustees with respect to the approvals necessary to implement the Multiple Distribution System will reflect the reasons for the trustees' determination that the proposed Multiple Distribution System is in the best interests of both the Fund and its shareholders.

3. On an ongoing basis, the trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. MFS, Lifetime, and FSI will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, MFS, Lifetime, and FSI, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

4. The trustees of the Funds will receive quarterly and annual statements concerning distribution and service expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or service of a particular class of shares will be used to support any distribution or service fee charged to that class. Expenditures not related to the sale or service of a particular class will not be presented to the trustees to support any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review of the Independent Trustees in the exercise of their fiduciary duties.

5. Dividends paid by the Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that (a) distribution and services payments associated with any rule 12b–1 plan relating to a particular class or shares (and any other costs relating to implementing the rule 12b–1 plan for such class or an amendment to such plan including obtaining shareholder approval of the rule 12b–1 plan for such class or any amendment to such plan) will be borne exclusively by that class; (b) any incremental shareholder servicing fees relating to a particular class will be borne by that class; (c) Printing and Postage Expenses relating to a particular class will be borne exclusively by that class; and (d) any other incremental expenses subsequently identified that should be properly allocated to a particular class which shall be approved by the SEC pursuant to an amended order will be borne exclusively by such class.

6. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses between the various classes has been reviewed by an expert (the "Expert") who has rendered a report to applicants, which has been provided to the staff of the SEC, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with the respect to such reports, following request by the Funds which the Funds agrees to make, will be

available for inspection by the SEC staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the SEC, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Regional Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System," as defined and described in SAS No. 44 of the AICPA, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

7. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among such classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in condition six above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition six above. Applicants agree to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

8. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

9. FSI will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Fund to agree to conform to such standards.

10. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees of the Funds with respect to the Multiple Distribution System will be set forth in guidelines that will be furnished to the trustees as part of the materials setting forth the duties and responsibilities of the trustees.

11. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, conversion features, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to the classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will present each class of shares separately.

12. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to their rule 12b–1 distribution or service plans in reliance on the exemptive order.

13. Purchase Class shares will convert into Target Class shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

14. The initial determination of the Printing and Postage Expenses, if any, that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the Fund, including a majority of the Independent Trustees. Any person authorized to direct the allocation and disposition of the monies paid or payable by the Fund to meet Printing and Postage Expenses shall provide to the board of trustees, and the board of trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

15. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Target Class. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class will convert into New Target Class. The New Target Class or the New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the trustees reasonably believe will not be subject to Federal taxation. In accordance with condition three, any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shall be borne solely by the adviser and the principal underwriter. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

Applicants' CDSC Condition

Applicants agree that any order granting the requested relief shall be subject to the following condition:

1. Applicants will comply with the provisions of proposed rule 6c–10 under the Act (see Investment Company Act Release No. 16619 (Nov. 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14914 Filed 6–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19520; 812–8046]

Mutual Fund Group, et al.; Application for Exemption

June 18, 1993.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Mutual Fund Group ("MFG"), The Chase Manhattan Bank, N.A. ("Chase"), Olympus Investment Trust ("Olympus"), and Olympus Asset Management Company ("OAMC").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 15(f)(1)(A).

SUMMARY OF APPLICATION: Applicants seek relief from section 15(f)(1)(A) to permit OAMC, the investment adviser of Olympus, to sell its investment advisory business to Chase, the investment adviser of MFG. Without the requested exemption, MFG would have to reconstitute its board to meet the 75% non-interested director requirement of section 15(f)(1)(A) in order to comply with the safe harbor provisions of section 15(f).

FILING DATES: The application was filed on May 21, 1993. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 13, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, the issues contested. Any person may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. MFG, 125 West 55th Street, New York, New York 10022. Chase, One Chase Manhattan Plaza, New York, New York 10081. Olympus and OAMC, 1925 Century Park East, Los Angeles, California 90067.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. MFG is an open-end investment company registered under the Act. MFG consists of 16 series, some of which are diversified, and others (the "Vista Funds") which are non-diversified. Chase serves as the investment manager of each of the Vista Funds.

2. Olympus is a diversified open-end investment company registered under the Act consisting of six series (the "Olympus Funds") OAMC serves as the investment manager of each of the Olympus Funds. It is a subsidiary of Associated Financial Group, Inc., formerly known as Associated Planners Group, Inc. ("AFG").

3. In March 1993, AFG and OAMC entered into an asset purchase agreement (the "Agreement") with Chase. Under the Agreement, OAMC will transfer to Chase all of its books and records relating to furnishing investment advisory services or other activities involving the Olympus Funds together with the opportunity to render management services to the Olympus Funds (the "Advisory Assets"). In connection with the Agreement and the transactions contemplated thereby, certain other agreements have been entered into, including: (a) A non-competition agreement by and among Chase, OAMC, and AFG; (b) a dealer retention agreement by and between Vista Broker-Dealers Services, Inc. and Associated Securities Corp., formerly known as Associated Planners Securities Corporation; and (c) a services agreement by and between Chase and Associated Securities Corp.

4. In consideration of the sale of the Advisory Assets and for the performance of other obligations and the execution of certain other documents, including the services agreement and non-competition agreement, Chase will pay to OAMC or its designees: (a) $700,000 for the Advisory Assets and the performance of the obligations under the Agreement; (b) $800,000 for the execution of the non-competition agreement and the performance of the obligations thereunder; and (c) $700,000 for the execution of the services agreement and the performance of the obligations thereunder. Applicants seek an exemption to permit OAMC to rely on the safe-harbor provision of section 15(f) to receive consideration in connection with the sale of its investment advisory business.

5. The consummation of the Agreement is subject to, among other things, approval of the shareholders of each relevant Olympus Fund of a plan of reorganization by and between MFG and Olympus. The MFG board of trustees approved the plan of reorganization on April 1, 1993, and the Olympus board of trustees approved it on April 2, 1993.

6. The plan of reorganization provides for: (a) Acquisition by MFG's Vista Growth and Income, Vista Capital Growth, Vista U.S. Government Income, and Vista Tax-Free Income Funds of substantially all of the assets and certain liabilities of Olympus's Stock, Growth, Investment Quality Bond, and National Tax-Free Funds, respectively, and the acquisition by MFG's Vista Equity Income and Vista California Intermediate Tax-Free Bond Funds of all of the assets and liabilities of Olympus's Equity Income and California Intermediate Tax-Free Bond Funds, in exchange for shares of each corresponding Vista Fund; (b) the distribution of these Vista Fund shares to the shareholders of the Olympus Funds in liquidation of the Olympus Funds; and (c) Olympus's termination under state law.

Applicants' Legal Analysis

1. Section 15(f) of the Act provides a safe-harbor that permits an investment adviser to receive "any amount of benefit" in connection with the "assignment" of its investment advisory contract with a registered investment company if the requirements of that section are satisfied. Section 15(f)(1)(A) requires that, for three years after the transaction, at least 75% of the directors of the investment company (or its successor, if the assignment results from the sale of the company's assets to another investment company) are not interested persons, within the meaning of section 2(a)(19), of the investment adviser of such company, or of the predecessor investment adviser. Applicants request an exemption from section 15(f)(1)(A) because the sale by OAMC of its investment advisory business with respect to the Olympus Funds may be deemed an assignment within the meaning of the Act and

applicants will not meet the 75% requirements.

2. The Olympus board of trustees currently is comprised of one interested person of OASMC and Chase ("Interested Trustee"), and three non-interested persons ("Non-Interested Trustees"). The MFG board of trustees currently is comprised of two Interested Trustees, and four Non-Interested Trustees. To comply with section 15(f)(1)(A) following consummation of the Agreement, MFG would have to add two Disinterested Trustees (thus creating an eight-person board), or reduce the number of Interested Trustees from two to one. If MFG were to add two Non-Interested Trustees, a vote of shareholders would be required pursuant to section 16(a), which requires at least two-thirds of a fund's directors to have been elected by shareholders.[1] MFG otherwise would not be required to hold a shareholders meeting to consummate the transactions contemplated by the Agreement and the plan of reorganization.

3. Section 15(f)(3)(B) provides that if, as here, the assignment of an investment advisory contract results from the merger, of, or sale of substantially all the assets by, a registered investment company with or to another registered investment company with assets substantially greater in amount, such discrepancy in size shall be considered by the SEC in determining whether, or to what extent, to grant exemptive relief pursuant to section 6(c) from section 15(f)(1)(A). As of April 30, 1993, Olympus has assets of $127.25 million, as compared to MFG's assets of approximately $3.6 billion. The assets of Olympus are approximately 3.5% of the assets of MFG. Applicants assert that the contemplated transaction involves an acquisition by an investment company with assets "substantially greater" than the assets of the acquired fund.

4. Applicants assert that it is appropriate for the assets of MFG, as opposed to each of its series, to be taken into account when considering the "substantially greater" test set forth in section 15(f)(3)(B). Applicants contend that any other conclusion would be inconsistent with the literal language of section 15(f)(3)(B), which refers to the sale of assets of one "investment company" to another "investment company with assets substantially greater in amount." MPG is the investment company involved in the transaction and, in fact, the MFG board must authorize the transaction on behalf of each of its series. In any event, if the transaction were viewed on a series by series basis, applicants believe that the transaction still would be consistent with the policies of the Act.

5. For the reasons stated above, applicants assert that the requested relief is necessary and appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the Act, as required by section 6(c).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14913 Filed 6–23–93; 8:45 am]

BILLING CODE 8010–01–M

[1] At present, two members of the MFG board have not been elected by shareholders. Adding two additional trustees without a shareholder vote would bring the number to four, comprising 50% of the board.

[Release No. 35–25829]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 18, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Intereрested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 12, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70–7937)

The Southern Company ("Southern"), a registered holding company, 64 Perimeter Center East, Atlanta, Georgia 30346, and its public utility subsidiaries, Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, Georgia Power Company ("Georgia"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, Gulf Power Company ("Gulf"), 500 Bayfront Parkway, Pensacola, Florida 32521, Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, Savannah Electric and Power Company ("Savannah"), 600 Bay Street East, Savannah, Georgia 31401, and Southern Electric Generating Company ("SEGCO"), 600 North 18th Street, Birmingham, Alabama 35291, a subsidiary of Alabama and Georgia (collectively, "Applicants"), have filed a post-effective amendment to their application-declaration under sections 6(a), 6(b) and 7 of the Act and Rule 50(a)(5) thereunder.

By Commission order dated March 31, 1992 (HCAR No. 25507) ("1992 Order"), the Applicants were authorized, among other things, to issue and sell, from time-to-time through March 31, 1994, up to the aggregate principal amounts of $500 million for Southern, $450 million for Alabama, $800 million for Georgia, $100 million for Gulf, $140 million for Mississippi, $6 million for Savannah, and $100 million for SEGCO: (1) Short-term and/or term loan notes to banks; (2) commercial paper to dealers; and/or (3) short-term non-negotiable promissory notes to public entities in connection with the financing of certain pollution control facilities through the issuance by such public entities of their revenue bond anticipation notes.

Alabama, Georgia and Savannah now propose to increase the authority provided in the 1992 Order to $530 million, $1.2 billion and $70 million, respectively, and the Applicants (other than Southern) propose to extend such authority through March 31, 1996. Southern is not requesting any increase in its existing borrowing authority or any extension thereof.

It is further proposed that borrowings from banks may have maturities of up to three years from the date of borrowing and may not be prepayable or may be prepaid only with a premium not in excess of 8% of the principal amount thereof. All other terms and conditions of such borrowings shall be as described in the 1992 Order.

Allegheny Power System, Inc. (70–7960)

Allegheny Power System, Inc. ("APS"), 12 East 49th Street, New York, New York 10017, a registered holding company, has filed a post-effective amendment to its declaration under sections 6(a) and 7 of the Act and Rules 50 and 50(a)(5) thereunder.

By order dated June 3, 1992 (HCAR No. 25549) ("Order"), the Commission authorized APS to issue and sell, through December 31, 1993, up to 3.5 million shares of its authorized and unissued common stock, par value $2.50 per share ("Common Stock"), under the competitive bidding procedures of Rule 50 of the Act as modified by the Commission's Statement of Policy dated September 2, 1982 (HCAR No. 22623), or in a negotiated sale to underwriters pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5).

APS now proposes to extend, through December 31, 1994, the period during which it may issue and sell the remaining 1.52 million shares of the 3.5 million shares of Common Stock previously authorized by the Order. In addition, APS proposes to issue and sell up to an additional 3 million shares of Common Stock under the competitive bidding procedures of Rule 50 of the Act as modified by the Commission's Statement of Policy dated September 2, 1982 (HCAR No. 22623), or in a negotiated sale to underwriters pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5). APS has requested that it be authorized to begin negotiations with potential underwriters to sell the additional Common Stock. It may do so.

Proceeds from the sale of the Common Stock may be used: (1) To repay short-term debt; (2) to make capital contributions to APS's direct, and advances to its indirect, subsidiary companies for use by them to finance construction, to acquire property and for their other general corporate purposes; (3) to acquire notes or stock of such subsidiary companies; (4) to repurchase shares of APS's common stock in order to fund its Dividend and Stock Purchase Plan ("Plan") in lieu of issuing additional new shares of common stock pursuant to such Plan; and (5) for other general corporate purposes.

The Southern Company, et al. 70–8203

The Southern Company ("Southern"), a registered holding company, and its wholly owned subsidiary service company, Southern Company Services, Inc. ("Services"), both located at 64 Perimeter Center East, Atlanta, Georgia 30346, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

Services proposes to incur indebtedness and issue notes, through December 31, 1996, in an aggregate principal amount up to $200 million at any time outstanding in any of the following manners.

Services proposes to issue and sell notes ("Notes") to a lender or lenders other than Southern. The Notes may have terms of up to 30 years, contain sinking funds and bear interest at a rate or rates not to exceed 3½ percentage points per annum over the rate for United States Treasury securities of corresponding maturity at the time the lender or lenders commit to purchase the particular issue. Services may engage an agent to place the Notes for a commission not in excess of ½ of 1% of the principal amount borrowed, payable upon the closing.

Services further proposes that it may effect short-term or term-loan borrowings under one or more revolving credit commitment agreements. Short-term borrowings under such agreement or agreements would have maximum maturity of one year; term loans would have maturities up to 10 years. It is expected that the borrowings would be evidenced by a "grid" promissory note ("Grid Note") to be dated the date of the initial borrowing and the date of each borrowing thereafter the Grid Note is not outstanding.

The proposed revolving credit borrowings would bear interest at rates to be negotiated with the lending bank or banks. It is anticipated that borrowings under the proposed revolving credit commitment agreements would be at rates per annum not in excess of (1) The lender's prime or base ("Prime") rate plus 1%; (2) the lender's certificate of deposit ("CD") rate plus 1¼%; and (3) the lender's LIBOR plus 2%. Based upon current rate quotations, and assuming full utilization of the commitments, the maximum anticipated effective cost of such borrowings would be 7.00% per annum for the Prime rate option, 4.50% per annum for the CD rate (three months) option and 5.25% per annum for the LIBOR (three months) option. Services also may negotiate separate rates for particular borrowings, an option Services would pursue only if the resulting rates are considered more favorable than those otherwise available under the commitments. In addition, it is expected that Services will be obligated to pay a commitment fee not in excess of ½ of 1% per annum of the unused portion of each lending bank's commitment.

Services also proposes that it may effect short-term borrowings from other banks up to certain specific amounts. These bank borrowings will be evidenced by notes to be dated as of the date of such borrowings and to mature in not more than three years after the date of issue, or by "grid" notes evidencing all outstanding borrowings from each bank to be dated as of the date of the initial borrowing and to mature in not more than three years after the date of issue. Generally, borrowings from the banks will be prepayable in whole, or in part, without penalty or premium, and will be at rates per annum not in excess of the Prime rate, the CD rate plus ¾%, and LIBOR plus 1%. Services also may negotiate separate rates for, and/or agree not to prepay, particular borrowings if it is considered more favorable to Services. Compensation for the credit facilities, not to exceed ½ of 1% per annum of the amount of the facilities, is expected to be provided by balances or comparable fees in lieu of balances.

Services also proposes to issue and Southern proposes to acquire notes ("Southern Notes"). The Southern Notes will bear interest at a rate equal to the average effective interest cost of Southern's outstanding obligations for borrowed money on the date of issue as authorized by the Commission or, if no such obligations are outstanding at the time, at the rate or rates at which Southern may borrow under its existing lines of credit as authorized by Commission order dated March 31, 1992 (HCAR No. 25507). Southern proposes to guarantee Services' borrowings from third parties.

Services proposes to use the proceeds to fund the general requirements of its business, including the possible refunding of outstanding indebtedness. Services will not use the proceeds of borrowings authorized hereunder to refund outstanding indebtedness unless the estimated present value savings derived from the net difference between interest payments on a new issue of comparable securities and those securities refunded is on an after tax basis greater than the estimated present value of all redemption, tendering and issuing costs, assuming an appropriate discount rate.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14912 Filed 6–23–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2653]

Illinois (And Contiguous Counties in Indiana); Declaration of Disaster Loan Area

Cook County and the contiguous counties of DuPage, Kane, Lake, McHenry, and Will in Illinois, and Lake County in Indiana constitute a disaster area as a result of damages caused by severe storms, hail and flooding which occurred on June 7 and 8, 1993. Applications for loans for physical damage may be filed until the close of business on August 16, 1993 and for economic injury until the close of business on March 17, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300. Atlanta, GA 30308.
or other locally announced locations.
The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 265311 for Illinois and 265411 for Indiana. For economic injury the numbers are 792200 for Illinois and 792300 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 17, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–14871 Filed 6–23–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2650]

New York (and Contiguous Counties in Connecticut & New Jersey); Declaration of Disaster Loan Area

Westchester County and the contiguous counties of Bronx, Putnam, and Rockland in New York; Fairfield County in Connecticut; and Bergen County in New Jersey constitute a disaster area as a result of damages caused by a fire in the Country Club Cooperative Apartments in the Town of Greenburgh on May 23, 1993. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 16, 1993 and for economic injury until the close of business on March 15, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Fl., Niagara Falls, NY 14303.
or other locally announced locations.
The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 265005 for New York; 265105 for Connecticut and 265205 for New Jersey. For economic injury the numbers are 791900 for New York; 792000 for Connecticut and 792100 for New Jersey.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 15, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–14870 Filed 6–23–93; 8:45 am]

BILLING CODE 8025–01–M

Interest Rates

The interest rate on section 7(a) Small Business Administration direct loans (as amended by Public Law 97–35) and the SBA share of immediate participation loans is 7 percent for the fiscal quarter beginning July 1, 1993.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8–4(d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the July–September quarter of FY 93, this rate will be 6 percent.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 93–14869 Filed 6–23–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 93–038]

Annual Certification of Cook Inlet Regional Citizens' Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), the Coast Guard may certify, on an annual basis, a voluntary advisory group in lieu of a Regional Citizens' Advisory Council for Cook Inlet, Alaska. This certification allows the advisory group to monitor the activities of oil tankers and facilities under the Cook Inlet Program established by the Act. The purpose of this notice is to inform the public that the Coast Guard has recertified the alternative voluntary advisory group for Cook Inlet, Alaska.

EFFECTIVE DATE: June 1, 1993 through May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice Jackson, Project Manager, Marine Environmental Protection Division, (G–MEP–3), (202) 267–0500, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION: As part of the Oil Pollution Act of 1990 (section 5002), Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990, (the Act), 33 U.S.C. 2732, to foster the long-term partnership among industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals and oil tankers.

Section 5002(o) of the Act (33 U.S.C. 2732(o)) permits an alternative voluntary advisory group to represent the communities and interests in the vicinity of the oil terminal facilities in Cook Inlet, in lieu of a council of the type specified in 33 U.S.C. 2732(d), if certain conditions are met. The Act requires that the group enter into a contract to ensure annual funding and receive annual certification by the President that it fosters the general goals

and purposes of the Act and is broadly representative of the community and interests in the vicinity of the terminal facilities. Accordingly, in 1991, the President granted certification to the Cook Inlet Regional Citizens' Advisory Council.

The authority to certify alternative advisory groups was subsequently delegated to the Commandant of the Coast Guard, and redelegated to the Chief, Office of Marine Safety, Security and Environmental Protection. The Coast Guard recertified the Cook Inlet Regional Citizens' Advisory Council as an alternative voluntary advisory group on September 16, 1992 (57 FR 42802).

Recertification

By letter dated June 3, 1993, the Chief, Office of Marine Safety, Security and Environmental Protection certified that the Cook Inlet Regional Citizens' Advisory Council qualifies as an alternative voluntary advisory group under the provisions of 33 U.S.C. 2732(o). This recertification terminates on May 31, 1994.

Dated: June 15, 1993.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–14891 Filed 6–23–93; 8:45 am]

BILLING CODE 4910–14–M

[CGD 93–039]

Annual Certification of Prince William Sound Regional Citizens' Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), the Coast Guard may certify, on an annual basis, a voluntary advisory group in lieu of a Regional Citizens' Advisory Council for Prince William Sound, Alaska, This certification allows the advisory group to monitor the activities of oil tankers and facilities under the Prince William Sound Program established by the Act. The purpose of this notice is to inform the public that the Coast Guard has recertified the alternative voluntary advisory group for Prince William Sound, Alaska.

EFFECTIVE DATE: July 1, 1993 through June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice Jackson, Project Manager, Marine Environmental Protection Division, (G–MEP–3), (202) 267–0500, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION: As part of the Oil Pollution Act of 1990 (section 5002), Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990, (the Act), 33 U.S.C. 2732, to foster the long-term partnership among industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals and oil tankers.

Section 5002(o) of the Act (33 U.S.C. 2732(o)) permits an alternative voluntary advisory group to represent the communities and interests in the vicinity of the oil terminal facilities in Prince William Sound, in lieu of a council of the type specified in 33 U.S.C. 2732(d), if certain conditions are met. The Act requires that the group enter into a contract to ensure annual funding certification by the President that it fosters the general goals and purposes of the Act and is broadly representative of the community and interests in the vicinity of the terminal facilities. Accordingly, in 1991, the President granted certification to the Prince William Sound Regional Citizens' Advisory Council.

The authority to certify alternative advisory groups was subsequently delegated to the Commandant of the Coast Guard, and redelegated to the Chief, Office of Marine Safety, Security and Environmental Protection. The Coast Guard recertified the Prince William Sound Regional Citizens' Advisory Council as an alternative voluntary advisory group on April 14, 1992 (57 FR 14442).

Recertification

By letter dated June 09, 1993, the Chief, Office of Marine Safety, Security, and Environmental Protection certified that the Prince William Regional Citizens' Advisory Council qualifies as an alternative voluntary advisory group under the provisions of 33 U.S.C. 2732(o). This recertification terminates on June 30, 1994.

Dated: June 15, 1993.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–14892 Filed 6–23–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 18, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0058
Form Numbers: ATF F 5120.25
Type of Review: Extension
Title: Application to Establish and Operate Wine Premises
Description: ATF F 5120.25 is used to establish the qualifications of an applicant for a bonded wine cellar of winery. The applicant certifies the intention to produce and/or store a specified amount of wine and take certain precautions to protect it from unauthorized use.
Respondents: Businesses or other for-profit, small businesses or organizations
Estimated Number of Respondents: 1,620
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 810 hours

OMB Number: 1512–0144
Form Numbers: ATF F 2736 (5100.12)
Type of Review: Extension
Title: Specific Transportation Bond—Distilled Spirits or Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse—Class Six
Description: ATF F 2736 (5100.12) is a specific bond which protects the tax liability on distilled spirits and wine while in transit from one type of bonded facility to another. The bond identifies the shipment, the parties, the date, and the amount of the bond coverage.
Respondents: Businesses or other for-profit, small businesses or organizations
Estimated Number of Respondents: 1
Estimated Burden Hours Per Respondent: 1

Frequency of Response: On occasion
Estimated Total Reporting Burden: 1 hour

OMB Number: 1512–0156
Form Numbers: ATF F 2987 (5210.8)
Type of Review: Extension
Title: Computation of Tax and Agreement to Pay Tax on Puerto Rican Cigars and Cigarettes
Description: ATF F 2987 (5210.8) is used to calculate the tax due on cigars and cigarettes manufactured in Puerto Rico and shipped to the U.S. The form identifies the taxpayer, cigars or cigarettes by tax class and a certification by a U.S. Customs official as to the amount of shipment, and that the shipment has been released to the U.S.
Respondents: Businesses or other for-profit, small businesses or organizations
Estimated Number of Respondents: 30
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 150 hours

OMB Number: 1512–0199
Form Numbers: ATF F 5110.30
Type of Review: Extension
Title: Drawback on Distilled Spirits Exported
Description: ATF F 5110.30 is used by persons who export distilled spirits and wish to claim a drawback of taxes already paid in the U.S. The form describes the claimant, spirits for tax purposes, amount of tax to be refunded, and a certification by the U.S. Government agent attesting to exportation.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 100
Estimated Burden Hours Per Respondent: 2 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 10,000 hours

OMB Number: 1512–0398
Form Numbers: ATF F 2093 (5200.3) and ATF F 2098 (5200.16)
Type of Review: Extension
Title: Application for Permit Under 26 U.S.C. Chapter 52—Manfacturer of Tobacco Products or Proprietor of Export Warehouse (ATF F 2093); and Application for Amended Permit Under 26 U.S.C. 5712—Manufacturer of Tobacco Products or Proprietor of Export Warehouse (ATF F 2098)
Description: These forms and any additional supporting documentation are used by tobacco industry members to obtain and amend permits necessary to engage in business as a Manufacturer of Tobacco Products or Proprietor of Export Warehouse.
Respondents: Businesses of other for-profit
Estimated Number of Respondents: 334
Estimated Burden Hours per Respondent:
AFT F 2093—2 hours
ATF F 2098—1 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 501 hours
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 93–14857 Filed 6–23–93; 8:45 am]
BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 17, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: IRS Form 1120–SF
Type of Review: New collection
Title: U.S. Income Tax Return for Settlement Funds (Under Section 468B)
Description: Form 1120–F is used by settlement funds to report income and taxes on earnings of the fund. The fund may be established by court order, a breach of contract, a violation of law, an arbitration panel, or the Environmental Protection Agency. The IRS uses Form 1120–SF to determine if income and taxes are correctly computed.
Respondents: Businesses or other for-profit
Estimated Number of Respondents/ Recordkeepers: 1,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—17 hours, 56 minutes
Learning about the law or the form—2 hours, 23 minutes
Preparing the form—5 hours, 35 minutes
Copying, assembling, and sending the form to the IRS—48 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 29,720 hours

OMB Number: 1545–0416
Form Number: IRS Form 5302
Type of Review: Extension
Title: Employee Census
Description: This form is used in conjunction with Forms 5300 and 5307 when applying to IRS for a determination letter stating the pension or profit-sharing plan of the employer meets the requirements of section 401(a) of the Internal Revenue Code (IRC). The data submitted allows the IRS to determine that the plan does not discriminate in favor of the prohibited group.
Respondents: Businesses or other for-profit, small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 52,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—10 hours, 31 minutes
Learning about the law or the form—42 minutes
Preparing, copying, assembling, and sending the form to the IRS—54 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 629,720 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93–14858 Filed 6–23–93; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review.

June 18, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the

Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0130

Form Number: IRS Form 1120S, Schedule D, and Schedule K–1

Type of Review: Revision

Title: U.S. Income Tax Return for an S Corporation, Capital Gains and Losses and Built-In Gains, and Shareholder's Share of Income, Credits, Deductions, etc.

Description: Form 1120S, Schedule D (Form 1120S), and Schedule K–1 (Form 1120S) are used by an S corporation to figure its tax liability, and income and other tax-related information to pass through to its shareholders. Schedule K–1 is used to report to shareholders their share of the corporation's income, deductions, credits, etc. IRS uses the information to determine the correct tax for the S corporation and its shareholders.

Respondents: Farms, businesses or other for-profit, small businesses or organizations

Estimated Number of Respondents/ Recordkeepers: 1,651,196

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying assembling, and sending the form to the IRS
1120S	62 hrs, 40 min	18 hrs, 32 min	34 hrs, 20 min	4 hrs, 1 min.
Sched. D	9 hrs. 20 min	4 hrs, 13 min	9 hrs, 13 min	1 hr, 20 min.
Sched. K–1	14 hrs, 21 min	9 hrs. 37 min	14 hrs, 0 min	1 hr, 12 min.

Fequency of Response: Annually

Estimated Total Reporting/ Recordkeeping Burden: 381,814,602 hours

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880 Office of Management and Budget room 3001, New Executive Office Building Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–14916 Filed 6–23–93; 8:45 am]

BILLING CODE 4830–01–M

Customs Service

Application For Recordation of Trade Name: "REDCO SALES CO."

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "REDCO SALES CO.," used by Redco Sales Co., located at 872 Belville Blvd., Naples, Florida 33942.

The application states that the trade name is used in connection with multi-purpose protective glasses used in the medical and safety industries. It is also sold to the general public as a retail sales item. This product is molded from polycarbonate plastic.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATES: Comments must be received on or before August 23, 1993.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington DC 20229 (202–482–6960).

Dated: June 15, 1993.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 93–14837 Filed 6–23–93; 8:45 am]

BILLING CODE 4820–02–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 120
Thursday, June 24, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, June 22, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Request by a financial institution relating to the cross-guaranty provisions of the Federal Deposit Insurance Act.

Recommendations regarding the liquidation of depository institutions' assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum re: The Howard Savings Bank, Livingston, New Jersey (Case No. 505–05435–93–BOD)

Memorandum re: The Howard Savings Bank, Livingston, New Jersey (Case No. 508–03519–93–BOD)

Matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Eugene A Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: June 22, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–15064 Filed 6–22–93; 3:43 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 93–13827.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 24, 1993, 10:00 a.m., Meeting Open to the Public.

Proposed Revisions to Definition of "Member" of a Membership Association (11 CFR 100.8(b)(4)(iv), 114.1(e). (Continued from meeting of June 17, 1993).

DATE AND TIME: Tuesday, June 29, 1993 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,
Administrative Assistant.

[FR Doc. 93–15062 Filed 6–22–93; 3:12 pm]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 33855, June 21, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., Wednesday, June 23, 1993.

CHANGES IN THE MEETING: The following topic has been deleted from the agenda during the open portion of the meeting.

- Final Membership Regulation.

The Board determined that agency business required that no earlier notice of these changes in the subject matter of the meeting was practicable.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR. Doc: 93–14980 Filed 6–22–93; 10:30 am]

BILLING CODE 6725–01–M

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Federal Register

Thursday
June 24, 1993

Part II

Department of Agriculture

Farmers Home Administration

7 CFR Part 1980
Certified Lender Program; Interim Rule

VOL 58 ISS 120 JE 24 1993 UMI

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1980

RIN 0575 AB33

Certified Lender Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule, with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to establish a Certified Lender Program (CLP), to provide lenders a simplified application for guaranteed loans of $50,000 or less, and to reduce the paperwork burden on all lenders applying for FmHA guaranteed Farmer Programs loans. This action is necessary to streamline the application process, improve the acceptability of the Guaranteed Program to the public, and comply with Congressional mandate. The intended effect is to expand the use of guaranteed funds and reduce the need for more costly direct funds. FmHA also amends its guaranteed Farmer Programs regulations to adopt appraisal standards for the purpose of guaranteed lending and servicing. The regulatory revisions are needed to reflect the current appraisal industry standards brought about by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

DATES: Interim rule effective July 26, 1993. The reporting requirements contained in this regulation will not become effective until approved by the Office of Management and Budget (OMB). Written comments must be submitted on or before July 26, 1993.

ADDRESSES: Submit written comments, in duplicate, to the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steven K. Ford, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone (202) 690–0451.

SUPPLEMENTARY INFORMATION:

Classification

This interim rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR part 3105, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Farm Operating Loans and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.406—Farm Operating Loans
10.407—Farm Operating Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (E.O.) 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the E.O.

Discussion of Interim Rule

This interim rule implements sections 15 and 18 of the Agricultural Credit Improvement Act of 1992 (Act) (7 U.S.C. 1983a and 1989). Section 15 requires simplified applications for FmHA guaranteed loans of $50,000 or less. Section 18 of the Act establishes a Certified Lender Program (CLP) for guaranteeing operating loans. The Act requires FmHA to issue such interim regulations as are necessary to implement these sections within 180 days of enactment. This action also streamlines the application and approval process for all guaranteed Farmer Programs loans. Now that the Agency has established a history with guaranteed lending, the CLP will provide those high volume lenders with a proven record of success with reduced application requirements, faster approval time, and reduced cost and paperwork. All lenders will benefit similarly from the simplified application for guaranteed loans of $50,000 or less.

Currently, FmHA has an Approved Lender Program (ALP) which was designed to eliminate much of the paperwork associated with guaranteed loans and provide faster approval for those lenders. However, this program does not require any prior experience or proven ability to properly process and service FmHA guaranteed Farmer Programs loans. This allows many unqualified lenders to hold ALP status and causes some FmHA officials to overscrutinize loan applications. Therefore, ALP lenders have not experienced the intended benefits of the program. Complaints are still being received from lenders, borrowers, and FmHA offices on the amount and redundancy of paperwork required by the program.

To address this problem, FmHA assembled a Guaranteed Overview Task Force to examine the Guaranteed Program forms and regulations and provide specific recommendations to the Administrator to streamline and focus the program. The task force was composed of 38 individuals from 12 States, with subgroups to address specific issues. Subgroups surveyed another 196 FmHA loan officers in the field to provide a broad base of input. Concerns and suggested improvements received from lenders have also been incorporated into these revisions.

After the task force recommendations were approved by the FmHA Administrator, Congress enacted the Agricultural Credit Improvement Act of 1992 which included a CLP program for guaranteed lenders of operating loans and a simplified application for guaranteed loans of $50,000 or less. Most of the requirements in the Act were consistent with the task force recommendations; however, the Act only permits FmHA to implement the CLP program for Guaranteed Operating (OL) loans as an interim rule. Since lenders frequently request Farm Ownership (FO) loans and Soil and Water (SW) loans along with OL loans/lines of credit, FmHA plans to expand

the CLP program to PO and SW loans with a future proposed rule.

The task force was concerned that FmHA requires the same amount of paperwork and analysis for small loans as required for large ones. Lenders contend, and FmHA's loan costs support, that small loans are unprofitable for the lender. This results in strong lender resistance to making small guaranteed loans, which are a major portion of the Agency's insured loan portfolio. The task force stated that standards should be relaxed for small loans. By requiring the Agency to simplify applications for guaranteed loans of $50,000 or less, Congress supports lenders' concerns.

The task force recommended that FmHA emphasize its relationship with the lender and minimize contact with the borrower. The lender has the responsibility to make and service guaranteed loans. Lenders have complained that current FmHA regulations require the Agency to make direct contact with the borrower. Borrowers frequently do not understand what the forms and letters from FmHA mean and must ask the lender for an explanation. This is time consuming for the lender and the borrower. Therefore, we are eliminating all unnecessary contact with the guaranteed borrower. It is the position of the Agency that since the borrower is the lender's customer, the lender shall be the contact person for the borrower. Privacy Act notifications previously sent to the loan applicant by FmHA now will be included in the application form, which the loan applicant must sign. The Privacy Act Notice, Form FmHA 410–10, currently sent to financial institutions when FmHA requests information directly, will no longer be required for Farmer Programs guaranteed loans since FmHA will only be requesting information through the lender. The Interest Assistance information letter, which is sent to the loan applicant, will be deleted since notification of the Interest Assistance Program also will be included in the loan application.

The task force recommended FmHA revise its definition of an eligible lender, as it applies to Farmer Programs loans, to include any lender regulated by and in good standing with a State or Federal government body. This change is necessary to include certain State run entities that are active agricultural lenders but were not eligible for FmHA guarantees.

The task force also recommended that the Agency establish a CLP to replace the ALP. The Act did not mention any relationship between the ALP and CLP. FmHA plans to replace the ALP with the CLP by removing the FmHA State Director's authority to enter into new ALP agreements with lenders and letting existing agreements expire over the next two years. This will be accomplished with separate proposed and final rules. Until this transition is completed, the two programs will be handled as follows:

Existing ALP lenders will continue to be governed by the existing lender's agreements and by Exhibit A to subpart B of part 1980 of this chapter. Once they apply and are accepted as a CLP lender, they may not submit applications for Operating Loans as an ALP lender.

Once ALP lenders are approved to become CLP lenders, a new lender's agreement will be executed to cover OL loans.

There is no requirement for ALP lenders to apply for CLP status prior to expiration of the current agreement.

During the transition period, the application requirements for ALP and CLP lenders will be identical; however, FmHA will continue to conduct a file review of loans from ALP lenders within 90 days from the date of closing.

Farm Credit System (FCS) offices currently receive automatic ALP status if they meet acceptable loss rates on their entire agricultural loan portfolio. This special consideration was included in the ALP to facilitate the reorganization of the FCS. Since the FCS has completed much of its reorganization, this special consideration is no longer necessary. Therefore, under the CLP, FmHA proposes to treat each Farm Credit System Association as a separate lender and each association will be required to meet the same CLP eligibility requirements as commercial banks.

Section 18 (c)(2) of the Act (7 U.S.C. 1989 (c)(2)) states "the Secretary shall certify a lending institution that meets such criteria as the Secretary may prescribe in regulations * * *." Eligibility requirements to become a CLP lender are set forth in § 1980.190 of subpart B of part 1980. Much of the criteria for ALP lenders will be adopted into the CLP; however, to improve consistency under the CLP, the FmHA State Director will no longer have the authority to establish optional criteria. Requirements for experience, guaranteed loan volume, training, loss rates, and overall financial strength of the lending institution have been added or strengthened as follows:

FmHA is requiring the CLP lender to have closed 10 FmHA guaranteed Farmer Programs loans with 5 of such loans having been closed within past 24 months. The ALP program has no requirement for lender experience with FmHA guaranteed loans. Larger volume lenders are more familiar with the policies and procedures of the program. This experience requirement will ensure only those lenders who have a demonstrated ability to process FmHA guaranteed loans receive preferred treatment. We believe this number of loans is sufficient to warrant the added responsibility and reduced application requirements, but not too large to exclude smaller local lenders. This requirement will encourage lenders to use the program. It is also consistent with the Agency's goal to promote a partnership with the private sector and use available funds for borrowers who are unable to obtain commercial credit.

FmHA also is requiring the CLP lender to maintain an acceptable loss rate on guaranteed Farmer Programs loans made during the past 7 years. Under the ALP, there is no mandatory loss requirement that the lender must maintain. The loss rate will be established in FmHA Instruction 440.1 by the Administrator and adjusted periodically. We propose to initially establish this loss rate at 7 percent. By enforcing a maximum loss rate, FmHA will be able to insure only the most capable lenders receive and retain CLP status which gives lenders added authority and flexibility. Lenders will be encouraged to submit quality loans for guarantees and discouraged from using the program to guarantee poorly performing loans already in their portfolio. To arrive at the minimum loan volume and maximum loss rate, FmHA examined historical data using several different rates and formulas. By setting the loss rate at 7 percent over 7 years, and applying the loan volume restrictions, FmHA has limited CLP status to the top 16 percent of FmHA lenders who are holding 60 percent of the current Agency portfolio.

Additionally, the CLP lender must designate a person to process and service FmHA guaranteed Farmer Programs loans and have these persons attend FmHA training sessions at least every 12 months. The ALP program requires the lender to attend training but does not specify prior training or minimum time requirements. As the Agency moves toward training and monitoring lenders instead of monitoring individual loans, we must ensure the lenders have the experience to perform the required loan making and servicing responsibilities. Therefore, the CLP training requirement is stricter than the ALP training requirement.

The lender also must maintain an acceptable financial strength rating as measured and reported by a lender

rating service selected by the Administrator. The ALP has no such requirement. The Agency plans to contract with a lender rating service and adopt the rating system established by that service. With this requirement, the Agency is ensuring that the bank has an acceptable management team, is not likely to fail, and will continue to be able to make and service loans in the future. Previous experience with failed financial institutions has indicated that poor loan servicing practices contributed to the failures. Also, lenders in weak financial condition are more likely to submit loans of unacceptable risk. Reviewing financial information submitted by the lender would not be a viable option as FmHA employees are not trained or experienced in evaluating the strength of a bank.

Currently, FmHA may guarantee up to 90 percent of a Farmer Programs loan, whether or not an ALP lender is involved. The Act states that FmHA shall guarantee 80 percent of a loan made under the CLP program. FmHA has interpreted the limitation in the Act to be a floor; therefore, all guarantees issued under the CLP program will be no less than 80 percent but not more than 90 percent.

To further minimize the paperwork associated with the CLP program, FmHA also has extended the term of the agreements over the current ALP limit. Once approved, the CLP agreements will be effective for 5 years. Currently, ALP agreements are effective for 2 years, after which the lender must reapply for ALP status and resubmit updated information to the FmHA State Director. Annual reviews of all CLP lenders will be conducted by the State Director to ensure compliance with loss rates, loan processing and servicing standards, and other requirements. If the CLP lender is not complying with one or more of the requirements set out in the regulations, the State Director may revoke that lender's CLP status. The lender may continue to submit applications, but as a non-CLP lender. The Agency's ability to monitor CLP lenders will not be impaired by extending these terms. To renew their CLP status, the lender will submit a written request for renewal along with updated information. This application will enable the State Director to conduct a more thorough review of the lender.

As an additional benefit for CLP lenders, FmHA proposes to extend the term of guaranteed lines of credit from 3 years to 5 years. Also, CLP lenders will not be required to receive FmHA approval for readvancing funds in future years of lines of credit. This will improve the acceptability of the guaranteed operating lines of credit since the lender will not be required to submit an application for a new line of credit after three years, will have less paperwork, and will be able to provide the farmer with operating funds with fewer delays.

The Act states that as a condition of CLP certification, the lender must service the loans using standards not less stringent than generally accepted banking standards. FmHA currently requires all lenders making guaranteed Farmer Programs loans to service loans using, as a minimum, standard lending practices. No changes to FmHA regulations were necessary to comply with this requirement.

The Act also requires the Secretary to permit the CLP lender to make appropriate certifications relating to creditworthiness, repayment ability, adequacy of collateral, and feasibility of the farm operation. However, the Act states that this certification does not affect the responsibility of the Secretary to certify eligibility, review financial information, and otherwise assess an application. To avoid confusion over who has responsibility to assess a loan applicant's eligibility and determine repayment capacity and adequacy of security, FmHA has not included these additional certifications in Forms FmHA 1980–25, "Farmer Programs Application," or 1980–22, "Lender Certification." The CLP lender will be permitted to certify that their loan file contains records to support the projected cash flow and will not be required to submit these records with the application.

To address lender complaints of excessive paperwork burden associated with the guaranteed program, the task force recommended that FmHA modify the procedure for accepting and approving applications. The Agency agreed with the recommendation. These changes are not limited to the CLP. Currently, FmHA has four different application forms and several other separate required certification statements which must be submitted by lenders applying for guaranteed loans. FmHA has received complaints that these forms are often confusing and request identical information. Therefore, these forms and certifications have been consolidated into a single application, Form FmHA 1980–25, "Farmer Programs Application," which is appendix G to subpart A of part 1980 of this chapter. This application will gather needed information only once. Lenders will benefit by knowing that the application they submit is complete. Furthermore, approved and certified lenders and all lenders requesting guarantees of $50,000 or less will be relieved of certain documentation requirements normally associated with the application process.

As part of the new application process, the option to file a preliminary application has been removed. Instead, FmHA will allow the County Committee to review partially completed applications, provided they contain sufficient information to make an eligibility determination. The preliminary application was rarely used for Farmer Programs loans. Also, with the new application form and streamlined process, preliminary applications will be unnecessary.

Four lender's agreements (Form FmHA 449–35, Form FmHA 1980–38, and Attachments 1 and 2 to Exhibit A to subpart B of part 1980) will be consolidated into a single lender's agreement, Form FmHA 1980–38. This lender's agreement will be used by both CLP and non-CLP lenders applying for guaranteed loans and lines of credit. The agreement will be signed only once and will govern all loans/lines of credit guaranteed while the agreement is in effect. This will reduce the paperwork necessary to make a guaranteed loan and create less confusion.

Also, Form FmHA 1980–38 is revised and renamed "Agreement for Participation in Farmer Programs Guaranteed Loan Programs of the United States Government." These revisions reflect a standardized format and terms drafted by the Office of Management and Budget to be used for all Federal guaranteed credit programs. (See the "Agreement for Participation in Single Family Housing Guaranteed/Insured Loan Programs of the United States Government" in the proposed revision to OMB Circular No. A–129 at 57 FR 52907–10, November 5, 1992.) The new agreement will allow lenders who participate in several different Federal programs a common set of requirements and conditions, where not program specific. For example, standards for the lender's origination and closing of the loan are added. Also, a provision is added to require the lender to notify FmHA of any change in the lender's status, e.g. solvency, address, corporate structure, debarment or suspensions, etc. Other standard terms adopted concern: personnel available for consultation, lender knowledge of FmHA program requirements, lender employee qualification, facilities, lender delinquency on Federal debt, collateral appraisal, processing of payments, insurance, escrow accounts, Agency review of lender operations, conformance to standards, list of

Agency regulations, and duration and modification of agreement. No new substantive standards are imposed. Many requirements contained in 7 CFR part 1980, subparts A and B or existing lender's agreements are only restated and/or clarified.

In addition, the agreement has been revised to provide a more general description of servicing responsibilities and procedures with references to the appropriate sections of 7 CFR 1980, subparts A and B. The more detailed descriptions have been moved to the regulation texts. Movement of these requirements from the lender's agreement to the regulations does not lessen the lender's responsibility for compliance with the requirements. The processing requirements for the lender's sale of the guaranteed portion of the loan is covered by 7 CFR 1980.119. The handling of bankruptcy cases is detailed at 7 CFR 1980.144. The processing of liquidation and loss claims is now contained in 7 CFR 1980.146. Procedures for handling protective advances are found at 7 CFR 1980.136, and loan servicing is described at 7 CFR 1980.130.

The Agency is revising its practice in 7 CFR 1980.130 to require a non-CLP lender to obtain FmHA's written agreement before the lender allows proceeds from the disposition of collateral, such as machinery, equipment, furniture, or fixtures to be used to acquire replacement collateral. Current lender agreements provide a blank space to be filled in by the County Supervisor as to the value of replacement collateral which can be obtained with security proceeds without written concurrence of FmHA. Since the new Form FmHA 1980–38 will be executed only once and will cover all of a lender's Farmer Programs guaranteed loans thereafter, a uniform rule was necessary. CLP lenders will not be required to obtain FmHA's written concurrence for such use of security proceeds.

The Agency also is taking the opportunity to clarify the conflict of interest provision in its lender's agreement. The Agency has received many questions asking whether the prohibited "substantial financial interest" includes business dealings with the guaranteed loan borrower. The form has been revised to specifically include business dealings which is particularly important in the small lending institutions with which FmHA deals. Questions have also arisen concerning the shareholder who holds a very small percentage of the bank's outstanding shares, but whose shares are of substantial value. The Agency is attempting to prohibit relationships with persons who have some influence over lending practices. Very small shareholders have no such influence and should not create a conflict of interest under the lender's agreement. The form, applicable to Farmer Programs guaranteed loans only, therefore, is revised to require the lender to certify only that its officers, directors, principal stockholders and other principal owners do not have prohibited relationships with any guaranteed borrower. 7 CFR 1980.13 has been revised accordingly to require the lender to provide FmHA notice with regard to possible conflicts of interest.

To further simplify the approval and closing process, information contained in Form FmHA 449–14, "Conditional Commitment for Guarantee," will be incorporated into Form FmHA 1980–15. The new Form FmHA 1980–15 will be renamed "Conditional Commitment (Farmer Programs)" and will be used for both loans and lines of credit. Conditions required by subpart B of this chapter are incorporated into the text of this form to prevent the possibility of omission; however, no new conditions are added.

Along with the form revisions, more flexibility will be given to lenders to document their verification of borrowers' debts and nonfarm income. Any suitable verification will be accepted. FmHA will require verification on only those debts of $1000 or more. Most operations requiring guaranteed loans are not impacted by such small debts, so these small debts require unnecessary burden. This revision will significantly reduce paperwork for lenders, but will not have any significant impact on FmHA loss payments due to the $1000 threshold.

In addition, lenders applying for a guarantee on subsequent loans in the same crop year may submit an abbreviated application. Frequently, lenders must increase the ceiling on a line of credit or finance the purchase of machinery soon after a guaranteed loan has been closed. Instead of requiring the lender to supply identical information, only that data which is different from the original application will be required. The lender will certify that the revised cash flow projection has a positive cash flow, the loan/line of credit will be adequately secured, the loan applicant is in compliance with the loan agreements, and all applicable certifications made when the original guaranteed loan was made are still valid.

The documentation CLP lenders are required to submit to demonstrate compliance with the various environmental provisions is modified to require only the specific information FmHA must have to make its determinations. Since it is the lender's loan, FmHA will have very limited contact with the borrower and will no longer have the detailed knowledge of the borrower's operation. The new application form requires the CLP lender to provide information on farm buildings, water quality standards, wetland and highly erodible land compliance, and hazardous substances. This is information which can only be obtained from a site visit and is available to the lender who has responsibility for the site visit. According to the Act, FmHA must permit certified lenders to make certification that the borrower is in compliance with all requirements of law, including environmental law. FmHA's duties under environmental law with relation to non-CLP lenders was not affected by the Act.

FmHA currently must approve or reject a completed application within 45 days. FmHA has received complaints from several lenders regarding the excessive time required for FmHA to respond to applications. These complaints have been the biggest problem in the guaranteed program. FmHA, therefore, is reducing the 45-day time frame to 30 calendar days for applications from non-CLP lenders. CLP lenders will be notified within 14 calendar days of a completed application as required by the Act. Also, the task force recommended that within 5 calendar days of receipt of an application, FmHA notify the lender if the application is incomplete and request additional information. This is an increase from the current 3-day requirement under the ALP. Further, FmHA will respond within 14 calendar days to requests from non-CLP lenders to advance on the second and third years of a line of credit. This is a new deadline recommended by the task force. With the modified application requirements, FmHA expects the data received from the lenders to be better organized and easier to review, thereby making these ambitious requirements achievable.

As FmHA relaxes its requirements for the information lenders must submit for a complete application, reporting and monitoring must be strengthened to avoid additional losses. Maintaining an accurate accounting of collateral is a critical function of the loan servicer. FmHA, therefore, will require CLP lenders to submit loan status reports semiannually, on March 31 and September 30 each year. This will

improve the accuracy of the Agency's data for management use and reporting.

The Act requires the Secretary to monitor the performance of each CLP lender at least annually. FmHA's monitoring of lenders' files will be conducted semiannually. For CLP lenders, 20 percent of the outstanding guaranteed portfolio will be reviewed each year. For non-CLP lenders, 40 percent of the lender's outstanding portfolio will be reviewed. When selecting the files to be reviewed, the priority selection criteria described in § 1980.130 will be used to ensure closer supervision is given to those loans for which a loss is likely. The review will evaluate the lender's procedures for servicing farm borrowers.

Additionally, County Supervisors will no longer approve loss claims. All loss claims must now be approved by the FmHA State Director. The Agency anticipates that this change will improve the Agency's consistency and internal controls, but will not delay the approval time for the loss claims.

Finally, the Agency believes it is imperative to conform FmHA regulations to the present appraisal environment brought about by Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101–73, 103 Stat. 183 (1989) (12 U.S.C. 3348). FmHA must immediately amend its appraisal regulations to protect the public's interest through adoption of the USPAP standards, and to provide direction to both FmHA field staff who administer the program and commercial lenders that participate.

Title XI of FIRREA directed the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision to publish appraisal rules for federally related transactions within each of their jurisdictions. The Resolution Trust Corporation and the Farm Credit Administration published final rules that substantially incorporated the elements of FIRREA and USPAP into their appraisal regulations. The FIRREA legislation was passed in reaction to the tremendous losses being suffered in the savings and loan industry. These regulatory agencies, however, have adopted rules which exempt the financial institutions from the regulatory agency appraisal requirements when the transaction is guaranteed or insured by a Federal agency, such as the FmHA. In those cases where the loan is guaranteed by a Federal agency, the financial regulator requires only that the lender comply with the guaranteeing agency's appraisal requirements. This change was adopted to avoid the potential of lenders having to obtain multiple appraisals to satisfy the particular appraisal requirements of the various guaranteeing and regulatory agencies. However, not all lenders obtaining FmHA guaranteed loans are regulated by the above-mentioned regulatory agencies. Those lenders regulated by other regulatory agencies must have begun using USPAP standards by January 1, 1993. In addition, OMB Circular A–129, dated January 11, 1993, requires, in part, that all Federal agencies apply USPAP standards to appraisals in guaranteed loan situations. For these reasons, it is essential that FmHA immediately initiate appraisal procedures that reflect the USPAP standards. The 30-day comment period will afford the public an opportunity to submit comments on the appropriateness of appraisal changes prior to FmHA's adoption of the appraisal requirements as a final rule.

Major items changed in this rule because of the FIRREA legislation and FmHA's desire to implement it in the lest burdensome way possible include:

Primary security is defined to clarify that lenders need not incur the expense of obtaining appraisals on property mortgaged to the lender by the borrower strictly in a precautionary fashion as "additional security." This will eliminate a potential cost disincentive to prudent lenders that obtain loan security beyond that required for FmHA approval of the guarantee. Chattel appraisal requirements are discussed separate from real estate appraisals to avoid potential confusion. The circumstances for obtaining chattel appraisals are clarified as is the basis for property valuation.

Real estate appraisal requirements are changed to set forth a threshold level of $100,000 before a real estate appraisal must be performed by a State Certified General Appraiser and require appraisal reports completed in accordance with USPAP. The financial regulators have adopted rules that allow for a statement of value, rather than a formal appraisal in accordance with USPAP, for transactions under $100,000. However, FmHA cannot adopt this same approach without causing undue risk to the public. FmHA's guaranteed farm borrowers are required by law to be unable to obtain non-guaranteed credit, which means the FmHA guaranteed borrowers are inherently high risk by commercial standards. It would be imprudent on FmHA's part not to require a formal appraisal in connection with these borrowers because this would expose FmHA to greater losses due to inadequately secured loans. However, because of the relatively small loan amounts involved. FmHA is allowing these appraisals to be performed by either a state licensed or a state certified general appraiser.

Requirements that FmHA internal reviews of lender real estate appraisals be conducted in accordance with Standard 3 of USPAP, and stipulations that the FmHA State Director is responsible for developing a framework to monitor and document guaranteed appraisal compliance and activities within their state, also are being implemented. Some small corrections to references are also included in this interim rule.

List of Subjects in 7 CFR Part 1980

Administrative practice and procedure, Agriculture, Business and industry, Loan programs—Housing and community development, Loan programs—Community facilities, Rural areas.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 7 U.S.C. 4201 note; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Section 1980.6 is amended by adding, in alphabetical order, the abbreviation "CLP—Certified Lender Program" in paragraph (b), and by revising the definitions for "Finance Office", "Guaranteed line of credit", and "Guaranteed loan", by removing the definitions for "Conditional Commitment for Contract of Guarantee (Line of Credit) (Form FmHA 449–15)", and "Lenders Agreement (Form FmHA 449–35 (or 1980–68 or 1980–71) or Form FmHA 1980–38)" and by adding new definitions for "Conditional Commitment (Farmer Programs) (Form FmHA 1980–15)" and "Lenders Agreement (Forms FmHA 449–35, 1980–38, 1980–68, or 1980–71)" in paragraph (a), to read as follows:

§ 1980.6 Definitions and abbreviations.

(a) * * *

Conditional Commitment (Farmer Programs) (Form FmHA 1980–15). FmHA's advice to the lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in "Conditional Commitment (Farmer Programs)."

* * * * *

Finance Office. The office which maintains the FmHA financial records. It is located at 1520 Market Street, St. Louis, Missouri 63103.

* * * * *

Guaranteed line of credit. Loan advances made and serviced by a lender subject to a maximum amount agreed to by the lender and FmHA which is specified in Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)," and for which FmHA has entered into a Form FmHA 1980–38, "Agreement for Participation in Farmer Programs Guaranteed Loan Programs of the United States Government."

Guaranteed loan. A loan made and serviced by a lender for which FmHA has entered into a Form FmHA 449–35, Form FmHA 1980–38, Form FmHA 1980–68, or Form FmHA 1980–71, "Lender's Agreement," and for which FmHA has issued a Form FmHA 449–34 (or Form FmHA 1980–69 or Form FmHA 1980–72), "Loan Note Guarantee."

* * * * *

Lender's Agreement (Forms FmHA 449–35, 1980–38, 1980–68, or 1980–71). The signed agreement between FmHA and the lender setting forth the lender's loan responsibilities when the Loan Note Guarantee or Contract of Guarantee is issued. Form FmHA 1980–38 is used for Farmer Programs loans only and will be referred to as "Lender's Agreement" even though its full title is "Agreement for Participation in Farmer Programs Guaranteed Loan Programs of the United States Government."

* * * * *

3. Section 1980.11 is amended in the sixth sentence by revising the title of Form FmHA 1980–15 from "Conditional Commitment for Contract of Guarantee" to "Conditional Commitment (Farmer Programs)."

4. Section 1980.13 is amended by revising the introductory text of paragraph (b), and paragraphs (b)(2), (b)(4) and (c) to read as follows:

§ 1980.13 Eligible lenders.

* * * * *

(b) *An eligible lender is:* Any Federal or State chartered bank, Farm Credit Bank, other Farm Credit System institution with direct lending authority, Bank for Cooperatives, Savings and Loan Association, Building and Loan Association, or mortgage company that is part of a bank-holding company. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Eligible lenders may also include credit unions that are subject to credit examination and supervision by either the National Credit Union Administration or a State agency or an insurance company that is regulated by a State or National insurance regulatory agency. For Farmer Programs loans, an eligible lender will include any lending organization regulated by, and in good standing with, a State or Federal government body. Only those lenders listed in this paragraph are eligible to make and service guaranteed loans, and such lenders must be in good standing with their licensing authority and have met licensing, loan making, loan servicing, and other requirements of the State in which the collateral will be located and the loan making and/or loan servicing office requirements in paragraph (b)(3) of this section. A lender must have the capability to adequately service the loan for which a guarantee is requested.

* * * * *

(2) *Lender notification.* Each lender will inform FmHA whether it qualifies for eligibility under this section and which agency or authority, if any, supervises such lender. This information will be furnished to FmHA on Form FmHA 1980–25, "Farmer Programs Application," with such proofs as FmHA may require.

* * * * *

(4) *Conflict of interest.* FmHA shall determine whether such ownership or business dealings are sufficient to likely result in a conflict of interest. For possible lender/borrower conflict of interest, see paragraph V of Form FmHA 449–35 or paragraph B.5. of Form FmHA 1980–38. All lenders will, for each proposed loan, inform FmHA in writing and furnish such additional evidence as FmHA requested as to whether and the extent that:

(i) For those loans covered by Form FmHA 449–35, the lender or its principal officers (including immediate family) or the borrower or its principals or officers (including immediate family) hold any stock or other evidence of ownership in the other; or

(ii) For Farmer Programs loans covered by Form FmHA 1980–38, the lender or its officers, directors, principal stockholders or other principal owners or the borrower or its officers, directors, stockholders or other owners have any business dealings with, or hold any stock or other evidence of ownership in, the other.

* * * * *

(c) *Substitution of lenders.* With written concurrence of FmHA, another eligible lender may be substituted for a lender who holds an outstanding Conditional Commitment provided the borrower, loan purposes, scope of project and loan terms remain unchanged. (See subpart E of this part.)

4A. Section 1980.20 is amended by revising the last sentence of the introductory text of paragraph (a) to read as follows:

§ 1980.20 Loan Guarantee limits.

(a) * * * Also, except in regards to D&D and DARBE guaranteed loans (see Subpart E of this part), the maximum loss covered by Form FmHA 449–34 or Form FmHA 1980–27 can never exceed the lesser of:

* * * * *

5. Section 1980.46 is amended by revising paragraph (a)(1) and the introductory text of paragraph (a)(2) to read as follows:

§ 1980.46 Right to Financial Privacy Act of 1978.

(a) * * *

(1) Except for Farmer Programs loans, within 3 days of the receipt of a pre-application or complete application from a lender for a guarantee for a loan, FmHA will forward Form FmHA 410–7, "Notification to Applicant on Use of Financial Information From Financial Institution," to those applicants desiring loan assistance. If notification is made upon receipt of a pre-application, notification will not be made upon receipt of an application for the same applicant. For Farmer Programs loans, this notification is included in Form FmHA 1980–25, "Farmer Programs Application," and therefore, Form FmHA 410–7 need not be sent to the loan applicant.

(2) Except for Farmer Programs loans, notification must also be given to the lender and other financial institutions to which FmHA makes a direct request for financial records. For Farmer Programs loans, this notification is included in Form FmHA 1980–25, and therefore, Form FmHA 410–7 need not be sent to the lender. The notification to the lender and other financial institutions will read as follows:

* * * * *

6. Section 1980.60 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1980.60 Conditions precedent to issuance of the Loan Note Guarantee or Contract of Guarantee.

(a) *Lender certification.* For Farmer Programs loans, Form FmHA 449–34 or Form FmHA 1980–27 will not be issued until the lender certifies to the applicable conditions below by executing Form FmHA 1980–22, "Lender Certification." For all other

loans, Form FmHA 449–34 will not be issued until the lender certifies that:

* * * * *

7. Section 1980.61 is amended by revising paragraphs (a), (b)(1), (b)(3), (b)(4), and (d) to read as follows:

§ 1980.61 Issuance of Lender's Agreement, Loan Note Guarantee, Contract of Guarantee and Assignment Guarantee Agreement.

(a) *Lender's Agreement.* If FmHA finds that all requirements have been met:

(1) Except for Farmer Programs loans, the lender and FmHA will execute Form FmHA 449–35. The original will be delivered to FmHA and a signed duplicate original will be retained by the lender. There will be a Form FmHA 449–35 executed for all loans and lines of credit guaranteed by FmHA.

(2) For Farmer Programs loans, a new lender's agreement (Form FmHA 1980–38) does not need to be executed for each loan.

(i) Eligible lenders (non-CLP or non-ALP) must execute the most current version of Form FmHA 1980–38. The original will be kept in the County Office operational file for that lender.

(ii) ALP lenders must have executed an ALP lender's agreement (Attachments 1 or 2 of Exhibit A of Subpart B of this part). The original will be kept in the State Office with a copy in the County Office operational file.

(iii) CLP lenders must have executed the most current version of Form FmHA 1980–38. The original will be kept in the State Office with a copy in the County Office operational file.

(iv) Outstanding guarantees will be governed by the provisions of the lender's agreement in effect at the time the guarantee was issued; therefore, all expired lender's agreements must be retained in the State and/or County Office operational file.

(3) In all cases, the lender's agreement will be executed no later than the time the Loan Note Guarantee or Contract of Guarantee is signed.

(b) * * *

(1) Upon receipt of the Form FmHA 449–35 or Form FmHA 1980–38, and after all requirements have been met, FmHA will execute Form FmHA 449–34. All original(s) will be provided to the lender and attached to the note(s). A conformed copy with copies of notes attached will be retained by FmHA.

* * * * *

(3) If a lender has selected the multi-note system as provided in paragraph III A 2 of Forms FmHA 449–35, FmHA 1980–68, and FmHA 1980–71, or § 1980.119 of subpart B of this part, a Loan Note Guarantee will be prepared and attached to each note the borrower issues. All the notes will be listed on Form FmHA 449–34.

(4) If the lender request a series of new notes to replace previously issued guaranteed notes as provided in paragraph III A (b) of Forms FmHA 449–35, FmHA 1980–68, and FmHA 1980–71, or § 1980.119 of subpart B of this part, the County Supervisor (State Director for B&I) may reissue the new Loan Note Guarantee in exchange for the original Loan Note Guarantee.

* * * * *

(d) *Assignment Guarantee Agreement.* In the event the lender assigns the guaranteed portion of the loan to a holder(s) in accordance with the provision of the applicable subpart, the lender, holder, and FmHA will execute Form FmHA 449–36. The original of the agreement(s) will be provided to the holder with conformed copy(s) to the lender and FmHA. If the lender desires to assign a part(s) of the guaranteed loan to a holder(s), an Assignment Guarantee Agreement will be executed for each assigned portion. Attached to the Assignment Agreement will be a copy of the borrower's note(s) and a copy of the Loan Note Guarantee. Line of credit agreements evidencing advances made under lines of credit will not be sold or assigned except as provided in paragraph I.C.4. of Form FmHA 1980–38 and § 1980.119 of subpart B of this part.

* * * * *

8. Section 1980.62 is revised to read as follows:

§ 1980.62 Lender's sale or assignment of guaranteed portion of loan.

Any sale or assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions in paragraph III of Form FmHA 449–35 or § 1980.119 of subpart B of this part. Only guaranteed portions of loans not in payment default as set forth in the terms of the debt instruments may be sold. Should the lender know at the time the loan application is being prepared that it plans to sell or assign any part of the guaranteed portion of the loan as provided in Form FmHA 449–35 or § 1980.119 of subpart B of this part, the lender will provide this information with the application of FmHA. Line of Credit agreements evidencing advances made under lines of credit will not be sold or assigned except as provided in paragraph I.C.4. of Form FmHA 1980–38 and § 1980.119 of subpart B of this part.

9. Section 1980.63 is amended by revising paragraph (a) to read as follows:

§ 1980.63 Defaults by borrower.

(a) Refer to paragraph X of Form FmHA 449–35 or I.D.6. of Form FmHA 1980–38.

* * * * *

10. Section 1980.64 is amended by revising paragraph (a) to read as follows:

§ 1980.64 Liquidation.

(a) *Reference.* Refer to paragraph XI of Form FmHA 449–35 or paragraph I.D.6. of Form FmHA 1980–38.

* * * * *

11. Section 1980.65 is revised to read as follows:

§ 1980.65 Protection advances.

Refer to paragraph XII of Form FmHA 449–35, or for Farmer Programs Loans, § 1980.136 of subpart B of this part.

12. Section 1980.66 is revised to read as follows:

§ 1980.66 Additional loans or advances.

Refer to paragraph XIII of Form FmHA 449–35, or paragraph I.D.6.(b) of Form FmHA 1980–38.

13. Section 1980.83 is amended by revising paragraph (a) to read as follows:

§ 1980.83 FmHA forms.

(a) *FmHA forms incorporated in this subpart.* Forms FmHA 449–34, FmHA 449–35 and FmHA 449–36 are incorporated in this subpart, made a part hereof, and appear as appendices A, B, and C in the Federal Register. Forms FmHA 1980–27, FmHA 1980–38, FmHA 1980–15, FmHA 1980–25, FmHA 1980–24, "Request for Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," and FmHA 1980–64, "Interest Assistance Agreement (Farmer Programs)," are incorporated in this subpart and are made a part hereof and appear as appendices D, E, F, G, H, I, and J of 7 CFR part 1980, subpart A. Copies of the forms may be obtained from any FmHA office.

* * * * *

14. Section 1980.84 is amended by revising paragraph (b)(4) to read as follows:

§ 1980.84 Replacement of loss, theft, destruction, mutilation, or defacement of Form FmHA 449–34, "Loan Note Guarantee," Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)" or Form FmHA 449–36, "Assignment Guarantee Agreement."

* * * * *

(b) * * *

(4) In those cases where the guaranteed loan was closed under the provisions of paragraph III(A)(2) of Form FmHA 449–35 or § 1980.119 of subpart B of this part, known as the

"Multi-Note System," FmHA will not attempt to or participate in the obtaining of replacement notes from the borrower. It will be the responsibility of the holder to bear costs of note replacement if the borrower agrees to issue a replacement instrument. Should such note be replaced, the terms of the note cannot be changed. (See paragraph III(A)(2)(b) of Form FmHA 449–35 or § 1980.119 of subpart B of this part for general conditions for reissued notes.) If the evidence of debt has been lost, stolen, destroyed, mutilated or defaced, such evidence of debt must be replaced before FmHA will replace any instruments.

* * * * *

15. Appendix E to subpart A of part 1980 is revised to read as follows:

APPENDIX E—AGREEMENT FOR PARTICIPATION IN FARMER PROGRAMS GUARANTEED LOAN PROGRAMS OF THE UNITED STATES GOVERNMENT

The purpose of this Agreement is to establish the Lender as an approved participant in the Farmer Programs Guaranteed Loan Programs of the Farmers Home Administration (FmHA), U.S. Department of Agriculture. This Agreement provides the terms and conditions for originating and servicing such loans, including lines of credit.

Participating Lender ("Lender"): _____

Tax Identification Number: _____

Business Address: _____

Telephone Number: _____

Complete the appropriate section indicating participation/non-participation in the Certified Lender Program.

	Offices affected by agreement		States affected by agreement
	All [_]	As listed below [_]	
Participating in the Certified Lender Program ("CLP")			
Not Participating in the Certified Lender Program			

Read this Agreement in its entirety and sign in the space on the last page. Your signature indicates consent with this Agreement.

Part I—General Requirements

A. Duties and Responsibilities of FmHA ("Agency")

1. *Payment of Claims.* FmHA agrees to make payment on its claims in accordance with the terms of the guarantee and Agency regulations in 7 CFR 1980, subparts A and B. The maximum loss payment may not exceed the amount determined in the guarantee, including the percentage of principal and any accrued interest. The guarantee is supported by the full faith and credit of the United States and is uncontestable except under the circumstances of fraud or misrepresentation of which the Lender has actual knowledge at the execution of the guarantee or which the Lender participates in or condones. (See 7 CFR 1980.107.)

2. *Personnel Available for Consultation.* FmHA shall make personnel available for consultation on interpretations of Agency regulations and guidelines. The Lender may consult with Agency personnel regarding unusual underwriting, loan closing, and loan liquidation questions.

B. General Requirements for the Lender

1. *Eligibility to Participate.* The Lender must meet the requirements set forth in 7 CFR 1980.13 and be approved by FmHA to be a participant in the Farmer Programs Guaranteed Loan Programs.

2. *Knowledge of Program Requirements.* The Lender is required to obtain and keep itself informed of all program regulations and guidelines, including all amendments and revisions. The Lender must establish and maintain adequate and written internal policies for loan origination and servicing to meet these requirements. These policies will be subject to review upon request by FmHA.

3. *Notification.* The Lender shall immediately notify FmHA in writing if the Lender:

- Becomes insolvent;
- Has filed for any type of bankruptcy protection, has been forced into involuntary bankruptcy, or has requested an assignment for the benefit of creditors;
- Has taken any action to cease operations, or to discontinue servicing or liquidating any or all of its portfolio guaranteed by FmHA;
- Has changed its name, location, address, tax identification number, or corporate structure;
- Has been debarred, suspended, or sanctioned in connection with its participation in any Federal guaranteed program; or
- Has been debarred, suspended, or sanctioned by any Federal or State licensing or certification authority.

4. *Employee Qualifications.* The Lender shall maintain a staff that is well trained and experienced in origination and loan servicing functions, as necessary, to ensure the capability of performing all the acts within its authority.

5. *Conflict of Interest.* The Lender certifies that its officers or directors, principal stockholders (except stockholders in a Farm Credit Bank or other Farm Credit System (FCS) institutions with direct lending authority that have normal stock/share requirements for participating), or other principal owners do not have, or will not have, a substantial financial interest in, or business dealings with, any guaranteed loan borrower. The Lender also certifies that neither any borrower nor its officers or directors, stockholders, or other owners have a substantial financial interest in the Lender. If the borrower is a member of the Board of Directors of a Farm Credit Bank or other FCS institution with direct lending authority, the Lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.

6. *Facilities.* The Lender shall operate its facilities and branch offices in a prudent and businesslike manner.

7. *Reporting Requirements.* The Lender recognizes that FmHA, as guarantor, has a vital interest in ensuring that all acts performed by the Lender regarding the subject loans are performed in compliance with this Agreement and Agency regulations. Information on the status of guaranteed loans is necessary for this purpose, as well as to satisfy budget and accounting reporting required by the Department of the Treasury and the Office of Management and Budget. The Lender agrees to provide FmHA with all the data required under Agency regulations and any additional information necessary for FmHA to monitor the health of its guaranteed loan portfolio, and to satisfy external reporting requirements.

The Lender also agrees to provide to FmHA, as requested by the Agency or as required by regulation, copies of audited financial statements, reports on internal controls, copies of compliance audits, and such other information that may be required for FmHA to properly monitor the Lender's performance.

C. Underwriting Requirements

1. *Responsibility.* The Lender is responsible for originating, servicing, and collecting all guaranteed Farmer Programs loans in accordance with Agency regulations.

2. *Origination Process—a. General Eligibility.* The Lender shall make a preliminary determination whether loan applicants meet the general eligibility requirements of the Farmer Programs Guaranteed Loan Programs. FmHA will make the final determination.

b. *Delinquency on Federal Debt.* The Lender shall determine whether the loan applicant is delinquent on any Federal debt. The Lender shall use credit reports and any other credit history to make this determination. If the loan applicant is delinquent on a federal debt, processing of the application may only continue in accordance with Agency regulations.

c. *Appraisals of Collateral.* The Lender shall ensure that the value of any collateral property or property to be purchased is determined by a qualified appraiser, including a State licensed or certified appraiser when required by law or regulation.

d. *Change in Borrower's Condition.* Before FmHA issues a loan guarantee, the Lender will certify that there has been no adverse change(s) in the borrower's condition, financial or otherwise, during the time period from issuance of a Conditional Commitment to issuance of the guarantee of the loan. This certification by the Lender must address all adverse changes and be supported by financial statements of the borrower and its guarantors which are not more than 90 days old at the time of certification. For use in this provision alone, the term "Borrower" includes any member, joint operator, partner or stockholder. (See 7 CFR 1980.117.)

e. *Limitation on Guarantee.* Any note requiring the payment of interest on interest will not be guaranteed. Default charges, late charges of any kind, and/or interest accrued on interest charges will not be covered by the guarantee.

3. *Loan Closing—a. Lender's Fee.* The Lender will submit the required guarantee fee with the Guaranteed Loan Closing Report.

b. *Lender's Use of Funds.* The Lender agrees funds for the particular loan or line of credit will be used only for the purposes authorized in 7 CFR 1980, subparts A and B as set forth in Form FmHA 1980–15.

c. *Loan Closing.* All loans guaranteed by the Agency shall be closed by attorneys, escrow companies, escrow departments of lending institutions, or other person(s) or entities skilled and experienced in conducting loan closings. The Lender shall:

- Ensure that documents, including the mortgage and any security agreements, chattel mortgages, or equivalent documents relating to it have been properly signed, are valid and contain terms enforceable by the Lender;
- Ensure that all security with appropriate lien priorities is obtained in accordance with Form FmHA 1980–15, and Agency regulations;
- Ensure that all closing documents required to be recorded are recorded accurately, in the appropriate offices, and in a timely and accurate manner;
- Ensure that security interests are perfected in collateral according to applicable regulatory requirements and procedures;
- Ensure that all required hazard insurance is obtained in accordance with Agency regulations;
- Collect all fees and costs due and payable by the borrower in the course of the loan transaction and disburse payment directly to the parties for services rendered; and
- Ensure that all loan proceeds are used as authorized.

The entire loan will be secured equally with the same security and the same lien priority for both the guaranteed and unguaranteed portions of the loan, under the assurance that the unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

4. *Lender's Sale or Assignment of Guaranteed Loan*—The Lender may retain all of any guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of loan(s) to the applicant or borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary, or affiliate. The Lender may market all or part of the guaranteed portion of the loan at or after loan closing only if the loan is not in default as set forth in the terms of the note. A line of credit may only be marketed by participation. Refer to 7 CFR 1980.119 for further guidelines.

D. Servicing Requirements

1. *Responsibilities.* The Lender will service the entire loan as mortgagee and/or secured party of record in a reasonable and prudent manner, notwithstanding the fact that another (Holder) may hold a portion of the loan. The Lender will obtain compliance with the covenants and provisions in the note, security instruments, and any other agreements, and notify FmHA and the borrower of any violations. Specific responsibilities are described in 7 CFR 1980.130.

2. *Negligent Servicing.* The guarantee cannot be enforced by the Lender to the extent a loss results from a violation of usury laws or negligent servicing regardless of when FmHA discovers such violation or negligence. Negligent servicing is defined as the failure to perform services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes both a failure to act and also not acting in a timely manner to include actions taken up to the time of loan maturity or until a final loss is paid. (See 7 CFR 1980.11.)

3. *Payments.* Payments from the borrower shall be processed upon receipt according to 7 CFR 1980.119, and may include escrow premiums for hazard insurance and real estate taxes. The Lender shall promptly disburse to any Holder(s) their pro rata share thereof which has been determined according to their respective interests in the loan, less only the Lender's servicing fee.

4. *Collateral—a. Insurance.* The Lender shall ensure that adequate insurance is maintained in accordance with Agency regulations, including the maintenance of hazard insurance containing a loss payable clause in favor of the Lender as the mortgagee or secured party.

b. *Escrow Accounts.* The Lender may establish separate escrow accounts. All escrow accounts must meet applicable Federal and State laws and regulations, and must be fully insured by the FDIC.

c. *Inspection.* The Lender shall inspect the collateral as often as necessary to properly service the loan and ensure the collateral is being properly maintained.

d. *Taxes.* The Lender shall ensure that taxes, assessments, or ground rents against or affecting collateral are paid.

5. *Delinquent Accounts—a.* The Lender will notify FmHA using Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status," when a borrower is 30 days past due on a payment or if the borrower has not provided the required financial statements to the Lender or is otherwise in default. The Lender will continue to submit Form FmHA 1980–44 every 60 days until the default is resolved, and will notify the Agency when the default is resolved. A meeting will be arranged by the Lender with the borrower and FmHA to resolve the problem. Actions taken by the Lender, with written concurrence of FmHA, may include but are not limited to, any curative actions contained in subpart B of 7 CFR part 1980 or liquidation.

b. The loan may be reamortized, rescheduled, or written down only with the agreement of any Holder(s) of the guaranteed portion of the loan, and only with FmHA's written agreement.

c. The Lender will negotiate in good faith to resolve any problem in order to allow the borrower to cure a default, where reasonable. The Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the borrower for Interest Assistance under Exhibit D of subpart B of 7 CFR part 1980, and request a determination of the borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after eligibility of the borrower to participate in the Interest Assistance Program has been established.

d. Debt Writedown. (Refer to 7 CFR part 1980, subpart B, 1980.125.) The maximum amount of loss payment associated with a loan/line of credit agreement which has been written down will not exceed the percent of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan before the writedown and the outstanding balance of the loan after the writedown. The Lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment to receive its pro rata share of any loss sustained. Interest will be paid to the date of the check on all debt writedown claims.

e. The Lender must participate in any farm credit mediation program of any State in accordance with the rules of that system and 7 CFR part 1980, subpart B, 1980.126.

f. When the borrower has not made payment of principal or interest due on the loan for 60 days or more or the Lender has

failed to give the Holder(s) its pro rata share of any payment made by the borrower within 30 days of receipt of the payment, the Holder may request the lender to repurchase the unpaid guaranteed portion of the guaranteed loan. If the Lender chooses not to repurchase, FmHA will purchase the unpaid principal balance. Upon FmHA's repurchase, the lender will liquidate the account or reimburse FmHA the amount of the repurchase within 180 days of FmHA's repurchase. See 7 CFR 1980.119 for further guidance on repurchasing loans from Holder(s).

6. *Default/Liquidation*—a. *Protective Advances.* Protective advances must constitute a debt of the borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $3,000 made by a CLP Lender. For non-CLP Lenders, the amount is $500. Refer to 7 CFR 1980.136.

b. *Additional Loans or Advances.* Except as provided for in each Borrower's loan agreement, the Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

c. *Future Recovery.* After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid the amount recovered in proportion to the percentage it guaranteed for the loan.

d. *Transfer and Assumption Cases.* Refer to 7 CFR 1980.123. If a loss occurs upon the completion of a transfer and assumption for less than the full amount of the debt and the transferor debtor (including Guarantors) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered as Not Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of transfer and assumption, if not assumed by the transferee, will be entered in the appropriate space on Form FmHA 449–30.

e. *Bankruptcy.* The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. Loss payments on bankruptcy cases will be processed according to the terms described in 7 CFR 1980.144.

f. *Liquidation.* If the Lender concludes that liquidation of a guaranteed loan account is necessary due to default or third party actions which the borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. All liquidations must receive prior concurrence by the appropriate FmHA official. Refer to 7 CFR 1980.146 for specific guidance on the procedures for liquidation.

7. *Servicer.* If the lender contracts for servicing of guaranteed Farmer Programs loans, the lender is not relieved of responsibility for proper servicing of the loans.

E. Agency Reviews of Lender's Operations

FmHA shall have the right to conduct reviews, including on-site reviews, of the Lender's operations and the operations of any agent of the Lender, for the purpose of verifying compliance with this Agreement and Agency regulations and guidelines. These reviews may include, but are not limited to: audits of case files; interviews with owners, managers, and staff; audits of collateral; and inspections of the Lender's and/or its agents underwriting, servicing, and liquidation guidelines. The Lender and/or its agents shall provide access to all pertinent information to allow the Agency, or any party authorized by the Agency, to conduct such reviews.

F. Conformance to Standards

1. *Standards.* The Lender shall conform to the standards outlined in this Agreement and Agency regulations for participation in Farmer Programs Guaranteed Loan Programs. CLP lenders must maintain compliance with the criteria set forth in 7 CFR 1980.190. The Agency shall determine Lender adherence to the standards based on:

- Adequacy in meeting requirements for origination, servicing, and liquidation of loans and lines of credit, including protection of collateral;
- Satisfaction of the reporting requirements of the Agency;
- Success in operating in a sound and prudent businesslike manner;
- Portfolio performance compared to overall performance of the Farmer Program Guaranteed Loan Programs; and
- Results of on-site reviews of the underwriting and/or servicing performed by the Lender.

2. *Determination of Non-Conformance.* The Agency shall carefully consider the circumstances and available facts in determining whether there is a pattern of Lender non-conformance with applicable standards. FmHA shall determine the propriety of any decision made by the Lender based on the facts available at the time the specific action was taken. It is understood by the Agency and intended by this Agreement that the Lender has the authority to exercise reasonable judgment in performing acts within its authority. However, FmHA reserves the right to question any act performed or conclusion drawn that is inconsistent with this Agreement or Agency regulations.

3. *Agency Action.* If the Lender is determined to be in non-conformance with any Federal law, State law, Agency regulation or guideline, or the terms of this Agreement, FmHA reserves the right to take action in accordance with its laws and regulations.

4. *Lender Right of Appeal.* FmHA shall provide the Lender an opportunity to appeal, in accordance with Agency regulations at 7 CFR part 1980, subpart A, adverse actions taken by the Agency.

Part II—List of Agency Regulations and Guidelines Designation of Lender Authority to Perform Certain Acts

A. List of Agency Regulations

The following is a list of FmHA regulations, which, along with any future amendments consistent with this Agreement, contain the information necessary for the Lender to be in compliance with Agency requirements.

1. 7 CFR part 1980 subpart A—General
2. 7 CFR part 1980 subpart B—Farmer Program Loans

B. Authority to Perform Certain Acts

Lenders participating in the CLP may be granted special authority to certify compliance with certain statutory or regulatory requirements. 7 CFR 1980.190 describes authorities and responsibilities for CLP lenders.

Part III—Duration and Modification

A. Duration and Termination

1. *Duration of Agreement.* For CLP lenders, this Agreement is valid for five years unless terminated by the Lender or FmHA as described below or revoked according to 7 CFR 1980.190. For non-CLP lenders, this Agreement will be valid indefinitely unless terminated by the Lender or FmHA as described below.

2. *Modification of Agreement.* This Agreement may be modified or extended only in writing and by consent of all parties.

3. *Termination by FmHA.* This agreement may be terminated by FmHA in accordance with Agency regulations.

4. *Termination by the Lender.* This Agreement may be terminated by the Lender by providing 30 days written notice to FmHA.

5. *Effect of Termination on Responsibilities and Liabilities.* Responsibilities or liabilities that existed before the termination of the Agreement with regard to outstanding guarantees will continue to exist after termination unless the Agency expressly releases the Lender from such responsibilities or liabilities in writing. The Lender shall remain obligated to service and liquidate the guaranteed loans remaining in the portfolio unless and until FmHA or the Lender transfers the loans. These requirements concerning loan management by the Lender and rights of the Agency under this Agreement shall remain in effect whether the Agreement is terminated by the Lender or FmHA.

B. Entire Agreement

This Agreement, Parts I through IV inclusive, and any regulations or guidelines incorporated by reference, shall constitute the entire Agreement. There are no other agreements, written or oral, regarding the terms in this Agreement which are or shall be binding on the parties.

Part IV—Endorsement

The undersigned certifies that they have read and understand the requirements in this agreement, and in 7 CFR part 1980, subparts A and B, and agree to the participation requirements and other provisions of this Agreement.

Notice. Requests for Guarantee and any notices or actions are expected to be initiated through the following FmHA County Offices: _____

_____

_____

_____

_____

_____

_____

Lender: Complete this block of Section IV.

XXI. LENDER_____

(Name)

_____

(IRS I.D. Tax No.)

By_____

(Signature)

_____

(Name Typed or Printed)

Title_____

Date _____

ATTEST: _____

This block of Section IV will be completed by FmHA.

The effective date of this Agreement is _____

The expiration date of this Agreement is _____

UNITED STATES OF AMERICA

Farmers Home Administration

By_____

(Signature)

_____

(Name Typed or Printed)

Title_____

Date_____

USDA—FmHA
Form FmHA 1980–38

16. Appendix F to Subpart A of part 1980 is revised to read as follows:

USDA-FmHA
Form FmHA 1980–15
(Rev. 6–93)

FORM APPROVED
OMB NO. 0575–0079

APPENDIX F—CONDITIONAL COMMITMENT

[Farmer Programs]

TO: LENDER	TYPE OF LOAN ☐FO ☐SW ☐OL ☐OL/LOC

APPENDIX F—CONDITIONAL COMMITMENT—Continued

[Farmer Programs]

LENDER MAILING ADDRESS	NAME OF LOAN APPLICANT
	FmHA CASE NUMBER
CITY, STATE, AND ZIP CODE	PRINCIPAL AMOUNT OF LOAN/LINE OF CREDIT $

From an examination of information supplied by the Lender on the above proposed loan/line of credit, the County Committee certification or recommendation, if required, and other relevant information deemed necessary, it appears that the transaction can be properly completed.

Therefore, the United States of America acting through the Farmers Home Administration (FmHA) hereby agrees that, in accordance with applicable provisions of the FmHA regulations published in the Federal Register and related forms, it will execute Form FmHA 449–34, "Loan Note Guarantee." or Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)", as appropriate, subject to the conditions and requirements specified in said regulations and included below.

The guarantee fee payable by the Lender to FmHA will be the amount as specified in the regulations on the date of this Conditional Commitment.

The interest rate for the loan/line of credit is _____% ☐ fixed, ☐ variable, which cannot exceed the rate the lender charges his average farm customer. If a variable rate is used, it cannot change more than _____.

A Loan Note Guarantee or Contract of Guarantee will not be issued until the Lender certifies to conditions in Form FmHA 1980–22 "LenderCertification" that there has been no adverse change(s) in the Loan Application's financial condition, nor any other adverse change in the Loan Applicant's condition during the period of time from FmHA's issuance of the Conditional Commitment, (Farmer Programs) to issuance of the Loan Note Guarantee or Contract of Guarantee.

Unless indicated in the section "Additional Conditions and Requirements." the purposes for which the loan funds will be used are as set out on the Farmer Programs Application.

The Lender agrees that, if liquidation of the account becomes imminent, the Lender will consider the Loan Applicant for Interest Assistance under Exhibit D of 7 CFR Part 1980, Subpart B, and request a determination of the Loan Applicant's eligibility by FmHA, The Lender may not initiate foreclosure action on the loan until 60 calendar days after a determination has been made with respect to the eligibility of the Loan Applicant to participate in the Interest Assistance Program.

INTEREST ASSISTANCE REQUIREMENTS

☐ N/A The subject guaranteed loan/line of credit does have Interest Assistance.

☐ INTEREST ASSISTANCE

The subject guaranteed loan/line of credit has been approved for participation in the Interest Assistance program. Interest Assistance during the first annual operating plan period will be _____percent per annum of average outstanding principal. The Maximum Rate of Interest Assistance Available (MRIAA) under this commitment is _____ percent per annum of average outstanding principal balance. Interest Assistance is available under this commitment for a period not to exceed _____ years. Availability of Interest Assistance is subject to the loan being closed in accordance with the conditions of this commitment and with FmHA regulations. Interest Assistance availability is also subject to the execution of Form FmHA 1980–64, "Interest Assistance Agreement" and compliance with the conditions of that agreement. Conditions include the requirement that the rate of Interest Assistance be adjusted annually based on an analysis of the borrower's need for Interest Assistance, with which the lender is required to perform and obtain FmHA concurrence.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0079), Washington, DC 20503 Please DO NOT RETURN this form to either of these addresses. Forward to FmHA only.

REQUIREMENTS FOR LOANS SECURED BY CHATTELS

(A) All collateral for the loan, i.e., livestock, farming and other equipment, crops, other farm products, supplies, inventory, accounts and contract rights, and general intangibles, must be accounted for on a disposition or collateral control sheets. An assignment will be obtained on all USDA crop and livestock program payments. All collateral pertains to that now owned and hereafter acquired. A yearly accounting and reconciliation with the Security Agreement is required.

(B) The Lender's financing statement must cover the proceeds and products of collateral and the following statement must be included: "Disposition of the collateral is not authorized hereby."

FOR OPERATING LOANS(S)/LINE OF CREDIT REQUIREMENTS

For an Operating Loan/Line of Credit(s), prior to any advances for the second or third plan year. Non-Certified Lenders must submit a copy of the borrower's income and expenses for the previous year, the projected cash flow for the borrower's operation for the upcoming operating cycle, a current financial statement a/k/a balance sheet, and a certification that the borrower is in compliance with the provisions of the Line of Credit Agreement and the income and expenses for the previous year have been accounted for. All of the above items are to be submitted to the County Supervisor for written approval.

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GENERAL REQUIREMENTS

Lender agrees that any provisions in its security instruments, including promissory notes, security agreements, financing statements, deeds of trust, or other forms used by the lender to evidence or secure a loan to a guaranteed loan applicant, which do not comply with 7 CFR Parts 1980–A and B; are unenforceable by the lender without the written concurrence of FmHA. Such provision and enforcement are hereby waived by the lender.

The Lender agrees that FmHA has not nor will certify to the validity, accuracy, legality, or enforceability of any note, security agreement, financing statement, deed of trust or other form which Lender has provided to FmHA, the providing of such forms being for informational purposes only.

HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

(A) This commitment is conditional upon loan proceeds not being used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

(B) All guaranteed lenders will be required to monitor compliance of these requirements as part of their servicing responsibilities. During loan servicing contacts the borrower's compliance is to be reviewed and analyzed. If the borrower violates 7 CFR Part 1940. Subpart G, Exhibit M requirements, the loan will be in default.

(C) ☐ N/A The loan applicants farm properties do not contain any highly erodible land, wetland, or converted wetland.

☐ The lender will for all applicants having highly erodible land, wetland, or converted wetlands on their farm properties, include the following provisions in its loan instruments:

PROMISSORY NOTES

Borrower recognizes that the loan described in this note will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland to produce or to make possible the production of an agricultural commodity, subject to 7 CFR Part 1940, Subpart G, Exhibit M.

MORTGAGES OR DEEDS OF TRUST

"Borrower further agrees that the loan(s) secured by this instrument will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland to produce or to make possible the production of an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M."

SECURITY AGREEMENT

"Default shall also exist if any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland to produce or to make possible the production of an agricultural commodity, as further explained in 7 CFR Part 1940. Subpart G, Exhibit M."

ADDITIONAL CONDITIONS AND REQUIREMENTS

(1) Purpose for which guaranteed loan funds will be used:

(2) Security required for the guaranteed loan:

(3) Type and frequency of financial reports required by FmHA but not required by the Lender:

(4) Other requirements: (Insert any additional conditions or requirements in this space or on an attachment referred to in this space, otherwise insert "NONE".)

This conditional commitment becomes null and void unless the conditions are accepted by the Lender and Loan Applicant and will expire on _____ unless the time is extended in writing by FmHA, or upon the Lender's earlier notification to FmHA that it does not desire to obtain an FmHA guarantee. Any negotiations concerning these conditions must be completed by that time. Once this instrument is executed and returned to FmHA, no major change of conditions or approved loan purpose as listed on the Form FmHA 1910–1, "Farmer Programs Application" will be considered.

UNITED STATES OF AMERICA
FARMERS HOME ADMINISTRATION

By: _____

FmHA: _____

_____

(Date)

ACCEPTANCE OR REJECTION OF CONDITIONS

To: Farmers Home Administration (FmHA)

The condition(s) of Form FmHA 1980–15 outlined on previous pages:

1. ☐ are *acceptable* and the undersigned Lender intends to proceed with the loan transaction and to request issuance of Form FmHA 449–34, "Loan Note Guarantee," or Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)," as applicable, at the appropriate time.

2. ☐ are *acceptable,* but not for other reasons as the undersigned Lender does not desire a Form FmHA 449–34, "Loan Note Guarantee," or Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)," as applicable. We withdraw our guaranteed loan application.

3. ☐ are *not acceptable,* and for that reason the undersigned Lender does not desire a Form FmHA 449–34, "Loan Note Guarantee," or Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)," as applicable. If you desire FmHA to withdraw your guaranteed loan application, check the following box ☐ WITHDRAW APPLICATION. If you do not withdraw the guaranteed loan application, a formal rejection letter notifying you or your appeal rights will be forthcoming.

4 ☐ are *not acceptable* but would be acceptable if the following changes were made:

Lender hereby certifies that it will comply with the requirements and regulations of 7 CFR Part 1980, Subparts A and B and Form FmHA 1980–38 "Agreement For Participation In Farmer Program Guaranteed Loan Programs of the United States Government."

If block number "1" above is checked:

(a) It is understood that the following information may now be released upon request: Name and address of applicant, name and address of lender, amount of loan, and general purpose of loan.

(b) It is anticipated that Form FmHA 449–34, "Loan Note Guarantee" or Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)," as applicable, will be requested in approximately _____days.

NOTE TO LENDER: Complete and execute the Acceptance or Rejection of Conditions as indicated above on the copy of this form and return it to FmHA.

_____

(Name of Lender)

By: _____

(Signature of Lender)

_____

(Date)

[1] Insert the period prescribed in the applicable FmHA regulations.
[2] Insert expiration date. (Allow sufficient time for processing and issuance of the forms.)
[3] Return completed and signed copy of this form to FmHA office from which it was received.

17. Appendix G to subpart A of part 1980 is revised to read as follows:

U5DA–FmHA
FORM FmHA 1980–25
(Rev. 6–93)

APPENDIX G—FARMER PROGRAMS APPLICATION

TO REQUEST INITIAL and/or SUBSEQUENT GUARANTEED LOAN/LINE OF CREDIT:

Complete Parts 1, 2, and 3 of the application
Review Part 4, and sign and date where indicated
Review Part 5
Complete all applicable areas of Part 6
To Request Interest Assistance, provide the information requested in Part 7
Provide the information required in Parts 9 and 10
Complete Parts 11 and 12
Review Parts 13
Complete and sign Part 14
*Attach a Lender's Loan Narrative including a brief history of the operation and support for the guarantee request.

TO REQUEST SUBSEQUENT GUARANTEED LOAN/LINE OF CREDIT IN THE SAME OPERATING CYCLE:

When a borrower received a guaranteed loan and needs additional funds, complete the following Parts:

Blocks 1, 2, 3, and 4 of part 1
Review Part 4, and sign and date where indicated
Complete all applicable areas of Part 6
To Request Interest Assistance, provide the information requested in Part 7
Complete Part 11 and 12
Review Part 13
Complete and Sign Part 14

TO REQUEST INTEREST ASSISTANCE ON EXISTING GUARANTEED LOAN(S):

Complete Blocks 1, 2, 3, and 4 of Part 1
Review Part 4, and sign and date where indicated
Provide the information requested in Part 7
Complete Part 8

Provide the information required in Part 10
Complete Part 11
Review Part 13
Complete and sign Part 14

Public reporting burden for this collection of information is estimated to average 2 hours per response for each applicant and 4 hours per response for each lender including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0079), Washington, D.C. 20503, Please DO NOT RETURN this form to either of these addresses. Forward to FmHA only.

BILLING CODE 3410–07–M

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USDA-FmHA
FORM FmHA 1980-25
(Rev. 6-93)

FORM APPROVED
OMB NO. 0575-0079

39b

FARMER PROGRAMS APPLICATION

PART I

TYPE OF ASSISTANCE BEING REQUESTED

1 GUARANTEE

☐ GUARANTEED LOAN

☐ INITIAL ☐ SUBSEQUENT

☐ SUBSEQUENT LOAN WITHIN SAME OPERATING YEAR

$_____ (ORIGINAL LOAN AMOUNT) _____ (LOAN CLOSING DATE)

☐ INTEREST ASSISTANCE ON EXISTING LOAN

(RESERVED FOR FUTURE USE)

2 TYPE OF LOAN APPLICATION ☐ Individual ☐ Partnership ☐ Corporation ☐ Cooperative ☐ Joint Operation

3. NAME OF LOAN APPLICANT

Show official name without abbreviations unless the abbreviation is a part of the official name. For individuals, partnerships, or joint operations show name(s) followed by d/b/a and trade name used, if any.

Have you conducted business under another name during the last 5 years? If so, indicate names.

4. Social Security/Tax ID No.
Appl. _____
Spouse _____

County

Telephone Number

Mailing Address

City, State, and Zip Code

Have you, as an individual, or any member of an entity loan applicant obtained a Direct or Guaranteed loan from FmHA? ☐ Yes ☐ No ☐ N/A

a. If yes, was the loan paid in full? ☐ Yes ☐ No ☐ N/A

b. Was the loan debt settled or were you ever released from personal liability as part of a debt settlement action? ☐ Yes ☐ No ☐ N/A

c. If a guaranteed loan, did the government pay the lender a loss claim? ☐ Yes ☐ No ☐ N/A

d. Are you, as an individual or any member of an entity application, delinquent on any federal debt? ☐ Yes ☐ No ☐ N/A
(Examples of debt include delinquent taxes, ASCS loans, education loans, etc.; If "Yes", explain on a separate sheet)

RECEIVERSHIP - BANKRUPTCY — Has the loan applicant or any member of the proposed entity ever been in receivership, been discharged in bankruptcy, or filed a petition for reorganization in bankruptcy? ☐ Yes ☐ No If "Yes" give names, dates and details and explain on a separate sheet.

ARE YOU, THE LOAN APPLICANT, FARMING OR RANCHING NOW? ☐ Yes ☐ No

IF NOT, WHEN DID YOU, THE LOAN APPLICANT OPERATE A FARM? _____ 19. ___

NUMBER OF YEARS EXPERIENCE OPERATING A FARM _____

(FOR INDIVIDUAL LOAN APPLICANT ONLY)

Dates of Birth of Persons in Household	Applicant	Spouse	Others

MARITAL STATUS..... ☐ MARRIED ☐ SEPARATED ☐ UNMARRIED (including single, divorced, and widowed)

Are you a citizen? ☐ Yes ☐ No

Are you a veteran? ☐ Yes ☐ No

IF "YES", INDICATE DATE OF SERVICE FROM _____ TO _____ BRANCH _____

(FOR COOPERATIVE, CORPORATION, PARTNERSHIP, OR JOINT OPERATION LOAN APPLICANTS ONLY)

The following information must be provided for all members, stockholders, partners and joint operators and submitted with this application

1) Name, address, social security number, principal occupation, and a current financial statement not more than 90 days old
2) Is each person a U.S. Citizen?
3) Percentage of ownership, control of entity, or number of shares
4) Must be assured that members, partners, etc. can meet personal obligations. Obtain personal cash flows, if necessary.
5) Provide evidence of existence.
   a) Copy of any charter or partnership/joint operation agreement
   b) Any articles of incorporation and by laws
   c) Any certificate of evidence of current registration (good standing)
   d) Copy of resolution adopted by members, partners, etc. to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

NOTE: Personal guarantees from all stockholders, all owners having an interest in the corporation, all members of a cooperative, all partners of partnerships, and all members of joint operations generally will be required.

PART 2

MARK

CURRENT FA
Cash Saving
Other Invest.
Accounts and
Crops and Fe
Livestock to b
Growing Crops
Supplies & Pre
Leases
Other
INTERMEDIAT
Accounts & No
Breeding Lives
Machinery, Eq
Cash Value, Li
CCC Grain Re
Coop Stock
Other
LONG TERM F
Tota Ac
Coop Stock
Equity in Partne
Other
TOTAL FAR

BILLING CODE 3

PART 2 39c

COMPLETE THE FINANCIAL STATEMENT BELOW

OR

MARK THIS BOX ☐ AND ATTACH A SIGNED LOAN APPLICANTS FINANCIAL STATEMENT DATED _____

FINANCIAL STATEMENT AS OF DATE OF APPLICATION

(Show property owned and debts owed by applicant)

LIST ALL PROPERTY OWNED					LIST ALL DEBTS OWED		
CURRENT FARM ASSETS				$VALUE	CURRENT FARM LIABILITIES		$ AMOUNT
Cash Savings ($) Checking ($)					Accounts and Notes Payable (Creditor & Due Date)	First Due	
Other Invest. (Time Cert $) (Other $)							
Accounts and Notes Receivable							
Crops and Feed	Units		Value Per Unit				
Livestock to be sold	Units	Units Weight	Value Per Unit				
					CCC Loan (Security) (Due Date)		
					Current Portion of Principal Due on		
					Intermediate Liabilities		
					Long Term Liabilities		
Growing Crops	Acres		Cost Acres		Accrued Interest on		
					Accounts and Notes Payable		
					Intermediate Liabilities		
					Long Term Liabilities		
Supplies & Prepaid Expenses					Accrued Taxes		
Leases					Income Tax & Social Security		
Other					Other (judgements, liens, etc.)		
					Accrued Rent/Lease Payments		
TOTAL CURRENT FARM ASSETS ▶					TOTAL CURRENT FARM LIABILITY ▶		
INTERMEDIATE FARM ASSETS					INTERMEDIATE FARM LIABILITIES (Portion due beyond 12 months)		
Accounts & Notes Receivable beyond 12 months					Creditor	Due Date / Int Rate / Amount Delquent	
Breeding Livestock	Units		Value Per Unit				
Machinery, Equipment, Vehicles							
Cash Value, Life Ins. (Face Amt $)					CCC Grain Reserve		
CCC Grain Reserve (Qty.) (Value/Unit)					Facilities Pmt $		
Coop Stock					Loan Secured by Life Insurance		
Other					Other		
TOTAL INTERMEDIATE FARM ASSETS ▶					TOTAL INTERMEDIATE FARM LIABILITIES ▶		
LONG TERM FARM ASSETS (Farm Real Estate)					LONG TERM FARM LIABILITIES (Portion due beyond 12 months)		
Tota Acres / Dates Purchased / Cost					Creditor	Due Date / Int Rate / Amount Delquent	
Coop Stock							
Equity in Partnerships/Corporations/Joint Operations/Cooperatives							
Other					Other		
TOTAL LONG TERM FARM ASSETS ▶					TOTAL LONG TERM FARM LIABILITIES ▶		
TOTAL FARM ASSETS ▶					**TOTAL FARM LIABILITIES ▶**		

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FINANCIAL STATEMENT (continued)						
NON FARM ASSETS	$ VALUE	NON FARM LIABILITIES				$ AMOUNT
Real Estate		Nonfarm accounts payable				
Car, Recreational Vehicles, etc.						
Household goods						
Cash value of Life Insurance						
Stocks, bonds, and other						
Nonfarm Business		Nonfarm notes payable				
		Name of Creditor	Due Date	Interest Rate	Annual Instal	Principal Balance
		TOTAL NONFARM LIABILITIES ▶				
		TOTAL LIABILITIES ▶				
TOTAL NONFARM ASSETS ▶		NET WORTH ▶				
TOTAL ASSETS ▶		TOTAL LIABILITIES AND NET WORTH ▶				

PART 3

If you OWN or plan to acquire any land complete the following: (Use a separate sheet, if necessary)

GENERAL DESCRIPTION OR ASCS FARM NO. (5) (Include Counties)		OWNER'S NAME	TOTAL ACRES	CROP ACRES

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If you RENT or plan to rent complete the follow: (Use a separate sheet, if necessary)

GENERAL DESCRIPTION OR ASCS NO. (5) (Include Counties)	LANDLORD NAME	TOTAL ACRES	CROP ACRES	LEASE TERMS	WRITTEN LEASE Yes or No

PART 4

LOAN APPLICANT

(1) FOOD SECURITY ACT OF 1985 (P.L. 99–198) CERTIFICATION

The loan applicant certifies that he/she, as an individual, or any member, stockholder, partner or joint operator entity applicant, he/she has not been convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance since December 23, 1985 in accordance with the Food Security Act of 1985 (Public Law 99–198).

(2) STATEMENT REQUIRED BY THE PRIVACY ACT

The Farmers Home Administration (FmHA) is authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et. seq.); and Title V of the Housing Act of 1949, as amended (42 U.S.C. 1471 et. seq.), or other Acts administered by FmHA to solicit the information requested on FmHA applications forms.

Disclosure of information requested is voluntary. However, failure to disclose certain items of information requested including your Social Security Account or Federal Identification Number may result in a delay in the processing of an application or its rejection.

The principal purposes for collecting the requested information are to determine eligibility for FmHA credit or other financial assistance, the need for interest credit or other servicing actions, for the serving of your loan, and for statistical analysis. Information provided may be used outside of the Department of Agriculture for the following purposes:

1. Release to interested parties who submit requests under the Freedom of Information Act.
2. To provide the basis for borrower success stories in Department of Agriculture news releases.
3. Referral to the appropriate law enforcement agency as set forth in 40 FR 38924 (1975).
4. Referral to employers, businesses, landlords, creditors or others to determine repayment ability and eligibility for FmHA programs.
5. Referral to a contractor providing services to FmHA in connection with your loan.
6. Referral to a credit reporting agency.
7. Referral to a person or organization when FmHA decides such referral is appropriate to assist in the collection or servicing of the loans.
8. Referral to a Federal Records Center for storage.

Every effort will be made to protect the privacy of applicants and borrowers.

FEDERAL EQUAL CREDIT OPPORTUNITY ACT STATEMENT

The Federal Equal Credit Opportunity Act Prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity

to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency which administers compliance with this law concerning Farmers Home Administration is the Federal Trade Commission, Pennsylvania Avenue at Sixth Street N.W., Washington, D.C. 20580.

WARNING

All information supplied to Farmers Home Administration (FmHA) by you or your agents in connection with your loan application may be released to interested third parties, including competitors, without your knowledge or consent under the provisions of the Freedom of Information Act (5 U.S.C. 522).

Much information not clearly marked "Confidential" may routinely be released if a request is received for same. Further, if we receive a request for information which you have marked "Confidential" the Federal Government will have to release the information unless you can demonstrate to our satisfaction that release of the information would be likely to produce substantial competitive harm to your business or would constitute a clearly unwarranted invasion of personal privacy. Also, forms, consultant reports, etc., cannot be considered confidential in their entirety if confidential material contained therein can reasonably be segregated from other information.

Information submitted may be made available to the public during the time it is held in Government files regardless of the action taken by FmHA on your application.

(3) CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, **Federal Register** (pages 4722–4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment

The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, had the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

The prospective lower tier participant further agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

Nothing contained in the foregoing shall be constructed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under paragraph 5 of this section, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

(A) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(B) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

TEST FOR CREDIT CERTIFICATION

(4) I am unable to provide the needed items on my own account, and I am unable to obtain the necessary credit for such items from other sources upon terms and conditions which I can reasonably fulfill, without a Loan Guarantee. I certify that the statements made by me in this application are true, complete and correct to the best of my knowledge and belief and are made in good faith to obtain a loan.

(5) The undersigned Loan applicant, upon signing this loan/line of credit application, certifies that I have received the previous notifications and will accept and comply with the conditions stated thereon:

WARNING

Section 1001 of Title 18, United States Code Provides: "Whoever, in any matter within the jurisdiction of any Department or Agency of the United States knowingly and willfully falsifies, conceals or covers up . . . a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years or both"

Date _____

(SIGNATURE OF LOAN APPLICANT)

(ADDITIONAL SIGNATURES REQUIRED, IF ANY)

ATTEST:_____(SEAL)

PART 5

(1) NOTIFICATION TO APPLICANT ON USE OF FINANCIAL INFORMATION FROM FINANCIAL INSTITUTION

Pursuant to Title XI, (1113(b)) of Public Law 95–630, your application for a government loan or loan guaranty authorizes the Farmers Home Administration in connection with the assistance you seek, to obtain financial information about you contained in financial institutions. No further notice of subsequent access to this information shall be provided during the term of the loan or loan guaranty.

As a general, financial records obtained pursuant to this authority may be used only for the purpose for which they were originally obtained. However, they may be transferred to another agency or department if the transfer is to facilitate a lawful proceeding, investigation, examination or inspection directed at the financial institution in possession of the records (or another legal entity not a customer). The records may also be transferred and used (1) by counsel representing a government authority in a civil action arising from a government loan, loan guaranty, or loan insurance agreement and (2) by the Government to process, service or foreclosure a loan or to collect on an indebtedness to the Government resulting from a customer's default.

FmHA reserves the right to give notice of a potential civil, criminal, or regulatory violation indicated by the financial records to any other agency or department of the Government with jurisdiction over that violation, such agency or department may then seek access to the records in any lawful manner.

(2) the United States Department of Agriculture, acting through the Farmers Home Administration, has complied with the applicable provisions of Title XI, Public Law 95–630, in seeking additional information regarding the above loan applicant pursuant to 7 CFR Part 1980, Subpart A, 1980.46(a)(2).

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PART 6

REQUEST NO. _____ of _____ FOR LOAN NOTE GUARANTEE and/or CONTRACT OF GUARANTEE FOR A LINE OF CREDIT:

PRINCIPAL AMOUNT OF LOAN/LINE OF CREDIT CEILING $ _____	LOAN TYPE ☐ FO ☐ OL ☐ SW ☐ OL/OC

INTEREST RATE ☐ FIXED _____% ☐ VARIABLE	PERCENT GUARANTEE REQUESTED _____%	REPAYMENT PERIOD _____YEARS	REQUEST INTEREST ASSISTANCE IF YES, NUMBER OF YEARS ☐ YES ☐ NO _____

PROPOSED REPAYMENT TERMS:

PURPOSES FOR WHICH GUARANTEED LOAN FUNDS WILL BE USED:	LOAN PURPOSE AMOUNT
	$
	$
	$

SECURITY PROPOSED (INCLUDE THAT ON HAND AND THAT TO BE ACQUIRED)

ITEM DESCRIPTION	APPRAISED VALUE	LIEN POSITION	AMT PRIOR LIEN	AMT OF COLLATERAL VALUE
	$		$	$
	$		$	$
	$		$	$
TOTALS	$		$	$

REQUEST NO. _____ FOR LOAN NOTE GUARANTEE and or CONTRACT OF GUARANTEE FOR A LINE OF CREDIT:

PRINCIPAL AMOUNT OF LOAN/LINE OF CREDIT CEILING $ _____	LOAN TYPE ☐ FO ☐ OL ☐ SW ☐ OL/OC

INTEREST RATE ☐ FIXED _____% ☐ VARIABLE	PERCENT GUARANTEE REQUESTED _____%	REPAYMENT PERIOD _____YEARS	REQUEST INTEREST ASSISTANCE IF YES, NUMBER OF YEARS ☐ YES ☐ NO _____

PROPOSED REPAYMENT TERMS:

PURPOSES FOR WHICH GUARANTEED LOAN FUNDS WILL BE USED:	LOAN PURPOSE AMOUNT
	$
	$
	$

SECURITY PROPOSED (INCLUDE THAT ON HAND AND THAT TO BE ACQUIRED)

ITEM DESCRIPTION	APPRAISED VALUE	LIEN POSITION	AMT PRIOR LIEN	AMT OF COLLATERAL VALUE
	$		$	$
	$		$	$
	$		$	$
TOTALS	$		$	$

NOTE: IF ADDITIONAL GUARANTEES NEED TO BE REQUESTED, MAKE A COPY OF THIS PAGE AND ATTACH TO THIS APPLICATION GUARANTEE REQUESTS NEED TO BE NUMBERED CONSECUTIVELY

PART 7

REQUIREME

a) Attac rate b

b) For lin of Exh

c) Attac

PART 8

REQUEST (S

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PART 9

ADDITIONAL

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1) Credit Rep
2) A copy of t 1980. Subp
3) A copy of th
4) Verification other docum
5) Verification statement fr
6) A copy of a
7) A copy of th major repair
8) Production a) A b) A c) Fi
9) Form AD 10

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PART 7

REQUIREMENTS WHEN INTEREST ASSISTANCE IS REQUESTED

a) Attach a copy of the proposed debt repayment schedule for each loan which shows principal and interest payments at the proposed interest rate before interest assistance

b) For lines of credit and operating loans for annual operating purposes, attach a copy of a monthly cash flow budget (as defined in paragraph III B of Exhibit D of 7 CFR Part 1980, Subpart B.)

c) Attach a completed copy of attachment 2 to Exhibit D of 7 CFR Part 1980, Subpart B "Interest Assistance Worksheet Needs Test".

PART 8

REQUEST (S) for INTEREST ASSISTANCE on the following existing loan (s) :

ORIGINAL LOAN AMT/LINE OF CREDIT CEILING	$ _____	$ _____	$ _____
ORIGINAL LOAN CLOSING DATE			
FmHA LOAN NUMBER			
MATURITY DATE OF ORIGINAL LOAN			
HAS THE LOAN BEEN FULLY ADVANCED?	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO
NUMBER OF YEARS INTEREST ASSISTANCE REQUESTED FOR?	_____ year (s)	_____ year (s)	_____ year (s)
PROPOSED INTEREST RATE (BEFORE INTEREST ASSISTANCE)	☐ fixed ____ % ☐ variable	☐ fixed ____ % ☐ variable	☐ fixed ____ % ☐ variable
AS OF DATE _____ CURRENT PRINCIPAL BALANCE CURRENT UNPAID INTEREST	$ _____ $ _____	$ _____ $ _____	$ _____ $ _____
HAS THIS LOAN BEEN PREVIOUSLY COVERED BY AN INTEREST RATE BUYDOWN OR INTEREST ASSISTANCE AGREEMENT?	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO

PART 9

ADDITIONAL REQUIREMENTS

NON-CERTIFIED LENDERS - The following information and/or documents listed below are submitted for FmHA's consideration and attached with this application.

APPROVED AND CERTIFIED LENDERS AND ALL LENDERS SUBMITTING APPLICATIONS OF $50,000 OR LESS - The following information and/or documents listed below are not required to be submitted with this application. The exception listed in item 9, however, only applies to certified lenders. The file may be examined by FmHA at anytime during the regular business hours, before or after FmHA responds to this request for guarantee.

1) Credit Report
2) A copy of the proposed loan/line of credit "Loan Agreement". This loan agreement must contain as a minimum all of the required items in 7 CFR Part 1980, Subpart B, 1980.113.
3) A copy of the appraisal report for any chattel and/or real estate security.
4) Verification of all debts greater than $1000. Lender may submit: a) Form 440-32, "Statement of Debts and Collateral", b) Lender's own form, or c) any other document verification.
5) Verification of non-farm income. Lender may submit: a) Form 1910-5 "Verification of Employment", b) Lender's own form, c) W-2, d) Earnings statement from employer, or e) any other documented verification.
6) A copy of any lease, contract, or agreement entered into by the loan applicant which may be pertinent to the consideration of the application.
7) A copy of the development plan, if applicable, which includes any drawings and specifications if the guaranteed loan is being requested for construction, major repairs, or major land development.
8) Production and Financial history records for the last five (5) years. This is to include:
   a) Actual production/yields
   b) Actual income and expenses data (farm and non-farm)
   c) Financial Statements a/k/a Balance Sheets
9) Form AD 1026 from ASCS.

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Part 10—Requirements for Cash Flow Projections

The Loan Applicant's cash flow projections and/or typical plan of operation have been prepared in accordance with 7 CFR part 1980, subpart B, 1980.113, and are attached to this document. Either Form FmHA 431–2 "Farm & Home Plan" or cash flow forms ordinarily used by the lender, which contain the same information as the Farm & Home Plan, are acceptable. If loan terms exceeds one year, cash carryover cannot be used in calculating debt service margin in a typical year plan.

Part 11—Financial Summary

Complete the financial summary tables (A and B) based on the Loan Applicant's cash flow projections.

TABLE A.—BALANCE AVAILABLE FOR DEBT REPAYMENT TABLE

A. Gross farm income	$_____
B. Gross non-farm income	$_____
C. Total farm operating expenses (excluding interest)	$_____
D. Family living expenses	$_____
E. Income and social security taxes	$_____
F. Net cash income (A+B−C−D−E)	$_____
G. Cash carryover on hand beginning of plan period	$_____
H. Loans/line of credit ceiling advanced during period of plan	$_____
I. Total available (F+G+H)	$_____
J. Capital expenditures	$_____
K. Balance available for debt repayment (I−J) (line K)	$_____

Table B.—Debt Repayment Table

To whom owed	Amount due without interest assistance (principal & interest)	Amount due with interest assistance (principal & interest)	Date due
Total(s)	(L)		

Percent debt reserve margin (line item K divided by block L)_____$_____%.
Minimum 110% positive cash flow requirement as per 7 CFR part 1980, subpart B, 1980.106(b)(17).
If less than 110% consider the interest assistance program.

Part 12—Environmental Information (CLP Lenders Only)

The undersigned lender certifies that proper investigations have been conducted to support the following conclusions:

1. Floodplains. Does the Property contain existing structures (i.e. farm dwellings and/or service buildings) or does the proposal involve development (i.e. construction channeling, or other alterations) located within the 100-year floodplain, as defined by FEMA floodplain maps, SCS soil surveys, or other documentation?

☐ YES ☐ NO

2. State Water Quality Standards. Did the investigation indicate the operation does not conform to State Water Quality standards?

☐ YES ☐ NO

3. Historical/Archaeological Sites. Does the property contain structures over 50 years old, structures with significant architectural features, or does the property have any historical significance which may make it eligible for the National Register of Historic Places.

☐ YES ☐ NO

4. Wetlands and Highly Erodible Land.

a. Will the proposed plan of operation contribute to the erosion of highly erodible land or the conversion of wetlands?

☐ YES ☐ NO

b. Has ASCS confirmed that the applicant currently holds an eligible status with respect to the HELC and WC provisions of the Food Security Act?

☐ YES ☐ NO

c. Will loan funds be used to drain, dredge, fill, or otherwise manipulate a wetland. Also, will loan funds be used for an activity which impairs or reduces the flow, circulation, or reach of water?

☐ YES ☐ NO

5. Hazardous Substances. For this proposal, has a "due diligence" investigation with respect to underground storage tanks and contamination from hazardous substances indicated any contamination?

☐ YES ☐ NO

If "yes" please describe on an attachment or contact the County Office.

Part 13—Certified and Non-Certified Lenders

The undersigned Lender certifies the following and requests issuance of a guarantee in the subject case.

1. The loan will be properly closed and/or line of credit agreement will be properly executed and the required security obtained. The construction, relocation, repairs, or other development will be completed in accordance with approved drawings and specifications.

2. The borrower has marketable title to security property now owned (and will obtain such title to any additional property to be acquired with loan funds), subject only to the instruments securing the loan to be guaranteed and any other exceptions set forth below:

3. Security property now owned and any acquired is considered adequate security for the loan to be guaranteed. If inadequate, state why you believe the borrower's operating plans will permit the borrower to pay the guaranteed loan or lines of credit in full within the period specified. The security instruments will be properly filed or recorded prior to, or simultaneously with, the issuance of the guarantee; except that if security property is yet to be acquired in a jurisdiction in which an after acquired property clause is not valid, a security instrument covering such property will be obtained as soon as appropriate and legally permissible.

4. Loan funds will be used for FmHA-approved purposes.

5. Proper hazard and any other required insurance will be obtained or is now in effect, as applicable.

6. The lender will provide a completed Form FmHA 1980–19, "Guaranteed Loan Closing Report," and a check for the amount of the guarantee fee prior to issuance of the guarantee, if applicable.

7. Restrictions and disclosure of lobbying activities. If any funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to guarantee a loan, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

8. Before a guarantee is issued by FmHA, The lender will certify to conditions in Form 1980–22, "Lender Certification."

9. The requirements of following sections of 7 CFR part 1980, subpart A have or will be met as applicable.

A. 7 CFR 1980.40 *Environmental requirements*

B. 7 CFR 1980.41 *Equal Opportunity and nondiscrimination requirements*

C. 7 CFR 1980.42 *Flood or mudslide hazard area precautions*

D. 7 CFR 1980.43 *Clean Air Act and Water Pollution Control Act requirements*

E. 7 CFR 1980.44 *Natural Historic Preservation Act of 1966*

F. 7 CFR 1980.45 *Other Federal, State, and local requirements*

The loan applicant and/or lender must be in compliance with this section effective with the date of issuance of the Loan Note Guarantee or Contract of Guarantee.

10. The undersigned: (a) considers the proposed loan or line of credit to be sound and within the borrower's repayment ability, (b) believes that all applicable requirements in 7 CFR part 1980, subparts A and B have been or will be met and (c) will not make the loan or advances under the line of credit without an FmHA guarantee.

11. In connection with Interest Assistance Requests the Lender certifies that:

A. The amount of interest resulting from the percentage of interest which FmHA agrees to pay will be permanently canceled as it becomes due and that no attempt will be made to collect that portion of the debt from the borrower.

B. The lender's reduction in interest charged to the borrower will result in a reduced payment schedule for the borrower and a projected positive cash flow (as defined in paragraph III D of this Exhibit D to 7 CFR part 1980, subpart B) throughout the term of the Interest Assistance Agreement.

12. In connection with subsequent loan requests in the same operating cycle when a borrower has a recently closed guaranteed loan and needs additional funds, the Lender certifies that the revised cash flow projection has a positive cash flow, the loan/line of credit will be adequately secured, and the loan applicant is in compliance with the loan agreements and all applicable certifications made when the original guaranteed loan was made, are still valid.

13. If loan funds are to be used at or after the time of loan closing for construction, substantial repairs, or major land development, certification(s) on Form FmHA 449–11, "Certification of Acquisition or Construction," will be furnished to FmHA as soon as possible on any such construction, repair or land development.

14. Certification regarding debarment, suspension, and other responsibility matters—primary covered transactions.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR § 3017.510, Participants' responsibilities. The regulations were published as part IV of the January 30, 1989, Federal Register (pages 4722–4733). Copies of the regulations may be obtained by contacting the Department of Agricultural agency offering the proposed covered transaction.

The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out on this form. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," and "voluntarily excluded," as used in this clause, had the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

The prospective primary participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

The prospective primary participant further agrees by submitting this form that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under paragraph 5 of this section (14), if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

A. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or Local) transaction or contract under a public transaction; violation of Federal, or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property;

(c) are not presently indicated for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offenses enumerated in paragraph (A)(b) of this certification; and

(d) have not within a three-year period receding this application/proposal had one or more public transactions (Federal, State, or Local) terminated for cause or default.

B. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

15. Appraisals. "I certify that this institution will be in compliance with the real estate appraisal requirements found in 7 CFR § 1980.113.

Part 14—Lenders Signature

This Application is being filed as:

☐ CERTIFIED LENDER
☐ NON-CERTIFIED LENDER
☐ APPROVED LENDER

The application is governed by the Lender Agreement dated _____

Name of Lender _____

Lender IRS, I.D. Tax No.: _____

Lender Address _____

_____

Telephone Number __

Contact Person __

(Name/Title)

Warning

Section 1001 of Title 18, United States Code Provides: "Whoever, in any matter within the jurisdiction of any Department or Agency of the United States knowingly and willfully falsifies, conceals or covers up . . . a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years or both"

(Signature of Lender)

Date: __

By: __

Title: __

Subpart B—Farmer Program Loans

18. Section 1980.101 is amended by revising paragraph (a) to read as follows:

§ 1980.101 Introduction.

(a) *Policy.* This subpart, supplemented by subpart A of this part, contains regulations for making the following Farmer Programs loans guaranteed by the Farmers Home Administration (FmHA): Operating (OL) (both loans and lines of credit), Farm Ownership (FO), and Soil and Water (SW) loans. It also contains regulations concerning the servicing of these loans as well as the servicing of Emergency (EM) and Recreation (RL) loans, which are no longer guaranteed by FmHA. It is the policy of FmHA to guarantee loans made to qualified applicants without regard to race, color, religion, sex, national origin, martial status, age or physical/mental handicap, providing the applicant can execute a legal contract. These regulations apply to lenders, holders, borrowers, FmHA personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee. Exhibit A provides policies and procedures for the Approved Lender Program. § 1980.190 of this subpart contains the policies and procedures for the Certified Lender Program (CLP) for Guaranteed OL loans. Any modifications contained in Exhibit A of this subpart or § 1980.190 of this subpart will prevail over other provisions of this subpart. Exhibit C provides an Application Processing guide for lenders packaging applications under this subpart. Exhibit D provides policies and procedures for an Interest Assistance Program applicable for Guaranteed OL loans including lines of credit, Guaranteed FO loans and Guaranteed SW loans. Exhibit E provides policies and procedures for an Interest Rate Reduction Program for a demonstration project to purchase Farm Credit System family-size inventory farms. Exhibit F provides the procedures for the recapturing of shared appreciation when a lender requests a writedown on the debt. Exhibit G contains the policies and procedures modifying the Guaranteed OL loan regulations (Loan Note Guarantees Only), as described in § 1980.175 of this subpart, which implements the provisions of Public Law 101–82, the Disaster Assistance Act of 1989.

* * * * *

19. Section 1980.106 is amended by revising the words "Table K of the Farm and Home Plan" in the first sentence of paragraph (b)(17)(iii) to read "Table K of Form FmHA 431–2, "Farm and Home Plan," and by revising paragraph (b)(1) and the introductory text of paragraph (b)(17) to read as follows:

§ 1980.106 Abbreviations and definitions.

* * * * *

(b) * * *

(1) *Applicant.* For guaranteed Farmer Programs loans, the lender will be considered the applicant. The party applying to the lender for a loan will be considered the loan applicant.

* * * * *

(17) *Positive cash flow.* A positive cash flow must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash flows plus the planned reserve for the planned period. Production records and prices used in the preparation of a positive cash flow will be in accordance with § 1980.113 of this subpart. A positive cash flow must show that a borrower will be at least able to:

* * * * *

20. Section 1980.113 is revised to read as follows:

§ 1980.113 Receiving and processing applications.

The County Supervisor will provide assistance in connection with loan/line of credit application processes. The degree of this assistance will be determined by the lender's experience with FmHA guaranteed processing, the lender's farm lending experience, and the complexity of the proposal. The lender should contact the local FmHA office serving the area where the farming operation is conducted for guidance and assistance in preparing the application and for obtaining the guarantee. The County Supervisor will provide copies of all applicable FmHA forms and regulations.

(a) *Complete application.* For lenders who are submitting applications under the CLP, see § 1980.190 of this subpart. ALP and CLP lenders and all lenders submitting applications for guarantees of $50,000 or less will only be required to submit Form FmHA 1980–25, "Farmer Programs Application," with the applicable attachments and sections completed. When this information is submitted, these lenders are certifying that all information required by this section is maintained in their loan file. A complete application from non-CLP lenders will consist of:

(1) *Form FmHA 1980–25.* The lender shall complete all applicable items and

provide supporting documentation where requested.

(2) *Verification of non-farm income, if any.* The lender may use Form FmHA 1910–5, "Request For Verification of Employment," or any other documentation.

(3) *Credit bureau report, where available, and other pertinent information concerning an applicant's credit history obtained by the lender.*

(4) *A copy of any lease, contract or agreement entered into by the applicant which may be pertinent to the consideration of the application, or when a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement will be included in the loan docket.*

(5) *Verification of all debts of $1,000 or more.* The lender may use Form FmHA 440–32, "Request for Statement of Debts and Collateral," or any other documentation.

(6) *Proposed loan agreement or line of credit agreements between the applicant and lender.* Loan Agreements or Line of Credit Agreements will include *at least the following:*

(i) Any improved management practices to be implemented.

(ii) Requirements for accounting and recordkeeping and periodic financial reporting.

(iii) A list of security for the loan/line of credit and plans for at least an annual accounting for security.

(iv) Limitations on purchase or sale of assets and prohibitions against assuming liabilities of others.

(v) Purposes for which loan funds or funds advanced under the line of credit will be used.

(vi) Interest rate and term(s) for the loan.

(vii) If the loan applicant is not a sole proprietorship, restrictions and limits on compensation of officers and owners, patronage refunds, dividend payments, or distribution of net income. Also, restrictions on consolidations and mergers or other circumstances if the applicant is a corporate entity.

(7) *Financial and production history to support the cash flow projections.* This history shall include 5 years of farm and non-farm income and expenses, 5 years of crop and livestock production history, and 5 years of balance sheets. If 5 years of records are not available, the lender must document the reason. The cash flow will be documented in sufficient detail to adequately reflect the overall condition of the operation. The projected income and expenses are to be based on the loan applicant/borrower's proven record of production and financial management.

(i) Lenders will use the following sources of price information to develop operation forecast projections:

(A) Futures market price less the recognized basis points for the area, documented by date, location, time and degree of use.

(B) Government loan rates, *i.e.*, Agricultural Stabilization and Conservation Service (ASCS) target prices.

(C) Published current market prices.

(D) The negotiated price in any forward contract.

(E) Prices developed by the State land grant university for the time of crop sale.

(F) For specialty crops, the average of three previous years' prices, only if the above data is not available.

(ii) Lenders will use the following guidelines for estimating yields when developing operating plans. These are to be used only as guidelines. Deviations from historical performance may be acceptable if specific to the changes in the operation, adequately justified, and acceptable to the FmHA approval official.

(A) For existing farmers, actual production/yields for the past 5 years will be utilized.

(B) For those farmers with less than a 5-year production/yield history, the actual production history will be utilized.

(C) For farmers whose actual history is insufficient to provide an accurate estimate, consider the use of ASCS records, Cooperative Extension Service (CES) data, State averages, County averages or any other reliable sources of information that are agreeable with the lender and the applicant.

(D) When an accurate projection cannot be made because the applicant's production history has been affected by a disaster(s) declared by the President or designated by the Secretary of Agriculture, the following applies:

(*1*) County average yields will be used for the disaster year(s). If the applicant's disaster year(s) are less than the County average yields, County average yields will be used for that year(s). If County average yields are not available, State average yields will be used.

(*2*) To calculate a historical average yield to be used in developing a projected plan of operation, the applicant may exclude the crop year with the lowest actual or County average yield, providing the applicant's yields were affected by disasters during at least 2 of the past 5 years immediately preceding the planned year.

(iii) When the loan applicant has or will have a farm plan developed in conjunction with a proposed or existing FmHA insured loan, there must be consistency in the data between the two plans.

(8) *Appraisals.* The need for an appraisal is determined by the type of security, and whether it is primary or additional security. Primary security is defined as the minimum amount of collateral needed to fully secure a proposed loan on a dollar for dollar basis. Additional security is defined as collateral in excess of that needed to fully secure the loan. A lender's statement of value on Form FmHA 1980–25 is sufficient for additional security.

(i) *Chattel Appraisals.* An appraisal of primary chattel security is required on initial and subsequent loans if the latest appraisal is no longer current. A current appraisal is defined as not more than 12 months old on the date of loan approval. An appraisal is not normally required for loans or lines of credit for annual production purposes that are secured by crops or livestock, except when a loan note/line of credit guarantee is requested late in the current production year and actual yields can be reasonably estimated.

(A) *Chattel appraisal techniques.* The appraised value of chattel property will be based first on public sales of the same, or similar, property in the market area. In the absence of public sales, reputable publications reflecting market values may be used.

(B) *Chattel appraisal reports.* Appraisal reports may be on Form FmHA 440–21, "Appraisal of Chattel Property," or on any other appraisal forms containing at least the same information.

(C) *Appraiser qualifications.* The appraiser must be able to demonstrate to the FmHA official's satisfaction that they posses sufficient experience and/or training to establish market (not retail) values.

(ii) *Real estate appraisals.* A real estate appraisal is required when real estate will be primary security. If the real estate has been appraised within one year of obligation of guarantee authority, FmHA officials may accept the existing appraisal if the appraisal was properly completed, and there have been no significant changes in the market or on the subject real estate.

(A) *Appraisal reports and appraiser qualifications.* Real estate appraisal reports must be completed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraisal may be completed in a narrative format, or by using any form that meets USPAP standards. The appraisal report must disclose the appraiser's basis for

adjustments to the comparable sales properties. Appraisals must be completed by qualified appraisers as described in paragraph (a)(8)(ii)(B) of this section.

(B) *Transactions requiring state certified general appraiser.* On loan transactions greater than $100,000, which includes principal plus accrued interest through the closing date, the appraisal must be completed by a state certified general appraiser. However, the lender has the option of using either a state certified general or state licensed appraiser on loan transactions of $100,000 or less. A loan transaction is defined as any loan approval or servicing action.

(9) *The lender's plan for servicing the loan/line of credit and any plan for providing management assistance to the borrower, including the steps necessary to see that the requirements of the loan agreement are met.*

(10) *Form AD–1026, "Highly Erodible Land and Wetland Conservation Certification," as specified in Exhibit M to Subpart G of Part 1940 of this chapter.*

(11) *Cooperative, corporation, partnership, or joint operation applicants.* If the applicant is a cooperative, corporation, partnership, or joint operation, the following additional information will be obtained and included in the loan docket:

(i) A complete list of members, stockholders, partners, or joint operators showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation, by each, or the percentage of interest held in the partnership or joint operation, by each.

(ii) A current personal financial statement from all members of a cooperative, joint operators of a joint operation, partners of a partnership, or stockholders of a corporation.

(iii) A current financial statement from the cooperative, corporation, partnership, or joint operation itself.

(iv) A copy of the cooperative's or corporation's charter, or any partnership or joint operation agreement, any articles of incorporation any bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors or members of stockholders authorizing specified officers of the cooperative, corporation, partnership, or joint operation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(b) *Subsequent Loans.* Lenders applying for a subsequent OL loan within the same operating cycle may complete an abbreviated Form FmHA 1980–25 if the conditions listed in paragraphs (b)(1) and (2) of this section can be met. See Form FmHA 1980–25 for the appropriate parts to be completed.

(1) There has been no material change in the borrower's financial position since the previous OL guarantee was issued.

(2) The scope of the borrower's operation has not changed and the proposed loan will not alter the scope of the operation, *e.g.*, no new enterprises will be added, and the size of the operation will not significantly increase.

21. Section 1980.114 is amended by revising the introductory text, by adding paragraph F. to the *Administrative* text, and by revising paragraph E. to the *Administrative* text, to read as follows:

§ 1980.114 FmHA evaluation of applications.

When the County Supervisor receives a complete application, the proper independent investigations, inspections, and appraisal reviews will be made to determine whether the applicant is eligible, whether the proposed loan/line of credit is for authorized purposes, whether there is reasonable assurance of a positive cash flow projection, and whether there is sufficient collateral and equity. The determinations will be recorded on Form FmHA 449–23, "Guaranteed Loan Evaluation (Farmer Programs)." This evaluation is for the benefit of FmHA, not the lender. The County Supervisor will notify the lender within 5 calendar days if an application submitted is incomplete. This requirement is contingent upon the availability of a County Supervisor during the prescribed timeframe, and employment ceilings affecting FmHA.

* * * * *

Administrative

* * * * *

E. Follow the requirements of subpart G of part 1940 of this chapter. If an environmental problem exists on the property, the County Supervisor may need to visit the farm to complete the review required by subpart G of part 1940 of this chapter. The County Supervisor's determination of whether an environmental problem exists will be based on any indication by the lender on Form FmHA 1980–25 that there is such a problem, and the County Supervisor's personal knowledge and investigation of environmental resources available in the County Office.

F. Document in the casefile the date on which the application is considered complete.

22. Section 1980.115 is revised to read as follows:

§ 1980.115 County Committee review.

The County Committee will review loan applications to determine whether the loan applicants meet FmHA eligibility requirements. Applications do not need to be complete before they are reviewed by the County Committee; however, all information relating to the eligibility must be received. The County Supervisor will promptly notify both the lender and loan applicant in writing of the County Committee's determination. (See *Administrative* paragraph B of this section.)

(a) *Favorable action.* If the County Committee finds the applicant eligible, the members will sign Form FmHA 440–2, "County Committee Certification or Recommendation." This form will be retained in the County Office file. When the loan applicant has been determined eligible for assistance and additional information becomes available before issuance of the conditional commitment that indicates the original determination may be in error, the loan applicant will be reconsidered by the County Committee taking the new information into account. The County Committee will then recertify whether or not the applicant continues to meet eligibility requirements by the use of Form FmHA 440–2. Proper notification as to action taken will be sent to the lender.

(b) *Unfavorable action.* If the County Committee finds the applicant ineligible, the members will complete Form FmHA 440–2 and the County Supervisor will inform the lender and the loan applicant in writing of FmHA's decision of the reasons for disapproval and of their opportunity for an appeal as set out in subpart B of part 1900 of this chapter.

Administrative

A. After the application is complete and the County Committee certification is obtained, the County Supervisor will:

1. Prepare Form FmHA 1940–3, "Request for Obligation of Funds—Guaranteed Loans," in accordance with the Forms Manual Insert (FMI).

2. Prepare Form FmHA 1980–15, "Conditional Commitment (Farmer Programs)." In no case will Form FmHA 1980–15 be executed prior to the determination of guarantee authority for the loan/line of credit. Any special conditions of approval will be listed in the space provided on the form, including requirements for security, improved management practices, and the type and frequency of financial reports required by FmHA but not required by the lender. An attachment to the forms may be used if necessary.

3. Forward the loan docket to the appropriate approval official if the loan/line of credit is not within the County Supervisor's approval authority.

B. The approval official will:

1. Forward the loan docket to the appropriate approval official if the loan/line of credit exceeds the State Director's approval authority or when the State Director needs assistance in handling any complaints of noncompliance.

2. Approve or disapprove all guaranteed applications not later than 30 calendar days (14 calendar days for CLP Lenders) after receipt of completed applications, execute Form FmHA 1940–3, and distribute the copies in accordance with the FMI. In order to meet the prompt approval requirement when guarantee authority is temporarily exhausted and the loan will be approved, Form FmHA 1940–3 must be signed. When funds are exhausted, a Conditional Commitment for Guarantee will not be executed until such time as funds become available and have been obligated in connection with the guarantee request.

3. After loan funds have been obligated, the lender will be sent Form FmHA 1980–15. The following, and any other special conditions will be set forth on Form FmHA 1980–15. An attachment to the form may be used, if necessary.

a. Requirements for security and, when appropriate, a requirement for the lender to obtain an assignment on all USDA crop and livestock program payments.

b. Type and frequency of financial reports required by FmHA but not required by the lender.

c. Improved management practices relating to highly erodible land and conversion of wetlands found in Exhibit M of subpart G of part 1940 of this chapter.

4. return Form FmHA 1980–15 to the County Supervisor for execution and proper distribution.

23. Section 1980.116 is revised to read as follows:

§ 1980.116 Review of requirements

The lender, after reviewing approval conditions and security requirements as set forth in Form FmHA 1980–15, will complete and execute the "Acceptance or Rejection of Conditions" and return a copy to the County Supervisor. If the conditions cannot be met, the lender and applicant may propose alternatives to the County Supervisor. These alternatives will be considered and the lender will be advised of FmHA's decision to accept or reject the alternatives. If accepted, Form FmHA 1980–15 will be so revised. If rejected, the County Supervisor will notify the loan application and the lender in writing within 10 calendar days of FmHA's decision as set out in subpart A of part 1910 of this chapter, of all the specific reasons for the decision, and advise them of their opportunity for appeal as set out in subpart B of part 1900 of this chapter, and in accordance with § 1980.80 of subpart A of this part.

24. Section 1980.117 is amended by removing the introductory text; by adding paragraphs (a), (b), (c), and (d); and by revising Administrative paragraphs A and B to read as follows:

§ 1980.117 Conditions precedent to issuance of the Loan Note Guarantee or Contract of Guarantee.

(a) *Lender certification.* Prior to issuing Form FmHA 449–34 or Form FmHA 1980–27, the lender must certify to the conditions in § 1980.60 of subpart A of this part. This will be done by the execution of Form FmHA 1980–22, "Lender Certification."

(b) *Inspections.* The lender will notify FmHA of any scheduled field inspections during construction and after issuance of the Loan Note Guarantee or Contract of Guarantee. FmHA may attend such field inspections. Any inspections or review conducted by FmHA, including those with the lender, are for the benefit of FmHA only and not for other parties of interest. FmHA inspections do not relieve any parties of interest of their responsibilities to conduct necessary inspections, nor can these parties rely on FmHA's inspections in any manner.

(c) *Execution of form.* The lender has executed and delivered to FmHA Form FmHA 1980–38, "Agreement for Participation in Farmer Programs Guaranteed Loan Programs of the United States Government." See § 1980.61 of subpart A of this part for proper execution of this form. Form FmHA 1980–38 will be signed only once and will govern all loans/lines of credit guaranteed while the agreement is in effect.

(d) *Plans for marketing.* The lender advises FmHA of its plans to sell or assign any part of the loan as provided in Form FmHA 1980–38.

Administrative

* * * * *

A. Consult with the lender and applicant concerning any changes made to the initially issued or revised Form FmHA 1980–15. A copy of Form FmHA 1980–15 and any amendments will be included in the file.

B. Review the loan agreement between the borrower and lender which provides for the periodic submission of financial statements to the County Supervisor. An annual analysis report of the farming operation will be required. In line of credit cases, the County Supervisor will review with the non-CLP lenders, the requirement that the lender is to submit a current financial statement and cash flow prepared in accordance with § 1980.113 of this subpart for prior approval of advances made in the second and third years of a line of credit.

* * * * *

25. Section 1980.118 is amended by paragraph (d), and by revising paragraphs (b), (c) and Administrative paragraph A. to read as follows:

§ 1980.118 Issuance of Lender's Agreement, Loan Note Guarantee, Contract of Guarantee, and Assignment Guarantee Agreement.

* * * * *

(b) A guaranteed portion of the loan may not be sold by the lender until the loan has been fully disbursed to the borrower. The guaranteed portion of a line of credit will never be sold or assigned by the lender except as provided in part III of Form FmHA 1980–38.

(c) Each Loan Note Guarantee issued will contain the statement "This Loan Note Guarantee is issued under the Lender's Agreement dated _____." The date will be the same date entered in Part IV of Form FmHA 1980–38.

(d) Each Contract of Guarantee issued will contain the statement "This Contract of Guarantee is issued under Lender's Agreement dated _____." The date will be the same date entered in Part IV of Form FmHA 1980–38.

Administrative

A. *Section 1980.61(a).* For non-CLP lenders, the original Form FmHA 1980–38 will be kept in the County Office. For CLP lenders, the original Form FmHA 1980–38 will be kept in the State Office, with copies distributed to the appropriate County Office.

* * * * *

26. Section 1980.119 is added to read as follows:

§ 1980.119 Lender's sale or assignment of Guaranteed loan.

The lender may retain all of any guaranteed loan. The lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of loan(s) to the loan applicant or borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. The lender may market all or part of the guaranteed portion of the loan at or after loan closing only if the loan is not in default as set forth in the terms of the note. A line of credit may only be marketed by participation. The lender may proceed as follows:

(a) *Disposition.* Prior to full disbursement, completion of construction, and acquisitions, disposition of the guaranteed portion of a loan may be made only with a prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisitions, the guaranteed portion of the loan may be disposed of as provided for in this section.

(b) *Assignment.* The lender may assign all or part of the guaranteed portion of any loan to one or more holders by using Form FmHA 449–36,

"Assignment Guarantee Agreement." As specified on this form, holder(s), upon written notice to the lender and FmHA, may reassign the unpaid guaranteed portion of the loan. On assignment notification, the assignee is responsible for all rights and obligations of the holder(s) as set forth on Form FmHA 449–36.

(c) *Multi-note System.* The holder receives from the lender the borrower's Form FmHA 449–34 and the attached executed note(s). The lender retains all rights under the security instruments (including personal and/or corporate guarantees) for the protection of the lender and the United states notwithstanding any contrary provisions under State law.

(1) At loan closing. The lender will provide for no more than 10 notes, unless the borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. FmHA will provide the lender with Form FmHA 449–34 for each of the notes.

(2) After loan closing. Upon written approval by FmHA, the lender may issue a series of new notes replacing previously issued guaranteed note(s), not to exceed the amount specified in paragraph (c)(1) of this section. FmHA will then provide the lender with a new Loan Note Guarantee to be attached to the new notes in exchange for the original Loan Note Guarantee which will be cancelled by FmHA. The following conditions must be met:

(i) The borrower agrees and executes the new notes.

(ii) The interest rate does not exceed the interest rate in effect when the loan was closed.

(iii) The maturity of the loan is not changed.

(iv) FmHA will not bear any expenses that may be incurred in reference to such re-issuance of notes.

(v) There is adequate collateral securing the note(s).

(vi) The secured lien priority remains the same.

(d) *Participations.* Participation occurs at the sale of an interest in the loan in which the lender retains the note, the collateral securing the note, and all responsibility for loan servicing and liquidation. The lender is required to retain a minimum of 10 percent of the total guaranteed loan(s) amount in its portfolio. The amount required to be retained must be from the unguaranteed portion of the loan. Participation with a lender by any entity does not make that entity a holder or a lender.

(e) *Rights and obligations.* Upon the lender's sale of the guaranteed portion of the loan, the holder will assume all rights of the Loan Note Guarantee pertaining only to the portion of the loan purchased. Lenders will remain bound to all obligations indicated in the Loan Note Guarantee, Form FmHA 1980–38, and the FmHA regulations.

(f) *Resale by Holder.* Upon written notice to the lender, the holder(s) may resell the unpaid guaranteed portion of the loan.

(g) *Lender Repurchase.* The lender has the option to repurchase the unpaid guaranteed portion of the loan from the holder(s) within 30 days of written demand by the holder(s) when: The borrower has not made payment of principal or interest due on the loan for 60 days or more; or the lender has failed to give the holder(s) its pro rata share of any payment made by the borrower within 30 days of receipt of payment. The repurchase by the lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest, less the lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the lender requesting the repurchase. The lender will accept an assignment without recourse from the holder(s) upon repurchase. The lender is encouraged to repurchase the loan in order to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The lender will notify the holder(s) and FmHA of its decision.

(h) *FmHA Repurchase.* If the lender does not repurchase as provided by paragraph (g) of this section, FmHA will purchase, from the holder(s), the unpaid principal balance of the guaranteed portion together with accrued interest to the date of repurchase, within 30 days after written demand to FmHA, from the holder(s). Upon FmHA's repurchase, the lender will liquidate the account or reimburse FmHA the amount of the repurchase within 180 days of FmHA's repurchase. The Loan Note Guarantee will not cover the note interest to the holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the lender requesting the repurchase. Such demand will include a copy of the written demand made upon the lender.

(i) The holder(s), or its duly authorized agent, will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement which has been properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will retain all rights of the holder(s). In its demand, the holder will specify the amount due including unpaid principal, unpaid interest to the date of demand, and interest which has accrued from the date of demand to the proposed payment date. FmHA will verify the amount of the unpaid principal and interest with the lender. Unless otherwise agreed to by FmHA, such proposed payment will ordinarily be within 30 days from the date of the demand to FmHA.

(2) FmHA will promptly notify the lender of the holder(s) demand for payment. The lender will promptly provide FmHA a current statement which has been certified by an appropriate authorized officer of the lender, of the unpaid principal and interest then owed by the borrower on the loan, and the amount due the holder(s).

(3) Any discrepancy between the amount claimed by the holder(s) and the information submitted by the lender must be resolved by the lender and the holder(s) before payment will be approved by FmHA. FmHA will not participate in resolution of any such discrepancy. Such a conflict will suspend the 30-day payment requirement. Upon receipt of the appropriate information, FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the State Director and the check(s) will then be sent to the holder(s).

(4) The lender further agrees that any purchase by FmHA does not change, alter, or modify any of the lender's obligations to FmHA specified in the loan or guarantee, nor does the purchase waive any of FmHA's rights against the lender. FmHA will have the right to set-off all lender's rights which have been passed along to FmHA from the holder against FmHA's obligation to the lender under the Loan Note Guarantee.

(5) Servicing fees assessed by the lender to a holder can only be collected from payment installments received by the lender from the borrower. When FmHA repurchases from a holder, FmHA will pay the holder only the amounts due to the holder. FmHA will not reimburse the lender for any servicing fees which have been assessed to the holder and not collected from the borrower. No service fee shall be charged to FmHA, and no such fee can be collectible from FmHA.

(6) The lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

27. Section 1980.122 is amended in the third sentence by removing the words "Form FmHA 449–35 or," and in the fourth sentence by removing the words "'Request Interest Assistance/ Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender.'"

28. Section 1980.123 is amended by revising the words "410–1 'Application for FmHA Services,'" to "1980–25" in paragraph (b), by revising the reference "Form FmHA 410–1" to "Form FmHA 1980–25" in the last sentence of paragraph (c), by revising the reference "§ 1980.113(d)(9)(ii)" to "§ 1980.113 (a)(8)(ii)" in paragraph (h), and by removing the words "and, for new borrowers, FmHA 1980–50," in the last sentence of *Administrative* paragraph C.

29. Section 1980.125 is amended by revising paragraphs (c)(4) and (d)(4) to read as follows:

§ 1980.125 Debt write down.

* * * * *

(c) * * *

(4) Any amount recaptured will be shared on a pro-rata basis between the lender and FmHA as provided in Form FmHA 1980–38.

* * * * *

(d) * * *

(4) As provided by paragraph I.D.3. of Form FmHA 1980–38, the lender will remit to the holder the holder's pro-rata share of any estimated loss claim payments made by FmHA after the writedown.

* * * * *

30. Section 1980.130 is revised to read as follows:

§ 1980.130 Loan servicing.

The lender will service the entire loan as mortgagee and/or secured party of record in a reasonable and prudent manner, notwithstanding the fact that a holder may hold a portion of the loan. The lender will obtain compliance with the covenants and provisions in the note, security instruments, and any other agreements, and notify FmHA of any violations. Specific requirements include:

(a) Assuring that the borrower complies with all laws and ordinances which are applicable to the loan, the collateral, and/or operation of the farm.

(b) Obtaining the lien coverage and lien priorities specified by the lender and agreed to by FmHA and properly recording or filing lien or notice instruments in order to obtain and maintain such lien priorities during the existence of the guarantee by FmHA. In no case will FmHA pay a loss claim on the portion of a loss which results from a lender's failure to obtain a perfected security interest in the loan collateral.

(c) Obtaining assignments on all USDA crop and livestock program payments when required.

(d) Assuring that the borrower obtains marketable title to the collateral.

(e) Assuring that the borrower and any party liable for the loan is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

(f) Providing the FmHA County Office with loan status reports on Form FmHA 1980–41, "Guaranteed Loan Status Report." The non-CLP lender must submit these reports annually as of December 31. The CLP lender must submit these reports as of March 31 and September 30 each year.

(g) Obtaining financial statements from each borrower and guarantor at least annually. The lender is responsible for preparing an analysis of the farming operation, taking any servicing actions if required, and providing copies of the statements and a record of action to the FmHA office at least annually.

(h) Monitoring the use of loan funds to assure they will not be used for any unauthorized purpose, including any purposes that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands either to produce an agricultural commodity or to make the production of an agricultural commodity possible, as further explained in Exhibit M of subpart G of part 1940 of this chapter

(i) Assuring that the borrower has not converted loan security. If so, FmHA and the lender will determine whether the potential recovery will be cost effective. If it is determined that the recovery will be cost effective, the lender must pursue the conversion.

(j) Assuring that the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation.

(k) Assuring that proceeds from the sale or other disposition of collateral are accounted for and applied in accordance with the lien priorities on which the guarantee is based. Except as provided in § 1980.190(c) of this section, a lender may allow proceeds from the disposition of collateral, such as machinery, equipment, furniture, or fixtures to be used to acquire replacement collateral of similar nature and value only with written agreement from FmHA.

(l) Assuring that insurance loss payments, condemnation awards, or similar proceeds are applied to debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or acquiring needed replacement collateral with the written approval of FmHA.

(m) Seeing that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made; and that FmHA agrees to the overall development schedule.

Administrative

A. The lender has the responsibility for loan servicing and protecting the collateral. Prompt follow-up on delinquent payments and early recognition of problems are keys to resolving many delinquent loans. Contacts with the borrower, when determined necessary by the County Supervisor, will be made with the lender present.

B. The County Supervisor is responsible for monitoring the lender's servicing activities as follows:

1. Semi-annually, FmHA will conduct a review of each lender's loan files. A minimum of 40 percent of each non-CLP lender's outstanding guaranteed Farmer Programs loans will be reviewed annually. The lender will be reminded of the lender's responsibilities in servicing the loan as required in Form FmHA 1980–38 when deficiencies are noted. This review will be thoroughly documented in the loan file and any deficiencies will be discussed with the lender and the discussion will be confirmed in writing with a copy to the State Director through the District Director. Loans will be selected for review according to the following priority:

a. The most recent loans closed by the lender and not yet reviewed.

b. Delinquent loans or loans which the lender or FmHA has identified as high risk.

c. Loans in which the funds were used to refinance the lender's own debt.

d. Other loans.

2. Contact the State Office when the case file review indicates the lender or the borrower has failed to fulfill any of the loan approval conditions and the resulting problem cannot be resolved by the County Supervisor and the lender.

3. Take the action required to assist the lender in servicing a delinquent account.

4. Use an office management system for guaranteed loans to assure the lender submits required information to FmHA. The following information shall be reviewed and proper follow-up actions initiated.

a. Borrower's year-end balance sheet.

b. Form FmHA 1980–41.

c. Submission of an annual analysis.

d. Submission of Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." (Required when the borrower is 30 days past due and cannot get current within 60 days; the report is to be submitted every 60 days by the lender to the County Office and the County Office is to forward the original to the Finance Office.)

e. Submission of any other financial reports required on the Conditional Commitment by the approving official.

f. Verification that the County Office has a tracking system for field reviews on at least 20 percent of each CLP lender's and 40 percent of each non-CLP lender's guaranteed caseload.

g. Other required information.

5. Review the borrower's projected cash flow statement and supporting income and expense summary to determine the progress of the borrower and the soundness of the plan. The County Supervisor will respond within 14 calendar days to requests from non-CLP lenders to make advances for future year's expenses on lines of credit. The lender will submit a copy of the borrower's income and expenses for the previous year, the projected cash flow for the borrower's operation for the upcoming operation cycle, and a certification that the borrower is in compliance with the provisions of the line of credit agreement and the income and expenses for the previous year have been accounted for.

6. Contact, at least annually, all lenders with active shared appreciation agreements for borrowers who have received debt writedown. When making this contact, the County Supervisor will ascertain if any collection has been made from property covered by such agreement. Findings will be recorded in the County Office file. If any unauthorized collection is made by the lender, a report will be forwarded to the State Director.

C. The State Director will approve all debt writedowns. Approval will be evidenced by a letter to the lender with a copy to the borrower and signed by the State Director.

D. The District Director will:

1. Provide guidance and assistance to the County Supervisor in monitoring guaranteed loans/lines of credit.

2. Review all field visit reports and make recommendations or comments and transmit them to the State Director, if necessary.

3. In the case of a debt writedown, the District Director will review for concurrence and forward to the State Director as appropriate.

E. County Supervisors are authorized to approve or concur in:

1. Alterations in the approval conditions which will not prejudice the Government's interest.

2. Any replacement of collateral for the loan/line of credit.

3. All lien coverage and lien priorities on the collateral established by the lender before issuance of the Loan Note Guarantee or Contract of Guarantee.

4. Any deferral, rescheduling, or reamortization of the loan.

5. For debt writedown, the County Supervisor will recommend State Director approval through the District Director.

6. The use of proceeds from the disposition of collateral complying with the provisions of paragraph (h) of this section.

31. Section 1980.131 is added to read as follows:

§ 1980.131 Appraisal reviews.

The State Director or designee(s) will:

(A) Provide for the framework of the real estate appraisal review and monitoring function and the documentation thereof;

(b) Perform appraisal reviews in accordance with the requirements of Standard 3 of the USPAP and perform at least one appraisal review per fiscal year for either each appraiser, or each lending institution that prepares, or uses, a real estate appraisal for the guaranteed program in a given fiscal year; and

(c) Provide appraisal training and guidance to assist State and field office personnel in making guaranteed approval decisions and serve as a resource to approval and underwriting officials performing administrative appraisal reviews, as needed.

32. Section 1980.136 is revised to read as follows:

§ 1980.136 Protective advances.

Protective advances are advances made by a lender when the borrower is in liquidation or close to being liquidated to protect or preserve the collateral itself from loss or deterioration. Protective advances include advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

(a) FmHA written authorization is required on all protective advances in excess of $3,000 made by a CLP lender. For non-CLP lenders, the amount is $500.

(b) Protective advance requests requiring FmHA approval must be accompanied by a repayment plan showing adequate repayment ability for the advance and all other debts. If a feasible repayment plan cannot be developed, a liquidation plan will be submitted with the protective advance request.

(c) The County Supervisor is authorized to approve protective advances up to $10,000 and will consult with the lender on future servicing of the account. The State Director is authorized to approve protective advances in excess of $10,000. Such protective advances must be approved in writing by the County Supervisor or State Director.

(d) Protective advances must constitute a debt of the borrower to the lender and be secured by the security instrument(s).

(e) It is not intended that protective advances be made in lieu of additional loans.

32A. Section 1980.139 is revised to read as follows:

§ 1980.139 Termination of Loan Note Guarantee or Contract of Guarantee.

See paragraph 12 of Form FmHA 449–34, or paragraph 6 of Form FmHA 1980–27.

33. Section 1980.144 is amended by removing *Administrative* paragraph D; by redesignating *Administrative* paragraphs E, F, and G as D, E, and F, respectively; by revising the parenthetical phrase at the end of newly redesignated *Administrative* paragraph E from "(Refer to paragraph X C of Form FmHA 449–35 or Form FmHA 1980–38)." to read "(Refer to § 1980.119 of this subpart)."; and by revising the introductory text of paragraph (a), paragraph (d), and newly redesignated *Administrative* paragraph F to read as follows:

§ 1980.144 Bankruptcy

(a) *General.* In bankruptcies, there are two separate proceedings: liquidation and reorganization under the bankruptcy court's protection. It is the lender's responsibility to protect the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings (refer to § 1980.130 of this subpart). These responsibilities include, but are not limited to:

* * * * *

(d) *Loss payments.* (1) *Estimated loss payments.* If a borrower has filed for protection under a reorganization bankruptcy, the lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. The lender will be entitled to accrued interest up to the date the confirmed plan becomes effective. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA at its option in accordance with any court-approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the lender is responsible for providing FmHA with documentation necessary to review and adjust if necessary the estimated loss claim to reflect actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured. The lender will use Form FmHA 449–30 to request an estimated loss payment and to revise an estimated loss payment during the course of the reorganization

plan. The estimated loss claim and any revisions of the claim will be accompanied by supporting legal documentation. Form FmHA 1980–44 will be submitted by the lender to the County Office at the beginning of and upon completion of the reorganization plan.

(2) *Interest loss payments.* (i) Interest loss payments for any court-ordered interest rate reduction sustained during the period of the reorganization plan will be processed in accordance with paragraph (d)(1) of this section. Interest loss claims will be filed on the anniversary date of the first payment under the confirmed plan and will include interest accrual to that date.

(ii) Interest loss payments sustained after the reorganization plan is completed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction extending beyond the period of the reorganization plan.

(iii) Form FmHA 449–30 will be completed to compensate the lender for the difference in interest rates specified on the Guaranteed Contract and the rate of interest specified by the bankruptcy court.

(3) *Final loss payment.* (i) Final loss payments will be processed when the loan is liquidated.

(ii) If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.

(4) *Payment application.* The lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. If a court attempts to direct payments to be applied otherwise, the lender will notify the FmHA servicing office immediately.

(5) *Overpayments.* Upon completion of the reorganization plan, the lender will provide FmHA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. As a result of the reorganization, if the actual loss sustained is greater than the estimated loss payment, the lender will submit a revised estimated loss form in order to obtain payment of the additional amount owed by FmHA. If the actual loss payment is less than the estimated loss, the lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

(6) *Protective advances.* Authorized protective advances may be included with the estimated loss payment associated with the reorganization bankruptcy, provided they were incurred in connection with liquidation of the account prior to the borrower filing bankruptcy. Protective advances during a bankruptcy reorganization are not authorized. As a result of a liquidation action, if approved protective advances were made prior to the borrower having filed bankruptcy, the protective advances and accrued interest will be entered on Form FmHA 449–30.

(7) *Legal fees.* Legal fees of any kind incurred to defend the bank's claim during the bankruptcy proceedings are not covered by the guarantee. Also, proceeds received from the sale of collateral during bankruptcy cannot be used to pay legal fees.

Administrative

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F. All loss claims must be approved by the State Director. The County Supervisor will accept Form 449–30 from the lender, review the form for accuracy, and forward the form to the State Director for approval. The State Director will submit Form FmHA 449–30 to the Finance Office.

34. Section 1980.145 is amended by revising paragraphs (a) and (b), and *Administrative* paragraph A to read as follows:

§ 1980.145 Defaults by borrower.

(a) See paragraph I.D.6. of Form FmHA 1980–38.

(b) The lender will prepare current financial information including a cash flow and will schedule a meeting with the County Supervisor and the borrower to discuss possible solutions including Interest Assistance to resolve the borrower's financial problems.

* * * * *

Administrative

A. The County Supervisor will review and distribute Form FmHA 1980–44 in accordance with the preparation instructions in the FMI upon receipt of the lender's default notification in accordance with paragraph I.D.5. of Form FmHA 1980–38. The County Supervisor will coordinate and process any request for FmHA to purchase (as outlined in § 1980.119 of this subpart) when the holder(s) is located in close proximity to the local lender. If any holder is located outside the area, the State Director will designate an employee to handle the repurchase arrangements. If the employee is not the County Supervisor, the County Supervisor will be notified of the transaction.

* * * * *

35. Section 1980.146 is revised to read as follows:

§ 1980.146 Liquidation.

If the lender concludes that liquidation of a guaranteed loan account is necessary due to default or third party actions which the borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the lender with FmHA. All liquidations must receive prior concurrence by the County Supervisor. The District Director or State Office will be consulted on complex cases for advice. When FmHA concurs with the lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the lender and the matter will be handled as follows:

(a) The lender will liquidate the loan unless FmHA, at its option, decides to carry out the liquidation. FmHA will exercise the option to liquidate only when there is reason to believe the lender's liquidating plan is not likely to provide a reasonably adequate recovery. If FmHA liquidates, all of the requirements for liquidating an FmHA insured loan will be followed (see subpart A of part 1955, subpart A of part 1962 and subpart A of part 1965 of this chapter). When FmHA exercises the option to liquidate, the State Director or designee will be the approval official. When such a decision is made, the approval official will submit Form FmHA 1980–45, "Notice of Liquidation Responsibility," to the Finance Office.

(b) When the decision to liquidate is made, the lender may proceed to purchase the guaranteed portion of the loan from the holder(s). The holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

(c) If the lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid its pro rata share of the proceeds from liquidation of the collateral first.

(d) The liquidation and loss claim will be handled as follows:

(1) *Lender's proposed method of liquidation.* The lender may use any method of liquidation customary to the farm lending industry so long as the method will result in the maximum collection possible on the debt. Within 30 days following the decision to liquidate, the lender will advise FmHA in writing of its proposed detailed method of liquidation. This is called a liquidation plan and will provide FmHA with the following:

(i) Proof of the lender's ownership of the guaranteed loan promissory note(s),

line of credit agreement(s) and related security instruments.

(ii) a list of borrower's assets including real and personal property, fixtures, claims, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, together with notice of which items are serving as collateral for the guaranteed loan.

(iii) A proposed method of maximizing the collection of debts. The lender should also specify how to collect any remaining loan balances of the guaranteed loan(s). After all loan collateral has been liquidated, possibilities for judgements will be determined.

(iv) The lender will obtain an independent appraisal report on all collateral securing the loan which will reflect the current market value and potential liquidation value. The appraisal report is to allow the lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the lender. Both the lender and FmHA recover this cost from the first collateral sales proceeds received, each taking half of the proceeds until the cost of the appraisal is recovered. The funds that are collected as recovery of an appraisal fee will be forwarded to the Finance Office along with Form FmHA 1980–40, "Reverse of Report of Liquidation Expense."

(v) An estimate of time necessary to complete the liquidation. When the lender is conducting a liquidation that the lender estimates will take longer than 90 days and owns any of the guaranteed portion of the loan, the lender will request a tentative loss estimate by submitting to FmHA an estimate of the loss claim that will occur upon liquidation of the loan. The estimated loss claim will be submitted with the liquidation plan.

(vi) In cases where the lender becomes aware that the borrower has converted loan security, FmHA and the lender will determine whether the potential recovery will be cost effective. The lender must address in the liquidation plan whether the recovery will be pursued.

(2) *FmHA's response to lender's liquidation plan.* The County Supervisor will have approval authority for the lender's liquidation plan. FmHA will inform the lender in writing whether it concurs with the lender's liquidation plan within 30 days upon receipt of such plan from the lender. If FmHA needs additional time to respond to the liquidation plan, it will inform the lender of an alternate deadline for the response. Should FmHA and the lender not agree on the lender's liquidation plan, negotiation will take place between FmHA and the lender to resolve any disagreement. Should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

(i) The lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the loan. In this event, the lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

(ii) FmHA attempt to obtain the maximum amount of proceeds from the liquidation.

(iii) FmHA may choose one or any combination of the usual commercial methods of liquidation.

(3) *Acceleration.* The lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the debt is necessary, including giving any notices and taking any other required legal action. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the lender, as the case may be.

(4) *Liquidation—accounting and reports.* When the lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, final costs, and any additional procedures necessary for successful completion of liquidation. The County Supervisor will accept or reject the accounting reports as submitted by the lender. When FmHA is the holder of a portion of the guaranteed loan, the lender will transmit to FmHA any payment received from the borrower, including the pro rata share of liquidation or other proceeds, using Form FmHA 1980–43, "Lender's Guaranteed Loan Payment." When FmHA liquidates, the lender will be provided with similar reports (with copies to the District and State FmHA offices).

(e) Form FmHA 449–30 will be used to calculate the estimated and final loss. The State Director has approval authority for all loss claims. If approved, the State Director will submit Form FmHA 449–30 to the Finance Office, with copies to the District and County Office. The Finance Office will forward loss payment checks within 10 days of receipt of the request to the County Supervisor for delivery to the lender.

(1) *Estimated loss payments.* Estimated loss payments may be approved by FmHA only after the lender has received FmHA's approval of the liquidation plan, debt writedown plan, or a reorganization plan which has been approved by the bankruptcy court. FmHA agrees to pay an estimated loss, provided the lender applies the payment to the outstanding principal balance owed on the guaranteed debt. The lender will discontinue interest accrual on the defaulted loan at the time the estimated loss claim is approved by FmHA. The estimate will be prepared and submitted by the lender on Form FmHA 449–30, using the appraisal value as opposed to the amount received from the sale of the collateral. Estimated loss payments will be inserted under "Amount Due Lender" on Form FmHA 449–30. The Director, Finance Office, will forward loss payment checks within 30 days of receipt of the request.

(2) *Final loss payments.* In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated. FmHA will have the right to recover any losses it paid under the Guarantee from the borrower or any other liable party.

(i) After the lender has completed liquidation, FmHA may audit the account and will determine the actual loss upon receipt of the final accounting and Report of Loss. If FmHA has any questions regarding the amount set forth in the final Report of Loss, it will investigate the matter. The lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, the loss claim will be tentatively approved in the space provided on the form for that purpose. If a lender's final loss claim is either denied or reduced, the County Supervisor will notify the lender in writing within 10 days of FmHA's decision, of all the reasons for the decision, and advise the lender of its opportunity for an appeal as set out in § 1980.80 of subpart A of this part and subpart B of part 1900 of this chapter.

(ii) In those instances where the lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss monies advanced as protective advances, including any accrued interest resulting from the protective advances. Payment will be made by FmHA when the final Report of Loss is approved.

(iii) Final loss payments will be made within 30 days after review of the accounting of the collateral.

(iv) When the lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

(A) If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the lender. If FmHA has conducted the liquidation, it will provide an accounting and Report of Loss to the lender and will pay the lender in accordance with the Loan Note Guarantee.

(B) If the loss is less than the estimated loss, the lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of overpayment.

(3) *Future recovery.* The County Supervisor will establish a follow-up to contact lenders in writing who have received final loss claim payments to report any collections made on the guaranteed loans. Such follow-up will be made annually for 5 years after the final loss claim is paid. The County Supervisor will report the results of the follow-up to the State Director no later than 10 working days after the end of the fiscal year. The State Director will consolidate the County Office reports and report the results to the Administrator by November 1 of each year. The information to be reported will be: lender, borrower, case number, loss claim amount, amount collected, and amount submitted to FmHA.

(4) *Maximum amount of interest payment.* Notwithstanding any other provisions of this subpart, the amount payable by FmHA to the lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, any loss which occurred by accrued interest will be covered by the guarantee only to the date FmHA accepts responsibility for the liquidation. Any loss occasioned by accrued interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the lender, provided it proceeds expeditiously with the liquidation plan approved by FmHA, except when an estimated loss claim is filed. If a lender files an estimated loss claim, the lender will discontinue interest accrual on the defaulted loan when the estimated loss claim is approved by FmHA. The balance of any accrued interest payable to the lender will be calculated on the final Report of Loss form.

(5) *Application of FmHA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment drafted by FmHA will be applied by the lender on the guaranteed portion of loan debt. However, such application does not release the borrower from liability. Such amounts are only to compensate the lender for the loss. In all cases, a final Form FmHA 449–30 prepared and submitted by the lender must be processed by FmHA in order to close out files.

(6) *Income from collateral.* Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt.

(7) *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. Reasonable is defined as the prevailing rate charged in the area for like services. These liquidation costs will be submitted as part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral, unless the costs have been previously determined by FmHA to be protective advances. Therefore, if liquidation never occurs or if liquidation is conducted by someone other than the lender (a bankruptcy trustee, for example), there can be no allowable liquidation costs. If circumstances have changed after submission of the liquidation plan which require a revision of liquidation costs, the lender will obtain FmHA's written concurrence prior to proceeding. with any proposed changes. No in-house expenses of the lender will be allowed. In-house expenses include, but are not limited to: employee's salaries, staff lawyers, travel, and overhead.

(8) *Foreclosure.* The lender is responsible for determining who the necessary parties are to any foreclosure action or who should be named on a deed of conveyance taken in lieu of foreclosure. When the conveyance is received and the property is liquidated, the net proceeds will be applied to the guaranteed loan debt. If FmHA has repurchased the guaranteed portion of the loan from the holder, the lender must obtain FmHA's concurrence to any foreclosure action to be taken by the lender; however, FmHA will not be considered to be a necessary party to the action or otherwise required to join in.

36. Section 1980.175 is amended by revising the introductory text of paragraph (b) and paragraph (f)(2) to read as follows:

§ 1980.175 Operating loans.

* * * * *

(b) *Loan eligibility requirements.* In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR part 1308, which is Exhibit C to subpart A of part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the issuance of the Loan Note Guarantee or the Contract of Guarantee in any crop year, the individual or entity shall be ineligible for a guaranteed loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Loan applicants will attest on Form FmHA 1980–25, that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

* * * * *

(f) * * *

(2) Except for lines of credit made under the CLP program, all advances on a line of credit must be made within 3 years from the date of the Contract of Guarantee. For lines of credit made under the CLP program, all advances must be made within 5 years from the date of the Contract of Guarantee.

* * * * *

37. Section 1980.185 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 1980.185 Soil and water loans.

* * * * *

(b) *Soil and Water loan eligibility requirements.* In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR part 1308, which is Exhibit C of subpart A of part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the issuance of the Loan Note Guarantee in any crop year, the individual or entity shall be ineligible for a loan guarantee for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 1980–25, that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

* * * * *

38. Section 1980.190 is added to read as follows:

§ 1980.190 Certified Lender Program—Operating loans.

(a) *General.* This section provides policies and procedures for the Certified Lender Program (CLP) for guaranteed Operating Loans (OL) described in § 1980.175 of this subpart. The objectives are to minimize the time required for certified lenders to obtain responses to requests for guarantees, permit maximum use of forms normally used by the lender, permit lenders to certify compliance rather than providing verifications, and give additional flexibility to those lenders with a proven ability to process and service Farmers Home Administration (FmHA) guaranteed loans. FmHA will make the final determination on eligibility, loan purposes and repayment terms. Form FmHA 1980–38 will serve as the "Lender's Agreement" for guarantees issued by FmHA under this section.

(1) *Authority.* The authorizations contained in this section provide:

(i) Methods for initial approval period, subsequent approval period(s) and revocation of CLP status;

(ii) Methods a CLP lender will use to process, service and conclude guaranteed OLs;

(iii) Methods FmHA will use to consider a CLP lender's request for guarantee and monitor guaranteed OL loan activities.

(2) *Policy.* The purpose of the CLP program is to enable not larger than family farm owners and/or operators to establish or continue a credit relationship with a commercial agricultural lender in situations where the lender could not otherwise extend credit.

(3) *List of lenders.* The County Supervisor will maintain a current list of lenders who express a desire to participate in the guaranteed program. This list will be made available to farmers upon request.

(b) *Lender approval, subsequent approval period(s), monitoring and revocation of CLP status.* Lenders who meet the required and other criteria may be granted CLP status for a period not to exceed 5 years by the State Director for the State in which the lender is authorized to do business. All initial and any subsequent approvals of the CLP status will be in the form of an agreement signed by the State Director and the lending institution. The agreement will be Form FmHA 1980–38. The agreement will not apply to branches or suboffices of the lender unless specifically named in the agreement. The CLP status of any lender may be revoked by the FmHA State Director as outlined in paragraph (b)(3) of this section. State Directors will keep their respective FmHA County and District Offices fully informed, by use of State supplements, of the names and addresses of all lending institutions, branches or suboffices that hold CLP status. The name of each CLP lender's designated person or agricultural loan officer who will process and service guaranteed loans for the CLP lender will be included.

(1) *Lender approval.* Any lender who desires to apply for CLP status must also be an "Eligible Lender" as defined in § 1980.13(b) of Subpart A of this part. Lenders who meet this requirement and desire CLP status will prepare a written request to the State Director for the State in which they desire to have CLP status. The written request will address each item of the required criteria outlined in paragraphs (b)(1) (i) through (viii) of this section and may be accompanied by any supporting evidence or other information the lender believes will be helpful to the State Director in making a decision on the application for CLP status. Any FmHA County, District or State Office may provide a lender who desires to apply for CLP status a complete copy of Subparts A and B of this part, and will assist in completion of the request. The State Director will make any necessary investigation or inquiry to determine accuracy of information and notify the lender within 15 days of receipt of a request that the request is approved, denied, or requires additional information. Other than as noted in this paragraph, before a State Director approves a lender for CLP status, the lender must:

(i) Provide evidence of being an "Eligible Lender" as defined in subpart A of this part.

(ii) Provide information to show that loan losses—net of recovery—do not exceed the CLP Loss Rate. The CLP Loss Rate will be periodically established by the Administrator, FmHA, and published in Exhibits B to FmHA Instruction 440.1. This Instruction is available in any FmHA office. The CLP Loss Rate equals the amount of guaranteed OL, FO, and SW total loss claims paid on loans made in the past 7 years divided by the total loan amount of the OL, FO, and SW loans guaranteed in the past 7 years.

(iii) Have the capacity to process and service FmHA guaranteed OL loans/lines of credit.

(iv) Designate a person(s) who will process and service FmHA guaranteed OL loans/lines of credit. The lender must certify that this person(s) has attended FmHA loan processing and servicing training sessions within the previous 12 months, or that the person(s) will attend such training prior to the lender's submission of the first guarantee request under the CLP program. The lender must also agree to send the designated person(s) to future FmHA training sessions at least annually.

(v) Agree to use forms acceptable to FmHA for processing, analyzing, securing and servicing FmHA guaranteed loans/lines of credit. Copies of financial statements, cash flow plans, budgets, loan agreements, analysis sheets, collateral control sheets, security and other forms to be used must be submitted for FmHA acceptability with request for CLP status. See § 1980.109 and § 1980.113 of this subpart for required forms.

(vi) Agree to abide by all applicable conditions of Form FmHA 1980–22 for all loan guarantees.

(vii) Have closed a minimum of 10 FmHA guaranteed loans or lines of credit and closed 5 FmHA guaranteed loans or lines of credit (not including readvances on lines of credit) within the past 2 years.

(viii) Have an acceptable financial strength rating as reported by a lender rating service selected by the Administrator, FmHA.

(2) *Sebsequent approval period(s).* Renewal of Form FmHA 1980–38 is not automatic.

(i) Lender Responsibilities—A lender must submit a written request for renewal of Form FmHA 1980–38. The request must be submitted to FmHA at least 60 days prior to the expiration of the existing Form FmHA 1980–38. The request must contain at least the following:

(A) A formal request for a new 5-year designation as a CLP Lender.

(B) A brief summary of the lender's CLP lending activity. The summary must include the dollar amount and number of FmHA guaranteed Farmer Programs loans in the lender's portfolio and the number and dollar amount of all FmHA guaranteed Farmer Programs loans the lender processed as a CLP lender.

(C) Information to indicate that FmHA guaranteed Farmer Programs net loan losses (reflecting any future recovery) do not exceed the CLP loss rate.

(D) A current update of the data required in paragraph (b)(1) of this section and any proposed changes in the designated person(s) for processing guaranteed loans, forms used, or operating methods used in FmHA guaranteed Farmer Programs loan processing and servicing.

(ii) FmHA Responsibilities:

(A) Upon receipt of a lender's renewal request, the State Director will complete a review of the information submitted by the lender. The State Director will also review the lender's CLP performance and consult with appropriate District and County Office personnel.

(B) FmHA must notify a lender of any additional information needed to process a CLP renewal request within 14 days of receipt of the request.

(C) The State Director will determine whether the lender continues to meet the CLP criteria set forth in this section, and whether a new Form FmHA 1980–38 can be executed.

(D) The State Director will notify the lender in writing of approval, or conditions the lender must meet for approval, or reasons for denial of the request for renewed CLP status. Lenders will be advised of their appeal or review rights as set out in subpart B of part 1900 of this chapter and in accordance with § 1980.80 of subpart A of this part.

(E) FmHA must notify the lender of the approval or denial of the renewal request at least 30 days after receiving a completed request for renewal.

(3) *FmHA monitoring and revocation of CLP status.* CLP status will lapse upon expiration of any 5-year period unless the lender obtains a new agreement under this section.

(i) The State Director will designate certified lenders in accordance with the terms and conditions of this section and Form FmHA 1980–38, and is responsible for managing the CLP program within the State and the following:

(A) Establishing an operational file for each CLP lender in the State Office. The file will include Form FmHA 1980–38 and all information related to the lender's CLP activities.

(B) Providing all County Offices named in Part IV of Form FmHA 1980–38 with a copy of the agreement and complete application material approved in connection with CLP status.

(C) Monitoring CLP lenders' loan making and servicing activities to determine compliance with the CLP agreement and subparts A and B of this part pertaining to guaranteed OL loans/lines of credit. This includes assuring that lender files are reviewed in accordance with this section.

(D) Conducting a review of each CLP lender's performance at least annually.

(E) Assuring that effective training sessions are conducted for CLP lender personnel at least annually.

(F) Taking appropriate action against a lender when justified, including revocation of CLP status for the reasons specified in paragraph (b)(3)(iv) of this section, and initiation of Suspension or Debarment action in accordance with subpart M of part 1940 of this chapter. The lender must be notified, in writing, of any such actions taken.

(ii) The District Director will assist the State Director in monitoring CLP performance, and will monitor County Office administration of the CLP program.

(iii) The County Office will normally be the primary contact point for CLP activities. The County Supervisor is responsible for:

(A) Establishing an operational file for each CLP lender in the office jurisdiction, which will include a copy of the Form FmHA 1980–38, the forms accepted in conjunction with CLP designation, documentation of the results of reviews of the lender's loans, and any other information relative to the lender's CLP activity in that Country Office.

(B) Processing CLP requests for guarantees.

(C) Reviewing CLP lender loan files in accordance with paragraph (d)(3) of this section, unless the State Director delegates this responsibility to another official.

(D) Advising the State Director of CLP lender performance at least annually, and immediately upon discovery of deficiencies in file reviews.

(iv) The State Director may revoke the lender's CLP status at any time for due cause. Cause for revocation of CLP status is limited to any of the following:

(A) The lender's FmHA guaranteed farm loan loss rate exceeds the CLP loss rate.

(B) Failure to maintain "required criteria" as approved in the application for CLP status.

(C) Changes in ownership.

(D) Failure to properly process and/or service FmHA guaranteed Farmer Programs loans.

(E) Violation of the terms of the Form FmHA 1980–38.

(F) Failure to correct cited deficiencies in loan documents within 30 days of notification by FmHA of the deficiencies.

(G) Knowingly submitting false information to FmHA when requesting a guarantee, or basing a guarantee request on information known to be false.

(H) Failure to submit status reports (as required by Form FmHA 1980–38 and this section) in a timely manner.

(v) A lender which has lost CLP status may continue to submit loan guarantee requests, but only as a non-CLP lender. When CLP status is revoked, FmHA will work with the lender, when possible, to help it regain CLP status. When Form FmHA 1980–38 is terminated under paragraph (b)(3)(iv)(G) of this section (knowingly submitting false information), National Office concurrence must be obtained prior to returning the lender to CLP status.

(c) *CLP lender responsibilities to process, service and liquidate Guaranteed OL loans/lines of credit.* (1) *Processing.* Before accepting an application for a guaranteed loan or line of credit, the CLP lender will review subparts A and B of this part. The lender must abide by limitations on loan purposes, loan limitations, interest rates, and terms set forth for OL loans/lines of credit in § 1980.175 of this subpart. All requests for guaranteed loans or lines of credit will be processed under subparts A and B of this part except as modified by this section.

(i) If the lender concludes that an application will be considered, a written statement of basis for the conclusion will be placed in the applicant's file maintained by the lender addressing each of the loan eligibility requirements in § 1980.175(b) of this subpart.

(ii) The CLP lender will only be required to submit Form FmHA 1980–25 with the applicable attachments and sections completed. The CLP lender is certifying that all information required by § 1980.113 of this subpart is maintained in its loan file.

(iii) CLP lenders will process all guaranteed OL loans/lines of credit as a "complete application" by obtaining and completing all required items described in § 1980.113 of this subpart.

(iv) CLP lenders are responsible for meeting the lender's requirements contained in Exhibit M to subpart G of part 1940 of this chapter.

(v) A guaranteed OL loan/line of credit loan will not be closed by a CLP lender prior to receipt of Form FmHA 1980–15 and the determination that all conditions, including the execution of Form FmHA 1980–22, can be met.

(vi) The CLP lender will be responsible for fully securing the OL loan or line of credit under § 1980.175(g) of this subpart.

(vii) CLP lenders may consult with the FmHA County Supervisor at any time during the processing and will make all material relating to any guarantee application available to FmHA for review upon request.

(2) *Servicing.* CLP lenders will be fully responsible for servicing, protecting, and accounting for the collateral for all loans/lines of credit guaranteed. A CLP lender may allow proceeds from the disposition of collateral, such as machinery, equipment, furniture, or fixtures to be used to acquire replacement collateral o

a similar nature and value without written agreement from FmHA.

(3) *Liquidation of loans/lines of credit.* Any liquidation of guaranteed OL loans/lines of credit will be completed by the lender. Loss claims will be submitted in accordance with the CLP agreement on Form FmHA 449–30. The Report of Loss will be accompanied by supporting information to outline disposition of all security and proceeds pledged to secure the loan/line of credit.

(d) *FmHA responsibilities.*—(1) *Evaluation.* (i) FmHA will complete the evaluation described in § 1980.114 of this subpart in any case where the approval official determines an independent analysis is needed before approval or denial of a request for guarantee.

(ii) The FmHA County Supervisor will complete the environmental review required by subpart G of part 1940 of this chapter and will review each request for a guarantee, and immediately contact the CLP lender within five working days if the information is not clear or is inadequate for County Committee review.

(iii) FmHA may, on a case by case basis, request additional information from the CLP lender or review the CLP lender's loan file if needed to determine whether the applicant is eligible, the loan/line of credit is for authorized purposes, there is reasonable assurance of repayment ability, and sufficient collateral and equity is available. Requests for additional information shall only be made in situation when, because of the unique characteristic of the loan request, an eligibility or approval decision cannot be made.

(2) *Notification.* FmHA will make the final determinations on the eligibility of applicants for a guaranteed OL loan/line of credit, and the purposes and terms of such loan/lines of credit. The CLP lender will be notified of FmHA's eligibility and approval decision within 14 calendar days of receipt of a completed application.

(3) *Monitoring.* FmHA will monitor each CLF lender's guaranteed loan/line of credit files to assure that the lender is complying with requirements of this subpart. The FmHA official who conducts these reviews will document the review in the FmHA County Office file. Any discrepancies noted and not resolved will be discussed with the lender and confirmed in writing with a copy to the State Director through the District Director. State Directors may establish additional reviews and reporting systems as necessary to insure the guaranteed program complies with subparts A and B of this part. Semi-annually, FmHA will conduct a review of each lender's loan files. A minimum of 20 percent of each CLP lender's outstanding guaranteed Farmer Programs loans will be reviewed annually. The lender will be reminded of the lender's responsibilities in servicing the loan as required in Form FmHA 1980–38 when deficiencies are noted. Any deficiencies will be discussed with the lender and the discussion will be confirmed in writing with a copy to the State Director through the District Director. Loans will be selected for review according to the following priority:

(i) The most recent loans closed by the lender and not yet reviewed.

(ii) Delinquent loans or loans which the lender or FmHA has identified as high risk.

(iii) Loans in which the funds were used to refinance the lender's own debt.

(iv) Other loans.

(e) *Percent of guarantee.* All guarantees issued under the CLP program will be no less than 80 percent but not more than 90 percent.

(f) *Relationship with Approved Lender Program.* (outlined in Exhibit A of this subpart)

(1) All existing ALP agreements will continue to be followed until they expire, are revoked, or are replaced by Form FmHA 1980–38.

(2) All existing loans will continue to be serviced as provided in the Lender's Agreement under which the loan was approved.

(3) ALP lenders will continue to be governed by the servicing and reporting requirements in the existing ALP agreements.

(4) ALP lenders may, at any time, apply for CLP status. If CLP status is approved, the lender's ALP designation will be considered expired for OL loans/lines of credit, and the lender will be so notified in writing by FmHA.

(5) Lenders may apply for both an OL loan/line of credit under the CLP program, and an FO or SW loan under the ALP program using the same application.

(g) *Reporting requirements.* The CLP lender will be responsible for providing FmHA with the following information on the loan and borrower:

(1) A year end balance sheet for each borrower.

(2) Form FmHA 1980–41 as of March 31 and September 30 each year.

(3) For lines of credit, a certification stating that a projected cash flow has been developed and is feasible, that the borrower is in compliance with the provisions of the line of credit agreement, and the previous year income and expenses have been accounted for.

39. Exhibit A to Subpart B of part 1980 is amended by revising the words "Lender's Agreement (Line of Credit)" to "Agreement for Participation in Farmer Programs Guaranteed Loan Programs of the United States Government" in the second sentence of the introductory text of part I. and by revising paragraph A. of part III and the second sentence of the introductory text of part IV. to read as follows:

Exhibit A to Subpart B—Approved Lender Program—Farm Ownership, Soil and Water and Operating Loans

* * * * *

III. ALP Lender Responsibilities to Process, Service and Liquidate Guaranteed OL, SW and FO loans

A. *Processing.* Before accepting an application for a guaranteed loan or line of credit, the ALP lender will review Subparts A and B of this part. If the lender concludes that an application will be considered, a written statement of basis for the conclusion will be placed in the applicant's file maintained by the lender addressing each of the loan eligibility requirements in §§ 1980.175(b), 1980.180(b) or 1980.185(b) of this subpart. The lender must abide by limitations on loan purposes, loan limitations, interest rates, and terms set forth for OL loans/lines of credit and FO and SW loans in §§ 1980.175, 1980.180 and 1980.185 of this subpart. All requests for guaranteed loans or lines of credit will be processed under Subparts A and B of this part except as modified by this Exhibit. The ALP lender will, for each application for a guaranteed loan or line of credit, obtain a Form FmHA 1980–25, "Farmer Programs Application," signed by the loan applicant. ALP lenders will process all guaranteed OL loans/lines of credit or SW or FO loans as a "complete application" by obtaining and completing all required items described in § 1980.113 of this subpart. ALP lenders are responsible for meeting the lender's requirements contained in Exhibit M to Subpart G of Part 1940 of this chapter. An ALP lender will only be required to submit Form FmHA 1980–25 and information on crops, livestock and financial condition on forms previously approved for use under paragraph II A of this Exhibit and, with any supportive information attached, to FmHA for making application for a guarantee. A guaranteed OL loan/line of credit or SW or FO loan will not be closed by an ALP lender prior to receipt of Form FmHA 1980–15, "Conditional Commitment (Farmer Programs)," and

the determination that all conditions, including the certification required by § 1980.60 of subpart A of this part can be met. The ALP lender will be responsible for fully securing the OL loan or line of credit under § 1980.175(g), FO loan under § 1980.180(f) or SW loan under § 1980.185(f) of this subpart. ALP lenders may consult with the FmHA County Supervisor at any time during the processing and will make all material relating to any guarantee application available to FmHA for review upon request. The relationship between ALP and CLP is described in § 1980.190(f) of this subpart.

* * * * *

IV. * * * The FmHA County Supervisor will complete the required environmental review and will review each Form FmHA 1980–25, compare material with the County Office copy of ALP agreement, approved forms and methods, and immediately contact the ALP lender within three working days if the information is not in accordance with the approved agreement, is not clear or is inadequate for County Committee review. * * *

* * * * *

40. Exhibit D to Subpart B of part 1980 is amended by revising the words "part 1980" to "this part" in the second sentence of part I.; by revising the words "by FmHA" to "by the Farmers Home Administration (FmHA)" in the first sentence of the second unidentified paragraph of part II.; by revising the reference "§ 1980.113 (d)(8)" to "§ 1980.113" in paragraphs B., D., and F. and the words "the Farm and Home Plan" to "Form FmHA 431–2, 'Farm and Home Plan,'" in the first sentence of paragraph D.(3) of part III.; by removing the words, "'Interest Assistance Worksheet/Needs Test,'" from paragraph A. and by adding the words "of this Exhibit" following the reference "Attachment 2" in the last (unidentified) paragraph of part VI.; by adding the words "of this Exhibit" following the reference "paragraph VIII E" in the last sentence of paragraph F. of part VIII; by adding the words "of Subpart A of this part" following the reference "§ 1980.61" in the introductory text of paragraph B of part IX.; by adding the words, in quotes, "Lender's Agreement," following the reference "Form FmHA 449–35" in the first sentence of paragraph G. of part XIII; and by revising part V., paragraph D. of part VIII., and the fourth sentence of paragraph E. of part XIII to read as follows:

Exhibit D of Subpart B—Interest Assistance Program

* * * * *

V. Requests for Interior Assistance

A. Applications for guaranteed loans(s)/line(s) of credit shall be processed in accordance with § 1980.113 of this subpart and with this section.

B. To apply for Interest Assistance in conjunction with a request for guarantee, the lender will complete Form FmHA 1980–25, "Farmer Programs Application." Additionally, such application must include a copy of Attachment 2 to this exhibit completed by the lender. A proposed debt repayment schedule which shows principal and interest payments for the proposed loan, in each year of the loan, will also be submitted with the application.

C. To request Interest Assistance on an existing guaranteed loan, the lender shall submit to FmHA the following:

1. Form FmHA 1980–25.
2. Attachment 2 to this exhibit.
3. Proposed debt repayment schedule which shows scheduled principal and interest payments for the subject loan, in each of the remaining years of the loan.
4. Cash flow budgets, pro forma income and expense statements, and supporting justification to document that the request meets the requirements outlined in paragraph IV of this exhibit.
5. Verification of non-farm income. The lender may use Form FmHA 1910–5, "Request for Verification of Employment," or other similar documentation.
6. Verification of all debts of $1,000 or more. The lender may use Form FmHA 440–32, "Request for State of Debts and Collateral," or any other documentation.
7. Documentation of the borrower's and lender's compliance with the requirements of Exhibit M to subpart G of part 1940 of this chapter, if the affected loan/line of credit is not already subjected to this provision.

D. Requests for Interest Assistance on Contracts of Guarantee (Lines of Credit) or Loan Note Guarantees for annual operating purposes must be accompanied by a projected monthly cash flow budget.

* * * * *

VIII. Approval of Interest Assistance

* * * * *

D. For requests which include requesting funds in order to issue a guarantee on the loan/line of credit, prepare Form FmHA 1980–15, "Conditional Commitment (Farmer Programs)." In no case will Form FmHA 1980–15 be executed prior to verification of the obligation of both loan/line of credit and Interest Assistance funds.

* * * * *

XIII. Servicing of Loans/Lines of Credit Covered by an Interest Assistance Agreement

* * * * *

E. * * * Interest loss payments will be processed in accordance with § 1980.144 of this subpart. * * *

* * * * *

Subpart E—Business and Industrial Loan Program

§ 1980.498 [Amended]

41. Section 1980.498 is amended by removing "(d)(7)(ii)" in paragraph (l)(4) and by removing paragraph (m)(5)(iv).

Dated: June 11, 1993.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93–14486 Filed 6–23–93; 8:45 am]

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Thursday
June 24, 1993

Part III

Department of Transportation

Federal Highway Administration

49 CFR Part 384

State Compliance With Commercial Driver's License Program; Proposed Rule

VOL 58 ISS 120 JE 24 1993 UMI

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 384

[FHWA Docket No. MC–93–9]

RIN 2125–AC52

State Compliance With Commercial Driver's License Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA proposes standards which States must meet to substantially comply with section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986, to avoid the loss of Federal-aid highway funds as provided in section 12011 of the Act. In addition, the FHWA proposes a process to determine annually whether each State meets these standards and to effect the withholding of highway funds in the event of noncompliance.

DATES: Comments must be received on or before August 23, 1993.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–93–9, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comment on specific provisions should refer to the appropriate section and paragraph number. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Jill L. Hochman, Chief, Driver Standards Division, Office of Motor Carrier Standards, (202) 366–4001, or Mr. Paul Brennan, Chief, Motor Carrier Law Division, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

In 1986, Congress enacted the Commercial Motor Vehicle Safety Act (the Act) (Pub. L. 99–570, title XII, 100 Stat. 3207–170, as amended, 49 U.S.C. app. 2701 *et seq.*) to improve the safety of commercial motor vehicle (CMV) drivers throughout the Nation. The goals of the Act were to:

(1) Prevent CMV drivers from concealing unsafe driving records by carrying licenses from more than one State,

(2) Ensure that all CMV drivers demonstrate the minimum levels of knowledge and skills needed to safely operate CMVs before being licensed, and

(3) Subject CMV drivers to new, uniform penalties for certain poor driving behaviors.

To accomplish these goals, Congress assigned responsibilities and deadlines to CMV drivers, employers, States, and the Secretary of Transportation. Effective July 1, 1987, all CMV drivers were obliged to divest themselves of multiple drivers' licenses, to provide certain driving record information to prospective employers, to inform their employers of all motor vehicle traffic violations and suspensions of their drivers' licenses or privileges, and to maintain driving records free of the disqualifying offenses listed in 49 CFR 383.51. Also effective July 1, 1987, employers of CMV drivers were to relieve of driving responsibilities any person who lacks a currently valid driver's license, whose CMV driving privileges have been lost in any State, who has been disqualified from operating a CMV, or who has more than one driver's license. The Secretary of Transportation was to issue, by July 1988, minimum uniform standards for the States to use in testing and licensing drivers under the CDL program. (The Secretary delegated these and other CDL responsibilities to the Federal Highway Administration (FHWA), whose Office of Motor Carriers establishes and enforces safety standards for large commercial vehicles, carriers, and drivers.) Also, by January 1989, the Secretary was to implement the Commercial Driver's License Information System (CDLIS), a nationwide clearinghouse to support the Act's goals of eliminating multiple licenses and keeping problem drivers off the road.

All CMV drivers were to obtain valid commercial drivers' licenses (CDLs) from their home States by April 1, 1992. In keeping with their traditional role as driver licensing entities, the States were to establish—consonant with the minimum standards issued by the FHWA—CDL testing and licensing programs that would allow every CMV operator to meet the April 1, 1992, licensing deadline.

The requirement imposed on the States was made a condition of the continued receipt of each State's full apportionment of Federal-aid highway construction funds. To avoid risking the future loss of a portion of these funds, every State must substantially comply, by September 30, 1993, with all 21 requirements enumerated in section 12009(a) of the Act (49 U.S.C. app. 2708(a)). (An additional requirement was later added to 49 U.S.C. app. 2708(a)(21) by the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, section 4009, 105 Stat. 1914, 2156). For reasons discussed in the analysis of § 384.222, the FHWA regards this addition as a 22d requirement for substantial compliance.) Some of these requirements relate directly to the testing and licensing of drivers by the April 1, 1992, deadline for obtaining CDLs; others pertain to State disqualification of drivers and State-to-State notifications of convictions.

Building on the Federal/State partnership that characterizes the CDL program, the FHWA now looks forward to all States' substantial compliance with the 22 requirements of 49 U.S.C. app. 2708(a) by September 1993, as called for in the Act. For the States to be able to meet this deadline, new Federal regulations—proposed herein—are necessary, for several reasons:

(1) Part 383 was addressed to multiple audiences—drivers, employers, and States—and focused on those requirements of the Act that became effective from its passage through April 1, 1992. It principally focuses on driver and employer responsibilities and what a CDL applicant needs to do in the State testing and licensing process, rather than on State compliance with section 12009(a), which is not required until September 1993. For example, § 383.23(a)(1) addresses drivers and requires them to take CDL tests before driving CMVs; part 383 contains no corresponding requirement that States offer and require the tests, a lack that would be remedied in this proposal.

(2) For most of the 22 requirements, particularly in the testing and licensing arena, part 383 tells States all they need to know to achieve substantial compliance. Nevertheless, certain sections of part 383 do not succinctly define what substantial compliance by States consists of. For example, § 383.51 is written in the passive voice ("A driver who is convicted of * * * is disqualified * * *.") so as to allow for both Federal and State disqualifications. The States need wording that directly tells them what actions they are responsible for and, in some cases, what constitutes satisfactory performance of those actions. For example, this proposal would not only make the

States clearly responsible for disqualifying drivers for the causes listed in § 383.51, but also would set a maximum time interval for the State to effect such a disqualification after conviction occurs (§ 384.231).

(3) Part 383 focused primarily on topics that were of immediate interest to its multiple audiences, and thus deferred to future rulemakings a number of subjects that pertain only to the States' ability to meet their September 1993 deadline. Thus, the FHWA's existing regulations do not address State-to-State notifications of convictions (49 U.S.C. app. 2708(a)(9)); these must be dealt with in this rulemaking to help eliminate certain loopholes within State CDL programs that could impede attaining the Act's goals.

(4) Finally, in setting penalties for State noncompliance with 49 U.S.C. app. 2708(a), the statute implicitly mandates a Federal procedure for determining State compliance with the CDL program. At present, however, no regulation for such a procedure exists.

The proposed rule is primarily directed toward motor vehicle administrators and other State officials with responsibility to develop, administer, and enforce the CDL program. Nothing in this proposal is intended to alter the existing responsibilities of drivers of CMVs and their employers. The proposal addresses all 22 State requirements under 49 U.S.C. app. 2708(a). It also describes the procedure by which the FHWA would determine a State's compliance with the CDL program and would incorporate the Act's provisions for withholding of funds under section 12011 (49 U.S.C. app. 2710) when a State is not in compliance.

Structure of the Proposed Regulation

The FHWA is proposing to add a new part 384 to house the State compliance rules instead of including them in part 383, because the proposed part 384 would focus exclusively on State responsibilities, whereas part 383 directly concerns drivers and employers as well as States. Merging the proposed State compliance rules into part 383 would dramatically increase the latter's length and complexity; by contrast, codifying the State compliance rules as a separate part 384 would leave part 383 intact as a well understood part of the CFR. Comments are invited from State and other respondents on whether, and why, they would prefer that the State compliance rules be promulgated in part 383 instead of in the new part 384 proposed herein.

The proposal comprises four subparts. Subpart A would contain the general provisions—purpose and scope, applicability, and definitions. Subpart B would present the minimum standards for substantial compliance by States based on, and in the exact order of, the 22 requirements of 49 U.S.C. app. 2708(a). Subpart C would specify State and Federal procedures to determine whether a State is in substantial compliance with the Act, and subpart D would detail the consequences of State noncompliance.

The Concept of Substantial Compliance

In 49 U.S.C. app. 2710, the Secretary is required to withhold five percent of a State's Federal-aid highway funds on the first day of the fiscal year succeeding the first fiscal year beginning after September 30, 1992, throughout which the State does not substantially comply with any requirement of 49 U.S.C. app. 2708(a).

Thus, the FHWA proposes that a State must "substantially comply" with each and all of the 22 requirements of 49 U.S.C. app. 2708(a). A State would not have the option of complying with fewer than the 22 requirements; nor may it balance a failure to comply with one requirement with extra attention to some other requirement.

Further, to meet a given minimum standard, a State would have to comprehensively implement it in the cases to which it applies. This is because the standards in part 384 are being proposed as the minimum standards which a State must meet to be considered to be in substantial compliance with the Act. (Similarly, part 383 contains minimum standards for testing and licensing CDL applicants and issuing valid CDLs.) Therefore, the FHWA would not agree that a State meets the standard for a given transaction if it successfully accomplishes the transaction only a given portion of the time, for example 80 percent. Rather, any departure from the minimum standard, together with evidence that the State does not have in place such procedures and internal controls as would offer reasonable assurance of comprehensive adherence, would be cause for a determination that the State is not meeting the standard and is not in substantial compliance.

The FHWA regards its proposed standards for substantial compliance as performance standards which each State would have to meet by means of the demonstrable combined effect of its statutes, regulations, administrative procedures, organizational structures, internal control mechanisms, resource assignments, and enforcement practices (i.e., all the components of its CDL program). Under this approach, a State that incorporates these standards verbatim into its laws, but fails to implement and enforce them, could be found to be noncompliant, while a State that thoroughly implements and enforces its CDL program by administrative means alone might be determined to be in substantial compliance.

This concept of substantial compliance is incorporated in proposed § 384.301.

Deadlines for Compliance

This proposal is based on the assumption that States will be able to certify, as of September 1993, that they meet all CDL requirements for which regulations have been in place prior to the publication of this rule. In most cases, the regulations date back to 1988 or earlier, giving States ample time to be in compliance. Three items included in this NPRM would be new to the States. These would include:

(1) Satisfaction of State disqualification requirement for non-CDL holders (§ 384.231(b)(2));

(2) Required timing of record checks—no more than 24 hours before license issuance (§ 384.232); and

(3) Implementation of disqualifications for violations of out-of-service regulations (§ 384.222 [reserved]—see analysis *ad locum*).

Because some States may encounter difficulties in implementing items (1) and/or (2), by legislation or otherwise, by September 1993, the FHWA proposes to define substantial compliance with 49 U.S.C. app. 2708(a) as excluding item (1), and including a relaxed version of item (2), until October 1, 1995. The Congress directed the Secretary to determine and define substantial compliance; thus, the FHWA believes that it is within its authority to allow States more time to comply with these new requirements without a corresponding loss of Federal-aid highway funds. Since the underlying regulation for item (3) is the subject of a separate proceeding in which no final rule has been published, the FHWA is not proposing corresponding State-related regulatory text in this NPRM and intends to require State compliance with the out-of-service violations provisions of 49 U.S.C. app. 2708(21) no earlier than the October 1, 1995, deferred effective date. Such a deferred date would allow sufficient time, even for States with biennial legislative sessions, to take the necessary steps to assure compliance.

A detailed analysis of each section of the proposal follows.

Section-by-Section Analysis

Subpart A—General

Section 384.105—Definitions. This part would rely on and supplement the definitions in part 383. However, in the work done by the State licensing agencies with the FHWA, three areas are continually at issue and are often the subject of many questions and interpretations in the context of compliance. Therefore, they are proposed to be defined as follows:

Issue and issuance. Although the Act requires a State to make specific checks of a driver's record before issuing him or her a CDL, and prohibits a State from issuing a CDL to a person subject to various licensing and other sanctions, it does not define the term "issue." Under this proposal, "issue" and "issuance" would refer to any of the licensing activities specifically mentioned in §§ 383.71 and 383.73—i.e., initial licensure, license transfers, license renewals, and license upgrades (and any of those procedures applied to nonresident CDLs, the issuance of which is at the State's option). Under this definition, as a minimum standard for substantial compliance with the Act, States would need to perform the checks of the CDLIS (§ 384.205), applicable State records (§ 384.206), and the NDR (§ 384.220), prior to any initial, transfer, renewal, or upgrade CDL issuance. In addition, States would be prohibited from issuing an initial, transfer, renewal, or upgrade CDL to any person to whom the limitation on licensing in § 384.210 applies.

Licensing entity. The intent of this definition is to allow the FHWA to impose reasonable deadlines on States for notifying each other of, and taking action on, convictions of CMV drivers. As mentioned at the outset of this preamble, the prompt and effective removal of problem CMV drivers from the Nation's highways is one of the underlying goals of the CDL program. These goals cannot be achieved unless the States implement reliable techniques to quickly inform each other of convictions and to disqualify drivers automatically whenever necessary. To fulfill these objectives, each State needs a rapid flow of information between the courts and the driver licensing agencies, a flow which the FHWA encourages the States to expedite by all available means. Although more than one branch of State government is involved in processing this information, the consequences of noncompliance attach to the State as a whole. Since one entity must be responsible for administering the CDL process by carrying out the minimum standards of parts 383 and 384, the FHWA proposes to use the term "licensing entity" to mean the agency in the State that is authorized to issue drivers' licenses.

Year of noncompliance. Title 49, U.S.C., app. 2710 requires a portion of a State's Federal-aid highway funding to be withheld on the first day of the fiscal year succeeding the first fiscal year beginning after September 30, 1992, throughout which the State does not substantially comply with any requirement of 49 U.S.C. app. 2708(a). In other words, a noncompliant State would begin to lose Federal-aid highway funds on the first day of the Federal fiscal year following the fiscal year in which the noncompliance occurs. For purposes of economy of expression, the FHWA proposes to use the term "year of noncompliance" to denote the Federal fiscal year in which the FHWA's final determination of noncompliance, or the State's failure to certify compliance, takes place. Thus, fiscal sanctions would begin on October 1 of the Federal fiscal year immediately following the year of noncompliance. The first possible year of noncompliance under the Act would be FY 1993; the first possible year for which funds might actually be withheld is FY 1994, which begins on October 1, 1993.

Subpart B—Minimum Standards for Substantial Compliance by States

The analysis of this subpart presents each section of the proposal as it relates to the corresponding section of the Act and, if applicable, part 383.

The numbering scheme for sections in this subpart correlates with that of 49 U.S.C. app. 2708(a). Thus, § 384.201 of this proposal implements 49 U.S.C. app. 2708(a)(1); § 384.202 reflects 49 U.S.C. app. 2708(a)(2); and so forth until § 384.221, which implements the intoxicating beverage portion of 49 U.S.C. app. 2708(a)(21), and § 384.222, which is reserved for a related rulemaking that is planned to address the provisions for violations of out-of-service orders added to 49 U.S.C. app. 2708(a)(21) by the Intermodal Surface Transportation Efficiency Act of 1991. For ease of understanding and implementation of the standard, the FHWA will treat the last as the 22d requirement for State compliance.

Section 384.201—Testing program. Paraphrasing 49 U.S.C. app. 2708(a)(1), this section would require the State to adopt and administer a CDL testing and licensing program meeting the minimum standards of part 383 (in subparts B, E, F, G, H, and J). Prior to receiving FHWA approval to issue CDLs, each State's testing and licensing practices passed a careful scrutiny utilizing those standards. While the testing and licensing standards, promulgated in July 1988, have long been in place, the explicit requirement that States set up CDL programs has not yet appeared in regulation. This section would correct that.

Section 384.202—Test standards. This section likewise paraphrases 49 U.S.C. app. 2708(a)(2) and refers to the testing and licensing portions of part 383.

Section 384.203—Driving while under the influence. This section would require the State to have in effect and enforce a 0.04 percent alcohol concentration standard for all CMV operators. A person convicted of driving a CMV while violating the 0.04 percent standard must be disqualified (i.e., through license suspension, revocation, or cancellation). This section paraphrases 49 U.S.C. app. 2708(a)(3) and incorporates the alcohol concentration level specified in § 383.51(b)(2)(i)(A). The FHWA published a detailed final rule on this topic in October 1988 (53 FR 39044).

Section 384.204—CDL issuance and information. This section would contain a general rule paraphrasing 49 U.S.C. app. 2708(a)(4) and referring to subpart J of part 383. The general rule contains two concepts: first, States can authorize persons to drive CMVs only by means of issuing CDLs (this concept does not explicitly appear in part 383 as it relates to States); and second, each CDL must contain the information specified in part 383, subpart J.

The exemption for behind-the-wheel training, contained in § 383.23(c), would be incorporated here so that it is included in the minimum standards for substantial compliance. In addition, some States confiscate CDLs so as to enhance enforcement of traffic codes (e.g., for driving under the influence of alcohol), and issue dated temporary receipts that allow continued driving pending a final disposition of the enforcement proceeding. An exemption is proposed that would allow this enhanced-enforcement practice to continue, as long as the receipts are valid for no more than 30 days or until the driver's conviction of a disqualifying offense (or offenses) under § 383.51, whichever occurs first.

Section 384.205—CDLIS information. Title 49, U.S.C., app. 2708 (a)(5) requires the State to notify the CDLIS before it issues a CDL. Section 383.73(a)(3)(ii) of title 49, CFR, implements this provision and requires the State to conduct a check of the CDLIS to determine whether the driver applicant already has a CDL, whether the applicant's license has been

suspended, revoked, or cancelled, or if the applicant has been disqualified from operating a CMV. This check fulfills the advance notification requirement of 49 U.S.C. app. 2708(a)(5). Moreover, under proposed § 384.205, if a CDLIS check yields unfavorable information on an applicant, the State would be required to subject him or her to all applicable licensing prerequisites, limitations, disqualifications, and penalties as specified in other sections of this subpart.

The timing of the record checks in §§ 384.205, 384.206, and 384.220 is discussed in the analysis of § 384.232.

Section 384.206—State record checks. Title 49, U.S.C., app. 2708(a)(6) requires a State to check the record of any applicant in any other State which has issued him or her a CDL. Section 383.73(a)(3)(i) similarly requires the State to check the applicant's driving record as maintained by his or her current State of licensure. Proposed section 384.206 would harmonize these two requirements by specifically requiring, as a prerequisite to licensing, two separate checks of State records: First, a check of the State's own record pertaining to the applicant; and second, a check of the applicant's record in any other State which has issued him or her a CDL. As a practical matter, the CDLIS check under § 384.205 would automatically provide information necessary for the latter check.

If the check of the State record under § 384.206 yields unfavorable information on the applicant, the State would be required to subject him or her to all applicable licensing prerequisites, limitations, disqualifications, and penalties as specified in other sections of this subpart.

Specifically omitted from the substantial compliance requirements at this time would be a check of the applicant's prior non-CDL record in another State, since it is not specifically required in the Act and since direct State-to-State transfers of such non-CDL records are not provided for in the CDLIS. The National Driver Register (NDR) check in § 384.220 is intended to capture any driving record information on problem drivers who have non-CDL records in other States.

Section 384.207—Notification of licensing. Title 49, U.S.C., app. 2708(a)(7) (as implemented in § 383.73(f)) provides that a State shall inform the operator of the CDLIS of all CDL issuances. Generally, the transaction which would enter a new driver in the CDLIS system would occur when the initial CDL is issued to a driver applicant. A transfer transaction would reflect a change in the State of licensure and record to which the driver's CDLIS record points. See also proposed 49 CFR 384.211. By contrast, renewals or upgrades would be reflected on the driver's existing record in the State of licensure. Although § 383.73(f) requires notification within ten days, notification should occur, as a practical matter, automatically upon issuance. The FHWA is proposing this standard to ensure that all checks and notifications needed to fulfill the intent of the Act are accomplished for each license issuance action.

Section 384.208 [Reserved]. Title 49 U.S.C. app. 2708(a)(8)—which has not been implemented by regulation—requires a State which disqualifies the holder of a CDL, or which suspends, revokes, or cancels the person's CDL, to inform the CDLIS and the State of licensure of such action. A specific standard for substantial compliance is not needed because, in the CDL program, it is the State of licensure that accomplishes disqualifications involving license suspension, revocation, and cancellation, and because the CDLIS pointer system already makes the State of licensure the location of all driver record information except for limited "pointer" data. Furthermore, if a person's CMV driving privileges are suspended within a State that is not the State of licensure, the FHWA expects that the State of licensure will discover that fact during the check of the National Driver Register prior to any CDL issuance (§ 384.220). If the privilege suspension remains current, the licensing State will apply the limitation on licensing of § 384.210 against the driver's CDL application for the duration of the suspension, which constitutes a disqualification (under paragraph (a) of the definition of disqualification in § 383.5—see the preamble to §§ 384.209 and 384.210). Therefore, all currently apparent applications of 49 U.S.C. app. 2708(a)(8) are already covered under other sections of this subpart, and the FHWA is not proposing a minimum standard for substantial compliance with this section of the Act. Section 384.208 is reserved to preserve the numbering scheme described in the introduction to subpart B of this analysis and to accommodate a minimum compliance standard corresponding to 49 U.S.C. app. 2708(a)(8) should the need ever arise.

Section 384.209—Notification of traffic violations. State-to-State notification of all convictions for violations of State or local law relating to motor vehicle traffic control (other than parking violations) by CDL holders is mandated by the Act, so that the State of licensure can take all requisite disqualifying and other actions. Although not included in part 383, the notification system is a pillar of the CDL program. In keeping with the CDL program strategy of removing problem CMV drivers from the road, the FHWA believes that State compliance with the Act's notification requirements is essential to highway safety. Without such notification, a driver who should be disqualified may be able to continue driving—contrary to the mandate and purpose of the Act.

Thus, the FHWA proposes—as mandated by Congress in the Act—to require States to perform State-to-State notifications for all traffic violation convictions of CDL holders (except parking violations), whether or not the convictions are disqualifying under § 383.51, and regardless of the type of vehicle in which the offense was committed. Moreover, for reasons explained in the analysis of § 384.231, the FHWA proposes that the licensing entity in the State of conviction would have to notify the State of licensure within three business days after the date the former learns of the conviction, and no more than 30 calendar days after the conviction occurs. This is to ensure prompt removal of poor drivers from the road and to make use of the electronic information exchange systems available in all States. The notification would be by electronic means as established by AAMVAnet, Inc., the operator of the CDLIS. The FHWA believes that only in this manner would the notification protocol satisfy the safety goals of the Act as well as the prescriptions of 49 U.S.C. app. 2708(a)(9).

Title 49, U.S.C., app. 2708(a)(9) requires State-to-State notification of all traffic convictions by "a person who operates a CMV." This means that the notification requirement extends to non-CDL holders who illegally operate CMVs, who commit traffic offenses (other than parking violations) while doing so, and who are subsequently convicted of such offenses. This NPRM therefore requires State-to-State reporting of all such convictions. Since such persons would not necessarily be entered into the CDLIS prior to their convictions, however, the proposal is to allow the licensing entities to accomplish these notifications by any means (not just electronically) and within 10 days. (For this class of drivers as well, the State of conviction would need to notify the licensing State no more than 30 days from the date of conviction.) See also § 384.231(b) for proposed disqualification requirements for non-CDL holders in the situation described in this paragraph.

Section 384.210—Limitation on licensing. As mandated in 49 U.S.C. app. 2708 (a)(10), States would be prohibited from issuing CDLs to persons who are disqualified from operating CMVs, or who have a driver's license suspended, revoked, or cancelled by the State or jurisdiction of licensure. In addition, this section would incorporate the limitation (in § 383.73(g)) against licensing a person who is determined to have falsified information on his or her CDL application.

The prohibition against issuing a CDL to a person with a currently suspended or revoked license would apply regardless of the cause of the suspension or revocation. For purposes of the limitation on licensing, "disqualification" would explicitly include all elements of that term as defined in § 383.5. In brief, these elements are:

(a) The suspension, revocation, cancellation, or other withdrawal by a State of a person's privileges to drive a CMV;

(b) A determination by the FHWA that a person is no longer qualified to operate a CMV; or

(c) The loss of qualification which automatically follows conviction of an offense listed in § 383.51.

This last element of the "disqualification" definition means that a State would be prohibited from issuing a CDL to any person for whom the required record checks in §§ 384.205, 384.206, and/or 384.220 yield information on convictions that—while disqualifying under § 383.51—have not yet been translated into a license suspension, revocation, or cancellation.

In conformity with § 384.231(b)(2), a State would also be prohibited from issuing a CDL to non-CDL holders who are disqualified due to convictions for CMV-disqualifying offenses. (See discussion at §§ 384.209 and 384.231(b)(2).)

Sections 384.211 (Return of old licenses) and 384.212 (Domicile requirement). These sections implement 49 U.S.C. app. 2708(a)(11) and (a)(12), respectively. In addition, § 384.212 would require States to enforce the requirement of § 383.71(b) that a CDL holder apply for a license transfer within 30 days of establishing domicile in a new State.

The actual disposition of the driver's old license documents is a matter best left to the States involved. However, the FHWA proposes to prescribe in § 384.207 that the driver's State of record be changed from the old to the new State by means of the CDLIS. This requirement would help ensure that each CDL holder has only one record, a tenet of the Act. It is also already a requirement of participation in the CDLIS and, as such, is the current practice of the States.

Section 384.213—Penalties for driving without a proper CDL. Title 49, U.S.C., app. 2708(a)(13), requires a State to impose the penalties that it deems appropriate, and that the Secretary approves, for operating a CMV while not having a CDL; while having any type of driver's license suspended, revoked, or cancelled; or while being disqualified from operating a CMV. Section 384.213 would implement 49 U.S.C. app. 2708(a)(13) with the proviso that the CDL-related civil and criminal penalties must be at least as severe as those imposed by the State on noncommercial drivers. The FHWA believes this proviso will encourage States to ensure that the CDL program is efficiently enforced.

Section 384.214—Reciprocity. The statute specifies that each State shall allow any holder of a valid CDL issued by any other State, who is not disqualified, to operate a CMV in its State. 49 U.S.C. app. 2708 (a)(14). Section 383.73(h) makes a State's granting of this licensing reciprocity a prerequisite to the validity of that State's own CDLs. This proposal explicitly conditions the State's substantial compliance with the CDL program on the same licensing reciprocity intended in part 383, with two clarifications. First, the proposed phrase "State or jurisdiction" means that a State must accept CDLs issued by countries named in footnote 1 to § 383.23(b). Currently, Canadian licenses issued under the National Safety Code, and Mexico's new Licencia Federal de Conductor, must be reciprocally accepted because the FHWA has determined that those countries test drivers and issue CDLs in accordance with, or similar to, the part 383 standards. Second, to be reciprocally honored, a license must be good for the vehicle type (including any endorsements) being driven.

Sections 384.215 (First offenses), 384.216 (Second offenses), 384.217 (Drug offenses), 384.218 (Second serious traffic violation) and 384.219 (Third serious traffic violation). These sections would implement without change the corresponding provisions of 49 U.S.C. app. 2708(a)(15) through (a)(19). Proposed § 384.231 would contain minimum standards, grouped together for economy of expression, that are generally applicable to all these sections. In particular, proposed § 384.231(a) specifies that it is the person's current State of licensure that is responsible to implement the disqualifications called for in these sections.

Section 384.220—National Driver Register (NDR) information. This proposed section makes clear that the State must check the NDR prior to any CDL "issuance" as defined herein. This check is required in section 12009(a)(20) of the Act and was implemented as an essential CDL State licensing procedure in § 383.73(a)(3)(iii). Although the Act demands that the State give full weight and consideration to NDR information in deciding whether to issue a CDL to such person, § 383.73(a)(3)(iii) prescribes no concrete action to be taken by the State based on a driver's NDR record, because that section is not a State requirement *per se*. This proposal, therefore, would make it such and goes beyond § 383.73(a)(3)(iii) to define "full weight and consideration" for substantial compliance purposes: As in the case of the checks of the CDLIS (§ 384.205) or of the State record (§ 384.206), if a State discovers information in the NDR check that would cause the disqualifications under §§ 384.215 through 384.219 or the licensing limitation of § 384.210 to apply to him or her, then those requisite actions must be taken. The FHWA believes this proposal would ensure that the limitations on licensing are applied in practice so that problem drivers are prevented from being issued CDLs.

Section 384.221 and future section 384.222 (reserved in this proposal). These sections would address two distinct infractions—first, violations of alcohol prohibitions, and second, violations of out-of-service orders placed on drivers for any reason including alcohol—for which Congress required the States to apply sanctions under 49 U.S.C. app. 2708(a)(21). The distinction between these two infractions is exemplified as follows: If the State Police stop a truck driver and detect alcohol on his or her breath, he or she has committed the first infraction, and the State must place the driver out-of-service for 24 hours. (Sections 392.5 and proposed 384.221.) If, upon the departure of the police 15 minutes later, the driver decides to resume his or her trip in violation of the out-of-service order, then he or she has committed the second infraction and, upon his or her conviction, the State would disqualify him or her for at least 90 days. (Sections 383.51—assuming finalization of the rule proposed at 58 FR 4640—and future § 384.222.)

Section 384.221—Out of service regulations (intoxicating beverage). This section would require States to place out-of-service for 24 hours any CMV

driver who is found to be in violation of § 392.5, which forbids driving while having any measured alcohol concentration or detected presence of alcohol (among other drinking/driving limitations).

As interpreted by the FHWA as early as October 1988 (at 53 FR 39048), this is the only requirement of 49 U.S.C. app. 2708(a) that applies both to all drivers of CMVs as defined in part 383 and to all drivers of CMVs as defined in part 390. (Generally, part 383 has a 26,001 pound gross vehicle weight rating (GVWR) minimum threshold for CMVs, while part 390 has a 10,001 pound threshold. Both parts include as CMVs, regardless of GVWR, vehicles placarded for hazardous materials or designed to transport 16 or more persons including the driver.) The requirement is unique in that States must apply § 392.5 to those CDL holders who otherwise are exempted from the Federal Motor Carrier Safety Regulations in parts 390 through 399 (for example, drivers of government vehicles).

Section 384.222. This section number is reserved for a related rulemaking concerning State responsibilities for disqualifying CMV drivers convicted of violations of out-of-service orders of any kind—not just of the out-of-service orders that section 384.221 would require States to give for intoxicating beverage infractions under section 392.5. (Examples of non-alcohol-related out-of-service orders would include those for excessive hours of service or unsafe equipment conditions.) Section 4009 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) amends the Act by adding section 12020 to mandate CMV disqualifications of at least 90 days for drivers convicted of violating any type of out-of-service order. The ISTEA likewise required States to implement these out-of-service-related disqualifications, and combined this new State responsibility with the intoxicating beverage provision in section 12009(a)(21) of the Act. However, as the example further above illustrates, the nature of the added infraction and its potential consequence differ enough from the original subject matter of section 12009(a)(21) that the FHWA regards this as the 22d requirement for substantial compliance.

The FHWA is conducting a rulemaking action to establish the out-of-service violation as a disqualifying offense in § 383.51, among other provisions (see 58 FR 4640), and has not yet issued a final rule. For that reason, no regulatory language on corresponding State responsibilities is included here. However, § 384.222 has been reserved for future placement of the appropriate State-directed regulatory text, if the rule establishing the underlying disqualifications is finalized. (At that time, changes will also be needed in the proposed § 384.231(a) and (d).) The FHWA's intention would be to make States responsible to enforce the out-of-service related disqualifications no earlier than October 1, 1995.

Sections 384.223 through 384.230. These sections are reserved.

Sections 384.231 and 384.232. These sections would contain minimum standards that pertain to more than one of the 22 State requirements of 49 U.S.C. app. 2708. To avoid the repetition of these standards under each of the 22 requirements to which they apply, they are grouped together here and cross-referenced to the applicable sections.

Section 384.231—Satisfaction of State disqualification requirement. This section provides minimum standards that a State would be required to meet to comply with §§ 384.215 through 384.219.

Section 384.231 (a). This section makes clear that it is the driver's current State of licensure that is responsible to implement the disqualifications of §§ 384.203 and 384.215 through 384.219; the licensing limitation of § 384.210 (a responsibility also of any prospective State of licensure); and the penalties of § 384.213. This is true regardless of where any relevant convictions may have occurred, and is needed to ensure that the CDL program successfully prevents problem drivers from being issued CDLs and operating on the highways. Without the one-license, one-record concept, the goals of the Act could not be met; and without this provision, the one-license, one-record concept would be violated.

Section 384.231(b). This section, based on 49 U.S.C. app. 2708(b) ("Satisfaction of State disqualification requirement"), requires the State to fulfill its responsibility to disqualify a CDL holder by means of suspending, revoking, or cancelling the driver's CDL. This is implied in part 383 but does not yet exist as a required standard, noncompliance with which may occasion the loss of Federal-aid highway funds. Therefore, the FHWA proposes to include it here. The State would, of course, retain the option to take still more stringent actions against the driver.

Section 384.209, Notification of traffic violations, in part, proposes notification requirements for CMV-disqualifying convictions of drivers for offenses committed while operating CMVs, but without holding currently valid CDLs. For example, a person who has no CDL gets drunk, steals a CMV, and is subsequently arrested and convicted for, among other things, operating a CMV while under the influence of alcohol. Section 384.231(b) carries the § 384.209 approach one step further by proposing that, effective October 1, 1995, the State of licensure maintain all records (including, by implication, CDLIS entries) necessary to prevent such a non-CDL holder's legally obtaining a CDL from any State during the period of disqualification.

Since the CDL program deals solely with commercial driving privileges, the FHWA believes that a State should have the discretion to allow the retention or restoration of driving privileges in personal automobiles or other non-CMVs for the period of disqualification, and is consequently interpreting 49 U.S.C. 2708(b) to allow for that eventuality. Comments are invited on the appropriateness and feasibility of this proposed treatment of non-CDL holders who receive CMV-disqualifying convictions, and any alternative approaches to this problem.

Section 384.231(c). This section addresses time limits for disqualification for which each State has responsibility, and makes the State's licensing entity responsible to assure compliance with those limits. Specifically, the FHWA is proposing to fix responsibility on the licensing entity for meeting a three-day deadline for disqualifying drivers (or, when appropriate, notifying the State of licensure) following receipt of notification from the court system. A thirty-day deadline, from the operative date of conviction to the date of disqualification by the licensing entity, is proposed to be applied to the State as a whole. (The operative date of conviction is generally the date of sentencing and the date from which the statute of limitations begins to run for appeal purposes.)

The rationale for the three-day deadline is as follows. First, problem CMV drivers must be removed from the road, particularly those who are convicted of the offenses listed in § 383.51. To allow more than three days would prolong the process and adversely affect highway safety. Second, most State licensing entities are computerized with capabilities that enable them to effect disqualifications almost immediately; a limit of three business days would make ample allowance for backlogs and administrative procedures.

Even with a three-day deadline applicable to the licensing entity, problems in communication between

court systems and licensing entities (see under definition of "licensing entity" at § 384.105) may persist; thus, the FHWA would require all branches of State government to limit the delay between a driver's conviction of a disqualifying offense, and the suspension, revocation, or cancellation of the CDL, to no more than 30 days.

The 30-day deadline, for which the State as a whole would be held accountable, would apply to convictions within the same State. If the conviction occurs in other than the licensing State, then the licensing entity in the licensing State would be responsible for meeting a three-day deadline to disqualify the driver following receipt of notification from the State of conviction. As discussed under § 384.209, the State of conviction would face its own deadlines for processing the information internally.

The FHWA has also recognized the need to clarify exactly when a person's required period of disqualification begins, and when it ends. In the time since part 383 was issued and while States implemented their CDL programs, this question surfaced many times. Thus, this proposal would specify that the disqualification period begins on the date that the licensing entity effects the suspension, revocation, or disqualification, and is in keeping with the FHWA's response to the many questions asked on this subject.

Nevertheless, as discussed in the preamble to the proposed § 384.210, Limitation on licensing, a State would be prohibited from issuing a CDL to a person during the period intervening between a disqualifying conviction and the beginning of the disqualification period as defined in the preceding paragraph.

Section 384.231(d)—Recordkeeping requirements. Certain CDL disqualification requirements are cumulative—that is, they are triggered by multiple convictions. To meet the disqualification standards, a State must assure that cumulative convictions stay on the books long enough to reflect the mandated disqualification time periods, thus implementing the strategy—intended by the Act—of removing CMV drivers from the road for certain unsafe driving behaviors. Thus, once a driver receives a long-term disqualification, his or her record must remain available so that, even after a period of years, the disqualification can be enforced. The driver's identifying data must remain on the CDLIS and the related conviction data must remain in the State of record, so that—in the event of a second or third such conviction—the appropriate disqualification can be implemented. In particular, the CDLIS and the State of record must retain information on a driver who receives an absolute lifetime disqualification for a drug-related CMV felony conviction, for example, so that no other State can subsequently issue him or her a CDL.

AAMVAnet, Inc., the operator of the CDLIS on behalf of the States, issues technical requirements for State participants in the CDLIS. The FHWA believes those technical determinations are appropriate standards for State compliance with § 384.231(d) because they were developed to implement the CDL program as mandated in the Act. For example, the requirements for the CDLIS define "life" as 55 years from conviction. Thus, the FHWA proposes that States be required to adopt and use these AAMVAnet, Inc. requirements to be in compliance with the Act.

Section 384.232—Required timing of record checks. To effectively exclude ineligible applicants from obtaining CDLs, the checks of the CDLIS, the State record(s), and the NDR (in §§ 384.205, 384.206, and 384.220, respectively) should occur immediately—i.e., no more than 24 hours—prior to all CDL issuances, as proposed to be defined in § 384.105. However, some States do not issue CDLs over-the-counter and are thus unable to complete these checks within 24 hours before CDL issuance. Therefore, for licenses issued before October 1, 1995, the FHWA is proposing that the record checks should occur no more than 10 days prior to issuance. For licenses issued after September 30, 1995, however, the FHWA is proposing to require that the checks occur no more than 24 hours prior to issuance. This staged implementation of the limits on elapsed time between record checks and issuance should balance the needs of the States which centrally issue licenses against the need to prevent an individual from obtaining a CDL who has recently been convicted of a disqualifying offense. It should also allow time for States to implement needed improvements to their communication systems.

Subpart C—Procedures for Determining State Compliance

This part of the proposal would set up two parallel mechanisms—mandatory State certifications and discretionary FHWA reviews of State CDL programs—either of which could trigger a finding of noncompliance.

Section 384.301—Substantial compliance—general requirement. This section summarizes the FHWA's concept of substantial compliance, discussed above.

Sections 384.303 and 384.305—State certifications. By the tenth day of September 1993 (the last month of Federal fiscal year 1993), and by January 1 of every subsequent Federal fiscal year, the State would make an annual certification of substantial compliance with 49 U.S.C. app. 2708(a). If the State fails to make that certification it would be determined to be out of compliance, and subject to the statutory reduction in Federal-aid highway funding.

The precise wording of the Act leads to differing certification requirements for Federal fiscal year 1993 and thereafter. The FHWA interprets 49 U.S.C. app. 2710(a) to mean that if a State is in compliance with part 384 at the end of FY 1993, it cannot be found to be out of compliance even if it has failed to meet the part 384 requirements throughout most of FY 1993. From a practical standpoint, in order to accomplish the apportionment of Federal-aid highway funds for FY 1994, the FHWA must know a State's compliance status by September 10, 1993. Thus, no later than September 10, 1993, the State would have to certify to the FHWA that it currently meets the standards of part 384.

The FHWA interprets 49 U.S.C. app. 2710(b) to mean that, in FY 1994 and thereafter, a State must continuously comply with part 384—i.e., throughout the entire year. Thus, the certification due by January 1 of any current fiscal year would cover the entire period from the date of the prior fiscal year's certification (retrospectively) through the date of the required certification for the next fiscal year (prospectively). (For example, the certification due January 1, 1995 would cover the period from January 1, 1994 through January 1, 1996.) The resulting overlaps in coverage result from the need for continuous compliance throughout the current fiscal year. A January 1 deadline for each fiscal year's certification is proposed because, in addition to paralleling the analogous requirement in 23 CFR 657.17 (for size and weight enforcement), it would provide the FHWA with sufficient time to review certifications and compliance. This deadline would also enable the State to conduct a thorough review of its compliance during the previous fiscal year as well as its capacity to continue in compliance during the current fiscal year.

The FHWA recognizes that the certifications proposed to be due by September 10, 1993, and January 1, 1994, would be separated by less than four months. Comments are invited on the efficacy of two required certifications in so brief a period and

any recommended solutions (such as waiving the FY 1994 certification if the prior one was submitted and accepted).

Section 384.307—FHWA program reviews of State compliance. Because individual States' situations may differ markedly, the FHWA will rely in the first instance on the State's certification. The FHWA reserves the right and the flexibility to design and schedule reviews of State compliance. Thus, the FHWA would, at its discretion, conduct reviews of State compliance with part 384 on a random and/or for-cause basis relying on information obtained from the State and other sources. The FHWA expects that the State-provided information would include documents and address topics such as those mentioned in the proposed § 384.301 (for example, statutes, regulations, and administrative procedures and practices). Comments are invited on whether the final rule should prescribe the documents which the State would be obliged to maintain for the FHWA.

If, in the course of any such reviews, the FHWA makes a preliminary determination that a State does not meet one or more of the standards of subpart B, an informal resolution procedure would begin. The State would be informed of any such preliminary determination before July 1 of the fiscal year in which it is made; this deadline would help assure that the State has adequate time to come into compliance prior to the beginning of the next fiscal year, to avoid a withholding of funds.

The State would have up to 30 calendar days to respond to a preliminary determination. If, after reviewing the State's timely response, the FHWA still finds the State to be in noncompliance, the FHWA would notify the State of its final determination.

The FHWA believes that such a procedure, building on existing Federal/State cooperation in the CDL endeavor, would satisfactorily protect the nationwide CDL program on the one hand, and the States' interests on the other.

Section 384.309—Results of compliance determination. Any year in which a State fails to submit the required certification, or in which the FHWA makes a final determination that a State does not meet one or more of the standards of subpart B of this part, would be considered a year of noncompliance and would trigger the consequences contained in subpart D. Conversely, if timely certification is supplied and the FHWA makes no final determinations of noncompliance, then the State would be deemed to be in compliance for the year.

Subpart D—Consequences of State Noncompliance

This subpart implements the detailed consequences of State noncompliance laid out in section 12011 of the Act (49 U.S.C. app. 2710). During the fiscal year following a State's first year of noncompliance, five percent of the State's Federal-aid highway funds would be withheld; during the fiscal year following any year of noncompliance other than the first, the withheld amount would be ten percent. The specific funds cited in the Act, 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6), are redesignated in this proposal to read 23 U.S.C. 104(b)(1), 104(b)(3), and 104(b)(5) to conform to changes made in the Federal-aid highway program by the Intermodal Surface Transportation Efficiency Act of 1991.

This proposal also sets forth the particulars, provided in the Act, for various cases in which a State comes into compliance after having had funds withheld.

Rulemaking Analyses and Notices

Regulatory Impact

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. Any final rule based on this NPRM is not expected to result in an annual effect on the economy of $100 million or more, or lead to a major increase in costs or prices, or have significant adverse impacts on the United States economy. However, because of the public interest in the issue of CMV safety and the expected benefit in transportation, this rule is considered significant under the regulatory policies and procedures of the DOT. For this reason, and pursuant to Executive Order 12498, this rulemaking action has been included on the regulatory program for significant rulemaking actions.

A primary purpose of this rulemaking is to formalize as State requirements the obligations already placed upon States in 49 CFR part 383, Commercial Driver's License Standards—Requirements and Penalties. Part 383 was already the subject of an extensive regulatory evaluation, a copy of which has been placed for informational purposes in the public docket for this rulemaking and is available for inspection in the Headquarters office of the FHWA, 400 Seventh Street SW., Washington, DC 20590. Because the States are already complying with the underlying requirements of part 383, and because the FHWA expects the States to comply with these proposed regulations which impose few new mandates on the States, the FHWA does not project that material incremental regulatory impacts, beyond those described in the regulatory evaluation for part 383, would result from promulgation of this proposal.

Regulatory Flexibility Act

As explained in the preamble to the final rule on CDL testing and licensing (53 FR 27647, July 21, 1988), the impacts of the CDL program on small entities have already been considered. This proposed rule, addressing the States rather than employees and employers, is not expected to have identifiable incremental impacts on small entities, beyond those already described with regard to part 383. Therefore, under the criteria of the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed rule on small entities, and certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

The FHWA subjected the underlying rules in 49 CFR part 383, which form the substantive basis for most of the State requirements in this rulemaking, to a painstaking Federalism analysis under Executive Order 12612. See 53 FR 27648. As a result of that analysis, the FHWA found that the CDL program, embodied in 49 CFR part 383, accorded fully with the letter and spirit of the Federalism initiative.

Title 49, U.S.C., app. 2708(a) lists 22 CDL program requirements which States must meet to avoid the withholding of five or ten percent of their Federal-aid highway construction funds. Most of these 22 requirements are already fully addressed in 49 CFR part 383 and covered by the Federalism Assessment for that part. The remaining requirements, addressed herein, constitute proposed minimum standards which would have to be followed by States and which may be supplemented by the States. This NPRM would limit the policymaking discretion of the States only in narrow ways, and would do so only to achieve the national purposes of the Act. The procedures proposed in subparts C and D either directly embody the provisions of the Act or constitute a necessary procedural framework for implementing the funds withholding sanctions set forth in 49 U.S.C. app. 2710. Accordingly, it is certified that the policies contained in

this document have been assessed in light of, and accord fully with, the principles, criteria, and requirements of the Federalism Executive Order and that the requirements of this action that were not addressed in the Federalism Assessment for 49 CFR part 383 do not have sufficient federalism implications to warrant the preparation of a separate full Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

By virtue of the certifications proposed to be required annually of the States under subpart C, this action proposes a minimal collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. Accordingly, a draft amendment to the information collection supporting statement for 49 CFR part 383 (Commercial Driver Testing and Licensing Standards—OMB Number 2125–0542) is being prepared and submitted to the Office of Management and Budget during the comment period for this NPRM.

National Environmental Policy Act

The agency has analyzed this section for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 384

Commercial driver's license documents, Commercial motor vehicles, Driver qualification, Highways and roads, Motor carriers licensing and testing procedures, Motor vehicle safety.

Issued on: June 17, 1993.

Rodney E. Slater,

Administrator.

In consideration of the foregoing, the FHWA hereby proposes to amend title 49, Code of Federal Regulations, chapter III, subchapter B, as set forth below.

1. Chapter III is amended by adding part 384, to read as follows:

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

Subpart A—General

Sec.

384.101 Purpose and scope.
384.103 Applicability.
384.105 Definitions.

Subpart B—Minimum Standards for Substantial Compliance by States

384.201 Testing program.
384.202 Test standards.
384.203 Driving while under the influence.
384.204 CDL issuance and information.
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384.206 State record checks.
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384.209 Notification of traffic violations.
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384.213 Penalties for driving without a proper CDL.
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384.215 First offenses.
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384.218 Second serious traffic violation.
384.219 Third serious traffic violation.
384.220 National Driver Register information.
384.221 Out-of-service regulations (intoxicating beverage).
384.222 through 384.230 [Reserved]
384.231 Satisfaction of State disqualification requirement.
384.232 Required timing of record checks.

Subpart C—Procedures for Determining State Compliance

384.301 Substantial compliance—general requirement.
384.303 State certification for Federal fiscal year (FY) 1993.
384.305 State certifications for Federal fiscal years after FY 1993.
384.307 FHWA program reviews of State compliance.
384.309 Results of compliance determination.

Subpart D—Consequences of State Noncompliance

384.401 Withholding of funds based on noncompliance.
384.403 Period of availability; effect of compliance and noncompliance.

Authority: 49 U.S.C. 3102; 49 U.S.C. app. 2505, 2701 *et. seq.*; and 49 CFR 1.48.

Subpart A—General

§ 384.101 Purpose and scope.

(a) *Purpose.* The purpose of this part is to ensure that the States comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. app. 2708(a)).

(b) *Scope.* This part:

(1) Includes the minimum standards for the actions States must take to be in substantial compliance with each of the 22 requirements of 49 U.S.C. app. 2708(a);

(2) Establishes procedures for determinations to be made of such compliance by States; and

(3) Specifies the consequences of State noncompliance.

§ 384.103 Applicability.

The rules in this part apply to all States.

§ 384.105 Definitions.

(a) The definitions in part 383 of this title apply to this part, except where otherwise specifically noted.

(b) As used in this part:

Issue and *issuance* mean initial licensure, license transfers, license renewals, license upgrades, and nonresident CDLs, as described in § 383.73 of this title.

Licensing entity means the agency of State government that is authorized to issue drivers' licenses.

Year of noncompliance means any Federal fiscal year during which—

(1) A State fails to submit timely certification as prescribed in subpart C of this part; or

(2) The State does not meet one or more of the standards of subpart B of this part, based on a final determination by the FHWA under § 384.307(c) of this part.

Subpart B—Minimum Standards for Substantial Compliance by States

§ 384.201 Testing program.

The State shall adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles in accordance with the minimum Federal standards contained in part 383 of this title.

§ 384.202 Test standards.

No State shall authorize a person to operate a commercial motor vehicle unless such person passes a written and driving test for the operation of a commercial motor vehicle in accordance with the minimum Federal standards contained in part 383 of this title.

§ 384.203 Driving while under the influence.

The State shall have in effect and enforce a law which provides that any person with an alcohol concentration of 0.04 percent or more when operating a commercial motor vehicle is deemed to be driving a commercial motor vehicle while under the influence of alcohol.

§ 384.204 CDL issuance and information.

(a) *General rule.* The State shall authorize a person to operate a commercial motor vehicle only by issuance of a CDL which contains, at a minimum, the information specified in part 383, subpart J, of this title.

(b) *Exceptions.*

(1) *Training.* The State may authorize a person, who does not hold a CDL valid in the type of vehicle in which training occurs, to undergo behind-the-wheel training in a commercial motor vehicle only by means of a learner's permit issued and used in accordance with § 383.23(c) of this title.

(2) *Confiscation of CDL pending enforcement.* The State may allow a CDL holder, whose CDL is confiscated in the course of enforcement of the State's motor vehicle traffic code, but who is not yet convicted of a disqualifying offense under § 383.51 based on such enforcement, to drive a commercial motor vehicle for up to 30 days while holding a dated receipt for such confiscated CDL.

§ 384.205 CDLIS information.

Before issuing a CDL to any person, the State shall, within the period of time specified in § 384.232, perform the check of the Commercial Driver's License Information System (CDLIS) in accordance with § 383.73(a)(3)(ii) of this title, and, based on that information, shall promptly implement the disqualifications, licensing limitations, and/or penalties that are called for in any applicable section(s) of this subpart.

§ 384.206 State record checks.

(a) *Required checks.*

(1) *Issuing State's records.* Before issuing a CDL to any person, the State shall, within the period of time specified in § 384.232, check its own driving record for such person in accordance with § 383.73(a)(3) of this title.

(2) *Other States' records.* Before initial or transfer issuance of a CDL to a person, the issuing State shall, within the period of time specified in § 384.232, obtain from any other State or jurisdiction which has issued a CDL to such person, and such other State(s) shall provide, all information pertaining to the driving record of such person in accordance with § 383.73(a)(3) of this title.

(b) *Required action.* Based on the findings of the State record checks prescribed in this section, the State shall promptly implement the disqualifications, licensing limitations, and/or penalties that are called for in any applicable section(s) of this subpart.

§ 384.207 Notification of licensing.

Within the period defined in § 383.73(f) of this title, the State shall:

(a) Notify the operator of the CDLIS of each CDL issuance;

(b) Notify the operator of the CDLIS of any changes in driver identification information; and

(c) In the case of transfer issuances, implement the Change State of Record transaction, as specified by the operator of the CDLIS, in conjunction with the previous State of record and the operator of the CDLIS.

§ 384.208 [Reserved]

§ 384.209 Notification of traffic violations.

(a) *Required notification with respect to CDL holders.* The licensing entity of the State in which a conviction occurs shall, before the end of the third business day following the day it receives notice of such conviction, and no later than 30 calendar days from the operative date of conviction in the tribunal of competent jurisdiction, notify the licensing entity of a person's State of licensure of the conviction by such electronic means as are specified by the operator of the CDLIS, whenever a person who holds a CDL from another State is convicted of a violation, in any type of vehicle, of any State or local law relating to motor vehicle traffic control (other than a parking violation).

(b) *Required notification with respect to non-CDL holders.* The licensing entity of the State in which a conviction occurs shall, within 10 days after being informed of such conviction, and no later than 30 calendar days from the operative date of conviction in the tribunal of competent jurisdiction, notify the licensing entity of a person's State of licensure of such conviction, whenever a person who does not hold a CDL, but who is licensed to drive by another State, is convicted of a violation, in a commercial motor vehicle, of any State or local law relating to motor vehicle traffic control (other than a parking violation).

§ 384.210 Limitation on licensing.

The State shall not knowingly issue a CDL to a person during a period in which:

(a) Such person is disqualified from operating a commercial motor vehicle under the definition of *disqualification* in § 383.5 of this title or under the provisions of § 384.231(b)(2);

(b) Any type of driver's license held by such person is suspended, revoked, or cancelled by the State or jurisdiction of licensure; or

(c) Such person is subject to the penalties for false information contained in § 383.73(g) of this title.

§ 384.211 Return of old licenses.

The State shall not issue a CDL to a person who possesses a driver's license issued by another State or jurisdiction unless such person first surrenders the driver's license issued by such other State or jurisdiction in accordance with §§ 383.71(a)(7) and (b)(4) of this title.

§ 384.212 Domicile requirement.

(a) The State shall issue CDLs only to those persons for whom such State is the State of domicile as defined in § 383.5 of this title; except that the State may issue a nonresident CDL under the conditions specified in §§ 383.23(b), 383.71(e) and 383.73(e) of this title.

(b) The State shall require any person holding a CDL issued by another State to apply for a transfer CDL from the State within 30 days after establishing domicile in the State, as specified in § 383.71(b) of this title.

§ 384.213 Penalties for driving without a proper CDL.

The State shall impose civil and criminal penalties for operating a commercial motor vehicle while not possessing a CDL that is valid for the type of commercial motor vehicle being driven; while having a driver's license suspended, revoked, or cancelled; or while being disqualified from operating a commercial motor vehicle. In determining the appropriateness of such penalties, the State shall consider their effectiveness in deterring this type of violation. The State shall not impose penalties on commercial motor vehicle drivers which are less stringent than those imposed on noncommercial drivers for the same or analogous offenses.

§ 384.214 Reciprocity.

The State shall allow any person to operate a commercial motor vehicle in the State who is not disqualified from operating a commercial motor vehicle and who holds a CDL which is—

(a) Issued to him or her by any other State or jurisdiction in accordance with part 383 of this title;

(b) Not suspended, revoked, or cancelled; and

(c) Valid, under the terms of part 383, subpart F, of this title, for the type of vehicle being driven.

§ 384.215 First offenses.

(a) *General rule.* The State shall disqualify from operating a commercial motor vehicle each person who is convicted, as defined in § 383.5 of this title, in any State or jurisdiction, of a disqualifying offense specified in § 383.51(b)(2)(i) through (iv) of this title, for no less than one year.

(b) *Special rule for hazardous materials offenses.* If the offense under paragraph (a) of this section occurred while the driver was operating a vehicle transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (codified as amended at 49 U.S.C. app. 1801–1819), the State shall disqualify the person for no less than three years.

§ 384.216 Second offenses.

(a) *General rule.* The State shall disqualify for life from operating a commercial motor vehicle each person who is convicted, as defined in § 383.5 of this title, in any State or jurisdiction, of a subsequent offense as described in § 383.51(b)(3)(iv) of this title.

(b) *Special rule for certain lifetime disqualifications.* The State may reduce the lifetime disqualification of a person disqualified for life under § 383.51(b)(3)(iv) of this title, to a minimum of ten years in accordance with § 383.51(b)(3)(v) of this title.

§ 384.217 Drug offenses.

The State shall disqualify from operating a commercial motor vehicle for life each person who is convicted, as defined in § 383.5 of this title, in any State or jurisdiction, of using a commercial motor vehicle in the commission of a felony described in §§ 383.51(b)(2)(v) and 383.51(b)(3)(iii) of this title. The State shall not apply the special rule in § 384.216(b) to lifetime disqualifications imposed for controlled substance felonies as detailed in §§ 383.51(b)(2)(v) and 383.51(b)(3)(iii) of this title.

§ 384.218 Second serious traffic violation.

The State shall disqualify from operating a commercial motor vehicle for a period of not less than 60 days each person who, in a three-year period, is convicted, as defined in § 383.5 of this title, in any State(s) or jurisdiction(s), of two serious traffic violations involving a commercial motor vehicle operated by such person, as specified in §§ 383.51(c)(1) and (c)(2)(i) of this title.

§ 384.219 Third serious traffic violation.

The State shall disqualify from operating a commercial motor vehicle for a period of not less than 120 days each person who, in a three-year period, is convicted, as defined in § 383.5 of this title, in any State(s) or jurisdiction(s), of three serious traffic violations involving a commercial motor vehicle operated by such person, as specified in §§ 383.51(c)(1) and (c)(2)(ii) of this title

§ 384.220 National Driver Register information.

Before issuing a CDL to any person, the State shall, within the period of time specified in § 384.232, perform the check of the National Driver Register in accordance with § 383.73(a)(3)(iii) of this title, and, based on that information, promptly implement the disqualifications, licensing limitations, and/or penalties that are called for in any applicable section(s) of this subpart.

§ 384.221 Out-of-service regulations (intoxicating beverage).

The State shall adopt, and enforce on all operators of commercial motor vehicles as defined in either § 383.5 or § 390.5 of this title, the provisions of § 392.5(a) and (c) of this title.

§§ 384.222 through 384.230 [Reserved]

§ 384.231 Satisfaction of State disqualification requirement.

(a) *Applicability.* The provisions of §§ 384.203, 384.206(b), 384.210, 384.213, 384.215 through 384.219, 384.221, and 384.231 apply to the State of licensure of the person affected by the provision. The provisions of § 384.210 also apply to any State to which a person makes application for a transfer CDL.

(b) *Required action.*

(1) *CDL holders.* A State shall satisfy the requirements of this subpart that the State disqualify a person who holds a CDL by, at a minimum, suspending, revoking, or cancelling the person's CDL for the applicable period of disqualification.

(2) *Non-CDL holders (effective October 1, 1995).* A State shall satisfy the requirements of this subpart that the State disqualify a non-CDL holder who is convicted of an offense or offenses necessitating disqualification under § 383.51 by, at a minimum, implementing the limitation on licensing provisions of § 384.210 and the timing and recordkeeping requirements of paragraphs (c) and (d) of this section so as to prevent such non-CDL holder's legally obtaining a CDL from any State during the applicable disqualification period(s) specified in this subpart.

(c) *Required timing.* The State shall disqualify a driver before the end of the third business day following the day the State licensing entity received notice of the conviction necessitating such driver's disqualification, and, if the conviction occurred in the State, no later than 30 calendar days from the operative date of conviction in the tribunal of competent jurisdiction. The starting date to calculate the minimum disqualification periods of this part shall be the date on which the State licensing entity takes the requisite disqualifying action.

(d) *Recordkeeping requirements.* The State shall maintain such driver records and cause such driver identification data to be retained on the CDLIS as the operator of the CDLIS specifies are necessary to the implementation and enforcement of the disqualifications called for in §§ 384.215 through 384.219.

§ 384.232 Required timing of record checks.

The State shall perform the record checks prescribed in §§ 384.205, 384.206, and 384.220, no earlier than 10 days prior to issuance for licenses issued before October 1, 1995, and no earlier than 24 hours prior to issuance for licenses issued after September 30, 1995.

Subpart C—Procedures for Determining State Compliance

§ 384.301 Substantial compliance—general requirement.

To be in substantial compliance with 49 U.S.C. app. 2708(a), a State must meet each and every standard of subpart B of this part by means of the demonstrable combined effect of its statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource assignments (facilities, equipment, and personnel), and enforcement practices.

§ 384.303 State certification for Federal fiscal year 1993 (FY 1993).

(a) *FY 1993 Certification Requirement.* Prior to September 10, 1993, each State shall review its compliance with this part and certify to the Federal Highway Administrator as prescribed in paragraph (b) of this section. The certification shall be submitted as a signed original and four copies to the State Director or Officer-in-Charge, Office of Motor Carriers, Federal Highway Administration, located in that State.

(b) *FY 1993 Certification Content.* The certification shall consist of a statement signed by the Governor of the State, or by an official designated by the Governor, and reading as follows: "I (name of certifying official), (position title), of the State (Commonwealth) of _____, do hereby certify that the State (Commonwealth) is in substantial compliance with all requirements of 49 U.S.C. app. 2708(a), as defined in 49 CFR 384.301, and contemplates no changes in statutes, regulations, or administrative procedures, or in the enforcement thereof, which would affect

such substantial compliance through the date of the next certification required under 49 CFR 384.305."

§ 384.305 State certifications for Federal fiscal years after FY 1993.

(a) *Certification requirement.* Prior to January 1 of each Federal fiscal year after FY 1993, each State shall review its compliance with this part and certify to the Federal Highway Administrator as prescribed in paragraph (b) of this section. The certification shall be submitted as a signed original and four copies to the State Director or Officer-in-Charge, Office of Motor Carriers, Federal Highway Administration, located in that State.

(b) *Certification content.* The certification shall consist of a statement signed by the Governor of the State, or by an official designated by the Governor, and reading as follows: "I (name of certifying official), (position title), of the State (Commonwealth) of _____, do hereby certify that the State (Commonwealth) has continuously been in substantial compliance with all requirements of 49 U.S.C. app. 2708(a), as defined in 49 CFR 384.301, since [date of prior year's required certification; or if no such certification was made, the first day of the current Federal fiscal year], and contemplates no changes in statutes, regulations, or administrative procedures, or in the enforcement thereof, which would affect such substantial compliance through the date of the next certification required under 49 CFR 384.305."

§ 384.307 FHWA program reviews of State compliance.

(a) *FHWA program reviews.* Each State's CDL program shall be subject to review to determine whether or not the State meets the general requirement for substantial compliance in § 384.301. The State shall cooperate with and provide information in conjunction with any program reviews under this section.

(b) *Preliminary FHWA determination and State response.* If, after review, a preliminary determination is made that a State does not meet one or more of the standards of subpart B of this part, the State will be informed accordingly prior to July 1 of the fiscal year in which the preliminary determination is made. The State will have up to thirty calendar days to respond to the preliminary determination. Upon request by the State, an informal conference will be provided during this time.

(c) *Final FHWA determination.* If, after reviewing any timely response by the State to the preliminary determination, a final determination is made that the State is out of compliance with the affected standard, the State's certifying official (or, if there is no certifying official, the Governor and the licensing entity), will be notified of the final determination.

§ 384.309 Results of compliance determination.

(a) A State shall be determined not substantially in compliance with 49 U.S.C. app. 2708(a) for any fiscal year in which it:

(1) Fails to submit the certification as prescribed in this subpart; or

(2) Does not meet one or more of the standards of subpart B of this part, as established in a final determination by the FHWA under § 384.307(c).

(b) A State shall be in substantial compliance with 49 U.S.C. app. 2708(a) for any fiscal year in which neither of the eventualities in paragraph (a) of this section occurs.

Subpart D—Consequences of State Noncompliance

§ 384.401 Withholding of funds based on noncompliance.

(a) *Following first year of noncompliance.* An amount equal to five percent of the funds required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3), and 104(b)(5) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's first year of noncompliance under this part.

(b) *Following second and subsequent year(s) of noncompliance.* An amount equal to ten percent of the funds required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3), and 104(b)(5) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's second or subsequent year of noncompliance under this part.

§ 384.403 Period of availability; effect of compliance and noncompliance.

(a) *Period of availability.*

(1) *Funds withheld on or before September 30, 1995.* Any funds withheld under this subpart from apportionment to any State on or before September 30, 1995, shall remain available for apportionment to such State as follows:

(i) If such funds would have been apportioned under 23 U.S.C. 104(b)(5)(B) but for the provisions of this subpart, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under 23 U.S.C. 104(b)(1) or 104(b)(3) but for the provisions of this subpart, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(2) *Funds withheld after September 30,1995.* No funds withheld under this subpart from apportionment to any State after September 30, 1995, shall be available for apportionment to such State.

(b) *Apportionment of withheld funds after compliance.* If, before September 10 of the last fiscal year for which funds withheld under this subpart from apportionment are to remain available for apportionment to a State under paragraph (a) of this section, the State makes the certification called for in § 384.305 and a determination is made that the State has met the standards of subpart B of this part for a period of 365 days and continues to meet such standards, the withheld funds remaining available for apportionment to such State shall be apportioned to the State on the day following the last day of such fiscal year.

(c) *Period of availability of subsequently apportioned funds.* Any funds apportioned pursuant to paragraph (b) of this section shall remain available for expenditure until the end of the third fiscal year succeeding the fiscal year in which such funds are apportioned. Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

(d) *Effect of noncompliance.* If, at the end of the period for which funds withheld under this subpart from apportionment are available for apportionment under paragraph (a) of this section, the State has not met the standards of subpart B of this part for a 365-day period, such funds shall lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

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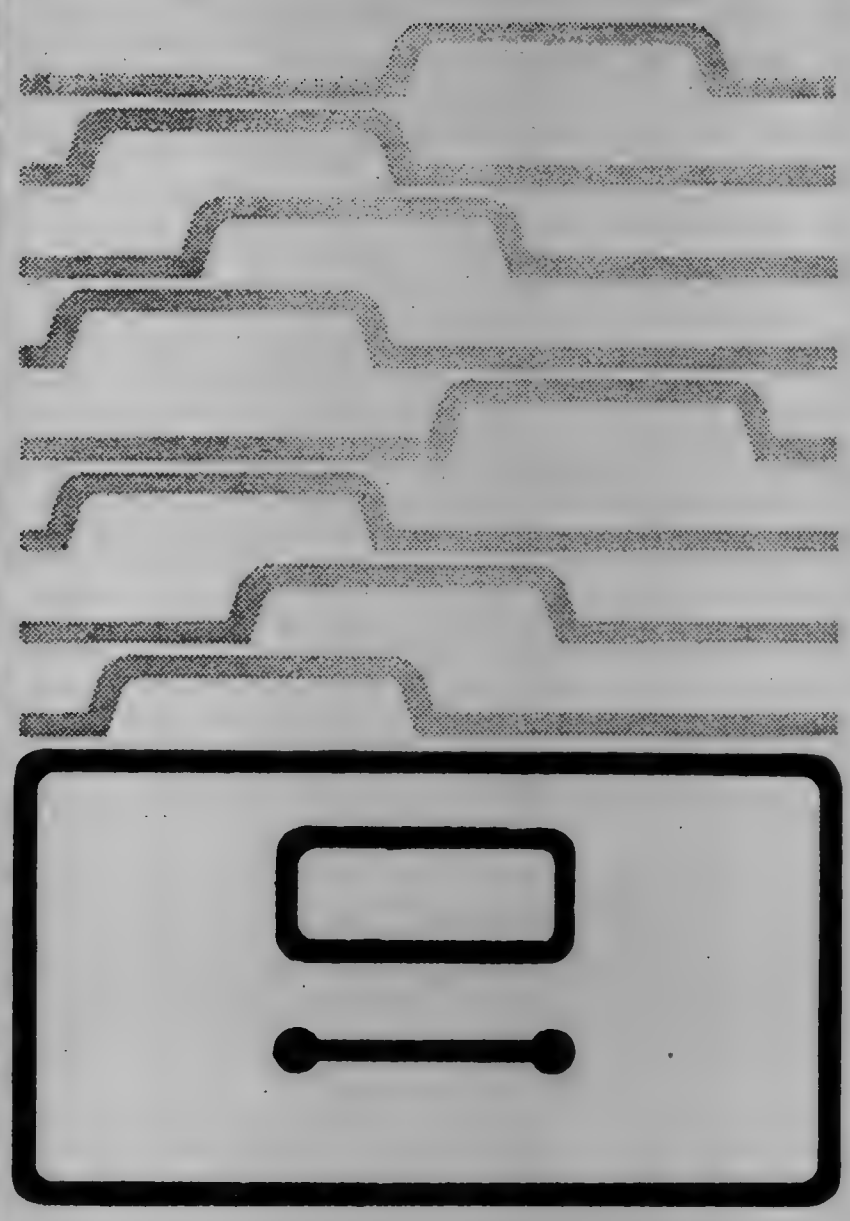

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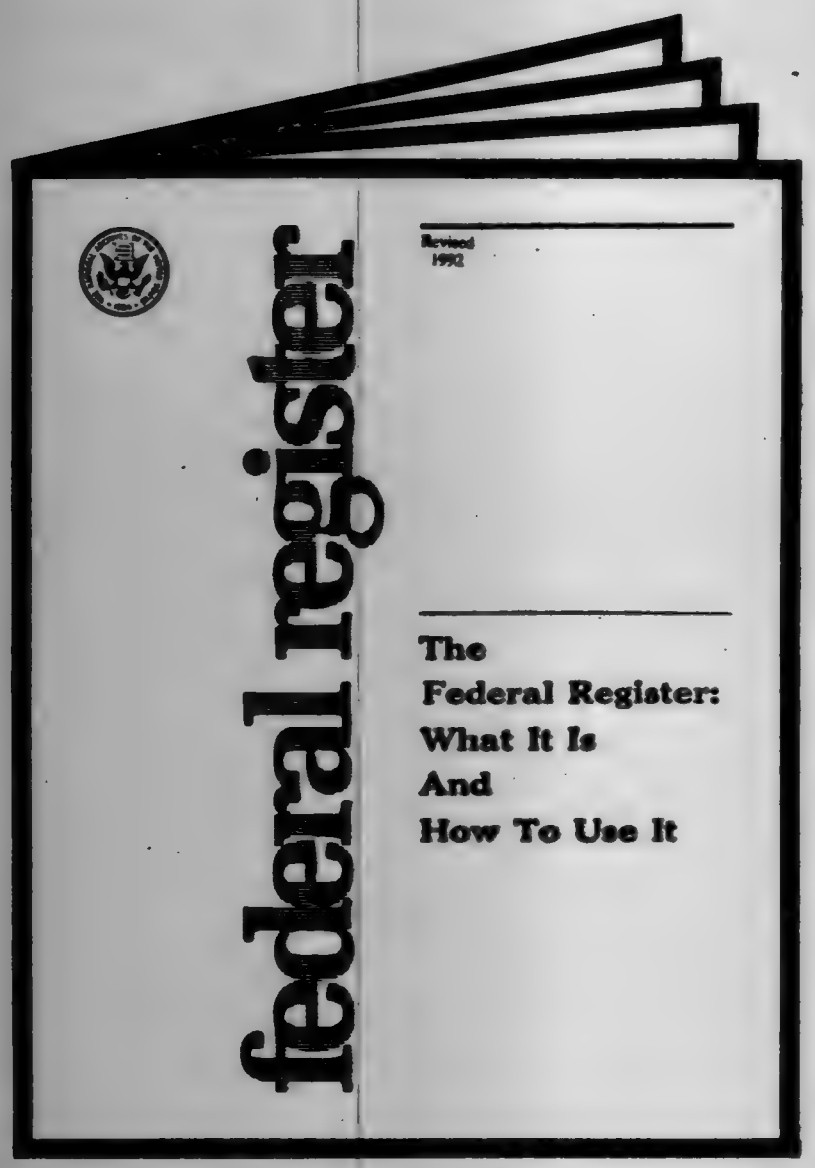

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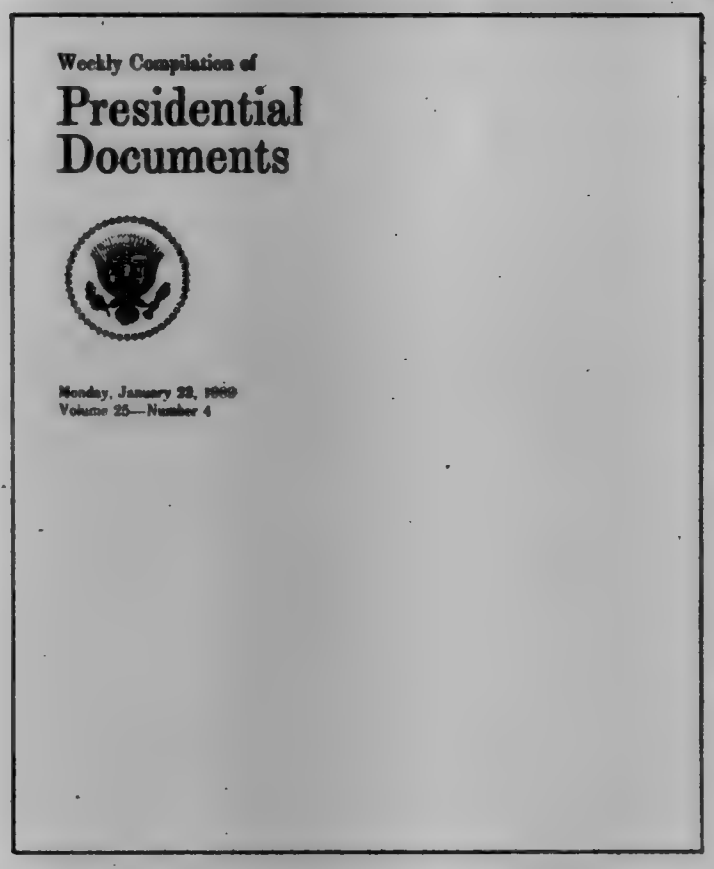

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AA37

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) is amending its regulation on assessments to establish a new risk-based assessment system. The new system, which will be implemented beginning with the assessment period commencing January 1, 1994, is required by section 302(a) of the FDIC Improvement Act of 1991. The amendments adopted by the Board make limited changes to the existing "transitional" risk-based assessment system.

For the most part, the limited changes adopted by the Board are those it proposed in December 1992. These amendments clarify the basis on which supervisory subgroup assignments are made by the FDIC; eliminate from the assessment classification review procedure the specific reference to a "informal hearing"; provide for the assignment of new institutions to the "well capitalized" assessment group; clarify that an institution is to make timely payment of its assessment at the rate assigned, subject to subsequent adjustments as appropriate; clarify the basis, and report data, on which capital group assignments are made for insured branches of foreign banks; and expressly address lifeline accounts.

In addition to adopting the changes it proposed, the Board is also eliminating the use of "experience factors" beginning with the assessment period commencing January 1, 1995, and making certain technical changes necessitated by the preceding amendments. Finally, the Board is adopting a procedural amendment delegating to the Director of the FDIC's Division of Supervision the authority to set dates applicable to the determination of supervisory subgroup assignments. The Board has decided to make no changes to the regulation with regard to the remaining issues on which it requested comment in its December 1992 proposal.

EFFECTIVE DATE: The final rule is effective October 1, 1993.

FOR FURTHER INFORMATION CONTACT: George French, Associate Director, Division of Research and Statistics, (202) 898–3929; Christine E. Blair, Financial Economist, Division of Research and Statistics, (202) 898–3936; William Farrell, Chief, Receipts Section, Division of Finance, (703) 516–5546; Cary H. Hiner, Manager, Analysis and Monitoring Section, Division of Supervision, (202) 898–6814; G. Michael Dew, Chief, Risk-Related Premium Unit, Division of Supervision, (202) 898–7104; or Martha Coulter, Counsel, Legal Division (202) 898–7348, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Section 302(a) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 stat. 2236) (FDIC Improvement Act) requires that the Board establish, by regulation, a risk-based assessment system. Under the system required by section 302(a), the assessments (or premiums) paid by a depository institution for FDIC insurance are to be based on the risk posed by the institution to the deposit insurance fund of which it is a member.[1]

In December 1992, in compliance with the provisions of section 302(a), the Board proposed amendments to the FDIC's assessments regulation. The proposal was published in the **Federal Register** on December 31, 1992, 57 FR 62502, and public comment was invited through April 29, 1993. Comments received through May 10 were also considered.

The assessment system currently in effect, and the system the Board proposed to amend, is the "transitional" risk-based assessment system adopted by the Board in September 1992 for the two semiannual assessment periods of 1993. This transitional system was authorized by section 302(f) of the FDIC Improvement Act. The Board believes that both the transitional system and the somewhat modified system the Board has now adopted pursuant to section 302(a) are fully consistent with the statutory requirements.

The amendments proposed by the Board involved only limited changes to the existing system. The proposal included clarification of the basis on which supervisory subgroup assignments are made by the FDIC, and deletion of express reference to the term "informal hearing" in the provisions governing the assessment classification review procedure. The Board also proposed to add provisions stating that new institutions will be assigned to the "well capitalized" assessment group for the first period for which they are required to pay assessments; clarifying that an institution is to make timely payment of its assessment at the rate assigned, subject to subsequent adjustment if the institution's assessment risk classification is later revised; clarifying the basis on which capital group assignments are made for insured branches of foreign banks, and the report date for the relevant financial data; and expressly addressing lifeline accounts.

In addition to proposing specific changes to the assessment regulation, the FDIC also requested comment on several issues. These issues included the following matters pertaining to the rate structure: (1) Whether a separate assessment risk classification should be established for institutions posing minimal risk to the deposit insurance funds and, if so, how it should be defined; (2) whether the existing assessment rate spread (23 to 31 basis points) should be widened and, if so, by how much; and (3) whether the existing three-by-three assessment classification framework should be expanded to

[1] Under section 302(a), the factors to be taken into consideration in evaluating the risk posed by an institution are the risks attributable to different categories and concentrations of assets and liabilities (both insured and uninsured, and contingent and noncontingent, liabilities) and any other factors the FDIC determines to be relevant. Also to be taken into account in calculating assessments under the statutory system are the likely amount of any loss for which the insurance fund is at risk with regard to the institution, and the revenue needs of the deposit insurance fund.

include more capital groups and supervisory subgroups and, if so, in what manner.

Other issues on which comment was sought involved consideration of an institution's premiums under an FDIC private reinsurance demonstration project in determining the institution's assessment risk classification; the continued use of "experience factors" in calculating additions to and deductions from an institution's assessment base; the desirability of assigning a consolidated assessment risk classification to all insured institutions within the same depository institution holding company; the need for separate assessment systems for large and small institutions; the desirability of establishing periodic incremental increases in the assessment rates of high-risk institutions that fail to improve over time (referred to as "ratcheting"); and the potential for introducing certain operating efficiencies into the assessment system.

Reference was also made to definition of the assessment base (that is, the dollar base to which an institution's assessment rate is applied to determine the amount of assessment owed). The Board proposed no specific change to the existing definition, pending further study.

II. Discussion of Comments Received

The FDIC received 169 letters in response to its requests for comment. Among the respondents were 100 banks, 19 depository institution holding companies, 28 thrifts, and 19 associations of depository institutions. Individuals and law firms were the remaining respondents.

In general, commenters agreed with the concept that the existing assessment system should be retained without major modification. Of the 49 letters that directly addressed this matter, 46 were in favor of continuing the existing system largely intact for some time into the future.

Comments on specific aspects of the FDIC's proposal are addressed below. Included with the discussion of each proposed amendment is an explanation of the Board's decision regarding adoption of the amendment.

A. Proposed Changes

1. Clarification of Basis for Supervisory Subgroup Assignments

The first modification addressed in the FDIC's proposal was an amendment clarifying the factors on which supervisory subgroup assignments are based. The proposal indicated that, while the FDIC gives great weight to the supervisory evaluations provided by an institution's primary federal regulator, these evaluations are not the sole basis for the FDIC's determination of the subgroup to which the institution should be assigned. The FDIC proposed an amendment to the existing regulation to clarify this element.

Thirteen of the 169 commenters addressed the proposed clarification. One of the 13—a large association of banks—supported the clarification. Seven commenters opposed the revision outright, opining that an institution's supervisory subgroup assignment should be based exclusively on the supervisory evaluation of the institution by its primary federal regulator. Another four of the 13 commenters expressed the view that the FDIC should vary from the primary federal regulator's evaluation only in very limited circumstances, such as when changes have occurred since the primary federal regulator's last examination. Two of these four commenters stated that if there were a difference between the FDIC's and primary federal regulator's evaluations, the institution or the primary federal regulator should be notified beforehand. The remaining commenter addressing the proposed amendment urged that the role of state supervisors should be clarified.

The Board has decided to adopt the clarification as proposed, with the additional provision discussed below. The Board believes that it is ultimately the obligation of the FDIC, as the federal deposit insurer, rather than of other banking regulators, to make assessment determinations concerning risks posed to the federal deposit insurance funds. Moreover, it is expected that there will be material differences in supervisory evaluations by the primary federal regulator and assessment determinations by the FDIC in only a very limited number of cases, and that the number should decrease over time. The few institutions adversely affected will have an opportunity to seek review of the FDIC's determination through the assessment classification review procedure.

The Board has also decided to add to the amendment an additional provision delegating to the Director of the FDIC's Division of Supervision or the Director's designee the authority to set dates applicable to the determination of supervisory subgroup assignments. This addition is not a substantive change but rather is a procedural provision that reflects existing practice. Its purpose is to alert all readers of the regulation that the Board has delegated the authority to establish supervisory subgroup "cutoff" dates.

At present, the cutoff date set by the Director of the Division of Supervision is the last day of the second quarter preceding the semiannual assessment period (e.g., March 31 for the period beginning July 1).[2] That is the date of the supervisory evaluations provided to the FDIC by each primary federal regulator for the institutions it regulates. This date allows the FDIC approximately six weeks to incorporate the evaluations with such other information as the FDIC deems relevant and to prepare approximately 14,000 assessment notices for mailing before the notice deadline provided for in the regulation. It is clear that a cutoff date for supervisory subgroup assignments is an operational necessity, and the Board has delegated the establishment of appropriate dates to the Corporation official that heads the relevant operation.

Based on the comments received on the proposed transitional system and during this rulemaking on the new system, the FDIC is well aware of the importance of using the most recent supervisory information possible. It is hoped that, as experience with the new system advances, operational refinements can be developed to permit the use of more current information.

Regarding the role of state supervisors, the Board believes that no additional clarification is needed. In cases in which the FDIC is the primary federal regulator, the evaluation of the state supervisor will be one of the factors considered in making the subgroup assignment. Where the institution has another primary federal regulator, it is expected that consideration of the state evaluation will be reflected in the evaluation provided to the FDIC by that primary federal regulator.

2. Assessment Classification Review Procedure

The FDIC also proposed to amend the assessment classification review procedure set forth in the transitional regulation by deleting the references to an informal hearing. The proposed deletion was limited to one sentence (the sentence reading "A request for review may include a request for an informal hearing") from § 327.3(f), which governs the review procedure, and the word "hearing" in the last

[2] For both assessment periods covered by the transitional system, the FDIC has provided notification of the applicable date by Financial Institution Letters (FILs) mailed to each institution. See FIL–77–92 (November 5, 1992) and FIL–34–93 (April 30, 1993).

sentence of that same provision.[3] Thus, under the proposal, the review process, which was designed predominantly as a written procedure, would remain virtually unchanged. The deletion proposed was only of the explicit reference to an element intended as, and applied by the FDIC to consist of, an informal oral presentation. In proposing this change, the Board explained that the purpose of the amendment is to avoid any misperception that a more formal administrative proceeding was contemplated as a part of the review process.

Of the 19 comment letters addressing this proposal, only one did not oppose it. However, it appears that there was some confusion among these commenters as to what was actually proposed. At least several of the 19 commenters seemed to have read the proposal as removing from the existing regulation all references to a review procedure, including the written procedure. In general, those commenting on the proposed amendment noted the importance of having a review procedure and urged that a process be provided for institutions to challenge their assessment risk classifications. Several letters called for a more "formal" procedure but generally did not elaborate as to what elements should be included in such a procedure.[4]

The Board has decided to adopt the amendment as proposed. In so doing, it emphasizes that the change made by the amendment is quite limited and does not in any way affect the availability of the written review procedure. As under the review provisions in § 327.3(f) of the existing regulation (redesignated § 327.3(g) in the amended regulation), every institution will have the opportunity under the amended regulation "to submit a written request for review of its assessment risk classification" within 30 days of the date of the notice informing the institution of the classification assigned to it. As under the existing regulation, the request is to be submitted to the Director of the FDIC's Division of Supervision in Washington, and is to "include documentation sufficient to support the reclassification sought by the institution." As under the existing regulation, "[a]ny institution submitting a timely request for review will receive written notice from the Corporation regarding the outcome of its request." The change from the existing regulation is that the two specific references to the term "informal hearing" or "hearing"—used by the FDIC to mean an informal oral presentation—will be removed. As noted in the proposal, 57 FR 62504, the Board does not intend by this change to eliminate the opportunity for an institution to make an oral presentation to the Division of Supervision. Instead, it is the Board's intention that such presentations will be permitted by the FDIC, at its discretion, when the Division of Supervision determines that an informal oral presentation would be productive under the applicable circumstances. Because the types of issues that can be expected to be raised by institutions seeking assessment classification review can be addressed quite effectively in writing, the Board does not believe that this change will adversely affect the ability of institutions to challenge their assessment risk classifications.

In addition to comments on the proposed amendment, several letters suggested other changes to the existing review procedure. Specifically, the changes were the imposition of a deadline on the FDIC response to requests for review, and the establishment of a panel including industry representatives to consider the requests for review. While the Board recognizes the merits of an FDIC response deadline, it believes that more experience with the new system is needed before such a deadline would be productive. In the Board's view, it would be contrary to the interests of institutions requesting review to impose an unrealistic deadline on FDIC response to the requests. This is a refinement that is best considered at a later date.[5]

Similarly, the Board is not in favor of industry participation in decisions on challenges to assessment classifications. A major concern in this regard is confidentiality. Review requests can include confidential information that institutions would not want disclosed to an existing or potential competitor. Concerns regarding such disclosure could cause some institutions to avoid seeking review. Moreover, the operational complexities of including private sector participants in review decisions would likely result in a slower, rather than a faster, response time.

Finally, one commenter objected to the "inflexible cutoff date" used in assigning depository institutions to supervisory subgroups. As indicated earlier, this cutoff date currently is the last day of the second quarter preceding the beginning of the relevant semiannual assessment period (e.g., March 31 for the period beginning July 1). The commenter asked that this approach be changed to allow for a revision of an institution's assessment classification if its composite rating is revised after the cutoff date but the revision was based on information as of an earlier date.

The Board is aware that there is some concern in the industry regarding strict application of the supervisory information cutoff date. However, the Board believes that this is, overall, the fairest approach. While institutions whose supervisory evaluations are not upgraded until after the cutoff date for a particular assessment period will not benefit through a lower assessment rate until the next semiannual period, an institution whose supervisory status declines (and who is unlikely to submit a request for assessment reclassification) will similarly not be immediately affected. To approach the matter differently would be unfair either to institutions whose evaluations are downgraded or to the deposit insurance funds. If changes finalized after the cutoff date were taken into account for all institutions equally, then the assessment notice received by institutions prior to the beginning of the assessment period would, in effect, serve only as a preliminary notice

[3] See 57 FR 62515 (December 31, 1992). Also proposed was the addition of a new sentence to the review procedure to the effect that, upon completion of a review, the Director of the FDIC's Division of Supervision will promptly provide the institution with written notice of the FDIC's determination as to whether reclassification is warranted. *Id.*

[4] One commenter, a federal savings bank, has urged that the assessments regulation be amended to provide for a formal evidentiary hearing in connection with the assignment of assessment risk classifications. The issues raised by the institution in its comment letter were the same issues it raised in a petition for rulemaking submitted just after the Board had initiated this rulemaking. The focus of the institution's concern appears to be situations in which an institution's supervisory subgroup assignment is based on an evaluation by its primary federal regulator that is disputed by the institution. The commenter asserts that, to satisfy due process requirements, the regulation should be amended to permit a formal evidentiary hearing on the basis for the assessment risk classification assigned by the FDIC, including the primary federal regulator's supervisory evaluation.

The Board believes that such an amendment is neither appropriate nor legally required. In the FDIC's view, the existing informal assessment classification review procedure satisfies due process concerns. Moreover, the Board believes that the FDIC is permitted to rely on a supervisory evaluation by an institution's primary federal regulator without submitting the evaluation to an evidentiary hearing. In instances in which an assessment risk classification is based on a primary federal regulator's evaluation that is disputed by the institution, the appropriate recourse is through that primary regulator's own procedures for challenging its supervisory evaluations.

[5] However, the Board is adopting the proposed new sentence referred to in note 3, above, to provide that, upon completion of a review, the institution will promptly be notified in writing of the FDIC's determination as to whether reclassification is warranted.

subject to later revision for potentially large numbers of institutions, and institutions whose supervisory status is declining would face the possibility of an additional, perhaps unexpected, assessment payment later in the assessment period. However, if information finalized after the cutoff date is taken into account only for institutions whose supervisory status is improving (which could, potentially, include hundreds of institutions), the result is unfair to the deposit insurance funds. Under that approach, partial assessment refunds or credits would be issued to institutions whose status is improving, while the FDIC would forego increased assessments from institutions whose condition is declining. A number of institutions have favored more predictability in the risk-based assessment system, an element which the FDIC's existing approach provides. Thus, the Board believes that the supervisory cutoff date should be strictly applied, except in unusual circumstances.

3. Capital Group for New Institutions

The existing regulation does not specify how institutions coming into existence during a particular semiannual period, and which have not filed the relevant financial reports at the end of the preceding semiannual period, are to be treated regarding capital group assignments for the next semiannual period. In order to provide predictability in this matter, the FDIC proposed to add a new provision stating that such institutions will be included in the "well capitalized" group for the first period for which they are required to pay assessments.

Four commenters addressed this proposed addition. Of the four, two large associations of depository institutions supported the addition, one commenter was neutral, and one commenter opposed it on the basis that new institutions should not be presumed to be well capitalized.

The Board has decided to adopt the addition as proposed. Applications for depository institution charters are subjected to careful scrutiny by chartering agencies, as are applications to the FDIC for deposit insurance. The Board believes that the capital element of the risk posed to the deposit insurance funds by new institutions during the early months of their existence is thus minimized.[6]

[6] This provision will not apply to new bridge banks or conservatorships, which are covered by an existing provision in the regulation specifically applicable to such institutions.

4. Payment of Disputed Assessments

The proposed changes included a provision clarifying that institutions must make timely payment of their assessments at the rate assigned to them, without regard to whether the institution has filed a request for review of its assessment risk classification. Under both the existing and proposed regulations, if the classification originally assigned is revised through a request for review, resulting in an overpayment, the FDIC will refund or credit the amount of the overpayment, with interest.

Only one of the four commenters addressing this change opposed it. The opponent, a large association of banks (another large association of banks supported the change), favored an arrangement under which the FDIC and an institution requesting reclassification would be required to compromise on the assessment amount pending review.

The Board has decided to adopt the proposed addition, which does not reflect a change in policy but instead explicitly incorporates the FDIC's interpretation of the existing assessment regulation. It believes that timely payment at the assigned rate is necessary to protect the deposit insurance funds, and that the return or credit of any overpayment, with interest, to institutions that successfully challenge their assessment risk classification provides adequate protection for such institutions.

5. Lifeline Accounts

Section 1605 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, 106 stat. 3672) enacted in October 1992, adds a new provision concerning "lifeline accounts" to section 7(b) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b), as amended by section 302 of the FDIC Improvement Act. The new provision requires that the FDIC design the risk-based assessment system so that, to the extent assessments are based on deposits, that portion of an institution's deposits that are attributable to "lifeline accounts" (as that term is defined by statute) will be subject to assessment at a rate established in accordance with the Bank Enterprise Act of 1991.[7]

[7] The Bank Enterprise Act of 1991, enacted as subtitle C of title II of the FDIC Improvement Act and codified in relevant part at 12 U.S.C. 1834, requires that the portion of an institution's assessment base attributable to "lifeline accounts" (as that term is defined in 12 U.S.C. 1834(c)) be assessed at a reduced rate. However, these "lifeline" provisions are not to take effect until the necessary appropriations have been provided to fund the arrangement, which has not yet occurred.

Consistent with this statutory requirement, the Board proposed to add a new provision applicable to lifeline accounts. The proposed provision stated that the portion of an institution's average assessment base that is attributable to deposits in lifeline accounts will be assessed at such rate as may be established by the FDIC with respect to such accounts.

Ten comment letters addressed this proposal. The three commenters that opposed the new provision did so by stating their opposition to the use of assessments as a means of encouraging depository institutions to offer lifeline accounts. Similarly, the three commenters supporting the provision seemed to do so based on their support for the concept of lifeline accounts. The four remaining letters addressing the proposal expressed neither support for nor opposition to the proposal, instead making suggestions or posing questions.[8]

The Board has decided to adopt the provision as proposed. Until such future time as lifeline accounts, as provided for in the Bank Enterprise Act, actually come into existence and, as required by Congress, a special assessment rate applicable to such accounts has been established by the FDIC, this new provision will have no actual effect. Moreover, adoption of the provision reflects neither support for nor opposition to the concept of lifeline accounts or a connection between such accounts and the amount of assessments paid by an institution. Congress has already decided these matters. The provision the Board is adopting is intended solely to comply with the statutory requirement that lifeline accounts be provided for in the design of the new risk-based assessment system.

6. Clarifications Regarding Insured Branches of Foreign Banks

The existing assessments regulation establishes capital group standards for insured branches of foreign banks. The FDIC proposed to amend the regulation to clarify that these standards are applied based on information provided in the insured branch's Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks. The proposal would also clarify that the report date for the relevant financial data (including the average book value of the insured branch's third-party

[8] For example, one commenter urged that the term "average assessment base" used in the proposed new provision be clarified. However, because that term is already defined in § 327.4 of the assessments regulation, the Board believes that such clarification is unnecessary.

liabilities) is the same as the report date applicable to the capital group assignments for domestic institutions.

Two comment letters were received addressing this proposal. One letter stated a neutral position and the other letter supported the proposal because it would ensure consistent treatment of foreign and domestic banks. The Board believes that the proposed change would provide desirable clarifications—including clarification promoting consistent treatment of foreign and domestic banks—and, accordingly, has decided that it should be adopted.

B. Additional Requests for Comment

In addition to comment on the specific changes proposed by the FDIC, comment was also requested on several other issues relevant to the establishment of the new risk-based assessment system. These issues are discussed below.

As a result of the comments received on one of these issues, the Board has decided to adopt an additional amendment to the existing assessments regulation. The additional amendment eliminates, beginning with the assessment period commencing January 1, 1995, the use of "experience factors" in calculating an institution's assessment base.

1. Establishment of a Minimal-Risk Category

The first topic on which the Board requested additional comment was whether a separate category should be established for institutions posing minimal risk to the deposit insurance funds. In response to this request, the FDIC received 108 letters addressing the issue. Of these letters, 79 were in favor of establishing a minimal-risk category. There was, however, no general consensus on how the minimal-risk category should be defined.

The FDIC proposal provided an example of, and requested comment on, a possible definition for a minimal-risk category. Under this two-part definition, minimal-risk institutions would be those (1) deemed to pose minimal risk to the insurance fund(s); and (2) with either (a) capital ratios that exceed by 50 percent the ratios required for "well-capitalized" institutions, *or* (b) certificates of deposit (CDs) rated "AAA" by a nationally recognized rating agency. Of the 50 letters addressing this definition, the majority (37 letters) opposed it.

Small and large institutions alike found the two-part definition to be flawed. For example, while many commenters favored the use of an objective, capital-based definition for the minimal-risk category, a 50 percent differential above the "well capitalized" levels was viewed by a number of commenters as being too high. Several commenters suggested instead a capital differential of ten to 15 percent. Some commenters expressed concern that the use of capital requirements more stringent than those applicable to the "well capitalized" group would encourage institutions to substitute investment securities for loans, to shrink balance sheets, or to restrain new lending in order to qualify for the minimal-risk category.

This concern notwithstanding, capital was the most frequently recommended measure for defining a minimal-risk category, although some commenters suggested use of supervisory measures either alone or in combination with capital standards. Among the standards suggested were the combined use of the "well-capitalized" criteria and CAMEL 1 or MACRO 1, or the use of composite ratings alone.

The FDIC's suggested use of CD ratings was opposed by 28 of the 35 commenters addressing that measure. Some respondents appear to have misunderstood the FDIC's intended use of CD ratings, by assuming that institutions would be required to obtain such ratings. Others expressed the view that a "AAA" CD rating is not an equivalent measure of risk to the alternative 50 percent capital differential.

The Board agrees with the majority of commenters that the new assessment system would be enhanced by the addition of a minimal-risk category. Such an addition would contribute to an incentive structure under which institutions are rewarded for safety and soundness and for skill at managing risk. However, in light of concerns as to what standards would be appropriate for assigning institutions to a minimal-risk category, the Board has decided against establishment of the category at this time. It is expected that this issue will be revisited as more experience with the new risk-based assessment system is acquired.

2. Widening the Rate Spread

In its proposal, the Board sought comment on whether the assessment rate spread embodied in the existing system—23 to 31 basis points—should be widened under the new system. Of the 96 letters commenting on this issue, 75 favored a wider rate spread. Among the commenters favoring a wider spread, the majority preferred a spread within the range of nine to 20 basis points.

In creating the transitional system, the FDIC sought to design a system that was not unduly burdensome to weak institutions yet would provide a financial incentive for all insured institutions to improve or maintain safety and soundness. In the short time the transitional system has been in operation, the distribution of institutions across the rate matrix has changed, with a greater number of institutions, as well as a larger percentage of industry assets and assessable deposits, qualified as "1A". This change can be attributed to the improved capitalization of many institutions. One implication of this changing distribution of institutions, assets, and assessment base is that widening the rate spread within the existing assessment classification matrix would be relatively more difficult. Lowering the assessment rate for "1A" institutions by even one basis point would require a substantial increase in premium rates for higher-risk institutions in order to maintain the same revenue.

The Board believes that a widening of the rate spread is desirable in principle. However, it also is concerned that the magnitude of the assessment rate increase that would be necessary for high-risk institutions in order to achieve a wider spread, while keeping assessment revenue constant, might be counterproductive. Thus, the Board has decided to retain the existing rate spread for the new risk-based assessment system. It is not unlikely, however, that the FDIC will revisit this issue at a later date, possibly in conjunction with the establishment of a minimal-risk category.

3. Expansion of the Number of Risk Categories

Another structural modification on which the Board requested comment was whether the existing three-by-three risk classification framework should be expanded to include more capital groups and supervisory subgroups and, if so, how. Seventy-nine letters commented on this issue. Of these, 48 were in favor of retaining the nine risk categories of the existing three-by-three matrix. Very few comments were directed specifically to the alternative rate matrices that were included in the FDIC's proposal for illustration purposes. [9]

[9] Although comment was specifically requested on the various risk-classification structures illustrated in the proposal, only 14 letters addressed this request. Of these, three commenters expressed a preference for the three-by-three matrices reflected in Table 4 (which included wider rate

Continued

The importance of obtaining additional experience with the transitional system was cited by most commenters as the primary reason to retain, without change, the nine existing risk classifications. Several commenters felt that additional risk categories, whether capital groups or supervisory subgroups, would lead to increased judgment calls on the part of the FDIC and increased record-keeping on the part of insured institutions. Others emphasized the importance of keeping the risk categories clearly delineated and easily understood, and judgment calls to a minimum. Still others felt that the current system was a reasonable approach that should be continued.

Of the 21 commenters who favored expanding the number of risk categories, 12 supported an expansion of supervisory subgroups. Another 8 favored an expansion of both capital groups and supervisory subgroups. The final commenter favored expansion of capital groups only. One commonly cited reason for expanding the number of risk categories, whether capital groups or supervisory subgroups or both, was to reduce the size of the rate differential between risk categories.

The Board agrees with the majority of commenters that the nine categories of the existing three-by-three risk classification framework should be retained for the new assessment system. However, as indicated above in connection with a minimal-risk category, it is not unlikely that the FDIC will revisit the possibility of expanding the number of risk categories as future conditions warrant.

4. Other Comments Solicited

a. *Private reinsurance.* Under section 322 of the FDIC Improvement Act, the FDIC is required to conduct a demonstration project exploring the feasibility of establishing a private reinsurance program. As part of the demonstration project, the FDIC is authorized to engage in actual reinsurance transactions. In addition, in establishing the new risk-based assessment system, the FDIC is authorized by section 302(a) of the FDIC Improvement Act to obtain private reinsurance for a portion of its loss with respect to individual institutions, and to base the institution's assessments on the cost of reinsurance. If a satisfactory private reinsurance demonstration project is developed, the FDIC could decide to take the premiums charged by private reinsurers into account in making assessment risk classification assignments to the institutions involved. To assist it in this matter, the Board requested comment as to whether the private reinsurance premiums should influence the FDIC's assessment risk classification assignments and, if so, in what manner.

Of the 19 letters that commented on this issue, five expressed the view that reinsurance should play a role in the risk-based assessment system, although caution regarding that role and its implementation was advised. The remaining 14 commenters generally felt that private reinsurance premiums should not have a direct impact in the FDIC's risk-based assessment system.

Several commenters framed the issue in terms of a perceived equity differential between large and small institutions, in that large and small institutions would not have equal access to reinsurance. Several other commenters noted that, pending completion of the demonstration project and the adoption of a permanent reinsurance program, it would be premature to relate an institution's reinsurance premium to its FDIC insurance assessment. Others commented that the FDIC alone, and not reinsurers, should determine assessment levels, leaving the option open for private reinsurance to act as an internal verification of the FDIC's pricing.

The Board believes that, while a decision at this point that private reinsurance premiums are to be taken into account in assigning assessment risk classifications might be premature, it similarly would be premature to decide now that they should not be considered. Thus, the Board has decided to reserve the option, in conducting a private reinsurance project, to consider reinsurance pricing information in assigning assessment risk classifications.

b. *Experience factors.* At present, section 7(b) of the Federal Deposit Insurance Act provides for the use of "experience factors" in calculating additions to and deductions from an institution's assessment base. Under section 7(b), if the institution's records do not show the actual amount of unposted credits and debits to deposits, the institution may estimate such amounts by means of experience factors, as prescribed by the FDIC by regulation. However, pursuant to section 302 of the FDIC Improvement Act, by January 1, 1994, section 7(b) in its existing form will be superseded by a new section 7(b) which does not expressly provide for experience factors.

In its proposal, the FDIC stated that it was considering amending its assessments regulation to eliminate the use of experience factors. As explained in the proposal, 57 FR 62513, the process for use of the factors is complicated, and is believed to be unnecessary due to availability of automated accounting systems that readily permit institutions to maintain the actual records needed for calculating the assessment base.

In response to its request for comment as to whether experience factors should be eliminated, the FDIC received eight letters that addressed the issue. Five of the letters (including one from a large association of depository institutions and two from state bankers' associations) either supported elimination of the factors or perceived no downside to such a change. Two commenters (both bank holding companies) opposed elimination. One of these companies expressed concern that elimination of the experience factors would impose a significant burden (at least a one-person week for a large bank) to review and record actual unposted debits and credits, and the other noted that it is not possible to maintain all records in current condition sufficient to calculate the assessment base with 100 percent accuracy. The remaining commenter, a large association of banks, neither supported nor clearly opposed elimination of experience factors but requested that the FDIC delay elimination until January 1, 1995.

The Board has decided to eliminate the use of experience factors, beginning with the assessment period commencing January 1, 1995. The delayed effective date should allow ample time for the very limited number of institutions currently using experience factors to prepare for maintaining the actual records needed for calculating the assessment base. In the FDIC's view, elimination of the experience factors will remove a complex procedure that has resulted in confusion, uncertainty, and erroneous reporting. It will promote consistent treatment for all insured institutions, and should not impose a significant burden on the industry.

c. Ratcheting. One vehicle by which the FDIC could encourage weak institutions to improve their performance would be to increase their insurance premiums over time for as long as they remain in a troubled condition. The proposal sought comment on the advisability of ratcheting upward, by one or two basis points every six or twelve months, the

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spreads), three commenters expressed a preference for Table 5 (which incorporated a minimal-risk group), four commenters expressed a preference for the four-by-six matrices of Table 7 (which included additional supervisory risk subgroups), and four commenters expressed a preference for the four-by-four matrices of Table 9 (which included an additional capital group and supervisory subgroup).

assessment rates applicable to the highest risk institutions.

Of the 23 letters that addressed ratcheting, the majority (19 letters) expressed the view that ratcheting is not warranted. This response was consistent with the views expressed on ratcheting during the comment period last year on the proposed transitional risk-based assessment system. The recent comments ranged from questioning whether the length of time spent by an institution in a high-risk classification is a reliable predictor of bank failure, to the belief that ratcheting would be counterproductive, essentially putting institutions into positions from which they cannot recover. It was noted that currently existing alternative measures (such as the prompt corrective action provisions of the FDIC Improvement Act) can be used more effectively than ratcheting as a means of addressing insurance risk.

The Board believes that at this time there are sufficient corrective measures for dealing with weak institutions to make ratcheting of deposit insurance rates unnecessary. Thus, the Board has decided against inclusion of a ratcheting provision in the new assessment system.

d. Consolidated risk measure. In its proposal, the Board also requested comment on an issue initially raised by several respondents last year during the comment period for the proposed transitional risk-based assessment system. This issue was whether the FDIC should apply a single assessment rate to all insured institutions within the same depository institution holding company. The previous respondents had suggested that, in light of statutory cross-guarantee provisions, it would be appropriate for the FDIC to measure insurance risk at the holding company level. Under this approach, all insured subsidiaries of a holding company would be assigned the same assessment rate.

In its proposal for the new assessment system, the Board did not propose that the existing system be changed to provide for a consolidated assessment rate for all insured subsidiaries of the same holding company. However, in order to air the matter for general consideration, the Board did invite comment on the issue. Twenty responses were received to this invitation. Of the ten letters that supported use of a consolidated rate, nine were from bank holding companies. Five of the ten responses opposing use of a consolidated rate were from associations of depository institutions.

Having reviewed the comments addressing this topic, the FDIC continues to find a consolidated rate approach inconsistent with its traditional mission of insuring and supervising individual institutions. Moreover, as noted in the proposal, a holding company with the ability to inject capital into an insured subsidiary could, by doing so, reduce the risk posed by the subsidiary to its deposit insurance fund. Accordingly, the Board has decided not to incorporate use of consolidated rates for insured subsidiaries of holding companies into the new assessment system.

e. Separate systems for large and small institutions. Section 302(a) of the FDIC Improvement Act authorizes the FDIC to establish separate risk-based assessment systems for large and small institutions. While it has been the Board's view that two institutions with the same capital ratios and the same supervisory evaluations should not be subject to potentially different assessment rates solely because of their respective sizes, comment was solicited on this topic. Twenty-one responses were received, 17 of which agreed with the Board's view. Accordingly, the Board continues to believe that a single assessment system applicable to insured institutions of all sizes is the preferable approach.

f. Operating efficiencies. Another matter on which the FDIC requested comment was the possible consolidation of an institution's assessment rate notification letter and its certified statement form into a single mailing by the FDIC, as well as other opportunities to improve the operational efficiency of the new assessment system. The FDIC received six letters that responded to this request, all of which supported a consolidated mailing.

The Board agrees that there are good reasons to seriously consider a consolidated mailing. At the same time, however, additional operational experience with the new system is needed before the FDIC will be prepared to move forward in this area. It is possible that a consolidated mailing can be implemented without amending the assessments regulation; whether or not an amendment is needed will depend in large part on whether consolidation is best implemented by changing the assessment notice deadline set out in § 327.3(d)(1) of the existing regulation (redesignated § 327.3(e)(1) of the amended regulation).

g. Assessment base. Under section 302 of the FDIC Improvement Act, the provisions in section 7(b) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b), that govern the assessment base will be superseded by January 1, 1994, by a new section 7(b) that does not include reference to an assessment base. At that time, definition of the assessment base will be determined by the FDIC's assessments regulation. At present, the assessments regulation reflects the assessment base currently defined in section 7(b). The Board has proposed no change in this regard, based on its view that further study is required before determining whether, or in what way, the assessment base should be redefined.

Although comments were not expressly solicited on this issue, several were received. Of the 28 letters that directly addressed definition of the assessment base, four letters concurred with the FDIC's position, 16 letters discussed reasons for assessing foreign deposits, seven discussed reasons for assessing only insured deposits, and one letter argued for assessing secured liabilities in addition to total deposits. Separately, another letter urged that the FDIC revise its assessment treatment of missent wire transfer payments.

The Board continues to believe that further study is needed before the FDIC is ready to recommend for or against any significant modifications to the assessment base as currently defined in both existing statutory and regulatory provisions.

C. Technical Amendments

The amendments discussed above necessitate a few minor technical amendments to the existing regulation, consisting of revision of citation cross-references and, in one case, deletion of the word "transitional" from the phrase "transitional risk-based assessment system" in redesignated § 327.3(h).

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the proposed rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof. *Id.* at 601(2). Accordingly, the Act's requirements regarding a regulatory flexibility analysis are not applicable here.

In any event, the assessment obligation that would result from the proposal would be determined by an institution's deposit base and the risk posed to the FDIC. The first element as

a matter of course fulfills the primary purpose of the Regulatory Flexibility Act, which is to make sure that agencies' rules do not impose disproportionate burdens on small businesses. The second element—the risk posed to the deposit insurance fund of which the institution is a member—is clearly one intended by Congress, as evidenced by the mandate in the FDIC Improvement Act of 1991 for implementation of a risk-based assessment system.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Financing Corporation, Savings associations.

For the reasons stated in the preamble, the Board amends 12 CFR part 327 as follows:

PART 327—ASSESSMENTS

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1817–1819.

2. Section 327.3 is amended by revising paragraph (c); by redesignating paragraphs (d) through (h) as paragraphs (e) through (i), respectively; by adding a new paragraph (d); by revising newly designated paragraphs (e)(1) introductory text, (e)(1)(i) introductory text, (e)(1)(i)(A), (e)(1)(i)(B)(*2*) introductory text, (e)(1)(i)(B)(2)(ii), (e)(1)(ii) heading and introductory text, (e)(2), and (g); and by revising the first sentence of newly designated paragraph (h) to read as follows:

§ 327.3 Payment of semiannual assessments.

* * * * *

(c) *Amount.* Except as provided in paragraph (d) of this section, the semiannual assessment to be paid by each insured depository institution for the current semiannual period shall be computed by multiplying the institution's average assessment base for the prior semiannual period by one-half the annual assessment rate applicable to such institution.

(d) *Lifeline accounts.* The portion of an institution's average assessment base that is attributable to deposits in lifeline accounts pursuant to the Bank Enterprise Act, 12 U.S.C. 1834, will be assessed at such rate as may be established by the Corporation pursuant to 12 U.S.C. 1834 and section 7(b)(2)(H) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1817(b)(2)(H).

(e) *Annual assessment rate.*—(1) *Assessment risk classification.* For the purpose of determining the annual assessment rate for BIF members under § 327.13(c) and the annual assessment rate for SAIF members under § 327.23(d), each insured institution will be assigned an "assessment risk classification". By the first day of the month preceding each semiannual period, each institution will be provided notice of its assessment risk classification for that period. Each institution's assessment risk classification, which will be composed of a group and a subgroup assignment, will be based on the following capital and supervisory factors:

(i) *Capital factors.* Institutions will be assigned to one of the following three capital groups on the basis of data reported in the institution's Report of Income and Condition, Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, or Thrift Financial Report containing the necessary capital data, for the report date that is closest to the last day of the seventh month preceding the current semiannual period.

(A) *Well capitalized.* For assessment risk classification purposes, the short-form designation for this group is "1".

(*1*) Except as provided in paragraph (e)(1)(i)(A)(*2*) of this section, this group consists of institutions satisfying each of the following capital ratio standards: Total risk-based ratio, 10.0 percent or greater; Tier 1 risk-based ratio, 6.0 percent or greater; and Tier 1 leverage ratio, 5.0 percent or greater. New insured depository institutions coming into existence after the report date specified in paragraph (e)(1)(i) of this section will be included in this group for the first semiannual period for which they are required to pay assessments.

(*2*) For purposes of assessment risk classification, an insured branch of a foreign bank will be deemed to be "well capitalized" if the insured branch maintains the pledge of assets required under 12 CFR 346.19, and maintains the eligible assets prescribed under 12 CFR 346.20 at 108 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (e)(1)(i) of this section.

(B) * * *

(*2*) For purposes of assessment risk classification, an insured branch of a foreign bank will be deemed to be "adequately capitalized" if the insured branch:

* * * * *

(*ii*) Maintains the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (e)(1)(i) of this section; and

* * * * *

(ii) *Supervisory risk factors.* Within its capital group, each institution will be assigned to one of three subgroups based on the Corporation's consideration of supervisory evaluations provided by the institution's primary federal regulator. The supervisory evaluations include the results of examination findings by the primary federal regulator, as well as other information the primary federal regulator determines to be relevant. In addition, the Corporation will take into consideration such other information (such as state examination findings, if appropriate) as it determines to be relevant to the institution's financial condition and the risk posed to the BIF or SAIF. Authority to set dates applicable to the determination of supervisory subgroup assignments is delegated to the Corporation's Director of the Division of Supervision (or his or her designee). The three supervisory subgroups are:

* * * * *

(2) *Payment of assessment at rate assigned.* Institutions shall make timely payment of assessments based on the assessment risk classification assigned in the notice provided to the institution pursuant to paragraph (e)(1) of this section. Timely payment is required notwithstanding any request for review filed pursuant to paragraph (g) of this section. Any institution to which notice of its assessment risk classification for the current semiannual period is not provided by the first day of the period shall preliminarily compute its assessment based on the rate applicable to the classification designated "2A" in the rate schedule set forth in § 327.13(c)(2) if the institution is a BIF member or in § 327.23(d)(2) if the institution is a SAIF member. If such institution is subsequently assigned for that period an assessment risk classification other than that designated as "2A", or if the classification assigned to an institution in the notice provided under paragraph (e)(1) of this section is subsequently changed, any excess assessment timely paid by the institution will promptly be refunded or credited by the Corporation, with interest, and any additional assessment owed shall promptly be paid by the institution, with interest. Interest payable under this paragraph shall be at the rate provided for in § 327.7(b) of this part.

* * * * *

(g) *Requests for review.* An institution may submit a written request for review of its assessment risk classification. Any such request must be submitted within 30 days of the date of the assessment risk classification notice provided by the Corporation pursuant to paragraph (e)(1) of this section. The request shall be submitted to the Corporation's Director of the Division of Supervision in Washington, DC, and shall include documentation sufficient to support the reclassification sought by the institution. If additional information is requested by the Corporation, such information shall be provided by the institution within 21 days of the date of the request for the additional information. Any institution submitting a timely request for review will receive written notice from the Corporation regarding the outcome of its request. Upon completion of a review, the Director of the Division of Supervision (or his or her designee) shall promptly notify the institution in writing of the FDIC's determination of whether reclassification is warranted. Notice of the procedures applicable to reviews will be included with the assessment risk classification notice to be provided pursuant to paragraph (e)(1) of this section.

(h) *Limited use of assessment risk classification.* The assignment of a particular assessment risk classification to a depository institution under this part 327 is for purposes of implementing and operating a risk-based assessment system. * * *

* * * * *

3. Section 327.3 is further amended by revising the reference in newly designated paragraph (e)(1)(i)(B)(*1*) to paragraph "(d)(1)(i)(B)(*2*)" to read "(e)(1)(i)(B)(*2*)"; by revising the reference in newly designated paragraph (e)(1)(i)(C) to "(d)(1)(i) (A) and (B)" to read "(e)(1)(i) (A) and (B)"; and by revising the reference in newly designated paragraph (i) to paragraph "(d)(1)" to read "(e)(1)".

4. Section 327.4 is amended by revising paragraph (c)(1) introductory text to read as follows:

§ 327.4 Average assessment base.

* * * * *

(c) * * *

(1) *Unposted credits.* Each insured depository institution shall report unposted credits in quarterly reports of condition for addition to the assessment base in the following manner, *provided,* however, that, notwithstanding any provision of this paragraph (c) or of § 327.5 to the contrary, the use of experience factors will not be permitted for any quarterly report of condition to be filed as of a date later than June 30, 1994, or for computing the average assessment base for any semiannual assessment period that commences after June 30, 1994:

* * * * *

5. Section 327.5 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 327.5 Experience factors.

(a) * * *

(1) * * *

(i) *In general.* If an insured depository institution intends to use an experience factor in computing the amounts of unposted credits or unposted debits, the institution shall state its intention in writing to the Corporation, *provided,* however, that, notwithstanding any provision of this section or of § 327.4 to the contrary, the use of experience factors will not be permitted with regard to assessments due for any semiannual assessment period that commences after December 31, 1994.

* * * * *

§ 327.13 [Amended]

5. Section 327.13 is amended in paragraph (c)(2) by revising the references to "§ 327.3(e)" and "§ 327.3(d)(1)" to read "§ 327.3(f)" and "§ 327.3(e)(1)", respectively.

§ 327.23 [Amended]

6. Section 327.23 is amended in paragraph (d)(2) by revising the references to "§ 327.3(e)" and "§ 327.3(d)(1)" to read "§ 327.3(f)" and "§ 327.3(e)(1)", respectively.

By order of the Board of Directors.

Dated at Washington, DC, this 17th day of June, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93-15026 Filed 6-24-93; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-14-AD; Amendment 39-8610; AD 93-12-04]

Airworthiness Directives; Precise Flight, Inc., Pulselite Units, Model 1210-2405-2; as Installed in Various Small Airplanes; Installed in Accordance With Supplemental Type Certificate (STC) SA4005NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Precise Flight, Inc., pulselite units, that requires removal of certain pulselite units, or replacement of those units with improved units. This amendment is prompted by reports that certain pulselite units have overheated and failed due to the installation of underrated transistors and the location of these transistors in relation to the heat sink fins. The actions specified by this AD are intended to prevent the presence of smoke in the cockpit, which could prompt the pilot to initiate an emergency landing.

DATES: Effective July 26, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 26, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Precise Flight, Inc., 63120 Powell Butte Road, Bend, Oregon 97701. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sheila I. Mariano, Aerospace Engineer, Special Certification Branch, ANM-190S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2599; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Precise Flight, Inc., pulselite units, was published in the **Federal Register** on March 26, 1993 (58 FR 16377). That action proposed to require removal of certain pulselite units, or replacement of those units with improved units.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 1,200 various small airplanes in the worldwide fleet on which the affected pulselite unit is installed. The FAA estimates that 1,000 airplanes of U.S.

registry will be affected by this AD, that it will take approximately 1.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $52.95 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $135,450, or $135.45 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-12-04 Precise Flight, Inc.: Amendment 39-8610. Docket 93-NM-14-AD.

Applicability: Precise Flight, Inc., pulselite units, Model 1210-2405-2; serial numbers X00150 through X01371, inclusive; as installed in various small airplanes in accordance with Supplemental Type Certificate (STC) SA4005NM; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the presence of smoke in the cockpit, which could prompt the pilot to initiate an emergency landing, accomplish the following:

(a) Within 12 months after the effective date of this AD, accomplish paragraph (a)(1) or (a)(2) of this AD in accordance with Precise Flight, Inc., Service Bulletin No. PL9303001, dated March 10, 1993.

(1) Remove Precise Flight, Inc., pulselite units, Model 1210-2405-2, from the airplane; or

(2) Replace Precise Flight, Inc., pulselite units, Model 1210-2405-2, with improved pulselite units, Model 1210-2405-2A.

(b) As of the effective date of this AD, no person shall install a Precise Flight, Inc., pulselite unit, Model 1210-2405-2, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle, ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The removal and replacement shall be done in accordance with Precise Flight, Inc., Service Bulletin No. PL9303001, dated March 10, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Precise Flight, Inc., 63120 Powell Butte Road, Bend, Oregon 97701. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 26, 1993.

Issued in Renton, Washington, on June 17, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-14974 Filed 6-24-93; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 93-ANE-16; Amdt. 39-8584; AD 93-11-11]

Airworthiness Directives; AC, Textron Lycoming, and Rajay/Rotomaster-Modified Diaphragm Fuel Pumps; C

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directives (AD) 93-05-21 applicable to AC, Textron Lycoming, and Rajay/Rotomaster-modified diaphragm fuel pumps, that was published in the **Federal Register** on June 4, 1993 (58 FR 31647). The AD number for that document is incorrect. This document corrects the AD number. In all other respects, the original document remains the same.

DATES: Effective June 21, 1993.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directives applicable to AC, Textron Lycoming, and Rajay/Rotomaster-modified high pressure diaphragm fuel pumps, overhauled by Aero Accessories Inc. (AAI), was published in the **Federal Register** on Friday, June 4, 1993 (58 FR 31647). The following corrections are needed:

1. On page 31647, in the first column, the fourth line down from the top in the heading where it reads "[Docket No. 93-ANE-16; Amdt. 39-8584; AD 93-05-21]" correct the AD number to read "AD 93-11-11".

§ 39.13 [Corrected]

2. On page 31648 in the second column in the AD before the Applicability paragraph, five lines from the bottom of the column, correct the AD number to read "93-11-11".

Issued in Burlington, MA, on June 17, 1993.

Michael H. Borfitz,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93-15011 Filed 6-24-93; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 24 and 178

[T.D. 93-43]

Importer Record Number "Freeze" Program

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide for the Importer Record Number "Freeze" program. This program allows participating importers of record to protect their access to information on Customs transactions by restricting persons authorized to make name/address changes for purposes of receiving transaction notifications.

EFFECTIVE DATE: June 25, 1993.

FOR FURTHER INFORMATION CONTACT: John Accetturo, National Finance Center, Indianapolis, Indiana (317) 298–1308.

SUPPLEMENTARY INFORMATION:

Background

In T.D. 67–33, 32 FR 492, Customs amended its regulations to allow for the automation of its appropriation and revenue accounting system. One of the changes wrought by these amendments was the addition of a new § 24.5, Customs Regulations (19 CFR 24.5), that required each person, business firm, Government agency or other organization to file a Notification of or Application for Importer's Number or Notice of Change of Name or Address (Customs Form 5106) with the first dutiable formal entry submitted or the first request for services that would result in the issuance of a bill or a refund check upon adjustment of a cash collection. Once established, this Importer Record Number (IRN) was to be used in all future Customs transactions requiring an importer number. This section also allowed organizations having branch offices to identify customs transactions originating in specific branch offices through the use of suffix codes, provided a separate Customs Form 5106 was submitted reporting the suffix code employed and designating the name and address of each branch office to be separately identified. By amendment to the regulations in 1978, this transaction-identification practice was extended to vessel owners desiring to associate particular Customs transactions with specific vessels. See, T.D. 78–7, 42 FR 64680. These transaction-tracking uses for IRN information necessarily enabled individuals associated with particular customs transactions, *e.g.*, with the importer of record, broker, or agent, to submit name/address changes, thus enabling them to receive Customs notifications intended for the importer of record.

In the 1970s, Customs instituted an IRN "Freeze" program to assure these importers of record that they would receive the Customs transaction notifications intended for them. The "Freeze" program allows concerned importers to freeze certain importer identification information on file with Customs. To participate in the program, importers designate the name and title/position of the individual authorized to effect name/ address changes to the importer's identification information contained on the Customs Form 5106 (Importer ID Input Record), and specify the IRNs and suffixes to be frozen and the mailing address and/or physical location address of the company where Customs transaction notifications should be directed. The designation must be made in a separate writing on letterhead paper signed by the importer of record or his agent, whose name and title are clearly indicated. The request to participate is to be sent to the Customs address specified in § 24.5(f), as set forth in this document.

Inapplicability of Public Notice and Comment Requirements, the Regulatory Flexbility Act, and Executive Order 12291

Because this amendment merely calls attention to an established and voluntary program designed to enable participating importers to control the receipt of Customs transaction notifications, which confers a benefit on the public, pursuant to 5 U.S.C. 553(b)(B) and (d)(3), good cause exists for dispensing with notice and public procedure thereon, and a delayed effective date, as unnecessary. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document does not meet the criteria for a "major rule" as defined in E.O. 12291, therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

The collection of information in this final regulation, as provided for under § 24.5(f), has been reviewed by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507, and approved under control number 1515–0199. The estimated annual burden per respondent/ recordkeeper choosing to participate in this program is 10 minutes. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Financial and accounting procedures, Imports, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, for the reason stated above, parts 24 and 178, Customs Regulations (19 CFR parts 24 and 178), are amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for part 24 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624; 31 U.S.C. 9701, unless otherwise noted.

* * * * *

2. Section 24.5 is amended by adding paragraph (f) to read as follows:

§ 24.5 Filing identification number.

* * * * *

(f) *"Freezing" importer identification information.* Those importers identifying Customs transactions through the procedure specified in paragraph (d) of this section and desiring to ensure that they receive such Customs transaction notifications as may be issued may request Customs to "freeze" the name and address information, regardless of what is shown on the Customs Form 5106 or request for services, by designating the name and title/position of the individual in their company authorized to effect name/address changes to the Importer's Record Number (IRN) identification information, and specifying the IRNs and suffixes to be frozen and the mailing address and/or physical location address of the company where Customs notifications are to be directed. The request must be made in a separate writing on letterhead paper signed by the importer of record or his agent, whose name and title are

clearly indicated. Participation in the "Freeze" Program is voluntary. Requests to participate should be sent to: U.S. Customs Service, National Finance Center—Revenue Branch, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, Attn: Freeze Program.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting, in appropriate numerical order according to the section number under the column indicated, the following information to read as follows:

19 CFR section	Description	OMB control No.
•	•	•
§ 24.5	Importer identification information.	1515–0199
•	•	•

Michael H. Lane,

Acting Commissioner of Customs.

Approved: February 10, 1993.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 93–14966 Filed 6–24–93; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

[RIN 2900–AF79]

Veterans Education; Implementation of the Veterans' Educational Assistance Amendments of 1991 in VEAP

AGENCY: Department of Defense and Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Veterans' Educational Assistance Amendments of 1991 contain several provisions which affect the payment of benefits to those receiving educational assistance under the programs VA (Department of Veterans Affairs) administers. This includes restoring lost entitlement to those reservists called to active duty and certain individuals on active duty during the Persian Gulf War, and an improvement in payments to these individuals. This proposal will inform the public of the way in which VA intends to implement these provisions of law with respect to VEAP (the Post-Vietnam Era Educational Assistance Program).

EFFECTIVE DATE: These amended regulations, like the provisions of law they implement, are retroactively effective on October 10, 1991.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: Many veterans who are eligible to receive benefits under VEAP are members of the Selected Reserve. Consequently, when reserve units began to be called to active duty at the start of Operation Desert Storm, those reservists participating under VEAP as a result often had to discontinue their training during a term or other enrollment period. VEAP participants on active duty faced similar circumstances as a result of being transferred to a new duty location or assignment, or being required to assume additional duties in connection with the Persian Gulf War. Under the law then in effect, these individuals would have lost the entitlement used in pursuit of those discontinued courses unless their educational institutions discovered a method whereby the individuals could receive a grade for those courses. This could have affected adversely the ability of these individuals to complete their programs of education. Furthermore, in order to pay these individuals to the date they discontinued training, VA would have to determine whether there were mitigating circumstances surrounding these discontinuances.

The Veterans' Educational Assistance Amendments of 1991 was enacted in order to prevent eligible individuals from suffering these setbacks while serving the country during the Persian Gulf War. This Act contains several provisions which improve the educational assistance benefits for those who served on active duty during the Persian Gulf War. These include restoring lost entitlement to those who were called to active duty during an enrollment and to those who received a new duty assignment, went to a new duty location or who assume additional duties due to the Persian Gulf War, and providing for payment to the date those individuals withdrew from their courses. These regulations implement such provisions of law for those receiving benefits under the VEAP program.

The Department of Veterans Affairs and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

VA finds for good cause that publishing these regulations for prior public comment is unnecessary and would serve no good purpose since these changes simply implement statutory requirements. Therefore, notice of proposed rulemaking will not be published for these regulations.

Since a notice of proposed rulemaking will not be published for these amended regulations, these changes do not fall within the definition of a rule in the Regulatory Flexibility Act. Nevertheless, these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Department of Veterans Affairs and the Department of Defense find that good cause exists for making these amended regulations and the new regulation, § 21.5053, like the provisions of law they implement, retroactively effective on Oct. 10, 1991.

It is necessary to implement these provisions of law as soon as possible. These provisions are intended to achieve a benefit for the individual. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of these provisions of law; and might result in the denial of a benefit to someone who is entitled to it. (The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.120.)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—

education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 28, 1993.

Robert M. Alexander,

Lieutenant General, USAF, Deputy Assistant Secretary (Military Manpower & Personnel Policy).

Approved: April 30, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subpart G is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

1. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In § 21.5021 paragraph (x) and its authority citation are added as follows.

* * * * *

(x) *Persian Gulf War.* The term "Persian Gulf War" means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(Authority: 38 U.S.C. 101(33))

3. Section 21.5053 and its authority citation are added to read as follows.

§ 21.5053 Restoration of contributions (Persian Gulf War).

(a) *Restoration of contributions when no entitlement is charged.* If the provisions of § 21.5072(i) require that a veteran's entitlement not be charged for a payment or payments he or she received, the amount of the veteran's contributions which were included in the payment or payments will be restored to the fund by the Department of Defense.

(Authority: 38 U.S.C. 3235; Pub. L. 102–127) (Oct. 10, 1991)

(b) *Restored contributions are treated like other contributions.* VA will treat contributions which have been restored under paragraph (a) of this section as though the veterans had contributed them for all purposes including—

(1) Computing the veteran's monthly rates and benefit payments under § 21.5138, and

(2) Determining any refund which may become due the veteran under §§ 21.5064 and 21.5065.

(Authority: 38 U.S.C. 3235; Pub. L. 102–127) (Oct. 10, 1991)

4. In § 21.5072 the introductory text is revised, introductory text to paragraph (a) is revised and paragraph (i) and its authority citation are added to read as follows.

§ 21.5072 Entitlement charge.

The Department of Veterans Affairs shall determine the entitlement charge for each payment in the same manner for all individuals regardless of whether they are on active duty. Unless the circumstances described in paragraph (i) of this section apply to a servicemember or veteran, VA will use paragraphs (a) through (h) of this section to determine an entitlement charge.

(a) *General.* Except as provided in paragraphs (b) through (i) of this section, VA will make a charge against entitlement as follows:

* * * * *

(i) *Entitlement charge may be omitted for course discontinuance (Persian Gulf War).* VA will make no charge against the entitlement of a servicemember or veteran for a payment of educational assistance allowance when—

(1) A veteran not serving on active duty had to discontinue course pursuit as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672 (a), (d), or (g), 673, 673b, or 688 of title 10; or

(2) A servicemember serving on active duty had to discontinue course pursuit as a result of being ordered, in connection with the Persian Gulf War, to a new duty location or assignment or to perform an increased amount of work; and

(3) The veteran or servicemember failed to receive credit or lost training time toward completion of his or her educational, professional or vocational objective as a result of having to discontinue course pursuit, as described in paragraphs (i)(1) or (i)(2) of this section.

(Authority: 38 U.S.C. 3235; Pub. L. 102–127) (Oct. 10, 1991)

[FR Doc. 93–14908 Filed 6–24–93; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–4665–9]

OMB Approval Numbers Under the Paperwork Reduction Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is continuing to consolidate display of the Office of Management and Budget (OMB) control numbers issued under the Paperwork Reduction Act (PRA) for various EPA regulations with information collection requirements.

EFFECTIVE DATE: This final rule is effective June 25, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at (202) 260–2740.

SUPPLEMENTARY INFORMATION: EPA is continuing to examine its management of the PRA. As part of that review, EPA is today publishing, as an addition to a single table, the current information collection request (ICR) control numbers issued by OMB for various regulations promulgated under the Clean Air Act; Motor Vehicle Information and Cost Savings Act; Executive Order 11735; Federal Water Pollution Control Act as amended by the Clean Water Act and the Water Quality Act; Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, Hazardous and Solid Waste Amendments, and the Quiet Communities Act; Oil Pollution Act; Toxic Substances Control Act; Safe Drinking Water Act; and Comprehensive Environmental Response, Compensation, and Liability Act as amended by the Superfund Amendments and Reauthorization Act. The affected regulations are codified at 40 CFR parts 33, 35, 51, 52, 55, 58, 60, 61, 63, 70, 72, 73, 75, 77, 78, 79, 80, 82, 85, 86, 112, 116, 117, 122, 123, 124, 125, 130, 131, 144, 146, 147, 148, 233, 258, 260, 261, 262, 263, 264, 265, 266, 268, 270, 271, 279, 280, 281, 300, 302, 307, 310, 311, 350, 355, 403, 501, 503, 600, and 749.

EPA is continuing to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 and in each CFR volume containing EPA regulations. The table lists the section numbers or parts with reporting and recordkeeping requirements, and their current OMB control numbers. In conjunction with consolidating display of OMB control numbers, the Agency is removing the existing parenthetical statement identifying OMB control numbers which currently appear in the affected Agency regulations.

The ICRs were previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary. For the

same reasons, EPA also finds that there is good cause under 5 U.S.C. 553(d)(3).

For additional information, see 58 FR 18014, April 7, 1993 and 58 FR 27472, May 10, 1993.

List of Subjects in 40 CFR Parts 9, 33, 35, 51, 52, 55, 58, 60, 61, 63, 70, 72, 73, 75, 77, 78, 79, 80, 82, 85, 86, 112, 116, 117, 122, 123, 124, 125, 130, 131, 144, 146, 147, 148, 233, 258, 260, 261, 262, 263, 264, 265, 266, 268, 270, 271, 279, 280, 281, 300, 302, 307, 310, 311, 350, 355, 403, 501, 503, 600, and 749

Reporting and recordkeeping requirements.

Carol Browner,

Administrator.

Dated: June 18, 1993.

For the reasons set out in the preamble, the Administrator under the authority of 42 U.S.C. 300j–9, 6912, 7601, and 9615; and 33 U.S.C. 1361, amends 40 CFR chapter I as follows:

1. The following parts are amended by removing the parenthetical phrase containing the OMB control number wherever it appears:

Part 51
Part 52
Part 55
Part 60
Part 61
Part 63
Part 80
Part 85
Part 86
Part 122
Part 144
Part 146
Part 261
Part 262
Part 264
Part 265
Part 266
Part 268
Part 270
Part 271
Part 280
Part 281
Part 302
Part 355
Part 600

PART 9—[AMENDED]

2. In Part 9:

a. The authority citation for part 9 is revised to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

b. Section 9.1 is amended by adding the new entries to the table, and by revising the heading for "National Emission Standards for Hazardous Air Pollutants" to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
Procurement Under Assistance Agreements	
33.110	2030–0013
33.211	2030–0013
State and Local Assistance	
35.6055(a)(2)	2010–0020
35.6055(b)(1)	2010–0020
35.6055(b)(2)(i)–(ii)	2010–0020
35.6105(a)(2)(i)–(v), (vii)	2010–0020
35.6110(b)(2)	2010–0020
35.6120	2010–0020
35.6145	2010–0020
35.6155(a), (c)	2010–0020
35.6230(a), (c)	2010–0020
35.6300(a)(3)	2010–0020
35.6315(c)	2010–0020
35.6320	2010–0020
35.6340(a)	2010–0020
35.6350	2010–0020
35.6500	2010–0020
35.6550(a)(1)(ii)	2010–0020
35.6550(b)(1)(iii)	2010–0020
35.6550(b)(2)(i)	2010–0020
35.6585	2010–0020
35.6595(a)	2010–0020
35.6600(a)	2010–0020
35.6650	2010–0020
35.6655	2010–0020
35.6660	2010–0020
35.6665(a)	2010–0020
35.6700	2010–0020
35.6705	2010–0020
35.6710	2010–0020
35.6805	2010–0020
35.6815 (a), (d), (e)	2010–0020
35.9000–35.9070	2040–0138
Requirements for Preparation, Adoption, and Submittal of Implementation Plans	
51.160–51.166	2060–0003
51.321–51.323	2060–0088
51.353–51.354	2060–0252
51.365–51.366	2060–0252
51.370–51.371	2060–0252
Approval and Promulgation of Implementation Plans	
52.21	2060–0003
52.741	2060–0203
Outer Continental Shelf Air Regulations	
55.4–55.8	2060–0249
55.11–55.14	2060–0249
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58.11–58.14	2060–0084
58.20–58.23	2060–0084
58.25–58.28	2060–0084
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58.33	2060–0084
58.35	2060–0084
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58.43	2060–0084
58.45	2060–0084
58.50	2060–0084
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60.46a–60.49a	2060–0023
60.40b	2060–0072
60.42b	2060–0072
60.44b–60.49b	2060–0072
60.42c	2060–0202
60.44c–60.48c	2060–0202
60.53–60.54	2060–0040
60.50a	2060–0210
60.56a–60.59a	2060–0210
60.63–60.65	2060–0025
60.73–60.74	2060–0019
60.84–60.85	2060–0041
60.93	2060–0083
60.104–60.108	2060–0022
60.113a–60.115a	2060–0121
60.113b–60.116b	2060–0074
60.123	2060–0080
60.133	2060–0110
60.142–60.144	2060–0029
60.143a–60.145a	2060–0029
60.153–60.155	2060–0035
60.203(a), (c)	2060–0037
60.204	2060–0037
60.213(a), (c)	2060–0037
60.214	2060–0037
60.223(a), (c)	2060–0037
60.224	2060–0037
60.233(a), (c)	2060–0037
60.234	2060–0037
60.243(a), (c)	2060–0037
60.244	2060–0037
60.253–60.254	2060–0122
60.273–60.276	2060–0038
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60.284–60.286	2060–0021
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60.296	2060–0054
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60.313–60.316	2060–0106
60.334–60.335	2060–0028
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60.373–60.374	2060–0081
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60.443–60.447	2060–0004
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60.463–60.466	2060–0107
60.473–60.474	2060–0002
60.482–2	2060–0012
60.482–3	2060–0012
60.482–4	2060–0012

40 CFR citation	OMB control No.
60.482–7	2060–0012
60.482–8	2060–0012
60.482–10	2060–0012
60.483–1	2060–0012
60.483–2	2060–0012
60.484–60.487	2060–0012
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60.538–60.539	2060–0161
60.543 (b)(2)–(4), (c)–(n)	2060–0156
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60.546 (a)–(e), (f)(4)–(6), (g)–(j).	2060–0156
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60.640	2060–0120
60.642–60.644	2060–0120
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60.663–60.665	2060–0197
60.670	2060–0050
60.672	2060–0050
60.674–60.676	2060–0050
60.683–60.685	2060–0114
60.692–1	2060–0172
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60.693–1	2060–0172
60.693–2	2060–0172
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40 CFR citation	OMB control No.
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86.091–21	2060–0104
86.091–23	2060–0104
86.091–28	2060–0104
86.091–30	2060–0104
86.092–14	2060–0104
86.092–24	2060–0104
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86.094–23	2060–0104
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86.094–35	2060–0104
86.095–14	2060–0104
86.095–24	2060–0104
86.095–26	2060–0104
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86.542–78	2060–0104
86.542–90	2060–0104
86.603–88	2060–0064
86.604–84	2060–0064
86.605–88	2060–0064
86.606–84	2060–0064
86.607–84	2060–0064
86.608–88	2060–0064
86.608–90	2060–0064
86.609–84	2060–0064
86.612–84	2060–0064
86.614–84	2060–0064
86.615–84	2060–0064
86.709–94	2060–0104
86.884–5	2060–0104
86.884–7	2060–0104
86.884–9	2060–0104
86.884–10	2060–0104
86.884–12	2060–0104
86.884–13	2060–0104
86.1003–88	2060–0064
86.1003–90	2060–0064
86.1004–84	2060–0064
86.1005–88	2060–0064
68.1005–90	2060–0064
86.1006–84	2060–0064
86.1007–84	2060–0064
86.1008–88	2060–0064
86.1008–90	2060–0064
86.1009–84	2060–0064
86.1012–84	2060–0064
86.1014–84	2060–0064
86.1015–87	2060–0064
86.1106–87	2060–0132
86.1108–87	2060–0132
86.1110–87	2060–0132
86.1111–87	2060–0104
86.1112–87–86.1115–87	2060–0132
86.1213–85	2060–0104
86.1213–87	2060–0104
86.1242–85	2060–0104
86.1242–90	2060–0104
86.1308–84	2060–0104
86.1310–84	2060–0104
86.1310–88	2060–0104
86.1310–90	2060–0104
86.1313–84	2060–0104
86.1313–87	2060–0104
86.1313–90	2060–0104
86.1313–91	2060–0104
86.1313–94	2060–0104
86.1314–84	2060–0104
86.1316–84	2060–0104
86.1316–90	2060–0104
86.1319–84	2060–0104
86.1319–90	2060–0104
86.1321–84	2060–0104
86.1321–90	2060–0104
86.1323–84	2060–0104
86.1327–84	2060–0104
86.1327–88	2060–0104
86.1327–90	2060–0104
86.1332–84	2060–0104
86.1332–90	2060–0104
86.1334–84	2060–0104
86.1335–84	2060–0104
86.1335–90	2060–0104
86.1336–84	2060–0104
86.1340–84	2060–0104
86.1340–90	2060–0104
86.1341–84	2060–0104
86.1341–90	2060–0104
86.1342–84	2060–0104
86.1344–84	2060–0104
86.1342–90	2060–0104
86.1344–84	2060–0104
86.1344–88	2060–0104
86.1542–84	2060–0104
86.1544–84	2060–0104
86.2500	2060–0104

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112.1–112.7	2050–0021

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116.4	2050–0046
117.3	2050–0046
117.21	2050–0046
302.4	2050–0046
302.6	2050–0046
302.8	2050–0086
Part 355, Appendix A, Appendix B.	2050–0046

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122.21(f)–(l)	2040–0086
122.21(j)(4)	2040–0150
122.21(m)–(p)	2040–0068
122.26(c), (d)	2040–0086
122.41(h)	2040–0068
122.41(j)	2040–0009, 2040–0110
122.41(l)	2040–0110, 2040–0068
122.42(c)	2040–0086
122.42(a), (b), (l)	2040–0068
122.44(g), (i)	2040–0004, 2040–0110
122.45(b)	2040–0004, 2040–0110
122.45(b)(4)	2040–0068
122.47(a)	2040–0110
122.47(b)	2040–0110, 2040–0068
122.48	2040–0004
122.62(a)	2040–0068
122.63	2040–0068

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123.21–123.29	2040–0057
123.26	2040–0057
123.43–123.45	2040–0057
123.62–123.64	2040–0057

Procedures for Decisionmaking

124.5	2040–0068
124.53–124.54	2040–0057

Criteria and Standards for the National Pollutant Discharge Elimination System

125.59–125.67, and Appendix A and B.	2040–0088

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130.6–130.10	2040–0071
130.15	2040–0071

40 CFR citation	OMB control No.
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131.6–131.8	2040–0049
131.20–131.22	2040–0049
131.31–131.36	2040–0049
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144.8	2040–0042
144.12	2040–0042
144.14–144.15	2040–0042
144.23	2040–0042
144.25–144.28	2040–0042
144.31–144.33	2040–0042
144.38	2040–0042
144.41	2040–0042
144.51–144.55	2040–0042
144.62–144.66	2040–0042
144.70	2040–0042
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146.10	2040–0042
146.12–146.15	2040–0042
146.22–146.25	2040–0042
146.32–146.35	2040–0042
146.52	2040–0042
146.64	2040–0042
146.66–146.73	2040–0042
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147.104	2040–0042
147.304–147.305	2040–0042
147.504	2040–0042
147.754	2040–0042
147.904	2040–0042
147.1154	2040–0042
147.1354–147.1355	2040–0042
147.1454	2040–0042
147.1654	2040–0042
147.1954	2040–0042
147.2103–147.2104	2040–0042
147.2154	2040–0042
147.2402	2040–0042
147.2905	2040–0042
147.2912–147.2913	2040–0042
147.2915	2040–0042
147.2918	2040–0042
147.2920–147.2926	2040–0042
147.2929	2040–0042
147.3002–147.3003	2040–0042
147.3006–147.3007	2040–0042
147.3011	2040–0042
147.3014–147.3016	2040–0042
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147.3104–147.3105	2040–0042
147.3107–147.3109	2040–0042
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233.21	2090–0015
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233.50	2090–0015
233.52	2090–0015
233.61	2040–0140
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258.10–258.16	2050–0122
258.20	2050–0122
258.23	2050–0122
258.28–258.29	2050–0122
258.51	2050–0122
258.53–258.55	2050–0122
258.57–258.58	2050–0122
258.60–258.61	2050–0122
258.71–258.74	2050–0122
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260.20–260.22	2050–0053
260.31–260.33	2050–0053
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261.3	2050–0085
261.4	2050–0053
261.35	2050–0115
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262.12	2050–0028
262.20	2050–0039
262.22–262.23	2050–0039
262.34	2050–0035, 2050–0085
262.40(a)	2050–0039
262.40(b)	2050–0024
262.40(c)	2050–0035
262.41	2050–0024
262.42	2050–0039
262.43	2050–0035
262.44(a)–(b)	2050–0039
262.44(c)	2050–0035
262.53–262.57	2050–0035
262.60	2050–0035
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263.11	2050–0028
263.20–263.22	2050–0039
263.30	2050–0039
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264.11	2050–0028
264.12(a)	2050–0120
264.13	2050–0120
264.14	2050–0009
264.15–264.17	2050–0120
264.18	2050–0009
264.19	2050–0007
264.51–264.52	2050–0009
264.53(a)	2050–0120
264.56 (d), (i), (j)	2050–0120
264.71–264.72	2050–0039
264.73	2050–0120
264.75	2050–0024
264.76	2050–0039
264.90	2050–0009
264.97 (g), (h)	2050–0009
264.97(j)	2050–0033
264.98 (c), (g)(1), (g)(5), (g)(6).	2050–0033
264.98 (g)(4), (h)	2050–0009
264.99 (c), (g), (h)(1), (i)(1), (i)(2).	2050–0033
264.99 (h)(2), (i)(3), (j)	2050–0009
264.100	2050–0033
264.101	2050–0120
264.112(a)–(c)	2050–0009
264.112(d)	2050–0120
264.113(b)	2050–0120
264.115–264.16	2050–0120
264.118	2050–0009
264.119 (a), (b)	2050–0120
264.119(c)	2050–0009
264.120	2050–0120
264.142–264.145	2050–0120
264.147(a)–(j)	2050–0120
264.147(b)	2050–0009, 2050–0120
264.148–264.150	2050–0120
264.190–264.191	2050–0050
264.192(a)	2050–0009
264.192(g)	2050–0050
264.193 (c), (d), (e), (g), (h)	2050–0009
264.193(i)	2050–0050
264.196	2050–0050
264.197(b)	2050–0050
264.197(c)	2050–0009
264.221	2050–0009
264.222–264.223	2050–0007
264.226(c)	2050–0009, 2050–0050
264.226(d)	2050–0007
264.227	2050–0050
264.231	2050–0009
264.251(b)	2050–0009
264.251(d)	2050–0007, 2050–0050
264.252–264.254	2050–0007
264.259	2050–0009
264.271–264.272	2050–0009
264.276(a)	2050–0009, 2050–0050
264.278	2050–0050
264.280(b)	2050–0050
264.280(d)	2050–0009
264.283	2050–0009
264.301	2050–0007, 2050–0009
264.302–264.304	2050–0007
264.314	2050–0050
264.317	2050–0009
264.343	2050–0050
264.344	2050–0009
264.347	2050–0050
264.571	2050–0115
264.573–264.574	2050–0115
264.603	2050–0050
264.1033–264.1036	2050–0050
264.1061–264.1065	2050–0050
264.1100–264.1101	2050–0085

40 CFR citation	OMB control No.
Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	
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265.12(a)	2050–0120
265.13	2050–0120
265.15	2050–0120
265.16	2050–0035, 2050–0120
265.19	2050–0007
265.37	2050–0035
265.51	2050–0035, 2050–0120
265.52	2050–0035, 2050–0120
265.53(a)	2050–0035, 2050–0120
265.54	2050–0120
265.56 (d), (i), (j)	2050–0035, 2050–0120
265.71–265.72	2050–0039
265.73	2050–0120
265.75	2050–0024
265.76	2050–0039
265.90	2050–0033
265.92–265.94	2050–0033
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265.113(b)	2050–0120
265.115–265.116	2050–0120
265.118 (a), (d), (e), (f)	2050–0120
265.119–265.120	2050–0120
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265.190	2050–0035, 2050–0050
265.191	2050–0035, 2050–0050
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265.193	2050–0035, 2050–0050
265.195	2050–0120
265.196	2050–0035, 2050–0050
265.197(b)	2050–0050
265.197(c)	2050–0120
265.221	2050–0050
265.222	2050–0007, 2050–0050
265.223	2050–0007
265.225	2050–0050
265.226	2050–0007
265.229	2050–0050
265.255	2050–0007
265.259–265.260	2050–0007
265.273	2050–0120
265.276	2050–0050
265.278	2050–0050
265.280	2050–0050
265.301	2050–0050
265.302–265.304	2050–0007
265.314	2050–0050
265.340	2050–0050
265.352	2050–0050
265.383	2050–0050
265.404	2050–0050
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40 CFR citation	OMB control No.
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266.70(c)	2050–0050
266.80	2050–0028
266.100	2050–0073
266.102	2050–0073
266.103 (a)(5), (a)(6)(iv), (b), (c), (d), (j), (k).	2050–0073
266.104	2050–0073
266.104(a)(3)	2050–0050
266.106–266.109	2050–0073
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268.4–268.5	2050–0085
268.6	2050–0062
268.7	2050–0085
268.9	2050–0085
268.42	2050–0085
268.44	2050–0085
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270.1	2050–0009, 2050–0028, 2050–0034
270.10	2050–0009
270.11	2050–0034
270.13	2050–0034
270.14–270.16	2050–0009
270.17	2050–0009
270.17(b)(3)–(5)	2050–0007
270.18	2050–0009
270.18(c)(1)(iii)–(v)	2050–0007
270.19–270.20	2050–0009
270.21	2050–0009
270.21 (b)(1)(iii)–(v), (c), (d)	2050–0007
270.22	2050–0073
270.23–270.25	2050–0009
270.26	2050–0115
270.33	2050–0009
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270.42 (a)–(c), (e), (g)	2050–0009
270.51	2050–0009
270.62 (a)(1), (c)	2050–0009
270.63	2050–0009
270.65	2050–0009
270.66	2050–0073
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270.73	2050–0009
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279.10–279.11	2050–0124
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279.56	2050–0050
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279.62	2050–0028
279.63	2050–0124
279.65–279.66	2050–0050
279.72	2050–0050
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280.34	2050–0068
280.40	2050–0068
280.45	2050–0068
280.50	2050–0068
280.53	2050–0068
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280.74	2050–0068
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310.05	2050–0077
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310.20	2050–0077
310.30	2050–0077
310.40	2050–0077
310.50	2050–0077
310.60	2050–0077
310.70	2050–0077
310.80	2050–0077

40 CFR citation	OMB control No.
310.90	2050–0077
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311.1–311.2	2050–0105
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350.40	2050–0078
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403.6–403.7	2040–0009
403.8(a)–(e)	2040–0009
403.8(f)	2040–0009, 2040–0150
403.9–403.10	2040–0009
403.12(b)–(g)	2040–0009
403.12 (h), (i)	2040–0009, 2040–0150
403.12 (j), (k), (l), (o)	2040–0009, 2040–0150
403.12 (m), (p)	2040–0009, 2040–0150
403.13	2040–0009
403.15	2040–0009
403.17–403.18	2040–0009
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501.15(a)	2040–0086, 2040–0110
501.15(b)	2040–0004, 2040–0068, 2040–0110
501.15(c)	2040–0068
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600.010–86	2060–0104
600.113–88	2060–0104
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600.207–86	2060–0104
600.209–85	2060–0104
600.306–86	2060–0104
600.307–86	2060–0104
600.311–86	2060–0104
600.312–86	2060–0104
600.313–86	2060–0104
600.314–86	2060–0104
600.507–86	2060–0104
600.509–86	2060–0104
600.510–86	2060–0104
600.512–86	2060–0104
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749.68	2060–0193
. . . . .	

[1] The ICRs referenced in this section of the Table encompass the applicable general provisions contained in 40 CFR part 60, subpart A, which are not independent information collection requirements.

[2] The ICRs referenced in this section of the Table encompass the applicable general provisions contained in 40 CFR part 61, subpart A, which are not independent information collection requirements.

PART 60—[AMENDED]

3. In part 60:

a. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

b. By removing §§ 60.48, 60.55, 60.75, 60.94, 60.116a, 60.124, 60.134, 60.205, 60.215, 60.225, 60.235, 60.245, 60.255, 60.297, 60.305, 60.336, 60.375, 60.405, 60.475, 60.594.

PART 61—[AMENDED]

4. In part 61:

a. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

b. By removing § 61.35.

PART 70—[AMENDED]

5. In part 70:

a. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

b. By removing paragraph (f) of § 70.1.

[FR Doc. 93–14918 Filed 6–24–93; 8:45 am]

BILLING CODE [illegible]

40 CFR Part 180

[PP 2F4039/R2002; FRL 4628–4]

RIN 2070–AB78

Exemption From Pesticide Tolerances for Tomato Pinworm Insect Pheromone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule modifies an exemption from the requirement of a tolerance for residues of the tomato pinworm (TPW) insect pheromone, (*E*)- and (*Z*)-4-tridecen-1-yl acetate, in or on all raw agricultural commodities. This regulation to establish an exemption from the requirement of a tolerance for the TPW insect pheromone was requested pursuant to a petition submitted by Scentry, Inc.

EFFECTIVE DATE: Effective June 25, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 2F4039/R2002], must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-2386.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 11, 1992 (57 FR 8658), EPA issued a notice which announced that Scentry, Inc., P.O. Box 426, Buckeye, AZ 85326-0090, had submitted a pesticide petition (PP 2F4039) to EPA proposing to amend 40 CFR part 180, under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, by establishing a regulation to exempt from the requirement of a tolerance the tomato pinworm insect pheromone NoMate TPW Spiral ([*E/Z*]-4-tridecen-1-yl acetates). On April 1, 1992, Scentry indicated in a letter to EPA that the initial notice of filing was incorrect. In the **Federal Register** of June 10, 1992 (57 FR 24647), EPA issued a notice which announced a correction to the initial notice of receipt correcting Scentry, Inc.'s, address as 610 Central Ave., Billings, MT 59102, and that Scentry, Inc., proposed amending 40 CFR 180.1064 by establishing a regulation to exempt from the requirement of a tolerance the insect pheromone containing the active ingredients [*E/Z*]-4-tridecen-1-yl acetates in or on all raw agricultural commodities. On May 20, 1992, the petition was modified to limit the amount of TPW pheromone applied per acre per year, with the number of applications per year limited to 10. On January 15, 1993, the petition was further modified to limit application of the TPW pheromone to point source dispensers.

Other than Scentry's April 1, 1992 comments, there were no comments or requests for referral to an advisory committee received in response to the notice of filing and correction. The scientific data submitted in the petition and other relevant material have been evaluated. A discussion of the toxicological data considered in support of the tolerance can be found in the rule (PP 1F2464/R432) establishing an exemption from the requirement of a tolerance for the TPW pheromone when used in a chopped fiber or tape, published in the Federal Register of October 13, 1981 (46 FR 50371). The Agency has evaluated the petitioner's request to modify the current tolerance exemption for the TPW pheromone, 40 CFR 180.1064. These modifications include (1) expanding the crops covered by this exemption to all raw agricultural commodities, (2) broadening the allowable method of application from tape or chopped fiber to any point source dispenser, and (3) limiting cumulative yearly application to 200 grams TPW pheromone/acre. These modifications are supported by the existing mammalian acute toxicology and mutagenicity data base, which showed no significant adverse effects in any test.

Based on the information cited above, the Agency has determined that the establishment of the exemption from the requirement of a tolerance by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication of this document in the Federal Register, file written objections and/or a request for a hearing with the Hearing Clerk at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements

Dated: June 15, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1064 is revised to read as follows:

§ 180.1064 Tomato pinworm insect pheromone; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for combined residues of both components of the tomato pinworm insect pheromone (*E*)-4-tridecen-1-yl acetate and (*Z*)-4-tridecen-1-yl acetate in or on all raw agricultural commodities (preharvest) in accordance with the following prescribed conditions:

(a) Application shall be limited solely to point source dispensers or point source chopped fibers containing the tomato pinworm insect pheromone.

(b) Cumulative yearly application cannot exceed 200 grams of tomato pinworm pheromone per acre.

[FR Doc. 93-15022 Filed 6-24-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300282A; FRL-4588-3]

RIN No. 2070-AB78

Urea-Formaldehyde Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing an exemption from the requirement of a tolerance for residues of urea-formaldehyde copolymer (CAS Reg. No. 9011-05-6) when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only. This regulation was requested by ICI Agricultural Products.

EFFECTIVE DATE: This regulation becomes effective on June 25, 1993.

ADDRESSES: Written objections, identified by the document control number [OPP-300282A], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708M, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Connie Welch, Registration Support Branch, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, North Tower, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 21, 1993 (58 FR 21432), EPA issued a proposed rule announcing that ICI Agricultural Products, Wilmington, DE 19897, had requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of urea-formaldehyde copolymer when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose;

wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule. The scientific data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule.

Based on the information cited above, the Agency has determined that when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA is establishing the exemption from the requirement of a tolerance as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication of this document in the Federal Register, file written objections and/or a request for a hearing with the Hearing Clerk at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 15, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) table is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
Urea-formaldehyde copolymer (minimum average molecular weight 30,000); CAS No. 9011-05-6..	.....	Encapsulating agent.
* * *	* * *	* * *

* * * * *

[FR Doc. 93-15021 Filed 6-24-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[DA 93-671]

Broadcast Services; Editorial Amendments to the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends agency regulations on television broadcast auxiliary stations and instructional television fixed service to reflect recent changes in the Commission's Rules. This action is needed to update these rules, to ensure that they concur with appropriate corresponding rule sections, and to ensure that they are as pertinent and as accurate as possible.

EFFECTIVE DATE: June 25, 1993.

FOR FURTHER INFORMATION CONTACT: Rita McDonald, Policy and Rules Division, Mass Media Bureau (202) 632-5414.

SUPPLEMENTARY INFORMATION:

Adopted: June 8, 1993.
Released: June 16, 1993.

By the Chief, Mass Media Bureau:

1. The Commission revises part 74 of its Rules, to ensure the consistency and accuracy of the Rules. We first amend § 74.602 to correspond with associated regulations in 47 CFR 2.106. Second, we amend § 74.931 to reinsert language inadvertently omitted from the text of the Code of Federal Regulations. This Order makes no substantive changes that impose additional burdens or remove provisions relied upon by licensees or the public. For this reason, we believe that this revision will serve the public interest. This information is amended as part of the Agency's oversight function.

2. This amendment is implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Because this amendment only clarifies and corrects the existing language of part 74, prior notice of rule making is not required. 47 CFR 1.412(c). For this same reason, this amendment may become effective upon publication in the Federal Register. 47 CFR 1.427(b). Because a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply.

3. Therefore, It is ordered, that pursuant to Sections 4, 5, and 303, of the Communications Act of 1934, as amended, and Sections 0.61 and 0.283 of the Commission's Rules, Part 74 of the FCC Rules and Regulations is amended as set forth below, effective upon publication in the Federal Register.

List of Subjects in Part 74

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

Amendatory Text

47 CFR part 74 is amended as follows:

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

4. The authority citation for part 74 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, as amended; 47 U.S.C. 154, 303.

5. Section 74.602 is amended by revising footnotes US219 and US222 following paragraph (a) to read as follows:

§74.602 Frequency assignment.

* * * * *

US219 In the band 2025–2110 MHz, Government Earth resources satellite Earth stations in the Earth exploration-satellite service may be authorized to use the frequency 2106.4 MHz for Earth-to-space transmissions for tracking, telemetry, and telecommand at the sites listed below. Such transmissions shall not cause harmful interference to non-Government operations.

US222 In the band 2025–2035 MHz geostationary operational environmental satellite Earth stations in the space research and Earth exploration-satellite services may be authorized on a coequal basis for Earth-to-space transmission for tracking, telemetry, and telecommand at the sites listed below:

Wallops Is., Va. 37°50′48″ N., 75°27′33″ W.

Seattle, Wash. 47°34′15″ N., 122°33′10″ W.

Honolulu, Hawaii 21°21′12″ N., 157°52′36″ W.

* * * * *

6. Section 74.931 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding paragraph (a)(2) to read as follows:

§74.931 Purpose and permissible service.

(a)(1) * * *

(2) All applicants that do not list accredited schools as receive sites must name the school(s) and the degree(s) or diploma(s) for which the formal programming will be offered and describe the administration of the course(s). They must submit documentation, written or signed by the authorities responsible for the schools' curricula, verifying each of these points.

* * * * *

[FR Doc. 93–14528 Filed 6–24–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 90

[PR Docket No. 92–210; FCC 93–256]

Amendment of Slow Growth Construction Requirements for Private Land Mobile Radio Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission has adopted a Report and Order amending the rules regarding slow growth construction ("extended implementation") periods for private land mobile radio licensees. The Commission lengthened the maximum extended implementation period from three to five years; eliminated the fleet-size requirement for qualification for extended implementation; eliminated the annual reporting requirement for slow growth licensees; permitted all applicants that might be required by law to follow a multi-year cycle for planning, approval, funding and purchasing a proposed system to be eligible for extended implementation; and extended the eligibility for extended implementation to Specialized Mobile Radio (SMR) Category applicants.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Tatsu Kondo, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632–7125.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in PR Docket No. 92–210, FCC 93–256, adopted May 13, 1993, and released June 9, 1993. The full text of this commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The full text of this decision also may be purchased from the Commission's copy contractor, ITS, Inc., 210 M Street, Suite 140, NW., Washington, DC 20037, (202) 857–3800.

Summary of Report and Order

1. In the Notice of Proposed Rule Making in PR Docket No. 92–210 (Notice), 57 FR 49058 Oct. 29, 1992), the Commission proposed to amend its slow-growth ("extended implementation") construction requirements for private land mobile radio licensees. In the private land mobile radio services, licensees are ordinarily required to have conventional systems constructed and placed in operation within eight months of licensing, and trunked systems constructed and placed in operation within one year of licensing, or their licenses will cancel automatically. Under § 90.629 of the Rules, however, applicants for frequencies in the Public Safety, Industrial/Land Transportation, Business, and General Category pools may, under certain conditions, be given an extended period of time for constructing and placing a station in operation.

2. The Notice sought comment on a proposal to amend § 90.629 of the Commission's Rules, 47 CFR 90.629, by (1) extending the rule's applicability to Specialized Mobile Radio (SMR) Category applicants, (2) lengthening the "slow growth" period from three to five years, (3) eliminating the fleet-size requirement for qualification for an extended implementation period, (4) eliminating the requirement that licensees provide the Commission with an annual report on the status of their system implementation, and (5) extending eligibility for slow growth construction to all entities required to follow a multi-year cycle for the planning, approval, funding and purchasing of the proposed system.

3. In the Report and Order, the Commission adopted the proposals set forth in the Notice. The Commission observed that an increasing number of SMR applicants have expressed interest in operating technically innovative, wide-area systems which, because of their complexity and expense, cannot be constructed and placed in operation within the one-year time frame applicable to trunked SMRs. The Commission, therefore, extended eligibility for extended implementation periods to SMR applicants.

4. In addition, consistent with the Notice, the Commission lengthened the maximum extended implementation construction period from three to five years. Based on the record in this proceeding, the Commission determined that many types of land mobile radio applicants are required to develop and implement radio systems over longer periods of time.

5. The Commission also found that, consistent with commenters' recommendations, the requirement that a licensee serve at least 200 mobile units should be eliminated since there is little correlation between the number of mobile units operating on an applicant's system and that applicant's need for extended implementation. The Commission further determined that, like the local governmental agencies currently eligible for extended implementation, the need for slow growth land mobile radio systems exists for *any* entity that similarly is required by law to follow a multi-year cycle for the planning, approval, funding and purchasing of a radio system.

6. The Report and Order adopted the proposal set forth in the *Notice* to abolish the current requirement that a licensee granted extended implementation submit annual reports to the Commission showing its progress toward completing its system. Instead, § 90.629 is being modified to require slow-growth licensees to certify annually during their extended implementation period that they are in compliance with their commitments. Requests to amend implementation plans may be filed annually with the licensee's certification statement. If the licensee fails to meet its commitments, and has failed to obtain timely prior approval from the Commission for its deviation from its initial extended implementation plan, its extended implementation authority will be terminated. In such cases, the licensee will be given six months to complete construction of its system. Authorizations for any stations not constructed and placed in operation will be cancelled, and the frequencies will be made available for reassignment.

7. The Commission continues the present requirements necessary to obtain an extended implementation period. An applicant must file a statement justifying the amount of time needed to construct and place its radio station in operation. This statement should include: (a) A description of the proposed system; (b) the amount of time necessary to construct and place the system in operation; (c) identification of the number of base stations to be constructed and placed in operation during each year of the extended construction period; (d) a showing that the application satisfies at least one of the three conditions for qualification for extended implementation as set forth in § 90.629(a) (1), (2), or (3); and (e) whether the applicant has obtained funding for constructing the proposed system and, if the applicant is required by law to follow a multi-year planning and funding cycle, when such funding approval is expected to be obtained.

8. The Commission will determine whether slow-growth authority should be granted based on each applicant's statement of justification and, if granted, what the licensee's implementation period will be.

9. The Commission will apply the Finder's Preference Program to licensees authorized under extended implementation to the same extent as to other authorizations, i.e., by permitting "finders" to identify and acquire channels not constructed and placed in operation only at the end of the extended implementation period and after the Commission has followed its normal channel recovery procedures. Finally, §§ 90.629 and 90.631(b) are clarified to indicate that licensees of trunked systems authorized slow-growth construction periods are required to load their systems to the same level as licensees of trunked systems not authorized extended implementation periods—i.e., 70 mobiles per channel within 5 years of authorization.

List of Subjects in 47 CFR Part 90

Radio.

Amendatory Text

Part 90 of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation to part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332 unless otherwise noted.

2. Section 90.629 is revised to read as follows:

§ 90.629 Extended implementation period.

Applicants requesting frequencies for either trunked or conventional operations may be authorized a period of up to five (5) years for constructing and placing a system in operation in accordance with the following:

(a) The applicant must justify an extended implementation period. The justification must describe the proposed system, state the amount of time necessary to construct and place the system in operation, identify the number of base stations to be constructed and placed in operation during each year of the extended construction period, and show that:

(1) The proposed system will require longer than eight months (if a conventional system) or one year (if a trunked system) to construct and place in operation because of its purpose, size, or complexity; or

(2) The proposed system is to be part of a coordinated or integrated wide-area system which will require more than eight months (if a conventional system) or one year (if a trunked system) to plan, approve, fund, purchase, construct, and place in operation; or

(3) The applicant is required by law to follow a multi-year cycle for planning, approval, funding, and purchasing the proposed system.

(b) Where an applicant is required by law to follow a multi-year cycle for planning, approval, funding and purchasing a proposed system, the applicant must indicate whether funding approval has been obtained and if not, when such funding approval is expected.

(c) Authorizations under this Section are conditioned upon the licensee constructing and placing its system in operation within the authorized implementation period and in accordance with an approved implementation plan of up to five years. Licensees must certify annually that they are in compliance with their yearly station construction commitments, but may request amendment to these commitments at the time they file their annual certification. If the Commission approves the requested amendments to a licensee's implementation commitments, the licensee's extended implementation authority will remain in effect. If, however, the Commission concludes, at this or any other time, that a licensee has failed to meet its commitments, the Commission will terminate authority for the extended implementation period. When the Commission terminates an extended implementation authority, the affected licensee will be given six months from the date of termination to complete system construction. At the end of any licensee's extended implementation period, authorizations for all stations not constructed and placed in operation will be cancelled. Trunked systems granted an extended implementation period must comply with the channel loading requirements of Section 90.631(b). Conventional channels not loaded to 70 mobile units may be subject to shared use by the addition of other licensees.

(d) Applicants eligible in the Industrial/Land Transportation Category requesting authorizations under this section may request frequencies in the Business Category only if the application contains a statement that no frequencies in the Industrial/Land

Transportation Category are available for assignment in their geographic area.

3. Section 90.631 is amended by revising paragraph (b) to read as follows:

§ 90.631 Trunked systems loading, construction and authorization requirements.

* * * * *

(b) Each applicant for a trunked system shall certify that a minimum of 70 mobiles for each channel authorized will be placed in operation within five years of the initial license grant. Except as provided in paragraph (i) of this section, if at the end of five years a trunked system is not loaded to the prescribed levels and all channels in the licensee's category are assigned in the system's geographic area, authorization for trunked channels not loaded to 70 mobile stations cancels automatically at a rate that allows the licensee to retain one channel for every 100 mobiles loaded, plus one additional channel. If a trunked system has channels from more than one category, General Category channels are the first channels considered to cancel automatically. All licensees who are authorized initially before June 1, 1993, and are within their original license term or are within the term of a two-year authorization granted in accordance with paragraph (i) of this section are subject to this condition. A licensee that has authorized channels cancelled due to failure to meet the above loading requirements will not be authorized to obtain additional channels to expand that same system for a period of six months from the date of cancellation.

* * * * *

Federal Communication Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-14654 Filed 6-24-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 672

[Docket No. 921107-3068; I.D. 062193B]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for the shortraker/rougheye rockfish (SRRE) species category to all gear in the Central Regulatory area, Statistical areas 62 and 63, in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the SRRE total allowable catch (TAC) in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 21, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Martin Loefflad, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the SRRE TAC for the Central Regulatory area was established by the final 1993 interim specifications (58 FR 16787, March 31, 1993) as 1,161 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has established, in accordance with § 672.20(c)(2)(ii), a directed fishing allowance of 590 mt, with consideration that 571 mt will be taken as incidental catch in directed fishing for other species in this area. The Regional Director has determined that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for SRRE in the Central Regulatory area, effective from 12 noon, A.l.t., June 21, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 21, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-14939 Filed 6-21-93; 4:33 pm]

BILLING CODE 3510-22-M

50 CFR Part 675

[Docket No. 921185-3021; I.D. 062193A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for yellowfin sole by operators of vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the first seasonal apportionment of the Pacific halibut bycatch mortality allowance for the trawl yellowfin sole fishery has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 21, 1993, through 12 noon, A.l.t., August 1, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1993 Pacific halibut bycatch mortality allowance for the trawl yellowfin sole fishery, which is defined at § 675.21(b)(1)(iii)(B)(1), is 592 metric tons (mt). The first seasonal apportionment of that allowance is 230 mt for the period May 1, 1993, through July 31, 1993 (58 FR 14524, March 18, 1993).

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iv), that the first seasonal apportionment of the Pacific halibut bycatch mortality allowance for the trawl yellowfin sole fishery has been reached. Therefore, NMFS is prohibiting directed fishing for yellowfin sole by operators of vessels using trawl gear in the BSAI from 12 noon, A.l.t., June 21, 1993, until 12 noon, A.l.t., August 1, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and complies with E.O. 12291.

List of Subjects in 50 CFR 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 21, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–14938 Filed 6–21–93; 4:33 pm]

BILLING CODE 3510–22–M

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50 CFR Part 675

[Docket No. 921185–3021; I.D. 061793B]

Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Inseason adjustment, request for comments.

SUMMARY: NMFS is redistributing the 1993 apportionment of the Pacific halibut prohibited species catch (PSC) allowance between the Pacific cod hook-and-line gear fishery and the other nontrawl gear fishery in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to achieve the optimum yields from the groundfish fisheries.

DATES: Effective date 12 noon, Alaska local time (A.l.t.), June 24, 1993, through 12 midnight, A.l.t., December 31, 1993. Comments must be received by July 9, 1993.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802–1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

Pursuant to § 675.21(a)(7) the PSC limit of Pacific halibut caught while conducting any non-trawl fishery for groundfish in the BSAI during any fishing year is an amount of Pacific halibut equivalent to 900 metric tons (mt) of halibut mortality. In accordance with § 675.21(b)(2)(i), the non-trawl gear fishery categories (defined at § 675.21(b)(2)(ii)) and the halibut bycatch mortality allowances specified for them during 1933 are as follows: (1) Pacific cod hook-and-line, 825 mt; (2) other non-trawl, 75 mt; and (3) groundfish pot gear fisheries, (exempt for 1993), 0 mt (58 FR 14524, March 18, 1993).

On May 11, 1993, directed fishing for Pacific cod was closed because the Pacific cod directed fishing allowance for 1993 had been taken (58 FR 28522, May 14, 1993). This closure resulted in an uncaught Pacific halibut PSC allowance for the Pacific cod hook-and-line gear fishery. The Pacific halibut PSC allowance for the other non-trawl gear fishery needs to be augmented to promote achieving the optimum yield from this fishery.

Under § 675.20(e), the Director of the Alaska Region, NMFS, is making an inseason adjustment, because the currently specified Pacific halibut PSC allowance between the Pacific cod hook-and-line gear fishery and the other non-trawl gear fisheries is no longer appropriate. This adjustment allows for redistribution of the uncaught Pacific halibut PSC allowance between these two fisheries. Therefore, in accordance with § 675.20(e)(1) (iii), NMFS is adjusting the allowances (mt) as follows:

Non-trawl target	Current allowance	Change	New allowance
Pacific cod hook-and-line	825	−145	680
Other non-trawl	75	+145	220

As required by § 675.20(f), all information relevant to this inseason adjustment, including the effect of overall fishing effort within the statistical area and the economic impacts on affected fishing businesses, was considered. Current halibut PSC allowances will cause a premature closing of the other non-trawl gear fishery and will not promote optimum yield of groundfish, thereby resulting in economic harm to fishermen and processors who would otherwise participate in the fishery.

Interested persons are invited to submit comments in writing to the previously cited address on or before July 9, 1993.

Classification

This action is taken under § 675.20(e) and complies with E.O. 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior public notice and comment on the inseason adjustment. Immediate effectiveness is necessary to prevent foregone revenue to the other non-trawl fishery, which would otherwise be prevented from conducting operations.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 21, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–14940 Filed 6–24–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 121
Friday, June 25, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–36–AD]

Airworthiness Directives; Puritan Bennett Aero Systems Protective Breathing Equipment, 119003 and 119003–01 Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Puritan Bennett Aero Systems protective breathing equipment (PBE), 119003 and 119003–01 units, that are installed on certain airplanes. The proposed action would require inspecting the affected PBE unit for existence of a yellow label attached to the red rip tag, and removing from service any unit that does not have this yellow label. Reports of deteriorated neck seals on several of the affected PBE units prompted the proposed action. This condition could cause reduced protection if the crewmember was extinguishing an in-flight fire. The actions specified by the proposed AD are intended to prevent this possible reduced protection because of a deteriorated neck seal on a PBE unit.

DATES: Comments must be received on or before August 31, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–36–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Puritan Bennett Aero Systems Company, Attention: Customer Service Department, 10800 Pflumm Road, Lenexa, Kansas 66215; Telephone (913) 469–5400, extension 240; Facsimile (913) 469–8419. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Jose Flores, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4133; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–36–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–36–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of the neck seals deteriorating on the hoods of several Puritan Bennett Aero Systems protective breathing equipment (PBE), 119003 and 119003–01 units, that are installed on certain airplanes. Material incompatibility between the latex seal and the silicone foam pad caused these deteriorated PBE hoods. The foam pad stabilizes the PBE hood on the crewmember's head. The silicone foam material of this pad is treated with a peroxide catalyst, which oxidizes latex and causes the hoods to deteriorate. A deteriorated PBE hood, if not detected and removed from service, could cause reduced protection if the crewmember was extinguishing an in-flight fire.

Puritan Bennett Aero Systems has attached a yellow label to the red rip tag on units that have been modified or were manufactured without the referenced condition present. In addition, Puritan Bennett Aero Systems has issued Service Bulletin (SB) No. 119003–35–1, dated February 15, 1993, which includes a figure specifying the location of this yellow label.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent failure of a PBE unit because of a deteriorated neck seal.

Since an unsafe condition has been identified that is likely to exist or develop in other Puritan Bennett Aero Systems PBE, 119003 and 119003–01 units, that are installed on aircraft, the proposed AD requires inspecting the affected PBE unit for existence of a yellow label attached to the red rip tag, and removing from service any unit that does not have this yellow label. Figure 1 of Puritan Bennett Aero Systems SB No. 119003–35–1, dated February 15, 1993, illustrates the location of this yellow label.

The proposed action is presented in calendar time instead of hours time-in-service (TIS) because the condition occurs regardless of whether the airplane is utilized, and is corrected through a factory modification. For these reasons, the airplane operator would have 12 calendar months to comply with the proposed action.

The FAA estimates that 12,000 airplanes in the U.S. registry would be affected by the proposed AD, that it

would take approximately 1 workhour per airplane to remove an affected unit from service, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $660,000. This figure takes into account that all units would be removed from service. The FAA believes that this figure is much lower.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Puritan Bennett Aero Systems: Docket No. 93–CE–36–AD.

Applicability: Crewmember Protective Breathing Equipment (PBE), 119003 and 119003–01 Units, that are installed on, but not limited to the following airplanes (all serial numbers), certificated in any category:

Manufacturer	Models
Airbus Industries	A300, A310, and A320.
Boeing	727, 737, 747, 757, and 767.
McDonnell Douglas	DC8, DC9, DC10, MD11, MD80, MD81, MD82, and MD83.
deHaviland	DHC–8.
British Aerospace	BAe 146 and BAe 31.
Lockheed	L1011.
Fokker	100.
SAAB	SF340.
Aerospatiale	ATR42 and ATR72.
Canadair	RJ.
Shorts	360.

Compliance: Required within the next 12 calendar months after the effective date of this AD, unless already accomplished.

To prevent failure of a PBE unit because of a deteriorated neck seal, accomplish the following:

(a) Inspect the affected PBE unit for existence of a yellow label attached to the red rip tag. Remove from service any unit that does not have this yellow label.

Note 1: Figure 1 of Puritan Bennett Aero Systems SB No. 119003–35–1, dated February 15, 1993, illustrates the location of this yellow label.

Note 2: PBE units not having a yellow tag may be shipped to the manufacturer at the address specified in paragraph (d) of this AD. The unit will then be modified and shipped back with a yellow tag attached to the red rip tag.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Puritan Bennett Aero Systems Company, Attention: Customer Service Department, 10800 Pflumm Road, Lenexa, Kansas 66215; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 18, 1993.

Roger D. Anderson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–14973 Filed 6–24–93; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–CE–30–AD]

Airworthiness Directives: Ayres Corporation S2R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Ayres Corporation (Ayres) S2R series airplanes. The proposed action would require inspecting the bracket that attaches the vertical tail front spar to the horizontal stabilizer (vertical tail attachment bracket) for damage (cracks, broken lugs or bolts, or elongated holes) and immediately replacing any damaged vertical tail attachment bracket with a new bracket of improved design, or if the bracket is not damaged, replacing it within a certain amount of airplane usage. Reports of broken lugs or bolts on the vertical tail attachment bracket on four of the affected airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent structural damage to the vertical tail caused by a damaged vertical tail attachment bracket, which could result in loss of control of the airplane.

DATES: Comments must be received on or before August 31, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–30–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Ayres Corporation, P.O. Box 3090, Albany, Georgia 31708; Telephone (912) 883–1440. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Lorenzen, Aerospace Engineer, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C,

Atlanta, Georgia 30349; Telephone (404) 991–2910; Facsimile (316) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–30–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–30–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received three recent reports of broken lugs or bolts on the bracket that attaches the vertical tail front spar to the horizontal stabilizer (vertical tail attachment bracket) on certain Ayres S2R series airplanes. A search of the FAA service difficulty database reveals a fourth occurrence of these failed bolts. This condition, if not detected and corrected, could lead to structural damage of the vertical tail.

Ayres has issued Service Bulletin (SB) No. SB–AG–32, dated February 12, 1993, which specifies procedures for accomplishing the following on certain Ayres S2R series airplanes: (1) Inspecting the vertical tail attachment bracket for cracks, broken lugs or bolts, and elongated holes; and (2) replacing the vertical tail attachment bracket with a new bracket of improved design.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that AD action should be taken to prevent structural damage to the vertical tail caused by a damaged vertical tail attachment bracket, which could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Ayres S2R series airplanes of the same type design, the proposed AD would require inspecting the vertical tail attachment bracket for damage (cracks, broken lugs or bolts, or elongated holes) and immediately replacing any damaged vertical tail attachment bracket with a bracket of improved design, or if the bracket is not damaged, replacing it within a certain amount of airplane usage. The proposed actions would be accomplished in accordance with the Accomplishment Instructions section of Ayres SB No. SB–AG–32, dated February 12, 1993.

The FAA estimates that 1,733 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 18 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $140 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,958,290. These figures take into account that none of the affected airplane operators have accomplished the proposed actions.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been plated in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

Section 39.13— [Amended]

2. Section 39.13 is amended by adding the following new AD:

Ayres Corporation: Docket No. 93–CE–30–AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial Numbers
S2R	5000 through 5099, 1380R, and 1416R through 2583R.
S2R–R1340 .	R1340–001 through R1340–030 (with or without DC suffix).
S2R–R3S	R3S–001 through R3S–011 (with or without DC suffix).
S2R–R1820 .	R1820–001 through R1820–035 (with or without DC suffix).
S2R–T11	T11–001 through T11–005 (with or without DC suffix).
S2R–T15	T15–001 through T15–029 (with or without DC suffix); and T27–001 through T27–029 and T–27–031 (with or without DC suffix).
S2R–T34	6000 through 6049, T34–001 through T34–180, T34–190, T34–191 and T34–192 (with or without DC suffix); T36–001 through T36–180 (with or without DC suffix); and T41–001 through T41–180 (with or without DC suffix).
S2R–T45	T45–001 through T45–003 (with or without DC suffix).
S2R–T65	T65–001 (with or without DC suffix).
S2R–HG–T65.	T65–002 through T65–010 (with or without DC suffix).
S2RG6	G6–101 through G6–112
S2R–G10	G10–101.

Compliance: Required as indicated, unless already accomplished.

Note 1: The compliance times specified in this AD take precedence over those referenced in Ayres SB No. SB–AG–32, dated February 12, 1993.

To prevent structural damage to the vertical tail caused by a damaged vertical tail attachment bracket, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 50 hours time-in-service after the effective date of this AD, inspect the bracket that attaches the vertical tail front spar to the horizontal stabilizer for damage (cracks, broken lugs or bolts, or elongated holes) in accordance with the Accomplishment Instructions: I. Inspection, section of Ayres Service Bulletin (SB) No. SB–AG–32, dated February 12, 1993.

(b) If any damage is found to the bracket during the inspection specified in paragraph (a) of this AD, prior to further flight, replace the bracket with an aluminum bracket, part number (P/N) 40301T007, and install a new close out plate, P/N 40309T003, in accordance with the Accomplishment Instructions: II. Repair, section of Ayres Service Bulletin (SB) No. SB–AG–32, dated February 12, 1993.

(c) Within the next 100 hours TIS after the effective date of this AD, unless already accomplished in accordance with paragraph (b) of this AD, replace the bracket with an aluminum bracket, part number (P/N) 40301T007, and install a new close out plate, P/N 40309T003, in accordance with the Accomplishment Instructions: II. Repair, section of Ayres Service Bulletin (SB) No. SB–AG–32, dated February 12, 1993.

(d) The replacement required by paragraph (c) of this AD may be accomplished instead of the inspection specified in paragraph (a) of this AD provided it is accomplished at or prior to the 50-hour TIS compliance time.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Ayres Corporation, P.O. Box 3090, Albany, Georgia 31708; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 18, 1993.

Roger D. Andersen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–14970 Filed 6–24–93; 8:45 am]

BILLING CODE 4910–13–U

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Requirements for Clacker Balls; Proposed Amendments

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed amendment to rule.

SUMMARY: The Commission proposes to amend its existing regulation, under the Federal Hazardous Substances Act, that bans clacker balls that do not meet specified requirements. The amendments include revising the definition of clacker ball to exclude those devices where the balls are suspended by plastic rods that are integrally molded to the balls and are mounted on a pivot so that movement of the balls is essentially limited to a single plane. The amendments would also exempt from the ban those clacker balls that meet specified maximum ball-weight and cord-length specifications and a minimum safety factor specification. The amendments would clarify the regulation and would benefit consumers, manufacturers, importers, distributors, and retailers by allowing the marketing of currently-banned products that do not present the unreasonable risk of injury the ban was intended to prevent.

DATES: Comments on the proposal should be submitted not later than September 8, 1993.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207-0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 420, 5401 Westbard Avenue, Bethesda, Maryland 20816, telephone (301) 504-0800.

FOR FURTHER INFORMATION CONTACT: Scott Heh, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301)504-0494.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission's regulations, issued under the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261-1277, ban clacker balls (defined in 16 CFR 1500.18(a)(7)), unless the clacker balls meet the requirements in 16 CFR 1500.86(a)(5). The regulations define clacker balls as:

> * * * consisting of two balls of plastic or another material connected by a length of line or cord or similar connector * * * intended to be operated in a rhythmic manner by an upward and downward motion of the hand so that the two balls will meet forcefully at the top and bottom of two semicircles thus causing a 'clacking' sound, which toys present a mechanical hazard because their design or manufacture presents an unreasonable risk of personal injury from fracture, fragmentations, or disassembly of the toy and from propulsion of the toy or its part(s). (But see § 1500.86(a)(5))

These requirements were issued in 1971 by the Food and Drug Administration, which administered the FHSA at that time.

The criteria in § 1500.86(a)(5) were designed to ensure the safety of the type of clacker ball that was on the market before the regulation was issued in 1971. This type of clacker ball used balls that were relatively large and heavy, and the balls were mounted on flexible cords. The criteria include an impact test for the balls and strength tests for the cords and attachment points.

In August of 1989, Mr. William Hones of Fascinations Toys and Gifts, Inc., petitioned the Commission to amend its requirements for clacker balls to exclude products that (1) mechanically restrict the motion of the balls to a plane perpendicular to a supporting shaft and (2) withstand impact and centrifugal stresses at least 10 times those produced in normal use. [1, Tab A][1] The petitioner marketed a product similar to a clacker ball but that operated in the manner that would be excluded by the requested amendment.

The device marketed by the petitioner mounted the balls by integrally molding them onto the apex of a V-shaped plastic member mounted so that the arms of the V pivot on a shaft. This mounting limits the movement of the balls to a single plane that is perpendicular to the axis of the shaft. Compared to the pre-1972 type of clacker balls, the petitioner's product had lighter balls and a shorter length of the mounting arms. Because of this, the

[1] Numbers in brackets represent the number of a relevant document in Appendix 1 (List of Relevant Documents) at the end of this notice.

petitioner's product did not generate the impact or centrifugal forces that the earlier clacker balls did. The Commission's staff agreed that the criteria of § 1500.18(a)(5) vastly exceeded the stresses generated by petitioner's device and by various other brands and types of clacker balls that were on the market.

After considering the petition, the Commission decided that the term "clacker ball" did not encompass the product marketed by the petitioner and similar products.[2] The Commission (3-0) also directed the staff to prepare, for the Commission's consideration, a draft **Federal Register** notice that would propose to amend the definition of clacker ball to explicitly exclude petitioner's and similar products and to amend § 1500.86(a)(5) to exempt clacker balls meeting maximum ball-weight and cord-length specifications and a minimum safety factor specification.

B. Procedure

A regulation such as the Commission's clacker ball regulation is issued under section 3(e) of the FHSA, 15 U.S.C. 1262(e), which applies to determinations that a toy or other article intended for use by children presents a mechanical, electrical, or thermal hazard and is thus a hazardous substance pursuant to section 2(f)(1)(D), 15 U.S.C. 1261(f)(1)(D). The original issuance of such a regulation would be governed by the procedure in section 3(f) of the FHSA, 15 U.S.C. 1262(f), which specifies a three-stage rulemaking procedure that is initiated by the publication of an advance notice of proposed rulemaking ("ANPR"). The action proposed below, however, has the effect of eliminating from the scope of the rule those products which do not present the mechanical risk that the regulation originally intended to cover. Accordingly, sections 3(e) and (f) do not apply. In addition, the provisions of section 3(f) governing the required content of the ANPR show that the ANPR is intended to apply only to cases where new requirements are being imposed and not to the case where previously covered products are being exempted or otherwise released from coverage. Therefore the two-stage rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. 553, apply.

[2]The Commission's vote on this interpretation was 2-1, with Commissioners Carol G. Dawson and Mary Gell voting for the interpretation; Chairman Jacqueline Jones-Smith did not vote for the interpretation.

C. The Proposed Amendments

Amended § 1500.18(a)(7). As explained above, the device marketed by the petitioner was mounted on plastic rods so that the balls move only in a single plane. This prevents off-center hits of the balls, and the limitation to "plastic" material should greatly reduce any likelihood of loose particles caused by flaking or fragmentation of the balls. Therefore, the proposal would add language specifically stating that the definition of clacker ball "does not include products that are constructed such that the connecting members consist of plastic rods integrally molded to the balls and are mounted on a pivot so that movement of the balls is essentially limited to a single plane."

Amended § 1500.86(a)(5). As discussed above, the Commission's staff concluded that the criteria in the current exemption in § 1500.86 (a)(5) are too stringent for the lighter and smaller clacker balls that are currently on the market, which have balls with masses of less than 12 grams each and pivot lengths of less than 180 mm (7.1 inches). Accordingly, the staff examined how the exemption criteria might be changed so that they would be more appropriate for these lighter and smaller clacker balls. The criteria that would need to changed in order to do this are (1) the cord-strength requirement of § 1500.86(a)(5)(i)(B), (2) the ball-impact test in § 1500.86(a)(5)(ii)(B), (3) the cord-strength test of § 1500.86(a)(5)(ii)(D), and (4) the holding-device strength test of § 1500.86(a)(5)(ii)(E). These criteria are discussed separately below. How the formulae for adjusting these factors were derived is explained in detail in the report "Engineering Analysis Supporting Proposed Amendments to the Clacker Ball Regulation at 16 CFR Sections 1500.18(a)(7) and 1500.86(a)(5)," Scott R. Heh, CPSC Directorate for Engineering Sciences, December 1992 (6, Tab B). For clacker balls with masses of 12 grams or more, or with pivot lengths of 180 mm or more, the current provisions of the regulation will continue to apply.

Cord-strength test. The staff calculated the safety factor that the current regulation applied to the large and heavy clacker balls that the regulation was intended to address and determined that it provides a cord-strength safety factor, for those clacker balls, of approximately 35. Therefore, this safety factor was also applied to the reduced forces proposed to be allowed when testing the cord strength of smaller and lighter clacker balls.

The tensile forces applied to the cord of a clacker ball during use are mainly due to the centrifugal forces generated by the motion of the balls. The centrifugal force of an object is equal to the mass of the object times its acceleration, which in turn is a function of the velocity of the object and the radius of the curve being traveled by the object. The velocity of the ball is established by specifying a maximum "clack" rate of 20 clacks per second. (As specified in the definition of clacker ball at § 1500.18(a)(7), a clack is produced when the two balls collide at the top and bottom of their semicircular paths. The highest clack rate that the Commission's staff was able to achieve in testing was 17 clacks per second.)

Applying the safety factor of 35, the adjusted cord-strength value in Newtons can be calculated by $0.1382(m_b)(R_p)$, where m_b is the mass of a single ball in grams and R_p is the radius of the arc described by the ball (pivot length) in mm. Accordingly, the Commission proposes below to allow this adjusted cord strength value to be one of the criteria for exempting the smaller and lighter clacker balls described above.

Ball-impact test. The current regulation provides that a clacker ball shall be tested by 10 drops of a 5-lb steel weight from a height of 48 inches. The Commission's staff determined that this provides a safety factor of about 20 for the large and heavy clacker balls for which the test was designed.

The clacker ball experiences an impact related to the magnitude of the kinetic energy it achieves in use, which is a function of the mass of the clacker ball times its velocity. The velocity can be calculated from the "clack rate," which, as described above, is assumed to be 20 clacks per second. Accordingly, the height from which a 5-lb weight must be dropped in order to achieve an impact equal to what the clacker ball can generate, times the safety factor of 20, can be calculated as $179 \times 10^{-5}(m_b)(R_p^2)$, where m_b is the mass of a single ball in grams and R_p is the radius of the arc described by the ball (pivot length) in mm. Accordingly, the Commission proposes below to allow this adjusted drop height value to be one of the criteria for exempting the smaller and lighter clacker balls described above.

Holding device test force. Present § 1500.86(a)(5)(ii)(E) provides that the device for holding the cords together shall be tested by applying a force of 50 lb to each cord separately, while the holding device is clamped in position. Since this is half the force provided by the current regulation for the cord-strength test, the Commission proposes

below to allow an adjusted holding device test force of half the adjusted cord-strength test force for exempting the smaller and lighter clacker balls described above.

D. Metric Units

Current Federal policy encourages the use of metric units in regulations. Executive Order 12770, 3 CFR, 1991 Comp., p. 343. Accordingly, wherever current § 1500.86(a)(5) uses inch/pound units that can be specified instead in metric units, the amendments proposed below give the corresponding metric units as the primary criteria, with the inch/pound equivalent in parentheses.

E. Effective Date

This proposal grants an exemption. A delayed effective date of 30 days from the date a final rule is issued should be sufficient for parties to test their products to determine whether the products comply with the amended regulation. Accordingly, the Commission proposes that the exemption become effective 30 days after any final rule is issued.

F. Correction

The exemptions at § 1500.86(a)(5) have a typographical error in the table in § 1500.86(a)(5)(vi). The word "rental" in the heading of the first column should be "retail." Accordingly, the final rule will correct this discrepancy.

G. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et seq.) generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economics prepared an Initial Regulatory Flexibility Act Analysis to examine the effect of the proposed rule on small entities. [6, Tab D] The findings of that analysis are repeated below.

The potential cost of the rule includes the possibility of future injury or death associated with these products, if that were due to less safe clacker balls being on the market because the exemption criteria of the regulation were made less stringent. The Commission has no information that would support a conclusion that this will occur.

The Commission is aware of 13 incidents from January 1, 1973, through 1992 that were associated with clacker balls. [6, Tab C] Three of these incidents involved fatalities. In one of these fatal incidents, a child strangled when she got the cord of a clacker ball around her neck. In the two others, infants were asphyxiated when clacker balls obstructed their airways. Such strangulation and asphyxiation hazards are not addressed by the current requirements for clacker balls.

The remaining 10 incidents involved injuries incurred when users were hit with clacker balls (4), fell on clacker balls (2), or ingested a piece of broken clacker ball (1), or involved a burn (1) or poisonings (2) associated with clacker balls that made a cracking sound and emitted smoke when the balls struck each other. None of these incidents is known to be due to any deficiency in the clacker balls' impact resistance, cord strength, or holding-device strength.

Based on the available epidemiological and engineering information, no potential injuries or deaths are expected to be associated with the amended definition and exemption. Accordingly, no significant costs are expected to be associated with these changes.

The proposed amended definition and exemption would provide benefits to marketers of the product by allowing the continued marketing of these products as toys and novelties. Marketers would also benefit through an elimination of any uncertainty about enforcement of the existing regulations, and the regulation's effects on future product development would be clarified. The marketers would also benefit by avoiding any cost increases that would be caused by having to come into compliance with the present regulation.

Consumers obtain utility from the use of these products. Sales in 1990 of products similar to the petitioner's are estimated at 10-12 million units, which were valued at $25-30 million. Sales in 1991 declined to about one million units, and 1992 sales were around two million units. Sales of lightweight, short-cord clacker balls are thought to be insignificant compared to the number of products like the petitioner's that are marketed. However, the available information is not sufficient to enable an accurate estimate. To the extent that consumers enjoy the use of these products, their continued availability is a benefit, and the loss of this product on the market would be a loss to consumers.

All the firms known to be currently marketing these products are small firms. The rule is expected to have a positive impact on these firms.

For the reasons given above, the Commission concludes that the proposal to amend the Commission's regulations for clacker balls, if issued, will not have any significant economic effect on a substantial number of small entities.

H. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission preliminarily assessed the possible environmental effects associated with the proposed amendments to the clacker ball regulations. [6, Tab D]

The proposed amendments are not expected to affect preexisting packaging, molds, plastic stocks, or other materials of construction. Thus, there would be no destruction or discarding of existing materials. Existing inventories of finished products, including those at retail, would not be rendered unusable through the implementation of the rules. Further, inventories would not have to be retrofitted in order to comply with the exemption.

The amendments are not expected to have a significant effect on the materials used in the production or packaging of the products subject to the amended definition or exemption, or on the amount or types of materials discarded after the rules. Therefore, the Commission concludes that the proposed rules will have no significant environmental effects. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Toys.

I. Conclusion

For the reasons given above, the Commission proposes to amend 16 CFR part 1500 as follows:

PART 1500—[AMENDED]

1. The authority citation for part 1500 is revised to read as follows:

Authority: 15 U.S.C. 1261-1277.

2. Section 1500.18(a)(7) is amended by replacing the second sentence with two new sentences to read as follows:

§ 1500.18 Banned toys and other banned articles intended for use by children.

* * * * *

(a) * * *

(7) * * * This does not include products that are constructed so that the connecting members consist of plastic rods integrally molded to the balls and are mounted on a pivot so that movement of the balls is essentially limited to a single plane. (But see § 1500.86(a)(5).)

* * * * *

§ 1500.86 [Amended]

3. Section 1500.86(a)(5)(i)(B) is amended by:

a. Replacing "100 pounds" with "445 Newtons (100 pounds)" and

b. Adding a new sentence at the end of the paragraph, to read as follows:

(a) * * *

(5) * * *

(i) * * *

(B) * * * Clacker balls where the mass of each ball is less than 12 grams (0.42 oz.) and the distance between the center of the pivot and the center of the ball cannot exceed 180 mm (7.1 inches) may have a minimum cord breaking strength of less than 445 Newtons (100 pounds), as computed by the following formula:

Adjusted Cord Breaking Strength in Newtons = $0.1382(m_b)(R_p)$

where m_b = mass of a single ball in grams and

R_p = pivot length in mm.

* * * * *

4. Section 1500.86(a)(5)(ii)(B) is amended by:

a. Replacing "5-pound" with "2.25 kg (5-pound)"

b. Replacing "2¼-inch" with "57-mm (2¼-inch)

c. Replacing "48 inches" with "1220 mm (48 inches)"

d. Replacing "2⅜-inch with "60-mm (2⅜-inch)" and

e. Adding a sentence after the first sentence and before the last sentence, to read as follows:

(a) * * *

(5) * * *

(ii) * * *

(B) * * * Clacker balls where the mass of each ball is less than 12 grams (0.42 oz.) and the distance between the center of the pivot and the center of the ball cannot exceed 180 mm (7.1 inches) may be tested by dropping the impact weight from a height of less than 1220 mm (48 in.), where the height is computed as follows:

Adjusted drop height in mm = $179 \times 10^{-5}(m_b)(R_p^2)$

where m_b = mass of a single ball in grams and

R_p = pivot length in mm. * * *

* * * * *

5. Section 1500.86(a)(5)(ii)(D) is amended by:

a. Replacing "100-pound" with "445-Newton (100-pound)" and

b. Adding two sentences before the last sentence, to read as follows:

(a) * * *

(5) * * *

(ii) * * *

(D) * * * Clacker balls where the mass of each ball is less than 12 grams (0.42 oz.) and the distance between the center of the pivot and the center of the ball cannot exceed 180 mm (7.1 inches) may be tested with a force of under 445 Newtons (100 pounds). The test force for these clacker balls shall be the same as the cord breaking strength calculated in § 1500.86(a)(5)(i)(B). * * *

* * * * *

6. Section 1500.86(a)(5)(ii)(E) is amended by:

a. Replacing "50-pound" with "222-Newton (50-pound)" and

b. Adding two sentences after the first sentence and before the last sentence, to read as follows:

(a) * * *

(5) * * *

(ii) * * *

(E) * * * Clacker balls where the mass of each ball is less than 12 grams (0.42 oz.) and the distance between the center of the pivot and the center of the ball cannot exceed 180 mm (7.1 inches) may have their holding device tested with a force of less than 222 Newtons (50 pounds). The holding device test force for these clacker balls shall be half of the cord breaking strength calculated in § 1500.86(a)(5)(i)(B). * * *

* * * * *

7. Section 1500.86(a)(5)(iv)(C) is amended by:

a. Replacing "one-quarter inch" with "6 mm (¼ inch)" and

b. Replacing "one-eighth inch" with "3 mm (⅛ inch)".

8. Section 1500.86(a)(5)(vi) is amended by replacing "rental" in the heading of the first column of the table with "retail".

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

(This Appendix will not be printed in the Code of Federal Regulations.)

Appendix 1 — List of Relevant Documents

1. Briefing Package — Petition HP 90-2 — Clacker Balls: Executive Summary and briefing memorandum "Petition HP 90-2: Clacker Balls," John D. Preston, Project Manager, CPSC Directorate for Engineering Sciences, dated Jan. 27, 1992, with Tabs A, C, and F-J.

TAB A - Petition.

TAB C - Photograph of petitioner's clacker ball.

TAB F - Memorandum from Debbie Tinsworth, CPSC/EPHA, to John Preston, CPSC/ESME, "Clacker Ball Incident Data," April 18, 1991.

TAB G - Memorandum from Terrance R. Karels, CPSC/ECPA to John Preston, Project Manager, "Clacker Ball Petition, HP 90-2," July 23, 1991.

TAB H - Memorandum from John Preston, CPSC/ESME, "Petition HP 90-2, Clacker Balls," October 4, 1991.

TAB I - Memorandum from Bob Poth, CPSC/CERM, to John Preston, Project Manager, CPSC/ESME, "Background of CE Action on 'Newton's Yo-Yo'," Sept. 18, 1991.

TAB J - Proposed Enforcement Policy.

2. Tape recording of Commission briefing on March 25, 1992.

3. Memorandum from John Preston, Project Manager, to the Commission, "Response to Commission Request for Options and Resource Estimates to Respond to the Clacker Ball Petition," June 5, 1992, with revised vote sheet.

4. Commissioners' ballot vote sheets, signed June 29-30, 1992.

5. Letter from the Commission's Secretary to Mr. William G. Hones, President of Fascinations Toys and Gifts, Inc., dated Sept. 23, 1992.

6. Briefing package "Proposed Amendments to the Clacker Ball Regulation at 16 CFR Sections 1500.18(a)(7) and 1500.86(a)(5)," consisting of Executive Summary, briefing memorandum, and Tabs A-E.

Briefing Memorandum, "Proposed Rule Amending the Clacker Ball Regulation at 16 CFR § 1500.18(a)(7) and § 1500.86(a)(5)," April 13, 1993.

TAB A - Photographs of products.

TAB B - Engineering report from Scott Heh, ESME, "Engineering Analysis Supporting Proposed Amendments to the Clacker Ball Regulation at 16 CFR Sections 1500.18(a)(7) and 1500.86(a)(5)," December 17, 1992.

TAB C - Memorandum from Suzanne P. Cassidy, EPHA, "Injuries and Deaths Associated with Clacker Balls," Feb. 1, 1993.

TAB D - Memorandum from A. Homan, ECPA, to Scott R. Heh, ESME, "Regulatory Flexibility and Regulatory Analyses, Economic and Environmental Assessments: Proposed Amendments to the Clacker Ball Regulations," December 10, 1992.

TAB E - Draft Federal Register notice.
[FR Doc. 93-14935 Filed 6-24-93; 8:45 am]
BILLING CODE 6325-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 93N-0178]

RIN 0905-AD90

Regulation of Dietary Supplements; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting an advance notice of proposed rulemaking that appeared in the Federal Register of June 18, 1993 (58 FR 33690). The document announced that FDA was reviewing the manner in which it regulates dietary supplements, including products containing vitamins, minerals, amino acids, herbs, and other similar nutritional substances. The document also announced the availability of a report entitled "Dietary Supplements Task Force Final Report." The document was published with some inadvertent errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Judith S. Kraus, Center for Food Safety and Applied Nutrition (HFS-456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5233.

In FR Doc. No. 93-14271, appearing on page 33690 in the Federal Register of Friday, June 18, 1993, the following corrections are made:

1. On page 33690, in the 1st column, in the "SUMMARY" section, beginning in the 10th line from the bottom, and on page 33699, in the 3d column, in Reference 2, the title "Task Force on Dietary Supplements Final Report" is corrected to read "Dietary Supplements Task Force Final Report".

2. On page 33690, beginning in the 1st column, the "ADDRESSES" section is correctly revised to read as follows:

ADDRESSES: "Dietary Supplements Task Force Final Report," may be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB93-192888 and include a payment of $27.00 (plus $3.00 for shipping and handling) for each copy of the document. Payment may be made by check, money order, charge card (American Express, Visa, or MasterCard), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703-487-4650. Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The "Dietary Supplements Task Force Final Report," and comments received in response to this document are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

3. On page 33699, in the 3d column, in Reference 3, in line 4, "'Dietary Supplements, 'Diet and Health:" is corrected to read "'Ch. 18. Dietary Supplements, *in* 'Diet and Health:"; and in Reference 6, in line 7, "July 18, 1989" is corrected to read "July 1989".

4. On page 33700, in the 1st column, in Reference 21, beginning in line 1, "TC-387, June 23, 1942." is corrected to read "TC-2-A, November 5, 1945."; in Reference 31, in line 2, "pp. 150-152" is added after "PA,"; and in Reference 32, in line 5, "129-1322" is corrected to read "129-132".

5. On page 33700, in the 2d column, in Reference 42, in line 5, "34" is corrected to read "341".

Dated: June 21, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-14983 Filed 6-24-93; 8:45 am]
BILLING CODE 4160-01-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL-4671-8]

Intent To Form an Advisory Committee To Negotiate Small Nonroad Engine Regulations

AGENCY: Environmental Protection Agency.

ACTION: Intent to Form a Negotiated Rulemaking Advisory Committee under the Federal Advisory Committee Act.

SUMMARY: The Environmental Protection Agency (EPA) is considering establishing an Advisory Committee under the Federal Advisory Committee Act (FACA). The Committee's purpose would be to negotiate issues leading to a notice of proposed rulemaking for control of emissions from nonroad spark-ignition engines 25 horsepower and below (small nonroad engines), excluding engines used in marine or recreational applications, under section 213 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990. The Committee would consist of representatives of parties that are substantially affected by the outcome of the proposed rule.

EPA requests public comment on whether: it should establish a Federal Advisory Committee; it has properly identified interests it believes are affected by the key issues listed above; regulatory negotiation is appropriate for this rulemaking, and the extent to which the issues and procedures are adequate and appropriate.

Please note that an organizational meeting (announced in the Federal Register June 15, 1993) will be held to discuss the issues involved in the regulation of small nonroad engines, and whether the Committee should be formed and negotiations proceed. This meeting is open and any parties interested in the negotiation are encouraged to attend.

DATES: EPA must receive comments and suggestions on this by July 30, 1993.

The public meeting will be held on June 30, 1993 from 10 to 4:30 p.m. and on July 1, 1993 from 8:30 a.m. to 3 p.m.

ADDRESSES: Comments should be submitted in duplicate, if possible, to the EPA Air Docket #A-93-29, 401 M Street, SW., room 4, South Conference Center, Washington DC 20460. A copy should also be sent to Betsy McCabe, National Vehicle and Fuel Emissions Laboratory, Environmental Protection Agency, 2565 Plymouth Rd., Ann Arbor, Michigan 48105. EPA Air Docket #A-93-29, containing materials relevant to this rulemaking may be inspected at EPA headquarters in Washington, DC 9:00-12:00 and 1-3 p.m. on weekdays, and a reasonable fee may be charged for copying.

The location of the public meeting will be the Sheraton Inn, 3200 Boardwalk, Ann Arbor, Michigan 48108.

FOR FURTHER INFORMATION CONTACT: For information pertaining to the substantive and technical issues to be addressed in the negotiation, contact: Betsy McCabe, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor, Michigan 48105; phone (313) 668-4344.

For information pertaining to the establishment of the negotiation committee and associated

administrative matters contact: Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street, SW., Washington DC 20460; phone (202) 260–5495.

SUPPLEMENTARY INFORMATION:

Outline of Notice

I. Negotiated Rulemaking Act
II. Subject and Scope of the Small Nonroad Engine Regulation.
A. Need for the Rule
B. Subject and Scope of the Rule
C. Issues and Questions to be Resolved
D. Affected Interests and Potential Participants
E. Schedule for the Negotiation
III. Formation of the Committee
A. Procedure for Establishing an Advisory Committee
B. Participants
C. Requests for Representation
D. Final Notice
IV. Negotiation Procedures
A. Facilitator
B. Good Faith Negotiation
C. Administrative Support
D. Meetings
E. Committee Procedures
F. Defining Consensus
G. Failure of the Committee to Reach Consensus
H. Record of Meetings

I. Negotiated Rulemaking Act

The Negotiated Rulemaking Act (Pub. L. 101–648, 5 U.S.C. 581–590) establishes a framework for the conduct of negotiated rulemaking and encourages agencies to use the process to enhance the informal rulemaking process. Under the Act the head of an agency shall consider whether:

(1) There is a need for a rule;

(2) There are a limited number of identifiable interests that will be significantly affected by the rule;

(3) There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who:

(A) Can adequately represent the interests identified under paragraph (2); and;

(B) Are willing to negotiate in good faith to reach a consensus on the proposed rule;

(4) There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;

(5) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of a final rule;

(6) The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and

(7) The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.

Negotiations are conducted through Advisory Committees chartered under the Federal Advisory Committee Act (FACA). The goal of the Committee is to reach consensus on the language or issues involved in a rule. If consensus is reached, it is used as the basis of the Agency's proposal. All procedural requirements of the Federal Advisory Committee Act, the Administrative Procedure Act and other applicable statutes continue to apply.

II. Subject and Scope of the Rule

A. Need for the Rule

Section 213 of the CAA, as amended, requires EPA to conduct a study of emissions from nonroad engines and vehicles, and to determine whether such emissions contribute significantly to air pollution problems. Section 213 further requires EPA to promulgate regulations that will result in reductions in emissions from nonroad sources, if the Agency makes the positive determination of significance.

EPA completed the Nonroad Engine and Vehicle Emission Study in November 1991 (the Nonroad Study is available for public review in EPA Docket #A–91–24). On May 17, 1993, EPA issued a notice of proposed rulemaking determining that nonroad sources are significant contributors to total ozone precursor and carbon monoxide (CO) emissions in areas that have failed to attain the National Ambient Air Quality Standards (NAAQS) for ozone and CO. In this action, EPA also proposed emission control for the first category of nonroad engines to be regulated (compression-ignition engines 50 horsepower and above) (see 58 FR 28809).

During the summer of 1992, a convening effort was conducted to investigate the possibility of developing regulations for small nonroad engines using regulatory negotiation or another consensus based process. Pursuant to this convening effort, EPA held public meetings November 16–17, 1992 (57 FR 49054), and January 28–29, 1993 (58 FR 4392), to explore further with potential participants the use of consensus-based regulatory approaches.

As an result of discussions at the January public meeting, EPA has decided to pursue a two-phase strategy to regulate emissions from small nonroad engines. Phase One regulations, to be effective in the near term, will be similar to those developed by the California Air Resources Board for lawn and garden and utility engines. Representatives from industry, states, and environmental and public health associations have expressed interest in working with EPA to develop longer-term Phase Two regulations through a regulatory negotiation process.

On February 1, 1993 the Sierra Club filed suit against EPA for missing the November 1992 deadline for promulgating regulations for control of emissions from nonroad sources. EPA has agreed to the following schedule for small nonroad engine regulation development in the settlement of the lawsuit:

Phase One proposal May 1994.
Phase One final May 1995.
Phase Two proposal April 1996.
Phase Two final April 1997.

The proposed regulatory negotiations will address Phase Two regulations for small nonroad engines.

B. Subject and Scope of the Rule

The rule will control emissions from small nonroad spark-ignition engines 25 horsepower and below (small nonroad engines), excluding engines used in marine or recreational applications. Phase Two regulatory negotiations will address the full range of issues relating to small nonroad engines including, but not limited to, useful life, in-use emissions, evaporative and refueling emissions, test procedure issues, and market based programs.

Phase One regulations will be implemented in the near term and are anticipated to achieve significant public health and environmental benefits. By following the basic structure of California regulations for the same engines, EPA is claiming the early emission reduction benefits available while continuing to develop the data necessary for a more complete control program in the second phase of regulation.

EPA's goals in developing Phase Two regulations for implementation in the longer term include: (1) Developing a more stringent control program to be effective in the next century; (2) encouraging the development and use of advanced technology for control of emissions from small nonroad engines; and (3) maximizing public health and environmental benefits from control while providing maximum flexibility in achieving these results.

C. Issues and Questions to be Resolved

EPA anticipates addressing and resolving the following key issues or questions during the negotiations:

• What is an appropriate comprehensive control program for

emissions related to small nonroad engines;

- What is the appropriate level of standard and effective date consistent with EPA mandate;
- What is the appropriate test for measuring emissions from engines using advanced emission control devices (and other test procedure issues);
- How should a comprehensive in-use enforcement program be designed;
- What controls are possible and appropriate for evaporative and refueling emissions;
- What market-based incentive programs are possible and appropriate (including the possible merits of an averaging, banking, and trading program for this segment of nonroad sources).

D. Affected Interests and Potential Participants

EPA has tentatively identified the following list of possible interests and/or parties:

Trade Associations and Regulated Industry

Engine Manufacturers Association
Manufacturers of Emission Controls Association
Outdoor Power Equipment Institute
Portable Power Equipment Manufacturers Association

Public Interest Groups

American Lung Association
Natural Resources Defense Council

State Government

Northeast States for Coordinated Air Use Management
State and Territorial Air Pollution Program Administrators
Association of Local Air Pollution Control Officials
State of California, Air Resources Board
State of Wisconsin, Bureau of Air Management

Federal Government

U.S. Environmental Protection Agency

E. Schedule for the Negotiation

EPA has set a deadline of Spring 1995 for the committee to complete work on the rule. The agency intends to terminate the activities of the Committee if it does not appear likely to reach consensus on a schedule that is consistent with Agency rulemaking needs.

EPA will host an organizational meeting of the committee June 30 and July 1, 1993 to discuss details of how the negotiations will proceed and how the Committee will function.

If the organizational meeting is successful and charter approved, EPA will hold the first meeting of the Advisory Committee in the Fall, 1993. At this meeting, participants will complete action on any procedural matters outstanding from the organizational meeting, determine how best to address the principal issues, and begin to address them.

Subsequent meetings of the Committee would be held approximately every two months in Ann Arbor, Michigan.

III. Formation of the Negotiating Committee

A. Procedure for Establishing an Advisory Committee

As a general rule, an agency of the federal government is required to comply with the requirements of FACA when it establishes or uses a group which includes non-federal members as a source of advice. Under FACA, an Advisory Committee is established only after both consultation with GSA and receipt of a charter. EPA has prepared a charter and has initiated the requisite consultation process. Only upon the successful completion of this process and the receipt of the approved charter will EPA form the Committee and commence negotiations.

B. Participants

The number of participants in the group is estimated to be about 15 and should not exceed 25 participants. A number larger than this could make it difficult to conduct effective negotiations. One purpose of this notice is to help determine whether the standard that EPA is developing would substantially affect interests not adequately represented by the proposed participants. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, we firmly believe that each interest must be adequately represented. Moreover, we must be satisfied that the group as a whole reflects a proper balance and mix of interests.

C. Requests for Representation

If, in response to this Notice, an additional individual or representative of an interest requests membership or representation in the negotiating group, the Agency, in consultation with the facilitator, will determine whether that individual or representative should be added to the group. EPA will make that decision based on whether the individual or interest:

- Would be substantially affected by the rule;
- Is already adequately represented in the negotiating group.

D. Final Notice

After evaluating the results of the organizational meeting, and reviewing any comments on this Notice and requests for representation, EPA will issue a final notice. That notice will announce the establishment of a Federal Advisory Committee and the date of the first meeting, unless (1) EPA decides, based on comments and other relevant considerations, that such action is inappropriate, or (2) EPA's charter request is disapproved. The negotiation process will begin once the Committee is appropriately chartered and notice is published in the **Federal Register**.

IV. Negotiation Procedures

The following procedures and guidelines will apply to the Committee, if formed, unless they are modified as a result of comments received on this Notice or during the negotiating process.

A. Facilitator

EPA will use a neutral facilitation team. The facilitators will not be involved with the substantive development or enforcement of the regulation. The facilitators' role is to:

- Chair negotiating sessions;
- Help the negotiation process run smoothly; and
- Help participants define and reach consensus.

B. Good Faith Negotiation

Since participants must be willing to negotiate in good faith and be authorized to do so, each organization must designate a senior official to represent its interests.

C. Administrative Support

EPA's Consensus and Dispute Resolution Program will supply logistical, administrative and management support. If it is deemed necessary and appropriate, the Agency will provide technical support to the committee in gathering and analyzing additional data or information.

D. Meetings

Meetings will be held in Ann Arbor, Michigan at the convenience of the Committee. EPA will announce Committee meetings in the **Federal Register**. Such meetings will be open to the public.

E. Committee Procedures

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for Committee meetings which they consider most appropriate.

F. Defining Consensus

The goal of the negotiating process is consensus. In the negotiations completed to date, consensus has meant that each interested party concurs in the result. We expect the participants to fashion their own working definition of this term.

G. Failure of Advisory Committee to Reach Consensus

In the event the Committee is unable to reach consensus, EPA will proceed to develop its own rule. Parties to the negotiation may withdraw at any time. If this happens, the remaining Committee members and the Agency will evaluate whether the Committee should continue.

H. Record of Meetings

In accordance with FACA's requirements, EPA will keep a record of all Advisory Committee meetings. This record will be placed in the public docket for this rulemaking.

Dated: June 20, 1993.

Michael H. Shapiro,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 93–15127 Filed 6–24–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[VA5–1–5310; FRL–4671–3]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Control of VOC Emissions RACT Fix-Ups

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision consists of revised volatile organic compound (VOC) emission regulations applicable in the Commonwealth of Virginia. The intended effect of this action is to propose approval of the Commonwealth of Virginia's revised VOC regulations to correct deficiencies in Virginia's ozone SIP. The Virginia Department of Air Pollution Control (VADAPC) is requesting that EPA propose approval of its entire May 10, 1991 SIP revision submittal (dealing with correction of VOC regulation deficiencies), but delay until July 1, 1993, the final approval of the capture efficiency test method portion of this SIP revision. This action is being taken under section 110 and subchapter I, part D of the Clean Air Act (CAA).

DATES: Comments must be received on or before July 26, 1993. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Virginia Department of Air Pollution Control, P.O. Box 10089, Richmond Virginia, 23240.

FOR FURTHER INFORMATION CONTACT: Cristina M. Schulingkamp, (215) 597–0545.

SUPPLEMENTARY INFORMATION: On May 10, 1991, VADAPC submitted to EPA revisions to Virginia's SIP. The proposed revisions consist of changes to Parts I, II, IV, V, VII and certain appendices of Virginia's Regulations for the Control and Abatement of Air Pollution. The revisions made to the following parts and appendices are addressed in this notice:

Part I General Definitions
Part II General Provisions
Part IV Existing and Certain Other Sources
- Rule 4–4 General Process Operations
- Rule 4–5 Synthesized Pharmaceutical Products Manufacturing Operations
- Rule 4–6 Rubber Tire Manufacturing Operations
- Rule 4–11 Petroleum Refinery Operations
- Rule 4–24 Solvent Metal Cleaning Operations
- Rule 4–25 Volatile Organic Compound Storage and Transfer Operations
- Rule 4–26 Large Appliance Coating Application Systems
- Rule 4–27 Magnet Wire Coating Application Systems
- Rule 4–28 Automobile and Light Duty Truck Coating Application Systems
- Rule 4–29 Can Coating Application Systems
- Rule 4–30 Metal Coil Coating Application Systems
- Rule 4–31 Paper and Fabric Coating Application Systems
- Rule 4–32 Vinyl Coating Application Systems
- Rule 4–33 Metal Furniture Coating Application Systems
- Rule 4–34 Miscellaneous Metal Parts and Products Coating Application Systems
- Rule 4–35 Flatwood Paneling Coating Application Systems
- Rule 4–36 Graphic Arts Printing Processes
- Rule 4–37 Petroleum Liquid Storage and Transfer Operations
- Rule 4–38 Dry Cleaning Systems
- Rule 4–39 Asphalt Paving Operations

Part VII Air Pollution Episodes

Appendices:
- K Nonattainment Areas
- L Prevention of Significant Deterioration Areas
- N Compliance Schedules
- P Volatile Organic Compound Emissions Control Areas
- R New and Modified Source Permit Exemption Levels
- S Air Quality Program Policies and Procedures

Background

On May 10, 1991, the Commonwealth of Virginia submitted revisions to its SIP. As previously stated, the revisions consist of changes to the Parts and appendices listed above. EPA's technical review of the submittal has determined the revisions to be approvable.

Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up requirement. Under section 182(a)(2)(A) of the CAA, 42 U.S.C. 7511(a)(2)(A), states were required by May 15, 1991, to correct RACT. SIPs were to include RACT as it was interpreted under pre-amended section 172(b) and as it was interpreted in pre-amendment guidance.[1]

The Clean Air Act Amendments of 1990 were enacted on November 15, 1990. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, 42 U.S.C. 7511(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas fix their

[1] Among other things, the pre-amendment guidance consists of the Post-87 policy, 52 FR 45044 (Nov. 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations Clarification to Appendix D of November 24, 1987 Federal Register Notice" (of which notice of availability was published in the Federal Register on May 25, 1988); and the existing Control Technique Guidelines (CTG).

deficient reasonably available control technology (RACT) rules for VOCs.

Through a SIP call, EPA makes a finding that the SIP does not provide for attainment of the NAAQS and EPA requires the state to revise its SIP to correct the inadequacies.

In response to a SIP call letter sent by EPA on May 26, 1988, the Commonwealth was required to : (1) Correct identified deficiencies in the existing SIP's VOC regulations; (2) adopt VOC regulations previously required or committed to but never adopted; and (3) update the areas' base year emissions inventories.

The SIP call letters interpreted guidance and indicated corrections necessary for specific nonattainment areas. Virginia has several ozone nonattainment areas which are subject to the VOC RACT fix-up requirements.[2] For detailed descriptions of the amendments addressed in this notice, please refer to the technical support document (TSD) prepared for these revisions.

By letter dated July 28, 1992, VADAPC requested that EPA propose approval of its entire May 10, 1991 SIP revision submittal, but delay final approval of the capture efficiency test method portion of this revision.

VADAPC is monitoring the progress and will analyze the results of EPA studies to determine whether any approvable alternative capture efficiency test methods are available. If Virginia wishes to supplement the SIP revision submittal by adding or substituting any such alternative test method procedures, VADAPC will notify EPA of its intent. Otherwise, EPA will proceed with final full approval of the SIP revision as submitted in May 10, 1991 without any further action by the Department or EPA.

Summary of the SIP Revision

VADAPC made the following changes to Part I, General Definitions:

1. Definitions of the following terms were added to reflect current EPA guidance: a. Actual Emissions Rate, b. Department, c. Emissions Unit.

2. Definitions of the following terms were modified in order to reflect current EPA guidance: a. Executive Director, b. Organic Compound, c. Stationary Source, d. Volatile Organic Compound.

3. The definition of the term nonmethane was deleted.

VADAPC made the following changes to Part II, General Provisions:

1. Section 120–02–08 *Relationship of State Regulations to Federal Regulations* was added to provide for federal enforceability of state regulations.

2. Section 120–02–34 *Facility and Control Equipment* Maintenance or Malfunction was modified to include notification by facsimile transmission in the case of a malfunction that may cause excess emissions for more than one hour.

VADAPC made the following changes to Part IV, Existing and Certain Other Sources:

1. Section 120–04–01, *Applicability* was amended to ensure that once a facility is subject to a RACT regulation, it will remain subject even if future conditions cause its emissions to fall below the applicability level.

2. The following sections were modified to reflect current EPA guidance and are approvable: § 120–04–02 *Compliance*, § 120–04–03 *Emission Testing*, § 120–04–04 *Monitoring*, and § 120–04–05 *Notification, Records and Reporting*.

VADAPC also made changes to Part IV Rules including the following:

1. Rule 4–4 *General Process Operations* has been amended to define the term RACT and to require source owners to affirmatively notify the VADAPC of the applicability of RACT to their facilities. Other modifications were made to make the rule consistent with current EPA guidance and requirements.

2. Rule 4–5 *Synthesized Pharmaceutical Products Manufacturing Operations* was modified to include the definition for RACT to reflect current EPA guidance and to add a RACT standard for VOCs.

3. Rule 4–6 *Rubber Tire Manufacturing Operations* was modified to include the current applicability threshold to reflect the current Control Technology Guideline (CTG) for the source category.

4. Rule 4–11 *Petroleum Refinery Operations*, Rule 4–24 *Solvent Metal Cleaning Operations*, and Rule 4–25 *Volatile Organic Compound Storage and Transfer Operations*, were modified to reflect current EPA guidance regarding applicability and designation of affected facilities in accordance with the appropriate CTGs.

5. Rule 4–26 *Large Appliance Coating Application Systems* and Rule 4–27 *Magnet Wire Coating Application Systems* have been modified to reflect the current EPA guidance regarding applicability and designation of affected facilities and the adoption of the EPA suggested definition for "Coating Application System," in accordance with the appropriate CTG.

6. Rule 4–28 *Automobile and Light Duty Truck Coating Application Systems* was modified to include the EPA definition for "extreme environmental conditions", the actual tested transfer efficiency of an operation, a topcoat standard of 2.8 lbs/gallon coating excluding water if the source is not demonstrating actual transfer efficiency, and wording requiring that anti-chip coatings emissions may not be averaged with guidecoat or topcoat emissions without SIP approval. Other changes were made to reflect current EPA guidance and the appropriate CTG for the source category.

7. Rule 4–29 *Can Coating Application Systems* and Rule 4–30 *Metal Coil Coating Application Systems* were modified to include the adoption of EPA's suggested definition for "Coating Application Systems," and to reflect current EPA guidance and the appropriate CTG for those source categories.

8. Rule 4–31 *Paper and Fabric Coating Application Systems* was modified to include wording such that all applicators of coating and adhesives are subject to RACT regardless of whether or not application covers the entire width of the web and whether or not application is uniform. The definition of the term "Coating Application Systems" was also included. Other changes were made to reflect current EPA guidance and the appropriate CTG for this source category.

9. Rule 4–32 *Vinyl Coating Application Systems*, Rule 4–33 *Metal Furniture Coating Application Systems*, Rule 4–34 *Miscellaneous Metal Parts and Products Coating Application Systems* and Rule 4–35 *Flatwood Paneling Coating Application Systems* were modified to reflect the current EPA definition of "Coating application system" and to reference the appropriate CTGs for those source categories.

10. Rule 4–36 *Graphic Arts Printing Processes* was modified to include a suggested definition of the term "waterborne inks," wording specifying that applicability for sources is to be based on potential emissions, wording specifying the use of waterborne or high-solids ink as the primary means of compliance, and a suggested definition for the term "printing process." These and other changes were made to reflect current EPA guidance and the appropriate CTG for the source category.

11. Rule 4–37 *Petroleum Liquid Storage and Transfer Operations* was modified to make its exemption

[2] Norfolk-Virginia Beach-Newport News, Richmond, Petersburg, and the Washington D.C. Area retained their designation of nonattainment and were classified marginal, moderate, and serious, respectively, by operation of law pursuant to section 107(d) and 181(a) upon enactment of the Amendments. 56 FR 56694

provisions consistent with EPA guidance and the appropriate CTG.

12. Rule 4–38 *Dry Cleaning System* and Rule 4–39 *Asphalt Paving Operations* were modified to reflect current EPA guidance.

The following parts and appendices were modified to reflect current EPA guidance and are found to be approvable: Part V, *New and Modified Sources;* Part VII, *Air Pollution Episodes;* Appendix K, *Nonattainment Areas;* Appendix L, *Prevention of Significant Deterioration;* and Appendix N, *Compliance Schedules.*

Appendix R, *New and Modified Source Permit Exemption Levels,* has been deleted and its provisions essentially unchanged, have been made part of a new Appendix S, *Air Quality Program Policies and Procedures.*

Appendix S, *Test Methods and Procedures for Facilities Subject to Emission Standards for Volatile Organic Compounds* has been deleted and its provisions, essentially unchanged, have been made part of a new Appendix S, *Air Quality Program Policies and Procedures.*

Appendix T, *Procedures for Determining Compliance with VOC Emission Standards,* has been deleted and its revised provisions, have been made part of a new Appendix S, *Air Quality Program Policies and Procedures.* The revisions include the conversion of each standard from pounds of VOC per gallon of coating less water to pounds of VOC per gallon of coating solids and is based on the actual density. The referenced test method for determining VOC content is Reference Method 24/24A.

Appendix U—*Procedures for the Measurement of Capture Efficiency* has been deleted, and its provisions, essentially unchanged, have been made part of a new Appendix S, *Air Quality Program Policies and Procedures.* An additional capture efficiency procedure has been added for situations where the inlet and outlet concentrations are too far apart to use one analyzer.

Appendix V—*Recordkeeping Procedures for Surface Coating Operations and the Graphic Arts Industry* has been deleted and its provisions, essentially unchanged, have been made part of a new Appendix S, *Air Quality Program Policies and Procedures.*

EPA's review of these regulatory corrections identified in the SIP indicates that the Commonwealth of Virginia has satisfied the deficiencies and inconsistencies in the existing VOC regulations identified in SIP Call letter dated May 26, 1988. Moreover, these corrections meet the RACT fix-up requirement of section 182(a)(2)(A). Therefore, EPA is proposing to approve the revision to parts I, II, IV, V, VII and certain appendices of Virginia's Regulations for the Control and Abatement of Air Pollution which were submitted on May 10, 1991, as a SIP revision. The Commonwealth of Virginia certified that public hearings with regard to this proposed SIP revision were held on April 25, 1990. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters.

These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this notice.

Proposed Action

EPA is proposing to approve the revisions to the Commonwealth of Virginia's SIP submitted on May 10, 1991, by the Department of Air Pollution Control (VADAPC) as meeting the RACT fix-up requirements of the amended Act. These revisions include amendments to Virginia's Regulations for the Control and Abatement of Air Pollution, specifically revisions to parts I, II, IV, V, VII and appendices K, L, N, P, R, and S.

The Agency has reviewed this request for revision of the Federally-approved State Implementation Plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed final rule on small entities. 5 U.S.C. 603 and 604.

Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the Commonwealth is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected.

Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute a Federal inquiry into the economic reasonableness of Commonwealth action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA,* 427 U.S. 246, 255–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

This action proposing to approve Virginia's RACT Fix-ups has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Tables 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

The Administrator's decision to approve or disapprove Virginia's RACT Fix-up SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K), 110(a)(3), and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 17, 1993.

William T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 93–15018 Filed 6–24–93; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 52

[OR–4–1–5164; FRL–4671–2]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: In this action, Environmental Protection Agency (EPA) invites public comment on its proposed approval of revisions to the State of Oregon Implementation Plan. The revisions are to the State of Oregon Administrative Rules for emission standards for sources of volatile organic compounds.

DATES: Comments must be postmarked on or before July 26, 1993.

ADDRESSES: Written comments should be addressed to Montel R. Livingston, Environmental Protection Specialist, Air and Radiation Branch, Air Program Development Section (AT–082), United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the materials submitted to EPA may be examined during normal business hours at: Air Programs Branch (OR4–1–5164), U.S. Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, and State of Oregon, Department of Environmental Quality, 811 SW. Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Michael J. Lidgard, Air and Radiation Branch, Air Program Development Section (AT–082), U.S. Environmental Protection Agency, Region 10, Seattle, Washington 98101, (206) 553–4233.

SUPPLEMENTARY INFORMATION:

I. Background

Section 172(a)(2) and (b)(3) of the Clean Air Act, as amended in 1977 (1977 Act), required sources of volatile organic compounds (VOC) to install, at a minimum, reasonably available control technology (RACT) in order to reduce emissions of this pollutant. EPA has defined RACT as the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979). EPA has developed Control Technology Guidelines (CTG) for the purpose of informing state and local air pollution control agencies of air pollution control techniques available for reducing emissions of VOC from various categories of sources. Each CTG contains recommendations to the states of what EPA calls the "presumptive norm" for RACT. This general statement of agency policy is based on EPA's evaluation of the capabilities and problems associated with control technologies currently used by facilities within individual source categories. EPA has recommended that the states adopt requirements consistent with the presumptive norm level.

On March 3, 1978, the entire Portland-Vancouver Interstate Air Quality Maintenance Area was designated by the EPA as a nonattainment area for Ozone. The Portland-Vancouver Interstate Air Quality Maintenance Area contains the urbanized portions of three counties in Oregon (Clackamas, Multnomah and Washington) and one county (Clark) in the state of Washington.

The 1977 Act required states to submit plans to demonstrate how they would attain and maintain compliance with national ambient air standards for those areas designated nonattainment. The 1977 Act further required these plans to demonstrate compliance with primary standards no later than December 31, 1982. An extension up to December 31, 1987, was possible if the state could demonstrate that despite implementation of all reasonably available control measures the December 31, 1982 date could not be met.

On October 7, 1982, EPA approved the Portland-Vancouver area ozone attainment plan including an extension of the attainment date to December 31, 1987 (47 FR 44262).

On June 15, 1988, pursuant to section 110(a)(2)(H) of the pre-amended Clean Air Act, former EPA Regional Administrator Robie Russell notified the state of Oregon by letter that the SIP for the Portland-Vancouver area was substantially inadequate to provide for timely attainment of the NAAQS. In that letter, EPA identified specific actions needed to correct deficiencies in State regulations representing RACT for sources of volatile organic compounds (VOC). Further, the Clean Air Act, as amended in 1990 (amended Act) also requires states to correct deficiencies. In amended section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas fix their deficient RACT rules for ozone. Areas designated nonattainment before the effective date of the Amendments and which retained that designation and were classified as marginal or above as of the effective date are required to meet the RACT fix-up requirement. Under section 182(a)(2)(A), states with such nonattainment areas were mandated to correct their RACT requirements by May 15, 1991. The corrected requirements were to be in compliance with section 172(b) as it existed before the amendments and as that section was interpreted in the pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The Portland part of the Portland, Oregon-Vancouver, Washington nonattainment area is classified as marginal.[2] Therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

On May 15, 1991, the state of Oregon submitted Oregon Administrative Rules (OAR) 340–22–100 through 340–22–220, General Emission Standards for Volatile Organic Compounds, as an amendment to the Oregon State Implementation Plan (SIP). This **Federal Register** Notice is to propose approval of the rules as an amendment to the SIP. Below is a brief summary of the changes in each section of rules 340–22–100 through 340–22–220 (refer to Oregon SIP submitted May 15, 1991, docket #OR4–1–5164).

II. Discussion of Submittal

OAR 340–22–100 Introduction. A statement was inserted regarding non-CTG sources with potential to emit greater than 100 tons per year. The statement specifically subjects these sources to RACT requirements which are specified in a new section (340–22–104(5)).

OAR 340–22–102 Definitions. Substantial changes were made to the definition section in order to be consistent with EPA guidelines. Twenty nine new definitions were added to this section, five existing definitions were modified, and four definitions were deleted. Some of the new definitions include: coating, major modification, major source, miscellaneous metal parts and products, potential emissions before add-on controls, source, and volatile organic compounds (VOC).

OAR 340–22–104 General Requirements. We are proposing approval of this general provision which requires EPA approval of all final RACT determinations. A statement was added to the general requirement section which clarifies that new major sources or major modifications of existing sources are required to comply with new source review rules as well as the rules of this section. RACT requirements for non-CTG sources greater than 100 tons per year which are approved by the Oregon Department of Environmental

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[1] Among other things, the pre-amendment guidance consists of the Post-87 policy, 52 FR 45044 (November 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing CTGs.

[2] Portland, OR retained its designation of nonattainment and was classified by operation of law pursuant to section 107(d) and 181(a) upon enactment of the Amendments. 47 FR 44261.

Quality (ODEQ) shall be incorporated in the source's Air Contaminant Discharge Permit, and shall not become effective until approved by EPA as a source specific SIP revision. The source shall have one year from the date of notification by ODEQ of EPA approval to comply with the applicable RACT requirements. Since these RACT determinations do not become effective until EPA's approval, this is not a state director's discretionary issue. The applicability cutoff is consistent with EPA guidance published on May 25, 1988, "Issues Relating to VOC Regulation, Cutpoints, Deficiencies, and Deviations" (referred to hereafter as the "Blue Book").

The RACT requirement for non-CTG sources is a new addition to the Oregon rules. The new requirement also contains provisions which apply the concept of "once-in-always-in" for applicability. That is, RACT continues to apply to the source even if emissions fall below the cutoff unless the reduction is due to a permanent reduction in capacity.

OAR 340–22–107 Compliance Determination. This section adds a paragraph which allows the use of alternative methods for demonstrating compliance with the emission standards provided the source has received prior approval by the Department as well as review and approval by EPA. EPA interprets this provision to provide that an alternative method approved by the ODEQ will not become a part of the federally-enforceable SIP until EPA approves such alternative.

OAR 340–22–110 Gasoline Dispensing Facilities. Paragraphs were added to clarify the gasoline throughput exemption consistent with the EPA Blue Book, including the use of a rolling 30-day average for the applicability level.

OAR 340–22–120 Bulk Gasoline Plants and Delivery Vessel(s). The exemptions and limitations sections were deleted. A new section was added which clarifies the exemption level so that it is now consistent with the EPA Blue Book, including the use of a thirty-day rolling average for determining applicability.

OAR 340–22–130 Bulk Gasoline Terminals. The use of a thirty-day rolling average was inserted in order to determine applicability. A reference to method 40 CFR part 60, Subpart XX, 60.503 was inserted for use in determining compliance.

OAR 340–22–137 Testing Vapor Transfer and Collection Systems. A test method reference to CFR part 60, EPA Method 21 or 27, or the California Air Resources Board Method 2–5 was inserted.

OAR 340–22–140 Cutback and Emulsified Asphalt. The outdated rule applicability date was deleted.

OAR 340–22–150 Petroleum Refineries. The outdated rule applicability date was deleted. A new paragraph regarding recordkeeping requirements was inserted whereas the previous regulation contained no recordkeeping requirements. This amended rule requires recordkeeping consistent with EPA requirements.

OAR 340–22–153 Petroleum Refinery Leaks. The outdated rule applicability date was deleted. Paragraph 4 which contained an unacceptable exemption level was deleted.

OAR 340–22–160 Liquid Storage. The outdated rule applicability date was deleted. Language regarding the proper temperature to use in calculating the true vapor pressure in order to determine applicability of the rule was inserted. Also, a semi-annual inspection requirement and additional recordkeeping requirements were added consistent with EPA guidelines.

OAR 340–22–170 Surface Coating in Manufacturing. This section applies to coating operations for cans, fabrics, vinyl, paper, auto and light duty trucks, metal furniture, magnet wire, large appliances, and miscellaneous metal parts and products.

Language was added that lowered the exemption level to sources whose potential emissions before add on controls of VOC are less than 10 tons per year consistent with EPA guidance. Language was deleted that exempted sources whose emissions were 40 tons per year of actual VOC emissions.

A new paragraph was added to allow for an evaluation of exceptions to the emission limits of this section (alternative RACT) on a case-by-case basis. The paragraph requires specific documentation to be supplied by the source which satisfies "federal criteria for RACT" and other information that is specified in the rule. Alternative emission limits must be approved by the Department, incorporated into the source's Air Contaminant Discharge Permit, and are not effective until approved by EPA as a source specific SIP revision.

The process and limitation paragraph was amended to lower the can coating and sealing compound limitation from 4.4 to 3.7 lbs/gallon and the high performance architectural coatings limit was reduced from 6.2 lbs/gallon to 3.5 lbs/gallon. Both changes were done to ensure federally-effective consistency, however, they are not federally enforceable until EPA approves as a SIP revision. This paragraph also included a new statement requiring that these limitations shall be based on a daily average.

The compliance determination paragraph was amended to incorporate 40 CFR part 60 EPA Methods 18, 24, and 25 as acceptable test procedures for determining compliance.

A paragraph similar to alternative RACT as discussed above was inserted for equivalent means of VOC removal. Equivalent means of VOC removal, aside from low solvent coatings or incineration must be approved by the Department and by EPA as source specific SIP revisions.

A new paragraph on recordkeeping was added which requires documentation necessary to evaluate compliance. Records must be kept for two years and must be made available for inspection by the Department. Recordkeeping was not addressed under the previous version of the VOC rules.

OAR 340–22–175 Aerospace Component Coating Operations. Under Section 340–22–170, Surface Coating in Manufacturing, a change was made in the exemption level from 40 tons per year to the potential to emit 10 tons per year. One aerospace coating facility located in the Portland area whose VOC emissions were previously below the exemption level was required to comply with the section due to the new lower exemption level. The source demonstrated to the Department that they were technologically and economically unable to meet the coating limitations of OAR 340–22–170. The EPA has not issued a CTG for the aerospace industry. Likewise, Oregon had not developed an aerospace-specific emission limitation since no sources in the area were previously required to comply. The state of Washington and local authorities in California do have specific emission limitations for aerospace facilities. The affected source has operations in these other areas and asked the state to make a RACT determination and incorporate it into the state VOC rules. Given these factors, the state of Oregon developed an aerospace coating limitation under this section and has submitted it for approval as a SIP revision. We propose approval of this rule revision as a part of the Oregon SIP for sources in Oregon.

EPA is required by the amended Act, under section 183(b)(3) to issue control technique guidelines to reduce emissions of VOC from aerospace coatings and solvents. The CTG is to be issued within 3 years after the date of enactment of the Amendments. The aerospace CTG is currently being developed by the EPA. Approval of the Oregon aerospace rule, applicable to aerospace facilities in the state of

Oregon, does not set a precedent and in no way binds EPA to any specific level of control in its forthcoming aerospace CTG. EPA will issue a CTG which shall reduce aggregate emissions of VOC from such coatings to a level which EPA determines to be achieved through the adoption of "best available control measures" as required by section 183 of the amended Act. After issuance of the CTG, EPA will reevaluate the Oregon rule for consistency and, if necessary to meet CAA requirements, seek revisions to the rule.

The Oregon rule, submitted as a revision to the Oregon SIP, contains emission limitations similar to those adopted by a local air authority in the state of California. The Oregon rule contains an exemption level consistent with the EPA Blue Book for surface coating facilities. This rule contains procedures to minimize solvent evaporation during surface preparation and cleanup. The rule contains reference to EPA test methods for compliance determination and recordkeeping requirements necessary to evaluate compliance.

OAR 340–22–180, 340–22–183, 340–22–186 Degreasers. The outdated applicability dates in the degreaser rules was deleted. Also, language was added so that the rules are consistent with state Solid and Hazardous Waste Rules.

OAR 340–22–190 Asphaltic and Coal Tar Pitch Used for Roofing Coating. The outdated rule applicability date was deleted.

OAR 340–22–200 Flat Wood Coating. The outdated applicability date was deleted. Language was added to strengthen equivalency requirements by specifying the time period to determine equivalency. Also, the outdated test procedures were deleted and EPA test methods were added.

OAR 340–22–210 Rotogravure and Flexographic Printing. The outdated effective date was deleted, and new language which clarifies that applicability is to be determined by potential emissions before add-on controls was inserted. Also deletion of outdated test methods and insertion of EPA methods which are incorporated by reference.

OAR 340–22–220 Perchloroethylene Dry Cleaning. An exemption which is not consistent with EPA guidance was deleted. Insertion of language which clarifies the emission limitation. Also inclusion of EPA test methods by reference.

III. Summary of Action

EPA is soliciting public comment on its proposed approval of Oregon's SIP submittal to meet the section 182(a)(2)(A) RACT fix-up requirement. Interested parties are invited to comment on all aspects of this proposed approval. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by July 26, 1993 will be considered in the final rulemaking action taken by EPA.

IV. Administrative Review

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of Section 3 of Executive Order 12291 for a period of two years (54 FR at 2222). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (46 FR 8709).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under Executive Order 12291, today's action is not "major." It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7671q.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: June 16, 1993.

Gerald A. Emison,

Acting Regional Administrator.

[FR Doc. 93–15019 Filed 6–24–93; 8:45 am]

BILLING CODE [illegible]

40 CFR Part 52

[MN10–1–5406; FRL–4670–2]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On November 26, 1991, August 31, 1992, and November 30, 1992, the State of Minnesota submitted revisions to its State Implementation Plans (SIPs) for particulate matter. These SIP revisions were submitted by the State of Minnesota for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter for the Saint Paul and Rochester nonattainment areas, and for the purpose of satisfying certain Federal requirements for SIPs for such areas. In this action, USEPA is proposing full approval of the particulate matter SIP revisions for both areas.

DATES: Comments on these requested SIP revisions and on the proposed USEPA action must be received by August 9, 1993.

ADDRESSES: Copies of the State's submittals and USEPA's technical support document of November 16, 1992 are available for inspection at the following address: (It is recommended that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AE–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to:

William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987, USEPA promulgated revised air quality standards for particulate matter, replacing the former standard based on a broad range of particle size (known as total suspended particulate matter) with a standard based on finer particles, specifically on particles having a nominal aerodynamic

diameter of 10 microns or less. Areas were grouped according to their likelihood of violating this new standard. Upon enactment of the Clean Air Act Amendments of 1990,[1] areas that had been identified as Group I areas (areas identified as having a high likelihood of violating the particulate matter standard) and areas which had recorded violations of the particulate matter standard prior to 1989 were designated nonattainment and classified as moderate under sections 107(d)(4)(B) and 188(a) of the amended Clean Air Act (Act). See 56 FR 56694 (November 6, 1991) and 57 FR 13498, 13537 (April 16, 1992). The amended Act requires that States submit SIP revisions by November 15, 1991, for such areas satisfying specified planning requirements of the amended Act.

The air quality planning requirements for moderate particulate matter nonattainment areas are set out in title I of the Act. The USEPA has issued a "General Preamble" describing USEPA's preliminary views on how USEPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those State submittals addressing moderate particulate matter nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992)). The reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's proposal and the supporting rationale. In today's rulemaking action on revisions to Minnesota's moderate particulate matter SIP, USEPA is proposing to apply its interpretations to the specific factual situation presented in Minnesota. Thus, USEPA will consider any timely submitted comments before taking final action on today's proposal.

Part D of title I contains the provisions applicable to nonattainment areas. Moderate particulate matter nonattainment areas must meet the applicable requirements set out in subparts 1 and 4 of part D. Subpart 1 (especially section 172(c)) contains provisions generally applicable to all nonattainment areas and subpart 4 (especially section 189) contains provisions specifically applicable to particulate matter nonattainment areas. At times, subparts 1 and 4 overlap or conflict. The USEPA has attempted to clarify the relationship among these various provisions in the General Preamble and, as appropriate, in today's notice.

Those States containing initial moderate particulate matter nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable (see section 189(a)(1)(B));

2. Provisions to assure that reasonably available control measures (RACM) (including such reductions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993 (see section 189(a)(1)(C));

3. Control requirements applicable to major stationary sources of particulate matter precursors except where the Administrator determines that such sources do not contribute significantly to particulate matter levels which exceed the NAAQS in the area (see section 189(e)); and

4. Miscellaneous related provisions of section 172(c), for example quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994.

Some provisions are due at a later date. By November 15, 1993, States must supplement their particulate matter nonattainment area SIPs by submitting contingency measures which become effective without further action by the State or USEPA, upon a determination by USEPA that the area has failed to achieve RFP or to attain the particulate matter NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543–13544). However, Minnesota submitted contingency measures with its August 31, 1992, submittal, and therefore USEPA is today proposing rulemaking with respect to this requirement.

States with initial moderate particulate matter nonattainment areas were also required to submit a permit program for the construction and operation of new and modified stationary sources of particulate matter by June 30, 1992 (see section 189(a)(1)(A)). Minnesota is expected to address this requirement in a separate submittal, and so USEPA will conduct separate rulemaking with respect to this requirement.

II. Requirements of Section 189

Section 189, located in subpart 4 of part D of title I of the Act, provides the principal requirements applicable to particulate matter nonattainment area plans. Of particular importance for moderate area nonattainment plans are the requirements in section 189(a)(1). This section includes the requirement in section 189(a)(1)(B) either to demonstrate attainment or to demonstrate that attainment is impracticable by the applicable attainment deadline, and includes the requirement in section 189(a)(1)(C) to provide for reasonably available control measures (RACM). (The requirement in section 189(a)(1)(A) for a new source permitting program will be addressed in a separate State submittal and separate USEPA rulemaking.) In addition, section 189(e) requires control of sources of particulate matter precursor emissions, unless the USEPA determines that such sources do not contribute significantly to violations of the particulate matter standards. Review of Minnesota's submittals with respect to each of these three provisions is provided in the subsections that follow.

A. Attainment Demonstration

As noted, for initial moderate particulate matter nonattainment areas, the State must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the Act). Alternatively, the State must show that attainment by December 31, 1994 is impracticable. In the General Preamble, USEPA indicated that the attainment demonstrations for the initial moderate areas must generally follow existing modeling guidelines for particulate matter (see 57 FR 13539).

Minnesota submitted attainment demonstrations showing that both the Saint Paul area and the Rochester area would attain the standards by December 31, 1994. These demonstrations may be considered to have two components: (1) An emissions inventory; and (2) a dispersion modeling analysis of the concentrations resulting from those emissions. The discussion that follows summarizes the more detailed discussion contained in the technical support document.

The principal causes of nonattainment in the two nonattainment areas are industrial sources. Therefore, in accordance with the Guideline on Air Quality Models, the attainment

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the particulate matter national ambient air quality standards (see Pub. L. No. 101–549, 104 Stat. 2399). References herein are to the Clean Air Act, as amended, 42 U.S.C. sections 7401 *et seq.*

demonstrations submitted by Minnesota are based on dispersion modeling analyses using an inventory of allowable emissions from industrial sources in each area, supplemented by actual emissions for the relatively minor area sources found in the Saint Paul area. (For Rochester, area sources are even less significant and are considered by means of a background concentration.) For the most significant sources, the State adopted and submitted administrative orders establishing the allowable emissions levels. For other sources, allowable emissions reflect applicable State regulations. Modeled actual emissions from area sources and monitored background concentrations yield modest supplemental impacts.

The State provided thorough documentation of its emissions estimates for all sources in the Saint Paul and Rochester area. The Saint Paul area was shown to include 13 industrial facilities, as well as public roadways and other area sources. Eight of these facilities are currently subject to administrative orders included in the submittal, namely North Star Steel, Metropolitan Waste Control Commission, Great Lakes Coal and Dock, J. L. Shiely, Commercial Asphalt, PM Ag Products, Lafarge, and Ashbach Contruction. The State is currently preparing an administrative order for a ninth facility (Harvest States Coop). For the Rochester area, the State submitted an administrative order for Rochester Public Utilities, and documented that the area contains no other significant sources.

The significant emission points in the two nonattainment areas may be divided into three types: (1) Stack sources; (2) process fugitive emissions; and (3) area sources, such as roadways and storage piles. The administrative orders subject stack sources to both hourly total emission limits and exit gas concentration limits. These limits are expressed in terms of particulate matter of a nominal aerodynamic diameter of 10 microns or less, and include condensible particulate matter as well as noncondensible particulate matter. Consequently, the calculation of allowable emissions for these sources is straightforward. Process fugitive emissions are generally much more difficult to estimate. The technical support document includes detailed discussion of an emission estimate for fugitive emissions from the roof monitor at North Star Steel's electric arc furnace (EAF) shop, which forms the basis of a quantified growth margin as provided in section 172(c)(4). For this and other fugitive emission sources, the State has made reasonable judgements in estimating emissions. Finally, emissions from roadways and other area sources are estimated in accordance with procedures specified in the USEPA guidance documents entitled Compilation of Air Pollutant Emission Factors (known as AP–42) and Control of Open Fugitive Dust Sources, using inputs that are judged to provide reasonable estimates of these emissions.

The stack emissions limits in the administrative orders include condensible as well as noncondensible particulate matter. The noncondensible particulate matter is generally measured with Method 201 or 201A in Appendix M of 40 CFR part 51, and the condensible particulate matter is generally measured with Method 202. No significant nonstack sources of condensible particulate matter are found in either nonattainment area. Thus, the State is thoroughly including condensible particulate matter emissions as well as noncondensible particulate matter emissions in its analysis.

One additional issue pertains to emissions from Harvest States Coop. Contrary to the *Guideline on Air Quality Models*, the attainment demonstration used maximum actual rather than allowable emissions for this source. In a letter dated November 6, 1992, the State committed to remedy this deficiency by preparing an administrative order limiting this source to maximum actual emissions. Once this administrative order has been adopted and submitted, the emissions inventory for the Saint Paul area as well as for the Rochester area will provide appropriate bases for the State's attainment demonstrations.

The dispersion modeling analyses conducted by the State for the Saint Paul and the Rochester areas both used the Industrial Source Complex—Short Term model for modeling both 24-hour and annual average concentrations. This model is recommended in the Guideline on Air Quality Models for simple terrain. Both analyses used 5 years of National Weather Service data. Specifically, the Saint Paul analysis used surface data from the Minneapolis-Saint Paul airport and the Rochester analysis used surface data from the Rochester airport. Both analyses used upper air data from Saint Cloud. In addition, both analyses used urban dispersion coefficients and regulatory default parameters. The analyses used receptors spaced 100 meters apart in the key impact areas, for a total of 507 receptors in the Saint Paul analysis and 756 receptors in the Rochester analysis.

As noted previously, the modeling analyses conducted by the State used maximum allowable emissions for all industrial sources and, in the Saint Paul analysis, included an estimate of actual emissions for the diffuse area sources such as public roadways. The State then added a background concentration to reflect impacts from unmodeled sources. In Saint Paul, "unmodeled sources" are sources outside the modeled area; in Rochester, "unmodeled sources" also include unmodeled local roadways and other area sources within the modeled area. Unmodeled sources should have similar impacts in the two areas, since the Saint Paul area has many more sources outside the modeled area, whereas Rochester has more unmodeled emissions within the modeled area. The State analyzed data from various monitors in the Minneapolis-Saint Paul area and concluded that unmodeled sources contribute approximately 24 $\mu g/m_3$ on a 24-hour average basis and approximately 12 $\mu g/m^3$ on an annual average basis. The State used these background concentrations in both the Rochester and the Saint Paul analyses.

A majority of the sources in the analyses were stack sources, modeled as point sources, or open dust sources (roadways and storage piles), modeled as area sources. A few sources, most notably the roof monitor at North Star Steel's EAF shop, were modeled as volume sources. Minnesota used appropriate modeling techniques for modeling these various types of sources. All stack heights were at or below good engineering practice height, including the one stack that is more than 65 meters high. More generally, the procedures and inputs used in the dispersion modeling analysis (except for use of maximum actual emissions at Harvest States Coop) are fully in accordance with guidance in the most recent *Guideline on Air Quality Models*.

The State did not use the most recent version of the Industrial Source Complex model, known as ISC2. This version of the Industrial Source Complex model was released after the State submitted its SIP and well after the State conducted its modeling analyses to determine appropriate SIP limits. Consequently, these modeling analyses are accepted for the purpose of this SIP review. However, USEPA approval of these modeling analyses for this limited purpose does not provide a precedent for using the ISC short term model rather than the more current ISC2 modeling in any future regulatory action.

The modeling output provided by Minnesota shows that the emissions limitations assumed in its analysis assure that no violations will occur in

either the Saint Paul or the Rochester area. For the Saint Paul area, the State provided a table of exceedances of the 24-hour standard modeled at all receptors showing at least two exceedances. This table demonstrated that the maximum number of exceedances estimated to occur at any receptor over the 5-year period was 4 exceedances. Although the State did not specify a post-control design value from its analysis (highest sixth highest value over the 5-year period), the post-control design value is approximately 140 μg/m^3. A table of annual average concentrations showed a highest annual average concentration of 48 μg/m^3. or the Rochester area, no exceedances of either standard were identified; the modeling provided by Minnesota indicates a highest sixth highest 24-hour average concentration of 106 μg/m^3. The highest annual average concentration found in the Rochester area was 32 μg/m^3.

Minnesota did not directly assess the impact of growth. However, several factors help assure that the Saint Paul and Rochester areas will maintain as well as attain the standards. First, a substantial majority of emissions in both areas are from industrial sources and were modeled either with maximum allowable emissions (for point sources) or with emissions at the sources' full capacity operation (for area sources). Thus, the only opportunities for growth in the inventory beyond the modeled inventory are new source construction and growth in public area sources. The existing new source review program assures that new sources will not create violations of the air quality standards. Public area source emissions are unlikely to increase significantly, since population in Saint Paul is declining, population in Rochester is growing slowly, and in both areas such sources are only minor contributors. Finally, given the substantial growth margin demonstrated in Minnesota's attainment demonstrations for the two areas, it is unlikely that growth of emissions would cause violations in either area.

For the Rochester area, the State's modeling analysis clearly demonstrates that this area's plan provides for attainment. Consequently, USEPA is today proposing to conclude that the State's plan for the Rochester area satisfies Section 189(a)(1)(B). For Saint Paul, although the attainment demonstration does not currently reflect allowable emission rates for Harvest States Coop, the State is preparing an administrative order to limit emissions from this facility to the emission rates used in the attainment demonstration. USEPA believes that the State's plan will then provide for attainment. Therefore, USEPA proposes that once the State submits an administrative order limiting Harvest States Coop's emissions to the modeled emission rates, the State plan will then have satisfied the attainment demonstration requirements of Section 189(a)(1)(B) for the Saint Paul area.

B. RACM

States must submit provisions to assure that RACM (including RACT) are implemented in initial moderate particulate matter nonattainment areas no later than December 10, 1993 [see Sections 172(c)(1) and 189(a)(1)(C)]. The General Preamble contains a detailed discussion of USEPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561).

Minnesota's submittal includes documentation concluding that the State's plan provides for reasonably available control measures (RACM), including RACT. One State memorandum concerns RACM for area sources, and documents the manner in which the various potential RACM identified in the Supplement to the General Preamble (published in the **Federal Register** on April 28, 1992, at 57 FR 18070) were considered. A second State memorandum documents the manner in which RACT at two major stationary sources was addressed.

USEPA previously evaluated whether Minnesota's regulations in Saint Paul and Rochester (and elsewhere) provide for RACT (see 47 FR 19520 (May 6, 1982)). A reassessment of this issue is necessary, particularly in light of the modeling analysis of additional measures needed to provide for attainment. At the same time, the State is not required to adopt all available measures, provided that the State adopts sufficient measures to assure RFP and attainment of the NAAQS and provided that application of additional available controls would not provide for earlier attainment. (See the General Preamble at 57 FR 13543 for a discussion of USEPA's interpretation of this issue.) The administrative orders require immediate compliance for most sources. The only extended compliance date is for the EAF at North Star Steel, which provides for installation of a new baghouse by November 26, 1993, and for 75 percent closure of the roof monitor by December 31, 1993. The limitations effective November 26, 1993, require this source to achieve the control normally representing RACT as identified by USEPA in an August 7, 1980, memorandum and attached table entitled "Steel Industry Particulate Emission Limitations Generally Achievable on a Retrofit Basis." In addition, the State has required adequate measures to provide for attainment shortly after the December 10, 1993, RACT deadline, and no control options are known to be available that would provide for attainment any more quickly. Therefore, Minnesota's submittal is judged to satisfy the requirement for RACT in Section 189(a)(1)(C).

C. Particulate Matter Precursors

Section 189(e) specifies that "control requirements * * * for major stationary sources of PM–10 shall also apply to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area." Particulate matter precursors are pollutants emitted as gases that undergo chemical transformations to become particulate, and principally include sulfates and nitrates. Minnesota's submittal documents receptor modeling results that address the significance of particulate matter precursors based on monitoring data in Saint Paul. This study concluded that secondary sulfate plus secondary nitrate represented 6.9 percent of monitored concentrations on days with relatively high particulate matter concentration. Furthermore, since persistent stagnations are not characteristic of either of Minnesota's nonattainment areas, reduction of sulfate and nitrate concentrations in these areas would require reduction of indeterminately located sources well upwind of these areas. Control of precursor sources in the nonattainment areas would have little if any impact on particulate matter concentrations in these areas. For these various reasons, USEPA proposes to determine that precursors do not contribute significantly to particulate matter concentrations in either of Minnesota's nonattainment areas. (Note that final action on this proposed determination will reflect the existing character of the area, including the existing mix of sources, and is subject to revision should future growth or other changes in source mix substantially alter the significance of precursors in the area)

III. Other Requirements

In addition to the requirements in section 189, particulate matter nonattainment area plans must also meet the requirements of subpart 1 of part D of title I of the Clean Air Act, particularly section 172(c). Section 172(c) imposes several requirements

which all nonattainment area SIPs, including particulate matter nonattainment area SIPs, must meet. Such plans must also meet the requirements of section 110, although these requirements in general are referenced in section 172(c) and for convenience are discussed as part of the discussion of section 172(c) requirements.

Section 172(c)(1) mandates that these plans require reasonably available control measures (including RACT). The discussion above concludes that Minnesota's submittal satisfies this requirement for its two particulate matter nonattainment areas.

Section 172(c)(2) requires that nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). RFP is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

For the initial moderate particulate matter nonattainment areas, USEPA believes that the emissions reductions progress made between the SIP submittal (due date of November 15, 1991) and the attainment date of December 31, 1994 (only 46 days beyond the November 15, 1994 milestone date) will satisfy the first milestone requirement. The *de minimis* timing differential makes it administratively impracticable to require separate milestone and attainment demonstrations.

In Minnesota's submittals, compliance for most sources is required immediately upon adoption of the administrative order, *i.e.*, August 25, 1992. As previously noted, the only significant alternate compliance date is for installation of a second baghouse for North Star Steel's EAF, which is to be completed by November 26, 1993, and the associated closing of most of the roof monitor, which is to be completed by December 31, 1993. The State has demonstrated that these measures will lead to attainment by that final compliance date, provided that the State supplements its prior submittals with an administrative order for Harvest States Coop incorporating the modeled emissions rates for this company. The early compliance dates in the plan provide for reasonable further progress as well as for attainment for both nonattainment areas.

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Minnesota has submitted an inventory of actual emissions satisfying these requirements. Further, section 110(a)(2)(K) generally authorizes USEPA to request any data necessary to perform air quality modeling for the purpose of predicting, among other things, impacts on the particulate matter NAAQS. In accordance with the *Guideline on Air Quality Models*, this would include a comprehensive, accurate, and current inventory of allowable emissions for the most significant sources and of actual emissions for less significant sources in the area. Because the submission of such inventories are a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with this submission (see 57 FR 13539). The relevant portions of the State's submittals were addressed above in the discussion of the State's attainment demonstrations. Upon submittal of an administrative order for Harvest States Coop reconciling allowable emission rates with modeled emission rates for this source, the State will have satisfied section 172(c)(3).

Section 172(c)(4) mandates that any stationary source growth margin included in the SIP be expressly identified and quantified. Consistent with this paragraph, Minnesota expressly identified 9.8 pounds per hour as a stationary source growth margin. The State has appropriately quantified this growth margin and has therefore satisfied section 172(c)(4).

Section 172(c)(5) mandates a suitable permit program for new or modified major stationary sources. This requirement is also specified in section 189(a)(1)(A) and will be addressed in separate rulemaking.

Section 172(c)(6), along with section 110(a)(2)(A), requires that limitations sufficient to provide for attainment be enforceable by the State and USEPA. See 57 FR 13556. The USEPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). The criteria include, for example, applicability to sources, compliance date(s), compliance periods, test methods, record keeping requirements, and any exemptions or variances. In addition to enforceable requirements, nonattainment area plan provisions must contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

Enforceability involves several issues. First, the applicable limits must be clearly specified. The State's administrative orders provide clear tables identifying each applicable limit, and other sources are governed by clear and specific State regulations. Second, a schedule for compliance must be clearly specified. Most of the limits in the administrative orders were effective immediately upon adoption on November 26, 1991.

Replacement of these orders with amended orders effective August 25, 1992, renewed these limits. The only extended compliance schedule is for North Star Steel, which is allowed until November 26, 1993, to achieve compliance with baghouse emission limits for its EAF, and until December 31, 1993, to close 75 percent of its EAF shop roof monitor. Third, the State must permit no exemptions for equipment malfunctions that increase emissions without clear and appropriate limitations on such malfunctions. The administrative orders, like the State regulations, provide no exemptions for malfunctions and also require that any malfunctions that do occur be reported and addressed. Fourth, the SIP must provide for suitable reporting and recordkeeping. Minnesota's administrative orders clearly identify appropriate reporting and recordkeeping requirements for each source. Fifth, concerning "director's discretion," the limits must not be subject to revision at the sole discretion of the State. The administrative orders do not provide authority to the State to revise limits or the associated test methods. Since the administrative orders address detailed aspects of source operation, the administrative orders provide the companies the authority to make specified types of changes to facility operations that do not increase emissions from any emission point. However, a company would be considered in violation if either MPCA or USEPA concluded that an emissions point was emitting more than its allowable amount. Furthermore, the administrative orders provide that "Any modification to this Order approved by MPCA shall not revise the federally enforceable requirements of the SIP until approved by EPA." Sixth, the SIP must provide clearly identified test methods for analyzing compliance with its limits. The administrative orders

clearly specify the compliance test method for each limit. Also, the orders provide clear authority to conduct a suitable enforcement program. Finally, the State conducts a suitable program that provides for enforcement of the control measures and other elements in the SIP. Thus, the State's submittals satisfy section 172(c)(6) of the Act.

Section 172(c)(7) mandates that the SIP meet applicable requirements of section 110(a)(2) of the Act. Principal among the requirements of section 110(a)(2) is the requirement that the State adopt its plan following reasonable notice and public hearing. Section 110(d) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

On October 7, 1991, the State published an initial notice soliciting public comment on its proposed plan, and on October 25, 1991, the State published notice that a public hearing would be held by the MPCA Board on November 26, 1991, to discuss this plan. Notice of a public hearing before the MPCA Board to discuss amendments to these orders was mailed to interested parties on [date], and the public hearing was held August 25, 1992. Thus, the State's submittal satisfies the requirements of sections 110(a)(2), 110(d), and 172(c)(7).

Section 172(c)(8) is irrelevant here, because Minnesota did not apply to use equivalent analysis procedures as authorized by this paragraph.

A final requirement in section 172(c) is contained in section 172(c)(9), mandating adoption of contingency measures. See generally 57 FR 13543–44. These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of an area's control strategy. These measures must take effect without further action by the State or USEPA, upon a determination by USEPA that the area has failed to make RFP or attain the particulate matter NAAQS by the applicable statutory deadline.

The amended administrative orders submitted by the State include contingency measures for every facility. These contingency measures in general are to be implemented "immediately following formal determination and notification of [the failure to attain the standard by the attainment deadline] by the MPCA or the EPA." Thus, the State's contingency measures will satisfy the mandate of Section 172(c)(9) as interpreted by USEPA that these measures become enforceable without further legislative or rulemaking action by either the State or USEPA (see 57 FR 13543).

A further issue relating to contingency measures is whether an adequate quantity of contingent control is provided. USEPA guidance on this issue is contained in a August 20, 1991 memorandum from Fred H. Renner, Jr., Acting Chief, SO_2/Particulate Matter Programs Branch. This guidance recommends that contingent emissions reductions "be approximately equal to the emissions reductions necessary to demonstrate [reasonable further progress] for one year," which in this case would be approximately 25 percent of the real emission reductions provided by the plan. The State did not attempt to quantify the reductions associated with the contingency measures, and in many cases (e.g. for storage pile work practice requirements) it is unclear what quantity of real emissions reductions if any is required by the SIP. Also complicating a quantitative review is the fact that some facilities are subject to more stringent sets of measures if the standard is violated by more than 10 percent than if the standard is violated by less than 10 percent. Nevertheless, a review of the measures submitted by the State suggests that USEPA's guidance on the quantity of contingency measures is satisfied. A typical plan is for the Shiely Company, for which the mandatory (noncontingent) control measures include watering unpaved roadways at .03 gallons per square foot along with selected storage pile work practice requirements, and for which the contingency plan requires watering at .06 gallons per square foot. The only facility required to achieve real emission reductions from a stack source is North Star Steel. For this source, a mandatory (noncontingent) control measure is installation of a second baghouse and partial roof monitor closure, while the contingency plan requires upgrading an existing baghouse and improving control efficiency for another stack. Consequently, USEPA believes that the State's submittal provides an adequate quantity of contingent emission reductions, and, more generally, fully satisfies the contingency measure requirements of section 172(c)(9).

IV. Today's Action

This notice has described a review of Minnesota's particulate matter nonattainment area plan submittals dated November 26, 1991, August 31, 1992, November 6, 1992, and November 30, 1992. In the submittal of November 6, 1992, the State commits to submit an administrative order for Harvest States Coop which would limit this facility's emissions to its current maximum actual emissions. In response to additional USEPA comments, the November 30, 1992, submittal contained revised administrative orders for North Star Steel Company, Metropolitan Waste Control Commission and the Metropolitan Council, LaFarge Corporation, and Rochester Public Utilities.

USEPA believes that the State plans satisfy the RACM requirement for both the Saint Paul and Rochester areas, that the plan for Rochester provides for attainment, and that the plan for the Saint Paul area will provide for attainment once the State fulfills its commitment to adopt and submit an administrative order for Harvest States Coop. On this basis, USEPA is today proposing to approve the State's plans for the Saint Paul and Rochester nonattainment areas as meeting the requirements of sections 189(a)(1)(B) and 189(a)(1)(C) as well as various paragraphs of section 172(c) (specifically including paragraphs 1, 2, 3, 4, 6, 7, and 8 of this Section). USEPA further proposes to determine pursuant to section 189(e) that secondary particulate matter formed from particulate matter precursors does not contribute significantly to exceedances of the NAAQS. Finally, USEPA proposes to approve Minnesota's contingency plan as meeting the requirements of section 172(c)(9). A separate State submittal is expected to address the permit program requirements specified in section 189(a)(1)(A), section 172(c)(5), and section 173. Such submittal which will be addressed in separate rulemaking. USEPA is proposing full approval of the State's plans for the two particulate matter nonattainment areas as meeting all other requirements of the Act. It should be made clear that USEPA is only proposing to approve the State's plans that have been formally adopted by the State and submitted to USEPA as part of this revision. Any future changes made to the plans by the State are not part of this proposed approval action.

Public comment is solicited on all aspects of USEPA's proposed rulemaking action. Comments received by August 9, 1993, will be considered in the development of USEPA's final rulemaking action.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a

significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements; I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the **Federal Register** on July 1, 1982.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 6, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–14811 Filed 6–24–93; 8:45 a.m.]

BILLING CODE 6560–50–P

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40 CFR Part 81

[OR–33–1–5973–1; FRL–4671–1]

Designation of Areas for Air Quality Planning Purposes: Oregon

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this action, Environmental Protection Agency (EPA) is proposing to redesignate Lakeview, Oregon, from unclassifiable to a moderate nonattainment for PM–10 (particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers). This action is in accordance with section 107(d)(3) of the Clean Air Act as amended in 1990. The Governor of the State of Oregon has requested redesignation of Lakeview, Oregon, citing monitored exceedances of the PM–10 National Ambient Air Quality Standards (NAAQS) which indicate that the area is in violation of the PM–10 NAAQS.

DATES: Comments on this proposed action must be received in writing by July 26, 1993.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, United States Environmental Protection Agency, Air Program Development Section (AT–082), Air and Radiation Branch, 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's request and other information supporting this proposed action are available for inspection during normal business hours at the following location: United States Environmental Protection Agency, Air and Radiation Branch, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and State of Oregon Department of Environmental Quality, 811 SW. Sixth Avenue, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: Rindy Ramos, Air Program Development Section (AT–082), Air and Radiation Branch, United States Environmental Protection Agency, Region 10, Seattle, Washington 98101, (206) 553–6510.

SUPPLEMENTARY INFORMATION: On July 1, 1987, EPA revised the NAAQS for particulate matter (52 FR 24634), replacing total suspended particulates as the indicator for particulate matter with a new indicator called PM–10 that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. At the same time, EPA set forth regulations for implementing the revised particulate matter standards and announced EPA's State implementation plan (SIP) development policy elaborating PM–10 control strategies necessary to assure attainment and maintenance of the PM–10 NAAQS (see generally 52 FR 24672).

The 24-hour PM–10 NAAQS is 150 micrograms per cubic meter ($\mu g/m^3$). The standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one (see 40 CFR section 50.6(a)). The annual PM–10 NAAQS is 50 $\mu g/m^3$ and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu g/m^3$ (see 40 CFR 50.6(b)). Conversely, an area is not in attainment with the 24-hour PM–10 NAAQS if the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is greater than one. Additionally, an area is not in attainment with the annual PM–10 NAAQS if the expected annual arithmetic mean concentration is greater than 50 $\mu g/m^3$.

I. Background

On December 29, 1992, the Governor of the State of Oregon submitted a letter notifying EPA that the monitoring site in the City of Lakeview, Oregon had recorded an exceedance of the 24-hour PM–10 NAAQS during calendar year 1992. Because the area had recorded three exceedances of the PM–10 NAAQS in calendar year 1991, this fourth exceedance in 1992 resulted in the expected number of days per calendar year to be greater than one indicating that the area is in violation of the PM–10 NAAQS. At the same time, the Governor of the State of Oregon requested that Lakeview, Oregon be redesignated from "unclassifiable" for PM–10 to "nonattainment".

Based on a study of wintertime PM–10 levels in Lakeview, conducted by the Oregon Department of Environmental Quality, the Governor has requested the Lakeview Urban Growth Boundary (UGB) be used to define the boundary of the nonattainment area. EPA is proposing to accept Oregon's request.

II. Significance of Today's Action

Areas designated as nonattainment are subject to the applicable requirements of part D, Title I of the Act. For example, if in taking final action on this notice EPA ultimately redesignates any area in Oregon as nonattainment for PM–10, at that time the area will also be classified as moderate by operation of law. See section 188(a) of the Act. Within 18 months of the designation, the State would therefore be required to submit to EPA an implementation plan for the area containing, among other things, the following requirements: (1) Provisions to assure that reasonably available control measures (including reasonably available control technology) are implemented within four years of the redesignation, (2) a permit program meeting the requirements of section 173 governing the construction and operation of new and modified major stationary sources of PM–10, and (3) either a demonstration (including air quality modeling) that the plan will provide for attainment of the PM–10 NAAQS as expeditiously as practicable, but no later than the end of the sixth calendar year after the area's designation as nonattainment, or a demonstration that attainment by such date is impracticable. See, e.g., sections

188(c), 189(a) & 172(c) of the Act. EPA has issued detailed guidance on the statutory requirements applicable to moderate PM–10 nonattainment areas. See 57 FR 13498 (April 16, 1992).

If EPA ultimately redesignates any area in Oregon as nonattainment in taking final action on this notice, EPA will establish a date by which the State must submit the contingency measures required by section 172(c)(9) of the Act. Section 172(b) provides that such date shall not be later than three years from the date of the nonattainment designation. EPA believes that 18 months provides a reasonable amount of time for the development of contingency measures. Thus, if EPA finalizes a moderate nonattainment designation for this area, EPA will very likely establish a schedule requiring the submittal of contingency measures with the other Part D requirements described above—within 18 months from such designation.

III. Request for Public Comments

EPA is proposing that the area within the Urban Growth Boundary of Lakeview, Oregon, be redesignated from unclassifiable to nonattainment for PM–10. Public comments should be submitted to EPA at the address identified above by July 26, 1993.

IV. Administrative Review

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to nonattainment under section 107(d)(3) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. To the extent that the State must adopt new regulations, based on an area's nonattainment status, EPA will review the effect those actions have on small entities at the time the State submits those regulations. The Administrator certifies that the approval of the redesignation action proposed today will not have a significant economic impact on a substantial number of small entities.

This action has been classified as a table 2 action under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for table 2 and 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7407, 7501–7515, 7601.

Dated: June 16, 1993.

Gerald A. Emison,

Acting Regional Administrator.

[FR Doc. 93–15017 Filed 6–24–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 152

[OPP–250092; FRL–4629–6]

Exemption of Natural Cedar Pesticides from Requirements of the Federal Insecticide, Fungicide, and Rodenticide Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of the Environmental Protection Agency (EPA) has forwarded to the Secretary of Agriculture a proposed rule under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The proposal would exempt certain natural cedar pesticides from the requirements of FIFRA. This notification to the Secretary of Agriculture is required by FIFRA section 25(a)(2).

FOR FURTHER INFORMATION CONTACT: By mail: Richard F. Mountfort, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 713, CM #2, 1921 Jefferson Davis Highway, Arlington. VA 22202, 703–305–5446.

SUPPLEMENTARY INFORMATION: Section 25(a)(2) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed rule at least 60 days before signing the proposal for publication in the **Federal Register**. FIFRA also provides that the Adminstrator may, by agreement with the Secretary, modify or waive the time requirements of the notification. This notice announces that the Administrator of the EPA has forwarded to the Secretary of Agriculture, a proposed rule that would exempt certain natural cedar pesticides from the requirements of FIFRA, and has requested that the Secretary waive the required review. This notice is required by FIFRA section 25(a)(2).

Dated: June 18, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–15020 Filed 6–24–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 87

[GEN Docket No. 90–56; FCC 93–255]

Mobile-Satellite Service in the 1530–1544 and 1626.5–1645.5 MHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Further Notice of Proposed Rule Making proposes to amend the Table of Frequency Allocations, § 2.106 of the Commission's Rules, to reallocate the 1525–1530 MHz band to the mobile-satellite service (MSS). This action, if finalized, would enhance the efficiency of future MSS operations in these bands and implement changes made at the 1992 World Administrative Radio Conference (WARC–92).

DATES: Comments must be filed on or before September 8, 1993, and reply comments on or before October 8, 1993.

ADDRESSES: Federal Communications Commission, 1919 M St. NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 653–8114.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rule Making in GEN Docket No. 90–56 (Notice), adopted May 13, 1993, and released June 11, 1993. The complete text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this Notice also may be purchased from the Commission's

duplication contractor, the International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Further Notice of Proposed Rule Making

1. This Notice proposes to reallocate the 1525–1530 MHz band to the mobile-satellite service (MSS). This proposed reallocation would enhance the efficiency of future MSS operations in the adjacent bands by equalizing the amount of spectrum available for uplink and downlink communications and is consistent with and would implement decisions made at the 1992 World Administrative Radio Conference (WARC–92). Based on the need demonstrated by the record for voice and data transmission services, we tentatively conclude that providing MSS this additional spectrum will help make available to the American public additional communications services at less cost than currently available.

2. Currently this spectrum is part of the 1435–1530 MHz band allocated to aeronautical telemetering on a primary basis. We do not believe it technically feasible for aeronautical telemetering and MSS to operate in the 1525–1530 MHz band on a co-primary basis, and therefore propose to reallocate the 1525–1530 MHz band on a primary basis to MSS and on a secondary basis to aeronautical telemetering without grandfathering existing users. We seek comment on this proposal.

Initial Regulatory Flexibility Analysis Statement

3. Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds as follows. This rule making proceeding is initiated to obtain comment regarding the proposed allocation of an additional 5 megahertz of spectrum to the MSS. The objective of this proposal is to provide the additional spectrum needed to balance the space-to-Earth segment with the Earth-to-space segment. The proposed action is authorized by sections 4(i), 7(a), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157(a), 303(f), 303(g), and 303(r). This proposal may provide new opportunities for radio manufacturers and suppliers of radio equipment, some of which may be small businesses, to develop and sell new equipment. We are unable to quantify other potential effects on small entities. We invite specific comments on this point. There are no reporting, record keeping, or other compliance requirements. There are no federal rules that overlap, duplicate, or conflict with this rule. There are no significant alternatives.

4. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, 1.1206(a).

5. This action is taken pursuant to sections 4(i), 7(a), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157(a), 303(f), 303(g), and 303(r).

6. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before September 8, 1993, and reply comments on or before October 8, 1993. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

List of Subjects

47 CFR Part 2

Frequency Allocation, General Rules and regulations, Radio.

47 CFR Part 87

Aviation, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–14989 Filed 6–24–93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 19

[GC Docket No. 93–153; FCC 93–274]

Conflict of Interest

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is seeking implementation of the provisions of the Telecommunications Authorizations Act of 1992, which created a new section 4(g)(3) of the Communications Act that authorizes the Commission to accept unconditional gifts, donations and bequests in furtherance of its functions. Section 4(g)(3) also directs the Commission to promulgate implementing regulations that "include provisions to preclude the acceptance of any gift, bequest or donation that would create a conflict of interest or the appearance of a conflict of interest." 47 U.S.C. 154(g)(3)(D). The reason for this action is to obtain public comment on what type of regulation will best satisfy the congressional mandate to preclude real and apparent conflicts of interest, while ensuring maximum use of the statutory authority, given ongoing Commission budgetary constraints.

DATES: Comments must be submitted on or before August 24, 1993 and Reply Comments are due on or before October 23, 1993.

ADDRESSES: Comments and Reply Comments may be mailed to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon Kelley, Office of General Counsel, Federal Communications Commission (202) 632–6990.

SUPPLEMENTARY INFORMATION: 1. This is a summary of the Notice of Proposed Rule Making in GC Docket No. 93–153, adopted May 26, 1993, and released June 21, 1993. The full text of this document is available for inspection and copying, Monday through Friday, 9 a.m. to 4:30 p.m. in the FCC Dockets Reference Room (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 2100 M Street, NW., Suite 140, Washington, DC 20037.

2. The purpose of this NPRM is to propose regulations to implement the conflict of interest restrictions required in section 4(g)(3). In order to develop implementing regulations, the Commission has looked for guidance to the policies of other agencies that have statutory gift acceptance authority, the provisions of the new government-wide standards of employee conduct and General Services Administration regulations implementing agency acceptance of travel reimbursement. Members of the public are requested to comment on the proposals set forth herein and are encouraged to submit alternative proposals. Comment is also sought on Commission policies and procedures for reporting any gifts,

donations or bequests under this new statutory authority.

3. Apart from new section 4(g)(3), it appears that no other agency's gift acceptance statute contains conflict of interest limitations. Several of the Federal entities with such authority have themselves imposed conflict of interest restrictions on their gift and bequest authority. From reviewing other agency policies, it appears that other agencies do not prohibit entirely the agency's acceptance of gifts from regulated entities but use a variety of mechanisms and factors in implementing conflict of interest requirements.

4. The new OGE rules governing gifts to individual employees do not apply to any gifts to the Commission that are accepted under section 4(g)(3), but the Commission looked to their standards and principles for guidance. Beyond guarding against actual conflicts of interest, these requirements seek to preserve public confidence in the integrity of government actions by avoiding even the appearance that government employees, irrespective of their actual impartiality, may have been influenced by personal gifts to take actions that favor particular persons or organizations. Although these regulations generally bar individual employees' acceptance of gifts from regulated entities, the rules contain exceptions that permit gift acceptance where the agency itself has an interest in the employee's acceptance of the gift and that interest outweighs any appearance of a conflict of interest.

5. Finally, the General Services Administration (GSA) recently issued new regulations to implement 31 U.S.C. 1353, which permits government agencies to accept payment from non-Federal sources for official travel and other expenses. The GSA regulations, like the agency standards surveyed above, do not impose a blanket ban on travel payments from regulated entities. Rather, the rules require case-by-case analysis and specify relevant considerations to guide the agency's determinations.

Proposals

6. Section 4(g)(3), unlike some agency gift acceptance statutes, expressly limits the Commission's gift acceptance authority to gifts that are "unconditional." This statutory restriction effectively precludes gifts that are made contingent on official action. To guard against any potential that official action could be influenced by gifts, it is therefore critical to ensure that the section 4(g)(3) prohibition on conditional gifts is carefully and scrupulously observed.

7. One means of avoiding any possible conflicts of interest or "appearance" concerns would be to preclude altogether gifts that are made by Commission regulatees and persons who have an interest in the outcome of Commission decisions, and we seek comment on this proposal. However adopting, such restrictive regulations would greatly reduce the usefulness of the Commission's gift acceptance authority, which was intended as a revenue-enhancing measure. Also, gifts to agencies do not necessarily involve the same type or degree of conflicts or appearance concerns as when personal gifts are made to employees, the area in which most traditional conflict of interest regulation has focused. Further, as noted, even in the areas covered by existing conflict of interest regulations, "hard and fast" rules are not applied, especially when appearance concerns are balanced against competing governmental interests. We therefore also seek comment on proposed regulations that are more flexible than imposing an absolute bar on the Commission's receipt of gifts from regulated entities.

8. In considering alternative approaches, we have proposed various regulatory mechanisms that fall into three general classes. First, we propose structural approaches and certain absolute prohibitions designed to avoid both conflicts of interest and appearance concerns. We propose to insulate agency officials and programmatic responsibilities, insofar as possible, from involvement in determinations regarding gift acceptance or discussions with potential donors regarding gifts. We thus propose requiring potential donors and Commission employees who receive gift overtures to refer such matters to specified agency officials such as the Commission's designated agency ethics official or to management officials with no regulatory or policy making responsibilities. We also propose an absolute bar on agency solicitation of gifts from regulated entities and others identified as prohibited sources under the new OGE standards of conduct. We would in addition require that all monetary gifts be made by check payable to the agency. Further, because we think that conflicts of interest and appearance problems may be greatest when the gifts made to the agency appear to ensure more to the personal benefit of employees, we seek comment on whether certain types of gifts should be prohibited altogether, *e.g.*, food and drink which would continue to be governed by the OGE standards of conduct or other independent authority. We also propose not to accept under section 4(g)(3) gifts of travel expenses for attendance at meetings sponsored or co-sponsored by a non-government source. Such employee travel expenses would continue to be accepted pursuant to other statutory provisions, such as the Government Employees Training Act, 5 U.S.C. 4111 or section 4(g)(2) of the Communications Act.

9. Second, we propose the imposition of mandatory factors that agency officials must consider in determining whether conflicts or appearances problems may exist. Where gifts are offered by a regulated entity, we would require officials making conflict of interest determinations to evaluate at the outset the extent to which benefits of the gift might accrue to individual employees. If the gift does benefit an individual employee, agency officials should consider whether that employee is responsible for matters affecting the potential donor that are currently pending before the agency and the significance of the employee's role in such matters. Whether or not the proposed gift benefits employees personally, we also propose to consider: The nature and sensitivity of any matters pending at the Commission affecting the regulated source and the timing of the gift, the value of the gift, and the frequency of gifts made by a particular donor. Commenters may also want to address whether it might be advisable to impose limitations on the value and frequency of gifts accepted from individual donors. Finally, we propose that donors be required to supply a written statement, which will be made publicly available, specifying the reason for the gift, and how the donor expects to benefit and to sign a verification that the gift is unconditional and not contingent on any promise or expectation that the agency's receipt of the gift will benefit the donor in any regulatory manner.

10. We propose also to adopt public disclosure and reporting requirements that are intended to minimize or eliminate appearance problems. We propose to keep a detailed record of all gifts and to make the following information publicly available concerning gifts that are accepted: The identity of the source, a description of the gift, the gift's value, documentation concerning the purpose of the gift, and a verification from the donor that the gift is unconditional. Moreover, we seek comment as to whether this information should be published annually in the **Federal Register** or in the Commission's Annual Report to Congress. Finally, we

seek comment on whether to allow a specified period of public notice before accepting gifts from prohibited sources that have a high monetary value. We would expect that aspects of all three of these approaches might be used in any final agency regulation.

11. Pursuant to the applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 24, 1993 and reply comments on or before October 23, 1993. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must submit an original and four copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (room 239), of the Federal Communications Commission.

12. This Notice of Proposed Rulemaking is a non-restricted notice and comment proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

13. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because, if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities as defined by section 601(3) of the Regulatory Flexibility Act. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 stat. 1164, 5 U.S.C. section 601, *et seq.* (1981).

14. Authority to conduct this inquiry is given in sections 4(g)(3), 4(i), 4(j), 303(r) and 403 of the Communications Act, 5 U.S.C. 154(g)(3), (i), (j), 303(r), and 403.

List of Subjects in 47 CFR Part 19

Conflict of Interests.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–14831 Filed 6–24–93; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 58, No. 121
Friday, June 25, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Agency Information Collection Activities Under OMB Review

AGENCY: ACTION.

ACTION: Information Collection Request Submitted to the Office of Management and Budget (OMB) for Review.

SUMMARY: This notice provides information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency, covered under the Paperwork Reduction ACT (44 U.S.C. chapter 35), currently under review by OMB. ACTION is requesting emergency processing by OMB with final action by July 19, 1993 so that the approved form can be used when projects begin to close at the end of July, 1993.

DATES: OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements received within 14 days from the date of publication.

ADDRESSES: Send comments to both—

Willard L. Hoing, Clearance Officer, ACTION, 1100 Vermont Ave., NW., Washington, DC 20525, (202) 606–5245.

Steve Semenuk, Desk Officer for ACTION, Office of Management and Budget, 3002 New Executive Office Bldg., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Office of ACTION Issuing Proposal

Office of Policy Research and Evaluation/Program Analysis and Evaluation Division.

Title of Forms: VISTA Summer Associates Program Supervisor Evaluation Questionnaire.

Need and Use: ACTION's legislation requires it to evaluate its programs every three years. This form is needed to conduct an evaluation of the VISTA Summer Associates program. Information gathered in the evaluation will be used to examine the program in the following areas: success in working with low-income communities, what supports a successful program, and benefits accruing to low-income communities. The information will be used to make changes in next year's program.

Type of Request: New request.

Respondent's Obligation To Reply: Voluntary.

Frequency of Collection: One time only.

Estimated Number of Responses: 165.

Average Burden Hours Per Response: 0.42 hours.

Estimated Annual Reporting or Disclosure Burden: 70 hours.

Regulatory Authority: 42 U.S.C. 5056 (a).

Dated: June 18, 1993.

Gary Kowalczyk,

Acting Director, ACTION.

[FR Doc. 93–14965 Filed 6–24–93; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Forest Service

Hebron Escarpment Heli, Tank, and Trapper Salvage Timber Sales, Klamath National Forest; Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Hebron Escarpment Heli; Tank, and Trapper salvage timber sale decisions, Goosenest Ranger District, Klamath National Forest.

SUMMARY: The Forest Service is exempting from Appeal the Hebron Escarpment Heli, Tank, and Trapper Salvage Timber Sale Decisions on the Goosenest Ranger District. These environmental documents are being prepared in response to the severe timber mortality caused by drought and related insect infestation. The Hebron Escarpment Heli Salvage analysis area is located 5 miles southwest of Macdoel, CA. The Tank Salvage analysis area is located 10 miles east of the Deer Mt. Road and Highway 97 intersection. The Trapper Salvage analysis area is located 25 miles south of Macdoel, CA.

The Goosenest Ranger District is proposing to harvest insect salvage timber as follows: On the Hebron Escarpment Heli Salvage Timber Sale, approximately 800 thousand board feet (MBF) by helicopter on 300 acres of the 2,000 acre analysis area; on the Tank Salvage Timber Sale, approximately 250 MBF by tractor on 175 acres of the 500 acre analysis area; and, on the Trapper Salvage Timber Sale, approximately 250 MBF by tractor on 300 acres of the 2,500 acre analysis area. No new road construction or road reconstruction will be done.

The recently ended drought caused a high degree of stress within the trees, which reduced their natural defense mechanisms and weakened them to the extent that they became predisposed to attack by bark beetles. Trees killed by insect attack deteriorate rapidly. This is particularly true of fir and pine trees in the lower elevations of the analysis areas. Although the winter of 1992–93 provided ample precipitation to end the drought, much higher than normal levels of tree mortality are present throughout the Klamath National Forest as a result of six consecutive years of below normal precipitation.

Prompt removal of the dead and dying timber minimizes value and volume loss. Reduction in the value of the timber could result in the projects not being implemented, particularly the Hebron Escarpment Heli Sale due to the relatively high costs associated with helicopter logging and the relatively low value of the dead trees. Excessive numbers of dead trees produce heavy fuel concentrations, which makes wildfire control extremely difficult.

The decisions for the proposed projects are scheduled to be issued in June, 1993. Implementation of the projects will occur by July, 1993, when the timber will be offered for sale. Harvest is expected to begin immediately after award of the timber sales.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decisions relating to the harvest and restoration of lands within the Hebron Escarpment Heli, Tank, and Trapper Salvage Timber Sales on the Goosenest Ranger District, Klamath National Forest.

EFFECTIVE DATE: This decision is effective June 25, 1993.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Forest Management Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San

Francisco, CA 94111, (415) 705–2684, or to Barbara Holder, Forest Supervisor, Klamath National Forest, 1312 Fairlane Road, Yreka, CA 96097, (916) 842–6131.

SUPPLEMENTARY INFORMATION: The Klamath National Forest has an ongoing public involvement program for all proposed timber sales. The public is encouraged to participate in identifying the issues and concerns for each project. The Goosenest Ranger District conducted public scoping on their District wide salvage program. The project files and related maps are available for public review at the Goosenest Ranger District Office, 37805 Highway 97, Macdoel, CA 96058.

The Hebron Escarpment Heli Salvage involves approximately 2,000 acres, within which 300 acres would be directly affected by harvest operations producing about 800 MBF of salvage timber valued at an estimated $160,000. The Tank Salvage involves approximately 500 acres, within which 175 acres would be directly affected by harvest operations producing about 250 MBF of salvage timber valued at an estimated $50,000. The Trapper Salvage involves approximately 2,500 acres, within which 300 acres would be directly affected by harvest operations producing about 250 MBF of salvage timber valued at an estimated $50,000. The stated values represent value to the government, and do not include the many jobs and benefits that are realized in related service, supply, and construction industries. Siskiyou County will share 25 percent of the selling value for any timber that is salvaged in a commercial timber sale. Rehabilitation and restoration measures necessary for watershed protection, erosion prevention, and fuels reduction will be implemented.

These proposals are not expected to adversely affect any furbearer habitat or any of the known pairs of northern spotted owls. Biological evaluations along with assessments are being prepared for vertebrate, and plant species, and appropriate mitigation measures will be followed in the implementation of the proposed projects. No wild and scenic rivers, wetlands, wilderness areas, roadless areas, or threatened or endangered species are within the proposed project areas.

Dated: June 16, 1993.

Dale N. Bosworth,

Deputy Regional Forester.

[FR Doc. 93–14971 Filed 6–24–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Statement of Financial Interests for Members and Executive Directors of Regional Fishery Management Councils.

Agency Form Number: NOAA Form 88–195.

Number: OMB Number: 0648–0192.

Type of Request: Reinstatement and revision of a previously approved collection.

Burden: 122 hours with 209 respondents and an average response time of 35 minutes.

Needs and Uses: The Magnuson Fishery Conservation and Management Act requires disclosure of financial interests in any harvesting, processing, or marketing activity by nominees for the position of Executive Director and membership on Fishery Management Councils. The collection is being modified to require annual updates of this information. The information will be made available for public inspection.

Affected Public: Individuals.

Frequency: Annually and On Occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ron Minsk, (202) 395–3084.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Ron Minsk, OMB Desk Officer, Room 3019, New Executive Office Building, Washington, DC 20503.

Dated: June 22, 1993.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 93–15035 Filed 6–24–93; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[A–588–817]

Active Matrix Liquid Crystal High Information Content Flat Panel Displays and Display Glass Therefor From Japan: Final Results of Changed Circumstances Administrative Review, Revocation of the Order and Termination of Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review, revocation of the order, and termination of administrative review.

EFFECTIVE DATE: June 25, 1993.

FOR FURTHER INFORMATION CONTACT: Carlo Cavagna or Michael Diminich, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

List of Abbreviations

Adastra=Adastra Systems Corporation
ADMA=Advanced Display Manufacturers of America (not including Magnascreen and OIS)
AMA=Active Matrix Associates
Apple=Apple Computer, Inc.
AT&T=AT&T Corporation
Compaq=Compaq Computer Corporation
Dukane=Dukane Corporation
Guardian=Guardian Industries Corporation
Hitachi=Hitachi, Ltd.
Honeywell=Honeywell, Inc.
Hosiden=Hosiden Corporation
IBM=International Business Machines Corporation
In Focus=In Focus Systems, Inc.
Matsushita=Matsushita Electric Industrial Co., Ltd.
Micron=Micron Display Technologies, Inc.
Mitsui=Mitsui Corporation and Mitsui Comtek
NEC=NEC Corporation
nView=nView Corporation
OIS=OIS Optical Imaging Systems, Inc.
Planar=Planar Systems, Inc.
Rockwell=Rockwell International Corporation
Seiko Epson=Seiko Epson Corporation
Sharp=Sharp Corporation
Standish=Standish Industries, Inc.
Sun=Sun Microsystems Computer Corporation
Tektronix=Tektronix, Inc.
Toshiba=Toshiba Corporation
UCE=UCE, Inc.

Background

On September 4, 1991, the Department of Commerce (the Department) published in the Federal

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Register (56 FR 43741) an antidumping duty order on active matrix liquid crystal high information content flat panel displays and display glass therefor from Japan (the order). On November 3, 1992, Guardian, on behalf of OIS, one of the petitioners in the original investigation, submitted a request for a changed circumstances review and revocation of the order. Guardian is the controlling shareholder of OIS.

On December 11, 1992, the Department published in the Federal Register a notice initiating a changed circumstances review to determine whether to revoke the order. (Active Matrix Liquid Crystal High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Initiation of Changed Circumstances Antidumping Administrative Review and Consideration of Revocation of the Antidumping Duty Order, 57 FR 58791.) We found that OIS's affirmative statement of no interest constitutes good cause for conducting a changed circumstances review. Interested parties were given thirty days to comment on the review and the grounds for revocation, and an additional seven days to submit rebuttal comments.

On January 19, 1993, we published the preliminary results of the changed circumstances review and notice of intent to revoke the order. (Active Matrix Liquid Crystal High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review and Intent to Revoke the Order, 58 FR 4979). We requested written comments on the preliminary results and intent to revoke. Interested parties were given 30 days to submit comments, and an additional seven days to submit rebuttal comments. No hearing was requested.

On March 12, 1993, we requested additional information concerning active matrix liquid crystal flat panel display ("AMLCD") production from the following U.S. companies that claimed to be members of the domestic display industry: ADMA, AMA, OIS, Planar, Tektronix, and UCE. We also requested information from the following additional companies identified by ADMA as potential U.S. producers of AMLCDs: AT&T, Micron, Xerox, Kopin, Motorola/Motif, and the David Sarnoff Research Center. We received responses from AT&T, Micron, AMA, Planar, and OIS. In addition, we received a response from Standish.

Scope of the Review

Imports covered by this review are active matrix liquid crystal high information content flat panel displays and display glass therefor. Active matrix flat panel displays are large area, matrix addressed displays, no greater than four inches in depth, with a picture element (pixel) count of 120,000 or greater, whether complete or incomplete, assembled or unassembled. Active matrix flat panel displays utilize a thin-film transistor array to activate liquid crystal at individual pixel locations. Included are monochromatic, limited color, and full color displays used to display text, graphics, and video. Active matrix flat panel display glass, whether or not integrated with additional components, exclusively dedicated to and designed for use in active matrix flat panel displays is defined as processed glass substrates that incorporate patterned row, column, or both types of electrodes, and also incorporate a material that reacts to a change in voltage (*i.e.*, liquid crystal) and contact pads for interconnecting drive electronics.

Standing

Under 19 CFR section 353.25(d)(1)(i), the Department may revoke an order if the order is no longer of interest to domestic "interested parties." The term "interested parties" is defined, in relevant part, as "a producer in the United States of the like product or seller (other than retail) in the United States of the like product produced in the United States." 19 CFR section 353.2(k)(3). We have defined the "like product" in this case as AMLCDs (*see* Active Matrix Liquid Crystal High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Recision of Investigation and Partial Dismissal, 56 FR 32376, 32381, July 16, 1991 (*Final Determination*). Therefore, for purposes of this review, the relevant domestic industry is composed of producers of AMLCDs (*see* DOC position on comment 2 for a detailed discussion of the definition of producer). The following section gives the position taken by respondent companies with respect to revocation and provides an analysis of the standing of those companies claiming to be members of the domestic industry.

OIS Optical Imaging Systems. OIS supports revocation of the order. OIS states that AMLCDs are the only types of displays it produces, and that, to the best of its knowledge, it is the only domestic manufacturer in continuous production of AMLCDs. OIS presented evidence of both its current AMLCD production capacity and actual production for the years 1991–1993. In addition; OIS reported production of AMLCD prototypes intended for commercial production (*see DOC Position* in *Comment 2*). Based on this evidence of OIS's AMLCD production, we determine that OIS is an interested party within the meaning of 19 CFR 353.25(d)(1)(i).

AT&T. AT&T supports revocation of the order. AT&T is currently not producing any flat panel displays. The company has recently formed a research and development (R&D) program, which it anticipates will result in new display technology and prototype development. Further, AT&T is considering the feasibility of producing AMLCDs in the future. However, AT&T did not indicate any concrete steps toward AMLCD production. Because AT&T does not produce AMLCDs, and because the activities undertaken by AT&T do not constitute substantial progress toward AMLCD production, we determine that AT&T is not an interested party within the meaning of 19 CFR 353.25(d)(1)(i).

Active Matrix Associates. AMA, a privately-held consulting firm, opposes revocation of the order. AMA does not currently have any AMLCD production capacity; its only AMLCD activities are R&D and prototype design.

R&D activities alone are not indicative of a substantial commitment toward future production. Although AMA states that it has taken some steps toward establishing AMLCD production capacity, those steps are generally in the nature of discussions, negotiations and plans, rather than completed actions. Thus, any discussion of future production is purely speculative. Based on these facts, we find that AMA does not produce AMLCDs, and that the activities undertaken by AMA do not constitute substantial progress toward AMLCD production. Therefore, we determine that AMA is not an interested party within the meaning of 19 CFR 353.25(d)(1)(i).

Micron Display Technology. Micron opposes revocation of the order. With respect to AMLCD production, Micron states that "[AMLCDs] are being researched, but not developed." (April 19, 1993 submission, at 4.) The company's efforts are "mainly directed towards identifying areas where FED has competitive advantages over [AMLCDs]. . . ." (*Id.*) Micron further states that it has "no prominent plan to manufacture" active matrix flat panel displays, only "FED based flat panel displays." (*Id.*)

Micron states that it is developing one-inch and ten-inch displays based on

FED technology. Micron does not describe FED technology, other than to state that it does not use liquid crystal material. Micron states that the FED products being developed compete directly with AMLCDs in all systems employing flat panel displays. However, the company does not compare the physical characteristics of FED and AMLCDs, or otherwise support its claim that the products would compete with one another.

Micron also states that "[m]uch of the equipment and many of the materials . . . being used to develop the FED's, [and that] will be employed in their manufacture, are a significant part" of the AMLCD industry. (*Id.*) However, Micron does not present any information concerning the other factors employees examined by the Department of analyzing like product issues, such as channels of distribution, customer perception, and price.

Micron's response indicates that production of FED displays remains in the developmental stage. Thus, we cannot determine at this time whether FED displays will fall within the relevant like product definition because such a determination would be based on speculation rather than fact. Furthermore, even assuming *arguendo* that an FED display is a like product, Micron does not currently produce FEDs or FED prototypes, nor has it demonstrated significant progress toward FED production. Its activities are limited solely to R&D, which alone are not indicative of a substantial commitment to future production. For these reasons, we find that Micron is not a producer of the like product and, therefore, it is an interested party within the meaning of 19 CFR 353.25(d)(2)(d)(1)(i).

Planar Systems. Planar opposes revocation of the order. Planar's AMLCD activities involve the pursuit of licensing, joint venture, and partnership agreements with AMLCD manufacturers. The company also has some R&D activities, including a project with Kopin, David Sarnoff Research Center, and Honeywell, which is funded by the Defense Advanced Research Projects Agency (DARPA).

Planar also states that it is working on a new technology called "active matrix EL (AMEL)" which it claims will be used in identical applications as AMLCDs (*Id.* at 3). Planar argues that the two products will be interchangeable, that they are intended to have identical applications, that they will be sold through the same distribution channels, and that they will be comparably priced and perceived similarly by end users. In addition, Planar asserts that the only difference in general physical characteristics will be in the weight of the displays. Finally, Planar contends that while the manufacturing of each particular variety of display will require some unique equipment and processes, all matrix-addressed displays have the same general production processes and require similar manufacturing facilities. Planar plans to start producing AMELs by late 1994.

With regard to AMLCDs, we do not find Planar's limited R&D activities, which constituted less than five percent of all of the company's R&D expenses in the period reported, to constitute significant progress towards AMLCD production. Planar's joint venture and licensing discussions have not yet resulted in a firm commitment to produce AMLCDs. Planar does not claim to have produced any AMLCDs or AMLCD prototypes, or to have a business plan for AMLCD production. None of Planar's plant and equipment is used in the production of AMLCDs, although Planar states that some existing equipment will eventually be modified for use in an AMLCD venture and the "additional equipment will be purchased." (April 8, 1993, at 8.)

With regard to AMLCD displays, this technology is still in the conceptual stages, and there has not yet been substantial progress towards production. Furthermore, at this early stage, it is not possible to determine whether the ultimate product will constitute a "like product," as defined in the Department's final determination (*see* Micron discussion). For these reasons, we determine that Planar is not an interested party within the meaning of 19 CFR 353.25(d)(1)(i).

UCE. UCE opposes revocation of the order. Currently, UCE is developing a passive-matrix flat panel display with an "active," or "adaptive," drive that is projected to be available in twelve to eighteen months. UCE states that the adaptive drive will allow passive-matrix displays to generate performance levels similar to those of AMLCDs and to compete with AMLCDs

However, UCE did not indicate how far the development of the adaptive drive displays has progressed or established whether they fall within the like product definition. Thus, the Department sent UCE the same questionnaire requesting additional information that was sent to all potential AMLCD producers. In response, UCE submitted another letter simply restating its opposition to revocation of the order. The company did not provide the information requested. Therefore, UCE has not shown that it is an interested party within the meaning of 19 CFR 353.25(d)(1)(i).

Standish Industries. Standish states that it would support revocation of the order in conjunction with other governmental initiatives to develop a strong domestic AMLCD industry, such as access to Japanese technology, market expansion, and public sector funding of flat panel display programs. With respect to its AMLCD operations, Standish states that it obtains processed substrates and assembles the substrates and cover plates into working AMLCDs, which it then delivers to the substrate manufacturer. Standish further states that: "[a]ssembly of these displays will move from the research and development lab to production by the end of the third quarter of 1993." (April 9, 1993 submission, at 1–2.)

In addition, Standish states that it has received DARPA contracts "to develop certain manufacturing steps for TFT [thin film transistor] AMLCDs," and that it is a member of a partnership with AT&T and Xerox "which is evaluating establishing an AMLCD manufacturing operation." (*Id.* at 2–3.) Standish also states that it has undertaken R&D and prototyping of AMLCDs and that "assembly will be shifted to production environment later this year." (*Id.* at 2.).

Standish did not report any current AMLCD production or prototype production, or any production capacity, or any plant and equipment for use in AMLCD production. Although the company may be engaged in R&D of manufacturing processes and is "evaluating" establishing a manufacturing operation, these do not constitute a substantial commitment to manufacture. Standish failed to provide any technical description of their assembly operations. Further, the company reported no current AMLCD production capacity or actual production data. Therefore, we determine that the Standish's assembly operations do not constitute AMLCD production. Therefore, Standish has not demonstrated that it is an interested party within the meaning of 19 CFR 353.25(d)(1)(i). With respect to Standish's proposed governmental initiatives, such initiatives are not a part of, or relevant to, the issue at hand. Revocation is the only issue under consideration in this proceeding, and Standish has expressed no position on the issue alone.

Tektronix. On February 24, 1992, Tektronix filed a request for a scope inquiry to determine whether Tektronix's Plasma Addressed Liquid Crystal ("PALC") Display is within the scope of the antidumping duty order.

Using the Department's five criteria for determining whether an order covers a product developed after an antidumping order is issued, Tektronix argued that PALC displays are within the scope of the order. Tektronix asserted that "[t]he only difference between PALC AMLCDs and TFT AMLCDs is the style of the transistor used to do the active addressing: PALC uses gaseous electronics whereas TFTs use semiconductor electronics." (February 24, 1993 submission, at 1.)

Because Tektronix's request for a scope inquiry concerned a product that is being developed and will be produced domestically, we did not initiate a scope inquiry. Tektronix advised the Department that it had requested the scope inquiry because it was interested in participating in this changed circumstances review. Therefore, on March 12, 1992, we sent a letter to Tektronix explaining that its inquiry would be handled in the context of the changed circumstances review. We enclosed a copy of the request for additional information that was sent to all parties that claimed to be members of the domestic AMLCD industry and instructed Tektronix to provide the information requested.

Tektronix did not respond to our request for additional information. Furthermore, Tektronix has not taken a position regarding revocation of the order. Therefore, we find that Tektronix is not an interested party within the meaning of 19 CFR 353.25(d)(1)(i).

Comments

Comment 1: ADMA and some of its members contend that, since the Department's final determination that there are four separate classes or kinds of flat panel displays, flat panel display technology has continued to evolve. They argue that displays based on alternative technologies are being developed that compete directly with the AMLCDs covered by the order. ADMA contends that the original class or kind distinctions based on different display technologies (active matrix liquid crystal, passive matrix liquid crystal, gas plasma and electroluminescence) have lost much of their meaning because many new derivative and hybrid technologies blur those distinctions. For example, ADMA and Planar assert that Planar's active matrix electroluminescent (AMEL) display competes directly with other flat panel display technologies, including AMLCDs. Further, ADMA and Tektronix contend that Tektronix's new PALC technology is virtually identical to AMLCD products in both function and performance, and differs only in the style of transistor used to perform the active addressing.

Therefore, ADMA argues that the Department should reconsider its final determination and find that there is now one single class or kind of merchandise, which encompasses all high information content (HIC) flat panel displays (FPDs), regardless of the technology used to make them.

Apple, IBM, Compaq, Mitsui, Hitachi, Hosiden, Matsushita, NEC, Seiko, Sharp and Toshiba contend that any request that the Department alter its final determination that products covered by the petition constitute four separate classes or kinds of merchandise should be rejected as untimely and inappropriate. Honeywell characterizes ADMA's single class or kind argument as an attempt to relitigate an issue already settled by the Department's final determination of sales at less than fair value. Moreover, Adastra Systems and Dukane argue that other technologies such as electroluminescent and gas plasma displays are not substitutes for the products covered under the scope of the order.

DOC Position: We examined class or kind issues in the original investigation and determined that the petition encompassed four separate classes or kinds of merchandise, one of which is AMLCDs (*see Final Determination*, 56 FR at 32377). The order under review was issued on AMLCDs (*see* High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Antidumping Duty Orders, 56 FR 43741, Sept. 4, 1991). We have already made a final determination on the scope of the order and do not have the authority to recombine the classes or kinds of merchandise.

Comment 2: ADMA argues that the antidumping statute recognizes that U.S. companies at different stages of development can be hurt by unfair trade. The Department should, therefore, include as interested parties those display companies that are in preproduction stages, *i.e.*, the Department should find that the relevant industry consists of all U.S.-based firms involved in any stage of development or production of high information content flat panel displays. ADMA further contends that the Department has full authority to obtain additional information from all potential interested parties that may have an interest in maintaining the order.

ADMA argues that OIS represents only one of many members of the relevant industry, and a request for revocation from one interested party among many is insufficient to warrant revocation. ADMA contends that, in cases of revocation based on lack of interest, the Department typically measures industry support for an order in terms of the industry members' respective shares of domestic production. Moreover, the Department should exercise its discretion to aid an industry rather than an individual company. Therefore, the Department should maintain the order.

Compaq, IBM, Apple, GRiD Systems Corporation, nView, OIS, In Focus Systems, Rockwell, Tandy, Mitsui, Hosiden, Honeywell, Hitachi, Matsushita, NEC, Seiko, Sharp and Toshiba agree with the Department's preliminary determination that the U.S. industry is composed of only one company, OIS, which supports revocation. The statement of no interest from OIS, therefore, constitutes unanimous support for revocation from members of the domestic industry. Just as industry support underlies the merit of an order, lack of industry support provides grounds for revocation.

They argue further that all potential domestic interested parties that may have an interest in maintaining the order have been on notice of the Department's intent to revoke. The companies that expressed opposition to the Department's intent to revoke have not demonstrated that they are domestic interested parties. Therefore, their views are irrelevant and there is no reason for the Department to request additional information from them.

DOC Position: As discussed above in the Standing section, the relevant domestic industry is composed of U.S. producers of AMLCDs. We agree, however, that a company that has taken steps that represent a substantial commitment toward production of the subject merchandise may be deemed to be a domestic "producer" within the meaning of 19 CFR 353.25(d)(1)(i). The statute provides for the protection not only of established industries, but also of nascent domestic industries materially retarded by reason of imports at less than fair value. Section 731(2)(B) of the Act. A corollary to that provision is that nascent domestic producers must fall within the term "producer" as used in the Act and regulations to define domestic interested parties. Section 771(9)(C) of the Act, 19 CFR 353.2(k)(3). Therefore, for purposes of determining which companies are domestic AMLCD "producers," we have looked for evidence of actual production or evidence of a "substantial commitment to commence production," in the latter case drawing from the International Trade Commission's standard for nascent industries. *See Jannette Sheet*

Glass Corp. v. *United States*, 9 CIT 154 (1985); Certain Commuter Airplanes from France, USITC Pub. 1269 (1982); Salmon Gill Fish Netting of Manmade Fibers from Japan, USITC Pub. 1234 (1982). We requested information from companies that claimed to be, or were identified as, members of the domestic industry: ADMA, AMA, AT&T, Kopin, Micron, Motorola/Motif, David Sarnoff Research Center, OIS, Planar, Tektronix, UCE, and Xerox. We received responses from AMA, AT&T, Micron, OIS, and Planar. In addition, we received a response from Standish Industries.

We requested information on AMLCD products currently produced, including prototypes, and substantial steps toward AMLCD production, such as prototype development, securing capital investment, acquisition of plant and equipment an R&D activities. In determining which companies are U.S. AMLCD producers, we have considered both information on current AMLCD production and information on progress taken toward AMLCD production. Based on the information in the responses received, we find that OIS is the only company that produces AMLCDs. We further find that no other company has taken sufficient steps to demonstrate a substantial commitment to establishing AMLCD production. Therefore, we determine that OIS is the only interested party within the meaning of 19 CFR 353.25(1)(i) (*see Standing* discussion above).

Comment 3: OIS, nView, Compaq, IBM, Apple, GriD, Tandy, Dukane, In Focus, Rockwell, Sun Microsystems, and Honeywell contend that the order has injured downstream users of AMLCDs. Production of products using AMLCDs has been forced offshore in order to avoid the duty, resulting in a loss of domestic jobs, tax revenue, expertise and competitiveness. Adastra Systems argues that the effects of the order are particularly harmful to small computer companies, such as itself, that cannot afford to establish offshore facilities to avoid the duty and therefore find themselves unable to compete with larger computer manufacturers.

The supporters of revocation also argue that the antidumping duty order has not been the catalyst for increased interest in developing and manufacturing flat panel displays. To the contrary, the order has impeded the emergence of a domestic FPD industry. It has not created a domestic AMLCD industry where one did not exist. Revocation of the order would allow the repatriation of jobs by U.S. computer manufacturers in order to be located nearer to the domestic market and to their R&D and design facilities.

ADMA and other parties opposed to revocation are concerned that revocation would impede further development of a domestic industry that employs AMLCD technology, its derivatives, and other technologies, to make high information content FPDs. ADMA contends that the supporters of revocation have asked the Department to engage in a balancing test to determine which of two industries is more important. It is ADMA's view that the standard to be applied by the Department is whether even one domestic interested party opposes revocation, and that the national interest is in maintaining in the United States the ability to develop and manufacture high information content FPDs.

DOC Position: Although we understand the concerns expressed by the various parties, the issue at hand is whether the order is no longer of interest to the domestic industry. 19 CFR section 353.25(d)(1)(i). As discussed above, the relevant industry is the U.S. AMLCD industry, and we have determined that only OIS is the U.S. industry. Because the order no longer is of interest to OIS, the requisite condition for revocation is met. Our decision to revoke the order is, therefore, appropriate and in accordance with law.

Comment 4: ADMA argues that, if the Department makes a final determination to revoke the order, revocation should not be retroactive to February 21, 1991. ADMA contends that a retroactive revocation would be contrary to current Department practice and Department regulations. The Department has revoked orders retroactively only in extremely limited circumstances, none of which is present in this case. In those cases where revocation has been retroactive, there was no opposition to the revocation. In the present case, only one among many interested parties has requested revocation. Retroactivity would deny to other domestic interested parties any further relief from the dumped imports.

Hitachi, Hosiden, Matsushita, NEC, Seiko, Sharp and Toshiba and Rockwell argue that, according to the Department's practice, where revocation of an order has been based on a statement of no interest by domestic producers, the revocation covers all unliquidated entries. Consistent with that established practice, revocation should be retroactive to February 21, 1991.

Rockwell cites the Department's decisions with respect to Certain Steel Wire Nails from the People's Republic of China, 52 FR 33463 (Sept. 3, 1987) and Offshore Platform Jackets and Piles from Japan, 52 FR 41604 (Oct. 29, 1987). Both cases were changed circumstances reviews in which petitioners requested revocation of the order, and revocation was applied retroactively to all unliquidated entries.

DOC Position: Section 751(c) of the Act provides that "revocation or termination shall apply with respect to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on and after a date determined by the administering authority." In revocation cases based on lack of interest, it is the Department's practice to apply the revocation to all unliquidated entries that are not subject to final results of an administrative review. *See* Certain Dried Heavy Salted Codfish from Canada, 54 FR 48794 (Nov. 27, 1989); Certain Steel Wire Nails from the People's Republic of China, 52 FR 33463 (Sept. 3, 1987); Offshore Platform Jackets and Piles from Japan, 52 FR 41604 (Oct. 29, 1987).

ADMA's attempt to distinguish past revocation cases of retroactive application is unpersuasive. In the cases cited above, revocation was based on the fact that the order no longer was of interest to the domestic industry. That is precisely the case here. We disagree with ADMA that OIS is just one among many members of the domestic industry. To the contrary, we have determined that OIS is the only U.S. AMLCD producer. The fact that in this case some parties outside the relevant domestic industry oppose revocation is an irrelevant distinction. Therefore, our decision in this case to apply revocation to all unliquidated entries is entirely consistent with our past practice.

Comment 5: ADMA argues that the Department should treat as confidential all information, including the positions on revocation, submitted by companies claiming to be a member of the domestic industry. ADMA states that confidentiality is necessary because U.S. companies would otherwise be reluctant to respond candidly.

DOC Position: A party who submits "factual information" to the Department may request that the Department treat that information as proprietary. 19 CFR 353.32. Proprietary information is defined as "factual information," specifically business information and trade secrets. 19 CFR 353.4(b). In addition, parties may request that the Department not release proprietary information under administrative protective order (APO) upon demonstrating a clear and compelling need to withhold the information. 19 CFR 353.34.

All factual information designated by the submitters as business proprietary

has been accorded proprietary treatment. None of the parties asked the Department not to release information designated as business proprietary under APO. Opinions, such as those expressed concerning revocation, do not constitute "factual information" and, therefore, cannot be accorded business proprietary treatment. Further, none of the submitters asked the Department to treat its opinion on revocation as confidential.

Comment 6: Rockwell challenges the propriety of certain of the rebuttal comments filed by ADMA on February 25, 1993, on the grounds that the comments contained new information. Specifically, Rockwell cited ADMA's inclusion of the request for a scope inquiry filed by Tektronix on February 24, 1993. ADMA counters that the request for a scope inquiry is properly included on the record because an affirmative scope ruling would rebut certain parties' claims made in their case briefs that OIS is the sole interested party with standing in the changed circumstances review.

DOC Position: We have decided to include ADMA's rebuttal comments on the recofd because ADMA's references to the Tektronix scope request were in rebuttal to arguments made by other respondents claiming that OIS is the only member of the domestic AMLCD industry and because we considered Tektronix's request for a scope inquiry in the context of the changed circumstances review.

Final Results of Review, Revocation of Antidumping Duty Order, and Termination of Administrative Review

The affirmative statement of no interest by OIS, the only company found by the Department to be an interested party within the meaning of 19 CFR 353.25(d)(1)(i), constitutes changed circumstances sufficient to warrant revocation of the order. Therefore, the Department is revoking the order on active matrix liquid crystal high information content flat panel displays and display glass therefor from Japan. This revocation applies to all entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after February 21, 1991.

The Department will instruct the Customs Service to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after February 21, 1991. The Department will further instruct the Customs Service to refund with interest any estimated duties collected with respect to entries described above.

As a result of this revocation, the Department is terminating the administrative review covering the period February 21, 1991 through August 30, 1992, which was initiated by the Department on October 22, 1992 (57 FR 48201).

This changed circumstances review, revocation of the antidumping duty order, termination of review, and notice are in accordance with sections 751 (b) and (c) of the Act (19 U.S.C. 1675 (b) and (c)) and sections 353.22(f) 353.25(d) of the Department's regulations.

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15038 Filed 6–24–93; 8:45 am]

BILLING CODE 3510-DS-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with May anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: June 25, 1993.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482–2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with §§ 353.22(a) and 355.22(a) of the Department's regulations, from interested parties, as defined in §§ 353.2(k) and 355.2(i) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements with May anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than May 31, 1994.

Antidumping duty proceedings and firms	Period to be reviewed
Brazil:	
Frozen concentrated orange juice A–351–605	
Branco Peres Citrus, S.A., Citro-Pectina S.A	5/1/92–4/30/93
Japan:	
Gray Portland Cement and Clinker A–588–815	
Onoda Cement Co., Ltd	5/1/92–4/30/93
Portable electric typewriters A–588–087	
Canon, Inc., Nakajima All Co., Ltd., Brother Industries, Ltd., Matsushita Electric Industrial Co., Ltd., Silver Seiko Ltd	5/1/92–4/30/93
Countervailing Duty Proceedings	
Mexico:	
Ceramic tile C–201–003	1/1/92–12/31/92
Peru:	
Cotton yarn C–333–002	1/1/92–12/31/92
Singapore:	
Antifriction bearings (other than tapered roller bearings) and parts thereof C–559–802	1/1/92–12/31/92
Thailand:	
Ball bearings and parts thereof C–549–802	1/1/92–12/31/92

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 353.22(c)(1) and 355.22(c)(1) (1992).

Dated: June 16, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–15036 Filed 6–24–93; 8:45 am]

BILLING CODE 3510-DS-M

Sanctions for Violations of Administrative Protective Order

AGENCY: Import Administration, International Trade Administration.

ACTION: Notice.

SUMMARY: This is a notice of the status of an investigation into charges of violations of administrative protective orders in antidumping and countervailing duty orders.

EFFECTIVE DATE: June 25, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Chief Counsel for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 483–8916.

SUPPLEMENTARY INFORMATION: The International Trade Administration (ITA), United States Department of Commerce, wishes to remind those members of the bar who appear before it in antidumping and countervailing duty proceedings of the extreme importance of protecting the confidentiality of business proprietary information obtained pursuant to administrative protective order (APO) during the course of those proceedings. In order that the gravity with which the ITA views violations of its APOs might be better appreciated, ITA is publishing the following report on recent allegations that the provisions of two ITA APOs have been violated.

An individual employed by a firm included proprietary information in the public version of a submission, which was served on interested parties to the proceeding and placed in the public file at the Department of Commerce for a period of five days. In another case, the same individual served a proprietary document on a counsel to an interested party who was not subject to the APO in the case. Following two investigations by the ITA, this individual was held responsible for these violations of the APO.

In these cases, the individual involved was (1) required to send a letter of apology to counsel for the companies whose information was improperly disclosed; (2) required to submit to the ITA a written copy of the firm's APO handling procedures, together with an outline for an in-house training course for employees of the firm on APO handling procedures; and (3) required to attend a training session conducted by ITA on procedures for protecting proprietary data. The individual also was issued a private reprimand which warned that future violations could be treated more severely.

We consider the sanctions to be appropriate for the following reasons: first, both violations appear to have been inadvertent; second, after having had the violations brought to his attention, the named individual took prompt action to prevent harm to the submitters; third, the named individual cooperated fully with ITA's investigations; and fourth, no apparent harm resulted from the violations.

Serious harm can result from the failure to properly safeguard proprietary information obtained under APO. ITA will continue to investigate vigorously allegations that the provisions of APOs have been faithfully observed, and is prepared to impose sanctions commensurate with the nature of the violations, including letters of reprimand, denial of access to proprietary information, or disbarment from practice before the ITA.

This notice is published pursuant to 19 CFR 354.15(e) of the Department's regulations.

Dated: May 14, 1993.

Timothy J. Hauser,

Acting Under Secretary for International Trade.

[FR Doc. 93–15037 Filed 6–24–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 13, 1993, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan. This review covers 14 manufacturers/exporters and the period April 1, 1991, through March 31, 1992 (eighth review).

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed our results for some of the companies.

EFFECTIVE DATE: June 25, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Heaney or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–4475/5254.

SUPPLEMENTARY INFORMATION:

Background

On January 13, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 4148) the preliminary results of its administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan (49 FR 18336, April 30, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act) and 19 CFR 353.22.

On March 19, 1993, the United States Court of Appeals for the Federal Circuit, in affirming the decision of the Court of International Trade (CIT) in *Zenith Electronics Corporation* v. *United States*, Slip Op. 92–1043, –1044, –1045, –1046, ruled that section 772(d)(1)(C) of the Tariff Act provides for an addition to U.S. price (USP) to account for taxes which the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Tariff Act does not allow a circumstance-of-sale (COS) adjustment to foreign market value (FMV) for difference in taxes. Accordingly, we have changed our practice and will no longer make a COS adjustment. Also, we will no longer calculate a hypothetical tax on the U.S. product, but will add to USP the absolute amount of tax on the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to USP, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to USP.

In addition, we will propose a change in 19 CFR 353.2(f)(2) to provide that we will calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated as described above, by the aggregated USPs net of taxes. This change would result in weighted-average dumping margin rates which are neither inflated nor deflated on account of our methodology of accounting for taxes paid in the home market but rebated or not collected by reason of exportation.

In reviewing our calculations we determined that Action Electronics Company, Ltd., (Action), Proton Electronic Industrial Corporation, Ltd., (Proton), and Tatung Corporation (Tatung) inappropriately based their claim for duty drawback upon the import duties associated with home-

market comparison models. Section 772(d)(1) of the Tariff Act provides in pertinent part that:

(T)he purchase price and the exporter's sales price shall be adjusted by being increased by—

(B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States;

Since the duty drawback claims of Action, Proton, and Tatung were based upon the duties associated with home-market comparison models, and since they failed to provide evidence of duty drawback on U.S. sales, these three respondents were unable to link their claim for duty drawback to the exported merchandise as required by the statute. Accordingly, we disallowed the duty drawback claims of Action, Proton, and Tatung in these final results.

Scope of the Review

Imports covered by this review are shipments of color television receivers (CTVs), except for video monitors, complete or incomplete, from Taiwan. The order covers all CTVs regardless of tariff classification. This merchandise is currently classifiable under item numbers 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00 of the Harmonized Tariff Schedule (HTS). HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers 14 manufacturers/exporters of CTVs, except for video monitors, from Taiwan for the period April 1, 1991, through March 31, 1992 (eighth review).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results as provided by § 353.22(c) of the Department's regulations. We received comments from Zenith Electronics Corporation (Zenith), and Tatung, Proton, and Action (collectively "the respondents").

Comment 1: Zenith contends that the Department neglected to account for home-market commodity tax and import duty as elements of Proton's and Tatung's cost of production (COP). Zenith argues that these cost elements were separately reported by Proton in its cost submission of November 6, 1992, and by Tatung in its cost submission of November 4, 1992, and thus were not included in any of the constituent elements used by the Department to calculate total COP. Zenith claims that duties and taxes are included in Proton's reported sales prices, since no addition for commodity tax was necessary in the calculation of FMV.

Additionally, Zenith argues that because Proton, in its August 7, 1992, and November 6, 1992, submissions, reported inconsistent values for home-market taxes and duties, the Department should use the higher of these values where inconsistencies are apparent.

Department's Position: For both Proton and Tatung we have deducted commodity tax and import duties from the selling price prior to comparison with COP. Where Proton reported inconsistent values for taxes and duties, we used as best information available the higher of the two figures.

Comment 2: Zenith argues that the Department neglected to use Proton's revised direct selling expenses in calculating constructed value (CV). Zenith claims that the Department should recalculate Proton's CV, using the revised values for selling expenses submitted by Proton. Zenith also contends that COS adjustments may only be done provided that they do not reduce general expenses and profit below the statutory minimum.

Department's Position: We agree in part. We have revised Proton's calculation of CV to account for the revised selling expenses reported by Proton. However, we do not agree with Zenith that COS adjustments may only be done provided that they do not reduce general expenses and profit below the statutory minima, and we continue to hold that COS adjustments to CV are not capped by the statutory minimum for general expenses and profit.

Comment 3: The respondents argue that the preliminary results have no basis in law because Zenith, the sole party requesting this review, does not fulfill the standard for being a U.S. "producer" of CTVs. Respondents cite to their submissions of June 11, 1992, and June 29, 1992, in which they argue that Zenith's planned consolidation of its color television final assembly and plastic-cabinet finishing operations in Mexico constitutes *prima facie* evidence that Zenith is no longer a domestic producer and, thus, not an interested party pursuant to § 353.2(k)(3) of the Department's regulations. Accordingly, the respondents argue that the Department should immediately terminate this review.

Department's Position: We disagree. We conducted an analysis of the issues raised in the respondents' June 11, 1992, and June 29, 1992, submissions and concluded that, "since respondents have failed to provide sufficient evidence to call into question Zenith's standing as an interested party, it is not necessary for us to conduct any further analysis in this case." See our memorandum dated July 24, 1992, from Joseph A. Spetrini, Deputy Assistant Secretary for Compliance, to Alan M. Dunn, Assistant Secretary for Import Administration.

Comment 4: The respondents argue that since the Department has a continuing obligation to evaluate the standing of interested parties, information submitted pertaining to the standing issue is by definition timely throughout an entire proceeding. Therefore, respondents conclude that the Department's decision to return certain submissions challenging Zenith's standing on the ground that they are untimely filed is contrary to law.

Respondents assert that the decision by the CIT in *Brother Industries, Ltd.* v. *United States*, 787 F. Supp. 1454 (CIT, 1992) (dismissing respondent's appeal because it had ceased export of subject merchandise and therefore had lost its standing as an "interested party"), and the decision by the Court of Appeals for the Federal Circuit (CAFC) in *Oregon Steel Mills, Inc.* v. *United States*, 862 F.2d 1541 (CAFC 1988) (holding that the Department has a continuing obligation to evaluate the standing of petitioners) oblige the Department to consider information regarding standing at any time during a proceeding.

Department's Position: The Department is not obligated to consider standing at any stage of a proceeding. While the Department recognizes its obligation to consider challenges to standing, orderly procedure, efficiency and the Department's regulations require that such challenges be timely filed.

Respondents cite to *Brother Industries, Ltd.* v. *United States*, 787 F. Supp. 1454, for their claim that, in addition to having standing at the time the review was requested, Zenith must continue to be an interested party throughout the entire administrative review. However, the CIT in the *Brother* decision held only that, for purposes of seeking judicial review of an administrative determination, a potential plaintiff which participated in the administrative proceeding also must be an interested party pursuant to section 771(9)(C) of the Tariff Act, at the time the party commences its action challenging the determination. The *Oregon Steel Mill* case holds only that the Department's authority, under section 751(c) of the Tariff Act, to revoke an antidumping duty order is not dependent upon a determination that sales at less than fair value have ceased.

Standing to request an administrative review is statutory in nature, and thus challenges to standing must conform to the procedural requirements (including timeliness requirements) of the Department's regulations. The regulations are clear that any "factual information", including information intended to challenge standing, is subject to the procedures of 19 CFR 353.31. While § 353.31(c)(2) provides a special extension of the time limit for submission of allegations that a petitioner lacks standing in an investigation, no such extension is made for administrative reviews. Thus, respondents' challenge to Zenith's standing remained subject to the deadlines imposed by § 353.31(a)(ii). This deadline is necessary for the Department to conclude its final results within the time period provided for in § 353.22(c)(7).

Comment 5: The respondents argue that by failing to undertake any independent fact finding in this review the Department has placed on them the entire burden of proving that Zenith is not a U.S. producer of CTVs. Respondents assert that since *prima facie* evidence exists which calls into question Zenith's standing as a domestic interested party, Zenith must demonstrate that it still is a domestic producer of CTVs. Respondents further assert that Zenith should carry the burden of proof in such an investigation since the information necessary to justify standing is readily available to Zenith.

Department's Position: We disagree with the respondents' characterization of the Department's procedure. The "*prima facie* evidence" submitted by the respondents as well as Zenith's rebuttal evidence was addressed in a memorandum dated July 24, 1992, from Joseph A. Spetrini, Deputy Assistant Secretary for Compliance, to Alan M. Dunn, Assistant Secretary for Import Administration. In that decision we concluded that "respondents have provided insufficient support for their assertion that Zenith has withdrawn from U.S. CTV production. It has only been established that Zenith plans to consolidate some of its CTV production in Mexico." This consolidation does not call into question Zenith's standing as a domestic interested party.

Moreover, we note that the Department's regulations require that any challenge to a petitioner's standing in an investigation be submitted with supporting factual information (19 CFR 353.31(c)(2)). This clearly places the burden of proof on the party challenging the petitioner's standing. There is no reason for the burden to fall on a different party in an administrative review. Absent timely opposition supported by factual information the standing of a party requesting an administrative review may be presumed.

Comment 6: The respondents argue that COS adjustments are only permitted to FMV, and that the Department should not have deducted U.S. expenses from U.S. sales. Respondents cite to section 773(a)(4)(B) of the Tariff Act, and the CIT's decision in *Timken Company* v. *United States*, 673 F. Supp. 495, 509–512 (CIT 1987) (*Timken*) as support for their argument.

Department's Position: We disagree. It is the practice of the Department to deduct all expenses incurred in the United States, including direct selling expenses, in calculating exporter's sales price (ESP), under the authority of section 772(e)(2) of the Tariff Act. In calculating purchase price, adjustments for the differences in circumstances of sale, including direct selling expenses, are made to FMV, and no deduction of direct selling expenses is made from the purchase price. This difference in practice is necessary to avoid a systematic distortion in the amounts of duty assessed which would result if the value on which dumping margins were calculated were consistently different than the entered value, upon which U.S. Customs will apply the margin. Entered value is most commonly based on the price to the United States between the exporter and the importer. In contrast, the basis of ESP is the resale price in the United States, which will approximate the entered value only after all expenses incurred in the United States (including direct selling expenses) are deducted. Purchase price will approximate the customs entered value without deducting any expenses because the direct selling expenses are incurred in the exporting country and included in the price to the United States used for both purchase price and entered value. While the Court of International Trade has decided our exporter's sales price practice is not proper in several cases, including *Timken*, we respectfully disagree, and will continue our practice until the issue is decided by the Court of Appeals for the United States. Therefore, we made appropriate adjustments to ESP for warranties, credit, direct advertising and promotion, royalties, and commissions.

Comment 7: The respondents argue that the Department should not have added to USP a variable representing the commodity tax that the companies would have paid if the export sale had been made in the home-market. Additionally, the respondents object to the COS adjustment made to home-market price for differences in commodity taxes between the U.S. and home-market models. The respondents maintain that the Department should add to USP the entire amounts of home-market commodity taxes reported in their responses without any COS adjustment for commodity tax.

Department's Position: As noted in the background section of this notice, we did not make a COS adjustment to home-market price for differences in commodity taxes between the U.S. and home-market models. We added to USP the absolute amount of tax imposed on the comparison merchandise sold in the country of exportation.

Comment 8: The respondents argue that for certain U.S. models, the Department incorrectly determined the tax base for calculating the commodity tax adjustment. Specifically, respondents assert that the Department should include import duties in the tax base for those U.S. models in which the comparison model was sold from a bonded warehouse.

Zenith disagrees with the respondents stating that they have not supplied for the record the amount of import duties that were rebated or uncollected due to exportation of the merchandise to the United States. Zenith argues that since the respondents have not provided the amount of import duties applicable to the exported merchandise, the Department has no basis upon which to determine the amount of import duty to include in the FOB export price.

Department's Position: As outlined in the background section above, we calculated the commodity tax adjustment by adding the absolute amount of home-market commodity tax to USP. Therefore, the issue as to what constitutes the appropriate method for calculating the U.S. tax base is moot.

Comment 9: Action argues that the Department neglected to add to USP import duties forgiven by virtue of exportation on U.S. sales as required by section 772(d)(1)(B) of the Tariff Act. Zenith contends that Action failed to provide information concerning duties not collected on exports even though the Department requested the information. Rather, the respondents provided exact amounts of import duties assessed on home-market sales of comparison models. Zenith, citing section 772(d)(1)(B) of the Tariff Act, states that the adjustment is limited to "import duties * * * which have been rebated, or which have not been collected, *by reason of the exportation of the merchandise* to the United States" (emphasis added).

Department's Position: For the reasons noted in the background section of this notice we disallowed Action's claim for duty drawback.

Comment 10: Action argues that the Department neglected to deduct advertisement expenses from Action's home-market prices as required by section 773(a)(4)(B) of the Tariff Act. Action states that these expenses should be deducted as a part of the COS adjustment.

Zenith, citing 19 CFR 353.56(a)(2), argues that a COS adjustment for advertising expense is appropriate only if those expenses are assumed by the producer on behalf of its purchaser. Zenith asserts that Action's advertising expense information fails to meet this criterion because Action did not categorize the different expenses, but rather stated that the expense was incurred to promote Action's entire line of CTVs.

Department's Position: Action correctly allocated its home-market advertising expenses according to the methodology set forth in our questionnaire. Since Action's advertising promoted a line of CTVs (some comparison models, some non-comparison models), Action used relative sales value to allocate the appropriate advertising expenses to the comparison models. Moreover, since this advertising was directed toward the ultimate customer, it qualifies as a direct selling expense. Accordingly, we deducted Action's home-market advertisement expenses from Action's home-market prices.

Comment 11: Action argues that the Department neglected to deduct home-market sales commissions from Action's home-market prices as required by section 773(a)(4)(B) of the Tariff Act. Action states that this expense should be deducted from home-market price as a part of the COS adjustment.

Zenith argues that the Department should disregard Action's home-market employee commission because Action failed to provide any evidence that the commission payments were at arm's length. Zenith also argues that Action provided no information regarding commission terms, agreements, or services that were rendered in exchange for commission payments. Zenith claims that if the Department allows this deduction then any allowance of commissions in the home-market also must be offset by selling expenses incurred by Action in the United States since Action paid no commissions on its purchase price (PP) sales.

Department's Position: There is nothing on the record to indicate that Action's home-market commissions were made at other than arm's length. As Action has stated from the outset of this review, all of its employees are paid both a salary and a commission. Since commissions are based on a rate applied to the amount sold, and commissions paid are a variable cost directly related to sales, Action's home-market sales commissions qualify as a direct deduction from home-market price under section 773(a)(4)(B) of the Tariff Act.

In accordance with 19 CFR 353.56(a)(2), we have made a reasonable allowance for differences in commissions when commissions were paid in both the U.S. and home-market. We deducted home-market sales commissions from Action's home-market prices and made a deduction from ESP transactions for U.S. commissions. For commission offsets to PP sales see our response to Comment 12.

Comment 12: Action argues that if the Department applies a commission offset on PP sales then it may do so only up to the amount of indirect selling expenses applicable to these sales. Action states that the Department may not include in the offset indirect selling expenses incurred at America Action, the related U.S. importer since these expenses pertain, by definition, exclusively to ESP sales. Action asserts that any adjustments resulting from commission offsets must be made to home-market price.

Department's Position: We agree with Action. Section 353.56(b)(1) of our regulations requires us to make an adjustment for situations in which a commission is paid in one market but not in the other market. Additionally, we agree with Action that the offset against home-market commissions should be limited to the indirect selling expenses of Action, the company headquarters, and should exclude the indirect selling expenses incurred at America Action, the related U.S. importer, since these expenses pertain exclusively to ESP transactions. Accordingly, we did not include the selling expenses incurred by Action America in our calculation of Action's commission offsets.

Comment 13: Tatung and Proton argue that the Department used the wrong values to calculate adjustments for commodity tax. Tatung and Proton listed the home-market commodity tax in their U.S. sales listings. Tatung and Proton entered a zero for commodity taxes on their home-market sales. Tatung and Proton argue that the Department should have generated its own theoretical value for U.S. commodity taxes rather than use the values which they reported since the commodity taxes reported by Tatung and Proton were the actual amount of commodity tax on home-market models.

Tatung and Proton assert that the Department's COS adjustment for home-market commodity tax is an addition to home-market price since the amount calculated for U.S. commodity taxes was significantly greater than the amount reported for home-market sales. Tatung and Proton assert that if the Department follows its usual methodology of calculating a theoretical amount of commodity tax to be added to USP the Department should recalculate the amount of U.S. commodity taxes according to the instructions contained in their February 24, 1993, case brief.

Zenith argues that pursuant to section 772(d)(1)(C) of the Tariff Act, tax amounts paid on home-market comparison models cannot be used to make adjustments to USP. Such adjustments can only be made on the basis of expenses associated with U.S. models. Furthermore, Zenith asserts that the Department followed Tatung's own instructions in adjusting for commodity taxes and that errors relating to calculation of commodity taxes are of Tatung's own doing.

Department's Position: As outlined in the background section above, we added the absolute amount of home-market commodity tax to USP for both Tatung and Proton in these final results.

Comment 14: Tatung argues that the Department failed to use the correct values for home-market warehousing expense in calculating Tatung's warehousing adjustment. Tatung notes that the Department used the amount originally reported in its submission of August 7, 1992, which was a clerical error. Tatung asserts that the Department should use the correct amount reported in its November 3, 1992, submission when calculating the warehousing expense adjustment.

Department's Position: We agree, and have made the appropriate adjustments.

Comment 15: Tatung argues that the Department used the wrong exchange rate to adjust for royalty expenses. Tatung notes that the amounts of royalty expenses were denominated in Japanese yen. Accordingly, Tatung requests that the Department correct these errors by converting the currencies using the appropriate exchange rate.

Zenith notes that, for purposes of evaluating whether Tatung's home-market sales were made at prices less than the COP, the royalty expense does not appear to have been considered at all. Zenith asserts that if the Department modifies the deduction of royalty from home-market price then corresponding

instructions should be inserted into the calculation of adjusted selling price for purposes of comparing that value to COP.

Department's Position: In these final results, we have converted Tatung's yen-denominated royalty expenses into U.S. dollars using the appropriate yen/dollar exchange rate. Additionally, in response to Zenith's comments, we revised our COP calculations to include Tatung's amended royalty claim in the adjusted selling price.

Comment 16: Tatung claims that the Department erroneously used model 21CBL, rather than 21NA2, as the comparison model for the U.S. models 20CFG, 20CMG, and 20CMK. Tatung contends that only sixteen 21CBL units were sold during the review period, and argues that this is an insufficient quantity to constitute sales in ordinary "commercial quantities" as required by Section 771(14)(B) of the Tariff Act. Tatung also argues that model 21NA2 is the most similar 20-inch model sold in the home market in terms of major physical characteristics (e.g., screen size, type of cabinet, number of I.C., dimension, number of channels, remote control, etc.), cost-of-manufacture differences, and, most importantly, sufficient quantity of sales in the home-market. Tatung states that the Department intended to use model 21NA2 since the Department manually coded the commodity tax value for the 21NA2 into its computer program for the preliminary results as the selected model for comparison to the three U.S. models listed above.

Zenith contends that the Department based its model match comparisons upon model concordance data provided by Tatung, and that these sales were made in the ordinary course of trade and in usual commercial quantities. Additionally, Zenith asserts that there is no basis for Tatung's complaint since Tatung has failed to show a correlation between differences in quantity (if one exists) and a difference between USP and FMV as is required under 19 CFR 353.55(a).

Department's Position: We disagree with Tatung and agree with Zenith. We based our model match comparisons on Tatung's submission of December 4, 1992. That submission states, "Tatung suggests comparing U.S. models 20CFG, 20CMG and 20CMK to home-market model TV–21CBL. This model is the most similar home-market model with regard to all of the major characteristics recognized by the Department." Additionally, Tatung stated in its December 4, 1992 submission that sales of TV–21CBL occurred throughout the review period. In its December 4, 1992, submission Tatung failed to supply information supporting its assertion that sales of model TV–21CBL did not occur in a volume sufficient to constitute sales in ordinary commercial quantities under section 771(14)(B) of the Tariff Act. Accordingly, in these final results we continued to use model TV–21CBL in our model match comparisons.

Comment 17: Proton argues that the Department failed to distinguish between dealer sales and non-dealer sales as it has done in the past. Proton notes that the Department made such a distinction in past reviews. See the 1983–1985 Final Results of Administrative Review; Color Television Receivers from Taiwan, 51 FR 46895, 46900 (December 29, 1986) (Comment 23) and the 1985–1986 Final Results of Administrative Review; Color Television Receivers from Taiwan, 53 FR 49706, 49708 (December 9, 1988) (Comment 7). Proton states that the Department should compare U.S. dealer sales only with home-market dealer sales, and U.S. non-dealer sales with home-market non-dealer sales.

Zenith argues that the Department's failure to distinguish between dealer and non-dealer sales is a result of Proton's ambiguous coding system. Zenith asserts that the Department should not be faulted for its inability to decipher Proton's coding system because where a respondent fails to be "very clear as to what the data indicates," the respondent must suffer the consequences of ambiguity (*Asociacion Colombiana de Exportadores de Flores* v. *United States*, 704 F. Supp. 1114 (CIT 1989), aff'd, 901 F.2d 1089 (Fed. Cir.), *cert. denied*, 111 S.Ct. 136 (1990)).

Department's Position: We agree with Proton. Proton stated in its August 7, 1992, submission that it had two types of sales in the U.S. market: Regular dealer sales and accommodation (i.e., non-dealer) sales. We believe that comparing Proton's dealer-to-dealer and non-dealer to non-dealer sales in both markets results in the closest possible concordance between levels of trade as required by 19 CFR 353.58. Additionally, Proton sold the same models at both levels of trade. See Final Results of Administrative Review; Color Television Receivers from Taiwan, 53 FR 49706, 49708 (December 9, 1988) (Comment 7).

Comment 18: Proton argues that the Department should not have included B-Stock sales or memo loans in Proton's margin calculations. Proton explains that since B-Stock sales were reported in responses in previous reviews, their inclusion in this review would result in double-counting of margins on the same sale. Proton states that the inclusion of memo loans, which are not sales at all, will eventually result in double-counting when the units are returned and later sold. Accordingly, Proton asserts that the Department should exclude B-Stock sales and memo loans from the dumping calculations as it has done in all previous reviews.

Department's Position: We disagree with Proton. Proton has not supported its claim that inclusion of B-Stock sales and memo loans would result in double counting. Moreover, Proton has not supplied documentary evidence that its B-Stock sales were included in past reviews or that merchandise associated with memo loans will be covered in future reviews. Therefore, we have included these transactions in our final calculations. Furthermore, the treatment of B-stock sales and memo loans has not been an issue in past reviews of this case.

Comment 19: Proton argues that the Department's preliminary results double or triple-counted many U.S. sales because it included Proton's alternative home-market model comparisons. Proton included this information in case the Department could not find sufficient, contemporaneous above-cost sales of the identical or most similar home-market models. Accordingly, Proton asserts that in its final calculations the Department should only use the first part of its computer tape pertaining to actual U.S. sales.

Department's Position: We agree that Proton's alternative model match suggestions should not be included in our margin calculations. Accordingly, we have eliminated these sales from our final results. As noted in our response to Comment 21, we based our model match selections upon the information provided in Proton's August 7, 1992 submission. In that submission Proton generated an entry for alternative comparison models in the U.S. computer sales listing for each U.S. sale, which had the effect of nearly doubling the actual number of transactions considered in our preliminary results. Accordingly, we removed the duplicative entries prior to calculating our final results.

Comment 20: Proton argues that an error in the Department's program led the Department to compare U.S. sales of VT–331 to CV rather than to home-market sales of similar models VT–331A and VT–330A. Proton asserts that the program search did not locate these two models because the program used only six-digit codes whereas the actual codes have seven digits (including the hyphen). This resulted in the suffix "A" being dropped from the search for

models VT–331A and VT–330A, causing the program's search to turn up no sales of these models. Accordingly, Proton requests that the Department correct this error and compare U.S. sales of VT–331 to models VT–331A and VT–330A rather than CV.

Department's Position: We agree and have amended the computer program to include seven digit codes. Accordingly, for these final results we have compared U.S. sales of VT–331 with home-market sales of VT–331A and VT–330A.

Comment 21: Proton argues that the Department should not use CV for comparison to any of Proton's U.S. sales. Proton asserts that instead of CV, the Department should use contemporaneous, home-market sales of such or similar merchandise as referenced in Proton's December 4, 1992, letter. Proton asserts that all information with respect to these models is on the record, including the information necessary to calculate difference-in-merchandise adjustments.

Zenith argues that the Department was correct in using CV for those models in which suitable matches could not be found. Zenith contends that not only were the alternative comparisons proposed by Proton in its December 4, 1992, submission unsolicited, they were also untimely.

Department's Position: We disagree with Proton and agree with Zenith. Our model match comparisons were based on Proton's model match recommendations in its August 7, 1992, submission. The model match comparisons proposed by Proton in its December 4, 1992, submission were unsolicited and untimely, and therefore were not considered pursuant to 19 CFR 353.31(a)(ii) and 353.31(b)(2). Accordingly, we have used CV for those models for which there were no contemporaneous, home-market sales of such or similar merchandise as reported in Proton's August 7, 1992, submission.

Final Results of the Review

As a result of our analysis of the comments received, we determine that the following margins exist:

Manufacturer/ exporter	Review period	Margin (percent)
Action	04/01/91–03/31/92	8.78
AOC	04/01/91–03/31/92	[1] 23.89
Funai	04/01/91–03/31/92	[1] 23.89
Hitachi	04/01/91–03/31/92	[1] 23.89
Kuang Yuan	04/01/91–03/31/92	[1] 0.00
Nettek	04/01/91–03/31/92	[2] 23.89
Paramount	04/01/91–03/31/92	[1] 23.89
Proton	04/01/91–03/31/92	14.20
Sampo	04/01/91–03/31/92	[1] .78
Sanyo	04/01/91–03/31/92	[1] 4.66
Shinlee	04/01/91–03/31/92	[2] 23.89
Tatung	04/01/91–03/31/92	22.82
Teco	04/01/91–03/31/92	[2] 23.89
Thomson	04/01/91–03/31/92	.25

[1] No shipments during the period; rate is from the last review in which there were shipments.

[2] No response; we therefore used as best information available either the highest margin among respondent firms in the current review, or the highest rate received by any firm in a prior review, whichever was higher.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of color television receivers, except for video monitors, from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act, and will remain in effect until the final results of the next administrative review: (1) The cash deposit rate for the above firms, except Thomson, will be the above listed rates; (2) Since the margin for Thomson is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties on entries from Thomson; (3) For merchandise exported by manufacturers or exporters not covered in this review but covered in a previous review or the original less-than-fair-value investigation, the cash deposit will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (4) If the exporter is not a firm covered in this review, earlier reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review, earlier reviews, or the original investigation, whichever is the most recent; and (5) The cash deposit rate for any future entries from all other manufacturers or exporter, who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firms or any previously reviewed firm, will be 22.82 percent. This rate is the highest non-best information available rate for any firm in this review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR. 353.34(d) or 355.34(d). Timely written notification of return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675 (a)(1)) and 19 CFR 353.22 (1992).

Dated: June 18, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15039 Filed 6–24–93; 8:45 am]

BILLING CODE 3510–DS–P

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review filed with the Canadian section on June 8, 1993.

SUMMARY: On June 8, 1993, Algoma Steel Inc. filed a Request for Panel Review with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free Trade Agreement. Panel review was requested of the final negative determination of injury made by the Canadian International Trade Tribunal pursuant to paragraph 43(1.1) of the Special Import Measures Act respecting Certain Hot-rolled Carbon Steel Plate and High-strength Low-alloy Plate, Heat-treated or not, Originating in or Exported from the United States of

America. Notice of this determination was published in the Canada Gazette on May 15, 1993. The Binational Secretariat has assigned Secretariat File No. CDA–93–1904–06 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules, as amended.

Rule 35(2) requires each Secretary of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the Canadian Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on June 8, 1993, requesting panel review of the final dumping determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is July 8, 1993);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 23, 1993); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: June 18, 1993.

Cartina L. Alston,

Deputy U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 93–15030 Filed 6–24–93; 8:45 am]

BILLING CODE 3510–GT–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review filed with the Canadian section on June 7, 1993.

SUMMARY: On June 7, 1993, Bethlehem Steel Export Corp., U.S. Steel, a Division of USX Corp., National Steel Corporation, Acme Steel Company, WCI Steel Incorporated, and LTV Steel Company filed a Request for Panel Review with the Canadian Section of the Binational Secretariat pursuant to article 1904 of the United States-Canada Free Trade Agreement. Panel review was requested of the final affirmative dumping determination made by the Deputy Minister of National Revenue, Revenue Canada, for Customs and Excise pursuant to paragraph 41(a) of the Special Import Measures Act respecting Certain Flat Hot-rolled Carbon Steel Sheet Products Originating in or Exported from the Untied States of America. Notice of this determination was published in the *Canada Gazette* on May 15, 1993. The Binational Secretariat has assigned Secretariat File No. CDA–93–1904–05 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules, as amended.

Rule 35(2) requires each Secretary of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the Canadian Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on June 7, 1993, requesting panel review of the final dumping determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is July 7, 1993);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline

for filing a Notice of Appearance is July 22, 1993); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: June 18, 1993.

Caratina L. Alston,

Deputy U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 93-15029 Filed 6-24-93; 8:45 am]

BILLING CODE 3510-GT-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel on June 11, 1993, in binational panel review of the final results of the fifth administrative review of the countervailing duty order respecting live swine from Canada, made by the Department of Commerce, International Trade Administration, Import Administration, (Secretariat File No. USA-91-1904-04).

SUMMARY: By a decision dated June 11, 1993, the Binational Panel affirmed in part and remanded in part the Department of Commerce's final determination respecting Live Swine from Canada published in the **Federal Register** on October 7, 1991 (56 FR 50560). A copy of the complete Panel decision is available from the FTA Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter was conducted in accordance with these Rules.

Background

On July 8, 1991, the Canadian Pork Council and its members (CPC) filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final results of the fifth administrative review of the countervailing duty order respecting Live Swine from Canada made by the International Trade Administration, Import Administration, (Commerce) File No. A-122-404. In addition, the Government of Canada (Canada) and the Government of Quebec (Quebec) filed Requests for Panel Review in this matter.

On August 26, 1992 the Panel issued its first decision ("August 26 Decision"). In that decision, the Panel affirmed Commerce's determination regarding the Canadian federal government's Feed Freight Assistance program ("FFA"), which is designed to provide users of feed grains in certain regions with transportation cost assistance. The Panel also affirmed Commerce's determination that sows, boars and weanlings are within the scope of the Order.

The Panel remanded to Commerce its determinations regarding: (i) the National Tripartite Stabilization Scheme for Hogs ("Tripartite"), which is a farm income stabilization program funded by the Canadian government, the provincial governments and by farmers; (ii) the Quebec Farm Income Stabilization Insurance program ("FISI"), which is a provincial farm income stabilization program covering agricultural production in the Province of Quebec; (iii) the British Columbia Farm Income Insurance Program ("FIIP"), which is also a provincial farm income stabilization program, covering agricultural production in the Province of British Columbia; and, (iv) the Alberta Crow Benefit Offset Program ("ACBOP"), which is a provincial program designed to compensate grain users in Alberta for the increased cost to them of grain resulting from the effect of the FFA on the grain market. Each of the programs involved in this proceeding has been more fully described in the Panel's August 26 Decision. The Panel also remanded to Commerce for further explanation its determinations that it could not establish a separate countervailing duty ("CVD") rate for weanlings or a separate company specific rate for Pryme Pork Ltd. ("Pryme").

On October 30, 1992, Commerce filed the final results of its Redetermination pursuant to remand. Commerce redetermined that Tripartite, FISI and FIIP conferred countervailable subsidies upon specific industries or groups of industries during the Review Period. Commerce also redetermined that Pryme's request for the establishment of a separate subclass for weanlings was untimely and, in any event, that the record does not contain sufficient information for it to determine any such separate rates. With respect to ACBOP, Commerce recalculated the benefit conferred under the program and redetermined that the proper amount thereof received by swine producers during the Review Period is CAD 4,392,551, resulting in a benefit of CAD 0.00041/lb.

The Redetermination has been challenged by the Complainants, each of which has filed its respective brief, and the Parties were heard in oral argument in Washington, DC, on December 17, 1992. On December 23, 1992, one of the panelists withdrew from the Panel to avoid any appearance of conflict of interest which could arise due to his participation in another matter involving certain issues that were similar to those before this Panel. As a result, pursuant to Rule 78, proceedings before the Panel were suspended pending the selection of a substitute Panelist. The suspension was lifted on March 23, 1993, after a replacement panelist was selected.

Panel Decision

The Binational Panel issued its second decision in this matter on June 11, 1993. On the basis of the reasons articulated in its decision, the Panel decided to:

(1) Affirm Commerce's redetermination that Tripartite was countervailable during the Review Period. The Panel concluded that substantial evidence in the record supports Commerce's redeterminations that:

(a) Hog producers were the dominant users of Tripartite in that 81 percent of all Tripartite payments went to hog producers during the Review Period and hog producers had received 72 percent of benefits conferred under the program to date;

(b) There were too few users of Tripartite—at most less than twenty percent of eligible commodities actually participated in the program; and,

(c) No other factor or record evidence raises a significant question with regard to Commerce's determination of countervailability during the Review Period.

(2) Remand Commerce's Redetermination regarding FISI, with instructions for it to remove FISI benefits from its duty calculation for the Review Period. The Panel concluded that Commerce's redetermination that FISI provided a subsidy to a specific enterprise or industry, or group of enterprises or industries, was based upon a "mathematical formula" which fails to indicate that Commerce exercised judgment and balanced the various factors in analyzing the facts of this particular case and, consequently, is not in accordance with law.

(3) Affirm Commerce's redetermination that FIIP was *de jure* countervailable during the Review Period. None of the Complainants has commented on the Redetermination with respect to FIIP. Insofar as FIIP is concerned, there was no challenge to the redetermination.

(4) Affirm Commerce's Redetermination regarding ACBOP. The Panel reviewed Commerce's recalculations in pertinent respect and concluded that the reasoning of Commerce as to how and why it proceeded to make certain adjustments is adequately articulated in the Redetermination, is based upon substantial record evidence and is otherwise in accordance with law.

(5) Affirm Commerce's redetermination that there was some evidence on the record concerning weanlings, but that it was insufficient to create a subclass. Substantial evidence on the record does not establish (i) Whether benefits were paid to weanling producers in their capacity as farmers; (ii) the value of any benefits paid to weanling producers under the various programs involved in this proceeding; (iii) domestic and export sales volumes for weanlings; and, (iv) export prices of weanlings. It is not unreasonable for Commerce to require such information in order to create a subclass.

Dated: June 18, 1993.

Caratina L. Alston,

Deputy U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 93–15028 Filed 6–24–93; 8:45 am]

BILLING CODE 3510–GT–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of panel review effective May 26, 1993. Notice of completion of panel review effective June 28, 1993.

SUMMARY: Notice is hereby given, pursuant to Rule 80(c) of the Rules of Procedure for Article 1904 Binational Panel Reviews, that the Binational Panel review of the final determination of dumping made by the Deputy Minister for National Revenue (Customs and Excise) respecting Tomato Paste in Containers Larger than 100 Fluid Ounces, Originating in or Exported from the United States of America will be completed on June 28, 1993, the 31st day following the filing of motions to terminate the binational panel review pursuant to subrule 73(2).

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules, as amended.

Background

On April 7, 1993, Kraft General Foods Canada, Inc. filed a Request for Panel Review with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free Trade Agreement. Panel review was requested of the final affirmative dumping determination made by the Deputy Minister of National Revenue, Revenue Canada, for Customs and Excise pursuant to paragraph 41(a) of the Special Import Measures Act respecting Tomato Paste in Containers Larger than 100 Fluid Ounces Originating in or Exported from the United States of America. Notice of this determination was published in the **Federal Register** on March 13, 1993. The Binational Secretariat assigned Secretariat File No. CDA–93–1904–03 to this request.

Rule 73(2) of the Article 1904 Panel Rules provides, in pertinent part, that, "where all participants files Notices of Motion requesting termination, the panel review is terminated." Notices of Motion requesting termination were received from all participants by May 28, 1993. Pursuant to Rule 80(c) of the Article 1904 Panel Rules, the panel review in this matter will be completed on the 31st day following the day on which the panel review is terminated (July 28, 1993).

Dated: June 18, 1993.

Caratina L. Alston,

Deputy U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 93–15027 Filed 6–24–93; 8:45 am]

BILLING CODE 3510–GT–M

National Institute of Standards and Technology

National Conference on Weights and Measures; Meeting

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the 78th Annual Meeting of the National Conference on Weights and Measures will be held July 18 through 22, 1993.

at the Ritz-Carlton Hotel, Kansas City, Missouri. The meeting is open to the public.

The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States, and private sector representatives. The interim meeting of the conference, held in January 1993, as well as the annual meeting, bring together enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations to discuss subjects that relate to the field of weights and measures technology and administration.

Pursuant to section 2(5) of its Organic Act (15 U.S.C. 272(5)), the National Institute of Standards and Technology acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the States in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighing and measuring.

Date: The meeting will be held July 18–22, 1993.

Location of Meeting: Ritz-Carlton Hotel, Kansas City, Missouri.

FOR FURTHER INFORMATION CONTACT: Carroll S. Brickenkamp, Executive Secretary, National Conference on Weights and Measurements, P.O. Box 4025, Gaithersburg, Maryland 20885. Telephone: (301) 975–4005.

Dated: June 18, 1993.

Arati Prabhakar,

Director.

[FR Doc. 93–14930 Filed 6–24–93; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council (Council) will hold a meeting of its Ad Hoc Red Snapper Advisory Panel on June 29–30, 1993, at the Holiday Inn Chateau LeMoyne, 301 Rue Dauphine, New Orleans, LA; telephone: (504) 581–1303. The Panel will meet on June 29 from 8 a.m. until 5 p.m. and on June 30 from 8 a.m. until 3:30 p.m. The agenda is as follows.

The Panel will provide recommendations to the Council on Draft Amendment #7 to the Reef Fish Fishery Management Plan from a panel of individuals who would be significantly impacted by the measures proposed for red snapper, including an ITQ program and the general enforceability options contained in the draft amendment. The draft amendment principally addresses the commercial red snapper fishery and includes options for managing that fishery during 1994 through modifications to the existing red snapper endorsement and trip limit measures, plus options for management beginning in 1995 by several types of limited access systems for this fishery as well as many non-limited access options.

The amendment also includes options that, if adopted, would affect all reef fish dealers and fishermen. These options include changing the termination date of the reef fish permit moratorium, modifying the proposed fish trap endorsement/moratorium to include allowing family transfers, and a number of options intended to improve enforceability of reef fish management regulations, including dealer permitting and recordkeeping requirements, separation of red snapper from other fish onboard vessels, standardization of amberjack size limits, a prohibition on commercial fishing by charter boats, and restricting off-loading of red snapper to daytime hours.

The panel will review the draft amendment and comments from the 12 public hearings held throughout the Gulf from June 7–18, 1993, and will develop recommendations for later presentation to the Council.

For more information contact Steven M. Atran, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: June 21, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–14941 Filed 6–24–93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Modification No. 3 to Permit No. 767 (P263B).

SUMMARY: On March 30, 1993, notice was published in the **Federal Register** (59 FR 16651) that a request for modification of scientific research Permit No. 767 authorizing the take marine mammals had been submitted by Ms. Janice Straley, P.O. Box 273, Sitka, AK 99835.

Notice is hereby given that under the authority of the Marine Mammal Protection Act of 1972 (MMPA), as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.33(d) and (3) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222), Scientific Research Permit No. 767, issued on March 4, 1992 (57 FR 7735), has been modified to extend its duration for an additional four years; increase the number of humpback whales (*Megaptera novaeangliae*) that may be inadvertently harassed to up to 1000 annually and authorize the inadvertent harassment of up to 500 gray whales (*Eschrichtius robustus*) annually during photo-identification studies. This modification becomes effective upon publication in the **Federal Register**.

Issuance of this Modification as required by the ESA was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the ESA.

The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Hwy., Suite 7324, Silver Spring, MD 20910 (301/712–3389); and

Director, Alaska Region, NMFS, NOAA, Federal Annex, 9109 Mendenhall Mall Rd., Suite 6, Juneau, AK 99802 (907/586–7221).

Dated: June 18, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–14969 Filed 6–24–93; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List

commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 26, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodities and services have been proposed for addition to the Procurement List for production by the nonprofit agency listed:

Commodities

Ballpoint Pen, Stick, Rubberized Barrel
7520–01–357–6839
7520–01–357–6840
7520–01–357–6841
7520–01–357–6842
7520–01–357–6843
7520–01–357–6844
Nonprofit Agency: Kansas City Association for the Blind, Kansas City, Missouri

Handle, Extension, Aluminum
7920–00–926–5146
Nonprofit Agency: Arizona Industries for the Blind, Phoenix, Arizona

Services

Declassification/Demilitarization of Classified Military Hardware, Robins Air Force Base, Georgia
Nonprofit Agency: Epilepsy Association of Georgia, Warner Robins, Georgia

Janitorial/Custodial, Armed Forces Reserve Center, Los Alamitos, California
Nonprofit Agency: Elwyn, Inc., Elwyn, Pennsylvania at its facility in Fountain Valley, California

Janitorial and Related Services, Federal Building, U.S. Courthouse and Post Office, 301 West Commerce Street, Aberdeen, Mississippi
Nonprofit Agency: Allied Enterprises of Monroe County, Aberdeen, Mississippi

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–15040 Filed 6–24–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 26, 1993.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 23, 1993, the Committee for Purchase from People Who Are Blind or Severely Disabled published notice (58 FR 21706) of proposed addition to the Procurement List.

Comments were received from the former contractor for this service and a related service now being performed by another firm under the Small Business Administration's 8(a) Program. The contractor provided information regarding the percentage of his firm's sales represented by the former contract, which included both the services associated with this contract and those now performed by an 8(a) business. The contractor also indicated that loss of the work contained in this contract would deprive him of the ability to spread his administrative costs over two contracts, the one in question and another Government service contract located nearby. In addition, the former contractor questioned the appropriateness of using the Committee's Javits-Wagner-O'Day (JWOD) Program to remove the opportunity to compete for this contract from his firm, which is owned and operated by a person with a physical disability.

The former contractor contended that he was not given sufficient opportunity to address the impact on his firm of the proposed addition. He provided information regarding his efforts to bring his concerns to the attention of the appropriate entity, alleging inadequate responsiveness by staff of the central nonprofit agency designated by the Committee to help organizations participate in the JWOD Program. The former contractor also argued that the Committee should not take into account the impact of not adding the contract on the current contractor for this service. That contractor is the same nonprofit agency employing individuals with severe disabilities proposed to provide the service under the JWOD Program. The former contractor's position is that, in accepting an interim contract for a service not yet added to the JWOD Program, the current contractor knowingly accepted the same risks associated with any interim contract.

The former contractor received actual notice of the Committee's intentions nearly a year ago, in the form of a certified letter which the receipt returned to the Committee indicated the former contractor received on June 29, 1992. The letter followed the standard form which the Committee uses to request contractor sales data to assess impact on the current or most recent contractor, including a statement that the Committee would presume that the former contractor considered the impact to be minimal if the Committee did not receive a response by July 15, 1992.

Because the former contractor did not timely respond, the Committee continued to process the addition of this service to the Procurement List on the assumption that impact on the former contractor would be minimal. Since that time, the former contractor has been supplanted by the current contractor and another organization. Committee regulations require an assessment of impact on the current contractor. A former contractor's claim that his firm is severely impacted by an addition to the

Procurement List is actually an objection to loss of the opportunity to bid on future contracts, which the Committee does not normally consider to be severe adverse impact on a contractor.

In this case, the impact of this loss of opportunity to bid is mitigated by the existence of opportunities to compete for other similar Government service contracts in the area. Also, because the service which the former contractor performed has been divided into two service contracts, only one of which is being added to the Procurement List, the total impact of the loss on the former contractor cannot be ascribed to the JWOD Program.

The Committee believes that the central nonprofit agency which the former contractor contacted responded appropriately to the inquiries it received. These responses included advising a member of the former contractor's staff to contact the Committee directly less than three months after the certified letter was sent, as well as promptly forwarding the former contractor's written inquiry to the Committee upon its receipt six months later. As the former contractor was told, the responsibility for contacting contractors to assess impact is a Committee function, not a responsibility of a central nonprofit agency.

As for the former contractor's assertion that the JWOD Program should not displace businesses owned by persons with disabilities, the Committee believes that assigning this service to a nonprofit agency which is required to use people with severe disabilities to perform most of the direct labor on the service is the best way to achieve the Committee's statutory mandate of creating employment for people with severe disabilities. The Committee has no indication that the former contractor's involvement with people with disabilities extends beyond the owner. Also, the competitive system does not guarantee that any one contractor will continue to perform this service.

The current contractor has been performing this service for nearly six months. The scope of the service has been changed from what the former contractor performed. Consequently, the Committee does not agree with the former contractor's assertion that the current contractor is an interim contractor, which presumably would require the Committee to consider the former contractor to be the current contractor for purposes of calculating impact.

After consideration of the material presented to it concerning the capability of qualified nonprofit agencies to provide the service, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Grounds Maintenance, Various Off-base Locations within a 50–Mile, Radius of the Navy Public Works Center, Norfolk, Virginia

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–15041 Filed 6–24–93; 8:45 am]

BILLING CODE [illegible]

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 26, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 26 and April 2, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (58 FR 16401 and 17385) of the proposed addition of these commodities to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to produce the commodities, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Towel, Paper
7920–00–965–1709
(Requirements for GSA Regions 3 and 4)

Belt, Military Police
8465–00–543–3378

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–15042 Filed 6–24–93; 8:45 am]

BILLING CODE [illegible]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Uruguay

June 21, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton and Wool Textile Agreement, effected by exchange of notes dated December 30, 1983 and January 23, 1984, as amended and extended, between the Governments of the United States and Uruguay establishes limits for the period beginning on July 1, 1993 and extending through June 30, 1994.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 57 FR 54976, published on November 23, 1992).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 21, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1992, pursuant to the Bilateral Cotton and Wool Textile Agreement, effected by exchange of notes dated December 30, 1983 and January 23, 1984, as amended and extended, between the Governments of the United States and Uruguay; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Uruguay and exported during the twelve-month period beginning on July 1, 1993 and extending through June 30, 1994, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334	110,404 dozen.
335	95,041 dozen.
410	2,740,743 square meters of which not more than 1,566,140 square meters shall be in Category 410–A[1] and not more than 2,523,224 square meters shall be in Category 410–B[2]
433	16,365 dozen.
434	24,415 dozen.
435	49,308 dozen.
442	34,880 dozen.

[1] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[2] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

Imports charged to these category limits for the period July 1, 1992 through June 30, 1993 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Uruguay.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–14995 Filed 6–24–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Defense Contract Audit Agency, (DCAA) Performance Review Boards

AGENCY: Defense Contract Audit Agency, DOD.

ACTION: Notice of Membership of the Defense Contract Audit Agency Performance Review Boards.

SUMMARY: This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Contract Audit Agency (DCAA). The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, DCAA, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE DATE: June 25, 1993.

FOR FURTHER INFORMATION CONTACT: Dale R. Collins, Director, Personnel and Security Division, Defense Contract Audit Agency, Department of Defense, Cameron Station, Alexandria, Virginia, 22304–6178, 703–274–7325.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of the executives who have been appointed to serve as members of the DCAA Performance Review Boards. They will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board

Mr. Michael Thibault, Assistant Director, Policy and Plans, Defense Contract Audit Agency, Chairperson.

Mr. William Sharkey, Assistant Director, Operations, Defense Contract Audit Agency, member.

Mr. John van Santen Assistant Director, Resources, Defense Contract Audit Agency, member.

Regional Performance Review Board

Mr. Joel Valenzuela, Regional Director, Central, Defense Contract Audit Agency, Chairperson.

Mr. Harvey Della Bernarda, Regional Director, Eastern, Defense Contract Audit Agency, member.

Mr. Willard Weikel, Deputy Regional Director, Mid-Atlantic, Defense Contract Audit Agency, member.

Dated: June 22, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–14987 Filed 6–24–93; 8:45 am]

BILLING CODE 5000–04–M

Determination; Excess Defense Articles (Trucks and Trailers)

Pursuant to the reporting requirements of section 517 of the Foreign Assistance Act of 1961 (FAA), and section 7(b) of Public Law 102–583, this document provides notification that during Fiscal Year 1993 the United States Government will transfer to Paraguay excess tactical wheeled vehicles and trailers. The total value of the vehicles is estimated to be $82,740. The original acquisition value was $866,260.

The vehicles will enable the Paraguayan Army to transport military and police forces, equipment, and supplies in support of counternarcotics missions.

In accordance with section 517(c) FAA the recipient country will agree in the associated Letter of Offer and Acceptance that it will ensure that these vehicles will be used primarily in support of counternarcotics activities.

The Deputy Director, Defense Security Assistance Agency, Glenn A. Rudd, certifies that the vehicles are needed by Paraguay and determines that there will be no adverse impact on U.S. military readiness as a result of these transfers.

Dated: June 22, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–14988 Filed 6–24–93; 8:45 am]

BILLING CODE 5000–04–M

Army Department

Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 13 July 1993.

Time of Meeting: 0800–1500.

Place: Ft. Monroe, VA.

Agenda: The Army Science Board's Analysis, Test and Evaluation Issue Group Study on "Battle Labs" will meet to receive their charge from General Franks, be briefed by the Army's Battle Laboratories, and discuss its internal organization to complete the study. This meeting will be closed to the public in accordance with section 552b.(c) of title 5, U.S.C., specifically subparagraph (1) thereof and title 5, U.S.C. appendix 2, subsection 10(d). The classified and unclassified information to be discussed will be so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–14927 Filed 6–24–93; 8:45 am]

BILLING CODE 3710–08–M

Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 8–9 July 1993.

Time of Meeting: 0800–1700 hours daily.

Place: The Pentagon, Room 3E385.

Agenda: The Army Science Board's 1993 Summer Study on "Missile Defense Programs" will meet to continue work on the study. This is the final meeting prior to the report writing session and the panel will discuss the progress of the study to date. Briefings to update and to clarify over a broad range of subject areas pertaining to the study may also be provided. This meeting will be closed to the public in accordance with section 552b.(c) of title 5, U.S.C., specifically subparagraph (1) thereof and title 5, U.S.C. appendix 2, subsection 10(d). The classified and unclassified information to be discussed will be so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–14928 Filed 6–24–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: July 26, 1993, beginning at 9 a.m. and ending at 5 p.m.; and July 27, 1993, beginning at 8:30 a.m. and ending at 12 noon.

ADDRESSES: Montana State University, MSU Foundation and Alumni Center, 1500 11th Avenue South, Bozeman, Montana 59717.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, room 4600, ROB–3, 7th & D Streets, SW., Washington, DC 20202–7582 (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary

education for low- and middle-income students, conducting a study of institutional lending in the Stafford Student Loan Program, and assisting with activities related to reauthorization of the Higher Education Act of 1965. As a result of the passage of the Higher Education Amendments of 1992, the Congress also has directed the Advisory Committee to assist with a series of special assessments and conduct an in-depth study of student loan simplication. The Advisory Committee will meet in Bozeman, Montana on Monday, July 26, 1993, from 9 a.m. to 5 p.m., and on Tuesday, July 27, from 8:30 a.m. to 12 noon.

The proposed agenda includes (a) a discussion of the impact of several legislative proposals including the President's direct lending proposal; (b) an analysis of the methods of monitoring student debt burden; (c) a discussion of the President's national service proposal; (d) an update on early eligibility determination programs; and (e) an Advisory Committee planning session for the upcoming year's agenda.

Space is limited and you are encouraged to register early if you plan to attend. To register, please contact the Advisory Committee staff office at (202) 708–7439. The registration deadline is July 16, 1993.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, room 4600, 7th and D Streets, SW., Washington, DC, from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: June 17, 1993.

Dr. Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 93–15043 Filed 6–24–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2519–003—Maine]

Central Maine Power Co.; Availability of Environmental Assessment

June 21, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new major license for the existing North Gorham Project located on the Presumpscot River in Cumberland County, near the towns of Gorham, Windham, and Standish, Maine, and has prepared an Environmental Assessment (EA) for the existing project. In the EA, the Commission's staff has analyzed the potential environmental effects of the existing project and has concluded that approval of the existing project, with appropriate enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14949 Filed 6–24–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2325–007 Maine]

Central Maine Power Co.; Availability of Environmental Assessment

June 21, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new major license for the existing Weston Project located on the Kennebec River in Somerset County, near the towns of Skowhegan, Norridgewock, Starks, and Madison, Maine, and has prepared an Environmental Assessment (EA) for the existing project.

In the EA, the Commission's staff analyzed the potential environmental effects of the existing project and concluded that approval of the existing project, with appropriate enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14950 Filed 6–24–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 18–014 Idaho]

Idaho Power Co.; Availability of Environmental Assessment

June 21, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of license to relocate the existing operators' village (three houses), for the Twins Falls Project, to a site more suitable for family housing. The area surrounding the existing village is dedicated to public park land. During construction of a new powerhouse and related facilities the site will be used for construction offices and laydown area. After project construction is completed the structures will be removed and the site converted to park land. The amendment includes a request to revise the project boundary to include the area where the new operators' village will be located. The project is located at the Twin Falls Reservoir on the Snake River in Jerome County, Idaho. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, the staff concludes that relocating the operators' village and revising the project boundary would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14948 Filed 6–24–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–713–000]

Arizona Public Service Co.; Filing

June 21, 1993.

Take notice that on June 15, 1993, Arizona Public Service Company (APS or Company) tendered for filing the following agreements related to the diverstiture of the San Carlos Irrigation Project (SCIP) Electric System: (1) Service Agreement between APS and the San Carlos Irrigation and Drainage District (SCIDD) and related Service Schedules A, B, C, and D; (2) Service Agreement between APS and the Gila River Indian Community (GRIC) and related Service Schedules A, B, C, and

D; (3) Service Agreement between APS and the San Carlos Apache Tribe (the Tribe) and related Service Schedules A, B, C, and D; (4) Reciprocal Distribution Agreement Between APS and Trico Electric Cooperative, Inc. (Trico); and (5) Oracle Junction Substation Use Agreement Between APS and Arizona Electric Power Cooperative (AEPCO).

The agreements are necessitated by the passage of the San Carlos Indian Irrigation Project Divestiture Act of 1991, Public Law 102–231 (the Act). The Act provides for the divestiture of the SCIP electric distribution and transmission system located primarily in Pinal County, Arizona with small extensions into adjacent Arizona Counties.

As an integral part of the divestiture APS and SCIDD, GRIC and the Tribe have entered into the proposed Service Agreements and relocated Service Schedules A, B, C, and D. The Service Agreements provide the general terms and conditions for various services to be provided through ensuing Service Schedules. The Service Schedules included as part of the proposed Service Agreements are: Service Schedule A—Wholesale Firm Power, Service Schedule B—Supplemental Capacity and Energy, Service Schedule C—Reciprocal Wheeling Service, and Service Schedule D—Local Facilities.

The Reciprocal Distribution Agreement with Trico provides that APS and Trico will reciprocally provide wheeling service up to a maximum of 5 MW on each others' distribution systems at no cost to either party.

AEPCO, on Trico's behalf, has agreed to contract with APS to continue to service Trico through the Oracle Junction Substation. The Oracle Junction Substation Use Agreement with AEPCO formalizes the terms and conditions which will apply to the right granted to Trico under the terms of the Principles concerning the use of the oracle Junction Substation.

APS requests an effective date of August 1, 1993 which is the latest possible date for divestiture before the Act terminates by its own means. The Company has requested waiver of any necessary requirements in order to allow these Agreements to become effective on August 1, 1993.

Copies of this filing have been served on the parties as well as the Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14956 Filed 6–24–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC93–16–000]

Arizona Public Service Co.; Notice of Filing

June 21, 1993.

Take notice that on June 15, 1993, Arizona Public Service Company (APS) tendered for filing an Application for approval to acquire the jurisdictional facilities previously owned by the Federal Government on behalf of San Carlos Indian Irrigation Project (SCIP). Initially, these facilities will be transferred from SCIP to the San Carlos Irrigation and Drainage District (SCIDD). This Application seeks authority for Arizona Public Service Company (APS) to acquire certain 69 kV and 44 kV transmission facilities and related substations, and to merge said facilities with those of APS.

Said Application is necessitated by the passage of the San Carlos Indian Irrigation Act of 1991, enacted December 12, 1993 (the Act), Public Law 102.231. The Act provides for the divestiture of the SCIP electric distribution and transmission system located primarily in Pinal County, Arizona, with small extensions emanating into adjacent counties of Arizona. The Act relies on the "Principles for Divesting the San Carlos Indian Irrigation Project Off-Reservation Electric System" which were entered into by the entities who will be acquiring various portions of the SCIP electric distribution and transmission system and the former customers of SCIP.

Approval of said Application is consistent with the public interest because the divestiture of the SCIP electric system will benefit the customers of electric service in Pinal and adjacent counties by assuring that there will be proper maintenance, modernization, and safe operation of the former SCIP system by the successor providers of service.

Copies of the filing were served upon SCIP, SCIDD, and the Arizona Corporation Commission. Approval of the Application is requested on an expedited basis, by July 23, 1993, in order that the Secretary of Interior can make the finding by the statutory deadline of July 31, 1993, that this Commission has terminated the existing power agreement between APS and SCIP, FPC Rate Schedule No. 66. The termination is contingent upon this Commission's approval of this Application and the related filing of section 205 agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14963 Filed 6–24–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–714–000]

Great Bay Power Corp.; Filing

June 21, 1993.

Take notice that on June 15, 1993, Great Bay Power Corporation (Great Bay), by and through representatives of its power marketing agent, tendered for filing an Agreement for Short Term Sales between Great Bay Power Corporation and Long Island Lighting Company, dated as of July 1, 1993.

Great Bay states that a copy of the filing has been sent to LILCO. Great Bay also requests waiver of the notice provisions of § 35.3 of the Commission's Regulations, so that service under the Agreements can begin on July 1, 1993, for good cause shown.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions

or protests should be filed on or before July 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14955 Filed 6–24–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–706–000]

Indiana Michigan Power Co., Ohio Power Co.; Filing

June 21, 1993.

Take notice that on June 11, 1993, Ohio Power Company and Indiana Michigan Power Company (the Companies), tendered for filing with the Commission a new Service Schedule NTS to their interconnection agreement with Public Service Company of Indiana (PSI), the Cincinnati Gas & Electric Company CG&E), the Dayton Power & Light Company (DP&L) and the Ohio Edison Company (OE).

Copies of the filing were served upon PSI, CG&E, DP&L, OE, the Public Utilities Commission of Ohio, the Indiana Utility Regulatory Commission and the Michigan Public Service Commission. The Companies request an effective date of August 10, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 2, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14954 Filed 6–24–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES93–41–000]

Iowa Southern Utilities Co.; Application

June 21, 1993.

Take notice that on June 16, 1993, Iowa Southern Utilities Company (Iowa Southern) filed an application under section 204 of the Federal Power Act requesting authorization to issue not more than $50 million in the aggregate of short-term notes, long-term notes or First Mortgage Bonds, over a two-year period. Also, Iowa Southern requests exemption from the Commission's competitive bidding regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14960 Filed 6–24–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES93–40–000]

Iowa Electric Light and Power Co.; Application

June 21, 1993.

Take notice that on June 16, 1993, Iowa Electric Light and Power Company (Iowa Electric) filed an application under section 204 of the Federal Power Act requesting authorization to issue not more than $100 million in the aggregate of short-term notes, long-term notes or First Mortgage Bonds, over a two-year period. Also, Iowa Electric requests exemption from the Commission's competitive bidding regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14961 Filed 6–24–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–652–000]

Niagara Mohawk Power Corp.; Filing

June 21, 1993.

Take notice that on June 15, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Commission a signed Service Agreement between Niagara Mohawk and TORCO Energy Marketing, Inc. (TORCO) for sales of system capacity and/or energy or resource capacity and/or energy under Niagara Mohawk's proposed Power Sales Tariff in Docket No. ER93–313–000. Niagara Mohawk filed its Power Sales Tariff on January 11, 1993 and requested an effective date of March 13, 1993 for the Tariff. In its May 12, 1993 filing of the proposed Service Agreement with TORCO, Niagara Mohawk requests an effective date for this Service Agreement of May 12, 1993 the date of filing with FERC.

A copy of this filing has been served upon TORCO and the New York State Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14953 Filed 6–24–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93-458-000]

Niagara Mohawk Power Corp.; Filing

June 21, 1993

Take notice that on June 15, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Commission a signed Service Agreement between Niagara Mohawk and Energy Exchange of Chicago, Inc. (EEoC) for sales of system capacity and/or energy or resource capacity and/or energy under Niagara Mohawk's proposed Power Sales Tariff in Docket No. ER-313-000. Niagara Mohawk filed its Power Sales Tariff on January 11, 1993 and requested an effective date of March 13, 1993 for the Tariff. In its May 14, 1993 filing of the proposed Service Agreement with EEoC, Niagara Mohawk requests an effective date for this Service Agreement of May 14, 1993 the date of signature for both parties.

A copy of this filing has been served upon EEoC and the New York State Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14957 Filed 6-24-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-412-000]

Northern States Power Co. (Minnesota), Northern States Power Co. (Wisconsin); Filing

June 21, 1993.

Take notice that on June 16, 1993, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (hereafter jointly NSP) tendered for filing an Amendment to its initial filing in Docket No. ER93-412-000. The Amendment provides certain additional information required by a Commission Staff deficiency letter dated May 17, 1993.

NSP again requests that its proposed Order 84 rate be accepted for filing effective May 1, 1993, and requests waiver of the Commission's notice requirements in order for the rate to be accepted for filing on the date requested.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14952 Filed 6-24-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER-92-727-001]

Northeast Utilities Service Co.; Filing

June 21, 1993.

Take notice that on April 13, 1993, Northeast Utilities Service Company tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 30, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14959 Filed 6-24-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-462-000]

Portland General Electric Co.; Filing

June 21, 1993.

Take notice that on June 15, 1993, Portland General Electric Company (PGE) tendered for filing an amendment to its original filing under Docket No. ER93-462-000. The nature of the amendment is a request for an additional thirty (30) days delay of Commission action.

PGE is amending the filing to complete an updated cost support analysis and to allow FERC staff time to review that analysis.

Copies of this filing have been served on the parties included in the distribution list contained in the filing letter.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14951 Filed 6-24-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-711-000]

Southwestern Electric Power Co.; Filing

June 21, 1991.

Take notice that on June 14, 1993, Southwestern Electric Power Company (SWEPCO), by its counsel, submitted for filing a letter dated June 4, 1993. The Letter Agreement confirms the agreement between SWEPCO and Rayburn Country Electric Cooperative (Rayburn Country) to defer collection of certain demand charges payable by Rayburn Country to SWEPCO for service provided under SWEPCO's FERC Rate Schedule No. 111, the Restated and Amended Supply Agreement, dated March 1, 1993, between SWEPCO and Rayburn Country.

SWEPCO requests an effective date of June 15, 1993. Accordingly, SWEPCO requests waiver of the Commission's

notice requirements. The billing adjustment provided for in the Letter Agreement is made at the request of Rayburn Country and will ease Rayburn Country's financial burdens.

Copies of the filing have been served on Rayburn Country, the Public Utility Commission of Texas, and copies of the transmittal letter only have been sent to other SWEPCO wholesale customers to advise them of the requested waiver of notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14958 Filed 6–24–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–55–000]

Tenpeak Corp., Application for Commission Determination of Exempt Wholesale Generator Status

June 21, 1993.

On June 16, 1993, Tenpeak Corporation of 81 Wyman Street, Waltham, MA 02254–9046 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The facility will be built in the Apex area of Clark County, Nevada within approximately five miles of the Harry Allen Substation, a substation owned and maintained by Nevada Power Company. The facility will consist of four combustion turbines with a combined capacity of 132 MWs (net of station use) at site conditions of 2000 elevation and 900 Fahrenheit. The facility will use natural gas as its primary fuel. A 138 KV (A.C.) transmission line approximately twenty-five (25) miles in length will interconnect the facility with the System of Nevada Power Company at the North West substation. The transmission line will be built, owned and maintained by Tenpeak Corporation and, accordingly, will be part of the facility.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its accuracy of the application. All such motions and comments should be filed on or before July 9, 1993 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14962 Filed 6–24–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–712–000]

PSI Energy, Inc.; Filing

June 21, 1993.

Take notice that PSI Energy, Inc. (PSI) on June 15, 1993, tendered for filing an Interconnection Agreement, dated July 1, 1993, between PSI and The City of Logansport, Indiana (Logansport).

The Interconnection Agreement provides for the following service between PSI and Logansport:

1. Service Schedule A—Supplemental Capacity and Energy
2. Service Schedule B—Maintenance Capacity and Energy
3. Service Schedule C—Backup Capacity and Energy
4. Service Schedule D—Economy Energy
5. Service Schedule E—Utilization of Surplus Transmission Line Capacity

Also PSI and Logansport have agreed to terminate the present agreement between the parties, Rate Schedule FERC No. 236—Agreement For Supply Of Base Load Capacity to The City of Logansport, Indiana, Supplemental To Its Own Generating Source of Capacity.

PSI and Logansport have requested a waiver of the Commission's Rules and Regulations to permit the proposed service to become effective July 1, 1993.

Copies of the filing were served on The City of Logansport and the Indiana Utility Regulatory Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14964 Filed 6–24–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4621–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed June 14, 1993 Through June 18, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930199, Final EIS, NPS, MT, Grant-Kohrs Ranch National Historic Site, General Management Plan and Development Concept Plan, Implementation, Northern Rockies, Powell County, MT, Due: July 26, 1993, Contact: Eddie Lopez (406) 846–2070.

EIS No. 930200, Final EIS, COE, NC, Carolina Beach and Vicinity/Area South Project, Beach Erosion Control and Hurricane Wave Protection, Implementation, New Hanover County, NC, Due: July 26, 1993, Contact: Daniel Small (919) 251–4730.

EIS No. 930201, Draft EIS, FHW, WA, WA–167 Corridor Adoption, WA–167 Freeway Extension from WA–167/ Meridian Street North in the City of Puyallup to the proposed WA–509 Freeway/East-West Alignment in the City of Tacoma, Funding and COE Section 404 Permit, Pierce County, WA, Due: August 09, 1993, Contact: Barry F. Morehead (206) 753–2120.

EIS No. 930202, Draft EIS, BLM, NV, Tonopah Resource Area, Resource Management Plan, Implementation, Battle Mountain District, Nye and Esmeralda Counties, NV, Due: September 30, 1993, Contact: Theodore Angle (702) 482–7800.

EIS No. 930203, Draft EIS, EPA, FL, Tampa Bay Area Ocean Dredged Material Disposal Site (ODMDS) Designation for Material Not Suitable for Beach Nourishment and Other Suitable Disposal Options, Offshore Tampa, FL, Due: August 09, 1993, Contact: W. Bowman Crum (404) 347–1740.

EIS No. 930204, Draft EIS, FHW, WI, Lake Arterial Extension, WI–TH–31 to Layton Avenue, Funding and Possible COE Section 404 Permit, Kenosha, Racine and Milwaukee Counties, WI, Due: August 10, 1993, Contact: Thomas J. Fudaly (608) 264–5940.

EIS No. 930205, Final Supplement, TVA, Control of Eurasian Watermilfoil, Implementation, Updated Information concerning the Aquatic Plant Management Program, Tennessee Valley Region, Due: July 26, 1993, Contact: Robert Pryor (615) 632–6695.

Dated: June 22, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–14981 Filed 6–24–93; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4621–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 7, 1993 Through June 11, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–AFS–J02028–00 Rating EC2, North Slope Oil and Gas Leasing, Application for Permit to Drill, High Uinta Mountain, Evanston and Mountain View Ranger District, Wasatch-Cache National Forest and Flaming Gorge District, Ashley National Forest, Intermountain Region, Summit and Daggett Counties, UT and Uinta County, WY.

Summary: EPA expressed concerns regarding potential air and water quality impacts and requested additional information regarding potential effects of the proposed activities on air and water resources.

ERP No. D–AFS–J65205–MT Rating EC2, Upper Sunday Timber Sales, Harvest Timber, Implementation, Kootenai National Forest, Fortine Ranger District, Flathead County, MT.

Summary: EPA expressed concerns that the quantitative data provided in the DEIS was insufficient to fully disclose the potential effects of the alternatives. A qualitative analysis of the data and additional information on monitoring activities should be provided in the final EIS.

ERP No. D–AFS–J67016–MT Rating EO2, South Beal Project, Beal Mountain Gold and Silver Mine Expansion Project, Construction and Operation, Plan of Operation, Mining Reclamation, Approval of Permits, Butte Ranger District, Deerlodge National Forest, Silver Bow County, MT.

Summary: EPA expressed environmental objections to the proposed South Beal Mine project due to the potential for significant environmental degradation that could be corrected by development of an expanded and detailed monitoring plan with specific alert levels that trigger contingency actions to prevent, mitigate, and/or correct environmental degradation.

ERP No. D–COE–G35019–LA Rating EC2, Gulf of Mexico Waters Oyster Shell Dredging Project, COE Section 10 and 404 Permits, East Cote Blanche and Atchafalaya Bays, Terrebonne and St. Mary Parishes, LA.

Summary: EPA had environmental concerns with the proposed project. EPA requested that additional information and analysis be provided in the final EIS on the following areas: the 404(b)(1) analysis, mitigation requirements or restrictions, location of live oyster reefs, and the development of an alternative that considers the combined use of alternative materials.

ERP No. D–FHW–F40137–MN Rating EO2, Mankato South Route (Blue Earth C.S.A.H 90) Roadway, Construction, TH 169/TH 60 on the west to TH 83, Funding, Right-of-Way and COE Section 404 Permits, Minnesota, Le Sueur and Blue Earth Rivers, Blue Earth County, MN.

Summary: EPA expressed environmental objections with the Blue Alternative due to the wetland impacts. EPA recommended that either the Green or Purple Alternative be chosen due to reduced impacts. Additional water quality data was also requested.

ERP No. D–FHW–G40136–OK Rating EC2, Poteau Bypass Corridor Construction, US 59/US 271 junction 4.5 Miles to the US 59/OK–112 junction, Funding and COE Section 404 Permit, City of Poteau, LeFlore County, OK.

Summary: EPA expressed environmental concerns with selection of Alternative 2 as the preferred alternative since it includes many substantial unmitigated noise impacts. Also, EPA requested that additional information be provided in the final EIS on wetlands and noise.

ERP No. D–NRC–J22004–UT Rating LO, Uranium and Thorium Byproduct Material Disposal Project, Construction and Operation, Licenses, Salt Lake City, Tooele County, UT.

Summary: EPA had no objections to the preferred alternative as described in the draft EIS.

ERP No. D–UAF–F11022–MI Rating EC2, Wurtsmith Air Force Base Disposal and Reuse, Implementation, Iosco County, MI.

Summary: EPA requested information regarding the locations of nearby public water supplies and the avoidance of impacts to wellhead protection areas in the Final EIS and Record of decision.

ERP No. DB–COE–F32043–MI Rating EC2, Sault Ste. Marie Federal Facilities Operation, Maintenance and Minor Improvements, Information concerning an Opening Operation Date, Implementation, Chippewa County, MI.

Summary: EPA had environmental concerns with the potential for oil and hazardous substance spills, structural damage and the absence of a mitigation plan. Additional information was requested to address these concerns.

Final EISs

ERP No. F–AFS–J02025–CO, Routt National Forest Oil and Gas Exploration and Development, Approval and Leasing, Routt, Moffat, Jackson, Grand, Garfield and Rio Blanco Counties, CO.

Summary: EPA expressed concerns regarding the EIS's lack of baseline information and the resultant inability to analyze potential impacts to water, air, and biological resources.

ERP No. F–AFS–J02026–MT, Beartooth Mountains Oil and Gas Exploration and Development Plan, Approval and Leasing, Custer National Forest, Beartooth Ranger District, Carbon, Park, Sweetgrass and Stillwater Counties, MT.

Summary: EPA expressed concerns that adequate assurance was not given that monitoring activities and mitigation measures would take place to ensure protection of the environment.

ERP No. F–AFS–J65196–UT, Coyote Hollow Timber Sale, Implementation, Dixie National Forest, Escalante Ranger District, Garfield County, UT.

Summary: EPA has no objection to the proposed action.

ERP No. F–FHW–F40316–MN, MN–TH 14 Improvements, North Mankato-

Mankato Bypass and County Road 193 to Smiths Mill, Funding and Section 404 Permit, City of Mankato, Blue Earth County, MN.

Summary: EPA expressed environmental objections with the preferred alternative due to its belief that an alternative with fewer lanes would satisfy project needs.

ERP No. F–FHW–G40126–OK, I–44 Reconstruction, I–44 Arkansas River Bridge to I–44/Broken Arrow Expressway/OK–51 Interchange, Funding, and COE Section 404 Permit, Tulsa County, OK.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the preparing agency.

ERP No. F–FHW–J40121–UT, US–89/ Logan Canyon Highway, Improvements, Right Fork 9 miles East of Logan to Garden City, Funding, 404 Permit and Special Use Permit, Wasatch-Cache National Forest, Cache and Rich Counties, UT.

Summary: EPA expressed environmental concerns due to the lack of a detailed wetland mitigation plan.

ERP No. F2–AFS–J65134–WY, Thunder Basin National Grasslands Oil and Gas Exploration and Development, Land Availability and Authorization for Leasing and Lease Offerings, Medicine Bow National Forest, Campbell, Crook, Weston, Converse and Niobrara Counties, WY.

Summary: EPA recommended that the Record of Decision establish a standard monitoring framework to ensure watershed protection.

Dated: June 22, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–14982 Filed 6–24–93; 8:45 am]

BILLING CODE [illegible]

[FRL–4670–6]

Science Advisory Board, Ecological Processes and Effects Committee, Sediment Quality Subcommittee; Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Sediment Quality Subcommittee (the Subcommittee) of the Ecological Processes and Effects Committee of the Science Advisory Board (SAB) will meet on July 7–9, 1993, at the Disabled American Veterans Building, 807 Maine Avenue, SW., Washington, DC 20024 in the first floor conference room. The meeting is open to the public, and will begin each day at 8:30 a.m. and end no later than 4:30 p.m. on July 9. Seating at the meeting will be on a first come basis.

Background

Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (USACE) and the Environmental Protection Agency (EPA) share responsibility for management of dredged material discharge activities in inland and near coastal waters. The USACE conducts Federal dredging and dredged material discharge activities and regulates non-Federal dredging and dredged material discharge activities through a permit program. The EPA is responsible for developing, in conjunction with the USACE, guidelines for evaluating proposed dredging and dredged material discharge activities. EPA and the USACE have developed a draft manual to provide testing procedures for determining the potential for contaminant-related environmental impacts associated with the discharge of dredged material in inland and near coastal waters.

The Charge

The Subcommittee will meet to review the draft document "Evaluation of Dredged Material Proposed for Discharge in Inland and Near Coastal Waters: Testing Manual." As part of the Charge to the Subcommittee, the Agency has requested the SAB to evaluate the assessment methods proposed for evaluating potential ecological and human health effects of proposed discharges of dredged material, with particular attention to: (1) Chemical and physical analyses; (2) bioassays and species selected for toxicity and bioaccumulation tests; (3) the scope of the Tier IV studies; (4) statistical methods used to compare dredged material to reference sediment; and (5) use of the STFATE mixing zone model.

Availability of Documents and Information

Single copies of the draft testing manual provided to the Subcommittee for this review are available from Esther Williams, U.S. EPA, Office of Science and Technology, 401 M Street SW. (WH–585), telephone (202) 260–7049. For additional information concerning this meeting or to obtain a draft agenda, please contact Ms. Stephanie Sanzone, Designated Federal Official, or Ms. Marcia Jolly, Staff Secretary, at (202) 260–6552, Ecological Processes and Effects Committee, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Anyone wishing to make a presentation at the meeting must notify Ms. Jolly and forward twenty-five copies of a written statement to her no later than June 30, 1993. Oral comments to the Subcommittee will be limited to five minutes per individual, and should not be repetitive of previously submitted written statements.

Dated: June 14, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–15016 Filed 6–24–93; 8:45 am]

BILLING CODE [illegible]

FEDERAL ELECTION COMMISSION

Clearinghouse Advisory Panel: Renewal of Charter

SUMMARY: The National Clearinghouse on Election Administration announces the renewal of the charter for the Clearinghouse Advisory Panel.

The purpose of the Panel is to provide advice and consultation to the Clearinghouse with respect to its research programs on election administration.

FOR FURTHER INFORMATION CONTACT: Janet McKee, National Clearinghouse on Election Administration, Washington, DC 20463, 202/219–3670.

Dated: June 22, 1993.

Penelope Bonsall,

Director, National Clearinghouse on Election Administration.

[FR Doc. 93–15023 Filed 6–24–93; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Jaxport/Crowley American Transport Inc.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200259–003.

Title: Jaxport/Crowley American Transport, Inc.

Parties:

Jacksonville Port Authority,
Crowley American Transport, Inc.

Synopsis: The amendment provides for changes in the Agreement's throughput charges, rental, and other rates as specified in the amendment.

By Order of the Federal Maritime Commission.

Dated: June 21, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–14934 Filed 6–24–93; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed: Venezuelan American Maritime Association, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–006190–069.

Title: Venezuelan American Maritime Association.

Parties:

Crowley American Transport, Inc.
Sea-Land Service, Inc.
A/S Ivarans Rederi
Consoricio Naviera de Occidente C.A.
Kirk Line, Ltd.
Venezuelan Container Line, C.A.

Synopsis: The proposed amendment modifies the rules governing financial obligations of the member lines.

Agreement No.: 202–010717–030.

Title: United States/Panama Freight Association.

Parties:

Crowley American Transport, Inc.
Sea-Land Service, Inc.
Seaboard Marine Line, Ltd.

Synopsis: The proposed amendment modifies the rules governing financial obligations of its member lines.

Dated: June 22, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–15034 Filed 6–24–93; 8:45 am]

BILLING CODE 6730–01–M

Issuance of Certificate (Casualty)

In the matter of Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Sun Fiesta Cruises, Inc., Pinnacle Maritime Ltd., Starlite Cruises, Inc. and Stena Crown Princess Ltd., 1007 North American Way, Miami, Florida 33132.

Vessel: SUN FIESTA

Dated: June 21, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–14932 Filed 6–24–93; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation

Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. § 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Sun Fiesta Cruises, Inc. and Starlite Cruises, Inc., 1007 North American Way, Miami, Florida 33132

Vessel: Sun Fiesta.

Dated: June 21, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–14933 Filed 6–24–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Continental Bank Corporation, Chicago, Illinois; Application to Engage in Asset Management Activities

The organization listed in this notice has applied under § 225.23(a)(1) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(1) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that the Board has determined previously to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 22, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Continental Bank Corporation, Chicago, Illinois; to engage *de novo* in asset management activities through its subsidiary Repechage Partners, Ltd., Chicago, Illinois. The Board has previously approved bank holding companies to engage in asset management activities. *See, e.g., The Dai-Ichi Kangyo Bank, Ltd.*, 79 Federal Reserve Bulletin 131 (1993); *NCNB*

Corporation, 77 Federal Reserve Bulletin 124 (1991).

Board of Governors of the Federal Reserve System, June 21, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14976 Filed 6–24–93; 8:45 am]

BILLING CODE 6210–01–F

Evans Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 15, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Evans Bancshares, Inc., Evansdale, Iowa; to engage *de novo* in a one time lending activity via the purchase of an overline from its subsidiary bank, the First Security State Bank, Evansdale, Iowa, pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Black Hawk County, Iowa.

Board of Governors of the Federal Reserve System, June 21, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14977 Filed 6–24–93; 8:45 am]

BILLING CODE 6210–01–F

F&A Financial Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 19, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. F&A Financial Company, Kittanning, Pennsylvania, and Snyder Holding Corporation, Kittanning, Pennsylvania; to acquire up to 64.04 percent of the voting shares of the Armstrong County Trust Company, Kittanning, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. THE BANCorp, Inc., LaGrange, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of THE BANK - Oldham County, LaGrange, Kentucky, a *de novo* bank.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Community Bancs of Oklahoma, Inc., Tulsa, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank & Trust Company, Tulsa, Oklahoma.

2. Liberty Bancorp, Inc., Oklahoma City, Oklahoma; to merge with First Edmond Bancshares, Inc., Edmond, Oklahoma, and thereby indirectly acquire First National Bank of Edmond, Edmond, Oklahoma.

Board of Governors of the Federal Reserve System, June 21, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14978 Filed 6–24–93; 8:45 am]

BILLING CODE 6210–01–F

John W. Frederick, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 15, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. John W. Frederick and Maureen A. Frederick, Grand Junction, Colorado; to acquire an additional 3.49 percent of the voting shares of Grand Valley Corporation, Grand Junction, Colorado, for a total of 25.54 percent, and thereby indirectly acquire Grand Valley National Bank, Grand Junction, Colorado.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Burrell Martin Dulany, Jr., Reisel, Texas, to acquire 51.16 percent of the voting shares of First Reisel Corporation, Reisel, Texas, and thereby indirectly acquire First State Bank, Reisel, Texas.

2. Herbert Dean Smith, Bonham, Texas; to acquire an additional 81.20 percent of the voting shares of Wolfe City Bancshares, Inc., Wolfe City, Texas, for a total of 81.21 percent, and thereby indirectly acquire The Wolfe City National Bank, Wolfe City, Texas.

Board of Governors of the Federal Reserve System, June 21, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–14979 Filed 6–24–93; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Study of a Uniform National Label for Devices That Dispense Automotive Fuel to Consumers

AGENCY: Federal Trade Commission.

ACTION: Notice of study and request for comments.

SUMMARY: The Federal Trade Commission ("Commission") seeks comments as to whether a uniform national label making disclosures required by Federal law should be placed on devices that dispense automotive fuel to consumers, and, if so, what information should be included in such a label. This action is being taken because the Energy Policy Act of 1992, Public Law 102–486, 106 Stat. 2776 ("Energy Act") directs the Commission, in consultation with the Environmental Protection Agency ("EPA"), to study the need for, and desirability of, such a label and to give interested parties an opportunity to participate in the study through the submission of written data, views, or arguments. The Commission is required to report to Congress by October 24, 1993, its findings, conclusions, and recommendations made as a result of this study, together with a description of the administrative and legislative actions needed to implement such recommendations. What follows is the preliminary version of the Commission's study. This preliminary version describes areas in which comments are requested and lists specific questions for comment.

DATES: Written comments must be submitted on or before July 26, 1993.

ADDRESSES: Written comments should be submitted to the Secretary, Federal Trade Commission, Washington, DC 20580, 202–326–2515. Comments should be identified as "Section 1503 Study—Comment." If possible, comments should be submitted both in writing and on personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format used.)

FOR FURTHER INFORMATION CONTACT: Lynda M. Rozell, Attorney, 202–326–2977, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Energy Act was enacted on October 24, 1992.[1] It establishes a comprehensive national energy policy to increase U.S. energy security gradually and steadily in cost-effective and environmentally beneficial ways. The Act seeks to reduce U.S. dependence on oil imports; to conserve energy and use it more efficiently; to reduce the use of oil-based fuels in motor vehicles; and to provide new energy options. The Act includes programs that encourage the development of alternative fuels and alternative fueled vehicles.

Section 1503 of the Energy Act directs the Commission, in consultation with EPA, to conduct a study to determine the need for, and the desirability of, a uniform national label on devices used to dispense automotive fuel to consumers that would consolidate information required by Federal law to be posted on such devices.[2] If the Commission finds that there is a need for such a label, the Commission's study must also determine the nature of the label.[3] The Commission is to weigh the consumer, environmental, and energy-saving benefits of possible elements of the label against the need for a concise, practical, and cost-efficient label.[4] As a possible element of an uniform national label, the Commission is to consider a statement suggesting that consumers check their vehicle owner's manual regarding octane requirements.[5]

In accordance with the Energy Act, the Commission is publishing this general notice of the study and requesting interested parties to submit written data, views, arguments, or comments.[6] To inform interested parties of the issues and questions that the Commission has identified as relevant to the study, Commission staff prepared this preliminary version of the study.

The Commission must report to Congress its findings, conclusions, and recommendations resulting from the study, including a description of any legislative and administrative actions needed to implement such recommendations, no later than October 24, 1993.[7] Any tentative finds and conclusions expressed in this preliminary version of the study may be revised significantly after written responses to this notice are received. Accordingly, this preliminary version does not include recommendations to Congress or a description of the actions necessary to implement such recommendations.

II. Background

A. Legislative History

Congress first considered whether there should be a uniform national label consolidating certain information on fuel pumps in 1988, in a hearing on gasoline fuel pump labeling before the Subcommittee on Energy and Power of the House Committee on Energy and Commerce.[8] The Subcommittee reviewed State and Federal labeling practices to determine whether it should consider drafting legislation that might require a single gasoline pump label to disclose information about octane, alcohol, lead, aromatics, detergents, and vapor pressure.[9]

Several bills and additional hearings followed the 1988 hearing. In 1990, the Octane Display and Disclosure Act, H.R. 5520, passed the House of Representatives, but was never considered in the Senate.[10] This 1990 bill would have had the Commission study a uniform national label consolidating information required by any law to be posted on automotive fuel pumps. The Commission was to assume in such a study that a uniform national label would preempt both federal and

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[1] Energy Act, Public Law 102–486, 106 Stat. 2776, 3133. The Energy Act has not yet been codified. All citations are to the session laws.

[2] Sec. 1503(a)(2)(A), Public Law 102–486, 106 Stat. 2776, 2998. Throughout this Notice, the term "fuel pump" or "fuel pumps" should be read to include any device that dispenses automotive fuel to consumers, even if such device technically is not a pump.

[3] Sec. 1503(a)(2)(B), Public Law 102–486, 106 Stat. 2776, 2998.

[4] Sec. 1503(b)(2)(A), Public Law 102–486, 106 Stat. 2776, 2999.

[5] Sec. 1503(b)(2)(B), Public Law 102–486, 106 Stat. 2776, 2999.

[6] Sec. 1503(b)(1), Public Law 102–486, 106 Stat. 2776, 2998.

[7] Sec. 1503(c), Public Law 102–486, 106 Stat. 2776, 2999.

[8] See Gasoline Pump Labeling: Hearing before the Subcommittee on Energy and Power of the House Committee on Energy and Commerce, 100th Cong., 2d Sess. (1988) ("1988 Hearing").

[9] 1988 Hearing, *supra* note 8, at 1 (remarks of Hon. Philip R. Sharp) and 39 (statement of Hon. Daniel Oliver, Chairman, Federal Trade Commission).

[10] Octane Display and Disclosure Act of 1990, H.R. 5520, 101st Cong., 2d Sess. (1990).

state labeling requirements.[11] By contrast, section 1503 of the Energy Act requires the Commission's study to address the consolidation only of information required by Federal law to be posted on automotive fuel pumps.[12] A hearing was held on the 1990 bill before the Subcommittee on Energy and Power of the House Committee on Energy and Commerce on June 20, 1990.[13]

In 1991, the House considered two bills whose provisions ultimately were incorporated in section 1503 of the Energy Act: (1) Another Octane Display and Disclosure bill, H.R. 2578,[14] and (2) H.R. 219, a bill that would have required a warning statement on fuel pumps directing consumers to check their vehicle owner's manual to see what grade of gasoline is recommended for their cars.[15] Like the current section 1503 of the Energy Act, the 1991 version of the Octane Display and Disclosure bill directed the Commission to conduct a study of a uniform national label consolidating information required by Federal law to be posted on fuel pumps.[16] Hearings were held on the two 1991 bills before the Subcommittee on Energy and Power of the House Committee on Energy and Commerce on June 12, 1991.[17]

Section 1503 of the Energy Act is part of the Octane Display and Disclosure provisions contained in title XV of H.R. 776, the House bill revised in conference and enacted as the Energy Act.[18] The conferees made no changes to the language of section 1503.[19] Section 1503 incorporates the language of the 1991 Octane Display and Disclosure bill, and, as derived from H.R. 219's proposed warning label, also directs the Commission to consider whether a uniform national label should suggest that consumers consult their vehicle owner's manuals for the manufacturer's recommended octane rating.[20]

B. Scope of the Study

The study applies to labels on all devices used to dispense automotive fuels to consumers, including gasoline pumps and devices that dispense alternative fuels at service stations, recharging stations, or other points of retail sale. It evaluates the possible consolidation of information currently required by Federal law to be posted on such devices. The statute contemplates consideration of at least one possible element of uniform national label that is not currently required to be posted by Federal law: The suggestion that consumers check their vehicle owner's manuals regarding octane requirements. The legislation that requires this study also requires new Federal labeling requirements for automotive fuel pumps under section 1501 of the Energy Act and for alternative fuels under section 406 of the Energy Act, discussed below.[21] These facts suggest that Congress did not intend to restrict the study to existing Federal requirements. Accordingly, in this study the Commission is considering issues related to the consolidation of existing and possible future Federal pump labeling requirements.

The study does not assume that a uniform national label would preempt state or local labeling requirements. Unlike H.R. 5520, which would have required such an assumption, the bill that was incorporated into section 1503 of the Energy Act requires the Commission to study the consolidation of information required by Federal law, not by any law.[22] The change in language suggests that, if the Commission were to recommend a uniform national label, it should not necessarily preempt state or local labeling requirements.[23]

Section 1503's direction to the Commission to weigh the consumer, environmental, and energy-saving benefits of any element of a uniform national label against the necessity for a concise, practical, and cost efficient label further suggests that, in evaluating consolidation of Federally required information, the Commission should examine informational issues, such as the length and content of messages and how consumers respond to such messages. For the same reasons, the Commission should consider whether every element of existing Federal labeling requirements should be maintained if consolidated on a uniform national label. Accordingly, the Commission will consider whether the consumer, environmental, and energy-saving benefits of the elements of labels currently required by Federal law to be posted on automotive fuel dispensers weigh in favor of including all elements of those labels on a uniform national label that must be concise, practical and cost efficient.

Because section 1503 directs the Commission to describe administrative and legislative actions needed to implement any Commission recommendations, this study also examines enforcement issues relating to Federal labeling requirements. Currently, as discussed in detail below, two separate agencies, the FTC and EPA, require labels to be posted on fuel pumps. Mechanisms for enforcing these requirements vary. Thus, consolidation of required label information poses administrative and legislative issues regarding the enforcement of uniform label requirements.

C. Current Federal Labeling Requirements

Federal law currently requires two to three labels on automotive fuel pumps: (1) A gasoline octane rating label; (2) a label identifying whether or not a pump contains unleaded gasoline,[24] and (3) a label regarding oxygenated gasoline in certain areas of the country during the winter.

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[11] H.R. Rep. No. 101-823, 101st Cong., 2d Sess. 8 (1990).

[12] Compare Energy Act, sec. 1503, 106 Stat. at 2998 with H.R. 5520, 101st Cong., 2d Sess., sec. 4 (1990).

[13] Octane Mislabeling: Hearing before the Subcommittee on Energy and Power of the House Committee on Energy and Commerce, 101st Cong., 2d Sess. (1990) ("1990 Hearing").

[14] H.R. 2578, 102d Cong., 1st Sess. (1991).

[15] H.R. 219, 102d Cong., 1st Sess. (1991). A similar bill recently was introduced in the current session of Congress. H.R. 1884, 103d Cong., 1st Sess. (1993).

[16] Compare Energy Act, sec. 1503, 106 Stat. at 2998 with H.R. 2578, 102d Cong., 1st Sess., sec. 4 (1991).

[17] National Energy Strategy (Part 6), Pump Labeling and Octane Cheating: Hearings before the Subcommittee on Energy and Power of the House Committee on Energy and Commerce, 102d Cong., 1st Sess. 405-506 (1992) ("1991 Hearings").

[18] H.R. 776, 102d Cong., 2d Sess. (1992).

[19] See H.R. Conf. Rep. No. 1018, 102d Cong., 2d Sess. (1992).

[20] Sec. 1503, Public Law 102-486, 106 Stat. 2776, 2998-99.

[21] Sec. 1501, Public Law 102-486, 106 Stat. 2776, 2996; sec. 406, Public Law 102-486, 106 Stat. 2776, 2880-81. A proposed rule implementing section 1501 of the Energy Act was published in the Federal Register on March 26, 1993. See Octane Certification and Posting, 58 FR 16464 (March 26, 1993). The Energy Act requires a final rule to be issued by July 21, 1993. The Act requires notice of a proposed rule to implement section 406 to be issued by April 23, 1994.

[22] Compare Energy Act, sec. 1503(a)(2)(A), 106 Stat. at 2998, and H.R. 2578, 102d Cong., 1st Sess., sec. 4 (1991) with H.R. 5520, 101st Cong., 2d Sess., sec. 4 (1990). See also H.R. Rep. No. 101-823, 101st Cong., 2d Sess. 8 sec. (1990).

[23] Similarly, preemption of state enforcement authority by whatever Federal mechanism may be used to enforce a uniform national label appears inconsistent with the Energy Act. The Act's Octane Display and Disclosure provisions are designed to give states greater authority to enforce against octane mislabeling. H.R. Rep. 102-474, 102d Cong., 2d Sess., pt. 2, at 151 (1992); 1991 Hearings, *supra* note 17, at 406 (statement of Rep. Philip R. Sharp). Section 1502, in particular, provides that state remedies that are not identical to the remedies provided for by the PMPA are no longer preempted. See sec. 1502, Public Law 102-486, 106 Stat. 2776, 2997-98 (to be codified at 15 U.S.C. 2824).

[24] Another related label must be placed in the immediate area of each gasoline pump stand or island. 40 CFR 80.22(d). The retailer may choose to place this label directly on a fuel pump, but is not required to do so. See discussion, *infra* section II, paragraph C.2.

1. The Octane Label

Since June 1, 1979, the Commission has required gasoline retailers to post the octane rating of gasoline sold to consumers.[25] The Octane Rule, issued pursuant to title II of the Petroleum Marketing Practices Act ("PMPA"),[26] is intended to enable consumers to purchase gasoline with an octane rating high enough to prevent "engine knock."[27] It also is intended to help consumers avoid buying gasoline with an octane rating higher than their vehicles need, a practice known as "octane overbuying."[28]

Retailers must post at least one label on each face of each gasoline dispenser through which gasoline is sold to consumers.[29] If two or more kinds of gasoline with different octane ratings are sold through the same dispenser, retailers must post separate labels for each kind of gasoline on each face of the dispenser.[30] The label, or labels, must be placed conspicuously on the dispenser in full view of consumers and as near as reasonably practical to the price of the gasoline.[31]

The Octane Rule specifies the format of the labels. All octane labels must be 3" wide x 2.5" long.[32] The labels must have a yellow background, black type and black borders.[33] The Octane Rule also specifies the style, size and spacing of text, numerals and borders.[34] All labels must contain the following information: "Minimum Octane Rating"; "(R + M)/2 Method"; and the minimum octane rating of the gasoline to which the label applies.[35] The octane number is the most prominent feature of the labels. Finally, the Octane Rule prohibits including on the labels any mark or information other than that called for by the Octane Rule.[36]

2. The Leaded/Unleaded Gasoline Labels

In 1973, EPA promulgated regulations to implement sections 211 and 301(a) of the Clean Air Act by providing for the availability of lead-free and phosphorus-free fuel.[37] The regulations were intended to prevent damage to motor vehicle emission control systems from lead or phosphorus additives to gasoline.[38]

Since July 1, 1974, EPA has required all retailers of gasoline for use in motor vehicles to affix a permanent, legible label to each gasoline pump stand to identify whether the gasoline is leaded or unleaded.[39] The label must state "Unleaded gasoline" if the pump stand contains dispensers for unleaded gasoline.[40] If the pump stand contains dispensers for leaded gasoline, the label must state "Contains lead anti-knock compounds" and must be located so as to be readily visible to employees and customers.[41]

EPA also requires every retailer of gasoline prominently and conspicuously to display in the immediate area of each gasoline pump stand a notice that Federal law prohibits the introduction of any gasoline containing lead or phosphorus into any motor vehicle labeled "Unleaded Gasoline Only."[42] The retailer need not place the notice directly on the pump stand or the fuel dispenser, but may do so.

The Clean Air Act Amendments of 1990 prohibit the sale of leaded gasoline as a motor vehicle fuel after December 31, 1995.[43] EPA may revise its leaded/unleaded gasoline rule accordingly.

3. The Oxygenated Fuels Labels

Section 211(m) of the Clean Air Act[44] requires certain states to implement an oxygenated gasoline program and to revise their State Implementation Plans ("SIPs") accordingly. SIPs provide for state implementation, maintenance, and enforcement of certain air quality standards prescribed by EPA under the Clean Air Act.[45] The oxygenated gasoline program applies to all states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more, generally based on data for 1988 and 1989.[46] The oxygenated gasoline program must require gasoline in the specified "control areas" to contain no less than 2.7% oxygen by weight during a specified "control period."[47] States may elect to adopt an averaging program using marketable oxygen credits. Under such a credit program, gasoline containing oxygen above 2.7% by weight may offset gasoline with an oxygen content below 2.7%.[48] EPA's guidelines specify that, if a state elects to adopt a credit program, it should establish a minimum oxygen content of 2.0% by weight for each gallon of gasoline.[49]

Section 211(m) also requires retailers of oxygenated gasoline in control areas, in accordance with regulations promulgated by EPA, to label the fuel dispensing system with a notice that the gasoline is oxygenated and will reduce carbon monoxide emissions from motor vehicles.[50] EPA's oxygenated fuels rule requires labeling of gasoline pumps to indicate that oxygenated fuel is being dispensed, effective November 19, 1992.[51] It does not restrict states from imposing additional labeling requirements.[52]

EPA intends the oxygenated fuels labeling rule to "inform the public of

[25] See 16 CFR part 306.

[26] 15 U.S.C. 2821–2824.

[27] Final Rule Governing Certification and Posting of Octane Numbers Under Title II of the Petroleum Practices Marketing Act, 44 FR 19160 (Mar. 30, 1979).

[28] *Id.*

[29] 16 CFR 306.9(a).

[30] *Id.*

[31] 16 CFR 306.9(b). The Commission may allow certain exceptions to the placement requirements upon petition by the retailer. See 16 CFR 306.9(b)(2).

[32] 16 CFR 306.11(a). To accommodate technological developments in the industry, the Commission has granted several petitions to post octane ratings on labels that differ slightly from the Octane Rule's specifications. See Sun Refining & Marketing Co., et al., 56 FR 26821 (Jun. 11, 1991); Sun Oil Co., 55 FR 1871 (Jan. 19, 1990); Exxon Corp., 54 FR 14072 (Apr. 7, 1989); Gilbarco, Inc., 53 FR 29277 (Aug. 3, 1988); Sun Oil Co., 44 FR 33740 (Jun. 12, 1979).

[33] 16 CFR 306.11(c).

[34] 16 CFR 306.11 (a) (b).

[35] 16 CFR 306.11(b).

[36] 16 CFR 306.11(d).

[37] Part 80, Regulation of Fuels and Fuel Additives, 38 FR 1254, 1255 (Jan. 10, 1973).

[38] *Id.*; 40 CFR 80.1.

[39] 40 CFR 80.22(e). A pump stand or island is a discrete area allowing motor vehicles access to one or more pumps for fueling. Typically, a pump stand or island is located on a raised slab or curb of concrete and has a sign advertising the fuel available at the pump stand.

[40] *Id.*

[41] *Id.*

[42] 40 CFR 80.22(d).

[43] 42 U.S.C. 7545(n).

[44] 45 U.S.C. 7545(m).

[45] See 42 U.S.C. 7410. Such plans must be adopted by the state and submitted for approval to EPA. *Id.* EPA approval of State Implementation Plans does not create new federal requirements, but simply approves requirements imposed by the states. See Approval and Promulgation of Implementation Plans, California State Implementation Plan Revision; Santa Barbara County Air Pollution Control District, 57 FR 37743, 37744 (Aug. 20, 1992).

[46] 42 U.S.C. 7410.

[47] A control area is an area designated by EPA in which only oxygenated gasoline may be sold or dispensed, because the area fails to meet certain Clean Air Act standards for the level of carbon monoxide pollution in the air. See 42 U.S.C. 7545(m); Notice of Final Oxygenated Fuels Labeling Regulations Under Section 211(m) of the Clean Air Act as Amended, 57 FR 47769, 47771 (Oct. 20, 1992). A control period is the period during which oxygenated gasoline must be sold or dispensed in any control area, because the control area is prone to high concentrations of carbon monoxide pollution during that time of the year. *Id.* For most control areas, EPA has established a control period starting November 1st and ending February 29th. For a listing of control areas and control periods, see Guidelines for Oxygenated Gasoline Credit Programs and Guidelines on Establishment of Control Periods Under Section 211(m) of the Clean Air Act as Amended, 57 FR 47853 (Oct. 20, 1992).

[48] 57 FR 47853, 47853–54.

[49] Environmental Protection Agency, "Oxygenated Gasoline Implementation Guidelines" 2 (July 27, 1992).

[50] 45 U.S.C. 7545(m).

[51] 57 FR 47769, 47770.

[52] 57 FR 47769, 47771.

the beneficial goal of section 211(m)'s mandated oxygenated gasoline program, and of reductions in carbon monoxide emissions from motor vehicles."[53] The rule also is intended to inform the consumer "in a clear and understandable way, while minimizing the chances of confusing the public."[54]

The oxygenated fuels rule requires gasoline retailers to affix to each gasoline pump stand from which oxygenated fuel is dispensed in a control area during a control period a "legible and conspicuous" label containing one of two alternative statements.[55] In states with oxygenated gasoline programs requiring a minimum oxygen content, the label must include the statement that: "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."[56] If, however, the gasoline pump stand is in a state with an oxygenated gasoline program that has a credit program with no minimum oxygen content requirement, the label must instead state that: "The fuel dispensed from this pump meets the requirements of the Clean Air Act as part of a program to reduce carbon monoxide pollution from motor vehicles."[57] The alternative language is intended to prevent consumers from being misled into believing that the gasoline is oxygenated, when in fact it may lawfully contain no oxygen if under the state implementation plan the gasoline may be averaged with other gasoline having an oxygen content greater than a minimum oxygen standard.[58] The oxygenated fuels rule does not require identification of the oxygenate.[59]

The label must contain one of the two alternative statements in block letters of no less than 20-point bold type in a color contrasting with the background.[60] It must be placed on the vertical surface of the pump on any side that has gallon and price meters, on the upper two-thirds of the pump, in a position from which it may be clearly read by the public.[61]

D. Pending Federal Labeling Requirements

1. Section 1501 of the Energy Act

Section 1501 of the Energy Act requires the Commission to issue posting and certification requirements, like the octane posting and certification requirements that presently exist for gasoline, for all liquid automotive fuels other than diesel fuels no later than July 21, 1993. Section 1501 also authorizes the Commission to issue posting and certification requirements for diesel fuels, if the Commission finds such requirements appropriate after a rulemaking proceeding. A Notice of Proposed Rulemaking proposing to amend the Octane Rule pursuant to section 1501 was published in the **Federal Register** on March 26, 1993.[62] The Commission also is conducting its ten-year regulatory review of the Octane Rule during that rulemaking proceeding.

The proposed amendments address fuel pump labeling for six alternative liquid fuels and for diesel fuel. The alternative liquid fuels are methanol; ethanol; M–85, a blend of 85% methanol with 15% gasoline; E–85, a blend of 85% denatured ethanol with 15% gasoline; liquified propane gas ("LPG"); and liquified natural gas ("LNG"). The Commission sought comments on four options for retail pump labeling of alterative fuels. Option 1 would require a label containing the octane rating of alternative fuels. Option 2 would require a label identifying the fuel being dispensed and providing a relevant non-octane rating: The minimum propane content of LPG, the minimum methane content of LNG, and the range of hydrocarbon content of methanol, ethanol, M–85, and E–85. Option 3 would require a label stating how many gallons of the alternative fuel being dispensed is needed either (1) to replace a gallon of gasoline, or (2) to travel as far as using a gallon of gasoline would allow. Option 4 would require a label identifying the alternative fuel being dispensed, which would have to meet certain specifications. The **Federal Register** notice proposing these amendments also seeks comments as to whether the cetane ratings of diesel fuel should be certified and posted.

For each of the four options for alternative liquid fuels, and for cetane disclosures for diesel fuels, the color, type size, and typeface of the proposed label would be the same as or similar to the current octane label. The content, size and location of labels for alternative liquid fuels may vary as described in the proposed rule or as revised during the rulemaking process. For example, the dimensions of the label would vary as needed to accommodate the length of the text. Under the proposed amendments, only labels pertaining to the fuel contained in a dispenser would appear on that dispenser. Thus, the total number of labels on the fuel pump would not increase, unless a fuel pump dispenses more than one type of fuel.

2. Section 406 of the Energy Act

Section 406 of the Energy Act requires the Commission to propose by April 23, 1994, uniform labeling requirements for alternative fuels and alternative fuel vehicles, including information about costs and benefits to enable consumers to make comparisons and choices.[63] The required alternative fuels labeling must be simple and may be consolidated with other labels that provide information to consumers.[64] The Department of Energy ("DOE") is to provide technical assistance to the Commission in developing labeling requirements under section 406, in coordination with DOE's production of a public information

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[53] *Id.* at 47770.

[54] *Id.*

[55] *Id.* at 47770–72 (to be codified at 40 CFR 80.35).

[56] *Id.* at 47771 (to be codified at 40 CFR 80.35(a)).

[57] *Id.* at 47772 (to be codified at 40 CFR 80.35(b)). States may elect an oxygenated fuels credit program that allows averaging of the oxygen content of gasoline, rather than prescribing oxygen content for all gasoline. In states with a credit program that does not require a minimum oxygen content for all gasoline, gasoline with no oxygen content could legally be sold in a control area during a control period, if it is averaged with gasoline having a higher oxygen content than required by the Clean Air Act minimum oxygen content standard. *Id.* at 47770.

[58] *Id.* According to EPA, no state included in the oxygenated gasoline program has yet adopted this alternative; all states electing a credit program have adopted a minimum oxygen content requirement of at least 2.0% by weight.

[59] In May 1991, as part of its regulation of gasoline volatility, EPA proposed requiring labels on gasoline pumps to identify gasoline containing the oxygenated ethanol and the percentage concentration of ethanol. Regulation of Fuels and Fuel Additives: Standards for Gasoline Volatility; and Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines: Standards for Particulate Emissions from Urban Buses, 56 FR 24242 (May 29, 1991). After reviewing comments from the public, the EPA withdrew its labeling proposal because it was not necessary for enforcing EPA's volatility fuel standards. Regulation of Fuels and Fuel Additives: Standards for Gasoline Volatility; and Control of Air Pollution from New Motor Vehicle and New Motor Vehicle Engines: Standards for Particulate Emissions from Urban Buses, 56 FR 64704, 64705 (Dec. 12, 1991).

[60] 57 FR 47769, 47772 (to be codified at 40 CFR 80.35(a), (b)).

[61] *Id.*

[62] Octane Certification and Posting, 58 FR 16464 (March 26, 1993). The comment period originally was scheduled to end on April 26, 1993. In response to a petition, the Commission extended the comment period to May 10, 1993. Octane Certification and Posting, 58 FR 25582 (Apr. 27, 1993).

[63] Section 406, Public Law 102–486, 106 Stat. 2776, 2880–81. Section 301 of the Energy Act defines "alternative fuel" to mean methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (but not less than 70 percent) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquified petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel that the Secretary of Energy determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and environmental benefits. Sec. 301, Public Law 102–486, 106 Stat. 2776, 2866.

[64] *Id.*

package on the costs and benefits of the use of alternative fuels in motor vehicles under section 405 of the Energy Act.[65] The Commission will solicit public comment on proposals for implementing Section 406 in a separate proceeding that will be announced in the **Federal Register**. The Energy Act directs the Commission to issue a final rule by April 23, 1995.

E. Other Labels on Fuel Pumps

Fuel pump labeling differs from state to state, and locality to locality. For example, many states require fuel pumps to be labeled with gasoline ingredients, particularly alcohol.[66] State weights and measures enforcement officials post certifications on fuel pumps to indicate that the fuel satisfies state law requirements. Some states and localities also have adopted trade association standards that mandate posting of health and safety warnings.

Further, the National Conference on Weights and Measures ("NCWM"), an organization of state and local weights and measures enforcement officials, issues model labeling guidelines for fuel pumps that are often adopted by states.[67] The dispenser labeling guidelines that NCWM recommends for state consideration include the Uniform Regulation for the Method of Sale of Commodities, which provides for labeling the upper half of the front panel of a dispenser of motor fuel that contains at least one percent by volume of any oxygenate or combination of oxygenates with a statement identifying the specific type of oxygenate(s) in the fuel, such as "contains ethanol" or "with MBTE."[68]

Gasoline retailers also may participate in voluntary health and safety warning labeling programs. A widely used "Gasoline Health Warning" label urges consumers to avoid prolonged breathing of vapors, to keep their faces away from the nozzle and gas tank, and to never siphon gasoline by mouth.[69] Other information that often appears on gasoline fuel pumps includes instructions for operating the fuel pump, instructions for paying for the fuel, brand names, grades of gasoline, and advertising.

As part of this study, the Commission is soliciting data and comments regarding the nature and extent of state and local labeling requirements and information that is voluntarily posted on fuel pumps. Commenters are asked for their views regarding the need for and desirability of a uniform Federal label in light of state and local labeling requirements and voluntarily provided information.

III. Need for and Desirability of a Uniform National Label

A. Purpose

Generally, labels have two functions: (1) Informational functions, such as informing, persuading, or reminding consumers, and (2) enforcement functions, such as aiding enforcement of standards or requirements referred to on the label. The legislative history of section 1503 indicates that Congress contemplated both the informational and enforcement functions of a uniform national label in directing the Commission to study the need for such a label. The purpose of the Octane Display and Disclosure provisions of the Energy Act, including section 1503, is to "increase consumer confidence in and information about motor fuels."[70] In addition, these provisions reflect Congress' recognition "that motorists have a right to know that they are getting what they pay for and that dealers have a right to know that their competitors are not cheating."[71]

Another concern prompting the uniform national label study is the perception that consumers tend to purchase gasoline with an octane rating higher than their vehicles need.[72] Representative Schumer, the principal sponsor of H.R. 219, a predecessor to one of the provisions of section 1503, indicated that octane overbuying increases out of pocket costs to consumers and damages the environment.[73]

B. Informational Issues

The informational functions of a uniform national label could include informing, persuading, or reminding consumers of (1) consumer benefits, such as protecting consumer safety and health, protecting vehicles, and enhancing vehicle performance; (2) environmental costs and benefits; and (3) energy-saving opportunities. These purposes to some extent overlap. The same elements on a uniform national label might serve more than one informational purpose.

I. Information Overload

In assessing whether there is a need for a uniform national label, both the quantity of information that already appears on fuel pumps and the quantity of information that might appear on such a label should be considered. One school of thought in marketing, "information overload" theory, posits that consumers make objectively worse decisions when they are provided with large amounts of information, because they selectively process the information and may ignore important factors.[74] Providing more information on a label is helpful to consumers only if information currently available on the label is inadequate. If, however, consumers have difficulty reading, understanding, and using the available label information, the value of additional information is doubtful.[75]

Marketing literature identifies many factors that affect how consumers process information, including: the length and content of the message; the format in which it is presented; the individual characteristics of consumers, such as their motivation in seeking

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[65] See sec. 405, Public law 102–486, 106 Stat. 2776, 2860.

[66] In 1988 the General Accounting Office ("GAO") surveyed states, the District of Columbia, Puerto Rico, and U.S. territories to determine their pump labeling requirements for gasoline ingredients. General Accounting Office, "Gasoline Marketing, States' Programs For Pump Labeling Of Gasoline Ingredients" 9 (1989). Forty-seven states, the District of Columbia, Puerto Rico, and the Virgin Islands responded to the survey. *Id.* Thirty-nine of these entities required some form of pump label to disclose gasoline ingredients, including the alcohol content of gasoline. *Id.* States that require posting of alcohol content on retail pumps generally require fuel pump labels for gasoline that includes more than 1% ethanol or methanol by volume. 1988 Hearings, *supra* note 8, at 95 (statement of Richard White, American Petroleum Institute).

[67] See 1988 Hearings, *supra* note 8, at 52 (statement of N. David Smith, National Conference of Weights and Measures).

[68] U.S. Department of Commerce, National Institute of Standards and Technology, "NIST Handbook 130," 93 (1993). The same labeling language is recommended by the NCWM in section 3.1 of its Uniform Regulation for Motor Fuel. *Id.* at 111.

[69] See 1988 Hearings, *supra* note 8, at 116 (testimony of the American Petroleum Institute).

[70] H.R. Rep. 102–474, 102d Cong., 2d Sess., pt. 2, at 151 (1992); 1991 Hearings, *supra* note 17, at 408 (statement of Rep. Philip R. Sharp).

[71] *Id.*

[72] 1991 Hearings, *supra* note 17, at 420 (statement of Rep. Carlos J. Moorhead); 1991 Hearings, *supra* note 17, at 421–24 (statement of Rep. Charles E. Schumer).

[73] 1991 Hearings, *supra* note 17, at 422 (statement of Rep. Charles E. Schumer).

[74] See, e.g., Wesley A. Magat and W. Kip Viscusi, "Informational Approaches to Regulation" 14, 105 (1992); J. Wesley Hutchinson and Joseph W. Alba, "Ignoring Irrelevant Information: Situational Determinants of Consumer Learning," 18 Journal of Consumer Research 325, 325–26 (1991); International Advertising Association, "Labeling & Advertising: Their Functions in Consumer Information" 8 (1987); James R. Bettman, John W. Payne and Richard Staelin, "Cognitive Considerations in Designing Effective Labels for Presenting Risk Information," 5 Journal of Public Policy & Marketing 1, 6–7, 12 (1986); Naresh K. Malhotra, "Information Load and Consumer Decision Making," 8 Journal of Consumer Research 419, 427 (1982). But see David M. Grether, Alan Schwartz and Louis L. Wilde, "The Irrelevance of Information Overload: An Analysis of Search and Disclosure," 59 S. Cal. L. Rev. 277 (1986) (concluding that consumers generally reach successful, if not optimal, results by selectively processing information).

[75] Magat and Viscusi, *supra* note 74, at 87.

information, their attention span, their cognitive skills, and their previous knowledge; and environmental factors, such as distractions and time limitations.[78] The Commission is not aware of any study that has been done of how consumers read, understand, and use information on fuel pump labels. It welcomes comments on any factors that may affect the ability of consumers to read, understand, and act upon label information posted on fuel pumps. Interested parties should address information overload issues both with regard to the content and format of a label consolidating information required to be posted by Federal law on fuel pumps and with regard to the need for such a label in light of all information displayed on fuel pumps.

It is not clear how much information is too much. According to information overload studies, consumers may focus on anywhere from one to ten pieces of information about a product in making decisions.[77] Requiring information for only some attributes of a product may lead consumers to believe that other attributes are less important.[78] How much information is provided may not be as important, however, as whether that information makes it more difficult for consumers to obtain information about the particular attributes in which they are interested.[79] The challenge of designing an effective label is to present enough information to help consumers make informed choices, but not so much information that consumers' selective reading and understanding of that information leads them to make poor decisions.[80] Although generally consumers are more satisfied if they have more information on which to base their decisions,[81] the effectiveness of a complex label may depend on how motivated consumers are to read it. Consumers who are highly motivated to read labels process more information than those who are not.[82]

Morever, the format of a label affects how consumers read, understand, and use the information on it.[83] The same information presented in different formats may result in different consumer decisions.[84] Not surprisingly, a format that makes information easier to process may improve consumer understanding and decisionmaking.[85]

To be effective, a label should be designed to direct the consumer's attention to the information that is most important for the consumer to learn.[86] Information should be organized in a way that it can be easily understood and acted upon.[87] Colors, type size, symbols, and the use of graphics such as boxes and arrows can help consumers locate and read the information that they need.[88] Standardized label formats for different products help consumers recognize the label as providing information or certifying quality.[89] Consistency in the format and type of information provided helps consumers read and understand new information, because they can relate the new label to their experience with a similar label.[90]

Finally, environmental factors such as distractions and time constraints may affect how consumers read, understand, and use information.[91] Research on grocery shopping behavior, for example, shows that consumers' use of product labels is limited by time pressure and the fact that many consumers dislike grocery shopping.[92] Nonetheless, time pressure may help focus consumers' attention and improve decisionmaking when consumers are presented with only a limited amount of information and do not have to make complex decisions.[93]

2. Application of Information Overload Theory to Fuel Pump Labels

Both the quantity of information on fuel pumps and the quantity of information on a uniform national label could contribute to information overload. Although Federal law currently requires only two to three labels, a fuel pump may contain seven or eight discrete labels or messages providing information required by state or local law, instructions on how to use the pump, voluntarily provided health and safety warnings or descriptions of fuel contents, and advertising. For purposes of the Commission's study of a uniform national label on fuel pumps, information load theory suggests that a fuel pump label should inform consumers of information on which they will rely in making choices. The amount of information that appears on fuel pumps and the amount of information that appears on a possible uniform national label should strike a balance between informing consumers and not overloading consumers. In striking this balance, consideration should be given to consumers' prior knowledge; any existing misperceptions (such as, for example, any tendency to equate higher octane levels with higher power); the educational level and motivation of consumers to read the

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[76] *See, e.g.*, Minhi Hahn, Robert Lawson, and Young Gyu Lee, "The Effects of Time Pressure and Information Load on Decision Quality," 9 Psychology & Marketing 365, 376–378 (1992); J. Craig Andrews, "Motivation, Ability, and Opportunity to Process Information: Conceptual and Experimental Manipulation Issues," in 15 Advances in Consumer Research 219, 219 (Michael J. Houston ed., 1987); Rajeev Batra and Michael L. Ray, "Situational Effects of Advertising Repetition: The Moderating Influence of Motivation, Ability, and Opportunity to Respond," 12 Journal of Consumer Affairs 433–34 (1986); Richard E. Petty and John T. Cacioppo, "Communication and Persuasion: Central and Peripheral Routes to Attitude Change," 170–71 (1986); Terence A. Shimp, "Promotion Management and Marketing Communications," 134–36 (2d ed. 1990).

[77] See Hutchinson and Alba, *supra* note 74, at 340–41; Grether, *supra* note 74, at 63; Maholtra, *supra* note 74, at 427.

[78] Linda R. Stanley, "A Market Test of Consumer Response to Information Disclosure," 10 Journal of Public Policy & Marketing 202, 206 (1991).

[79] Grether, et al., *supra* note 74, at 286–87.

[80] Bettman, et al., *supra* note 74, at 7. See also Grether, et al., *supra* note 74, at 301 (concluding that disclosure requirements should reduce the costs to consumers of learning about product attributes and should correct information processing problems caused by consumer misperceptions).

[81] In general, consumers may be more satisfied when they believe they have more information on which to base product choices. See Grether, et al., *supra* note 74, at 284–85. Consumer who lack prior knowledge or expertise tend to have more favorable attitudes toward a label if more information is provided. See Petty and Cacioppo, *supra* note 76, at 171. Because the attributes that are relied upon by consumers in making choices may differ from consumer to consumer, it may be necessary to provide information about many attributes to satisfy a substantial number of consumers. Grether, et al., *supra* note 74, at 300–01; Bettman, et al., *supra* note 74, at 7. See also Julie A. Caswell and Daniel I. Padberg, "Towards a More Comprehensive Theory of Food Labels," 7 American Journal of Agricultural Economics 460, 465 (1992).

[82] Durairaj Maheswaran and Brian Sternthal, "The Effects of Knowledge, Motivation, and Type of Message on Ad Processing and Product Judgments," 17 Journal of Consumer Research 66, 70–71 (1990). The complexity of the message in relation to the educational level of the reader also affects the ability of the reader to understand the information. F. Kelly Shuptine and Ellen M. Moore, "Even After the Magnuson Moss Act of 1975, Warranties Are Not Easy to Understand," 14 Journal of Consumer Affairs 394, 402–03 (1980).

[83] Merely making information available does not guarantee consumers will respond to it. Magat and Viscusi, *supra* note 74, at 186.

[84] See Bettman, et al., *supra* note 74, at 2. Recent studies confirm that the manner and structure in which information is presented also substantially affect the ability of consumers to recall information. Magat and Viscusi, *supra* note 74, at 14–15, 107, 118.

[85] Bettman, et al., *supra* note 74, at 10.

[86] See Hutchinson and Alba, *supra* note 74, at 342.

[87] Magat and Viscusi, *supra* note 74, at 186; Bettman, et al., *supra* note 74, at 15.

[88] See Bettman, et al., *supra* note 74, at 15.

[89] Miller, J.A. "Labeling—The State of the Art," 128 (1978).

[90] See Bettman, et al., *supra* note 74, at 11.

[91] See Andrews, *supra* note 76, at 221. See also Hahn, *supra* note 76, at 377; Magat and Viscusi, *supra* note 74, at 91; Hutchinson and Alba, *supra* note 74 at 327; Bettman, et al., *supra* note 74, at 2. Studies show that less accurate information processing occurs under time constraints; test subjects focus on fewer pieces of information and unduly emphasize negative information. Malhotra, *supra* note 74, at 421.

[92] Caswell and Padberg, *supra* note 81, at 74.

[93] Hahn, *supra* note 76, at 377.

label; the ease of obtaining the same information from other sources; and time pressure and distractions that may affect consumer processing of the information provided on a fuel pump label. Care should be taken that inclusion of any statement regarding fuel attributes does not have negative implications by suggesting that other attributes are irrelevant. It also may be useful for a label to refer consumers to more detailed sources of information.

The Commission seeks information and comments regarding consumer use of information posted on fuel dispensers, and any constraints affecting consumer reading and understanding of such information at fuel stations. Specifically, commenters should address whether a uniform Federal label replacing two or three discrete labels would make it easier or more difficult for consumers to process information on the new label. Commenters also should address whether the existence of other labels on fuel pumps affects the need for or desirability of a uniform Federal label.

With regard to format, the label should be organized in a manner that directs the attention of consumers to the most important elements of information. Accordingly, the Commission seeks comments as to which of the elements that might be included on a uniform national label are most important for consumers to read and understand, if such a label were adopted. The Commission seeks comments on whether maintenance of a format similar to that of the long-established octane label is desirable to benefit from consumer familiarity with the octane label.

C. Enforcement Issues

Currently, Federal requirements that two to three labels be posted at fuel pumps are enforced by the FTC, EPA, and, in some circumstances, the states. By posting Federally required labels, sellers represent directly or indirectly that the information provided on the labels is accurate. Thus, the labels not only assure consumers that the fuel they select meets certain standards or requirements, they provide a basis for enforcement actions against mislabeling. Enforcement is not limited solely to FTC or EPA actions. Mislabeling of the octane content of gasoline, for example, may be a violation of state law and subject to state enforcement. Similarly, under EPA's guidelines, states are responsible for enforcing oxygenated gasoline labeling requirements. Below, the enforcement mechanisms for each of the currently required labels are discussed in more detail. The Commission seeks comments as to whether current enforcement mechanisms should be maintained if current Federal labeling requirements are consolidated on a uniform national label, or whether another enforcement mechanism would be more appropriate for a uniform national label.

1. The Octane Label

At the retail level, sellers of gasoline must post an octane rating that is consistent with a certification obtained from their distributor, or with the results of the seller's testing of the gasoline. The Commission's enforcement of the Octane Rule relies on a system of testing at the refiner or producer level and repeated certification through the chain of distribution to retailers in order to provide assurance that the proper octane rating is posted and to deter mislabeling. Refiners must test and provide certification of the octane rating to distributors, which in turn use this information to provide certification of the octane rating of the gasoline they sell to retailers. The retailers then use the certification information they receive from distributors, or the results of retail level tests, to post an octane rating label on the fuel pump.

The Commission takes action against sellers who mislabel the octane content of gasoline and sellers who fail to certify octane ratings or to keep records of the certification or tests on which they based their octane ratings.[94] Violations of the Commission's Octane Rule are punishable by fines of up to $10,000 per violation.[95] In addition to the Commission's policing of mislabeling and the Octane Rule's certification and recordkeeping requirements throughout the chain of distribution, many states routinely test gasoline at the retail level in order to determine whether the octane rating is accurate, and bring enforcement actions if there is mislabeling.[96]

The Commission encourages state testing and enforcement efforts and cooperates with state officials in joint enforcement actions.[97] It believes that state testing of retail gasoline pumps and state enforcement against octane mislabeling are critical.[98] Mislabeling occurs most frequently at the local level, and state enforcement is needed to address this problem.[99] Accordingly,

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Ratings Are Accurate," 15 (1990). Between 1979 and 1987, the Motor Vehicle Manufacturer's Association ("MVMA") found that 9% of the gasoline tested was at least 0.6 of an octane point below the posted rating in a survey of 26 areas nationwide. *Id.* A recent enforcement sweep by Minnesota found that 17% of the gasoline tested was at least 0.8 octane points below the posted octane rating. Hubert Humphrey III, "Octane Misleading in Minnesota, A Report by Minnesota Attorney General Hubert Humphrey III," 8–9 (1992). Minnesota's investigation, however, found that most mislabeling occurred at small, independent stations; was inadvertent rather than fraudulent; and did not significantly affect consumers. *Id.* The mislabeled gasoline accounted for a much smaller proportion of the gasoline sold in the state and the misleading occurred between types of premium gasoline varying by only one or two octane points. *Id.* at 9. Data from the MVMA in recent years show a mislabeling rate in the range of 2% to 4%. Motor Vehicle Manufacturers Association, "National Fuel Survey" (1990); Motor Vehicle Manufacturers Association, "National Fuel Survey" (1991).

[94] See, e.g., *United States* v. *Davis Brothers Oil, Inc.*, No. IP93–459C (S.D. Ind. Apr. 4, 1993); *United States* v. *Midwest Petroleum Co.*, No. 4:92 CV 001438 CFG (E.D. Mo. July 24 1992); *United States* v. *Henderson*, No. 392–CV–1487X (N.D. Tex. Jul. 24, 1992); *United States* v. *F.A. Stein Oil Co.*, No. 92–CV–532–WDS (S.D. Ill. July 14, 1992); *FTC* v. *Wright*, No. 92–281H (CM) (S.D. Cal. Oct. 14, 1992); *FTC* v. *Wright Cos.*, No. CV–S–92–157–HDM–RJJ (S.D. Cal. Feb. 25, 1992). The Commission currently is conducting an enforcement sweep of distributors of gasoline to determine whether they are receiving and providing certification of the octane rating.

[95] 15 U.S.C. 45(m)(1)(A).

[96] Data on the extent of octane mislabeling differ. Christopher Dyson, "Fueling the Public, An Investigative Report on the Selling of Gasoline" 23 (1992) (published by Public Citizen); General Accounting Office, "Gasoline Marketing: Consumers Have Limited Assurance that Octane

[97] 1991 Hearings, *supra* note 17, at 430–31 (statement of the Federal Trade Commission); 1990 Hearing, *supra* note 13, at 18–20 (statement of the Federal Trade Commission). For example, the *Midwest Petroleum* and *Henderson* cases were brought in cooperation with the Missouri Attorney General, who filed similar cases against the same parties in Missouri state courts for violations of state law. The Commission also has provided assistance to states without formal testing programs that wished to determine whether mislabeling was occurring in their states. For example, Commission staff provided technical assistance to the Arizona Attorney General for an enforcement sweep conducted by Arizona in September, 1991. Similarly, the Commission provided assistance that formed the evidentiary basis for certain actions that the Massachusetts Division of Standards brought against several retailers in Massachusetts for mislabeling. Other such efforts are ongoing.

[98] Octane mislabeling appears to decrease after states adopt a testing program. See GAO, *supra* note 96, at 19. See also Christopher Dyson, "Comparing State Gasoline Quality Assurance Programs" 42 (1993) (published by Public Citizen). Public Citizen recently reported, however, that some 23 states lack regular gasoline testing and enforcement programs despite the extremely low cost per capita of such programs. *Id.* at vii.

[99] 1991 Hearings, *supra* note 17, at 436 (statement of the Federal Trade Commission); Hubert Humphrey III, *supra* note 96, at 7; GAO, *supra* note 96, at 20. To encourage and facilitate state enforcement, Commission staff participate in a committee of the NCWM that addresses gasoline quality issues. As a result of staff's involvement, in 1991 the NCWM included in its members' handbook a chapter about the Octane Rule and sent letters to states urging them to work with the FTC in mislabeling issues. Most recently, the FTC and the National Association of Attorneys General ("NAAG") collaborated on a Joint Enforcement Handbook for certain rules, including the Octane Rule, where the regulated entities generally are local in nature. This handbook is designed to facilitate both joint enforcement efforts and state

the Commission testified in support of amending the section of the PMPA dealing with preemption to facilitate state enforcement efforts against octane mislabeling by whatever means the enforcing state deems appropriate.[100] Congress enacted this amendment in section 1502 of the Energy Act.[101]

2. EPA's Fuel Pump Labels

EPA enforces its rule requiring identification of unleaded gasoline and gasoline containing lead anti-knock additives.[102] It conducts routine, random testing of gasoline to check for lead content and Reid vapor pressure.[103] In the course of collecting gasoline samples, EPA checks the posting of fuel pump labels, and the posting of warning signs in the vicinity of the pump stand or island. Violations of EPA's leaded/unleaded gasoline labeling rule are punishable by fines of $10,000 per violation for each day that the violation continues.[104]

Individual states, however, are responsible for implementing the oxygenated gasoline program required under section 211(m) of the Clean Air Act. Each SIP[105] must include a "control strategy" that describes the state's enforcement measures.[106] EPA strongly encourages states to include in their SIPs provisions for testing gasoline and considers gasoline sampling to be part of an effective state enforcement program.[107] EPA's guidelines for parties regulated by oxygenated gasoline credit programs recommend a combination of testing at the refiner/producer level and certification of oxygenate levels throughout the chain of distribution.[108] States are required to test periodically at distributor and retail levels.[109] EPA recommends that states test at least 20% of retail gasoline outlets and gasoline terminal facilities for compliance with the state's oxygenated fuels regulations.[110] EPA strongly recommends that states include in these regulations labeling provisions identifical to the Federal oxygenated gasoline labeling regulations.[111]

3. Enforcement Mechanisms for a Uniform National Label

The Commission seeks comments as to the appropriate enforcement mechanisms for a uniform national label. It may be preferable to maintain existing enforcement mechanisms, even if labeling required by different laws and regulated by different agencies were consolidated on a uniform national label.[112] There may, however, be cost-efficiencies in consolidating certain aspects of existing enforcement mechanisms, such as, for example, state testing for air quality standards under the Clean Air Act and state testing for performance characteristics, such as octane. The Commission seeks comments on whether existing enforcement mechanisms should be maintained if the disclosures being enforced are consolidated onto a uniform national label, or whether some other enforcement mechanism should be adopted for a uniform national label.

D. Perceived Need for a Uniform National Label

As part of its 1988 survey of state requirements for fuel pump labeling, the GAO asked whether there was a need for a federal uniform nationwide pump label for gasoline ingredients, and, if so, what should be included on the label.[113] Forty-seven states, the District of Columbia, Puerto Rico, and the Virgin Islands (collectively referred to as "states") responded to the survey.[114] Thirty-seven states expressed an opinion as to whether there should be a federal uniform label for gasoline ingredients.[115] Of these thirty-seven states, twenty-four favored such a label and thirteen opposed it.[116] The remaining thirteen states were uncertain or had no basis to judge whether such a label was needed.[117] The GAO reported that opponents of a uniform federal label "were concerned about enforcement or preemption of state laws."[118] Supporters of such a label "liked the idea of uniformity."[119]

There was no consensus, however, on what information should be included on the label.[120] Some responses indicated that labeling should be directed at protecting public health and vehicle performance.[121] Seventeen responses indicated that some type of information about alcohol content should be included on a uniform federal label.[122] Below, the Commission discusses what the possible elements of such a label could be.

IV. Possible Elements of a Uniform National Label

A. Factors To Be Weighed

Section 1503 requires the Commission to weigh the consumer, environmental, and energy-saving benefits of any element of a uniform national label against the necessity for a concise, practical, and cost-efficient label. Consumer benefits may include improving the knowledge and ability of consumers to make better choices; increasing consumer confidence in and information about various fuels; improving the quality of fuel because consumers change their behavior to choose fuel that has attributes about which information is provided; increasing consumer satisfaction; or reducing prices of fuels by facilitating comparison shopping.[123]

Environmental and energy-saving benefits may include providing information that discourages unnecessary purchases of high octane gasoline,[124] reducing dependence on

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enforcement under state law in the areas addressed by the Handbook.

[100] 1991 Hearings, *supra* note 17, at 434–435 (statement of the Federal Trade Commission). Before it was amended by the Energy Act, section 204 of title II of the PMPA preempted state enforcement mechanisms and remedies that were not comparable to those provided by the PMPA and the Commission's Octane Rule.

[101] Sec. 1502, Public Law 102–486, 106 Stat. 2776, 2997–98 (to be codified at 15 U.S.C. 2824).

[102] See 40 CFR 80.4.

[103] Testing for Reid vapor pressure is to enforce compliance with EPA regulations pertaining to the volatility of gasoline. See 40 CFR 80.27.

[104] 40 CFR 80.5.

[105] See discussion of State Implementation Plan, *supra* section II, paragraph C.3.

[106] 40 CFR 51.111.

[107] Environmental Protection Agency, "Oxygenated Gasoline Implementation Guidelines," 18–19, 22–23 (July 27, 1992). See also 40 CFR 52.12 (states may include testing provisions in their control strategy).

[108] Environment Protection Agency, *supra* note 107, at 16. See discussion of gasoline credit programs, *supra* note 57.

[109] *Id.* at 18–19.

[110] Environmental Protection Agency, *supra* note 107, at 19.

[111] See *Notice of Final Oxygenated Fuels Labeling Regulations Under Section 211(m) of the Clean Air Act as Amended*, 57 FR 47769, 47771 (Oct. 20, 1992) (to be codified at 40 CFR 80.35) and discussion, *supra* section II, paragraph C.3, for a description of the Federal labeling requirements.

[112] Any consolidation of existing Federal labeling requirements may require amendment of existing enforcement mechanisms. For example, the Octane Rule prohibits including any information other than that specified in the rule on the octane label. See 15 CFR 306.11(d0. The final report that the Commission makes to Congress will describe the administrative or legislative changes needed to implement the Commission's recommendations.

[113] GAO, *supra* note 66, at 17. The GAO's study did not attempt to discover how many consumers actually read fuel pump labels or pay attention to them. 1988 Hearing, *supra* note 8, at 92 (testimony of Keith O. Fultz, GAO).

[114] GAO, *supra note 66, at 9.*

[115] *Id.* at 11.

[116] *Id.*

[117] *Id. at 3.*

[118] *Id.*

[119] *Id.*

[120] *Id.* at 4, 12.

[121] *Id.* at 12, 19–20.

[122] *Id.*

[123] See H.R. Rep. 102–474, 102d Cong., 2d Sess., pt. 2, at 151 (1992); 1991 Hearings, *supra* note 17, at 406 (statement of Rep. Philip R. Sharp), 420 (statement of Rep. Carlos J. Moorhead), and 421–24 (statement of Charles E. Schumer). See also Bottman, et al., *supra* note 74, at 1.

[124] See discussion of octane overbuying, *infra* section IV, paragraph B. See also 1991 Hearings,

Continued

foreign petroleum, or encouraging the use of alternative fuels.[125] Informing consumers about environmental and energy-saving benefits of alternative fuels may help achieve those benefits, if consumers are motivated to alter their behavior to use such fuels. A recent study of consumer responses to an air pollution control campaign in Denver, Colorado, during 1985 through 1989, suggests that realizing environmental and energy-saving benefits by affecting consumers' voluntary behavior may require making changes in voluntary behavior as easy and convenient as possible and educating consumers as to the benefits their individual behavior can achieve.[126]

The necessity for a concise, practical, and cost efficient label reflects the need not to overload consumers with too much information.[127] It also may include concern with the practical logistics of replacing labels and whether the benefits of the label outweigh the costs to retailers of obtaining the label and placing it on the pump. The Commission seeks comments concerning the costs and burdens of a uniform national label, relative to the costs and burdens of labels currently required by Federal law.

B. Possible Elements

If the Commission determines that a uniform national label is needed, it must report to Congress the elements that should be included on such a label. Consistent with Congress' direction to consider the consolidation of information required by Federal law to be posted on fuel pumps, the Commission seeks comments on elements that would consolidate some or all of the information (1) currently required by Federal law to be posted on fuel pumps and (2) that may be required by Federal law as a result of the other rulemaking proceedings required by the Energy Act.[128]

Congress also directed the Commission to consider as a possible element of a uniform national label a statement suggesting that drivers check their owner's manuals for the octane rating required by their vehicles.[129] The Commission seeks comments on this possible element of a uniform national label. The purpose of this statement is to discourage octane overbuying.[130] A 1991 General Accounting Office ("GAO") report on octane overbuying found that, although the evidence was somewhat inconclusive, consumers were probably buying higher octane gasoline than they need.[131] Octane overbuying may occur because of consumer perceptions that more octane improves their vehicle performance or that high octane gasoline has detergent characteristics not found in other gasoline.[132] Consumers also may view purchasing higher octane gasoline as insurance against even a low probability of engine or fuel system repairs.

The Octane Rule in part is designed to allow consumers to avoid octane overbuying, by requiring the correct minimum octane rating be posted. Providing consumers with the minimum octane rating of gasoline, as required by the Commission's Octane Rule, has significant consumer, environmental, and energy-saving benefits. Purchasing more octane than needed results in higher costs to consumers and has negative environmental and energy-saving effects.[133] More barrels of crude oil are required to produce higher octane gasoline, and the aromatic content of higher octane gasoline may cause harmful emissions.[134]

Using a gasoline with too low an octane rating can result in loss of power and engine damage. The vast majority of vehicles, however, require an octane rating of 87.[135] Although the octane requirements of cars increase over time, most of the increase occurs within the first 15,000 miles.[136] Public Citizen reports that this increase already is taken into account in the manufacturer's minimum octane recommendation.[137] Certain driving conditions—climbing hills, heavy loads, and hot, dry weather—may increase octane requirements, while other conditions—low temperatures, cool and humid weather, and high altitude—lower octane requirements.[138]

In addition to its enforcement of the Octane Rule, the Commission has addressed octane overbuying through consumer education efforts. To mitigate the effect of consumer misperceptions about octane, the Commission has published several consumer education pieces alerting the public not to purchase higher octane gasoline than needed. In 1990, the Commission and the National Association of Attorneys General jointly released a press advisory to warn consumers of energy-related scams taking advantage of consumers' concerns about petroleum supplies following Iraq's invasion of Kuwait.[139] Among other things, the press advisory recommended that consumers check their owner's manuals for the manufacturer's recommended octane level and purchase the lowest octane gasoline that their cars can run on without knocking. In January 1991, the Commission released a brochure informing consumers of the meaning of octane ratings and directing them to check their owner's manual for the recommended octane level for their vehicle.[140] In cooperation with the Automobile Association of America, the Commission released a similar brochure in July of the same year.[141] The Commission has distributed more than 55,000 of these two brochures.[142] Last year, the Commission issued a final consent order prohibiting Sunoco from making any representation about the superiority of Ultra 93.5 or 94 in

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supra note 17, at 421–24 (statement of Rep. Charles E. Schumer).

[125] See H.R. Rep. No. 102–474, 102d Cong., 2 Sess., pt. 1, at 132–33 (1992).

[126] R. Bruce Hutton and Olli T. Ahtola, "Consumer Response to a Five-Year Campaign to Combat Air Pollution," 10 Journal of Public Policy & Marketing 242 (1991). This five-year study found that consumers learned about the campaign, developed positive attitudes and intentions to participate in the program, and changed their behavior in response to being provided information about environmental benefits. *Id.* at 252. Nonetheless, voluntary behavior, including a request that drivers not drive one day each week and that drivers cancel or postpone trips on days in which carbon monoxide levels were expected to be extremely high, produced only marginal reductions in the number of vehicle miles traveled. *Id.* By contrast, mandatory woodburning bans and the use of oxygenated fuels resulted in significant reductions in carbon monoxide pollution. *Id.* The reasons for the lack of effect of the voluntary aspects of the program varied. They included the belief that individual participation would not make a difference; the difficulty of finding an alternative to driving; the inconvenience of using available alternatives to driving; and the ease of identifying the personal costs of participating in the program, in contrast to an inability to identify direct benefits of the program. *Id.* at 252–53.

[127] See discussion of information overload, *supra* section III, paragraph B.

[128] See discussion of the rulemaking proceedings required by sections 1501 and 406 of the Energy Act, *supra* section II, paragraph D.

[129] Sec. 1503(b)(2), Public Law 102–486, 106 Stat. 2776, 2999.

[130] See discussion, *supra* section III, paragraph A.

[131] See generally General Accounting Office, "Gasoline Marketing: Premium Gasoline Overbuying May Be Occurring, But Extent Unknown" (1991). Public Citizen, a consumer advocacy group, recently concluded that consumers needlessly purchase billions of dollars of high octane gasoline. See Dyson, *supra* note 96, at 14–15 (report published by Public Citizen).

[132] GAO, *supra* note 131, at 16.

[133] See Federal Trade Commission, "Facts for Consumers, Octane Ratings" (January 1991).

[134] GAO, *supra* note 131, at 24.

[135] *Id.* at 16.

[136] *Id.* at 16–17

[137] Dyson, *supra* note 96, at 3.

[138] *Id.* at 17.

[139] Federal Trade Commission, "FTC and Attorneys General Warn Consumers of Possible Energy-Related Scams," (Aug. 29, 1990).

[140] Federal Trade Commission, "Facts for Consumers: Octane Ratings" (January 1991).

[141] Federal Trade Commission, "Facts for Consumers: Octane Ratings" (July 1991).

[142] The American Automobile Association also distributed the July 1991 brochure. Consumer columnists around the country have addressed the issue of octane overbuying in response to the octane ratings brochures.

providing engine power or acceleration, and from representing the performance characteristics of any gasoline without competent and reliable scientific evidence to substantiate the claim.[143] The extent of octane overbuying based on misperceptions as to the effect of higher octane remains difficult to determine.

1. Statement Identifying the Fuel Being Dispensed

One of the options proposed for comment in the section 1501 proceeding to amend the Octane Rule is a label that would identify the alternative fuel being dispensed.[144] EPA's current fuel pump labeling requirements identify gasoline by requiring information as to whether the gasoline is unleaded, leaded, or, in certain cases, oxygenated. At this time, the octane label does not require identification of fuel as gasoline, although only gasoline pumps currently have octane labels.

A statement on a uniform national label identifying the fuel being dispensed may be needed to avoid misfueling. EPA has found that, on occasion, motorists inadvertently fill their vehicle tanks with diesel fuel instead of gasoline. Using the wrong fuel not only damages the misfueled vehicle, it causes an increase in harmful emissions. As more fuels become available to consumers, the potential for misfueling may increase.

Fuel retailers, however, have a clear incentive to identify the fuel being dispensed, because a consumer that puts the wrong fuel in a vehicle will not be happy. At a minimum, a consumer that inadvertently misfuels a vehicle will incur considerable expense and inconvenience to have the fuel tank drained. As a matter of customer relations, it is in the retailer's best interest prominently to identify the fuel being dispensed. Therefore, the costs of including this information on a uniform national label with limited space may not justify the consumer benefits that may be achieved by repeating information that the retailer has already provided.[145]

The Commission seeks comments on whether the benefits of identifying the fuel being dispensed weigh in favor of including such information on a uniform national label.

2. Identification of Additives

Sellers of gasoline use additives to increase octane levels and to prevent or clean up accumulations of deposits in engines and fuel supply systems. Federal law currently requires pump disclosure only of lead anti-knock additives. Although Federal regulation of additives under the Clean Air Act is expanding,[146] no labeling requirements are currently contemplated. Therefore, this study considers only whether EPA's unleaded/leaded gasoline labeling requirements should be consolidated on a uniform national label.

Lead damages vehicles and produces harmful emissions if introduced into the fuel systems of vehicles not designed to use leaded gasoline. After December 31, 1995, however, the lead disclosure requirement will become irrelevant to consumer choice, because sales of leaded gasoline as a motor vehicle fuel will be illegal.[147] Consequently, there seems to be little benefit to including this statement on a uniform national label, unless such a label is posted on fuel pumps prior to that date

3. Relevant Performance Characteristic Rating

As discussed above, the Commission's Octane Rule requires certification and posting of the minimum octane rating of gasoline at fuel pumps. The Commission also is seeking comments in its rulemaking under section 1501 of the Energy Act as to whether the octane rating of alternative liquid fuels, or an alternative performance rating, should be required to be certified and posted. The Commission's rulemaking under section 406 of the Energy Act might also consider use of performance characteristic ratings as part of a label informing consumers of the costs and benefits of alternative fuels.

The Commission is considering several possible performance ratings for alternative liquid fuels in the section 1501 rulemaking proceeding, as well as cetane ratings for diesel fuels.[148] The options for alternative fuels include requiring certification and posting of octane ratings for liquid alternative fuels; requiring certification and posting of the minimum propane content of LPG, the minimum methane content of LNG, the range of hydrocarbon content for methanol, ethanol, M–85, and E–85; and identification of the energy value of alternative fuel relative to gasoline.[149] Such information might have consumer, environmental and energy-saving benefits in helping consumers select an efficient and environmentally beneficial fuel. The Commission seeks comments as to whether such information, if required by the final-rule to be issued by July 21, 1993, should be consolidated on a uniform national label.

The current octane label for gasoline includes the test formula required for calculating the rating: "(R + M)/2 METHOD."[150] At the time the Octane Rule was issued, this disclosure was needed to show that a uniform (R + M)/2 formula was being used rather than the research octane number formula with which consumers were then more familiar.[151] The Commission seeks comments as to whether continued disclosure of the uniform test method for minimum octane ratings has consumer, environmental, or energy-saving benefits. The Commission also seeks comments as to whether disclosure of uniform test formula information for other performance characteristics ratings for alternative fuels would have consumer, environmental, or energy-saving benefits, if labels providing such ratings for alternative fuels were to be required by the Commission under section 1501 or section 406 of the Energy Act.

4. Suggestion to Consult Vehicle's Owner's Manual

As discussed above, Congress' direction to the Commission to consider as a possible element of a uniform national label a statement referring consumers to their owner's manuals for

[143] See Sun Co., Inc., Docket No. C–3381 (May 8, 1992) (Commissioner Owen dissenting as to sufficiency of remedy).

[144] See discussion, *supra* section II, paragraph D.1.

[145] There may be an incentive, however, for a seller marginally to misrepresent the contents of a fuel by identifying it with a misleading name. Moreover, there may be consumer benefits to requiring use of a uniform name to identify a particular fuel with which consumers may not be familiar.

[146] Beginning in 1995, the sale to consumers and distributors of gasoline not containing detergent additives will be illegal. See 42 U.S.C. 7545(1). In addition, EPA currently is conducting a rulemaking to implement the "reformulated gasoline" requirements of the 1990 Amendments to the Clean Air Act. See Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline; Proposed Rule, 58 FR 11722 (Feb. 26, 1993); Regulation of Fuels and Fuel Additives; Standards for Reformulated and Conventional Gasoline, 57 FR 13416 (Apr. 16, 1992); Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline, 56 FR 31176 (Jul. 9, 1991). These amendments require major changes in the ingredients of gasoline used in certain areas of the country to reduce emissions of ozone and toxic air pollutants. See 42 U.S.C. 7545(k). Gasoline which meets standards promulgated by the EPA, relating to minimum oxygen content, detergent additives, limits on emissions, and limits on benzene and aromatic hydrocarbons, will be certified by EPA as "reformulated gasoline." See 42 U.S.C. 7545(k)(10)(E). Beginning no later than January 1, 1995, gasoline sold or dispensed in certain areas of the country must be reformulated. 42 U.S.C. 754(k)(5). EPA is not currently considering requiring a label to identify fuel pumps dispensing reformulated gasoline.

[147] See 42 U.S.C. 7545(n).

[148] See discussion, *supra* section II, paragraph D.1.

[149] Id.

[150] 16 CFR 306.11(b)

[151] See Part 306—Octane Certification and Posting, 44 FR 19160, 19166 (Mar. 30, 1979).

octane requirements reflects Congress' concern with octane overbuying.[152] A suggestion that consumers consult their owner's manuals may have the benefit of reducing octane overbuying, if consumers are unaware of the recommended octane rating for their vehicle. If such a statement were included on a uniform national label, it might be appropriate to apply it to all fuels by using such language as "Check your vehicle's owner's manual for the octane or other performance rating your vehicle needs." The Commission seeks comments on whether consumer, environmental, and energy-saving benefits of including such a statement on a uniform national label weigh in favor of such inclusion.

Recently, a consumer group suggested that vehicle manufacturers post each vehicle's recommended octane rating on the fuel tank inlet label required by EPA.[153] The Commission seeks comments on whether it should recommend to Congress use of the fuel tank inlet label for informing consumers of the specific octane recommendation for their vehicles, in lieu of a uniform national label directing consumers to consult their owner's manuals for that information.

5. Oxygenated Fuels Information

The Commission seeks comments on the possible consumer, environmental, and energy-saving benefits of including EPA's current labeling requirements for oxygenated fuels on a uniform national label. In particular, the Commission seeks the views of interested parties as to whether consumer choice is likely to be affected by providing information as to whether fuel is oxygenated.

6. Assurance of Compliance With Federal Requirements

In lieu of posting specific information that is required by Federal law, but does not directly assist consumers in making choices, it might be possible to consolidate such information on a uniform national label by a general statement assuring consumers that the fuel satisfies Federal requirements. Such an assurance statement might take the place of more specific references to oxygenated fuels or Clean Air Act requirements, or the test method used to determine the octane rating of gasoline. In other words, rather than consolidating all or specific elements of various disclosures, the underlying informational purposes of such disclosures would be accomplished by consolidation in a simple assurance statement.

The Commission seeks comments as to whether a statement that "This fuel meets all Federal requirements," or another similar statement, should be included on a uniform national label, and, which, if any, more detailed information should be maintained on such a label (for example, the octane rating or other performance characteristic ratings that may be adopted in the section 1501 rulemaking). For example, a general statement that "This fuel meets all Federal requirements" could be added to existing octane rating labels, or to labels disclosing performance characteristics relevant to alternative liquid fuels and diesel fuels, if adopted in the Commission's section 1501 rulemaking.

The Commission also solicits the views of interested parties as to whether it would be particularly useful to include other information to increase consumer confidence in a label assuring compliance with Federal requirements. For example, one possible option might be to include a statement identifying an enforcement agency which consumers may contact with complaints or questions. The Commission seeks comments as to the benefits and burdens of including such additional information on a uniform national label, and as to the proper enforcement authority, if any, to be identified on the label.

V. Request for Comments

The Commission seeks comments on any issue, data, and tentative finding or conclusion in the preliminary study set forth above. The Commission also seeks comments in response to the specific questions set forth below. All comments should be referenced specifically to the section of the preliminary study or the paragraph number of the question to which they pertain.

A. Need for and Desirability of a Uniform National Label

1. Should there be a uniform national label consolidating all federal labeling requirements for devices that dispense automotive fuel to consumers?

2. Should a uniform national label consolidate only some federal labeling requirements? If so, which requirements, and why?

3. Do consumers read and pay attention to information currently posted on automotive fuel pumps? What information is read, and why? What information is not read, and why?

4. Do consumers hold any misperceptions about automotive fuels that a uniform national label could correct? What information should be provided to correct such misperceptions? What alternative means exist to correct such misperceptions?

5. Are consumers more likely to read information on one label as opposed to information on two to three labels?

6. How many discrete pieces of information is it practical to include on a uniform national label, in terms of whether consumers will be able to read that information and understand it?

7. Please submit any studies of which you are aware that address factors affecting how consumers read, understand, and use information posted on fuel pumps.

8. What factors affect how consumers read, understand, and use information posted on fuel pumps? Are these distractions or time pressures that affect how consumers read, understand, and use information posted on fuel pumps? Please explain.

9. What information is required by state or local laws to be posted on fuel pumps? What information typically is voluntarily posted on fuel pumps, including, for example, trade association or industry standard health warnings?

10. What information typically is posted in the vicinity of fuel pumps, for example, on pump stands or islands?

11. What significance or weight should be given to the presence of state, local, and voluntary labeling in determining whether a uniform national label is desirable?

12. Would a uniform national label that consolidated information inapplicable to the fuel actually being dispensed confuse consumers and make it more difficult for them to perceive information that is relevant to the fuel they are purchasing? Should a uniform national label, to the extent possible, provide information relevant only to the fuel being dispensed by the device to which the label is applied and not to other fuels, unless other fuels are to be compared to the fuel being dispensed? If it is not practical to have a single, uniform national label, should different versions of a uniform national label be used for different types of fuel?

B. Elements of a Uniform National Label

1. If there were a uniform national label, should it include each discrete piece of information set forth below:

a. A statement identifying the fuel being dispensed;

b. A statement identifying the presence of lead in the fuel;

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[152] See discussion of legislative history, *supra* section II, paragraph A, and section III, paragraph A.

[153] Dyson, *supra* note 90, at 43.

c. A statement identifying gasoline as oxygenated;

d. A statement information consumers that the gasoline meets Clean Air Act requirements under an oxygenated fuels program (ie., the gasoline may or may not be oxygenated, yet still would comply with an averaging or credit program);

e. The minimum octane rating of gasoline;

f. The minimum cetane rating of diesel fuels;

g. The minimum relevant performance characteristic rating of alternative fuels;

h. The test method for determining octane or another performance characteristic rating identified on the label;

i. A statement suggesting that consumers check their vehicle's owner's manual regarding octane requirements or, if octane requirements are not relevant to the fuel being dispensed, a statement suggesting that consumers check their manuals for the fuel type or other relevant characteristic recommended by the manufacturer;

j. Disclosures that may be required under section 406 of the Energy Act;

k. Any other disclosures required under section 1501 of the Energy Act;

l. A general statement assuring consumers that the fuel meets Federal requirements.

2. Identify any consumer, environmental or energy-saving benefits of each discrete piece of information you selected above. Describe how each discrete piece of information would be consistent or inconsistent with the necessity for a concise, practical, and cost-efficient label.

3. If you believe that other information should be required on a uniform national label, identify that information, and any consumer, environmental or energy-saving benefits of that information. Describe how providing the information would be consistent or inconsistent with the necessity for a concise, practical, and cost-efficient label.

4. List, in order of priority, the most important information that you contend should be on a uniform national label.

5. Is there information that need not be included on a uniform national label, such as health and safety information, or particular characteristics of fuels relating to performance and vehicle protection, because fuel retailers have sufficient incentives to make consumers aware of such information?

6. Should the label contemplated by section 406 of the Energy Act be consolidated into the uniform national label contemplated by this study? If so, should the uniform national able emphasize information that pertains to the fuel actually being dispensed? By what means?

7. If an octane or other performance characteristic rating is required that varies for different fuels or grades of fuel dispensed by the same fuel pump, is it practical to use a single consolidated label on that fuel pump?

8. If a general statement informing consumers that "This fuel meets all Federal requirements" is used in lieu of existing Federal labeling requirements, is there any other more detailed information that should be maintained on a uniform national label (for example, octane or other relevant performance characteristic ratings)? Are there consumer, environmental, or energy-saving benefits to be achieved by providing the name and telephone number of an enforcement agency to which consumers could direct complaints or inquiries about the fuel? If there are such benefits, are they limited to a label that contains a general statement about compliance with Federal requirements, or would they extend to other labels?

9. Are there any existing or pending Federal disclosure requirements that a uniform national label might satisfy by referring to a source of information other than the label? How?

10. If a uniform national label includes information that is required by Federal law to be posted only for part of the year, should the label be changed at the beginning and end of the part of the year to which the information applies, or should the label provide the information all year but identify the part of the year to which the information applies?

11. What costs, expenses, or burdens would be associated with a uniform national label if such a label were changed or updated by retailers (a) annually, (b) twice a year, or (c) monthly? How would such costs, expenses, or burdens compare to those associated with current Federal labeling requirements?

12. Do consumers consult their vehicle owner's manuals for fuel requirements? Are they likely to consult their owner's manuals at a fuel station, or elsewhere, in response to a label suggesting that they do so in order to determine the octane rating or other fuel characteristic recommended for their vehicles?

13. Would posting the recommended octane rating on the vehicle's fuel tank inlet label more effectively inform consumers of that rating that a uniform national label directing consumers to consult their owner's manuals?

14. Should the format of a uniform national label resemble the current octane label? If the contents of a national label vary for different types of fuels, should a uniform format be used so that consumers can find the same type of information in the same location on the label?

15. Is consumer choice likely to be affected by identifying fuel as oxygenated? Although consumers have no choice about whether to purchase oxygenated fuels in control areas, is it likely that oxygenated fuels might voluntarily be made available outside control areas? Would identification of gasoline as oxygenated on a uniform national label encourage use of such fuel?

C. Enforcement

1. What enforcement mechanisms should be used for a uniform national label?

2. Should each agency currently responsible for enforcing a Federal labeling requirement maintain the same responsibility if such requirement is consolidated on a uniform national label?

3. If a uniform national label included the name and telephone number of an enforcement authority, what would be the appropriate enforcement authority to which consumers could direct complaints and inquiries about the label?

4. Should the Commission recommend, if it finds a need for a uniform national label, that any legislation specifically provide that federal enforcement mechanisms do not preempt state enforcement of the standards on that label?

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–15046 Filed 6–24–93; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–FRSP 935 93.1]

Family Resource and Support Programs

AGENCY: Administration on Children, Youth, and Families (ACYF); Administration for Children and Families (ACF), HHS.

ACTION: Announcement of the availability of fiscal year 1993 funds and

request for applications from States for grants for Family Resource and Support (FRS) Programs.

SUMMARY: The Administration on Children, Youth and Families announces the implementation of a new, competitive grant program to assist States to develop, expand and operate a network of local FRS programs in collaboration with existing health, mental health, education, employment and training, child welfare and other social service agencies within the State. These grants are authorized under the Claude Pepper Young Americans Act of 1990 (the Act), established by title IX of the Augustus F. Hawkins Human Services Reauthorization Act of 1990 (Pub. L. 101–501).

FRS programs are community-based services that offer sustained assistance to families. Such services promote parental competences and behaviors that will lead to the healthy and positive personal development of parents and children through:

- The provision of assistance to build family skills and assist parents in improving their capacities to be supportive and nurturing parents;
- The provision of assistance to families to enable such families to use other formal and informal resources and opportunities for assistance that are available within the communities of such families; and
- The creation of supportive networks to enhance the childbearing capacity of parents and assist in compensating for the increased social isolation and vulnerability of families.

For fiscal year 1993, Congress appropriated $4,910,000 for FRS programs. ACYF expects to fund grants for up to three States on a competitive basis.

This announcement sets forth the requirements and application process for these grants.

DATES: The closing date for submission of applications is August 9, 1993.

ADDRESSES: Applications should be sent to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, Room 341–F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Attn: Family Resource and Support Program.

FOR FURTHER INFORMATION CONTACT: Arlene Taylor (202) 205–8034.

SUPPLEMENTARY INFORMATION:

Part I: General Information

A. Background

The Family Resource and Support Center Movement and Philosophy

FRS programs are an emerging form of community-based assistance for families to build on family strengths. By strengthening families' ability to nurture their children physically, emotionally, and intellectually, FRS programs increase the likelihood that children will grow up healthy, safe, and successful. By focusing on early, comprehensive and sustained support for all parents, these programs enable parents to respond early to their children's multiple needs, within the family, and before healthy development is compromised.

Initially established as small, community-based demonstration programs, often grassroots in origin, family resource and support centers are growing in number, size and complexity. Presently, FRS programs are being replicated statewide in several States and receive substantial State financial support.

This movement has emerged throughout the United States over the last ten to fifteen years as a response to the need for better, more holistic support for families. The need for a different way of assisting parents was expressed both by parents themselves and by people who worked with families in social service and health care agencies, schools, churches, and other community-based institutions. Social workers, educators, therapists, and health care professionals have come to understand that they cannot protect, teach, or heal children in a vacuum. These professionals increasingly focus on the family unit in efforts to prevent and treat child abuse and neglect, ensure children's success in school, and keep children healthy.

The physical settings of local family resource and support centers have tended to move from church basements and kitchen tables to a variety of more conventional settings. In some communities they are drop-in centers located in renovated houses in neighborhoods or in public housing units. Some are located in health centers, social service agencies, or workplaces. Some have offices located in schools or office buildings and send home visitors into the community to visit families.

Despite the outward differences in settings for these local programs, all FRS programs work toward the basic goal of empowering parents. The relationship between the program (represented by the professional or the staff member) and the parent is one of equality and respect, and the attitude of the program toward parents is one of partnership. The parent is not viewed as a passive recipient of services of information, but rather as an active participant in determining what services and information are offered, in what form, and under what conditions.

With this as the underlying theme, FRS centers all seek to:

1. Empower families by helping parents cope with the stresses of daily life and improving their skills and capacities to support, guide, and nurture their children;
2. Promote voluntary parental participation and ownership in the programs, without categorical restrictions on eligibility so that families do not have to identify themselves as "problematic or dysfunctional" to receive services;
3. Provide a community-based, comprehensive, developmental approach to services that are culturally and socially relevant to the families they serve;
4. Link families with other formal and informal community services and support systems that can help meet their needs, ideally before the needs intensify and reach crisis proportions; and
5. Create a supportive network designed to enhance parents' child-rearing capabilities and to compensate for the isolation and vulnerability of many families by bringing them into contract with other parents in similar circumstances.

State Initiatives

The development and financing of family support initiatives at the State level is a relatively new phenomenon, having emerged over the past seven to eight years. In many States and communities these programs are patched together with unstable sources of funding and are not well known, nor integrated into the existing service systems. A small but increasing number of States, however, have made a long-term funding commitment to supporting statewide programs. Today more than a dozen States are expanding family support initiatives that have grown out of such policy concerns as the desire to prevent child abuse and neglect (Hawaii), to reduce long-term welfare dependency through family-centered services (Iowa), to prepare children for school (Missouri and Washington), to improve family literacy (Kentucky), and to support teen parents (Maryland and Illinois). These State programs were built on several years of experience with

pilot demonstration programs in the State and were then replicated in several communities. Maryland, for example, opened four FRS centers in 1986 and has now expanded to 14 statewide. Local programs in all of the above States receive support through a grant proposal process which allows considerable room for local flexibility and creativity.

State initiatives have differed in their emphasis either on the development of a network of locally based centers that serve the nearby community or on a home-visiting model that operates out of schools or hospitals and attempts to reach all families with certain characteristics. Maryland, Illinois, Connecticut, Oregon, Vermont, and Wisconsin, for example, all chose the center-based model, while Arkansas, Hawaii, Missouri, and the States replicating the Missouri program are among those using primarily a home-visiting approach. Although center-based and home-based programs differ, most center-based programs conduct home visits and most home visitor programs also conduct group activities. Both approaches can effectively meet the challenge of building statewide systems that leave room for local flexibility and responsiveness to the needs of individual families and communities.

The organizational locus of, and the populations targeted by, these State initiatives also vary. The Minnesota, Missouri and Kentucky programs, for example, receive their funding from and are administered by the State education department, and they are universal, open to all families in the target area. The Maryland and Connecticut programs are funded largely by the State human resources department. The Maryland program currently targets teenage parents. The Connecticut program is open to all families with children up to age 17 in the site communities, but priority is given to certain target groups. The Wisconsin program receives funding from the Children's Trust Fund, which is run by an independent Child Abuse and Neglect Prevention Board, and targets services to new parents and the parents of young children through urban and rural Family Resource Centers.

Wherever the organizational locus at the State or local level, FRS centers often serve as brokers for or directly operate other Federal programs. Maximum coordination at the State and local levels is necessary to avoid duplication and confusion, and to best serve children and families. There are many Federal programs and funding sources with which State and community FRS programs can coordinate. At the Department of Health and Human Services (HHS), these include: Head Start; Comprehensive Child Development Programs; Healthy Start; Child Abuse and Neglect; Child Care Development Block Grant; Child Welfare Services; Foster Care; Runaway and Homeless Youth Programs; Aid to Families with Dependent Children; Job Opportunities and Basic Skills (JOBS); Social Services Block Grant; Child Support Enforcement; Community Services Block Grants; Maternal and Child Health Block Grant; Substance Abuse and Mental Health Services Block Grant; Supplemental Security Income; Medicaid and more. Other Federal Departments with programs and funding which can also be coordinated for a FRS program include the Department of Agriculture (e.g., Food Stamps; Women, Infants and Children program); the Department of Labor; and the Department of Education.

Private Foundation Support

Many private foundations are supporting the FRS center movement, by funding research as well as local and statewide efforts. One recent effort, for example, is the PEW Charitable Trusts Children's Initiative. This Initiative calls for States and communities to adopt a new way of working with families, to reshape service delivery systems, and to make the investments necessary to shift from a crisis-oriented, fragmented, and often inadequate approach to one of inclusion and effective support for all children. In December 1992, PEW announced that Florida, Georgia, Kentucky, Rhode Island and Minnesota received planning grants under the Children's Initiative. States receiving any grants similar to this effort or a planning grant under the PEW Children's Initiative must address how those efforts will be coordinated with and not duplicate of those under this announcement.

Other Federal Activities

At the Federal level, the HHS has incorporated the principles of family support into many of its programs, including such programs as the Runaway and Homeless Youth Program; Head Start's Parent and Child Centers and Family Service Centers as well as parent involvement in all Head Start centers; the Comprehensive Child Development Program; and Healthy Start. The HHS has also granted waivers to several States to test innovative approaches to welfare reform, which include family support and parent education components.

In addition, the ACYF has funded, since FY 1991, a National Resource Center for Family Support Programs to serve as a central location of information and training for family resource and support programs, and to build a network of technical assistance experts to serve this rapidly growing program area. The National Resource Center for Family Support Programs, operated by the Family Resource Coalition, 200 South Michigan Avenue, Suite 1520, Chicago, Illinois 60604 (312–341–0900), can provide applicants with additional background on FRS programs.

B. Eligible Applicants

Eligibility for grants under the FRS Program is restricted to the 50 States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and the Trust Territory of the Pacific Islands (the Republic of Palau). See section 915 of the Act. The Chief Executive Officer of each State must designate an agency to administer these funds and assume responsibility for the development and implementation of a network of local FRS centers. The designated agency must be an existing State agency or other public or non-profit private entity with demonstrated ability to work with other State and community-based agencies and to provide training and technical assistance. The designated agency must also have a commitment to assuring parental participation in the design and administration of FRS programs. See sections 926(5) and 933(d) of the Act.

C. Availability and Allocation of Funds

Federal funds are available through this announcement for State grants to develop, expand, and operate a network of local FRS programs in coordination with existing health, mental health, education, employment and training, child welfare, and other social services agencies within the State. These grants are authorized by the Claude Pepper Young Americans Act of 1990 enacted under title IX of the Augustus F. Hawkins Human Services Reauthorization Act of 1990, Public Law 101–501, which was signed into law November 3, 1990. The ACYF proposes to award three grants in FY 1993 for $1.5 million each.

ACYF will use one percent of the appropriated funds to make allotments to Indian tribes and tribal organizations. See section 934(f) of the Act. The availability of these funds will be made in a separate announcement.

Awards, on a competitive basis, will be for a one-year budget period, although project periods will be for three years. Continuation grants under these awards beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis subject to the availability of funds, satisfactory progress by the grantee, receipt of reports required under section 933(c)(2)(B) of the Act, and determination that continued funding would be in the best interest of the government.

Regarding the reports required under section 933(c)(2) of the Act, the State must report to the Commissioner at the beginning of the third year concerning its plans for:

1. The establishment and expansion of a network of FRS programs in the State;

2. The number of FRS programs that have been expanded or newly established with grant funds under section 933;

3. The nature of those programs, including the populations served and the services provided; and

4. The extent of local community and parental participation in the development, operation, and governance of the programs.

D. Grantee Share of the Project

States must provide at least 20 percent of the total cost of the project pursuant to section 934(g) of the Act. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although States are encouraged to meet their match requirements through cash contributions.

E. Use of Funds

1. During the first 12-month funding period, the State may use the funds received under this announcement exclusively for program development. Program development may be viewed as leading to the establishment of local FRS programs. Subsequent to this funding period, grant funds shall be used for program implementation and operation unless the State requests and the Commissioner approves a waiver from this limitation. See section 933(c)(2)(A) of the Act.

2. A State that receives a grant under this announcement must use not less than 90 percent of the funds to establish local FRS programs. See Section 934(e) of the Act. Pursuant to section 933(f) of the Act, States receiving grants must:

a. Implement a community planning process involving parents, local public and private non-profit agencies responsible for providing health, education, employment training, Head Start and other early childhood, child welfare, and other social services to determine local family needs, and identify appropriate community agencies to administer such programs locally;

b. Provide core services as defined by section 926(2) of the Act (described in Part II.B.5.a. of this announcement), and other services as defined by section 926(6) of the Act (described in Part II.B.5.b. of this announcement). Such services should be provided directly or through contracts or agreements with other local agencies; and

c. Involve parents in the development, operation, and governance of the program.

3. A State may not use FRS Program funds to support traditional, crisis-oriented services which assist families only after problems occur. Instead, they should establish and support FRS programs which: are available to a wide range of parents in a community, including—to the extent possible—fathers and employed parents; reflect a philosophy of empowering families to help themselves; and have as their goal building parenting capacities as well as promoting the full and healthy development of children.

4. A State shall not use in excess of 10 percent of a grant awarded under this announcement for administrative activities at the State level. See section 934(e) of the Act.

Part II. Responsibilities of the Applicant

A. State Plan Requirements

The Chief Executive Officer of a State must submit to the Commissioner of the Administration for Children, Youth and Families (ACYF) a State plan for a 3-year period to be eligible for grants under this announcement. The State plan may be revised annually and must contain all assurances described in Part II.B. of this announcement. The State Plan must also contain a description of the proposed multi-year plans of the State for program development and implementation. See section 929 of the Act.

B. Application Requirements

A State must prepare and submit, an application signed by the Chief Executive Officer of the State.

Applications from States for grant support under this announcement must be submitted on Standard Form 424 and the narrative section must not exceed 20 double-spaced pages. In addition to the information requested by Form 424, the application must include the following:

1. Designated State Agency

The application must include an assurance that the Chief Executive Officer of the State will designate a lead agency to assume responsibility for the development and implementation of FRS programs as required by section 933(d)(1) of the Act.

2. Effective Program Development and Coordination

Pursuant to section 933(d)(2) of the Act, the application must include an assurance that the State has a process for effective program development that:

(a) Does not duplicate current processes or programs;

(b) Makes publicly available a written plan for the establishment of a network of local FRS programs; and

(c) Involves appropriate personnel in the development process, including:

(i) Parents and prospective participants in FRS programs;

(ii) Staff of existing FRS programs, if applicable, or of other multi-purpose community-based organizations;

(iii) Representatives of State and local government social service, health, mental health, education, employment, and economic development agencies;

(iv) Representatives of the business community;

(v) Representatives of general purpose local government;

(vi) Representatives of local communities in which FRS programs are likely to be located; and

(vii) Other individuals with expertise in the services that the FRS programs of the State intend to offer.

3. Current Programs

The application must include a description of the current family support programs in the State, the current unmet need for such services, and the intended scope of the State FRS program, the population to be served, the manner in which the program will be operated, and the manner in which such program will relate to other community services and public agencies. See section 933(d)(3) of the Act.

4. State Financial Commitment

The application must include a description of the projected level of financial commitment by the State to developing a FRS program. See section 933(d)(4) of the Act.

5. Core and Other Services

The application must describe the core services and other support services to be provided by the program, and the manner in which such services will be provided. See section 933(d)(5) of the Act.

(a) "Core services," as described in section 926 of the Act, refer to:

(i) Educational and support services provided to assist parents in acquiring parenting skills, learning about child development, and responding appropriately to the behavior of their children;

(ii) The early developmental screening of children to assess any needs of such children and to identify specific types of support that may be provided;

(iii) Outreach services provided to ensure (through home visits or other methods) that parents are aware of and able to participate in family resource and support program activities;

(iv) Community referral services to assist families in obtaining community resources, including health care, mental health care, employability development and job training, and other social services; and

(v) Follow-up services, provided to ensure that necessary services are received by families and are effective in meeting their needs.

(b) "Other services" as described in section 926 of the Act means such services as:

(i) Child care, early childhood development and intervention programs;

(ii) Employability development services (including skill training);

(iii) Educational services, such as scholastic tutoring, literacy training, and General Educational Degree (GED) services;

(iv) Nutrition education;

(v) Life management skills training;

(vi) Peer counseling and crisis intervention, family violence counseling, and referrals for such services;

(vii) referral for substance abuse counseling and treatment referral; and

(viii) Referral for primary health and mental health services.

6. Cultural Diversity

The application must include an assurance that the State program will maintain cultural diversity as required by section 933(d)(6) of the Act. This assurance must include a description of the cultural diversity of the population to be served by the FRS program, and the activities, resources and efforts that would be undertaken to meet their needs in carrying out the proposed FRS program.

7. Parental Involvement

The application must describe the State's guidelines for requiring parental involvement in State and local program development, policy design, and governance and the process for assessing and demonstrating that parental involvement in program development, operation, and governance occurs. See section 933(d)(7) of the Act.

8. Low-Income Communities

The application must include an assurance that, in awarding local grants, priority will be given to programs serving low-income communities and programs serving young parents. See section 933(d)(8) of the Act.

9. Local Interagency Planning

The application must describe the local interagency planning process to be utilized to develop and implement local FRS programs as required by section 933(d)(9) of the Act.

10. Awarding Local Grants

The application must describe the criteria that the State will utilize for awarding grants for local programs so that they meet the local program requirements described in Part I.E.2. of this announcement. See section 933(d)(10) of the Act.

11. Training and Technical Assistance

The application must include a plan for providing training, technical assistance, and other assistance to local communities in program development and implementation as required by section 933(d)(11) of the Act.

12. Evaluation

Pursuant to section 933(d)(12) of the Act, the application must describe the methods to be utilized to evaluate the implementation and effectiveness of the FRS programs within the State including:

(a) Evaluations of ongoing programs;

(b) Process evaluations focusing on implementation strategies at the State and local level; and

(c) The development or adaptation of simple evaluation models for use by local FRS programs.

13. Reduction of Barriers to the Provision of Comprehensive Services

The application must describe the proposed actions by the State that will reduce practical and regulatory barriers to the provision of comprehensive services to families, including family resource and support programs. See section 933(d)(13) of the Act. Written evidence of collaborative agreements with other agencies and organizations should be included with the application if applicable.

Part III. Criteria for Review and Evaluation of Application

In considering how applicants will carry out the responsibilities addressed under Part II of this announcement, all applications will be reviewed and evaluated against the criteria specified below.

We recognize that there may be a potential conflict for States in developing a detailed operating plan when a State may also use the first year of these grant funds for program development. Therefore, a State should describe its planned activities and focus as much as possible on its operating plan.

A. Objectives and Need for Assistance (10 Points)

The extent to which the applicant includes relevant knowledge about family-oriented programs, describes current family support programs in the State, documents an unmet need for FRS programs, and demonstrates an understanding of the service components and processes that are necessary to carry out such programs.

The degree to which the proposed objectives are specific and relate to the needs identified by the applicant. The objectives should describe the intended scope of the FRS programs to be supported by this grant, including the population(s) to be served and the communities in which the FRS programs would operate, and the manner in which the FRS programs would relate to other community services and public agencies. (Applicants with existing FRS programs operating in the State must clearly demonstrate how this grant would expand those services.)

B. Results and Benefits Expected (20 Points)

The extent to which the applicant identifies and describes realistic and measurable results and benefits to be derived by the project, and the manner in which actual results and benefits would be substantiated to determine if objectives are met.

The extent to which the proposed methods to be utilized is appropriate to evaluate the implementation and effectiveness of the FRS programs within the State, and the extent to which the project would contribute to

improved policy, practice, theory, and/or research.

The degree to which any proposed actions to be taken by the State would reduce practical and regulatory barriers to the provision of comprehensive services to families, including FRS programs.

C. Approach (Project Implementation Plan) (40 Points)

The extent to which the proposed approach presents an effective program development process that meets the requirements of section 933(d)(2) of the Act, as described in Part II.A.2. above, and would result in expanded family support services that do not duplicate existing processes or programs.

The extent to which the core services are adequate to meet the needs of the State, as required by section 933(d)(5) of the Act, and the appropriateness of the manner in which such services would be provided. (See Part II.A.5. above for a definition of "core services.")

The extent to which the State program design and guidelines would ensure that cultural diversity and parental involvement in State and local program development, policy and governance are maintained; and the adequacy of the plans to assess and demonstrate that parental involvement in program development, operation, and governance occurs.

The extent to which the State's approach would ensure that, in awarding local grants, priority would be given to programs serving low-income communities and programs serving young parents, and the extent to which the criteria that the State would utilize for awarding grants for local programs would ensure that such local programs meet the requirements of Section 933(f) of the Act. (See Part I.E.2. of this announcement.)

The extent to which the local interagency planning process to be utilized to develop and implement local FRS programs is sufficient to meet the needs of the State.

The amount and appropriateness of the State's plans for providing training and technical assistance to local communities in program development and operation.

The extent to which the applicant proposes and describes a State evaluation methodology that will be used to examine the program development and implementation process as well as the impact of local program activities on the clients served. Applicant must use an outside evaluator and must set aside no less than $100,000 of the Federal funds per year for the evaluation effort.

The extent to which the applicant describes the plans for developing evaluation models for use by local FRS programs.

D. Organization, Staffing and Management (15 Points)

The extent to which the applicant demonstrates that the lead agency designated by the State to assume responsibility for the development and implementation of FRS programs has the ability to effectively carry out that responsibility and to coordinate FRS programs with other programs and services in the State.

The extent to which the applicant demonstrates the ability to effectively and efficiently administer the project, including a description of the staffing pattern for the proposed project, clearly linking operational staff responsibilities to project tasks and identifying the key staff describing their educational and qualifying experience.

E. Budget Appropriateness (15 Points)

The extent to which the applicant relates the proposed budget to the level of effort required to attain project objectives, including demonstrating that the project's costs are reasonable in view of the anticipated results. Applicants should also discuss how administrative costs at the State level would be kept to under 10 percent of the total Federal share.

The projected level of financial commitment by the State to develop and support a FRS program, including any commitments beyond the 20 percent match requirement. The ability of the State to secure financial commitments from a variety of sources, including public and private entities, to develop and support a FRS program.

An applicant should ensure that availability of any amount proposed as match prior to including it in this budget. The non-Federal share must be met by a grantee during the life of the project. Otherwise, ACF will disallow any unmatched Federal funds.

The extent to which grant funds would expand existing FRS programs or establish new FRS programs within the State, thereby supplementing, not supplanting, Federal, State, and local funds currently expended for FRS programs.

Part IV: The Application Process

A. Availability of Forms

All instructions and forms required for submittal of applications are included in this announcement. Additional copies of this announcement may be obtained by writing or telephoning: Arlene Taylor, Family Services Program Specialist, Family and Youth Services Bureau, room 2427 Switzer Building, 330 C Street, SW., Washington, DC 20201, Telephone (202) 205–8034.

B. Application Submission

One signed original and two copies of the grant application must be mailed or hand delivered to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, Hubert H. Humphrey Building, room 341–F, 200 Independence Avenue SW., Washington, DC 20201, ATTN: Family Resource and Support Program.

In ordered to be considered for a grant under this program announcement, an application must be submitted on the forms and in the manner required by this ammouncement. This application must be executed by the Chief Executive Officer for the State.

C. Application Consideration and Notification

Applications which are complete and conform to the requirements of this program announcement will be reviewed and scored competitively by experts in the subject area. Applicants will be scored against the evaluation criteria listed above, and the results of this review will be a primary factor in making funding decisions. ACYF reserves the option of discussing applications with or referring them to other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal Government or the applicant. ACYF may also solicit comments from other Federal agencies, Central and Regional Office staff, interested foundations, national organizations, specialists experts, States and the general public. These comments along with those of the expert reviewers, will be considered by the Commissioner, ACYF in making funding decisions.

After final selections, successful applicants will be notified through the issuance of a Financial Assistance Award. The award will state the amount of Federal funds awarded, the purpose of the grant, the total project period, the budget period and the amount of the non-Federal matching share. Unsuccessful applicants will be notified by letter.

D. Deadline for Submission of Applications

Deadline: Applications shall be considered as meeting the announced deadline if they are either:

1. Physically received before close of business on or before the deadline date at the place specified in this program announcement. (Hand delivered applications will be accepted at the ACF Grants Office during the normal working hours of 9 a.m. to 5:30 p.m. Monday through Friday.); or

2. Sent on or before the deadline date and received by the granting agency in time for the independent review under DHHS GAM Chapter 1–62. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private Metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications: Applications which do not meet the criteria stated above are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: The granting agency may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

E. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, P.L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements and regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved by OMB.

F. Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," for State plan consolidation and simplification only (45 CFR 100.12). The review and comment provision of the Executive Order and Part 100 do not apply.

G. Assurance and Certifications

In addition to the assurances cited under Part II of this announcement, applicants must file a Standard Form 424B, Assurances—Non-Construction Programs and a Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements and (2) Debarment and Other Responsibilities. These certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary.

A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on a SF 424 indicates compliance with the Drug-Free Workplace Requirements and the Debarment and Other Responsibilities certifications.

H. Cooperation in Evaluation Efforts

All applicants funded under this announcement will be required to provide information for special studies or evaluations funded by the Administration on Children, Youth and Families (ACYF). The cooperation of any third-party evaluators funded by the applicants is also required.

(Catalog of Federal Domestic Assistance Program Number 93.580 Family Resource and Support Programs)

Dated: April 16, 1993.

Joseph Mottola

Acting Commissioner, Administration on Children, Youth and Families.

BILLING CODE 4184-01-M

VOL 58 ISS 121 JE 25 1993 UMI

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ • ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

Instructions

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Instructions For The SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—"New" means a new assistance award.
—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$

7. Program Income	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

BILLING CODE 4184-01-C

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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Instructions For The SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number of each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in

accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism, (g) secs. 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a–7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to Executive Order 11738; (c) protection of wetlands pursuant to Executive Order 11990; (d) evaluation of flood hazards in floodplains in accordance with Executive Order 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (Pub. L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (Pub. L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with Pub. L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Preventive Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

BILLING CODE 4184–01–M

VOL 58 ISS 121 JE 25 1993 UMI

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services(HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying—

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less then $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*	**Congressional District,** *if known:*
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable* _____
8. Federal Action Number, *if known:*	**9. Award Amount,** *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*	13. Type of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

Centers for Disease Control and Prevention

Cooperative Research and Development Agreement 93–004

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), The National Institute for Occupational Safety and Health (NIOSH), announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) to develop a commercial version of the NIOSH EARTALK system.

It is anticipated that all inventions which may arise from this CRADA will be jointly owned. The collaborator(s) with whom the CRADA is made will have an option to negotiate an exclusive or non-exclusive royalty-bearing license. The CRADA will be executed for a 2-year period with the possibility of renewal for another 2-year period.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. There is a single restriction in this exchange: CDC MAY NOT PROVIDE FUNDS to the other participants in a CRADA. This opportunity is available until 30 days after publication of this notice. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION CONTACT:

Technical

John R. Franks, Ph.D., Bioacoustics and Occupational Vibration Section, Physical Agents Effects Branch, Division of Biomedical and Behavior Science, National Institute for Occupational Safety and Health, CDC, Robert A. Taft Laboratories, 4676 Columbia Parkway, Mailstop C–27, Cincinnati, OH 45226–1998, telephone (513) 533–8281, fax (513) 533–8510.

Business

Theodore F. Schoenborn, Technology Transfer Coordinator, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, OH 45226–1998, telephone (513) 841–4305, fax (513) 841–4500.

SUPPLEMENTARY INFORMATION: The EARTALK system incorporates an optimized speech communication unit into a hearing protection system allowing workers to talk to each other easily while receiving protection from noise without the inconvenience of external boom-mounted microphones, interconnecting cabling, and squelch circuits found in existing systems. The EARTALK system will have applications in any situation where two or more workers need to be in communication including, but not limited to, construction sites, foundries, steel mills, airports, manufacturing facilities, and mining operations. The collaborator(s) and NIOSH will jointly perform the research aimed at development of a commercial system to achieve instrument ruggedness and lowest possible cost per unit system. NIOSH will provide technical expertise, consultation and guidance, system specifications, verification of system integrity, and product evaluation and testing. Since this CRADA involves the bringing together of diverse technologies, a consortium of collaborators will be considered, such as hearing protector manufacturers and/or speech communications systems manufacturers.

Applicants will be judged according to the following criteria:

1. Adequacy and technical capabilities to develop the desired technologies and product;

2. Ability to develop, produce, market, and support commercial hearing safety and speech communication systems;

3. Evidence of technical credibility; and

4. Ability to complete the CRADA in a timely fashion.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act: Pub. L. 99–502.

The responses must be made to: Theodore F. Schoenborn, Technology Transfer Coordinator, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, OH 45226.

Dated: June 18, 1993.

Richard A. Lemen,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–14972 Filed 6–24–93; 8:45 am]

BILLING CODE 4160–19–P

Food and Drug Administration

[Docket No. 93N–0215]

Parke-Davis et al.; Withdrawal of Approval of 35 New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 35 new drug applications (NDA's). The holders of the NDA's notified the agency in writing that the drug products were no longer being marketed under the NDA's and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: July 26, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy Maizel, Center for Drug Evaluation and Research (HFD–53), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4320.

SUPPLEMENTARY INFORMATION: The holders of the NDA's listed below have informed FDA that these drug products are no longer being marketed under the NDA's and requested that FDA withdraw approval of the applications. The applicants have also, by request, waived their opportunity for a hearing.

NDA No.	Drug name	Applicant name and address
3–727	Hexavibex Injection and Capsules	Parke-Davis, Division of Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950.
4–208	Salicresin Liquid	The Upjohn Co., U.S. Pharmaceutical Regulatory Affairs, 7000 Portage Rd., Kalamazoo, MI 49001–0199.
5–422	Cepacol® Lozenges	Merrell Dow Research Institute, Merrell Dow Pharmaceuticals Inc., 2110 East Galbraith Rd., P.O. Box 156300, Cincinnati, OH 45215–6300.

NDA No.	Drug name	Applicant name and address
5–564	Desenex® Powder	Fisons Pharmaceuticals, Fisons Corp., Jefferson Rd., P.O. Box 1710, Rochester, NY 14603.
5–565	Desenex® Ointment and Solution	Do.
6–997	Promacetin Tablets	Parke-Davis, Pharmaceutical Research Division, Warner-Lambert Co., 2800 Plymouth Rd., P.O. Box 1047, Ann Arbor, MI 48106–1047.
7–292	Polysorb Ointment	Altana Inc., 60 Baylis Rd., Melville, NY 11747.
7–413	Protamine Sulfate Powder for Injection	The Upjohn Co.
8–420	Rimifon Syrup and Injection	Roche Pharmaceuticals, Division of Hoffmann- La Roche Inc., 340 Kingsland St., Nutley, NJ 07110–1199.
8–492	Antrenyl® Tablets	Ciba Pharmaceutical Co., Division of Ciba-Geigy Corp., Summit, NJ 07901.
8–499	Isoniazid Tablets	Lilly Research Laboratories, Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285.
8–822	Percorten® Injection	Ciba Pharmaceutical Co.
9–427	Piptal® Tablets	Merrell Dow Research Institute.
9–551	Pyrazinamide Tablets	Merck Research Laboratories, Division of Merck & Co., West Point, PA 19486.
9–890	Viadril Powder for Injection	Pfizer Pharmaceuticals, Pfizer Inc., 235 East 42d St., New York, NY 10017.
10–597	Tace® with Androgen Capsules	Merrell Dow Research Institute.
10–798	Fungacetin Ointment, Liquid and Powder	The Purdue Frederick Co., 100 Connecticut Ave., Norwalk, CT 06859–3590.
10–849	Kynex® and Lederkyn® Tablets	Lederle Laboratories, Division of American Cyanamid Co., Pearl River, NY 10965.
15–139	Meprobamate Tablets	ICN Pharmaceuticals Inc., International Headquarters, ICN Plaza, 3300 Hyland Ave., Costa Mesa, CA 92626.
16–055	Monex Otic Drops	Schering-Plough Research Institute, 2000 Galloping Hill Rd., Kenilworth, NJ 07033–0530.
16–210	Ortho-Novum® SQ Tablets	R. W. Johnson Pharmaceutical Research Institute, Route 202, P. O. Box 300, Raritan, NJ 08869–0602.
16–252	Ioprep® Solution	Johnson & Johnson Medical Inc., P.O. Box 130, Arlington, TX 76004–0130.
16–715	Ortho-Novum® 1/80 21 and 28 Tablets	R. W. Johnson Pharmaceutical Research Institute.
16–761	Ortho-Novum® 1/50–Fe 28 Tablets	Do.
16–799	Ortho-Novum® 1/80–Fe 28 Tablets	Do.
16–948	Bendopa® (levodopa) Capsules	ICN Pharmaceuticals Inc.
17–262	Xenasol® Solution	Mallinckrodt Inc., 675 McDonnell Blvd., P. O. Box 5840, St. Louis, MO 63134.
17–386	Gynorest® Tablets	Solvay Pharmaceuticals, 901 Sawyer Rd., Marietta, GA 30062.
18–976	Levatol® Tablets, 10 mg (only those portions of NDA that deal with 10 mg tablets)	Reed & Carnrick Pharmaceuticals, 257 Comelison Ave., Jersey City, NJ 07302–9988.
19–819	Locoid® Solution	Owen/Galderma, 6201 South Freeway, P.O. Box 6600, Fort Worth, TX 76115.
50–471	Celospor® Powder for Injection	Ciba Pharmaceutical Co.
50–476	Rimactazid Capsules	Do.
50–478	Nyser Suppositories	Norwich Eaton Pharmaceuticals Inc., A Procter & Gamble Co., P. O. Box 191, Norwich, NY 13815–0191.
50–548	Velosef '500' and Velosef '250' Capsules	Bristol-Myers Squibb Co., U. S. Managed Health Care Group, P. O. Box 4000, Princeton, NJ 08543–4000.
50–598	Lanabiotic Aerosol Spray	Combe Inc.,1101 Westchester Ave., White Plains, NY 10604–3597.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the NDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective July 26, 1993.

Dated: June 15, 1993.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 93-14990 Filed 6-24-93; 8:45 am]

BILLING CODE 4160-01-F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Psychopharmacologic Drugs Advisory Committee

Date, time, and place. July 19 and 20, 1993, 8:30 a.m., conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, July 19, 1993, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open public hearing, July 20, 1993, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Michael A. Bernstein, Center for Drug Evaluation and Research (HFD-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4020.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of psychiatry and related fields.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 12, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 19, 1993, the committee will discuss the safety and effectiveness of Nefazodone HCL, New Drug Aplication (NDA) 20-152, Bristol-Myers, for use in the treatment of depression. Additionally, the committee will discuss preclinical toxicity data relevant to the risk/benefit assessment of Risperdal® (risperidone), New Drug Application (NDA) 20-272, Jansen Research Foundation, for use in the treatment of psychotic disorders. On July 20, 1993, the committee will discuss the safety and effectiveness of Prozac® [fluoxetine HCL], New Drug Application (NDA) 20-187, Eli-Lilly, for use in the treatment of obsessive compulsive disorder.

Anti-Infective Drugs Advisory Committee

Date, time, and place. July 22 and 23, 1993, 8:30 a.m., conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, July 22, 1993, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4:30 p.m.; open public hearing, July 23, 1993, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4:30 p.m.; Ermona B. McGoodwin or Mary Elizabeth Donahue, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluates data relating to the safety and effectiveness of marketed and investigational human drugs for use in infectious and ophthalmic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 16, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On July 22, 1993, the committee will discuss new drug application (NDA) 50-605/S-017, Ceftin® (cefuroxime axetil, Glaxo) effectiveness supplement for treatment of early Lyme disease. During the morning of July 23, 1993, the committee will discuss a proposed addition to the Division of Anti-Infective Drug Products' points to consider document. This addition concerns guidance on the conduct and analysis of clinical trials of antimicrobial drug products in the treatment of sepsis and potential product labeling for products establishing effectiveness in the treatment of sepsis. During the afternoon of July 23, 1993, the committee will discuss the use of quinolone-class antimicrobials as investigational drugs in children.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: June 17, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–14931 Filed 6–24–93; 8:45 am]

BILLING CODE 4160–01–F

International Scientific Workshop; Combined Vaccines and Simultaneous Administration: Current Issues and Perspectives

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Biologics Evaluation and Research (CBER) is announcing an international scientific workshop entitled "Combined Vaccines and Simultaneous Administration: Current Issues and Perspectives." The purpose of this workshop is to bring together the scientific, public health, and regulatory communities to discuss issues associated with the development and use of vaccines administered either combined or simultaneously.

DATES: The workshop will be held on Wednesday, July 28, 1993, and Thursday, July 29, 1993, from 7:55 a.m. to 5:35 p.m., and Friday, July 30, 1993, from 7:55 a.m. to 5 p.m. There is no workshop fee. Because seating space is limited, early preregistration is requested.

ADDRESSES: The workshop will be held at the National Institutes of Health, Warren Grant Magnuson Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: For information on the agenda, registration, hotel, and travel: Pamela S. Milan, KRA Corp., 1010 Wayne Ave., suite 950, Silver Spring, MD 20910, 301–495–1591; facsimile 301–495–2919.
For information regarding this notice: JoAnn Minor, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–295–9074.

SUPPLEMENTARY INFORMATION: The international scientific workshop on "Combined Vaccines and Simultaneous Administration: Current Issues and Perspectives" is cosponsored by CBER; the National Vaccine Program Office; the National Institute of Allergy and Infectious Diseases; the Centers for Disease Control and Prevention; and the World Health Organization. The purpose of this workshop is to bring together the scientific, public health, and regulatory communities to discuss issues associated with the development and use of vaccines administered either combined or simultaneously. The program has been developed for the presentation and discussion of basic and clinical research and development efforts including those which impact on regulatory decisions.

Speakers and panelist will address the following topics: (1) The interface between vaccine initiatives, new technologies and vaccine development; (2) advances in the development of conjugate and combination vaccines; (3) new approaches in design and use of vaccine adjuvants; (4) new antigen delivery systems: construction and use; and (5) combination vaccines: clinical design, efficacy, and statistical issues.

Dated: June 22, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–14991 Filed 6–24–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0072]

FDA Medical Device Incident Reporting; Notice of Public Meeting; Electronic Data Interchange Strawman Standard for Adverse Event and Problem Reporting to the FDA Centers for Biologic Evaluation and Research, Drug Evaluation and Research, Devices and Radiological Health; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it will hold an open public meeting to address issues related to medical device problem reporting. The meeting will provide a forum for information exchange about medical device adverse events and problem reporting between FDA's Center for Devices and Radiological Health (CDRH) and affected public groups such as device manufacturers, distributors, user facilities, and vendors of telecommunication and electronic data interchange (EDI) products. The agency is also announcing the availability of a partial draft standard entitled "Electronic Data Interchange Strawman Standard for Adverse Event and Problem Reporting to the Food and Drug Administration, Centers for Biologic Evaluation and Research, Drug Evaluation and Research, Devices and Radiological Health." The electronic reporting pilot program and the partial draft standard for reporting events by electronic media will be discussed at the meeting also.

DATES: The meeting will be held on Tuesday, July 13, 1993, 9 a.m. to 5 p.m. Those interested in making oral presentations must submit requests by July 2, 1993. Written comments should be submitted by July 28, 1993.

ADDRESSES: The meeting will be held at the Holiday Inn Crowne Plaza Hotel, 1750 Rockville Pike, Rockville, MD 20850. A number of rooms have been reserved at a reduced rate for meeting attendees. To reserve a hotel room for Monday night, July 12, 1993, please call the Holiday Inn Crowne Plaza (301–468–1100) prior to June 28, 1993, and specify group 3471. It is suggested that interested persons register by July 8, 1993, because space for the meeting is limited. There is no registration fee.

The partial draft standard "Electronic Data Interchange Strawman Standard for Adverse Event and Problem Reporting to the Food and Drug Administration Centers for Biologic Evaluation and Research, Drug Evaluation and

Research, Devices and Radiological Health" may be ordered from Sociometrics, Inc., 6525 Belcrest Rd., suite 202, Hyattsville, MD 20782. Copies of the partial draft standard are free of charge. For telephone orders or further information on placing an order, call Sociometrics, Inc., at 301–277–9319 or 1–800–729–0890 (FAX 301–277–6219). An electronically delivered copy of the partial draft standard may be requested via an E-Mail note to: EDISTD01@FDADR.CDRH.FDA.GOV. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Comments should be identified with the docket number found in brackets in the heading of this document. The partial draft standard and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Regarding information concerning the meeting: Joan M. Rudick, Center for Devices and Radiological Health (HFZ–306), 1390 Piccard Dr., Rockville, MD 20850, 301–427–1156.

Regarding oral presentations at the meeting, and registration: Kathy Pointer of Sociometrics, Inc., 6525 Belcrest Rd., suite 202, Hyattsville, MD 20782, or call 301–277–9319 or 1–800–729–0890 (FAX 301–277–6219).

SUPPLEMENTARY INFORMATION: The Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629) and the Medical Device Amendments of 1992 (Pub. L. 102–300) contain provisions governing the reporting of certain types of medical device events to FDA by device user facilities, manufacturers, and distributors. User facilities include, but are not limited to, hospitals, nursing homes, ambulatory surgical facilities, outpatient treatment facilities which are not a physician's office. Pursuant to the SMDA, FDA has published a proposed rule regarding user facility, distributor, and manufacturer reporting to FDA of deaths, serious injuries, illnesses, and malfunctions related to medical devices (56 FR 60024, November 26, 1991), single-problem report form. Publication of the final regulation governing reporting, based on comments to the November 26, 1991, proposed tentative final rule, is expected later this year. On May 28, 1992, by operation of law under the SMDA, the proposed tentative final rule relating to adverse event reporting by distributors became final. On June 16, 1993, the Medical Device Amendments of 1992 amended certain provisions of the act relating to the reporting standard of adverse events for manufacturers, importers, and user facilities, and revised the definition of serious injury.

In the **Federal Register** of April 22, 1993 (58 FR 21587) and April 29, 1993 (58 FR 25995), FDA announced the Commissioner's conference on MEDWATCH, the FDA Medical Products Reporting Program. The conference was held on June 3, 1993. The FDA MEDWATCH program is intended to facilitate the reporting of adverse events and device problems by both voluntary reporters and mandatory reporters. One component of the program is the use of a new single reporting form, which was published in the **Federal Register** of June 3, 1993 (58 FR 31596). FDA's first notice announcing the availability of this form and requesting comments also announced FDA's intent to examine methods for the electronic submission of reports and encouraged suggestions for facilitating electronic submissions. In the **Federal Register** of February 26, 1993 (58 FR 11768), CDRH, in concert with other FDA centers, has prepared a partial draft standard to govern the technological aspects of such electronic submissions entitled, "Electronic Data Interchange Strawman Standard for Adverse Event and Problem Reporting to the Food and Drug Administration Centers for Biologic Evaluation and Research, Drug Evaluation and Research, Devices and Radiological Health."

The morning session of the July 13, 1993, public meeting will address statutory, regulatory, compliance, and training issues related to the reporting responsibilities of the user facility, manufacturer, and distributor communities. Guidelines, instructions, and forms will be discussed. Ample time will be provided for questions from the floor. The afternoon session will commence with an FDA overview of the electronic reporting pilot program and the partial draft standard. The floor will then be open for public presentations and discussion. It is anticipated that the partial draft standard will focus on magnetic media, report formats, and data elements and that the pilot program will address the subsequent inclusion of electronic telecommunications in a manner compatible with EDI practice. Subsequent to this meeting, interested public members and FDA may collaborate to develop and finalize the standard as rapidly as possible. Vendors of EDI and telecommunication products are encouraged to attend. They should note that over 40,000 user facilities and over 10,000 device manufacturers and distributors are affected by these regulations.

FDA encourages public participation and presentations. Therefore, the agenda includes periods for public presentations, particularly with respect to electronic reporting. Each speaker will be allocated a brief time, depending on the number of requests for presentations received. Members of the public interested in speaking must forward requests to Kathy Pointer (address above) by July 2, 1993. Requests to speak will be subject to written FDA confirmation. Written comments from the public are invited and may be submitted prior to the meeting on July 13,1993, and until July 28, 1993.

Dated: June 22, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–15112 Filed 6–24–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Office for Alternative Medicine; Alternative Medicine Program; Meeting

The Office for Alternative Medicine, Office of Science Policy and Technology Transfer, National Institutes of Health (NIH), announces a meeting of an Ad Hoc Panel on Alternative Medicine. The meeting is scheduled for July 14 and 15, 1993, from 8:30 a.m. until 5 p.m. on the first day, the 14th, and 8:30 a.m. to 3:30 p.m. on the second day, the 15th.

The meeting will be held at the Renaissance Hotel, Washington-Dulles International Airport, Sully Road (Route 28) at McLearen Rd, 13869 Park Center Rd, Herndon, VA 22071.

This meeting will be open to the public. Attendance may be limited by seating capacity. Thus, all persons planning to attend the meeting are strongly encouraged to pre-register with Mr. Glenn Reighart, the EEI contact person (see below) prior to the meeting.

There will be an open public session on Thursday, July 15, from 8:30 to 9:30 a.m. Any person wishing to make a presentation at this session should notify Dr. David Larson, the OAM contact person by 5 p.m., Thursday, July 9. A one-page summary of the presentation should accompany the request.

Each speaker will be limited to a maximum of five minutes. The speaker will be requested to bring 30 copies of the full text of their presentation. The 30 copies are to be available no later than the start of the meeting on Wednesday, July 14th. If a copy is provided to the Office for Alternative Medicine by July

9th, the Office will distribute it to the Panel prior to the open public session.

Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make a brief oral presentation at the conclusion of the meeting, if time permits, and at the discretion of the Chairperson.

Scheduled agenda items include discussions of: Ongoing activities of the Office for Alternative Medicine; review of the Best Case Series Evaluation approach and its relevance to the Office's research field investigations; progress report on the Request for Application (RFA) for Exploratory Grants in Alternative Medicine; possible research initiatives of the Office; and discussion of methodology conferences and the concerns of the Alternative Medicine community.

Written requests to attend should be sent to the attention of Mr. Glenn Reighart of EEI, 66 Canal Center Plaza, suite 200, Alexandria, Virginia 22314–1538, Office telephone: 703–684–2116, FAX: 703–683–4915.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Glenn Reighart at the number above in advance of the meeting.

For additional information, contact David B. Larson, M.D., M.S.P.H., Office for Alternative Medicine, National Institutes of Health, 9000 Rockville Pike, Building 31, room B1–C35, Bethesda, MD 20892, 301–402–2467.

Dated: June 21, 1993.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 93–14947 Filed 6–24–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the President's Cancer Panel

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, July 30, 1993, at the Hyatt Regency La Jolla, 3777 La Jolla Village Drive, San Diego, California 92122.

The entire meeting will be open to the public from 8:30 a.m. to approximately 1 p.m. The topic will include: Cancer and the Family.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, Executive Plaza North, room 630E, 9000 Rockville Pike, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a roster of the committee members upon request.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Ms. Nora Winfrey, (301/496–1148), in advance of the meeting.

Dr. Maureen O. Wilson, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31A, room 4A34, 9000 Rockville Pike, National Institutes of Health, Bethesda, Maryland 20892 (301/496–1148) will furnish substantive program information.

Dated: June 18, 1993.

Susan K. Feldman,

Committee Management Officer, NIH

[FR Doc. 93–14945 Filed 6–24–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on Effects of Sex Hormones on Coronary Artery Reactivity.

Dates of Meeting: July 7–9, 1993.

Time of Meeting: 7:30 p.m.

Place of Meeting: Holiday Inn, Bethesda, Maryland.

Agenda: To evaluate and review grant applications.

Contact Person: Dr. Andre Premen, 5333 Westbard Avenue, room 5A10, Bethesda, Maryland 20892, (301) 594–7481.

Name of Panel: NHLBI SEP on Pulmonary Epithelia in Health and Disease (Telephone Conference Call).

Dates of Meeting: July 15, 1993.

Time of Meeting: 11 a.m.

Place of Meeting: 5333 Westbard Avenue, room 552, Bethesda, Maryland 20892.

Agenda: To evaluate and review grant applications.

Contact Person: Dr. Robert M. Chasson, 5333 Westbard Avenue, room 552, Bethesda, Maryland 20892, (301) 594–7476.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: June 21, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–14946 Filed 6–24–93; 8:45 am]

BILLING CODE 4140–01

Office of Research on Women's Health; Meeting

Notice is hereby given that the Office of Research on Women's Health (ORWH) in the Office of the Director, National Institutes of Health (NIH), will hold a scientific meeting, "Recruitment and Retention of Women in Clinical Studies," on July 12 and 13, 1993, from 8:30 a.m. to 5 p.m. at the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland.

In February 1993, the ORWH convened a Task Force on the Recruitment and Retention of Women in Clinical Studies (Task Force) to review key issues particular to this subject. Testimony from nearly 60 individuals and representatives of organizations from across the country was received by the Task Force at a March 29–30, 1993 public hearing sponsored by the ORWH. The July meeting will provide an opportunity to further address issues that impact the recruitment and retention of women from diverse racial and ethnic groups and socioeconomic strata in different types of clinical research.

The meeting is open to the public. However, attendance may be limited by seat availability. Please call Margaret Pickerel of Prospect Associates, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, 301–468–6555, 301–770–5164 (FAX), to obtain a registration form for this meeting.

Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other special accommodations, should contact Ms. Pickerel in advance of the meeting. For additional information, contact Carrie P. Hunter, M.D., Special Assistant to the Director, Office of Research on Women's Health, National Institutes of Health, Building 1, room 201, Bethesda, Maryland 20892, 301–402–1770, 301–402–1798 (FAX).

Dated: June 18, 1993.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 93–14944 Filed 6–24–93; 8:45 am]

BILLING CODE 4140–01

Public Health Service

National Center for Health Statistics; the ICD–9–CM Coordination and Maintenance Committee

AGENCY: National Center for Health Statistics, DHHS.

ACTION: Notice of meeting.

SUMMARY: The ICD–9–CM Coordination and Maintenance Committee (C&M) will be holding its second meeting of the year on August 5, 1993. The C&M is a public forum for the presentation of proposed modifications to the International Classification of Diseases, ninth-revision, clinical modification.

DATES: The meeting will be held on August 5, 1993 from 9 a.m.–4 p.m.

ADDRESS: The Hubert H. Humphrey building, rm. 703A, 200 Independence Ave., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Amy Blum, 301–436–4216.

SUPPLEMENTARY INFORMATION:

Tentative Agenda

In utero Diethylstilbestrol (DES) exposure, Seborrheic keratosis, Monoplegia, Complication codes, Mental disorders, Bi-level positive airway pressure, Repair of vaginal enterocele, Percutaneous transcatheter occlusion, Cystostomy/Cystotomy, Addenda.

Sue Meads,

R.R.A., Co-chair, ICD–9–CM Coordination and Maintenance Committee.

[FR Doc. 93–14994 Filed 6–24–93; 8:45 am]

BILLING CODE 4160–18–M

Social Security Administration

Federal Old-Age, Survivors, and Disability Insurance; Program Announcement No. SSA–ORS–93–1

AGENCY: Social Security Administration, HHS.

ACTION: Announcement of the availability of fiscal year 1993 funds for section 1110 research grants.

SUMMARY: The Principal Deputy Commissioner of Social Security announces that competing applications will be accepted for new research grants authorized under section 1110 of the Social Security Act. This announcement, consisting of three parts, describes the nature of the grant activities and gives notice of the anticipated availability of fiscal year (FY) 1993 funds in support of the proposed activities. Part I discusses the purpose of the announcement and briefly describes the application process. Part II describes the programmatic priorities under which the Social Security Administration (SSA) is soliciting applications for funding. Part III describes the application process and provides guidance on how to submit an application.

DATES: The closing date for the receipt of grant applications in response to this announcement is August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Serge R. Harrison, Office of Research and Statistics, Social Security Administration, 4–C–15 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–2843.

Part I. Purpose and the Grants Process

A. Program Purpose

This research is intended to add to existing knowledge and to improve methods and techniques for the management, administration, and effectiveness of SSA programs. In particular, this research is expected to be useful to the Trustees of the Old-Age, Survivors, and Disability Insurance (OASDI) Trust Funds in choosing the assumptions and/or to SSA's actuaries in refining the methodologies used to make their predictions. Professionals in actuarial science, demography, economics, sociology and related fields are potential users of the results.

In general, SSA will fund the following types of projects:

1. Those that examine issues related to the scheduled increase in the retirement age.

2. Those that examine assumptions made in demographic projections for the Old-Age, Survivors, and Disability Insurance (OASDI) Trust Funds.

B. FY 1993 Grant Process

The grant application process for FY 1993 will consist of a one-stage, full application. Applications are limited to 20 single- or 40 double-spaced pages (excluding resumes, forms, etc.) and must relate to the selection criteria established for review of applications.

Priority areas in this announcement permit applicants to propose research efforts from 12 to 24 months in duration. In item 11 of the Face Sheet (page 1 of form SSA–96–BK) indicate the priority area under which the application is submitted, i.e., ORS–93–001 or ORS–93–002.

Part II. Priority Research Areas

In particular, the following projects will be considered for funding:

A. Issues Related to the Scheduled Increase in the Retirement Age—ORS–93–001

The Social Security Amendments of 1983 (Public Law 98–21) provide for a gradual increase in the age at which unreduced retired-worker benefits are first payable (for brevity, the retirement age) from 65 to 67 between the years 2000 and 2027. Benefits for retired workers still will be available at age 62, but the amount payable will gradually be reduced from the currently payable 80 percent of the unreduced benefit to 70 percent.

The increase is based on the assumption that the increase in life expectancy has been accompanied by a corresponding improvement in health and capacity to work. But past studies are inconclusive about the relationship between longevity and work ability, especially among persons in their sixties. Proposals are sought to further investigate these relationships, using either new approaches, more current data, and/or new databases.

The retirement-age increase may also impact on the Social Security Disability Insurance (DI) program. Studies are needed to address questions like: (i) What is the expected impact on the number of DI beneficiaries and their duration on the rolls and to the DI Trust Fund; (ii) how many workers would qualify for DI benefits at age 65 and 66 and how many would elect to receive benefits; and (iii) among those aged 62–64 who do not now elect to apply for DI benefits, how many might do so because of the additional reduction in benefits for early retirement that accompanies a retirement-age increase?

Grant proposals must be based on well-developed, rigorous analysis. Applicants may submit applications for multi-year funding not to exceed 24 months in duration.

The applications should include a budget for the first budget period (not to exceed 12 months). If the application is approved, a grant will be awarded for the initial 12-month budget period. Funding will subsequently be provided for an additional 12-month budget period dependent upon satisfactory performance of the initial budget period, continued relevance of the project, and the availability of FY funds.

It is anticipated that an amount up to $190,000 will be allocated to fund two or more projects for the initial 12-month budget period under this priority area.

B. Selected Demographic Assumptions Used to Project the Financial Status of the OASDI Trust Funds—ORS–93–002

The annual reports of the Board of Trustees of the Federal Old-Age and

Survivors Insurance and Disability Insurance Trust Funds contain long-range, 75-year projections on the financial status of the trust funds. The assumptions and methodology underlying those projections were reviewed by the Panel of Technical Experts convened by the quadrennial Advisory Council on Social Security and recommendations for research were made. Key subject areas identified as requiring further basic research in this priority area include fertility, mortality, and illegal immigration. (The "Social Security Technical Panel Report to the 1991 Advisory Council on Social Security" and its appendices were reprinted in the November and December 1990 issues of the Social Security Bulletin which is available at Federal Depository Libraries.)

Among the questions to be addressed on fertility patterns in this priority area are: What are the determinants of fertility and changes in fertility? What is the relationship between age of the parents at first birth and the total fertility rate? How do birth rates of immigrants and of their children compare with those of non-immigrants and their children? Will future trends in fertility rates by race and ethnic group mirror past trends? For assumptions used in projecting fertility, can an analytical framework be developed to help decide how much weight to put on long-term trend information and how much weight to put on the most recent trends? Is there empirical evidence supporting alternative weighting schemes?

Among the questions to be addressed on mortality are: What are the determinants of mortality and rates of change in mortality? What evidence is there for projecting changes in mortality for specific causes (e.g., cancer, heart, etc.) based on changes in smoking, nutrition, and other lifestyle patterns? For assumptions used in projecting mortality, can an analytical framework be developed to help decide how much weight to put on long-term trend information and how much weight to put on the most recent trends? Is there empirical evidence supporting alternative weighting schemes?

Also of interest, but of somewhat lower priority, is the establishment of a more adequate knowledge base concerning other-than-legal immigrants. In particular: Estimates of current numbers, labor-force participation rates, and rates of immigration of illegal immigrants; analysis of factors likely to affect future immigration rates of illegal immigrants and projections based on this analysis; the length of coverage and average earnings of illegal immigrants and the length of time they remain in the country; and the extent to which illegal immigrants receive benefits based upon their coverage under the system.

Grant proposals must be based on well-developed, rigorous analysis. Other approaches to this priority area and other areas of relevance to the projections, including the appropriate method of moving from the short-range level of an assumption to the ultimate level or improvement of the aggregate forecasts, could be candidates for supported research. However, preference will be given to well-designed research in this year's specific demographic areas.

Applicants may submit applications for funding not to exceed 17 months in duration. The applications should include a budget for the total period of the grant (not to exceed 17 months). If the application is approved, a grant will be awarded for the entire budget period of the grant.

It is anticipated that a total of $160,000 will be allocated to fund one or more projects for a period not to exceed 17 months under this priority area.

Note: To foster the sharing of research, principal investigators for each grant awarded will be required to discuss the results of their research with SSA staff. Funds should be included in the grant budget for a meeting at the SSA Office of Research and Statistics, Washington, DC.

Part III. Application Process

A. Eligible Applicants

Any State, local government, and public or private organization or agency (including educational institutions) may apply for a grant under this announcement. Individuals are not eligible to apply. For-profit organizations or institutions may apply with the understanding that no grant funds may be paid as profit to any grant recipient. Profit is considered as any amount in excess of the allowable costs of the grant recipient. A for-profit organization or institution means a corporation or other legal entity which is organized or operated for the profit or benefit of its shareholders or other owners and must be distinguishable or legally separable from that of an individual acting on his or her own behalf.

B. Availability and Duration of Funding

SSA anticipates allocating a total of $190,000 to fund projects in priority area ORS–93–001, "Issues Related to the Scheduled Increase in the Retirement Age." SSA expects to fund the initial 12-month budget period(s) of a 24-month grant(s) for one (1) or more projects in priority area ORS–93–001. Also, SSA anticipates allocating $160,000 to fund at least one (1) project not to exceed 17 months in duration in priority area ORS–93–002, "Selected Demographic Assumptions Used to Project the Financial Status of the OASDI Trust Funds."

C. Grantee Share of the Project Costs

Grant recipients receiving assistance to conduct these research projects are expected to contribute towards the project costs. Generally, 5 percent of the total costs is considered acceptable. No grant will be awarded that covers 100 percent of the project's costs.

D. The Application Process for Proposals Requesting Grant Funds

Organizations wishing to compete for grants under this announcement must submit an application by August 24, 1993. Applications received in response to this announcement will be reviewed by Federal and non-Federal personnel.

Successful applicants may expect funding during the fourth quarter of FY 1993 (prior to September 30, 1993).

1. Availability of Application Forms

Application kits which contain the prescribed application forms for grant funds are available from the Grants Management Staff; Division of Contract and Grant Operations; Office of Acquisitions and Grants; Social Security Administration; 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, MD 21207; telephone (410) 965–9500; Mr. Lawrence H. Pullen, Chief, Grants Management Staff.

When requesting an application kit, the applicant should refer to program announcement number SSA–ORS–93–1 and the date of this announcement to ensure receipt of the proper application kit.

2. Additional Information

For additional information concerning project development, please contact Mr. Serge R. Harrison; Office of Research and Statistics; Social Security Administration; 4–C–15 Operations Building; 6401 Security Boulevard; Baltimore, MD 21235; telephone (410) 965–2843.

3. Application Submission

All applications requesting Federal grant funds must be submitted on the standard forms provided by the Grants Management Staff. The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the grant award.

As part of the project title (page 1 of the application form SSA–96–BK, item 11), the applicant must clearly indicate the application submitted is in response to this announcement (SSA–ORS–93–1) and must show the appropriate priority area project identifier (i.e., ORS–93–001, ORS–93–002).

• Applications must be submitted to: Grants Management Staff; Division of Contract and Grant Operations; Office of Acquisition and Grants; Social Security Administration; 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, MD 21207.

4. Application Consideration

Applications are initially screened for relevance to this announcement. If judged irrelevant, the applications are returned to the applicants. Applications that conform to the requirements of this program announcement will be reviewed and evaluated against the criteria specified in No. 6(b) of this announcement and evaluated by Federal and non-Federal personnel. The results of this evaluation will assist the Commissioner of Social Security in selecting the applications to be funded.

5. Application Approval

Grant awards will be issued within the limits of Federal funds available following the approval of the applications selected for funding. The official award document is the "Notice of Grant Award." It will provide the amount of funds awarded, the purpose of the award, the budget period for which support is given, the total project period for which support is contemplated, the amount of grantee financial participation, and any special terms and conditions of the grant award.

6. Criteria for Screening and Reviewing of Applications

(a) Screening requirements. In order for an application to be in conformance, it must meet all of the following requirements:

(1) Number of Copies: An original signed application and two copies must be submitted. Five additional copies are optional and will expedite processing of the grant application.

(2) Length: The narrative portion of the application (Part III of form SSA–96–BK) must not exceed 20 single- or 40 double-spaced pages, exclusive of resumes, forms, etc., typewritten on one side only using standard size (8½" × 11") paper. Applications should neither be unduly elaborative nor contain voluminous documentation.

(3) Non-Federal Contribution (Match): Grant recipients must contribute towards the project costs (cash or in-kind). Generally, 5 percent of the total costs is acceptable. SSA will not provide 100 percent or total funding for any project grant.

(b) Evaluation criteria. Applications which pass the screening process will be reviewed by at least three individuals. Reviewers will score the applications, basing their scoring decisions on the following criteria. Relative weights are shown in parentheses.

(1) Project Objective: (15 points)

How closely do the project objectives fit those of the announcement? Is the need for the project discussed in terms of the importance of the issues to be addressed? Does it describe how the project builds upon previous research?

(2) Project Design: (30 points)

Is the design of the project adequate and feasible as indicated by the appropriateness of the work statement and the technical approach, including: (a) A concise and clear statement of goals and objectives; (b) theoretical analysis of the problem and, if appropriate, hypotheses to be tested and/or parameters to be estimated; (c) data to be collected, including specification of data sources; (d) plan for data analysis, including appropriateness of statistical methods to be used; and (e) scheduling of tasks and milestones in the progress of the project? Does the proposal describe specific plans for conducting the project in terms of the tasks to be performed, and how the approach proposed will accomplish the project objectives?

(3) Qualifications: (30 points)

Do the qualifications of the project personnel, as evidenced by training, experience, and publications, indicate that they have the skills required to competently carry out the research and to produce a final report that is comprehensible and usable? Is the staffing pattern appropriate for the proposed research, linking responsibilities clearly to project tasks? Does the applicant's organization have adequate facilities and resources to plan, conduct, and complete the project?

(4) Organization and Budget: (10 points)

Are the resources needed to conduct the project specified, including personnel, time, funds, and facilities? Are any collaborative efforts with other organizations clearly identified and written assurances referenced? Is all budget information provided, including a description by category (personnel, travel, etc.) of the total of the Federal funds required? Where appropriate, are justifications and explanations of costs provided? Are the project's costs reasonable in view of the level of effort and anticipated outcome?

Please Note: For-profit organizations may not use grant funds to purchase equipment under the grant. Equipment means tangible, non-expendable, personal property having a useful life of more than 1 year and an acquisition cost of $300 or more per unit.

(5) Expected Outcomes: (15 points)

What is the potential usefulness of the anticipated result and expected benefits to SSA and other target groups? What is the potential usefulness of the proposed project for the advancement of scientific knowledge?

7. Closing Date for Receipt of Applications

The closing date for receipt of grant applications for Federal funds in response to this announcement is August 24, 1993.

Applications may be mailed or sent by commercial carrier or personally delivered to: Grants Management Staff; Division of Contract and Grant Operations; Office of Acquisition and Grants; Social Security Administration; room 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, MD 21207.

Hand-delivered applications are accepted during the hours of 8 a.m. to 5 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

(a) Received on or before the deadline date at the above address; or

(b) Mailed through the U.S. Postal Service or sent by commercial carrier on or before the deadline date and received in time to be considered during the competitive review and evaluation process. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier as evidence of timely mailing. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the above criteria are considered late applications. SSA will notify each late applicant that its application will not be considered.

Note: Facsimile copies will not be accepted.

Paperwork Reduction Act

This notice contains reporting requirements in "The Application Process" section. However, the information is collected using form SSA–96–BK, Federal Assistance, which

has Office of Management and Budget clearance No. 0960–0184.

Executive Order 12372 and 12416—Intergovernmental Review of Federal Programs

This program is not covered by the requirements of Executive Order 12372, as amended by Executive Order 12416, relating to Federal agencies providing opportunities for consultation with State and local elected officials on proposed Federal financial assistance or direct Federal development.

(Catalog of Federal Domestic Assistance: Program No. 93.812—Social Security—Research and Demonstration)

Dated: June 17, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

[FR Doc. 93–14936 Filed 6–24–93; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–37]

Federal Property Suitable As Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD:

(1) Its intention to make the property available for use to assist the homeless,

(2) Its intention to declare the property excess to the agency's needs, or

(3) A statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P; Rm. 1E671, Pentagon, Washington, DC 20310–2600; (703) 693–4583; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; U.S. Air Force: Bob Menke, USAF, Bolling AFB, SAF–MIIR, Washington, DC 20332–5000; (202) 767–6235; GSA: Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 208–0619; Dept. of Agriculture: Marsha Pruitt, Realty Officer, USDA, South Bldg. Rm. 1566, 14th and Independence Ave. SW, Washington, DC 20250; (202) 447–3338; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW, room 10319, Washington, DC 20590; (202) 366–4246; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW, Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000 Independence Ave. SW, Washington, DC 20585; (202) 586–1191; (These are not toll-free numbers).

Dated: June 18, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program, Federal Register Report for 06/25/93

Suitable/Available Properties

Buildings (by State)

California

Quarters 1, TV 0001
950 Tennessee Valley Road
Mill Valley Co: Marin CA 94941–

Landholding Agency: Interior
Property Number: 619320002
Status: Unutilized
Comment: 828 sq. ft., 1 story wood frame residence, fair condition, off-site use only

Bldg. 9001
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199
Landholding Agency: Navy
Property Number: 779320001
Status: Excess
Base closure Number of Units: 1
Comment: 435,000 sq. ft., 4-story, concrete, most recent use—hospital/clinic, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.

Bldg. 9002
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199
Landholding Agency: Navy
Property Number: 779320002
Status: Excess
Base closure Number of Units: 1
Comment: 13,500 sq. ft., 2-story, concrete, most recent use—barracks, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.

Bldg. 9003
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199
Landholding Agency: Navy
Property Number: 779320003
Status: Excess
Base closure Number of Units: 1
Comment: 4,980 sq. ft., 1-story, concrete, most recent use—barracks, presence of asbestos, possible seismical upgraded needed, scheduled to be vacated 4/1/94.

Bldg. 9004
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199
Landholding Agency: Navy
Property Number: 779320004
Status: Excess
Base closure Number of Units: 1
Comment: 1,023 sq. ft., 1-story, metal, most recent use—carpentry shop, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.

Bldg. 9005
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199
Landholding Agency: Navy
Property Number: 779320005
Status: Excess
Base closure Number of Units: 1
Comment: 1,120 sq. ft., 1-story, concrete, most recent use—weight room, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.

Bldg. 9006
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199
Landholding Agency: Navy
Property Number: 779320006
Status: Excess
Base closure Number of Units: 1
Comment: 1,200 sq. ft., 1-story, metal, most recent use—warehouse, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.

Bldg. 9023
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199
Landholding Agency: Navy
Property Number: 779320007
Status: Excess
Base closure Number of Units: 1
Comment: 1531 sq. ft., 1-story, metal, most recent use—metal shop, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.

Bldg. 9024
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199
Landholding Agency: Navy
Property Number: 779320008
Status: Excess
Base closure Number of Units: 1
Comment: 3,630 sq. ft., 1-story, concrete, most recent use—minimart, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.

Bldg. 9025
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199
Landholding Agency: Navy
Property Number: 779320009
Status: Excess
Base closure Number of Units: 1
Comment: 8,079 sq. ft., 1-story, metal, most recent use—warehouse, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.

Bldg. 9026
Long Beach Naval Hospital
Long Beach Co: Los Angeles CA 90822–5199
Landholding Agency: Navy
Property Number: 779320010
Status: Excess
Base closure Number of Units: 1
Comment: 2,240 sq. ft., 1-story, metal, most recent use—gas station, presence of asbestos, possible seismical upgrade needed, scheduled to be vacated 4/1/94.

Iowa

LeMars Communication Site
NW¼ Section 18, T92N, R44W
LeMars Co: Plymouth IA 51031–
Landholding Agency: GSA
Property Number: 549310007
Status: Excess
Comment: 144 sq. ft., 1-story metal shed with 5.79 acres, most recent use—radio relay station.
GSA Number: 7–B–IA–471–A

Kansas

Federal Building
412–418 South Main St.
Wichita Co: Sedgwick KS 67202–
Landholding Agency: GSA
Property Number: 549320005
Status: Excess
Comment: 35,000 sq. ft., 2-story steel/concrete bldg., scheduled to be vacated 9/93 , presence of asbestos
GSA Number: 7–G–KS–0512

Massachusetts

Lowell Federal Building
50 Kearny Square
Lowell Co: Middlesex MA 01854–
Landholding Agency: GSA
Property Number: 549320003
Status: Excess
Comment: 40,283 sq. ft., 3-story concrete and steel bldg., most recent use—storage/office and medical clinic
GSA Number: 2–G–MA–778

New Mexico

Albuquerque Tree Nursery
3615 Los Picaros Rd. SE
Albuquerque Co: Bernalillo NM 87105–
Landholding Agency: Agriculture
Property Number: 159310003
Status: Unutilized
Comment: 11 bldgs., most are metal, 1 brick office bldg., off-site use only

Land (by State)

South Dakota

Ree Heights Communication Site
2 miles south of Ree Heights Co: Hand SD 57371–
Landholding Agency: GSA
Property Number: 549310015
Status: Excess
Comment: approx. 4.24 acres divided into 2 parcels with radio towers and equipment sheds
GSA Number: 7–B–SD–512

Land—1.28 acre
Arlington Co: Brookings SD 57212–
Landholding Agency: GSA
Property Number: 549320004
Status: Excess
Comment: 1.28 acre of land with 120 sq. ft., metal bldg., most recent use—radio equipment housing
GSA Number: 7–B–SD–495–A

Suitable/Unavailable Properties

Buildings (by State)

Nebraska

Bldg. 4, Hastings Family Hsg.
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320059
Status: Excess
Comment: 19370 sq. ft., brick frame, 1-story, possible asbestos, most recent use—recreation.

Bldg. 500
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320060
Status: Excess
Comment: 4984 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.

Bldg. 502
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320061
Status: Excess
Comment: 2108 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.

Bldg. 504
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320062
Status: Excess
Comment: 2852 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.

Bldg. 506
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320063
Status: Excess
Comment: 2960 sq. ft., 2-story plus ¾ basement wood frame family housing, possible asbestos.

Bldg. 507
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320064
Status: Excess
Comment: 2154 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.

Bldg. 509
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320065
Status: Excess
Comment: 2404 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.

Bldg. 511
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320066
Status: Excess
Comment: 3156 sq. ft., 2-story plus full basement wood frame family housing, possible asbestos.

Bldg. 512
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320067
Status: Excess
Comment: 2948 sq. ft., 2-story plus ¾ basement wood frame family housing, possible asbestos.

Bldg. 515
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320068
Status: Excess
Comment: 2554 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.

Bldg. 517
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320069
Status: Excess
Comment: 2554 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.

Bldg. 519
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320070
Status: Excess
Comment: 2800 sq. ft., 2-story plus full basement wood frame family housing, possible asbestos.

Bldg. 521
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320071
Status: Excess
Comment: 2268 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.

Bldg. 523
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320072
Status: Excess
Comment: 2718 sq. ft., 2-story plus ¾ basement wood frame family housing, possible asbestos.

Bldg. 525
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320073
Status: Excess
Comment: 2718 sq. ft., 2-story plus ¾ basement wood frame family housing, possible asbestos.

Bldg. 526
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320074
Status: Excess
Comment: 3720 sq. ft., 1-story plus ½ basement wood frame family housing, possible asbestos.

Bldg. 529
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320075
Status: Excess
Comment: 2252 sq. ft., 1-story plus ¾ basement wood frame family housing, possible asbestos.

Bldg. 531
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320076
Status: Excess
Comment: 2782 sq. ft., 2-story plus ¾ basement wood frame family housing, possible asbestos.

Bldg. 533
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320077
Status: Excess
Comment: 2324 sq. ft., 2-story plus ¾ basement wood frame family housing, possible asbestos.

Bldg. 534
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320078
Status: Excess
Comment: 3276 sq. ft., 1-story plus ½ basement wood frame family housing, possible asbestos.

Bldg. 536
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320079
Status: Excess
Comment: 2228 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.

Bldg. 538
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320080
Status: Excess
Comment: 2228 sq. ft., 2-story plus full basement wood frame family housing, possible asbestos.

Bldg. 541
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320081
Status: Excess
Comment: 2452 sq. ft., 2-story plus full basement wood frame family housing, possible asbestos.

Bldg. 542
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320082
Status: Excess
Comment: 2566 sq. ft., 2-story plus ¾ basement wood frame family housing, possible asbestos.

Bldg. 544
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320083
Status: Excess
Comment: 3488 sq. ft., 1-story plus full basement wood frame family housing, possible asbestos.

Bldg. 546
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320084
Status: Excess
Comment: 3724 sq. ft., 1-story plus full basement wood frame family housing, possible asbestos.

Bldg. 549
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force

Property Number: 189320085
Status: Excess
Comment: 2624 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.

Bldg. 550
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320086
Status: Excess
Comment: 2270 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.

Bldg. 552
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320087
Status: Excess
Comment: 2358 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.

Bldg. 553
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320088
Status: Excess
Comment: 2012 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.

Bldg. 555
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320089
Status: Excess
Comment: 2286 sq. ft., 2-story plus full basement wood frame family housing, possible asbestos.

Bldg. 557
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320090
Status: Excess
Comment: 2176 sq. ft., 1-story plus full basement wood frame family housing, possible asbestos.

Bldg. 558
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320091
Status: Excess
Comment: 2052 sq. ft., 2-story plus ½ basement wood frame family housing, possible asbestos.

Bldg. 560
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320092
Status: Excess
Comment: 2600 sq. ft., 2-story plus ¾ basement wood frame family housing, possible asbestos.

27 Detached Garages
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320093
Status: Excess
Comment: 280–708 sq. ft., wood frame, accommodates 1 to 3 vehicles, possible asbestos.

Bldg. 17
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320094
Status: Excess
Comment: 2225 sq. ft., 1-story wood frame, most recent use—offices, needs rehab, possible asbestos.

Bldg. 16
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320095
Status: Excess
Comment: 3278 sq. ft., 1-story plus basement brick frame, most recent use—storage, possible asbestos.

Bldg. 18
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320096
Status: Excess
Comment: 115 sq. ft., 1-story metal frame, most recent use—storage, no known utility potential.

Bldg. 6
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320097
Status: Excess
Comment: 256 sq. ft., 1-story wood frame, most recent use—storage, possible asbestos.

Bldg. 547
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320098
Status: Excess
Comment: 731 sq. ft., 1-story plus full basement wood frame, most recent use—storage, possible asbestos.

Bldg. 604
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320099
Status: Excess
Comment: 224 sq. ft., 1-story wood frame, most recent use—storage.

New Hampshire

Bldg. 114
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320055
Status: Excess
Comment: 2606 sq. ft., 1-story concrete block frame, possible asbestos, access restrictions, most recent use—storage.

Bldg. 115
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320056
Status: Excess
Comment: 2606 sq. ft., 1-story concrete block frame, possible asbestos, access restrictions, most recent use—storage.

Bldg. 127
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031–1514
Landholding Agency: Air Force
Property Number: 189320057
Status: Excess
Comment: 698 sq. ft., 1-story concrete and metal frame, possible asbestos, access restrictions, most recent use—storage.

North Carolina

Portion VA Reservation
Nurses Quarters
Oteen Co: Buncombe NC
Landholding Agency: GSA
Property Number: 549320006
Status: Excess
Comment: 8752 sq. ft., 3-story stucco bldg., presence of asbestos, most recent use—educational facility.
GSA Number: 4–GR–NC–481B.

Washington

Bldg. 26
Naval Station Puget Sound
7500 Sand Point Way NE
Seattle Co: King WA 98115–
Landholding Agency: Navy
Property Number: 779310085
Status: Excess
Base closure Number of Units: 1
Comment: 17282 sq. ft., 3-story, most recent use—officer's quarters, scheduled to be vacated 9/95.

Bldg. 26A
Naval Station Puget Sound
Seattle Co: King WA 98115–
Landholding Agency: Navy
Property Number: 779310087
Status: Excess
Base closure Number of Units: 1
Comment: 16082 sq. ft., 3-story, most recent use—storage, possible asbestos, scheduled to be vacated 9/95.

Land (by State)

Idaho

Paul Substation
North Main St. or Lots 11, 12
Paul Co: Minidoka ID 83347–
Landholding Agency: Energy
Property Number: 419320006
Status: Unutilized
Comment: Approx. 6250 sq. ft., most recent use—substation for electrical power.

Unsuitable Properties

Buildings (by State)

California

Bldg. 20
Support Center San Pedro
Terminal Island
San Pedro Co: Los Angeles CA 90731–

Landholding Agency: DOT
Property Number: 879320021
Status: Unutilized
Reason: Secured Area.
Bldg. 22
Support Center San Pedro
Terminal Island
San Pedro Co: Los Angeles CA 90731–
Landholding Agency: DOT
Property Number: 879320022
Status: Unutilized
Reason: Secured Area.
Bldg. 23
Support Center San Pedro
Terminal Island
San Pedro Co: Los Angeles CA 90731–
Landholding Agency: DOT
Property Number: 879320023
Status: Unutilized
Reason: Secured Area.

Maine

Fort Popham Light
Phippsburg Co: Sagadahoc ME 04562–
Landholding Agency: DOT
Property Number: 879320024
Status: Unutilized
Reason: Other Comment: Extensive Deterioration.

Montana

Sioux Pass Radio Relay Tower
17 Miles South of Culbertson Co: Richland MT 57212–
Landholding Agency: GSA
Property Number: 549320012
Status: Excess
Reason: Other Comment: No public access
GSA Number: 7–B–SD–495–A.

Nebraska

Bldg. 21
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901–
Landholding Agency: Air Force
Property Number: 189320058
Status: Excess
Reason: Other Comment: Generator.

Ohio

Bldg. A–5
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219320399
Status: Unutilized
Reason: Other Comment: Extensive Deterioration.
Bldg. WH–26
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219320400
Status: Unutilized
Reason: Other Comment: Extensive Deterioration.
Bldg. WH–27
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219320401
Status: Unutilized
Reason: Other Comment: Extensive Deterioration.
Bldg. WH–28
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219320402
Status: Unutilized
Reason: Other Comment: Extensive Deterioration.
Bldg. WH–29
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219320403
Status: Unutilized
Reason: Other Comment: Extensive Deterioration.
Bldg. WH–45
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219320404
Status: Unutilized
Reason: Other Comment: Extensive Deterioration.
Bldg. WH–47
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219320405
Status: Unutilized
Reason: Other Comment: Extensive Deterioration.
Bldg. WH–60
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219320406
Status: Unutilized
Reason: Other Comment: Extensive Deterioration.
Bldg. WH–68
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219320407
Status: Unutilized
Reason: Other Comment: Extensive Deterioration.
Bldg. WH–86
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219320408
Status: Unutilized
Reason: Other Comment: Extensive Deterioration.
Bldg. WH–87
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219320409
Status: Unutilized
Reason: Other Comment: Extensive Deterioration.
Bldg. WH–88
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219320410
Status: Unutilized
Reason: Other Comment: Extensive Deterioration.

Land (by State)

Puerto Rico

El Corcho Tract
Naval Station Roosevelt Roads
Naguabo PR 00718–
Landholding Agency: GSA
Property Number: 549320011
Status: Excess
Reason: Floodway
GSA Number: N–PR–487.

Puntas Figueras (2)
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: GSA
Property Number: 549320013
Status: Excess
Reason: Floodway
GSA Number: N–PR–488A.

[FR Doc. 93–14829 Filed 6–24–93; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–03–4210–04; M52124]

Montana; Realty Action: Exchange

AGENCY: Butte District Office, Bureau of Land Management, DOI.

ACTION: Designation of public lands in Madison and Beaverhead Counties, Montana for transfer out of Federal ownership in exchange for lands owned by the Montana Power Company.

SUMMARY: BLM proposes to exchange public land with the Montana Power Company in order to acquire land along the Madison River for recreational purposes and to achieve more efficient management of the public lands through consolidation of land ownership.

The following public land is being considered for exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Montana Principal Meridian

T 7 S, R 9 W
Sec. 11, SE¼SW¼, S½SE¼;
Sec. 13, W½SW¼;
Sec. 14, Lots 1–3, and 5;
T 5 S, R 4 W
Sec. 34, SE¼NW¼, S½;
T 8 S, R 1 E
Sec. 34, S½SW¼;

The lands described above comprise 789.57 acres in Madison and Beaverhead Counties. These lands are segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregative effect will terminate upon issuance of patent or two years from the date of this publication, whichever occurs first.

Final determination of disposal will await completion of an Environmental Assessment. Upon completion of the Environmental Assessment, a Notice of Realty Action shall be published

specifying the lands to be exchanged and the lands to be acquired.

DATES: Interested parties may submit comments to James R. Owings, Butte District Manager, P.O. Box 3388, Butte, Montana 59702 on or before August 9, 1993.

Dated: June 17, 1993.

James R. Owings,

District Manager.

[FR Doc. 93–14929 Filed 6–24–93; 8:45 am]

BILLING CODE 4310-DN-M

National Park Service

Cuyahoga Valley National Recreation Area, Ohio

AGENCY: National Park Service, Department of the Interior.

ACTION: Solicitation of bids for lease of real property.

SUMMARY: This notice publishes the interest of the National Park Service to solicit bids for the lease of lands within the boundary of Cuyahoga Valley National Recreation Area, Brecksville, Ohio.

DATES: The lease solicitation for sealed bids will be accepted until 2 p.m., September 1, 1993. The bids are to be delivered to Superintendent, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, Ohio 44141, in a sealed envelope clearly identified by writing on the envelope "Bid—Pittenger Farm."

FOR FURTHER INFORMATION CONTACT: Mr. Robert P. Martin, Assistant Superintendent, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, Ohio 44141, Telephone 216–526–5256.

SUPPLEMENTARY INFORMATION: The following additional information is provided regarding the proposed lease of real property:

Justification

The National Park Service is soliciting sealed bids for the lease of a portion of Tract 119–34 consisting of 16.57 acres with a residence and other buildings within Cuyahoga Valley National Recreation Area. The property will be leased for residential and equestrian related use only. Leasing of real property is authorized under section 5(a) of The Act of July 16, 1968, 82 Stat. 354, 16 U.S.C. 460*l*–22(a), 36 CFR Part 17. Leasing this property with certain terms and conditions will assure use of the property in a manner consistent with the purpose for which the Cuyahoga Valley National Recreation Area was authorized by Congress.

Legal Description

A portion of Cuyahoga Valley Tract 119–34, also known as 4635 Wetmore Road, Peninsula, Ohio, containing 16.57 acres, more or less, including all improvements subject to the terms and conditions of lease available for inspection at the Park Superintendent's office, 15610 Vaughn Road, Brecksville, Ohio 44141.

Interest To Be Conveyed

The property will be leased for a period of twenty-five (25) years to the highest bidder.

Fair Market Rental Value

The appraised fair market rental value of the property is $2,600 per year which is the minimum acceptable bid. The appraisal may be inspected at the Park Superintendent's office, 15610 Vaughn Road, Brecksville, Ohio 44141.

Conveyance Procedures, Requirements and Time Schedule

Conveyance of the property will be by a formal lease document. The minimum acceptable bid is $2,600 per year, or $216.67 per month, plus a separate non-refundable payment of $100 to cover the cost of publication and processing of bids. Bids must be in writing, clearly identify the bidder, signed by the bidder or his assigned agent, state amount of bid, and refer to the notice. Bids must be accompanied by certified check, post office money order, bank draft, or cashier check and made payable to the United States of America for the full amount of the first year's rent as bid. This payment will be refunded to unsuccessful bidders.

The property will be available for public inspection on the site from 2 p.m. to 4 p.m., July 11 and August 15, 1993. Bids will be accepted until 2 p.m. September 1, 1993.

Dated: June 9, 1993.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 93–14999 Filed 6–24–93; 8:45 am]

BILLING CODE 4310-70-M

Creve Coeur Lake Memorial Park, St. Louis County, MO; Environment Impact Statement

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare a supplemental environmental impact statement for section 6(f) land conversion for Creve Coeur Lake Memorial Park, St. Louis County, Missouri.

SUMMARY: The National Park Service, in compliance with section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) [42 United States Code (U.S.C.) 4321 *et seq.* and 42 U.S.C. 4332, as amended] and with section 6(f) of the Land and Water Conservation Fund (LWCF) Act (Pub. L. 88–578, as amended), will prepare a supplemental environmental impact statement (SEIS) to evaluate additional replacement land as a result of a conversion of 184 acres of Creve Coeur Lake Memorial Park from outdoor recreation use. Creve Coeur Lake Memorial Park is a county park which has received Federal financial assistance from the LWCF grant-in-aid program. This SEIS will supplement the final environmental impact statement (FEIS) for Page Avenue (Route D) extension, St. Louis and St. Charles Counties, Missouri, prepared by the Federal Highway Administration (FHWA).

The FHWA FEIS addressed construction of a 10-lane elevated extension of Page Avenue across the southern tip of the park site assuming all necessary coordination with other Federal agencies has been satisfactorily accomplished. The FEIS also identified that the proposed highway project would impact the approximately 184 acres necessitating the conversion referenced above.

The initial proposal, submitted by the state of Missouri to replace the 184 acres included seven parcels totalling 265 acres, has been under review by the National Park Service and the U.S. Department of the Interior for some time. The National Park Service is concerned that the 265 acres may not offer "reasonably equivalent usefulness," to the extent necessary to reflect appropriately the loss of this unique natural area.

A range of alternative land proposals, including additional substitution properties, will be considered in the SEIS. These alternatives will analyze the "equivalent usefulness" of candidate replacement land parcels as well as impacts on natural and cultural resources, the socioeconomic environment, and current uses.

Federal, State, local agencies, and individuals or organizations are invited to participate in the scoping process. The scoping process includes:

1. Identification of alternative land proposals.
2. Identification of potential impact topics and depth of analysis.
3. Determination of potential formal and/or informal cooperating agencies and assignment of responsibilities.

The National Park Service will conduct a scoping meeting prior to the

draft SEIS being made available to the public.

Meeting Date and Time: July 1, 1993; 1 p.m. until 9 p.m.

Address: Best Western Westport Park Hotel, 2434 Old Dorsett Road, Maryland Heights, Missouri 63043.

In order to provide a statement, interested individuals must contact the National Park Service to reserve a time to present testimony. Statements will be limited to 10 minutes per speaker. The phone number to call to reserve a time is 402–221–3202. Calls will be taken from 8:30 a.m. to 4 p.m. Central Daylight Time from Wednesday, June 23 through Wednesday June 30.

As part of the scoping process, the public is encouraged to send written comments and suggestions concerning preparation of the SEIS by July 6 to the responsible official, who is Mr. Don H. Castleberry, Regional Director, Midwest Region, National Park Service, Omaha, Nebraska 68102.

FOR FURTHER INFORMATION CONTACT: Mr. Clay McDermeit, Chief, Western Heartland Division, Recreation Assistance Programs, Midwest Region, National Park Service, Omaha, Nebraska 68102.

Dated: June 16, 1993.

Edward D. Carlin,

Acting Regional Director, Midwest Region.

[FR Doc. 93–14996 Filed 6–24–93; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32307]

Gateway Western Railway Co.; Trackage Rights Exemption; Gateway Eastern Railway Co.

Gateway Eastern Railway Company (GERC) has agreed to grant nonexclusive overhead trackage rights to Gateway Western Railway Company (GWRC) over a 1.7-mile portion of GERC'S East Alton Line to be acquired from Consolidated Railroad Corporation (Conrail), between milepost 236.8 at "Willows" interlocking and milepost 238.5 at "K" Tower, in East St. Louis, St. Clair County, IL.[1] The trackage rights will provide GWRC with access to Conrail's Rose Lake Yard at East St. Louis and with it the ability to interchange traffic directly with Conrail. They will be effective upon consummation of the acquisition and operation exemption that is the subject of the notice filed in Finance Docket No. 32304 and completion of the construction of certain connecting track that is the subject of the exemption sought in Finance Docket No. 32305 (*see* n. 1).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert H. Wheeler, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate* 360, I.C.C. 653 (1980).

Decided: June 21, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–14992 Filed 6–24–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–290 (Sub-No. 129X)]

Norfolk Southern Railway Co.; Abandonment Exemption; Between Bowlin, SC and Crowders, NC

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon its 1.7-mile line of railroad between milepost HG–35.8 at Bowlin, SC, and milepost HG–37.5 at Crowders, NC.

NS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period, and (4) that the requirements at 49 CFR 1105.7, 49 CFR 1105.8, 49 CFR 1105.11, 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 25, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by July 6, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 15, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Robert J. Cooney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

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[1] This proceeding is related to Finance Docket No. 32304, a notice of exemption filed by GERC to acquire and operate certain Conrail lines, including the line segment described above. It is also related both to Finance Docket No. 32305, where GERC and GWRC jointly seek an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10901 to construct a connection between a proposed new GWRC line (discussed below) and the lines to be acquired by GERC, and to Finance Docket No. 32306, where the owners of GERC seek an exemption under section 10505 from the prior approval requirements of 49 U.S.C. 11343 *et seq.*, to continue in control of GERC when it becomes a carrier. Because these concurrently filed exemptions will, if consummated, have the cumulative effect of connecting GWRC to Conrail, they are also related to our decision in Finance Docket Nos. 32158 and 32158 (Sub-No. 1), *Gateway West. Ry. Co.-Const. Exempt.-St Clair Co. IL, et al.* (not printed), served May 11, 1993. In these consolidated proceedings, the Commission conditionally granted GWRC an exemption to construct and operate a rail line at East St. Louis, but requested additional evidence on whether the construction of certain related crossings would result in the Conrail connection now proposed and on what the traffic consequences of such a connection would be. Petitions to reopen and revoke these exemptions are now pending before the Commission.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

NS has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by June 30, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 21, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–14993 Filed 6–24–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Baker Oil Tools, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the Matter of Baker Oil Tools, A/K/A Tri-State Oil Tools, Inc., A/K/A Baker Service Tools, Bellaire, Texas, and Operating at Various Locations In These States: TA–W–27,927A Alaska; TA–W–27,927B Arkansas; TA–W–27,927C California; TA–W–27,927D Colorado; TA–W–27,927E Florida; TA–W–27,927F Illinois; TA–W–27,927G Kansas; TA–W–27,927H Louisiana; TA–W–27,927I Michigan; TA–W–27,927J Mississippi; TA–W–27,927K Montana; TA–W–27,927L New Mexico; TA–W–27,927M North Dakota; TA–W–27,927N Ohio; TA–W–27,927O Oklahoma; TA–W–27,927P Pennsylvania; TA–W–27,927Q Texas (except Houston and Odessa); TA–W–27,927R Utah; TA–W–27,927S West Virginia; TA–W–27,927T Wyoming

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance on March 31, 1993, applicable to all workers at the subject firm. The amended notice was published in the **Federal Register** on April 13, 1993 (58 FR 19276).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The investigation findings show that Baker Service Tools, a subsidiary of Baker Hughes, was merged into Baker Oil Tools in August 1992. Accordingly, the findings show that some of the claimants' wages for Baker Oil Tools were reported for Unemployment Insurance tax purposes under Baker Service Tools, Inc.

The intent of the Department's certification is to include all workers of Baker Oil Tools. The amended notice applicable to TA–W–27,927 is hereby issued as follows:

"All workers of Baker Oil Tools, Duncan, Oklahoma a/k/a Tri-State Oil Tools, and a/k/a Baker Service Tools and operating at various locations in the following States: Alaska, Arkansas, California, Colorado, Florida, Illinois, Kansas, Louisiana, Michigan, Mississippi, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas (except Houston and Odessa), Utah, West Virginia and Wyoming who became totally or partially separated from employment on or after October 15, 1991, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 15th day of June 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–15000 Filed 6–24–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28, 108]

Homco International Inc., et al.; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In the Matter of Homco International, Inc., Bellaire, Texas, and Operating at Various Locations in these states: TA–W–28108A Alabama; TA–W–28108B Alaska; TA–W–28108C California; TA–W–28108D Kansas; TA–W–28108E Louisiana; TA–W–28108F Michigan; TA–W–28108G Mississippi; TA–W–28108H New Mexico; TA–W–28108I Texas; and Southern Flow Companies (Division of Homco International, Inc.) Operating at Various Locations in these States: TA–W–28108J Louisiana; TA–W–28108K Texas; TA–W–28108L Mississippi; TA–W–28108M Alabama; TA–W–28108N Oklahoma

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 5, 1993, applicable to all workers of Homco International, Inc., located in Bellaire, Texas, and operating in various locations in the United States. The notice was published in the **Federal Register** on March 22, 1993 (58 FR 15384).

At the request of the company, the Department reviewed the certification for workers of Homco International, Inc. The investigation findings show that the climants' wages for Homco International, Inc. are being reported under Southern Flow Companies division, in the States of Louisiana, Texas, Mississippi, Alabama, and Oklahoma.

Accordingly, the Department is amending the certification to properly reflect the correct worker groups.

The intent of the Department's certification is to include all workers of Homco International, Inc. and Southern Flow Companies irrespective to which account their unemployment insurance (UI) taxes are paid.

The amended notice applicable to TA–W–28,108 is hereby issued as follows:

"All workers of Homco International, Inc., Bellaire, Texas, and the field operations in the below cited states who were engaged in exploration and drilling who became totally or partially separated from employment on or after November 30, 1991, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

TA–W–28108A Alabama; TA–W–28108B Alaska; TA–W–28108C California; TA–W–28108D Kansas; TA–W–28108E Louisiana; TA–W–28108F Michigan; TA–W–28108G Mississippi; TA–W–28108H New Mexico; TA–W–28108I Texas

and

"All workers of Southern Flow Companies (a division of Homco International, Inc., Bellaire, Texas) and the field operations in the below cited states who were engaged in exploration and drilling who became totally or partially separated from employment on or after November 30, 1991, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

TA–W–28108J Louisiana; TA–W–28108K Texas; TA–W–28108L Mississippi; TA–W–28108M Alabama; TA–W–28108N Oklahoma

Signed at Washington, DC this 15th day of June 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–15001 Filed 6–24–93; 8:45 am]

BILLING CODE 4510–30–M

[TA—W—28,599].

Specialty Industries & Sales, Big Springs, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 26, 1993, in response to a worker petition which was filed on April 23, 1993, on behalf of workers at Specialty Industries & Sales, Big Springs, Texas.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 16th day of June, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–15003 Filed 6–24–93; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than July 6, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 6, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 7th day of June, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Wang Laboratories Inc (Co)	Lowell, MA	06/07/93	05/21/93	28,733	Computers and peripherals.
Tektronix—Network Display Div. (Wkrs).	Wilsonville, OR	06/07/93	05/26/93	28,734	Computer terminal software & hardware.
Smith & Nephew Perry (Wkrs)	Corrollton, OH	06/07/93	05/25/93	28,735	Chlorinated surgical gloves.
Rhodes Plastics (Wkrs)	Linden, NJ	06/07/93	05/11/93	28,736	Polyethylene film and bags.
RB&W Corp (AIW)	Kent, OH	06/07/93	05/28/93	28,737	Screws and nuts.
Page Aluminized Steel Corp (USWA).	Monessen, PA	06/07/93	05/19/93	28,738	Fence fabrics.
Office Technologies, Inc (Co)	Oklahoma City, OK	06/07/93	05/24/93	28,739	Computer disk drives.
M.O.S.T. Mfg (Wkrs)	Monument, CO	06/07/93	05/10/93	28,740	Optical disk drives.
Menumaster, Inc (UE)	Sioux Falls, SD	06/07/93	05/18/93	28,741	Commercial microwave ovens.
Marathon Oil Co (Co)	Markham, TX	06/07/93	05/27/93	28,742	Oil and gas.
Marathon Oil Co (Co)	Sinton, TX	06/07/93	05/27/93	28,743	Oil and gas.
Jockey International (Wkrs)	Carlisle, KY	06/07/93	05/17/93	28,744	Men's and ladies' underwear.
Marlon Rohr Corp (Wkrs)	Hornell, NY	06/07/93	05/26/93	28,745	Ladies' and girls' undergarments.
IMC Fertilizer, Inc (Co)	Mulberry, FL	06/07/93	05/25/93	28,746	Phosphate fertilizers.
Glenbrook Nickle Co (Wkrs)	Riddle, OR	06/07/93	05/28/93	28,747	Ferrol nickle ingot.
GTI Corp (Wkrs)	Hadley, PA	06/07/93	05/25/93	28,748	Electronic components.
Dowty Silcofab USA, Inc (Wkrs)	Fairport Harbor, OH	06/07/93	05/29/93	28,749	Seals & grummets for vehicles.
Communications Instruments, Inc (Wkrs).	El Paso, TX	06/07/93	05/27/93	28,750	Sales, purchasing, administration, etc.
CNG Producing Co (Co)	New Orleans, LA	06/07/93	05/24/93	28,751	Crude oil and natural gas.
C&K Unimax (Wkrs)	Wallingford, CT	06/07/93	05/26/93	28,752	Electromechanical switches.
Barmet Aluminum (Wkrs)	Rockport, IN	06/07/93	04/24/93	28,753	Aluminum recycling.
AmeriComm Direct Marketing (Wkrs).	Buffalo, NY	06/07/93	05/18/93	28,753	Direct mail advertising.
Target Sportswear, Inc (ACTWU)	Clearfield, PA	06/07/93	05/24/93	28,755	Men's jackets, suits and sport coats.
Target Sportswear, Inc (ACTWU)	New Philadelphia, PA	06/07/93	05/24/93	28,756	Men's jackets, suits and sport coats.
Target Sportswear, Inc (ACTWU)	Hyde, PA	06/07/93	05/24/93	28,757	Men's jackets, suits and sport coats.
Target Sportswear, Inc/Kent I Pt. (ACTWU).	Curwensville, PA	06/07/93	05/24/93	28,758	Men's jackets, suits and sport coats.
Target Sportswear,/Fletcherville Pt (ACTWU).	Clearfield, PA	06/07/93	05/24/93	28,759	Men's jackets, suits and sport coats.

APPENDIX—Continued

Petitioner: union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Target Sportswear/Kent II Pt. (ACTWU).	Curwensville, PA	06/07/93	05/24/93	28,760	Men's jackets, suits and sport coats.
Western Atlas, Core Laboratories (Co).	Anchorage, AK	06/07/93	05/21/93	28,761	Oil service.
Western Atlas, Core Laboratories (Co).	Bakersfield, CA	06/07/93	05/21/93	28,762	Oil service.
Western Atlas, Core Laboratories (Co).	Lafayette, LA	06/07/93	05/21/93	28,763	Oil service.
Western Atlas, Core Laboratories (Co).	Tulsa, OK	06/07/93	05/21/93	28,764	Oil service.
Western Atlas, Core Laboratories (Co).	Corpus Christi, TX	06/07/93	05/21/93	28,765	Oil service.
Western Atlas, Core Laboratories (Co).	Casper, WY	06/07/93	05/21/93	28,766	Oil service.

[FR Doc. 93–15002 Filed 6–24–93; 8:45 am]
BILLING CODE 4510–30–M

Emergency Unemployment Compensation; General Administration Letters for Implementing Title I of the Emergency Unemployment Compensation Act of 1991 and Other Provisions

On November 15, 1991, the President signed into law the Emergency Unemployment Compensation Act of 1991 (Pub. L. 102–164), which in title I created the Emergency Unemployment Compensation (EUC) program. This Act has been further amended by enactment of Public Law 102–182 on December 4, 1991; Public Law 102–244 on February 7, 1992; Public Law 102–318 on July 3, 1992, which also amended the Federal-State Extended Unemployment Compensation Act of 1970 provisions applicable to the EUC program; and Public Law 103–6 on March 4, 1993.

The Department of Labor, in order to assist the States and cooperating State agencies in the administration of the EUC program, issued, as binding operating instructions, a consolidation of the Attachments in five previous General Administration Letters (GALs) with GAL 12–92. GAL 12–92 was issued September 11, 1992 and was published in the **Federal Register** on November 16, 1992, at 57 FR 54106. The consolidated Attachments to GAL 12–92 are the current effective operating instructions to the States.

Recent automation enhancements, the latest amendments, and other clarifications have necessitated updating the operating instructions provided in the Attachments to GAL 12–92 as follows. GAL 12–92, Change 1, issued February 16, 1993, provides that the data required to be reported in Attachment C to GAL 12–92 is to be submitted electronically, rather than through the use of manually prepared paper forms. GAL 12–92, Change 2, issued March 10, 1993, provides changes to the Attachments to GAL 12–92 based on the enactment of Public Law 103–6 and incorporates further clarifications of the Department, including those made by GAL 12–92, Change 1. GAL 12–92, Change 3, issued May 19, 1993, revises Section III.M.2.b. of Attachment A to GAL 12–92 to permit offsets of EUC overpayments at less than 50 percent, if State law so provides for regular compensation.

GAL 12–92, Change 1, GAL 12–92, Change 2, and GAL 12–92, Change 3, are published below to provide public notification of the changes which are required procedures. Further, public notice is provided that the States and cooperating State agencies may not vary from the operating instructions in GAL 12–92; and GAL 12–92, Changes 1, 2, and 3, without the prior approval of the Department of Labor.

Signed at Washington, DC on June 18th, 1993.

Carolyn M. Golding,

Acting Assistant Secretary of Labor.

Classification: UI

Correspondence Symbol TEURA

Dated: February 16, 1993.

Directive: General Administration Letter No. 12–92, Change 1

To: All State Employment Security Agencies

From: Barbara Ann Farmer, Administrator for Regional Management.

Subject: Reporting Emergency Unemployment Compensation (EUC) Data Electronically.

1. *Purpose.* To inform State Employment Security Agencies (SESAs) that EUC reporting, as required in GAL No. 12–92, Attachment C, will be accomplished electronically beginning with the first reports due after the download of appropriate software on or about February 16, 1993.

2. *Background.* Instruction for reporting data for the EUC program is listed in GAL No. 12–92, Attachment C. At the time of the issuance, all EUC data except that reported on the ETA 539 and ETA 2112 were to be reported on separate paper forms and mailed to the National Office. EUC data for the ETA 539 and ETA 2112 were to be put in the comments section of the regular electronically transmitted reports.

3. *Separate Electronic Reports.* Separte input screens for the electronic reporting system have now been developed for the ETA 207, ETA 218, ETA 227, ETA 5130, ETA 5159, and ETA 2112. These screens should be available to States for electronic entry on, or about, February 16, 1993. State UI Network System Administrators will be informed a few days prior to the download.

Reporting instructions remain the same. Only the method of reporting is changed from paper copy to electronic. The EUC data associated with the ETA 2112 will now be reported electronically on a separate screen. The ETA 539 will continue to have associated EUC data reported in the comments section of the regular electronically transmitted report.

4. *OMB Approval.* These reporting requirements are approved under OMB approval number 1205–0317, expiring December 31, 1993.

5. *Action Required.* SESA Administrators should inform appropriate personnel of this change in method of reporting and begin electronic reporting with the first reports due after the download of screen programs on or about February 16, 1993.

6. *Inquires.* Direct inquires to the appropriate Regional Office.

Rescissions: None

Expiration Date: December 31, 1993.

Classification: UI/EUC

Correspondence Symbol: TEUMI

Dated: March 10, 1993.

Directive: General Administration Letter No. 12–92, Change 2

To: All State Employment Security Agencies

From: Barbara Ann Farmer, Administrator for Regional Management.

Subject: Emergency Unemployment Compensation Act of 1991, As Amended by Public Law 103–6 (H.R. 920).

1. *Purpose.* To provide amended operating instructions for States and State employment security agencies (SESAs) for the administration of the provisions of title I of the "Emergency Unemployment Compensation Act of 1991", as amended by Public Law 103–6, which was signed into law by the President on March 4, 1993, and to provide other editorial and technical corrections.

2. *References.* Title I of the Emergency Unemployment Compensation Act of 1991, Public Law 102–164, as amended by Public Laws 102–182, 102–244, 102–318, and the Emergency Unemployment Compensation Amendments of 1993, Public Law 103–6 (H.R. 920); the Federal-State Extended Unemployment Compensation Act of 1970 (FSEUCA) as amended; 20 CFR part 615; GAL 12–92 and GAL 12–92, Change 1; GAL 7–93; UIPL 9–92 and Changes; the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*); 20 CFR part 617; and GAL 10–92.

3. *Background.* Title I of the Emergency Unemployment Compensation Act of 1991 created the Emergency Unemployment Compensation (EUC) program. The EUC Act of 1991 has been amended several times including the amendments made by section 2 of the Emergency Unemployment Compensation Amendments of 1993 (Pub. L. 103–6), which are applicable to weeks beginning after March 6, 1993. Effective upon enactment (March 4, 1993), section 4 of Public Law 103–6 provides for establishing a program to profile new claimants under each State law for regular compensation (which includes compensation payable pursuant to 5 U.S.C. chapter 85) to determine which claimants may be likely to exhaust regular compensation and may need reemployment assistance. Separate guidance will be issued at a later date to inform States and SESAs of the requirements and specifications of that program.

Rescissions: None

Expiration Date: December 31, 1993.

The Employment and Training Administration (ETA) issued controlling guidance for the States and State agencies in the operating instructions in GAL 4–92, and 4 Changes thereto, for implementation and administration of the EUC program. These were all published in the **Federal Register**. Because of the number of changes due to the amendments, particularly the Unemployment Compensation Amendments of 1992 (Pub. L. 102–318 enacted July 3, 1992), and because of needed editorial corrections, the ETA issued a consolidation of the Attachments to GAL 4–92 in GAL 12–92, dated September 11, 1992. The compilation of the 5 separate documents in GAL 12–92 became the controlling guidance for the States and cooperating State agencies in the administration of the EUC program. GAL 12–92 was published in the **Federal Register** on November 16, 1992 at 57 FR 54106. GAL 12–92, Change 1, was issued on February 16, 1993, which provided operating instructions to the States and State agencies relative to the reports required under Attachment C to GAL 12–92, and that effective on or about February 16, 1993, the reports were to be submitted electronically rather than through the use of manually submitted forms. Appropriate changes to Attachment C, based on Change 1, are reflected in this Change 2.

Under the amendments made by section 2 of Public Law 103–6 to title I of the EUC Act of 1991, the phase-out date of the EUC program is changed to October 2, 1993 and the termination date is changed to January 15, 1994. In addition, section 2(c) of Public Law 103–6 amended section 101(e)(1) of the EUC Act of 1991 to provide that the Governor's election (if State law permits) to trigger "off" an extended compensation period in order to provide payment of EUC is not applicable with respect to any extended compensation period beginning after October 2, 1993 (this was previously March 6, 1993). Section 5 of Public Law 103–6 provides the financing provisions to carry out the amendments made by section 2.

The operating instructions in GAL 12–92, GAL 12–92, Change 1, and this Change 2 (including Attachments A, B, and C) are issued to the States and cooperating State agencies and constitute the controlling guidance provided by the Department of Labor in its role as the principal in the EUC program. As agents of the United States, the States and cooperating State agencies may not vary from the operating instructions in GAL 12–92, GAL 12–92, Change 1, or this Change 2 (or any subsequent or supplemental operating instructions) without the prior approval of the Department of Labor.

4. Attachment A—Changes to Operating Instructions

a. In the Table of Contents, under Section III.C. (page 3), insert new topic line "8.", entitled "8. Suspension of Requirements" and designate page number "30.", and change the number of existing topic line "8." to "9.". (See the addition of new paragraph "8." in item "1." below.)

b. In the Table of Contents, under Section III.L. (page 4), insert new topic line "7.", entitled "7. Suspension of Requirements" and designate page number "46.", and change the number of existing topic line "7." to "8.". (See the addition of new paragraph "7." in item "p." below.)

c. On page 1 of Attachment A, change the heading of Section I. to read:

"I. Section-by-Section Explanation of title I of Public Law 102–164, as amended by Public Laws 102–182, 102–244, and 102–318 and further amended by Public Law 103–6."

d. In Sections I.B.5.a.(ii) and I.B.5.b. (pages 2 and 3), change the date of "March 6, 1993" to "October 2, 1993", each place it appears.

e. In Section I.C. 10., entitled, "*Effective Dates.*" (page 7), change the date of "March 6, 1993" to "October 2, 1993" and the date of "June 19, 1993" to "January 15, 1994", each place such dates appear.

f. In Section I.E. (page 8), add the following "NOTE" after paragraph 2., entitled "*Authorization.*"

"Note: Section 5 of Public Law 103–6 authorizes the payment of EUC benefits (for weeks of unemployment attributable to new claims filed after March 6, 1993) from general revenue funds to be included in the Department of Labor Appropriation Acts to be transferred to the "extended unemployment compensation account". The administrative funds for the extension of the program under Pub. L. 103–6 will be provided from the contingency reserves in the "State Unemployment Insurance and Employment Service Operations" appropriation. (See amendments made to Attachment B, Fiscal Instructions, and Attachment C, Reporting Instructions, by GAL 12–92, Change 2.)"

g. In Section I.G.2.b. (page 10), change the date of "March 6, 1993" to "October 2, 1993".

h. In Section III.A.1., the definition of "Act" (page 20), change the phrase after

the citation to "Pubic Law 102–164," to read "as amended by Public Laws 102–182, 102–244, and 102–318, and further amended by Public Law 103–6."

i. In Section III.A.3., the definition for "Period of Eligibility" (page 20), change the date of "March 6, 1993" to "October 2, 1993".

j. In Section III.B. (page 22), change the date of "March 6, 1993" to "October 2, 1993" each place it appears, and change the date of "June 19, 1993" to "January 15, 1994".

k. In Section III.C.3. (page 26), change the date of "March 6, 1993" to "October 2, 1993".

l. In Section III.C. (page 30), renumber existing paragraph "8." as "9." and add the following new paragraph 8., entitled "8. *Suspension of Requirements.*"

"8. Suspension of Requirements

The provisions of paragraphs 5., 6., and 7., of this Section III.C., are suspended for weeks of unemployment beginning after March 6, 1993. In lieu thereof, provisions of State law applicable to claims for regular compensation shall apply. (See GAL 7–93 for specific actions required by States.)"

m. In Section III.E.2.g. (page 34), change the date of "March 6, 1993" to "October 2, 1993" and change the date of "June 19, 1993" to "January 15, 1994", each place they appear.

n. In Section III.E.4.b. (page 35), change the date of "March 6, 1993", to "October 2, 1993", each place it appears.

o. In Section III.H.2.c. (page 39), add the following "NOTE" after the last paragraph:

"NOTE: For weeks of unemployment beginning after March 6, 1993, liable States will apply the work search and suitable work requirements applicable to the payment of claims for regular compensation to EUC claims."

p. In Section III.L. (page 46), renumber existing paragraph "7." as "8." and add the following new paragraph 7., entitled "7. *Suspension of Requirements.*".

"7. Suspension of Requirements

The provisions of paragraphs 4., 5. and 6. of this Section III.L. are suspended for weeks of unemployment beginning after March 6, 1993. State law job prospects classification, active search for work, suitable work and work registration provisions required of claimants for regular compensation will apply to EUC claimants."

q. In Section IV (page 54), add the following new paragraph "D." after existing paragraph "C.".

"D. The provisions of paragraphs A. and B., and the last sentence in paragraph C., do not apply to weeks of unemployment beginning after March 6, 1993. State law provisions for regular compensation concerning work registration, job prospects classification and work tests will be applicable to EUC claimants."

5. *Attachment B—Changes to Fiscal Instructions*

a. In the fourth paragraph of Section 1.a., add the following new sentence at the end:

"Funds to pay EUC benefits authorized by Public Law 103–6 will be drawn from the Extended Unemployment Compensation Account (EUCA) in the Unemployment Trust Fund. Money in the EUCA will be derived from the Advances to the Unemployment Trust Fund and other funds appropriation."

b. In the fifth paragraph of Section 1.a., replace the existing last sentence with the following:

"However, States will be required to identify separately on the EUC ETA 2112, EUC payments for weeks of unemployment *attributable to initial claims filed on or before July 4, 1992*, weeks of unemployment *attributable to initial claims filed after July 4, 1992 through March 6, 1993*, and weeks of unemployment *attributable to initial claims filed after March 6, 1993* so that charges to the appropriate sources of funds can be made. (See Attachment C, Reporting Instructions.)"

c. At the end of the second paragraph of Section 1.b., add the following new sentence:

"Funds to pay UI EUC administrative costs resulting from Public Law 103–6 are provided through the FY 1993 Labor/HHS Appropriations Act using the contingency reserve language in the State Unemployment Insurance and Employment Service Operations account."

d. In Section 1.b, delete the last sentence in the fourth paragraph that begins with the word "States".

e. In the last paragraph of Section 1.b., change the parenthetical phrase after the phrase "law changes" to read; "(e.g., Public Law 102–244, Public Law 102–318 and Public Law 103–6 (H.R. 920))". In addition, add the following phrase in the second sentence after the phrase "EUC claims" and before the phrase "will be computed":

"and notification and reassessment of eligibility required by Public Law 102–318 of previously denied EUC claimants per guidance furnished in GAL 7–93".

In addition, in the fourth sentence change the phrase "line 5" to read "line 13", and delete the fifth sentence that begins with the word "States".

6. *Attachment C—Changes to Reporting Instructions*

a. In the first paragraph of Section 1., replace the first, second and third sentences with the following new sentences:

"Since February 16, 1993, data for the Emergency Unemployment Compensation (EUC) program for reports ETA 207, ETA 218, ETA 227, ETA 5130, ETA 5159 and ETA 2112 should be submitted electronically by utilizing separate EUC entry screens that are available through the UI electronic reporting system. Electronic submittal of EUC data for the ETA 539 will continue following the instructions provided in Section 2.g.."

b. Replace all the instructions in Section 2.f., entitled "*ETA 2112.*", with the following new instructions:

"f. *ETA 2112.* Data will be reported in the aggregate on the electronic regular ETA 2112 report. Amounts received as reimbursement from other States for EUC–CWC payments made prior to July 1, 1992, should be included on either line 24 or 25 in columns C and F.

Total disbursements for EUC payments are to be included on line 39 in columns C and F.

Because funding sources are different for the original program and each of the two extensions of the program, the disbursements for each must be separately reported. Breakouts of EUC disbursements are to be reported electronically on the separate EUC version of the ETA 2112 as follows:

1. Net disbursements for weeks of unemployment attributable to new and additional initial claims filed on or before July 4, 1992. This amount is to be broken out into four categories: Regular, UCFE, UCX, and Other.

2. Net disbursements for weeks of unemployment attributable to new initial claims filed after July 4, 1992 through March 6, 1993 and *additional initial claims filed after July 4, 1992, which are associated with new initial claims filed through March 6, 1993.* Report the net total amount only for this category.

3. Net disbursements for weeks of unemployment attributable to new initial claims filed after March 6, 1993 and *additional initial claims associated with new initial claims filed after March 6, 1993.* Report the net total amount only for this category.

NOTE: Residual activity from previous Federal emergency unemployment compensation programs must continue to be reported on line 39 of the regular ETA 2112 report and the amount must be noted in the comments section of the report."

7. *Action Required.* SESA Administrators shall:

a. Provide the above controlling guidance to appropriate staff.

b. Issue a public notice in appropriate news media to announce the extension of the EUC program due to enactment of the Emergency Unemployment Compensation Amendments of 1993 (Pub.L. 103–6), which are applicable to weeks of unemployment beginning after March 6, 1993.

c. Perform all other actions needed for proper payment of EUC to eligible individuals, including, but not limited to, notifying individuals who exhaust regular compensation with the week ending March 6, 1993 through the week ending September 25, 1993, of their potential EUC entitlement.

8. *Inquiries.* Questions should be directed to the appropriate Regional Office.

Rescissions: None

Expiration Date: December 31, 1993

Classification: UI/EUC

Correspondence Symbol: TEUMI

Dated: May 19, 1993.

DIRECTIVE: General Administration letter No. 12–92, Change 3

TO: All State Employment Security Agencies

FROM: Barbara Ann Farmer, Administrator for Regional Management.

SUBJECT: Emergency Unemployment Compensation Act of 1991, As Amended—Clarification and Revision.

1. *Purpose.* To provide revised operating instructions for States and State Employment Security Agencies (SESAs) for the administration of section 105(c)(1) of title I of the "Emergency Unemployment Compensation Act of 1991," as amended.

2. *References.* Title I of the Emergency Unemployment Compensation Act of 1991, Public Law 102–164, as amended by Public Laws 102–182, 102–244, 102–318, and the Emergency Unemployment Compensation Amendments of 1993, Public Law 103–6; the Federal-State Extended Unemployment Compensation Act of 1970 (FSEUCA) as amended; 20 CFR part 615; GAL 12–92 and GAL 12–92, Changes 1 and 2; the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*); 20 CFR part 617.

3. *Backgroud.* GAL 4–92, dated November 27, 1991, and published on February 14, 1992 (57 FR 5472), transmitted the Department's operating instructions to the States for administration of the Emergency Unemployment Compensation (EUC) program. On June 4, 1992, the Department issued GAL 4–92, Change 3, which transmitted revised operating instructions for Section III.M., *Fraud and Overpayment.*, in Attachment A, based on questions from States. This document was published on June 24, 1992 (57 FR 28188).

After additional substantive changes to the operating instructions in GAL 4–92, based on amendments to the EUC Act of 1991 and other provisions of Public Law 102–318 (enacted July 3, 1992), the Department consolidated GAL 4–92 and the four changes into one document, GAL 12–92. This document, issued on September 11, 1992, became the official controlling guidance and was published on November 16, 1992 (52 FR 54106). Based on changes to the reporting requirements provided in Attachment C to GAL 12–92 and extension of the EUC program provided in Public Law 103–6, the Department issued Changes 1 and 2 to GAL 12–92 on February 16, 1993, and March 10, 1993, respectively.

Now, additional questions have arisen from the States, as well as other interested parties, concerning the application of the offset of overpayment provisions in Section III.M.. After consideration of the comments and the provisions of the EUC Act of 1991 as a whole, the Department is revising Section III.M.2.b.(5) of Attachment A to GAL 12–92 for the reasons described below.

4. *Clarification and Revision—Explanation.* Section 105(c)(1) of the EUC Act of 1991 (entitled Fraud and Overpayments) provides that in the event of an EUC overpayment, deductions from EUC and other unemployment compensation payable may be utilized to offset the overpayment; except that no single deduction may exceed 50 percent of the weekly benefit amount from which the deduction is made.

Section 243(a)(2) of the Trade Act of 1974 contains nearly identical language and the Department's regulation at 20 CFR 617.55(a)(4)(C)(iii) was promulgated to implement the provision. Therefore, the Department did not vary from the the provision in 20 CFR part 617 when Section III.M.2.b.(5) was issued in GAL 4–92 and now GAL 12–92, since a precedent had been established in the Trade Act regulations.

However, unlike the Trade Act of 1974, section 101(d)(2) of the EUC Act of 1991 provides that the terms and conditions of State law that apply to claims for EUC and the payment thereof, except where inconsistent with the provisions of the EUC Act or with regulations or operating instructions of the Secretary promulgated to carry out the EUC Act.

Based on questions from the States and other interested parties, the Department has determined that part of the requirement provided in current Section III.M.2.b.(5), prescribing that any deduction must be 50 percent is too restrictive, since some States have a smaller deduction for regular compensation, which is applicable to EB, and, hence, is also applicable to EUC. Any State law requiring greater than a 50 percent reduction is inconsistent with section 105(c)(1) and may not be applied to EUC overpayments under Section III.M.2.b.(5).

Therefore, Section III.M.2.b.(5) is revised as described below. This interpretation is applicable to all outstanding EUC overpayments and to all offset determinations made after the date of this issuance.

The revised operating instructions in this GAL 12–92, Change 3, are issued to the States and constitute the controlling guidance provided by the Department in its role as the principal in the EUC program. As agents of the United States, the States may not vary from the operating instructions in GAL 12–92, GAL 12–92, Change 1, GAL 12–92, Change 2, or this Change 3 (or any subsequent or supplemental operating instructions) without the prior approval of the Department of Labor.

5. *Amendment to Operating Instructions*

Consistent with section 105(c)(1) of the EUC Act of 1991, Section III.M.2.b.(5) of Attachment A of GAL 12–92 is changed to read as follows:

"(5) No single deduction under this section III.M.2., shall exceed 50 percent of the amount otherwise payable to the individual."

6. *Action Required.* SESA administrators should ensure that the above controlling guidance is issued to appropriate staff and, if State law so provides for a deduction of less than 50 percent, that such lesser reduction shall apply to all outstanding EUC overpayments and to all offset determinations made after the date of this issuance.

7. *Inquiries.* Questions should be directed to the appropriate Regional Office.

Rescissions: None

Expiration Date: September 30, 1994.

[FR Doc. 93–15005 Filed 6–24–93; 8:45 am]
BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida: FL930045 (Feb. 19, 1993)
Kentucky:
KY930001 (Feb. 19, 1993)
KY930002 (Feb. 19, 1993)
KY930003 (Feb. 19, 1993)
KY930004 (Feb. 19, 1993)
KY930006 (Feb. 19, 1993)
KY930007 (Feb. 19, 1993)
KY930029 (Feb. 19, 1993)
KY930032 (Feb. 19, 1993)
KY930033 (Feb. 19, 1993)
KY930035 (Feb. 19, 1993)
New Jersey: NJ930003 (Feb. 19, 1993)
Virginia:
VA930026 (Feb. 19, 1993)
VA930064 (Feb. 19, 1993)
VA930068 (Feb. 19, 1993)
West Virginia: WV930002 (Feb. 19, 1993)

Volume II

Louisiana:
LA930004 (Feb. 19, 1993)
LA930005 (Feb. 19, 1993)
LA930009 (Feb. 19, 1993)
LA930010 (Feb. 19, 1993)
LA930011 (Feb. 19, 1993)
LA930013 (Feb. 19, 1993)
LA930014 (Feb. 19, 1993)
Minnesota:
MN930007 (Feb. 19, 1993)
MN930008 (Feb. 19, 1993)
MN930015 (Feb. 19, 1993)
Ohio:
OH930001 (Feb. 19, 1993)
OH930002 (Feb. 19, 1993)
OH930003 (Feb. 19, 1993)
OH930012 (Feb. 19, 1993)
OH930028 (Feb. 19, 1993)
OH930029 (Feb. 19, 1993)
OH930034 (Feb. 19, 1993)
OH930035 (Feb. 19, 1993)
Oklahoma: OK930020 (Feb. 19, 1993)
Texas: TX930060 (Feb. 19, 1993)

Volume III

California: CA930002 (Feb. 19, 1993)
South Dakota:
SD930003 (Feb. 19, 1993)
SD930005 (Feb. 19, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 18th day of June 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–14828 Filed 6–24–93; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

Maryland State Standards; Notice of Approval

1. Background—Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the

Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of Subpart 0 to part 1952 containing the decision.

The Maryland State Plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of subpart 0 sets forth the State's schedule for the adoption of Federal standards. By letter dated January 5, 1993, from Commissioner Henry Koellein, Jr., Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to: 29 CFR 1910.1050 and 1926.60, pertaining to the Occupational Exposure to 4, 4' Methyleneaniline (MDA) for both General Industry and Construction, and revisions to 1910.19(i), Special Provisions for Air Contaminants, as published in the Federal Register of August 10, 1992 (57 FR 35666–35696). These standards are contained in COMAR 09.12.31. Maryland occupational safety and health standards were promulgated after a public hearing on December 15, 1992. These standards became effective on January 2, 1993.

2. Decision—Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and, accordingly, are approved.

3. Location of the Supplements for Inspection and Copying—A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202: and the OSHA Office of State Programs, U.S. Department of Labor, room N3700, 3rd Street and Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation—Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standard is identical to the Federal standard which was promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standard was adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective June 25, 1993.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)

Signed at Philadelphia, Pennsylvania, this 1st day of June 1993.

Linda R. Anku,

Regional Administrator.

[FR Doc. 93–15004 Filed 6–24–93; 8:45 am]

BILLING CODE 4510-26-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Management of Procurement Systems

AGENCY: Executive Office of the President, Office of Federal Procurement Policy (OFPP), Office of Management and Budget.

ACTION: Solicitation of public comments on a draft OFPP Policy Letter entitled "Management of Procurement Systems."

SUMMARY: The Policy Letter will require agencies to initiate pilot programs to determine how well their procurement programs are being managed. In addition, it requires them to conduct annual reviews of their policies and procedures governing contract audit backlogs, procurement management reviews and procurement system performance standards. The Policy Letter also implements the recommendation in the SWAT Team Report on Civil Agency Contracting, November 9, 1992, that:

"OFPP should periodically analyze the contract administration findings in each Agency's Procurement Management Reviews (PMR) and other management audits to identify recurring problem areas that may need Government-wide corrective action and require corrective action plans from agencies when problems are identified."

COMMENT DATE: Comments on the proposed Policy Letter must be received on or before July 26, 1993.

ADDRESS AND INFORMATION CONTACT: Comments should be sent to Charles W. Clark, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503. Questions may be addressed to Mr. Clark on (202) 395–6805.

Dated: June 21, 1993.

Allan V. Burman,

Administrator.

Policy Letter No. 93–XX
To The Heads of Executive Departments and Establishments
Subject: Management of Procurement Systems

1. *Purpose.* This Policy Letter has three fundamental purposes:

a. It requires each agency to establish pilot programs for measuring how well their respective procurement programs are managed;

b. It establishes internal control procedures to ensure adequate and efficient procurement systems, systematic identification and correction of material weaknesses, and dissemination of system improvements and innovations, and

c. It implements the recommendation in the SWAT Team Report on Civil Agency Contracting, November 9, 1992, that "OFPP should periodically analyze the contract administration findings in each Agency's Procurement Management Reviews (PMR) and other management audits to identify recurring problem areas that may need Government-wide corrective action and require corrective action plans from agencies when problems are identified."

2. *Authority.* This Policy Letter is issued pursuant to section 6 of the Office of Federal Procurement Policy (OFPP) Act, as amended, (41 U.S.C. 401, *et seq.*).

3. *Background.* Over the years Federal agencies and OFPP have worked to streamline and improve the procurement process and to establish more efficient and effective procurement systems. Much has been accomplished as a result of these efforts and work on both process and systems improvements must continue. At the same time, however, new attention and effort must be directed at establishing and improving assessment and management techniques that can be used to measure how well procurement programs are being managed.

President Clinton in his February 17, 1993 report, entitled "A Vision of Change for America," stated:

"Too often Government agencies and programs have only the vaguest goals. As a

result, they have little to guide their efforts, and there is no way for an administration or the American people to measure the results of their work. Businesses set goals and evaluate managers and workers based on their performance in meeting those goals. Government can and should do the same. The Administration is studying possible ways of testing performance based management to help agencies and their employees do their jobs better, and to enable managers and the public to evaluate their work."

This Policy Letter provides policies to help implement the President's objectives. The policies require each agency to establish procedures that ultimately will lead to the systematic measurement and reporting on the management of agency procurement programs. In addition, the Policy Letter adds to the procurement system management requirements initially promulgated by Executive Order 12352, Federal Procurement Reforms, March 17, 1982.

4. *Policy.* It is the policy of the Federal Government that each Executive agency initiate pilot programs to determine how well their procurement programs are being managed and conduct annual reviews of their policies and procedures governing contract audit backlogs, PMRs, and procurement system performance standards.

a. *Pilot Programs.* Each agency shall select two of its major procurement offices and require these offices to establish pilot performance measurement systems. These systems shall provide information on program cost and on the amount and quality of the work completed by each office. In establishing the systems, each office shall, as a minimum, prepare strategic plans; annual performance plans, and annual performance reports.

(1) *Strategic Plans.* The strategic plan should set forth the basic mission(s) of the office and the strategy and objectives for accomplishing the mission(s).

(2) *Performance Plans.* The performance plan should consist of a set of performance goals for pilot office activities, and the means to be used for gauging progress for accomplishing and achieving these goals. Performance goals should be defined with sufficient specificity to permit ready assessment of whether the goals are being achieved. The essential issues to be addressed through the performance plan are the criteria and determinants that will be used in measuring how well the office succeeded in completing its mission. The plan should permit the measurement of different gradations of success and failure.

(3) *Performance Reports.* Six months after the end of each fiscal year (Fiscal Years 1994 and 1995), each pilot office should prepare a report on the actual performance achieved compared to the performance goals that were set out in the annual plan. The report should compare performance measurement information to program evaluation findings and give a clear picture of the office's performance.

b. *Certification of Procurement Systems.* Agency Procurement Executives shall certify their respective procurement systems at the end of fiscal year 1994 (October 1, 1993) and every three years thereafter. The certifications shall be made in accordance with criteria adopted pursuant to Executive Order 12352, Section 1(i). Copies of the certifications should be provided to OFPP. Any material weaknesses should be identified and an action plan for their correction included with the certification. The certification for FY 1993 should be sent to OFPP by January 1, 1994.

c. *Procurement Management Reviews.* Copies of agencies' periodic PMR reports shall be provided to OFPP, with any material weaknesses identified and corrective action plans provided. Improvements and innovations revealed in either the certification process or the management review that may have Government-wide application shall be noted.

d. *Audit Backlogs.* Agencies shall inventory their active contracts annually and a risk/cost analytic technique shall be developed for determining the extent of audit justified on a contract by contract basis. Each agency shall establish annual goals to eliminate audit backlogs.

[Note: For a further discussion on strategic plans, performance plans and performance reports, see pp. 14 and 15 of Senate Report 102–429, Government Performance and Results Act, S–20, September 29, 1992.]

5. *Judicial Review.* This Policy Letter should not be construed to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning Federal contracting.

6. *Implementation.* Since this subject matter, although fundamental to good management, is distinct from the core function of awarding and administering specific contracts, regulatory implementation under 41 U.S. C. 401 is not required.

7. *Contact.* For information regarding this Policy Letter, contact Mr. Robert M. Cooper, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503. Telephone (202) 395–6803.

8. *Effective Date.* This Policy Letter is effective immediately upon publication.

Allan V. Burman,

Administrator.

[FR Doc. 93–14937 Filed 6–24–93; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

June 21, 1993.

The above named national securities exchange has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder the unlisted trading privileges in the following security:

Libbey Inc.

Common Stock, $.01 Par Value (File No. 7–10654)

This security is listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 13, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–15008 Filed 6–24–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19529; 812-8352]

AIM Funds Group, et al.; Notice of Application

June 21, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: AIM Funds Group, AIM Convertible Securities, Inc., AIM Equity Funds, Inc., AIM High Yield Securities, Inc., AIM Investment Securities Funds, Inc., AIM International Funds, Inc., AIM Strategic Income Fund, Inc., AIM Summit Fund, Inc., Short-Term Investments Co., Tax-Free Investments Co. (the "AIM Funds"), and AIM Advisors, Inc. ("AIM Advisors"), for themselves, including each applicant's successor in interest,[1] and any subsequently registered investment companies organized or sponsored by AIM Management Group Inc., or entities under common control or controlled by AIM Management Group Inc., and advised by AIM Advisors, or registered investment advisers controlled by or under common control with AIM Advisors

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for exemption from sections 13(a)(2), 13(a)(3), 17(a)(1), 18(a), 18(c), 18(f)(1), 22(f), 22(g), and 23(a), of the Act and rule 2a-7 thereunder, and pursuant to section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the AIM Funds to enter into deferred fee arrangements with certain of their directors and to effect transactions incident to those arrangements.

FILING DATES: The application was filed on April 20, 1993 and amended on June 16, 1993. By letters dated June 17, 1993 and June 21, 1993 applicants' counsel stated that an additional amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 12, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: 11 Greenway Plaza, Suite 1919, Houston, Texas 77046.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney, at (202) 272-7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the AIM Funds, except AIM Strategic Income Fund, Inc., is a registered open-end management investment company advised by AIM Advisors, a wholly-owned subsidiary of AIM Management Group Inc.[2] AIM Strategic Income Fund, Inc. is a closed-end management investment company by AIM Advisors.

2. The majority of the members of each applicant's board of directors are not "interested persons" of the applicant within the meaning of section 2(a)(19) of the Act. Only the directors who are not employees of AIM Management Group Inc. or any of its affiliates receive annual fees for their services (the "Eligible Directors"). Collectively, the annual fees are, and are expected to be, insignificant in comparison to applicant's total net assets.

3. The deferred fee arrangements will be implemented by means of a deferred fee agreement (the "Agreement") entered into between an Eligible Director[3] and the appropriate AIM Fund. The Agreement would permit an Eligible Director to elect to defer receipt of all or part of his directors' fees to defer payment of income taxes or for other reasons.

4. Under the Agreement, the deferred fees payable by an AIM Fund to a particular Eligible Director will be credited to a book reserve account established by the AIM Fund (the "Deferred Fee Account"), as of the first business day following the date that such fees would have been paid to the Eligible Director. The deferred fees will accrue income from and after the date of credit in an amount equal to the amount that would have been earned had such fees (and all income earned thereon) been invested and reinvested in shares of one or more of any of the AIM Funds, or in certain AIM Funds selected by the boards of directors of the AIM Funds from time to time (the "Investment Funds").

5. Each Eligible Director may elect to have his deferred fees treated as if they had been invested and reinvested in shares of one or more of the Investment Funds, provided that such election is agreed upon in writing from time to time by the appropriate AIM Fund and the participating Eligible Director (such shares are referred to as the "Underlying Securities").

6. The return on the Deferred Fee Account will be based upon the return of the Investment Funds selected by an Eligible Director or, if the Investment Funds selected are no longer in existence, upon a recognized measure of prevailing market interest rates (*e.g.*, the Treasury Bill rate).

7. The obligations of each AIM Fund to make payments from the Deferred Fee Account will be general unsecured obligations of each such AIM Fund and payments made pursuant to the Agreement will be made from such AIM Fund's general assets and property. Also, the Agreement provides that the AIM Funds will be under no obligation to purchase, hold, or dispose of any investments. If one or more of the AIM Funds choose to purchase investments to cover their obligations under the

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[1] "Successors in interest" is herein limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Prior to June 30, 1992, AIM Funds Group was advised by CIGNA Investments, Inc. and was known as the CIGNA Funds Group. CIGNA Funds Group previously received four exemptive orders permitting it to establish a deferred fee program. *See* Investment Company Act Release Nos. 16162 (Dec. 21, 1987) (notice) and 16225 (Jan. 14, 1988) (order); Investment Company Act Release Nos. 14167 (Sept. 19, 1984) (notice) and 14200 (Oct. 17, 1984) (order); Investment Company Act Release Nos. 13752 (Feb. 8, 1984) (notice) and 13819 (March 12, 1984) (order); and Investment Company Act Release Nos. 12985 (Jan. 12, 1983) (notice) and 13018 (Feb. 9, 1983) (order). On July 13, 1992, the Division issued a no-action letter stating that it would not recommend that the SEC take any action against AIM Funds Group if it continued to maintain a deferred fee program in reliance upon those orders until the earlier of the date the SEC takes final action on the application or July 13, 1993.

[3] Pursuant to the CIGNA Funds Group July 13, 1992 no-action letter, the AIM Funds Group continues to maintain a deferred fee program for the directors of the CIGNA Funds Group. Certain of these directors resigned from their positions as directors once the CIGNA Funds Group became the AIM Funds Group. These directors are included as "Eligible Directors" because the AIM Funds Group continues to hold their deferred fee accounts.

Agreement, then any and all such investments will continue to be a part of the general assets and property of the AIM Funds.

8. As a matter of prudent risk management, the participating AIM Funds intend and, with respect to any money market series of the AIM Funds that values its assets using the amortized cost method, undertake to purchase and hold the Underlying Securities in amounts equal to the deemed investment of the Deferred Fee Accounts of its Eligible Directors. Accordingly, in cases where the AIM Funds purchase shares of the Underlying Securities, liabilities created by the credits to the Deferred Fee Accounts under the Agreement are expected to be matched by an equal amount of assets, which would not be held by the AIM Funds if fees were paid on a current basis.

9. Under the Agreement, deferred directors' fees, including accrued interest, will become payable in cash upon the Eligible Director's retirement or disability in generally equal quarterly installments over a period of five of more years, beginning on the date payment of retirement benefits commence to such Eligible Director under the AIM Funds' retirement plan. The AIM Funds may accelerate payment of amounts in the Deferred Fee Account at any time after the termination of the Eligible Director's service as a director. In addition, in the event of the liquidation, dissolution or winding up of an AIM Fund or the distribution of all or substantially all of an AIM Fund's assets and property to its shareholders, all unpaid amounts in the Deferred Fee Account shall be paid in a lump sum on the effective date thereof. In the event of the Eligible Director's death, remaining amounts payable to him under the Agreement will be paid to his designated beneficiary. In all other events, the right to receive payments will be nontransferable.

10. The Agreement will not obligate an AIM Fund to retain a director in such capacity, nor will it obligate and AIM Fund to pay any particular level of fees to any director.

11. Any acquisition of Underlying Securities is expected to have a negligible impact on the issuer of such securities. Each AIM Fund will vote shares of any affiliated AIM Fund in proportion to the votes of all other holders of shares of such affiliated AIM Fund.

Applicants' Legal Analysis

1. Applicants believe that the deferred fee arrangements are in the best interests of each AIM Fund and its shareholders, and that the arrangements will enhance the ability of the AIM Funds to attract and retain high caliber directors. Applicants believe that the proposed arrangements are necessary and appropriate in the public interest, consistent with the protection of investors, and with the purposes fairly intended by the policy and provisions of the Act.

2. Sections 18(a) and 18(c) restrict the ability of a registered closed-end investment company to issue senior securities. Similarly, section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that an open-end or closed-end investment company obtain shareholder authorization before issuing any senior securities not contemplated by the recitals of policy in its registration statement. Applicants contend that the Agreement possesses none of the characteristics of senior securities that led Congress to enact these sections. The Agreement would not: (a) Induce speculative investments or provide opportunities for manipulative allocation of the expenses and profits of any AIM Fund; (b) affect control of any AIM Fund; (c) confuse investors or convey a false impression of safety; or (d) be inconsistent with the theory of mutuality of risk. All liabilities created by credits to the Deferred Fee Account are expected to be offset by essentially equal amounts of assets that would not otherwise exist if the fees were paid on a current basis.

3. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. All such restrictions would be clearly set forth in the Agreement, are included primarily to benefit the Eligible Directors, and would not adversely affect the interests of any shareholder of any AIM Fund.

4. Sections 22(g) and 23(a) generally prohibit a registered open-end and closed-end investment company, respectively, from issuing any of their securities for services or for property other than cash or securities. These provisions are primarily concerned with the dilutive effect on the equity and voting power that can result when securities are issued for consideration that is not readily valued.

5. Section 17(a)(1) prohibits an affiliated person of a registered investment company from selling any security to such registered investment company. The AIM Funds may be "affiliated persons" under section 2(a)(3) of the Act. Section 17(a)(1) was designed to prevent sponsors of investment companies from using investment company assets as capital for enterprises with which they were associated or to acquire controlling interests in such enterprises. Applicants submit that the sale of securities issued by the AIM Funds pursuant to the Agreement does not implicate the concerns of Congress in enacting this section, but would merely facilitate the matching of each AIM Fund's liability for deferred fees with the Underlying Securities that would determine the amount of such liability.

6. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. Each applicant, except AIM Funds Group, has an investment policy prohibiting the purchase of investment company shares without shareholder approval. Applicants believe that it is appropriate to grant an exemption from the provisions of section 13(a)(3) so as to enable applicants to invest in Underlying Securities without a shareholder vote. The value of the Underlying Securities will be *de minimis* in relation to the total net assets of the AIM Funds, and will at all items equal the value of the corresponding AIM Fund's obligations to pay deferred fees. Changes in the value of the Underlying Securities will not affect the value of shareholders' investments in the AIM Funds. Thus, permitting applicants to invest in Underlying Securities without obtaining shareholder approval required by section 13(a)(3) would result in no harm to the AIM Funds or their shareholders.

7. Rule 2a–7 requires a registered investment company to limit its portfolio to securities meeting certain standards of maturity, quality, and diversification as a condition to adopting the term "money market" as part of its name or holding itself out to investors as a money market fund. Rule 2a–7 contains a number of conditions designed to reduce the likelihood that the net asset valve of a money market fund as determined by the amortized cost method will deviate materially from its net asset value as determined by the mark-to-market method. Any money market series of the AIM Funds that values its assets using the amortized cost method will buy and hold Underlying Securities that determine the performance of the Deferred Fee Account to achieve an exact match between such series' liability to pay deferred fees and the assets that offset that liability.

Applicants argue that, under these circumstances, the underlying concerns that have led the Commission strictly to prescribe the permissible characteristics of a money market fund's portfolio securities are not present.

8. Section 17(d) and rule 17d–1 generally prevent a registered investment company's joint or joint and several participation with an affiliated person in a transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan on a basis different from or less advantageous than that of the affiliated person. The participating Eligible Directors are not employees of AIM Management Group Inc. or any of its affiliates, and will neither directly nor indirectly receive benefits which would otherwise inure to the AIM Fund or any of its shareholders. Deferral of an Eligible Director's fees in accordance with the Agreement essentially would maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the fees were paid on a current basis. When all payments have been made to an Eligible Director, such Eligible Director will be (in a position relative to the AIM Funds) no better off than if such Eligible Director had received deferred fees on a current basis and invested them in shares of the Underlying Securities.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

With respect to the requested relief from rule 2a–7, any money market series that values its assets using the amortized cost method will buy and hold the Underlying Securities that determine performance of Deferred Fee Accounts to achieve an exact match between such series' liability to pay deffered fees and the assets that offset that liability.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–75007 Filed 6–24–93; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular: Type Certification Basis for Conversion From Reciprocating Engine to Turbine Engine-Powered Part 23 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and request for comments on a proposed AC, which provides information and guidance concerning type certification basis for conversion from reciprocating engine to turbine-powered part 23 airplanes.

DATES: Comments must be received on or before August 9, 1993.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Jules Bell, Standards Staff (ACE–110) Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration; telephone number (816) 426–6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by contacting the person named above under "FOR FURTHER INFORMATION CONTACT."

Comments Invited

Interested parties are invited to submit comments on the proposed AC. Commenters must identify Act 23–XX–17 and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE–110), Suite 900, 1201 Walnut, Kansas City, Missouri, between the hours of 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

Background

Applications for supplemental type certificates (STC's) and amended type certificates (TC's) for incorporation of gas turbine engines in certificated reciprocating engine airplanes are received by the Federal Aviation Administration (FAA). The certification requirements for gas turbine engine installation are substantially different from those for reciprocating engine installation requirements. Accordingly, the FAA is proposing and requesting comments on AC 23–XX–17, which will provide information and guidance concerning an acceptable means of showing compliance with part 23 through amendment 23–43 if the Federal Aviation Regulations (FAR) applicable to replacing reciprocating engines with gas turbine engines (turbopropeller, turbojet, and turbofan).

Issued in Kansas City, Missouri, June 15, 1993.

Roger D. Anderson,

Acting Manager, Small Airplace Directorate, Aircraft Certification Service.

[FR Doc. 93–15012 Filed 6–24–93; 8:45 am]

BILLING CODE 4910-13-M

System Capacity Advisory Committee Termination

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of System Capacity Advisory Committee termination.

SUMMARY: Notice is hereby given of the termination of the System Capacity Advisory Committee. The committee was established to provide advice and recommendations on the needs, objectives, plans, approaches, contents, and accomplishments of the system capacity program. The committee reviewed aviation system capacity needs involving airports, terminal and enroute airspace, technology, automation, and aircraft noise. The committee has been terminated as its continuation is not longer in the public interest in connection with the performance on FAA by law. Any further advisory committee activity on system capacity will be conducted by the Research, Engineering, and Development Advisory Committee.

FOR FURTHER INFORMATION CONTACT: The Office of System Capacity and Requirements (ASC), 800 Independence Avenue, SW., Washington, DC 20591; telephone 202–267–7370.

Issued in Washington, DC, June 10, 1993.

Edward T. Harris,

Director of System Capacity and Requirements.

[FR Doc. 93–15013 Filed 6–24–93; 8:45 am]

BILLING CODE 4910-13-M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at General Edward Lawrence Logan International Airport, East Boston, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at General Edward Lawrence Logan International Airport under the provisions of the Aviation

Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 26, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Alden S. Raine, Executive Director of the Massachusetts Port Authority at the following address: Massachusetts Port Authority, Ten Park Plaza, Boston, Massachusetts 02116–3971.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Massachusetts Port Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Soldan, Airports Program Specialist, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 273–7054. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at General Edward Lawrence Logan International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 26, 1993, the FAA determined that the application to impose and use a PFC submitted by the Massachusetts Port Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 24, 1993.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00
Proposed charge effective date: November 1, 1993
Proposed charge expiration date: May 31, 2014
Total estimated PFC revenue: $725,105,000
Brief description of proposed projects:

Impose and Use Project

Conduct Planning, Preliminary Design and Environmental Analysis for Modernization Program

Impose Only Projects

Final design for Modernization Program
Residential Soundproofing
Terminal "E"
Reconstruct and Construct Access Road
Construct Passenger Transfer System
Construct Federal Inspection Services Facility
Construct Airside to Airside Connector—Underground Vehicle Tunnel
PFC Bond Issuance Costs, Debt Service Reserve, and Interest Payments

Class or classes of air carriers that the public agency has requested not be required to collect PFCs: FAR part 135 Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA Regional Airports office located at: 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Massachusetts Port Authority.

Issued in Burlington, Massachusetts on June 8, 1993.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 93–15010 Filed 6–24–93; 8:45 am]

BILLING CODE 4910–13–M

Intent to Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Glacier Park International Airport, Kalispell, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Glacier Park International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 26, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David P. Gabbert, Manager, Helena Airports District Office, HLN–ADO, Federal Aviation Administration, FAA Building, room 2, Helena, MT 59601.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Monte Eliason, Airport Manager, Kalispell, Montana, at the following address: 4170 Highway 2 East, Kalispell, Montana 59901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Mr. Monte Eliason, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. David P. Gabbert, (406) 449–5271; Helena Airports District Office, HLN–ADO; Federal Aviation Administration; FAA Building, room 2, Helena, Montana 59601. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Glacier Park International Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 17, 1993, the FAA determined that the application to impose and use a PFC submitted by the Flathead Municipal Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 28, 1993.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00
Proposed charge effective date: December 1, 1993
Proposed charge expiration date: December 31, 1999
Total estimated PFC revenue: $1,246,000.00
Brief description of proposed projects: Runway 2–20 rehabilitation; Airport Rescue Fire Fighting (ARFF) hydrant water system; snow removal equipment.
Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial operators.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration,

Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Glacier Park International Airport.

Issued in Renton, Washington on June 17, 1993.

Matthew J. Cavanaugh,

Assistant Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 93–15009 Filed 6–24–93; 8:45 am]

BILLING CODE 4910-13-M

Intent To Rule on Application To Impose, Use a Passenger Facility Charge (PFC) at Washington National Airport, Washington, DC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Washington National Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 26, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia 22046.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James A. Wilding, General Manager of the Metropolitan Washington Airports Authority, at the following address: Metropolitan Washington Airports Authority, 44 Canal Center Plaza, Alexandria, Virginia 22314.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Washington Airports Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Robert Mendez, Manager, Washington Airports District Office 101 West Broad Street, Suite 300 Falls Church, Virginia 22046. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Washington National Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 27, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by The Metropolitan Washington Airports Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 14, 1993.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00
Proposed charge effective date: October 1, 1993
Proposed charge expiration date: December 28, 2000
Total estimated PFC revenue: $173,000,937
Brief description of proposed project(s):
—New Thirty-five Gate North Passenger Terminal Complex including Metro Station, utility relocation, connector and signage. (Impose Only)
—Airfield/Taxiways Paving (Impose and Use)
—Acquire Property Rights (Impose and Use)
—Reconstruct Runway 36 Hold Apron (Impose and Use)
—Airfield Signage (Impose and Use)
—Replace Runway/Taxiway Lighting Systems (Impose and Use)
—New Arrival Runways—Phases II, IV & VI (Impose and Use)
—New Apron (Impose and Use)
—Thomas Avenue South Area Realignment (Impose and Use)
—Dulles International Airport Main Terminal Extension (Impose and Use)

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 On Demand Air Taxis Filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT" and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at The Metropolitan Washington Airports Authority.

Issued in Jamaica, New York on June 15, 1993.

Louis P. DeRose,

Manager, Airports Division, Eastern Region.

[FR Doc. 93–15014 Filed 6–24–93; 8:45 am]

BILLING CODE 4910-13-M

Intent To Prepare an Environmental Impact Statement and Conduct a Scoping Meeting at Dane County Regional Airport, Madison, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Intent.

SUMMARY: The Federal Aviation Administration (FAA) advises the public that an Environmental Impact Statement (EIS) will be prepared to analyze potential impacts of constructing a new air carrier runway 3–21 at Dane County Regional Airport. All those concerned are invited to participate in a public scoping meeting to ensure significant issues related to the proposed action are identified.

FOR FURTHER INFORMATION CONTACT: William J. Flanagan, Federal Aviation Administration, Airports District Office, room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450, (612) 725–4463.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the Wisconsin Bureau of Aeronautics and Dane County Regional Airport, will prepare an EIS to analyze potential environmental impacts of proposed development at Dane County Regional Airport. The primary development is a new runway 3–21, proposed in a recently approved noise study to lessen adverse impacts of aircraft noise in the vicinity of the airport. This and other related development identified on the airport layout plan (ALP) will be addressed as follows:

1. Construction of a new 6,500 foot air carrier runway 3–21 with parallel and connecting taxiways. Grading of associated runway and taxiway safety areas.

2. Installation of precision instrument approach middle and outer markers and associated approach lighting system (MALSR) at the northeast end of runway 3–21.

3. Land acquisition for runway protection zone (RPZ) to the northeast of runway 3–21.

4. Relocations of U.S. Highway 51 and Messerschmidt Roads for anticipated airspace obstruction clearance.

5. Construction of an airport north perimeter road.

6. Acquisition of parcels associated with Cherokee Marsh and Token Creek Park.

7. Closing runway 4–22.

8. Other cumulative or connected actions.

Public Scoping Meeting

Comments and suggestions are invited from Federal, State, local and other interested parties at the public scoping meeting to ensure the full range of issues related to this proposed project are addressed. In order to facilitate public contribution at the scoping meeting, a pre-scoping package is being sent to all known interested parties. Copies may be obtained from the FAA informational contact listed above.

Two public scoping meetings are scheduled for Wednesday, July 28, 1993. The first meeting will start at 10 a.m. for the convenience of Federal, State and local agencies. It will start with a brief presentation describing the EIS process, project and proposed schedule. It will be located at the Dane Country Regional Airport in the first floor conference room of the terminal building. The second meeting will be held from 4 p.m. to 9 p.m. Brief presentations describing the EIS process, project and proposed schedule will be conducted at 4, 6 and 8 p.m. The meeting will be located at the Madison Area Technical College, Truax Campus, room 142, 3550 Anderson Street, Madison, WI 53704. Comments and suggestions on the scope may also be mailed to the FAA informational contact no later than August 11, 1993.

Issued in Minneapolis, Minnesota, June 16, 1993.

Franklin D. Benson,

Manager, Minneapolis Airports District Office, FAA Great Lakes Region.

[FR Doc. 93–15015 Filed 6–24–93; 8:45 am]

BILLING CODE 4910-13-M

VOL 58 ISS 121 JE 25 1993 UMI

Sunshine Act Meetings

Federal Register
Vol. 58, No. 121
Friday, June 25, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COPYRIGHT ROYALTY TRIBUNAL

TIME AND DATE: June 30, 1993 at 10:00 a.m.

PLACE: 1825 Connecticut Ave., NW., Suite 918, Washington, DC 20009.

STATUS: Closed pursuant to a vote taken June 21, 1993.

MATTERS TO BE CONSIDERED: Formal rule making—motion of the Joint Sports Claimants to establish procedural schedule. Pursuant to its authority, the Tribunal has waived the 7 (seven) day public notice requirement.

CONTACT PERSON FOR MORE INFORMATION: Linda R. Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Conn. Ave., NW., Suite 918, Washington, DC 20009, (202) 606–4400.

Dated: June 23, 1993.

Cindy Daub,

Chairman.

COPYRIGHT ROYALTY TRIBUNAL

Certification of Closed Meeting

The General Counsel of the Copyright Royalty Tribunal hereby certifies, pursuant to 5 U.S.C. § 552B(f)(1), and pursuant to Section 301.14(b) of the Tribunal's rules, 37 C.F.R. § 301.14(b), that the Tribunal's deliberations concerning the motion filed by Joint Sports Claimants to establish procedural schedule for the 1990 royalty distribution proceeding, scheduled to occur on June 30, 1993 (and from time to time thereafter up to 30 days as the Tribunal may, pursuant to 37 C.F.R. § 301.14(a), find appropriate) may be properly closed to public observation. The relevant exemptions on which this certification is based are set forth in the following provisions of law: 5 U.S.C. § 552b(c)(10) (formal rule making) 37 C.F.R. § 301.13(i) (formal rule making). The recorded vote of each Commissioner, taken June 21, 1993, on the question of a closed meeting is as follows:

Chairman Cindy Daub	Yes
Commissioner Edward Damich	Yes
Commissioner Bruce Goodman	Yes

The recorded vote of each Commissioner, taken June 21, 1993, pursuant to 5 U.S.C. § 552b(e)(1) and 37 C.F.R. § 301.11(d), on the question of waiving the 7 (seven) day public notice requirement is as follows:

Chairman Cindy Daub	Yes
Commissioner Edward Damich	Yes
Commissioner Bruce Goodman	Yes

It is anticipated that, in addition to the Commissioners of the Tribunal, the General Counsel will attend the Tribunal's deliberations.

Dated: June 23, 1993.

Linda R. Bocchi,

General Counsel.

[FR Doc. 93–15170 Filed 6–23–93; 2:22 pm]

BILLING CODE 1410-09-M

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From June 24th Open Meeting

The following item has been deleted from the list of agenda items scheduled for consideration at the June 24, 1993, Open Meeting and previously listed in the Commission's Notice of June 17, 1993.

Item No., Bureau, and Subject

7—Mass Media—Title: Implementation of Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992—Home Shopping Station Issues (MM Docket No. 93–8). Summary: The Commission will consider adoption of a *Report and Order* regarding the licensing and mandatory cable television carriage of the signals of broadcast "home shopping" stations.

Dated: June 23, 1993.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–15171 Filed 6–23–93; 2:23 pm]

BILLING CODE 6715-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, June 30, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment on the consolidation of the System's Purchases and Sales Securities Service.

Discussion Agenda

2. Proposed 1994 Federal Reserve Board budget objective.

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 23, 1993.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 93–15120 Filed 6–23–93; 11:26 am]

BILLING CODE 6210-01-P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:30 a.m., Wednesday, June 30, 1993, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals regarding a Federal Reserve Bank's building requirements.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 23, 1993.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 93–15121 Filed 6–23–93; 11:26 am]
BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 33688, June 18, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, June 23, 1993.

CHANGES IN THE MEETING: The Open Meeting Has Been Cancelled.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: June 23, 1993.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 93–15168 Filed 6–23–93; 2:11 pm]
BILLING CODE 6210–01–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–93–19]

TIME AND DATE: July 2, 1993 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731-TA-650 (Preliminary) (Nitromethane from the Peoples' Republic of China)—briefing and vote.
5. Inv. No. 731-TA-572 (Final) (Certain Special Quality Carbon and Alloy Hot-Rolled Steel Bars and Rods and Semifinished Products from Brazil)—briefing and vote.
6. Outstanding action jackets—
   1. GC-93-046, Request for Commission action in Invs. Nos. 337-TA-334 (Certain Condensers) and 337-TA-331 (Memory Controllers).
   2. GC-93-050, Inv. No. 332-341, Proposed Reorganization of the U.S. International Trade Relief Laws.
   3. GC-93-052, Petition for modification of remedial orders in Inv. No. 337-TA-315 (Certain Plastic Encapsulated Integrated Circuits).
   4. GC-93-056, Final Disposition of Inv. No. 337-TA-337 (Certain Integrated Circuit Telecommunications Chips and Products Containing Same, Including Dialing Apparatus).
   5. GC-93-060, Final Initial Determination in Inv. No. 337-TA-334 (Certain Condensers).
   6. O/TA&TA-93-010, Reports on S. 398, S. 454, S. 506, S. 509, and S. 642.
7. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205-2000.

Issued: June 22, 1993.
Paul R. Bardos,
Acting Secretary.
[FR Doc. 93–15164 Filed 6–23–93; 2:03 pm]
BILLING CODE 7020–02–P

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of June 28, 1993.

A closed meeting will be held on Monday, June 28, 1993, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Monday, June 28, 1993, at 11:00 a.m., will be:

Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Formal order of investigation.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Christine Sakach at (202) 272–2300.

Dated: June 22, 1993.
Jonathan G. Katz,
Secretary.
[FR Doc. 93–15085 Filed 6–22–93; 4:29 pm]
BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 58, No. 121
Friday, June 25, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[WH-FRL-4660-9]

Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; State's Compliance

Correction

In rule document 93-12845 beginning on page 31177 in the issue of Tuesday, June 1, 1993, make the following correction:

On page 31178, in the first column, in the fifth full paragraph, in the fourth line, "(1)(A)(ii)" should read "(1)(A)(iii)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-930-4210-06; WYW 128871]

Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

Correction

In notice document 93-13009, appearing on page 31536 in the issue of Thursday, June 3, 1993 in land description T.41 N., R. 117 W., "34 and 25" should read "34 and 35".

BILLING CODE 1505-01-D

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federal register

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June 25, 1993

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

Use of Materials Bulletin 101; Interim Rule

VOL 58 ISS 121 JE 25 1993 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R–93–1646; FR–3365–I–01]

RIN 2502–AF84

Use of Materials Bulletin 101 Used in the HUD Building Product Standards and Certification Program for Exterior Finish and Insulation Systems (EFIS)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: The Department has experienced significant problems with Exterior Finish and Insulation Systems (EFIS) even when construction was accomplished under HUD Materials Releases. These problems continue to grow and at the same time the Department continues to allow the application of these systems which may create further problems that will require expensive corrective action. Therefore, this interim rule adopts Use of Materials Bulletins (UM) No. 101 Exterior Finish and Insulation Systems. The interim rule references related national voluntary consensus standards, provides a labeling and third party certification program to meet the appropriate national voluntary standards, requires that a third-party inspection at the job site be conducted, provides that additional information be included on the label, tag, or mark that each manufacturer would affix to a certified product, specifies the frequency with which products must be tested in order to be acceptable to HUD, and requires an inspection report regarding installation.

DATES: *Effective date:* This interim rule is effective July 26, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 26, 1993.

Comment due date: August 24, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Facsimile (FAX) are not acceptable. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Leslie Breden, Office of Manufactured Housing and Regulatory Functions, Standards and Products Branch, Department of Housing and Urban Development, room 3214, L'Enfant Plaza, 490E, 451 Seventh Street, SW., Mail room B–133, Washington, DC 20410–8000; telephone, voice: (202) 755–7440; (TDD) (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Pursuant to HUD's Building Product Standards and Certification Program, which is authorized by section 521 of the National Housing Act, 12 U.S.C. 1735e, the Department issues Use of Materials Bulletins (UMs). The Ums are issued to provide HUD standards that establish minimum acceptable qualities for certain materials and products to be used in properties subject to mortgages insured by the Department. A UM is also used as a means of promulgating a labeling and a certification program to assure that the products used meet the appropriate standard.

The Department has evaluated the technical standards for exterior finish and insulation systems and plans to adopt these standards by incorporating them into the UM by reference. The UM's adoption would also augment the labeling requirements of 24 CFR 200.935(d)(6).

The text of the UM is not being produced in the interim rule because the substance is embodied in a new section of 24 CFR 200.946 set forth below. However, copies of the UM are available for public inspection during regular business hours in the Office of Manufactured Housing and Regulatory Functions, Standards and Products Branch, Department of Housing and Urban Development, room 3214, L'Enfant Plaza, 490E, Mail Room B–133, Washington, DC 20410–8000, and in the Office of the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Justification for Interim Rulemaking

Most frequently the Department publishes rules of this kind as proposed rules for public comment before implementation for effect. In this instance the rule is being published as an interim rule because of the need to bring an end to losses to the insurance fund being experienced because of the continuing problems alluded to elsewhere in the document with existing standards governing exterior finish and insulation systems.

The Department believes that improving the standards governing exterior finish and insulation by summary means will have the effect of materially improving the quality of these systems, limiting problems experienced by owners and occupants of properties subject to the new standards and reducing the instances of required corrective action expensive to the Department and owners alike. For these reasons, the Department believes that interim rulemaking is justified. Public comments, however, have been requested and will be considered in the promulgation of a later final rule on this subject matter.

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102 (2)(c) of the National Environment Policy Act of 1969, 42 U.S.C. 4321 et. seq. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Major Rule

This interim rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the interim rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

Under 5 U.S.C. 605(b), the Regulatory Flexibility Act, the undersigned hereby certifies that this interim rule would not have a significant economic impact on a substantial number of small entities. This UM would adopt standards that are nationally recognized throughout the effected industry and will not create a significant burden on manufacturers.

Semiannual Agenda

This interim rule was listed as item 1452 in the Department's Semiannual

Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24411) under Executive Order 12291 and the Regulatory Flexibility Act.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this interim rule does not have potential for significant impact on family formation, maintenance, and general well-being; therefore, it is not subject to review under the order.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this interim rule would not have substantial direct effect on states or their political subdivisions, or the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the interim rule is not subject to review under the order.

Incorporation by Reference

These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the standards may be obtained from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; The Council of American Building Officials, 5203 Leesburg Pike, Falls Church, Virginia 22041; the Exterior Insulation Manufacturers Association, 2759 State Road 580, Suite 112, Clearwater, Florida 34621; the Federal Test Methods (FTM), Office of Standards and Quality Control, General Services Administration, 18th and F Street, Washington, DC 20406; and the Military (MIL) Standards Office, Naval Publications and Forms, 5901 Tabor Avenue, Philadelphia, Pennsylvania 19120.

Copies of the standards are available for inspection at the Office of Manufactured Housing and Regulatory Functions, Standards and Products Branch, Department of Housing and Urban Development, room 3214, L'Enfant Plaza, 490E, Mail Room B–133, Washington, DC 20410–8000, and at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social Security, Unemployment compensation, Wages.

Accordingly, 24 CFR part 200 is amended as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

2. A new § 200.946 is added to read as follows:

§ 200.946 Building product standards and certification program for exterior finish and insulation systems, use of Materials Bulletin UM 101.

(a) *Applicable standards:* (1) All Exterior Finish and Insulation Systems shall be designed, manufactured, and tested in compliance with the following standards:

(i) ASTM C 150–89, Standard Specification for Portland Cement.

(ii) ASTM C 578–87a, Standard Specification for Preformed, Cellular Polystyrene Thermal Insulation.

(iii) ASTM C 920–87, Standard Specification for Elastomeric Joint Sealants.

(iv) ASTM C 1186–91, Standard Specification for Flat Non-Asbestos Fiber Cement Sheets.

(v) ASTM D 3168–73 (Reapproved 1979), Standard Recommended Practice for Qualitative Identification of Polymers in Emulsion Paints.

(vi) ASTM E 108–90, Standard Test Methods for Fire Tests of Roof Coverings.

(vii) ASTM E 330–90, Standard Test Method for Structural Performance of Exterior Windows, Curtain Walls and Doors by Uniform Static Air Pressure Difference.

(viii) ASTM E 606–80, Standard Recommended Practice for Constant-Amplitude Low-Cycle Fatigue Testing.

(ix) ASTM E 695–79 (Reapproved 1991), Standard Method of Measuring Relative Resistance of Wall, Floor and Roof Construction to Impact Loading.

(x) ASTM G 26–90, Standard Practice for Operating Light-Exposure Apparatus (Xenon-Arc Type) With and Without Water for Exposure of Nonmetallic Materials.

(xi) Council of American Building Officials, Model Energy Code, 1992 Edition.

(xii) EIMA Test Method and Standard 101.86, Standard Test Method for Resistance of Exterior Insulation Finish Systems to the Effects of Rapid Deformation (Impact), October 4, 1991.

(xiii) MIL–STD–810B, Method 508, Fungus, 15 June 1967.

(xiv) MIL–Y–1140H, Military Specification, Yarn, Cord, Sleeving, Cloth, and Tape-Glass, 13 December 1972.

(xv) TT–C–555B, Amendment-1, Federal Specification, Coating, Textured (For Interior and Exterior Masonry Surfaces), August 5, 1975.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from:

(i) American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103;

(ii) The Council of American Building Officials, 5203 Leesburg Pike, Falls Church, Virginia 22041;

(iii) Exterior Insulation Manufacturers Association, 2759 State Road 580, Suite 112, Clearwater, Florida 34621;

(iv) Federal Test Methods (FTM), Office of Standards and Quality Control, General Services Administration, 18th and F Street, Washington, DC 20406; and

(v) Military (MIL) Standards Office, Naval Publications and Forms, 5901 Tabor Avenue, Philadelphia, Pennsylvania 19120.

(3) The standards are available for inspection at the Office of Manufactured Housing and Regulatory Functions, Standards and Products Branch, Department of Housing and Urban Development, room 3214, L'Enfant Plaza, 490E, Mail Room B–133, Washington, DC 20410–8000, and at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(b) *Labeling.* Under the procedures as set forth in § 200.935(d)(6), concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applied standard is required to be on the certification label issued by the administrator to the manufacturers. In the case of exterior wall insulation and finish systems, the certification label containing the administrator's mark shall be permanently affixed on the package or container of base and finish coating materials. Further, additional information shall be included on the certification, label, mark, or stamp:

(1) Manufacturer's name.

(2) Manufacturer's statement of conformance with UM 101.

(c) The administrator's (or administrator-accepted inspection agency) inspection of EFIS system installation of 5000 sq. ft. or more, shall be made during and upon completion of the construction. Reports of the inspection shall be made to the owner's representative. These reports shall include:

(1) The coverage of the finish coat per sq. ft. for a given volume of finish.

(2) The minimum thickness of the base and finish coatings.

(3) A statement that: (i) The fiberglass mesh is installed properly around joints and insulation; (ii) all penetrations, including windows, flashing, etc., are sealed; (iii) there is a caulk and sealant continuity evaluation; and (iv) the manufacturer's installation instructions and all of the requirements in UM 101 were followed.

(d) The manufacturer shall warrant their exterior wall insulation and finish system, including any caulks and sealants, for twenty years against faulty performance. The warranty shall include correction of delamination, chipping, denting, peeling, blistering, flaking, bulging, unsightly discoloration, or other serious deterioration of the system such as the intrusion of water through the wall or structural failure of the system's surface materials. Should any of these defects occur, the manufacturer shall make a pro-rata allowance for replacement or pay the owner the amount of the allowance. The manufacturer shall not be liable for damages or defects resulting from misuse, natural catastrophes, other than hail or other causes beyond the control of the manufacturer.

Dated: May 25, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 93–14967 Filed 6–24–93; 8:45 am]

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing

24 CFR Part 219
Flexible Subsidy Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 219

[Docket No. R–93–1666; FR–3441–P–01]

RIN 2502–AG03

Flexible Subsidy Program; Proposed Amendments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: The Housing and Community Development Act of 1992 amended section 201 of the Housing and Community Development Amendments of 1978 (HCDA), which created the Flexible Subsidy Program. The 1992 amendments, which improve the operation of the Flexible Subsidy Program, were implemented through the Fiscal Year 1993 Notice of Funding Availability for the Flexible Subsidy Program, which was published in the Federal Register on June 7, 1993 for the benefit of eligible project owners who intend to apply for this funding.

HUD proposes to adopt, as regulatory amendments to 24 CFR part 219, the 1992 Act amendments to the Flexible Subsidy Program as implemented in the June 7, 1993 NOFA. The specific amendments made by the Housing and Community Development Act of 1992 are addressed in the SUPPLEMENTARY INFORMATION section of this document.

DATES: Comment due date: August 24, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, 451 Seventh Street SW., Washington DC 20410, telephone (202) 708–3944 (voice) or (202) 708–4594 (TDD for hearing-impaired). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Statement

The Office of Management and Budget has approved the used of the Flexible Subsidy forms under OMB control number 2502–0395, through September 30, 1993.

I. Background of Flexible Subsidy Program

Section 201 of the Housing and Community Development Amendments of 1978 (HCDA) created the Flexible Subsidy Program to provide Operating Assistance to eligible projects experiencing financial difficulty. Operating Assistance is provided in the form of a deferred loan and, in conjunction with other resources, is designed to restore or maintain the physical and financial soundness of eligible projects. The 1983 amendments to section 201 of the HCDA expanded the universe of eligible projects and clarified that a project need not have an FHA-insured mortgage to be eligible for Flexible Subsidy assistance (e.g., a non-insured section 236 project is eligible).

The 1987 amendments to section 201 of the HCDA created a new category of assistance to be provided under the Flexible Subsidy Program for projects that needed capital improvements to achieve physical soundness that cannot be funded from project reserve funds without jeopardizing other major repairs or replacements that are reasonably expected to be required in the near future.

II. Changes Made to Flexible Subsidy Program by 1992 Act

A. Overview

Sections 405 and 406 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (the 1992 Act) amended section 201 of the HCDA, making the following changes to the Flexible Subsidy Program (note that the parenthetical following the description of each program change indicates the applicable statutory section which makes the program change):

- The inclusion of additional criteria by which a project will be considered eligible for assistance under section 201 of the HCDA (see section 405(a));
- The establishment of new selection criteria by which HUD shall award assistance to eligible projects under section 201 of the HCDA, and the requirement that eligible projects that have federally insured mortgages in force be selected for assistance under section 201 before any other eligible project (see section 405(b));
- The authorization to require owners receiving assistance as capital improvements under section 201 of the HCDA to retain the housing as housing affordable for very low-income, low-income and moderate-income persons or families for the remaining useful life of the housing (see section 405(c));
- The exclusion of projects receiving assistance under section 201 of the HCDA from receiving prepayment incentives under the Emergency Low-Income Housing Preservation Act of 1987 (ELIHPA) or the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA), and the exclusion of projects receiving prepayment incentives from receiving assistance under section 201 of the HCDA (see section 405(d));
- The requirement that HUD grant to owners credit for advances made to the project during the three year period prior to the application for assistance (see section 405(e));
- The requirement that HUD coordinate the allocation of assistance under section 201 of the HCDA with assistance made available under section 8(v) of the U.S. Housing Act of 1937 (the 1937 Act) and section 203 of the HCDA (see section 405(f));
- The requirement that HUD review and approve or disapprove each management improvement and operating (MIO) plan no later than the expiration of the 30-day period of receipt of the plan by HUD, and if HUD fails to inform an owner of its disapproval of the owner's plan, the plan shall be considered approved (see section 406).

B. Capital Improvement Loans as Permissible Incentives Under Amended Flexible Subsidy Program

The Flexible Subsidy NOFA, which was published on July 7, 1993 assured support of preservation efforts by providing for a set-aside of $18 million for Flexible Subsidy Capital Improvement funding to insured projects that are eligible to receive incentives in exchange for extending the low- to moderate-income use of the projects under plans of action approved in accordance with 24 CFR part 248. The $18 million set-aside was not made available under the June 7, 1993 Flexible Subsidy NOFA, but was made available under a separate notice of funding availability, published on June 9, 1993 (58 FR 32424).

As noted in the June 7, 1993 Flexible Subsidy NOFA, section 405(d) of the 1992 Act amended section 201 of the HCDA by adding a provision that states "[p]rojects receiving assistance under

this section are not eligible for prepayment incentives under [ELIHPA] or [LIHPRHA]. Projects receiving financial assistance under such Acts are not eligible for assistance under this section."

Section 405(b) of the 1992 Act repeals section 201(k)(4) of the HCDA, and establishes new selection criteria for awarding flexible subsidy capital improvement loans, which includes giving priority to projects with HUD-insured mortgages over (1) projects with HUD-held mortgages, and (2) non-insured projects which are assisted by State agencies. Section 201(k)(4) had created a priority for projects receiving incentives under ELIHPA and LIHPRHA, but its repeal by section 405(b) of the 1992 Act eliminates preservation projects from the list of selection criteria. Accordingly, these amendments on their face, appear to preclude ELIHPA and LIHPRHA projects from receiving flexible subsidy assistance, and vice versa.

However, the Congress did not amend section 224(b)(6) of ELIHPA or section 219(b)(4) of LIHPRHA, which list flexible subsidy capital improvement loans as a permissible incentive, nor did the Congress repeal sections 201 (m)(1) and (m)(2) of the HCDA, which discuss rental payments for ELIHPA and LIHPRHA projects receiving flexible subsidy assistance. In addition, the Congress enacted section 318 of title III of the 1992 Act, which requires HUD to present a report to the Congress detailing the cost of providing preservation incentives to owners of projects deemed ineligible for incentives because the owners entered into agreements to maintain the projects' low income use in exchange for flexible subsidy assistance. This report is required because the Congress "is concerned that many of these projects may not be preserved, even with flexible subsidy, for lack of necessary additional funding * * * the report [should] include any recommendation which the Committee can consider for ways to make these projects eligible for the preservation program * * *" House Rpt. No. 760, 102d Cong., 2d Sess., at 117 (the "House Report"). The failure of the Congress to eliminate capital improvement loans as an incentive, or to delete all flexible subsidy provisions pertaining to ELIHPA and LIHPRHA projects, coupled with the fact that Congress is requesting a report to attempt to make projects with flexible subsidy eligible for incentives, imply that the Congress intended to continue to permit capital improvement loans as an incentive.

While owners proceeding under ELIHPA or LIHPRHA may finance rehabilitation with a loan insured under section 241 of the National Housing Act, a capital improvement loan is preferred by nonprofit purchasers because for capital improvement loans there are no owner contribution requirements, the interest rate tends to be lower, and amortization does not begin until the loan proceeds are spent. The amendment to section 241(f) by section 316(a) of title III of the 1992 Act eliminates the need for a rehabilitation loan under LIHPRHA because rehabilitation costs will now be included in the section 241(f) equity and acquisition loans. However, capital improvement loans would be beneficial for nonprofit purchasers under ELIHPA whose only choice is to finance improvements with a section 241(a) loan.

In light of the foregoing, HUD will allow nonprofit purchasers to obtain flexible subsidy capital improvement loans as an incentive under ELIHPA. Because nonprofit purchasers requesting capital improvement loans in their plans of action will not be "receiving financial assistance" under ELIHPA or LIHPRHA at the time they are determined eligible for flexible subsidy, this position will not violate section 405(d) of the 1992 Act. Accordingly, this rule does not propose to amend § 219.330(a), which addresses this issue.

HUD has issued a NOFA for capital improvement loans that announces funding for insured projects which are being sold to nonprofit purchasers in accordance with approved plans of action under ELIHPA. These projects have to conform to the new selection criteria established in section 201(n)(1), and are being awarded assistance as their applications are received. (New subsection (n) was added to section 201 by section 405(b)(2) of the 1992 Act.) Nonprofit purchasers of projects which do not have mortgages insured by HUD are also eligible to apply for a capital improvements loan, but because of the statutory preference granted to projects with HUD-insured mortgages in section 201(n)(2), these projects will not be awarded funding until the end of the funding year.

C. MIO Plan Review and Approval

As discussed under Section I.A. of this preamble, section 406 of the 1992 Act imposes the following requirement on HUD:

[T]he Secretary shall review and approve or disapprove each plan not later than the expiration of the 30-day period beginning upon the date of submission of the plan to the Secretary by the owner, but if the Secretary fails to inform the owner of approval or disapproval of the plan within such period the plan shall be considered to have been approved.

The June 7, 1993 Flexible Subsidy NOFA implements this requirement for the benefit of FY 1993 applicants, but as noted in the NOFA, this 30-day review and notification requirement only applies to the MIO Plan Part I.

HUD, through its handbook implementation of the Flexible Subsidy Program, had created an MIO Plan Part I and an MIO Plan Part II. (See HUD Handbook 4355.1 REV–1, Flexible Subsidy.) The MIO Plan Part I incorporates the plan components required by the HCDA. The MIO Plan Part II incorporates the components of the plan imposed by HUD as a matter of administrative discretion.

In enacting section 406, it is HUD's reading that the intent of the Congress was to require HUD to approve or disapprove the MIO Plan Part I within 30 days of its submission by the owner to the Secretary, because it is the MIO Plan Part I which contains the items required by statute to be included to the plan. The items that comprise the MIO Plan Part I, and described in section 201(d)(6) of the HCDA, have been determined by the Congress to be the minimum items necessary for an appropriate MIO Plan, and through section 406, it appears that the Congress has further determined that these statutorily imposed components of the plan could and should be reviewed and approved or disapproved within a 30-day period.

Section 201(d)(6) of the HCDA provides that the MIO Plan must include, at a minimum, the following items: (A) A detailed maintenance schedule; (B) a schedule for correcting past deficiencies in maintenance, repairs and replacements; (C) a plan to upgrade the project to meet cost-effective energy efficiency standards approved by the Secretary; (D) a plan to improve financial and management control systems; and (E) a detailed annual operating budget taking into account such standards for operating costs in the area as may be determined by the Secretary. The MIO Plan Part I requires the submission of all of these items. (See Section III.A.1.a of the June 7, 1993 Flexible Subsidy NOFA.)

The MIO Plan Part II is comprised of HUD administrative requirements. The MIO Plan Part II consists of four principal components: (1) Management Objectives—which sets forth the owner's plan to address all management deficiencies; (2) Action Items—which must address all project deficiencies, including those to be corrected using

resources other than Flexible Subsidy assistance; (3) Sources and Uses of Funds—which documents how much each source will contribute to the Project Improvement Account in the implementation of the MIO Plan; and (4) HUD certifications and disclosures; that is, the submission of various certifications and disclosures required by certain HUD regulations, e.g., anti-lobbying certification, certification of compliance with the Uniform Relocation Assistance Act. (Please see Section II.A.B.2 of the June 7, 1993 Flexible Subsidy NOFA for a more detailed description of the items required under the MIO Plan Part II.)

These additional items, required to be submitted under the MIO Plan Part II, are not only important in assisting HUD to assess whether the project, for which assistance is being requested, is being operated in accordance with a sound management plan, but assist HUD in determining: (1) The degree to which the project's problems present a threat to the life, health and safety of the project residents; (2) that the project owner is in compliance with other applicable HUD program requirements; and (3) that funds will be used appropriately in project improvement.

A competent and responsible review of the items required to be submitted under the MIO Plan Part I, and those required to be submitted under the MIO Plan Part II would take significantly more than 30 days to review. To collapse the entire MIO Plan review process into a 30-day period would result in program administration problems that may adversely affect project owners. An abbreviated review period for the entire MIO Plan may result in cursory review and (1) disapproval of plans, which would have been approved under a more reasonable review period, or (2) approval of plans which should have been disapproved because they do not satisfactorily meet the statutory or administrative requirements.

HUD does not believe that the intent of the Congress was to create the possibility of inequitable results in the award of Flexible Subsidy assistance, which would be the case if the 30-day review period is applied to both parts of the MIO Plan. HUD believes that the intent of the Congress was, however, to expedite the MIO Plan review process, and this objective will be achieved by limiting review of the MIO Plan Part I to 30 days. Accordingly, §§ 219.210 and 219.310 which address the application process for operating assistance, and capital improvement loans, respectively, would clarify that there are two parts to the MIO Plan, and that it is the MIO Plan Part I that is subject to the 30-day review and response requirement.

D. Comprehensive Needs Assessment

As noted in Section II.A. of this preamble, section 405(b) of the 1992 Act establishes new selection criteria by which HUD shall award assistance to eligible projects under section 201 of the HCDA. One of the new selection criteria added by section 405(b) is—the extent of physical improvements needed by the project as evidenced by the comprehensive needs assessment submitted in accordance with title IV of the 1992 Act. The submission of the comprehensive needs assessment, the contents of the comprehensive needs assessment and its review by HUD are addressed in sections 402, 403 and 404 of the 1992 Act. This rule does not propose to implement the regulations that will govern the submission, contents and review of the comprehensive needs assessment. The regulations governing the comprehensive needs assessment will be the subject of separate rulemaking. At the time that the comprehensive needs assessment rule has been published for effect, HUD will make a conforming amendment to part 219 to include the comprehensive needs assessment as a selection criterion. To include this criterion at this point, without the comprehensive needs assessment regulations in place, may only confuse owners seeking Flexible Subsidy assistance concerning their responsibilities and those of HUD with respect to the award of assistance.

III. Proposed Amendments to 24 CFR Part 219

HUD's regulations governing the Flexible Subsidy Program are codified at 24 CFR part 219. These regulations were recently amended by a final rule published on July 21, 1992 (57 FR 32398).

By this notice, HUD proposes to amend part 219 to reflect the changes made to the Flexible Subsidy Program by the 1992 Act. The 1992 Act changes to the Flexible Subsidy Program are set forth in the following sections of 24 CFR part 219 (the parenthetical following the description of each program change indicates the specific statutory section which made the change).

Section 219.110 (General Eligibility) would incorporate the inclusion of additional criteria by which a project will be considered eligible for assistance under section 201 of the HCDA (see section 405(a)).

Sections 219.230 and 219.330, which concern priorities for funding for operating assistance and capital improvement loans, respectively, would include the new selection criteria by which HUD shall award assistance under section 201 of the HCDA (see section 405(b)). These sections also provide that eligible projects that have federally insured mortgages in force are to be selected for award of assistance under section 201 of the HCDA before any other eligible project (see section 405(b)).

Section 219.110(b) would include the authorization provided to HUD by the Congress to require owners receiving assistance as capital improvements under section 201 of the HCDA to retain the housing as housing affordable for very low-income, low-income and moderate-income persons or families for the remaining useful life of the housing (see section 405(c)).

Sections 219.205(b) and 219.305(c), which pertain to owner contributions for operating assistance and capital improvement loans, respectively, would incorporate the requirement that HUD grant to owners credit for advances made to the project during the three year period prior to the application for assistance (section 405(e)). In incorporating this requirement, HUD also would remove the reference to "surplus cash" contained in §§ 219.205(b)(1) and 219.305(c)(1), and therefore, clarify the owner contribution requirement by simply stating that "the contribution may not come from project income." Notably, any distributions to which a project owner is entitled, e.g., the up to six percent distribution available to a limited distribution owner, once they have been distributed, can be applied toward an owner's contribution. Conversely, "surplus" funds not taken as a distribution by the owner and that are applied or to be applied to project related accounts cannot be applied toward an owner's contribution.

A new § 219.127 would address the requirement that HUD coordinate the allocation of assistance under section 201 of the HCDA with assistance made available under section 8(v) of the U.S. Housing Act of 1937 (the 1937 Act) and section 203 of the HCDA (section 405(f)).

Sections 219.210 and 219.310, which address the application process for operating assistance and capital improvement loans, respectively, would incorporate the requirement that HUD review and approve or disapprove each management improvement and operating (MIO) plan no later than the expiration of the 30-day period of receipt of the plan by HUD, and if HUD fails to inform an owner of its disapproval of the owner's plan, the

plan shall be considered approved (section 406).

IV. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) in connection with HUD's development of the FY 1993 NOFA for the Flexible Subsidy Program. That Finding is also applicable to this proposed rule, and is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Regulatory Impact

This proposed rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individuals, industries, Federal, State or local government, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication, and, by approving it, certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would codify the changes made to the Flexible Subsidy Program by the Housing and Community Development Act of 1992. These statutory changes do not provide the Department with the discretion to differentiate between large and small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this proposed rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, this proposed rule would codify the changes made to the Flexible Subsidy Program by the Housing and Community Development Act of 1992. These changes will not interfere with State or local government functions.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, or general well-being, and thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on November 3, 1992 (57 FR 51392) under Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance for the program affected by this rule is 14.164.

List of Subjects in 24 CFR Part 219

Loan programs—housing and community development, Low- and moderate-income housing.

Accordingly, 24 CFR part 219 is proposed to be amended as follows:

PART 219—FLEXIBLE SUBSIDY PROGRAM FOR TROUBLED PROJECTS

1. The authority citation for part 219 would continue to read as follows:

Authority: 12 U.S.C. 1715z–1a; 42 U.S.C. 3535(d).

2. Section 219.110 would be amended by revising paragraph (b) and by adding new paragraphs (h) through (l) to read as follows:

§ 219.110 General eligibility.

* * * * *

(b) The owner has agreed to maintain the low- and moderate-income character of the project for a period at least equal to the remaining term of the project mortgage. This constitutes the minimum period for low-income affordability restriction. HUD, at its discretion, may extend this period of restriction to the remaining useful life of the project.

* * * * *

(h) All reasonable attempts have been made to take all appropriate actions and provide suitable housing for project residents.

(i) There is a feasible plan to involve the residents in project decisions as demonstrated through documentation submitted to HUD.

(j) The Affirmative Fair Housing Marketing plan meets applicable requirements.

(k) The owner certifies that he/she will comply with all applicable equal opportunity statutes.

(l) The project is not receiving financial assistance under the Emergency Low-Income Housing Preservation Act of 1987 (12 U.S.C. 17151 note) or the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) (12 U.S.C. 4101 *et seq.*).

3. A new § 219.127 would be added to read as follows:

§ 219.127 Coordination of assistance.

The Secretary shall coordinate the allocation of assistance under this part with assistance made available under 24 CFR part 886, subpart A (the Loan Management Set-Aside Program), and 24 CFR part 290, subpart B (Management of HUD-Owned Multifamily Projects) to enhance the effectiveness of the Federal Response to troubled multifamily housing.

4. In § 219.205, paragraph (b)(1) would be revised to read as follows:

§ 219.205 Amount of operating assistance.

* * * * *

(b) * * *

(1) Generally, the contribution must be made in cash. The contribution must not be taken from project income. Cash contributions made by the owner within the 36 months before application for operating assistance under this subpart from sources other than project income may be considered for purposes of meeting this contribution requirement.

* * * * *

5. Section 219.210 would be revised to read as follows:

§ 219.210 Application.

(a) The project owner must submit an application on a form approved by the Secretary. The application will include a MIO Plan that consists of two parts—Parts I and II.

(b) The MIO Plan I must include the following:

(1) A detailed maintenance schedule;

(2) A schedule for correcting past deficiencies in maintenance, repairs and replacements;

(3) A plan to upgrade the project to meet cost-effective energy efficiency standards approved by HUD;

(4) A plan to improve financial and management control systems;

(5) An updated annual operating budget, if the last budget was submitted more than 90 days before the application is submitted;

(6) A plan setting forth the specific controls and procedures that will result in a reduction in operating costs, if possible, together with an estimate of the cost saving; and

(7) Documentation of eligibility, as described in § 219.110.

(c) The MIO Plan Part II must include the following:

(1) Action items and other requirements needed to monitor the funding process, including sources and uses of funds;

(2) Certification of compliance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 U.S.C. 4601–4655), and its implementing regulations at 49 CFR part 24, and § 219.135 of this part;

(3) Certification that the applicant will comply with the provisions of the Fair Housing Act, title VI of the Civil Rights Act of 1964, Executive Orders 11063 and 11246, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, section 3 of the Housing and Urban Development Act of 1968, and all regulations issued in accordance with these authorities;

(4) Affirmative Fair Housing marketing Plan;

(5) Disclosures of other government assistance and expected sources and uses of that assistance, and the identity of interested parties, as required by 24 CFR 12.32; and

(6) Such other certifications and disclosures that may be specified in a **Federal Register** notice of funding availability.

(d) Within 30 days of receipt by HUD from the owner of the MIO Plan Part I in response to a notice of funding availability (NOFA), HUD will advise the owner, in writing, whether or not the MIO Plan Part I meets the submission requirements as stated in the NOFA. If HUD fails to inform the owner of its disapproval within the 30-day time-frame, the MIO Plan Part I shall be considered to be approved. If HUD disapproves the MIO Plan Part I, no further consideration will be given to the applicant for award of funds under the NOFA.

6. Section 219.230 would be revised to read as follows:

§ 219.230 Priorities for funding.

(a) HUD will give funding priority first to insured projects based on the extent to which:

(1) The project presents an imminent threat to the life, health, and safety of project residents;

(2) The project is financially troubled;

(3) There is evidence that there will be significant opportunities for residents (including a resident council or resident management corporation, as appropriate) to be involved in management of the project (except that this paragraph (a)(3) shall have no application to projects that are owned by cooperatives);

(4) The project owner has provided competent management and complied with all regulatory and administrative instructions (including such instructions with respect to the comprehensive servicing of the multifamily projects as the Secretary may issue); and

(5) The project meets such other criteria that the Secretary may specify in a **Federal Register** notice of funding availability.

(b) To the extent that funds are available for projects other than those described in paragraph (a) of this section, priority will be given to the following projects, in the order shown, based on the extent to which these projects meet the same criteria set forth in paragraph (a) of this section:

(1) HUD-held projects and projects assisted under section 202 of the Housing and Community Development Act of 1978;

(2) State Agency non-insured projects; and

(3) State Agency owned projects.

7. In § 219.305, paragraphs (c)(1) and (c)(4) would be revised to read as follows:

§ 219.305 Eligibility.

* * * * *

(c) * * *

(1) Generally, the contribution must be made in cash. The contribution must not be taken from project income. Cash contributions made by the owner within 36 months before the application for a capital improvement loan under this subpart, from sources other project income, may be considered for purposes of meeting this contribution requirement.

(2) * * *

(3) * * *

(4) When an owner has spent its own money (as from surplus cash) to attempt to repair items within 36 months before HUD's receipt of the capital improvement loan application, and the repair was unsuccessful and has resulted in a need for a replacement (to be funded by a capital improvement loan), the expenditure will be considered credit for purposes of meeting the contribution requirement.

8. Section 219.310 would be revised to read as follows:

§ 219.310 Application.

(a) The project owner must submit an application on a form approved by the Secretary. The application will include a MIO Plan that consists of two parts—Parts I and II.

(b) The MIO Plan Part I must include a work write-up to describe the capital improvements to be covered by the requested loan (see § 219.315), and other documentation of eligibility, as described in §§ 219.110 and 219.305. A MIO Plan Part I is required for an application for a capital improvement loan only when one or more of the following conditions exist:

(1) The project is in default or was in default at any time during the one-year period preceding the application date.

(2) The project received a Below Average or Unsatisfactory rating for Overall Physical Condition or for Maintenance Policies and Practices on the most recent HUD–9822, Physical Inspection Report (unless the owner has since corrected the problem in a manner satisfactory to HUD).

(3) The project received a Below Average or Unsatisfactory rating in the Financial Management Section or Overall Management Section on the HUD–9834, Management Review, in the past 24 months (unless the owner has corrected the problems through a substitution of management agent, management personnel, or otherwise, in a manner satisfactory to HUD).

(4) A situation that HUD Headquarters has determined requires submission of a MIO Plan Part I.

(c) The MIO Plan Part II must include the following:

(1) Action items and other requirements needed to monitor the funding process, including sources and uses of funds.

(2) Certification of compliance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 U.S.C. 4601–4655), and its implementing regulations at 49 CFR part 24, and § 219.135 of this part;

(3) Certification that the applicant will comply with the provisions of the Fair Housing Act, title VI of the Civil Rights Act of 1964, Executive Orders 11063 and 11246, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, section 3 of the Housing and Urban Development

Act of 1968, and all regulations issued in accordance with these authorities;

(4) Affirmative Fair Housing Marketing Plan;

(5) Disclosures of other government assistance and expected sources and uses of that assistance, and the identify of interested parties, as required by 24 CFR 12.32; and

(6) Such other certifications and disclosures that may be specified in a **Federal Register** notice of funding availability.

(d) Within 30 days of receipt by HUD from the owner of the MIO Plan Part I in response to a notice of funding availability (NOFA), HUD will advise the owner, in writing, whether or not the MIO Plan Part I meets the submission requirements as stated in the NOFA. If HUD fails to inform the owner of its disapproval within the 30-day time-frame, the MIO Plan Part I shall be considered to be approved. If HUD disapproves the MIO Plan Part I, no further consideration will be given to the applicant for award of funds under the NOFA.

9. In § 219.330 paragraph (b) would be revised and paragraph (c) would be added to read as follows:

§ 219.330 Priorities for funding.

* * * * *

(b) To the extent that funds are available for projects other than those described in paragraph (a) of this section, priority will be given to insured projects based on the extent to which—

(1) the project presents an imminent threat to the life, health, and safety of project residents;

(2) the project is financially troubled;

(3) there is evidence that there will be significant opportunities for residents (including a resident council or resident management corporation, as appropriate) to be involved in management of the project (except that this paragraph (b)(3) shall have no application to projects that are owned by cooperatives);

(4) the project owner has provided competent management and complied with all regulatory and administrative instructions (including such instructions with respect to the comprehensive servicing of the multifamily projects as the Secretary may issue); and

(5) the project meets such other criteria that the Secretary may specify in a **Federal Register** notice of funding availability.

(c) To the extent that funds are available for projects other than those described in paragraph (b) of this section, priority will be given to the following projects, in the order shown, based on the extent to which these projects meet the same criteria set forth in paragraph (b) of this section:

(1) HUD-held projects and projects assisted under section 202 of the Housing and Community Development Act of 1978;

(2) State Agency non-insured projects; and

(3) State Agency owned projects.

Dated: June 18, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–14968 Filed 6–24–93; 8:45 am]

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121, et al.
Special Federal Aviation Regulation No. 38; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, 127, 129, and 135

[Docket No. 18510; SFAR No. 38–8]

Special Federal Aviation Regulation No. 38; Certification and Operating Requirements

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment establishes a new termination date for Special Federal Aviation Regulation (SFAR) No. 38–2 (50 FR 23941; June 7, 1985), which contains the certification and operating requirements for persons conducting commercial passenger or cargo operations. The FAA stated in previous extensions of SFAR 38–2 that it was necessary to establish a new termination date for SFAR 38–2 to allow time for the FAA to complete the rulemaking process that will consolidate the rules regarding certification and operating requirements and incorporate SFAR 38–2 into the Federal Aviation Regulations (FAR). The current termination date for SFAR 38–2 is June 1, 1993. Because the FAA has not completed that rulemaking process, an extension of the termination date is necessary. SFAR 38–2 is extended to ensure that the FAA has adequate time to complete the consolidation of the rules regarding certification and operating requirements. However, if a final rule, which consolidates those rules, is issued before the new termination date, the FAA intends to publish a notice rescinding SFAR 38–2 concurrently with the publication of the final rule in the Federal Register.

DATES: Effective date June 18, 1993. Comments must be received on or before August 24, 1993.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Docket No. 18518, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in triplicate to: Federal Aviation Administration, Rules Docket, room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rules Dockets weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Davis, Project Development Branch, AFS–240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267–8096

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1978, the FAA issued SFAR 38 (43 FR 58366; December 14, 1978) as a consequence of the Airline Deregulation Act of 1978 (ADA or Act) (Pub. L. 95–504, 92 stat. 1705). That Act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the Civil Aeronautics Board (CAB) be abolished on December 31, 1984, and that certain of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979–1984. By January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulations relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition to the change in economic regulatory activities. This action was consistent with the Congressional directive contained in section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when the ADA was enacted. SFAR 38 (43 FR 58366; December 14, 1978) set forth FAA certification and operating requirements applicable to all "air commerce" and "air transportation" operations for "compensation or hire." (SFAR 38 did not address part 133 External Load Operations, part 137 Agriculture Aircraft Operations, or part 91 training and other special purpose operations.)

On December 27, 1984, the FAA issued SFAR 38–1 (50 FR 450; January 4, 1985), which merely extended the termination date of SFAR 38 and allowed the FAA time to propose and receive comments on revising SFAR 38.

On May 28, 1985, the FAA issued SFAR 38–2 (50 FR 23941; June 7, 1985), which updated SFAR 38 in light of changes since 1978 and clarified provisions stating which FAA regulations apply to each air carrier and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were rigidly compartmentalized, and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (i.e., supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an air carrier's particular operation.

On April 30, 1986, the FAA issued SFAR 38–3 (51 FR 17274; May 9, 1986), which extended the termination date of SFAR 38–2 to allow the FAA time to incorporate its contents into Notice No. 88–16 (53 FR 39852; October 12, 1988). That notice proposes to consolidate the certification and operating requirements rules in parts 121 and 135, and to incorporate various provisions of SFAR 38–2 into new part 119 of the FAR.

On July 15, 1987, the FAA issued SFAR 38–4 (52 FR 28938; August 4, 1987), which reinstated SFAR 38–2, because it was inadvertently allowed to expire, and extended its termination date to June 1, 1989. That extension allowed the FAA time to incorporate the contents of SFAR 38–2 into Notice No. 88–16.

On May 26, 1989, the FAA issued SFAR 38–5 (54 FR 23884; June 2, 1989), which extended the expiration date of SFAR 38–2 to June 1, 1990, in order for the FAA to consider comments on Notice No. 88–16 and to issue a final rule which would consolidate the certification and operating requirements rules of SFAR 38–2, part 121, and part 135.

On April 11, 1990, the FAA reopened the comment period for Notice No. 88–16 (55 FR 14404; April 17, 1990) for comments on the definition of "scheduled operation" and the notification requirement for changes to operations specifications for a period of 30 days. The reopened comment period closed May 17, 1990.

To allow for additional time to consider comments received during the reopened comment period, the FAA extended the expiration date for SFAR 38–2 until June 1, 1991 (55 FR 23046; June 5, 1990). Because of the complexity of the comments, the expiration date for SFAR 38–2 was extended until June 1, 1992 (56 FR 25450; June 4, 1991), and

subsequently again extended until June 1, 1993 (57 FR 23922; June 4, 1992).

Based on comments received, the FAA has determined that a different definition of "scheduled operation" should be proposed for public comment. That supplemental notice was published June 8, 1993 (58 FR 32248); the comment period closes July 23, 1993. However, to allow time to consider comments and issue a final rule, the FAA has determined that it is necessary to extend the expiration date for SFAR 38–2 until June 1, 1995.

Good Cause Justification for Immediate Adoption

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38–2 of June 1, 1995. If the FAA publishes a final rule incorporating SFAR 38–2 into the FAR before the termination date, a notice rescinding SFAR 38–2 will be published concurrently. This action is necessary to permit continued operations under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

This rule will not impose any additional incremental costs over those that would have been incurred when SFAR 38–2 was first issued. Therefore, I certify that the amendment will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The FAA finds this amendment will have no impact on international trade.

Paperwork Reduction Act

Information collection requirements in this SFAR have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0008.

Federalism Implications

The amendment herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient federalism applications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11304; February 26, 1979); and the anticipated impact is so minimal that a full regulatory evaluation is not required.

List of Subjects

14 CFR Part 121

Air carrier, Aircraft, Airmen, Air transportation, Aviation safety.

14 CFR Part 125

Aircraft, Airmen, Airports, Airspace, Air traffic control, Air transportation, Chemicals, Children, Drugs, Flammable materials, Handicapped, Hazardous materials, Infants, Smoking.

14 CFR Part 127

Air carriers, Aircraft, Airmen, Airworthiness.

14 CFR Part 129

Air carriers, Aircraft, Airmen, Air transportation, Aviation safety, Safety.

14 CFR Part 135

Air carriers, Aircraft, Airmen, Air taxis, Air transportation, Airworthiness, Aviation safety, Safety.

Adoption of the Amendment

In consideration of the foregoing SFAR 38–2 (14 CFR parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended as follows:

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1423, 1424, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983).

2. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 through 1430, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983).

3. The authority citation for part 127 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983).

4. The authority citation for part 129 is revised to read as follows:

Authority: 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, 1511, and 1522; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983).

5. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a) 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983).

Special Federal Aviation Regulation No. 38–2 is amended by removing the words "June 1, 1993" in the last paragraph, and by adding in their place the words "June 1, 1995."

Issued in Washington, DC, on June 18, 1993.

Joseph M. Del Balzo,

Acting Administrator.

[FR Doc. 93–15006 Filed 6–24–93; 8:45 am]

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Part V

Department of Commerce

International Trade Administration

Trade Fair Certification Program: International Trade Fairs, Solicitation of Applications; Notice

VOL 58 ISS 121 JE 25 1993 UMI

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 930643-3143]

Trade Fair Certification Program; U.S. Representatives Sought for International Trade Fairs

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of a search for qualified U.S. representatives to recruit U.S. firms for certain international trade fairs and a request to solicit applications for these same events for the Trade Fair Certification Program.

SUMMARY: This notice lists several oversees trade shows identified by the Department of Commerce (Commerce) as good venues for U.S. export opportunities in the respective markets, and as good candidate events for Commerce's Trade Fair Certification (Certification) Program. Commerce is interested in entertaining applications to have these events considered for Certification. Qualified U.S. firms interested in representing, promoting, and recruiting for these events in the United States, and in applying for Certification, must contact the foreign organizers directly to formalize representation for the subject shows. Once a representation agreement is reached between the U.S. representative and foreign show organizer, Commerce will entertain an application for Certification, as provided for in **Federal Register** notice (58 FR, 26116–26119), April 30, 1993.

DATES: Applications for Trade Fair Certification must be received by the office noted directly below, 270 days prior to the relevant show dates.

ADDRESSES: Trade Fair Certification Program, room 2116, Export Promotion Services, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Paul Bucher, Manager, Trade Fair Certification, U.S. Department of Commerce, room 2116, 14th and Constitution Avenue, NW., Washington, DC 20230. Tel: (202) 482–2525; Fax: (202) 482–0115 (for communication purposes only; facsimile applications will not be accepted).

SUPPLEMENTARY INFORMATION:

Background

Various Commerce Commercial Sections abroad recently identified the overseas trade shows listed below as good opportunities for U.S. exporters and as viable candidate events for Commerce's Trade Fair Certification Program. These shows are in addition to the many other trade fairs identified as candidates for Certification by Commerce, but which already have existing U.S. representation. The subject shows also are in addition to unsolicited applications and repeat requests for Certification that Commerce normally receives on an ongoing basis. One of the principal requirements for Certification is the presence of a U.S. organizer, or a U.S. representative, office, or subsidiary of the foreign show organizer. The shows listed below currently have no U.S. representative or other U.S. recruiting presence.

Commerce is interested in entertaining applications to have these events considered for Certification. Commerce's Certification program is a cooperative arrangement between private sector show organizers and the Department. The program provides Commerce endorsement and support for promoting private sector-recruited and organized foreign trade shows. Certifying a trade show means Commerce, through its U.S. and Foreign Commercial Service (US&FCS), "certifies" or endorses a qualified foreign trade event as a good opportunity to promote U.S. exports, particularly those of new-to-market firms. Certification also provides recognition of the U.S. show organizer or representative as a reliable firm capable of effectively recruiting and managing a U.S. exhibitor presence at a specific show.

Qualified U.S. firms interested in representing, promoting, and recruiting for the following events in the United States, and in applying for Certification, must contact the foreign organizers directly to discuss formalizing a business relationship for representing the subject shows.

Qualifying U.S. representatives must be firms or persons experienced in trade fair recruitment and management in the relevant industry. Applicants for Certification must comply with the provisions of the Trade Fair Certification Program as prescribed in the **Federal Register** notice (58 FR, 26116–26119), April 30, 1993, which provides all the applicable event and organizer criteria. A copy of this notice and an application for Trade Fair Certification may be obtained by contacting the office listed above.

Commerce's identification of these events as good candidates for Certification does not imply automatic Certification award status. Applications will be subject to the same review process as are all other applications. Commerce's listing of these events also does not imply any responsibility on its part with regard to any agreement made between U.S. representatives and the overseas show organizers.

Targeted Certified Trade Shows

The following show organizers seek qualified U.S. representatives to promote and recruit U.S. exhibitors for the subject shows:

A. Trade Show: Salon De L'Etudiant
City, Country: Paris, France
Date: March 14–18, 1994
Industry: Education Services
Organizer: L'Etudiant, 27, Rue Du Chemin Vert, 75011 Paris, France, Tel: 33–1–48–07–41–41, Fax: 33–1–48–07–02–92

B. Trade Show: Australian International Engineering Exhibition (AIEE)
City, Country: Sydney, Australia
Date: May 22–26, 1994
Industry: Engineering, Electrical, and Process Control Instrumentation
Organizer: Mr. Rod Larkin, Managing Director, Thomson World Trade Exhibitions, 140 William Street, Sydney, N.S.W. 2011, Australia, Tel: 61–3–357–7555, Fax. 61–3–357–3020

C. Trade Show: Kobe International Home Fair
City, Country: Kobe, Japan
Date: June 3–6, 1994
Industry: Building materials and related products for the residential market.
Organizer: D. Mitoru Kikuchi, World Import Mart, Co., Ltd., 3–1–3 Higashi-Ikebukuro, Toshima-ku, Tokyo 170, Japan, Tel: 81–3–3987–3161, Fax: 81–3–3981–8371

D. Trade Show: International Chemical Industry Fair
City, Country: Beijing, China
Date: September 15–20, 1994
Industry: Chemical Industry
Organizer: Ms. Peng Qingzhi, Ministry of Chemical Industry, China Council for the Promotion of International Trade, Tel: 861–466–4433 ext. 2042, Fax: 861–466–7303

Dated: June 18, 1993.

Ann H. Watts,

Director, Cooperative Events Division, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 93–14985 Filed 6–24–93; 8:45 am]

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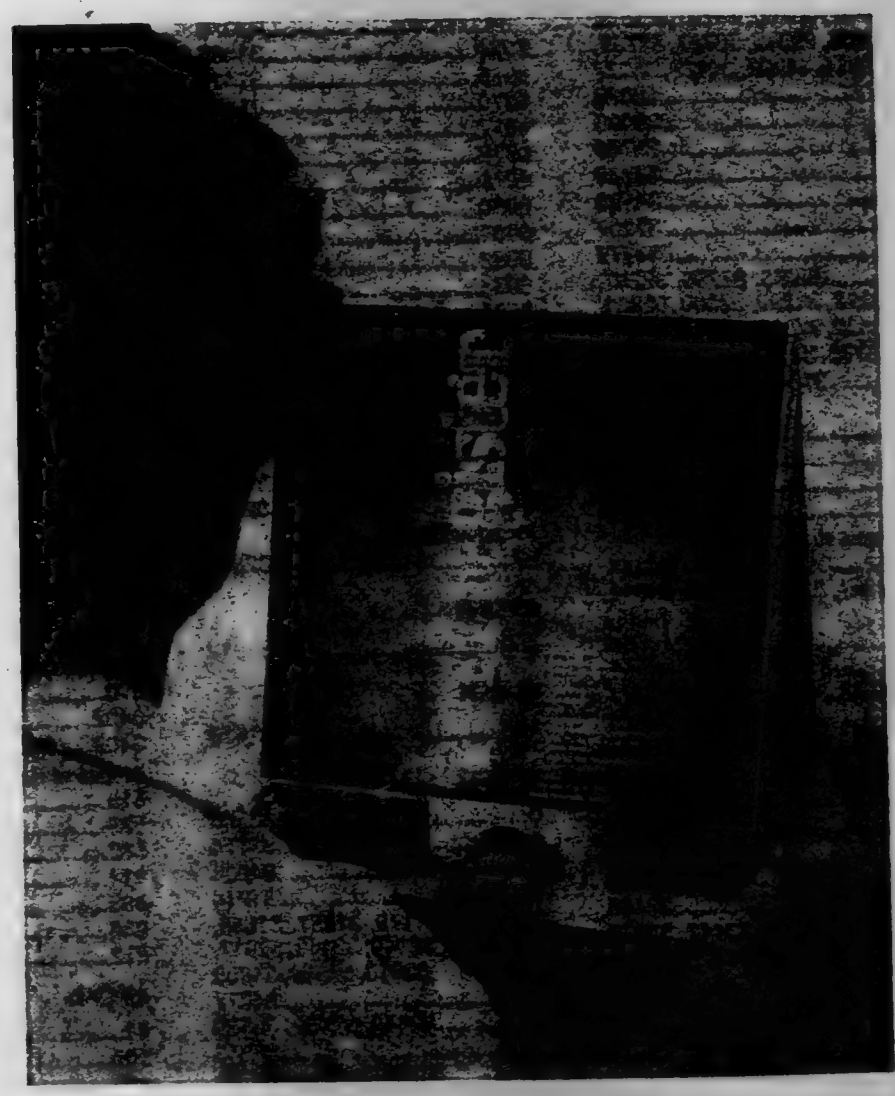

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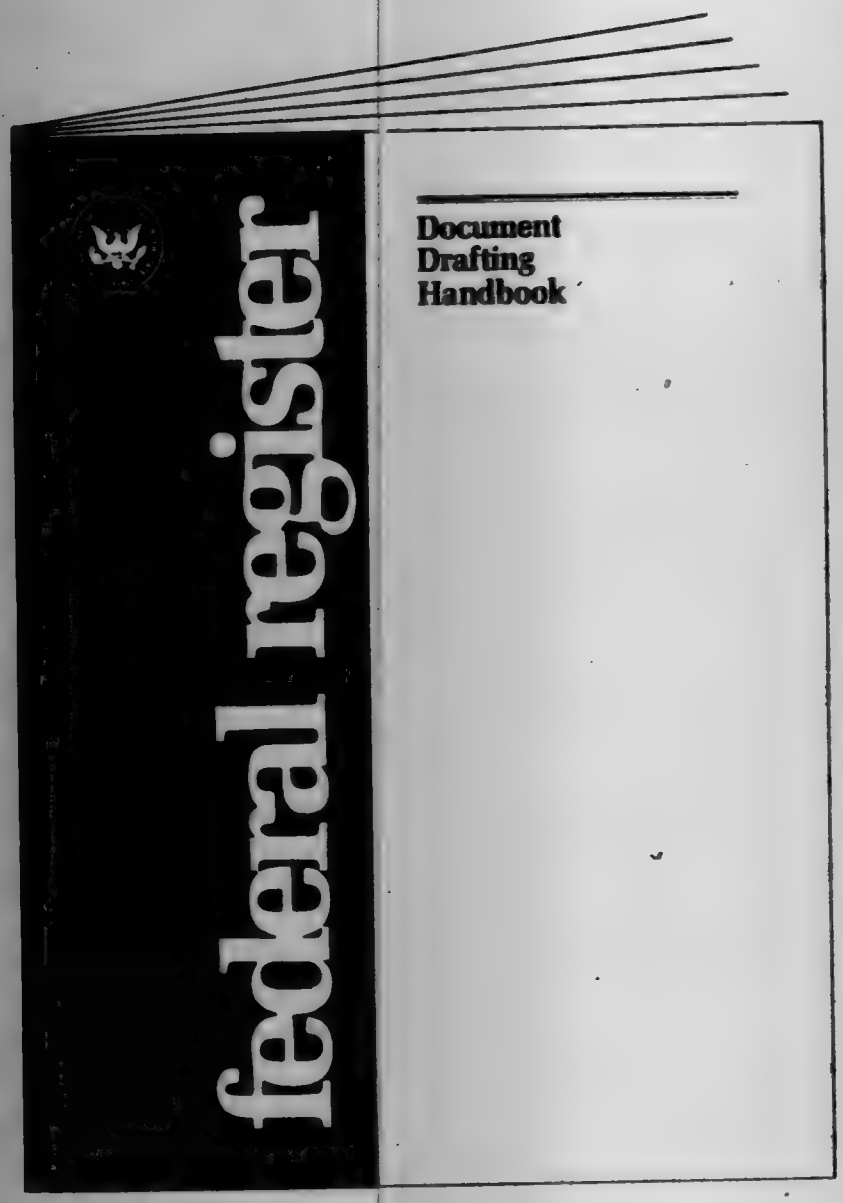

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Presidential Documents

Title 3—

The President

Memorandum of June 23, 1993

Delegation of Reporting Function

Memorandum for the Secretary of Energy

By virtue of the authority vested in me by the Constitution and the laws of the United States, including section 301 of title 3 of the United States Code, I hereby delegate to you the authority to transmit to the Congress the annual report describing the activities of the Federal Government as required by subtitle H, title V of the Energy Security Act (Public Law 96–294; 42 U.S.C. 8286, *et seq.*).

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 23, 1993.

[FR Doc. 93–15309
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–32; Amendment 39–8600; AD 93–11–03]

Airworthiness Directives; Teledyne Continental Motors Models O–200A, O–300A, O–300C, and O–300D Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 93–11–03 that was sent previously to all known U.S. owners and operators of Teledyne Continental Motors (TCM) Models O–200A, O–300A, O–300C, and O–300D reciprocating engines by individual letters. This AD requires inspection to determine if an incorrect connecting rod is installed, and replacement, if necessary, with serviceable parts. This amendment is prompted by 5 reports of TCM O–200 and O–300 series reciprocating engines shipped from the factory with an IO–360 series connecting rod installed. The actions specified by this AD are intended to prevent failure of the connecting rod which can result in engine failure.

DATES: Effective July 13, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 93–11–03, issued on June 1, 1993, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before August 27, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–32, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, suite 210C, Atlanta, GA 30349; telephone (404) 991–3810; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: On June 1, 1993, the Federal Aviation Administration (FAA) issued priority letter AD 93–11–03, applicable to Teledyne Continental Motors (TCM) Models O–200A, O–300A, O–300C, and O–300D reciprocating engines, which requires inspection to determine if an incorrect connecting rod is installed, and replacement, if necessary, with serviceable parts. That action was prompted by 5 reports of TCM O–200 and O–300 series reciprocating engines shipped from the factory with an IO–360 series connecting rod installed. The IO–360 series connecting rod is the same length as the O–200 and O–300 series connecting rods but the piston pin bushing is a slightly larger diameter: 1.000 inches vs. 0.923 inches, creating an improper fit. There are 93 TCM models O–200A, O–300A, O–300C, and O–300D engines that are suspected to contain incorrect connecting rods. The FAA has determined that engine failure from an incorrect connecting rod will likely occur within 100 hours time in service (TIS) from installation of the incorrect connecting rod. Therefore, this AD does not require inspection of engines with more than 100 hours TIS from new, rebuild, or overhaul, on the effective date of the AD. This condition, if not corrected, can result in failure of the connecting rod which can result in engine failure.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 93–11–03 to prevent failure of the connecting rod which can result in engine failure. The AD requires inspection to determine if an incorrect connecting rod is installed, and replacement, if necessary, with serviceable parts.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on June 1, 1993, to all known U.S. owners and operators of TCM Models O–200A, O–300A, O–300C, and O–300D reciprocating engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–32." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the

national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-11-03 Teledyne Continental Motors: Amendment 39-8600. Docket 93-ANE-32.

Applicability: Teledyne Continental Motors (TCM) Models O-200A, O-300A, O-300C, and O-300D reciprocating engines with the following serial numbers:

New O-200A: 256005 through 256009, 256011 and 256012;
Rebuilt O-200A: 281313-R, 281316-R, 281319-R through 281323-R, 281325-R through 281327-R, 281329-R, 281331-R, 281335-R, 281338-R, 281340-R, 281342-R, 281344-R, 281345-R, 281347-R, 281350-R, 281354-R, 281356-R, 281358-R, 281359-R, 281364-R, 281367-R, 281372-R through 281375-R, 281385-R, 281389-R, 281394-R, 281398-R, 281405-R, 281407-R, 281409-R, 281410-R, 281416-R, 281419-R through 281423-R, 281427-R, 281428-R, 281433-R, 281435-R, 281436-R, 281438-R, 281440-R, 281444-R through 281446-R, 281457-R, 281459-R through 281461-R, 281463-R, 281464-R, 281472-R, 281476-R, 281479-R, 281494-R, 285002-R, and 285005-R;
Factory Overhauled O-200A: 242663-H, 252848-H, 254252-H, 255170-H, 255210-H, and 255984-H;
Rebuilt O-300A: 16107D-R and 16108D-R;
Rebuilt O-300C: 230815-R;
Rebuilt O-300D: 25356-R, 25363-R, 25622D-R, 29680-R, 29723-R, 35774-R, 35977-R, and 35978-R;
Factory Overhauled O-300D: 27903-H, 29712-H, and 29899-H. These engines are installed on but not limited to: Aeronca Models 15AC and S15AC; American Champion (Bellanca) Models 7ECA and 402; Cessna 150, 170, and 172 series; Maule Models Bee Dee M-4, M-4, M-4C, M-4S, and M-4T; and Taylorcraft Model F-19 aircraft.

Compliance: Required prior to further flight, unless accomplished previously.

To prevent engine failure from an incorrect connecting rod, accomplish the following:

(a) For engines that have less than 100 hours time in service (TIS), or unknown TIS, on the effective date of the AD since new, rebuild, or factory overhaul, accomplish the following:

(1) With the engine cold, remove the engine cowling, ground both magnetos, and remove the top spark plugs.

(2) Taking each cylinder in turn:

(i) Position each piston at about 60 degrees before top dead center.

(ii) Insert a small brass rod into the spark plug bore until contact with the top of the piston is achieved.

(iii) Holding the brass rod against the top of the piston, move the propeller back and forth about 30 degrees in a rocking motion to move the crankshaft.

(iv) By observing the brass rod move, ascertain that piston movement responds immediately and synchronously to connecting rod/crankshaft movement; that is, the brass rod must move immediately upon moving the crankshaft.

(v) While checking for synchronous movement between the piston and the crankshaft, there must be no audible indication of differential movement between the piston and the connecting rod/crankshaft.

(3) If for any cylinder, piston movement does not respond immediately and synchronously to crankshaft movement, or if there is an audible indication of differential movement between the piston and the connecting rod/crankshaft, replace the connecting rod with the correct serviceable part for that model engine, and inspect for serviceability, and replace as necessary, other applicable engine parts.

(b) For engines that have 100 hours or more TIS on the effective date of this AD, since new, rebuild, or factory overhaul, no inspection is required.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) This amendment becomes effective July 13, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 93-10-03, issued June 1, 1993, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on June 17, 1993.

Michael H. Borfitz,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93-15146 Filed 6-25-93; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 93-44]

Certifications Under Strategic and Critical Materials Stock Piling Act; Conforming Amendment

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide, in conformance with current law and administrative practice, that the Defense Logistics Agency is the proper party to certify that imported goods have been acquired under the Strategic and Critical Materials Stock Piling Act, and are thus entitled to duty-free entry under the Harmonized Tariff Schedule of the United States. Also, the Customs Regulations are further amended to reflect a recodification of the stockpile procurement and management authorities under the Act.

EFFECTIVE DATE: June 28, 1993.

FOR FURTHER INFORMATION CONTACT: Roland L. Bernier, Collections/Statistics Branch, Office of Trade Operations, (202) 927-0051.

SUPPLEMENTARY INFORMATION:

Background

Under the Strategic and Critical Materials Stock Piling Act, 50 U.S.C. 98

et seq. (the Act), stocks of certain materials identified as strategic and critical to the military, industrial and essential civilian needs of the United States may be acquired in advance, and retained and managed, for purposes of national defense, in order to decrease and, when possible, preclude a dangerous and costly dependence by the U.S. upon foreign sources for supplies of such materials during times of national emergency. Materials procured for this purpose constitute the "National Defense Stockpile" (50 U.S.C. 98b).

As stated in § 10.102(b)(2), Customs Regulations (19 CFR 10.102(b)(2)), imported merchandise procured in accordance with the Act is entitled to free entry under subheading 9808.00.40, Harmonized Tariff Schedule of the United States (HTSUS). Both this HTSUS subheading as well as § 10.102(b)(2) currently require the General Services Administration (GSA) to certify that such imported goods are strategic and critical materials acquired under the Act, in order to entitle them to free entry.

In this latter connection, the Act, prior to 1979, specified that the GSA had responsibility for the procurement and management of such stockpile materials. As referenced in § 10.102(b)(2), these authorities were codified at 50 U.S.C. 98b.

In 1979, however, Congress substantially revised the Act, vesting the stockpile procurement and management authorities directly in the President, and recodifying such authorities at 50 U.S.C. 98e (Pub. L. 96–41, 93 Stat. 319).

While the President thereafter redelegated these authorities back to the GSA, Congress, in 1986, again amended the Act to require the President to appoint a "National Defense Stockpile Manager" (50 U.S.C. 98h–7), and, pursuant to this, by Executive Order (E.O.) 12626 dated February 25, 1988, the President appointed the Secretary of Defense to act in this capacity, delegating to the Secretary the stockpile procurement and management authorities set forth in 50 U.S.C. 98e. The Secretary of Defense subsequently redelegated these authorities within the Department of Defense, specifically to the Defense Logistics Agency (DLA). As a result, despite the outdated references to the GSA in subheading 9808.00.40, HTSUS, and § 10.102(b)(2), it is now Customs policy and practice to accept such certifications directly from the DLA.

Accordingly, in order to keep pace with these changes, Customs has determined to remove the references in § 10.102(b)(2) to the "General Services Administration" and to "50 U.S.C. 98b", wherever appearing therein, and to add, in place thereof, the "Defense Logistics Agency" and "50 U.S.C. 98e", respectively.

In addition, the DLA has agreed to coordinate with Customs in order to correct the aforecited HTSUS provision.

Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12291

Inasmuch as these amendments merely conform the Customs Regulations to existing law and administrative practice as noted above, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary, and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These amendments do not meet the criteria for a "major rule" as defined in E.O. 12291; therefore, a regulatory impact analysis is not required thereunder.

Drafting Information

The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Reporting and recordkeeping requirements.

Amendments to the Regulations

Part 10, Customs Regulations (19 CFR part 10), is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

§ 10.102 [Amended]

2. Section 10.102(b)(2) is amended by removing the references to "General Services Administration" and to "50 U.S.C. 98b", wherever appearing therein in the heading and the text, and by adding, in place thereof, "Defense Logistics Agency" and "50 U.S.C. 98e", respectively.

George J. Weise,
Commissioner of Customs.

Approved: June 18, 1993.

John P. Simpson,
Acting Assistant Secretary of the Treasury.

[FR Doc. 93–15145 Filed 6–25–93; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 511

Increase in the Per Diem Allowance Paid to Members of the Special Industry Committee

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document increases the per diem allowance that is paid to members of special industry committees in American Somoa to the rate specified in Chapter 304 of the Department of Labor Supplement to the Federal Personnel Manual. The latest increase is in accordance with changes in General Schedule salary rates effective January 10, 1993, for regular employees of the U.S. Government.

The industry committee, whose members are appointed by the Secretary of Labor and includes representatives of employees, employers, and the public, meets periodically pursuant to the Fair Labor Standards Act (FLSA), to review the wage rates in various industries and to recommend minimum wage increases where appropriate. The FLSA authorizes the establishment of minimum wage rates in American Samoa, that may be lower than the mainland minimum wage rate, by special industry committee recommendation.

EFFECTIVE DATE: June 28, 1993.

FOR FURTHER INFORMATION CONTACT: Charles E. Pugh, Acting Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–5409. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: It is standard practice to compensate special industry committee members for each day actually spent in the work of the committee and to adjust such compensation in accordance with changes in General Schedule salary rates. This notice increases the

compensation of each member of the special industry committee to the rate specified in Chapter 304 of the Department of Labor Supplement to the Federal Personnel Manual in accordance with changes in General Schedule salaries effective January 10, 1993. It should be noted that the language of the amendment references the section of the Federal Personnel Manual containing the increased per diem rate for experts and consultants rather than referencing the rate itself. This change eliminates the necessity of publishing a final rule amending the regulations to reflect an increased per diem rate each time an industry committee convenes.

As this amendment concerns only a rule of agency practice and is not substantive, having only a minimal impact on the interests of the general public, notice of proposed rulemaking and opportunity for public participation are not required by 5 U.S.C. 553. Furthermore, good cause is found to make the regulation effective immediately in order that industry committee members may be afforded the benefit of the revised rates for the hearing scheduled to commence the week of June 7, 1993. Accordingly, this revision shall be effective immediately.

Paperwork Reduction Act

The changes made by this notice impose no reporting or recordkeeping requirements on the public.

Executive Order 12291

The rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under 5 U.S.C. 553(b), the requirement to prepare regulatory flexibility analyses does not apply.

This document was prepared under the direction and control of Charles E. Pugh, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 511

Administrative practice and procedure, American Samoa, Minimum wages, Wage and hour division.

For the reasons set out in the Preamble, part 511 of chapter 5 of Title 29 of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, DC, on this 22nd day of June 1993.

Charles E. Pugh,

Acting Administrator, Wage and Hour Division.

PART 511—WAGE ORDER PROCEDURE FOR AMERICAN SAMOA

1. The authority citation for part 511 continues to read as follows:

Authority: Secs. 5, 6, 8, 52 Stat. 1062, 1064 (29 U.S.C. 205, 206, 208) secs. 2–12, 60 Stat. 237–244; (5 U.S.C. 1001–1011). Section 4 is issued under sec. 5, 52 Stat. 1062 as amended (29 U.S.C. 205).

2. Section 511.4 is revised to read as follows:

§ 511.4 Compensation of committee members.

Each member of an industry committee will be allowed per diem compensation at the rate specified in Chapter 304 of the Department of Labor Supplement to the Federal Personnel Manual for each day actually spent in the work of the committee, and will, in addition, be reimbursed for necessary transportation and other expenses incident to traveling in accordance with Standard Government Travel Regulations then in effect. All travel expenses will be paid on travel vouchers certified by the Administrator or an authorized representative. Any other necessary expenses that are incidental to the work of the committee may be incurred by the committee upon approval of, and shall be paid upon, certification of the Administrator or an authorized representative.

[FR Doc. 93–15095 Filed 6–25–93; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG21

Special Allowance To Restore Certain Social Security Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has adopted regulations concerning entitlement to benefits under the Restored Entitlement Program for Survivors (REPS). These benefits are authorized by statute to replace social security benefits which were available to surviving spouses and children of certain persons who died as a result of service-connected disabilities but which were eliminated under prior legislation. This amendment will change from eleven months to six months after the initial month of eligibility the period during which claimants must apply in order to receive benefits from the first day of the month in which eligibility arose. It also provides for the provision of equitable relief to certain persons who may have relied on the former regulation. The intended effect of this amendment is to bring VA regulations into conformance with the statutory provisions pertaining to entitlement to REPS benefits.

EFFECTIVE DATE: This amendment is effective June 28, 1993.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1981 amended title 42, United States Code, to discontinue payment of the social security mother's and child's insurance benefits at the point at which the child reached age sixteen. Previously, such benefits had terminated when the child reached age eighteen. Section 156 of Public Law 97–377 restored such benefits for surviving spouses and children of individuals who died on active duty prior to August 13, 1981, or died as a result of service-connected disability incurred or aggravated prior to that date. This law, which established the REPS, provided that payment of the mother's and child's benefits would be in the amount, if any, that beneficiaries would have received under section 202 of the Social Security Act (codified at 42 U.S.C. 402) if the child were under sixteen years of age. Section 202(j) of the Social Security Act provides that the mother's (or father's) and child's benefits may be paid from the beginning of the first month in which eligibility arose, where application for benefits is filed prior to the end of the sixth month immediately succeeding that month.

VA issued an implementing regulation, codified at 38 CFR 3.812(f)(2), providing that benefits could

be paid from the first day of the month in which the claimant first became eligible, if application was filed within eleven months following that month. However, in view of the *sua sponte* ruling by the Court of Veterans Appeals in *Cole* v. *Derwinski*, U.S. Vet. App. No. 89–30 (judgment entered July 27, 1992), invalidating this regulation, VA reviewed the statutory authority for payment of benefits under this program. As a result of this review, we now believe that the six-month application period for payment of benefits from the month in which eligibility arose, provided by the social security statutes, must be applied under the REPS program. This amendment corrects the regulation in this regard.

Since the provisions of the Social Security Act require that application be filed within six months after the month in which eligibility arose in order for payment to be made from that month, there was no authority under section 156 to make such payment to those persons who applied after six months but before eleven months from the month in which eligibility arose. However, persons who have been paid benefits pursuant to 38 CFR 3.812(f)(2) from the month in which eligibility arose, based on applications filed within eleven months, but not within the six months, of that month, will be permitted to keep those benefits since payment was based on administrative error and, under 38 U.S.C. 5112(b)(10) and 38 CFR 3.500(b)(2), the effective date for reduction of benefits in such situations is the date of last payment. We realize that there may be persons who first became eligible for REPS benefits within eleven months prior to the month in which this amendment became effective but who did not or will not apply for benefits within the required six-month period because of reliance upon the eleven-month filing period specified in the former regulation. This amendment establishes a policy under which equitable relief will be provided to such persons under 38 U.S.C. 503(a), if they can establish to the satisfaction of the Secretary that they did not make application within the required six-month period due to reliance on the former regulation. Section 503(a) authorizes the Secretary to provide equitable relief to persons denied benefits by reason of administrative error on the part of the Federal Government.

VA is issuing a final rule to amend the provisions of 38 CFR 3.812(f)(2). This amendment is necessary to make the regulatory provisions concerning restored entitlement pursuant to section 156 of Public Law 97–377 conform with the statute. The portion of the amendment which changes from eleven months to six months after the month in which eligibility arose the period during which claimants must apply in order to receive benefits from that month is an interpretative rule. The portion of the rule which authorizes equitable relief to certain persons who relied upon the prior regulatory provision is a general statement of VA policy. Under these circumstances, publication as a proposal for public notice and comment is unnecessary pursuant to the exception provided in 5a U.S.C. 553(b)(A). Also, in accordance with 5 U.S.C. 553(d)(2), this rule is effective on the date of its publication in the Federal Register.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602. In any event, the Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601–612. The reason for this certification is that this amendment will not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order No. 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more;

(2) It will not cause a major increase in costs or prices; and,

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is no affected Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: March 17, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.812 [Amended]

2. In § 3.812, remove the words "11 months" in paragraph (f)(2) and add, in their place, the words "6 months"; redesignate paragraph (f)(4) as paragraph (f)(5), and add a new paragraph (f)(4); and revise the authority citation at the end of the section to read as follows:

§ 3.812 Special allowance payable under section 156 of Pub. L. 97–377.

* * * * *

(f) * * *

(4) Any claimant who meets all of the requirements of paragraphs (f)(4)(i), (ii), and (iii) of this section will be granted equitable relief under the authority of 38 U.S.C. 503(a) in the amount of the special allowance the claimant would have received had the claimant applied for the special allowance within 6 months following the month in which the claimant first became eligible for the special allowance.

(i) The claimant first became eligible for this special allowance within 11 months prior to June 1993;

(ii) The claimant applies for benefits more than 6 months following the month in which becoming eligible for the special allowance; and,

(iii) The claimant establishes to the satisfaction of the Secretary that the claimant did not apply for the special allowance within the 6-month period following the month in which first becoming eligible due to reliance on the former provision of paragraph (f)(2) of this section which stated that for claims received within 11 eleven months of the month in which the claimant first became eligible for the special allowance benefits would be payable for all periods beginning on or after the first day of the month that the claimant first became eligible for the special allowance.

* * * * *

(Authority: Sec. 156, Pub. L. 97–377, 96 Stat 1830, 1920 (1982); 38 U.S.C. 503)

[FR Doc. 93–15165 Filed 6–25–93; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AF34

Veterans Education; Implementation of Legislation Affecting the Post-Vietnam Era Veterans' Educational Assistance Program

AGENCY: Department of Defense and Department of Veterans Affairs.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published Monday, June 7, 1993 (58 FR 31910). The regulations implemented provisions of the Act to amend title 38, United States Code, which was enacted on March 31, 1991.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, 202–233–2092.

SUPPLEMENTARY INFORMATION:

Background

The final regulations which are the subject of these corrections implemented provisions of Public Law 102–16 which apply to the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP). Chief among these was one which included flight training in this program.

Need for Correction

As published the regulations contain incorrect references to other regulations. These may prove to be misleading and need to be corrected.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

1. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In § 21.5072(h)(1) in the first sentence the phrase "§ 21.5138(a)(4)(viii)" is revised to read "§ 21.5138(a)(5)(viii)".

3. In § 21.5072(h)(2) in the second sentence the phrase "§ 21.5138(a)(4)(viii)" is revised to read "§ 21.5138(a)(5)(viii)"

Approved: June 21, 1993.

Marjorie M. Leandri,

Chief, Records, Reports, and Regulations Division.

[FR Doc. 93–15105 Filed 6–25–93; 8:45 am]

BILLING CODE 6320–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV8–1–5680; A–1–FRL–4653–9]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Particulate Matter (PM–10): Group III Areas State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of West Virginia. This revision establishes and requires the implementation of primary and secondary particulate matter standards consistent with the national ambient air quality standards (NAAQS) for particulate matter (PM–10). The intended effect of this action is to approve three (3) regulations, amended by West Virginia in order to conform with the requirements established for Group III areas for PM–10 published in the **Federal Register** on July 1, 1987. This action is being taken under Section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective August 27, 1993, unless notice is received by July 28, 1993, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and West Virginia Department of Commerce, Labor, and Environmental Resources Department of Environmental Protection Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia 25311.

FOR FURTHER INFORMATION CONTACT: David J. Campbell, (215) 597–9781.

SUPPLEMENTARY INFORMATION: On August 15, 1990, the West Virginia Department of Commerce, Labor, and Environmental Resources submitted to EPA a revision to the West Virginia State Implementation Plan (SIP) to achieve and maintain the national ambient air quality standards (NAAQS) for particulate matter (PM–10). The revision consists of: (1) An amended Regulation VII—"Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter"; (2) An amended Regulation XI—"Prevention of Air Pollution Emergency Episodes"; and (3) An amended Regulation XIV—"Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration".

August 15, 1990 submittal is consistent with the SIP revision requirements as detailed in the July 1, 1987 **Federal Register** notice (52 FR 24672). The amended West Virginia regulations are consistent with the NAAQS for PM–10, and specify:

- PM–10 as an indicator of particulate matter.
- Exceedance levels.
- Reference methods for measurement of PM–10.
- Emergency episode plan revisions to include PM–10.
- Prevention of Significant Deterioration (PSD) regulation standards for both PM–10 and Total Suspended Particulate (TSP), with standards for emission rates and significant monitoring concentrations.

Summary of SIP Revision

On July 1, 1987, EPA promulgated national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10) (52 FR 24634). The PM–10 standards replace the total suspended particulate (TSP) standards promulgated by EPA in 1971. Also on July 1, 1987, EPA promulgated changes to the policies and regulations by which it will implement the NAAQS for PM–10 in 40 CFR Parts 51 and 52 (52 FR 24672).

Using the classification criteria established at 52 FR 24672, EPA has

preliminarily designated areas within each state as Group I, II, or III based upon an area's probability of attaining the PM–10 standard. The July 1, 1987 **Federal Register** notice requires State Implementation Plan (SIP) revisions for all classified Group I, II, and III areas and indicates the SIP revision requirements for each classification.

On August 7, 1987, the State of West Virginia was classified at 52 FR 29383 as follows:

Group I—
Brooke County—Follansbee Area
Group II—
Hancock County
Remainder of Brooke County not in Group I
Group III—
All other Areas not classified as Group I or Group II.

The Clean Air Act, as subsequently amended in 1990 ("the Act"), affects these classifications, and the associated requirements, in a number of ways. First, the Group I area identified as the "Follansbee Area" was classified as a "moderate" nonattainment area for PM–10 by operation of law according to amended section 107(d)(4)(B)(i) of the Act. As a result of this nonattainment designation, the State of West Virginia was required to submit to EPA a SIP revision and attainment demonstration for the Follansbee Area by November 15, 1991 pursuant to amended section 189(a)(2)(A) of the Act. West Virginia submitted the required SIP revision and attainment demonstration to EPA on November 15, 1991 and the submittal is currently being considered under a separate rulemaking. The requirements of the amended Act superseded those established for Group I areas in the **Federal Register** on July 1, 1987.

The amended Act also eliminated the need for states to seek approval of "committal" SIP revisions for Group II areas as prescribed in the July 1, 1987 **Federal Register** notice. The Group II areas are to be addressed using the authorities established in section 107 of the Act concerning the classification of areas as attainment or nonattainment with regard to the NAAQS. On September 22, 1992, a portion of Hancock and Brooke Counties, West Virginia, namely the City of Weirton, was proposed to be classified as a "moderate" nonattainment area for PM–10 under amended section 107 of the Act (57 FR 43846). This represents the Group II area identified above. If this area is designated as nonattainment under a final rulemaking action, the State of West Virginia will be required to submit to EPA a SIP revision and attainment demonstration for the nonattainment area within 18 months of the final designation to nonattainment. Therefore, the Act also supersedes the Group II requirements.

The Act did not affect the requirements established for Group III areas. The July 1, 1987 **Federal Register** notice requires states to seek approval of SIP revisions as required under the preconstruction review program and to codify other minor regulatory changes as needed. In the July 1, 1987 **Federal Register** notice, it is presumed that the existing West Virginia SIP is adequate to demonstrate attainment and maintenance of the NAAQS for PM–10 in all Group III areas in the State. On August 15, 1990, the State of West Virginia responded to the July 1, 1987 **Federal Register** by submitting three (3) regulations amended to reflect the revised particulate matter standards as a SIP revision. This SIP revision addresses Group III areas only.

EPA Evaluation

EPA has evaluated West Virginia's SIP revision request and concluded the following: (1) The amended regulations conform with the revised primary and secondary NAAQS for PM–10; (2) the amended regulations are clearly enforceable; and (3) the applicable requirements of 40 CFR Part 51 have been met. A more detailed evaluation is provided in the Technical Support Document available upon request from the regional EPA office listed in the ADDRESSES section of this notice.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on August 27, 1993.

Final Action

EPA is approving the three (3) regulations submitted by the West Virginia Department of Commerce, Labor, and Environmental Resources as a revision to the West Virginia SIP. EPA's review of this material indicates that it conforms to the requirements of 40 CFR parts 51 and 52, and to the July 1, 1987 promulgation of NAAQS for PM–10 in the **Federal Register**.

The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis for would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

This SIP revision establishing revised particulate matter standards in West Virginia has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue that temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 27, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 28, 1993.

William M. Bulman,

Acting Regional Administrator, Region III.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(28) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(28) Revisions to the State Implementation Plan submitted by the West Virginia Department of Commerce, Labor, and Environmental Resource on August 15, 1990.

(i) Incorporation by reference.

(A) Letter from the West Virginia Department of Commerce, Labor, and Environmental Resources dated August 15, 1990 submitting a revision to the West Virginia State Implementation Plan.

(B) Amendments to the West Virginia Code Chapter 16, Article 20—Regulation VIII—"Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter"; Regulation XI—"Prevention of Air Pollution Emergency Episodes"; and Regulation XIV—" Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration". All three rules were adopted on March 19, 1990 and became effective April 25, 1990.

(ii) Additional materials.

(A) Remainder of the State Implementation Plan revision request submitted by the West Virginia Department of Commerce, Labor, and Environmental Resources on August 15, 1990.

[FR Doc. 93–15090 Filed 6–25–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[WI24–2–5845; FRL–4654–5]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving Wisconsin particulate matter rules as a revision to Wisconsin's State Implementation Plan (SIP) for particulate matter. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act.

DATES: This action will be effective August 27, 1993, unless notice is received within 30 days that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Daniel Meyer at (312) 886–9401, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: Carlton Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of today's revision to the Wisconsin SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Daniel Meyer, Air Toxics and Radiation Branch, Regulation Development Section (AT–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–9401.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On July 1, 1987, USEPA adopted regulations revising the national ambient air quality standard for PM. In its revision, USEPA replaced total suspended particulates (TSP) as an indicator for the PM standard with a new indicator that only includes those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. To implement the revised ambient standards, USEPA requires that states revise their SIPs in accordance with the revised federal regulations.

On March 13, 1989, Wisconsin Department of Natural Resources (WDNR) submitted rule package AM–2–88. AM–2–88 modifies Chapter NR, Sections 400.02, 404.02, 405.02, 406.04, and 484.03 of the Wisconsin Administrative Code (WAC). AM–2–88 pertains to changes in definitions for the establishment of an ambient air quality standard for PM. The rule package also includes a modification to the criteria which are used to exempt sources from a Prevention of Significant Deterioration review. Similarly on May 10, 1990, WDNR submitted rule package AM–22–88. AM–22–88 modifies Chapter NR, Sections 404.04 and 484.03 of the WAC. AM–22–88 pertains to PM standards, including the addition of ambient air quality standards for PM, and the deletion of TSP as an indicator of particulate matter. Both rule packages have been submitted as revisions to the SIP.

On December 23, 1992, USEPA proposed to disapprove the two rule packages as a revision to the Wisconsin SIP. The basis for this disapproval was the inclusion of certain provisions which appeared to permit the exercise of State discretion without USEPA approval. In response, WDNR submitted comments on January 22, 1993.

II. Analysis of State Submittal

The two packages are being considered for approval/disapproval as one interrelated revision to the SIP. Essentially, AM–2–88 defines PM, while AM–22–88 establishes standards for PM. Many of the definitions presented in AM–2–88 incorporate determinations to be made in the future by the exercise of WDNR discretion, without requiring USEPA review and approval of any resulting determination. For instance, AM–2–88 allows for the PM attainment status to be determined not only by the monitoring methodology approved by USEPA, but also by the use of

monitoring methodology established by WDNR (but not approved by USEPA). However, in WDNR's January 22, 1993, comments, Wisconsin specifies the USEPA test methods it utilizes to measure PM, and maintains it only uses test methods approved by USEPA. In addition, the State commits to obtaining prior USEPA approval for test methods not approved by USEPA. USEPA finds this commitment acceptable.

In addition, Rule NR 484.03(3) is incorrectly cited in Wisconsin's submission as NR 484.06(3). The citation has since been corrected in the WAC.

This notice approves Wisconsin's revision.

III. Rulemaking Action

USEPA is approving the Wisconsin particulate matter rules as a revision to the Wisconsin SIP. Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on August 27, 1993. However, if we receive notice by July 28, 1993, that someone wishes to submit adverse comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The Agency has reviewed this request for revision of the federally approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 27, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 11, 1993.

Valdas V. Adamkus,

Regional Administrator.

For the reasons cited in the preamble, 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(65) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(65) On March 13, 1989, and May 10, 1990, Wisconsin Department of Natural Resources (WDNR) submitted rule packages AM–2–88 and AM–22–88, respectively, as revisions to its state implementation plan for particulate matter. AM–2–88 was published in December, 1988, and became effective on January 1, 1989. AM–2–88 modifies Chapter NR, Sections 400.02, 404.02, 405.02, 406.04, and 484.03 of the Wisconsin Administrative Code (WAC). AM–22–88 was published in September, 1989, and became effective on October 1, 1989. AM–22–88 modifies Chapter NR, Sections 404.04 and 484.03 of the WAC.

(i) Incorporation by reference.

(A) The rule packages revise NR 400.02, 404.02, 404.04, 405.02, 406.04, and 484.03 of the Wisconsin Administrative Code.

(ii) Additional information.

(A) A January 22, 1993, letter from D. Theiler, Director, Bureau of Air Management, WDNR, provides additional information responding to USEPA's proposed disapproval of the SIP revision, and contains WDNR's commitment to using only test methods approved by USEPA.

[FR Doc. 15089 Filed 6–25–93; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 52

[MN3–1–5107; FRL–4657–9]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: With the publication of this action, USEPA is taking three actions. First, the USEPA is approving a revision to the Minnesota State Implementation Plan (SIP) for carbon monoxide (CO) submitted by the State on August 31, 1989, which removes the Lake George Interchange roadway improvement project (10th Avenue at First Street South) in St. Cloud, Minnesota, from the CO SIP. This measure was approved on December 13, 1979, into the CO SIP. Second, the USEPA is approving three transportation control measures (TCMs): (Enforcement of an existing ban on

double parking and extended idling on St. Germain corridor, removal of signs which encourage using the West St. Germain corridor and development of a signing plan directing through traffic to alternate routes, and creation of left-hand turns on Division Street between 19½ and 31st Avenues to decrease traffic congestion) mentioned in the State's August 16, 1982, SIP revision. Third, the USEPA is disapproving two TCMs proposed in the 1982 CO SIP submittal as two of five TCMs which would provide emission reductions during a requested one year delay in implementing the Lake George Interchange roadway improvement project. Since the delay has been superseded by a request for removal, these TCMs are no longer relevant and would serve no purpose in the CO SIP. The disapproved TCMs include the following: Implementation of a media campaign designed to encourage use of transportation routes which will improve air quality in the city; and distribution of a pamphlet by local merchants encouraging the use of alternate transportation routes.

DATES: This action will be effective August 27, 1993 unless notice is received by July 28, 1993, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: A copy of this revision to the Minnesota SIP is available for inspection at:

United States Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Angela T. Lee, at (312) 353–5142, before visiting the Region 5 Office.)

United States Environmental Protection Agency, Region 5, Air Enforcement Branch (AE–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments on this rulemaking should be addressed to:

William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Angela T. Lee, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5142.

SUPPLEMENTARY INFORMATION: On December 13, 1979, USEPA approved the Lake George Interchange roadway improvement project, also known as the T.H. 23/10th Avenue transportation control measure (TCM) project, into the CO SIP for St. Cloud Minnesota (44 FR 72116). On August 16, 1982, the Minnesota Pollution Control Agency (MPCA) submitted an amendment to the Air Quality Plan for Transportation for the St. Cloud Metropolitan Area as a revision to the SIP. This submittal requested that five TCMs be implemented in 1982 in lieu of a delay in funding and implementation of the Lake George Interchange from 1982 to 1983. On May 18, 1983, USEPA proposed to approve the TCMs and disapprove the delay of the project (48 FR 22335).[1] USEPA never took final action on the August 16, 1982 submittal.

On August 31, 1989, the MPCA submitted a request to revise the St. Cloud CO SIP which would remove the proposed Lake George Interchange roadway improvement project from the CO SIP. The submittal included information supporting the revision. The Lake George Interchange roadway improvement project was one of a number of projects in the St. Cloud SIP designed to improve traffic flow and enhance air quality in the downtown area. All of the projects have been completed, with this one exception. The traffic flow has decreased in the critical area along St. Germain Street since these measures have been implemented. In addition, the MPCA has demonstrated that this project is not necessary to attain or maintain the National Ambient Air Quality Standards (NAAQS) for CO.

USEPA Evaluation and Rulemaking Action

A. Removal of the Lake George Interchange Roadway Improvement Project

By its August 31, 1989, SIP revision request, Minnesota seeks removal of the Lake George Interchange project from its CO SIP. This revision would supersede the State's previous request to delay implementation of that project.

Section 193 of the Clean Air Act (CAA) provides that a preenactment control measure may not be removed from a SIP for a nonattainment area unless it is replaced by a measure that provides equivalent or greater emission reductions. The purpose of the Lake George Interchange roadway improvement project was to encourage traffic to bypass the critical area along St. Germain Street. Evidence suggests that roadway improvements in the area have significantly reduced traffic volume on St. Germain Street.

In 1978, average daily traffic volume (ADT) on St. Germain Street was approximately 8,000 vehicles. In 1982, the ADT had fallen to 7,600 vehicles, and by 1987, it had fallen further to only 7,200. Other roadways outside of the St. Germain Street canyon generally increased in volume by approximately 2 percent per year. Thus, the ADT on St. Germain Street fell by 10 percent over the nine-year period while the ADT on other roadways which are better able to handle the traffic increased by almost 20 percent. In addition to the reduced traffic volume on St. Germain Street, the evolving Federal Motor Vehicle Control Program (FMVCP) continues to provide further emission reductions in the CO "hotspot" by reducing vehicular emissions through fleet turnover.

In support of the 1989 request to remove the Lake George Interchange roadway improvement project from the SIP, the MPCA submitted a report addressing the current status of CO levels in the City of St. Cloud. This report was intended to demonstrate monitored attainment and was accompanied by related documents and supplemental data reports. Detailed information on this data is contained in the USEPA's August 14, 1990, Technical Support Document (TSD).

Based on CO dispersion modeling, the MPCA has demonstrated that the NAAQS have been attained and will be maintained in St. Cloud through the year 2000 without implementation of the Lake George Interchange roadway improvement project. The model was used to compute CO concentrations at receptor sites located at the four area intersections with the highest traffic volumes and the former and current monitoring site. A further discussion of the modeling is contained in the August 14, 1990, TSD.

USEPA believes that the emission reductions that would have occurred had the Lake George Interchange roadway improvement project been implemented are provided by three transportation control measures. These measures have accomplished the purpose of the Lake George Interchange roadway improvement project—that of diverting traffic from St. Germain Street—and they continue to provide emission reductions in the CO "hotspot." These measures were

[1] In the May 18, 1983 Notice of Proposed Rulemaking, USEPA proposed action on the delay of a second project (9th and 10th Avenue project). Since the MPCA never formally requested the delay of the second project, the USEPA is not taking further action on the delay of this project.

submitted as part of Minnesota's August 16, 1982, SIP submittal and were implemented in 1982. USEPA proposed approval of these measures on May 18, 1983, but never took final action to approve these measures into the SIP. Today, USEPA is taking final action to approve the three measures into the SIP as a replacement for the Lake George Interchange project. These measures include the following:

(1) Enforcement of an existing ban on double parking and extended idling on St. Germain Street,

(2) Creation of left-hand turns on Division Street between 19½ and 31st Avenues to decrease traffic congestion, and

(3) Removal of signs which encourage using the West St. Germain corridor and development of a signing plan directing through traffic to alternate routes.

These measures are currently being implemented and are discussed in an addendum to the August 14, 1990, TSD.

B. Disapproval of Two Transportation Control Measures

The State's August 16, 1982, submittal also included two additional transportation control measures. Today USEPA is disapproving these measures because they were to be implemented only during the proposed delay of the Lake George Interchange roadway improvement project. Since the delay has been superseded by a request for removal, the measures are no longer relevant and would serve no purpose in the SIP.

Final Action

By today's action, USEPA is approving the removal of the Lake George Interchange from Minnesota's approved CO SIP. In addition, USEPA is approving three new TCMs into the CO SIP and disapproving two other submitted TCMs. The measures being approved include the following:

(1) Enforcement of an existing ban on double parking and extended idling on St. Germain Street,

(2) Creation of left-hand turns on Division Street between 19½ and 31st Avenues to decrease traffic congestion, and

(3) Removal of signs which encourage using the West St. Germain corridor and development of a signing plan directing through traffic to alternate routes.

EPA is also disapproving the following two TCMs:

(1) Implementation of a media campaign designed to encourage use of transportation routes which will improve air quality in the city, and

(2) Distribution of a pamphlet by local merchants encouraging the use of alternate transportation routes.

Because USEPA considers this action noncontroversial and routine, the Agency is taking action today without prior proposal. The action will become effective on August 27, 1993. However, if USEPA receives notice by July 28, 1993 that someone wishes to submit critical comments, then USEPA will publish the following: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of fewer than 50,000.

SIP approvals under section 110 subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

USEPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, USEPA's disapproval of the submittal does not impose any new federal requirements. Therefore, USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 27, 1993. Filing petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Incorporation by reference, Carbon monoxide, Environmental protection.

Note: Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 11, 1993.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by adding a new paragraph (c)(27) to read as follows:

§52.1220 Identification of plan.

* * * * *

(c) * * *

(27) On August 16, 1982, the MPCA submitted an amendment to the St. Cloud Area Air Quality Control Plan for Transportation as a State Implementation Plan revision. This revision to the SIP was adopted by the Board of the Minnesota Pollution Control Agency on July 27, 1982. On August 31, 1989, the Minnesota Pollution Control Agency submitted a revision to the Minnesota State Implementation Plan (SIP) for carbon monoxide deleting the Lake George Interchange roadway improvement project (10th Avenue at First Street South) from its St. Cloud transportation control measures. This revision to the SIP was approved by the Board on June 27, 1989.

(i) Incorporation by reference.

(A) Letter dated August 16, 1982, from Louis J. Breimburst, Executive Director, Minnesota Pollution Control Agency to Valdas V. Adamkus, Regional Administrator, United States Environmental Protection Agency—Region 5 and its enclosed amendment to the Air Quality Plan for Transportation for the St. Cloud Metropolitan Area entitled, "Staff Resolution," measures 1, 4 and 5 adopted by the Minnesota Pollution Control Agency on July 27, 1982.

(B) Letter dated August 31, 1989, from Gerald L. Willet, Commissioner, Minnesota Pollution Control Agency to Valdas V. Adamkus, Regional Administrator, United States Environmental Protection Agency—Region 5.

[FR Doc. 93–15141 Filed 6–25–93; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 81

[MN2–1–5105; FRL–4672–2]

Redesignation of Areas for Air Quality Planning Purposes; Minnesota

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving a change of the carbon monoxide (CO) designation for the City of St. Cloud from nonattainment to attainment. The revision is based on a request from the State of Minnesota to redesignate this area and on the supporting data the State submitted. Under section 107(d)(3)(E) of the Clean Air Act, designations can be changed if sufficient data are available to warrant such change. USEPA is also finding that Minnesota has adequately responded to USEPA's May 26, 1988, notice of inadequacy of the St. Cloud CO State Implementation Plan (SIP).

DATES: This action will be effective August 27, 1993 unless notice is received by July 28, 1993, that someone wishes to submit adverse or critical comments on either this action or on an action published elsewhere in today's **Federal Register** which approves a revision to the St. Cloud CO plan. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the redesignation request, the technical support document, and the supporting air quality data are available at the following address for review: (It is recommended that you telephone Angela Lee at 312–353–5142 before visiting the Region 5 office.)

United States Environmental Protection Agency, Region 5, Air Enforcement Branch (AE–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments on this rulemaking should be addressed to:

William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Angela T. Lee, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5142.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the pre-amended Clean Air Act (CAA), the USEPA promulgated the carbon monoxide (CO) attainment status for each area of every State. For Minnesota, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978) codified at 40 CFR 81.324. These area designations may be revised whenever the data warrant. On August 31, 1989, the Minnesota Pollution Control Agency (MPCA) submitted a request for the redesignation of the City of St. Cloud, Minnesota to attainment of the National Ambient Air Quality Standards (NAAQS) for CO. This redesignation request applies to Sherburne, Benton and Stearns Counties. The redesignation request was accompanied by a report containing information supporting the redesignation request. Prior to USEPA's action on that request, on November 15, 1990, the Clean Air Act Amendments (CAAA) of 1990 were enacted. Public Law 101–549, codified at 42 U.S.C. 7401–7671q. Pursuant to section 107(d)(1)(C) of the amended Act, the St. Cloud area retained its designation of nonattainment upon enactment of the CAAA, since St. Cloud was designated nonattainment prior to enactment. (See 56 FR 56694, November 6, 1991, and 57 FR 56762, November 30, 1992.)

Requirements for Redesignation

Although Minnesota submitted its redesignation request before enactment of the CAAA, the amended Act provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) provides for redesignation if: (i) The Administrator determines that the area has attained the NAAQS; (ii) The Administrator has fully approved the applicable implementation plan for the area under section 110(k); (iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (v) The State containing such area has met all requirements applicable to the area under section 110 and part D.

USEPA's redesignation policy may be found in the General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990, 57 FR 13498 (April 16, 1992), 57 FR 18070 (April 28, 1992), and in policy memoranda.

The NAAQS for CO are 9 parts per million (ppm) for an 8-hour average concentration not to be exceeded more than once per year, and 35 ppm for a 1-hour average concentration not to be exceeded more than once per year. Further clarification is given in a May 27, 1983, memorandum from Richard G. Rhoads, USEPA, to Gary L. O'Neal, USEPA, Subject: Summary of NAAQS Interpretation. This memorandum explains that the 8-hour concentrations are to be based on running 8-hour averages, with the convention that a monitored violation of the NAAQS requires at least two non-overlapping 8-hour averages above the level of the standard.

Data Supporting the Requested Redesignation

In support of the redesignation request, the MPCA submitted a report addressing the current status of CO

levels in the City of St. Cloud. This report was accompanied by related documents and supplemental data reports. Detailed information on this data and USEPA's review of it is contained in the USEPA's August 9, 1990, and August 19, 1992, Technical Support Documents, which are available at the Region 5 Office listed above.

A. Air Quality Data

Minnesota has shown compliance with the first requirement of section 107(d)(3)(E)—that the CO NAAQS has been fully attained. Minnesota demonstrated that there have been no monitored violations of the CO standard during the 1986 through 1989 time period. The 911 St. Germain Street monitor recording a violation of the standard in 1985 was moved to 810 St. Germain Street in 1987. The reason for the relocation of the monitor was an infestation of rats in the building housing the previous monitor which made servicing the monitor unsafe. Consequently, there have not been 2 complete years of continuous monitoring data at the original monitoring site after the violation occurred in 1985. However, the MPCA has demonstrated through modeling that the area is in attainment. Additionally, no monitored violations occurred through late 1990. In late 1990 the CO monitor was removed from the area. A new monitor is in place at the City Hall building located at trunk highway 23 and 4th avenue. This intersection had the highest modeled concentration in the central business district.

B. CO Emission Control Measures

Minnesota has met the second requirement of having a fully approved SIP (see 44 FR 72116, December 13, 1979, and the SIP revision for St. Cloud published elsewhere in today's **Federal Register** and 40 CFR 52.1220). The Part D New Source Review (NSR) SIP for the State of Minnesota has not been approved. Under the CAAA, the emission inventory SIP and the Part D NSR SIP for carbon monoxide are not due until November 15, 1993. Pursuant to a September 4, 1992, USEPA memorandum from John Calcagni, Director, Air Quality Managements Division, the applicable requirements that an area must satisfy before it can be redesignated are the requirements that were due before the request was submitted. Since the request was submitted before the CO NSR SIP and the emission inventory SIP were due, these SIPs are not "applicable", and do not have to be approved before the redesignation request can be approved.

Minnesota has met the third requirement that the improvement in air quality was due to permanent and enforceable reductions in emissions. The emission reductions which led to attainment after the violation which occurred in 1985 are attributable to the Federal Motor Vehicle Emission Control Program (FMVCP). This program continues to provide emission reductions through fleet turnover and tailpipe emission standards.

C. Maintenance Plan, and Section 110 and Part D Requirements

Minnesota has also met the requirement to provide a maintenance plan as specified in section 175A of the Act. A CO dispersion modeling analysis was conducted based on USEPA's emission model (MOBILE3) and intersection model (CALINE3). Based on the modeling analysis and additional analysis by USEPA, it has been demonstrated that the CO NAAQS have been attained and will be maintained through the year 2003 at the previous monitoring site, where the violation occurred. The modeling submitted by the MPCA showed that the highest concentration in the year 2000 is expected to be 6.3 parts per million (ppm). Based on the expected decrease in emissions due to the Federal Motor Vehicle Control Program and the new tailpipe emissions standards, the highest concentration in the area is expected to remain below 9 ppm and maintain the NAAQS through the year 2003. A public hearing was held on February 23, 1993, for the maintenance plan.

The area has also met the contingency measure requirement of section 175A(d). The State has committed to the installation of a continuous carbon monoxide monitor. This monitor will be used to determine if the area is maintaining the standard and it will trigger the contingency plan if a violation is monitored. The State has committed in a May 25, 1992, resolution that within two months of the notice of violation the Minnesota Pollution Control Agency will submit a schedule to implement contingency measures to correct the violation according to a defined timeframe. The State has also committed to the implementation of previous measures contained in the SIP.

Pursuant to the fifth requirement, the St. Cloud area must have fulfilled the applicable requirements of section 110 and part D. The area has met the requirements of section 110 by having a fully-approved SIP (44 FR 72116, December 13, 1979, and the SIP revision for St. Cloud published elsewhere in today's **Federal Register**). The CO-specific provisions of subpart 3 do not apply to St. Cloud because it is not classified. However, the State must meet the requirements of section 172(c) in order to satisfy the requirements of subpart 1 of part D.

The SIP must require that Reasonably Available Control Measures (RACM) be implemented as expeditiously as practicable and provide for attainment of the NAAQS. At the time USEPA granted full approval of the St. Cloud CO nonattainment plan, the Agency determined that the plan was consistent with the Reasonably Available Control Technology (RACT), RACM, and the section 172(c)(7) requirements of the CAA. The CO SIP did provide for attainment of the CO standard and the St. Cloud area has demonstrated, using modeling, that the area has been in attainment since 1987 and is expected to remain in attainment. USEPA recognizes that St. Cloud has met the applicable RACM and attainment requirements of section 172(c)(1).

The Reasonable Further Progress (RFP) requirement of section 172(c)(2) loses any continued force and importance once an area has reached attainment of the NAAQS. Under its SIP, the State must require RFP toward the goal of attainment. The concept of RFP only has importance in regard to attaining the NAAQS; once an area reaches attainment, the goal is met, and no further progress remains to be made toward that goal. St. Cloud provided for RFP in its SIP. Since the St. Cloud area has now attained the NAAQS, it no longer needs to demonstrate RFP.

Similarly, sections 172(c) (3), (4) and (5) relating to an emission inventory and Part D New Source Review disappear upon redesignation to attainment. Under the CAAA, the emission inventory SIP and the Part D NSR SIP for carbon monoxide is not due until November 15, 1993 for areas which are not classified. Pursuant to a September 4, 1992, USEPA memorandum from John Calcagni, Director, Air Quality Management Division, the applicable requirements that an area must satisfy before it can be redesignated are the requirements that were due before the request was submitted. Since the request was submitted before the CO Part D NSR SIP and emission inventory SIP were due, these SIPs are not "applicable" for purposes of determining whether or not the State has met all section 110 and part D requirements, and do not have to be approved before the redesignation request can be approved. Further, the Part D NSR program will be replaced by the PSD program upon redesignation. The PSD program was delegated under

40 CFR 52.21(u) in full to Minnesota on September 20, 1977, as amended on March 26, 1979, October 15, 1980, and November 3, 1988.

Section 172(c)(6) requires the SIP to include enforceable emission limitations, control measures, means or techniques (including economic incentives such as fees, marketable permits and auctions of emissions rights) and schedules and timetables for compliance, as may be necessary to reach attainment by the attainment date. Since attainment has been reached, no additional measures are needed to provide for attainment. The need for additional measures to ensure that maintenance continues is addressed under the requirements for maintenance plans.

The Section 172(c)(9) contingency measures are required to be undertaken if an area fails to make RFP or to attain the NAAQS by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Moreover, maintenance of the standard is covered by the contingency provisions required under section 175A(d); the State has committed that within two months of the notice of violation the Minnesota Pollution Control Agency will submit a schedule to implement contingency measures to correct the violation according to a defined timeframe. They have also committed to the implementation of previous measures contained in the SIP. Therefore, the State has satisfied the need for contingency measures under section 172(c)(9).

The State has committed to follow USEPA's conformity regulation upon issuance, as applicable.

Rulemaking Action

The redesignation request submitted by the State of Minnesota on August 31, 1989, meets the section 107(d)(3)(E) conditions of the CAAA for redesignation. Therefore, at the request of the State of Minnesota, USEPA is redesignating the City of St. Cloud to attainment of the CO NAAQS.

Also, USEPA concludes that the State has adequately responded to the May 26, 1988, SIP call under section 110(a)(2)(H) of the CAA, which was issued by USEPA to the State concerning the St. Cloud Metropolitan Statistical Area (MSA) (the City of St. Cloud and all additional portions of Stearns, Sherburne, and Benton Counties) on May 26, 1988. A January 10, 1989, letter from Steve Rothblatt to J. Michael Valentine outlined what was required to satisfy the SIP call. The State was required to submit a technical demonstration which assured that previously monitored violations have been eliminated through permanent, enforceable emission reductions and assures maintenance of the air quality standards for CO. This has been accomplished and today's approval releases the State from the May 26, 1988 SIP call for St. Cloud.

Because USEPA considers this action noncontroversial and routine, the agency is approving it without prior proposal. If USEPA receives notification within 30 days of today that a party wishes to comment adversely on this redesignation, USEPA will replace the attainment designation with a nonattainment designation, as noted in the section 107 notice that is expected to be published in October 1992. Furthermore, USEPA will withdraw this direct-final action, publish a proposed rule redesignating St. Cloud to attainment, and accept comment on that proposal. If USEPA does not receive notification of any adverse comments, St. Cloud will be redesignated attainment August 27, 1993 and will retain its attainment designation pursuant to the section 107 notice.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for a redesignation. Each request for redesignation shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 27, 1993. Filing petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection, Carbon monoxide, Intergovernmental relations.

Dated: May 13, 1993.

Dale S. Bryson,

Acting Regional Administrator.

Part 81 of chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PURPOSES—MINNESOTA

1. The authority citation of part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q, unless otherwise noted.

2. In § 81.324—Minnesota, the Carbon Monoxide table is amended by removing footnote 2 and revising the entries for Benton County, Sherburne County, and Stearns County to read as follows:

§ 81.324 Minnesota.

* * * * *

MINNESOTA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
• • •	•	•	•	• •
Benton County	August 27, 1993	Attainment		
• • •	•	•	•	• •
Sherburne County	August 27, 1993	Attainment		
• • •	•	•	•	•
Stearns County	August 27, 1993	Attainment		
• • •	•	•	•	• •
• • •	•	•	•	• •

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 93–15142 Filed 6–25–93; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 86

[FRL–4670–4]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Evaporative Emission Regulations for Gasoline- and Methanol-Fueled Light-Duty Vehicles and Light-Duty Trucks and Heavy-Duty Vehicles; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: On March 24, 1993 EPA finalized a new test procedure to measure evaporative emissions from motor vehicles. This notice makes various corrections to the published final rule.

EFFECTIVE DATE: The corrections to the regulations are effective July 28, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Stout, (313) 741–7805.

SUPPLEMENTARY INFORMATION: On March 24, 1993 EPA finalized a new test procedure to measure evaporative emissions from motor vehicles (58 FR 16002). This action corrects an omission in the published March 1993 final rule. The regulations now include heavy-duty vehicles equipped with methanol-fueled diesel engines in the scope of the evaporative test procedures. The preamble to the March 1993 final rule clearly established EPA's intent to include these vehicles in the scope of the test requirements (see especially 58 FR 16003 through 16006). In addition, this action makes corrections for various typographical and administrative errors in the text of the regulations. These corrections are effective immediately upon publication in the **Federal Register**.

This notice corrects only obvious and unintended errors in the March 1993 final rule, or corrects provisions where the rule mistakenly fails to reflect the Agency's stated intent. Therefore, within the meaning of 5 U.S.C. 553(b)(B) and 307(d)(1) of the Clean Air Act, EPA finds that comment on these technical corrections is unnecessary.

List of Subjects in 40 CFR Part 86

Administrative practice and procedures, Air pollution control, Gasoline, Incorporation by reference, Labeling, Motor vehicle pollution, Motor vehicles, Reporting and recordkeeping requirements.

Dated: June 17, 1993.

Michael H. Shapiro,

Acting Assistant Administrator for Air and Radiation.

Appendix to the Preamble—Table of Changes to Various Sections

Section	Change
1. Authority, Part 86.	None.
2. § 86.096–7	Revise paragraph (h)(6) to include methanol-fueled diesel engines.
3. § 86.096–8	Remove introductory text. Revise heading of paragraph (k).
4. § 86.096–21	Revise cross-referencing.
5. § 86.096–30	Revise cross-referencing. Add paragraph (a)(18) to include methanol-fueled diesel engines.
6. § 86.096–35	Revise cross-referencing. Revise paragraph (a)(2)(C) to require identification of evaporative family on the label for light-duty trucks.
7. § 86.098–11	Revise paragraph (b)(3) to include methanol-fueled diesel engines.
8. § 86.098–23	Revise paragraph (m) to include methanol-fueled diesel engines.
9. § 86.099–11	Add new section for fully phased-in standards.

For the reasons set out in the preamble, title 40, chapter I, part 86 of the Code of Federal Regulations is amended as set forth below.

PART 86—[CORRECTED]

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

Subpart A—[Corrected]

2. Section 86.096–7 is amended by revising paragraph (h)(6)(i) to read as follows:

§ 86.096–7 Maintenance of records; submittal of information; right of entry.

* * * * *

(h)(6) *Voiding a certificate.* (i) EPA may void ab initio a certificate for a vehicle certified to Tier 0 certification standards or to the respective evaporative test procedure and accompanying evaporative standards as set forth or otherwise referenced in §§ 86.090–8, 86.090–9, 86.091–10 or 86.094–11 for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

* * * * *

3. Section 86.096–8 is amended by removing the introductory text and revising the heading of paragraph (k) to read as follows:

§ 86.096–8 Emission standards for 1996 and later model year light-duty vehicles.

* * * * *

(k) *Cold Temperature Carbon Monoxide (CO) Standards—Light-Duty Vehicles.* * * *

4. Section 86.096–21 is amended by revising the reference to paragraphs (c) through (g) of § 86.094–21 to read as follows:

§ 86.096–21 Application for certification.

* * * * *

(c) through (i) [Reserved]. For guidance see § 86.094–21.

5. Section 86.096–30 is amended by revising the reference to paragraphs (a)(3)(i) through (a)(4)(ii) introductory text of § 86.095–30 and paragraphs (b) through (e) of § 86.094–30 and by adding paragraph (a)(18) to read as follows:

§ 86.096–30 Certification.

* * * * *

(a)(3)(i) through (a)(4)(iii) introductory text [Reserved]. For guidance see § 86.095–30.

* * * * *

(a)(18) For all heavy-duty vehicles certified to evaporative test procedures and accompanying standards specified under § 86.098–11:

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of § 86.098–11 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in § 86.098–11 will be considered to be a failure to satisfy the conditions upon which the certificate was issued and the vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(b) through (f) [Reserved]. For guidance see § 86.094–30.

6. Section 86.095–35 is amended by revising paragraph (a)(2)(iii)(C) to read as follows:

§ 86.095–35 Labeling.

* * * * *

(a) * * *

(2) * * *

(iii) * * *

(C) Engine displacement (in cubic inches or liters), engine family identification, and evaporative family;

* * * * *

6a. Section 86.096–35 is amended by revising the reference to paragraphs (b) through (h) of 86.095–35 to read as follows:

§ 86.096–35 Labeling.

* * * * *

(b) through (i) [Reserved]. For guidance see § 86.095–35.

7. Section 86.098–11 is amended by revising paragraph (b)(3) and removing paragraph (b)(4) to read as follows:

§ 86.098–11 Emission standards for 1998 and later model year diesel heavy-duty engines and vehicles.

* * * * *

(b) * * *

(3) Evaporative emissions (total of non-oxygenated hydrocarbons plus methanol) from heavy-duty vehicles equipped with methanol-fueled diesel engines shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(i) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 lbs:

(A)(*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 3.0 grams per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 3.5 grams per test.

(B) *Running loss test:* 0.05 grams per mile.

(C) *Fuel dispensing spitback test:* 1.0 gram per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs:

(A)(*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 4.0 grams per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 4.5 grams per test.

(B) *Running loss test*: 0.05 grams per mile.

(iii)(A) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 lbs, the standards set forth in paragraph (b)(3) of this section refer to a composite sample of evaporative emissions collected under the conditions and measured in accordance with the procedures set forth in subpart M of this part.

(B) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 lbs., the standards set forth in paragraph (b)(3)(ii) of this section refer to the manufacturer's engineering design evaluation using good engineering practice (a statement of which is required in § 86.091–23(b)(4)(ii)).

(iv) All fuel vapor generated during in-use operations shall be routed exclusively to the evaporative control system (e.g., either canister or engine purge). The only exception to this requirement shall be for emergencies.

(v)(A) At least 90 percent of a manufacturer's sales of 1998 model year heavy-duty vehicles equipped with methanol-fueled diesel engines shall not exceed the standards described in paragraph (b)(3) of this section. The remaining vehicles shall be subject to the standards described in § 86.094–11(b)(3). All 1999 model year and later heavy-duty vehicles equipped with methanol-fueled diesel engines shall not exceed the standards described in paragraph (b)(3) of this section.

(B) Optionally, 90 percent of a manufacturer's combined sales of 1998 model year gasoline- and methanol-fueled light-duty vehicles, light-duty trucks, and heavy-duty vehicles shall not exceed the applicable standards.

(C) Small volume manufacturers, as defined in § 86.092–14(b) (1) and (2), are exempt from the phase-in described in paragraph (b)(3)(v)(A) of this section. For small volume manufacturers, the standards of § 86.094–11(b)(3), and the associated test procedures, apply for the 1998 model year. Beginning in the 1999 model year, 100 percent compliance with the standards of this section is required. This exemption does not apply to small volume engine families as defined in § 86.092–14(b)(5).

* * * * *

8. Section 86.098–23 is amended by revising paragraphs (m)(1), (m)(2)(iv), and (m)(2)(v) to read as follows:

§ 86.098–23 Required data.

* * * * *

(m) * * *

(1) In the application for certification the projected sales volume of evaporative families certifying to the respective evaporative test procedure and accompanying standards as set forth or otherwise referenced in §§ 86.090–8, 86.090–9, 86.091–10 and 86.094–11 or those set forth or otherwise referenced in §§ 86.096–8, 86.096–9, 86.096–10 and 86.098–11. Volume projected to be produced for U.S. sale may be used in lieu of projected U.S. sales.

(2) * * *

(iv) Failure by a manufacturer to submit the end-of-year report within the specified time may result in certificate(s) for the evaporative family(ies) certified to the certification

standards set forth in §§ 86.090–8, 86.090–9, 86.091–10 and 86.094–11 being voided ab initio plus any applicable civil penalties for failure to submit the required information to the Agency.

(v) The information shall be organized in such a way as to allow the Administrator to determine compliance with the Evaporative Emission Testing implementation schedules of §§ 86.096–8, 86.096–9, 86.096–10 and 86.096–11.

* * * * *

9. A new section 86.099–11 is added to subpart A to read as follows:

§ 86.099–11 Emission standards for 1999 and later model year diesel heavy-duty engines and vehicles.

(a) Exhaust emissions from new 1999 and later model year diesel heavy-duty engines shall not exceed the following:

(1)(i) *Hydrocarbons (for petroleum-fueled diesel engines).* 1.3 grams per brake horsepower-hour (0.48 gram per megajoule), as measured under transient operating conditions.

(ii) *Organic Material Hydrocarbon Equivalent (for methanol-fueled diesel engines).* 1.3 grams per brake horsepower-hour (0.48 gram per megajoule), as measured under transient operating conditions.

(2) *Carbon monoxide.* (i) 15.5 grams per brake horsepower-hour (5.77 grams per megajoule), as measured under transient operating conditions.

(ii) 0.50 percent of exhaust gas flow at curb idle (methanol-fueled diesel only).

(3) *Oxides of Nitrogen.* (i) 4.0 grams per brake horsepower-hour (1.49 grams per megajoule), as measured under transient operating conditions.

(ii) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.094–15. If the manufacturer elects to include engine families in any of these programs, the NO_x FELs may not exceed 5.0 grams per brake horsepower-hour (1.9 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(4) *Particulate.* (i) For diesel engines to be used in urban buses, 0.05 gram per brake horsepower-hour (0.019 gram per megajoule) for certification testing and selective enforcement audit testing, and 0.07 gram per brake horsepower-hour (0.026 gram per megajoule) for in-use testing, as measured under transient operating conditions.

(ii) For all other diesel engines only, 0.10 gram per brake horsepower-hour (0.037 gram per megajoule), as measured under transient operating conditions.

(iii) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all or the particulate averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.094–15. If the manufacturer elects to include engine families in any of these programs, the particulate FEL may not exceed:

(A) For engine families intended for use in urban buses, 0.25 gram per brake horsepower-hour (0.093 gram per megajoule);

(B) For engine families *not* intended for use in urban buses, 0.60 gram per brake horsepower-hour (0.22 gram per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(b)(1) The opacity of smoke emission from new 1999 and later model year diesel heavy-duty engine shall not exceed:

(i) 20 percent during the engine acceleration mode.

(ii) 15 percent during the engine lugging mode.

(iii) 50 percent during the peaks in either mode.

(2) The standards set forth in paragraph (b)(1) of this section refer to exhaust smoke emissions generated under the conditions set forth in subpart I of this part and measured and calculated in accordance with those procedures.

(3) Evaporative emissions (total of non-oxygenated hydrocarbons plus methanol) from heavy-duty vehicles equipped with methanol-fueled diesel engines shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(i) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 lbs:

(A)(*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 3.0 grams per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 3.5 grams per test.

(B) *Running loss test:* 0.05 grams per mile.

(C) *Fuel dispensing spitback test:* 1.0 gram per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs:

(A)(*1*) For the full three-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 4.0 grams per test.

(*2*) For the supplemental two-diurnal test sequence described in § 86.1230–96, diurnal plus hot soak measurements: 4.5 grams per test.

(B) Running loss test: 0.05 grams per mile.

(iii)(A) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 lbs, the standards set forth in paragraph (b)(3) of this section refer to a composite sample of evaporative emissions collected under the conditions and measured in accordance with the procedures set forth in subpart M of this part.

(B) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 lbs., the standards set forth in paragraph (b)(3)(ii) of this section refer to the manufacturer's engineering design evaluation using good engineering practice (a statement of which is required in § 86.091–23(b)(4)(ii)).

(iv) All fuel vapor generated during in-use operations shall be routed exclusively to the evaporative control system (e.g., either canister or engine purge). The only exception to this requirement shall be for emergencies.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1999 or later model year methanol-fueled diesel, or any naturally-aspirated diesel heavy-duty engine. For petroleum-fueled engines only, this provision does not apply to engines using turbochargers, pumps, blowers, or supercharges for air induction.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart I or N of this part to ascertain that such test engines meet the requirements of paragraphs (a), (b), (c), and (d) of this section.

[FR Doc. 93–14809 Filed 6–25–93; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–45; RM–8167]

Radio Broadcasting Services; American Falls, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 281C1 for Channel 281A at

American Falls, Idaho, and modifies the construction permit for Station KOUU (FM) to specify operation on Channel 281C1, at the request of Dobson, Goss, Rones & Dahl. See 58 FR 15462, March 23, 1993. Channel 281C1 can be allotted to American Falls, Idaho, in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.6 kilometers (2.8 miles) southeast at Station KOUU (FM)'s construction permit site. The site restriction avoids a short-spacing to Station KVEZ (FM), Channel 280A, Smithfield, Utah. The coordinates for Channel 281C1 at American Falls are North Latitude 42–45–24 and West Longitude 112–42–38. With this action, this proceeding is terminated.

DATES: Effective August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–46, adopted June 7, 1993, and released June 22, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 281A and adding Channel 281C1 at American Falls.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–15051 Filed 6–25–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–12; RM–8151]

Radio Broadcasting Services; Galliano and Buras Triumph, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Callais Cablevision, Inc., licensee of Station KLEB–FM, Channel 232C3, Galliano, Louisiana, substitutes Channel 232C2 for Channel 232C3 at Galliano and modifies Station KLEB–FM's license to specify operation on the higher powered channel. To accommodate KLEB–FM's upgrade, the Commission also deletes Channel 231A at Buras Triumph, Louisiana. See 58 FR 15321, March 22, 1993. Channel 232C2 can be allotted in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 232C2 at Galliano are 29–26–00 and 90–17–54. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–12, adopted June 7, 1993, and released June 22, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Buras Triumph, Channel 231A, and by removing Channel 232C3 and adding Channel 232C2 at Galliano.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–15050 Filed 6–25–93; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 58, No. 122
Monday, June 28, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AD40

Production and Utilization Facilities; Emergency Planning and Preparedness—Exercise Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to revise its emergency planning regulations. The proposed rule would update and clarify ambiguities that have surfaced in the implementation of the Commission's emergency planning exercise requirements.

DATES: The comment period expires September 13, 1993. Comments received after this date will be considered if practical to do so, but only those comments received on or before this date can be assured of consideration.

ADDRESSES: Comments may be sent to the Secretary of the Commission, Attention: Docketing and Service Branch, U. S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand-delivered to One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 am and 4:15 pm Federal workdays. Copies of comments received may be examined at the Commission's Public Document Room at 2120 L Street NW., (Lower Level) Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael T. Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301–492–3918).

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1980, (45 FR 55402) the NRC published a final rule that revised its emergency planning regulations. The final rule became effective on November 3, 1980. On July 6, 1984 (49 FR 27733), the NRC amended its emergency planning regulations to relax the frequency of participation by State and local governmental authorities in emergency preparedness exercises at nuclear power reactor sites. The amendments were based on the NRC's experience gained in observing and evaluating emergency preparedness exercises since 1980. Further experience has shown that the requirements in 10 CFR part 50, appendix E, section IV.F.3 on full or partial participation by State or local governments in the biennial (offsite) exercise are unnecessarily complicated. Additionally, the Commission believes that the interval for an ingestion exposure pathway exercise should be changed from 5 to 6 years, and that the regulation be deleted that requires all states within the plume exposure pathway emergency planning zone (EPZ) for a given site fully participate in an offsite exercise for that site at least once every 7 years.

The Commission finds that the current regulation has resulted in a relatively complicated description of the requirements for exercise participation by State and local governments who have offsite planning responsibility for more than one nuclear power plant. This proposed rule would simplify and clarify this requirement. In addition, appendix E would be revised to reflect that the interval for an ingestion exposure pathway exercise be changed from at least once every 5 years to at least once every 6 years (FEMA's ingestion pathway exercise requirement is at least once every 6 years). The change in the interval would match the biennial frequency required for exercises of offsite plans. Further, appendix E also would be revised to eliminate the 7 year return frequency requirement because it has proven to be unnecessary to achieve the underlying purpose of the rule as well as being burdensome to states which are within the plume exposure pathway for multiple sites (FEMA does not have a return frequency requirement). Both changes would assure compatibility with FEMA requirements and thus avoid confusion among licensees and State governments. Notwithstanding elimination of the 7 year return frequency requirement, the Commission believes that offsite authorities should rotate their full participation in exercises among sites if they are within the plume exposure pathway for more than one site.

The Commission codified the 7 year return frequency in the July 6, 1984 (49 FR 27733) amendment to the emergency planning regulations. This amendment provides that at least once every 7 years, all states within the plume exposure pathway EPZ of a given site must fully participate in an offsite exercise for that site. In so doing the Commission noted that "the final rule is not totally consistent with FEMA's final regulation (44 CFR part 350). This inconsistency lies in the area of return frequency of multiple-site states as previously discussed. The FEMA position on return frequency is a significant departure from the NRC's proposed regulation of July 21, 1983 (48 FR 33307). The Commission believes that more study is needed before deletion of the return frequency requirement can be justified."

The Commission now believes that sufficient experience has been gained in the observation and evaluation of emergency preparedness exercises at nuclear power reactor sites to conclude that the 7 year return frequency can be deleted.

The Commission has found that multi-site states, when not fully participating in an exercise at a specific site will usually partially participate at a significant level of activity every 2 years at that specific site in order to support the participation of the appropriate local governments. The Commission has found that this level of exercise participation provides adequate emergency response training for State and local governments. Additionally, a provision still exists in the regulation which permits State or local government participation in the licensee's annual exercise. A State or local government may consider its response capability to be less than optimal because of an unusually large personnel turnover or because there have been limited responses to real emergencies in the community. The regulation still requires the licensees to provide for State or local government participation if they indicate such a desire. This proposed revision would not have any adverse impact on public health and safety because State emergency response personnel continuously respond to actual emergencies and experience has

shown that states through a combination of full and partial participation exercises maintain an adequate level of response capability. A formal requirement for a state to return to a specific site every 7 years to participate in an exercise has proven to be unnecessary. This rulemaking would delete that unnecessary, unwarranted and burdensome requirement.

Lastly, the proposed revision would delete past due dates (see section F(2)(a)) because they are now meaningless.

The NRC staff consulted with the FEMA staff during the development of this proposed rule.

Submission of Comments in Electronic Form

Commenters are encouraged to submit, in addition to the original paper copy, a copy of the letter in electronic form on 5.25 or 3.5 inch computer diskette: IBM PC/DOS or MS/DOS format. Data files should be provided in WordPerfect format or unformatted ASCII code. The format and version should be identified on the diskette's external label.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment; and therefore, an environmental impact statement is not required. The proposed rule would update and clarify the emergency planning regulations relating to exercises. It does not involve any modification to any plant or revise the need for or the standards for emergency plans, and there is no adverse effect on the quality of the environment. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street, NW., (Lower Level) Washington, DC 20037. Single copies are available without charge upon written request from NRC Distribution Section, Office of Information Resources Management, USNRC, Washington, DC 20555.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval number 3150–0011.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L St., NW., (Lower Level) Washington, DC 20037. Single copies of the analysis may be obtained from Michael Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3918.

Backfit Analysis

This proposed rule would not impose any new requirements on production or utilization facilities. The proposed would delete the requirement that all states within the plume exposure pathway EPZ for a given site fully participate in an offsite exercise for that specific site at least every 7 years. It also relaxes the requirement to perform an ingestion exposure pathway exercise from every 5 years to every 6 years. These changes would permit, but do not require, licensees to change their emergency plans and procedures. Therefore, these changes are not considered backfits as defined in 10 CFR 50.109 (a)(1).

Regulatory Flexibility Act Certification

The proposed rule would not have a significant impact on a substantial number of small entities. The proposed rule would update and clarify ambiguities in the emergency planning regulations relating to exercises. Nuclear power plant licensees do not fall within the definition of small business in section 3 of the Small Business Act, 15 U.S.C. 632, the Small Business Size Standards of the Small Business Administration in 13 CFR Part 121, or the Commission's Size Standards published at 56 FR 56671 (November 6, 1991). Therefore, in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, reporting and recordkeeping requirements.

For the reasons set out in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54 (dd) and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91; and 50.92 also issued under Pub. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80, 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Appendix E to part 50 is amended by revising section IV.F. to read as follows:

Appendix E—Emergency Planning and Preparedness for Production and Utilization Facilities.

* * * * *

IV. Content of Emergency Plans

F. Training

1. The program to provide for the training of employees and exercising, by periodic drills, of radiation emergency plans to ensure that employees of the licensee are familiar with their specific emergency response duties, and the participation in the training and drills by other persons whose assistance may be needed in the event of a radiation emergency shall be described. This shall include a description of specialized initial training and periodic retraining programs to be provided to each of the following categories of emergency personnel:

a. Directors and/or coordinators of the plant emergency organization;

b. Personnel responsible for accident assessment, including control room shift personnel;

c. Radiological monitoring teams;

d. Fire control teams (fire brigades);

e. Repair and damage control teams;

f. First aid and rescue teams;

g. Medical support personnel;

h Licensee's headquarters support personnel;

i. Security personnel.

In addition, a radiological orientation training program shall be made available to local services personnel; e.g., local emergency services/Civil Defense, local law enforcement personnel, local news media persons.

2. The plan shall describe provisions for the conduct of emergency preparedness exercises as follows: Exercises shall test the adequacy of timing and content of implementing procedures and methods, test emergency equipment and communications networks, test the public notification system, and ensure that emergency organization personnel are familiar with their duties.[3]

a. A full participation[4] exercise which tests as much of the licensee, State and local emergency plans as is reasonably achievable without mandatory public participation shall be conducted for each site at which a power reactor is located. This exercise shall be conducted within two years before the issuance of the first operating license for full power (one authorizing operation above 5% of rated power) of the first reactor and shall include participation by each State and local government within the plume exposure pathway EPZ and each state within the ingestion exposure pathway EPZ. If the full participation exercise is conducted more than one year prior to issuance of an operating licensee for full power, an exercise which tests the licensee's onsite emergency plans shall be conducted within one year before issuance of an operating license for full power. This exercise need not have State or local government participation.

b. Each licensee at each site shall annually exercise the onsite emergency plan.

c. Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the plan. Where the offsite authority has a role under a radiological response plan for more then one site it shall fully participate in one exercise every two years and shall, at least, partially participate[5] in other offsite plan exercises, in such period.

d. Each State within any ingestion exposure pathway EPZ shall exercise its plans and preparedness related to ingestion exposure pathway measures at least once every 6 years.

e. Licensees shall enable any State or local government located within the plume exposure pathway EPZ to participate in annual exercises when requested by such State or local government.

f. Remedial exercises will be required if the emergency plan is not satisfactorily tested during the biennial exercise, such that NRC, in consultation with FEMA, cannot find reasonable assurance that adequate protective measures can be taken in the event of a radiological emergency. The extent of State and local participation in remedial exercises must be sufficient to show that appropriate corrective measures have been taken regarding the elements of the plan not properly tested in the previous exercises.

g. All training, including exercises, shall provide for formal critiques in order to identify weak or deficient areas that need correction. Any weaknesses or deficiencies that are identified shall be corrected.

h. The participation of State and local governments in an emergency exercise is not required to the extent that the applicant has identified those governments as refusing to participate further in emergency planning activities, pursuant to 10 CFR 50.47(c)(1). In such cases, an exercise shall be held with the applicant or licensee and such governmental entities as elect to participate in the emergency planning process.

* * * * *

Dated at Rockville, Maryland, this 14th day of June, 1993, For the Nuclear Regulatory Commission.

James M. Taylor

Executive Director for Operations

[FR Doc. 93–15116 Filed 6–25–93; 8:45 am]

BILLING CODE 7590–01–M

[3] Use of site specific simulators or computers is acceptable for any exercise.

[4] "Full participation" when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite local and State authorities and licensee personnel physically and actively take part in testing their integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant. "Full participation" includes testing major observable portions of the onsite and offsite emergency plans and mobilization of state, local and licensee personnel and other resources in sufficient numbers to verify the capability to respond to the accident scenario.

[5] "Partial participation" when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite authorities shall actively take part in the exercise sufficient to test direction and control functions, i.e., (a) protective action decision making related to emergency action levels, and (b) communication capabilities among affected State and local authorities and the licensee.

DEPARTMENT OF JUSTICE

28 CFR Part 505

[AG Order No. 1753–93]

Costs of Incarceration Fee

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes procedures for the assessment and collection of a fee to cover the costs of incarceration for Federal inmates. This fee, which is to be assessed no more than once for any separate period of confinement, shall be equivalent to the average cost of one year of incarceration. An inmate will be assessed a fee in accordance with his or her ability to pay as determined by application of the Department of Health and Human Services poverty guidelines. No fee is to be collected from an inmate with respect to whom a fine intended to recover costs of incarceration was imposed or waived by a United States District Court. An assessed fee may be waived or reduced in cases of financial hardship. This proposed rule, which implements newly enacted statutory authority on recovering costs of incarceration, is intended to ensure the continued efficient operation of Federal correctional institutions, including the provision of programs to help inmates better themselves.

DATES: Comments due by August 12, 1993.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307–3062.

SUPPLEMENTARY INFORMATION: The Department of Justice is proposing to add a new regulation on the Cost of Incarceration Fee. Section 111 of Public Law 102–395 (106 stat. 1842) authorizes the Attorney General to establish and collect from all persons convicted in a United States District Court and committed to the custody of the Attorney General a fee to cover the costs of incarceration.

In the interest of fairness and to insure institution stability, fees will be imposed only on inmates who begin serving their sentence on or after the date on which the regulation becomes effective; inmates already serving terms of imprisonment will not be affected.

Fees will be imposed on inmates based on their total assets above the poverty level (established by the Department of Health and Human Services). Inmates will be assessed a fee equal to their assets above the poverty level up to the average costs to the Bureau of Prisons of confining an inmate for one year. This method will allow inmates to maintain some assets for the care of dependents and to assist re-entry into society.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not be a major rule within the meaning

of Executive Order 12291, nor does this rule have federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of Executive Order 12612.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. All comments received will remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 505

Penalties, Prisoners.

Accordingly, by virtue of the authority vested in the Attorney General by law, including 5 U.S.C. 301, 28 U.S.C. 509 and 510, 31 U.S.C. 3717, and Public Law 102–395 (106 stat. 1842), part 505 of chapter I of title 28 of the Code of Federal Regulations is proposed to be added as follows.

PART 505—COSTS OF INCARCERATION FEE

Sec.

505.1 Purpose and scope.
505.2 Fee assessment.
505.3 Payment.
505.4 Appeal.
505.5 Final disposition.

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 31 U.S.C. 3717; Pub. L. 102–395 (106 Stat. 1842).

§ 505.1 Purpose and scope.

This part establishes procedures for the assessment and collection of a fee to recover the costs of incarceration. The provisions of this part apply to any person who is convicted in a United States District Court and committed to the custody of the Attorney General, and who begins service of sentence on or after [THE EFFECTIVE DATE OF THE FINAL RULE]. For purpose of this part, revocation of parole or supervised release shall be treated as a separate period of incarceration for which a fee may be imposed.

§ 505.2 Fee assessment.

(a) The Director of the Bureau of Prisons shall review the amount of the fee not less than annually to determine the cost of incarceration and is authorized to amend paragraph (b) of the this section to reflect the current cost. The new figure shall be published as a notice in the **Federal Register**.

(b) For fiscal year 1993, the fee to cover the costs of incarceration shall be twenty-thousand, eight-hundred and three dollars ($20,803). This figure represents the average cost to the Bureau of Prisons of confining an inmate for one year.

(c) A fee otherwise required by this part may not be collected from an inmate with respect to whom a fine was imposed or waived by a United States District Court pursuant to section 5E1.2 (f) and (i) of the United States Sentencing Guidelines or any successor provisions.

(d) For any inmate committed to the custody of the Attorney General for a period of less than 334 days (including pretrial custody time), the maximum fee to be imposed shall be computed by prorating on a monthly basis the average cost for one year of confinement.

(e) Bureau of Prisons Unit Team staff shall be responsible for computing the amount of the fee to be paid by each inmate.

(1) Unit Team staff shall rely exclusively on the information contained in the Presentence Investigation Report and findings and orders of the sentencing court in order to determine the extent of an inmate's assets, liabilities and dependents.

(2) The fee shall be assessed in accordance with the following formula: If an inmate's assets are equal to or less than the poverty level, as established by the United States Department of Health and Human Services and published annually in the **Federal Register**, no fee is to be imposed. If an inmate's assets are above the poverty level, Unit Team staff shall impose a fee equal to the inmate's assets above the poverty level up to the average cost to the Bureau of Prisons of confining an inmate for one year.

(f) The Warden may reduce or waive the fee if the person under confinement establishes that (1) he or she is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay all or part of the fee, or (2) imposition of a fine would unduly burden the defendant's dependants.

§ 505.3 Payment.

Fees imposed pursuant to this part are due and payable 15 days after notice of the Unit Team actions. Fees shall be included in the Inmate Financial Responsibility Program under the category "other federal government obligations", and shall be paid before other financial obligations included in that same category. Fees not paid within 15 days may also result in interest charges.

§ 505.4 Appeal.

An inmate may appeal the Warden's decision not to grant a waiver or the Unit Team's calculation through the Administrative Remedy Procedure (see part 542 of this chapter) and may submit information to demonstrate substantial hardship.

§ 505.5 Final disposition.

Before the inmate completes his or her sentence, Unit Team staff shall review the status of the inmate's fee and refer any unpaid amount to the United States Attorney's Office for collection.

Dated: June 18, 1993.

Janet Reno,

Attorney General.

[FR Doc. 93–15056 Filed 5–25–93; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 0

Ethics and Conduct of Department of Labor Employees

AGENCY: Office of the Secretary, Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor proposes to issue a rule which repeals, effective February 3, 1993, most of the regulatory provisions relating to "Ethics and Conduct of Department of Labor Employees." Certain additional provisions are repealed, effective October 5, 1992.

The regulatory provisions which the proposed rule would repeal have been superseded by a final rule, "Standards of Ethical Conduct for Employees of the Executive Branch," issued by the Office of Government Ethics. This rule was effective February 3, 1993 and published at 57 FR 35006–35067 (August 7, 1992). Other regulatory provisions have superseded by an interim rule entitled "Executive Branch Financial Disclosure, Qualified Trusts, And Certificates of Divestiture," issued by the Office of Government Ethics. This rule was effective October 5, 1992 and was initially published at 57 FR 11800–11830 (April 7, 1992).

The proposed rule continues in effect those provisions which require clearance of certain outside employment, business, professional, or other such activities. It preserves additional instructions or other issuances which restrict the holding of specific financial interests or require the clearance of outside employment or other such activities. The proposed rule

also continues in effect a regulatory waiver under the conflict of interest laws which permits Department of Labor employees to engage in official activities affecting certain financial interests in insurance companies, mutual funds, investment companies or banks, even though engaging in such activities would otherwise be prohibited by law.

DATES: Comments by agencies and the public are invited and are due by July 28, 1993.

ADDRESSES: Send comments to Mr. Robert Shapiro, Department of Labor, room N–2428, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Robert Shapiro, Office of the Solicitor, telephone (202/FTS) 523–8201, FAX (202/FTS) 219–6896.

SUPPLEMENTARY INFORMATION: On April 7, 1992, the Office of Government Ethics (OGE) published an interim rule, 5 CFR part 2634, establishing a new confidential financial disclosure reporting system for executive branch departments and agencies, effective October 5, 1992 (57 FR 11800–11830). The new confidential financial reporting system supersedes 5 CFR 735.106, all of subpart D of part 735 of 5 CFR, and all implementing agency regulations thereunder, including subpart E of 29 CFR part 0.

On August 7, 1992, the Office of Government Ethics (OGE published a final rule to establish, effective February 3, 1993, uniform standards of ethical conduct for all employees of the executive branch (57 FR 35006–35067). This OGE rule is intended to carry out, among other provisions, the mandate of section 201 of Executive Order 12674 of April 12, 1989, as modified by E.O. 12731, which directs the Office of Government Ethics to establish a single, comprehensive and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable. The final OGE rule is codified at 5 CFR part 2635. It supersedes most of the OGE's model ethics and conduct regulations found at subparts A, B, and C of 5 CFR part 735 and agency ethics regulations issued thereunder including subparts A–D the Department of Labor ethics and conduct regulations (29 CFR part 0).

On November 30, 1992, the Office of Personnel Management (OPM) reissued uniform standards of conduct regulations relating to gambling, conduct prejudicial to the Government, and the special preparation of persons for civil service and foreign service examinations. This OPM action will preserve the executive branch-wide applicability of certain provisions which are not included in the OGE regulations at part 2635.

The Department of Labor proposed rule revokes the superseded provisions of subparts A through D of the Department of Labor ethics and conduct regulations, effective February 3, 1993, and revokes subpart E, effective October 5, 1992. It proposes, however, to permit certain Department of Labor regulations, instructions, and issuances to remain in effect for a limited period. The limited continuation of these provisions is consistent with part 2635. If the Department of Labor determines that a further continuation of some of these provisions is appropriate, it may, with the approval of the OGE, include them in a supplemental agency regulation. Section 2635.105 of the OGE rule provides that in addition to the OGE standards of conduct contained in part 2635 an agency may issue, jointly with OGE, supplemental agency regulations with which the OGE has concurred (57 FR 35043–35044).

The Department of Labor proposed rule would not disturb the continued effectiveness of current regulations, instructions, and issuances of the Department of Labor, including its constituent agencies, restricting the acquisition or holding of certain financial interests. Retention of these requirements is in accordance with the Note at § 2635.403(a) of the OGE regulations (57 FR 35053). This Note provides that for one year after the effective date of part 2635 or until the issuance of an agency supplemental regulation, whichever occurs first, any prohibition on acquiring a specific financial interest contained in an agency regulation, instruction or other issuance in effect prior to the effective date of part 2635 shall be treated as an agency supplemental regulation. Section 2635.403(a) provides that supplemental agency regulations may include restrictions on the acquisition or holding of a financial interest or a class of interests by agency employees and certain family members.

The proposed rule also would not disturb the continued effectiveness of existing Department-wide and agency regulations, instructions, or other issuances requiring prior approval of outside employment or activities. The Note to § 2635.803 (57 FR 35062) provides, as in the case of restrictions on financial interests, that these prior approval requirements will be regarded as agency supplemental regulations for a time period described identically to that set forth in § 2635.403.

Finally, the proposed rule would not affect the current regulatory waiver issued by the Department of Labor under the authority of title 18 U.S.C. 208(b)(2). This waiver is found in the Department of Labor ethics regulations at 29 CFR 0.735–12(c). It permits Department of Labor employees to engage in official activities affecting certain financial interests in insurance companies, mutual finds, investment companies or banks, even though engaging in such activities would otherwise be prohibited by 18 U.S.C. 208(a). It is likely that the Department of Labor waiver provided in 29 CFR 0.735–12(c) will eventually be superseded by OGE action. Section 2635.401(d)(1) provides that pending the issuance of superseding regulatory waivers by OGE, agency regulatory waivers issued prior to November 30, 1989 continue to apply.

Executive Order 12291, Federal Regulation

As Secretary of Labor, I have determined that this proposed rule is a regulation related to agency organization, management or personnel, as provided in section 1(a)(3) of Executive Order 12291. Moreover, its effects do not meet the test for a "major rule" as defined in section 1(b) of the Executive Order.

Regulatory Flexibility Act

As Secretary of Labor, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have significant economic impact on a substantial number of small entities because it affects only Federal employees.

Paperwork Reduction Act

As secretary of Labor, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget thereunder.

List of Subjects in 29 CFR Part 0

Conflicts of interest; Government employees and former employees.

Accordingly, for the reasons set out in the preamble, 29 CFR part 0 is proposed to be amended as follows:

PART 0—ETHICS AND CONDUCT OF DEPARTMENT OF LABOR EMPLOYEES

1. The authority citation for part 0 is revised to read as follows:

Authority: E.O. 11222; 1964–1965 Comp., p. 306; 5 CFR part 735; 18 U.S.C. 201–209; 5 CFR part 737 (48 FR 11944, Mar. 22, 1983);

5 U.S.C. 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR 1990 Comp., p. 306; 5 CFR part 2634; and 5 CFR part 2635.

2. Part 0 is amended by removing and reserving subparts A, B, D, and E.

3. Part 0, subpart C is amended by removing and reserving § 0.735–11 and by removing and reserving the introductory text, and paragraphs (a), (b); and (d) in § 0.735–12.

4. Section 0.735–13 is amended by revising the section heading to read as follows and by adding a new paragraph (d) at the end of the section to read as follows:

§ 0.735–13 Financial interests and clearance of outside activities.

* * * * *

(d) In accordance with the Note to 5 CFR 2635.403(a) and the Note to 5 CFR 2635.803, any requirement for prior approval of employment or activities and any prohibition on acquiring or holding a specific financial interest contained in an agency, regulation, instruction, or other issuance which is in effect prior to February 3, 1993 shall remain effective for one year after February 3, 1993 or until issuance of an agency supplemental regulation under part 2635, whichever occurs first. Issuances which are the subject of this paragraph shall include regulations, instructions, or other issuances by the Department of Labor and any agencies within the Department of Labor.

Signed at Washington, DC, this 22 day of June 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–15099 Filed 6–25–93; 8:45 am]

BILLING CODE 4510–23–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 93–3]

Cable and Satellite Carrier Royalty Refunds

AGENCY: Copyright Office; Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking is issued to inform the public that the Copyright Office of the Library of Congress proposes to amend its regulations with respect to refunds of overpaid royalties made pursuant to the cable compulsory and satellite carrier statutory licenses, 17 U.S.C. § 111 and § 119, respectively. The Office also proposes changing its policy with respect to the administrative accounting and handling of royalties designated for refunds from individual accounting periods.

EFFECTIVE DATE: Comments should be received on or before July 28, 1993.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail, to: Library of Congress, Department 100, Washington, DC 20540. If delivered by hand, copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM–407, 101 Independence Avenue, SE., Washington, DC 20559.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559, (202) 707–8380.

SUPPLEMENTARY INFORMATION:

1. Background

Section 111 of title 17, the Copyright Act of 1976, establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works contained on broadcast television signals. Cable systems seeking to avail themselves of the compulsory license must deposit statements of account and royalty fees with the Copyright Office on a biannual basis. Congress also created a similar statutory license for satellite carriers in section 119 of title 17, the Satellite Home Viewer Act of 1988, for retransmission of broadcast signals to home satellite dish owners for private home viewing.

While both section 111 and section 119 require the deposit of royalty fees, neither section makes provision for the refund of monies submitted by cable systems and satellite carriers in excess of their statutory obligation. At the request of interested parties, the Copyright Office initially addressed this situation in the context of section 111 and adopted formal regulations. 45 FR 45270 (1980). The Office noted that refunds of excessive royalty sums could be made in either of two ways: through the ordinary course of examination of a statement of account by the Copyright Office and discovery of an obvious error on the face of the statement; or at the discovery of an error by a cable operator and subsequent timely request for a refund. *Id.*

With respect to cable refund requests, the Office promulgated a regulation specifying the method and requirements. 37 CFR 201.17(j)(3). The regulation provides in pertinent part:

> The request must be in writing, must clearly identify its purpose, and, in the case of a request for a refund, must be received in the Copyright Office before the expiration of 60 days from the last day of the applicable Statement of Account filing period, as provided for in paragraph (c)(1) of this section,* * *. A request made by telephone or by telegraphic or similar unsigned communication, will be considered to meet this requirement if it clearly identifies the basis of the request, if it is received in the Copyright Office within the required 60 day period, and if a written request meeting all the conditions of this paragraph (j)(3) is also received in the Copyright Office within 14 days after the end of such 60 day period.

Section 201.17(j)(3)(i).

The Copyright Office cited several reasons in support of the short and strict time limit on requests for refunds:

> To enable the Copyright Office to fulfill its statutory obligation promptly to transfer royalty payments to the Treasury for investment in interest-bearing securities; to provide detailed accounting to the Copyright Royalty Tribunal; to assure that copyright owners will derive the intended benefits of prompt transfers and investment; and to prevent the Copyright Royalty Tribunal from being hampered in distributing the accumulated fees and interest to copyright owners.

45 FR at 45273 (1980) (quoting the Notice of Proposed Rulemaking, 44 FR 73123, 73125 (1979)).

Shortly after the passage of the Satellite Home Viewer Act of 1988, the Copyright Office adopted formal implementing regulations. 54 FR 27873 (1989). The language governing refunds made pursuant to examination and request mirrors § 201.17, except that in the case of refund requests, they must be made within 30 days of the close of an account filing period, as opposed to the 60 day cable rule. In support of the 30 day deadline, the Office stated:

> The modest information required by the satellite carrier statement of account form and the straight-forward method of calculating the royalties should mean that refund requests are infrequent. Satellite carriers should make fewer errors compared to cable systems and the review of the statements of account should take less time. The Office would compare the satellite carrier filing requirements to those relating to the jukebox compulsory license, for which a 30 day refund period has been found reasonable.

54 FR at 27874 (1989).

Both the cable and satellite carrier refund regulations have generally served well the interests of copyright owners, cable operators and the Copyright Office in the years since their adoption.

However, a number of policy issues have arisen regarding refunds. The Office considers it appropriate to deal with the matter of periodic rollover of royalties that accumulate following distribution of the bulk of the royalties by the Copyright Royalty Tribunal.

As noted above, several underlying policy reasons motivated the original adoption of the refund rule in 1980. The general aim, however, was to fashion a rule that would not substantially interfere with the royalty distribution process designed by Congress so as to assure that copyright owners received the full value of monies collected as quickly and efficiently as possible. While some of the circumstances surrounding the technical operation of the refund regulation may have changed in the intervening years, the Office believes that the announced policies remain fundamentally sound. It is with this principle firmly in mind that the Office now addresses some new challenges facing its refund rules for the cable and satellite carrier licenses.

2. Refunds for Amended Filings

Section 201.17(j)(3)(i), applicable to the cable license, and 201.11(g)(3)(i), applicable to the satellite carrier license, commence the 60 and 30 day time periods, respectively, within which to request a refund from the "last day of the applicable Statement of Account filing period." Thus, for example, in the case of the cable license for calendar year 1992, requests for refunds for the first accounting period were due at the Office no later than October 28, 1992, and requests for the second accounting period of 1992 were due no later than April 30, 1993.

In accordance with strict adherence to its refund policy, the Copyright Office has marked the commencement of 30 and 60 day refund request periods from the "last day of the applicable Statement of Account filing period." The Office, however, has experienced certain situations with amended filings which may require a refund request period not marked from the last day of the accounting period.

For example, a cable statement of account from Operator X for the first accounting period of 1992 gives Operator X 60 days from August 29, 1992, or October 28, 1992, in which to request a refund. Suppose, however, that Operator X amends its statement of account on November 15, 1992 to correct for an error it discovers, which would not be revealed in the ordinary course of the Copyright Office's examination of the statement of account, and submits an additional royalty payment. Or, perhaps Operator X has missed the August 29 filing date altogether and is filing for the first time, or is responding to a Copyright Office discovery of an error and is submitting an additional royalty payment. [1] In either of these situations, Operator X is prohibited from requesting a refund on any monies submitted on November 15, even if it discovers an error in calculation (exclusive of obvious errors discovered by the Office during examination) on the same day.

The Copyright Office acknowledges the potential for inequality created by the current refund regulations' reliance on the last day of the accounting period as the triggering date, particularly where an overpayment is made accidentally in response to an Office inquiry. The Office, therefore, proposes to amend sections 201.17(j)(3)(i) and 201.11(g)(3)(i) by deleting the phrase "last day of the applicable Statement of Account filing period" and the sectional references to such days in both sections and replacing them with "date of receipt at the Copyright Office of the royalty payment that is the subject of the request."

3. Clear Basis for Refund

The question has arisen about the substantive standards, if any, for granting a refund request.

Both §§ 201.17(j)(3) and 201.11(g)(3) establish the technical format for a refund request. A request must be "in writing, must clearly identify its purpose," and must be received within the prescribed time limit. The request must clearly identify the applicable Statement of Account, contain "a clear statement of the facts on which it is based," identify the error and provide corrected information, and be accompanied by an affidavit from a corporate officer explaining why the royalty was miscalculated, and a proper filing and processing fee. These requirements are, for the most part, procedural in nature, and the question remains as to the substantive requirements necessary to the grant of a refund.

Several cable operators have in the past taken the position that refunds are a matter of right: if the operator wishes to amend the information on its Statement of Account, for whatever reason, it may do so and require a refund of royalties consistent with the new information (so long as the request is made within the 60 day time period). This situation is particularly acute in situations where the Copyright Office has not adopted or announced a formal position with respect to certain filing procedures.

For example, the Office currently does not have a formal position regarding application of the 3.75% rate in the case of partially permitted/partially nonpermitted distant signals. A partially permitted/partially nonpermitted distant signal scenario involves a distant broadcast station which was not permitted to be carried by the cable operator in certain communities under the FCC's former carriage rules, and hence subject to the costly 3.75% of gross receipts royalty charge, and permitted in the other communities served by the cable operator, and thus subject to the less expensive base rate for distant signals. The Office has not yet stated a formal position as to whether the cable operator must pay 3.75% for the entire signal, the base rate for the entire signal, or may pro-rate based on subscriber groups located within and without the permitted area. Some cable operators have maintained that if they initially pay 3.75% for the entire signal, and then amend their statement within the 60 day period to reflect payment either at the base rate or pro-rated, they are entitled to a refund as a matter of right.

The Copyright Office has long maintained that refund "requests" are just that; they are "requests" which may be granted by the Office and are not due as a matter of ordinary administrative course. Neither section 111 nor section 119 make any provision for refunds, and there is no statutory right requiring the return of any royalties submitted to the Copyright Office. The Copyright Office adopted refund regulations in accordance with its rulemaking authority for purposes of administering the compulsory license. See 45 FR 45270 (1980)(cable license); 54 FR 27873 (1989)(satellite carrier license); *see also, Cablevision Systems Development Company v. Motion Picture Association of America, Inc.*, 836 F.2d 599 (D.C. Cir.), *cert. denied*, 487 U.S. 1235 (1987). Refunds are not a matter of right, nor are they made in ordinary due course or as a simple ministerial function. Requests must comply in all respects with the refund regulations applicable to the cable and satellite licenses.

By administrative practice, the Copyright Office has long interpreted its refund regulation to deny a request for a refund where there has been no clear overpayment of the statutory royalty. We now propose to confirm this administrative practice by adding explicit regulatory text.

[1] All royalty payments made after August 31 would require assessment of interest for the late time period. See 37 CFR § 201.17(i) and 201.11(h).

The Office proposes to amend both section 201.17(j)(3)(iii) and 201.11(g)(3)(iii) by requiring that refund requests must, in addition to "a clear statement of facts," provide for a "clear basis" upon which requests can be granted. A "clear basis" is one which has a direct foundation either in the statute or a Copyright Office decision or policy. Thus, in the partially permitted/partially nonpermitted scenario described above, no refund would be made if the cable operator changed its payment from 3.75% to base rate or prorated since there is no "clear basis" either in the statute, or an articulated Copyright Office policy or practice on which a refund could be granted. When the Copyright Office has not affirmatively taken a position with respect to a particular royalty filing and payment practice and the statute does not directly address the issue, no refund will be made. This is consistent with the Copyright Act, which makes no express provision for refunds, and the Office's goal of making refunds to prevent inequitable consequences arising from bona fide payment errors. 45 FR 45270 (1980).

4. The Royalty Pool

The Copyright Office has had a longstanding policy of making refunds only from the calendar year account in which the overpayment was made. A calendar year account consists of royalties collected for the two accounting periods January-June and July-December. This policy has necessitated that the Office reserve a certain portion of the total royalty pool for every calendar year account, thereby preventing the Copyright Royalty Tribunal from distributing that amount, in anticipation of making refunds. The Office is now reconsidering its practice of matching refunds to royalties collected during their respective accounting year in favor of a more flexible approach.

In keeping with generally accepted accounting principles and to preserve the autonomy of royalty pools, the Copyright Office has refunded money only from the calendar year account to which the refund applies. Thus, for example, if the Copyright Office examined a statement of account form in September of 1992 for either accounting period of 1991 and discovered an overpayment, it would refund the amount of overpayment from the 1991 royalty account. The practice of making a refund from monies collected during the calendar year account to which the refund applies comports with general rules of accounting accepted by the Library of Congress, and aids in determining the total royalties collected for each accounting period.

The practice is not, however, without its difficulties. In order to account for the possibility of refunds, the Copyright Office is required to create a reserve by withholding royalty sums from the distribution process conducted by the Copyright Royalty Tribunal. Thus, for each accounting period, the Copyright Office must approximate how much money will be needed to satisfy refunds, and withhold that amount from the year's total royalties available for distribution. The need for a "refund pool" is not obviated by the expiration of the refund request period, since refunds are often made through the Copyright Office examination process. [2]

Difficulties arise in calculating how much of the royalty pool for a given accounting period should be reserved, particularly when a potential for refunds exists even years later. This problem is exacerbated by the Copyright Office's recent decision that MMDS operators and satellite carriers are not eligible for section 111 compulsory licensing. 57 FR 3284 (1992). The regulation, with an effective date of January 1, 1994, provides that any MMDS operators or satellite carriers who have filed statements of account and paid royalties under section 111 for any accounting period may request a full refund. Although many operators and carriers may not opt for a refund in favor of the precedential value of having made a good faith effort in securing the section 111 license and satisfying the copyright laws for carriage that occurred before the effective date of the regulation, the potential exists for large refund sums from prior accounting periods. In the case of the recently enacted Audio Home Recording Act, Congress recognized this copyright policy issue and provided a statutory solution. The Act explicitly gives the Register the regulatory authority to close out royalty accounts every four years and rollover the balance to the succeeding calendar year account. The Copyright Office finds that this explicit authority confirms regulatory authority that can be implied to exist with respect to the cable and satellite carrier licenses in the interest of fair and equitable administration of those licenses.

In order to eliminate the withholding guessing game and the potential for exhausted "refund pools," the Copyright Office is proposing to amend its regulations to provide a "closeout" procedure whereby accounting periods would, in the discretion of the Register of Copyrights, be closed out after four years, and any refund applicable to a closed out accounting period would be made from more current funds. The regulation would adopt language from section 1005 of the Audio Home Recording Act of 1992, Public Law No. 102–563, which provides that:

> The Register may, in the Register's discretion, 4 years after the close of any calendar year, close out the royalty payments account for that calendar year, and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.

The regulation would therefore have a "close out" feature, eliminating the need to maintain funds in all previous accounts, and a "rollover" feature that would allow refunds to be made from royalties collected for more current accounting periods. The Copyright Office believes that this procedure will be more efficient and manageable from an accounting standpoint, as well as allow for faster distribution of a greater percentage of the royalty pool to copyright owners. Cable and satellite carrier licensees will benefit from the assurance that their proper refund requests can be satisfied. Copyright owners will benefit because the Office can adopt lower reserves to provide for refunds, and therefore more money is available for earliest distribution.

Regulatory Flexibility Act Statement

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, of U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are

[2] The need for funds for refunds also does not end with the completion of examination of statement of accounts for the most recent accounting periods. It is often the case that amended or original filings are made long after their applicable accounting period, and refunds from examination may still be made. Thus, for example, a cable operator who did not file any statement or pay any royalties for the first accounting period of 1985 may finally do so in 1992. The Office would examine the statement, and, if it found an obvious error resulting in an overpayment, would make a refund from the 1985/1 royalty pool.

agencies as defined in the Administrative Procedure Act.[3]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights had determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 201

Cable systems; satellite carriers; cable compulsory license; satellite carrier statutory license.

Proposed Regulation

In consideration of the foregoing, it is proposed that part 201 of 37 CFR Chapter II be amended to read as set forth below.

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 would be revised to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. § 702, § 201.6 is also issued under 17 U.S.C. 708; § 201.7 is also issued under 17 U.S.C. 408, 409 and 410; § 201.11 is also issued under 17 U.S.C. 119; § 201.16 is also issued under 17 U.S.C. 116; § 201.17 is also issued under 17 U.S.C. 111; § 201.19 is also issued under 17 U.S.C. 115; and § 201.24 is also issued under Public Law 101–650; 104 Stat. 5089, 5134;

2. In section 201.11, paragraph (c)(4) is added and the first sentences of paragraphs (g)(3)(i) and (g)(3)(iii) are revised to read as follows:

§ 201.11 Satellite Carrier Statement of Account Covering Statutory Licenses for Secondary Transmissions for Private Home Viewing.

* * * * *

(c) * * *

(4) The Register may, in the Register's discretion, 4 years after the close of any calendar year, close out the royalty payments account for that calendar year, and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.

* * * * *

(g) * * *

(3) * * *

(i) The request must be in writing, must clearly identify its purpose, and, in the case of a request for a refund, must be received in the Copyright Office before the expiration of 30 days from the last day of the applicable Statement of Account filing period, or before the expiration of 30 days from the date of receipt at the Copyright Office of the royalty payment that is the subject of the request, whichever time period is longer.

* * * * *

(iii) The request must contain a clear statement of the facts on which it is based and provide a clear basis on which a refund may be granted, in accordance with the following procedures:

* * * * *

3. In section 201.17, paragraph (c)(4) is added and the first sentences of paragraphs (j)(3)(i) and (j)(3)(iii) are revised to read as follows:

§ 201.17 Statements of Account Covering Compulsory Licenses for Secondary Transmissions by Cable Systems.

* * * * *

(c) * * *

(4) The Register may, in the Register's discretion, 4 years after the close of any calendar year, close out the royalty payments account for that calendar year, and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.

* * * * *

(j) * * *

(3) * * *

(i) The request must be in writing, must clearly identify its purpose, and, in the case of a request for a refund, must be received in the Copyright Office before the expiration of 60 days from the last day of the applicable Statement of Account filing period, or before the expiration of 60 days from the date of receipt at the Copyright Office of the royalty payment that is the subject of the request, which ever time period is longer.

* * * * *

(iii) The request must contain a clear statement of the facts on which it is based and provide a clear basis on which a refund may be granted, in accordance with the following procedures:

* * * * *

Dated: June 10, 1993.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 93-15107 Filed 6-25-93;8:45am]

BILLING CODE 1410-08-P

[3] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title (17)," except with respect to the making of copies of copyright deposits (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 21–1–5949; FRL–4671–6]

Federal Contingency Procedures for the Maricopa County, Arizona Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is finding that the Maricopa County (Phoenix), Arizona, carbon monoxide (CO) nonattainment area has violated the CO national ambient air quality standard after December 31, 1991, the projected attainment date in the 1991 Arizona Federal Implementation Plan (FIP). This violation triggers the contingency procedures in the Arizona FIP. In compliance with those procedures, EPA is proposing to find that the implementation plan is inadequate and that additional control measures are necessary to attain and maintain the CO NAAQS. Also in compliance with those procedures, EPA is proposing two lists of highway projects, some of which will be delayed while EPA promulgates any necessary additional control measures.

DATES: Written comments on this proposal must be submitted to EPA at the address below by July 28, 1993.

ADDRESSES: Comments on this proposal should be sent to: Julia Barrow, FIP Team (A–2–5), Air and Toxics Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105.

The rulemaking docket for this notice, Docket No. 93–AZ-MA 1, may be inspected at the above location between 8 a.m. and 4:30 p.m. on weekdays. A reasonable fee may be charged for copying parts of the docket.

Copies of the docket are also available at the State and local offices listed below:

Arizona Department of Environmental Quality, Library, 3033 North Central Avenue, Phoenix, Arizona 85012.

Maricopa Association of Governments, 1820 West Washington, Phoenix, Arizona 85007.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Mobile Sources Section (A–2–1), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901, (415) 744–1225.

SUPPLEMENTARY INFORMATION:

I. The Federal Contingency Process for Maricopa

On February 11, 1991, EPA disapproved under the Clean Air Act (CAA) portions of the Arizona State Implementation Plan (SIP) and promulgated a limited federal implementation plan (FIP) for the Maricopa County, Arizona, carbon monoxide (CO) nonattainment area. EPA disapproved portions of the SIP and promulgated the FIP in response to an order of the Ninth Circuit Court of Appeals in *Delaney* v. *EPA*, 898 F.2d 687 (9th Cir. 1990). For a discussion of *Delaney* and the FIP, please see the notice of proposed rulemaking (NPRM) for the FIP, 55 FR 41204 (October 10, 1990) and the notice of final rulemaking for the FIP, 56 FR 5458 (February 11, 1991).[1]

The *Delaney* order required EPA to promulgate, as part of the FIP, a two-part contingency procedure consistent with the Agency's 1982 SIP guidance found at 46 FR 7187, 7192 (January 22, 1981).[2] These two parts are a list of transportation projects that would be delayed while an inadequate SIP is being revised and a process to adopt measures to compensate for unanticipated emission reduction shortfalls. Under the 1982 SIP guidance both parts are triggered when the EPA Administrator determines that a SIP is inadequate and additional emission reductions are necessary.

For reasons discussed in the FIP NPRM, the Agency decided to use a verified violation of the CO national ambient air quality standard (NAAQS) occurring after December 31, 1991 as the initial trigger for its contingency process. December 31, 1991 was the projected date for attainment in the FIP. A verified violation not caused by an exceptional event (as defined by EPA guidelines) requires a determination by the Agency of whether additional control measures are necessary to assure maintenance of the CO standard. Upon a final finding by the Agency that additional measures are necessary, the process to identify, propose, and promulgate additional measures as well as the delay of highway projects are triggered. Under the FIP contingency process, the Agency has approximately ten months from the final finding to propose and promulgate additional measures (six months to propose and four months to finalize). A detailed discussion of the entire contingency process is given in the February, 1991, FIP rulemaking.

II. 1992 CO Violations in Maricopa

Once the FIP contingency process is triggered by a violation of the CO NAAQS after December 31, 1991, the first step in the process requires EPA to make a formal finding that the Maricopa area has violated the CO NAAQS after December 31, 1991 and, therefore, the implementation plan may be inadequate. Under the definition of the CO NAAQS (40 CFR 50.8), the first time in a calender year that ambient CO concentrations exceeds the 9 ppm standard[3] at a monitor is considered an exceedence; the second and all subsequent times during the same calender year that ambient concentrations exceed the standard at the same monitor are considered violations of the NAAQS.

On December 11, 1992, the Maricopa area recorded a violation of the CO standard at the 27th Avenue/Thomas Road/Grand Avenue air quality monitor. The area recorded another violation at the same monitor on December 24. In total, the area recorded five exceedences (2 of which were also violations) of the CO standard in 1992. These exceedences are listed in Table 1.

TABLE 1—CO EXCEEDENCES IN THE MARICOPA NONATTAINMENT AREA 1992

Date	Value (ppm)	Monitor location
Dec. 2	10.1	West Indian School.
Dec. 2	9.5	27th/Thomas/Grand.
Dec. 3	9.6	N. 7th Avenue.
Dec. 11	**9.8**	**27th/Thomas/Grand.**
Dec. 24	**9.7**	**27th/Thomas/Grand.**

Violations in bold.

All data documenting the exceedences have been quality assured and verified as not being caused by an exceptional event.

Based on this monitoring data, EPA today is finding that the Maricopa nonattainment area has violated the CO NAAQS after December 31, 1991 and is also proposing to find that the implementation plan is inadequate.

III. Determining the Cause of the Violation

The second step in the FIP contingency process requires EPA to determine the cause of the violations by determining the implementation status of the plan control strategy and by comparing the current emissions inventory to plan projections. Under the FIP, if incomplete implementation or non-implementation of plan measures or unanticipated growth have increased emissions above the level needed to maintain the CO standard, the Agency would proceed to determine whether additional control measures are necessary to lower those emissions. If emission levels are found to be at or below those projected as needed for maintenance, the Agency would first perform the additional air quality modeling necessary to determine whether additional control measures are necessary.

However, notwithstanding the actual causes of the December 1992 violations, EPA determined that updated air quality modeling was necessary before it could decide whether additional control measures were necessary for maintenance in the area. This determination was based on the type of modeling used in the 1991 FIP attainment demonstration, the release in 1992 of an updated version of EPA's mobile source emissions model, and new information on the contribution of

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[1] The Arizona FIP currently contains only contingency and conformity provisions for the Maricopa County and Pima County CO nonattainment areas. All control measures for both areas are contained in the SIP. See the final notice restoring and approving SIP measures, 56 FR 3219 (January 29, 1991) and the final notice approving two Maricopa measures and withdrawing the equivalent FIP measures, 57 FR 8268 (March 9, 1992).

The State of Arizona has submitted a contingency procedure and measure for the Maricopa area which EPA believes can be substituted for the overall FIP contingency process. EPA will shortly be proposing approval of the State submittal and withdrawal of the FIP process for the Maricopa Area. However, until the FIP process is withdrawn, the Agency is obligated to comply with its terms.

[2] The Clean Air Act Amendments of 1990 require SIPs in general "to provide for the implementation of specific measures to be undertaken if an area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under [Part D (nonattainment area provisions)] * * * [s]uch measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator." See section 172(c)(9). This requirement is substantially different from EPA's pre-amendment policy for contingency procedures. Both because of the timing of FIP rulemaking (the proposal was published prior to the passage of the amendments) and because the Ninth Circuit specifically cited EPA's pre-amendment contingency requirements as the missing element in the Arizona SIPs, EPA promulgated contingency procedures which comply with its pre-amendment policy. Arizona remains obligated to submit contingency provisions consistent with the amended Act by November 15, 1993.

[3] Due to EPA's rounding criteria, any recorded CO concentration less than 9.5 ppm is not considered an exceedence.

off-road mobile sources to the overall CO inventory in Maricopa County.

EPA has reviewed the implementation status of control measures in the SIP and compared current vehicle miles traveled projections with those used in the FIP. This information is briefly discussed below and is contained in the Technical Support Document for this rulemaking.

In the 1991 FIP, the attainment demonstration was based on a modified rollback analysis using EPA's mobile source emissions model, MOBILE4, and region-wide vehicle miles traveled (VMT) and speed data provided by the Arizona Department of Environmental Quality in 1990.[4] EPA's preferred air quality model for areas with region-wide CO problems (such as Maricopa's) is the urban airshed model (UAM). UAM is preferred because it allows the use of area-specific meteorological inputs and the use of spatially-distributed emission inventories. Because of the short promulgation schedule imposed by the *Delaney* order, EPA could not perform UAM modeling for the 1991 FIP.

In 1992, EPA released a new mobile source emissions model, MOBILE5, which replaces the model used in the FIP, MOBILE4. In late March 1993, a corrected version of MOBILE5, MOBILE5a was released. Under Agency policy, the latest available mobile source model should be used in any new reasonable further progress or attainment demonstrations (see *Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources,* EPA–450/4–81–026d (Revised), 1992). A determination of whether additional controls are necessary for the Maricopa area is equivalent to developing a new attainment demonstration for the area, and therefore the determination should be based on MOBILE5a. Because of changes internal to the model, mobile source inventories generated from MOBILE5a cannot be compared to those generated from MOBILE4; therefore, EPA is unable to compare the current inventory with the projections in the FIP.

Finally, the new carbon monoxide inventory developed by the Maricopa Bureau of Air Pollution Control shows that off-road mobile sources (sources such as construction equipment, airplanes, trains, and small utility equipment) emit more CO and contribute a greater portion of the overall CO inventory than had been thought. Where previous inventories placed the non-road mobile sources' contribution at approximately 9 percent of the total CO inventory, these sources are now believed to contribute up to 21 percent of total CO inventory. This increase in the inventory from non-road sources has the effect of both increasing the overall CO inventory and decreasing the overall contribution to the nonattainment problem of automobiles and trucks.

EPA has now completed the initial updated air quality modeling for the Maricopa area. The modeling protocol and results are discussed in the next sections.

IV. Air Quality Modeling

A. Modeling Protocol

This section briefly describes the modeling performed for the Maricopa area. A complete description of the data and techniques used in this modeling are contained in the modeling protocol in the Technical Support Document.

To determine if additional control measures are necessary for attainment and maintenance in the Maricopa area, EPA applied the Urban Airshed Model (UAM). EPA's Guideline for Regulatory Application of the Urban Airshed Model for Areawide Carbon Monoxide (EPA–450/4–92–011 a and b, June 1992) prescribes the use of UAM for areas where the CO problem is not due solely to "hotspots" at a few major road intersections, or where a build-up of CO over time would violate the steady-state assumptions in other air quality models.

As was noted in Table 1, several exceedences of the CO standard occurred in December, 1992. All were fairly close in CO level and in geographic location. The December 3rd episode was chosen to be modeled because of the widespread high CO values monitored on that day.

Using hourly CO emissions[5] and meteorological inputs for the December 3rd episode, UAM was used to simulate the areawide CO concentrations. The more localized hotspot component, determined with the CAL3QHC model, was added to UAM's areawide component to represent CO near the congested intersections of Thomas Road with Grand and 27th Avenues, and Indian School Road with Grand and 35th Avenues, the sites of the existing hotspot monitors. UAM's and CAL3QHC's predictions were then validated against CO concentrations actually observed during the December 3rd episode at all CO monitors located in the nonattainment area.

After the model was validated against the December 3rd, 1992 episode, it was rerun using baseline CO emissions projected for December, 1995.[6] These emissions were calculated assuming only existing control measures. To demonstrate attainment of the CO standard in 1995, modeled CO values must be no more than 9.0 ppm (the CO NAAQS) everywhere within the nonattainment area.

B. Modeling Results

The UAM simulations performed indicate that the Maricopa area will not attain the CO standard by 1995 with existing control measures. Further, the modeling indicates that high CO levels extend over a wide area and are not localized at specific hotspots.

For 1992, the model shows two areas of high CO values. One is a wide upside-down triangle or "T" shape centered on downtown Phoenix, with the arms of the "T" corresponding to, but far broader than, Interstates 10 and 17. The other area of high concentration is centered to the southeast, near Tempe and the Superstition Freeway. The latter area had the highest peak simulated areawide CO component for 1992 of 13.8 ppm. These general shapes persist in the 1995 results, though with a lower peak of 12.8 ppm now located in the downtown area. The areas of high ambient CO concentrations roughly matched the distribution of CO emissions.

Predicted 1995 CO including the hotspot component was about 13.1 ppm near the Indian School Road intersection and 11.4 ppm near the Thomas and Grand intersection. These modeled hotspot maxima did not occur exactly at the locations of the monitoring sites. This may indicate that the monitors were not optimally placed at these hotspots given the meteorological conditions of the December 3rd episode.

For this application, the model's performance was acceptable: the accuracy of peak prediction was within EPA guidelines, by several statistical measures. Plots of stimulated CO levels

[4] A complete discussion of this modeling analysis can be found in the FIP proposed rule, 55 FR 41204 (October 10, 1990), and the Technical Support Document for the final FIP rule.

[5] On-road motor vehicle emissions were calculated from MOBILE5 rather than MOBILE5a which is the current EPA model for mobile source emission calculations. MOBILE5a was released (on March 28, 1993) too late for use in this air quality modeling exercise. MOBILE5a corrected minor errors in MOBILE5. These corrections primarily affected calculations of either ozone precusor emissions or reductions from control strategies that are not currently applicable to the Maricopa area. Therefore, it is unlikely that MOBILE5a if it had been used would have resulted in different emissions or air quality modeling results.

[6] Late 1995 was chosen here because it is the statutory attainment date for moderate CO nonattainment areas such as Maricopa County.

over time for each monitor show that the model gives a reasonable match to the observations, and in general predicts peak values quite well.

For 1992, the model's simulated 13.8 ppm peak concentration does not occur at a monitored location and is significantly higher than the 9.6 ppm maximum observed at the existing ambient monitors. EPA's assessment of the model's reliability had to address the question of why the monitored CO peak values over the last few years have shown a downward trend—nearly to attainment—whereas the modeling shows continuing high values.

This difference may be due to the siting of the existing CO ambient monitors which may not be located at the true CO peak for this particular CO episode. This can be tested by placing monitors during the next CO season at the locations that the modeling indicates have high CO levels. The Maricopa County Air Pollution Control Division is currently undertaking a review of its monitoring system and will be siting additional monitors late this year.

Alternatively, there may be some inaccuracy in the modeling inputs, such as in emissions, the wind inputs, and the height of the inversion. It should be noted that the precise modeled peak values given above are preliminary and are subject to change, though they are very likely to remain above the standard. EPA continues to review these issues; however, after preliminary review, the Agency does not believe that they affect the conclusion that the Maricopa area will continue to exceed the CO standard in 1995.

Because of the correspondence between emissions and ambient concentration patterns, the acceptable performance of the wind modeling and the UAM statistical measures, and the insensitivity of the modeling results to some of the uncertainties, EPA judges that this application of UAM forms a reliable tool for decisions about the projected attainment status of the Maricopa area.

C. Implementation Status of Control Measures

The primary CO control strategy for the Maricopa area consists of four programs: oxygenated gasoline, a wintertime gasoline volatility limit, motor vehicle inspection and maintenance, and employer travel reduction.[7] Except for the wintertime gasoline volatility limit, information available to EPA indicates that these program are achieving, or have been modified to achieve, the emission reductions projected for them in the FIP. These programs, the assumptions made in the FIP about their effectiveness, and their current implementation status is discussed in the Technical Support Document for this rulemaking.

The wintertime gasoline volatility limit program requires that all gasoline sold in the Maricopa area during the CO season have a volatility (measured as Reid Vapor Pressure or RVP) of no more than 10 pounds per square inch (psi). Gasolines blended with ethanol are allowed to exceed this limit by no more than 1 psi because the addition of ethanol to gasoline raises the RVP of gasoline by approximately 1 psi. In projecting the benefit of the RVP limit in the FIP, EPA assumed that the market-share of ethanol blends would be 18 percent with methyl tert-butyl ether (MTBE) blends making up the balance of the market.[8] In the 1992/93 CO season the actual market share of ethanol blends was 73 percent. This unexpectedly high market-share for ethanol reduced the predicted benefit from the wintertime RVP limit. EPA believes, however, that while this reduction in effectiveness may have contributed to the 1991 violations, it was not by itself the cause of these violations.

V. Finding on the Need for Additional Control Measures

The next step in the FIP contingency process requires EPA to make a finding as to whether additional control measures are necessary to correct the emission reduction shortfall after the time EPA could reasonably promulgate these additional measures.

The Maricopa CO nonattainment area was classified by EPA under CAA section 186(a)(1) as a moderate CO nonattainment area with a design value less than 12.7 ppm. See 56 FR 56694, 56714 (November 6, 1991). CAA section 186(a)(1) sets attainment dates for moderate CO nonattainment areas as expeditiously as practicable but not later than December 31, 1995.

As discussed above, the initial modeling for the Phoenix area shows that the area will not attain the CO standard even by the outside date required by the Clean Air Act—December 31, 1995—with the existing SIP-approved control strategy. The simulated CO values are enough above the standard of 9.0 ppm, that in spite of the uncertainties of the modeling, the Agency is proposing to conclude that existing control measures are not sufficient to overcome the observed standard violations or to provide for attainment by 1995. Based on this result, EPA is proposing to find that additional control measures are necessary.[9] If the Agency should finalize this finding, then EPA has six months to propose the necessary additional control measures and four months beyond that to promulgate the measures.[10] The Agency invites comments on this proposed finding and on potential control measures that it should consider for the Maricopa area.

VI. List of Highway Projects Subject to Delay

Under the FIP contingency process, a finding by EPA that additional control measures are necessary for maintenance triggers the delay of a listed set of highway projects while EPA promulgates those measures. Tables 2 and 3 contain the proposed lists of transportation projects from the Maricopa County nonattainment area that EPA has determined may adversely affect air quality and, therefore, could potentially be delayed. During the period of delay, the Federal Highway Administration could not fund construction of any of the listed projects. Not all the projects on the lists would actually be delayed; many of the projects are scheduled for construction before or after the period that the delay would be in effect. Under the FIP contingency process, EPA has approximately 10 months from when it

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[7] It is important to note that the overall SIP control strategy for the Maricopa area consists of many more measures (including many transportation control measures) than the four listed here. These four measures, however, are the ones that were explicitly credited in the attainment demonstration contained in the 1991 FIP. The attainment demonstration also relies on emission reductions from the Federal Motor Vehicle Control Program.

[8] The addition of MTBE to gasoline does not raise the RVP of the blend. The market share assumptions were based on actual market shares from the 1989/90 CO season. Market share levels are not regulated under either the oxygenated gasoline program or the RVP program.

[9] The Arizona Legislature recently passed a CO contingency measure which would eliminate the 1 psi exemption for ethanol blends and require all gasoline sold in the Maricopa area, regardless of the oxygenate, to have an RVP no greater than 10 psi during the winter CO season. Under the terms of the legislation, this measure will be triggered when EPA finalizes the finding that additional control measures are necessary. This measure is projected to reduce total CO emissions by 3.9 percent by 1995. Based on the preliminary modeling results, this measure, while an important step in reducing CO levels in Phoenix, is not by itself sufficient to change EPA's proposed conclusion that additional control measures are necessary.

[10] The State may and EPA encourages Arizona to submit adopted control measures that may eliminate—if the measures are adequate to demonstrate expeditious attainment—or reduce the need for EPA to propose and promulgate federal measures under the FIP contingency process.

takes final action on today's notice to propose and promulgate the necessary additional control measures; therefore, the maximum period that any one project should be delayed is approximately 10 months.

Projects on the lists are drawn from the highway element of the Maricopa Association of Governments' *FY 1992/93 through 1996/97 Transportation Improvement Program* (TIP) adopted July 29, 1992. EPA followed the same procedure, discussed at 55 FR 41224 (October 10, 1990), that was used in the FIP to select projects for listing. The procedure uses a set of exemptions to screen projects in the TIP. These exemptions are:

(a) Road rehabilitation projects which do not increase capacity, landscaping projects, right-of-way acquisitions, design and engineering studies, and other projects which by their nature do not adversely impact air quality;

(b) Projects not requiring any federal action, approval, or funding under title 23 U.S.C.;

(c) Safety projects as defined in "EPA/FHWA Region IX Procedures to Implement Section 176(a)" (December 12, 1980)·

(d) Projects that implement TCMs in the 1988 Maricopa CO SIP or 1990 PM10 plan;

(e) Transit projects;

(f) Aviation projects; and

(g) Projects outside of the Maricopa nonattainment area as defined in 56 FR 56694 (November 6, 1991).

Consistent with how it historically has implemented highway funding sanctions, EPA also has not listed projects from the TIP for which construction contracts have already been issued, construction has commenced, or construction is completed.

As discussed at 55 FR 41224, these exemptions were developed from EPA's 1982 SIP guidance language requiring a highway delay list and the section 176(a) language regarding the highway funding sanction in the 1977 Clean Air Act.[11]

For each project listed, EPA also determined the current status of the project.[12] As part of this work, EPA discovered that a number of projects had been proposed by their sponsors to be withdrawn from development, downsized, or withdrawn from federal funding or approval. Many of these proposed changes will be reflected in the FY 1993/94 through FY 1997/8 TIP currently being drafted by the Maricopa Associaton of Governments. However, because this new TIP is a draft and subject to change, EPA believes that it must still rely on the 1992/93 TIP as the primary source of projects for listing. In order to deal with the possibility that certain projects will in the future qualify for exemption from delay, EPA has divided the highway projects potentially subject to delay into two groups. The first group is listed in Table 2 and are the projects that are proposed to change in scope or source of funding. The second group is listed in Table 3 and are the projects that may in the future qualify for exemption from delay. To the extent that the projects on Table 3 do become exempt based on their listing in the FY 1993/4 TIP, EPA would not consider them subject to delay. However, any project on Table 3 which does not become exempt will still be subject to delay.

EPA solicits comments on the listed projects including whether any additional projects should be listed or whether any listed projects should be removed. Such comments should include information on the impact of the project on air quality or, if appropriate, the exemption status of the project consistent with the criteria discussed above.

TABLE 2.—HIGHWAY PROJECTS POTENTIALLY SUBJECT TO DELAY

ID No.	Fiscal year	Location	Worktype
5	93	101L Agua Fria/I–17 Interchange	Construct Central Structures (West Legs).
168	93	Queen Creek Road	New Construction.
210	93	Thompson Ranch Rd, Grand Ave to Greenway Rd	New Construction.
225	93	Elliot and Lindsey Roads	Reconstruct to 6' cross section, widen from 2 to 4 lanes, improve railroad crossing.
237	93	67th Ave, Peoria to Cactus	Widen from 4 to 5 lanes.
264	93	Avenida del Yaqui, Calle Sonora to Highline Canal	Reconstruct to 44' cross section.
283	93	Bell Rd, 31st St to 45th St	Widen from 4 to 6 lanes.
284	93	Bell Rd, 45th St to Tatum Blvd	Widen from 4 to 6 lanes.
285	93	Bell Rd, 64th St to Scottsdale Rd	Widen from 4 to 6 lanes.
286	93	Bell Rd, 7th St to 20th St	Widen from 4 to 6 lanes.
287	93	Bell Rd, 99th Ave to New River Bridge	Widen from 4 to 6 lanes.
289	93	Bell Rd, Tatum Blvd to 64th St	Widen from 4 to 6 lanes.
319	93	Queen Creek Rd, I–10 to Price Rd	Construct 4 lanes.
385	93	Baseline Rd, Country Club Dr to Horne Rd	Widen from 4 to 6 lanes.
391	93	Mesa Dr, Baseline Rd to SR 360	Widen from 3 to 6 lanes.
487	93	99th Ave, Bridge across New River	Construct new bridge.
502	93	40th St, Baseline Rd to Southern Ave	Reconstruct to 64' cross section widen from 2 to 5 lanes.
503	93	7th St, Bell Rd to Union Hills Dr	Reconstruct to 84' cross section widen from 4 to 6 lanes.
504	93	7th St, Union Hills Dr to Beardsley Rd	Reconstruct to 84' cross section widen from 4 to 6 lanes.
505	93	Bell Rd, Tatum Blvd to 64th St	Reconstruct to 84' cross section widen from 4 to 6 lanes.
586	93	Cactus Rd, 60th St to Scottsdale Rd	Reconstruct roadway to 61' cross section widen from 2 to 4 lanes.
64	94	153 Sky Harbor Expwy University Dr to Sky Harbor	Construct roadway.
75	94	I–10 Maricopa Fwy, Superstition to Baseline Rd. Unit II	Reconstruct interchange, widen mainline, I–10 HOV lanes.

[11] The Clean Air Act Amendments of 1990 provided new criteria for determining which projects are exempt under highway sanctions. Safety and transit capital projects are still exempt, but now specific transportation control measures projects are also exempt whether or not they are SIP (or FIP) measures. See section 179(b). EPA has reviewed the proposed list of highway projects to assure that no project is listed that in its entirety would be explicitly exempt from highway sanctions under the 1990 Amendments.

[12] This information is contained in the document, "Arizona Contingency Program—Highway Delay List," System Applicatons International, April 30, 1993, which can be found in the docket for this rulemaking.

TABLE 2.—HIGHWAY PROJECTS POTENTIALLY SUBJECT TO DELAY—Continued

ID No.	Fiscal year	Location	Worktype
81	94	I–17 Black Canyon Fwy, Thomas Rd to Glendale Ave	Widen mainline from 6 to 8 lanes.
157	94	Van Buren St, Dysart Rd to Agua Fria River	Widen from 2 to 4 lanes.
240	94	67th Ave, Camino de la Campana to Angela Dr Skunk Creek Bridge	Widen from 2 to 4 lanes, reconstruct, bridge, sidewalks.
260	94	Van Buren St, SP Railroad to Bullard	Reconstruct from 2 to 4 lanes.
330	94	Bell Rd, 20th St to 31 St	Widen from 4 to 6 lanes.
331	94	Bell Rd, I–17 to 19th Ave	Widen from 4 to 6 lanes.
408	94	Baseline Rd, Horne Rd to Gilbert Rd	Widen from 4 to 6 lanes.
411	94	Stapley Dr, Baseline Rd to SR 360	Widen from 4 to 6 lanes.
523	94	83rd Ave, Indian School Rd to Camelback Rd	Reconstruct to 64′ cross section, widen from 2 to 5 lanes.
526	94	Greenway Rd, 51st Ave to 43rd Ave	Reconstruct to 64′ cross section, widen from 2 to 5 lanes.
104	95	I–17 Black Canyon Fwy, Bell Rd Interchange	Reconstruct interchange.
265	95	Avenida del Yaqui, Calle Carmen to Calle Guadalupe	Reconstruct to 44′ cross section.
538	95	43rd Ave, Buckeye Rd to Van Buren St	Reconstruct to 68′ cross section, widen from 2 to 5 lanes.
539	95	43rd Ave, Lower Buckeye Rd to Buckeye Rd	Reconstruct to 68′ cross section, widen from 2 to 5 lanes.
542	95	Thomas Rd, 91st Ave to 83rd Ave	Reconstruct to 84′ cross section, widen from 2 to 5 lanes.
697	95	91st Ave, I–10 to Buckeye Rd	Reconstruct to 84′ cross section.
116	96	67 Arizona Ave, Frye Rd—South	Reconstruct from 4 to 6 lanes, pave.
121	96	I–10 Maricopa Fwy, Baseline Rd to Warner Rd	Close median, add 4 median lanes.
553	96	35th Ave, Agua Fria Fwy to Deer Valley Rd	Reconstruct to 74 cross section, widen from 2 to 6 lanes.
556	96	Thomas Rd, 99th Ave to 91st Ave	Reconstruct to 84′ cross section, widen from 2 to 6 lanes.
558	96	Union Hills Dr, Cave Creek Rd to 32nd St	Reconstruct to 74′ cross section, widen from 2 to 6 lanes.
140	97	I–17 Black Canyon Fwy, Glendale Ave to Ariz Canal	Widen mainline from 6 to 8 lanes.
266	97	Calle Guadalupe, Avenida del Yaqui to Highland Canal	Reconstruct to 44′ cross section.
570	97	7th St, Pima Fwy to Deer Valley Rd	Reconstruct to 84′ cross section, widen from 2 to 6 lanes.

TABLE 3.—HIGHWAY PROJECTS POTENTIALLY SUBJECT TO DELAY WHICH MAY BE EXEMPTED

ID No.	Fiscal year	Location and reason for exemption	Worktype
164	93	Chandler Blvd, McQueen Rd to ¼ mile past Cooper Road—withdrawn	Widen from 4 to 5 lanes.
167	93	Germann Road—withdrawn	New Construction.
234	93	59th Ave, Thunderbird Rd to Greenway Rd—bid award by June 18	Widen from 4 to 5 lanes, reconstruct.
297	93	Dysart Rd, McDowell Rd to R.I.D. Canal—local funding only	Reconstruct 2 to 4 lanes.
177	94	Cooper Rd—withdrawn	Widen from 2 to 4 lanes.
179	94	Fyre Road—withdrawn	Widen from 2 to 4 lanes.
180	94	McQueen Rd—withdrawn	Widen from 2 to 4 lanes.
244	94	Olive Ave, 59th to 67th—downsized to overlay only/local funds only	Widen from 4 to 5 lanes.
245	95	67th Ave, Alice to Olive Ave.—local funding only	Widen from 2 to 5 lanes.
248	96	Bell Rd, 51st Ave to 67th Ave.—local funding only	Widen from 2 to 4 lanes.
336	94	Dysart Rd, Camelback Rd to Northern Ave.—local funding only	Reconstruct from 2 to 4 lanes.
337	94	Dysart Rd, R.I.D. Canal to Camelback Rd.—local funding only	Reconstruct from 2 to 4 lanes.
569	97	32nd St Bell Rd to Union Hills Dr.—local funding only	Reconstruct to 74′ cross section, widen from 2 to 6 lanes.
572	97	Union Hills Dr, 7th St to 16th St.—local funding only	Reconstruct to 84′ cross section, widen from 2 to 6 lanes.

VII. Proposed Actions

In summary, EPA is finding that the Maricopa County (Phoenix), Arizona, carbon monoxide (CO) nonattainment area has violated the CO NAAQS after December 31, 1991, the projected attainment date in the 1991 Arizona FIP. This violation triggers the contingency procedures in the FIP. These procedures require the Agency to determine if additional control measures are necessary to attain and maintain the CO standard in the Maricopa nonattainment area. EPA has performed air quality modeling which indicates that the existing set of control measures is not adequate to prevent future violations of the CO standard in the Maricopa area. Based on this modeling result, EPA is proposing to find that the Maricopa CO. implementation plan is inadequate and that additional control measures are necessary to attain and maintain the CO NAAQS. EPA is also proposing lists of highway projects, some of which will be delayed while EPA promulgates any necessary additional control measures.

EPA invites public review and comments on the air quality modeling results, the proposed conclusion that additional control measures are necessary, and the list of highway projects subject to delay. Comments should be sent to the address listed at the beginning of this notice.

VIII. Regulatory Requirements

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement for a regulatory impact analysis. EPA has determined that this proposal is not major. Specifically, EPA's potential action under this notice will be temporary and will cost less than $100 million annually, will cause no major price increases, and should not have a significant long-term adverse effect on competition, productivity, or

investment. Accordingly, no regulatory impact analysis is necessary.

This rulemaking was also submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and EPA's response to those comments will be placed in the public docket for this rulemaking.

Section 605 of the Regulatory Flexibility Act requires that the Administrator certify that its actions do not have a significant impact on a substantial number of small entities. I certify that this action will not have such an effect because EPA is proposing to exempt highway projects already under contract for construction or under construction.

There are no reporting or recordkeeping requirements under this proposed rulemaking.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 21, 1993.

Carol M. Browner,

Administrator.

[FR Doc. 93–15066 Filed 6–25–93; 8:45 am]

BILLING CODE [illegible]

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40 CFR Part 52

[CA–47–1–5929; FRL–4671–7]

Conditional Approval of California's Commitment To Implement Basic and Enhanced Motor Vehicle Inspection and Maintenance (I/M) Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to conditionally approve a revision to the California State Implementation Plan (SIP) for the attainment of National Ambient Air Quality Standards for carbon monoxide and ozone. The California Air Resources Board submitted this revision to EPA on November 13, 1992. The revision provides for the adoption and implementation of basic and enhanced vehicle inspection/maintenance (I/M) programs meeting all requirements of EPA's I/M regulation. EPA is proposing to conditionally approve this SIP revision. The proposed conditional approval is based on the commitment by the Governor to the timely adoption and implemention of basic and enhanced I/M programs meeting all requirements of the I/M regulation, and upon submission of a schedule of implementation. A full SIP revision including legal authority to implement the programs is required by November 15, 1993.

DATES: Comments must be received on or before July 28, 1993.

ADDRESSES: Written comments should be addressed to: U.S. Environmental Protection Agency, Region 9, Air and Toxics Division (A–2–1), Attention: Docket No. CA–93–IM–1, 75 Hawthorne Street, San Francisco, CA 94105.

A copy of the committal letter with attachments is contained in Docket No. CA–93–IM–1 and is available for public inspection at EPA's Region 9 office (address above) during normal business hours.

FOR FURTHER INFORMATION CONTACT: Sylvia Dugré, Mobile Sources Section (A–2–1), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105 Telephone: (415) 744–1224.

SUPPLEMENTARY INFORMATION:

Clean Air Act Requirements

The Clean Air Act as amended in 1990 (CAA or the Act) requires States to make changes to improve existing I/M programs or implement new ones. Section 182(a)(2)(B) required any marginal or worse ozone nonattainment area with an existing I/M program that was part of a SIP, or any area that was required previously by the Act to have an I/M program, to immediately submit a SIP revision to bring the program up to the level of past EPA guidance or to what had been committed to previously in the SIP, whichever was more stringent. All carbon monoxide nonattainment areas were also subject to this requirement to improve existing or previously required programs to this level. In addition all moderate and worse ozone nonattainment areas must implement a basic I/M program, regardless of previous requirements.

EPA was also directed to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. Each area required by the Act to have an I/M program was to incorporate this guidance into the SIP. Marginal and moderate ozone nonattainment areas and carbon monoxide (CO) nonattainment areas with design classifications of 12.7 ppm or less required to have I/M programs were required to meet EPA guidance for "basic" I/M programs. Serious and worse ozone nonattainment areas with populations of above 200,000 and CO nonattainment areas with design classifications above 12.7 ppm and populations of 200,000 or more, in addition to metropolitan statistical areas with populations of 100,000 or more in the northeast ozone transport region, were required to meet EPA guidance for "enhanced" I/M programs. These areas were required to submit a SIP revision to incorporate an enhanced I/M program by November 15, 1992.

In California a basic I/M program is required in the following urbanized areas:

Antioch-Pittsburg
Chico
Davis
Fairfield
Hemet-San Jacinto
Hesperia-Apple Valley-Victorville
Indio-Coachella
Lancaster-Palmdale
Lodi
Lompoc
Merced
Modesto
Napa
Palm Springs
Salinas
San Francisco-Oakland
San Jose
San Luis Obispo
Santa Barbara
Santa Cruz
Santa Maria
Santa Rosa
Seaside-Monterey
Simi Valley
Stockton
Vacaville
Visalia

An enhanced I/M program must be implemented in the following urbanized areas:

Bakersfield
Fresno
Los Angeles
Oxnard-Ventura
Riverside-San Bernardino
Sacramento
San Diego

Basis for Conditional Approval

EPA believes conditional approval is appropriate in this case because the State could not be expected to begin developing an I/M program meeting the requirements of the Act and the I/M regulation until the I/M regulation was adopted as a final rule. The I/M regulation was published in the **Federal Register** on November 5, 1992 under Subpart S, part 51, title 40 Code of Federal Regulations. EPA does believe the State can adopt revised I/M program plans within one year of EPA's final rule. As a condition of EPA's proposed approval, the I/M regulation requires

that by November 15, 1993, a complete SIP revision be submitted which contains all of the elements in the implementation schedule, including authorizing legislation and implementing regulations. The proposed conditional approval in this action should not be interpreted as an approval of the program design features. In order to be considered complete and fully approvable, the 1993 submittal must include an analysis of the program using the most current EPA mobile source emission model, or an alternative model approved by the administrator, demonstrating that the program meets the applicable performance standard, among other features.

I/M Regulation Requirements

The I/M regulation required each state that must implement an I/M program to submit by November 15, 1992, a SIP revision including two elements, a commitment from the Governor or his designee to the timely adoption and implementation of an I/M program meeting all requirements of the I/M regulation, and a schedule of implementation.

State Submittal

The State of California submitted a committal SIP revision on November 13, 1992. The submittal became complete by operation of law under section 110(K)(1)(B) on May 13, 1993. The submittal includes a letter from the Executive Officer of the California Air Resources Board and a copy of Resolution 92–74 which was adopted at a public hearing held by the Air Resources Board on November 13, 1992. The Resolution directs the Executive Officer to submit the committal letter to EPA as a revision to the SIP. The submittal includes a commitment to the timely adoption and implementation of basic and enhanced I/M programs meeting all requirements of the I/M regulation and the Act in all the nonattainment areas in California where these programs are required. A schedule of implementation is included in a letter sent by the Executive Officer to EPA on January 15, 1993 clarifying certain details of the November 13, 1992 SIP submittal.

Statement of Approvability

Under the authority of the Governor, the State of California Air Resources Board submitted a SIP revision to satisfy the requirements of the I/M regulation to EPA on November 13, 1992. The Agency has reviewed this submittal and proposes to conditionally approve it under section 110(k)(4) of the Act. If, however, the State fails to adopt legislative authority or meet certain other applicable interim milestones in the commitment prior to EPA's final action on this proposal, EPA proposes in the alternative to disapprove the commitment as failing to comply with section 110(k)(4) because EPA believes that California could not meet the November 15, 1993 submission date if it fails to meet those interim milestones.

If EPA takes final action to conditionally approve the commitment, the State must meet its commitment to adopt legislation and regulations meeting all requirements of the I/M regulation and submit a complete SIP revision which contains all the elements in the implementation schedule, including the authorizing legislation and implementing regulations, by November 15, 1993. Once EPA has conditionally approved this committal, if the State fails to adopt or submit the authorizing legislation and implementing regulations within this time frame, this approval will become a disapproval upon EPA notification of the State by letter. At that time, this commitment to implement basic and enhanced I/M programs will no longer be part of the approved California SIP. EPA subsequently will publish a notice in the notice section of the **Federal Register** indicating that the commitment has been disapproved and removed from the SIP. If the State adopts and submits the authorizing legislation and implementing regulations within the applicable time frame, the conditionally approved commitment will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal.

If EPA issues a final disapproval or if the conditional approval is converted to a disapproval, the sanctions clock under section 179(a) of the Act will begin. This clock will begin at the time EPA issues the final disapproval or at the time EPA notifies the State by letter that the conditional approval has been converted to a disapproval. If the State does not submit and EPA does not approve the I/M programs on which the disapproval was based within 18 months of the disapproval, EPA must impose one of the sanctions under section 179(b)—highway funding restrictions or the offset sanction. In addition, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c). Finally, under section 110(m) EPA has discretionary authority to impose sanctions at any time after a final disapproval.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and entities with jurisdiction over populations less than 50,000.

Conditional approvals under sections 110 and 301 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing or has committed to impose in the future. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v *U.S.E.P.A.*, 427 U.S. 246, 256–266 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for a Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 18, 1993.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 93–15067 Filed 6–25–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–166, RM–8242]

Radio Broadcasting Services; Rexburg, Idaho and Afton, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Communicast Consultants, Inc., permittee of Station KRXK–FM, Channel 251C3, Rexburg, Idaho, seeking the substitution of Channel 251C1 for Channel 251C3 at Rexburg, and modification of its construction permit to specify the higher class channel. This proposal also requires the substitution of Channel 254A for Channel 252A at Afton, Wyoming. The coordinates for Channel 251C1 at Rexburg are North Latitude 43–32–34 and West Longitude 111–53–07. The coordinates for Channel 254A at Afton's authorized site are North Latitude 42–51–02 and West Longitude 110–58–46.

DATES: Comments must be filed on or before August 13, 1993, and reply comments on or before August 30, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marvin Rosenburg, Kathleen Victory, Fletcher, Heald & Hildreth, 1300 North 17th Street, 11th Floor, Rosslyn, VA 22209 (Attorneys for Petitioner).

FOR FURTHER INFORMATION CONTACT: Nacy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–166, adopted June 7, 1993, and released June 22, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–15053 Filed 6–25–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–168, RM–8241]

Radio Broadcasting Services; Lena, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Jane Lucas seeking the allotment of Channel 271A to Lena, Illinois, as that community's first local aural service. Channel 271A can be allotted to Lena in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.5 kilometers (5.3 miles) south. The coordinates for Channel 271A at Lena are North Latitude 42–18–27 and West Longitude 89–47–45.

DATES: Comments must be filed on or before August 13, 1993, and reply comments on or before August 30, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jane Lucas, 301 South King Street, Mount Carroll, IL 61053 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–168, adopted June 7, 1993, and released June 22, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–15052 Filed 6–25–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–167, RM–8256]

Radio Broadcasting Services; Chillicothe, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Livingston Broadcasting Corporation proposing the substitution of Channel 280C3 for Channel 280A at Chillicothe, Missouri, and modification of the license for Station KCHI–FM to specify operation on Channel 280C3. The coordinates for Channel 280C3 are 39–45–15 and 93–27–09. We shall propose to modify the license for Station KCHI–FM in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before August 13, 1993, and reply comments on or before August 30, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the

FCC, interested parties should serve the petitioner, as follows: Steve Mickelson, President, Livingston Broadcasting Corporation, 421 Washington, P.O. Box 227, Chillicothe, Missouri 64601.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–167, adopted June 7, 1993, and released June 22, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–15049 Filed 6–25–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–168, RM–8246]

Radio Broadcasting Services; Walterboro and Ridgeville, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Gresham Communications, Inc., seeking the reallotment of Channel 265C3 from Walterboro, South Carolina, to Ridgeville, South Carolina, and the modification of Station WPAL–FM's license to specify Ridgeville as its community of license. Channel 265C3 can be allotted to Ridgeville in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.7 kilometers (1.7 miles) west to accommodate petitioner's desired transmitter site, at coordinates North Latitude 33–06–00 and West Longitude 80–20–30.

DATES: Comments must be filed on or before August 13, 1993, and reply comments on or before August 30, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William J. Pennington, III, Esq., P.O. Box 2506, Pawleys Island, South Carolina 29585 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–169, adopted June 7, 1993, and released June 22, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–15048 Filed 6–25–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Extension of Comment Period and Public Hearing on Proposed Rule To Establish Additional Manatee Sanctuaries in Kings Bay, Crystal River, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period and notice of public hearing.

SUMMARY: The Service gives notice that the comment period is extended on a proposed rule to add additional manatee sanctuaries in Kings Bay, Crystal River, Florida, pursuant to the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act of 1972. A public hearing will allow all interested parties to orally submit comments on the proposed rule.

DATES: The public hearing will be held from 7 p.m. to 9 p.m. on July 15, 1993, in Crystal River, Florida. The comment period on the proposed rule is extended until July 30, 1993.

ADDRESSES: The public hearing will be held at the Coastal Region Library meeting room, 8619 W. Crystal Street, Crystal River, Florida. Written comments and materials concerning the proposed rule should be sent directly to the Manatee Coordinator, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, suite 310, Jacksonville, Florida 32216–0912. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert O. Turner, Manatee Coordinator, at the above address (telephone: 904/232–2580, fax 904/232–2404).

SUPPLEMENTARY INFORMATION:

Background

The proposed rule published on May 13, 1993 (58 FR 28381) would establish three additional permanent manatee (*Trichechus manatus*) sanctuaries and extend an existing sanctuary in Kings Bay, Crystal River, Florida. All waterborne activities would be prohibited in these sanctuaries from November 15 through March 31 of each year. The proposed action would prevent the taking of manatees by harassment resulting from waterborne activities during the winter months. The number of sanctuaries in Kings Bay

would be increased from three (10.7 acres) to six (28.1 acres) to accommodate the increasing number of manatees using the area each winter, and to alleviate the harassment from increasing public use.

The proposed rule stated that a public hearing would be held if requested. On June 10, 1993, the Service received such a request from the Crystal River Chamber of Commerce. The public hearing is scheduled for July 15, 1993, from 7 p.m. to 9 p.m. at the Coastal Region Library in Crystal River, Florida. Parties wishing to make statements for the record are encouraged to bring a copy of their statements to present to the Service at the start of the hearing. Oral statements may be limited in length if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. The extended comment period for the proposed rule closes on July 30, 1993. Written comments should be submitted to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Robert O. Turner, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, suite 310, Jacksonville, Florida 32216–0912 (904/232–2580 or fax 904/232–2404).

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544), and the Marine Mammal Protection Act (16 U.S.C. 1361–1407).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: June 18, 1993.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 93–15054 Filed 6–25–93; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 58, No. 122
Monday, June 28, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Information Collection Submitted to OMB for Review

AGENCY: Action.

ACTION: Information collection submitted to the Office of Management and Budget for review.

SUMMARY: The following form has been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.A. chapter 35). This entry is not subject to 44 U.S.C. 3504(h). Copies of the submission may be obtained from the ACTION Clearance Officer.

DATES: OMB and ACTION will consider comments received by July 28, 1993.

ADDRESSES: Send comments to both:

Willard L. Hoing, Clearance Officer, ACTION, 1100 Vermont Ave., NW., Washington, DC 20525.

Steve Semenuk, Desk Officer for ACTION, Office of Management & Budget, 3002 New Executive Ofc. Bldg., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Title and No. of Form: VISTA Project Application, Form A–1421.

Need and Use: The information provided on this document by potential and existing sponsors is considered by ACTION in making initial and renewal assignments of VISTA Volunteers.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Respondent's Obligation to Reply: Required for initial/renewal benefits.

Descriptions of Respondents: Public agencies and private non-profit organizations.

Frequency of Collection: Annually.

Estimated Number of Annual Responses: 1,500 total (1,000 new submissions; 500 renewal submissions).

Estimated Average Burden Hours per Response: 9 hours (new applicants—10 hours; renewal applicants—7 hours).

Regulatory Authority: 45 CFR 1234.

Dated: June 21, 1993.

Gary Kowalczyk,

Acting Director, ACTION.

[FR Doc. 93–15087 Filed 6–25–93; 8:45 am]

BILLING CODE 6050–28–M

Information Collection Submitted to OMB for Review

AGENCY: Action.

ACTION: Information collection submitted to the Office of Management and Budget for review.

SUMMARY: The following form has been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.A. chapter 35). This entry is not subject to 44 U.S.C. 3504 (h). Copies of the submission may be obtained from the ACTION Clearance Officer.

DATES: OMB and ACTION will consider comments received by July 28, 1993.

ADDRESSES: Send comments to both:

Willard L. Hoing, Clearance Officer, ACTION, 1100 Vermont Ave., NW., Washington, DC 20525.

Steve Semenuk, Desk Officer for ACTION, Office of Management & Budget, 3002 New Executive Ofc. Bldg., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Title and No. of Form: VISTA Project Grant Application, Form 1421B.

Need and Use: The information provided on this document by potential and existing sponsors is considered by ACTION in making initial and renewal assignments of VISTA Volunteers.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Respondent's Obligation to Reply: Required for initial/renewal benefits.

Descriptions of Respondents: Public agencies and private non-profit organizations.

Frequency of Collection: Annually.

Estimated Number of Annual Responses: 1,500 total (1,000 new submissions; 500 renewal submissions).

Estimated Average Burden Hours per Response: 16 hours (new applicants—17 hours; renewal applicants—14 hours)

Regulatory Authority: 45 CFR Part 1234.

Dated: June 21, 1993.

Gary Kowalczyk,

Acting Director, ACTION.

[FR Doc. 93–15088 Filed 6–25–93; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Special Provisions for Fresh Fruit and Vegetable Imports Under the U.S.-Canada Free-Trade Agreement

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination of existence of conditions necessary for imposition of temporary duty on potatoes from Canada.

SUMMARY: As required by section 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 ("FTA Implementation Act"), this is a notification that the necessary conditions exist with respect to United States acreage and import price criteria for potatoes classifiable to subheadings 0701.10.00, 0701.90.10, and 0701.90.50 of the Harmonized Tariff Schedule of the United States (HTS) imported from Canada to permit the Secretary of Agriculture to consider recommending to the President the imposition of a temporary duty ("snapback duty") by the United States pursuant to section 301(a) of the FTA Implementation Act, implementing Article 702 of the United States-Canada Free-Trade Agreement (FTA), Special Provisions for Fresh Fruits and Vegetables.

FOR FURTHER INFORMATION CONTACT: Howard Wetzel, Horticultural & Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 720–3423.

SUPPLEMENTARY INFORMATION: The FTA Implementation Act, in accordance with the FTA, authorizes the imposition of a temporary duty (snapback) for a limited group of fresh fruits and vegetables when certain conditions exist. Potatoes, fresh or chilled, classified under subheadings 0701.10.00, 0701.90.10, and 0701.90.50 of the HTS are goods subject to the snapback duty provision.

Under section 301(a) of the FTA Implementation Act, two conditions must exist before imposition by the United States of a snapback duty can be

considered. First, the import price of a covered Canadian fruit or vegetable, for each of five consecutive working days, must be less than ninety percent of the corresponding five-year average monthly import price. This price for a particular day is the average import price of a Canadian fresh fruit or vegetable imported into the United States from Canada, for the calendar month in which that day occurs, in each of the 5 preceding years, excluding the years with the highest and lowest monthly averages.

Second, the planted acreage in the United States for the like fruit or vegetable must be no higher than the average planted acreage over the preceding five years, excluding the years with the highest and lowest acreage.

From April 30 to May 19, 1993, the price conditions with respect to potatoes were met.

The most recent revision of planted acreage for potatoes shows that this year's planted acreage is below the planted acreage over the preceding five years, excluding the years with the highest and lowest planted acreages.

Issued at Washington, DC the 18th day of June, 1993.

Charles J. O'Mara,

Acting Under Secretary for International Affairs and Commodity Programs.

[FR Doc. 93–15129 Filed 6–25–93; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Crock Insect Salvage Treatment Area, Plumas National Forest; From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notice of Exemption from Appeal, Crock Insect Salvage Treatment Area Decision, Beckwourth Ranger District, Plumas National Forest.

SUMMARY: The Forest Service is exempting from administrative appeal the Crock Insect Salvage Treatment Area Decision on the Beckwourth Ranger District, Plumas National Forest. The Crock Insect Salvage Treatment Area environmental document is being prepared in response to the severe timber mortality caused by drought and related insect infestation. The Crock Insect Salvage Analysis Area is located approximately eight miles north of Portola, in Plumas County, California.

The Beckwourth Ranger District is proposing to harvest approximately 5,000 thousand board feet (MBF) of salvage timber by tractor and helicopter on about 8,600 acres. The Crock Insect Salvage Project includes approximately 1.2 miles of new road construction.

Although the winter of 1992–93 provided ample precipitation, the summer of 1992 found the eastside of the Plumas National Forest in the sixth consecutive year of drought conditions. As the trees continued to experience drought caused stress, populations of the fir engraver beetle, *Scolytus ventralis*, thrived. The resulting drought and insect caused mortality has left thousands of acres on which many white fir and red fir trees are dead. Many stands of mixed conifer timber have lost most or all of the white fir component, leaving jeffery pine, ponderosa pine, Douglas-fir, and incense-cedar. The Crock Insect Salvage Treatment Area was first treated for insect mortality in 1991. Extensive, additional mortality became evident in the fall of 1992.

Prompt removal of the dead and dying timber minimizes value and volume loss. An inventory of the timber has been completed, which shows that approximately 98 percent of the trees to be salvaged are true fir with an average diameter of 16 inches. Net volume losses for this salvage timber can be expected to average 80 percent by the spring of 1994. Volume losses at this time are 40 percent. Any delay in salvage harvest would result in additional volume loss, which translates to value loss. Such value loss could result in most or all of the project not being implemented due to the relatively high costs associated with helicopter logging and the rapidly decreasing value of the dead trees. The net value of the salvage timber is expected to decrease to zero by the summer of 1994.

The large number of dead trees have resulted in high risk fire hazard due to large amounts of dead, dry fuels covering large areas. If left alone, the dead trees would fall to the ground, resulting in a fuel arrangement that would pose an even higher risk of catastrophic fire. The need exists to reduce the high risk fire hazard by managing the fuels. Avoiding a catastrophic fire would serve to protect watersheds and other valuable resources and facilitate long-term productivity. Salvage harvest of wood fiber would partially accomplish the reduction of fuels while providing funds needed to accomplish additional fuel management objectives.

The decision for the proposed project is scheduled to be issued in July, 1993. Implementation of the project will occur in July or early August, 1993, when the salvage timber will be offered for sale. Harvest is expected to begin immediately after award of the timber sale and proceed at a rate that will allow completion or near completion of harvest activities during the fall and early winter of 1993.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decision relating to the harvest and restoration of lands covered by the Crock Insect Salvage Treatment Area Environmental Analysis on the Beckwourth Ranger District, Plumas National Forest. The environmental document being prepared will address the effects of the proposed actions on the environment, will document public involvement, and will address the issues raised by the public.

EFFECTIVE DATE: This decision will be effective on June 28, 1993.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Forest Management Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648, or H. Wayne Thornton, Forest Supervisor, Plumas National Forest, P.O. Box 11500, Quincy, CA 95971, (916) 283–2050.

SUPPLEMENTARY INFORMATION: The Beckwourth Ranger District initiated public scoping for the Crock Insect Salvage Project in November, 1992, encouraging the public to participate in identifying the issues and concerns to be addressed in the environmental analysis. Public scoping has been conducted over the last several years for other projects that have been analyzed in the same area, resulting in the opportunity to revisit previously identified issues and concerns in light of the Crock Insect Salvage Proposal. The project files and related maps are available for public review at the Beckwourth Ranger District Office, Mohawk Road, Blairsden, CA 96103.

No roadless areas, wilderness areas, or wild and scenic rivers are within the proposed project area. There is one bald eagle, two goshawks, and one prairie falcon in the project area. Impacts to these species will be minimized through project mitigation measures, which are documented in the appropriate environmental documents. Rehabilitation and restoration measures necessary for watershed protection, erosion prevention, and fuels reduction will be implemented.

Dated: June 21, 1993.

Dale N. Bosworth,

Deputy Regional Forester.

[FR Doc. 93–15096 Filed 6–25–93; 8:45 am]

BILLING CODE 3410–11–M

Suitability Study of the Hiwassee and Tellico Rivers for Inclusion in the National Wild and Scenic Rivers System; Cherokee and Nantahala National Forests, Monroe and Polk Counties, Tennessee; Cherokee County, NC

AGENCY: USDA, Forest Service.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to evaluate the environmental impacts of including suitable segments of the Hiwassee and Tellico Rivers classified as wild, scenic, or recreational rivers in the National Wild and Scenic Rivers System. The decision to recommend the nomination of suitable river segments to the National Wild and Scenic Rivers System rests with the Secretary of Agriculture. The Wild and Scenic Rivers Act (Public Law 90–542) reserves to Congress the authority to include rivers in the National Wild and Scenic Rivers System.

The agency invites written comments and suggestions on the suitability of these rivers and significant issues related to classifying and including them in the National Wild and Scenic Rivers System. In addition, the agency gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

The Forest Service, Tennessee Valley Authority, and the State of Tennessee jointly manage the recreational opportunities on the study section of the Hiwassee River. The Hiwassee River is a State of Tennessee Scenic River. The National Forest lands adjacent to the Hiwassee and Tellico Rivers in Tennessee are managed by the Cherokee National Forest; those lands adjacent to the Tellico River in North Carolina are managed by the Nantahala National Forest. The Cherokee National Forest is responsible for the preparation of the EIS.

DATES: Comments concerning the suitability of these two rivers and significant issues related to classifying and including them in the National wild and Scenic Rivers System must be received in writing by July 30, 1993, to ensure timely consideration.

ADDRESSES: Send written comments to Wild and Scenic River Suitability Study, c/o John F. Ramey, Forest Supervisor, P.O. Box 2010, Cleveland, TN 37320.

FOR FURTHER INFORMATION CONTACT: Amy L. Fore, Wild and Scenic Rivers Study Team Leader, Hiwassee Ranger District, Drawer D, Etowah, TN 37331, 615/263–5486.

SUPPLEMENTARY INFORMATION: In 1982, the Department of Interior listed the Tellico River (NC and TN) and the Hiwassee River (TN) for possible designation as Wild and Scenic Rivers in the National Rivers Inventory. In 1991, the Cherokee National Forest determined that portions of the Tellico and Hiwassee are eligible as components of the National Wild and Scenic River System. That information and additional findings will be documented in this EIS. Additionally, the National Forests in North Carolina found the section of the Tellico River located in North Carolina to be eligible. The EIS will address Rivers. Based on the analysis and disclosure of effects displayed in the EIS, the Forest Service will make a recommendation to the Secretary of Agriculture on whether or not these rivers should be included in the National Wild and Scenic Rivers System. The decision to include these rivers in the Wild and Scenic Rivers System rests with the United States Congress upon recommendation from the Secretary of Agriculture.

The EIS will consider the following eligible river segments:

Tellico (NC)	Headwaters to NC/TN state line	5.8 miles.
Tellico (TN)	NC/TN state line to Highway 165 bridge crossing the Tellico River near river mile 30 (old Steel bridge).	17.0 miles.
Hiwassee (TN)	Apalachia powerhouse downstream to the Forest proclamation boundary (east end of Long Island) ..	10.5 miles.

Based on information collected in the eligibility study, all river segments are potentially suitable for inclusion in the National Wild and Scenic Rivers System as recreational rivers. The impact study will determine suitability and classification of river segments as wild, scenic, or recreation rivers. The Tellico River in North Carolina was found eligible because of an outstanding native trout fishery. The portion of the Tellico in Tennessee has outstanding recreational, historic and cultural, and botanical values. The eligible section of the Hiwassee River possesses outstanding recreational, fish and wildlife, and botanical values. All eligible sections of both rivers are free of impoundments and, therefore, considered to be free flowing.

The area of consideration for each stream is a corridor a minimum of ¼ mile from each stream bank for the entire length of the stream within the Cherokee and Nantahala National Forest boundaries.

Significant issues identified during internal scoping include the effects of designation on private lands, the effects of designation on water quality, and the effects on Threatened or Endangered species.

A range of alternatives will be developed based on issues and concerns raised during the scoping process. As a minimum, one alternative will maintain current management without specific protection for the potential corridors (the no action alternative). Other potential alternatives include: (1) Designate all eligible segments of both rivers; (2) Provide protection by means other than designation; and (3) Designate eligible segments with different classifications (wild, scenic, recreational) based on identified issues. The EIS will disclose the direct, indirect, and cumulative effects of implementing each alternative.

Public participation will be especially important at several points during the analysis process. The first point is the scoping process (40 CFR 1501.7). The scoping process includes, but is not limited to: (1) identifying potential issues; (2) identifying issues to be analyzed in depth; (3) eliminating insignificant issues or those that have been covered by a relevant previous environmental analysis; (4) exploring additional alternatives; and (5) identifying potential (direct, indirect, and cumulative) environmental effects of the alternatives.

The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies and individuals or organizations who may be interested in or affected by the proposal. This information will be used to prepare a Draft Environmental Impact Statement (DESIS). In June 1993, scoping notices will be published in local and regional newspapers and letters sent to key contacts and interested and affected individuals and groups. Two open houses will be held during the scoping process to give interested parties the opportunity to meet with the planning team and

discuss any issues and concerns they have concerning the potential inclusion of the rivers in the National Wild and Scenic Rivers Systems. The first open house will focus on the Tellico River and will be held on July 20, 1993, at the Tellico Ranger District Office, Tellico Plains, Tennessee from 5 p.m. to 8 p.m. A second open house, focusing on the Hiwassee River will be held on July 22, 1993, from 5:00 p.m. to 8 p.m. at the Gee Creek State Building, 6 miles north of Benton, Tennessee and 7 miles south of Ethowah, Tennessee on U.S. Highway 411. Media announcements will be made several days in advance of both open houses. Informal contacts through phone calls and visits will also be made throughout the study. Additional mailings and media releases will occur when the Draft EIS and Final EIS are completed and available for public review.

The responsible official is Mike Espy, Secretary of Agriculture, Administration Bldg, 12th Street and Jefferson Drive, SW., Washington, DC 20250.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by March 1994. The comment period on the DEIS will be 45 days from the date the EPA publishers the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Upon release of the DEIS, projected for March 1994, reviewers must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* vs. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS, but are not raised until after the completion of the Final Environmental Impact Statement (FEIS) may be waived or dismissed by the courts. *City of Angoon* vs. *Hodel,* 803F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* vs. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposal participate by the close of the 60-day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages and chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions at the National Environmental Policy Act of 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the FEIS. The final statement is scheduled to be completed by October 1994.

The Secretary of Agriculture will consider comments, responses, and environmental consequences discussed in the FEIS and applicable laws, regulations, and policies in making his recommendation to the President regarding the suitability of these rivers for inclusion in the National Wild and Scenic Rivers System. The decision on the inclusion of a river in the National Wild and Scenic Rivers System rests with the United States Congress.

Dated: June 22, 1993.

Ralph F. Mumme,

Acting Regional Forester.

[FR Doc. 93–15097 Filed 6–25–93; 8:45 am]

BILLING CODE 3410–11–M

Revised Land and Resource Management Plan for the Jefferson National Forest; Kentucky Counties of Letcher and Pike; Virginia Counties of Bedford, Bland, Botetourt, Carroll, Craig, Dickenson, Giles, Grayson, Lee, Montgomery, Pulaski, Roanoke, Rockbridge, Scott, Smyth, Tazewell, Washington, Wise and Wythe; and Monroe County, WV.

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a Draft and Final Environmental Impact Statement for a proposed action to revise the Jefferson National Forest Land and Resource Management Plan pursuant to 16 U.S.C. 1604(f)(5) and 36 CFR 219.12.

The agency invites written comments and suggestions within the scope of the analysis. In addition, the agency gives notice that a full environmental analysis and decision-making process will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

In accordance with 40 CFR 1501.6, the Bureau of Land Management will be a cooperating agency.

DATES: Comments concerning the analysis should be received by September 7, 1993, to ensure timely consideration.

ADDRESSES: Submit written comments and suggestions to: Forest Supervisor, Jefferson National Forest, 210 Franklin Road, SW., Caller Service 2900, Roanoke, Virginia 24001.

FOR FURTHER INFORMATION CONTACT: Ken Landgraf, Planning and Environmental Coordination Staff Officer, (703) 982–6270.

SUPPLEMENTARY INFORMATION: The Record of Decision for the Jefferson National Forest Land and Resource Management Plan (Forest Plan) was approved on October 16, 1985. Forest Plans are ordinarily to be revised every 10–15 years (36 CFR 219.10(g)). This Notice signals the development of an Environmental Impact Statement (EIS) for the revision of the Jefferson National Forest Land and Resource Management Plan. The decisions to be made in the planning process include:

1. Establishment of the forest-wide multiple-use goals and objectives, 36 CFR 219.11(b);

2. Establishment of forest-wide management requirements (standards and guidelines) to fulfill the requirements of 16 U.S.C. 1604 applying to future activities (resource integration requirements 36 CFR 219.13 to 219.27);

3. Establishment of management areas and management area direction (management area prescriptions) for applying future activities in that management area, 36 CFR 219.11(c);

4. Determination of land which is suitable for the production of timber, 16 U.S.C. 1604(k) and 36 CFR 219.14;

5. Establishment of allowable sale quantity for timber, 36 CFR 219.16;

6. Recommendations for Wild and Scenic River designation;

7. Determination of Forest-wide lands that will be administratively available for gas and oil leasing, specific lands for which consent to lease will be permitted, and stipulation for areas where surface occupancy will be restricted or prohibited, 36 CFR 228.102;

8. Recommendation of roadless areas as potential wilderness areas, 36 CFR 219.17; and

9. Establishment of monitoring and evaluation requirements, 36 CFR 219.11(d).

Monitoring and evaluation are required to determine how well the Forest Plan is being implemented. Monitoring and evaluation are ongoing

processes that occur in many different ways: Through management reviews, functional assistance trips, Management Attainment Reports, routine observations, site specific observations by professionals and technicians, and public comments. During the five-year review of the Forest Plan, monitoring results were evaluated and public comments were solicited to determine needed changes to the Forest Plan. This review identified several areas which needed attention during the Forest Plan revision. These issues, and others identified by the Forest Service and by the public, form the basis of the preliminary topics and issues to be examined during the revision. These are not the sole issues which will be evaluated. The Forest Service will consider public comments received on this Notice and in our public meetings to develop additional topics as needed.

The preliminary issues identified to be addressed in the revision include:

1. The Monitoring Plan. This involves making monitoring easier to implement and providing information which is more responsive to management concerns. Forest health is an item which may need to be incorporated into the monitoring plan.

2. Mineral leasing. This includes conducting the analysis to implement the federal regulations on oil and gas leasing. The BLM will be included as a cooperating agency.

3. Ecosystem management. Facets to this topic include definitions, direction and analysis of biodiversity, old growth, landscape management (fragmentation of habitat), forest health, management of unique ecosystems (balds, caves, wetlands, etc), even-aged timber harvest, use of alternative methods of vegetation management, conifer management, protection of proposed, endangered, threatened and sensitive species, use of prescribed burning, and the role of commodity production (timber, game, range, minerals) in ecosystem management.

4. Demand for Forest resources. Demand for many resources has quite likely changed over the last 10 years. Demand for saw timber has shown a recent increase based on bid prices for timber sales. Recreation demands have changed with increased demand for horse trails, mountain bike trails and higher levels of services in some campgrounds. Off-Highway Vehicle demands have also changed. These increased demands have increased the need for law enforcement. A new Analysis of the Management Situation will be prepared as part of the Revision.

5. Wildlife management and the identification of management indicator species. Management indicator species (for both flora and fauna) will need to be identified, and the role of wildlife management will need to be integrated with ecosystem management.

6. Suitable land base for timber production and Allowable Sale Quantity (ASQ). 36 CFR 219.14(d) requires a review of the suited land base at least every 10 years. This review, along with possible adjustment due to ecosystem management, timber demand, reevaluation of roadless areas, the "below-cost timber" issue, and other possible management changes have the potential to change the ASQ for the Forest.

7. Integrated Pest Management. The gypsy moth and oak decline will both have an impact on the Forest in the next ten years. The expected effects of these outbreaks need to be examined, planned controls discussed and salvage guidelines established.

8. Management areas. Several management areas have changed since the Forest Plan was prepared. In addition, new management areas may be designated to address changes in management direction, and to incorporate ecosystem management principles. Management areas on the Mount Rogers NRA are likely to change to emphasize the unique nature of that unit.

9. Resource information and inventory. Information used to evaluate resource impacts and resource outputs will need to be updated. Inventories of Forest resources will be updated. These include the Recreation Opportunity Spectrum, timber stand information, system trails and roads, off-highway vehicle routes, special interest areas, land ownership, wetlands, and old growth. The Jefferson National Forest is a pilot Forest in implementation of the new Scenery Management System. This system is an update of the current Visual Quality Management System. A revised inventory of visual resources will be accomplished, and possible changes to the visual management direction will be considered. Research needs will be revised. Land acquisition needs, budget estimates, yield tables, resource values and potential outputs will all be reviewed.

10. Review of roadless areas and updating of wilderness direction. The Virginia Wilderness Act of 1984 directs that the Forest will review the wilderness option for all RARE II areas (except those designated as wilderness) during the revision. 36 CFR 219.17(a) directs that roadless areas be evaluated and considered for recommendation as potential wilderness areas during the planning process. This will include roadless areas adjacent to existing wilderness. Direction on existing wilderness needs to be revised to reflect wilderness implementation documents and to define management direction on providing use that does not impair the values for which the wilderness areas were created.

11. Review Wild, Scenic and Recreational River candidates. Eligibility and classification determinations will be completed, as will suitability studies. River protection and management direction will be incorporated.

12. Recreation management. This includes identifying recreation development needs based on past accomplishments and changes in recreation demands, developing quality standards for developed recreation sites so that services and facilities meet customer expectations, incorporating access for people with disabilities into development plans, developing direction on monitoring and use of dispersed recreation sites, developing better definitions of Off-Highway Vehicle roads and trails, and updating the Recreation Opportunity Spectrum classifications.

13. Special uses. This includes updating management direction for special uses, particularly with respect to the management and designation of major utility and transportation corridors.

14. Air resource management. Direction is needed to guide monitoring, inventory and cooperation with state and federal regulatory actions.

Changing demands, responding to results identified by monitoring and incorporating an ecological approach to management are likely to result in some changes in management direction in all areas.

In preparing the EIS, the Forest Service will develop, as a minimum, the following range of alternatives: (1) the current program (no action); (2) one that emphasizes meeting the most recent Resource Planning Act program; and (3) others necessary to respond to the full range of revision topics, public issues, management concerns, and resource opportunities. Wild and Scenic River and Wilderness recommendations will be included in the alternatives.

The Forest Service is seeking information, comments, and assistance from Federal, State and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be utilized in the preparation of the draft environmental impact statement. Public participation will be solicited by notifying in person and/or by mail

known interested and affected publics, news releases will be used to give the public general notice, and scoping meetings will be conducted.

Public participation will be especially important at several points during the project analysis process. The first point in the analysis is the scoping process (40 CFR 1501.7). The scoping process includes: (1) identifying potential issues (other than those previously described), (2) from these, identifying significant issues to be analyzed in depth, (3) eliminating from detailed study insignificant issues or those which have been covered by prior environmental review, (4) exploring additional alternatives, and (5) identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).

As part of the first step in scoping, a series of public meetings are scheduled to inform the public of the revision and to seek input into other issues which need to be addressed in the revision. Comments from the public, and other agencies are welcomed. These meetings will be held at the following locations with each meeting scheduled from 7 pm to 9:30 pm:

Tuesday, July 13, 1993, Natural Bridge Resort, Natural Bridge, VA
Thursday, July 15, 1993, Holiday Inn, Blacksburg, VA
Monday, July 19, 1993, Clinch Valley College Chapel of All Faiths, Wise, VA
Tuesday, July 20, 1993, Holiday Inn, Marion, VA
Tuesday, July 27, 1993, McCleary Elementary School, New Castle, VA
Wednesday, July 28, 1993, Sheraton Airport Inn, Roanoke, VA
Monday, August 2, 1993, Wytheville Community College Grayson Hall Commons, Wythevile, VA

Comments from these meetings, in addition to comments received in response to this notice will be used to determine the scope of the revision.

The Draft Environmental Impact Statement (DEIS) is expected to be filed with the Environmental Protection Agency and to be available for public comment by February 1995. At that time, the Environmental Protection Agency will publish a notice of availability of the DEIS in the **Federal Register**. The comment period on the DEIS will be 3 months from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermonth Yankee Nuclear Power Corp.* v. *NRDC. 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the DEI stage but that are not raised until after completion of the Final Environmental Impact Statement (FEIS) may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 3 month comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DEIS, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the FEIS. The FEIS is scheduled to be completed in December 1995. The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making a decision regarding this revision. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal in accordance with 36 CFR 217.

The responsible official is the Regional Forester, Southern Region, 1720 Peachtree Road, NW., Atlanta, Georgia 30367.

Dated: June 22, 1993.

Ralph F. Mumme,

Acting Regional Forester.

[FR Doc. 93–15098 Filed 6–25–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–559–801, A–401–801, A–549–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom; Initiation of Antidumping Administrative Reviews and Notice of Request for Revocation of Order (in Part)

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping duty administrative reviews and notice of request for revocation of orders (in part).

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of antidumping duty orders concerning Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom. In accordance with the Commerce Regulations, we are initiating those administrative reviews for the period May 1, 1992, through April 30, 1993. We have also received requests to revoke the orders covering: spherical plain bearings and parts thereof from France with respect to sales of this merchandise made by SKF France, ball bearings and parts thereof from Germany with respect to sales of this merchandise made by NTN Kugellagerfabrik (Deutschland) GmbH and GMN George Mueller Nurnberg, cylindrical roller bearings and parts thereof from Italy with respect to sales of this merchandise made by SKF Industrie S.p.A., spherical plain bearings and parts thereof from Japan with respect to sales of this merchandise made by NTN Corporation and Honda Motor Co., Ltd., and ball bearings and cylindrical roller bearings and parts thereof from Japan with respect to sales of this merchandise made by Honda Motor Co., Ltd.

EFFECTIVE DATE: June 28, 1993.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Director, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230: telephone (202) 482–2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with § 353.22(a)(1), (2), and (3) of the Department's regulations, for administrative reviews of antidumping duty orders covering antifriction bearings (other than tapered roller bearings) and parts thereof. The orders cover three classes or kinds of merchandise: Ball bearings (ball), cylindrical roller bearings (cylindrical), and spherical plain bearings (spherical). Pursuant to section 353.25 of the Department's regulations, we have also received requests to revoke the orders covering: spherical plain bearings and parts thereof from France with respect to sales of this merchandise made by SKF France, ball bearings and parts thereof from Germany with respect to sales of this merchandise made by NTN Kugellagerfabrik (Deutschland) GmbH and GMN George Mueller Nurnberg, cylindrical roller bearings and parts thereof from Italy with respect to sales of this merchandise made by SKF Industrie S.p.A., ball bearings and parts thereof from Japan with respect to sales of this merchandise made by NTN Corporation and Honda Motor Co., Ltd., and cylindrical roller bearings and spherical plain bearings and parts thereof with respect to sales of this merchandise from Japan made by Honda Motor Co., Ltd. The requests are based on the firms' claims that there has been an absence of dumping on sales of the above subject merchandise for a period of three consecutive years.

Initiation of Reviews

In accordance with § 353.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping duty orders. We intend to issue the final results of these reviews no later than May 31, 1994.

Proceedings and firms	Class or kind
France	
A–427–801:	
Franke & Heydrich	Ball.
Hoesch Rothe Erde AG	Ball.
INA Roulements S.A	All.
Rollix Defontaine, S.A	Ball.
SKF France (including all relevant affiliates).	All.
SNFA	Ball & Cylindrical.
Societe Nouvelle de Roulements (SNR).	Ball & Cylindrical.
Societe Nationale d'Etude et de Construction de Moteurs d'Aviation (SNECMA).	Ball & Cylindrical.
Germany	
A–428–801:	
FAG Kugelfischer Georg Schaefer KGaA.	All.
Fichtel & Sachs AG	Ball.
Franke & Heydrich KG	Ball.
Georg Mueller Numberg, AG. (GMN).	Ball.
Hoesch Rothe Erde AG	Ball.
INA Walzlager Schaeffler KG.	Ball & Cylindrical.
NTN Kugellagerfabrik (Deutschland) GmbH.	Ball.
Rollix & Defontaine, S.A	Ball.
SKF GmbH. (including all relevant affiliates).	All.
Italy	
A–475–801:	
FAG Italy	Ball & Cylindrical.
Meter, S.p.A	Ball & Cylindrical.
SKF-Industrie S.p.A. (including all relevant affiliates).	Ball & Cylindrical.
Societe Nationale d'Etude et de Construction de Moteurs d'Aviation (SNECMA).	Ball & Cylindrical.
Japan	
A–588–804:	
Asahi Seiko Co., Ltd	Ball.
Fujino Iron Works Co., Ltd	Ball.
General Bearing Corp	All.
Honda Motor Co., Ltd	All.
Izumoto Seiko Co., Ltd	Ball.
Koyo Seiko Company, Ltd	All.
Nachi-Fujikoshi Corporation	Ball & Cylindrical.
Nankai Seiko Co., Ltd	Ball.
Nippon Pillow Block Sales Company, Ltd.	Ball.
Nippon Seiko K.K	All.
NTN Corp	All.
Peer International Japan	Ball & Cylindrical.
SST	All.
Takeshita Seiko Co., Ltd	Ball.
Tottori Yamakai Bearing	Ball.
Bearing Seisakusho Ltd	Ball.
Singapore	
A–559–801:	
NMB Singapore/Pelmec Ind.	Ball.
Sweden	
A–401–801:	
SKF Sverige (including all relevant affiliates).	Ball & Cylindrical.
Thailand	
A–549–801:	
NMB Thai/Pelmec Thai Ltd.	Ball.
United Kingdom	
A–412–801:	
Barden Corporation	Ball & Cylindrical.
FAG (U.K.) Ltd	Ball & Cylindrical.
NSK Bearings Europe, Ltd	Ball & Cylindrical.
Revolvo Ltd	Ball & Cylindrical.
RHP Bearings Ltd	Ball & Cylindrical.

Interested parties must submit applications for administrative protective orders in accordance with § 353.34(b) of the Department's regulations. However, due to the large number of parties to this proceeding, we strongly recommend that parties submit their APO applications as soon as possible, and we will process them on a first-come, first-serve basis.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c).

Dated: June 14, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–15150 Filed 6–25–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–729–801]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Ferrosilicon From Egypt

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 28, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1756.

Preliminary Determination

The Department of Commerce (the Department) preliminarily determines that ferrosilicon from Egypt is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on February 1, 1993 (58 FR 24, February 8, 1993), the following events have occurred.

On February 11 and 18, 1993, the U.S. Embassy in Cairo informed us of the names and relevant history of the firms producing ferrosilicon in Egypt. According to the U.S. Embassy, the Egyptian Ferroalloy Company (EFACO) was the only producer exporting ferrosilicon to the United States.

On February 26, 1993, the International Trade Commission (ITC) notified us of its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of subject merchandise that is allegedly sold in the United States at less than fair value.

On March 5, 1993, we sent the Department's antidumping questionnaire to EFACO. On March 11, 1993, EFACO requested a two week extension for filing a response to Section A of the questionnaire. On March 15, 1993, we granted EFACO a two week extension. On March 25, 1993, EFACO requested an additional one week extension of time for filing the response to Section A of the questionnaire and a two week extension of time for filing the response to Sections B and C. On March 26, 1993, we granted EFACO the extensions it requested.

On March 30, 1993, EFACO notified the Department by letter that EFACO made no U.S. sales during the period of investigation (POI) (July 1, 1992 through December 31, 1992) and only modest U.S. sales in recent years. Therefore, EFACO stated that it would not be responding to the questionnaire.

On April 1, 1993, the Department notified EFACO that it was considering whether it would be appropriate to expand the POI to capture sales associated with shipments during the POI. At that time, EFACO, once again, informed the Department that it would not respond to the questionnaire.

On June 2, 1993, we received comments from petitioners discussing the use of BIA in making our preliminary determination.

Period of Investigation

The POI is July 1, 1992 through December 31, 1992.

Scope of Investigation

The product covered by this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this investigation. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon, and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing by weight not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Best Information Available

On March 30, 1993, EFACO notified the Department by letter that it did not intend to respond to the Department's questionnaire. EFACO asserted that it made this decision because it had no U.S. sales during the six-month POI identified in the questionnaire, and only modest U.S. sales in recent years. According to information received from the U.S. Embassy in Cairo, however, EFACO had shipments to the United States during the POI. Thus, the Department tried to ascertain whether it would be appropriate to extend the POI to capture the sales associated with shipments during the POI. (See, Final Determination of No Sales at Less Than Fair Value: Ferrosilicon from Argentina (58 FR 88, May 10, 1993)) However, EFACO informed the Department in a telephone conversation that it would not respond to any sections of the questionnaire even if the Department were to expand the POI (*See*, April 1, 1993, memorandum from Shawn Thompson to the file.) Thus, EFACO did not submit a questionnaire response; accordingly, we are using BIA to calculate the margin for EFACO (*See* section 776(c) of the Act, and 19 CFR 353.37.)

As BIA, we are assigning the highest margin among the margins in the petition, in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding, and as outlined in the Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (other Than Tapered Roller Bearings and Parts Thereof from the Federal Republic of Germany, Italy, Japan, Romania, Sweden, Thailand, and the United Kingdom (54 FR 18992, 19033, May 3, 1989); and as upheld in *Krupp Stahl AG. et al* v. *U.S.*, Slip Op. 93–84 [CIT May 24, 1993]

Fair Value Comparisons

To determine whether sales of ferrosilicon from Egypt to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based U.S. price on BIA, which was information supplied by the petitioner. Petitioners based their estimate of USP on the U.S. f.o.b. import value of ferrosilicon imported from Egypt in June 1992. Petitioners stated that no adjustments to the estimated USP were made because no information was available.

Foreign Market Value

We based FMV on BIA, which was information supplied by the petitioner. Petitioners based their estimate of FMV on home market prices obtained from an Egyptian producer for subject merchandise sold during July through December 1992. Petitioners made no adjustments to the estimated FMV because they stated that they were unable to obtain information regarding transportation and packing costs.

Suspension of Liquidation

In accordance with section 733(d)(1) (19 U.S.C. 1673b(d)(1)) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of ferrosilicon from Egypt, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the FMV of the subject merchandise exceeds the USP as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter:	Weighted average margin percent
The Egyptian Ferroalloy Company	90.50
All Others	90.50

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments must be submitted, in at least ten copies, to the Assistant Secretary for Import Administration no later than August 10, 1993, and rebuttal briefs no later than August 16, 1993. In addition, a public version and five copies should be submitted by the appropriate date if the submission contains business proprietary information. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held, if requested, at 9:30 a.m. on August 18, 1993, at the U.S. Department of Commerce, room 1412, 14th Street and Constitution Avenue NW., Washington DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099 within ten days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentation will be limited to arguments raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: June 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15148 Filed 6–25–93; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 93–051. *Applicant:* Southwest Missouri State University, 901 S. National, Springfield, MO 65804. *Instrument:* Dipole/Dipole Electromagnetic Surveying System, Model EM 34-3-XL/DL. *Manufacturer:* Geonics Limited, Canada. *Intended Use:* The instrument will be used in the courses Geology 590-Elements of Geophysics and Geology 572-Groundwater Hydrology to teach students how electromagnetic techniques are used to determine the electrical conductivity of the earth. *Application Received by Commissioner of Customs:* May 19, 1993.

Docket Number: 93–052. *Applicant:* University of Vermont, Burlington, VT 05405–0156. *Instrument:* (2) Sweeping Beam Optocators, Model S001 and (2) SS1 Interface Modules. *Manufacturer:* Selcom AB, Sweden. *Intended Use:* The instruments will be used to study how the thickness and cross-sectional area of soft connective tissues changes during tensile loading. In addition, these instruments will be used in engineering courses designed to give students a general background in the behavior and testing of materials. *Application Received by Commissioner of Customs:* May 19, 1993.

Docket Numbers: 93–053 and 93–054. *Applicant:* Columbia University in the City of New York, Department of Physics, 538 West 120th Street, P.O. Box 137, New York, NY 10027. *Instrument:* (10) High Voltage Power Supplies and (4) Multiwire Detectors. *Manufacturer:* IAS/CNR, Italy. *Intended Use:* The instruments are part of an x-ray detector for stellar observations that will be used to analyze the polarization of x-ray from stellar objects in order to gain knowledge on the activities of these stellar objects. In addition, the instruments will be used to obtain scientific data from the observations for use in the course High Energy Astrophysics. *Applications Received by Commissioner of Customs:* May 19, 1993.

Docket Number: 93–056. *Applicant:* Duke University, Department of Chemistry, PM Gross Chemical Laboratory, P.O. Box 90346, Durham, NC 27708–0346. *Instrument:* Mass Spectrometer, Model JMS-SX102A with Accessories. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used chiefly to identify and characterize synthetic and naturally occurring chemicals either prepared or isolated. Another use for the instrument will be to identify very small amounts of biochemical intermediates released in the body and to follow the chemical reactivity of compounds that are found in disease states of man. The instrument will also be used for educational purposes in chemistry courses. *Application Received by Commissioner of Customs:* May 21, 1993.

Docket Number: 93–058. *Applicant:* Louisiana State University and A&M College, School of Veterinary Medicine, Departments of Physiology, Pharmacology and Toxicology, S. Stadium Drive, Baton Rouge, LA 70803. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad 2+. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to analyze natural waters, biological tissues and tissue cellular extracts, soils and sediments, atmospheric particulates, etc. The experiments to be conducted will include:

(1) determination of the partitioning of major, minor and trace elements between the particulate, colloidal and dissolved phase in the Mississippi River and the plume in the Gulf of Mexico;

(2) assessment of the immunosuppressant activity of selected trace elements in catfish;

(3) investigation of the speciation of selected toxic metals in a poised redox system containing water and sediments;
(4) investigation of the bioavailability of sediment or colloid bound trace metals to aquatic organisms; and
(5) DNA binding of selected elements and the implications for DNA damage.

Application Received by Commissioner of Customs: May 24, 1993.

Docket Number: 93–060. *Applicant:* Tulane University, Department of Chemistry, New Orleans, LA 70118. *Instrument:* Coaxial Nanosecond Flashlamp, Model 5000F. *Manufacturer:* IBH Consultants Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of luminescent organic compounds and transition metal complexes to measure the luminescent lifetimes of these complexes. In addition, the instrument will be used in the training of graduate students, undergraduates pursuing research and postdoctoral associates. *Application Received by Commissioner of Customs:* June 2, 1993.

Docket Number: 93–061. *Applicant:* University of Wisconsin-Madison, Purchasing Services, 750 University Avenue, Madison, WI 53706–1490. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad PQ2+. *Manufacturer:* VG Elemental, United Kingdom. *Intended Use:* The instrument will be used to test water from Lake Michigan and Lake Superior and their tributaries for metals such as aluminum, cadmium, chromium, copper, lead and zinc. In addition, the instrument will be used to train graduate students to perform low level metals analyses and metals tests that may be needed to complete their graduate research and/or thesis requirements. *Application Received by Commissioner of Customs:* June 2, 1993.

Docket Number: 93–062. *Applicant:* University of Connecticut, Storrs, CT 06269–3060. *Instrument:* Electron Paramagnetic Resonance Spectrometer, Model ER300–10R/12. *Manufacturer:* Bruker Instruments, Inc., Germany. *Intended Use:* The instrument will be used for studies of catalysts, ceramics and polymers that contain paramagnetic centers to determine where unpaired electrons are located, what the local structure is around the unpaired electron(s) and whether these electrons are localized or delocalized. *Application Received by Commissioner of Customs:* June 4, 1993.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–15149 Filed 6–25–93; 8:45 am]

BILLING CODE 3510–DS–F

International Trade Administration (A–583–820)

Antidumping Duty Order: Certain Helical Spring Lock Washers From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 28, 1993.

FOR FURTHER INFORMATION CONTACT: William Crow, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230: (202) 482–0116.

Scope of Order

For purposes of this investigation, certain helical spring lock washers (HSLWs) are circular washers of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screw or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper. The lock washers subject to this investigation are currently classifiable under subheading 7318.21.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on May 3, 1993, the Department of Commerce (Department) made its final determination that certain helical spring lock washers from Taiwan are being sold at less than fair value (58 FR 27709 May 11, 1993). On June 21, 1993, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that an industry in the United States is threatened with material injury by reason of such imports. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Act that, but for the suspension of liquidation of entries of certain helical spring lock washers from Taiwan, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) applies. Therefore, all unliquidated entries or warehouse withdrawals, for consumption of certain helical spring lock washers from Taiwan made on or after June 25, 1993, the date on which the ITC proposes to publish its notice of final determination of threat of material injury, will be liable for the assessment of antidumping duties. The Department will direct U.S. Customs officers to terminate the suspension of liquidation for entries entered, or withdrawn from warehouse, for consumption before June 25, 1993, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

The Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain helical spring lock washers from Taiwan. These antidumping duties will be assessed on all unliquidated entries of certain helical spring lock washers from Taiwan entered, or withdrawn from warehouse, for consumption on or after June 25, 1993. U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise.

Manufacturers/producers/exporters:	Margin percentage
Spring Lake Enterprise Co., Ltd	31.93
Coimiko Industrial Co., Ltd	31.93
Par Excellence Industrial Co., Ltd	31.93
All Others	31.93

This notice constitutes the antidumping duty order with respect to certain helical spring lock washers from Taiwan, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: June 23, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–15227 Filed 6–25–93; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Brazil

June 22, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: June 29, 1993.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 225 and 300/301 are being increased by recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 58 FR 14381, published on March 17, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 22, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 12, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1993 and extends through March 31, 1994.

Effective on June 29, 1993, you are directed to amend the directive dated March 12, 1993 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Federative Republic of Brazil:

Category	Adjusted twelve-month limit [1]
Sublevels in the aggregate	
225	7,461,975 square meters.
300/301	6,070,089 kilograms.

[1] The limits have not been adjusted to account for any imports exported after March 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–15153 Filed 6–25–93; 8:45 am]

BILLING CODE 3510–DR–F

New Transshipment Charges for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

June 22, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs charging transshipments to 1993 limits.

EFFECTIVE DATE: June 28, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a notice published in the **Federal Register** on July 10, 1992 (57 FR 30725), CITA announced that Customs would be conducting other investigations of transshipments of textiles produced in China and exported to the United States. Based on these investigations, the U.S. Customs Service has determined that textile products in various categories, produced or manufactured in China and entered into the United States with the incorrect country of origin, were transshipped in circumvention of the U.S.-China Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988, as amended. Consultations were held between the Governments of the United States and the People's Republic of China on this matter on June 7 through 9, 1993. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to charge the following amounts to the 1993 quota levels for the categories listed below:

Category	Amounts to be charged to 1993 limit
237	618 dozen.
239	101,822 kilograms.
334	2,019 dozen.
338–S	116,224 dozen.
339	7,480 dozen.
339–S [1]	24,945 dozen.
340	449 dozen.
345	22,495 dozen.
347	11,168 dozen.
348	15,835 dozen.
352	302,871 dozen.
359–C	1,257 kilograms.
361	152,269 numbers.
433	1,384 dozen.
634	159 dozen.
635	291 dozen.
636	840 dozen.
639	3,552 dozen.
641	10,798 dozen.
647	8,314 dozen.
648	5,301 dozen.
670–L	2,120 kilograms.
847	4,154 dozen.

[1] Charges to Category 339–S are in addition to those charges being made to Category 339.

U.S. Customs continues to conduct other investigations of such transshipments of textiles produced in China and exported to the United States. The charges resulting from these

investigations will be published in the Federal Register.

The U.S. Government is taking this action pursuant to the U.S. diplomatic note dated June 7, 1993, the U.S.-China bilateral textile agreement of February 2, 1988, as amended, and in conformity with Paragraph 16 of the Protocol of Extension and Article 8 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973 and extended on December 14, 1977, December 22, 1981, July 31, 1986 and December 9, 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 57 FR 54976, published on November 23, 1992).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 22, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetble Fiber Textile Agreement of February 2, 1988, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on June 28, 1993, you charge the following amounts to the following categories for the 1993 restraint period (see directive dated December 23, 1992):

Category	Amount to be charged to 1993 limit
237	516 dozen.
239	101,822 kilograms.
334	2,019 dozen.
338–S [1]	116,224 dozen.
339	7,480 dozen.
339–S [2]	24,945 dozen.
340	449 dozen.
345	22,495 dozen.
347	11,168 dozen.
348	15,835 dozen.
352	302,871 dozen.
359–C [3]	1,257 kilograms.
361	152,269 numbers.
433	1,384 dozen.
634	159 dozen.
635	291 dozen.
636	640 dozen.
639	3,552 dozen.
641	10,798 dozen.
647	8,314 dozen.
648	5,301 dozen.
670–L [4]	2,120 kilograms.
847	4,154 dozen.

[1] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023.

[2] Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[4] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

This letter will be published in the Federal Register.

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc 93–15157; Filed 6–25–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

June 22, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: June 29, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6705. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 335/635 and 369–O are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 56328, published on November 27, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 22, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 20, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on June 29, 1993, you are directed to amend further the directive dated November 20, 1992 to reduce the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
335/635	420,000 dozen.
369–O [2]	9,628,090 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 369–O: all HTS numbers except 5702.10.9020, 5702.49.1010, 5702.99.1010 (rugs exempt from the bilateral agreement); 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369–D); and 6307.10.2005 (369–S).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–15151 Filed 6–25–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Macau

June 22, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: June 29, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6709. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 49074, published on October 29, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 22, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 23, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on June 29, 1993, you are directed to amend further the directive dated October 23, 1992, to reduce the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Macau:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I 333/334/335/833/834/835.	190,757 dozen of which not more than 104,584 dozen shall be in Categories 333/335/833/835.
338	249,753 dozen.
339	1,058,413 dozen.
340	235,098 dozen.
347/348/847	593,677 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–15152 Filed 6–25–93; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Democratic Socialist Republic of Sri Lanka

June 22, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6708. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated May 23 and 24, 1988, as amended and extended, between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka establishes limits for the agreement period which begins on July 1, 1993 and extends through June 30, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 22, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1992; pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated May 23 and 24, 1988, as amended and extended, between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Sri Lanka and exported during the twelve-month period beginning on July 1, 1993 and extending through June 30, 1994, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	227,498 dozen.
314	2,694,340 square meters.
331/631	2,194,185 dozen pairs.
333/633	42,824 dozen.
334/634	501,835 dozen.
335/835	220,808 dozen.
336/636/836	330,542 dozen.
338/339	1,003,669 dozen.
340/640	947,805 dozen of which not more than 322,253 dozen shall be in Categories 340–Y/640–Y [1].
341/641	1,575,000 dozen of which not more than 1,050,000 dozen shall be in Category 341 and not more than 1,050,000 dozen shall be in Category 641.

Category	Twelve-month restraint limit
342/642/842	521,908 dozen.
345/845	135,162 dozen.
347/348/847	1,052,548 dozen of which not more than 631,529 dozen shall be in Categories 347–T/348–T/847–T[2].
350/650	93,675 dozen.
351/651	250,025 dozen.
352/652	1,070,581 dozen.
359–C/659–C[3]	1,030,771 kilograms.
361	500,000 numbers.
363	9,702,135 numbers.
369–D[4]	728,411 kilograms.
369–S[5]	607,008 kilograms.
635	294,410 dozen.
638/639/838	715,193 dozen.
644	401,468 numbers.
645/646	160,587 dozen.
647/648	861,009 dozen.

[1] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[2] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0038, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2035, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0042, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2035, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050; Category 847–T: only HTS numbers 6103.29.2044, 6103.49.3017, 6103.49.3024, 6104.29.2041, 6104.29.2045, 6104.69.3034, 6104.69.3038, 6112.19.2060, 6112.19.2090, 6117.90.0051, 6203.29.3046, 6203.49.3040, 6203.49.3045, 6204.29.4041, 6204.29.4047, 6204.69.3052, 6204.69.9044, 6211.20.3040, 6211.20.6040, 6211.39.0040, 6211.49.0040 and 6217.90.0070.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369–S: only HTS number 6307.10.2005.

Imports charged to these category limits for the periods July 1, 1992 through June 30, 1993 and January 27, 1993 through June 30, 1993 (Category 314) shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–15155 Filed 6–25–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

June 22, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: June 29, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 482–6719. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53885, published on November 13, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 22, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on June 29, 1993, you are directed to amend further the directive dated November 6, 1992, to reduce the limits for the following categories, as provided under the terms of the Bilateral Textile Agreement, effected by exchange of notes dated August 21, 1990 and September 18, 1990:

Category	Adjusted twelve-month limit[1]
Sublevels in Group I	
218	18,632,804 square meters.
225/317/326	33,008,144 square meters.
611	2,668,265 square meters.
619/620	12,138,923 square meters.
Within Group I subgroup	
361	1,188,685 numbers.
Sublevels in Group II	
331	484,878 dozen pairs.
338/339	716,100 dozen.
340	1,050,464 dozen.
631	4,390,286 dozen pairs.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 93–15154 Filed 6–25–93; 8:45 am]
BILLING CODE 3510–DR–F

Amendment of the Coverage of Part-Categories for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Various Countries

June 22, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending coverage of certain part-categories.

EFFECTIVE DATE: June 29, 1993.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

To facilitate the implementation of existing bilateral textile agreements and export visa arrangements based upon the Harmonized Tariff Schedule (HTS), for goods entered in the United States for consumption or withdrawn from warehouse for consumption on and after June 1, 1993, regardless of the date of export, certain HTS classification numbers for part-Categories 369–L and 670–L are being changed on all visa and certification arrangements and all import controls for countries with these part-categories. The changes contained below are being published in a supplement to the 1993 Harmonized Tariff Schedule.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 57 FR 54967, published on November 23, 1992).

Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 22, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, all import control directives issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which include wool and man-made fiber textile products in part-Categories 369–L and 670–L, produced or manufactured in various countries and entered in the United States for consumption on and after June 1, 1993, regardless of the date of export.

Also, this directive amends, but does not cancel, all directives issued to you which establish visa arrangements for part-Categories 369–L and 670–L for all countries for which visa arrangements are in place with the United States Government.

Effective on June 29, 1993, you are directed to make the changes shown below in the aforementioned directives for goods entered in the United States for consumption or withdrawn from warehouse for consumption on and after June 1, 1993, regardless of the date of export:

Category	Obsolete number	New number
369–L	4202.92.6000	4202.92.6090
670–L	4202.92.9020	4202.92.9025

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 93–15156 Filed 6–25–93; 8:45 am]
BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement, Solid Waste Management Complex, Andersen AFB, Guam

The United States Air Force is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the construction of a new solid waste management complex at Andersen AFB, Guam. The proposed complex is to include recycling, composting, and disposal facilities. The proposed disposal facilities would include separate landfills for asbestos, rubble (hardfill), and sanitary refuse.

Alternatives identified to date include seven alternate landfill sites on Andersen AFB, the existing Government of Guam landfill, a proposed Government of Guam waste-to-energy facility, a new DoD/Government of Guam landfill, capping and vertical expansion of the existing landfill, incineration on base, and no action.

The EIS will present the results of a screening of alternatives and examine environmental impacts of alternatives. Issues to be addressed in the EIS focus on, but are not limited to, groundwater quality, endangered species habitat, presence of Installation Restoration Program sites (requiring investigation and perhaps remediation prior to use as part of the proposed solid waste management complex), air quality, transportation systems, aesthetics and recreation.

The National Environmental Policy Act encourages agencies to conduct public scoping meetings to obtain input to assist in determining the nature, extent and scope of the issues and concerns to be addressed in the EIS. The Air Force has tentatively scheduled a public scoping meeting for July 1993. Notice of the exact time and place of the meeting will be published in the news media.

The United States Air Force invites comments and suggestions from all interested parties on the scope of the EIS. If concerned persons are not able to attend the scoping meeting, written comments and suggestions will be accepted. To assure the Air Force will have sufficient time to fully consider public inputs on issues, written comments should be mailed to ensure receipt no later than July 31, 1993. Comments or requests for further information concerning this EIS should be addressed to Mr. Roy N. Tsutsui, Chief, Environmental Flight, Andersen AFB, Guam, 633 CES/CEV, Bldg 18001,

Unit 14041, APO AP 96543–4041;
Phone (671) 366–2101.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–15140 Filed 6–25–93; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by June 30, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Cary Green, Department of Education, 7th & D Streets, SW., room 4682, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public, and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an amendment to this notice.

Dated: June 22, 1993.

Joyce Smith,

Acting Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: Expedited

Title: Libraries Data Collection—Federal—State Cooperative System (FSCS) for the Collection of Data from Public Libraries and their Outlets, State Library Agencies and Public Library Administrative Entities.

Freqency: Annually

Affected Public: State or local governments

Reporting Burden:

Reponses: 51

Burden Hours: 1,530

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: FSCS is an annual census of over 9,000 public libraries and their outlets, state library agencies and public library administrative entities. Data for public libraries is aggregated at the state and national levels. Federal, state, and local officials use data for evaluation, planning, monitoring, budgeting, administration and policy. Other uses: librarians, researchers, business and educators. Respondents: State library agencies and District of Columbia.

Additional Information: An expedited review is requested because the materials to be submitted are time sensitive administrative records. According to guidelines of 5 CFR 1320.6 at least 30 days are required for respondents to provide their submission. In order to provide respondents with sufficient time a clearance date of June 30, 1993 is necessary.

[FR Doc. 93–15167 Filed 6–25–93; 8:45 am]

BILLING CODE 4000-01-M

Office of Educational Research and Improvement

Library Services and Construction Act: Intent To Repay Funds Recovered As a Result of a Final Audit Determination Issued to the Library of Michigan

AGENCY: Department of Education.

ACTION: Notice of Intent to Award Grantback Funds.

SUMMARY: Under section 459 of the General Education Provisions Act (GEPA) (20 U.S.C. 1234h) in effect in March 1991, the U.S. Secretary of Education (Secretary) intends to repay to the Library of Michigan (State Agency), under a grantback arrangement, an amount equal to 75 percent of funds recently recovered by the Department of Education (Department) as a result of a final audit determination issued by the Assistant Secretary for Educational Research and Improvement (Assistant Secretary) on March 25, 1991. The Department's recovery of funds followed an audit of the State Agency conducted pursuant to the Single Audit Act, 31 U.S.C. 7501 *et seq.* The final audit determination issued by the Assistant Secretary had sustained the auditor's questioning the use of $31,893 in Federal funds awarded under Title I of the Library Services and Construction Act, as amended (LSCA) (20 U.S.C. 351 *et seq.*). This notice describes the State Agency's plans for the use of the repaid funds and the terms and conditions under which the Secretary intends to make these funds available to the State Agency. This notice invites comments on the proposed grantback.

DATES: Comments should be received by the Department on or before July 28, 1993.

ADDRESSES: All written comments should be submitted to Mr. Robert Klassen, U.S. Department of Education, 555 New Jersey Avenue, NW., Suite 402, Washington, DC 20208–5571.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Klassen at (202) 219–1303. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

A. Background

The Department has recovered $31,893 from the Library of Michigan (State Agency) in response to claims arising from a federally mandated audit covering fiscal years (FYs) 1985 and 1986.

The claims involved the State Agency's administration of Title I of the LSCA. The final audit determination of the Assistant Secretary found that, during FYs 1985 and 1986, the State Agency had violated certain cost principles governing the use of Federal funds granted to State and local governments. These cost principles are contained in the U.S. Office of Management and Budget (OMB) Circular A–87, which during the audit period was restated in the Education Department General Administrative Regulations, appendix C to 34 CFR part 74. (These cost principles are now referenced by 34 CFR 80.22). A–87 forbids the allocation of joint costs, such as rent and salaries of persons performing both grant and non-grant activities, without an approved cost allocation plan. In addition, building space costs are allowable only with the approval of the Federal grantor agency. Further, grantee employees who divide their time between Federal and non-Federal objectives must keep accurate time distribution records.

The State Agency appealed the Assistant Secretary's determination to the Department's Office of Administrative Law Judges (OALJ) (Application of the Library of Michigan; Docket No: 90–79–R). Mediation proceedings conducted under OALJ oversight culminated in submission of additional evidence by the State Agency and a March 25, 1991 redetermination by the Assistant Secretary of the amount to be refunded as $31,893. A Repayment Agreement was executed on May 2, 1991. On May 6, 1991, the Library of Michigan paid $31,893 to the Department.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA (1988) provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for that program and may arrange to repay to the State Agency affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this so-called "grantback" arrangement if the Secretary determines that:

(1) The practices and procedures of the State Agency that resulted in the final audit determination have been corrected, and that the State Agency is, in all other respects, in compliance with requirements of the applicable program;

(2) The State Agency has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) The use of funds to be awarded under the grantback arrangement in accordance with the State Agency's plan would serve to achieve the purposes of the program under which funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

In accordance with section 459(a)(2) of GEPA, in its February 10, 1993, request for a grantback, the State agency submitted a plan for the proposed use of the requested funds. In its plan, the State proposes to use the grantback of $23,920 to extend and improve library services to areas of the State where they are inadequate, in compliance with section 102(a)(2)(A) of the LSCA. The grantback funds will be used to supplement current program activities by providing increased access to information and educational resources throughout Michigan and the nation. To that end, the State Agency's plan is to fund the placement of computer terminals in libraries within the State that do not have them, or to provide subscriptions to online databases for libraries that have computers. In particular, the plan will provide to small and rural libraries or libraries in economically depressed areas the opportunities and advantages of current technological innovations.

This application of the grantback funds would benefit the population that was affected by the repayment of the original audit findings. LSCA funds in the FYs 1985 and 1986 were used to expand and improve public library services and resource sharing that resulted from the Library of Michigan's networking and statewide library planning programs. Currently these statewide networking activities center on the use of technological innovations. The State Agency proposed to use grantback funds to purchase computers or computer terminals and subscriptions to online databases for the 18 percent of Michigan libraries that currently do not have access to regional and State bibliographic databases. These libraries are generally either small rural libraries or are located in economically depressed areas of the State. The Secretary's analysis of the proposed activities and the project budget indicates that the requested amount for the grantback award, which is the maximum amount permitted under section 459(a) of GEPA, is reasonable and necessary to the fulfillment of the proposed grantback project and is justified in the light of the enhancement of the statewide library network.

D. Secretary's Determination

The Secretary has reviewed the State Agency's request for the repayment of funds, the State Agency's plan (as outlined in Section C of this Notice), and other information submitted by the State Agency. Based upon that review, the Secretary has determined that the conditions contained in section 459 of GEPA have been met. This determination is based upon the best information available to the Secretary at the present time. If this information is at a later date discovered to have been inaccurate or incomplete, the Secretary will not be precluded from taking appropriate administrative action at that time. On finding that the conditions of section 459 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendation or final audit determination.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least thirty days prior to entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Library of Michigan under a grantback arrangement, as authorized by section 459. The grantback award will be in the amount of $23,920. This amount is 75 percent—the maximum percentage authorized by section 459—of the amount of funds recovered by the Department under the terms of the Repayment Agreement in this case. The Secretary's intent to award the maximum amount of grantback funds possible under section 459 is based upon the determination outlined in Section D of this notice.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Will Be Made

The State Agency agrees to comply with the following terms and conditions under which payments under a grantback arrangement will be made:

(1) The Library of Michigan will expend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements, including

those related to the purposes for which LSCA Title I funds may be used.

(b) The plan that was submitted in conjunction with the February 10, 1993, request for grantback, and any other amendments to that plan that are approved in advance of the grantback award by the Secretary.

(2) Pursuant to section 459(c) of GEPA, all funds received under this grantback arrangement must be obligated not later than September 10, 1994.

(3) The State Agency must, not later than January 1, 1995, submit a report to the Secretary that—

(a) Indicates how the funds awarded under the grantback have been used;

(b) Shows that the funds awarded under the grantback have been liquidated;

(c) Describes the results and effectiveness of the project for which the funds were spent; and

(d) Describes the consultation with representatives of the population that will benefit from the grantback payments.

(4) Separate accounting records must be maintained documenting the expenditure of funds under the grantback arrangement.

(Catalog of Federal Domestic Assistance Number 84.034: Library Services and Construction Act State-Administered Program.)

Dated: June 18, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–15103 Filed 6–25–93; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Availability of the 1992–93 National Defense, National Direct and Perkins Loan Programs Revised Directory of Designated Low-Income Schools

AGENCY: Department of Education.

ACTION: Notice of availability of the National Defense, National Direct and Perkins Loan Programs revised directory of designated low-income schools for teacher cancellation benefits for the 1992–93 school year.

SUMMARY: Institutions and borrowers participating in the National Defense, National Direct, and Federal Perkins Loan Programs and other interested persons are advised that they may obtain information regarding the National Defense, National Direct and Perkins Loan Programs Revised Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the 1992–93 School Year (Directory). The revised Directory reflects changes in the list of schools at which borrowers may be teaching to qualify for teacher cancellation benefits under each of the loan programs.

DATES: The revised Directory is currently available.

ADDRESSES: Information concerning specific schools listed in the revised Directory may be obtained from Ronald W. Allen, Systems Administration Branch, Campus-Based Programs Systems Division, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4621, ROB–3), Washington, DC 20202–5453. Telephone (202) 708–8730. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: The revised Directory is available at (1) each institution of higher education participating in the Federal Perkins Loan Program, (2) each of the fifty-seven (57) State and Territory Departments of Education, (3) each of the major Federal Perkins Loan billing services, and (4) the U.S. Department of Education.

SUPPLEMENTARY INFORMATION: The Secretary of Education published a notice in the **Federal Register** on November 19, 1992 (57 FR 54573) that the National Defense, National Direct and Perkins Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the 1992–93 School Year was available. The Secretary has revised the Directory due to changes in the authorizing legislation, additional schools becoming eligible, the opening and closing of schools, school name changes, and the need for other corrections. These changes are reflected in the revised Directory.

The procedures for selecting the schools that qualify borrowers for teacher cancellation benefits are described in the Federal Perkins Loan Program regulations at 34 CFR 674.53 and 674.54 and in section 465 of the Higher Education Act of 1965, as amended. The Directory has been revised to reflect the provision of the Higher Education Amendments of 1992 that the Secretary no longer is required to set a 50-percent restriction on the number of low-income institutions in a State receiving assistance under Chapter 1 for cancellation purposes for the Federal Perkins and National Direct Student Loan programs. The Secretary has determined that for the 1992–93 academic year, full-time teaching in any of the schools set forth in the Directory, as revised, qualifies a borrower for cancellation.

The Secretary is providing the revised Directory to each institution participating in the Federal Perkins Loan Program. Borrowers and other interested parties may check with their lending institutions, the appropriate State or Territory Department of Education, regional offices of the Department of Education, or the Office of Postsecondary Education of the Department of Education concerning the identity of qualifying schools for the 1992–93 academic year.

The Office of Postsecondary Education will retain, on a permanent basis, copies of all published amendments and revised Directories.

(Catalog of Federal Domestic Assistance Number 84.037; National Defense/Direct and Federal Perkins Student Loan Cancellations.)

Dated: June 18, 1993.

Maureen A. McLaughlin,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 93–15104 Filed 6–25–93; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center, Financial Assistance Award; Grant Renewal

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of Noncompetitive Financial Assistance Renewal Award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i) Criteria (A), the DOE, Morgantown Energy Technology Center (METC) gives notice of its plans to award a grant renewal to the University of Colorado, Chemical Engineering Department, Campus Box 19, Boulder, Colorado 80309–0019, in the amount of approximately $193,494 and cover a twelve (12) month project period.

FOR FURTHER INFORMATION CONTACT: Beverly J. Harness, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4241. Procurement Request No. 21–93MC27115.501.

SUPPLEMENTARY INFORMATION: The pending award is based on a renewal application for continuing work necessary to the satisfactory completion of an activity presently being funded by DOE and for which competition for

support would have a significant adverse effect on continuity or completion of the activity. The grant is to provide financial assistance to the University of Colorado for conducting research focused on the development of an economical process to convert natural gas to higher value hydrocarbons utilizing catalytic technologies. By providing financial support, DOE expects to ultimately stimulate utilization of natural gas reserves by addressing serious information deficiencies that must be overcome to permit the smooth operation and expansion of domestic natural gas markets.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 93–15225 Filed 6–25–93; 8:45 am]

BILLING CODE 6405–01–M

Federal Energy Regulatory Commission

[Docket No. CP93–498–000]

ANR Pipeline Co.; Application

June 22, 1993.

Take notice that on June 17, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93–498–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon two firm transportation services for Southern Natural Gas Company (Southern), authorized in Docket Nos. CP79–95 and CP80–119, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that ANR and Southern have agreed to terminate the transportation agreements dated November 10, 1978, and October 31, 1979, on file as ANR's Rate Schedule Nos. X–74 and X–106, respectively, under Original Volume No. 2 of ANR's FERC Gas Tariff. ANR states that the parties have agreed to replace the two transportation services with open-access transportation services under part 284 of the Commission's regulations. ANR requests that the abandonments of service be made effective on November 1, 1992, coincident with the effective date of ANR's interim settlement in Docket Nos. RP89–161, et al.

ANR explains that up to 8,484 Mcf of gas per day is transported under Rate Schedule X–74 from West Cameron Area Block 167, offshore Louisiana, to an interconnection with Southern in St. Mary Parish, Louisiana, and alternately, at the tailgate of the Superior Oil Company's Lowry Plant in Cameron Parish, Louisiana. ANR further states that up to 1,400 Mcf of gas per day is transported under Rate Schedule X–106 from Eugene Island Block 341, offshore Louisiana to St. Mary Parish, Louisiana (Shadyside).

Any person desiring to be heard or to make any protest with reference to said application should on or before July 13, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15081 Filed 6–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TX93–2–000]

City of Bedford, VA, City of Danville, VA, City of Martinsville, VA, Town of Richlands, VA, Blue Ridge Power Agency; Filing

June 22, 1993.

Take notice that on June 18, 1993, the Cities of Bedford, Danville and Martinsville, and the Town of Richlands, together with the Blue Ridge Power Agency filed an Application for Order Requiring Transmission Service to be provided by the operating companies of the American Electric Power Company, Inc. (AEP) System (collectively "AEP Companies"). The application has been filed pursuant to section 211 of the Federal Power Act, as amended by the Energy Policy Act of 1992 (16 U.S.C. 824j).

The applicants are partial requirements customers of AEP subsidiary Appalachian Power Company (APCo) and allege that AEP has refused to provide such services in connection with Blue Ridge Power Agency's purchase of term capacity and energy from PSI Energy, Inc. (PSI) under the Interchange Agreement between them.

Copies of the filing were served on American Electric Power Service Corporation, APCo, and PSI.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15072 Filed 6–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL93–47–000]

The Board of Public Works of the City of Lewes, DE, v. Delmarva Power and Light Co.; Filing

June 22, 1993.

Take notice that on June 11, 1993, The Board of Public Works of the City of

Lewes, Delaware tendered for filing a complaint against Delmarva Power and Light Company (DP&L) requesting that the Commission find DP&L has failed to fulfill its contractual obligations to Lewes, to order DP&L to act in accordance with those obligations, and to provide refunds for damages caused to Lewes by DP&L's failure to abide by its Settlement Agreement in FERC docket No. ER92–236–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint shall be due on or before July 22, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15078 Filed 6–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–477–000]

CNG Transmission Corp.; Application

June 22, 1993.

Take notice that on June 10, 1993, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP93–477–000 an application, pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the replacement of approximately 16.4 miles of its existing 12-inch deteriorated Line 9, with 8.8 miles of new 30-inch pipeline (designated TL–474 Extension 1), in Armstrong & Westmoreland Counties, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG states that about 8.8 miles of Line 9 will be removed (except at road and river crossings) between CNG's Kiski Gate and McIlwain Gate Stations and the TL–474 Extension 1 replacement pipeline will be placed in the same ditch. Further, CNG states that the remaining 7.6 miles of Line 9 to the South, between CNG's J. B. Tonkin Compressor Station and the Kiski Gate Station will be abandoned in place and ultimately used as a ground bed for the cathodic protection of a parallel pipeline, Line 19.

CNG states that construction of the proposed replacement facilities will cost an estimated $8,817,400 which will be financed from funds on hand or obtained from CNG's parent company, Consolidated Natural Gas Company.

According to CNG, Line 9, a 12-inch bare-metal pipeline, was constructed in 1944 with an original Maximum Allowable Operating Pressure (MAOP) of 1000 psig. To maintain compliance with Department of Transportation (DOT) regulations, CNG over the years had to derate this part of its system to an MAOP of 894 psig. Replacing deteriorated Line 9 will restore the operating capability of this portion of CNG's system, states CNG.

CNG states that it can effectively replace 16.4 miles of deteriorated, 12-inch, pipeline by replacing it with 8.8 miles of new, coated, 30-inch pipeline (TL–474 Extension 1). This not only allows CNG to enhance the integrity and safe operation of its system in its Central Division (and comply with DOT regulations), but, according to CNG, also enables CNG to increase the reliability of its pipeline system, for the benefit of all of its customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 13, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15079 Filed 6–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–595–000]

Great Lakes Gas Transmission Limited Partnership; Site Visit

June 22, 1993.

On July 15, 1993, the staff of the Federal Energy Regulatory Commission will conduct a site visit of Great Lakes' proposed pipeline loop and alternatives in China Township, St. Clair County, Michigan.

For further information, contact Mr. Howard Wheeler at (202) 208–1237.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15071 Filed 6–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL93–46–000]

City of Hamilton, OH and American Municipal Power-Ohio, Inc. v. Kentucky Power Co. and Ohio Power Co.; Filing

June 22, 1993.

Take notice that on June 7, 1993, the City of Hamilton, Ohio (Hamilton) and American Power-Ohio, Inc. (AMP-Ohio) tendered for filing a Complaint against Kentucky Power Company (KPCO) and Ohio Power Company (OPCO) for a reduction in the loss adjustment factor being charged by the Companies for the transmission service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection. Answers to the complaint shall be due on or before July 13, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15080 Filed 6–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–513–002]

Idaho Power Co.; Filing

June 22, 1993.

Take notice that on June 16, 1993, Idaho Power Company (IPC) tendered for filing a revision of rates and a refund report in the above-referenced docket with regard to Clockum Transmission, Inc.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 7, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15074 Filed 6–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–715–000]

New England Power Service Co.; Filing

June 22, 1993.

Take notice that on June 16, 1993, New England Power Service Company (NEP) tendered for filing a Notice of Termination of NEP's transmission service to the Vermont Electric Generation and Transmission Coop (VEGT) for VEGT's entitlement in Northeast Utilities' gas turbine units.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 7, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15077 Filed 6–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ID–2794–000]

James T. Rhodes; Filing

June 22, 1993.

Take notice that on May 28, 1993, James T. Rhodes (Applicant) tendered for filing an application under section 305(b) to hold the following positions:

Officer and Director—Virginia Electric and Power Company

Director—Nations Bank of Virginia

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15076 Filed 6–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP79–444–004, CP81–125–001, CP81–474–003, and CP82–499–002]

Tennessee Gas Pipeline Co.; Petition to Amend

June 22, 1993.

Take notice that on June 14, 1993, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam Street, Houston, Texas 77002, filed with the Commission, pursuant to section 7 of the Natural Gas Act (NGA), a petition to amend orders issued in the above referenced dockets to eliminate restrictions on the transportation of natural gas for Chevron U.S.A. Inc. (Chevron-successor to Gulf Oil Corporation), all as more fully set forth in the application for amendment, which is open to the public for inspection.

Tennessee states that pursuant to Commission orders granted in the above referenced dockets [1] (as amended), Tennessee and other parties received authority to construct and operate the SP77 system, which extends from a South Pass Block 77, offshore Louisiana, platform to an onshore point in Plaquemines Parish, Louisiana. Chevron contributed a percentage of the construction and operation expenses in exchange for using the same percentage of the SP77 system's capacity to meet its warranty contract obligations to Texas Eastern Transmission Corporation (Texas Eastern).

Tennessee also states that the orders issued in the above referenced dockets restricted the natural gas volumes transported via the SP77 system by Tennessee and others for Gulf Oil to satisfying Chevron's warranty contract obligations to Texas Eastern. Chevron fulfilled its warranty contract obligations to Texas Eastern in November 1989, but Tennessee's transportation service restrictions still remain in effect. Tennessee, therefore, at Chevron's urging, proposes the removal of all restrictions on market destinations or use of Chevron's gas transported by Tennessee via the SP77 system.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before July 13, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15082 Filed 6–25–93; 8:45 am]

BILLING CODE 6717–01–M

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[1] See orders at 12 FERC ¶61,307 (1980); 16 FERC ¶61,054 (1981); 17 FERC ¶62,196 (1981); and 22 FERC ¶61,208 (1983), respectively.

[Docket No. CP93–499–000]

Transwestern Pipeline Co.; Request Under Blanket Authorization

June 22, 1993.

Take notice that on June 18, 1993, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP93–499–000 a request pursuant to § 157.205 of the Commission's Regulations for permission and approval to abandon a sales tap used to provide a direct sales service to Mr. Ray H. Ralston, a right-of-way grantor, located in Hansford County, Texas under Transwestern's blanket certificate issued in Docket No. CP82–534–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transwestern proposes to abandon a tap, side valve, and measurement facilities was previously used to provide a direct sales service to Mr. Ralston, a right-of-way grantor located in Hansford County, Texas. Transwestern states that it sold up to 7,700 dth per year to Mr. Ralston pursuant to a direct sales agreement dated June 5, 1978, with a primary term of twelve months. By letter dated April 14, 1993, Mr. Ralston advised Transwestern that he was no longer interested in receiving gas services from Transwestern and requested that Transwestern remove the metering facilities, it is indicated.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest if filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15073 Filed 6–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–576–000]

Wisconsin Power & Light Co., Filing

June 22, 1993.

Take notice that on June 10, 1993, Wisconsin Power & Light Company (WP&L) tendered for filing material inadvertently not included in their May 28, 1993 filing in the above-referenced docket. In addition, WP&L requests to withdraw their request for privileged treatment of the confidential agreement also filed on May 28, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 7, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15075 Filed 6–25–93; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Final Power Allocations, 1994 Power Marketing Plan, Central Valley Project, California

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of the final allocation of 29.122 megawatts of power under the 1994 Power Marketing Plan.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy, hereby announces its final allocation of 29.122 megawatts (MW) of Central Valley Project (CVP) power under the 1994 Power Marketing Plan (Plan) published in 57 FR 45782, October 5, 1992. That notice announced the final allocation of 500.824 MW of power to existing customers and the proposed allocation of 29.122 MW of power.

The formal comment period on the proposed allocations ended on November 4, 1992, and a discussion of the comments received is included in this notice. After consideration of all the comments, Western has decided to finalize the proposed power allocations as announced in the October 5, 1992, notice.

DATES: Electric service contracts for the sale of the power allocated in this notice will be effective on the later of July 1, 1994, or when signed by both the customer and Western. Allottees will have 6 months to execute a contract with Western after the initial offer of a draft contract, unless otherwise agreed in writing by Western. Contracts entered into under the Plan will remain in effect until midnight of December 31, 2004.

FOR FURTHER INFORMATION CONTACT: James C. Feider, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825–1097, (916) 649–4418. All documentation made or retained by Western, including the environmental assessment and finding of no significant impact, for the purpose of developing the Plan and allocations, is available for inspection and copying at this address.

SUPPLEMENTARY INFORMATION:

Responses to Comments Regarding Proposed Power Allocations

Comment: Western received comments from allottees who generally expressed that while they would have desired a greater allocation of power, they appreciated the amount that they received.

Response: Western appreciates their supportive comments and looks forward to providing electric services.

Comment: The city of Avenal recommended that Western implement allocations to new customers as soon as possible; there is no purpose in waiting until July 1, 1994.

Response: Western announced in previous **Federal Register** notices regarding the Plan that electric service contracts for the sale of this power will be effective on the later of July 1, 1994, or when signed by Western and the customers. This was a condition of marketing power under this Plan. In addition, the 29.122 MW of power was originally marketed through June 30, 1994, and a portion of this power is under contract until then.

Comment: The cities of Alameda, Healdsburg, Lodi, Lompoc, Santa Clara, and Ukiah (Cities) suggested that Western market the 21 MW of Diversity Power (pro rata allocations) to the Cities (excluding Santa Clara) as soon as possible, since it would mitigate some of the impacts that have already occurred through withdrawals. The Cities also commented that by not marketing this power, Western is foregoing revenues that could assist in

the repayment of the CVP. Also, the Northern California Power Agency recommended that Western provide Diversity Power allocations on a "retroactive, priority basis" to those customers who have already experienced Westlands Withdrawals.

Response: Western originally marketed Diversity Power in 1982 to provide economic incentives for customers to shed load so Western could avoid exceeding the simultaneous load level limit and minimize the need to reduce Contract Rates of Delivery. Since that time, other arrangements have also been implemented to enable Western's Diversity Program to adequately protect the 1152 MW load level without the need to market additional Diversity Power. Western is concerned that marketing additional Diversity Power will stress the system because it will increase the energy requirements on the CVP and the number of times needed to shed load to maintain the load level. Western has, therefore, decided that it may market this power on a pro rata basis to those customers who may in the future lose a portion of their Long-Term Firm Power due to a withdrawal of Westlands Withdrawable Power. It will be marketed only in the event that withdrawals of Westlands Withdrawable Power cause undue hardship for Westlands Withdrawable customers.

Comment: The California Department of Corrections (CDC) was disappointed to learn that Western will not be marketing the additional Diversity Power. They commented that if the rainfall patterns return to normal, Western will most likely be in a position to market Diversity Power. They are, therefore, interested in contracting with Western for this power under a normal rainfall scenario. The CDC is also interested in obtaining power under an interruptible service arrangement and suggested that Western should take advantage of CDC's experience and willingness to explore all power marketing options.

Response: Western's rationale for marketing Diversity Power has been discussed above. Marketing interruptible service was not an option that was considered in the development of alternatives for the Plan. These types of marketing alternatives will be considered during the development of the 2004 Power Marketing Plan, which is scheduled to start in 1993.

Comment: The Maxwell Irrigation District requested that Western give the basis for the determination that they did not receive an allocation of power. Also, the Southern San Joaquin Municipal Utility District asked that Western reconsider a power allocation to them because they (1) qualify as a preference customer; (2) are a CVP water customer; and (3) are ready, willing, and able to receive power.

Response: There were approximately 30 applicants eligible to receive a share of the available 8.122 MW of Long-Term Firm Power. Western used the general allocation criteria listed in the Plan and exercised its discretion under Reclamation law in allocating this limited resource to the eligible applicants. Western regrets that there is not enough power to satisfy the requests of all the entities that qualified for an allocation.

Comment: The Pacific Gas and Electric Company (PG&E) advanced several comments. First, it argues that Western lacks the legal authority to allocate power to several proposed allottees. Assuming allocations are made, PG&E also questions whether under Contract 2948A it must wheel Western power to those allottees. Finally, PG&E expressed its concern that allocations under this marketing plan are beyond the capability of Western's generation system and may become PG&E's responsibility to plan for and serve. Western deals with each of PG&E's comments in turn.

Response: PG&E comments that Western is able to allocate power only to those publicly owned utilities that own or operate their own electric distribution systems over which they resell and deliver at retail the allocated preference power. In other words, PG&E argues that public agencies such as irrigation districts, Federal agencies, and State agencies are not preference customers, since it is possible that these publicly owned end-users might not own electric distribution systems and might not resell and deliver at retail the allocated Federal power.

Western acknowledges that several of the proposed allottees are not municipal utilities. PG&E's comment, however, contradicts Western's CVP allocation policy, as well as that of its predecessor, the Bureau of Reclamation. For years Western has allocated CVP power to irrigation districts, Federal agencies, and State agencies as preference customers.

Nonetheless, PG&E's legal arguments deserve careful study. PG&E argues, as a matter of law, that the Tenth Circuit decision in Salt Lake City, et al., v. Western Area Power Administration, et al., 926 F.2d 974 (10th Cir. 1991) shows that Western itself recognizes the rule that preference extends only to those public bodies which operate their own electric distribution system. PG&E misapplies the Tenth Circuit decision.

In the Salt Lake City case, Western adopted an allocation criteria that required that municipalities, to qualify for an allocation of Federal power, must have utility responsibility; i.e., that the municipality must operate its own utility system; Salt Lake City, at 977. Yet, in the same allocation process, Western also adopted an allocation criterion for Federal or State agencies with an ultimate consumer-type load. Western did not require utility responsibility for those entities. (Post-1989 Power Marketing and Allocation Criteria, 51 FR 4,844, 4,870 (February 7, 1986)) The plaintiffs in the Salt Lake City case did not challenge the distinction that Western drew between municipalities on the one hand, and Federal and State agencies on the other. Neither the district court nor the Tenth Circuit held, as a matter of law, that municipalities must have utility responsibility to qualify as preference customers. Rather, both courts held that Western's interpretation of Reclamation law, that municipalities under the Post-1989 General Power Marketing and Allocation Criteria must have utility responsibility to qualify as preference customers, was "fully reasonable." Salt Lake City, et al., v. Western Area Power Administration, et al., No. C 86–1000G (C.D. Utah April 14, 1988), 40; 1988 U.S. Dist. LEXIS 16822; Salt Lake City, at 978. For this reason, we cannot agree with PG&E's argument that the Salt Lake City decisions require Western to allocate preference power only to municipalities with utility responsibility, and to the exclusion of any other public agencies.

PG&E next argues that several court decisions interpreting a preference-type provision in the Niagara Redevelopment Act (NRA), 16 U.S.C. 836, require Western to apply that interpretation to the Reclamation Project Act of 1939 preference provisions in the present allocation process. For example, PG&E cites the Second Circuit interpretation of the term "public body" in the NRA, 16 U.S.C. 836(a)(1), to mean "publicly-owned entities that are capable of selling and distributing power directly to consumers of electricity at retail." Metropolitan Transportation Authority v. Federal Energy Regulatory Commission, 796 F.2d 584, 593 (2nd Cir. 1986). PG&E argues that this preference-type provision, and its interpretation by the Second Circuit, should be read in pari materia with what the Second Circuit considered to be the "standard 'federal-type' preference." (Id., at 592, n.7).

We agree with PG&E that Reclamation statutes, in general, are to be read in pari materia. However, the NRA is not a Reclamation statute. Its purpose is not to reclaim the semiarid and arid lands in the Western United States (section 1, Reclamation Act of 1902, 43 U.S.C. 391) but to utilize completely the United States rights to water in the Niagara River in New York State § 1, Niagara Redevelopment Act, 16 U.S.C. 836(a).

No court has interpreted Reclamation law in a manner that supports PG&E's position. Western's discretion in choosing each marketing plan's eligibility criteria and allocation criteria, therefore, the type of preference entities which are eligible to receive power, is "fully reasonable" and is entitled to deference. Salt Lake City, supra; see, City of Santa Clara v. Andrus, 572 F.2d 660, 666–668 (9th Cir. 1978), cert. denied sub. nom. Pacific Gas and Electric Company v. City of Santa Clara, 439 U.S. 859 (1978).

As for PG&E's wheeling argument, we agree that article 24(a) of Contract 2948A between Western and PG&E provides that a defined Western customer must have been a customer of PG&E on or before April 2, 1951; have monthly maximum demands of 500 kilowatts or more for 3 consecutive months of the immediately preceding 12 months; be located outside a municipality where PG&E serves at retail; and be located on PG&E's system in the area described in exhibit C to Contract 2948A. These conditions go to PG&E's obligations to provide transmission service under Contract 2948A, not to Western's authority to allocate power. Western notes that article 24(a)(1) states that these conditions apply "except as the parties [Western and PG&E] otherwise have agreed or may agree in writing," and also notes PG&E's commitment to provide transmission service to Western customers in a February 8, 1980, Memorandum of Understanding (MOU). There, PG&E agreed:

> to support an increase in [Western's] customer load level up to an additional 102 megawatts * * * made on bases or terms which are in accordance with Contract 2948A * * * provided that, to the extent a proposed allocation would be inconsistent with Contract 2948A, it will be considered under PG&E's Stanislaus Commitments.

(MOU, p.3) Of course, "PG&E has repeatedly acknowledged its obligation to provide transmission services under these Commitments." United States v. Pacific Gas and Electric Company, et al., 714 F. Supp. 1039, 1049 (N.D. Cal. 1989). Once Western exercises its discretion under law to make the final allocations, Western will, as it has in the past, negotiate with PG&E for any necessary wheeling services.

Finally, we respond to PG&E's comment that allocations under this marketing plan are beyond the capability of Western's generation system and may become PG&E's responsibility to plan for and serve. Western disagrees. PG&E has had time since 1980, when it agreed in the MOU to support a Western customer load level of 1,152 MW, to plan for that load level. Allocations under this plan do not increase the 1,152 MW load level; thus, Western perceives no increased planning or support burden falling on PG&E as a result of this marketing plan.

Comment: The Sacramento Municipal Utility District commented that marketing an additional 8.122 MW will necessitate more withdrawals from energy account #2 (EA2) except under wet hydrologic conditions. Western should avoid additional sales which trigger high cost capacity purchases and excess withdrawals from EA2.

Response: The 8.122 MW is part of the total 529.9 MW of power being marketed by Western under this Plan. Marketing the 8.122 MW may slightly increase Western's need to purchase energy, but will not trigger any additional capacity purchases. Hydrological conditions and customer load factors are conditions that impact purchases more significantly than the allocation of an additional 8.122 MW.

Final Power Allocations

The following final power allocations are made in accordance with the Plan published in 57 FR 45782, October 5, 1992. All of the allocations are subject to the execution of a contract in accordance with the Plan. If an allottee fails to execute a contract in accordance with the Plan, Western may offer the power to another eligible entity that submitted a request for an allocation under the Plan without further public process. Western may present a contract offer to new customers at any time after publication of this notice.

ALLOCATION OF 8.122 MW OF LONG-TERM FIRM POWER

Preference customer	Proposed allocation (MW)
Avenal, City of	.622
Bay Area Rapid Transit District	4.000
Cawelo Water District	.500
Lassen Municipal Utility District	3.000
Total	8.122

Allocation of 21 MW of Diversity Power

The 21 MW of Diversity Power that is presently not under contract will be reserved so that it may be offered on a pro rata basis to customers with an allocation of Westlands Withdrawable Power in the event that power is withdrawn. While Western prefers not to market the 21 MW of Diversity Power due to the adequacy of load management options in the present resource mix, Western will consider marketing this power if the withdrawal of Westlands Withdrawable Power causes undue hardship for Westlands Withdrawable Power customers.

The 21 MW of Diversity Power will not be available for marketing to Westlands Withdrawable customers until after June 30, 1994. In the event of a withdrawal of Westlands Withdrawable Power, and if Western determines that the withdrawal is causing undue hardship to Westlands Withdrawable customers, Western will at that time present a contract for the sale of this power to those customers for execution.

The following is a list of Westlands Withdrawable Power customers who would be offered an allocation of Diversity Power if Western presents a contract for execution.

Preference customers	Present westlands withdrawable power (MW)
Utility District:	
East Bay Municipal Utility District	1.051
Irrigation Districts:	
Delano-Earlimart	0.349
James	0.349
Kern Tulare	0.349
Lindsay-Strathmore	0.349
Lower Tule River	1.051
Modesto	5.960
Santa Clara Valley	0.349
Terra Bella	0.349
Turlock	1.751
Municipalities:	
City of Alameda	10.869
City of Healdsburg	1.751
City of Lodi	6.063
City of Lompoc	3.155
City of Ukiah	3.856
Total	39.601

Regulatory Procedure Requirements: Regulatory Flexibility Analysis, Determination Under Executive Order 12291, Environmental Compliance, and Paperwork Reduction Act of 1980 were addressed in 57 FR 45782, October 5, 1992; and apply to this **Federal Register** notice.

Issued in Golden, Colorado, March 1, 1993.
William H. Clagett,
Administrator.
[FR Doc. 93–15226 Filed 6–25–93; 8:45 am]
BILLING CODE 6460–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4672–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.
DATES: Comments must be submitted on or before July 28, 1993.
FOR FURTHER INFORMATION, OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260–2740.
SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Notification of Substantial Risks Under section 8(e) of the Toxic Substances Control Act (TSCA). (EPA ICR No. 0794.05; OMB No. 2070–0046). This is a request for extension of the expiration date of a currently approved collection.

Abstract: Under section 8(e) of TSCA, chemical manufacturers, importers, processors, and distributors must immediately inform EPA when they obtain information which indicates that their product(s) may present a substantial risk of injury to health or the environment. The Agency estimates that 650 respondents will submit an initial TSCA section 8(e) report and 220 respondents will be involved in required follow-up/supplemental submission of information. The EPA and other Federal agencies use this information to determine and control chemical risks.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 21 hours per initial section 8(e) submission affecting 650 respondents, and 4 hours per follow-up/supplemental section 8(e) submission affecting 220 respondents. This estimate includes the time needed to review instructions, gather and submit the data needed, and complete and review the collection of information.

Respondents: Chemical manufacturers, importers, processors, and distributors.

Estimated No. of Respondents: 870.

Estimated No. of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 14,530 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: June 18, 1993.
Paul Lapsley,
Director, Regulatory Management Division.
[FR Doc. 93–15134 Filed 6–25–93; 8:45 am]
BILLING CODE 6560–50–F

[FRL–4669–9]

Draft Acid Rain Permits Public Comment Period; Correction

AGENCY: Environmental Protection Agency (EPA).
ACTION: Correction.

SUMMARY: In notice document 93–13834 beginning on page 32667 in the issue of Friday, June 11, 1993, make the following correction:

On page 32667, in the third column, under **SUPPLEMENTARY INFORMATION**, after the last sentence in the first full paragraph for Kammer in West Virginia, the following two sentences should be added: EPA proposes to approve conditional reduced utilization plans for units 1, 2, and 3 as a means of compliance. The plans rely on energy conservation measures to account for underutilization.

On page 32669, in the second column, under **SUPPLEMENTARY INFORMATION**, after the last sentence in the paragraph for Walter C Beckjord in Ohio, the following two sentences should be added: EPA proposes to approve conditional reduced utilization plans for unit 5 and 6 as a means of compliance. The plans rely on energy conservation measures to account for underutilization.

Comments on the draft permits for Kammer in West Virginia and Walter C Beckjord in Ohio must be received no later than 30 days after the date of this notice or the publication date of the notice of these draft permits in local newspapers.
FOR FURTHER INFORMATION CONTACT: Mike Kalinoski at 202–233–9116.

Dated: June 15, 1993.
Brian J. McLean,
Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.
[FR Doc. 93–15133 Filed 6–25–93; 8:45 am]
BILLING CODE 6560–50–M

[FRL–4671–9]

TRC Environmental Services, American Management Systems, Inc., Omnisys Corporation; Transfer of Data to Contractor and Subcontractors

AGENCY: U.S. Environmental Protection Agency.
ACTION: Notice.

SUMMARY: This is a notice to persons who have submitted information to the United States Environmental Protection Agency (EPA) under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). EPA has contracted with TRC Environmental Services as a primary contractor, and American Management Systems, Inc. and Omnisys Corp. are serving as subcontractors to TRC Environmental Services to perform work for EPA Region I (Contract No. 68–W9–0003). In order to do this work, the subcontractors will be provided access to certain information submitted to EPA under CERCLA Section 104. Some of these materials may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to TRC Environmental Services, American Management Systems, Inc. and Omnisys Corp. consistent with the requirements of 40 CFR 2.310(h)(2). Access to this information by American Management Systems, Inc. and Omnisys Corp. is necessary for the performance of this contract.
DATES: Comments must be provided on or before July 5, 1993. The transfer of data submitted under CERCLA Section 104 and claimed to be confidential will occur no sooner than 10 working days after publication of this notice in the Federal Register.
ADDRESSES: Comments should be addressed to LeAnn Walls, U.S. Environmental Protection Agency,

Office of Regional Counsel, RCU, J.F.K. Federal Building, Boston, MA 02203, and should reference Sullivan's Ledge Superfund Site.

FOR FURTHER INFORMATION CONTACT: LeAnn Walls, U.S. Environmental Protection Agency, Office of Regional Counsel, RCU, J.F.K. Federal Building, Boston, MA 02203, (617) 565–4891.

SUPPLEMENTARY INFORMATION: American Management Systems, Inc. and Omnisys Corp., as subcontractors through TRC Environmental Services, will be performing work for EPA Region I regarding the Sullivan's Ledge Superfund Site litigation, *U.S.* v. *Federal Pacific Electronics, Inc., et al.*, including document preparation for litigation (bate stamping of documents, preparation of a privilege list, microfilming documents and quality control of EPA's site files). This work will be performed by the subcontractors, American Management Systems, Inc. and Omnisys Corp. EPA Region I Waste Management Division has determined that, in order for the subcontractors to perform the work assigned, they will need access to information in EPA's files which has been claimed as CBI.

Pursuant to 40 CFR 2.310(h)(2), the contractor and subcontractors are legally required to safeguard this information from any unauthorized disclosure. In accordance with these regulations, EPA's contract with TRC Environmental Services and TRC Environmental Services' contract with American Management Systems, Inc. and Omnisys Corp. prohibits the use of the information for any purpose not specified in the contract, prohibits disclosure of the information in any form to a third party without prior written approval from EPA, and requires the return to EPA of all copies of the information upon request by EPA, whenever the information is no longer required by the contractor for the performance of the contract, or upon completion of the contract. Each employee of the contractor and subcontractors who will have access to the information has been or will be required to sign a written agreement honoring the terms specified in the contract, before they have access to any confidential information. Pursuant to 40 CFR 2.310(h)(2), EPA is providing notice and an opportunity to comment to affected parties who have submitted CBI regarding this Site. These parties have five (5) business days from the publication of this Notice in which to comment on the anticipated release of this information to EPA's contractor and subcontractors.

Dated: June 15, 1993.

Patricia L. Meaney,

Acting Regional Administrator.

[FR Doc. 93–15065 Filed 6–25–93; 8:45 am]

BILLING CODE [illegible]

[FRL–4671–5]

Public Water Supervision Program: Program Revision for the Commonwealth of Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commonwealth of Massachusetts is revising it's approved State Public Water Supervision Primacy Program. Massachusetts has adopted (1) drinking water regulations for filtration, disinfection, turbidity, Giardia lamblia, viruses, Legionella, and heterotrophic bacteria that correspond to the National Primacy Drinking Water Regulations for filtration, disinfection, turbidity, Giardia lamblia, viruses, Legionella, and heterotrophic bacteria requirements promulgated on June 29, 1989 (54 FR 27486). EPA has determined that the State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions. All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by July 28, 1993, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by July 28, 1993, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective July 28, 1993.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intended to submit at such hearing. (3) The signature of the individual making the request: or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, at the following offices:

Massachusetts Department of Environmental Protection, Division of Water Supply, One Winter Street, Boston, MA 02108,
and
Regional Administrator, U.S. Environmental Protection Agency—Region I, JFK Federal Building, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: J. Kevin Reilly, U.S. Environmental Protection Agency—Region I, Ground Water Management and Water Supply Branch, JFK Federal Building, Boston, MA 02203, Telephone: (617) 565–3619.

Section 1413 of the Safe Drinking Water Act, as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: March 26, 1993.

Paul Keough,

Acting Regional Administrator.

[FR Doc. 93–15132 Filed 6–25–93; 8:45 am]

BILLING CODE [illegible]

[OPP–50756; FRL–4628–1]

Receipt of a Notification to Conduct Small-Scale Field Testing; Genetically-Altered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from AgriVirion Inc., of New York, a notification of intent to conduct a small-scale field test involving the genetically-altered (polyhedrin-minus) *Autographa californica* nuclear polyhedrosis virus (AcNPV). AgriVirion intends to test the pesticide on cabbage in New York. The target pest for these field trials is cabbage looper.

DATES: Written comments must be received on or before July 12, 1993.

ADDRESSES: Comments, in triplicate, should bear the docket control number OPP–50756 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as

"Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA, (703) 305–7690.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to EPA's Statement of Policy entitled, "Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act," published in the **Federal Register** of June 26, 1986 (51 FR 23313), has been received from AgriVirion Inc. of New York. The purpose of the proposed testing is to evaluate the efficacy of the genetically-altered AcNPV under field conditions on cabbage in New York. The target pest for these field trials is cabbage looper. A 2-acre test site will be treated once this growing season; all treated crops will be destroyed.

Following the review of AgriVirion's application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

Dated: June 21, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–15131 Filed 6–25–93; 8:45 am]

BILLING CODE 6560-50-F

[OPP–50764; FRL–4629–4]

Receipt of Notification to Conduct Small-Scale Testing of a Genetically Engineered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application from Sandoz Agro, Inc. of intent to conduct small-scale field testing of a genetically engineered microbial pesticide. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received on or before July 28, 1993.

ADDRESSES: Comments in triplicate, must bear the docket control number OPP–50764 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7690.

SUPPLEMENTARY INFORMATION: An application for an nonindigenous mircrobial pesticide (NMP) has been received from Sandoz Agro, Inc., Des Plaines, Illinois. This NMP application EPA file symbol is 55947–NMP–T. The proposed small-scale field trial will involve the introduction of two genetically modified strains of *Bacillus thuringiensis* (Bt). The host microorganisms or parent strains are EPA-registered *Bacillus thuringiensis kurstaki* strain [wild type A] and [wild type B]. This application proposes that a 2–year testing program be implemented. In 1993, the tests will be conducted only at the Sandoz Research Farm outside Greenville, Mississippi. The 1993 field tests will be conducted on 0.2 acre. The 1994 testing will be on less than 1.0 acre in California, Florida, and Mississippi. For the 1993 tests, a maximum of 20.6 British International Units (BIUs) (less than 3.42 x 10 spores) will be applied with a backpack sprayer. For the 1994 tests, a maximum of 112 BIUs (less than 1.86 x 10 spores) will be applied. All field trials will be conducted by Sandoz Product Developments personnel, and all treated crops will be tilled back into the soil following the field tests. Therefore, there is no reason to expect any adverse human health effects or environmental effects resulting from use of the genetically modified microorganisms since none have been documented for the parent strains used in commercially registered products or the cry 1 delta endotoxin which was transferred into the recipient strain.

Dated: June 21, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–15130 Filed 6–25–93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511. For further information contact Shoko B. Hair, Federal Communications Commission (202) 632–6934.

Federal Communications Commission

OMB Control No.: 3060–0553

Title: Amendments of the Part 69 Allocation of General Support Facility Costs.

Expiration Date: 05/31/94.

Description: In the Report and Order in the Matter of Amendment of the Part 69 Allocation of General Support Facility Costs, CC Docket No. 92–222, the Commission modified Section 69.307(b) of its rules to correct the misallocation of general support facility (GSF) investment and related expenses among the part 69 cost categories for local exchange carriers (LECs). The modified rule will eliminate the over-allocation of costs to access categories other than common line, including special access and switched transport,

thereby resulting in more cost-based pricing by the LECs. The Commission also concluded that LECs should be allowed to treat the reallocation of costs as exogenous under price cap regulation. These changes are to be reflected in tariffs to become effective on July 1, 1993. The tariffs implementing the rule modification are to be filed on 14 days notice.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–15125 Filed 6–25–93; 8:45 am]

BILLING CODE 6712–01–M

Comments Requested on Request for Waiver to Permit Operation of Part 15 Device in the Radio Navigation Band at 24.725 GHz

June 22, 1993.

On April 16, 1992, VORAD Safety Systems, Inc. (VORAD) asked the Commission to waive section 15.209 of its Rules to permit the operation of VORAD's vehicle detection and driver alert system (the T–200 Radar) in the aviation radionavigation band at 24.725 GHz. It appears that there are no existing or planned aviation services on this frequency.

The Request for Waiver is available for public inspection in the Technical Standards Branch of the Office of Engineering and Technology, room 7122, 2025 M Street, NW., Washington, DC. Comments on the Request for Waiver are invited and should be submitted on or before July 23, 1993, to the Chief Engineer, Federal Communications Commission, room 7122, Mail Stop 1300–B4, 2025 M Street NW., Washington, DC 20554.

The full text of the petition may also be purchased from the Commission's duplicating contractor: International Transcription Service, 2100 M Street, NW., suite 140, Washington, DC 20037, Telephone: (202) 857–3800.

For further information please contact George Harenberg at (202) 653–7314.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–15126 Filed 6–25–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

The Bank Holding Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 22, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. The Bank Holding Company, Griffin, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Spalding County, Griffin, Georgia.

2. Merchants & Farmers Bancshares, Inc., Eutaw, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Merchants & Farmers Bank of Greene County, Eutaw, Alabama.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Charter Bancorp, M.H.C., Sparta, Illinois; to become a bank holding company by acquiring at least 51 percent of the voting shares of Charter Bank, S.B., Sparta, Illinois, a proposed stock savings bank being formed to acquire substantially all of the assets and assume all the liabilities of Charter Bank, S.B., Sparta, Illinois, an existing mutual savings bank.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. BANKFIRST Corporation, Inc., Brookings, South Dakota; to acquire 100 percent of the voting shares of BANKFIRST, Minneapolis, Minnesota, a *de novo* bank.

2. Dakota Company, Inc., Minneapolis, Minnesota; South Dakota Bancorp, Inc., Minneapolis, Minnesota; and South Dakota Financial Bancorporation, Inc., Minneapolis, Minneosta; to acquire 100 percent of the voting shares of O'Neill Properties, Inc., Minneapolis, Minnesota, and thereby indirectly acquire First National Bank of O'Neill, O'Neill, Nebraska.

Board of Governors of the Federal Reserve System, June 22, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-15108 Filed 6-25-93; 8:45 am]

BILLING CODE 6210-01-F

Charles Hill Beaty, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 19, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Charles Hill Beaty, Gallatin, Tennessee; Charles Randolph Beaty, Portland, Tennessee; Helen June Beaty, Portland, Tennessee; and Montee Kittrell Beaty, Gallatin, Tennessee; to acquire as a group at least 25 percent of the voting shares of First Farmers Bancshares, Inc., Portland, Tennessee, and thereby indirectly acquire The Farmers Bank, Portland, Tennessee.

Board of Governors of the Federal Reserve System, June 22, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-15109 Filed 6-25-93; 8:45 am]

BILLING CODE 6210-01-F

VOL 58 ISS 122 JE 28 1993 UMI

GENERAL SERVICES ADMINISTRATION

Environmental Impact Statement: Sacramento, CA

Notice of intent to prepare an environmental Impact Statement for a proposed U.S. Courthouse and Federal Building in Sacramento, California.

The General Services Administration (GSA) hereby gives notice that it intends to prepare an Environmental Impact Statement (EIS) in cooperation with the City of Sacramento (City) to disclose the environmental effects of constructing a proposed U.S. Courthouse and Federal Building in Sacramento, California. The proposed building initially would provide up to 380,088 occupiable square feet of courts and executive agencies space, with future expansion potential to a total of 510,000 occupiable square feet, and would be located on a full city-block site to be acquired from the City of Sacramento. The proposed site is bordered by H Street of the North, I Street to the South, 5th Street to the West, and 6th to the East. The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA).

GSA invites interested individuals, organizations, and federal, state and local agencies to participate in defining the reasonable alternatives to be evaluated in the EIS and in identifying any significant social, economic, or environmental issues related to the alternatives. Scoping will be accomplished by correspondence and through a public meeting. The meeting is scheduled for July 8, 1993, from 2 p.m. to 6 p.m., at the John E. Moss Federal Building—U.S. Courthouse, 650 Capitol Mall, Sacramento, California. Comments received during the meeting will be made a part of the administrative record for the EIS will be evaluated as part of the scoping process.

Written comments on the scope of alternatives and potential impacts may be addressed to Mr. Lou Lopez, GSA Planning Staff (9PL), Public Buildings Service, 525 Market Street, San Francisco, California 94105, telephone number (415) 744–5253. Comments should be sent to GSA by July 16, 1993.

A Draft EIS will be prepared based upon the scoping efforts. After its publication, the Draft EIS will be available for public and agency review and comment. A Final EIS will be prepared that addresses the comments on the Draft EIS.

Dated: June 18, 1993.

Aki K. Nakao,

Acting Regional Administrator (9A).

[FR Doc. 93–15060 Filed 6–25–93; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–93–3645; FR–3535–N–01]

National Manufactured Home Advisory Council; Open Meeting

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of open meeting.

SUMMARY: The National Manufactured Home Advisory Council is authorized by section 605 of the Housing and Community Development Act of 1974 (Pub. L. 93–383). This twenty-four member Council was created to provide the Department with an opportunity to obtain balanced views on manufactured home standards issues. The Act stipulates that one-third of the membership of the Council must be chosen from each of the following categories: (a) Consumer organizations and recognized consumer leaders; (b) the manufactured home industry and related groups, including at least one representative of small business; and (c) government agencies including Federal, State and local governments.

The Department is directed, to the extent feasible, to consult with this Advisory Council prior to establishing, amending, or revoking any manufactured home construction or safety standard of the Manufactured Home Construction and Safety Standards program. The Council's current Charter was approved on April 28, 1993.

DATES: July 13 and 14, 1993.

FOR FURTHER INFORMATION CONTACT: Maurice Gulledge, Special Assistant, Office of Manufactured Housing and Regulatory Functions, Office of Single Family Housing, Department of Housing and Urban Development, 451 7th Street, SW., Attn: Mail Room B–133, Washington, DC 20410, Telephone: (202) 755–7410. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Time and Place—The Advisory Council will meet on Tuesday July 13, 1993 and Wednesday July 14, 1993 starting at 8:30 a.m. The meetings will be all day and held in the HUD Departmental Conference Room, room 10235, 451 7th Street, SW., Washington, DC 20410. This is an open meeting.

Agenda

The Department plans to discuss the following proposed changes to the Manufactured Home Construction and Safety Standards with the Council: (1) Changes published in the **Federal Register** on February 24, 1992 as a proposed rule concerning energy, ventilation and referenced standards, pursuant to section 568 of the Housing and Community Development Act of 1987, (2) Changes published in the **Federal Register** on April 14, 1993 as a proposed rule concerning wind safety, and (3) A new proposed rule on hardboard siding that is under development to implement the requirements of section 907 of the Housing and Development Act of 1992.

Public Participation

These are open meetings. The public comment period on the proposed rule concerning energy, ventilation and referenced standards was closed in 1992, but the public comment period on the proposed rule concerning wind safety does not close until July 9, 1993. The public will have an opportunity to comment on the proposed rule on hardboard siding once it is published as a proposed rule in the **Federal Register**.

Dated: June 24, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–15281 Filed 6–25–93; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–03–4380–03]

Arizona: Long-Term Visitor Area Program for 1993–1994 and Subsequent Use Seasons; Revision to Existing Supplementary Rules, Yuma District, AZ, and California Desert District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Publication of supplementary rule changes.

SUMMARY: The Bureau of Land Management (BLM) Yuma District and California Desert District announce revisions to the Long-Term Visitor Area Program. The program, which was instituted in 1983, established

designated long-term visitor areas and identified an annual long-term use season from September 15 to April 15. During the long-term use season, visitors who wish to camp on public lands in one location for extended periods must stay in the designated long-term visitor areas and purchase a long-term visitor area permit.

EFFECTIVE DATE: September 15, 1993.

FOR FURTHER INFORMATION CONTACT: Mark Lowans, Outdoor Recreation Planner, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, telephone (606) 726–6300; or John Butz, Outdoor Recreation Planner, California Desert District, 6221 Box Springs Boulevard, Riverside, California 92507–0714, telephone (909) 697–5394.

SUPPLEMENTARY INFORMATION: The purpose of the Long-Term Visitor Area Program is to provide areas for long-term, winter camping use. The sites designated as long-term visitor areas are, in most cases, the traditional use areas of long-term visitors. Designated sites were selected using criteria developed during the land management planning process, and environmental assessments were completed for each site location.

The program was established to safely and properly accommodate the increasing demand for long-term winter visitation and to provide natural resource protection through improved management of this use. The designation of long-term visitor areas assures that specific locations are available for long-term use year after year and that inappropriate areas are not used for extended periods.

Visitors may camp without a long-term visitor area permit outside of long-term visitor areas, on public lands not otherwise posted or closed to camping, for up to 14 days in any 28-day period. The Mule Mountain Long-Term Visitor Area is also open to short-term camping without a long-term visitor area permit for a period not to exceed 14 days.

Authority for the designation of long-term visitor areas is contained in title 43, Code of Federal Regulations, subpart 8372, sections 0–3 and 0–5(g). Authority for the establishment of a Long-Term Visitor Area Program is contained in title 43, Code of Federal Regulations, subpart 8372, section 1, and for the payment of fees in title 36, Code of Federal Regulations, subpart 71.

The authority for establishing supplementary rules is contained in title 43, subpart 8365, section 1–6. The long-term visitor area supplementary rules have been developed to meet the goals of individual resource management plans. These rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected and will be posted near and/or within the lands, sites, or facilities affected. Violations of supplementary rules are punishable by fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The following supplementary rule changes apply to designated long-term visitor area and are in addition to rules of conduct set forth in title 43, Code of Federal Regulations, subpart 8365, section 1–6.

A. Long-Term Permit

The special stipulations and supplemental rule changes for the Long-Term Permit are as follows:

1. Rule No. 9. Trash. Place all trash in designated receptacles. Public trash facilities are shown in the long-term visitor area brochure. Depositing trash or holding tank sewage in vault toilets is prohibited. A long-term visitor area permit is required for trash disposal within all long-term visitor area campgrounds except for the Imperial Dam and Mule Mountain Long-Term Visitor Areas.

2. Rule No. 10. Dumping. Absolutely no dumping of sewage or garbage on the ground. This includes motor oil and any other waste products. The changing of motor oil or vehicular fluids or disposal of these used substances within a long-term visitor area is strictly prohibited. Federal, State, and County sanitation laws and ordinances specifically forbid these practices. Sanitary dump station locations are shown in the long-term visitor area brochure. Dumping of gray water is prohibited unless otherwise posted. Long-term visitor area permits are required for dumping within all long-term visitor area campgrounds except for the Imperial Dam and Midland Long-Term Visitor Areas.

3. Rule No. 22. Wood Collection. No wood collection is permitted within the boundaries of Mule Mountain, Imperial Dam, and La Posa Long-Term Visitor Areas. Outside these long-term visitor areas and in all other long-term visitor areas, only dead and down wood may be collected for firewood or hobby purposes. Collection and possession of ironwood for hobby purposes is regulated to three pieces, not to exceed 10 pounds total in weight. A maximum of 50 pounds of natural firewood will be allowed per individual or group campfire site at any one time. Please contact the BLM for current regulations concerning collection.

B. Short-Visit Permit

The special stipulations and supplemental rule changes for the Short-Visit Permit are as follows:

1. Rule No. 9. Trash. Place all trash in designated receptacles. Public trash facilities are shown in the long-term visitor area brochure. Depositing trash or holding tank sewage in vault toilets is prohibited. As long-term visitor area permit is required for trash disposal within all long-term visitor area campgrounds except for the Imperial Dam and Mule Mountain Long-Term Visitor Areas.

2. Rule No. 10. Dumping. Absolutely no dumping of sewage or garbage on the ground. This includes motor oil and any other waste products. The changing of motor oil or vehicular fluids or disposal of these used substances within a long-term visitor area is strictly prohibited. Federal, State, and County sanitation laws and ordinances specifically forbid these practices. Sanitary dump station locations are shown in the long-term visitor area brochure. Dumping of gray water is prohibited unless otherwise posted. Long-term visitor area permits are required for dumping within all long-term visitor area campgrounds except for the Imperial Dam and Midland Long-Term Visitor Areas.

3. Rule No. 22. Wood Collection. No wood collection is permitted within the boundaries of Mule Mountain, Imperial Dam, and La Posa Long-Term Visitor Areas. Outside these long-term visitor areas and in all other long-term visitor areas, only dead and down wood may be collected for firewood or hobby purposes. Collection and possession of ironwood for hobby purposes is regulated to three pieces, not to exceed 10 pounds total in weight. A maximum of 50 pounds of natural firewood will be allowed per individual or group campfire site at any one time. Please contact the BLM for current regulations concerning collection.

All other stipulations as established on September 15, 1992, shall remain the same.

This Notice is published under the authority of title 43, Code of Federal Regulations, subpart 8365, section 1–6.

Dated: June 8, 1993.

Ed Hastey,

State Director, California.

Larry Bauer,

Acting State Director, Arizona.

[FR Doc. 93–15055 Filed 6–25–93; 8:45 am]

BILLING CODE 4310–32–M

National Park Service

Denali National Park and Preserve, Alaska; Concession Permit

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

VOL 58 ISS 122 JE 28 1993 UMI

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession permit authorizing continued flightseeing services for the public at Denali National Park and Preserve, Alaska, for a period of approximately five (5) years from the date of execution through December 1998.

EFFECTIVE DATE: August 27, 1993.

ADDRESSES: Interested parties should contact the Superintendent, Denali National Park and Preserve, Post Office Box 9, Denali Park, Alaska 99755, to obtain a copy of the prospectus describing the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1993, and therefore pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in negotiation of a new permit, providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the permit will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the permit will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the permit will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Superintendent not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: June 14, 1993.

John M. Morehead,

Regional Director.

[FR Doc. 93–15160 Filed 6–25–93; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 19, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 6, 1993.

Patrick Andrus,

Acting Chief of Registration, National Register.

Connecticut

Middlesex County

Bridge No. 1603 (Connecticut State Park and Forest Depression—Era Federal Work Relief Programs Structures TR), Devil's Hopyard Rd. (Rt. 434) over unnamed brook, Devil's Hopyard SP, Millington vicinity, 93000641

Bridge No. 1604 (Connecticut State Park and Forest Depression—Era Federal Work Relief Programs Structures TR), Devil's Hopyard Rd. (Rt. 434) over Muddy Brooks, Devil's Hopyard SP, Millington vicinity, 93000642

Bridge No. 1605 (Connecticut State Park and Forest Depression—Era Federal Work Relief Programs Structures TR), Devil's Hopyard Rd. (Rt. 434) over unnamed brook, Devil's Hopyard SP, Millington vicinity, 93000643

New Haven County

Bronson, Aaron, House, 846 Southford Rd., Southford, 93000656

Curtiss, Reuben, House, 1770 Bucks Hill Rd., Southford, 93000658

Hurd, William, House, 327 Hulls Hill Rd., Southford, 93000659

Hurley Road Historic District, 6 and 17 Hurley Rd., Southford, 93000662

Plaster House, 117 Plaster House Rd., Southford, 93000660

Sanford Road Historic District, 480 and 487 Sanford Rd., Southford, 93000657

Wheeler, Adin, House and Thornton F. Wheeler Wheelwright Shop, 125 Quaker Farms Rd., Southford, 93000661

New London County

Bridge No. 1860 (Connecticut State Park and Forest Depression—Era Federal Work Relief Programs Structures TR). Massapeag Side Rd. (Rt. 433) over Shantok Brook, Fort Shantok SP, Montville, 93000644

Tolland County

Hebron Center Historic District, Church, Gilead, Main, Wall and West Sts. and Marjorie Cir., Hebron, 93000649

Iowa

Crawford County

Dunham, Z.T., Pioneer Stock Farm, IA 37, 1 mi. NW of Dunlap, Dunlap vicinity, 93000652

Kossuth County

Dau, William C. and Hertha, House, 315 S. Dodge St., Algona, 93000654

Linn County

Whittier Friends Meeting House, Jct. of Co. Rds. E34 and X20, Whittier, 93000653

Van Buren County

Twombley, Voltaire, Building, 803 First St., Keosauqua, 93000655

Maine

Cumberland County

Manning, Richard, House, Raymond Cape Rd., W side, 0.3 mi. S of US 302, South Casco, 93000639

Hancock County

Duck Cove School, ME 46, E side, at jct. with Stubbs Brook Rd., Bucksport vicinity, 93000640

Knox County

Megunticook Golf Club, 212 Calderwood Ln., Rockport, 93000636

VICTORY CHIMES (Schooner), North End Shipyard, Rockland Harbor, Rockland, 93000637

Washington County

McCurdy Smokehouse, Water St., E side, at jct. with School St., Lubec, 93000638

Michigan

Wayne County

George, Edwin S., Building, 4612 Woodward Ave., Detroit, 93000651

Mississippi

Holmes County

West Historic District, Roughly bounded by Emory St., Anderson Ave. and Cross Sts. and the Illinois Central Gulf RR tracks, West, 93000646

Tennessee

Bledsoe County

Lincoln School, Old TN 28 near Rockford Rd., Pikeville, 93000648

Hamilton County

Model Electric Home, 1516 Sunset Rd., Chattanooga, 93000645

Wilson County

Smith, Warner Price Mumford, House, Address Restricted, Mount Juliet vicinity, 93000647

Wisconsin

Outagamie County

Courtney, J.B., Woolen Mills, 301 E. Water St., Appleton, 93000650

A proposed move is being considered for the following property:

New York

Suffolk County

House at 244 Park Avenue (Huntington Town MRA), 244 Park Ave., Huntington, 85002535

[FR Doc. 93–15159 Filed 6–25–93; 8:45 am]

BILLING CODE 4310–70–M

Solicitation of Nominations for the Preservation Technology and Training Board

AGENCY: Department of the Interior.

ACTION: Notice of nomination solicitation.

SUMMARY: The Secretary of the Interior is soliciting nominations to serve on the Preservation Technology and Training Board. The purpose of the Board is to provide advice and professional oversight to the Secretary and to the National Center for Preservation Technology and Training.

DATES: All nominations should be submitted on or before July 28, 1993.

ADDRESSES: Nominations should be sent to Secretary, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Blaine Cliver, Preservation Assistance Division, National Park Service, (202) 343–9573. A copy of the Board's charter is available upon request.

SUPPLEMENTARY INFORMATION: Title IV of Public Law 102–575 established within the Department of the Interior a National Center for Preservation Technology and Training to be located at Northwestern State University in Natchitoches, Louisiana. In addition, title IV established a Preservation Technology and Training Board. The Board is to consist of the Secretary of the Interior, or his designee, and twelve members to be appointed by the Secretary. Of the twelve members to be appointed, six are to represent appropriate Federal, State, and local agencies, State and local historic preservation commissions, and other public and international organizations, and six are to be appointed on the basis of outstanding professional qualifications representing major organizations in the fields of archeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education. Appointments will be for 6-year terms, with initial terms staggered to foster continuity in membership. Through this notice, the Secretary is soliciting nominations from interested organizations or individuals for any of the appointments. All nominations should indicate for which category(s) the nominee is to be considered, and be accompanied by complete biographical and professional information, including home and business addresses and telephone numbers for each person recommended.

Dated: June 16, 1993.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 93–14998 Filed 6–25–93; 8:45 am]

BILLING CODE 4310–70–P

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30 p.m. (PDT) on Tuesday, July 6, 1993, at the San Mateo City Council Chambers, San Mateo City Hall, 330 West 20th Avenue, San Mateo, California 94403. The Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

The main agenda item at this meeting will be a public hearing on the California Department of Transportation (Caltrans) plans for widening of California State Highway 92 from State Highway 35 (Skyline Boulevard) to Interstate Highway 280 in the vicinity of Crystal Springs Reservoir. The Caltrans plans for the widening were incorporated in an "Initial Study/ Environmental Assessment for Vehicle Lane Safety Improvements, Route 35 South to Interstate Route 280."

The project lies within the watershed of the San Francisco Water Department (SFWD). The Department of the Interior has Scenic and Scenic and Recreational Easements on the San Francisco Watershed lands in accordance with an agreement between the City and County of San Francisco and the Department of the Interior signed on January 15, 1969.

The Scenic and Recreation Easement was made the administrative responsibility of the Golden Gate National Recreation Area by Public Law 96–607 in December 1980. Both the founding legislation for the Golden Gate National Recreation Area and the Scenic and Recreational Easement emphasize preservation of the land, and the natural resources found there, in a natural condition.

Under provisions of the Easement, the approval of a representative of the Secretary of the Interior is required before certain actions can take place within the San Francisco Watershed, and consultation is required on certain other actions. The Scenic and Recreational Easement was granted to the federal government to protect the resources of the San Francisco Watershed in San Mateo County.

The meeting will also contain a Superintendent's Report.

Interested individuals, representatives of organizations, and public officials are invited to express their views in person at the July 6 public meeting. Those not wishing to appear in person may submit written statements to the Superintendent of the Golden Gate National Recreation Area on the above-mentioned agenda item.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after July 27, 1993. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: June 18, 1993.

John D. Cherry,

Acting Regional Director, Western Region.

[FR Doc. 93–14997 Filed 6–25–93; 8:45 a.m.]

BILLING CODE 4310–70–P

Geological Survey

Advisory Committee on Water Data for Public Use

AGENCY: U.S. Department of the Interior.

ACTION: Notice of an open meeting of the Advisory Committee on Water Data for Public Use (ACWDPU).

SUMMARY: Notice is hereby given of a meeting of the ACWDPU. The theme of the meeting is "Implementation of the Water Information Coordination Program." The proposed agenda for the meeting includes presentations by Federal officials on the National Water Quality Assessment Program; the National Weather Service Modernization Program; the Intergovernmental Task Force on

Monitoring Water Quality (ITFM); the National Water Information Clearinghouse (NWIC); and other aspects of the Water Information Coordination Program, including water-information standards, methods, and data comparability. On Thursday, July 15, 1993, representatives of the ACWDPU will attend working groups that focus on issues related to the ITFM; Standards, Methods, and Data Comparability; and the NWIC. That afternoon, members of the ACWDPU will participate in the organizational meeting of the National Water Quality Assessment Council.

The ACWDPU consists of representatives of water-resources-oriented groups, including national, State, and regional organizations; Native Americans; professional and technical societies; public interest groups; private industry; and the academic community. Its principal responsibility is to advise the Federal Government, through the U.S. Department of the Interior, on activities and plans related to Federal water-information programs and the effectiveness of those programs in meeting the Nation's water-information needs. The Director of the U.S. Geological Survey (USGS) chairs the ACWDPU.

DATES: The meeting will convene at 9 a.m. on Wednesday, July 14, 1993, and will adjourn at 5:45 p.m. on Thursday, July 15, 1993.

ADDRESSES: Ramada Hotel Tysons Corner; 7801 Leesburg Pike; Falls Church, Virginia 22043. Take the Route 7 exit off the Capitol Beltway (Route 495) toward Falls Church.

FOR FURTHER INFORMATION CONTACT: Nancy Lopez, Chief, Office of Water Data Coordinating; 417 National Center; Reston, Virginia 22092. Telephone: (703) 648–5014; Fax: (703) 648–6802.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Tim has been set aside for public comment at 4:30 p.m., Wednesday, July 14, 1993. Persons wishing to make a brief presentation (up to 5 minutes) are asked to provided a written request with a description of the general subject area to Ms. Lopez no later than noon, July 12, 1993, to reserve space on the agenda. It is requested that 30 copies of a written statement for the record be submitted to Ms. Lopez at the time of the meeting for distribution to the members of the ACWDPU and for the official file. Any member of the public may submit written information and/or comments to Nancy Lopez for distribution to the ACWDPU.

Dated: June 21, 1993.

Dallas L. Peck,

Director.

[FR Doc. 93–15086 Filed 6–25–93; 8:45 am]

BILLING CODE 4310–31–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–625 (Final)]

Certain Helical Spring Lockwashers From Taiwan; Import Investigation

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured [3] or threatened with material injury [4] by reason of imports from Taiwan of certain helical spring lockwashers, provided for in subheading 7318.21.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective February 22, 1993, following a preliminary determination by the Department of Commerce that imports of certain helical spring lockwashers from Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 10, 1993 (58 FR 13280). The hearing was held in Washington, DC, on May 13, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 21, 1993. The views of the Commission are contained in USITC Publication 2651 (June 1993), entitled "Certain Helical Spring Lockwashers from Taiwan, Investigation No. 731–TA–625 (Final).

By order of the Commission.

Issued: June 23, 1993.

Paul R. Bardos

Acting Secretary.

[FR Doc. 93–15147 Filed 6–25–93; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Watson and Commissioner Nuzum dissenting. Commissioner Crawford did not participate in the determination.

[3] Commissioner Brunsdale determines that an industry in the United States is materially injured.

[4] Chairman Newquist and Commissioner Rohr determine that an industry in the United States is threatened with material injury.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on June 2, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Advanced Lead-Acid Battery Consortium ("ALABC"), a discrete program of the International Lead Zinc Research Organization, Inc. ("ILZRO"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of two members to the ALABC. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the ALABC advised that written commitments to become members of the ALABC have been received from Hollingsworth & Vose Company, East Walpole, MA (originally listed as a verbal commitment) and Rheinische Zinkgesellschaft GmbH, Duisburg, Germany.

No other changes have been made in either the membership or planned activity of the ALABC. Membership in the ALABC remains open and the ALABC intends to file additional written notification disclosing any future changes in membership.

On June 15, 1992, the ALABC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 1992, 57 FR 33522. The last notification was filed with the Department on March 4, 1992. A notice was published in the **Federal Register**

pursuant to section 6(b) of the Act on March 24, 1993, 58 FR 15882.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–15057 Filed 6–25–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, (38 FR 19029 March 29, 1984)), notice is hereby given that a proposed Consent Decree in *United States* v. *Louisiana-Pacific, Inc. and Kirby Forest Industries, Inc.*, Civil Action No. 93–0869 was lodged with the United States District Court for the Westner District of Louisiana on May 24, 1993.

The proposed Consent Decree requires the installation of improved pollution control devices at fourteen Louisiana-Pacific and Kirby Forest Industries' plants located in eleven States. The Decree would also require Defendants to conduct an environmental audit of all of their facilities and management and to employ corporate and plant environmental managers responsible for compliance with environmental statutes at their wood panel plants.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Louisiana-Pacific, Inc. and Kirby Forest Industries, Inc.*, D.O.J. Ref. No. 90–5–2–1–1823.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 705 Jefferson Street, room 305, Lafayette, Louisiana, 70501; at the Region VI office of the U.S. Environmental Protection Agency, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, Texas 75202; and at the Consent Decree Library, 1120 G. Street, NW., 4th Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $16.50 (25 cents per page reproduction charge) payable to Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–15058 Filed 6–25–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

BACKGROUND: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

- The Agency of the Department issuing this recordkeeping/ reporting requirement
- The title of the recordkeeping/reporting requirement
- The OMB and/or Agency identification numbers, if applicable
- How often the recordkeeping/reporting requirement is needed
- Whether small businesses or organizations are affected
- An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent
- The number of forms in the request for approval, if applicable
- An abstract describing the need for and uses of the information collection

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 (202 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New

Employment and Training Administration
Governor's Coordination and Special Services Plan (GCSSP)
Biennially
State or local governments
59 respondents; 50 hours per response; 1 response; 2,950 total hours

The GCSSP required by section 121(a) of JTPA, will provide the Department a general description of each State's plan for the operation of the JTPA program and its utilization of its JTPA resources.

Employment and Training Administration
State Job Training Plan
Biennially
State or local governments
15 respondents; 80 hours per response; 1,200 total hours

The Job Training Partnership Amendments (JTPA) of 1992 (Pub. L. 102–367, effective July 1, 1993), and 20 CFR 628.420 of the JTPA Interim Final Regulations published in the **Federal Register** on December 29, 1992, require State Job Training Plans for those States with a statewide JTPA program to provide information on the activities to be conducted and participants to be served by the State under JTPA.

Extension

Employment and Training Administration
Job Corps Health Questionnaire and Child Care Certification Form 1205–0033; ETA 6–53, 6–82

Form No.	Affected public	Respondents	Frequency	Per response
ETA 6–53	Individuals or households	103,000	One-time	12 minutes.

Form No.	Affected public	Respondents	Frequency	Per response
ETA 6–82 ..... 20,607 total hours	Individuals or households	309	One-time	1 minute.

The ETA 6–53 is used to obtain the health history of applicants for the program to determine medical eligibility. The applicant must not have a health condition which represents a potential serious hazard to the youth or others, results in a significant interference with the normal performance of duties, requires frequent, or expensive, or prolonged treatment. The ETA 6–82 is used to certify an applicant's child care arrangements.

Occupational Safety and Health Administration

1218–0048

Occupational Exposure to Noise On Occasion

Businesses or other for-profit; Small businesses or organizations 1,328 respondents; .0798 hours per response; 107 total hours The purpose of the Occupational Exposure to Noise Standard and its collection requirement is to provide protection for employees from the adverse health effects associated with occupational exposure to noise. The standard requires that OSHA have access to various records to ensure that employers are complying with the disclosure provisions of the noise standard.

Signed at Washington, DC this 22nd day of June, 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–15091 Filed 6–25–93; 8:45 am]

BILLING CODE 4510–30–P

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 8, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 8, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 14th day of June, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Chevron U.S.A. Production Co. (Co) ..	Houston, TX	06/14/93	06/02/93	28,767	Law Dept.
Chevron U.S.A. Production Co. (Co) ..	New Orleans, LA	06/14/93	06/02/93	28,768	Law Dept.
Chevron U.S.A. Production Co. (Co) ..	Bakersfields, CA	06/14/93	06/02/93	28,769	Law Dept.
Mount Baker Plywood, Inc (Wkrs)	Bell, WA	06/14/93	05/28/93	28,770	Plywood.
General Motors, Inland Fisher (UAW) .	Trenton, NJ	06/14/93	05/06/93	28,771	Automotive hardware.
Hillin-Simon Oil Co (Wkrs)	Midland, TX	06/14/93	06/03/93	28,772	Oil and gas.
GCA (General Signal) (Wkrs)	Williston, VT	06/14/93	06/04/93	28,773	Steppers.
Exxon Chemical Co (IBT)	Linden, NJ	06/14/93	05/24/93	28,774	Polymers.
Cleo, Inc (Co)	Bloomington, IN	06/14/93	03/08/93	28,775	Gift wrap, tags and greeting cards.
Carboloy, Inc (UAW)	Warren, MI	06/14/93	06/02/93	28,776	Carbide cutting tools.
Beth Energy, Mine #33 (Co)	Edensburg, PA	06/14/93	06/06/93	28,777	Coal.
Barry Belt Inc (Wkrs)	Archbald, PA	06/14/93	06/03/93	28,778	Ladies' dresses.
American Airlines (Wkrs)	Tulsa, OK	06/14/93	05/18/93	28,779	Commercial air transportation.
Klerk's Plastic (Co)	Middlesex, NJ	06/14/93	06/04/93	28,780	Plastic floral packaging.
Villa Fashions, Inc (Wkrs)	Shenandoah, PA	06/14/93	06/14/93	28,781	Ladies' blazers.
Torch Operating (Wkrs)	Howna, LA	06/14/93	05/15/93	28,782	Oil and gas.
G.E.O., Inc (Co)	Casper, WY	06/14/93	06/24/93	28,783	Wellsite laboratories.

[FR Doc. 93–15094 Filed 6–25–93; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–28,471]

Laurel Metal Processing, Inc. Johnstown, PA; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated June 15, 1993, the company requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on May 17, 1993 and published in the **Federal Register** on June 15, 1993 (58 FR 33122).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The subject workers perform a service (steel rod straightening and cutting operations) for Bethlehem Steel's Johnstown plant.

The subject workers were initially denied TAA in October, 1992 (TA–W–27,692) and more recently in May, 1993 (TA–W–28,471) because they did not produce an article within the meaning of the Trade Act of 1974. The Department has consistently determined that the performance of services does not constitute the production of an article and this determination has been upheld in the U.S. Court of Appeals.

Company officials at Laurel Metal state that their workers should be certified eligible to apply for TAA since the workers of the Bar, Rod & Wire Division of Bethlehem Steel Corporation, their parent firm, were recently certified for TAA, TA–W–27,118.

The investigation findings show that Bethlehem Steel is not the parent firm of Laurel Metal Processing. Laurel Metal Processing is an independent firm and is not affiliated or controlled by Bethlehem Steel Corporation, a condition necessary to obtain certification for an affiliate of another firm whose workers are already certified and which produces an article.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of June 1993.

Stephen A. Wander,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–5092 Filed 6–25–93; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–28,515]

Logic Sciences, Inc. Houston, TX; Termination of Investigation

Pursuant to section 223 of the Trade Act of 1974, an investigation was initiated on April 5, 1993 in response to a worker petition which was filed on behalf of workers at Logic Sciences, Inc., Houston, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 16th day of June 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–15093 Filed 6–25–93; 8:45 am]
BILLING CODE 4510–30–M

LEGAL SERVICES CORPORATION

Grant Awards for Migrant Alternative Dispute Resolution Proposals

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to award grants.

SUMMARY: The Legal Services Corporation hereby announces its intention to award four (4) one-time, non-recurring grants to legal services programs to fund demonstration projects that pilot alternative dispute resolution (ADR) programs as viable options to address labor and work-related disputes between U.S. migrant farmworkers and their employers. The Corporation plans to award grants as follows:

Farmworker Legal Services of New York: $74,329
Florida Rural Legal Services: $75,000
Texas Rural Legal Aid: $74,500
Western Nebraska Legal Services: $73,002

These one-time grants will be awarded pursuant to authority conferred by section 1006(a)(1)(B) of the Legal Services Corporation Act of 1974, (Act) as amended. This public notice is issued pursuant to section 1007(f) of the Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this 30 day period.

DATES: All comments and recommendations must be received on or before the close of business on July 28, 1993, at the Office of Field Services, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Leslie Q. Russell, Manager, Program Support & Technical Assistance Division, Office of Field Services, (202) 336–8824.

Date issued: June 22, 1993.

Charles T. Moses, III,

Deputy Director, Office of Field Services.

[FR Doc. 93–15045 Filed 6–25–93; 8:45 am]
BILLING CODE 7050–01–P

Grant Awards for Expansion and Development of Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant awards.

SUMMARY: The Legal Services Corporation (LSC/Corporation) hereby announces its intention to award grants to seventeen (17) law school clinical programs to assist LSC-eligible clients with their civil legal cases. Pursuant to the Corporation's announcement of funding availability on February 25, 1993, 58 FR 11425, a total of $1,253,000 will be awarded to the following schools:

Name of school	State	Amount
1. University of California/Berkeley.	CA	$50,000
2. University of Colorado.	CO	50,000
3. University of Denver.	CO	100,000
4. D.C. Law Students in Court Program.	DC	100,000
5. District of Columbia School of Law.	DC	87,500
6. Nova University ...	FL	68,875
7. Georgia State University.	GA	68,000

Name of school	State	Amount
8. Indiana University/ Bloomington.	IN	100,000
9. Indiana University/ Indianapolis.	IN	100,000
10. University of Chicago.	IL	75,898
11. Loyola University	LA	58,150
12. City University of New York (CUNY).	NY	44,000
13. State University of New York (SUNY).	NY	45,850
14. The Housing Advocates (Housing Advocates, Inc. and Cleveland State University, Cleveland-Marshall College of Law).	OH	98,150
15. Lewis and Clark College.	OR	89,745
16. Texas Southern University.	TX	80,000
17. Brigham Young University.	UT	36,832

These one-time, one-year grants are awarded under the authority conferred on LSC by section 1006(a)(1)(B) of the Legal Services Corporation Act of 1974, as amended (Act). This public notice is issued pursuant to section 1007(f) of the Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. Grant awards will become effective and grant funds will be distributed upon the expiration of this 30 day public comment period.

DATES: All comments and recommendations must be received on or before the close of business on July 28, 1993, at the Office of Field Services, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Leslie Q. Russell, Manager, Program Support and Technical Assistance Division, Office of Field Services, (202) 336–8908.

Date Issued: June 22, 1993.

Charles T. Moses, III,

Deputy Director, Office of Field Services.

[FR Doc. 93–15044 Filed 6–25–93; 8:45 am]

BILLING CODE 7050–01–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 93-5]

Cable Compulsory License; Major Television Market List

AGENCY: Copyright Office; Library of Congress.

ACTION: Notice of Inquiry.

SUMMARY: This Notice of Inquiry is issued to inform the public that the Copyright Office is considering the impact of the Federal Communications Commission's recent update of its major television market list, 47 CFR 76.51, on copyright liability under the cable compulsory license, 17 U.S.C. 111. The Office seeks comment on whether it should adhere to the update and what effect future updates may have on the operation of the compulsory license.

DATES: Comments should be received on or before August 27, 1993. Reply comments should be received on or before September 27, 1993.

ADDRESSES: Ten copies of written comments and reply comments should be addressed, if sent by mail, to: Library of Congress, Department 100, Washington, DC 20540. If delivered by hand, copies should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, room LM-407, 101 Independence Avenue, SE., Washington, DC 20559.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559, (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

The "Cable Television Consumer Protection and Competition Act of 1992" (1992 Cable Act) amends the Communications Act of 1934 by, *inter alia*, adding a new section 614 governing the cable carriage obligations for local commercial television stations. Section 614(f) requires that in adopting regulations to implement the new must-carry rules, such regulations "shall include necessary revisions to update section 76.51 of title 47 of the Code of Federal Regulations." Section 76.51 of title 47 is what is known as the major television market list. This list of the top 100 television markets is derived largely from Arbitron's 1970 prime time household rankings. The list was used to identify hyphenated markets and the communities identified with those markets, and had relevance to the carriage obligations of cable systems under the former FCC must-carry rules. With the invalidation of those rules in the *Quincy Cable T.V., Inc.* v. *FCC*, 768 F.2d 1434 (D.C. Cir. 1985), *cert. denied*, 476 U.S. 1169 (1986) and *Century Communications* v. *FCC*, 835 F.2d 292 (D.C. Cir. 1987), *cert. denied*, 486 U.S. 1032 (1988) cases, the major television market list no longer plays a role in the must-carry context.

On November 19, 1992, the Federal Communications Commission published a Notice of Proposed Rulemaking, MM Docket No. 92-259, in its proceeding to implement the must-carry and retransmission consent provisions of the 1992 Cable Act. In carrying out its obligation under section 614(f), the Commission observed that a congressionally mandated update of the major television market list was somewhat anomalous. The new statutory must-carry regime is based upon Arbitron's Area of Dominant Influence (ADI) list, and the major television market list has no bearing for must-carry or retransmission consent purposes. The legislative history to the 1992 Cable Act is silent as to the reason for updating the list, and the Commission concluded that "it appears that this [congressional] action would primarily affect copyright liability under the compulsory license." *Notice of Proposed Rulemaking*, para. 21.[1] The Commission sought comment from the Copyright Office directly on this provision.

On January 4, 1993, the Copyright Office filed its comments on the major television market list. The Office noted that this was not the first time it had considered the copyright impact of changes to the list. In 1987, the Copyright Office issued a policy decision in response to a Commission amendment of the list in 1985 which included Melbourne and Cocoa, Florida in the Orlando-Daytona Beach hyphenated market. *Policy Decision Concerning Federal Communications Commission Action Amending List of Major Television Markets*, 52 FR 28362 (1987). By adding Melbourne and Cocoa to the Orlando-Daytona Beach market, the Commission increased the must-carry obligations for cable systems serving Melbourne and Cocoa. The question which faced the Copyright Office was whether the transformation of Melbourne and Cocoa broadcast stations to must-carry signals in the hyphenated market affected their local/distant status under section 111 of the Copyright Act.

[1] The language requiring the FCC update to § 76.51 was offered by Rep. Bob McEwen (R-Ohio) as part of a package of amendments submitted to the House Rules Committee shortly before House approval of the 1992 Cable Act. No explanation accompanied the amendment, the only one offered by Congressman McEwen. While it is assumed by some that the language was offered for copyright purposes, the change to the major market list may in fact have been sought solely for communications purposes, such as expanding territorial exclusivity rights. It therefore cannot be definitively said that Congress sought to bring about a change in the copyright laws or the administration of the cable compulsory license through this provision.

The cable compulsory license requires cable operators with gross receipts over specified limits to calculate royalty payments, in part, on the basis of the number of broadcast stations which they carry beyond the local service area of those stations—i.e. distant signals. Section 111(f) defines the local service area of a broadcast station as "the area in which such station is entitled to insist upon its signal being retransmitted by a cable system pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976"—i.e. the former FCC must-carry rules. The effect of this statutory provision is to freeze the 1976 must-carry rules for copyright purposes in determining when a particular broadcast station is a local or distant signal to a particular cable operator.[2]

Under the must-carry rules in effect on April 15, 1976, a cable operator would look to the major television market list, *inter alia*, for determining which television broadcast stations are subject to mandatory carriage. The issue which faced the Copyright Office after the 1985 Commission update was whether the addition of Melbourne and Cocoa was a change in must-carry obligations which, by virtue of the section 111(f) definition of the "local service area of a primary transmitter," would have an effect for copyright purposes.

The Office concluded that "signals entitled to mandatory carriage status under the FCC's former must-carry rules as a result of an FCC market redesignation order are to be treated as local signals for purposes of the cable compulsory license." 52 FR 28362, 28366 (1987). Melbourne and Cocoa were, therefore, considered a part of the Orlando-Daytona Beach hyphenated market for both copyright and communications purposes.

Although the Copyright Office followed the Commission's redesignation order for copyright purposes, its 1987 policy decision was specific to those circumstances. The Commission's 1985 amendment to the major market list only involved a redesignation of the Orlando-Daytona Beach market, and not a reordering of the markets. Reordering of markets has a direct impact on royalty rates paid for distant signals, as opposed to the renaming of markets which only affects the local/distant status of particular signals.[3] The Office did not have to consider the potential impact of reordering on the royalty pool. Furthermore, the parties submitting comments to the 1987 proceeding unanimously agreed that the redesignation of the Orlando-Daytona Beach market was not a change in the FCC's rules in effect on April 15, 1976, and that the Office should treat signals in the newly defined market as local for communications and copyright purposes. 52 FR at 28363.

Finally, the Copyright Office's 1987 decision was influenced in large part by the invalidation of the must-carry rules in the *Quincy* case. The Office stated:

> [T]he changes in the FCC's must-carry rules following the *Quincy* decision have essentially mooted the subject of this Notice. When this inquiry began the Copyright Office had concerns about enlargement of the class of local signals under the Copyright Act due to the approximately 400 petitions for market redesignation at the time pending at the FCC. However, it would appear that this policy concern is now eliminated because under the FCC's amended must-carry rules, the major market list is not determinative of must-carry status, and it is unlikely that a large number of market redesignations will be effected by the FCC in the future.

52 FR at 28366. In summary, the Copyright Office's decision was a tailored response to a very specific set of circumstances. The question now arises about the copyright impact of the Commission's most recent action and possible future actions.

On March 29, 1993, as part of its implementation of the must-carry and retransmission consent provisions of the 1992 Cable Act, the Commission issued its update of the § 76.51 major television market list. *Report and Order*, FCC 93-144 (March 29, 1993). Confirming its earlier announced belief that the changes to § 76.51 were copyright motivated as opposed to communications based, the Commission took a minimalist approach to updating the list:

> We do not believe that a major update of the § 76.51 market list is necessary on the basis of the record before us. Wholesale changes in or reranking the markets on the list would have significant implications for copyright liability and for the Commission's broadcast and cable program exclusivity rules. We are not prepared to make such changes on the present record.

Report and Order, para. 50. The Commission therefore made only three changes to the list: (1) renamed the Columbus, Ohio, market to include Chillicothe; (2) added New London to the Hartford-New Haven-New Britain-Waterbury, Connecticut market; and (3) changed the Atlanta, Georgia market to Atlanta-Rome. *Id.*

Although the Commission only made slight changes to the major television market list in its proceeding, it did not rule out the possibility of significant future changes. The approach is on a case-by-case basis in accordance with the Commission's normal rulemaking procedures:

> We will consider further revisions to this list on a case-by-case basis. Where appropriate, we will issue a notice of proposed rulemaking based on the submitted petition without first seeking public comment on whether we should do so. We will expect to receive evidence that demonstrates commonality between the proposed community to be added to a market designation and the market as a whole in such petitions. We will also consider requests to remove named communities from specific hyphenated markets using the same procedure.

Id.

The tone of the Commission's remarks suggests that it will once again actively entertain and rule upon petitions for changes in market designations, a practice that it abandoned after the *Quincy* decision. *See, also* para. 50, f.n. 150 (authorizing the Chief of the Mass Media Bureau to act on petitions for redesignation). Although the Commission confined its discussion to the renaming of markets, it has neither embraced nor ruled out the possibility of reordering markets. *See* para. 50 ("We are not prepared to make such changes on the present record."). It is therefore possible that future changes to the § 76.51 list may include both reranking and renaming, although probably in limited circumstances.

The Copyright Office is now considering the effect on the cable compulsory license of the Commission's three renamed markets, as well as the

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[2] The April 15, 1976 must-carry rules are relevant to determination of the local/distant status of a broadcast signal. The Copyright Act also provides for an adjustment in royalty rates "[i]n the event that the rules and regulations of the [FCC] are amended * * * to permit the carriage of additional television broadcast signals beyond the local service area of such signals * * *." 17 U.S.C. 801(b)(2)(B). The Copyright Royalty Tribunal did adjust the rates in 1982 following the FCC's repeal of the syndicated exclusivity and distant signal carriage rules. *See Adjustment of the Royalty Rates for Cable Systems*, 47 FR 2146 (1982).

[3] The following is an example of how royalties would be effected by a market reordering. Cable system X carries three distant signals and is 55th on the current § 76.51 list. A cable system in the second fifty markets is permitted carriage of two distant signals under the FCC's former distant signal carriage rules. Cable system X therefore pays royalties for two of its distant signals at the lower cost base rate, and for the third signal at the higher rate of 3.75% of its gross receipts. If the Commission reorders the major television market list and cable system X is now located in the 45th largest market, under one reading of the applicable law and regulations, cable system X is entitled to carry three distant signals at the base rate. Cable system X therefore effectively reduces its royalty payments because it would no longer have to pay 3.75% of its gross receipts for carriage of the third distant signal.

expected impact of future redesignations and reordering. While the Office did incorporate the Commission's redesignations in 1987, the Office does not necessarily share the Commission's view that it has "traditionally" followed changes in the § 76.51 list, or that "Congress intended for our updated Section 76.51 list to be applied to assess copyright liability." *Report and Order* at para. 53-54. As noted above, the 1987 Copyright Office policy decision involved very specific circumstances, tempered by the then recent constitutional invalidation of the 1976 must-carry rules. Likewise, there is nothing in the 1992 Cable Act which either states or implies that the update to § 76.51 is motivated by copyright concerns. The Office therefore considers it prudent to seek public comment about the copyright implications of changes in the FCC's Major Television Market List. The Office invites general comment on renaming or reordering of the list, although the Office is inclined to maintain its 1987 Policy Decision regarding renaming of markets. Pending the conclusion of this proceeding, the Copyright Office will not question the designation of local signal status based on the FCC's action to rename one or more of the major markets.

In order to focus the direction of this inquiry, in addition to any general comments received, the Copyright Office requests the commentators to respond directly to the following questions.

(1) The section 111(f) definition of a "local service area of a primary transmitter" is defined as "the area in which such station is entitled to insist upon its signal being retransmitted by a cable system pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976"—i.e. the 1976 must-carry rules. Is the amendment to the § 76.51 major television market list required by the 1992 Cable Act an amendment of the 1976 rules, or is it a separate and independent action of Congress? If it is an independent act with no bearing on the 1976 rules, under what statutory justification should the Copyright Office follow the present and future changes to the § 76.51 list?

(2) The FCC has stated its belief that "Congress intended for our updated § 76.51 list to be applied to assess copyright liability." What evidence is there in the 1992 Cable Act to support this contention?

(3) If the Copyright Office accepts the redesignations in Ohio, Connecticut, and Georgia for copyright purposes, should the Office accept any future redesignations? Should such acceptance be as a matter of course, or should it be on a case-by-case basis?

(4) If the Commission at some future date reranks markets on the list, and/or adds or subtracts markets, should the Copyright Office recognize these changes as applicable to the cable compulsory license? If so, in the situation where a reranking results in a cable system reducing its number of permitted distant signals, should the cable system be allowed to continue to carry the former permitted distant signal(s) on a grandfathered basis as a non-3.75% distant signal(s)?

Dated: June 18, 1993.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 93-15106 Filed 6-25-93; 8:45 am]

BILLING CODE 1410-08-F

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Preservation Meeting

Notice is hereby given that the National Archives Advisory Committee on Preservation will meet on September 14, 1993. The meeting will be held from 9 a.m. to 5 p.m. in Conference Room A, 601 Pennsylvania Avenue, Washington, DC.

The agenda for the meeting will be:

1. Aging characteristics of acetate-based media.
2. Nature and extent of records holdings on acetate.
3. Options for preventing degradation.
4. Storage options.
5. Reformatting.

This meeting is open to the public. For further information, contact Alan Calmes on (202) 208–7893.

Notice of the meeting is made in accordance with the Federal Advisory Committee Act.

Dated: June 21, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–15061 Filed 6–25–93; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that meetings of the following sections of the Dance Advisory Panel to the National Council on the Arts will be held as follows: Dance Company Grants Panel A on July 19–22, 1993 from 9 a.m.–8 p.m. and from 9:30 a.m.–12:30 p.m. on July 23, 1993; Dance Company Grants Panel B on July 24, 1993 from 10 a.m.–1 p.m. All meetings will be held in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC.

A portion of the Dance Company Grants Panel A meeting will be open to the public on July 23, 1993 from 9:30 a.m.–12:30 p.m. The topics of discussion will include guidelines and policy.

The remaining portions of these meetings, on July 19–23, 1993 from 9 a.m.–8 p.m. and on July 24, 1993 from 10 a.m.–1 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: June 21, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–15161 Filed 6–25–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Consolidated Application Pilot for Presenters Section) to the National Council on the Arts will be held on July 14–15, 1993, from 9 a.m.–6 p.m.. on July 14, 1993 and on July 15, 1993, from 9 a.m.–5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on July 15, 1993 from 2 p.m.–5 p.m. The topics will be policy and guidelines review.

The remaining portions of this meeting on July 14, 1993 from 9 a.m.–6 p.m. and July 15, 1993 from 9 a.m.–1 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: June 21, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–15163 Filed 6–25–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Touring Initiatives Section) to the National Council on the Arts will be held on July 21, 1993, from 9 a.m.–5 p.m., in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC.

A portion of this meeting will be open to the public from 3 p.m.–5 p.m. The topics of discussion will include guidelines and policy.

The remaining portions of this meeting, from 9–3 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: June 21, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–15162 Filed 6–25–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical and Communications Systems.

Dates and Times: July 14, 1993; 8:30 a.m.–5 p.m.

Place: Room 500E, 1110 Vermont Avenue, NW., Washington, DC.

Type of Meeting: Closed

Contact Person: Dr. Linton G. Salmon, Program Director, Solid State and Microstructures Program, Division of Electrical and Communications Systems, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: 202/357–9618.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the National Nanofabrication Users Facility Network proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 23, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–15143 Filed 6–25–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Networking and Communications Research

Dates and Times: July 22, 1993; 8:30 a.m. to 5 p.m.

Place: Room 416, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Mr. Daniel VanBelleghem, NSFNET Connection Program, National Science Foundation, room 416, Washington, DC 20550 (202 357–9717).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the NSFNET Connections Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 23, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–15144 Filed 6–25–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–30266, License No. 30–23697–01E EA 93–067]

Innovative Weaponry, Inc., Albuquerque, NM; Order Modifying License (Effective Immediately)

I

Innovative Weaponry, Inc. (Licensee) is the holder of NRC License No. 30–23697–01E (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 32. The License authorizes the Licensee to distribute hydrogen-3 (tritium) in luminous gunsights, or weapons containing luminous gunsights, as specified in Condition No. 9 of the License, to persons exempt from the requirements for a license pursuant to § 30.19, 10 CFR part 30, or equivalent provisions of the regulations of any Agreement State. The License was issued on June 9, 1988, was most recently amended on November 20, 1991, and is due to expire on June 30, 1993.

II

On August 5, 1991, NRC Region IV staff conducted an inspection of the Licensee. During this inspection, a violation of NRC requirements for distribution of licensed materials was identified. A Notice of Violation was issued on September 16, 1991, for distribution of gunsights that were not authorized by the License. In addition, a confirmatory action letter (CAL) was issued on August 7, 1991, which confirmed the Licensee's agreement to cease distribution activities under the License and to apply for a license amendment authorizing distribution of gunsights not previously authorized by the license, within seven days of receipt of the CAL. License Amendment No. 03 was issued on November 20, 1991.

The NRC Region IV staff conducted an inspection of the Licensee on February 3, 1993. During this inspection, apparent violations of NRC requirements for distribution of licensed materials were identified, one of which is a repetitive violation, since it also occurred in 1991. Specifically, the Licensee was found to have distributed gunsights that had not been evaluated to determine if the devices meet the safety criteria established to allow exempt distribution. Once the devices are evaluated and registered by the NRC, they are licensed for exempt distribution.

Currently, License Condition No. 10 authorizes distribution of models RBI010 and SIC123 night sight configurations (inserts) only when mounted in sights permanently fixed on weapons. The inspection found that these inserts had been distributed without being mounted on weapons. On February 6, 1992, the Licensee had submitted a license amendment request to authorize installation of tritium inserts models RBI010 and SIC123 in steel gunsights manufactured by Millett Industries (or Millett Sights) without their being permanently mounted to a weapon. The Licensee failed to pay the amendment fee. The NRC notified the Licensee in a letter dated March 25, 1992, that in addition to the fees for the amendment request of February 6, 1992, an application fee was due for a device evaluation performed in conjunction with a prior license amendment request of August 8, 1991. The Licensee was advised that the pending application would be processed upon receipt of the fees. The Licensee failed to pay the fees and was notified by NRC letter dated August 4, 1992, that the NRC would consider the amendment request abandoned if a response was not received within 20 days. Subsequently, having had no response, the NRC advised the Licensee on September 28, 1992, that the NRC considered the February 6, 1992 amendment request to be abandoned. Subsequent to being notified that the request was considered abandoned, the Licensee distributed unauthorized gunsights containing tritium inserts that were not mounted on weapon as described above.

In addition, during an inspection at Millett Sights on January 11–12, 1993, and a visit at Colt's Manufacturing Company, Inc. on February 5, 1993, it was discovered that Millett and Colt's had received gunsights from the Licensee that were not permanently stamped with the radioisotope name and manufacturer's logo as required by License Condition No. 14.

III

Based on the above, the NRC has concluded that the Licensee has willfully violated NRC requirements. The violations of NRC requirements are particularly disturbing to the NRC, since the Licensee has broad authority for distribution and the License places significant responsibility on the Licensee to ensure activities are conducted in accordance with NRC requirements. Without the proper safety reviews of the devices by the NRC, the NRC has no assurance that these devices will not leak or that they can withstand normal or extreme operating environs to preclude release of radioactive materials to unrestricted areas or the environment. Thus, the protection of the public health and safety is not assured. As a result, the NRC negotiated a CAL with the Licensee. In the CAL, dated February 11, 1993, the Licensee agreed to certain actions, including that:

1. It would recall from its customers and cease further distribution of gunsight models: RBI010, SIC123, CGR030, and CGF003.

2. It would identify those gunsights listed in paragraph 1 above that it was unable to recover and the reasons why recovery is impossible.

3. By February 24, 1993, it would provide the NRC Region IV office with a written report listing each customer who received gunsights listed in paragraph 1 above, the dates of distribution, the quantity distributed, and the quantity that have been returned to it as of the date of its response.

The CAL provided that its issuance did not preclude the issuance of an order formalizing the above commitments or requiring other actions by the Licensee.

By letter dated February 22, 1993, the Licensee reaffirmed its commitment to cease distribution of the gunsights specified in the CAL. The Licensee also stated that it had issued a recall of these gunsights from two firms identified by the Licensee as the sole recipients of these products. Although the Licensee has not provided the exact number of gunsights subject to recall, a representative of Colt's Manufacturing Company reported to the NRC that approximately 80 sights were subject to the recall and the NRC staff believes the total gunsights to be recalled may be in the hundreds.

By letter dated March 15, 1993, the Licensee stated that it had received products returned from one of the two firms and was awaiting receipt of

products from the second. The Licensee reaffirmed that these two firms were the only ones that had received improperly distributed products. Since then, the Licensee has not provided any further information as required by the CAL.

I find that the Licensee's commitments as set forth in the letter of February 11, 1993, are still necessary. To date, the Licensee has not identified gunsights it is unable to recover and why recovery is impossible, nor has the Licensee provided the written reports described in the February 11, 1993, CAL, which it had agreed to provide by February 24, 1993. The Commission must be able to rely on its licensees to provide complete and accurate information in a timely manner. Although the NRC's investigation into the Licensee's activities is continuing, I further conclude that on multiple occasions the Licensee has distributed gunsights not authorized by its License, after prior enforcement action for such unauthorized distribution and after abandoning its request for authorization to do so, and also has distributed gunsights without proper labels.

In light of the Licensee's willful violations of regulatory requirements, the NRC cannot rely on the Licensee's commitments. Therefore, I lack reasonable assurance that the Licensee will comply with all Commission requirements in the future. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments in its February 11, 1993, letter be confirmed by this Order. In addition, because of the delays in ascertaining the exact number of gunsights that are to be recalled and their return to the Licensee, I have concluded that regular detailed reports on the progress of the return of gunsights to the Licensee are necessary to enable the NRC to properly monitor compliance with regulatory requirements. I have also concluded that with adherence to these commitments, the public health and safety will be reasonably assured. Pursuant to 10 CFR 2.202, I have also determined, based on the significance of the violations described above and the willfulness of the Licensee's actions, that the public health and safety require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 30 and 32, it is hereby ordered, effective immediately, that License No. 30–23697–01E is modified as follows:

1. The Licensee shall not distribute, and shall continue its efforts to recall from its customers, gunsights identified in confirmatory Action Letter (CAL 4–93–05) dated February 11, 1993, and any other gunsights that have been distributed in a manner not in compliance with the License; and

2. Within 15 days from the date of this Order, the Licensee shall provide a written report to the NRC Region IV office which updates the listing of each customer who received the subject gunsights, the dates of distribution, the quantity distributed, and the quantity that has been returned to the Licensee as of the date of the report. The above report shall continue to be submitted on a monthly basis until the requirement is rescinded in writing by the NRC Regional Administrator. Each report shall also discuss those actions taken since the last report to recover the subject gunsights and shall identify instances where the recovery of particular gunsights has been determined to be impossible and the reason(s) why.

If the Licensee is able to account for all of the subject gunsights, it may request termination of this monthly reporting requirement. Such a request shall be submitted in writing to the NRC Region IV office.

The Regional Administrator, Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee, in writing, of good cause.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Services Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on more suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland this 18th day of June 1993.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 93–15117 Filed 6–25–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of Standard Form 113–A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44 U.S. Code chapter 35), this notice announces a request submitted to the Office of Management and Budget (OMB) for renewal of authority to collect data for the Monthly Report of Federal Civilian Employment (SF 113–A). The information that is collected monthly provides a timely count of Governmentwide employment, payroll, turnover, and employment ceiling-

related data. Uses of the data include monthly reporting to OMB and publishing the biomonthly Federal Civilian Workforce Statistics—Employment and Trends; answering data requests from the Congress, White House, other Federal agencies, the media, and the public; providing ceiling-related employment counts required by OMB; and serving as benchmark data for quality control of the Central Personnel Data File. The number of responding agencies is 130. The report is submitted 12 times a year. The total number of person-hours required to prepare and transmit the reports annually is estimated at 3,120. For copies of the clearance package, call C. Ronald Trueworthy, Agency Clearance Officer, on (703) 908–8550.

DATES: Comments on this proposal should be received within 30 days from date of this publication.

ADDRESSES: Send or deliver comments to: Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, New Executive Office Building, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: May Eng, (202) 606–2684, U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–15070 Filed 6–25–93; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 19536/ 811–4176]

Apollonius Institutional Investment Fund, Inc.; Application

June 22, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Apollonius Institutional Investment Fund, Inc. ("Applicant").

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on May 3, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 19, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Pustorino, Puglisi & Co., P.C., 515 Madison Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272–3018, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation.)

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company that was organized as a corporation under the laws of Maryland, on December 18, 1984. On January 24, 1985, applicant registered under the Act and filed a registration statement pursuant to section 8(b) of the Act. Applicant has not filed any registration statements pursuant to the Securities Act of 1933 and never made a public offering of its securities in the United States. Applicant's shares were privately placed outside the United States.

2. On March 24, 1993, the Applicant's Board of Directors, having received notice that the fund's largest institutional shareholder intended to redeem all of its shares of Applicant, approved the creation of a reserve account of $65,000 to cover reasonably anticipated expenses in the event the Board decided to liquidate and dissolve the Applicant. This reserve included accounts payable of approximately $35,000 which already accrued on the books of the Applicant.

3. On March 30, 1993, the institutional investor, whose holdings represented more than 99% of the Applicant's assets, redeemed all of its shares in the Applicant. The redemption price was $215.67 per share for 101,578 shares, for a total redemption price of $21,907,327.26. On the same day, all remaining shareholders redeemed their shares. These investors redeemed 122 shares at a price of $215.67 per share, for a total redemption price of approximately $26,311.74.

4. On April 6, 1993, the Board of Directors of applicant unanimously authorized and directed the proper officers of the Applicant to take any and all actions necessary to liquidate and dissolve the Applicant, including filing Articles of Dissolution with the Secretary of State of Maryland, and filing of this application.

5. As of the date of the filing of this application, Applicant has retained $28,216 in cash in the reserve established by the Board of Directors (after the payment of expenses in connection with Applicant's liquidation and dissolution.[1] The amount of the reserve will not be invested in securities.

6. The date, the expenses associated with the liquidation of Applicant that have been paid by Applicant have totalled approximately $8,300 consisting of legal and accounting expenses. The Applicant also anticipates paying approximately (a) $5,500 for miscellaneous expenses, including state filing fees, fees of a corporate agent, and accounting fees, and (b) a payment authorized by the Board of Directors in the amount of $20,000, to Cologne Capital Corporation for administrative and other non-advisory services to be provided in connection with the dissolution of Applicant. Applicant incurred no brokerage commission or other portfolio transaction costs in liquidating their portfolios securities because they were sold exclusively to dealers who make a market in the securities.

7. Applicant has no debts or liabilities outstanding as of the date of filing of this application other than the accounts payable for which funds have been placed in the reserve.

8. Applicant is not a part to any litigation or administrative proceeding. Applicant has no remaining shareholders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

[1] By letter dated June 15, 1993, applicant's counsel stated that the Board of Directors also authorized the distribution to shareholders of record on March 29, 1993 of any cash remaining in the reserve at the end of six months following the filing of this application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-15135 Filed 6-25-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19539; 812-8212]

FFB Funds Trust, et al; Application

June 22, 1993.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: FFB Funds Trust (the "Trust"), including each series of the Trust (the "FFB Funds"), Furman Selz Incorporated (the "Administrator"), FFB Funds Distributor, Inc. (the "Distributor"), and First Fidelity Bank, N.A., New Jersey (the "Adviser").

RELEVANT ACT SECTIONS: Amended, conditional order requested under section 6(c) granting an exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d), and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting certain open-end management investment companies to issue multiple classes of shares representing interests in the same portfolio of securities, and assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on certain redemptions of the shares.

FILING DATES: The application was filed on December 10, 1992, and amended on April 8, 1993. By letter dated June 11, 1993, applicants have agreed to make certain technical changes to the application, and to file an amendment prior to the issuance of any order granting the requested relief. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 19, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. The Trust, the Administrator, and the Distributor, 230 Park Avenue, New York, New York 10169. The Adviser, 765 Broad Street, Newark, New Jersey 07102.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504-2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. the complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the Act as an open-end management investment company. It is the successor to FFB Money Trust. The Trust currently consists of ten investment portfolios. The Adviser, a national bank, serves as the investment adviser to each of the FFB Funds. The Distributor is the distributor of each of the FFB Funds. The Administrator provides administrative services for the operation of the FFB Funds, including record maintenance and compliance monitoring, but does not provide transfer agency, accounting, or investment advisory services.

2. The Trust, on behalf of each of the FFB Funds, has adopted a distribution plan under rule 12b-1. Other Funds, as defined below, in the future also may adopt similar distribution plans. All such distribution plans will be adopted and implemented in compliance with Article III, Section 26 of the NASD's Rules of Fair Practice.

3. The Trust or its transfer agent may enter into shareholder servicing agreements with banks and financial institutions to provide various recordkeeping and administrative services to their customers who invest in shares of the FFB Funds. The services provided under such agreements augment and are not duplicative of the services to be provided to the Trust by the Administrator and the Distributor. No part of any service payment will constitute a "service fee" as defined in Section 26 of Article III of the NASD's Rules of Fair Practice.[1]

4. In 1991, the SEC issued an order, pursuant to which the FFB Funds may offer two classes of shares representing interests in the same portfolio.[2] This dual distribution system has not yet been implemented by the FFB Funds.

5. Applicants seek to amend the prior order to permit the Funds to issue a third class of shares representing interests in the same portfolio. The relief would also permit the Funds to assess and, under certain circumstances, waive a CDSC on certain redemptions of shares issued by them. Any order issued granting the requested relief will supersede and replace the Existing Order with respect to the Funds. Applicants request relief on behalf of themselves and any existing or future registered open-end management investment company for which the Administrator, or any entity controlled by or under common control with the Administrator, serves now or in the future as administrator, distributor, and/or principal underwriter (such existing and future investment companies, together with the FFB Funds, are collectively referred to herein as the "Funds").[3]

A. The Multi-Class Distribution System

1. Applicants propose to establish a distribution plan (the "Multi-Class Distribution System") enabling each Fund to issue and sell up to three classes of shares (herein referred to as Class A, Class B, and Class C).

2. Class A shares would be sold exclusively to institutional investors, and would be offered without a front-end sales load or CDSC. Class A shares may be offered subject to a distribution plan and/or a shareholder servicing plan. However, applicants currently do not intend to charge distribution plan or shareholder servicing plan fees in connection with Class A shares.

3. Class B shares would be sold to individual investors at net asset value plus a front-end sales load. The sales load does not apply to certain investors in accordance with rule 22d-1 under the Act. Class B shares may be subject to a distribution plan with a fee at an annual rate of up to .35% of the average daily net asset value of the Class B shares. Class B shares may also be subject to a shareholder servicing plan

[1] The Division of Investment Management is not evaluating and takes no position as to whether any fees charged for services provided under a shareholder servicing plan would be considered "service fees" as defined in article III, section 26 of the NASD's Rules of Fair Practice.

[2] Investment Company Act Release Nos. 18166 (May 24, 1991) (notice) and 18209 (June 20, 1991) (order).

[3] Only the named applicants currently intend to rely on any order granting the requested relief. Other existing or future Funds that decide to offer multiple classes of shares and/or impose a CDSC will do so in accordance with the representations and conditions of the requested order.

with a fee at an annual rate of up to .35% of the average daily net asset value of the Class B shares.

4. Class C shares would be sold to individual investors at net asset value, subject to a CDSC, as described below. Class C shares may be subject to a distribution plan with a fee at an annual rate up to 1.0% of the average daily net asset value of the Class C shares. Such fee would include a service fee of up to .25% per annum of the average daily net asset value of the Class C shares. Class C shares also may be subject to a shareholder servicing plan with a fee at an annual rate of up to .35% of the average daily net asset value of the Class C shares.

5. Class C shares automatically would convert to Class B shares of a Fund on the first business day of the month in which the sixth anniversary of the issuance of such shares occurs. Shares purchased through the reimbursement of dividends and other distributions paid in respect of Class C shares also would be Class C shares, but would be considered held in a sub-account for purposes of conversion. Each time Class C shares that are not held in a sub-account convert to Class B, a *pro rata* portion of the shares in the sub-account would also convert to Class B. The conversion feature may be subject to the continuing availability of an opinion of counsel, ruling by the Internal Revenue Service, or other assurances acceptable to the Fund that such conversion does not constitute a taxable event under the Internal Revenue Code of 1986, as amended (the "Code"). If such assurances are not available, the Fund may suspend the conversion feature.

6. All expenses borne by a Fund would be borne *pro rata* by each class based on the relative net asset value of the respective classes, except for class expenses (as described in condition 1 below). Because of the class expenses that may be borne by a class of shares, the net income of (and dividends payable to) such class may be different form the net income of another class of shares of the same Fund. Dividends paid to each class of shares in a Fund will, however, be declared and paid on the same days and at the same time, and except as affected by the class expenses, will be determined in the same manner and paid in the same amounts. To ensure that the net asset value per share of all shares of a daily dividend Fund remains the same regardless of variations in daily net income, no class will bear any class expense that would cause its accrued expenses to exceed its allocated gross income on any given day.

7. Each class of shares may be exchanged only for shares of the same class in another Fund, except that Class B and Class C shares will also be exchangeable for shares of the FFB money market funds for which Class B and Class C shares do not exist. All exchanges will be effected in accordance with the provisions of rule 11a–3.

B. The CDSC

1. Applicants propose to assess a CDSC, payable to the Distributor, on redemptions of the Class C shares made within a specified period (ranging from one to six years) after purchase. The CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or at the time of redemption. The amount of the CDSC would typically range from 1% to 4% (but could be higher or lower) on shares redeemed during the first year after purchase and typically would be reduced during the CDSC period so that redemptions on shares held after the CDSC period would not be subject to the CDSC.

2. No CDSC will be imposed on shares issued prior to any order granting the requested relief. No CDSC will be imposed on redemptions of shares derived from the reinvestment of distributions, or an amount representing an increase resulting from capital appreciation above the amount paid for the shares.

3. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing capital appreciation, next of shares representing reinvestment of dividends and capital gain distributions, and finally of other shares held by the shareholder for the longest period of time. In addition, unless the shareholder elects otherwise, redemption requests placed by a shareholder owning Class B and Class C shares will be satisfied first by redeeming the Class B shares, then by redeeming the Class C shares.

4. The Funds propose to waive the CDSC (a) on redemptions made within one year following the death or disability of a shareholder, and on redemptions from trust accounts made within one year following the death or disability of the beneficiary, or of the grantor, trustee, or other fiduciary; (b) in connection with (i) a lumped sum or other distribution following retirement, or, in the case of an individual retirement account ("IRA"), Keogh Plan, or custodial account pursuant to section 403(b)(7) of the Code, after the shareholder has attained age 59½, or any redemption resulting from a tax-free return of an excess contribution pursuant to section 408(d) (4) or (5) of the Code, or from the death or disability of the employee, or (ii) in the alternative, in connection with a distribution following retirement under a tax-deferred retirement plan, or attaining age 70½ in the case of an IRA, Keogh Plan, or custodial account pursuant to section 403(b) of the Code, or resulting from the tax-free return of an excess contribution to an IRA; (c) on redemptions of shares purchased by active or retired officers, directors or trustees, and employees of the Funds, the adviser, the distributor, or their affiliated companies, and by members of the immediate families of such persons or any trust, pension or profit sharing plan for the period of such personals, provided that such shares may not be resold except to the Fund; (d) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Fund; (e) on redemptions effective pursuant to a Fund's right to liquidate a shareholder's account if the aggregate net asset value of shares held in the accounts is less than the minimum account size; (f) in connection with redemptions by accounts established with an initial purchase order of $1 million or more; and (g) in connection with redemptions effected by advisory accounts managed by the Adviser or by a company affiliated with it. If the Funds waive or reduce the CDSC, such action will be uniformly applied to all offerees in the class specified.

5. If the trustee of a Fund offering a class of shares which has been waiving or reducing its CDSC pursuant to any of the items set forth above determine not to waive or reduce such CDSC any longer, the disclosure in that Fund's prospectus will be appropriately revised. Also, any class of shares subject to a CDSC purchased prior to the termination of such waiver or reduction would be able to have the CDSC waived or reduced as provided in a Fund's prospectus at the time of the purchase of such shares.

6. An investor may reinvest in any of the FFB Funds within 120 days of a redemption of Class C shares. The reinvestment would be at net asset value, and would be reinvested in Class C shares of the chosen Fund without the imposition of the CDSC. Any CDSC paid upon redemption would be reinstated by the Distributor to the investor's account and the reinvested shares would continue to be subject to the applicable CDSC. The proposed CDSC reinstatement allows investors who

erroneously redeemed or otherwise had second thoughts about having redeemed their shares to reinvest the proceeds, plus the amount of any CDSC previously paid. It also affords a shareholder the opportunity to determine without fear of being subjected to the CDSC whether the redemption was the best means of satisfying his or her current financial needs.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed arrangement might be deemed (a) to result in a "senior security" within the meaning of section 18(g) and prohibited by section 18(f)(1), and (b) to violate the equal voting provisions of section 18(i).

2. Applicants believe that the classes of securities present in the capital structures that prompted the SEC to recommend the adoption of section 18 (*i.e.*, funded debt, preferential stocks, and convertible securities) would not be present here. The proposed arrangement does not involve borrowings, and does not affect the Funds' existing assets or reserves. Applicants submit that no class of shares will have a priority claim on earnings, a preferential lien on Fund assets in the case of liquidation or dissolution, or any right to require that lapsed dividends be paid before dividends are declared on the other classes of shares in the Fund, and no class will be protected by any reserve or other account.

3. Applicants submit that each Fund's capital structure would not induce shareholders to invest in risky securities to the detriment of other shareholders since the investment risks of a Fund will be borne equally by all of its shareholders. Each Fund's capital structure would not enable insiders to manipulate the expenses and profits among shares since it is not organized in a pyramid fashion. Moreover, the concerns that complex capital structures may facilitate control without equity or other investment and may make it difficult for investors to value Fund shares are not present here. Applicants submit that, since the similarities and dissimilarities of the shares will be fully disclosed in the prospectuses for each class of a Fund, investors will not be given misleading impressions as to the safety or risk of the shares and the nature of the shares will not be rendered speculative.

4. Applicants believe that the proposed arrangement would enhance the ability of each Fund to facilitate meeting its competitive demands. Applicants also believe that the proposed allocation of expenses and voting rights relating to the distribution plans is equitable and would not discriminate against any group of investors. An investor would be able to choose the method of purchasing shares that is most beneficial given the amount of purchase, the length of time the shares are expected to be held, and other relevant circumstances. Customers who receive the services provided under a shareholder servicing plan would bear the associated expenses, while investors not purchasing shares covered by such a plan would not be burdened by such expenses.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences between the classes of shares of a Fund will relate solely to: (a) the impact of the expenses specifically attributable to the particular class, limited to: transfer agent fees as identified by the transfer agent as being attributable to a specific class; fees payable to a distribution plan and shareholder servicing plan or agreement, if applicable; printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders; registration fees; the expense of administrative personnel and services as required to support the shareholders of a specific class; litigation or other legal expenses relating solely to one class of shares and trustees' fees incurred as a result of issues relating to one class of shares; (b) the fact that the classes will vote separately with respect to a Fund's shareholder servicing plan and distribution plan, if applicable, except as provided in condition 16 below; (c) the different exchange privileges of each class of shares; (d) the conversion feature applicable only to the Class C shares; and (e) different class designation of each class of shares.

2. The initial determination of the class expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the Fund including a majority of the trustees who are not interested persons of the Fund. Any person authorized to direct the allocation and disposition of moneys paid or payable by the Fund to meet class expenses shall provide to the board of trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

3. The trustees of a Fund, including a majority of the independent trustees, will approve the Multi-Class Distribution System. The minutes of the meetings of the trustees of a Fund regarding the deliberations of the trustees with respect to the approvals necessary to implement the Multi-Class Distribution System will reflect in detail the reasons for the trustees' determination that the proposed Multi-Class Distribution System is in the best interests of both the Fund and its shareholders.

4. On an ongoing basis, the trustees of a Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts between the interests of the classes of shares. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser, Administrator and the Distributor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the Adviser, the Administrator and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

5. The shareholder services plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

6. The trustees of a Fund will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

7. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the

same time, on the same day, and will be in the same amount, except that distribution and shareholder services payments relating to each respective class of shares will be borne exclusively by that class and any incremental transfer agency costs and other class expenses relating to a specific class of shares will be borne exclusively by that class.

8. The methodology and procedures for calculating the net asset value and dividends and distributions of the multi-classes and the proper allocation of expenses between the classes has been reviewed by an expert (the "Expert"), who has rendered a report to applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the expert is a "Special Purpose" report on the "Design of a System" as defined and described in SAS No. 44 of the AICPA, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses between the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition 8 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 8 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

10. The prospectus of each Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

11. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of a Fund to agree to conform to such standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees of the Fund with respect to the Multi-Class Distribution System will be set forth in guidelines which will be furnished to the trustees.

13. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales, loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to each Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset value and public offering price will present each class of shares separately.

14. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Fund may make pursuant to its distribution plan or shareholder services plan in reliance on the exemptive order.

15. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset value of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in article III, section 26, of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

16. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Class B shares under the plan, existing Class C shares will stop converting into Class B unless the Class C shareholders, voting separately as a class, approve the proposal. The Directors/Trustees shall take such action as is necessary to ensure that existing Class C shares are exchanged or converted into a new class of shares ("New Class B"), identical in all material respects to Class B as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Class B. If deemed advisable by the Directors/Trustees to implement the foregoing, such action may include the exchange of all existing Class C shares for a new class ("New Class C"), identical to existing Class C shares in all material respects except that New Class C will convert into New Class B. New Class B or New Class C may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be affected in a manner that the Directors/Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of New Class B or New Class C shall be borne solely by the adviser and the distributor. Class C shares sold after implementation of the proposal may convert to Class B shares subject to the higher maximum payment, provided that the material features of the Class plan and the relationship of such plan to the Class C shares are disclosed in an effective registration statement.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

18. To ensure that the net asset value per share of all shares of a Fund which declares dividends on a daily basis remains the same regardless of variations in daily net income, no class will bear any class expenses that would cause the accrued expenses of such class to exceed allocated gross income on any given day. To accomplish this, each such Fund may seek to obtain undertakings from its service providers stating, that, if necessary to prevent accrued class expenses of any class from exceeding the allocated gross income of such class on any given day, they will waive some or all of the payments to which they otherwise would have been entitled. If such waivers are not obtained or they are not sufficient to prevent accrued class expenses for the day from exceeding a class's gross income for the day, the Adviser and/or the Distributor will waive their fees up to the amount by which such day's accrued class expenses exceed a class's gross income. If after giving effect to such waivers by service providers, if any, and by the Adviser and the Distributor, class expense for the day would nevertheless exceed a class's gross income, the Adviser and/or the Distributor will, within five business days, reimburse the Fund in such amount as may be necessary to prevent such class expenses from exceeding a class's gross income for the day. Fees and expenses waived by a service provider or reimbursed to the Fund by the Adviser and/or the Distributor will not be carried forward or recouped at a future date.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15136 Filed 6–25–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19538; 812–8316]

Midwest Strategic Trust, et al.; Application

June 22, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Midwest Strategic Trust, Midwest Group Tax Free Trust, and Midwest Income Trust, on behalf of themselves and any other open-end management investment company for which Midwest Advisory Services, Inc. ("MAS") or Leshner Financial Services, Inc. ("Leshner") (collectively, the "Advisers") may in the future become the investment adviser or for which MGF Distributors, Inc. (the "Distributor") may in the future become the principal underwriter (the "Funds"); the Advisers; and the Distributor.

RELEVANT ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds to issue and sell three classes of shares representing interests in the same portfolios of securities, assess a contingent deferred sales charge ("CDSC") on certain redemptions, and waive the CDSC in certain instances.

FILING DATE: The application was filed on March 19, 1993, and amended on April 28, 1993, June 7, 1993, and June 17, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 19, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of the date of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 312 Walnut Street, 21st Floor, Cincinnati, Ohio 45202.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are open-end diversified management investment companies. MAS provides investment advisory and other services to the Funds, except for Leshner Financial Equity Fund, a series of Midwest Strategic Trust. Leshner provides investment advisory and other services to Leshner Financial Equity Fund. The Distributor serves as principal underwriter for the Funds.

2. Applicants seek an exemption to permit the individual series of the Funds that are not money market funds (the "Series") to issue three classes of shares, to impose a CDSC on certain redemptions of one class of shares, and to waive the CDSC in certain cases. Under applicants proposal, investors will be able to purchase shares in one of three manners: (a) Subject to a conventional front-end sales load, and distribution fee not to exceed .35% of average net assets ("Class A shares"); (b) subject to a front-end sales load that is smaller than the sales load on Class A shares, and a distribution fee and service fee of up to 1% of average net assets ("Class B shares"); and (c) subject to a CDSS, and a distribution and service fee of up to 1% of average net assets ("Class C shares").

3. Each of the Series, except Leshner Financial Equity Fund, are sold with a front-end sales load (ranging from 1% to 4%) and a distribution fee at an annual rate ranging from .25% to .35% of average daily net assets. Leshner Financial Equity Fund shares are sold subject to a maximum front-end sales load of 1% and a distribution fee at an annual rate of 1% of average daily net assets. The multi-class distribution system will be implemented by having the Series create up to two new classes of shares (the existing shares of Leshner Equity Fund will be designated Class B and the existing shares of the other Series will be designated Class A). The creation and issuance of multiple classes of shares will be made on a Series-by-Series basis, and some Series may not in fact create any new classes or may create only two of the three classes.

4. The three classes will be identical except that: (i) The distribution fees payable by a Series attributable to each class pursuant to the proposed rule 12b–1 distribution plans will be higher for Class B shares and Class C shares than for Class A shares; (ii) each class may bear different Class Expenses (as defined below); (iii) each class will vote separately as a class with respect to a Series' rule 12b–1 distribution plan; (iv) each class has different exchange privileges as described below; and (v)

each class may bear a different name or designation.

5. Under the multi-class distribution system, a Fund's board of trustees could determine that any of certain expenses attributable to the shares of a particular class of shares would be borne by the class to which they were attributable ("Class Expenses"). Class Expenses, are limited to: (a) Transfer agency fees (including the incremental cost of monitoring a CDSC applicable to a specific class of shares); (b) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders of a specific class; (c) SEC and Blue Sky registration fees incurred by a class of shares; (d) the expenses of administrative personnel and services as required to support the shareholders of a specific class (including, but not limited to, maintaining telephone lines and personnel to answer shareholders' inquiries about their accounts or about the Funds); (e) litigation or other legal expenses relating to a specific class of shares; (f) Trustees' fees or expenses incurred as a result of issues relating to a specific class of shares; (g) accounting fees and expenses relating to a specific class of shares; and (h) additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares and approved by the SEC.

6. The CDSC is expected to range from 3% to 5% shares redeemed during the first year after purchase (but can be higher or lower) and will be reduced at a rate of 1.00% per year over the CDSC period (which will be at least three years but will not exceed six years) so that redemptions of shares held after that period will not be subject to a CDSC. The CDSC will be imposed on the lesser of the aggregate net asset value of the shares being redeemed either at the time of purchase or redemption. No CDSC will be imposed on shares acquired through reinvestment of income dividends or capital gains distributions. In determining whether a CDSC is applicable, unless the shareholder otherwise specifically directs, it will be assumed that a redemption is made first of any Class C shares derived from reinvestment of dividends, second of Class C shares held for a period longer than the CDSC period, third of any Class B shares in the shareholder's account, fourth of any Class A shares in the shareholder's account, and fifth of Class C shares held for a period not longer than the CDSC period.

7. Applicants will waive the CDSC on redemptions following the death or disability of a shareholder as defined in section 72(m)(7) of the Internal Revenue Code. The Distributor will require satisfactory proof of death or disability before it determines to waive the CDSC. In cases of death or disability, the CDSC may be waived where the decedent or disabled person is either an individual shareholder or owns the shares with his or her spouse as a joint tenant with rights of survivorship if the redemption is made within one year of death or initial determination of disability.

8. Under the multi-class distribution system, Class A shares and Class B shares of a Series will be exchangeable for (a) Class A shares of the other Series, (b) Class B shares of the other Series, (c) shares of series of the Funds which are money market funds ("Money Market Series"), and (d) shares of any Series which offers only one class of shares (provided such Series does not impose a CDSC) on the basis of relative net asset value per share, plus an amount equal to the difference, if any between the sales charge previously paid on the exchanged shares and sales charge payable at the time of the exchange on the acquired shares.

9. Class C shares of a Series will be exchangeable for (a) Class C shares of the other Series, (b) shares of the Money Market Series, and (c) shares of any Series which offers only one class of shares and which imposes a CDSC on the basis of relative net asset value per share. A Series will "tack" the period for which original Class C shares were held onto the holding period of the acquired Class C shares for purposes of determining what, if any, CDSC is applicable in the event that the acquired Class C shares are redeemed following the exchange. In the event of redemptions of shares after an exchange, an investor will be subject to the CDSC of the Series with the longest CDSC period and/or highest CDSC schedule which may have been owned by him or her, resulting in the greatest CDSC payment. The period of time that Class C shares are held in a Money Market Series will not count toward the CDSC holding period. Applicants will comply with rule 11a–3 as to any exchanges.

Applicants' Legal Analysis

1. Applicants request an order exempting them from the provisions of sections 18(f)(1), 18(g), and 18(i) of the Act to the extent that the proposed issuance and sale of three classes of shares representing interests in the same Series might be deemed: (a) to result in a "senior security" within the meaning of section 18(g); (b) prohibited by section 18(f)(1); and (c) to violate the equal voting provisions of section 18(i).

2. Applicants believe that the proposed multi-class arrangement will better enable the Funds to meet the competitive demands of today's financial services industry. Under the multi-class arrangement, an investor will be able to choose the method of purchasing shares that is most beneficial given the amount of his or her purchase, the length of time the investor expects to hold his or her shares, and other relevant circumstances. The proposed arrangement would permit the Funds to facilitate both the distribution of their securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks.

3. The proposed allocation of expenses and voting rights relating to the rule 12b–1 plans in the manner described is equitable and would not discriminate against any group of shareholders. In addition, such arrangements should not give rise to any conflicts of interest because the rights and privileges of each class of shares are substantially identical.

4. Applicants believe that the proposed multi-class arrangement does not present the concerns that section 18 of the Act was designed to address. The multi-class arrangement will not increase the speculative character of the shares of the Fund. The multi-class arrangement does not involve borrowing, nor will it affect the Funds' existing assets or reserves, and does not involve a complex capital structure. Nothing in the multi-class arrangement suggests that it will facilitate control by holders of any class of shares.

5. Applicants submit that the requested exemption to permit the Funds to implement the proposed CDSC is appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. The proposed CDSC arrangement will provide shareholders the option of having their full payment invested for them at the time of their purchase of shares of the Funds with no deduction of a sales charge.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Series, and be identical in all material respects, except as set forth below. The only differences among

the various classes of a Series will relate solely to: (a) the impact of disproportionate rule 12b–1 distribution payments allocated to each of the Class A shares, Class B shares, or Class C shares of a Series; (b) Class Expenses, which are limited to: (i) transfer agency fees (including the incremental cost of monitoring a CDSC applicable to a specific class of shares), (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders of a specific class, (iii) SEC and Blue Sky registration fees incurred by a class of shares, (iv) the expenses of administrative personnel and services as required to support the shareholders of a specific class, (v) litigation or other legal expenses relating to a specific class of shares, (vi) trustees' fees or expenses incurred as a result of issues relating to a specific class of shares, and (vii) accounting fees and expenses relating to a specific class of shares; (c) the fact that each class will vote separately as a class with respect to the rule 12b–1 distribution plans; (d) the different exchange privileges of the various classes of shares; and (e) the designation of each class of shares of the Series. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the SEC.

2. The trustees of each of the Funds, including a majority of the trustees who are not interested persons of the Funds, shall have approved the multi-class system prior to the implementation of the multi-class system by a particular Series. The minutes of the meetings of the trustees of each Fund regarding the deliberations of the trustees with respect to the approvals necessary to implement the multi-class system will reflect in detail the reasons for the trustees' determination that the proposed multi-class system is in the best interests of both the Series and their respective shareholders.

3. The initial determination of Class Expenses that will be applied to a class of shares and any subsequent changes thereto will be reviewed and approved by votes of the board of trustees of each Fund, including a majority of the trustees who are not interested persons of the Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by a Series to meet Class Expenses shall provide to the board of trustees, and the trustees shall review at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the trustees of each of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Series for the existence of any material conflicts among the interests of the various classes of shares. The trustees, including a majority of the trustees who are not interested persons of the Funds, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. A Series' investment adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, a Series' investment adviser and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

5. The trustees of each Fund will receive quarterly and annual statements complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only distribution expenditures properly attributable to the sale of a class of shares will be used to support the rule 12b–1 fees charged to shareholders of such class of shares. Expenditures not related to the sale of a particular class will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

6. Dividends paid by a Series with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that distribution fee payments and Class Expenses relating to each respective class of shares will be borne exclusively by that class.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of income and expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and based on such review, will render at least annually a report to the Series that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds (which each Fund agrees to provide), will be available for inspection by the SEC staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional office of the SEC, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions among the various classes of shares and the proper allocation of income and expenses among such classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in condition 7 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 7 above. Applicants agree to take immediate corrective measures if this representation is not concurred in by the Expert, or appropriate substitute Expert.

9. The prospectus of each Series will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling Series shares may receive different compensation with respect to one particular class of shares over another in the Series.

10. The Distributor will adopt compliance standards as to when Class A, Class B and Class C shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the

trustees of each Fund with respect to the multi-class system will be set forth in guidelines which will be furnished to the trustees.

12. Each Series will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus. Class A, Class B, and Class C shares will be offered and sold through a single prospectus. Each Series will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Series as a whole generally and not on a per class basis. Each Series' per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Series. To the extent any advertisement or sales literature describes the expenses or performance data applicable to Class A, B, or C shares, it will disclose the respective expenses and/or performance data applicable to each class of shares. The information provided by applicants for publication in any newspaper or similar listing of the Series' net asset values and public offering prices will separately present Class A, Class B, and Class C shares.

13. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Series may make pursuant to its rule 12b–1 distribution plans or otherwise in reliance on the exemptive order.

14. Applicants will comply with the provisions of proposed Rule 6c–10 under the Act, Investment Company Act Release No. 16169 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15137 Filed 6–25–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19532; 811–5525]

Huntington Investment Trust; Notice of Application

June 22, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Huntington Investment Trust.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 10, 1993, an amendment thereto was filed on May 6, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 19, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Huntington Investment Trust, 251 South Lake Avenue, suite 600, Pasadena, California 91101.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272–3023, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management company, organized as a business trust under the laws of Massachusetts. On March 31, 1988, applicant filed a Notification of Registration on Form N–8A. Applicant registered an indefinite number of units of beneficial interest of its CPI+ Fund series (the "Fund"), on Form N–1A which was declared effective on January 2, 1989. Applicant commenced the public offering of shares of the Fund on or about January 23, 1989. Until its liquidation on November 30, 1990, the Fund was Applicant's sole series.

2. On October 9, 1992, applicant's Board of Trustees voted to liquidate and terminate applicant and the Fund. The Board's principal reasons for liquidating were: (a) that the Fund was too small to be able to operate efficiently; (b) that the nature of the Fund's investment strategy was such that there did not appear to be any basis for anticipating that the Fund's net asset size would increase significantly in the foreseeable future; and (c) the Fund's investment manager could not continue to subsidize the Fund in order to allow it to continue to operate.

3. On or about October 22, 1992, the Trust sent a written communication to the securityholders of record of the Funds as of October 15, 1992, which described the pending liquidation and termination of the Trust and the Fund. No securityholder action or vote was required under the Trust's Agreement and Declaration of Trust or under Massachusetts law to liquidate the Fund.

4. All of the Fund's portfolio securities were sold on the open market prior to the liquidation and distribution of the Fund's net assets. All brokerage commissions incurred in connection with such sales were paid by the Fund.

5. The Fund incurred no expenses in connection with the liquidation and distribution of its assets.[1] Applicants unamortized organizational expenses at the time of liquidation of the Fund were $10,997, all of which were paid by Huntington Advisers, Inc. and not Applicant's securityholders.

6. At November 27, 1992, the Fund had the following securities outstanding: 29,024 shares having an aggregate net asset value of $1,305,058 and a per share net asset value of $44.96. On November 30, 1992, the Fund made a liquidating distribution of $44.96 per share to all Fund shareholders of record at the close of business on November 27, 1992.

7. Applicant has not securityholders, debts or liabilities as of the time of filing of the application. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not presently engaged in nor does it propose to engage in any business activities other than those necessary for the winding up of its affairs.

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[1] By letter dated June 15, 1993, applicant's counsel stated that the expenses relating to the liquidation of the Trust totalled approximately $2,430.78, none of which were borne by the Trust. All of those expenses have been or will be paid by the Trust's investment adviser, Huntington Advisers, Inc.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15084 Filed 6–25–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. IC–19531; 811–1085]

Monmouth Capital Corporation; Deregistration

June 22, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Monmouth Capital Corporation.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company because it is engaged in real estate related activities within the scope of section 3(c)(5)(C) of the Act.

FILING DATE: The application was filed on December 6, 1991, and amended on April 12, 1993. Applicant has agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 19, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Eugene W. Landy, 125 Wyckoff Road, Eatontown, New Jersey 07724.

FOR FURTHER INFORMATION CONTACT: Maura A. Murphy, Senior Attorney, at (202) 272–7779 or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end non-diversified management investment company organized as a New Jersey corporation. On August 8, 1961, it registered under the Act by filing a notification of registration. Applicant has approximately 517 shareholders, and 510,680 shares of common stock outstanding that trade in the over-the-counter market.

2. Applicant also was licensed by the Small Business Administration as a small business investment company ("SBIC") under the Small Business Investment Act of 1958 from June 28, 1961 to January 13, 1993. As an SBIC, applicant was permitted to provide financing to small business concerns through the making of loans to, and obtaining certain equity interests in, small business concerns. At present, substantially all of applicant's business consists of acquiring loans and participation interests in loans, substantially all of which are secured by real estate.

3. Applicant's board of directors determined that it is no longer in the best interests of applicant or its shareholders to operate as an SBIC or an investment company. As a result of board proposals, applicant's shareholders adopted resolutions allowing applicant and its management to: (1) amend applicant's certificate of incorporation to permit it to engage in business as a general corporation rather than exclusively as an SBIC, (2) amend applicant's investment and loan policies to authorize it to engage in the making and acquisition of real estate investments and mortgage loans, the acquisition, development, construction, leasing, management and disposition of real estate and improvements thereon, and other real estate related activities (collectively, "Real Estate Activities"), (3) cause applicant to engage in Real Estate Activities and to attempt to qualify as a real estate investment trust under subchapter M of the Internal Revenue Code, and (4) cause applicant to cease to be an investment company under the Act and an SBIC under the Small Business Investment Act.

4. Applicant's management is taking all necessary steps to effectuate the foregoing resolutions. Applicant surrendered its license with the Small Business Administration on January 15, 1993. In addition, applicant does not propose to engage in any business activities other than Real Estate Activities.

5. As of March 17, 1993, applicant had assets totalling $3,961,510. Applicant's total assets consisted substantially of the following, which are discussed more fully below: outstanding loans secured by mortgages on real estate ("Mortgage Loans"); whole-pool mortgage-backed securities; participation interests in Mortgage Loans; a trust whose underlying assets consist substantially of Mortgage Loans; and cash items and other investments and assets.

Applicant's Legal Analysis

1. Section 8(f) of the Act provides, in part, that when the SEC, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the taking effect of such order the registration of such company shall cease to be in effect.

2. Section 3(c)(5)(C) of the Act specifically excepts from the definition of an investment company any person who is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates, and who is primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on and interests in real estate. Applicant is not engaged in the issuance of redeemable securities, face-amount certificates of the installment type, or periodic payment plan certificates as defined in the Act. In addition, it believes that it is primarily engaged in purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.

A. Mortgage Loans, Whole Pool GNMAs, and Participation Interests with Foreclosure Rights

1. Applicant holds certain Mortgage Loans, each of which meets the following criteria: (1) the Mortgage Loan is secured by a mortgage or deed of trust on one or more tracts or parcels of real estate ("Real Estate"); (2) 100% of the principal amount of the Mortgage Loan was secured by Real Estate at the time of origination; and (3) 100% of the fair market value of the Mortgage Loan was secured by Real Estate at the time applicant received the Loan ("First Tier Mortgage Loans"). As of March 17, 1993, applicant's First Tier Mortgage Loans, in the aggregate including accrued interest, totalled approximately $1,418,820, or 36% of applicant's total assets.

2. Applicant holds mortgage pass-through certificates guaranteed by the Government National Mortgage Association that represent all of the

ownership interests in a pool of mortgages underlying the certificates ("Whole Pool GNMAs"). As of March 17, 1993, these Whole Pool GNMAs were valued at approximately $1,096,531, including accrued interest, and thus constituted approximately 28% of applicant's total assets.

3. Applicant holds a participation interest in a Mortgage Loan upon which applicant has an unrestricted right to foreclose. Applicant was the primary mortgage lender with respect to a loan to Motel Associates of Columbus. After selling participation interests in that Mortgage Loan to other parties, applicant continues to retain the rights it had when the Mortgage Loan was originated, including the unrestricted right to foreclose upon the Mortgage Loan. As of March 17, 1993, the total value of applicant's Motel Associates participation interest, including accrued interest, was approximately $415,482, or 10.5% of applicant's total assets.

4. Accordingly, $2,930,833 or 74.5% of applicant's assets consist of First Tier Mortgage Loans, Whole Pool GNMAs, and a participation interest with foreclosure rights.

B. Participation Interests Without Foreclosure Rights, and Interest in a Trust

1. Applicant also has participation interests in Mortgage Loans originated by First Connecticut Small Business Investment Company. Each First Connecticut participation interest was entered into pursuant to a separate participation agreement with First Connecticut. First Connecticut maintains unrestricted control over the enforcement of the underlying Mortgage Loan in connection with each First Connecticut participation interest (*i.e.*, First Connecticut has the unrestricted right to foreclose upon the Mortgage Loan). As of March 17, 1993, the total value of these First Connecticut participation interests, including accrued interest, was approximately $133,678, or 3% of applicant's total assets.

2. In 1990, First Connecticut filed a petition under the United States Bankruptcy Code to reorganize its operations. First Connecticut's plan of reorganization was approved in 1992. Under the Plan, each party that had purchased participation interests in Mortgage Loans from First Connecticut had an opportunity to receive an interest in the First Connecticut Participants' Trust. Applicant elected to retain the First Connecticut participation interests described in the preceding paragraph, and to receive an interest in the Trust with respect to certain other participation interests. The Trust is a pool of money that consists of all of the funds received by First Connecticut in the ordinary course of its business. These funds are derived substantially from Mortgage Loans. First Connecticut delivers the funds to the Trust, which then disburses them to the various participants in accordance with the agreed-upon interest rate in the respective participation agreements. To secure the payments from the Trust, each participant, including applicant, was granted "a blanket security interest in and to all [First Connecticut's] assets, real or personal." The value of applicant's interest in the Trust was approximately $336,494, or 8.5% of applicant's total assets, as of March 17, 1993.

3. Accordingly, $470,172 or 11.5% of applicant's assets consist of real estate type assets in the form of participation interests without foreclosure rights, and the First Connecticut Trust.

C. Cash Items and Other Investments

As of March 17, 1993, applicant held cash items and other miscellaneous investments in the total amount of approximately $469,637, which constituted approximately 12% of its total assets. Applicant's total assets also include non-investment assets totalling $90,868, constituting approximately 2% of applicant's total assets.[1]

D. Conclusion

In summary, as of March 17, 1993, the value of applicant's assets was $3,961,510, which consisted of approximately the following: $2,930,833 or 74.5% in First Tier Mortgage Loans, Whole Pool GNMAs, and participation interests with foreclosure rights; $470,172 or 11.5% in real estate type assets in the form of participation interests without foreclosure rights, and the First Connecticut Trust; and $560,505 or 14% in cash items and other miscellaneous investments. In light of the assets described above, applicant believes that it is excepted from the definition of an investment company by reason of section 3(c)(5)(C) of the Act, and that the SEC should declare by order pursuant to section 8(f) that applicant has ceased to be an investment company.

[1] This amount consists of prepaid expenses totalling $28,539, accounts receivable of $25,836, and other assets in the amount of $36,493.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15083 Filed 6–25–93; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination of the Individual Tariff-Rate Quota Amounts for Certain Imported Sugars, Syrups, and Molasses for "Other Specified Countries and Areas"

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the individual tariff-rate quota amounts for each foreign country and area in the category of "Other specified countries and areas" for imports of certain sugars, syrups, and molasses for the period October 1, 1992 through September 30, 1994. On May 11, 1993, the Secretary of Agriculture announced the total amount and quota period for the tariff-rate quota for these sugars, syrups and molasses at 2.5 million short tons, raw value for the period October 1, 1992 through September 30, 1994, effective October 1, 1993.

EFFECTIVE DATE: June 29, 1993.

FOR FURTHER INFORMATION CONTACT: Carole Jackson, Senior Economist, Office of Agricultural Affairs (202–395–5006), or Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, Office of the General Counsel (202–395–7305); Office of the United States Trade Representative, 600 Seventeenth Street, Washington, DC 20506.

SUPPLEMENTARY INFORMATION: Section 2011.303 of 15 CFR provides for the allocation of individual quota amounts to each foreign country and area in the category of "Other specified countries and areas" specified pursuant to Additional U.S. note 3(b) of the Harmonized Tariff Schedule of the United States. The individual quota amount is specified in 15 CFR 2011.303(b), and has normally been 7,258 metric tons, raw value for a 12-month quota period (October 1—September 30).

However, the USTR is authorized under 15 CFR 2011.303(c)(2) to modify this individual tariff-rate quota amount to ensure an orderly transition in the circumstance of a change from an

annual quota period (October 1—September 30) to another quota period. Notice of any such modification is to be published in the **Federal Register.**

Notice

On May 11, 1992, the Secretary of Agriculture determined and announced by press release that 2.5 million short tons, raw value of the aforementioned sugars, syrups and molasses may be entered, or withdrawn from warehouse for consumption, during the period of October 1, 1992 through September 30, 1994, effective October 1, 1993.

This is a change from an annual tariff-rate quota period (October 1—September 30) to another quota period. Accordingly, in order to ensure an orderly transition, the USTR has determined that, for the period October 1, 1992 through September 30, 1994, and effective October 1, 1993, the individual tariff-rate quota amount for each of the foreign countries and areas in the category of "Other specified countries and areas" is set at 13,372 metric tons, raw value.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 93–15158 Filed 6–25–93; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Vehicle-Highway Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Vehicle-Highway Society of America (IVHS AMERICA) will hold a meeting of its Board of Directors on August 3, 1993. The session is expected to focus on: (1) An amendment to the Articles of Incorporation; (2) Bylaws revisions; (3) DOT program advice on government procurement; (4) Task force and project on public/private partnership issues; (5) IVHS National Program Plan; (6) International Standards Organization activities; (7) IVHS architecture; and (8) IVHS World Congress.

IVHS AMERICA provides a forum for national discussion and recommendations on IVHS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of IVHS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on IVHS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of IVHS AMERICA will meet on August 3 from 9 a.m. to 4:30 p.m. e.t.

ADDRESSES: Beckman Center, 100 Academy Drive, Irvine, California 92715, (714) 721–2211.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Euler, FHWA, HTV–10, Washington, DC 20590, (202) 366–2201, office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except for legal holidays; or Mr. Craig Roberts, IVHS AMERICA, 1776 Massachusetts Avenue, NW., Washington, DC 20036, (202) 857–1202.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: June 21, 1993.

Rodney E. Slater,

Administrator.

[FR Doc. 93–15068 Filed 6–25–93; 8:45 am]

BILLING CODE 4910–22–P

Federal Transit Administration

FTA Sections 3 and 9 Grant Obligations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1993, Public Law 102–338, contains a provision requiring the Federal Transit Administration (FTA) to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to sections 3 and 9 of the Federal Transit Act, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management and State Programs Division, Office of Capital and Formula Assistance, Department of Transportation, Federal Transit Administration, Office of Grants Management, 400 Seventh Street, SW., room 9305, Washington, DC 20590, (202) 366–2053.

SUPPLEMENTARY INFORMATION: The section 3 program provides capital assistance to eligible recipients in three categories: Fixed guideway modernization, construction of new fixed guideway systems and extensions, and bus purchases and construction of bus related facilities. The section 9 program apportions funds on a formula basis to provide capital and operating assistance in urbanized areas. Section 9 grants reported may include flexible funds transferred from the Federal Highway Administration to the FTA for use in transit projects in urbanized areas. These flexible funds are authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) to be used for highway or transit purposes. Pursuant to the statute FTA reports the following grant information.

Transit property	Grant No.	Grant amount	Obligation date
SECTION 3 GRANTS			
County of Sacramento—Department of Public Works, Sacramento, CA	CA–03–0371–00	$1,061,175	05/17/93
Los Angeles County Metropolitan Transportation Authority, Los Angeles, CA	CA–03–0392–00	59,550,000	05/13/93
San Francisco Bay Area Rapid Transit District, San Francisco—Oakland, CA	CA–03–0394–00	22,500,000	05/20/93
Metropolitan Transit Development Board, San Diego, CA	CA–03–0398–00	2,700,190	05/18/93
Santa Clara County Transit District, San Jose, CA	CA–03–0402–00	48,000,000	05/20/93
SECTION 9 GRANTS			
South Coast Area Transit, Oxnard—Ventura, CA	CA–90–X514–00	2,504,190	05/17/93
City of Victorville, Riverside—San Bernardino, CA	CA–90–X545–00	1,241,266	05/11/93
Hub Area Transit Authority, Yuba City, CA	CA–90–X546–00	456,550	05/20/93
Metropolitan Transit Development Board, San Diego, CA	CA–90–X554–00	13,349,718	05/17/93

Transit property	Grant No.	Grant amount	Obligation date
City of Davis, Davis, CA	CA-90-X556-00	649,625	05/19/93
Sunline Transit Agency, Palm Springs, CA	CA-90-X557-00	1,299,249	05/19/93
Los Angeles County Metropolitan Transportation Authority, Los Angeles, CA	CA-90-X575-00	21,326,000	05/13/93
Middletown Transit District, Hartford—Middletown, CT	CT-90-X208-01	11,287	05/11/93
Maine Department of Transportation, Maine	ME-90-X065-00	870,981	05/07/93

Issued On: June 22, 1993.

Robert E. McMaster,

Acting Administrator.

[FR Doc. 93-15047 Filed 6-25-93; 8:45 am]

BILLING CODE 4910-57-M

National Highway Traffic Safety Administration

Highway Traffic Safety Intern Program; Discretionary Cooperative Agreement

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Announcement of Discretionary Cooperative Agreement to Support a Highway Traffic Safety Intern Program.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the availability of a discretionary cooperative agreement to support a highway traffic safety program for graduate students. This notice solicits applications from colleges and universities interested in working jointly with NHTSA to perform the educational and support activities for this internship program.

DATES: Applications must be received at the office designated below on or before 4 p.m., August 13, 1993.

ADDRESSES: Applications should reference procurement number DTNH22-93-Y-05301 and must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD-30), 400 7th Street SW., room 5301, Washington, DC 20590, Attention: Karen Brockmeier.

FOR FURTHER INFORMATION CONTACT: Questions related to this cooperative agreement should be directed to Ms. Susan Gorcowski, Chief, National Organizations Division (NTS-11), NHTSA, Room 5118, 400 7th Street SW., Washington, DC 20590, (202-366-2712).

SUPPLEMENTARY INFORMATION:

Background

The National Highway Traffic Safety Administration (NHTSA) is mandated to design strategies to save lives and reduce injuries from motor vehicle crashes. NHTSA's Office of Occupant Protection meets this responsibility by educating the general public and specific target populations about the benefits of occupant protection systems. Among other things, these benefits center on the importance of using safety belts all the time, the proper use of child safety seats, and the effectiveness of automatic crash protection systems.

To achieve these occupant protection benefits, NHTSA is placing additional emphasis on reaching those identified in the research who show a higher than average risk of suffering the effects of non-safety belt use, or incorrect safety belt or child safety seat use. This population includes young adults, the economically disadvantaged, and rural populations. Therefore, NHTSA places special emphasis on these groups by using specific delivery systems to better reach them, while continuing to work with general and other target populations.

To help the nation reach safety belt use rates in the 70 to 90 percent range, NHTSA critically examined its existing occupant protection program strategies and initiated projects to help reach higher belt use levels. A sample of these projects are outlined below:

- Development of the National Safety Belt Honor Roll program, awarding those worksites, special groups, cities and schools, or other entities with a minimum of 100 people who show sustained belt use levels of 70 percent or more.
- Continued production of Idea Samplers for Child Passenger Safety Awareness Week in February and Buckle Up America! Week in May; adding an Idea Sampler for the Federal employees program; additional video news releases for the special focus weeks; and participating in the development of training and promotional materials for trucking industry and other special populations.
- Development of support services and materials to encourage Fortune 500 companies to take a leadership role in the area of traffic safety.
- Organizing the NHTSA occupant protection message around the following program delivery systems or subject areas: mass media; law enforcement; worksite and employer; school and child care-based; association and civic group; and health, medicine and nursing.

Over the years, NHTSA has worked with campuses on projects that offer students practical experiences in highway traffic safety. NHTSA plans to continue work in this area by sponsoring an intern program for graduate students. The approach we plan to use involves working with an educational institution to help present the benefits of highway traffic safety to students, and encourage them to consider a career in this field. NHTSA is interested in increasing the labor pool of knowledgeable, young, energetic traffic safety professionals.

NHTSA is responsible for assisting interested organizations in their efforts to promote the reduction of motor vehicle injuries and fatalities. Since 1981, NHTSA has worked with health and medical professionals, universities and colleges, civic groups, private and public employers, and others, who are in a position to promote occupant protection systems. They depend upon NHTSA to provide technical information and updates on current traffic safety issues. In order to increase, or at least maintain, the number of professionals who have more than just a fundamental knowledge of traffic safety issues, avenues are needed to expose students to this subject.

Many colleges and universities have phased out their programs dealing with careers in traffic safety. NHTSA is concerned with the shortage of traffic safety professionals in both public and private sector organizations, and student participation in this work-study program should act as an incentive to consider careers in highway traffic safety. Because of this experience, students many also consider the benefits of integrating highway safety concepts in whatever career fields they choose.

Many colleges and universities have shown innovation and originality in their support for safer highways. They have demonstrated their willingness to issue policy statements, and sponsor national workshops and demonstration projects on this subject. While this project's focus is on occupant protection, students must also be prepared to participate in other traffic safety areas. They include: pedestrian,

bicycle and motorcycle safety; driving while not under the influence of alcohol or drugs; police traffic services; emergency medical services; and other areas.

Objectives

The objective of this award is to design, implement and operate a Highway Traffic Safety Intern Program for selected graduate students. This program shall act as an incentive for students to consider careers in highway traffic safety. By completing this program, students will have developed practical experiences in this area and will be in a position to integrate the benefits of highway safety in their future private or public sector careers.

Specific Tasks

To receive this award, the applicant shall agree to complete the Specific Tasks outlined below:

1. Work with NHTSA to design a Highway Traffic Safety Intern program for selected graduate students. The design should encourage the development of well-trained, entry level professionals in the highway traffic safety field, for careers in the public and private sectors. The design should also include techniques on how graduate students might use motivating factors to encourage young people (15 to 24) in high risk populations to adopt positive traffic safety behaviors as components of healthy lifestyles. These factors should include ideas that young people can use to help spread the benefits of traffic safety among their peers.

2. Develop, in draft, specific program tasks descriptions and individual project assignments for students, and include the period of time for each assignment. The institution and NHTSA shall refine these descriptions after this project is awarded.

3. Develop criteria for selecting graduate student candidates, and identify and nominate appropriate graduate candidates based upon requirements of each project assignment.

4. Develop a schedule of student activities at both the institution's site and at NHTSA's offices in Washington, DC. While this program's primary focus is on occupant protection, the schedule shall reflect student participation and assignments that include other traffic safety concerns. Up to three students can participate in this internship each year. Each of the students shall be assigned to NHTSA on a rotating basis, and the time period for each assignment should be four to six months. Students may be assigned to various NHTSA units, working in areas such as pedestrian, bicycle and motorcycle safety; driving while not under the influence of alcohol or drugs; police traffic services; emergency medical services, or other areas. The travel section of the schedule should include attendance at the national Lifesavers conference by one or more of the students. The Lifesavers conference is sponsored by highway safety associations, the National Transportation Safety Board, and NHTSA, and attracts about 1300 safety professionals each year.

5. Provide supervision and academic advice and credit to selected graduate candidates, consistent with institution policy.

6. Provide appropriate space and facilities for participating students and institution staff involved in approved tasks and projects.

7. Contribute in-kind resources, valued at a minimum of $10,000 per year, in support of this effort.

8. Meet periodically with the NHTSA staff to promote the exchange of information so as to assure coordination of the program and related tasks and projects.

Deliverables

A final list of required deliverables will be developed in accordance with the accepted application prior to award. For planning purposes, the agency anticipates that the required deliverables will include the following:

Deliverables	Due date after award	Total number of copies
1. Quarterly Progress Reports	Quarterly	4
2. Student Selection Criteria	30	4
3. Listing of student schedules, tasks descriptions, individual project assignments.	30	4
4. Listing of candidates	30	4
5. Listing of candidates nominated for participation	30	4
6. Signed statements of agreement	55	4
7. Statements summarizing meetings between the institution and NHTSA.	Submit with monthly report	4
8. Drafts: Technical Summary and Final Report (see NHTSA Form HS 321, for Technical Summary format).	360	4
9. Institution submits Technical Summary and Final Report (60 days after termination).	420	Four (4) camera ready and six (6) reproducible copies.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement, an organization must meet the following requirements:

- Be a four-year institution in the United States, fully accredited by one of the institutional or professional accrediting associations;
- Offer graduate level programs in transportation safety, public health, medicine, nursing, or course work in related fields;
- Demonstrate an understanding of the current and potential role of the graduate student participation in occupant protection programs; and
- Demonstrate a commitment to obligate faculty, administrative, and other resources needed to effectively manage this program.

NHTSA's Role

NHTSA's Office of Occupant Protection (OOP) will be involved in all activities undertaken as part of this cooperative agreement program and will:

1. Provide a project officer to participate in the planning and management of the cooperative agreement, and coordinate activities between the institution and OOP;

2. Provide funding in an amount not to exceed $45,000 per year, to partially reimburse the grantee for the costs incurred in the performance of their efforts under this procurement. NHTSA used the following budget categories for this program: student and graduate assistant stipends; faculty and student travel; faculty support; student travel and per diem expenses; administration; and overhead. The Government reserves the right to extend the Period of

Performance for an additional twenty-four (24) months, subject to the availability of funds.

3. Work with the institution to identify the projects and their requirements concerning the student work experiences; and arrange for the participation of other Federal agencies;

4. Work with the institution to provide broad project description(s) for each student project.

5. Work with the institution's Project Officer, to complete specific task descriptions.

6. Review the qualifications of graduate students nominated by the institution, based upon the requirements of each project and task descriptions. Provide technical direction to those students mutually selected to perform the work requirements.

7. Coordinate meetings with other government and private agencies as appropriate and provide the institution with information and technical assistance from these sources.

8. Arrange for the following planning meetings with the institution's Project Officer and NHSTA staff: Pre Summer Session Meetings; Pre and Post Graduate Assignment Meetings; and Evaluation Meetings after each assignments.

9. As appropriate, provide necessary office space and support facilities when participating students are assigned at NHTSA's offices in Washington, D.C.

10. Notify the grantee in a timely fashion of any cancellation of projects or tasks.

Evaluation Criteria and Review Process

Submissions must demonstrate that the applicant meets all eligibility requirements listed above. Applications will be evaluated based upon the following factors which are listed in descending order of importance, except that factors 2 and 3 are equal, and factors 4 and 5 are equal:

1. Understanding the General and Specific Requirements and soundness of approach as shown by the applicant's technical proposal. For example, does the applicant:

- Present a workable plan that is innovative and creative, one designed to encourage graduate students promote traffic safety programs;
- Clearly indicate an understanding of the tasks and the problems of this project;
- Represent the manner in which each task can be satisfactorily accomplished;
- Present logical and reasonable solutions that will meet stated project objectives; and
- Does the applicant propose a unique or novel solution superior to the Government's request?

2. Qualifications of personnel to be assigned and person-hours to be spent on the proposed work. For example:

- Do personnel assigned possess the experience, education, background and record of past accomplishments appropriate to the General and Specific Requirements;
- Does the application require substantial requirement of top-level personnel from outside the firm, causing a detriment to operations; and
- Does the application indicate that the applicant depends upon subcontractor support, and if so, are such plans reasonable?

3. Application's completeness and thoroughness in compliance with the General and Specific Requirements, and other RFP requirements. For example:

- Is the application's organization and content in accordance with instructions; are all data germane to the RFP;
- Does the application identify, describe and consider thoroughly each element of the Scope of Work;
- Does the proposer place proper emphasis on the more difficult requirements; and
- Is the application presented in a clear and exact manner?

4. Commitment to complete the Specific Tasks, the Deliverables schedule and meet the other Terms and Conditions. For example:

- Does the application contain a work schedule that includes the accomplishment of each task;
- Proposed work schedule indicates realistically, the satisfactory accomplishment of the task in accordance with the time specified; and
- Does the application indicate that the applicant is willing to commit itself to this program's Objectives, and the requirements of the Specific Tasks statements:

5. Type of organization, past performance and responsibility of applicant in similar projects or activities. For example:

- Has the applicant had previous experience in performing on Government contracts of this type; and
- Has the applicant showed satisfactory performance in contracts on similar type projects, either for the Government or for others?

Upon receipt of applications by the agency, they will be screened to assure that all eligibility requirements have been met. Applications will be reviewed by NHTSA staff using the criteria outlined above, and the results will be the basis of recommendations to NHTSA management for an award.

Terms and Conditions

Contingent on the availability of funds, satisfactory performance, and continued demonstrated need, this cooperative agreement may be awarded for a project period of up to three (3) years. The application for the initial funding period (12 months) should address what is proposed and can be accomplished during the initial 12 month period. The application for the initial period should not include any continuation information, but should cover only the first 12 months of effort. To obtain funding after the initial 12-month period, a continuation application and approval will be required for any subsequent year. Continuation applications will not be subjected to competitive review, but must demonstrate that the continuation effort will effectively and efficiently fulfill program objectives.

Anticipated funding level for the FY 93 cooperative agreement is $45,000.00. Subsequent years may be funded pending the availability of funds, demonstrated need and satisfactory performance. Federal funds should be viewed as seed money to assist organizations in the development of traffic safety initiatives. Monies allocated in this cooperative agreement are not intended to cover all of the costs that will be incurred in completing the project. Applicants should demonstrate a commitment of financial and in-kind resources to the support of the proposed project.

The organization participating in this cooperative agreement program may use the funds awarded to support salaries of individuals assigned to the project, the development or purchase of direct program materials, direct program-related activities, or for travel related to the cooperative agreement.

The recipient of this award will be required to submit quarterly progress reports in a format to be determined after award; the schedule in the Deliverables section shall be revised as needed. In addition, the recipient will be required to submit a Technical Summary and Final Report describing the project and its outcomes no later than sixty (60) days after the termination of this project.

Application Procedure

1. All applications must be "covered" by a signed copy of OMB Standard Form 424 (revised 4/88, including 424A and 424B) "Application for Federal Assistance" with the required information filled in and the certified assurances included. This form is available from: NHTSA, Office of

Contracts and Procurement (NAD–30), 400 Seventh Street SW, Washington, DC 20590, (202 366–0607).

2. Applications shall include a program narrative statement which addresses the following:

Goals and Objectives

Identifies the results and benefits to be derived. States the principle and subordinate objectives of the project. Supporting documentation from concerned interests other than the applicant may be used. Any relevant data should be included or footnoted.

Approach

Outlines a plan of action pertaining to the scope and detail on how the proposed work will be accomplished. Includes the reasons for taking this approach as opposed to other approaches. Describes any unusual features, such as design or technological innovations, extraordinary academic involvement, etc. Provides quantitative projections of the accomplishments to be achieved, if possible, or lists the activities in chronological order to show the schedule of accomplishments and their target dates. Identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate results. Explains the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. Lists each organization, corporation, consultant, or other individual who will work on the project, along with a short description of the nature of their effort or contribution and relevant experience.

3. Format. Applications must be typed on one side of the page only. The original and two copies of each application must be submitted. An applicant may submit an additional four copies to facilitate the review process, but there is no requirement or obligation to do so.

Administration of the Cooperative Agreement

During the effective period of the cooperative agreement awarded as a result of this notice, the agreements shall be subject to general administrative requirements of OMB Circular A–110 (or the "common rule," if effected prior to the award), the cost principles of OMB Circular A–21 or A–22, as applicable to the recipient, and the provisions of 49 CFR, Part 29, Government-wide Debarment and Suspension (nonprocurement).

Issued on: June 22, 1993.

Robert M. Nicholson,

Acting Associate Administrator, Traffic Safety Programs.

[FR Doc. 93–15118 Filed 6–25–93; 8:45 am]

BILLING CODE 4910–59–M

Maritime Administration

Approval of Applicant as Trustee

Notice is hereby given that Ameritrust Texas N.A., with offices at 5599 San Felipe, P.O. Box 3285, Houston, Texas 77253, has been approved as Trustee pursuant to Public Law 100–710 and 46 CFR part 221.

Dated: June 22, 1993.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 93–15139 Filed 6–25–93; 8:45 am]

BILLING CODE 4910–81–M

Change of Name of Approved Trustee

Notice is hereby given that effective July 13, 1992, Ameritrust Company, N.A., with offices at 127 Public Square, Cleveland, Ohio 44114–1306, changed its name to Society National Bank.

Dated: June 22, 1993.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 93–15138 Filed 6–25–93; 8:45 am]

BILLING CODE 4910–81–M

Discretionary Cooperative Agreement To Support the Development of Traffic Safety Materials for State/Local Officials

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of a discretionary cooperative agreement to support the development of traffic safety materials for State/local government officials.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the availability of a FY 1993 discretionary cooperative agreement to support the development and focus testing of education and awareness materials for State/local government officials who are responsible for policy decisions in fields where traffic safety concerns are a priority, such as transportation, health and education. The materials will be designed to inform State/local government officials of the cost of motor vehicle crashes and offer strategies to reduce traffic deaths and injuries and their related costs. This notice solicits applications from national non-profit governmental organizations interested in developing and implementing this project.

DATES: Applications must be received at the office designated below on or before 4 p.m., August 13, 1993.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, SW., room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–93–Y–05387. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Rose Watson, Office of Contracts and Procurement, at (202) 366–9557. Programmatic questions should be directed to Ms. Susan Gorcowski, Chief, National Organizations Division (NTS–11), NHTSA, room 5118, 400 7th Street, SW., Washington, DC 20590, (202) 368–2712.

SUPPLEMENTARY INFORMATION:

Background

The National Highway Traffic Safety Administration (NHTSA) designs strategies to reduce motor vehicle-related fatalities and injuries. One approach includes the development of awareness and educational materials for public and private sector organizations on the benefits of using occupant restraints and child safety seats in motor vehicles. NHTSA also promotes the passage and enforcement of laws requiring the use of these devices.

Occupant protection systems have proven to be effective at reducing fatalities and serious injuries. In 1990, a survey in 19 U.S. cities indicated a 49 percent belt use rate and a 64 percent child safety seat use rate. During 1990, safety belts saved about 4,800 lives and child restraints saved 222 lives. Had the use of safety belts and child restraints been universal during 1990, an additional 10,000 adult and 250 child lives could have been saved.

In early 1991, NHTSA initiated the National "70% by '92" Campaign, modeled after successful programs in Canada and limited demonstrations in the United States. One component, Operation Buckle Down (OBD), encouraged top level law enforcement personnel to integrate high levels of occupant protection enforcement into

their regular operations. In another component, State and local police promoted public awareness of safety belt and child passenger safety laws for the several weeks surrounding summer holidays. These holiday enforcement activities included press conferences and news events which underscored the importance of using occupant protection systems. In Less than two years, seat belt use rates increased to an all time high of 62 percent, the greatest single increase since the majority of seat belt use laws were passed.

A significant portion of the public does not perceive the failure to use seat belts to be as critical as other "high priority" societal problems, such as rising health care costs, economic decline, and crime. Similarly, many public officials may not recognize the civic benefits of belt use in reducing medical and rehabilitation costs. Successful traffic safety programs have shown that without the support of State/local leaders, it is difficult to get relevant policies and programs enacted, implemented or enforced. As successful as the "70% by 92" campaign was, only 2,000 police jurisdictions—out of approximately 20,000—participated. The number could be dramatically increased in State/local officials understood the cost implications of traffic crashes on the budgets. The estimated $137 billion that traffic crashes cost society annually translates into significant expenditures by State/local governments for: liability claims and coverage; social and emergency medical services; health care programs; and welfare and income support. Increasing the national belt use rate to at least 75 percent by 1996 would reduce national fatalities by 1,850 each year. An additional annual reduction of 1,850 fatalities could be achieved by reducing alcohol involvement in crashed from 46 to 43 percent.

Objective

To develop and focus-test education and awareness materials designed to inform State/local officials of the cost of motor vehicle crashes to their community and offer strategies to reduce traffic deaths and injuries and their related costs. Anticipated outcomes are: (1) An increase in the use of safety belts, child safety seats and other occupant protection devices; and (2) a reduction in alcohol involvement in crashes.

Specific Tasks

The recipient shall, at a minimum, perform the following tasks:

1. Develop educational and awareness materials on the cost of motor vehicle crashes to communities. The materials will include relevant cost data of interest to State/local officials in their understanding of the significance of traffic safety problems. The materials will also include strategies to address the community problems. The materials can include videos, handouts, slide presentations, worksheets, overheads, brochures, sample articles for newsletters, and other items. The recipient will use resource data prepared by NHTSA and other organizations on the societal cost of motor vehicle crashes, cost of injury to employers, benefits of belt use and belt use laws, etc. All drafts shall be reviewed and approved by NHTSA.

2. Produce a "how-to" guide to assist State/local elected/appointed officials to conduct policy forums using the materials prepared for this project. The guide will provide information which State/local officials can use to conduct forums on the cost data applicable to State/local governments, recommendations on how to implement programs to increase the understanding of traffic safety problems, and strategies for addressing these community problems. The "how-to" guide shall be reviewed and approved by NHTSA.

3. Through agreements established with five organizational State/local chapters/affiliates (in five different States), arrange for the conduct of community meetings to "focus test" the materials developed for this project. As a facet of this task, the recipient shall obtain statements from each chapter/affiliate that include (i) a project plan to tract and assess how the materials are to be focus-tested and used; (ii) a budget plan estimating costs for labor, material, etc., including proposed cost-sharing; (iii) a staffing plan, including resumes; and (iv) documentation that the project plan has been coordinated with Governor's Highway Safety Office.

4. Schedule and conduct meetings in the five State/local chapter/affiliate locations selected to focus test the materials developed for this project and prepare a special report on these meetings. Revise materials based upon focus test results.

5. Attend a national conference to enhance the recipient's awareness of current traffic safety technology and programs.

6. Support a project exhibit at the Lifesavers conference. This three-day conference is usually held in the Spring. It is sponsored by highway safety associations, the National Transportation Safety Board, and NHTSA, and attracts about 1,300 highway safety professionals each year. The location of the next conference has not been selected.

7. Prepare and submit quarterly and final performance reports in formats to be determined after award. The final performance report shall at a minimum include a description of the project, an evaluation of the results, and a presentation of the conclusions and recommendations.

Milestones/Deliverables

A final list of milestones/required deliverables will be developed to coincide with the accepted application prior to award. For planning purposes, NHTSA anticipates that the milestones/required deliverables will include the following:

Milestones/deliverables	Date
1. Enter into agreements with affiliates in five States.	3 months after award.
2. Develop educational and awareness materials.	5 months after award.
3. Produce a how-to guide to conduct State/local policy forums.	6 months after award.
4. Convene meetings to focus test materials in five States.	7–10 months after award.
5. Submit special report on the five focus test meetings.	12 months after award.
6. Revise materials based on focus tests results.	14 months after award.
7. Submit periodic performance reports.	Quarterly.
8. Submit final performance report.	16 months after award.

NHTSA Involvement

NHTSA, Office of Occupant Protection, will be involved in all activities undertaken as part of this cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the cooperative agreement and coordinate activities between the organization and NHTSA.

2. Work with the organization to identify chapter/affiliates located in five States with which agreements will be established to arrange for the conduct of community meetings to "focus test" the materials developed for this project.

3. Provide information and technical assistance from Federal government sources, within available resources and as determined appropriate by the COTR.

4. Provide liaison with other government/private agencies as appropriate.

Period of Support

The period of support for this cooperative agreement is sixteen (16) months and the anticipated funding level is $99,000. Federal funds should be viewed as seed money to assist organizations in the development of ongoing traffic safety initiatives. Monies allocated to this cooperative agreement are not intended to cover all of the costs that will be incurred in completing the project. Applicants should demonstrate a commitment of financial or in-kind resources to the support of this project.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement, an organization must meet the following requirements:

1. Be a national non-profit organization;

2. Have an established membership structure with State/local chapters or affiliates; and

3. Have a membership consisting exclusively, or in large part, of State/local elected or appointed government officials.

Application Procedures

Each applicant must submit one original and two copies of their application package to: NHTSA, Office of Contracts and Procurement (NAD–30), Attn: Rose Watson, 400 7th Street SW., room 5301, Washington, DC 20590. Submission of four additional copies will expedite processing, but is not required. Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–93–Y–05387. Only complete applications received on or before August 13, 1993, shall be considered.

Application Contents

1. The application package must be submitted with OMB Standard Form 424 (revised 4–88, including 424A and 424B), Applications for Federal Assistance, with the required information filled in and the certified assurances included. While the Form 424–A deals with budget information, and Section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort. Anticipated funding support to be made available to State/local chapters/affiliates should be indicated.

2. Applications shall include a program narrative statement that addresses the following:

a. Identifies: (i) The organizational membership and purposes; (ii) the past and present organizational experience in similar or related projects involving traffic safety; (iii) the organizational communication mechanisms, such as national/State conventions, monthly/annual training or policy meetings; and (iv) the relationship of the national organization to State/local elected or appointed government policy/decision-making officials and the importance of that relationship to this project. States the principal objectives of the project, as well as anticipated results and benefits. Supporting documentation from concerned interests other than the applicant can be used. Any relevant data should be included or footnoted.

b. Approach:

(1) Outlines a plan of action pertaining to the scope and detail on how the proposed work will be accomplished. The plan will include, but not be limited to: (i) The rationale to be used to identify and select the five State/local chapters/affiliates to participate in this project; (ii) the methods to be used to assess and address the needs of State/local government officials in the development of the awareness materials and "how to" guide; and (iii) the strategy to be used to determine the means of conveying complex cost/data information to State/local government officials which effectively promotes understanding and a proactive response. Includes the reasons for taking this approach as opposed to other approaches.

(2) Provides quantitative projections, if possible, of the accomplishments to be achieved or lists the planned schedule of activities in chronological order.

(3) Identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate results. Explains the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

(4) Lists each organization, corporation, consultant, or other individual who will work on the project, along with a short description of the nature of their effort or contribution, and relevant experience.

Evaluation Criteria and Review Process

Initially, all applications will be reviewed to confirm that the applicant is eligible to participate and that the application contains all of the information required by the Applications Contents section of this notice.

Each complete application from those who are eligible will then be evaluated by an Evaluation Committee. The applications will be evaluated based upon the following factors which are listed in descending order of importance:

1. What the applicant proposes to accomplish and the potential of the proposed project to make a significant contribution to local and national efforts to achieve increased safety belt use, proper child safety seat use, awareness of automatic crash protection systems, driving while not under the influence of alcohol or drugs, and reductions in the costs of motor vehicle crashes.

2. The soundness and feasibility of the proposed approach and the extent to which the applicant's proposed project addresses the needs of State/local government officials.

3. How the organization will provide the administrative capability and staff expertise required to successfully complete the proposed project.

4. The proposed coordination with and use of other available organizational resources, including other sources of financial support.

5. The past and present organizational experience in the performance of similar projects and the effectiveness of organizational communications mechanisms.

Terms and Conditions of the Award

1. Prior to award, the recipient must comply with the certification requirements of 49 CFR part 20—Department of Transportation New Restrictions on Lobbying, if applicable, and 49 CFR part 29—Department of Transportation Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

2. During the effective period of the cooperative agreement awarded as a result of this notice, the agreement shall be subject to the general administrative requirements of OMB Circular A–110, the cost principles of OMB Circular A–122, and the requirements of 49 CFR part 20, if applicable, and 49 CFR part 29.

Issued on: June 22, 1993.

Robert M. Nicholson,

Acting Associate Administrator for Traffic Safety Programs.

[FR Doc. 93–15128 Filed 6–25–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 21, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0803
Form Number: IRS Form 5074
Type of Review: Extension
Title: Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands (CNMI)
Description: This form is used by U.S. citizens or residents as an attachment to Form 1040 when they have $50,000 income from U.S. sources and $5,000 from Guam or Northern Mariana Islands. The data is used by IRS to allocate income tax due to Guam or CNMI as required by 26 U.S.C. 7654.
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers: 50
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hours, 57 minutes
Learning about the law or the form—5 minutes
Preparing the form—42 minutes
Copying, assembling, and sending the form to the IRS—17 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 202 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93–15114 Filed 6–25–93; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Environmental Hazards; Meetings

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held on Monday, July 12, 1993, in room 946, on Tuesday, July 13, 1993, in room 534, and on July 14, 1993, in room 946, 801 I Street, NW., Washington, DC 20004. The meetings will convene at 9 a.m. and adjourn at 5 p.m.

The purpose of the meetings is to review information relating to activities during which significant numbers of veterans were exposed to ionizing radiation before January 1, 1970 (this includes activities other than participation in an atmospheric nuclear test or service with the occupation forces of Hiroshima, or Nagasaki, Japan.)

The meeting is open to the public to the capacity of the room. For those wishing to attend, contact Mrs. Leney Holohan, Department of Veterans Affairs Central Office (026B), 810 Vermont Avenue, NW., Washington, DC 20420, phone (202) 523–3911, prior to July 1, 1993.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Deputy Assistant General Counsel (026B), Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: June 17, 1993.

Heyward Bannister,
Committee Management Officer.
[FR Doc. 93–15166 Filed 6–25–93; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 122
Monday, June 28, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the July 8, 1993 regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Thursday, July 15, 1993. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: June 24, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–15316 Filed 6–24–93; 3:23 pm]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on June 8, 1993 (58 FR 32171) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for June 10, 1993. This notice is to amend the agenda to add an item to the open session of that meeting.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. The agenda for June 10, 1993, is amended by adding the following item to the open session:

Open Session

B. New Business

2. Other

c. Policy Statement on Regulatory Burden.

Dated: June 24, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–15317 Filed 6–24–93; 3:23 pm]

BILLING CODE 6705–01–P

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), U.S.C. 552b:

DATE AND TIME: June 30, 1993, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 982nd Meeting—June 30, 1993, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 4055–017, Vernon F. Ravenscroft

CAH–2.
Project No. 8864–008, Weyerhaeuser Company

CAH–3
Project No. 3407–042, Magic Reservoir Hydroelectric, Inc.

CAH–4
Project No. 6287–007, Rainsong Company

CAH–5.
Project No. 10177–005, Town of West Stockbridge, Massachusetts

CAH–6.
Docket Nos. HB08–93A–75–001 and 76–001, Virginia Electric and Power Company

CAH–7.
Project No. 2494–005, Puget Sound Power & Light company

CAH–8.
Docket No. RM90–3–002, California Save Our Streams Council

CAH–9.
Project Nos. 2916–006 and 010, East Bay Municipal Utility District

CAH–10.
Project No. 8185–014, Bluestone Energy Design, Inc.

CAH–11.
Docket Nos: 9085–013 and 014, Richard Balagur

Consent Agenda—Electric

CAE–1.
Docket No. ER93–160–000, Puget Sound Power & Light Company

CAE–2.
Docket Nos. ER92–668–001 and EC92–20–001, Northern Electric Power Company, L.P.

CAE–3.
Docket No. ER93–295–001, Kentucky Power Company and Ohio Power Company

CAE–4.
Docket No. ER93–200–001, Appalachian Power Company

CAE–5.
Docket Nos. ER93–224–000 and 001, Public Service Company of New Hampshire

CAE–6.
Docket No. ER89–48–002, Southern Company Services, Inc.

CAE–7.
Omitted

CAE–8.
Docket No. EL93–1–001, Kramer Junction Company, Harper Lake Company VIII and HLC IX Company

CAE–9.
Docket No. EL91–30–001, Municipal Resale Service Customers v. Ohio Power Company

CAE–10.
Docket No. FA88–62–002, Wisconsin Electric Power Company

CAE–11.
Docket No. EG93–52–000, InterAmerican Energy Leasing Company

CAE–12.
Docket No. AC93–136–000, Oregon Trail Electric Consumers Cooperative, Inc.

CAE–13.
Docket No. ER93–401–000, Montaup Electric Company

CAE–14.
Docket Nos. ER93–96–000 and EL93–11–000, Delmarva Power & Light Company

CAE–15.
Docket Nos. ER93–85–000 and EL93–7–000, Connecticut Yankee Atomic Power Company

CAE–16.
Docket Nos. EL93–26–000 and QF84–433–002, Mesquite Lake Associates, Ltd.

CAE–17.
Omitted

CAE–18.
Docket No. ER93–413–001, Pacific Gas & Electric Company

Consent Agenda—Oil and Gas

CAG–1.
Docket No. RP93–136–000, Transcontinental Gas Pipe Line Corporation
CAG–2.
Docket No. RP93–124–000, Texas Eastern Transmission Corporation
CAG–3.
Omitted
CAG–4.
Docket No. RP93–118–000, Viking Gas Transmission Company
CAG–5.
Docket No. RP93–126–000, Algonquin Gas Transmission Company
CAG–6.
Docket No. RP93–134–000, Algonquin Gas Transmission Company
CAG–7.
Docket No. RP93–122–000, Texas Eastern Transmission Corporation
CAG–8.
Docket No. RP93–125–000, Texas Eastern Transmission Corporation
CAG–9.
Omitted
CAG–10.
Docket No. RP93–129–000, Florida Gas Transmission Company
CAG–11.
Docket No. RP93–132–000, Tennessee Gas Pipeline Company
CAG–12.
Omitted
CAG–13.
Docket Nos. TQ93–5–22–000 and RP93–133–000, CNG Transmission Corporation
CAG–14.
Docket Nos. RP93–127–000 and RP93–102–001, Columbia Gas Transmission Company
CAG–15.
Docket Nos. RP93–53–005, 006 and RP93–110–001, Carnegie Natural Gas Company
CAG–16.
Docket Nos. RP92–237–009 and RS92–27–004, Alabama-Tennessee Natural Gas Company
CAG–17.
Docket No. RP93–130–000, Trunkline Gas Company
CAG–18.
Docket No. RP93–5–012, Northwest Pipeline Corporation
CAG–19.
Docket Nos. RP91–203–031, RS92–23–011 and RP92–132–032, Tennessee Gas Pipeline Company
CAG–20.
Docket Nos. RP92–202–001 and 002, Tennessee Gas Pipeline Company
CAG–21.
Docket No. RP93–4–008, Mississippi River Transmission Corporation
CAG–22.
Docket No. RP88–44–044, El Paso Natural Gas Company
CAG–23.
Docket No. RP93–99–001, Colorado Interstate Gas Commission
CAG–24.
Docket No. OR89–2–002, Trans Alaska Pipeline System
Docket No. IS89–7–003, Amerada Hess Pipeline Corporation
Docket No. IS89–8–003, ARCO Transportation Alaska, Inc.
Docket No. IS89–9–003, BP Pipeline (Alaska), Inc.
Docket No. IS89–10–003, Exxon Pipeline Company
Docket No. IS89–11–003, Mobil Alaska Pipeline Company
Docket No. IS89–12–003, Phillips Alaska Pipeline Corporation
Docket No. IS89–13–003, Unocal Pipeline Company
CAG–25.
Docket Nos. RP85–209–000, RP86–246–000, CP87–524–000, CP88–6–000, CP88–329–000, CP88–440–000, CP88–478–000, IN86–5–000, RP84–42–000, RP84–424–000, RP86–93–000, RP86–158–000, RP87–34–000, RP88–8–000, RP88–27–000, RP88–92–000, RP88–263–000, RP88–264–000, RP88–265–000, RP89–138–000, RP90–91–000, RP91–198–000 and TC88–6–000, United Gas Pipe Line Company
CAG–26.
Docket Nos. RP92–137–008 and RP92–108–003, Transcontinental Gas Pipe Line Corporation
CAG–27.
Docket Nos. RP89–160–015 and RP89–114–009, Trunkline Gas Company
CAG–28.
Docket Nos. TM90–3–42–005, 006, RP90–49–003, CP88–99–014, TM90–5–42–002, 003, RP86–126–007 and RP90–43–002, Transwestern Pipeline Company
CAG–29.
Docket No. RM87–34–067, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (In re: Tennessee Gas Pipeline Company)
Docket Nos. TA91–1–21–003 and TM91–8–21–003, Columbia Gas Transmission Corporation
Docket No. RM85–1–184, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol
Docket No. CP87–115–004, Tennessee Gas Pipeline Company
CAG–30.
Docket No. AC92–22–001, CNG Transmission Corporation
CAG–31.
Docket Nos. RP91–68–016, 015, 012, RP92–161–000, 002, 003, CP79–492–050 and 051, Penn-York Energy Corporation
CAG–31.
Docket Nos. IS90–30–000, IS92–24–000, IS92–25–000, IS92–36–000, IS93–20–000 and OR92–3–000, Amoco Pipeline Company
CAG–33.
Docket No. RP93–8–000, Bridgeline Gas Distribution Company
CAG–34.
Docket No. RM91–8–002, Qualifying Certain NGPA Section 107 Gas for Tax Credit
CAG–35.
Docket No. GP93–5–000, Railroad Commission of Texas, Texas-81, Spraberry Formation, JD93–00008T
CAG–36.
Docket Nos. RS92–60–015, RP88–44–042, RP89–189–005, RP91–188–000, RP92–214–000, CP89–1540–005, CP90–2214–005, CP92–446–001, CP92–511–001, CP93–180–002, RP93–19–001 and CI93–8–001, El Paso Natural Gas Company
CAG–37.
Docket No. RS92–87–016, Transwestern Pipeline Company
CAG–38.
Docket Nos. RS92–16–002, RP91–187–010 and CP91–2448–004, Florida Gas Transmission Company
CAG–39.
Docket Nos. RS92–13–002, CP92–487–041, RP86–10–021, RP89–34–007, RP92–163–005, RP92–170–005 and RP92–236–003, Williston Basin Interstate Pipeline Company
CAG–40.
Docket Nos. RS92–43–002 and RP93–4–009, Mississippi Basin Interstate Pipeline Company
CAG–41.
Docket No. CP89–710–010, Transcontinental Gas Pipe Line Corporation
Docket No. CP88–171–028, Tennessee Gas Pipeline Company
CAG–42.
Docket Nos. CP93–118–001, CP93–132–001, CP93–133–001, CP93–135–001, CP93–142–001, CP93–143–001, CP93–144–001 and CP93–174–001, High Island Offshore System
CAG–43.
Docket No. CP87–312–008, Texas Eastern Transmission Corporation
CAG–44. Omitted
CAG–45. Omitted
CAG–46.
Docket No. CP92–6–008, Southern Natural Gas Company and South Georgia Natural Gas Company
Docket No. CP92–311–006, Southern Natural Gas Company
CAG–47.
Docket No. CP92–142–001, CNG Transmission Corporation
Docket No. CP92–165–001, Texas Eastern Transmission Corporation
CAG–48.
Docket Nos. CP92–184–000, 001 and 002, Texas Eastern Transmission Corporation
Docket Nos. CP92–185–000, 001 and 002, Algonquin Gas Transmission Company
CAG–49.
Docket Nos. CP90–316–004 and CP90–317–003, Empire State Pipeline
CAG–50.
Docket No. CP89–892–005, Great Lakes Gas Transmission Limited Partnership
CAG–51.
Docket No. RM93–16–001, Revisions to the Regulations Governing Natural Gas Pipelines
CAG–52.
Docket No. CP92–459–000, Texas Eastern Transmission Corporation
Docket No. CP92–460–000, Trunkline Gas Company
CAG–53.
Docket No. CP93–247–000, Southern Natural Gas Company
CAG–54.
Docket No. CP93–95–000, Amoco Production Company and United Gas Pipe Line Company
CAG–55.

Docket No. CP93–325–000, Granite State Gas Transmission, Inc.

CAG–56.
Omitted

CAG–57.
Docket No. CP93–186–000, Blue Ridge Pipeline Company
Docket No. CP93–187–000, Transcontinental Gas Pipe Line Corporation

CAG–58.
Docket No. CP93–254–000, Ormat Inc.

CAG–59.
Docket Nos. CP92–406–000 and 001, Michigan Consolidated Gas Company

CAG–60.
Omitted

CAG–61.
Docket No. CP92–668–001, Southern Natural Gas Company and South Georgia Natural Gas Company

CAG–62.
Docket Nos. RP85–39–010 and 011, Wyoming Interstate Company, Ltd.

CAG–63.
Docket Nos. RS92–86–004, RP92–108–006 and RP92–137–016, Transcontinental Gas Pipe Line Corporation

CAG–64.
Docket No. RP93–6–009, Paiute Pipeline Company

Hydro Agenda

H–1.
Omitted

Electric Agenda

E–1.
Docket Nos. EC92–21–000 and ER92–806–001, Entergy Services, Inc. and Gulf States Utilities Company. Order on rehearing of order on proposed merger.

E–2.
Docket No. EC93–6–000, Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI). Order on proposed merger.

E–3.
Omitted

E–4.
Docket No. RM93–19–000, Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act. Request for comments on pricing policy for transmission by public utilities.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Docket No. RM93–11–000, Revisions to Oil Pipeline Regulations Pursuant to Energy Policy Act of 1992. Notice of Proposed Rulemaking.

II. Restructuring Matters

RS–1.
Docket No. RS92–26–000, United Gas Pipe Line Company. Order on compliance.

RS–2.
Docket Nos. RS92–46–000 and 002, Pacific Gas Transmission Company. Order on compliance.

RS–3.
Omitted

RS–4.
Docket Nos. RS92–78–001 and 002, Sabine Pipeline Company. Order on compliance.

RS–5.
Docket No. RS92–35–000, Gas Transport, Inc. Order on compliance.

RS–6.
Docket No. RS92–57–000, Canyon Creek Compression Company, Order on compliance.

RS–7.
Docket No. RS92–63–000, Great Lakes Gas Transmission Limited Partnership. Order on compliance.

RS–8.
Docket Nos. RS92–22–005, 006 and 008, Panhandle Eastern Pipe Line Company. Order on compliance and rehearing.

RS–9.
Docket Nos. RS92–23–008, RP91–203–027 and RS92–132–009, Tennessee Gas Pipeline Company. Order on compliance and rehearing.

RS–10.
Docket Nos. RS92–65–001 and 002, Kern River Gas Transmission Company. Order on compliance filing.

RS–11.
Docket Nos. RS92–66–001 and 002, Mojave Pipeline Company. Order on compliance.

III. Pipeline Certificate Matters

PC–1.
Reserved

Dated: June 23, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15328 Filed 6–24–93; 3:40 pm]

BILLING CODE 6717–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, July 2, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 24, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–15343 Filed 6–24–93; 3:59 pm]

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June 28, 1993

Part II

Department of Health and Human Services

Administration for Children and Families

Developmental Disabilities: Availability of Financial Assistance; Notice

VOL 58 ISS 122 JE 28 1993 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93631–92–03]

Developmental Disabilities: Availability of Financial Assistance for Projects of National Significance for Fiscal Year 1993

AGENCY: Administration on Developmental Disabilities (ADD), Administration for Children and Families (ACF).

ACTION: Announcement of availability of financial assistance for Projects of National Significance for Fiscal Year 1993.

SUMMARY: The Administration on Developmental Disabilities, Administration for Children and Families, announces that applications are being accepted for funding of Fiscal Year 1993 Projects of National Significance.

This program announcement consists of five parts. Part I, the Introduction, discusses the goals and objectives of ACF and ADD. Part II provides the necessary background information on ADD for applicants. Part III describes the review process. Part IV describes the priorities under which ADD solicits applications for Fiscal Year 1993 funding of projects. Part V describes in detail how to prepare and submit an application. All of the forms and instructions necessary to submit an application are published as part of this announcement following Part V.

No separate application kit is either necessary or available for submitting an application. If you have a copy of this announcement, you have all the information and forms required to submit an application.

Grants will be awarded under this program announcement subject to the availability of funds for support of these activities.

DATES: Closing date for submittal of applications under this announcement is August 12, 1993.

ADDRESSES: Applications should be sent to: Department of Health and Human Services, ACF/Division of Discretionary Grants, 200 Independence Avenue, S.W., Room 341–F, Washington, D.C. 20201, Attn: 93.631 ADD—Projects of National Significance.

FOR FURTHER INFORMATION CONTACT: Kay Smith, Program Development Division, Administration on Developmental Disabilities, (202) 690–5984.

SUPPLEMENTARY INFORMATION:

Part I. Introduction

A. Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is located within the Administration for Children and Families (ACF), Department of Health and Human Services (DHHS). Although different from the other ACF program administrations in the specific populations it serves, ADD shares a common set of goals:

- To create and stimulate self-sufficiency in our target populations;
- To promote parental responsibility for their children financially as well as for their social, emotional, physical and cognitive development;
- To encourage the integration of services among specialized service providers to eliminate fragmentation, reduce duplication and improve the impact of ACF services on children and families.
- Emphasis on these goals and progress toward them will help more persons with developmental disabilities to live productive and independent lives integrated into communities. It is through the Projects of National Significance Program that ADD attempts to promote the achievement of these goals.

B. Purpose of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is the lead agency within ACF and DHHS responsible for planning and administering programs which promote the self-sufficiency and protect the rights of persons with developmental disabilities.

The Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000, *et seq.*) (the Act) supports and provides assistance to States and public and private nonprofit agencies and organizations to assure that persons with developmental disabilities receive the services and other assistance and opportunities necessary to enable them to achieve their maximum potential through increased independence, productivity and integration into the community.

The Act emphasizes that persons with developmental disabilities include those with severe functional limitations attributable to physical impairments, mental impairments, and combinations of physical and mental impairments. It recognizes that, notwithstanding their severe disabilities, these persons have capabilities, competencies, and personal needs and preferences. In addition, it points out that a substantial portion of persons with developmental disabilities remain unserved or underserved.

The Act also stresses that the family and members of the community can play a central role in enhancing the lives of persons with developmental disabilities, especially when the family is provided with the necessary support services; that public and private employers tend to be unaware of the capability of persons with developmental disabilities to be engaged in competitive work in integrated settings; and that it is in the national interest to offer persons with developmental disabilities the opportunity to make decisions for themselves and to live in homes and communities where they can exercise their full rights and responsibilities as citizens.

In administering the Act at the Federal level, ADD seeks to enhance the role of the family in assisting persons with developmental disabilities to achieve their maximum potential (through self-advocacy and empowerment); in supporting the increasing ability of persons with developmental disabilities to perform leadership functions, and to determine changes of their choice; and in ensuring the protection of the legal and human rights of these individuals.

Programs funded under the Act are:

- Basic State formula grants;
- State system for the protection and advocacy of individual rights;
- Grants to University Affiliated Programs for interdisciplinary training, exemplary services, technical assistance, and information dissemination; and
- Grants for Projects of National Significance.

Part II. Background Information

A. Description of Projects of National Significance

Under Part E of the Act, grants and contracts are awarded for projects of national significance to increase and support the independence, productivity, and integration into the community of persons with developmental disabilities, and to support the development of national and state policy which enhances the independence, productivity, and integration of these individuals. These projects may include, but are not limited to:

- Projects to conduct data collection and analysis,
- Projects to provide technical assistance to program components;

- Projects to provide technical assistance for the development of information and referral systems;
- Projects which improve supportive living and quality of life opportunities which enhance recreation, leisure and fitness;
- Projects to educate policymakers;
- Projects to pursue Federal interagency initiatives;
- Projects that support the enhancement of minority participation in public and private sector initiatives in developmental disabilities; and
- Other projects of sufficient size and scope, and which hold promise of expanding or otherwise improving opportunities for persons with developmental disabilities (especially those who are multihandicapped or disadvantaged, including minority groups, Native Americans, Native Hawaiians, and other underserved groups).

B. Comments on FY 1992 and FY 1993 Proposed Priority Areas

1. FY 1992 Proposed Priority Areas

A public comment notice on ADD's FY 1992 proposed priority areas was published in the **Federal Register** on March 20, 1992. In soliciting comments on the priority areas for FY 1992, we specifically asked for feedback and recommendations concerning research, demonstration, evaluation, training or technical assistance projects which address areas of existing or evolving national significance related to the field of developmental disabilities. We also asked for suggestions for topics which were timely and related to specific needs in the field of developmental disabilities.

ADD received a total of 24 letters and 36 individuals comments in response to the FY 1992 announcement.

Agencies and organizations which commented were identified as follows:

- Advocacy agencies, which included national organizations, state DD Councils, state advocacy groups, and local advocacy groups;
- Service organizations, which included agencies which provide services for individuals with developmental disabilities as well as providing advocacy services on behalf of a particular disability;
- Educational institutions, which included universities, programs located with a university setting (CA/N, R&TC, UAPs and liberal arts colleges);
- Private agencies, which included foundations and non-profit organizations; and
- Government agencies, which included Federal, state, county and local government entities.

Comments were either supportive of what ADD proposed for FY 1992 or recommended other priorities relating to the mission of the particular agency submitting the comments.

Comment: 12 comments recommended that ADD consider additional priority areas for FY 1992. Some examples of suggested priority areas include the following: funding initiatives on improving the quality of life for persons with developmental disabilities; setting aside funds for innovative "special-needs" housing projects that target persons with physical disabilities, especially for the young adult population; funding projects that provide opportunities for creative and cultural experiences in the lives of children and adults with developmental disabilities; developing systems capacity for people who meet the Federal definition of developmental disabilities; demonstrating innovative methods and collaborative approaches to providing protection and advocacy services to Native Americans with developmental disabilities; and developing a means of support for local projects that place a strong focus on systems change through community development, awareness, and education.

Response: ADD's FY 1993 funding priority on home ownership addresses the issue of improving the quality of life and affecting systems change of persons with developmental disabilities covering the entire age span. This priority area also focuses on community integration and full inclusion of persons with developmental disabilities.

The PNS projects funded in FY 1991 will continue in FY 1993 to focus on self-advocacy and empowerment; youth leadership; and cultural diversity.

ADD is involved in activities with the DD network in Arizona, New Mexico and Utah to work with the Navajo, Hopi, San Juan Southern Paiute Nations to strengthen the collaborative process and lead to an action plan to benefit the Native Americans involved.

The comments and recommendations for additional priority areas will be considered during future funding cycles.

Comment: ADD received eight comments on proposed Priority Area 1, Technical Assistance for Implementing the National Agenda. The majority of the comments in this priority area were supportive of what we proposed, and commended ADD for continuing its efforts on the "Leadership Through Collaboration" initiative. One organization noted that the technical assistance provided through this initiative would promote innovative, effective and outcome-oriented collaboration among all network components of the DD network and the principal organizations involved with people with developmental disabilities in the U.S.

Response: The above comments are representative of the comments received in this proposed priority area. ADD is continuing its efforts in implementing the National Agenda, although the activities will be completed through existing programs and projects.

Comment: ADD received six comments on proposed Priority Area 2, Continuation Grant Awards. The comments in this priority area were supportive of what we proposed. One organization concurred, but expressed concern that the data collection initiatives were not specifically mentioned. They suggested the continuation of these projects since they represent the only developmental disability-specific longitudinal data available to advocates and policymakers. A university commented that they recognized the need for ADD to frequently review its priority area development, but urged ADD to continue its focus on the ongoing data collection area. The university also enclosed 89 letters from 48 states and the District of Columbia supporting the continuation of the data collection projects.

Response: The above comments are representative of the comments received in this proposed priority area. We agree with the comments, and the final FY 1993 priority areas will include ongoing data collection.

Comment: ADD received six comments on proposed Priority Area 3, Technical Assistance. The majority of the comments received in this priority area were supportive of what we proposed. Two agencies submitted comments suggesting that we conduct a topic specific conference in the area of aging and community integration that would be directed toward providing technical assistance.

Response: The above comments are representative of the comments received in this proposed priority area. ADD continues to fund aging projects through the University Affiliated Program's Training Initiative Program. Community integration will be addressed in the FY 1993 priority area on home ownership.

Comment: ADD received seven general comments. They consisted of letters of support, letters applauding ADD and its efforts in conducting the "Leadership Through Collaboration" initiative, and letters making suggestions on the particular organization's specific interest and focus.

Response: The comments in these letters will be used, as appropriate, in subsequent funding years.

(The final outcome for the PNS program in FY 1992 was as follows: ADD funded continuation grants and awarded funds to provide technical assistance to improve the functions of the University Affiliated Program. We did not make any new grant awards in FY 1992, but instead, emphasized the provision of technical assistance for the implementation of the Commissioner's national initiative, "Leadership through Collaboration." We extend our appreciation to those agencies and organizations that submitted comments to our FY 1992 public comment notice.)

2. FY 1993 Proposed Priority Areas

A public comment notice on ADD's FY 1993 proposed priority areas was published in the **Federal Register** on June 11, 1992. It requested specific comments and suggestions concerning the proposed priority areas, in addition to recommendations for project activities which would advocate for public policy change and community acceptance of all people with developmental disabilities and their families. We also expressed an interest in projects which would promote the inclusion of all persons with developmental disabilities, including persons with the most severe disabilities, in community life; which would promote the interaction between persons with and without developmental disabilities; and which would recognize the contributions of these individuals (whether they have a disability or not) as such individuals share their talents at home, school, work and in recreation and leisure time.

The proposed priority areas for FY 1993 were based on the legislatively mandated activities, current ACF and Departmental priority initiatives, and the needs expressed by the field of developmental disabilities to support the development of national and state policy which enhances the independence, productivity, and integration of persons with developmental disabilities.

An analysis of the comments in response to the FY 1993 public comment notice published in the **Federal Register** on June 11, 1992, follows.

ADD received a total of 175 letters and 332 individual comments from the following kinds of agencies and organizations:

- Advocacy agencies, which included national organizations, state DD Councils, state advocacy groups, and local advocacy groups;
- Service organizations, which included agencies which provide services for individual with developmental disabilities as well as providing advocacy services on behalf of a particular disability;
- Educational institutions, which include universities, programs located within a university setting (CA/N, R&TC, UAPs and liberal arts colleges);
- Private agencies, which included foundations and nonprofit organizations;
- Government agencies, which included Federal, state, county and local government entities;
- Private individuals; and
- Business organizations.

Most comments were supportive of ADD's proposed priorities, elaborated on what was proposed, and/or recommended priorities relating to the mission of the particular agency submitting the comments, e.g., head injuries, cerebral palsy, epilepsy, etc.

The comments received were helpful in highlighting the concerns of the developmental disabilities field and have been used in refining the final priority areas that appear later.

Comment: 118 comments recommended that ADD consider additional priority areas for FY 1993, among them, funding a national self-advocacy organization; publishing Federal interagency priorities in the announcement and providing an indication of the priority they would receive; targeting a funding effort that would enable the UAPs and DDPCs to focus on training community leaders from both the developmental disabilities and aging networks to become change agents and magnets for others with like interests; funding projects in ethics and bioethics; and funding projects on recreation and leisure. Two general comments supported the priorities as proposed.

Response: ADD funded six self-advocacy and empowerment projects in Fiscal Years 1991 and 1992. We continue to fund those activities. ADD has revised priority area 2 to include "self" in the word "advocacy." We will also consider funding a national self-advocacy organization in future PNS announcements.

ADD continues to fund activities with the following agencies through interagency agreements: Center for Mental Health Services, (formerly the National Institute on Mental Health) on advocacy services and programs for persons with developmental disabilities and mental illness; Health Resources Services Administration on minority health; and the Administration on Native Americans and Indian Health Service for a Fetal Alcohol Syndrome prevention project. ADD will consider including Federal interagency initiatives in future PNS announcements.

ADD continues to fund projects on elderly persons with disabilities through the University Affiliated Program's Training Initiative component.

ADD will consider including ethics/bioethics and recreation/leisure as specific priority areas in future PNS announcements.

ADD appreciates the suggestions for additional priority areas for this fiscal year. However, we are unable to add new priority areas at this time because of budget limitations for FY 1993. These recommendations will be considered during the next year's public comment process.

Comment: ADD received 55 comments on proposed Priority Area 1, Home of One's Own. Most of the comments in this priority area were supportive of what ADD proposed, while some provided specific suggestions for how the projects should be funded (based on the particular focus of the organization submitting the comments). A large number of letters were submitted regarding the establishment of a national technical information dissemination center on home ownership.

Response: The above comments are representative of the comments received in this priority area. We have considered these suggestions and have revised the final Home of Your Own Priority area to address the establishment of an information and development network on consumer based housing that will have a coordinated and national focus rather than one on local networks.

Comment: ADD received 36 comments on proposed Priority Area 2, Personal Assistance Services (PAS). Most commenters expressed appreciation for the development of this particular priority area. They suggested that ADD focus on the delivery of personal assistance services.

Response: The above comments are representative of the comments received in this priority area. We agree with the comments, and the final PAS priority area reflects the delivery of services approach.

Comment: ADD received 41 comments on proposed Priority Area 3, Leadership/Advocacy. In addition, ADD received over one hundred individual comments suggesting we fund a national self-advocacy organization (we had inadvertently omitted self-advocacy from our priority area list). Most of the comments received were supportive of what we proposed, but suggested that

we focus our leadership/advocacy efforts on self-advocacy by primary consumers rather than by coalitions.

Response: The final Leadership/Advocacy priority reflects "self" as part of all of the leadership/advocacy activities.

Note: A reduction in the appropriation level for the PNS program in FY 1993 has resulted in limiting funds now available for new grant awards. Therefore, ADD is reducing the number of funding priorities by combining proposed Priority Areas 2 (PAS) and 3 (Leadership/Advocacy) to focus specifically on leadership and self-advocacy as it relates to Personal Assistance Services and labeling it Priority Area 2, Personal Assistance Services (PAS) Through Leadership and Self Advocacy.

Comment: ADD received 37 comments on Proposed Priority Area 4, Community Integration. Most commenters supported this priority area, suggesting that we provide technical assistance in the areas related to inclusion and target our efforts toward people with disabilities and their families.

Response: These comments are representative of the comments received in this priority area. They stress our focusing on community programs, services, and activities, and full inclusion of all persons with disabilities and their families. As a result of these comments and budget limitations already identified for FY 1993, the final priority area on community integration has been combined with the home ownership priority area to reflect these concerns, in part, and to focus specifically on full inclusion and individual control and choice. It has been renumbered as Priority Area 1, Community Integration Through Consumer Responsive Living Arrangements and Housing.

Comment: ADD received 14 comments on Proposed Priority Area 5, Ongoing Data Collection and Information Dissemination. Primarily, the comments were supportive of what ADD proposed.

Response: As a result of the comments received, ADD's final priority area continues to focus on the collection of data on public expenditures, employment and economic status.

Comment: ADD received 29 comments on proposed Priority Area 6, Technical Assistance Projects. Primarily, the comments were supportive of what ADD proposed. However, the comments also suggested that we change our focus and redirect our efforts toward persons with disabilities and their families rather than our affiliate agencies.

Response: The technical assistance component of the PNS program is one of the activities identified in ADD's legislation that is targeted towards supporting the developmental disabilities program components. Many of the technical assistance activities that are proposed by the national organizations applying for technical assistance funding specifically address and target communities and families of persons with developmental disabilities. Therefore, this priority area remains as it was proposed.

Part III. The Review Process

A. Eligible Applicants

Before applications are reviewed, each application will be screened to determine that the applicant organization is a non-profit agency or organization, as specified under the selected priority area. Applications from organizations which do not meet the eligibility requirements for the priority areas will not be considered or reviewed in the competition, and the applicant will be so informed.

Only agencies and organizations, not individuals, are eligible to apply under any of the priority areas. On all applications developed jointly by more than one agency or organization, the applications must identify only one organization as the lead organization and official applicant. The other participating agencies and organizations can be included as co-participants, subgrantees or subcontractors.

Any non-profit agency which has not previously received Federal support must submit proof of non-profit status with its grant application. The non-profit agency can accomplish this by either making reference to its listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or submitting a copy of its letter from the IRS under IRS Code section 501(c)(3). ADD cannot fund a non-profit applicant without acceptable proof of its non-profit status.

B. Review Process and Funding Decisions

Applications from eligible applicants that meet the deadline date requirements under Part V, Section C will be reviewed and scored competitively. Experts in the field, generally persons from outside of the Federal government, will use the appropriate evaluation criteria listed later in this Part to review and score the applications. The results of this review are a primary factor in making funding decisions.

ADD reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. It may also solicit comments from ADD Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by ADD in making funding decisions.

In making decisions on awards, ADD may give preference to applications which focus on or feature: minority populations; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations involved in the administration or delivery of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, ADD may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Criteria

There are two sets of evaluation criteria: demonstration and training applications (priority areas 1 and 2) will be evaluated against one set, while research applications (priority area 3) will be evaluated against another set. Using the appropriate evaluation criteria below (see sections C.1. and C.2.), a panel of at least three reviewers (primarily experts from outside the Federal government) will review the applications. Applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

Reviewers will determine the strengths and weaknesses of each proposal in terms of the appropriate evaluation criteria listed below, provide

comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section may be given in the review process.

1. *Demonstration and Training Projects* (Priority Areas 1 and 2)

Applications under priority areas 1 and 2 will be evaluated against the following criteria.

A. *Objectives and Need for Assistance (20 points)* The extent to which the application pinpoints any relevant physical, economic, social, financial, institutional or other problems requiring a solution; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and includes and/or footnotes relevant data based on the results of planning studies. The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids may be attached.

B. *Results or Benefits Expected (20 points)* The extent to which the application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the proposal, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs are reasonable in view of the expected results.

C. *Approach (35 points)* The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project, and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

The extent to which, when applicable, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. The extent to which the application describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution.

D. *Staff Background and Organization's Experience (25 points)* The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The applicant describes the relationship between this project and other work planned, anticipated or underway by the applicant which is being supported by Federal assistance.

2. *Research Projects* (Priority Area 3)

Applications submitted under priority area 3—Ongoing Data Collection will be evaluated using the evaluation criteria below:

A. *Objectives (15 points)* The extent to which the application concisely states the specific objectives of the project and describes what the research project is intended to accomplish. The research issue(s) to be addressed or the specific theory driven question(s) to be answered and the hypothesis(es) to be tested are well formulated. (The response to this criterion should be reflected in the "Objectives and Need for Assistance" section of the Program Narrative Statement.)

B. *Background and Significance (15 points)* The extent to which the application effectively discusses the current state of knowledge relative to the issue or area that is addressed, and provides a review of the literature, including previous work of the author(s) of the proposal (a list of references must be included with the application). The results of any pilot tests are described. The application indicates how the proposed research will build on the current knowledge base and contribute to policy, practice and future research. (The response to this criterion should be reflected in the "Objectives and Need for Assistance" section of the Program Narrative Statement.)

C. *Approach (45 points)* The extent to which the application delineates how the terms used in the study will be defined and operationalized, identifies variables and data sources, and discusses the selection, adaptation or development of instruments to be used, including information on reliability and validity. The application outlines the experimental design features and the procedures for data collection, processing, analysis and interpretation. As applicable, it includes a sampling plan for the selection of site(s) and subjects. The sample sizes must be sufficiently large for both statistical power and significance.

The application describes the characteristics of the target population, utilizing approaches that are culturally sensitive, and details recruitment procedures for the study subjects. For intervention studies, the theory base, ecological setting, and level of intervention are described. The application discusses any potential difficulties in the proposed procedures, provides realistic estimates of attrition and discusses statistically appropriate ways of adjusting the sample.

The extent to which the application reflects sensitivity to ethical issues that may arise, such as potential deception, delayed or diminished treatment for control groups placed on waiting lists, provision for treatment and removal from the project if a potentially dangerous behavior is exhibited, plans for stopping an intervention that proves harmful or unsuccessful, or lag in debriefing the subject. The extent to which the applicant addresses procedures for the protection of human subjects, confidentiality of data and consent procedures. (Where applicable, a Protection of Human Subjects Assurance must be included with the application, in addition to the other required assurances.)

The extent to which the application indicates that the data sets will be prepared according to sound documentation practices and that the final report will be prepared in a format that ensures its ease for dissemination and utilization. The application proposes strategies for dissemination of findings in a manner that will be of use to researchers and practitioners in the field.

The extent to which the application outlines a sound and workable plan of action and details how the proposed work will be accomplished. The activities to be carried out are listed in chronological order, showing a reasonable schedule of accomplishments and target dates. The application includes an adequate staffing plan that lists key staff and consultants along with their responsibilities on the project, and that allocates a sufficient amount of time for each person to these activities. The application delineates how the research team will be assembled and the use of any advisory panels. It also lists each organization, agency, or other key

groups that will work on the project, along with a description of their activities and training plans. The application indicates the ability to gain access to necessary information, data and clients. A sound administrative framework for maintaining quality control over the implementation and operation of the study is detailed. The author(s) of the application and his/her role in the proposed project is/are identified. (Letters of commitment, where appropriate, must be included with the application.) The proposed project costs are reasonable, and the funds are appropriately allocated across component areas and are sufficient to accomplish the objectives. (The response to this criterion should be reflected in the "Approach" section of the Program Narrative Statement.)

D. *Staff Background and Organization's Experience (25 points)* The extent to which the application describes the background, experience, training and qualifications of the key staff and consultants, including work on related research and similar projects. It describes the personal resources available for sampling, experimental design, statistical analysis and field work. Key personnel have a working knowledge of the proposed research and are geographically accessible. (Two Curriculum vitae for each key person must be included with the application.) The adequacy of the available facilities and organizational experience related to the tasks of the proposed project are detailed. (A two page organizational capability statement must be included with the application.) Any collaborative efforts with other organizations, including the nature of their contribution to the project, are described. (Letters of commitment, where appropriate, must be included with the application.)

The extent to which the application demonstrates the ability of the staff and organization to effectively and efficiently administer a project of the size, complexity and scope proposed. It further reflects the capacity to coordinate activities with other agencies for the successful accomplishment of project objectives. The application describes the relationship between this project and other work planned, anticipated or underway by the applicant which is being supported by Federal assistance. (The response to this criterion should be reflected in the "Staff Background and Organization Experience" section of the Program Narrative Statement.)

D. Structure of Priority Area Descriptions

Each priority area description is composed of the following sections:

- *Eligible Applicants:* This section specifies the type of organization which is eligible to apply under the particular priority area.
- *Purpose:* This section presents the basic focus and/or broad goal(s) of the priority area.
- *Background Information:* This section briefly discusses the legislative background as well as the current state-of-the-art and/or current state-of-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by ACF and/or others State models are noted, where applicable. Some priority areas specify individuals to contact for more information.
- *Minimum Requirements for Project Design:* This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important since they will be used by the reviewers in evaluating the applications against the evaluation criteria. Project products, continuation of the project effort after the Federal support ceases, and dissemination/utilization activities, if appropriate, are also addressed.
- *Project Duration:* This section specifies the maximum allowable length of time for the project period; it refers to the amount of time for which Federal funding is available.
- *Federal Share of Project Costs:* This section specifies the maximum amount of Federal support for the project.
- *Matching Requirement:* This section specifies the minimum non-Federal contribution, either through cash or in-kind match, that is required to the maximum Federal funds requested for the project.
- *Anticipated Number of Projects To Be Funded:* This section specifies the number of projects that ADD anticipates it will fund in the priority area.
- *CFDA:* This section identifies the Catalog of Federal Domestic Assistance (CFDA) number and title of the program under which applications in this priority area will be funded. This information is needed to complete item 10 on the SF 424.

Please note that applicants that do not comply with the specific priority area requirements in the section on "*Eligible Applicants*" will not be reviewed.

Applicants must clearly identify the specific priority area under which they wish to have their applications considered, and tailor their applications accordingly. In addition, previous experience has shown that an application which is broader and more general in concept than outlined in the priority area description is less likely to score as well as one which is more clearly focused on and directly responsive to the concerns of that specific priority area.

E. Available Funds

ADD intends to award new grants and cooperative agreements resulting from this announcement during the fourth quarter of fiscal year 1993, subject to the availability of funding. The size of the actual awards will vary. Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose project periods which are shorter than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas when the applicant is able to do so.

For multi-year projects, continued Federal funding beyond the first budget period is dependent upon proof of satisfactory performance and the availability of funds from future appropriations.

F. Grantee Share of Project Costs

Other than the exception described below, Federal funds will be provided to cover up to 75% of the total allowable project costs. Therefore, the non-Federal share must amount to at least 25% of the total (Federal plus non-Federal) project cost. This means that, for every $3 in Federal funds received, up to the maximum amount allowable under each priority area, applicants must contribute at least $1.

For example, the cost breakout for a project costing $100,000 to implement would be:

Federal request	Non-Federal share	Total cost
$75,000 75%	$25,000 25%	$100,000 100%

The exception to the grantee cost sharing requirement relates to applications originating from American Samoa, Guam, the Virgin Islands, Palau and the Commonwealth of the Northern Mariana Islands. Applications from these areas are covered under Section 501(d) of Public Law 95–134, which requires that the Department waive "any requirement for local matching funds for grants under $200,000."

The applicant contribution must generally be secured from non-Federal sources. Except as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant. However, funds from some Federal programs benefitting Tribes and Native American organizations have been used to provide valid sources of matching funds. If this is the case for a Tribe or Native American organization submitting an application to ADD, that organization should identify the programs which will be providing the funds for the match in its application. If the application successfully competes for PNS grant funds, ADD will determine whether there is statutory authority for this use of the funds. The Administration for Native Americans and the DHHS Office of General Counsel will assist ADD in making this determination.

The non-Federal share of total project costs may be in the form of grantee-incurred costs and/or third party in-kind contributions. ADD strongly encourages applicants to meet their match requirement through a cash contribution, as opposed to an in-kind contribution. For further information on in-kind contributions, refer to the instructions for completing the SF 424A—Budget Information, in Part IV.

The required amount of non-Federal share to be met by the applicant is the amount indicated in the approved application. Grant recipients will be required to provide the agreed upon non-Federal share, even if this exceeds 25% (or other required portion) of the project costs. Therefore, an applicant should ensure the availability of any amount proposed as match prior to including it in its budget.

The non-Federal share must be met by a grantee during the life of the project. Otherwise, ADD will disallow any unmatched Federal funds.

G. Cooperation in Evaluation Efforts

Grantees funded under the Ongoing Data Collection priority area may be requested to cooperate in evaluative efforts funded by ADD. The purpose of these evaluation activities is to learn from the combined experience of multiple projects funded under a particular priority area. To the degree possible, grantees under this priority area will be expected to coordinate their data gathering efforts with one another, as appropriate, under the direction of an ADD-supported evaluator.

H. Closed Captioning for Audiovisual Efforts

Applicants are encouraged to include "closed captioning" in the development of any audiovisual products.

Part IV. Fiscal Year 1993 Priority Areas for Projects of National Significance

The following section presents the final priority areas for Fiscal Year 1993 Projects of National Significance (PNS) and solicits the appropriate applications.

Fiscal Year 1993 Priority Area 1: Community Integration Through Consumer Responsive Living Arrangement and Housing

(This priority area combines Proposed Fiscal Year 1993 Priority Area 1: Home of One's Own and Proposed Fiscal Year 1993 Priority Area 4: Community Integration)

- *Eligible Applicants:* State agencies, public or private nonprofit organizations, institutions or agencies and coalitions of eligible applicants.
- *Purpose:* Under this priority area, ADD will award grant funds through a cooperative agreement which will enable people with developmental disabilities to achieve maximum community integration, in stable living environments, through the dissemination of state-of-the-art housing and support service models. This project will disseminate best practices, develop training materials in substantive topical areas, publish technical information and furnish on-site support activities.
- *Background Information:* ADD, as part of its general mission to facilitate the independence, productivity and integration (IPI) of individuals with developmental disabilities, conducted a national forum to obtain broad-based input from consumers, family members, advocates, and researchers to determine areas to which devotion of resources would most likely benefit this population. Developing and expanding options for community integration through housing that incorporates consumer control and choice in integrated, community settings was identified as a top priority.

ADD developed the final priority area on housing after obtaining information on pertinent issues emerging in the independent, integrated housing movement characterized by community membership and functional supports. The final priority area reflects consultation with a variety of sources nationwide including results of our previously funded demonstration projects (Fiscal years 1991–1993), individuals with developmental disabilities, public policymakers, advocates, technical experts on housing and disability issues, practitioners in the field, staff input and research, and public comments submitted in response to the FY 1993 Notice of Proposed Priority Areas.

The goals of IPI for individuals with developmental disabilities in the past have constituted prerequisites for community integration. ADD's PNS demonstration projects and other selected, local initiatives show that IPI are the result of, rather than prerequisites to, independent living by individuals with developmental disabilities.

The trend in living arrangements is away from institutionalization toward community-based options. From the state consumer surveys conducted in preparation for the 1990 Report we learned that:

- Independence and integration were reported to be important to 75 percent of those surveyed; however, only 26 percent and 38 percent, respectively, saw themselves as independent and integrated.
- People who lived in nursing home and other institutions were less independent, productive, and integrated than people who lived in community residences.
- People with developmental disabilities had less participation in community living activities and were more apt to feel lonely than people without disabilities.
- Less than one-third of those who need community living support were receiving it.
- 12%–18% of adults with developmental disabilities in America own or lease their own homes.

In FY 1992, ADD awarded three continuation awards for projects of national significance that are resulting in individuals with developmental disabilities having control of their own residences through ownership or lease. These projects are:

South Shore Association for Retarded Citizens: A Home of One's Own (Mary Burt: 617/335–3023)

Melwood Horticultural Training Center: "Home of Your Own" Project—An Innovative Approach to Increasing Housing and Support Service Options For and Control Over These Options by

Person with Disabilities (Earl Copus, Jr.: 301/599–9000)

University of New Hampshire: New Hampshire's House of Your Own (Jen Nisbet: 603/862–4320)

Project activities and achievements include the:

- Promotion of successful community integration through home ownership/leasing;
- Identification of solutions to barriers (fiscal, policy, and programmatic) to individualized housing and individual control; and
- Establishment of collaborative arrangements/agreements with local housing agencies, builders and developers.

These projects are demonstrating the efficacy of community integration through home ownership and control by individuals with developmental disabilities in integrated, independent settings.

- *Minimum Requirements for Project Design:* There is an overwhelming need to assist States, private providers and consumers and self advocates in making broad and systemic change. The work of cutting-edge practitioners can be replicated and such knowledge disseminated that will advance independent home living for larger numbers of individuals nationwide.

The knowledge and skills required to produce viable, integrated, independent, housing options for individuals with developmental disabilities is not yet widely or readily available. Therefore, the applicant must demonstrate that such expertise will be available to this project on a regular and continuing basis. Furthermore, the applicant must offer a plan to impact a variety of audiences which include, at a minimum: self advocates, housing development corporations, local, State and national housing agencies and authorities, residential providers, real estate financing and development entities, private foundations and the developmental disabilities network. ADD is particularly interested in fostering state-level coalitions between Developmental Disabilities Councils, Protection and Advocacy Systems, University Affiliated Programs, and advocacy and consumer groups to achieve systems change in this area.

The following are types of activities that the project may seek to engage:

- Collecting and disseminating knowledge gained from existing demonstration projects.
- Conducting workshops, seminars, conferences and forums on substantive topical areas.
- Development of practical products such as manuals, how-to reports, useful instruments/tools/methodologies.
- On-site consultation to assist in systems change activities.

In addition, proposals should provide for the widespread distribution of their products (reports, summary documents, audio-visual materials, and the like) in accessible formats.

Before making the final award, ADD will conduct a site visit to assure the capacity of the applicant to fulfill the proposed plans and the capabilities to carry out the terms of a cooperative agreement. ADD is interested particularly in applications from organizations or coalitions that have a strong community and consumer base. Such applicants would demonstrate significant involvement by people with disabilities in the governance, management, and operation of the organization. Furthermore, ADD is particularly interested in applications that can present a plan to acquire the needed resources to continue project activities when ADD funding ceases.

Proposals should also include provisions for the travel of two key personnel during the last year of the project to Washington, DC for a one day meeting with ADD staff.

The application should also respond to the following:

- Describe the physical setting, the administrative and organizational structure within which the program will function, and internal and external organizational relationships relevant to this project. Charts outlining these relationships, and any formal agreements defining them, should be included in the appendices.
- Describe staff, space, equipment, research facilities, and other supports available to carry out the program.
- Describe briefly how the additional resources sought to accomplish the purposes of this effort will be integrated into and augmented by other resources available or accessible by the applicant.
- Develop and implement an evaluation process to ensure that systematic, objective information is available about the utilization and effectiveness of the products of this project. Specific outcomes must be built into the project for evaluation. The evaluation should be performed by an independent evaluator; and

As noted earlier, the award will be made as a cooperative agreement. While the organization receiving the award will not be conducting this project on behalf of ADD, ADD and the awardee will work cooperatively in the development and implementation of the project's agenda as described below.

Under the cooperative agreement mechanism, ADD will be actively involved in the development of information regarding state-of-the-art housing and community inclusion approaches. The awardee will have the primary responsibility for developing and implementing the activities of the project. ADD will jointly participate with the awardee in such activities as clarifying the specific issue areas to be addressed through periodic briefings and ongoing consultation, sharing with the awardee its knowledge of the issues being addressed by past and current projects, and providing feedback to the awardee about the usefulness to the field of its written products and information sharing activities. The details of this relationship will be set forth in the cooperative agreement to be developed and signed prior to issuance of the award.

- *Project Duration:* This announcement is soliciting applications for project periods up to five years under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for five years. Applications for continuation grants funded under this priority area beyond the one-year budget period, but within the five year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government.
- *Federal Share of Project Costs:* The maximum Federal share is not to exceed $500,000 for the first 12-month budget period or a maximum of $2,500,000 for a 5-year project period.
- *Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $2,500,000 is $833,333 for a 5-year project period. This constitutes 25 percent of the total project budget.
- *Anticipated Number of Projects to be Funded:* It is anticipated that at least one project will be funded.
- *CFDA:* ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance.

Fiscal Year 1993 Priority Area 2: Personal Assistance Services (PAS) Through Leadership and Self Advocacy

(This priority area combines Proposed Fiscal Year 1993 Priority Area 2: Personal Assistance Services and Proposed Fiscal Year 1993 Priority Area 3: Leadership/Advocacy)

• *Eligible Applicants:* State agencies, public or private nonprofit organizations, institutions or agencies.

• *Purpose:* Under this priority area, ADD will award demonstration grant funds on Personal Assistance Services (PAS) Through Leadership and Self Advocacy. This priority area intends to strengthen the ability of individuals with disabilities, especially those with developmental disabilities, and their immediate families, to serve as leaders and advocates on the critical issue of PAS and thereby promote the independence, productivity and integration into the community of persons with developmental disabilities. Projects will develop leadership skills among self advocates (throughout this announcement, this term includes family members of children with disabilities and family members of adults with disabilities if such adults are unable to advocate for themselves) to educate policymakers and promote PAS at the State and local levels. ADD is interested in fostering State-level coalitions among self advocacy and consumer groups, Developmental Disabilities Councils, Protection and Advocacy Systems, and University Affiliated Programs to achieve, influence and impact all facts of PAS service delivery and to achieve systems coordination/change.

• *Background Information:* Personal assistance services have been defined as "* * * one or more persons assisting another person with tasks which that individual would typically do if they did not have a disability. This includes assistance with such tasks as dressing, bathing, getting in and out of bed or one's wheelchair, toileting (including bowel, bladder and catheter assistance), eating (including feeding), cooking, cleaning house, and on-the-job support. It also includes assistance from another person with cognitive tasks like handling money and planning one's day or fostering communication through interpreting and reading services." (The Consortium for Citizens with Disabilities, Recommended Federal Policy Directions on Personal Assistance Services for Americans with Disabilities, May, 1992, Washington, D.C.)

Personal assistance services are identified as critical factors in the attainment of independence, productivity, and integration of individuals with developmental disabilities by researchers, self advocates, and consumers. Individuals with a variety of disabilities can function at optimal levels and participate fully in society if personal assistance services are available. Current research has identified service delivery models. One conclusion about the status quo is that "[t]here is no uniform system for providing personal assistance services (PAS) in the U.S. Instead, there are a variety of federal and state funding streams. Some funding sources were developed specifically to provide PAS, others were developed to provide different social and medical services * * *" [(The Research and Training Center on Public Policy and Independent Living, World Institute on Disability (WID), Personal Assistance Services: A Guide to Policy and Action, September, 1991, Oakland, CA., Ch. 2, p. 1].

Individuals engaging in self advocacy can be effective in enhancing State and local PAS service delivery systems. Self advocates may be uniquely qualified to "translate what personal assistance services will really mean" (WID, Ch 3, p. 1) to policy makers, State and local communities, organizations, and others to increase the effectiveness of PAS State and local service delivery systems.

• *Minimum Requirements for Project Design:* There is an overwhelming need to assist consumers and self advocates in making broad and systemic change in the area of personal assistance services. ADD is particularly interested in applications from cross-disability coalitions or organizations that have a strong consumer and/or self-advocacy base. Such applicants should demonstrate significant involvement by people with disabilities in the governance, management, and operation of the organization. Examples of projects include activities which would:

• Support and train consumers and self-advocates to identify, modify, coordinate and impact on the various personal assistance services and options available within the State and to identify the means by which the services are acquired, and identify and propose systemic changes (redirection of funding, coordination of efforts).

• Develop a self-advocacy program which will provide the necessary skills and support to further the attainability and consumer and/or self-advocacy responsiveness of personal assistance services.

• Establish a personal assistance services action committee which identifies and develops plans to address barriers to individual receipt of personal assistance services.

• Identify and document replicable programs and projects which promote the leadership qualities essential to serving as a leader/advocate in personal assistance services.

• Identify State and local linkages that would be essential to establishing collaborative agreements/arrangements that would strengthen consumers' and/or self-advocates' capacities to serve as leaders/advocates in personal assistance services.

Proposals should also include provisions for the travel of two key personnel during the first and last year of the project to Washington, DC for a one day meeting with ADD staff.

In addition, proposals should provide for the widespread distribution of their products (reports, summary documents, audio-visual materials, and the like) in accessible formats.

• *Project Duration:* This announcement is soliciting applications for project periods up to three years under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under this priority area beyond the one-year budget period, but within the three year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government.

• *Federal Share of Project Costs:* The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $300,000 for a 3-year project period.

• *Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $300,000 is $100,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

• *Anticipated Number of Projects to be Funded:* It is anticipated that at least four PAS projects will be funded.

• *CFDA:* ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance. This information is needed to complete item 10 on the SF 424.

Fiscal Year 1993 Priority Area 3: Ongoing Data Collection and Information Dissemination

(This priority area appeared in the June 1992 announcement as proposed Fiscal Year 1993 Priority Area 5: Ongoing Data Collection and Information Dissemination)

• *Eligible Applicants:* State agencies, public or private nonprofit organizations, institutions or agencies.

• *Purpose:* Under this priority area, ADD will award grand funds through a cooperative agreement which will collect data on public expenditures,

employment and economic status, and other factors as they impact on the independence, productivity and integration into community of persons with developmental disabilities. ADD is particularly interested in the maximum use of already existing data bases and in fostering the broadest dissemination to and use of the data by consumers, families and advocacy audiences.

Examples of successful projects that ADD has funded include:

—University of Minnesota: National Recurring Data Set Project on Residential Services—Ongoing National and State-by-State Data Collection and Policy/Impact Analysis on Residential Services for Persons with Developmental Disabilities (Charles Lakin: 612/624–2097)

—University of Illinois at Chicago: Fourth National Study of Public Mental Retardation/Developmental Disabilities Spending (David Braddock: 312/413–1647)

—Boston Children's Hospital: Ongoing National Collection on Data and Employment Services for Citizens with Developmental Disabilities (Bill Kiernan: 617/735–6506)

Examples of projects include activities which would:

• Identify, collect and disseminate new data bases;

• Modify, expand and/or reformulate existing data bases;

• Connect, integrate or analyze available data bases.

• Project and model the cost-benefit impact of alternative future decisions based on the analysis of discrete programmatic options in the areas of residential services and employment.

• *Minimum Requirements for Project Design:* Given its interest in promoting the increased independence, productivity, and community integration of people with developmental disabilities in a cost-beneficial manner, ADD is particularly interested in supporting projects that provide quantitative and qualitative analysis in the following areas.

• Trends in the movement of people with developmental disabilities from institutional to community settings.

• The efficacy of various approaches to the full inclusion of people with developmental disabilities in local community activities where the majority of participants do not have a disability.

• The employment status of people with developmental disabilities on a state and national basis.

Any sampling techniques used as part of this analysis should be broadly representative of persons with developmental disabilities of employment age on a national basis, including people with severe disabilities. Quantitative data should provide statistical information on current placement patterns and their cost as well as projections regarding future placement options and associated costs. It is also recognized that certain areas may be more appropriate for qualitative analysis, although a summary of any quantitative data (if available) should be included in the proposal.

All projects funded under this priority area must provide evidence of the soundness of their proposed research methods and analytic techniques. In addition, proposals should clearly delineate (via a comprehensive literature review) data sets that are already in existence, how these data sets will be incorporated into the research design, and what new knowledge will be gained through the proposed project.

All projects shall provide for the widespread distribution of their products (reports, summary documents, audio-visual materials, and the like) in accessible formats to a national audience consisting of, at a minimum, people with developmental disabilities and their families, advocacy groups, State Developmental Disabilities Councils, Protection and Advocacy Systems, University Affiliated Programs, State Mental Retardation/Developmental Disabilities Directors, State Governor's Offices, Federal agencies represented on the Interagency Committee on Developmental Disabilities, as well as the Secretaries of Health and Human Services and Education at the federal level.

Proposals should also include provisions for the travel of two key personnel during the first and last year of the project to Washington, DC for a one day meeting with ADD staff.

The application should also respond to the following:

• Describe the physical setting, the administrative and organizational structure within which the program will function, and internal and external organizational relationships relevant to this project. Charts outlining these relationships, and any formal agreements defining them, should be included in the appendices.

• Describe staff, space, equipment, research facilities, and other supports available to carry out the program.

• Describe briefly how the additional resources sought to accomplish the purposes of this effort will be integrated into and augmented by other resources available or accessible by the applicant.

• Develop and implement an evaluation process to ensure that systematic, objective information is available about the utilization and effectiveness of the products of this project. Specific outcomes must be built into the project for evaluation. The evaluation should be performed by an independent evaluator.

As noted earlier, the award will be made as a cooperative agreement. While an organization receiving an award will not be conducting its project on behalf of ADD, ADD and the awardee will work cooperatively in the development and implementation of the project's agenda as described below.

Under the cooperative agreement mechanism, ADD and the awardees will share the responsibility for planning the objectives of the projects. Awardees will have the primary responsibility for developing and implementing the activities of the project. ADD will jointly participate with awardees in such activities as clarifying the specific issue areas to be addressed through periodic briefings and ongoing consultation, sharing with awardees its knowledge of the issues being addressed by past and current projects, and providing feedback to awardees about the usefulness to the field of written products and information sharing activities. The details of the relationship between ADD and awardees will be set forth in the cooperative agreement to be developed and signed prior to issuance of the award.

• *Project Duration:* This announcement is soliciting applications for project periods up to three years under this priority area. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under this priority area beyond the one-year budget period, but within the three year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government.

• *Federal Share of Project Costs:* The maximum Federal share is not to exceed $200,000 for the first 12-month budget period or a maximum of $600,000 for a 3-year project period.

• *Matching Requirement:* The minimum non-Federal matching requirement in proportion to the maximum Federal share of $600,000 is $200,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

• *Anticipated Number of Projects to be Funded:* It is anticipated that at least three data collection projects will be funded.

• *CFDA:* ADD's CFDA (Code of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance. This information is needed to complete item 10 on the SF 424.

Fiscal Year 1993 Priority Area 4: Technical Assistance Projects

(This priority area appeared in the June 1992 announcement as proposed Fiscal Year 1993 Priority Area 6: Technical Assistance)

For this priority area, ADD will be awarding funds separately using the procurement process to provide technical assistance to improve the functions of the Developmental Disabilities Planning Councils, Protection and Advocacy Systems, University Affiliated Programs, and to provide additional technical assistance to the developmental disabilities field in the area of housing, leadership, cultural diversity, and policy development.

Part V. Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. Application forms are provided along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in part IV.

A. Required Notification of the State Single Point of Contact

All applications under the ADD priority areas are required to follow the Executive Order (E.O.) 12372 process, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories, except Alabama, Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Pennsylvania, Oklahoma, Oregon, Virginia, Washington, American Samoa and Palau, have elected to participate in the Executive Order process and have established a State Single Point of Contact (SPOC). Applicants from these 14 jurisdictions need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions.

Applicants must submit all required materials to the SPOC as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials and indicate the date of this submittal (or date SPOC was contacted, if no submittal is required) on the SF 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application date to comment on proposed new or competing continuation awards. However, because applications are due 45 days from the date of publication, and grants are to be awarded in September, there is not sufficient time to allow for a complete SPOC comment period. Therefore, we have reduced the comment period to 45 days (from date of publication in the **Federal Register**). These comments are reviewed as part of the award process. Failure to notify the SPOC can result in delays in awarding grants.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendation which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ADD, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, Washington, DC 20201.

Contact information for each State's SPOC is found at the end of this Part.

B. Notification of State Developmental Disabilities Planning Councils

A copy of the application must also be submitted for review and comment to the State Developmental Disabilities Planning Council in each state in which the applicant's project will be conducted. A list of the State Developmental Disabilities Planning Councils is included at the end of this announcement.

C. Deadline for Submittal of Applications

An application will be considered as meeting the *deadline* if it is either:

1. Received on or before the deadline date at the place specific in the program announcement, or
2. Sent on or before the deadline date and received by the granting agency in time for the independent review under DHHS GAM Chapter 1–62. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications: Applications which do not meet the criteria stated above are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: The granting agency may extend the deadline for all applicants due to acts of God, such as floods, hurricanes or earthquakes; or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

D. Instructions for Preparing the Application and Completing Application Forms

The SF 424, SF 424A, SF 424A, Page 2 and Certifications have been reprinted for your convenience in preparing the application. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

Item 1. "Type of Submission"—Preprinted on the form.

Item 2. "Date Submitted" and "Applicant Identifier"—Date

application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. "Date Received By State"—State use only (if applicable).

Item 4. "Date Received by Federal Agency"—Leave blank.

Item 5. "Applicant Information"

"Legal Name"—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

"Organizational Unit"—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

"Name and telephone number of the person to be contacted on matters involving this application (give area code)"—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. "Employer Identification Number (EIN)"—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. "Type of Applicant"—Self-explanatory.

Item 8. "Type of Application"—Preprinted on the form.

Item 9. "Name of Federal Agency"—Preprinted on the form.

Item 10. "Catalog of Federal Domestic Assistance Number and Title"—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title. For all of ADD's priority areas, the following should be entered, "93.631—Developmental Disabilities: Projects of National Significance."

Item 11. "Descriptive Title of Applicant's Project"—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12. "Areas Affected by Project"—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. "Proposed Project"—Enter the desired start date for the project and projected completion date.

Item 14. "Congressional District of Applicant/Project"—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If statewide, a multi-State effort, or nationwide, enter "00."

Item 15. Estimated Funding Levels In completing 15a through 15f, the dollar amounts entered should reflect, for a 17 month or less project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Item 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b–e are considered cost-sharing or "matching funds." The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part III, Sections E and F, and the specific priority area description.

Item 15f. Enter the estimated amount of program income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this program income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. "Is Application Subject to Review By State Executive Order 12372 Process? Yes."—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part IV. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application.

Item 16b. "Is Application Subject to Review by State Executive Order 12372 Process? No."—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. "To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded."—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. "Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. "Signature of Authorized Representative"—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. "Date Signed"—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed period exceeds 17 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) the total project period of 17 months or less or

(2) the first year budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, "Other."

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included in Line 6h, "Other."

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is non-expendable tangible personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. For all other applicants, the threshold for equipment is $500 or more per unit and the required useful life is more than two years. The higher threshold for State and local governments became effective October 1, 1988, through the implementation of 45 CFR Part 92, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, "Other."

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: Insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter "none." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b*) from (a*). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled "Totals." In-kind contributions are defined in title 45 of the Code of Federal Regulations, Part 74.51, as "property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant."

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required *Federal* funds for the second budget period (months 13 through 24) under column "(b) First." If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under "(c) Second." Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. They should remain blank.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Summary Description

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposal. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project "abstract." It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

4. Program Narrative Statement

The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part IV. The narrative should also provide information concerning how the application meets the evaluation criteria, using the following headings:

(a) *Objectives and Need for Assistance;*

(b) *Results and Benefits Expected;*

(c) *Approach;* and

(d) *Staff Background and Organization's Experience.*

The specific information to be included under each of these headings is described in Section C of Part III, Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8½" × 11" plain white paper, with 1" margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½×11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

5. Organizational Capability Statement

The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. Part V—Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must provide certifications regarding: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These two certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications, and need not be mailed back with the application.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

E. Checklist for A Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;

—Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);
—Application length does not exceed 60 pages, unless otherwise specified in the priority area description.

A complete application consists of the following items in this order:
—Application for Federal Assistance (SF 424, REV 4–88);
—A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable.
—Budget Information—Non-Construction Programs (SF 424A, REV 4–88);
—Budget justification for Section B—Budget Categories;
—Table of Contents;
—Letter from the Internal Revenue Service to prove non-profit status, if necessary;
—Copy of the applicant's approved indirect cost rate agreement, if appropriate;
—Project summary description and listing of key words;
—Program Narrative Statement (See Part III, Section C);
—Organizational capability statement, including an organization chart;
—Any appendices/attachments;
—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);
—Certification Regarding Lobbying; and
—Certification of Protection of Human Subjects, if necessary.

F. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application and of the four digit identification number assigned to their application. This number and the priority area must be referred to in *ALL* subsequent communication with ADD concerning the application. If acknowledgment of receipt of your application is not received within eight weeks after the deadline date, please notify ADD by telephone at (202) 690–5984.

(Federal Catalog of Domestic Assistance Number 93.631 Developmental Disabilities—Projects of National Significance)

Dated: June 21, 1993.

Will Wolstein,

Acting Commissioner Administration on Developmental Disabilities.

BILLING CODE 4184-01-M

VOL 58 ISS 122 JE 28 1993 UMI

Attachment A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

Authorized for Local Reproduction

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided.

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-M

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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Instructions

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separated for obligations within the different categories of the grantor agency's programs or projects having separately stated Federal participation. Do not include other programs or projects for which Federal assistance is not sought or is not available. Provide a breakdown sufficient to explain the estimates for each line entry in every section, and any other explanations or comments deemed necessary by the applicant or required by the Federal grantor agency. Indicate the source of funding per-year) and Section F. Enter the name of the Federal agency from which assistance is being requested with this application. Identify the budget for the entire project period (usually multiple years) in Section D, unless the grantor agency instructs otherwise. Enter in Section D the estimated amounts of cash needed from the Federal grantor agency for the first year, by quarter. Enter in Section E budget estimates of all Federal funds needed for the project for future funding periods (years). Section F is for the entry of any additional budget items or explanations required by the Federal grantor agency.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications for grants under more than one grant program to be funded under a single application, prepare the budget summaries on separate lines in Columns (a) and (b). For continuing grant program applications, submit these budget summaries on the forms provided by the grantor agency. Identify the grant program by the Catalog number (line 1 under title and the respective grant program title in Column (b).

For applications for other than grants which require Federal authorization (such as loans, insurance, or other financial assistance), follow the same instructions as for grants.

Lines 1–4, Column (c)

For applications pertaining to a single Federal grant program and no Federal catalog number has been assigned, leave this column blank. For applications pertaining to a single program requiring funds on more than one line in Column (a), enter the catalog number assigned to the program in each line in Column (c). For applications pertaining to multiple programs, enter the catalog number for each program in Column (c).

Lines 1–4, Column (d)

For applications pertaining to a single Federal grant program and no Federal catalog number has been assigned, enter in Column (d) the appropriate titles of the program and the number and title of the program function or activity involved. For applications pertaining to multiple programs where none of the programs require a Federal catalog number, enter in Column (d) the appropriate titles of each program and the number and title of the program function or activity involved.

Lines 1–4, Column (e)

Enter in Column (e) the amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these budget estimates on the forms provided by the grantor agency. Enter in Column (e) the amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1–4, Column (f)

Enter in Column (f) the amounts of funds needed for support of the project during the second funding period (usually a year).

Lines 1–4, Column (g)

Enter in Column (g) the amounts of funds needed for support of the project during the third funding period (usually a year).

Lines 1–4, Column (h)

Enter in Column (h) the amounts of funds needed for support of the project during the fourth funding period (usually a year).

Line 5—Totals

Enter in Column (a) the total amounts of funds needed for support of the project during the first year. Leave Columns (b) and (c) blank. Enter in Column (d) the amounts of funds needed for support of the project during the second funding period (usually a year). Leave Columns (b) and (c) blank. Enter in Column (e) the amounts of funds needed for support of the project during the third funding period (usually a year). Leave Columns (b) and (c) blank. Enter in Column (f) the amounts of funds needed for support of the project during the fourth funding period (usually a year). Leave Columns (b) and (c) blank. Enter in Column (g) the amounts of funds needed for support of the project during the fifth funding period (usually a year). Leave Columns (b) and (c) blank. Enter in Column (h) the amounts of funds needed for support of the project during the sixth funding period (usually a year). Leave Columns (b) and (c) blank.

Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b). For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g). *For new applications,* leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

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Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–23–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

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Attachment B

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department of agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction or records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attached an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions." without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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Attachment C

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification* set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

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(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

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Attachment D

State Single Points of Contact

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315.

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203,Telephone: (501) 371–1074.

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone: (916) 323–7480.

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone: (303) 866–2156.

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410.

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone: (302) 736–3326.

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, D.C. 20004, Telephone: (202) 727–9111.

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, the Capitol, Tallahassee, Florida 32399–0001, Telephone: (904) 488–8114.

Georgia

Charles, H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone: (404) 656–3855.

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol—Room 406, Honolulu, Hawaii 96813, Telephone: (808) 548–5893, FAX (808) 548–6172.

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois Springfield, Illinois 62706, Telephone: (217) 782–8639.

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone: (317) 232–5610.

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50390, Telephone: (515) 281–3725.

Kentucky

Debbie Anglin, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382.

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261.

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490.

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001.

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373–7111.

Please direct correspondence to:
Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Buildings Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373–6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960–4280.

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834.

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444–5522.

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, ATTN: John B. Walker, Clearinghouse Coordinator.

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155.

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613.

Please direct correspondence and questions to:
Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025.

New Mexico

Aurelia M. Sandoval, State Budget Division, DFA, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605.

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733–0499.

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224–2094.

Ohio

Larry Weaver, State Single Point of Contact, State/Federal funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698.

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656.

Please direct correspondence and questions to:
Review Coordinator, Office of Strategic Planning

South Carolina

Danny L. Crom
Contact, Gra
Governor, 12
477, Columb
Telephone (8

South Dakota

Susan Comer,
Coordinator,
East Capitol,
Telephone (6

Tennessee

Charles Brown
State Plannin
Avenue, 309
Nashville, Te
(615) 741–16

Texas

Tom Adams, G
Planning, P.O
78711, Telep

Utah

Utah State Clea
and Budget,
116 State Ca
84114, Telep

Vermont

Bernard D. John
Office of Poli
Pavilion Offi
Montpelier, V
(802) 828–33

West Virginia

Fred Cutlip, Di
Development
of Communit
Development
Charleston, W
Telephone (3

Wisconsin

William C. Car
IGA Relation
P.O. Box 786
53707, Telep

Please direct
questions to:
William C. Car
State Relation
Department o
0267.

Wyoming

Ann Redman, S
Wyoming Sta
Planning Coo
Building, Che
Telephone (3

Territories

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South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0493.

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212.

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676.

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778.

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535.

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326.

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010.

Wisconsin

William C. Carey, Federal/State Relations, IGA Relations, 101 South Webster Street, P.O. Box 7864, Milwaukee, Wisconsin 53707, Telephone (608) 266–1741.

Please direct correspondence and questions to:

William C. Carey, Section Chief, Federal/State Relations Office, Wisconsin Department of Administration, (608) 266–0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777–7574.

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285.

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950.

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444.

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774–0750.

Attachment E

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her own knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date.

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB: 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____

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[FR Doc. 93-14942 Filed 6-25-93; 8:45 am]
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federal register

Monday
June 28, 1993

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 701 et al.
Surface Coal Mining and Reclamation Operations; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 773, 774, 778, and 843

RIN 1029–AB52

Definition and Procedures for Transfer, Assignment and Sale of Permit Rights; Definitions of Ownership and Control; Permit Information Requirements and the Applicant/Violator System; Civil Penalties for Owners and Controllers of Violators

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) proposes to establish new regulations and amend existing provisions to clarify the role of the Applicant/Violator System (AVS) in the permit application process; reorganize and amend the definitions of ownership and control; amend the definition of and procedures for transfer, assignment or sale of permit rights; establish procedures for permit revisions regarding changes in operators or other changes in ownership or control; revise requirements for information to be submitted as part of the permit application process; eliminate certain civil penalties for owners and controllers of violators; and establish penalties for knowing submission of false or incomplete ownership or control information during any of the above or several other information collection processes. Experience in the permitting process and operation of the AVS has shown the need for the proposed changes which are intended to improve implementation of the permitting process, clarify existing responsibilities, and improve operation of the AVS.

DATES: *Written comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on August 27, 1993.

Public hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, DC, on a date and at a time that would be subsequently announced. Upon request, OSM will also hold public hearings in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington at times and dates to be announced prior to any requested hearings. OSM will accept requests for public hearings until 5 p.m. Eastern time on July 19, 1993. Individuals wishing to attend, but not testify, at any hearing should contact the person identified under "**FOR FURTHER INFORMATION CONTACT**" beforehand to verify that the hearing will be held.

ADDRESSES: *Written comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol Street, NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660 N.C., 1951 Constitution Avenue NW., Washington, DC 20240

Public hearings: The addresses for hearings scheduled in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, Washington, and the District of Columbia will be announced prior to the hearings.

Request for public hearings: Submit request orally or in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Annetta Cheek, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240. Telephone: 202–208–6652.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practical, commenters should submit three copies of their comments. Comments received after the close of the comment period (see "**DATES**") or delivered to addresses other than those listed above (see "**ADDRESSES**"), may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The times, dates, and addresses for all hearings will be announced in the **Federal Register** at least 7 days prior to any hearings which are to be held.

Any person interested in participating at a hearing at a particular location should inform Dr. Cheek (see "**FOR FURTHER INFORMATION CONTACT**") either orally or in writing of the desired hearing location by 5 p.m. Eastern time July 19, 1993. If no one has contacted Dr. Cheek to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results will be included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing provide the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

II. Background

The regulations proposed here are intended to implement several different sections of SMCRA. Together, these statutory requirements ensure that permits are not issued to persons who are ineligible to receive a permit to conduct surface coal mining operations, due to ownership and control links to outstanding violations, including overdue civil penalties and abandoned mine land (AML) fees.

A. Section 506—Permits and Section 510—Permit Approval or Denial

Section 506(b) of SMCRA provides that successors in interest to permittees may continue mining until a new permit is issued if the successor can obtain the required bond and applies for the new permit within 30 days of succeeding to such interest. OSM has previously defined successor in interest at 30 CFR 701.5 (44 FR 15316 *et seq.*) to mean "any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights."

Section 510(c) of SMCRA and existing 30 CFR part 773 establish certain requirements for permits and permit processing. These requirements include the determination of ownership or control links between permit applicants and individuals or entities who are responsible for unabated violations of Federal or State laws and rules. See 30 CFR 773.5; 30 CFR 773.15(b). The purpose of such inquiry is to determine whether a permit applicant is linked to surface coal mining operations which have unabated violations. See 30 CFR 773.15(b). In the event that a permit applicant is so linked, the regulatory authority may not issue a permit to the applicant unless the applicant submits proof that the violation has been or is in

the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation, or is the subject of a good faith, direct administrative or judicial appeal to contest the validity of the violation.

The Secretary of the Interior established a computerized Applicant/Violator System ("AVS") to match permit applicants and their owners and controllers with current violators of SMCRA, to improve implementation of this statutory requirement. The rules proposed there would contribute to OSM's intention to continue operating and enhancing this system. This rule clarifies responsibilities for obtaining, entering, and maintaining data in the system.

B. Section 511—Revision of Permits

Section 511(b) of SMCRA provides that "no transfer, assignment or sale of the rights granted under any permit issued pursuant to this Act shall be made without the written approval of the regulatory authority." OSM has previously defined transfer, assignment or sale of permit rights at 30 CFR 701.5 to mean a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the regulatory authority (44 FR 15316 *et seq.*). OSM has further specified at 30 CFR 774.17(a) that no such transfer of rights can occur without the prior written approval of the regulatory authority. These provisions help ensure that individuals who are not eligible to receive a permit to conduct surface coal mining operations do not receive such a permit through a transfer from some other, eligible party.

III. Discussion of Proposed Rules

The proposed rules would amend various existing provisions relating directly or indirectly to the use of the AVS. Taken together, these changes would clarify the role of the AVS in the permit application process and eliminate duplicative submission of data by permit applicants. The changes would clarify the definitions of ownership or control of entities and of surface coal mining operations, and would relate changes in such ownership or control to revised procedures for transfer, assignment or sale of permit rights and for permit revisions in a more meaningful and practical way. Overall, the proposed changes are expected to make the AVS a more useful tool for OSM, regulatory authorities, the coal mining industry and the public.

This preamble will discuss proposed regulations in numerical order by section, starting with the definition of transfer, assignment or sale of permit rights in § 701.5 and continuing through §§ 773.5, 773.17, 773.27, 774.17, 774.18, 778.13, 778.14, and 843.23.

A. Section 701.5—Definitions

This proposal would amend the current definition of "transfer, assignment or sale of permit rights." The existing rule in its current form was published on September 23, 1983 (48 FR 44391), and has not been amended since. The change proposed here would restrict the definition to changes in permittees. The term would no longer apply to other changes in ownership or control, such as changes in directors or officers of an entity, or changes of operators on a surface coal mining operation.

At the time the current definition was finalized, OSM had not promulgated its ownership and control definitions. When those latter definitions were promulgated in 1988, as discussed below, OSM greatly changed the interaction of the definition of transfer, assignment or sale with the definitions of ownership and control. Subsequently, experience has shown that the interaction of the two provisions results in an impractical process, whereby persons engaged in the surface coal mining industry are required to go through the transfer, assignment or sale process for any change in ownership or control, as defined in § 773.5. This includes not just changes in permittees, but also changes in officers or directors, shareholders, and all other owners or controllers. Furthermore, the current regulations require regulatory authority approval of such changes before they occur. Not only does this impose an undue burden on both the regulatory authorities and on the regulated community, it conflicts with normal and accepted business practices.

Restriction of the term transfer, assignment or sale of permit rights to changes of the permittee means that prior regulatory authority approval for ownership or control changes under this provision of the Act will be required only for changes for permittees. Other ownership or control changes, except for changes in operators, as discussed below, can occur prior to such approval. OSM intends these various new provisions to provide adequate opportunity for such changes to be reviewed without imposing unrealistic burdens on the regulated community, or contravening normal business practices.

B. Section 773.5—Definitions

This proposal would amend the current definitions of "owned or controlled" and "owns or controls." The final rule in its current form was published October 3, 1988 (53 FR 38868 *et seq.*). OSM recognizes that the definition of ownership or control is currently being litigated in the case of *National Wildlife Federation* v. *Lujan*, Nos. 88–3464, *et seq.* (D.D.C., consolidated), and this proposal departs in some respects from the position taken by the agency in that litigation.

The primary change proposed here would be a reorganization of the definitions. In effect, the ownership and control of entities would be defined separately from the ownership and control of surface coal mining operations. Currently, ownership and control of both entities and surface coal mining operations are covered by the same set of definitions. Specifically, the proposal provides definitions of deemed and presumed owners of entities in proposed paragraphs 773.5(a) (1) and (2), respectively. It provides definitions of deemed and presumed owners of surface coal mining operations in paragraphs 773.5(b) (1) and (2), respectively. These organizational changes would enhance the clarity of the definitions.

Three other changes would be made to the definitions as well. First, the proposal specifies that operators are deemed to own or control the surface coal mining operations they actually conduct. The preamble to the final ownership and control rule of October 3, 1988, discussed the topic at length:

> The definition [promulgated herein] establishes a rebuttable presumption of control for operators. This has been a difficult and controversial issue for OSMRE, and one about which members of Congress inquired as to the basis the agency had for proposing an irrebuttable presumption of control for operators and the basis for changing that position.
>
> Prior to promulgating this rule, OSMRE considered several alternatives. In the April 5, 1985, proposal (50 FR 13724), operators were not specifically mentioned in the definition, but would have been regulated under the phrase "any other relationship." The second alternative was published on April 16, 1986 (51 FR 12879). It did not contain specific rule language but stated that being an operator would constitute control. This option was added in response to comments which argued that the person really controlling the mining operation is the operator (administrative record document no. 6). Under another alternative, published on May 4, 1987 (52 FR 16275); reiterated on October 5, 1987 (52 FR 37164), and included in this final rule, being an operator creates a presumption of control.
>
> Part of OSMRE's difficulty in determining the degree to which an operator controls a surface coal mining operation results from ambiguities in the Act. Even though the terms "permittee" and "operator" are defined in the Act, the Act sometimes uses the terms

interchangeably from one section or subsection to another. For example, "permittee" in section 518(a) and "operator" in section 518(c) appear to be used interchangeably.

OSMRE is concerned about the inequities that could result from a conclusive presumption for operators that may not always be true. Although permittees are responsible for everything that happens on the site, non-permittee operators are responsible only for their own conduct. Thus an operator may be able to show that a violation was caused by the permittee or someone else other than itself.

Further, courts have construed operators to include entities which do not physically engage in coal removal. See *United States* v. *Rapoca Energy Co.*, 613 F. Supp. 1161 (1985) (*Rapoca*). Thus although OSMRE agrees that entities physically engaged in surface coal mining operations will almost universally control such operations, the term operator includes more than such entities.

The proper focus of a compliance review inquiry should be whether a person controls the operation, not whether the person is the "operator." Therefore OSMRE is reluctant to establish an irrebuttable presumption based upon the definition in section 701(13). (53 FR 38873)

Subsequent to the publication of that preamble, OSM has found in its implementation of the AVS that operators are invariably the controllers of the operations they conduct. No entity has even attempted to rebut the presumption that it controlled operations it conducted. Part of the difficulty with this issue, OSM believes, has been the confusion between control of operations and control of entities. Certainly, this confusion has created a problem for the consistent application of principles of ownership and control to the process by which permit applicants are evaluated and, when they are linked to a violation, blocked from receiving new permits to mine. This is particularly true where the operator is not the permittee, but rather is a separate entity hired by the permittee to mine the coal on the permit. This situation has been a source of confusion in the implementation of 30 CFR 773.15 and 30 CFR 773.5. For example, where the operator is not the permittee, but is a separate entity hired by the permittee to mine the coal, the permittee should be considered to be a controller of the operator only *vis-a-vis* the specific permit on which the operator is conducting mining operations for the permittee, but not at other permits being mined by the operator for other permittees.

This proposal would clarify that not only is the permittee considered a deemed controller of a surface coal mining operation, but so is a non-permittee entity who is removing the coal on behalf of the permittee. However, OSM recognizes the validity of the arguments it made in the preamble to the 1988 final ownership and control rule, quoted above. Thus, OSM is not actually proposing a change in policy from that articulated in the preamble. Here, OSM is specifying that "non-permittee operators are responsible only for their own conduct." While an operator is responsible for its own operations, if there is more than one such operator on a permit, and assuming the portions of the permit are readily separable, each operator would be a deemed controller only for those portions of the total operation when and where it is conducting surface coal mining operations. In effect, the operator could refute the fact that it controlled a specific portion of the operation, but it could not rebut its control over its own parts of the operation. OSM believes that this change accurately reflects the degree of control an operator exercises over its own operations, while still allowing an operator to present facts that may demonstrate it is not in control of other activities on the same permit. Thus, proposed paragraph 773.5(b)(1)(ii) would stipulate that operators are deemed controllers "with respect to any operations or activities conducted by such operator on the site."

For additional clarity, OSM proposes to amend the language currently found in paragraph 773.5(a)(3) to specify at proposed paragraph 773.5(b)(1)(i) that permittees are deemed controllers with respect to any operations or activities conducted on a site. This latter proposal also does not represent any change from current policy.

For purposes of the proposed rule, the term "operator" in § 773.5(b)(1)(ii) means any person or entity that meets the definition of "operator" in 30 U.S.C. 1291(13), other than a permittee covered by § 773.5(b)(1)(i) or a mineral owner covered by § 773.5(b)(2). OSM has consistently interpreted the term "operator" to include both permittees—see H.R. Rep. No. 294, 101st Cong., 1st Sess. 25–26 (1989)—and mineral owners who conduct surface coal mining operations through the use of contractor miners—see *United States* v. *Rapoca Energy Co.*, 613 F. Supp. 1161 (W.D. Va. 1985). Most commonly, however, the term "operator" is used to refer to an entity that mines coal under a contract, sublease, or assignment from a permittee. It is this latter usage that OSM intends in proposed § 773.5(b)(1)(ii), since permittee-operators and mineral owner-operators are covered separately in proposed § 773.5(b)(1)(i) and (b)(2), respectively.

OSM has discussed these issues extensively with the States. As a result, OSM believes that these definitions provide a reasonable basis for providing consistency to regulatory authorities in their attempts to record relationships among different entities at one surface coal mining operation accurately and clearly.

A second change that would be made by this proposal would be in current 30 CFR 773.5(b)(6). That section currently provides that control is presumed to exist where someone owning or controlling coal to be mined by another person under the terms of a lease, sublease or other contract has the right to receive such coal after mining or has the authority to determine the manner in which that person or another person conducts a surface coal mining operation. Thus, this presumption can be met when someone owns the coal to be mined by another under a lease or contract, and has a right to receive the coal or otherwise can determine the manner of mining. By manner of mining, OSM is not referring to the general type of mining—surface or underground, for example—but rather to the implementation of whichever general mode of mining is used at a particular site. OSM is proposing to delete the last provision—determining the manner of mining. The proposed regulation would retain the first two provisions—ownership of the coal and the right to receive the coal.

OSM believes that the last part of the current provision is redundant with the provisions in current 30 CFR 773.5(a)(3). The provisions of current 30 CFR 773.5(a)(3) state that deemed ownership or control includes "any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations." Under today's proposal, current 30 CFR 773.5(a)(3) would become paragraph 773.5(a)(1)(ii), and would be repeated, in large part, in proposed paragraph 773.5(b)(1)(iii). Under the proposal to separate the definitions of ownership or control for entities and for surface coal mining operations, OSM is adding definitional language at proposed paragraph 773.5(b)(1)(iii) that is essentially the same as that at current paragraph 773.5(a)(3). OSM considers entities which have authority directly or indirectly to determine the manner in which the surface coal mining operation is conducted to be deemed controllers of such surface coal mining operations. Once the test currently contained in (a)(3) has been met, control is no longer

presumed, but deemed. Thus, it is unnecessary to have that test in the section dealing with presumed control.

OSM recognizes, however, that there may be some reason to retain this definition of control by mineral owners who have authority to determine the manner of mining in both the (a) and (b) sections of § 773.5. It has been suggested that regulatory authorities may be discouraged from asserting a control link under the deemed provisions in the (a) portion of the definition, but would assert such control under the presumed provisions in (b), because the entity concerned could attempt to rebut control under (b), but not under (a). OSM is particularly interested in receiving comments on this matter.

The third and final substantive change proposed today would alter OSM's policy regarding the relationship between successive ascending or descending levels of corporate structure and percentage of ownership of an entity. In the preamble to the 1988 ownership and control rule, OSM stated that ownership does not "dilute" as it goes up or down a hierarchy of owners or controllers. In that preamble, OSM noted that the definition of ownership and control relating to instruments of ownership or voting securities would be used

"in determining whether control exists between indirectly related corporate entities and will apply at each level of a corporate structure. For example, if Company "A" owns a forth-five percent interest in Company "B," and Company "B" owns a twenty percent interest in Company "C" (the applicant), then Company "A" will be presumed to own or control the applicant, even though Company "A" has an indirect interest in the applicant of only nine percent. The determining factor is not the percentage owned, but whether control exists. In such an example, if Company "A" owned or controlled Company "D" which had a violation, the applicant will not be issued a permit unless it submits evidence proving that it is not controlled by Company "B," Company "B" is not controlled by Company "A", Company "A" does not own or control Company "D", or Company "D" is not a violator." (53 FR 38874)

Based on several years' experience with the AVS–OSM has determined that it is not feasible to apply this definition in this manner. Use of this interpretation has required applicants to submit, regulatory authorities to collect, and OSM to maintain information on levels of ownership of entities well beyond the extent to which any reasonable person would suggest that effective control might exist. As the amount of information in the AVS has increased, collection of information on multiple levels of ownership where the cumulative ownership share falls below 10% has resulted in large quantities of data that are rarely used to establish a link between an applicant and a violation being entered into the system. In short, collection, entry, and maintenance of this information has created a significant burden on the regulated community, State regulatory authorities, and OSM, but has had minimal benefit for the effective implementation of section 510(c) of SMCRA. Thus, OSM is proposing that the percentages of ownership at the various levels would be multiplied to determine the percentage of ownership which any remote owner has in the entity. Once an ownership share fell below 10% (in the above example, 45%×20%=9%), OSM is now proposing to hold that ownership or control for purposes of section 510(c) of SMCRA would no longer be presumed to exist. Similarly, once cumulative ownership fell below the over 50% level, OSM would hold that deemed ownership no longer existed, although presumed ownership would exist until the cumulative percentage fell below 10%.

OSM recognizes that, by changing its interpretation of this definition, there may be a few cases where a person with effective control over an entity would be excused from the definition of ownership or control under this specific test. However, if such control actually existed, the situation could be covered by proposed (a)(1)(ii).

This formula, as well as other definitions of ownership and control contained herein, would apply to the Small Operators Assistance Program (SOAP) requirements at 30 CFR Part 795. Specifically, they would apply to the attributed production requirement for SOAP eligibility and liability under that regulation.

In summary, OSM is today proposing reorganized and revised definitions of "owned or controlled and owns or controls" at § 773.5. Definitions for entities are found at (a) (1) and (2), and cover deemed and presumed owners and controllers, respectively. Definitions for surface coal mining operations are found at (b) (1) and (2), and also cover deemed and presumed owners and controllers, respectively.

Several additional points regarding these definitions need to be discussed. During development of the rule, OSM was asked whether there should be a floor under the definition found at proposed § 773.5(a)(2)(ii). That is, to what degree must a person control financial or other assets to be in control of an entity? OSM does not believe that it is necessary to address this issue in the regulations themselves. Clearly, control in this definition refers to control of assets that can affect mining operations. While each case would have to be looked at in the context of the facts of that case, OSM expects that control would not be found unless the person had the ability to commit a significant portion of the entity's assets that were involved in the mining operations themselves.

Secondly, OSM was asked about the relationship between the definitions of ownership or control for entities and those for surface coal mining operations. The premise of both the existing and the proposed regulations is that persons who control entities also control the operations that those entities conduct. Thus, a deemed owner of an entity—for example, a person owning of record greater than 50% of the stock—is deemed to control that entity's mining operations. However, the reverse is not necessarily true; control of surface coal mining operations does not, in and of itself, imply overall control of an entity conducting the operations. For example, an operator or mineral owner covered by proposed § 773.5 (b)(1)(ii) or (b)(2) may control surface coal mining operations being conducted by a permittee on a particular site, but not surface coal mining operations being conducted by the same permittee at other sites. In such a case, the operator or mineral owner would be considered a controller of the permittee, but only with respect to the particular site.

C. Section 773.17—Permit Conditions

This proposal would amend § 773.17(i) to delete the current permit condition that a permittee must provide updated ownership and control information to the regulatory authority within 30 days of receiving a cessation order. It would substitute a requirement that permittees instead follow the transfer, assignment or sale of permit rights procedures at § 774.17 for changes of permittees and the proposed permit revision procedures at § 774.13(e) for changes in operators, as a means of ensuring that regulatory authorities have up-to-date information on permittees and operators which control surface coal mining operations at a site.

This proposal includes some changes to the existing program. The current requirement in this section, specifying that permittees must submit to the regulatory authority updated ownership and control information within 30 days of receiving a cessation order, would be deleted. As discussed in 54 FR 8991, this provision was intended to insure that regulatory authorities had complete and accurate ownership and control information regarding violations, so that

all appropriate entities could be held responsible for the correction of such violations. OSM now believes that a different method is more appropriate for ensuring that the regulatory authority has needed information on entities directly controlling surface coal mining operations on a permit. Consequently, OSM is proposing to delete the current provision at § 773.17(i).

Additionally, OSM believes that the appropriate method for obtaining ownership and control information on permittees and operators is through the transfer, assignment or sale procedures, for permittees, the newly proposed permit revision procedures at § 774.13(e), for operators, and procedures for other ownership and control changes. These procedures are discussed elsewhere in this proposal. See the discussions of proposed §§ 774.13(e), 774.17, and 774.18. In proposed paragraph 773.17(i), OSM proposes that the obligation to follow the permit revision and transfer, assignment or sale procedures be a required permit condition. The details of the procedures to be followed are not included in this section, but rather are covered in §§ 774.13(e), 774.17, and 774.18, below.

D. Section 773.27—Periodic Check of Ownership or Control Information

This section was first discussed by OSM in the AVS procedures rule proposal of September 6, 1991 (56 FR 45780 *et seq.*). Subsequent to the development of that proposal, however, several factors have suggested that an additional provision should be added to the proposal. Consequently, OSM is today withdrawing proposed § 773.27, and is simultaneously reproposing the same provision in modified form as part of this proposal.

The September 1991 proposed rule established procedures for the regulatory authority to determine whether the information contained in the current official record of the permit concerning the permittee, the operator, and the MSHA identification number was and remains complete and accurate. If the regulatory authority determined that the information was not complete or accurate, several additional steps would be taken to resolve the matter. Such additional steps would include enforcement action requiring cessation of operations by any unapproved permittee or operator and the submission of an application for transfer, assignment, or sale of permit rights under § 774.17 of this chapter. Finally, proposed § 773.27(b)(2) provided that the regulatory authority take action in accordance with the provisions of § 843.23. Section 843.23 was also proposed on September 6, 1991, and is also reproposed here. This section would establish sanctions for knowing omissions or inaccuracies in ownership or control and violation information.

As is explained below, OSM is modifying the above proposal with respect to two provisions, §§ 773.27(a)(2) and (b)(1)(iv). The reproposed section is otherwise the same as that proposed in September 1991.

The first change, in proposed § 773.27(a)(2), would be to eliminate a requirement that regulatory authorities consult information from the Energy Information Administration (EIA), as provided by the AVS, to determine whether the permit record was complete. OSM has found, over the past couple years, that information from EIA is not particularly helpful in such determinations, and that the same information is generally found in other more readily available sources.

The second change, to proposed § 773.27(b)(1)(iv), is being made for consistency with other changes proposed today in provisions relating to obtaining regulatory authority approval for certain types of ownership and control changes. The provision proposed today, compared to the September 6, 1991 proposal, eliminates the requirement for enforcement action when there has been an attempt to change an owner or controller, other than the permittee or operator, without the written approval of the regulatory authority. This is consistent with the proposal regarding changes in ownership and control, other than permittees or operators, discussed below at § 774.18, which provides for such changes to be reported on a quarterly basis, rather than before they occur.

Proposed § 773.27 would require that the regulatory authority engage in periodic review of a permitted site to assure that basic ownership and control information contained in the current official record of the permit was and remains complete and accurate.

The underlying theory of this proposed section is that some permittees may inadvertently fail to provide accurate ownership and control information in their permit applications. Other permittees may intentionally provide misleading information in their applications to enable them to receive permits which would otherwise be blocked. In addition, relevant information as to ownership and control and as to the identification of operators may change over the life of a permit. In any of these situations, to the extent that a regulatory authority engages in periodic investigations subsequent to the issuance of a permit, there is a greater likelihood that only eligible persons are allowed to engage in surface coal mining operations and that the records of the regulatory authority will accurately reflect the actual facts of a particular permitted site.

Proposed § 773.27(a)(1)–(2) would require that the regulatory authority take certain actions to determine whether the information contained in the current official record of the permit concerning the permittee, the operator, and the MSHA identification number for the site was and remains complete and accurate. The actions required by paragraphs (a)(1) and (a)(2) would have to be undertaken by the regulatory authority at the first regular inspection after disturbance of a permitted site and annually thereafter for as long as coal extraction on the site was not completed. For currently active sites which have already been permitted, OSM expects that the regulatory authority would undertake these actions at the next regularly scheduled inspection, and annually thereafter. Actually, because of agreements that OSM and the States entered into in 1990, most active sites should already have been checked by the regulatory authorities for complete ownership and control information.

Proposed § 773.27(a)(1) provides that the regulatory authority would be required to conduct an on-site inquiry during a regular inspection of the site. Proposed § 773.27(a)(2) provides that the regulatory authority would be required to conduct a check of MSHA and AML information, as such information sources are made available through AVS.

Site disturbance is proposed as the key event triggering the regulatory authority's duty to conduct further investigation of previously submitted information. In the event that the permit application has failed to identify the operator who is actually conducting mining operations on the site, such operator can be readily identified once surface mining activities have begun.

An "on-site inquiry" means simply that the regulatory authority should be observing activities on the site and asking questions. For instance, if an inspector observes that the name on a mine identification sign or on motor vehicles or other equipment on the site is not listed in the permit application as an operator, permittee, or owner or controller, than the inspector should inquire as to the relationship of the

named entity to the operator, permittee, and owners or controllers so listed.

OSM has placed MSHA and AML information files directly into AVS. Accordingly, the proposed duty of the regulatory authority to check such files can be accomplished through use of AVS. The assumption of this proposed requirement is that these other databases are updated from time to time, based on reports submitted by the permittee or other operator. These procedures would help to assure that the regulatory authority is aware of changes relating to ownership and control relationships which are reported to and developed by the two Federal agencies.

Proposed § 773.27(b) would provide that if, after conducting an on-site inquiry and checking the MSHA and AML databases, the regulatory authority identifies any potential omissions, inaccuracies, or inconsistencies in the information previously provided in the permit application, or the regulatory authority identifies a change to such information, the regulatory authority would be required to take one or more of the actions delineated in paragraph (b)(1).

Proposed § 773.27(b)(1) would require the regulatory authority, in all cases, to promptly contact the permittee and require expeditious resolution of the matter through one or more of the actions listed in paragraphs (b)(1)(i)–(b)(1)(iv). The decision as to the appropriate action or actions to resolve a particular matter would be based upon the facts of a given situation.

Paragraph (b)(1)(i) would allow the regulatory authority to require, as a basis for resolution, that the permittee submit a satisfactory explanation which includes credible information to demonstrate that no actual omission, inaccuracy, or inconsistency existed at the time of permit issuance and that no subsequent change to such information has occurred.

"Credible" information would include the types of documentation presented in support of challenges to ownership or control links or to the status of violations as provided by previously proposed § 773.26. See 56 FR 45801–45803 (September 6, 1991). Such information would be submitted in this case, however, to make the demonstration required by paragraph (b)(1)(i) of proposed § 773.27.

Proposed § 773.27(b)(1)(ii) would provide that resolution of the apparent omission, inaccuracy, or inconsistency could include, if appropriate, amendment of the regulatory authority's current official record of the permit. Such amendments would be appropriate, for example, to make minor corrections in the record—for example, to correct the MSHA number for the site or to update the permittee's or operator's mailing address. They would not be appropriate to document changes in permittees or operators, which are discussed under paragraph (b)(1)(iv) below.

Under proposed § 773.27(b)(1)(iii), resolution of the apparent omission, inaccuracy, or inconsistency would include remedial action as provided by 30 CFR 773.20(c) in situations where complete and accurate information would have precluded issuance of the permit under 30 CFR 773.15(b). In a situation covered by paragraph (b)(1)(iii), the facts in existence at the time of permit issuance would have required a denial of the permit application had such facts been known. Accordingly, the regulatory authority would treat the permit as having been improvidently issued and would apply the remedial measures contained for such permits at 30 CFR 773.20(c).

Proposed § 773.27(b)(1)(iv) would require that resolution of the apparent omission, inaccuracy, or inconsistency include enforcement action under 30 CFR 843.11 or .12, or the State program equivalent, where there has been an attempt to change the permittee or operator of the surface coal mining operation without complying with the requirements for an operator change or for a transfer, assignment or sale of permit rights under 30 CFR 774.13 or 30 CFR 774.17, respectively, or the State program equivalent.

An unapproved operator change, without complying with the provisions proposed at § 774.13(e), below, would constitute a violation of the approved permit and the regulatory program. Essentially, such an unapproved operator would be conducting surface coal mining operations without a permit.

Under 30 CFR 774.17(a), "[n]o transfer, assignment, or sale of permit rights may be made" without regulatory authority approval. Proposed paragraph (b)(1)(iv) therefore refers to an unapproved transfer, assignment, or sale as an "attempt to change the permittee" even though a *de facto* change may have occurred on the mine site.

An unapproved transfer, assignment, or sale of permit rights does not relieve the approved permittee (and its owners or controllers) of responsibility for the surface coal mining operation. Moreover, such changes made without complying with § 774.17 would constitute a violation of the approved permit and the regulatory program. Except where mining operations are authorized under proposed § 774.17(f)(2), as explained below, any unapproved permittee would be conducting surface coal mining operations without a permit.

The provisions of proposed §§ 774.13, 774.17, and 774.18 are covered in more detail below.

Proposed § 773.27(b)(2) would require that the regulatory authority also take action, where appropriate, in accordance with the provisions of proposed § 843.23 or the State program equivalent. The provisions of proposed § 843.23 are discussed in detail below.

E. Section 774.13—Permit Revisions

In promulgating SMCRA, Congress specified general procedures for the transfer, assignment or sale of permit rights and for successors in interest. These procedures help ensure that persons who are not eligible to receive permits to conduct surface coal mining operations, because of ownership and control links to outstanding violations, including overdue abandoned mine land (AML) fees, do not receive such permits by transfer from other, eligible persons.

The terms "transfer, assignment or sale of permit rights" and "successor in interest" are currently defined in 30 CFR 701.5 as follows:

Transfer, assignment or sale of permit rights means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the regulatory authority.

Successor in interest means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

These definitions were promulgated March 13, 1979 (44 FR 15316 *et seq.*) and have not been changed since.

In its regulations at 30 CFR 774.17, promulgated September 28, 1983 (48 FR 44395 *et seq.*), OSM specified the procedures to be followed in the event of a transfer, assignment or sale of permit rights. In brief, these procedures require the permittee who desires to transfer permit rights to apply to the regulatory authority, providing certain legal, financial, compliance, ownership and control, and related information. Furthermore, the filing of the application must be advertised in a newspaper of general circulation in the locality of the operations involved. Any person having an interest which may be affected by a decision on the transfer, assignment or sale may submit written comments to the regulatory authority, within a time specified by the regulatory authority. See 30 CFR 774.17(c).

With the promulgation of the current ownership and control rule at 30 CFR 773.5 in October, 1988 (53 FR 38868 *et seq.*), the range of persons defined as owners or controllers, and thus subject to the transfer, assignment or sale procedures, became very broad. Thus, in its Directive INE–42, of March, 1991, OSM specified that transfer, assignment or sale of permit rights applies to all changes of ownership or control as defined by § 773.5. In essence, this means that any change in a director or officer of a company, any sale of more than 10% of stock in a company, any change of partners in a partnership, any change in permittee or operator at a site, or any other ownership or control change requires prior regulatory authority approval and a public comment process.

Subsequently, OSM has found that requiring transfer, assignment and sale procedures for all changes in ownership as defined by § 773.5 is excessively burdensome on both the industry and the State Regulatory Authorities, and does not significantly contribute to implementation of the requirements of section 510(c). For example, it is unrealistic to expect a company to obtain prior, written approval from the regulatory authority before hiring a new officer, or selling relatively small amounts of its stock. Furthermore, these requirements reach a broader range of persons than those who are likely to have an immediate impact on the manner in which surface coal mining operations are conducted.

To resolve this problem, OSM is today proposing three sets of regulatory changes: (1) Changes in the transfer, assignment, or sale definition, as discussed above at § 701.5, and other changes in the transfer, assignment, or sale provisions discussed at § 774.17, below; (2) new provisions for changes in operators, discussed in this section, and (3) new provisions for changes in other ownership and control categories, discussed at § 774.18, below.

Proposed new § 774.13(e) covers requests to change an operator on a permit. Proposed § 774.13(e)(1) establishes that any changes to an operator shall be submitted for approval to the regulatory authority, according to procedures set forth in the remaining paragraphs of proposed § 774.13(e).

Proposed § 774.13(e)(2) would establish application requirements for changes in operators. The proposed provisions are similar to those for permittee changes under the transfer, assignment or sale provisions at § 774.17. They include provision of the name and address of the permittee and the permit number; the name and address of the proposed operator, and the legal, financial, compliance, and related information required by part 778 of this chapter for the proposed operator.

At proposed § 774.13(e)(2)(i)(D), OSM is including a provision that this information can be submitted by certifying that information on the proposed operator contained in AVS is complete and accurate, rather than by submitting this information *de novo* with each application. This provision will appear several times throughout this proposed regulation. OSM intends this and other similar provisions to be used to reduce the information collection and paperwork burden place on the regulatory authorities and the regulated community. The AVS currently contains large amounts of information about the coal industry. Most active entities, including those who frequently conduct surface coal mining operations on behalf of a permittee, are recorded in the database. The information on such companies generally includes extensive data on officers, directors, shareholders, and other owners and controllers. It does not seem an efficient use of either private or public resources to continue to require submission of this information with each new permitting action, including changes of operators. In the event that the proposed regulation is adopted, a regulatory authority may choose a more stringent approach with respect to the submission of information. Accordingly, if a specific regulatory authority believes that it needs to continue to require any or all such information to be submitted with each permitting action, it may do so.

Proposed § 774.13(e)(2)(ii) would require the applicant for an operator change to advertize the filing of the application in a newspaper of general circulation in the locality of the operation involved, along with sufficient information to identify the proposed operator and the operation. OSM believes that the public interest in ensuring that operators conducting surface coal mining operations are eligible to conduct such operations is sufficient to warrant this requirement, given the amount of control that such operators have over mining methodologies.

Proposed § 774.13(e)(2)(iii) would establish that mining may be conducted by the proposed operator, prior to final approval by the regulatory authority, when certain conditions have been met: (A) The permittee has submitted to the regulatory authority a complete application for a change of operator; and (B) the regulatory authority has determined by checking the information in the AVS that the proposed operator is eligible to receive a permit to conduct surface coal mining operations. OSM believes these steps are necessary to accommodate the realities of the coal mining industry. In some cases, it may be necessary for a permittee to replace an operator on relatively short notice. To minimize the disruption to mining from the regulatory program, OSM believes that it is prudent to allow mining with the proposed new operator to proceed before the entire approval process is complete. OSM further believes that the two steps required here will, in most cases, ensure that operations are not conducted by individuals who are not eligible to receive permits to conduct surface coal mining operations.

Proposed 774.13(e)(3) would provide that any person having an interest which is or may be adversely affected by a decision on the change in operator, including an official of any Federal, State or local government agency, may submit written comments on the application to the regulatory authority within a time specified by the regulatory authority. This furthers OSM's concern that the public interest in ensuring that operators conducting surface coal mining operations are eligible to conduct such operations is accommodated.

Proposed § 774.13(e)(4) would establish criteria for approval of operator changes by the regulatory authority. It would provide that the regulatory authority may approve the operator change if it finds that the new operator (i) is eligible to receive a permit in accordance with § 773.15(b) and (c) of this chapter; and (ii) meets any other requirements of the regulatory authority.

Proposed § 774.13(e)(5) would cover situations where the regulatory authority found, during a routine inspection or through any other means, that an unapproved operator is operating on a site. It further would provide that the regulatory authority has to issue, under §§ 843.11–.12 of this part or the State program equivalent, a notice of violation to the permittee and a cessation order to the operator, specifying that the operator may not conduct surface coal mining operations until the application requirements discussed above have been met. Failure to comply with such orders can be handled by the regulatory authority through the State program equivalents of §§ 843.11 and .12.

OSM has carefully considered the appropriate remedy for this situation. OSM believes that operations by the unapproved operator must immediately

be ceased, until the regulatory authority has an opportunity to determine that the operator is, indeed, eligible to receive a permit to conduct surface coal mining operations. Further, OSM believes that the permittee should be penalized, with a notice of violation and appropriate attendant civil penalties, for authorizing the unapproved operator to conduct operations on the permit. However, OSM also believes that it is appropriate to allow operations under the permit to continue, either with the previous (approved) operator, or the permittee itself. OSM is particularly interested in comments on this issue.

Proposed 774.13(e)(6) would require the regulatory authority, within 30 days of its decision regarding any operator change, to enter the new operator information into AVS. OSM believes that prompt updating of the AVS is critical to allowing the database to be used as a substitute for certain permit information requirements.

F. Section 774.17—Transfer, Assignment, or Sale of Permit Rights

This proposed section revises existing provisions for the transfer, assignment or sale of permit rights by requiring a complete inspection prior to the regulatory authority's approval of a transfer, assignment, or sale, allowing provision of required information by reference to AVS, and by allowing for continued operations prior to final regulatory authority approval of a proposed change in permittee. These proposed provisions should be considered in conjunction with the proposed change to the definition of transfer, assignment, or sale of permit rights, discussed above under proposed § 701.5. That proposed change in definition would mean that the following proposed provisions would apply only to changes in permittees, not to changes in any other categories of ownership or control. However, OSM understands that, because of variations in State statutes, situations in which these requirements are applied may vary somewhat from State to State. For example, one State may consider the sale of one company to another, without any other change in corporate structure, to be a change in permittee; another State may not.

Specifically, proposed § 774.17(a) would require the regulatory authority to conduct a complete inspection of a permit area within a 30 day period just prior to granting the permittee's request for a transfer, assignment, or sale of permit rights under that permit. OSM believes this requirement is needed to ensure that the current permittee, as well as the new permittee, are held responsible for violations that are outstanding at the time of the transfer.

Proposed § 774.17(b)(1)(iv) would allow an applicant to certify that the relevant information in AVS on the proposed new permittee is complete and accurate as of the date of the certification, in lieu of submitting information on ownership or control required by this section, or any portion thereof.

As discussed above under proposed § 774.13(e)(2)(i), this provision is intended to reduce the information collection and paperwork burden placed on the regulatory authorities and the regulated community. The AVS currently contains large amounts of information about the coal industry. Most active entities, including those who hold permits, are recorded in the database. The information on such companies generally includes extensive data on officers, directors, shareholders, and other owners and controllers. It does not seem an efficient use of either private or public resources to continue to require submission of this information with each new permitting action, including changes of operators. In the event that the proposed regulation is adopted, a regulatory authority may choose a more stringent approach with respect to the submission of information. Accordingly, if a specific regulatory authority believes that it needs to continue to require any or all such information to be submitted with each permitting action, it may do so.

Proposed § 774.17(f)(1) would simply renumber current § 774.17(f) as (f)(1). Proposed new § 774.17(f)(2) would allow an applicant who has not received final approval of a transfer, assignment, or sale of permit rights to conduct surface coal mining operations under an existing permit, pending the final decision on the application for a transfer, assignment, or sale of permit rights, when certain conditions were met: (i) The applicant has submitted to the regulatory authority a complete application for transfer, assignment, or sale of permit rights in accordance with paragraph (a) of this section; (ii) the regulatory authority has determined that adequate bond coverage and liability insurance will continue to exist with respect to the surface coal mining operation subject to the transfer, assignment, or sale of permit rights; and (iii) the regulatory authority has determined by checking the information in the AVS that the proposed transferee, assignee or purchaser of the rights is eligible to succeed to mining rights under the permit.

This proposal reflects procedures which OSM believes ensure that entities ineligible to receive permit rights do not indeed receive such rights. Further, these provisions accommodate the need of the coal industry to expedite the transfer, assignment, or sale procedure.

OSM believes that, of the various steps required in the transfer, assignment, or sale process, three are most critical for ensuring that rights of eligible transferees, assignees or purchasers are protected and that the environment is protected from inappropriate transfers. These three include a (i) complete application for transfer, (ii) maintenance of adequate bond and insurance coverage, and (iii) the review of information on AVS. Review of the information contained in the complete application and in AVS assures that the regulatory authority will know if the applicant is associated with violations that would prevent the applicant from receiving a permit to mine. Adequate bonding and insurance for the permit helps protect the environment and assures that funds will be available for reclamation. Consequently, OSM has incorporated these critical requirements into proposed paragraph (f)(2). Once these requirements are met, the other requirements of the transfer, assignment and sale process, including the opportunity for public comment, can be accommodated while mining at the site continues. Of course, if it is discovered during the remaining steps of the process that the applicant is, in fact, ineligible to receive a permit, the transfer application would be denied, the interim authorization to mine would be revoked, but the original permit would remain place.

G. Section 774.18—Changes in Ownership or Control Information

In this section, OSM is proposing an entirely new approach to changes in owners and controllers of entities or surface coal mining operations, as defined above at § 773.5, compared to present provisions, except for permittees or operators, which are discussed under proposed §§ 774.17 and 774.13(e), respectively. Currently, changes to all owners and controllers are covered by the transfer, assignment or sale provisions at § 774.17, as a result of the inclusive nature of the definition of transfer, assignment or sale of permit rights provisions in current § 701.5. This is discussed more fully in the discussion of proposed § 701.5, above. OSM is now proposing three separate procedures for changes of owners or controllers: One for changes in operators, discussed above at proposed § 774.13(e); one for changes in permittees, essentially existing transfer,

assignment or sale procedures at § 774.17; and the procedures proposed here at § 774.18 for all other changes in ownership or control.

Essentially, the procedures proposed for changes in owners or controllers other than operators or permittees would not require prior, written approval of the regulatory authority for changes in these other owners or controllers. Such owners or controllers include officers, directors, shareholders, general partners, persons owning the mineral and having the right to receive the coal from a surface coal mining operation, persons having the ability to commit the financial or real property assets or working resources of the entity, and other persons who can control the method of mining at a mining operation. Other requirements of the current procedures, such as public notice and comment, would also be removed. Instead, there would be a requirement to report changes in all such owners to OSM on a quarterly basis. OSM would, following appropriate review, as discussed below, enter such owners or controllers into the AVS. Thus, what was once a requirement to obtain prior approval of the regulatory authority would become a requirement to inform OSM of such changes within a specific time period.

In brief, the procedures would operate as follows. If a corporation elects a new president, for example, it would report the change to OSM within 30 days of the end of the calendar quarter. When OSM received information that a change in ownership or control of the type covered by this section had been made, OSM would review the documentation to ensure that it was adequate to substantiate that the change had indeed occurred. Currently, OSM accepts certified copies of corporate minutes, letters signed by the secretary of a corporation, or other similar documentation as sufficient proof that the reported change in ownership or control has indeed occurred. Additionally, OSM would review each new owner or controller against the information available in the AVS, to ensure that the person was not linked to a violation. If such a link were found, the AVS Office would notify the entity submitting the information, and any individual owner or controller, of the link, and any of those persons could challenge the link. If, following its consideration of any such challenge, OSM made a final determination that the link to a violation did indeed exist, OSM would notify any State regulatory authorities that had permit applications pending or that had issued permits affected by the owner or controller change. The regulatory authority would deny any pending permits until the violation was resolved, or, where a permit had already been issued, would take appropriate action under the State program equivalent of § 773.20. A permit that was issued prior to the new owner or controller being associated with a permittee would not technically be improvidently issued. However, a change of ownership or control in which a person linked to a violator assumes a control position with a permittee constitutes a material change in the facts upon which the permit approval was based. The regulatory authority approved the permit based upon facts which assumed that the permittee was not a violator or linked to a violator. Such a change would give the regulatory authority cause to review the validity of the permit under those procedures, or other procedures appropriate under the specific State program.

The proposed procedures would require notification of OSM on a quarterly basis. OSM intends to incorporate these requirements into the quarterly reporting of information regarding AML Fees on the OSM–1 form. Use of that form should consolidate the reporting requirements, and eliminate the need for any additional documentation to substantiate ownership or control changes. OSM is interested in receiving comments on the proposed schedule of reporting, and on the use of the OSM–1 form for this purpose. For the present, OSM will continue accepting notifications of ownership or control changes by letter, as it does now.

OSM does not intend this process to interfere with the normal permitting review process conducted by the State regulatory authorities. OSM intends to ensure that it has adequate documentation to substantiate any changes made in the AVS. OSM also believes that the regulatory authorities may rely on the information in the AVS as up-to-date and accurate, as far as these owners or controllers are concerned, in accordance with the position taken by OSM in the preamble of the improvidently issued permit rule. See 54 FR 18438–444 (April 28, 1989). It should be noted that a person denied a permit can challenge any basis for a permit denial by a regulatory authority including a link between an owner or controller to a violation, to the extent that such person has not previously had the opportunity to appeal such a link. See OSM's Ownership and Control Rule, 53 FR 38868, 38885. Furthermore, OSM notes that this procedure is not intended to stand in the place of the section 510(c) review required during the permitting process. OSM's collection and management of information on officers, directors, shareholders, and other owners and controllers will not reach to permit specific information, nor to compliance information such as that required by § 778.14 of these regulations.

OSM believes that these procedures are more consistent with common and accepted business practices that are the current transfer, assignment or control requirements. They provide one central point for the regulated community to contact to keep ownership or control information up-to-date. Additionally, the current procedures have proven almost impossible to implement, not only because it is impractical for companies to obtain prior regulatory authority approval for all changes in officers and directors, but also because the constant flux in the management of the industry presents a very difficult data update problem to the government. Furthermore, OSM believes that providing information to OSM on a timely basis, coupled with review procedures discussed below, will be sufficient to ensure that individuals who are not eligible to receive permits to conduct surface coal mining operations do not indeed receive such permits. These proposed procedures also provide the opportunity to considerably reduce paperwork burdens on the regulated community and on the State regulatory authorities. Finally, OSM believes that providing this information through one central point will assist in keeping the ownership and control information in AVS current and accurate. In turn, this will enhance the utility of AVS as a tool for OSM and the State regulatory authorities to use in meeting the requirements of section 510(c) of the Act.

The specific provisions being proposed are as follows. Proposed § 774.17(a) would establish the basic requirement that all changes, replacements or additions to the ownership or control of a surface coal mining operation or of an entity controlling such operation, as defined in § 773.5 of this part, except for changes of permittees or operators, must be reported to OSM on a quarterly basis. It would also require entities operating in only one state to report any changes to the appropriate State regulatory authority. OSM recognizes that State regulatory authorities are in a better position to know such localized entities. Further, the States can notify OSM in the event that reported ownership or control changes appear inconsistent

with the State's knowledge of the particular entity.

Proposed § 774.18(b) would contain reporting requirements. It would specify that all persons reporting a change in ownership or control information must (1) provide the legal, financial, and related information required by § 778.13 of this chapter for the new owners or controllers; and must (2) specify which existing owners or controllers have been replaced, if any. The first requirement is similar to that currently found in the existing transfer, assignment, or sale of permit rights procedures. The second requirement, specification of which existing owners or controllers have been replaced, is a new requirement. Such information will facilitate implementation of the requirements in that section by allowing OSM to remove out-of-date information from the AVS.

Proposed § 774.18(b)(3) would specify that, in lieu of submitting information on ownership or control required by this section, or any portion thereof, an applicant could certify to OSM that the relevant information in AVS on the proposed new owner or controller is complete and accurate as of the date of the certification. This provision is consistent with similar provisions found in proposed §§ 774.13(e) and .17, discussed above. It is explained more fully in the discussion of the proposed identification of interest provisions, covered below at § 778.13.

Proposed § 774.18(c) requires OSM to review the information to determine whether the new owners or controllers are eligible to receive a permit in accordance with § 773.15 (b) and (c) of this chapter, and to immediately notify the entity when any such owner or controller is found to be ineligible due to a link to a violation or outstanding penalty or fee. This review would be conducted mainly by reference to the information in AVS. Further, OSM would use any other sources of information available to it. Along with the proposed provisions at paragraphs (d) and (e) below, this provision is intended to provide persons with due process by ensuring that they have an opportunity to submit information to OSM refuting or rebutting a purported link to a violation, before such a link is actually used by OSM or a State regulatory authority to block issuance of a permit or to cause an existing permit to be revoked or rescinded.

Proposed § 774.18(d) would allow the entity submitting the information and/or any owners or controllers found to be linked to a violation, unless bound by a prior administrative or judicial determination, to challenge the link to the violation by submitting a written explanation of the basis for the challenge, along with any relevant evidentiary materials and supporting documents, to OSM, addressed to the Chief of the AVS Office, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240. The Director or the Director's designee will make the final decision on behalf of the agency. OSM is interested in comments on whether more than one appeal level is needed within the agency.

Proposed § 774.18(e) would require OSM to review any information submitted under paragraph (d) of this section, discussed above, and to make a written decision whether or not the ownership or control link has been shown to be erroneous or has been rebutted.

Proposed § 774.18(f) would provide that if, as a result of the decision under paragraph (e) of this section, discussed above, OSM determines that the ownership or control link has not been shown to be erroneous and has not been rebutted, OSM would notify the entity and the owner or controller. OSM would also be required to update the information in AVS promptly, if necessary. This section further stipulates that notification would be made in accordance with the provisions of 30 CFR 843.14.

Proposed § 774.18(g) would provide that the decision regarding the link could be appealed within 30 days, under the procedures in proposed 43 CFR 4.1386, but that OSM's decision would remain in effect during the pendency of any appeal, unless temporary relief were granted in accordance with 43 CFR 4.1386, or a State program equivalent. This is identical to a provision previously proposed at 56 FR 45801 and discussed at 56 FR 45787.

Proposed § 774.18(h) would provide that when an application is pending or the entity has a surface coal mining operation under permit, OSM would notify the regulatory authority which is considering the application or which has issued the permit. This would allow the regulatory authority to take the necessary steps to resolve the violation.

Proposed § 774.18(i) would establish these steps. It would specify that when an ineligible owner or controller of an entity holding a permit to conduct surface coal mining operations was identified, the regulatory authority would (1) require the permittee to implement a plan for abatement of the violation or a schedule for payment of the penalty or fee, in cooperation with the responsible regulatory authority; (2) condition the permit requiring abatement or payment; (3) suspend the permit until the violation is abated or the penalty or fee is paid; or (4) rescind the permit consistent with procedures in § 773.21 of this part. These procedures are identical to those currently found in § 773.20(c).

H. Section 778.13—Identification of Interests

This section currently specifies in considerable detail the information on the ownership and control relationships of permit applicants, as well as similar information on other operations to which the applicant is linked through ownership or control, which must be provided as part of the permit application process. Much of the information required to be submitted with each permit application by this section is already contained in the AVS, especially for persons who participate regularly in the surface coal mining business. Industry has complained about the collection of redundant data. OSM agrees. The AVS can and should be used to reduce the information collection burden currently placed on the regulatory authorities and on permit applicants, without losing information critical to the implementation of section 510(c) requirements.

AVS should fulfill the role of being a major source of information on which to base the compliance review required by section 510(c) of the Act to ensure that no ineligible parties receive permits to mine. Such a role has in fact already been assigned to the AVS by the "Improvidently Issued Permit Rule." See 54 FR 16438 *et seq.* (April 28, 1989). There, OSM stated that, "subject to the review standard set out [above], a regulatory authority may rely on the information in the AVS as up-to-date and accurate. * * * Under this rule a proper query of the AVS will constitute a reasonable inquiry of the information available to the regulatory authority, and absent some defect in the violation information provided in the permit application, or inadequate use of other information that actually was known to the regulatory authority, an error in or omission from the AVS will not provide the basis for a finding that a permit was improvidently issued." *Id.* at 18444. This statement assigns the AVS a very significant role in the section 510(c) review process, and highlights the need for OSM to maintain the AVS in as accurate and current a state as possible.

This role for AVS would be further strengthened by the promulgation of the procedures for proposed permittee or operator changes, or replacements or additions of owners or controllers,

discussed at proposed §§ 774.13(e), 774.17, and 774.18, respectively.

OSM believes that it is appropriate for the AVS to assume a greater responsibility by containing the information needed to enable regulatory authorities to perform the review required by section 510(c) of the Act and to ensure that parties linked to outstanding violations do not receive permits. The AVS has become a large, complex system containing data on thousands of entities in the surface coal mining industry. OSM believes it is appropriate at this time to continue and to increase efforts to enhance the data in AVS. Further, OSM wants to encourage more timely and accurate updates on the part of industry. This section of the proposed regulation, as well as the following three proposed sections, all are intended to implement these basic principles. In the present instance, timely entry of information concerning changes in the owners or controllers of entities or surface coal mining operations is obviously critical to OSM's efforts to maintain AVS' data in a complete, up-to-date fashion.

OSM is proposing two major changes to § 778.13. First, OSM is proposing to remove completely certain requirements for ownership and control information in permit applications. Second, OSM is proposing an alternate means by which permit applicants can provide required information to the regulatory authority.

Currently, § 778.13(c) specifies that applicants must provide certain ownership or control information for all categories of ownership or control, as defined in § 773.5. OSM is proposing to eliminate the requirement that the applicant provide information on ownership and control categories defined in proposed § 773.5(a)(1)(ii), (a)(2)(ii), and (b)(1)(iii). These categories include, for entities, owners or controllers that have any relationship which gives a person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations or that have the ability to commit the financial or real property assets or working resources of an entity; and, for operations, owners or controllers that have any relationship which gives a person authority directly or indirectly to determine the manner of conducting the operation.

OSM is proposing to excuse these categories of ownership or control from the permit information requirements because it has found that the application of these definitions generates considerable confusion within industry. Furthermore, it is clear that there can be good faith, reasonable differences of opinion concerning whether a particular purported owner or controller, as defined by one of these categories, is indeed an owner or controller. Unlike the other categories of ownership or control, these categories are "conclusory," often requiring research to reach a conclusion that such a relationship does exist. Industry has complained that OSM has, with such definitions, established a situation in which a particular entity could be accused of providing incomplete ownership or control information in its permit application, even though it did not indeed realize or believe, in good faith, that an ownership or control relationship existed. Considering that failure to provide complete ownership and control information would now be defined to be a violation of the Act (proposed § 843.23(a)(2)), the consequences of such a failure can be serious for the entity. OSM wants to avoid potential situations whereby considerable effort may be expended in attempts to demonstrate that an entity has knowingly failed to provide such information when, in reality, the "failure" was the result of a good faith debate over ownership or control relationships. OSM believes that such cases could absorb a disproportionate share of the resources available to conduct research into ownership and control relationships and to deal with violations of the Act. The limited resources of OSM and the State regulatory authorities can be better spent elsewhere.

Removing the requirement that entities provide ownership or control information on these conclusory types of ownership or control as part of their permit applications does not, of course, mean that such relationships do not exist. They will continue to be included in the definitions of ownership or control, and can be established by the regulatory authority when necessary. OSM has found, in its application of the ownership and control definitions at § 773.5 to the operation of the AVS, that very few examples of such owner and controller categories are ever provided as part of the permit information submitted by an applicant. The few examples that have been reported have in general come from the research conducted by a regulatory authority or by OSM itself. OSM expects that this research will continue to produce some such ownership or control links.

This approach is consistent with that taken in the preamble to the ownership or control rule. In the discussion of current § 773.5(a)(3), OSM noted that, under paragraph (a)(3), the regulatory authority has to establish that control exists (53 FR 38870). In its Memorandum of Points and Authorities in Support of the Government's Motion for Summary Judgement, filed on April 23, 1990, by the Secretary in *National Wildlife Federation v. Lujan*, No. 88–3117–AER etc., (D.D.C.) (consolidated), the government repeatedly asserts that § 773.5(a)(3) places upon the regulatory authorities the entire burden of proof that any relationship not otherwise addressed in § 773.5 constitutes actual control of a surface mining operation (p. 38). Again, (p. 43), the government states that pursuant to § 773.5(a)(3), the regulatory authority bears the burden of proving that a control relationship exists.

Similarly, the government points out that, pursuant to the terms of § 773.5(b)(3), the regulatory authority reviewing a permit application must make a *prima facie* showing that [someone] can commit the financial or real property assets of an entity (p. 44). In effect, the regulatory authority has the burden of making an initial showing of the control relationship.

These specific categories of ownership and control, shown in this proposal as definitions § 773.5(a)(1)(ii) and (a)(2)(ii), are those which OSM is proposing to exempt from the information requirements of permit applicants. This proposal is consistent with the government's position in court as stated in its brief, which imposes the initial burden of proof upon the regulatory authority, rather than upon the applicant.

The proposed revision of § 778.13(j) would allow permit applicants to submit any and all information required by this section and by § 778.14 of this part by certifying to the regulatory authority that the information on AVS is complete, accurate, and up-to-date. This is consistent with the discussions of information found at proposed § 774.13(e) and § 774.14, above. OSM anticipates that this provision will significantly reduce the reporting burden for many permit applicants, and for regulatory authorities as well. The AVS currently contains extensive information on many entities in the surface coal mining industry, including their permits, permit issuance dates, ownership and control links, links to violations, and other data required in the permit application process. Submitting such information with each permit application can be redundant, particularly for those entities who apply for permits, permit renewals, permit revisions, or other permitting actions on a regular basis. In the event that the proposed regulation is adopted, a regulatory authority may choose a more

stringent approach with respect to the submission of information. Accordingly, if a specific regulatory authority believes that it needs to continue to require any or all such information to be submitted with each permitting action, it may do so.

It seems unlikely that any but the most active companies will apply for permits so frequently that on any one occasion the information contained in the AVS will be completely up to date. Nevertheless many entities should be able to submit relatively brief updating material as part of their permit application. This should result in a significantly reduced reporting burden.

For some time, OSM has been working with individual companies to update their ownership and control information in the AVS. OSM will be available to provide assistance to any entity wishing to review and update the information contained in the AVS about that entity.

I. Section 843.23—Actions for Knowing Omissions or Inaccuracies in Ownership or Control and Violation Information

This section was proposed to be amended by the AVS procedures rule proposal of September 6, 1991 (56 FR 45780 *et seq.*). During the process of developing this rulemaking, however, it became apparent that a number of minor changes were needed in the September, 1991 proposal. Consequently, OSM is today withdrawing proposed § 843.23, and is simultaneously reproposing the same paragraph in modified form as part of this proposal. Such changes include a change in the proposed wording and title of the regulation to indicate that the options available to OSM would be "actions," rather than "sanctions." For any provisions finalized for this section, OSM will add a cross reference in § 840.13(b) to § 843.23, requiring that State programs be amended accordingly, consistent with the provisions of § 840.13(b).

The September, 1991 proposal provided certain actions (referred to as sanctions) to be taken by OSM for knowing omissions or inaccuracies in ownership or control and violation information. The proposal provided for OSM action in the event of knowing failures to provide complete and accurate information, including permit denial, issuance of a notice of violation, and criminal prosecution. Cross-references contained in paragraph 843.23(a)(1) directed the reader to several different sections of OSM regulations, all of which discussed information requirements associated with permit applications or with changing or challenging AVS information.

The list of cross-references did not, however, include any mention of the transfer, assignment, or sale provisions of the regulations. However, OSM now believes that it is critical that permittees be held accountable for submitting complete, accurate, and timely information during these processes. This is particularly true since OSM is proposing to delete the provision requiring updates of ownership and control information within 30 days of receiving a cessation order, currently found in § 773.17(i). Only with prompt updates relating to the transfer, assignment, or sale of permits, changes of operators, and other changes in ownership or control, will OSM be able to ensure that the AVS is accurate and current, and can justify the reliance placed on the system by the new permit information provisions contained in proposed § 778.13. Consequently, OSM is proposing to add a cross-reference to this provision in the version of § 843.23 proposed here. OSM is also proposing to add cross-references to the permit revision information required in § 774.13, the violation information required in § 774.14, and the ownership and control information required in proposed § 774.18. These cross-references clarify that OSM would take action for failure to provide complete and accurate ownership or control or violation information through the transfer, assignment, or sale process, the permit revision process, and the ownership and control update process, as well as the permit application process and the processes for requesting changes to information in AVS.

Proposed § 843.23 is designed to respond to those circumstances in which there are material omissions and inaccuracies and in which there has been a knowing failure to provide the regulatory authority with complete and accurate ownership and control or violation information in an application or other document submitted pursuant to parts 773 and 778 of title 30. The inclusion of a materiality standard is a further modification of the September 6, 1991, proposal. In substance, material omissions or inaccuracies are those which are relevant and which have or may have an impact upon the regulatory authority's decision with respect to an application or other document submitted.

Pursuant to section 201(c)(2) of SMCRA, the Secretary, acting through OSM, is authorized to "publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act". Proposed § 843.23 is designed "to carry out the purposes" of sections 507(b)(4), 510(b), 510(c), and 518(g) of SMCRA. The proposed section would deter and publish the intentional failure to provide the complete and accurate ownership and control information required by sections 507(b)(4) and 510(b)-(c). It would further implement the provisions of section 518(g) where appropriate.

OSM recognizes that ownership and control relationships can be complicated. There may be honest disagreements among reasonable people as to whether the facts of a particular matter establish an ownership and control relationship. In submitting information to a regulatory authority, people acting in good faith may inadvertently fail to provide complete or completely accurate information. The actions of proposed § 843.23 are not designed for such situations. The actions are designed to respond to situations of knowing concealment or deception.

Under paragraph (a)(1) of proposed § 843.23, OSM would determine whether material omissions or inaccuracies contained in an application or otherwise provided pursuant to 30 CFR parts 773, 774 and 778 were the result of a "knowing failure" to provide complete and accurate information. Today's proposal makes clear that such consideration is to be made with respect to documents provided to OSM.

Under the proposed regulation, a knowing failure would include any knowing submission of false information and any failure by a person to provide complete and accurate information where the person knew or had reason to know that such failure could mislead OSM as to the facts of ownership or control relevant to a surface coal mining operation or the status of any violation. OSM would examine the totality of the circumstances to determine what an individual knew or had reason to know when he or she supplied false information.

Paragraph (a)(2) of proposed § 843.23 would reaffirm the principle that such a knowing failure to provide complete and accurate information to OSM is a violation of the Act. See sections 507(b)(4), 510(b), 510(c) and 518(g) of SMCRA.

Paragraph (b)(1) of proposed § 843.23 would require OSM to take one or more actions, from the list of actions provided, following prompt consideration of which is most appropriate, in the event that OSM determines that a person knowingly failed to provide complete and accurate

ownership and control or violation information. The proposed actions include denial of a permit for failure to comply with 30 CFR 773.15(c)(1), issuance of a notice of violation, along with assessment of an appropriate civil penalty, and criminal prosecution under section 518(g) of the Act which is codified as 30 U.S.C. 1268(g).

Paragraph (b)(2) of proposed § 843.23 would provide that any actions taken under paragraph (b)(1) would be in addition to any actions taken by OSM under the provisions of paragraphs (b)(1)(iii)-(iv) of proposed § 773.27. The provisions of proposed § 773.27 are discussed in detail in this Preamble above.

OSM would choose the appropriate action or combination of actions based upon the facts of a particular case. Further, the choice of one of the listed actions does not preclude imposition of another listed action. The egregiousness of the behavior and OSM's ability to prove such behavior before a reviewing tribunal would be factors in the choice of actions to be taken.

IV. Procedural Matters

Effect of the Rule in Federal Program States and on Indian Lands

The proposed revisions, if adopted, will apply through cross-referencing in those States with Federal programs: California, Georgia, Idaho, Massachusetts, Michigan, North Caroline, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The proposed rule, if adopted, will also apply through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR part 750. Comments are specifically solicited as to whether unique conditions exist in any of these Federal program states or on Indian lands relating to this proposal which should be reflected either as changes to the national rules or as specific amendments to any or all of the Federal programs or the Indian lands program.

Effects of the Rule on State Programs

The provisions of section 503(a)(1) of the Act require that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of the Act. Further, section 503(a)(7) of the Act requires that State programs contain rules and regulations "consistent with" regulations issued by Secretary pursuant to the Act.

These terms are defined by § 730.5 of title 30 of the Code of Federal Regulations to require that State programs contain procedures which are, with respect to the Act, no less stringent than the Act; and with respect to the Secretary's regulations, no less effective, than the Secretary's regulations in meeting the requirements of the Act.

If the proposed rules are adopted, OSM will then evaluate State programs to determine whether any changes in these programs will be necessary. If OSM determines that any State program provisions should be amended to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

Federal Paperwork Reduction Act

The collection of information contained in this rule has been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for this collection of information is estimated to vary from 1 to 24 hours, depending on the action being taken and the size of the company responding. Average burden for a mid-sized company requesting a change in operator, the most common action under these rules, is estimated to average 4 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement (OSM), 1951 Constitution Ave., room 640 NC, Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029–0041) (1029–0034) (1029–0088), Washington, DC 20503.

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under the criteria of Executive Order 12291 and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rules would allow persons desiring to conduct surface coal mining operations to submit some required permit application information by reference to AVS, thus reducing the reporting burden on permit applicants.

The economic effects of the proposed rule are not estimated to be significant or have a negative impact because the rule eliminates reporting requirements thereby reducing costs to industry. The rule does not distinguish between small and large entities.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA) of this proposed rule and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a Finding of No Significant Impact (FONSI) will be approved for the final rule in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see "ADDRESSES"). An EA will be completed on the final rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Executive Order 12778 on Civil Justice Reform

This proposed rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this proposed rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What would be the preemptive effect, if any, of the regulation?

The proposed regulation would have the same preemptive effect as other standards adopted pursuant to SMCRA. To retain primacy, States have to adopt and apply standards for their regulatory programs that are no less effective than those set forth in OSM's regulations. Any State law that is inconsistent with or that would preclude implementation of the proposed regulation would be subject to preemption under SMCRA section 505 and implementing regulations at 30 CFR 730.11. To the extent that the proposed regulation would result in preemption of State law, the provisions of SMCRA are intended to preclude inconsistent State laws and regulations. This approach is established in SMCRA, and has been judicially affirmed. See *Hodel* v. *Virginia Surface Mining and Reclamation Ass'n*, 452 U.S. 264 (1981).

B. What would be the effect of the regulation on existing Federal law or regulation, if any, including all provisions repealed or modified.

The proposed regulation would modify the implementation of SMCRA as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of the proposed action specifies the Federal regulatory provisions that are affected by the proposed revision.

C. Would the regulation provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by the regulation would be as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA. The purpose of this proposed regulation is to establish clear and certain standards in order to implement a more effective program. As stated in the preamble, the proposed rule would promote a significant reduction in burden hours as well as simplifying the current regulatory language.

D. What would be the retroactive effect, if any, to be given to the regulation?

This applies prospectively to future regulatory actions, but affects the standards under which OSM and the State Regulatory Authorities would analyze past events. In the preamble to the ownership and control rule, OSM stated that ownership does not "dilute" as it goes up or down a hierarchy of owners or controllers. For example, if Company "A" owns forty-five percent interest in Company "B" and Company "B" owns twenty percent interest in Company "C" (the applicant), then Company "A" will be presumed to own or control the applicant, even though Company "A" has an indirect interest in the applicant of only nine percent. Under existing regulations this indirect interest has to be reported. OSM has determined that it is not feasible to apply this definition in this manner due to the multiple levels of ownership where the cumulative ownership share falls below ten percent. Thus, OSM is proposing that the percentages of ownership at the various levels would be multiplied to determine the percentage of ownership which any remote owner has in the entity. Once a share falls below ten percent or cumulative falls below fifty percent ownership and control will no longer exist. The new percentage requirements would significantly reduce the current reporting burden placed on the regulatory authorities and the applicant.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings would be required before parties may file suit in court challenging the provisions of the proposed revision under section 526(a) of SMCRA, 30 U.S.C. 1276(a).

Prior to any judicial challenge to the application of the revision, however, administrative procedures must be exhausted. In situations involving OSM application of the revision, applicable administrative procedures may be found at 43 CFR part 4. In situations involving State regulatory authority application of provisions equivalent to those contained in the proposed revision, applicable administrative procedures are set forth in the particular State program.

F. Would the proposed action define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items.

Terms which are important to the understanding of the proposed action are set forth in 30 CFR 701.5, 773.5 and 843.5.

G. Would the regulation address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

The Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

Author

The principal author of this proposed rule is Annetta L. Cheek, Chief, Applicant/Violator System Office, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240. Inquiries with respect to the proposed rule should be directed to Dr. Cheek at the address and telephone specified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 773

Administrative practice and procedure, Reporting and recordkeeping requirements, Permits, Surface mining, Underground mining.

30 CFR Part 774

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 778

Administrative practice and procedure, Reporting and recordkeeping requirements, Permits, Surface mining, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Law enforcement, Reporting and recordkeeping requirements, Permits, Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR parts 701, 773, 774, 778, and 843 as follows:

Dated: January 11, 1993.

Richard Roldan,

Deputy Assistant Secretary, Lands and Minerals Management.

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for Part 701 continues to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq., as amended*), and Pub. L. 100–34.

2. Section 701.5 is amended by revising the definition of "Transfer, assignment, or sale of permit rights" to read as follows:

§ 701.5 Definitions.

* * * * *

Transfer, assignment, or sale of permit rights means a substitution of the permittee listed in a permit to conduct surface coal mining operations issued by a regulatory authority.

* * * * *

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

3. The authority citation for part 773 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq., as amended; 16 U.S.C. 470 et seq.*, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 661 *et seq.*, 16 U.S.C. 703 *et seq.*, 16 U.S.C. 668a *et seq.*, 16 U.S.C. 469 *et seq.*, 16 U.S.C. 470aa *et seq.*, and Pub. L. 100–34.

4. Section 773.5 is revised to read as follows:

§ 773.5 Definitions.

For purposes of this subchapter.

Owned or controlled and owns or controls mean any one or a combination of the relationship specified in paragraphs (a) and (b) of this definition—

(a) With regard to an entity—

(1) (i) Based on instruments of ownership or voting securities, owning of record in excess of 50 percent of the entity; or

(ii) Having any other relationship which gives a person authority directly or indirectly to determine the manner in which the entity conducts surface coal mining operations.

(2) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the entity conducts surface coal mining operations.

(i) Being an officer, director, or general partner of the entity;

(ii) Having the ability to commit the financial or real property assets or working resources of the entity; or

(iii) Based on instruments of ownership or voting securities, owning of record 10 through 50 percent of an entity.

(3) For purposes of computing the percentage of ownership under paragraphs (a)(1)(i) and (a)(2)(iii) of this definition in situations involving two or more levels of ownership of an entity, the percentages of ownership at the various levels shall be multiplied to determine the percentage of ownership which any remote owner has in the entity. For example, a 45 percent owner of a 20 percent owner of an applicant will be considered to own a 9 percent interest in the applicant (.45 × .20 = .09).

(b) With regard to a surface coal mining operation—

(1) (i) Being a permittee of the surface coal mining operation, with respect to any operations or activities conducted on the site;

(ii) Being the operator of a surface coal mining operation, with respect to any operations or activities conducted by such operator on the site; or

(iii) Having any other relationship which gives a person authority directly or indirectly to determine the manner in which the surface coal mining operation is conducted.

(2) Owning or controlling coal to be mined by another person under a lease, sublease, or contract and having the right to receive such coal after mining is presumed to constitute ownership or control of the surface coal mining operation unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the surface coal mining operation is conducted.

5. Section 773.17 is amended by revising paragraph (i) to read as follows:

§ 773.17 Permit conditions.

* * * * *

(i) Each permittee shall provide to the regulatory authority, consistent with the procedures in §§ 774.13, 774.17 and 774.18, information on any permittee or operator change.

6. Section 773.27 is added to read as follows:

§ 773.27 Periodic check of ownership or control information.

(a) At the first regularly scheduled inspection after the initial disturbance of a permitted site and annually thereafter until coal extraction on the site has been completed, the regulatory authority shall take the following steps to determine whether the information contained in the current official record of the permit concerning the permittee, the operator, and the MSHA identification number for the site was and remains complete and accurate:

(1) An on-site inquiry; and

(2) A check of MSHA and Abandoned Mine Land information, as available through AVS.

(b) If, as a result of the steps taken under paragraph (a) of this section, the regulatory authority identifies any potential omission, inaccuracy, or inconsistency in the information provided in the application, or a subsequent change to such information—

(1) The regulatory authority shall promptly contact the permittee and require that the matter be resolved expeditiously through one or more of the following actions:

(i) Submission of a satisfactory explanation which includes credible information sufficient to demonstrate that no actual omission, inaccuracy, or inconsistency existed at the time of permit issuance and that no subsequent change to such information has occurred;

(ii) Amendment to the current official record of the permit, where appropriate;

(iii) Remedial action under § 773.20(c) (or the State program equivalent) in situations where complete and accurate information would have precluded issuance of the permit under § 773.15(b); and

(iv) Enforcement action under §§ 843.11–.12 of this chapter (or the State program equivalent) requiring the cessation of operations by any unapproved permittee or operator and the submission of an application for an operator change under § 774.13 or for transfer, assignment, or sale of permit rights under § 774.17 of this chapter, or the State program equivalent.

(2) The regulatory authority shall also take action in accordance with the provisions of § 843.23 of this chapter, or the State program equivalent, where appropriate.

PART 774—REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS

7. The authority citation for part 774 is revised to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 et seq. as amended) and Pub. L. 100–34.

8. Section 774.13 is revised by the addition of new paragraph (e) to read as follows:

§ 774.13 Permit revisions.

* * * * *

(e) Request to change an operator on a permit. (1) General. Any changes to an operator on a permit shall be submitted for approval to the regulatory authority according to the following procedures.

(2) Application requirements. Any person seeking approval of a change in an operator on a permit issued by a regulatory authority shall—

(i) Provide the regulatory authority with an application for approval of an operator change, including

(A) the name and address of the permittee and permit number;

(B) the name and address of the proposed operator; and

(C) the legal, financial, compliance, and related information required by part 778 of this chapter for the proposed operator.

(D) In lieu of submitting information on ownership or control required by this section, or any portion thereof, an applicant may certify that the relevant information in AVS on the proposed new operator is complete and accurate as of the date of the certification.

(ii) Advertise the filing of the application in a newspaper of general circulation in the locality of the operation involved, indicating the name and address of the proposed operator, the geographic location of the operation involved, the permit number, and the address to which written comments may be sent.

(iii) Surface coal mining operations may be conducted by the proposed operator prior to the final approval of the regulatory authority when the following requirements have been met—

(A) The permittee has submitted to the regulatory authority a complete application for a change of operator; and

(B) the regulatory authority has determined by checking the information in the AVS that the proposed operator is eligible to receive a permit to conduct surface coal mining operations.

(3) Public participation. Any person having an interest which is or may be adversely affected by a decision on the change in operator, including an official of any Federal, State or local government agency, may submit written comments on the application to the regulatory authority within a time specified by the regulatory authority.

(4) Criteria for approval. The regulatory authority may approve the operator change if it finds that the new operator:

(i) Is eligible to receive a permit in accordance with § 773.15(b) and (c) of this chapter; and

(ii) Meets any other requirements of the regulatory authority.

(5) If the regulatory authority finds, during a routine inspection or through any other means, that an unapproved operator is operating on a site, the regulatory authority shall issue, under §§ 843.11 and 843.12 of this chapter or the State program equivalent, a notice of violation to the permittee and a cessation order to the operator, specifying that the operator may not conduct surface coal mining operations until the application requirements in paragraph (e)(2) of this section have been met.

(6) Within 30 days of its decision regarding any operator change, the regulatory authority shall enter the new operator information into AVS.

9. Section 774.17 is amended by revising paragraphs (a) and (f) and by adding paragraph (b)(1)(iv) to read as follows:

§ 774.17 Transfer, assignment, or sale of permit rights.

(a) *General.* No transfer, assignment, or sale of permit rights granted by a permit shall be made without the prior written approval of the regulatory authority. The regulatory authority shall conduct a complete inspection of the permit area within the 30 days prior to granting such approval.

(b) * * *

(1) * * *

(iv) In lieu of submitting information on ownership or control required by this section, or any portion thereof, an applicant may certify that the relevant information in AVS on the proposed new permittee is complete and accurate as of the date of the certification.

* * * * *

(f)(1) *Continued operation under existing permit.* The successor in interest shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Act, the regulatory program, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit as provided in this subchapter.

(2) An applicant who has not received final approval of a transfer, assignment, or sale of permit rights may be allowed to conduct surface coal mining operations under an existing permit, pending the final decision on the application for a transfer, assignment, or sale of permit rights, when all of the following conditions have been met:

(i) The applicant has submitted to the regulatory authority a complete application for transfer, assignment, or sale of permit rights in accordance with paragraph (a) of this section;

(ii) The regulatory authority has determined that adequate bond coverage and liability insurance will continue to exist with respect to the surface coal mining operation subject to the transfer, assignment, or sale of permit rights; and

(iii) The regulatory authority has determined by checking the information in the AVS that the proposed transferee, assignee or purchaser of the rights is eligible to succeed to mining rights under the permit.

10. Section 774.18 is added to read as follows:

§ 774.18 Changes in ownership or control information.

(a) *General.* Except for changes of permittees or operators, any changes, replacements or additions to the ownership or control of a surface coal mining operation or of an entity controlling such operation, as defined in § 773.5 of this chapter, shall be reported to OSM on a quarterly basis, within 30 days of the end of each calendar quarter. Entities operating in only one state shall also report any changes to the appropriate State regulatory authority.

(b) *Reporting requirements.* All persons reporting a change in ownership or control information shall

(1) Provide the legal, financial, and related information required by § 778.13 of this chapter for the new owners or controllers; and

(2) Specify which existing owners or controllers have been replaced, if any.

(c) OSM shall review the information to determine whether the new owners or controllers are eligible to receive a permit in accordance with § 773.15 (b) and (c) of this chapter, and shall immediately notify the entity when any such owner or controller is found to be ineligible due to a link to a violation or outstanding penalty or fee.

(d) The entity submitting the information and/or any owners or controllers found to be linked to a violation, unless bound by a prior administrative or judicial determination, may challenge the link to the violation by submitting, within 30 days, a written explanation of the basis for the challenge, along with any relevant evidentiary materials and supporting documents, to OSM, addressed to the Chief of the AVS Office, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240. The Director or the Director's designee will make the final decision on behalf of the agency.

(e) OSM shall review any information submitted under paragraph (d) of this section and shall make a written decision whether or not the ownership or control link has been shown to be erroneous or has been rebutted.

(f) If, as a result of the decision reached under paragraph (e) of this section, OSM determines that the ownership or control link has not been shown to be erroneous and has not been rebutted, it shall so notify the entity and the owner or controller, and shall update the information in AVS promptly, if necessary. Notification shall be made in accordance with the provisions of 30 CFR 843.14.

(g) The applicant or other person may appeal OSM's decision to the Department of Interior's Office of Hearings and Appeals within 30 days of service of the decision in accordance with 43 CFR 4.1380, *et seq.* OSM's decision shall remain in effect during the pendency of the appeal, unless temporary relief is granted in accordance with 43 CFR 4.1386.

(h) When an application is pending or the entity has a surface coal mining operation under permit, OSM shall notify the regulatory authority which is considering the application or which has issued the permit.

(i) When an eligible owner or controller of an entity holding a permit to conduct surface coal mining operations has been identified the regulatory authority shall use one or more of the following remedial measures:

(1) Implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(2) Impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(3) Suspend the permit until the violation is abated or the penalty or fee is paid; or

(4) Rescind the permit under § 773.21 of this chapter.

PART 778—PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION

11. The authority citation for part 778 continues to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 et seq), and Pub. L. 100–34.

12. Section 778.13 is amended by revising paragraphs (c) and (j) as follows:

§ 778.13 Identification of interests.

* * * * *

(c) For each person who owns or controls either the proposed surface coal mining operation or the application for a permit under the definition of "owned or controlled" and "owns or controls" in § 773.5 of this chapter, as applicable, except that information on persons specified in §§ 773.5(a)(1)(ii), (a)(2)(ii), and (b)(1)(iii) need not be provided.

* * * * *

(j) The applicant shall submit the information required by this section and by § 778.14 of this part in any prescribed OSM format that is issued. Applicants who have previously applied for permits and for whom relevant data resides in AVS may submit any and all information, or any portion thereof, required by this section by certifying to the regulatory authority that the information on AVS is complete, accurate, and up-to-date.

PART 843—FEDERAL ENFORCEMENT

13. The authority citation for part 843 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq., as amended; and Pub. L. 100–34.

14. Section 843.23 is added to read as follows:

§ 843.23 Actions for knowing omissions or inaccuracies in ownership or control and violation information.

(a)(1) Whenever the Office identifies any material omission or inaccuracy in ownership or control or violation information provided in an application or other document submitted pursuant to §§ 773.22, 773.24, 773.25, 773.26, 773.27, 774.13, 774.17, 774.18, 778.13, or 778.14 of this chapter, it shall determine whether the omission or inaccuracy resulted from a knowing failure to provide complete and accurate information, including:

(i) Any knowing submission of false information, and

(ii) Any failure by a person to provide complete and accurate information where the person knew or had reason to know that such failure could mislead the Office as to the facts of ownership or control relevant to a surface coal mining operation or the status of any violation.

(2) The knowing failure to provide complete and accurate information is a violation of the Act.

(b)(1) If the Office determines, pursuant to paragraph (a) of this section, that a failure to provide complete and accurate information was knowing, the Office shall promptly consider one or more of the following actions:

(i) Denial of the permit for failure to comply with § 773.15(c)(1) of this chapter;

(ii) Issuance of a notice of violation, along with assessment of an appropriate civil penalty; and

(iii) Criminal prosecution under 30 U.S.C. 1268(g).

(2) Such actions shall be in addition to any action taken under § 773.27(b)(1)(iii) and (iv) of this chapter, if applicable.

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Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary

Funding Availability for FY 1993; Invitation for Applications: Public Housing Development; Notice

VOL 58 ISS 121 JE 28 1993 UMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Public and Indian Housing

[Docket No. N-93-3633; FR-3442-N-01]

Notice of Funding Availability for FY 1993; Invitation for Applications: Public Housing Development

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1993 for public housing development; invitation for applications.

SUMMARY: This NOFA announces the availability of FY 1993 funding, and invites eligible public housing agencies (PHAs) to submit applications for public housing development. Applications are limited to:

(1) Replacements for demolition/disposition subject to section 18 of the United States Housing Act of 1937 (USHA);

(2) Replacements for homeownership transfers under the HOPE I Program;

(3) Replacements for homeownership sales under section 5(h) of the USHA;

(4) Units required by litigation settlements; and

(5) "Other" applications.

All successful applicants will be required to participate in the Family Self-Sufficiency (FSS) program, unless granted an exception. This NOFA also provides instructions regarding the preparation and processing of applications. This NOFA is not applicable to the Indian housing program.

DATES: Applications are due at the HUD Field Office on or before 4 p.m., local time, on August 12, 1993. See Section III of this NOFA for further information on application submission. If an application is mailed to the Field Office, the PHA must clearly write "PUBLIC HOUSING DEVELOPMENT APPLICATION" on the outside of the envelope and obtain a return receipt indicating the date and time of delivery.

The application deadline is firm as to *date and hour*. In the interest of fairness to all applicants, HUD will not consider any application that is received after the deadline. PHAs should take this into account and submit applications as early as possible to avoid risk brought about by unanticipated delays or delivery-related problems. In particular, PHAs intending to mail applications must provide sufficient time to permit delivery on or before the deadline date. Acceptance by a Post Office or private mailer does not constitute delivery. Facsimile (Fax), COD, and postage due applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Janice Rattley, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4136, Washington, DC 20410. Telephone (202) 708-1800 (voice) or (202) 708-4594 (TDD). (These are not toll-free numbers.).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the OMB under the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2577-0033, 2577-0036, and 2577-0044.

I. Introduction

A. Authority

Sections 5 and 23 of the United States Housing Act of 1937 (42 U.S.C. 1437c and 1437u); and sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Public housing development regulations are published at 24 CFR part 941; demolition/disposition regulations are published at 24 CFR part 970; section 5(h) regulations are published at 24 CFR part 906. The interim and final regulations for the public housing FSS program were published on May 27, 1993, at 58 FR 30858, and 58 FR 30906, respectively, and will be codified at 24 CFR part 962. (The FSS final rule simply adopts the FSS interim rule as the FSS final regulations.) The Notice of Program Guidelines for the HOPE-1 program was published on January 14, 1992 at 57 FR 1522. The Catalog of Federal Domestic Assistance Program number is 14.850.

B. Fund Availability

The FY 1993 VA-Housing and Urban Development-Independent Agencies Appropriation Act (Pub. L. 102-389, approved October 6, 1992) makes available $400 million of budget authority (grants) for public housing development under section 5(a)(2) of the USHA. Since some of the appropriated funds are to be derived from the recapture of prior year obligations, the appropriated funds have been reduced by $11,155,481, leaving a balance of $388,844,519 currently available for allocation. If recaptures of funds within the Annual Contributions account occur during the fiscal year, these amounts will be made available for allocation to Public Housing Development up to the fully appropriated amount.

In accordance with section 624 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) (HCD Act of 1992), HUD has established a set-aside of $20,000,000 for the development of housing designated for disabled families. This reduction, partially offset by the addition of $1,614,675 in carryover funds, leaves a balance of $370,459,194 available under this NOFA. The use of funds for replacement housing subject to section 18 of the USHA is limited to 30 percent of the amount appropriated for development, or $116,655,000 at this time. (The availability of the $20 million for public housing for disabled families will be announced in a separate NOFA.)

C. Fund Assignments

Section 213(d) of the Housing and Community Development Act of 1974 (HCD Act of 1974) requires that funds be allocated on a fair share basis, except for (a) amounts retained in a Headquarters Reserve for litigation settlements, and (b) appropriations determined incapable of geographic allocation.

1. A minimum of $100 million will be fair shared for Regional Administrators to approve "other" applications. Threshold-approvable applications relating to litigation settlements involving a lack of assisted housing or minority housing opportunities shall be assigned Headquarters Reserve funding before the allocations are determined. Up to $116,655,000 will be made available for applications for replacement housing subject to section 18 of the USHA. Remaining funds will be made available for approvable applications for replacement units for HOPE 1 or section 5(h) homeownership transfers or sales. Any remaining funds not reserved for HOPE 1 or section 5(h) applications will be added to the $100 million to be fair shared for "other" approvable applications.

2. Fair share funds will be distributed to HUD Regional Offices on the basis of the following fair share factors, which reflect the most recent decennial census data as to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, and other measurable conditions. Any unused Regional assignments will be redistributed, proportional to need, among remaining regions with approvable unfunded "other" applications. Fair share and Headquarters Reserve funds are also subject to the requirement of section 213 of the HCD Act of 1974 that not less than 20 percent nor more than 25

percent of the HUD aggregate program funds covered by the statute be allocated for use in nonmetropolitan areas. Therefore, public housing development fund allocations to select "other" applications may be modified before assignments to the Regions to achieve compliance with this statutory and regulatory requirement (see 24 CFR 791.403(a)).

Region	Fair-share factors (percentages)
I Boston	7.2
II New York	18.3
III Philadelphia	9.4
IV Atlanta	13.8
V Chicago	15.1
VI Ft. Worth	7.7
VII Kansas City	3.6
VIII Denver	2.5
IX San Francisco	18.7
X Seattle	3.7
Total	100.0

D. Conformity to Regulations and NOFA Requirements

While conformity with 24 CFR part 941 is required, this funding effort is also subject to the additional specific requirements, consistent with the regulations, that are set forth in this NOFA. Applicants also should consult Handbook 7417.1 REV–1, the FY 1993 detailed Processing Notice, and the FSS interim and final regulations published on May 27, 1993 at 58 FR 30858 and 58 FR 30906, respectively, and which will be codified at 24 CFR part 962. Regional Offices may not authorize any selection criteria in addition to the criteria set out in the NOFA.

II. Application Process Overview

A. Categories of Applications

Each application must specify the housing type (new construction, rehabilitation, or acquisition), development method (conventional, turnkey, or acquisition), and community for which the project is proposed. No more than one housing type, development method, and community may be proposed for an application. While a PHA may file multiple applications, each application must be for only one of the following specific categories:

1. Replacement units for demolition/ disposition approvals, subject to section 18 of the USHA;

2. Replacement units for HOPE 1 or section 5(h) homeownership transfers or sales;

3. Public housing required by litigation settlements (involving a lack of assisted or minority housing opportunities); or

4. "Other" development applications intended to increase the public housing stock.

B. Application Processing

The Field Office will screen each application for completeness and will provide the PHA a 14-day opportunity to furnish missing technical information or exhibits, or to correct technical mistakes. Each application will then be subjected to a "pass/fail" threshold examination. Each passing application will be recommended for funding (categories 1, 2, and 3) or rated and ranked (category 4). Regional Offices will verify Field Office actions and will select category 4 applications for approval based on Field Office ratings. Headquarters will determine the funds required to approve category 1, 2, and 3 applications.

C. Application Approval

1. A minimum of $100 million will be fair shared for Regional Administrators to approve (in rank order) category 4 applications.

2. All category 3 approvable applications and up to $116,655,000 for category 1 applications will be funded.

3. Remaining funds will be made available for approvable category 2 applications. Any remaining funds not reserved for category 2 applications will be added to the $100 million to be fair shared for category 4 applications.

D. Disclosure of Information

The Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) prohibits advance disclosure of funding decisions. (See 24 CFR part 4, and the interim rule amending 24 CFR part 4, published on August 4, 1992, 57 FR 34246.) Civil penalties related to advance disclosure are set out in 24 CFR part 30. Application approval/non-approval notifications shall not occur until the congressional notification process is completed.

E. Records Retention

Applications and materials related to applications (e.g., application scoring sheets, and notifications of selection/ non-selection) will be retained in the appropriate Field Office for five years, and be available for public inspection in accordance with 24 CFR part 12.

III. Application Requirements

A. All Applicants

Each application shall consist of an original and two copies, and must include the following:

1. *Cover Letter.* The cover letter must identify the category of application (see Section II.A of this NOFA for a description of the categories; see also subparagraph 6 of this Section III.A of the NOFA).

2. *Application—Form HUD 52470.* The application must be signed and dated and include the information as specified in the form.

3. *Evidence of Legal Eligibility.* The PHA must document that it is legally organized, and must provide a current General Certificate (Form HUD 9009).

4. *Cooperation Agreement (Form HUD 52481).* The PHA must document that the number of units requested, along with units in management and other units in development, are covered by Cooperation Agreements.

5. *PHA Resolution In Support of the Application (Form HUD–52471).* Under this resolution, the PHA agrees to comply with all requirements of 24 CFR part 941 (see also subparagraph 6 of this Section III.A).

6. *Front-end Funds.* If front-end funds are being requested, the PHA must so state in its cover letter. If the PHA desires the project only if front-end funds can be approved, the PHA must so state. The Form HUD–52471 (PHA Resolution) must refer to the request, and include Form HUD–52472 (Local Governing Body Resolution/ Transcript of Proceedings) approving the request.

7. *Drug-Free Workplace.* The PHA must submit the Certification for a Drug-Free Workplace (Form HUD–50070) in accordance with 24 CFR 24.630.

8. *Certification for Contracts, Grants, Loans and Cooperative Agreements (Form HUD–50071).* In accordance with section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the regulations at 24 CFR part 87, the PHA must certify that no federally appropriated funds have been paid or will be paid, by or on behalf of the PHA for influencing or attempting to influence an officer or employee of any agency, or a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modifications of any Federal contract, grant, loan, or cooperative agreement.

9. *Form SF–LLL, Disclosure of Lobbying Activities.* Also, in accordance with the Byrd Amendment and the regulations at 24 CFR part 87, the PHA must complete and submit Form SF–LLL if funds other than federally appropriated funds have been paid or

will be paid by or on behalf of the PHA for influencing or attempting to influence an officer or employee of any agency, or a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modifications of any Federal contract, grant, loan, or cooperative agreement.

10. *Disclosure of Government Assistance and Identity of Interested Parties (Form HUD 2880).* The PHA must submit the Applicant/Recipient Disclosure/Update Report (Form HUD–2880) in accordance with the requirements of 24 CFR part 12, subpart C.

11. *Applications for New Construction.* Every application for a new construction project (conventional or turnkey) must be accompanied by either the information described in paragraphs 11.a. and 11.c., or, at the applicant's option, the information described in paragraphs 11.b. and 11.c.:

a. A PHA comparison of the costs of new construction (in the neighborhood where the PHA proposes to construct the housing) and the costs of acquisition of existing housing or rehabilitation in the same neighborhood (including estimated costs of lead-based paint testing and abatement); or

b. A PHA certification, accompanied by supporting documentation, that there is insufficient existing housing in the neighborhood to develop housing through acquisition of existing housing or rehabilitation;

c. A statement that either:

(1) Although the application is for new construction, the PHA will accept acquisition of existing housing or rehabilitation, if HUD determines the PHA cost comparison or certification of insufficient housing does not support approval of new construction; or

(2) The application is for new construction only. (In any such case, if HUD cannot approve new construction under section 6(h) of the USHA, the application will be rejected.)

12. *Family Self-Sufficiency (FSS).* Section 23 of the USHA requires PHAs that are awarded new public housing units to implement an FSS program. Applicants must certify that they will comply with 24 CFR part 962.

B. Replacement Housing Applications

1. *Cover Letter.* For both category 1 and category 2 applications, the cover letter must state whether the underlying application (to demolish/dispose of units, or to transfer/sell units) has been approved; the date of approval; the project number and the name of the project being replaced; and whether it is being replaced in whole or in part. If the underlying application was not approved at the time the replacement housing application is filed, the cover letter must state the date the underlying application was submitted for consideration.

2. *Section 5(j) Certification.* The PHA must certify that the units requested are specifically required in FY 1993 either to meet the one-for-one replacement requirement of section 18 of the USHA to replace public housing demolition/disposition; or to meet the requirements of section 304(g) of the USHA to replace existing public housing approved in FY 1993 for homeownership transfer under HOPE 1, or for sale under section 5(h).

3. *Replacement Application Under Section 18.* A PHA submitting a replacement housing application under section 18 (category 1) must demonstrate that the replacement units, alone or together with other identified replacement units:

a. Will implement the PHA's Replacement Housing Plan submitted under 24 CFR 970.11;

b. Are for no fewer units than the number of units to be demolished or disposed of; and

c. Will house at least the same number of individuals and families that could be served by the housing to be demolished or disposed.

C. Applications for Units Required for Litigation Settlement

1. *Cover Letter.* A PHA submitting a category 3 application shall identify the litigation in its cover letter.

2. *Section 5(j) Certification.* The PHA must certify that the units requested are required by litigation settlements involving a lack of assisted or minority housing opportunities.

D. "Other" Applications

1. *Cover Letter.* Applicants for "other" public housing development units (category 4), must state whether they will accept fewer units than applied for. Refusal to accept fewer units may result in an application not being selected if funds are not sufficient for the full number of units.

2. *Section 5(j) Certification.* The PHA must certify to one of the following, pursuant to section 5(j) of the USHA, for each "other" application:

a. The units requested (limited to 100 or fewer) are needed for family housing to satisfy demands not being met by the section 8 existing or voucher rental assistance programs;

or

b. That 85 percent of the PHA's dwelling units (select (1), (2), or (3)):

(1) Are maintained in substantial compliance with the section 8 housing quality standards (24 CFR 882.109); or

(2) Will be so maintained upon completion of modernization for which funding has been awarded; or

(3) Will be so maintained upon completion of modernization for which applications are pending that have been submitted in good faith under section 14 of the USHA (or a comparable State or local government program), and that there is a reasonable expectation, as determined in writing by HUD, that such application would be approvable; or will be so maintained upon completion of modernization for which a Comprehensive Plan has been approved under the Comprehensive Grant program.

3. *Funding Preference in Accordance With Section 6(p).* Section 6(p) of the USHA requires HUD to provide a funding preference for applications in areas with an inadequate supply of housing for use by low-income families (i.e., a "tight" housing rental market). The implementation of this preference shall be in accordance with the process described in Section V.A. of this NOFA.

a. The PHA must furnish data relative to rental vacancy rates in the market area where the project is proposed. This data should include a description of the data sources and methods used to obtain survey information. (It is recommended that PHAs consult with local community development agencies relative to their housing needs before submitting applications under this NOFA, since most of these agencies will have participated in the development of a Comprehensive Housing Affordability Strategy (CHAS).)

b. Factors such as the following will provide evidence of conditions which, when taken together, will demonstrate a pattern of inadequate supply (generally, no one factor, taken alone, is conclusive):

(1) The current rental housing vacancy rate is at a low level (typically six percent or lower) which results in housing not being available for families seeking rental units (unless the housing market area is not growing and, as a result, is experiencing low levels of demand);

(2) The annual production of rental housing units is insufficient to meet the demand arising from the increase in households, or, where there is little or no growth, is insufficient to meet the demand arising from net losses to the available inventory;

(3) The shortage of housing is resulting in rent increases exceeding

those increases commensurate with rental housing operating costs; and

(4) A significant number or proportion of section 8 certificate/voucher holders are unable to find adequate housing because of the shortage of rental housing, as evidenced by PHA data showing a lower-than-average percentage of units under lease and a longer-than-average time required to find units (typically, less than 85 percent lease up within 60 days).

4. *Documentation to Demonstrate Need.* The PHA must submit documentation, such as waiting list description or PHA vacancy rate data, to demonstrate need for the proposed public housing, to assist the HUD Field Office in its determination concerning relative need.

5. *Other Criteria.* Additional rating points may be earned by category 4 applicants in accordance with Section IV.D.1.h of this NOFA.

E. Ineligible Applications

Applications for intermediate care facilities and nursing homes may not be approved under this NOFA. Applications for housing designated for disabled families will be the subject of a separate NOFA and may not be applied for under this NOFA.

IV. Field Office Processing of Applications

A. Initial Screening

1. Immediately after the deadline for receipt of applications, the Field Office will screen each application to determine whether all information and exhibits have been submitted.

a. If an application lacks any technical information or exhibit, or contains a technical mistake, the PHA will be advised in writing and will have 14 calendar days from the date of the issuance of HUD's notification to deliver the missing or corrected information or documentation to the Field Office.

b. Curable technical deficiencies relate only to items that would not improve the substantive quality of the application, relative to the ranking factors.

c. If Form HUD 52470 (Application) is missing, the PHA's application will be considered substantively incomplete, and therefore ineligible for further processing. If Form HUD 50070 (Drug Free Workplace Certification) is missing, or if there is a technical mistake, such as no signature on a submitted form, the PHA will be given an opportunity to correct the deficiency.

2. An application that does not meet the applicable threshold and NOFA requirements after the 14-day technical deficiency period will be rejected from processing and determined to be unapprovable.

3. Applications proposing housing in areas also served by the Farmers Home Administration (FmHA) are subject to coordination with FmHA to assure that assisted housing resources to be provided are not duplicative. The State FmHA office shall be advised that an application for public housing has been received and is being considered for funding, and be provided an opportunity to comment on the application.

4. The responsibility for submitting a complete application rests with the PHA. The failure of the Field Office to identify and provide a notice of deficiency to the PHA shall not relieve the PHA of the consequences of failure to submit a complete application.

B. Application Threshold Approvability

After initial screening and upon expiration of the deficiency "cure" period, complete applications will be examined for threshold approvability. Applications that fail one or more of the threshold criteria will be rejected from processing and determined to be unapprovable. All applications for public housing development funds must meet the following thresholds to be determined approvable:

1. The PHA may not have any litigation pending which would preclude approval of the application. The PHA must be legally eligible to develop, own, and operate public housing under the USHA and have:

a. Approved and current PHA organization documents;

b. Local cooperation agreements to cover units under management, in development, and the units requested (Form HUD 52481), and any other required local authority;

c. A properly executed and complete PHA Resolution (Form HUD 52471), referring to the need for front-end funding, if requested, and a Local Governing Body Resolution (HUD 52472) which approves the request for front-end funds, if front-end funds are requested. NOTE: The PHA Resolution certifies to the PHA's intent to comply with all requirements of 24 CFR part 941 (these requirements include: Nondiscrimination under the applicable civil rights laws; the requirements imposed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655); the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations at 24 CFR part 8; and section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u), and HUD's implementing regulations at 24 CFR part 135.

2. The category of application is eligible under this NOFA (see Section II.A of this NOFA).

3. If new construction (conventional or turnkey) has been applied for, the PHA has provided a cost comparison or a certification with documentation (see Section III.A.11 of this NOFA), and has stated what is to be done with the application if new construction is not approvable.

4. For "other" applications, the Field Office must determine that there is a need and a market for the proposed household type and bedroom sizes, taking into consideration the documentation submitted by the PHA on housing supply and demonstration of need, any local plans, and other assisted housing (e.g., HUD or FmHA) existing and proposed (including housing funded but not completed).

5. The Field Office must determine that the PHA has or will have the capability to develop and manage the proposed housing. The Field Office shall determine capability based upon the PHA's overall capability; the PHA's total score under the Public Housing Management Assessment Program (PHMAP) (see 24 CFR part 901); the PHA's most recent fiscal audit; and outstanding HUD monitoring findings.

a. A PHA that has been designated as "troubled" shall be considered eligible if its most recent PHMAP assessment improved by at least 5 points (on a zero-to-one hundred point scale) as compared to the assessment completed on April 16, 1992; or it can demonstrate to the satisfaction of the Field Office that it is making substantial progress by a narrative describing actions that have been taken to address deficiencies identified by PHMAP, by the PHA's Memorandum of Agreement with HUD, or by HUD reviews, audits or surveys; or it provides an acceptable binding contract from another public or private entity to act as administrator of the development program on behalf of the PHA.

b. A PHA shall not be determined to lack administrative or development capability simply because it has no recent experience in developing or managing public/assisted housing.

c. No application shall be determined to be approvable if the PHA has failed to return excess advances received during development or modernization, or amounts determined by HUD to constitute excess financing based on a HUD-approved Actual Development

Cost Certificate (ADCC) or Actual Modernization Cost Certificate (AMCC), unless HUD has approved a pay-back plan.

6. There are no environmental factors, such as sewer moratoriums, precluding development in the requested locality.

7. The following certifications are included in the application and have been executed by the appropriate person(s):

a. Form HUD–50070, Drug-Free Workplace;

b. Form HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements;

c. Form SF–LLL, Disclosure of Lobbying Activities, if applicable;

d. Form HUD–2880, Applicant/Recipient Disclosure/Update Report;

e. FSS certification;

f. Section 5(j) certification appropriate to the category of application.

C. Non-Fair Share Threshold Approvable Applications

Applications in categories 1, 2, and 3 will be determined approvable if they successfully pass the threshold review. Threshold-approvable applications in category 4 ("other") will be rated by the Field Office, using the criteria set out in the following Section D.

D. "Other" Development Applications

1. Rating criteria. Threshold approvable "Other" applications will be rated by the Field Office on the following criteria:

Criteria	Points
a. *Relative Need.* The application proposes a project for a locality which has been previously under-funded for the household type (family or elderly) requested, relative to the need for housing for the same household type in other localities in the respective metropolitan or non-metropolitan portion of the Field Office's jurisdiction	10
b. *Large-Family Housing.* The application is for a project comprising 51 percent or more three bedroom or larger units	20
c. *Relocation.* The proposed project would primarily assist households displaced or to be displaced by Federal action or a natural disaster in a federally declared disaster area	10
d. *Low Density Family Housing.* The application proposes scattered site development to expand housing opportunities	10
e. *PHA Development Experience.* (Select (1), (2), or (3).) (1) The PHA scored at least 90 percent ("A") in indicator #12 (Development) of PHMAP	20
(2) The PHA's latest PHMAP score for Indicator #12 (Development) is between 80 and 89 percent, or the Field Office has no information on the PHA's previous development experience to rate the PHA under paragraph (a) above; however, the PHA's application demonstrates the capability for, and the expectation of, expeditious quality development (e.g., the PHA showed evidence of section 8 or other development experience, or submitted a development management contract with an experienced PHA)	15
or	
(3) The PHA's latest PHMAP score for Indicator #12 (Development) is between 60 and 79 percent, or the Field Office has no information on the PHA's development experience under either paragraph (1) or (2) above, but the PHA has evidenced staff capability and organization that demonstrates the PHA has the capability for, and the expectation of, expeditious quality development	5
f. *PHA Management Experience.* (Select (1), (2), or (3).) (1) The vacancy rate in public housing projects under management is not greater than 5 percent, indicating that the PHA will and can fully utilize the units applied for	20
or	
(2) The vacancy rate in public housing projects under management is not greater than 6 percent or two units (if that is greater)	10
or	
(3) The PHA has no public housing in management, but has management experience in the section 8 program and management reviews or Inspector General audit findings (if any) are being addressed satisfactory	5
g. *Other Criteria.* (Select any that apply.) (1) The PHA has submitted evidence that, for the past five years, it has met any commitments made under the provisions of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C., 1701u), as amended from time to time, and the implementing regulations for section 3 at 24 CFR part 135. If the PHA does not have five years of development experience, it may instead submit evidence related to its experience with the modernization program	5
(2) The application proposes a project which, as evidenced by a letter from local officials, actively supports an area of local initiative such as a Community Development Block Grant, urban revitalization, Enterprise Zone, or other similar local activity	5
(3) The Field Office, based on documentation submitted by the PHA, has determined that the PHA has no drug problem or is aggressively combatting drug abuse in its public housing projects	5
Total Possible Points	105

E. Field Office Reports to Region

1. *General.* All reports to the Regional Office of threshold-approvable applications shall include the project number, total number of units and units by bedroom size, structure type(s), cost areas, funding required and the metropolitan/non-metropolitan designations for each application. The "Other" list shall include the rating assigned each application.

2. *Category 1, 2, and 3 Applications.* Each Field Office shall forward its lists (by category) of fair-share exempt threshold-approvable applications to the Regional Office within two weeks of the deficiency "cure" period.

3. *Category 4 Applications.* "Other" applications that have met the threshold criteria of Section IV.B of this NOFA shall be rated and reported to the Regional Office by the Region's required date.

V. Regional Office Processing

A. All Applications

Regional Offices will ensure that all applications have been properly determined to be threshold-approvable and will forward separate lists of category 1, 2, and 3 approvable applications to Headquarters. Regional Offices will separate "other" applications (category 4) on the basis of "tight rental housing market" and Field Office ratings, and approve them (in the following order) to the extent fair share funds are assigned:

1. Applications in tight rental housing markets which receive 80 or more rating points;

2. Applications in other rental housing markets which receive 80 or more rating points;

3. Applications in tight rental housing markets which receive fewer than 80 rating points;

4. Applications in other rental housing markets which receive fewer than 80 rating points.

B. Reservation of Funds

Funds will be reserved in an amount equal to the total development cost limit for the number, structure type, and size of units being approved, "trended" to take into consideration the anticipated cost of construction at the time the construction/rehabilitation contract is expected to be executed. Acquisition reservations will be trended to take into account anticipated cost variations between fund reservation and Date of Full Availability (DOFA). The trend shall be calculated by multiplying the total development cost limit by 5.4 percent (1.054), rounded to the nearest $50.

C. Partial Funding

Partial funding of highly ranked "other" applications is authorized (so long as such projects are determined viable and the PHA has indicated willingness to accept fewer units) to facilitate the funding in rank order of additional applications for highly ranked projects.

VI. Checklist of Application Submission Requirements—All Programs

A. PHAs may use the following application checklist, which enumerates the submission requirements of Section III of this NOFA.

1. Form HUD 52470, Application for Public Housing Development;

2. Evidence of legal eligibility with a current General Certificate (HUD 9009);

3. Evidence that the number of units in management, in development, and being requested in this application are covered by Cooperation Agreements (HUD 52481) and any other State/local requirements have been met;

4. HUD 52471, PHA Resolution in Support of Public Housing;

5. HUD 52472, Local Governing Body Resolution, if front-end funds are being requested by the PHA. (Note: If front-end funds are requested, the HUD 52471 must be appropriately modified. See Section II.A.6. of this NOFA);

6. PHA statement identifying its funding preferences if more than one application is being submitted for category 4 (section II.A.);

7. PHA statement whether it will accept fewer "other" units than applied for (category 4);

8. HUD 50070, PHA Certification for a Drug-Free Workplace;

9. HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements;

10. Form SF–LLL, Byrd Amendment Disclosure and Certification Regarding Lobbying, only if the applicant determines it is applicable;

11. Form HUD 2880, Disclosure of Government Assistance and Identity of Interested Parties;

12. Section 5(j) certification appropriate to the category of application;

13. Evidence of inadequate housing supply (i.e., a "tight" rental housing market), for category 4 ("Other") units;

14. Evidence (such as waiting list information or PHA vacancy rate data) of relative need for the units requested for category 4 applications;

15. Section 6(h) cost comparison justification, if new construction is requested;

16. FSS program certification;

17. Replacement housing exhibits, if applicable (see section III.B).

B. Application Packets

Forms comprising the application package may be obtained from the HUD Field Office.

VII. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410.

B. Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The NOFA will provide PHAs with funding for public housing development.

C. Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA do not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. To the extent that the funding provided through this NOFA results in additional or improved housing, the effects on the family will be beneficial.

D. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. (See Section II of this NOFA.) These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

E. Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

HUD's regulation implementing section 13 is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning the rule should be directed to the Office of

Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815 (voice/TDD). This is not a toll-free number. Forms necessary for compliance with the rule may be obtained from the local HUD office.

F. Prohibition Against Advance Information on Funding Decisions

Section 103 of the HUD Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing section 103 is codified at 24 CFR part 4, and was recently amended by an interim rule published in the **Federal Register** on August 4, 1992 (57 FR 34246). In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

G. Accountability in the Provision of HUD Assistance

HUD's regulations at 24 CFR part 12 implement section 102 of the HUD Reform Act. Section 102 contains a number of provisions designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. The following requirements concerning documentation and public access disclosures are applicable to assistance awarded under this NOFA.

1. *Documentation and Public Access.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

2. *Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in **Federal Register** on January 16, 1992 (52 FR 1942), for further information on these disclosure requirements.)

Dated: June 17, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 93–15101 Filed 6–25–93; 8:45 am]

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federal register

Monday
June 28, 1993

Part V

Federal Emergency Management Agency

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: July 28, 1993.

ADDRESSES: Comments on the master list or any changes to the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Larry Maruskin, Office of Fire Prevention and Arson Control, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1141.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 24, 1992, 57 FR 55314, and published changes five times previously.

Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list.

Each update contains or will contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Dated: June 23, 1993.

Spence W. Perry,

Acting General Counsel.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST

06/16/93 UPDATE

Property name	PO Box/Rt No.	Street address	City	State/zip	Telephone
ADDITIONS					
Alabama					
Lenlock Inn		6210 McClellen Blvd	Anniston	AL 36201	2058201515
Econo Lodge		103 Greensprings Hwy	Birmingham	AL 35209	2059421253
Holiday Inn South Galleria Area.		1548 Montgomery Hwy	Birmingham	AL 35216	2058224350
Residence In by Marriott		3 Greenhill Pkwy	Birmingham	AL 35242	2059918686
Holiday Inn Downtown Historic Dist.		301 Government St	Mobile	AL 36602	2056490100
Inn South		4243 Inn South Ave	Montgomery	AL 36105	2052887999
Island House Hotel		26650 Perdido Beach Blvd.	Orange Beach	AL 36561	2059816100
Ramada Inn Limited		1418 Parkhill Pkwy	Pell City	AL 35125	2053381314
Arkansas					
Holiday Inn Arkadelphia		1–30 & Hwy. 7 & 67	Arkadelphia	AR 71923	5012465831
Arizona					
Holiday Inn City Center		181 W. Broadway Rd	Tucson	AZ 85701	6025248711
California					
Radisson Hotel San Diego.		1433 Camino Del Rio S	San Diego	CA 92708	6192600111
Massachusetts					
Susse Chalet Cambridge		211 Concord Tnpk	Cambridge	MA 02140	6176617800
Nebraska					
Embassy Suites Omaha		7270 Cedar St	Omaha	NE 68124	4023975141
Nevada					
Cal Neva Lodge Resort Hotel Spa & Casino.	PO Box 368	#2 Stateline Rd	Crystal Bay	NV 39402	7028324000
Circus Circus Towers		2880 Las Vegas Blvd. S	Las Vegas	NV 89109	7027340410

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HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST—Continued

06/16/93 UPDATE

Property name	PO Box/Rt No.	Street address	City	State/zip	Telephone
Circus Circus Manor		2880 Las Vegas Blvd. S .	Las Vegas	NV 89109	7027340410
Circus Circus Skyrise		2880 Las Vegas Blvd. S .	Las Vegas	NV 89109	7027340410
Circus Circus Hotel Casino.		500 N. Sierra St	Reno	NV 89503	7023290711
Circus Circus Hotel Casino.		516 West St	Reno	NV 89503	7023290711
New York					
Econo Lodge		1632 Central Ave	Albany	NY 12205	5184568811
Hojo Inn		5245 Camp Rd	Hamburg	NY 14075	7166462000
Econo Lodge		610 Upper Cornelia St	Plattsburgh	NY 12901	5185611500
Oregon					
Best Western Sunridge Inn.		One Sunridge Ln	Baker City	OR 97814	5035236444
The Greenwood Inn		10700 SW Allen Blvd	Beaverton	OR 97005	5036437444
Howard Johnson Lodge #1201.		1249 Tapadeka Ave	Ontario	OR 97914	5039889521
Red Lion Hotel Columbia River.		1401 N. Hayden Island Dr.	Portland	OR 97217	5032832111
South Caroline					
Days Inn Airport		1386 E. Main St	Ducan	SC 29334	8034331122
Comfort Inn	PO Box 5688	I-95 & US 52	Florence	SC 29502	8036654558
Econo Lodge	PO Box 5688	I-95 & US 52	Florence	SC 29502	8036658558
Sleep Inn	PO Box 5688	I-95 & US 52	Florence	SC 29502	8036628588
Residence Inn Spartanburg.		9011 Fairforest Rd	Spartanburg	SC 29305	8035783333
Wilson World		9027 Fairforest Rd	Spartanburg	SC 29301	8035742111
Econo Lodge #ΣΨ141		128 Interstate Dr. I-95 & US 78.	St. George	SC 29448	8035634027
Virginia					
Comfort Inn		12330 Jefferson Ave	Newport News	VA 23602	8042490200
CORRECTIONS/ CHANGES					
California					
Irvine Suites Hotel		23192 Lake Center Dr	El Toro	CA 92630	7143809888
South Carolina					
Radisson In Charleston Airport.		5891 Rivers Ave	North Charleston	SC 29418	8037442501
DELETIONS					
Mississippi					
Days Inn	PO Box 6518	US Hwy. 49	Hattiesburg	MS 39401	6015446360
Days Inn	PO Box 2355	Hwy. 80 W	Jackson	MS 39204	6019480680
Tupelo Executive Inn		1011 N. Gloster	Tupelo	MS 38801	6016412222
Ohio					
Marriott Inn		3663 Park East Dr	Beachwood	OH 44122	2162416375
Pennsylvania					
Holiday Inn		250 Market St	Johnstown	PA 15907	8145357777

[FR Doc. 93-15115 Filed 6-25-93; 8:45 am]

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500-599	(869-019-00039-9)	19.00	Jan. 1, 1993
600-End	(869-019-00040-2)	28.00	Jan. 1, 1993
13	(869-019-00041-1)	28.00	Jan. 1, 1993
14 Parts:			
1-59	(869-019-00042-9)	29.00	Jan. 1, 1993
60-139	(869-019-00043-7)	26.00	Jan. 1, 1993
140-199	(869-019-00044-5)	12.00	Jan. 1, 1993
200-1199	(869-019-00045-3)	22.00	Jan. 1, 1993
1200-End	(869-019-00046-1)	16.00	Jan. 1, 1993
15 Parts:			
0-299	(869-019-00047-0)	14.00	Jan. 1, 1993
300-799	(869-019-00048-8)	25.00	Jan. 1, 1993
800-End	(869-019-00049-6)	19.00	Jan. 1, 1993
16 Parts:			
0-149	(869-019-00050-0)	7.00	Jan. 1, 1993
150-999	(869-019-00051-8)	17.00	Jan. 1, 1993
1000-End	(869-019-00052-6)	24.00	Jan. 1, 1993
17 Parts:			
1-199	(869-019-00054-2)	18.00	Apr. 1, 1993
200-239	(869-017-00055-8)	17.00	Apr. 1, 1992
240-End	(869-017-00056-6)	24.00	Apr. 1, 1992
18 Parts:			
1-149	(869-017-00057-4)	16.00	Apr. 1, 1992
150-279	(869-017-00058-2)	19.00	Apr. 1, 1992
280-399	(869-019-00059-3)	15.00	Apr. 1, 1993
400-End	(869-019-00060-7)	10.00	Apr. 1, 1993
19 Parts:			
1-199	(869-017-00061-2)	28.00	Apr. 1, 1992
200-End	(869-019-00062-3)	11.00	Apr. 1, 1993
20 Parts:			
1-399	(869-019-00063-1)	19.00	Apr. 1, 1993
400-499	(869-017-00064-7)	31.00	Apr. 1, 1992
500-End	(869-017-00065-5)	21.00	Apr. 1, 1992
21 Parts:			
1-99	(869-019-00066-6)	15.00	Apr. 1, 1993
100-169	(869-017-00067-1)	14.00	Apr. 1, 1992
170-199	(869-017-00068-0)	18.00	Apr. 1, 1992
200-299	(869-019-00069-1)	6.00	Apr. 1, 1993
300-499	(869-017-00070-1)	29.00	Apr. 1, 1992
500-599	(869-017-00071-0)	21.00	Apr. 1, 1992
600-799	(869-017-00072-8)	7.00	Apr. 1, 1992
800-1299	(869-017-00073-6)	18.00	Apr. 1, 1992
1300-End	(869-019-00074-7)	12.00	Apr. 1, 1993
22 Parts:			
1-299	(869-019-00075-5)	30.00	Apr. 1, 1993
300-End	(869-017-00076-1)	19.00	Apr. 1, 1992
23	(869-017-00077-9)	18.00	Apr. 1, 1992
24 Parts:			
0-199	(869-017-00078-7)	34.00	Apr. 1, 1992
200-499	(869-017-00079-5)	32.00	Apr. 1, 1992
500-699	(869-017-00080-9)	13.00	Apr. 1, 1992
700-1699	(869-017-00081-7)	34.00	Apr. 1, 1992
1700-End	(869-019-00082-8)	15.00	Apr. 1, 1993
25	(869-017-00083-3)	25.00	Apr. 1, 1992
26 Parts:			
§§ 1.0-1-1.60	(869-017-00084-1)	17.00	Apr. 1, 1992
§§ 1.61-1.169	(869-017-00085-0)	33.00	Apr. 1, 1992
*§§ 1.170-1.300	(869-019-00086-1)	23.00	Apr. 1, 1993
§§ 1.301-1.400	(869-017-00087-6)	17.00	Apr. 1, 1992
§§ 1.401-1.500	(869-017-00088-4)	38.00	Apr. 1, 1992
§§ 1.501-1.640	(869-017-00089-2)	19.00	Apr. 1, 1992
§§ 1.641-1.850	(869-017-00090-6)	19.00	Apr. 1, 1992
§§ 1.851-1.907	(869-017-00091-4)	23.00	Apr. 1, 1992
§§ 1.908-1.1000	(869-019-00093-3)	26.00	Apr. 1, 1993
§§ 1.1001-1.1400	(869-017-00093-1)	19.00	Apr. 1, 1992
*§§ 1.1401-End	(869-019-00095-0)	31.00	Apr. 1, 1993
2-29	(869-019-00096-8)	23.00	Apr. 1, 1993
30-39	(869-017-00096-5)	15.00	Apr. 1, 1992
40-49	(869-017-00097-3)	12.00	Apr. 1, 1992
50-299	(869-017-00098-1)	15.00	Apr. 1, 1992
300-499	(869-017-00100-0)	23.00	Apr. 1, 1993
500-599	(869-019-00101-8)	6.00	[4] Apr. 1, 1990
600-End	(869-017-00101-5)	6.50	Apr. 1, 1992

Title	Stock Number	Price	Revision Date
27 Parts:			
1-199	(869-017-00102-3)	23.00	Apr. 1, 1992
200-End	(869-017-00103-1)	11.00	Apr. 1, 1992
28	(869-017-00104-0)	28.00	July 1, 1992
29 Parts:			
0-99	(869-017-00105-8)	20.00	July 1, 1992
100-499	(869-017-00106-6)	8.50	July 1, 1992
500-899	(869-017-00107-4)	28.00	July 1, 1992
900-1899	(869-017-00108-2)	15.00	July 1, 1992
1900-1910 (§§ 1.910.999)	(869-017-00109-1)	26.00	July 1, 1992
1910 (§§ 1910.1000 end)	(869-017-00110-4)	17.00	July 1, 1992
1911-1925	(869-017-00111-2)	8.00	July 1, 1992
1926	(869-017-00112-1)	15.00	July 1, 1992
1927-End	(869-017-00113-9)	24.00	July 1, 1992
30 Parts:			
1-199	(869-017-00114-7)	21.00	July 1, 1992
200-699	(869-017-00115-5)	15.00	July 1, 1992
700-End	(869-017-00116-3)	20.00	July 1, 1992
31 Parts:			
0-199	(869-017-00117-1)	14.00	July 1, 1992
200-End	(869-017-00118-0)	26.00	July 1, 1992
32 Parts:			
1-39, Vol. I	(869-017-00119-8)	15.00	July 1, 1992
1-39, Vol. II	(869-017-00120-1)	19.00	July 1, 1992
1-39, Vol. III	(869-017-00121-0)	18.00	July 1, 1992
1-189	(869-017-00122-8)	23.00	July 1, 1992
190-399	(869-017-00123-6)	28.00	July 1, 1992
400-629	(869-017-00124-4)	24.00	July 1, 1992
630-699	(869-017-00125-2)	13.00	July 1, 1992
700-799	(869-017-00126-1)	15.00	July 1, 1992
800-End	(869-017-00127-9)	17.00	July 1, 1992
33 Parts:			
1-124	(869-017-00128-7)	21.00	July 1, 1992
125-199	(869-017-00129-5)	28.00	July 1, 1992
200-End	(869-017-00130-9)	19.00	July 1, 1992
34 Parts:			
1-299	(869-017-00131-7)	28.00	July 1, 1992
300-399	(869-017-00132-5)	13.00	July 1, 1992
400-End	(869-017-00133-3)	28.00	July 1, 1992
35	(869-017-00134-1)	10.00	July 1, 1992
36 Parts:			
1-199	(869-017-00135-0)	13.00	July 1, 1992
200-End	(869-017-00136-8)	28.00	July 1, 1992
37	(869-017-00137-6)	20.00	July 1, 1992
38 Parts:			
0-17	(869-017-00138-4)	28.00	July 1, 1992
18-End	(869-017-00139-2)	23.00	July 1, 1992
39	(869-017-00140-6)	15.00	July 1, 1992
40 Parts:			
1-51	(869-017-00141-4)	28.00	July 1, 1992
52	(869-017-00142-2)	28.00	July 1, 1992
53-60	(869-017-00143-1)	28.00	July 1, 1992
61-80	(869-017-00144-9)	13.00	July 1, 1992
81-85	(869-017-00145-7)	12.00	July 1, 1992
86-99	(869-017-00146-5)	28.00	July 1, 1992
100-149	(869-017-00147-3)	23.00	July 1, 1992
150-189	(869-017-00148-1)	19.00	July 1, 1992
190-259	(869-017-00149-0)	13.00	July 1, 1992
260-299	(869-017-00150-3)	28.00	July 1, 1992
300-399	(869-017-00151-1)	13.00	July 1, 1992
400-424	(869-017-00152-0)	23.00	July 1, 1992
425-699	(869-017-00153-8)	23.00	July 1, 1992
700-789	(869-017-00154-6)	23.00	July 1, 1992
790-End	(869-017-00155-4)	23.00	July 1, 1992
41 Chapters:			
1, 1-1 to 1-10	(869-017-00156-2)	13.00	July 1, 1992
1, 1-11 to Appendix, 2 (2 Reserved)	(869-017-00157-1)	13.00	July 1, 1992
3-6	(869-017-00158-9)	14.00	July 1, 1992
7	(869-017-00159-7)	6.00	July 1, 1992
8	(869-017-00160-1)	4.50	July 1, 1992
9	(869-017-00161-9)	13.00	July 1, 1992
10-17	(869-017-00162-7)	9.50	July 1, 1992
18, Vol. I, Parts 1-5	(869-017-00163-5)	13.00	July 1, 1992
18, Vol. II, Parts 6-19	(869-017-00164-3)	13.00	July 1, 1992
18, Vol. III, Parts 20-52	(869-017-00165-1)	19.00	July 1, 1992
19-100	(869-017-00166-0)	13.00	July 1, 1992
1-100	(869-017-00167-8)	8.00	July 1, 1992
101	(869-017-00168-6)	23.00	July 1, 1992
102-200	(869-017-00169-4)	11.00	July 1, 1992
201-End	(869-017-00170-8)	12.00	July 1, 1992
42 Parts:			
1-60	(869-017-00171-6)	15.00	Oct. 1, 1992
61-399	(869-017-00172-4)	5.50	Oct. 1, 1992
400-429	(869-017-00173-2)	19.00	Oct. 1, 1992
430-End	(869-017-00174-1)	23.00	Oct. 1, 1992
43 Parts:			
1-999	(869-017-00175-9)	15.00	Oct. 1, 1992
1000-3999	(869-017-00176-7)	25.00	Oct. 1, 1992
4000-End	(869-017-00177-5)	11.00	Oct. 1, 1992
44	(869-017-00178-3)	23.00	Oct. 1, 1992
45 Parts:			
1-199	(869-017-00179-1)	14.00	Oct. 1, 1992
200-499	(869-017-00180-5)	8.50	Oct. 1, 1992
500-1199	(869-017-00181-3)	19.00	Oct. 1, 1992
1200-End	(869-017-00182-1)	19.00	Oct. 1, 1992
46 Parts:			
1-40	(869-017-00183-0)	13.00	Oct. 1, 1992
41-69	(869-017-00184-8)	13.00	Oct. 1, 1992
70-89	(869-017-00185-6)	5.50	Oct. 1, 1992
90-139	(869-017-00186-4)	13.00	Oct. 1, 1992
140-155	(869-017-00187-2)	13.00	Oct. 1, 1992
156-165	(869-017-00188-1)	13.00	Oct. 1, 1992
166-199	(869-017-00189-9)	14.00	Oct. 1, 1992
200-499	(869-017-00190-2)	19.00	Oct. 1, 1992
500-End	(869-017-00191-1)	11.00	Oct. 1, 1992
47 Parts:			
0-19	(869-017-00192-9)	19.00	Oct. 1, 1992
20-39	(869-017-00193-7)	15.00	Oct. 1, 1992
40-69	(869-017-00194-5)	8.50	Oct. 1, 1992
70-79	(869-017-00195-3)	15.00	Oct. 1, 1992
80-End	(869-017-00196-1)	19.00	Oct. 1, 1992
48 Parts:			
1-51	(869-017-00197-0)	28.00	Oct. 1, 1992
52-99	(869-017-00198-8)	13.00	Oct. 1, 1992
100-189	(869-017-00199-6)	23.00	Oct. 1, 1992
190-299	(869-017-00200-3)	23.00	Oct. 1, 1992
300-499	(869-017-00201-1)	19.00	Oct. 1, 1992
500-End	(869-017-00202-0)	13.00	Oct. 1, 1992
49 Parts:			
1-99	(869-017-00203-8)	13.00	Oct. 1, 1992
100-177	(869-017-00204-6)	23.00	Oct. 1, 1992
178-199	(869-017-00205-4)	19.00	Oct. 1, 1992
200-399	(869-017-00206-2)	19.00	Oct. 1, 1992
400-999	(869-017-00207-1)	23.00	Oct. 1, 1992
1000-1199	(869-017-00208-9)	15.00	Oct. 1, 1992
1200-End	(869-017-00209-7)	15.00	Oct. 1, 1992
50 Parts:			
1-199	(869-017-00210-1)	19.00	Oct. 1, 1992
200-End	(869-017-00211-9)	19.00	Oct. 1, 1992

[1] Jan. 1, 1993
[2] Apr. 1, 1990
[3] Apr. 1, 1991
[4] Apr. 1, 1990
[5] Apr. 1, 1991

Title	Stock Number	Price	Revision Date
27 Parts:			
1–199	(869–017–00102–3)	34.00	Apr. 1, 1992
200–End	(869–019–00104–2)	11.00	[5] Apr. 1, 1991
28	(869–017–00104–0)	37.00	July 1, 1992
29 Parts:			
0–99	(869–017–00105–8)	19.00	July 1, 1992
100–499	(869–013–00106–6)	9.00	July 1, 1992
500–899	(869–017–00107–4)	32.00	July 1, 1992
900–1899	(869–017–00108–2)	16.00	July 1, 1992
1900–1910 (§§ 1901.1 to 1910.999)	(869–017–00109–1)	29.00	July 1, 1992
1910 (§§ 1910.1000 to end)	(869–017–00110–4)	16.00	July 1, 1992
1911–1925	(869–017–00111–2)	9.00	[6] July 1, 1989
1926	(869–017–00112–1)	14.00	July 1, 1992
1927–End	(869–017–00113–9)	30.00	July 1, 1992
30 Parts:			
1–199	(869–017–00114–7)	25.00	July 1, 1992
200–699	(869–017–00115–5)	19.00	July 1, 1992
700–End	(869–017–00116–3)	25.00	July 1, 1992
31 Parts:			
0–199	(869–017–00117–1)	17.00	July 1, 1992
200–End	(869–017–00118–0)	25.00	July 1, 1992
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–017–00119–8)	30.00	July 1, 1992
190–399	(869–017–00120–1)	33.00	July 1, 1992
400–629	(869–017–00121–0)	29.00	July 1, 1992
630–699	(869–017–00122–8)	14.00	[7] July 1, 1991
700–799	(869–017–00123–6)	20.00	July 1, 1992
800–End	(869–017–00124–4)	20.00	July 1, 1992
33 Parts:			
1–124	(869–017–00125–2)	18.00	July 1, 1992
125–199	(869–017–00126–1)	21.00	July 1, 1992
200–End	(869–017–00127–9)	23.00	July 1, 1992
34 Parts:			
1–299	(869–017–00128–7)	27.00	July 1, 1992
300–399	(869–017–00129–5)	19.00	July 1, 1992
400–End	(869–017–00130–9)	32.00	July 1, 1992
35	(869–017–00131–7)	12.00	July 1, 1992
36 Parts:			
1–199	(869–017–00132–5)	15.00	July 1, 1992
200–End	(869–017–00133–3)	32.00	July 1, 1992
37	(869–017–00134–1)	17.00	July 1, 1992
38 Parts:			
0–17	(869–017–00135–0)	28.00	Sept 1, 1992
18–End	(869–017–00136–8)	28.00	Sept. 1, 1992
39	(869–017–00137–6)	16.00	July 1, 1992
40 Parts:			
1–51	(869–017–00138–4)	31.00	July 1, 1992
52	(869–017–00139–2)	33.00	July 1, 1992
53–60	(869–017–00140–6)	36.00	July 1, 1992
61–80	(869–017–00141–4)	16.00	July 1, 1992
81–85	(869–017–00142–2)	17.00	July 1, 1992
86–99	(869–017–00143–1)	33.00	July 1, 1992
100–149	(869–017–00144–9)	34.00	July 1, 1992
150–189	(869–017–00145–7)	21.00	July 1, 1992
190–259	(869–017–00146–5)	16.00	July 1, 1992
260–299	(869–017–00147–3)	36.00	July 1, 1992
300–399	(869–017–00148–1)	15.00	July 1, 1992
400–424	(869–017–00149–0)	26.00	July 1, 1992
425–699	(869–017–00150–3)	26.00	July 1, 1992
700–789	(869–017–00151–1)	23.00	July 1, 1992
790–End	(869–017–00152–0)	25.00	July 1, 1992
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–017–00153–8)	9.50	July 1, 1992
101	(869–017–00154–6)	28.00	July 1, 1992
102–200	(869–017–00155–4)	11.00	[7] July 1, 1991
201–End	(869–017–00156–2)	11.00	July 1, 1992
42 Parts:			
1–399	(869–017–00157–1)	23.00	Oct. 1, 1992
400–429	(869–017–00158–9)	23.00	Oct. 1, 1992
430–End	(869–017–00159–7)	31.00	Oct. 1, 1992
43 Parts:			
1–999	(869–017–00160–1)	22.00	Oct. 1, 1992
1000–3999	(869–017–00161–9)	30.00	Oct. 1, 1992
4000–End	(869–017–00162–7)	13.00	Oct. 1, 1992
44	(869–017–00163–5)	26.00	Oct. 1, 1992
45 Parts:			
1–199	(869–017–00164–3)	20.00	Oct. 1, 1992
200–499	(869–017–00165–1)	14.00	Oct. 1, 1992
500–1199	(869–017–00166–0)	30.00	Oct. 1, 1992
1200–End	(869–017–00167–8)	20.00	Oct. 1, 1992
46 Parts:			
1–40	(869–017–00168–6)	17.00	Oct. 1, 1992
41–69	(869–017–00169–4)	16.00	Oct. 1, 1992
70–89	(869–017–00170–8)	8.00	Oct. 1, 1992
90–139	(869–017–00171–6)	16.00	Oct. 1, 1992
140–155	(869–017–00172–4)	12.00	Oct. 1, 1992
156–165	(869–017–00173–2)	14.00	[8] Oct. 1, 1991
166–199	(869–017–00174–1)	17.00	Oct. 1, 1992
200–499	(869–017–00175–9)	22.00	Oct. 1, 1992
500–End	(869–017–00176–7)	14.00	Oct. 1, 1992
47 Parts:			
0–19	(869–017–00177–5)	22.00	Oct. 1, 1992
20–39	(869–017–00178–3)	22.00	Oct. 1, 1992
40–69	(869–017–00179–1)	12.00	Oct. 1, 1992
70–79	(869–017–00180–5)	21.00	Oct. 1, 1992
80–End	(869–017–00181–3)	24.00	Oct. 1, 1992
48 Chapters:			
1 (Parts 1–51)	(869–017–00182–1)	34.00	Oct. 1, 1992
1 (Parts 52–99)	(869–017–00183–0)	22.00	Oct. 1, 1992
2 (Parts 201–251)	(869–017–00184–8)	15.00	Oct. 1, 1992
2 (Parts 252–299)	(869–017–00185–6)	12.00	Oct. 1, 1992
3–6	(869–017–00186–4)	22.00	Oct. 1, 1992
7–14	(869–017–00187–2)	30.00	Oct. 1, 1992
15–28	(869–017–00188–1)	26.00	Oct. 1, 1992
29–End	(869–017–00189–9)	16.00	Oct. 1, 1992
49 Parts:			
1–99	(869–017–00190–2)	22.00	Oct. 1, 1992
100–177	(869–017–00191–1)	27.00	Oct. 1, 1992
178–199	(869–017–00192–9)	19.00	Oct. 1, 1992
200–399	(869–017–00193–7)	27.00	Oct. 1, 1992
400–999	(869–017–00194–5)	31.00	Oct. 1, 1992
1000–1199	(869–017–00195–3)	19.00	Oct. 1, 1992
1200–End	(869–017–00196–1)	21.00	Oct. 1, 1992
50 Parts:			
1–199	(869–017–00197–0)	23.00	Oct. 1, 1992
200–599	(869–017–00198–8)	20.00	Oct. 1, 1992
600–End	(869–017–00199–6)	20.00	Oct. 1, 1992
CFR Index and Findings Aids	(869–019–00053–4)	36.00	Jan. 1, 1993
Complete 1993 CFR set		775.00	1993
Microfiche CFR Edition: Complete set (one-time mailing)		188.00*	1990

Title	Stock Number	Price	Revision Date
Complete set (one-time mailing)		188.00	1991
Complete set (one-time mailing)		188.00	1992
Subscription (mailed as issued)		223.00	1993
Individual copies		2.00	1993

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 92–139–4]

Pine Shoot Beetle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations to allow certain pine transplants to be certified for interstate movement. Immediate action is necessary to relieve unnecessarily burdensome restrictions during the spring shipping season, while continuing to prevent the interstate spread of the pine shoot beetle.

We are also adding Benton, Huntington, Miami, Tippecanoe, and White counties, IN; and Barry, Clinton, Eaton, Gratiot, Kalamazoo, and Livingston counties, MI, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the pine shoot beetle, a highly destructive pest of pine trees, into noninfested areas of the United States.

DATES: Interim rule effective June 23, 1993. Consideration will be given only to comments received on or before August 30, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–139–4. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Milton C. Holmes, Senior Operations Officer, PPQ, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8247.

SUPPLEMENTARY INFORMATION:

Background

The pine shoot beetle is a highly destructive pest of pine trees. The pine shoot beetle can cause damage in weak and dying trees, where reproduction and immature stages of pine shoot beetle occur, and in the new growth of healthy trees. The "maturation feeding" of young beetles takes the form of boring up the center of pine shoots (usually of the current year's growth), causing stunted and distorted growth in the host trees. The pine shoot beetle is also an important vector of several diseases of pine trees. Adults can fly at least 1 kilometer, and the wood, nursery stock, and Christmas trees they infest are often transported long distances.

This pest damages urban trees, and can cause economic losses to the timber, Christmas tree, and nursery industries.

The regulations in 7 CFR 301.50 (referred to below as the regulations) impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the pine shoot beetle into noninfested areas of the United States. The regulations were established in a document effective on November 13, 1992, and published in the **Federal Register** on November 19, 1992 (57 FR 54492–54499). In a document effective on January 19, 1993, and published in the **Federal Register** on January 28, 1993 (58 FR 6346–6348, Docket No. 92–139–2), we amended the regulations by adding Will County, IL, to the list of quarantined areas; by allowing all pine nursery stock to be certified for interstate movement; and by allowing cut pine Christmas trees and pine nursery stock to be moved interstate after cold treatment. In a document effective and published in the **Federal Register** on May 13, 1993 (58 FR 28333–28335, Docket No. 92–139–3), we further amended the regulations by adding Ingham County, MI, to the list of quarantined areas; by removing restrictions on logs and lumber, with bark attached, of fir, larch, and spruce; by relieving certain restrictions on the interstate movement of logs and lumber of pine; by adding pine stumps and pine bark nuggets, including bark chips, to the list of regulated articles; and by providing for certification of certain pine seedlings up to 36 inches high.

Certificates are issued for the interstate movement of certain regulated articles upon a finding by an inspector that, because of certain conditions (e.g., the article is free of the pine shoot beetle), there is an absence of a pest risk prior to movement. Regulated articles accompanied by a certificate may be moved interstate without further restrictions being imposed.

Specifically, § 301.50–5(a) provides that an inspector will issue a certificate for the movement of certain regulated articles if, among other things, the inspector finds that the articles are free of the pine shoot beetle, have been treated under direction of an inspector in accordance with § 301.50–10, or are greenhouse-grown and come from a premises of origin free from the pine shoot beetle. Section 301.50–5(a)(iii) provides for certification of pine seedlings up to 36 inches high, with a bole diameter at soil level of 1 inch or less, if an inspector finds them free of the pine shoot beetle, based on visual inspection.

It has come to our attention that the term "seedling" can have a more specialized meaning than "young plants grown from seed." In the nursery industry involved in the production of pine nursery stock, seed-grown young plants that are growing in the place where they were planted are called "seedlings." When a seedling is "lifted" from the soil it becomes a "transplant." Because the pine shoot beetle will not infest any immature pine plants that are no greater than 36 inches high with a bole diameter at soil level of 1 inch or less, we have no reason to regulate seedlings and transplants differently. We are therefore revising § 301.50–5(a)(iii) to provide for certification of pine transplants and pine seedlings alike, if they are up to 36 inches high, with a bole diameter at soil level of 1 inch or less, on the basis of a visual inspection.

Surveys recently conducted by State and county inspectors revealed that Benton, Huntington, Miami,

Tippecanoe, and White counties, IN; and Barry, Clinton, Eaton, Gratiot, Kalamazoo, and Livingston counties, MI, are infested with the pine shoot beetle. The regulations in § 301.50–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the pine shoot beetle has been found by an inspector, in which the Administrator has reason to believe the pine shoot beetle is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the pine shoot beetle has been found. In accordance with these criteria, we are designating Benton, Huntington, Miami, Tippecanoe, and White counties, IN; and Barry, Clinton, Eaton, Gratiot, Kalamazoo, and Livingston counties, MI, as quarantined areas, and adding them to the list of quarantined areas provided in § 301.50–3(c).

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the pine shoot beetle from spreading to noninfested areas of the United States, and to remove unnecessary restrictions on nursery owners.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this interim rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Approximately 175 small nurseries and 130 small Christmas tree farms are located in the 11 newly quarantined counties.

Most nurseries in these counties specialize in production of deciduous landscape products. However, some also produce rooted pine Christmas trees and some pine nursery stock. Local extension agents estimate that these nurseries ship about 2,650 rooted pine Christmas trees and pine nursery stock products interstate annually. If inspected and found to be infested with the pine shoot beetle, these trees and nursery stock products require cold treatment before interstate shipment. The cold treatments for interstate shipments of rooted pine Christmas trees and pine nursery stock cost producers between $3.10 and $12.50 per plant. Per-unit treatment costs vary due to tree size and treatment facility capacity. Therefore, the estimated impact of the cold treatment requirement will be between $46.95 and $189.30 per nursery.

The Christmas tree farms affected by this interim rule depend on the local choose-and-cut market for most of their annual pine Christmas tree sales. Few, if any, cut pine Christmas trees are shipped to markets outside the quarantined areas. Therefore, we expect this interim rule to have a negligible impact on cut pine Christmas tree producers in the 11 newly quarantined counties.

The newly quarantined counties are deficit producers of pine logs, lumber, and wood products. This means that more pine logs, lumber, and wood products are shipped into these counties than are harvested or manufactured. Therefore, although exact figures are unavailable, it appears that the effect of this interim rule on small entities producing pine logs, lumber, and wood products will be insignificant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0088.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.50–3, paragraph (c), under Indiana and Michigan, new counties are added, in alphabetical order, to read as follows:

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

Indiana

* * * * *

Benton. The entire county.

* * * * *

Huntington. The entire county.

* * * * *

Miami. The entire county.

* * * * *

Tippecanoe. The entire county.

* * * * *

White. The entire county.

* * * * *

Michigan

Barry. The entire county.

* * * * *

Clinton. The entire county.
Eaton. The entire county.
Gratiot. The entire county.
* * * * *
Kalamazoo. The entire county.
Livingston. The entire county.
* * * * *

3. In § 301.50–5, paragraph (a)(1)(iii) is revised to read as follows:

§ 301.50–5 Issuance and cancellation of certificates and limited permits.

* * * * *

(a) * * *
(1) * * *

(iii) Based on inspection of the regulated article, if the regulated article is a pine seedling or a pine transplant and is no greater than 36 inches high with a bole diameter at soil level of 1 inch or less, that it is free from the pine shoot beetle; or

* * * * *

§§ 301.50–5, 301.50–6, 301.50–7, and 301.50–8 [Amended]

4. In §§ 301.50–5, 301.50–6, 301.50–7, and 301.50–8, at the end of the regulatory text for each section, the following phrase is added to read as follows:

(Approved by the Office of Management and Budget under control number 0579–0088)

Done in Washington, DC, this 23rd day of June 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–15278 Filed 6–28–93; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV92–915–1 FR]

Avocados Grown in South Florida; Finalize Temporarily Relaxed Grade Requirements for Certain Florida Avocados

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action finalizes an interim final rule which temporarily relaxed grade requirements for Florida avocados by suspending all grade requirements for fresh avocados shipped in certain containers to destinations within the production area in Florida. Florida avocado supplies are currently very limited, and supplies next season are expected to be well below normal. The suspension was designed to enable Florida growers and handlers to sell a larger portion of their avocado crop in the fresh market in the production area during a period of limited supplies.

EFFECTIVE DATE: July 29, 1993.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: 202–720–5331; or William Pimental, Southeast Marketing Field Office, USDA/AMS, PO Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 915 (7 CFR Part 915) regulating the handling of avocados grown in South Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 40 avocado handlers subject to regulation under the marketing order covering avocados grown in Florida, and about 300 avocado producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the Florida avocado handlers and producers may be classified as small entities.

The Avocado Administrative Committee (committee) recommended the relaxation for Florida avocados. This committee works with the Department in administering the marketing order, and it meets prior to and during each season to consider recommendations for modification, suspension, or termination of the handling requirements for Florida avocados. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations, information submitted by the committee and other information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

The interim final rule was issued on February 5, 1993, with an effective date of February 11, 1993, and published in the **Federal Register** (58 FR 7972, February 11, 1993). The interim final rule provided a 30-day comment period ending March 15, 1993, and no comments were received.

The interim final rule temporarily relaxed grade requirements for Florida avocados by suspending all grade requirements for fresh avocados shipped to destinations within the production area in Florida in containers other than those authorized under § 915.305. The suspension ends on April 1, 1994, when more abundant supplies of fresh Florida avocados are expected to be available. Florida avocado supplies are currently very limited, and supplies next season are expected to be well below normal.

Hurricane Andrew destroyed practically all remaining Florida 1992–93 season crop last August, and extensively damaged the avocado groves.

Prior to the suspension, all fresh Florida avocados were required to grade at least U.S. No. 2, when shipped in any container. The suspension applied only to Florida avocados shipped to destinations within the production area. Thus, the U.S. No. 2 grade requirement continues to apply to avocados shipped to destinations outside the production area, as well as to all avocados shipped to any destination in those containers specified in § 915.305. The maturity, container, pack, and inspection requirements for all fresh Florida avocado shipments under the avocado marketing order were not changed by the interim final rule.

Currently, avocados imported into the United States must grade at least U.S. No. 2, as provided in § 944.28 (7 CFR 944.28). Since the interim final rule did not change the minimum grade requirement of U.S. No. 2 specified in § 915.306 for avocados handled to points outside the production area, there was no need to change the avocado import regulation. Section 8e of the Act (7 U.S.C. 608e–1) requires that whenever specified commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity into the United States must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

The suspension provided Florida avocado growers and handlers with an opportunity to sell, in the production area, fresh avocados which would otherwise be culled out during the packing process, thus making additional avocados available to consumers. The suspension is expected to result in relatively small quantities of lower quality avocados being sold within the production area, and facilitate the movement of avocados to the fresh market.

This action reflects the committee's and the Department's appraisal of the need to finalize the relaxed grade requirements for certain avocados grown in Florida. The Department's view is that maintaining the relaxed requirements will have a beneficial impact on producers and handlers since it will permit avocado handlers to make additional supplies of fruit available to meet consumer needs consistent with crop and market conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, as published in the **Federal Register** (58 FR 7972, February 11, 1993), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 915.306 [Amended]

2. Accordingly, the interim final rule amending § 915.306 by adding a new paragraph (a)(7), which was published in the **Federal Register** [58 FR 7972, February 11, 1993], is adopted as a final rule without change.

Note: This section will appear in the annual Code of Federal Regulations.

Dated: June 23, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–15195 Filed 6–28–93; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 915

[Docket No. FV93–915–1 IFR]

Avocados Grown in South Florida; Revise Maturity Requirements for Fresh Avocados

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises maturity requirements in effect on a continuous basis for avocados grown in Florida by adjusting the shipping dates in the shipping schedule for several avocado varieties to synchronize those dates with the 1993 and 1994 calendar years. This action is designed to ensure that only mature fruit is shipped to the fresh market, thereby improving grower returns and promoting orderly marketing conditions.

DATES: This rule becomes effective June 29, 1993. Comments must be received by July 29, 1993.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; or by facsimile at 202–720–5698. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. The written comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–720–5331; or William Pimental, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 915 (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This interim final rule is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for

a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 40 avocado handlers subject to regulation under the marketing order covering avocados grown in Florida, and about 300 avocado producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the Florida avocado handlers and producers may be classified as small entities.

The Avocado Administrative Committee (committee) unanimously recommended this action. This committee works with the Department in administering the order, and it meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida avocados. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations, information submitted by the committee and other information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Maturity requirements for avocados grown in Florida, based on minimum weights, diameters, and skin color, are specified in § 915.322 (7 CFR 915.322), and are in effect on a continuous basis. These maturity requirements specify minimum weights and diameters for specific shipping periods for some 60 varieties of avocados, and color specifications for those varieties which turn red or purple when mature. The maturity requirements for the various varieties of avocados are different, because each variety has different characteristics. The maturity requirements for each avocado variety are based on maturity test results.

These maturity requirements are designed to prevent shipments of immature avocados to the fresh market, especially during the early part of the harvest season for each variety. Providing fresh markets with mature fruit is an important aspect of creating consumer satisfaction and is in the interest of both producers and consumers. Fresh shipments of Florida avocados usually begin with light shipments of early varieties in May, and they continue until the following March or April, with heaviest shipments occurring from July through December.

This interim final rule revises the shipping schedules for the avocado varieties specified in Table 1 of paragraph (a)(2) of § 915.322 (7 CFR part 915) to synchronize those schedules with the 1993 and 1994 calendar years. This rule also makes necessary corrections in the section by adjusting the final date of regulation from Monday to Sunday for each variety listed in the shipping schedule.

The maturity requirements, based on minimum weights, diameters, and skin color, specified in § 944.31 (7 CFR 944.31) for imported avocados were indefinitely suspended by a final rule issued May 15, 1991 (56 FR 23009, May 20, 1991). Therefore, this action will not impact imported avocados until the suspension is lifted.

A minimum grade requirement of U.S. No. 2 currently in effect on a continuous basis for avocados grown in Florida under § 915.306 (7 CFR part 915), and for avocados imported into the United States under § 944.28 (7 CFR part 944) remains in effect unchanged by this action.

Florida avocado handlers may ship, exempt from the minimum grade, size, and maturity requirements effective under the order, up to 55 pounds of avocados during any one day under a minimum quantity provision, and up to 20 pounds of avocados as gift packs in individually addressed containers. Also, avocados grown in Florida utilized in commercial processing are not subject to the grade, size, and maturity requirements under the order.

This action reflects the committee's and the Department's appraisal of the need to make the specified changes. The Department's view is that this action will have a beneficial impact on producers and handlers since it will help ensure that only mature avocados are shipped to fresh markets. The committee considers that maturity requirements for Florida grown avocados are necessary to improve grower returns and promote orderly marketing conditions. Although compliance with these maturity requirements will affect costs to handlers, these costs will be offset by the benefits of providing the trade and consumers with mature avocados.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action only adjusts dates in the maturity schedule to synchronize those dates with the 1993 and 1994 calendar years and makes necessary corrections; (2) Florida avocado handlers are aware of this action which was unanimously recommended by the committee at a public meeting; (3) these changes apply to varieties of avocados which handlers normally begin shipping in early May; and (4) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 915.332 is amended by revising Table I in paragraph (a)(2) to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 915.332 Florida avocado maturity regulation.

(a) * * *

(2) * * *

TABLE I

Avocado variety	Effective period		Minimum size	
	From	Through	Weight ounces	Diameter inches
Arue	2nd Mon May	4th Sun May	16	
	4th Mon May	4th Sun June	14	3–3/16
Donnie	3rd Mon May	5th Sun May	16	3–5/16
	5th Mon May	4th Sun June	14	3–4/16
Dr. Dupuis #2	4th Mon May	1st Sun June	16	3–7/16
	1st Mon June	4th Sun June	14	3–5/16
	4th Mon June	2nd Sun July	12	3–2/16
Fuchs	5th Mon May	2nd Sun June	14	3–3/16
	2nd Mon June	4th Sun June	12	3
K–5	1st Mon June	3rd Sun June	16	3–5/16
	3rd Mon June	1st Sun July	14	3–3/16
Simmonds	2nd Mon June	4th Sun June	16	3–9/16
	4th Mon June	2nd Sun July	14	3–7/16
	2nd Mon July	4th Sun July	12	3–1/16
Pollock	2nd Mon June	4th Sun June	18	3–11/16
	4th Mon June	2nd Sun July	16	3–7/16
	2nd Mon July	4th Sun July	14	3–4/16
West Indian Seedling [1]	2nd Mon June	2nd Sun July	18	
	2nd Mon July	3rd Sun Aug	16	
	3rd Mon Aug	2nd Sun Sept	14	
Hardee	3rd Mon June	4th Sun June	16	3–2/16
	4th Mon June	1st Sun July	14	2–14/16
	1st Mon July	3rd Sun July	12	
Nadir	3rd Mon June	4th Sun June	14	3–3/16
	4th Mon June	1st Sun July	12	3–1/16
	1st Mon July	2nd Sun July	10	2–14/16
Gorham	4th Mon June	2nd Sun July	29	4–5/16
	2nd Mon July	2nd Sun Aug	27	4–3/16
Reuhle	4th Mon June	1st Sun July	18	3–11/16
	1st Mon July	2nd Sun July	16	3–9/16
	2nd Mon July	4th Sun July	14	3–7/16
	4th Mon July	1st Sun Aug	12	3–5/16
	1st Mon Aug	2nd Sun Aug	10	3–3/16
Biondo	1st Mon July	2nd Sun Aug	13	
Peterson	1st Mon July	2nd Sun July	14	3–8/16
	2nd Mon July	3rd Sun July	12	3–5/16
	3rd Mon July	1st Sun Aug	10	3–2/16
Bernecker	2nd Mon July	4th Sun July	18	3–6/16
	4th Mon July	2nd Sun Aug	16	3–5/16
	2nd Mon Aug	4th Sun Aug	14	3–4/16
Miguel (P)	2nd Mon July	4th Sun July	22	3–13/16
	4th Mon July	2nd Sun Aug	20	3–12/16
	2nd Mon Aug	4th Sun Aug	18	3–10/16
Nesbitt	2nd Mon July	4th Sun July	22	3–12/16
	4th Mon July	1st Sun Aug	16	3–5/16
	1st Mon Aug	3rd Sun Aug	14	3–3/16
232	2nd Mon July	4th Sun July	14	
	4th Mon July	2nd Sun Aug	12	
Pinelli	2nd Mon July	4th Sun July	18	3–12/16
	4th Mon July	2nd Sun Aug	16	3–10/16
Trapp	2nd Mon July	4th Sun July	14	3–10/16
	4th Mon July	2nd Sun Aug	12	3–7/16
Tonnage	4th Mon July	2nd Sun Aug	16	3–6/16
	2nd Mon Aug	3rd Sun Aug	14	3–4/16
	3rd Mon Aug	4th Sun Aug	12	3
Waldin	4th Mon July	2nd Sun Aug	16	3–9/16
	2nd Mon Aug	4th Sun Aug	14	3–7/16
	4th Mon Aug	1st Sun Sept	12	3–4/16
Tower 2	4th Mon July	2nd Sun Aug	14	3–6/16
	2nd Mon Aug	5th Sun Aug	12	3–4/16
K–9	4th Mon July	3rd Sun Aug	16	
Christina	4th Mon July	3rd Sun Aug	11	2–14/16

TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight ounces	Diameter inches
Beta	1st Mon Aug	2nd Sun Aug	16	3–8/16
	2nd Mon Aug	5th Sun Aug	16	3–5/16
Lisa (P)	1st Mon Aug	2nd Sun Aug	12	3–2/16
	2nd Mon Aug	3rd Sun Aug	11	3
Black Prince	2nd Mon Aug	4th Sun Aug	28	4–1/16
	4th Mon Aug	1st Sun Sept	23	3–14/16
	1st Mon Sept	4th Sun Sept	16	3–9/16
Catalina	2nd Mon Aug	4th Sun Aug	24	
	4th Mon Aug	2nd Sun Sept	22	
Loretta	4th Mon Aug	1st Sun Sept	30	4–3/16
	1st Mon Sept	4th Sun Sept	26	3–15/16
Booth 8	4th Mon Aug	1st Sun Sept	16	3–9/16
	1st Mon Sept	3rd Sun Sept	14	3–6/16
	3rd Mon Sept	1st Sun Oct	12	3–3/16
	1st Mon Oct	3rd Sun Oct	10	3–1/16
Booth 7	4th Mon Aug	1st Sun Sept	18	3–13/16
	1st Mon Sept	3rd Sun Sept	16	3–10/16
	3rd Mon Sept	1st Sun Oct	14	3–8/16
Blair	4th Mon Aug	1st Sun Sept	16	3–8/16
	1st Mon Sept	4th Sun Sept	14	3–5/16
Booth 5	5th Mon Aug	2nd Sun Sept	14	3–9/16
	2nd Mon Sept	4th Sun Sept	12	3–6/16
Guatemalan Seedling[2]	5th Mon Aug	4th Sun Sept	15	
	4th Mon Sept	4th Sun Nov	13	
Marcus	5th Mon Aug	2nd Sun Sept	32	4–12/16
	2nd Mon Sept	4th Sun Oct	24	4–5/16
Brooks 1978	5th Mon Aug	1st Sun Sept	12	3–4/16
	1st Mon Sept	2nd Sun Sept	10	3–1/16
	2nd Mon Sept	1st Sun Oct	8	2–14/16
Rue	1st Mon Sept	2nd Sun Sept	30	4–3/16
	2nd Mon Sept	4th Sun Sept	24	3–15/16
	4th Mon Sept	2nd Sun Oct	18	3–9/16
Collinson	1st Mon Sept	1st Sun Oct	16	3–10/16
Hickson	1st Mon Sept	3rd Sun Sept	12	3–1/16
	3rd Mon Sept	1st Sun Oct	10	3
Simpson	2nd Mon Sept	1st Sun Oct	16	3–9/16
Chica	2nd Mon Sept	4th Sun Sept	12	3–7/16
	4th Mon Sept	2nd Sun Oct	10	3–4/16
Choquette	3rd Mon Sept	2nd Sun Oct	28	4–4/16
	2nd Mon Oct	4th Sun Oct	24	4–1/16
	4th Mon Oct	1st Sun Nov	20	3–14/16
Hall	3rd Mon Sept	1st Sun Oct	26	3–14/16
	1st Mon Oct	3rd Sun Oct	20	3–9/16
	3rd Mon Oct	5th Sun Oct	18	3–8/16
Leona	3rd Mon Sept	1st Sun Oct	18	3–10/16
Lula	4th Mon Sept	2nd Sun Oct	18	3–11/16
	2nd Mon Oct	4th Sun Oct	14	3–6/16
	4th Mon Oct	1st Sun Nov	12	3–3/16
Herman	4th Mon Sept	2nd Sun Oct	16	3–9/16
	2nd Mon Oct	4th Sun Oct	14	3–6/16
Pinkerton (CP)	4th Mon Sept	2nd Sun Oct	13	3–3/16
	2nd Mon Oct	4th Sun Oct	11	3
	4th Mon Oct	1st Sun Nov	9	
Taylor	1st Mon Oct	3rd Sun Oct	14	3–5/16
	3rd Mon Oct	5th Sun Oct	12	3–2/16
Ajax (B–7)	1st Mon Oct	4th Sun Oct	18	3–14/16
Booth 3	1st Mon Oct	2nd Sun Oct	16	3–8/16
	2nd Mon Oct	4th Sun Oct	14	3–6/16
Monroe	2nd Mon Nov	3rd Sun Nov	26	4–3/16
	4th Mon Nov	1st Sun Dec	24	4–1/16
	1st Mon Dec	3rd Sun Dec	20	3–14/16
	3rd Mon Dec	1st Sun Jan	16	3–9/16
Booth 1	2nd Mon Nov	3rd Sun Nov	16	3–12/16
	4th Mon Nov	1st Sun Dec	12	3–6/16
Zio (P)	2nd Mon Nov	3rd Sun Nov	12	3–1/16
	4th Mon Nov	1st Sun Dec	10	2–14/16
Gossman	4th Mon Nov	3rd Sun Dec	11	3–1/16
Brookslate	1st Mon Dec	2nd Sun Dec	18	3–13/16
	2nd Mon Dec	3rd Sun Dec	16	3–10/16

TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight ounces	Diameter inches
	3rd Mon Dec	1st Sun Jan	14	3–8/16
	1st Mon Jan	3rd Sun Jan	12	3–5/16
	3rd Mon Jan	5th Sun Jan	10	
Meya (P)	1st Mon Dec	3rd Sun Dec	13	3–2/16
	3rd Mon Dec	1st Sun Jan	11	
Reed (CP)	1st Mon Dec	3rd Sun Dec	12	3–4/16
	3rd Mon Dec	1st Sun Jan	10	3–3/16
	1st Mon Jan	3rd Sun Jan	9	

[1] Avocados of the West Indian type varieties and seedlings not listed elsewhere in Table I.
[2] Avocados of the Guatemalan type varieties and seedlings, hybrid varieties and seedlings, and unidentified seedlings not listed elsewhere in Table I.

* * * * * *

Dated: June 23, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93-15202 Filed 6-28-93; 8:45 am]

BILLING CODE 3410-02-P

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7 CFR Part 925

[FV92-925-1FR]

Grapes Grown in Designated Area of Southeastern California; Increase in 1992 Fiscal Year Expenses and Expenses and Assessment Rate for 1993 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (Department) is adopting as a final rule, with appropriate changes, the provisions of the interim final rule which authorized an increase in expenditures for the 1992 fiscal year and authorized expenditures and established an assessment rate for the 1993 fiscal year for the California Desert Grape Administrative Committee (committee) under M.O. No. 925. Authorization of this budget enables the committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

DATES: The amendment to § 925.212 is effective on June 29, 1993 and applies to the 1993 fiscal year which began on January 1, 1993; and § 925.211 applies to the 1992 fiscal year which began on January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, California Marketing Field Office, 2202 Monterey Street, suite 102 B, Fresno, California 93721, telephone: (209) 487–5901; or Charles L. Rush or Britthany E. Beadle, MOAB, F&V, AMS, USDA, PO Box 96456, room 2522–S, Washington, DC 20090–6456; telephone: (202) 720–2431; or 690–0992, respectively.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 925 (7 CFR Part 925), as amended, regulating the handling of California desert grapes. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California desert grapes are subject to assessments. It is intended that the assessment rate specified herein be made applicable to all assessable desert grapes handled during the 1993 fiscal year, which began January 1, 1993. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of desert grapes subject to regulation under this marketing order and approximately 90 producers of desert grapes. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and handlers of desert grapes may be classified as small entities.

The desert grape marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable desert grapes handled from the beginning of such year. Annual budgets of expenses are prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and producers of desert grapes. They are familiar with the committee's needs and with the costs for goods, services, and

personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of desert grapes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The recommended budget and rate of assessment is usually acted upon by the committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The committee met on September 10, 1992, and unanimously recommended that the 1992 fiscal year budget be increased by $5,000 to cover expenses of a Western Grapeleaf Skeletonizer Research Project. This will increase the previously authorized budget from $55,100 to $60,100. No increase in the assessment rate for the 1992 fiscal year is necessary because adequate reserve funds are available to cover additional expenses.

The committee met again on November 5, 1992, and unanimously recommended expenditures of $178,600, and an assessment rate of $0.02 per 22-pound container for the 1993 fiscal year. This is a $118,600 increase in expenditures and a $0.0175 increase in the assessment rate from the 1992 fiscal year budget.

An interim final rule was published in the **Federal Register** (58 FR 8893, February 18, 1993) and afforded interested persons until March 22, 1993, to submit written comments. One comment was received from the committee requesting an increase in the 1993 budget.

The committee met again on February 18, 1993, and unanimously recommended an increase in their 1993 assessment rate from $0.02 to $0.025 per 22-pound container. The committee also recommended an increase in the 1993 budget from $178,600 to $204,600. This increase is needed to fund the research project on the Western Grapeleaf Skeletonizer and supplement the reserve fund.

Major expenditures for the 1993 fiscal year budget taking into account the committee's February 18, 1993 recommendations, are $85,000 for the University of Riverside's research projects relating to agricultural products grown and produced in the Coachella Valley, and $24,000 for a research project on the Western Grapeleaf Skeletonizer.

In comparison, 1992 fiscal year budgeted expenditures were $60,100, and the assessment rate was $0.0025 per lug. Major expenditures were for research, salaries, and rent.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the committee needs to have sufficient funds to pay its expenses. Such expenses are incurred on a continuous basis. Marketing Order No. 925 requires that any rate of assessment for a fiscal year apply to all assessable desert grapes handled during that fiscal year. In addition, handlers are aware of this action which was recommended by the committee at public meetings. Comments received concerning the interim final rule have been incorporated into the final rule.

List of Subjects in 7 CFR Part 925

Marketing agreements, Grapes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Note: This section will not appear in the annual Code of Federal Regulations.

2. Accordingly, the interim final rule adding §§ 925.211 and 925.212, which was published in the **Federal Register** (58 FR 8893, February 18, 1993) is adopted as a final rule with the following changes. Section 925.212 is revised to read as follows:

§ 925.212 Expenses and assessment rate.

Expenses of $204,600 by the California Desert Grape Administrative Committee are authorized and an assessment rate of $0.025 per lug of grapes is established for the fiscal year ending on December 31, 1993. Unexpended funds may be carried over as a reserve.

Dated: June 23, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–15199 Filed 6–28–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 927

[Docket No. FV–92–091FR]

Winter Pears Grown in Oregon, Washington, and California; Final Rule Establishing Interest and Late Payment Charges on Late Assessments and Changing the Due Dates for Handler Reports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes interest and late payment charges on late assessments owed by handlers and changes the due dates for handler reports, under Marketing Order No. 927 covering winter pears grown in Oregon, Washington and California. This action will contribute to the efficient operation of the program by ensuring that adequate funds are available to cover budgeted expenses incurred under the marketing order. It will also result in easier reporting by handlers and more timely submission of reports.

EFFECTIVE DATE: August 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mark Hessel, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–3923; or Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon, 97204; telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement and Order No. 927 (7 CFR Part 927), regulating the handling of winter pears grown in Oregon, Washington and California. The marketing agreement

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and order are authorized under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, winter pears are subject to assessments. An assessment rate established under the marketing order is intended to be applicable to all assessable winter pears handled during a fiscal period. This rule establishes interest and late payment charges on late assessments owed by handlers. In addition, the rule changes the due dates for two handler reports. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of winter pears subject to regulation under the marketing order, and approximately 1,850 winter pear producers in Washington, Oregon and California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the winter pear handlers and producers may be classified as small entities.

The Winter Pear Control Committee (WPCC), the agency responsible for local administration of the order, met May 29, 1992, and unanimously recommended establishing interest and late payment charges on handler assessments payable to the WPCC and changing due dates for the "Handler's Statement of Pear Shipments" and "Handler's Packout Report." Under § 927.41 of the marketing order, each winter pear handler is required to pay a pro-rata share of the cost of administering the program. This cost is in the form of a uniform assessment rate applied to each handler's shipments. It is important for handlers to pay their assessments promptly so that the WPCC has sufficient funds to cover its expenses. The order also authorizes the WPCC, with the Secretary's approval, to establish interest and late payment charges on delinquent assessments.

The WPCC recommended imposing a late payment charge of $25.00 or 2 percent of the unpaid balance, whichever is greater. This late payment charge will not be imposed until 45 days after the initial billing date, so that handlers will have ample time to pay their assessments and avoid incurring the additional charges. Payments received more than 60 days after the date they are due will be charged interest of 1½ percent compounded monthly, until final payment is made. This interest charge will be applied to the total unpaid balance, including the late payment charge and any accumulated interest. Any amount paid by a handler as assessments or related charges will be credited upon receipt in the WPCC's office. The WPCC believes that this action will encourage handlers to pay their assessments in a timely manner.

The proposed rule indicated that payments received more than 60 days after the day they are due shall be subject to 1½ percent interest charge. The modified language in this final rule clarifies the fact that this is a monthly interest charge.

The WPCC also recommended changing the due dates for the "Handler's Statement of Pear Shipments" (currently due the 1st and 15th of every month) and "Handler's Packout Report" (currently due the 15th and last day of every month) so that both reports will be received on the same date, every other Friday.

The "Handler's Statement of Pear Shipments" is used by handlers to report interstate shipments by date shipped, container, variety, and destination. This information is used by the WPCC for statistical purposes. The information is compiled and then used by handlers in making marketing and other business decisions. The "Handler's Packout Report" is used to report the amount of pears packed by variety and destination. The WPCC uses this information for statistical and compliance purposes. This report is needed to maintain up-to-date information about the number of boxes of pears packed and shipped and helps handlers plan advertising and marketing strategies.

The WPCC recommended changing these dates because it will be more convenient for shippers to know that both reports will be for the period ending the close of business every other Friday. In addition, verification between these two reports will be easier as they will cover shipments during the same time periods. The WPCC believes that this action will result in easier reporting by handlers and more timely submission of reports.

The proposed rule indicated that the "Handlers' Statement of Pear Shipments" should provide the ultimate destination of pears shipped. The modified language in this final rule clarifies how the ultimate destination should be specified for foreign shipments. Also, the proposed rule indicated that the "Handler's Packout Report" must contain specific information. The modified language in this final rule no longer refers to the "Handler's Packout Report" as Form 4R and clarifies what information is required on the form.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection requirements included in this rule have been previously approved by the Office of Management and Budget (OMB) under OMB No. 0581–0089.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the December 7, 1992, **Federal Register** (57

FR 57694) and afforded interested persons until January 6, 1993, to submit written comments. No comments were received.

After consideration of all relevant matter presented, including the information and recommendations submitted by the WPCC and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended to read as follows:

Note: This section will appear in the annual code of Federal Regulations.

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON AND CALIFORNIA

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 927.123 is added to read as follows:

§ 927.123 Interest and late payment charges.

Payments received more than 45 days after the date on which they are due shall be considered delinquent and subject to a late payment charge of $25.00 or 2 percent of the total due, whichever is greater. Payments received more than 60 days after the date on which they are due shall be subject to a 1½ percent interest charge per month, until final payment is made and interest shall be applied to the total unpaid balance, including the late payment charge and any accumulated interest. Any amount paid shall be credited when the payment is received in the Control Committee office.

3. In § 927.125, paragraphs (b) and (c) are revised to read as follows:

§ 927.125 Reports.

* * * * *

(b) Each handler shall furnish to the Control Committee, as of every other Friday, a report containing the following information on Form 1 "Handlers' Statement of Pear Shipments":

(1) The number of standard western pear boxes (two half boxes shall be counted as one box) of each variety of pears shipped by that handler during the preceding two weeks;

(2) The date of each shipment;

(3) The ultimate destination, by city and state or city and country; and

(4) The name and address of such handler. In addition, the handler shall indicate, for each lot of pears shipped in accordance with the provisions of § 927.122, the storage lot number, and the name and address of the storage warehouse.

(c) Each handler shall furnish to the Control Committee, as of every other Friday, a "Handler's Packout Report" containing the following information:

(1) The total of the packout of each variety;

(2) The quantity of each variety loose in storage;

(3) The volume of each variety sold; and

(4) The name and address of such handler.

* * * * *

§ 927.125 [Amended]

4. In § 927.125 paragraph (d), the word "semimonthly" is removed.

§ 927.122 [Amended]

(5) In § 927.122 paragraph (a), the word "semimonthly" is removed.

Dated: June 23, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–15196 Filed 6–28–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 948

[Docket No. FV92–948–1FR]

Irish Potatoes Grown in Colorado; Reapportionment of Area 2 Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action finalizes, without change, an interim final rule which reapportioned producer membership of the Area 2 Committee by moving one of the three producer member and alternate member positions of Rio Grande County to Alamosa County, so that each county has two positions. Both counties have approximately the same percentage of harvested acreage and potato production of Area 2. Thus, dividing the four producer and alternate member positions evenly between the two counties provides for more equitable representation on the Area 2 Committee.

EFFECTIVE DATE: July 29, 1993.

FOR FURTHER INFORMATION CONTACT: Gary Olson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon, 97204, telephone (503) 326–2724; or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 690–0464.

SUPPLEMENTARY INFORMATION: This action is taken pursuant to Marketing Agreement No. 97 and Order No. 948 (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a non-major rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued

thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

In the Area 2 production area, there are approximately 285 producers of Colorado potatoes, and 118 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the producers and handlers may be classified as small entities.

The Colorado Potato Administrative Committee, San Luis Valley Office (Area 2 Committee), met December 16, 1992, and unanimously recommended that producer membership on the Area 2 Committee be reapportioned. This is authorized by § 948.53, Reestablishment, which allows the Secretary, upon recommendation of area committees, to make changes in the distribution of membership among subdivisions of areas, when properly justified.

The Area 2 Committee consists of 12 members, each with an alternate. Seven members represent producers and five members represent handlers. Prior to the publication of the interim final rule on February 16, 1993, Rio Grande County was represented by three producer members. Three counties, Alamosa, Saguache, and Conejos, were represented by one member each. All other counties in Area 2 also were represented by one member. The Area 2 Committee recommended that one member and alternate position be moved from Rio Grande County to Alamosa County, which would give Rio Grande County two members instead of three, and Alamosa County two members instead of one.

In the San Luis Valley, virtually all arable land in Rio Grande County is now in use. Any increase in potato acreage must be at the expense of other crops. However, Alamosa County has unused land available for expansion. It is this land that has provided the steady increase in potato acreage for Area 2 over the last seven years. Nearly all of the increased production is due to land being cleared of sagebrush, flushed of alkali, and planted for the first time.

Statistical information provided by the Area 2 Committee was furnished by the Colorado Department of Agriculture, and indicates that the Area 2 Committee's request for reapportionment is valid. Harvested acreage for the 1988 through 1992 seasons indicates that Rio Grande County, with three members, averaged 38 percent of Area 2's production, while Alamosa County, with 1 member, averaged 32 percent. During the same season, Saguache County averaged 21 percent of the total, Costilla County, 5 percent, and Conejos County, 3 percent.

The statistical data also indicate that potato production closely follows harvested acreage. In 1991–92, the most recent season for which production data are available, Rio Grande County produced nearly 8.6 million hundredweight, or 37 percent of Area 2's total production. During the same season, Alamosa County produced 7.2 million hundredweight, or 30 percent of the total, while Saguache County produced 5.2 million hundredweight, or 22 percent. Conejos and Costilla Counties produced 0.9 and 1.7 million hundredweight, 4 and 7 percent, respectively.

Continuation of the reapportionment (two members each for Rio Grande and Alamosa Counties) is consistent with balanced committee representation. The Area 2 Committee discussed redistricting to combine Conejos and Costilla Counties with the lowest production, and decided not to recommend such action at this time. The production areas of Costilla and Conejos Counties are separated by 25 miles, and each has its own unique characteristics, including different soil types and different cultural and irrigation techniques. The Area 2 Committee members believe that merging these two disparate groups of producers under one representative could leave producers in one of the counties without representation.

The interim final rule became effective February 16, 1993, upon publication in the **Federal Register** (58 FR 8539). The rule afforded interested persons until March 18, 1993, to file comments prior to finalization. None were filed.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the Area 2 Committee's recommendations and other relevant information presented, it is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. For the reasons set forth in the preamble, the interim final rule amending 7 CFR part 948 by revising § 948.150(a), which was published at 58 FR 8541 on February 16, 1993, is adopted as a final rule without change.

Dated: June 23, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–15197 Filed 6–28–93; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 953

[Docket No. FV93–953–1IFR]

Southeastern Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 953 for the 1993–94 fiscal period. Authorization of this budget enables the Southeastern Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective June 1, 1993, through May 31, 1994. Comments received by July 29, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement

No. 104 and Order No. 953, both as amended [7 CFR part 953], regulating the handling of Irish potatoes grown in Southeastern States (Virginia and North Carolina). The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Virginia-North Carolina potato handlers are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1993–94 fiscal period, beginning June 1, 1993, through May 31, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 150 producers of Southeastern potatoes under this marketing order, and approximately 60 handlers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Southeastern potato producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 fiscal period was prepared by the Southeastern Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Southeastern potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Southeastern potatoes, based on last season's crop of 1,488,000 hundredweight. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met April 21, 1993, and unanimously recommended a 1993–94 budget of $11,000, the same as last year. Major expense items include committee staff salaries and travel expenses.

The Committee also recommended an assessment rate of $0.01 per hundredweight, $0.0050 more than last season's rate. As planting for the 1993–94 crop season has not been completed, the Committee based its estimate of production on the 1993–94 crop season. The $12,426 reserve will be adequate to cover the expenses incurred. Funds remaining at the end of the 1992–93 fiscal period should be within the maximum permitted by the order of one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on June 1, 1993, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Irish potatoes handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 953 is amended as follows:

Note: This section will not appear in the Code of Federal Regulations.

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

1. The authority citation for 7 CFR part 953 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 953.250 is added to read as follows:

§ 953.250 Expenses and assessment rate.

Expenses of $11,000 by the Southeastern Potato Committee are authorized, and an assessment rate of $0.01 per hundredweight of assessable potatoes is established for the fiscal period ending May 31, 1994.

Unexpended funds may be carried over as a reserve.

Dated: June 23, 1993.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93-15201 Filed 6-28-93; 8:45 am]
BILLING CODE 3410-02-P

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7 CFR Part 981

[Docket No. FV92-981-1IFR]

Almonds Grown in California; Revision of the Administrative Rules and Regulations Concerning Handler Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule revises the administrative rules and regulations established under the Federal marketing order for California almonds. This action will streamline the reporting process for handlers in order to provide a more efficient process of collection and dissemination of information. This action is based on a unanimous recommendation of the Almond Board of California (Board), which is responsible for local administration of the order.

DATES: Interim final rule effective July 1, 1993. Comments received by September 27, 1993, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456, FAX Number (202) 720-5698. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S., P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-1509 or FAX (202) 720-5698; or Martin Engeler, Assistant Officer-in-Charge, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102-B, Fresno, California 93721; (209) 487-5901 or FAX (209) 487-5906.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 981 [7 CFR part 981], both as amended, regulating the handling of almonds grown in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

The information collection requirements contained in these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0581-0071. The requirements in this interim final rule are as follows:

(1) The interim final rule contains a requirement that each first handler of almonds grown in California must file a Summary Report of Almonds Received For Our Own Account (ABC Form 1). The Department and the Board need this information to determine the obligations of each handler concerning assessments, reserves, and inventory. The estimated number of handlers filing this report is 115, each submitting seven reports per year (a decrease from the current regulation which requires ten reports per year). The estimated average reporting burden is 15 minutes per report, or 201.25 hours per year.

(2) The interim final rule contains a requirement that each first handler of almonds grown in California must file a Redetermination report (ABC Form 2). This information is used by the Board to redetermine the kernelweight of almonds that the handler has received. This information allows the Board to make any necessary adjustments to a handler's assessment and reserve obligations. The estimated number of handlers filing this report is 115 handlers. Each handler will submit three reports per year. The estimated average reporting burden is 30 minutes per report, or 172.5 hours per year.

(3) The interim final rule allows handlers to file a shortened form in lieu of completing ABC-Form 2, which will be known as ABC Form 2-A. The information on Form 2-A will be used by the Board to complete ABC Form 2 for each handler's approval. Each handler will submit three reports per year. The estimated average reporting burden is 3 minutes per report, or 17.25 hours per year.

(4) The interim final rule contains a requirement that each first handler of almonds grown in California must file a Report of Shipments and Commitments (ABC Form 25-1). This information is necessary for the Board to determine trade demand and monitor compliance with the reserve requirement. Each handler will submit twelve reports per year. The estimated average reporting burden is 60 minutes per report, or 1,380 hours per year.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this interim final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 7,000 producers of almonds in the regulated area and approximately 115 handlers who are subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small

agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the almond producers and handlers may be classified as small entities.

This action revises §§ 981.472, 981.473 and 981.474 of Subpart—Administrative Rules and Regulations and is based on a unanimous recommendation of the Almond Board of California (Board) and other available information.

In August 1992, the Board directed its staff to review current reporting requirements under the marketing order. The staff was asked to determine if changes could be made to decrease the reporting burden on handlers by simplifying the process, eliminating unnecessary and duplicative reporting by handlers, and still provide the Board with the information it needs to properly administer the order. As a result of this review, the Board unanimously recommended at its December 14, 1992, meeting, revisions to several existing forms, the elimination of others, and the establishment of one new form. The Board also recommended reducing the frequency of submitting certain forms to the Board. Some of the recommended changes require corresponding changes to the aforementioned sections of the rules and regulations.

The recommended changes are authorized pursuant to § 981.74 which provides authority for the Board, with approval of the Secretary, to request information from handlers that will enable the Board to perform its duties and exercise its powers.

The Board recommended three changes to the reporting requirements under § 981.472. Currently, § 981.472 requires handlers to report the quantity of almonds received from growers on ABC Form 1 (Summary Report of Almonds Received for Our Own Account) during 10 prescribed periods. One change will reduce the number of reporting periods to seven. The Board has determined that, despite the reduction in reporting periods, the statistical information from these reports will still be available to the industry on a timely basis due to increased data processing capabilities. The change will reduce the burden on handlers through less frequent reporting.

Another recommended change to § 981.472 will provide that ABC Form 1 is due in the Board office by the fifth calendar day after the close of the applicable reporting period. Currently, handlers are required to submit ABC Form 1 within five "business" days after the close of the applicable reporting period. This change will allow the Board more time to compile the information to use as a cross-reference for other reports.

A final change to § 981.472 will eliminate the requirement that handlers submit summary reports of almonds received by county of origin (ABC Form 26–1 and 26–2). The Board is able to acquire this information from other sources. Therefore, the requirement that handlers report this information should be ended.

The Board recommended three changes to the reporting requirements under § 981.473. Currently, § 981.473 specifies the following information required on ABC Form 2 (Redetermination Report): (1) Handler carryover; (2) reserve disposition of certain almonds; (3) delivered sales; (4) almond products; (5) transfers; and (6) exempt outlet deliveries. This information is used by the Board to redetermine the kernelweight of almonds that the handler has received. This information allows the Board to make any necessary adjustments to handlers' assessments and reserve obligations. Due to a revision in the format of ABC Form 2 by the Board staff, the Board recommended that § 981.473 be revised and certain portions of that section be removed.

Information regarding reserve almond dispositions and almond products dispositions are currently reported separately on ABC Form 2. The language changes to § 981.473 will require such information to be reported as part of delivered sales (shipments) on the same form. Specific information regarding reserve dispositions will be reported on ABC Form 25 under another recommendation covered in this action. These changes will eliminate the redundancy of reporting this information twice.

Exempt outlet deliveries are currently reported on ABC Form 2. Due to a change in mathematical calculations used to derive the redetermination weight, the change will require handlers to report the quantity remaining to be delivered to exempt outlets (inedible disposition) instead of the exempt outlet deliveries. This change will simplify the data processing and calculations conducted by the Board, and provide the same result as the calculation procedure currently used. The Board has also recommended an alternative method of collecting data on handler inventory. Under this action, a new form, ABC Form 2–A (Current inventory for next redetermination report), will be used to collect inventory data for reporting and calculating information on the ABC Form 2. If the handler chooses to submit the ABC Form 2–A with the handler's period end inventory amount, the Board will calculate the other information on ABC Form 2, based on information submitted by the handler, to obtain the redetermination weight. The handler will then receive a completed copy of ABC Form 2 for approval. Handlers will be given the option of providing the inventory amount on the ABC Form 2–A or completing the ABC Form 2 and submit it to the Board. This change will allow the Board to process data in a more timely manner and decrease the reporting burden on handlers.

Section 981.474 requires handlers to file several reports with the Board. Three of the reports required under this section will be eliminated and another report changed.

The Board recommended to eliminate the requirement for collecting export information on ABC Forms 18 and 19. This information has not been collected for several years and is not expected to be needed in the future. Therefore, this information collection provision should be removed from the regulations.

Handlers are required to report information concerning custom processed almonds on ABC Form 48. The Board believes that the information currently being collected is serving no useful purpose. Such information is not expected to be needed in the future, therefore this information collection provision will be removed from the regulations.

Handlers are currently required to report actual shipments on ABC Form 25–1 (Report of shipments and commitments). Information concerning shipments of almonds for products will be shifted from ABC Form 2, as previously mentioned, to ABC Form 25–1. This will allow all types of shipments to be reported on one form. In addition, language changes will clarify that these forms will be due in the Board office five calendar days after the close of each month of the crop year.

In addition to the aforementioned changes, Board forms will be revised to accommodate new data processing procedures being implemented by the Board. As part of this procedure, the Board will perform many of the mathematical calculations on the forms for the handlers.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impractical, unnecessary, and contrary to the public interest to give preliminary

notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes restrictions on handlers by reducing the overall burden in the filing of forms to the Board, thereby reducing handler costs; (2) this action should be implemented before the beginning of the crop year, July 1, 1993, so that the Board can give handlers ample notice regarding the new forms so that handlers may plan their operations accordingly; (3) if this action cannot be effective by the beginning of the crop year, it will be necessary for the Board to wait until the next crop year to use the new forms because it will be difficult and confusing to the industry to change forms and reporting requirements after the crop year has begun; (4) this action was discussed at a public meeting and was unanimously recommended by the Board; (5) this action provides for a 90-day comment period so that handlers may use the forms for part of the crop year and provide comments accordingly; and (6) the Board is restructuring its automation system and it will be cost effective to coordinate the new forms with the installation of the new computer system and software.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recording requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 981.472 is amended by revising paragraph (a) and removing and reserving paragraph (b) to read as follows:

§ 981.472 Report of almonds received.

(a) Each handler shall report to the Board on ABC Form 1 the total adjusted kernel weight of almonds, by varieties, received by it for its own account within any of the hereinafter prescribed reporting periods. Each such report shall be received by the Board within five (5) calendar days after the close of the applicable one of the following reporting periods: July 1 to August 31; September 1 to September 30; October 1 to October 31; November 1 to November 30; December 1 to December 31; January 1 to March 31; and April 1 to June 30.

(b) [Reserved]

* * * * *

3. Section 981.473 is amended by revising paragraph (a); removing paragraph (b); redesignating paragraph (c) as paragraph (b) and revising it; removing paragraph (d); redesignating paragraph (e) as paragraph (c); adding a new paragraph (d); and removing paragraph (f) to read as follows:

§ 981.473 Redetermination reports.

* * * * *

(a) *Handler carryover.* Report the weight of all almonds, whether unshelled or shelled, wherever located, held by the handler for the handler's own account, whether or not sold.

(b) *Delivered sales.* Report the weight of salable almonds sold and delivered (shipments), showing the weight, and whether unshelled or shelled, including those disposed of pursuant to the requirements for reserve disposition, or used in almond products.

(c) *Transfers.* A report of almonds transferred to another handler showing the weight of each lot transferred and whether unshelled or shelled.

(d) *Remaining inedible obligation.* Report the quantity of almonds the handler intends to deliver to Board approved outlets to meet the disposition obligation pursuant to § 981.42(a).

4. Section 981.474 is amended by revising paragraph (a); removing paragraphs (b) and (c); and redesignating paragraphs (d) and (e) as paragraphs (b) and (c) respectively to read as follows:

§ 981.474 Other reports.

(a) *Report of shipments and commitments.* Each handler shall report on ABC Form 25–1 all shipments of almonds, inshell, shelled, and products by classification (domestic and export by countries of destination); and on ABC Form 25–2 all commitments (almonds not shipped, but sold or otherwise obligated) whether domestic contract, export contract, or non-contract. If the destination of any export is unknown to the handler, such handler shall have the broker/exporter furnish this information to the Board. In support of this report, the handler shall keep invoices on the shipments, or such other documentation as may be acceptable to the Board. The reports shall be received by the Board within five calendar days after the close of each month of the crop year.

* * * * *

Dated: June 23, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–15200 Filed 6–28–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1250

[Docket No. PY–91–002]

RIN 0581–AA59

Amendment to Egg Research and Promotion Rules and Regulations

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This rule amends the Egg Research and Promotion Rules and Regulations by adding a late-payment charge on all delinquent assessments. The American Egg Board approved this change at its July 17–18, 1991, meeting and requested the Secretary amend the Rules and Regulations accordingly.

A late-payment charge of 1.5 percent per month will be levied on all assessment charges more than 30 days past due. This change will facilitate the Board's efforts to make timely collections.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, 202–720–3506.

SUPPLEMENTARY INFORMATION:

Executive Orders 12291 and 12778 and Regulatory Flexibility Act

This rule has been reviewed under USDA procedures implementing Executive Order 12291 and Department Regulation 1512–1 and has been classified a "non-major" rule under the criteria contained therein. It will not result in an annual effect on the economy of $100 million or more; (ii) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; or (iii) will not have a significant impact on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under

section 14 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, any provisions of such order, or any obligations imposed in connection with such order, are not in accordance with law; and request a modification of the order or an exemption therefrom. Such person is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint is filed within 20 days after date of the entry of the ruling.

The AMS Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Information collection requirements and recordkeeping provisions contained in 7 CFR part 1250 have been approved by the Office of Management and Budget and assigned OMB Control No. 0581–0093 under the Paperwork Reduction Act of 1980.

Background

The Rules and Regulations in 1250.517 require egg handlers to pay assessments on a monthly basis. Assessments are due and collectable on or before the 15th day after the end of the reporting period. It is incumbent upon the Board's compliance department to ensure that such payments are made. However, some handlers continually remit assessments after they are due or, in some cases, refuse to pay at all.

Since the Board relies on a predictable income to fund ongoing projects, an additional mechanism is needed to facilitate the Board's efforts with regard to the timely remittance of assessments. Other commodity research and promotion boards have found that late-payment charges have been effective in facilitating timely payment of assessments. The Board recommended the addition of such a charge and, similar to regulations governing other like programs, requested that a late-payment charge of 1.5 percent per month be incorporated into the Rules and Regulations.

Comments

A proposed rule was published in the **Federal Register** (57 FR 60139) on December 18, 1992. Comments on the proposed rule were solicited from interested parties until January 19, 1993. During the 30-day comment period, the Agency received one comment in opposition to the proposed late-payment charge.

The commentor, a State egg council, expressed a concern that, since egg markets are depressed, a late-payment charge would place an additional burden on producers. However, the late-payment charge will only affect handlers who are not remitting assessments, as required by the Egg Research and Consumer Information Act.

List of Subjects in 7 CFR Part 1250

Egg research and promotion.

For the reasons set forth in the preamble, title 7, CFR part 1250 is amended as follows:

PART 1250—EGG RESEARCH AND PROMOTION

1. The authority citation of part 1250 continues to read as follows:

Authority: Pub. L. 93–428, 88 Stat. 1171, as amended, 7 U.S.C. 2701–2718.

2. Section 1250.519 is added to read as follows:

§ 1250.519 Late-payment charge.

Any unpaid assessments due to the Board pursuant to § 1250.347 shall be increased by a late-payment charge of 1.5 percent each month beginning with the day following the date such assessments are 30 days past due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. Assessments that are not paid when due because of a person's failure to submit a handler report to the Board as required shall accrue late-payment charges from the time such assessments should have been remitted. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date payment is actually received by the Board, whichever is earlier.

Dated: June 23, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–15204 Filed 6–28–93; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 50

[Docket No. 92–061–2]

Indemnity for Additions to Tuberculosis-Reactor Herds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the tuberculosis indemnity regulations to allow indemnity claims for cattle and bison that are destroyed because of tuberculosis after being added to a herd under quarantine for tuberculosis. This action is necessary to make it cost-effective for owners of quarantined herds to destroy cattle or bison affected with tuberculosis in a timely manner, expediting tuberculosis-eradication efforts in the United States.

EFFECTIVE DATE: July 29, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Stenseng, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 734, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8715.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis (referred to below as tuberculosis) is a serious communicable disease of cattle, bison, and other species, including humans, caused by *Mycobacterium bovis*. Tuberculosis causes weight loss, general debilitation, and sometimes death. The regulations in 9 CFR part 50 (referred to below as the regulations) provide for payment of Federal indemnity to owners of cattle or bison destroyed because of tuberculosis.

On November 2, 1992, we published in the **Federal Register** (57 FR 49429–49431, Docket No. 92–061–1) a proposal to amend the regulations by allowing indemnity claims for cattle and bison that are destroyed after being added to a herd quarantined for tuberculosis, if an approved herd plan is in effect at the time the claim is filed. As part of the approved herd plan, we proposed to require that cattle or bison being added to a herd quarantined for tuberculosis: (1) Be from an accredited herd; or (2) be from a herd that tested negative to an official tuberculin test no more than 12 months before the cattle or bison were added to the claimant's herd, and have been found negative to an official tuberculin test during the 60 days before the cattle or bison were added to the

claimant's herd. We proposed this change to provide owners with an incentive for promptly destroying and replacing marginal animals.

We solicited comments concerning our proposal for a 60-day comment period ending January 4, 1993. We received 24 comments by that date. All responses were in favor of our proposal. One commenter, however, suggested that we modify the proposed requirements.

This commenter recommended that all cattle or bison be tested and found negative to an official tuberculin test during the 30 days before being added to a herd quarantined because of tuberculosis. The commenter contended that this would reduce the disease risk associated with herd additions. We have found no epidemiological data supporting the commenter's contention. We believe the health requirement that herd additions be from a tested herd and be tested during the 60 days before being added, or be from an accredited herd, are adequate to ensure that the herd additions will not spread the disease to the claimant's herd. Therefore, we are making no change to the requirement that herd additions be from an accredited herd or be tested, as discussed above, before being added to a claimant's herd.

The commenter further recommended that "the tuberculosis program requirements concerning the origins for cattle and bison being added to herds quarantined because of tuberculosis should be specified in the approved herd plan and not in the regulations," to "empower" the State animal health official and the veterinarian in charge. While the precise meaning of the recommendation is unclear, the commenter seems concerned that the regulations will not give animal health officials sufficient flexibility in designing individual herd plans. As stated in the proposed rule, each approved herd plan is "a herd management and testing plan based on the disease history and movement patterns of the individual herd," designed by the herd owner and a State representative or an Animal and Plant Health Inspection Service (APHIS) representative. Common to all herd plans are the health requirements as set forth in revised § 50.14(e). These requirements are necessary to ensure, to the extent possible, that any cattle or bison added to a quarantined herd would not spread tuberculosis. We believe the approved herd plan, as defined, affords sufficient flexibility to the animal health officials involved, and we are making no change as a result of this comment.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule, without change.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Of the 10 herds currently under quarantine for tuberculosis, 6 are dairy herds, 1 is a bison herd, and 3 are beef cattle herds. Exact figures for 1993 are not available, but in 1992, the total number of animals in 16 quarantined herds was approximately 18,200. Roughly 18,000 were in dairy herds.

As a rule, dairy herd owners cull between 25 and 30 percent of their herd animals each year. They purchase about 40 percent of their replacement cattle, raising the remaining 60 percent themselves. Owners of beef cattle herds cull at a rate of between 5 and 8 percent, purchasing only about 10 percent of their replacements. Bison herd owners tend to raise all of their own replacements.

Approximately 1.67 percent of the cattle and bison tested for tuberculosis and designated as exposed in 1991 were found to be reactors.

Based on the above figures, and noting that the number of quarantined herds has declined since 1992, we expect the total cost of allowing indemnity payments for dairy herd additions to be less than $27,000 (of the 30 percent of 18,000 animals culled in 1992 (5400), 40 percent of their replacements would be added from other herds; of this 40 percent of 30 percent (2160), 1.67 percent (36) would be reactors eligible for indemnity ($750)). The cost of allowing indemnity payments for beef cattle herd additions will be marginal.

The total number of herds (10) affected by this rule is insubstantial compared to the total number of herds in the United States (approximately 1.6 million). The 6 dairies affected are small entities, with a gross value of approximately $2.7 million. This represents an extremely small fraction of the $40 billion cattle industry.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule will be submitted for approval to the Office of Management and Budget.

List of Subjects in 9 CFR Part 50

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements, Tuberculosis.

Accordingly, 9 CFR part 50 is amended as follows:

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

1. The authority citation for part 50 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a-1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 50.1, the following definitions are added, in alphabetical order, to read as follows:

§ 50.1 Definitions.

* * * * *

Approved herd plan. A herd management and testing plan based on the disease history and movement patterns of an individual herd, designed by the herd owner and a State representative or APHIS representative

to determine the disease status of animals in the herd and to eradicate tuberculosis within the herd. The plan must be jointly approved by the State animal health official and the Veterinarian in Charge.

* * * * *

Reactor cattle and bison. Cattle are classified as reactors for tuberculosis in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," based on a positive response to an official tuberculin test. Bison are classified as reactors for tuberculosis in the same manner as cattle.

* * * * *

3. In § 50.14, paragraph (e) is revised to read as follows:

§ 50.14 Claims not allowed.

* * * * *

(e) If the cattle or bison were added to the herd while the herd was quarantined for tuberculosis, unless an approved herd plan was in effect for the herd at the time the claim was filed. As part of the approved herd plan, cattle or bison added to a herd quarantined for tuberculosis must:

(1) Be from an accredited herd, as defined in § 77.1 of this chapter; or

(2)(i) Be from a herd that tested negative to an official tuberculin test (complete herd test), as defined in § 77.1 of this chapter, no more than 12 months before the cattle or bison were added to the claimant's herd; and

(ii) Have been found negative to an official tuberculin test, as defined in § 77.1 of this chapter, during the 60 days before the cattle or bison were added to the claimant's herd.

Done in Washington, DC, this 23rd day of June 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–15277 Filed 6–28–93; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 77

[Docket No. 93–062–1]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of Hawaii from a modified accredited State to an accredited-free State. We have determined that Hawaii meets the criteria for designation as an accredited-free State.

DATES: Interim rule effective June 29, 1993. Consideration will be given only to comments received on or before August 30, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–062–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Stenseng, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8715.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The tuberculosis regulations contained in 9 CFR part 77 (referred to below as the regulations) regulate the interstate movement of cattle and bison because of tuberculosis. Cattle or bison not known to be affected with or exposed to tuberculosis are eligible for interstate movement without restriction if those cattle or bison are moved from jurisdictions designated as accredited-free States or modified accredited States. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from jurisdictions designated as nonmodified accredited States.

The status of a State is based on its freedom from evidence of tuberculosis, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which is part of the regulations via incorporation by reference in part 77. A State must have no findings of tuberculosis in any cattle or bison in the State for at least 5 years in order to be designated as an accredited-free State.

Before publication of this interim rule, Hawaii was designated in § 77.1 of the regulations as a modified accredited State. However, Hawaii now meets the requirements for designation as an accredited-free State. Therefore, we are amending the regulations by removing Hawaii from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted, as Hawaii currently meets the criteria for designation as an accredited-free State. This action provides prospective cattle and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective buyers prefer to buy cattle and bison from accredited-free States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle and bison are moved interstate for slaughter, for use as breeding stock, or for feeding. There are approximately 1700 cattle herds in Hawaii, with a total of about 200,000 cattle. An estimated 99 percent of these herds are owned by small businesses. Changing the status of Hawaii may affect the marketability of cattle and bison from the State, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant. Furthermore, almost none of the owners of cattle herds in Hawaii are in the export business, and therefore will not be affected by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR part 77 is amended as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 77.1 [Amended]

2. In § 77.1, in the definition for "Modified accredited state", paragraph (2) is amended by removing "Hawaii,".

3. In § 77.1, in the definition for "Accredited-free state", paragraph (2) is amended by adding "Hawaii," immediately after "Georgia,".

Done in Washington, DC, this 23rd day of June 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–15280 Filed 6–28–93; 8:45 am]

BILLING CODE 3410-34-P

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9 CFR Part 78

[Docket 92–184–2]

Validated Brucellosis-Free States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of swine by adding Mississippi and Missouri to the list of validated brucellosis-free States. We have determined that they meet the criteria for classification as validated brucellosis-free States. The action relieved certain restrictions on moving breeding swine from Mississippi and Missouri.

EFFECTIVE DATE: July 29, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Delorias M. Lenard, Senior Staff Veterinarian, Swine Health Staff, VS, APHIS, USDA, room 736, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7767.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on February 25, 1993 (58 FR 11364–11365, Docket No. 92–184–1), we amended the brucellosis regulations in 9 CFR part 78 by adding Mississippi and Missouri to the list of validated brucellosis-free States in § 78.43.

Comments on the interim rule were required to be received on or before April 26, 1993. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12291 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 78.43 and that was published at 58 FR 11364–11365 on February 25, 1993.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 23rd day of June 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–15279 Filed 6–28–93; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 27338; Amdt. No. 377]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: July 22, 1993.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft if in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on June 22, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 GMT on July 22, 1993:

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

PART 95—[AMENDED]

2. Part 95 is amended as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS—AMENDMENT 377 EFFECTIVE DATE, JULY 22, 1993

From	To	MEA
§ 95.6006 VOR Federal Airway 6 is Amended to Read in Part		
Albin, WY FIX	Sidney, NE VORTAC	8500
§ 95.6008 VOR Federal Airway 8 is Amended to Read in Part		
Akron, CO VORTAC	Hayes Center, NE VORTAC	6500
§ 95.6009 VOR Federal Airway 9 is Amended to Read in Part		
Green Bay, WI VORTAC	Iron Mountain, MI VORTAC	2900
Iron Mountain, MI VORTAC	Hermy, MI FIX	3400
§ 95.6010 VOR Federal Airway 10 is Amended to Read in Part		
Bradford, IL VORTAC	Plano, IL FIX	3000
Carleton, MI VORTAC	U.S. Canadian Border	*3000
*2200–MOCA		
§ 95.6054 VOR Federal Airway 54 is Amended to Read in Part		
Fayetteville, NC VOR/DME	*Josch, NC FIX	2000
*5000–MRA		
Josch, NC FIX	Kinston, NC VORTAC	2000
§ 95.6055 VOR Federal Airway 55 is Amended to Read in Part		
Giper, MI VORTAC	Keeler, MI VORTAC	*4000
*2300–MOCA		
Keeler, MI VORTAC	Pullman, MI VORTAC	4000
§ 95.6061 VOR Federal Airway 61 is Amended to Read in Part		
Grand Island, NE VORTAC	Pawnee City, NE VORTAC	*4000
*3200–MOCA		
§ 95.6078 VOR Federal Airway 78 is Amended to Read in Part		
Rhinelander, WI VORTAC	Iron Mountain, MI VORTAC	4300
Iron Mountain, MI VORTAC	Gerla, MI FIX	3100
§ 95.6080 VOR Federal Airway 80 is Amended to Read in Part		
Holyo, CO FIX	North Platte, NE VORTAC	*6500
*5000–MOCA		
§ 95.6081 VOR Federal Airway 81 is Amended to Read in Part		
Albin, WY FIX	Scottsbluff, NE VORTAC	*8000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS—AMENDMENT 377 EFFECTIVE DATE, JULY 22, 1993—Continued

From	To	MEA
*7000–MOCA		
Scottsbluff, NE VORTAC	Chadron, NE VOR/DME	7000
§ 95.6084 VOR Federal Airway 84 is Amended to Read in Part		
Story, IL FIX	Pivot, MI FIX	*2500
*1900–MOCA		
Pivot, MI FIX	*Tadds, MI FIX	**3000
*4000–MRA		
**1900–MOCA		
Tadds, MI FIX	Pullman, MI VORTAC	*2500
*1900–MOCA		
§ 95.6100 VOR Federal Airway 100 is Amended to Read in Part		
Medicine Bow, WY VORTAC	Scottsbluff, NE VORTAC	9500
Ainsworth, NE VOR/DME	O'Neill, NE VORTAC	4500
Musky, MI FIX	Keeler, MI VORTAC	4000
Keeler, MI VORTAC	Athen, MI FIX	10000
Athen, MI FIX	Litchfield, MI VORTAC	2800
§ 95.6116 VOR Federal Airway 116 is Amended to Read in Part		
Nepta, MI FIX	Keeler, MI VORTAC	4000
Keeler, MI VORTAC	Jackson, MI VOR/DME	10000
§ 95.6133 VOR Federal Airway 133 is Amended to Read in Part		
Escanaba, MI VORTAC	Uuper, MI FIX	*3000
*2300–MOCA		
Uuper, MI FIX	Marquette, MI VOR/DME	*10000
*2900–MOCA		
§ 95.6148 VOR Federal Airway 148 is Amended to Read in Part		
Hayes Center, NE VORTAC	North Platte, NE VORTAC	4900
Hayward, WI VOR/DME	Ironwood, MI VORTAC	*8000
*3100–MOCA		
§ 95.6157 VOR Federal Airway 157 is Amended to Read in Part		
Florence, SC VORTAC	Fayetteville, NC VOR/DME	2200
Fayetteville, NC VOR/DME	*Josch, NC FIX	2000
*5000–MRA		
Josch, NC FIX	Kinston, NC VORTAC	2000
§ 95.6164 VOR Federal Airway 164 is Amended to Read in Part		
Bulge, NY FIX	Buffalo, NY VORTAC	*2800
*2000–MOCA		
§ 95.6169 VOR Federal Airway 169 is Amended to Read in Part		
Sidney, NE VORTAC	Scottsbluff, NE VORTAC	*7000
*6000–MOCA		
Scottsbluff, NE VORTAC	Chadron, NE VOR/DME	7000
Chadron, NE VOR/DME	Waxer, NE FIX	*7000
*6000–MOCA		
§ 95.6170 VOR Federal Airway 170 is Amended to Read in Part		
Hebel, MI FIX	Lessy, MI FIX	*4500
*3000–MOCA		
§ 95.6172 VOR Federal Airway 172 is Amended to Read in Part		
North Platte, NE VORTAC	Wolbach, NE VORTAC	*5400
*4500–MOCA		
Wolbach, NE VORTAC	Columbus, NE VOR/DME	3800
§ 95.6188 VOR Federal Airway 188 is Amended to Read in Part		
Carleton, MI VORTAC	U.S. Canadian Border	*3000
*2200–MOCA		
§ 95.6191 VOR Federal Airway 191 is Amended to Read in Part		
Rhinelander, WI VORTAC	Ironwood, MI VORTAC	*6000
*3100–MOCA		
§ 95.6207 VOR Federal Airway 207 is Amended to Read in Part		
Gill, CO VORTAC	Scottsbluff, NE VORTAC	7500
§ 95.6218 VOR Federal Airway 218 is Amended to Read in Part		
Keeler, MI VORTAC	Hebel, MI FIX	4000
§ 95.6219 VOR Federal Airway 219 is Amended to Read in Part		
Hayes Center, NE VORTAC	Wolbach, NE VORTAC	*5000
*4500–MOCA		
§ 95.6220 VOR Federal Airway 220 is Amended to Read in Part		
Akron, CO VORTAC	Mcjef, NE FIX	*7000
*6000–MOCA		
McCook, NE VOR/DME	Sprit, NE FIX	*5000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS—AMENDMENT 377 EFFECTIVE DATE, JULY 22, 1993—Continued

From	To	MEA
*4100–MOCA		
§ 95.6224 VOR Federal Airway 224 is Amended to Read in Part		
Marquette, MI VOR/DME	Schoolcraft County, MI VOR/DME	*10000
*2900–MOCA		
§ 95.6277 VOR Federal Airway 277 is Amended to Read in Part		
Bagel, IN FIX	Keeler, MI VORTAC	4000
§ 95.6287 VOR Federal Airway 287 is Amended to Read in Part		
Malay, WA FIX	*Tonno, WA FIX	8000
*5000–MRA		
§ 95.6316 VOR Federal Airway 316 is Amended to Read in Part		
Marquette, MI VOR/DME	Traen, MI FIX	*10000
*2800–MOCA		
§ 95.6341 VOR Federal Airway 341 is Amended to Read in Part		
Iron Mountain, MI VORTAC	Marquette, MI VOR/DME	3400
§ 95.6380 VOR Federal Airway 380 is Amended to Read in Part		
Wolbach, NE VORTAC	Grand Island, NE VORTAC	*4000
*3200–MOCA		
§ 95.6430 VOR Federal Airway 430 is Amended to Read in Part		
Ironwood, MI VORTAC	Diner, MI FIX	8000
Is Amended to Read in Part		
Diner, MI FIX	Iron Mountain, MI VORTAC	3400
Iron Mountain, MI VORTAC	Gerla, MI FIX	3100
§ 95.6440 VOR Federal Airway 440 is Amended to Read in Part		
Sayre, OK VORTAC	Carff, OK FIX	4000
§ 95.6454 VOR Federal Airway 454 is Amended to Read in Part		
King Salmon, AK VORTAC	Dillingham, AK VOR/DME	*5000
*4300–MOCA		
§ 95.6532 VOR Federal Airway 532 is Amended to Read in Part		
Salina, KS VORTAC	Lincoln, NE VORTAC	*5000
*3000–MOCA		
§ 95.6412 Hawaii VOR Federal Airway 12 is Amended to Read in Part		
*Kaths, HI FIX	**Nonni, HI FIX	29000
*29000–MRA		
**29000–MRA		
Leane, HI FIX	*Keola, HI FIX	
	W BND	16000
	E BND	5000
*10000–MRA		
§ 95.6416 Hawaii VOR Federal Airway 16 is Amended to Read in Part		
*Syvad, HI FIX	**Puppi, HI FIX	
	W BND	32000
	E BND	14000
*32000–MRA		
**14000–MRA		
Puppi, HI FIX	*Ohana, HI FIX	
	W BND	14000
	E BND	5000
*5000–MRA		
Ohana, HI FIX	South Kauai, HI VORTAC	
	W BND	14000
	SE BND	5000
Napua, HI FIX	*Grail, HI FIX	6000
*9000–MRA		
Grail, HI FIX	*Keola, HI FIX	9000
*10000–MRA		
Keola, HI FIX	*Gecko, HI FIX	10000
*10000–MRA		
Gecko, HI FIX	*Alana, HI FIX	7000
*5000–MRA		

From	To	MEA	MAA
	§ 95.7053 Jet Route No. 53 Is Amended to Read In Part		
Pulaski, VA VORTAC	Elkns, WV FIX	21000	45000
Elkns, WV FIX	Ellwood City, PA VORTAC	18000	45000

§ 95.8003 VOR Federal Airways Changeover Points

Airway segment		Changeover points	
From	To	Distance	From
	V–3 Is Amended by Adding		
Sandhills, NC VORTAC	Raleigh/Durham, NC VORTAC	10	Sandhills.
	V–66 Is Amended by Adding		
Sandhills, NC VORTAC	Raleigh/Durham, NC VORTAC	10	Sandhills
	V–116 Is Amended by Adding		
Keeler, MI VORTAC	Jackson, MI VOR/DME	40	Keeler.
	V–133 Is Amended by Adding		
Escanaba, MI VORTAC	Marquette, MI VOR/DME	33	Escanaba
	V–155 Is Amended by Adding		
Sandhills, NC VORTAC	Raleigh/Durham, NC VORTAC	10	Sandhills
	V–170 Is Amended by Adding		
Pullman, MI VORTAC	Salem, MI VORTAC	61	Pullman.
	V–218 Is Amended by Adding		
Keeler, MI VORTAC	Lansing, MI VORTAC	39	Keeler.
	V–430 Is Amended by Adding		
Ironwood, MI VORTAC	Ironwood, MI VORTAC	44	Ironwood.

[FR Doc. 93–15267 Filed 6–28–93; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27333; Amdt. No. 1552]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register**

expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on June 18, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
05/25/93	KS	Goodland	Renner Field/Goodland Muni	FDC 3/2698	ILS Rwy 30 Amdt 3.
05/25/93	KS	Goodland	Renner Field/Goodland Muni	FDC 3/2699	NDB Rwy 30 Amdt 6.
05/25/93	KS	Goodland	Renner Field/Goodland Muni	FDC 3/2700	VOR Rwy 30 Amdt 7.
05/26/93	OH	Akron	Akron Fulton Intl	FDC 3/2726	LOC Rwy 25 Amdt 12. *This Corrects Notam in TL 93–13.*
05/26/93	OH	Akron	Akron-Canton Regional	FDC 3/2722	VOR Rwy 23 Amdt 8. *This Corrects Notam in TL 93–13.*
06/01/93	AK	Mekoryuk	Mekoryuk	FDC 3/2923	NDB/DME–A Amdt 2.
06/01/93	AK	Mekoryuk	Mekoryuk	FDC 3/2924	NDB Rwy 23 Amdt 1.
06/01/93	MO	St. Charles	St. Charles	FDC 3/2907	VOR Rwy 9 Amdt 4.
06/02/93	MO	Marshall	Marshall Memorial Muni	FDC 3/2944	NDB Rwy 36 Orig.
06/02/93	NY	Poughkeepsie	Dutchess County	FDC 3/2942	ILS Rwy 6 Amdt 5.
06/04/93	MO	Sikeston	Sikeston Memorial Muni	FDC 3/2979	NDB Rwy 20 Amdt 7A.
06/04/93	NY	Angola	Angola	FDC 3/2984	VDR/Dme-A Orig.
06/07/93	MO	St. Louis	Lambert-St. Louis Intl	FDC 3/3041	ILS Rwy 12R Admt 20A.
06/05/93	NY	Jamestown	Chautauqua County-Jamestown	FDC 3/3046	ILS Rwy 25 Amdt 5.
06/11/93	MA	Hyannis	Barnstable Muni-Boardman/Polando Field.	FDC 3/3109	ILS Rwy 24 Amdt 16A.
06/11/93	WV	Clarksburg	Benedum	FDC 3/3105	ILS Rwy 21 Amdt 12.

[FR Doc. 93–15269 Filed 6–28–93; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27332; Amdt. No. 1551]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on June 18, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME

or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective September 16, 1993

Alamosa, CO, San Luis Valley Regional/ Bergman Field, VOR–A, Amdt. 6
Alamosa, CO, San Luis Valley Regional/ Bergman Field, VOR/DME–B, Amdt. 4
Madison, CT, Griswold, VOR–A, Amdt. 7
Shreveport, LA, Shreveport Regional, LOC RWY 5, Amdt. 1
Pawtucket, RI, North Central State, VOR–A, Amdt. 6
Pawtucket, RI, North Central State, VOR–B, Amdt. 6
Pawtucket, RI, North Central State, LOC RWY 5, Amdt. 5
Pawtucket, RI, North Central State, NDB RWY 5, Amdt. 2
Pawtucket, RI, North Central State, VOR/ DME RNAV RWY 5, Amdt. 6
Pawtucket, RI, North Central State, VOR/ DME RNAV RWY 23, Amdt. 5
Beaumont, TX, Beaumont Muni, VOR/DME RWY 13, Amdt. 1
Beaumont, TX, Beaumont Muni, VOR/DME RWY 31, Amdt. 3
San Angelo, TX, Mathis Field, VOR/DME RWY 21, Orig., CANCELLED
San Angelo, TX, Mathis Field, ILS RWY 3, Amdt. 20
Sonora, TX, Sonora Muni, NDB RWY 18, Amdt. 3
Ogden, UT, Ogden-Hinckley ILS RWY 3, Amdt. 2
Seattle, WA, Seattle-Tacoma Intl, VOR RWY 16 L/R, Amdt. 12
Ashland, WI, John F. Kennedy Memorial, VOR RWY 2, Amdt. 5
Ashland, WI, John F. Kennedy Memorial, VOR RWY 31, Amdt. 6
Ashland, WI, John F. Kennedy Memorial, NDB RWY 2, Amdt. 9

Effective August 19, 1993

Grand Rapids, MN, Grand Rapids/Itasca Co-Gordon Newstrom Fld, VOR/DME RWY, 16, Orig.

Effective July 22, 1993

Bakersfield, CA, Meadows Field, VOR–A, Orig.
Bakersfield, CA, Meadows Field, VOR RWY 12L, Amdt. 6, CANCELLED
Bakersfield, CA, Meadows Field, VOR RWY 30R, Amdt. 7
Bakersfield, CA, Meadows Field, NDB RWY 30R, Amdt. 6
Bakersfield, CA, Meadows Field, ILS RWY 30R, Amdt. 27
Wilmington, DE, New Castle County, ILS RWY 1, Amdt. 20
Wilmington, DE, New Castle County, NDB RWY 1, Amdt. 18
Chicago/Aurora, IL, Aurora Muni, VOR/DME RNAV RWY 27, Amdt. 1, CANCELLED
Chicago/Aurora, IL, Aurora Muni, VOR/DME RNAV RWY 27, Orig.
Lincoln, IL, Logan County, NDB RWY 21, Amdt. 1
Lincoln, IL, Logan County, VOR RWY 3, Amdt. 6
Moline, IL, Quad-City, LOC RWY 27, Amdt. 7
Monee, IL, Sanger, VOR RWY 5, Amdt. 3
Paris, IL, Edgar County, NDB RWY 27, Amdt. 5
Paris, IL, Edgar County, VOR/DME–A, Amdt. 7
Pontiac, IL, Pontiac Muni, VOR–A, Amdt. 1, CANCELLED
Monticello, IN, White County, NDB RWY 36, Amdt. 4
Sullivan, IN, Sullivan County, NDB RWY 36, Amdt. 6
Sullivan, IN, Sullivan County, VOR/DME–A, Amdt. 1
Clarion, IA, Clarion Muni, RNAV RWY 14, Orig., CANCELLED
Mt. Pleasant, IA, MT. Pleasant Muni, NDB RWY 33, Amdt. 5
Boston, MA, General Edward Lawrence Logan Intl, ILS/DME–2, RWY 27, Orig.
Boston, MA, General Edward Lawrence Logan Intl, ILS–2, RWY 22L, Orig.
Gardner, MA, Gardner Muni, VOR–A, Amdt. 5
Detroit, MI, Detroit Metropolitan Wayne County, ILS RWY 21R, Amdt. 26
Hastings, MI, Hastings, VOR–A, Orig.
Muskegon, MI, Muskegon County, VOR/DME RWY 6, Amdt. 10
Aurora, NE, Aurora Municipal, NDB RWY 16, Amdt. 2
Aurora, NE, Aurora Municipal, VOR–A, Amdt. 5
Grand Island, NE, Central Nebraska Regional, ILS RWY 35, Amdt. 9
Grand Island, NE, Central Nebraska Regional, NDB RWY 35, Amdt. 7
Grand Island, NE, Central Nebraska Regional, LOC/DME BC RWY 17, Amdt. 9
Grand Island, NE, Central Nebraska Regional, VOR/DME RWY 35, Amdt. 14
Grand Island, NE, Central Nebraska Regional, VOR/DME RWY 31, Amdt. 6
Grand Island, NE, Central Nebraska Regional, VOR RWY 17, Amdt. 23
Grand Island, NE, Central Nebraska Regional, VOR RWY 13, Amdt. 18
Hastings, NE, Hastings Muni, RNAV RWY 14, Amdt. 4, CANCELLED
Hastings, NE, Hastings Muni, NDB RWY 14, Amdt. 12
Hastings, NE, Hastings Muni, VOR RWY 32, Amdt. 13
Hastings, NE, Hastings Muni, VOR RWY 14, Amdt. 16
Hastings, NE, Hastings Muni, VOR RWY 4, Amdt. 5
Oshkosh, NE, Garden County, NDB RWY 12, Amdt. 5, CANCELLED
York, NE, York Muni, NDB RWY 35, Amdt. 2
York, NE, York Muni, NDB RWY 17, Amdt. 2
Berlin, NJ, Camden County, VOR–B, Amdt. 2
Readington, NJ, Solberg-Hunterdon, VOR–A, Amdt. 7
Teterboro, NJ, Teterboro, VOR/DME 2 RWY 24, Orig.
Teterboro, NJ, Teterboro, VOR/DME 1 RWY 24, Amdt. 5
Batavia, NY, Genesee County, ILS RWY 28, Amdt. 3
Batavia, NY, Genesee County, VOR/DME–A, Amdt. 4
Binghamton, NY, Binghamton Regional/ Edwin A. Link Field, RADAR–1, Amdt. 7, CANCELLED
Youngstown, OH, Youngstown-Warren Regional, RADAR–1, Amdt. 12
Willoughby, OH, Willoughby Lost Nation Muni, VOR RWY 27, Amdt. 2, CANCELLED
Willoughby, OH, Willoughby Lost Nation Muni, VOR RWY 23, Amdt. 2, CANCELLED
Willoughby, OH, Willoughby Lost Nation Muni, VOR RWY 5, Amdt. 2, CANCELLED
Medford, OR, Medford-Jackson County, VOR/ DME RWY 14, Amdt. 2
Medford, OR, Medford-Jackson County, VOR–A, Amdt. 2
Grove City, PA, Grove City, VOR/DME RNAV RWY 28, Amdt. 2
Grove City, PA, Grove City, VOR/DME RNAV RWY 10, Amdt. 2
Selinsgrove, PA, Penn Valley, VOR–A, Amdt. 5
Westerly, RI, Westerly State, LOC RWY 7, Amdt. 4
Westerly, RI, Westerly State, VOR–A, Amdt. 9, CANCELLED
Westerly, RI, Westerly State, NDB RWY 7, Amdt. 2
Cleburne, TX, Cleburne Muni, VOR/DME RNAV RWY 33, Amdt. 3
Cleburne, TX, Cleburne Muni, VOR/DME RNAV RWY 15, Amdt. 2
Cleburne, TX, Cleburne Muni, VOR/DME–A, Amdt. 5
Mesquite, TX, Phil L. Hudson Muni, NDB RWY 17, Amdt. 4
Mesquite, TX, Phil L. Hudson Muni, LOC BC RWY 35, Amdt. 1
Mesquite, TX, Phil L. Hudson Muni, LOC RWY 17, Amdt. 3

Effective June 15, 1993

Portland, OR, Portland Intl, LOC BC RWY 10L, Amdt. 14

[FR Doc. 93–15268 Filed 6–28–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances: Exempt Anabolic Steroid Products

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Interim rule and request for comments.

SUMMARY: The Drug Enforcement Administration (DEA) is designating two preparations as exempt anabolic steroid products. This action, as part of the ongoing implementation of the Anabolic Steroid Control Act of 1990, removes certain regulatory controls pertaining to Schedule III substances from the designated entities.

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DATES: *Effective Date:* June 29, 1993. Comments must be submitted on or before August 30, 1993.

ADDRESSES: Comments and objections should be submitted to the Director, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537; Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., (Chief, Drug and Chemical Evaluation Section), 202–307–7183.

SUPPLEMENTARY INFORMATION: Section 1903 of the Anabolic Steroids Control Act of 1990 (ASCA) (title XIX of Pub. L. 101–647) provides that the Attorney General may exempt products which contain anabolic steroids from all or any part of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*) if the products have no significant potential for abuse. The procedure for implementing this section of the ASCA was published by the DEA on Friday, August 30, 1991, (56 FR 42935). The purpose of this rule is to identify two products which meet the exempt anabolic steroid product criteria.

The Director, Office of Diversion Control, having reviewed the applications, the recommendations of the Secretary of the Department of Health and Human Services, and other relevant information, finds that each of the products described below has no significant potential for abuse because of its concentration, preparation, mixture or delivery system.

Interested persons are invited to submit their comments in writing in regard to this interim rule.

The listing of these products in 21 CFR 1308.34 relieves persons who handle them in the course of legitimate business from the registration, records, reports, prescription, physical security, import, and export requirements associated with Schedule III substances. Accordingly, the Director certifies that this action will have no impact on the ability of small businesses to compete and he therefore determines that no regulatory flexibility analysis is required.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that this matter does not have sufficient federalism implications to require the preparation of a Federalism Assessment.

It has been determined that drug control matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of E.O. 12291. Accordingly, this action is not subject to those provisions of E.O. 12778 which are contingent upon review by OMB. Nevertheless, the Director has determined that this is not a "major rule," as that term is used in E.O. 12291, and that it would otherwise meet the applicable standards of sections 2(a) and 2(b)(2) of E.O. 12778.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by title XIX of Public Law 101–647, as delegated to the Administrator of the DEA pursuant to 21 U.S.C. 871(a) and 28 CFR 0.100, the Director of the Office of Diversion Control hereby amends 21 CFR part 1308 as set forth below:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.34 is amended by adding two new entries to the *Table of Exempt Anabolic Steroid Products,* to be placed in alphabetical order first by Trade Name and then by Company, to read as follows:

§ 1308.34 Exempt anabolic steroid products.

* * * * *

TABLE OF EXEMPT ANABOLIC STEROID PRODUCTS

Trade name	Company	NDC No.	Form	Ingredients	Quantity
• •	•	•	•	•	•
Testosterone Cypionate—Estradiol Cypionate Injection					
Testosterone Cypionate—Estradiol Cypionate Injection.	The Upjohn Co., Kalamazoo, MI.	0009–0253	Vial	Testosterone Cypionate .... 50 mg/ml Estradiol Cypionate ..... 2 mg/ml	
• •	•	•	•	•	•
Tilapia Sex Reversal Feed (Investigational).	Zeigler Brothers, Inc., Gardners, PA.	.....	Plastic Bags	Methyltestosterone Fish feed.	60 mg/1 kg
• •	•	•	•	•	•

Dated: June 22, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–15181 Filed 6–28–93; 8:45 am]

BILLING CODE 4410–09–M

21 CFR Part 1308

Schedules of Controlled Substances: Exempt Anabolic Steroid Products

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: The interim rule (58 FR 16772, March 31, 1993) which identified five anabolic steroid products as being exempt from certain regulatory provisions of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*) is adopted without change.

EFFECTIVE DATE: June 29, 1993.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., (Chief, Drug and Chemical Evaluation Section), 202–307–7183.

SUPPLEMENTARY INFORMATION: The Director, Office of Diversion Control, Drug Enforcement Administration (DEA), published in the **Federal Register**, an interim rule which identified five products as being exempt anabolic steroid products (58 FR 16772, March 31, 1993). Comments were requested, none were received. The interim rule is adopted without change.

The listing of products in 21 CFR 1308.34 relieves persons who handle them in the course of legitimate business from the registration, records,

reports, prescription, physical security, import, and export requirements associated with Schedule III controlled substances. Accordingly, the Director certifies that this action will have no impact on the ability of small businesses to compete and he therefore determines that no regulatory flexibility analysis is required.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that this matter does not have sufficient federalism implications to require the preparation of a Federalism Assessment.

It has been determined that drug control matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of E.O. 12291. Accordingly, this action is not subject to those provisions of E.O. 12778 which are contingent upon review by OMB. Nevertheless, the Director has determined that this is not a "major rule," as that term is used in E.O. 12291, and that it would otherwise meet the applicable standards of sections 2 (a) and 2(b)(2) of E.O. 12778.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by title XIX of Public Law 101–647, as delegated to the Administrator of the DEA pursuant to 21 U.S.C. 871(a) and 28 CFR 0.100, the Director of the Office of Diversion Control hereby adopts as a final rule, without change, the interim rule amending 21 CFR 1308.34 which was published at 58 FR 16772 on March 31, 1993.

Dated: June 22, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–15180 Filed 6–28–93; 8:45 am]

BILLING CODE 4410–09–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2616 and 2617

RIN 1212–AA41 and RIN 1212–AA47

Distress Terminations of Single-Employer Plans; Standard Terminations of Single-Employer Plans; Correction

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule on distress termination and standard termination of single-employer pension plans (29 CFR parts 2616 and 2617) that was published in the **Federal Register** of Monday, December 14, 1992 (57 FR 59205). This action is needed to correct certain editorial errors

EFFECTIVE DATE: January 28, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Renae R. Hubbard, Special Counsel, Office of the General Counsel (Code 22000), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202–778–8850 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 92–30057, which was published Monday, December 14, 1992 (57 FR 59205). The regulations in that document relate to the requirements for pension plans terminating in distress or standard terminations under the Employee Retirement Income Security Act of 1974, as administered by the Pension Benefit Guaranty Corporation. The editorial corrections are:

§ 2616.4 [Corrected]

1. On page 59220, column three, paragraph (d)(1) of § 2616.4 is corrected by removing "The prohibitions described in paragraph (b)(2)–(b)(4) of this section shall cease to apply—"and adding, in its place, "The prohibitions in paragraph (b) of this section, other than those in paragraph (b)(1), shall cease to apply—".

§§ 2616.6 and 2617.6 [Corrected]

2. On page 59221, column three, paragraph (b)(1) of § 2616.6 is corrected and on page 59228, column two, paragraph (b)(1) of § 2617.6 is corrected, in each instance by removing "The date used for determining such interest rate or rates shall be—" and adding, in its place, "The present value of such benefits shall be determined using the interest rate or rates as of—".

§ 2617.22 [Corrected]

3. On page 59229, column 3, paragraph (c)(2) of § 2617.22 is corrected by adding "on the date on which it is handed to the affected party" between "affected party" and "or deposited".

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–15298 Filed 6–28–93; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendment.

SUMMARY: This rule amends the Cuban Assets Control Regulations (the "Regulations") to bring them into conformity with the Cuban Democracy Act of 1992 (the "CDA")

The CDA modifies existing sanctions imposed against Cuba pursuant to the Trading With the Enemy Act ("TWEA") Those modifications are incorporated into the existing Regulations, the authority for which now includes the CDA.

This final rule amends the Regulations to reflect the CDA's prohibition on the issuance of licenses for most trade between third countries and Cuba by entities owned or controlled by a person subject to the jurisdiction of the United States. A new prohibition on the entry of vessels is added to the Regulations. Finally, this rule amends the Regulations to add civil penalty authority. An interpretive section is added concerning certain CDA-specified limitations on civil penalty authority.

EFFECTIVE DATE: For all sections except § 515.207(a) the effective date is October 23, 1992. For § 515.207(a), the effective date is December 23, 1992.

FOR FURTHER INFORMATION CONTACT: John T. Roth, Chief, Policy Planning and Program Management Division (tel.: 202/622–2500), for questions concerning entry of vessels; Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), for questions concerning licensing policy; Marilyn G. Morrison, Chief, Civil Penalties Division (tel.: 202/622–2490), for questions concerning civil penalties; or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), for legal questions; Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The enactment on October 23, 1992, of the Cuban Democracy Act of 1992, sections 1701–12, Public Law 102–484, 106 Stat. 2575 (the "CDA"), requires changes to the Cuban Assets Control Regulations, 31 CFR part 515 (the "Regulations"), to effect the modification of the Cuban embargo contained in the CDA. Section 515.207 is amended to add to the Regulations a prohibition on the entry of a vessel into the United States to load

or unload any freight if the vessel has entered Cuba in the trade of goods or services. Such a vessel may not enter the United States to load or unload freight for 180 days from the day it has departed Cuba. Section 515.559 is amended to reflect the CDA's prohibitions on the issuance of most licenses for trade with Cuba under that section to entities that are owned or controlled by a U.S. person and located in third countries. Such licenses may be granted only for transactions based on contracts entered into before October 23, 1992, or for other transactions authorized by the CDA involving the exportation of medicine or medical equipment, or telecommunications equipment. Section 515.571 is added to authorize vessels to enter the United States after calling in Cuba where the vessels' trade with Cuba was authorized by the U.S Treasury Department or by the U.S. Commerce Department consistent with the requirements of the CDA.

Because the CDA amends section 16 of the Trading With the Enemy Act, 50 U.S.C. App. 16, to permit the imposition of civil monetary penalties and civil forfeiture, Subpart G is extensively revised to establish the procedures governing the imposition of civil penalties. In addition, § 515.417 is added to the Regulations to provide an interpretation of the limitations contained in the CDA on the use of civil penalties.

Section 1705 of the CDA authorizes certain transactions for the support of the Cuban People. Additional regulations implementing section 1705 will be issued by the Treasury Department and other agencies concerning telecommunications, exports of donations of food, and exports of medicine and medical equipment.

Because this rule involves a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

The rule is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act. For this reason, the collections of information contained in §§ 515.703 and 515.704 are being submitted to the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments concerning the collection of information and the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to OMB, Paperwork Reduction Project (1505-****), Washington, DC 20503, with copies to the Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW.—Annex, Washington, DC 20220. Any such comments should be submitted no later than August 30, 1993. Notice of OMB action on these requests will be published in the **Federal Register**.

The collections of information in this rule are contained in §§ 515.703 and 515.704. This information is required by the Office of Foreign Assets Control for civil penalty purposes to determine whether and to what extent a civil penalty is appropriate. The likely respondents are individuals and business organizations. Estimated total annual reporting burden for §§ 515.703 and 515.704: 100 hours.

The estimated annual burden per respondent varies from one to four hours, depending on individual circumstances, with an estimated average of two hours.

Estimated number of respondents: 50.
Estimated annual frequency of response: 1.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Cuba, Exports, Foreign trade, Penalties, Shipping, and Vessels.

For the reasons set forth in the preamble, 31 CFR part 515 is amended as set forth below:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 is revised to read as follows:

Authority: 50 U.S.C. App. 5; secs. 1701–12, Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6001–10); 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

Subpart B—Prohibitions

2. Section 515.207 is revised to read as follows:

§ 515.207 Entry of vessels engaged in trade with Cuba.

Except as specifically authorized by the Secretary of the Treasury (or any person, agency or instrumentality designated by him), by means of regulations, rulings, instructions, licenses or otherwise,

(a) No vessel that enters a port or place in Cuba to engage in the trade of goods or the purchase or provision of services, may enter a U.S. port for the purpose of loading or unloading freight for a period of 180 days from the date the vessel departed from a port or place in Cuba; and

(b) No vessel carrying goods or passengers to or from Cuba or carrying goods in which Cuba or a Cuban national has an interest may enter a U.S. port with such goods or passengers on board.

Subpart D—Interpretations

3. Section 515.417 is added to read as follows:

§ 515.417 Limitations on the use of civil penalties.

(a) As noted in § 515.701(a)(5), section 16 of the Trading With the Enemy Act provides that civil penalties and civil forfeiture for violations subject to such civil penalties may not be imposed for:

(1) Newsgathering, research, or the export or import of, or transmission of information or informational materials; or

(2) Clearly defined educational or religious activities, or activities of recognized human rights organizations, that are reasonably limited in frequency, duration, and number of participants.

Note: The licensing policy governing travel transactions is contained in § 515.560.

(b) If a person who engages in a transaction related to activities identified in § 515.701(a)(5) (i) or (ii) engages in a similar transaction after notice that a license is required but without securing such a license, that person and any unlicensed person who participates in the subsequent transaction with notice of the requirement for a license will be subject to civil or other penalties for transactions that violate the prohibitions contained in this part.

(c) Persons who engage in prohibited transactions related to activities described in § 515.701(a)(5) may be subject to criminal penalties or other penalties as appropriate.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

4. In § 515.559, the section heading is revised, paragraphs (a) through (c) are redesignated as paragraphs (b) through (d) and a new paragraph (a) is added to read as follows:

§ 515.559 Transactions by U.S.-owned or controlled foreign firms with Cuba.

(a) Effective October 23, 1992, no specific licenses will be issued pursuant to paragraph (b) of this section for transactions between U.S.-owned or controlled firms in third countries and

Cuba for the exportation to Cuba of commodities produced in the authorized trade zone or for the importation of goods of Cuban origin into countries in the authorized trade zone, unless, in addition to meeting all requirements of paragraph (b), one or more of the following conditions are satisfied:

(1) The contract underlying the proposed transaction was entered into prior to October 23, 1992;

(2) The transaction is for the exportation of medicine or medical supplies from a third country to Cuba, which shall not be restricted:

(i) Except to the extent such restrictions would be permitted under section 5(m) of the Export Administration Act of 1979 or section 203(b)(2) of the International Emergency Economic Powers Act if the exportation were subject to these provisions;

(ii) Except in a case in which there is a reasonable likelihood that the item to be exported will be used for purposes of torture or other human rights abuses;

(iii) Except in a case in which there is a reasonable likelihood that the item to be exported will be reexported; or

(iv) Except in a case in which the item to be exported could be used in the production of any biotechnological product; and

(v) Except in a case where it is determined that the United States Government is unable to verify, by on-site inspection or other means, that the item to be exported will be used for the purpose for which it was intended and only for the use and benefit of the Cuban people, but this exception shall not apply to donations for humanitarian purposes to a nongovernmental organization in Cuba.

(3) The transaction is for the exportation of telecommunications equipment from a third country, when the equipment is determined to be necessary for efficient and adequate telecommunications service between the United States and Cuba.

* * * * *

5. Section 515.560(b) is revised to read as follows:

§ 515.560 Certain transactions incident to travel to and within Cuba.

* * * * *

(b) *Specific Licenses.* Specific licenses authorizing the transactions in paragraph (c) of this section will be issued in appropriate cases to persons desiring to travel to Cuba for humanitarian reasons, for clearly defined educational or religious activities, for activities of recognized human rights organizations, for purposes of public performances, public exhibitions or similar activities, or for purposes related to the export, import, or transmission of information or informational materials.

* * * * *

6. Section 515.571 is added to read as follows:

§ 515.571 Certain vessel transactions authorized.

Unless a vessel has otherwise engaged in transactions that would prohibit entry pursuant to § 515.207, § 515.207 shall not apply to a vessel that is:

(a) Engaging in trade with Cuba authorized by licenses issued pursuant to § 515.559, or

(b) Carrying donations of food to nongovernmental organizations or individuals, or

(c) Carrying medicine or medical equipment or telecommunications supplies, the exportation of which has been authorized by the Department of Commerce.

7. Subpart G is revised to read as follows:

Subpart G—Penalties

Sec.

515.701 Penalties.
515.702 Prepenalty notice.
515.703 Presentation responding to prepenalty notice.
515.704 Hearing.
515.705 Penalty notice.
515.706 Judicial Review.
515.707 Referral to United States Department of Justice; administrative collection measures.

Subpart G—Penalties

§ 515.701 Penalties.

(a) Attention is directed to section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16), which provides that:

(1) Whoever shall willfully violate any provision of that act or any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of that act shall, upon conviction, be fined not more than $1,000,000 or, if a natural person, be fined not more than $100,000 or imprisoned for not more than 10 years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall, upon conviction, be fined not more than $100,000 or imprisoned for not more than 10 years, or both.

(2) Upon conviction, any property, funds, securities, paper, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, concerned in a violation of the act may be forfeited to the United States.

(3) The Secretary of the Treasury may impose a civil penalty of not more than $50,000 on any person who violates any license, order, or regulation issued under that act;

(4) Any property, funds, securities, paper, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation subject to a civil penalty issued pursuant to paragraphs (a)(3) and (4) of this section shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States Government.

(5) The penalties described in paragraphs (a)(3) and (4) of this section may not be imposed for:

(i) Newsgathering, research, or the export or import of, or transmission of information or informational materials; or

(ii) For clearly defined educational or religious activities, or activities of recognized human rights organizations, that are reasonably limited in frequency, duration, and number of participants. See § 515.417.

(b) Attention is directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

§ 515.702 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Trading with the Enemy Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty and/or forfeiture. The prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state

the amount of the proposed monetary penalty and/or forfeiture.

(2) *Right to make presentation or request a hearing.* The prepenalty notice also shall inform the person of his right to make a written presentation within 30 days of mailing of the notice as to why a monetary penalty and/or forfeiture should not be imposed, or, if imposed, why it should be in a lesser amount than proposed. In addition or alternatively, within 30 days of mailing of the notice, the person may request an agency hearing conducted pursuant to 5 U.S.C. 554–557 to present his defenses to the imposition of a penalty or forfeiture and to offer any other information that he believes should be included in the agency record prior to a final determination concerning the imposition of a penalty or forfeiture.

(3) *Right to discovery.* The prepenalty notice also shall inform the person of his right prior to a hearing to review documents relied on by the agency in making its determination to issue the prepenalty notice. The availability of such documents is subject to the agency's assertion of privileges normally available to the agency.

§ 515.703 Presentation responding to prepenalty notice.

(a) *Time within which to respond.* The named person shall have 30 days from the date of mailing of the prepenalty notice to make a written presentation to the Director.

(b) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty or forfeiture should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

§ 515.704 Hearing.

(a) The named person shall have 30 calendar days from the date of mailing of the prepenalty notice to request a hearing.

(b) The hearing shall be conducted in a manner consistent with 5 U.S.C. 554–557.

§ 515.705 Penalty notice.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice and any relevant facts, or the record of the hearing and the determination of the hearing officer, the Director determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no monetary penalty or forfeiture will be imposed.

(b) *Violation.* If, after considering any presentations made in response to the prepenalty notice and any relevant facts, or the record of the hearing and the determination of the hearing officer, the Director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of the imposition of the monetary penalty and/or forfeiture to that person.

§ 515.706 Judicial Review.

Any person may seek judicial review as provided under 5 U.S.C. 702 for a penalty imposed pursuant to this part.

§ 515.707 Referral to United States Department of Justice; administrative collection measures.

In the event that the person named does not pay the penalty imposed pursuant to this part within 30 days of the mailing of the written notice of the imposition of the penalty, the matter shall be referred for administrative collection measures or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Dated: May 20, 1993.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: May 25, 1993.

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 93–15212 Filed 6–24–93; 2:17 pm]

BILLING CODE 4810-25-W

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300249A; FRL–4159–9]

RIN 2070–AB78

Aldicarb; Revocation of Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document removes the tolerance for residues of the pesticide aldicarb [2-methyl-2-(methylthio)propionaldehyde-*O*-(methylcarbamoyl)oxime], also known as Temik, and its cholinesterase-inhibiting metabolites 2-methyl-2-(methylsulfinyl) propionaldehyde-*O*-(methylcarbamoyl) oxime and 2-methyl-2-(methylsulfonyl) propionaldehyde-*O*-(methylcarbamoyl) oxime in or on the raw agricultural commodity bananas. Rhone-Poulenc AG Co., the sole registrant of aldicarb, has stopped world-wide sale of aldicarb for use on bananas.

EFFECTIVE DATE: This regulation becomes effective June 29, 1993.

ADDRESSES: Written objections, identified by the document control number, [OPP-300249A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Jeff Morris, Special Review and Reregistration Division (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Crystal Station #1, 3rd Floor, 2800 Jefferson Davis Hwy., Arlington, VA, (703)-308-8029.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 15, 1992 (57 FR 31346), EPA issued a proposed rule to revoke the aldicarb tolerance for bananas under 40 CFR 180.269 pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a). EPA initiated this rulemaking for two reasons.

First, it is EPA's general policy to revoke tolerances associated with pesticide uses which have been cancelled (40 CFR 180.32(b)). Rhone-Poulenc, the sole registrant of aldicarb, withdrew payment for continued aldicrab use on bananas in March 1992, and the registrations have been cancelled. Second, evidence submitted by Rhone-Poulenc shows that there is a likelihood that residues above the tolerance level would result following aldicarb applications at the established use rates, and EPA is concerned about the potential risk of poisoning incidents to the U.S. population consuming bananas containing aldicarb residues at levels above the tolerance. Rhone-Poulenc responded to these concerns by withdrawing world-wide sale of aldicarb for use on bananas in 1991. In March 1992, Rhone-Poulenc withdrew payment for continued aldicarb use on bananas, and the registrations have been cancelled. It is EPA's general policy to revoke tolerances associated with pesticide uses that have been cancelled (40 CFR 180.32(b)). Therefore, EPA does not believe that there are any legally treated domestic or international bananas still in channels of trade.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance revocation will protect the public health. Therefore, the tolerance is removed as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 21, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides, and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.269 [Amended]

2. Section 180.269 *Aldicarb; tolerances for residues* is amended in the table therein by removing the entry "bananas."

[FR Doc. 93–15262 Filed 6–28–93; 8:45 am]

BILLING CODE 6560-50-F-M

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 670, 671 and 672

Conservation of Antarctic Animals and Plants; Waste Regulation; Enforcement and Hearing Procedures

AGENCY: National Science Foundation (NSF).

ACTION: Final rule.

SUMMARY: NSF is issuing a final rule that amends its regulations to add provisions governing waste management and waste disposal in Antarctica. These changes implement the provisions of the Antarctic Conservation Act that require the Director of NSF to promulgate regulations designating, and governing the release of, pollutants in Antarctica.

EFFECTIVE DATE: March 1, 1994, for nongovernmental activities, and August 15, 1993, for governmental activities; except that the provisions of 45 CFR 671.4 shall not apply to governmental activities covered by permit applications submitted no later than August 15, 1993, until NSF takes final action on those applications.

FOR FURTHER INFORMATION CONTACT: Miriam M. Leder, Office of the General Counsel at 202–357–9435.

SUPPLEMENTARY INFORMATION: On July 31, 1992, the National Science Foundation (NSF) published a proposed rule governing waste management and waste disposal in Antarctica, and invited public comment on that proposed rule. 57 FR 33918 (July 31, 1992). NSF received written comments from six government agencies (the U.S. Environmental Protection Agency (EPA), the Department of the Navy (Navy), the U.S. Department of Justice (DOJ), the Marine Mammal Commission (MMC), the United States Department of the Interior, and the United States Arms Control and Disarmament Agency), and from one non-governmental organization (the Environmental Defense Fund (EDF)). NSF considered each of the comments submitted, and those determined to be significant are discussed below. Comments that are generally laudatory or generally critical of the rule, or that offer editorial suggestions not affecting the meaning of a provision, are not specifically addressed.

For ease of reference, general comments are discussed first, and comments on specific regulatory provisions are discussed in the order in which those provisions appear in the rule.

A. General Comments

Fulfillment of Statutory Obligation

EDF claims this rule does not fulfill NSF's obligation under the ACA to issue regulations identifying pollutants and prescribing measures controlling their discharge. NSF does not agree. The rule clearly defines various categories of pollutants (banned substances, designated pollutants and waste) and imposes conditions on their use and release in Antarctica.

Authority to Issue Regulations

This rule implements many of the requirements of Annex III of the Protocol on Environmental Protection to the Antarctic Treaty (the "Protocol"). EDF states that the ACA does not give NSF authority to implement Annex III of the Protocol, and appears to imply that NSF does not have the statutory authority to issue this rule. That is simply not the case. While the ACA does not give NSF authority to implement the Protocol per se, it does give NSF broad authority to promulgate regulations governing waste management and waste disposal practices in Antarctica, and issuing this rule is well within the bounds of that authority.

Consultation with EPA

EDF believes NSF should consult with EPA in connection with the issuance of this rule. NSF agrees and has done so.

Specific Criteria/Standards

Several commenters suggest that the final rule include specific standards or criteria upon which NSF should base its permit decisions. For example, EPA recommends that NSF include an explanation of the basis upon which it will determine whether a substance

poses a present or potential hazard; that it define the phrase "to the maximum extent practicable;" and that it specify performance and design standards for incineration. Similarly, EDF feels the rule should identify specific, quantitative criteria governing the discharge of pollutants, and the Navy, EDF and EPA all believe the provision requiring retrograde of "waste containing harmful levels of heavy metals or acutely toxic or harmful persistent compounds" (Section 671.12(a)(4)) requires more precise definitions.

Unfortunately, NSF is not able to identify specific, quantitative criteria for these items at this time. As described in the "SUPPLEMENTARY INFORMATION" section of the proposed rule, there has never been a comprehensive regulatory scheme in place to govern waste management and waste disposal in Antarctica, and this rule represents a starting point for NSF. As NSF gains experience in administering the rule, it will be better able to identify specific criteria that are appropriate for Antarctic operations. Public comments on permit applications will also help NSF identify specific criteria and refine definitions. While many definitions, standards and criteria remain couched in general terms for the time being, NSF will develop more detailed standards and criteria. Comments that recommend the inclusion of additional criteria and standards are discussed below only if changes were made in response to those comments.

B. Comments on Specific Regulatory Provisions

Section 671.3 Definitions

Banned substances. EDF believes additional items should be added to the list of banned substances, and cites as examples ash, hazardous wastes and toxic chemicals. EDF does not, however, explain why it believes these substances must be banned, and NSF does not feel it necessary or appropriate to do so. The Antarctic environment is adequately protected by requiring that these substances be controlled while in Antarctica, and retrograded from Antarctica for disposal.

EPA found the rule's definition of banned substances inconsistent with the Protocol's requirements. Specifically, it felt that banned substances should include pesticides (other than those required for scientific, medical or hygiene purposes), and that the words "similar forms of packaging" should be used in the definition, rather than "similar loose packing materials." NSF has added pesticides to the list of banned substances, but has not changed its description of banned polystyrene packaging material. The Protocol's ban on these materials arose out of a concern that polystyrene beads, chips and similar materials could escape more easily into the Antarctic environment, and the rule, therefore, prohibits the introduction of this type of material into Antarctica. This concern does not exist for other types of polystyrene packaging material, which may be used in Antarctica, but retrograded for disposal.

Designated pollutant. EPA and EDF suggest that substances which exhibit a hazardous waste characteristic (as defined in 40 CFR part 261, subparts B and C—regulations issued under the Resource Conservation and Recovery Act (RCRA)) should be included as designated pollutants since some of those substances are likely to be managed in Antarctica. RCRA regulations are intended to ensure the safe disposal of potentially harmful substances. However, because of the vast differences between environmental conditions in the United States, and environmental conditions in Antarctica, it might not always make sense, from the standpoint of environmental protection, to regulate substances the same way in both places. Since substances displaying hazardous waste characteristics are retrograded to the United States for ultimate disposal, NSF has revised the definition of a designated pollutant to include these substances.

EPA also suggested that the definition of designated pollutants reference ocean disposal regulations listing hazardous substances under the Marine Protection, Research, and Sanctuaries Act (MPRSA), and regulations promulgated under the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) which define hazardous substances. NSF does not believe it necessary to cross reference these authorities since the MPRSA, and regulations issued thereunder, already apply to ocean disposal in Antarctica, most pesticides are banned from introduction into Antarctica, and most substances listed under TSCA are already picked up by the regulations.

Harmful pollutant. The proposed rule's use of the terms "designated pollutant" and "harmful pollutant" appears to have confused some commenters. As EDF pointed out, the proposed rule's definition of a "designated pollutant" did not include substances exhibiting a hazardous waste characteristic. The definition of a "harmful pollutant" was intended to include those, and possibly other, substances. In the final rule, however, the definition of a "designated pollutant" includes substances exhibiting a hazardous waste characteristic. As a result, there is no longer a compelling need to establish an additional category of pollutants (i.e., those that may pose a substantial or potential hazard to human health, living resources, marine life and the environment), and the "harmful pollutant" category has been eliminated from the final rule. Should the Director determine that a substance is not included in the definition of a designated pollutant, but, nevertheless, may pose a hazard to health or the environment, § 671.14(b) of the final rule allows the Director to designate that substance a "designated pollutant."

Hazardous waste. Both EPA and the Navy consider the term confusing, since U.S. domestic environmental law defines it differently. EPA suggests that NSF use a different term (i.e., "Antarctic hazardous waste") to avoid confusion.

NSF has revised the proposed rule to include as a designated pollutant (and, therefore, as a hazardous waste) any substance that exhibits a hazardous waste characteristic under the Solid Waste Disposal Act, as amended by the Resource Recovery and Conservation Act (RCRA). This brings the rule's definition of hazardous waste more in line with definitions used in domestic statutes. NSF has also adopted EPA's suggestion to use the term "Antarctic hazardous waste." It believes that these two changes will reduce the likelihood of confusion.

Master permit. EPA believes the phrase "other expedition activities" is not clear. NSF has replaced that phrase with the word "group" in the final rule.

Station. EPA recommends that the final rule specify whether a USAP facility is a "station" if it is designed to accommodate at least 50 persons at one time, or an average of 50 persons over some unknown time, or something else. The provision has been revised to specify that a "station" is a facility designed to accommodate at least 50 persons "at any one time." EPA also questions whether the 50 person limit is consistent with the requirements of Article 5(1)(b) of Annex III of the Protocol, which provides for maceration of sewage and domestic liquid wastes generated "* * * in a station where the average weekly occupancy over the austral summer is approximately 30 individuals or more". NSF does not believe there is any inconsistency. Although the rule defines a "station" as one designed to accommodate at least 50 people, it includes the Protocol's

requirement on maceration in § 671.12(c).

Waste. EPA suggests that NSF consider material a waste until it is recycled, or, alternatively, that NSF establish limits for materials thought suitable for recycling. NSF has revised the definition to exclude materials to be recycled or reused only if they are appropriately stored, and are actually recycled or reused within three years.

EPA also believes the phrase "* * * no longer be used for any useful purpose" is too vague, and that any reuse constituting disposal should be addressed in the rule. NSF believes its phraseology is sufficiently clear, and, based on its experience in administering the U.S. Antarctic Program, does not believe reuse constituting disposal need be specifically addressed.

EDF considers the definition of waste "curious" since it excludes substances reused in a manner different than their initial use. It then asks whether fuel, which may have been originally intended to operate vehicles or aircraft, could be used to ignite open pit burns and not be considered a waste. If open pit burns were allowed (see § 671.12(h)), then fuel used to ignite those burns would not be considered waste. As indicated in Section 671.12(h), open burning is prohibited at all permanent stations; will be phased out at other locations by March, 1994; and, until March, 1994, must be conducted in accordance with specified restrictions.

U.S. citizen. The Department of the Interior suggested a revised definition of "U.S. citizen". While that definition may be more accurate than the one used in this rule, NSF must continue to define the term "U.S. citizen" in a manner consistent with the ACA's definition. Accordingly, no change was made to this provision.

Pollutants, generally. EPA suggests adding banned substances to the general definition of pollutants, and NSF has done so.

Section 671.4 Prohibited Acts

The Navy questions whether proposed § 671.4 prohibits the shipboard use of banned substances, or requires a permit for the shipboard use of potentially harmful pollutants. It was not NSF's intention to ban, or require a permit for, the shipboard use of various substances that are never removed from the vessel. The definition of the term "use" in the final rule now excludes this type of use.

The Navy also urges NSF to modify proposed Section 671.4 so that only intentional, willful or negligent releases (and not accidental ones) are deemed unlawful. NSF agrees that willful violations of this rule are more serious than accidental ones. The drafters of the ACA also recognized this fact, and, therefore, considered violations to be criminal, only if willfully committed. 16 U.S.C. 2408. Under the ACA, civil penalties may be assessed against persons who commit accidental violations, and, for purposes of consistency, this rule considers such violations to be unlawful as well. NSF will take into account whether or not a violation is intentional, negligent, or merely accidental, in determining what enforcement action is appropriate.

Section 671.5 Exceptions

EPA, EDF and MMC all express confusion over the intent of proposed § 671.5(a), which provides that permits are not required for activities of individuals already authorized under permits issued to different parties. This exception was intended to allow an expedition member, for example, to conduct activities under a permit issued to the expedition leader. However, the same result can be achieved if the permit itself specifies persons who are authorized to conduct permitted activities. Because the exception is obviously confusing to many commenters, it has been omitted from the final rule, and NSF will require greater specificity in the permit itself.

EDF considers proposed § 671.5(b) acceptable only if it exempts activities that are already permitted by the Coast Guard under the Act to Prevent Pollution from Ships (APPS). EDF is concerned that U.S. tour operators use vessels in Antarctica that are not subject to APPS, and believes their activities should, therefore, fall within the requirements of this rule. However, this rule deals primarily with land-based waste disposal and waste management activities, and APPS deals with disposal from ships. The fact that foreign vessels chartered by U.S. tour groups are not subject to APPS should be addressed in the context of that statute, rather than the ACA.

Section 671.6(a) General Content of Permit Applications

EDF suggests that permit applications also include the applicant's reasons for using or releasing designated pollutants or wastes in Antarctica, alternatives that would not result in the use or release of such substances, and reasons the alternatives cannot and are not being pursued and implemented. NSF's environmental assessment regulations (45 CFR part 641) already require it to consider these factors for activities that have at least a minor or transitory impact on the Antarctic environment. In other cases, NSF believes it would be unduly burdensome to require this information.

EDF also objects to the provision allowing the Director to waive any requirement for information. However, NSF believes the Director must have discretion to waive requirements for information when deemed necessary, since the nature of the Antarctic environment and complexities of Antarctic operations, may make it impossible to provide all information requested in a permit application. As a result, there is no change to this provision in the final rule.

EPA suggests strengthening subsections (a)(2) and (3) by including requirements in both sections for monitoring compliance and for contingency plans for controlling releases. Subsection (a)(2) applies to all waste (including Antarctic hazardous wastes), so it is not necessary to repeat the monitoring requirement in both subsections. With respect to contingency plans, NSF believes it unduly burdensome, and not particularly useful, to require such plans for controlling releases of non-hazardous waste, and has not included that requirement in the final rule.

EPA also suggests that the rule require permanent or temporary cessation of activities causing accidental releases, and that corrective action be taken in response to those releases. However, in many instances, activities causing accidental releases will have to continue, even if additional accidental releases may occur. For example, occasional small fuel spills are inevitable, but neither USAP nor other potential permit applicants can permanently stop using fuel in Antarctica. NSF has revised § 671.12 to add a new subsection (i) that requires corrective action in response to accidental releases, and § 671.10 allows the Director to suspend or revoke a permit if a change in conditions makes the permit inconsistent with the purposes of the ACA or any of the requirements of this rule. NSF believes these provisions adequately address concerns in this area.

Section 671.6(d) Publication of Permit Applications

EPA recommends that the rule be revised to clearly state whether permit modifications are subject to public review and comment. NSF believes that it already does so. Section 671.8(c) provides that applications for permit modifications involving material changes are subject to the same requirements as new applications (i.e., public review and comment).

Applications for other types of modifications are not.

MMC suggests that NSF might wish to routinely forward permit applications to interested agencies (including the Department of State, the Coast Guard, EPA and the National Oceanic and Atmospheric Administration) at the time notice of receipt of an application is published in the **Federal Register**. While NSF intends to consult with interested agencies when appropriate, it does not believe it necessary to forward permit applications to those named agencies in all cases, and has not, therefore, included this requirement in the final rule.

Section 671.7 General Issuance Criteria

EDF believes the regulations must ensure that the issuance of permits is consistent with guidelines recommended by EPA under RCRA. However, NSF does not believe it appropriate or desirable to use the ACA to make RCRA applicable, in its entirety, to Antarctic activities.

EPA suggests that permit issuance criteria be more explicit and rigorous, and that permit applicants at least be required to reduce waste as much as practicable. EPA suggests that relevant provisions in Articles 1(2) through 1(5) of Annex III of the Protocol are appropriate for use as issuance criteria. NSF believes that the obligations set forth in Articles 1(2) through 1(5) of Annex III are implicitly incorporated into § 671.6(a) which requires identification of waste reduction and minimization plans. That section has been revised to include identification of recycling plans as well, and NSF does not believe additional revisions are necessary.

EPA also suggests that the proposed rule include criteria for determining what constitutes a "substantial" hazard to health or the environment, including consideration of the possible cumulative effects of multiple releases. NSF has revised § 671.7(b) to require consideration of the cumulative effects of multiple releases.

Section 671.8(c) Amendment of Applications or Permits

EDF believes all permit modifications should undergo public review. NSF does not agree that public review is necessary for inconsequential permit modifications, and has made no change to this provision.

Section 671.8(d) Public Notice of Issuance or Denial

EDF recommends revising the rule to prohibit permit applicants from taking any action under their permits until 30 days after notice of the issuance of the permit is published in the **Federal Register**. However, NSF believes § 671.6(d) provides adequate opportunity for public comment on permit applications, and it sees no reason to delay the effective date of a permit.

Section 671.9(a) Conditions

Both EPA and DOJ believe the rule should condition permits on compliance with the ACA. NSF agrees, and has revised § 671.9(a) accordingly.

EPA and DOJ also suggest that NSF clearly state that its environmental assessment regulations, issued pursuant to Executive Order 12114, apply to permit decisions. However, NSF does not believe it necessary to cross reference those regulations in this rule. Of course, activities undertaken by NSF pursuant to a permit, or otherwise, are subject to the assessment requirements of those regulations, and where permits are issued to non-USAP persons or entities, the assessment requirements would also apply to permit decisions.

Section 671.9(c) Reports

Both the Navy and EDF believe NSF should specify a time period within which accidental releases must be reported, and the Navy recommends that the rule specify information to be included in the report. NSF agrees. The provision now requires that reports be made within fourteen days, and it also specifies information to be included in the report. Such reports may be made in electronic form or to the NSF station manager in Antarctica.

EDF also believes this provision should be amended to make it clear that reports are available to the public, and that NSF will forward them to any party who commented on the permit application. The reports would, in most cases, be available to the public under the Freedom of Information Act (FOIA), and NSF sees no reason to reiterate that Act's requirements here. Further, while NSF might well forward reports to those who commented on the original applications, NSF believes it unduly burdensome to do so in all cases, and has not included this requirement in the final rule.

EPA suggests broadening the reporting requirements to require reporting of permit violations, and of actual or planned actions to contain and remediate releases. These requirements have been added to the final rule.

Section 671.10 Review, Modification, Suspension, and Revocation.

EDF believes the public should have notice and an opportunity to comment on permit revocations. NSF believes it sufficient to allow the permit holders themselves to contest revocations, and has made no change to this provision in the final rule.

EPA and DOJ both suggested deleting the words "the purposes of" from Paragraph (a)(2). NSF has done so.

EPA also suggests that the proposed rule's requirement for biannual reviews of permits might be too ambitious. NSF intended to conduct biennial reviews, and has revised this provision to reflect this intent.

Section 671.11 Waste Storage

EDF does not believe hazardous wastes should be treated or disposed of in Antarctica under any circumstances. NSF agrees that Antarctic hazardous wastes should not be disposed of in Antarctica, and § 671.12 precludes such disposal. It will consider the extent to which treatment might be appropriate on a case-by-case basis as part of its permit review process.

EPA recommends that the final rule provide details concerning transportation guidelines and regulations that NSF will observe, and suggests the rule be modified to require that Antarctic hazardous waste containers have sufficient structural integrity for the transportation of that waste. Because NSF retrogrades hazardous waste to the United States, the requirements of the Hazardous Waste Transportation Act (including those relating to hazardous waste containers) would begin to apply when the vessel enters U.S. territorial waters. However, NSF does not believe it necessary to include a statement to that effect in the rule itself.

The Navy suggests that this section be amended to include time limits for temporary storage of radioactive and medical waste, to the extent not included with the category of Antarctic hazardous waste. NSF agrees, and has revised § 671.11(b) accordingly.

Section 671.11(b). The Navy and MMC believe the time limits for storing hazardous material are too short, while EDF believes they are too long. NSF believes the time frames provided are the shortest, realistically achievable ones, and it has made no change to this provision in the final rule.

Section 671.11(b)(3). The Navy suggests that the rule require secondary containment for liquid hazardous waste that might be stored for up to 28 months in areas that are not occupied year

round. Section 671.11(b)(3) only allows temporary storage of hazardous wastes for 28 months at Palmer Station—a station that is occupied year round.

Section 671.11(b) (4) and (6). EPA recommends that waste containers be stored in a manner allowing access for inspection and response to emergencies, and that ignitable, reactive or incompatible wastes should be properly segregated and protected from sources of ignition or reaction. NSF has revised the rule in the manner suggested by EPA.

The Navy suggests that § 671.11(b)(4)(iv) and (b)(5) be modified to require formal documentation of weekly inspections, subject to review by the Director at any time. It also recommends that the Director develop and provide a standardized inspection form for this purpose. NSF agrees that weekly inspections should be documented, and has modified the rule accordingly. It does not believe it necessary, however, to require the Director to develop a specific form for this purpose.

Section 671.11(b)(5). EPA believes the rule should require secondary containment for tanks and container storage areas, requiring all tanks to have monitoring and leak detection devices (not just to the extent available), and require the preparation of contingency plans addressing potential accidental release or emergencies. The rule already requires permit applicants to submit contingency plans for controlling accidental releases. As to secondary containment and leak detection devices, it is not possible at this time for USAP to provide secondary containment or monitoring and leak detection devices for all tanks and container storage areas. NSF will consider what is appropriate as permit applications are submitted, but it has not made this suggested change to the final rule.

Section 671.12 Waste Disposal

EPA believes that the rule is not clear as to who is responsible for determining what satisfies "the maximum extent practicable" test, and for determining what constitutes waste containing harmful levels of heavy metals or acutely toxic or harmful persistent compounds; whether those determinations are subject to public review and comment; and whether they are made prior to permit issuance, or after a permitted activity has begun.

Permit applications must include information on types and concentrations of wastes to be released and arrangements for waste management (see § 671.6(a) (2) and (3)), and the public will be given notice of the availability of permit applications, and an opportunity to comment on them (see § 671.6(d)). NSF will make the determinations referred to by EPA before permits are issued.

EDF believes air emissions are not covered by this rule. In fact, the term "release" includes air emissions, and permits are required for such releases.

Section 671.12(a). The Navy suggests modifying the disclaimer at the end of § 671.12(a) to read "* * * paragraphs (a)(7) and (a)(8) shall not apply if the Director determines that the removal of such wastes * * *." NSF has done so in the final rule.

The Navy also believes domestic regulatory restrictions may make it difficult, prohibitively expensive, or even impossible to dispose of USAP hazardous and radioactive waste in the United States. Nevertheless, NSF is committed to finding a way to properly dispose of these wastes in the United States.

EPA believes the term "non-usable fuel drum" in § 671.12(a)(8) requires a more precise definition. NSF's intent was to exclude fuel drums that were to be reused in Antarctica from the requirements of subsection 671.12(a)(8). However, because these drums would not be considered "waste" in any case, it is not necessary to qualify the term "fuel drums", and the words "damaged or non-usable" have been deleted from the final rule.

Section 671.12(b). EPA comments that § 671.12 (b) and (c) allow NSF to continue its current practice of disposing of sewage and domestic liquid wastes into the sea, and states that this practice is inconsistent with Article 2(2) of Annex III of the Protocol which states that "* * * sewage and domestic liquid wastes, shall, *to the maximum extent practicable* [emphasis added], be removed from [Antarctica]." NSF believes its current practice is fully consistent with the requirements of Article 2(2), since it is simply not practicable to retrograde the sewage and domestic liquid waste that is generated by USAP—over 1,100 persons occupy McMurdo Station alone during the austral summer.

Section 671.12(c). MMC believes the phrase "adversely affect the local environment" requires more precise definition, and suggests the following in its place: "provided such disposal does not alter the species composition or abundance of benthic flora and fauna, or result in deposition of potentially harmful contaminants in sediments more than (one-tenth, one-quarter, one-half, one, two) miles from the discharge site." NSF has no empirical data at this point that would allow it to specify distances as suggested by MMC. If, in the future, monitoring or other data is collected that would allow NSF to establish specific distances, it will consider a revision to this provision.

EPA states that maceration does not produce biological process byproducts, and suggests that the last sentence of § 671.12(c) either be prefaced by the qualifier "If biological processes are considered acceptable * * *" or be modified by replacing the reference to biological processes with a reference to primary-treated wastewater effluent and sludge. Maceration does not, in fact, produce primary-treated wastewater effluent or sludge—it cuts down the size of particles, but does not provide any treatment. However, NSF has revised this section to add the qualifier "If biological treatment processes are used" to this section.

Section 671.12(e). EDF believes incineration should be prohibited in all cases in Antarctica. However, NSF does not believe such a blanket prohibition is advisable at this time. Incineration may be an appropriate, environmentally sound waste management practice under certain circumstances. NSF will make this determination on a case-by-case basis, each time it receives a permit application that contemplates incineration.

The Navy questions whether incineration of medical waste, which might be permissible under this section, would be consistent with the intent of the ACA and Protocol. Neither the ACA nor the Protocol address the issue of incineration of medical waste, and NSF does not believe that either intended to prohibit the incineration of medical waste. Of course, USAP does not currently incinerate its medical waste. If it, or any other permit applicant, desires to do so in the future, NSF will consider the benefits and detriments of this practice, and decide whether or not to allow it at that time.

MMC believes § 671.12(e) can be interpreted to require NSF to adopt all emission standards or equipment guidelines recommended by SCAR or the Committee on Environmental Protection, and suggests modification to avoid this result. However, NSF believes this provision is clear—those standards or guidelines need only be "taken into account", and not adopted. As a result, the suggested revision was not made in the final rule.

NSF has amended § 671.12(e) to allow USAP to continue its current practice of burying certain combustible wastes in snow pits at South Pole Station, but requires that such practice be phased out prior to March 1, 1995.

Section 671.12(f). MMC suggests that where uncertainty exists as to whether ice pits are located on ice-flow lines which may terminate at ice-free areas or in blue-ice areas of high ablation, ice-movement studies or monitoring may be necessary to ensure compliance with § 671.12(f). The Director might require such studies as a condition of granting a permit, but NSF does not believe it necessary to address this issue in the rule itself.

Section 671.12(h). EPA believes the Protocol's interim standards for conducting open burning should be added. NSF agrees, and has revised the rule accordingly.

EDF believes NSF should flatly ban open burning immediately. The rule already bans open burning at permanent stations, and NSF believes a one-year phase out period for field camps is reasonable.

Section 671.13 Waste Management for the USAP

EPA believes that this section could be strengthened by requiring the development of an action plan which coordinates and prioritizes for action the waste classification to be conducted under subparagraph (a), the waste management plans required under subparagraph (b), the inventory of locations of past activities under subparagraph (d), and the cleanup to be conducted under subparagraph (e). While this might be helpful as a management tool, NSF does not believe it necessary to include a provision requiring an action plan in the rule itself.

Section 671.13(a). EPA believes the specified categories of waste do not go far enough in discriminating among waste materials, and that, in particular, they fail to employ the characteristics used in RCRA to identify hazardous wastes. Article 8 of Annex III of the Protocol requires the establishment of a waste disposal classification system, employing the same categories of waste that are used in § 671.13(a). NSF will, of course, comply with other provisions of this rule which require a more rigorous discussion of the types of harmful pollutants and hazardous waste that will be used or released in Antarctica. However, NSF does not believe it necessary to establish additional categories and subcategories of waste for this section.

Section 671.13(b). EDF believes NSF should publish in the **Federal Register** notice of the availability of waste management plans and of inventories of locations of past activities. However, this rule already requires publication of notice of the availability of permit applications, and NSF believes this is sufficient.

Section 671.13(c). EDF believes NSF should commit to cleaning up its past and present waste disposal sites on land and offshore. This rule is designed mainly to deal with prospective releases of pollutants. When the Protocol specifically requires that action be taken with respect to certain past activities, those requirements are also included in this rule. In other cases, however, they are not.

Section 671.13(e). MMC suggests adding the following exception to the general clean-up requirement—"Remove any structure or waste from remote areas where the effort would pose substantial risk to personnel or equipment, and provide little or no benefit with regard to environmental protection." While NSF agrees that this might be a desirable addition, the requirements of § 671.13(e) track the requirements of Article 1(5) of Annex III of the Protocol. The exception suggested by MMC would be inconsistent with those requirements. Therefore, it was not included in the final rule.

Section 671.14 Annual Review

EDF believes the rule's tests for specifying pollutants under the ACA are much more stringent than the statutory standard for designation of pollutants—substances "liable * * * to create hazards to human health, to harm living resources or marine life, to damage amenities, or to interfere with other legitimate uses of Antarctica." NSF agrees, and has modified the rule accordingly.

Section 671.15 Publication of Preliminary Determination

MMC believes the notice provision should allow for longer comment period, at NSF's discretion. NSF can always extend the comment period at its discretion, and it is not necessary to specifically say so in the rule itself.

Section 671.16 Designation and Redesignation

EDF believes that NSF's decision to designate, redesignate or remove a substance from the relevant lists should not become effective until at least 30 days after notice of the decision is published in the **Federal Register**. NSF agrees, and has revised this section accordingly.

Section 671.17 Cases of Emergency

EPA does not believe NSF has the authority to allow discharges of pollutants for which permits have not been obtained, unless, as stated in the ACA, they are "committed, under emergency circumstances, to prevent the loss of human life." NSF does not believe this precludes it from establishing additional exceptions—it merely requires it to include at least that exception in the rule.

Both EDF and EPA recommend that this section require publication of a **Federal Register** notice to notify the public of acts or omissions resulting from emergencies. NSF agrees, and has revised this section accordingly.

As required by the Antarctic Conservation Act, NSF consulted with the Department of State prior to preparing this notice.

I have determined that this is not a major rule as defined by Executive Order 12291.

I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule will not have a significant impact on a substantial number of small businesses, because fewer than ten U.S. businesses are expected to apply for permits during any one year.

I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does apply. The Foundation estimates that five businesses and nongovernmental entities are likely to apply for a permit during any given year. The Foundation further estimates that preparing each required permit application will take twelve hours for a total burden of sixty hours.

List of Subjects

45 CFR Part 670:

Antarctica.

45 CFR Part 671:

Antarctica.

45 CFR Part 672:

Administrative practice and procedure, Antarctica.

Dated: June 21, 1993.

Lawrence Rudolph,

Acting General Counsel, National Science Foundation.

For the reasons set forth in the preamble, NSF hereby amends 45 CFR part 670, and adds 45 CFR parts 671 and 672 as follows:

PART 670 [AMENDED]

1. The authority citation for part 670 continues to read as follows:

Authority: Sec. 11, Pub. L. 81–507, 64 Stat. 149 (42 U.S.C. 1870) as amended: Pub. L. 95–541, 92 Stat. 2048 (16 U.S.C. 2401).

2. 45 CFR part 670, subpart K, consisting of §§ 670.50 through 670.72, is redesignated as new part 672, consisting of §§ 672.1 through 672.22, and an authority citation is added

following the table of contents, reading as follows:

PART 672—ENFORCEMENT AND HEARING PROCEDURES; TOURISM GUIDELINES

* * * * *

Authority: 16 U.S.C. 2401 et seq.

* * * * *

3. Part 671 is added to read as follows:

PART 671—WASTE REGULATION

Subpart A—Introduction

Sec.

671.1 Purpose of regulations.
671.2 Scope.
671.3 Definitions.

Subpart B—Prohibited Acts, Exceptions

671.4 Prohibited Acts.
671.5 Exceptions.

Subpart C—Permits

671.6 Applications for permits.
671.7 General issuance criteria.
671.8 Permit administration.
671.9 Conditions of permit.
671.10 Review, modification, suspension and revocation.

Subpart D—Waste Management

671.11 Waste storage.
671.12 Waste disposal.
671.13 Waste management for the USAP.

Subpart E—Designation of Banned Substances; Reclassification of Pollutants

671.14 Annual review.
671.15 Publication of preliminary determination.
671.16 Designation and redesignation of pollutants.

Subpart F—Cases of Emergency

71.17 Cases of Emergency.

Authority: 16 U.S.C. 2405.

Subpart A—Introduction

§671.1 Purpose of regulations.

The purposes of these regulations in part 671 are to protect the Antarctic environment and dependent and associated ecosystems, to preserve Antarctica's value as an area for the conduct of scientific research, and to implement the Antarctic Conservation Act of 1978, Public Law 95–541, consistent with the provisions of the Protocol on Environmental Protection to the Antarctic Treaty, signed in Madrid, Spain, on October 4, 1991.

§671.2 Scope.

These regulations in part 671 apply to any U.S. citizen's use or release of a banned substance, potentially harmful pollutant or waste in Antarctica.

§671.3 Definitions.

(a) *Definitions.* In this part:

Act means the Antarctic Conservation Act of 1978, Public Law 95–541, 92 Stat. 2048 (16 U.S.C. 2401 et seq.)

Antarctic hazardous waste means any waste consisting of or containing one or more designated pollutants.

Antarctica means the area south of 60 degrees south latitude.

Banned substance means any polychlorinated biphenyls (PCBs), non-sterile soil, polystyrene beads, plastic chips or similar loose polystyrene packing material, pesticides (other than those required for scientific, medical or hygiene purposes) or other substance designated as such under subpart E of this part.

Designated pollutant means any substance designated as such by the Director pursuant to subpart E of this part; any pesticide, radioactive substance, or substance consisting of or containing any chemical listed by source, generic or chemical name at 40 CFR 61.01, Table 116.4A of 40 CFR 116.4; subpart D of 40 CFR part 261, 40 CFR 302.4, part 355, and part 372; and any substance which exhibits a hazardous waste characteristic as defined in subparts B and C of 40 CFR part 261; but shall not include any banned substance.

Director means the Director of the National Science Foundation, or an officer or employee of the Foundation designated by the Director.

Incinerate or *Incineration* means the processing of material by mechanisms that (1) involve the control of combustion air and/or fuel so as to maintain adequate temperature for efficient combustion; (2) contain the combustion reaction in an enclosed device with sufficient residence time and mixing for complete processing; and (3) control emission of gaseous or particulate combustion products.

Master permit means a permit issued to a federal agency, or its agents or contractors, or any other entity, covering activities conducted in connection with USAP or other group activities in Antarctica.

NSF or *Foundation* means the National Science Foundation.

Open burning means combustion of any material by means other than incineration.

Permit means a permit issued pursuant to subpart C of this part.

Private permit means any permit other than a master permit.

Protocol means the Protocol on Environmental Protection to the Antarctic Treaty, signed by the United States in Madrid on October 4, 1991, and any and all Annexes thereto, as amended or supplemented from time to time.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping, burying or disposing of a substance, whether intentionally or accidentally..

Station means McMurdo Station, Palmer Station, Amundsen-Scott South Pole Station and any other permanent USAP facility in Antarctica designed to accommodate at least 50 persons at any one time.

Substance means any gas, liquid, or solid, or mixture thereof, including biological material.

Treaty means the Antarctic Treaty signed in Washington, D.C., on December 1, 1959.

United States means the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam and the Trust Territory of the Pacific Islands, including the Federated States of Micronesia and the Commonwealth of the Northern Mariana Islands.

United States Antarctic Program or *USAP* means the United States national program in Antarctica.

U.S. citizen means any individual who is a citizen or national of the United States; any corporation, partnership, trust, association, or other legal entity existing or organized under the laws of any of the United States; and any department agency or other instrumentality of the Federal government or of any State, and any officer, employee, or agent of such instrumentality.

Use means to use, generate or create a substance, or to import a substance into Antarctica, but does not include the shipboard use of a substance, provided that substance is not released or removed from the vessel.

Waste means any substance that will no longer be used for any useful purpose, but does not include substances to be recycled in Antarctica, or substances to be reused in a manner different than their initial use, provided such substances are stored in a manner that will prevent their dispersal into the environment, and further provided that they are recycled, reused or disposed of in accordance with the provisions of this Part within three years. Recycling includes, but is not limited to, the reuse, further use, reclamation or extraction of a waste through a process or activity that is separate from the process or activity that produced the waste.

(b) Pollutants, generally. All banned substances, designated pollutants and waste shall be considered pollutants for purposes of the Antarctic Conservation Act.

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Subpart B—Prohibited Acts, Exceptions

§ 671.4 Prohibited acts.

Unless one of the exceptions stated in § 671.5 is applicable, it is unlawful for any U.S. citizen to:

(a) Use or release any banned substance in Antarctica;

(b) Use or release any designated pollutant in Antarctica, except pursuant to a permit issued by NSF under subpart C of this part;

(c) Release any waste in Antarctica, except pursuant to a permit issued by NSF under subpart C of this part; or

(d) Violate any term or condition of a permit issued by NSF under subpart C of this part, or any term or condition of any of the regulations issued under this part.

§ 671.5 Exceptions

A permit shall not be required for any use or release of designated pollutants or waste allowed under the Act to Prevent Marine Pollution from Ships (33 U.S.C. 1901 et seq.), as amended, or for any shipboard use of banned substances or designated pollutants, provided such substances are not removed from the vessel in Antarctica.

Subpart C—Permits

§ 671.6 Applications for permits.

(a) *General content of permit applications.* Each application for a permit shall be dated and signed by the applicant, and shall include the following information:

(1) The applicant's name, address and telephone number, the business or institutional affiliation of the applicant, or the name, address and telephone number of the president, principal officer or managing partner of the applicant, as applicable;

(2) A description of the types, expected concentrations and volumes of wastes and designated pollutants to be released in Antarctica; the nature and timing of such releases; arrangements for waste management, including, without limitation, plans for waste reduction, minimization, treatment and processing, recycling, storage, transportation and disposal; arrangements for training and educating personnel to comply with these waste management requirements and procedures, and arrangements for monitoring compliance; and other arrangements for minimizing and monitoring the environmental impacts of proposed operations and activities;

(3) A description of the types, expected concentrations and volumes of designated pollutants to be used in Antarctica; the nature and timing of such uses; the method of storage of designated pollutants; and a contingency plan for controlling releases in a manner designed to minimize any resulting hazards to health and the environment;

(4) The desired effective date and duration of the permit; and

(5) The following certification:

"I certify that, to the best of my knowledge and belief, and based upon due inquiry, the information submitted in this application for a permit is complete and accurate. Any knowing or intentional false statement will subject me to the criminal penalties of 18 U.S.C. 1001."

(b) *Address to which application should be sent.* Each application shall be in writing, and sent to: Permits Office, Office of Polar Programs, National Science Foundation, Washington, D.C. 20550.

(c) *Sufficiency of application.* The sufficiency of the application shall be determined by the Director. The Director may waive any requirement for information, or require such additional information as he determines is relevant to the processing and evaluation of the application.

(d) *Publication of permit applications.* The Director shall publish notice in the **Federal Register** of each application for a permit and the proposed conditions of its issuance (including duration). The notice shall invite the submission by interested parties, the Environmental Protection Agency and other federal agencies, within 30 days after the date of publication of notice, of written data, comments, or views with respect to the application. Information received by the Director as a part of any application shall be available to the public as a matter of public record.

§ 671.7 General issuance criteria.

(a) Upon receipt of a complete and properly executed application for a permit, the Director will decide whether and on what conditions he will issue a permit. In making this decision, the Director will carefully consider any comments or suggestions received from interested parties, the Environmental Protection Agency and other federal agencies pursuant to § 671.6(d), and will determine whether the permit requested meets the objectives of the Act, the Protocol, and the requirements of these regulations.

(b) Permits authorizing the use or release of designated pollutants or wastes may be issued only if, based on relevant available information, the Director determines that such use or release will not pose a substantial hazard to health or the environment, taking into account available information on the possible cumulative impact of multiple releases.

§ 671.8 Permit administration.

(a) *Issuance of permits.* The Director may approve an application for a permit in whole or in part, and may condition such approval upon compliance with additional terms and conditions. Permits shall be issued in writing, shall be signed by the Director, shall specify duration, and shall contain such terms and conditions as may be established by the Director and as are consistent with the Act and this part.

(b) *Denial.* An applicant shall be notified in writing of the denial of any permit request or part of a request, and the reason for such denial. If authorized in the notice of denial, the applicant may submit further information, or reasons why the permit should not be denied. Such further submissions shall constitute amendments of the application.

(c) *Amendment of applications or permits.* An applicant or permit holder desiring to have any term or condition of his application or permit modified must submit full justification and supporting information in conformance with the provisions of this Part. Any application for modification of a permit that involves a material change beyond the terms originally requested will be subject to the same procedures as a new application.

(d) *Public notice of issuance or denial.* Within 10 days after the date of the issuance or denial of a permit, the Director shall publish notice of the issuance or denial in the **Federal Register**, including the conditions of issuance or basis for denial, as appropriate.

§ 671.9 Conditions of permit.

(a) *Conditions.* All permits issued pursuant to subpart C of this part shall be conditioned upon compliance with the relevant provisions of the ACA, the Treaty, the Protocol, such specific conditions or restrictions as may be imposed by the Director under § 671.7, and the provisions of subpart D of this part.

(b) *Possession of permits.* Permits issued under this part, or copies of them, must be in the possession of persons to whom they are issued or their agents when conducting the authorized action. Any permit issued shall be shown to the Director or to any other person with enforcement authority upon request.

(c)(1) *Reports.* Permit holders must provide the Director with written reports of:

(i) Any non-permitted release of designated pollutants or waste within fourteen days after the occurrence of such release, including the date, quantity and cause of the release, and plans for remediation;

(ii) The identity and quantity of all designated pollutants removed from Antarctica or otherwise disposed of, and the method of disposal; and

(iii) Any other violations of the terms and conditions of their permits.

(2) The Director may also require permit holders to file reports of activities conducted under their permits. Such reports shall be submitted to the Director not later than June 30 for the preceding 12 month period ending May 31.

§ 671.10 Review, modification, suspension, and revocation.

(a) The Director may modify, suspend or revoke, in whole or in part, any permit issued under this part:

(1) In order to make the permit consistent with any change to any regulation in this Part made after the date of issuance of the permit;

(2) If there is any change in conditions which makes the permit inconsistent with the Act and any regulation in this part; or

(3) In any case in which there has been any violation of any term or condition of the permit, any regulation in this part, or any provision of the Act.

(b) The Director shall review all unexpired permits issued under this part at least biennially to determine whether those permits should be modified, suspended or revoked as set forth in paragraph (a) of this section.

(c) Whenever the Director proposes any modifications, suspensions or revocations of a permit under this § 671.10, the permittee shall be afforded the opportunity, after due notice, for a hearing by the Director with respect to such proposed modification, suspension, or revocation. If a hearing is requested, the action proposed by the Director shall not take effect before a decision is issued by him after the hearing, unless the proposed action is taken by the Director to meet an emergency situation.

(d) Notice of the modification, suspension, or revocation of any permit shall be published in the Federal Register within 10 days from the date of the Director's decision.

Subpart D—Waste Management

§ 671.11 Waste storage.

(a) Pending the treatment, disposal or removal of any wastes pursuant to § 671.12, all wastes shall be contained, confined or stored in a manner that will prevent dispersal into the environment;

(b) All Antarctic hazardous wastes generated at or transported to any USAP station may be temporarily stored at such station prior to the treatment, disposal or removal of any wastes pursuant to § 671.12, provided all such Antarctic hazardous waste is stored in either closed containers or tanks labeled to indicate their contents and the beginning date of accumulation of such waste, and further provided the following conditions are satisfied:

(1) If Antarctic hazardous wastes, radioactive wastes, or medical wastes, are generated at or transported to McMurdo Station, they may be temporarily stored at that station for a period not to exceed 15 months;

(2) If Antarctic hazardous wastes, radioactive wastes, or medical wastes, are generated at or transported to South Pole Station, they may be temporarily stored at that station while awaiting transport to McMurdo Station, for a period not to exceed 15 months;

(3) If Antarctic hazardous wastes, radioactive wastes, or medical wastes, are generated at or transported to Palmer Station, they may be temporarily stored at that station while awaiting transport to McMurdo Station or other disposition, for a period not to exceed 28 months;

(4) Containers holding Antarctic hazardous wastes must be:

(i) In good, non-leaking condition with sufficient structural integrity for the storage of Antarctic hazardous waste;

(ii) Made of or lined with materials which will not react with, and are otherwise compatible with, the Antarctic hazardous waste to be stored, so that the ability of the containers to contain such waste is not impaired;

(iii) Stored in a manner that allows access for inspection and response to emergencies; and

(iv) Inspected at least weekly for leakage and deterioration. All inspections must be appropriately documented.

(5) Tank systems used for storing Antarctic hazardous wastes must be in good, non-leaking condition with sufficient structural integrity for the storing of hazardous wastes; and systems must be inspected weekly to detect corrosion or releases of waste and to collect data from monitoring and leak detection equipment, to the extent available, to ensure that they are functioning properly. All inspections must be appropriately documented. Prior to the expiration of the 15 month period referred to in § 671.11(b)(1), all Antarctic hazardous wastes shall be treated or removed from Antarctica in accordance with § 671.12.

(6) Ignitable, reactive or incompatible wastes shall be properly segregated and protected from sources of ignition or reaction, as appropriate.

(c) All Antarctic hazardous wastes generated at a location other than a permanent station may be temporarily stored at such location for a period not to exceed 12 months, in closed, non-leaking containers marked to indicate their contents. Such containers must be in good condition and made of or lined with material which will not react with and is otherwise compatible with the Antarctic hazardous waste stored therein so as not to impair the ability of the container to contain the waste. Prior to the expiration of the 12 month period referred to above, all such hazardous wastes shall be either:

(1) Treated or processed, disposed of or removed from Antarctica pursuant to § 671.12, or

(2) Removed to a permanent station and temporarily stored at that station in accordance with paragraph (b) of this section.

§ 671.12 Waste disposal.

(a)(1) The following wastes shall be removed from Antarctica:

(i) Radioactive materials;

(ii) Electrical batteries;

(iii) Fuel (both liquid and solid);

(iv) Waste containing harmful levels of heavy metals or acutely toxic or harmful persistent compounds;

(v) Poly-vinyl chloride (PVC), polyurethane foam, polystyrene foam, rubber and lubricating oils, treated timbers and other products containing additives which can produce harmful emissions or releases;

(vi) All other plastic wastes except low density polyethylene containers (such as bags for storing wastes) provided such containers are incinerated in accordance with paragraph (e) of this section;

(vii) Solid, non-combustible wastes; and

(viii) Fuel, oil and chemical drums that constitute waste.

(2) Notwithstanding paragraph (a)(1) of this section, the obligations set forth in paragraphs (a)(1) (vii) and (viii) of this section shall not apply if the Director determines that the removal of such wastes by any practicable option would cause greater adverse environmental impacts than would be caused by leaving them in their existing locations.

(b) All liquid wastes other than sewage and domestic liquid wastes and wastes referred in paragraph (a) of this section shall be removed from

Antarctica to the maximum extent practicable.

(c) Sewage and domestic liquid wastes may be discharged directly into the sea, taking into account the assimilative capacity of the receiving marine environment, and provided that such discharge occurs, wherever practicable, where conditions exist for initial dilution and rapid dispersal, and further provided that large quantities of such wastes (generated in a station where the average weekly occupancy over the austral summer is approximately 30 individuals or more) shall be treated at least by maceration. If biological treatment processes are used, the by-product of such treatment may be disposed of into the sea provided disposal does not adversely affect the local environment.

(d) Residues of introduced animal carcasses, laboratory culture of micro-organisms and plant pathogens, and introduced avian products must be removed from Antarctica unless incinerated, autoclaved or otherwise sterilized.

(e) Combustible wastes not removed from Antarctica other than wastes referred to in paragraph (a) of this section, shall be burnt in incinerators which reduce harmful emissions or discharges to the maximum extent practicable and the solid residue of such incineration shall be removed from Antarctica; provided, however, that USAP may continue to bury such combustible wastes in snow pits at South Pole Station, but must phase out such practices before March 1, 1995. Any emission or discharge standards and equipment guidelines which may be recommended by the Committee for Environmental Protection constituted or to be constituted pursuant to the Protocol or by the Scientific Committee on Antarctic Research shall be taken into account.

(f) Sewage and domestic liquid wastes and other liquid wastes not removed from Antarctica in accordance with other provisions of this section, shall, to the maximum extent practicable, not be disposed of onto sea ice, ice shelves or grounded ice-sheet unless such wastes were generated by stations located inland on ice shelves or on the grounded ice-sheet. In such event, the wastes may be disposed of in deep ice pits if that is the only practicable option, provided the ice pits are not located on known ice-flow lines which terminate at ice-free land areas or in blue ice areas of high ablation.

(g) No wastes may be disposed of onto ice-free areas or into any fresh water system.

(h) Open burning of wastes is prohibited at all permanent stations, and shall be phased out at all other locations by March 1, 1994. If it is necessary to dispose of waste by open burning prior to March 1, 1994, allowance shall be made for the wind direction and speed and the type of waste to be burnt to limit particulate deposition and to avoid such deposition over areas of special biological, scientific, historic, aesthetic or wilderness significance.

(i) Each unauthorized release of waste in Antarctic shall be, to the maximum extent practicable, promptly cleaned up by the person responsible for such release.

§ 671.13 Waste management for the USAP.

(a) In order to provide a basis for tracking USAP wastes, and to facilitate studies aimed at evaluating the environmental impacts of scientific activity and logistic support, the USAP shall classify its wastes in one of the following categories:

(1) Sewage and domestic liquid wastes;

(2) Other liquid wastes and chemicals, including fuels and lubricants;

(3) Solid wastes to be combusted;

(4) Other solid wastes; and

(5) Radioactive material.

(b) USAP shall prepare and annually review and update a waste management plan (including plans for waste reduction, storage and disposal) specifying for each of its permanent stations, field camps and ships (other than small boats that are part of the operations of permanent stations or are otherwise taken into account in existing management plans for ships):

(1) Current and planned waste management arrangements, including final disposal;

(2) Current and planned arrangement for assessing the environmental effects of waste and waste management;

(3) Other efforts to minimize environmental effects of wastes and waste management; and

(4) Programs for cleaning up existing waste disposal sites and abandoned work sites.

(c) USAP shall designate one or more waste management officials to develop and monitor waste management plans and ensure that members of expeditions receive training so as to limit the impact of their activities on the Antarctic environment, and to inform them of the requirements of the Protocol and of this Part.

(d) USAP shall, to the extent practicable, prepare an inventory of locations of past activities (i.e., traverses, fuel depots, field bases, crashed aircraft) so that such locations can be taken into account in planning future scientific, logistic and waste management programs.

(e) USAP shall clean up its past and present waste disposal sites on land and abandoned work sites, except that it shall not be required to:

(1) Remove any structure designated as a historic site or monument; or

(2) Remove any structure or waste in circumstances where the removal would result in greater adverse environmental impact than leaving the structure or waste in its existing location.

(f) USAP shall circulate waste management plans and inventories described in this section in accordance with the requirements of the Treaty and the Protocol.

Subpart E—Designation of Banned Substances; Reclassification of Pollutants

§ 671.14 Annual review.

The Director shall review the list of banned substances and designated pollutants at least annually, and may propose the designation or redesignation of any substance as a banned substance, designated pollutant or other waste, based on the following criteria:

(a) If the Director determines that a substance, including a designated pollutant, poses a substantial immediate hazard to health or the environment and such hazard cannot be eliminated through waste management practices or other methods, or if the Parties to the Protocol or Treaty agree that a substance should be banned from use in Antarctica, the Director may designate such substance a banned substance.

(b) If the Director determines that a substance is liable to create a hazard to health or the environment if improperly treated or processed, stored, transported, or disposed of, the Director may designate such substance a designated pollutant.

(c) If the Director determines that a substance previously designated a banned substance no longer displays the characteristics described in paragraph (a) of this section, the Director may remove such substance from the list of banned substances (to the extent consistent with the provisions of the Protocol), but if the Director determines that such substance has the characteristics described in paragraph (b) of this section, it shall be redesignated a designated pollutant.

(d) If the Director determines that a substance previously designated a designated pollutant no longer displays the characteristics described in

paragraph (b) of this section, the Director may remove such substance from the list of designated pollutants.

(e) In making the determinations referred to in paragraphs (a) through (d) of this section, the Director shall take into account all relevant new information obtained through monitoring activities or otherwise.

§ 671.15 Publication of preliminary determination

Prior to any designation or redesignation of substances pursuant to § 671.14 (including removal of such substances from lists of banned substances or designated pollutants), the Director shall publish notice in the **Federal Register** of any proposed designation or redesignation, including the basis therefor. The notice shall invite the submission by interested parties, the Environmental Protection Agency and other federal agencies, within 30 days after the date of publication of notice, of written data, comments, or views with respect to such action.

§ 671.16 Designation and redesignation of pollutants

After review of any comments or suggestions received from interested parties, the Environmental Protection Agency and other Federal agencies pursuant to § 671.15, the Director will make a final determination to designate and redesignate various substances as set forth above. Within 10 days after the date of such final determination, the Director shall publish notice of any action taken in the **Federal Register**. Such action shall become effective no earlier than thirty days following publication of notice.

Subpart F—Cases of Emergency

§ 671.17 Cases of emergency.

The provisions of this part shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft or other equipment and facilities of high value, or the protection of the environment. Notice of any acts or omissions resulting from such emergency situations shall be reported promptly to the Director, who shall notify the Treaty parties in accordance with the requirements of the Treaty and the Protocol, and publish notice of such acts or omissions in the **Federal Register**.

[FR Doc. 93–15113 Filed 6–28–93; 8:45 am]

BILLING CODE 7555-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 672

[Docket No. 921107–3068; I.D. 062293B]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of sablefish by persons using hook-and-line gear in the Central and Eastern Regulatory areas, Statistical areas 62, 63, 64, and 65, in the Gulf of Alaska (GOA) and is requiring that catches of sablefish be treated in the same manner as prohibited species and discarded. This action is necessary because the shares of the sablefish total allowable catch (TAC) assigned to hook-and-line gear in these areas have been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 23, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Martin Loefflad, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.24(c), the share of the sablefish TAC assigned to hook-and-line gear in the Central Regulatory area was established by the final 1993 interim specifications (58 FR 16787, March 31, 1993) as 7,688 metric tons (mt), the West Yakutat district of the Eastern Regulatory area as 3,638 mt, and the Southeast Outside district of the Eastern Regulatory area as 5,158 mt.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.24(c)(3)(ii), that the shares of the sablefish TAC assigned to hook-and-line gear in the Central and Eastern Regulatory areas have been reached. Therefore, NMFS is requiring that further catches of sablefish by hook-and-line gear in these areas be treated as prohibited species in accordance with § 672.20(e) effective from 12 noon, A.l.t., June 23, 1993, through 12 midnight, A.l.t., December 31, 1993.

Classification

This action is taken under 50 CFR 672.24, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–15206 Filed 6–23–93; 5:06 pm]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 921107–3068; I.D. 062293A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 63 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 24, 1993 through 12 noon, A.l.t., July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The second quarterly allowance of pollock TAC in Statistical Area 63 is 15,200 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1993 second quarterly allowance of pollock TAC in Statistical Area 63 soon will be reached. The Regional Director established a directed fishing allowance of 14,700 mt,

and has set aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 63 is prohibited, effective from 12 noon, A.l.t., June 24, 1993, through 12 noon, A.l.t., July 1, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–15208 Filed 6–24–93; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 921185–3021; I.D. 062293C]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Greenland turbot in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the Greenland turbot total allowable catch (TAC) in the BSAI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 24, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Greenland turbot TAC for the BSAI was established by the final 1993 initial specifications of groundfish (58 FR 8703, February 17, 1993) as 5,950 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Greenland turbot TAC in the BSAI soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 5,450 mt, with consideration that 500 mt will be taken as incidental catch in directed fishing for other species in the BSAI. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Greenland turbot in the BSAI, effective from 12 noon, A.l.t., June 24, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–15207 Filed 6–24–93; 8:45 am]

BILLING CODE 3510–22–M

VOL 58 ISS 123 JE 29 1993 UMI

Proposed Rules

Federal Register
Vol. 58, No. 123
Tuesday, June 29, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1004

[DA-93-17]

Milk in the Middle Atlantic Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This action invites written comments on a proposal to suspend certain provisions of the Middle Atlantic Federal milk marketing order for the months of September 1993 through February 1994. The proposal would make inoperative for those months the requirement that pool distributing plants dispose of at least 40 percent of their receipts as Class I use. As proposed, a pool distributing plant would have to dispose of at least 30 percent of its monthly milk receipts for fluid purposes in these months. The suspension was requested by several cooperatives that represent producers who supply a large portion of the milk for the market. Proponents contend that the action is necessary to assure that producer milk which has been historically associated with the market will continue to be pooled under the order.

DATES: Comments are due no later than July 29, 1993.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-7311.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), suspension of the following provisions of the order regulating the handling of milk in the Middle Atlantic marketing area is being considered for the months of September 1993 through February 1994:

In § 1004.7(a), the words "40 percent in the months of September through February, and" and "in the months of March through August".

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 by the 30th day after publication of this notice in the **Federal Register**.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27 (b)).

Statement of Consideration

The proposed action would suspend certain portions of the pool distributing plant provision of the Middle Atlantic order (Order 4) for the months of September 1993 through February 1994. The suspension would reduce the percentage of a pool distributing plant's receipts that must be disposed of for Class I purposes for each of the months covered by this action to the 30 percent level effective for other months. As proposed, a pool distributing plant would have to use at least 30 percent, rather than 40 percent, of its monthly milk receipts as Class I milk in such months.

The action was requested by several cooperatives that represent about 90 percent of the market's producer milk. Proponents state that since 1990 the percentage of the Middle Atlantic market's producer milk used in Class I has decreased. For example, they indicate that in February 1990, 52 percent of such milk was used in Class I compared with only 45 percent for the same month in 1993.

In further support of their suspension request, proponent cooperatives indicate that two large Order 4 distributing plants with which large volumes of Order 4 diverted milk had been associated recently became regulated under the New York-New Jersey order. Under Order 4, diverted milk is included in the receipts of the plant from which the milk is diverted in determining whether such plant meets the minimum Class I use percentage to qualify as a pool plant. The cooperatives claim that they are experiencing

difficulty associating all of their diverted producer milk with the remaining distributing plants now regulated under the Middle Atlantic order without affecting the pool status of the milk and/or the plants.

Thus, it may be appropriate to suspend the higher Class I utilization standard which applies to fluid milk plants under the Middle Atlantic order in the months of September 1993 through February 1994.

List of Subjects in 7 CFR Part 1004

Milk marketing orders.

The authority citation for 7 CFR part 1004 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: June 23, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–15198 Filed 6–28–93; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Section 2.206 Petitions Requesting Institution of a Proceeding To Modify, Suspend or Revoke a License, or for Such Other Action as May Be Proper; Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) is initiating a review of its regulations and practice governing petitions under 10 CFR 2.206. The first step in that process will be a public workshop where participants from citizen's groups, industry, and government can exchange information on the objectives of the § 2.206 petition process, its effectiveness, and what, if any, revisions should be made to the process. The workshop will be held in Bethesda, Maryland, on July 28, 1993, and will be open to the public.

DATES: Wednesday, July 28, 1993, from 8:45 a.m. to 5:15 p.m.

As discussed later in this notice, the workshop discussions will focus on the issues identified in the background discussion paper developed by the NRC staff. The Commission will accept written comments on the background paper from the public, as well as from workshop participants. Written comments should be submitted by August 27, 1993.

ADDRESSES: Send written comments on the background discussion paper to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays. The background discussion paper is available from Francis X. Cameron (See **FOR FURTHER INFORMATION CONTACT**).

The meeting will be held at the Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland. Phone: (301) 652–2000.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison and Waste Management, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 504–1642.

SUPPLEMENTARY INFORMATION:

Background

The § 2.206 petition is the primary formal method for a member of the public to request Commission review of a potential safety problem with an NRC licensed facility, outside of a licensing or rulemaking proceeding. Any person may file a petition under 10 CFR 2.206 to request that the Commission institute a proceeding to modify, suspend, or revoke a license, or for such other action as may be proper. This process provides the public with a mechanism to raise issues of concern, which must then be reviewed and addressed by the Commission's staff. Except as specifically provided in the regulations, each § 2.206 petition is reviewed by the appropriate major program Office Director, who must either initiate the requested proceeding or issue a formal Director's Decision providing a specific disposition of the issues raised in the petition within a "reasonable time." If the Director finds that the petition raises a substantial safety question, an enforcement order will be issued or other appropriate action taken, within the Director's discretion.

The § 2.206 Petition Process Review and Workshop

The Commission has approved the initiation of a review of its regulations and practice governing petitions under 10 CFR 2.206. The first step in this evaluation process will be a public workshop where knowledgeable affected interests will share their advice and recommendations concerning the § 2.206 process with the NRC staff. In addition to providing an opportunity for representatives of affected interests to comment on the § 2.206 process, the workshop will also provide an opportunity for participants from citizens' groups, industry, and government to exchange information on the objectives of the § 2.206 process, its effectiveness, and what, if any, improvements could be made to the process. The Commission believes that, whatever the ultimate outcome of the Commission's evaluation of the § 2.206 process, this educational aspect of the workshop will be valuable for all participants in terms of fostering a better understanding of the § 2.206 process

The NRC has not re-examined the § 2.206 process in any systematic way since this provision was added to the Commission's regulations in 1974. In addition, this process has been the subject of longstanding criticism by citizens' groups and by some members of Congress, primarily because most § 2.206 petitions are denied. Therefore, the Commission believes that it is time to evaluate the § 2.206 process and to determine whether any changes should be made to that process. This evaluation is also consistent with current Commission efforts to enhance public participation in the Commission's decisionmaking process. The purpose of this review is to ensure that the § 2.206 process is an effective, equitable, and credible mechanism for the public to prompt Commission investigation and resolution of potential health and safety problems. In addition, given the reality of shrinking rather than expanding resources, the Commission believes that the evaluation of the § 2.206 process must consider how to achieve a more effective § 2.206 process with equal or fewer resources.

The broad focus of the Commission's review of the § 2.206 process is to determine whether § 2.206 has proven to be an effective mechanism, for not only bringing potential safety problems to the Commission's attention, but also ensuring that the Commission has been responsive in evaluating any such potential safety problems. The review of the § 2.206 process will address such questions as: What is the objective of the § 2.206 process? Is it meeting this objective? How can the § 2.206 process be improved? Is this the most effective mechanism to bring safety problems to the Commission's attention? What other mechanisms exist, such as, for example, the allegation management system, for bringing safety problems to the Commission's attention? How are these different from § 2.206 both in objective and procedure? The workshop will not only focus on these broad issues, but will specifically address the procedures that the Commission uses to evaluate § 2.206 petitions. The staff has identified three broad areas of potential

improvement to the § 2.206 process which are discussed in more detail in the background discussion paper: (1) Increasing interaction with the petitioner; (2) Focussing on resolution of safety issues rather than on requesting enforcement action; and (3) Categorizing petitions according to importance of issues raised.

Workshop Format

The workshop format is based on a "roundtable" discussion of the relevant issues by invited participants and representatives of the NRC staff. The workshop discussion will be guided by the workshops issues paper and the agenda set forth below. The NRC has invited representatives from a broad spectrum of affected interests who are knowledgeable on the § 2.206 process. Participants have been invited from citizen groups, industry, state government, and federal agencies. The workshop is open to the general public and time has been set aside for comment and questions from the audience. A member of the NRC staff will serve as the facilitator for the discussion. A complete transcript of the workshop will be taken.

Workshop Agenda

8:45 a.m.
Welcome. Francis X. Cameron, Office of General Counsel, NRC
9 a.m.
Opening remarks. Dr. Ivan Selin, Chairman, Nuclear Regulatory Commission
9:30 a.m.
Workshop format—objectives, agenda, groundrules
9:45 a.m.
Participant introductions—name, affiliation, concerns
10 a.m.
Historical overview of § 2.206. Martin G. Malsch, Deputy General Counsel, Office of General Counsel, NRC
10:30 a.m.
Break
10:45 a.m.
Introductory discussion: Perspectives on the § 2.206 process—What are the objectives of the § 2.06 process? Do the current procedures and process meet these objectives? What is the relationship of the § 2.206 process to other mechanisms for the public to identify safety problems?
11:40 a.m.
Public comment
12 p.m.
Lunch
1 p.m.
Potential revisions to the § 2.206 process: Increased interaction between the NRC staff and the petitioner
1:30 p.m.
Public comment
1:45 p.m.
Potential revisions to the § 2.206 process: Shift the focus of § 2.206 petitions from a specific enforcement action to the exploration and resolution of the underlying safety issue
2:45 p.m.
Public comment
3 p.m.
Break
3:15 p.m.
Potential revisions to the § 2.206 process: Establishing categories of petitions according to significance of the issues raised and specifying different levels of internal review according to these categories
4 p.m.
Public comment
4:15 p.m.
Open agenda item for other issues
4:45 p.m.
Schedule for completion of the evaluation of the § 2.206 process
5:15 p.m.
Closing remarks from participants

Background Discussion Paper

The NRC staff has prepared a background discussion paper which will be provided to each potential workshop participant. Additional copies will be available to members of the public in attendance at the workshop. Copies will also be available in advance from the NRC staff contact identified above. In addition to the comments on the background discussion paper provided at the workshop, the Commission also invites written comments on the issues, as noted under the heading **DATES.**

Dated at Rockville, MD this 23rd day of June, 1993.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 93–15177 Filed 6–28–93; 8:45 am]

BILLING CODE 7590–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 88

[AMS–FRL–4670–6]

The California Pilot Test Program and Clean-Fuel Vehicle Standards for Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Provisions of the amendments to the Clean Air Act (CAA) enacted in 1990 require EPA to promulgate a pilot program for the sale of clean-fuel vehicles (CFVs) in the state of California, referred to as the California Pilot Test Program in the CAA. In an earlier action, EPA established a credit program for the California Pilot Program (Dec. 17, 1992). This NPRM addresses other aspects of the Pilot Program, including CFV sales requirements for the State of California and an opt-in program for other states. This NPRM also proposes CFV emission standards pursuant to sections 242 and 243 of the Clean Air Act (CAA). These CFV emission standards apply to both the Pilot Program and the Clean Fuel Fleet Program, the subject of two other rulemakings (March 1, 1993 and June 10, 1993).

DATES: Comments on this proposal will be accepted until August 16, 1993. EPA will conduct a public hearing on this Notice of Proposed Rulemaking on July 15, 1993.

Additional information on the public hearing and submission of comments can be found under "Public Participation" in the Supplementary Information section of today's notice.

ADDRESSES: Interested parties may submit written comments in response to this notice (in duplicate if possible) to Public Docket No. A–92–69, at: Air Docket Section, U.S. Environmental Protection Agency, Attention: Docket No. A–92–69, First Floor, Waterside Mall, room M–1500, 401 M Street SW., Washington, DC 20460. A copy of the comments should also be sent to Bryan Manning, U.S. EPA (SRPB–12), Regulatory Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105.

The public hearing will be held at Domino's Farms, 24 Frank Lloyd Wright Drive, Ann Arbor, MI 48105. The public hearing will begin at 9 a.m. and will continue until all testimony has been presented. A transcript of the hearing will be placed in the docket. Copies may also be obtained by arrangement with the court reporter on the day of the hearing.

Regulatory text for and other materials relevant to this document have been placed in Docket No. A–92–69 by EPA. The docket is located at the above Washington address and may be inspected between 8:30 a.m. and noon and 1:30 and 3:30 p.m. on weekdays. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Manning, U.S. EPA (SRPB–12), Regulatory Development and Support Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone (313) 741–7832.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Clean Air Act Amendments of 1990 (Pub.L. 101–549) added part C to title II of the Clean Air Act (CAA) entitled "Clean Fuel Vehicles." Under part C, states are to establish clean-fuel fleet programs (collectively called the Clean Fuel Fleet Program) in certain nonattainment areas, and EPA is to establish a clean-fuel vehicle pilot program in the State of California (the California Pilot Test Program, hereinafter referred to as the Pilot Program).

The Clean Fuel Fleet Program requires certain states to revise their state implementation plans to include a program that requires a minimum percentage of new vehicles purchased by certain fleet owners to be clean-fuel vehicles. Both light-duty and heavy-duty clean-fuel vehicles are included in this program. A credit program for the fleet program along with transportation control measure exemptions for fleet vehicles was promulgated in a separate rulemaking (58 FR 11888, March 1, 1993). The balance of the fleet provisions established by EPA are the subject of a second rulemaking (58 FR 32474, June 10, 1993); information on that rulemaking has been placed in docket No. A–92–30. Also being proposed in that rulemaking are clean-fuel vehicle emission standards for heavy-duty vehicles and regulations concerning the conversion of vehicles to clean-fuel fleet vehicles.

The Pilot Program is designed to be a federally administered test program in the State of California. The program requires vehicle manufacturers to sell a minimum number of clean-fuel light-duty vehicles and light-duty trucks in California starting in the 1996 model year. The heavy-duty CFVs included in the fleet program are not included in the Pilot Program.

The CAA gave EPA several responsibilities with regard to the Pilot Program. EPA was to implement a credit program for manufacturers and other key provisions as well. The credit program was finalized and published on December 17, 1992 (57 FR 60038). The second key area of action for EPA which includes details regarding the vehicle sales requirements, state opt-in provisions of the Pilot Program, and the light-duty vehicle and light-duty truck CFV standards for use in both the Pilot Program and the fleet program are proposed in the sections which follow.

II. Light-Duty Clean-Fuel Vehicle Standards

A. Requirements of the CAA

Section 241(7) of the CAA defines a clean-fuel vehicle as a vehicle that meets the emission standards applicable under part C of title II of the CAA. Any light-duty vehicle or light duty truck that meets these standards (which are set forth in sections 242 and 243) will be classified as a CFV regardless of the fuel that is used.

Subsections (a) through (d) of section 243 of the Act specify certain exhaust standards for light-duty vehicles and light-duty trucks. The emission levels for non-methane organic gas (NMOG), carbon monoxide (CO), oxides of nitrogen (NO_x), diesel particulate matter (PM), and formaldehyde (HCHO) for various vehicle classes are all prescribed in that section (PM standards are only prescribed for the 100,000 mile point). The standards are prescribed in two phases for vehicles and trucks of up to 5,750 pounds loaded vehicle weight (LVW) and 6,000 pounds gross vehicle weight rating (GVWR). The first phase, called Phase I, begins with the 1996 model year (MY), which is the first year of required sales in the Pilot Program. (These Phase I standards are identical to California's transitional low emitting vehicle (TLEV) standards.) The second phase of standards, Phase II, begins with MY 2001. (The Phase II standards are identical to California's low emitting vehicle (LEV) standards.) There is only one set of standards for heavy-light-duty trucks (HLDTs) which have a GVWR greater than 6,000 pounds. Standards for these vehicles are applicable beginning with the year 1998. These statutory standards are listed in Table 1.

TABLE 1a.—PHASE I CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LDTS UP TO 3,750 LBS LVW AND UP TO 6,000 LBS GVWR AND LDVS (BEGINNING MY 1996; GRAMS/MILE)

Pollutant	NMOG[2]	CO	NO_x	PM[1]	HCHO
50,000 mile standard	0.125	3.4	0.4	.....	0.015
100,000 mile standard	0.156	4.2	0.6	0.08	0.018

[1] Applicable to diesel-fueled vehicles only.

TABLE 1b.—PHASE II CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LDTS UP TO 3,750 LBS LVW AND UP TO 6,000 LBS GVWR AND LDVS (BEGINNING MY 2001; GRAMS/MILE)

Pollutant	NMOG	CO	NO_x	PM[1]	HCHO
50,000 mile standard	0.075	3.4	0.2	.....	0.015
100,000 mile standard	0.090	4.2	0.3	0.08	0.018

[1] Applicable to diesel-fueled vehicles only.

TABLE 1c.—PHASE I CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LDTS OF MORE THAN 3,750 LBS LVW AND UP TO 5,750 LBS. LVW AND UP TO 6,000 LBS GVWR (BEGINNING MY 1996; GRAMS/MILE)

Pollutant	NMOG	CO	NO_x	PM[1]	HCHO
50,000 mile standard	0.160	4.4	0.7	.....	0.018
100,000 mile standard	0.200	5.5	0.9	0.08	0.023

[1] Applicable to diesel-fueled vehicles only.

TABLE 1d.—PHASE II CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LDTS OF MORE THAN 3,750 LBS LVW AND UP TO 5,750 LBS. LVW AND UP TO 6,000 LBS GVWR (BEGINNING MY 2001; GRAMS/MILE)

Pollutant	NMOG	CO	NO_x	PM [1]	HCHO
50,000 mile standard	0.100	4.4	0.4	.....	0.018
100,000 mile standard	0.130	5.5	0.5	0.08	0.023

[1] Applicable to diesel-fueled vehicles only.

TABLE 1e.—CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LDTS GREATER THAN 6,000 LBS GVWR (BEGINNING MY 1998; GRAMS/MILE)

[Test Weight Category: Up to 3,750 lbs. TW]

Pollutant	NMOG	CO	NO_x	PM [1]	HCHO
50,000 mile standard	0.125	3.4	[2] 0.4	.....	0.015
120,000 mile standard	0.180	5.0	0.6	0.08	0.022

[1] Applicable to diesel-fueled vehicles only.
[2] Standards not applicable to diesel-fueled vehicles

TABLE 1f.—CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LDTS GREATER THAN 6,000 LBS GVWR (BEGINNING MY 1998; GRAMS/MILE)

[Test Weight Category: Above 3,750 lbs. but not above 5,750 lbs. TW]

Pollutant	NMOG	CO	NO_x	PM [1]	HCHO
50,000 mile standard	0.160	4.4	[2] 0.7	.....	0.018
120,000 mile standard	0.230	6.4	1.0	0.10	0.027

[1] Applicable to diesel-fueled vehicles only.
[2] Standards not applicable to diesel-fueled vehicles

TABLE 1g.—CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LDTS GREATER THAN 6,000 LBS GVWR (BEGINNING MY 1998; GRAMS/MILE)

[Test Weight Category: Above 5,750 lbs. TW but not above 8,500 lbs. GVWR]

Pollutant	NMOG	CO	NO_x	PM [1]	HCHO
50,000 mile standard	0.195	5.0	[2] 1.1	.....	0.022
120,000 mile standard	0.280	7.3	1.5	0.12	0.032

[1] Applicable to diesel-fueled vehicles only.
[2] Standards not applicable to diesel-fueled vehicles.

The exhaust emission standards described above are for clean-fuel vehicles which are capable of operating on only one type of fuel. Subsection 243(d) also directs EPA to establish clean-fuel vehicle standards for LDVs and LDTs which are capable of operating on more than one fuel. That subsection requires that flexible or dual-fueled vehicles be certified to two sets of NMOG standards. One set of standards establishes the level that exhaust emissions of NMOG may not exceed when vehicles are operated on the clean alternative fuel for which the vehicles were certified (section 243(d)(2) of the CAA). This set of standards has the same NMOG level as required for single-fueled clean-fuel vehicles.

The second set of NMOG standards establish the level that exhaust emissions of NMOG may not exceed when flexible or dual-fueled vehicles are operated on conventional fuel (section 243(d)(3) of the CAA). This set of standards is, in effect, equivalent to the next less stringent set of standards for the applicable vehicle category and model year. For example, the NMOG standard for a Phase I flexible or dual-fueled clean-fuel vehicle while operating on conventional fuel would be equivalent to the non-methane hydrocarbon (NMHC) standard for conventional vehicles as set by the recent Tier I emissions standards final rule (56 FR 25724). (The NMOG and NMHC standards are essentially equivalent when conventional gasoline is the fuel used). The NMOG standard for a Phase II flexible or dual-fueled clean-fuel vehicle while operating on conventional fuel would be equivalent to the NMOG standard for a Phase I single-fueled clean-fuel vehicle.

These flexible or dual-fueled vehicles are also required to meet all other exhaust standards (listed above) that other CFVs must meet. The NMOG standards for flexible or dual-fueled vehicles are listed in Tables 2a and 2b.

TABLE 2a.—NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CLEAN ALTERNATIVE FUEL/CONVENTIONAL FUEL [1]

[LDTs up to 6,000 lbs. GVWR and LDVs]

Vehicle type	Column A (50,000 mi.) standard (gpm)	Column B (100,000 mi.) standard (gpm)
Beginning MY 1996:		
LDTs (0–3,750 lbs. LVW) and LDV	0.125 / 0.25	0.156 / 0.31
LDTs (3,751–5,750 lbs. LVW)	0.160 / 0.32	0.200 / 0.40
Beginning MY 2001:		
LDTs (0–3,750 lbs. LVW) and LDV	0.075 / 0.125	0.090 / 0.156
LDTs (3,751–5,750 lbs. LVW)	0.100 / 0.160	0.130 / 0.200

[1] The numerical value on the left side of the / is the NMOG standard which must be met when using the clean alternative fuel. The value to the right of the / is the NMOG standard which must be met when using the conventional fuel.

TABLE 2b.—NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CLEAN ALTERNATIVE FUEL/CONVENTIONAL FUEL [1]

[LDTs More than 6,000 lbs. GVWR]

Vehicle type	Column A (50,000 mi.) standard (gpm)	Column B (100,000 mi.) standard (gpm)
Beginning MY 1998:		
LDTs (0–3,750 lbs. TW)	0.125 / 0.25	0.180 / 0.36
LDTs (3,751–5750 lbs. TW)	0.160 / 0.32	0.230 / 0.46
LDTs (above 5,750 lbs. TW)	0.195 / 0.39	0.280 / 0.56

[1] The numerical value on the left side of the / is the NMOG standard which must be met when using the clean alternative fuel. The value to the right of the / is the NMOG standard which must be met when using the conventional fuel.

In addition to the standards prescribed in section 243, the CAA also directs EPA to establish standards for clean-fuel vehicles that are more stringent than those required in section 243. In section 246 of the CAA, which addresses the Clean Fuel Fleet Program, paragraph 246(f)(4) requires that more stringent standards be established for the purpose of generating credits. Vehicles meeting these more stringent standards would also be eligible to earn credits in the credit program of the Pilot Program (section 249(d)(3)). The more stringent standards for light-duty vehicles and light-duty trucks are to conform "as closely as possible" to the standards established in California's LEV program. An explanation of these standards is included later in this proposal.

In addition to the exhaust emission requirements of section 243, section 242(b) states that CFVs up to 8500 GVWR "shall comply with all motor vehicle requirements of this title (such as requirements relating to on-board diagnostics, evaporative emissions, etc.) which are applicable to conventional gasoline-fueled vehicles of the same category and model year, except as provided in section 244 with respect to administration and enforcement, and except to the extent that any such requirement is in conflict with the provisions of" Part C. These include, but are not limited to, standards for cold temperature CO exhaust emissions (cold CO), on-board diagnostics (OBD), evaporative emission controls (evap), on-board refueling vapor recovery (onboard), total hydrocarbons (THC), and non-methane hydrocarbons (NMHC). Other previous requirements such as crankcase controls and vehicle labeling also apply.

Section 242(c) lists the useful life and in-use testing limitations for purposes of determining in-use compliance with the standards in section 243. The proposed useful life for clean-fuel vehicles is the same as adopted in EPA's regulations for 1994 and later model year light-duty vehicles and light-duty trucks, commonly called Tier 1 standards (56 FR 25742, June 5, 1991). For light-duty vehicles and light light-duty trucks, the standards in section 243 are established at the intermediate useful life of five years or 50,000 miles (5/50,000), whichever occurs first, and a full useful life of ten years or 100,000 miles (10/100,000), whichever occurs first (see Table 1). With respect to in-use testing, however, section 243(c) provides that such testing for these vehicle classes would not be done beyond 7 years or 75,000 miles, whichever occurs first. The analogous intermediate and full useful life levels for heavy light-duty trucks are 5/50,000 and 11/120,000, respectively (see Table 1). Section 243(c) provides, however, that the in-use testing for these vehicles would not be done beyond 7 years or 90,000 miles, whichever comes first.

Section 243(e) concerns the possible replacement of the CAA standards with the CARB standards. Section 243(e)(1) addresses the replacement of CAA standards if CARB has promulgated one set of standards and section 243(e)(2) addresses the replacement of CAA standards if CARB has promulgated multiple sets of standards. As CARB's LEV program, which is described below, contains multiple sets of standards, section 243(e)(2) is the pertinent provision. It states that

"[i]f the State of California promulgates regulations establishing and implementing several different sets of standards applicable in California pursuant to a waiver under section 209 * * * and each of such sets of standards is, in the aggregate, at least as protective of public health and welfare as the otherwise applicable standards set forth in section 242 and subsection (a), (b), (c), or (d) of this section, such standards shall be treated as 'qualifying California standards' for purposes of this paragraph. Where more than one set of qualifying standards are established and administered by the State of California, the least stringent set of qualifying California standards shall apply to the clean-fuel vehicles concerned in lieu of the standards otherwise applicable to such

vehicles under section 242 of this title and this section."

As section 243(e)(2) describes a comparison of CARB's standards to those "set forth in section 242 and subsection (a), (b), (c), or (d) of this section," the comparison includes the other Title II standards referred to in section 242 and their California counterparts, i.e., it is not limited to the CFV exhaust emission standards specified in section 243. Section 243(f) provides for the replacement of the CAA standards by CARB standards for a limited period of time in the event CARB modifies its standards to be less stringent than those specified in section 243 or delays the effective date of those standards. This section of the CAA thus requires EPA to compare CARB's standards with those established in the CAA in sections 242(b) and in section 243 to determine whether the least stringent set of CARB standards should replace the CAA standards. A discussion and comparison of the stringency of the CARB and CAA standards is presented below.

B. CARB's Low-Emission Vehicle Standards

Pursuant to section 209 of the CAA, the State of California applied to EPA for a waiver on October 4, 1991 for its "Low-Emission Vehicle and Clean Fuels Regulations." EPA granted the requested waiver on January 7, 1993 (58 FR 4166 January 13, 1993).

As described below, California's regulations establish four new levels of vehicle emission standards (called vehicle emission categories (TLEV, LEV, ULEV, ZEV)) for light-duty vehicles, light-duty trucks, and medium-duty trucks. (The medium-duty truck class is a vehicle class particular to CARB and contains trucks between 6000 and 14,000 lbs. GVWR). Vehicles would be able to be certified to these new standards starting in the 1994 model year. (See CARB's Proposed Regulations for Low-Emission Vehicles and Clean Fuels, Staff Report, available in docket A–91–23.)

CARB's program establishes exhaust emission standards for its Transitional Low-Emission Vehicle (TLEV) category for NMOG, CO, NO_x, PM, and formaldehyde. These exhaust emission standards are identical to the analogous federal Phase I clean-fuel vehicle standards described above for MY 1996–2000. Similarly CARB's Low-Emission Vehicle (LEV) exhaust emission standards are identical to the federal Phase II standards, effective beginning MY 2001. CARB also has standards for heavy light-duty trucks (HLDTs) for its LEV emission category which are identical to these standards required by the Pilot Program for HLDTs. (Neither CARB nor the CAA define a TLEV category for heavy light-duty trucks).

CARB has also established two additional vehicle emission categories that are more stringent than the TLEV and LEV standards: Ultra-Low-Emission Vehicles (ULEVs) and Zero-Emission Vehicles (ZEVs). As previously mentioned, EPA is required to promulgate standards that are more stringent than the clean-fuel vehicle standards in section 243 for credit purposes and that conform as closely as possible to California's ULEV and ZEV standards.

Finally, CARB is also allowing the use of intermediate in-use compliance standards that are intended to facilitate compliance by manufacturers. These in-use standards are numerically half-way between the certification standards of the new emission category and the old emission category (e.g., halfway between TLEV and LEV). These intermediate standards will be effective through model year 1995 for TLEVs and through model year 1998 for LEVs and ULEVs.

C. Comparison of CAA and CARB Requirements

As stated previously, the CAA provides that CARB's standards can in certain circumstances replace the federal standards after a comparison is made between CARB's standards and the federal clean-fuel vehicle (CFV) standards. This comparison includes not only the CFV exhaust emission standards, but other motor vehicle standards as well. If CARB's standards are determined to be, in the aggregate, at least as protective of public health and welfare as the CAA standards, then all of CARB's standards will apply in lieu of the standards otherwise applicable under sections 242 and 243. On the other hand if CARB's standards are determined to be not as protective as the CAA standards, then all of the CAA standards will apply.

Section 243(f) states that if CARB modifies any of its standards to include standards that are less stringent, or if any effective date contained in their regulations is delayed, such modified standards or such delay, shall apply for an interim period. The interim period shall be a period of not more than 2 model years from the effective date otherwise applicable in Section 243 of the CAA. After such interim period, the otherwise applicable standards shall take effect. Currently, CARB has not proposed to modify their LEV program to include exhaust standards that are less stringent than the CAA exhaust standards.

EPA believes that, under section 243(e)(2), the federal Phase I CFV standards can be replaced by the least stringent set of California LEV program standards (i.e., the TLEV standards), but should not be replaced by the next more stringent set of California standards (i.e., the LEV standards) if the TLEV standards are not deemed to be at least as protective of public health and welfare as the federal Phase I CFV standards. Rather, if the TLEV standards are not determined to be at least as protective, EPA believes that the appropriate outcome is that the federal Phase I CFV standards would apply. The reason for this is that section 243(e) applies where California has adopted several sets of standards and "each of such sets" is at least as protective. EPA believes that the limitation of section 243(e)2 to the situation where "each" of the sets of California's standards is at least as protective as the federal CFV standards means that the federal Phase I CFV standards should not be replaced by the California LEV standards if the TLEV standards do not satisfy the protectiveness criterion, but the LEV standards do. EPA also believes that it is reasonable to compare California's LEV standards (which are the next most stringent set of California standards) to the federal Phase II CFV standards, which will be the federal fleet program standards and credit standards for the California Pilot Program prior to model year 2001, to determine if the Phase II standards should be replaced by the LEV standards. EPA requests comment on this interpretation of the Act. Furthermore, EPA requests comment on the application of section 243(e)(2) to the situation beginning in model year 2001, when the only applicable federal standards will be the Phase II standards. From that point on, the Phase II standards will be clearly more stringent than the TLEV standards, which will still be available as a certification option for manufacturers in California.

As discussed above, CARB's Transitional Low Emitting Vehicle (TLEV) standards are the same as the CAA Phase I standards and CARB's Low Emitting Vehicle (LEV) standards are the same as the CAA Phase II standards. Thus, on the basis of these exhaust emission standards, CARB's program would be of equal stringency.

Several other CAA Title II standards need to be compared to CARB's program in order to assess the protectiveness of the programs "in the aggregate": The cold temperature carbon monoxide standard (cold CO), evaporative emission requirements, refueling vapor

control requirements, and total hydrocarbons (THC) and non-methane hydrocarbons (NMHC). These standards are considered next.

1. Cold CO Emissions

The cold CO requirement (section 202(j) of the CAA) was established in order to control the emissions of CO at lower temperatures where it has been shown that gasoline vehicle CO emissions are greatest and their control needed the most. EPA recently promulgated a cold CO standard (57 FR 31888, July 17, 1992), and on January 14, 1993 CARB adopted a cold CO standard as well. The CARB cold CO standard is equivalent to the federal standard. Gasoline-powered vehicles are the only vehicles subject to the requirements established in the federal cold CO rulemaking; however, all CFVs (regardless of fuel type) would be required to meet the cold CO standard by section 242(b). For the CARB cold CO rulemaking, gasoline-powered vehicles as well as LPG and alcohol-fueled vehicles would be required to meet the CARB cold CO standard.

EPA does not expect cold temperature CO emissions to be a problem for gaseous-fueled vehicles since they do not generally utilize fuel enrichment strategies to aid during cold starts, as is the case with other vehicles due to the difficulty of vaporizing liquid fuels at cold temperatures. However, there is little data available on gaseous-fueled vehicle cold start emissions. Compliance with the cold CO standard is not expected to be a problem for electric and diesel vehicles as well. On this basis, EPA proposes that manufacturers of gaseous-fueled, electric and diesel-fueled vehicles be eligible to receive a waiver from cold CO testing by demonstrating compliance on the basis of engineering analyses or test data. (This provision would be similar to the requirements of Otto-cycle vehicles which must show compliance with a PM standard in the Tier I rulemaking (56 FR 25730). As a safeguard against currently unforeseen compliance problems, EPA reserves the right to perform confirmatory tests during certification and Selective Enforcement Audit (SEA) tests during production for the cold CO standard. Similarly, CARB exempted CNG vehicles from the cold CO standard; however, LPG vehicles would be required to demonstrate compliance with the cold CO standard through testing.

As with gasoline-fueled vehicles, alcohol-fueled vehicles emit greater amounts of CO under cold conditions, and thus alcohol-fueled vehicles should have to demonstrate compliance with the cold CO standard through testing. In addition, CARB would require alcohol-fueled vehicles to demonstrate compliance with the cold CO standard through testing. EPA requests comment on applying the current cold CO test procedure to alcohol-fueled vehicles, including whether or not further new test procedures are required.

2. Evaporative Emissions

Currently California and federal requirements for evaporative emissions are identical. EPA has just promulgated new evaporative requirements that are to take effect beginning in MY 1996. CARB, however, is also developing new evaporative requirements. CARB has promulgated a set of new requirements for improved control; however, it has not yet received a Section 209 waiver of federal preemption from EPA for its new requirements. EPA's newly promulgated requirements are similar to CARB's new requirements in key respects, including a running loss test, three diurnal heating cycles, and a high temperature hot soak. In addition, CARB stated that they plan to modify their requirements to conform to EPA's requirements. (55 FR 1914, January 19, 1990, and CARB Mail-Out #92–10, March 3, 1992, for the federal and California proposals respectively.)

The timing of these events makes it difficult to draw final conclusions about the comparability of the federal and California evaporative standards. However, at the time of this proposal, the evaporative requirement for which CARB has received a waiver and EPA's current requirement for evaporative emissions are exactly the same. EPA's new requirements are more stringent than CARB's current requirements for which CARB has already received a waiver. It appears likely, however, that once both CARB's new requirement and EPA's new requirement go into effect, the evaporative requirements will be equivalent. EPA requests comment on the comparability of the federal and California evaporative emission requirements. EPA's determination regarding the relative stringency of the CARB and federal evaporative requirements at the time of the promulgation of the final rule in this rulemaking proceeding will necessarily depend upon the circumstances at that time.

3. Refueling Emissions

Another Title II standard deals with the recovery of refueling vapors. EPA had decided in April 1992 not to require onboard vapor recovery canisters on vehicles for the control of refueling emissions (57 FR 13200). Petitions for review of that decision were filed with the United States Court of Appeals for the District of Columbia and, in a decision dated January 22, 1993, the court set aside EPA's decision and ordered EPA to promulgate onboard refueling standards in compliance with the Clean Air Act. *Natural Resources Defense Council* v. *William K. Reilly*, No. 92–1137 (DC Cir. Jan. 22, 1993). As a consequence, EPA expects to promulgate onboard vapor recovery standards. CARB, however, does not require onboard vapor recovery but does require the use of Stage II vapor recovery equipment at service stations throughout California. EPA requests comment regarding the issue of onboard vapor recovery standards and, in particular, on any impact the use of Stage II vapor recovery equipment should have on the comparison of the federal and California programs.

4. Volatile Organic Compound Emissions

EPA and California have used different bases for regulating emissions of volatile organic compounds (VOCs) from vehicles, a fact that complicates the comparison of these emission standards. Traditionally, federal organic emissions controls were based on total hydrocarbon (THC) emissions. Under this approach, THC emissions were measured by a flame ionization detector (FID), implicitly assuming that all hydrocarbon emissions behaved similarly with respect to ozone reactivity and FID response. This approach was changed for methanol-fueled vehicles by measuring methanol and formaldehyde emissions separately while still measuring other THC emissions using a FID.[1] Under this second approach, the measured masses of methanol and formaldehyde are converted to equivalent HC masses by factors which are intended to eliminate the mass of the oxygen in the methanol and formaldehyde molecules, and the sum of the methanol and formaldehyde equivalent masses and the mass of the remaining THC is called the Organic Material (or Total) Hydrocarbon Equivalent (OMHCE or THCE) mass. A third approach measures methane separately, and subtracts it from the THC to measure non-methane hydrocarbons (NMHC). For methanol-fueled vehicles, the equivalent of NMHC is OMNMHCE or NMHCE.

The Act establishes both THC and NMHC exhaust emission standards for conventional light-duty gasoline and diesel vehicles (0.41 g/mile for THC and

[1] For a detailed description of this procedure, see 54 FR 14426, April 11, 1989.

0.25 g/mile for NMHC). EPA has also established OMHCE and OMNMHCE standards for methanol-fueled vehicles (0.41 and 0.25 g/mile, respectively) and has proposed to establish NMHC standards for CNG- and LPG-fueled vehicles (0.25 g/mile).

CARB uses a fourth approach that involves separately measuring the mass of each organic compound except methane and weighing it by its ozone-forming reactivity, relative to average gasoline emissions. This sum is referred to as non-methane organic gases (NMOG). The approach used by CARB also allows NMOG to be determined by measuring the total mass of organic emissions and multiplying it by a single Reactivity Adjustment Factor (RAF), which is the ratio of the ozone-forming potential of the emissions from a given fuel to the ozone-forming potential of the emissions from conventional gasoline (as determined by CARB for each fuel type). Thus, the comparison of the CARB and EPA standards for organic emissions are best done on a fuel by fuel basis.

For gasoline and diesel vehicles, NMHC and NMOG standards are equivalent since relative reactivity factors equal 1. In addition, since the total amount of methane emissions as a percent of total hydrocarbon emissions from these types of vehicles is very low,[2] and since the NMOG standard for TLEVs and LEVs are well below the federal THC standard (0.41 g/mi), even the THC standard would not be exceeded by vehicles designed to meet the statutory NMOG standards. Thus, for gasoline and diesel vehicles, the CARB NMOG standards are at least as stringent as the NMHC and THC standards required by the Act.

For natural gas vehicles, the NMOG standards are not necessarily equivalent to either the NMHC or THC standards. The relationship between NMOG and NMHC for natural gas vehicles is not clear at this time since CARB has not finalized a RAF for natural gas; CARB has considered values between 0.2 and 0.5. Given the relatively high methane fraction (typically about 90 percent) for current-technology natural gas vehicles, such vehicles meeting the TLEV and LEV NMOG standards will not necessarily result in THC emissions of less than 0.41 g/mile.

The high exhaust methane emissions make it infeasible for current technology natural gas-fueled vehicles to comply with the THC standards currently in place for other fuels. The main reason for this is that current exhaust catalyst technology is largely ineffective at oxidizing methane. While there is work underway to develop catalyst technology which would allow natural gas-fueled vehicles to meet the THC standards, this technology is fairly early in its development. At present the Agency does not believe that the THC standards are feasible in the near term for natural gas-fueled vehicles. The amount of leadtime required for technology development cannot be readily determined, primarily because a durable methane catalyst formulation has not yet been identified. Also, the development of such technology is to some extent dependent upon the availability of research and development resources, which is in turn dependent upon the development of the natural gas vehicle market in the near-term.

EPA notes, however, that section 242(b) of the CAA states that clean-fuel vehicles shall comply with all motor vehicle requirements of Title II of the Act, "except to the extent that any such requirement is in conflict with the provisions of this part." EPA believes that such a conflict exists in applying a THC standard to CNG vehicles. Consequently, applying the standard to CNG vehicles would likely exclude them from the Pilot Program as well as the Clean Fuel Fleet Program. However, the nonmethane portion of the emissions from a CNG vehicle are typically less than the NMHC emissions from a gasoline-fueled vehicle. Because of this inherently clean potential for CNG vehicles, EPA has concluded that they should not be excluded from the clean-fuel vehicle programs. This is particularly the case here. The methane component of emissions from natural gas vehicles has a very low reactivity, and therefore is not a significant contributor to ozone formation, and the reduction of which is the primary objective of the Fleet and Pilot programs (see CAA sections 246, 247, and 249). Thus, the application of a THC standard to CNG vehicles in order to control methane emissions that excludes such vehicles from the CFV programs would be contrary to the ozone-reduction goals of the programs.

Furthermore, EPA's Gaseous Fuels NPRM (57 FR 52912, November 5, 1992) has proposed that the current 0.41 g/mile THC standard (which is specified by the Act for gasoline and diesel vehicles), not apply to natural gas vehicles. EPA requests comments on whether it would be appropriate to apply a THC standard to natural gas clean-fuel vehicles, particularly if no THC standards are applied to other natural gas vehicles.

EPA proposes that the CNG vehicles being certified as CFVs for use in the Pilot Program and the Clean Fuel Fleet Program not be required to meet the federal THC standard. Since CARB has not finalized a RAF for natural gas, a comparison between the California NMOG and federal NMHC standards can not be made. Therefore, EPA proposes that the NMHC standards be applied to natural gas vehicles.

For LPG vehicles, the issues related to the comparison of NMOG to NMHC are the same as those for natural gas vehicles. Thus, as is also the case for natural gas vehicles, NMHC and California NMOG cannot be compared for LPG vehicles until a RAF is finalized. Since the methane emissions from LPG vehicles are comparable to those from gasoline vehicles, however, a THC standard of 0.41 g/mile may not be more protective than the proposed NMOG standards.

As with CNG vehicles, it is not possible to determine that the CARB NMOG standards are as protective of the environment as the federal NMHC standards for alcohol-fueled vehicles until CARB finalizes its program, including RAFs. CARB has established a RAF of 0.41 for M85 vehicles, and this standard is as protective as the federal NMHC standard. However, CARB has not established a RAF for M100 vehicles or for other alcohol-fueled vehicles. For the reasons described below, unless CARB establishes a RAF significantly below 0.2 for M100 vehicles, the CARB NMOG standard should be more protective than the federal NMHC standard.

An alcohol-fueled vehicle meeting CARB's NMOG standard will likely not have a problem meeting the federal NMHC standard. This is because the existing NMHC standard is intended for gasoline vehicles, and the emissions from a alcohol-fueled vehicle would be calculated as if they were emissions from a gasoline vehicle. As mentioned earlier, NMHC is measured by subtracting methane from a total hydrocarbon value as detected by a FID. A FID measurement will detect about 70 to 80 percent of the methanol and very little formaldehyde in an emission sample. For calculating NMOG, HC is measured with a FID, but actual methanol and actual formaldehyde amounts are derived through wet chemistry. Thus, since a FID does not measure a substantial amount of the methanol and formaldehyde emissions from alcohol-fueled vehicles, those alcohol-fueled vehicles that comply with the NMOG standard should easily

[2] U.S. Environmental Protection Agency, Office of Mobile Sources, "Specification for SAI Runs," Memorandum from Chris Lindhjem, Penny Carey, and Joe Somers to the Record, April 14, 1992.

meet the federal NMHC standard unless CARB establishes a RAF significantly below 0.2 for M100 vehicles.

As with gasoline and diesel vehicles, methane emissions from methanol vehicles are generally low enough that vehicles meeting the NMOG standards would also comply with the federal THC standard.

5. Summary

In light of this assessment of various standards, EPA believes that, with the possible exception of onboard vapor recovery standards, CARB's standards are likely to become essentially equivalent in stringency to the federal standards. However, it is not possible to reach this conclusion with finality until CARB and EPA finalize certain portions of their programs. Therefore, EPA cannot conclude, at this time, that the CARB standards are in the aggregate as protective of public health and welfare as the federal standards. Therefore, the Agency is proposing that federal emission standards apply to CFVs covered under this program (and the Fleet Program) as provided in section 243(e) of the CAA. This means that the CAA exhaust standards, plus federal requirements for cold CO, evaporative emissions, refueling emissions, NMHC, and, with certain exceptions, THC, would apply. For cold CO, EPA proposes that federal cold CO testing requirements be waived for vehicle/fuel combinations that can be established to have acceptable cold CO emissions through engineering analysis or test data. For THC, EPA proposes that CNG vehicles not be required to meet the THC standard due to the conflict with provisions of part C of the Act, as explained above.

Currently planned changes in the standards indicate that by the time this rulemaking is finalized the California and federal requirements, with the possible exception of onboard vapor recovery standards, may well be equivalent. Specifically, California is expected to adopt a cold CO standard comparable to the federal standard as described above. Similarly, it is expected that CARB will establish improvements to its current evaporative emission requirements comparable to those recently promulgated by EPA. Likewise, the finalized LEV program may well include RAFs which will result in standards of comparable stringency to the federal THC and NMHC standards, as discussed above. If events do develop in the ways described above for all standards, a conclusion that the California standards are, in the aggregate, at least as protective as the federal standards would be supported. If this conclusion can be drawn by the time of final action on this NPRM, and California has received waivers for all pertinent aspects of its motor vehicle program, the California standards and requirements apply. EPA will continue to monitor developments on these issues and will supplement the record and provide an opportunity for comment as appropriate.

D. Credit Generating Standards

As mentioned earlier the CAA requires EPA to establish standards for Ultra-Low Emission Vehicles (ULEVs) and Zero Emission Vehicles (ZEVs) which must be more stringent than those standards otherwise applicable to clean-fuel vehicles. These more stringent standards will be used for purposes of issuing credits in the Clean Fuel Fleet Program and the Pilot Program. Section 249(d)(3) states that the more stringent standards and other requirements established for purposes of the credit program for the Clean Fuel Fleet Program shall also apply for purposes of issuing credits in the Pilot Program.

Section 246(f)(4) of the CAA states that, "[t]he standards established by the Administrator under this paragraph for vehicles under 8,500 lbs. GVWR or greater shall conform as closely as possible to standards which are established by the State of California for ULEV and ZEV vehicles in the same class." EPA proposes that the ULEV and ZEV standards established by CARB be adopted as the federal ULEV and ZEV standards. (These standards are enumerated in tables A108–1 through A108–6 included in the regulations for this rule).

ZEVs (e.g., electric vehicles) are vehicles which have no emissions of the following pollutants: NMOG, NOx, CO, particulates, and formaldehyde. EPA proposes that compliance with the ZEV standard be determined (like CARB) through engineering analysis rather than by testing. As stated in section 244 of the CAA, EPA proposes that the ZEV standards be administered and enforced in accordance with applicable CARB procedures.

E. Administration and Enforcement

Section 244 of the CAA states that when the applicable CAA and CARB standards are the same, "such standards shall be administered and enforced by the Administrator (1) in the same manner and with the same flexibility as the State of California administers and enforces corresponding standards * * *; and (2) subject to the same requirements, and utilizing the same interpretations and policy judgments, as are applicable in the case of such CARB standards, including, but not limited to, requirements regarding certification, production-line testing, and in-use compliance." Section 244 also states the above shall not apply, however, if EPA determines that the administration and enforcement of the applicable clean-fuel vehicle standards pursuant to CARB would not meet the criteria for a waiver under section 209. Section 246(f)(4) also provides that the credit generating standards are to be administered and enforced in the same manner as the other clean-fuel vehicle standards.

Since the CAA CFV exhaust emission standards (for NMOG, CO, NOx, PM and HCHO) are numerically identical to the California standards, EPA proposes that, since a waiver has been granted to California for its LEV program those CFV standards be administered and enforced according to applicable CARB procedures. These requirements include the test procedures and measurement techniques used for certification, production-line testing (SEA), and in-use compliance.

With respect to the NMOG standard, sections 241(3) and 241(4) of the CAA provide definitions for NMOG and base gasoline used for determining reactivity adjustments for alternative fuels. Section 241(4) further provides that EPA is to modify these definitions and the method used for determining reactivity adjustment factors to conform to CARB's provided CARB's definitions are, in the aggregate, at least as protective of public health and welfare as the CAA definitions. CARB's definition of NMOG, contained in the "definitions" section of its LEV program regulations, is identical to the CAA definition. CARB has not yet adopted a definition of "base gasoline," although the definition used in the CAA is identical to that of the gasoline used by CARB in establishing the RAF for methanol-fueled vehicles ("California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," appendix VIII). CARB has proposed a definition of "conventional gasoline" that is substantially identical to that in the section 241(4) of the CAA. It appears that CARB has in fact relied on a definition of base gasoline identical to that provided in the CAA, thus, it is likely that CARB's regulatory definition of "conventional gasoline" will be at least as protective as the CAA definition of base gasoline. Moreover, this would also be required by the language of section 244 regarding administration and enforcement since CARB's NMOG standards would be identical to those specified in the CAA. Consequently,

EPA proposes to adopt the definitions and method for making reactivity adjustments used by California.

In order to ensure that the administration and enforcement of the CFV exhaust emission standards are undertaken in conformance with section 244, EPA proposes to incorporate by reference CARB's test procedures and other regulatory provisions regarding administration and enforcement. EPA also is proposing that any vehicle certified in California to the same standards as the CFV exhaust emission standards be considered to satisfy the requirements for certification to the equivalent federal CFV exhaust emission standards.

The other proposed federal requirements discussed above (those for cold CO emissions, evaporative emissions, THC emissions and NMHC emissions) are not currently identical to the California requirements. Consequently, EPA proposes that the existing federal administration and enforcement provisions, including the applicable test procedures, apply.

EPA further proposes that, if it is determined at the time of the final rule that all of CARB's standards will replace the otherwise applicable federal standards, all of the standards be administered and enforced in accordance with CARB's procedures.

Provisions established in the Motor Vehicle and Engine Compliance Program Fees rule (57 FR 30044, July 7, 1992) give EPA the authority to recover all reasonable costs associated with enforcement and compliance activities performed by EPA. Clean-fuel vehicles certified for use in the Pilot Program may be subject to California-only fees if a manufacturer only intends to sell the CFV in California. However, other CFVs certified under the same process may be subject to fees applicable for a federal certificate. This would be the case if such CFVs were sold outside of California (e.g., CFVs used in the Clean Fuel Fleet Program).

EPA also proposes that vehicles certified under this program as CFVs be labeled according to CARB's revised motor vehicle emission control label specifications (contained in California's proposed LEV program, California Code of Regulations Title 13, section 1965). These revised labeling requirements include labeling vehicles to designate that they meet LEV, ULEV or ZEV standards.

III. Sales Requirements

A. Requirements of the Clean Air Act

Section 249(c) of the CAA requires EPA to promulgate regulations requiring that "[c]lean-fuel vehicles shall be produced, sold, and distributed (in accordance with normal business practices and applicable franchise agreements) to ultimate purchasers in California (including owners of covered fleets) * * * in numbers that meet or exceed" 150,000 in model years 1996 through 1998 and 300,000 in model year 1999 and thereafter. The CAA does not provide guidance on how EPA is to distribute these vehicle sales among the various vehicle manufacturers, but section 249(d) provides for credits to be made available towards "fulfillment of [a] manufacturer's share of the requirements".

B. CARB's Requirements

CARB's LEV Program will require the sale of vehicles meeting more stringent exhaust emission levels through the establishment of a decreasing fleet average NMOG emission requirement (for manufacturers of vehicles up to 6000 lbs GVWR) and through direct sales percentage requirements (for manufacturers of vehicles from 6000 to 14,000 lbs GVWR). The vehicle classes subject to the Pilot Program will be a subset of the classes subject to CARB's program since the Pilot Program only includes vehicles up to 8500 lbs GVWR.

The CARB program would require each manufacturer of vehicles up to 6000 lbs GVWR to sell LEV vehicles in each of the two loaded vehicle weight (LVW) subclasses (<3750 and ≥3750 lbs LVW) in numbers such that the manufacturer's California fleet average NMOG exhaust emission value is less than or equal to a fleet average NMOG exhaust emission requirement for the corresponding model-year, vehicle type, and LVW subclass. In addition to meeting the fleet average NMOG requirement, each manufacturer's fleet must also contain a required minimum percentage of ZEVs starting in the 1998 model year (see Table 3).

For trucks from 6001 to 14,000 lbs GVWR ("medium-duty vehicles"), CARB requires, starting with the 1998 model year, each manufacturer to certify vehicles to CARB's emission standards in numbers such that the manufacturer's fleet consists of a minimum percentage of LEVs and a minimum percentage of ULEVs. These percentages are presented in Table 4.

The projected sales of clean-fuel vehicles in California resulting from these requirements will likely far exceed the Pilot Program requirements. Based on the projected sales of LDVs and LDTs under 3750 LVW only, clean-fuel vehicle sales under CARB's program are expected to reach almost 200 percent of the Pilot Program sales requirement in 1996 and 400 percent of the sales requirement in 1999. Whether vehicles sold pursuant to CARB's program meet the standards for CFVs applicable under the Pilot Program will depend upon the standards adopted for the Pilot Program, for example, whether all of the standards are identical to CARB's or whether Pilot Program vehicles must meet federal Title II standards (e.g., Cold CO) not applicable under CARB's program.

TABLE 3.—CARB NMOG FLEET AVERAGE STANDARDS FOR VEHICLE SUBCLASSES LESS THAN 3750 LBS. LVW AND LARGER LIGHT TRUCKS GREATER THAN OR EQUAL TO 3,750

Model year	Fleet average standard	Required ZEV percentage
1994	0.250	
1995	0.231	
1996	0.225	
1997	0.202	
1998	0.157	2
1999	0.113	2
2000	0.073	2
2001	0.070	5
2002	0.068	5
2003	0.062	10

TABLE 4.—CARB IMPLEMENTATION SCHEDULE FOR MEDIUM-DUTY VEHICLES (6001–14000 LBS. GVWR)

Model year	LEV (percentage)	ULEV (percentage)
1998	25	2
1999	50	2
2000	75	2
2001	95	5
2002	90	10
2003	85	15

C. Proposed Pilot Program Sales Requirements

1. Definition of Sales

The CAA requires, in section 249(c)(1) that "[c]lean-fuel vehicles be produced, sold, and distributed to ultimate purchasers in California". This has been interpreted in the final rule of the Credit Program for the California Pilot Program (57 FR 60038) as the first point of sale from the manufacturer to the dealer, fleet owner, etc.

EPA notes that nothing in the language of section 249 requires the inclusion of conversions in the clean-fuel vehicle sales requirement. Furthermore section 247, which sets forth requirements applicable to conversions, states that conversions may be used to satisfy the requirements of the federal Clean Fuel Fleet Program.

There is no mention in section 247 of the Pilot Program, however.

For these reasons, EPA believes it is not the intent of the CAA that conversions be included in the sales requirement for the Pilot Program. This is also consistent with CARB's proposed LEV requirements, in which conversions do not count toward a manufacturer's sales.

EPA is proposing that only new clean-fuel vehicles sold by the manufacturers, rather than conversions of existing vehicles, be counted toward the clean-fuel vehicle sales requirement. EPA believes one of the goals of the program is to encourage the development and introduction of new clean-fuel vehicles. The development of new clean-fuel vehicles, as opposed to converted vehicles, should result in the design of clean-fuel vehicles that are more fuel efficient, have better durability, and evolve into vehicles which meet even more stringent emission standards. Although this restricts the options available for manufacturer compliance, the credit program mentioned earlier should be useful to manufacturers who do not, or can not, meet their minimum sales requirements through sales of new vehicles.

2. Sales Distribution Among Manufacturers

Vehicle manufacturers are responsible for the attainment of the sales requirement. Paragraph 249(c)(1) states that "[c]lean-fuel vehicles shall be produced, sold, and distributed." Also, paragraph 249(d) discusses the fulfillment of a "manufacturer's share of the requirements of subsection (c)(1)". The CAA does not, however, discuss how the requirements should be distributed among the manufacturers. As discussed above, it is likely that the California LEV Program will result in total CFV sales far exceeding the requirements of the Pilot Program. (This assumes California LEV program vehicles satisfy federal Pilot Program standards.) Thus, a specific method for allocating sales requirements among manufacturers may have little impact. However, EPA has considered two options for addressing this situation and requests comment on, or alternatives to each option.

The first option would be for EPA to designate the minimum number of clean-fuel vehicles that each manufacturer must sell for each particular model year. The number would be based on the manufacturer's share of vehicles sold in the State of California over the preceding year or years. For example, EPA could use an equation such as the following to determine a given manufacturer's required sales volume.

RMS = (MS / TS) * TCPPS

Where:

—RMS is the required sales for a given manufacturer for a given model year.
—MS is the manufacturers total vehicle sales in California in the preceding year(s).
—TS is the total vehicle sales in California in the preceding year(s).
—TCPPS is the total CFV sales required by the Pilot Program for the year in question (150,000 or 300,000).

If the sales requirements were based on vehicle sales in the previous year, EPA would be able to determine the most current and equitable market share between manufacturers. However, manufacturers would have little time to plan before beginning production of the model year vehicles in question. Even so, because the clean-fuel vehicle standards would already be established, the sales requirement would not require the development of new technology. The sales requirement could nevertheless have an impact on manufacturers' production plans. EPA requests comment on the appropriateness of assigning minimum CFV sales requirements one year in advance of production.

If the sales requirements were based on a manufacturer's share of total vehicle sales in California two or more years prior to the model year for which the sales requirement is being determined, manufacturers would be able to plan their CFV production well in advance. A potential drawback to basing sales requirements on figures two or more years old, however, would be the inability to account for sudden changes in the market. Furthermore, any new manufacturer entering the market would not be included in the sales figures until two or more years after its first sales.

In this first option, especially if the most current possible sales data is used, EPA would be able to insure an equitable distribution of the CFV sales requirements. However, to do so may also require significant administration and monitoring by both EPA and manufacturers.

Therefore, EPA has considered a second option, which is similar to the first but establishes a calculation that each manufacturer would apply rather than relying on EPA to intervene. This would alleviate much of the administrative burden by allowing each manufacturer to calculate its own sales requirement.

In this case each manufacturer's share of the total CFV sales requirement in any given year (150,000 in 1996–97 and 300,000 thereafter) would again be based on the ratio of the manufacturer's sales to all sales in California. The same equation as the one above would be used by each manufacturer. The equation could again require sales data from the previous year or from several previous years. EPA requests comment on the appropriateness of this option, and it ability to reduce administrative burden.

The regulatory language accompanying this preamble is based on the second option described here, using a one year time interval for projecting sales requirements. If the first option were to be promulgated the regulatory language would be the same except that additional language would reflect EPA involvement in the determination of sales requirements. If two or more previous years data were included in the sales requirement calculation, that would be reflected in the additional language as well.

Since the Pilot Program does not have standards in place for the certification of HLDTs until the 1998 model year, the market share of required sales for the 1996 and 1997 model years would be determined under either option on the basis of LDVs and LLDTs only. In 1998, the clean-fuel vehicle standards for HLDTs become effective and at that time the market share would be determined on the basis of all LDVs and LDTs.

It is EPA's intent to distribute required sales as equitably as possible and with minimal burden. EPA requests specific comment from manufacturers on the options introduced here as well as suggestions for any other options for the distribution of sales.

3. Exemptions for Small Volume Manufacturers (SVM)

Both the CARB LEV and federal Tier 1 programs make similar allowances for SVMs. Here also, given the close connection between the Pilot Program and CARB's LEV program and in order to be consistent with CARB, EPA is proposing to define a "small volume manufacturer" (SVM) under the Pilot Program as one which had, in the previous model year, sales of all LDVs and LDTs in California totaling 3000 or less units. This definition is only appropriate to the Pilot Program, as other rulemakings may utilize a different definition of a SVM. EPA also proposes to allow SVMs to delay compliance with the sales requirements of the Pilot Program until model year 2001 for all LDVs and all LDTs. This proposed delay is intended to recognize limited capital and research resources available to SVMs, and should provide

SVMs adequate time to research and plan their production of CFVs.

4. Sales Reporting and Enforcement

If a manufacturer fails to meet its required sales volume EPA believes that it has the authority to penalize the manufacturer to the full extent allowed for such an infraction under section 205 of the CAA. Thus, a $25,000 penalty would be levied on a manufacturer in the event of a failure to meet the prescribed sales requirements for certified Pilot Program vehicles. The penalty would be assessed on a per vehicle basis.

In order for EPA to administer and enforce the sales requirements of the Pilot Program, manufacturers will need to report their vehicle sales in California. There is an existing requirement for manufacturers to submit sales data to EPA in § 86.085–37. However, the reporting requirements do not distinguish vehicles sold in California from vehicles sold throughout the U.S. Such a distinction is necessary for purposes of the Pilot Program. For purposes of the Pilot Program EPA proposes that manufacturers, in conjunction with the requirements of § 86.085–37, report the number of vehicles sold only in California.

IV. State Opt-in Program

Section 249(f) of the CAA provides that EPA is to promulgate regulations establishing a program by which states can voluntarily opt into (opt-in) this program and establish incentives to promote the sale and use of clean-fuel vehicles and clean alternative fuels. Under this opt-in program individual states may voluntarily decide to implement a clean-fuel vehicle program as described in this proposed rulemaking.

Any state in which there is located all or part of any ozone nonattainment area that is classified under subpart D of title I as Serious, Severe, or Extreme can choose to submit a revision of their applicable state implementation plan (SIP) under part D of title I and section 110. The state's SIP should provide incentives for the sale or use of CFVs and the production and distribution of clean alternative fuels such as those that are required to be produced, sold, and distributed in the State of California. The provisions of such a plan will come into effect one year after the state has provided a notice of the plan provisions to motor vehicle manufacturers and fuel suppliers.

This section of the Act also lists examples of incentives that may be provided to encourage the sale and use of CFVs and clean alternative fuels. Such incentives may include higher registration fees on non-CFVs, financial incentives, exemptions from high occupancy vehicle or trip reduction requirements, and parking preferences. States may provide additional incentives to those listed here to encourage the CFVs and clean alternative fuels. These incentives will not apply in the case of covered fleet vehicles.

Section 249(f) prohibits a state opting into the program from including in its SIP sales or production mandates for clean-fueled vehicles or clean alternative fuels. Also vehicle manufacturers and fuel suppliers cannot be subjected to penalties or sanctions for failing to produce or sell clean-fuel vehicles or clean alternative fuels.

The proposed regulations for this NPRM implement the state opt-in requirements described above.

V. Program Impacts

A. Environmental Impact

The Pilot Program, as proposed here, will have a minimal impact in light of CARB's larger LEV program, and therefore should not produce emission reductions beyond those of the CARB program. Environmental benefits may [would] be realized, however, if incentives offered by other states that choose to opt into the Pilot Program according to section 249(f) of the Act result in an [and] increase[d] in the numbers of CFVs [are] sold in those states. EPA requests comment on this assessment of environmental benefits.

B. Economic Impact

As with emission reductions, the Pilot Program, superseded by the projected effect of the CARB LEV program, should not create additional economic impact. However, if states choose to opt into the Pilot Program, additional costs could be incurred. For example, the Draft Regulatory Impact Analysis for the recently proposed Conversions, Heavy Duty Standards, and General Provisions NPRM estimates that the cost effectiveness for light-duty CFVs would be in the range of $5,400 to $10,100 per ton of NMOG (EPA believes this range reasonably applies to non-fleet vehicles covered by the Pilot Program as well as to fleet vehicles). EPA requests comment on these assessments of economic impact, including the nationwide impact if significant numbers of states choose to opt in and significant numbers of CFVs are purchased.

C. Energy Impact

Because, as previously mentioned, CARB's LEV program is the dominant program, the Pilot Program should cause no incremental positive or negative energy impact. If other states choose to opt into the Pilot Program, an energy impact would result only if alternative fuels were used. EPA requests comment on this assessment of the energy impact of the Pilot Program.

VI. Public Participation

EPA desires full public participation in arriving at its final decisions, and therefore solicits comments on all aspects of this proposal. Wherever applicable, full supporting data and detailed analysis should be submitted to allow EPA to make maximum use of the comments. Commenters are especially encouraged to provide specific suggestions for any changes to any aspect of the regulations that they believe need to be modified or improved. All comments should be directed to EPA Air Docket, Docket No. A–92–69 (See **ADDRESSES**). The official comment period will last for 30 days following the public hearing for this rulemaking.

Any person desiring to testify at the public hearing (see **DATES**) should notify the contact person listed above of such intent at least 7 days before the hearing date. Persons wishing to testify at the hearing should also provide as estimate of the time required for their presentation and notification of any need for audio/visual equipment. It is suggested that sufficient copies of the statement of the material to be presented be brought to the hearing for distribution to the audience. In addition, a sign up sheet will be available at the registration table the morning of the hearing for scheduling of the order of testimony.

The official record of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the EPA Air Docket, Docket No. A–92–69 (see **ADDRESSES**).

Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket.

Information covered by such a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality

accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

The hearing will be conducted informally, and technical rules of evidence will not apply. Written transcripts of the hearing will be made. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

VII. Statutory Authority

The statutory authority for today's proposal is granted to EPA by sections 241, 242, 243, 246, 249, and 301(a) in title II, part C of the Clean Air Act, as amended; 42 U.S.C. 7581, 7589, and 7601(a).

VIII. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. Major regulations have an annual effect on the economy in excess of $100 million, have a significant adverse impact on competition, investment, employment or innovation, or result in a major rule according to the established criteria. Since this program, as stated above in section V, will have very minimal impacts outside of the California LEV program, there is no significant economic impact to the program. Thus, this program is not considered major.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments have been placed in the public docket for this rulemaking.

IX. Compliance With Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to consider potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis.

There will not be a significant impact on a substantial number of small business entities due to the Pilot Program, primarily because it will exist in effect as a subset to the larger California LEV program and thus will not in itself create any adverse impact on small businesses.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *e.t. seq.*, EPA certifies that this regulation does not have a significant impact on a substantial number of small entities.

X. Reporting and Recordkeeping Requirements

The record-keeping burden requirements of the Pilot Program are kept to a minimum by keeping the program similar to CARB's LEV program. For the most part, the manufacturers will not need to keep any additional data or information beyond that required by CARB's LEV program.

This rule will require a minimal reporting and recordkeeping burden in addition to the requirements described in the Credit Program for the California Pilot Test Program rulemaking. The information collection requirements for that proposal have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA for that rule (ICR No. 1590.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M Street, SW., (PM–223Y); Washington, DC 20460 or by calling (202) 260–2740. In addition to that document a separate Information Collection Request document has been prepared for this proposal (ICR No. 783.28), and a copy may be obtained from Sandy Farmer as well. The information requested is data required for the certification of light-duty CFVs and data for the total number of vehicles a manufacturer sold only in California each year as well as the number of CFVs a manufacturer sold only in California each year. EPA requests comments on the burden estimates in this Information Collection Request document. This document has also been submitted for approval to the Office of Management and Budget under the Paper Work Reduction Act.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW., (PM–223Y); Washington DC 20460; and to the Office of Information and Regulatory Affairs, Office of Information and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final Rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects 40 CFR Part 88

Administrative practice and procedures, Air pollution control, Gasoline, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: June 17, 1993.

Carol M. Browner,

Administrator.

[FR Doc. 93–15257 Filed 6–28–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 372

[OPPTS–400079; FRL–4577–4]

Chromium, Nickel, and Copper in Stainless Steel, Brass, and Bronze; Toxic Chemical Release Reporting; Community Right-To-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition.

SUMMARY: EPA is denying three petitions to exempt reporting of chromium, nickel, and copper when contained in stainless steel, brass, bronze and other alloys from the list of toxic chemicals subject to section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). Specifically, EPA is denying these petitions because: (1) Chromium, copper, and nickel can reasonably be anticipated to cause various adverse human health and environmental effects; and (2) the petitioners failed to provide, nor does EPA possess, any data to support petitioners' contention that manufacturing, processing, use, or other activities involving the metal alloys would not lead to availability of these metals. EPA is requesting comment on whether certain forms of brass, bronze, and stainless steel do not corrode under various processing, use, or disposal conditions. Depending upon the comments received, EPA will reconsider the issue of reporting for metals contained in alloys.

DATES: Written comment on this notice must be received by August 30, 1993.

ADDRESSES: Written comments should be submitted in triplicate to: OPPT Docket Clerk, TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS–120, 401 M St., SW.,

Washington, DC 20460, Toll free: 800–535–0202, In Virginia and Alaska, 703–412–9877 or Toll free TDD: 800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This Notice is issued under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act, 42 U.S.C. 13106. Section 313 established an initial list of toxic chemicals that is comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has both added to, and deleted chemicals from, the original statutory list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition is denied. On May 23, 1991 (56 FR 23703), EPA published guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories.

II. Description of Petitions

On June 12, 1992, EPA received a petition from Russell Harrington Cutlery, Inc. to exempt reporting of chromium present in stainless steel from section 313 of EPCRA. On September 25, 1992, EPA received a second petition from Bath Iron Works Corporation petitioning for an exemption from the EPCRA section 313 requirements for reporting nickel when contained in stainless steel and other alloys. A third petition was received on October 1, 1992, from Stillwater Fasteners, Inc. petitioning for the deletion of the processing of chromium, nickel, and copper when contained in stainless steels and solid copper-based alloys from the EPCRA section 313 requirements. The petitioners contend that the alloys themselves are not toxic agents. They also contend that the chromium, nickel, and copper are alloyed in the stainless steel, brass, and bronze and that in this form pose no threat to human health or the environment because they are not available for exposure.

Reporting of chromium, nickel, and copper in alloys is currently required under EPCRA section 313 because the elemental metals are subject to reporting and the Agency considers alloys to be solid-solid mixtures. Therefore, the weight percent of any listed chemical in a mixture must be factored into threshold and release determinations.

III. EPA's Technical Review of Chromium, Nickel, and Copper

A detailed technical review of the petitions to exempt the reporting of chromium, nickel, and copper in stainless steels, brass, and bronze is contained in the support document, "Support Document for the Petitions to Exempt Chromium in Stainless Steel, Nickel in Stainless Steel, and Chromium, Copper, and Nickel in Brass, Bronze, and Stainless Steel" (Ref. 1). This document includes an analysis of the chemistry and health effects known for each substance and its compounds. In addition, the document includes an analysis of the availability of chromium, nickel, and copper from the corrosion of alloys under several environmental conditions. Following is a summary of those analyses.

A. Chemistry and Alloying Functions

Chromium (Cr; Chemical Abstract Service (CAS) number 7440–47–3) is a hard, brittle, semi-gray metal which is soluble in acids (except nitric acid) and strong alkalies. Its common oxidation states are +3 and +6. Nickel (Ni; CAS number 7440–020) is a malleable, silvery metal which exhibits excellent resistance to corrosion, although it can be attacked slightly by hydrochloric, sulfuric, and nitric acids. Nickel commonly exists in the +2 oxidation state. Copper (Cu; CAS number 7440–50–8) has a distinctive reddish color, is ductile, and is an excellent conductor of electricity. Copper dissolves readily in nitric acid and hot concentrated sulfuric acid, but slowly in hydrochloric acid. Copper is commonly found in the +1 and +2 oxidation states.

Chromium is one of the most widely used alloying elements in the metal industry. It improves the mechanical properties of steel and also increases the resistance to corrosion and oxidation. The superior corrosion resistance of stainless steels is due primarily to the addition of chromium. Nickel is unique among the elements added to steel, in that with iron it forms a continuous series of solid solutions and has no tendency to form compounds. Nickel strengthens unquenched or annealed steels, toughens pearlitic-ferritic steels (especially at low temperatures), and renders high chromium iron alloys austenitic. Copper increases resistance to atmospheric corrosion, increases fluidity to the melt, improves tensile and yield strengths with only minor loss in ductility, and increases machinability. Nearly all of the newer steels contain a small amount of copper.

Copper is the primary constituent of brasses and bronzes. Brasses are copper - zinc alloys of varying concentrations, containing typically 5 to 40 percent zinc. Bronzes are copper tin alloys of varying concentrations, containing typically 1 to 10 percent tin.

B. Toxicological Evaluation

1. *Chromium.* There are sufficient data to indicate that chromium meets the criteria of EPCRA section 313(d)(2)(B). Data demonstrate that chromium (VI) is a human carcinogen. Chromium (VI) is classified as a Group A (known human) carcinogen under EPA's Carcinogen Assessment Guidelines (Ref. 2). The International Agency for Research on Cancer (IARC) has classified chromium (VI) as carcinogenic to humans (Group 1). Chromium metal can be oxidized to chromium (III), which under certain conditions can be further oxidized to chromium (VI).

2. *Copper.* There are sufficient data to indicate that copper meets the criteria of EPCRA section 313(d)(2)(B) and (C). Copper poisoning has been demonstrated in animals and identified in humans. The liver is the main storage depot for copper and hematic damage is associated with the accumulation of high levels of copper. Hepatic toxicity is characterized by hepatocellular necrosis, regenerative activity, and cirrhosis. Kidney necrosis and elevated levels of serum copper occur only after the liver begins to accumulate high levels of copper. These elevated serum copper levels can progress to sudden hemolytic anemia and jaundice.

The types of neurological effects associated with copper poisoning can include demyelination and cerebral degeneration.

Copper is very toxic to aquatic life. Under section 303 of the Clean Water

Act (CWA), EPA has issued Water Quality Criteria for copper to protect aquatic life. These criteria describe what level of copper ambient water can contain and still be suitable for certain uses. The acute criterion in fresh water is .0092 milligrams/liter (mg/L). The chronic criterion in fresh water is .0065 mg/L. In salt water the acute criteria is .0029 mg/L and there is no chronic criteria.

3. *Nickel.* There are sufficient data to indicate that nickel meets the criteria of EPCRA section 313(d)(2)(B). There is evidence both in humans and animals for the carcinogenicity of nickel. Some biochemical and *in vitro* toxicological studies indicate that nickel ion is the carcinogenic form of nickel and its compounds. IARC has classified metallic nickel as possibly carcinogenic to humans (Group 2B) and nickel compounds as carcinogenic to humans (Group 1).

C. Alloy Corrosion

The petitioners requested that EPA exempt the processing and use of these metals in alloys from the EPCRA section 313 reporting requirements based on their belief that when the elemental metals exist in the form of an alloy, they are not available and therefore could not cause adverse effects. However, EPA has information indicating that some forms of these alloys, such as dusts, shavings, and turnings, can reasonably be anticipated to corrode under some processing, use, or disposal situations yielding soluble forms of the constituent metals. Accordingly, EPA believes that these metals can reasonably be anticipated to cause adverse human health and environmental effects.

Stainless steels, brasses, and bronzes can reasonably be anticipated to corrode under various environmental conditions to yield the soluble forms of the constituent metals, particularly after disposal in a landfill. The rate of corrosion of the particular alloy is dependent upon many factors such as the surface area of the alloy wastes, the pH of the disposal site, the type of soil present, and the presence of other chemicals.

After being processed and worked, some stainless steel, brass, and bronze wastes may enter landfills in the form of dust or scrapped metal (filings, shavings, turnings, grindings, etc.). This dust and scrapped metal may be in contact with the leachates that are generated at the landfill as the liquid within the landfill moves through the soil beneath the disposal area. The generation and characteristics of the leachate (in particular the concentration of the chromium, nickel, and copper ions present) are affected by physical, chemical, and biological influences.

As previously indicated, there are many factors which will influence the corrosion of an alloy in a landfill to yield the metal constituents. The size of a solid particle will have a direct influence on the leachability of the material. The smaller the particle size per unit weight the larger the resulting exposed surface area. A large exposed surface area permits increased contact and corresponding increased leaching. Therefore, the availability of the metal constituents from the alloy is greatly influenced by the surface area to volume ratio of the alloy waste.

Another factor which will affect the leachability of the alloy wastes is the quantity of liquid present. This will determine the rate at which the leachate will be generated as well as its composition. Other solid waste materials that are present as well as the porosity and particle size of the soil will influence the velocity of the leachate liquid and the time that the liquid will be in contact with the alloys. Chemical influences such as solubility and pH are also important factors.

The corrosion rates of various stainless steels were observed under the following seven environmental conditions: mild atmosphere and fresh water, industrial atmospheric, marine atmospheric, salt water, mild chemical, oxidizing chemical, and reducing chemical. The majority of the steels studied corroded under one or more of these environmental conditions yielding soluble forms of their constituent metals. Corrosion was particularly pronounced in the presence of salt water and reducing chemicals.

Brasses and bronzes exhibit high resistance to the corrosive effects of the atmosphere, fresh water and seawater. However, sulfur and sulfides, aqueous ammonia, and oxidizing chemicals attack copper alloys.

The fate of stainless steels in four different types of soils, considered to be representative of most soils in the United States, has been studied. These soils are: (1) Well aerated acid soils low in soluble salts (pH 4.8); (2) poorly aerated soils (pH 7.1); (3) alkaline soils high in soluble salts (pH 7.5); and soils high in sulfides (pH 2.6). Corrosion was highest in alkaline soils high in soluble salts and soils high in sulfides.

Brasses and bronzes exhibit a higher resistance to corrosion by soils than stainless steels. Corrosion of brasses and bronzes is enhanced in soils containing high concentrations of sulfides, chlorides, or hydrogen ions.

EPA concludes from this data that there are some forms of alloys which will corrode or corrode under specific conditions to yield their metal constituents. There are several factors which may contribute to this corrosion either independently or collectively. These factors include: surface area to volume ratios, soil pH, and the presence of other chemicals. All of these factors are important in establishing alloy corrosion; however, EPA is particularly concerned with the surface area to volume issue. Currently, the Agency does not have enough data on these factors to establish which forms of the alloy will corrode.

D. Technical Summary

Chromium metal can oxidize to chromium (III), which may be oxidized to chromium (VI), a known human carcinogen. Nickel and its compounds are also known human carcinogens. Copper is very toxic to aquatic life and also causes some adverse human health effects.

The available data indicate that corrosion of alloys will occur to yield soluble forms of their metal constituents in certain soil types and under certain environmental conditions (see Unit III. C.). This corrosion is anticipated to be much more pronounced in forms of the alloy which have high surface area to volume ratios.

IV. Rationale for Denial

EPA is denying the petitions to exempt the reporting of chromium, nickel, and copper when contained in stainless steel, brass, and bronze from the section 313 list of toxic chemicals. The denial is based on the Agency's determinations, as discussed in Units III.B. and C. above, that: (1) Chromium, copper, and nickel meet the criteria of EPCRA section 313(d)(2)(B) and (C), and (2) corrosion of certain forms (e.g., dusts, grindings, and shavings) of the alloys brass, bronze, and stainless steel can reasonably be anticipated to occur under some processing, use or disposal situations yielding soluble forms of these constituent metals. The petitioners failed to provide, nor does EPA possess, any data to support petitioners' contention that manufacturing, processing, use, or other activities involving the metal alloys would not lead to availability of these metals. Accordingly, these metals can reasonably be anticipated to cause adverse human health and environmental effects. EPA has determined that copper can reasonably be anticipated to cause significant adverse effects on the environment because of its high aquatic toxicity, and on human health by copper poisoning. EPA has also determined that chromium

and nickel can reasonably be anticipated to cause human health effects since chromium (VI) is a known human carcinogen, nickel has been shown to be a possible human carcinogen, and nickel compounds are carcinogenic to humans.

V. Request for Public Comment

EPA requests comment on the reporting of chromium, nickel, and copper in stainless steel, brass, and bronze. Data indicate that certain forms (e.g, dusts, shavings, etc.) of stainless steels, brasses, and bronzes can readily be anticipated to corrode under one or more of the conditions described above in Unit III.C. However, there may be some forms of these alloys (e.g., those having low surface area to volume ratios such as blocks or large pieces of scrap alloy) which will not readily corrode under the conditions described above in Unit III.C. EPA requests comment on whether the reporting of chromium, copper, and nickel in certain forms (e.g., blocks) of the alloys should be exempted from the reporting requirements of EPCRA section 313. Depending upon the nature of the information submitted in response to this request for comment, EPA will consider proposing a qualification of the EPCRA section 313 listing to exempt from reporting those forms of an alloy for which data can be provided that indicate corrosion will not occur.

EPA believes that it has authority under EPCRA section 313(c) to qualify the listing for a chemical by specifying that certain forms of or processes associated with a particular chemical are not subject to the EPCRA section 313(a) reporting requirements. When Congress enacted EPCRA, the original toxic chemical list included several chemicals for which reporting was required only on certain physical forms (e.g., zinc, aluminum, and vanadium are reportable as fume or dust only), or manufactured in certain processes (saccharin is reportable only when manufactured). Based on these precedents and the provisions of EPCRA section 313(d) and (e) which give EPA discretion to add or delete a chemical from the list upon consideration of adverse human health and environmental effects, EPA believes that it has the authority to qualify the listing.

While none of the petitioners provided adequate information to justify qualifying the listings in this case, EPA recognizes that such information may exist from other sources. Accordingly, EPA is soliciting comment on whether it should qualify the listings for metals contained in alloys. To effect such a qualification, EPA requires information demonstrating that activities involving these alloys would not result in availability of the listed metals.

The information needed to make this determination includes descriptions of the typical releases of alloy wastes. This information should consist of data on direct releases as well as waste management practices for alloy wastes. For example, are the wastes of certain types of alloys primarily disposed of in landfills (where they can potentially corrode) or is virtually all the waste recycled (lessening the potential for alloy corrosion). The Agency requests comment on the various types of waste management practices applied to differing alloy wastes.

Data indicate that most stainless steels and many brasses and bronzes will corrode under certain processing, use, and disposal situations (see Unit III. C). Alloy corrosion is enhanced in certain soil types, especially those containing high sulfide, chloride, and hydrogen ion concentrations. In addition, data show that some stainless steels are particularly susceptible to salt water and reducing chemicals. However, EPA believes that certain forms of alloys which have high surface area to volume ratios (e.g., dusts, grindings, shavings) will corrode more rapidly than forms of the alloy which have low surface area to volume ratios (e.g., blocks or thick sheets). Therefore, in addition to information on the types of waste management practices employed, the Agency also requests comment on the forms (e.g., dusts, grindings, shavings) of alloy wastes generated and whether the specific form of the wastes affects how the waste will be managed. Currently, the Agency does not have data that indicate which surface area to volume ratios will result in minimal corrosion.

At this time, EPA has no basis for establishing criteria for determining which forms of an alloy may be exempted. A criterion based solely on the size of the alloy waste will not adequately capture all forms with high surface area to volume ratios which are likely to rapidly corrode. The Agency requests comment on any data regarding the corrosion of alloys under various processing, use, or disposal conditions.

Assuming EPA were to receive data indicating that pursuing a section 313 reporting exemption is warranted for chromium, nickel, and copper in alloys in certain forms, EPA requests comment on whether this exemption should also apply to all the metals on the EPCRA section 313 toxic chemical list that are typical constituents of alloys.

EPA also requests comment on how such an exemption should be formulated. Two alternatives are either to qualify the individual listing for each metal to be affected or to qualify the listing for all metals contained in alloys. A modification of the individual listings could take the form of a qualifier such as "fumes, dusts, fines, etc. when contained in an alloy." In addition, all forms that would be identified as reportable would have to be listed or otherwise identified in the qualifier. EPA requests comment on how the listing qualifier could be most clearly formulated. Another approach would be to modify the listings for all metals contained in all alloys in those forms which would not require reporting. EPA requests comment on how any qualification for the reporting of individual metals contained in alloys should be framed.

VI. References

1. USEPA, Office of Pollution Prevention and Toxics, Support Document for the Petitions to Exempt Chromium in Stainless Steel, Nickel in Stainless Steel, and Chromium, Copper, and Nickel in Brass, Bronze, and Stainless Steel. (1993).

2. USEPA, Risk Assessment Guidelines 1986. Guidelines for Carcinogen Risk Assessment. Cincinnati, OH: USEPA, Office of Health Effects and Assessment. (1987)

VII. Administrative Record

The record for this action is contained in docket control number OPPTS-400079. All documents, including an index of the docket, are available to the public in the TSCA Nonconfidential Information Center (NCIC), also known as, the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. NCIC is located at EPA Headquarters, Rm. E–G102, 401 M St., SW., Washington, DC 20460.

Dated: June 15, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 93–15263 Filed 6–28–93; 8:45 am]

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VOL 58 ISS 123 JE 29 1993 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[BPD-771-CN]

RIN 0938-AG23

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1994 Rates; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule; correction.

SUMMARY: In the May 26, 1993, issue of the **Federal Register** (FR Doc 93-12093) (58 FR 30222), we proposed to revise the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the system. Additionally, in the addendum to that proposed rule, we announced the proposed prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs that would be applicable to discharges occurring on or after October 1, 1993, and set forth proposed update factors for the rate-of-increase limits for hospitals and hospital units excluded from the prospective payment systems. This notice corrects errors made in that document.

FOR FURTHER INFORMATION CONTACT: Barbara Wynn, (410) 966-4529.

SUPPLEMENTARY INFORMATION: In our May 26, 1993, proposed rule (58 FR 30222), we included as Appendix F the "ProPAC Proposed Nearest Neighbor Wage Index," which set forth hypothetical hospital-specific wage index values based on a proposal from the Prospective Payment Assessment Commission (ProPAC). Subsequently, we discovered a technical error in the computation of the wage index values contained in Appendix F. Therefore, this notice is necessary to set forth the correct wage index values that would result from the ProPAC proposal.

As we indicated in the proposed rule, the "nearest neighbor" wage index reflects hypothetical hospital-specific labor market areas consisting of each hospital and its 10 nearest hospitals within a radius of 50 air miles (58 FR 30242). To provide comparability with the proposed FY 1994 wage index, which is based on MSA labor market areas, the revised "nearest neighbor" wage index values reflect the hour-weighted average hourly wage of hospitals in the hypothetical labor market area (numerator) relative to the hour-weighted national average hourly wage of $17.0434 (denominator). Similarly, the "nearest neighbor" wage index values have been adjusted by a normalization factor of .995026, so that the hour-weighted mean of those values equals the hour-weighted mean of the proposed FY 1994 wage index values. This normalization adjustment allows hospitals to assess more accurately the payment impact of this hypothetical hospital-specific labor market approach. Section 1886(d)(3)(E) of the Act requires that updates or adjustments to the hospital wage index be budget neutral, so the normalization adjustment helps to account for the impact of the budget neutrality adjustment.

The original version of the table (58 FR 30457 through 30596) correctly identified the hospitals whose wage data are used to construct each hospital-specific wage index. Therefore, the table below (see item 9) shows only the provider number and the revised wage index value for each hospital. We note that, as indicated in the May 26, 1993, proposed rule, comments on this hospital-specific approach are due by August 31, 1993, so that we can consider the comments in developing the prospective payment system proposed rule for FY 1995.

In addition to the incorrect wage index values contained in appendix F, the May 26, 1993, proposed rule also contained several other minor typographical and technical errors. Therefore, we are making the following corrections to that document:

1. On page 30245, third column, in the first full paragraph, beginning in the third line of the paragraph, the phrase "1-day stays cost" is revised to read "first day of a stay costs". Also, in the same paragraph, the second and third sentences that read:

"Among medical DRG transfer cases, the costs of 2-day stays are about 20 percent higher than the applicable per diem payment amount, and cases transferred after 2 days cost about 10 percent more than the applicable per diem amount. Among surgical cases, the costs of stays of 2 or more days are actually about 7 percent below the applicable per diem amount."

are revised to read:

"Among medical DRG transfer cases, the costs of the second day of a stay are about 20 percent higher than the applicable per diem payment amount, and each succeeding day costs about 10 percent more than the applicable per diem amount. Among surgical cases, the costs of each day after the first day are actually below the applicable per diem amount."

2. On page 30252, second column, beginning in the sixth line, the phrase "to remove and reserve" is revised to read "to remove".

§ 413.40 [Corrected]

3. On page 30267, second column, in § 413.40(i)(1)(ii)(A), beginning in the seventh line, the phrase "are services." is revised to read "care services."

4. On pages 30348 and 30349, in Table 6d—Revised Diagnosis Code Titles, for diagnosis codes 250.00 through 250.91, under the "Description" column, the phrase "not stated as controlled" is revised to read "not stated as uncontrolled".

5. On page 30370, in Table 6h—Additional OR Procedures That Group to DRG 477, code 86.3 and its corresponding description that reads "Other local excision or destruction of lesion or tissue of skin and subcutaneous tissue." are removed. This procedure is not an OR procedure and was mistakenly included in the table.

6. On page 30440, first column, after the table's last footnote and before the date of March 25, 1993, the following title is added to read:

"Appendix C—Report to Congress on the Update Factor for Prospective Payment Hospitals and Hospitals Excluded From the Prospective Payment System".

7. On pages 30444 and 30445, Table 1—Comparison of FY 1994 Update Recommendations is republished to correct a printing error that inadvertently misplaced some of the entries under the columns entitled "HHS" and "ProPAC." Table 1 is revised to read as follows:

TABLE 1.—COMPARISON OF FY 1994 UPDATE RECOMMENDATIONS

	HHS	ProPAC
Market Basket	MB	MB

TABLE 1.—COMPARISON OF FY 1994 UPDATE RECOMMENDATIONS—Continued

	HHS	ProPAC
Difference Between HCFA & ProPAC Market Baskets	.....	+0.1
Subtotal	MB	MB +0.1
Policy Adjustment Factors	.....	.....
Productivity	−1.1 to −0.8	−0.5
Intensity:		
Science and Technology	+0.7 to +0.9	+1.0
Intensity	.....	(1)
Real Within DRG Change	.....	(2)
Subtotal	−0.4 to +0.1	+0.5
Case Mix Adjustment Factors:		
Observed Case Mix Change	−1.7	−2.0
Real Across DRG Change	+1.0 to +1.4	+1.4
Real Within DRG Change	(3)	+0.4
Effect of 1992 Reclassification and Recalibration	−0.1	.....
Subtotal	−0.8 to −0.4	−0.2
Adjustment for MSA Changes	−0.2	.....
Forecast Error Correction	−1.4	−1.3
Total Recommended Update	MB −2.8 to MB −1.9	MB −0.7

[1] Included in ProPAC's Productivity Measure
[2] Included in ProPAC's Case Mix Adjustment
[3] Included in HHS' Intensity Factor

8. On page 30453, second column, in the second full response, the last sentence is revised to read:

"The justification for this procedure is that depreciation amounts from both surveys were highly correlated but interest amounts in Medicare cost reports are not clearly classified and, therefore, appear to be under-reported. Interest amounts from the AHA Survey appeared to represent this expense more clearly."

9. As discussed above, we are making the following revisions to Appendix F, ProPAC Proposed Nearest Neighbor Wage Index, which was set forth in the proposed rule on pages 30457 through 30596:

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX

Provider No.	Wage index
010001	0.7363
010004	0.8711
010005	0.7461
010006	0.7503
010007	0.6486
010008	0.6692
010009	0.8044
010011	0.9310
010012	0.8040
010015	0.6280
010016	0.9140
010018	0.9310
010019	0.7440
010020	0.7775
010021	0.7397
010022	0.8053
010023	0.7460
010024	0.7468
010025	0.7255

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
010027	0.6595
010029	0.7302
010031	0.7558
010032	0.7713
010033	0.9310
010034	0.7500
010035	0.7518
010036	0.6412
010038	0.7758
010039	0.8030
010040	0.7676
010043	0.7066
010044	0.7497
010045	0.7523
010046	0.7676
010047	0.6548
010049	0.7515
010050	0.8211
010051	0.8114
010052	0.6792
010053	0.7119
010054	0.8086
010055	0.7363
010056	0.9310
010057	0.7515
010058	0.8218
010059	0.7609
010061	0.8005
010062	0.7100
010064	0.9140
010065	0.6788
010066	0.7166
010068	0.9126
010069	0.7128
010072	0.6908
010073	0.7125
010078	0.7758
010079	0.8086
010080	0.6731

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
010081	0.7468
010083	0.7975
010084	0.9241
010085	0.8086
010086	0.7503
010087	0.7456
010089	0.8801
010090	0.7456
010091	0.6310
010092	0.8384
010094	0.7542
010095	0.8032
010096	0.8093
010097	0.7466
010098	0.7654
010099	0.6806
010100	0.7703
010101	0.7138
010102	0.6867
010103	0.9236
010104	0.9310
010108	0.7480
010109	0.7907
010110	0.7496
010112	0.7183
010113	0.7656
010114	0.9140
010115	0.7473
010117	0.9310
010118	0.7359
010119	0.7456
010120	0.6395
010121	0.7359
010122	0.7154
010123	0.7588
010124	0.7503
010125	0.7659
010126	0.6567
010127	0.6030

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
010128	0.6310
010129	0.7294
010130	0.9236
010131	0.8030
010134	0.6008
010136	0.7698
010137	0.9310
010138	0.7133
010139	0.9241
010143	0.7518
010144	0.7456
010145	0.8377
010146	0.7626
010148	0.6480
010149	0.7466
010150	0.7385
010152	0.7456
010153	0.6384
020001	1.2854
020004	1.4537
020006	1.2854
020007	1.1726
020009	1.1726
020010	1.1486
020011	1.1653
020014	1.5097
020017	1.2854
020024	1.1691
020025	1.1486
030001	1.0541
030002	1.0468
030003	1.0522
030004	0.7764
030006	0.9899
030007	0.8665
030008	1.0464
030009	0.9899
030010	0.9899
030011	0.9870
030012	0.8554
030013	0.9376
030014	1.0371
030015	1.0392
030017	0.9500
030018	0.9500
030019	1.0462
030022	1.0485
030023	0.8688
030024	1.0498
030025	0.9579
030027	0.8921
030030	1.0464
030033	0.8648
030034	0.9171
030035	0.9899
030036	1.0274
030037	1.0485
030038	0.9731
030040	1.0015
030041	1.0425
030043	0.9149
030044	0.8349
030046	0.9662
030047	0.9367
030049	1.0224
030051	0.9868
030054	0.9875
030055	0.9445
030059	1.0498

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
030060	1.0214
030061	1.0222
030062	0.8723
030064	0.9899
030065	1.0260
030067	0.8922
030068	0.7272
030069	0.9355
030080	0.9870
030083	0.9820
030085	0.9899
030086	0.9463
030087	0.9654
030088	0.9500
030089	1.0222
030091	0.8022
030092	1.0498
030093	1.0222
040001	0.7243
040002	0.7460
040003	0.8290
040004	0.7179
040005	0.7074
040007	0.8283
040008	0.6949
040010	0.7151
040011	0.7831
040013	0.7179
040014	0.7568
040015	0.6561
040016	0.8283
040017	0.6761
040018	0.7211
040019	0.8470
040020	0.6707
040021	0.8291
040022	0.7179
040024	0.7334
040025	0.8476
040026	0.8346
040027	0.6287
040028	0.7170
040029	0.8292
040030	0.6963
040031	0.6987
040032	0.7839
040035	0.6364
040036	0.8283
040037	0.6771
040039	0.6894
040040	0.7222
040041	0.6963
040042	0.8584
040044	0.6578
040045	0.6834
040047	0.6735
040048	0.7166
040050	0.6948
040051	0.7296
040053	0.7134
040054	0.7122
040055	0.7211
040058	0.7293
040060	0.7212
040062	0.7211
040063	0.7714
040064	0.7520
040066	0.7673
040067	0.7441

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
040069	0.7037
040070	0.7835
040071	0.8057
040072	0.8407
040074	0.8295
040075	0.7063
040076	0.8352
040077	0.7477
040078	0.8346
040080	0.7122
040081	0.7992
040082	0.7825
040084	0.8364
040085	0.7949
040088	0.6537
040090	0.7519
040091	0.7536
040093	0.6112
040095	0.7536
040100	0.7556
040105	0.6266
040106	0.7185
040107	0.7838
040109	0.7074
040114	0.8283
040115	0.6315
040116	0.8283
040118	0.6787
040119	0.7090
040122	0.6812
040124	0.7339
040126	0.6474
050002	1.3678
050006	0.9540
050007	1.3884
050008	1.4024
050009	1.2379
050013	1.2252
050014	1.1281
050015	1.1406
050016	1.2010
050017	1.2273
050018	1.2025
050021	1.1990
050022	1.2101
050024	1.1549
050025	1.2051
050026	1.2022
050028	0.9540
050029	1.2734
050030	1.0316
050032	1.2252
050033	1.3967
050036	1.0100
050038	1.4385
050039	1.0321
050040	1.3660
050041	1.3007
050042	1.0957
050043	1.3965
050045	0.9376
050046	1.2194
050047	1.3967
050049	1.1924
050051	1.0181
050053	1.3965
050054	1.1789
050055	1.4196
050056	1.2794

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REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
050057	1.0057
050058	1.3035
050060	1.0192
050061	1.2007
050063	1.2585
050065	1.2902
050066	1.2755
050067	1.1111
050068	1.0598
050069	1.3046
050070	1.4162
050071	1.4385
050072	1.3998
050073	1.3925
050074	1.4108
050075	1.3997
050076	1.3967
050077	1.2051
050078	1.2668
050079	1.4390
050080	1.4119
050081	1.0192
050082	1.2595
050084	1.1315
050086	1.3156
050088	1.2016
050089	1.2234
050090	1.2600
050091	1.2077
050092	1.0330
050093	1.0192
050095	1.3614
050096	1.2231
050097	0.9540
050099	1.3007
050100	1.2175
050101	1.3925
050102	1.2073
050103	1.1986
050104	1.2697
050107	1.1909
050108	1.2266
050109	1.2273
050110	1.1863
050111	1.3217
050112	1.2969
050113	1.3761
050114	1.3504
050115	1.2449
050116	1.3320
050117	0.9581
050118	1.1210
050121	1.0015
050122	1.1315
050124	1.3444
050125	1.4385
050126	1.3685
050127	1.2277
050128	1.1952
050129	1.2234
050131	1.3963
050132	1.2579
050133	1.1171
050135	1.3275
050136	1.2333
050137	1.3621
050138	1.3568
050139	1.2381
050140	1.2371

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
050143	1.3619
050144	1.3495
050145	1.3088
050147	1.2657
050148	1.0202
050149	1.2142
050150	1.1303
050152	1.4037
050153	1.4385
050154	1.0971
050155	1.2548
050158	1.4091
050159	1.2382
050161	1.1876
050166	1.2292
050167	1.1222
050168	1.1432
050169	1.1834
050170	1.2247
050172	0.9521
050173	1.1946
050174	1.2252
050175	1.1915
050177	1.2595
050179	1.0779
050180	1.3882
050181	1.4129
050183	1.0935
050186	1.2022
050188	1.4385
050189	1.3008
050191	1.2565
050192	1.0325
050193	1.2779
050194	1.3261
050195	1.4006
050196	1.0015
050197	1.4350
050199	1.3482
050204	1.2857
050205	1.2171
050207	1.1171
050208	1.3967
050211	1.4018
050212	1.1659
050213	1.0192
050214	1.3482
050215	1.4385
050217	0.9102
050219	1.3060
050220	1.1996
050222	1.1278
050224	1.2661
050225	1.0317
050226	1.2472
050228	1.4196
050230	1.2604
050231	1.2113
050232	1.2016
050233	1.2051
050234	1.1299
050235	1.3317
050236	1.3521
050238	1.2787
050239	1.3134
050240	1.2783
050241	1.3031
050242	1.4018
050243	1.1697

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
050245	1.2234
050248	1.3175
050251	0.8284
050253	1.1834
050254	1.2471
050256	1.2142
050257	1.0100
050258	1.2299
050260	1.2237
050261	1.0488
050262	1.3045
050263	1.3351
050264	1.3619
050267	1.3291
050269	1.1882
050270	1.1549
050272	1.2235
050274	1.0971
050276	1.4185
050277	1.2564
050278	1.3482
050279	1.1703
050280	1.1397
050281	1.1938
050282	1.1940
050283	1.3656
050286	1.0588
050289	1.4365
050290	1.2969
050291	1.2252
050292	1.2281
050293	1.3967
050295	1.0100
050296	1.3080
050298	1.0865
050299	1.3085
050300	1.2350
050301	1.0865
050302	1.3761
050305	1.3810
050307	1.0321
050308	1.4660
050309	1.2266
050310	1.2856
050312	1.1080
050313	1.1665
050315	1.0100
050317	1.3364
050319	1.4385
050320	1.3809
050324	1.2303
050325	1.0848
050327	1.2121
050328	1.3284
050329	1.2275
050331	1.2602
050333	1.0139
050334	1.3099
050335	1.0848
050336	1.1400
050337	1.2857
050342	1.9376
050343	1.2564
050345	1.2275
050348	1.2388
050349	1.0488
050350	1.1788
050351	1.3022
050352	1.1693

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
050353	1.2930
050355	1.1726
050357	1.1992
050359	1.0598
050360	1.3958
050363	1.3236
050366	1.0996
050367	1.3773
050369	1.2231
050373	1.1974
050376	1.2729
050377	1.0158
050378	1.3317
050379	1.0252
050380	1.4385
050381	1.0865
050382	1.2348
050385	1.2615
050387	0.9376
050388	0.8488
050390	1.1589
050391	1.2689
050392	1.1254
050393	1.2624
050394	1.2382
050396	1.2007
050397	0.9801
050401	1.2933
050404	1.0446
050406	1.0412
050407	1.4037
050410	1.0202
050411	1.2755
050414	1.2266
050417	0.7713
050418	1.0057
050419	1.1193
050420	1.2838
050421	1.2273
050423	0.7551
050424	1.2255
050425	1.2273
050426	1.2098
050427	1.2734
050430	0.9498
050431	1.1880
050432	1.1801
050433	0.9445
050434	1.0699
050435	1.2178
050436	0.9895
050438	1.2254
050440	1.0397
050441	1.4465
050442	1.1400
050443	0.9653
050444	0.9581
050446	1.0518
050447	1.1975
050448	0.9210
050449	1.1865
050450	1.0129
050451	1.0773
050454	1.4086
050455	1.0100
050456	1.2601
050457	1.3990
050458	1.3175
050459	1.3083

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
050464	1.1015
050467	1.3438
050468	1.2601
050469	0.9312
050470	1.0076
050471	1.2142
050476	1.1412
050477	1.3085
050478	1.1545
050481	1.3351
050482	1.0921
050483	1.2348
050485	1.2486
050486	1.3149
050488	1.3607
050489	1.3064
050491	1.2902
050492	1.0192
050494	1.1603
050496	1.4227
050497	0.9767
050498	1.2379
050502	1.3134
050503	1.2359
050506	1.2016
050510	1.3958
050512	1.3670
050515	1.2064
050516	1.2273
050517	1.2350
050522	1.4410
050523	1.4147
050526	1.3409
050528	0.9885
050531	1.3149
050534	1.2052
050535	1.3062
050537	1.2287
050539	1.1991
050541	1.4350
050542	1.0094
050543	1.2661
050545	1.2355
050546	1.0488
050547	1.2228
050548	1.2681
050549	1.3568
050550	1.3046
050551	1.2021
050552	1.3487
050557	1.1015
050559	1.2905
050560	1.2916
050561	1.3094
050564	1.2694
050565	1.1679
050566	1.1827
050567	1.2727
050568	1.0305
050569	0.9900
050570	1.3409
050571	1.2302
050573	1.1813
050575	1.2269
050577	1.1782
050578	1.2657
050579	1.3045
050580	1.2362
050581	1.2657

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
050583	1.1975
050584	1.2113
050585	1.2442
050586	1.2206
050587	1.2121
050588	1.2204
050589	1.2360
050590	1.2273
050591	1.1826
050592	1.2033
050593	1.3813
050594	1.2375
050597	1.2348
050598	1.2259
050599	1.2266
050601	1.3655
050603	1.2727
050604	1.4385
050607	1.1946
050608	1.0160
050609	1.2522
050613	1.3810
050615	1.2370
050616	1.2595
050618	1.1559
050619	1.2534
050622	1.3167
050623	1.2852
050624	1.3388
050625	1.3742
050630	1.1991
050633	1.2137
050635	1.4229
050636	1.2512
050637	1.2550
050638	1.1428
050641	1.1643
050644	1.2997
050651	1.1313
050655	1.2007
050661	1.4108
050662	1.4390
050666	1.2483
050667	1.2280
050668	1.4239
050669	1.2113
050671	1.3619
050672	1.1915
050674	1.2273
050675	1.3388
050676	0.8405
050677	1.3531
050678	1.3409
050680	1.2355
060001	0.9188
060003	0.9643
060004	1.1510
060005	1.1317
060006	0.7777
060007	0.8890
060008	0.7346
060009	1.1225
060010	0.8906
060011	1.1317
060012	0.8870
060013	0.9788
060014	1.1317
060015	1.1225
060016	0.8873

REVISIONS
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060018
060020
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REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage Index
060018	0.9788
060020	0.8870
060022	0.8902
060023	0.8769
060024	1.1317
060026	1.1317
060027	1.0249
060028	1.1317
060029	1.1489
060030	0.9771
060031	0.8902
060032	1.1317
060033	0.6089
060034	1.1281
060036	0.7623
060037	0.6165
060038	0.7310
060039	0.9709
060041	0.9192
060042	0.9118
060043	0.8294
060044	0.8642
060046	0.8424
060047	0.6686
060049	0.8407
060050	0.6880
060052	0.6558
060053	0.6291
060054	0.8769
060056	0.7621
060057	1.0309
060058	0.7247
060060	0.7346
060062	0.9657
060063	0.6615
060064	1.1281
060065	1.1218
060066	0.7810
060068	0.8127
060070	0.6557
060071	0.6558
060072	0.7346
060073	0.8631
060075	1.0303
060076	0.7521
060085	0.6367
060087	1.1176
060088	0.9443
060090	0.9719
060093	1.1317
060096	1.0418
060101	1.1281
070001	1.2136
070002	1.2227
070003	1.1032
070004	1.0937
070005	1.1955
070006	1.3383
070007	1.2081
070008	1.1204
070009	1.2296
070010	1.2236
070011	1.2173
070012	1.1948
070013	1.2227
070014	1.2274
070015	1.2020
070016	1.2003
070017	1.2274

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No	Wage Index
070018	1.3529
070019	1.2236
070020	1.2242
070021	1.2357
070022	1.2136
070023	1.2049
070024	1.2028
070025	1.2227
070026	1.2009
070027	1.2287
070028	1.2093
070029	1.2265
070030	1.3383
070031	1.2185
070033	1.2147
070034	1.2500
070035	1.2194
070036	1.2227
080001	1.0873
080002	0.8687
080003	1.0873
080004	0.8975
080005	1.0873
080006	0.9017
080007	0.9091
090001	1.1282
090002	1.0851
090003	1.1224
090004	1.1324
090005	1.1243
090006	1.1224
090007	1.1206
090008	1.0794
090010	1.1282
090011	1.1224
100001	0.8759
100002	0.9998
100004	0.7751
100005	0.8137
100006	0.9551
100007	0.9910
100008	0.9762
100009	1.1188
100010	0.9850
100012	0.9348
100014	0.8628
100015	0.9651
100016	0.8835
100017	0.8617
100018	0.9460
100019	0.9045
100020	1.0007
100021	0.9871
100022	1.1188
100023	0.8627
100024	0.9735
100025	0.8200
100026	0.8071
100027	0.7696
100028	0.9895
100029	1.0747
100030	0.9837
100032	0.9306
100034	1.0959
100035	0.9653
100038	1.0557
100039	1.0528
100040	0.8759
100042	1.0580

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage Index
100043	0.9545
100044	0.9807
100045	0.8617
100046	0.8853
100047	0.9294
100048	0.8140
100049	0.7891
100050	1.0856
100051	0.9875
100052	0.8133
100053	1.1036
100054	0.8226
100055	0.9571
100056	1.0146
100057	0.9806
100059	1.0998
100060	1.0956
100061	1.1421
100062	0.8823
100063	0.9364
100065	0.8211
100067	0.9306
100068	0.8655
100069	0.9267
100070	0.9512
100071	0.8576
100072	0.8722
100073	1.0245
100074	0.9858
100075	0.9267
100076	1.1493
100077	0.9294
100078	0.7706
100079	0.9852
100080	0.9875
100081	0.8233
100082	0.8768
100083	0.8759
100084	0.9671
100085	1.0267
100086	1.0000
100087	0.5436
100088	0.8759
100089	0.9088
100090	0.8764
100092	0.9115
100093	0.8211
100098	0.9585
100099	0.8295
100100	1.1363
100102	0.8834
100103	0.8612
100105	0.9444
100106	0.8671
100107	0.9348
100108	0.7591
100109	0.8226
100110	0.9858
100112	0.7964
100113	0.8768
100114	1.0018
100117	0.8759
100118	0.8559
100121	0.8137
100122	0.8082
100124	0.8231
100125	1.0108
100126	0.8306
100127	0.9651

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
100128	0.9286
100129	0.9910
100130	0.9425
100131	1.0970
100132	0.9331
100134	0.8542
100135	0.7768
100137	0.8133
100138	0.7407
100139	0.8747
100140	0.8645
100142	0.7472
100143	0.9267
100144	0.9649
100145	0.9442
100146	0.7395
100147	0.7350
100150	0.9822
100151	0.8759
100152	1.1493
100154	1.0016
100156	0.8808
100157	0.8354
100159	0.7640
100160	0.9898
100161	0.9769
100162	0.9871
100164	0.8190
100165	0.9653
100166	0.9436
100167	1.0267
100168	1.0311
100169	0.8655
100170	0.8759
100172	1.1134
100173	0.9211
100174	0.9651
100175	0.9554
100176	0.9479
100177	0.9115
100179	0.8759
100180	0.9306
100181	1.0016
100183	0.9852
100185	0.8014
100186	0.9306
100187	1.0856
100189	1.0138
100191	0.9364
100194	1.0469
100195	0.9822
100196	0.8759
100199	0.9970
100200	1.0528
100203	0.9760
100204	0.8807
100206	0.9267
100207	0.9875
100208	1.0063
100209	0.9762
100210	1.0274
100211	0.8853
100212	0.8823
100213	0.9653
100217	0.9415
100218	0.9306
100219	0.8764
100220	0.9348
100221	0.9837

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
100222	1.0018
100223	0.8422
100224	0.9676
100225	1.0580
100226	0.8752
100227	0.9267
100228	1.0267
100229	0.8617
100230	1.0592
100231	0.8148
100232	0.8610
100234	0.9850
100235	0.9760
100236	0.9294
100237	0.9963
100238	0.9306
100239	0.9306
100240	1.1341
100241	0.8898
100242	0.8150
100243	0.9058
100244	0.9348
100246	0.9818
100248	0.9651
100249	0.8561
100252	0.9778
100253	0.9798
100254	0.8186
100255	0.9267
100256	0.8626
100258	0.9911
100259	0.9515
100260	0.9818
100262	0.9850
100263	0.9885
100264	0.8721
100265	0.9645
100266	0.8257
100267	0.9607
100268	1.0311
100269	0.9850
100270	0.7696
100271	0.9211
100273	0.8063
100275	0.9834
100276	1.0033
100277	1.0998
110001	0.8911
110002	0.9492
110003	0.7424
110004	0.8857
110005	0.9769
110006	0.8569
110007	0.7729
110008	1.0131
110009	0.9626
110010	0.9554
110011	0.8693
110013	0.9696
110014	0.8150
110015	0.8915
110016	0.7632
110017	0.7582
110018	0.9472
110020	0.8490
110023	0.8623
110024	0.8044
110025	0.7488
110026	0.7987

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
110027	0.8290
110028	0.9977
110029	0.9247
110030	0.9153
110031	0.8729
110032	0.8922
110033	1.0180
110034	0.9977
110035	0.9937
110036	0.8046
110037	0.6787
110038	0.7547
110039	0.9977
110040	0.8684
110041	0.8968
110042	0.9243
110043	0.8044
110044	0.7850
110045	0.9037
110046	0.9088
110048	0.8495
110049	0.7100
110050	0.8263
110051	0.7750
110052	0.8253
110054	0.8344
110055	0.7324
110056	0.8101
110059	0.8079
110061	0.6689
110062	0.7928
110063	0.7820
110064	0.7258
110065	0.9200
110066	1.0228
110069	0.9667
110070	0.7456
110071	0.6942
110072	0.7217
110073	0.7507
110074	0.8635
110075	0.7529
110076	0.9538
110077	0.8324
110078	0.9497
110079	0.9497
110080	0.9401
110082	1.0228
110083	0.9572
110085	0.9497
110086	0.5521
110087	0.9925
110088	0.8532
110089	0.7287
110091	0.9071
110092	0.7560
110093	0.7617
110094	0.7088
110095	0.7642
110096	0.6919
110097	0.7216
110098	0.7189
110100	0.9409
110101	0.6921
110103	0.7402
110104	0.7864
110105	0.6739
110107	0.7286
110108	0.7426

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
110109	0.7087
110111	0.9928
110112	0.7112
110113	0.9921
110114	0.8623
110115	0.9497
110117	0.8821
110118	0.7478
110120	0.8293
110121	0.7701
110122	0.6711
110124	0.7350
110125	0.7674
110127	0.5999
110128	0.6812
110129	0.7258
110130	0.7347
110131	0.9497
110132	0.7589
110133	0.7137
110134	0.7789
110135	0.7837
110136	0.7137
110140	0.7993
110141	0.6578
110142	0.6514
110143	0.9762
110144	0.5337
110146	0.8581
110149	0.9205
110150	0.7123
110151	0.6887
110152	0.6482
110153	0.9647
110154	0.9229
110155	0.7295
110156	0.8071
110157	0.9985
110161	1.0228
110162	0.9977
110163	0.7729
110164	0.7272
110165	0.9342
110166	0.7272
110168	0.8344
110169	1.0668
110171	1.0668
110172	1.0292
110174	0.8194
110175	0.9556
110176	0.9885
110177	0.9991
110178	0.9536
110179	1.0607
110181	0.6560
110183	0.9869
110184	0.9506
110185	0.6220
110186	0.7258
110187	0.8946
110188	0.9247
110189	0.8260
110190	0.7537
110191	0.9182
110192	0.9700
110193	0.8466
110194	0.7402
110195	0.7076
110198	1.0024

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
110200	0.7258
110201	0.7321
110202	0.4688
110203	0.9554
120001	1.1021
120002	1.1996
120003	1.0160
120004	1.1029
120005	1.0284
120006	1.1021
120007	1.1021
120009	1.1141
120010	1.1021
120011	1.1021
120012	1.1029
120014	1.0160
120015	1.1996
120016	1.0300
120018	1.0158
120019	1.0284
120021	1.0221
120022	1.1021
120024	1.1900
120025	1.0160
130001	0.8143
130002	0.7621
130003	0.8253
130005	0.9408
130006	0.8826
130007	0.8826
130008	0.8966
130009	0.8370
130010	0.7388
130011	0.8364
130012	0.7292
130013	0.8830
130014	0.8817
130015	0.7544
130016	0.6800
130017	0.9085
130018	0.9401
130019	0.7629
130021	0.6944
130022	0.9520
130024	0.8013
130025	0.9202
130026	0.7629
130027	0.9869
130028	0.9408
130029	0.7621
130030	0.8447
130031	0.8256
130034	0.8810
130035	0.8307
130036	0.7621
130037	0.9915
130039	0.8888
130040	0.8395
130043	0.6234
130044	1.0056
130045	0.9125
130048	0.5875
130049	0.9938
130050	0.8817
130051	0.8143
130054	0.7418
130056	0.7397
140001	0.8260
140002	0.8529

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
140003	0.7296
140004	0.8447
140005	0.7340
140007	1.0697
140008	1.0312
140010	0.9750
140011	0.6714
140012	0.8637
140013	0.8400
140014	0.8421
140015	0.7160
140016	0.7132
140018	1.0669
140019	0.7679
140024	0.7056
140025	0.8097
140026	0.8125
140027	0.8054
140029	1.0357
140030	1.0380
140031	0.8241
140032	0.7074
140033	0.9739
140034	0.7410
140035	0.6913
140036	0.8236
140037	0.6830
140038	0.8647
140039	0.8272
140040	0.7600
140041	0.8348
140042	0.7421
140043	0.8087
140045	0.7370
140046	0.7263
140047	0.7809
140048	1.0835
140049	1.0286
140051	1.0222
140052	0.8349
140053	0.8369
140054	1.0639
140055	0.8835
140058	0.8491
140059	0.8879
140061	0.8014
140062	1.1076
140063	1.0541
140064	0.8064
140065	1.1014
140066	0.9294
140067	0.8399
140068	1.0865
140069	0.7913
140070	0.8529
140072	0.9909
140074	0.7800
140075	1.0997
140077	0.8917
140079	1.0721
140080	0.9700
140081	0.7338
140082	1.0335
140083	1.0509
140084	0.9739
140086	0.7913
140087	0.9556
140088	1.0534
140089	0.7474

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
140090	1.0458
140091	0.8088
140093	0.8341
140094	1.0847
140095	1.0998
140098	0.9808
140100	0.9501
140101	0.9794
140102	0.8355
140103	1.0494
140105	1.0422
140107	0.8593
140108	1.0476
140109	0.7779
140110	0.9065
140112	0.8410
140113	0.8088
140114	0.9645
140115	1.0481
140116	0.9934
140117	1.0521
140118	1.0757
140119	1.0998
140120	0.8376
140121	0.8418
140122	1.1014
140123	0.8287
140124	1.0998
140125	0.9099
140126	0.8122
140127	0.7923
140128	0.8806
140129	0.7979
140130	1.0683
140132	1.0418
140133	1.0716
140135	0.8376
140137	0.7787
140138	0.6925
140139	0.7220
140140	0.6785
140141	0.7674
140143	0.8114
140144	0.8896
140145	0.7951
140146	0.8109
140147	0.7166
140148	0.8381
140150	1.0998
140151	1.0954
140152	1.0909
140154	1.0378
140155	1.0077
140158	1.0973
140159	0.7195
140160	0.8670
140161	0.8301
140162	0.7923
140164	0.6961
140165	0.7490
140166	0.8376
140167	0.8382
140168	0.8529
140170	0.7339
140171	0.6785
140172	1.0534
140173	0.8250
140174	1.0409
140176	0.9856
140177	1.0535
140179	1.0874
140180	1.0985
140181	1.0535
140182	1.0016
140184	0.6701
140185	0.8928
140186	1.0077
140187	0.8560
140188	0.7761
140189	0.7863
140190	0.7884
140191	1.0766
140192	0.9909
140193	0.7424
140197	1.0335
140199	0.7703
140200	1.0858
140202	1.0275
140203	0.9685
140205	0.8806
140206	1.0944
140207	1.0426
140208	1.0945
140209	0.8399
140210	0.6706
140211	1.0348
140212	1.0932
140213	1.0909
140215	0.6913
140217	1.0357
140218	0.8246
140220	0.8420
140223	1.0367
140224	1.0458
140226	1.0873
140228	0.8655
140229	0.7984
140230	0.8275
140231	1.0810
140233	0.8790
140234	0.8114
140236	0.9500
140239	0.8655
140240	1.0489
140242	1.1014
140245	0.7050
140246	0.6551
140250	1.0892
140251	0.9678
140252	1.0787
140253	1.0534
140258	1.0374
140271	0.7683
140275	0.8315
140276	1.0701
140280	0.8287
140281	1.0787
140285	0.8359
140286	0.9347
140288	1.1050
140289	0.8143
140290	1.0786
140291	1.0784
140292	1.0753
140294	0.7263
140295	1.0437
140297	1.1014
140299	1.0367
150001	0.9316
150002	0.9983
150003	0.8502
150004	1.0578
150005	1.0060
150006	0.8987
150007	0.8453
150008	1.0321
150009	0.9509
150010	0.8453
150011	0.8076
150012	0.8947
150013	0.8028
150014	1.0083
150015	0.9277
150017	0.8760
150018	0.8947
150019	0.8441
150020	0.8513
150021	0.8773
150022	0.8503
150023	0.8120
150024	1.0083
150025	0.8494
150026	0.9062
150027	0.9238
150029	0.8969
150030	0.8183
150031	0.7744
150032	1.0083
150033	1.0083
150034	0.9983
150035	0.9538
150036	0.8361
150037	1.0047
150038	0.9581
150039	0.8700
150042	0.7152
150043	0.8836
150044	0.9509
150045	0.8947
150046	0.8290
150047	0.8760
150048	0.8416
150049	0.7852
150050	0.8313
150051	0.8091
150052	0.9065
150053	0.8919
150054	0.8140
150056	1.0083
150057	1.0028
150058	0.8947
150059	1.0452
150060	0.8236
150061	0.7405
150062	0.8187
150063	0.8640
150064	0.7950
150065	0.7966
150066	0.8130
150067	0.8141
150069	0.8311
150070	0.8189
150071	0.7666
150072	0.8352
150073	0.9017
150074	1.0072
150075	0.8640

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
150076	0.8873
150077	0.9246
150078	0.8943
150079	0.9561
150082	0.8494
150084	1.0083
150085	0.7836
150086	0.9362
150088	0.9296
150089	0.8482
150090	1.0152
150091	0.8636
150092	0.7706
150094	0.8774
150095	0.7809
150096	0.8987
150097	0.9601
150098	0.9120
150099	0.8947
150100	0.8522
150101	0.8748
150102	0.8792
150103	0.8232
150104	1.0104
150105	0.8027
150106	0.8722
150109	0.8502
150110	0.8945
150111	0.7831
150112	0.8284
150113	0.8720
150114	0.8367
150115	0.7429
150122	0.7873
150123	0.8496
150124	0.7852
150125	1.0466
150126	0.9886
150127	0.7696
150128	1.0083
150129	1.0084
150130	0.8509
150132	0.9983
150133	0.8436
150134	0.8959
150135	0.8416
150136	1.0096
160001	0.8158
160002	0.7133
160003	0.6702
160005	0.6580
160007	0.8163
160008	0.7319
160009	0.7915
160012	0.9204
160013	0.9138
160014	0.6725
160016	0.7229
160018	0.7282
160020	0.7032
160021	0.7569
160023	0.6926
160024	0.8675
160025	0.8287
160026	0.8468
160027	0.7076
160028	0.9708
160029	0.9136
160030	0.8596

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
160031	0.7865
160032	0.8588
160033	0.8287
160034	0.7852
160035	0.8289
160036	0.8183
160037	0.8357
160039	0.7907
160040	0.8188
160041	0.7118
160043	0.6813
160044	0.7902
160045	0.9122
160046	0.7466
160047	0.9706
160048	0.6618
160049	0.8382
160050	0.7160
160051	0.8563
160052	0.8681
160054	0.7458
160055	0.6631
160056	0.7709
160057	0.7500
160058	0.9136
160059	0.8466
160060	0.7517
160061	0.6593
160062	0.8325
160063	0.7060
160064	0.8466
160065	0.9689
160066	0.6736
160067	0.8188
160068	0.6971
160069	0.7725
160070	0.7152
160071	0.6910
160072	0.7062
160073	0.9101
160074	0.6437
160075	0.8665
160076	0.7674
160077	0.7043
160079	0.9122
160080	0.8383
160081	0.6911
160082	0.8675
160083	0.8675
160085	0.8237
160086	0.8256
160088	0.6540
160089	0.7073
160090	0.9115
160091	0.7000
160092	0.7563
160093	0.8245
160094	0.8167
160095	0.8185
160097	0.7654
160098	0.6859
160099	0.6693
160101	0.8675
160102	0.6675
160103	0.9084
160104	0.8287
160106	0.7558
160107	0.8248
160108	0.8559

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
160109	0.6444
160110	0.8162
160111	0.6600
160112	0.6857
160113	0.6531
160114	0.6588
160115	0.7159
160116	0.7035
160117	0.7725
160118	0.7091
160119	0.7989
160120	0.9256
160122	0.7364
160123	0.7637
160124	0.7273
160126	0.6942
160129	0.6800
160130	0.7125
160131	0.7680
160132	0.6934
160133	0.8075
160134	0.7404
160135	0.8163
160138	0.8156
160140	0.8011
160141	0.6445
160142	0.7122
160143	0.7276
160145	0.8142
160146	0.8028
160147	0.7634
160151	0.6699
160152	0.7225
160153	0.8028
170001	0.7140
170003	0.7355
170004	0.7401
170006	0.7640
170008	0.6358
170009	0.9145
170010	0.7387
170011	0.7110
170012	0.7110
170013	0.7355
170014	0.9275
170015	0.6399
170016	0.8785
170017	0.9685
170018	0.7204
170019	0.9773
170020	0.9578
170021	0.7472
170022	0.8070
170023	0.7430
170024	0.6453
170025	0.7348
170026	0.7678
170027	0.6323
170030	0.7330
170031	0.7158
170032	0.7210
170033	0.7323
170034	0.6828
170035	0.8067
170036	0.6960
170037	0.8313
170038	0.7469
170039	0.9743
170040	0.9493

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
170041	0.6651
170043	0.7666
170044	0.7115
170045	0.8517
170049	0.9599
170050	0.7072
170051	0.7443
170052	0.9602
170053	0.6956
170054	0.7009
170055	0.7145
170056	0.7225
170057	0.6743
170058	0.6707
170060	0.6364
170061	0.6210
170062	0.7342
170063	0.6251
170064	0.6422
170066	0.7240
170067	0.7485
170068	0.7024
170069	0.6309
170070	0.7290
170072	0.7232
170073	0.7237
170074	0.7469
170075	0.9576
170076	0.6349
170077	0.7223
170079	0.7439
170080	0.7158
170081	0.6449
170082	0.6383
170084	0.6383
170085	0.7314
170086	0.8785
170087	0.9653
170088	0.7353
170089	0.6955
170090	0.7312
170092	0.7265
170093	0.6210
170094	0.7276
170095	0.6390
170097	0.6242
170098	0.7167
170099	0.6214
170100	0.7303
170101	0.7450
170102	0.6517
170103	0.9643
170104	0.9575
170105	0.7689
170106	0.7336
170108	0.7220
170109	0.9128
170110	0.7308
170112	0.7329
170113	0.6340
170114	0.7436
170115	0.7362
170116	0.7300
170117	0.6079
170119	0.7397
170120	0.6936
170121	0.7297
170122	0.9653
170123	0.9653

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
170124	0.6191
170125	0.7427
170126	0.7127
170128	0.8756
170131	0.9009
170133	0.9193
170134	0.6297
170137	0.9254
170139	0.7362
170140	0.9743
170142	0.7097
170143	0.7119
170144	0.9604
170145	0.7452
170146	0.9452
170147	0.9685
170148	0.9452
170150	0.8526
170151	0.6517
170152	0.6661
170159	0.7657
170160	0.8778
170164	0.6720
170166	0.6740
170168	0.6423
170170	0.6460
170171	0.9649
170173	0.6837
170174	0.7399
170175	0.7380
170176	0.9540
180001	0.9394
180002	0.7865
180004	0.7699
180005	0.7747
180006	0.7664
180007	0.8387
180009	0.8547
180010	0.8387
180011	0.7580
180012	0.9160
180013	0.7704
180014	0.9509
180015	0.8534
180016	0.9482
180017	0.7504
180018	0.7819
180019	0.8120
180020	0.7756
180021	0.7520
180023	0.9013
180024	0.7566
180025	0.9003
180026	0.7433
180027	0.7502
180028	0.7771
180029	0.7703
180030	0.8229
180031	0.8041
180032	0.7771
180033	0.7038
180034	0.6717
180035	0.9394
180036	0.8547
180037	0.9536
180038	0.8534
180040	0.9509
180041	0.7746
180042	0.8197

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
180043	0.7535
180044	0.7619
180045	0.9394
180046	0.8354
180047	0.7368
180048	0.7769
180049	0.8223
180050	0.7487
180051	0.7140
180053	0.7568
180054	0.7342
180055	0.7564
180056	0.8542
180058	0.8166
180059	0.7927
180060	0.8409
180062	0.7345
180063	0.7624
180064	0.8050
180065	0.8120
180066	0.7599
180067	0.8387
180069	0.7709
180070	0.7835
180072	0.8395
180075	0.7751
180078	0.7811
180079	0.8357
180080	0.7652
180081	0.9509
180085	0.9509
180087	0.7562
180088	0.9509
180092	0.8313
180093	0.7538
180094	0.8280
180095	0.7406
180099	0.7733
180101	0.8400
180102	0.7369
180103	0.8387
180104	0.7401
180105	0.6422
180106	0.6234
180108	0.6248
180115	0.7630
180116	0.7426
180117	0.7168
180118	0.7485
180120	0.8213
180121	0.7324
180122	0.8442
180123	0.9509
180124	0.7745
180125	0.7604
180126	0.7366
180127	0.8393
180128	0.8762
180129	0.7450
180130	0.9509
180132	0.7505
180133	0.9536
180134	0.7199
180136	0.8387
180137	0.9509
180138	0.9344
190001	0.8419
190002	0.8253
190003	0.7795

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REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
190004	0.8312
190005	0.8524
190006	0.8253
190007	0.8232
190008	0.8375
190009	0.8685
190010	0.9162
190011	0.7756
190012	0.8155
190013	0.7870
190014	0.7322
190015	0.9701
190017	0.7560
190018	0.7760
190019	0.8777
190020	0.8559
190023	0.7588
190025	0.7371
190026	0.8655
190027	0.7821
190029	0.9621
190033	0.7813
190034	0.7830
190035	0.8524
190036	0.8721
190037	0.8402
190039	0.8690
190040	0.9514
190041	0.9167
190043	0.7798
190044	0.8104
190045	0.9113
190046	0.8687
190047	0.6547
190048	0.8861
190049	0.8513
190050	0.7771
190053	0.7628
190054	0.7795
190059	0.8562
190060	0.7821
190064	0.8672
190065	0.8865
190071	0.9167
190075	0.8525
190077	0.7928
190078	0.7224
190081	0.7261
190083	0.7474
190086	0.7770
190088	0.8565
190089	0.6942
190090	0.6960
190092	0.8802
190095	0.8419
190098	0.9167
190099	0.8470
190102	0.6253
190103	0.7991
190106	0.7789
190109	0.8766
190110	0.8192
190111	0.9167
190112	0.9167
190113	0.9167
190114	0.7342
190115	0.9167
190116	0.7684
190118	0.9079

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
190119	0.8298
190120	0.8886
190122	0.8540
190124	0.8602
190125	0.7766
190127	0.9167
190128	0.8672
190130	0.6666
190131	0.8702
190132	0.7342
190133	0.7516
190134	0.8837
190135	0.8687
190136	0.7991
190138	0.8524
190140	0.7804
190142	0.8545
190144	0.9013
190145	0.8436
190146	0.8817
190147	0.8813
190148	0.6461
190149	0.7688
190151	0.7655
190152	0.8712
190155	0.8736
190156	0.6918
190158	0.8687
190160	0.7766
190161	0.7821
190162	0.8596
190164	0.8622
190165	0.7292
190166	0.7854
190167	0.7242
190170	0.7752
190173	0.8471
190175	0.8533
190176	0.8524
190177	0.9113
190178	0.7720
190182	0.8817
190183	0.8375
190184	0.7822
190185	0.8437
190186	0.7775
190187	0.8435
190189	0.9167
190190	0.7822
190191	0.7560
190193	0.9727
190194	0.9167
190196	0.7822
190197	0.7684
190198	0.9005
190199	0.8545
190200	0.8602
190201	0.7821
190202	0.8731
190204	0.9514
190205	0.8253
190206	0.8650
190207	0.8856
190208	0.6858
200001	0.8971
200002	0.9406
200003	0.8017
200006	0.9475
200007	0.9484

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
200008	0.9530
200009	0.9530
200012	0.8482
200013	0.9122
200015	0.9241
200016	0.9115
200017	0.9530
200018	0.7842
200019	0.9696
200020	1.0365
200021	0.9553
200023	0.7984
200024	0.9414
200025	0.9581
200026	0.7900
200027	0.8733
200028	0.8915
200031	0.7801
200032	0.9298
200033	0.8953
200034	0.9414
200037	0.9034
200038	0.9225
200039	0.8901
200040	0.9696
200041	0.8901
200043	0.9524
200044	0.9581
200050	0.9166
200051	0.9237
200052	0.7801
200055	0.7862
200062	0.9158
200063	0.8660
200066	0.8913
210001	0.8363
210002	0.9202
210003	1.0977
210005	0.8642
210006	0.9513
210007	1.0043
210008	0.9057
210009	0.9057
210010	0.9141
210011	0.9138
210012	1.0151
210013	0.9137
210015	0.9771
210016	1.1291
210017	0.8119
210018	1.0495
210019	0.8489
210022	1.0693
210023	0.9215
210024	0.9477
210025	0.8091
210026	0.9057
210027	0.8058
210028	0.9203
210029	0.9081
210030	0.9465
210031	0.9367
210032	1.0333
210033	0.9824
210034	0.8981
210035	1.0178
210036	1.1200
210037	0.9429
210038	0.9297

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
210039	1.0047
210040	1.0012
210043	0.9209
210044	1.0021
210045	0.8017
210046	0.8042
210048	0.9059
210049	0.9839
210051	1.1131
210054	1.1004
210055	1.0659
210056	1.0043
210058	0.9297
210059	0.8287
220001	1.0229
220002	1.2499
220003	0.9872
220004	1.1768
220006	1.1332
220008	1.0760
220010	1.0420
220011	1.2534
220012	1.1410
220015	1.0269
220016	0.9533
220017	1.2149
220019	1.1205
220020	1.0784
220021	1.0738
220023	1.0365
220024	1.0365
220025	1.1028
220026	1.1092
220028	1.1092
220029	1.0803
220030	1.0377
220031	1.2323
220033	1.1254
220035	1.1232
220036	1.2539
220038	1.0402
220041	1.0523
220042	1.1982
220045	1.1520
220046	0.9365
220048	1.1377
220049	1.1197
220050	1.0306
220051	0.9581
220052	1.1062
220055	1.0778
220057	1.0975
220058	1.0899
220060	1.1559
220062	1.0975
220063	1.1473
220064	1.2569
220065	1.0807
220066	1.0474
220067	1.2387
220068	1.1789
220070	1.1613
220071	1.1832
220073	1.0543
220074	1.1317
220075	1.1832
220076	1.1912
220077	1.0474
220079	1.0578

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
220080	1.0420
220081	1.2153
220082	1.1520
220083	1.2254
220084	1.2033
220086	1.2150
220088	1.2122
220089	1.1453
220090	1.1130
220092	1.1833
220094	1.0999
220095	1.0229
220097	1.2121
220098	1.0428
220099	1.0365
220100	1.1011
220101	1.2700
220102	1.2072
220104	1.2323
220105	1.2283
220106	1.2081
220107	0.9303
220108	1.2149
220110	1.2150
220111	1.1099
220114	1.1194
220115	1.0975
220116	1.2323
220119	1.2157
220120	1.2495
220123	1.1329
220126	1.1177
220128	1.1139
220131	1.0775
220133	1.1835
220135	1.1329
220153	1.0365
220154	1.2213
220156	1.1099
220163	1.1092
220171	1.1973
230001	0.8821
230002	1.0582
230003	0.9875
230004	0.9877
230005	0.9843
230006	0.9943
230007	1.0378
230012	1.1411
230013	1.0335
230014	0.8824
230015	1.0516
230017	1.0260
230019	1.0555
230020	1.1744
230021	0.8811
230022	0.9407
230024	1.1575
230027	0.9696
230029	1.0314
230030	0.9120
230031	1.0093
230032	0.9813
230034	0.9821
230035	0.9692
230036	0.9484
230037	0.8947
230038	0.9813
230040	1.0148

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
230041	0.9936
230042	1.0754
230043	1.0811
230046	1.2174
230047	0.9977
230053	1.1411
230054	0.8969
230055	0.8270
230056	0.7424
230058	0.8831
230059	0.9813
230060	0.9054
230062	0.9126
230063	0.9993
230065	1.1484
230066	0.9877
230068	1.0446
230069	1.2017
230070	1.0249
230071	1.0696
230072	0.9836
230075	1.0811
230076	1.1498
230077	1.0249
230078	0.9675
230080	0.8846
230081	0.8966
230082	0.9182
230085	0.9772
230086	0.8382
230087	0.9324
230089	1.0437
230090	1.1498
230092	0.9271
230093	0.8546
230095	0.8679
230096	1.0137
230097	0.9182
230098	1.0709
230099	1.0188
230100	0.7896
230101	0.8344
230103	0.9795
230104	1.1498
230105	0.8644
230106	0.9667
230107	0.9321
230108	0.7456
230110	0.7922
230111	1.0339
230113	0.9931
230114	1.0444
230115	0.8271
230116	0.9118
230117	1.0960
230118	0.9123
230119	1.1498
230120	1.2313
230121	1.0460
230122	1.0249
230124	0.9239
230125	0.8784
230128	1.1498
230129	0.9823
230130	1.0470
230132	1.0444
230133	0.8696
230134	1.0902
230135	1.0271

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230244
230253
230254

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REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
230137	0.8704
230138	0.8270
230140	1.0378
230141	1.0444
230142	1.0709
230143	0.8186
230144	1.1901
230145	0.7456
230146	1.0407
230147	1.1498
230149	0.7914
230150	1.1417
230151	1.0665
230153	0.9071
230154	0.8596
230155	0.8506
230156	1.2174
230157	0.9784
230159	0.9877
230161	0.8714
230162	0.8859
230165	1.0102
230167	0.9823
230169	1.0407
230171	0.9212
230172	1.0816
230173	1.1408
230174	0.9842
230175	0.9290
230176	1.0412
230178	0.9027
230180	0.8816
230184	0.9271
230186	1.0403
230188	0.9223
230189	0.9313
230190	1.0908
230191	0.7617
230193	1.0715
230194	0.7651
230195	0.9766
230197	1.0444
230199	0.8790
230201	0.9002
230204	0.9917
230205	0.9187
230207	1.0335
230208	0.8987
230211	0.8304
230212	1.2059
230213	0.7952
230216	0.9958
230217	1.0030
230219	0.7408
230221	1.1507
230222	0.9475
230223	0.9920
230227	0.9977
230228	0.9111
230230	0.9764
230232	0.9668
230235	0.9508
230236	0.9813
230237	0.9813
230239	0.7932
230241	0.9923
230244	1.0764
230253	0.8640
230254	0.9912
230257	0.9973
230259	1.2152
230264	1.1554
230266	1.1498
230269	0.9082
230270	1.0406
230273	1.1498
230276	0.9813
230277	1.0328
240001	1.0400
240002	0.9459
240003	1.0632
240004	1.0439
240005	0.8166
240006	0.9991
240007	0.7158
240008	0.9906
240009	0.7125
240010	0.9993
240011	0.9010
240013	0.9404
240014	1.0417
240016	0.8351
240017	0.8571
240018	0.8314
240019	0.9459
240020	0.9694
240021	0.8968
240022	0.7556
240023	0.8736
240025	0.8446
240027	0.7887
240028	1.0527
240029	0.9247
240030	0.7863
240031	0.7892
240036	0.9442
240037	1.0528
240038	1.0632
240040	0.8365
240041	0.8525
240043	0.8718
240044	0.9254
240045	0.9374
240047	0.9459
240048	1.0632
240049	1.0607
240050	1.1171
240051	0.9393
240052	0.8014
240053	1.0380
240056	1.0512
240057	1.0439
240058	0.8389
240059	1.1301
240061	0.9991
240063	1.0632
240064	0.8390
240065	0.8812
240066	1.1305
240069	0.9738
240071	0.9405
240072	0.8282
240073	0.7573
240075	0.8324
240076	1.0419
240077	0.6795
240078	1.0380
240079	0.8261
240080	1.0409
240082	0.8155
240083	0.8034
240084	0.8143
240085	0.8522
240086	0.8618
240087	0.7767
240088	0.8380
240089	1.0491
240090	0.9962
240091	0.7453
240093	0.8357
240094	1.0433
240096	0.8579
240097	1.0976
240098	0.7073
240099	0.6711
240100	0.8768
240101	0.9165
240102	0.7477
240103	0.7823
240104	1.0688
240105	0.9952
240106	1.0632
240107	0.8333
240108	0.6609
240109	0.7979
240110	0.9322
240111	0.6627
240112	0.7372
240114	0.9263
240115	1.0359
240116	0.6839
240117	0.9686
240119	0.8324
240121	0.9315
240122	0.9337
240123	0.8190
240124	0.8430
240125	0.7502
240127	0.7286
240128	0.8660
240129	0.8093
240130	0.7906
240132	1.0567
240133	0.9491
240134	0.6943
240135	0.8239
240136	0.8451
240137	0.8474
240138	0.6768
240139	0.8700
240140	0.9227
240141	0.9849
240142	0.8510
240143	0.6609
240144	0.8505
240145	0.6860
240146	0.8633
240148	0.9229
240150	0.9730
240152	0.8298
240153	0.6534
240154	0.8525
240155	0.7925
240156	0.7151
240157	0.7816
240158	0.7073
240160	0.7755

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
240161	0.8816
240162	0.8050
240163	0.8410
240166	0.7415
240167	0.7991
240169	0.8415
240170	0.8173
240171	0.7596
240172	0.9996
240173	0.8375
240175	1.0400
240179	0.7768
240180	0.8495
240183	0.9847
240184	0.6711
240187	0.8869
240192	0.7724
240193	0.9375
240196	1.0439
240200	0.8065
240201	0.7598
240207	1.0268
240210	1.0632
250001	0.7486
250002	0.7024
250003	0.7174
250004	0.7142
250005	0.6866
250006	0.7033
250007	0.7859
250008	0.6994
250009	0.6277
250010	0.6998
250012	0.8469
250015	0.5763
250016	0.6852
250017	0.7043
250018	0.6161
250019	0.8273
250020	0.5718
250021	0.7190
250023	0.7137
250024	0.6294
250025	0.7349
250027	0.5709
250029	0.6596
250030	0.5970
250031	0.7443
250032	0.7443
250033	0.7196
250034	0.6351
250035	0.6771
250036	0.7441
250037	0.6646
250038	0.7500
250039	0.7325
250040	0.7543
250042	0.6284
250043	0.6863
250044	0.6971
250045	0.8892
250046	0.7359
250047	0.5953
250048	0.7486
250049	0.6645
250050	0.6061
250051	0.5867
250057	0.6378
250058	0.6823
250059	0.5701
250060	0.7031
250061	0.6053
250062	0.6258
250063	0.6286
250065	0.7428
250066	0.5902
250067	0.6266
250068	0.7105
250069	0.7175
250071	0.6167
250072	0.7486
250073	0.7152
250076	0.7204
250077	0.6312
250078	0.6913
250079	0.6363
250081	0.7175
250082	0.6120
250083	0.6183
250084	0.6977
250085	0.6934
250086	0.7246
250088	0.7200
250089	0.7034
250091	0.5836
250093	0.6296
250094	0.6913
250095	0.6203
250096	0.7486
250097	0.6663
250098	0.6256
250099	0.5931
250100	0.6415
250101	0.6060
250102	0.7486
250104	0.7175
250105	0.6883
250107	0.6762
250109	0.6023
250112	0.5936
250117	0.8662
250119	0.7223
250120	0.6216
250122	0.6977
250123	0.8273
250124	0.6693
250125	0.8273
250126	0.8443
250128	0.6382
250129	0.7486
250131	0.6322
250134	0.7486
250137	0.6983
250138	0.7488
250139	0.6631
250140	0.7086
260001	0.7472
260002	0.9397
260003	0.7732
260004	0.8854
260005	1.0237
260006	0.7744
260007	0.7472
260008	0.9363
260009	0.8973
260011	0.8718
260012	0.7820
260013	0.7428
260014	0.9396
260015	0.7023
260016	0.9437
260017	0.7330
260018	0.6067
260019	0.6807
260020	0.9881
260021	0.9396
260022	0.7599
260023	0.8547
260024	0.6643
260025	0.7266
260026	0.7839
260027	0.9437
260029	0.8862
260030	0.7146
260031	0.9475
260032	0.9396
260033	0.9254
260034	0.7256
260035	0.6817
260036	0.9255
260037	0.8718
260039	0.7023
260040	0.7762
260042	0.9396
260044	0.7261
260047	0.8718
260048	0.9475
260049	0.7618
260050	0.7449
260051	0.9396
260052	1.0100
260053	0.7489
260054	0.9396
260055	0.6937
260057	0.7987
260059	0.7738
260061	0.6657
260062	0.8092
260063	0.8486
260064	0.8843
260065	0.7762
260066	0.6712
260067	0.7484
260068	0.8755
260070	0.6995
260073	0.7537
260074	0.8895
260077	0.9754
260078	0.6190
260079	0.7573
260080	0.6676
260081	0.9764
260082	0.7287
260085	0.9473
260086	0.7408
260089	0.7762
260090	0.8059
260091	0.9396
260092	0.7032
260094	0.7512
260095	0.9446
260096	0.9364
260097	0.8175
260100	0.7936
260102	0.9091
260103	0.9397
260104	1.0237
260105	
260107	
260108	
260109	
260110	
260111	
260112	
260113	
260115	
260116	
260119	
260120	
260122	
260123	
260127	
260128	
260129	
260131	
260134	
260137	
260138	
260141	
260142	
260143	
260146	
260147	
260148	
260158	
260159	
260160	
260162	
260163	
260164	
260165	
260166	
260172	
260173	
260175	
260176	
260177	
260178	
260179	
260180	
260182	
260183	
260186	
260188	
260189	
260190	
260191	
260193	
260195	
260197	
260198	
260200	
270002	
270003	
270004	
270006	
270007	
270009	
270011	
270012	
270013	
270014	
270016	
270017	
270019	
270021	

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REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
260105	0.9396
260107	0.9437
260108	0.9881
260109	0.7072
260110	0.7214
260111	0.8830
260112	0.9421
260113	0.7249
260115	0.7592
260116	0.7037
260119	0.6865
260120	0.6865
260122	0.8590
260123	0.6914
260127	0.7380
260128	0.7287
260129	0.7599
260131	0.8721
260134	0.9185
260137	0.7426
260138	0.9425
260141	0.8755
260142	0.7898
260143	0.7543
260146	0.8755
260147	0.7122
260148	0.7113
260158	0.7205
260159	0.9386
260160	0.7420
260162	1.0283
260163	0.7037
260164	0.6989
260165	0.7208
260166	0.9225
260172	0.6725
260173	0.7593
260175	0.7550
260176	0.9764
260177	0.9106
260178	0.8755
260179	1.0329
260180	0.8899
260182	0.7669
260183	0.7214
260186	0.7600
260188	0.9360
260189	0.6739
260190	0.9414
260191	1.0390
260193	0.9091
260195	0.7750
260197	0.7762
260198	1.0124
260200	1.0287
270002	0.6801
270003	0.9008
270004	0.8920
270006	0.9017
270007	0.8967
270009	0.8621
270011	0.8055
270012	0.8844
270013	0.8764
270014	0.8387
270016	0.6801
270017	0.9054
270019	0.8496
270021	0.7522
270023	0.8387
270024	0.6593
270026	0.8529
270027	0.6840
270028	0.7762
270029	0.6746
270030	0.7723
270031	0.8503
270032	0.8099
270033	0.8512
270035	0.7544
270036	0.6208
270039	0.8212
270040	0.8819
270044	0.6892
270046	0.6908
270047	0.8512
270048	0.6934
270049	0.8920
270050	0.8522
270051	0.8482
270052	0.5619
270053	0.7708
270055	0.9074
270057	0.7838
270058	0.6177
270059	0.8462
270060	0.6210
270063	0.7964
270068	0.6090
270072	0.6776
270073	0.8389
270079	0.9017
270080	0.7851
270081	0.9004
270082	0.8856
270083	0.6526
280001	0.6106
280003	0.6583
280005	0.0600
280009	0.7596
280011	0.6779
280012	0.6681
280013	0.9708
280014	0.6972
280015	0.7444
280017	0.6579
280018	0.6532
280020	0.8567
280021	0.6507
280022	0.7654
280023	0.7491
280024	0.7410
280025	0.6378
280026	0.7800
280028	0.6541
280029	0.7150
280030	0.9706
280031	0.6855
280032	0.7530
280033	0.8002
280034	0.6681
280035	0.6672
280037	0.9153
280038	0.7628
280039	0.6886
280040	0.9706
280041	0.7074
280042	0.6968
280043	0.6021
280045	0.8557
280046	0.7045
280047	0.9817
280048	0.6633
280050	0.6190
280051	0.8661
280052	0.7690
280054	0.8447
280055	0.8185
280056	0.7485
280057	0.6854
280058	0.8599
280060	0.9708
280061	0.7930
280062	0.9466
280064	0.6965
280065	0.7544
280066	0.6943
280068	0.6914
280070	0.7830
280073	0.6370
280074	0.7091
280075	0.6055
280076	0.8490
280077	0.9671
280078	0.6968
280079	0.8464
280080	0.6986
280081	0.9708
280082	0.6622
280083	0.7530
280084	0.7349
280085	0.9708
280088	0.9708
280089	0.7492
280090	0.6828
280091	0.8538
280092	0.5922
280094	0.6039
280097	0.6739
280098	0.6028
280101	0.6558
280102	0.7315
280104	0.6272
280105	0.9708
280106	0.7647
280107	0.6477
280108	0.7486
280109	0.6644
280110	0.6046
280111	0.6624
280114	0.7585
280115	0.8035
280117	0.7663
280118	0.7918
290001	1.1711
290002	1.1654
290003	1.1396
290005	1.1396
290006	1.2678
290007	1.1396
290008	1.0098
290009	1.1738
290010	1.1396
290011	0.7370
290012	1.1396
290013	0.8399
290015	0.9424

OPAC PRO-
WAGE INDEX
Wage index
0.9396
0.7023
0.9437
0.7330
0.6067
0.6807
0.9881
0.9396
0.7599
0.8547
0.6643
0.7266
0.7839
0.9437
0.8852
0.7146
0.9475
0.9396
0.9254
0.7256
0.6817
0.9255
0.8718
0.7023
0.7762
0.9396
0.7261
0.8718
0.9475
0.7618
0.7449
0.9396
1.0100
0.7489
0.9396
0.6937
0.7987
0.7738
0.6657
0.9092
0.6486
0.8843
0.7762
0.6712
0.7484
0.8755
0.6995
0.7537
0.6895
0.9754
0.6190
0.7573
0.6676
0.9764
0.7287
0.9473
0.7408
0.7762
0.8058
0.9396
0.7032
0.7512
0.9446
0.9364
0.8175
0.7936
0.9091
0.9397
1.0237

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
290016	0.8399
290018	1.1396
290019	1.1779
290020	0.8651
290021	1.1396
290022	1.1396
290027	0.9125
290032	1.1711
290033	1.1396
300001	1.0421
300003	0.9980
300005	1.0213
300006	0.9761
300007	1.0457
300008	0.9897
300009	1.0047
300010	0.9908
300011	1.0600
300012	1.0609
300013	1.0159
300014	1.0178
300015	0.9123
300016	0.9980
300017	1.0691
300018	1.0295
300019	0.9591
300020	1.0600
300021	0.8558
300022	0.8595
300023	1.0538
300024	0.9971
300026	0.9925
300029	1.0230
300033	0.8407
300034	1.0653
310001	1.1242
310002	1.2182
310003	1.4374
310005	1.0327
310006	1.1442
310008	1.2759
310009	1.2504
310010	1.0557
310011	0.9799
310012	1.1339
310013	1.2186
310014	1.1391
310015	1.1368
310016	1.3728
310017	1.1331
310018	1.2454
310019	1.1418
310020	1.1153
310021	1.0355
310022	1.1502
310024	1.0981
310025	1.0992
310026	1.1396
310027	1.2182
310028	1.0908
310029	1.1523
310031	1.0224
310032	1.0114
310034	1.1483
310035	1.1324
310037	1.1478
310038	1.0841
310039	1.0752
310040	1.3769

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
310041	1.0459
310042	1.1594
310043	1.2451
310044	1.0433
310045	1.3158
310047	1.0198
310048	1.1030
310049	1.3728
310050	1.1393
310051	1.2202
310052	1.0450
310054	1.1595
310057	1.0488
310058	1.1339
310060	1.0008
310061	1.0196
310062	1.2437
310063	1.1014
310064	1.0198
310067	1.1451
310069	1.0378
310070	1.0841
310072	1.2033
310073	1.0199
310074	1.3728
310075	1.1293
310076	1.2429
310077	1.1442
310078	1.2396
310081	1.1193
310083	1.2437
310084	1.0470
310085	1.1132
310086	1.1090
310087	1.0075
310088	1.0266
310090	1.2035
310091	1.0584
310092	1.0433
310093	1.2504
310096	1.2402
310105	1.2007
310108	1.0844
310110	1.0545
310111	1.0188
310112	1.1094
310113	1.0468
310115	1.0690
310116	1.1479
310118	1.2764
310119	1.2437
310120	1.0739
310121	1.0844
320001	0.9854
320002	0.9438
320003	0.9375
320004	0.8633
320005	0.9788
320006	0.6041
320009	0.9854
320010	0.6041
320011	0.8956
320012	0.7754
320013	0.7249
320014	0.7495
320016	0.7495
320017	0.9903
320018	0.9363
320019	0.9854

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
320021	0.9854
320022	0.7477
320023	0.7525
320030	0.6464
320031	0.7697
320032	0.9027
320033	0.9423
320035	0.7911
320037	0.7529
320038	0.7720
320046	0.8633
320048	0.8131
320063	0.8358
320065	0.8226
320067	0.7533
320068	0.8440
320074	0.9854
320076	0.9903
330001	1.0481
330002	1.3443
330003	0.9187
330004	1.0294
330005	0.9323
330006	1.3065
330007	0.9377
330008	0.9460
330009	1.4076
330010	0.9070
330011	0.8653
330012	1.4174
330013	0.9187
330014	1.4018
330015	0.8287
330016	0.9364
330019	1.4152
330020	0.9055
330022	0.9119
330023	1.0526
330024	1.4595
330025	0.9001
330027	1.4126
330028	1.2409
330029	0.9323
330030	0.9991
330033	0.9338
330034	1.4086
330036	1.3050
330037	0.9830
330038	0.9717
330039	0.7578
330041	1.3665
330043	1.2861
330044	0.9574
330045	1.3265
330046	1.4962
330047	0.9070
330048	0.9574
330049	1.0327
330053	0.8771
330055	1.3629
330056	1.4451
330057	0.9187
330058	0.9744
330059	1.4149
330061	1.3583
330062	0.8293
330064	1.4271
330065	0.9370
330066	0.9187

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330075
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REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
330067	1.0526
330072	1.4202
330073	0.9573
330075	0.9218
330078	0.9336
330079	0.8856
330080	1.4111
330082	0.9218
330084	0.7995
330085	0.9254
330086	1.3632
330088	1.2106
330090	0.8394
330091	0.9323
330092	0.9544
330094	0.9752
330095	0.9323
330096	0.7514
330097	0.8169
330100	1.4590
330101	1.5002
330102	0.8336
330103	0.7594
330104	1.3080
330106	1.4205
330107	1.2453
330108	0.8394
330110	0.7854
330111	0.9164
330114	0.8250
330115	0.9160
330116	0.9231
330118	0.9323
330119	1.4851
330121	0.9533
330122	1.2951
330125	0.9919
330126	1.0641
330127	1.4149
330128	1.4725
330132	0.8972
330133	1.4590
330135	0.9547
330136	0.9164
330140	0.9145
330141	1.2742
330142	1.4788
330144	0.8076
330148	0.0909
330151	0.7734
330152	1.4583
330153	0.9187
330155	0.7676
330157	0.8287
330158	1.1611
330159	0.9145
330160	1.2989
330161	0.9323
330162	1.3439
330163	0.9001
330164	0.9919
330166	0.8756
330167	1.4126
330169	1.4590
330171	1.3622
330174	0.7695
330175	0.9082
330176	0.8665
330177	0.8138

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
330179	0.8107
330180	0.9218
330181	1.4547
330182	1.4214
330183	0.9919
330184	1.3606
330185	1.2451
330188	0.9345
330189	0.9187
330191	0.9086
330193	1.3822
330194	1.4095
330195	1.4132
330196	1.4048
330197	0.7782
330198	1.3453
330199	1.4558
330201	1.4299
330202	1.4241
330203	0.9145
330204	1.4645
330205	1.1193
330208	1.2717
330209	1.0605
330211	0.7619
330212	1.3287
330213	0.8243
330214	1.4645
330215	0.9276
330218	0.9172
330219	0.9336
330221	1.4500
330222	0.9028
330223	0.7924
330224	1.0294
330225	1.3377
330226	0.9902
330229	0.8970
330230	1.4768
330231	1.3912
330232	0.9218
330233	1.4327
330234	1.3352
330235	0.9107
330236	1.4348
330238	0.9467
330239	0.7697
330240	1.4046
330241	0.9145
330242	1.3505
330244	0.9336
330245	0.9574
330246	1.2451
330247	1.5031
330249	0.8396
330250	0.8870
330252	0.8883
330254	0.9991
330258	1.4937
330259	1.4123
330261	1.3161
330263	0.8250
330264	1.0858
330265	0.9971
330267	1.2885
330268	0.9461
330270	1.5002
330273	1.2716
330275	0.9838

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
330276	0.8735
330277	0.8241
330279	0.9323
330281	1.4757
330285	0.9830
330286	1.2679
330288	1.1018
330290	1.4274
330293	0.9149
330304	1.3288
330306	1.4299
330307	0.8059
330308	1.4232
330309	1.2783
330314	1.3292
330315	1.4152
330316	1.4086
330327	1.0472
330331	1.3695
330332	1.3432
330333	1.4110
330335	1.5236
330336	1.3432
330338	1.3322
330339	0.9187
330340	1.2434
330350	1.4241
330353	1.3665
330357	1.4839
330359	0.9724
330372	1.3630
330381	1.3290
330385	1.4149
330386	0.9482
330387	1.5002
330389	1.4590
330390	1.4046
330393	1.2470
330394	0.8698
330396	1.4347
330397	1.4348
330398	1.4518
330399	1.4066
340001	0.9864
340002	0.8536
340003	0.9402
340004	0.9442
340005	0.8254
340006	0.9489
340007	0.8694
340008	0.8309
340009	0.9909
340010	0.8470
340011	0.8553
340012	0.7318
340013	0.8249
340014	0.8526
340015	0.9358
340016	0.8645
340017	0.8687
340018	0.8505
340019	0.9430
340020	0.8941
340021	0.8544
340022	0.7818
340023	0.9003
340024	0.8051
340025	0.8597
340027	0.8456

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
340028	0.7983
340030	0.9604
340031	0.7550
340032	0.9734
340034	0.9588
340035	0.8327
340036	0.9228
340037	0.9687
340038	0.8595
340039	0.9133
340040	0.8667
340041	0.9225
340042	0.8225
340044	0.7676
340045	0.8477
340047	0.9526
340048	0.7998
340049	0.9604
340050	0.7964
340051	0.7696
340052	0.9474
340053	0.9909
340054	0.7150
340055	0.9274
340060	0.8684
340061	0.9651
340063	0.8203
340064	0.8347
340065	0.7322
340067	0.9251
340068	0.8217
340069	0.9391
340070	0.9588
340071	0.8319
340072	0.7421
340073	0.9391
340075	0.9137
340076	0.7750
340080	0.8522
340084	0.8327
340085	0.9442
340087	0.8911
340088	0.8604
340089	0.8536
340090	0.8848
340091	0.9317
340093	0.8171
340094	0.8354
340096	0.9316
340097	0.9378
340098	0.9909
340099	0.7550
340100	0.9246
340101	0.8708
340104	0.8609
340105	0.8536
340106	0.8289
340107	0.8741
340109	0.8560
340111	0.9211
340112	0.8659
340113	0.9909
340114	0.9584
340115	0.8044
340116	0.9340
340119	0.9275
340120	0.7696
340121	0.8590
340122	0.8671

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
340123	0.8862
340124	0.8566
340125	0.9468
340126	0.8926
340127	0.9380
340129	0.9596
340130	0.9864
340131	0.8410
340132	0.9194
340133	0.8659
340135	0.8470
340136	0.9656
340137	0.9137
340138	0.9584
340141	0.8354
340142	0.7833
340143	0.9340
340144	0.9470
340145	0.9192
340146	0.8130
340147	0.9894
340148	0.9526
340151	0.7603
340153	0.9909
340154	0.9172
340155	0.9617
340158	0.8358
340159	0.9249
340160	0.7912
340162	0.8789
340164	0.7983
340166	0.9861
340167	0.9604
350001	0.7915
350002	0.8668
350003	0.8170
350004	0.9415
350005	0.8720
350006	0.7985
350007	0.6387
350008	0.7549
350009	0.7685
350010	0.6243
350011	0.9330
350012	0.5692
350013	0.7341
350014	0.6992
350015	0.8668
350016	0.8646
350017	0.7484
350018	0.6577
350019	0.8540
350020	0.9367
350021	0.6346
350023	0.6054
350024	0.6316
350025	0.7484
350027	0.9430
350029	0.6136
350030	0.7345
350031	0.7209
350032	0.7464
350033	0.9291
350034	0.6996
350035	0.7980
350036	0.8079
350038	0.7184
350039	0.6045
350041	0.6286

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
350042	0.7171
350043	0.7985
350044	0.6094
350047	0.8765
350049	0.5450
350050	0.8472
350051	0.5443
350053	0.7364
350055	0.7171
350056	0.6593
350058	0.8610
350060	0.7649
350061	0.6164
350065	0.7710
360001	0.9465
360002	0.8266
360003	0.9319
360006	0.9595
360007	0.8547
360008	0.8569
360009	0.7584
360010	0.8599
360011	0.8158
360012	0.9555
360013	0.8002
360014	0.7750
360015	0.9005
360016	0.9319
360017	0.9609
360018	0.9372
360019	0.9087
360020	0.9005
360021	0.9449
360024	0.8062
360025	0.8062
360026	0.9338
360027	0.8964
360028	0.8158
360029	1.0040
360030	0.8283
360031	0.9595
360032	0.7621
360034	0.8959
360035	0.9609
360036	0.8939
360037	1.0664
360038	0.9319
360039	0.7942
360040	0.8225
360041	0.9725
360042	0.9143
360044	0.8250
360045	1.0807
360046	0.8320
360047	0.8350
360048	1.0031
360049	1.0664
360050	0.8267
360051	0.9373
360052	0.9372
360054	0.8613
360055	0.9449
360056	0.9252
360057	0.8550
360058	0.7715
360059	1.0394
360062	0.9609
360063	0.8276
360064	0.9441

360065
360066
360067
360068
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360070
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360100
360101
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360115
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REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage Index
360065	0.8176
360066	0.7589
360067	0.8166
360068	1.0031
360069	0.9854
360070	0.8996
360071	0.8177
360072	0.9192
360074	1.0031
360075	1.0709
360076	0.9426
360077	0.9673
360078	0.8953
360079	0.9351
360080	0.8463
360081	1.0031
360082	1.0761
360083	0.8009
360084	0.8893
360085	0.9595
360086	0.9136
360087	1.0394
360088	0.8300
360089	0.8005
360090	1.0038
360091	0.9155
360092	0.9429
360093	0.8048
360094	1.0031
360095	0.7905
360096	0.8303
360098	1.0634
360099	0.8728
360100	0.9085
360101	1.0761
360102	0.9836
360103	1.0031
360104	1.0664
360106	0.8953
360107	0.8042
360108	0.8367
360109	0.7991
360112	1.0031
360113	0.9319
360114	0.9274
360115	1.0672
360116	0.8522
360118	0.8236
360119	1.0031
360120	0.8062
360121	0.8096
360122	1.0728
360123	0.9112
360124	0.9459
360125	0.9160
360126	0.9441
360127	1.0434
360128	0.8189
360129	0.7940
360130	0.9192
360131	0.8694
360132	0.9252
360133	0.9372
360134	0.9319
360135	0.8205
360136	0.8751
360137	1.0755
360139	0.8248
360140	0.8849

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage Index
360141	0.9496
360142	0.8773
360143	1.0582
360144	1.0728
360145	0.9192
360147	0.7490
360148	0.8694
360149	0.8492
360150	0.8917
360151	0.8996
360152	0.9595
360153	0.8428
360154	0.7512
360155	0.9673
360156	0.8492
360159	0.9661
360161	0.9483
360162	1.0751
360163	0.9319
360164	0.8324
360165	0.9865
360166	0.8236
360169	0.7562
360170	0.9369
360172	0.9192
360174	0.9206
360175	0.9313
360176	0.7989
360177	0.8878
360178	0.7490
360179	0.9319
360180	1.0709
360184	0.9138
360185	0.9375
360186	0.8393
360187	0.9136
360188	0.8947
360189	0.9489
360192	0.9592
360193	0.7942
360194	0.8312
360195	0.9174
360197	0.7920
360200	0.7665
360203	0.7808
360204	0.9192
360210	0.9263
360011	0.8460
360212	0.9975
360213	0.8669
360218	0.9190
360230	1.0751
360231	0.7551
360232	0.9705
360234	0.9374
360236	0.9521
360238	0.8303
360239	0.9374
360240	0.8916
360241	0.8920
370001	0.8329
370002	0.6403
370004	0.7593
370005	0.8153
370006	0.6709
370007	0.6704
370008	0.7964
370011	0.8471
370012	0.8203

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage Index
370013	0.8102
370014	0.8270
370015	0.6364
370016	0.7105
370017	0.6578
370018	0.8275
370019	0.5920
370020	0.6329
370021	0.7476
370022	0.7650
370023	0.7748
370025	0.8065
370026	0.7105
370028	0.8092
370029	0.6092
370030	0.7362
370032	0.8092
370033	0.8248
370034	0.6582
370035	0.8092
370036	0.6426
370037	0.8092
370038	0.8063
370039	0.8391
370040	0.7192
370041	0.7964
370042	0.7559
370043	0.8147
370045	0.7570
370046	0.8152
370047	0.6929
370048	0.7361
370049	0.6676
370051	0.7850
370054	0.8180
370056	0.7700
370057	0.8018
370059	0.7945
370060	0.6303
370063	0.6118
370064	0.7421
370065	0.7397
370069	0.8329
370071	0.7397
370072	0.6418
370076	0.7686
370077	0.7105
370078	0.8313
370079	0.8281
370080	0.6919
370082	0.6095
370083	0.6743
370084	0.7363
370085	0.6811
370086	0.7432
370089	0.7734
370091	0.8329
370092	0.6157
370093	0.8092
370094	0.7999
370095	0.6590
370097	0.7682
370099	0.5944
370100	0.6673
370103	0.6176
370105	0.8092
370106	0.7999
370108	0.6441
370110	0.7472

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
370112	0.7354
370113	0.6625
370114	0.8329
370117	0.6929
370121	0.7771
370122	0.6472
370123	0.7999
370125	0.6097
370126	0.6421
370131	0.6131
370133	0.6862
370138	0.7213
370139	0.7033
370140	0.8193
370141	0.8329
370146	0.5905
370148	0.8024
370149	0.7864
370153	0.7273
370154	0.6622
370156	0.7440
370157	0.6707
370158	0.8170
370159	0.8092
370161	0.7967
370163	0.7854
370165	0.7875
370166	0.8362
370169	0.7125
370176	0.6316
370177	0.6306
370178	0.7518
370179	0.6220
370183	0.7050
380001	0.9470
380002	0.9646
380003	0.9713
380004	1.1080
380005	0.9476
380006	0.9429
380007	1.1083
380008	0.9663
380009	1.1064
380010	1.1010
380011	0.8630
380013	0.9582
380014	0.9636
380017	1.1064
380018	0.9620
380019	0.9429
380020	0.9605
380021	1.1091
380022	0.9636
380023	0.9068
380024	1.1064
380025	1.0997
380026	0.9961
380027	0.9292
380029	1.0345
380031	0.9095
380033	0.9592
[illegible]005	0.8424
[illegible]006	0.9497
380037	1.1067
380038	1.0939
380039	1.1075
380040	0.9429
380042	0.9561
380047	0.9429

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
380048	0.9320
380050	0.8649
380051	0.9935
380052	0.8817
380055	1.1031
380056	0.9935
380059	0.9518
380060	1.1022
380061	1.1075
380062	0.8170
380063	0.9646
380064	0.9317
380065	0.9509
380066	0.9130
380068	1.1132
380069	0.8633
380070	0.9944
380071	1.0762
380072	0.8241
380075	0.9631
380078	0.9127
380081	0.9429
380082	1.1038
380083	0.9744
380084	0.9646
380087	0.9310
380088	0.8405
380089	1.1089
380090	0.9374
380091	1.0997
380094	0.9809
390001	0.8883
390002	1.0052
390003	0.8775
390004	0.9776
390005	0.8796
390006	0.8919
390007	1.0859
390008	0.9226
390009	0.8891
390010	0.9659
390011	0.8957
390012	1.0389
390013	0.8953
390014	0.9767
390015	0.8206
390016	0.9434
390017	0.9421
390018	1.0315
390019	1.0052
390021	1.1112
390022	1.2248
390023	1.1807
390024	1.2171
390025	1.1807
390026	1.0932
390027	1.0845
390028	1.0298
390029	1.0426
390030	0.8477
390031	0.8415
390032	1.0315
390035	1.0078
390036	0.9261
390037	1.0204
390039	0.8712
390040	0.8787
390041	0.9355
390042	0.9756

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
390043	0.8570
390044	0.9440
390045	0.8835
390046	0.9827
390047	1.1139
390048	0.9168
390049	0.9911
390050	1.0275
390051	1.2171
390052	0.8899
390054	0.8359
390055	1.0312
390056	0.9079
390057	1.0182
390058	0.9785
390059	1.2206
390060	0.8957
390061	0.9842
390062	0.9033
390063	0.8891
390064	0.8734
390065	0.8712
390066	0.9889
390067	0.9776
390068	0.9455
390069	1.0258
390070	1.0335
390071	0.8435
390072	0.8769
390073	0.9132
390074	1.0222
390075	0.8835
390076	1.0754
390078	0.8891
390079	0.8770
390080	1.0869
390081	1.1833
390083	1.1112
390084	0.8919
390086	0.8535
390088	1.1146
390090	1.0426
390091	0.8713
390092	0.8798
390093	0.8520
390095	0.8832
390096	0.9509
390097	1.0969
390098	0.9776
390100	0.9842
390101	0.9827
390102	1.0348
390103	0.9659
390104	0.7889
390106	0.8856
390107	1.0367
390108	1.1208
390109	0.8832
390110	0.8957
390111	1.2262
390112	0.8887
390113	0.8559
390114	1.0254
390115	1.0305
390116	1.0894
390117	0.8635
390118	0.7773
390119	0.8832
390121	0.9132

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
390122	[illegible]
390123	[illegible]
390125	[illegible]
390126	[illegible]
390127	[illegible]
390128	[illegible]
390130	[illegible]
390131	[illegible]
390132	[illegible]
390133	[illegible]
390135	[illegible]
390136	[illegible]
390137	[illegible]
390138	[illegible]
390139	[illegible]
390142	[illegible]
390143	[illegible]
390145	[illegible]
390146	[illegible]
390147	[illegible]
390148	[illegible]
390149	[illegible]
390150	[illegible]
390151	[illegible]
390152	[illegible]
390153	[illegible]
390154	[illegible]
390155	[illegible]
390156	[illegible]
390157	[illegible]
390158	[illegible]
390159	[illegible]
390160	[illegible]
390161	[illegible]
390162	[illegible]
390163	[illegible]
390164	[illegible]
390165	[illegible]
390166	[illegible]
390167	[illegible]
390168	[illegible]
390169	[illegible]
390170	[illegible]
390171	[illegible]
390172	[illegible]
390173	[illegible]
390174	[illegible]
390176	[illegible]
390178	[illegible]
390179	[illegible]
390180	[illegible]
390181	[illegible]
390183	[illegible]
390184	[illegible]
390185	[illegible]
390186	[illegible]
390187	[illegible]
390189	[illegible]
390191	[illegible]
390192	[illegible]
390193	[illegible]
390194	[illegible]
390195	[illegible]
390197	[illegible]
390198	[illegible]
390199	[illegible]
390200	[illegible]
390201	[illegible]
390203	[illegible]

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REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
390122	0.8727
390123	1.0211
390125	0.9109
390126	1.1050
390127	1.0862
390128	1.0153
390130	0.8081
390131	1.0298
390132	1.1565
390133	0.9911
390135	1.0963
390136	1.0275
390137	0.8734
390138	0.8292
390139	1.0405
390142	1.0862
390143	1.0254
390145	0.9609
390146	0.7747
390147	0.9661
390148	1.0628
390149	1.1791
390150	0.9050
390151	0.8361
390152	0.9024
390153	1.1048
390154	0.8303
390155	1.0858
390156	1.1650
390157	0.9960
390158	0.9509
390159	1.1208
390160	0.9679
390161	0.8142
390162	0.9913
390163	0.9570
390164	1.0254
390165	0.9451
390166	0.9041
390167	1.1746
390168	0.9394
390169	0.8701
390170	1.2248
390171	0.8613
390172	1.0348
390173	0.9098
390174	1.2217
390176	0.9924
390178	0.9552
390179	1.1165
390180	1.1700
390181	0.8829
390183	0.9215
390184	0.9520
390185	0.8335
390186	0.8701
390187	0.9097
390189	0.8556
390191	0.8272
390192	0.8848
390193	0.8691
390194	0.9797
390195	1.1499
390197	0.9911
390198	0.8891
390199	0.8596
390200	0.9854
390201	0.9637
390203	1.0595

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
390204	1.0992
390205	1.2283
390206	0.9776
390209	0.8232
390211	0.9481
390213	0.8399
390215	1.1650
390217	0.9643
390219	0.9411
390220	1.0633
390222	1.0636
390223	1.2162
390224	0.8682
390225	0.9339
390226	1.2190
390228	1.0129
390229	1.0254
390231	1.0741
390232	0.9889
390233	0.9248
390235	1.1624
390236	0.8795
390237	0.8832
390238	1.0323
390242	0.9911
390244	0.8497
390245	1.0867
390246	0.7751
390247	1.0913
390249	0.9001
390252	0.9148
390256	0.9786
390258	1.0555
390260	1.0514
390261	0.9911
390262	1.0288
390263	0.9911
390265	0.9934
390266	0.8765
390267	1.0411
390268	0.8992
390270	0.8891
390272	1.0894
390277	1.2044
410001	1.0760
410002	1.0637
410004	1.7060
410005	1.0760
410006	1.0709
410007	1.0760
410008	1.0645
410009	1.0650
410010	1.0760
410011	1.0709
410012	1.0760
410013	1.1336
420002	0.9827
420004	0.8799
420005	0.8189
420006	0.8799
420007	0.8639
420009	0.8765
420010	0.8230
420011	0.8937
420014	0.8691
420015	0.9058
420016	0.9753
420018	0.8646
420019	0.8103

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
420020	0.8498
420022	0.9087
420023	0.9179
420026	0.8646
420027	0.8954
420028	0.8093
420029	0.9179
420030	0.8685
420031	0.7407
420032	0.9677
420033	0.9218
420035	0.8044
420036	0.9707
420037	0.9218
420038	0.8275
420039	0.8159
420040	0.8125
420042	0.7941
420043	0.8552
420044	0.8125
420048	0.8682
420049	0.7711
420051	0.8125
420053	0.8541
420054	0.8298
420055	0.8132
420056	0.9766
420057	0.8249
420059	0.8180
420061	0.7565
420062	0.8355
420064	0.8089
420065	0.8799
420066	0.8079
420067	0.8132
420068	0.8666
420069	0.8298
420070	0.8258
420071	0.7575
420072	0.7179
420073	0.8718
420074	0.8212
420075	0.9833
420076	0.8639
420078	0.8894
420079	0.8748
420080	0.8183
420081	0.9199
420082	0.9096
420083	0.8639
420084	0.8546
420085	0.7674
420086	0.8646
420087	0.8799
420088	0.8799
420089	0.8782
430004	0.7686
430005	0.6607
430007	0.8520
430008	0.6352
430009	0.5598
430010	0.6800
430011	0.7324
430012	0.6736
430013	0.7155
430014	0.7464
430015	0.8218
430016	0.6611
430017	0.7219

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
430018	0.6140
430022	0.7366
430023	0.8566
430024	0.7059
430025	0.7805
430026	0.6900
430027	0.8611
430028	0.7974
430029	0.8069
430031	0.6830
430033	0.7304
430034	0.7842
430036	0.8536
430037	0.6939
430038	0.7347
430039	0.7304
430040	0.6346
430041	0.8539
430042	0.6247
430043	0.6189
430044	0.8000
430047	0.6071
430048	0.7934
430049	0.7304
430051	0.8041
430054	0.8557
430056	0.4882
430057	0.6514
430060	0.6247
430062	0.5966
430064	0.6301
430065	0.6762
430066	0.7334
430073	0.7304
430076	0.5706
430077	0.7874
430079	0.6149
430080	0.6290
430087	0.6055
430088	0.6709
440001	0.8169
440002	0.7752
440003	0.8975
440006	0.9240
440007	0.7689
440008	0.7798
440009	0.6529
440010	0.7614
440011	0.9319
440012	0.8464
440014	0.7818
440015	0.9319
440016	0.6656
440017	0.8449
440018	0.8390
440019	0.9267
440020	0.7883
440022	0.7986
440023	0.7686
440024	0.9112
440025	0.8232
440026	0.9310
440029	0.9353
440030	0.7989
440031	0.9134
440032	0.8041
440033	0.9417
440034	0.9284
440035	0.8367

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
440038	0.7839
440039	0.9377
440040	0.7774
440041	0.8198
440046	0.9170
440047	0.7826
440048	0.8584
440049	0.8620
440050	0.8232
440051	0.7430
440052	0.8004
440053	0.9124
440054	0.7713
440056	0.9207
440057	0.7400
440058	0.7508
440059	0.6455
440060	0.7817
440061	0.7216
440063	0.8413
440064	0.8869
440065	0.8173
440067	0.7989
440068	0.7558
440069	0.9377
440070	0.7836
440071	0.8584
440072	0.7251
440073	0.8046
440074	0.9120
440078	0.7613
440079	0.7225
440081	0.9216
440082	0.9377
440083	0.6541
440084	0.8288
440087	0.6499
440090	0.8884
440091	0.6841
440095	0.8462
440100	0.7001
440102	0.8115
440103	0.8841
440104	0.8884
440105	0.8413
440109	0.7174
440110	0.8184
440111	0.9377
440114	0.7659
440115	0.7823
440120	0.9267
440121	0.8857
440125	0.9267
440130	0.7542
440131	0.8497
440132	0.7068
440133	0.9377
440135	0.9240
440136	0.8872
440137	0.8036
440141	0.8207
440142	0.7847
440143	0.7863
440144	0.7653
440145	0.7016
440146	0.9319
440147	0.8628
440148	0.7783
440149	0.6824

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
440150	0.9260
440151	0.7839
440152	0.8584
440153	0.8282
440156	0.8841
440157	0.7196
440159	0.8628
440160	0.7921
440161	0.9377
440162	0.8841
440166	0.9594
440168	0.8647
440170	0.8628
440173	0.9284
440174	0.7817
440175	0.7925
440176	0.8464
440177	0.7826
440178	0.8820
440180	0.8120
440181	0.7527
440182	0.6960
440183	0.8628
440184	0.8413
440185	0.9066
440186	0.7847
440187	0.6260
440189	0.7752
440192	0.6704
440193	0.8872
440194	0.9201
440196	0.8517
440197	0.9377
440200	0.7952
440203	0.7702
440205	0.9261
450002	0.9363
450004	0.8122
450005	0.8622
450007	0.7979
450008	0.9387
450010	0.7462
450011	0.8373
450014	0.8414
450015	0.9235
450016	0.8082
450018	0.9786
450020	0.9667
450021	0.9347
450023	0.8405
450024	0.9363
450025	0.7462
450027	0.9358
450028	0.8134
450029	0.6113
450031	1.0155
450032	0.9161
450033	0.8134
450034	0.8660
450035	0.9771
450037	0.9094
450040	0.8509
450041	1.0007
450042	0.9544
450043	0.9048
450044	0.9235
450046	0.8261
450047	0.8134
450050	0.8419

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
450051	
450052	
450053	
450054	
450055	
450056	
450057	
450058	
450059	
450060	
450063	
450064	
450065	
450068	
450070	
450072	
450073	
450074	
450078	
450079	
450080	
450081	
450082	
450083	
450085	
450087	
450090	
450092	
450094	
450096	
450097	
450098	
450099	
450101	
450102	
450104	
450107	
450108	
450109	
450110	
450112	
450113	
450115	
450118	
450119	
450121	
450123	
450124	
450126	
450127	
450128	
450130	
450131	
450132	
450133	
450135	
450137	
450140	
450142	
450143	
450144	
450145	
450146	
450147	
450148	
450149	
450150	
450151	
450152	

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
450051	0.9194
450052	0.8220
450053	0.7185
450054	0.9367
450055	0.7847
450056	0.9104
450057	0.8509
450058	0.7750
450059	0.8175
450060	1.0077
450063	0.7372
450064	0.9519
450065	0.9218
450068	0.9771
450070	0.8627
450072	0.9909
450073	0.8553
450074	0.8261
450078	0.8060
450079	0.9320
450080	0.6844
450081	0.8436
450082	0.8380
450083	0.8997
450085	0.7068
450087	0.9319
450090	0.9006
450092	0.6842
450094	0.9236
450096	0.8681
450097	0.9126
450098	0.8225
450099	0.7622
450101	0.9544
450102	0.8997
450104	0.7567
450107	0.9363
450108	0.7645
450109	0.8894
450110	0.8527
450112	0.6688
450113	0.8810
450115	0.9070
450118	0.8261
450119	0.8062
450121	0.9048
450123	0.8681
450124	0.9104
450125	0.9234
450127	0.8645
450128	0.8062
450130	0.7750
450131	0.8261
450132	0.8437
450133	0.8479
450135	0.9048
450137	0.9048
450140	0.8452
450142	0.9712
450143	0.9036
450144	0.8348
450145	0.8278
450146	0.8260
450147	0.8405
450148	0.9231
450149	0.9782
450150	0.6196
450151	0.6684
450152	0.9576

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
450153	0.8261
450154	0.8976
450155	0.7327
450157	0.7683
450160	0.7708
450162	0.8527
450163	0.8304
450164	0.9330
450165	0.7594
450166	0.6438
450169	0.8255
450170	0.8022
450175	1.0266
450176	0.6062
450177	0.7231
450178	0.7881
450179	0.9363
450181	0.7708
450184	1.0203
450185	0.6242
450188	0.6749
450190	0.9786
450191	0.9648
450192	0.8541
450193	0.9771
450194	0.8938
450195	0.9793
450196	0.6688
450197	0.9699
450200	0.7714
450201	0.7843
450203	0.9035
450209	0.7788
450210	0.9190
450211	0.8164
450213	0.7836
450214	0.9155
450217	0.5525
450218	0.7971
450219	0.7139
450221	0.7614
450222	1.0265
450224	0.7971
450229	0.8021
450231	0.7593
450234	0.7203
450235	0.7272
450236	0.6986
450237	0.7750
450239	0.9416
450241	0.7719
450249	0.7966
450246	0.8786
450249	0.6244
450250	0.6769
450253	0.8961
450258	0.6928
450259	0.9209
450264	0.7238
450269	0.7836
450270	0.8206
450271	0.9769
450272	0.8862
450276	0.7570
450278	0.6427
450280	0.9952
450283	0.8873
450286	0.9146
450288	0.7357

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
450289	0.9771
450292	1.0048
450293	0.7375
450296	1.0205
450297	0.9558
450299	0.8373
450303	0.8514
450306	0.8268
450307	0.8257
450309	0.7755
450315	0.9952
450320	0.9576
450321	0.7857
450322	0.8014
450324	0.8554
450325	0.7688
450327	0.6713
450330	0.9729
450334	0.7790
450337	0.8795
450340	0.7621
450341	0.8951
450346	0.9660
450347	0.8750
450348	0.9448
450349	0.9824
450351	0.8342
450352	0.9470
450353	0.8245
450355	0.8053
450358	0.9771
450362	0.9106
450365	0.9347
450366	0.9551
450369	0.6347
450370	0.8849
450371	0.9029
450372	0.9573
450373	0.6939
450374	0.8518
450376	0.7621
450378	0.9810
450379	0.9303
450381	0.8027
450388	0.7836
450389	0.8905
450393	0.8810
450394	0.9890
450395	0.8813
450399	0.8535
450400	0.7973
450403	1.0316
450410	0.9473
450411	0.8353
450417	0.9486
450418	1.0008
450419	0.9046
450422	0.9306
450423	0.9920
450424	0.9358
450429	0.8602
450431	0.9104
450438	0.7806
450446	0.9771
450447	0.8338
450450	0.8304
450451	0.8714
450457	0.8509
450460	0.8769

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
450462	0.9320
450464	0.7932
450465	0.8790
450467	0.8798
450469	0.8810
450473	0.8168
450475	0.9072
450476	0.7769
450484	0.8164
450486	0.7257
450488	0.9070
450489	0.7682
450497	0.7985
450498	0.8069
450508	0.8474
450514	0.8681
450518	0.8681
450523	0.9771
450530	0.9786
450534	0.7250
450535	0.9358
450537	0.0176
450538	0.9645
450539	0.8579
450544	0.9299
450545	0.8378
450546	1.0090
450547	0.8598
450550	0.9299
450551	0.9397
450557	0.8531
450558	0.8019
450559	0.8462
450561	0.7538
450563	1.0192
450565	0.9087
450570	0.8633
450571	0.7621
450573	0.7939
450574	0.7641
450575	0.7780
450578	0.8192
450580	0.8004
450583	0.7031
450584	0.7522
450586	0.7744
450587	0.6547
450590	0.9329
450591	0.9588
450596	0.9198
450597	0.8380
450603	0.7945
450604	0.6929
450605	0.8261
450607	0.7214
450609	0.8477
450610	0.9795
450614	0.7885
450615	0.7765
450617	0.9429
450620	0.7115
450623	0.8409
450626	0.8608
450628	0.7973
450630	0.9551
450631	0.7836
450632	0.8562
450633	0.7750
450634	1.0629

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
450637	1.0265
450638	0.9927
450639	0.9774
450641	0.7589
450643	0.6113
450644	0.9880
450646	0.9363
450647	1.0224
450648	0.9771
450649	0.6459
450651	1.0180
450652	0.7195
450653	0.7711
450654	0.7913
450656	0.8474
450658	0.8243
450659	0.9771
450660	0.9882
450661	0.8437
450662	0.8134
450665	0.8292
450666	0.8660
450667	0.6049
450668	0.9363
450669	1.0755
450670	1.0330
450672	0.9048
450673	0.7833
450674	0.9882
450675	0.9582
450677	0.9035
450678	0.9945
450681	0.7836
450682	1.0107
450683	1.0286
450684	1.0390
450685	0.7750
450686	0.8509
450688	1.0155
450690	0.8997
450691	1.0011
450694	0.8197
450696	0.9194
450697	0.7796
450698	0.8597
450700	0.8036
450702	0.9094
450703	0.7714
450704	1.0107
450705	0.8750
450706	0.9721
450709	0.9460
450711	0.8082
450712	0.8166
450713	0.9008
450715	0.9852
450716	0.9903
450717	1.0104
450718	0.9025
450723	0.9061
450724	0.8405
450725	0.7820
450726	0.7347
450727	0.6703
450728	0.8068
450729	0.9194
450730	1.0008
450732	1.0074
450733	0.7820

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
450734	0.7750
450735	0.7612
450742	0.9962
450743	1.0637
450745	0.9319
450746	0.6524
450747	0.8610
450749	0.8581
460001	0.9551
460003	0.9563
460004	0.9682
460005	0.9682
460006	0.9614
460007	0.8953
460008	0.9614
460009	0.9638
460010	0.9563
460011	0.9286
460013	0.9573
460014	0.9614
460015	0.9457
460016	0.7135
460017	0.9734
460018	0.8716
460019	0.9168
460020	0.7135
460021	0.9458
460022	0.8636
460023	0.9685
460024	0.8669
460025	0.6460
460026	0.8636
460027	0.9539
460029	0.9402
460030	0.8978
460032	0.9864
460033	0.7843
460035	0.8426
460036	0.9785
460037	0.9625
460039	0.9434
460041	0.9655
460042	0.9635
460043	0.9551
460044	0.9664
460046	0.9614
460047	0.9614
470001	0.9795
470003	0.8989
470004	0.9815
470005	0.9811
470006	0.9799
470008	0.8476
470010	0.9086
470011	0.9510
470012	0.9446
470013	0.8989
470015	0.9924
470018	1.0000
470020	0.9182
470023	0.8607
470024	0.9144
490001	0.8506
490002	0.7997
490003	0.8900
490004	0.8924
490005	0.7854
490006	0.7848
490007	0.8700

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Prov	
490008	
490009	
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490011	
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490013	
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490020	
490021	
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490090	
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490098	
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490100	
490101	
490104	
490105	

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REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
490008	1.1071
490009	0.0945
490010	0.8506
490011	0.8700
490012	0.8385
490013	0.8219
490014	1.1071
490015	0.8916
490017	0.8689
490018	0.8907
490019	0.9211
490020	0.8700
490021	0.8126
490022	1.0402
490023	1.0380
490024	0.8113
490027	0.8506
490028	0.8900
490030	0.8700
490031	0.8017
490032	0.8900
490033	0.8266
490035	0.8521
490037	0.8137
490038	0.7746
490040	1.0343
490041	0.8662
490042	0.8773
490043	1.0167
490044	0.8657
490045	1.1037
490046	0.8700
490047	0.8835
490048	0.8194
490050	1.1258
490052	0.8517
490053	0.8316
490054	0.7756
490057	0.8700
490059	0.8916
490060	0.7880
490063	1.1629
490065	0.8441
490067	0.8700
490069	0.8843
490071	0.8900
490073	1.1258
490074	0.8700
490075	0.8677
490077	0.9027
490079	0.8094
490083	0.8154
490084	0.8583
490085	0.8919
490088	0.8212
490089	0.8168
490090	0.8520
490091	0.8900
490092	0.8455
490093	0.8521
490094	0.8900
490095	0.8126
490097	0.7550
490098	0.7488
490099	0.7855
490100	0.8154
490101	1.1375
490104	0.8700
490105	0.7746

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
490106	0.9005
490107	1.0547
490108	0.8126
490109	0.8220
490110	0.8768
490111	0.8517
490112	0.8900
490113	1.1043
490114	0.8438
490115	0.7573
490116	0.8744
490117	0.8853
490118	0.8916
490119	0.8700
490120	0.8711
490122	1.0601
490123	0.8924
490124	0.8900
490126	0.8209
490127	0.7779
490129	1.1087
490130	0.8223
490131	0.7621
500001	1.0984
500002	0.9082
500003	1.0484
500005	1.0977
500007	1.0454
500008	1.0981
500009	1.0673
500011	1.1306
500012	0.9482
500014	1.0673
500015	1.0578
500016	0.9715
500019	0.9938
500021	1.0253
500023	0.9097
500024	1.0019
500025	1.0977
500026	1.0834
500027	1.0977
500028	0.8086
500029	0.9497
500030	0.9922
500031	0.9871
500033	0.8181
500035	0.9959
500036	0.9482
500037	0.9450
500039	1.0904
500041	1.0796
500042	1.0269
500043	0.9460
500044	0.9959
500045	1.0483
500048	1.0173
500049	0.9082
500050	1.1060
500051	1.0981
500053	0.9097
500054	0.9959
500055	0.8495
500057	0.8253
500058	0.9097
500059	1.0273
500060	1.0765
500061	0.9853
500062	1.0336

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage index
500064	1.0977
500065	0.8309
500068	0.9882
500069	0.9347
500071	0.7870
500072	1.0035
500073	1.0065
500074	0.8336
500075	1.0984
500076	0.9482
500077	0.9959
500078	1.0999
500079	1.0498
500080	0.8012
500084	1.0773
500085	0.9371
500088	1.1274
500089	1.0134
500090	0.8597
500092	0.9392
500093	1.0484
500094	0.8691
500096	0.9191
500097	0.9966
500098	0.8677
500101	0.8307
500102	0.9211
500104	1.0572
500106	0.9551
500107	0.7935
500108	1.0483
500110	0.9707
500118	0.9979
500119	0.9959
500122	1.0258
500123	0.9869
500124	1.0844
500125	0.7754
500129	1.0483
500132	0.9984
500134	1.1321
500135	1.1278
500139	1.0019
500141	1.0512
510001	0.8747
510002	0.7687
510004	0.7775
510005	0.8669
510006	0.8266
510007	0.8692
510008	0.8240
510009	0.8334
510012	0.8459
510013	0.8161
510015	0.8743
510016	0.7521
510018	0.7815
510020	0.8334
510022	0.8648
510023	0.8718
510024	0.8929
510025	0.7376
510026	0.7839
510027	0.7952
510028	0.8540
510029	0.8886
510030	0.7958
510031	0.8648
510033	0.7538

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage Index
510035	0.7719
510036	0.7923
510038	0.7912
510039	0.8428
510040	0.8785
510043	0.7669
510046	0.8657
510047	0.8275
510048	0.7775
510050	0.8428
510053	0.7860
510055	0.8736
510058	0.7538
510059	0.8648
510060	0.8492
510061	0.7947
510062	0.8824
510063	0.7710
510065	0.7806
510066	0.8682
510067	0.8937
510068	0.8193
510070	0.8824
510071	0.9093
510072	0.7751
510076	0.9106
510077	0.7709
510080	0.8690
510081	0.8455
510082	0.8622
510084	0.7560
510085	0.8896
510086	0.8686
520002	0.9006
520003	0.8413
520004	0.8143
520006	0.9197
520007	0.8727
520008	0.9551
520009	0.8819
520010	1.1114
520011	0.8227
520012	0.8807
520013	0.8209
520014	0.9343
520015	0.9099
520016	0.7545
520017	0.8267
520018	0.8578
520019	0.8866
520021	0.9437
520024	0.8148
520025	0.8552
520026	0.9761
520027	0.9272
520028	0.8846
520029	0.8975
520030	0.9133
520031	0.9349
520032	0.9384
520033	0.8934
520034	0.8648
520035	0.8506
520037	0.9061
520038	0.9075
520039	0.8173
520040	0.9517
520041	0.9364
520042	0.9581

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage Index
520044	0.8506
520045	0.8759
520047	0.8376
520048	0.8744
520049	0.8803
520051	0.9155
520053	0.8643
520054	0.8493
520056	0.9311
520057	0.9368
520058	0.9459
520059	0.9237
520060	0.8721
520062	0.9569
520063	0.9225
520064	0.8392
520066	0.8804
520068	0.8301
520069	0.9497
520070	0.8209
520071	0.8558
520074	0.8014
520075	0.8603
520076	0.8435
520077	0.8736
520078	0.9347
520081	0.8548
520082	0.9361
520083	0.9401
520084	0.9346
520087	0.8143
520088	0.8636
520089	0.9376
520090	0.8737
520091	0.7983
520092	0.8748
520094	0.9156
520095	0.9393
520096	0.9048
520097	0.8796
520098	0.9376
520100	0.8785
520101	0.8736
520102	0.9048
520103	0.9547
520107	0.8648
520109	0.7651
520110	0.7966
520111	0.8733
520112	0.8950
520113	0.8802
520114	0.7128
520115	0.8672
520116	0.8937
520117	0.7577
520118	0.9084
520120	0.7953
520121	0.8155
520122	0.8155
520123	0.8625
520124	0.8301
520130	0.8249
520131	0.8410
520132	0.8506
520134	0.6923
520135	0.8376
520136	0.9517
520138	0.9364
520139	0.9330

REVISIONS TO APPENDIX F.—PROPAC PROPOSED NEAREST NEIGHBOR WAGE INDEX CONTINUED

Provider No.	Wage Index
520140	0.9570
520141	0.8818
520142	0.8401
520144	0.8193
520145	0.9517
520146	0.7716
520148	0.9370
520149	0.8589
520151	0.8511
520152	0.8780
520153	0.8485
520154	0.8867
520156	1.1272
520157	0.8715
520159	0.7944
520160	0.8819
520161	0.8538
520170	0.9547
520171	0.8454
520173	0.8220
520174	0.9380
520176	0.9347
520177	0.9361
520178	0.7716
530001	0.9231
530002	0.8067
530003	0.7956
530004	0.7916
530005	0.8184
530006	0.7337
530007	0.6866
530008	0.8323
530009	0.7242
530010	0.8725
530011	0.8174
530012	0.6268
530014	0.9231
530015	0.8867
530016	0.6866
530017	0.9486
530018	0.7879
530019	0.7091
530022	0.7461
530023	0.8436
530024	0.6891
530025	0.7985
530026	0.7337
530027	0.6814
530029	0.6866
530031	0.6854
530032	0.9672

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: June 23, 1993.

Neil J. Stillman,

Deputy Assistant Secretary forInformation Resources Management.

[FR Doc. 93–15296 Filed 6–28–93; 8:45 am]

BILLING CODE 4120–01–P

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1601, 1602, 1609, 1615, 1632, 1642, 1646, and 1652

RIN 3206–AE67

Federal Employees Health Benefits Acquisition Regulation; Miscellaneous Changes

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed regulation to amend certain provisions of the Federal Employees Health Benefits Acquisition Regulation (FEHBAR). The changes will more precisely reflect the needs of OPM in contracting for health benefits under the Federal Employees Health Benefits Program (FEHBP) and in the general administration of the FEHBP contracts.

DATES: Comments must be received on or before July 29, 1993.

ADDRESSES: Written comments may be sent to Andrea S. Minniear, Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606–0191.

SUPPLEMENTARY INFORMATION: On July 2, 1990, OPM issued a regulation implementing the Health Maintenance Organization Amendments of 1988 that affected the FEHBP. In that regulation, OPM introduced the concept of Similarly Sized Subscriber Groups (SSSGs) to improve its contract price negotiation policy. OPM's objective is to ensure that each plan bases the FEHBP's rates on the same underlying rates that it uses to derive the rates for its SSSGs. Thus, the plan must derive the FEHBP rates in a manner consistent with the rating methodology it uses to derive the SSSGs' rates.

We have used the SSSG concept for the last 2 years. The experience gained has convinced us that certain changes in the SSSG provisions are necessary to improve the efficiency of the rate negotiation process. Therefore, OPM is proposing to modify the definition of SSSGs.

The proposed regulation changes the definition of SSSGs to require only that the Comprehensive Medical Plan's two SSSGs meet a contract size requirement. Thus, the proposed revision would eliminate the current requirement that the SSSGs must purchase substantially the same basic benefits package as proposed for the Federal group. The concept of "substantially the same basic benefits package" confused many plans. As a result, many chose inappropriate SSSGs and did not consider other more appropriate groups because they erroneously believed that the basic benefits package was substantially different. OPM believes that this problem will be corrected by defining SSSGs solely in terms of contract size, and by using actuarial analysis to reconcile any benefits differences.

We would normally expect that the rating methods used for the SSSGs and the FEHBP would be the same. However, it is not absolutely necessary that this be the case. If it is not the case, the plan must have a written, consistently applied, rational criterion to explain the difference in rating methods. We want to emphasize that the SSSG concept is a method devised by OPM to ensure that the plan uses proper community rating procedures. Therefore, OPM will normally examine only the rating of the plan's SSSGs. OPM does, however, reserve the right to examine any aspect of the plan's rating process that it deems necessary to ensure that the plan is giving the FEHBP an equitable rate.

OPM is also proposing to set out in regulation its practice of basing the selection of the SSSGs on more current enrollment data. Under the proposed rule, the Comprehensive Medical Plan's SSSGs will be the two groups whose number of contracts (self only, self and dependents, family, etc.) at the time the rate reconciliation is submitted is closest to the number of FEHBP contracts (self only, family). In the past, the number of FEHBP contracts used for comparison was the number on record at OPM at the time the rate proposal was submitted, that is, May, prior to the beginning of the applicable rate year. Because OPM's figures were obtained from the FEHBP's previous September headcount, the FEHBP rates were based on data almost 1½ years old by the time the rate year began. OPM prefers to use contract figures that correspond to the applicable period, i.e., for the 1993 rate reconciliation, plans should use the total number of 1993 contracts. In most cases, the plan will have appropriate 1993 enrollment data at the time it submits its reconciliation. Any exceptions will be treated on a case-by-case basis. We would like to make it clear, however, that the carriers' contract figures will be used only for SSSG determinations, and their use for this purpose in no way concedes that the Comprehensive Medical Plan's contract figures are the official enrollment figures for any other purpose. The policy enables OPM to obtain more current rates and, therefore, simplify the rate reconciliation process.

We have amended 1615.802 to clarify that OPM will make a downward price adjustment if it determines that the rate for one or both of the SSSGs is lower than that which would be obtained by basing the rate on the plan's community rate. The purpose of this revised language is to make clear that the plan must give the FEHBP the lowest discount given to any SSSG.

We are proposing to change the time of submission of the Certificate of Accurate Pricing for Community Rated Plans [1615.804–70] from the time rate proposal is submitted to the time of the rate reconciliation so that the most recent community rate and enrollment head count are available. Further, we have deleted a reference in the certificate to the carrier's use of alternative methodologies for adjusted community rating (ACR). The language developed was intended only for a transition period following enactment of the Health Maintenance Organization (HMO) amendments of Public Law 100–517 during which OPM would evaluate its experience under the new legislation. We have found that special provisions for ACR are no longer necessary in light of OPM's SSSGs policy.

The current definition of "similarly sized subscriber groups" [1602.170–11(c)] has been misinterpreted by some carriers. The provision allows carriers to use Government groups as SSSGs, provided that such groups are community rated. Some carriers have considered this provision optional and are excluding State and local government groups even though they meet the SSSGs requirements and are community rated. To clarify this provision, the proposed regulation modifies the SSSG definition to say that the SSSGs are a plan's two community rated groups (regardless of whether or not they are Government groups) satisfying certain conditions.

In addition to amending the community rating provisions, the regulation also identifies more specifically how the Federal Acquisition Regulation (FAR) quality assurance requirements [1646.270] will be applied to FEHBP carriers and makes implementation of quality assurance requirements a minimum standard for carriers contracting with OPM under the FEHBP [1609.7001(b)(7)].

A new minimum standard has been added at 1609.7001(b)(8) that requires as a condition for participating in the FEHBP that the carrier establish and

maintain a system of internal control that specifies procedures for assuring the proper use of FEHBP funds, and accurate reporting of expenditures applicable to FEHBP operations.

In section 1601.102(b), we have clarified for carriers the order of precedence for the FEHB law and regulation, the FAR (including the FEHBAR), and the FEHBP contract. This should eliminate any confusion the carriers may have had over the priority of these documents with respect to the FEHBP.

In subpart 1609.4, we have adopted the FAR certification at 52.209–5 relating to debarment and suspension of Federal contractors. Because FEHBP contracts are, by law, exempt from competitive bidding, we have modified the certification to conform to the FEHBP statute. The certification is to be submitted by current FEHBP carriers, and by applicant carriers prior to OPM's determination on the application for approval to participate in the FEHBP.

OPM seeks to ensure carrier compliance with the FAR with regard to novation and change of name agreements [FAR subpart 42.12]. Accordingly, we have adapted the FAR-recommended agreement format to meet the specific needs of the FEHBP. Some FEHBP carriers are not forwarding timely filed, properly completed and signed novation or change-of-name agreements to OPM recognizing a successor in interest when carrier assets are transferred or following a change in the carrier's name. While the Significant Events clause at 1652.222–70 requires carriers to notify OPM within 10 work days of an event which might have a material effect upon the carrier's ability to meet its obligations under the contract, carriers are not keeping OPM informed. The law (41 U.S.C. 15) prohibits transfer of Government contracts. Nevertheless, the Government may, in its interest, recognize a third party as the successor in interest to a Government contract under certain circumstances [42.1204]. Pursuant to the law and regulation, we are proposing to add a new minimum standard to 1609.701(a) [1609.7001(a) in the proposed regulation] that will result in OPM's withdrawing approval of a carrier that fails to timely submit a novation or change-of-name agreement to OPM when it transfers its assets to a successor in interest, becomes a successor in interest to another business, or when the carrier changes its name. Further, FAR policy requires that, under normal circumstances, a successor in interest must assume all of the contractor's obligations under the contract [FAR 42.1201]. OPM's proposed regulation is intended to protect the FEHB Fund from carrier takeovers in which the successor in interest seeks to assume the assests of an FEHBP carrier but not the liabilities pertinent to the FEHBP contract. In this regard, OPM will terminate the contract if it determines that it is in the Government's best interest not to recognize a successor in interest to the contract [1642.1204(c)].

In addition to the foregoing, OPM is proposing to provide in the FEHBAR [1642.7001] for a Management Agreement that enables it to continue a contract in lieu of a novation agreement. Management Agreements are useful in various situations, such as, while awaiting a decision on a request for a novation, and as an interim measure when the timing of a transfer of assets or the timing of a carrier withdrawal make administration of the contract inconvenient for a period of time (such as when the effective date of Open Season enrollment changes or hospitalization on the effective date of an enrollment change requires the carrier to provide benefits to enrollees for a period of time beyond the effective date of the change).

While OPM must approve them, OPM is not a party to such agreements, nor is it required to execute them. Management Agreements are a means whereby the original contracting entity remains bound by the contract, but executes an agreement with a third party to administer the day-to-day performance of its contractual obligations. The third party acts as the agent for the original contracting entity. OPM has approved such arrangements in the past to protect the interests of enrollees.

Section 1632.617, which modifies FAR clause 52.232–17, is corrected to read that no FEHBP carrier may offset debts to the FEHB Fund by a tax credit under the Internal Revenue Code (26 U.S.C. 1481). Experience rated FEHB carriers had been inadvertently omitted from this provision.

In part 1652, we have updated the list of applicable FAR clauses. We have also added contract clause 1652.246–70 to implement the quality assurance provisions. In part 1653, we have updated the list of FAR clauses in the FEHBP Clause Matrix.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because they primarily affect administrative procedures used by OPM and the FEHBP plans.

List of Subjects in 48 CFR Part 1601, 1602, 1609, 1615, 1632, 1642, 1646, and 1652

Administrative practice and procedure, Government contracts, Health insurance.

U.S. Office of Personnel Management.
Patricia W. Lattimore,
Acting Deputy Director.

Accordingly, OPM is proposing to amend 48 CFR chapter 16 as follows:

CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATION

PART 1601—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citations for 48 CFR parts 1601, 1602, 1609, 1615, 1632, 1646, and 1652 continue to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

2. In section 1601.102, the existing paragraph is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

1601.102 Authority.

* * * * *

(b) The FEHBAR does not replace or incorporate regulations found at 5 CFR part 890, which provides the substantive policy guidance for administration of the FEHBP under 5 U.S.C. chapter 89. The following is the order of precedence in interpreting a contract provision under the FEHBP:

(1) 5 U.S.C. chapter 89;
(2) 5 CFR part 890;
(3) 48 CFR chapters 1 and 16;
(4) The FEHBP contract.

PART 1602—DEFINITION OF WORDS AND TERMS

3. Section 1602.170–11 is revised to read as follows:

1602.170–11 Similarly sized subscriber groups.

Similarly sized subscriber groups (SSSGs) are a comprehensive medical plan's two community rated groups each of which best satisfies the following conditions:

(a) As of March 31 of the applicable rate year, has a total subscriber

enrollment closest to the total subscriber enrollment of the Federal group; and,

(b) Renews in the plan's fiscal year which includes January 1 of the applicable rate year (if the plan's fiscal year begins October 1, groups renewing between October 1, 1992, and September 30, 1993, would be SSSG candidates for the 1993 FEHBP rate year).

PART 1609—CONTRACTOR QUALIFICATIONS

4. In part 1609, subpart 1609.4 is added, section 1609.701 is redesignated 1609.7001, and paragraphs (a)(7), (b)(7), and (b)(8) are added to read as follows:

Subpart 1609.4—Debarment, Suspension, and Ineligibility

1609.470 Notification of debarment, suspension, and ineligibility.

FAR subpart 9.4 is supplemented as set out in the certification required in 1609.471 by converting the FAR "offeror's" certification at FAR 52.209–5 into a carrier's certification. This change reflects the FEHBP's statutory exemption from competitive bidding (5 U.S.C. 8902), which obviates the issuance of solicitations.

1609.471 Contractor certification.

All FEHB carriers and applicant carriers are required to submit the following certification. Applicant carriers must submit the certification prior to OPM's determination on the application for approval to participate in the FEHBP. Current carriers must submit the certification once, along with their benefit and rate proposals for the contract year following publication of this regulation.

Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters

The Carrier certifies, to the best of its knowledge and belief, that—

(a) The Carrier and/or any of its Principals—

(1) Are ( ) are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2) Have ( ) have not ( ), within a 3-year period preceding this certification, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(3) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(2) of this clause.

(4) The Carrier has ( ) has not ( ), within a 3-year period preceding this certification, had one or more contracts terminated for default by any Federal agency.

(b) *Principals*, for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the Carrier subject to prosecution under section 1001, title 18, United States Code.

(c) The Carrier shall provide immediate written notice to the Contracting Officer if, at any time, the Carrier learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(d) A Carrier's certification that any of the actions mentioned in the certification exists will not necessarily result in termination of the contract. However, the certification, or the Carrier's failure to provide such additional information as requested by the Contracting Officer, will be considered in connection with a determination of the Carrier's responsibility under subpart 1609.70, Minimum Standards for Health Benefits Carriers.

(e) Nothing contained in the certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this section. The knowledge and information of the Carrier is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(f) The certification in this section is a material representation of fact upon which reliance is placed by the Contracting Officer. If it is later determined that the Carrier knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract for default.

Carrier Name: _____

_____

Name of Chief Executive Officer

Date signed: _____

(End of Certificate)

1609.7001 Minimum standards for health benefits carriers.

(a) * * *

(7) It must timely submit to OPM a properly completed and signed novation or change-of-name agreement in accordance with subpart 1642.12 of this chapter.

(b) * * *

(7) Development and application of a quality assurance program that specifies procedures for assuring contract quality as required by 1646.271.

(8) Establishment and maintenance of a system of internal control that provides reasonable assurance that:

(i) The provision and payments of benefits and other expenses is in compliance with legal, regulatory, and contractual guidelines;

(ii) FEHB funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and,

(iii) Data are accurately and fairly disclosed in all reports required by OPM.

* * * * *

5. In part 1615, section 1615.802, paragraph (b)(3), and section 1615.804–70 are revised to read as follows:

Subpart 1615.8—Price Negotiation

1615.802 Policy.

* * * * *

(b) * * *

(3) Contracts will be subject to a downward price adjustment if OPM determines that the rate for one or both of the similarly sized subscriber groups is lower than that which would be obtained by basing such rate on the plan's community rate. Such adjustments will be based on the lowest rate given to a similarly sized subscriber group.

* * * * *

1615.804–70 Certificate of accurate pricing for community rated plans.

When a carrier proposes a community rate as defined by FEHBAR 1602.170–2, the contracting officer shall require the carrier to execute the Certificate of Accurate Pricing for Community Rated Plans contained in this section unless the carrier has been exempted from filing certified cost or pricing data pursuant to 1615.802(b)(1). The plan shall submit the Certificate to OPM at the time it submits its rate reconciliation.

Certificate of Accurate Pricing for Community Rated Plans

This is to certify that, to the best of my knowledge and belief: (1) The cost or pricing data submitted (or, if not submitted, maintained and identified by the plan as supporting documentation) to the Contracting Officer or the Contracting Officer's representative or designee in support of the _____* FEHBP rates were developed in accordance with the requirements of 48 CFR chapter 16 and the FEHBP contract, and are accurate, complete, and current as of the date this certificate is executed; and, (2) The FEHBP rates were developed in a manner consistent with the methodology used to rate the plan's similarly sized subscriber groups and approved by OPM.

Firm: _____
Name: _____
Title: _____
Signature: _____
Date of Execution: _____

*Insert the year for which the rates apply. Normally, this will be the year for which the rates are being reconciled.

(End of Certificate)

PART 1632—CONTRACT FINANCING

6. In subpart 1632.6, section 1632.617 is revised to read as follows:

1632.617 Contract clause.

The clause at FAR 52.232–17 will be modified in all FEHBP contracts to exclude the words "net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)."

SUBCHAPTER G—CONTRACT MANAGEMENT

7. Add a heading for subchapter G immediately above part 1644 to read as follows:

SUBCHAPTER G—CONTRACT MANAGEMENT

8. In Subchapter G, Part 1642 is added to read as follows:

PART 1642—CONTRACT ADMINISTRATION

Subpart 1642.12—Novation and Change-of-Name Agreements

Sec.
1642.1201 Definitions.
1642.1204 Agreement to recognize a successor in interest (novation agreement).
1642.1205 Agreement to recognize carrier's change of name.

Subpart 1642–70—Management Agreement (In Lieu of Novation Agreement).

1642.7001 Management agreement.

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 1642.12—Novation and Change-of-Name Agreements

1642.1201 Definitions.

The definitions at FAR 42.1201 shall have the same meaning of this subpart.

1642.1204 Agreement to recognize a successor in interest (novation agreement).

(a) FAR 42.1204 shall be implemented as provided in this section. The contracting officer shall insert the following agreement in all FEHBP contracts for use when the contractor's assets or the entire portion of the assets pertinent to the performance of the contract, as determined by the Government, are transferred.

Novation Agreement

The *(insert corporate name)* (Transferor), a corporation duly organized and existing under the laws of *(insert State)* with its principal office in *(insert city, state)*; the *(insert corporate name)* (Transferee), *[if appropriate add "formerly known as the Corporation"]* a corporation duly organized and existing under the laws of *(insert State)* with its principal office in *(insert city)*; and the UNITED STATES OF AMERICA (Government) enter into this Agreement effective *(insert date transfer of assets became effective under applicable State law)*.

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Government, represented by various Contracting Officers of the Office of Personnel Management (OPM), has entered into Contract Number _____ with the Transferor. The term *contracts*, as used in this Agreement, means the contract cited in this paragraph and all other contracts and purchase orders, including any and all amendments and modifications made between the Government and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) As of _____, 19____ (insert date transfer of assets became effective under applicable State law), the Transferor has transferred to the Transferee all the assets of the Transferor, or the entire portion of the Transferor's assets pertinent to performing the contract, as determined by OPM, by virtue of a(an) *(insert term describing the legal transaction involved)* between the Transferor and the Transferee.

(3) The Transferee has acquired all the assets of the Transferor, or the entire portion of the Transferor's assets pertinent to performing the contract, as determined by OPM, by virtue of the transfer in paragraph (a)(1).

(4) The Transferee has assumed all obligations and liabilities of the Transferor pertinent to performing the contract, as determined by OPM, by virtue of the transfer in paragraph (a)(1).

(5) The Transferee is in a position to fully perform all obligations that may exist under the contract.

(6) It is consistent with the Government's interest to recognize the Transferee as the successor party to the contract.

(7) Evidence of the transfer in paragraph (a)(1) has been filed with the Government.

(8) [If applicable:] A certificate dated _____, 19____, signed by the Secretary of State of *(insert State)*, to the effect that the corporate name of *(insert old corporate name)* was changed to *(insert new corporate name)* on _____, 19____, has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT BY THIS AGREEMENT—

(1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government or the Federal Employees Health Benefits Fund that it now has or may have in the future in connection with the contract.

(2) The Transferee agrees to be bound by and to perform the contract in accordance with the conditions contained in the contract. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor pertinent to the contract, as determined by OPM, as if the Transferee were the original party to the contract.

(3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contract, with the same force and effect as if the action had been taken by the Transferee.

(4) The Government recognizes the Transferee as the Transferor's successor in interest in and to the contract. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the contract as if the Transferee were the original party to the contract. Following the effective date of this Agreement, the terms *Carrier* and *Contractor* as used in the contract, shall refer to the Transferee.

(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Government against the Transferor.

(6) All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the contract, shall be considered to have discharged those parts of the Government's obligations under the contract. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government's obligations under the contract, to the extent of the amounts paid or reimbursed.

(7) The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer of this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contract.

(8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee (i) assumes under this Agreement or (ii) may undertake in the future should this contract be modified under its terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

(9) The contract shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement effective *(insert the date transfer of assets became effective under applicable State law)*.

UNITED STATES OF AMERICA,

By _____
Date _____
Title _____
(Enter Transferor's name)
By _____

Date _____
Title _____
(CORPORATE SEAL)
(Enter Transferor's name)
By _____
Title _____
(CORPORATE SEAL)

Certificate

I, _____, certify that I am the Secretary of (*insert Name of Transferor*); that _____ who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this _____ day of _____, 19___.

By _____
(CORPORATE SEAL)

Certificate

I, _____, certify that I am the Secretary of (*insert name of Transferee*); that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this _____day of _____, 19___.

By _____
(CORPORATE SEAL)
(End of Agreement)

(b) Failure to submit the properly completed and signed Novation Agreement in a timely manner shall be cause for termination of the contract by OPM in accordance with FEHBAR 1652.249–70.

(c) The contracting officer shall terminate the contract if it is determined not to be in the Government's interest to recognize a successor in interest to the contract. The effective date will be decided by the contracting officer after considering the best interests of FEHBP enrollees.

1642.1205 Agreement to recognize carrier's change of name.

(a) FAR 42.1205 shall be implemented as provided in this section. The contracting officer shall insert the following Agreement in all FEHBP contracts when the carrier changes its name and the Government's and contractor's rights and obligations remain unaffected.

Change-of-Name Agreement

The (*insert new Carrier name*), a corporation duly organized and existing under the laws of (*insert State*), and the UNITED STATES OF AMERICA (Government), enter into this Agreement effective (*insert date when the change of name became effective under applicable State law*).

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Government, represented by various Contracting Officers of the Office of Personnel Management (OPM), has entered into Contract Number _____with the (*insert old Carrier name*). The term *contracts* as used in this Agreement means the contract cited in this paragraph and all other contracts and purchase orders and all modifications thereto made by the Government and the Contractor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the OPM or the Carrier has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) The (*insert old Carrier name*), by an amendment to its certificate of incorporation, dated _____, 19 ____, has changed its corporate name to (*insert new Carrier name*).

(3) This amendment accomplishes a change of corporate name only and all rights and obligations of the Government and the Carrier under the contract are unaffected by this change.

(4) Documentary evidence of this change of corporate name has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT:

(1) The contract is amended by substituting the name "(*insert new Carrier name*)" for the name "(*insert old Carrier name*)" wherever it appears in the contract; and

(2) Each party has executed this Agreement effective the day and year stated in paragraph (a)(2).

UNITED STATES OF AMERICA,
By _____
Date _____
Title _____
(Enter new Carrier name)
By _____
Date _____
Title _____
(CORPORATE SEAL)

Certificate

I, _____, certify that I am the Secretary of (*insert new Carrier name*); that _____, who signed this Agreement for this corporation, was then (*insert position held*) of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this ____day of _____, 19____.

By _____
(CORPORATE SEAL)
(End of Agreement)

(b) Failure to submit the properly completed and signed Change-of-Name Agreement in a timely manner may be cause for termination of the contract by OPM in accordance with FEHBAR 1652.249–70.

Subpart 1642–70—Management Agreement (in Lieu of Novation Agreement).

1642.7001 Management agreement.

When it is in the best interests of FEHBP enrollees to continue a contract for an interim period after the carrier discontinues its operations and has entered into a Purchase and Sale Agreement (or other descriptive term), but before a successor in interest has been recognized by OPM, the carrier may submit for OPM approval a Management Agreement that enables it to continue a contract through an agreement with a third party to administer the day-to-day performance of the contract. Examples of situations in which a Management Agreement may be accepted by OPM are:

(a) When a transfer of assets does not meet the criteria for a novation;

(b) While a request for a novation is pending;

(c) While awaiting a decision on a request for a novation;

(d) As an interim measure, when the timing of a transfer of assets or the timing of a carrier's withdrawal make administration of the contract inconvenient;

(e) When it is not in the interests of the Government to either recognize a successor in interest or to immediately terminate the existing FEHB contract.

PART 1646—QUALITY ASSURANCE

9. In part 1646, section 1646.301 is removed and subpart 1646.2 is added to read as follows:

Subpart 1646.2—Contract Quality Requirements

Sec.
1646.270 General.
1646.271 Contract clause.

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 1646.2—Contract Quality, Requirements

1646.270 General.

(a) This section prescribes general policies and procedures to ensure that services acquired under the FEHB contract conform to the contract's quality requirements.

(b) OPM shall periodically evaluate the contractor's system of internal controls under the quality assurance program clause in the contract and will acknowledge in writing whether or not the system is consistent with the requirements set forth in the contract. After the initial review, subsequent reviews may be limited to changes in the contractor's internal control

guidelines. However, a limited review does not diminish the contractor's obligation to apply the full internal control system.

1645.271 Contract clause.

The clause at 1652.246–70 shall be inserted in all FEHBP contracts.

PART 1652—CONTRACT CLAUSES

10. In section 1652.000, FAR clauses 52.230–3, 52.230–4, 52.230–5 and all of the clause dates are removed and the following FAR clauses are added in numerical sequence to read as follows:

1652.000 Applicable clauses.

* * * * *

Section and Clause Title
* * * * *
52.203–7 Anti-Kickback Procedures.
52.203–9 Requirement for Certificate of Procurement Integrity-Modification.
52.203–12 Limitation on Payments to Influence Certain Federal Transactions.
52.209–6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.
* * * * *
52.223–6 Drug-Free Workplace.
* * * * *
52.230–2 Cost Accounting Standards
52.230–3 Disclosure and Consistency of Cost Accounting Practices
52.230–5 Administration of Cost Accounting Standards
* * * * *
52.242–13 Bankruptcy.
* * * * *
52.249–2 Termination for Convenience of the Government (Fixed-Price).
52.249–8 Default (Fixed-Priced Supply and Service).
* * * * *

11. Section 1652.246–70 is revised to read as follows:

Subpart 1652.2—Texts of FEHBP Clauses

1652.246–70 FEHBP quality assurance requirements.

As described in section 1646.271 of this chapter, insert the following clause in all FEHBP contracts.

Quality Assurance Requirements (Jan 1994)

(a) The Carrier shall develop and apply a quality assurance program specifying procedures for assuring contract quality. At a minimum, the program should include procedures to address:

(1) Accuracy of payments and recovery of overpayments;

(2) Timeliness of payments to beneficiaries;

(3) Quality of services and responsiveness to beneficiaries;

(4) Quality of service and responsiveness to OPM; and

(5) Detection and recovery of fraudulent claims.

(b) The Carrier shall prepare overpayment recovery guidelines to include a system of internal control for approval annually by the contracting officer. The Contracting Officer may withdraw such approval with 90 days' notice of prospective withdrawal.

(c) The Carrier shall keep complete records of its quality assurance procedures and the results of their implementation and make them available to the Government during contract performance and for as long afterwards as the contract requires.

(d) The Government has the right to inspect and evaluate the work being performed under the contract, and the premises where the work is being performed, at all times during the term of the contract and for as long afterwards as the contract requires and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the carrier or a subcontractor, the carrier shall furnish and require the subcontractor to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) The Contracting Officer may order the correction of a deficiency or a modification in the Carrier's services and/or quality assurance program. The Carrier shall take the necessary action promptly to implement the contracting officer's order. If the Contracting Officer orders the correction of a deficiency or a modification of the Carrier's services and/or quality assurance program pursuant to this paragraph after the contract year has begun, the costs incurred in correcting the deficiency or making the modification may be taken into consideration—for the following contract year—in the evaluation of the "cost control" factor in the service charge provided the Carrier demonstrates that modification or correction of the deficiency significantly increased the contractor's costs under the contract.

(f) The Contracting Officer may authorize Carrier-recommended alternatives when it is in the Government's interest.

(g) The Carrier shall insert this clause in all subcontracts for underwriting and administrative services and shall substitute *Contractor* or other appropriate reference for the term *Carrier*.

(End of clause)

Alternate I (JAN 1994). If this contract is for a Comprehensive Medical Plan, substitute the following paragraphs (a) and (b) for paragraphs (a) and (b) of the basic clause:

(a) The Carrier shall develop and apply a quality assurance program specifying procedures for assuring contract quality. At a minimum, the program should include procedures to address:

(1) Utilization of inpatient services, outpatient services, and referral services;

(2) Credentialing of providers;

(3) Risk sharing with respect to primary care physicians, referral physicians, hospitals and/or ancillary providers; and,

(4) Member satisfaction.

(b) The Carrier shall make available to the Contracting Officer upon request a current copy of (1) the Member Handbook or other information used to instruct members and providers about the use of the Plan, and (2) reports which demonstrate results of the Quality Assurance Program.

12. In subpart 1652.3, section 1652.370, the full entries in the FEHBP clause matrix for FAR clauses 52.230–3, 52.230–4 and 52.230–5 are removed and the following FAR clause references are added in numerical sequence to read as follows:

Subpart 1652.3—FEHBP Clause Matrix

1652.370 Use of the matrix.

* * * * *

FEHBP CLAUSE MATRIX

Clause No.	Text reference	Title	Use status	Use with contracts based on	
				Cost analysis	Price analysis
•	•	•	•	•	•
FAR 52.203–9	FAR 3.104–10(b)	Requirement for Certificate of Procurement Integrity—Modification.	M	T	T

FEHBP CLAUSE MATRIX—Continued

Clause No.	Text reference	Title	Use status	Use with contracts based on: Cost analysis	Use with contracts based on: Price analysis
•	•	•	•	•	•
FAR 52.203–12	FAR 3.808	Limitation on Payments to Influence Certain Federal Transactions.	M	T	T
•	•	•	•	•	•
FAR 52.209–6	FAR 9.409(b)	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.	M	T	T
•	•	•	•	•	•
FAR 52.215–27	FAR 15.804–8(e)	Termination of Defined Benefit Pension Plans	M	T	T
•	•	•	•	•	•
FAR 52.215–39	FAR 15.804–8(f)	Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).	M	T	T
•	•	•	•	•	•
FAR 52.222–1	FAR 22.103–5(a)	Notice to the Government of Labor Disputes	M	T	T
•	•	•	•	•	•
FAR 52.230–2	FAR 30.201–4(a)(1)	Cost Accounting Standards	A	T	T
FAR 52.230–3	FAR 30.201–4(b)(1)	Disclosure and Consistency of Cost Accounting Practices.	A	T	T
FAR 52.230–5	FAR 30.201–4(d)(1)	Administration of Cost Accounting Standards	A	T	T
•	•	•	•	•	•
FAR 52.242–13	FAR 42.903	Bankruptcy	M	T	T
•	•	•	•	•	•
FAR 52.249–2	FAR 49.502(b)(1)(i)	Termination for Convenience of the Government (Fixed-Price).	M	T	T
FAR 52.249–8	FAR 49.504(a)(1)	Default (Fixed-Price Supply and Service)	M	T	T

[FR Doc. 93–15110 Filed 6–28–93; 8:45 am]
BILLING CODE 8325–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR PART 1035

[Ex Parte No. 495]

Bills of Lading

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to revise its regulations pertaining to railroad and water carrier uniform bills of lading and livestock contracts to clarify the terms, remove obsolete references, and eliminate prescription of livestock contracts as set forth below. These revisions involve no changes to the uniform bill of lading. The Commission is at the same time seeking comment on a proposed modification of the rules submitted jointly by AAR, NITL, and NGFA to further amend these bill of lading rules by, in sum, permitting railroads and shippers mutually to make changes to the language of the front of the bill of lading. The proposals are set forth below. Comments are invited on the proposals.

DATES: Comments must be received by July 29, 1993.

ADDRESSES: Send notices of intent and an original and 10 copies of pleadings referring to Ex Parte No. 495 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660 or Andrew J. Nosacek (202) 927–5318, [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision served this date. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Act Analysis

Pursuant to 5 U.S.C. 605(b), we conclude and certify that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. No new regulatory requirements are imposed, directly or indirectly, on such entities. The purpose of this action is to clarify language in the existing regulations and to propose a reduction in regulatory burden. The economic impact on small entities, if any, will be to reduce administrative costs and is not likely to be significant within the meaning of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 1035

Bills of lading, Railroads, Water carriers.

Decided: June 8, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set out in the preamble, the Interstate Commerce Commission proposes to amend title 49, chapter X, part 1035 of the Code of Federal Regulations as follows:

Part 1035 is proposed to be revised to read as follows:

PART 1035—BILLS OF LADING

Sec.

1035.1 Requirement for certain forms of bills of lading.
1035.2 Modification of front of uniform bill of lading.
Appendix A to Part 1035—Uniform Straight Bill of Lading.

Authority: 49 U.S.C. 10321 and 5 U.S.C. 553.

§ 1035.1 Requirement for certain forms of bills of lading.

(a) All common carriers, except express companies, engaged in the transportation of property other than livestock and wild animals, by rail or by water subject to the Interstate Commerce Act are required to use bills of lading as prescribed in Appendix A to this Part.

(b) All such bills of lading:

(1) May be either documented on paper or generated and/or transmitted electronically;

(2) May be legible copies of original bills of lading, free from erasure and interlineation;

(3) May vary in the arrangement and spacing of the printed matter on the face of the form.

§ 1035.2 Modification of front of uniform bill of lading.

[Proposed addition to Part 1035 by AAR, NITL, and NGFA]

Notwithstanding any other provision of this part, with respect to the information called for, the front portion only of a bill of lading may deviate from the language prescribed in this part so long as the deviation conforms with approved national standards for the electronic data interchange and other commercial requirements for bill of lading information; *provided* that no such deviation in the language shall affect the obligations of any shipper to provide information absent the consent of such shipper nor shall such deviation be deemed to alter any rights or obligations conferred by statute or regulation on either carriers or shippers with respect to the preparation or issuance of bills of lading.

Appendix A to Part 1035

Uniform Straight Bill of Lading

Original—Not Negotiable

Shipper's No. _____

Agent's No. _____

Company _____

RECEIVED, subject to the classifications and tariffs in effect on the date of this Bill of Lading at _____, 19___, from _____ the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only.)

Consigned to _____

Destination _____

State of _____

County of _____

Route _____

Delivering Carrier _____

Car Initial _____

Car No. _____

Trailer Initials/Number _____

Length _____

Plan _____

Length _____

Plan _____

Container Initials/Number _____

Length _____

Plan _____

Length _____

Plan _____

No. packages	Description of articles, special marks, and exceptions	*Weight (subject to correction)	Class or rate	Check column

No. packages	Description of articles, special marks, and exceptions	*Weight (subject to correction)	Class or rate	Check column

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

Note.—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ per _____.

Shipper _____

Agent _____

Per _____

Per _____

Permanent post office address of shipper _____

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of consignor) _____

If charges are to be pre-paid, write or stamp here, "To be Prepaid."

Received $_____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per _____

(The signature here acknowledges only the amount prepaid.)

Charges advanced: $_____

Contract Terms and Conditions

Sec. 1. (a) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto, except as hereinafter provided.

(b) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from riots or strikes.

(c) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged, or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though the same may have been done by carrier's officers, agents, or employees, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

Sec. 2. (a) No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

(b) As a condition precedent to recovery, claims must be filed in writing with the receiving or delivering carrier, or carrier issuing this bill of lading, or carrier on whose line the loss, damage, injury or delay occurred, within nine months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed; and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims will not be paid.

(c) Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: Provided, That the carrier reimburse the claimant for the premium paid thereon.

Sec. 3. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 4. (a) Property not removed by the party entitled to receive it within the free time allowed by tariffs, lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the

property for delivery at destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or at the option of the carrier, may be removed to and stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

(b) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee or party entitled to receive it fails to receive it within 15 days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the carrier: Provided, That the carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published: Provided, That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent, or given.

(c) Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier, may, in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale: Provided, That if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it, and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(d) Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(e) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(f) Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and except in case of carrier's negligence, when received from or delivered to such stations, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from locomotive or train or until loaded into and after unloaded from vessels.

Sec. 5. No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage cased by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7. The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no carrier by railroad shall deliver or relinquish possession at destination of the property covered by this bill of lading until all tariff rates and charges thereon have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor (except as hereinafter provided) shall not be liable for such charges. Provided, that, where the carrier has been instructed by the shipper or consignor to deliver said property to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of said property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (a) is an agent only and has no beneficial title in said property, and (b) prior to delivery of said property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of said property; and, in such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner, shall be liable for such additional charges. If the consignee has given to the carrier erroneous information as to who the beneficial owner is, such consignee shall himself be liable for such additional charges. On shipments reconsigned or diverted by an agent who has furnished the carrier in the reconsignment or diversion order with a notice of agency and the proper name and address of the beneficial owner, and where such shipments are refused or abandoned at ultimate destination, the said beneficial owner shall be liable for all legally applicable charges in connection therewith. If the reconsignor or diverter has given to the carrier erroneous information as to who the beneficial owner is, such reconsignor or diverter shall himself be liable for all such charges.

If a shipper or consignor of a shipment of property (other than a prepaid shipment) is also the consignee named in the bill of lading and, prior to the time of delivery, notifies, in writing, a delivering carrier by railroad (a) to deliver such property at destination to another party, (b) that such party is the beneficial owner of such property, and (c) that delivery is to be made to such party only upon payment of all transportation charges in respect of the transportation of such property, and delivery is made by the carrier to such party without such payment, such shipper or consignor shall not be liable (as shipper, consignor, consignee, or otherwise) for such transportation charges but the party to whom delivery is so made shall in any event be liable for transportation charges billed against the property at the time of such delivery, and also for any additional charges which may be found to be due after delivery of the property, except that if such party prior to such delivery has notified in writing the delivering carrier that he is not the beneficial owner of the property, and has given in writing to such delivering carrier the name and address of such beneficial owner, such party shall not be liable for any additional charges which may be found to be due after delivery of the property; but if the party to whom delivery is made has given to the carrier erroneous information as to the beneficial owner, such party shall nevertheless be liable for such additional charges. If the shipper or consignor has given to the delivering carrier erroneous information as to who the beneficial owner is, such shipper or consignor shall himself be liable for such transportation charges, notwithstanding the foregoing provisions of this paragraph and irrespective of any provisions to the contrary in the bill of lading or in the contract of transportation under which the shipment was made. The term "delivering carrier" means the line-haul carrier making ultimate delivery.

Nothing herein shall limit the right of the carrier to require at time of shipment the prepayment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Where delivery is made by a common carrier by water the foregoing provisions of this section shall apply, except as may be inconsistent with Part III of the Interstate Commerce Act.

Sec. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or otherwise, or election of common law or bill

of lading liability, in or in connection with such prior bill of lading, shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

Sec. 9. (a) If all or any part of said property is carried by water over any part of said route, and loss, damage or injury to said property occurs while the same is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water (this bill of lading being such bill of lading if the property is transported by such water carrier thereunder) and by and under the laws and regulations applicable to transportation by water. Such water carriage shall be performed subject to all the terms and provisions of, and all the exemptions from liability contained in the Act of Congress of the United States, approved on February 13, 1893, and entitled "An act relating to the navigation of vessels, etc." and of other statutes of the United States according carriers by water the protection of limited liability as well as the following subdivisions of this section: and to the conditions contained in this bill of lading not inconsistent with this section, when this bill of lading becomes the bill of lading of the carrier by water.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall be at liberty to call at any port or ports, in or out of the customary route, to tow and be towed, to transfer, trans-ship, or lighter, to load and discharge goods at any time, to assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

(d) General Average shall be payable according to the York-Antwerp Rules of 1924, Sections 1 to 15, inclusive, and Sections 17 to 22, inclusive, and as to matters not covered thereby according to the laws and usages of the Port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenance, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

(f) The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

Sec. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

[FR Doc. 93-15240 Filed 6-28-93; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 930101-3125]

Listing of Endangered and Threatened Species; Petition To Delist the Snake River Sockeye Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of finding.

SUMMARY: On March 30, 1993, NMFS received a petition from Delbert L. Lathim to delist Snake River sockeye salmon (*Oncorhynchus nerka*) from the endangered species list. NMFS has determined the petition does not contain any new substantial information which would indicate that the petitioned action would be warranted.

FOR FURTHER INFORMATION CONTACT: Marta F. Nammack, Protected Species Management Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910 (301-713-2322) or Garth Griffin, Endangered Species Branch, Environmental and Technical Services Division, NMFS, 911 NE. 11th Avenue, room 620, Portland, OR 97232 (503/230-5430).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) requires NMFS to make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. Of the finding is positive, NMFS is required to commence a status review of the involved species. The criteria considered in determining whether or not a petition is substantial are outlined in 50 CFR 424.14(b).

The petitioner argued that Snake River sockeye salmon no longer exist and, therefore, no longer need protection. However, the petitioner presented no factual evidence to support his argument.

In addition to the progeny (being reared in Idaho and Washington facilities) of Snake River sockeye salmon that returned to Redfish Lake in 1991, there is a residual population of *Oncorhynchus nerka* in Redfish Lake that is part of the listed Snake River sockeye salmon Evolutionarily Significant Unit. An estimated 1,000-3,000 outmigrants per year may be expected from this population. This population could make a substantial contribution to broadening the genetic base of Snake River sockeye salmon and are under ESA protection.

NMFS has determined that the petition to delist Snake River sockeye salmon does not contain any new substantial information which would indicate that the petitioned action would be warranted. Since the petition does not contain substantial information, NMFS is not initiating a status review.

List of Subjects in 50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: June 23, 1993.

Gary Matlock,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 93–15216 Filed 6–28–93; 8:45 am]

BILLING CODE 3510–22–M

VOL 58 ISS 123 JE 29 1993 UMI

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**ARCHITE
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Meeting

AGENCY: A
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Notices

Federal Register
Vol. 58, No. 123
Tuesday, June 29, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, DC on Tuesday and Wednesday, July 13–14, 1993 at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, July 13, 1993

9–10:30 a.m. Review Session on Proposed Accessibility Guidelines for State and Local Government Facilities (closed session)
10:45–11:45 a.m. Planning and Budget Committee
1:15–5 p.m. Rulemaking Work Group (closed meeting)

Wednesday, July 14, 1993

9–12 p.m. Rulemaking Work Group (closed meeting)
1:30–3 p.m. Board Meeting

ADDRESSES: The meetings will be held at: JW Marriott, 1331 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 14.

SUPPLEMENTARY INFORMATION: At its business meeting, the Access Board will consider the following agenda items:

- Approval of the Minutes of the January 13, March 10, and May 12, 1993 Board Meetings.
- Executive Director's Report.
- Status Report on Fiscal Year 1993 Budget.
- Status Report on Fiscal Year 1994 Budget.
- Preliminary Discussion on Fiscal Year 1995 Budget.
- Review Draft Preamble and Text for ADAAG Sections 11, 12, and 13 and miscellaneous sections (closed).
- Status Report on Technical Program Projects.
- Report on Extraordinary Work.
- Complaint Status Report.
- Recreation Access Advisory Committee.

Some meetings or items may be closed to the public as indicated above. All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,
Executive Director.

[FR Doc. 93–15291 Filed 6–28–93; 8:45 am]
BILLING CODE 8150–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Exempt Decisions for Buzzard, Snell, Scotty Dog, Juniper, Barnes Rim, Middle Drews, Dog Bone, Pot Bear, and Antelope Salvage Timber Sales From Appeal, Fremont National Forest, OR

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decisions to implement the following salvage timber sales on the Lakeview Ranger District of the Fremont National Forest are exempted from appeal: Buzzard; Snell; Scotty Dog; Juniper; Barnes Rim; Middle Drews; Dog Bone; Pot Bear; and Antelope. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the Federal Register on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: June 29, 1993.

FOR FURTHER INFORMATION CONTACT: Charles R. Graham, Forest Supervisor, Fremont National Forest, 524 North G Street, Lakeview, Oregon 97630, phone (503) 947–2151.

SUPPLEMENTARY INFORMATION: Due to severe drought over the past several years, the southern portion of the Fremont National Forest has been experiencing increased mortality from insects and disease. The report, "Forest Health on the Fremont—An Assessment of Existing Condition and Plan for Restoration", documents the determination that mortality has reached epidemic levels. Most of the area affected is commercial timber land designated as Management Area 5 (Timber and Range Production) by the Fremont National Forest Land and Resource Management Plan Forest Plan (Forest Plan).

As a result of this existing forest condition, an analysis team was assigned to assess damage and to consider possible management practices for treating the areas. Since March this team has surveyed most of the area, initiated project scoping, and started the analysis process for the alternative treatments. The analysis team identified the need to salvage the timber which has died or which has a high likelihood of dying as a result of insect and disease attack in as short a time as possible so the logs would remain merchantable. Rapid drying of dead trees will result in cracking or "checking," especially of the smaller diameter trees, which will quickly reduce value as sawlogs. None of the nine salvage timber sales will involve new permanent road construction although some reconstruction and temporary road construction would be done to facilitate harvest operations.

Public (external) scoping for these sales identified no major issues. Internal scoping raised three major issues: (1) Modifications to existing sales may have negative impacts to the economic value of the sale; (2) activities may negatively impact old growth areas; and (3) activities may exceed cumulative watershed impact levels allowed in the Forest Plan. These issues would be adequately addressed through project design and mitigation.

Based on the scoping and initial analysis done so far, an interdisciplinary team developed two alternatives to be considered in detail for each proposed salvage sale: (1) No-action, and (2) harvest dead and dying trees from the area.

The effects of the alternatives will be disclosed in the environmental assessment and analysis files for each salvage project. The table below displays the estimated volumes salvaged, in million board feet (MMBF), and area treated, in acres, for each of the proposed salvage timber sales.

Salvage sale	Volume salvaged (MMBF)	Area treated (acres)	Responsible official
Buzzard	8.0	1,850	Forest Supervisor.
Snell	3.5	1,020	Forest Supervisor.
Scotty Dog	2.5	700	Forest Supervisor.
Juniper	5.6	1,600	Forest Supervisor.
Barnes Rim	7.0	2,000	Forest Supervisor.
Middle Drews	5.4	5,400	Forest Supervisor.
Dog Bone	7.0	2,000	Forest Supervisor.
Pot Bear	3.85	1,100	District Ranger.
Antelope	2.8	800	District Ranger.
Total	45.65	16,470	

New construction would be limited to temporary roads for all sales. Wet areas would be avoided in the salvage alternatives. Cable logging systems will be used if steep slopes and rocky areas are present. The proposed harvest alternatives have been designed to meet applicable Forest Plan Standards and Guidelines. Harvesting the dead and dying timber would meet both the Forest Plan objectives and the objectives for salvage.

These sales and accompanying work are designed to accomplish the objectives quickly and to capture as much timber volume and value as possible. Based on the analyses completed to date, I have determined that good cause exists to exempt these salvage timber sale decisions from administrative review (36 CFR part 217). Under this regulation, the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System Lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, the Decision Notices for the Buzzard, Snell, Scotty Dog, Juniper, Barnes Rim, Middle Drews, and Dog Bone Salvage Timber Sales may be signed by the Forest Supervisor and the Pot Bear and Antelope Salvage Timber Sales may be signed by the District Ranger. Therefore, these projects will not be subject to review under 36 CFR part 217.

Dated: June 22, 1993.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 93–15215 Filed 6–28–93; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee will be convened at 1:30 p.m. and adjourn at 4 p.m. on Wednesday, July 21, 1993, in the Function Room of Hartford City Hall, 550 Main Street, Hartford, Connecticut 06103. The purposes of the meeting include discussing questions concerning how Advisory Committees are appointed and how they develop reports. The Connecticut Advisory Committee will also review and act upon a draft of "Campus Tensions in Connecticut: Searching for Solutions in the Nineties," based on an April 27, 1992, factfinding meeting that mainly involved speakers from the University of Connecticut and Wesleyan University, and will discuss proposals for a new project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Ivor J. Echols, 203–688–2009, or John I. Binkley, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 21, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–15173 Filed 6–28–93; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Receipt of Application for Exploration License

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of application.

SUMMARY: Pursuant to section 116(a) of the Deep Seabed Hard Mineral Resources Act (DSHMRA) and 15 CFR 970.212(a), which was published at 46 FR 45898, Sept. 15, 1981, as amended at 54 FR 547, Jan. 6, 1989, notice is hereby given that on June 17, 1993, the National Oceanic and Atmospheric Administration (NOAA) received an application from Ocean Minerals Company, P.O. Box 2227, Menlo Park, California 94026, to conduct deep seabed mining exploration activities in license site USA–4, formerly licensed to the Kennecott Consortium (KCON), Ladysmith, Wisconsin. Subject to 15 CFR 971.802, which excludes certain information from public disclosure, interested persons will be permitted to examine the materials relevant to this application and may submit written comments to NOAA.

DATES: Comments on this application should be submitted to NOAA on or before August 30, 1993.

ADDRESSES: Comments should be addressed to: Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, 1305 East-West Highway, room 11437, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Betty Rosser or Karl Jugel, Ocean Minerals and Energy Division, at the above address, (301) 713–3159.

SUPPLEMENTARY INFORMATION: On May 21, 1993, pursuant to the provisions of section 115 of the DSHMRA and 15 CFR 971.803, NOAA received from KCON

formal notification of surrender of deep seabed mining license USA–4, issued to KCON by NOAA on October 29, 1984, under the provisions of the DSHMRA and 15 CFR part 970.

Dated: June 23, 1993.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 93–15282 Filed 6–28–93; 8:45 am]

BILLING CODE 3510–12–M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council (Council) and its Committees will meet on July 12–15, 1993. The meetings will be held at the St. Anthony Hotel, 300 East Travis Street, San Antonio, TX; telephone: (210) 227–4392. The agenda is as follows:

Council

The Council will convene on July 14 at 8:30 a.m. and recess at 5 p.m. Council agenda items and the times allocated for discussion are as follows:

From 8:45 am. to 12 noon: Receive public testimony on Draft Amendment #7 to the Reef Fish Fishery Management Plan; (Note: Testimony cards must be turned in to staff before the start of public testimony).

From 1:30 p.m. to 4:45 p.m.: Receive the Reef Fish Management Committee report;

From 4:45 p.m. to 5 p.m.: Consider the Appointment of Advisory Panel and Scientific and Statistical Committee members (this discussion to be held in Closed Session).

The Council will reconvene at 8:30 a.m. on July 15 with adjournment at 5 p.m. to review the Live Rock Options Paper, and then receive reports from the following Committees:

1. Budget Committee (11 a.m. to 11:15 a.m.);
2. Shrimp Management Committee (11:15 a.m. to 12 noon);
3. Review the Mackerel Amendment #7 Options Paper (1:30 p.m. to 3:30 p.m.);
4. Receive the Migratory Species Management Committee Report (3:30 p.m. to 3:45 p.m.);
5. Receive Law Enforcement Committee Report (3:45 p.m. to 3:55 p.m.);
6. Receive a report from 3:55 p.m. to 4:05 on the Council Chairmen's meeting which was held in San Francisco, CA, on May 16–18, 1993;
7. Receive a report from 4:05 p.m. to 4:15 p.m. on the Bluefin Tuna Working Group meeting which was held in Baltimore, Maryland, on May 21–23, 1993; and
8. Receive the Director's reports, with adjournment at 5 p.m.

Committees

On July 12 at 10 a.m. the following committees will meet, with adjournment at 5:30 p.m.: The Migratory Species Management Committee, the Budget Committee, the Coral Management Committee, and the Reef Fish Management Committee.

Two committees will reconvene at 8 a.m. on July 13. There will be a continuation of the Reef Fish Management Committee meeting, and the Shrimp Management Committee meeting at that time. Both will adjourn at 5 p.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: June 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management; National Marine Fisheries Service.

[FR Doc. 93–15283 Filed 6–28–93; 8:45 am]

BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council (Council) and its Committees will meet on July 13–15, 1993. The meeting will be held at the Holiday Inn Downtown, 700 King Street, Wilmington, DE; telephone: (302) 655–0400. The meetings are scheduled as follows.

On July 13, a Bluefish Monitoring Committee meeting will be held from 10 a.m. until 11:45 a.m. and the Coastal Migratory Committee meeting will be held from 1 p.m. until 3 p.m. This meeting will be followed by an Executive/Finance Committee and Habitat Committee meetings, both to be held from 3 p.m. until 5 p.m.

On July 14, the Council will begin its regular session at 8 a.m. and meet until 3:30 p.m., after which there will be a Demersal Species Committee meeting.

On July 15, the Council will begin meeting at 8 a.m. and should adjourn at approximately 1 p.m. In addition to hearing committee reports on the morning of July 14, the Council will hold a closed session (not open to the public) to discuss personnel matters, and then in open session possibly adopt Amendment #5 to the Summer Flounder Plan, adopt Amendment #9 to the Surf Clam/Ocean Quahog Plan, and plans to adopt bluefish management recommendations for 1994. Other fishery management matters as deemed necessary may also be discussed. The meeting may be lengthened or shortened based on the progress of the agenda. The Council may also go into closed session to discuss national security matters.

For more information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: June 24, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–15284 Filed 6–28–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification to Below-Listed Permits: Theater of the Sea, Permit Nos. 69 and 326 (P92 and P92B); Dolphin Research Center, Permit No. 514 (P53B); Dolphins Plus, Inc., Permit Nos. 292 and 577 (P234 and P234A); Hyatt Regency Waikoloa Resort, Permit No. 625 (P407).

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Special Conditions on Swim-With-The-Dolphin (SWTD) programs that apply to Public Display Permits Nos. 69 and 326 issued to the Theater of the Sea, Islamorada, Florida; Permit No. 514 issued to the Dolphin Research Center, Marathon, Florida; Permit Nos. 292 and 577 issued to Dolphins Plus, Inc., Key Largo, Florida; and Permit No. 625 issued to the Hyatt Regency Waikoloa Resort, Waikoloa, Hawaii, are modified by deleting Special Condition D.1 and substituting the following:

D.1. The Permit Holder is authorized to use dolphins in an experimental human/dolphin swim program until July 31, 1993. The NMFS may modify, suspend, or revoke this authority before July 21, 1993, if the SWTD programs are found to have an adverse impact on the health or well-being of the animals, if an ongoing review of public display permit authorities, procedures, and criteria results in new regulations that disallow such programs, or if the terms of the conditions that follow are not met.

Documents concerning the above modification and permits are available for review by appointment in the Office of Protected Resources and Habitat

Programs, NMFS, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910, (301) 713–2289.

This modification is effective on July 1, 1993.

Dated: June 23, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–15217 Filed 6–28–93; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee; Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee (FPAC) will conduct a public meeting in the Lower Level Hearing Room (B–1) at the Commission's Washington, DC headquarters located at 2033 K Street, NW., Washington, DC 20581, on July 29, 1993, beginning at 1:30 p.m. and lasting until 5 p.m. The agenda will consist of:

1. A presentation on the AUDIT system being developed by the Chicago Board of Trade and the Chicago Mercantile Exchange;
2. A panel discussion of regulators concerning the capital treatment of derivatives;
3. A panel discussion on the prospects for development of a swaps clearinghouse;
4. Briefings on proposed rule amendments of interest to FPAC including Rule 4.5 and Rule 1.35; and
5. Other items of Committee consideration; timing of next meeting; other Committee business.

The purpose of this meeting is to solicit the views of the Committee on these agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on the assessment of issues concerning individuals and industries interested in or affected by financial markets regulated by the Commission. The purposes and objectives of the Advisory Committee are more fully set forth in the April 23, 1993 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, CFTC Commissioner Sheila C. Bair, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Susan Milligan, 2033 K Street NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Milligan in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC, on June 23, 1993.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–15184 Filed 6–28–93; 8:45 am]

BILLING CODE 6351-01-M

Membership of the Commission's Performance Review Board

AGENCY: Commodity Futures Trading Commission.

ACTION: Membership change of Performance Review Board.

SUMMARY: In accordance with the Office of Personnel Management guidance under the Civil Service Reform Act, notice is hereby given that the following employees will serve as members of the Commission's Performance Review Board.

Chairman: Donald L. Tendick, Deputy Executive Director

Members: Andrea Corcoran, Director, Division of Trading and Markets; Dennis Klejna, Director, Division of Enforcement; Pat Nicolette, Deputy General Counsel; Gerry Gay, Director, Division of Economic Analysis.

DATES: This action was effective June 23, 1993.

ADDRESSES: Commodity Futures Trading Commission, Office of Personnel, room 202, 2033 K Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Charles W. Lang, Deputy Director, Office of Personnel, Commodity Futures Trading Commission, room 202, 2033 K Street NW., Washington, DC 20581, (202) 254–3275.

SUPPLEMENTARY INFORMATION: This action which changes the membership of the Board supersedes the previously published **Federal Register** Notice, May 11, 1990.

Issued in Washington, DC, on June 23, 1993.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–15185 Filed 6–28–93; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title and OMB Control Number: DoD FAR Supplement, Part 247, Transportation, and related clauses at 252.247, OMB Control Number 0704–0245

Type of Request: Reinstatement

Number of Respondents: 2,532

Responses per Respondent: 1

Annual Responses: 2,532

Average Burden per Response: 11 minutes

Annual Burden Hours: 460

Needs and Uses: DoD FAR Supplement, Part 247, prescribes policies and procedures to support contracting for transportation and related services

Affected Public: Businesses or other for-profit, Non-profit institutions, and Small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503

DoD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302

Dated: June 23, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–15238 Filed 6–28–93; 8:45 am]

BILLING CODE 5000-04-M

Office of the Secretary

Meetings

AGENCY: Education Benefits Board of Actuaries, Department of Defense.

ACTION: Notice of meeting.

SUMMARY: A meeting of the board has been scheduled to execute the provisions of chapter 101, title 10, United States Code (10 U.S.C. 2006 et seq). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the G.I. Bill. Persons desiring to (1) attend the DoD Education Benefits Board of Actuaries meeting or (2) make an oral presentation or submit a written statement for consideration at the meeting must notify Pamela Samuels at (703) 696–6336 by July 16, 1993. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: August 13, 1993, 10 a.m. to 1 p.m.

ADDRESSES: Room 1E801 #35.

FOR FURTHER INFORMATION CONTACT: Benjamin I. Gottlieb, Executive Secretary, DoD Office of the Actuary, 4th floor, 1600 Wilson Boulevard, Arlington, VA 22209–2593, (703) 696–5869.

Dated: June 23, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–15237 Filed 6–28–93; 8:45 am]

BILLING CODE 5000–04–M

Meeting; Department of Defense Retirement Board of Actuaries

SUMMARY: A meeting of the board has been scheduled to execute the provisions of chapter 74, title 10, United States Code (10 U.S.C. 1464 et seq). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the Military Retirement System. Persons desiring to (1) attend the DoD Retirement Board of Actuaries meeting or (2) make an oral presentation or submit a written statement for consideration at the meeting must notify Pamela Samuels at (703) 696–6336 by July 16, 1993. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: August 12, 1993, 1 p.m. to 4:30 p.m.

ADDRESSES: Room 1E801 #1.

FOR FURTHER INFORMATION CONTACT: Benjamin I. Gottlieb, Executive Secretary, DoD Office of the Actuary, 4th floor, 1600 Wilson Boulevard, Arlington, VA 22209–2593, (703) 696–5869.

Dated: June 23, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–15236 Filed 6–28–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committees on Options for Theater Air Defense will meet from 8 a.m. to 5 p.m. on 30 June 1993 at the PEO Missile Center, Huntsville, Alabama and 1 July 1993 at Wright Laboratory, Eglin Air Force Base, Florida.

The purpose of this meeting is to receive information and briefings to help develop the report for the SAB 1993 Summer Study. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–15270 Filed 6–28–93; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 16 July 1993.

Time of Meeting: 0800–1500.

Place: McDonald Douglas, Mesa, Arizona.

Agenda: The Army Science Board's 1993 Summer Study Subpanel on "Innovative Acquisition Strategies for the 90s" will meet to discuss future Army acquisition strategies and technology opportunities given probable funding constraints. This meeting will be closed to the public in accordance with section 552b. (c) of title 5, U.S.C., specifically subparagraph (1) thereof and title 5, U.S.C. Appendix 2, subsection 10(d). The classified and unclassified information to be discussed will be so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–15179 Filed 6–28–93; 8:45 am]

BILLING CODE 3710–08–M

Proposal To Provide Full Valuation on All Department of Defense Freight Traffic Shipments

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command proposes to amend the Freight Traffic Rules to require carriers to provide both released and full value rates in order to do business with the DOD.

DATES: July 29, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Saxton, Headquarters, Military Traffic Management Command, room 635, 5611 Columbia Pike, Falls Church, VA 22041–5050, telephone (703) 756–1756.

SUPPLEMENTARY INFORMATION:

Background

In a report to Congress (U.S. General Accounting Office, *Defense Transportation: Ineffective Oversight Contributes to Freight Losses, (GAO/NSIAD–92–96, June 1992, pp. 14–16),* the General Accounting Office observed that when freight losses, are identified and documented and a claim is filed against the carrier, DOD may be reimbursed for a relatively small amount of the property's value.

When a DOD shipment's value significantly exceeds the carriers liability, the Government is not adequately protected against property loss and damage and government property is vulnerable to theft and loss. Presently, released value rates outlined in item 190 of the MTMC Freight Traffic Rules Publication (MFTRP) No. 1A (motor) and MFTRP No. 10 (rail) allow for the reduction in carrier rates for movement of DOD cargo subject to the limitation of carrier liability for loss and damage. Tenders are subject to a full common carrier liability, unless the filing carrier completes item 15 of the tender form. If a carrier chooses to limit their liability,they may do so by placing a released value amount that cannot be less than $2.50 per pound/per shipment on line 15 of their tender form. The exceptions are with DOD unique commodities for which no released value statement is provided in the NMFC. Released valuations for those DOD unique commodities are found in the tender instruction.

Proposal

To ensure DOD freight is afforded reasonable cargo protection, it is proposed to require carriers to submit both full value rates for full common

carrier liability and released value rates for limitation of carrier liability. This requirement would be applicable for all tenders filed with MTMC, unless specifically exempted in a specific DOD solicitation. It is further proposed the full value rate be determined as a percentage of the released value rate. This change allows DOD shippers to determine the extent of cargo protection needed, based on their service's requirements and shipment needs. As an example, if a carrier has a released value FAK rate of 120 CWT where cargo liability is limited to $2.50 per pound, their full value rate could be expressed as 200 percent of the released value rate or 240 CWT.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93-15183 Filed 6-28-93; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Emerging Technologies Task Force will meet July 14-15, 1993, from 8 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to address naval technological response to changes in military warfare. The entire agenda for the meeting will consist of discussion of key issues regarding technologies important to future naval operations and introducing technological innovations. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: J. Kevin Mattonen, Executive Secretary to the Executive Panel, 4401 Ford Avenue, room 601, Alexandria, VA 22302-0268, Phone (703) 756-1205.

Dated: June 17, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-15174 Filed 6-28-93; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

[CFDA No: 84.240A]

Protection and Advocacy of Individual Rights; Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: This program provides support to eligible systems within States to protect the legal and human rights of (a) individuals with disabilities who are ineligible for (1) client assistance programs (CAP); (2) protection and advocacy programs under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (DDA), 42 U.S.C. 6041–6043; and (3) protection and advocacy programs under the Protection and Advocacy for Individuals with Mental Illness Act of 1986 (PAIMI), 42 U.S.C. 10801–10805; or (b) individuals with disabilities who need protection and advocacy services that are beyond the scope of the services provided by CAP. An individual with a disability may be eligible for services under the CAP but may be seeking services that a CAP may not have authority to provide.

Eligible Applicants: A State protection and advocacy system that is established under part C of the Developmental Disabilities Assistance and Bill of Rights Act (DDA), 42 U.S.C. 6041–6043, and that meets the requirements of § 381.10 of the proposed regulations for this program is eligible to receive a grant award under this program.

Deadline for Transmittal of Applications: August 2, 1993.

Deadline for Intergovernmental Review: October 2, 1993.

Applications Available: July 1, 1993.

Available Funds: $1,350,810.

Estimated Range of Awards: $90,000 to $100,000.

Estimated Average Size of Awards: $95,000.

Estimated Number of Awards: 13.

Note: The department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, (except for §§ 76.103, 76.125–137, 76.300–401, 76.704, 76.734, and 76.740), 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations in 34 CFR 369.43, 369.46, and 369.48 relating to certain conditions that must be met by grantees.

It is the policy of the Department of Education not to solicit applications before the publication of final regulations. However, in this case, it is essential to solicit applications on the basis of the notice of proposed rulemaking, published in the **Federal Register** on May 5, 1993 (58 FR 26890), because the Department's authority to obligate these funds will expire on September 30, 1993.

The comment period for the notice of proposed rulemaking ended June 4, 1993. Thirteen parties submitted comments on the proposed regulations. The following is a summary of the changes that are expected to be made in the final regulations that are currently undergoing review, based on public comment.

One commenter suggested that paragraph (2) of the definition of "Eligible individual with a disability" in § 381.5(b) be deleted because section 509 of the Act specifies that individuals who are eligible for PAIR services must be ineligible for CAP services.

The Secretary believes that the definition of eligible individual with a disability accurately reflects the intent of Congress. The purposes of the eligibility requirements for the PAIR program are (1) to avoid duplicating the services available under the CAP and the protection and advocacy programs under Part C of the DDA and under the PAIMI; and (2) to provide protection and advocacy services not otherwise authorized under the CAP and other protection and advocacy programs. An individual with a disability may be eligible for services under the CAP, but may be seeking services that a CAP may not have authority to provide. However, the Secretary does recognize that a slight revision may clarify who is eligible. The Secretary expects to make a minor change to the definition of "Eligible individual with a disability" in § 381.5(b) to clarify that individuals with disabilities who need protection and advocacy services other than the services authorized under CAP are eligible for services under the PAIR program.

One commenter questioned the appropriateness of targeting or establishing a priority for individuals who are exiting from public school programs and suggested deleting the reference to these individuals in § 381.10(d).

The Secretary did not intend the language in § 381.10(d) to target or give priority to individuals who are exiting from public school programs. The Secretary intended simply to ensure that

the information and referral services that are available to everyone in the State are also made available to these individuals. A revision of § 381.10(d) is expected to be made to add the words "but not limited to" after the word "including" in order to clear up this confusion.

Three commenters suggested altering or deleting the requirement in § 381.10(i) that mediation and other alternative dispute resolution methods should be used to the maximum extent possible.

The Secretary does not believe that requiring eligible systems to use mediation or alternative dispute resolution methods to the maximum extent possible is either burdensome, contrary to public policy, or inconsistent with the law. In addition, section 2(a)(2) of Executive Order on Civil Justice Reform (No. 12778), which became effective on January 21, 1991, requires that agency regulations be written to minimize needless litigation to help reduce the costs and delays associated with litigation. The Secretary also believes there should be no question that if an eligible system represents an individual with disabilities in mediation or alternative dispute resolution, the eligible system remains the advocate or representative of the client and is not to assume the neutral role of the mediator. A change is expected in the definition of "mediation" to clarify that the third party who acts as a mediator, intermediary, or conciliator must not be any entity or individual who is connected in any way with the eligible system or the agency, entity, or individual with whom the individual with a disability has a dispute.

One commenter wanted to know if the language in § 381.21(g)(2) regarding individuals with disabilities who may have limited knowledge about the PAIR program was intended to be a priority or preference for PAIR services for these individuals. Another commenter objected to what he perceived as the "targeting" of these individuals for protection and advocacy services.

The Secretary did not intend to establish a priority or preference for PAIR services for individuals with disabilities who may have limited knowledge about the PAIR program by including these individuals in the selection criterion in § 381.21(g)(2). However, if the PAIR program is to be useful, individuals with disabilities must know about its existence. To avoid confusion, the Secretary expects to remove this reference from the "Service comprehensiveness" category of the selection criteria and add a criterion under "Plan of operation" for plans to ensure that individuals with disabilities in the State are informed about the PAIR program. Those individuals may include individuals with disabilities who may have limited knowledge about the PAIR program, such as persons with mental retardation, persons with sensory or communications impairments, persons in isolated rural areas, or persons who are new to the vocational rehabilitation system.

One commenter asked what part of the Education Department General Administrative Regulations would be applicable for States that have a statute requiring Federal funds to pass through a State agency before going to a nonprofit organization (NPO). Section 509(g)(1) of the Act states that payments under the PAIR shall go directly to the eligible system "unless the State provides otherwise." To the extent that a State's laws, regulations, or policies prevent the direct payment of Federal funds to a private entity in the State, the Secretary will not make a direct payment to that eligible system. The Secretary expects to add a new paragraph (b) to § 381.10 that will require an eligible system that requests direct payment under the PAIR program from the Secretary to provide an assurance with its application for assistance under this program that direct payment to the eligible system is not prohibited or inconsistent with the laws, regulations, or policies of the State in which the eligible system plans to carry out the PAIR program.

Seven commenters suggested that § 381.30(b) should be deleted or revised to permit an eligible system to enter into contracts with other entities or individuals to carry out part or all of the PAIR program. Two of these commenters also suggested that eligible systems should be able to award grants or subgrants to third parties to carry out the PAIR program. Another commenter suggested adding language that a recipient of funds may not be associated with an organization that provides services that might be the subject of an appeal by an individual with a disability.

The Secretary agrees that section 509 of the Act does not prohibit an eligible system from entering into contracts with other entities or individuals to carry out part or all of the PAIR program and expects to revise § 381.30(b) accordingly. However, to ensure that an eligible system that receives funds under the PAIR program does not violate the independence requirement under part C of the DDA (42 U.S.C. 6042(a)(2)(A)), the Secretary expects to add a new § 381.30(c) that specifies that a PAIR system may contract with another entity or individual to provide PAIR services, in whole or in part, only if the entity or individual is independent of any entity or individual that provides services under the Act or that provides treatment, services, or habilitation to persons with disabilities, and is not connected financially or through a board of directors to an entity or individual that provides services under the Act or that provides treatment, services, or habilitation to persons with disabilities. The Secretary also expects to add a new § 381.30(d) to specify that, for purposes of § 381.30(c), "services under the Act" and "treatment, services, or habilitation" will not include client assistance services under the Client Assistance Program (CAP) authorized under section 112 of the Act, protection and advocacy services authorized under the protection and advocacy programs under Part C of the DDA and the PAIMI, or any other protection and advocacy services.

With respect to the issue of grants or subgrants to third parties by an eligible system, the Secretary expects to revise § 381.30(b) to prohibit an eligible system from awarding grants and subgrants to entities or individuals to carry out part or all of the PAIR program. Both 34 CFR 75.708 and 76.50 prohibit an eligible system that receives funds under this part from making grants or subgrants unless grants or subgrants are specifically authorized by the program statute. Nowhere in section 509 of the Act are eligible systems given the specific authority to award grants or subgrants. Therefore, eligible systems under this program do not have authority to award grants or subgrants.

One commenter expressed concern about the requirement in § 381.31(b) for consent from the agency providing personal information about a client to the eligible system.

The Secretary agrees that only the individual who is a client of the eligible system or who applies for services from the eligible system, or the advocate authorized by the individual, should have control over the disclosure by an agency of personal information about the individual and expects the language requiring the consent of the agency in § 381.31(b) to be deleted.

Two commenters suggested that the last phrase in § 381.33(b) concerning the definition of "administrative costs" needs to be clarified and defined more realistically. Although the Secretary believes that the definition of administrative costs in § 381.33(b) is appropriate, the Secretary expects to change the last phrase to clarify that administrative costs include other

similar types of costs that would be incurred by the eligible system to carry out programs other than the PAIR program.

One commenter expressed concern with the Department's funding of PAIR grants for only one year and the disruption that results if a grantee is not successful in obtaining a grant for a second year. One-year awards were made in FY 1991, and two-year awards were made in FY 1992. In FY 1993 and in subsequent years, the Secretary intends to make awards under this program for a three-year period.

Applicants should prepare their applications based on the proposed regulations, as modified by the expected changes contained in this notice. If additional changes are made in the final regulations that are currently undergoing review, applicants will be given the opportunity to revise or resubmit their applications.

Selection Criteria

In evaluating applications for grants under this competition, the Secretary uses the selection criteria in proposed § 381.21 of the notice of proposed rulemaking, with the expected changes discussed in this notice.

For Applications or Information Contact: Deborah Havens, U.S. Department of Education, 400 Maryland Avenue, SW, room 3220 Switzer Building, Washington, DC 20202–2735. To request an application or receive further information, call (202) 205–8733. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: Secs. 12 and 508(f), (g), and (j) of the Act; 29 U.S.C. 794e.

Dated: June 25, 1992.

William L. Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–15385 Filed 6–28–93; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No. 84.132B]

Training, Technical Assistance, and Transition Assistance for the Centers for Independent Living Program; Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: Title VII, Chapter 1, Part C, section 721(e)(1)(B) of the Act authorizes grants to provide training and technical assistance with respect to planning, developing, conducting, administering, and evaluating centers for independent living and to provide transition assistance to assist centers to achieve compliance with the standards and assurances in section 725 of the Act.

Eligible Applicants: To be eligible to apply for funds under this program, an entity must demonstrate in its application that it has experience in the operation of centers for independent living. Experience of an applicant in the operation of a center for independent living is determined by whether or not the applicant's management and staff have engaged in the planning, development, conduct, administration, and evaluation of centers for independent living. A center for independent living is defined in section 702(1) of the Act as a consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agency that is designed and operated within a local community by individuals with disabilities and provides an array of independent living services.

Supplementary Information: The Secretary may determine that these grants require substantial Federal involvement during the grant award period. Therefore, these awards may be made as cooperative agreements for the first or subsequent years of the projects.

Deadline for Transmittal of Applications: July 30, 1993.

Deadline for Intergovernmental Review: September 30, 1993.

Applications Available: June 30, 1993.

Available Funds: $621,000.

Estimated Average Size of Award: $615,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

It is the policy of the Department of Education not to solicit applications before the publication of final priorities; however, in this case, it is essential to solicit applications for this program on the basis of the notice of proposed priority as published in the Federal Register on April 22, 1993 (58 FR 21630), because the Department's authority to obligate these funds will expire on September 30, 1993.

The comment period for the notice of proposed priority ended on May 24, 1993. Thirteen parties submitted comments. The following is a summary of the comments received and of the changes that are expected to be made, based on public comments, in the notice of final priority that is currently undergoing review.

Four commenters recommended funding one or two national projects as opposed to three multi-regional projects. The commenters thought a national project would be more effective because it would reduce redundant organizational and materials development efforts without significantly increasing travel costs. Funding one or two national projects was also seen as more likely to promote greater consistency in policy, training, and technical assistance across the country. One commenter appeared to recommend funding a project that would serve only one State, and another commenter recommended dividing geographic Area 1 (Department of Education regions I-IV) into two areas and funding a total of four geographic areas.

The Secretary agrees that funding one national project will lessen the possibility of duplicating efforts in development of materials and inconsistencies in information provided. The Secretary also agrees that the most effective method of providing training and technical assistance to centers for independent living in all States is to fund a project that will be national in scope and serve centers in all States. It is important that training curricula address issues affecting centers for independent living nationally, as well as addressing specific regional and local issues. The Secretary expects that the final priority will fund one national training and technical assistance project.

Two commenters recommended specific curriculum areas for training and technical assistance. The Secretary agrees that it is appropriate to include the recommended curriculum areas for training and technical assistance. The Secretary expects that the final priority will include these curriculum areas. These areas are discussed later in this notice.

Two commenters expressed concern about whether, given the statutory requirements on eligibility, the Regional Rehabilitation Continuing Education programs would qualify for competition.

The Secretary has not imposed any additional requirements for eligibility on applicants, including Regional Rehabilitation Continuing Education programs, to participate in this program. The eligibility requirements for funding under this priority are mandated by section 721(e)(1)(B) of the Act. The Secretary does not expect any change in the final priority.

Three commenters recommended providing multiple-year funding for the project.

The Secretary agrees that multi-year funding is appropriate for this program. The Secretary expects that the final priority will authorize an award for a three-year project period under this program.

After considering all of the comments, the Secretary expects that the final priority will fund one national project that will provide coordinated and comprehensive training and technical assistance in planning, developing, conducting, administering, and evaluating centers for independent living. The Secretary expects that the final priority will fund a national project that will serve centers for independent living in all States, address regional and State differences, and use innovative and cost-effective approaches in providing technical assistance and training, e.g., satellite training, video taped presentations, and interactive computer-based training.

Finally, the Secretary expects that the final priority will provide transition assistance to help centers to achieve compliance with the standards and assurances in section 725 (b) and (c) of the Act, provide training and technical assistance in the areas of resource development techniques, independent living philosophy, governing board development, forming effective collaborative relationships, and innovative techniques for providing independent living services and program evaluation.

If additional changes are made in the notice of final priority that is currently undergoing review, applicants will be given the opportunity to revise or resubmit their applications.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary expects to use the selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210 provide that the Secretary awards a maximum of 100 points under the selection criteria. Section 75.210(c) provides that the Secretary distributes an additional 15 points among the criteria listed in 34 CFR 75.210(b). For this competition, the Secretary distributes the 15 points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Ten points are added to this criterion for a possible total of 25 points.

Evaluation plan (34 CFR 75.210(b)(6)). Five points are added to this criterion for a possible total of ten points.

For Applications: Telephone (202) 205–9343. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Raymond Melhoff, U.S. Department of Education, 400 Maryland Avenue, SW., room 3416 Switzer Building, Washington, DC 20202–2741. Telephone: (202) 205–9320. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–9362.

Program Authority: 29 U.S.C. 721(e)(1)(B).

Dated: June 24, 1992.

William L. Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–15354 Filed 6–28–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2342]

PacifiCorp Electric Operations; Intention To Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings

June 23, 1993.

The Federal Energy Regulatory Commission (FERC) has received an application for a new license for the Condit hydropower project, FERC No. 2342. The hydropower project is located on the White Salmon River in Washington.

The FERC staff has determined that licensing this project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the hydroelectric project in accordance with the National Environmental Policy Act.

The staff's EIS will objectively consider both site specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EIS will be issued and circulated for review by all the interested parties. All comments filed on the draft EIS will be analyzed by the staff and considered in a final EIS. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

Scoping Meetings

The FERC staff will conduct two scoping meetings. The evening scoping meeting is primarily for public input while the afternoon meeting will focus on resource agency concerns. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

To help focus discussions, a preliminary EIS scoping document outlining subject areas to be addressed at the meeting will be distributed by mail to parties on the FERC service list. Copies of the preliminary scoping document will also be available at the scoping meetings.

Two public scoping meetings will be conducted by staff. The first meeting will be held on Wednesday, July 28, 1993, will focus on resource agency concerns and will be held from 2 p.m. to 5 p.m., in Conference room D, Social Services, 670 Woodland Square Loop SE, Lacey, Washington. The second meeting will be held on Thursday, July 29, 1993, from 7:30 p.m. to 11 p.m., in the Auditorium, White Salmon City Hall, 170 NW Lincoln, White Salmon, Washington. This meeting is primarily designed for public input.

Objectives

At the scoping meetings the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned EIS; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The meetings will be recorded by a stenographer and all statements (oral and written) thereby become a part of the formal record of the Commission proceedings on the Condit Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend either or both of the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Participants at the public meetings are asked to keep oral comments to five minutes.

Persons choosing not to speak at the meetings, but who have views on the

issues or information relevant to the issues, may submit written statements for inclusion in the public record. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, until August 30, 1993.

All correspondence should clearly show the following caption on the first page: Condit Project, Washington, Project No. 2342.

All those that are formally recognized by the Commission as intervenors in the Condit Project proceeding are asked to refrain from engaging the staff or its contractor in discussions of the merits of the projects outside of any announced meetings.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedure, requiring parties or interceders (as defined in 18 CFR 385.2010) filing documents with the Commission, to serve a copy of the document on each person whose name is on the official service list for this proceeding. See 18 CFR 4.34(b).

For further information please contact Kathleen Sherman at (202) 219–2834.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15189 Filed 6–28–93; 8:45 am]

BILLING CODE 7617–01–M

[Docket No. QF87–552–002]

Thermo Cogeneration Partnership, L.P.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

June 23, 1993.

On June 10, 1993, Thermo Cogeneration Partnership, L.P. of 5840 Dahlia Street, Commerce City, Colorado 80022, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility, which will be located in Fort Lupton, Colorado, will consist of two phases. The first phase includes two combustion turbine generators, two heat recovery steam generators and one extraction/condensing steam turbine generator with a maximum net electric power production capacity of 122 MW. The second phase includes three combustion turbine generators, three heat recovery steam generators and one extraction/condensing steam turbine generator with a maximum net electric power production capacity of 150 MW. Both phases are expected to begin operations in either the fourth quarter of 1993 or the first quarter of 1994. However, after approximately 15 years, the second phase may be closed down.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15187 Filed 6–28–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–504–000]

Trunkline Gas Co.; Request for Abandonment Authorization

June 23, 1993.

Take notice that on May 17, 1993, Trunkline Gas Company (Trunkline) filed a request, pursuant to section 7(b) of the Natural Gas Act, to authorize Trunkline to abandon the storage service it currently offers under Trunkline's Rate Schedule SAS, as of September 1, 1993. The Commission is attaching the above captioned certificate docket to this request.

Any person desiring to be heard or to protest said request for abandonment authorization should on or before July 9, 1993, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene and protest in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection in the public reference room.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no protest is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a protest is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15188 Filed 6–28–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–40–006]

Western Gas Interstate Company; Filing

June 23, 1993.

On June 11, 1993, pursuant to the May 13, 1993 order of the Director of the Office of Pipeline and Producer Regulation, Western Gas Interstate Company filed its Justification Statement and revised tariff sheets (First Revised Sheet Nos. 252 and 253 of Second Revised Volume No. 1) to permit it to recover take-or-pay costs billed to it by upstream pipelines, to be effective June 1, 1993.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before June 30, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15186 Filed 6–28–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93-48-NG]

Cascade Natural Gas Corp.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Cascade Natural Gas Corporation blanket authorization to import up to 56 Bcf of natural gas from Canada over a two-year term beginning on the date of the first import after June 30, 1993.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 16, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-15285 Filed 6-28-93; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the Week of May 28 Through June 4, 1993

During the Week of May 28 through June 4, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: June 22, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 28 through June 4, 1993]

Date	Name and location of applicant	Case No.	Type of submission
5/28/93	ARCO/Faith Oil Company, Channel Islands Harbor, California.	RR304-62	Request for Modification/Rescission in the ARCO Refund Proceeding. If granted: The May 14, 1993 Decision and Order (Case No. RF304-11950) issued to Faith Oil Company would be modified regarding the firm's application for refund submitted in the ARCO refund proceeding.
6/1/93	OXY USA, Inc., Washington, DC	LFA-0300	Appeal of an Information Request Denial. If granted: The April 29, 1993 Freedom of Information Request Denial issued by the Economic Regulatory Administration would be rescinded, and OXY USA, Inc. would receive access to certain documents pertaining to Cities Service Co.
6/1/93	New England Self-Serve, Inc., Ridgefield, Connecticut.	LEE-0050	Exception to the Reporting Requirements. If granted: New England Self-Serve, Inc. would not be required to file EIA Form 782B with the Department of Energy.
6/2/93	Cal Brekke, San Jose, California	LFA-0301	Appeal of an Information Request Denial. If granted: The March 29, 1993 Freedom of Information Request Denial issued by the Chicago Field Office and the May 24, 1993 Decision and Order issued by the Office of Hearings and Appeals would be rescinded, and Cal Brekke would receive access to information concerning a study on self pumping heat circulation.
6/2/93	Gulf/Hinds Gulf, Langhorne, Pennsylvania	RR300-253	Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The May 5, 1993 Decision and Order (Case No. RF300-21736) issued to Hinds Gulf would be modified regarding the firm's application for refund in the Gulf refund proceeding.
6/4/93	Greenwood Lake Union Free School District, Greenwood Lake, New York.	RR272-106	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The June 3, 1993 Dismissal Letter (Case No. RF272-87381) issued to the Greenwood Lake Union Free School District would be modified regarding the District's application for refund in the Crude Oil refund proceeding.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/ name of refund application	Case No.
5/28/93 thru 6/4/93.	Atlantic Richfield Applications Received.	RF304-14029 thru RF304-14058

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/ name of refund application	Case No.
5/28/93 thru 6/4/93.	Crude Oil Refund Applications Received.	RF272-94725 thru RF272-94734

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/ name of refund application	Case No.
5/28/93	McPhail Gulf	RF300-21741
6/1/93	Chicago West Pullman & S.	RF321-19762
6/1/93	Mihalics Texaco Serv Stat.	RF321-19763

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/ name of refund application	Case No.
6/1/93	Field's Texaco	RF321–19764
6/1/93	Jerry's Texaco	RF321–19765
6/1/93	Linder Texaco	RF321–19766
6/1/93	Weedland's Beacon #474.	RF238–91
6/1/93	Port Barre Canal.	RF346–53
6/1/93	Port Barre Canal.	RF346–54
6/2/93	Western Trucking.	RC272–201
6/2/93	Stormy Oil Co	RF309–1429
6/2/93	C.T. Hertzsch, Inc.	RC272–202
6/4/93	Arliss Gulf Station.	RF3000–21742
6/4/93	Riverside Linen Supply.	RF300–21743
6/4/93	Duke Automatic Gas Co. 1.	RF300–21744

[FR Doc. 93–15290 Filed 6–28–93; 8:45 am]
BILLING CODE 6450–01–P

Issuance of Proposed Decision and Order During the Week of May 24 Through May 28, 1993

During the Week of May 24 through May 28, 1993, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: June 22, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order

Lozier Oil Co., Inc., Farmington, Il, Lee–0049

Lozier Oil Co., Inc., filed an Application for Exception from the Energy Information Administration (EIA) requirement to file Form EIA–782B, the "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the reporting requirement in a way that was significantly different from the burden borne by similar reporting firms. Accordingly, on May 26, 1993, the DOE issued a Proposed Decision and Order that tentatively denied the Lozier Oil Co., Inc. Application.

[FR Doc. 93–15289 Filed 6–28–93; 8:45 am]
BILLING CODE 6450–01–P

Issuance of Decisions and Orders During the Week of April 26 Through April 30, 1993

During the week of April 26 through April 30, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Albuquerque Tribune, 4/30/93, LFA–0278

The Albuquerque Tribune filed an Appeal from a determination issued by the Office of Inspector General of the Department of Energy (IG), in response to a request for information submitted under the Freedom of Information Act (FOIA). In its determination, the IG stated that it did not possess documents responsive to the Tribune's request. The Tribune challenged the adequacy of the search. In considering the Appeal, the DOE found that because a computer or manual search of files by subject or title was performed where possible, and copies of the FOIA request were circulated to members of IG staff to determine whether any files within their offices might contain responsive documents, the search procedures employed were reasonably calculated to uncover the material sought by the appellant. Accordingly, the Tribune's appeal was denied.

Implementation of Special Refund Procedures

DeMenno-Kerdoon, 4/27/93, LEF–0042

The DOE issued a Decision and Order implementing procedures for the distribution of $150,000, plus accrued interest, in alleged overcharges obtained from DeMenno-Kerdoon (DeMenno). These funds were remitted by DeMenno to the DOE to settle possible pricing violations with respect to sales of crude oil during the period August 19, 1993 through January 27, 1981. The DOE determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. Under the Modified Policy, crude oil overcharge monies are divided among the states (40%), federal government (40%), and injured purchasers of refined products (20%). Accordingly, Applications for refund will be accepted from any party who purchased controlled refined petroleum products during the period of price controls. The specific information to be included in the Applications for Crude Oil Refunds, which must be submitted by June 30, 1994, is included in the Decision.

Refund Applications

Gulf Oil Corporation/Raleigh Plaza Gulf, 4/26/93, RR300–250

The DOE issued a Decision and Order concerning a Motion for Reconsideration submitted in the Gulf Oil Corporation special refund proceeding by Raleigh Plaza Gulf. The Motion for Reconsideration was dismissed because it was filed after the March 1, 1993 deadline established as the final filing date for the Gulf proceeding and the applicant provided no compelling reason why the OHA should reconsider its earlier claim.

Mrs. M.B. Troy, 4/29/93, RF272–69111, RD272–69111

The DOE issued a Decision and Order granting in part an Application for Refund filed by Mrs. M.B. Troy in the Subpart V crude oil overcharge refund

proceeding. Mrs. Troy claimed a refund for petroleum products purchased by Arco Auto Carriers (Carriers) and Roadway Centers (Roadway), two companies owned by her late husband, Mr. M.B. Troy. She also claimed for petroleum products purchased by Mr. Troy for his personal use.

The DOE found that Mrs. Troy was not the rightful recipient of a refund for Carriers' purchases because the entire capital stock of Carriers had been transferred after the refund period to another owner without retention by Mrs. Troy of the right to the crude oil refund. The DOE found an affidavit by the purchaser of Carriers, purporting to waive the refund right, of no effect in light of the DOE's statutory mandate to identify and provide restitution to parties injured by violations of petroleum pricing regulations.

In the portion of the claim relating to Roadway, a truckstop operator, Mrs. Troy requested a refund only for fuel that Roadway facilities consumed directly, and not for fuel that was resold. The DOE found that Mrs. Troy could not make use of the presumption of end-user injury for Roadway's claim, because the fuel was not purchased for use unrelated to the petroleum industry and separate and distinct from a petroleum reselling and retailing operation. As there was no showing that Roadway was injured by crude oil overcharges, the DOE denied the portion of the claim relating to Roadway.

Finally, the DOE found that Mrs. Troy could make use of the presumption of end-user injury for petroleum purchases made by Mr. Troy for his personal use. The total volume approved in the Decision and Order is 22,500 gallons and the total refund granted is $18. A group of States and Territories filed an Objection and Motion for Discovery in reference to the portion of Mrs. Troy's application dealing with Carriers. The DOE denied the Motion.

Murphy Oil Corporation/ Lemmen Oil Company, 4/26/93, RR309–4

The DOE issued a Decision and Order denying the Motion for Reconsideration filed in the Murphy Oil Corporation special refund proceeding on behalf of Lemmen Oil Company (Lemmen). Lemmen requested that the DOE reverse its decision in *Murphy Oil Corp./ Lemmen Oil Company*, 21 DOE ¶ 85,315 (1991), in which the DOE determined that Lemmen was a spot purchaser of Murphy products during the consent order period and was therefore ineligible for a refund. Lemmen asserted that it began its regular relationship with Murphy during the last several months of the respective refund periods for gasoline and middle distillates and therefore should be eligible for a refund for purchases made in those months. The firm was unable however, to demonstrate that these purchases were any less discretionary than the undisputed spot purchases made by the firm in previous months. Consequently, the DOE denied Lemmen's Motion for Reconsideration.

Shell Oil Company/Holland America Line-Westours, 4/27/93, RF315–8920

The DOE issued a Decision and Order denying an Application for Refund in the Shell Oil Company special refund proceeding, filed by Holland America Line-Westours, a cruise ship owner and operator, and a bus, boat and rail tour operator. The applicant was required to show that the petroleum purchases for which the refund was requested were domestic purchases. Holland America's application included no documentation that convincingly verified the volume claimed in the application, nor did it verify that the volume claimed consisted solely of domestically purchased petroleum products. Analysis of an earlier Application for Refund filed by Holland America in the crude oil refund proceeding (RF272–295) showed that, while much of the petroleum products purchased by Holland America was purchased domestically, all of the Shell purchases during the refund period were international, not domestic purchases. Accordingly, Holland America's Application for Refund was denied.

Texaco Inc./Irby Texaco, 4/30/93, RF321–19713

The DOE issued a Supplemental Order to modify a refund granted to Irby Texaco (Case No. RF321–9267) in Texaco Inc./Milam County, Case No. RF321–9201, et al. (July 22, 1991). Specifically, the DOE determined that the factual basis underlying the July 22, 1991 Decision and Order was inaccurate, and that the firm did not own the Texaco outlet for the entire refund period as claimed. Since the refund had been disbursed to Irby Texaco, the DOE required Irby Texaco to remit to the DOE the excess refund granted, $1,720, plus $143 in interest.

Texaco Inc./Moreno East Grand Texaco RF321–16927, Moreno North 3rd Texaco, 4/29/93, RF321–16928

The DOE issued a Decision and Order denying Applications for Refund filed by Louis L. Moreno in the Texaco Inc. Subpart V special refund proceeding on behalf of Moreno East Grand Texaco and Moreno North 3rd Texaco. Mr. Moreno was unable to satisfactorily establish and document the periods during which he operated each outlet. Mr. Moreno's Applications also lacked acceptable purchase volume information; rather, the purchase volumes advanced in the Applications were based on an "area averaging" estimation methodology and the applicant's memory. The DOE had previously decided that both the "area averaging" estimation method and an applicant's memory are not acceptable means of establishing a purchase volume. Thus, Mr. Moreno's Applications for Refund for Moreno East Grand Texaco and Moreno North 3rd Texaco did not meet the criteria set forth in the Decision and Order implementing the Texaco Subpart V special refund proceeding and accordingly, were denied.

Vickers Energy Corporation/Kansas, 4/29/93, RQ1–587

The Department of Energy issued a Decision and Order granting a request by the State of Kansas to use $120,000 in second-stage refund monies made available by Vickers Energy Corporation to establish an Incentive Grant Program that would provide individual grants of $1,500 for the conversion of vehicles to use compressed natural gas (CNG) as fuel.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of hearings and Appeals.

Atlantic Richfield Company/ A&L Taxi, Inc. et al.	RF304–893	04/30/93
Atlantic Richfield Company/ Brindley Motors.	RF304–12531	04/27/93
Brindley Motors	RF304–13831	.....
Atlantic Richfield Company/ Gateway Transportation Co. et al.	RF304–12211	04/30/93
Claiborne County Schools et al.	RF272–80625	04/26/93
Clark Oil & Refining Corp./ Chuck's Owens Clark Super 100 et al.	RF342–230	04/28/93
Dunn Construction Co.	RF272–67239	04/27/93
Dunn Construction Co.	RD272–67239	.....
Passaic Crushed Stone Co., Inc.	RF272–69025	.....

Passaic Crushed Stone Co., Inc.	RD272–69025	.....	
U.S. Borax & Chemical Corp.	RF272–69319	.....	
U.S. Borax & Chemical Corp.	RD272–69319	.....	
U.S. Borax & Chemical Corp.	RF272–69695	.....	
U.S. Borax & Chemical Corp.	RD272–69695	.....	
Gilman Paper Company.	RF272–65876	04/26/93	
Gulf Oil Corporation/DeBlanc Gulf Service Station.	RF300–13421	04/26/93	
Gulf Oil Corporation/Gardiner Oil & Supply Co.	RF300–14454	04/26/93	
Gardiner Oil & Supply Co.	RF300–15143	.....	
Gulf Oil Corporation/Mitchell Welding Supply Co.	RF300–21734	04/28/93	
Gulf Oil Corporation/Pate's Grocery & Gulf Station et al.	RF300–13302	04/26/93	
Gulf Oil Corporation/Phoenix Central School et al.	RF300–19001	04/27/93	
Gulf Oil Corporation/Sykesville Gulf.	RF300–13505	04/30/93	
Liberty Gulf	RF300–13506	.....	
Gulf Oil Corporation/Yellow Checkered Cab, Inc.	RF300–20946	04/28/93	
Hunter-Tannersville Central School et al.	RF272–80409	04/30/93	
Industrial Trucking Service Corp. et al.	RF272–93864	04/30/93	
Inland Lime and Stone.	RC272–192	04/26/93	
New Buffalo Area School Dist. et al.	RF272–80200	04/26/93	
Odebolt-Arthur Community Sch. et al.	RF272–81357	04/26/93	
R.J. Reynolds Tobacco USA.	RC272–193	04/30/93	
Skarrup Shipping Corp.	RF272–20516	04/28/93	
Skarrup Shipping Corp.	RD272–20516	.....	
South Adams Schools et al.	RF272–87055	04/26/93	
Texaco Inc./Al's Texaco.	RF321–19612	04/26/93	
Texaco Inc./Chuck's Texaco et al.	RF321–111	04/26/93	
Texaco Inc./Harold Aleshire Texaco et al.	RF321–18156	04/28/93	
Texaco Inc./Harris Texaco Service et al.	RF321–9020	04/28/93	
Texaco Inc./Kemp's Service Center et al.	RF321–7504	04/28/93	
Texaco Inc./Walker Texaco.	RF321–19699	04/30/93	
Worth School District No. 127 et al.	RF272–83303	04/30/93	

Dismissals

The following submissions were dismissed:

Name	Case No.
A & B Arco	RF304–13575
Arrow Gas Corporation	RF304–13546
Buchan & Buchan, Inc	RF300–13483
Cherry Hill Texaco Service Station.	RF321–16953
Collingswood Service Station	RF321–16956
Danny's Garage	RF315–7964
Deschenes Texaco Service Station.	RF321–16913
Ed's Auto Service	RF304–13796
Herb's Gulf Service	RF300–13413
Kakson Enterprises, Inc	RF304–13816
Lusk Texaco	RF321–11060
Malone Brothers Construction Co.	RF300–16023
Perkins Local School District	RF272–87631
Pretty Prairie Unified School District No. 311.	RF272–79560
Red's Texaco	RF321–13550
St. Michael-Albertville Schools	RF272–79253
Yardville Service Station	RF321–16952

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: June 22, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–15288 Filed 6–28–93; 8:45 am]

BILLING CODE 6450–01–P

Southwestern Power Administration

[Rate Order No. SWPA–27]

Robert D. Willis Power Rate; Order, Confirming, Approving and Placing Decreased Power Rate in Effect on an Interim Basis

AGENCY: Southwestern Power Administration, Department of Energy.

ACTION: Notice of Power Rate Order.

SUMMARY: The Assistant Secretary, Conservation and Renewable Energy, acting under Amendment No. 2 to Delegation Order No. 0204–108, dated August 23, 1991, 56 FR 41835, has confirmed, approved and placed in effect on an interim basis Rate Schedule RDW–93. The rate schedule supersedes the existing Rate Schedule RDW.

EFFECTIVE DATES: Rate Order No. SWPA–27 specifies April 1, 1993, through September 30, 1997, as the effective period for the rate schedule.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Grisaffe, Director, Administration and Rates, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581–7419.

SUPPLEMENTARY INFORMATION: Southwestern's Administrator has prepared the 1993 Current Power Repayment Study for the Robert D. Willis Project based on the annual power rate of $408,648. The study indicates that the power rate exceeds cost recovery criteria as specified in Department of Energy Order No. RA 6120.2 and section 5 of the Flood Control Act of 1944. The Administrator prepared a 1993 Revised Power Repayment Study for the project which indicated that a reduction in annual revenue of $124,068, or 30.4 percent, is required effective April 1, 1993, to satisfy cost recovery criteria. In this regard, the Administrator has determined that the annual rate of $284,580 is the lowest possible rate to the customer consistent with sound business principles. The rate has been approved on an interim basis through September 30, 1997, or until confirmed and approved on a final basis by the Federal Energy Regulatory Commission.

Issued in Washington, DC, this 19 day of March, 1993

Robert L. San Martin,

Acting Assistant Secretary, Conservation and Renewable Energy.

Order Confirming, Approving and Placing Decreased Power Rate in Effect on an Interim Basis

Pursuant to sections 302(a) and 301(b) of the Department of Energy

Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration (Southwestern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, 48 FR 55664, the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect on an interim basis power and transmission rates, and delegated to the Federal Energy Regulatory Commission (FERC) on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744, revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates to the Under Secretary of Energy rather than the Deputy Secretary of Energy. This delegation was reassigned to the Deputy Secretary of Energy by Department of Energy (DOE) Notice 1110.29, dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89, dated August 3, 1989, and subsequent revisions. By Amendment No. 2 to Delegation Order No. 0204–108, effective August 23, 1991, 56 FR 41835, the Secretary of the Department of Energy revised Delegation Order No. 0204–108 to redelegate to the Assistant Secretary, Conservation and Renewable Energy, the authority which was previously delegated to the Deputy Secretary in that Delegation Order. This rate order is issued by the Assistant Secretary pursuant to said Amendment to Delegation Order No. 0204–108.

Background

Dam B (Town Bluff Dam), located on the Neches River in eastern Texas downstream from the Sam Rayburn Dam, was originally constructed in 1951 by the U.S. Army Corps of Engineers (Corps), and, now, primarily provides streamflow regulation of releases from the Sam Rayburn Dam. The Lower Neches Valley Authority contributed funds toward construction of both projects and makes established annual payments for the right to withdraw up to 2000 cubic feet of water per second from Town Bluff Dam for its own use. Power was legislatively authorized at the project, but installation of hydroelectric facilities was deferred until justified by economic conditions. A determination of feasibility was made in a 1982 Corps Study. In 1983 the Sam Rayburn Municipal Power Agency (SRMA) proposed to sponsor and finance the development of hydropower at Town Bluff Dam in return for the output of the project to be delivered to its member municipalities and participating member cooperatives of the Sam Rayburn Dam Electric Cooperative. Since the hydroelectric facilities at the Town Bluff Dam have been completed, the facilities have been renamed the Robert Douglas Willis Hydroelectric Project (Robert D. Willis).

The Robert D. Willis rate is unique in that it excludes the costs associated with the hydropower design and construction performed by the Corps, because all funds for these costs were provided by SRMA. Under the Southwestern/SRMA power sales Contract No. DE–PM–75–85SW00117, SRMA will continue to pay all annual operating and marketing costs, as well as expected capital replacement costs, through the rate paid to Southwestern, and will receive all power and energy produced at the project for a period of 50 years.

The existing annual Robert D. Willis project power rate of $408,648 was confirmed and approved on a final basis by the FERC on January 22, 1992, for the period October 1, 1991, through September 30, 1995. The 1993 Robert D. Willis Current Power Repayment Study (PRS) indicates that the rate exceeds cost recovery criteria for the isolated project. The 1993 Robert D. Willis Revised PRS indicates that an annual rate of $284,580 will satisfy repayment criteria in accordance with Department of Energy Order No. RA 6120.2 and section 5 of the Flood Control Act of 1944. The proposed decrease in revenue amounts to $124,068 or 30.4 percent annually to begin April 1, 1993.

Pursuant to Title 10, part 903, subpart A of the Code of Federal Regulations (10 CFR 903), "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions", 50 FR 37837, the Administrator, Southwestern, published notice in the **Federal Register** (57 FR 53328), on November 9, 1992, announcing a 90-day period for public review and comment concerning a proposed annual rate of $278,304. Southwestern held several informal meetings and a Public Information Forum (Forum) on December 17, 1992, where Southwestern provided copies of supporting data for the 1992 Robert D. Willis PRS to interested parties. At the Forum, Southwestern indicated its intent to incorporate 1993 data and update the 1992 Revised PRS to 1993 levels. No opposition was expressed. In addition, a letter was received on behalf of SRMA, indicating support for the proposed rate decrease. Southwestern did not receive any request to convene a formal Public Comment Forum and, as a result, did not convene such a meeting.

Discussion

The 1993 Current Robert D. Willis PRS tests the adequacy of the existing rate based on the latest cost evaluation period extending from FY 1993 through FY 1997, to recover annual expenses for marketing, operation and maintenance, and to amortize additions to plant and major replacements of the generating facilities. Since the project's design and construction were financed in their entirety by the non-Federal sponsor, SRMA, no component for amortization of the original investment of some $18 million is included in the rate determination. The Current PRS for the Robert D. Willis project, using the existing annual rate of $408,648, indicates that the legal requirements to repay all costs will be exceeded without a reduction in revenue. This overage is primarily a result of an agreement reached among all parties to revise the methodology of allocating non-specific project operations between the Robert D. Willis and Sam Rayburn Dam projects. The Robert D. Willis project is remotely operated by personnel at the Sam Rayburn Dam project. The methodology change provided a more equitable allocation of the costs by basing the allocation on the generating capacity (52 MW for Sam Rayburn and 7.4 MW for Robert D. Willis) rather than the number of generating units at each project (two generators at each project). The Revised PRS shows that a reduction of $124,068 (30.4 percent) annually is needed to satisfy repayment criteria. The proposed rate of $284,580 annually would satisfy the present repayment criteria.

Information regarding this rate proposal, including studies, comments and other supporting material, is available for public review and comment in the offices of the Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74101.

Administrator's Certification

The 1993 Revised Robert D. Willis PRS indicates that the annual power rate of $284,580 will repay all costs of the project including amortization of additions to plant and major replacements of the generating facilities consistent with provisions of DOE Order No. RA 6120.2. In accordance with Section 1 of Delegation Order No. 0204–108, as amended August 23, 1991, 56 FR

41835, and section 5 of the Flood Control Act of 1944, the Administrator has determined that the proposed Robert D. Willis power rate is consistent with applicable law and is the lowest possible rate consistent with sound business principles.

Environment

The environmental impact of the rate decrease proposal was evaluated in consideration of DOE's guidelines for implementing the procedural provisions of the National Environmental Policy Act and was determined to fall within the class of actions that are categorically excluded from the requirements of preparing either an Environmental Impact Statement or an Environmental Assessment.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm, approve and place in effect on an interim basis, effective April 1, 1993, the proposed annual rate of $284,580 for the sale of power and energy from the Robert D. Willis project to the Sam Rayburn Municipal Power Agency, under Contract No. DE–PM75–85SW00117, as amended. The rate shall remain in effect on an interim basis through September 30, 1997, or until the FERC confirms and approves the rate of a final basis.

Issued at Washington, DC, this 19th day of March, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 93–15287 Filed 6–28–93; 8:45 am]

BILLING CODE 6450–01–M

[Rate Order SWPA–28]

Sam Rayburn Dam Power Rate; Order Approving a Power Rate Increase on an Interim Basis

March 19, 1993.

AGENCY: Southwestern Power Administration, Department of Energy.

ACTION: Notice of approving a power rate increase—Sam Rayburn Dam Project.

SUMMARY: The Assistant Secretary, Conservation and Renewable Energy, acting under Amendment No. 2 to Delegation Order No. 0204–108, dated August 23, 1991, 56 FR 41835, has approved Rate Order No. SWPA–28 which increases the power rate for the Sam Rayburn Dam Project. This is interim approval of the rate effective April 1, 1993, through September 30, 1997.

FOR FURTHER INFORMATION CONTACT: George C. Grisaffe, Director, Administration and Rates, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

SUPPLEMENTARY INFORMATION: The existing rate for the Sam Rayburn Dam Project is $1,810,368 per year. The rate was approved on a final basis by the Federal Energy Regulatory Commission on October 11, 1988, for a period ending September 30, 1991. The rate was then determined to be adequate and was extended on an interim basis by the Assistant Secretary, Conservation and Renewable Energy, on September 28, 1991, for a one year period beginning October 1, 1991. On September 1, 1992, the Assistant Secretary, Conservation and Renewable Energy extended the rate for six additional months to provide sufficient time to incorporate a cost assignment change in the 1992 rate assessment process and fulfill all public participation requirements of a major rate filing. This extension is effective from October 1, 1992, through March 31, 1993.

Following review of Southwestern's proposal within the Department of Energy, I approved, Rate Order No. SWPA–28, which increases the existing Sam Rayburn Dam Rate to $2,076,444 per year for the period April 1, 1993, through September 30, 1997.

Issued at Washington, DC, the 19 day of March, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Conservation and Renewable Energy.

Order Approving Power Rate Increase on an Interim Basis

Pursuant to sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under section 5 of the Flood Control Act of 1994, 16 U.S.C. 825s, for the Southwestern Power Administration were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, 48 FR 55664, the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect on an interim basis power and transmission rates, and delegated to the Federal Energy Regulatory Commission (FERC) on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744, revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating such authority to the Under Secretary of Energy rather than the Deputy Secretary of Energy. This delegation was reassigned to the Deputy Secretary of Energy by Department of Energy (DOE) Notice 1110.29, dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89, dated August 3, 1989, and subsequent revisions. By Amendment No. 2 to Delegation Order No. 0204–108, effective August 23, 1991, 56 FR 41835, the Secretary of the Department of Energy revised Delegation Order No. 0204–108 to delegate to the Assistant Secretary, Conservation and Renewable Energy (AS/CE), the authority which was previously delegated to the Deputy Secretary in that Delegation Order. This rate order is issued by the AS/CE pursuant to said Amendment to Delegation Order No. 0204–108.

Background

The Sam Rayburn Dam is located on the Angelina River in the State of Texas in the Neches River Basin. Since the beginning of its operation in 1965, it has been marketed under isolated project rates through a contract with the Sam Rayburn Dam Electric Cooperative, Inc., through the facilities of Gulf States Utilities Company. The contract originally provided for a rate of $79,167 per month ($950,004 annually). Subsequently, this rate has been increased on numerous occasions.

The existing annual Sam Rayburn Dam power rate of $1,810,368 was confirmed and approved on a final basis by the FERC for the period July, 1, 1988, through September 30, 1991. The rate was extended on an interim basis by the AS/CE, for the period October 1, 1991, through September 30, 1992, since a rate adjustment was not then needed. A subsequent extension was also implemented by the AS/CE for a six-month period ending March 31, 1993. That extension was to provide time to incorporate a new cost assignment methodology and fulfill all public participation requirements related to a rate filing.

Discussion

The 1992 PRS indicated the need for a major rate increase of approximately 11.0 percent. The primary cause of the FY 1992 increase over the currently-approved rate was a change in the Corps of Engineers' methodology in allocating personnel labor costs between Sam Rayburn and Robert D. Willis.

That 1992 rate increase proposal was communicated to the public through a 90-day public participation period cited in the **Federal Register** (57 FR 53328), informal meetings with the customer and a formal Public Information Forum (Forum). At the Forum, Southwestern indicated its intent to incorporate 1993 data, if possible, and update the 1992 Revised PRS to 1993 levels. No opposition was expressed. One comment was received on behalf of SRDEC, expressing no opposition to the proposed rate increase. Southwestern did not receive any request to convene a formal Public Comment Forum and, as a result, did not convene such a meeting.

The 1993 PRS rate proposal is larger than the 1992 PRS proposal because (1) the spillway modification cost estimates had not previously included interest during construction associated with the modification; (2) the 1992 PRS had estimated $560,000 would be booked by the Corps in FY 1992 for its cavitation repair work while the 1993 PRS recorded the actual cost at over $1.1 million in FY 1992; and, (3) the 5-year cost evaluation period was routinely extended from FY 1996 to FY 1997, which adds a year of inflation to the projected costs.

Southwestern completed the 1993 PRS for Sam Rayburn which indicates that an annual rate of $2,076,444 is needed, beginning April 1, 1993, to satisfy all repayment criteria. The rate represents an increase of 14.7 percent over the existing rate.

Information regarding this rate increase, including studies and other supporting material, is available for public review and comment in the offices of the Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74103.

Administrator's Certification

The 1993 Revised Sam Rayburn Dam PRS indicates that the annual power rate of $2,076,444 will repay all costs of the project including amortization of the power investment consistent with provisions of DOE Order No. RA 6120.2. In accordance with Section 1 of Delegation Order No. 0204–108, as amended August 23, 1991 (56 FR 41835), and section 5 of the Flood Control Act of 1944, the Administrator has determined that the proposed Sam Rayburn Dam Power rate is consistent with applicable law and is the lowest possible rate consistent with sound business principles.

Environment

The environmental impact of the rate increase proposal was evaluated in consideration of DOE's guidelines for implementing the procedural provisions of the National Environmental Policy Act and was determined to fall within the class of actions that are categorically excluded from the requirements of preparing either an Environmental Impact Statement or an Environmental Assessment.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby increase on an interim basis, for the period April 1, 1993, through September 30, 1997, the annual Sam Rayburn Dam Rate to $2,076,444 for the sale of power and energy from Sam Rayburn Dam to the Sam Rayburn Dam Electric Cooperative, Inc., under Contract No. DE–PM75–92SW00215, dated October 7, 1992.

Issued at Washington, DC, the 17 day of March 1993.

Robert L. San Martin,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 93–15286 Filed 6–28–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4672–1]

California: Program Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Tentative Determination on Program Application of California for Program Adequacy Determination, Public Hearing and Public Comment Period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

California applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed California's application and made a tentative determination of adequacy for those portions of the State's MSWLF permit program that are adequate to assure compliance with the revised MSWLF Criteria. These portions are described later in this notice. The State has drafted revisions to the remainder of its permit program to assure complete compliance with the revised MSWLF Criteria and gain full program approval. EPA has determined that the State's revised requirements, if fully adopted before EPA makes a final determination and effective on or before the relevant effective dates of the Federal Criteria, would be adequate to ensure compliance with the Federal Criteria.

Although RCRA does not require EPA to hold a hearing on any determination to approve a State/Tribe's MSWLF program, the Region has scheduled an opportunity for a public hearing on this tentative determination. Details appear below in the **"DATES"** section. California's application for program adequacy determination is available for public review and comment.

DATES: All comments on California's application for a determination of adequacy must be received by the close of the public hearing which will be held on August 24, 1993 at 10 a.m., at 75 Hawthorne Street, American Samoa/

Guam Rooms, San Francisco, California. California will participate in the public hearing held by EPA on this subject.

ADDRESSES: Copies of California's application for adequacy determination and supporting documents are available during the hours of 9 a.m to 5 p.m. at the following addresses for inspection and copying: California Integrated Waste Management Board, 8800 Cal Center Drive, Sacramento, California, 95826, Attn: Mr. Dennis Corcoran, telephone 916–255–2627; and U.S. EPA Region 9 Library, 75 Hawthorne Street, 13th Floor, San Francisco, California, 94105, telephone 415–744–1510. Written comments should be sent to Ms. Donna J. Orebic, Mail Code H–3–1, EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, Attn: Ms. Donna J. Orebic, Mail Code H–3–1, telephone (415) 744–2092.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in the STIR to allow partial approvals if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with part 258; (2) changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and, (3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of part 258. The STIR requirements, if promulgated, will address the potential problems posed by the dual State/Tribal and Federal programs that will come into effect in October 1993 in those States/Tribes that only have partial approvals of their MSWLF programs. On that date, Federal rules covering any portion of a State/Tribe's program that has not received EPA approval will become enforceable. Owners and operators of MSWLFs subject to such dual programs must be able to understand which requirements apply and comply with them. In addition, the parts of the Federal program that are in effect must mesh well enough with the approved portions of the State/Tribal program to leave no gaps in regulatory control of MSWLFs. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the federal requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

As provided in the October 9, 1991 municipal solid waste landfill rule, EPA's national Subtitle D standards will take effect on October 9, 1993 in any State/Tribe that lacks an approved program. Consequently, any remaining portions of the Federal Criteria which are not included in an approved State/Tribal program by October 9, 1993 would apply directly to the owner/operator.

EPA intends to approve portions of State/Tribal MSWLF permit programs prior to promulgation of the STIR. EPA interprets the requirement for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum standards. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions determine whether a State/Tribe has submitted an "Adequate" program based on the criteria outlined above. EPA expects States/Tribes to meet all these criteria for all elements of a MSWLF program before it gives full approval to a MSWLF program. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule.

EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to propose to make submission of a schedule mandatory in the STIR.

B. State of California

On February 5, 1993 California submitted an application for program adequacy determination. EPA Region 9 reviewed California's application and tentatively determined that the following portions of the State's Subtitle D program will ensure compliance with the revised Federal Criteria.

1. General criteria governing scope and applicability, definitions, and consideration of other federal laws (40 CFR 258.1, 258.2, and 258.3);

2. Location restrictions for fault areas, seismic impact zones, and unstable areas (40 CFR 258.13, 258.14, and 258.15);

3. Operating Criteria for disease vector control, access requirements, and surface water requirements (40 CFR 258.22, 258.25, and 258.27);

4. Groundwater monitoring and corrective action criteria governing applicability (40 CFR 258.50);

5. Closure and post-closure care requirements for final cover, contents of closure plan, notification of intent to close units, beginning closure activities, notification and certification that closure has been completed, deed notation following closure, post-closure care length and activities (except groundwater monitoring during post-closure care), contents of post-closure care plan, notification and certification that post-closure care has been completed (40 CFR 258.60 (a), (b), (c), (e), (f), (h), (i), (j) and 258.61(a) (1), (2), & (4), (b), (c), (e));

6. Financial assurance criteria for closure and allowable mechanisms (40 CFR 258.71 and 258.74).

Not all States/Tribes will have existing permit programs through which they can ensure compliance with all provisions of the revised Federal Criteria. Were EPA to restrict a State/Tribe from submitting its application until it could ensure compliance with the entirety of 40 CFR part 258, many States/Tribes would need to postpone obtaining approval of their permit programs for a significant amount of time. This delay in determining the adequacy of the State/Tribal permit program while the State/Tribe revises its statutes or regulations could impose a substantial burden on owners and

operators of landfills because the State/Tribe would be unable to exercise the flexibility available to States/Tribes with permit programs which have been approved as adequate.

California needs to revise aspects of its permit program to ensure compliance with the following provisions of the Federal Criteria.

1. Location restrictions for airport safety, floodplains, wetlands, and closure of existing units that do not meet the location restrictions pertaining to airports and floodplains (40 CFR 258.10, 258.11, 258.12, and 258.16);

2. Operating criteria for exclusion of hazardous waste, cover material, explosive gases control, air emissions, run-on/run-off control systems, liquids restrictions, and recordkeeping (40 CFR 258.20, 258.21, 258.23, 258.24, 258.26, 258.28, and 258.29);

3. Design Criteria (40 CFR 258.40);

4. Groundwater monitoring and corrective action criteria for groundwater monitoring systems, sampling and analysis, detection monitoring, assessment monitoring, assessment of corrective measures, selection of remedy, and implementation of the corrective action program (40 CFR 258.51, 258.53, 258.54, 258.55, 258.56, 258.57, and 258.58);

5. Closure and post-closure care requirements for submittal of closure plan, completion of closure activities, groundwater monitoring during post-closure care, and submittal of post-closure care plan (40 CFR 258.60 (d) and (g), and 258.61(a)(3) and (d));

6. Financial assurance criteria for applicability and effective date, post-closure care and corrective action (40 CFR 258.70, 258.72 and 258.73).

California submitted an amended application for program adequacy determination on May 17, 1993. California's amended application included revised draft requirements for those parts of the State's existing program that are not adequate to ensure compliance with the federal criteria. EPA Region 9 reviewed California's amended application and provided comments to the State. California then submitted newly revised draft requirements to EPA on June 9, 1993. EPA reviewed the revised draft requirements and determined that these requirements would be adequate to ensure compliance with the Federal Criteria.

If the draft permit and statutory requirements submitted to EPA on June 9, 1993 are fully adopted before EPA makes a final determination and effective on or before the relevant effective dates of the Federal Criteria, then EPA proposes to fully approve California's MSWLF program. If all the necessary draft permit and statutory requirements are not adopted with the relevant effective dates or are adopted with altered language that would not clearly assure compliance with the Federal Criteria, then EPA proposes to partially approve California's program. Partial approval would only be for those portions of the State program that assure compliance with the Federal Criteria.

Region 9 will hold a public hearing on its tentative decision on August 24, 1993 at 10 a.m. at the EPA Region 9 office at 75 Hawthorne Street, American Samoa/Guam Rooms, in San Francisco, California. The public may submit written comments on EPA's tentative determination until the close of the public hearing on August 24, 1993. Copies of California's application and supporting documents are available for inspection and copying at the locations indicated in the "ADDRESSES" section of this notice.

EPA will consider all public comments on its tentative determination received during the public comment period and during the public hearing. Issues raised by those comments may be the basis for a determination of inadequacy for California's program. EPA will make a final decision on whether or not to approve California's program by October 9, 1993 and will give notice of it in the Federal Register. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this notice from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this tentative approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This proposed notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: June 16, 1993.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 93–15261 Filed 6–28–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00360; FRL–4632–9]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2–day meeting, beginning on July 12, 1993, and ending on July 13, 1993. This notice announces the location and times for the meeting and sets forth tentative agenda topics. The meeting is open to the public.

DATES: The SFIREG will meet on Monday, July 12, 1993, from 8:30 a.m. to 5 p.m. and on Tuesday, July 13, 1993, beginning at 8:30 a.m. and adjourning at approximately noon.

ADDRESSES: The meeting will be held at: DoubleTree Hotel National Airport - Crystal City, 300 Army-Navy Drive, Arlington, VA, (703) 892–4100.

FOR FURTHER INFORMATION CONTACT: By mail: Arty Williams or Shirley Howard, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1109, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7371.

SUPPLEMENTARY INFORMATION: The tentative agenda of SFIREG includes the following:

1. Regional SFIREG reports.
2. Reports from the SFIREG Working Committees.
3. Discussion of Old and New Issue Papers.
4. Update on Worker Protection Issues.
5. Discussion of Section 18 Issues - Delaney Clause.
6. Update on Recordkeeping for Private Applicators.
7. Update on Office of Pesticide Program Policies and Regulations: Endangered Species, Certification Training and Groundwater Protection.
8. Update from the Office of Compliance Monitoring.

9. Other Topics as Appropriate.

Dated: June 22, 1993.

Daniel Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93-15264 Filed 6-28-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4670-8]

Notice of Public Water Supervision Program: Program Revisions for the State of New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of New Hampshire is revising its approved State Public Water Supply Supervision Primacy Program. New Hampshire has adopted (1) drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987 (52 FR 25690) and (2) public notice requirements promulgated on October 8, 1987 (52 FR 41534). EPA has determined that these two sets of State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for public hearing must be submitted by July 29, 1993 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing my be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by July 29, 1993, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become effective on July 29, 1993.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intended to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

New Hampshire Department of Environmental Services, Water Supply Engineering Bureau, 6 Hazen Drive, Concord, NH 01908.

U.S. Environmental Protection Agency—Region I, Ground Water Management and Water Supply Branch, One Congress Street—11th Floor, Boston, MA 02203—2211.

FOR FURTHER INFORMATION CONTACT: Martha Johnson, U.S. Environmental Protection Agency—Region I, J.F.K. Federal Building, Boston, MA 02203-2211, Telephone (617) 565-3613.

(Section 1413 of the Safe Drinking Water Act, as amended (1988); and 40 CFR 142.10 of the National Primary Drinking Water Regulations).

Dated: May 28, 1993

Paul Keough,

Acting Regional Administrator.

[FR Doc. 93-15260 Filed 6-28-93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1948]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

June 23, 1993.

Petitions for reconsideration and clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857-3800. Opposition to these petitions must be filed July 14, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Evaluation of the Syndication and Financial Interest Rules. (MM Docket No. 90-162) Number of Petitions Filed: 5.

Subject: Amendment of Parts 0, 1, 2, and 95 of the Commission's Rules to Provide for Interactive Video Data Services. Reinstatement of Dismissed Interactive Video Data Service License Applications. (GEN Docket No. 91-2, RM-6196) Number of Petitions Filed: 1.

Subject: Implementation of section 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992. Development of Competition and Diversity in Video Programming Distribution and Carriage. (MM Docket No. 92-265) Number of Petitions Filed: 9.

Subject: Amendment of Parts 2 and 15 of the Commission's Rules to Prohibit Marketing of Radio Scanners Capable of Intercepting Cellular Telephone Conversations. (ET Docket No. 93-1) Number of Petitions Filed: 1.

Subject: Establishment of Amateur Station Call Sign Administrators for Club and Military Recreation Stations. (FCC 93-249) Number of Petitions Filed: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-15169 Filed 6-28-93; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; FMG/CSAV/NAV Cooperative Working Agreement, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011298-003.

Title: FMG/CSAV/NAV Cooperative Working Agreement.

Parties:

Compania Sud Americana de Vapores
Flota Mercante Grancolombiana
Naviera Interamericana Navicana S.A.

Synopsis: The proposed amendment permits the parties to file a single tariff for their services under the Agreement except in situations where a party to the Agreement does not wish to adhere to such rates, charges or conditions. It also includes provisions relating to independent action. The parties have requested a shortened review period.

Agreement No.: 202–011346–003

Title: Israel Trade Conference

Parties:

Farrell Lines, Inc.

Lykes Bros. Steamship Company, Inc.

Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment permits the parties to amend service contracts and to adopt or amend guidelines for the negotiation of service contracts.

By Order of the Federal Maritime Commission.

Dated: June 23, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–15220 Filed 6–28–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P29–93]

Petition of Distribution-Publications, Inc. for Temporary Exemption From Electronic Tariff Filing Requirements; Filing of Petition

Notice is hereby given of the filing of a petition by the above named petitioner, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioner requests exemption from the June 4, 1993, electronic filing deadline, on behalf of a number of carrier customers stating they are unable to comply with the June 4, 1993, deadline for filing of World Wide/Asian and South Pacific tariffs.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than July 2, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on John W. Sullivan, President, Distribution-Publications, Inc., 800 N. Capitol Street, NW., suite 140B, Washington, DC 20002.

Copies of the petition are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–15191 Filed 6–28–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of March 23, 1993

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 23, 1993.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity has increased at a more moderate pace in the early months of 1993 after expanding robustly in the fourth quarter. Total nonfarm payroll employment registered a sharp increase in February following generally small advances in previous months, and the civilian unemployment rate edged down further to 7.0 percent. Industrial production continued to post solid gains in January and February. Retail sales increased somewhat further over the first two months of the year after a fourth-quarter surge. Housing starts slipped in early 1993 after registering sizable gains late last year. Incoming data on orders and shipments of nondefense capital goods suggest a further brisk advance in outlays for business equipment, while nonresidential construction has remained soft. The nominal U.S. merchandise trade deficit was essentially unchanged in January from its average level in the fourth quarter, but both exports and imports were substantially lower. Increases in wages have remained subdued, but recent advances in consumer and producer prices have been larger than those recorded in the latter part of 1992.

Short-term interest rates have changed little since the Committee meeting in early February while bond yields have fallen appreciably on balance. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G–10 currencies declined on balance over the intermeeting period.

M2 and M3 contracted in January and February, apparently reflecting transitory factors and further shifts into market investments. Total domestic nonfinancial debt appears to have expanded somewhat further in January.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in February established ranges for growth of M2 and M3 of 2 to 6 percent and ½ to 4-½ percent, respectively, measured from the fourth quarter of 1992 to the fourth quarter of 1993. The Committee expects that developments contributing to unusual velocity increases are likely to persist during the year. The monitoring range for growth of total domestic nonfinancial debt was set at 4-½ to 8-½ percent for the year. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with a resumption of moderate growth in the broader monetary aggregates over the second quarter.

By order of the Federal Open Market Committee, June 23, 1993.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 93–15245 Filed 6–28–93; 8:45 am]

BILLING CODE 6210–01–F

[1] Copies of the Minutes of the Federal Open Market Committee Meeting of March 23, 1993, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

GENERAL SERVICES ADMINISTRATION

Special Conditions to Licensing Agreement for Child Care Providers in GSA-Controlled Space

AGENCY: Office of Child Care and Development Programs, GSA.

FOR FURTHER INFORMATION, CONTACT: Karen S. Jackson, Acting Director, Office of Child Care and Development Programs, 202/501–3965.

SUMMARY: The special conditions to licensing agreements ensure that Child Care Centers in General Services Administration (GSA)-controlled space are safe, have appropriate programs, and are financially viable. There are three versions of the special conditions: (1) Agreement between GSA and the sponsoring Department/Agency, (2) agreement between GSA and the Board of Directors as the Child Care Provider, and (3) agreement between GSA and the Child Care Provider. Signatories to the special conditions will be determined on an individual basis. All are negotiable and can be modified. The following special conditions to licensing agreements for child care providers in GSA-controlled space are being published as a supplement to this notice for information and guidance.

Dated: June 11, 1993.

Karen Jackson,

Acting Director, Office of Child Care and Development Programs.

Special Conditions to the Licensing Agreement Between the General Services Administration and the Board of Directors as Child Care Provider

1. License Authority

This license is granted pursuant to the authority of and subject to the conditions in 40 U.S.C. 490b. The Child Care Provider who provides child care at the site agrees to abide by these Special Conditions.

2. Priority Spaces for Department/ Agency

The Child Care Provider shall give priority for available child care services to employees of sponsoring agencies.

3. Criminal History Background Checks

The Child Care Provider and its employees are subject to the Crime Control Act of 1990 (Pub. L. 101–647, as amended by Pub. L. 102–190, dated December 5, 1991), and will submit to criminal history background checks. The Child Care Provider or its employees who have a conviction for sex crimes, offenses involving children as victims, or drug felonies will be denied employment or dismissed, except that for a conviction of a crime other than a sex crime or offense involving children, the government will review the facts of the individual case before exercising its right to deny or terminate the employment of that employee. In addition, the Child Care Provider and its employees are subject to any other checks as may be required by the Department, the General Services Administration (GSA) and any pertinent local regulatory authorities.

4. Terms and Conditions of Occupancy

The child care center will be operated in accordance with the following terms and conditions:

a. Maintain and operate a developmental child care program from _____a.m. to _____p.m., Monday through Friday except on Federal holidays. The Child Care Provider is responsible for all day to day operations of the center. The child care center may be closed a minimum of one week per year for maintenance. At least 50% of the children enrolled in the program must be children of Federal employees or have guardians who are Federal employees.

b. The center's employees shall comply with all building regulations and special building security arrangements. Building security arrangements may include the display of GSA furnished ID cards, where required. All GSA furnished IDs remain the property of GSA and must be surrendered to the Child Care Provider's management by all center employees leaving the Child Care Provider's employment. Such IDs must then be immediately returned to GSA's designated building security officer.

c. The Child Care Provider shall not discriminate on the basis of sex, race, religion, color, national origin or disability with respect to enrollment of children or employment of staff.

d. The Child Care Provider will acknowledge receipt of all items of equipment and other property to GSA, in writing, and shall provide routine care of any government furnished equipment during the term of this license.

e. The Child Care Provider shall be responsible for any damage to Government furnished equipment arising from wrongful acts or acts of negligence of the Provider or its staff.

f. A tuition assistance program for families in economic need shall be established through a nonprofit organization and should qualify for Combined Federal Campaign (CFC) or United Way donations. Individuals responsible for the collection and disbursement of funds should receive 10 hours of financial management training to be provided by the Internal Revenue Service (IRS)/Department of the Treasury at no charge to the child care center, or demonstrate they have equivalent training.

g. The Child Care Provider shall give priority for training programs for the child care center staff. The Child Care Provider must also ensure that staff members have had training in the prevention and detection of child abuse, first aid, infant CPR, emergency evacuation procedures, and other training that may be required by State and local licensing authorities.

h. The Child Care Provider will ensure that all criminal incidents or other incidents requiring medical attention are immediately reported to the Department/agency contact, Federal Protective Service, and the GSA Building manager. The Child Care Provider will ensure that a written copy of the incident report is furnished to the GSA Regional Child Care Coordinator and the GSA Office of Child Care and Development Programs within 24 hours of the occurrence.

i. The Child Care Provider shall begin the National Association for the Education of Young Children (NAEYC) accreditation process within one year of operation and will achieve accreditation within one year of beginning the process. The Child Care Provider will maintain accreditation through the renewal process of the National Academy of Early Childhood Programs.

j. The Child Care Provider shall agree to submit, upon request of GSA officials, proof of its current State and local licenses to operate a child care center facility. The Child Care Provider will comply with all Federal, State and local safety policies, including the no-smoking policy. The Child Care Provider will submit and post an emergency evacuation plan for the child care center. The Child Care Provider will conduct a fire drill at least monthly

k. Upon reasonable request by GSA, the Child Care Provider must demonstrate that it is financially capable of continuing its operations under the terms of its license to use space. Quarterly financial statements must be provided to GSA. The Child Care Provider agrees to provide GSA with an annual audit of its financial books, records, and expenditures, by an outside, independent auditor or accountant.

l. The Child Care Provider will submit demographic data and other pertinent information relating to center operations to the Office of Child Care and Development Programs, upon request, in a timely and expeditious manner.

m. The Child Care Provider shall provide all supplies (consumables and manipulatives) such as toys, food and curriculum materials. All supplies provided by the Child Care Provider shall remain the property of the Child Care Provider.

n. The Child Care Provider will have a Board of Directors of no more than 11 voting members to oversee the operations of the child care center. Members of the Board should include a variety of interests and skills such as department/agency representatives, an early childhood expert, a fundraiser, an accountant or CPA, Child Care Provider representative, center director, a lawyer, and a parent representative from each age group.

o. The Child Care Provider agrees to submit, upon request, proof of its tax-exempt charitable and educational status under Federal and state laws.

5. Renewal

This license begins on the date of execution continues indefinitely, unless terminated pursuant to Item 8.

6. Child Care Provider Status

The Child Care Provider is not an employee or agent of the Government. Parents with children enrolled at the center shall contract directly with the

Child Care Provider. Except for matters explicitly addressed in this license, decisions and responsibilities with respect to program, levels of enrollment, security, fees, tuition, hiring, policy making, and any and all other aspects of the operation and conduct of the Center's business shall be the exclusive right, prerogative, and responsibility of the Child Care Provider.

7. Insurance

The Child Care Provider shall, at its own expense, provide and maintain during the term of this license, and any extension thereof, comprehensive liability insurance in an amount not less than $1 million. A copy of the insurance policy shall be provided to GSA for review prior to occupancy of the child care center. An accident insurance policy, which meets the requirements of the state in which the center is located, will be maintained on all students by the Child Care Provider.

8. Termination

GSA or Child Care Provider may terminate this license after thirty days written notice, or immediately if there is a substantial breach of the conditions of this license.

9. Notifications to GSA

The Child Care Provider will notify GSA of all regular meetings of the Child Care Provider and will allow an official representative of GSA, or his representative, the right to attend the meeting as a nonvoting observer.

10. Effective Date And Duration

This license is effective on the date of the last signature below and will continue in effect for each party unless and until terminated by either party under the conditions in section 8 of this agreement.

11. Modifications

This license may be modified at any time by written agreement of the parties.

12. Changes in Status

The Child Care Provider agrees to notify GSA immediately of any changes in the manner in which the child care center is being operated or in its change of profit/nonprofit status.

13. Approvals

On behalf of our respective parties, this license is approved.

Board Representative Title

Date

GSA Agency Representative Title

Date

Special Conditions to the Licensing Agreement Between the General Services Administration and the Department/Agency

1. License Authority

This license is granted pursuant to the authority of and subject to the conditions in 40 U.S.C. 490(b). The Department/Agency will obtain a written agreement from the Child Care Provider with whom it contracts or otherwise arranges to provide child care at the site to abide by these Special Conditions. A copy of the agreement between the Department/Agency and its Child Care Provider will be provided to GSA.

2. Priority Spaces for Department/Agency

The Department/Agency's Child Care Provider shall give priority for available child care services to Federal Department/Agency employees.

3. Criminal History Background Checks

The Child Care Provider and its employees are subject to the Crime Control Act of 1990 (Pub. L. 101–647, as amended by Pub. L. 102–190, dated December 5, 1991), and will submit to criminal history background checks. The Child Care Provider or its employees who have a conviction for sex crimes, offenses involving children as victims, or drug felonies will be denied employment or dismissed, except that for a conviction of a crime other than a sex crime or offense involving children, the government will review the facts of the individual case before exercising its right to deny or terminate the employment of that employee. In addition, the Child Care Provider and its employees are subject to any other checks as may be required by the Department, the General Services Administration (GSA) and any pertinent local regulatory authorities.

4. Terms and Conditions of Occupancy

The child care center will be operated in accordance with the following terms and conditions:

a. The Department/Agency's Child Care Provider shall maintain and operate a developmental child care program from ____a.m. to ____p.m., Monday through Friday except on Federal holidays. The Child Care Provider is responsible for all day to day operations of the center. The child care center may close a minimum of one week per year for maintenance. At least 50% of the children enrolled in the program must be children of Federal employees or have guardians who are Federal employees.

b. The Department/Agency's Child Care Provider's employees shall comply with all building regulations and special building security arrangements. Building security arrangements may include the display of Department/Agency furnished identification (ID) cards, where required. All Department/Agency furnished IDs remain the property of the Department/Agency and must be surrendered to the Child Care Provider's management by all center employees leaving the Child Care Provider's employment. Such IDs must then be immediately returned to the Department/Agency's designated building security officer.

c. The Department/Agency's Child Care Provider shall not discriminate on the basis of sex, race, religion, color, national origin or disability with respect to enrollment of children or employment of staff.

d. The Department/Agency's Child Care Provider will acknowledge receipt of all items of equipment and other property to GSA, in writing, and shall provide routine care of any government furnished equipment during the term of this license.

e. The Department/Agency's Child Care Provider shall be responsible for any damage to government furnished equipment arising from wrongful acts or acts of negligence of the Child Care Provider or its staff.

f. The Department/Agency's Child Care Provider shall maintain a tuition assistance program for families in economic need. The Provider or its Board of Directors shall qualify for Combined Federal Campaign (CFC) donations. The Director of the Center and/or a staff member must receive 10 hours of financial management training to be provided by the Internal Revenue Service (IRS)/Department of the Treasury at no charge to the Child Care Center, or demonstrate that the individuals responsible for collection and disbursement of funds have equivalent training in that field.

g. The Department/Agency's child Care Provider shall give priority for training programs for the Center's child care staff. The Child Care Provider must ensure that staff members have had training in the prevention and detection of child abuse, first aid, infant CPR, emergency evacuation procedures and other training that may be required by State and local licensing authorities.

h. The Department/Agency will ensure that all accidents requiring any medical attention and all criminal incidents are reported immediately by the Child Care Provider to the

Department/Agency contact, the Federal Protective Service and the GSA building manager.

The Department/Agency will ensure that a written copy of the incident report will be furnished to the GSA Regional Child Care Coordinator and the GSA Office of Child Care and Development Programs within 24 hours of the occurrence.

i. The Department's/Agency's Child Care Provider shall begin the National Association for the Education of Young Children (NAEYC) accreditation process within one year of operation and will achieve accreditation within one year of beginning the process. The Department/Agency's Child Care Provider will maintain accreditation through the renewal process of the National Academy of Early Childhood Programs.

j. The Department's/Agency's Child Care Provider shall agree to submit, upon the request of a Department/Agency or GSA official, proof of its current State and local licenses to operate a child care center facility. The Department/Agency's Child Care Provider will comply with all Federal, State and local safety policies, including the Department/Agency no-smoking policy. The Department/Agency's Child Care Provider will submit and post an emergency evacuation plan for the child care center. The Department/Agency's Child Care Provider will conduct a fire drill at least monthly.

k. Upon reasonable request by GSA, and/or the Department/Agency, the Department/Agency's Child Care Provider must demonstrate that it is financially capable of continuing its operations under the terms of its license to use space. Quarterly financial statements must be submitted to GSA. The Department/Agency's Child Care Provider agrees to provide GSA and the Department/Agency with an annual audit of their financial books, records, and expenditures, by an outside, independent auditor or accountant.

l. The Department/Agency's Child Care Provider will submit demographic data and other pertinent information relating to the Department/Agency's center operations to the GSA Office of Child Care and Development Programs, upon request, in a timely and expeditious manner.

m. The Department/Agency's Child Care Provider shall provide all supplies (consumables and manipulatives) such as toys, food and curriculum materials. All supplies provided by the Department/Agency's Child Care Provider shall remain the property of the Department/Agency's Child Care Provider.

n. The Department/Agency will ensure that a board of directors of no more than 11 voting members is selected to oversee the operations of the Center. Members of the board should include a variety of interests and skills such as department/agency representatives, an early childhood expert, a fund-raiser, an accountant or CPA, vendor representative, center director, a lawyer and a parent representative from each age group.

o. The Department/Agency's Child Care Provider or its Board of Directors agrees to submit to the Department/Agency, upon request, proof of its tax-exempt charitable and educational status under Federal and State laws.

5. Renewal

This license begins on the date of execution and continues indefinitely unless terminated pursuant to Item 8.

6. Status of the Department/Agency's Child Care Provider

The Department/Agency's Child Care Provider is not an employee or agent of the Government. Parents with children enrolled at the center shall contract directly with the Department/Agency's Child Care Provider. Except for matters explicitly addressed in the license, decisions and responsibilities with respect to program, levels of enrollment, fees, tuition, hiring, policy making, and any and all other aspects of the operation and conduct of the Center's business shall be the exclusive right, prerogative, and responsibility of the Department/Agency's Child Care Provider.

7. Insurance

The Child Care Provider shall, at its own expense, provide and maintain during the term of this license, and any extension thereof, comprehensive liability insurance in an amount not less than $1 million. A copy of the insurance policy shall be provided to GSA for review prior to occupancy of the child care center. An accident insurance policy, which meets the requirements of the state in which the center is located, will be maintained on all students by the Child Care Provider.

8. Termination

GSA or the Department/Agency may terminate this license after thirty days written notice or immediately if there is a substantial breach of the conditions of the agreement.

9. Notifications to GSA

The Department/Agency's Child Care Provider will notify GSA of all regular meetings of the Child Care Provider and will allow an official representative of GSA, or his representative, the right to attend the meeting as a nonvoting observer.

10. Effective Date and Duration

This license is effective on the date of the last signature below and will continue in effect for each party unless and until terminated by either party under the conditions in section 8 of this agreement.

11. Modifications

This license may be modified at any time by written agreement of the parties.

12. Changes in Status

The Department/Agency agrees to notify GSA immediately of any changes in the manner in which the child care center is being operated or in its change of profit/nonprofit status.

13. Approvals

On behalf of our respective parties, this license is approved.

Department/Agency Representative Title

Date

GSA Agency Representative Title

Date

Special Conditions to the Licensing Agreement Between the General Services Administration and the Child Care Provider

1. License Authority

This license is granted pursuant to the authority of and subject to the conditions in 40 U.S.C. 490b. The Child Care Provider who provides child care at the site agrees to abide by these Special Conditions.

2. Priority Spaces for Department/Agency

The Child Care Provider shall give priority for available child care services to employees of sponsoring agencies.

3. Criminal History Background Checks

The Child Care Provider and its employees are subject to the Crime Control Act of 1990 (Pub. L. 101–647, as amended by Pub. L. 102–190, dated December 5, 1991), and will submit to criminal history background checks. The Child Care Provider or its employees who have a conviction for sex crimes, offenses involving children as victims, or drug felonies will be denied employment or dismissed, except that for a conviction of a crime other than a sex crime or offense involving children, the government will

review the facts of the individual case before exercising its right to deny or terminate the employment of that employee. In addition, the Child Care Provider and its employees are subject to any other checks as may be required by the Department, the General Services Administration (GSA) and any pertinent local regulatory authorities.

4. Terms and Conditions of Occupancy

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a. Maintain and operate a developmental child care program from ____a.m. to ____p.m., Monday through Friday except on Federal holidays. The Child Care Provider is responsible for all day to day operations of the center. The child care center may be closed a minimum of one week per year for maintenance. At least 50% of the children enrolled in the program must be children of Federal employees or have guardians who are Federal employees.

b. The center's employees shall comply with all building regulations and special building security arrangements. Building security arrangements may include the display of GSA furnished ID cards, where required. All GSA furnished IDs remain the property of GSA and must be surrendered to the Child Care Provider's management by all center employees leaving the Child Care Provider's employment. Such IDs must then be immediately returned to GSA's designated building security officer.

c. The Child Care Provider shall not discriminate on the basis of sex, race, religion, color, national origin or disability with respect to enrollment of children or employment of staff.

d. The Child Care Provider will acknowledge receipt of all items of equipment and other property to GSA, in writing, and shall provide routine care of any government furnished equipment during the term of this license.

e. The Child Care Provider shall be responsible for any damage to Government furnished equipment arising from wrongful acts or acts of negligence of the Provider or its staff.

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g. The Child Care Provider shall give priority for training programs for the child care center staff. The Child Care Provider must also ensure that staff members have had training in the prevention and detection of child abuse, first aid, infant CPR, emergency evacuation procedures, and other training that may be required by State and local licensing authorities.

h. The Child Care Provider will ensure that all criminal incidents or other incidents requiring medical attention are immediately reported to the Department/agency contact, Federal Protective Service, and the GSA Building manager. The Child Care Provider will ensure that a written copy of the incident report is furnished to the GSA Regional Child Care Coordinator and the GSA Office of Child Care and Development Programs within 24 hours of the occurrence.

i. The Child Care Provider shall begin the National Association for the Education of Young Children (NAEYC) accreditation process within one year of operation and will achieve accreditation within one year of beginning the process. The Child Care Provider will maintain accreditation through the renewal process of the National Academy of Early Childhood Programs.

j. The Child Care Provider shall agree to submit, upon request of GSA officials, proof of its current State and local licenses to operate a child care center facility. The Child Care Provider will comply with all Federal, State and local safety policies, including the no smoking policy. The Child Care Provider will submit and post an emergency evacuation plan for the child care center. The Child Care Provider will conduct a fire drill at least monthly.

k. Upon reasonable request by GSA, the Child Care Provider must demonstrate that it is financially capable of continuing its operations under the terms of its license to use space. Quarterly financial statements must be provided to GSA. The Child Care Provider agrees to provide GSA with an annual audit of its financial books, records, and expenditures, by an outside, independent auditor or accountant.

l. The Child Care Provider will submit demographic data and other pertinent information relating to center operations to the Office of Child Care and Development Programs, upon request, in a timely and expeditious manner.

m. The Child Care Provider shall provide all supplies (consumables and manipulatives) such as toys, food and curriculum materials. All supplies provided by the Child Care Provider shall remain the property of the Child Care Provider.

5. Renewal

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6. Child Care Provider Status

The Child Care Provider is not an employee or agent of the Government. Parents with children enrolled at the center shall contract directly with the Child Care Provider. Except for matters explicitly addressed in this license, decisions and responsibilities with respect to program, levels of enrollment, security, fees, tuition, hiring, policy making, and any and all other aspects of the operation and conduct of the Center's business shall be the exclusive right, prerogative, and responsibility of the Child Care Provider.

7. Insurance

The Child Care Provider shall, at its own expense, provide and maintain during the term of this license, and any extension thereof, comprehensive liability insurance in an amount not less than $1 million. A copy of the insurance policy shall be provided to GSA for review prior to occupancy of the child care center. An accident insurance policy, which meets the requirements of the state in which the center is located, will be maintained on all students by the Child Care Provider.

8. Termination

GSA or Child Care Provider may terminate this license after thirty days written notice, or immediately if there is a substantial breach of the conditions of this license.

9. Notifications to GSA

The Child Care Provider will notify GSA of all regular meetings of the Child Care Provider and will allow an official representative of GSA, or his representative, the right to attend the meeting as a nonvoting observer.

10. Effective Date and Duration

This license is effective on the date of the last signature below and will continue in effect for each party unless and until terminated by either party under the conditions in section 8 of this agreement.

11. Modifications

The license may be modified at any time by written agreement of the parties.

12. Changes in Status

The Child Care Provider agrees to notify GSA immediately of any changes in the manner in which the child care center is being operated or in its change of profit/nonprofit status.

13. Approvals

On behalf of our respective parties, this license is approved.

Provider Representative Title

Date

GSA Agency Representative Title

Date

[FR Doc. 93–15175 Filed 6–28–93; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Announcement Number 325]

Environmental Health Education Activities for Educating Health Professionals and Communities Concerned With Human Exposure to Environmentally Hazardous Substances

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement program for state departments of health and state departments of environment to build state capacity for educating health professionals and communities on health issues related to human exposures to hazardous substances in the environment.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under sections 104(i) (14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9604 (i) (14) and (15)).

Eligible Applicants

Eligible applicants are the official health departments and/or environmental departments of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Availability of Funds

Approximately $843,000 is available in FY 1993 to fund approximately 18 awards. It is expected that 9 noncompeting continuation awards will be made for approximately $382,000, and approximately 9 new and competing awards will be made for approximately $461,000. It is expected that the average new award will range from $45,000 to $55,000. Awards are funded for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change.

Applicants should specify whether they are applying for 1, 2, or 3 years of funding, if no preference is indicated, it will be assumed that 1 year is requested. The applicant should expect the continuation year funding not to exceed the first year funding level.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of the program is to assist state health departments and state environmental departments to identify, develop, disseminate, and evaluate appropriate educational materials on the potential health effects, prevention, medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances. Special emphasis will be placed on exposures found at or near Environmental Protection Agency (EPA) Superfund sites, and other sites identified by ATSDR's Health Activities Recommendation Panel (HARP). (Superfund sites are defined as sites on, or proposed to be on, the EPA's National Priorities List (NPL) or any sites for which Superfund monies have been expended. HARP sites include petitioned sites and consultation sites, in addition to NPL sites). (Federal facilities are not included and should not be targeted with these funds.) These educational efforts should address topics relevant to Superfund. A partial list of appropriate and inappropriate topics to be addressed by these educational activities for health professionals and/or communities follows:

Sample of Appropriate Topics: Superfund-related hazardous substances; chemicals on the priority pollutant list (the ranked list of substances prioritized by ATSDR and the Environmental Protection Agency appears in **Federal Register** issue 56 FR 52166, October 17, 1991); environmental medicine/environmental health; environmental exposure histories; issues related to exposure to hazardous substances in communities (including those in underserved/minority areas); resources for environmental health information; health risk communication; and childhood lead poisoning.

Sample of Inappropriate Topics: Occupational health/workplace exposures; radon; indoor air; sick building syndrome; secondhand smoke; ozone; air pollution (unless Superfund-related); carbon monoxide poisoning; greenhouse effect; insect repellents; and household chemicals.

Programs should be aimed at: (1) Physicians, nurses, physician assistants, or other primary care providers or public health professionals (such as state, county, and local health department staff) whose work involves determining and/or communicating the potential health effects of hazardous substances in the nonworkplace environment; and (2) communities concerned about health effects of hazardous substances. A portion of the funds (up to 25% for continuation states, and up to 50% for new states) must be devoted to conducting community health education activities related to Superfund sites and recommended by HARP. (See below under Recipient Activities.) For the purposes of this cooperative agreement, community environmental health education is defined as a two-way process between the community and the agency. This process facilitates agency, personal, and community participation in the mutual understanding of environmental health issues and the adoption of actions and behaviors that would prevent or mitigate adverse human health effects and diminished quality of life resulting from exposure to hazardous substances in the environment.

This is a program to build state capacity, that is, to enable states to address questions and issues related to the potential health effects of exposure to hazardous substances in the environment. The applicant should demonstrate significant contribution to and primary responsibility for the

design, implementation, and evaluation of the projects. Emphasis should be placed on both public and private health professionals and the communities they serve who are concerned about illness and disease related to potential exposure to hazardous substances found at Superfund sites. Emphasis should also be placed on conducting educational activities at sites where recommendations for health professional and/or community health education have been made by HARP.

Sample goals for projects funded by this award include the following:

- Educate primary health care providers in the state on how to diagnose potential health effects of exposure to hazardous substances from Superfund sites.
- Conduct HARP-recommended site-specific training activities to educate health professionals and community members about health concerns related to Superfund hazardous substances.
- Develop and distribute to health professionals and communities resource guides and other materials with relevant and up-to-date environmental health information, including information about hazardous substances found at Superfund sites.
- Build state capacity so that the department of health or environment may serve as a resource in responding to health professional and community requests and concerns related to exposure to hazardous substances at Superfund sites.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and ATSDR will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Develop for health professionals educational activities and instructional methods relevant to Superfund sites and sites recommended for follow-up activity by ATSDR's Health Activities Recommendation Panel (HARP), and substances found at these sites. (Particular emphasis should be placed on HARP sites.) Activities could include grand rounds, conferences, short courses, and workshops. To maximize outreach to the target audience, these educational activities should be conducted, whenever possible and appropriate, in conjunction with pre-existing health professional meetings. The materials and programs developed should include efforts to improve the knowledge and skills of health care providers in determining potential hazardous substance exposures as an integral part of their patient workup (i.e., taking exposure histories).

2. Develop, implement, and evaluate educational materials or methods to improve the skills and knowledge of health care providers concerning potential exposure to hazardous substances in the environment. If non-printed materials such as videotapes, audiotapes, computer-learning tools, etc. are to be developed, the applicant must thoroughly describe the materials, and justify their superiority over traditional educational materials. Their acceptability to the target audience must be substantiated. The applicant should be aware that ATSDR has materials (developed in-house and also by other cooperative agreement awardees) that may be appropriate for program use. It is not always necessary to develop new materials.

3. Develop and distribute resource guides that contain relevant and up-to-date information concerning Superfund sites and substances, including environmental health references and local, state, and Federal resources and contacts.

4. Assess program effectiveness by outlining an evaluation plan that includes process and impact/outcome measures.

5. Devote up to 50% of the state's efforts under this cooperative agreement to community health education about potential exposure to hazardous substances at Superfund sites. Focus on those sites recommended for follow-up community health education by ATSDR's HARP.

The recipient is strongly encouraged to identify sites where the need for behavioral change by community members has been clearly demonstrated.

B. ATSDR Activities

1. Collaborate with the recipient to determine effective methods to enhance skill and knowledge required for appropriate medical surveillance, screening, treatment, and prevention of injury or disease related to exposure to hazardous substances at Superfund sites.

2. Collaborate with the recipient in developing and reviewing all materials and ensuring scientific consistency.

3. Collaborate with the recipient in developing an environmental health information resource guide.

4. Collaborate with the recipient in evaluating the effectiveness of educational materials and activities.

5. Participate in state-based hospital grand rounds, workshops, conferences, and seminars to exchange current information concerning the diagnosis, treatment, and prevention of illness or injury associated with exposure to hazardous substances.

6. Collaborate with the recipient in facilitating linkages with other professional organizations and networks.

7. When appropriate, provide the recipient with existing educational materials to be used in state programs.

8. Collaborate with the recipient in identifying communities recommended for HARP follow-up education. Assist with developing appropriate, targeted education activities that address the needs and concerns of communities.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. Proposed Project and Appropriateness of Project Design 40% (20% for 1–10, 20% for 11 and 12)

The adequacy of the proposal relative to:

1. Project purpose;
2. Rationale of project;
3. Applicant's justification of the need or problem to be addressed;
4. Identification of target group(s);
5. Quality of project objectives in terms of specificity, measurability, and feasibility;
6. Specificity and feasibility of the applicant timetable for implementing project activities;
7. Thoroughness of the approach to be used in carrying out project, including measurability;
8. Appropriateness and feasibility of the methods used to carry out the project;
9. Evidence to assure that the project does not duplicate other training programs.
10. Addressing each of the "Recipient Activities" listed above.
11. Appropriateness of proposed content of educational programs (in accordance with the Purpose and Program Requirements sections above); programs should include both site-specific health professional and site-specific community health education; and
12. Identification of community health education sites with a demonstrated need for behavioral change concerning potential exposure to hazardous substances in the environment.

B. Program Evaluation 30%

The adequacy of the proposal relative to:

1. Appropriateness of the methods used to evaluate project;

2. Thoroughness of the methods used to evaluate project; and

3. Extent to which evaluation plan includes measures of program outcome (i.e., effect on participants' knowledge, attitudes, skills, and behaviors).

C. Applicant Capability and Coordination of Effort 30%

The adequacy of the proposal relative to the:

1. Applicant's basic knowledge/experience required to perform the applicant's responsibilities in the project;

2. Ability of the applicant to provide staff required to perform the applicant's responsibilities in the project, including specific staff and credentials (when possible);

3. Ability of the applicant to provide other resources (such as computers, furniture, telephones, etc.) required to perform the applicant's responsibilities in the project;

4. Appropriate CVs are provided; and

5. Letters of support are provided.

D. Project Budget (Not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of funds.

E. Review of Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

1. Satisfactory progress has been made in meeting project objectives;

2. Objectives for the new budget period are realistic, specific, and measurable;

3. Proposed changes in described long-term objectives, methods of operation, need for cooperative agreement support, and/or evaluation procedures will lead to achievement of project objectives; and

4. The budget request is clearly justified and consistent with the intended use of cooperative agreement funds.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, Georgia 30305, within sixty days of the application submission date. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance (CFDA) number is 93.161.

Other Requirements

A. Cost Recovery

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), provides for the recovery of costs incurred for site-specific activities at each Superfund site from potentially responsible parties. The recipient would agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated cost including indirect cost, as appropriate for the site. The recipient will retain the documents and records to support these financial transactions, for possible use in a cost recovery case, for a minimum of ten (10) years after submission of a final Financial Status Report (FSR), unless there is a litigation, claim, negotiation, audit or other action involving the specific site, then the records will be maintained until resolution of all issues on the specific site.

B. Third Party Agreements

Project activities which are approved for contracting pursuant to the prior approval provisions shall be formalized in a written agreement that clearly establishes the relationship between the grantee and the third party.

The written agreement shall at a minimum:

1. State or incorporate by reference all applicable requirements imposed on the contractors under the grant by the terms of the grant, including requirements concerning technical review (ATSDR selected reviewers), ownership of data, and the arrangement for copyright when publications, data or other copyrightable works are developed under or in the course of work under a PHS grant supported project or activity.

2. State that any copyrighted or copyrightable works shall be subject to a royalty-free, nonexclusive, and irrevocable license to the Government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal Government purposes.

3. State that whenever any work subject to this copyright policy may be developed in the course of a grant by a contractor under a grant, the written agreement (contract) must require the contractor to comply with these requirements and can in no way diminish the Government's right in that work.

4. State the activities to be performed, the time schedule for those activities, the policies and procedures to be followed in carrying out the agreement, and the maximum amount of money for which the grantee may become liable to the third party under the agreement.

The written agreement required shall not relieve the grantee of any part of its responsibility or accountability to PHS under the grant. The agreement shall, therefore, retain sufficient rights and control to the grantee to enable it to fulfill this responsibility and accountability.

C. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before July 31, 1993. (By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.)

A. Deadline:

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. Late Applications

Applications which do not meet the criteria in A.1. or A.2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, telephone: (404) 842–6797. Programmatic technical assistance may be obtained from Jeannette May, M.P.H., Division of Health Education, Agency for Toxic Substances and Disease Registry, Mailstop E–33, 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 639–6205.

Please refer to Announcement Number 325 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (telephone: 202–783–3238).

Dated: June 23, 1993.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 93–15214 Filed 6–28–93; 8:45 am]

BILLING CODE 4160–70–P

[Program Announcement Number 324]

Health Studies Initiative of Priority Health Conditions; Availability of Funds for Fiscal Year 1993

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement/grant program to conduct health studies related to human exposure to hazardous substances including health conditions prioritized by ATSDR, with emphasis on immune function disorders.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the Section Where to Obtain Additional Information.)

Authority

This program is authorized in sections 104(i) (1)(E), (7), (9), and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604(i) (1)(E), (7), (9), and (15)).

Eligible Applicants

Eligible applicants are the official public health agencies of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. State organizations, including state universities, state colleges, and state research institutions, must establish that they meet their respective state's legislature definition of a state entity or political subdivision to be considered an eligible applicant.

Availability of Funds

Approximately $2,000,000 is available in FY 1993 to fund approximately 8 awards. It is expected that 5 noncompeting continuation awards will be made for approximately $1,700,000, and approximately 3 new and competing awards will be made for approximately $300,000. Awards are funded for a 12-month budget period within a project period of up to 3 years.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of these awards is to assist the awardee in developing studies to understand the occurrence of, and risk factors for, priority health conditions, with emphasis on immune function disorders at Superfund sites. Studies should utilize existing data sources to the maximum extent possible. One such data source that exists within ATSDR and is available for use by researchers is the TCE Subregistry, a list of persons enrolled on the National Exposure Registry. Priority will be given to studies using data from multiple sites, such as ecologic studies, which will assess the health status of several communities. This will improve the recipients' ability to address potential public health problems related to exposure to hazardous substances.

The ATSDR Priority Health Conditions are (in alphabetical order):

(1) Birth defects and reproductive disorders;
(2) Cancers (selected anatomic sites);
(3) Immune function disorders;
(4) Kidney dysfunction;
(5) Liver dysfunction;
(6) Lung and respiratory diseases; and
(7) Neurotoxic disorders.

Program Requirements

Applications must propose studies which will address one or more of the following areas of investigation:

1. Evaluate the occurrence of adverse health effects in a population. This will include the evaluation of the incidence or prevalence of a disease, disease symptoms, self-reported health concerns, or biological markers of disease, susceptibility, or exposure.

2. Identify risk factors for adverse health effects in populations. This will include hypothesis generating cohort or case-control studies on potentially impacted populations to identify linkages between exposure and adverse health effects and those risk factors which may be impacted by prevention actions.

3. Develop methods to diagnose adverse health effects in populations. This includes medical research to evaluate currently available biological tests (biomarkers) and disease occurrence in potentially impacted populations.

ATSDR will provide financial assistance to applicants in developing methods and technologies to explore the

relationship between exposure to hazardous substances and occurrence and risk factors for priority adverse health conditions with emphasis on immune function disorders. ATSDR is also interested in funding applicant programs that identify human populations at higher risk of immune function disorders resulting from exposure or toxicity caused by hazardous substances in their environment.

Applicants must specify the type of award for which they are applying, either grant or cooperative agreement. These two types of Federal assistance are explained below.

A. Grants

In a grant, the applicant will be required to conduct the proposed study without substantial programmatic involvement by ATSDR. Grantees must meet the following requirements:

1. The application should be presented in a manner that demonstrates the applicant's ability to address the environmental health problems.

2. The applicant's protocol should contain consent forms and questionnaires, baseline morbidity and mortality information, procedures for collecting biologic and environmental specimens and for conducting laboratory analysis and medical evaluation of the test results of biologic specimens, statistical and epidemiologic analysis of the study information, and a description of the safeguards for protecting the confidentiality of individuals on whom data are collected.

By comparison, the activities of the recipient and the ATSDR for a cooperative agreement are described in paragraph B.

B. Cooperative Agreements

In a cooperative agreement, the funding agency will assist the collaborator in conducting the studies. The application should be presented in a manner that demonstrates the applicant's ability to address the health problem in a collaborative manner with the funding agency. In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under 1., below and ATSDR shall be responsible for conducting activities under 2., below:

1. Recipient Activities

a. Review Superfund-related environmental sampling information, human disease surveillance information, and other appropriate information to identify populations potentially exposed to hazardous substances.

b. Design, develop, and implement a protocol to conduct the necessary study of exposed individuals.

c. Provide proof, by citation of state code or regulation or other state pronouncement given the authority of law, that medical information obtained pursuant to the agreement, which pertains to an individual and is therefore considered confidential, will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

d. Develop a mechanism for ongoing interaction with the affected community.

2. ATSDR Activities

a. Assist in developing the study.

b. Assist in analyzing the information on background morbidity and mortality rates for the study area.

c. Provide epidemiologic and other technical assistance in both the planning and implementation phases of the field work called for under the study protocol.

d. Provide consultation and assist in monitoring the collection and handling of information and the sampling and testing activities.

e. Participate in the statistical and epidemiologic analysis.

f. Collaborate in interpreting the study findings.

g. Conduct technical and peer review.

Evaluation Criteria

The review for scientific and technical merit by an objective review group will be based on the following criteria:

A. Scientific and Technical Review Criteria of New Applications

1. Appropriateness and knowledge of study design—25%

The extent to which the applicant's proposal addresses (a) a rationale for the proposed study design; (b) the identification of a target (exposed/diseased) population; (c) the identification of an appropriate comparison group; (d) a consideration of sample size; (e) a plan for exposure assessment and/or a plan for evaluating adverse health outcomes; and (f) a detailed plan for analysis of the data.

2. Proposed study—25%

The adequacy of the proposal relevant to (a) the study purpose, objectives, and rationale; (b) the quality of program objectives in terms of specificity, measurability, and feasibility; (c) the specificity and feasibility of the applicant's timetable for implementing program activities and timely completion of the study; and (d) the likelihood of the applicant agency completing proposed program activities and attaining proposed objectives based on the thoroughness and clarity of the overall program.

3. Relationship to initiative—15%

The extent to which the application addresses the Priority Health Condition(s) emphasized by this announcement, the use of existing databases, the conduct of studies using data from multiple sites, and the areas of investigation outlined by ATSDR.

4. Quality of data collection—15%

The extent to which (a) the study ascertains the information necessary to meet the objectives, including (but not limited to) information on pathways of exposure, confounding factors, and biomedical testing; (b) the quality control and quality assurance of questionnaire data are provided, including (but not limited to) interviewer training and consistency checks of data; (c) the laboratory tests (if applicable) are sensitive and specific for the analyte or disease outcome of interest; and (d) the quality control, quality assurance, precision, and accuracy of information for the proposed tests are provided and acceptable.

5. Applicant capability and coordination efforts—10%

The extent to which the proposal has described: (a) The capability of the applicant's administrative structure to foster successful scientific and administrative management of a study; (b) the capability of the applicant to demonstrate appropriate plan for interaction with the community; and (c) the suitability of facilities and equipment available or to be purchased for the project.

6. Program personnel—10%

The extent to which the proposed program staff is qualified and appropriate, and the time allocated for them to accomplish program activities is adequate.

7. Program budget—(not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of cooperative agreement/grant funds.

B. Review of Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

1. Satisfactory progress has been made in meeting project objectives;

2. Objectives for the new budget period are realistic, specific, and measurable;

3. Proposed changes in described long-term objectives, methods of operation, need for grant support, and/or evaluation procedures will lead to achievement of project objectives; and

4. The budget request is clearly justified and consistent with the intended use of grant/cooperative agreement funds.

Executive Order 12372

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E-13, Atlanta, Georgia 30305, no later than 60 days after the application deadline date. (By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.)

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161, Health Programs for Toxic Substances and Disease Registry.

Other Requirements

A. Peer Review

CERCLA, as amended by SARA, section 104(i)(13), 42 U.S.C. 9604(i)(13) requires: All studies and results of research (other than health assessments) that ATSDR carries out or funds in whole or in part will be peer reviewed. ATSDR funded or conducted studies must:

1. Be reported or adopted only after appropriate peer review.

2. Be peer reviewed within a period of 60 days to the maximum extent practical.

3. Be reviewed by no fewer than three or more than seven reviewers who: (a) Are selected by the Administrator, ATSDR; (b) are disinterested scientific experts; (c) have a reputation for scientific objectivity; and (d) lack institutional ties with any person involved in the conduct of the study or research under review.

B. Protection of Human Subjects

This program requires research on human subjects, therefore, all applicants must comply with Public Law 93-148 regarding the protection of human subjects. Assurances must be provided that the project or activity will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

C. Cost Recovery

CERCLA, as amended by SARA, provides for the recovery of costs incurred for health assessments and health effects studies at each Superfund site from potentially responsible parties. The recipient would agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated cost including indirect cost, as appropriate for the site. The recipient will retain the documents and records to support these financial transactions, for possible use in a cost recovery case, for a minimum of ten (10) years after submission of a final Financial Status Report (FSR), unless there is a litigation, claim, negotiation, audit, or other action involving the specific site, then the records will be maintained until resolution of all issues on the specific site.

D. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

E. Third Party Agreements

Project activities which are approved for contracting pursuant to the prior approval provisions shall be formalized in a written agreement that clearly establishes the relationship between the grantee and the third party. The written agreement shall at a minimum:

1. State or incorporate by reference all applicable requirements imposed on the contractors under the grant by the terms of the grant, including requirements concerning peer review and technical review, release of data, ownership of data, and the arrangement for copyright when publications, data or other copyrightable works are developed under or in the course of work under a PHS grant supported project or activity.

2. State that any copyrighted or copyrightable works shall be subject to a royalty-free, nonexclusive, and irrevocable license to the Government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal Government purposes.

3. State that whenever any work subject to this copyright policy may be developed in the course of a grant by a contractor under a grant, the written agreement (contract) must require the contractor to comply with these requirements and can in no way diminish the Government's right in that work.

4. State the activities to be performed, the time schedule for those activities, the policies and procedures to be followed in carrying out the agreement, and the maximum amount of money for which the grantee may become liable to the third party under the agreement.

The written agreement required shall not relieve the grantee of any part of its responsibility or accountability to PHS under the grant. The agreement shall, therefore, retain sufficient rights and control to the grantee to enable it to fulfill this responsibility and accountability.

Application and Submission Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mail Stop E–13, Atlanta, Georgia 30305, on or before July 24, 1993. (By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.)

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

2. Late Applications

Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mail Stop E–13, Atlanta, Georgia 30305, (Telephone: 404–842–6797). Programmatic assistance may be obtained from Dr. Jeffrey A. Lybarger, Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–31, Atlanta, Georgia 30333, (Telephone: 404–639–6200).

Please refer to Announcement Number 324 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (Telephone: 202–783–3238).

Dated: June 23, 1993.

Walter R. Dowdle,

Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 93–15213 Filed 6–28–93; 8:45 am]

BILLING CODE 4160–70–P

Food and Drug Administration

[Docket No. 93N–0189]

Warning Statements for Medical and Food Products Containing or Manufactured With Chlorofluorocarbons and Other Ozone Depleting Substances; Alternative Language

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of alternative language with respect to warning statements for human drug, biological, and device products containing or manufactured with chlorofluorocarbons (CFC's) and other ozone-depleting substances that may be used on such medical products in place of certain language provided in recent Environmental Protection Agency (EPA) regulations (58 FR 8136, February 11, 1993). FDA's alternative language will direct patients to consult their physicians before discontinuing use of a prescription medical product because of concerns about the product's effect on the environment or their health. Additional labeling statements may be used for over-the-counter (OTC) drug and device products and will direct patients to consult their physicians, pharmacists, or suppliers with questions about the products. The warning statement language in this notice will complement the warning statements required under the Clean Air Act and relevant EPA regulations (40 CFR part 82) (see 58 FR 8136).

DATES: Submit written comments by July 29, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Christina L. Good, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–295–8049.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 11, 1993 (58 FR 8136), EPA issued final regulations requiring, among other things, a warning statement on all products containing or manufactured with specific ozone-depleting substances. In general, EPA regulations require each container or product containing or manufactured with CFC's, halons, carbon tetrachloride, and methyl chloroform to bear the following warning statement:

> WARNING: Contains [or Manufactured with, if applicable] [*insert name of substance*], a substance which harms public health and environment by destroying ozone in the upper atmosphere.

EPA issued regulations pursuant to section 611 of the Clean Air Act (42 U.S.C. 7671j), which requires the warning statements on all products containing or manufactured with CFC's on or after May 15, 1993. In promulgating the regulations, EPA noted that several comments had argued that certain prescription medical products, such as metered dose inhalers, should be exempt from the labeling requirements because they are essential to the health of patients. The comments indicated that a warning statement might lead some patients to avoid their medication because of alarm over the words "harms public health" or because of concerns about the product's effect on the environment. EPA stated that it understood the importance of such products to patients as well as the need to "tailor the labeling requirement to avoid unduly alarming patients," but EPA also stated that it lacked the authority to exempt prescription medical products from the labeling requirement (see 58 FR 8136 at 8155). Consequently, EPA indicated that the statutorily required warning statement could appear on supplemental printed material intended for physicians rather than patients, provided that the supplemental printed material intended for patients contain similar warning language without the words, "warning" and "harms public health" (see 58 FR 8136 at 8156). EPA also indicated that prescription medical product manufacturers could supplement this information with additional information for patients. EPA anticipated that FDA would provide the specific additional language in the **Federal Register** (see 58 FR 8136 at 8156).

Since 1977, FDA has required, with a few exceptions, OTC human drugs and nonrestricted device products containing CFC propellants be labeled with a warning (§§ 369.21 and 801.425 (21 CFR 369.21 and 21 CFR 801.425)). FDA established similar warning statement regulations for food, animal food, and cosmetic products containing CFC propellants (§§ 101.17(c), 501.17(c), 740.11(c)) (21 CFR 101.17(c), 21 CFR 501.17(c) and 21 CFR 740.11(c)). In addition since 1978, FDA has prohibited the use of CFC propellants in most of the products it regulates (§§ 189.191, 300.100, 500.49, 700.23, 801.417 (21

CFR 189.191, 300.160, 500.49, 700.23, 801.417)), except those products listed in § 2.125(e) (21 CFR 2.125(e)). In the future, FDA may consider amending its regulations to be consistent with the requirements of the Clean Air Act and EPA regulations.

Before drafting labeling statements for prescription medical products containing or manufactured with CFC's described in section II of this document, FDA discussed the language with EPA and representatives of the International Pharmaceutical Aerosol Consortium (IPAC), an organization of metered dose manufacturers, and the Joint Council of Allergy and Immunology.

II. Description of Warning Statements

This document describes the warning statements that should accompany human drug, biologic and device products that contain or are manufactured with CFC's, halons, carbon tetrachloride, methyl chloroform, and any other "class I" ozone-depleting substances designated by the EPA Administrator. A list of class I ozone-depleting substances can be found at 40 CFR part 82, appendix A to subpart A. As an alternative to the EPA warning statement issued on February 11, 1993 (58 FR 8136 at 8165), this notice of availability provides for additional language for the alternative placement of the warning statement for physician package inserts and for patient labeling as stated in the EPA final regulation (58 FR 8136 at 8166). The warning statement for the physician package insert would be used in conjunction with an alternative warning statement which would appear on patient labeling. These alternative warning statements have been written so that patients do not cease using their medications because of concerns over the products effect on the environment or alarm over the words "harms public health" without first consulting their physicians. Instead, patients would be able to discuss their concerns with their physicians or, in the case of OTC drug and nonrestricted device products, their pharmacists, or suppliers and, if they wish, consider the use of alternative treatments. FDA believes that these warning statements will identify environmental concerns and will enable patients, physicians, pharmacists, and suppliers (in the case of devices) to make informed decisions.

For prescription drug, biologic and device products, and restricted device products (hereafter referred to as "prescription human medical products"), containing or manufactured with chlorofluorocarbons, halons, carbon tetrachloride, methyl chloroform, or any other "class I" ozone-depleting substances designated by the EPA Administrator shall use the EPA warning statement or the specified alternative warning statements described in the following paragraph.

There are two options for labeling. The first option is EPA's warning statement:

> **WARNING:** Contains [or Manufactured with, if applicable] *[insert name of substance]*, a substance which harms public health and environment by destroying ozone in the upper atmosphere.

This warning statement should be clearly legible and conspicuous on the product, its immediate container, its outer packaging, or other labeling, and "appear with such prominence and conspicuousness as to render it likely to be read and understood by consumers under normal conditions of purchase."

The second option contains FDA's additional language for the alternative warning statements. These warning statements are intended for physician labeling and patient labeling and are applicable to prescription human medical products. For patient labeling, the warning statement would appear on the product, its packaging, or supplemental printed material intended for the patient and would read as follows:

> "Note: The indented statement below is required by the Federal government's Clean Air Act for all products containing or manufactured with chlorofluorocarbons (CFC's) [or name of other class I substance, if applicable]."
>
> This product contains [or manufactured with, if applicable] *[insert name of substance]*, a substance which harms the environment by destroying ozone in the upper atmosphere.
>
> "Your physician has determined that this product is likely to help your personal health. USE THIS PRODUCT AS DIRECTED, UNLESS INSTRUCTED TO DO OTHERWISE BY YOUR PHYSICIAN. If you have any questions about alternatives, consult with your physician."

These statements are designed to explain that the Clean Air Act requires the warning statement, but that patients should continue to use the medical product unless instructed otherwise by their physicians. The labeling for the physician would be placed on the physician package insert after the "How supplied" section on the label describing the special handling and storage conditions. For the package insert for the physician, the warning statement would state that:

> "Note: The indented statement below is required by the Federal government's Clean Air Act for all products containing or manufactured with chlorofluorocarbons (CFC's) [or name of other class I substance, if applicable]."
>
> WARNING: Contains [or Manufactured with, if applicable] *[insert name of substance]*, a substance which harms public health and environment by destroying ozone in the upper atmosphere.
>
> "A notice similar to the above WARNING has been placed in the information for the patient [or patient information leaflet, if applicable] of this product pursuant to EPA regulations."

This document specifies a particular location for the warning statement intended for the physician; provided however, the statement intended for the patient is placed on the product, its packaging, or supplemental printed material intended for the patient. In any case, the warning statement for the patient must be clearly legible and conspicuous at the time of purchase. FDA further advises all parties that this notice does not replace or relieve a party from other requirements in EPA's final rule (58 FR 8136 at 8164).

OTC drug or nonprescription and nonrestricted device products that contain or are manufactured with chlorofluorocarbons or other class I substances may use the EPA warning statement or, as an alternative, state:

> "Note: The indented statement below is required by the Federal government's Clean Air Act for all products containing or manufactured with chlorofluorocarbons (CFC's) [or other class I substance, if applicable]:"
>
> WARNING: Contains [or Manufactured with, if applicable] *[insert name of substance]*, a substance which harms public health and environment by destroying ozone in the upper atmosphere.
>
> "CONSULT WITH YOUR PHYSICIAN OR PHARMACIST [or YOUR PHYSICIAN, PHARMACIST, OR SUPPLIER, if applicable for devices] IF YOU HAVE ANY QUESTION ABOUT THE USE OF THIS PRODUCT."

The warning statement may appear on the product, its immediate container, its packaging or other labeling on or within the package from which the drug is dispensed, but must also be "prominent and conspicuous so as to render it likely to be read and understood by consumers under normal conditions of purchase." This statement also must be consistent with EPA's regulations (58 FR 8136 at 8164).

The agency believes that these warning statements for OTC drug and nonrestricted device products, like those for prescription human medical products, will enable patients, physicians, pharmacists, and suppliers to appreciate environmental concerns

and will also avoid unduly alarming patients.

III. Implementation Scheme

FDA advises applicants who have an approved new drug application (NDA) and whose products contain or are manufactured with CFC's or other ozone-depleting substances to use the existing procedures in §314.70(c) (21 CFR 314.70(c)) (supplements for changes that may be made before FDA approval) to notify the agency of any labeling changes to add a CFC warning statement. Applicants who have an approved abbreviated new drug application (ANDA) should follow the same procedures in accordance with §314.97 (21 CFR 314.97) (57 FR 17950 at 17987, April 28, 1992).

FDA advises applicants who have submitted either an NDA or ANDA but have not received approval should, if necessary, amend their applications to notify FDA about the warning statement(s) they intend to use. Applicants should submit such amendments in accordance with §§ 314.60 or 314.96 (21 CFR 314.60 or 314.96) (57 FR 17950 at 17983 and 17986, April 28, 1992), whichever is appropriate.

FDA advises applicants who hold an approved product license application (PLA) and those whose products contain or are manufactured with CFC's or other ozone-depleting substances should follow the guidance offered in this notice. Revision of labeling to accommodate this warning statement may be implemented without preclearance from the Center for Biologics Evaluation and Research (CBER) and submitted to the file as final printed labeling provided that the placement of such information does not interfere with or render less prominent any information required by biologics labeling regulations (§§ 610.60 through 610.65) (21 CFR 610.60 through 610.65).

Applicants who have submitted a PLA but have not yet received approval should, if necessary, amend their applications to notify CBER about inclusion of the required warning statement(s) they intend to use. Such amendments should be submitted under the applicable reference number.

For medical devices, FDA advises applicants who have submitted premarket approval applications (PMA's) but have not received approval should, if necessary, amend their applications to notify FDA about the warning statement(s) they intend to use. Applicants should submit such amendments in accordance with § 814.37 (21 CFR 814.37). With respect to approved PMA's, applicants should use the procedures in § 814.39 (21 CFR 814.39) to notify the agency of any labeling changes to add a CFC warning. Applicants who hold current 510(k)'s for medical devices need not file a new 510(k) if this notice only results in the addition of the statement to the labeling. FDA advises applicants who have an approved new animal drug application (NADA) and whose products contain or are manufactured with CFC's or other ozone-depleting products to use the existing procedures as identified in 21 CFR 514.8(e) (supplements for changes which may be made before FDA approval) to notify the agency of any labeling changes made to add the CFC warning statement. FDA advises applicants who have submitted an NADA but have not received approval should, if necessary, amend their applications to reflect the required label warning. Animal drug products manufactured with CFC's or other ozone-depleting products must use EPA's warning statement, as the alternative labeling statement is restricted to human medical products. For foods, cosmetics and animal foods, no notification is necessary.

IV. Opportunity for Public Comment

FDA is issuing this notice of availability with an opportunity for public comment because the May 15, 1993, statutory deadline of the Clean Air Act compels the agency to issue this document giving interested persons information on the alternative warning statements. Consequently, a comment period of 30 days is necessary. This notice is intended to give manufacturers and other affected parties guidance on the warning statements to assist them with complying with the statutory mandate for the warning statements.

This document states that parties may use the EPA warning statement or an alternative statement drafted by FDA. FDA has no authority to change or modify the warning statements established in EPA's regulations, and in this notice FDA offers, but does not require, the use of an alternative statement.

Furthermore, FDA believes that, without the availability of the alternative warning statement, patients who are concerned about a medical product's impact on the environment and public health might inappropriately refrain from taking their medication. This notice of availability provides an alternative warning statement that encourages patients to continue taking their medication and to consult their physicians, pharmacists, or suppliers concerning the product's effect on the environment or health. FDA believes, however, that it should invite and consider public comment on this notice of availability of alternative language for these CFC warning statements.

Interested persons may, on or before July 29, 1993, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Section 611 of the Clean Air Act of 1990 and the EPA regulations implementing the requirements of this act require warning statements for products containing or manufactured with CFC's and other ozone-depleting substances. EPA's regulations (58 FR 8136 at 8165) suggest that FDA provide the additional labeling language in the **Federal Register**. Furthermore, FDA's notice of availability of alternative language for the warning statements for medical, food, and cosmetic products containing or manufactured with CFC's and other ozone-depleting substances is authorized by the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Fair Packaging and Labeling Act.

Dated: June 22, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–15233 Filed 6–28–93; 8:45 am]

BILLING CODE 4160–01–P

[Docket No. 93N–0223]

Bel-Mar Laboratories, Inc.; Proposal to Withdraw Approval of Applications; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is offering to Bel-Mar Laboratories, Inc. (Bel-Mar), an opportunity for a hearing on the agency's proposal to withdraw approval of 24 abbreviated new drug applications (ANDA's). The basis for the proposal is that Bel-Mar has failed to file required annual reports on these ANDA's.

DATES: Written requests for a hearing by July 29, 1993; data and information in support of the hearing request due by August 30, 1993.

ADDRESSES: A request for a hearing, supporting data, and other comments should be identified with Docket No. 93N–0223 and submitted to the Dockets

Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8038.

SUPPLEMENTARY INFORMATION: The holders of approved applications to market new drugs or antibiotic drugs for human use are required to submit annual reports to FDA concerning each of their approved applications in accordance with § 314.81 (21 CFR 314.81). Bel-Mar has failed to submit the required annual reports for the ANDA's listed in the table below, and has not responded to the agency's request by certified mail for submission of the reports.

ANDA No.	Drug
80-710	Lidocaine Hydrochloride Injection, 1%
80-711	Procaine Hydrochloride Injection, 1%
80-712	Thiamine Hydrochloride Injection, 200 milligrams (mg)/milliliter (mL)
80-718	Thiamine Hydrochloride Injection, 100 mg/mL
80-741	Testosterone Proprionate Injection, 25 mg/mL
80-742	Testosterone Proprionate Injection, 50 mg/mL
80-743	Testosterone Proprionate Injection, 100 mg/mL
80-756	Procaine Hydrochloride Injection, 2%
80-757	Lidocaine Hydrochloride Injection 2% and Epinephrine, 1:100,000
80-758	Procaine Hydrochloride 1% and Epinephrine Injection, 1:50,000
80-759	Procaine Hydrochloride 2% and Epinephrine Injection, 1:50,000
80-760	Lidocaine Hydrochloride Injection, 2%
80-761	Pyridoxine Hydrochloride Injection, 100 mg/mL
80-819	Vitamin A Palmitate Injection, 50,000 units base/mL
80-820	Lidocaine Hydrochloride 1% and Epinephrine Injection, 1:100,000
80-821	Chlorpheniramine Maleate Injection, 10 mg/mL
80-822	Diphenhydramine Hydrochloride Injection, 10 mg/mL
83-733	Chlorpheniramine Maleate Injection, 100 mg/mL
83-738	Prednisolone Acetate Suspension, 25 mg/mL and 50 mg/mL
83-739	Sterile Hydrocortisone Acetate Suspension, 25 mg/mL and 50 mg/mL
84-629	Hydroxocobalamin Injection, 1,000 micrograms/mL
84-752	Dexamethasone Sodium Phosphate Injection, 4 mg/mL
86-666	m-Predrol (Sterile Methylprednisolone Acetate) Suspension, 40 mg/mL
87-135	m-Predrol (Sterile Methylprednisolone Acetate) Suspension, 80 mg/mL

Therefore, notice is given to the holder of the ANDA's listed in the table and to all other interested persons that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)) withdrawing approval of the ANDA's and all amendments and supplements thereto on the ground that the applicant has failed to submit reports required under § 314.81.

In accordance with section 505 of the act and 21 CFR part 314, the applicant is hereby provided an opportunity for a hearing to show why the applications listed above should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drugs products covered by these applications.

An applicant who decides to seek a hearing shall file: (1) On or before July 29, 1993, a written notice of participation and request for hearing, and (2) on or before August 30, 1993, the data, information, and analyses relied on to demonstrate that there is a genuine and substantial issue of fact that requires a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, notice of participation, and request for hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in 21 CFR 314.200 and in 21 CFR part 12.

The failure of an applicant to file a timely written notice of participation and request for hearing, as required by 21 CFR 314.200, constitutes an election by that applicant not to avail itself of the opportunity for a hearing concerning the proposal to withdraw approval of the applications and constitutes a waiver of any contentions concerning the legal status of the drug products. FDA will then withdraw approval of the applications and the drug products may not thereafter lawfully be marketed, and FDA will begin appropriate regulatory action to remove the products from the market. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. Reports submitted to remedy the deficiencies must be complete in all respects in accordance with § 314.81. If the submission is not complete or if a request for hearing is not made in the required format or with the required reports, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice of opportunity for a hearing are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 505 of the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: June 15, 1993.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 93–15234 Filed 6–28–93; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Services Administration's Federal Advisory Committee has been filed with the Library of Congress:

Advisory Committee on Infant Mortality

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC, on weekdays between 9 a.m. Copies may be obtained from: Ms. Kyungeun Carol Han, Public Health Analyst, Office of the Planning, Evaluation and Legislation, Health Resources and Services Administration, room 14–22, Parklawn Building, 5600

Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1900.

Date: June 23, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–15241 Filed 6–28–93; 8:45 am]

BILLING CODE 4160–15–P

Project Grants for Renovation of Non-Acute Care Intermediate and Long-Term Care Facilities for Patients With Acquired Immune Deficiency Syndrome (AIDS)

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of limited competition for grant funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that $334,692 is available for new project grants to renovate buildings or to buy equipment to prevent the spread of the tuberculosis bacterium among patients with AIDS or other Human Immunodeficiency Virus (HIV) related conditions. Funds were appropriated by Public Law 101–517 under the provisions of Section 1610(b) of the Public Health Service Act. Awards are expected to average $100,000 each.

These awards will be limited to previous recipients of project grants for renovation or construction of non-acute care intermediate and long-term care facilities for patients with Acquired Immune Deficiency Syndrome under section 1610(b). Awards will be further limited to projects which will be located in hospital buildings in cities having a population over 100,000 that have a 1991 tuberculosis rate higher than 30 cases per 100,000 population, as reported by the Centers for Disease Control and Prevention (CDC). The HRSA will contact each eligible applicant by mail. The proposed renovations and/or equipment must be in conformance with the procedures recommended by the CDC in the Morbidity and Mortality Weekly Reports of December 7, 1990 and June 19, 1992.

Competition is limited for the following reasons:

(1) There is a health priority for tuberculosis prevention because persons with AIDS/HIV are especially susceptible to aerosol transmitted tuberculosis bacterium. The multi-drug resistant variety of tuberculosis usually results in death to AIDS patients within a few months.

(2) There would be a greater benefit in preventing the spread of tuberculosis in high occupant facilities such as hospital buildings in high incidence areas.

FOR FURTHER INFORMATION CONTACT: Additional information relating to technical and program issues may be obtained from Mr. Paul Murphy, Chief, Training Facilities Grants Branch, Division of Facilities Assistance and Recovery, Bureau of Health Resources Development, Parklawn Building, room 11A–10, 5600 Fishers Lane, Rockville, Maryland 20857, 301 443–0272. Information regarding business, administrative or fiscal issues related to the awarding of grants under this Notice may be requested from the Grants Management Officer, Ms. Glenna Wilcom, Parklawn Building, room 13A–38, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2280.

The OMB Catalog of Federal Domestic Assistance number for section 1610(b) is 93.887.

Dated: May 5, 1993.

Robert Harmon,

Administrator.

[FR Doc. 93–15235 Filed 6–28–93; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Environmental Policy Act: Implementing Procedures (516 DM 6, Appendix 6)

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Final notice of revisions to the DOI Manual 516 DM 6, Appendix 6, managing the National Environmental Policy Act (NEPA) process for the U.S. Bureau of Mines.

SUMMARY: This notice announces final revisions of the Departmental Manual 516 DM 6, Appendix 6 for implementing National Environmental Policy Act (NEPA) procedures within the U.S. Bureau of Mines. These revisions primarily reflect changes in organization and responsibilities. The Department of the Interior (DOI) issued a notice of proposed revisions for implementing NEPA procedures within the Bureau of Mines in the **Federal Register** on January 29, 1992 (57 FR 3436). DOI received only one comment involving a technical correction to the proposed revisions. The final revisions include the suggested technical correction.

EFFECTIVE DATE: July 29, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Jonathan P. Deason, address above, telephone (202) 208–3891. For U.S. Bureau of Mines, contact Mr. William L. Miller, Division of Policy Analysis, telephone (202) 501–9729.

SUPPLEMENTARY INFORMATION: The revised appendix to the Departmental Manual (516 DM 6, Appendix 6) provides specific NEPA compliance instructions to the U.S. Bureau of Mines. In particular, it updates information about the Bureau's organizational responsibilities for NEPA compliance, provides information on preparing an Environmental Assessment and makes minor technical changes in categorical exclusions for the NEPA process.

The Appendix must be considered in conjunction with the Department's procedures (516 DM 1–6) and the Council on Environmental Quality's regulations implementing the procedural provisions of NEPA (40 CFR parts 1500–1508).

Outline

Chapter 6 (516 DM 6) Managing the NEPA Process Appendix 6—U.S. Bureau of Mines
6.1 NEPA Responsibility
6.2 Guidance to Applicants
6.3 Major Actions Normally Requiring an EIS
6.4 Preparation of an Environmental Assessment
6.5 Categorical Exclusions

Dated: June 22, 1993.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

516 DM 6, Appendix 6

6.1 NEPA Responsibility

A. The *Director* is responsible for the compliance of all U.S. Bureau of Mines activities with NEPA.

B. *Chief, Office of Regulatory Projects Coordination* (ORPC), is responsible to the Director for overseeing Bureau compliance with the requirements of NEPA. The Chief, ORPC, reviews proposed legislation and Bureau programs for NEPA-related implications.

C. *Associate Director—Research* is responsible for the formulation, planning, management, effective performance, and evaluation of research programs under his/her purview. The Associate Director ensures that environmental concerns are identified early in the planning stages for all proposed research projects, facilities, and related activities.

D. *Chiefs, Research Divisions,* are responsible to the Associate Director—Research for integrating the NEPA process into all research programs.

E. *Associate Director—Information and Analysis* is responsible for the

conduct of engineering investigations and evaluations, and economic investigations relative to the development, utilization, and conservation of mineral resources, assessments of mineral potential on public lands, and the conduct of State mineral activities. The Associate Director is responsible for the overall coordination of the Bureau's NEPA activities and providing guidance and information on NEPA matters pertaining to the Bureau's programs. Information about U.S. Bureau of Mines NEPA documents or the NEPA process can be obtained by contacting the Division of Resource Evaluation.

F. *Chief, Division of Resource Evaluation* (DRE), is responsible to the Associate Director—Information and Analysis for ensuring that potential environmental impacts on domestic mineral resources are adequately reviewed and assessed. The Chief, DRE, coordinates the internal environmental review process.

6.2 Guidance to Applicants

The U.S. Bureau of Mines is not involved in the application process.

6.3 Major Actions Normally Requiring an Environmental Impact Statement

A. Approval of construction of a major new research center or test facility normally will require the preparation of an Environmental Impact Statement (EIS).

B. The preparation of an EIS should adhere to the relevant sections of the Council on Environmental Quality (CEQ) regulations, 40 CFR part 1502, and the Interior Department's (DOI) Manual Part 516 (DM4).

6.4 Preparation of an Environmental Assessment

A. An Environmental Assessment (EA) will be prepared and processed in accordance with CEQ regulations, 40 CFR 1508.9, and 1508.13, and the DOI Manual, Part 516 (DM 3), to determine whether to prepare an EIS or a finding of no significant impact.

B. The content of the EAs should be consistent with the requirements of 6.4 A. above, and should address the description of the proposed action, need for the proposed action, alternatives considered, environmental impacts of the proposed action and its alternatives, and consultation with others including the public.

6.5 Categorical Exclusions

Categorical exclusions should be guided by the appropriate sections of the CEQ regulations, 40 CFR 1507.3 and 1508.4 and the DOI Manual, Part 516 (DM2, Appendix 1). In addition to the actions listed in the Departmental categorical exclusions (Appendix 1 of 516 DM2) many of which the Bureau also performs, the following U.S. Bureau of Mines actions are designated categorical exclusions unless the action qualifies as an exception under Appendix 2 of 516 DM2.

A. Data collection activities and field surveys. Included are reconnaissance-type investigations, detailed field investigations, research studies to develop new information, and well logging.

B. Research activities concerning the development and evaluation of metallurgical or environmental technologies, and the demonstration of associated methodologies and related equipment.

C. Research activities concerning health, safety, and mining technology.

D. Research activities that take place in a laboratory where the scale of the activity does not exceed the design capacity of the laboratory and where the methods for proper control and disposal of laboratory wastes have been implemented to prevent any accidental release to the environment and its subsequent degradation.

E. Field demonstrations and pilot plant operations, when undertaken only in conjunction with existing operations and facilities of a cooperator or contractor, when the scale of the proposed demonstrations and pilot-plant tests does not exceed the capacity of the installation to control and contain any accidental release or other impact and such demonstrations or operations are in compliance with all existing Federal, State, and local standards and regulations to protect human health and the environment.

[FR Doc. 93–15172 Filed 6–28–93; 8:45 am]
BILLING CODE 4310-10-M

Bureau of Land Management—Alaska

[AK–964–4230–05–P]

Notice for Publication F14877A; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a) (1988), will be issued to NANA Regional Corporation, Inc., successor in interest to Koovukmeut Incorporated for approximately 320 acres. The lands involved are in the vicinity of Kobuk, Alaska, within T. 18 N., R. 9 E., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 29, 1993 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

G. Steve Flippen,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 9315218 Filed 6–28–93; 8:45 am]
BILLING CODE 4310-JA-P

[UT–050–4210–05 U–63984]

Proposed Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The proposed planning amendment for the Sevier River Resource Area's Mountain Valley Management Framework Plan (MFP) and associated Environmental Assessment (EA) to allow for disposal of approximately 461.94 acres to Sevier County is available.

The lands are described as follows:

Salt Lake Meridian

T. 23 S., R. 1 W.
Section 3, Lots 3 through 6, Lot 12, and W½SW¼
Section 4, Lots 1, 9, 10, and E½SE¼
Section 9, NE¼NE¼
Section 10, W½NW¼NW¼
Containing 461.94 acres in Sevier County.

This plan amendment would allow the Sevier River Resource Area to dispose of the identified public land to Sevier County pursuant to the Recreation and Public Purposes (R&PP) Act, as amended, for the purpose of developing and constructing a Regional sanitary landfill.

DATES: The protest period for this plan amendment will commence with the

date of publication of this notice. Protests must be submitted on or before July 29, 1993.

FOR FURTHER INFORMATION CONTACT: J. Roderick Lister, Sevier River Resource Area Manager, 150 East 900 North, Richfield, Utah 84701 (801) 896–8221.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(e) of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610. The planning amendment is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with the provisions of 43 CFR 1610.5–2. Protests must contain at a minimum the following information:

- The name, mailing address, telephone number, and interest of the person filing the protest.
- A statement of the issue or issues being protested.
- A statement of the part or parts being protested and a citing of pages, paragraphs, maps, etc., of the proposed plan amendment, where practical.
- A copy of all documents addressing the issue(s) submitted by the protester during the planning process or a reference to the date when the protester discussed the issue(s) for the record.
- A concise statement as to why the protester believes the BLM State Director's decision is incorrect.

Protests must be received by the Director of the Bureau of Land Management (760), MS 406 LS, 1849 C Street NW., Washington, DC 20240, within 30 days after the publication of this Notice of Availability for the planning amendment.

James M. Parker,

State Director.

[FR Doc. 93–15271 Filed 6–28–93; 8:45 am]

BILLING CODE 4310-DQ-M

National Park Service

Intent To Repatriate Cultural Items in the Possession of the Heard Museum, Phoenix, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act of 1990 of the intent to repatriate a cultural item in the possession of The Heard Museum that meets the definitions of "sacred object" under section 2 of the act.

The item consists of a wooden hoop 28.5 cm in diameter wrapped with green painted hide to which are attached eagle feathers, a long strip of animal fur, glass beads, and the carcasses of birds of prey, one of which appears to be a bald eagle. The birds' beaks have been painted yellow and red.

The object was donated to The Heard Museum in 1978 as part of the donation of the Fred Harvey Fine Arts Collection, of which it had been a part. No information has been obtained relative to the acquisition of the item by the Fred Harvey Fine Arts Collection. The original museum records describe the object as "227BE, Scalp Ring, Crow."

In January, 1993 the Museum supplied an inventory of its holdings identified as "Crow" to authorized representatives of the Crow Nation who subsequently visited the Museum and examined the collection. At that time, this item was identified as likely to be a sacred object. The ring was identified as having been once owned by Chief Two Leggings of the River Crows, and used in a ceremony encompassing a full band. Subsequently, the Crow Nation has requested repatriation of the item from The Heard Museum in a letter dated April 22, 1993. The Museum's Collections Committee has reviewed the request, and will recommend that the Board of Trustees respond positively to the request. Authorities of the United States Fish and Wildlife Service have been contacted regarding applicability of Federal endangered species statutes to this transfer.

Representatives of any other tribe that believes itself to be culturally affiliated with this item should contact Martin Sullivan, Director, The Heard Museum, 22 E. Monte Vista, Phoenix, AZ 85004, telephone: (602) 252-8840 before July 29, 1993. Repatriation of the item to the Crow Nation may begin after that date if no additional claimants come forward.

Dated: June 16, 1993.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[FR Doc. 93–15223 Filed 6–28–93; 8:45 am]

BILLING CODE 4310-70-F

Intent To Repatriate Cultural Items in the Possession of the Portland Art Museum

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act of 1990 of the intent to repatriate cultural items in the possession of the Portland Art Museum that meet the definitions of "sacred object" and "object of cultural patrimony" under section 2 of the act.

The cultural items consist of one large and three smaller carved wooden objects and a sea shell necklace. The large wooden object measures 29 3/8" long by 2 3/4" diameter. The three smaller carved wooden objects range from 5–7" long. All four wooden objects are carved with various designs. The shell necklace measures approximately 6" diameter and consists of ten sea shells strung on beige colored string. These cultural items were initially loaned to the Portland Art Museum in 1987 and were subsequently donated to the Museum in 1992. The original museum listing describes the objects as "Figure, Zuni, 1850."

The form of the cultural items and their apparent source lead the Museum to believe they are of Zuni origin, and most likely represent a Zuni War God and related cultural patrimony. Copies of museum records and photographs of the objects have been provided to the Head Councilman, the Tribal Council, and the Elder Bow Priest of the Pueblo of Zuni. Authorized representatives of the Pueblo of Zuni have viewed photographs of the objects and concur with the identification of the objects as a Zuni War God and related cultural patrimony. The Pueblo of Zuni has requested repatriation of the objects from the Portland Art Museum in a letter dated September 29, 1992. The Portland Art Museum has no objection.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these cultural items should contact Paul Faulstich, Curator of Native American Art, Portland Art Museum, 1219 SW. Park Avenue, Portland Oregon 97205, telephone: (503) 226–2811 before July 29, 1993. Repatriation of the cultural items to the Pueblo of Zuni may begin after that date if no additional claimants come forward.

Dated: June 8, 1993.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[FR Doc. 93–15222 Filed 6–28–93; 8:45 am]

BILLING CODE 4310-70-F

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of loans to the Government of Jordan ("Borrower") as part of A.I.D.'s

development assistance program. The proceeds of these loans will be used to finance infrastructure and shelter projects for low-income families in Jordan. At this time, the Government of Jordan has authorized A.I.D. to request proposals from eligible lenders for a loan under this program of $15 Million U.S. Dollars (U.S. $15,000,000). The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Jordan

Project: 278–HG–004—$15,000,000
Loan Guaranty Authorization No: 278–HG–004 A01
Attention: Mr. Sidqi Abdel Hadi, Director of Loan Financing Department, P.O. Box 85, Amman, Jordan
Telex No.: 23634 FINANCE JO
Telefax No.: 962–6–643–121
Telephone No.: 962–6–636–321

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to the Borrower's representative by Tuesday, July 13, 1993, 12 noon Eastern Standard Time. Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. Michael Foster, c/o American Embassy, Unit 70206, APO AE 09842–0206, Amman, Jordan, (Street address: 111–81–5573 Zaharan Street, Jebel Amman, USAID/Amman, Amman, Jordan)
Telefax No.: 962–6–820–143 or 820–163 (preferred communication)
Telephone No.: 962–6–820–101, EXT. 2621
and
Mr. David Painter, Director, RHUDO/Near East, USAID/Tunis, Department of State, Washington, DC 20521–6360, (Street address: 28, Rue Suffex, Notre Dame, Tunis, Tunisia)
Telefax No.: 216–1–782–464 (preferred communication)
Telefax No.: 216–1–789–719
Telephone No.: 216–1–784–300
Mr. David Grossman/Mr. Peter Pirnie, Agency for International Development, Office of Housing and Urban Programs, PRE/H, Room 401, SA–2, Washington, DC 20523–0214
Telex No.: 892703 AID WSA
Telefax No.: 202/663–2552 (preferred communication)
Telephone No.: 202/663–2548/2530

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $15 million.

(2) *Term:* 30 years.

(3) *Grace Period:* Ten years grace on repayment of principal. During grace period, semi-annual payments of interest only. Semi-annual level payments of principal and interest over the remaining 20-year life of the loan.

(4) *Interest Rate:* Fixed rates are requested.

(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the 7⅛% U.S. Treasury Bond due February 15, 2023. Such rate is to be set at the time of acceptance.

(5) *Prepayment:*

(a) Offers should include options for prepayment and mention prepayment premiums, if any.

(b) Federal statutes governing the activities of A.I.D. require that the Borrower use an amount in local currency equivalent to the proceeds of A.I.D.-guaranteed loans to provide affordable shelter and related infrastructure and services to below median-income families. In the extraordinary event that the Borrower materially breaches its obligation to comply with this requirement, A.I.D. reserves the right, among its other rights and remedies, to accelerate the loan.

(6) *Fees:* Offers should specify the placement fees and other expenses, including A.I.D. fees, Paying and Transfer Agent fees, out of pocket expenses, etc. Lenders are requested to include all legal fees in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan.

(7) *Closing Date:* Estimated 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Mr. Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 401, SA–2, Washington, D.C. 20523–0214; Telephone: 202/663–2530.

Dated: June 23, 1993.

Michael G. Kitay,

Assistant General Counsel, Bureau for Private Enterprise, Agency for International Development.

[FR Doc. 93–15182 Filed 6–28–93; 8:45 am]
BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32313]

St. Louis Southwestern Railway Co.; Trackage Rights Exemption; Terminal Railroad Association of St. Louis

Terminal Railroad Association of St. Louis (TRRA) has agreed to grant overhead trackage rights to St. Louis Southwestern Railway Company (Cotton Belt) over 9.34 miles of rail line between Gratiot Tower in St. Louis, MO, and Willows Tower in East St. Louis, IL. The trackage rights will allow Cotton Belt to connect segments of its existing operations, and thereby improve transit times and equipment utilization. The trackage rights became effective on or after June 17, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void in *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, Southern Pacific Bldg., One Market Plaza, room 846, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 21, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–15239 Filed 6–28–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 93–37; Exemption Application No. D–9265, et al.]

Grant of Individual Exemptions; Bentley Nevada Corp. Profit Sharing 401(k) Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Bentley Nevada Corporation Profit Sharing 401(k) Plan (the Plan), Located in Minden, Nevada

[Prohibited Transaction Exemption 93–37; Exemption Application No. D–9265]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of certain parcels of real property (the Property) to Mr. Donald E. Bentley, President and Chief Executive Officer and sole owner of the sponsoring employer, a party in interest with respect to the Plan, provided that (a) the Plan receives not less than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale, and (b) the Plan will not incur any expenses incident to the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 27, 1993, at 58 FR 25670.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Citizens First National Bank of New Jersey, Employee Stock Ownership Plan (the Plan), Located in Glen Rock, New Jersey

[Prohibited Transaction Exemption 93–38; Exemption Application No. D–8271]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (a) the past acquisition by the Plan of certain transferable subscription rights (the Rights) for the purchase of common stock of Citizens First Bancorp, Inc. (CFB), a party in interest with respect to the Plan, which were issued to shareholders of record, as of August 26, 1992, pursuant to a stock rights offering (the Rights Offering), and (b) the holding and exercise of the Rights by the Plan during the subscription period; provided that (1) the acquisition of the Rights occurred in connection with the Rights Offering made available to all shareholders of CFB, (2) all holders of the common stock of CFB were treated in the same manner with respect to the Rights Offering, including the Plan, and (3) all decisions regarding the acquisition, holding, and disposition of the Rights by the Plan were exercised by a qualified, independent fiduciary of the Plan, which made all determinations as to whether and how the Plan should exercise or sell the Rights received by the Plan through the Rights Offering.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 27, 1993, at 58 FR 25669.

EFFECTIVE DATE: This exemption is effective as of August 26, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Johnson Paints, Inc. Employee Profit Sharing Plan (the Plan) Located in Fort Myers, Florida

[Prohibited Transaction Exemption 93–39; Exemption Application No. D–9275]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of a certain parcel of real property (the Property) from the Plan to Johnson Paints, Inc. (the Employer), the sponsor of the Plan, and the assumption by the Employer of two existing mortgages on the Property, provided that the following conditions are met:

1. The fair market value of the Property is established by appraisers independent of the Employer;

2. The Employer pays cash to the Plan in connection with the sale and assumes the existing mortgages on the Property;

3. Such cash payment amounts to no less than the greater of the current fair market value of the Property (less the remaining balance on the mortgages) or the total cash outlays made by the Plan in regard to the Property as of the date of sale; and

4. The Plan pays no fees or expenses in relation to the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 9, 1993, at 58 FR 18424.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Aldrich, Eastman, & Waltch, L.P. (AEW, L.P.) and Aldrich, Eastman & Waltch, Inc. (AEW, Inc.; collectively, AEW) Located in Boston, Massachusetts

[Prohibited Transaction Exemption 93–40; Exemption Application No. D–8324]

Exemption

Part I—Exemption for Payment of Certain Fees to AEW

The restrictions of section 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of certain initial investment fees (the Investment Fee) and disposition fees (the Disposition Fee) to AEW by employee benefit plans for which AEW provides investment management services (the Client Plans), pursuant to an investment management agreement (the Agreement) entered into between AEW and the Client Plans either individually, through the establishment of a single client separate account (Single Client Account), or collectively as participants in a multiple client commingled account (Multiple Client Account), provided that the conditions set forth below in Part III are satisfied. (Single Client Accounts and Multiple Client Accounts are collectively referred to herein as Accounts.)

Part II—Exemption for Investments in a Multiple Client Account

The restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any investment by a Client Plan in a Multiple Client Account managed by AEW, provided that the conditions set forth below in Part III are satisfied.

Part III—General Conditions

(a) The investment of plan assets in a Single or Multiple Client Account, including the terms and payment of any Investment Fee and Disposition Fee, shall be approved in writing by a fiduciary of a Client Plan which is independent of AEW and its affiliates and, in the case of a Multiple Client Account for which ultimate investment discretion is exercised by a bank trustee, a fiduciary which is independent of the bank trustee and AEW and its affiliates (the Independent Fiduciary). Notwithstanding the foregoing, AEW may authorize the transfer of cash from a Single Client Account to a Multiple Client Account provided that: (1) The Multiple Client Account has similar investment objectives and the identical fee structure as the Single Client Account; (2) the Agreement governing the Single Client Account authorizes AEW to invest in a Multiple Client Account; (3) AEW receives no additional fees from the Single Client Account for cash invested in the Multiple Client Account and no additional Investment Fee is paid with respect to cash transferred to the Multiple Client Account; (4) a binding commitment to make the transfer to the Multiple Client Account is made by AEW within six months of the Independent Fiduciary's decision to allocate assets to the Single Client Account or, in the event AEW's binding commitment to make the transfer occurs more than six months after such Fiduciary's decision, AEW obtains an additional authorization from the Independent Fiduciary, and (5) each transfer of assets from the Single Client Account to the Multiple Client Account occurs within sixty days of the actual transfer of such assets to the Single Client Account.

(b) The terms of any investment in an Account and of any Investment Fee or Disposition Fee shall be at least as favorable to the Client Plans as those obtainable in arm's-length transactions between unrelated parties.

(c) At the time any Account is established and at the time of any subsequent investment of assets (including the reinvestment of assets) in such Account:

(1) Each Client Plan shall have total net assets with a value in excess of $50 million; and

(2) No Client Plan shall invest, in the aggregate, more than five percent (5%) of its total assets in any Account or more than ten percent (10%) of its total assets in all Accounts established by AEW.

(d) Prior to making an investment in any Account, the Independent Fiduciary of each Client Plan investing in an Account shall receive offering materials from AEW which disclose all material facts concerning the purpose, structure and operation of the Account, including any fee arrangements.

(e) With respect to its ongoing participation in an Account, each Client Plan shall receive the following written information from AEW:

(1) Audited financial statements of the Account prepared by independent public accountants selected by AEW no later than 90 days after the end of the fiscal year of the Account;

(2) Quarterly and annual reports prepared by AEW relating to the overall financial position and operating results of the Account and, in the case of a Multiple Client Account, the value of each Client Plan's interest in the Account. Each such report shall include a statement regarding the amount of fees paid to AEW during the period covered by such report;

(3) Annual appraisals indicating the fair market value of the Account's assets as established by an MAI licensed real estate appraiser independent of AEW and its affiliates which has been approved by the Client Plan prior to investing in the Account, provided that if a new appraiser for a property is chosen by AEW, the appraiser shall be approved by the Independent Fiduciary of the Client Plan or the responsible independent fiduciaries of Client Plans and other authorized persons acting for investors in a Multiple Client Account (the Responsible Independent Fiduciaries, as defined in Part IV(e) below), prior to any valuation of such property; and

(4) In the case of any Multiple Client Account, a list of all other investors in the Account.

(f) The total fees paid to AEW shall constitute no more than reasonable compensation.

(g) The Investment Fee shall be equal to a specified percentage of the net value of the Client Plan assets allocated to the Account which shall be payable either:

(1) At the time assets are deposited (or deemed deposited in the case of reinvestment of assets) in the Account; or

(2) In periodic installments, the amount (as a percentage of the aggregate Investment Fee) and timing of which have been specified in advance based on the percentage of the Client Plan's assets invested in real property as of the

payment date; provided that (i) the installment period is no less than three months, and (ii) if the percentage of the Client Plan assets which have actually been invested by a payment date is less than the percentage required for the aggregate Investment Fee to be paid in full through that date (both determined on a cumulative basis), the Investment Fee paid on such date shall be reduced by the amount necessary to cause the percentage of the aggregate Investment Fee paid to equal only the percentage of the Client Plan assets actually invested by that date. The unpaid portion of such Investment Fee shall be deferred to and payable on a cumulative basis on the next scheduled payment date (subject to the percentage limitation described in the preceding sentence).

(h) The Disposition Fee shall be payable after the Client Plan has received distributions from the Account in excess of an amount equal to 100% of its invested capital plus a pre-specified annual compounded cumulative rate of return (the Threshold Amount), except that in the case of AEW's removal or resignation, AEW shall be entitled to receive a Disposition Fee payable either at the time of removal or, in the event of AEW's resignation, upon sale of the assets to which the fee is allocable or upon termination of the Account as the case may be, subject to the requirements of paragraph (k) below, as determined by a deemed distribution of the assets of the Account based on an assumed sale of such assets at their fair market value (in accordance with independent appraisals), only to the extent that the Client Plan would receive distributions from the Account in excess of an amount equal to the Threshold Amount at the time of AEW's removal or resignation. Both the Threshold Amount and the amount of the Disposition Fee, expressed as a percentage of the amount distributed (or deemed distributed) from the Account in excess of the Threshold Amount, shall be established by the Agreement and agreed to by the Independent Fiduciary of the Client Plan.

(i) The Threshold Amount for any Disposition Fee shall include at least a minimum rate of return to the Client Plan, as defined below in Part IV(f).

(j) For any sale of property in an Account which shall give rise to the payment of a Disposition Fee to AEW prior to the termination of the Account, the sales price of the property shall be at least equal to a target amount (the Target Amount), as defined in Part IV(g), in order for AEW to sell the property and receive its Disposition Fee. If the proposed sales price of the property is less than the Target Amount, the proposed sale shall be disclosed to and approved by the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account, in which event AEW shall be entitled to sell the property and receive its Disposition Fee. If the proposed sales price is less than the Target Amount and the Independent Fiduciary's or Responsible Independent Fiduciaries' approval is not obtained, AEW shall still have the authority to sell the property, if the Agreement provides AEW with complete investment discretion for the Account, provided that the Disposition Fee which would have been payable to AEW is paid only at the termination of the Account.

(k) In the event AEW resigns as investment manager for an Account, the Disposition Fee shall be calculated at the time of resignation as described above in paragraph (h) and allocated to each property based upon the relationship that the appraised value of such property bears to the total appraised value of the Account. Each amount arrived at through this calculation shall be multiplied by a fraction, the numerator of which shall be the actual sales price received by the Account on disposition of the property (or in the case of a property which has not been sold prior to the termination of the Account, the appraised value of the property as of the termination date) and the denominator of which shall be the appraised value of the property which was used in connection with determining the Disposition Fee at the time of resignation, provided that this fraction shall never exceed 1.0. The resulting amount for each property shall be the Disposition Fee payable to AEW upon sale of such property or termination of the Account, as the case may be.

(l) AEW or its affiliates shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (m) of this Part III to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of AEW or its affiliates, the records are lost or destroyed prior to the end of the six year period; and (2) no party in interest, other than AEW, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (m) below.

(m)(1) Except as provided in paragraph (m)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (l) of this Part III shall be unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of a Client Plan or any duly authorized employee or representative of such fiduciary;

(iii) Any contributing employer to a Client Plan or any duly authorized employee or representative of such employer; and

(iv) Any participant or beneficiary of a Client Plan or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in paragraph (m)(1) (ii)–(iv) shall be authorized to examine the trade secrets of AEW and its affiliates or any commercial or financial information which is privileged or confidential.

Part IV—Definitions

(a) An "affiliate" of a person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "management services" means:

(1) Development of an investment strategy for the Account and identification of suitable real estate-related investments;

(2) Directing the investments of the assets of the Account, including the determination of the structure of each investment, the negotiation of its terms and conditions and the performance of all requisite due diligence;

(3) Timing and directing the disposition of any assets of the Account and directing the liquidation of the Account;

(4) Administration of the overall operation of the investments of the Account, including all applicable leasing, management, financing and capital improvement decisions;

(5) Establishing and maintaining accounting records of the Accounts and

distributing reports to Client Plans as described in Part III; and

(6) Selecting and directing all service providers of ancillary services as defined in this Part IV.

(d) The term "ancillary services" means:

(1) Legal services;

(2) Services of architects, designers, engineers, hazardous materials consultants, contractors, leasing agents, real estate brokers, and others in connection with the acquisition, construction, improvement, management and disposition of investments in real property;

(3) Insurance brokerage and consultation services;

(4) Services of independent auditors and accountants in connection with auditing the books and records of the Accounts and preparing tax returns;

(5) Appraisal and mortgage brokerage services; and

(6) Services for the development of income-producing real property.

(e) The term "Responsible Independent Fiduciaries" means with respect to a Multiple Client Account the Independent Fiduciary of each Client Plan invested in the Account and other authorized persons acting for investors in the Account which are not employee benefit plans as defined under section 3(3) of the Act (such as governmental plans, university endowment funds, etc.) that are independent of AEW and its affiliates and are persons other than the bank trustee for the Account, and that collectively hold at least 50% of the interests in the Account.

(f) The term "Threshold Amount" means with respect to any Disposition Fee an amount which equals all of a Client Plan's capital invested in an Account plus a pre-specified annual compounded cumulative rate of return that is at least a minimum rate of return determined as follows:

(1) A non-fixed rate which is at least equal to the rate of change in the consumer price index (CPI) during the period from the deposit of the Client Plan's assets into the Account until distributions of the Client Plan's assets from the Account equal or exceed the Threshold Amount; or

(2) A fixed rate which is at least equal to the rate of change in the CPI over some period of time specified in the Agreement, which shall not exceed 10 years.

(g) The term "Target Amount" means a value assigned to each property in the Account established by AEW either (1) at the time the property is acquired, by mutual agreement between AEW and the Independent Fiduciary for a Single Client Account or the Responsible Independent Fiduciaries for a Multiple Client Account, or (2) pursuant to an objective formula approved by such Fiduciaries at the time the Account is established. However, in no event will such value be less than the acquisition price of the property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on April 27, 1993 at 58 FR 25662.

EFFECTIVE DATE: The effective date of this exemption is April 27, 1993.

WRITTEN COMMENTS AND CORRECTIONS: The applicant's representative (the Applicant) submitted a letter with several comments and requests for clarification regarding the Notice.

The Applicant was concerned about the timing for the payment of a Disposition Fee in the event AEW resigns as the investment manager for an Account. Under conditions described in the Notice, if AEW resigns, payment of the entire amount of any Disposition Fee would be deferred until the termination of the Account. The Applicant states that because AEW would not have any control over the timing of a sale or other disposition of any assets remaining in the Account after its resignation nor over the timing of the termination of the Account, a more appropriate approach would be to allow AEW to receive the portion of its Disposition Fee allocable to each asset in the Account at the time that such asset is sold or, in the case of assets which have not been sold when the Account terminates, at the time the Account is terminated. The Applicant notes that the purpose of the requirement in the Notice that the Disposition Fee payable in the event of AEW's resignation not be paid at the time of resignation was to assure that AEW would not be motivated to resign in order to accelerate payment of its Disposition Fee. The Applicant maintains that this purpose is in no way undermined by changing the relevant conditions of the Notice to permit the allocable portion of the Disposition Fee to be paid as and when each of the assets in the Account is sold after AEW's resignation. The Applicant states that since AEW would have no control or influence over the timing of such sales, it is not necessary to defer the payment of such fee beyond the date of sale. Moreover, all information needed to determine the amount of the allocable portion of the Disposition Fee is known when the asset is sold since the fraction referred to in Part III(k) will be fixed at that time based upon the amount received by the Account from such a sale. Therefore, the Applicant does not believe that it is necessary to defer the payment of the entire Disposition Fee in the event of AEW's resignation until the termination of the Account. Rather, the Applicant requests that the exemption permit payment of the Disposition Fee as and when the assets are sold.

The Department agrees with the Applicant's proposed suggestion and has determined to modify the final exemption accordingly. However, the Department wishes to emphasize that the payment of any Disposition Fee to AEW, in the event of AEW's resignation or otherwise, occurs only after the Client Plan has received distributions from the Account of cash or properties which exceed the predetermined Threshold Amount. In addition, the Department notes that the fraction discussed in Part III(k), which is used to calculate the Disposition Fee after AEW's resignation, will ensure that any Disposition Fee paid to AEW reflects the actual sales price on disposition of the property or the appraised value as of the termination date.

With respect to information received by a Client Plan during its ongoing participation in an Account, the Applicant requests that the Department clarify Part III(e)(3) of the Notice to clarify that appraisers approved by the Client Plan prior to investing in the Account may be changed provided that such appraisers are approved by the Independent Fiduciary or Responsible Independent Fiduciaries. In response to such request, the Department has added the following language to the end of Part III(e)(3) of the Notice:

* * *, provided that if a new appraiser for a property is chosen by AEW, the appraiser shall be approved by the Independent Fiduciary of the Client Plan or the responsible independent fiduciaries of Client Plans and other authorized persons acting for investors in a Multiple Client Account (the Responsible Independent Fiduciaries, as defined in Part IV(e) below), prior to any valuation of such property;

This modification is consistent with the Applicant's representations regarding AEW's procedures for approval of appraisers used to value properties for purposes of determining the Management Fee. In this regard, see the sixth paragraph of Paragraph (6) of the Summary of Facts and Representations in the Notice (the Summary).

The Department has also decided to make the following additional changes to the Notice pursuant to the Applicant's request for clarifications and corrections:

(1) The heading of the Notice has been changed to include references to AEW, Inc. and AEW, L.P. in addition to the reference to AEW as including AEW, Inc. and AEW, L.P. collectively.

(2) In the third and fourth lines of Part II of the Notice, the words "* * * sanctions resulting from the application of" have been deleted and the words "* * * taxes imposed by" inserted instead. This change makes the corresponding language of Part I and Part II of the Notice consistent.

(3) In the eighth and ninth lines of Part II of the Notice the words "* * * (collectively, the Accounts)" have been deleted. Instead, the following additional sentence has been inserted at the end of Part I of the Notice: "* * * (Single Client Accounts and Multiple Client Accounts are collectively referred to herein as Accounts.)

(4) The second sentence of paragraph (j) of Part III of the Notice has been revised to make the sentence more consistent with language used elsewhere in the Notice. In this regard, the Department has made the following changes: (i) The words "agreed to" in the 13th line of such paragraph have been deleted and the word "approved" has been added; (ii) the complete reference to the definition of the term "Responsible Independent Fiduciaries" has been deleted because such term has now been introduced earlier in Part III(e)(3); and (iii) the phrase "* * * in which event AEW shall be entitled to sell the property and receive its Disposition Fee * * *" has been added to the end of the sentence.

(5) In the 13th line of paragraph (e) of Part IV of the Notice, the word "and" has been inserted before the word "that".

(6) In the 13th line of paragraph (1) of the Summary, the reference to "AEW" should be to "AEW, Inc.", which is the general partner of AEW Holdings, L.P.

(7) In line three of paragraph (2) of the Summary, the word "or" should be changed to "and/or".

(8) In the last sentence of the second paragraph of paragraph (3) of the Summary, the reference to AEW should be changed to "AEW or an affiliate of AEW".

(9) In the seventh line of the third paragraph of paragraph (8) of the Summary, the word "days" should be inserted immediately after "(60)".

(10) In the third line of the fourth paragraph of paragraph (8) of the Summary, the word "is" should be changed to "if".

(11) The first sentence of the fifth paragraph of paragraph (8) of the Summary should be changed to read as follows:

"* * * Upon AEW's resignation as investment manager, AEW will not receive a Disposition Fee *until the assets to which such fee is allocable are sold or* the Account is terminated, *as the case may be.*" (emphasis added)

(12) The third sentence of the sixth paragraph of paragraph (8) of the Summary should be changed to read as follows:

"* * * The resulting amount for each property will be the Disposition Fee payable to AEW upon *sale of such property or* termination of the Account, *as the case may be.*" (emphasis added)

Finally, for purposes of clarification regarding the timing for transfers of cash by AEW from a Single Client Account to a Multiple Client Account, the Department has amended Clause 4 of paragraph (a) of Part III and added a new Clause 5 which requires that each transfer of assets from the Single Client Account to the Multiple Client Account occurs within sixty days of the actual transfer of such assets to the Single Client Account.

Accordingly, after consideration of the entire record, the Department has determined to grant the exemption as modified and corrected.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams or Ms. Lyssa Hall of the Department, telephone (202) 219–8883 or 219–8971. (These are not toll-free numbers.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 24th day of June, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–15300 Filed 6–28–93; 8:45 am]

BILLING CODE 4510-29-P

[Application No. D–8273, et al.]

Proposed Exemptions; John William Boor, M.D. Profit Sharing Plan and Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of

Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

John William Boor, M.D. Profit Sharing Plan and Trust Located in West Chester, PA

[Application No. D–9273]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a)(1)(A)–(D) and (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code[1] shall not apply to the proposed sale by the Plan of two undeveloped parcels of real property (the Parcels) to John W. Boor, M.D. and his wife, Barbara Boor, (Dr. and Mrs. Boor), parties in interest with respect to the Plan; provided that the following conditions are met: (a) The sales of the Parcels will be one-time transactions for cash; (b) the fair market value of the Parcels will be determined by an independent qualified appraiser on the date of the sales; (c) the purchase price paid by Dr. and Mrs. Boor will be the greater of the cost to the Plan to acquire and hold the Parcels or the aggregate fair market value of the Parcels on the date of the sales; (d) the terms of the transactions are no less favorable to the Plan than those obtainable in similar transactions negotiated at arm's length with unrelated third parties; (e) the Plan will pay no costs, or commissions associated with the transactions, nor any other expenses associated with the application for exemption; and (f) the account of Jane Forsythe (Ms. Forsythe) in the Plan will receive compensation of an amount reflecting a ten percent (10%) rate of return, annualized from September 1, 1992, through the date the payment is made.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan which has three participants and approximately $750,335 in assets, as of August 31, 1991. The Plan was formed on November 1, 1991, when the John William Boor M.D. Money Purchase Pension Plan and Trust (the M/P Plan) merged with the profit sharing predecessor to the Plan. It is represented that at the time of the merger, the M/P had approximately $311,194 in assets and the predecessor to the Plan had assets totaling approximately $439,140. Dr. Boor is the sole shareholder of John William Boor, M.D., the employer (the Employer) and sponsor of the Plan. Dr. Boor also serves as the trustee of the Plan and has the largest account balance of the three participants in the Plan. The other two participants are Mrs. Boor and Ms. Forsythe. Ms. Forsythe became a participant in the Plan on September 1, 1991. The first contribution by the Employer was made on her behalf at the end of that Plan year on August 31, 1992.

2. The Plan purchased one of the Parcels (Parcel A) from unrelated third parties, Carol E. Roland and Debra F. Long, executrices of the estate of Dean S. Roland on December 13, 1988. The Plan purchased the other of the Parcels (Parcel B) from unrelated third parties, David B. Fitzgerald III and Developers 1000 Inc, a Pennsylvania Corporation, on September 7, 1990.

Parcel A fronts the east side of School House Road in Little Britain Township in Lancaster County, Pennsylvania and consists of approximately 45 acres of a larger tract of 61.530 acres the balance of which (approximately 16.5 acres) is owned by Dr. and Mrs. Boor. The acreage of Parcel A is described as cultivated land, brushy woodland, and idle land. Parcel A also contains a small stream and approximately 6.7 acres of hardwoods.

Parcel B fronts the west side of Sleepy Hollow Road in Little Britain Township in Lancaster County, Pennsylvania and consists of approximately 29.7 acres. The acreage on Parcel B is described as cultivated land, brushy woodland, and bottomland. It is represented that a portion of Parcel B contains the flood plain of a stream and is subject to periodic flooding.

The area surrounding both Parcels is rural in character and except for roadside subdivisions is mainly occupied by Amish tobacco and dairy farmers. Both Parcels are zoned for agricultural-residential development.

The Plan paid, including settlement charges, $301,718 and $163,891, respectively, for Parcel A and Parcel B. The aggregate purchase price for the Parcels was approximately $465,609. Since the Plan acquired the Parcels, it has expended a total of $2,750.78 in real estate taxes, maintenance, and insurance to hold the Parcels. Accordingly, it is represented that as of March 3, 1993, the Plan had expended a total of $468,360 to acquire and hold the Parcels.

It is represented that since they were acquired both Parcels have been leased to unrelated third parties for agricultural purposes. In this regard, Parcel A has generated $3,000 per annum rental from 1989–91, and Parcel B has generated $385 per annum rental in 1991 and 1992.

It is represented that in 1988 when acquired the value of Parcel A represented approximately 51.4% of the assets of the Plan, and that subsequently in 1990 when it was acquired, the value of Parcel B constituted an additional 21.4% of the assets of the Plan. As of 1990, approximately 72.8% of the assets of the Plan were involved in Parcel A and Parcel B. As of the date the application was filed, approximately

[1] For purposes of this exemption, references to specific provisions of title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

57% of the assets of the Plan is attributable to the value of the Parcels.[2]

3. It is represented that the Plan acquired the Parcels to hold for appreciation. In this regard, neither Dr. Boor and Mrs. Boor nor any other party in interest has used either of the Parcels. However, Dr. Boor, individually and on behalf of the Plan, has submitted to the Little Britain Township a proposal seeking preliminary approval to subdivide into residential lots the Parcels owned by the Plan and the real property adjacent to Parcel A owned by Dr. Boor. At present, it is represented that there are no prospective purchasers, as preliminary approval for the subdivision has not yet been obtained and an estimated minimum of $350,000 to $400,000 will need to be expended on percolation tests, septic systems, street widening, paving and other improvements before lots are offered for sale. It is represented that subdivision expenses to date in the range of $35,000 have been allocated proportionately between the Parcels owned by the Plan and the property owned by Dr. and Mrs. Boor. In this regard, it is represented that the account in the Plan of one of the participants, Ms. Forsythe, was not reduced by a pro-rata portion of the expenses incurred by the Plan in connection with the subdivision, because all of those expenses were incurred prior to the first allocation to her account by the Employer, as of August 31, 1992.

In addition to the expenses connected with the subdivision of the Parcels, it is represented that profit to the Plan from the sales of subdivided lots on the Parcels would be subject to unrelated business income tax. In order to avoid such expenses and tax and to permit tax free sale of the Parcels, Dr. and Mrs. Boor propose to purchase the Parcels for a purchase price that is the greater of the cost to the Plan to acquire and hold the Parcels or the aggregate fair market value, as determined by an independent qualified appraiser, as of the date of the sales.[3]

It is represented that these sales are feasible in that they will be one-time transactions for cash. Further, it is represented that the transactions are in the interest of the participants of the Plan, as their account balances will reflect the full value of the Parcels being conveyed to Dr. and Mrs. Boor unreduced by federal and/or state income taxes. In order to compensate for the fact that the Plan was heavily invested in real property that has depreciated in value, the applicant proposes to credit the profit sharing account of Ms. Forsythe with an amount reflecting a ten percent (10%) rate of return, annualized from September 1, 1992, the date of the first Employer contribution to Ms. Forsythe's profit sharing account in the Plan, through the date on which the payment is made. It is represented that a 10% rate of return is appropriate in this regard as it was based on the rate of return for other investments, including the Dow Jones Average gain for 1992 (8.5%), the longest term United States Treasury Bond yield for the relevant period (7.59%), and the return on a broad mix of common stocks, bonds, mortgages, U.S. Treasury Notes, and mutual funds obtained by another profit sharing plan in 1992 (9.2%). It is represented that the Plan will incur no expenses as the result of the sales, as Dr. and Mrs. Boor will pay all costs and commissions associated with the transactions and any other charges associated with the application for exemption. Finally, it is represented that the transactions are protective of the Plan in that the price of the Parcels will be the greater of the cost to the Plan to acquire and hold the Parcels or the aggregate fair market value of the Parcels on the date of the sales, as determined by an independent qualified appraiser.

4. James D. Sheetz (Mr. Sheetz) of James D. Sheetz Real Estate Consultant in Oxford, Pennsylvania, appraised both of the Parcels as of May 1992, at a total value of $430,000. In the opinion of Mr. Sheetz, the fair market value of Parcel A and Parcel B was, respectively, $250,000, as of May 18, 1992, and $180,000, as of May 15, 1992. In an addendum dated October 22, 1991, to his appraisal of Parcel A, Mr. Sheetz represents that Parcel A is more valuable to Dr. and Mrs. Boor, than to other third party purchasers, in that they own the immediately adjacent property and access to their property is through acreage owned by the Plan. In the opinion of Mr. Sheetz, Dr. and Mrs. Boor in acquiring Parcel A will seal off access from the north from other possible purchasers, obtain desirable wooded lots, improve the use of both the northern and southern roads for developing the subdivision, and control the type of homes constructed in subdivision. In arriving at the fair market value in the amount of $250,000 for Parcel A, Mr. Sheetz represents that he considered the factors listed in the above two sentences.

Mr. Sheetz represents that he is independent in that he has no present or contemplated interest in the Parcels or bias with respect to the parties involved and that neither his employment nor his compensation was contingent upon the appraised value of such Parcels. Mr. Sheetz' qualifications to value the Parcels include experience as a soil scientist since 1937 and real estate salesman and/or broker since 1953.

5. In summary, Dr. and Mrs. Boor represent that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sales of the Parcels by the Plan to Dr. and Mrs. Boor are one time transactions for cash; (b) the fair market value of the Parcels will be determined by an independent qualified appraiser on the date of the sales; (c) the purchase price paid by Dr. and Mrs. Boor will be the greater of the cost to the Plan to acquire and hold the Parcels or the aggregate fair market value of the Parcels on the date of the sales; (d) the terms of the transactions are no less favorable to the Plan than those obtainable in similar transactions negotiated at arm's length with unrelated third parties; (e) the Plan will pay no costs, or commissions associated with the transactions, nor any other expenses associated with the application for exemption; and (f) the account of Ms. Forsythe in the Plan will receive compensation of an amount reflecting a ten percent (10%) rate of return, annualized from September 1, 1992, through the date the payment is made.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Goldman Sachs Group, L.P. Located in New York, New York

[Application No. D–8983]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 406(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the proposed acquisition and holding by employee benefit plans (the Plans) of

[2] The Department herein is not proposing relief for any violation of Part IV of the Act which may have arisen as a result of the acquisition or holding of the Parcels by the Plan.

[3] The applicant represents that to the extent that the Plan will receive greater than the fair market value of the Parcels, the limitations, as set forth in section 415 of the Code, if applicable, will not be exceeded.

fixed-rate and variable-rate debt instruments (the Instruments) issued by Goldman Sachs Group, L.P. or its affiliates (collectively, Goldman Sachs), provided the following conditions are satisfied:

(A) Goldman Sachs does not have any discretionary authority or control or provide any investment advice, within the meaning of 29 CFR 2510.3–21(c), with respect to Plan assets involved in the transactions;

(B) The Plans pay no fees or commissions to Goldman Sachs in connection with the transactions covered by the requested exemption;

(C) The decision to invest in the Instruments is made by a Plan fiduciary who is independent of Goldman Sachs;

(D) Prior to a Plan's acquisition of any Instrument, Goldman Sachs fully discloses in writing to the independent Plan fiduciary all terms and conditions of the Instrument, including (but not limited to) the following:

(1) The currency in which the return is calculated;

(2) The date and conditions of maturity;

(3) Whether the Instrument is subject to a fixed or variable rate of return;

(4) All details of the basis of the rate of return of the Instrument;

(5) If the Instrument is calculated in reference to a specified index, information relating to calculation of principal and interest payments;

(6) If the Instrument includes any participation feature, all details of the methodology of measuring performance; and

(7) The terms, if any, under which the Instrument may be redeemed;

(E) All terms of the transactions are at least as favorable to the Plans as the terms available to unrelated investors at the time of acquisition of the Instruments;

(F) Each Plan has assets in excess of $500 million;

(G) After the acquisition of an Instrument, no more than 10 percent of any Plan's assets shall be invested in all Instruments;

(H) The Instruments are rated in one of the three highest generic rating categories by at least one nationally recognized statistical rating service at the time of acquisition by a Plan;

(I) With respect to variable-rate Instruments (described below), the interest rate of each Instrument is objectively determined, and, following the issuance of each Instrument, Goldman Sachs retains an authority to affect the determination of such interest rate;

(J) With respect to participation-feature Instruments (described below), the method of determining the rate of return is fixed permanently upon the issuance of each Instrument, in accordance with generally-accepted accounting principles, and, following the Instrument's issuance, Goldman Sachs retains no authority to affect the determination of such method; and

(K) The Instruments covered by this exemption are made available by Goldman Sachs in the ordinary course of its business to customers which are not employee benefit plans covered by title I of the Act.

Temporary Nature of the Exemption:

This exemption is temporary in nature and will expire seven years from the date on which the final exemption, if granted, is published in the **Federal Register**, with respect to a Plan's acquisition of the Instruments. Instruments acquired prior to the expiration date of the exemption may be held by a Plan beyond the seven year period. If the applicant wishes to continue selling the Instruments to Plans after the exemption expires, the applicant must apply for an extension of the exemption at the end of the seven year period. The application for extension should describe the following: (1) Whether and how compliance with the exemption has been achieved; (2) the number of transactions engaged in under the exemption; and (3) the particular decisions made by the Plans' fiduciaries regarding investments in the Instruments.

Summary of Facts and Representatives

1. Goldman Sachs is a privately-held investment banking firm with its headquarters in New York, New York. As of November 29, 1991, Goldman Sachs had total consolidated assets of approximately $69.7 billion. Goldman Sachs constitutes a diversified global financial services group, maintaining five major operational divisions:

(a) Investment Banking Division, providing a broad range of financial services, including advice, underwriting public and private offerings, structuring and executing transactions in domestic and foreign capital markets, mergers and acquisitions, and real estate transactions;

(b) Fixed Income Division, which underwrites, distributes and trades fixed income securities and derivative products;

(c) Equities Division, specializing in domestic and foreign shares, global convertible securities, equity derivative products, equity arbitrage, equity capital markets, and institutional investor services;

(d) J. Aron Currency and Commodities Division, providing trading, hedging and advisory services for various foreign exchange, precious metals and commodities transactions; and

(e) Goldman Sachs Asset Management, a registered investment adviser under the Investment Advisers Act of 1940, offering a wide range of U.S. fixed income and equity portfolio and mutual fund management services to private and public pension funds, banks, insurance companies, and other private and institutional investors.

Goldman Sachs represents that it is the largest lead manager of international equity offerings, U.S. common stock offerings for industrial, financial and utility companies, and initial public offerings of common stock. Goldman Sachs also represents that it is the largest lead manager of nonconvertible debt issues in the United States, including municipal bond and note offerings. In foreign market activity, Goldman Sachs is a member of the Tokyo and London stock exchanges and presents that it is the largest lead manager of issues of American Depositary Receipts by international companies. Goldman Sachs represents that it has achieved levels of diversification and competence to provide sufficient financial stability to enable its debt instruments to maintain ratings in the three highest generic rating categories by nationally recognized rating services.

Goldman Sachs represents that the activities of its various components are subject to governmental oversight and regulation by the Securities and Exchange Commission (SEC), the Commodities Futures Trading Commission (CFTC) and other federal and state regulatory agencies, in addition to self-regulatory organizations such as the New York Stock Exchange (NYSE) and the Chicago Board of Trade. Goldman Sachs represents that as a registered broker-dealer and member firm of the NYSE, Goldman Sachs is subject to the Net Capital Rule, which specifies the minimum net capital requirement of a broker-dealer, and is also subject to net capital requirements of the CFTC and other commodity exchanges.

2. Goldman Sachs represents that its operations frequently present a greater number of attractive investment opportunities than its available capital can accommodate. Additionally, Goldman Sachs routinely needs additional capital in order to maintain inventories of securities for its market-making and other business activities. For these reasons, Goldman Sachs maintains a continuous need to borrow

funds from various institutional and individual investors for use in its business operations. In response to this need, Goldman Sachs issues various high-quality debt instruments (the Instruments), generally rated in one of the three highest generic rating categories by nationally recognized rating firms, offering varying levels of risk and potential return.

Due to its size and significance in U.S. financial markets, Goldman Sachs represents that it is likely to be a party in interest fiduciary and/or provider of services, as defined in sections 3(14)(A) and (B) of the Act, with respect to a high percentage of large pension and profit-sharing plans, with assets in excess of $500 million. In addition to brokerage and investment advisory services, Goldman Sachs provides research, securities lending, or valuation services to a substantial number of such Plans. As Plan funds continue to represent an increasing, substantial share of available investment domestic capital, Goldman Sachs represents that it is becoming increasingly difficult for Goldman Sachs to fulfill its routine borrowing needs without engaging inadvertent prohibited transactions, resulting from investments by the Plans in Goldman Sachs debt instruments. In addition to inadvertent prohibited transactions, Goldman Sachs notes that the prohibited transactions provisions of the Act prevent fiduciaries of the Plans from intentional investments in the Instruments. Goldman Sachs desires to continue expanding its sources of borrowed capital without contravening the prohibited transactions provision of the Act, and is requesting an exemption to enable the Plans to invest in the Instruments under the terms and conditions described herein.[4]

3. Goldman Sachs represents that because of the possibility of inadvertent prohibited transactions, the Instruments have been offered heretofore only to institutional investors other than plans covered by the Act. With the requested exemption, if granted, investment in the Instruments will become available only to Plans with assets in excess of $500 million. Goldman Sachs states that it will continue to offer the Instruments to non-plan investors, and that such investors will continue to constitute a substantial market for such securities as the Instruments. Investment in the Instruments by Plans will be further restricted to those Plans for which Goldman Sachs has no discretionary authority with respect to the assets invested in the Instruments, and provides no investment advice with respect to any investment in the Instruments. The Plans will not pay Goldman Sachs any fees or commissions in connection with any transactions involving the Instruments, and no more than ten percent of any Plan's assets, as determined immediately after the acquisition of an Instrument, may be invested in Instruments.

4. The Instruments will include medium-term and longer-term debt instruments, with terms ranging from a minimum of nine months to a maximum of twenty years. The Instruments will include both fixed-rate and variable-rate securities. Goldman Sachs represents that although the Instruments will be rated in one of the three highest generic rating categories by a nationally recognized rating firm, they will offer varying levels of risk and potential return. Goldman Sachs offers descriptions of the following Instruments as representative of those to be covered by the requested exemption:

(a) *Fixed-rate and variable-rate medium-term notes* (the Notes): As described in a private placement memorandum, these Notes may be offered on a variety of terms, subject to a minimum term of one year, involving a variety of formulas under which the rate of return is determined. Goldman Sachs represents that all terms of each Note will be set forth with specificity in a pricing supplement to each Note (the Supplement), which will include the following information:

(1) The currency in which the return is calculated;

(2) The price at which the Note will mature;

(3) The date on which the Note will be issued;

(4) The date on which the Note will mature;

(5) Whether the Note is subject to a fixed or variable rate of return;

(6) If fixed-rate, the annual rate at which the Note will bear interest;

(7) If variable-rate, the interest rate basis, any applicable spread or spread multiplier on the rate, the initial, maximum and minimum rates, and the date on which interest will be determined, calculated, and paid;

(8) Whether the Note is an original issued discount note, and, if so, the yield to maturity;

(9) If the Note is calculated in reference to a specified index, information relating to calculation and payment of principal and interest;

(10) Whether the Note is subject to redemption and the terms under which it may be redeemed; and

(11) Any other terms of the Note.

Goldman Sachs represents that the level of specificity of the Note terms and the descriptions in the Supplement are sufficient to ensure that Goldman Sachs cannot affect the rate of return to purchasers of the Notes, after the Notes are issued.

(b) *Participation-Feature Instruments*: Goldman Sachs represents that Instruments with participation features will enable investors, including the Plans, to participate in and benefit from successful performance by Goldman Sachs entities in a wide variety of financial activities. The participation features of some of the Instruments will provide investors an opportunity to realize rates of return which will increase in proportion to the performance success of Goldman Sachs, without assuming the risk of loss of principal. Goldman Sachs represents that the methodology through which its performance will be measured will not be subject to Goldman Sachs' discretion, because such measurement will be in accordance with generally accepted accounting principles and the financial statement on which such measurement is based will be audited by an unrelated, qualified accounting firm, currently Coopers and Lybrand. Goldman Sachs states that the methodology through which the participation features of such Instruments are measured will be fully disclosed to, and approved by, appropriate fiduciaries responsible for making investment decisions on behalf of a Plan, prior to any Plan's acquisition of an Instrument with participation features.[5]

Goldman Sachs represents that it is possible that the Instruments may be included among assets acquired by a Plan to comprise the underlying portfolio of a "synthetic GIC" arrangement, whereby the Plan's

[4] Goldman Sachs represents that the Plans, due to their size, are likely to have experienced in-house investment management personnel responsible for making all investment decisions relating to the acquisition, holding, and disposition of securities in which the Plans invest. Because in-house managers are not eligible to act as "qualified professional asset managers" (QPAM) within the meaning of Prohibited Transaction Exemption 84–14 (PTE 84–14, 49 FR 9494, March 13, 1984), PTE 84–14 is not generally available to the Plans for investments in the Instruments. However, some of the Plans may have all or a portion of their assets under management by a QPAM. For those transactions executed by a QPAM on behalf of a Plan with respect to assets under management by the QPAM, no relief is being provided pursuant to this proposed exemption.

[5] Goldman Sachs represents that it is aware that certain types of participation features could cause a debt instrument to be considered an equity interest under the Department's regulation defining "plan assets" at 29 CFR 2510.3–101(b). However, Goldman Sachs represents that it will not offer to Plan investors any Instruments which would cause the underlying assets of Goldman Sachs or its affiliates to be considered "plan assets".

beneficial interest in one or more debt instruments is combined with a guarantee of future value. With respect to such "synthetic GICs", Goldman Sachs represents that it will be neither the issuer nor the guarantor, or "wrapper" provider, and that it will provide no extension of credit to such Plans, nor their participants, other than that deemed to result from such Plan's acquisition of an Instrument. Accordingly, in this proposed exemption, Goldman Sachs is not requesting exemptive relief with respect to "synthetic GICs".

5. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Plan investments in the Instruments will be restricted to large Plans, with assets in excess of $500 million, constituting sophisticated investors having experienced in-house investment management personnel responsible for investment decisions relating to the acquisition, holding and disposition of securities in which the Plan invests; (2) The Plan investments in the Instruments will not involve any Plan assets with respect to which Goldman Sachs has any discretionary authority or provides any investment advice; (3) The Plans will be able to invest in debt instruments which are rated in one of the three highest generic rating categories by at least one nationally recognized statistical rating service at the time of acquisition by a Plan; (4) The terms of the Plans' investments in the Instruments will be at least as favorable to the Plans as the terms available to unrelated investors at the time of acquisition; (5) No more than ten percent of any Plan's assets, after the acquisition of an Instrument, will be invested in the Instruments; and, (6) The Plans will pay no fees or commissions to Goldman Sachs in connection with the transactions covered by the requested exemption.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 24th day of June, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–15299 Filed 6-28-93; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by August 2, 1993. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335. Copies of materials may be obtained at the above address or telephone. Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Fellowship applications and award forms

Affected Public: Individuals

Respondents/Reporting Burden: 11,000 respondents; 12 hours per response.

Abstract: Section 10 of the National Science Foundation Act of 1950, as amended, states that "the Foundation is authorized to award scholarships and fellowships for scientific study." These applications provide information used to identify some of the Nation's most talented science personnel for award of support for further study.

Dated: June 22, 1993.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 93–15211 Filed 6–28–93; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382]

Entergy Operations, Inc. Waterford Steam Electric Station, Unit 3, Environmental Assessment And Finding Of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of section III.D.1.(a) of Appendix J to 10 CFR part 50 to Entergy Operations, Inc. (the licensee), for the Waterford Steam Electric Station, Unit 3, located in Saint Charles Parish, Louisiana.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from section III.D.1.(a) of Appendix J to 10 CFR part 50, which requires a set of three Type A tests (containment integrated leak rate tests, or CILRTs) be performed, at approximately equal intervals, during each 10-year service period. This licensee request is for a one-time exemption from the requirement that the third Type A test of the first 10-year service period be performed at the required interval during the service period. The exemption would extend

the third interval by approximately 4 months within the first 10-year service period.

The proposed action is in accordance with the licensee's request for exemption dated May 7, 1993.

The Need for the Proposed Action

The proposed exemption is needed because the licensee's current refueling outage schedule requires the third CILRT for the first 10-year service period be performed at 54 months, which is not consistent with the "approximately equal interval" provision of Appendix J or with the technical specification (TS) requirement of 40±10 month intervals. (CILRTs are generally performed coincident with refueling outages due to the time required for their performance.) The first and second CILRT testing intervals for the first 10-year service period were 32 and 36 months. Without this exemption, the licensee would be required to perform the third CILRT at a 34-month interval and perform an additional (fourth) CILRT during the refueling outage for the first 10-year inspection. The licensee has also requested a one-time change to the TS; this will be addressed by a separate NRC action.

Environmental Impacts of the Proposed Action

The Commission's staff has determined that granting the proposed exemption would not significantly increase the probability or amount of expected primary containment leakage and that containment integrity would thus be maintained. The current requirement in section III.D.1.(a) that three Type A tests be performed would continue to be met, except one interval (at Refueling Outage 7) will be longer than the approximately equal interval and would also be longer than specified in the Waterford TS. Consequently, the probability of accidents would not be increased, nor would the post-accident radiological releases be greater than previously determined. Neither would the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission's staff concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves a change to surveillance requirements. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of Waterford Steam Electric Station, Unit No. 3," dated September 1981.

Agencies and Persons Consulted

The staff consulted with the State of Louisiana regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated May 7, 1993, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Dated at Rockville, Maryland, this 22nd day of June 1993.

For The Nuclear Regulatory Commission.

Terence L. Chan,

Acting Director, Project Directorate IV–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–15230 Filed 6–28–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Medical Uses of Isotopes; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission will convene a special teleconference meeting of the Advisory Committee on Medical Uses of Isotopes (ACMUI) on July 8, 1993. The topic of this meeting will be issues related to the allocation of responsibilities among Federal and State regulatory bodies to ensure adequate protection of the radiological health and safety of the public, including patients and health care workers in the medical uses of ionizing radiation.

DATES: The meeting will be held at 11:30 a.m., on July 8, 1993.

ADDRESS: The U.S. Nuclear Regulatory Commission, 11555 Rockville Pike (One White Flint North), Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, MS 6–H–3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–504–3417.

Conduct of the Meeting

Barry Siegel, M.D. will chair the meeting. Dr. Siegel will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Larry W. Camper (address listed above). Comments must be received by July 7, 1993, to ensure consideration at the meeting. The transcript of the meeting will be kept open until July 16, 1993, for inclusion of written comments.

2. Persons who wish to make oral statements should inform Mr. Camper, in writing, by July 7, 1993. Statements must pertain to the topic for the meeting. The Chairman will rule on requests to make oral statements. Members of the public will be permitted to make oral statements if time permits. Permission to make oral statements will be based on the order in which requests are received. In general, oral statements will be limited to approximately 5 minutes. Oral statements must be supplemented by detailed written statements, for the record. Rulings on who may speak, the order of presentation, and time allotments may be obtained by calling Mr. Camper, 301–504–3417, between 9 a.m. and 5 p.m. EST, on July 7, 1993.

3. At the meeting, questions from attendees other than committee members, NRC consultants, and NRC staff will be permitted at the discretion of the Chairman.

4. The transcript, minutes of the meeting, and written comments will be available for inspection, and copying, for a fee, at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20555, on or about July 18, 1993.

5. Seating for the public will be on a first-come, first-served basis.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a); the Federal Advisory Act (5 U.S.C. App); and the Commission's regulations in title 10, Code of Federal Regulations, part 7.

Justification for Less Than 15 Days Notice

It is necessary to hold this meeting on an expedited basis in order to provide a timely response to recent direction from the Commission.

Dated: June 23, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–15176 Filed 6–28–93; 8:45 am]

BILLING CODE 7590–01–M

Nuclear Safety Research Review Committee; Severe Accident Subcommittee, Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The NSRRC Severe Accident Subcommittee will hold a meeting on August 2–3, 1993, in the Maryland Room, Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda will be as follows:

Monday, August 2, 1993, 8:30 a.m. to 5:30 p.m. and

Tuesday, August 3, 1993, 8:30 a.m. to 4:30 p.m.

The Subcommittee will review accomplishments, status, and completion plans for programs pursued under the NRC's Severe Accident Research Program Plan, focusing primarily on additions and changes underway or planned since October 1992. Related aspects of Accident Management, Individual Plant Examinations (IPE), and Individual Plant Examinations for External Events (IPEEE) will be included as pertinent. In addition, consideration of the following will be included: cooperative international programs with NRC participation that include severe accident research, use of risk analysis in planning and terminating severe accident research, closure of research projects and maintenance of capabilities, and performance criteria and management oversight to enhance research contributions. The Subcommittee will report to the full Committee on the facts and analyses developed at the meeting.

A detailed agenda will be made available at the meeting.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Subcommittee. Questions may be asked only by members of the Committee and the staff. Persons desiring to make oral statements should notify the Nuclear Regulatory Commission staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to Mr. George Sege (telephone 301/492–3904) between 8 a.m. and 4:30 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: June 22, 1993.

George Sege,

Technical Assistant to the Director, Office of Nuclear Regulatory Research.

[FR Doc. 93–15228 Filed 6–28–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on July 8–10, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on June 24, 1993.

Thursday, July 8, 1993

8:30 a.m.–8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–10:15 a.m.: NRC Regulatory Review Group Report (Open)—The Committee will review and comment on the report of the NRC Regulatory Review Group. Representatives of the NRC staff will participate.

10:30 a.m.–11:45 a.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including matters related to the status of appointment of new members, and organizational and personnel matters relating to ACRS staff members.

Portions of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory committee pursuant to 5 U.S.C. 552b(c)(2) and to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

12:45 p.m.–2:45 p.m.: Application of Probabilistic Risk Assessment Methods for Ranking Motor-Operated Valves (MOV) (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff on the preliminary results from a research program to prioritize the risk importance of MOVs. Representatives of the industry will participate, as appropriate.

3 p.m.–3:30 p.m.: Implementation Guidance for the Maintenance Rule (Open)—The Committee will discuss the NRC staff's response to ACRS comments and recommendations included in the April 26, 1993 report on the implementation guidance for the Maintenance Rule. Representatives of the NRC staff will participate.

3:30 p.m.–4:30 p.m.: Plans for Completing the ACRS Review of the Advanced Boiling Water Reactor (ABWR) Standard Safety Analysis Report (SSAR) (Open)—The Committee will discuss the schedule for completing its review of the SSAR for the ABWR design. Representatives of the NRC staff will participate, as appropriate.

4:30 p.m.–5:15 p.m.: Future ACRS Activities (Open)—The Committee will discuss topics proposed for consideration during future ACRS meetings.

5:15 p.m.–5:30 p.m.: Reconciliation of ACRS Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

5:30 p.m.–6:15 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

Friday, July 9, 1993

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–9:15 a.m.: Draft Regulatory Guide, DG–1025, Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence (Open)—The Committee will review and comment on a draft regulatory guide regarding the

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methodology for determining pressure vessel neutron fluence. Representatives of the NRC staff and industry will participate.

9:15 a.m.–10 a.m.: Draft Regulatory Guide, DG–1023, Evaluation of Reactor Pressure Vessels with Charpy Upper-Shelf Energy Less Than 50 Ft-Lb. (Open)—The Committee will review and comment on a draft regulatory guide regarding the evaluation of reactor pressure vessels with Charpy upper-shelf energy less than the 50 ft-lb level. Representatives of the NRC staff will participate.

10:15 a.m.–11:15 a.m.: Debris Plugging of Emergency Core Cooling Suction Line Strainers (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff on the potential for debris plugging of emergency core cooling suction line strainers. In addition, the Committee will hear an update on the NRC staff activities to evaluate the need for actions by U.S. licensees to address this issue as a result of the lessons learned from the Barsebeck event in Sweden. Representatives of the industry will participate, as appropriate.

11:15 a.m.–12:15 p.m.: Reactor Operations Experience (Open)—The Committee will hear a briefing by and hold discussion with representatives of the NRC staff on a recent event at Sequoyah Nuclear Power Plant, Unit 2 that involved a rupture of an extraction steam header line. Representatives of the industry will participate, as appropriate.

1:15 p.m.–5 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

5 p.m.–6 p.m.: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

Saturday, July 10, 1993

8:30 a.m.–Close of Business: Preparation of ACRS Reports (Open)—The committee will discuss proposed ACRS reports regarding items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 16, 1992 (57 FR 47494). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d), Public Law 92–463, that it is necessary to close portions of this meeting noted above to discuss information that involves the internal personnel rules and practices of the agency per 5 U.S.C. 552b(c)(2) and to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the ACRS Executive Director, Dr. John T. Larkins (telephone 301–492–4516), between 8 a.m. and 4:30 p.m. EST.

Dated: June 23, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–15178 Filed 6–28–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corporation, Vermont Yankee Nuclear Power Station; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by letter dated April 8, 1993, to Thomas T. Martin, Regional Administrator, Region I, U.S. Nuclear Regulatory Commission (NRC), as supplemented by letter dated April 11, 1993, to Ivan Selin, Chairman of the NRC, from Michael J. Daley on behalf of the New England Coalition on Nuclear Pollution, the NRC has received a Petition under 10 CFR 2.206 regarding the Vermont Yankee Nuclear Power Station. The Petitioner requested the NRC to take immediate action to require that the reactor remain in cold shutdown until plant management can provide proof that the emergency diesel generators (EDG) at the plant are able to meet their safety function. Petitioner seeks relief based on assertions that (1) diesel generator "A" was damaged by overload conditions suffered during testing in August through October of 1990; (2) the "B" unit also suffered under the same testing regime; (3) one of the causes of the repeated failures of the "A" unit in the summer of 1992 was the damage from this testing; (4) the overloading resulted from inappropriate actions taken in response to an NRC-identified violation indicating that the EDG had for 20 years not been tested at loads consistent with the maximum expected accident load; and (5) the foregoing raises a number of questions that must be answered immediately if Vermont Yankee is going to be allowed to depend on these machines to fulfill the regulatory requirements for adequate onsite emergency backup power systems.

Petitioner's request for immediate action was denied by the Regional Administrator for Region I in a letter dated April 13, 1993. The bases for the denial of Petitioner's request for immediate action are set forth with more specificity in a letter dated June 21, 1993, which acknowledges receipt of the Petition.

Petitioner's request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The NRC will take appropriate action on this request within a reasonable time.

A copy of the Petition is available for inspection and copying in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and in the Local Public Document Room, Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 21st day of June, 1993.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93–15224 Filed 6–28–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–498 and 50–499]

Houston Lighting & Power Co. et al. South Texas Project, Units 1 and 2; Withdrawal of Amendments To Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request from Houston Lighting & Power Company, et. al., (HL&P, the licensee) to withdraw HL&P's August 4, 1992, application for amendments to Facility Operating License Nos. NPF–76 and NPF–80, issued to the licensee for operation of the South Texas Project, Units 1 and 2, located in Matagorda County, Texas. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on September 30, 1992 (57 FR 45085).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to reflect the results of a correction to the containment free volume calculation.

By letter dated June 11, 1993, the licensee informed the staff that the proposed amendment was being superseded as part of the licensee's fuel upgrade license amendment application of May 27, 1993. The Commission has considered the licensee's request and has determined that permission to withdraw the application for amendments should be granted.

For further details with respect to this action, see (1) the application for amendment dated August 4, 1992, (2) the withdrawal letter dated June 11, 1993, (3) the staff's letter dated June 23, 1993. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Dated at Rockville, Maryland, this 23rd day of June 1993.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–15229 Filed 6–28–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Co.; Consideration of Issuance of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–70 and DPR–75 issued to Public Service Electric and Gas Company (the licensee) for operation of the Salem Nuclear Generating Station, Units 1 and 2, located in Salem County, New Jersey.

The proposed amendment would change the Salem Nuclear Generating Station, Units 1 and 2, Updated Final Safety Analysis Report (UFSAR), section 4.3 and 15.3.5, relative to single rod control cluster assembly (RCCA) withdrawal events. The change would incorporate a new assumption that a potential single failure in the rod control system can cause misoperation of a single or multiple RCCAs and provides the necessary analysis to show continued compliance with General Design Criterion (GDC) 25. As a result, the changes would reclassify the single RCCA withdrawal event from a Condition III event to a Condition II event. This reclassification would assume an increased frequency in the occurrence of the event, but would show that the fuel design limits would not be exceeded.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The operation of Salem Nuclear Generating Station in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

UFSAR chapter 15 accident analyses which may be affected by the observed rod control system failure causing inadvertent RCCA withdrawal have been identified. The probability of the Single RCCA Withdrawal at Power event discussed in UFSAR section 15.3.5 is considered to be increased since only multiple failures were previously considered to cause this event. The analysis contained in UFSAR section 15.3.5 was previously evaluated against the criteria of a Condition III event. The reanalysis of this event considered the more stringent criteria of a Condition II event. The analysis concluded that the DNB design limits for the fuel continued to be met in accordance with GDC 25.

Therefore, although the probability of this event has theoretically increased, this increase is not considered significant since the criteria for a Condition II event as defined in ANSI N18.2 have been conservatively demonstrated to be met (i.e., although the probability of the event has increased, the consequences meet the more stringent Condition II criteria).

Therefore, the proposed license amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) The operation of the Salem Generating Station in accordance with the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

A spectrum of RCCA withdrawal events is documented in the Salem licensing basis. A symmetric RCCA group/bank withdrawal event from subcritical is analyzed and presented in UFSAR section 15.2.1 and a symmetric RCCA group/bank withdrawal at power is analyzed and presented in UFSAR section 15.2.2. The single RCCA withdrawal event is analyzed and presented in section 15.3.5 of the Salem UFSAR but assumes that initiation can only occur as a result of multiple failures. This event, although now potentially caused by a single failure, is not considered to be an event which is different than that already evaluated.

Given that this failure could cause the asymmetric withdrawal of more than one RCCA, which is not currently analyzed for the UFSAR, new RCCA withdrawal cases have been postulated. However, based on the guidelines of the Standard Review Plant (section 15.4.3), this postulated scenario only represents a variation of the reactivity and power distribution anomalies that are currently addressed in the Salem licensing basis is not considered to be a new event of a different type. Thus, although it requires reanalysis of the RCCA withdrawal event, the assumed single failure does not create the possibility of an accident that is different than that already evaluated.

Therefore, the proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The operation of Salem Generating Station in accordance with the proposed change does not involve a significant reduction in a margin of safety.

The rod control system failure and subsequent RCCA withdrawal will have no affect on the availability, operability or performance of any safety-related equipment required for accident mitigation. Operation in automatic or manual control and criticality achieved through boron dilution will ensure that the requirements of GDC 25 will continue to be satisfied. Any potential releases resulting from RCCA withdrawals will remain within the limits of 10 CFR part 20 and 10 CFR part 100 limits. Therefore, the proposed license amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposed to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments in this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would

result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 29, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Charles L. Miller, Director, Project Directorate I–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a

balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 17, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local pubic document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 22nd day of June 1993.

For the Nuclear Regulatory Commission.

James C. Stone,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–15231 Filed 6–28–93; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2643, Variances for Sale of Assets

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: This notice advises the public that the Pension Benefit Guaranty Corporation has requested extension of approval by the Office of Management and Budget for a currently approved collection of information (1212–0021) contained in its regulation on Variances for Sale of Assets (29 CFR part 2643). Current approval of the collection of information expires on August 31, 1993.

ADDRESSES: All written comments should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212–0021), Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 7100, 2020 K Street, NW., Washington, DC 20006, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–1958 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This collection of information is contained in the Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Variances for Sale of Assets, 29 CFR part 2643.

Under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (sections 4201–4225), if an employer's covered operations or obligation to contribute under a multiemployer plan ceases, the employer is generally liable to pay withdrawal liability to the plan. Section 4204 of ERISA provides an exception when the cessation results from a sale of assets if certain conditions are met. Among other things, the buyer must furnish a bond or escrow, and the sale contract must provide that the seller will be secondarily liable if the buyer withdraws within a specified period after the sale and fails to pay withdrawal liability (section 4204(a)(1)(B) and (C)). Section 4204(c) authorizes the PBGC to vary the bond/escrow and sale-contract requirements by regulation if the variance would "more effectively or equitably carry out the purposes of [Title IV]" and to grant individual or class variances or exemptions from those requirements when warranted.

Pursuant to this authority, the PBGC has issued its regulation on Variances for Sale of Assets (29 CFR part 2643). Subpart A of the regulation establishes procedures for requesting individual variances of the bond/escrow and sale-contract requirements from the PBGC. Section 2643.2 (d) and (e) describes the information that must be submitted with a request. This information collection requirement is needed to give PBGC adequate information to determine whether a variance request meets the applicable statutory and regulatory standards.

Based on past experience, the PBGC estimates that five variance requests per year are submitted by employers to the PBGC. The PBGC estimates that it takes a requester about two hours to complete a request, for a total annual burden on the public of 10 hours.

Issued at Washington, DC, this 22nd day of June, 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–15190 Filed 6–28–93; 8:45 am]

BILLING CODE 7708–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Campobello Island Estates, New Brunswick, Canada

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Campobello Island Estates, located on Campobello Island in the Province of New Brunswick, Canada, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until September 27, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contecting the following person: Mr. Lanis X. Yarbrough, Resolution Trust Corporation, Kansas City Office, 4900 Main Street, suite 200, Kansas City, MO 64141, (816) 531–2212; Fax (816) 561–0882.

SUPPLEMENTARY INFORMATION: The Campobello Island Estates property is located on Campobello Island, New Brunswick, Canada. The site has frontage on the Atlantic Ocean, contains endangered species, and is adjacent to the Roosevelt Campobello International Park which is managed jointly by the United States and Canada. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The Campobello Island Estates property consists of approximately 1,995 acres of undeveloped land and is situated in a coastal zone regulated by the New Brunswick Department of Environmental Affairs. The property contains a number of home lots designed for recreational purposes and an abandoned fish processing plant.

Property size: Approximately 1,995 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before September 27, 1993 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government;

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the

property must be submitted by September 27, 1993 to Mr. Lanis X. Yarbrough at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: Campobello Island Estates
Federal Register Publication Date: June 29, 1993.

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: June 23, 1993.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 93–15209 Filed 6–28–93; 8:45 am]

BILLING CODE 6714-01-M

Coastal Barrier Improvement Act; Property Availability; Pariso Cumbres, San Diego County, CA

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Pariso Cumbres, located in Rancho Penasquitos, San Diego County, California, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until September 27, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Ralph Ross, Resolution Trust Corporation, Subsidiary Operations, 7700 San Felipe, suite 360, Houston, TX 77063, (713) 953–5514; Fax (713) 953–5444.

SUPPLEMENTARY INFORMATION: The Pariso Cumbres property is located in the northeast portion of the Rancho Penasquitos community in the City of San Diego, California. The property has recreational value and is contiguous with Black Mountain Park. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The Pariso Cumbres property consists of approximately 230 acres of undeveloped land with a network of trails and unpaved roads. The elevation of the site ranges from 800 feet above mean sea level in the northwest corner of the property to 1,310 feet in the middle. The predominant habitat on the site is chamise chaparral. Diegan coastal sage and southern mixed chaparral also occur on the property.

Property size: Approximately 230 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before September 27, 1993 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by September 27, 1993 to Mr. Ralph Ross at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: Pariso Cumbres
Federal Register Publication Date: June 29, 1993

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: June 23, 1993.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 93–15210 Filed 6–28–93; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32497; File No. SR-NASD–93–29]

Self-Regulatory Organization; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc.

June 23, 1993.

In the matter of Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to an Increase From $50 to $100 Per Year of the Aggregate Value of Non-Cash Sales Incentive Items Allowed to be Paid by a Sponsor or Affiliate of a Sponsor of Direct Participation Programs or Rollups of Direct Participation Programs to Any Person Associated with an NASD Member.

On May 4, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4 adopted thereunder.[2] The rule change amends section 5(e) of Appendix F to Article III, Section 34 of the NASD Rules of Fair Practice to increase from $50 to $100 per person the aggregate value of non-cash sales incentive items allowed to be paid by a sponsor or an affiliate of a sponsor of Direct Participation Programs ("DPPs") or rollups of a DPP to any associated person of an NASD member.

Notice of the proposed rule change, together with the substance of the proposal was provided by issuance of a Commission-release (Securities Exchange Act Release No. 32308, May 14, 1993), and by publication in the **Federal Register** (58 FR 29442, May 20, 1993). No comment letters were received. This order approves the rule change.

The Commission recently reviewed and approved a NASD rule filing, SR-NASD–92–40, that amends section 10(a) to Article III of the NASD Rules of Fair Practice to increase from $50 to $100 the annual value of certain non-cash payments that a member or person associated with a member may give to employees of another person. In connection with the Commission's review of SR-NASD–92–40, the NASD agreed to review the dollar limit on the receipt of non-cash items contained in section 5(e)(1) of Appendix F to Article III, Section 34 of the Rules of Fair

[1] 15 U.S.C. 78s(b)(1) (1988).
[2] 17 CFR 240.19b–4 (1992).

Practice, which relates to NASD member participation in the public offering of a DPP or the rollup, to determine whether it should be consistent with section 10(a) of Article III.

Section 5(e)(1) currently limits the aggregate value of non-cash sales incentives to $50 per year allowed to be paid by any sponsor or affiliate of a sponsor of a DPP or DPP rollup to a person associated with a member. Upon review, the Commission believes that increasing the aggregate value of such non-cash sales incentives in appendix F to $100 is appropriate as it would provide a consistent standard under NASD rules regarding limitations on the receipt of non-cash items.

The Commission finds that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[3] which requires that the NASD adopt and amend its rules to promote just and equitable principles of trade, foster cooperation and coordination with regulators, and in general to protect investors and the public interest. The proposed rule change is designed to uniformly regulate the non-cash compensation paid to persons associated with members in connection with the sales in a public offering in a DPP or a rollup of a DPP. Increasing the aggregate value of non-cash sales incentives allowed to be paid by any sponsor or affiliate of a sponsor of a DPP or DPP rollup to a person associated with a member to $100 is appropriate as it provides a consistent standard regarding limitations on the receipt of non-cash items contained in Appendix F and in similar provisions the Commission approved in SR-NASD-92-40. Furthermore, the Commission finds that the dollar amounts are relatively low and will neither compromise the intent, nor reduce the ability, of the rule to prevent fraudulent acts and practices which might arise in connection with the giving of valuable gifts or payments to persons without their employer's knowledge.

The Commission finds that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR-NASD-93-29 be, and hereby is approved.

[3] 15 U.S.C. 78o-3.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-15256 Filed 6-28-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32498; File No. SR-NYSE-93-25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Its Floor Conduct and Safety Guidelines

June 23, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 19, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the General Conduct section of its Floor Conduct and Safety Guidelines. The Exchange proposes to adopt the following amendments: [1]

General Conduct on Floor and on Other Premises Under Exchange Control—*(a)* Engaging in activities involving practical jokes, roughhousing, the use of abusive or indecorous language, *indecorous behavior,* or the failure to cooperate with Exchange security personnel conveys a very unbusinesslike appearance and is strictly prohibited on the trading Floor and other premises under Exchange control.

Two Floor Officials, at least one of whom is a Floor Governor, may impose a penalty under this Guideline. A penalty of a fine ranging from $250 to $1,000 may be levied against any member exhibiting such behavior. The following penalties [will] *may* be levied against any *clerk* [individual] exhibiting such behavior:

First Offense [Member $250] 3 day I.D. card suspension.

Second Offense [$500] 5 day I.D. card suspension.

(b) Where any act described above constitutes a substantial violation of these Guidelines, or where there are repeated instances of engagement in the acts described above, the Exchange may conduct an investigation with a view toward initiating a formal disciplinary proceeding with respect to any member or clerk pursuant to Rule 476. For purposes of this paragraph (b), sexual harassment, conduct disruptive to trading or conduct which could cause public embarrassment to the Exchange would constitute substantial violations of these Guidelines.

* * * * *

2. Procedures for Handling Violations—When a Floor Official observes *or receives information that* a member or a Floor clerical employee of a member or member organization *may be* in violation of the Floor Conduct and Safety Guidelines, [or if a violation is brought to the attention of a Floor Official by an Exchange employee who is in a supervisory or managerial capacity,] *and the Floor Official determines, after appropriate inquiry, that a violation has occurred,* the following three steps will be taken:

(no change)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The General Floor Conduct section of the Exchange's Floor Conduct and Safety Guidelines ("Guidelines") prohibits Floor personnel from engaging in certain activities which carry with them the potential for causing serious disruptions of business on the Floor. These activities include practical jokes, roughhousing, the use of abusive or indecorous language, or the failure to cooperate with Exchange security personnel. Currently, members of the Exchange are subject to a $250 fine for a first offense and a $500 fine for a second offense. In order to make the penalty for this type of action more meaningful, the Exchange proposes to empower Floor Officials and Floor Governors [2] to implement a fine within

[1] With respect to the following language, italicizing indicates new material and brackets indicate material to be deleted.

[2] A Floor Official is a member who has been named as such under NYSE Rule 46 and who is empowered to take action with respect to a number

Continued

a range of $250 to $1,000 for any offense under this portion of the Guidelines. However, in order to bring uniformity to the administration of this policy, two officials, at least one of whom is a Floor Governor, must be consulted before a fine is imposed.

The Exchange is also adding language to the Guidelines to clarify that it may initiate a formal disciplinary proceeding under Exchange Rule 476 where, in its judgment, an act or acts under this section constitute recidivism or a substantial violation. Any action by a clerk or member that appears to involve sexual harassment, conduct disruptive to trading or which could cause public embarrassment to the Exchange would be viewed as constituting possible substantial violations requiring a full investigation to assess whether formal disciplinary action is warranted since such act or acts may be found to be detrimental to the interest or welfare of the Exchange or to constitute conduct inconsistent with just and equitable principles of trade.

Finally, the Exchange is making certain technical changes to the language concerning the procedures to be followed when handling violations under the Guidelines. The changes clarify that action may be taken based on personal observation or investigation of facts reported by others.

The proposed rule change supports the Guidelines' purpose of insuring the safety and welfare of all individuals on the Floor by enhancing the Exchange's ability to respond swiftly and effectively to certain types of aberrant behavior on the Floor of the Exchange.[3]

(b) Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–25 and should be submitted by July 20, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15254 Filed 6–28–93; 8:45 am]

BILLING CODE 8010–01–M

of trading and other situations on the Floor. A Floor Governor is one of 16 Floor Officials who has been designated as a Governor and is empowered to take any action required of a Floor Director.

[3] A member or clerk would be able to appeal any fine levied under this provision pursuant to the procedures outlined in the Floor Conduct and Safety Guidelines. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, and Louis A. Randazzo, Attorney, Commission, on May 20, 1993.

[Release No. 34–32499; File No. SR–NYSE–93–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Dissemination of Enhanced Message for Certain Trading Halts.

June 23, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 25, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change consists of a revision of the message to be disseminated during a regulatory halt [1] for dissemination of news that a related (convertible) security has been called. The revised message would provide additional information which would indicate that the halt is due to conditions in a related security.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] A "Regulatory Halt" is defined under the CTA (Consolidated Tape Association) Plan. The CTA Plan states that a regulatory halt occurs whenever the primary market for any Eligible Security, in the exercise of its regulatory functions, halts or suspends trading in such security because such primary market has determined (i) that there are matters relating to such security or the issuer thereof which have not been adequately disclosed to the public, or (ii) that there are regulatory problems relating to such security which should be clarified before trading therein is permitted to continue. *See* Restatement of Restated Plan Submitted to Securities and Exchange Commission Pursuant to Rule 17a–15 under the Securities Exchange Act of 1934, March 1, 1980, amended March 1, 1992, p. 9.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to enhance the information disseminated during certain regulatory halt conditions. When a call is made for redemption of a related convertible preferred or debt security, it may result in forced conversions into the common stock that could have a significant dilutive effect on the common stock. In such situations, the message currently disseminated is "news pending." The lack of specificity of such a message could cause investors to speculate that the news may be broader in scope and significance and would cause volatility in industry-related stocks. The Exchange is therefore proposing to amplify that message to indicate that the halt is due to conditions in a related security; for example, such a message might read "news pending in view of related security." This would alleviate the uncertainty in the marketplace which could be caused by a "news pending" announcement.

The Exchange is not creating a new halt condition, but rather is expanding the information disseminated during a certain type of halt condition.

The Exchange's policy regarding halts and indications has not been changed.

(2) Statutory Basis

The basis under the Act for this proposed rule change is section 6(b)(5), which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. This proposed rule change would further these ends by enhancing the information available to investors during certain trading halts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–19 and should be submitted by July 20, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15255 Filed 6–28–93; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Ground Round Restaurants, Inc., Common Stock, $.1667 Par Value) File No. 1–6192

June 23, 1993.

Ground Round Restaurants, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

On May 11, 1993, the Board of Directors of the Company authorized the withdrawal of the Common Stock from listing on the Amex and the listing of the Common Stock on the National Association of Securities Dealers Automated Quotations/National Market System ("NASDAQ/NMS").

According to the Company, it believes that the listing of the Common Stock on the NASDAQ/NMS system will offer the Company the opportunity to secure its own group of market-makers. The Company believes that the NASDAQ/NMS system of competing market-makers will result in greater visibility and trading volume, which will expand the capital base available for trading the Company's Common Stock. The Company also believes it is in the best interests of the Company and its shareholders to list its Common Stock on the NASDAQ/NMS system instead of on the Amex.

Any interested person may, on or before July 15, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–15192 Filed 6–28–93; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Spectrum Signal Processing Inc., Common Stock, No Par Value) File No. 1–11230

June 23, 1993.

Spectrum Signal Processing Inc. ("Company") has filed an application

with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company its Board of Directors (the "Board") unanimously approved a resolution on May 26, 1993, to withdraw the Company's Common Stock from listing on the Emerging Company Marketplace of the Amex and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations/National Market System ("NASDAQ/NMS"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than the present listing on the Amex because:

(1) The Company believes that the cost required to graduate to a full listing on the Amex is higher than that of the NASDAQ/NMS system;

(2) The Company believes that the NASDAQ/NMS system of competing market-makers will result in increased visibility and sponsorship for its Common Stock than is presently the case with the single specialist assigned to the stock on the Amex;

(3) The Company believes that the NASDAQ/NMS system will offer the Company's stockholders more liquidity than that presently available on the Amex and less volatility in quoted prices per share when trading volume is slight;

(4) The Company believes that the NASDAQ/NMS system will offer the opportunity for the Company to secure its own group of market-makers and, in doing so, expand the capital base available for trading in its Common Stock; and

(5) The Company believes that firms making a market in the Company's Common Stock on the NASDAQ/NMS system will be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before July 15, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–15193 Filed 6–28–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to report the results of the seventh session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods.

DATES: July 27, 1993 at 9:30 a.m.

ADDRESSES: Room 3200, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: This meeting will be held to describe the outcome of the seventh session of the Sub-Committee of Experts on the Transport of Dangerous Goods to be held July 12 to 21, 1993, in Geneva, Switzerland and to discuss the U.S. delegation's plans for participating in the eighth session of the Sub-Committee to be held from November 22 to December 1, 1993. Topics to be covered include packaging requirements for explosives, revision of the manual for tests and criteria for explosives and other substances, classification criteria for environmentally hazardous substances, requirements for infectious substances, requirements for multimodal tanks, requirements for intermediate bulk containers, classification of specific dangerous goods and other proposed amendments to the United Nations Recommendations on the Transport of Dangerous Goods.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the seventh session of the UN Sub-Committee meeting and, when available, a copy of the Sub-Committee report may be obtained from RSPA. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may be ordered by filling out an on-line request form on the HMIX or by contacting RSPA's Dockets Unit (202–366–4453). For more information on the use of the HMIX system, contact the HMIX information center; 1–800–PLANFOR (752–6367); in Illinois, 1–800–367–9592; Monday through Friday, 8:30 a.m. to 5 p.m. Central time.

After the meeting, a summary of the public meeting will also be available from Hazardous Materials Advisory Council, suite 250, 1110 Vermont Ave., NW., Washington, DC 20005; telephone number (202) 728–1460.

Issued in Washington, DC, on June 23, 1993.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93–15205 Filed 6–28–93; 8:45 am]

BILLING CODE 4910–60–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 123
Tuesday, June 29, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, July 1, 1993.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

Model Rocket Petition

The staff will brief the Commission on petition HP 92–1 from Aero-Tech, Inc. requesting amendment of regulations which exempt certain model rocket motors from classification as "banned hazardous substances."

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: June 23, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–15421 Filed 6–25–93; 2:16 pm]

BILLING CODE 6355–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

PREVIOUSLY SCHEDULED:

TIME AND DATE: Thursday, July 1, 1993.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission has determined that the following item will be postponed and considered at a later date:

1. *Energy West Mining Co.*, Docket No. WEST 91–251 (Issues include whether the judge erred in concluding that Energy West's violation of 30 CFR § 75.503 was of a significant and substantial nature and in assessing a civil penalty for the violations.)

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/800–877–8339 Toll Free.

Dated: June 24, 1993.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 93–15443 Filed 6–25–93; 2:48 pm]

BILLING CODE 6730–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 28, July 5, 12, and 19, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 28

Thursday, July 1

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 5—Tentative

Thursday, July 8

2:00 p.m.
Brief by Nuclear Safety Research Review Committee (NSRRC) (Public Meeting) (Contact: George Sege, 301–492–3904)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 12—Tentative

Wednesday, July 14

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 19—Tentative

Tuesday, July 20

10:00 a.m.
Briefing on Options for Addressing Shutdown and Low Power Risk Issues (Public Meeting) (Contact: Ashok Thadani, 301–504–2884)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Overview of NRC Research Program (Public Meeting) (Contact: George Sege, 301–492–3904)

ADDITIONAL INFORMATION: By a vote of 4–0 (Commissioner Rogers was not present) on June 24, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Briefing on Status of Design Basis Threat Reevaluation" (CLOSED—Ex. 1) be held on June 24, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: June 25, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–15445 Filed 6–25–93; 2:49 pm]

BILLING CODE 7590–01–M

UNITED STATES INSTITUTE OF PEACE

DATE/TIME: Thursday, July 8, 1993, 9:00 a.m. to 5:30 p.m.

LOCATION: First Floor Conference Room, 1550 M Street, NW., Washington, DC.

STATUS: (Open Session)—portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: Approval of minutes of the Fifty-Ninth Meeting of the Board of Directors; Chairman's Report; President's Report; General Issues; Selection of Unsolicited Grants; Selection of Solicited Grant Topic; Other Business, and open discussion.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs and Information, Telephone: (202) 457–1700.

Dated: June 25, 1993.

Charles D. Smith,

General Counsel, United States Institute of Peace.

[FR Doc. 93–15392 Filed 6–25–93; 11:50 am]

BILLING CODE 3155–01–M

Corrections

Federal Register
Vol. 58, No. 123
Tuesday, June 29, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-940-03-4210-01-241A;MINES 46016]

Minnesota Chippewa Tribe; Transfer of Submarginal Lands

Correction

In notice document 93-12949 beginning on page 31413 in the issue of Wednesday, June 2, 1993, make the following corrections.

1. On page 31413, in the third column, in the land description:

a. In T. 14N., R. 39W., in Sec. 30, in the second line, "E½SE¼" should read "E½SW¼".

b. In T. 143N., R. 39W., Sec. 6, in the first line, the last "SE¼NE¼" should read "SE¼NW¼"; and in sec. 7, "N¼SE¼' should read "N½SE¼".

2. On page 31414, in the first column, in T. 143 N., R. 39W., in sec. 15, insert a comma after "NE¼".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 92]

Staff Accounting Bulletin No. 92

Correction

In rule document 93-13893 beginning on page 32843 in the issue of Monday, June 14, 1993, make the following corrections:

1. On page 32843, in the third column, under the heading **Topic 5: Miscellaneous Accounting**, in paragraph Y., in the first line, insert "and" after "Accounting".

2. On page 32844, in the third column, in the second paragraph from the bottom, in the fifth line, "discount" should read "discounted".

3. On page 32845, in the 3d column, in the 2d paragraph from the bottom, in the 17th line, insert a comma after "asbestos".

4. On page 32846, in the third column, in the last paragraph, in the third line, "contingencies" should read "Contingencies".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-14-81]
RIN 1545-AD81

Deductions and Reductions in Earnings and Profits (or Accumulated Profits) With Respect to Certain Foreign Deferred Compensation Plans Maintained by Certain Foreign Corporations or by Foreign Branches of Domestic Corporations

Correction

In proposed rule document 93-10594 beginning on page 27219 in the issue of Friday, May 7, 1993, make the following corrections:

§ 1.404A-3 [Corrected]

1. On page 27234, in the second column, in § 1.404A-3(c)(3)(ii), in the last line, "August 5, 1993" should read "[insert date that is 90 days after the date of publication of final regulation in the **Federal Register**]".

§ 1.404A-4 [Corrected]

2. On page 27236, in the 3rd column, in § 1.404A-4(a), in the 23rd line, "otherwise" was misspelled.

§ 1.404A-5 [Corrected]

3. On page 27239, in the third column, in § 1.404A-5(b)(8), in the third line, "August 5, 1993" should read "[insert date that is 90 days after the date of publication of final regulations in the **Federal Register**]".

§ 1.404A-6 [Corrected]

4. On page 27240, in the first column, in § 1.404A-6(a), in the third line, insert "(i)" before "*Methods of accounting*".

§ 1.404A-7 [Corrected]

5. On page 27245, in the third column, in § 1.404A-7(b)(2), in the fifth and sixth lines from the bottom, "May 9, 1994" should read "[insert date that is 365 days after the date of publication of final regulations in the **Federal Register**]".

6. On page 27246, in the second column, in § 1.404A-7(c)(2), in the ninth line, "May 9, 1994" should read "[insert date that is 365 days after the date of publication of final regulations in the **Federal Register**]".

7. On page 27248, in the second column, in § 1.404A-7(d)(4)(ii), in the third and fourth lines, "May 9, 1994" should read "[insert date that is 365 days after the date of publication of final regulations in the **Federal Register**]".

8. On page 27249, in the first column, in § 1.404A-7(e)(2)(i), in the third line from the bottom, "May 9, 1994" should read "[insert date that is 365 days after the date of publication of final regulations in the **Federal Register**]".

9. On page 27250, in the first column, in§ 1.404A-7(f)(3), in the seventh line from the bottom, "May 9, 1994" should rea d"[insert date that is 365 days after the date of publication of final regulations in the **Federal Register**]".

10. On the same page, in the second column, in § 1.404A-7(g)(5), in the last line, "May 7, 1993" should read "[insert the date of publication of final regulations in the **Federal Register**]".

BILLING CODE 1505-01-D

federal register

Tuesday
June 29, 1993

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Permit-Required Confined Spaces; Corrections to Rule

VOL 58 ISS 123 JE 29 1993 UMI

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218–AA51

[Docket No. S–019]

Permit-Required Confined Spaces; Correction

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule; corrections.

SUMMARY: This document makes corrections to the final rule on Permit-Required Confined Spaces, which was published in the Federal Register on January 14, 1993 at 58 FR 4462.

EFFECTIVE DATE: June 29, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Office of Information and Public Affairs, room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 219–8151.

SUPPLEMENTARY INFORMATION: This document contains corrections to the final standard for Permit-Required Confined Spaces, which was published on January 14, 1993 (58 FR 4462). As published, the standard and appendices contain typographical errors as well as language that does not clearly express OSHA's intent. As explained below, this document is necessary to correct the identified errors and to indicate clearly what the Agency intended when it promulgated 29 CFR 1910.146.

Amendments to 29 CFR 1910.146

The term "Permit-required confined space program (permit space program)" is defined in 29 CFR 1910.146(b). However, that term is not used consistently elsewhere in the standard. In order to prevent confusion, OSHA is amending the standard so that the defined term appears where appropriate.

Paragraph (c)(5) of the final standard provides for alternative entry procedures to be used by employers under certain specified conditions. Employers meeting the conditions specified in paragraph (c)(5)(i) need not comply with paragraphs (d) through (f) and (h) through (k) of the standard. Paragraph (c)(5)(ii)(H) of the final rule requires that any employer who chooses to make an entry under the provisions of paragraph (c)(5) verify, through a written certification, that the measures required under (c)(5)(ii) have been taken. The certification is required to be made prior to entry. It is clear, however, that some measures (such as periodic monitoring) required under paragraph (c)(5)(ii) cannot be performed before entry takes place and that one cannot provide a pre-entry certification of a post-entry event that has not yet occurred. OSHA is correcting this inconsistency by making it clear that the certification requirement applies only to "pre-entry" measures taken under paragraph (c)(5)(ii).

OSHA recognizes that, while many employers already have fully operative permit space programs that comply with 29 CFR 1910.146, some employers have had little or no experience with such programs. The Agency has included non-mandatory appendices in the final rule for the benefit of those employers who want guidance in developing permit space programs. The appendices simply provide examples of procedures and permit forms that comply with the standard.

Some equipment manufacturers, however, have notified OSHA that certain sections of the appendices need to be amended because they either are unclear or express an inappropriate preference for specific types of equipment and procedures. The Agency has reviewed the manufacturers' concerns and has determined that some provisions of the appendices need to be amended so that they provide clear and appropriate guidance. In addition, OSHA has concluded, based on its own review of the appendices, that some other provisions in the appendices need to be corrected. The changes to the appendices are addressed below.

Amendment to Appendix A

Paragraph (c)(1) of the standard requires that employers evaluate their workplaces to determine if any spaces are permit-required confined spaces. The informational note which follows paragraph (c)(1) of the final standard OSHA states that proper application of the decision flowchart in appendix A of the standard would facilitate compliance with paragraph (c)(1). Several individuals have pointed out to OSHA that appendix A lacks a decision box dealing with the determination of the presence of confined spaces (preliminarily to any determination of whether or not such a confined space was a permit-required confined space). These individuals have recommended that OSHA change appendix A to indicate that such a determination is a necessary part of the evaluation process. OSHA agrees that this correction would be helpful and is adding a decision box at the beginning of appendix A which asks whether or not the workplace contains any confined spaces.

Amendments to Appendix B

OSHA is adding certified marine chemists to the example listing of technically qualified professionals in appendix B, paragraph (1). Certified marine chemists are well qualified to evaluate and interpret confined space hazard data and to develop or review entry procedures. They are an important resource available to employers in all industries.

OSHA is adding paragraph (5) at the end of appendix B to address the order of testing for atmospheric hazards. Even though the order for testing is specifically covered in paragraph (d)(5)(iii) of the standard, OSHA believes it is possible that employers may incorrectly infer from the existing appendix B, which does not address the order of testing, that there is no specified order of testing. The added paragraph briefly explains the correct order of testing and explains why the prescribed order is necessary.

Amendments to Appendix C

OSHA is making several minor changes in Example 1 in appendix C. The phrase "measured as an 8-hour time-weighted average" is being added following "[e]qual to or more than 10 ppm hydrogen sulfide", so that employers will understand precisely what is being measured. The reference to a non permit-required confined space is being removed, since the discussion actually centers on a permit space entry made using the alternative procedures in paragraph (c)(5). OSHA believes that the reference to a non permit-required confined space can only cause confusion, is out of place and should be removed.

Lastly, the reference to an alarm only gas monitor is being corrected. Although the standard contains no requirement that such a meter be used, OSHA feels that an employer could misunderstand the reference and mistakenly believe that an alarm only gas meter is necessary. The Agency expects employers to select the monitoring equipment which fits the circumstances of the particular workplace where entry operations are to be conducted. The alarm only gas monitor was mentioned simply as an example of the monitoring equipment which is available. Therefore, OSHA has added language which clarifies this provision.

Amendments to Appendix D

OSHA is deleting appendix D–1A. It contains material not required by the standard's regulatory text and is called

a "pre-entry check list". It has been the source of considerable confusion among numerous interested persons. OSHA believes that appendix D–1B, by itself, adequately serves as a sample permit and that appendix D–1A is best removed.

OSHA is redesignating appendix D–1B as appendix D–1. Also, all references to the term "check list" are being removed from this appendix, since this term is not used in the regulatory text and may be confusing. OSHA is also adding provisions dealing with communication procedures and periodic testing to appendix D–1. These provisions are required by paragraph (f) of the final rule but were inadvertently omitted from the sample permit in appendix D–1.

OSHA is making several minor changes to appendix D–2. Provisions pertaining to communication procedures, rescue procedures and a space for the name(s) of the entrant(s) have been added, since these items are required by paragraph (f) of the final rule but were inadvertently omitted from the sample permit in appendix D–2.

Amendments to Appendix E

OSHA is removing all references to broad range sensor instruments in appendix E. Employers are given the discretion to select the atmospheric testing equipment that best fits a specific permit space operation, so it is inappropriate for Appendix E to suggest that a particular type of sensor instrument should be used for sewer entry. In keeping with this performance-oriented approach, OSHA has added language to the appendix stating that atmospheric monitoring equipment needs to be calibrated in accordance with the manufacturer's specifications.

Authority: This document was prepared under the direction of David C. Zeigler, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, the publication on January 14, 1993 of § 1910.146 and appendices thereto, which was the subject of FR Doc. 93–538, is hereby corrected as set forth below.

Signed at Washington, DC, this 23rd day of June, 1993.

David C. Zeigler,

Acting Assistant Secretary of Labor.

§ 1910.146 [Corrected]

1. On page 4551, in the first column, in § 1910.146, the word "entry" is removed from the fourth line of paragraph (c)(4).

§ 1910.146 [Corrected]

2. On page 4551, in the third column, in § 1910.146, the word "pre-entry" is added between the words "the" and "measures" in lines two and three of paragraph (c)(5)(ii)(H).

§ 1910.146 [Corrected]

3. On page 4552, in the first column, in § 1910.146, the phrase "an permit space program" in line four and five of paragraph (c)(8)(i) is corrected to read "a permit space program".

§ 1910.146 [Corrected]

4. On page 4552, in the second column, in § 1910.146, the heading and introductory text to paragraph (d) are corrected to read as follows:

(d) *Permit-required confined space program* (permit space program). Under the permit space program required by paragraph (c)(4) of this section, the employer shall:

* * * * *

§ 1910.146 [Corrected]

5. On page 4553, in the first column, in § 1910.146, the phrase "permit-required confined space program" in lines two and three of the note to paragraph (d)(13) is corrected to read "permit space program."

§ 1910.146 [Corrected]

6. On page 4553, in the first column, in § 1910.146, the phrase "permit-required confined space program" in lines one and two of paragraph (d)(14) is corrected to read "permit space program."

§ 1910.146 [Corrected]

7. On page 4553, in the first column, in § 1910.146, the phrase "permit entry programs" in the second line in the undesignated paragraph following the informational note in paragraph (d)(14) is corrected to read "permit space programs."

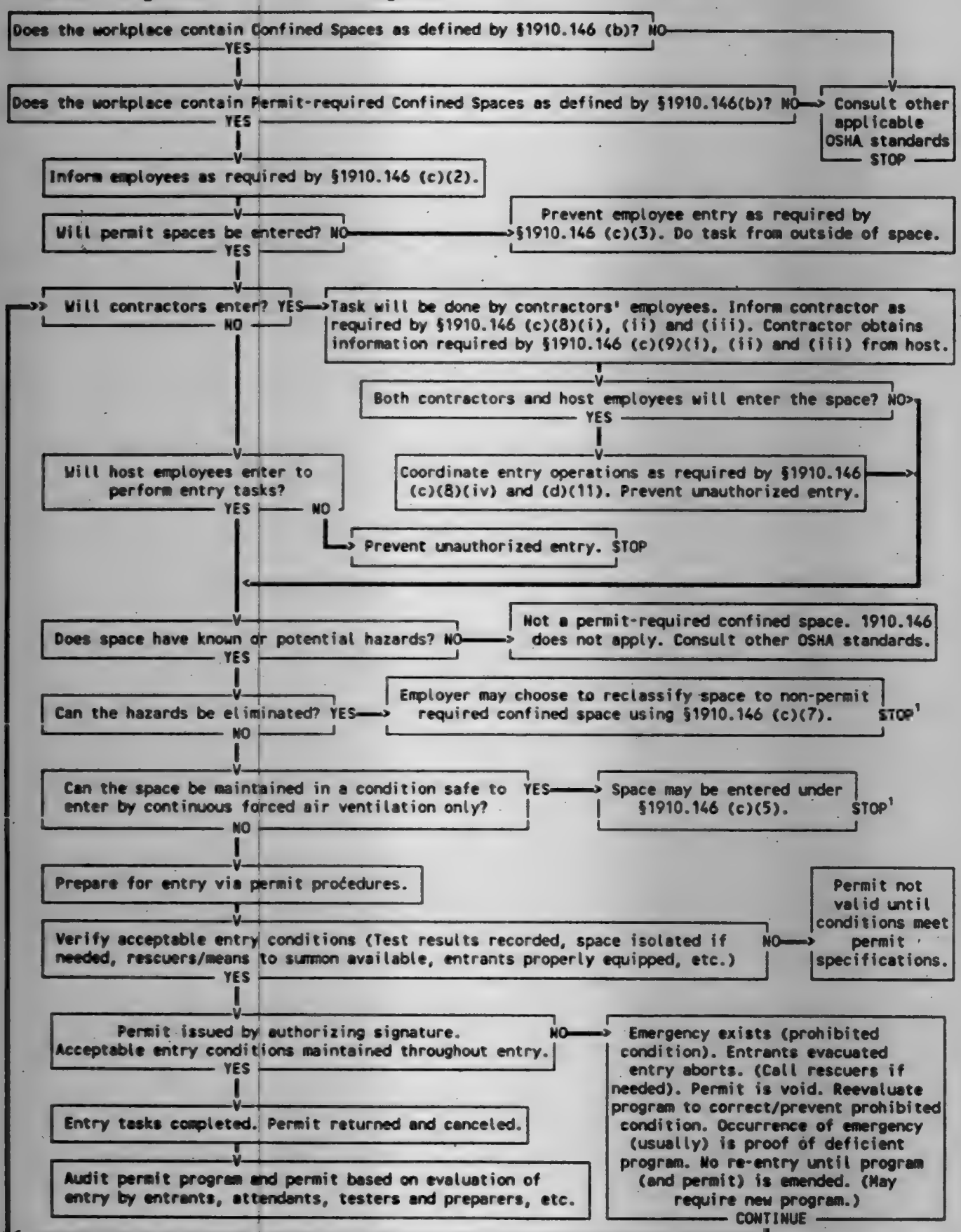
Appendices to § 1910.146 [Corrected]

8. Appendix A on page 4556 is corrected by adding a decision box at the beginning of the appendix dealing with the determination of whether or not a workplace contains any confined spaces. The corrected appendix A now reads as follows:

BILLING CODE 4510-26-P

Appendix A

Permit-required Confined Space Decision Flow Chart



[1] Spaces may have to be evacuated and re-evaluated if hazards arise during entry

BILLING CODE 4510-26-C

9. On page 4557, in the first column, the word "evqaluation" in the second line of appendix B is corrected to read "evaluation."

10. On page 4557, in the first column, the phrase "certified marine chemist" is added between the words "professional" and "etc." in line fifteen of the *evaluation testing* paragraph of appendix B.

11. On page 4557, in the first column, appendix B is corrected by adding a new paragraph (5) which reads as follows:

(5) *Order of testing.* A test for oxygen is performed first because most combustible gas meters are oxygen dependent and will not provide reliable readings in an oxygen deficient atmosphere. Combustible gases are tested for next because the threat of fire or explosion is both more immediate and more life threatening, in most cases, than exposure to toxic gases and vapors. If tests for toxic gases and vapors are necessary, they are performed last.

12. On page 4557, in the first column, the first sentence of the *Presence of toxic gases* paragraph in Example 1 of appendix C is corrected to read as follows: "Equal to or more than 10 ppm hydrogen sulfide measured as an 8-hour time-weighted average."

13. On page 4557, in the first column, the first sentence under A. *Entry without Permit/Attendant* in Example 1 of appendix C is corrected to read as follows: "Confined spaces may be entered without the need for a written permit or attendant provided that the space can be maintained in a safe condition for entry by mechanical ventilation alone, as provided in § 1910.146(c)(5)."

14. On page 4557, in the second column, the sentence "An alarm only type gas monitor may be used." in the fourth and fifth lines of the *Testing* paragraph, Example 1 of appendix C is corrected to read as follows: "Detector tubes, alarm only gas monitors and explosion meters are examples of monitoring equipment that may be used to test permit space atmospheres."

15. On page 4560 appendix D–1A is removed.

16. On page 4561 appendix D–1B is redesignated as appendix D–1 and is corrected to read as follows:

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Appendix D - 1

Confined Space Entry Permit

Date & Time Issued:_____ Date and Time Expires:_____

Job site/Space I.D.:_____ Job Supervisor_____

Equipment to be worked on:_____ Work to be performed: _____

Stand-by personnel_____ _____ _____

1. Atmospheric Checks: Time _____
   Oxygen _____%
   Explosive _____% L.F.L.
   Toxic _____PPM

2. Tester's signature_____

3. Source isolation (No Entry):	N/A	Yes	No
Pumps or lines blinded, disconnected, or blocked	( )	( )	( )
	( )	( )	( )

4. Ventilation Modification:	N/A	Yes	No
Mechanical	( )	( )	( )
Natural Ventilation only	( )	( )	( )

5. Atmospheric check after isolation and Ventilation:

Oxygen_____%	>	19.5	%
Explosive_____% L.F.L.	<	10	%
Toxic_____PPM	<	10	PPM H_2S

Time_____

Testers signature_____

6. Communication procedures: _____
   _____

7. Rescue procedures: _____
   _____
   _____
   _____
   _____
   _____

8. Entry, standby, and back up persons:

	Yes	No
Successfully completed required training?		
Is it current?	( )	( )

9. Equipment:

	N/A	Yes	No
Direct reading gas monitor - tested	( )	( )	( )
Safety harnesses and lifelines for entry and standby persons	( )	( )	( )
Hoisting equipment	( )	( )	( )
Powered communications	( )	( )	( )
SCBA's for entry and standby persons	( )	( )	( )
Protective Clothing	( )	( )	( )
All electric equipment listed Class I, Division I, Group D and Non-sparking tools	( )	( )	( )

10. Periodic atmospheric tests:

Oxygen ___% Time____	Oxygen ____% Time____		
Oxygen ___% Time____	Oxygen ____% Time____		
Explosive___% Time____	Explosive____% Time____		
Explosive___% Time____	Explosive____% Time____		
Toxic ___% Time____	Toxic ____% Time____		
Toxic ___% Time____	Toxic ____% Time____		

We have reviewed the work authorized by this permit and the information contained here-in. Written instructions and safety procedures have been received and are understood. Entry cannot be approved if any squares are marked in the "No" column. This permit is not valid unless all appropriate items are completed.

Permit Prepared By: (Supervisor)_____ _____

Approved By: (Unit Supervisor)_____ _____

Reviewed By (Cs Operations Personnel):_____ _____

(printed name) (signature)

This permit to be kept at job site. Return job site copy to Safety Office following job completion.

Copies: White Original (Safety Office) Yellow (Unit Supervisor) Hard(Job site)

BILLING CODE 4510-26-C

17. O
correcti
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17. On page 4562 appendix D—2 is corrected to read as follows:

BILLING CODE 4910-30-P

BILLING CODE 4310-30-C

Appendix D - 2

ENTRY PERMIT

PERMIT VALID FOR 8 HOURS ONLY. ALL PERMIT COPIES REMAIN AT SITE UNTIL JOB COMPLETED

DATE: - - SITE LOCATION/DESCRIPTION _____

PURPOSE OF ENTRY _____

SUPERVISOR(S) in charge of crews Type of Crew Phone #

_____

_____

COMMUNICATION PROCEDURES _____

RESCUE PROCEDURES (PHONE NUMBERS AT BOTTOM) _____

_____

*** BOLD DENOTES MINIMUM REQUIREMENTS TO BE COMPLETED AND REVIEWED PRIOR TO ENTRY***

REQUIREMENTS COMPLETED	DATE	TIME	REQUIREMENTS COMPLETED	DATE	TIME
Lock Out/De-energize/Try-out	____	____	**Full Body Harness w/"D" ring**	____	____
Line(s) Broken-Capped-Blank	____	____	**Emergency Escape Retrieval Eq**	____	____
Purge-Flush and Vent	____	____	**Lifelines**	____	____
Ventilation	____	____	Fire Extinguishers	____	____
Secure Area (Post and Flag)	____	____	Lighting (Explosive Proof)	____	____
Breathing Apparatus	____	____	Protective Clothing	____	____
Resuscitator - Inhalator	____	____	Respirator(s) (Air Purifying)	____	____
Standby Safety Personnel	____	____	Burning and Welding Permit	____	____

Note: Items that do not apply enter N/A in the blank.

** RECORD CONTINUOUS MONITORING RESULTS EVERY 2 HOURS **

CONTINUOUS MONITORING** TEST(S) TO BE TAKEN	Permissible Entry Level									
PERCENT OF OXYGEN	**19.5% to 23.5%**	____	____	____	____	____	____	____	____	____
LOWER FLAMMABLE LIMIT	**Under 10%**	____	____	____	____	____	____	____	____	____
CARBON MONOXIDE	**+35 PPM**	____	____	____	____	____	____	____	____	____
Aromatic Hydrocarbon	+ 1 PPM * 5PPM	____	____	____	____	____	____	____	____	____
Hydrogen Cyanide	(Skin) * 4PPM	____	____	____	____	____	____	____	____	____
Hydrogen Sulfide	+10 PPM *15PPM	____	____	____	____	____	____	____	____	____
Sulfur Dioxide	+ 2 PPM * 5PPM	____	____	____	____	____	____	____	____	____
Ammonia	*35PPM	____	____	____	____	____	____	____	____	____

* Short-term exposure limit:Employee can work in the area up to 15 minutes.

\+ 8 hr. Time Weighted Avg.:Employee can work in area 8 hrs (longer with appropriate respiratory protection).

REMARKS: _____

GAS TESTER NAME & CHECK # INSTRUMENT(S) USED MODEL &/OR TYPE SERIAL &/OR UNIT #

_____ _____ _____ _____

_____ _____ _____ _____

SAFETY STANDBY PERSON IS REQUIRED FOR ALL CONFINED SPACE WORK

SAFETY STANDBY PERSON(S) CHECK # CONFINED SPACE ENTRANT(S) CHECK # CONFINED SPACE ENTRANT(S) CHECK #

_____ _____ _____ _____ _____ _____

_____ _____ _____ _____ _____ _____

SUPERVISOR AUTHORIZATION - ALL CONDITIONS SATISFIED _____ DEPARTMENT/PHONE _____

AMBULANCE 2800 FIRE 2900 Safety 4901 Gas Coordinator 4529/5387

BILLING CODE 4510-26-C

18. On
second co
monitorin
corrected
should be
equipped
equipmen
alarm, in
whenever
condition
concentra
flammabl

18. On page 4563, in the first and second columns, the *Atmospheric monitoring* paragraph of appendix E is corrected to read as follows: "Entrants should be trained in the use of, and be equipped with, atmospheric monitoring equipment which sounds an audible alarm, in addition to its visual readout, whenever one of the following conditions is encountered: Oxygen concentration less than 19.5 percent; flammable gas or vapor at 10 percent or more of the lower flammable limit (LFL); or hydrogen sulfide or carbon monoxide at or above 10 ppm or 35 ppm, respectively, measured as an 8 hour time-weighted average. Atmospheric monitoring equipment needs to be calibrated according to the manufacturer's instructions. Substance specific monitoring equipment should be used whenever actual or potential contaminants have been identified. The instrument should be carried and used by the entrant in sewer line work to monitor the atmosphere in the entrant's environment, and in advance of the entrant's direction of movement, to warn the entrant of any deterioration in atmospheric conditions. Where several entrants are working together in the same immediate location, one instrument, used by the lead entrant, is acceptable."

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Part III

The President

Proclamation 6575—To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

Memorandum of June 25—Actions Concerning the Generalized System of Preferences

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Title 3—

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Presidential Documents

Title 3—

The President

Proclamation 6575 of June 25, 1993

To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

By the President of the United States of America

A Proclamation

1. Pursuant to title V of the Trade Act of 1974, as amended ("1974 Act") (19 U.S.C. 2461 *et seq.*), the President may designate specified articles provided for in the Harmonized Tariff Schedule of the United States ("HTS") as eligible for preferential tariff treatment under the Generalized System of Preferences ("GSP") when imported from designated beneficiary developing countries.

2. Pursuant to section 504(c) of the 1974 Act (19 U.S.C. 2464(c)), beneficiary developing countries, except those designated as least-developed beneficiary developing countries pursuant to section 504(c)(6) of the 1974 Act, are subject to limitations on the preferential treatment afforded under the GSP. Pursuant to section 504(c)(5) of the 1974 Act, a country that is no longer treated as a beneficiary developing country with respect to an eligible article may be redesignated as a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in section 504(c)(1) (after application of paragraph (c)(2)) during the preceding calendar year. Pursuant to section 504(d)(1) of the 1974 Act (19 U.S.C. 2464(d)(1)), section 504(c)(1)(B) of the 1974 Act shall not apply with respect to any eligible article if a like or directly competitive article is not produced in the United States on January 3, 1985. Further, pursuant to section 504(d)(2) of the 1974 Act (19 U.S.C. 2464(d)(2)), the President may disregard the limitations provided in section 504(c)(1)(B) with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year is not in excess of an amount that bears the same ratio to $5,000,000 as the gross national product of the United States for that calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1979.

3. Section 502(b)(7) of the 1974 Act (19 U.S.C. 2462(b)(7)) provides that a country that has not taken or is not taking steps to afford internationally recognized worker rights, as defined in section 502(a)(4) of the 1974 Act (19 U.S.C. 2462(a)(4)), is ineligible for designation as a beneficiary developing country for purposes of the GSP. Pursuant to section 504 of the 1974 Act, the President may withdraw, suspend, or limit the application of duty-free treatment under the GSP with respect to any article or with respect to any country upon consideration of the factors set forth in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 2462(c)).

4. Pursuant to sections 501, 503(a), and 504(a) of the 1974 Act (19 U.S.C. 2461, 2463(a), and 2464(a)), in order to subdivide and amend the nomenclature of existing provisions of the HTS to modify the GSP, I have determined, after taking into account information and advice received under section 503(a), that the HTS should be modified to adjust the original designation of eligible articles. In addition, pursuant to title V of the 1974 Act, I have determined that it is appropriate to designate specified articles provided for in the HTS as eligible for preferential tariff treatment under the GSP when imported from designated beneficiary developing countries, and

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that such treatment for other articles should be terminated. I have also determined, pursuant to sections 504(a), (c)(1), and (c)(2) of the 1974 Act, that certain beneficiary countries should no longer receive preferential tariff treatment under the GSP with respect to certain eligible articles. Further, I have determined, pursuant to section 504(c)(5) of the 1974 Act, that certain countries should be redesignated as beneficiary developing countries with respect to certain eligible articles. These countries have been previously excluded from benefits of the GSP with respect to such eligible articles pursuant to section 504(c)(1) of the 1974 Act. Further, pursuant to section 504(d)(1) of the 1974 Act (19 U.S.C. 2464(d)(1)), I have determined that the limitation provided for in section 504(c)(1)(B) of the 1974 Act (19 U.S.C. 2464(c)(1)(B)) should not apply with respect to certain eligible articles because no like or directly competitive article was produced in the United States on January 3, 1985. Last, I have determined that section 504(c)(1)(B) of the 1974 Act should not apply with respect to certain eligible articles pursuant to section 504(d)(2) of the 1974 Act.

5. Pursuant to sections 502(b)(7), 502(c)(7), and 504 of the 1974 Act (19 U.S.C. 2462(b)(7), 2462(c)(7), and 2464), I have determined that it is appropriate to provide for the suspension of preferential treatment under the GSP for articles that are currently eligible for such treatment and that are imported from Mauritania. Such suspension is the result of my determination that Mauritania has not taken and is not taking steps to afford internationally recognized worker rights, as defined in section 502(a)(4) of the 1974 Act (19 U.S.C. 2462(a)(4)).

6. Pursuant to sections 501 and 502 of the 1974 Act (19 U.S.C. 2461 and 2462), and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Albania as a beneficiary developing country for purposes of the GSP.

7. Proclamation 6517 of December 23, 1992, withdrew the duty-free treatment accorded under the GSP, pursuant to title V of the 1974 Trade Act, to imports of sulfanilic acid, provided for in HTS subheading 2921.42.24. Proclamation 6544 of April 13, 1993, made further modifications in the HTS provisions for such goods. Through technical error, the HTS provisions created in the annexes to such proclamations were not properly structured and numbered. Therefore, I have decided that it is necessary and appropriate to modify the HTS to correct these errors.

8. Section 604 of the 1974 Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other Acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to title V and section 604 of the 1974 Act, do proclaim that:

(1) In order to designate certain articles as eligible articles for purposes of the GSP when imported from designated beneficiary developing countries, the HTS is modified as provided in Annex I to this proclamation.

(2)(a) In order to designate certain articles as eligible articles for purposes of the GSP when imported from any designated beneficiary developing country, the Rates of Duty 1–Special subcolumn for the HTS subheading enumerated in Annex II(a) to this proclamation is modified by inserting in the parentheses the symbol "A" as provided in such Annex.

(b) In order to designate certain articles as eligible articles for purposes of the GSP when imported from any designated beneficiary developing country excluding India, the Rates of Duty 1–Special subcolumn for the HTS subheading enumerated in Annex II(b) to this proclamation is modified by inserting in the parentheses the symbol "A*" as provided in such Annex.

Billing code 3

(c) In order to restore preferential tariff treatment under the GSP to a country which has been excluded from the benefits of the GSP for an eligible article, the Rates of Duty 1–Special subcolumn for each of the HTS subheadings enumerated in Annex II(c) to this proclamation is modified: (i) by deleting symbol "A*" in parentheses, and (ii) by inserting in such subcolumn the symbol "A" in lieu thereof.

(d) In order to provide that one or more countries should no longer be treated as a beneficiary developing country with respect to an eligible article for purposes of the GSP, the Rates of Duty 1–Special subcolumn for each of the HTS provisions enumerated in Annex II(d) to this proclamation is modified: (i) by deleting the symbol "A" in parentheses, and (ii) by inserting in such subcolumn the symbol "A*" in lieu thereof.

(3) In order to provide for the suspension of preferential treatment under the GSP for Mauritania, to provide for the addition of Albania as a beneficiary developing country under the GSP, to provide that one or more countries that have not been treated as beneficiary developing countries with respect to an eligible article should be redesignated as beneficiary developing countries with respect to such article for purposes of the GSP, and to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to an eligible article for purposes of the GSP, general note 3(c)(ii) to the HTS is modified as provided in Annex III to this proclamation.

(4) In order to ensure the withdrawal of GSP treatment from imports of sulfanilic acid and to correct technical errors in certain HTS provisions, as created in the Annex to Proclamation 6517 and modified in Annex II to Proclamation 6544, such annexes are hereby superseded, and the HTS is modified as set forth in Annex IV to this proclamation.

(5) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(6)(a) The modifications made by Annexes I, II, and III(a) to this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1993.

(b) The modification made by Annex III(b) to this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after 60 days after the date of publication of this proclamation in the **Federal Register**.

(c) The modifications made by Annex IV to this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after January 12, 1993.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of June, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

Billing code 3195–01–P

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Annex I

Modifications to the HTS

The HTS is modified as provided below, with bracketed matter included to assist in the understanding of proclaimed modifications. The following supersedes matter in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1–General", "Rates of Duty 1–Special", and "Rates of Duty 2", respectively.

Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1993.

1. Subheading 4418.20.00 is superseded by:

	[Builders' joinery . . .]			
"4418.20	Doors and their frames and thresholds:			
4418.20.40	French doors	7.5%	Free (A*, CA, E, IL, J)	33⅓%
4418.20.80	Other	7.5%	Free A,CA,E, IL, J)	33⅓%"

2. Subheading 8521.10.00 is superseded by:

	[Video recording . . .:]			
"8521.10	Color, cartridge or cassette type:			
8521.10.30	Not capable of recording	3.9%	Free (A, C, CA, E, IL, J)	35%
8521.10.60	Other	3.9%	Free (A*, C, CA, E, IL, J)	35%
8521.10.90	Other	3.9%	Free (A, C, CA, E, IL, J)	35%"

Annex II

Modification in the HTS of an Article's Preferential Tariff Treatment under the GSP

Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1993.

(a) For HTS subheading 7202.50.00, in the Rates of Duty 1–Special subcolumn, insert in the parentheses following the "Free" rate the symbol "A," in alphabetical order.

(b) For HTS subheading 2902.60.00, in the Rates of Duty 1–Special subcolumn, insert in the parentheses following the "Free" rate the symbol "A*," in alphabetical order.

(c) For HTS subheadings 4008.19.10, 8112.91.50 and 8527.11.60, in the Rates of Duty 1–Special subcolumn, delete the symbol "A*" and insert an "A" in lieu thereof.

(d) For the following HTS provisions, in the Rates of Duty 1–Special subcolumn, delete the symbol "A" and insert an "A*" in lieu thereof:

0709.90.05	7008.00.00	8481.80.90	8548.00.00
0710.80.70	7320.10.30	8516.80.50	8716.39.00
1604.16.10	8402.20.00	8527.31.40	9006.99.00
4412.11.10	8408.20.90	8536.61.00	9405.50.30
4804.31.60	8471.92.40	8542.30.00	

Annex III

Modifications to General Note 3(c)(ii) of the HTS

(a) Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1993.

(1) General note 3(c)(ii)(A) is modified by inserting "Albania" in alphabetical order in the enumeration of independent countries.

(2) General note 3(c)(ii)(D) is modified:

(i) by deleting the following HTS subheading and the country set opposite such subheading:

4008.19.10	Malaysia
8112.91.50	Chile
8521.10.00	Malaysia; Thailand
8527.11.60	Malaysia

(ii) by adding in numerical sequence, the following HTS provisions and countries set opposite them:

0709.90.05	Mexico	8471.92.40	Malaysia
0710.80.70	Guatemala	8481.80.90	Mexico
1604.16.10	Morocco	8516.80.80	Mexico
2902.60.00	India	8521.10.60	Indonesia; Thailand
4412.11.10	Indonesia	8527.31.40	Malaysia
4418.20.40	Malaysia	8536.61.00	Mexico
4804.31.60	Mexico	8542.80.00	Malaysia
7008.00.00	Mexico	8548.00.00	Mexico
7320.10.30	Mexico	8716.39.00	Mexico
8402.20.00	Philippines	9006.99.00	Mexico
8408.20.90	Brazil	9405.50.30	India

(iii) by adding, in alphabetical order, the following countries opposite the following HTS provisions:

2603.00.00	Indonesia
2915.39.50	Mexico
2917.35.00	Mexico
2918.90.30	Mexico
3402.20.10	Mexico
4104.22.00	Brazil
7113.19.50	India

(b) *Effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after 60 days after the date of publication of this Proclamation in the* **Federal Register**.

(1) General note 3(c)(ii)(A) is modified by deleting "Mauritania" from the enumeration of independent countries.

(2) General note 3(c)(ii)(B) is modified by deleting "Mauritania" from the enumeration of countries.

Annex IV

Effective with respect to articles both: (i) imported on or after January 1, 1976 and (ii) entered, or withdrawn from warehouse for consumption, on or after January 12, 1993.

1. The HTS is modified as provided below, with bracketed matter included to assist in the understanding of proclaimed modifications. The following supersedes matter in the HTS. The subheadings and superior text are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1–General", "Rates of Duty 1–Special", and "Rates of Duty 2", respectively.

Subheading 2921.42.24 is deleted and the following new subheadings inserted in numerical sequence:

	[Amine-function compounds:]			
	[Aromatic monoamines . . .:]			
	[Aniline derivatives . . .:]			
"2921.42.21	Metanilic acid	2.4¢/kg + 18.8%	Free (A*, CA, E, IL, J)	15.4¢/kg + 60%
2921.42.22	Sulfanilic acid	2.4¢/kg + 18.8%	Free (CA, E, IL, J)	15.4¢/kg + 60%"

Conforming change: General note 3(c)(ii)(D) to the HTS is modified by deleting "2921.42.24 India" and inserting, in numerical sequence, "2921.42.21 India" in lieu thereof.

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Presidential Documents

Memorandum of June 25, 1993

Actions Concerning the Generalized System of Preferences

Memorandum for the United States Trade Representative

Pursuant to sections 502(b)(4), 502(b)(7), 502(c)(5), and 504 of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2462(b)(4), 2462(b)(7), 2462(c)(5), and 2464), I am authorized to make determinations concerning the alleged expropriation without compensation by a beneficiary developing country, to make findings concerning whether steps have been taken or are being taken by certain beneficiary developing countries to afford internationally recognized worker rights to workers in such countries, to take into account in determining the Generalized System of Preferences (GSP) eligibility of a beneficiary developing country the extent to which certain beneficiary developing countries are providing adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights, and to modify the application of duty-free treatment under the GSP currently being afforded to such beneficiary developing countries as a result of my determinations.

Specifically, after considering a private sector request for a review concerning the alleged expropriation by Peru of property owned by a United States person allegedly without prompt, adequate, and effective compensation, without entering into good faith negotiations to provide such compensation or otherwise taking steps to discharge its obligations, and without submitting the expropriation claim to arbitration, I have decided to continue the review of the alleged expropriation by Peru.

Second, after considering various private sector requests for a review of whether or not certain beneficiary developing countries have taken or are taking steps to afford internationally recognized worker rights (as defined in section 502(a)(4) of the 1974 Act (19 U.S.C. 2462(a)(4)) to workers in such countries, and in accordance with section 502(b)(7) of the 1974 Act (19 U.S.C. 2462(b)(7)), I have determined that Panama has taken or is taking steps to afford internationally recognized worker rights, and I have determined that Mauritania has not taken and is not taking steps to afford such internationally recognized rights. Therefore, I am notifying the Congress of my intention to suspend the GSP eligibility of Mauritania. Finally, I have determined to continue to review the status of such worker rights in Bahrain, El Salvador, Fiji, Guatemala, Indonesia, Malawi, Oman, and Thailand.

Third, after considering various private sector requests for a review of whether or not certain beneficiary developing countries are providing adequate and effective means under their laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights, I have determined to continue the review of the Dominican Republic, Guatemala, and Honduras.

Fourth, pursuant to section 504(f) of the 1974 Act (19 U.S.C. 2464(f)), I am hereby acting to modify the application of duty-free treatment under the GSP currently being afforded to Israel.

Specifically, I have determined under the provisions of section 504(f) that the per capita gross national product for Israel, calculated on the basis of the best available information, including 1992 World Bank statistics, exceeds the applicable limit provided in section 504(f)(2). Accordingly, pursuant to section 504(f)(1)(A), beginning on July 1, 1993, and continuing through June 30, 1995, the limitations of preferential treatment provided under section 504(c)(1)(B) of the 1974 Act (19 U.S.C. 2464(c)(1)(B)) shall be applied substituting "25 percent" for "50 percent." Furthermore, pursuant to section 504(f)(1)(B), effective July 1, 1995, Israel shall no longer be treated as a beneficiary developing country for purposes of the GSP.

Pursuant to section 504 of the 1974 Act, after considering various requests for a waiver of the application of section 504(c) of the 1974 Act (19 U.S.C. 2464(c)) with respect to certain eligible articles, I have determined that it is appropriate to modify the application of duty-free treatment under the GSP currently being afforded to certain articles and to certain beneficiary developing countries. Further, in order to convert a prior Presidential decision taken in terms of the Tariff Schedule of the United States (TSUS) into the nomenclature of the Harmonized Tariff Schedule of the United States (HTS), I have also determined that it is appropriate to convert the waiver of section 504(c) of the 1974 Act with respect to lawn tennis balls provided for in TSUS 734.85 from Indonesia into the HTS nomenclature, specifically HTS subheading 9506.91.00.

Specifically, pursuant to section 504(c)(3) of the 1974 Act (19 U.S.C. 2464(c)(3)), I have determined that it is appropriate to waive the application of section 504(c) of the 1974 Act with respect to certain eligible articles from certain beneficiary developing countries. I have received the advice of the United States International Trade Commission on whether any industries in the United States are likely to be adversely affected by such waivers, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 2462(c)), that such waivers are in the national economic interest of the United States. The waivers of the application of section 504(c) of the 1974 Act apply to the eligible articles in the HTS subheadings and the beneficiary developing countries set opposite such HTS subheadings enumerated below.

HTS Subheadings and Countries Granted Waivers of Section 504(c) of the 1974 Act

HTS Subheading	Country
7202.50.00	Zimbabwe
8521.10.60	Malaysia
8527.11.60	Malaysia

These determinations shall be published in the Federal Register.

William J. Clinton

THE WHITE HOUSE,
Washington, June 25, 1993.

[FR Doc. 93-15499
Filed 6-25-93; 4:54 pm]
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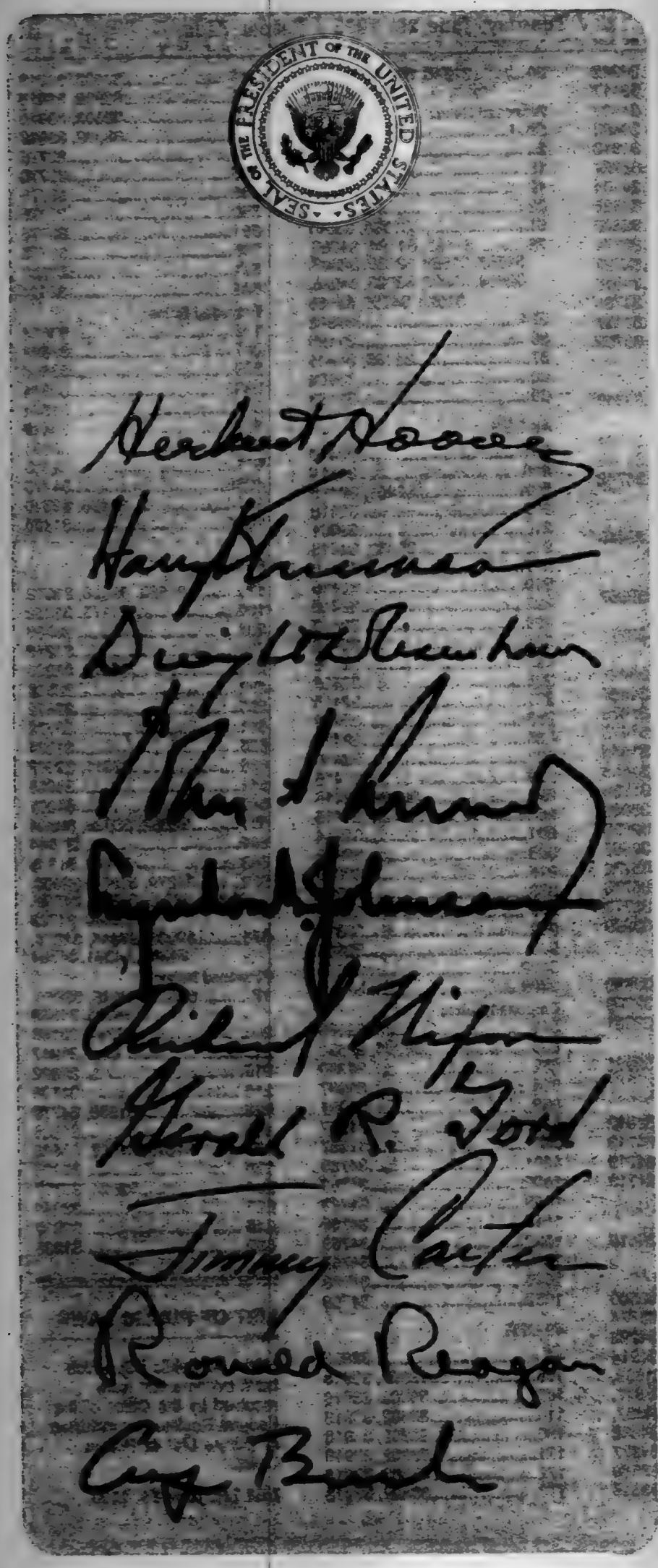

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DEPARTM

Agricultur

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[Docket No

Changes I the Quality Peanuts N Marketing

AGENCY: A USDA.

ACTION: In for comme

SUMMARY: changes th for 1993 a regulates t by persons Peanut Ma outgoing r shipment, identificat reconstitu of a buyer kept on su will provi handlers t buyers and movement change is requireme specified i

DATES: Thi effective Ju received b considered rule.

ADDRESSES invited to concernin sent in tri Fruit and USDA, PO Washingto (202) 720- reference date and p

Rules and Regulations

Federal Register
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Wednesday, June 30, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 997

[Docket No. FV93-997-1IFR]

Changes in the Provisions Regulating the Quality of Domestically Produced Peanuts Not Subject to the Peanut Marketing Agreement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the outgoing quality regulation for 1993 and future crop peanuts which regulates the quality of peanuts handled by persons who are not signatory to the Peanut Marketing Agreement. The outgoing regulation is changed to allow shipment, without positive lot identification, of lots which are reconstituted by a handler at the request of a buyer and to require that records be kept on such shipments. This action will provide increased opportunity for handlers to meet the requests of their buyers and, thus, facilitate the movement of peanuts to market. This change is intended to bring the quality requirements into conformity with those specified in the agreement.

DATES: This interim final rule is effective June 30, 1993. Comments received by July 30, 1993 will be considered prior to finalization of the rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456, or FAX (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–2020, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This interim final rule is issued pursuant to requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 25 handlers of peanuts who have not signed the agreement and thus, are subject to the regulations contained herein. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000. It is estimated that most of the handlers are small entities. Most producers doing business with these handlers are also small entities. Small agricultural producers have been defined as those having annual receipts of less than $500,000.

Aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. Public Law 101–220, enacted December 12, 1989, amended section 608(b) of the Act to require that all peanuts handled by persons who have not entered into the agreement (non-signers) be subject to quality and inspection requirements to the same extent and manner as are required under the agreement. It is estimated that 5 to 10 percent of the domestic peanut crop is marketed by non-signer handlers and the remainder of the crop is handled by signatory handlers.

Under the non-signer provisions, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the quality requirements of the agreement. Regulations to implement Public Law 101–220 were issued and made effective on December 4, 1990 (55 FR 49980) and amended on October 31, 1991 (56 FR 55988). Violation of those regulations may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the support price for quota peanuts. The support price for quota peanuts is determined under section 108b of the Agricultural Act of 1949 (7 U.S.C. 1445c–2) for the crop year during which the violation occurs.

The intent of Public Law 101–220 and the objective of the agreement is to insure that only wholesome peanuts of good quality enter edible market channels. Under the non-signer and agreement regulatory provisions, farmers' stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to non-edible uses. Each lot of shelled peanuts, destined for edible channels, must be officially sampled and chemically tested for aflatoxin by the Department or in other laboratories listed in the regulations. Inspection and chemical analysis programs are administered by the Department.

In 1992, the three major peanut production areas produced approximately 4.28 billion pounds of peanuts, a 13 percent decrease from 1991. The 1992 crop value is $1.3 billion, down 8 percent from 1991.

This interim final rule amends paragraph (d) Identification, of the outgoing quality regulation to allow for shipment, without Positive Lot

Identification (PLI), of inshell and shelled, edible quality peanuts which are reconstituted after processing and PLI by a handler, at the request of a buyer

The outgoing quality regulation requires that peanut lots be PLI when shipped by the handler. Handlers have traditionally maintained PLI until the lot is received by a buyer or other independent entities in the handling process such as second handlers, independent cold storage warehouse operators, blanchers or remillers. Under current provisions, the handler PLI requirement, at the time of shipment, puts handlers at a competitive disadvantage with such entities. Such entities may provide additional processing or change containers of the lot, at the request of the buyer. However, because such lots are no longer under the purview of the non-signer provisions, the entities do not have to maintain PLI, and thus do not charge buyers the extra costs for obtaining a Federal or Federal-State Inspection Service transfer certificate or a second positive lot inspection of such reconstituted lots.

This rulemaking extends an action approved beginning with the 1992 crop year when the Department determined (57 FR 39112, August 28, 1992) that non-signer handlers may commingle PLI lots, at the request of a buyer, and ship such lots without inspection recertification. This action permits non-signer handlers to provide additional processing services after the initial processing and PLI, without incurring recertification costs.

To safeguard normal inspection procedures, a lot which does not receive a new PLI or transfer certificate after reconstitution and/or commingling is not eligible for an appeal inspection. Loss of the handler's right to an appeal inspection on a reconstituted and/or commingled lot should not represent a significant concern as lots that pass quality inspection and aflatoxin testing normally do not require an appeal inspection.

Non-signer handlers are to be responsible for maintaining records of the quantities of peanuts so reconstituted and making such records available to the Department upon request.

The change is effected by revising § 997.30(d). A similar change has been made in the outgoing quality regulation of the agreement, effective for the 1993–94 crop year.

This action will provide increased opportunity for handlers to meet the requests of their buyers and, thus facilitate the movement of peanuts to market. There will be no adverse impact from this change on the outgoing quality regulation of the non-signer provisions.

There are no changes applicable to the incoming quality requirements, therefore, the incoming quality regulation applicable to 1992–93 crop peanuts continues to be effective for 1993–94 crop peanuts.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

The information collection requirements that are contained in the sections of these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0163.

After consideration of all available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes restrictions on peanut handlers not subject to the agreement; (2) the new crop year begins on July 1, 1993, and handlers need to know the regulations applicable to handling the 1993 peanut crop; (3) this action will ease the movement of peanuts to market; (4) this action brings the quality requirements under part 997 into conformity with those under the agreement, as required by the Act; and (5) this action provides a 30-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 997 is amended as follows:

Note: This section will be published in the annual Code of Federal Regulations.

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

1. The authority citation for 7 CFR part 997 is revised to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 997.30 is amended by revising paragraph (d) to read as follows:

§ 997.30 Outgoing regulation.

* * * * *

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts shall be identified by positive lot identification procedures prior to being shipped or otherwise disposed of. For the purpose of this regulation, "positive lot identification" of a lot of shelled or inshell peanuts is a means of relating the inspection certificate to the lot which has been inspected so that there can be no doubt that the peanuts are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bag in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bags the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and if in other containers by other means acceptable to the Federal or Federal-State Inspection Service. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures, except those lots which have been reconstituted and/or commingled at the request of the receiver. All such reconstituted and/or commingled lots will no longer be considered positive lot identified and, therefore, no longer be eligible for appeal inspection. Handler shall keep and maintain records of the quantities involved in each reconstituting and/or commingling procedure, whether in single or multiple lots, and such records shall be available to the Division on request.

* * * * *

Dated: June 23, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–15275 Filed 6–29–93; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 998

[Docket No. FV93–998–2IFR]

Amending Requirements Established Under Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts for 1993 Crop Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the outgoing quality regulation to: (1) Allow shipment, without positive lot identification, of lots which are reconstituted after initial inspection and certification by a handler at the request of a buyer (Such lots are not eligible for indemnification claims or appeal inspection and handlers must maintain records on such shipments.); and (2) strengthen the control of the movement of out-of-grade lots of peanuts, and peanuts derived from the blanching and milling of such lots, by the Peanut Administrative Committee (Committee). The terms and conditions of indemnification also are amended to clarify the deadline for submitting indemnification claims, to identify documentation needed to process indemnification claims, and to provide consistency with amended quality regulations. These Committee recommendations: (1) Provide increased opportunities for handlers to meet the requests of their buyers and, thus, facilitate the movement of peanuts to market; (2) assure the proper handling of out-of-grade peanut lots regulated under provisions of the agreement; and (3) clarify regulations and reporting requirements to assist the Committee in administering the indemnification program.

DATES: This interim final rule is effective June 30, 1993. Comments received by July 30, 1993 will be considered prior to finalization of the rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–South, Washington, DC 20090–6456, or FAX (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments received will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: John Toth, Southeastern Marketing Field Office, P.O. Box 2276, Winter Haven, Florida 33883–2276, telephone (813) 299–4770, FAX (813) 299–5169 or Jim Wendland, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 720–2170, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to Marketing Agreement No. 146 (7 CFR part 998), regulating the quality of domestically produced peanuts, hereinafter referred to as the agreement. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (the Act).

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are about 70 handlers of peanuts subject to regulation under the agreement, and there are about 47,000 peanut growers in the 16 States covered under the program. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000 and small agricultural producers have been defined as those having annual receipts of less than $500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the growers may be classified as small entities.

In 1992, the three major peanut production areas covered under the agreement produced approximately 4.28 billion pounds of peanuts, a 13 percent decrease from 1991. The 1992 crop value is $1.3 billion, down 8 percent from 1991.

The objective of the agreement, in place since 1965, is to ensure that only wholesome peanuts enter edible market channels. About 70 percent of U.S. shellers (handlers), handling approximately 90 percent of the crop, have voluntarily signed the agreement. Under the agreement, farmers' stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to non-edible uses. Each lot of milled peanuts must be sampled and the samples chemically analyzed for aflatoxin contamination. A sheller who has complied with these requirements may be eligible for indemnification of losses if the peanuts test positive to aflatoxin. Indemnification and administrative costs are paid by assessments levied on handlers signatory to the agreement.

The Committee met on March 24 and 25, 1993, and unanimously recommended changes to § 998.200 *Outgoing quality regulation* and § 998.300 *Terms and conditions of indemnification—1993 crop peanuts.*

After considerable discussion, the Committee recommended amendment of paragraph (d) *Identification* of the outgoing quality regulations to allow for shipment, without Positive Lot Identification (PLI), of inshell and shelled, edible quality peanuts which are reconstituted after processing and PLI by a handler, at the request of a buyer.

The outgoing quality regulation requires that peanut lots be PLI when shipped by the handler. Handlers have traditionally maintained PLI until the lot is received by a buyer or another, independent entity in the handling process such as second handlers and independent cold storage warehouses. The Committee believes the PLI requirement for handlers, at the time of shipment, puts handlers at a competitive disadvantage with such second handlers or similar entities, as well as with blanchers and remillers. Such entities may provide additional processing or change containers of the lot, at the request of the buyer. However, because such lots are no longer under purview of the regulations (and the control of the handler), the entities do not have to maintain PLI, and thus, do not charge buyers the extra costs for

obtaining a Federal or Federal-State Inspection Service (Inspection Service) transfer certificate or a second positive lot inspection.

This rulemaking action also extends an action implemented last year (57 FR 34061, August 3, 1992) that allows handlers to commingle PLI lots, at the request of buyers, and ship such lots without reinspection and recertification. This action permits handlers to provide additional processing services after the initial processing, inspection and PLI, without incurring recertification costs.

To safeguard the indemnification program and normal inspection procedures, the Committee recommended that lots which do not receive a new PLI or transfer certificate after reconstitution and/or commingling not be eligible for indemnification claims or for appeal inspection. Loss of the handler's right to indemnification claims and appeal inspections on reconstituted and/or commingled lots should not represent a significant concern to handlers as lots that pass quality inspection and aflatoxin testing are not eligible for indemnification and normally do not require an appeal inspection.

The Committee also recommended that handlers be responsible for maintaining records of the quantities of peanuts so reconstituted and making such records available to the Committee upon request.

The second Committee recommendation is designed to strengthen the control of the movement of handlers' out-of-grade lots sent for blanching and remilling under provisions specified in paragraphs (h)(2) (blanching) and (h)(4) (remilling) of the outgoing quality regulations. The Committee made this recommendation to assure the proper handling of peanut lots subject to the program's outgoing quality regulations.

Paragraph (h)(2) applies, in part, to handlers' out-of-grade lots which are sent to blanching for further processing. Residual peanuts resulting from the blanching process must be either returned to the handler, or, at the handler's instruction, disposed of by the blancher to crushing or inedible export outlets. The existing text of paragraph (h)(2) is amended to require that the handler receive authorization from the Committee prior to movement of such lots to a blancher and that the residual lots, when so disposed, shall be positive lot identified.

Because current regulations do not reference all acceptable inedible outlets, the Committee also recommended that acceptable disposition outlets be specified in paragraph (h)(2). Such acceptable outlets are other handlers who are crushers or exporters, crushers who are not handlers but are approved by the Committee, and Committee approved blanchers.

Paragraph (h)(4) applies, in part, to handlers' residual lots resulting from remilling. The Committee recommended that the amended text of (h)(4) read the same as that recommended for paragraph (h)(2).

In addition to changes in paragraphs (h)(2) and (h)(4) of the outgoing quality regulation, the Committee recommended, for consistency purposes, adding a new subparagraph (p)(2) to § 998.300 *Terms and Conditions for Indemnification*. This addition identifies paragraphs (h)(2) and (h)(4) as paragraphs in the outgoing quality regulation that handlers must comply with to be eligible to receive indemnification payments.

The Committee unanimously recommended amending paragraph (l) of § 988.300 *Terms and Conditions of Indemnification* to provide for the more timely receipt of indemnification claim documents and to specify the documentation needed by the Committee to process such claims. The Committee reported that incomplete indemnification claim requests are occasionally received on or just after the November 1 deadline (following the crop year). Such late, incomplete claims become an extra burden on Committee personnel and may result in the claim not being processed and paid by the December 31 deadline following the crop year. Thus, the Committee recommended that the regulations clarify that claim requests may be received by mail or facsimile up to the close of business on November 1 and, also specify the documents needed. The documents are: (1) PAC–5 Handlers's Request for Rejection (signed and executed); (2) the valid grade inspection certificate covering the lot; and (3) the lab certificate showing the aflatoxin assay results which caused the lot's rejection. This revision of paragraph (l) does not represent new reporting requirements. The revised paragraph should help assure that claim payments are made by the established deadline, thus benefiting handlers.

Paragraphs (z) (1) through (7) of § 998.300 specify claim procedures and payment schedules based on the number of indemnification claims received by the Committee. The Committee recommended continuing for the 1993 crop year, the same procedures and payment schedules in effect for the 1992 terms and conditions. The Committee also recommended continuing for the 1993 crop year, the indemnification cap of $9,000,000, with $5,000,000 of insurance coverage that was in effect for the 1992 crop year.

Changes are also made to section headings of § 998.100 *Incoming quality regulation*, § 998.200 *Outgoing quality regulation* and § 998.300 *Terms and conditions of indemnification* to make those regulations applicable to the 1993 crop year.

Based on the above, the Administrator of the AMS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities.

Written comments, timely received, in response to this action will be considered before finalization of this rule.

The information collection requirements that are contained in these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0067.

After consideration of the Committee's recommendation and all relevant information presented, it is found that the changes in the outgoing quality regulation and terms and conditions of indemnification, as set forth in this interim final rule, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action, in part, relaxes requirements currently in effect for peanut handlers who are signatory to the agreement; (2) this action should be in effect as soon as possible, because the 1993 crop year begins July 1, 1993 and handlers need to know regulations applicable to handling the 1993 crop; and (3) this action provides a 30-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 998.100 is amended by revising the section heading to read as follows:

§ 998.100 Incoming quality regulation—1993 crop peanuts.

3. Section 998.200 is amended by revising the section heading, revising paragraph (d), and revising paragraphs (h)(2) and (h)(4) to read as follows:

§ 998.200 Outgoing quality regulation—1993 crop peanuts.

* * * * *

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts shall be identified by positive lot identification procedures prior to being shipped or otherwise disposed of. For the purpose of this regulation, "positive lot identification" of a lot of shelled or inshell peanuts is a means of relating the inspection certificate to the lot which has been inspected so that there can be no doubt that the peanuts are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bag in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bags the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and if in other containers by other means acceptable to the Federal or Federal-State Inspection Service and to the Committee. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures, except those lots which have been reconstituted and/or commingled at the request of the receiver. All such reconstituted and/or commingled lots will no longer be considered positive lot identified and, therefore, no longer be eligible for indemnification or for appeal inspection. Handlers shall keep and maintain records of the quantities involved in each reconstituting and/or commingling procedure, whether in single or multiple lots, and such records shall be available to the Committee on request.

* * * * *

(h) * * *

(2) Handlers may blanch or cause to have blanched positive lot identified shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements of paragraph (a) of this section because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin: Provided, That such lots of peanuts contain not in excess of 8 percent damage and minor defects combined or 2 percent foreign material. Prior to movement of such peanuts to a blancher, handlers shall report to the Committee, on a form furnished by the Committee, and receive authorization from the Committee for movement and blanching of each such lot. Lots of peanuts which are moved under these provisions must be accompanied by a valid grade inspection certificate and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet specifications for unshelled peanuts, damaged kernels, minor defects, moisture, and foreign material as listed in paragraph (a) of this section and be accompanied by an aflatoxin certificate determined to be negative by the Committee. The residual peanuts, excluding skins and hearts, resulting from blanching under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition under the provisions of paragraph (g)(3) of the Outgoing Quality Regulation of the Peanut Marketing agreement (§ 998.200); or in the alternative, such residuals shall be positive lot identified by a Federal or Federal-State Inspection Service, and shall be disposed of by the blancher to handlers who are crushers or exporters, or to crushers who are not handlers but who are approved by the Committee, or to a Committee approved exporter. Blanching under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such blanching.

* * * * *

(4) Handlers may contract with Committee approved remillers for remilling shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of the Outgoing Quality Regulation: Provided, That such lots of peanuts contain not in excess of 8 percent damage and minor defects combined or 10 percent fall through or 2 percent foreign material. Prior to movement of such peanuts under these provisions to a Committee approved remiller, handlers shall report to the Committee, on a form furnished by the Committee, and receive authorization from the Committee for movement and remilling of each such lot. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and must be positive lot identified and the title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in paragraph (a), and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled separate and apart from all other peanuts. The residual peanuts resulting from remilling under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition under the provisions of paragraph (g)(3) of the Outgoing Quality Regulation of the Peanut Marketing Agreement (§ 998.200); or in the alternative, such residuals shall be positive lot identified by a Federal or Federal-State Inspection Service, and shall be disposed of by the remiller to handlers who are crushers or exporters, or to crushers who are not handlers but who are approved by the Committee, or to a Committee approved exporter. Remilling under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such remilling.

* * * * *

4. Section 998.300 is amended by revising the section heading, revising paragraph (l), and redesignating present

paragraph (p) as (p)(1) and adding a new paragraph (p)(2) to read as follows:

§ 998.300 Terms and conditions of indemnification—1993 crop peanuts.

* * * * *

(1) Notice of claims for indemnification on peanuts of the current crop year shall be received by the Committee (by mail or legible facsimile) no later than the close of the business day on November 1, following the end of the crop year. For the purpose of this paragraph, "notice" shall be defined as the covering (executed and signed) Form PAC–5 (Handler's Request For Rejection), accompanied by a copy of the applicable valid grade inspection certificate and the lab certificate showing the aflatoxin assay results which caused the request for rejection.

* * * * *

(p)(1) * * *

(2) Any handler who fails to comply with the requirements of paragraph (h)(2) or (h)(4) of the Outgoing Quality Regulation shall be ineligible for any indemnification payments until such non-compliance is corrected or reconciled to the satisfaction of the Committee.

* * * * *

Dated: June 23, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–15274 Filed 6–29–93; 8:45 am]

BILLING CODE 3410–02–P

Farmers Home Administration

7 CFR Part 1927

Real Estate Title Clearance and Loan Closing

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule, technical amendments.

SUMMARY: The Farmers Home Administration (FmHA) corrects a final rule published December 31, 1991, (56 FR 67470–67485) regarding real estate title clearance and loan closing with an effective date of January 30, 1992, that was extended to March 31, 1992 (57 FR 3276). The intent of this action is to correct errors in the final rule.

EFFECTIVE DATE: June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Walter B. Patton, Senior Loan Specialist, Single Family Housing Processing Division, Farmers Home Administration, USDA, room 5334, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 720–0099.

SUPPLEMENTARY INFORMATION: On December 31, 1991, FmHA published a final rule to implement changes in its Real Estate Title Clearance and Loan Closing regulations. As published, the final regulation contains errors which may be misleading and are in need of clarification.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is corrected as follows:

PART 1927—TITLE CLEARANCE AND LOAN CLOSING

1. The authority citation for part 1927 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Real Estate Title Clearance and Loan Closing

2. Section 1927.52 is amended by adding the words "to the entire property" following the words "a clear title" at the end of the definition for *Title defects*, and by revising the second sentence of the definition for *Approval official* to read as follows:

§ 1927.52 Definitions.

Approval official * * * If a loan must be approved at a higher level because of the dollar amount or for other reasons, the initiating office may approve the closing agent.

* * * * *

§ 1927.54 [Amended]

3. Section 1927.54 is amended by adding the word "all" between the words "meet" and "the" in the introductory text of paragraph (c).

§ 1927.55 [Amended]

4. Section 1927.55 is amended by correcting the reference "FmHA Guide Letter No. 1927–1" to read "FmHA Guide Letter No. 1927–B–1" in the last sentence of paragraph (c), and by adding the words "judgments of record," between the words "outstanding" and "bankruptcy" in paragraph (d)(4).

§ 1927.56 [Amended]

5. Section 1927.56 is amended by correcting the reference "Form FmHA 1927–15, 'Loan Closing Instructions'" to read "Form FmHA 1927–15, 'Loan closing Instructions/Loan Closing Statement For'" in paragraph (b).

§ 1927.58 [Amended]

6. Section 1927.58 is amended by correcting the words "Form FmHA 1927–17, 'Loan Closing Statement'" to read "Form FmHA 1927–15," in the first sentence of paragraph (g), and by correcting the words "Forms FmHA 1927–15 and FmHA 1927–17" to read "Form FmHA 1927–15" in the second sentence of paragraph (h)(3).

§ 1927.59 [Amended]

7. Section 1927.59 is amended by correcting the word "when" to "if" in the introductory text of paragraph (a)(1).

Dated: May 15, 1993.

Bob Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 93–15407 Filed 6–29–93; 8:45 am]

BILLING CODE 3410–07–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

Investment and Deposit Activities

AGENCY: National Credit Union Administration, (NCUA).

ACTION: Final rule.

SUMMARY: The final rule revises NCUA's high-risk for Callateralized Mortgage Obligations (CMOs) and Real Estate Mortgage Investment Conduits (REMICs). Under this rule CMOs and REMICs will be subject to an average life test, an average life sensitivity test, and a price sensitivity test. A floating rate CMO or REMIC will also be subject to the price sensitivity test if it reaches its contractual cap at the time of purchase or on a subsequent testing date. The revised test is generally consistent with the Federal Financial Institutions Examination Council's (FFIEC) High Risk Securities Test (HRST) for mortgage derivatives, which applies to other depository institutions.

EFFECTIVE DATE: July 30, 1993.

ADDRESSES: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Daniel Gordon, Investment Officer, Office of Examination and Insurance (800) 755–5999, or Lisa Henderson, Staff Attorney, Office of General Counsel (202) 682–9630, at the above address.

SUPPLEMENTARY INFORMATION:

A. Background and Discussion

On January 14, 1993, the NCUA Board issued proposed changes to part 703 of the NCUA Rules and Regulations (See 58 FR 5664, Jan. 22, 1993). Part 703 applies to federally chartered credit unions. State-chartered federally insured credit unions must set aside a special reserve for investments that go

beyond those authorized by part 703 (See Section 741.9(a)(3) of the NCUA Rules and Regulations.) The changes were proposed to attain consistency with the FFIEC's High Risk Securities Test (HRST) for mortgage derivations, which applies to other depository institutions. The Board has determined to issue the final rule as proposed. NCUA's adoption of the essential elements of the HRST test should eliminate confusion in the marketplace.

Under this final rule, federal credit unions are required to apply an average life test, an average life sensitivity test, and a price sensitivity test when purchasing or re-testing fixed or floating rate CMOs and REMICs. The price sensitivity test must be applied to a floating rate instrument if it reaches its contractual cap either at the time of purchase or at a subsequent re-testing date. The Board notes that the rule does not apply to investments in CMO residuals or stripped mortgage-backed securities (SMBS). CMO residuals and SMBS are prohibited for federal credit unions unless they are acquired *solely* to reduce interest-rate risk. In addition, credit unions are not permitted to purchase options. Since an interest rate cap is an option, credit unions cannot purchase interest rate contracts to uncap floating rate CMOs or REMICs that reach their contractual caps.

Federal credit unions are permitted to use standard industry calculators (Bloomberg, etc.) to perform the three tests contained in the rule. In performing any of the three tests, all of the underlying assumptions, including prepayment assumptions for the underlying collateral, must be reasonable and supportable. The assumptions needed to be documented in the credit union's records and be available for examiner review.

B. Comments

Twenty-one comment letters were received: fourteen from federal credit unions, including three corporate federal credit unions, two from state-chartered credit unions, two from national credit union trade associations, two from broker-dealers, and one from a trade association for government securities dealers. Nineteen of the commenters were in favor of the proposal. About half suggested modifications to it. Two of the commenters opposed the proposed rule.

Several commenters objected to the divestiture requirement for instruments which initially meet the requirements but do not pass the tests after the original purchase date. The Board notes that CMOs and REMICs can have substantially more volatility than the mortgage pools from which they are derived. As a result, an instrument with an acceptable risk at the time of purchase may, because of changes in the economic and financial environment, become too risky at a later date. The Board continues to believe that a federal credit union should not have high-risk securities in its portfolio, unless they are being used solely to offset interest-rate risk. Therefore, the divestiture requirement has been retained in the final rule.

As noted in the supplementary information section of the proposed rule, NCUA will address divestiture situations on a case-by-case basis under existing supervisory policies and procedures. Generally, existing policies and procedures permit NCUA and the affected credit union to develop a liquidation plan appropriate to the circumstances of the case. This plan would take into account all relevant factors, including the dollar amount of the investment, the remaining time to maturity, and the likelihood that the security may again pass the high-risk security test at a future testing date.

In general, where the credit union can demonstrate that the failure of the security to pass the tests is likely to be temporary, or where the sale of the investment would result in a significant loss to the credit union or impair its ability to pay a dividend, the credit union may be permitted to hold the investment until maturity, or until some point where the investment can be sold without significant loss. In accordance with generally accepted accounting principles, a CMO or REMIC which fails any one of the three tests on a subsequent testing date must be reported at the lower of cost or market value until it matures, is sold in the secondary market, or is shown to be a nonhigh-risk security on a subsequent testing date.

Individual prepayment models typically provide different results for the tests. While a federal credit union can comply with the regulations by demonstrating that a CMO or REMIC passes the tests when conducted under only one model, a conservative approach would be to use at least three separate models. The criteria used to determine whether a CMO or REMIC is suitable for the credit union should be identified in the credit union's investment policy.

The Board also notes that either a median or consensus prepayment model may be used to determine if a CMO or REMIC is a permissible investment. If a standard median or consensus prepayment model is used (Bloomberg, etc.), it would generally be unnecessary to use more than one model. If a nonstandard industry median or consensus is used, no fewer than five prepayment models should be included in the formulation of the median or consensus. In these cases the federal credit union should be able to provide sufficient information on each prepayment model used to formulate the median or consensus in order to demonstrate that the results of these models are all reasonable and supportable.

There are occasions when a CMO or REMIC could pass the tests for a 300 basis point change, but fail the HRST at some lesser shift in the yield curve. To be permissible investments, these securities must pass the tests for all yield curve shifts, up to and including a 300 basis point shift. Testing at 100, 200 and 300 basis point shifts should usually be sufficient to address these concerns.

The Board notes that recently, some CMOs and REMICs have been created from stripped mortgage-backed securities. These instruments are permitted if they can pass the high-risk security tests. This is no change from the prior rule.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). Based upon the experience of NCUA examiners, few small credit unions are engaging in the investment practices that are the subject of the final rule. Accordingly, the NCUA Board determines and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The final rule does not impose any new paperwork requirements.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. Part 703 directly applies only to federally chartered credit unions, and the final rule makes no change in its application. Although part 703 indirectly applies to federally insured state-chartered credit unions through the insurance requirements at 12 CFR 741.9 (a)(3) and (b)(3), the Board determines that the

final rule will not have a substantial direct effect on the states, on the relationship of the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Further, the final rule will not preempt provisions of state law or regulations.

List of Subjects in 12 CFR Part 703

Credit unions, Investments.

By the National Credit Union Administration Board on June 17, 1993.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, 12 CFR part 703 is revised to read as follows.

PART 703—[AMENDED]

1. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15), 1766(a), 1789(11).

2. In 703.5 the introductory text and paragraphs (g) and (j) are revised read as follows:

§ 703.5 Prohibited activities.

The prohibitions contained in paragraphs (f), (h) and (k) of this section shall not apply to securities purchased prior to December 2, 1991. The prohibition contained in paragraph (g) of this section shall not apply to securities purchased prior to July 30, 1993.

* * * * *

(g)(1) Except as provided in paragraph (i) of this section, a federal credit union may not purchase a CMO or REMIC which meets any of the following three tests:

(i) *Average Life Test.* The CMO or REMIC has an expected average life greater than 10 years

(ii) *Average Life Sensitivity Test.* The average life of the CMO or REMIC: (A) Extends by more then 4 years, assuming an immediate and parallel shift in the yield curve of plus 300 basis points, or

(B) Shortens by more than 6 years, assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points.

(iii) *Price Sensitivity Test.* The estimated change in the price of the CMO or REMIC is more than 17 percent, due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

(2) The three tests contained in paragraph (g) of this section shall apply at the time of purchase and on any subsequent re-testing date, assuming market interest rates and prepayment speeds at the time that the tests are applied.

* * * * *

(j) The average life and average life sensitivity tests contained in paragraph (g) of this section shall not apply to a floating or adjustable rate CMO/REMIC that has all of the following characteristics at the time of purchase or on a subsequent testing date, irrespective of whether or not it has been purchased to reduce interest-rate risk:

(1) The interest rate of the instrument is reset at least annually.

(2) The interest rate of the instrument, at the time of purchase or at a subsequent testing date, is below contractual cap of the instrument.

(3) The index upon which the interest rate is based is a conventional widely-used market interest rate such as the London Interbank Offered Rate (LIBOR).

(4) The interest rate of the instrument varies directly (not inversely) with the index upon which it is based and is not reset as a multiple of the change in the related index.

* * * * *

[FR Doc. 93–15221 Filed 6–29–93; 8:45 am]

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RESOLUTION TRUST CORPORATION

12 CFR Part 1626

RIN 3205–AA18

Program Fraud Civil Remedies and Procedures

AGENCY: Resolution Trust Corporation.

ACTION: Final rule.

SUMMARY: The Resolution Trust Corporation (RTC) hereby adopts rules to implement the Program Fraud Civil Remedies Act (the Act) of 1986. The rules would establish administrative procedures for determining whether to impose the statutorily authorized civil penalties against any person who makes, submits, or presents a false, fictitious, or fraudulent claim or written statement to the Corporation.

EFFECTIVE DATE: The rule will become effective on July 30, 1993.

FOR FURTHER INFORMATION CONTACT: Carl Gold, Division of Legal Services. Telephone: (202) 736–0728.

SUPPLEMENTARY INFORMATION: In October 1986, Congress enacted the Program Fraud Civil Remedies Act, 31 U.S.C. 3801, et. seq., to establish a new administrative remedy against those who knowingly make false claims and/or false statements. The statute requires specified entities of the federal government to adopt regulations that establish procedures to recover penalties and assessments against person who file false claims or statements. The Act provides for designated investigative and reviewing officials, an administrative hearing process, and an agency appeal procedure with limited judicial review. To facilitate the new process and promote uniformity in government, the President's Council on Integrity and Efficiency distributed draft model regulations to its membership. The RTC, with minor variation, proposed to adopt the model regulations set forth in the Council's final draft. The regulations also incorporate certain definitions and procedures required by the Act. In keeping with the Act's requirements, the RTC's regulations provide that the Inspector General or a designee will act as the Investigating Official; the Senior Vice President and General Counsel, or a designee, will act as the Reviewing Official; the Division of Legal Service will assist in prosecuting claims; an administrative law judge will be the Presiding Officer; and the President and Chief Executive Officer, or his designee, will act as Authority Head on appeals.

In addition to providing procedures for dealing with the filing of false claims or statements, it should be noted that the regulation provides procedures for assessing civil penalties against those who do business with the RTC despite intentionally failing to file certifications required by law. Attention is particularly directed to § 1626.3(c) of the regulation. While this section would apply to the failure to file any required certification, it particularly carries out the statutory command of the so-called "Byrd Amendment" (31 U.S.C. 1352) that the failure to file a certification required by that statute is punishable using procedures adopted pursuant to the Program Fraud Civil Remedies Act. (The same is true for any affirmative false statements made in response to the Byrd Amendment.) Comments were invited on all issues relating to the proposed rules. [57 FR 54337, November 18, 1992]. Only one comment was filed. The commenter supported adoption of the rules as proposed, and exhorted the RTC to redouble its efforts to deter and punish fraud in its programs. The RTC agrees with this position, and will use the remedies afforded under these procedures as one of many means to accomplish those objectives.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, the

RTC published for separate comment an initial regulatory flexibility analysis. No comments were separately filed in response to that initial analysis. The following final regulatory flexibility analysis is hereby provided:

1. Reasons, objectives, and legal bases underlying the regulation: These elements have been discussed elsewhere in the Supplementary Information. It has been noted that the RTC is statutorily mandated to promulgate these regulations. Therefore, to the extent that the regulation affects small firms or individuals, it is a direct consequence of that statutory mandate. By adopting this regulation, the RTC will ensure that all participants in the RTC's programs, including small firms and individuals, will have a better chance to compete because advantages inadvertently conferred to dishonest firms and individuals will be reduced or eliminated.

2. Small entities to which the regulation would apply. This element is discussed elsewhere in the Supplementary Information.

3. Impact of the final regulations on small businesses: This regulation would not increase the burden on small businesses to participate in the RTC's programs.

4. Overlapping or conflicting federal rules. There are no known federal rules which overlap, duplicate, or conflict with the final regulations.

5. Alternatives to the regulation. The RTC has not identified alternatives that would be less burdensome to small businesses and yet effectively accomplish the objectives of the regulation. As noted above, the regulation is mandated by statute, and many of the provisions and procedures are mandated by statute. The RTC is always willing to negotiate or streamline proceedings by agreement with the program participant to the extent permitted by the statute.

Lists of Subjects in 12 CFR Part 1626

Administrative practice and procedure, Claims, Fraud, Penalties.

For the reasons set out in the preamble, the RTC hereby adds part 1626 to title 12, chapter XVI, of the Code of Federal Regulations to read as follows:

PART 1626—PROGRAM FRAUD CIVIL REMEDIES AND PROCEDURES

Sec.

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Authority: 12 U.S.C. 1441a(b)(12)(A); 31 U.S.C. 3809.

§ 1626.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99–509, codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part: (1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present or cause to be made, submitted, or presented false, fictitious, or fraudulent claims or written statements to authorities or to their agents; and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 1626.2 Definitions.

(a) *Administrative Law Judge (ALJ)* means the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

(b) *Authority* means the Resolution Trust Corporation (RTC).

(c) *Authority head* means the President and Chief Executive Officer of the RTC, or a designee.

(d) *Benefit* means, in the context of "statement," anything of value, including but not limited to, any advantage, preference, privilege, license, permit, favorable decisions, ruling, status, or loan guarantee.

(e) *Claim* means any request, demand, or submission:

(1) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(2) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(i) For property or services if the United States:

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) Will reimburse such recipient or party for the purchase of such property or services;

(ii) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States:

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(3) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

(f) *Complaint* means the administrative complaint served by the reviewing official on the defendant under § 1626.7.

(g) *Corporation* means the Resolution Trust Corporation.

(h) *Defendant* means any person alleged in a complaint under § 1626.7 of this part to be liable for a civil penalty or assessment under § 1626.3.

(i) *Government* means the United States Government.

(j) *Individual* means a natural person.

(k) *Initial Decision* means the written decision of the ALJ required by § 1626.10 or § 1626.37, and includes a revised initial decision issued following

a remand or a motion for reconsideration.

(l) *Investigating official* means the Inspector General of the Resolution Trust Corporation, or an officer or employee of the Office of Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule, or the equivalent under the pay scale utilized by the Resolution Trust Corporation.

(m) *Knows or has reason to know,* means that a person, with respect to a claim or statement:

(1) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(3) Acts in reckless disregard of the truth or falsity of the claim or statement.

(n) *Makes,* wherever it appears, shall include the terms "presents," "submits", and "causes to be made, presented, or submitted". As the context requires, "making" or "made," shall likewise include the corresponding forms of such terms.

(o) *Person* means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

(p) *Representative* means an attorney, who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico, and designated by a party in writing.

(q) *Reviewing Official* means the Senior Vice President and General Counsel, or a designee who is:

(1) Not subject to supervision by, or required to report to, the investigating official;

(2) Not employed in the organizational unit of the authority in which the investigating official is employed; and

(3) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule, or the equivalent under the pay scale utilized by the Resolution Trust Corporation.

(r) *Statement* means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made:

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for):

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit received, directly or indirectly, from the authority, or any State, political subdivision of a State, or any other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 1626.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know constitutes any of the following in paragraphs (a)(1)(i) through (iv) of this section, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim:

(i) The claim is false, fictitious, or fraudulent;

(ii) The claim includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent; or

(iii) The claim includes or is supported by any written statement that:

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) The claim is for payment for the provision of property or services which the person has not provided as claimed.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claims.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that meets the conditions in paragraphs (b)(1) (i) and (ii) of this section shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement:

(i) The person knows or has reason to know that the statement:

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority.

(c) *Failure to file certification.* Where, as a prerequisite to conducting business with the RTC, a person is required by law to file one or more certifications, and the person intentionally fails to file such certification, the person shall be subject to civil penalties as prescribed by this part.

(d) *Intent.* No proof of specific intent to defraud is required to establish liability under this section.

(e) *Liability.* (1) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held jointly and severally liable for a civil penalty under this section.

(2) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 1626.4 Investigations.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted:

(1) The subpoena so issued shall identify the person to whom it is addressed and the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available, and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to preclude or limit such official's discretion to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 1626.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 1626.4(b) the reviewing official determines that there is adequate evidence to believe that a person is liable under § 1626.3, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 1626.7.

(b) Such notice shall include:

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 1626.3;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known, or an absence of any information indicating that the person may be unable to pay such amount.

§ 1626.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 1626.7 only if:

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1); and

(2) In the case of allegations of liability under § 1626.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 1626.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 1626.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 1626.8.

(b) The complaint shall state:

(1) The allegations of liability against the defendant, including the statutory basis for liability, or identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer and to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 1626.10.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of this part.

§ 1626.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure (28 U.S.C. App.). Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by:

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

§ 1626.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant:

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a

hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 1626.11. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

§ 1626.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 1626.9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 1626.8, a notice that an initial decision shall be issued under this section.

(c) If the defendant fails to answer, the ALJ shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 1626.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such a decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 1626.38.

(h) The defendant may appeal to the authority head of the decision denying the motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excuses the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 1626.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ. The reviewing official shall include the name, address and telephone number of a representative for the Corporation.

§ 1626.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 1626.8. At the same time, the ALJ shall send a copy of such notice to the representative of the Corporation.

(b) Such notice shall include:

(1) The tentative time, date, and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Corporation and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 1626.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the Corporation.

(b) Pursuant to the False Claims Act (31 U.S.C. 3730(c)(5)), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 1626.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case:

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Corporation may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official; however, the representative for the Corporation may not participate or advise in the review of the initial decision by the authority head.

§ 1626.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 1626.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging conflict of interest or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate or the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no

further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f) (1) If the ALJ determines that a reviewing official is disqualified, the ALF shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his, or her review or the initial decision upon appeal, if any.

§ 1626.17 Rights of parties.

Except as otherwise limited by this part, all parties may:

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law.

§ 1626.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to:

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

Upon motion of a party, take official notice of facts; decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(12) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(13) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to make any determinations regarding the validity of Federal statutes or regulations, or of directives, rules, resolutions, policies, orders, or other such general pronouncements issued by the Corporation.

§ 1626.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party (subject to the objection of other parties) chooses to waive appearance at an oral hearing and to submit only documentary evidence and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time, date, and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 1626.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 1626.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 1626.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 1626.9.

§ 1626.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Request for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Dispositions.

(b) For the purpose of this section and §§ 1626.22 and 1626.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data or documentary evidence. Nothing contained in this part shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) Motions for discovery. (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within 10 days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 1626.24.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought:

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 1626.24.

(e) Depositions. (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time, date, and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 1626.8.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within 10 days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 1626.22 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 1626.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is not prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 1626.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefore not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time, date, and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 1626.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within 10 days after service or on or before the time specified in the subpoena for compliance if it is less than 10 days after service.

§ 1626.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) The certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 1626.25 Witness fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 1626.26 Form, filing, and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 1626.8 shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid, and addressed to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party. The ALJ may authorize facsimile transmission as an acceptable form of service.

(c) *Proof of service.* A certificate by the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 1626.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than 7 days, intermediate Saturday, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional 5 days will be added to the time permitted for any response.

§ 1626.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties. Motions may include, without limitation, motions for summary judgment.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 1626.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for:

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleading or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief, or other document which is not filed in a timely fashion.

§ 1626.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 1626.3, and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 1626.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious, or fraudulent claims or statement) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in a similar transaction;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may

mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 1626.32 Location of hearing.

(a) The hearing may be held:

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement at issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 1626.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 1626.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth;

(2) Avoid needless consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. The ALJ is not authorized to exclude:

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Corporation engaged in assisting the representative for the Corporation.

§ 1626.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence (28 U.S.C. App.). However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 1626.24.

§ 1626.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits, and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 1626.24.

§ 1626.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 1626.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 1626.3; and

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 1626.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 1626.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be 5 days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon order of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority and shall be final and binding on all parties 30 days after the ALJ denies the motion, unless the final decision is timely appealed to the authority head in accordance with section 1626.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with section 1626.39.

§ 1626.39 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b) (1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 1626.38 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The authority head may extend the initial 30 day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and a statement describing the right of any person determined to be liable for a penalty or an assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 1626.37 is final and is not subject to judicial review.

§ 1626.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 1626.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 1626.42 Judicial review.

Section 3508 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 1626.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of Title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 1626.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 1626.42 or § 1626.43, or any amount agreed upon in a compromise or settlement under § 1626.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 1626.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 1626.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 1626.42 or during the pendency of any action to collect penalties and assessments under § 1626.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 1626.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 1626.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 1626.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of notice under § 1626.10(b) shall be deemed a notice of a hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

By order of the Chief Executive Officer.

Dated at Washington, DC, this 24th day of June, 1993.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 93–15432 Filed 6–29–93; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ANE–58; Amendment 39–8606; AD 92–26–08]

Airworthiness Directives; Allied-Signal Inc., Garrett Engine Division, TPE331 Series Turboprop and Model TSE331–3U Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 92–26–08 that was sent previously to all known U.S. owners and operators of Allied-Signal Inc., Garrett Engine Division, TPE331 series turboprop and Model TSE331–3U turboshaft engines by individual letters. This AD requires replacing third stage stator assemblies with serviceable assemblies, and maintaining a record of accumulated operating hours and cycles on a life limited part log card and maintenance record. This amendment is prompted by reports of a Hastelloy S material inner seal support in a third stage stator assembly that moved aft and made contact with the third stage turbine wheel, resulting in an uncontained engine failure. In reports of other incidents, several Hastelloy S material inner seal supports exhibited numerous circumferential cracks prior to achieving the FAA approved life limit.

Haynes 25 material is the approved material used in the manufacture and repair of P/N 868379–3 third stage stator assemblies. The FAA has determined that 283 third stage stator assemblies were repaired at National Flight Services between February 20, 1990, and April 6, 1992. An undetermined number of these third stage stator assemblies were repaired using Hastelloy S material. The FAA has determined that the Hastelloy S material has approximately one-sixth of the expected fatigue life in this particular application. This condition, if not corrected, can result in an uncontained failure of the third stage turbine wheel.

The FAA has reviewed and approved the technical contents of National Flight Services Alert Bulletin No. NF331–A72–11921, dated November 9, 1992, that describes procedures for replacing third stage stator assemblies with serviceable assemblies.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 92–26–08 to prevent an uncontained failure of the third stage turbine wheel. The AD requires replacing third stage stator assemblies listed by serial number in National Flight Services Alert Bulletin No. NF331–A72–11921, dated November 9, 1992, with serviceable assemblies, and maintaining a record of accumulated operating hours and cycles on a life limited part log card and maintenance record. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 16, 1992, to all known U.S. owners and operators of Allied-Signal Inc., Garrett Engine Division, TPE331 series turboprop and Model TSE331–3U turboshaft engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are

DATES: Effective July 15, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 92–26–08, issued on December 16, 1992, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 15, 1993.

Comments for inclusion in the Rules Docket must be received on or before August 30, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–58, 12 New England Executive Park, Burlington, MA 01803–5299.

The applicable service information may be obtained from National Flight Services, Inc., 10971 E. Airport Service Road, Swanton, Ohio 43558; telephone (419) 865–2311. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Propulsion Branch, ANM–140L, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, FAA, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5246; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: On December 16, 1992, the Federal Aviation Administration (FAA) issued priority letter AD 92–26–08, applicable to Allied-Signal Inc., Garrett Engine Division, TPE331 series turboprop and Model TSE331–3U turboshaft engines, which requires replacing third stage stator assemblies with serviceable assemblies, and maintaining a record of accumulated operating hours and cycles on a life limited part log card and maintenance record. That action was prompted by reports of a Hastelloy S material inner seal support in a third stage stator assembly, Part Number (P/N) 868379–3, that moved aft and made contact with the third stage turbine wheel, resulting in an uncontained engine failure. The actions specified by this AD are intended to prevent an uncontained failure of the third stage turbine wheel.

invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ANE–58." The postcard will be dated stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–26–08 Allied-Signal Inc., Garrett Engine Division: Amendment 39–8606. Docket 92–ANE–58.

Applicability: Allied-Signal Inc., Garrett Engine Division, Model TPE331–1, –2, –2UA, –3U, –3UW, –5, –5A, –6, and –6A turboprop and Model TSE331–3U turboshaft engines incorporating third stage stator assemblies, Part Number (P/N) 868379–3, repaired at National Flight Services between February 20, 1990, and April 6, 1992, and identified by serial numbers listed in National Flight Services Alert Bulletin No. NF331–A72–11921, dated November 9, 1992. These engines are installed on but not limited to Mitsubishi MU–2B series (MU–2 series); Construcciones Aeronauticas, S.A. (CASA) C–212 series; Fairchild SA226 series (Swearingen Merlin and Metro series; Prop-Jets, Inc. Model 400; Twin Commander 680 and 690 (Jetprop Commander), Rockwell Commander S–2R, Shorts Brothers and Harland, Ltd. SC7 (Skyvan), Dornier 228 series, Beech 18 and 45 series and Models JRB–6, 3N, 3NM, 3TM, and B100, Pilatus PC–6 series (Fairchild Porter, Peacemaker), De Havilland Model DH 104 series 7AXC (Dove), and Ayres S–2R series airplanes; and Sikorsky S–55 series helicopters.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained failure of the third stage turbine wheel, accomplish the following:

(a) Replace affected third stage stator assemblies, P/N 868379–3, with serviceable assemblies in accordance with the following schedule:

Third stage stator cycles in service since repair by National Flight Services	Replacement schedule
900 or more cycles	Within 50 cycles in service after the effective date of this AD.
450 to 899 cycles	Within 150 cycles in service after the effective date of this AD, but not to exceed 950 cycles.
Less than 450 cycles	Prior to accumulating 600 cycles.

Note: The FAA has determined that cracking of third stage stator assemblies is related to operating cycles, rather than operating hours.

(b) If cycles cannot be determined, calculate cycles by multiplying third stage stator assembly hours time in service by 1.5.

(c) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) Third stage stator assemblies, P/N 868379–3, repaired at National Flight Services between February 20, 1990, and April 6, 1992, are identified by serial numbers listed in the following alert bulletin:

Document No.	Pages	Date
NF331–A72–11921	1–10	Nov. 9, 1992

Total pages: 10.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from National Flight Services, Inc., 10971 E. Airport Service Road, Swanton, Ohio 43558; telephone (419) 865–2311. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective July 15, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 92–26–08, issued December 16, 1992, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on June 18, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–15355 Filed 6–29–93; 8:45 am]

BILLING CODE 4910–13–P

Office of the Secretary

14 CFR Part 302

[OST Docket No. 82; Amdt. 302–74]

Rules of Practice in Proceedings; Clarification

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to clarify that, when an application to conduct scheduled airline operations is referred to a DOT decisionmaker, the decisionmaker shall be advised on the merits of the application by the Office of the General Counsel and not necessarily the Assistant General Counsel for International Law.

EFFECTIVE DATE: The effective date of this amendment is June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, Department of Transportation, Washington, DC (202) 366–9154.

SUPPLEMENTARY INFORMATION: When an application to conduct scheduled airline operations is referred to a DOT decisionmaker, DOT's internal procedures dictate that advice on the merits of such application be given to the decisionmaker by, among others, the Office of the General Counsel. Those procedures further provide that, where the application is to conduct international operations, the advice is to be given by the Assistant General Counsel for International Law, and where the application is to conduct domestic operations, by the Assistant General Counsel for Environmental, Civil Rights, and General Law. By error, when this function was transferred to DOT from the former Civil Aeronautics Board (CAB), the public procedure (14 CFR 302.1760) referenced only the Assistant General Counsel for International Law, since the antecedent of that official at the CAB handled both matters. The purpose of this amendment is to conform the public procedure, which is incorrect, to the internal, which is correct, by providing, without further specifying, that the advice shall come from the Office of the General Counsel. Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register**. Any domestic case to which § 302.1760 applies that is pending at the time this amendment takes effect shall be subject, as was intended, to the internal procedure. Also, the title of the Director of Aviation Operations has been changed to Director of Aviation Analysis; conforming changes are made by this amendment.

List of Subjects in 14 CFR Part 302

Administrative practice and procedure, Air carriers, Postal Service.

In consideration of the foregoing, part 302 of title 14, Code of Federal Regulations, is amended as follows:

1. The authority citation continues to read as follows:

Authority: Secs. 204, 401–419, 901, 903, 1001, 1002, and 1007, Public Law 85–726, as amended; 72 Stat. 743, 754, 757, 758, 760, 763, 766, 767, 768, 769, 770, 771, 783, 786, 788, 796; 76 Stat. 145; 91 Stat. 1284; 92 Stat. 1732 (49 U.S.C. app. 1324, 1371–1389, 1471, 1473, 1481, 1482, and 1487; 18 U.S.C. 20 (b), (c); 49 U.S.C. subtitle I.

2. In section 302.1760, "Director of Aviation Analysis" is substituted for "Director, Office of Aviation Operations" in paragraph (a), and the first sentence of paragraph (b) is revised to read as follows:

§ 302.1760 Internal procedures.

* * * * *

(b) In deciding each case under this subpart on the merits, the DOT decisionmaker will receive a recommendation from the Director, Office of Aviation Analysis, and the Office of the General Counsel. * * *

Issued in Washington, DC, on June 23, 1993.

Federico F. Pena,

Secretary of Transportation.

[FR Doc. 93–15368 Filed 6–29–93; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 27

[Docket No. R–93–1667; FR–3368–F–01]

RIN 2502–AF88

Nonjudicial Foreclosure of Multifamily Mortgages

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: Section 517 of the Housing and Community Development Act of 1992 amends the Multifamily Foreclosure Act of 1981 by expanding the HUD programs subject to that Act. This final rule implements section 517 by amending the regulations covering the Multifamily Foreclosure Act of 1981.

EFFECTIVE DATE: July 30, 1993.

FOR FURTHER INFORMATION CONTACT: John P. Kennedy, Associate General Counsel, Office of Program Enforcement, room 10270, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2568. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–3259. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 517 of the Housing and Community Development Act of 1992, Pub. L. 102–550, approved October 28, 1992 (1992 HCD Act), amends the Multifamily Mortgage Foreclosure Act of 1981 (codified at 12 U.S.C. 3701–3717), by expanding the HUD programs subject to that Act. As originally enacted, the Multifamily Foreclosure Act of 1981 established a statutory nonjudicial procedure for foreclosing defaulted multifamily mortgages held by the Secretary pursuant to title II of the National Housing Act (12 U.S.C. 1701–1715z–20), or section 312 of the Housing Act of 1964 (42 U.S.C. 1452b).

On February 24, 1984, the Department added part 27 to title 24 of the Code of Federal Regulations (49 FR 7072), implementing the Multifamily Mortgage Foreclosure Act of 1981. The procedure for foreclosing multifamily properties set out in the legislation and implementing regulations is similar to the foreclosure procedures used in states whose laws authorize nonjudicial foreclosure.

Section 517 of the 1992 HCD Act expands the coverage of the Multifamily

Foreclosure Act of 1981 to include defaulted multifamily mortgages held by the Secretary pursuant to:

(a) Section 608 of the National Housing Act (12 U.S.C. 1743);

(b) Section 801 of the National Housing Act (12 U.S.C. 1748);

(c) Title II of the National Housing Act (12 U.S.C. 1707–1715z–20);

(d) Title X of the National Housing Act (12 U.S.C. 1749aa);

(e) Section 312 of the Housing Act of 1964, as it existed immediately before its repeal by section 289 of the Cranston-Gonzalez National Affordable Housing Act (hereafter referred to as "NAHA;" codified at 42 U.S.C. 1452b);

(f) Section 202 of the Housing Act of 1959, as it existed immediately before its amendment by section 801 of the NAHA (12 U.S.C. 1701q),

(g) Section 202 of the Housing Act of 1959, as amended by section 801 of the NAHA (12 U.S.C. 1701q); and

(h) Section 811 of the NAHA (42 U.S.C. 8013).

The Department interprets the reference to section 202 of the Housing Act of 1959, "as it existed immediately before its amendment by section 801 of the NAHA," in contrast to "as amended by section 801 of the NAHA" to distinguish the section 202 loan program from the section 202 capital advance program. (Under the section 202 loan program, the Department made a direct loan to the borrower, amortized over 40 years and with a set interest rate. The section 202 capital advance program is a program in which the Department advances funds (a "capital advance") which bear no interest and require no repayment so long as the project remains available for very low-income elderly persons for at least 40 years.)

In addition to expanding the coverage of the Multifamily Foreclosure Act, section 517 also modifies the definition of multifamily mortgage by removing the phrase "covering any property, except a property on which there is located a one-to four-family residence." However, because the title of the Act and the text within the Act continue to reference multifamily mortgages, the Department believes that Congress did not intend this definitional change to bring one-to four-family residences under title II of the National Housing Act within the coverage of the Multifamily Foreclosure Act. Rather, the Department believes that the phrase "covering any property, except a property on which there is located a one-to four-family residence" was removed because some multifamily projects under section 202 of the Housing Act of 1959, and section 811 of NAHA (e.g. group homes) could be considered one-to four-family residences.

To distinguish one-to four-family residences which are part of a section 202 or section 811 project from such residences under title II of the National Housing Act, the definition provides that the term "Multifamily mortgage" does not include a property on which there is located a one-to four-family residence, except when the one-to four-family residence is subject to a mortgage pursuant to section 202 of the Housing Act of 1959, or section 811 of the National Affordable Housing Act.

Finally, this rule contains four minor technical amendments to part 27 which are necessary because of the expanded coverage of the Multifamily Foreclosure Act.

II. Justification for Final Rule Making

In general, the Department publishes rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 provides exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary because the Department is merely revising part 27 to implement statutory amendments that do not involve the exercise of any discretion by the Department.

Other Matters

A. Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Environmental Impact

The policies and procedures contained in this rule relate only to the acquisition of multifamily properties by foreclosure and for that reason they are categorically excluded from the requirements of the National Environmental Policy Act, in accordance with the regulations of the Council on Environmental Quality at 40 CFR 1508.4 and HUD regulations at 24 CFR 50.20(i). These regulations provide for a categorical exclusion from NEPA requirements for the acquisition of an existing structure, where the property being acquired will be retained for the same use.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612; Federalism, has determined that the policies contained in this proposed rule have federalism implications, and are subject to review under the order. Specifically, the rule provides for preemption of state foreclosure procedures for Secretary-held multifamily mortgages. While the rule has federalism aspects, a more comprehensive review under the Executive Order 12612 is not required because the Act expressly authorizes the Department to preempt state law. In promulgating this rule, the Department has restricted the regulatory preemption to the minimum level necessary to achieve the objectives of the Act.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

E. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule only affects defaulting mortgagor entities, whose mortgages are foreclosed by the Secretary under the provisions of this rule. Such entities will not constitute a significant number of the mortgagors of Secretary-held mortgages.

F. Regulatory Agenda

This final rule was listed as sequence number 1449 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24411) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

G. The Catalog of Federal Domestic Assistance program number(s) are 14.103, 14.112, 14.116, 14.123, 14.126, 14.127, 14.128, 14.129, 14.134, 14.135, 14.138, 14.139, 14.149, 14.151, 14.155, 14.157, 14.167, 14.173, 14.181.

List of Subjects in 24 CFR part 27

Administrative practice and procedure, Loan programs—housing and community development.

Accordingly, 24 CFR part 27 is amended as follows:

PART 27—NONJUDICIAL FORECLOSURE OF MULTIFAMILY MORTGAGES

1. The authority citation for 24 CFR part 27 is revised to read as follows:

Authority: 12 U.S.C. 3701–3717; 42 U.S.C. 3535(d).

2. Section 27.1 is amended by revising the second sentence to read as follows:

§ 27.1 Purpose

* * * The Act creates a uniform Federal remedy for foreclosure of multifamily mortgages. * * *

3. Section 27.3 is amended by revising the definition of "Multifamily mortgage" to read as follows:

§ 27.3 Definitions

* * * * *

Multifamily mortgage means a mortgage held by the Secretary, covering any property pursuant to:

(1) Section 608 of the National Housing Act (12 U.S.C. 1743);

(2) Section 801 of the National Housing Act (12 U.S.C. 1748);

(3) Title II of the National Housing Act (12 U.S.C. 1707–1715z–20);

(4) Title X of the National Housing Act (12 U.S.C. 1749aa);

(5) Section 312 of the Housing Act of 1964, as it existed immediately before its repeal by section 289 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 1452b);

(6) Section 202 of the Housing Act of 1959, as it existed immediately before its amendment by section 801 of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1701q);

(7) Section 202 of the Housing Act of 1959, as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1701q); and

(8) Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013).

Multifamily mortgage does not include a property on which there is located a one- to four-family residence, except when the one- to four-family residence is subject to a mortgage pursuant to section 202 of the Housing Act of 1959, or section 811 of the National Affordable Housing Act. The definition of multifamily mortgage also includes a mortgage taken by the Secretary in connection with the previous sale of the project by the Secretary (purchase money mortgage).

* * * * *

4. In section 27.5 the last sentence in paragraph (a) is revised to read as follows:

§ 27.5 Prerequisites to foreclosure.

(a) * * * Nothing in this part shall preclude the Secretary from foreclosing under this part where the Secretary has obtained or is seeking any other remedy available pursuant to Federal or State Law or under the mortgage agreement, including, but not limited to the appointment of a receiver; mortgagee-in-possession status; relief under an assignment of rents; or transfer to a nonprofit entity in accordance with section 202 of the Housing Act of 1959 (as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act), or section 811 of the Cranston-Gonzalez National Affordable Housing Act.

* * * * *

5. Section 27.20 is amended by revising paragraphs (a), (b)(1), (c)(1) and (c)(3) and by adding (c)(5) to read as follows:

§ 27.20 Conditions of foreclosure sale.

(a) If a majority of the residential units in a property subject to foreclosure sale pursuant to this part are occupied by residential tenants either on the date of the foreclosure sale or on the date on which the General Counsel designates the foreclosure commissioner, the Secretary shall require, as a condition and term of the sale, that the purchaser at a foreclosure sale (other than the Secretary) agree to continue to operate the project in accordance with the terms of the program under which the mortgage insurance or assistance was provided, or any applicable regulatory or other agreement in effect with respect to such property immediately prior to the time of foreclosure sale as the Secretary shall find appropriate. If a majority of the residential units are not so occupied, at either such time, the Secretary, in his or her discretion, may require as a condition and term of the sale, that the purchaser (other than the Secretary) agree to continue to operate the property in accordance with such terms described above as the Secretary shall find appropriate.

(b) * * *

(1) The history of the project, including the purposes of the program under which the mortgage insurance or assistance was provided, and any other program of HUD under which the project was developed or otherwise assisted and the probable causes of project failure resulting in its default;

* * * * *

(c) * * *

(1) If the mortgage being foreclosed was previously insured by the Secretary under section 608, or 801, or title II or X of the National Housing Act; or assisted under section 202 of the Housing Act of 1959, as it existed before its amendment by section 801 of the Cranston-Gonzalez National Affordable Housing Act, any terms required by the Secretary pursuant to this section shall be in effect no longer than the earliest date on which the mortgagor could have prepaid the mortgage debt without the Secretary's consent, or the maturity date of the mortgage, whichever is earlier. No terms shall be required pursuant to this section, if, under the terms of the mortgage, the mortgagor could have prepaid the mortgage debt in full without the Secretary's consent on or before the date of the foreclosure sale.

* * * * *

(3) If the mortgage being foreclosed covers a project which is governed by a use agreement executed under section 1(d)(1) of the Housing and Community Development Amendments of 1978, as amended (12 U.S.C. 1715z–1a); section 202 of the Housing Act of 1959, as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1701q); section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013); or section 225(b) of the Emergency Low Income Housing Preservation Act of 1987 (12 U.S.C. 17151), any terms required by the Secretary under this section shall be in effect no longer than the maturity date of the mortgage.

(4) * * *

* * * * *

(5) If the mortgage being foreclosed covers a project which is governed by a use agreement executed under section 222(b) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4112), any terms required by the Secretary under this section shall be in effect for the remaining useful life of the

project. Remaining useful life has the same meaning given the term in 24 CFR 248.101.

* * * * *

Dated: May 20, 1993.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 93–15102 Filed 6–29–93; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8480]

RIN 1545–AR41

Extension of Time for Making a Valid Election to Exclude Foreign Earned Income and Housing Cost Amounts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the application of section 911 with respect to the requirement of a return in order to make a valid election to exclude foreign earned income and the housing cost amount. These regulations will provide the public with guidance necessary to comply with the Economic Recovery Tax Act of 1981 and will affect individuals claiming the foreign earned income exclusion and the housing cost amount.

DATES: Effective June 30, 1993. These regulations apply to taxable years beginning after December 31, 1981.

FOR FURTHER INFORMATION CONTACT: Leslie B. van der Wal of the Office of Associate Chief Counsel (International), Internal Revenue Service, 202–622–3850, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to part 1 of the Income Tax Regulations under section 911 of the Internal Revenue Code of 1986 (Code). These amendments will provide the public with guidance necessary to comply with the Economic Recovery Tax Act of 1981.

Explanation of Provisions

Section 911(a) provides that at the election of a qualified individual, there shall be excluded from gross income and exempt from tax the foreign earned income and the housing cost amount of such individual.

Section 1.911–7(a) provides that in order to receive either exclusion provided by section 911(a), a qualified individual must separately elect each exclusion. The election may be made on Form 2555 or on a comparable form. Section 1.911–7(a)(2)(i) provides that in order to make a valid election, the election must be made (A) with an income tax return that is timely filed (including any extensions of time to file), (B) with a later return filed within the period described in section 6511(a) amending the foregoing timely filed income tax return, or (C) with an original income tax return that is filed within one year after the due date of the return (determined without regard to any extension of time to file). The one-year period in (C) above does not constitute an extension of time for any purpose; it is merely a period during which a valid election may be made on a late return.

Section 1.911–7(a)(2)(i)(D) is added to provide that a qualified individual may make an election at dates later than provided in paragraphs (a)(2)(i)(A), (B) and (C) in two situations. If the taxpayer owes no federal income tax after taking into account the exclusion, the taxpayer may file under this paragraph (a)(2)(i)(D)(*1*) Form 1040 with Form 2555 or a comparable form attached either before or after the Internal Revenue Service discovers that the taxpayer failed to elect the exclusion. If, however, the taxpayer owes federal income tax after taking into account the exclusion, the taxpayer may file under paragraph (a)(2)(i)(D)(*2*) Form 1040 with Form 2555 or a comparable form attached provided the filing is before the Internal Revenue Service discovers that the taxpayer failed to elect the exclusion. Paragraph (a)(2)(i)(D)(*3*) provides that a taxpayer who files an income tax return pursuant to (a)(2)(i)(D)(*1*) or (*2*) must state at the top of the return that the return was filed pursuant to § 1.911–7(a)(2)(i)(D). This change shall apply to taxable years beginning after December 31, 1981.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. It has further been determined that immediate guidance in this area is necessary. The issuance of this regulation removes a temporal restriction presently imposed on taxpayers by allowing them to claim a benefit without making a timely election. Therefore, it has been determined pursuant to 5 U.S.C. 553(b)(B) that good cause exists to dispense with prior notice and public procedure. Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these regulations has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Leslie B. van der Wal of the Office of Associate Chief Counsel (International), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding a citation in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.911–7 also issued under 26 U.S.C. 911(d)(9). * * *

Par. 2. Section 1.911–7(a)(2)(i) is amended as follows:

1. Paragraph (a)(2)(i)(B) is amended by removing the word "or" at the end of the sentence.

2. Paragraph (a)(2)(i)(C) is amended by removing the period at the end of the sentence and by adding the language ", or" in its place.

3. Paragraph (a)(2)(i)(D) is added.

4. The added provision reads as follows:

§ 1.911–7 Procedural rules.

(a) * * *

(2) * * * (i) * * *

* * * * *

(D) With an income tax return filed after the period described in paragraphs (a)(2)(i)(A), (B), or (C) of this section provided—

(*1*) The taxpayer owes no federal income tax after taking into account the exclusion and files Form 1040 with Form 2555 or a comparable form attached either before or after the Internal Revenue Service discovers that the taxpayer failed to elect the exclusion; or

(*2*) The taxpayer owes federal income tax after taking into account the

exclusion and files Form 1040 with Form 2555 or a comparable form attached before the Internal Revenue Service discovers that the taxpayer failed to elect the exclusion.

(3) A taxpayer filing an income tax return pursuant to paragraph (a)(2)(i)(D)(1) or (2) of this section must type or legibly print the following statement at the top of the first page of the Form 1040: "Filed Pursuant to Section 1.911–7(a)(2)(i)(D)."

* * * * *

Michael P. Dolan,

Commissioner of Internal Revenue.

Approved: June 16, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–15304 Filed 6–29–93; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 301

[T.D. 8481]

RIN 1545–AR14

Extension of Time for Making Elections

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document amends the Treasury Regulations concerning the extension of time for making certain elections or applications for relief under the Internal Revenue Code. This document generally conforms the regulations to the new standards that the Commissioner of the Internal Revenue Service will use to grant taxpayers extensions of time for making elections or applications for relief. This document is intended to foster greater compliance by providing an administrative means for taxpayers to correct certain errors.

EFFECTIVE DATE: April 5, 1991.

FOR FURTHER INFORMATION CONTACT: Barbara B. Walker 202–622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final amendments to § 301.9100–1 of the Procedure and Administration Regulations. Section 301.9100–1 was adopted in 1959 (24 FR 1206) and was amended in 1970 (35 FR 17840) and in 1991 (56 FR 64980) under the authority of section 7805(a) of the Internal Revenue Code (Code). Section 301.9100–1 concerns extensions of time for making certain elections or applications for relief where the time is not expressly prescribed by statute.

Explanation of Provisions

Under § 301.9100–1(a), the Commissioner has the discretion to grant a reasonable extension of time for making an election when the time for making the election is not expressly prescribed by statute.

Section 301.9100–1(b) of the regulations, as amended in 1991, contained a special transitional rule that applied to elections or applications for relief under subtitles B, C, D, and F, required to be made prior to April 5, 1991. The rule required taxpayers to request relief by the later of October 2, 1991, or the date that was one year after the date the election or application was required to be made and to show clear evidence of intent to make the election. The deadline for requesting relief and the intent requirement in the special transitional rule were consistent with the Service's general practice, at that time, of granting relief under § 301.9100–1(a) only if a taxpayer requested relief within one year of the missed election and could demonstrate an intent to timely make the election.

In 1992, the Service modified the standards for granting relief under § 301.9100–1(a) by issuing Rev. Proc. 92–85, 1992–42 I.R.B. 32, and eliminating the intent requirement and the one-year general practice described in the preceding paragraph for elections covered by that section. These regulations generally conform the standards for relief for elections previously covered by the special transitional rule to the new standards for relief under § 301.9100–1(a) by eliminating the special transitional rule for all elections other than those under section 4980A(f)(5) of the Code. Thus, even if a taxpayer could not satisfy the requirements of the special transitional rule for such elections, relief will be granted as long as the taxpayer satisfies the requirements of § 301.9100–1(a).

Section 4980A of the Code, enacted by the Tax Reform Act of 1986, imposes a 15 percent excise tax on certain pension plan distributions or accumulations. If the value of the taxpayer's pension benefit, determined as of August 1, 1986, equals or exceeds $562,500, the taxpayer could have elected to exclude that amount from taxation under section 4980A. Section 4980A(f)(5) provides that these elections must have been made on an individual's income or estate tax return for a taxable year beginning before January 1, 1989. The purpose of these elections was to provide a transition for the new excise taxes. An exception is made for section 4980A(f)(5) elections because they are one-time transitional elections that present special opportunities for retroactive tax planning.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations; therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, a copy of these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Barbara B. Walker, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Seals and insignia, Statistics, Taxes.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.9100–1(b) is revised to read as follows:

§ 301.9100–1 Extension of time for making certain elections.

* * * * *

(b) *Special transitional rule for section 4980A(f)(5) elections.* Taxpayers may request relief under this paragraph (b) for section 4980A(f)(5) elections for any year as to which the period of limitations has not expired. Requests for relief must be filed with the Commissioner by October 2, 1991. In addition to satisfying all other requirements for relief, a taxpayer must

demonstrate clear evidence of intent to make the election at the time it was required to be made.

* * * * *

Shirley D. Peterson,
Commissioner of Internal Revenue.

Approved: April 16, 1993.

James Fields,
Acting Assistant Secretary of the Treasury.

[FR Doc. 93–15303 Filed 6–29–93; 8:45 am]

BILLING CODE 4830–01–M

POSTAL SERVICE

39 CFR Part 111

Restructuring and Revision of the Domestic Mail Manual

AGENCY: Postal Service.

ACTION: Interim rule.

SUMMARY: At the request of postal customers, the Postal Service has restructured and revised the Domestic Mail Manual (DMM) to make it easier to use. As part of this effort, internal postal operating procedures and recommendations for voluntary customer actions are being published in a separate DMM publication. No substantive changes have been made in this revision.

EFFECTIVE DATE: July 1, 1993.

ADDRESSES: Written comments on this revision and suggestions for future changes should be mailed to the Manager, Mailing Standards, U.S. Postal Service, room 8430, 475 L'Enfant Plaza West, SW., Washington, DC 20260–2419.

FOR FURTHER INFORMATION CONTACT: Mr. Leo Raymond, (202) 268–5199.

SUPPLEMENTARY INFORMATION: In 1992, the Competitive Services Task Force, a joint working group of representatives of the Postal Service and the mailing industry chartered to propose improvements in postal services, recommended that the Postal Service revise and reorganize the Domestic Mail Manual (DMM) to make it simpler and easier to use. Acting on that recommendation, the Postal Service undertook, with guidance from focus groups of postal customers and postal employees and from the Mailers Technical Advisory Committee, to review the organization, style, format and content of the DMM to determine ways to accomplish the goal set by the Task Force.

Based on that review, the Postal Service determined to limit the content of the DMM to those regulations that specifically governed eligibility for and use of domestic postal services. Materials covering recommendations for voluntary customer action and internal instructions to postal employees were identified for future deletion from the DMM. These materials are being published in a separate part of the DMM entitled the Domestic Mail Manual Transition Book. The internal postal instructions and customer recommendations in this document will remain in full force and effect as DMM regulations for up to a year. This will allow the Postal Service time to make a more thorough review of their necessity and determine whether to incorporate them in other publications of the Postal Service, like the Postal Operations Manual, to publish them as mail classification rulings or to rescind them. The regulations in the DMM Transition Book are published in the same format as they appeared in Issue 45 of the DMM and remain essentially unchanged.

A major emphasis of the effort to revise the DMM was a reconsideration of the organization of the regulations. As a result of research on the methods used by other postal administrations and focus group interviews, the Postal Service determined to adopt a modular approach and a new numbering system to provide maximum flexibility to users of the manual. Under this approach, the regulations are organized by subject matter instead of class of mail as in past issues. The manual is organized in the following twelve modules:

I—Introduction and Index
G—General Information
R—Rates and Fees
E—Eligibility
C—Characteristics and Content
A—Addressing
M—Mail Preparation and Sortation
L—Labeling Lists
S—Special Services
P—Postage and Payment Methods
D—Deposit, Collection, and Delivery
F—Forwarding and Related Services

A new alphanumeric numbering system is also adopted for Issue 46. This numbering system and the new loose-leaf structure will permit the user to reorganize the regulations by class of mail or along other lines of interest to best suit its particular needs. The basic element of the new format is the unit, identified by a letter and three digits. The letter represents the module name, and the first digit identifies a broad category, as follows:

000—Basic Information
100—First-Class Mail
200—Second-Class Mail
300—Third-Class Mail
400—Fourth-Class Mail
500—Express Mail
700—Special Situations
800—Automation-Compatible Mail
900—Services

Except as previously published in the **Federal Register**, this revision of the DMM contains no substantive changes to the requirements set forth in Issue 45 that mailers must meet to be eligible to use the domestic mail services of the Postal Service. All the changes in the DMM regulations that will appear in Issue 46 are editorial in nature. Issue 46 and the DMM Transition Book will be distributed to all subscribers to Issue 45. A cross-reference chart is included in the DMM Transition Book which shows the disposition of the regulations in Issue 45. For the convenience of the user, the cross-reference chart is reproduced below.

Cross-Reference Tables

[Disposition of DMM 45 Material to DMM 46 and Transition Book]

DMM 45	DMM 46	TBK	Comments
111.1	G020		
111.2	G011		
111.3	G020		
111.4	G020		
111.5	G020		
112	G011		
113	G011	113	
114	G011		
115	G012		
119	G013		

CROSS-REFERENCE TABLES—Continued

[Disposition of DMM 45 Material to DMM 46 and Transition Book]

DMM 45	DMM 46	TBK	Comments
121	C010	121	
122.11	A010		
122.12	A010		
122.13	A010		
122.14	A010		
122.15	A010		
122.16			Deleted.
122.17	M011	122.17	
122.18	F030		
122.2	A010		
122.3		122.3	
122.4	A040		
122.44	A930		
122.5			Deleted.
122.61	A010		
122.62			Deleted.
122.63	A010		Text Only.
122.63a	L001		Exhibits Only.
122.63b	L002		
122.63c	L003		
122.63d	L004		
122.63e	L101		
122.63f	L201		
122.63g	L701		
122.63h	L702		
122.63i	L202		
122.63j	L703		
122.63k	L704		
122.63l	L705		
122.63m	L801		
122.63n	L802		
122.63o	L803		
122.63p	L203		
122.63q	L706		
122.63r	L707		
122.63s	L708		
122.63t	L804		
122.64			Deleted.
122.65			Deleted.
122.7	G030		
122.8	A010		
122.9	A010		
123.1	C010		
123.2	C010		
123.3	C010	123.3	
123.4	C031		
123.5	C032	123.5	
123.6	C033	123.6	
124.1	C041	124.1	
124.2	C021		
124.3	C042	124.3	
124.4	C021	124.4	
124.5	C022	124.5	
124.6	C023	124.6	
124.7	C024		
125	E010		
126	E020		
127.1	C010		
127.2	C010		
127.3	C050		
127.4	C010		
127.5	C010		
128	C050		
129	C024		
131	G020		
132	1042		
133	G020		
134	E030		
135	E040		
136.1	E070		
136.21	E070		
136.22			
136.23			
136.24			
136.31			
136.31			
136.32			
136.32			
136.32			
136.41			
136.42			
136.43			
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145.9			
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CROSS-REFERENCE TABLES—Continued

[Disposition of DMM 45 Material to DMM 46 and Transition Book]

DMM 45	DMM 46	TBK	Comments
136.22	A010		
136.23	E070		
136.24	M071		
136.31	E070		
136.31	P071		
136.32	E070		
136.32	M071		
136.32	P071		
136.41	E070		
136.42	E070		
136.43	P071		
136.44			Deleted.
136.5	F010		
136.6	S070		
136.71	D071		
136.72	D070		
136.72	E070		
136.73	D070		
136.74			Deleted.
136.75	M072		
136.76	M072		
136.76	P072		
136.77	S500		
136.81	E070		
136.82			Deleted.
136.83	P071		
136.84	M071		
136.84	P071		
136.85	E070		
136.86	F010		
136.91	D070		
136.92	D070		
136.92	E070		
136.93	D070		
136.93	M072		
136.93	P072		
136.94	P072	136.94	
136.95	M072		
136.96	M072		
136.96	P072		
136.97	D070		
137.1	E050	137.1	
137.2	E060	137.2	
138	E080	138	
141	P021	141	
142	P022	142	
143	P023	143	
144.1	P030		
144.2	P030	144.2	
144.3	P030	144.3	
144.4	P030		
144.5	P030	144.5	
144.6		144.6	
144.7		144.7	
144.8	D072	144.8	
144.9	P030	144.9	
145.1	P040	145.1	
145.2	P040		
145.3	P040		
145.4	P040		
145.5	P040		
145.6	P040		
145.7	P710	145.7	
145.8	P720	145.8	
145.9	P730	145.9	
145.9	P790	145.9	
146	P011	146	
147	P014	147	
148	P011		
149	S010	149	
151	D041	151	

CROSS-REFERENCE TABLES—Continued

[Disposition of DMM 45 Material to DMM 46 and Transition Book]

DMM 45	DMM 46	TBK	Comments
151.4			Del. 7/1/93.
152	D030	152	
153	D042	153	
154.1	D020		
154.2	D020		
154.3	D020		
154.4	M074		
154.5	M074		
154.6	D020		
154.7	D020	154.7	
154.8	D020		
155	D042	155	
156	D042	156	
157	D042	157	
158		158	
159.1	F010	159.1	
159.2	F020	159.2	
159.3	F030	159.3	
159.4	F010	159.4	
159.5	F010	159.5	
161	G900	161	
162	G900	162	
163	G900	163	
164	G900	164	
165		165	
166	G013	166	
171	G900	171	
172	G900		
173	G900	173	
174		174	
175		175	
176	G900	176	
210	E500		Text Only.
210	R500		Exhibit Only.
212	R500		In Exhibit 210.
213			Deleted.
214			Deleted.
215.1	E500		
215.1	R500		
215.2	E500		
215.2	R500		
216	E500		
221.1	E500		
221.2	E500		
221.3			Deleted.
221.4	E500		
222.1	E500		
222.2	M500	222.2	
222.3	D500		
222.4	D500		
222.5	D030		
223	D500		
223	E500		
224.1	E500		
224.2	E500	224.2	
224.3	D010		
224.4	D500		
225.1	E500		
225.2	E500		
225.3	D010		
225.4	D500		
226	D010		
226	D500		
226	E500		
227	D500		
230	D500		
240	E500		
242	E500		
250	C500		
252	C500		
260	M500		
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326.1			
326.2			
326.3			
326.4			
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328.1			
328.2			
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CROSS-REFERENCE TABLES—Continued

[Disposition of DMM 45 Material to DMM 46 and Transition Book]

DMM 45	DMM 46	TBK	Comments
270	D500	270	
272	D500		
273	D500	273	
281	P500		
282	P500		
283			Deleted.
284			Deleted.
285			Deleted.
286			Deleted.
287			Deleted.
291.1	F020	291.1	
291.2	F020	291.2	
291.3	F030	291.3	
292.1	F030	292.1	
292.2	F030		
292.3	F010	292.3	
293		293	
294	F030	294	
295.1	F010	295.1	
295.1	S500	295.1	
295.2	F010	295.2	
295.2	S500	295.2	
295.3	F010	295.3	
295.3	S500	295.3	
296.1	P014	296.1	
296.1	S500	296.1	
296.2	P014	296.2	
296.2	S500	296.2	
296.3	P014	296.3	
296.3	S500	296.3	
297	F010	297	
297	S500	297	
311.11	E110		
311.12	E110		
311.13	R100		
311.21	E110		
311.22	R100		
312	R100		
313.1	E110		
313.21	E110		
313.22	R100		
313.31	E110		
313.32	R100		
313.4			Reserved in #45.
313.5	R100		
313.6	E110		
313.6	R100		
313.7	R100		
313.8	R100		
314	E120		
314	R100		
315	R100		
321.1	E110		
321.2	E110		
321.3	C021		
322.1	E110		
322.2	C100		
322.3	C100		
322.4	E110		
323	E132		
324	E142		Parts exp. 3/20/93.
325	E144		Parts exp. 3/20/93.
326.1	E120		
326.2	M101		
326.3	E120		
326.4	E120		
326.5	D010		
327	E147		Parts exp. 3/20/93.
328.1	E148		
328.2	E149		
330	D100		

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CROSS-REFERENCE TABLES—Continued

[Disposition of DMM 45 Material to DMM 46 and Transition Book]

DMM 45	DMM 46	TBK	Comments
340	E110		
351	C100		
352	C100		
353	C100		
354	C024		
361	A010		
361	E131		
361	E132		
362.1	M101		
362.2	M103		
362.3	M102		
362.4	M818		
362.5	M812		
362.5	M813		
362.6	M814		
362.6	M815		
362.6	M816		
362.6	M823		
362.7	M819		
362.7	M827		
363	M031		
363	M033		
363	M101		
364			Exp. 3/20/93; Del.
365			Exp. 3/20/93; Del.
366			Exp. 3/20/93; Del.
367.1	M103		
367.2	M103		
367.3	M102		
367.4	M102		
367.5	M103		
368			Exp. 3/20/93; Del.
369.1	M013		
369.2	M032		
369.3	M032		
370	D100	370	
372	D100		
373	D100		
374	D100	374	
381	P100		
382	P100		
383	P100		
384	P013		
391	F010		
392.1	F010		
392.2	F010		
392.3	F030		
392.4			Deleted.
411.11	P013		
411.12	E212		
411.13	P013		
411.14	E231		
411.21	E212		
411.22	R200		
411.23	E212		
411.23	R200		
411.24	E212		
411.24	R200		
411.25	E212		
411.25	R200		
411.31	E212		
411.32	E271		
411.32	R200		
411.33	E271		
411.33	E272		
411.33	R200		
411.34	E272		
411.34	E273		
411.34	R200		
411.35	E273		
411.35	E274		
411.35			
411.36			
411.36			
411.4			
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424.83			
424.84			
424.85			
424.86			
424.9			
425			
426.1			
426.2			

CROSS-REFERENCE TABLES—Continued

[Disposition of DMM 45 Material to DMM 46 and Transition Book]

DMM 45	DMM 46	TBK	Comments
411.35	R200		
411.36	E274		
411.36	R200		
411.4	E215		
411.5	E212		
412	R200		
421	E211		
422	E211		
423.11	E221		
423.12	E221		
423.13	E211		
423.14	E216	423.14	
423.15	E216		
423.16	E216		
423.17	E216		
423.21	E222		
423.22	E216	423.22	
423.23	E216	423.23	
423.24	E216	423.24	
423.25	E214	423.25	
423.31	E223		
423.32	E216	423.32	
423.33	E216	423.33	
423.34	E216	423.34	
423.35	E216	423.35	
423.4		423.4	
423.41	E224		
423.42	E224		
423.43	E216		
423.44	E216		
423.45	E216		
423.46	E216	423.46	
423.51	E225		
423.52	E216	423.52	
423.53	E216	423.53	
423.54	E216		
423.55	E216		
423.61	E226		
423.62	E216	423.62	
423.63	E216	423.63	
423.64	E216	423.64	
423.65	E216	423.65	
424.11	E272		
424.12	E272		
424.13	E272		
424.14	E272		
424.15	E217	424.15	
424.16	E217		
424.17	E217	424.17	
424.18	E217	424.18	
424.2	E217	424.2	
424.31	E274		
424.32	E217	424.32	
424.33	E217	424.33	
424.34	E217		
424.35	E217	424.35	
424.4	E250		
424.5	E242		
424.6	E244		Exp. 3/20/93.
424.7	E232	424.7	
424.7	M204	424.7	
424.81			Deleted.
424.82	E231		
424.83	E231		
424.84	E213	424.84	
424.85	E238		
424.86	M042		
424.9	E250		
425	E213	425	
426.1	D230		
426.2	D230		

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CROSS-REFERENCE TABLES—Continued

[Disposition of DMM 45 Material to DMM 46 and Transition Book]

DMM 45	DMM 46	TBK	Comments
426.3	D230	426.3	
426.4	D230	426.4	
426.5	D230		
426.6	D240	426.6	
426.7	D250	426.7	
427	E214	427	
428.1	E211		
428.2	E211		
428.3	E211		
428.4	E215		
429.1	C200		
429.2	C200		
429.3	A200		
429.4	C200		
429.5	C200		
429.6	E211		
429.7	A060		
430	D210		
441.1	M201		
441.21	M201		
441.22	M020		
441.231	M020		
441.232	M013		
441.24	M020		
441.25	M201		
441.3	M020		
441.3	M031		
441.3	M201		
442			Reserved in #45.
443	M202		
444	M202		
444	M203		
445.1	M205		
445.2	M041	445.2	
445.2	M042	445.2	
445.3	M041	445.3	
445.3	M042	445.3	
445.4	M041	445.4	
445.4	M042	445.4	
446	M032		
447			Exp. 3/20/93; Del.
450	D210		
461	P200	461	
462	P200		
463.1		463.1	
463.2	P013		
463.3	P200	463.3	
463.4	P200		
463.5	P200		
464	P200	464	
465	P750	465	
470	F010		
511			Deleted.
512			Deleted.
513	M812		
513	M813		
513	M814		
513	M815		
513	M816		
514	E142		
514	E147		
514	E242		
514	E342		
515	E144		
515	E148		
515	E244		
515	E344		
516	E145		
516	E149		
516	E245		
516	E345		

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561.1
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566.6
566.7
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568
569.1
569.11

CROSS-REFERENCE TABLES—Continued

[Disposition of DMM 45 Material to DMM 46 and Transition Book]

DMM 45	DMM 46	TBK	Comments
517	C840		
521	C810		
522	C820		
531	A950		
532	A950		
533	A950		
534	A800		
535	A930		
541.1	E142		
541.1	E242		
541.1	E342		
541.2	E142		
541.2	E242		
541.2	E342		
542	C830		
543	C830		
544	C830		
545	C830		
546	C830		
551	C840		
552	C840		
553	C840		
561.1	M020		
561.2	M033		
562.1	E142		
562.1	E242		
562.1	E342		
562.13	M812		
562.14	M812		
562.2			Exp. 3/20/93; Del.
562.3	M812		
562.4	M812		
563.11	E142		
563.12	E242		
563.13	E342		
563.2	M813		
563.3	M020		
563.3	M813		
563.4	M813		
563.5	M813		
563.6	M813		
564.11	E144		
564.11	E244		
564.11	E344		
564.12	M814		
564.13	M814		
564.14	M814		
564.2			Exp. 3/20/93; Del.
564.3	M814		
564.4	M814		
565.1	M815		
565.2	E144		
565.22	E244		
565.23	E344		
565.3	M815		
565.4	M815		
565.5	M815		
565.6	M815		
566.1	M816		
566.21	E144		
566.22	E244		
566.23	E344		
566.3	M816		
566.4	M816		
566.5	M816		
566.6	M816		
566.7	M816		
567			Exp. 3/20/93; Del.
568	M817	568	
569.1	M818		
569.11	E147		

CROSS-REFERENCE TABLES—Continued

[Disposition of DMM 45 Material to DMM 46 and Transition Book]

DMM 45	DMM 46	TBK	Comments
569.12	M818		
569.13	M818		
569.2	M819		
569.21	E148		
569.22	M819		
569.23	M819		
571.11	E145		
571.12	E245		
571.13	E345		
571.2	M827		
572.1	M020		
572.2	M031		
572.2	M033		
573	M823		
574	M822		
574	M823		
574	M825		
575	M825	575	
576	M048		
577.1	E149		
577.2	M827		
581.1	P100		
581.2	P100		
581.3	P100		
581.4	P100		
581.5	P760		
581.6	P760		
582	P200		
583.1	P300		
583.2	P300		
583.3	P300		
583.4	P760		
583.5	P760		
590			Deleted.
611.1	E320		
611.1	R300		
611.2	E312		
612.1	R300		
612.2	E311		
612.2	R300		
612.3	R300		
613	E320		
613	R300		
621	E311		
622	E320		
623	E312		
624.1	E331		
624.2	E332		
624.3	A930		
624.3	E333		
624.4			Reserved in #45.
624.5			Reserved in #45.
624.6			Reserved in #45.
624.7	E350	624.7	
624.8	E334	624.8	
624.8	M304	624.8	
625	E371		
626	E372	626	
627	E372	627	
628			Exp. 3/20/93; Del.
628.1	E342		
628.2	E345		
628.3			Exp. 3/20/93; Del.
629.1	E311		
629.21	C300		
629.22	C300		
629.23	C300		
629.24	C024		
629.3	A010		
629.3	E312		
629.4	A010		
629.5			
629.6			
629.7			
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641.1			
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711.41			
711.42			
711.42			
711.5			
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712.1			
712.1			
712.2			

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CROSS-REFERENCE TABLES—Continued

[Disposition of DMM 45 Material to DMM 46 and Transition Book]

DMM 45	DMM 46	TBK	Comments
629.5	A060		
629.6	M301		
629.7	C300		
630	D300		
641.1	M301		
641.1	M302		
641.2	M305		
641.3			Reserved in #45.
641.4	M014		
641.4	M303		
642	M013		
643	M306		
644.1	M020	644.1	
644.1	M041	644.1	
644.1	M042	644.1	
644.1	M043	644.1	
644.2	M031	644.2	
644.2	M041	644.2	
644.2	M043	644.2	
644.3	M031		
644.3	M041		
644.3	M043		
644.4	M031	644.4	
644.4	M041	644.4	
644.4	M043	644.4	
645	M307	645	
646.1	M032		
646.2	M032		
647.1	M308		
647.2	M309		
647.3			Deleted.
647.4	M032		
647.4	M033		
650	D300		
661	P300		
662	P300		
663	P013		
664	P750		
665	P750		
691	F010		In Exhibits.
692.1	F010		In Exhibits.
692.2	F010		In Exhibits.
692.3	F030		
711.11	E412		
711.11	R400		
711.12	E412		
711.12	R400		
711.13	E412		
711.13	R400		
711.14	E412		
711.14	R400		
711.15	E412		
711.15	R400		
711.21	E414		
711.22	E414		
711.22	R400		
711.23	E414		
711.23	R400		
711.24	P013		
711.24	R400		
711.31	E416		
711.32	E416		
711.32	R400		
711.41	E419		
711.42	E419		
711.42	R400		
711.5	P013		
711.6	E411		
712.1	E411		
712.1	R400		
712.2	E411		

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CROSS-REFERENCE TABLES—Continued

[Disposition of DMM 45 Material to DMM 46 and Transition Book]

DMM 45	DMM 46	TBK	Comments
712.2	R400		
712.3	E411		
712.3	R400		
712.4	E411		
712.4	R400		
721.1	E411		
721.2	E411		
721.3	M073		
722.1	E412		
722.2	E412		
722.3	E412		
722.4	E450		
722.5	D010		
723.1	E414		
723.2	E414		
723.3			Deleted.
724	E416		
724	M404		
725	E419		
730	D400		
741	E412		
742	E411		
743	E411		
751	C400		
752	C400		
753	C400		
753	E412		
761.1	A010		
761.2	E412		
762	M401		
763.1	E414		
763.1	M403		
763.2			Deleted.
764	M044		
764	M404		
765	M073		
766	M405		
767.11	M402		
767.11	M403		
767.12	M403		
767.13	M402		
767.13	M403		
767.2	M402		
767.2	M407		
767.3	M406		
767.4	M407	767.4	
767.5	M020	767.5	
767.5	M031	767.5	
767.5	M041	767.5	
767.5	M044	767.5	
767.6	M020	767.6	
767.6	M031	767.6	
767.6	M041	767.6	
767.6	M044	767.6	
767.7	A060		
767.8	M403		
768	M013		
768	M014		
769	M032		
770	D400		
781	P400		
782	P400		
783	P013		
784	P750	784	
785	P750	785	
791	F010		
792.1	F010		
792.2	F030		
911.1	S911		
911.2	S911	911.2	
911.3	S911	911.3	
911.4			
911.5			
912.1			
912.2			
912.3			
912.4			
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913.1			
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931.23			
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934.5			
934.6			
934.7			
934.8			
941.1			
941.2			

CROSS-REFERENCE TABLES—Continued

[Disposition of DMM 45 Material to DMM 46 and Transition Book]

DMM 45	DMM 46	TBK	Comments
911.4	S911	911.4	
911.5	S911	911.5	
912.1	S912		
912.2	S912		
912.3	R900		
912.4	S912	912.4	
912.5	S912	912.5	
912.6	F010	912.6	
912.7		912.7	
912.8	S912	912.8	
913.1	S913		
913.2	S913		
913.3	S913		
913.33	R900		
913.4	S913	913.4	
913.5		913.5	
913.5	S913		
913.6		913.6	
913.7		913.7	
913.8	F010	913.8	
914.1	S921	914.1	
914.2	R900		
914.3	S921		
914.4	S921	914.4	
914.5	S921	914.5	
914.6		914.6	
914.7		914.7	
914.8		914.8	
915.1	S930	915.1	
915.2	S923	915.2	
915.3	S930	915.3	
915.4	S930	915.4	
915.5		915.5	
915.6	F010	915.6	
916.1	S930		
916.2	S930		
916.3	S930		
916.4	S930		
916.5	S930		
916.6	F010		
917.1	S922	917.1	
917.2	S922		
917.3	R900	917.3	
917.3	S922	917.3	
917.4	S922		
917.5	S922		
917.6	S922		
918.1	S930		
918.2	S930		
918.3	S930		
918.4	R900		
918.5	S930	918.5	
919.1	S923	919.1	
919.2	S923	919.2	
919.3	S923	919.3	
919.4	S923	919.4	
919.5	S923	919.5	
919.6		919.6	
919.7		919.7	
930			Reserved in 845.
931	S914	931	
931.23	R900		
932	S915	932	
933	S916	933	
934	S917		
934.5		934.5	
934.6		934.6	
934.7	F010	934.7	
934.8		934.8	
941.1	S020	941.1	
941.2		941.2	

CROSS-REFERENCE TABLES—Continued

[Disposition of DMM 45 Material to DMM 46 and Transition Book]

DMM 45	DMM 46	TBK	Comments
941.3	S020	941.3	
941.4	S020	941.4	
941.5		941.5	
941.6		941.6	
941.7		941.7	
941.8	S020	941.8	
942	S020	942	
942	S930	942	
943	S030		
944	S030		
945.1	A910		
945.1	R100		
945.2	A910		
945.3	A910		
945.4	A910		
945.5	A910		
946	A920	946	
946.9	A930		
951	D910	951	
952	D920	952	
953	D930	953	
954	D930	954	

ORIGIN OF DMM 46 MATERIAL IN DMM 45

DMM 46	DMM 45
A010	122.11, 122.12, 122.13, 122.14, 122.15, 122.2, 122.61, 122.63, 122.8, 122.9, 136.22, 361, 629.3, 629.4, 761.1
A040	122.4
A060	429.7, 629.5, 767.7
A200	429.3
A800	534
A910	945.1, 945.2, 945.3, 945.4, 945.5
A920	946
A930	122.44, 535, 624.3, 946.9
A950	531, 532, 533
C010	121, 123.1, 123.2, 123.3, 127.1, 127.2, 127.4, 127.5
C021	124.2, 124.4, 321.3
C022	124.5
C023	124.6
C024	124.7, 129, 354, 629.24
C031	123.4
C032	123.5
C033	123.6
C041	124.1
C042	124.3
C050	127.3, 128
C100	322.2, 322.3, 351, 352, 353
C200	429.1, 429.2, 429.4, 429.5
C300	629.21, 629.22, 629.23, 629.7
C400	751, 752, 753
C500	250, 252
C810	521
C820	522
C830	542, 543, 544, 545, 546
C840	517, 551, 552, 553
D010	224.3, 225.3, 226, 326.5, 722.5
D020	154.1, 154.2, 154.3, 154.6, 154.7, 154.8
D030	152, 222.5
D041	151
D042	153, 155, 156, 157
D070	136.72, 136.73, 136.91, 136.92, 136.93, 136.97

ORIGIN OF DMM 46 MATERIAL IN DMM 45—Continued

DMM 46	DMM 45
D071	136.71
D072	144.8
D100	330, 370, 372, 373, 374
D210	430, 450
D230	426.1, 426.2, 426.3, 426.4, 426.5
D240	426.6
D250	426.7
D300	630, 650
D400	730, 770
D500	222.3, 222.4, 223, 224.4, 225.4, 226, 227, 230, 270, 272, 273
D910	951
D920	952
D930	953, 954
E010	125
E020	126
E030	134
E040	135
E050	137.1
E060	137.2
E070	136.1, 136.21, 136.23, 136.31, 136.32, 136.41, 136.42, 136.72, 136.81, 136.85, 136.92
E060	138
E110	311.11, 311.12, 311.21, 313.1, 313.21, 313.31, 313.6, 321.1, 321.2, 322.1, 322.4, 340
E120	314, 326.1, 326.3, 326.4
E131	361
E132	323, 361
E142	324, 514, 541.1, 541.2, 562.1, 563.11
E144	325, 515, 564.11, 565.2, 566.21
E145	516, 571.11
E147	327, 514, 569.11
E148	328.1, 515, 569.21
E149	328.2, 516, 577.1
E211	421, 422, 423.13, 428.1, 428.2, 428.3, 429.6
E212	411.12, 411.21, 411.23, 411.24, 411.25, 411.31, 411.5

ORIGIN OF DMM 46 MATERIAL IN DMM 45—Continued

DMM 46	DMM 45
E213	424.84, 425
E214	423.25, 427
E215	411.4, 428.4
E216	423.14, 423.15, 423.16, 423.17, 423.22, 423.23, 423.24, 423.32, 423.33, 423.34, 423.35, 423.43, 423.44, 423.45, 423.46, 423.52, 423.53, 423.54, 423.55, 423.62, 423.63, 423.64, 423.65
E217	424.15, 424.16, 424.17, 424.18, 424.2, 424.32, 424.33, 424.34, 424.35
E221	423.11, 423.12
E222	423.21
E223	423.31
E224	423.41, 423.42
E225	423.51
E226	423.61
E231	411.14, 424.82, 424.83
E232	424.7
E238	424.85
E242	424.5, 514, 541.1, 541.2, 562.1, 563.12
E244	424.6, 515, 564.11, 565.22, 566.22
E245	516, 571.12
E250	424.4, 424.9
E271	411.32, 411.33
E272	411.33, 411.34, 424.11, 424.12 424.13, 424.14
E273	411.34, 411.35
E274	411.35, 411.36, 424.31
E311	612.2, 621, 629.1
E312	611.2, 623, 629.3
E320	611.1, 613, 622
E331	624.1
E332	624.2
E333	624.3
E334	624.8

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ORIGIN OF DMM 46 MATERIAL IN DMM 45—Continued

DMM 46	DMM 45
E342	514, 541.1, 541.2, 562.1, 563.13, 628.1
E344	515, 564.11, 565.23, 566.23
E345	516, 571.13, 628.2
E350	624.7
E371	625
E372	626, 627
E411	711.6, 712.1, 712.2, 712.3, 712.4, 721.1, 721.2, 742, 743
E412	711.11, 711.12, 711.13, 711.14, 711.15, 722.1, 722.2, 722.3, 741, 753, 761.2
E414	711.21, 711.22, 711.23, 723.1, 723.2, 763.1
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Any regulation language contained in Issue 45 which is not carried forward in Issue 46 and the DMM Transition Book is rescinded. The listing of the parts and sections of the DMM in 39 CFR 111.5 is revised to conform with this revision of the DMM.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Section 111.5 is revised to read as follows:

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§ 111.5 Contents of the Domestic Mail Manual.

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Stanley F. Mires,

Chief Counsel, Legislative Division.

[FR Doc. 93–15408 Filed 6–29–93; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD–FRL–4673–2]

Prevention of Significant Deterioration for Particulate Matter; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction to final rule.

SUMMARY: This document corrects the Preamble to the final rule published on June 3, 1993 at (58 FR 31622). The rule revised the maximum allowable increases (increments) for particulate matter under the requirements for prevention of significant deterioration (PSD) of air quality. The Preamble contains an incorrect date for filing a petition for judicial review, and this action provides the correct date.

EFFECTIVE DATE: This correction is effective June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Questions regarding this correction notice can be directed to Dan deRoeck, Air Quality Management Division (MD–15), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Caroline 27711, (919) 541–5593.

SUPPLEMENTARY INFORMATION: Section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), allows 60 days for individuals to file a petition for review concerning final rulemaking actions by the Administrator. The Preamble to the June 3, 1993 PSD rule revisions inadvertently contained an incorrect date which would have allowed persons only 30 days to file such petition. Today's action corrects that error by providing that a petition for judicial review may be filed at any time during the 60-day period specified by the statute.

The final rule published on June 3, 1993 is corrected as follows:
On page 31622, in the first column, in the fourth line under the DATES caption, the incorrect date for filing a petition, "July 6, 1993," is corrected to read "August 2, 1993."

Dated: June 17, 1993.

James B. Weigold,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 93–15456 Filed 6–29–93; 8:45 am]

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40 CFR Part 52

[CA13–7–5746; FRL–4670–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revisions for Kern County Air Pollution Control District, San Diego County Air Pollution Control District, and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Notice of final rulemaking (NFR).

SUMMARY: EPA is finalizing approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on April 14, 1992. The revisions concern rules from the following districts: The Kern County Air Pollution Control District (KCAPCD), the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), and the San Diego County Air Pollution Control District (SDCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended (CAA or the Act). These rules control VOC emissions from architectural coatings. The proposed action on these rules provided a 30-day public comment period and EPA received three letters commenting on its proposal to approve the revisions. The issues raised in these letters have been considered by EPA, and found not to warrant a change in EPA's decision to approve these rules. Thus, EPA is finalizing the approval of these revisions into the California SIP under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA.

EFFECTIVE DATE: This action is effective July 30, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.
Environmental Protection Agency, Jerry Kurtzweg, ANR–445, 401 "M" Street SW., Washington, DC 20460.
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.
Kern County Air Pollution Control District, 2700 M Street, suite 275, Bakersfield, CA 93301.
San Diego County Air Pollution Control District, County Administration Center, 1600 Pacific Highway, room 335, San Diego, CA 92101.
San Joaquin Valley Unified, Air Pollution Control District, 2314 Mariposa Street, Fresno, CA 93721.

FOR FURTHER INFORMATION CONTACT: Dave Hodges, Rulemaking Section I (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Background

On April 14, 1992 in 57 FR 12906, EPA proposed to approve the following rules into the California SIP: KCAPCD Rule 410.1, Architectural Coatings;[1] SDCAPCD Rule 67.0, Architectural Coatings; and SJVUAPCD Rule 460.1, Architectural Coatings. Rule 410.1 was adopted by the KCAPCD on May 6, 1991; Rule 460.1 was adopted by the SJVUAPCD on April 11, 1991; and Rule 67.0 was adopted by the SDCAPCD on December 4, 1990. SDCAPCD Rule 67.0 was submitted by the California Air Resources Board (ARB) on May 13, 1991, and the other two rules were submitted by ARB to EPA on May 30, 1991.

These rules, with the exception of KCAPCD Rule 410.1, were submitted in response to EPA's 1988 SIP-Call and the section 182(a)(2)(A) RACT fix-up requirement of the CAA.[2] Both EPA's 1988 SIP-Call and section 182(a)(2)(A) of the CAAA required nonattainment areas to fix their deficient reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amended Act. Section 182(a)(2)(A) also established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the above-referenced notice of proposed rulemaking.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced at (57 FR 12906). EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided at (57 FR 12906) and in the technical support documents available at EPA's Region IX office (TSDs dated February 27, 1992 for Rules 410.1, 67.0, and 460.1).

A 30-day public comment period was provided and three commenters submitted letters in response to EPA's proposal.

Comment: Two commenters, the Environmental Legislative & Regulatory Advocacy Program of the Southern California Paint & Coating Association (EL RAP), and Triangle Coatings, Inc. expressed concern that VOC content limits for certain architectural coatings may not be feasible by the effective date of September 1, 1992, and as a result have a deleterious effect on air quality. The commenters requested that EPA refrain from approving those portions of the rules which require lower VOC limits effective September 1, 1992.[3]

Response: The EPA supports California's use of certain technology-forcing limits because they have an important role in the state's efforts at controlling air pollution. The past use of

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[1] The portion of Kern County affected by KCAPCD Rule 410.1 is that area of Kern County that lies outside of the San Joaquin Valley Air Basin and is contained within the Southeast Desert Air Basin.

[2] The requirements of the CAA section 182(a)(2)(A) RACT fix-up requirement were applicable only to those areas designated as non-attainment at the time of the CAA's enactment. The pre-enactment designation for that portion of Kern County which lies within the Southeast Desert Air Basin and is affected by Rule 410.1, was unclassified for ozone. Therefore, that portion of Kern County located within the Southeast Desert Air Basin was not subject to the section 182(a)(2)(A) requirements.

[3] EPA notes that Triangle Coatings, Inc. and others have challenged in state court the September 1, 1992 VOC content limits set forth in the KCAPCD and SJVUAPCD rules that are the subject of this final rulemaking. *Dunn-Edwards Corp., et al* v. *Technical Review Group*, No. BC065536 (Cal. Super. Ct. L.A.). However, to date, the court has made no rulings that affect the validity of these rules under state or local law. Therefore, there exists no legal impediment resulting from the lawsuit to EPA's final action approving the rules into the California SIP. See *Sierra Club* v. *Indiana-Electric Corporation*, 716 F.2d 1145 (1983).

certain technology-forcing coating limits in architectural coating regulations has led to the development and acceptance of low-VOC coatings. The California Air Resources Board (ARB) in the development of the Suggested Control Measure for Architectural Coatings, upon which the regulations in this notice were modeled, set limits based upon information supplied by paint manufacturers. The ARB determined, and EPA agrees that, a "reasonable basis" existed that the limits could be met by the proposed effective dates. In consideration of the technology-forcing effect of certain coating limits in these rules, the past history of the paint industry's compliance with technology-forcing limits,[4] and the subsequent benefit to air quality through reduced VOC emissions, EPA believes it is appropriate to approve the rules as proposed. Should any of the limits be found unattainable, or a convincing demonstration be made that the coating standards adversely affect air quality, the State may request and EPA will consider a change to the SIP to reflect the most stringent but attainable VOC coating standard.

Comment: One commenter, EL RAP, stated that the California Air Resources Board had failed to comply with section 110(l) of the CAA by failing to provide "reasonable notice and public hearing" of the proposed SIP revisions.

Response: EPA has found that the State of California complied with section 110(l) of the CAA and 40 CFR 51.102 in its submittal of the architectural coating rules addressed in this notice. The proposed KCAPCD, SJVUAPCD, and SDCAPCD architectural coating rules were adopted by the Districts on May 6, 1991, April 11, 1991, and May 13, 1991 respectively. Prior to adoption, the Districts conducted public hearings to afford the opportunity for public comment on these proposed regulations. The time and location of these public hearings were announced by the Districts thirty (30) days in advance of the hearings. The adopted District rules were submitted to the ARB which subsequently adopted these rules as revisions to the SIP through Executive Orders G–125–86 and G–125–87. Further information on hearing dates, locations, and public comment is located in the docket files for these rules. Docket files are available for public review at the EPA Region IX office whose address was provided earlier in this notice.

Comment: The U.S. Small Business Administration (SBA) commented that the proposed rules' compliance with the Regulatory Flexibility Act (RFA) was inadequate as EPA failed to transmit a RFA certification to the Chief Counsel for Advocacy.

Response: EPA acknowledges that the NPR did not fully explain the reason for certification. Therefore, a complete explanation has been incorporated into the Regulatory Process section of this notice. The SBA previously waived the requirement in the RFA that EPA transmit a copy of the Regulatory Flexibility certification to the SBA's Chief Counsel for Advocacy on SIP approvals.

EPA Action

In today's notice, EPA takes final action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of Section 3 of Executive Order 12201 for a period of two years (54 FR at 2222). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements. Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

[4] The California Technical Review Group (TRG), a statewide regulatory workgroup, has recently investigated (July 1992) the subject architectural coatings and their availability at the mandated September 1, 1992 VOC limits. The findings of the TRG were that the anticipated technological developments have occurred, with the possible exception of magnesite cement coatings for which formulation development was still ongoing, and that there are VOC compliant coatings available for each category in California. EPA does not believe that the September 1, 1992 standard for magnesite cement coatings (450 grams VOC/liter of coating) will result in any compliance problems in SJVUAPCD or KCAPCD since the major manufacturer of this coating has reported that magnesite cement coating is not distributed for use in these areas. In SDCAPCD where magnesite cement coating is sold, SDCAPCD Rule 67.0 does not require the September 1, 1992 standard of 450 grams VOC/liter of coating. SDCAPCD Rule 67.0 requires magnesite cement coating meet a 600 grams VOC/liter of coating standard.

Dated: June 10, 1993.

David P. Howekamp,

Acting Regional Administrator.

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(184)(i)(D)(*1*), (185)(i)(A)(*4*), and (185)(i)(C)(*3*).

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(184) * * *

(i) * * *

(D) * * *

(*1*) Amended Rule 67.0, adopted on December 4, 1990.

* * * * *

(185) * * *

(i) * * *

(A) * * *

(*4*) Amended Rule 410.1, adopted on May 6, 1991.

* * * * *

(C) * * *

(3) New Rule 460.1, adopted on April 11, 1991.

* * * * *

[FR Doc. 93–15370 Filed 6–29–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CA–12–4–5890; FRL–4672–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on March 8, 1993 and January 5, 1993. The revisions concern the following rules from the San Diego County Air Pollution Control District (SDCAPCD): Rule 61.2, Transfer of Organic Compounds into Mobile Transport Tanks; Rule 61.3, Transfer of Volatile Organic Compounds into Stationary Storage Tanks; and Rule 67.5, Paper, Film, and Fabric Coating Operations. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended (CAA or the Act). The revised rules control VOC emissions from several different industries. Both **Federal Register** notices provided 30-day public comment periods, and EPA received no comments on its proposals to approve these revisions. Thus, EPA is finalizing the approval of these revisions into the California SIP under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA.

EFFECTIVE DATE: This action is effective August 2,1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Jerry Kurtzweg ANR 443, 401 "M" Street, SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1095

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 Telephone: (415) 744–1195.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1993 in 58 FR 324, EPA proposed to approve the following rule into the California SIP: SDCAPCD's Rule 67.5, Paper, Film, and Fabric Coating Operations. On March 8, 1993 in 58 FR 12914, EPA proposed to approve the following rules into the California SIP: SDCAPCD Rule 61.2, Transfer of Organic Compounds into Mobile Transport Tanks and Rule 61.3, Transfer of Volatile Organic Compounds into Stationary Storage Tanks. Rules 67.5, 61.2, and 61.3 were adopted by SDCAPCD on October 16, 1990. All three rules were submitted by the California Air Resources Board to EPA on April 5, 1991.

These rules were submitted in response to EPA's 1988 SIP-Call and the CAA requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the NPR(s) cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in 58 FR 324 and 58 FR 12914. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 58 FR 324 and 58 FR 12914 and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated August 24, 1992 (Rule 67.5), August 20, 1992 (Rule 61.2) and August 27, 1992 (Rule 61.3).

EPA Action

In today's notice, EPA takes final action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by August 30, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: June 17, 1993.

John C. Wise,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(183)(i)(A)(*10*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(183) * * *

(i) * * *

(A) * * *

(*10*) Revised Rules 61.2, 61.3, and 67.5, adopted on October 16, 1990.

* * * * *

[FR Doc. 93–15371 Filed 6–29–93; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 52

[IL 34–1–5355; FRL–4469–7]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On June 29, 1990, USEPA promulgated a Federal implementation plan (FIP) which contained stationary source volatile organic compound (VOC) control measures representing reasonably available control technology (RACT) for certain emission sources, including coating operations, located in six northeastern Illinois (Chicago area) counties: Cook, DuPage, Kane, Lake, McHenry, and Will. USEPA also took final rulemaking action on certain VOC RACT rules previously adopted and submitted by the State of Illinois for inclusion in its State implementation plan (SIP).

Among the rules that USEPA promulgated is one for coating operations. Under this rule, the VOC limit for pail and drum interior coatings which are not "clear coatings" is 3.5 lb/gal. On October 1, 1991, the KNS Companies, Inc. (KNS) petitioned USEPA to revise the VOC limit applicable to pail and drum interior coatings to 4.3 lb/gallon. In support of its request, KNS attached two USEPA policy memoranda. For the reasons discussed below, USEPA has determined that the FIP revision requested by KNS Companies is consistent with USEPA policy and should be approved.

DATES: This action will be effective August 30, 1993 unless notice is received within 30 days of publication that someone wishes to submit adverse or critical comments. Such notice may be submitted to Jay Bortzer at the EPA Regional Office address listed below. If the effective date is delayed, timely notice will be published in the **Federal Register**.

Comments on this requested revision to the Chicago FIP and on USEPA's rulemaking action must be received by July 30, 1993 at the address below. A public hearing, if requested, will be held in Chicago, Illinois. Requests for a hearing should be submitted to Jay Bortzer by July 30, 1993 at the address below. Interested persons may call Ms. Hattie Geisler at (312) 886–3199 to see if a hearing will be held and the date and location of any hearing. Any hearing will be strictly limited to the subject matter of this action, the scope of which is discussed below.

ADDRESSES: Written comments on this action should be addressed to Jay Bortzer, Chief, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region V, 77 West Jackson Street, Chicago, Illinois 60604. Comments should be strictly limited to the subject matter of this action, the scope of which is discussed below.

DOCKET: Pursuant to section 307(d)(1), of the CAA, 42 U.S.C. 7607(d)(1), this action is subject to the procedural requirements of section 307(d). Therefore, EPA has established a public docket for this action, 5–AR–92–3, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the following addresses. We recommend that you contact Steven Rosenthal before visiting the Chicago location and Gloris Butler before visiting the Washington, DC location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region V, Regulation Development Branch, 18th Floor, Southwest, 77 West Jackson Street, Chicago, Illinois 60604.

U.S. Environmental Protection Agency, Docket No. 5–AR–92–3, Air Docket (LE–131), room M1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460, (202) 245–3639.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Regulation Development Branch, EPA Region V, (312) 886–6052, at the Chicago address indicated above.

SUPPLEMENTARY INFORMATION:

I. Background

On June 29, 1990, USEPA promulgated coating rules codified at 40 CFR 52.741(e) (55 FR 26856). Under the Federal coating rules, steel pail and drum interior coatings meeting the definition in 40 CFR 52.741(a)(3) for clear coatings ("coatings that lack opacity or are transparent using the undercoat as a reflectant base or undertone color"), are subject to the 4.3 lb/gallon VOC content limit in 40 CFR 52.741(e)(1)(i)(J)(*1*). Steel pail and drum interior coatings not meeting the above definition are subject to the 3.5 lb/gallon VOC content limit in 40 CFR 52.741(e)(1)(i)(J)(*3*), for "extreme performance coatings."

II. KNS's Petition for Reconsideration

On October 1, 1991, KNS Companies submitted a petition requesting that USEPA revise the Chicago FIP. The petition requested that a 4.3 lb/gallon VOC content limit be adopted for all steel pail and drum interior coatings. Two USEPA memoranda and a copy of 25 Pennsylvania Code § 129.5 were enclosed with the petition.

The subject of both memoranda was "emission limits for (interior) coatings of shipping pails and drums." Both memoranda, dated September 3, 1980, and April 5, 1985, respectively, state that USEPA's presumptive norm (for establishing RACT) for the VOC content of pail and drum interior coatings is 4.3 lb/gallon. Section 129.51 of that portion of Title 25 of the Pennsylvania Code attached to the petition adopts a 4.3 lb/gallon VOC content limit for pail and drum interior coatings. KNS has demonstrated that USEPA made an error in promulgating the FIP limit of 3.5 lb/gallon VOC content for some pail and

interior coatings. Based on USEPA's authority to correct an error under section 110(k)(6) of the Act, 42 U.S.C. 7410(k)(6), USEPA is revising the FIP to make it consistent with existing federal RACT guidance that specifies a 4.3 lb/gallon VOC content limit for pail and drum interior coatings.

III. Summary and Final Rulemaking Action

USEPA acknowledges that its policy since 1980 has been to recognize a 4.3 lb/gallon VOC limit for steel pail and drum interior coatings. It also acknowledges that under the Chicago FIP, steel pail and drum interior coatings not within the scope of the § 52.741(a)(3) "clear coating" definition are subject to the 3.5 lb/gallon VOC content limit under 40 CFR 52.741(e)(1)(i)(J)(3). USEPA agrees with the petitioner that the FIP should be revised to adopt a 4.3 lb/gallon VOC content limit for steel pail and drum interiors. Such a revision is consistent with RACT, as discussed in USEPA policy memoranda. USEPA is, therefore, promulgating a limit of 4.3 lb/gallon for steel pail and drum interiors and is adding definitions for "drum" and "pail".

USEPA has considered KNS's contentions concerning VOC limits for steel pail and drum interior coatings and believes that the FIP revision it requests is noncontroversial and should elicit no negative public comment. As such, the petition qualifies for direct and final rulemaking action. Accordingly, USEPA is publishing in today's Federal Register, a discussion of the principal issues and a final rule that applies a 4.3 lb/gallon VOC content limit to steel pail and drum interior coatings. USEPA is publishing this action without prior proposal because the Agency views this as a noncontroversial FIP revision and anticipates no adverse comments. This action will become final August 30, 1993 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective August 30, 1993.

Under 5 U.S.C. 605(b), I certify that this FIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

This rulemaking has been submitted to the Office of Management and Budget for review.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 16, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.741 is amended by adding two definitions to paragraph (a)(3), by revising paragraph (e)(1)(i)(J)(4) and by adding paragraph (e)(1)(i)(J)(5) to read as follows:

§ 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry, and Will Counties.

(a) * * *

(3) * * *

Drum means any cylindrical metal shipping container of 13- to 110-gallon capacity.

* * * * *

Pail means any cylindrical metal shipping container of 1- to 12-gallon capacity and constructed of 29-gauge and heavier material.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(J) * * *

(4) Steel pail and drum interior coating, 0.52 (4.3).

(5) All other coatings, 0.36 (3.0).

* * * * *

[FR Doc. 93–15367 Filed 6–29–93; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[MA–09–3–5788; A–1–FRL–4671–4]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving portions of the State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts which amend its volatile organic compound (VOC) regulations. The intended effect of this action is to approve portions of the Massachusetts revised SIP for ozone submitted on June 7, 1991, November 13, 1992 and February 17, 1993. This action is being taken in accordance with section 110 and part D of the Clean Air Act (CAA).

EFFECTIVE DATE: This rule will become effective on July 30, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Jerry Kurtzweg, U.S. Environmental Protection Agency, 401 M Street, SW. (ANR–443), Washington, DC 20460; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Emanuel Souza, Jr., (617) 565–3248.

SUPPLEMENTARY INFORMATION: On September 22, 1992 (57 FR 43651), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. Additionally, a notice was published on October 28, 1992 (57 FR 47896) correcting two typographical errors in the September 22, 1992 notice. The NPR proposed approval of portions of a SIP revision submitted by the Commonwealth of Massachusetts on June 7, 1991. Today's action finally approves portions of the SIP revisions submitted on June 7, 1991, November 13, 1992 and February 17, 1993.

Background

On May 25, 1988, EPA sent a letter to the Governor of Massachusetts notifying

him that the Massachusetts SIP was substantially inadequate to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the entire State. EPA requested the State to respond to that letter in two phases—the first in the near future and the second following EPA's issuance of a final policy on how the States should correct their SIPs. One of the requirements of the first phase of the State's response was to correct the deficiencies identified by EPA in the existing SIP's VOC regulations.

On June 16, 1988, EPA sent a letter to the Acting Director of the Massachusetts Department of Environmental Protection (DEP) Division of Air Quality Control outlining the corrections that needed to be made to Massachusetts' existing regulations in order to eliminate the identified deficiencies and inconsistencies in the regulations as compared to EPA's national guidance.

The Commonwealth of Massachusetts made changes to its VOC regulations as required by EPA's May 25 and June 16, 1988 letters, and submitted the revised adopted VOC regulations as a formal SIP revision on August 17, 1989.

EPA proposed approval of the August 17, 1989 submittal in two notices. The automobile surface coating regulation was published separately as a proposed partial disapproval and proposed partial approval. This notice was published in the **Federal Register** on October 12, 1990 (55 FR 41553). EPA acted on the automobile surface coating regulation separately because a portion of the submittal, the compliance dates for the topcoat and final repair applications, had already been disapproved by EPA on September 16, 1988 (53 FR 36011).

The remainder of the regulations submitted on August 17, 1989 were published as a proposed approval. EPA proposed approval of these remaining VOC regulations in an NPR on May 29, 1990 (55 FR 21755).

That notice proposed approval of all of Massachusetts' August 17, 1989 submittal with the exception of the automobile surface coating regulation.

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA) were enacted. In section 182(a)(2)(A) of the amended Act, Congress codified the requirement that states revise their SIPs for ozone nonattainment areas so that they conform with EPA's pre-amendment guidance.

On June 7, 1991, Massachusetts submitted revisions to its VOC regulations pursuant to the changes requested in the NPRs published in the **Federal Register**. The June 7, 1991 SIP revision also included revisions to VOC regulations (organic material storage and distribution, solvent metal degreasing and surface coating of miscellaneous parts and products) which were never before proposed by EPA. Therefore, EPA chose to propose these regulations in a separate action. EPA finally approved as a separate action, revisions to Massachusetts' automobile surface coating regulation in the **Federal Register** on October 8, 1992 (57 FR 46313). Additionally, the regulations submitted on August 17, 1989 and June 7, 1991, with the exception of the organic material storage and distribution, solvent metal degreasing and surface coating of miscellaneous parts and products, were finally approved on January 11, 1993 (58 FR 3492). The organic material storage and distribution, solvent metal degreasing and surface coating of miscellaneous parts and products regulations were proposed for approval in the **Federal Register** on September 22, 1992 (57 FR 43651).

On November 13, 1992, the Commonwealth of Massachusetts submitted revisions to its VOC regulations pursuant to section 182(b)(2).[1] Included in this revision was an amendment to 310 CMR 7.24(4), which EPA requested the State to make before final approval of the regulations proposed on September 22, 1992.

EPA is taking final action on portions of the June 7, 1991, November 13, 1992 and February 17, 1993 because this action is consistent with the guidance that existed at the time of the proposal and because it strengthens the SIP. Additionally, these amendments, although submitted in response to the SIP call letter, also fulfill the RACT fix-up requirement.

Summary of Amendments Made To Secure Final EPA Approval

EPA's NPR published on September 22, 1992, for Massachusetts' organic material storage and distribution, solvent metal degreasing and miscellaneous metal parts and products regulations required that one issue be addressed prior to final rulemaking. In the November 13, 1992 submittal, Massachusetts added a revision to 310 CMR 7.24(4), "Motor Vehicle Fuel Tank Trucks," to require that testing to determine compliance shall be conducted in accordance with EPA Method 27 as described in appendix A of 40 CFR part 60, or by any other methods approved by the Department and EPA. Therefore, Massachusetts has satisfactory met the conditions of the NPR.

A more detailed description of these revisions and EPA's rationale for approving them was provided in the NPR and will not be restated here. For additional details of each portion of Massachusetts' regulations, see the Technical Support Document prepared on the revision available at the locations listed in the **ADDRESSES** section of this notice.

Response to Public Comments

EPA received one letter of public comment on the NPR published on May 29, 1990 and none on the September 22, 1992 NPR. The comment letter received on the May 29, 1990 NPR addressed issues that were subsequently being proposed in another action. Therefore, the final rulemaking notice (58 FR 3492) approving the regulations proposed on May 29, 1990 stated that the one comment letter received would be addressed when EPA published a final rulemaking notice on the September 22, 1992 NPR. The letter of public comment was submitted by the Massachusetts DEP on June 28, 1990. A summary of the significant comments and of EPA's response can be found below.

Comment: The DEP states that the seventh condition of the May 29, 1990 NPR, which states that the cutoff of 310 CMR 7.18(11)(a) for surface coating of miscellaneous metal parts (MMP) must be lowered to 15 pounds of VOC per day actual emissions before add-on control *or* Massachusetts must adopt an alternative approach that is shown to produce enforceable equivalent reductions in VOC emissions, causes the most concern. DEP believes that lowering the cutoff of the MMP is not the most efficient way to control small MMP coaters. The DEP believes that an innovative strategy of controlling the manufacturers and distributors of the coatings would be more appropriate and efficient in reducing these VOC emissions.

Response: This comment is no longer an issue since the state has adopted a cutoff of potential emissions of 10 tons per year for surface coaters of miscellaneous metal parts and products. To reduce the universe of possible facilities applicable to the regulation under the new cutoff, the DEP has made several exemptions. First, the sum of all coatings exempted from the emission limitations of 310 CMR 7.18(11)(b) shall

[1] Section 182(b)(2) requires all areas classified as moderate and above to submit a SIP revision to EPA requiring implementation of reasonably available control technology (RACT) for: (1) Each category of VOC sources in the area covered by a CTG document issued by the Administrator between the date of the enactment of the Clean Air Act Amendments of 1990 and the date of attainment, (2) all VOC sources in the area covered by any CTG issued before the date of the enactment of the Clean Air Act Amendments of 1990 and (3) all other major stationary sources of VOCs that are located in the area.

not exceed 55 gallons per year at any facility. Additionally, any facility which emits, before any application of air pollution control equipment, less than or equal to one ton of VOCs in any one calendar month, and less than ten tons of VOCs in any consecutive twelve month period is exempt from the emission limitations of 310 CMR 7.18(11)(b).

Final Action: EPA is approving portions of the SIP revisions submitted by the Commonwealth of Massachusetts on June 7, 1991, November 13, 1992 and February 17, 1993. These revisions amend Massachusetts' VOC regulations. For the reasons described here and in the Technical Support Document, EPA is approving the additions and/or revisions made to the Massachusetts VOC regulations.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

EPA is approving the submittals as meeting the requirements of section 182(a)(2)(A) of the amended Act. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up requirement. Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT as it was required under preamended section 172(b) as that requirement was interpreted in preamendment guidance.[2] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The entire state of Massachusetts is classified as a serious, ozone nonattainment area and is, therefore, subject to the RACT fix-up requirement.

Section 182(a)(2)(A) codifies the corrections certain nonattainment areas needed to make subject to the EPA SIP call letters issued in 1987 and 1988. Because the Massachusetts SIP submittal meets the SIP call requirements and, therefore, is consistent with the applicable pre-amendment guidance, EPA believes that the submittal also necessarily meets the requirements of section 182 (a)(2)(A) of the amended Act.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225).

On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP Revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

[2] Among other things, the pre-amendment guidance consists of the VOC RACT portions of the Post-87 policy, 52 FR 45044 (Nov. 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Duviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Bluebook) (notice of availability published in the Federal Register on May 25, 1988); and the existing CTGs.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 9, 1993.

Patricia Meaney,

Acting Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(58) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(58) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on June 7, 1991, November 13, 1992 and February 17, 1993.

(i) Incorporation by reference.

(A) Letters from the Massachusetts Department of Environmental Protection dated June 7, 1991, November 13, 1992 and February 17, 1993 submitting revisions to the Massachusetts State Implementation Plan.

(B) Amendments and additions to 310 CMR 7.00 submitted on June 7, 1991 and effective on April 12, 1991.

(C) Amendments and additions to 310 CMR 7.00 submitted on June 7, 1991 and effective on June 21, 1991.

(D) Addition of 310 CMR 7.24(4)(j) submitted on November 13, 1992 and February 17, 1993 and effective on February 12, 1993.

(ii) Additional materials.

(A) Nonregulatory portions of the state submittal.

3. In § 52.1167 Table 52.1167 is amended by adding new entries to existing state citations for "310 CMR 7.00", "310 CMR 7.18(8)" and "310 CMR 7.18(11)"; and by adding new state citations for "310 CMR 7.20" and "310 CMR 7.24" to read as follows:

§ 52.1167 EPA-approved Massachusetts state regulations.

* * * * *

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
310 CMR 7.00	Definitions	June 7, 1991 ...	[Insert date of publication].	[Insert FR citation from published date].	58	Definitions: Bulk plants, vapor balance systems.
310 CMR 7.18(8)	U Solvent Metal Degreasing.	June 7, 1991 ...	[Insert date of publication].	[Insert FR citation from published date].	58	Approval of 310 CMR 7.18 (8), (8)(a), (8)(a)1., (8)(a)2., (8)(a)3., (8)(a)4., (8)(a)5., (8)(a)6., (8)(b), (8)(b)1., (8)(b)2., (8)(b)3., (8)(b)4., (8)(b)5., (8)(b)6., (8)(b)7., (8)(b)8., (8)(b)9., (8)(b)10., (8)(b)11., (8)(b)12., (8)(b)13., (8)(c), (8)(c)1., (8)(c)2., (8)(c)3., (8)(c)4., (8)(c)5., (8)(c)6., (8)(c)7., (8)(c)8., (8)(c)9., (8)(d)2., (8)(d)3.
310 CMR 7.18(11) ..	U Surface Coating of Miscellaneous Metal Parts and Products.	June 7, 1991 ...	[Insert date of publication].	[Insert FR citation from published date].	58	Approval of 310 CMR 7.18 (11), (11)(a), (11)(a)1., (11)(a)2., (11)(a)3.
310 CMR 7.20	U Motor Vehicle Inspection and Maintenance Emission Analyzer Approval Process and Inspection Requirements and Procedures.	June 7, 1991 ...	[Insert date of publication].	[Insert FR citation from published date].	58	Approval of 310 CMR 7.20(10)(c)2. to correct a typographical error.
310 CMR 7.24	U Organic Material Storage and Distribution.	June 7, 1991, November 13, 1992, February 17, 1993.	[Insert date of publication].	[Insert FR citation from published date].	58	Replacement of 310 CMR 7.24, 7.24(1), 7.24(2), 7.24(3), and 7.24(4).

* * * * *

[FR Doc. 93–15373 Filed 6–29–93; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[PA7–1–5668; A–1–FRL–4670–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revisions to Municipal Waste Incinerator and Continuous Emissions Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes new requirements pertaining to control of municipal waste incinerators and revised requirements governing continuous emissions monitoring (CEM). The intended effect of this action is to approve the federally-enforceable SIP so as to make it consistent with the current State requirements. This action

is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATES: This action will become effective August 30, 1993 unless notice is received on or before July 30, 1993 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Toxics, and Radiation Management Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Toxics, and Radiation Management Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Commonwealth of Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, PA 17105–8468.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford (3AT10), (215) 597–1325.

SUPPLEMENTARY INFORMATION: On January 11, 1991, the Commonwealth of Pennsylvania submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of revisions to the following sections of Title 25 of the Pennsylvania Code: Sections 121.1 (Definitions), 123.25 (Monitoring Requirements) 129.18 (Municipal Waste Incinerators), 139.101 (Monitoring-General Requirements), 139.103(2) (Opacity Monitoring Requirements), 139.104 (Sulfur Dioxide and Nitrogen Oxide Monitoring Requirements for Combustion Sources), and 139.111 (Municipal Waste Incinerators).

Pennsylvania provided proof that public hearings were held on September 21, 1989 in Coraopolis, September 25, 1989 in King of Prussia, and September 27, 1989 in Harrisburg, in accordance with the requirements of 40 CFR 51.102.

Summary of SIP Revision

A. Municipal Waste Incinerators

Section 121.1—Definitions

Definitions of combustion efficiency, incineration, incinerator, municipal waste, municipal waste incinerator, and resource recovery unit are added.

Section 129.18—Municipal Waste Incinerators

An entire section is added, establishing continuous emissions monitoring (CEM) requirements for municipal waste incinerators (MWIs.)

Section 139.111—Municipal Waste Incinerator Monitoring Requirements

The introductory sentence to Paragraph 139.111(1) is revised to add combustion efficiency as a monitoring parameter, replacing the requirements to monitor carbon dioxide and oxygen. Paragraphs 139.111(1), 139.111(2) and 139.111(3) are revised to add data availability requirements for MWIs. This is accomplished by referring to the quality assurance section of the CEM manual described in section 139.102(3) (References).

B. Miscellaneous Revisions to the CEM Requirements

1. In several sections, Pennsylvania has replaced the word systems with devices in order to clarify that the data monitoring requirements apply to the entire monitoring system, and not just the devices. Pennsylvania asserts that the operators of CEMs have always implemented the regulations as if the requirements applied to the entire system, and therefore, the change serves as a clarification. The affected sections are: Sections 123.25, 139.101, 139.103(2), 139.104, and 139.111.

2. Section 123.25(e) is added to allow use of data from alternative monitoring systems to determine compliance with the applicable sulfur dioxide (SO_2) emission limits. Section 123.25(d)(1) and (e) allow the Pennsylvania Department of Environmental Resources (DER) to utilize sulfur-in-fuel sampling programs to determine source compliance, provided that such sampling programs meet all the requirements of section 139. This regulation applies to solid fuel-fired combustion units requesting for an exemption to the one-hour averaging provision, as well as any fossil fuel-fired steam generator located statewide with a heat input greater than 250 mmbtu/hr which has installed SO_2 control equipment.

3. Section 139.101 is revised as described below:

a. The introductory paragraph is revised in order to clarify that the CEM provisions apply to the monitoring of emission and process operational parameters required by or approved under the New Source Performance Standards (NSPS) requirements of 40 CFR part 60.

b. Section 139.101(7) is revised to expand the procedures involved in CEM certification. The revision replaces "source sampling" with the more broad term testing in order to make clear that procedures other than source sampling are involved in the CEM certification process.

c. Section 139.101(16) is revised by replacing references to specific types of monitoring parameters with a generic reference to monitoring of emissions and process operation parameters. The purpose of this change is to ensure that the requirements of section 139.101 apply to all monitoring devices, and therefore, that the monitoring data is complete.

EPA Evaluation

The revised regulations involve no new emissions limitations. Rather, the revised regulations clarify the meaning of municipal waste incinerator, and clarify how compliance is to be determined. The regulations also expand the use of CEM as a compliance tool, and expand the CEM requirements to cover more types of monitoring systems. The revisions to the CEM requirements meet the basic requirements of 40 CFR part 51, appendix P.

The revised regulations do not provide any new exceptions beyond those already approved as part of the Pennsylvania SIP. Section 129.18, pertaining to requirements for municipal waste incinerators, does not specifically require CEM's to be installed on MWI's. However, the regulation authorizes DER to require continuous monitoring, and it is DER's practice to issue operating permits requiring all currently operating MWIs to install CEMs meeting the requirements of section 139. In addition, pursuant to section 129 of the Clean Air Act Amendments, EPA will be requiring Pennsylvania to submit a section 111(d) plan to control municipal waste combustor (MWC) emissions. One mandatory plan element is the requirement to install CEMS on MWI units with a throughput capacity of greater than 250 tons per day.

Therefore, EPA concludes that the revised regulations submitted by Pennsylvania on January 11, 1991 and described in this action conform with all statutory requirements of the Clean Air Act, as well as the substantive and procedural requirements of 40 CFR part 51. The control strategy demonstration submitted by Pennsylvania justifies that the revised regulations will have no adverse impact on the NAAQS for CO, SO_2, or NO_2, and thus, satisfies the requirements of 40 CFR part 51, subpart G (Control Strategy). The revised provisions also are consistent with

Agency practices and procedures, and therefore, are considered to be federally enforceable. A more detailed evaluation is provided in a Technical Support Document available upon request from the Regional EPA office listed in the ADDRESSES section of this action.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on August 30, 1993.

Final Action: EPA is approving revised Pennsylvania Regulations 121.1, 123.25, 129.18, 139.101, 139.103, 139.104, and 139.111 as revisions of the Pennsylvania State Implementation Plan.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this Agency approval action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 1993. Filing a petition for reconsideration by the Administrator of this final rule regarding Pennsylvania's revised municipal waste incinerator and CEM requirements does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 11, 1993.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

§ 52.2020 [Amended]

2. Section 52.2020 is amended by adding paragraph (c)(81) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(81) Revisions to the State Implementation Plan submitted by the Pennsylvania Department of Environmental Resources on January 11, 1991.

(i) Incorporation by reference.

(A) Letter from the Pennsylvania Department of Environmental Resources dated January 11, 1991 submitting a revision to the Pennsylvania State Implementation Plan.

(B) The following revised regulations, effective October 27, 1990: Sections 121.1 (Definitions of "combustion efficiency," "incinerator," "municipal waste," "municipal waste incinerator," and "resource recovery unit" only); 123.25 (b), (c), and (e); 129.18 (entire section); 139.101 (7), (16) and introductory paragraph; 139.103(2); 139.104(2); 139.111 (1), (2), (3).

(ii) Additional material.

(A) Remainder of the January 11, 1991 State submittal.

* * * * *

[FR Doc. 93–15372 Filed 6–29–93; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 180

[PP 2E4108/R1198; FRL–4585–5]

RIN 2070–AB78

Pesticide Tolerance for N,N-Diethyl-2-(1-Naphthalenyloxy)Propionamide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the herbicide *N,N*-diethyl-2-(1-naphthalenyloxy) propionamide (also referred to as napropamide) in or on the raw agricultural commodity sweet potato. The regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: This regulation becomes effective on June 30, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 2E4108/R1198], may be submitted to: Hearing Clerk (A-110),

Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 14, 1993 (58 FR 19391), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 2E4108 to EPA on behalf of the Agricultural Experiment Stations of California, North Carolina, and Louisiana. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to establish a tolerance for residues of the herbicide *N,N*-diethyl-2-(1-naphthalenyloxy)propionamide in or on the raw agricultural commodity sweet potato at 0.1 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 18, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.328, paragraph (a) table is amended by adding and alphabetically inserting the raw agricultural commodity sweet potato, to read as follows:

§ 180.328 N,N-Diethyl-1-(1-naphthalenyloxy)propionamide; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Sweet potato	0.1
* * * * *	

* * * * *

[FR Doc. 93-15418 Filed 6-29-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300279A; FRL-4580-8]

RIN 2070-AB78

Titanium Dioxide; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of titanium dioxide (CAS Reg. No. 13463-67-7) when used as an inert ingredient (colorant on seed) in pesticide formulations applied to seeds for planting. This regulation was requested by Becker-Underwood, Inc. The proposed rule for this exemption also included a proposal for an exemption for 2-[methyl- [(perfluoroalkyl)-sulfonyl]- amino]alkyl (C_2-C_8) acrylate-alkyl (C_2-C_8) methacrylates-*N*-methylolacrylamide copolymer when used as an inert ingredient (water repellant agent) in pesticide formulations applied to animals. A comment was received in response to this proposal that questioned the risks to human health and the environment for this polymer, and the comment and proposal will be addressed in a separate **Federal Register** document.

EFFECTIVE DATE: This regulation becomes effective on June 30, 1993.

ADDRESSES: Written objections, identified by the document control number, [OPP-300279A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Rosalind Gross, Registration Support Branch, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8354.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 10, 1993 (58 FR 13239), EPA issued a proposed rule giving notice that SmithKline Beecham Animal Health, 1600 Paoli Pike, P.O. Box 2650, West Chester, PA 19380-6014. had submitted pesticide petition 2E4147 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(e) by establishing an exemption from the

requirement of a tolerance for residues of 2-[methyl- [(perfluoroalkyl)-sulfonyl]- amino]alkyl (C_2-C_8) acrylate-alkyl (C_2-C_8) methacrylates-*N*-methylolacrylamide copolymer when used as an inert ingredient (water repellant agent) in pesticide formulations applied to animals.

Also in the **Federal Register** of March 10, 1993 (58 FR 13239), EPA issued a proposed rule giving notice that Becker-Underwood, Inc., 801 Dayton Ave., Ames, IA 50010, had submitted pesticide petition (PP) 2E4128 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) to expand an existing exemption from the requirement of a tolerance for residues of titanium dioxide (CAS Reg. No. 13463-67-7) when used as an inert ingredient (pigment/coloring agent in plastic bags used to wrap growing bananas (preharvest) to include the additional use as a colorant on seeds for planting.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk.

One comment was received in response to the proposed rule concerning 2-[methyl- [(perfluoroalkyl)-sulfonyl]- amino]alkyl (C_2-C_8) acrylate-alkyl (C_2-C_8) methacrylates-*N*-methylolacrylamide copolymer. The comment questioned the risks to human health and the environment for this polymer based on its characteristics. The comment indicated that Patent Number 4921696 includes some structures related to the subject copolymer, which exemplify why one should not generalize that substances with molecular weights greater than 1,000 are normally not absorbed through the intact gastrointestinal (GI) tract. EPA acknowledges that to protect the public health the comment necessitates further evaluation of the safety of 2-[methyl- [(perfluoroalkyl)- sulfonyl]- amino]alkyl (C_2-C_8) acrylate-alkyl (C_2-C_8) methacrylates-*N*-methylolacrylamide copolymer. EPA's findings in regard to the aforementioned comment will be discussed in a separate **Federal Register** document.

However, no comments or requests for referral to an advisory committee were received in response to the proposed rule for titanium oxide. The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the EPA concludes that the tolerance exemption for titanium dioxide will protect the public health. Therefore, the tolerance exemption for residues of titanium dioxide is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 18, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001, paragraph (d) table is amended by revising the entry for titanium dioxide, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
Titanium dioxide (CAS Reg. No. 13463-67-7)		Pigment/coloring agent in plastic bags used to wrap growing bananas (preharvest), colorant on seeds for planting.

* * * * *

[FR Doc. 93-15420 Filed 6-29-93; 8:45 am]
BILLING CODE 4000-00-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 414

[BPD-730-F]

RIN 0938-AF49

Medicare Program; Payment for Customized Wheelchairs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to comments we received on an interim final rule relating to payment for customized wheelchairs that was published on December 20, 1991 (56 FR 65995). The interim rule set forth the Secretary's criteria that a wheelchair must meet to be considered a customized item and allowed for a payment for the purchase of customized items based on the carrier's case-by-case determination.

This rule establishes the interim rule as a final regulation with one change. The change is based on our review and consideration of the public comments.

EFFECTIVE DATE: This final rule is effective on July 30, 1993.

FOR FURTHER INFORMATION CONTACT: William Long, (410) 966-5655.

SUPPLEMENTARY INFORMATION:

I. Background

Before January 1, 1989, payment for durable medical equipment (DME) was made on the basis of reasonable charges. The reasonable charge was defined as the lowest of: (1) The actual charge for the item; (2) the customary charge; (3) the prevailing charge for the item in the locality; or (4) the inflation-indexed charge. Medicare carriers were also authorized by regulations, at § 405.502(a)(7), to take into account any other factors that may have been relevant in determining the reasonable charge. Further, the charges a carrier deemed reasonable for Medicare payment purposes were not to exceed the comparable charges that were applicable to policyholders and subscribers under that carrier's own private insurance plan. In the case of expensive equipment, carriers were also required to determine whether it would be more economical to rent or purchase the equipment. In the case of customized equipment, payment was based not on customary and prevailing charges but on reasonable charge determinations made by carriers on an item-by-item basis.

Section 4062(b) of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, added section 1834 to the Social Security Act (the Act). Section 1834(a)(1)(B) limits Medicare payment for DME to the lower of the actual charge for the item or the fee schedule amount. Under sections 1834(a) (2) through (7), equipment is classified into one of six classes for payment purposes: Inexpensive or other routinely purchased DME; items requiring frequent and substantial servicing; customized items; prosthetics and orthotics; other expensive items of DME (capped rental); and oxygen and oxygen equipment. Payment for a piece of equipment is determined by the fee schedule for the class into which the piece of equipment falls. The methodology for computing fee schedules and for classifying equipment as belonging to a particular class is also provided for in sections 1834(a) (2) through (10) of the Act.

Under section 1834(a)(4), a lump sum payment for customized equipment continues to be based "upon the carrier's individual consideration" of the item. Before revision by section 4152(c)(4)(B) of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101-508, enacted on November 5, 1990, section 1834(a)(4) of the Act defined customized equipment as equipment

* * * that is uniquely constructed or substantially modified to meet the specific needs of an individual patient, and for that reason cannot be grouped with similar items for purposes of payment * * *.

Section 4152(c)(4)(B) of OBRA '90 amended section 1834(a)(4) of the Act to provide that a wheelchair furnished on or after January 1, 1992 is treated as a customized item only if it meets the definition added at the end of section 1834(a)(4), that is—

* * * if the wheelchair has been measured, fitted, or adapted in consideration of the patient's body size, disability, period of need, or intended use, and has been assembled by a supplier or ordered from a manufacturer who makes available customized features, modifications, or components for wheelchairs that are intended for an individual patient's use in accordance with instructions from the patient's physician.

However, under section 4152(c)(4)(B)(ii) of OBRA '90, if the Secretary developed specific criteria for the treatment of wheelchairs as customized items before January 1, 1992, the Secretary's criteria apply instead. On December 20, 1991, we published interim final regulations, effective on January 1, 1992, that set forth the Secretary's criteria (56 FR 65995).

II. Provisions of the Interim Final Rule

The December 20, 1991 interim final rule announced our decision not to use the optional definition of customized wheelchairs in section 1834(a)(4) of the Act and added a new § 414.224 to 42 CFR to provide in regulations criteria that must be met for a covered item to be considered a customized item for payment purposes. In addition, § 414.224 allows for a payment for the purchase of customized items based on the carrier's case-by-case determination.

In § 414.224(a), we specified that, to be considered a customized item for payment purposes, a covered item (including a wheelchair) must be uniquely constructed or substantially modified for a specific beneficiary and be so different from another item used for the same purpose that the two items cannot be grouped together for pricing purposes.

In § 414.224(b), we specified that payment is made on a lump sum basis for the purchase of a customized item based on the carrier's individual consideration and judgment of a reasonable payment amount for each customized item. We further specified that the carrier's individual consideration takes into account written documentation on the costs of the items including at least the cost of labor and materials used in customizing an item.

III. Responses to Public Comments

We received ten timely items of correspondence on the interim final rule. The commenters included medical equipment suppliers' associations, an association representing retail pharmacies, a State agency, a

congressman, the medical director of a Medicare carrier, and other individuals.

We received some comments on issues that did not pertain to the subject matter of the interim final rule, which was limited specifically to the definition of customized equipment and payment on the basis of the carrier's individual consideration and judgment of a reasonable payment amount. For example, we received comments regarding refining the coverage definitions of medical equipment, updating the HCFA Common Procedure Coding System (HCPCS), and allowing certain diagnoses to serve as authorization for customized equipment. We are responding in this final rule to only those comments related to the subject matter of the interim final rule.

Comment: A commenter suggested that we modify the definition of customized equipment by recognizing "nonstandard" modular components now offered by manufacturers as cost-effective methods of customizing.

Response: If a "nonstandard" item cannot be grouped with any other items for pricing purposes, it meets the definition of customized equipment; if it can be grouped with other items, it does not meet that definition. We see no reason to consider as customized items all items that are labeled "nonstandard." For example, if we received claims for 500 "nonstandard" items that were similar and similarly priced, it would be administratively burdensome and costly to consider each item as customized for pricing purposes and would serve no valid program purpose.

Comment: Two commenters stated that the definition of customized equipment is the same that was used before 1989 and it is outmoded. They suggested we adopt the definition of customized equipment in the second sentence of section 1834(a)(4) of the Act. Two commenters stated that we skirted congressional intent by not adopting that definition. One of these commenters believed that our perception that our long-standing definition has worked well is erroneous.

Response: Congress gave the Secretary the authority to define customized equipment and the option to implement the definition contained in the second sentence of section 1834(a)(4) of the Act. In choosing to define customized equipment solely in terms of the definition contained in the first sentence of section 1834(a)(4) of the Act, the Secretary has exercised this authority. As explained in the interim final rule, the definition contained in the second sentence of section 1834(a)(4) is so imprecise that virtually all medical equipment would meet the definition of customized equipment. This would prove administratively onerous and costly, benefiting neither the Medicare program nor Medicare beneficiaries. The only entities that would benefit from use of that definition would be those suppliers of equipment that would seek to increase payment amounts for standard equipment by billing as though the equipment were customized. We have no documentation indicating that our long-standing definition is not working well. As pointed out, the optional definition at section 1834(a)(4) of the Act is imprecise, and no appropriate alternatives were suggested by commenters.

Comment: Two commenters believed that the long-standing definition of customized equipment will hurt a beneficiary's access to needed medical equipment and will increase institutional costs or prices to consumers. A few commenters stated that the definition appears inconsistent with the intent of the Americans with Disabilities Act, which promotes access by the disabled to both transportation and opportunities in the job market, in that it creates a barrier to beneficiaries' access to customized equipment.

Response: Access to medically necessary equipment is not limited by virtue of its definition. Each of the various categories of DME is covered under Medicare if medical necessity is clearly justified. The definition merely distinguishes between customized and noncustomized equipment for the purpose of determining payment. Commenters did not document that beneficiaries have failed to receive medically necessary equipment. Further, we have heard of no instance under our definition where a beneficiary did not have access to a wheelchair, whether it is customized or noncustomized, if the beneficiary's medical condition warranted the particular type of wheelchair.

Since commenters did not document that beneficiaries failed to receive medically necessary equipment, they also could not document any increased beneficiary or institutional costs from that failure. However, it is very likely that adopting the broad definition of customized equipment and pricing that equipment on an unprofiled, individual consideration basis would increase the costs for equipment.

Comment: One commenter suggested that the word "substantially" be dropped from the definition of customized equipment. Another suggested that we eliminate the phrase "substantially modified" because it does not add any more to the definition than is already supplied by the phrase "uniquely constructed." The commenter believed that "substantially modified" could be interpreted to mean a wheelchair that merely has numerous special features added, such as individualized foot rests or seats, and that this does not appear to be our intent.

Response: If we removed the word "substantially," it could be argued that any equipment that was modified, no matter how insignificantly, meets the first half of the definition of customized equipment. We believe this would create unreasonable vulnerability for the program.

In regard to the second comment, an item could be built or constructed at the outset as customized equipment or a stock item could undergo such substantial modification that it warrants the description "customized." If we were to eliminate the phrase "substantially modified," it is possible that, in the latter circumstance, the item would not be considered by the carriers to be customized.

Comment: One commenter recommended that, in order to prevent suppliers from customizing equipment for their own financial gain when customizing is not medically necessary, the regulation clarify who specifies how equipment is to be customized. The commenter suggested that the phrase "according to the description and orders of a physician" be added to the criteria for a customized item.

Response: We agree and in this final rule have revised § 414.224(a), by adding the above phrase, to read—

> * * * a covered item (including a wheelchair) must be uniquely constructed or substantially modified for a specific beneficiary according to the description and orders of a physician and be so different from another item used for the same purpose that the two items cannot be grouped together for pricing purposes.

Comment: One commenter suggested that "uniquely constructed" should require a certificate of medical necessity signed by both a physician (orthopedist, neurologist, physiatrist) and a physical or occupational therapist who also certified that the feature or component is not currently available.

Response: Availability of a feature or component should not determine if it must be custom made. In other words, if a feature or component is unavailable solely because it is out-of-stock, it should not meet the definition of customized equipment. We fully agree that without detailed, written documentation from knowledgeable

professionals carriers cannot make informed judgments on the nature of and need for customized equipment. However, other personnel involved in the construction of the equipment, such as other supplier personnel or the manufacturer, may be in a better position than a physical or occupational therapist to know if an item must be uniquely constructed. As stated above, we agree that the item should be ordered by a physician.

Comment: Three commenters wanted us to clarify our intent to pay for the additional labor costs involved in the design, manufacture, and assembly of customized equipment.

Response: As we explained in the interim final rule (56 FR 65997), individual consideration is a process in which the carrier makes its best judgment concerning the reasonableness of the payment amount. At a minimum, we expect carriers to consider such factors as written documentation of the costs (including design, fabrication, and assembly costs) of the item including at least the cost of labor and types of materials used in customizing an item. We believe this clearly expresses our intent regarding the process that carriers must use in establishing a reasonable payment amount. Admittedly, this process will vary among the carriers. We expect the variance to be mitigated, however, after implementation of designated regional carriers for DME claims. (On November 6, 1991, we published in the **Federal Register** a proposed rule regarding designated regional carriers for DME claims (56 FR 55812), and we are developing a final rule.)

Comment: One commenter believed that the regulation should state that the material and labor costs must be based on the prevailing wage of the area where the customizing occurs.

Response: We do not believe it is appropriate to base payment for the cost of a customized item on the area prevailing wage. Rather, the carrier's individual consideration should take into account the actual costs of labor, to the extent that they are reasonable, of those actually performing the customization. This approach better reflects the true cost of customized equipment.

Comment: Three commenters stated that each of the Medicare carriers will interpret differently how to pay for customized equipment. Another commenter believed that the regulation will result in payment differences that are mainly a function of a carrier's judgment and unrelated to the actual cost of labor and material and other costs. The commenter added that the regulation should be based less on judgment and more on pricing data that are easily and routinely available.

Response: We agree that there will be payment differences as a result of carrier judgment and, for that reason, we are limiting the items in the customized payment category. That is why our rule states that the only items in this category are those that are so different from another item used for the same purpose that the two items cannot be grouped together for pricing purposes. The more objective, that is, less subject to an individual carrier's consideration and judgment, we make the payment methodology through the use of the current HCPCS, the less often carriers are required to make individual interpretations. For items that are so different that they cannot be grouped together, there are no pricing data that are easily and routinely available. Therefore, carriers must individually price these items based on their judgment. However, we expect the variance to be mitigated after implementation of designated regional carriers for DME claims.

Comment: A commenter stated that the regulation should provide what the carrier must accept as appropriate and adequate documentation of costs.

Response: We do not want to limit a carrier's individual consideration by requiring what would or would not constitute appropriate and adequate documentation of costs. Carriers have been making these individual considerations for many years and have significant expertise in making such judgments. Since this process has been working with success, we expect it will continue to do so.

Comment: A commenter stated that some suppliers will provide a customized wheelchair only if the beneficiary pays for the wheelchair upon delivery. Since some beneficiaries cannot afford the price of a wheelchair, they must wait until the Medicare carrier determines whether to cover the wheelchair and how much it will pay for the customized wheelchair.

Response: This is another reason for limiting as much as possible those items subject to the customized payment category. Fewer customized claims received by carriers translates into fewer claims that are subject to individual carrier consideration and judgment. The more often we can make payment through use of the current HCPCS, the less often carriers are required to make individual interpretations. A smaller number of claims requiring individual interpretation should reduce the processing time of wheelchair claims. If a supplier insists on payment by the beneficiary for a customized wheelchair upon delivery, we would suggest that the beneficiary obtain the customized wheelchair from a different supplier, one willing to await payment by the Medicare carrier.

Comment: One commenter believed the 30-day delay in the effective date for the interim final rule should not have been waived.

Response: As we explained in the interim final rule, a 30-day delay in the effective date for that rule would have caused the optional definition of customized wheelchairs in section 1834(a)(4) of the Act to go into effect on January 1, 1992. That would have resulted in increased cost to the Medicare program as well as administrative difficulties and confusion for suppliers and beneficiaries.

IV. Provisions of the Final Rule

This final rule reflects the interim final rule, with the following change, which is discussed in section III of this preamble:

We have revised § 414.224(e) to add that, to be considered a customized item, the unique construction or substantial modification must be according to the description and orders of a physician.

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Since the impact on the Medicare program and on DME distributors and manufacturers is expected to be less than $100 million per year over the next 5 fiscal years, this final rule does not meet the $100 million criterion, nor do we believe that it meets the other E.O. criteria. Therefore, this final rule is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all DME distributors and manufacturers to be small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. That analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that has fewer than 50 beds and is located outside a Metropolitan Statistical Area.

The overall impact of this final rule on the DME industry is expected to be less than $100 million annually. Historically, total annual expenditures for customized wheelchairs have not exceeded $5 million. If, however, the optional, less precise definition of customized wheelchairs was adopted, we would expect suppliers to bill for customized wheelchairs even though the wheelchairs were not uniquely constructed or substantially modified. This would result in an increase in the estimated $5 million annual expenditures because the Medicare payment for a customized wheelchair is generally higher than the payment for a non-customized wheelchair. Thus, if the optional, less precise definition of customized wheelchairs was adopted, suppliers would have a financial incentive to bill as though the wheelchair was uniquely constructed or substantially modified.

For the above reasons, the Secretary certifies that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

IV. Information Collection Requirements

This rule contains no information collection requirements. Consequently, this rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 42 CFR Part 414

Health professions, Kidney diseases, Laboratories, Medicare.

42 CFR part 414 is amended as set forth below:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1833(a), 1834(a), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395l(a), 1395m(a), 1395hh, and 1395rr).

2. Section 414.224(a) is revised to read as follows:

§ 414.224 Customized items.

(a) *Criteria for a customized item.* To be considered a customized item for payment purposes under paragraph (b) of this section, a covered item (including a wheelchair) must be uniquely constructed or substantially modified for a specific beneficiary according to the description and orders of a physician and be so different from another item used for the same purpose that the two items cannot be grouped together for pricing purposes.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: April 8, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Dated: May 5, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–15295 Filed 6–29–93; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

[RIN 3067–AC16]

List of Jurisdictions Eligible for Sale of Crime Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule restores the eligibility of the State of Tennessee, making its citizens eligible to purchase Federal crime insurance policies against burglary and robbery losses on and after June 30, 1993.

EFFECTIVE DATE: June 30, 1993.

ADDRESSES: Comments are encouraged and should be submitted to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Kimber A. Wald, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3440.

SUPPLEMENTARY INFORMATION: This interim rule amends the list of jurisdictions in which there exists a critical crime insurance availability problem that has not been resolved at the local level. The Acting Federal Insurance Administrator has determined there is a critical crime insurance availability problem in Tennessee based upon a letter dated May 2, 1993 from the Tennessee Department of Commerce and Insurance and an on-site evaluation by a representative of the Federal Insurance Administration.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

I certify that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule is not expected (1) to adversely affect the availability of crime insurance to small entities, (2) to have significant secondary or incidental effects on a substantial number of small entities, and (3) to create any additional burden on small entities. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 81

Crime insurance.

Accordingly, 44 CFR part 81 is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 83 continues to read as follows:

Authority: 12 U.S.C. 1749bbb et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 81.1 [Amended]

2. Section 81.1 is amended by revising paragraph (b)(1) to read as follows:

* * * * *

(b)(1) On the basis of the information available, the Federal Insurance Administrator has determined that the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and the states set forth in this paragraph have an unresolved critical crime insurance market unavailability problem requiring the operation of the Federal Crime Insurance Program therein as of June 30, 1993.

California
Florida
Illinois
Kansas
Maryland
New Jersey
New York
Pennsylvania
Tennessee
District of Columbia
Puerto Rico
Virgin Islands

* * * * *

Dated: June 25, 1993.

Francis V. Reilly,

Acting Administrator, Federal Insurance Administration.

[FR Doc. 93–15398 Filed 6–29–93; 8:45 am]

BILLING CODE 6718–21–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[GEN Docket No. 90–56; FCC 93–255]

Mobile-Satellite Service in the 1530–1544 and 1626.5–1645.5 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This First Report and Order amends the Table of Frequency Allocations found in § 2.106 of the Commission's Rules. Specifically, we allocate the 1530–1544 and 1626.5–1645.5 MHz bands to the mobile-satellite service (MSS), subject to requirements that priority and preemptive access be accorded maritime distress and safety communications. This action responds to a petition for rule making by Geostar Messaging Corporation (Geostar), RPM–6459. This action increases the amount of spectrum available to mobile-satellite services and implements results achieved at the 1992 World Administrative Radio Conference (WARC–92).

EFFECTIVE DATE: July 30, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 653–8114.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order in GEN Docket No. 90–56, adopted on May 13, 1993, and released June 11, 1993. The complete text of this First Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington DC 20037.

Summary of First Report and Order

1. The Commission concludes that there is an increasing demand for MSS services and that this projected demand warrants allocation of the 1530–1544 and 1626.5–1645.5 MHz bands to the MSS. Expanding the domestic allocation for the MSS will lead to additional voice and data services for the public.

2. The Commission recognizes the need to ensure the operation of maritime safety and distress communications, and therefore is adopting requirements identical to those that protect aeronautical safety services in the adjacent MSS bands. Specifically, we are requiring that priority and preemptive access be accorded maritime mobile-satellite distress and safety communications in the 1530–1544 and 1626.5–1645.5 MHz bands. MSS stations not providing such priority access to maritime safety communications and not participating in the global maritime distress and safety systems (GMDSS) will be permitted to operate in these bands only on a secondary basis.

3. Accordingly, to meet the projected demand for MSS services we are allocating 1530–1544 and 1626.5–1645.5 MHz to the MSS on a co-primary basis with the maritime mobile-satellite service (MMSS), subject to the conditions discussed above.

Final Regulatory Flexibility Analysis

4. Pursuant to 5 U.S.C. section 603, an initial Regulatory Flexibility Analysis was incorporated in the Notice of Proposed Rule Making in GEN Docket No.90–56/55 FR 8964, March 9, 1990. Written comments on the proposals in the Notice, including the Regulatory Flexibility Analysis, were requested.

A. Need for and Objective of Rules

This allocation is needed to meet demonstrated demand for mobile-satellite services. Our objective is to provide spectrum to meet this demand by allocating spectrum that will be shared between land mobile-satellite services, maritime mobile-satellite services, and aeronautical mobile-satellite services in the 1530–1544 and 1626.5–1645.5 MHz bands. We believe that sharing among the services in these bands is feasible and will serve the public interest. We also are adopting requirements to ensure that important maritime safety-related communications needs are fully met and protected.

B. Issues Raised by the Public in Response to the Initial Analysis

No party suggested specific modifications to the initial regulatory flexibility analysis.

C. Any Significant Alternative Minimizing Impact on Small Entities and Consistent with Stated Objectives

In the Notice of Proposed Rule Making, we proposed a spectrum allocation that we believed would address the demonstrated demand for MSS services and yet reduce administrative burdens to the public as much as possible. Based on the record, we conclude that the spectrum allocation being adopted in this proceeding is in the public interest and also minimizes the impact to small business entities. The Secretary shall send a copy of this Report and Order and Further Notice of Proposed Rule Making to the Chief Counsel for Advocacy of the Small Business Administration.

5. Accordingly, *It is ordered*, That part 2 of the Commission's Rules is amended as specified below, effective July 30, 1993. This action is taken pursuant to sections 4(i), 7(a), 303(f), 303(g), and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157(a), 303(f), 303(g), and 303(r).

List of Subjects

47 CFR Part 2

Frequency Allocation, General Rules and regulations, Radio.

Donna R. Searcy,

Secretary.

Amendatory Text

Part 2 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation in part 2 continues to read:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocation is amended to read as follows:

a. Columns (1) through (3) in the 1525–1559 and 1626.5–1660.5 MHz bands and columns (4) through (7) in the 1435–1544 and 1626.5–1645.5 MHz bands are revised to read as follows:

§2.106 Table of frequency allocations.

* * * * * * *

International table			United States table		FCC use designators	
Regional 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
•	•	•	•	•	•	•
			1435–1530 MOBILE (aeronautical telemetering)	1435–1530 MOBILE (aeronautical telemetering).	AVIATION (87).	
1525–1530 SPACE OPERATION (space-to-Earth). FIXED. MARITIME MOBILE–SATELLITE (space-to-Earth). Land Mobile-Satellite (space-to-Earth) 726B. Earth Exploration-Satellite Mobile except aeronautical mobile 724. 722 723B 725 726A 726D	1525–1530 SPACE OPERATION (space-to-Earth). MOBILE–SATELLITE (space-to-Earth). Earth Exploration-Satellite. Fixed. Mobile 723. 722 723A 726A 726D	1525–1530 SPACE OPERATION (space-to-Earth). FIXED. MOBILE–SATELLITE (space-to-Earth). Earth Exploration-Satellite. Mobile 723 724. 722 726A 726D	722 US78	722 US78		
1530–1533 SPACE OPERATION (space-to-Earth). MARITIME MOBILE–SATELLITE (space-to-Earth). LAND MOBILE–SATELLITE (space-to-Earth). Earth Exploration-Satellite. Fixed. Mobile except aeronautical mobile. 722 723B 726A 726D	1530–1533 SPACE OPERATION (space-to-Earth). MARITIME MOBILE–SATELLITE (space-to-Earth). LAND MOBILE–SATELLITE (space-to-Earth). Earth Exploration-Satellite. Fixed. Mobile 723. 722 726A 726C 726D	1530–1533 SPACE OPERATION (space-to-Earth). MARITIME MOBILE–SATELLITE (space-to-Earth). LAND MOBILE–SATELLITE (space-to-Earth). Earth Exploration-Satellite. Fixed. Mobile 723. 722 726A 726C 726D	1530–1535 MARITIME MOBILE–SATELLITE (space-to-Earth). MOBILE–SATELLITE (space-to-Earth). Mobile (aeronautical telemetering).	1530–1535 MARITIME MOBILE–SATELLITE (space-to-Earth). MOBILE–SATELLITE (space-to-Earth). Mobile (aeronautical telemetering).	SATELLITE COMMUNICATION (25). Aviation (87).	
1533–1535	1533–1535	1533–1535				

International table			United States table		FCC use designators	
Regional 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
SPACE OPERATION (space-to-Earth).	SPACE OPERATION (space-to-Earth).	SPACE OPERATION (space-to-Earth).				
MARITIME MOBILE-SATELLITE (space-to-Earth).	MARITIME MOBILE-SATELLITE (space-to-Earth).	MARITIME MOBILE-SATELLITE (space-to-Earth).				
Earth Exploration-Satellite.	Earth Exploration-Satellite.	Earth Exploration-Satellite.				
Fixed.	Fixed.	Fixed.				
Mobile except aeronautical mobile.	Mobile 723.	Mobile 723.				
Land Mobile-Satellite (space-to-Earth) 726B.	Land Mobile-Satellite (space-to-Earth) 726B.	Land Mobile-Satellite (space-to-Earth) 726B.				
722 723B 726A 726D	722 726A 726C 726D	722 726A 726C 726D	722 726A US78 US315	722 726A US78 US315		
1544–1545	1544–1545	1544–1545				
MOBILE-SATELLITE (space-to-Earth).	MOBILE-SATELLITE (space-to-Earth).	MOBILE-SATELLITE (space-to-Earth).				
722 726D 727 727A	722 726D 727 727A	722 726D 727 727A				
1545–1555	1545–1555	1545–1555				
AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth).	AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth).	AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth).				
722 726A 726D 727 729 729A 730	722 726A 726D 727 729 729A 730	722 726A 726D 727 729 729A 730				
1555–1559	1555–1559	1555–1559				
LAND MOBILE-SATELLITE (space-to-Earth).	LAND MOBILE-SATELLITE (space-to-Earth).	LAND MOBILE-SATELLITE (space-to-Earth).				
722 726A 72[illegible] 727 730 [illegible] 730B 730[illegible]	722 726A 726D 727 730 730A 730B 730C	722 726A 726D 727 730 730A 730B 730C				
1626.5–163[illegible]	1625.5–1631.5	1626.5–1631.5	1626.5–1645.5	1626.5–1645.5		
MARITIME [illegible] BILE-SA[illegible] ELLITE ([illegible] to-space)	MOBILE-SATELLITE (Earth-to-space).	MOBILE-SATELLITE (Earth-to-space).	MARITIME MOBILE-SATELLITE (Earth-to-space).	MARITIME MOBILE-SATELLITE (Earth-to-space).	MARITIME (80).	
Land Mobile-[illegible] ellite (Ear[illegible] space) 72[illegible]			MOBILE-SATELLITE (Earth-to-space).	MOBILE-SATELLITE (Earth-to-space).	SATELLITE COMMUNICATION (25).	
722 726A 72[illegible] 727 730	722 726A 726C 726D 727 730	722 726A 726C 726D 727 730				
1631.5–163[illegible]	1631.5–1634.5	1631.5–1634.5				
MARITIME [illegible] BILE-SA[illegible] ELLITE ([illegible] to-space)	MARITIME MOBILE-SATELLITE (Earth-to-space).	MARITIME MOBILE-SATELLITE (Earth-to-space).				
LAND MOB[illegible] SATE[illegible]LIT[illegible] (Earth-to-space).	LAND MOBILE-SATELLITE (Earth-to-space).	LAND MOBILE-SATELLITE (Earth-to-space).				
722 726A 726[illegible] 726D 727 [illegible] 734A	722 726A 726C 726D 727 730 734A	722 726A 726C 726D 727 730 734A				
1634.5–1645.[illegible]	1634.5–1645.5	1634.5–1645.5				
MARITIME MO-BILE-SAT-ELLITE (Ear[illegible] to-space).	MARITIME MOBILE-SATELLITE (Earth-to-space).	MARITIME MOBILE-SATELLITE (Earth-to-space).				

International table			United States table		FCC use designators	
Regional 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Land Mobile-Satellite (Earth-to-space) 726B.	Land Mobile-Satellite (Earth-to-space) 726B.	Land Mobile-Satellite (Earth-to-space) 726B.				
722 726A 726C 726D 727 730	722 726A 726C 726D 727 730	722 726A 726C 726D 727 730	722 726A US315	722 726A US315		
1645.5–1646.5	1645.5–1646.5	1645.5–1646.5				
MOBILE–SATELLITE (Earth-to-space).	MOBILE–SATELLITE (Earth-to-space).	MOBILE–SATELLITE (Earth-to-space).				
722 726D 734B	722 726D 734B	722 726D 734B				
1646.5–1656.5	1646.5–1656.5	1646.5–1656.5				
AERONAUTICAL MOBILE–SATELLITE (R) (Earth-to-space).	AERONAUTICAL MOBILE–SATELLITE (R) (Earth-to-space).	AERONAUTICAL MOBILE–SATELLITE (R) (Earth-to-space).				
722 726A 726D 727 729A 730 735	722 726A 726D 727 729A 730 735	722 726A 726D 727 729A 730 735				
1656.5–1660	1656.5–1660	1656.5–1660				
LAND MOBILE–SATELLITE (Earth-to-space).	LAND MOBILE–SATELLITE (Earth-to-space).	LAND MOBILE–SATELLITE (Earth-to-space).				
722 726A 726D 727 730 730A 730B 730C 734A	722 726A 726D 727 730 730A 730B 730C 734A	722 726A 726D 727 730 730A 730B 730C 734A				
1660–1660.5	1660–1660.5	1660–1660.5				
RADIO ASTRONOMY	RADIO ASTRONOMY	RADIO ASTRONOMY				
LAND MOBILE–SATELLITE (Earth-to-space).	LAND MOBILE–SATELLITE (Earth-to-space).	LAND MOBILE–SATELLITE (Earth-to-space).				
722 726A 726D 730A 730B 730C 736	722 726A 726D 730A 730B 730C 736	722 726A 726D 730A 730B 730C 736				

b. Add 723B, 726C, 726D, 730B, and 730C to and remove 726 from the International Footnotes described in Section 2.106. Additionally, revise footnotes 724, 726A, and 726B. Finally, add US315 to the list of United States Footnotes.

* * * * *

International Footnotes

* * * * *

723B Additional allocation: In Belarus, the Russian Federation and Ukraine, the band 1429–1535 MHz is also allocated to the aeronautical mobile service on a primary basis exclusively for the purposes of aeronautical telemetry within the national territory. As of 1 April 2007, the use of the band 1452–1492 MHz is subject to agreement between the administrations concerned.

* * * * *

724 Different category of service: In Afghanistan, Saudi Arabia, Bahrain, Bulgaria, Cameroon, Egypt, The United Arab Emirates, France, Iran, Iraq, Israel, Kuwait, the Lebanon, Morocco, Mongolia, Oman, Poland, Qatar, Syria, the German Democratic Republic, Romania, Czechoslovakia, the U.S.S.R., Yemen and Yugoslavia, the allocation of the band 1525–1530 MHz to the mobile, except aeronautical mobile, service is on a primary basis (see No. 425).

* * * * *

726A The bands 1525–1544 MHz, 1545–1559 MHz, 1626.5–1645.5 MHz and 1646.5–1660.5 MHz shall not be used for feeder links of any service. In exceptional circumstances, however, an earth station at a specified fixed point in any of the mobile-satellite services may be authorized by an administration to communicate via space stations using these bands.

726B The use of the bands 1525–1530 MHz, 1533–1544 MHz, 1626.5–1631.5 MHz and 1634.5–1645.5 MHz by the land mobile-satellite service is limited to non-speech low bit-rate data transmissions.

726C Additional allocation: In Argentina, Australia, Brazil, Canada, the United States, Malaysia and Mexico, the band 1530–1544 MHz is allocated to the mobile-satellite (space-to-Earth) service, and the band 1626.5–1645.5 MHz is also allocated to the mobile-satellite (Earth-to-space) service, on a primary basis subject to the following conditions: maritime mobile-satellite distress and safety communications shall have priority access and immediate availability over all other mobile-satellite communications operating under this provision. Communications of mobile-satellite system stations not participating in the global maritime distress and safety system (GMDSS) shall operate on secondary basis to distress and safety communications of stations operating in the GMDSS. Account shall be taken of the priority of

safety-related communications in the other mobile-satellite services.

726D The use of the bands 1525–1559 and 1626.5–1660.5 MHz by the mobile-satellite services are subject to the application of the coordination and notification procedures set forth in Resolution 46 (WARC–92). In Regions 1 and 3 in the band 1525–1530 MHz coordination of space stations of the mobile-satellite services with respect to terrestrial services is required only if the power flux-density produced at the Earth's surface exceeds the limits in No. 2566. In respect of assignments operating in the band 1525–1530 MHz, the provisions of Section II, paragraph 2.2 of Resolution 46 (WARC–92) shall also be applied to geostationary transmitting space stations with respect to terrestrial stations.

* * * * *

730B Alternative allocation: In Australia, Canada and Mexico, the band 1555–1559 MHz is allocated to the mobile-satellite (space-to-Earth) service, the band 1656.5–1660 MHz is allocated to the mobile-satellite (Earth-to-space) service, and the band 1660–1660.5 MHz is allocated to the mobile-satellite (Earth-to-space) and the radio astronomy services, on a primary basis.

730C Alternative allocation: In Argentina and the United States, the band 1555–1559 MHz is allocated to the mobile-satellite (space-to-Earth) service, the band 1656.5–1660 MHz is allocated to the mobile-satellite (Earth-to-space) service, and the band 1660–1660.5 MHz is allocated to the mobile-satellite (Earth-to-space) and radio astronomy services, on a primary basis subject to the following conditions: the aeronautical mobile-satellite (R) service shall have priority access and immediate availability over all other mobile-satellite communications within a network operating under this provision; mobile-satellite systems shall be interoperable with the aeronautical mobile-satellite (R) service; account shall be taken of the priority of safety-related communications in the other mobile-satellite services.

* * * * *

United States (U.S.) Footnotes

* * * * *

US315 In the frequency bands 1530–1544 MHz and 1626.5–1645.5 MHz maritime mobile-satellite distress and safety communications, e.g., GMDSS, shall have priority access with real-time preemptive capability in the mobile-satellite service. Communications of mobile-satellite system stations not participating in the GMDSS shall operate on a secondary basis to distress and safety communications of stations operating in the GMDSS. Account shall be taken of the priority of safety-related communications in the mobile-satellite service.

* * * * *

[FR Doc. 93–15232 Filed 6–29–93; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

48 CFR Part 970

Acquisition Regulation; Facilities Management

AGENCY: Department of Energy (DOE).

ACTION: Final Rule

SUMMARY: The Department is amending the Department of Energy Acquisition Regulation (DEAR) to add new provisions entitled "Facilities Management" for its management and operating contractors. This new provision specifies a contract clause to be used in any contracts that provide for contractor management of DOE-owned or DOE-controlled facilities. These provisions standardize the manner in which DOE and its contractors manage DOE-owned and DOE-controlled facilities. This action follows publication of a notice of proposed rulemaking in the **Federal Register** on September 3, 1991, 56 FR 43577. Five comments were received and are discussed at a later section.

EFFECTIVE DATE: August 30, 1993.

FOR FURTHER INFORMATION CONTACT:

Richard B. Langston, Office of Procurement, Assistance and Program Management (PR–121) Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8247.

Anne Troy, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1526.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments Received
III. Procedural Requirements
A. Regulatory Analysis
B. Review Under Executive Order 12778
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. National Environmental Policy Act

I. Background.

Under section 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as are necessary to accomplish the Department's functions. That same Act, at section 501, requires that rules relating to public property, loans, grants, or contracts be promulgated following the rulemaking protocol of the Administrative Procedures Act, Public Law 89–554 (44 U.S.C. 1501–1515). Accordingly, the DEAR was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR chapter 9.

The Department is amending the DEAR to specify a clause, at Section 970.5204–60, Facilities management, that will be used in contracts calling for contractor management of DOE-owned facilities. Also added is a new Subpart 970.72, Facilities management, which will prescribe the use of the clause.

II. Discussion of Comments Received

A summary of the comments received and the Department's response to the issues and concerns raised by the commenters follows. One commenter suggested that the rule was not needed as the standard practice could be specified in each of the existing contracts. While the commenter's observation is correct, DOE must ensure, due to section 501 of the DOE Organization Act, Public Law 95–91 (42 U.S.C. 7254), that any contract rules are promulgated through the rulemaking protocol of the Administrative Procedures Act, Public Law 89–554 (5 U.S.C. 551–559). The commenter suggested that we add the specific identifying numbers and dates of the DOE Directives referenced in the clause. DOE does not wish to include such specificity as future revisions are expected to result in changes in the identifying numbers and dates of the directives and result in the need to update this regulation each time one of the directives is revised. The first commenter suggested that an instructional preamble be added to the clause to instruct personnel to take local conditions into account such as the division of facility management responsibilities if more than one management and operating contractor is at a site. This suggestion has been adopted. This commenter also suggested that the words in the third sentence of the maintenance management paragraph of the clause be changed to read, "The contractor shall maintain property to enhance the property's ability, throughout its life, to meet the requirements for which it was designed." This has been done.

One commenter offered three suggestions regarding the guidance on general design criteria. An exception was requested for buildings located off the site which are leased for the contractor's use. Such an exception has been added in the form of a new final sentence at paragraph (b) of the clause. The commenter was concerned that DOE's general design criteria are more demanding than usual commercial design practices. DOE is unable to do this as general design criteria are required for the construction of new Federal facilities. The commenter suggested the added costs to comply with general design criteria would require the contractor to divert funds from existing research projects. New Government construction projects are separate budget line items and are the source of a direct appropriation separate from those for contract research.

One commenter observed that the contractor develops the initial site plans based on the intended purpose of the facility and questioned whether this negates the first sentence of paragraph (a) of the clause. DOE does not believe this to be the case. The Government specifies the purpose of the facility and approves the plan developed by the contractor. The commenter observed that there are inherent technical difficulties in adopting general design criteria at a site. The commenter suggested that maintenance management is, by its nature, subject to local conditions and observed that it would be difficult to specify detailed procedures that could be uniformly implemented at all of DOE's diverse sites. DOE agrees. A preamble has been added to the clause noting that it may be necessary to tailor it to local conditions.

One commenter questioned the DOE position that the regulation creates no new paperwork burdens and does not require review by the OMB under the Paperwork Reduction Act. These burdens, associated with 10 CFR 436.56, were previously cleared by OMB. This action is deemed necessary to ensure a more standard approach. The commenter asked clarification of the reference to 908.3 in paragraph (d) of the clause. That reference should have been to 970.0803 and has been corrected.

III. Procedural Requirements

A. Regulatory Review

Pursuant to the January 22, 1993, memorandum on the subject of regulatory review from the Director of the Office of Management and Budget (58 FR 6074, January 25, 1993), DOE submitted this notice to the Director for appropriate review. The Director has completed his review. Separately, DOE has determined that there is no need for a regulatory impact analysis because the rule is not a major rule as that term is defined in section 1(b) of Executive Order 12291.

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and 2(b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's proposal meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This proposal was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any proposed rule which is likely to have a significant economic impact on a substantial number of small entities. This proposed rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the Federal government and the states, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This proposed rule will not affect states. It deals with relations between Federal agencies.

F. National Environmental Policy Act

DOE has concluded that this proposed rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*) (1976) or the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC., on June 22, 1993.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

For the reasons set out in the preamble, part 970 of title 48 of the Code of Federal Regulations is amended as set forth below.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act of 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

2. Section 970.5204–60 is added as set forth below:

970.5204–60 Facilities management.

Pursuant to 970.72 the following clause is to be used in contracts providing for contractor management of a DOE-owned or DOE-controlled facility or facilities.

Facilities Management: August 30, 1993. Copies of DOE Directives referenced herein are available from the contracting officer.

(a) *Site development planning.* The Government shall provide to the contractor site development guidance for the facilities and lands for which the contractor is responsible under the terms and conditions of this contract. Based upon this guidance, the contractor shall prepare, and maintain through annual updates, a Long-Range Site Development Plan (Plan) to reflect those actions necessary to keep the development of these facilities current with the needs of the Government and allow the contractor to successfully accomplish the work required under this contract. In developing this Plan, the contractor shall follow the procedural guidance set forth in DOE Directive 4300.1C, version in effect on effective date of contract, entitled *Site Development Planning.* The contractor shall use the Plan to manage and control the development of facilities and lands. All plans and revisions shall be approved by the Government.

(b) *General design criteria.* The general design criteria which shall be utilized by the contractor in managing the site for which it is responsible under this contract are those specified in DOE Directive 6430.1, version in effect on effective date of contract, entitled *General Design Criteria.* The contractor shall comply with these mandatory, minimally acceptable requirements for all facility designs with regard to any building acquisition, new facility, facility addition or alteration or facility lease undertaken as part of the site development activities of paragraph (a) above. This includes on-site constructed buildings, pre-engineered buildings, plan-fabricated modular buildings, and temporary facilities. For existing facilities, original design criteria apply to the structure in general; however, additions or modifications shall comply with this directive and the associated latest editions of the references therein. An exception may be granted for off-site office space being leased by the contractor on a temporary basis.

(c) *Maintenance management.* In its management of property on the site for which it is responsible under this contract, the contractor shall comply with the provisions of DOE Directive 4330.4 A, version in effect on effective date of contract, entitled *Maintenance Management Programs,* requiring the establishment and execution of a maintenance management program for all property under the contractor's control. The contractor shall maintain property for which it is accountable in a manner which promotes operational safety, environmental protection and compliance, property preservation, and cost effectiveness. The contractor shall maintain property to enhance the property's ability, throughout its life, to meet the requirements for which it was designed. This will include periodic examination of the property to determine any deterioration or technical obsolescence which may threaten performance or safety.

(d) *Energy management.* The contractor shall manage the facilities for which it is responsible under the terms and conditions of this contract in an energy efficient manner in accordance with DOE Directive 4330.2C, version in effect on effective date of contract, entitled *In-House Energy Management.* The contractor shall develop a 10-year energy management plan for each site with annual reviews and revisions. The contractor shall submit an annual report on progress toward achieving the goals of the 10-year plan for each individual site, and an energy conservation analysis report for each new building or building addition project. Any acquisition of utility services by the contractor shall be conducted in accordance with 970.0803.

(e) *Capital assets management.* The contractor shall manage the planning, programming, and budgeting for the capital assets of the site for which the contractor is responsible under the terms and conditions of this contract according to, and consistent with, the requirements of DOE Directive 4320.2, version in effect on effective date of contract, entitled *Capital Assets Management Process.* The contractor shall prepare and submit to the Contracting Officer all appropriate data and documents required by the Directive for that site.

(f) *Subcontract requirements.* To the extent the contractor subcontracts performance of any of the responsibilities discussed in this clause, the subcontract shall contain the requirements of this clause relative to the subcontracted responsibilities.

3. Subpart 970.72 is added as follows:

Subpart 970.72—Facilities Management

970.7201 Policy.

Contractors managing DOE facilities shall be required to comply with the DOE Directives applicable to facilities management. To accomplish this, all management and operating contracts which include contractor management of a DOE-owned facility shall contain the clause at 970.5204–60, Facilities management, specifying the Directives applicable to the contractual situation at the DOE facility involved.

[FR Doc. 93–15452 Filed 6–29–93; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; "Lasmigona decorata" (Carolina Heelsplitter) Determined to be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Carolina heelsplitter (*Lasmigona decorata*) to be an endangered species under the authority contained in the Endangered Species Act of 1973, as amended (Act). This species was historically known from several locations within the Catawba River and Pee Dee River systems in North Carolina and the Saluda and Pee Dee River systems in South Carolina. It is presently known to be surviving in only a few short reaches each of Waxhaw Creek (Catawba River system) and Goose Creek (Pee Dee River system), Union County, North Carolina; in a short reach of the Lynches River (Pee Dee River system), Chesterfield, Lancaster, and Kershaw Counties, South Carolina; and in a short reach of Flat Creek, a tributary to the Lynches River in Lancaster County, South Carolina. The species' range has been seriously reduced by impoundments and the general deterioration of habitat and water quality resulting from siltation and other pollutants contributed by poor land use practices. Due to the species' limited distribution, any factors that adversely modify habitat or water quality in the stream reaches it now inhabits could further endanger the species.

EFFECTIVE DATE: July 30, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806.

FOR FURTHER INFORMATION CONTACT: Mr John Fridell at the above address (704/665–1195, Ext. 225).

SUPPLEMENTARY INFORMATION:

Background

The Carolina heelsplitter was originally described as *Unio decoratus* by Lea (1852). In 1970, Johnson synonymized this species with *Lasmigona subviridis* (Conrad 1835). Clarke (1985) recognized the Carolina heelsplitter as a distinct species, *Lasmigona decorata*, and synonymized *Unio charlottensis* (Lea 1863) and *Unio insolidus* (Lea 1872) with *Lasmigona decorata*.

The Carolina heelsplitter has an ovate, trapezoid-shaped, unsculptured shell. The shell of the largest known specimen of the species measures 118.0 mm in length, 40 mm in width, and 63.5 mm in height (Keferl 1991). The shell's outer surface varies from greenish-brown to dark brown in color, and shells from younger specimens have faint greenish-brown or black rays. The nacre (inside surface) is often pearly-white to bluish-white, grading to orange in the area of the umbo (Keferl 1991). However, in

older specimens the entire nacre may be a mottled pale orange (Keferl 1991).

Because of its rarity, little is known of the biology of the Carolina heelsplitter. Historically the species was reported from small to large streams and rivers, as well as ponds. The "ponds" referred to in historic records are believed to have been mill ponds on some of the smaller streams within the species' historic range (Keferl 1991). Presently, the species is known to occur in only three small streams and one small river and is usually found in mud, muddy sand, or muddy gravel substrates along stable, well-shaded stream banks (Keferl and Shelly 1988, Keferl 1991). The stability of stream banks appears to be very important to the species (Keferl 1991). Like other freshwater mussels, the Carolina heelsplitter feeds by filtering food particles from the water. It has a complex reproductive cycle in which the mussel larvae (glochidia) parasitize fish. The mussel's life span, fish species its larvae parasitize, and many other aspects of its life history are unknown.

Prior to 1987, the Carolina heelsplitter had not been found since the mid-19th century (Keferl and Shelly 1988, Keferl 1991). Historically, the species was collected from the Catawba River, Mecklenburg County, North Carolina; several streams and "ponds" in the Catawba River system around the Charlotte area of Mecklenburg County, North Carolina; one small stream in the Pee Dee River system in Cabarrus County, North Carolina; and an area in South Carolina referred to as the "Abbeville District," a term no longer employed (Clarke 1985, Keferl and Shelly 1988, Keferl 1991). The records from the Abbeville District, South Carolina, are believed to have been from the Saluda River system (Clarke 1985, Keferl and Shelly 1988, Keferl 1991). An additional record of the Carolina heelsplitter in the Oconee River in Georgia is believed to be a misidentification (E. Kefrel, Brunswick College, personal communication, 1992).

During the period of 1987–1990, the Service funded status surveys of the Carolina heelsplitter to determine the species' present status. Altogether, 667 different sites in 356 different rivers, streams, and impoundments within historic and potential habitat of the species in the Saluda River, Catawba River, Pee Dee River, Broad River, Rocky River, and Lynches River systems were intensively surveyed (Keferl and Shelly 1988, Keferl 1991). The Carolina heelsplitter was found to have been eliminated from all the streams from which it was known to have been historically collected, and only three surviving populations were found. One small remnant population was found in the Catawba River system in Waxhaw Creek, a tributary to the Catawba River, Union County, North Carolina; another small population was discovered in a short stretch of Goose Creek, a tributary to the Rocky River in the Pee Dee River system, Union County, North Carolina; and a third, slightly larger population, was discovered in the Lynches River, part of the Pee Dee River system, Chesterfield, Lancaster, and Kershaw Counties, South Carolina, and in Flat Creek, a tributary to the Lynches River, Lancaster County, South Carolina. No evidence of a surviving population was found anywhere in the Saluda River system, and no evidence of the species was found in the Broad River system.

Habitat and water quality degradation/alteration resulting from impoundments; stream channelization; dredging; sand mining; sewage effluents; and poorly implemented agricultural, forestry, and development practices are believed to be the primary factors resulting in the elimination of the species throughout the majority of its historic range. All three of the remaining populations are located in areas bordered entirely, with the exception of State bridge and road rights-of-way, by private lands and are threatened by these same factors. Both the Waxhaw Creek and Goose Creek populations are threatened by impacts associated with agriculture, logging, and construction and development activities. At present the Flat Creek portion of the Lynches River/Flat Creek population at present does not appear to be affected by human-related habitat destruction/alteration activities. However, the Lynches River is suffering the same problems occurring in the Waxhaw and Goose Creeks drainages and is also being impacted by heavy nutrient and pollutant loads from wastewater treatment plants, as well from other point and nonpoint sources.

The Carolina heelsplitter was recognized by the Service in the January 6, 1989, **Federal Register** (54 FR 579) as a species being reviewed for potential addition to the Federal List of Endangered and Threatened Wildlife and Plants. This mussel was placed in category 2 on this candidate list. Category 2 species are those for which the Service has some information indicating that the taxa may be under threat, but sufficient information is lacking to prepare a proposed rule. The Service has met and been in contact with various knowledgeable Federal and State agency personnel and private individuals knowledgeable concerning the species' status. On March 8, 1990, and October 30, 1990, the Service notified appropriate Federal, State, and local government agencies, in writing, that a status review was being conducted and that the species might be proposed for Federal listing. Five written comments were received. The U.S. Army Corps of Engineers, State agencies in both North Carolina and South Carolina, and an interested biologist expressed their support of the species' being protected under the Endangered Species Act. No negative comments were received.

On May 26, 1992, the Service published in the **Federal Register** (57 FR 21925) a proposal to list the Carolina heelsplitter as an endangered species. That proposal provided information on the species' biology, status, and threats to its continued existence.

Summary of Comments and Recommendations

In the May 26, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A legal notice, which invited general public comment, was published in the following newspapers: The Lancaster News, Lancaster, South Carolina, June 3, 1992; Chronicle-Independent, Camden, South Carolina, June 10, 1992; Cheraw Chronicle, Cheraw, South Carolina, June 11, 1992; and Enquirer-Journal, Monroe, North Carolina, June 10, 1992. Thirteen written comments were received in response to the proposed rule. Two comments supported the listing; one opposed the listing "at this time" and requested additional information on the species and its status; two offered no opinion concerning the listing but requested copies of the status survey reports for the species; and eight expressed no opinion regarding the listing but either requested additional information concerning the species (three respondents), requested a delay in the listing process to assess economic impacts (two respondents), requested that the Service publish a taking implication assessment prior to listing (two respondents), and/or expressed opposition to certain statements within the proposed rule (three respondents). Opposing comments and other comments questioning the rule have been organized into nine specific issues.

These issues and the Service's response to each are summarized as follows:

One respondent questioned whether the Carolina heelsplitter warranted endangered species listing. The Service has carefully assessed the best scientific and commercial information available concerning the taxonomy, biology, distribution, status, and threats to the continued existence of the Carolina heelsplitter in making the determination to list the species as endangered. This included a review of literature, State data bases, and museum records; intensive surveys of historic and potential habitat; correspondence with other Federal, State, and private agencies, companies, and individuals knowledgeable about the species; and all relevant comments received throughout the listing and notification process. Based on a thorough review of all available information, the Service has determined that: (1) The Carolina heelsplitter has been eliminated from a significant portion of its historic range and has been reduced to three small populations, occupying only three small creeks and one small river (see "SUMMARY" and "BACKGROUND" sections above); and (2) the surviving populations of the Carolina heelsplitter are endangered by many of the same factors that have resulted in the extirpation of the species throughout the majority of its historic range (see "SUMMARY" and "BACKGROUND" sections above, and "Summary of Factors Affecting the Species" section, below).

One respondent inquired concerning information used to determine the historic range of the Carolina heelsplitter and questioned the reliability of this information. Another respondent questioned whether the species might occur in other areas of the United States or the world. The known historic range of the Carolina heelsplitter is based upon information provided by Lea (1852, 1863, 1972), Johnson (1970), Clark (1985), Keferl and Shelly (1988), and Keferl (1991). The Service considers all of these reliable sources. Waxhaw Creek, Goose Creek, Flat Creek, and the Lynches River are the only streams within the United States in which this species is still known to occur (Keferl 1991). Based on a review of all available information, the Carolina heelsplitter has never been found outside the United States.

Two respondents expressed concern that the present range of the Carolina heelsplitter as defined in the proposed rule was too broad. Specifically, they referred to the statement on page 21925 in the SUMMARY section of the proposed rule, that the species "* * * is presently known to be surviving in only a few short reaches of Waxhaw Creek (Catawba River system) and Goose Creek (Pee Dee River system) in North Carolina, and the Lynches River (Pee Dee River system) and Flat Creek, a tributary to the Lynches River, in South Carolina." They interpreted this statement to indicate that the Service was including all of the Lynches River in South Carolina within the present range of the Carolina heelsplitter. The Service did not mean to imply that the entire Lynches River in South Carolina is being considered as part of the present range of the Carolina heelsplitter. The Service has attempted to clarify this statement in the "SUMMARY" section of this document. The Carolina heelsplitter is presently known to occur in only a few short reaches of the Lynches River in Lancaster, Chesterfield, and Kershaw Counties, South Carolina; a short reach of Flat Creek in Kershaw County, South Carolina; and a few short reaches each of Waxhaw and Goose Creeks in Union County, North Carolina.

One respondent questioned whether the species was already extinct and, if not, whether any remaining population(s) of the species might already be below the level required to maintain long-term genetic viability. Based on the results of surveys conducted by Keferl (1991), the Carolina heelsplitter is believed to be surviving in a few short reaches of Waxhaw and Goose Creeks in North Carolina (albeit in very low numbers), and in a few short reaches of the Lynches River and Flat Creek in South Carolina (see the "SUMMARY" and "BACKGROUND" sections above). The small size and geographic isolation of the three remaining populations reduce the genetic diversity within the populations and make the long-term genetic viability of these populations of concern to the Service (see Factor E of the "Summary of Factors Affecting the Species" section below). Additional research is needed in this area, and the Service will address this (as well as other activities necessary to ensure long-term survival of the species) through the development and implementation of a recovery plan for the Carolina heelsplitter (as directed by section 4(f) of the Act) and through other means (see "Available Conservation Measures" section below).

One respondent inquired concerning the specific threats to the Carolina heelsplitter. The three known surviving populations of the Carolina heelsplitter are potentially threatened by a wide variety of factors (see "Summary of Factors Affecting the Species" section below).

One respondent asked whether there has been any research on the translocation and artificial propagation of freshwater mussels. In the Southeast, research on artificial propagation and translocation of freshwater mussels is currently being conducted by the Service at Tennessee Technological University and Virginia Polytechnic Institute and State University. The Tennessee Valley Authority, University of North Alabama, Aquatic Resources Center (in Franklin, Tennessee), and several other Federal, State, and private agencies and institutions have also conducted research in mussel propagation and relocation. While substantial progress has been and is being made, much more work is needed to perfect freshwater mussel propagation and translocation techniques before these techniques can be applied in the conservation and recovery of endangered mussels.

Two respondents expressed concern about the economic impact the listing might have on municipal and industrial discharges and requested that the Service extend the comment period to allow for an assessment of these impacts. Under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available concerning the status of a species and after taking into account those efforts, if any, being made to protect such species. The legislative history of this provision clearly states that the intent of Congress is to ensure that listing decisions are "based solely on biological criteria and to prevent non-biological considerations from affecting such decisions" H.R. Rep. No. 97–835, 97th Cong. 2nd Sess. 19 (1982). As further stated in the legislative history, "economic considerations have no relevance to determinations regarding the status of the species." Because the Service is precluded from considering economic impacts in a listing decision, the Service determined that an extension of the comment period to assess possible economic consequences of the listing of the Carolina heelsplitter was not warranted.

Two respondents requested that, prior to listing of the Carolina heelsplitter, the Service prepare, and publish in the Federal Register, a "Taking Impact Assessment" under Executive Order 12630 that assesses the impacts of the listing on private property. The Attorney General has issued guidelines to the Department of the Interior (Department) on the implementation of Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property

Rights. Under these guidelines, a special rule applies when an agency within the Department is required by law to act solely upon specified criteria that leave the agency no discretion. In enacting the Endangered Species Act, Congress required the Department to list species based solely upon scientific and commercial data indicating whether they are in danger of extinction. The Service is forbidden by law from withholding a listing based on concerns regarding economic impact and is required to act, with appropriate public notice, under strict time tables. Any failure to comply subjects the agency to potential legal action. Accordingly, the provisions of the Attorney General's guidelines relating to nondiscretionary actions clearly are applicable to the determination of endangered status for the Carolina heelsplitter, and Taking Implication Assessments under the Executive Order cannot be considered in making this administrative decision that must, by law, be made without regard to its economic impact. Since the Act precludes consideration of economic factors during the listing process, the Service's policy is to consider taking implications following publication of final rules.

Two respondents objected to statements in the proposed rule that forestry and logging operations are a threat to the continued existence of the Carolina heelsplitter. Both respondents stated that forestry operations, which include such protective measures as implementation of Best Management Practices (BMPs) and Streamside Management Zones (SMZs) are being voluntarily implemented by the majority of landowners and that implementation of BMPs is on the increase. The Service agrees that many landowners and timber companies operating within the watersheds of the streams still occupied by the Carolina heelsplitter are practicing responsible timber management and harvest operations and that properly implemented State-recommended BMPs and SMZs for timber harvest operations significantly reduce the potential impacts of logging operations on the Carolina heelsplitter. The Service strongly encourages implementation of North Carolina's and South Carolina's recommended SMZs and BMPs and commends those landowners, foresters, and timber companies who are implementing them. However, as noted by both respondents, not all landowners are implementing these protective measures. Logging activities that have resulted in the removal of trees right to the top of the stream banks have occurred in recent years along both the Lynches River and the lower reaches of Goose Creek (E. Keferl, personal communication, 1992). Such activities adversely affect stream shading and can lead to erosion and destabilization of the stream banks and increased runoff of sediments and other pollutants into the streams from adjacent uplands. Therefore, the Service continues to believe that poorly implemented logging activities, when considered individually or in combination with the effects of other land disturbance activities occurring within the watersheds of the streams still occupied by the Carolina heelsplitter, pose a significant threat to the continued existence of the species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Carolina heelsplitter should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Carolina heelsplitter (*Lasmigona decorata*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.

Historic and recent collection records for the Carolina heelsplitter indicate that the species was once fairly widespread throughout portions of the Catawba River system in North Carolina, the Pee Dee River system in North and South Carolina, and the Saluda River system in South Carolina (Clarke 1985, Keferl and Shelly 1988, Keferl 1991). The species apparently no longer exists in the Saluda River system and, with the exception of a short stretch of Waxhaw Creek, has been eliminated from the Catawba River system (Keferl 1991). In the Pee Dee River system, only two small populations remain—the Goose Creek population and the Lynches River/Flat Creek population (Keferl 1991). This decline in the species throughout its range has been attributed to several factors, including siltation resulting from poorly implemented land use practices during agricultural, forestry, and construction activities; runoff and discharge of municipal, industrial, and agricultural pollutants; habitat alterations associated with impoundments, channelization, dredging, and sand mining operations; and other natural and human-related factors that adversely modify the aquatic environment. Many of these same factors threaten the three remaining populations of the species.

Both the Waxhaw Creek and Goose Creek populations are extremely small. Only one live individual of the species was found in Waxhaw Creek in 1987 and only two in 1990 (Keferl 1991). Three live specimens were found in Goose Creek in 1987, and only one was found in 1990 (Keferl 1991). Waxhaw Creek and Goose Creek are small streams containing only a limited amount of suitable habitat for the Carolina heelsplitter (E. Keferl, personal communication, 1991). The Lynches River/Flat Creek population, though the healthiest of the three surviving populations, also appears to be relatively small and is restricted to a few scattered sites along a short reach of the Lynches River and a small section of Flat Creek (Keferl, personal communication, 1991). During the 1987–1990 surveys, a total of only 12 live specimens of the Carolina heelsplitter were found in the Lynches River, and only 2 live individuals were found in Flat Creek (both were found in 1990) (Keferl 1991). The low numbers of individuals and the restricted range of the populations make each of the three remaining populations extremely vulnerable to extirpation from a single catastrophic event, such as a toxic chemical spill. Also, the existing and potential future land uses of the surrounding area threaten the habitat and water quality of all three populations with increased discharge or runoff of silt, sediments, and organic and chemical pollutants.

Of the four streams where the Carolina heelsplitter still occurs, only Flat Creek appears to be relatively undisturbed by human activities. Waxhaw Creek, Goose Creek, and the Lynches River flow through areas where they are subject to sedimentation and pollutants from agriculture and other farming activities (presently the primary land use within the watersheds of these streams). Also, all three streams receive drainage from areas that are developing rapidly. In addition, poorly implemented logging activities, particularly along the Lynches River and Goose Creek, also appear to be having a detrimental effect on the streams. In some areas, trees and shrubs have been cleared right up to the stream banks, thereby increasing the siltation of the streams and adversely affecting shading of the streams and the stability of the stream banks.

Heavy nutrient and pollutant loads (i.e., fertilizers, organic wastes, pesticides, heavy metals, oil, salts, etc.) from wastewater treatment facility effluents, agricultural fields, urban and rural residential and industrial areas, highways, and other point and nonpoint sources also threaten the continued existence of the remaining populations. Though at present this appears to be more of a problem in the Lynches River than in the other streams, it will likely become more of a threat to the Goose Creek and Waxhaw Creek populations as development increases within their drainages.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

This freshwater mussel species is not commercially valuable, but, because it is extremely rare, it could be sought by collectors. Because of the species' restricted range, taking could be a threat to its continued existence. Federal listing would help control any indiscriminate taking of individuals.

C. Disease or Predation.

Although the Carolina heelsplitter is presumably utilized for food by mammals, such as the muskrat, raccoon, and mink, predation is not thought to be a significant factor in the decline of the species.

D. The Inadequacy of Existing Regulatory Mechanisms.

The States of North Carolina and South Carolina prohibit the taking of fishes and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. However, the species are not generally protected from other threats. Federal listing will provide additional protection under the Endangered Species Act by requiring Federal permits to take the species and by requiring Federal agencies to consult with the Service when actions they fund, authorize, or carry out are likely to affect the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence.

Only three populations of the species are known to still exist—one population each in Waxhaw Creek and Goose Creek and one population in the Lynches River that extends into Flat Creek. All three populations appear to be extremely small (particularly the Waxhaw Creek and Goose Creek populations, which appear to be comprised of only a few individuals), and all three populations are geographically isolated from one another. This isolation prohibits the natural interchange of genetic material between populations, and the small population size reduces the reservoir of genetic variability within populations. It is highly possible that these populations may already be below the level required to maintain long-term genetic viability.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Carolina heelsplitter (*Lasmigona decorata*) as an endangered species. The species has been eliminated from the Saluda River system, and its range has been greatly reduced in the other two river systems (the Catawba and Pee Dee) in which the species historically occurred. Presently only three small isolated populations are known to survive. These populations are threatened by a variety of factors, including road construction activities, residential and commercial development, logging and farming activities, water pollution, and other manmade and natural factors adversely affecting the aquatic environment. Due to the species' history of population losses and the extreme vulnerability of the three surviving populations, endangered appears to be the most appropriate classification for this species (see "Critical Habitat" section for a discussion of why critical habitat is not being proposed for the Carolina heelsplitter).

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Title 50, part 424 of the Code of Federal Regulations, § 424.12(1) states that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) Such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for both reasons.

The Service believes that the potential for taking represents a significant threat to the Carolina heelsplitter. This species is so rare as to increase the likelihood that it may be sought both for scientific purposes and for private collections. The publication of critical habitat maps and other publicity accompanying critical habitat designation could increase that threat. The locations of populations of this species have consequently been described only in general terms for purposes of this rulemaking action.

Critical habitat also would not be beneficial in terms of adding additional protection for the species under section 7 of the Act. Regulations promulgated for the implementation of section 7 provide for both a "jeopardy" standard and a "destruction or adverse modification" of critical habitat standard. Due to the highly precarious status of the Carolina heelsplitter, any Federal action likely to adversely affect the species would trigger both standards. Under these conditions, the "destruction or adverse modification" standard adds no measurable benefit to protection of the species.

As part of the development of this rule, Federal, State, and local government agencies were notified of this species' distribution. They were requested to provide data on proposed Federal actions that might adversely affect the species, and no specific projects were identified. Should any future projects be proposed in areas inhabited by this mussel, the involved agency/agencies would already have the distribution data needed to determine if the species could potentially be affected by their action. Also, any existing precise locality data needed would be available to appropriate Federal, State, and local government agencies through the Service office described in the "ADDRESSES" section.

Accordingly, for the above reasons it is the Service's determination that critical habitat designation would not be prudent for the Carolina heelsplitter.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its

critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Service has notified the Federal agencies that may have programs that affect the species. Federal activities that occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, wastewater facility development, hydroelectric facility construction and operation, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations have been resolved so that the species has been protected and the project objectives have been met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

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Lea, I. 1872. Description of Twenty-Nine New Species of Unionidae of the United States. Proceeding of the Academy of Natural Sciences of Philadelphia, 24:155–161.

Author

The primary author of this rule is John A. Fridell (see "**ADDRESSES**" section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50, of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) for animals by adding the following, in alphabetical order under CLAMS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
CLAMS							
*	*	*	*	*	*		*
Heelsplitter, Carolina	Lasmigona decorata	U.S.A. (NC, SC)	NA	E	505	NA	NA
*	*	*	*	*	*		*

Dated: June 3, 1993.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–15366 Filed 6–29–93; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 675

[Docket No. 921185–3021; I.D. 062493A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is rescinding the closure to directed fishing by operators of vessels using trawl gear for aggregate species in the rock sole/"other flatfish" fishery category in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the 1993 second seasonal apportionment of Pacific halibut bycatch mortality allowance to the trawl rock sole/"other flatfish" fishery category in the BSAI.

EFFECTIVE DATE: Effective 12 noon, A.l.t., June 24, 1993, through 12 noon, A.l.t., July 4, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The directed fishery by operators of vessels using trawl gear for aggregate species in the rock sole/"other flatfish" fishery category in the BSAI was previously closed under § 675.21(c)(1)(iv) (58 FR 29793, May 24, 1993).

The Regional Director, Alaska Region, NMFS, has determined that the 1993 second seasonal apportionment of Pacific halibut bycatch mortality allowance to the aggregate species in the trawl rock sole/"other flatfish" fishery category in the BSAI has not been reached. Therefore, NMFS is rescinding that closure and is re-opening directed fishing by operators of vessels using trawl gear for the rock sole/"other flatfish" fishery in the BSAI, in areas for which other closures are not in effect, effective at 12 noon, A.l.t., June 24, 1993, through 12 noon, A.l.t., July 4, 1993.

All other closures remain in full force and effect, including the closure to directed fishing in Bycatch Limitation Zone 1 for aggregate species in the trawl rock sole/"other flatfish" fishery category in the BSAI (58 FR 9129, February 19, 1993).

Classification

This act is taken under §§ 675.20, 675.21, and 675.23 and complies with E.O. 12291.

List of Subjects in 50 CFR 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 24, 1993.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–15340 Filed 6–24–93; 8:45 am]

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AGENCY: A
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ACTION: P

SUMMARY:
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VOL 58 ISS 124 JE 30 1993 UMI

Proposed Rules

Federal Register
Vol. 58, No. 124
Wednesday, June 30, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA–91–010A]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Grades of Colby Cheese

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the United States Standards for Grades of Colby Cheese by modifying the standards to recognize technological changes in manufacturing practices and to more accurately describe consumer-acceptable product. The proposal expands the permissible range of open body characteristics to include colby cheese manufactured using automated equipment. The proposal was initiated at the request of the National Cheese Institute (NCI) and was developed in cooperation with NCI and other dairy trade associations.

DATES: Comments should be filed by August 30, 1993.

ADDRESSES: Comments should be sent to: Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2968–S, PO Box 96456, Washington, DC 20090–6456. They will be available for public inspection at the Dairy Division in room 2750–S during regular business hours.

FOR FURTHER INFORMATION CONTACT: Roland S. Golden, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/Dairy Division, room 2750–S, PO Box 96456, Washington, DC 20090–6456, (202) 720–7473.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as a "non-major" rule under the criteria contained therein.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Administrator, Agricultural Marketing Service, has determined that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and the revisions would not increase costs to those utilizing the standards.

To recognize technological changes in the manufacture of colby cheese and to accurately assess the quality of consumer-acceptable product, USDA is proposing the following changes in the U.S. Standards for Grades of Colby Cheese.

1. Expand Body and Texture Criteria to Permit U.S. Grade Assignment to Colby Cheese That Contains Less Than Numerous Mechanical Openings

The current U.S. Standards for Grades of Colby Cheese became effective in 1973. When these standards were established, production procedures encouraged the formation of numerous small mechanical openings evenly distributed throughout the cheese. Since then, automated manufacturing processes have been developed which have altered traditional body characteristics. Colby cheese that is produced using automated production technology has resulted in cheese that no longer exhibits numerous mechanical openings. Cheese produced in this manner is readily available and is capturing an increasing share of the colby cheese market. Changes in body characteristics have not altered the flavor or reduced the useability of the cheese.

Changes in the standards would provide for the assignment of U.S. grades to colby cheese that contains less than numerous mechanical openings or that may be completely devoid of mechanical openings. These changes do not disallow mechanical openings in cheese produced using traditional production methods. No additional changes to body and texture characteristics are being proposed.

2. Modify the U.S. Grade Standard by Deleting the Requirement That Cheese Be Held at a Temperature No Lower Than 35 °F. for 10 Days Prior to Grading

The current U.S. Standards for Grades of Colby Cheese include a requisite that the cheese be held at a temperature no lower than 35 °F. during the required 10-day aging period prior to grading. This is the only U.S. grade standard for cheeses that contains the temperature requirement. The proposed revision would eliminate the temperature requirement and provide increased consistency among U.S. grade standards for various types of cheeses.

3. Modify the Permitted Flavor Characteristics by Deleting the Provision for Very Slight Bitter in U.S. Grade A Colby Cheese

Bitter flavor in colby cheese is generally found in higher moisture cheese and increases in intensity as the cheese ages. U.S. grade may be assigned to colby cheese once it has reached 10 days of age. Any evidence of a bitter flavor at this time will intensify as the cheese ages. Provisions for slight bitter flavor remain the same for U.S. Grade B Colby Cheese. No additional changes to flavor characteristics are being proposed.

4. Redefine Packaging Requirements

Proposed changes in packaging requirements would provide greater clarity and expand the types of packaging methods permitted. The general-type packaging requirements outlined in this proposed revision would recognize the packaging methods (such as, rinded and paraffin-dipped, rindless and wrapped, and rindless and paraffin-dipped), that are used in the cheese industry today, and provide latitude for future developments in packaging technology.

5. Update the Terminology and Format of the Standards

The current U.S. Standards for Grades of Colby Cheese were established in 1973. Since that time, changes in

terminology and formatting have taken place. The proposal would update the standards and provide consistency among the various U.S. grade standards for cheeses.

USDA grade standards are voluntary standards that are developed pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to facilitate the marketing process. Manufacturers of dairy products are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity. When colby cheese is officially graded, the USDA regulations and standards governing the grading of manufactured or processed dairy products are used. These regulations also require a charge for the grading service provided by USDA. The Agency believes this proposal would accurately identify quality characteristics of colby cheese currently available.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 58 be amended as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR part 58 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. Subpart J—United States Standards for Grades of Colby Cheese is revised to read as follows:

Subpart J—United States Standards for Grades of Colby Cheese

Definitions

Sec.

58.2475 Colby cheese.
58.2476 Types of surface protection.

U.S. Grades

58.2477 Nomenclature of U.S. grades.
58.2478 Basis for determination of U.S. grade.
58.2479 Specifications for U.S. grades.
58.2480 U.S. grade not assignable.

Explanation of Terms

58.2481 Explanation of terms.

Subpart J—United States Standards for Grades of Colby Cheese[1]

Definitions

§ 58.2475 Colby cheese.

Colby cheese is cheese made by the colby process or by any other procedure which produces a finished cheese having the same organoleptic, physical, and chemical properties as the cheese produced by the colby process. The cheese is made from cow's milk with or without the addition of artificial coloring. It contains added common salt and not more than 40 percent moisture, its total solids content is not less than 50 percent milkfat, and it conforms to the applicable provisions of 21 CFR part 133, "Cheeses and Related Cheese Products," as issued by the Food and Drug Administration.

§ 58.2476 Types of surface protection.

The following are the types of surface protection for colby cheese:

(a) *Rinded and paraffin-dipped.* The cheese that has formed a rind is dipped in a refined paraffin, amorphous wax, microcrystalline wax, or other suitable substance. Such coating is a continuous, unbroken, and uniform film adhering tightly to the entire surface of the cheese rind.

(b) *Rindless.*—(1) *Wrapped.* The cheese is completely enveloped in a tight-fitting wrapper or other protective covering, which is sealed with sufficient overlap or satisfactory closure. The wrapper or covering shall not impart color or objectionable taste or odor to the cheese. The wrapper or covering shall be of sufficiently low permeability to air so as to prevent the formation of a rind.

(2) *Paraffin-dipped.* The cheese is dipped in a refined paraffin, amorphous wax, microcrystalline wax, or other suitable substance. The paraffin shall be applied so that it is continuous, unbroken, and uniformly adheres tightly to the entire surface. If a wrapper or coating is applied to the cheese prior to paraffin dipping, it shall completely envelop the cheese and not impart color or objectionable taste or odor to the cheese.

U.S. Grades

§ 58.2477 Nomenclature of U.S. grades.

The nomenclature of U.S. grades is as follows:

(a) U.S. Grade AA.
(b) U.S. Grade A.
(c) U.S. Grade B.

[1] Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act.

§ 58.2478 Basis for determination of U.S. grade.

(a) The cheese shall be graded no sooner than 10 days of age.

(b) The rating of each quality factor shall be established on the basis of characteristics present in any vat of cheese.

(c) The U.S. grades of colby cheese are determined on the basis of rating the following quality factors:

(1) Flavor.
(2) Body and texture.
(3) Color.
(4) Finish and appearance.

(d) The final U.S. grade shall be determined on the basis of the lowest rating of any one of the quality factors.

§ 58.2479 Specifications for U.S. grades.

(a) *U.S. Grade AA.* U.S. Grade AA Colby Cheese shall conform to the following requirements (See Tables I, II, III, and IV of this section):

(1) *Flavor.* The cheese shall possess a fine and highly pleasing colby cheese flavor which is free from undesirable tastes and odors; or it may be lacking in flavor development. The cheese may possess a very slight feed flavor. See Table I of this section.

(2) *Body and Texture.* A plug drawn from the cheese shall be firm. Dependent upon the method of manufacture, a satisfactory plug may exhibit evenly distributed small mechanical openings or a close body. The cheese shall not possess sweet holes, yeast holes, or other gas holes. The texture may be definitely curdy. See Table II of this section.

(3) *Color.* The color shall be uniform and bright. If colored, the cheese should be a medium yellow-orange. See Table III of this section.

(4) *Finish and appearance.*—(i) *Rinded and paraffin-dipped.* The bandage shall be evenly placed over the entire surface of the cheese and be free from unnecessary overlapping and wrinkles, and not burst or torn. The rind shall be sound, firm, smooth, and provide good protection to the cheese. The surface shall be smooth, bright, and have a good coating of wax or coating that adheres firmly to all surfaces. The cheese shall be free from mold under the paraffin. The cheese shall be free from high edges, huffing, or lopsidedness, but may possess soiled surface to a very slight degree. See Table IV of this section.

(ii) *Rindless and wrapped.* The wrapper or covering shall be practically smooth and properly sealed with adequate overlapping at the seams or sealed by any other satisfactory type of closure. The wrapper or covering shall be neat and shall adequately and

securely envelop the cheese, but may be slightly wrinkled. Allowance should be made for slight wrinkles caused by crimping or sealing when vacuum packaging is used. The cheese shall be free from mold under the wrapper or covering and shall not be huffed or lopsided. See Table IV of this section.

(iii) *Rindless and paraffin-dipped.* The cheese surface shall be smooth, bright, and have a good coating of paraffin that adheres firmly. If a wrapper or coating is applied prior to paraffin dipping, it shall completely envelop the cheese. The cheese shall be free from high edges, huffing, lopsidedness, or mold. The cheese may possess soiled surface to a very slight degree. The wrapper may be wrinkled to a slight degree. See Table IV of this section.

(b) *U.S. Grade A.* U.S. Grade A Colby Cheese shall conform to the following requirements (See Tables I, II, III, and IV of this section):

(1) *Flavor.* The cheese shall possess a pleasing colby cheese flavor which is free from undesirable tastes and odors; or it may be lacking in flavor development. The cheese may possess very slight acid or feed flavor to a slight degree. See Table I of this section.

(2) *Body and texture.* A plug drawn from the cheese shall be reasonably firm. Dependent upon the method of manufacture, a satisfactory plug may exhibit evenly distributed mechanical openings or a close body. The plug shall be free from sweet holes, yeast holes, or other gas holes. The body may be very slightly loosely knit or definitely curdy. See Table II of this section.

(3) *Color.* The color shall be fairly uniform and bright. If colored, the cheese shall be a medium yellow-orange. The cheese may possess waviness to a very slight degree. See Table III of this section.

(4) *Finish and appearance.* (i) *Rinded and paraffin-dipped.* The bandage shall be evenly placed over the entire surface of the cheese and not be burst or torn. The rind shall be sound, firm, smooth, and provide good protection to the cheese. The surface shall be practically smooth, bright, and have a good coating of paraffin that adheres firmly to all surfaces. The cheese shall be free from mold under the paraffin. The cheese may possess the following characteristics to a very slight degree: Soiled surface or surface mold; and to a slight degree: High edges, irregular press cloth, lopsided, or rough surface. See Table IV of this section.

(ii) *Rindless and wrapped.* The wrapper or covering shall be practically smooth, properly sealed with adequate overlapping at the seams or sealed by any other satisfactory type of closure. The wrapper or covering shall be neat and adequately and securely envelop the cheese but may be slightly wrinkled. Allowance should be made for slight wrinkles caused by crimping or sealing when vacuum packaging is used. The cheese shall be free from mold under the wrapper or covering and shall not be huffed but may possess to a slight degree: High edges, lopsided, irregular press cloth, or rough surface. See Table IV of this section.

(iii) *Rindless and paraffin-dipped.* The cheese surface shall be bright and have a good coating of paraffin that adheres firmly. If a wrapper or coating is applied prior to paraffin dipping, it shall completely envelop the cheese and have a good coating of paraffin that adheres firmly. The cheese may possess soiled surface to a very slight degree. The cheese shall be free from mold, and may possess to a slight degree: High edges, lopsided, irregular press cloth, or rough surface. The wrapper may be wrinkled to a slight degree. See Table IV of this section.

(c) *U.S. Grade B.* U.S. Grade B Colby Cheese shall conform to the following requirements (See Tables I, II, III, and IV of this section):

(1) *Flavor.* The cheese may possess a fairly pleasing colby cheese flavor; or it may be lacking in flavor development. The cheese may possess onion or sour flavor to a very slight degree; barny, bitter, flat, fruity, malty, old milk, rancid, utensil, weedy, whey-taint, or yeasty flavor to a slight degree; and acid or feed flavor to a definite degree. See Table I of this section.

(2) *Body and texture.* A plug drawn from the cheese shall be moderately firm. Dependent upon the method of manufacture, a satisfactory plug may exhibit mechanical openings or a close body. The cheese may possess the following characteristics to a slight degree: Coarse, corky, crumbly, gassy, loosely knit, mealy, pasty, short, slitty, sweet holes, or weak; and the following to a definite degree: curdy. See Table II of this section.

(3) *Color.* The cheese may possess the following characteristics to a slight degree: Acid-cut, dull, faded, mottled, salt spots, seamy, unnatural, or wavy. In addition, rindless colby cheese may have a bleached surface to a slight degree. See Table III of this section.

(4) *Finish and appearance.*—(i) *Rinded and paraffin-dipped.* The bandage shall be placed over the entire surface of the cheese and may be uneven and wrinkled, but not burst or torn. The rind shall be reasonably sound and free from soft spots, rind rot, cracks, or openings of any kind. The surface may be rough and unattractive but shall possess a fairly good coating of paraffin. The paraffin may be scaly or blistered. with very slight mold under the bandage or paraffin, but there shall be no indication that mold has entered the cheese. The cheese may possess the following characteristics to a slight degree: Checked rind, defective coating, soiled surface, sour rind, surface mold, or weak rind; and to a definite degree: High edges, irregular press cloth, lopsided, or rough surface. See Table IV of this section.

(ii) *Rindless and wrapped.* The wrapper or covering shall be unbroken and shall adequately and securely envelop the cheese. The following may be present to a very slight degree: Mold under the wrapper but not entering the cheese; to a slight degree: Soiled surface or surface mold; and to a definite degree: high edges, irregular press cloth, lopsided, rough surface, or wrinkled wrapper or cover. See Table IV of this section.

(iii) *Rindless and paraffin-dipped.* The wrapper or coating applied prior to paraffin dipping shall adequately and securely envelop the cheese and have a coating of paraffin that adheres firmly to the cheese wrapper or shall be unbroken but may be definitely wrinkled. The paraffin may be scaly or blistered, with very slight mold under the paraffin, but there shall be no indication that mold has entered the cheese. The cheese may possess the following characteristics to a slight degree: Defective coating, soiled surface, or surface mold; and the following to a definite degree: High edges, lopsided, irregular press cloth, or rough surface. See Table IV of this section.

TABLE I.—CLASSIFICATION OF FLAVOR WITH CORRESPONDING U.S. GRADE

Flavor characteristics	AA	A	B
Acid	—[1]	VS[2]	D[4]
Barny	—[1]	—[1]	S[3]
Bitter	—[1]	—[1]	S[3]
Feed	VS[2]	S[3]	D[4]
Flat	—[1]	—[1]	S[3]
Fruity	—[1]	—[1]	S[3]
Malty	—[1]	—[1]	S[3]
Old milk	—[1]	—[1]	S[3]
Onion	—[1]	—[1]	VS[2]
Rancid	—[1]	—[1]	S[3]
Sour	—[1]	—[1]	VS[4]
Utensil	—[1]	—[1]	S[3]
Weedy	—[1]	—[1]	S[3]
Whey-taint	—[1]	—[1]	S[3]
Yeasty	—[1]	—[1]	S[3]

[1] (—) = Not permitted
[2] VS = Very Slight
[3] S = Slight
[4] D = Definite

TABLE II.—CLASSIFICATION OF BODY AND TEXTURE WITH CORRESPONDING U.S. GRADE

Body and texture characteristics	AA	A	B
Coarse	—[1]	—[1]	S[3]
Corky	—[1]	—[1]	S[3]
Crumbly	—[1]	—[1]	S[3]
Curdy	D[4]	D[4]	D[4]
Gassy	—[1]	—[1]	S[3]
Loosely knit	—[1]	VS[2]	S[3]
Mealy	—[1]	—[1]	S[3]
Pasty	—[1]	—[1]	S[3]
Short	—[1]	—[1]	S[3]
Slitty	—[1]	—[1]	S[3]
Sweet holes	—[1]	—[1]	S[3]
Weak	—[1]	—[1]	S[3]

[1] (—) = Not permitted
[2] VS = Very Slight
[3] S = Slight
[4] D = Definite

TABLE III.—CLASSIFICATION OF COLOR WITH CORRESPONDING U.S. GRADE

Color characteristics	AA	A	B
Acid-cut	—[1]	—[1]	S[3]
Bleached surface (rindless).	—[1]	—[1]	S[3]
Dull or faded	—[1]	—[1]	S[3]
Mottled	—[1]	—[1]	S[3]
Salt spots	—[1]	—[1]	S[3]
Seamy	—[1]	—[1]	S[3]
Unnatural	—[1]	—[1]	S[3]
Wavy	—[1]	VS[2]	S[3]

[1] (—) = Not permitted
[2] VS = Very Slight
[3] S = Slight
[4] D = Definite

TABLE IV.—CLASSIFICATION OF FINISH AND APPEARANCE WITH CORRESPONDING U.S. GRADE

Finish and appearance characteristics	AA	A	B
Rindless:			
Defective coating (paraffin-dipped: scaly, blistered, and checked).	—[1]	—[1]	S[3]
High edges	—[1]	S[3]	D[4]
Irregular press cloth (uneven, wrinkled, and improper overlapping).	—[1]	S[3]	D[4]
Lopsided	—[1]	S[3]	D[4]
Mold under wrapper or covering.	—[1]	—[1]	VS[2]
Rough surface	—[1]	S[3]	D[4]
Soiled surface	—[1]	—[1]	S[3]
Soiled surface (paraffin-dipped).	VS[2]	VS[2]	S[3]
Surface mold	—[1]	—[1]	S[3]
Wrinkled wrapper or covering (paraffin-dipped).	S[3]	S[3]	D[4]
Rinded:			
Checked rind	—[1]	—[1]	S[3]

TABLE IV.—CLASSIFICATION OF FINISH AND APPEARANCE WITH CORRESPONDING U.S. GRADE—Continued

Finish and appearance characteristics	AA	A	B
Defective coating (scaly, blistered, and checked).	—[1]	—[1]	S[3]
High edges	—[1]	S[3]	D[4]
Irregular press cloth (uneven, wrinkled, and improper overlapping).	—[1]	S[3]	D[4]
Lopsided	—[1]	S[3]	D[4]
Mold under paraffin	—[1]	—[1]	VS[2]
Rough surface	—[1]	S[3]	D[4]
Soiled surface	VS[2]	VS[2]	S[3]
Sour rind	—[1]	—[1]	S[3]
Surface mold	—[1]	VS[2]	S[3]
Weak rind	—[1]	—[1]	S[3]

[1] (—) = Not permitted
[2] VS = Very Slight
[3] S = Slight
[4] D = Definite

§ 58.2480 U.S. grade not assignable.

Colby cheese shall not be assigned a U.S. grade for one or more of the following reasons:

(a) The cheese fails to meet or exceed the requirements for U.S. Grade B.

(b) The cheese is produced in a plant that is rated ineligible for USDA grading service or is not USDA-approved.

Explanation of Terms

§ 58.2481 Explanation of terms.

(a) *With respect to types of surface protection:*—(1) *Paraffin.* Refined paraffin, amorphous wax, microcrystalline wax, or any combination of such or any other suitable substance.

(2) *Paraffin dipped.* Cheese that has been coated with paraffin.

(3) *Rind.* A hard coating caused by the dehydration of the surface of the cheese.

(4) *Rinded.* A protection developed by the formation of a rind.

(5) *Rindless.* Cheese which has not formed a rind due to the impervious type of wrapper, covering, or container, enclosing the cheese.

(6) *Wrapped.* Cheese that has been covered with a transparent or opaque material (plastic film type or foil) next to the surface of the cheese.

(7) *Wrapper or covering.* A plastic film or foil material next to the surface of the cheese, used as an enclosure or covering of the cheese.

(b) *With respect to flavor:*

(1) *Very slight.* Detected only upon very critical examination.

(2) *Slight.* Detected only upon critical examination.

(3) *Definite.* Not intense but detectable.

(4) *Undesirable.* Those listed in excess of the intensity permitted or those characterizing flavors not listed.

(5) *Acid.* Sharp and puckery to the taste, characteristic of lactic acid.

(6) *Barny.* A flavor characteristic of the odor of a poorly ventilated cow barn.

(7) *Bitter.* Distasteful, similar to the taste of quinine.

(8) *Feed.* Feed flavors (such as alfalfa, sweetclover, silage, or similar feed) in milk which have carried through into the cheese.

(9) *Flat.* Insipid, practically devoid of any characteristic colby cheese flavor.

(10) *Fruity.* A fermented, sweet, fruit-like flavor resembling apples.

(11) *Lacking in flavor development.* No undesirable and very little, if any, Colby cheese flavor development.

(12) *Malty.* A distinctive, harsh flavor suggestive of malt.

(13) *Old milk.* Lacks freshness.

(14) *Onion.* A flavor recognized by the peculiar taste and aroma suggestive of its name. Present in milk or cheese when the cows have eaten onions, garlic, or leeks.

(15) *Rancid.* A flavor suggestive of rancidity or butyric acid; sometimes associated with bitterness.

(16) *Sour.* An acid, pungent flavor resembling vinegar.

(17) *Utensil.* A flavor that is suggestive of improper or inadequate washing and sterilization of milking machines, utensils, or factory equipment.

(18) *Weedy.* A flavor present in cheese when cows have eaten weedy hay or grazed on weed-infested pasture.

(19) *Whey-taint.* A slightly acid flavor characteristic of fermented whey.

(20) *Yeasty.* A flavor indicating yeast fermentation.

(c) With respect to body and texture:—(1) Very slight. Detected only upon very critical examination and present only to a minute degree.

(2) *Slight.* Barely identifiable and present only to a small degree.

(3) *Definite.* Readily identifiable and present to a substantial degree.

(4) *Coarse.* Feels rough, dry, and sandy.

(5) *Corky.* Hard, tough, over-firm cheese which does not readily break down when rubbed between the thumb and fingers.

(6) *Crumbly.* Tends to fall apart when rubbed between the thumb and fingers.

(7) *Curdy.* Smooth but firm; when worked between the fingers is rubbery and not waxy or broken down.

(8) *Firm.* Feels solid, not soft or weak.

(9) *Gassy.* Gas holes of various sizes and may be scattered.

(10) *Loosely knit.* Curd particles which are not well-matted and fused together.

(11) *Mealy.* Short body, does not mold well and looks and feels like corn meal when rubbed between the thumb and fingers.

(12) *Mechanical openings.* Irregular shaped openings that are caused by variations in make procedure and not caused by gas fermentation.

(13) *Pasty.* Is usually a weak body and when the cheese is rubbed between the thumb and fingers becomes sticky and smeary.

(14) *Pinny.* Numerous very small gas holes.

(15) *Reasonably firm.* Somewhat less firm but not to the extent of being weak.

(16) *Short.* No elasticity in the cheese plug and when rubbed between the thumb and fingers, the cheese tends toward mealiness.

(17) *Slitty.* Narrow, elongated slits generally associated with a cheese that is gassy or yeasty. These slits may sometimes be referred to as "fish-eyes."

(18) *Sweet holes.* Spherical gas holes which are glossy in appearance and usually about the size of BB shots. These gas holes are sometimes referred to as "shot holes."

(19) *Weak.* The cheese plug is soft but is not necessarily sticky like a pasty cheese and requires little pressure to crush.

(d) *With respect to color*—(1) *Very slight.* Detected only upon very critical examination and present only to a minute degree.

(2) *Slight.* Barely identifiable and present only to a small degree.

(3) *Acid-cut.* A bleached or faded color which sometimes varies throughout the cheese and appears most often around mechanical openings.

(4) *Bleached surface.* A faded color beginning at the surface and progressing inward.

(5) *Dull or faded.* A color condition lacking in luster or translucency.

(6) *Mottled.* Irregular shaped spots or blotches in which portions are light colored and others are of higher color. Also an unevenness of color due to combining the curd from two different vats, sometimes referred to as "mixed curd."

(7) *Salt spots.* Large light-colored spots or areas.

(8) *Seamy.* White thread-like lines that form when the curd is not properly matted or fused.

(9) *Unnatural.* Deep orange or reddish color.

(10) *Uncolored.* Absence of added coloring.

(11) *Wavy.* An unevenness of color which appears as layers or waves.

(e) *With respect to finish and appearance*—(1) *Very slight.* Detected only upon very critical examination and present to a minute degree.

(2) *Slight.* Barely identifiable and present to a small degree.

(3) *Definite.* Readily identifiable and present to a substantial degree.

(4) *Adequately and securely enveloped.* The wrapper or covering is properly sealed and entirely encloses the cheese with sufficient adherence to the surface of the cheese to protect it from contamination or dehydration.

(5) *Bandage.* Cheese cloth used to wrap cheese prior to dipping in paraffin.

(6) *Bandage evenly placed.* Placement of the bandage so that it completely envelops the cheese and overlaps evenly about one inch.

(7) *Bright surface.* Clean, glossy surface.

(8) *Burst or torn bandage.* A severance of the bandage usually occurring at the side seam; or when the bandage is otherwise snagged or broken.

(9) *Checked rind.* Numerous small cracks or breaks in the rind which sometimes follows the outline of curd particles.

(10) *Defective coating.* A brittle coating of paraffin that breaks and peels off in the form of scales or flakes; flat or raised blisters or bubbles under the surface of the paraffin; checked paraffin, including cracks, breaks or hairline checks in the paraffin or coating of the cheese.

(11) *Firm sound rind.* A rind possessing a firmness and thickness (not easily dented or damaged) consistent with the size of the cheese and which is dry, smooth, and closely knit, sufficient to protect the interior quality from external defects; free from checks, cracks, breaks, or soft spots.

(12) *High edge.* A rim or ridge on the side of the cheese.

(13) *Huffed.* A block of cheese which is swollen because of gas fermentation. The cheese becomes rounded or oval in shape instead of having flat surfaces.

(14) *Irregular press cloth.* Press cloth improperly placed in the hoop resulting in too much press cloth on one end and insufficient on the other causing overlapping; wrinkled and loose fitting.

(15) *Lopsided.* One side of the cheese is higher than the other side.

(16) *Mold under bandage and paraffin.* Mold spots or areas under the paraffin.

(17) *Mold under wrapper or covering.* Mold spots or areas under the wrapper or covering.

(18) *Rind rot.* Soft spots on the rind that have become discolored and are decayed or decomposed.

(19) *Rough Surface.* Lacks smoothness.

(20) *Smooth surface.* Not rough or uneven.

(21) *Soft spots.* Areas soft to the touch and which are usually faded and moist.

(22) *Soiled surface.* Milkstone, rust spots, or other discoloration on the surface of the cheese.

(23) *Sour rind.* A fermented rind condition, usually confined to the faces of the cheese.

(24) *Surface mold.* Mold on the exterior of the paraffin or wrapper.

(25) *Wax or paraffin that adheres firmly to the surface of the cheese.* A coating with no cracks, breaks, or loose areas.

(26) *Weak rind.* A thin rind which possesses little or no resistance to pressure.

Dated: June 23, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–15252 Filed 6–28–93; 8:45 am]

BILLING CODE 3410-02-P

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7 CFR Part 58

[DA–92–18]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Grades of Whipped Butter

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes the promulgation of new United States Standards for Grades of Whipped Butter. This proposal would establish quality criteria for grade determination and optional microbiological and keeping-quality tests for whipped butter.

The Department has determined that the grading of butter sold in consumer-size packages bearing USDA official identification (grade-label) should be conducted when the product is in the final package. Presently, the quality of whipped butter is evaluated prior to the whipping process using the U.S. Standards for Grades of Butter. Accordingly, U.S. Standards for Grades of Whipped Butter are being proposed.

DATES: Comments should be filed by August 30, 1993.

ADDRESSES: Comments should be sent to: Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2968–S, P.O. Box 96456, Washington, DC 20090–6456. They will be made available for public inspection at the Dairy Division in room 2750–S during regular business hours.

FOR FURTHER INFORMATION CONTACT: Diane D. Lewis, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/ Dairy Division, room 2750–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7473.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as a "non-major' rule under the criteria contained therein.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule does not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Administrator, Agricultural Marketing Service, has determined that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and this action will not increase costs to those utilizing the standards.

In 1991, the Department evaluated the procedures used to assign U.S. grade to butter in consumer size packages. The Department concluded that the grading of the product should be conducted when the butter is in the final package because the evaluation of whipped butter at that time is more accurate.

The current practice of evaluating grade-label whipped butter is to either grade the butter in the bulk form prior to whipping or obtain a sample of fresh butter taken during the manufacturing process and evaluate it. Accordingly, the promulgation of U.S. Standards for Grades of Whipped Butter is being proposed. These proposed standards have received general support from many of the manufacturers of whipped butter who utilize the USDA grade-label program, as well as from the American Butter Institute. In addition, these standards have been field tested by the Dairy Grading Branch and were found to be satisfactory.

In order to establish U.S. Standards for Grades of Whipped Butter, USDA is proposing the following:

1. Provide quality specifications for whipped butter at two U.S. Grade levels: U.S. Grade AA and U.S. Grade A

Whipped butter is produced by uniformly incorporating air or inert gas into butter to improve its spreadability characteristics. The percent overrun based on buyer or consumer preference is usually between 50 and 100 percent. Market analysis conducted during the development of this proposal supports the opinion that consumers prefer the higher quality products. Therefore, standards are being proposed that establish quality designations at two levels: U.S. Grade AA and U.S. Grade A.

2. Define flavor characteristics

Production and processing practices influence flavor characteristics in whipped butter. To manufacture whipped butter with a highly pleasing flavor, the raw milk and cream must be free of objectionable flavors. This proposal would define acceptable flavor characteristics to assist the graders in identifying and classifying the flavor.

3. Define body, color, and salt characteristics and establish disratings

Just as production and processing practices influence the flavor of whipped butter, they also influence body, color, and salt characteristics. This proposal would describe distinguishing body, color, and salt characteristics and establish disratings which are used to determine U.S. grade.

4. Illustrate how flavor, body, color, and salt characteristics influence grade determination

These standards provide step-by-step instructions in determining the final grade of whipped butter. The U.S. grade of whipped butter is determined on the basis of classifying first the flavor characteristics. Then body, color, and salt characteristics are noted and disratings established. When total disratings exceed the permitted amount identified in the standards, the final U.S. grade is lowered.

5. Establish optional microbiological and keeping-quality tests (not mandatory for grade designation)

Since 1975, the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service have required microbiological and keeping-quality testing of whipped butter bearing USDA official identification. The market analysis conducted during the development of this proposal revealed that the industry is utilizing tighter microbiological specifications for proteolytic and yeast and mold counts than those listed in the "General Specifications". To be more aligned with current industry standards, this proposal would tighten these microbiological requirements. This proposal also would incorporate these same tests as optional tests (not mandatory for grade designation) in the U.S. Standards for Grades of Whipped Butter.

USDA grade standards are voluntary standards that are developed pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to facilitate the marketing process. Manufacturers of dairy products are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity. When whipped butter is officially graded, the USDA regulations and standards governing the grading of manufactured or processed dairy products are used. These regulations also require a charge for the grading service provided by USDA. The Agency believes this proposal would accurately identify quality characteristics in whipped butter.

Corollary changes must be made in the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service, to conform the definition and grade designations of whipped butter set forth therein with the proposed United States Standards for Grades of Whipped Butter.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 58 be amended as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR part 58 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. In subpart B, § 58.305(f) is revised as follows:

§ 58.305 Meaning of words.

* * * * *

(f) *Whipped Butter.* The food product is made by the uniform incorporation of air or inert gas into butter.

§ 58.323 [Removed and reserved].

3. In subpart B, § 58.323 is removed and reserved.

4. In subpart B, § 58.346 is revised to read as follows:

§ 58.346 Whipped butter.

(a) The quality requirements for whipped butter shall be in accordance with the U.S. Standards for Grades of Whipped Butter for U.S. Grade AA and U.S. Grade A, respectively.

(b) Whipped butter shall also be subject to the following specifications when sampled and tested in accordance with §§ 58.336 and 58.337, respectively:

(1) Proteolytic count, not more than 50 per gram; yeast and mold count, not more than 10 per gram; coliform count, not more than 10 per gram; and keeping-quality test, satisfactory after 7 days at 70 °F.

(2) Optional except when required or requested: Copper content, not more than 0.3 ppm; iron content, not more than 1.0 ppm; enterococci, not more than 10 per gram.

5. Subpart G—United States Standards for Grades of Whipped Butter is added to read as follows:

Subpart G—United States Standards for Grades of Whipped Butter

Definitions

Sec.

58.2425 Whipped butter.
58.2426 Butter.
58.2427 Cream.

U.S. Grades

58.2428 Nomenclature of U.S. grades.
58.2429 Basis for determination of U.S. grade.
58.2430 Specifications for U.S. grades.
58.2431 Relationship of U.S. grade of whipped butter to the flavor classifications as affected by disratings in body, color, and salt characteristics.
58.2432 Optional tests.
58.2433 U.S. grade not assignable.
58.2434 Test methods.

Explanation of Terms

58.2435 Explanation of terms.

Subpart G—United States Standards for Grades of Whipped Butter [1]

Definitions

§ 58.2425 Whipped butter.

Whipped butter is the food product made by the uniform incorporation of air or inert gas into butter.

§ 58.2426 Butter.

The food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, with or without additional coloring matter, and containing not less than 80 percent by weight of milkfat, all tolerances having been allowed for.

§ 58.2427 Cream.

The term *cream* when used in this subpart G means cream separated from milk produced by healthy cows. The cream shall be pasteurized at a temperature of not less than 165 °F and held continuously in a vat at such temperature for not less than 30 minutes; or pasteurized at a temperature of not less than 185 °F for not less than 15 seconds; or pasteurized by other approved methods giving equivalent results.

U.S. Grades

§ 58.2428 Nomenclature of U.S. grades.

The nomenclature of U.S. grades is as follows:

(a) U.S. Grade AA.

(b) U.S. Grade A.

§ 58.2429 Basis for determination of U.S. grade.

The U.S. grade of whipped butter is determined on the basis of classifying first the flavor characteristics and then the characteristics in body, color, and salt of a representative sample. Flavor is the basic quality factor in grading whipped butter and is determined organoleptically by smell and taste. The flavor characteristic and intensity is identified and rated according to the applicable classification contained in table I in § 58.2430. When more than one flavor characteristic is discernible in a sample of whipped butter, the flavor classification of the sample shall be established on the basis of the flavor that carries the lowest rating. Body, color, and salt characteristics are then noted and disratings are made in accordance with the established classification in table II in § 58.2430. The final U.S. grade for the sample is then established in accordance with the flavor classification, subject to permitted disratings for body, color, and salt as outlined in § 58.2431.

§ 58.2430 Specifications for U.S. grades.

The specifications for the U.S. grades of whipped butter are as follows:

(a) *U.S. Grade AA.* U.S. Grade AA whipped butter conforms to the following: Shall possess a fine and highly pleasing butter flavor. Whipped butter may also have a lactic culture flavor. May possess a slight feed, or a definite cooked flavor. The permitted disratings in body, color, and salt characteristics are limited to one-half (½). For detailed specifications and classification of flavor characteristics, see Table I of this section. For body, color, and salt disratings, see Table II of this section.

(b) *U.S. Grade A.* U.S. Grade A whipped butter conforms to the following: Shall possess a pleasing and desirable butter flavor. Whipped butter may also have a lactic culture flavor. May possess to a slight degree the following flavors: acid, aged, bitter, coarse, flat, smothered, and storage. May possess a definite feed flavor. The permitted disratings in body, color, and salt characteristics are limited to one-half (½). For detailed specifications and classification of flavor characteristics, see Table I of this section. For body, color, and salt disratings, see Table II of this section.

(c) *General.* Whipped butter of all U.S. grades shall be free from foreign materials and visible mold. When total disratings exceed the permitted amount, the final U.S. grade shall be lowered one grade level for each additional one-half (½) disrating.

TABLE I.—CLASSIFICATION OF FLAVOR WITH CORRESPONDING U.S. GRADE

Flavor Characteristics [1]	U.S. grade designation	
	AA	A
Acid	[2]—	[3]S
Aged	[2]—	[3]S
Bitter	[2]—	[3]S
Coarse	[2]—	[3]S
Cooked	[4]D	.....
Feed	[3]S	[4]D
Flat	[2]—	[3]S
Smothered	[2]—	[3]S
Storage	[2]—	[3]S

[1] When more than one flavor is discernible in a sample of whipped butter, the flavor classification of the sample shall be established on the basis of the flavor that carries the lowest rating.

[2] (—) = Not permitted

[3] S = Slight

[4] D = Definite

TABLE II.—CHARACTERISTICS AND DISRATINGS IN BODY, COLOR AND SALT

Characteristics	Disratings	
	Slight	Definite
Body:		
Free Moisture	½	1
Mealy or grainy	½	1
Color:		
Color specks	1	1½
Mottled	½	1
Wavy	½	1

[1] Compliance with these standards does not excuse failure to comply with provisions of the Federal Food, Drug and Cosmetic Act.

TABLE II.—CHARACTERISTICS AND DISRATINGS IN BODY, COLOR AND SALT—Continued

Characteristics	Disratings	
	Slight	Definite
Salt:		
Gritty	1	1½
Sharp	1	1½

§ 58.2431 Relationship of U.S. grade of whipped butter to the flavor classifications as affected by disratings in body, color, and salt characteristics.

When the disratings for body, color, and salt exceed the permitted amount of (½) for any flavor classification, the final U.S. grade shall be lowered accordingly:

TABLE III

Flavor classification	Total disratings	U.S. grade
AA	½	AA
AA	1	A
AA	1½	1(*)
A	½	A
A	1	1(*)

1(*) = No U.S. grade assigned.

§ 58.2432 Optional tests.

(a) There are optional tests (not mandatory for grade designation) that may be made on whipped butter that can be requested by the buyer or seller. If requested, the product must comply with the microbiological and keeping-quality specifications as follows:

Proteolytic count—not more than 50 per gram
Yeast and mold count—not more than 10 per gram
Coliform count—not more than 10 per gram
Keeping-quality test—satisfactory after 7 days at 70 °F.

(b) All required tests, and optional tests when specified, shall be performed in accordance with the test methods identified in § 58.2434.

§ 58.2433 U.S. grade not assignable.

Whipped butter shall not be assigned a U.S. grade for one or more of the following reasons:

(a) The butter fails to meet or exceed the requirements for U.S. Grade A.

(b) The butter, when tested, does not comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or the minimum milkfat requirements of 80.0 percent.

(c) The butter is produced in a plant that is rated ineligible for USDA grading service or is not USDA-approved.

§ 58.2434 Test methods.

Testing methods contained in the latest edition of the "Standard Methods for the Examination of Dairy Products" or the "Official Methods of Analysis of the Association of Official Analytical Chemists" are used to determine bacterial estimates and milkfat content.

Explanation of terms

§ 58.2435 Explanation of terms.

(a) With respect to flavor intensity and characteristics:

(1) *Slight.* Detected only upon critical examination.

(2) *Definite.* Not intense but detectable.

(3) *Acid.* Lacks a delicate flavor or aroma and is associated with an acid condition but there is no indication of sourness.

(4) *Aged.* Characterized by lack of freshness.

(5) *Bitter.* Astringent, similar to taste of quinine and produces a puckery sensation.

(6) *Coarse.* Lacks a fine, delicate, smooth flavor.

(7) *Cooked.* Smooth, nutty-like characteristic resembling a custard flavor.

(8) *Feed.* Aromatic flavor characteristic of the feed eaten by cows.

(9) *Flat.* Lacks natural butter flavor.

(10) *Smothered.* Suggestive of improperly cooked cream.

(11) *Storage.* Characterized by a lack of freshness and more intensified than "aged" flavor.

(b) With respect to body:

(1) *Free Moisture.* "Free moisture" is present when beads of moisture are visible on the surface of the sample. The intensity is described as "slight" when the droplets or beads of moisture are barely visible, few in number, and about the size of a pinhead; and "definite" when the moisture droplets are clearly visible, more numerous, and are somewhat larger in size.

(2) *Mealy or grainy.* A "mealy" or "grainy" condition imparts a granular consistency when the whipped butter is melted on the tongue. The intensity is described as "slight" when the mealiness or graininess is barely detectable; and "definite" when the mealiness or graininess is clearly detectable.

(c) With respect to color:

(1) *Mottled.* "Mottled" appears as a dappled condition with spots of lighter and deeper shades of yellow. The intensity is described as "slight" when the small spots of different shades of yellow, irregular in shape, are barely discernible on the sample of whipped butter; and "definite" when the mottles are more clearly discernible.

(2) *Color specks.* "Specks" usually appear in whipped butter as small white or yellow spots. The intensity is described as "slight" when the spots are few in number; and "definite" when they are noticeable in larger numbers.

(3) *Wavy.* "Wavy" color in whipped butter is an unevenness in the color that appears as waves of different shades of yellow. The intensity is described as "slight" when the waves are barely discernible; and "definite" when they are readily noticeable.

(d) With respect to salt:

(1) *Gritty.* A "gritty" salt condition imparts a sand-like feeling on the tongue due to grains of undissolved salt. The intensity is described as "slight" when only a few grains of undissolved salt are detected; and "definite" when the condition is more readily noticeable.

(2) *Sharp.* "Sharp" salt is characterized by taste sensations suggestive of salt. The intensity is described as "slight" when the salt taste predominates in flavor; and "definite" when the taste distinctly predominates in flavor.

Dated: June 23, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–15251 Filed 6–29–93; 8:45 am]
BILLING CODE 3410–02–P

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7 CFR Part 920

[Docket No. FV93–920–1PR]

Kiwifruit Grown in California; Revision of Pack and Container Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise pack and container requirements for California kiwifruit. The first change would add a new size category to the allowable sizes for packs of kiwifruit. The second change would standardize packaging for certain volume-fill containers packed by weight at 23 pounds. The third change would require all containers of kiwifruit to be marked with the identity of the product; the name, address, and zip code of the shipper; and the quantity of the product within the container. These changes were unanimously recommended by the Kiwifruit Administrative Committee (committee) at its annual meeting.

DATES: Comments must be received by July 15, 1993.

ADDRESSES: Written comments concerning this proposal should be submitted in triplicate to the Docket Clerk, F&V Division, AMS, USDA, PO

Box 96456, room 2523–S, Washington, DC 20090–6456, or by facsimile at (202) 720–5698. All comments submitted will be made available for public inspection in the above office during regular business hours. Comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mark A. Hessel, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2526–S, Washington, DC 20090–6456, telephone (202) 720–5127; or Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, CA 93721; telephone (209) 487–5901.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Order No. 920 (7 CFR part 920), both as amended, regulating the handling of kiwifruit grown in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principle place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of California kiwifruit subject to regulation under the marketing order and approximately 600 kiwifruit producers in the production area. The Small Business Administration (13 CFR 121.601) has defined small agricultural producers as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California kiwifruit may be classified as small entities.

Under the terms of the marketing order, fresh market shipments of California kiwifruit are required to be inspected and are subject to grade, size, maturity, pack, and container requirements. Current requirements include specifications that such shipments be at least Size 49, grade at least KAC No. 1 quality, and contain a minimum of 6.5 percent soluble solids.

The production of California kiwifruit for the 1992 season was approximately 12.7 million tray equivalents, compared to the 1991 season production of 7.2 million tray equivalents. This represents a 76 percent increase in California kiwifruit production from 1991 to 1992.

The committee, the agency responsible for local administration of the marketing order, met on February 4, 1993, and unanimously recommended the following changes:

Additional Size Designation

Section 920.302(a)(4)(ii) of the rules and regulations includes a table that specifies numerical size designations to be used in packing certain containers of kiwifruit. These size designations are defined by numerical counts, which establish the maximum number of fruit per 8-pound sample for each of the established sizes. The size designation table only applies to kiwifruit packed in bags, volume-fill, or bulk containers, and does not apply to kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays. The size designation table defines nine different sizes, beginning with Size 25 (the largest size) and ending with Size 49 (the smallest size). For example, Size 25 means that a maximum number of 27 pieces of kiwifruit may be contained in an 8-pound sample when packed in bags, volume-fill, or bulk containers. The committee recommended adding a Size 21 category which authorizes a maximum number of 22 pieces of fruit in an 8-pound sample.

Size 21 would be the largest size designation for kiwifruit packed in bags, volume-fill, or bulk containers. As a result of improved cultural practices, kiwifruit larger than Size 25 have become more prevalent. During the 1990–91 shipping season, 301 tray equivalents of California kiwifruit shipments were classified in sizes larger than a Size 25 equivalent, but during the 1992–93 shipping season, 6,022 tray equivalents of California kiwifruit shipments were classified as larger than a Size 25 equivalent. This trend is expected to continue.

Currently, for bags, volume-fill, and bulk containers containing kiwifruit the equivalent of Size 21 or larger, the size is marked as "Size 25." This puts handlers shipping kiwifruit larger than Size 25 at a disadvantage, because handlers may receive higher prices for larger sizes of kiwifruit and could benefit by classifying it as a larger size. A handler does have the option of using containers with molded trays and marking them "21 count," but this container is more expensive than using either bags, volume-fill, or bulk containers. For this reason, more kiwifruit is being shipped in bags, volume-fill, and bulk containers. In 1992, 41.8 percent of California kiwifruit was shipped in either bags, volume-fill, or bulk containers as compared to 18 percent in 1987. There is a need for a Size 21 designation so that kiwifruit marked "Size 21" may be shipped in bags, volume-fill, or bulk containers.

In addition, not having a Size 21 designation makes it difficult for handlers to stay within the size tolerances for the Size 25 designation. Current pack requirements specify that kiwifruit designated as Size 25 must be packed within a ½ inch size tolerance. Since there is no Size 21 designation, kiwifruit of Size 21 or larger is often "blended" into the Size 25 designation. Blending occurs because the four largest size designations have the same size tolerance specified under the order (½ inch) and kiwifruit within that tolerance may be packed in any of those sizes.

Blending requires handlers to take special care to stay within the size tolerance and reduces the uniformity of the pack size. Establishing a Size 21 designation could reduce the cost of packing larger-sized fruit by making it easier for handlers to stay within the established size tolerances.

For the above reasons, this change would have a positive impact throughout the industry by allowing Size 21 fruit to be uniformly packed in bags, volume-fill, or bulk containers. This change would encourage a more uniform pack of larger-sized fruit by decreasing the amount of blending and increasing grower returns since larger fruit often sells at a higher price.

Standardized Packaging

The committee also recommended standardizing the weight of certain volume-fill containers marked by weight at 23 pounds. Paragraph (a)(3) of § 920.52 specifies that the Secretary may fix the weight of containers used in the handling of kiwifruit.

Handlers may ship volume-fill containers of kiwifruit marked by count or by weight depending upon the preference of the receiver. Volume-fill containers marked by count would not be affected by this particular change. Also, containers of less than 10 pounds or more than 35 pounds would not be affected by this weight standard. Thus, the industry would continue to have the flexibility to utilize containers of different weights for a variety of consumer needs.

Currently, there is no standard weight established for volume-fill containers marked by weight. Handlers are shipping volume-fill containers marked by weight primarily of either 21 or 23 pounds. Both containers are sold at essentially the same price. Retailers often expect to receive 23-pound containers and actually receive 21-pound containers. The inconsistency of container sizes has caused confusion and complaints in the marketplace. Standardizing the weight of volume-fill containers marked by weight would standardize marketing practices for the kiwifruit industry.

The committee considered setting the minimum weight for volume-fill containers at 21 pounds rather than at 23 pounds. Those in favor of a 21-pound container believed that such a container packed better. However, some committee members commented that setting a 21-pound standard may result in some loosely packed containers. This in turn could present quality problems caused by a greater amount of jostling during packing and transportation. Proponents of setting a 23-pound standard also pointed out that nearly 90 percent of the volume-fill containers of kiwifruit shipped by the California kiwifruit industry in 1992 were 23-pound containers.

Currently, the committee is aware of three handlers who pack 21-pound volume-fill containers. Most containers used to pack 21 pounds are large enough to contain 23 pounds of kiwifruit. Also, such containers could be used for volume-fill containers marked by count or as 3-layer cartons. This change would impose some minimal costs on some handlers who would have to convert 21-pound volume-fill containers into other types of containers. However, the overall benefits to the California kiwifruit industry by standardizing volume-fill containers at 23 pounds would more than offset the costs imposed on handlers.

An additional packing requirement would be added for containers in which quantity is specified by count. The count would be required to be equal to three times the size designation. This is already an existing container marking practice of the kiwifruit industry. For example, if the kiwifruit is Size 42, then, on average a total of 126 pieces of fruit would be in the container. The carton would be labeled "Size 42, 126 count." Standardizing the container marking requirements of volume-fill containers marked by count would clarify marketing practices for the kiwifruit industry. Also, the United States Standards for Grades of Kiwifruit in § 51.2338(c)(2) specifies that the count shall not vary more than two from the marked count.

Container Marking Requirements

The committee also recommended additional container marking requirements. Section 920.52(a)(3) specifies that the Secretary may set container marking requirements on shipments of kiwifruit. In past years, some container marking requirements on shipments of California kiwifruit were required under the California Agricultural Code. These requirements specified that all containers of kiwifruit be marked with the identity of the product, the name and address of the shipper, and a description of the quantity of kiwifruit contained inside. These three requirements are referred to as identity, responsibility, and quantity (IRQ). The California Department of Food and Agriculture was responsible for the enforcement of these IRQ requirements. Last year, in response to severe budget restraints, the State put this program on a user fee basis. The California kiwifruit industry decided to drop out of the State program, and establish needed container marking requirements under the Federal marketing order.

Specifically, this proposed action would establish under the Federal marketing order's rules and regulations, with minor modifications, the container marking requirements that were formerly required under the California Agricultural Code. The order now requires under § 920.302 that closed containers with cell compartments, cardboard fillers, or molded trays be marked with the count, and that bags, volume-fill, and bulk containers be marked with the size designation, as specified by the size designation table. Also, all containers, except those containers supervised by the Federal or Federal-State Inspection Service being loaded directly for export, need to be marked with a lot stamp number.

The proposed action would establish standard container marking requirements similar to IRQ requirements. First, all kiwifruit containers would be labeled with the term "kiwifruit" and the varietal name, if the varietal name is other than Hayward. The container would be labeled as "unknown variety," if the variety of kiwifruit is unknown.

Second, containers would also need to be marked with the name and the address of the handler. The address would need to include the city, state, and zip code.

Third, information regarding the quantity of kiwifruit would be required to be marked on each of the following types of containers. (1) The count would need to be marked on all molded trays and 3-layer cartons. (2) The net weight and size designation would need to be marked on volume-fill containers packed by weight. Also, the count and size designation would need to be marked on volume-fill containers packed by count. (3) The net weight and size designation or the net weight, count, and size designation would need to be marked on bulk bins. (4) Master containers, which hold more than one individual package, would need to be marked to properly express the quantity of the contents. Also, the size designation would need to be marked. For example, a master container packed with 20 packages each containing 1 pound of Size 49 kiwifruit would need to be labeled "20–1 lb. packages, Size 49." (5) The net weight or count would need to be marked on all individual consumer packages. If the count is used, then it would need to be accompanied by the size designation.

When the quantity is expressed in terms of weight, size designation, or

count, the marking would need to be accompanied by the words "net weight," "size," or "count" as applicable. For example, a size designation could be marked on a container as "Size 49" or as "49 size," but not as "49."

The lot stamp number could be plainly marked anywhere on the outside of the container. Lot stamp numbers would not be required for consumer packages or those containers supervised by the Federal or Federal-State Inspection Service being loaded directly for export. All other container marking information would need to be plainly and conspicuously marked on at least one outside principal display panel. The term "principal display panel" means that part of the package or container most likely to be displayed, presented, shown, or examined under normal or customary conditions of display and purchase.

These proposed requirements are necessary because a number of major export markets, including Canada, require these markings. The California kiwifruit industry may have containers of kiwifruit rejected at points of destination unless such containers are properly marked. Currently, containers may pass inspection at the shipping point yet be detained at the point of destination because of improper markings. The mandatory marking of all containers with information regarding the identity, responsibility, and quantity would help prevent problems for shippers and receivers of kiwifruit.

The committee considered not recommending any new container markings, but concluded that invariably some shippers would not follow customary container marking practices. This could damage the reputation of the California kiwifruit industry if improperly marked kiwifruit containers were rejected at the receiving point. Also, mandatory container marking requirements would standardize labeling for California kiwifruit containers. Inconsistent container marking practices could result in confusion in the market place and ultimately lower sales and grower revenue.

In addition, the committee considered remaining under the State program and paying an additional assessment of $.001 per container. Not only is this alternative more expensive than adding the IRQ regulations to the Federal order, but it would impose an additional burden by requiring Shipping Point Inspection (SPI) personnel to contact State Standardization personnel each time a mislabeled container was detected. Under this proposal, the SPI would inspect and certify compliance with IRQ requirements, in addition to current grade, size, maturity, pack, and container marking requirements under the order.

For purposes of clarification, portions of paragraph (a)(4) and paragraph (a)(5) of § 920.302 regarding container marking requirements would be incorporated, in modified form, into a new § 920.303 which would deal specifically with container marking requirements. It is the intent of this action to add new container marking requirements to the rules and regulations and not to replace existing container marking requirements.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Interested persons are invited to submit their views and comments on this proposal. A 15-day comment period is considered appropriate so that the industry will have sufficent time to conform to the requirements of this proposed action before the beginning of the 1993–94 shipping season in mid-September. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 920 be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 920.302, paragraph (a)(5) is removed, and paragraph (a)(4) is revised to read as follows:

§ 920.302 Grade, size, and pack regulations.

* * *

(4) Pack requirements. (i) Kiwifruit packed in containers with cell compartments, cardboard fillers or molded trays shall be of proper size for the cells, fillers or molds in which they are packed. Such fruit shall be fairly uniform in size. Not more than 10 percent, by count, of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container may fail to meet the requirements of this paragraph. The fruit packed in such containers shall meet the following minimum weight requirements at the time of initial inspection:

Count designation of fruit	Minimum net weight of fruit (lbs)
34 or larger	7.5
35 to 37	7.25
38 to 40	6.875
41 to 43	5.75
44 and smaller	5.5

The average weight of all sample units in a lot must meet the specified minimum net weight, but no sample unit may be more than 4 ounces less than such weight.

(ii) Kiwifruit packed in bags, volume fill or bulk containers may not vary more than ½-inch (12.7 mm) in diameter if Size 30 or larger; not more than ⅜-inch (9.5 mm) in diameter if Size 33, 36, 39, or 42; and not more than ¼-inch in diameter (6.4 mm) if Size 45/46 or smaller. Not more than 10 percent, by count, of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container may fail to meet the requirements of this paragraph. The following table specifies the numerical size designation to be used in packing such containers as shown in Column 1, and the maximum number of fruit per 8-pound sample as shown in Column 2.

Column 1, numerical count size designation	Column 2, Maximum number of fruit per 8-pound sample
21	22
25	27
27/28	30
30	32
33	35
36	40
39	45
42	50
45/46	57
49	60

The average weight of all sample units in a lot must weigh at least 8 pounds, but no sample unit may be more than 4 ounces less than 8 pounds.

(iii) For shipments in volume-fill containers in which the quantity is specified by count, the count must equal three times the size designation in accordance with tolerances specified in the U.S. Standards for Grades of Kiwifruit (7 CFR 51.2328(c)(2)).

(iv) All volume-fill containers of kiwifruit designated by weight shall hold 23 pounds net weight of kiwifruit unless such containers hold less than 10

pounds or more than 35 pounds net weight of kiwifruit.

* * * * *

3. A new § 920.303 is added to read as follows:

§ 920.303 Container marking regulations.

No handler shall ship any kiwifruit except in accordance with the following terms and conditions:

(a) Each package or container of kiwifruit shall bear on at least one outside principal display panel in plain sight and in plain letters, the word "kiwifruit," the name of the variety (if other than the Hayward variety), if known or, when the variety is not known, the words "unknown variety."

(b) Each package or container of kiwifruit shall bear on one outside principal display panel in plain sight and in plain letters the name and address (including the city, state, and zip code) of the shipper.

(c) Each package or container of kiwifruit shall bear on one outside principal display panel in plain sight and in plain letters the following information regarding the quantity of kiwifruit packed within the container:

(1) The quantity shall be indicated in terms of count for kiwifruit packed in cell compartments, cardboard fillers, or molded trays, and the contents shall conform to the count.

(2) The quantity shall be indicated in terms of the size designation and either the net weight for volume-fill containers packed by weight or the count for volume-fill containers packed by count.

(3) For bulk bins, the quantity shall be indicated in terms of the size designation and net weight; or in terms of the size designation, net weight, and count.

(4) Master containers, which hold more than one individual package, must be properly marked with the quantity of the contents. The size designation must also be indicated.

(5) The quantity shall be indicated in terms of either net weight or count (or both) for individual consumer packages. If count is used, it must be accompanied by the size designation.

(6) Designations of size, count, and net weight on each container shall be accompanied by the words "size," "count," or "net weight" as applicable.

(d) Containers of kiwifruit shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector; except for individual consumer packages and containers that are being directly loaded into a vehicle for export shipment under the supervision of the Federal or Federal-State Inspection Service.

(e) As used in this section, the term "principal display panel" means that part of the package or container most likely to be displayed, presented, shown or examined under normal or customary conditions of display and purchase.

Dated: June 23, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–15272 Filed 6–29–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 958

[Docket No. FV–92–093PR]

Onions Grown in Certain Designated Counties in Idaho and Malheur County, Oregon—Amendment to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises a previously issued proposed rule and would require shipments of pearl onions to be inspected and certified as being within the maximum permissible size of 1¾ inches in diameter and require handlers to pay assessments on such onions. Under the current regulation, pearl onions are exempt from inspection and assessments as well as minimum grade and size requirements, but cannot be larger than 1¾ inches in diameter. To eliminate redundancy in the regulations, this proposal also would remove one paragraph regarding imported onions, which is the same as requirements in effect under 7 CFR 980.117 for imported onions.

DATES: Comments must be received by July 30, 1993.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2523–S, Washington, DC 20090–6456, or FAX (202) 720–5698. Three copies of all written material shall be submitted. Comments timely received will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary Olson, Northwest Marketing Field Office, 1220 SW Third Avenue, room 369, Portland, Oregon, 97204, telephone (503) 326–2724, or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 690–0464.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 130 and Order No. 958 (7 CFR Part 958) (order), regulating the handling of onions grown in Idaho and Malheur County, Oregon. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a non-major rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of Idaho-Oregon onions subject to regulation under the marketing order, and approximately 450 producers in the production area. Small agricultural service firms are defined as those whose annual receipts are less than $3,500,000, and small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000. The majority of onion producers and handlers subject to regulations under the order may be classified as small entities.

On June 30, 1992, the Idaho-Eastern Oregon Onion Committee (Committee) unanimously recommended amending the order's handling regulation to change the term "pearl onions" to "pickler onions" and to reduce the maximum size of such onions to not more than 1 inch in diameter. A proposed rule was published in the October 6, 1992 issue of the Federal Register (57 FR 45993), giving interested persons until November 5, 1992, to file comments with respect to the proposal. In response to the proposal, three comments were received. One extensive comment from the only current pearl onion producer presented arguments contrary to those of the Committee. To allow both the Committee and other interested persons sufficient time to study the comments and provide additional comments and background material, the comment period was reopened until January 22, 1993 (58 FR 3234, January 8, 1993). One additional comment, from the Committee, was received during the extended comment period.

Paragraph (h) of § 958.328 Handling regulation, currently defines pearl onions as onions grown using specific cultural practices that limit growth to the same general size as boiler and pickler onions, measuring 1¾ inches in diameter or less. The regulation groups all small onions under the heading of boilers and picklers with sizes up to 1¾ inches in diameter. The United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Type) (7 CFR 51.2834) states that the size range for boiler onions shall be 1 to 1⅞ inches while picklers shall be 1 inch or less in diameter.

Pursuant to paragraph (e) of § 958.328, pearl onions are handled as special purpose shipments and, thus, are exempt from the grade, size, maturity, assessment and inspection requirements of the order. However, pearl onions must comply with safeguard requirements of the order.

The Department previously increased the exempted size of pearl onions to 1¾ inches in diameter (55 FR 36601, September 6, 1990). That increase was justified because a small number of the culturally-grown, pearl onions were larger than the intended size of 1 inch or less in diameter. The Committee had reported that buyers were more willing to purchase the somewhat larger onions in lots of pearl onions than to pay the additional handling costs associated with sorting the various sizes. Because pearl onions are sold as a specialty item, distinct from other onions grown in the production area, it was not expected that the increase in exemption size would adversely affect the marketing of other onions.

At its June 30, 1992, meeting, the Committee recommended changing the term "pearl onions" to "pickler onions," and reducing the maximum size of such onions to 1 inch. Also, at that time, the Committee believed that the larger sizes of exempt pearl onions; i.e., between 1 inch and 1¾ inches in diameter, competed directly with onions regulated under the order. The current regulation requires that white varieties of onions must be at least 1 inch in diameter in order to be shipped, while white pearl onions must be no more than 1¾ inches in diameter. This size overlap for exempted and regulated onions has presented a compliance problem for the Committee. Thus, the Committee recommended that pearl onions which range between 1 inch and 1¾ inches in diameter not be exempt from order requirements. The Committee recommended that such pearl onions be subject to the same grade, size, maturity, assessment and inspection requirements as other smaller-sized onions regulated under the order.

Four comments were received in response to the October 6, 1992 proposed rule, one from the Idaho-Eastern Oregon Onion Committee and three from members of the onion industry who would be affected by this rule. One comment was received from Magic Valley Growers, Ltd., the principal domestic producer of pearl onions. The commenter objected to lowering the maximum size from 1¾ inches to 1 inch in diameter and stated that the industry generally considers pearl onions to be up to 1¼ inches in diameter. The commenter objected to the proposal to redefine "pearl onions" as "pickler onions." The commenter stated that smaller sized pearl onions are called "picklers" and are usually ¾ to 1 inch in diameter, which is generally too small for consumer use. The commenter stated that slightly larger pearl onions are called "creamers" which range from 1 to 1¼ inches in diameter. The commenter contended that about two-thirds of its pearl onion shipments are 1 to 1¼ inches in diameter.

The commenter stated that its original intent in requesting the maximum size increase to 1¾ inches was to provide an adequate tolerance and that it has never intended to produce pearl onions smaller than 1 inch in diameter. The commenter stated that pearl onions up to 1¾ inches in diameter do not compete with other varieties of onions shipped to retail outlets.

The commenter also objected to the statement in the proposed rule that after harvest, pearl onions were virtually indistinguishable from other small onions. He commented that pearl onions are grown from special varieties, that Sweet Spanish varieties are too large at maturity to meet the maximum size requirement for pearl onions, and that pearl onions are shipped to specialty or gourmet markets which are different from regular onion markets.

Finally, the commenter objected that the proposed rule would not permit the shipment of red and yellow pearl onions more than 1 inch in diameter.

Two additional comments were received from California-based pearl onion handlers who are supplied by Magic Valley Growers, Ltd. Both comments stated that the proposed 1 inch maximum size for pearl onions was too restrictive and that most of their pearl onion business is for onions 1 to 1¼ inches in diameter. In addition, they were concerned that the proposed size requirement would prevent the marketing of red and yellow varieties of pearl onions, even though such onions are an important part of the commenters' seasonal sales.

The Committee held a meeting on December 16, 1992, to resolve the apparent differences between the comments filed and the original recommendations of the Committee. Representatives of Magic Valley Foods, Ltd. participated in the meeting.

As a result of the meeting, the Committee filed a comment to withdraw its original recommendations to reduce the pearl onion maximum size requirement to 1 inch in diameter. The Committee believes that, because the majority of pearl onions shipped are 1 to 1¼ inches in diameter, the current requirement of 1¾ inches maximum diameter is acceptable and need not be changed. This action also would allow handlers to meet the market demands for red and yellow varieties of pearl onions that are 1 to 1½ inches in diameter, which would have been prohibited under the original recommendation.

In its comment, the Committee also requested withdrawal of its original recommendation to change the term "pearl" onion to "pickler" onion. That original proposal should be withdrawn because the term pickler refers to smaller size pearl onions which are not representative of the majority of pearl onions marketed.

During the meeting, the Committee also considered further action with regard to pearl onions. It was pointed out that market inspection reports indicated that some exempt onions larger than 1¾ inches in diameter have appeared in marketing channels. The Committee believed that the size exemption must be verified and the best way to do that would be to add inspection requirements to verify the maximum size on all pearl onions. Thus, the Committee recommended unanimously that all pearl onions be inspected and certified for maximum size.

The Committee also discussed whether pearl onions should be subject to assessments. It believes that all segments of the Idaho-Eastern Oregon onion industry, including the pearl onion segment of the industry, benefit from the order's research and promotion activities. Thus, the Committee recommended unanimously that pearl onion shipments be assessed.

Therefore, under the Committee's revised proposal, all pearl onions up to a maximum of 1¾ inches in diameter would be shipped under paragraph (e) Special purpose shipments but such onions would be subject to maximum size, assessment, and inspection requirements. The Committee also recommended that reference to pearl onions be removed from paragraph (f) Safeguards, of § 958.328, since such requirements would no longer be necessary. Also, for clarification, the reference to pearl onions under paragraph (h) Definitions, should be revised by adding after the words "boilers and picklers" the words "* * * and that have been inspected and certified as * * *." The Committee believes that these recommendations address the written comments as well as those voiced at the December 16 meeting.

This action also proposes that paragraph (i) Applicability to Imports, of § 958.328 be removed from the handling regulation. That paragraph provides information that is contained in 7 CFR 980.117 Import regulations; onions. Because the same information applicable to imported onions is contained in the import regulations, paragraph (i) in the domestic handling regulations should be removed to eliminate redundancy of regulations.

These recommended changes are intended to result in clearer terminology, a more consistent application of assessments, and an improved ability by the committee to oversee compliance with program requirements.

The Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Written comments, timely received, in response to this action will be considered before finalization of this proposed rule.

The information collection requirements that are contained in these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0087.

This proposed rule, as revised, is significantly different from the proposed rule published in the **Federal Register** on October 6, 1992. Thus, the Department believes that it is in the public interest to publish this revision as a proposed rule with a 30-day comment period.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 958 be amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 958.328 is proposed to be amended by revising paragraph (e), revising the introductory sentence of paragraph (f), revising paragraph (f)(2), revising paragraph (h), and removing paragraph (i) to read as follows:

§ 958.328 Handling regulation.

* * * * *

(e) *Special purpose shipments.* The minimum grade, size, maturity, assessment, and inspection requirements of this section shall not be applicable to shipments of onions for any of the following purposes: (1) Planting, (2) livestock feed, (3) charity, (4) dehydration, (5) canning, (6) freezing, (7) extraction, and (8) pickling. In addition, the minimum grade, size, and maturity requirements set forth in paragraph (a) of this section shall not be applicable to shipments of pearl onions, but the maximum size requirements in paragraph (h) of this section and the assessment and inspection requirements shall be applicable to shipments of pearl onions.

(f) *Safeguards.* Each handler making shipments of onions for dehydration, planting, canning, freezing, extraction or pickling pursuant to paragraph (e) of this section shall: * * *

(2) Prepare, on forms furnished by the committee, a report in quadruplicate on each individual shipment to such outlets authorized in paragraph (c) of this section;

* * * * *

(h) *Definitions.* The terms "U.S. No. 1," "U.S. Commercial," and "U.S. No. 2" have the same meaning as defined in the United States Standards for Grades of Onions (Other than Bermuda-Granex-Grano and Creole Types), as amended (7 CFR 51.2830–2854), or the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR 51.3195–3209), as amended, whichever is applicable to the particular variety, or variations thereof specified in this section. The term "braided red onions" means onions of red varieties with tops braided (interlaced). "Pearl onions" means onions produced using specific cultural practices that limit growth to the same general size as boilers and picklers, and that have been inspected and certified as measuring 1¾ inches in diameter or less. The term "moderately cured" means the onions are mature and are more nearly well cured than fairly well cured. Other terms used in this section have the same meaning as when used in Marketing Agreement No. 130 and this part.

Dated: June 23, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–15273 Filed 6–29–93; 8:45 am]

BILLING CODE 3410-02-P

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7 CFR Part 1007

[DA–93–14]

Milk in the Georgia Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal to suspend for the months of July and August 1993 provisions of the Georgia Federal milk marketing order that provide for

payments to producers on the basis of a base and excess payment plan. The dairy farmer cooperatives that requested the suspension say that milk supplies will be tight in July and August and therefore production should not be discouraged through payment of the excess price for milk produced in excess of the base amount.

DATES: Comments are due no later than July 15, 1993.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–4829.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. This action will encourage milk production during the months of July and August, which are months of declining milk production.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act, as amended (7 U.S.C. 601–674) ("the Act"), provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Act, the suspension of the following provisions of the order regulating the handling of milk in the Georgia marketing area is being considered for the months of July and August 1993:

1. In § 1007.32, paragraph (a).
2. In § 1007.61 (a), the words "of September through January".
3. In § 1007.61, paragraph (b).

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 15th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 15 days because a longer period would not provide the time needed to complete the required procedure and include July 1993 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would make inoperative the requirement that producers be paid on the basis of the base and excess plan for the months of July and August 1993. The proposal was submitted by Dairymen, Inc. (DI), Carolina/Virginia Milk Producers Association, Inc., and Southern Milk Sales, Inc. These three cooperative associations have a substantial amount of milk pooled on the Georgia milk market. In support of their proposal, the cooperative associations state that the suspension is needed because in recent years milk in this area has been in short supply during July and August. Without the suspension, the cooperatives contend the market's base and excess plan would discourage production in those months. Thus, it may be appropriate to suspend the base and excess plan for the months of July and August 1993.

List of Subjects in 7 CFR Part 1007

Milk marketing orders.

The authority citation for 7 CFR Part 1007 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: June 23, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–15203 Filed 6–29–93; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

[RIN 3150–AE46]

10 CFR Part 50

Notification of Spent Fuel Management and Funding Plans By Licensees of Prematurely Shut Down Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to amend its regulations to clarify the timing of notification to the NRC of spent fuel management and funding plans by licensees of those nuclear power reactors that have been shut down before the expected end of their operating lives. The proposed rule, if adopted, would require that a licensee submit such notification either within 2 years after permanently ceasing operation of its licensed power reactor or no later than 5 years before the reactor operating license expires, whichever event occurs first.

DATES: Comment period expires September 13, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm Federal workdays.

Examine copies of comments received at: The NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–1255.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1984, the NRC published a final rule, Requirements for Licensee Actions Regarding the Disposition of Spent Fuel Upon Expiration of Reactor Operating Licensees (49 FR 34689). In part, this rule added to the NRC's regulation a new paragraph—10 CFR 50.54(bb)—which required licensees of nuclear power reactors to submit for NRC review and approval, no later than 5 years before the reactor operating license expires, their plans for managing spent fuel at their site until title to the spent fuel is transferred to the Department of Energy (DOE). These plans are to include plans for funding of spent fuel management before transfer to DOE.

In the preamble to the 1984 final rule, the Commission responded to comments on the proposed rule by stating that:

> Premature shutdown or termination of a reactor's license which results in an unanticipated need for interim storage or disposal arrangements is not expected to be a generic problem. The Commission will consider the consequences of premature termination of operation, should such an event occur, on a case-by-case basis. Even if a reactor shuts down prematurely, it will still be required to comply with license requirements (49 FR 34689, at p. 34690).

Similarly, in the final decommissioning rule (53 FR 24018; June 27, 1988), the Commission acknowledged that, in certain instances, reactors might be permanently shut down before completing the full term of their operating lives. However, because the Commission determined that such instances would be infrequent, it did not explicitly include in the rule remedies for premature shutdown.

Subsequent to the publication of both the final spent fuel disposition and decommissioning rules, 6 power reactor facilities have been shut down prematurely: the Fort St. Vrain Nuclear Generating Station, the Rancho Seco Nuclear Generating Station, Unit 1 of the San Onofre Nuclear Station, the Shoreham Nuclear Power Station, the Trojan Nuclear Station and the Yankee Nuclear Power Station. Unit 2 of the Three Mile Island Nuclear Station also effectively permanently ceased operation after suffering its March 1979 accident although the licensee never formally announced its shutdown.

The Commission's regulations in 10 CFR 50.82(a) provide that all power reactors that permanently cease operation after July 27, 1988, including those that shut down prematurely, must apply to the NRC to decommission their facilities within 2 years following permanent cessation of operations. Further, 10 CFR 50.82(b)(1)(iii) indicates that the proposed decommissioning plan submitted by the licensee when applying to decommission should consider factors such as the unavailability of waste disposal capacity and other site specific factors affecting the licensee's capability to carry out decommissioning safely.

Discussion

The Commission requires that each licensee submit its decommissioning plans in a timely manner after permanently ceasing operations. The NRC's regulations recognize that the ability of a licensee to plan properly and safely for decommissioning depends on a licensee's ability to manage and dispose of its spent fuel. Therefore, the timing of actions required in 10 CFR 50.54(bb) for managing and storing spent fuel should be consistent with the decommissioning timing requirements in 10 CFR 50.82. The intent of 10 CFR 50.54(bb) is to provide for plans for the orderly management of spent fuel by the time the reactor is permanently shut down. When the NRC developed § 50.54(bb), premature reactor shutdown was not deemed to be very likely and, in any case, DOE had scheduled to begin operating a permanent repository in 1998. However, the number of reactors that have been shut down prematurely has increased over earlier expectations. Also, DOE has delayed development of a permanent repository, which increases the number of reactors that will likely need to store spent fuel on-site.

Therefore, the Commission proposes to amend 10 CFR 50.54(bb) to require a power reactor licensee to notify the NRC of the licensee's program to manage and provide funding for management of the irradiated fuel at the reactor either within 2 years following permanent cessation of operation of the reactor or no later than 5 years before expiration of the reactor operating license, whichever occurs first. The NRC chose a term of 2 years following permanent cessation of operations to be consistent with the timing provisions in § 50.82(a) for submittal of a decommissioning plan. Also, continuing to require licensees to submit spent fuel management and funding plans 5 years prior to expiration of the operating license for a plant that does not shut down prematurely will maintain consistency with the timing provisions of § 50.75(f) for submittal of a preliminary decommissioning plan.

Additionally, pursuant to 10 CFR 50.75, costs of spent fuel removal and disposal are not included in the decommissioning cost estimates. This proposed rule is consistent with that objective. The Commission will consider a rulemaking on the inclusion of spent fuel costs as part of decommissioning costs when its information base on spent fuel costs is fully developed.

A licensee will need to plan to manage spent fuel once its plant permanently ceases operation so as to comply with the NRC's decommissioning regulations in 10 CFR 50.82. Therefore, the conforming changes in 10 CFR 50.54(bb) would not represent any additional requirements. Rather, these changes are administrative because they clarify the timing of submissions of spent fuel management and funding plans for those licensees whose power reactors are shut down prematurely.

Finding of No Significant Environmental Impact: Availability

These proposed amendments would clarify the timing of submission of plans for managing and providing funding for managing all irradiated fuel for those licensees whose power reactors are shut down prematurely. This action is required to coordinate the submission of spent fuel management and funding plans with submission of decommissioning plans for prematurely shutdown reactors. Because management and funding of spent fuel can have a significant impact on the method and timing of decommissioning, licensees should submit their plans for spent fuel management and funding to be consistent with the timing provisions for decommissioning plans in § 50.82(a) (i.e., no later than 2 years after permanent shutdown).

Neither this action nor the alternative of maintaining the existing rule would significantly affect the environment. Changes in the timing of the submission of spent fuel management and funding for prematurely shutdown power reactors would not alter the effect on the environment of the licensed activities considered in either the final spent fuel disposition rule (49 FR 34689; August 31, 1984) or the final decommissioning rule (53 FR 24018; June 27, 1988) as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG–0586, August 1988). The alternative to this proposed action would not significantly affect the environment. Therefore, the Commission has determined, under the National Environmental Policy Act of

1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. No other agencies or persons were contacted for this proposed action, and no other documents related to the environmental impact of this proposed action exist. The foregoing constitutes the environmental assessment and finding of no significant impact for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number [3150–0011].

Regulatory Analysis

On August 31, 1984, the NRC published a final rule, Requirements for Licensee Actions Regarding the Disposition of Spent Fuel Upon Expiration of Reactor Operating Licensees (49 FR 34689). As part of this rule, the NRC required power reactor licensees to submit for NRC review and approval, no later than 5 years before expiration of the reactor operating license, their plans for managing spent fuel at their site until title to the spent fuel is transferred to the Department of Energy (DOE). These plans are to include plans for funding of spent fuel management before transfer to DOE.

On June 27, 1988, the Commission promulgated its final decommissioning rule (53 FR 24019). Section 50.82 of this rule provides that licensees of all power reactors that permanently cease operation after July 27, 1988, including those that shut down prematurely, must apply to the NRC to decommission their facilities within 2 years following permanent cessation of operations. Section 50.82(b)(1)(iii) further provides that the proposed decommissioning plan submitted by the licensee should consider factors such as the unavailability of waste disposal capacity and other site specific factors affecting the licensee's capability to carry out decommissioning safely. The Commission requires licensees to submit decommissioning plans in a timely manner after they permanently cease operations. The NRC's regulations recognize a licensee's ability to plan properly and safely for decommissioning depends on a licensee's ability to dispose of its spent fuel. Thus, the timing of requirements for spent fuel management and storage should be consistent with the timing for submission of decommissioning plans, including those for power reactors that have been shut down prematurely. Therefore, the NRC proposes to amend 10 CFR 50.54(bb) to require each power reactor licensee to notify the NRC of its program to manage and provide funding for management of the irradiated fuel at its reactor either within 2 years after the licensee permanently ceases operation of its reactor or no later than 5 years before its reactor operating license expires, whichever occurs first.

Although the timing of preparation and submission of plans for management and funding of spent fuel would be formally advanced for licensees that shut down their power reactors prematurely, these licensees would be required to incorporate the same consideration of spent fuel management and funding in their decommissioning plans required to be submitted under 10 CFR 50.82. The proposed regulations merely make 10 CFR 50.54(bb) consistent with 10 CFR 50.82. Thus, there should be no substantive impact on power reactor licensees.

The proposed rule would not create substantial costs for other licensees. The proposed rule also will not significantly affect state and local government and geographical regions, or the environment, or create substantial costs to the NRC or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant impact upon a substantial number of small entities. The proposed rule would potentially affect approximately 115 nuclear power reactor operating licenses. Nuclear power plant licensees do not fall within the definition of small businesses as defined in section 3 of the Small Business Act, 15 U.S.C. 632, the Small Business Size Standards of the Small Business Administrator (13 CFR part 121), or the Commission's Size Standards (56 FR 56671; November 6, 1991).

Backfit Analysis

The NRC has determined that this proposed rule does not impose a backfit as defined in 10 CFR 50.109(a)(1). Therefore, a backfit analysis is not required for this proposed rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242 as amended 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54 (dd), and 50.103 also issued under sec. 108, 68 Stat. 939 as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58–50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.54 is amended by revising paragraph (bb) to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(bb) For nuclear power reactors licensed by the NRC, the licensee shall, within 2 years following permanent cessation of operation of the reactor or 5 years before expiration of the reactor operating license, whichever occurs first, submit written notification to the Commission for its review and preliminary approval of the program by which the licensee intends to manage and provide funding for the

management of all irradiated fuel at the reactor following permanent cessation of operation of the reactor until title to the irradiated fuel and possession of the fuel is transferred to the Secretary of Energy for its ultimate disposal in a repository. Final Commission review will be undertaken as part of any proceeding for continued licensing under part 50 or part 72. The licensee must demonstrate to NRC that the elected actions will be consistent with NRC requirements for licensed possession of irradiated nuclear fuel and that the actions will be implemented on a timely basis. Where implementation of such actions requires NRC authorizations, the licensee shall verify in the notification that submittals for such actions have been or will be made to NRC and shall identify them. A copy of the notification shall be retained by the licensee as a record until expiration of the reactor operating license. The licensee shall notify the NRC of any significant changes in the proposed waste management program as described in the initial notification.

* * * * *

Dated at Rockville, Maryland this 16th day of June, 1993.

For the Nuclear Regulatory Commission.

James L. Blaha,

Acting Executive Director for Operations.

[FR Doc. 93–15383 Filed 6–29–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–57–AD]

Airworthiness Directives; Twin Commander Aircraft Corporation Models 500, 560A, 560E, 680, 680E, and 720 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Twin Commander Aircraft Corporation (Twin Commander) Models 500, 560A, 560E, 680, 680E, and 720 airplanes. The proposed action would require inspecting the wing front spar lower cap (spar cap) for interference, fretting, or corrosion between the firewall flange and spar cap flange at Wing Station (WS) 96, and clearing any interference, repairing any fretting or corrosion damage, and replacing any cracked spar cap. The Federal Aviation Administration (FAA) has received reports of two of the affected airplanes having cracked spar caps at WS 96. The actions specified by the proposed AD are intended to prevent failure of the wing structure caused by a cracked spar cap at WS 96.

DATES: Comments must be received on or before September 15, 1993.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–57–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive NE., Arlington, Washington 98223. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2594.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–CE–57–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–57–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received two reports of cracks caused by corrosion on the spar cap forward flange at WS 96 on Twin Commander Model 680E airplanes operated in Sweden. One of these reports cited an accident where further investigation revealed that (1) the firewall flange had worn a notch in the spar flange; (2) the protective coating had deteriorated around this area; (3) corrosion had then formed in this notch; and (4) a crack had initiated at this area. These factors were determined to have contributed to the referenced accident.

Twin Commander has issued Service Bulletin (SB) No. 212, dated November 3, 1992, which specifies procedures for the following on certain Twin Commander Models 500, 560A, 560E, 680, 680E, and 720 airplanes: (1) inspecting the main spar lower cap for corrosion or interference between the firewall flange and spar flange; and (2) clearing any interference and repairing any corrosion damage to the spar cap.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent failure of the wing structure caused by a cracked wing spar cap at WS 96.

Since an unsafe condition has been identified that is likely to exist or develop in other Twin Commander Models 500, 560A, 560E, 680, 680E, and 720 airplanes of the same type design, the proposed AD would require inspecting the spar cap for interference, fretting, or corrosion between the firewall flange and spar cap flange at WS 96, and clearing any interference, repairing any fretting or corrosion damage, and replacing any cracked spar cap. The proposed inspection and repair, if applicable, would be accomplished in accordance with Twin Commander SB No. 212, dated November 3, 1992.

The FAA estimates that 332 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 20 workhours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $55 an hour. Parts

to accomplish the proposed inspection would cost approximately $20. Based on these figures, the total cost impact of the inspection specified in the proposed AD on U.S. operators is estimated to be $371,840. One airplane owner has already accomplished the proposed inspections, and found no damage or cracks.

In addition, if the proposed inspection would reveal cracks, or corrosion that exceeds certain limits, replacing the spar cap would be required at a cost of approximately $100,000, parts and labor included. An airplane affected by the proposed AD could have a compliance cost as low as approximately $1,120 (labor + parts) if no cracks, interference, or corrosion damage is found during the inspection, and as high as approximately $101,120 (inspection + spar cap replacement) if the operator replaces the spar cap.

Based on these airplanes having an expected average remaining operating life of 10 years or 15 years, the annualized compliance cost would range between:

- If only inspecting the spar cap at WS 96 is necessary for airplanes with an average remaining operating life of 10 years: $1,120 × 0.14349 (10-year capital recovery factor at a 7 percent interest rate) = $168 annualized cost;
- If only inspecting the spar cap at WS 96 is necessary for airplanes with an average remaining operating life of 15 years: $1,120 × 0.11434 (15-year capital recovery factor at a 7 percent interest rate) = $126;
- If replacing the spar cap is necessary for airplanes with an average remaining operating life of 10 years: approximately $101,120 × 0.15349 (capital recovery factor at a 7 percent interest rate) = $15,520; or
- If replacing the spar cap is necessary for airplanes with an average remaining operating life of 15 years: approximately $101,120 × 0.11434 (capital recovery factor at a 7 percent interest rate) = $11,562.

The proposed AD's from Dockets No. 92–CE–43–AD (for Models 500, 560A, 560E, 680, 680E, and 720) and No. 92–CE–58–AD (for Models 685, 690, 690A, and 690B) would also affect certain airplanes included in this proposed AD. The compliance costs of these other proposed AD's would add to the cost discussed above. However, replacing the spar cap would only be required once, so the $100,000 replacement cost, if required, would be a one-time action.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions.

The 331 U.S.-registered airplanes affected by the proposed AD that have not complied with Twin Commander SB No. 212, dated November 3, 1992, are owned according to the following breakdown: 196 by individuals, 2 by U.S. government agencies, 7 by states or local governments, and 126 by other entities. Six entities own 2 airplanes each.

The FAA cannot determine the sizes of all the affected non-individual owner entities nor the relative significance of the costs estimated above. Because of these uncertainties, no cost thresholds for significant economic impact can be reasonably determined. The FAA solicits comments concerning the impact of this proposed AD on small entity owners of affected airplanes. Based on the possibility that this proposed AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of substantial public interest; and (3) if promulgated, may have a significant economic impact on a substantial number of small entities. The FAA has conducted an Initial Regulatory Flexibility Determination and Analysis and has considered alternatives to this proposal that could minimize the impact on small entities. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES". After careful consideration, the FAA has determined that the proposed action is the best course to achieve the safety objective of returning the airplane to its original certification level of safety. Alternative actions and views are solicited from interested persons and will be considered by the FAA in the development of the final rule.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Twin Commander Aircraft Corporation: Docket No. 92–CE–57–AD.

Applicability: The following model and serial number airplanes that do not have the wing front spar lower cap replaced in accordance with procedures specified in paragraph (a)(3) of this AD, certificated in any category:

Model	Serial numbers
500	618 through 750.
560A	231 though 450.
560E	433 through 750.
680	242 through 658.
680E	623 through 750.
720	501 through 750.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the wing structure caused by a cracked wing front spar lower cap at Wing Station (WS) 96, accomplish the following:

(a) Inspect the wing front spar lower cap of each wing for corrosion or interference between the firewall flange and spar flange in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Twin Commander

Service Bulletin (SB) No. 212, dated November 3, 1992.

(1) If any interference is found between the firewall flange and spar flange, prior to further flight, clear this interference in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Twin Commander SB No. 212, dated November 3, 1992.

(2) If any corrosion damage is found, prior to further flight, repair any corrosion damage to the wing front spar lower cap in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Twin Commander SB No. 212, dated November 3, 1992.

(3) If any cracks are found, prior to further flight, replace the wing front spar lower cap in accordance with replacement procedures obtained from the manufacturer through the Manager, Seattle Aircraft Certification Office, at the address specified in paragraph (c) of this AD.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

NOTE: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Twin Commander Aircraft Corporation, 19003 59th Drive, N.E., Arlington, Washington 98223; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.Issued in Kansas City, Missouri, on June 24, 1993.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–15365 Filed 6–29–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–CE–58–AD]

Airworthiness Directives: Twin Commander Aircraft Corporation 500, 680, 681, 685, and 690 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 91–08–09, which currently requires the following on certain Twin Commander Aircraft Corporation (Twin Commander) 500, 680, 681, 685, and 690 series airplanes: repetitively inspecting the wing front spar lower cap (spar cap) for corrosion; and replacing the spar cap if corrosion exceeds certain limits. The proposed action would incorporate updated and more detailed inspection procedures, extend the repetitive inspection intervals, and provide the option of incorporating one of three modifications as terminating action for the repetitive inspections. The actions specified by the proposed AD are intended to prevent wing structural damage that, if not detected, could progress to the point of failure.

DATES: Comments must be received on or before September 15, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–58–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056; Telephone (206) 227–2594.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–CE–58–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–58–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 91–08–09, Amendment 39–6965 (56 FR 14307, April 9, 1991), currently requires the following on certain Twin Commander Aircraft Corporation (Twin Commander) 500, 680, 681, 685, and 690 series airplanes: repetitively inspecting the spar cap for corrosion; and replacing the spar cap if corrosion exceeds certain limits. The inspections are accomplished in accordance with Twin Commander Service Bulletin (SB) No. 208, dated June 11, 1990.

Twin Commander has revised SB No. 208 (Twin Commander SB No. 208A, dated November 9; 1992) to include updated and more detailed procedures for inspecting the spar cap for corrosion, and defines allowable corrosion service limits that specify an increase in the amount of time allowed between repetitive inspections.

The following includes instruction and procedures for replacing the spar cap:

- Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992, which applies to Twin Commander Models 685, 690, 690A, and 690B airplanes.
- Twin Commander Custom Kit No. CK–145, dated August 21, 1992, which applies to Twin Commander Models 500U, 500S, 680FL, and 680FL(P) airplanes.
- AVIADESIGN, Inc. Supplemental Type Certificate (STC), dated July 16, 1992, which applies to Twin Commander Models 690, 690A, and 690B airplanes.

Of the 562 affected airplanes registered in the United States, 10 have already accomplished the proposed inspection in accordance with Twin Commander SB No. 208A, dated

November 9, 1992. None of these airplanes required spar cap replacement.

After examining the circumstances and reviewing all available information related to the situation described above including the referenced service information, the FAA has determined that (1) Twin Commander SB No 208A, dated November 9, 1992, should be incorporated into the current AD; (2) the incorporation of one of the modifications referenced above should be considered terminating action for the currently required repetitive inspections of the spar cap; and (3) AD action should be taken in order to prevent wing structural damage that, if not detected, could progress to the point of failure.

Since an unsafe condition has been identified that is likely to exist or develop in Twin Commander 500, 680, 681, 685, and 690 series airplanes of the same type design, the proposed AD would supersede AD 91–08–09 with a new AD that would (1) retain the requirement of repetitively inspecting the spar cap, and replacing the spar cap if certain corrosion limits are exceeded; (2) incorporate Twin Commander SB No. 208A, dated November 9, 1992; and (3) incorporate the replacement modifications referenced above (as applicable) as terminating action for these repetitive inspections.

The compliance time for the proposed AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time for compliance would be the most desirable method because the unsafe condition described by the proposed AD is caused by corrosion. Corrosion can occur on airplanes regardless of whether the airplane is in service.

The FAA estimates that 562 airplanes in the U.S. registry would be affected by the proposed AD, that it would take between 110 and 162 workhours per airplane (varies by model; a weighted average of 146 workhours) to accomplish the proposed inspection, and that the average labor rate is approximately $55 an hour. Based on these figures, the total initial cost impact of the inspection specified by the proposed AD on U.S. operators is estimated to be $4,688,980 ($8,343 per airplane). As previously discussed, 10 of the 562 affected airplanes have already accomplished the proposed inspection. This would reduce the initial cost impact of the inspection specified by the proposed AD on U.S. operators to $4,432,560.

The inspections currently required by AD 91–08–09 carry an earlier FAA-estimated cost impact on U.S. operators of $880 (16 workhours × $55 per hour) per airplane. In actuality, those inspections range from $1,100 (20 workhours × $55 per hour) to $1,980 (36 workhours × $55 per hour) depending on the airplane model. Because of the more comprehensive inspection procedures specified in Twin Commander SB No. 208A, the initial cost impact of the inspections of the proposed AD carry an additional cost impact of between $4,950 to $6,930 per airplane over that which is already required by AD 91–08–09. The proposed AD provides owners of the affected airplanes some relief from some of the provisions of AD 91–08–09. For example:

- If no corrosion is found, the proposed AD would require repetitive inspections at 36-calendar month intervals instead of 12-calendar month intervals, which is a savings of between $2,200 to $3,960 over the next 24 calendar months depending on the airplane model.
- If corrosion is less than 50 percent of the allowable service limits referenced in Twin Commander SB 208A, the proposed AD would require reinspection at 30-calendar month intervals instead of 12-calendar month intervals, which is a savings of between $2,750 to $4,950 over the next 30 calendar months depending on the airplane model.
- Replacing the spar cap terminates this repetitive inspection requirement, which is a savings of $1,100 to $1,980 per year depending on the airplane model.

In addition, if the proposed inspection revealed corrosion in excess of certain established limits, then replacing the spar cap would be required at a cost of approximately $100,000, parts and labor included. If the spar cap did not reveal corrosion in excess of certain established limits, then an airplane affected by the proposed AD could have an incremental compliance cost as low as $4,950 (proposed inspection cost at 110 workhours minus the cost of the inspection required by AD 91–08–09) or $6,930 (proposed inspection cost at 162 workhours minus the cost of the inspection required by AD 91–08–09). If replacing the spar cap would be necessary, an airplane affected by the proposed AD could have an incremental compliance cost as high as approximately $104,950 (inspection at 110 workhours minus the cost of the inspection required by AD 91–08–09 plus spar cap replacement) to $106,930 (inspection at 162 workhours minus the cost of the inspection required by AD 91–08–09 plus spar cap replacement).

The FAA cannot predict the results of the proposed inspections, especially as the airplanes continue to age. Approximately 61 percent of the airplanes inspected in accordance with Twin Commander SB No. 208 (AD 91–08–09) had no significant spar cap corrosion, 24 percent had less than 50 percent of the established corrosion service limits, and 13 percent had between 50 to 100 percent of the established corrosion service limits. Less than 3 percent of the airplanes exceeded the established corrosion service limits.

Based on an expected average remaining operating life of 20, 25, or 30 years per affected airplane (depending on the model), the incremental annualized compliance cost would be:

- If only repetitively inspecting the spar cap is necessary for airplanes with an average operating life of 20 years: $904 to $7,239 incremental annualized cost (depending on the airplane model and frequency of inspection, and using a 7 percent interest rate);
- If only repetitively inspecting the spar cap is necessary for airplanes with an average operating life of 25 years: $1,195 to $7,176 incremental annualized cost (depending on the airplane model and frequency of inspection, and using a 7 percent interest rate);
- If only repetitively inspecting the spar cap is necessary for airplanes with an average operating life of 30 years: $1,290 to $7,495 incremental annualized cost (depending on the airplane model and frequency of inspection, and using a 7 percent interest rate);
- If replacing the spar cap is necessary for airplanes with an average operating life of 20 years: approximately $9,675 incremental annualized cost (using a 7 percent interest rate) if the spar cap is replaced during the first inspection.
- If replacing the spar cap is necessary for airplanes with an average operating life of 25 years: approximately $8,719 incremental annualized cost (using a 7 percent interest rate) if the spar cap is replaced during the first inspection.
- If replacing the spar cap is necessary for airplanes with an average operating life of 30 years: approximately $8,145 incremental annualized cost (using a 7 percent interest rate) if the spar cap is replaced during the first inspection.

The proposed AD's from Dockets No. 92–CE–26–AD (for Model 500S and 690B), No. 92–CE–38–AD (for Models 685, 690, 690A, and 690B), and No. 92 CE–43–AD (for Models 500S, 500U,

680FL, 680FL(P), 680W, and 681), would also affect certain airplanes included in this proposed AD. The compliance costs of these other proposed AD's would add to the cost discussed above. However, replacing the spar cap would only be required once, so the $100,000 replacement cost, if required, would be a one-time action.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions.

The 562 U.S.-registered airplanes affected by the proposed AD are owned according to the following breakdown: 92 by individuals, 7 by U.S. government agencies, 20 by states or local governments, and 443 by other entities. Twenty seven entities each own more than one of the affected airplanes: one owns 7, four own 5 each, three own 3 each, and nineteen own 2 each.

The FAA cannot determine the sizes of all the non-individual owner entities nor the relative significance of the costs estimated above. Because of these uncertainties, no cost thresholds for significant economic impact can be reasonably determined. The FAA solicits comments concerning the impact of this proposed AD on small entity owners of affected airplanes. Based on the possibility that this proposed AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and he States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of substantial public interest; and, (3) if promulgated, may have a significant economic impact on a substantial number of small entities. The FAA has conducted an Initial Regulatory Flexibility Determination and Analysis and has considered alternatives to this proposal that could minimize the impact on small entities. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES". After careful consideration, the FAA has determined that the proposed action is the best course to achieve the safety objective of returning the airplane to its original certification level of safety. Alternative actions and views are solicited from interested persons and will be considered by the FAA in the development of the final rule.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91–09–09, Amendment 39–6965 (56 FR 14307, April 9, 1991), and by adding the following new airworthiness directive:

Twin Commander Aircraft Corporation: Docket No. 92–CE–58–AD. Supersedes AD 91–08–09, Amendment 39–6965.

Applicability: The following model and serial number airplanes that do not have the wing front spar lower cap replaced in accordance with the procedures of one of the three modifications specified in paragraph (c) of this AD, certificated in any category:

Models	Serial No.
500U, 680FL, 680FL(P), and 680W.	1731 through 1854.
500S	1755 through 3323.
681	6001 through 6072.
685	12000 through 12066.
690, 690A, and 690B	11001 though 11566.

Compliance: Required within the next 90 calendar days after the effective date of this AD or within 12 calendar months after the last inspection required by AD 91–08–09, whichever occurs later, unless already accomplished, and thereafter as indicated.

To prevent wing structural damage that, if not detected, could progress to the point of failure, accomplish the following:

Note 1: The serial number of the Model 685 airplanes differs from that specified in Twin Commander Service Bulletin (SB) No. 208A, dated November 9, 1992. This AD takes precedence over that service information.

(a) Ultrasonically inspect each area of the wing front spar lower cap for corrosion in accordance with the instructions in Twin Commander SB No. 208A, dated November 9, 1992.

(1) If no corrosion is found, reinspect within the next 36 calendar months.

(2) If corrosion is found that is less than 50 percent of the allowable service limits referenced in Table 1 of Twin Commander SB No. 208A, dated November 9, 1992, reinspect within the next 30 calendar months.

(3) If corrosion is found to be between 50 to 100 percent of the allowable service limits referenced in Table 1 of Twin Commander SB No. 208A, dated November 9, 1992, reinspect within the next 12 calendar months.

(4) If corrosion is found to be greater than 100 percent of the allowable service limits referenced in Table 1 of Twin Commander SB No. 208A, dated November 9, 1992, prior to further flight, replace the wing front spar lower cap in accordance with one of the replacement modifications referenced in paragraph (b) of this AD.

(b) The inspection requirement of this AD may be eliminated by replacing the wing front lower spar cap in accordance with the instructions in one of the following, as applicable:

(1) For Models 685, 690, 690A, and 690B: Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992.

(2) For Models 500S, 500U, 680FL, and 680FL(P): Twin Commander Custom Kit No. CK–145, dated August 21, 1992;

(3) For Models 690, 690A, and 690B: AVIADESIGN, Inc. Supplemental Type Certificate SA5740NM.

(4) For Models 680W and 681: replacement procedures from the manufacturer through the Manager, Seattle Aircraft Certification Office, at the address specified in paragraph (d) of this AD.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to

operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial and repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 91–08–09, Amendment 39–6965.

Issued in Kansas City, Missouri, on June 24, 1993.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–15364 Filed 6–29–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–CE–43–AD]

Airworthiness Directives: Twin Commander Aircraft Corporation 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 65–06–01, which currently requires repetitively inspecting the wing front spar lower cap (spar cap) of both the left and right wings on certain Twin Commander Aircraft Corporation (Twin Commander) 500 and 600 series airplanes, and replacing any cracked spar cap. Front spar lower cap cracks have developed on certain Twin Commander model airplanes that are not affected by AD 65–06–01, and the manufacturer has updated the inspection procedures through improved service information. The proposed action would retain the inspections and repair requirements of AD 65–06–01, but would require inspecting in accordance with updated service information and would increase the effectivity to include other model airplanes. The actions specified by the proposed AD are intended to prevent failure of the wing structure caused by cracks in the spar cap.

DATES: Comments must be received on or before September 15, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–43–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056; Telephone (206) 227–2594.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA- public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–CE–43–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–43–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 65–06–01, Amendment 39–1053, currently requires repetitively inspecting the spar cap of both the left and right wings at Wing Station (WS) 24 on certain Twin Commander 500 and 600 series airplanes, and replacing any cracked spar cap.

Recently, the FAA has received reports of spar cap cracks on certain Twin Commander model airplanes that are not affected by AD 65–06–01. In addition, Twin Commander has issued Service Bulletin (SB) No. 90C, dated March 30, 1992, and Service Publications revision notice of SB No. 90C, Revision 1, dated June 5, 1992. These service documents provide updated procedures for inspecting the spar caps at WS 24 on certain Twin Commander 500, 600, and 700 series airplanes. In addition, Twin Commander Custom Kit No. CK–145, dated August 21, 1992, specifies procedures for replacing the spar cap on the Models 500S, 500U, 680FL, 680FL(P), 680W, and 681 airplanes.

Of the 1,303 airplanes registered in the United States that would be affected by the proposed AD, 1,025 of these airplanes are currently affected by AD 65–06–01. Of the 307 additional airplanes not affected by AD 65–06–01, 39 have already accomplished the proposed actions. One of these airplanes required spar cap replacement.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that AD action should be taken in order to prevent failure of the wing structure caused by cracks in the spar cap.

Since an unsafe condition has been identified that is likely to exist or develop in other Twin Commander 500 600, and 700 series airplanes of the same type design, the proposed action would supersede AD 65–06–01 with a new AD that would (1) retain the inspection and repair requirements of the spar caps required by AD 65–06–01; (2) incorporate the updated service information into the proposed AD; and (3) increase the effectivity of the current

AD to include other airplane models of the Twin Commander 500, 600, and 700 series. The proposed inspections would be accomplished in accordance with Twin Commander SB No. 90C, dated March 30, 1992, and Twin Commander Service Publications revision notice of SB No. 90C, Revision 1, dated June 5, 1992.

The FAA estimates that 1,303 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 32 (average) workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts would not be required for 1,054 airplanes, and parts would cost approximately $700 per airplane for 105 airplanes and $1,700 per airplane for 144 airplanes. Based on these figures, the total cost impact of the inspections specified in the proposed AD on U.S. operators is estimated to be $2,611,580 (cost per airplane varies by model).

AD 65–06–01 currently requires the same actions as the proposed AD on 1,025 of 1,303 airplanes. Of the remaining 307 airplanes affected by the proposed AD, the FAA estimates that it would take approximately 18 workhours for 156 airplanes and 100 workhours for 151 airplanes, depending upon the particular model. Parts would not be required for 156 airplanes and would cost approximately $1,700 for 151 airplanes. Based on these figures, the cost impact of the proposed AD upon U.S. operators not already affected by AD 65–06–01 would be approximately $1,241,640 (cost per airplane varies by model).

In addition, if the proposed inspection would reveal cracks in the spar cap, replacing the spar cap would be required at a cost of approximately $100,000, parts and labor included. An airplane affected by the proposed AD could have a compliance cost as low as approximately $990 (18 workhours) or $7,200 (100 workhours) if cracks were not found during the inspection, and as high as approximately $100,990 (inspection using 18 workhours + spar replacement) to $107,200 (inspection using 100 workhours + spar replacement) if the operator replaces the spar cap.

The FAA estimates that the airplanes that would be affected by the proposed AD are utilized an average of approximately 200 hours time-in-service per year, or an average time-interval between the proposed inspections of 2.5 years.

Based on an expected average remaining operating life of 20 years per affected airplane, the annualized compliance cost would be:

- If only repetitively inspecting the spar cap is necessary at 18 workhours: $456 annualized cost (using a 7 percent interest rate);
- If only repetitively inspecting the spar is necessary at 100 workhours: $2,700 annualized cost (using a 7 percent interest rate); or
- If replacing the spar cap is necessary: approximately $9,971 annualized cost (with 18 workhours for inspection and using a 7 percent interest rate) and $10,372 annualized cost (with 100 workhours for inspection and using a 7 percent interest rate) if the spar cap is replaced during the first inspection.

The proposed AD's from Dockets No. 92–CE–26–AD (for Model 500S), No. 92–CE–57–AD (for Models 500, 560A, 560E, 680, 680E, and 720), and No. 92–CE–58–AD (for Models 500S, 500U, 680FL, 680W, and 681), would also affect certain airplanes included in this proposed AD. The compliance costs of these other proposed AD's would add to the cost discussed above. However, replacing the spar cap would only be required once, so the $100,000 replacement cost, if required, would be a one-time action.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions.

The 307 U.S.-registered airplanes affected by the proposed AD that are not already affected by AD 65–06–01 are owned according to the following breakdown: 80 by individuals, 3 by U.S. government agencies, 9 by states or local governments, and 215 by other entities. Four entities own more than one of the affected airplanes that are not affected by AD 65–06–01: two own 2 each, and two own 5 each. Three entities own models that would be affected by this proposed AD, as well as AD 65–06–01.

The FAA cannot determine the sizes of all the affected non-individual owner entities nor the relative significance of the costs estimated above. Because of these uncertainties, no cost thresholds for significant economic impact can be reasonably determined. The FAA solicits comments concerning the impact of this proposed AD on small entity owners of affected airplanes. Based on the possibility that this proposed AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of substantial public interest; and, (3) if promulgated, may have a significant economic impact on a substantial number of small entities. The FAA has conducted an Initial Regulatory Flexibility Determination and Analysis and has considered alternatives to this proposal that could minimize the impact on small entities. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES". After careful consideration, the FAA has determined that the proposed action is the best course to achieve the safety objective of returning the airplane to its original certification level of safety. Alternative actions and views are solicited from interested persons and will be considered by the FAA in the development of the final rule.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 65–06–01, Amendment 39–1053, and by adding the following new airworthiness directive:

Twin Commander Aircraft Corporation: Docket No. 92–CE–43–AD. Supersedes AD 65–06–01, Amendment 39–1053.

Applicability: All serial numbers of the following model airplanes, certificated in any category:

500	500A	500B	500S	500U
520	560	560A	560E	560F
680	680E	680F	680FL(P)	680FL
680T	680V	680W	681	720

Compliance: Required initially within the next 50 hours time-in-service (TIS), unless already accomplished (compliance with superseded AD 65–06–01), or 500 hours after the wing front lower spar cap was replaced in accordance with one of the three modifications referenced in paragraph (b) of this AD, whichever occurs later, and thereafter at intervals not to exceed 500 hours TIS.

Note 1: Although not required, it is recommended that airplanes utilized for survey usage and low altitude usage (below 1,000 fee AGL) reinspect at more periodic intervals described below and specified in Twin Commander Service Publications revision notice of Service Bulletin No. 90C, Revision 1, dated June 5, 1992:

Usage	Hours TIS
Survey	200
Low Altitude	100

To prevent failure of the wing structure caused by cracks in the lower front spar cap, accomplish the following:

(a) Inspect the wing front spar lower cap at left and right Wing Station 24 in accordance with the instructions in the applicable part of Twin Commander SB No. 90C, dated March 30, 1992, and Twin Commander Service Publications revision notice of SB No. 90C, Revision 1, dated June 5, 1992. The applicable part of the referenced service bulletin is outlined below:

(1) Part I: Models 500, 500A, 500B, 500S, 500U, 520, 560, 560A, 560E, 560F, 680, 680E, 680F, 680F(P), and 720 airplanes.

(2) Part II: Models 680FL and 680FL(P) airplanes.

(3) Part III: Models 680FL, 680FL(P), 680T, 680V, 680W, and 681 airplanes.

(b) If cracks are found, prior to further flight, replace the wing front spar lower cap in accordance with one of the following, as applicable:

(1) For Models 500S, 500U, 680FL, 680FL(P), 680W, and 681—the instructions in Twin Commander Custom Kit No. CK–145, dated August 21, 1992; or

(2) For Models 500, 500A, 500B, 520, 560, 560A, 560E, 560F, 680E, 680F, 680T, 680V, 680W, and 720—obtain replacement procedures from the manufacturer through the Manager, Seattle Aircraft Certification Office, at the address specified in paragraph (d) of this AD.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial and repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 65–06–01, Amendment 39–1053.

Issued in Kansas City, Missouri, on June 24, 1993.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–15359 Filed 6–29–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–CE–26–AD]

Airworthiness Directives: Twin Commander Aircraft Corporation Models 500S and 690B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Twin Commander Aircraft Corporation (Twin Commander) Models 500S and 690B airplanes. The proposed action would require removing a sample of the wing front spar lower cap (spar cap) material for examination, and, depending upon the results of that examination, inspecting or replacing the spar cap. The Federal Aviation Administration (FAA) has received reports of cracks caused by stress corrosion in the spar cap of the affected airplanes. The actions specified by the proposed AD are intended to prevent failure of the wing structure caused by cracks in the spar cap.

DATES: Comments must be received on or before September 15, 1993.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–26–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive, NE, Arlington, Washington 98223. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056; Telephone (206) 227–2594.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following

statement is made: "Comments to Docket No. 92–CE–26–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–26–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of cracks caused by stress corrosion in the spar cap of certain Twin Commander Models 500S and 690B airplanes. Further analysis revealed that the airplanes with stress corrosion cracks in the spar cap contained an unusual spar cap grain structure. The FAA has determined that airplanes with this type of unusual spar cap grain structure are susceptible to stress corrosion cracking when exposed to a corrosive environment. If not detected and corrected, a cracked spar cap could result in failure of the wing structure.

Twin Commander has issued Service Bulletin (SB) No. 215, dated March 3, 1992, which specifies procedures for removing a sample of the spar cap material for metallurgical examination. This examination would compare this material with that of the grain structure found in airplanes with cracks in the spar cap to determine if either spar cap replacement or additional inspection procedures would be necessary. Twin Commander SB No. 215 also specifies that the EMTEC Corporation will verbally notify the airplane owner/operator of the metallurgical inspection results on the next working day following receipt of the coupon. In addition, the following service information specifies procedures for replacing the spar cap, if required:

- Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992, which applies to Twin Commander Model 690B airplanes.
- Twin Commander Custom Kit No. CK–145, dated August 21, 1992, which applies to Twin Commander Model 500S airplanes.
- AVIADESIGN, Inc. Supplemental Type Certificate (STC), dated July 16, 1992, which applies to Twin Commander Model 690B airplanes.

Of the 80 affected airplanes registered in the United States, 34 have already accomplished the proposed inspection in accordance with Twin Commander SB No. 215, dated March 3, 1992. For five of these airplanes, or approximately 15 percent, the examination revealed a grain structure that would require spar cap replacement under the criteria of this proposed AD. These five airplane operators voluntarily replaced the spar cap in order to assure safety of their airplane.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that AD action should be taken to prevent failure of the wing structure caused by cracks in the spar cap.

Since an unsafe condition has been identified that is likely to exist or develop in other Twin Commander Models 500S and 690B airplanes of the same type design that have spar caps manufactured from the same lot of extrusion material, the proposed AD would require removing a sample of the spar cap material for examination, and, depending upon the results of the examination, inspecting or replacing the spar cap. The proposed actions would be accomplished in accordance with the service information described above.

The FAA estimates that 80 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 15 workhours hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $32 per airplane, and the metallurgical inspection would cost approximately $150. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $81,360. As previously discussed, 34 of the 80 affected airplanes have already accomplished the proposed actions. This would reduce the cost impact of the proposed AD upon U.S. operators to $56,392. The manufacturer would also incur the cost of the proposed metallurgical examination. The EMTEC Corporation would bill the manufacturer and send the results of the proposed inspection to the airplane owner/operator. This would further reduce the cost impact upon U.S. operators by $8,400 from $56,392 to $48,992.

In addition, if the proposed examination would reveal a fine equi-axed grain structure, replacing the spar cap would be required at a cost of approximately $100,000, parts and labor included. If the proposed examination would reveal an unusual grain structure that was not a fine equi-axed structure, inspecting the spar cap for stress corrosion would be required at a cost of approximately $2,750 (50 workhours at $55 per hour). An airplane affected by the proposed AD could have a compliance cost as low as $1,007 if the spar cap was found acceptable during the metallurgical examination, and as high as approximately $100,857 if the operator replaces the spar cap.

Based on an expected average remaining operating life of 30 years per affected airplane, the annualized compliance cost would be:

- If only a metallurgical examination is necessary: $1,007 − $150 (cost incurred by manufacturer) = $857 × 0.8145 (capital recovery factor at an interest rate of 7 percent) = $70 annualized cost; or
- If replacing the spar cap is necessary: approximately $100,857 × 0.8145 (capital recovery factor at an interest rate of 7 percent) = $8,215 annualized cost.

The proposed AD's from Dockets No. 92–CE–38–AD (for Model 690B), No. 92–CE–43–AD (for Model 500S), and No. 92–CE–58–AD (for both Models 500S and 690B) would also affect certain airplanes included in this proposed AD. The compliance costs of these other proposed AD's would add to the cost discussed above. However, replacing the spar cap would only be required once, so the $100,000 replacement cost, if required, would be a one-time action.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions.

Of the 56 U.S.-registered airplanes affected by the proposed AD that have not complied with Twin Commander SB No. 215, dated March 3, 1992, no owner owns more than one. Of these 56 different owners, 50 are businesses, not-for-profit enterprises, or state or local governments; and six are individuals.

The FAA cannot determine the sizes of all the 50 non-individual owner entities nor the relative significance of the costs estimated above. Because of these uncertainties, no cost thresholds for significant economic impact can be reasonably determined. The FAA

solicits comments concerning the impact of this proposed AD on small entity owners of affected airplanes. Based on the possibility that this proposed AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of substantial public interest; and, (3) if promulgated, may have a significant economic impact on a substantial number of small entities. The FAA has conducted an Initial Regulatory Flexibility Determination and Analysis and has considered alternatives to this proposal that could minimize the impact on small entities. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES". After careful consideration, the FAA has determined that the proposed action is the best course to achieve the safety objective of returning the airplane to its original certification level of safety. Alternative actions and views are solicited from interested persons and will be considered by the FAA in the development of the final rule.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Twin Commander Aircraft Corporation: Docket No. 92–CE–26–AD.

Applicability: The following Model and serial number airplanes, certificated in any category:

Model	Serial No.
500S	3314 through 3323.
690B	11480 through 11566.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the wing structure caused by stress corrosion cracks in the wing front spar lower cap, accomplish the following:

(a) Remove a sample (coupon) of the wing front spar lower cap in accordance with the INSTRUCTIONS: PART I section (Model 500S airplanes) or the INSTRUCTIONS: PART II section (Models 690B airplanes) of Twin Commander Service Bulletin (SB) No. 215, dated March 3, 1992, as applicable. Prior to further flight, send this coupon for a metallurgical examination to the EMTEC Corporation, 124 East Sheridan, Suite 101, Oklahoma City, Oklahoma 73104, and wait for the results of the examination.

Note 1: The manufacturer will incur the cost of the required metallurgical examination. The EMTEC Corporation will bill the manufacturer and send the results of the inspection to the airplane owner/operator.

(b) If the results of the metallurgical examination required by paragraph (a) of this AD reveal a fine equi-axed grain structure, prior to further flight, replace the wing front spar lower cap in accordance with the instructions in one of the following, as applicable:

(1) For Model 690B, Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992.

(2) For Model 500S, Twin Commander Custom Kit No. CK–145, dated August 21, 1992; or

(3) For Model 690B, AVIADESIGN, Inc. Supplemental Type Certificate SA5740NM.

Note 2: A fine equi-axed grain structure refers to a grain structure that is approximately equal in all three axes and the grains are considerably smaller than what is typical. This is in contrast to the elongated, highly directional grain structure with relatively large grains normally found in extrusions.

(c) If the results of the metallurgical examination required by paragraph (a) of this AD reveal an unusual (but not fine equi-axed) grain structure, prior to further flight, inspect the wing front spar lower cap for stress corrosion cracking in accordance with an inspection procedure approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

(1) Send the results of this inspection in writing to the FAA at the address specified in paragraph (d) of this AD, within 10 days after the inspection or 15 days after the effective date of this AD, whichever occurs later. State whether any cracks or corrosion was found, the location and length of any cracks found, and the location and depth of any corrosion found. (Reporting approved by the Office of Management and Budget under OMB No. 2120–0056).

(2) If any cracks are found, prior to further flight, replace the wing front spar lower cap in accordance with the instructions in one of the following, as applicable:

(i) For Model 690B, Twin Commander Custom Kit No. CK–144, Revision A, dated November 12, 1992.

(ii) For Model 500S, Twin Commander Custom Kit No. CK–145, dated August 21, 1992; or

(iii) For Model 690B, AVIADESIGN, Inc. Supplemental Type Certificate SA5740NM.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Twin Commander Aircraft Corporation, 19003 59th Drive, NE, Arlington, Washington 98223; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 24, 1993.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–15363 Filed 6–29–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–CE–38–AD]

Airworthiness Directives: Twin Commander Aircraft Corporation Models 685, 690, 690A, and 690B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Twin Commander Aircraft Corporation (Twin Commander) Models 685, 690, 690A, and 690B airplanes. The proposed action would require modifying the wing ribs at Wing Station (WS) 39, inspecting (one-time) WS 39 for cracks or corrosion, treating any corrosion found, and replacing any cracked wing front spar lower cap (spar cap). The Federal Aviation Administration (FAA) has received several reports of cracked spar caps and cracked and deformed wing ribs at WS 39 on the affected airplanes. The actions specified by the proposed AD are intended to prevent failure of the wing structure caused by a cracked spar cap or cracked or deformed wing rib at WS 39.

DATES: Comments must be received on or before September 15, 1993.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–38–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Pasion, Aerospace Engineer, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055–4056; Telephone (206) 227–2594.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–CE–38–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–38–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received several reports of cracked spar caps and cracked and deformed wing ribs at WS 39 on certain Twin Commander Models 685, 690, 690A, and 690B airplanes. If not detected and corrected, a cracked spar cap or cracked or deformed wing rib could result in damage to the wing structure to the point of failure.

Twin Commander has issued Service Bulletin (SB) No. 211, Revision 1, dated July 7, 1992, which specifies procedures for (1) inspecting the wing front spar lower cap and lower wing stringer No. 7 at WS 39 for cracks or corrosion; and (2) modifying the wing ribs at WS 39. In addition, the following service information specifies procedures for replacing the spar cap:

- Twin Commander Custom Kit 144, Revision A, dated November 12, 1992, which applies to Models 685, 690, 690A, and 690B airplanes; and
- AVIADESIGN, Inc. Supplemental Type Certificate (STC) SA5740NM, dated July 16, 1992, which applies to Models 690, 690A, and 690B airplanes.

Of the 439 affected airplanes registered in the United States, 89 have already accomplished the proposed inspection in accordance with Twin Commander SB No. 211, Revision 1, dated July 7, 1992. On 2 of these airplanes, the inspection revealed cracks in the spar caps, which required spar cap replacement, and on 34 airplanes, the inspection revealed cracks in the WS 39 rib web, which required wing rib repair.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that AD action should be taken to prevent failure of the wing structure caused by a cracked spar cap or cracked or deformed wing rib.

Since the condition described is likely to exist or develop in other Twin Commander Models 685, 690, 690A, and 690B airplanes of the same type design, the proposed AD would require (1) modifying the wing ribs at WS 39; (2) inspecting (one-time) the main spar lower cap and lower wing stringer No. 7 at WS 39 for cracks or corrosion; and (3) replacing the spar cap if any cracks are found and treating any corrosion found. The proposed actions would be accomplished in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Twin Commander SB No. 211, Revision 1, dated July 7, 1992. If spar cap replacement is required, the procedures from the following service information would be used: Twin Commander Custom Kit 144, Revision A, dated November 12, 1992; or AVIADESIGN, Inc. STC SA5740NM, dated July 16, 1992, as applicable.

The FAA estimates that 439 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 168 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour (total labor cost of $9,240 per airplane). Parts cost approximately $1,300 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,627,060 ($10,540 per airplane). As previously discussed, 89 of the 439 affected airplanes have already accomplished the proposed actions. This would reduce the cost impact of the proposed AD upon U.S. operators from $4,627,060 to $3,689,000.

In addition, if the proposed inspection would reveal cracks or corrosion that exceeds a certain amount, replacing the spar cap would be required at a cost of approximately $100,000 per airplane, parts and labor included. An airplane affected by the proposed AD could have a compliance cost as low as approximately $10,540 (labor + parts) if cracks or corrosion is not found during the inspection, and as high as approximately $110,540 (inspection and modification + spar cap replacement) if the operator replaces the spar cap.

Based on an expected average remaining operating life of 30 years per

affected airplane, the annualized compliance cost would be:

• If only inspecting the spar cap and wing rib at WS 39 and modifying at WS 39 are necessary: $10,540 × 0.8145 (capital recovery factor at a 7 percent interest rate) = $858 annualized cost; or

• If replacing the spar cap is necessary: approximately $110,540 × 0.8145 (capital recovery factor at a 7 percent interest rate) = $9,003 annualized cost.

The proposed AD's from Dockets No. 92–CE–26–AD (for Model 690B) and No. 92–CE–58–AD (for Models 685, 690, 690A, and 690B) would also affect certain airplanes included in this proposed AD. The compliance costs of these other proposed AD's would add to the cost discussed above. However, replacing the spar cap would only be required once, so the $100,000 replacement cost, if required, would be a one-time action.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions.

The 350 U.S -registered airplanes affected by the proposed AD that have not complied with Twin Commander SB No. 211, Revision 1, dated July 7, 1992, are owned according to the following breakdown: 60 by individuals, 2 by U.S. government agencies, 9 by states or local governments, and 279 by other entities. Twenty entities own more than one of the affected airplanes: one owns 7, one owns 5, another owns 4, and the other seventeen own 2 each.

The FAA cannot determine the sizes of all the affected non-individual owner entities nor the relative significance of the costs estimated above. Because of these uncertainties, no cost thresholds for significant economic impact can be reasonably determined. The FAA solicits comments concerning the impact of this proposed AD on small entity owners of affected airplanes. Based on the possibility that this proposed AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of substantial public interest; and, (3) if promulgated, may have a significant economic impact on a substantial number of small entities. The FAA has conducted an Initial Regulatory Flexibility Determination and Analysis and has considered alternatives to this proposal that could minimize the impact on small entities. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES". After careful consideration, the FAA has determined that the proposed action is the best course to achieve the safety objective of returning the airplane to its original certification level of safety. Alternative actions and views are solicited from interested persons and will be considered by the FAA in the development of the final rule.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Twin Commander Aircraft Corporation: Docket No. 92–CE–38–AD.

Applicability: The following Model and serial number airplanes that do not have the wing front spar lower cap replaced in accordance with the procedures of one of the two specified in paragraph (b)(2) of this AD, certificated in any category:

Model	Serial Numbers
685	12000 through 12066
690, 690A, and 690B	11001 through 11566

Note 1: The serial number of the Model 685 airplanes differs from that specified in Twin Commander Service Bulletin (SB) No. 211, Revision 1, dated July 7, 1992. This AD takes precedence over that service information.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the wing structure caused by a cracked wing front spar lower cap or cracked or deformed wing rib at Wing Station (WS) 39, accomplish the following:

(a) Modify the wing ribs at WS 39 in accordance with Part II of the ACCOMPLISHMENT INSTRUCTIONS section of Twin Commander SB No. 211, Revision 1, dated July 7, 1992.

(b) Eddy current inspect the wing front spar lower cap and lower wing stringer No. 7 at WS 39 for cracks or corrosion in accordance with Part I of the ACCOMPLISHMENT INSTRUCTIONS section of Twin Commander SB No. 211, Revision 1, dated July 7, 1992.

(1) If any corrosion is found that is less than .031 inch in the thin flange or .063 inch in the thick section of the wing front lower spar cap, prior to further flight, treat the wing front spar lower cap area that is corroded with corrosion inhibitor such as LPS–3 or ACF–50.

(2) If any cracks are found or any corrosion is found that is equal to or exceeds .031 inch in the thin flange or .063 inch in the thick section of the wing front spar lower cap, prior to further flight, replace the wing front spar lower cap in accordance with the instructions in one of the following, as applicable:

(i) For Models 685, 690, 690A, and 690B—Twin Commander Custom Kit 144, Revision A, dated November 12, 1992; or

(ii) For Models 690, 690A, and 690B—AVIADESIGN, Inc. Supplemental Type Certificate SA5740NM, dated July 16, 1992.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest

Mountain Region, 1601 Lind Avenue S.W., Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Twin Commander Aircraft Corporation, 19003 59th Drive, NE., Arlington, Washington 98223; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on June 24, 1993.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–15362 Filed 6–29–93; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR PARTS 606 AND 610

[DOCKET NO. 91N–0152]

RIN 0905–AC90

Current Good Manufacturing Practices for Blood and Blood Components; Notification of Consignees Receiving Blood and Blood Components at Increased Risk for Transmitting HIV Infection

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations to require that blood establishments prepare and follow written procedures when the blood establishments have collected blood and blood components that are potentially contaminated with human immunodeficiency virus (HIV). This proposal would require that when a donor who previously donated blood subsequently is tested for HIV in accordance with 21 CFR 610.45, and tests repeatably reactive for antibody to HIV, a blood establishment shall perform more specific testing using a licensed test, and notify consignees who received such blood so that appropriate action is taken. Blood establishments and consignees would also be required to quarantine previously collected blood and blood components from such donors. FDA is also proposing that certain transfusion services take steps to notify transfusion recipients. FDA is proposing these rules to help ensure the continued safety of the blood supply, to help ensure that information is provided to users of blood and blood components, and to help ensure that transfusion recipients of potentially contaminated blood and blood components may be notified as appropriate. These procedures are commonly referred to as "look-back" rules.

DATES: Written comments by August 30, 1993. FDA proposes that any final rule based on this proposal be effective 60 days after date of publication of the final rule.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–205), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Paula McKeever, Food and Drug Administration, Center for Biologics Evaluation and Research (HFM–635), 1401 Rockville Pike, Rockville, MD 20859–1448, 301–295–9074.

SUPPLEMENTARY INFORMATION:

I. Introduction

Part 606 (21 CFR part 606) contains current good manufacturing practices (CGMP's) for blood establishments designed to help ensure the continued safety, purity, potency, and efficacy of blood and blood components. The regulations in this part apply to both licensed and unlicensed blood establishments. Blood establishments include human blood and plasma donor centers, blood banks, transfusion services, other blood product manufacturers and independent laboratories that engage in quality control and testing for registered blood product establishments (21 CFR 607.3(c)). Consignees are included in the definition of blood establishments. In addition, part 610 (21 CFR part 610) provides rules and testing standards generally applicable to biological products, including blood and blood components.

HIV is the virus that causes acquired immunodeficiency syndrome (AIDS), a communicable disease that can be transmitted through blood and blood components contaminated with HIV. FDA has implemented an extensive system of additional testing and donor screening procedures, performed before, during, and after donation takes place, to help prevent the transfusion of blood components that are potentially contaminated with HIV. Beginning in 1983, the Public Health Service (PHS) issued recommendations that individuals who engaged in high risk practices for AIDS voluntarily refrain from donating blood or plasma. See Morbidity and Mortality Weekly Report (MMWR), 32:101–103, 1983. Beginning in 1985, FDA licensed kits to test for antibody to HIV, and blood banks began testing units of blood and blood components for antibody to HIV (ref. 1). Since 1988, FDA has required that units of blood and blood components be tested for antibody to HIV using licensed tests (21 CFR 610.45). Since 1986, confidential unit exclusion and donor history interviews have become a routine part of the donation procedure, so that donors may indicate confidentially if their units should be excluded from the blood supply. FDA's recommendations regarding these procedures have been revised periodically as additional information regarding the epidemiology of HIV has become available. The most recent recommendation was issued to all registered blood establishments on December 5, 1990 (ref. 2). These procedures are designed to help ensure the continued safety of the blood supply.

As a result of this effort, the possibility of transmitting HIV through blood transfusion has decreased significantly. Within the last 3 years, the risk of HIV transmission via blood transfusion has been estimated to be between 1 in 38,000 and 1 in 153,000.[1] However, it remains possible, despite the best practices of a blood establishment, that a person might donate blood early in infection, during the "window" period, when the HIV antibody test remains negative but HIV is present in the person's blood. Accordingly, a recipient of such a donation may not know that he or she may have become infected with HIV. If the same donor attempts to donate blood at a later date, the test for antibody to HIV then may be repeatably reactive. FDA and the Health Care Financing Administration (HCFA) are proposing steps designed to further protect the blood supply and to notify recipients of the possibility that they

[1] A 1988 Centers for Disease Control report based on a theoretical model estimated the risk of transfusion in a worst-case scenario at 1:38,000. A 1989 report by the American Red Cross, based on semi-empirical data, estimated the risk at 1:153,000. Other studies estimated the risk between 1:50,000 and 1:68,000. Busch, M. et al., New England Journal of Medicine, 1991, 325:1–5; Cohen, N. D. et al., New England Journal of Medicine, 1989, 320:1172–1176; Kleinman et al., Transfusion, 1988, 28:499–501.

may have received blood products contaminated with HIV. FDA's proposal, along with HCFA's proposal published elsewhere in this **Federal Register**, would require facilities involved in the collection, processing, and administration of blood to quarantine certain blood and blood components and to inform the consignee, and, as appropriate, the recipient's attending physician or the recipient, of the possibility that blood previously used for transfusion was obtained from a donor who subsequently tested repeatably reactive for antibody to HIV. These rules would result in transfusion recipients receiving information so they can be tested for evidence of HIV infection, receive early treatment, if indicated, and take appropriate precautions to prevent the further spread of the virus.

Under certain circumstances, PHS has already encouraged direct notification of transfusion recipients at increased risk for HIV infection. In the MMWR of March 20, 1987, PHS recommended testing and counseling for individuals who received multiple transfusions of unscreened blood in areas with a high incidence of AIDS. A number of blood centers and transfusion services have attempted direct notification by letter of all patients who received transfusions between 1977 and 1985. Data collected from these efforts indicate that sweeping notification of a group of recipients is extremely resource-intensive, and particularly where recipients are unaware of donors' risk factors, recipients are not motivated to respond and the effort is not very effective.[2] A 1988 PHS mailing of AIDS information to all the nation's households included a notification of the need for testing for antibody to HIV for patients who received a transfusion between the years 1977 and 1986. MMWR, 37:261–269, 1988. FDA believes that these proposed rules, in conjunction with those being proposed by HCFA elsewhere in this **Federal Register**, will provide a more efficient means of notification.[3]

II. Coordination Between HHS Agencies

A. Memorandum of Understanding

In a memorandum of understanding (MOU), FDA and HCFA agreed to coordinate the inspections of blood banks and transfusion services to minimize duplication of effort and to reduce the burden on affected facilities. In the MOU, it was estimated that HCFA would be responsible for inspecting and surveying approximately 3,000 transfusion services. FDA continues to conduct the inspections of establishments where activities include more than the performance of compatibility testing. (See 49 FR 34448 (August 31, 1984), 21 CFR 607.65.)

B. Locating Blood Donors

The Social Security Administration operates a Blood Donor Locater Service (BDLS) to enable States and authorized blood donation facilities to notify blood donors whose donations indicate that they are or may be infected with HIV. Section 205(c)(2)(D) of the Social Security Act (42 U.S.C. 405(c)(2)(D)) permits States to require a blood donor to furnish his or her social security number (SSN) to a State agency or to an authorized blood donation facility. With the SSN, an authorized blood donation facility may request the State to contact the BDLS to obtain the donor's mailing address. The State agency may also make a request on its own behalf for this information to the BDLS.

C. Summary of the Proposed Rules of HCFA and FDA

Under proposed §§ 606.100(b)(19) and 610.46(a), an establishment would be required to quarantine, and to notify the consignees regarding the need to quarantine, certain blood and blood components previously collected from a donor who subsequently tests repeatably reactive for antibody to HIV. The proposed rule, would also require consignees to quarantine such products. Under proposed § 610.46(b), in situations in which blood establishments distributed such units, blood establishments would be required to test by a licensed, more specific test, the donor's blood sample from the current donation that tested repeatably reactive. Blood establishments would be required to notify the consignees of the results of the licensed, more specific test. If the licensed, more specific test result is negative, the units from prior collections are regarded as negative for antibody to HIV, and the prior collections, which previously tested negative, may be released from quarantine under proposed § 610.46(c). If the licensed, more specific test result is positive or indeterminate, the units from prior collections may not be released from quarantine. The blood establishment would be required to dispose of extant products located at the establishment and to notify the consignees of the test result and of the need for the appropriate disposal of extant products. The general requirements for disposal of unsuitable products would apply to the specific situation where a product does not qualify for release from quarantine under this proposal. FDA has provided guidance to establishments for disposal of unsuitable products (ref. 3). If the licensed, more specific test result is positive, the blood establishment would be required to report the positive result to consignees that received units from prior collection, so that steps are taken to initiate notification of the attending physicians of transfusion recipients.

Under proposed § 606.160(b)(1)(vii), FDA would amend its biologics regulations to require blood establishments to prepare and maintain records so that previous donations from a donor could be identified, and to keep records of the look-back process. As with other records related to recipient health and donor suitability, the confidentiality of such donor and recipient records should be protected, consistent with evolved practices, standard operating procedures (SOP's), generally-recognized policies and expectations, and local, State, and Federal requirements.

Under HCFA's proposed rule, issued elsewhere in this **Federal Register**, transfusion services or other blood establishments inspected by HCFA that are notified by a blood establishment that a donor of blood products shipped to them for transfusion subsequently has tested positive by a licensed, more specific test for antibody to HIV would be required to notify the recipient's attending physician, the recipient, or other authorized person, as appropriate. HCFA has proposed to require the transfusion service to have a written agreement with each blood supplier documenting these procedures. We are especially interested in receiving comments on whether this proposed requirement would be more appropriately implemented as part of the FDA requirements applicable to blood banks or in the manner proposed, as part of a medicare hospital standard. Under FDA's proposed rule, transfusion services inspected by FDA that are so notified also would be required to notify the recipient's attending physician, the recipient, or other authorized person as appropriate.

The agencies are taking these actions to address blood safety issues affecting transfusion recipients who may be at increased risk for HIV infection, and to restrict the use of potentially infectious blood and blood components in the

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[2] See e.g., Busch, M.P. et al., "Risk of Human Immunodeficiency Virus (HIV) Transmission by Blood Transfusion Before the Implementation of HIV–1 Antibody Screening," Transfusion, 1991, 31:4–12.

[3] Ibid. See also Busch, M.P. et al., "Is Lookback Doing the Job?" (letter), Transfusion, 27:503–504, 1987; Sampson et al., "Identification of HIV Infection in Transfusion Recipients: The utility of cross-referencing previous donor records with AIDS case reports," Transfusion, 30:214–218, 1990.

manufacture of injectable and noninjectable blood products.

III. FDA'S Proposed Rule

Under the biologics licensing and quarantine provisions of the Public Health Service Act (42 U.S.C. 262–264) and the drug, device, and the general administrative provisions of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351–353, 355–360, 371–374), FDA has the authority to promulgate regulations to protect the public from unsafe or ineffective biological products and to promulgate regulations necessary to prevent the transmission of communicable diseases into the United States or from one State to another.

Under these statutory authorities, FDA currently requires that each donation of blood intended for transfusion, or for use in preparing a product, be tested and found negative for antibody to HIV under § 610.45 (21 CFR 610.45). Existing regulations already restrict the use, for transfusion or further manufacture, of a donation testing repeatably reactive. Although current screening tests for antibody to HIV are very sensitive, antibody testing may not identify all blood units capable of transmitting infection. For this reason, many blood establishments have instituted special precautions when blood has been collected and the donor later tests repeatably reactive for antibody to HIV. These procedures involve determining the suitability of prior collections of blood and blood components from that donor. These procedures also may involve notifying consignees that have received prior collections from the donor so consignees may arrange to determine the suitability of such units, and, if appropriate, may take steps so that recipients of transfusions of those units are notified. These procedures are generally referred to as "look-back."

This proposal would require blood establishments, including consignees, to take certain actions when donors subsequently show evidence of antibody to HIV. These actions include quarantining units from prior collections pending a determination of the suitability of the units, notifying consignees of such units of the need for quarantine, and maintaining records regarding the quarantine and notification. Below is a discussion of the specific provisions of the proposed rules, beginning with a discussion of certain terms used in the rules.

A. The Term "HIV"

Throughout the proposed rule, FDA uses the term "HIV" to refer to HIV–1, the principal virus associated with AIDS in the United States, and HIV–2, a closely related virus, also associated with AIDS. HIV–2 has been found in other parts of the world, but is found only very rarely in the United States. A licensed test is also available that can detect antibody to HIV–2. The licensed test for antibody to HIV–1 may give repeatably reactive results based on cross-reactivity from antibody to HIV–2, but the current HIV–1 tests do not distinguish between antibody to HIV–1 and antibody to HIV–2. FDA is using the more general term "HIV" to require quarantine and notification regardless of whether the establishment has determined that the antibody detected is to HIV–1 or HIV–2.

B. The Term "Repeatably Reactive for Antibody to HIV"

Based on FDA's extensive experience with blood establishments, including annual inspections, FDA believes that the current practice of blood establishments is to screen blood donations with licensed Enzyme Immunoassay (EIA) tests, which detect antibody to HIV. The preamble describes how look-back is to be implemented when an establishment uses licensed EIA tests for donor screening. EIA test results are either negative or repeatably reactive. If the results are negative, the blood and blood components are suitable for use. If the EIA test result is repeatably reactive, then the product is not suitable for use. Establishments then perform licensed Western Blot testing for the purpose of determining the suitability of previously collected units, or for the purpose of counseling the donor.

Although establishments currently use licensed EIA tests in accordance with 21 CFR 610.45(a)(1), other tests may be approved for use under 21 CFR 610.45(a)(2). It is possible that as technology advances, and if other tests become practical for use as screening tests, establishments may seek FDA approval of other tests for donor screening purposes. This proposed rule, like 21 CFR 610.45, is flexible enough to provide for the use of other approved screening tests whether or not they detect HIV antibody. As other tests are approved for screening purposes, FDA will provide guidance on the look-back program using those test technologies.

C. The Term "Promptly"

In proposed § 610.46(a), FDA is proposing that specified actions be performed "promptly" rather than specifying time limits for performing the various steps of the look-back program. For an establishment with existing records on a computerized database, checking records of previous donations to identify the date products were collected, the date the last negative screening test was performed, and to whom the products were distributed often can be performed concurrently with the recording of the donor's repeatably reactive test results. However, for an establishment without this capability, the determination may take longer. Likewise, for a facility that performs licensed, more specific tests on site, the test results may be available more quickly than for a facility that sends samples for testing to an outside laboratory. FDA is using the general term "promptly" in order to recognize that differences will exist. However, within 2 weeks after the donor's repeatably reactive test, the establishment should have the results of the more specific testing, and FDA is proposing a 2-week limit in which the establishment would be required to perform the test and notify consignees of the results. As discussed later in this preamble, the written SOP's of each blood establishment should address the time limits for performing each significant step of its look-back program If the blood establishment is unable to meet the time limits prescribed in the SOP's for a specific task, the reasons for that deviation should be described in the establishment's records.

It is within the blood establishment's customary practices to perform testing, to arrange for appropriate action based on test results, and to maintain contact with consignees regarding, among other things, the quality of the product and services. The agency can estimate reasonable time limits based on this experience, and such time limits can be imposed for these activities. However, FDA is not proposing time limits for the notification of recipients but is relying on HCFA's expertise in the area of hospital practice. Consistent with HCFA's proposed rule, published elsewhere in this issue of the **Federal Register**, FDA believes that the hospital's notification effort should consist of, at the minimum, several attempts by phone or in writing to reach the attending physician or the recipient. The hospital's notification effort should begin immediately after receiving word from the blood bank, and should be completed 8 weeks later. FDA would require that the hospital document the attempts to notify the recipient and indicate whether the recipient was located. FDA specifically invites public comment on the sufficiency of this level of effort. The agency believes that the chain of notification about the potentially infectious blood and/or

blood products should be from the hospital to the recipient's attending physician (physician of record), and that only in rare situations would the recipient receive this notification from the hospital. FDA invites comment as to whether a regulation describing the mechanics of this notification is necessary and whether additional explanation is necessary to identify when the hospital should directly notify the recipient. The agency believes this proposed rule is self-explanatory, but that a stated timeframe may be necessary to determine when the recipient should be notified by the hospital if the attending physician cannot be reached by telephone.

D. Amendments to Part 606—Current Good Manufacturing Practice for Blood and Blood Components

Under 21 CFR part 606, FDA provides CGMP regulations for licensed and unlicensed blood establishments to help ensure the continued safety, purity, potency, and efficacy of blood and blood components. To implement the look-back program, FDA proposes to amend the CGMP regulations regarding written SOP's and records.

1. Standard Operating Procedures

FDA proposes adding new paragraph (b)(19) to § 606.100. Proposed § 606.100(b)(19) would require that establishments have written procedures to look-back at prior donations of blood and blood products from a donor who has previously donated blood and subsequently tests repeatably reactive for antibody to HIV when tested in accordance with § 610.45. The written procedures would be required to describe in detail how obligations under this section would be met. The written SOP's would be required to include procedures to quarantine in-house blood and blood components, including Source Plasma and Recovered Plasma, and products intended for research, whether intended for transfusion or further manufacture, that were obtained from such donors. Consignees are blood establishments, and for clarity the proposed rule provides a separate, express provision requiring consignees to quarantine such products. The written SOP's also would be required to include procedures to notify consignees regarding the need to quarantine such products; procedures to determine the suitability for release of such products held in quarantine; procedures to notify consignees of blood and blood components from such donors of the results of the suitability determination; and procedures to determine the proper disposition of the products as appropriate. The written procedures should include timeframes for meeting each obligation; they should also include a list of persons authorized to provide and receive notification.

2. Records

FDA proposes adding new paragraphs (b)(1)(vii) and (b)(1)(viii) to § 606.160. Proposed § 606.160(b)(1)(vii) would require that an establishment's records be organized in a manner to readily relate a donor with the unit number of each donation from that donor. Many establishments already organize records in this manner to implement existing programs regarding look-back, donor deferrals, recruitment of previous donors, record transfer to computer data banks, and recordkeeping efficiency. FDA is aware, however, that some blood establishments, using their current recordkeeping systems, are unable to readily determine the complete history of donations, including the unit numbers of the blood collected, from a specific donor. Some blood establishments, particularly small blood establishments, have organized information on blood donors by other systems, such as by the date of donation, which would not readily accommodate the proposed look-back procedures. FDA does not propose to require that blood establishments reorder and rerecord all previous information, but proposes that new information be entered on recordkeeping systems that are suitably modified by the proposed effective date. Upon the effective date of the final rule, to the extent that prior recordkeeping systems exist that relate a donor with each previous donation, FDA proposes that an establishment would be required to review its records to identify units for quarantine and consignee notification under proposed § 606.160(b)(1)(vii). Beginning with the effective date of the final rule, FDA proposes to require that donor information be recorded in a manner to readily relate a donor with the unit number of each donation from that donor.

Under proposed § 606.160(b)(1)(viii), FDA would require that records be kept documenting the quarantine, consignee notification, testing, and disposition of products required under proposed § 610.46 (a) and (b). FDA is not proposing at this time specific requirements regarding methods for notification, such as whether notification must be performed in writing by facsimile or overnight mail, certified mail, regular mail, or orally by telephone. The means of notification should be set under each blood establishment's written SOP. However, regarding the information included about the notification, for both initial and followup contacts, the proposed notification records should identify all persons who gave and received the notification, the dates and times of notification, the types and unit numbers of all blood and blood components which are the subject of the notification, the dates that the donor tested repeatably reactive, the dates and results of more specific testing, and other information regarding the notification event. As with similar records related to recipient health and donor suitability, strict confidentiality of these records should be maintained.

E. Amendments to Part 610—General Biological Products Standards

Under proposed § 610.46(a), when a blood donor tests repeatably reactive for antibody to HIV, an establishment would be required to quarantine units collected from this donor within the past 5 years if intended for transfusion, and to quarantine units collected within the past 6 months if intended for further manufacture. The blood establishment would be required to promptly notify consignees who would also be required to quarantine such products.

Under proposed § 610.46(b), if a blood establishment distributed such units, the blood establishment would be required to perform a licensed, more specific test for antibody to HIV. Within 2 weeks after the donor's repeatably reactive test, the blood establishment would be required to notify the consignees of the results of the licensed, more specific test: Whether positive, indeterminate, negative, or unavailable. Proposed § 610.46(c) provides specific circumstances for the release of products from quarantine based on the evaluation of the test result. FDA intends that these proposed requirements apply to blood and blood components intended for transfusion or further manufacture, including blood and blood components intended for research use. Thus, establishments would be required to meet the standards for all blood and blood components intended for transfusion or for further manufacture, as applicable.

Under existing § 610.45, blood and blood components, including plasma, that are repeatably reactive to a test for antibody to HIV are subject to restrictions on use, regardless of the results of subsequent testing. FDA does not propose that the units testing repeatably reactive would be releasable if the results of more specific testing are negative. The units that would be releasable under this proposed rule are only those blood and blood components

from previous donations that have been tested and found negative for antibody to HIV; FDA does not propose to amend the restrictions in § 610.45. Products collected at the time the donor tests repeatably reactive must not be reissued for any purpose, except as provided in § 610.45(c). Additionally, FDA does not propose to change the recommendations restricting the reentry of donors whose screening test results are repeatably reactive. The current procedures for donor reentry were provided by FDA in its memorandum to all blood establishments of December 5, 1990 (Ref. 2). FDA proposes to amend § 610.45 for clarity, to refer to the requirements of §§ 610.46 and 610.47. HCFA regulations expressly reference § 610.45, therefore, an express referral in § 610.45 to §§ 610.46 and 610.47 will facilitate HCFA-regulated facilities in recognizing all requirements related to the test for antibody to HIV.

1. Quarantine and Notification Procedure

Proposed § 610.46 would require quarantine of previously collected products and notification of consignees in specified circumstances. FDA proposes that blood establishments be required to follow, at a minimum, the precautions listed below, and that they be performed promptly when a previous donor of blood and blood components subsequently tests repeatably reactive for antibody to HIV:

a. Quarantine and notification of consignees for blood and blood components intended for transfusion. Under § 610.46(a), FDA proposes to require blood establishments to quarantine previously collected blood and blood components intended for transfusion that have been collected during the time period from the present extending back 5 years, or, if there is a record of the donor's last licensed negative test for antibody to HIV which had been performed in accordance with § 610.45, then back to the time 12 months before such test. Proposed § 610.46(a) would also require blood establishments to notify consignees so that such products are appropriately quarantined.

b. Quarantine and notification of consignees for blood and blood components intended for further manufacture. Also under § 610.46(a), FDA proposes to require blood establishments to identify and quarantine all units in inventory intended for further manufacture, including Source Plasma and Recovered Plasma, that have been collected during the time period from the present extending back to the time 6 months prior to the repeatably reactive test. Proposed § 610.46(a) would also require blood establishments to notify consignees regarding the need to quarantine unpooled units that were collected within the past 6 months.

Blood, blood components, and Source Plasma intended for further manufacture are pooled quickly and are unlikely to be available after 6 months. In addition, they are subjected to further manufacturing steps in making various final products. The proposed rule would require collecting establishments to quarantine products intended for further manufacture that have been pooled by the establishment but not yet shipped to a consignee. These pools are more often small and their quarantine provides an additional margin of safety without negatively affecting the availability of the blood product. FDA also proposes a requirement to notify consignees so they may quarantine products intended for manufacture. FDA is not proposing to require consignees to quarantine products pooled by the consignee as a preliminary step for further manufacture, because these are often large pools, comprising a thousand units or more, and their diversion could have serious consequences on the availability of blood products.

In addition, products manufactured from blood and blood components, including plasma, undergo further manufacturing steps so the final products are treated in such a manner to prevent the transmission of HIV. Some method to inactivate viral contaminants is used in the manufacture of all such products. The most common practice for treating blood and blood products is heat inactivation treatment. FDA thoroughly reviews the methods proposed by manufacturers in establishment and product license applications and amendments and evaluates the effectiveness of these methods before approving any methods. FDA also reviews epidemiologic evidence, which has also established that these treatment processes reduce the risk of HIV infection from these products.

2. Testing and Notification of Consignees

Proposed § 610.46(b) would apply in situations involving a donor who subsequently tests repeatedly reactive, and would require that for blood and blood components intended for transfusion or for further manufacture which have been distributed, a blood establishment must test the donor's blood for HIV by a licensed, more specific test. This more specific test would be performed on blood that is collected at the time the donor first tests repeatably reactive for antibody to HIV; FDA is not proposing to require more specific testing on each unit in quarantine. Blood establishments that have distributed prior units would be required to notify the consignees of the results of the more specific test within 2 weeks from the date of the repeatably reactive test. The consignee would rely on the results of the licensed, more specific test to determine whether to notify physicians of the recipients of prior transfusions, in accordance with HCFA's and FDA's proposed rules, as well as to determine the disposition of the products in quarantine.

3. Release From Quarantine

Under proposed § 610.46(c), units from previous donations would be unsuitable for release from quarantine unless the result of the licensed, more specific test for antibody to HIV is negative. If the result of the licensed, more specific test is positive, indeterminate, or not available within 2 weeks, then the units must not be released from quarantine. Instead, the blood establishment is responsible for notifying the consignee of the results so that the units may be appropriately disposed.

FDA notes that the procedures described above have two related but distinct objectives. First, the proposed procedures will help ensure that blood and blood components that may be contaminated with HIV are quarantined. This objective would be met by following FDA's proposed requirements. The second objective involves a joint effort between FDA and HCFA. FDA is proposing regulations so that users of blood and blood components intended for transfusion are provided with adequate information so that, in compliance with HCFA's and FDA's proposed regulations, they may notify the transfusion recipient's attending physician that the blood or blood components may have been contaminated with HIV.

4. Transfusion Services; Quarantine and Notification Requirements

Elsewhere in this issue of the **Federal Register**, HCFA has proposed to require recipient notification for all hospitals that participate in the Medicare program. HCFA's proposal does not extend to hospitals and transfusion services that do not participate in the Medicare program, so nonparticipating establishments will not be subject to HCFA's proposed rule. Because of the significant public health issue associated with the look-back program, including the need to notify transfusion

recipients so they can be tested, obtain early treatment if needed, and prevent the further spread of this disease, FDA is proposing § 610.47, which would require all registered establishments that do not participate in the Medicare program to take steps to notify transfusion recipients. Proposed § 610.47 would also require such facilities to take steps to quarantine units collected from a donor who subsequently tests repeatably reactive for antibody to HIV.

F. Other Reliable Indications That Donors Have Evidence of HIV

As proposed, the look-back procedures would be required only when indicated by the results of testing performed by a blood establishment. A blood establishment may receive information from other sources, such as a State health department, a physician, friends or relatives of a donor, or other blood establishments, which indicate that a donor may be infected with HIV. The availability of this information varies from State to State because of differing State laws regarding the type, detail, and restrictions on the use of this information, and because of confidentiality issues. Because a blood establishment may not receive such information consistently, nor may it be able to readily evaluate the reliability of all types of information, at this time FDA is not proposing additional circumstances under which look-back would be required. FDA invites comment on whether there are additional circumstances when a blood establishment can reliably and consistently receive information that should result in the required initiation of the look-back procedures included in this proposed rule. FDA encourages blood establishments to initiate look-back procedures whenever they have received reliable information that a donor is infected with HIV.

G. Limitations on Temporal Requirements for Look-back

FDA is proposing temporal limitations on the requirement for look-back. If at the time the donor's blood is first identified as being repeatably reactive, it is known when the most recent negative screening test was performed in accordance with § 610.45, units collected more than 12 months prior to the date of the last negative screening test need not be quarantined. If the date of the most recent negative screening test is not known, units collected previously would be quarantined until the date can be determined. As discussed in subparagraph 2 below, units collected more than 5 years prior to the date of the repeatably reactive test need not be quarantined. FDA is proposing that units intended for further manufacture need not be held in quarantine if collected more than 6 months prior to the donor's current repeatably reactive test. The blood establishment would also quarantine these previously collected units until the dates of collection and previous negative test are determined.

1. Twelve Months Before the Date of the Repeatably Reactive Test

Previous donors of blood and blood components intended for transfusion or further manufacture who have donated since licensed testing became available, approximately in mid-1985, should have tested negative for anti-HIV by a licensed test at the prior donation. In rare cases, the donor may have tested negative by that previous test while in the "window" period, a time period usually less than 6 months during which time the donor tests negative for HIV but may be infectious for the virus. Based on experience, current estimates predict with approximately 95 percent confidence that in all cases of HIV infection, the person will test positive for anti-HIV by a licensed test within 6 months from the date of infection (ref. 2). To provide an additional margin of safety, FDA has extended the period for look-back to 12 months, to more closely approximate a 99 percent confidence interval.[4] Accordingly, FDA has constructed the proposed look-back procedures so that virtually all donations collected during the "window" period are appropriately included.

2. Five Years From the Date of the Repeatably Reactive Test

In accordance with Federal requirements, most records related to blood donors and transfusion recipients are kept for 5 years. In rare cases, the donor's last negative screening test may have occurred more than 4 years before the repeatably reactive test result, so that the period 12 months prior to the donor's last negative screening test would cover a time period for which records may no longer be available. Under this proposal, look-back will not be required to continue beyond 5 years prior to the date of the donor's repeatably reactive test for anti-HIV for several reasons:

(1) After 5 years, hospitals are not required to keep records identifying transfusion recipients, so such transfusions may not be traceable;

(2) High mortality exists among transfusion recipients for reasons not directly related to the blood transfusion (because transfusion recipients are often elderly and conditions requiring transfusion are often life-threatening); the majority of recipients will not survive beyond 5 years so attempts to notify these recipients would be inefficient and ineffective;

(3) If HIV infection were present in a recipient's blood for 5 years, the recipient may be aware of the condition independently without need for notification; and

(4) The program described in the MMWR of March 20, 1987, and in the PHS mailing to every household in 1988, included a notification of the need for followup testing for recipients of transfusion before mid-1985.

3. Six Months After Collection of Products Intended for Further Manufacture

Past experience has shown that blood, blood components, and Source Plasma intended for further manufacture are pooled quickly and subjected to further manufacturing steps in making various final products. Accordingly, 6 months after collection, such units are rarely, if ever, recoverable as single units or small pools of units. Because the final products intended for administration to humans are treated in such a manner to prevent the transmission of HIV, as discussed above, and because after 6 months products from individual donors cannot be readily isolated and quarantined, a 6 month-period is appropriate to help ensure the continued safety of the blood supply while helping to ensure the availability of safe and effective products.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(10) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Economic Assessment

The agency has examined the economic impact of this proposed rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as specified in the Regulatory Flexibility Act (Pub. L. 96–354). The benefits of this rule to the public are

[4] See Horsburg, C. R., Jr., et al., "Estimated Duration of HIV Infection Before Detection of Antibody," *The Lancet*, 16:637–40, 1989.

twofold. The primary purpose of the look-back requirement is to reduce the risk of HIV infection through transfusion of blood and blood components during the window period, at which time antibodies to the HIV virus in the donor are not detectable through normal screening procedure. Notification of consignees to quarantine potentially infected components, until confirmatory testing is completed, will prevent any further infection of the public. Once a donor has converted to HIV positive, all recipients of previously donated components during the potential window period can be notified, tested, and treated before they begin to exhibit symptoms of infection. Spreading of the virus can be retarded through early detection made possible by this rule.

Most blood establishments already participate in a look-back program. Ninety-five percent of blood establishments, collecting 98 percent of the nation's blood supply, already participate in a look-back notification of their customers concerning units of blood previously shipped that may be at increased risk of transmitting HIV because the donor was later found to be repeatably reactive. Thus, requirements for written procedures and records of notification that apply to blood establishments regulated by FDA, and that relate only to blood units taken from donors who later were found to be repeatably reactive, would affect about 5 percent of blood establishments; the remaining 95 percent of blood establishments may need to make minor adjustments in their procedures which FDA believes should only have a minimal impact. FDA expects the total annualized cost of this proposed rule on blood establishments to be $2,469,950. FDA anticipates only a small number of cases per year which can be traced to potentially infectious blood and therefore the need to notify transfusion recipients will arise infrequently. FDA has determined that the proposed rule is not a major rule as defined in Executive Order 12291. Further, FDA certifies that the proposed rule will not have a significant impact on a substantial number of small business entities, as defined in the Regulatory Flexibility Act.

VI. Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Current Good Manufacturing Practices for Blood and Blood Components; Notification of Consignees Receiving Blood and Blood Components at Increased Risk for Transmitting HIV Infection.

Description: This proposed rule would require that blood establishments prepare and follow written procedures when the blood establishments have collected blood and blood components that are potentially contaminated with HIV. This proposal would require that when a previous donor subsequently tests positive for antibody to HIV, a blood establishment shall quarantine previously collected blood, blood components, and plasma collected from such donor, and notify consignees of such blood so that appropriate action is taken. The agency is proposing these rules to help ensure the continued safety of the blood supply, to help ensure that information is provided to users of blood and blood components, and to help ensure that transfusion recipients of potentially contaminated blood and blood components may be notified as appropriate.

Description of Respondents: Blood establishments (Business and Not-for-Profit).

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Responses per respondent	Total responses per hours per recordkeeper	Annual hours per response	Annual burden hours
Recordkeeping					
606.100(b)(19)	2,641	N/A	1.1	N/A	2,773
606.160(b)(1)(vii)	132	N/A	284	N/A	37,485
606.160(b)(1)(viii)	2,641	N/A	11.1	N/A	29,250
Subtotal					69,508
Reporting or Disclosure					
610.46	2,641	11.1	11.1	1	29,250
610.47	100	.4	.4	1	40
Subtotal					29,290
Total Hours					98,798

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to FDA. The agency seeks comment on these estimates, particularly the industries' view of the number of firms and products affected by the collections of information contained in this proposed rule.

The agency will submit a copy of this proposed rule to OMB for its review of these information collections. Interested persons are requested to send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to FDA's Dockets Management Branch (address above), and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

VII. Comments

Interested persons may, on or before August 30, 1993 submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the

heading of the document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum to Registered Blood Establishments from the Director, Office of Biologics Research and Review, July 22, 1985.

2. Memorandum to Blood Establishments from the Director, Center for Biologics Evaluation and Research, December 5, 1990.

3. Memorandum to All Registered Blood Establishments from the Director, Center for Biologics Evaluation and Research, April 6, 1988.

List of Subjects

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Administrative Procedure Act, it is proposed that 21 CFR parts 606 and 610 be amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

1. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 505, 510, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374); secs. 215, 351, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263a, 264).

2. Section 606.100 is amended by adding new paragraph (b)(19) to read as follows:

§ 606.100 Standard operating procedures.

* * * * *

(b) * * *

(19) Procedures in accordance with § 610.46 of this chapter to look-back at prior donations of blood and blood products from a donor who has donated blood and subsequently tests repeatably reactive for infection with human immunodeficiency virus (HIV) or otherwise is determined to be unsuitable when tested in accordance with § 610.45 of this chapter. Procedures to quarantine in-house blood and blood components intended for transfusion or further manufacture, including Source Plasma and Recovered Plasma, that were obtained from such donors; procedures to notify consignees regarding the need to quarantine such products; procedures to determine the suitability for release of such products from quarantine; procedures to notify consignees of blood and blood components from such donors of the results of the antibody testing of such donors; and procedures in accordance with § 610.47 of this chapter to notify attending physicians so that transfusion recipients are informed that they may have received blood infected with the human immunodeficiency virus.

* * * * *

3. Section 606.160 is amended by adding new paragraphs (b)(1)(vii) and (b)(1)(viii) to read as follows:

§ 606.160 Records.

* * * * *

(b) * * *

(1) * * *

(vii) Records to relate the donor with the unit number of each previous donation from that donor.

(viii) Records of quarantine, notification, testing, and disposition performed pursuant to §§ 610.46 and 610.47 of this chapter.

* * * * *

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

4. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

5. Section 610.45 is amended by adding new paragraph (d) to read as follows:

§ 610.45 Human immunodeficiency virus (HIV) requirements.

* * * * *

(d) For a donor whose test results for antibody to HIV are repeatably reactive or otherwise determined to be unsuitable when tested in accordance with paragraph (a) of this section, the blood establishment shall comply, as applicable, with §§ 610.46 and 610.47.

6. New §§ 610.46 and 610.47 are added to subpart E to read as follows:

§ 610.46 Look-back requirements.

(a) *Quarantine and notification.* (1) All blood establishments are required to take appropriate action when a donor of blood or blood components, including Source Plasma, tests repeatably reactive for antibody to human immunodeficiency virus (HIV) or otherwise is determined to be unsuitable when tested in accordance with § 610.45. For units collected from that donor within the 5 years prior to the repeatably reactive test if intended for transfusion, or collected within the 6 months prior to the repeatably reactive test if intended for further manufacture, the blood establishment shall promptly:

(i) Quarantine all such blood and blood components held at that establishment; and

(ii) Notify consignees so that such products they hold are quarantined.

(2) Consignees notified in accordance with paragraph (a)(1)(ii) of this section shall quarantine unpooled products held at that establishment.

(b) *Testing and notification of consignees of results.* Blood establishments that have distributed blood or blood components from a donor described in paragraph (a) of this section shall perform a licensed, more specific test for HIV on the donor's blood, and further shall notify the consignees, within 2 weeks after the donor's repeatably reactive test, of the results of the test.

(c) *Release and exemption from quarantine.* Products intended for transfusion or further manufacture which have been quarantined under paragraph (a) of this section may be released if the donor is subsequently tested for antibody to HIV by a licensed, more specific test and the test result is negative. In addition, products intended for transfusion need not be held in quarantine if a determination has been made that the blood or blood component was collected more than 12 months prior to the donor's most recent negative screening test when tested in accordance with § 610.45.

(d) Actions under this section do not constitute a product recall as defined in § 7.3(g) of this chapter.

§ 610.47 Look-back notification requirements for transfusion services.

(a) Transfusion services that are not subject to the Health Care Financing Administration's regulations on conditions of Medicare participation (42 CFR part 482) are required to take appropriate action in accordance with paragraph (b) of this section when a recipient has received blood from a donor determined to be unsuitable when tested for human immunodeficiency virus (HIV) infection in accordance with § 610.45 and the results of the licensed more specific test

are positive, or not available within 2 weeks as specified in § 610.46.

(b) *Notification of recipients of prior transfusions.* If the transfusion service has administered any unit of blood as described in paragraph (a) of this section, the transfusion service shall notify the recipients' attending physician (physician of record) and ask him or her to inform the recipient of the need for HIV testing and counseling. The physician may notify another authorized person, such as a parent or guardian of the recipient, if the reasons to do so are documented pursuant to § 606.160 of this chapter. If the physician is unavailable or declines to notify the recipient, the transfusion service shall notify the recipient and inform the recipient of the need for HIV testing and counseling. The transfusion service is responsible for notification, including basic explanations to the recipient and referral for counseling, and shall document the notification or attempts to notify the attending physician or the recipient, pursuant to § 606.160 of this chapter.

Dated: March 26, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 93–15400 Filed 6–29–93; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–14–81]

RIN 1545–AD81

Deductions and Reductions in Earnings and Profits (or Accumulated Profits) With Respect to Certain Foreign Deferred Compensation Plans Maintained by Certain Foreign Corporations or by Foreign Branches of Domestic Corporations; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (EE–14–81), which was published in the **Federal Register** for Friday, May 7, 1993 (58 FR 27219). The proposed regulations relate to the limitations on deductions and adjustments to earnings and profits (or accumulated profits) with respect to certain foreign deferred compensation plans.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Purcell, (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections contain proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 404A and 7805(a) of the Internal Revenue Code.

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (EE–14–81), which was the subject of FR Doc. 93–10743, is corrected as follows:

1. On page 27224, column 3, in the preamble under the heading "Section 481(a) Adjustment", second line from the bottom of the paragraph continued from column 2, the language "plan as the beginning of the year of a" is corrected to read "plan as of the beginning of the year of a".

§ 1.404–A–7 [Connected]

2. On page 27248, column 3, § 1.404A–7(d)(5), *Example 3*, eleventh line following the table, the language "as provided paragraph (d) of this section," is corrected to read "as provided in paragraph (d) of this section,".

3. On page 27249, column 2, § 1.404A–7(f)(1)(i), sixth line from the bottom of the paragraph, the language "this section, however. Furthermore, the" is corrected to read "this section. Furthermore, the".

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–15302 Filed 6–29–93; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 85

[FRL–4672–6]

Emission Defect Reporting Requirements; Public Workshop

AGENCY: Environmental Protection Agency.

ACTION: Notice of public workshop and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is currently considering possible revisions to its motor vehicle and engine Emission Defect Reporting Requirements, promulgated under the Clean air Act. To aid the Agency in this process, a public workshop will be held on various issues relevant to revising the current defect reporting regulations. The Agency is also inviting written comment on these issues. All interested parties are invited to attend the public workshop and provide input on the relevant issues.

DATES: The workshop will be held on Tuesday, July 27, from 10 a.m. to 5 p.m. in Washington, DC. Persons interested in making presentations at the workshop are requested to notify the Agency contact below at least two weeks prior to the workshop so that a final agenda can be prepared. Written comments may be submitted to the same Agency contact until August 27, 1993.

ADDRESSES: The workshop will be held at the EPA Judiciary Square building in the first floor conference room, 501 3rd Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Stumbaugh, Recall Branch, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Telephone: (202) 233–9324.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Motor Vehicle Emissions Control Program established under title II of the Clean Air Act and EPA's implementing regulations are structured to insure that manufacturers build motor vehicles an engines that conform to the applicable emission standards for the vehicles' or engines' useful lives. This program includes requirements for certification based on pre-production testing, assembly line testing, recall of non-complying in-use vehicles, as well as emission warranties for individual owners. In addition, section 208(a) of the Clean Air Act provides the Administrator with the authority to require a manufacturer to "make reports and provide information the Administrator may reasonably require to determine whether the manufacturer or other person has acted or is acting in compliance with" Parts A and C of Title II of the Clean Air Act and regulations thereunder.

The "Emission Defect Reporting Requirements," 40 CFR 85.1901–85.1908, are an important component of EPA's programs to detect potential emission nonconformities of in-use vehicles and engines. Current regulations require manufacturers to

submit a defect information report to EPA whenever a specific emission related defect is found to exist in 25 or more vehicles or engines of the same model year.

Defect information reports alert EPA to potential emissions nonconformities among in-use vehicles or engines. Manufacturers are currently required to submit defect information reports whenever a defect is found in the required number of vehicles or engines. However, manufacturers often do not actively search for possible emission related defects, or monitor available data to track defects. EPA is considering amendments to the regulations that would require manufacturers to collect, analyze, and submit data on potential emission-related defects. This would provide for more thorough and accurate identification of emission-related defects.

II. Issues

EPA is interested in obtaining more information on the issues described below. Parties submitting written comments may assert a business confidentiality claim covering all or part of the information provided. A claim of business confidentiality regarding any information submitted should be made in a manner consistent with 40 CFR 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures set forth in 40 CFR part 2, subpart B. If no claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the submitting party.

Data Sources for Identification of Emissions Defects

The Agency's goal in defect reporting is to accurately identify emissions defects that occur during the useful life of vehicles and engines. One means of monitoring potential emissions defects is through warranty claims. Other possible means of tracking defects include, but are not limited to, part sales, repair records (both warranty and non-warranty), and manufacturers' own in-use testing.

EPA requests comments from manufacturers regarding data tracking. Persons providing comment to the Agency on this issue are requested to include in their comments responses to the following questions:

(1) In order to implement a system to effectively identify defective components during the entire useful life or a vehicle, what data should be collected? How and from whom would the data be collected?

(2) Given options of (a) tracking data for a shorter period of time (2 years/24,000 miles, for example) while meeting more stringent triggers for further action (providing the Agency with a report when defect levels reach 4%, perhaps), or (b) monitoring for a longer period of time and having less stringent triggers for further action, which option is preferable?

California Procedures for Reporting Failures of Emission-Related Components

In February 1990, amendments to the California Air Resources Board's (CARB's) Recall Regulations went into effect. These amendments include revisions to the procedures for reporting failures of emission-related components. Manufacturers of California-certified vehicles are now required to review and compile warranty claim data, and to submit (to (CARB) quarterly reports based on warranty claims for emission-related components. If the number of warranty claims for a specific component of an engine family exceeds a specified percentage of total sales for that engine family, further investigation into the validity of the warranty claims data and the effects of the component failure on emissions is required. EPA requests specific data on the burden this requirement has on manufacturers. Affected parties providing comment to the Agency on this issue are requested to address the following questions:

(1) On average, prior to model year 1990, how many voluntary recalls (per model year) were initiated due to information submitted to CARB under CARB's defect reporting regulations?

(2) Since model year 1990, how many voluntary recalls (per model year) have been initiated due to the collection of warranty claim information?

(3) Are data collected from all California dealerships, or is a sample used to project the data from the entire state? If a sample is used, what criteria are used for selecting the representative dealerships? What percentage of California dealerships does the sample represent? What percentage of California sales?

(4) What methods are used to validate warranty claims in order to determine the level of actual component failures (as needed to trigger a field information report)?

(5) What methods are used to project the number of validated component defects for an engine family (as required in the field information report)?

(6) What methods are used (or would be used) to determine the emissions impact of a validated component defect (as required in the emissions impact report)?

In addition to the questions above, commenters are encouraged to provide data and comments on any issues not specified above that are pertinent to the impact of the California warranty reporting requirements.

Electronic reporting

In an effort to reduce the volume of paper handled by both manufacturers and EPA, the Agency is considering making electronic communication the primary method for submission of reports related to defective components. EPA requests information on the hardware, operating systems, and software currently being used by manufacturers for collecting, analyzing, and distributing data and information. Persons presenting or submitting comments are asked to answer the following questions:

(1) What types of hardware (IBM PC, mainframe, etc.) are currently being used? What operating systems (DOS 5.0, UNIX, etc.) are used?

(2) What commercial software packages are used?

(3) What method (electronic or other) is used to distribute information (such as technical service bulletins) in dealerships?

(4) What method (electronic or other) is used to receive information (such as warranty claims) from dealerships?

(5) What method (electronic or other) is used to exchange information between other common contacts (such as part suppliers, different plants, etc.)?

(6) What would be the preferred method for transporting defect data to EPA? What medium (floppy disk, magnetic tape, modem, etc.) would be used with this method? What is this method preferable over other methods?

III. Workshop Structure

EPA will arrange the workshop agenda to accommodate those persons who what to make presentations and who notify the Agency contact listed above at least two weeks prior to the workshop. EPA will allot time to address the issues outlined in this notice, as well as other relevant issues from the comments received prior to the workshop. Persons who have not previously contacted the Agency but who wish to make oral presentations on the day of the workshop may do so to the extent time permits. Written comments may also be submitted to the

Agency for 30 days after the workshop, to the Agency contact listed above.

Jerry A. Kurtzweg,

Acting Assistant Administrator for Air Radiation.

[FR Doc. 93–15259 Filed 6–29–93; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[OPP–300287; FRL 4587–5]

RIN No. 2070–AC18

Boric Acid and its Salts, Borax (Sodium Borate Decahydrate), Disodium Octaborate Tetrahydrate, Boric Oxide (Boric Anhydride), Sodium Borate and Sodium Metaborate; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of boric acid and its salts, borax (sodium borate decahydrate), disodium octaborate tetrahydrate, boric oxide (boric anhydride), sodium borate, and sodium metaborate, in or on raw agricultural commodities when used as an active ingredient in insecticides, herbicides, or fungicides preharvest or postharvest in accordance with good agricultural practices. This proposed regulation was requested by Bushwacker Associates, Galveston, TX. The proposed tolerance exemption would supersede the tolerances for boron established under 40 CFR 180.271; therefore, this document also proposes to remove § 180.271.

DATES: Written comments, identified by the document control number, [OPP-300287], must be received on or before July 30, 1993.

ADDRESSES: By mail, submit comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail, Robert A. Forrest, Product Manager (PM 14), Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6600.

SUPPLEMENTARY INFORMATION: Bushwacker Associates, Inc., Division of Bethurum Research & Development, Inc., P.O. Box 3436, Galveston, TX 77552, submitted pesticide petition (PP) 2F4132 requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of boric acid and its salts, borax (sodium borate decahydrate), disodium octaborate tetrahydrate, boric oxide (boric anhydride), sodium borate, and sodium metaborate in or on raw agricultural commodities when used as an active ingredient in insecticides, herbicides, or fungicides preharvest or postharvest in accordance with good agricultural practices.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the exemption is sought.

The petition requested that an exemption from the requirement of a tolerance be established as a result of the use of boric acid as a fire ant control bait in agricultural areas. The product is to be applied as a broadcast via ground or air at a rate of 0.5 lb ai/acre. A second application may be made 5 days after initial treatment.

Boron occurs naturally in water, fruits, vegetables, and forage crops, and is an essential nutrient for plants. In pears and strawberries the levels may reach 160 ppm, and in red cabbage occasionally as high as 200 to 300 ppm. The increment of added boron residues resulting from pesticide use of boric acid and the boron-containing salts is insignificant compared to levels of naturally occurring boron in citrus and cottonseeed. For example, lemons average 1 ppm incremental boron due to treatment, compared with 2.5 ppm boron which is endogenous.

Based on a review of the toxicology data it has been determined that even with an increase of exposure there would be no increase in hazard because boric acid and its salts are benign.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this active ingredient is useful and a tolerance is not necessry to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below, and as the tolerance exemption would supersede tolerances for boron established under 40 CFR 180.271, it is also proposed that § 180.271 be removed.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended that contains any of the ingredients listed herein may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulations. Comments must bear a notation indicating the document control number, [OPP-300287]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 17, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371

§ 180.271 [Removed]

2. In subpart C, § 180.271 *Boron; tolerances for residues* is removed.

3. In subpart D, by adding new § 180.1121, to read as follows:

§ 180.1121 Boric acid and its salts, borax (sodium borate decahydrate), disodium octaborate tetrahydrate, boric oxide (boric anhydride), sodium borate and sodium metaborate; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the pesticidal chemical boric acid and its salts, borax (sodium borate decahydrate), disodium octaborate tetrahydrate, boric oxide (boric anhydride), sodium borate and sodium metaborate, in or on raw agricultural commodities when used as an active ingredient in insecticides, herbicides, or fungicides preharvest or postharvest in accordance with good agricultural practices.

[FR Doc. 93–15415 Filed 6–29–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[OPP–300290; FRL–4627–3]

[RIN 2070–AC18]

C.I. Pigment Violet #23 (Carbazole Violet), C.I. Pigment Blue #15, C.I. Pigment Green #7, and FD & C Red No. 40; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of C.I. Pigment Violet #23 (Carbazole Violet; CAS Registry No. 6358-30-1), C.I. Pigment Blue #15 (CAS Registry No. 147-14-8), C.I. Pigment Green #7 (CAS Registry No. 1328-53-6), and FD & C Red No. 40 (CAS Reg. No. 25956-17-6) when used as inert ingredients (dyes, coloring agents) in pesticide formulations applied to growing crops only. This proposed regulation was requested by Becker-Underwood, Inc., and responds to a comment by Gustafson, Inc., to a proposed rule on FD & C Red No. 40 regarding the use and amount of FD & C Red No. 40 exempt from the requirement of a tolerance.

DATES: Comments, identified by the document control number [OPP-300290], must be received on or before July 30, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTATCT: By mail: Connie Welch, Registration Support Branch, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703) 308-8320.

SUPPLEMENTARY INFORMATION: Becker-Underwood, Inc., 801 Dayton Ave., Ames, IA 50010, submitted pesticide petitions (PP) 2E4129, 2E4130, and 2E4131 requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of C.I. Pigment Violet #23 (Carbazole Violet; CAS Registry No. 6358-30-1), C.I. Pigment Blue #15 (CAS Registry No. 147-14-8), and C.I. Pigment Green #7 (CAS Registry No. 1328-53-6) when used as inert ingredients (dyes, coloring agents) in pesticide formulations applied to growing crops only.

Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266-0065, submitted a comment to OPP-300277 (58 FR 12200, March 3, 1993) requesting the Administrator to expand the proposed tolerance exemption for FD & C Red No. 40 (CAS Reg. No. 25956-17-6), principally disodium salt of 6-hydroxy-5-[(2-methoxy-5-methyl-4sulfophenyl)azo]-2-naphthalenesulfonic acid. EPA had proposed to exempt FD & C Red No. 40 from the requirement of a tolerance when used as an inert ingredient (dye, coloring agent) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest with the limitation that the dye was not to exceed 0.002% by weight in the formulation. Gustafson, Inc., requested that the limitation be raised to 2% by weight in pesticide formulations so that the dye could be used for seed treatment. Two percent by weight of the pesticide formulation is needed for FD & C Red No. 40 in seed treatment to distinguish treated seed from untreated seed. Since the original request did not involve seed treatment, it was finalized, as proposed, at the lower limit and this proposal for the seed treatment application was developed for use on growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk.

The Agency has decided that the data normally required to support the proposed tolerance exemptions for C.I.

Pigment Violet #23 (Carbazole Violet; CAS Reg. No. 6358-30-1), C.I. Pigment Blue #15 (CAS Registry No. 147-14-8), C.I. Pigment Green #7 (CAS Registry No. 1328-53-6), and FD & C Red No. 40 (CAS Reg. No. 25956-17-6) will not need to be submitted. The rationale for this decision is described below.

1. C.I. Pigment Violet #23 is not expected to be absorbed by any route based on a review of the acute oral, dermal, and subchronic data submitted, thus eliminating concerns for oncogenicity, mutagenicity, or developmental toxicity.

2. C.I. Pigment Violet #23 has a reported acute oral LD_{50} of 10 gm/kg or greater in mice. No signs of skin or eye irritation were observed after application of C.I. Pigment Violet #23.

3. In a 43-day feeding study, rats fed 1 gm/kg of C.I. Pigment Violet #23 in aqueous dispersion did not demonstrate any abnormal pathology.

4. A series of cytotoxicity studies were conducted indicating that C.I. Pigment Violet #23 is noncytotoxic.

5. C.I. Pigment Green #7 and C.I. Pigment Blue #15 both have a reported acute oral LD_{50} of 10 gm/kg or greater in rats. No signs of skin or eye irritation were observed after application of C.I. Pigment Green #7, and no signs of skin or mucosal irritation were observed after application of C.I. Pigment Blue #15.

6. A 2-year NTP Bioassay study conducted on C.I. Pigment Green #7 and C.I. Pigment Blue #15 was dropped based on lack of absorption or adverse effects in a 90-day feeding study in rats and mice.

7. In vitro screening tests for mutagenicity conducted on C.I. Pigment Green #7 and C.I. Pigment Blue #15 were negative.

8. C.I. Pigment Green #7 is approved for use as a colorant in food-contact resinous and polymeric coatings under 21 CFR 175.300.

9. C.I. Pigment Green #7 is approved for use as a colorant in contact lenses under 21 CFR 73.3124.

10. C.I. Pigment Green #7 is approved for use as a pigment in rubber products intended for repeated food-contact use under 21 CFR 177.2600.

11. C.I. Pigment Blue #15 is approved by the Food and Drug Administration for use as a colorant in polypropylene sutures, polybutester nonabsorbable sutures, nonabsorbable polybutylene terephthalate monofilament sutures for general and ophthalmic surgery, and for intraocular lenses under 21 CFR 74.3045.

12. C.I. Pigment Blue #15 is approved for use as a colorant for contact lenses under 21 CFR 74.3045.

13. C.I. Pigment Blue #15 is approved for use as a pigment in polyurethane resins used as food-contact surfaces for dry food under 21 CFR 177.1680.

14. C.I. Pigment Blue #15 is approved for use as a colorant in food-contact polymers under 21 CFR 178.3297.

15. FD & C Red No. 40 is considered safe for use in coloring foods under 21 CFR 74.340.

16. FD & C Red No. 40 is considered safe for use in coloring drugs under 21 CFR 74.1340.

17. FD & C Red No. 40 is considered safe for use in coloring cosmetics under 21 CFR 74.2340.

18. FD & C Red No. 40 was the subject of an Interagency Working Group chaired by the Food and Drug Administration. The Working Group, which included scientists and statisticians from academia and government, including EPA, reviewed the design and conduct of an *in utero*-exposed lifetime rat study and two *in utero*-exposed lifetime mouse studies. In the unpublished "Report of the Interagency Working Group on FD C Red No. 40," June 1981, EPA MRID 412365-03, the Working Group concluded:

> The results from the two mouse studies and the rat study were analyzed statistically both for tumor incidence and time-to-tumor. No pattern of statistically significant increases in the incidence of cancer in relation to FD C & Red No. 40 has been found in any of the three studies.... We find no substantial question of safety and at this time see no need for additional testing in chronic rodent studies.

19. FD & C Red No. 40 would be an alternative to another frequently used seed colorant, Rhodamine B, which is a List 1, "Inerts of Toxicological Concern." Registrants have been encouraged to remove any List 1 inert ingredient from their pesticide formulation.

Based upon the above information and review of the ingredients' use, EPA has found that, when used in accordance with good agricultural practice, these ingredients are useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300290]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: June 17, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

Part 180—[Amended]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredients, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
• • •	•	• • •
C.I. Pigment Blue #15 (CAS Reg. No. 147-14-8)	.....	Dye, coloring agent
C.I. Pigment Green #7 (CAS Reg. No. 1328-53-6)	.....	Dye, coloring agent
C.I. Pigment Violet #23 (CAS Reg. No. 6358-30-1)	.....	Dye, coloring agent
• • •	•	• • •
C.I. Pigment Red No. 40 (CAS Reg. No. 25956-17-6) conforming to 21 CFR 74.340.	For seed treatment use only. Not to exceed 2% by weight of pesticide formulation..	Dye, coloring agent
• • •	•	• • •

* * * * *

[FR Doc. 93-15417 Filed 6-29-93; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 5F3177/P561; FRL-4628-3]

RIN 2070-AC18

Pesticide Tolerance for Cyromazine

AGENCY: Environmental Protection Agency

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish a tolerance for residues of the insect growth regulator cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) (Armor) and its metabolite melamine (1,3,5-triazine-2,4,6-triamine), calculated as cyromazine, in or on mushrooms at 10.0 parts per million (ppm). This regulation to establish maximum permissible levels for residues of the insecticide was requested pursuant to a petition submitted by Ciba-Geigy Corp.

DATES: Written comments must be received by July 21, 1993.

ADDRESSES: Comments, in triplicate, should bear the docket control number, [PP 5F3177/P561], and be submitted to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Hwy., Crystal City, VA 22202.

Information submitted in any comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutten, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-2386.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 30, 1985 (50 FR 4265), EPA issued a notice which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a pesticide petition (PP 5F3177) to EPA proposing to amend 40 CFR part 180 by establishing a tolerance, under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, for residues of the insecticide cyromazine (*N*-cyclo-propyl-1,3,5-triazine-2,4,6-triamine) and its metabolite melamine (1,3,5-triazine-2,4,6-triamine) in or on mushrooms at 10.0 ppm. Further, in the **Federal Register** of September 25, 1985 (50 FR 38895), EPA issued a notice which announced that Ciba-Geigy Corp. had revised the petition so that Ciba-Geigy Corp. proposed amending 40 CFR part 180 by establishing a tolerance for the combined residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its principal metabolite, melamine (1,3,5-triazine-2,4,6-triamine), calculated as cyromazine in or on the commodity mushrooms at 10.0 ppm. The proposed analytical method for determining residues is gas chromatography.

There were no comments or requests for referral to an advisory committee received in response to these notices of filing. Because these notices of filing were issued 8 years ago, EPA is publishing a proposal in regard to the petition rather than proceeding directly to a final rule.

The scientific data submitted in the petition and other relevant material have been evaluated. A discussion of the toxicological data considered in support of the tolerance as well as a discussion of the risk of cyromazine and its metabolite melamine can be found in a rule (FAP 2H5355/P344) published in the **Federal Register** of April 27, 1984 (49 FR 18120) and in the Notice of Conditional Registration for Larvadex 0.3% Premix, published in the **Federal Register** of May 15, 1985 (50 FR 20373) Subsequent to these documents being published, the Agency has reevaluated both the developmental toxicity of cyromazine and the carcinogenic potential of its metabolite melamine.

Cyromazine has been classified by the Office of Pesticide Programs' Health Effects Division's Carcinogenicity Peer Review Committee (PRC) as Group C, i.e., possible human carcinogen. Mammary tumors in the mouse occurred at a dose that may have been insufficient for an adequate assessment of carcinogenic potential. However, the incidence of mammary tumors was almost three times the historical controls. These data were also supported by the same tumor type in the rat, although the dosing may have been excessive in this species. In addition, cyromazine has some structural similarities to other mammary tumor-producing analogs, although the relationship was not considered to be strong. Although the evidence from the rat study alone was not conclusive, in combination with the mouse study the weight-of-the-evidence for the carcinogenicity of cyromazine pointed toward a Group C classification. Because the rat study alone does not carry much weight (there may have been excessive dosing and because the incidence of mammary tumors was within the historical control range), the

Agency has chosen to use reference dose calculations to estimate human dietary risk from cyromazine residues.

Melamine, a metabolite of cyromazine, produced bladder tumors that were accompanied by bladder stones in dosed rats. Cyromazine did not produce bladder tumors in rats or mice, nor were any bladder stones or any other effect in the urinary tract noted in animals treated with cyromazine. Bladder tumors can be produced by the introduction of inert materials like glass beads and wax pellets into the bladder; a host of chemicals that lead to bladder stone formation also produce bladder tumors. It appears that irrespective of the composition of the stones, foreign bodies in the bladder induce intense epithelial irritation, compensatory cell proliferation, hyperplasia and, following chronic stimulation, bladder tumors. The Agency believes that this sequence: inflammation, hyperplasia and neoplasias would not occur unless preceded by stone formation in the bladder. Thus at doses far below those which induce the formation of bladder stones, tumor formation would not be expected to occur. The Agency thinks this to be the case for cyromazine, since only about 10% of cyromazine appears to be metabolized to melamine, and the maximum tolerated dose (MTD) for cyromazine in rats is about 3,000 ppm (accordingly, it is unlikely that a dose of cyromazine that would result in high enough melamine concentrations to produce bladder stones and bladder tumors would be tolerated in rats). Furthermore, human exposure to melamine from the pesticidal use of cyromazine via residues in food is far below the dose that was administered in the rat and it is not anticipated to produce bladder stones, much less bladder tumors. Therefore, the carcinogenic effects in the bladders of rats associated with melamine were not considered to be applicable to evaluating the carcinogenic potential of cyromazine. In sum, EPA believes cyromazine poses a negligible cancer risk to humans.

A chronic dietary exposure/risk assessment for the proposed use on mushrooms based on tolerance residue levels of 10 ppm was performed. This chronic analysis compared daily exposure estimates to a Reference Dose (RfD) of 0.0075 mg/kg body weight/day based on a no-observable-effects-level (NOEL) of 0.75 mg/kg body weight /day and an uncertainty factor of 100. The NOEL is based on a 6-month dog-feeding study which demonstrated decreased hematocrit and hemoglobin levels. Estimates (in mg/kg body weight/day and percents of RfD occupied) for the overall (average) U.S. population for currently published tolerances of cyromazine are 0.001861 and 25%. With the inclusion of mushrooms, these figures become 0.002075 and 28%. Therefore, the contribution of the mushroom tolerance takes up an additional 3 percent of the RfD. Since the exposure estimates are based on Theoretical Maximum Residue Contribution, typically an overestimate of actual exposure, and do not exceed the reference dose, the chronic health risk of cyromazine does not appear to be significant.

Regarding developmental effects, the Agency concluded in 1985 (50 FR 20373) that cyromazine was a developmental toxicant with a NOEL of 5 mg/kg body weight. Subsequent to this determination, the Agency has considered the "Weight-Of-Evidence" document submitted by Ciba-Geigy in support of the registrant's contention that cyromazine is not a developmental toxicant. Based on the document and additional information obtained by the Agency, the Agency has concluded that the developmental effects observed in the rabbit, namely cyclopia, diaphragmatic hernia, and hydrocephaly, are not consistently reproducible across studies, are clearly not cyromazine dose-related, and appear to have occurred by chance.

The Agency has received seven studies evaluating the developmental toxicity of cyromazine, six in the rabbit and one in the rat. Of the six rabbit studies submitted, only one is acceptable for regulatory purposes. This study, WIL 82001, shows developmental effects of cyclopia, diaphragmatic hernia, and hydrocephaly in treatment groups below the maternal lowest observable effect level (LOEL). Buckshire New Zealand White rabbits were used in this study. There appears to be a high background malformation rate in Buckshire rabbits with the observations of cyclopia and craniofacial head defects occurring in "clusters," where several studies will have no evidence of craniofacial defects and then several studies in a row will present with these observations. This was observed in the submitted historical control data (cyclopia and craniofacial head defect incidence of 7.94 per 10,000 New Zealand White Rabbit fetuses) and from evaluation of the open literature data base for cyromazine and for craniofacial birth defects (where it was found that the rabbit has a unique response to certain agents in the form of cyclopia; however, these agents have a steroidal structure which cyromazine does not possess). It was determined that the observed frequency of the observations could be explained by chance. The observations of diaphragmatic hernia and hydrocephaly were not dose related and were within the historical control range for New Zealand White Rabbits. The Agency has determined that the NOEL for developmental toxicity in the rabbit is 60 mg/kg/day, the highest dose tested.

The rat teratology study with cyromazine (IRDC, Study No. 382-070, 1979) using dose levels of 0, 100, 300, and 600 mg/kg/day of technical cyromazine was reevaluated for developmental toxicity based on observed skeletal variations and historical control data. The maternal toxicity NOEL was determined to remain at 100 mg/kg/day with a LOEL of 300 mg/kg/day based on increased incidence of clinical observations and decreased body weight gain. However, reevaluation of the data determined that the developmental toxicity NOEL was 300 mg/kg/day with a LOEL of 600 mg/kg/day due to the observations of increased incidence of minor skeletal variations.

Dietary exposures are well below these levels. Additionally, based on the expected levels of cyromazine exposure to unprotected mushroom workers mixing, loading, and applying the cyromazine end-use product Armor (anticipated daily exposure is 1.10 mg/kg/day); the low level of cyromazine dermal absorption (less than 13% in the rat) and the high NOEL for developmental toxicity in the rat teratology study; the risk for developmental toxicity to workers appears to be insignificant.

Based on the information cited above, the Agency has determined that the establishment of the tolerance by amending 40 CFR part 180 will protect the public health. Therefore, EPA proposes that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to any Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 5F3177/P561]. All written comments filed in response

this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 23, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.414, new paragraph (e) is added, to read as follows:

§ 180.414 Cyromazine; tolerances for residues.

* * * * *

(e) Tolerances are established for combined residues of the insect growth regulator cyromazine (*N*-cyclo-propyl-1,3,5-triazine-2,4,6-triamine) and its metabolite melamine (1,3,5-triazine-2,4,6-triamine), calculated as cyromazine, in or on the following raw agricultural commodity:

Commodity	Parts per million
Mushrooms	10.0

[FR Doc. 93-15416 Filed 6-29-93; 8:45 am]

BILLING CODE [illegible]

40 CFR Parts 260, 261, 264, 265, 270 and 302

[FRL-4673-6]

RIN 2050-AD60

Extension of Comment Period for Proposed Rule Wood Surface Protection; Identification and Listing of Hazardous Waste; Testing and Monitoring Activities; et al.

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking; Extension of Comment Period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is extending the comment period for a proposed rule published on April 27, 1993 (58 FR 25706) which proposed to amend the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by proposing to list as hazardous certain wastes from the use of chlorophenolic formulations in the wood surface protection industry. The original deadline for comments is being extended, and comments must now be submitted by July 14, 1993. The Agency recognizes that the docket for this proposed listing contains many technical documents. In addition, a member of the public has specifically requested additional time to submit comments because a relatively small number of supporting materials were inadvertently not included in the docket index at the time the proposed rule was published, and because the docket itself was closed for a period of one week while it moved to its present location (see 58 FR 28569 dated May 14, 1993). In light of these circumstances, the Agency is extending the comment period on the proposed rule.

DATES: Comments for this proposed rule should be submitted in writing to the address shown below on or before July 14, 1993 to be considered in the formulation of the final rule.

ADDRESSES: The official record of this rule-making is identified by Docket Number F-93-F33P-FFFFF and is located at the following address: EPA RCRA Docket Clerk, Room 2616 (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-9327. The public may copy 100 pages from the docket at no charge; additional copies are $0.15 per page. Copies of materials relevant to the CERCLA portions of this rulemaking also are located in room 2427 at the above address.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, at (800) 424-9346 (toll-free) or (703) 412-9810, in the Washington, DC metropolitan area. The TDD Hotline number is (800) 553-7672 (toll-free) or (703) 486-3323, locally. For technical information on the proposed listing, contact Mr. David J. Carver at (202) 260-6775, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

For technical information on the CERCLA aspects of this rule, contact: Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (5202-G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 603-8732.

Dated: June 25, 1993.

Walter W. Kovalick,

Acting Assistant Surgeon General, USPHS Acting Assistant Administrator.

[FR Doc. 93-15524 Filed 6-29-93; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 482

[BPD-633-P]

RIN 0938-AE40

Medicare Program; Hospital Standard for HIV Infectious Blood and Blood Products

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would address a blood and blood products safety issue that concerns the prompt notification of transfusion recipients who are at increased risk of HIV infection. Thus, this proposed rule would require hospitals to notify the recipient's attending physician when potentially HIV infectious blood and blood products have been administered, and ask the physician to inform the recipient of the need for HIV testing and counseling. If the physician is unavailable or declines to notify the recipient, the hospital must notify the recipient and inform the recipient of the need for HIV testing and counseling.

DATES: Written comments will be considered if we receive them at the

appropriate address, as provided below, no later than 5:00 p.m. on August 30, 1993.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–633–P, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201, or room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept audio, visual, or facsimile (FAX) copies of comments.

If comments concern information collection or recordkeeping requirements, please address a copy of comments to: Office of Management and budget, Office of Information and Regulatory Affairs, Room 3206, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron Eydt.

In commenting, please refer to file code BPD–633–P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–690–7890).

FOR FURTHER INFORMATION CONTACT: Joyce Eng, (410) 966–4619.

SUPPLEMENTARY INFORMATION:

I. Background

Hospitals must meet certain conditions of participation in order to participate in the Medicare program. These conditions are intended to protect patient health and safety and to ensure that high-quality care is provided to Medicare patients.

Regulations containing the Medicare conditions of participation for hospitals are located in the Code of Federal Regulations at 42 CFR part 482, with the conditions for hospital laboratory services at § 482.27. The laboratory regulations at § 482.27 are relatively general because the more detailed requirements for laboratories appear in part 493, which sets forth requirements for all laboratories participating in the Medicare, Medicaid, and Clinical Laboratories Improvement Act programs. Part 493 was added to the CFR on March 14, 1990 (55 FR 9538).

The Human Immunodeficiency Virus (HIV) is a virus whose presence is associated with Acquired Immune Deficiency Syndrome (AIDS). Receipt of potentially HIV infectious blood and blood products does not mean that a person will get AIDS, but it indicates a likelihood that one may, depending upon the recipient's immunity and other factors.

In response to scientific data that show HIV is transmissible through blood and blood products, the Food and Drug Administration (FDA) has implemented an extensive system of additional donor screening and testing procedures, performed before, during, and after donation takes place, to help prevent the transfusion of blood and blood products that are potentially contaminated with HIV. The FDA continues to monitor blood donor issues and updates its recommendations as more information becomes available.

The Social Security Administration operates a Blood Donor Locator Service (BDLS) to enable States and authorized blood donation facilities to notify blood donors whose donations indicate that they are or may be infected with HIV. Section 205(c)(2)(D) of the Act permits States to require a blood donor to furnish his or her Social Security number (SSN) to a State agency or to an authorized blood donation facility. With the SSN, an authorized blood donation facility may request the State to contact the BDLS to obtain the donor's last known personal mailing address. The State agency may also make a request on its own behalf for this information to the BDLS.

II. Provisions of the Regulations

This proposed rule would amend the conditions of participation for hospitals to require hospitals to develop agreements which would require outside blood banks to notify the hospitals when the blood banks have made potentially HIV infectious blood and blood products available to the hospitals. We also would require that the hospitals ensure that the recipients of the blood and blood products be notified and informed of the need for HIV testing and counseling. Testing persons for HIV could allow individuals who test positive to seek medical treatment and to change behavior so as not to infect others.

This proposed rule would set forth a new standard for hospitals at § 482.27, which sets forth standards for hospital laboratory services. Section 482.27(c)(1) would require that, when services are furnished to a hospital by an outside blood bank, there be an agreement governing the procurement, transfer and availability of blood and blood products specifying that the blood bank notify the hospital if potentially HIV infectious blood and blood products have been made available to the hospital. We are especially interested in receiving comments on whether this proposed requirement would be more appropriately implemented in the manner proposed, as part of a Medicare hospital standard, or as part of the FDA requirements applicable to blood banks.

Potentially HIV infectious blood and blood products would be defined as blood and blood products from a donor whose licensed or approved screening test shows the presence of HIV and whose licensed or approved screening supplemental, more specific tests are positive or unavailable. An individual would be considered to be infected by HIV if the individual's results from the FDA's licensed or approved tests at 21 CFR 610.45 show the presence of HIV and if these screening results are confirmed by a licensed or approved supplemental, more specific test.

A new paragraph (c)(2) would require that, if a hospital has administered potentially HIV infectious blood and blood products, the hospital must first make several attempts to notify the recipient's attending physician (physician of record) and ask the physician to inform the recipient of the need for HIV testing and counseling. Then, if the physician is unavailable or declines to notify the recipient, the hospital must make several attempts to notify the recipient and inform the recipient of the need for HIV testing and counseling. The notification must be confidential. The hospital is responsible for notification, including basic explanations to the recipient and referral for counseling.

We believe that the hospital's notification effort should consist of, at the minimum, several attempts by phone or in writing to reach the attending physician and then, the recipient. The hospital's notification effort should begin immediately after receiving word from the blood bank and be completed eight weeks later. We would require that the hospital document the attempts to notify the attending physician, the attempts to notify the recipient, and indicate whether the recipient was located. We specifically invite public comment on the sufficiency of this level of effort and on whether the notification should be done by certified mail marked "confidential".

In the proposed § 482.27(c)(2), we believe that the chain of notification

about the potentially infectious blood and blood products should be from the hospital to the recipient's attending physician (physician of record), and that only in rare situations would the recipient receive this notification from the hospital. We invite comment as to whether a regulation describing the mechanics of this notification is necessary and whether additional explanation is necessary to identify when the hospital should directly notify the recipient. We believe this proposed rule is self-explanatory, but that a stated timeframe may be necessary to determine when the recipient should be notified by the hospital if the attending physician cannot be reached by telephone.

If a hospital furnishes HIV testing or counseling, we do not anticipate that the hospital will furnish these services without costs. It may choose to furnish the services and bill the recipient, or it may refer the recipient to a public health agency or a laboratory. Medicare and Medicaid would pay for services they cover (coverage would vary, depending on which program was used and which services were furnished). Private insurance may pay for non-Medicare or non-Medicaid patients.

We have not yet determined whether these new requirements should be independently verified by a survey or whether hospitals accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and the American Osteopathic Association (AOA) can be assumed to meet these requirements. Because accreditation standards change regularly, this proposed new requirement may well be incorporated into the accreditation programs of the JCAHO and the AOA. When a final regulation is published, we will announce whether accreditation by one of these organizations creates presumptive compliance or whether a compliance survey will be performed.

This proposed rule addresses hospital requirements only, because we believe the overwhelming majority of blood and blood products are furnished in hospitals. However, we welcome public comment regarding the need to develop similar requirements for other types of facilities.

III. Regulatory Impact Analysis

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals, blood banks and physicians to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

This proposed rule would add a new paragraph (c) to § 482.27 regarding the notification of a patient when potentially HIV infectious blood and blood products have been administered. These proposed regulations do not affect blood testing required by § 493.1269 ("Condition: Immunohematology").

From 1988 through 1991, the risk of HIV transmission via blood and blood products transfusion has been estimated to be between 1 in 38,000 and 1 in 153,000. Appropriate efforts to further reduce the risk have occurred by public education, improved tests, donor questionnaires, and revised criteria for donor self-referral. However, it remains possible, despite the best practices of a blood bank, that a person might donate blood and blood products early in infection, during the "window" period, when the test for anti-HIV remains negative but HIV is present in the person's blood. Section 482.24 ("Condition of participation: Medical record services.") currently requires hospitals to maintain records for a period of 5 years. We expect hospitals would identify recipients of blood and blood products and furnish appropriate notice to the extent to which they have maintained records that permit them to do so.

As for ongoing activities, we anticipate that only a small number of cases per year can be traced to potentially HIV infectious transfused blood and blood products, and thus, we do not expect these proposed regulations would result in a substantial economic or resource burden on hospitals, blood banks or physicians. We do not have estimates of the additional cost due to the HIV counseling and subsequent testing that would be required, but since the services would be covered for those persons eligible to receive Medicare and Medicaid benefits, if they meet other eligibility and coverage requirements, we believe the effect on beneficiaries, even in high risk areas, would be minimal. To the extent possible, private insurance may also pay, or, if the State has a program, the Ryan White Comprehensive AIDS Resource Emergency Act of 1990 (Pub. L. 101-381) may cover some of these services. In addition, since many hospitals, blood banks, and physicians are currently voluntarily complying with the requirements of these proposed regulations, new effects due to these proposed regulations are not expected to be substantial. We expect the continued cost of implementing this regulation after the initial implementation to be small because the risk of a person being transfused with potentially HIV infectious blood and blood products is declining. Even though this proposed rule would affect few people per year after initial implementation, public awareness of the HIV issue dictates that we address it by taking steps to ensure that potentially infected people are notified so they may seek appropriate medical care or consider behavior changes so as not to infect others.

As part of this proposed rule, blood banks with records that permit them to do so may notify hospitals of potentially HIV infectious blood and blood products provided in past years. Recipients of potentially HIV infectious blood and blood products would need to be notified and informed of the need for HIV testing and counseling. Since it is extremely important to notify these individuals that they have the potential to transmit the HIV virus to others, it is necessary that they be identified and notified, and that their status be assessed. This is critical to the epidemiology of AIDS.

For the reasons cited above, we do not believe these proposed regulations would meet any of the criteria for a major rule, therefore we are not including an initial regulatory impact analysis.

In addition, since we have determined, and the Secretary certifies, that this proposed rule would not be

likely to have a significant economic impact on a substantial number of small entities or on the operations of a substantial number of small rural hospitals, we are not preparing analyses for either the RFA or small rural hospitals.

IV. Information Collection Requirements

Section 482.27(c)(2) of this proposed rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This section requires that, if potentially HIV infectious blood and blood products are administered, regardless of the source of the blood, a hospital must first make several attempts to notify the recipient's attending physician and ask the physician to inform the recipient of the need for HIV testing and counseling. Then, if the physician is unavailable, or declines to notify the recipient, the hospital must make several attempts to notify the recipient and inform the recipient of the need for HIV testing and counseling. The hospital must also document the notification or attempts to notify the attending physician and the recipient. Public reporting burden for the collection of information is estimated to be 1 hour per response. A notice will be published in the **Federal Register** if approval is obtained. Other organizations and individuals desiring to submit comments regarding the burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, should direct them to the OMB official whose name appears in the "ADDRESSES" section of this preamble.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects in 42 CFR Part 482

Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Chapter IV, 42 CFR 482.27 would be amended as follows:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation for Part 482 continues to read as follows:

Authority: Secs. 1102, 1136, 1138, 1814(a)(6), 1861(e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1302b-6, 1338, 1395f(a)(6), 1395x(e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1395aa, 1395hh, 1395tt, 1395ww, 1396a(a)(30), and 1396(a)).

2. In § 482.27, a new paragraph (c) is added as follows:

§ 482.27 Condition of participation: Laboratory services.

* * * * *

(c) Standard: Infectious blood and blood products.

(1) When services are furnished by an outside blood bank, the hospital must have an agreement governing the procurement, transfer, and availability of blood and blood products. The agreement must require that the blood bank notify the hospital if potentially HIV infectious blood and blood products have been made available to the hospital. "Potentially HIV infectious blood and blood products" is defined as blood and blood products from a donor whose licensed or approved screening test shows the presence of HIV and whose licensed or approved screening supplemental, more specific tests are positive or unavailable.

An individual would be considered to be infected by HIV if the individual's results from the FDA's licensed or approved tests at 21 CFR 610.45 show the presence of HIV, and if these screening results are confirmed by a licensed or approved supplemental, more specific test.

(2) If a hospital has administered potentially HIV infectious blood and blood products, the hospital must make several attempts to notify the recipient's attending physician (physician of record) and ask him or her to inform the recipient of the need for HIV testing and counseling. If the physician is unavailable or declines to notify the recipient, the hospital must make several attempts to notify the recipient and inform the recipient of the need for HIV testing and counseling. The hospital is responsible for notification, including basic explanations to the recipient and referral for counseling, and must document the notification or attempts to notify the attending physician and the recipient.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance.)

Dated: March 2, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: May 19, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–15357 Filed 6–29–93; 8:45 am]

BILLING CODE 4120-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 93–25, DA 93–760]

Cable Television Services; Implementation of Section 25 of the Cable Television Act, Direct Broadcast Satellite Public Service Obligations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: The Commission granted a request by the Association of America's Public Television Stations for a two-week extension of the deadline for filing reply comments in this proceeding. The Commission determined that the extension of time was warranted in light of the complexity and novelty of the issues raised in this proceeding. This action will facilitate the development of a full and complete record on these issues.

DATES: Reply comments are now due on July 14, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 632–5414.

SUPPLEMENTARY INFORMATION:

Order Granting Extension of Time To File Reply Comments

In the Matter of Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992; Direct Broadcast Satellite Public Service Obligations.

Adopted: June 23, 1993; Released: June 24, 1993; Reply Comment Date: July 14, 1993.

1. On March 2, 1993, the Commission released a Notice of Proposed Rule Making ("Notice") in this proceeding, soliciting comment on the imposition of public service obligations on providers of direct broadcast satellite video programming.[1] The deadline for filing

[1] 8 FCC Rcd 1589 (1993), 58 F R. 12917 (March 8, 1993).

eply comments is currently June 30, 1993.

2. On June 21, 1993, a motion for extension of time for filing reply comments was filed by the Association of America's Public Television Stations ("APTS"). The motion requests that the deadline for filing reply comments be extended by two weeks to July 14, 1993.

3. APTS contends, among other things, that the extension of time is necessary to analyze the complicated issues raised in this proceeding and the numerous sets of comments that have been filed. Moreover, APTS has been and is involved in a number of other legal activities related to implementation of the 1992 Cable Act with strict participation deadlines during this comment and reply period. Also, APTS is in a unique position to represent the interests of a significant constituency in this rulemaking proceeding.

4. Although § 1.46 of the Commission's Rules provides that extensions of time should not be routinely granted, we believe that a two week extension of time to file reply comments is warranted in light of the complexity and novelty of the issues raised in this proceeding. This brief extension of time should facilitate the development of a full and complete record on these issues and should not prejudice the parties in this proceeding.

5. Accordingly, *it is ordered*, That the motion for extension of time filed by the Association of America's Public Television Stations is granted and that the time for filing reply comments in MM Docket 93–25 is hereby extended to July 14, 1993.

6. This action is taken pursuant to authority found in sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, and §§ 0.204(b), 0.283, and 1.45–46 of the Commission's Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93–15375 Filed 6–29–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

Atlantic Tuna Fisheries; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of an additional public hearing.

SUMMARY: NMFS will hold an additional public hearing in Bath, Maine, on June 28, 1993, from 7 p.m. to 10 p.m. This is in addition to those hearings already scheduled that appeared in the **Federal Register** on June 21, 1993 (58 FR 33793). The hearings are scheduled to receive comments on the proposed regulations governing the Atlantic tuna fisheries. This additional meeting was scheduled after industry contracts expressed concern that it was not practical for the large fishing community in Maine to attend the other hearings.

DATES: Comments on the proposed rule that is the subject of these hearings must be received on or before July 8, 1993. See **SUPPLEMENTARY INFORMATION** for dates and times of the hearings.

ADDRESSES: Written comments should be sent to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Clearly mark the outside of the envelope "Tuna Comments." Copies of the proposed rule are available from the same address.

See **SUPPLEMENTARY INFORMATION** for addresses of the hearing locations.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347.

SUPPLEMENTARY INFORMATION: This notice is to announce an additional public hearing to those already scheduled hearings that appeared in the **Federal Register** on June 21, 1993 (58 FR 33793). The hearings are scheduled to receive comments on a proposed rule to amend the regulations governing the Atlantic tuna fisheries (58 FR 32894, June 14, 1993). A summary of the measures, and the purpose and need for the proposed action, are contained in the previous **Federal Register** notice of public hearings, and are not repeated here. A complete description of the measures, and the purpose and need for the proposed action, are contained in the proposed rule. Copies of the proposed rule may be obtained by writing (see **ADDRESSES**) or calling the contact person above.

The public hearing schedule is revised to read as follows:

June 28, 1993, Bath, ME, 7–10 p.m.

Morse High School Auditorium, 826 High St., Bath, ME 04530, (207) 443–8250

June 29, 1993, Portsmouth, NH, 7–10 p.m.

Elwyn (Urban) Forestry Center, 45 Elwyn Rd., Portsmouth, NH 03801, (603) 431–6774

June 30, 1993, New Bedford, MA, 7–10 p.m.

Seaport Inn, 110 Middle St., Fairhaven, MA 02719, (508) 997–1281

July 1, 1993, Toms River, NJ, 7–10 p.m.

Ocean County Community College Auditorium, College Drive, P.O. Box 2001, Toms River, NJ 08754–2001, (908) 255–0326

July 2, 1993, Ronkonkoma, NY, 7–10 p.m.

Holiday Inn (Airport), 3845 Veterans Memorial Highway, Ronkonkoma, NY 11779, (516) 585–9500

July 6, 1993, Norfolk, VA, 7–10 p.m.

Quality Inn, 6280 Northampton Blvd., Norfolk, VA 23502, (804) 461–6251

After consulting with fishing industry representatives in the Gulf of Mexico, a decision was reached that a public hearing in that area was not necessary. If NMFS receives information that contradicts this decision, a hearing at a later date will be scheduled there.

Dated: June 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–15349 Filed 6–24–93; 4:41 pm]

BILLING CODE 3510–22–M

50 CFR Parts 285 and 630

Receipt of Petition for Rulemaking; Center for Marine Conservation

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of petition for rulemaking; extension of comment period.

SUMMARY: NMFS announces that it is extending the comment period on the Center for Marine Conservation's (CMC's) petition for rulemaking in the pair trawl fishery to July 8, 1993.

In order to coincide further comments received on this petition with those on an Atlantic tuna proposed rule dealing with similar issues, NMFS is extending the comment period.

DATES: Comments on the petition are requested through July 8, 1993.

ADDRESSES: Comments on the petition should be directed to: Nancy Foster, Assistant Administrator (Acting), National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910 (Attention: Richard Stone—F/CM4). Please indicate in the letter that your comment is in response to the "CMC Petition for Rulemaking."

FOR FURTHER INFORMATION CONTACT: Regarding Fishery Management Plan

issues, please contact Aaron King, 301–713–2347; regarding ESA and MMPA issues, please contact Victoria Credle at 301–713–2322. Copies of the Center for Marine Conservation's petition for rulemaking are available upon request. Also available are aggregated data on catch of target species and bycatch in the pair trawl fishery as collected by observers during the fall of 1992.

SUPPLEMENTARY INFORMATION: A **Federal Register** notice acknowledging a CMC petition for rulemaking on pair trawling, and requesting public comment over a 30-day comment period, was published on April 26, 1993, at 58 FR 21967. In order to coincide further comments received on this petition with those on an Atlantic tunas proposed rule (published on June 8, 1993, 58 FR 32894) dealing with similar issues, NMFS is extending the comment period on the CMC petition to July 8, 1993 (the end of the proposed rule comment period).

Comments will continue to be solicited on the CMC requests to (1) amend guidelines for Fishery Management Plans (FMPs) to limit the use of new fishing gear, and (2) amend the Swordfish FMP and other FMPs to regulate pair trawling as an experimental fishery. The request to recategorize the pair trawl fishery from a Category II to a Category I fishery has already been considered in the 1993 List of Fisheries (see Interim Final List of Fisheries, 58 FR 32905, June 14, 1993). The request to reinitiate consultation under section 7 of the Endangered Species Act has been denied based on the lack of any new evidence indicating greater interactions between pair trawl gear and endangered or threatened species than previously considered.

Further information is available from the **Federal Register** notice of receipt of petition for rulemaking.

Dated: June 24, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–15352 Filed 6–29–93; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 669

Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NMFS announces that the Caribbean Fishery Management Council has submitted Amendment 2 to the Fishery Management Plan for the Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP) for review by the Secretary of Commerce (Secretary). The amendment is available for public review and comments are requested from the public.

EFFECTIVE DATE: Written comments must be received on or before August 26, 1993.

ADDRESSES: Comments should be mailed to the Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702. Copies of Amendment 2, which contains a draft regulatory impact review/initial regulatory flexibility analysis/ supplemental environmental impact statement, may be obtained from the Caribbean Fishery Management Council, 268 Ave Muñoz Rivera, suite 1108, San Juan, PR 00918–2577.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolon, 809–753–6910 or William R. Turner, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) requires that a council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving an amendment, immediately publish a notice that it is available for public review and comment. The Secretary will consider public comment in determining approvability of the amendment.

Amendment 2 to the FMP proposes to (1) expand the management unit to incorporate species comprising the most important components of the deep-water reef fish fishery and finfish species taken in the marine aquarium trade; (2) add measures to reverse the decline of certain reef fish species; (3) restrict harvest and gear for various species; (4) close spawning aggregation areas for red hind and mutton snapper; and (5) revise certain fish trap restrictions, including authorizing the use of 18-gauge ungalvanized wire as fasteners on escape panels when a zinc anode is not attached to the trap. Based on a preliminary review of Amendment 2, the Secretary has disapproved the provision in Amendment 2 that would have authorized the use of 18-gauge ungalvanized wire as fasteners on traps because this measure was determined to be inconsistent with national standard 2 requiring measures to be based on the best available scientific information. The use of such wire has not been scientifically tested to determine if its degradation time would prevent overfishing. Amendment 2 also makes several recommendations to the local governments of Puerto Rico and the U.S. Virgin Islands regarding mandatory permitting and reporting requirements, monitoring landings of red and tiger grouper, establishing marine coral reef reserves, and extending current local regulations that prohibit the introduction of exotic species in freshwater to marine waters.

Proposed regulations to implement Amendment 2, less the disapproved measure for wire trap fasteners, are scheduled for publication within 15 days.

Dated: June 25, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service

[FR Doc. 93–15410 Filed 6–29–93; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 124
Wednesday, June 30, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation of the Schneider (IN) Agency and the State of Georgia

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: FGIS announces the designation of Schneider Inspection Service, Inc. (Schneider), and the Georgia Department of Agriculture (Georgia) to provide official inspection services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: August 1, 1993.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the January 28, 1993, **Federal Register** (58 FR 6382), FGIS announced that the designations of Schneider and Georgia end on July 31, 1993, and asked persons interested in providing official services within the specified geographic areas to submit an application for designation. Applications were due by March 1, 1993.

Schneider and Georgia, the only applicants, each applied for the entire area currently assigned to them. FGIS named and requested comments on the applicants for designation in the March 31, 1993, **Federal Register** (58 FR 16810). Comments were due by April 30, 1993. FGIS received one comment by the deadline. This comment, submitted by a grain firm, supported designation of Schneider.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and according to section 7(f)(1)(B), determined that Schneider and Georgia are able to provide official services in the geographic areas for which they applied.

Effective August 1, 1993, and ending July 31, 1996, Schneider and Georgia are designated to provide official inspection services in the geographic area specified in the January 28, 1993, **Federal Register**.

Interested persons may obtain official services by contacting Schneider at 219–992–2306, and Georgia at 912–386–3130.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: June 23, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–15250 Filed 6–29–93; 8:45 am]

BILLING CODE 3410–EN–F

Request for Applications From Persons Interested in Designation To Provide Official Services in the Geographic Areas Presently Assigned to the Decatur (IL) and McCrea (IA) Agencies, and the State of South Carolina (SC)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of Decatur Grain Inspection, Inc. (Decatur), John R. McCrea Agency, Inc. (McCrea), and the South Carolina Department of Agriculture (South Carolina) will end December 31, 1993, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before July 30, 1993.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Decatur, main office located in Decatur, Illinois; McCrea, main office located in Clinton, Iowa; and South Carolina, main office located in Columbia, South Carolina, to provide official grain inspection services under the Act on January 1, 1990.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. The designations of Decatur, McCrea, and South Carolina end on December 31, 1993. The geographic area presently assigned to Decatur, in the State of Illinois, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern and eastern DeWitt County lines; the eastern Macon County line south to Interstate 72; Interstate 72 northeast to the eastern Piatt County line;

Bounded on the East by the eastern Piatt, Moultrie, and Shelby County lines;

Bounded on the South by the southern Shelby County line; a straight

line running along the southern Montgomery County line west to State Route 16 to a point approximately one mile northeast of Irving; and

Bounded on the West by a straight line from this point northeast to Stonington on State Route 48; a straight line from Stonington northwest to Elkhart on Interstate 55; a straight line from Elkhart northeast to the west side of Beason on State Route 10; State Route 10 east to DeWitt County; the western DeWitt County line.

Exceptions to Decatur's assigned geographic area are the following locations inside Decatur's area which have been and will continue to be serviced by the following official agencies:

1. Champaign-Danville Grain Inspection Departments, Inc.: Moultrie Grain Association, Cadwell, Moultrie County; Tabor and Company, Weedman Grain Company, and Pacific Grain Company, all in Farmer City, DeWitt County; and Monticello Grain Company, Monticello, Piatt County; and

2. Springfield Grain Inspection, Inc.: Chestervale Elevator Company, Chestervale, Logan County.

The geographic area presently assigned to McCrea, in the States of Illinois and Iowa, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Carroll and Whiteside Counties, Illinois.

Clinton and Jackson Counties, Iowa.

The geographic area presently assigned to South Carolina, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is the entire State of South Carolina, except those export port locations within the State.

Interested persons, including Decatur, McCrea, and South Carolina are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning January 1, 1994, and ending December 31, 1996. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: June 23, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–15249 Filed 6–29–93; 8:45 am]

BILLING CODE 3410–EN–F

Request for Comments on the Applicant for Designation in the Geographic Area Currently Assigned to the Hastings (NE) Agency

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicant for designation to provide official services in the geographic area currently assigned to Hastings Grain Inspection, Inc. (Hastings).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by July 30, 1993.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the April 29, 1993, **Federal Register** (58 FR 25965), FGIS asked persons interested in providing official services in the geographic area assigned to Hastings to submit an application for designation. Applications were due by May 31, 1993. Hastings, the only applicant, applied for the area currently assigned to it. FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning Hastings. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of Hastings. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicant written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: June 23, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–15248 Filed 6–29–93; 8:45 am]

BILLING CODE 3410–EN–F

Request for Comments on the Applicants for Designation in the Fort Worth (TX) Area

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicants for designation to provide official services in the Fort Worth geographic area presently assigned to Amarillo Grain Exchange, Inc. (Amarillo).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by July 30, 1993.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the April 29, 1993, **Federal Register** (58 FR 25966), FGIS asked persons interested in providing official services in the Fort Worth area presently assigned to Amarillo to submit an application for designation. Applications were due by May 31, 1993. There were two applicants: William K. Mathews proposing to incorporate and do business as North Texas Grain Inspection, Inc., and Basil B. Aumiller. Both applied for the entire Fort Worth area, but would accept less than the entire area. FGIS also requested comments on the need for official services in the Fort Worth area. FGIS received comments from two grain firms and the Fort Worth Grain Exchange requesting that official services be provided in the Fort Worth area.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of the applicant. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicant written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: June 23, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–15247 Filed 6–29–93; 8:45 am]

BILLING CODE 3410–EN–F

Animal and Plant Health Inspection Service

[Docket No. 93–078–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 10 environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
93–026–04	University of California, Berkeley.	05–26–93	*Pseudomonas syringae*, genetically engineered for reduced epiphytic fitness.	California.
93–033–02	Pioneer Hi-Bred International, Incorporated.	05–26–93	Sunflower plants genetically engineered to express a methioninerich seed storage protein from Brazil nut.	North Dakota.
93–063–05	American Crystal Sugar Company.	05–26–93	Sugarbeet plants genetically engineered to express two genes for tolerance to the herbicide glyphosate.	North Dakota.

Permit No.	Permittee	Date Issued	Organisms	Field test location
93-012-01	University of Idaho	05-28-93	Potato plants genetically engineered to express potyvirus- and luteovirus-derived genes to obtain resistance to potato virus Y (PVY) or potato leaf roll virus (PLRV).	Idaho.
93-085-02	Upjohn Company	05-28-93	Lettuce plants genetically engineered to express resistance to tomato spotted wilt virus.	Georgia.
93-088-01	Louisiana State University.	05-28-93	Rice plants genetically engineered to express tolerance to the phosphinothricin class of herbicides and resistance to hygromycin.	Louisiana.
93-074-06	Upjohn Company	06-04-93	Cucumber plants genetically engineered to express resistance to certain fungal plant pathogens.	Georgia.
93-088-02	University of Wisconsin	06-04-93	Alfalfa plants genetically engineered to express industrial enzymes.	Wisconsin.
93-090-02	DuPont Agricultural Products.	06-04-93	Rapeseed plants genetically engineered to express modified fatty acids in seeds.	Idaho.
93-105-01, renewal of permit 92-164-02, issued on 07-30-92.	Michigan State University.	06-04-93	Melon plants genetically engineered to express resistance to zucchini yellow mosaic virus.	Michigan.

The environmental assessments and findings of no significant impact have been prepared in accordance with:

(1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*);

(2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508);

(3) USDA Regulations Implementing NEPA (7 CFR part 1b); and

(4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 23rd day of June 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–15405 Filed 6–29–93; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 93–069–1]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
93–056–02, renewal of permit 91–43–01, issued on 05–10–91.	Louisiana State University.	05–19–93	Rice plants genetically engineered to express a delta-endotoxin from *Bacillus thuringiensis* subsp. *soto* for resistance to lepidopteran insects, and to express bean and rice storage proteins.	Louisiana.
93–053–02	Upjohn Company	05–20–93	Squash plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	California, Georgia, Oregon, Texas.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 23rd day of June 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–15404 Filed 6–29–93; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 93–068–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the month of April 1993. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of April 1993. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 23rd day of June 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–15406 Filed 6–29–93; 8:45 am]

BILLING CODE 3410–34–P

Farmers Home Administration

Springhill Subdivision Project, Charles Town, WV; Notice of Intent To Prepare Environmental Impact Statement; Public Scoping Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement.

SUMMARY: The notice is hereby given that the U.S. Army Corps of Engineers under the direction of the Farmers Home Administration (FmHA), Morgantown, West Virginia is gathering information in order to prepare an Environmental Impact Statement (EIS) for a proposal to develop the proposed Springhill Subdivision Project, located in Charles Town, West Virginia. The proposed project endeavors to provide affordable housing for the Charles Town and surrounding area. The development of the Springhill Subdivision Project creates the potential for significant environmental and socio-economic impacts; therefore a draft EIS (DEIS) will be prepared to analyze these potential impacts.

DATES: FmHA is scheduling a public scoping meeting on the Springhill Subdivision Project DEIS for Tuesday, July 13, 1993, at 6 p.m. All interested parties are encouraged to attend and participate in this meeting. This meeting will be held to determine the scope and significant issues to be analyzed in depth in the DEIS. Notice of this meeting will be published in local newspapers. Written comments concerning the scope of the analysis must be received by July 30, 1993.

ADDRESSES: Send written comments to William D. Harman, State Environmental Coordinator, USDA, FmHA, Federal Building, room 320, 75 High Street, Morgantown, WV 26505–7500, (304) 291–4248. The public scoping meeting will be held at the Public Library, 200 E. Washington Street, Charles Town, West Virginia.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project and DEIS should be directed to William D. Harman, State Environmental Coordinator, Phone: (304) 291–4248.

SUPPLEMENTARY INFORMATION: 1. The proposed Springhill Subdivision will be developed by Marcus Enterprises, 608 E. Washington Street, Charles Town, West Virginia, Phone: (304) 725–9233.

2. The proposed development will consist of:

a. 315 single family homes;
b. 155 townhouses;
c. A recreation area;
d. A daycare center;
e. Two bus and mail drop-offs; and
f. A protected 6.35 acre wetland area.

In addition a vegetated buffer strip will be established on the south side of the development between the houses and the Baltimore & Ohio Railroad and wetlands.

3. These efforts have been discussed at meetings and workshops with concerned area residents. Public involvement will continue throughout the development of the DEIS in the form of workshops and information furnished to the local media. Federal, State, and local agencies, as well as, other affected and concerned organizations will be notified of all scheduled meetings through published notices in local newspapers and direct notification with concerned parties.

4. Several potentially significant environmental impacts have been identified. These are:

a. Impacts on existing wetlands;
b. Impacts on the possibility of Endangered and Threatened Species being present in the existing wetland area;
c. Socio-economic impacts;
d. Impacts to cultural resources;
e. Impacts on existing aquatic and terrestrial resources.

In addition to the above potential impacts, any significant impacts developed during the environmental impact analysis or brought out as part of the scoping meeting shall be addressed and presented in the DEIS.

5. The DEIS will be developed under the guidance, requirements, and format in 40 CFR 1502.10, "Recommended Format". Consultation will be conducted with the U.S. Fish and Wildlife Service and the Environmental Protection Agency during the DEIS process, pursuant to the requirements of the Fish and Wildlife Coordination Act 16 U.S.C. *661 et seq. (Pub. L. 85–624), the Heritage Conservation and Recreation Service and State Historical Preservation Act of 1966 (80 Stat. 915) (Pub. L. 89–655), and the Preservation of Historic and Archaeological Data (88 Stat. 174) (Pub. L. 93–291) and Executive Order 11593 (Protection and Enhancement of the Cultural Environment). In addition, any other interested groups or organizations will be welcomed as active participants in the DEIS process.

6. Alternatives under consideration are reduction in project size and alternative sites.

Dated: June 24, 1993.

Sharron S. Longino,

Acting Administrator, Farmers Home Administration.

[FR Doc. 93–15374 Filed 6–29–93; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: Application for License to Enter Watches and Watch Movements into the Customs Territory of the U.S. (Pub. L. 97–446).

Form Number: Agency—ITA–334P; 15 CFR 303 OMB—0625–0040.

Type of Request: Extension of a currently approved collection.

Burden: 6 respondents; 6 reporting hours.

Average Hours Per Response: 1 hour.

Needs and Uses: Public Law 97–446 requires the Departments of Commerce and the Interior to administer the distribution of duty-exemptions and duty-refunds involving up to $5 million annually to watch producers in the U.S. Territories and the Northern Mariana Islands. The annual allocation and production incentive certificate for each producer are based on data supplied from Form ITA–334P. The form is completed annually by each producer. It is also used by new firms making application for entitlements for the first time.

Affected Public: Businesses or other for profit; small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 25, 1993.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 93–15442 Filed 6–29–93; 8:45 am]

BILLING CODE 3510–CW–M

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

Firm name	Address	Date petition accepted	Product
Sandvik Rock Tools, Inc	8760 Clay Road, Houston, TX 77080	05/24/93	Boring or Sinking Machinery.

Firm name	Address	Date petition accepted	Product
Hawaiian Green House, Inc	P.O. Box L (Hwy 130), Pahoa, HI 96778	05/24/93	Anthuriums.
Green Point Nurseries	P.O. Box 4400 (811 Kealakai St.), Hilo, HI 926720.	05/24/93	Tropical Flowers.
Senior Systems Technology, Inc	20150 Sunburst Street, Chatsworth, CA 91311.	05/27/93	Electronic Assemblies and Printed Circuit Boards.
Dotson Wheel Corporation, Inc	Route 2, Box AA, Saltville, VA 24370	05/27/93	Carbon Steel is Bent, Machine Soldered to Form Wheels, Rims and Parts for Earth Moving Equipment.
Belle Dream, Inc	501 A Bellfork Road, Jacksonville, NC 28540.	05/31/93	Women's & Girls' Bathing Suits, Sportswear, Sleepwear and Graduation.
Richard and Rita deGroen	12424 164th Avenue SE, Renton, WA 98059.	05/31/93	Machined Aircraft Parts.
Seattle Telecom & Data, Inc	2735 152nd Avenue Northeast, Redmond, WA 98052.	06/02/93	Motherboards.
Alloy Tool & Mold Mfg. Corp	200 Meister Avenue, North Branch, NJ 08876.	06/02/93	Molds of Aluminum & Brass to be used to Produce Blow Mold Plastic Containers.
Windham Industries, Inc	100 Passaic Street, Garfield, NJ 07026	06/04/93	Women's Sweaters.
EMA Capital, Inc	1816 West 135 Street, Gardena, CA 90249.	06/04/93	Electic Table, Desk and Floorstand Lamps.
Coleman Cable Systems, Inc	2500 Commonwealth Avenue, North Chicago, IL 60064.	06/08/93	Copper Wire.
Taee Group, Inc	8868 Research Blvd. #406, Austin, TX 78758.	06/08/93	Wrist Watch Bands.
Interstate Forging Industries, Inc	4051 North 27th Street, Milwaukee, WI 53216–1883.	06/08/93	Parts for Oilfield Services Equipment, Tractors and Mining, Transmission, Military, Trucks & Auto.
Hasco Spring Industries, Inc	10600 Gratiot, Detroit, MI 48213	06/08/93	Flat Spiral Counter Balance Springs.
Gulf Valve Company	6511 Winfree, Houston, TX 77087	06/09/93	Check Valves.
Coastal Industries, Inc. dba OIC Valve Corporation.	7021 Portwest Dr., Suite 100, Houston TX 77024.	06/10/93	Check Valves.
Mc Alpin Industries, Inc	255 Hollenbeck Street, Rochester, NY 14621.	06/10/93	Metal Enclosure for Office Equipment and Copier Wiper Blades.
Alpha Circuits, Inc	1304 Langham Creek Dr., Suite 200, Houston, TX 77084–5076.	06/10/93	Printed Circuit Boards.
American Glove Co., Inc	P.O. Box 277, Alpine Street, Lyerly, GA 30730..	6/10/93	Work Gloves.
International Sensor Systems, Inc	P.O. Box 345, Industrial Park, Aurora, NE 68818	06/10/93	Hybrid Thick Film Printed Circuit Badges.
Younger Manufacturing Co., Realite Optical, Inc.	3788 South Broadway Place, Los Angeles, CA 90007.	06/10/93	Ophthalmic Lenses.
Papaya Orchards of Hawaii, Inc	800 Leilani Street, Hilo, HI 96720	06/15/93	Fruit Puree.
ILC Technology, Inc	399 Java Drive, Sunnyvale, CA 94089	06/15/93	Flash, Arc, and Infrared Lamps.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: June 23, 1993.

David L. McIlwain,

Acting Deputy Assistant Secretary for Program Operations.

[FR Doc. 93–15446 Filed 6–29–93; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal

government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 85–4A018."

U.S. Shippers Association's original Certificate was issued on June 3, 1986. It was subsequently amended on January 16, 1990 and on November 13, 1990. A summary of the original Certificate was published in the **Federal Register** on June 6, 1986 [51 FR 20873]. A summary of the application for amendment follows.

Summary of the Application:

Applicant: U.S. Shippers Association, 1209 Orange St., Wilmington, DE 19801.

Application No.: 85–4A018.

Date Deemed Submitted: June 24, 1993.

Proposed Amendment: The U.S. Shippers Association seeks to amend its Certificate to add the following additional companies as "Members" within the meaning of § 325.21 of the Regulations (15 CFR 325.2(1)): ARCO Chemical Company, Newton Square, PA (Controlling entity: Atlantic Richfield Company, Inc.); and Solvay Minerals, Inc., Houston, TX (Controlling entity: Solvay, S.A.).

Dated: June 24, 1993.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 93–15447 Filed 6–29–93; 8:45 am]

BILLING CODE 3510–DR–M

International Trade Administration, Commerce.

Export Trade Certificate of Review

ACTION: Notice of issuance of an Amended Export Trade Certificate of Review, Application No. 91–A0007.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the National Association of Energy Service Companies ("NAESCO") on June 23, 1993. The original Certificate was issued on January 21, 1992. Notice of issuance of the Certificate was published in the **Federal Register** on February 12, 1992 (57 FR 5133).

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1993) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

NAESCO's Export Trade Certificate of Review has been amended to add Energy Performance Services, Inc. of Houston Texas and its Subsidiary—Energy Performance Services of North America, Inc. of Montreal, Quebec Canada as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)), and the Certificate has been amended to remove Energy Investment, Inc. of Boston, Massachusetts. Furthermore, the definition of "Export Trade" has been amended to read as follows: "Export Trade means trade or commerce in Products, Services, Export Trade Facilitation Services and Technology Rights exported, or in the course of being exported, from the United States or any territory thereof to the Export Markets."

Correction

The date deemed submitted in the original Federal Register Notice (58 FR 17572, April 5, 1993) for the NAESCO amendment (Application No. 91–A0007) was incorrect. The correct date deemed submitted is March 25, 1993 instead of March 25, 1992.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: June 23, 1993.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 93–15435 Filed 6–29–93; 8:45 am]

BILLING CODE 3510–DR–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in China

June 24, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 24, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 334 and 347/348 are being increased by application of swing, reducing the limit for Category 607 to account for the increases.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff

Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 62304, published on December 30, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 24, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 23, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on June 24, 1993, you are directed to amend further the directive dated December 23, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Levels not in a group	
334	302,770 dozen.
347/348	2,445,054 dozen.
607	2,113,672 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–15440 Filed 6–29–93; 8:45 am]

BILLING CODE 3510–DR–F

Establishment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Costa Rica

June 24, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as recent consultations have not resulted in a mutually satisfactory solution on Category 447, the United States Government has decided to control imports in this category for the twelve-month period beginning on February 25, 1993 and extending through February 24, 1994 at a level of 7,971 dozen.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in further consultations with the Government of Costa Rica, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 58 FR 13059, published on March 9, 1993.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 24, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1992; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 447, produced or manufactured in Costa Rica and exported during the period beginning on February 25, 1993 and extending through February 24, 1994, in excess of 7,971 dozen [1].

Textile products in Category 447 which have been exported to the United States prior to February 25, 1993 shall not be subject to the limit established in this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–15438 Filed 6–29–93; 8:45 am]

BILLING CODE 3510–DR–F

Amendment and Adjustment of Import Limits and Establishment of a Sublimit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

June 24, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and adjusting limits and establishing a sublimit.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6712. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated May 5, 1993, the

[1] The limit has not been adjusted to account for any imports exported after February 24, 1993.

Governments of the United States and Malaysia agreed to amend their current bilateral agreement for 1993 to increase the base level for cotton trousers in Categories 347/348 and establish a sublimit for woven trousers in Categories 347–W/348–W. The new levels for Categories 347/348 and 347–W/348–W include a reduction for carryforward used in the 1992 agreement year.

Also, the current levels for certain other categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 54772, published on November 20, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and MOU, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 24, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 17, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on July 1, 1993, you are directed, pursuant to the Memorandum of Understanding (MOU) dated May 5, 1993, between the Governments of the United States and Malaysia, to increase the level for Categories 347/348 and establish a sublimit for Categories 347–W/348–W. Also, pursuant to the current bilateral textile agreement between the two governments, you are directed to reduce the limits for the remaining categories listed below.

Category	Twelve-month limit [1]
338/339	651,824 dozen.
347/348	333,450 dozen of which not more than 301,032 dozen shall be in Categories 347–W/348–W [2].
351/651	181,099 dozen.
634/635	586,517 dozen of which not more than 345,969 dozen shall be in Category 635.
638/639	302,210 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.3020, 6210.40.2035, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348–W: only HTS numbers 6204 12.0030, 6204.19.3030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.3010, 6204.69.9010, 6210.50.2035, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–15437 Filed 6–29–93; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

June 25, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: June 28, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6711. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The U.S. Government has agreed to increase the Special Regime limits for Categories 338/339/638/639 and 352/652.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 58 FR 88, published on January 4, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 25, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 28, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on June 28, 1993, you are directed to amend the directive dated December 28, 1993 to increase the Special Regime limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the United Mexican States. The Normal Regime sublimit for Categories 338/339/638/639 and the Normal Regime limit for Categories 352/652 remain unchanged.

Category	Adjusted twelve-month limit [1]
338/339/638/639	4,000,000 dozen.
352/652	3,700,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 93–15441 Filed 6–29–93; 8:45 am]
BILLING CODE 3510–DR–F

Notice of a New U.S. Policy on Illegal Transshipments

June 24, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Julie Carducci, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In order to curb the flow of illegal transshipment of textiles and apparel to the United States, the Committee for the Implementation of Textile Agreements (CITA) has adopted a new policy, effective immediately, for countries that are not members of the General Agreement on Tariffs and Trade (GATT) or the Arrangement Regarding International Trade in Textiles (MFA) and that do not have a bilateral textile agreement with the United States containing a consultation provision.

Under the new policy, when there is reasonable suspicion that textile and apparel imports arriving from a country are in circumvention of U.S. bilateral textile agreements or unilateral restraints with other countries, the United States Government will ask the country to allow a U.S. team of trained experts to conduct joint factory inspections with officials of the host government. The category or categories of textile product exports suspected of being illegally transshipped will be cited in the U.S. diplomatic note requesting permission to visit. The country will be given 15 working days to respond. If the country agrees to joint inspections, the United States Government will send a team as soon as possible, and during this time textile exports can continue to be imported into the United States, provided they do not disrupt the U.S. market. If the reply to the request for joint inspections is negative, then a notice of an embargo will be published in the **Federal Register** to inform the public. The embargo against that country's textile exports in the relevant category will take effect on a date certain. That date shall be published in the **Federal Register** and shall be the later of: (1) 45 U.S. working days after delivery of the request to the country or (2) 30 days after publication of the notice. However, if the country agrees to the joint inspections before expiration of the 45 U.S. working day period, then the embargo shall be suspended pending the inspection, and notice of such suspension shall be published in the **Federal Register.**

If inspection teams confirm adequate production in a country to justify the amount of imports entering the United States, no embargo will take effect. If the inspection team confirms that there is no production of the category in question, a complete or partial embargo will be imposed.

The provisions of the Administrative Procedures Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date are inapplicable because this policy falls within the foreign affairs exemption (5 U.S.C. 553(a)(1)).

Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 93–15439 Filed 6–29–93; 8:45 am]
BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Rolling Spot Futures Contract on the Australian Dollar and Options on That Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in rolling spot Australian dollar futures and option contracts. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before July 30, 1993.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME rolling spot Australian dollar futures contract and the option on that futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on June 24, 1993.

Gerald D. Gay,
Director.
[FR Doc. 93–15394 Filed 6–29–93; 8:45 am]
BILLING CODE 8351–01–M

VOL 58 ISS 124 JE 30 1993 UMI

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Disposal and Reuse of Naval Air Station Chase Field, Beeville, TX

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy announces its decision to dispose for reuse real property known as Naval Air Station (NAS) Chase Field, Beeville, Texas, including Naval Auxiliary Landing Field (NALF) Goliad and Chase Park family housing.

The Department of Defense has been directed by Congress to realign and reduce certain military operations pursuant to the Defense Base Closure and Realignment Act of 1990. NAS Chase Field, Beeville, Texas, was one of the bases directed for closure by the 1991 Defense Base Closure and Realignment Commission.

Draft and Final Environmental Impact Statements (DEIS/FEIS) were prepared by the Navy and distributed to federal and state agencies and elected officials, and to the interested public for review and comment. These documents described the potential environmental impacts associated with the following reuse alternatives: *NAS Chase Field:* (A) Correctional Facility/Community Redevelopment, and (B) Community Aviation/Mixed-Use, Chase Park family housing will likely continue to be used for housing purposes under either alternative. *NALF Goliad:* (A) Intensive Agricultural (Ostrich Farm), (B) Correctional Facility/Agricultural, and (C) Recreation/Conservation. The preferred environmental alternatives were construction of a correctional facility with other community redevelopment for NAS Chase Field and intensive agriculture for NALF Goliad. Comments on the DEIS centered on the need for timely approval of interim use agreements and the need for sufficient maintenance of the property before ultimate disposal. No substantive comments were received during the review period for the FEIS which ended on April 26, 1993.

For NAS Chase Field, the Navy proposes to convey the majority of buildings and non-aviation developed areas (approximately 284 acres) to the Texas Department of Criminal Justice (TDCJ). The TDCJ will use the property as a 4,000-bed correction facility, a TDCJ training center, and a maintenance, supply, and distribution center for the TDCJ in the South Texas area. The remainder of the property (approximately 1,488 acres), including airfield, hangars, aircraft maintenance facility, and the electronics maintenance facility, is proposed to be conveyed for use as a municipal airport as well as light industrial facilities or other compatible uses.

NALF Goliad is proposed to be conveyed for intensive agricultural use such as a large-scale ostrich farm and processing facility requiring construction of ostrich pens (204 acres), administration facilities (10 acres), and a wastewater treatment facility (10 acres).

This action will not result in any unmitigatable significant environmental impacts. The correctional facility/community redevelopment uses at NAS Chase Field will positively benefit the City of Beeville and Bee County in terms of economic activity, employment, and income. The capacity of community infrastructure, including roads, potable water, and sanitary sewer service, is projected to continue to provide acceptable levels of service. Community services such as police, fire, and emergency medical will not be adversely impacted. School districts in Bee County have adequate capacity, based on existing capacity and programmed improvements, to accommodate the projected level of students.

Seven installation restoration sites at NALF Goliad and NAS Chase Field are either under investigation for remediation, or are being cleaned up. The Navy will complete its investigations and, if necessary, remediate the sites prior to their conveyance.

The development of intensive agricultural use at NALF Golaid will also provide long-term benefits to the region in terms of economic activity, employment, and income. Expansion and/or improvements to existing water and wastewater systems will require compliance with state and local laws and regulations.

The Navy has made an "adverse effect" determination concerning the proposed action and its impact upon historic resources eligible for listing on the National Register of Historic Places, under the criteria established by the National Historic Preservation Act of 1966, as amended, and its implementing regulations (36 CFR part 800). A professional survey of NAS Chase Field and NALF Goliad finds that there are no archeological resources existing. A Memorandum of Agreement (MOA) has been developed which ensures appropriate management and protection of NAS Chase Field historic resources. The MOA has been signed by the Navy, the Texas State Historic Preservation Officer, and the Western Office of the Advisory Council on Historic Preservation, and is now effective. The MOA has also been concurred in by the TDCJ and the Beesville/Bee County Economic Development Corporation. Questions regarding this Record of Decision may be directed to Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, P.O. Box 10068, Charleston, SC 29411 (Attn: Mr. Laurens Pitts), telephone (803) 743–0893.

Dated: June 23, 1993.

Elsie L. Munsell,

Deputy Assistant Secretary of the Navy (Environment and Safety).

Dated: June 25, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–15422 Filed 6–29–93; 8:45 am]
BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133B]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Inviting Applications for Certain New Awards Under the Rehabilitation Research and Training Centers (RRTC) for Fiscal Year (FY) 1994

PURPOSE: On December 4, 1992 at 57 FR 57617 and January 21, 1993 at 58 FR 5535, Consolidated Application Packages (CAPs) were published in the **Federal Register** inviting applications for new awards for two competitions for fiscal year 1993. The CAPs contained information, application forms, and instructions needed to apply for a grant under these competitions. Satisfactory applications were not received for the RRTCs in (1) Personal Assistance Services, (2) Rehabilitation Interventions in Traumatic Brain Injury, and (3) Community Integration for Individuals with Spinal Cord Injury, and there is a continuing need for research into these areas. The purpose of this notice is to reinvite applications for the RRTCs listed above for fiscal year 1994.

The Rehabilitation Act Amendments of 1992 requires that each applicant for a grant demonstrate how its proposed activities address the needs of individuals from minority backgrounds who have disabilities.

The estimated funding levels in this notice do not bind the Department of

Education to make awards in any of these categories, or to any specific number of awards or funding levels.

APPLICATIONS AVAILABLE: July 1, 1993.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86; and (b) The regulations for this program in 34 CFR Parts 350 and 352.

PRIORITIES: The priorities published in the **Federal Register** on December 4, 1992 at 57 FR 57612 for Personal Assistance Services, and on January 21, 1993 at 58 FR 5524 for Rehabilitation Interventions in Traumatic Brain Injury, and Community Integration for Individuals with Spinal Cord Injury, apply to these competitions.

APPLICATION NOTICE FOR FISCAL YEAR 1994 REHABILITATION RESEARCH AND TRAINING CENTER CFDA NO. 84.133B

Funding priority	Deadline for transmittal of applications	Estimated number of wards	Estimated size of awards (per year)	Project period (months)
Personal assistance services	9/1/93	1	$500,000	36
Rehabilitation interventions in traumatic brain injury	9/1/93	1	650,000	60
Community integration for individuals with spinal cord injury	9/1/93	1	650,000	60

FOR FURTHER INFORMATION CONTACT: Dianne Villines, U.S. Department of Education, room 3417, Switzer Building, 400 Maryland Avenue, SW., Washington, DC 20202–2704. Telephone: (202) 205–5450. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

PROGRAM AUTHORITY: 29 U.S.C. 760–762

Dated: June 25, 1993.

William L. Smith,

Acting Assistant Secretary, Office of Special Education, and Rehabilitative Services.

[FR Doc. 93–15387 Filed 6–29–93; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Reporting and Dissemination Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10 (a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: July 19, 1993.

TIME: 10:15 a.m. to 11 a.m.

LOCATION: 800 North Capitol Street, NW., suite 825, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Reporting and Dissemination Committee of the National Assessment Governing Board will meet from 10:15 a.m. until 11 a.m. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The Committee will consider an NCES plan for release of two supplementary focussed reports on the 1992 mathematics assessment. These are to include presentations and discussions at seminars or conferences, to be held after the initial release press conferences. The reports will be on constructed response questions and effective mathematics instruction.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: June 25, 1993.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 93–15454 Filed 6–29–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93–623–000 et al]

Montaup Electric Co., et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 24, 1993.

Take notice that the following filings have been made with the Commission:

1. Montaup Electric Co.

[Docket No. ER93–623–000]

Take notice that on June 16, 1993, Montaup Electric Company tendered for filing, in the above-referenced docket, an amendment to the Company's agreement with Altresco Pittsfield L.P. The amendment replaces the formula rate attached to the agreement with the formula rate contained in Montaup's transmission tariff. The change eliminates unnecessary differences in format and was made as the result of discussions with the Commission's Staff.

Comment date: July 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Idaho Power Co.

[Docket No. ER93–491–002

Take notice that on June 14, 1993, Idaho Power Company (Idaho) tendered for filing its refund report in the above-referenced docket.

Comment date: July 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Edison Sault Electric Co.

[Docket No. ER93–717–000]

Take notice that Edison Sault Electric Company on June 21, 1993, tendered for filing proposed changes in its Transmission Coordination Agreement between Cloverland Electric Cooperative, Inc., and Edison Sault Electric Company, FPC Rate Schedule 9. The proposed changes represented in Supplement Number Four are to implement the ability of either Party to this agreement to arrange third-party wheeling over the joint system, provided any incremental costs associated therewith are paid by the third-party and that the wheeling does not jeopardize the reliability of service to existing customers. The charge for wheeling would be equal to the Transmission Carrying Charges defined in the existing Agreement, plus up to 1 mill per kWh for unquantifiable costs when the contract period is one year of less.

The proposed Supplement Number Four to the agreement will permit either Party to readily deal with potential wheeling customers such as may appear, particularly Qualifying Facilities and Independent Power Producers.

Comment date: July 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Portland General Electric Co.

Docket No. ER93–462–000

Take notice that on June 18, 1993, Portland General Electric Company (PGE) tendered for filing an amendment to its original filing under Docket No. ER93–462–000. The nature of the amendment is a request for a thirty (30) day delay of Commission action.

PGE is amending the filing to complete an updated cost support analysis and to allow FERC staff time to review that analysis.

Copies of this filing have been served on the parties included in the distribution list contained in the filing letter.

Comment date: July 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER93–577–000]

Take notice that on June 17, 1993, PacifiCorp withdrew its filing, in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, of the POWER PURCHASE AGREEMENT plus amendments between Sunnyside Cogeneration Associates and PacifiCorp.

Copies of this filing have been supplied to Sunnyside Cogeneration Associates, the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: July 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Montaup Electric Co.

[Docket No. ER93–624–000].

Take notice that on June 16, 1993, Montaup Electric Company tendered for filing, in the above referenced docket, an amendment to the Company's agreement with MASSPOWER. The amendment replaces the formula rate attached to the agreement with the formula rate contained in Montaup's transmission tariff. The change eliminate unnecessary differences in format and was made as the result of discussions with the Commission's Staff.

Comment date: July 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Portland General Electric Co.

[Docket No. ER93–716–000]

Take notice that Portland General Electric Company (PGE), on June 17, 1993, tendered for filing its Average System Cost (ASC) as calculated by PGE and determined by the Bonneville Power Administration under the revised ASC Methodology which became effective on October 1, 1984. This filing includes PGE's revised appendix 1 of the Residential Purchase and Sale Agreement.

PGE states that the revised Appendix 1 shows the ASC to be 34.29 mills/kWh. The Bonneville Power Administration determined the ASC rate for PGE to be 34.29 mills/kWh.

Copies of the filing have been served on the persons named in the transmittal letter as included in the filing.

Comment date: July 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Central Maine Power Co.

[Docket No. ER93–704–000]

Take notice that on June 10, 1993, Central Maine Power Company (CMP) tendered for filing a Power Sales Tariff which provides for sales of system capacity and/or energy or unit capacity and/or energy. The proposed Tariff requires interested purchasers to enter into a service agreement with Centeral Maine Power Company before transactions may commence under the Tariff.

CMP requests that its Tariff be accepted for filing and allowed to become effective in accordance with its terms as specified. Information filed in support of the Tariff includes cost support for CMP's tariff ceiling rates, and pricing terms that allow for the capacity and energy changes to be pro-rated for the duration of each sale. A copy of this filing was served upon the Maine Public Utilities Commission.

Comment date: July 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15395 Filed 6–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ93–8–63–002 and TM93–8–63–002]

Carnegie Natural Gas Co.; Compliance Filing

June 24, 1993.

Take notice that on June 17, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing the following substitute tariff sheet to Carnegie's FERC Gas Tariff, Second Revised Volume No. 1, to supplement and correct a tariff sheet submitted by Carnegie on June 11, 1993:

2nd Sub Forty-Fourth Revised Sheet No. 9

Carnegie states that it is submitting this second substitute tariff sheet to correct a typographical error contained on Substitute Forty-Fourth Revised Sheet No. 9 tendered in its June 11 compliance filing. Carnegie states that on that tariff sheet, the cumulative adjustment amount reflected for the minimum commodity rate under Carnegie's Rate Schedule SEGSS was

erroneously stated with brackets, indicating that it was a negative, or credit, amount. Carnegie further states that the second substitute tariff sheet filed on June 17, 1993, correctly reflects this amount without brackets, indicating that it is a positive amount.

Carnegie states that the correction affects only the cumulative adjustment amount for the SEGSS minimum commodity rate and does not result in any change to the adjusted sales rates in effect under any of Carnegie's rate schedules.

Carnegie states that copies of the supplemental filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15338 Filed 6–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–503–000]

East Tennessee Natural Gas Co.; Application

June 24, 1993.

Take notice that on June 21, 1993, East Tennessee Natural Gas Company (East Tennessee), Post Office Box 2511, Houston, Texas 77252, filed in Docket No. CP93–503–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate approximately 2000 feet of 8-inch loop line in Roanoke County, Virginia, all as more fully set forth in the application on file with the Commission and open to public inspection.

East Tennessee proposes to install the loopline around East Tennessee's existing 8-inch Line 3300 in Roanoke County. It is stated that the existing line may be jeopardized by the erection of a dam over the line and that the loop line is required to protect service through the existing line. It is explained that the county is developing a water impoundment reservoir over the existing line, which will be covered by water to a depth of 130 feet. It is further explained that the loop is needed in the event that the water might cause a rupture on the existing line. It is estimated that the construction cost will be $486,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 15,1 993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for East Tennessee to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15329 Filed 6–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–8–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

June 24, 1993.

Take notice that on June 11, 1993, Granite State Gas Transmission, Inc. (Granite State) 300 Friberg Parkway, Westborough, Massachusetts 01581, filed Revised Twenty-Sixth Revised Sheet No. 21 in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on June 12, 1993.

According to Granite State, its filing is an out-of-cycle purchased gas cost adjustment based on projected gas costs and sales for the balance of the second quarter of 1993. Granite State further states that its current rates are those made effective in Docket No. TF93–3–4–000 on May 1, 1993 and its actual gas costs have increased rapidly since that filing. It is further stated that the instant filing is made to correct its gas costs because of its potential exposure under Section 154.306 (Assessment of Past Performance) of the Regulations to disallowed costs.

Granite State indicates that the revised sales rates on Revised Twenty-Sixth Revised Sheet No. 21 are applicable to Granite State's wholesale sales to its two affiliated distribution company customers: Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities).

Granite State states that copies of its filing were served upon its customers Bay State Gas Company and Northern Utilities, Inc. and the regulatory commissions of the states of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to make protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15339 Filed 6–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93-54-000]

Great Bay Power Corporation; Application for Commission Determination of Exempt Wholesale Generator Status

June 24, 1993.

On June 11, 1993, Great Bay Power Corporation, a corporation organized under the laws of New Hampshire (the "Applicant") whose address is Forty Stark Street, P.O. Box 326, Manchester, NH 03101, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant states that it is engaged directly and exclusively in the business of owning a 12.1324 percent undivided interest (the "Seabrook Interest") in the Seabrook Nuclear Power Plant (the "Seabrook Plant") and selling at wholesale its entitlement to a pro rata share of the capacity and energy from the Seabrook Plant. The Seabrook Plant is a nuclear-fueled electricity generating plant located in Seabrook, New Hampshire, consisting of a pressurized water reactor with a rated capacity of 1,150 megawatts. The Seabrook Plant includes interconnecting transmission facilities that interconnect the Seabrook Plant with the transmission facilities of Public Service Company of New Hampshire. The Applicant requests a determination that upon the effective date of a plan of reorganization of the Applicant, the Applicant will be an exempt wholesale generator under section 32(a)(1) of the Public Utility Holding Company Act of 1935.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before July 9, 1993 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-15331 Filed 6-29-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2423-001]

William T. McCormick, Jr., Notice of Filing

June 24, 1993.

Take notice that on June 14, 1993, William T. McCormick, Jr. (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director—Schlumberger Limited.
Chairman of the Board and Consumers Power Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-15336 Filed 6-29-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-4-86-000 and TA93-1-86-001]

Pacific Gas Transmission Co.; Change in Rates

June 24, 1993.

Take notice that on June 18, 1993, Pacific Gas Transmission Company (PGT), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Twentieth Revised Sheet No. 4, with proposed effective date of June 19, 1993.

PGT also tendered for filing Substitute Twenty-First Revised Sheet No. 4, with proposed effective date of August 1, 1993. PGT states that the tariff sheet updates PGT's annual PGA filing at Docket No. TA93-1-86-000, filed on May 28, 1993.

PGT states that the rates set forth in the First Revised Twentieth Revised Tariff Sheet No. 4 reflect an increase of $0.106539 per MMBtu (commodity) from those rates filed in PGT's previously quarterly PGA filing at Docket No. TQ93-3-86-000, which were effective May 1, 1993. PGT states that this increase in commodity cost reflects an increase in projected prices.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-15330 Filed 6-29-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-144-000]

Southern Natural Gas Co.; Petition for Limited Waiver of Tariff Provisions

June 24, 1993.

Take notice that on June 17, 1993, Southern Natural Gas Company (Southern), tendered for filing a petition for a limited waiver of its FERC Gas Tariff, Sixth Revised Volume No. 1, in accordance with § 161.3(b) of the Commission's Regulations 18 CFR 163.3(b).

Southern respectfully requests a limited waiver of Southern's FERC Gas Tariff, Sixth Revised Volume No. 1, to the extent necessary to allow Southern to make an adjustment to Mullite Company of America's (Mullite) transportation account.

In January 1993, Mullite attempted to rectify a positive imbalance with Southern from December 1992 by nominating less transportation gas then it planned to withdraw, which Southern's tariff does not permit. The excess gas withdrawn by Mullite was treated as sales by Southern to Andersonville and sales by Andersonville to Mullite, resulting in substantially higher charges to Mullite. Southern requests authority to waive its tariff provision to adjust Mullite's transportation account so the excess gas withdrawn in January can be billed as gas purchased by Mullite in the spot market and transported by Southern.

Southern states that copies of the filing were served on all of Southern's shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15333 Filed 6–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP90–687–009]

Transcontinental Gas Pipe Line Corp.; Petition to Amend

June 24, 1993.

Take notice that on June 14, 1993, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed pursuant to sections 7(b) and 7(c) of the Natural Gas Act to further amend the certificate of public convenience and necessity granted by the Commission by orders issued January 17, 1991 and June 11, 1991, and amended by order issued November 30, 1992 in Docket Nos. CP90–687–000, *et al.*,[1] to permit the assignment of South Jersey Energy Company's (South Jersey Energy) firm transportation capacity entitlement under Transco's Rate Schedule FT–NT to South Jersey Gas Company (South Jersey Gas), all as more fully set forth in the application which is on file with the Commission and open to pubic inspection.

Transco states that South Jersey Energy and South Jersey Gas are shippers under Transco's Rate Schedule FT–NT and are also corporate affiliates of each other. South Jersey Energy and South Jersey Gas have notified Transco that South Jersey Energy desires to assign its Service Agreement under Rate Schedule FT–NT to South Jersey Gas. Transco further states that South Jersey Energy has explained to Transco that it no longer requires firm transportation capacity under Rate Schedule FT–NT, and, as part of South Jersey Energy's and South Jersey Gas' overall strategy, they desire South Jersey Gas to be the only corporate affiliate holding firm transportation capacity entitlements on Transco's system under Rate Schedule FT–NT.

Transco requests authorization to permit South Jersey Energy to assign its Rate Schedule FT–NT firm transportation capacity entitlement of 7,000 McF/d to South Jersey Gas. Transco states that in order to accomplish this assignment, Transco requests that: (1) Transco's certificate granted in this proceeding be amended to increase South Jersey Gas' firm transportation service under Rate Schedule FT–NT from 17,700 Mcf/d to 24,700 Mcf/d, and (2) South Jersey Energy's 7,000 Mcf/d of firm transportation service under Rate Schedule FT–NT be abandoned. Transco requests that this amendment and abandonment approval be effective on the first day of the month immediately following receipt and acceptance by Transco of the authorizations requested.

Transco states that since South Jersey Energy's and South Jersey Gas' Service Agreements under Rate Schedule FT–NT have the same receipt and delivery points, no changes to such agreements are required for this assignment. Also, no abandonment of or modifications to any facilities are required.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before July 15, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15334 Filed 6–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EF93–5101–000]

Western Area Power Administration; Notice of Filing

June 24, 1993.

Take notice that on June 10, 1993, the Assistant Secretary for Energy Efficiency and Renewable Energy of the Department of Energy, by Rate Order No. WAPA–62, did confirm and approve on an interim basis, to be effective beginning on June 8, 1993, an extension of the rate contained in contract No. 7–07–50–P0890 for Amistad and Falcon Projects' power marketed by Western Area Power Administration (Western).

The rate extension will be in effect on an interim basis pending the Federal Energy Regulatory Commission's (Commission) approval of it or a substitute rate on a final basis ending June 7, 1998.

Article 9(e) of the contract No. 7–07–50–P0890 requires Western to calculate the annual installment to be paid by the South Texas Electric Cooperative, Inc., and the Medina Electric Cooperative, Inc. (STEC/MEC), for the power generated at the Amistad and Falcon Powerplants, by consultation with the U.S.Section of the International Boundary and Water Commission (U.S. Section), and to submit it to STEC/MEC in the form of a contract exhibit on or before August 31, of the year preceding the fiscal year to which it pertains.

The amount of each annual installment shall be the sum of

(1) An annual installment including interest, to amortize within the remaining period, the unpaid United States investment in the Falcon hydroelectric facilities and in the penstocks at Amistad Dam; plus

(2) An annual installment to amortize over a 50-year period, the United States actual total investment costs with interest, for hydroelectric power facilities, not including penstocks, at Amistad Dam to be under the jurisdiction of the U.S. Section, including the costs of engineering plans, supervision, administration of construction, and interest during construction * * *, and

(3) The annual operation, maintenance, replacement, and administration costs of the U.S. Section and the administration costs of the U.S. Section and the administration costs of Western related directly or indirectly to the United States power facilities at Amistad Dam and at Falcon Dam, provided that such costs shall be based on prudent and businesslike management practices and in accordance with established electric industry operation and maintenance practices * * *.

This repayment schedule is not dependent upon the power and energy made available for sale of the rate of generation each year.

Western will continue to provide STEC/MEC with a revised exhibit A by

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[1] See 54 FERC 61,032; 55 FERC 61,415; and 61 FERC 62,164.

August 31 of each year using the same methodology.

The Assistant Secretary states that the rate extension is submitted for confirmation and approval on a final basis for a 5-year period beginning June 8, 1993, and ending June 7, 1998, pursuant to the authority vested in the Commission by Delegation Order No. 0204–108.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1535 Filed 6–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA93–1–43–002]

Williams Natural Gas Co.; Compliance Filing

June 24, 1993.

Take notice that on June 1, 1993, Williams Natural Gas Company (WNG) tendered for filing with the Commission additional information in compliance with Commission April 30, 1993 order. WNG states that by Commission order dated April 30, 1993 the Commission direct WNG to (1) file a statement in support of its storage gas projections, or make the appropriate adjustments, as necessary, to comply with the March 17, 1993 Commission order in Docket No. RS92–12, and (2) file a revised surcharge to be effective May 1, 1993, based on 12 months of estimated sales.

WNG states that Attachment A to the filing describes the basis for WNG's storage gas projections utilized in the annual PGA filing and the changes which have been made as a result of the March 17, 1993 order. Attachment B to the filing represents WNG's best estimate of sales for the six month period ending November 1, 1993. Such estimate sales level, also represents WNG's best estimate of sales for the twelve month period May 1993 through April 1994.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15337 Filed 6–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TM93–6–49–001 and TA93–1–49–002]

Williston Basin Interstate Pipeline Co.; Revised Tariff Filing

June 24, 1993.

Take notice that on June 17, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing a revision to its Annual Take-or-Pay Reconciliation Filing, which was filed May 28, 1993, and to its Annual Purchased Gas Adjustment Filing, which was filed June 1, 1993, pursuant to the General Terms and Conditions of its FERC GAS Tariff.

Williston Basin has requested that the Commission accept the tariff sheets contained in appendix A to the filing to become effective July 1, 1993 and the tariff sheets contained in appendix B to the filing to become effective August 1, 1993.

Williston Basin states that the substitute tariff sheets are being filed to reflect a correction to the total throughput underlying the revised throughput surcharge to be effective during the period July 1, 1993 through June 30, 1994 pursuant to the procedures contained in Section 32 and 33 of the General Terms and Conditions of Williston Basin's Ferc Gas Tariff, First Revised Volume No. 1 and in accordance with a filing submitted concurrently in compliance with the Commission's May 6, 1993 Order in Docket Nos. RP90–137–000, *et al.* This filing reflects a revised total throughput surcharge of 12.603 cents per dkt on all applicable sales and transportation volumes.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 384.211. All such protests should be filed on or before July 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–15332 Filed 6–29–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4672–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and their expected cost and burden; where appropriate, they include the actual data collection instruments.

DATES: Comments must be submitted on or before July 30, 1993.

FOR FURTHER INFORMATION, OR TO OBTAIN A COPY OF THESE ICRS, CONTACT: Ms. Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Annual Updates of Emission Data to the Aerometric Information Retrieval System (AIRS) (EPA ICR No. 0916.06; OMB No. 2060–0088). This is a request for renewal of a currently approved information collection.

Abstract: State air pollution control agencies are required to update annually information on stationary sources emitting at least prescribed amounts of pollutants regulated by the National Ambient Air Quality Standards (NAAQS). EPA's Office of Air Quality Planning and Standards (OAQPS) uses the annual emission reports to update the National data base on emissions of stationary sources. The data is used in developing emission standards, applying dispersion models, and in

preparing national trend assessments and other special analyses and reports.

Burden Statement: The public reporting burden for this collection of information is estimated to average 125 hours per response. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: State air pollution control agencies.

Estimated No. of Respondents: 54.

Estimated No. of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6,759 hours.

Frequency of Collection: Annual.

Title: Source Compliance and State Action Reporting (EPA ICR No. 0107.04; OMB No. 2060–0096). This is a request for renewal of a currently approved information collection.

Abstract: State, District, Commonwealth, and territorial governments make air compliance information available to EPA on a quarterly basis via input to the Aerometric Information Retrieval System (AIRS) Facility Subsystem (AFS). The information provided to EPA includes compliance determinations and compliance activities. EPA uses this information to assess progress toward meeting emission requirements developed under the authority of the Clean Air Act to protect and maintain the atmospheric environment and the public health. The compliance information in AFS is used by all ten EPA Regional Offices and by most of the 55 State, District, Commonwealth, and territorial governments on a daily basis for managing activities of their air pollution control programs.

Burden Statement: The public reporting burden for this collection of information is estimated to average 334 hours per response for reporting, and to require 1,310 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: State, District, Commonwealth, and Territorial air pollution control agencies.

Estimated No. of Respondents: 55.

Estimated No. of Responses Per Respondent: 4.

Estimated Total Annual Burden on Respondents: 145,633 hours.

Frequency of Collection: Quarterly.

Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burdens, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: June 24, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–15444 Filed 6–29–93; 8:45 am]

BILLING CODE 6560-60-F

[OPP–30320B; FRL–4627–8]

Kemira Biotech.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Kemira Biotech., to conditionally register four Mycostop Biofungicide products containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Lewis, Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–6900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of July 2, 1991 (56 FR 30392), which announced that Kemira Oy, Porkkalankatu 3, PO Box 330, 00101 Helsinki, Finland, had submitted applications to conditionally register four Mycostop Biofungicide products (File Symbols 64137–R, 64137–E, 64137–G, and 64137–U), containing the active ingredient dried spores and mycelium of ray fungus (*Streptomyces griseoviridis*) at 30 percent, an active ingredient not included in any previously registered products.

The following applications were approved on April 13, 1993, for seed treatment, soil treatment, and foliar spray, and contains the active ingredient dried spores and mycelium of ray fungus (*Streptomyces spp. Strain K61*) at 30 percent.

1. Product name: Mycostop Biofungicide for Agronomic Crops. (EPA Reg. No. 64137–1).

2. Product name: Mycostop Biofungicide for Vegetable Crops. (EPA Reg. No. 64137–2).

3. Product name: Mycostop Biofungicide for Repackaging Only. (EPA Reg. No. 64137–3).

4. Product name: Mycostop Biofungicide for Ornamental Crops. (EPA Reg. No. 64137–4).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of dried spores and mycelium of ray fungus (*Streptomyces spp. Strain K61*), and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of dried spores and mycelium of ray fungus (*Streptomyces spp. Strain K61*) during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in a Chemical Fact Sheet on dried spores and mycelium of ray fungus (*Streptomyces spp. Strain K61*).

A copy of the fact sheets, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service

(NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1128, CM–2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: June 18, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–15265 Filed 6–29–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180895; FRL–4589–7]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 12 States as listed below, and one was granted to the United States Department of Agriculture. These exemptions, issued during the month of March 1993, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied a specific exemption request from the Florida Department of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703–308–8417).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of triclopyr on rice to control broadleaf weeds; March 15, 1993, to September 1, 1993. (Susan Stanton)

2. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of methyl bromide on sweet potatoes to control root-knot nematodes; March 3, 1993, to March 2, 1994. (Libby Pemberton)

3. Florida Department of Agriculture and Consumer Services for the use of malathion on atemoya and sugar apple to control annona seed borers; March 11, 1993, to December 31, 1993. (Susan Stanton)

4. Idaho Department of Agriculture for the use of sethoxydim on mint to control green foxtail and quackgrass; March 15, 1993, to September 1, 1993. (Susan Stanton)

5. Louisiana Department of Agriculture and Forestry for the use of triclopyr on rice to control broadleaf weeds; March 15, 1993, to August 30, 1993. (Susan Stanton)

6. Minnesota Department of Agriculture for the use of sethoxydim on canola to control volunteer grains and grasses; March 3, 1993, to June 30, 1993. (Susan Stanton)

7. Montana Department of Agriculture for the use of sethoxydim on canola to control volunteer grains and grasses; March 3, 1993, to July 15, 1993. (Susan Stanton)

8. Montana Department of Agriculture for the use of quizalofop-p-ethyl on mint to control volunteer grains and grasses; March 19, 1993, to November 30, 1993. (Susan Stanton)

9. North Carolina Department of Agriculture for the use of iprodione on tobacco transplants to control target spot, stem rot, and collar rot; March 5, 1993, to June 1, 1993. (Susan Stanton)

10. Oregon Department of Agriculture for the use of chlorothalonil on filberts (hazelnuts) to control eastern filbert blight; March 9, 1993, to May 30, 1993. (Susan Stanton)

11. Texas Department of Agriculture for the use of cypermethrin on dry bulb onions to control thrips; March 19, 1993, to March 19, 1994. (Andrea Beard)

12. Utah Department of Agriculture for the use of sethoxydim on canola to control volunteer grains and grasses; March 3, 1993, to November 15, 1993. (Susan Stanton)

13. Utah Department of Agriculture for the use of cypermethrin on dry bulb onions to control thrips; March 19, 1993, to September 30, 1993. (Andrea Beard)

14. Washington Department of Agriculture for the use of quizalofop-p-ethyl on mint to control grassy weeds; March 19, 1993, to July 15, 1993. (Susan Stanton)

15. Washington Department of Agriculture for the use of sethoxydim on canola to control volunteer grains and grasses; March 3, 1993, to November 30, 1993. (Susan Stanton)

16. United States Department of Agriculture for the use of methyl bromide on cucumbers to control any pest new to, or not heretofore prevalent, in the United States at ports of entry; March 11, 1993, to March 10, 1996. (Libby Pemberton)

EPA has denied a specific exemption from the Florida Department of Agriculture and Consumer Services for the use of iprodione on tangerines and tangelos to control alternaria brown spot. (Susan Stanton)

Authority: 7 U.S.C. 136.

Dated: June 15, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–15266 File 6–29–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[PR Docket No. 93–105; DA 93–708]

Private Land Mobile Radio Services; Virgin Islands Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for the Virgin Islands (Region 48). As a result of accepting the Plan for Region 48, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: June 23, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: June 15, 1993.
Released: June 23, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On January 28, 1993, Region 48 (Virgin Islands) submitted its Public

Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in the Virgin Islands.

2. The Virgin Islands Plan was placed on Public Notice for comments due on May 17, 1993, 58 FR 19669 (April 15, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for the Virgin Islands and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the *Report and Order* in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in the Virgin Islands.

4. Therefore, we accept the Virgin Islands Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in the Virgin Islands may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–15376 Filed 6–29–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

Federal Emergency Management Agency

[FEMA–991–DR]

Oklahoma; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma, (FEMA–991–DR), dated May 12, 1993, and related determinations.

EFFECTIVE DATE: June 23, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Oklahoma dated May 12, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 12, 1993:

Osage County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–15399 Filed 6–29–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

[Docket No. 93–13]

Worldlink Logistics, Inc. v. Hyundai Merchant Marine Co., Ltd.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Worldlink Logistics, Inc. ("Complainant") against Hyundai Merchant Marine Co. Ltd. ("Respondent") was served June 24, 1993. Complainant alleges that Respondent engaged in violations of section 8(c) of the Shipping Act of 1984, 46 U.S.C. app. 1707(c), by failing and refusing to make available the essential terms of a service contract to a similarly situated shipper, and failing to respond to Complainant's "me-too" request within fourteen days with either a contract offer or a written explanation as to why Complainant is not entitled to the contract.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitation prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the material in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by June 24, 1994, and the final decision of the Commission shall be issued by October 24, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 93–15319 Filed 6–29–93; 8:45 am]

BILLING CODE 6730–01–M

Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; Filing of Petitions

In the matter of Petition No. P30–93; Petition of World Tariff Services, Inc. on behalf of additional common carriers; Petition No. P31–93; Petition of NX Corp. D/B/A/ Logistec on behalf of various carriers; Petition No. P32–93, Petition of D.X.I. Incorporated on behalf of various carriers.

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from the June 4, 1993, electronic filing deadline, on behalf of a number of carrier customers, stating they are unable to comply with the June 4, 1993 deadline for filing of World Wide/Asian and South Pacific tariffs.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than June 26, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on petitioners as follows:

P30–93—Paul D. Coleman, Esq., Hoppel, Mayer & Coleman, 1000 Connecticut Avenue, NW., Washington, DC 20036

P31–93—Normal M. Nagel, Jr. NX Corp. d.b.a. Logistec, 8950 Route 108, suite 223, Columbia, Maryland 21045

P32–93—Mary D. DeVitis, Manager, Tariff Conversion, D.X.I., Incorporated, 200 Hightower Boulevard, suite 202 Pittsburgh, Pennsylvania 15205

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–15318 Filed 6–29–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Fleet Financial Group, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or

through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 20, 1993.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Fleet Financial Group, Inc., Providence, Rhode Island; to engage *de novo* through its subsidiary, Fleet Factors Corporation, New York, New York, in making, acquiring, or servicing loans or other extensions of credit for the subsidiary's own account or for the account of others, such as would be made by a mortgage, commercial finance and factoring company pursuant to § 225.25(b)(1); leasing personal or real property or acting as agent, broker or adviser in leasing such property pursuant to § 225.25(b)(5); and providing to others data processing and data transmission services, facilities, data bases, or access to such services, facilities, or data bases by any technological means pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Northern Bankshares, Inc., McFarland, Wisconsin; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted within the State of Wisconsin.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Bushnell Bancorp, Bushnell, Nebraska; to engage *de novo* through its subsidiary, Kimball County Bank, Bushnell, Nebraska, in making and servicing loans and purchasing loan participation bank pursuant to § 225.25(b)(1) of the Board's Regulation Y.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. BankAmerica Corporation, San Francisco, California; to engage *de novo* through its subsidiary, BA Securities, Inc., Seattle, Washington, in providing investment or financial advice, including financial feasibility studies, fairness opinions and valuation services in connection with mergers, acquisitions, divestitures, leveraged buyouts, recapitalizations, capital restructurings and financing transactions pursuant to § 225.25(b)(4)(vi)(A)(1); providing advice to state and local governments pursuant to § 225.25(b)(4)(v); advice on structuring and arranging of swaps and caps and similar hedging advice relating to interest rates and currency exchange rates and economic and financial indices, primarily with respect to project finance activities pursuant to § 225.25(b)(4)(vi)(A)(2); and advice on portfolio investments, primarily in connection with the project finance activities and involving advice to companies on investments such as investments in oil and gas leases pursuant to § 225.25(b)(4)(iii); and providing full service brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y, including brokerage services in combination with permissible investment advisory services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 25, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–15448 Filed 6–29–93; 8:45 am]

BILLING CODE 6210–01–F

The Royal Bank of Scotland Group, plc.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Correction

This notice corrects a previous notice (FR Doc. 93–13537) published at page 32359 of the issue for Wednesday, June 9, 1993.

Under the Federal Reserve Bank of Boston heading, the entry for The Royal Bank of Scotland Group, plc is revised to read as follows:

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. The Royal Bank of Scotland Group, plc, Edinburgh, Scotland; The Royal Bank of Scotland, Edinburgh, Scotland; Citizens (U.K.) Limited, Edinburgh, Scotland; and Citizens Financial Group, Inc., Providence, Rhode Island; to acquire 100 percent of the voting shares of The Boston Five Cents Savings Bank, F.S.B., Boston, Massachusetts ("Boston Five"), pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Upon the acquisition, Boston Five will convert to a state bank under section 3(a)(3) of the Bank Holding Company Act, and merge with Applicant's state savings bank subsidiary. Boston Five also engages in the sale of Savings Bank Life Insurance.

Comments on this application must be received by July 12, 1993.

Board of Governors of the Federal Reserve System, June 25, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–15449 Filed 6–29–93; 8:45 am]

BILLING CODE 6210–01–F

Ray J. Starner, et al.; Change In Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of

Governors. Comments must be received not later than July 20, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Ray J. Starner, East Stroudsburg, Pennsylvania; Edward G. Martin, Naples, Florida; and James T. McHale, Esq., Clarks Green, Pennsylvania; to function as Trustees under a Voting Trust Agreement and to acquire 46.5 percent of the common stock and 61.6 percent of the preferred stock of First Lehigh Corporation, Allentown, Pennsylvania, and thereby indirectly acquire First Lehigh Bank, Allentown, Pennsylvania.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Kaharudin Latief, Jakarta, Indonesia; to acquire 35 percent of the voting shares of Bank of San Francisco Company Holding Company, San Francisco, California, and thereby indirectly acquire Bank of San Francisco, San Francisco, California.

Board of Governors of the Federal Reserve System, June 25, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–15450 Filed 6–29–93; 8:45 am]

BILLING CODE 6210–01–F

Wilmington Trust Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 23, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Wilmington Trust Corporation, Wilmington, Delaware; to acquire 100 percent of the voting shares of Freedom Valley Bank, West Chester, Pennsylvania.

Board of Governors of the Federal Reserve System, June 25, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–15451 Filed 6–29–93; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Change in Solicitation Procedures Under the Small Business Demonstration Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice.

SUMMARY: Title VII of the "Business Opportunity Development Act of 1988" (Public Law 100–656) established the Small Business Competitiveness Demonstration Program and designated nine (9) agencies, including GSA, to conduct the program over a four (4) year period from January 1, 1989 to December 31, 1992. The Small Business Opportunity Enhancement Act of 1992 (Public Law 102–366) extended the demonstration program until September 30, 1996 and made certain changes in the procedures for operation of the demonstration program. The law designated four (4) industry groups for testing whether the competitive capabilities of the specified industry groups will enable them to successfully compete on an unrestricted basis. The four (4) industry groups are: Construction (except dredging); architectural and engineering (A&E) services (including surveying and mapping); refuse systems and related services (limited to trash/garbage collection services); and non-nuclear ship repair. Under the program, when a participating agency misses its small business participation goal, restricted competition is reinstituted only for those contracting activities that failed to attain the goal. The small business goal is 40 percent of the total contract dollars awarded for construction, trash/garbage collection services, and non-nuclear ship repair and 35 percent of the total contract dollars awarded for architect-engineer services. This notice announces modifications to GSA's solicitation practices under the demonstration program based on a review of the agency's performance during the period from April 1, 1992 to March 31, 1993. Modifications to solicitation practices are outlines in the Supplementary Information section below and apply to solicitations issued on or after July 1, 1993.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT:

Ida Ustad, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

Procurements of construction or trash/garbage collections with an estimated value of $25,000 or less and procurements of A&E services with an estimated value of $50,000 or less will be reserved for emerging small business concerns in accordance with the procedures outlined in the interim policy directive issued by the Office of Federal Procurement Policy (58 FR 13513, March 11, 1993).

Procurements of construction or trash/garbage collections with an estimated value that exceeds $25,000 and procurements of A&E services with an estimated value that exceeds $50,000 by GSA contracting activities will be made in accordance with the following procedures:

Construction Service in Groups 15, 16 and 17

Procurements for all construction services (except solicitations issued by GSA contracting activities in Regions 2, 5, and 9 for services in SIC 1794) will be conducted on an unrestricted basis.

Procurements for construction services in SIC 1794 issued by GSA contracting activities in Regions 2, 5, and 9 will be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements will be conducted on an unrestricted basis.

Region 2 encompasses the states of Connecticut, Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, New Jersey, New York, Puerto Rico, and Virgin Islands.

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin. Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

Trash/Garbage Collection Services in PSC S205

Procurements for trash/garbage collection services in PSC S205 will be conducted on an unrestricted basis.

Architect-Engineer Services (All PSC Codes Under the Demonstration Program)

Procurements for all architect-engineer services (except solicitations issued by contracting activities in GSA Central Office and Regions 2, 3, and 6) will be conducted on an unrestricted basis.

Procurements for architect-engineer services issued by GSA contracting activities in GSA Central Office and Regions 2, 3, and 6 will be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurements will be conducted on an unrestricted basis.

GSA Central Office is located in Washington, DC. Region 2 encompasses the states of Connecticut, Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, New Jersey, New York, Puerto Rico, and Virgin Islands. Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges counties) and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun and Prince William). Region 6 encompasses the states of Iowa, Kansas, Missouri, and Nebraska.

Non-Nuclear Ship Repair

GSA does not procure non-nuclear ship repairs.

Dated: June 18, 1993.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 93–15323 Filed 6–29–93; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Epidemiologic Study of Mortality Patterns Among Uranium Conversion and Enrichment Workers; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Epidemiologic Study of Mortality Patterns Among Uranium Conversion and Enrichment Workers.

Time and Date: 9 a.m.–4:30 p.m., July 16, 1993.

Place: Alice Hamilton Laboratory, Energy Activity Conference Room (B227), NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of the meeting is to obtain individual advice and guidance regarding the technical and scientific merits of the proposed Epidemiologic Study of Mortality Patterns Among Uranium Conversion and Enrichment Workers being conducted at NIOSH. The individual participants will review the proposed study protocol, recommend changes of scientific merit, and advise on the conduct of the study. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: James H. Stebbings, Sc.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop R–44, Cincinnati, Ohio 45226, telephone 513/841–4400.

Dated: June 24, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–15360 Filed 6–29–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 93N–0100]

Kumar Prasad; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under section 306(a)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a(a)(2)) permanently debarring Mr. Kumar Prasad, 13439 Puyton Dr., #122, Chino Hills, CA 91710, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Prasad was convicted of a felony under Federal law for conduct relating to the development and approval, including the process for development and approval, of a drug product; and relating to the regulation of a drug product under the act. Mr. Prasad has failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

EFFECTIVE DATE: June 30, 1993.

ADDRESSES: Application for termination of debarment should be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Megan Foster, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8041.

SUPPLEMENTARY INFORMATION:

I. Background

On February 5, 1993, the United States District Court for the District of Maryland entered judgment against Mr. Kumar Prasad for one count of making a false statement in a matter within the jurisdiction of an agency of the United States, a Federal felony offense under 18 U.S.C. 1001.

As a result of this conviction, FDA served Mr. Prasad by certified mail on April 7, 1993, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application and offered him an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(A) and (a)(2)(B) of the act, that he was convicted of a felony under Federal law for conduct (1) relating to the development and approval, including the process for development and approval, of a drug product; and (2) relating to the regulation of a drug product under the act. Mr. Prasad did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

II. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.20), finds that Mr. Kumar Prasad has been convicted of a felony under Federal law for conduct (1) relating to the development and approval, including the process for development and approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, Mr. Kumar Prasad is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective June 30, 1993 (21 U.S.C.

335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Prasad in any capacity, during his period of debarment, will be subject to civil money penalties. If Mr. Prasad, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application from Mr. Prasad during his period of debarment.

Any application by Mr. Prasad for termination of debarment under section 306(d)(4) of the act (21 U.S.C. 335a(d)(4)) should be identified with Docket No. 93N–0100 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 17, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–15401 Filed 6–29–93; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPD–740–FN]

RIN 0938–AF56

Medicare and Medicaid Programs; Recognition of the Joint Commission on Accreditation of Healthcare Organizations Standards for Home Care Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This final notice recognizes accreditation by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) for home health agencies (HHAs) that wish to participate in the Medicare or Medicaid programs. As a result of this recognition, HHAs accredited by JCAHO are deemed to meet the Medicare conditions of participation for HHAs to the extent described in this notice. This final notice sets forth certain specific requirements with which JCAHO must comply to maintain Medicare and Medicaid recognition of its HHA accreditation program.

EFFECTIVE DATE: This final notice is effective on September 28, 1993.

FOR FURTHER INFORMATION CONTACT: John J. Thomas, (410) 966–4623.

SUPPLEMENTARY INFORMATION:

I. Background

Providers of health care services participate in the Medicare and Medicaid programs under provider agreements with HCFA (for Medicare) and State Medicaid agencies (for Medicaid). Generally, in order to enter into a provider agreement, an entity must first be certified by a State survey agency as complying with the requirements set forth in Federal law. Providers are subject to various surveys by State survey agencies to ensure that the providers continue to meet these requirements.

The Social Security Act (the Act) includes provisions that permit exemption of certain entities from routine surveys by State survey agencies for determining compliance with Medicare conditions of participation. Specifically, section 1865(a) of the Act permits the "deeming" of entities as meeting the applicable Medicare conditions if the entities are accredited by a national accrediting organization. That is, if we find that the accreditation of entities by a national accrediting body provides reasonable assurance that the Medicare conditions of participation are met, then we may deem these entities as meeting the conditions of participation.

A national accrediting organization may request that we recognize its program as providing reasonable assurance that some or all of the Medicare conditions are met. We then examine the requesting organization's accreditation process to determine if the process provides reasonable assurance that the entities accredited by the organization meet the Medicare conditions of participation as we would apply them. If we recognize an accrediting organization in this manner, any entity accredited by the recognized national accrediting body will be deemed to meet the Medicare conditions of participation and will, therefore, not be subject to routine surveys by the State survey agency.

As a result of this notice, HHAs accredited by JCAHO are deemed to meet the requirements for participation in the Medicare program and, therefore, may participate in the Medicaid program as a provider of home health services. We are currently considering the development of a separate rule that would permit the States to apply more stringent State-specific requirements for HHA participation in the Medicaid program. However, our recognition of JCAHO does not affect in any way a State's independent authority to license providers and inspect such providers to ensure compliance with its licensure standards.

In section 4039(f) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), Congress imposed a special requirement on our approval of national accrediting organizations. Under that section, publication of a final notice recognizing accreditation by a national organization as deeming a provider to meet the Medicare conditions of participation or requirements is necessary to implement section 1865(a) of the Act. Publication of the final notice must follow the publication of a proposed notice by at least 6 months.

II. Provisions of the Proposed Notice and This Final Notice

In the February 3, 1992 proposed notice (57 FR 4044), we stated our determination that accreditation by JCAHO provides reasonable assurance that an HHA meets the Medicare conditions of participation for HHAs. We also described our initial review of the JCAHO standards, scoring guidelines, survey procedures (JCAHO's "Home Care Standards for Accreditation", "Accreditation Manual for Home Care", and "Key to Quality", respectively), our meetings with JCAHO staff, and our subsequent comparison of JCAHO's revised 1991 standards for HHAs seeking accreditation or re-accreditation with the Medicare conditions of participation and survey and certification procedures.

The proposed notice described our process for determining that JCAHO accreditation provided reasonable assurance that Medicare conditions are met. The proposed notice also discussed in detail the areas of discrepancy between the JCAHO standards and Medicare conditions, the effect these discrepancies had on our determination of reasonable assurance, and the resolution of these discrepancies.

In addition, the proposed notice stated that we would remove recognition of JCAHO accreditation if either of the following circumstances occur:

- JCAHO revises its standards so that the revised standards fail to provide reasonable assurance that JCAHO-accredited HHAs meet the Medicare conditions of participation. Conversely, we revise the Medicare HHA conditions of participation to such a degree that JCAHO's standards or accreditation policies would no longer provide reasonable assurance that JCAHO-

accredited HHAs meet the conditions of participation; or

• Our validation or complaint surveys reveal widespread, systematic, or unresolvable problems with the JCAHO accreditation process, thereby providing evidence that there is not reasonable assurance that JCAHO-accredited HHAs meet the Medicare conditions of participation.

The proposed notice also reserved our right to perform, as appropriate, announced and unannounced validation and complaint surveys to ensure that JCAHO-accredited HHAs that participate in Medicare meet the Medicare conditions of participation.

The proposed notice also made our recognition of JCAHO's accreditation program contingent on JCAHO's continued agreement to:

• Release JCAHO survey reports to us routinely and to the public upon request. If the reports reveal deficiencies which we believe warrant action by us, we may survey the HHAs identified as having deficiencies, withdraw recognition of the accreditation program if appropriate, and apply any other appropriate corrective measures or sanctions. The information to be released includes the accreditation findings, supporting documentation, the official accreditation survey reports of JCAHO surveyors, and other related information.

• Report to either the Office of Inspector General (OIG) (for Medicare) or to the State agency responsible for investigating fraud and abuse (for Medicaid), or to both, complaints received from persons working in the accredited HHA or any substantial complaints from others, anonymous or identified, concerning potential fraud and abuse violations, and any other indication of a Medicare or Medicaid program abuse encountered by JCAHO during a JCAHO inspection.

• Make JCAHO surveyors available to serve as witnesses if adverse action is taken by HCFA after JCAHO accreditation has been withdrawn.

Finally, we proposed to make our approval of JCAHO's accreditation program contingent on the following revisions to JCAHO's survey and accreditation process (JCAHO had already agreed to make these changes):

• Implementation of an annual, unannounced survey of those HHAs requesting JCAHO accreditation for Medicare deeming purposes.

• Adoption of the standardized functional assessment instrument used by HCFA and State agency surveyors and training of the JCAHO surveyors in its use.

• Adoption of a case-mix, stratified random sampling process and sample sizes of clinical records for review and home visits comparable to HCFA's.

• Maintenance of a timeframe and process for following up deficiencies found during an HHA survey comparable to HCFA's.

In the proposed notice, we discussed three issues that need further clarification. First, we proposed to remove our recognition of JCAHO accreditation if we determine that JCAHO standards no longer provide reasonable assurance that JCAHO-accredited HHAs meet the Medicare conditions of participation. We did not, however, set forth our specific procedures for determining whether JCAHO-accredited HHAs meet the conditions of participation in the event our recognition of JCAHO is withdrawn. Basically, an affected HHA's deemed status would continue for a limited time during which the HHA could seek either Medicare certification or accreditation by another approved accreditation organization. A further explanation of this issue is contained below in response to a comment.

Second, when we developed the proposed notice, we did not consider the effect of the provisions of section 4206 of Pub. L. 101–508 that concern advance directives. JCAHO accreditation standards have been revised to provide assurance that JCAHO-accredited HHAs provide each patient, in advance of coming under the HHA's care, with written information concerning an individual's rights under State law to make decisions concerning medical care. These rights include the right to accept or refuse medical or surgical treatment, the right to formulate advance directives, and the right to review the written policies of the HHA regarding the implementation of these rights, including a statement of limitation if the provider cannot implement an advance directive on the basis of conscience.

Third, we need to clarify JCAHO's agreement to implement annual, unannounced surveys of those HHAs requesting JCAHO accreditation for Medicare deeming purposes and to meet the provisions of section 1891 of the Act which establishes the requirements for standard, partial extended and extended surveys.

JCAHO has agreed to conduct annual, unannounced standard surveys and partial extended or extended surveys as follows. The JCAHO Medicare Decision Rules, which establish JCAHO "deemed status" survey procedures, specify that the standard JCAHO Medicare survey will be expanded to a partial extended survey when the conditions of participation are found to be met, but the standard JCAHO Medicare survey indicates further evaluation is needed, usually in a specific area or service not fully addressed in the Medicare standard survey. The Decision Rules recommend that the JCAHO Medicare standard survey be fully extended when one or more of the conditions of participation are not met, or an immediate threat to patient or public health and safety exists within an organization.

In this final notice, we are adopting the provisions of the February 3, 1992 proposed notice with the above revisions. As a result of this final notice, HHAs accredited by JCAHO will not be subject to routine inspection by Medicare State survey agencies to determine their compliance with Federal requirements. Rather, they will be deemed to meet the Medicare conditions of participation. As appropriate, however, we will perform announced and unannounced validation and complaint surveys of HHAs to assure that JCAHO-accredited HHAs that participate in Medicare meet the Medicare conditions of participation. As established in the proposed notice of February 3, 1992, we may withdraw recognition of JCAHO accreditation of HHAs at any time if we determine that JCAHO accreditation does not continue to provide reasonable assurance that Medicare conditions of participation are met.

In conclusion, we believe that the JCAHO accreditation standards and survey processes, subject to the above requirements, provide us with reasonable assurance that the Medicare conditions of participation have been met. Accordingly, subject to those requirements, we will deem HHAs accredited by JCAHO beginning September 28, 1993, to be in compliance with the Medicare conditions of participation for HHAs in accordance with the authority provided in section 1865 of the Act.

Because we have found accreditation by JCAHO to provide the necessary "reasonable assurance" required by law, and because the publication of this final notice follows the publication of our February 3, 1992 proposed notice by at least 6 months as required by section 4039(f) of Public Law 100–203, and because of the other actions taken with respect to this final notice, we have fulfilled the statutory requirements governing the recognition of national accrediting organizations. Therefore, our recognition of the JCAHO HHA accreditation program will be complete 90 days after the publication of this

notice, subject to JCAHO's continued compliance with the requirements established in this final notice.

III. Discussion of Comments

We received correspondence from 100 commenters, including professional organizations and associations, HHAs, public health departments, State governmental agencies, universities, and individuals on the provisions of the proposed notice. A summary of the public comments and our responses follow.

Comment: 69 commenters expressed support for the proposed notice.

Response: We acknowledge the support for the provisions in the proposed notice, and we have developed a final notice consistent with those provisions.

Comment: One commenter asked if an HHA with deemed status is also considered to meet the requirements for participation in Medicaid.

Response: Our regulations at 42 CFR 440.70(d) define an HHA for purposes of participation in the Medicaid program as a "public or private agency or organization, or part of an agency or organization, that meets requirements for participation in Medicare." Because we have determined that accreditation by JCAHO provides reasonable assurance that an accredited HHA meets the Medicare HHA conditions of participation, such an HHA would also be considered to meet the requirements of § 440.70 and could, therefore, participate in the Medicaid program as a provider of home health services. However, we are considering the development of a regulation that would permit States to apply more stringent, State-specific requirements for participation in the Medicaid program. Our recognition of JCAHO does not affect in any way a State's independent authority to license providers and inspect such providers to ensure compliance with its licensure standards.

Comment: Several commenters expressed concern that JCAHO accreditation does not provide reasonable assurance that Medicare requirements are met because, in general, private accreditation organizations are financially dependent upon the accreditation fees paid by accredited providers. These commenters are concerned that JCAHO will be reluctant to withdraw accreditation from an HHA because such a withdrawal would preclude the collection of any future accreditation fees from the sanctioned agency.

Response: We do not agree with the comment. Our examination of the JCAHO accreditation program revealed no indication that JCAHO was unwilling to revoke an HHA's accreditation for fear of being deprived of that agency's accreditation fee. Furthermore, as one of the conditions upon which recognition of accreditation is granted to JCAHO, we retain the right to withdraw the recognition if, as specified in this notice, "validation or complaint surveys reveal widespread, systematic, or unresolvable problems with the JCAHO accreditation process, thereby providing evidence that there is not reasonable assurance that JCAHO-accredited HHAs meet the Medicare conditions of participation." If we ever determine that JCAHO, in contradiction to its own guidelines, is continuing accreditation to HHAs not meeting the Medicare conditions of participation, we will move to withdraw recognition of JCAHO accreditation.

Comment: Several commenters opposed recognition of the JCAHO HHA accreditation program on the general basis that it does not provide sufficient oversight of Medicare-participating HHAs.

Response: We disagree with this comment. As we have explained in both this notice and the February 3, 1992 proposed notice, we have determined that accreditation by JCAHO provides reasonable assurance that Medicare conditions are met. We have determined that JCAHO's agreement to conduct annual, unannounced surveys as well as to use the standardized functional assessment instrument and Medicare's sampling methodology for home visits and record review provides assurance of sufficient oversight. Also, this notice reserves our right to revoke our recognition of the JCAHO program should we determine that JCAHO has failed to properly adopt these standards and practices or that, for any reason, JCAHO accreditation no longer provides reasonable assurance that an HHA meets the Medicare conditions of participation.

Comment: Several commenters requested that we delay final recognition of any HHA accreditation organization until the publication of the final rule implementing the HHA survey and enforcement provisions of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203).

Response: We believe a delay in recognizing HHA accreditation organizations is unnecessary because the process involved in approving an accrediting body for deeming purposes does not require that the survey and enforcement provisions of Public Law 100–203 be implemented. We can recognize any national accrediting body whose requirements provide reasonable assurance that those Medicare conditions in effect at that time are met. Recognition of JCAHO is contingent on its standards continuing to provide reasonable assurance that Medicare conditions are met and enforced. Should JCAHO fail to sufficiently revise its standards to the extent necessary to provide reasonable assurance that revised Medicare conditions are met and enforced, we would move to withdraw our recognition of the JCAHO accreditation program and, thus, the deemed status of JCAHO-accredited HHAs.

Comment: Several commenters requested that we delay the recognition of any private accreditation program until after the publication of the final rule that will establish the general process for the granting and withdrawal of deemed status. The commenters believe that the recognition of any accreditation program before the final publication of the general deeming rule will deprive the public of a full understanding of the process by which we examine accreditation organizations that apply for recognition and will undermine the validity of our determinations regarding the granting of deemed status to providers.

Response: We have not accepted this comment. The general process for granting and withdrawal of deemed status was described in a proposed rule published in the Federal Register on December 14, 1990 (55 FR 51434). This proposed rule set forth the procedure that we would use to review and approve national accrediting organizations that wish to be recognized as providing reasonable assurance that Medicare conditions are met. The proposed rule also set forth the standards and procedures that we would use to remove our approval of a national accrediting body. This rule is not required by statute but is being developed to provide for additional public input and guidance on the deeming issue. We are now developing the final rule. Although we believe that the final rule on deemed status will help our future efforts to grant or withdraw deemed status and to continue Federal oversight of accreditation programs, we are not precluded in any way from proceeding with the granting of deemed status before those procedures are issued in a final rule. We described the process by which we analyzed the JCAHO program in our February 3, 1992 proposal to grant deemed status to JCAHO-accredited HHAs. We also detailed the conditions under which we will withdraw our recognition of JCAHO accreditation in both the proposed notice and this notice. As a result of

these efforts, we believe that the public has remained fully informed about our analysis of the JCAHO program and the conditions under which we will grant deemed status to JCAHO-accredited HHAs. We also believe that we have promulgated our recognition of the JCAHO HHA accreditation program in full compliance with all applicable statutory requirements and regulations.

Comment: Several commenters requested that we recognize HHA accreditation by JCAHO and by the Community Health Accreditation Program (CHAP) simultaneously.

Response: We published a final notice granting deemed status to HHAs accredited by CHAP in the **Federal Register** on May 29, 1992 (57 FR 22773). Although we believe that accreditation by either CHAP or JCAHO provides reasonable assurance that an HHA meets the Medicare conditions of participation, we believe that it is best to consider each accreditation program separately and to not link approval of one accrediting program with another.

We decided that this approach is the most fair to all involved parties because it allows each deeming proposal to advance solely on its own merits. If we proposed recognition of one or more accreditation organizations in the same notice, the proposal could not advance until the analysis of both programs is completed and both programs have completed any required revisions. Because different accreditation programs may require different amounts of time to analyze, we do not believe that it would be fair to delay recognition of one program while the analysis of another program is conducted. For this reason, we believe the independent approach that we have taken is fair to both programs. We do not intend for this approach to give one program an advantage over the other, nor do we intend that the accreditation program which first receives Medicare recognition be perceived as being favored over another accreditation organization that may be granted recognition at a later date. We have no preference between recognized private accreditation programs.

Comment: Several commenters expressed concern that private accreditation would eventually be required of all HHAs participating in the Medicare program. Other commenters opposed the proposal on the basis that it would require HHAs to pay accreditation fees to JCAHO, therefore, shifting the financial burden of HHA survey and certification from the government to individual HHAs.

Response: JCAHO accreditation will continue to be voluntary. Our recognition of JCAHO accreditation does not mean that HHAs are required to seek JCAHO accreditation. Therefore, it is entirely the decision of the HHA to incur the fees associated with JCAHO accreditation. Those HHAs that are not accredited by a recognized private accreditation program will continue to be subject to the annual surveys conducted by the State survey agencies. These HHAs will not experience any change from their current survey and certification process as a result of our recognition of JCAHO accreditation. In addition, because accreditation expenses are among the costs recognized by Medicare as related to patient care, Medicare will share in part of the cost of HHA accreditation on the basis of utilization. In this manner, the Medicare program will assume some of the cost of accreditation and help reduce the associated financial burden.

Comment: Several commenters questioned whether the composition of JCAHO's boards and committees ensured adequate consumer input into the formulation of JCAHO accreditation policies and procedures. Similarly, another commenter questioned whether the composition of JCAHO's boards and committees allowed for objective evaluation of HHAs.

Response: Section 1865(a) of the Act requires the Secretary to determine whether accreditation by a national accreditation body provides reasonable assurance that Medicare conditions are met. We have determined that accreditation by JCAHO provides reasonable assurance that an HHA meets the Medicare conditions of participation. Because there are no statutory or regulatory requirements for consumer or provider representation on the governing or advisory boards or committees of private accreditation programs, we have not required JCAHO (or any other recognized accreditation program) to include any specific groups or individuals on such boards or committees. Our primary concern is the content and application of the accreditation standards and procedures, not the composition of the bodies that establish the standards and procedures. The commenters should find it to be of interest, however, that JCAHO's "Key to Quality, A Guide to Joint Commission Home Care Survey and Accreditation", explains that the JCAHO Home Care Professional and Technical Advisory Committee (PTAC) has the ongoing responsibility for standards development, review, and revision, as well as monitoring of the survey process. The Home Care PTAC includes, but is not limited to, a member of the general public and representatives of the following organizations: the American Association of Retired Persons, the National Association for Home Care, the Visiting Nurses Association of America, the National Association of Area Agencies on Aging, and HCFA.

Comment: One commenter suggested that changes to JCAHO accreditation standards be subject to public comment.

Response: We do not believe that a formal process of public notice and comment on any proposed revisions to the JCAHO accreditation standards is necessary to maintain our reasonable assurance that JCAHO-accredited HHAs meet the Medicare conditions of participation. However, it is JCAHO policy to subject all new accreditation standards to field review by accredited HHAs and other interested parties. During this review, any interested parties may comment on the proposed standards.

It is also important to note that changes to the Medicare and Medicaid HHA conditions of participation are subject to public notice and comment. Because JCAHO is obligated to provide us with continued assurance that its accreditation provides reasonable assurance that an accredited HHA meets the Medicare conditions of participation, we believe that there is an additional element of public input into the basic content of the JCAHO accreditation standards. Should we ever determine that JCAHO accreditation no longer provides reasonable assurance that Medicare conditions are met due to changes in the JCAHO standards or procedures (or a failure to change its standards to comply with revised Medicare conditions), we would move to withdraw Medicare recognition of the JCAHO HHA accreditation program.

Comment: Several commenters stated that JCAHO's policy requiring hospital-based HHAs to obtain JCAHO accreditation as a condition of the hospital's JCAHO accreditation restricts the HHA's ability to freely choose a private accreditation program. Another commenter suggested that JCAHO's policy requiring JCAHO surveys of organizations that provide services under contract with accredited HHAs is similarly restrictive.

Response: We agree. The Medicare Act does not restrict the ability of a home health agency to choose among accrediting organizations. It is also our general belief that competition is a healthy force in the marketplace. We do not believe that it is necessary in this notice—which is for the purpose of determining whether there is a "reasonable assurance" that our standards are met by an HHA which has received JCAHO accreditation—to

address this issue. We have raised the issue with the JCAHO, however, and believe that the Commission itself is taking steps to deal with the emergence of other accrediting bodies.

We would note that the College of American Pathologists (CAP), which has its own accreditation program for hospital-based clinical laboratories, has obtained recognition from the JCAHO that its accreditation (in the case of hospitals which have chosen it) will be used by JCAHO in determining accreditation of a hospital instead of JCAHO's own survey of the hospital-based clinical laboratory. The JCAHO has indicated to us that it will fairly and objectively review any request from any national accrediting body for review of its standards, surveyor training and credentials, and survey and decision-making processes in order to provide the opportunity for similar recognition of its program in the context of the JCAHO's program.

Comment: One commenter stated that JCAHO's inclusion of certain Medicare requirements in its scoring guidelines gives the impression that they are a lower priority than the earlier JCAHO standards.

Response: We disagree. Section 1865(a) of the Act provides the Secretary with considerable latitude in determining whether accreditation by a particular organization provides the necessary "reasonable assurance" that Medicare conditions are met. The Act does not specify whether Medicare requirements must be represented in an accrediting body's standards or in its scoring guidelines. JCAHO has designed its scoring guidelines to ensure that an HHA that does not meet the Medicare requirements on a given standard cannot be considered in full compliance with the standard. The HHA must demonstrate compliance with a scoring guideline comparable to the applicable Medicare requirement before the JCAHO surveyor can find that the overall JCAHO standard has been met. We have determined that this system provides reasonable assurance that JCAHO-accredited HHAs meet the Medicare conditions of participation. We will, however, continue to monitor any revisions to both the JCAHO standards and scoring guidelines to determine that the required "reasonable assurance" continues to exist.

Comment: One commenter stated that we should not base our recognition of JCAHO accreditation on JCAHO's promise to adopt Medicare standards and practices.

Response: We agree. We have not based our recognition of JCAHO HHA accreditation on JCAHO's promise to conform its relevant standards and procedures with those of Medicare. We have fully documented any required JCAHO accreditation program revisions and monitored the inclusion of these revisions in the JCAHO "Accreditation Manual for Home Care" and other JCAHO publications. JCAHO has now implemented many of these changes, and will have all necessary revisions implemented by the effective date of this notice. It is important to note that we reserve the right to conduct validation and complaint surveys of JCAHO-accredited HHAs and intend to periodically review both JCAHO's survey files and survey and enforcement procedures at JCAHO's home office and accompany JCAHO surveyors on site visits to ensure that JCAHO is following policies and procedures described to us and to ensure that our requirements are met. Furthermore, we will withdraw Medicare recognition of JCAHO accreditation if we determine that Medicare requirements are not met.

Comment: One commenter disagreed with our emphasis on considering an accrediting organization's total program when determining whether accreditation by that organization provides "reasonable assurance" that Medicare conditions are met. This commenter believed that we should place greater emphasis on determining whether each Medicare requirement can be matched to a directly comparable accreditation requirement. Another commenter agreed with our emphasis on examining the total program rather than simply requiring identical standards.

Response: We agree with the second commenter. Section 1865(a) of the Act requires the Secretary to determine whether accreditation by a given private accreditation program provides "reasonable assurance" that Medicare conditions are met, but does not require the private accreditation program's requirements to be precisely identical to comparable Medicare requirements. We believe that this requirement grants the Secretary broad latitude in determining whether accreditation by a particular program provides the required "reasonable assurance." As we described in the February 3, 1992 proposed notice, our approval of JCAHO's HHA accreditation program is based on both a comparison of individual JCAHO and Medicare standards and an examination of the overall effects of the JCAHO accreditation process. We did this to determine whether JCAHO accreditation as a whole provides reasonable assurance that Medicare conditions are met. Although we found that a small number of Medicare requirements had no directly comparable JCAHO requirements, our examination of the total JCAHO program, including standards, scoring guidelines, and survey procedures, led us to determine that JCAHO accreditation provides reasonable assurance that an HHA meets the Medicare conditions of participation. We used this same approach when we examined the CHAP HHA accreditation program and believe that this approach complies fully with the requirements of section 1865(a) of the Act.

Comment: One commenter asked if JCAHO home care accreditation will be recognized for participation in Medicare as a hospice.

Response: No. This notice recognizes the JCAHO home care accreditation program for purposes of participation in the Medicare program as an HHA. We have found accreditation by this program to provide reasonable assurance that an accredited provider meets the Medicare HHA conditions of participation. JCAHO does not currently offer hospice accreditation. Hospice survey and certification procedures will not be affected by this notice.

Comment: Several commenters requested that we publish a full side-by-side comparison of the Medicare HHA conditions of participation and the JCAHO accreditation standards.

Response: We do not believe this is necessary for the following reasons:

- Our February 3, 1992 **Federal Register** notice that proposed to grant deemed status to JCAHO-accredited HHAs fully described our analysis of the JCAHO accreditation standards and procedures. This notice also discussed changes made by JCAHO in its standards so that they conform more closely with the Medicare conditions of participation as well as differences that remain between specific JCAHO standards and Medicare conditions of participation. We believe that this notice fully explained the rationale on which we based our determination that JCAHO accreditation provides reasonable assurance that the Medicare conditions are met.
- Our analysis of the JCAHO program was not limited to a point-by-point comparison between JCAHO standards and Medicare conditions of participation. In analyzing the JCAHO program, we reviewed all aspects of the JCAHO program, including its survey and enforcement policies and its capacity to manage an increase in the number of HHAs seeking accreditation. Most importantly, the goal of our analysis was to determine whether, when viewed as a whole, JCAHO

accreditation provides reasonable assurance that Medicare conditions are met. That is, the goal of our analysis was to determine whether JCAHO's entire program could be determined to provide reasonable assurance that Medicare conditions are met, rather than to judge the JCAHO standards as "equal to or better" than every specific criterion of the Medicare conditions.

After conducting this overall analysis, we determined that JCAHO accreditation does provide this reasonable assurance. We believe that a simple crosswalk between the JCAHO standards and Medicare conditions, although a useful tool for part of our analysis of the JCAHO program, reflects only a small portion of our analysis, and, in addition to being unnecessary for the reasons stated in the previous paragraph, would fail to reflect the total evaluation that was the basis for our recognition of the JCAHO program.

Comment: One commenter suggested that we allow an annual public comment period for the initial 3 years of JCAHO recognition during which JCAHO-accredited HHAs could comment on JCAHO adherence to the Medicare conditions.

Response: Although we encourage accredited HHAs to inform us if they believe JCAHO accreditation fails to provide reasonable assurance that Medicare conditions are met, we do not believe that an official annual public notice and comment period is necessary. We emphasize that our recognition of JCAHO accreditation for purposes of participation in the Medicare program is contingent on our continued determination that JCAHO accreditation provides reasonable assurance that Medicare conditions are met. HHAs are free to contact us or the State at any time should they have any complaints or comments on JCAHO's standards or procedures. We (or the State) will respond to these comments or complaints in an appropriate manner, including reviewing JCAHO standards and guidelines and conducting validation surveys. Validation surveys in particular will provide a direct comparison between the effects of JCAHO and Medicare surveys. We believe that the establishment of an annual official comment period would slow the process of investigating HHA comments or complaints with burdensome requirements and possibly discourage HHA comments during times other than the official comment period.

Comment: Several commenters opposed the proposal on the basis that it would result in a reduction of Federal funds directed to State survey and enforcement efforts. The commenters are concerned that such a reduction in funds could threaten a State's ability to effectively monitor HHAs.

Response: The level of funding of the State's survey agency will continue to be based on its Medicare survey and enforcement workload. Funding of the State survey agencies will be commensurate with workload and the number of HHAs involved. Also, each State remains free to develop and implement its own State HHA licensure and survey practices should it determine additional HHA oversight is necessary.

Comment: One commenter suggested that any survey funds that are saved as a result of our recognition of the JCAHO HHA accreditation program should be diverted to JCAHO for purposes of reducing HHA accreditation fees.

Response: Federal funds budgeted for State survey and certification activities cannot be diverted to private accreditation organizations. The purpose of this notice is to recognize the JCAHO HHA accreditation program, not to subsidize it. HHAs that choose not to seek accreditation by JCAHO because of the involved expenses will continue to be subject to the annual surveys conducted by the State survey agency. Also, as we mentioned above, as accreditation expenses are among the costs recognized by Medicare as related to patient care, Medicare will participate in a facility's costs of HHA accreditation.

Comment: One commenter opposed the proposal on the basis that State surveyors' knowledge of local conditions and practices make them best equipped to assess the HHAs in a particular area.

Response: Although we do not disagree that State surveyors are well qualified to perform HHA surveys, we believe that JCAHO's required surveyor credentials provide reasonable assurance that Medicare requirements for surveyor qualifications are met. JCAHO requires an HHA surveyor to be a registered nurse with at least 5 years home care experience, including 3 years in an administrative capacity. The surveyor must have experience in a wide range of clinical care provided in the home, and must have a bachelor of science degree in nursing, with a master's degree preferred in a clinical specialty, public health, or health care administration. JCAHO is currently training its surveyors in use of the functional assessment instrument, the Medicare sampling methodology, and other Medicare survey procedures.

Comment: Several commenters did not support JCAHO's agreement to conduct annual surveys. These commenters believe that we should recognize JCAHO's triennial survey and, therefore, only require JCAHO-accredited HHAs to undergo State survey in the years that they have not been surveyed by JCAHO.

Response: As we discussed in the February 3, 1992 proposed notice, JCAHO has proposed to maintain its traditional home care accreditation program (which includes a triennial, announced survey) as a separate accreditation program for those providers that do not wish to receive deemed status. Accredited HHAs that wish to receive deemed status would be subject to JCAHO's revised accreditation program (including annual, unannounced surveys) which we recognize in this final notice.

Section 1865(a) of the Act requires the Secretary to determine whether accreditation by a private accrediting body provides reasonable assurance that Medicare conditions are met. Because section 1891(c) of the Act requires annual, unannounced HHA surveys, any recognized HHA accreditation program must also conduct annual, unannounced surveys in order to provide the required "reasonable assurance." Therefore, we cannot recognize JCAHO's traditional triennial home care accreditation program because, in addition to other reasons, accredited HHAs are not subject to annual, unannounced surveys. HHAs that are accredited by JCAHO under its unrecognized 3-year accreditation program will remain subject to annual, unannounced surveys by the State survey agency.

To prevent any confusion that could result from an HHA frequently switching between deemed status and standard Medicare approval, we will require any recognized accreditation program to promptly report to us the withdrawal of any deemed provider from its program. The purpose of this requirement is to ensure that a provider that is claiming payment under Medicare is at all times either accredited by a recognized program or certified by the State as meeting the Medicare conditions of participation.

In addition, JCAHO will encourage HHAs to elect the deemed status option for an entire triennial accreditation cycle. If an HHA decides to withdraw from this option during the triennial accreditation cycle, JCAHO will notify HCFA immediately. Also, JCAHO will not allow the HHA to re-elect the deemed status option during the remainder of the 3-year cycle.

Comment: One commenter cautioned that HHAs accredited under JCAHO's recognized HHA accreditation program

should be clearly distinguished from those that have not received deemed status to avoid misleading consumers and survey personnel.

Response: We agree. JCAHO has agreed to revise both the accreditation award letter and official accreditation report to clearly indicate that the HHA has received an annual, unannounced survey and has been surveyed for compliance with applicable Medicare HHA conditions of participation.

Comment: Several commenters requested clarification of the status of JCAHO-accredited HHAs if we withdraw recognition of JCAHO accreditation of HHAs for purposes of participation in the Medicare program.

Response: Should we withdraw recognition of JCAHO's HHA accreditation program, an affected HHA's deemed status will continue in effect for 60 days after the date of withdrawal. We may extend an HHA's deemed status for an additional 60 days if we determine the HHA has submitted an application within the initial 60-day timeframe to another approved accreditation organization or to us so that compliance with Medicare conditions can be determined. HHAs that receive accreditation by another approved accreditation organization or Medicare certification within the specified time period may continue to participate in the Medicare program without interruption.

Comment: Several commenters requested clarification of the conditions under which sanctions or corrective actions will be applied to HHAs that are found to have serious deficiencies during a JCAHO survey. Another commenter asked that we integrate our recognition of JCAHO HHA accreditation with the application of intermediate sanctions.

Response: JCAHO will not have the authority to apply Medicare corrective actions or alternative sanctions (for example, fines, appointment of temporary management, or suspension of Medicare payments). JCAHO will continue to apply its own corrective measures, such as required actions, warnings, or the withdrawal of accreditation, and is required to disclose survey results to us. If JCAHO survey reports reveal deficiencies that we believe warrant our action, we may conduct our own survey and apply any appropriate sanctions or corrective actions.

With regard to the second comment, we published a proposed rule, "Granting and Withdrawal of Deeming Authority to National Accreditation Organizations", in the **Federal Register** on December 14, 1990 (55 FR 51434). We proposed to establish our authority to accept a recognized accrediting organization's findings as our own and impose intermediate sanctions or other corrective actions immediately based on those findings. We intend to exercise this authority upon the final publication of that rule.

Comment: One commenter stated that we should revise our validation survey standards to assure that JCAHO accreditation is consistent with Federal standards and that validation surveys are conducted consistently. Another commenter suggested that JCAHO accreditation be evaluated under a formal system similar to the State Agency Evaluation Program.

Response: As stipulated in this notice, we reserve the right to conduct announced and unannounced validation surveys to ensure that JCAHO-accredited HHAs participating in Medicare continue to meet the Medicare conditions of participation. We also reserve the right to conduct on-site reviews of JCAHO procedures and processes at its headquarters on a periodic basis. We believe these activities will enable us to determine whether JCAHO accreditation continues to provide reasonable assurance that an accredited HHA meets the Medicare HHA conditions of participation.

With regard to our validation survey standards, guidelines for hospital accreditation validation surveys are currently contained in the State Operations Manual instructions provided to the State survey agencies. We recognize that the hospital accreditation validation survey guidelines may require some revision to accommodate the survey of HHAs. We are now reviewing the guidelines to identify the needs for any revisions. Because guidelines for validation surveys have been previously developed, we do not anticipate that these potential revisions will be so extensive that they will necessitate the delay of our recognition of the JCAHO HHA accreditation program. In addition, the Medicare statute does not require the development of any specific validation survey guidelines as a condition of our recognition of a private accreditation program.

Comment: One commenter suggested that JCAHO be required to inform the State of any new applications for accreditation to ensure the enforcement of State and local laws and regulations.

Response: JCAHO will require HHAs to notify the appropriate State agency of their intent to use JCAHO accreditation for purposes of participation in the Medicare program before applying for accreditation. After notifying the State, the HHA will apply to JCAHO for "deemed status" accreditation. In addition, JCAHO will release its survey reports to us, including the accreditation findings, supporting documentation, the official accreditation survey reports of JCAHO surveyors, and other related information. We will share that information with the States.

Comment: One commenter believes that it is not sufficient to require JCAHO to release survey information to us. The commenter proposed that, in addition to the required JCAHO disclosure, States should be required to respond in writing and take action to correct any deficiencies found by JCAHO. The commenter believes this requirement would ensure stringent State oversight of JCAHO-accredited HHAs.

Response: We do not agree with this comment. The purpose of this final notice is to announce that we will deem HHAs accredited by JCAHO as meeting the Medicare HHA conditions, rather than to impose survey and sanction requirements on the States. Also, we do not believe that it would be sound policy for us to require that the States (or HCFA) respond in writing and take action to correct all JCAHO deficiencies. This requirement would deprive the States of needed flexibility in responding to JCAHO survey reports and be inconsistent with the purpose of the deeming authority under section 1865(a) of the Act. For example, while some JCAHO deficiencies might clearly require State response, others may relate only to JCAHO standards that have no equivalent in the Medicare conditions of participation. In other cases, the State, on our behalf, may determine that JCAHO's corrective action was sufficient to address the deficiency.

Comment: One commenter stated that the requirements relating to JCAHO disclosure of survey reports and related information should be identical to the disclosure requirements we placed upon our recognition of the CHAP HHA accreditation program.

Response: We agree. We have revised the disclosure requirements at the beginning of this notice to require JCAHO to release its survey reports to us routinely and to the public upon request. This disclosure requirement is identical to that included in our May 29, 1992 final notice granting deemed status to HHAs accredited by CHAP (57 FR 22773). We also clarify that the information subject to disclosure includes accreditation findings, supporting documentation, the official accreditation reports of JCAHO surveyors, and other related information. Although this clarification

was not included in the notice recognizing CHAP accreditation, we also reserve the right to require this information from CHAP under the authority of section 1865(a) of the Act, which requires a "deemed" provider to authorize the recognized accrediting body to release to us a copy of the most recent accreditation survey as well as "any other information directly related to the survey as the Secretary may require."

Comment: One commenter stated that we lack the statutory authority to release survey information to the public. Another commenter stated that JCAHO should not be required to routinely release survey reports to us.

Response: We do not agree with either comment. Section 1865(a) of the Act requires accreditation organizations to release accreditation surveys and related information to the Secretary. This same section specifically allows the Secretary to publicly disclose this information if it relates to the accreditation of an HHA by a recognized accreditation organization. As discussed in the previous comment, we have revised the proposed stipulation to conform it to our recognition of CHAP. We are not exceeding our statutory authority in our attempt to streamline the disclosure process by requiring JCAHO to release accreditation survey reports and related information directly to the public upon request.

Comment: One commenter disagreed with our requirement that JCAHO report to either the Office of Inspector General (for Medicare) or to the State agency responsible for investigating fraud and abuse (for Medicaid), or to both, complaints received from persons working in the accredited HHA or any substantial complaints from others, substantial or identified, concerning potential fraud and abuse violations. The commenter believed that this requirement creates an opportunity for false and malicious complaints that will damage an HHA's reputation.

Response: We have chosen to retain this requirement. As we explained in the proposed notice, we believe that this requirement is necessary to ensure that the fraud and abuse reporting which presently occurs as a result of the State survey continues to occur. Although we understand this requirement could present an opportunity for a disgruntled employee or unethical competitor to maliciously damage the reputation of an innocent HHA, we believe that this remote possibility is outweighed by the need to maintain government oversight of Medicare and Medicaid program integrity. This requirement will ensure that government agencies no longer conducting regular surveys of accredited HHAs (and therefore no longer in routine contact with the HHAs and their staff) will continue to be informed of possible program fraud and abuse. Also, we believe that this requirement is important because it will assure those individuals with legitimate complaints that those complaints will be considered by State and Federal authorities, in addition to the private accreditation organization.

Comment: One commenter asked for a description of how JCAHO addresses complaints about its accredited HHAs.

Response: JCAHO responds to all complaints about accredited HHAs. The complaint investigation may include an unannounced survey of the HHA to determine compliance with relevant JCAHO standards. JCAHO has agreed to share each complaint and any resultant investigation and resolution with us. Also, as discussed above, this notice requires that JCAHO must report to either the Department's Office of Inspector General or the State agency responsible for investigating fraud and abuse for Medicaid, or to both, complaints received from persons working in an accredited HHA or any substantial complaints from others, anonymous or identified, concerning potential fraud and abuse violations, and any other indication of Medicare or Medicaid program abuse encountered by JCAHO.

Comment: One commenter stated that the proposed notice effectively precluded the use of JCAHO surveyors as witnesses in any enforcement actions involving intermediate sanctions.

Response: We disagree. We intended that the proposed notice require that JCAHO surveyors must be made available to serve as witnesses if adverse action is taken by HCFA after JCAHO accreditation is withdrawn. We believe that the commenter may have misinterpreted this requirement. The purpose of this requirement is to ensure the availability of JCAHO surveyors as witnesses even though accreditation has been withdrawn and JCAHO has severed its relationship with the HHA. We believe that this is necessary to prevent the surveyors from refusing to act as witnesses because the HHA no longer is accredited by JCAHO. This requirement is not intended to preclude the use of JCAHO surveyors as witnesses in all other circumstances, but merely to require their availability in a circumstance that required clarification. We also expect JCAHO surveyors to be available to serve as witnesses in cases where JCAHO has not withdrawn accreditation but intermediate sanctions are being applied.

Comment: One commenter asked for clarification of whether the JCAHO accreditation report parallels the HCFA Statement of Deficiencies and Plan of Correction form.

Response: All deficiencies identified during a State survey that are violations of the Medicare statute and regulations are cited and sent to the HHA in writing on the Statement of Deficiencies and Plan of Correction (Form HCFA–2567). The HHA is required to respond to the notice including an explanation of how and when it plans to correct the deficiencies.

After a JCAHO accreditation survey, the HHA is sent an accreditation report. This report is the primary instrument used to determine a survey outcome as it gives a detailed description of the accreditation decision. The accreditation report begins by describing whether the HHA has been awarded accreditation with or without Type I or Type II recommendations, conditional accreditation, or nonaccreditation. The accreditation report also delineates specific areas of noncompliance and includes the recommendations for action and any contingencies for accreditation which are monitored by JCAHO. Given the similar purposes of each document, we believe that the JCAHO survey report does parallel the HCFA–2567.

Comment: One commenter asked that we clarify the scoring process used by JCAHO to determine compliance.

Response: JCAHO surveyors assess an HHA's compliance with each accreditation standard through the use of the scoring guidelines contained in Volume II of the JCAHO "Accreditation Manual for Home Care". These guidelines are used to assign a score of 1 (substantial compliance) to 5 (noncompliance) to each standard. As described in the "Accreditation Manual," the scoring guidelines express parameters or common conditions that surveyors use to make judgments and assign scores to key items. The guidelines do not supersede or preempt surveyor judgment regarding an HHA's degree of compliance to a standard. They are intended to improve the consistency of the survey process by providing objective and uniform parameters of surveyor judgement. These guidelines express the intent of the standards and establish a basis for assigning scores on the survey report form that relate to the degree of compliance.

After the survey, JCAHO analysts aggregate the HHA's survey scores into an accreditation decision grid. The hundreds of scores assigned to individual standards and required

characteristics by the surveyor are aggregated to the 37 performance elements that appear on the grid. Each of these performance areas have been identified by JCAHO as important to the delivery of quality care, and the scores for each performance area are an aggregate of the scores for each standard related to the performance element. When completed, the grid scores reflect an HHA's overall compliance with the accreditation standards. The scores for each performance element are then assigned a weight to reflect the element's importance in the decision process, and an accreditation decision is made.

Comment: One commenter asked for a clarification of what JCAHO considers to be a Type I recommendation.

Response: The JCAHO's "Guide to Home Care Survey and Accreditation" describes a Type I recommendation as follows:

> Type I recommendations are recommendations or groups of recommendations that should be given the highest priority in the organization's plans for improvement if it wishes to retain its accreditation. The progress of the organization in making these improvements will be monitored by the Joint Commission during the accreditation cycle through focused surveys or written progress reports at times designated by the Joint Commission. Failure to make these improvements by the designated time could lead to loss of accreditation.

Comment: One commenter asked how long an HHA is given to review and dispute a JCAHO decision of conditional accreditation or nonaccreditation. Another commenter requested that JCAHO eliminate this procedure.

Response: Before a recommendation for conditional accreditation or nonaccreditation is made, the HHA is given the opportunity to review the findings of the survey and to submit documentation to establish that it was, in fact, in compliance with the standards at the time of the survey. Progress since the survey is not considered. As an alternative, if the HHA wishes, JCAHO will resurvey those areas that contributed to the development of the recommendation. Materials or a request for a validation survey must be submitted within 20 calendar days from its receipt of the report.

It is important to note that these procedures do not apply when a surveyor identifies any condition that is a threat to public or patient safety. In such cases, the president of JCAHO, or a designee, promptly recommends to the Accreditation Committee that accreditation be denied or terminated. This action is reported by telephone and in writing to the organization's chief executive officer and in writing to the authorities having jurisdiction. Because this policy prevents an HHA from continuing a threat to public or patient safety throughout a prolonged appeal process, we do not believe it is necessary to require JCAHO to revise this process.

Comment: One commenter stated that JCAHO should adopt the same sampling techniques for home visits and record review that are used by the States.

Response: JCAHO has agreed to use the sampling methodology for home visits and record review that is outlined in the State Operations Manual.

Comment: Several commenters stated that JCAHO should perform annual, unannounced surveys at the same frequency required of the State survey agencies.

Response: JCAHO has agreed to perform annual, unannounced surveys of those HHAs that seek deemed status at the same frequency that is required of the State survey agencies.

Comment: One commenter stated that JCAHO's policy of sending pre-survey questionnaires to accredited HHAs endangers its ability to conduct unannounced surveys.

Response: We understand the commenter's concern, but believe JCAHO's application of this policy does not materially endanger the unannounced nature of its surveys. Approximately 6 months before a survey, JCAHO will send an accredited HHA a questionnaire to determine the size of the agency, the services it provides, its location, and other basic information. Because the questionnaire is sent so far in advance of the survey, we do not believe that it compromises the conduct of an unannounced survey.

Comment: One commenter requested that the notice be revised to provide a more extensive description of an HHA's appeal rights should we seek to terminate its Medicare provider agreement.

Response: The purpose of this notice is to deem HHAs accredited by JCAHO as meeting the Medicare HHA conditions of participation, not to provide an indepth description of provider termination procedures. Although the February 3, 1992 proposed notice provided a brief description of Medicare survey and certification, and approval and termination procedures, it was not intended to offer an extensive description of each process. As this final notice does not contain a background description of these Medicare procedures, and such a description is not directly related to the purpose of the notice, we have chosen not to add a comprehensive description of an HHA's termination appeal rights. A more detailed description can be found, however, in Federal Regulations at 42 CFR part 498.

Comment: One commenter suggested that JCAHO surveyors should determine whether an HHA refers patients to the appropriate rehabilitation professionals as part of the accreditation survey.

Response: As discussed above, JCAHO surveyors are required to have extensive experience in the provision of home health care. These surveyors are trained to survey for all accreditation standards and to apply their own experience to determine whether the standards are actually met. JCAHO accreditation standard HH.1 requires:

> The number, qualifications, and current competence of the individual(s) providing each service are appropriate to the patient/client needs, the skills necessary for the level of care required, and to applicable law and regulation.

In addition, the scoring guidelines for this standard instruct the surveyor to verify that "The training and experience of all individuals providing service/care are appropriate to the assigned responsibilities, treatment provided, and the patient population being served."

We believe the application of this standard by qualified surveyors provides reasonable assurance that an accredited HHA will refer its patients to the appropriate rehabilitation professionals.

Comment: Several commenters expressed concern about JCAHO's timeframes for notification of survey results and the required submission of plans of correction as well as the conduct of a follow-up survey to monitor compliance.

Response: As we described in the proposed notice, we believe that the JCAHO process for following up deficiencies provides reasonable assurance that a JCAHO-accredited HHA meets the Medicare conditions of participation. However, after review of the public comments, we concluded that the JCAHO process should be revised to provide earlier notification of an HHA's noncompliance so that the HHA may more quickly act to correct deficiencies. In response to our concerns, the JCAHO surveyor will now complete a JCAHO report entitled, "Medicare Preliminary Decision Report" at the conclusion of the JCAHO survey. This report will detail the surveyor's preliminary findings with regard to the HHA's compliance with

Medicare and JCAHO standards and conditions. A copy of the report will be left with the HHA administrator at the end of the JCAHO surveyor's exit conference. We believe that this action provides reasonable assurance that deficiencies related to applicable Medicare conditions of participation will be identified to the HHA immediately so that the HHA can take prompt corrective action. The final report issued by JCAHO to the HHA regarding the Medicare certification process will be sent no later than 30 days following the last day of the survey. Monitoring activities, such as a written progress report or focus survey, will be reviewed and conducted, respectively, 48 to 60 days following the last day of the survey. Notification of the results of the survey and any required follow-up will be communicated by JCAHO to HCFA within the above timeframe. Finally, as we explain above, it is important to emphasize that the normal JCAHO procedures do not apply when a surveyor identifies any condition that poses a threat to patient or public safety. In such cases, JCAHO will take immediate action to address the condition.

As a result of these revisions to the JCAHO process, we have not changed our determination that accreditation by JCAHO provides reasonable assurance that an HHA meets the Medicare conditions of participation.

Comment: Several commenters expressed concern that JCAHO's required HHA personnel qualifications are less stringent than those contained in the Medicare conditions of participation. One commenter stated that the requirement that personnel "meet licensure requirements" described in the proposed notice is not the same as specifically requiring the individual to be licensed.

Response: As we described in detail in the February 3, 1992 proposed notice, JCAHO personnel qualifications for several disciplines are less specific than those contained in the Medicare HHA conditions of participation. However, as we also explained in the proposed notice, we believe that the application of JCAHO's standards provides reasonable assurance that Medicare conditions are met. As we described above, our recognition of JCAHO accreditation is based on our analysis of the entire JCAHO program, not on a word-by-word comparison of JCAHO and Medicare requirements. We believe that the JCAHO personnel requirements meet the qualification and proficiency standards sought by the Medicare conditions. As we also described in the proposed notice, JCAHO has agreed to revise its standards to specifically require physical therapists, physical therapy assistants, social workers, and social work assistants to meet the qualifications established in the Medicare HHA conditions of participation. Finally, JCAHO standard HH.1.1 states:

Each individual who provides home health services has a current license, registration, or certification, in accordance with applicable law and regulation.

Comment: One commenter stated that JCAHO does not prohibit surveyors from conducting surveys of HHAs in which they have a financial or other interest.

Response: We disagree. JCAHO has an extensive written conflict-of-interest policy. Included in this policy is the requirement that an employee or consultant surveyor "survey no organization on behalf of the Joint Commission to which he or she has provided any consulting or related services at any time during the preceding three (3) years." We have determined that JCAHO's conflict-of-interest policy precludes an individual from conducting a JCAHO survey of an HHA in which he or she has a financial, managerial, or other interest and provides reasonable assurance that the Medicare surveyor conflict-of-interest policy is met.

Comment: One commenter stated that the JCAHO standards should specifically require a supervisory visit to patients receiving home health aide services at least once every 60 days.

Response: The following standards are found in the "Personal Care and Support Services" chapter of the JCAHO "Accreditation Manual for Home Care":

SS.4 The personal care and support services provided are based on the initial and ongoing assessments of patient/client needs and are conducted by an appropriately qualified individual in the patient's/client's home.

SS.4.4.1 When personal care services are provided, the assessment occurs at least every two months.

SS.4.4.3 When personal care is provided to a patient/client with an unstable medical condition or who is also receiving (additional) home health services, assessment occurs at least every 14 days, or more frequently if indicated by the patient's/client's needs.

In addition, the scoring guidelines for standard SS.4 require the assessment visits to be "conducted by a qualified individual who meets educational and/or experience requirements in accordance with applicable laws, regulations, and the home care organization's policy" to be considered in full compliance with the standard.

Although these standards do not incorporate the Medicare condition of participation terms "home health aide services" and "supervision", we have determined that the application of these standards provides reasonable assurance that the Medicare home health aide supervision requirements are met.

Comment: One commenter stated that the JCAHO standards do not require a home health aide to successfully complete a competency determination if there has been a continuous period of 24 consecutive months in which the individual has not furnished home health aide services.

Response: The requirements for home health aide training and competency determination are partially contained in the following JCAHO standards:

SS.2 Personal care and service staff complete appropriate training and orientation before being assigned to provide care or services for patients/clients.

SS.2.1 Staff demonstrate knowledge of the subjects taught and proficiency in skills appropriate to their assigned responsibilities.

SS.2.5 The training complies with applicable law and regulation.

To ascertain compliance with standard SS.2.5, the JCAHO surveyor is instructed to determine whether "training for personal care and support services staff complies with any applicable existing state and/or federal law and regulation." Although the standards do not specifically require retesting individuals who have not provided services for 2 years, they appropriately require Medicare-participating HHAs seeking deemed status to comply with all Medicare home health aide training and competency evaluation requirements. We believe that this requirement, in addition to JCAHO's application of standards SS.2, SS.2.1, and the other more specific training and testing accreditation standards in the accreditation manual, provide reasonable assurance that the Medicare standards governing home health aide training and competency evaluation are met.

Comment: One commenter stated that JCAHO standards do not require an HHA to inform the patient in advance of any changes in treatment.

Response: We disagree. We believe that the following JCAHO accreditation standards provide reasonable assurance that an HHA patient will be informed in advance of the care to be furnished and of any changes in the care to be furnished:

PR.1 The patient/client (including any individual appropriately authorized to represent the patient/client) has the right to

make informed decisions regarding his/her care.

PR.1.1 When possible, the patient/client participates in decisions regarding his/her care, including the development and revision of the plan of care or service.

PR.1.2 The patient/client receives the information necessary to make decisions regarding his/her care.

Comment: One commenter stated that the JCAHO standards do not require the HHA to notify the patient's physician of ineffective drug treatment or drug interaction.

Response: We disagree. Although the JCAHO standards do not specifically require the HHA to inform the patient's physician of difficulties with medication, standard HH.7 does require that "home health staff contact the patient's/client's physician whenever warranted by the patient's/client's condition." We believe that this general requirement provides reasonable assurance that a JCAHO-accredited HHA will inform a patient's physician upon detecting ineffective drug treatment or drug interaction, or in any other situation that warrants the physician's attention.

Comment: One commenter stated that JCAHO standards do not require consumer participation in the HHA's annual program evaluation.

Response: Although JCAHO accreditation standard GB.7 does require the HHA's governing body to conduct an annual evaluation of the HHA's performance, it is true that the standards do not specifically require consumer participation in the evaluation. However, as we stated before, our approval of the JCAHO accreditation program is not based on JCAHO maintaining accreditation standards that are identical to the Medicare conditions of participation. Although JCAHO's standards are not completely equivalent to the Medicare requirement in this instance, we have determined, after examining the JCAHO accreditation program on the whole, that JCAHO accreditation does provide reasonable assurance that an HHA meets the requirements for participation in Medicare. Also, it is important to point out that JCAHO's agreement to release survey reports and related information to the public ensures a public review of accredited HHAs, thus satisfying the ultimate intent of the condition of participation requiring consumer participation in the annual program review.

Comment: One commenter stated that the JCAHO standards do not prohibit discrimination on the basis of age.

Response: JCAHO standard MA.6.1.1 requires that "staff whose qualifications are commensurate with anticipated job responsibilities are employed without regard to sex, race, age, creed, handicap, or national origin." We believe that this standard appropriately prohibits discrimination on the basis of age.

Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will likely result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In this final notice, we recognize the JCAHO accreditation process. HHAs accredited by JCAHO ordinarily will not be subject to routine inspection by the State survey agencies to determine their compliance with Federal requirements. Federal expenditures to ensure compliance with requirements will continue either in payments to States to perform compliance surveys, or reimbursements to home care organizations for the reasonable and allocable costs of JCAHO accreditation. We believe that there will be no significant costs or savings realized as a result of this notice; therefore, a regulatory impact analysis under Executive Order 12291 is not required.

Collection of Information Requirements

This rule contains no information collection requirements. Consequently, this rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Authority: Sec. 1865(a) of the Social Security Act (42 U.S.C. 1395bb(a)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.778, Medical Assistance Program)

Dated: March 11, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: April 22, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–15293 Filed 6–29–93; 8:45 am]

BILLING CODE 4120–01–P

[OCC–034–N]

Medicare Program; Revised Designation of States in Which Medicare SELECT Insurance Policies May Be Issued

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: Section 4358(c) of the Omnibus Budget Reconciliation Act of 1990, provides for the designation of 15 States in which Medicare supplemental insurance policies (commonly referred to as "Medigap" policies) may be approved for issuance as Medicare SELECT policies during the period January 1, 1992 through December 31, 1994. This notice announces two revisions in the list of States designated under this authority.

EFFECTIVE DATES: The revised designations in this notice are effective on June 30, 1993 and expire on December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Melvin Silverman, (202) 619–0834.

SUPPLEMENTARY INFORMATION:

I. Background

On September 20, 1991, the Secretary announced in the **Federal Register** (56 FR 47763), the conditional designation of 15 States in which Medicare SELECT policies may be approved for issuance during the period January 1, 1992, through December 31, 1994. As the notice explained, Medicare SELECT policies are Medicare supplemental insurance policies (commonly referred to as "Medigap" policies) that restrict benefits to items and services furnished through a network of providers, or that pay reduced benefits for items and services received from non-network providers.

Under Medicare SELECT, issuers enter into agreements with providers to assure appropriate utilization and deliver cost-efficient and high-quality care as a way to improve the value of Medicare supplemental insurance. In the designated States, an issuer of a Medicare SELECT policy must meet the requirements of section 1882 of the

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Social Security Act (the Act) and the policy must be approved by the State.

Section 4358 of Public Law 101–508 (enacted November 5, 1990), the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) authorized the issuance of Medicare SELECT policies during the 3-year period beginning with 1992 in 15 States designated by the Secretary. The Secretary must conduct an evaluation of the section 4358 amendments and submit a report to Congress by January 1, 1995.

To retain their designated status, the States were required to incorporate into their regulatory programs standards that are at least as stringent as those contained in the Model Regulation adopted by the National Association of Insurance Commissioners (NAIC) on July 30, 1991, including the standards described in section 10 of the Model Regulation, which specifically addresses Medicare SELECT policies. The NAIC Model Regulation was published in the **Federal Register** on August 21, 1992 (57 FR 37980).

II. Solicitation of States

On February 6, 1991, the NAIC informed all State Insurance Commissioners of the new Medicare SELECT program and advised interested States to contact us. On April 25, 1991, the Secretary announced his intention to designate the 15 Medicare SELECT States and invited States to notify us of their interest in participating.

As a result, 29 State insurance departments notified us of their interest in being considered for participation in Medicare SELECT. Based on the information available to us, we applied the factors listed in section III below, to each of the 29 States that notified us of their interest in being designated under section 4358 of OBRA '90. As a minimum requirement, we determined that all Medicare SELECT States must have an approved Medigap regulatory program that meets the OBRA '90 requirements.

III. Criteria for Designation

Designation of the 15 States was based on the extent to which the following factors were present in the States:

- An effective State Medigap regulatory program as demonstrated by approval under the Medicare Catastrophic Coverage Act (Pub. L. 100–360) and the Medicare Catastrophic Coverage Repeal Act (Pub. L. 101–234). If a State was conditionally approved, we considered the nature of the problem and evidence that the problem will be corrected.
- Availability of pre-OBRA '90 Medigap policies in the State that incorporate a network, such as existing indemnity and health maintenance organization products, and the levels of enrollment in the policies.
- Interest of insurers in offering Medicare SELECT in the State.
- Availability of beneficiary assistance/counseling programs, Medicare/Medicaid assistance programs, or special programs supported by the State.
- Absence of State legislation that would deter the operation of effective utilization review techniques by the Medicare SELECT insurer or otherwise restrict effective network arrangements.
- State interest and ability in regulating the products of Preferred Provided Organizations (PPOs) (for example, a State authorizing PPO legislation that includes provisions on access, information, and quality) or State interest in developing an effective PPO regulatory program.
- State commitment to coordinated care, such as a Governor's program for managed care or large Medicare and Medicaid health maintenance organization enrollment.
- Factors related to evaluation of the Medicare SELECT program, such as geographic dispersion of the States.

Under section 1882(a)(2) of the Act, no Medigap policies (including Medicare SELECT policies) may be issued after July 30, 1992, in States that do not have approved regulatory programs unless they are certified by the Secretary. Each of the designated Medicare SELECT States as published in the **Federal Register** on September 20, 1991 (56 FR 47763), received HCFA approval of their Medicare supplemental insurance regulatory programs. Oregon was granted an extension of the deadline until its legislature convenes.

In addition, in order to maintain their approved status, Medicare SELECT States must assure that the standards they have adopted continue to be enforced during the trial period.

IV. Alternate States

The notice published in the **Federal Register** on September 20, 1991 (56 FR 47763) noted that while more than 15 States may have been good candidates for Medicare SELECT, the Congress limited the Secretary's authority to designating only 15 States.

The notice also noted that if any of the 15 States did not establish an approvable program by July 30, 1992, or otherwise chose not to participate in Medicare SELECT, we would designate substitutes from the following list of alternate States, whose Medicare supplemental insurance regulatory programs we have approved:

Colorado, Delaware, Georgia, Illinois, Kansas, Massachusetts, Mississippi, Nevada, New Jersey, Pennsylvania, South Carolina, Virginia, West Virginia.

On December 16, 1991, the Secretary announced in a correction notice, published in the **Federal Register** (56 FR 65269), that the State of Louisiana, was added to the list of alternate States.

V. Withdrawal and Revised Designation of Medicare SELECT States

While the Secretary approved the regulatory programs for all 15 designated States, two of the States, Oregon and Michigan, have requested that their Medicare SELECT status be withdrawn. The Commissioners of Insurance for Oregon and Michigan have advised us that no Medicare supplemental insurers are interested in selling Medicare SELECT policies in their States, and that therefore, the States are willing to give up their designated status in order to permit other States to be designated.

Based on the criteria listed above in Section III, (except that we considered an effective Medigap regulatory program to be demonstrated by approval under OBRA '90) we have designated Illinois and Massachusetts as Medicare SELECT States to restore the number of States to 15. Illinois and Massachusetts, respectively, have shown State commitment to coordinated care programs, including large Medicare and Medicaid enrollments in HMOs; have identified a number of issuers potentially interested in offering a Medicare SELECT program; and have exemplary State beneficiary assistance and counselling programs available.

Replacing Michigan and Oregon with two other States may help assure that data on Medicare SELECT insurance is available from a full complement of 15 States for purposes of the evaluation that is to be conducted under section 4358(d) of OBRA '90.

For these reasons, the designation under section 4358(c) of OBRA '90 of 15 States in which Medicare SELECT policies may be approved is revised to include the following:

Alabama, Arizona, California, Florida, Illinois, Indiana, Kentucky, Massachusetts, Minnesota, Missouri, North Dakota, Ohio, Texas, Washington, Wisconsin.

Illinois and Massachusetts, the newly designated States, may begin to approve Medicare SELECT policies as soon as the standards specified in section 10 of the NAIC Model Regulation (57 FR 37993–37994) are incorporated into their State regulatory programs and

approved by us. Michigan and Oregon, the States whose designation is being withdrawn, may not permit the issuance of Medicare supplemental policies that restrict benefits to items and services furnished by a particular network of providers, and must amend their regulatory programs accordingly.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 1, 1993.

William Toby,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: April 5, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–15297 Filed 6–29–93; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

Final Funding Priority and Special Consideration for Grants for Establishment of Departments of Family Medicine

The Health Resources and Services Administration (HRSA) announces the final funding priority and special consideration for fiscal year (FY) 1993 Grants for Establishment of Departments of Family Medicine authorized under the authority of section 747(b), (previously section 780) of the Public Health Service (PHS) Act, title VII, as amended by the Health Professions Education Extension Amendments of 1992, Title I, Public Law 102–408, dated October 13, 1992.

Purpose

Section 747(b) of the PHS Act authorizes support to schools of medicine and osteopathic medicine to meet the costs of projects to establish, maintain, or improve family medicine academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in family medicine. Funds awarded will be used to: (1) Plan and develop model educational predoctoral, faculty development and graduate medical education programs in family medicine which will meet the requirements of section 747(a) by the end of the project period of section 747(b) support; and (2) support academic and clinical activities relevant to the field of family medicine.

The program may also assist schools to strengthen the administrative base and structure that is responsible for the planning, direction, organization, coordination, and evaluation of all undergraduate and graduate family medicine activities. Funds are to complement rather than duplicate programmatic activities for actual operation of family medicine training programs under section 747(a).

Eligibility

To be eligible to receive support for this grant program, the applicant must be a public, or nonprofit private, accredited school of medicine or osteopathic medicine.

Statutory Funding Preferences

Public Law 102–408 has amended section 747(b), (previously section 780) to include the following two statutory funding preferences which are new for this program.

1. Establishment and Expansion

Section 747(b)(2) provides that preference shall be given to any qualified applicant that agrees to expend the award for one of the following purposes:

(a) Establishing an academic administrative unit (defined as a department, division, or other unit), for programs in family medicine; or

(b) Substantially expanding the programs of such a unit.

A program will meet the definition of "substantial expansion" if it has developed an acceptable plan for a 50 percent increase in a sufficient number of the following areas to qualify for 70 points. The expansion must be completed within 3 years.

	Points
(1) Required 3rd Year Clerkship	30
(2) Required Preceptorship	20
(3) Family Medicine Research	10
(4) Expansion of Faculty	10
(5) Faculty Development Program for Community Based Faculty	10
(6) Family Medicine Faculty Represented on Medical School Standing Committees of Admissions or Curriculum	10
(7) Family Medicine Faculty Represented on Dean's Executive Committee or Tenure Committee	10

2. Graduates Serving Residents of Medically Underserved Communities

Section 791(a) of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, provides for the following funding preference which is applicable to programs under section 747:

Statutory preference will be given to qualified applicants that: (1) Have a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (2) during the 2-year period preceding the fiscal year for which such an award is sought, have achieved a significant increase in the rate of placing graduates in such settings.

This preference will only be applied to applications that rank above the 20th percentile of applications that have been recommended for approval by peer review groups under section 798(a) of the PHS Act, as amended.

Additional information concerning the implementation of this preference has been published in the **Federal Register** at 58 FR 9570, dated February 22, 1993. The burden for collection of information to request this preference is under review by the Office of Management and Budget in accordance with the Paperwork Reduction Act.

Information Requirement Provision

Under section 791(b) of the Act, the Secretary may make an award under the Grants for the Establishment of Departments of Family Medicine program only if the applicant for the award submits to the Secretary information regarding the programs of the applicant. The provision for these requirements will be implemented in FY 94. The burden for collection of this information is under review by the Office of Management and Budget in accordance with the Paperwork Reduction Act.

Established Nonstatutory Funding Priority for FY 1993

The following funding priority, which was established in the **Federal Register** in FY 1992 after public comment (57 FR 11326) dated April 2, 1992, is being continued in FY 1993:

A funding priority will be given to applicants that document that 20 percent or more of the previous medical school graduating class, or of the combined last three graduating classes, entered accredited family medicine residency training programs or internship training programs in osteopathic medicine which emphasize family medicine and are approved by the American Osteopathic Association.

Final Funding Priority and Special Consideration for FY 1993

A funding priority and special consideration were proposed for FY 1993 in the **Federal Register** on April 19, 1993 at 58 FR 21175 for public comments. A comment was received from one respondent during the 30-day comment period. The respondent expressed concern over the increased

administrative burden that nonstatutory funding factors impose on applying institutions and that the costs of applying for and overseeing grants were more than the potential rewards available from this grant program. The nonstatutory funding priorities established for this program will encourage applicants to meet the standard which is established as a reasonable and challenging level and are consistent with the HRSA strategy to increase the number of health professionals from minority and other at-risk populations. No plans are contemplated to remove any of the nonstatutory funding factors in FY 1993. Following additional data collection, it is likely that the implementation methodology will be revised before implementation in FY 1994.

Therefore, as proposed the funding priority and special consideration will be retained as follows:

In making awards for FY 1993, a funding priority will be given to applicants that demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in influencing graduates from those minority or low-income populations identified as at-risk of poor health outcomes to enter family medicine residency training.

Special consideration will be given to the extent to which applicants enroll and graduate students from underserved areas.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Additional Information

Questions regarding programmatic information should be directed to: Ms. Shelby Biedenkapp, Program Specialist, Resources Development Section, PCMEB, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–04, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–3614, Fax: (301) 443–8890.

This program is listed at 93.984 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: June 24, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–15402 Filed 6–29–93; 8:45 am]

BILLING CODE 4160–15–P–M

Final Funding Priorities for Nursing Special Project Grants for Fiscal Year 1993

The Health Resources and Services Administration (HRSA) announces the final funding priorities for fiscal year (FY) 1993 Grants for Nursing Special Projects under the authority of section 820, title VIII of the Public Health Service (PHS) Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, title II of the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

This program was announced in the **Federal Register** at 58 FR 19270 on April 13, 1993. The announcement included proposed funding priorities. A comment period of 30 days was established to allow public comment concerning the proposed funding priorities. Five comments were received. This notice includes a discussion of the comments and the final funding priorities for Nursing Special Project Grants for Fiscal Year 1993. Comments on program aspects that were not specifically proposed for public comment are not addressed in this notice.

Purpose

Section 820(a) of the PHS Act authorizes the Secretary to make grants for the purpose of assisting schools in increasing the number of students enrolled.

Section 820(b) of the PHS Act authorizes the Secretary to make grants for the establishment or expansion of nursing practice arrangements in noninstitutional settings to demonstrate methods to improve access to primary health care in medically underserved communities.

Section 820(c) of the PHS Act authorizes the Secretary to make grants for the purpose of providing continuing education for nurses serving in medically underserved communities.

Section 820(d) of the PHS Act authorizes the Secretary to make grants for the purpose of providing fellowships to individuals who are employed by nursing facilities or home health agencies as nursing paraprofessionals.

Eligibility

Eligible applicants for projects under section 820(a) include public and nonprofit private schools of nursing with programs of education in professional nursing. To receive support under 820(a) the school must agree to make available non-Federal contributions in an amount that is at least 10 percent of the project costs for the first fiscal year, at least 25 percent of the project costs for the second fiscal year, at least 50 percent of the project costs for the third fiscal year, and at least 75 percent of the project costs for the fourth or fifth fiscal years.

Eligible applicants for projects under section 820(b) include public and nonprofit private schools of nursing. To receive support under 820(b) the program proposed must be operated and staffed by the faculty and students of the school and must be designed to provide at least 25 percent of the students of the school with a structured clinical experience in primary health care.

Eligible applicants for projects under section 820(c) include public and nonprofit private entities.

Eligible applicants for projects under section 820(d) include public and nonprofit private entities that operate accredited programs of education in professional nursing, or State-board approved programs of practical or vocational nursing. To receive support under 820(d), the applicant must agree that, in providing fellowships, preference will be given to eligible individuals who (A) are economically disadvantaged individuals, particularly such individuals who are members of a minority group that is underrepresented among registered nurses; or (B) are employed by a nursing facility that will assist in paying the costs or expenses. The applicant must also agree that the fellowships provided will pay all or part of the costs of (A) the tuition, books, and fees of the program of nursing with respect to which the fellowship is provided; and (B) reasonable living expenses of the individual during the period for which the fellowship is provided.

Other Considerations

The following funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

It is not required that applicants request consideration for a funding

factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Statutory Funding Preferences

In making awards of grants under section 820(a), preference will be given to any qualified school that provides students of the school with clinical training in the provision of primary health care in publicly-funded (A) urban or rural outpatient facilities, home health agencies, or public health agencies; or (B) rural hospitals.

In making awards of grants under section 820(d), preference will be given to any qualified applicant operating an accredited program of education in professional nursing that provides for the rapid transition to status as a professional nurse from status as a nursing paraprofessional.

Funding Priority for 820(a)

One comment objected to the priorities for generic baccalaureate programs. These priorities are designed to facilitate the education of nurses prepared to work in primary care settings and to increase the number of primary care providers. For this reason, these priorities remain as proposed. It is important to note that these priorities apply only to applications for grants under section 820(a).

Final Funding Priority for 820(a)

A priority will be given to schools that offer generic baccalaureate programs. A priority will also be given to schools that offer both generic baccalaureate nursing programs and RN completion programs. These priorities apply to applications for grants under section 820(a).

Funding Priority for 820(a), (b), and (d)

Three comments objected to the priority for programs which enroll and graduate trainees from those minority of low-income populations identified as at-risk of poor health outcomes. The objection related to the need for an established record, particularly as it relates to programs such as Ladders in Nursing Careers (LINC, sponsored by an acute care hospital in New York), which have not had time to establish such records. Since the record must be established by the applicant school rather than by a program such as LINC, this priority remains as proposed.

Final Funding Priority for 820(a), (b), and (d)

A funding priority will be given to programs which demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating trainees from those minority or low-income populations identified as at-risk of poor health outcomes. This priority is consistent with a HRSA strategy to increase the number of health professionals from minority and other at risk populations, to assure equal access to health professions education for all population groups, ultimately, to provide a greater volume of health care in underserved areas. This priority applies to applications for grants under sections 820(a), 820(b), and 820(d).

Funding Priority for 820(c)

One comment pointed out that the term "medically underserved areas" used in this priority requires definition. In response to this comment, the term used in the final priority is "medically underserved community" which is defined in the **Federal Register** at 58 FR 9570, dated February 22, 1993.

Final Funding Priority for 820(c)

A funding priority will be given to applications for continuing education programs for nurses from medically underserved communities to increase their knowledge and skills in care of persons who are HIV positive or who have AIDS. This priority applies to applications for grants under section 820(c).

Additional Information

If additional programmatic information is needed, please contact:

Mary S. Hill, Chief, Nursing Education and Practice Resources Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 9–36, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6193 FAX: (301) 443–8586.

This program, Nursing Special Project Grants, is listed at 93.359 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: June 24, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–15403 Filed 6–29–93; 8:45 am]

BILLING CODE 4165–15–P

Indian Health Service

Indian Health Service Research Program; Grants Application Announcement

AGENCY: Indian Health Service, HHS.

ACTION: Notice of final funding emphases for competitive grant applications for the Indian Health Service (IHS) Research Program.

SUMMARY: The IHS announces the final funding emphases for fiscal year (FY) 1994 IHS Research Program authorized by section 208 of the Indian Health Care Improvement Act, as amended, 25 U.S.C. 1621g. There will be only one funding cycle during FY 1994. Grants shall be administered in accordance with applicable Office of Management and Budget (OMB) Circulars and HHS policies. This program is described at 93.905 in the Catalog of Federal Domestic Assistance. Executive Order 12372 requiring intergovernmental review is not applicable to this program

General Program Goals

1. To support practice and community-based research projects likely to improve the health of American Indians and Alaska Natives (AI/AN) served by the IHS.

2. To develop research skills among IHS and tribal health professionals. The applicant, as the direct and primary recipient of PHS funds, must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party, or to provide funds to another party.

3. These grants will be awarded and administered in accordance with the published program announcement in the **Federal Register** of May 3, 1993 (58 FR 26334) and the Indian Health Care Improvement Act, as amended, 25 U.S.C. 1621g.

Research Funding Emphases

Proposed funding emphases were published in the **Federal Register** of May 3, 1993 (58 FR 26334) for public comment. No comments were received during the 30-day comment period. Therefore, as proposed the following funding emphases will be retained as listed below.

1. Studies of documented high importance in the community in which the research is to be done.

2. Studies with high relevance for the AI/AN populations. (The series "The Research Agenda for Indian Health" in the IHS Primary Care Provider, lists many relevant research subjects. Reprints are available from the IHS Research Program and the Area Research Offices.)

3. For studies that involve problems that are both social and medical (e.g., dysfunctional families), research about factors that enable the community or individuals to overcome the problem.

4. Competing continuations of previously-funded research projects.

Review Process

Applications meeting eligibility requirements that are complete and conform to the published program announcement in the **Federal Register** of May 3, 1993 (58 FR 26334) will be reviewed in accordance with the following process.

1. Review by Authorized Institutional Review Boards (IRB). All applications involving human subjects will be reviewed by the authorized Area or National IRBs in the IHS for compliance with requirements to protect human subjects contained in 45 CFR part 46, and as specified in the IHS Multiple Project Assurance (MPA). It is suggested but not required that the application be sent to the appropriate Area IRB(s) 1 (one) month before the deadline, for the IRB review of the proposal to permit making the changes before the final submission. The IRB will review only IRB issues, not purely technical methods. Any applications involving investigators from institutions with IRBs with MPAs and involving human subjects must also be reviewed by the IRBs of the respective institution(s). The researcher should contact non-IHS IRB(s) for their deadline requirements. No research project can be funded by IHS unless it has been approved by, and has met the conditions of, all applicable IRBs.

2. Review by the Indian Health Research Study Section (IHRSS) Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed for merit by the IHRSS appointed by the IHS to review these applications. The IHRSS review will be conducted in accordance with the IHS objective review procedures. The technical review process ensures selection of quality research projects in a national competition for limited funding. The IHRSS will include at least 60 percent non-IHS, Federal or non-Federal, individuals, all experts in research. The IHRSS will review each application against established criteria, and will assign a numerical score to each application. The members of the IHRSS will use the following criteria and weights to make the score.

Weights. (Criteria "a" through "f" refer to section I. Research Plan.)

4 a. Specific Aims: statement of study question(s) and objective(s). (Are the study questions stated clearly and precisely? Does the rest of the Research Plan follow logically from the study questions?)

10 b. Background in Research Literature: (Does the background in research literature include the important existing research and knowledge relevant to the study question(s), and pilot data (if applicable)? Do the conclusions follow from the review?)

4 c. Progress Report (for competing continuation studies only). (What is the progress to date? Is the report timely? Does the progress report demonstrate that investigators will achieve the objective(s) of the research?)

15 d. Research design and methods to be used. (Does the Research Plan adequately describe the research design? Is the proposed approach appropriate for the objective(s) of the research? Does the Plan adequately describe: The population to be studied; the inclusion and exclusion criteria, and how the investigators will determine inclusion and exclusion; the sampling techniques; selection of controls (if any); the definition of the independent and dependent variables (if any) and how to measure them; the interventions (if any) and how to assure that they are done in fact; and the definition of the expected outcomes or effects (if any) and how to measure them? Are these methods appropriate to achieve the objective(s) of the research? Are sample size calculations included, if needed? Is the projected sample size achievable, and sufficient to achieve the objective(s) of the research? Does the Plan adequately account for alternative explanations of expected findings? Is the application's timeline, with completion dates of all major tasks, appropriate and feasible?)

10 e. Data sources, management, quality control, and analysis. (Does the Research Plan adequately describe: The data to be collected, by whom, and at what time; the data sources, and how access to the sources will be attained; the procedures to collect, receive, code, and prepare for analysis of the data; the contents of interviews (if they are to be done), and the connection between the interview question and the variables to be studies; how the data will be assured and low response rates dealt with; how accuracy of the data will be measured and assured; the plan for analysis; the statistical analyses to be done (if any); and the non-statistical analyses to be done (if any)? Are these plans appropriate and adequate for the research questions?)

4 f. Originality. (Will this research likely develop *new* methods, or directly lead to *new* information, useful for research *in general*?) (Criteria "g" through "k" refer to section J. Importance and Utility.)

10 g. Importance of the health problem(s) for the community(ies) involved. (Are the health problems addressed by the research project of high importance in the community(ies) involved?)

9 h. Importance of the health problem(s) for all AI/AN people and the IHS Area. (Are the health problems addressed by the research project of high importance in all or major segments of AI/AN people, and in the IHS Area?)

4 i. Setting of the study. (Should the research be done only, or be done best, in an AI/AN population, and in the proposed community(ies)?)

10 j. *Utility of the product and experience to the community(ies) and Service Unit(s) (SU) involved.* (Does the research project have a high expected utility of the product (e.g., *new* information) or of the experience (e.g., *new* research skills, capabilities, resources, or liaisons to do practice-based or community-based research) to the community(ies) and/or SU(s) involved?)

5 k. *Utility of the product and experience to the IHS and other AI/AN people.* (Does the research project have a high expected utility of the product (e.g., *new* information) or of the experience (e.g., *new* research skills, capabilities, resources, or liaisons to do practice-based on community-based research) to the IHS, to the IHS Area, and/or to other AI/AN people?)

5 l. *Budget.* (This criterion refers to section *G. Budget.*) (Is the proposed budget sufficient to do the project? Is the proposed budget excessive? Is the proposed budget being used for the purchase of computers or other expensive equipment? If the research project is a competing continuation, are the additional years necessary? Is the cost justified by the expected benefit?)

10 m. *Key Personnel and Research Time.* (This criterion refers to section *H Key Personnel and Research Team.*) (Does the principal investigator have the training, experience, and time necessary to do and to manage the proposed research project? Does the research team have the capabilities to carry out and complete the project successfully?)

FOR FURTHER INFORMATION CONTACT: Ms. Donna Pexa, Research Program Coordinator, Office of Health Program Research and Development, 7900 South J. Stock Road, Tucson, AZ 85746–9352, (602) 295–2503.

Dated: June 24, 1993.

Michel E. Lincoln,

Acting Director.

[FR Doc. 93–15305 Filed 6–29–93; 8:45 am]

BILLING CODE 4160–16–M

National Institutes of Health

National Institute on Aging; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Task Force on Aging Research, National Institute on Aging, June 29, 1993, from 9 a.m. to 12 noon in Conference Room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland, which was published in the **Federal Register** on June 10, 1993, page 32538.

We have decided to delay this meeting until September 8, 1993, because developing and editing the recommendations has taken longer than planned.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: June 25, 1993.

Wendy Baldwin,

Acting Deputy Director for Extramural Research.

[FR Doc. 93–15455 Filed 6–29–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Dates of Meeting: July 14, 1993.

Time of Meeting: 8 a.m. to 4:30 p.m.

Place of Meeting: Holiday Inn, Chevy Chase, MD.

Agenda: Review of R03 Applications.

Contact Person: Dr. Mary Nekola, Scientific Review Administrator, NIDCD/SRB, Executive Plaza South, room 400B, Bethesda, Maryland 20892, (301) 496–8683.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: June 21, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–15312 Filed 6–29–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases, National Digestive Diseases Advisory Board; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on July 26–27, 1993. Meetings on both days will begin at approximately 8:30 a.m. and adjourn at approximately 5 p.m. The focus of these meetings will be colorectal cancer and alcoholism and liver disease. These meetings which are open to the public, will be held at the Capital Gateway Marriott, Crystal City, Virginia. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, two weeks prior to the meeting date. In addition, his office will provide a membership roster of the Board and an agenda and summaries of the actual meetings.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: June 21, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–15314 Filed 6–29–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the advisory committees of the National Institute on Drug Abuse for July 1993.

The initial review groups will be open to the public for approximately one-half hour at the beginning of the first day of the meeting for announcements and reports of administrative, legislative, and program development. Attendance by the public will be limited to space available.

As indicated below in accordance with provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the initial review groups will be closed to the public for the review, discussion, and evaluation of individual grant applications on the dates indicated below. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Extramural Science Advisory Board will discuss NIDA's program areas, intramural program and NIDA publications. This meeting will be open on the dates indicated below; however, attendance by the public will be limited to space available.

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, room 10–42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443–2755).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Sociobehavioral Subcommittee, Drug Abuse AIDS Research Review Committee.

Meeting Date: July 12–14, 1993.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: July 12, 9 a.m. to 9: a.m.

Closed: 9:30 a.m., July 12, to adjournment on July 14.

Contact: H. Noble Jones, room 10–22, Parklawn Building, Telephone (301) 443–9042.

Committee Name: Biobehavioral/Clinical Subcommittee, Drug Abuse AIDS Research Review Committee.

Meeting Date: July 13–14, 1993.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: July 13, 9 a.m. to 9:30 a.m.
Closed: 9:30 a.m., July 13, to adjournment on July 14.
Contact: Mary Custer, Ph.D., room 10–42, Parklawn Building, Telephone (301) 443–2620.

Committee Name: Extramural Science Advisory Board, NIDA.
Meeting Date: July 22–23, 1993.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Open: July 22–23, 9 a.m. to 5 p.m.
Contact: Jacqueline P. Downing, room 10A–55, Parklawn Building, Telephone (301) 443–1056.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact persons named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs.)

Dated: June 21, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–45311 Filed 6–29–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of Environmental Health Sciences Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on August 2–3, 1993 at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina. The meeting will be open to the public on August 2 from 9 a.m. until approximately 11:30 a.m. for general discussion. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public August 2, from approximately 11:30 a.m. until adjournment on August 3, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Drs. John Braun, or Carol Shreffler, Scientific Review Administrators, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919–541–7826), will provide summaries of meeting and rosters of committee members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact any of the above named Scientific Review Administrators in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Date: June 21, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–15308 Filed 6–29–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on RFA for Specialized Centers of Research in Pediatric Cardiovascular Diseases.
Dates of Meeting: July 11–13, 1993.
Time of Meeting: 7:30 p.m.
Place of Meeting: Holiday Inn, Bethesda, Maryland.
Agenda: To evaluate and review grant applications.
Contact Person: Dr. Dennis Lang, 5333 Westbard Avenue, room 553, Bethesda, Maryland 20892, (301) 594–7448.

Name of Panel: NHLBI SEP on RFA for Gene Therapy for Cystic Fibrosis.
Dates of Meeting: July 11–14, 1993.
Time of Meeting: 8 p.m.
Place of Meeting: Holiday Inn, Bethesda, Maryland.
Agenda: To evaluate and review grant applications.
Contact Person: Dr. Eric H. Brown, 5333 Westbard Avenue, room 5A09, Bethesda, Maryland 20892, (301) 594–7484.

Name of Panel: NHLBI SEP on Structure, Function and Genetics of Coagulation Factors.
Dates of Meeting: July 15, 1993.
Time of Meeting: 11:30 a.m.
Place of Meeting: Embassy Suites Hotel, Chicago O'Hare Airport, Chicago, IL.
Agenda: To review and evaluate grant applications.
Contact Person: Dr. Louis M. Ouellette, 5333 Westbard Avenue, room 552, Bethesda, Maryland 20892, (301) 594–7474.

Name of Panel: NHLBI SEP for the Re-review of a Clinical Investigator Development Award (K08) (Telephone Conference Call).
Dates of Meeting: July 19, 1993.
Time of Meeting: 2 p.m.
Place of Meeting: 5333 Westbard Avenue, room 550, Bethesda, Maryland 20892.
Agenda: To review and evaluate grant applications.
Contact Person: Dr. Kathryn Ballard, 5333 Westbard Avenue, room 550, Bethesda, Maryland 20892, (301) 594–7450.

Name of Panel: NHLBI SEP on Obesity Prevention in American Indians: Field Centers.
Dates of Meeting: July 26, 1993.
Time of Meeting: 1 p.m.
Place of Meeting: Crystal City Marriott, Arlington, Virginia.
Agenda: To review and evaluate grant applications.
Contact Person: Dr. C. James Scheirer, 5313 Westbard Avenue, room 548, Bethesda, Maryland 20892, (301) 594–7452.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: June 21, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–15313 Filed 6–29–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke, Board of Scientific Counselors; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke, Division of Intramural Research, on July 21–23, 1993, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 9 a.m. to 12:30 p.m. and

from 1:30 p.m. to 5 p.m. on July 22nd in the Medical Board Room, Bldg. 10, rm. 2C116, to discuss program planning and program accomplishments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 8 p.m. to 10 p.m. on July 21st and from 9 a.m. until adjournment on July 23rd in Bldg. 10, rm. 5S235, for the review, discussion and evaluation of individual programs and projects conducted by the NINDS. The programs and discussions include consideration of personnel qualifications and performances, the competence of individual investigators and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Freedom of Information Coordinator, Ms. Mary Whitehead, Federal Building, room 1004, 7550 Wisconsin Avenue, Bethesda, MD 20892, telephone (301) 496–9231 or the Executive Secretary, Dr. Irwin J. Kopin, Director, Division of Intramural Research, NINDS, Building 10, room 5N214, National Institutes of Health, Bethesda, MD 20892, telephone (301) 496–4297, will furnish a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: June 21, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–15310 Filed 6–29–93; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public 92–463, for the review, discussion and evaluation of individual grant applications and Small Business Innovation Research Program Applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meetings and rosters of panel members.

Meetings To Review Individual Grant Applications

Scientific Review Administrator: Dr. Peggy McCardle (301) 594–7293.

Date of Meeting: July 22, 1993.

Place of Meeting: Westwood Bldg., Rm 305, NIH, Bethesda, MD, (Telephone Conference).

Time of Meeting: 1:00 p.m.

Scientific Review Administrator: Dr. Leonard Jakubczak (301) 594–7198.

Date of Meeting: August 9, 1993.

Place of Meeting: Westwood Bldg., Rm 352C, NIH Bethesda, MD (Telephone Conference).

Time of Meeting: 2:00 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 21, 1993.

Susan K. Feldman,

Committee Management Office, NIH.

[FR Doc. 93–15315 Filed 6–29–93; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Nursing Recruitment Program for Indians

AGENCY: Indian Health Service, HHS.

ACTION: Correction.

SUMMARY: In notice document 93–12496 beginning on page 30791 in the issue of Thursday, May 27, 1993, make the following corrections:

1. On page 30791, in the second column, under "Dates:", in the first paragraph, in the eighth line, delete "May 21," and insert "(insert 30 days after date of publication)". In the second column, under "Additional Dates", second line, delete "July 2, 1993." and insert "(insert 30 days after date of publication.)"; in the third line delete "August 5, 1993." and insert "August 10, 1993." In the third column, under "A. General Program Purpose", line one, add "nurses," after the word "of".

2. On pages 30791–30792, the words "nurse(s) (ADN, BSN)," were inadvertently omitted and should be added before "nurse midwives," in every place it appears under the following headings: "B. Eligibility and Preference", lines 4 and 10; "D. Program Objectives" lines 4, 14, 20, 24; and "I. Criteria for Review and Evaluation", line 27.

Dated: June 24, 1993.

Michel E. Lincoln,

Acting Director.

[FR Doc. 93–15306 Filed 6–29–93; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

Privacy Act of 1974; Report of New Routine Uses

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Addition of new routine uses to four systems of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to add new routine uses to the systems of records entitled "Master Files of Social Security Number Holders, HHS/SSA/OSR, 09–60–0058," "Claims Folder System, HHS/SSA/OP, 09–60–0089," "Master Beneficiary Record (MBR), HHS/SSA/OSR, 09–60–0090" and "Supplemental Security Income Record (SSR), HHS/SSA/OSR, 09–60–0103." We invite public comment on this publication.

DATES: The proposed routine uses will become effective as proposed, without further notice on July 30, 1993 unless we receive comments on or before that date which would warrant our preventing the changes from taking effect.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, Room 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Hanna, Social Insurance Specialist, Confidentiality and Disclosure Branch, Division of Technical Documents and Privacy, Office of Regulations, Office of Policy, Social Security Administration, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 410–966–7077.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Routine Use

We propose to add new routine uses to the systems of records shown above. The proposed routine uses implement recent legislation governing the disclosure of information by SSA to the Department of Education (DOEd) for administration of DOEd's student loan programs.

A. Disclosure of Address Information

The Emergency Unemployment Compensation Act of 1991 (Pub. L. No. 102–164) amended the Higher Education Act of 1965 (20 U.S.C. 1001, *et. seq.*) by adding a new section 489A (20 U.S.C. 1096a(a)(1)). This section authorizes the Secretary of DOEd "to obtain information from the files and records maintained by any of the departments, agencies or instrumentalities of the United States concerning the most recent address of an individual obligated on a loan held by the Secretary or a loan made in accordance with part B of this subchapter held by a guaranty agency, or an individual owing a refund of an overpayment of a grant awarded under this subchapter * * *." The DOEd will use a contractor in its efforts to locate individuals. Before we disclose any address data about beneficiaries to the DOEd or its contractors, we must comply with the Privacy Act by establishing a routine use.

The proposed routine use will be #32 in the Claims Folder system, #32 in the Master Beneficiary Record system and #30 in the Supplemental Security Income Record system. The routine use will state that:

"Addresses of beneficiaries who are obligated on loans held by the Secretary of Education or a loan made in accordance with 20 U.S.C. 1071, *et. seq.* (the Robert T. Stafford Student Loan Program) may be disclosed to the Department of Education as authorized by Section 489A of the Higher Education Act of 1965."

B. Verification of Social Security Numbers (SSN)

The Higher Education Act of 1965 was reauthorized in July 1992 (Pub. L. No. 102–325). Title IV, part G, section 484(q) (20 U.S.C. 1091) of the new law requires that "the Secretary of Education, in cooperation with the Commissioner of the Social Security Administration, shall verify any social security number provided by a student to an eligible institution * * *." A new routine use will enable SSA to verify SSNs at the request of the DOEd.

The proposed routine use will be #29 in the Master Files of Social Security Number Holders system. It will state that:

"Upon request by the Department of Education, SSNs which are provided by students to postsecondary educational institutions may be verified as required by title IV of the Higher Education Act of 1965 (20 U.S.C. 1091)."

II. Compatibility of Proposed Routine Uses

We are proposing the changes discussed above in accordance with the Privacy Act (5 U.S.C. 552a(a)(7), (b)(3), and (e)(11)) and our disclosure regulation (20 CFR part 401).

The Privacy Act permits us to disclose information about individuals without their consent for routine uses when the purposes for which the information would be used by an agency receiving it from SSA would be compatible with the purposes for which SSA collects the information. We believe that disclosure which is required by law meets the compatibility requirement for routine uses under the Privacy Act based on the obvious congressional intent that the information be used for the purposes for which its release is required by the statute. The proposed disclosures to DOEd described above meet this compatibility criterion, since they are required by law.

III. Effect of the Proposal on Individual Rights

As discussed above, the proposed disclosures to the DOEd are required by Federal law. They will assist the DOEd in administering its student loan programs, including the location of individuals who default on loan repayments. SSA will follow all statutory and regulatory requirements for disclosure. Therefore, we do not anticipate that the disclosures will have any unwarranted effect on the privacy or other rights of individuals.

IV. Other Changes

We have made editorial and technical changes throughout the notices of systems of records effected by this publication. These changes include publication of routine uses #15 through 19 under the Supplemental Security Income Record (09–60–0103) which were inadvertently omitted in the FEDERAL REGISTER publication of November 24, 1992.

Dated: June 17, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

09–60–0059

SYSTEM NAME:

Master Files of Social Security Number Holders, HHS/SSA/OSR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Social Security Administration, Office of System Operations, 6401 Security Boulevard, Baltimore, MD 21235.

Social Security Administration, Office of Central Records Operations, Metro West Building, 300 N. Greene Street, Baltimore, MD 21201.

Social Security Administration, Office of System Requirements, 6401 Security Boulevard, Baltimore, MD 21235.

Records may also be maintained at contractor sites (contact the system manager at the address below to obtain contract addresses).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains a record of each individual who has applied for and/or obtained a Social Security number (SSN).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains all of the information received on original applications for SSNs (e.g., name, date and place of birth, both parents' names, and race/ethnic data) and any changes in the information on the applications that are submitted by the SSN holder. Cross-references may be noted where multiple numbers have been issued to the same individual and an indication may be shown that a benefit claim has been made under a particular SSN(s).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) and 205(c)(2) of the Social Security Act.

PURPOSE(S):

Information in this system is used by the Social Security Administration (SSA) to assign SSNs. The information also is used for a number of administrative purposes, such as:

- By SSA components for various title II, XVI, and XVIII claims purposes including usage of the SSN itself as a case control number and a secondary beneficiary cross-reference control number for enforcement purposes and use of the SSN record data for verification of claimant identity factors and for other claims purposes related to establishing benefit entitlement;

- By SSA as a basic control for retained earnings information;
- By SSA as a basic control and data source to prevent issuance of multiple SSNs;
- As the means to identify reported names or SSNs on earnings reports;
- For resolution of earnings discrepancy cases;
- For statistical studies;
- By the Department of Health and Human Services (HHS), Office of Inspector General, Office of Audit Services, for auditing benefit payments under Social Security programs;
- By the HHS Office of Child Support Enforcement for locating parents who owe child support;
- By the National Institute of Occupational Safety and Health for epidemiological research studies required by the Occupational Safety and Health Act of 1974;
- By the SSA Office of Refugee Resettlement for administering Cuban refugee assistance payments; and
- By the HHS Health Care Financing Administration for administering Title XVIII claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. Employers are notified of the SSNs of employees in order to complete their records for reporting wages to SSA pursuant to the Federal Insurance Contributions Act and section 218 of the Social Security Act.

2. To State welfare agencies, upon written request, of the SSNs of Aid to Families with Dependent Children applicants or recipients.

3. To the Department of Justice (DOJ), Federal Bureau of Investigation and United States Attorneys, for investigating and prosecuting violations of the Social Security Act.

4. To the DOJ, Immigration and Naturalization Service, for the identification and location of aliens in the United States pursuant to requests received under section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

5. To a contractor for the purpose of collating, evaluating, analyzing, aggregating or otherwise refining records when SSA contracts with a private firm. (The contractor shall be required to maintain Privacy Act safeguards with respect to such records.)

6. To the Railroad Retirement Board for:

(a) Administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment; and

(b) Administering the Railroad Unemployment Insurance Act.

7. To the Department of Energy for its study of the long-term effects of low-level radiation exposure.

8. To the Department of the Treasury for:

(a) Tax administration as defined in section 6103 of the Internal Revenue Code (26 U.S.C. 6103); and

(b) Investigating the alleged theft, forgery, or unlawful negotiation of Social Security checks.

9. To a congressional office in response to an inquiry from the office made at the request of the subject of a record.

10. To the Department of State for administering the Social Security Act in foreign countries through facilities and services of that agency.

11. To the American Institute of Taiwan for administering the Social Security Act on Taiwan through facilities and services of that agency.

12. To the Department of Veterans Affairs (DVA), Philippines Regional Office, for administering the Social Security Act in the Philippines through facilities and services of that agency.

13. To the Department of the Interior for administering the Social Security Act in the Trust Territory of the Pacific Islands through facilities and services of that agency.

14. To the Department of Labor for:

(a) Administering provisions of the Federal Coal Mine Health and Safety Act; and

(b) Conducting studies of the effectiveness of training programs to combat poverty.

15. To DVA for the following purposes:

(a) For the purpose of validating SSNs of compensation recipients/pensioners in order to provide the release of accurate pension/compensation data by DVA to SSA for Social Security program purposes; and

(b) Upon request, for purposes of determining eligibility for or amount of DVA benefits, or verifying other information with respect thereto.

16. To Federal agencies which use the SSN as a numerical identifier in their recordkeeping systems, for the purpose of validating SSNs.

17. To DOJ, to a court, to another tribunal, or to another party before such tribunal, when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity when DOJ (or SSA when it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof when SSA determines that the litigation is likely to affect the operations of SSA or any of its components

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the tribunal, or other party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were disclosed.

Wage and other information that is subject to disclosure provisions of the Internal Revenue Code (IRC) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

18. To State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations.

19. Information necessary to adjudicate claims filed under an international Social Security agreement that the United States has entered into pursuant to section 233 of the Social Security Act may be disclosed to a foreign country which is a party to that agreement.

20. To Federal, State, or local agencies (or agents on their behalf) for the purpose of validating SSNs used in administering cash or noncash income maintenance programs or health maintenance programs (including programs under the Social Security Act).

21. To third party contacts when the party to be contacted has, or is expected to have, information which will verify documents when SSA is unable to determine if such documents are authentic.

22. Upon request, information on the identity and location of aliens may be disclosed to the DOJ, Criminal Division, Office of Special Investigations, for the purpose of detecting, investigating, and, when appropriate, taking legal action against suspected Nazi war criminals in the United States.

23. To the Selective Service System for the purpose of enforcing draft registration pursuant to the provisions of the Military Selective Service Act (50 U.S.C. App. 462, as amended by section 916 of Pub. L. 97–86).

24. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an

agency function relating to this system of records.

25. Validated SSN information may be disclosed to organizations or agencies such as prison systems that are required by law to furnish SSA with SSN information.

26. Nontax return information that is not restricted from disclosure by Federal law may be disclosed to the General Services Administration and the National Archives and Records Administration for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.

27. Disclosure of SSNs and dates of birth may be made to the DVA or third parties under contract to that agency for the purpose of conducting DVA medical research and epidemiological studies.

28. SSN information may be disclosed to the Office of Personnel Management (OPM) upon receipt of a request from that agency in accordance with 5 U.S.C. 8347(m)(3), when OPM needs the information in administering its pension program for retired Federal Civil Service employees.

29. Upon request by the Department of Education, SSNs which are provided by students to postsecondary educational institutions may be verified as required by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1091).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in paper form (e.g., paper lists and punch cards); magnetic media (e.g., magnetic tape and disk with on-line access); and in microfilm and microfiche form.

RETRIEVABILITY:

Records in this system are indexed by both SSN and name.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the HHS Automated Data Processing Manual, "Part 6, ADP Systems Security." This includes maintaining the magnetic tapes and disks within a secured enclosure attended by security guards. Anyone entering or leaving this enclosure must have a special badge issued only to authorized personnel.

For computerized records electronically transmitted between Central Office and Field Office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. All microfilm, microfiche, and paper files are accessible only by authorized personnel who have a need for the records in the performance of their official duties.

Expansion and improvement of SSA's telecommunications system has resulted in the acquisition of terminals equipped with physical key locks. The terminals also are fitted with adapters to permit the future installation of data encryption devices and devices to permit the identification of terminal users.

RETENTION AND DISPOSAL:

All paper forms are retained for 5 years after they have been filmed or entered on tape and the accuracy has been verified. They then are destroyed by shredding. All tape, disks, microfilm, and microfiche files are updated periodically. Out-of-date magnetic tapes and disks are erased. Out-of-date microfiches are disposed of by applying heat.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Pre-Claims Requirements, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURES:

An individual can determine if this system contains a record pertaining to him/her by providing his/her name, signature, and SSN; or, if the SSN is unknown, name, signature, date and place of birth, mother's birth name, and father's name, and evidence of identity to the address shown under "System manager" above. (Furnishing the SSN is voluntary, but it makes searching for an individual's record easier and avoids delay.) These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Also, requesters should reasonably specify the record contents which they are seeking. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above. Also, requesters should reasonably identify the record, specify the information which they are contesting, and state the corrective action sought and the reasons for the correction, with supporting justification showing how the record is complete, untimely, inaccurate, or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from SSN applicants (or individuals acting on their behalf). The SSN itself is assigned to the individual as a result of internal processes of this system.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-60-0059

SYSTEM NAME:

Claims Folders System, HHS/SSA/OP

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The claims folders initially are established and maintained in Social Security field offices when claims for benefits are filed or a lead is expected to result in a claim. Telephone and address information for Social Security field offices may be found in local telephone directories under United States Department of Health and Human Services, Social Security Administration or under Social Security Administration. The claims folders are retained in field offices until all development has been completed, and then transferred to the appropriate processing center as set out below.

Supplemental Security Income (SSI) claims folders are held in Social Security field offices pending establishment of a payment record, or until the appeal period in a denied claim situation has expired. The folders are then transferred to a folder-staging facility (FSF) in Wilkes-Barre, Pennsylvania. The address is: Social Security Administration, SSI Folder Staging Operations, Wilkes-Barre Data Operations Center, P.O. Box 7000, Wilkes-Barre, PA 18703.

Retirement and Survivors Insurance (RSI) claims folders are maintained primarily in the Social Security Administration's (SSA's) Program Service Centers (PSC's) (contact the system manager at the address below for PSC address information). If the individual to whom the claim pertains resides outside the United States or any of its possessions, the folder is maintained in the Office of Disability and International Operations (ODIO). The address for ODIO is: Social Security Administration, P.O. Box 1756, Baltimore, MD 21203.

Disability Insurance (DI) claims folders for individuals under age 59 are

maintained primarily in the SSA Office of Disability Operations (ODO). The address for ODO is: Social Security Administration, Office of Disability Operations, 1500 Woodlawn Drive, Baltimore, MD 21241.

If the individual resides outside the United States or any of its possessions, DI claims folders for individuals under age 59 are maintained in ODIO (see the address above). DI claims folders for disabled individuals over age 58 are maintained in SSA's PSC's (contact the system manager for addresses).

Claims folders relating to Black Lung (BL) claims are maintained in ODIO at the following address: Social Security Administration, Office of Disability and International Operations, 1500 Woodlawn Drive, Baltimore, MD 21241.

In addition, claims folders are transferred to numerous other locations throughout the Department of Health and Human Services (HHS) and the General Services Administration (GSA) and on occasion may be temporarily transferred to other Federal agencies. The DI claims folders also are transferred to State agencies for disability and vocational rehabilitation determinations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants, applicants, beneficiaries and potential claimants for RSI and DI benefits; Health Insurance (HI) benefits; BL benefits or SSI payments. Folders also are maintained on claims that have been denied.

CATEGORIES OF RECORDS IN THE SYSTEM:

The claim folder is established when a claim for benefits is filed or a lead is expected to result in a claim. It contains the name and Social Security number (SSN) of the claimant or potential claimant; the application for benefits; earnings record information established and maintained by SSA; documents supporting findings of fact regarding factors of entitlement and continuing eligibility; payment documentation; correspondence to and from claimants and/or representatives; information about representative payees; and leads information from third parties such as social service agencies, the Internal Revenue Service (IRS), the Department of Veterans Affairs (DVA) and mental institutions.

The claim folder also may contain data collected as a result of inquiries or complaints, and evaluation and measurement studies of the effectiveness of claims policies.

Separate files may be maintained of certain actions which are entered directly into the computer processes. These relate to reports of changes of address, work status, and other post-adjudicative reports. Separate files also temporarily may be maintained for the purpose of resolving problem cases.

Separate abstracts also are maintained for statistical purposes (i.e., disallowances, technical denials, and demographic and statistical information relating to disability decisions).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 202–205, 223, 226, 228, 1611, 1631, 1818, 1836, and 1840 of the Social Security Act and sections 411 and 413 of the Federal Coal Mine and Health Safety Act, as amended by the Black Lung Benefits Act.

PURPOSE(S):

The claim folder constitutes the basic record for payments and determinations under the Social Security Act and the Federal Coal Mine Health and Safety Act. Data are used to produce and maintain the Master Beneficiary Record (09–60–0090) which is the automated payment system for RSI and DI benefits; the Supplemental Security Income Record (09–60–0103) which is the payment system for the aged, blind, and disabled payments; the Black Lung Payment System (09–60–0045) which is the payment system for BL claims; and the Health Insurance Billing and Collection Master Record system (09–70–0522) which is the payment system for HI and Supplementary Medical Insurance (Medicare) benefits.

This paper file is controlled by the SSA Claims Control System while the claim is pending development for adjudication in the field office, and by the Case Control System once the folder has been transferred to the processing center (ODIO, PSC, or ODO).

The claims folders are used throughout SSA for purposes of pursuing claims, determining, organizing and maintaining documents for making determinations as to eligibility for benefits, the amount of benefits, the appropriate payee for benefits, reviewing continuing eligibility, holding hearings or administrative review processes; ensuring that proper adjustments are made based on events affecting entitlement; and answering inquiries.

The folder may be referred to State Disability Determination Services (DDS's) or vocational rehabilitation agencies in disability cases. They may also be used for quality review, evaluation, and measurement studies, and other statistical and research purposes. Extracts may be maintained as interviewing tools, activity logs, records of claims clearance, and records of type or nature of actions taken.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. To third party contacts in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for or entitlement to benefits under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

(1) He/she is capable or of questionable mental capability;

(2) He/she cannot read or write;

(3) He/she cannot afford the cost of obtaining the information;

(4) He/she has a hearing impairment, and is contacting SSA by telephone through a telecommunications relay system operator;

(5) A language barrier exists; or

(6) The custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

(1) His/her eligibility for benefits under the Social Security program;

(2) The amount of his/her benefit payment; or

(3) Any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement activities.

2. To third party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

3. To a person (or persons) on the rolls when a claim is filed by an individual which is adverse to the person on the rolls; i.e.:

(a) An award of benefits to a new claimant precludes an award to a prior claimant; or

(b) An award of benefits to a new claimant will reduce the benefit payments to the individual(s) on the rolls:

But only for information concerning the facts relevant to the interests of each party in a claim.

4. To employers or former employers for correcting or reconstructing earnings records and for Social Security tax purposes only.

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5. To the Department of the Treasury for:

(a) Collecting Social Security taxes or as otherwise pertinent to tax and benefit payment provisions of the Social Security Act (including SSN verification services); or

(b) Investigating alleged theft, forgery, or unlawful negotiation of Social Security checks.

6. To the United States Postal Service for investigating the alleged forgery, theft or unlawful negotiation of Social Security checks.

7. To the Department of Justice (DOJ) for:

(a) Investigating and prosecuting violations of the Social Security Act to which criminal penalties attach,

(b) Representing the Secretary, or

(c) Investigating issues of fraud by agency officers or employees, or violation of civil rights.

8. To the Department of State for administering the Social Security Act in foreign countries through facilities and services of that agency.

9. To the American Institute of Taiwan for administering the Social Security Act in Taiwan through facilities and services of that organization.

10. To the DVA, Philippines Regional Office, for administering the Social Security Act in the Philippines through facilities services of that agency.

11. To the Department of Interior for administering the Social Security Act in the Trust Territory of the Pacific Islands through facilities of that agency.

12. To the Railroad Retirement Board for administering provisions of the Social Security Act relating to railroad employment.

13. To State Social Security Administrators for administration of agreements pursuant to section 218 of the Social Security Act.

14. To State audit agencies for:

(a) Auditing State supplementation payments and Medicaid eligibility considerations; and

(b) Expenditures of Federal funds by the State in support of the DDS.

15. To private medical and vocational consultants for use in making preparation for, or evaluating the results of, consultative medical examinations or vocational assessments which they were engaged to perform by SSA or a State agency acting in accord with sections 221 or 1633 of the Social Security Act.

16. To specified business and other community members and Federal, State, and local agencies for verification of eligibility for benefits under section 1631(e) of the Social Security Act.

17. To institutions or facilities approved for treatment of drug addicts or alcoholics as a condition of the individual's eligibility for payment under section 1611(e)(3) of the Social Security Act and as authorized by regulations issued by the Special Action Office for Drug Abuse Prevention.

18. To applicants, claimants, prospective applicants or claiments, other than the data subject, their authorized representatives or representatives payees to the extent necessary to pursue Social Security claims and to representative payees when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting SSA in administering its representative payment responsibilities under the Social Security Act and assisting the representative payees in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

19. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

20. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Social Security Act.

21. To Federal, State, or local agencies (or agents on their behalf) for administering cash or noncash income maintenance or health maintenance programs (including programs under the Social Security Act). Such disclosures include, but are not limited to, release of information to:

(a) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the Railroad Unemployment Insurance Act;

(b) The DVA for administering 38 U.S.C. 412, and upon request, information needed to determine eligibility for or amount of DVA benefits or verifying other information with respect thereto;

(c) The Department of Labor for administering provisions of Title IV of the Federal Coal Mine Health and Safety Act, as amended by the Black Lung Benefits Act;

(d) State welfare departments for administering sections 205(c)(B)(i)(III) and 402(a)(25) of the Social Security Act requiring information about assigned SSNs for Aid to Families with Dependent Children program purposes only;

(e) State agencies for making determinations of Medicaid eligibility; and,

(f) State agencies for making determinations of food stamp eligibility under the food stamp program.

22. To State welfare departments:

(a) pursuant to agreements with SSA for administration of State supplementation payments;

(b) For enrollment of welfare recipients for medical insurance under section 1843 of the Social Security Act; and

(c) For conducting independent quality assurance reviews of SSI recipient records, provided that the agreement for Federal administration of the supplementation provides for such an independent review.

23. To State vocational rehabilitation agencies or State crippled children's service agencies (or other agencies providing services to disabled children) for consideration of rehabilitation services per sections 222(a) and 1615 of the Social Security Act.

24. Information necessary to adjudicate claims filed under an international Social Security agreement that the United States has entered into pursuant to section 233 of the Social Security Act may be disclosed to a foreign country that is a part to that agreement.

25. To IRS, Department of the Treasury, for the purpose of auditing SSA's compliance with the safeguard provisions of the Internal Revenue Code of 1986, as amended.

26. To the Office of the President for responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

27. To third part contacts (including private collection agencies under contract with SSA) for the purpose of their assisting SSA in recovering overpayments.

28. To DOJ (Immigration and Naturalization), upon request, to identify and locate aliens in the United States pursuant to section 290(c) of the Immigration and Nationality Act (8 U.S.C. 1360(c)).

29. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

30. Nontax return information which is not restricted from disclosure by Federal law may be disclosed to the GSA and the National Archives and Records Administration for the purpose

of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.

31. To DOJ, a court or other tribunal, of another party before such tribunal when:

(a) SSA, any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to present the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information which is subject to the disclosure provisions of the Internal Revenue Code (IRC) (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

32. Addresses of beneficiaries who are obligated on loans held by the Secretary of Education or a loan made in accordance with 20 USC 1071, *et seq.* (the Robert T. Stafford Student Loan Program) may be disclosed to the Department of Education as authorized by section 489A of the Higher Education Act of 1965.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records generally are maintained manually in file folders. However, some records may be maintained in magnetic media (e.g., on disk and microcomputer).

RETRIEVABILITY:

Claims folders are retrieved both numerically by SSN and alphabetically by name.

SAFEGUARDS:

Claims folders are protected through limited access to SSA records. Access to the records is limited to those employees who require such access in the performance of their official duties. All employees are instructed in SSA confidentiality rules as a part of their initial orientation training.

RETENTION AND DISPOSAL:

The retention period for claims folders are as follows:

A. RSI Claims Folders

Folders for disallowed life and death claims, withdrawals, and lump-sum claims in which potential entitlements exist are transferred to the Federal Records Center (FRC) after being so identified and then destroyed 10 years thereafter.

Folders for awarded claims where the last payment has been made and there is no future potential claimant indicated in the record are transferred to the FRC and then destroyed 5 years thereafter.

B. DI Claims Folders

Folders for DI denial claims are transferred to the FRC after expiration of the reconsideration period and then destroyed 10 years thereafter.

Folders for terminated DI claims are transferred to the FRC after being identified as eligible for transfer and then destroyed 10 years thereafter.

C. SSI Claims Folders

Folders for SSI death termination claims are destroyed 2 years after resolution of possible outstanding overpayments or underpayments. Folders for other SSI terminations are transferred to the FRC after termination and destroyed after 6 years, 6 months.

When a subsequent claim is filed on the SSN the claim folder is recalled from the FRC. Similarly, claims folders may be recalled from the FRC at any time by SSA, as necessary, in the administration of Social Security programs. When this occurs, the folder will be temporarily maintained in a Social Security field, regional or central office.

Separate files of actions entered directly into the computer processes are shredded or destroyed by heat after 1–6 months. Claims leads that do not result in a filing of an application are destroyed 6 months after the inquirer is invited by letter to file a claim.

All paper claim files are disposed of by shredding or the application of heat when the retention periods have expired.

SYSTEM MANAGER(S) AND ADDRESS:

SSA Privacy Officer, Social Security Administration, 6401 Security Boulevard, Baltimore MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him/her by contacting any Social Security field office.

When requesting notification, the individual should provide his/her name, SSN, and the type of claim he or she filed (RSI, DI, HI, BL special minimum payments, or SSI). If more than one claim is filed, each should be identified, whether he/she is or has been receiving benefits, whether payments are being received under his or her own SSN, and if not, the name and SSN under which received, if benefits have not been received, the approximate date and place the claim was filed, and his/her address and/or telephone number. (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and prevent delay.)

An individual requesting notification of records in person need not furnish any special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (e.g., credit cards, drivers license or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his/her name, date of birth and address in order to establish identity, plus any additional information specified in this section.

An individual who requests access to a medical record shall, at the time he/she makes the request, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of or access to a minor's medical record shall at the time he/she makes the request designate a physician or other health professional (other than a family member) who will be willing to review the record and inform the parent or guardian of its contents at the physician's or health professional's discretion.

These procedures are in accordance with HHS regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the information they are seeking. These procedures are in accordance with HHS regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with HHS regulations 45 CFR part 5b.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from claimants, beneficiaries, applicants and recipients; accumulated by SSA from reports of employers or self-employed individuals; various local, State, and Federal agencies; claimant representatives and other sources to support factors of entitlement and continuing eligibility or to provide leads information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-60-0090

SYSTEM NAME:

Master Beneficiary Record (MBR), HHS/SSA/OSR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of System Operations, 6401 Security Boulevard, Baltimore, MD 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Social Security beneficiaries who are or were entitled to receive Retirement and Survivors Insurance (RSI), or Disability Insurance (DI) benefits, including individuals who have received a RSI or DI payment since November 1978 even if their payment is not part of an ongoing award of benefits; individuals (nonclaimants) on whose earnings records former spouses apply for RSI or DI benefits; persons who are only enrolled in the Hospital and/or Supplementary Medical Insurance (SMI) programs; and claimants whose benefits have been denied or disallowed.

The system also contains short references to records for persons entitled to Supplemental Security Income Payments, Black Lung benefits or Railroad Retirement Board (RRB) benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

The MBR contains information about each claimant who has applied for RSI or DI benefits, or to be enrolled in the Hospital or SMI programs; a record of the amount of Federal tax withheld on benefits paid to nonresident aliens; and the aggregate amount of benefit payments, repayments and reductions with respect to an individual in a calendar year. A record is maintained under each individual's Social Security number (SSN). However, if the individual has filed on another person's SSN, only a short "pointer" record is maintained. Personal and general data about the claim is maintained under the SSN of that claim. Data about the claimant can be accessed using the claimant's SSN or the SSN on which benefits have been awarded or claimed (claim account number (CAN)).

There are three types of data in each CAN:

Account data. This includes the primary insurance amount, insured status of the SSN holder (if no monthly benefits are payable), data relating to the computation (use of military service credits, railroad retirement credits, or coverage credits earned under the social security system of a foreign country when the claim is based on a totalization agreement), and, if only survivor's benefits have been paid, identifying data about the SSN holder (full name, date of birth, date of death and verification of date of death).

Payment data. This includes the payee's name and address, data about a financial institution (if benefits are sent directly to the institution for deposit), the monthly payment amount, the amount and date of a one-time payment of past due benefits, and, where appropriate, a scheduled future payment. Payment data can refer to one beneficiary or several beneficiaries in a combined payment.

Beneficiary data. This includes personal information (name, date of birth, sex, date of filing, relationship to the SSN holder, other SSN's, benefit amount and payment status), and, if applicable, information about a representative payee, data about disability entitlement, worker's compensation offset data, estimates and report of earnings, or student entitlement information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sect. 202–205, 223, 226, 228, 1818, 1836, and 1840 of the Social Security Act (the Act).

PURPOSE(S):

Data in this system are used by a broad range of Social Security employees for responding to inquiries, generating followups on beneficiary reporting events, computer exception processing, statistical studies, conversion of benefits, and generating records for the Department of the Treasury to pay the correct benefit amount.

Data in this system also are available to the Department of Health and Human Services' (HHS') Inspector General for use in the performance of his/her duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. To applicants or claimants, prospective applicants or claimants (other than the data subject), their authorized representatives or representative payees to the extent necessary to pursue Social Security claims and to representative payees, when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting SSA in administering its representative payment responsibilities under the Act and assisting the representative payees in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

2. To third party contacts in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for, or entitlement to, benefits under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

(1) He/she is incapable or of questionable mental capability;

(2) He/she cannot read or write;

(3) He/she cannot afford the cost of obtaining the information;

(4) He/she has a hearing impairment, and is contacting SSA by telephone through a telecommunications relay system operator;

(5) A language barrier exists; or

(6) The custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

(1) His/her eligibility for benefits under the Social Security program;

(2) The amount of his/her benefit payment; or

(3) Any case in which the evidence is being reviewed as a result of suspected fraud, concern for program integrity, quality appraisal, or evaluation and measurement activities.

3. To third party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

4. To a person (or persons) on the rolls when a claim is filed by another individual which is adverse to the person on the rolls:

(a) An award of benefits to a new claimant precludes an award to a prior claimant; or

(b) An award of benefits to a new claimant will reduce the benefit payments to the individual(s) on the roll; but only for information concerning the facts relevant to the interests of each party in a claim.

5. To the Department of the Treasury for:

(a) Collecting Social Security taxes or as otherwise pertinent to tax and benefit payment provisions of the Act (including SSN verification services);

(b) Investigating the alleged theft, forgery, or unlawful negotiation of Social Security checks;

(c) Determining the Federal tax liability on Social Security benefits pursuant to 26 U.S.C. 6050, as amended by Pub. L. 98–21. The information disclosed will consist of the following:

(1) The aggregate amount of Social Security benefits paid with respect to any individual during any calendar year;

(2) The aggregate amount of Social Security benefits repaid by such individual during such calendar year;

(3) The aggregate reductions under section 224 of the Act in benefits which would otherwise have been paid to such individual during the calendar year on account of amounts received under a worker's compensation act; and

(4) The name and address of such individual; and

(d) Depositing the tax withheld on benefits paid to nonresident aliens in the Treasury (Social Security Trust Funds) pursuant to 26 U.S.C. 871, as amended by Pub. L. 98–21.

6. To the United States Postal Service for investigating the alleged theft or forgery of Social Security checks.

7. To the Department of Justice (DOJ) for:

(a) Investigating and prosecuting violations of the Act to which criminal penalties attach;

(b) Representing the Secretary of HHS; and

(c) Investigating issues of fraud by agency officers or employees, or violation of civil rights.

8. To the Department of State for administering the Act in foreign countries through services and facilities of that agency.

9. To the American Institute of Taiwan for administering the Act in Taiwan through services and facilities of that agency.

10. To the Department of Veterans Affairs (DVA), Philippines Regional Office, for administering the Social Security Act in the Philippines through the services and facilities of that agency.

11. To the Department of Interior for administering the Act in the Trust Territory of the Pacific Islands through services and facilities of that agency.

12. Information necessary to adjudicate claims filed under an international Social Security agreement that the United States has entered into pursuant to section 233 of the Act may be disclosed to a foreign country which is a party to that agreement.

13. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his/her behalf.

14. The Department of Education for determining eligibility of applicants for basic educational opportunity grants.

15. The Bureau of the Census when it performs as a collecting agent or data processor for research and statistical purposes directly relating to this system of records.

16. To the Department of the Treasury, Office of Tax Analysis, for studying the effects of income taxes and taxes on earnings.

17. To the Office of Personnel Management for the study of the relationship of civil service annuities to minimum Social Security benefits, and the effects on the trust fund.

18. To State Social Security Administrators for administering agreements pursuant to section 218 of the Act.

19. To the Department of Energy for its study of the long-term effects of low-level radiation exposure.

20. To contractors under contract to the Social Security Administration (SSA) (or under contract to another agency with funds provided by SSA) for the performance of research and statistical activities directly relating to this system of records.

21. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

22. To the Department of Labor for conducting statistical studies of the relationship of private pensions and Social Security benefits to prior earnings.

23. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Act.

24. To Federal, State, or local agencies (or agents on their behalf) for administering income maintenance or health maintenance programs (including programs under the Act). Such disclosures include, but are not limited to, release of information to:

(a) RRB for administering provisions of the Railroad Retirement act relating to railroad employment; for administering the Railroad Unemployment Insurance Act and for administering provisions of the Social Security Act relating to railroad employment;

(b) DVA for administering 38 U.S.C. 412, and upon request, for determining eligibility for, or amount of, veterans benefits or verifying other information with respect thereto;

(c) State welfare departments for administering sections 205(c)(2)(B)(i)(II) and 402(a)(25) of the Act requiring information about assigned SSN's for Aid to Families with Dependent Children (AFDC) program purposes and for determining a recipient's eligibility under the AFDC program; and

(d) State agencies for administering the Medicaid program.

25. Upon request, information on the identity and location of aliens may be disclosed to DOJ (Criminal Division, Office of Special Investigations) for the purpose of detecting, investigating and, where appropriate, taking legal action against suspected Nazi war criminals in the United States.

26. To third party contacts (including private collection agencies under contract with SSA) for the purpose of their assisting SSA in recovering overpayments.

27. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under the routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

28. Nontax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration and the National Archives and Records Administration for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.

29. Information may be disclosed to the Federal Reserve Bank of New York for the purpose of making direct deposit/electronic funds transfer of Social Security benefits to foreign-resident beneficiaries.

30. To DOJ, a court or other tribunal, or another party before such tribunal when:

(a) SSA, any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information which are subject to the disclosure provisions of the Internal Revenue Code (IRC) (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

31. To the Rehabilitation Services Administration (RSA) for use in its program studies of, and development of enhancements for, State vocational rehabilitation programs. These are programs to which applicants or beneficiaries under titles II and or XVI of the Act may be referred. Data released to RSA will not include any personally identifying information (such as names or SSNs).

32. Addresses or beneficiaries who are obligated on loans held by the Secretary of Education or a loan made in accordance with 20 USC 1071, *et. seq.* (the Robert T. Stafford Student Loan Program) may be disclosed to the Department of Education as authorized by Section 489A of the Higher Education Act of 1965.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in magnetic media (e.g., magnetic tape and magnetic disc) and in microform and paper form.

RETRIEVABILITY:

Records in this system are indexed and retrieved by SSN.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the HHS Information Resources Management Manual, "Part 6, Automated Information Systems Security Program Handbook." All magnetic tapes and discs are within an enclosure attended by security guards. Anyone entering or leaving this enclosure must have special badges which are issued only to authorized personnel. All microform and paper files are accessible only by authorized personnel and are locked after working hours.

For computerized records, electronically transmitted between SSA's central office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and an audit trail.

RETENTION AND DISPOSAL:

Primary data storage is on magnetic disc. A new version of the disk file is generated each month based on changes to the beneficiary's record (adjustment in benefit amount, termination, or new entitlements). The prior version is written to tape and retained for 90 days in SSA's main data processing facility and is then sent to a secured storage facility for indefinite retention.

Selected records also are retained on magnetic disc for on-line query purposes. The query files are updated monthly and retained indefinitely. Microform records are disposed of by shredding or the application of heat after periodic replacement of a complete file.

Paper records are usually destroyed after use, by shredding, except where needed for documentation of the claims folder. (See the notice for the Claims Folders System, 09–60–0089 for retention periods and method of disposal for these records).

SYSTEM MANAGER AND ADDRESS:

Director, Office of Claims and Payment Requirements, Office of System Requirements, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him/her by contacting the most convenient Social Security field office and providing his/her name, Social Security claim number (SSN plus alphabetic symbols), address, and proper identification. (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and prevent delay.)

An individual requesting notification of records in person need not furnish any special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (e.g., credit cards, driver's license, or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his/her name, date of birth and address in order to establish identity, plus any additional information specified in this section.

These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is untimely, incomplete, inaccurate or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD SOURCE CATEGORIES:

Data for the MBR come primarily from the Claims Folders System (09–60–0089) and/or is furnished by the claimant/beneficiary at the time of filing for benefits, via the application form and necessary proofs, and during the period of entitlement when notices of events such as changes of address, work, marriage, are given to the SSA by the beneficiary; and from States regarding HI third party premium payment/buy-in cases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–60–0103

SYSTEM NAME:

Supplemental Security Income Record (SSR), HHS/SSA/OSR.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems Operations, 6401 Security Boulevard, Baltimore, MD 21235. Records also may be located in Social Security Administration (SSA) Regional and field offices (individuals should consult their local telephone directories for address information).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This file contains a record for each individual who has applied for

supplemental security income (SSI) payments, including individuals who have requested an advance payment; SSI recipients who have been overpaid; and each essential person associated with an SSI recipient.

CATEGORIES OF RECORDS IN THE SYSTEM:

This file contains data regarding SSI eligibility; citizenship; residence; Medicaid eligibility; eligibility for other benefits; alcoholism or drug addiction data, if applicable (disclosure of this information may be restricted by 21 U.S.C. 1175 and 42 U.S.C. 290dd–3 and ee–3); income data; resources; payment amounts, including overpayment amounts and date and amount of advance payments; living arrangements; case folder location data; appellate decisions, if applicable; Social Security numbers (SSN's) used to identify a particular individual), if applicable; information about representative payees, if applicable; and a history of changes to any of the persons who have applied for SSI payments. For eligible individuals, the file contains basic identifying information, income and resources (if any) and, in conversion cases, the State welfare number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 1602, 1611, 1612, 1613, 1614, 1615, 1616, 1631, 1633, and 1634 of Title XVI of the Social Security Act (the Act).

PURPOSES(S):

SSI records begin in Social Security field offices where an individual or couple files an application for SSI payments. The application contains data which may be used to prove the identity of the applicant, to determine his/her eligibility for SSI payments and, in cases where eligibility is determined, to compute the amount of the payment. Information from the application, in addition to data used internally to control and process SSI cases, is used to create the SSR. The SSR also is used as a means of providing a historical record of all activity on a particular individual's or couple's record.

In addition, statistical data are derived from the SSR for actuarial and management information purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclsoure may be made for routine uses as indicated below:

1. To the Department of the Treasury to prepare SSI and Energy Assistance checks.

2. To the States to establish the minimum income level for computation of State supplements.

3. To the following Federal and State agencies to prepare information for verification of benefit eligibility under section 1631(e) of the Act: Bureau of Indian Affairs; Office of Personnel Management; Department of Agriculture; Department of Labor; Immigration and Naturalization service; Internal Revenue Service (IRS); Railroad Retirement Board (RRB); State Pension Funds, State Welfare Offices; State Worker's Compensation; Department of Defense; United States Coast Guard; and the Department of Veterans Affairs (DVA).

4. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

5. To State crippled children's agencies (or other agencies providing services to disabled children) to identify title XVI eligibles under the age of 16 for the consideration of rehabilitation services in accordance with section 1615 of the Act.

6. To contractors under contract to SSA or under contract to another agency with funds provided by SSA for the performance of research and statistical activities directly relating to this system of records.

7. To State audit agencies for auditing State supplementation payments and Medicaid eligibility consideration.

8. To State agencies to effect and report the fact of Medicaid eligibility of title XVI recipients in the jurisdiction of those States which have elected Federal determinations of Medicaid eligibility of title XVI eligibles and to assist the States in administering the Medicaid program.

9. To State agencies to identify title XVI eligibles in the jurisdiction of those States which have not elected Federal determinations of Medicaid eligibility in order to assist those States in establishing and maintaining Medicaid rolls and in administering the Medicaid program.

10. To State agencies to enable those which have elected Federal administration of their supplementation programs to monitor changes in applicant/recipient income, special needs, and circumstances.

11. To State agencies to enable those which have elected to administer their own supplementation programs to identify SSI eligibles in order to determine the amount of their monthly supplementary payments.

12. To State agencies to enable them to assist in the effective and efficient administration of the SSI program.

13. To State agencies to enable those which have an agreement with the Secretary of Health and Human Services (HHS) to carry out their functions with respect to interim Assistance Reimbursement pursuant to Section 1631(g) of the Act.

14. To State agencies to enable them to locate potentially eligible individuals and to make eligibility determinations for extensions of social services under the provisions of title XX of the Act.

15. To State agencies to assist them in determining initial and continuing eligibility in their income maintenance programs and for investigating and prosecution of conduct subject to criminal sanctions under these programs.

16. To the United States Postal Service for investigating the alleged theft, forgery or unlawful negotiation of SSI checks.

17. To the Department of the Treasury for investigating the alleged theft, forgery or unlawful negotiation of SSI checks.

18. To the Department of Education for determining the eligibility of applicants for Basis Educational Opportunity Grants.

19. To Federal, State or local agencies (or agents on their behalf) for administering cash or noncash income maintenance or health maintenance programs (including programs under the Act). Such disclosures include, but are not limited to, release of information to:

(a) The DVA upon request for determining eligibility for, or amount of, VA benefits or verifying other information with respect thereto;

(b) The RRB for administering the Railroad Unemployment Insurance Act;

(c) State agencies to determine eligibility for Medicaid;

(d) State agencies to locate potentially eligible individuals and to make determinations of eligibility for the food stamp program; and

(e) State agencies to administer energy assistance to low income groups under programs for which the States are responsible.

20. To IRS, Department of the Treasury, as necessary, for the purpose of auditing SSA's compliance with safeguard provisions of the Internal Revenue Code of 1986, as amended.

21. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or a third party on his/her behalf.

22. Upon request, information on the identity and location of aliens may be disclosed to the DOJ (Criminal Division, Office of Special Investigations) for the purpose of detecting, investigating and, where necessary, taking legal action against suspected Nazi war criminals in the United States.

23. To third party contacts (including private collection agencies under contract with SSA) for the purpose of their assisting SSA in recovering overpayments.

24. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

25. Nontax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration and the National Archives and Records Administration for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.

26. To the DOJ, a court or other tribunal, or another party before such tribunal when:

(a) SSA, any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components.

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court, or other tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information which are subject to the disclosure provisions of the Internal Revenue Code (IRC) (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

27. To representative payees, when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting SSA in administering its representative payment responsibilities under the Act and assisting the representative payees in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

28. To third party contacts in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for, or entitlement to, benefits under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

(1) He/she is incapable or of questionable mental capability;

(2) He/she cannot read or write;

(3) He/she cannot afford the cost of obtaining the information;

(4) He/she has a hearing impairment, and is contacting SSA by telephone through a telecommunications relay system operator;

(5) A language barrier exists; or

(6) The custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

(1) His/her eligibility for benefits under the Social Security program;

(2) The amount of his/her benefit payment; or

(3) Any case in which the evidence is being reviewed as a result of suspected fraud, concern for program integrity, quality appraisal, or evaluation and measurement activities.

29. To the Rehabilitation Services Administration (RSA) for use in its program studies of, and development of enhancements for, State vocational rehabilitation programs. These are programs to which applicants or beneficiaries under titles II and or XVI of the Act may be referred. Data released to RSA will not include any personally identifying information (such as names or SSNs).

30. Addresses of beneficiaries who are obligated on loans held by the Secretary of Education or a loan made in accordance with 20 USC 1071, *et. seq.* (the Robert T. Stafford Student Loan Program) may be disclosed to the Department of Education as authorized by Section 489A of the Higher Education Act of 1965.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in magnetic media (e.g., magnetic media (e.g., magnetic tape) and in microform.

RETRIEVABILITY:

Records are indexed and retrieved by SSN.

SAFEGUARDS:

System security for automated records has been established in accordance with the HHS Information Resources Management Manual, Part 6, Automated Information System Security Program Handbook. This includes maintaining all magnetic tapes and magnetic discs within an enclosure attended by security guards. Anyone entering or leaving that enclosure must have special badges which are only issued to authorized personnel. All authorized personnel having access to the magnetic records are subject to the penalties of the Privacy Act. The microfiche are stored in locked cabinets, and are accessible to employees only on a need-to-know basis. All SSR State Data Exchange records are protected in accordance with agreements between SSA and the respective States regarding confidentiality, use, and redisclosure.

RETENTION AND DISPOSAL:

Original input transaction tapes received which contain initial claims and posteligibility actions are retained indefinitely although these are processed as received and incorporated into processing tapes which are updated to the master SSR tape file on a monthly basis. All magnetic tapes appropriate to SSI information furnished to specified Federal, State, and local agencies for verification of eligibility for benefits and under section 1631(e) are retained, in accordance with the Privacy Act accounting requirements, for at least 5 years or the life of the record, whichever is longer.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Claims and Payment Requirements, Office of Systems Requirements, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him/her by writing to or visiting any Social Security field office and providing his or her name and SSN. (Individuals should consult their local telephone directories for Social Security office address and telephone information.) (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and prevent delay.

An individual requesting notification of records in person need not furnish any special documents of identity. Documents he/she would normally

carry on his/her person would be sufficient (e.g., credit cards, driver's license, or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his/her name, date of birth and address in order to establish identity, plus any additional information specified in this section.

These procedures are in accordance with HHS regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual who requests notification of, or access to, a medical record shall, at the time he or she makes the request, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a minor's medical record shall at the time he or she makes the request designate a physician or other health professional (other than a family member) who will be willing to review the record and inform the parent or guardian of its contents at the physician's or health professional's discretion. These procedures are in accordance with HHS regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with HHS regulations 45 CFR part 5b.

RECORD SOURCE CATEGORIES:

Data contained in the SSR are obtained for the most part from the applicant for SSI payments and are derived from the Claims Folders System (09–60–0089). The States also provide data affecting the SSR (State Data Exchange Files).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93–15307 Filed 6–29–93; 8:45 am]

BILLING CODE 4160–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management, Alaska

[AK–967–4230–15–P]

Notice for Publication

AA–6646–A

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1611, will be issued to Akhiok-Kaguyak, Inc. for approximately 690 acres. The lands involved are in the vicinity of Akhiok, Alaska.

Seward Meridian, Alaska

T. 35 S., R. 31 W.,
Secs. 4 and 9.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 30, 1993 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Copy Furnished to: Director (311), Room 3653, Main Interior Building.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 93–15358 Filed 6–29–93; 8:45 am]

BILLING CODE 4310–JA–P

[AK–964–4230–05–P]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Arctic Slope Regional Corporation for approximately 28,004 acres. The lands involved are within Tps. 4 N., Rs. 6 thru 8 E., Umiat Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The North Slope Sentinel. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 30, 1993 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 93–15341 Filed 6–29–93; 8:45 am]

BILLING CODE 4310–JA–P

[NV–930–4210–03; N–56419]

Realty Action; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described lands in Elko County, Nevada have been examined and found suitable for classification for lease/purchase under the Recreation and Public Purposes Act (R&PP) of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease until at least 60 days after the date of publication of this Notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 47 N., R. 64 E.,
Sec. 1, S½NW¼NW¼SW¼SE¼.
Containing 1.25 acres, more or less.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Bureau of Land Management, Wells Resource Area, 3900 E. Idaho Street, Elko, Nevada.

SUPPLEMENTARY INFORMATION: Assemblies of God Church intends to use the land to construct a Church

Facility and Day Care Center. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act, applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States; Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable laws and regulations to be established by the Secretary of the Interior.

The land is not required for any Federal purpose. The classification and the lease/conveyance are consistent with the Bureau's planning for the area.

Upon publication of this Notice of Realty Action in the **Federal Register**, the subject lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. The segregative effect shall terminate upon issuance of a patent or as specified in an opening order to be published in the **Federal Register**, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Elko District Office, P.O. Box 831, Elko, NV 89803.

Any objections will be evaluated by the State Director, who may sustain, vacate or modify this realty action. In the absence of timely filed objections, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: June 18, 1993.

Rodney Harris,

District Manager.

[FR Doc. 93-15320 Filed 6-29-93; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-4210-05; N-52356]

Notice of Realty Action; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following land in Elko County, Nevada has been examined and identified as suitable for disposal by direct sale, including the mineral estate with no known value, under section 203 and section 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713 and 1719) at no less than fair market value:

Mount Diablo Meridian, Nevada

T. 46 N., R. 69 E.,
Sec. 2, E½NE¼SE¼NW¼.
Comprising 5 acres, more or less.

The above described land is being offered as a direct sale to Potomac Corporation dba Victor Land & Livestock. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Bureau of Land Management, Wells Resource Area, 3900 E. Idaho Street, Elko, Nevada.

SUPPLEMENTARY INFORMATION: The lands have been identified as suitable for disposal by the Wells Resource Management Plan. The proposal has been reviewed and approved by the Elko County Planning Commission. The land is not needed for any resource program and is not suitable for management by the Bureau or another Federal department or agency. The locatable and salable mineral estates have been determined to have no known value. The land is prospectively valuable for oil and gas and geothermal minerals. Therefore, the mineral estate, excluding oil and gas and geothermal minerals, will be conveyed simultaneously with the sale of the surface estate. Acceptance of the direct sale offer will constitute an application to purchase the mineral estate having no known value. A nonrefundable fee of $50.00 will be required with the purchase money. Failure to submit the purchase money and the nonrefundable filing fee for the mineral estate within the time frame specified by the authorized officer will result in cancellation of the same. Upon publication of this Notice of Realty Action in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws but not the mineral leasing laws or disposals pursuant to sections 203 and 209 of FLPMA. The segregation shall terminate upon issuance of a patent or other document of conveyance, upon publication in the **Federal Register** of a Notice of Termination of Segregation, or 270 days from date of this publication, which ever occurs first.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, (43 U.S.C. 945).

2. Oil and gas and geothermal minerals. A more detailed description of this reservation, which will be included in the patent document, is available for review at the Elko District office.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Elko District Office, Bureau of Land Management, P.O. Box 831, Elko, NV 89803. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become a final determination of the Department of the Interior.

Dated: June 18, 1993.

Rodney Harris,

District Manager,

[FR Doc. 93-15321 Filed 6-29-93; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-92-4210-05; N-57477]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Purchase of public lands in Clark County.

SUMMARY: The following described public land in the City of North Las Vegas, Clark County, Nevada, has been determined to be suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale are sections 203 and 209 of Public Law 94-579, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 43 U.S.C. 1719).

Mount Diablo Meridian, Nevada

T. 19 S., R. 61 E.,
Sec. 13: N½, NE¼SW¼, SE¼.
Sec. 14: N½.
Sec. 15: All.
Sec. 16: All.
Sec. 17: All.
Sec. 18: Lots 5 to 20, inclusive.
Sec. 19: Lots 5 to 18, inclusive.
Sec. 20: All.
Sec. 21: N½.
Sec. 23: N½NE¼, SW¼NE¼, E½NW¼.
Sec. 24: N½, NE¼SW¼, N½SE¼, SW¼SE¼.
T. 19 S., R. 62 E.,
Sec. 18: Lots 1 to 4, inclusive, E½, E½W½.
Sec. 19: Lots 1 to 4, inclusive, E½, E½W½.

Sec. 20: All.

Aggregating 7,534.27 acres (gross).

This parcel of land, situated in Clark County is being offered as a direct sale to the City of North Las Vegas and is not required for any Federal purposes. The sale is consistent with the Bureau's planning system. The sale of this parcel would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Oil, gas, sodium, and potassium.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County/the City of North Las Vegas.

2. Those rights for railroad purposes which have been granted to the Los Angeles and Salt Lake Railroad Company by Permit No. CC-0360 under the Act of March 3, 1875, 18 Stat. 482, 43 U.S.C. 934-939.

3. Those rights for road purposes which have been granted to the Corps of Engineers by Permit No. Nev-045137 under the Act of January 13, 1916, 44 LD 513.

4. Those rights for power line purposes which have been granted to Nevada Power Company by Permit No. NEV-061985 and Nev-067348 under the Act of February 15, 1901, 31 Stat. 790, 43 U.S.C. 959.

5. Those rights for material site and road purposes which have been granted to the Nevada Department of Transportation by Permit No. N-32236 under the Act of August 27, 1958, 72 Stat. 916, 23 U.S.C. 317(A).

6. Those rights for power line purposes which have been granted to Nevada Power Company by Permit No. N-39815, N-42592 and N-49722 under the Act of October 21, 1976, 90 Stat. 2776, 43 U.S.C. 1761. Publication of this notice in the **Federal Register** shall establish June 24, 1993, as the date the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of segregation, whichever occurs first.

Dated: June 16, 1993.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 93-15342 Filed 6-29-93; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-4210-05; N-53194]

Realty Action: Direct Sale of Public Lands in Clark County, NV; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Corrected NORA.

SUMMARY: The Notice of Realty Action published in the **Federal Register** on February 25, 1993 (58 FR 11417; FR Doc. 93-4371) is hereby corrected as follows: Second column, sixth line, delete "exchange", insert "direct sale".

Dated: June 22, 1993.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 93-15369 Filed 6-29-93; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-03-4210-05; N-51812]

Realty Action, Advertisement of Public Land To Be Sold by the Bureau of Land Management (BLM) by Direct Sale Authority to Wilkinson Ranches, Inc., P.O. Box 74, McDermitt, NV 89421.

SUMMARY: Notice is hereby given that pursuant to the Act of October 21, 1976, (43 U.S.C. 1713; sec. 203), the BLM will sell a parcel of public land at fair market value to Wilkinson Ranches, Inc.

The following describes the public land to be disposed of:

Mount Diablo Meridian, Nevada

T. 48 N., R. 38 E., Sec. 34, Lot 5, containing 56.41 acres.

DATE: July 30, 1993.

FOR FURTHER INFORMATION CONTACT: District Realty Specialist Hal Green, c/o Bureau of Land Management, 705 East 4th Street, Winnemucca, NV 89445, Phone: (702) 623-1500.

SUPPLEMENTARY INFORMATION: The public land is being offered for sale to the Wilkinson Ranches, Inc., by the BLM in order to facilitate the efficient use and operation of private land owned by the private party. The parcel of public land is bordered on all sides by private land.

This sale action by the BLM is in accordance with land use plans, programs, policy, and guidelines developed by the U.S. Department of the Interior, BLM.

Both surface and subsurface (mineral) estates would be disposed of.

Publication of this notice in the **Federal Register** shall segregate the public land to the extent that the land would not be subject to appropriation under the public land laws including the mining laws. Any subsequent application will not be considered as filed and would be returned to the applicant. The segregative effect of this Notice of Realty Action shall terminate upon issuance of the patent or transfer document for the land described above or upon publication of a notice in the **Federal Register** of a termination of the segregation or 270 days from the date of the publication of this notice, whichever occurs first.

Reservations to the United States Government

The patent, when issued, will contain the following reservation:

1. Rights-of-way for ditches and canals constructed under the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

Other Information

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, Winnemucca District Office, 705 East 4th Street, Winnemucca, NV 89445.

In the absence of comment or objection to the Bureau's action, this Notice of Realty Action will become the final determination of the Department of the Interior, BLM.

Dated: June 21, 1993.

Ron Wenker,

District Manager, Winnemucca.

[FR Doc. 93-15327 Filed 6-29-93; 8:45 am]

BILLING CODE 4310-HC-M

[OR-092-4210-04: GP3-282; OROR 48077]

Realty Action; Exchange of Public Lands; Lane, Linn, Polk and Yamhill Counties, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—exchange of public lands in Lane, Linn Polk and Yamhill Counties, Oregon.

SUMMARY: The following described public lands are being considered for transfer out of Federal ownership by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Willamette Meridian, Oregon

T. 8 S., R. 6 W.

Sec. 7: W½NW¼, NW¼SW¼
Sec. 17: W½NE¼, NW¼
T. 8 S., R. 7 W.
Sec. 8: SW¼NE¼, W½SE¼
Sec. 15: SE¼SE¼
Sec. 17: N½NE¼, NE¼NW¼
T. 16 S., R. 1 W.
Sec. 5: NW¼NW¼
T. 16 S., R. 2 W.
Sec. 1: SW¼SW¼
Sec. 3: Lots 1–4, SE¼NE¼, SW¼NW¼, NE¼SW¼, SE¼SE¼
Sec. 11: NE¼NE¼
T. 16 S., R. 2 E.
Sec. 24: NW¼SW¼
T. 17 S., R. 2 W.
Sec. 7: Lot 3
T. 17 S., R. 8 W.
Sec. 9: Lots 1–6, NW¼NE¼
T. 18 S., R. 1 E.
Sec. 7: All
T. 18 S., R. 1 W.
Sec. 1: All
T. 21 S., R. 1 W.
Sec. 31: Tract 37

Containing 2732.97 acres, more or less, in Lane, Linn and Polk Counties.

In addition, reserved Federal timber interests in the following lands located in Yamhill County are being considered for transfer out of Federal ownership by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Willamette Meridian, Oregon

T. 3 S., R. 6 W.
Sec. 22: SE¼NE¼, NE¼SE¼
Sec. 23: E½NW¼

In exchange for these lands, the United States will acquire the following described lands from Willamette Industries, Inc.:

Willamette Meridian, Oregon

T. 15 S., R. 7 W., W.M.
Sec. 14: All
Sec. 22: All
Sec. 24: All
Sec. 26: All
T. 16 S., R. 7 W., W.M.
Sec. 20: Portion of Lot 10 and SW¼SW¼ lying west of Highway 36
T. 16 S., R. 8 W., W.M.
Sec. 35: SW¼, N½SW¼SE¼, portion of the NE¼SE¼ and SE¼SE¼ (tax lot 16–08–35–00–00200 and part of tax lot 16–08–36–00–01700)
Sec. 36: Portion of Lot 12 (balance of tax lot 16–08–36–00–01700)

Containing 2779.72 acres, more or less, in Lane County.

The purpose of the exchange is to improve the resource management program of the Bureau of Land Management and the property management program of Willamette Industries, Inc. The public lands to be exchanged are relatively isolated parcels, in some cases lacking public access. The private lands being offered have important timber, fisheries, wildlife habitat and recreation values. These lands will be managed for multiple use along with the adjoining public lands. The public interest will be well served by making this exchange. The final determination on the exchange will await completion of an environmental assessment.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted to bring the values as close as possible upon completion of the final appraisal of the lands. Full equalization of values will be achieved by payment to the United States of funds in an amount not to exceed 25 percent of the total value of the public land to be transferred.

The exchange will be subject to:

1. All valid existing rights, including any right-of-way, easement, permit or lease of record.

2. A reservation to the United States of a right-of-way for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. A reservation to the United States of all mineral materials subject to disposition under authority of the Materials Act of 1947, as amended (30 U.S.C. 601, 602) in and upon the Southeast quarter of the Southeast quarter of Section 15, T. 8 S., R. 7 W., W.M.

4. A reservation to Bohemia Inc. of all ores and minerals of any nature whatsoever in and upon the Northwest quarter of the Northeast quarter of Section 14, Township 15 South, Range 7 West, Willamette Meridian, Lane County, Oregon, except for all geothermal steam and heat, oil shale, coal, lignite, and oil and gas, including coal seam gas.

Publication of this notice in the **Federal Register** segregates the public land, described above, from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years from the date of this publication, whichever occurs first.

DATES: On or before August 16, 1993, interested parties may submit comments to the Eugene District Manager at the address shown below.

ADDRESSES: Detailed information concerning this exchange is available from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Eugene District Office, at (503) 683–6403.

Dated: June 24, 1993.

Bonnie Hogan,

Acting District Manager.

[FR Doc. 93–15361 Filed 6–29–93; 8:45 am]

BILLING CODE 4310–33–M

[ID–943–4210–06; IDI–15317, IDI–15636, IDI–15620]

Proposed Continuation of Withdrawals; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management Proposes that 825.77 acres for withdrawals for the Nampa Rod and Gun Club, Powersite Reserve No. 724 and Powersite Reserve No. 21 continue for an additional 20 years. The lands are still needed for rifle range and waterpower development purposes. The 100.00 acres for the Gun Club will remain closed to surface entry and mining and the 725.77 acres for the powersite reserves will remain closed to surface entry. All of the lands have been and would remain open to mineral leasing.

EFFECTIVE DATE: Comments should be received within 90 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–384–3166.

The Bureau of Land Management proposes that the existing land withdrawals made by the Executive Orders dated June 28,1 937, December 6, 1919 and July 2, 1910 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as they affect the following described land:

Boise Meridian

IDI–15317 (E.O. 6/28/37, Nampa Rod and Gun Club)
T. 2 N., R. 2 W.,
Sec 26, S½SW¼NW¼ and W½SW¼.
IDI–15636 (E.O. 7/2/10, Powersite Reserve No. 21)
T. 7 N., R. 2 E.,
Sec. 10, lots 1 and 2;
Sec. 11, lots 4 and 5;
Sec. 14, lots 1, 2 and 4 and NW¼SW¼;
Sec. 15, lots 1 to 5 inclusive;
Sec. 22, NE¼NE¼;
Sec. 23, lot 10;
Sec. 32, lots 3, 4 and 8 and N½SE¼;

Sec. 33, lots 1 and 2.
IDI–15620 (E.O. 12/6/19, Powersite Reserve No. 724)
T. 9 N., R. 44 E.,
Sec. 32, NW¼NW¼.

The areas described aggregate 825.77 acres in Canyon, Fremont and Boise Counties.

The withdrawals are essential for protection of the Nampa Rod and Gun Club rifle range and waterpower purposes. The existing withdrawal for the Gun Club closes the described land to surface entry and mining. The withdrawals for the powersite reserves close the land to surface entry, only. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Dated: June 18, 1993.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 93–15326 Filed 6–29–93; 8:45 am]

BILLING CODE 4310-GG-M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–342]

Commission Determination To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

In the Matter of certain circuit board testers.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the initial determination (ID) issued in the above-captioned investigation by the presiding administrative law judge (ALJ) on May 12, 1993. Commission review was prompted by concerns about provisions of the settlement providing for retention of confidential business information (CBI) of non-parties that was obtained under the Commission's protective order.

ADDRESSES: Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

WRITTEN SUBMISSIONS: By June 30, 1993, the private parties are requested to submit letters from all non-party suppliers of CBI stating either that the suppliers no longer consider their information confidential or that they consent to use of their CBI, as provided in the settlement agreement between the parties, with the understanding that the Commission will not enforce the protective order after the investigation is terminated.

SUPPLEMENTARY INFORMATION: On September 25, 1992, Integri-Test Corp. (Integri-Test) filed a complaint and a motion for temporary relief with the Commission alleging violations of section 337 in the importation and sale of certain circuit board testers allegedly covered by certain claims of Integri-Test's U.S. Letters Patent 4,565,966. The notice of investigation instituting an investigation based on Integri-Test's complaint was published in the **Federal Register** on November 2, 1992. 57 FR 49490. Bath Scientific Ltd. of the United Kingdom and BSL North America of Massachusetts were named as respondents. Pursuant to Commission interim rule 210.24(e)(8) (19 CFR 210.24(e)(8)), the Commission also provisionally accepted Integri-Test's motion for temporary relief.

On January 11, 1993, the presiding ALJ issued an ID denying complainant's motion for temporary relief. The Commission determined to review the ID and to designate the temporary relief phase of the investigation "more complicated." 58 FR 7246 (Feb. 5, 1993). On March 17, 1993, the Commission denied complainant's motion for temporary relief. 58 FR 16202 (March 25, 1993).

On April 29, 1993, the private parties filed a joint motion to terminate the investigation based on a settlement agreement. The Commission investigative attorney (IA) conditionally supported the joint motion. On May 12, 1993, the ALJ granted the motion to terminate with the exception that the Commission would retain jurisdiction over the protective order. On May 24, 1993, complainant filed a petition for review of ID. The IA responded to the petition on June 1, 1993. On June 4, 1993, complainant filed a supplement to its petition for review. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rules 210.53 and 210.56 (19 CFR 210.53 and 210.56).

By order of the Commission.

Issued: June 24, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–15429 Filed 6–29–93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337–TA–339]

Commission Determination To Affirm an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

In the Matter of certain commercial food portioners, components thereof, including software, and process thereof.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm the initial determination (ID)(Order No. 38) issued in the above-captioned investigation by the presiding administrative law judge (ALJ) on February 19, 1993.

ADDRESSES: Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. Hearing-impaired individuals are advised that information on this matter

can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 22, 1992, based on a complaint filed by Design Systems, Inc. (DSI) of Redmond, Washington. 57 FR 32561 (July 22, 1992). DSI alleged violations of section 337 in connection with the importation and sale of certain commercial food portioners covered by U.S. Letters Patent 4,557,019.

On February 1, 1993, complainant Design Systems, Inc. and the remaining respondents to the investigation—Lumetech, Ltd., Koch Supplies Inc., and Carl Jorgensen Co.— filed a joint motion to terminate the investigation on the basis of a settlement agreement. On February 11, 1993, the Commission investigative attorney filed a response in support of the joint motion.

On February 19, 1993, the presiding ALJ issued an ID granting the joint motion to terminate the investigation based on the settlement agreement. No petitions for review of the ID or agency or public comments were filed. On March 24, 1993, the Commission determined to review the ID on its own motion because of concerns about the document retention provisions contained in the settlement agreement. 58 FR 126846 (March 24, 1993).

On May 13, 1993, the private parties filed a joint submission stating that they did not expect the Commission to enforce the administrative protective order to protect their confidential business information (CBI) after termination of the investigation. The joint submission contained certifications from the non-party suppliers of CBI stating that the non-party suppliers had consented to retention and use of their CBI with the understanding that the Commission would not enforce its administrative protective order after the termination of the investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and § 210.56(c) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.56(c)).

By order of the Commission.

Issued: June 25, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–15425 Filed 6–29–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–337]

Issuance of Limited Exclusion Order and Cease and Desist Orders

In the Matter of certain integrated circuit telecommunication chips and products containing same including dialing apparatus

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has issued a limited exclusion order and five cease and desist orders in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., or Matthew T. Bailey, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3093 and 202–205–3108, respectively.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.58 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.58).

The Commission instituted this investigation on April 8, 1992, based on a complaint filed on March 5, 1992, by SGS-Thomson Microelectronics Corporation (ST). 57 FR 11966 (April 8, 1992). ST's complaint alleged a violation of section 337 of the Tariff Act of 1930, as amended, by reason of the importation into the United States, sale for importation, or sale in the United States after importation, of certain integrated circuit telecommunication chips, and products containing such chips, that infringed various claims of U.S. Letters Patent Nos. 4,061,886, 4,315,108, and 4,446,436 owned by ST. The complaint, and the Commission's original notice of investigation, named twelve respondents allegedly engaged in the manufacture, importation, and sale of allegedly infringing integrated circuit telecommunication chips or products containing such chips. Two additional respondents were subsequently added to the investigation. 57 FR 33520 (July 29, 1992); 57 FR 38855 (August 27, 1992).

On March 9, 1993, the presiding administrative law judge (ALJ) issued his final ID finding that there was a violation of section 337 in the manufacture, sale for importation, and importation of certain integrated circuit telecommunication chips. On April 27, 1993, the Commission ordered review of certain portions of the final ID, and requested written submissions addressing certain specific questions raised by the issues under review. Specifically, the Commission ordered review of (1) whether the '108 patent is valid under the enablement and best mode provisions of 35 U.S.C. 112, first paragraph; (2) whether the ALJ properly construed the claims at issue of the '886 patent; (3) whether claims 1 and/or 6 of the '436 patent are invalid as obvious under 35 U.S.C. 103 and, if not, does a violation of section 337 exist as to those claims. The Commission determined not to review the remainder of the ID, which thereby became the determination of the Commission. The Commission also requested written submissions concerning the issues of remedy, the public interest, and bonding. 58 FR 26004 (April 29, 1993).

Having reviewed the record in this investigation, including the written submissions of the parties addressing the specific questions raised by the portions of the ID under review, the Commission made its determinations disposing of the issues on review, and the issues of remedy, the public interest, and bonding.

The Commission determined to (1) revise the ALJ's determination of the level of ordinary skill in the art for the '108 patent to the extent that the determination fails to include all relevant fields of technology; (2) vacate the ALJ's utility analysis of independent claims 6 and 13 of the '886 patent and one sentence in ALJ Finding of Fact number 329; and (3) reverse the ALJ's determination of invalidity with regard to claim 1 of the '436 patent and affirm his determination of invalidity with regard to claim 6 of the '436 patent. Thus, the Commission determined that there is a violation of section 337 of the Tariff Act of 1930 in the unauthorized importation and sale of certain integrated circuit telecommunication chips which infringe claims 1, 2, 3, or 4 of U.S. Letters Patent 4,446,436.

The Commission also determined that the appropriate form of relief is a limited exclusion order prohibiting the importation of infringing integrated circuit telecommunication chips, and prohibiting the importation of certain telephones and telephone sets containing such chips. The Commission further determined to issue cease and desist orders directed to each domestic respondent. Finally, the Commission determined that the public interest factors enumerated in 19 U.S.C. 1337 (d) and (f) do not preclude the issuance of the aforementioned relief, and that the bond during the Presidential review period shall be in the amount of $0.08 per integrated circuit

telecommunication chip or telephone or telephone set containing such chip(s).

Copies of the Commission's orders, the Commission's opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are or will be available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: June 22, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–15430 Filed 6–29–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–346]

Certain Magnetic Switches for Coaxial Transmission Lines and Products Containing the Same; Commission Determination Not To Review an Initial Determination Amending the Complaint and Notice of Investigation to Add Claims

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 7) in the above-captioned investigation amending the complaint and notice of investigation to add allegations of infringement of claims 15, 16, 17 and 18 of U.S. Letters Patent 4,965,542 (the '542 patent).

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Rose, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3113.

SUPPLEMENTARY INFORMATION: On December 15, 1992, Sector Microwave Industries, Inc. (SMI) and Victor Nelson (Nelson) filed a complaint with the Commission alleging violations of section 337 in the importation and sale of certain magnetic switches for transmission lines and products containing the same, that are allegedly covered by claim 6 of the '542 patent. The notice of investigation instituting an investigation based on the complaint was published in the **Federal Register** on January 21, 1993, naming Com Dev Ltd. of Canada as a respondent. 58 FR 5414.

On June 4, 1993, the presiding administrative law judge issued an ID granting a motion by complainants SMI and Nelson to amend the complaint and notice of investigation to add allegations that respondent also has infringed claims 15, 16, 17 and 18 of the '542 patent. No petitions for review or government agency comments were received.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and § 210.53(h) of the Commission's Interim Rules of Practice and Procedure (19 CFR. 210.53(h)).

Issued: June 25, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–15423 Filed 6–29–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–515 (Final)]

Commission Determination To Conduct a Portion of the Hearing in Camera

In the Matter of portable electric typewriters from Singapore.

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon requests of petitioner Brother Industries (USA) and Smith Corona Corporation in the above-captioned final investigation, the Commission has unanimously determined to conduct a portion of its hearing scheduled for June 25, 1993, *in camera*. See Commission rules 201.13 and 201.35(b)(3) (19 CFR 201.13 and 201.35(b)(3)). The remainder of the hearing will be open to the public.

FOR FURTHER INFORMATION CONTACT: Rhonda M. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3083. Hearing-impaired persons are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that Smith Corona and Brother have demonstrated good cause justifying the closure of the hearing, so that Brother may address arguments and assertions made by Smith Corona which are allegedly based on proprietary information and Smith Corona may present proprietary pricing information. The Commission has determined that a full discussion of the domestic industry and of the indicators that it examines in 2 assessing material injury by reason of the subject imports could only take place if at least part of the hearing were held *in camera*. In making this decision, the Commission nevertheless affirms its belief that wherever possible its business should be conducted in public.

The hearing will begin with the public presentation by petitioner, followed by questioning of petitioner by the Commission. Respondent will then make public arguments and be questioned as appropriate by the Commission. Following respondent's public presentation and questioning, an *in camera* session concerning the above-described business proprietary information (BPI) will begin. For this discussion the room will be cleared of all persons except: (1) Those who have been granted access to BPI under the administrative protective order (APO) and are included on the Commission's APO service list in this investigation, (2) persons who will be presenting *in camera* testimony on behalf of the parties, and (3) personnel of the Commission, including the court reporter. Any representatives of the petitioner eligible to attend the session may respond and be questioned by the Commission as appropriate.

After petitioner's *in camera* presentation, respondent's representatives will be given the opportunity to present an *in camera* rebuttal to respondent's presentation. Respondent will then be given the opportunity to make its *in camera* presentation, followed by petitioner's *in camera* rebuttal. Two short recesses may be necessary to enable preparation of the rebuttals.

Following the *in camera* session, the Commission would reopen the hearing to the public for concluding statements or for additional public questioning by the Commission. The time for the

parties' presentations in the *in camera* sessions will be taken from their respective overall allotments for the hearing. All persons planning to attend the *in camera* portion of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in Portable Electric Typewriters from Singapore, Inv. No. 731–TA–515 (Final), may be closed to the public to prevent the disclosure of BPI as described in Commission Rule 201.36(b)(4) (19 CFR 210.36(b)(4)).

By order of the Commission.

Issued: June 24, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–15426 Filed 6–29–93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 731–TA–651 (Preliminary)]

Silicon Carbide From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–651 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of silicon carbide, whether or not chemically defined, and whether crude, in grains, or ground, pulverized or refined, provided for in subheadings 2849.20.10 and 2849.20.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by August 5, 1993.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Brian Walters (202–205–3198), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on June 21, 1993, by the Ad Hoc Silicon Carbide Coalition, Washington, DC.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on July 12, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Brian Walters (202–205–3198) not later than July 8, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 15, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: June 25, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–15424 Filed 6–29–93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 751–TA–15]

Stainless Steel Plate From Sweden

AGENCY: United States International Trade Commission.

ACTION: Institution of a review investigation concerning the Commission's affirmative determination in investigation No. AA1921–114, stainless steel plate from Sweden.

SUMMARY: The Commission hereby gives notice that it has initiated an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) (the Act) to review its determination in investigation No. AA1921–114. The purpose of the investigation is to determine whether an industry in the United States would be materially injured, or would be

threatened with material injury, by reason of imports of stainless steel plate from Sweden if the antidumping order regarding such merchandise were to be revoked. Stainless steel plate is provided for in subheadings 7219.11.0000, 7219.12.0000, 7219.21.0000, 7219.22.0000, 7219.31.0000, 7220.11.0000, and 7220.20.10 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and E (19 CFR part 207).

EFFECTIVE DATE: June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION

Background

On May 1, 1973, the Commission determined that an industry in the United States was injured within the meaning of the Antidumping Act of 1921 by reason of imports of stainless steel plate from Sweden which the Secretary of Treasury had determined to be sold or likely to be sold at less than fair value (LTFV). On June 5, 1973, the Department of Treasury issued a finding of dumping and published a notice of its determination in the **Federal Register** (38 FR 15079).

On July 8, 1985, the Commission received a request to review its affirmative determination in investigation No. AA1921–114. The request was filed pursuant to section 751(b) of the Tariff Act of 1930 by counsel on behalf of Avesta AB, the largest Swedish producer and exporter of stainless steel plate, and Avesta Stainless Inc., a U.S. producer of stainless steel plate. The Commission published a notice in the **Federal Register** requesting comment as to whether changed circumstances were sufficient to warrant institution of a review investigation. Comments were submitted on behalf of Allegheny Ludlum Steel Corp., Armco Inc., LTV Steel Co., Washington Steel Corp., and the United Steelworkers of America opposing the institution of a review investigation. After consideration of the information contained in the petition and in the responses to the notice, the Commission determined that the petition did not show changed circumstances sufficient to warrant institution of a review investigation (50 FR 43613).

On February 24, 1987, the Commission received a second request, pursuant to section 751(b) of the Act, to review its affirmative determination in investigation No. AA1921–114. This request was again filed by counsel for Avesta AB and Avesta Stainless Inc. The Commission again published a notice in the **Federal Register** requesting comment as to whether changed circumstances were sufficient to warrant institution of a review investigation. The changed circumstances alleged in the petition included (1) the acquisition by Avesta of a domestic facility in 1976, (2) the alleged decline of imports of Swedish plate since 1976 to commercially insignificant amounts, (3) the consolidation of production in Sweden from four producers to one, and (4) the increase in Swedish shipments to the European Community (EC) following a bilateral free trade agreement covering stainless steel plate; (5) U.S. producers of stainless steel were highly protected due to voluntary restraint agreements (VRAs) with a number of countries putting Sweden at a competitive disadvantage vis-a-vis other foreign producers; (6) Sweden supplied U.S. demand for a type of cold-rolled plate, referred to as "KBR plate," of widths which U.S. firms were unable to supply; and (7) Sweden supplied several newly patented types of steel plate, not produced domestically, and that such imports should be excluded from the scope of the antidumping order. In addition, the petition argued that the import data used by the Commission should be adjusted to exclude certain types of stainless steel plate (type 904L, Stavex, and Ramex) because there was no comparable domestic product. These products allegedly represented between 30 and 60 percent of imports from Sweden in recent years.

Comments were again submitted on behalf of Allegheny Ludlum Steel Corp., Armco Inc., LTV Steel Co., Washington Steel Corp., and the United Steelworkers of America opposing the institution of a review investigation. After consideration of the information in the petition and in the responses to the notice, the Commission determined that the petition did not show changed circumstances sufficient to warrant institution of a review investigation (52 FR 24541). In making that determination, the Commission made no adjustments to the import data to exclude type 904L, Stavex, or Ramex plate since they apparently were included in the scope of the order. The Commission discounted the significance of the purchase of a domestic facility in 1976 and rejected the allegation that imports from Sweden had declined since that acquisition because the data available to it at the time indicated that imports had not decreased since 1976 and there was a notable increase from 1984 to 1986.

Recently, the Commission has received significant new information that affects the reasoning the Commission gave for rejecting the petitions for review in 1985 and 1987. Specifically, the Commission has been informed that the Customs Service, in an unpublished scope determination in 1976, had excluded imports of Stavex and Ramex from the scope of the antidumping order. In addition, type 904L had also been excluded from the scope of the order. Neither the Commission nor the parties were aware of this, either during the administrative proceedings or during appellate review before the Court of International Trade or before the Court of Appeals for the Federal Circuit. Had it known of these scope rulings, pursuant to the statute, the Commission would have excluded from its analysis of import volume, and the effect of imports on the domestic industry, any imports that were not subject to a finding of dumping or were not otherwise within the scope of an antidumping order. The evidence of record clearly indicates that exclusion of the volume of imports of type 904L, Stavex, and Ramex plate from the import data would significantly reduce the volume of LTFV imports from Sweden subject to the order. This fact, together with the acquisition of a domestic facility by Avesta and the change in the composition of imports from Sweden, now suggest that a review investigation is warranted.

In light of the foregoing, the Commission has determined that changed circumstances warrant a section 751 review of the antidumping order covering imports of stainless steel plate from Sweden. Upon review the Commission will seek information regarding the current condition of the domestic industry and the potential impact of revocation of the order on that industry. Further, the Commission will seek information regarding recent levels of imports of stainless steel plate from Sweden, the effect of the 1976 scope ruling on those levels, and the likely

consequences of revocation on Swedish exports to the United States. Finally, the Commission will seek information regarding Avesta's domestic operations and the relationship between its domestic operations, its exports from Sweden, and its exports to the EC.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List.

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on September 3, 1993, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on September 16, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 10, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 13, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is September 10, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is September 24, 1993; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before September 24, 1993. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.45 of the Commission's rules.

By order of the Commission.

Issued: June 24, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–15428 Filed 6–29–93; 8:45 am]

BILLING CODE 7020–02–P

Appointment of Individuals To Serve as Members of Performance Review Boards

AGENCY: United States International Trade Commission.

ACTION: Appointment of individuals to serve as members of Performance Review Boards.

EFFECTIVE DATE: June 24, 1993.

FOR FURTHER INFORMATION CONTACT: Micheal J. Hillier, Director of Personnel, U.S. International Trade Commission, (202) 205–2651.

SUPPLEMENTARY INFORMATION: The Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB).

Chairman of PRB—Vice Chairman Peter S. Watson
Member—Commissioner David B. Rohr
Member—Commissioner Anne E. Brunsdale
Member—Commissioner Carol T. Crawford
Member—Commissioner Janet A. Nuzum
Member—William L. Featherstone, Jr.
Member—Lorin L. Goodrich
Member—Lynn I. Levine
Member—Robert A. Rogowsky
Member—Eugene A. Rosengarden
Member—Lyn M. Schlitt
Member—Marion L. Simpson, Jr.

Notice of these appointments is being published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Chairman.

Issued: June 30, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–15427 Filed 6–29–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms.

Johnnie Davis or Ms. Tawanna Glover-Sanders, Interest Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–5750 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability: None.

Comments on the following assessment are due 30 days after the date of availability:

AB–167 (SUB–NO. 1116), Consolidated Rail Corporation—Abandonment—Between Upper Sandusky and Dunkirk, in Hardin and Wyandot Counties, Ohio. EA available June 25, 1993.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–15389 Filed 6–29–93; 8:45 am]

BILLING CODE 7035–01–M

Revision of Publication OCP–100, Your Rights and Responsibilities When You Move

AGENCY: Interstate Commerce Commission.

ACTION: Notice of revision of OCP–100.

SUMMARY: The Commission is permitting interstate household goods movers to print minor editorial corrections in the publication entitled OCP–100, Your Rights and Responsibilities When You Move, and to print a notice describing increased valuation charges to be inserted inside the OCP–100 cover.

DATES: The revision of OCP–100 is effective June 25, 1993.

FOR FURTHER INFORMATION CONTACT: Charles E. Wagner (202) 927–5530, John W. Fristoe, (202) 927–5520, (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Under 49 CFR 1056.2, the publication entitled, Your Rights and Responsibilities When You Move is required to be given to consumers by movers and household goods brokers to provide them with information about their rights and responsibilities as shippers of household goods. From time to time the publication must be revised. Under 49 1056.2(b)(2), notice of amendments to publications OCP–100 must be published in the **Federal Register**. We are revising the publication to make editorial corrections to reflect current valuation rate information and to alert shippers as to the appropriate level of valuation charges that now apply. None of these changes constitute a material change requiring notice and comments.

In Released Rates of Motor Common Carriers of Household Goods, 9 I.C.C.2d, 523 (1993) we modified existing released rate authorities to permit household goods carriers to increase excess value charges for released rate shipments and to restructure excess value changes for storage-in-transit shipments. This change in released rates makes certain information in the OCP–100 publication obsolete. We are, therefore, in this notice permitting the movers to reflect this change:

They may make the following editorial corrections in the *The Mover's Liability for Loss or Damage* section when printing supplies of the OCP–100:

(Page 10, Paragraph 2, Line 6)—"$7.00 for each $1,000 of liability.",

(Page 10, Paragraph 3, Line 5)—"$7.00 for each $1,000 of declared value", and;

(Page 10, Paragraph 3, Line 6)—"which in this case would result in a charge of $70.00".

They may print a notice to be inserted inside the cover using the following language:

All Shippers Please Notice—New Valuation Charges

This is to notify you that effective May 21, 1993, the ICC has allowed movers to increase their rates under the new Released Rates Order No. MC–999. The Old Release Rates Order Nos. MC–505 and MC–672, which were in effect for the last 26 years, are now rescinded. This means that the following valuation charges are now in effect:

—70 cents (not 50 cents) for each $100, or fraction thereof, of the released or declared value for shipments released to a value of not less than $1.25 per pound;

—12% additional valuation charge for shipments requiring *Storage-In-Transit for each 15-days storage period or fraction thereof; except,

—10% instead of 12% when Full Valuation Protection is ordered for each 15 days or fraction thereof for *Storage-in-Transit.

(*Storage-in-Transit valuation charges are to be assessed in 15-day increments.)

A copy of this notice may be obtained by writing to the Office of Compliance and Consumer Assistance, room 4133, 12th Street and Constitution Avenue, NW., Washington, DC, 20423 or by calling (202) 927–5557. Assistance for the hearing impaired is available through TDD Services at (202) 927–5721.

Dated: June 24, 1993.

Decided: Bernard Gaillard, Director, Office of Compliance and Consumer Assistance.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–15391 Filed 6–29–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

In accordance with the policy of the Department of Justice, notice is hereby given that on June 18, 1993 a proposed consent decree in *United States* v. *Gregory A. Schmalz, et al.*, Civil Action No. 90–C–0941 was lodged with the United States District Court for the Eastern District of Wisconsin. This action was brought, pursuant to sections 104 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 *et seq.* ("CERCLA"), for the recovery of costs expended by the United States in connection with the cleanup of the Schmalz Dump Superfund Site ("Site") located in the Town of Harrison, Calumet County, Wisconsin.

Under the consent decree, defendant City of Menasha, acting through Menasha Electric and Water Utilities, and third party defendant Consolidated Papers, Inc. (collectively, the "settling defendants"), will pay $1,520,243.39 to the Hazardous Substances Superfund to reimburse the United States for response costs incurred at the Site in connection with the cleanup and removal activities at the Site. The consent decree also provides that the settling defendants will pay all future costs incurred or to be incurred in connection with the second operable unit at the Site. "Future costs," are defined by the consent decree to mean those costs incurred by the United States after March 31, 1992. The consent decree also contains certain recovery sharing provisions in case the United States or the settling defendants recover a judgment against third party defendants Menasha Corporation, Warren Wieseler, or Wieseler Construction, Inc. that are based upon costs incurred by the United States in connection with the Site.

The Department of Justice will receive comments relating to the proposed consent decrees for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Gregory Schmalz et al.*, DJ Ref. #90–11–2–224.

The proposed consent decree may be examined at the office of the United States Attorney, 517 E. Wisconsin

Avenue, room 330, Milwaukee, Wisconsin 53202 and at the Region V Office of the Environmental Protection Agency, 111 West Jackson Blvd., 3rd floor, Chicago, Illinois 60604. Copies of the proposed consent decree may also be examined at the Consent Decree Library, 1120 G. Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed decrees may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $6.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 93–15322 Filed 6–29–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Commission on the Future of Worker-Management Relations; Request for Comments

This notice seeks comments from representatives of management, labor and other interested parties on whether the Commission should hold a hearing on issues related to the Railway Labor Act in the railroad or airline industries and their applicability to the following three questions contained in the Commission's charter:

(1) What (if any) new methods of institutions should be encouraged, or required, to enhance workplace productivity through labor-management corporation and employee participation?

(2) What (if any) changes should be made in the present legal framework and practices of collective bargaining to enhance cooperative behavior, improve productivity and reduce conflict and delay?

(3) What (if anything) should be done to increase the extent to which workplace problems are directly resolved by the parties, themselves, rather than recourse to state and federal courts and government regulatory bodies?

The Commission requests that any submission contain a brief statement regarding the questions listed above in the event a party believes a hearing is appropriate. Comments should be submitted by July 26, 1993 and should be addressed to Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, room C–2318, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, room C–2318, Washington, DC, telephone (202) 219–9148.

Signed at Washington, DC, this 25th day of June, 1993.

June M. Robinson,

Designated Federal Official, Commission on the Future of Worker-Management Relations.

[FR Doc. 93–15409 Filed 6–29–93; 8:45 am]

BILLING CODE 4410–23–M

Occupational Safety and Health Administration

Targeted Training Grants

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of grant program.

SUMMARY: The Occupational Safety and Health Administration (OSHA) has a grant program, Targeted Training, which awards funds to nonprofit organizations to address unmet needs for safety and health training and education in the workplace. This notice announces Targeted Training grant availability for training construction workers in the hazards of lead, general industry workers in confined space requirements, construction workers in confined space activities or work practices, workers at risk in the hazards of bloodborne diseases, and workers participating in the Maine 200 project. This notice describes the scope of the grant program and provides information on how to obtain a grant application. Applications should not be submitted without first obtaining the detailed grant application package mentioned later in the notice.

Authority for this program may be found in section 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670).

DATES: Applications must be received by August 13, 1993.

ADDRESSES: Grant applications must be submitted to the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Ronald Mouw, Chief, Division of Training and Educational Programs, or Helen Beall, Training Specialist, Office of Training and Education, Occupational Safety and Health Administration, U.S. Department of Labor, 1555 Times Drive, Des Plaines, Illinois 60018, telephone (708) 297–4810.

SUPPLEMENTARY INFORMATION:

Background

Section 21(c) of the Occupational Safety and Health Act provides for the education and training of employers and workers in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions. OSHA has used a variety of approaches over the years to fulfill its responsibilities under this section, one of which is the awarding of grants to nonprofit organizations to develop and provide training and education to workers and employers.

The Targeted Training Program is OSHA's current grant program for training and education of workers and employers. Its goals include educating small businesses, training in new OSHA standards, and training in areas of special emphasis or recognized high risk activities or tasks. Organizations awarded grants under this program will be expected to develop training and/or educational programs that address a target named by OSHA, reach out to workers and employers for whom the program is appropriate, and provide them with the training and/or educational program. Success is measured by the number of individuals participating in the program and evidence of their increased ability to recognize and abate hazards or to comply with standards.

Scope

The purpose of this notice is to announce the availability of funds for grants. Each grant awarded will be designed to develop and provide training and education in one of the following target areas.

1. Lead in Construction

Programs that provide training to employers and workers in the requirements of 29 CFR 1926.62, lead exposure in construction. Programs are to address the recognition and abatement of lead hazards in construction involving the repair and renovation of bridges or steel structures or in the demolition of buildings and other structures.

2. Confined Spaces

a. General Industry

Programs that provide training and education to employers and workers in the requirements of 29 CFR 1910.146, permit-required confined spaces. Grantees will be expected to provide

training in industries where confined spaces must be entered frequently or in industries that have a high incidence of injuries and deaths in confined spaces.

b. Construction

Programs that provide training and education to employers and workers in the hazards of confined spaces and precautions and protective and emergency equipment to be used when entering confined spaces.

3. Bloodborne Diseases

Programs that provide training and education in the requirements of 29 CFR 1910.1030, bloodborne pathogens, to workers at risk of exposure to bloodborne diseases, including construction workers.

4. Maine 200 Project

Programs that provide training to workers participating with their employer in this pilot. Grantees will be expected to be in New England and provide on-site training on the various aspects of effective safety and health programs to the employees of the firms identified by OSHA as being among the top two hundred employers in Maine that experienced the greatest number of serious workplace injuries and illnesses.

Among the activities which may be supported under these grants are: Conducting training, conducting other educational activities designed to reach and inform workers, and developing educational materials for use in the training and/or educational activities.

Eligible Applicants

Any nonprofit organization that is not an agency of a State or local government is eligible to apply. However, State or local government supported institutions of higher education are eligible to apply in accordance with 29 CFR 97.4(a)(1).

Nonsupportable Activities

Statutory and regulatory limitations, as well as the objectives of the grant program, prevent reimbursement for certain activities under these grants. These limitations include the following.

1. Any activities inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.

2. Activities involving workplaces largely precluded from enforcement action under section 4(b)(1) of the Occupational Safety and Health Act.

3. Activities for the benefit of State, county or municipal employees unless those employees are covered by a State Plan funded by OSHA under section 23(g) of the Occupational Safety and Health Act.

4. Production, publication, reproduction or use of training and educational materials, including newsletters and programs of instruction, that have not been approved by OSHA.

5. Lobbying.

6. Training and other educational activities that primarily address issues other than recognition, avoidance, and prevention of unsafe and unhealthful working conditions. Examples include activities concerning workers' compensation, first aid, and publication of materials prejudicial to labor or management.

7. Activities that provide assistance to workers in arbitration cases or other actions against employers, or that provide assistance to employers and/or workers in the prosecution of claims against Federal, State or local governments.

8. Activities that directly duplicate services offered by OSHA, a State under a State Plan, or consultation programs provided by State designated agencies under sections 7(c)(1) of the Occupational Safety and Health Act.

9. Activities directly or indirectly intended to generate membership in the grant recipient's organization. This includes activities to acquaint non-members with the benefits of membership, inclusion of membership appeals in materials produced with grant funds, and membership drives.

Administrative Requirements

Grant recipients must provide copies of the educational materials to OSHA by the end of the grant period. Programs will be subject to OSHA review and approval during development and before final publication.

The grant program will be administered in compliance with 41 CFR Part 29-70 and OMB Circulars A–110, A–133, and A–21 or A–122.

All applicants will be required to certify to a drug-free workplace in accordance with 20 CFR part 98 and to comply with the New Restrictions on Lobbying published at 29 CFR part 93.

The program is subject to matching share requirements. Grant recipients will be expected to provide a minimum of 20% of the total grant budget. For example, if the Federal share of the grant is $80,000 (80% of the grant), then the matching share will be $20,000 (20% of the grant), for a total grant of $100,000. The matching share may exceed 20%.

Evaluation Process and Criteria

Applications for grants solicited in this notice will be evaluated on a competitive basis by the Assistant Secretary for Occupational Safety and Health with assistance and advice from OSHA staff.

The following factors, which are not ranked in order of importance, will be considered in evaluating grant applications.

1. Program Design

a. The plan to develop and implement a training and education program that addresses one of the following targets.

i. Lead in construction.

ii. Confined spaces.

iii. Bloodborne diseases.

iv. Main 200 project.

b. The number of workers to be reached by the program.

c. The appropriateness of the planned activities for the target selected.

d. The plan for evaluating the program's effectiveness in achieving its objectives.

e. The feasibility and soundness of the proposed work plan in achieving the program objectives effectively.

2. Program Experience

a. Prior occupational safety and health experience of the organization.

b. Previous and current training or education programs developed by the organization.

c. Technical and professional expertise of present or proposed project staff.

d. Prior experience in reaching and serving the target population with occupational safety and health and/or training and educational programs.

3. Administrative Capability

a. Managerial expertise of the applicant as evidenced by the variety and complexity of current and/or recent programs it has administered.

b. Financial management capability of the applicant as evidenced by a recent report from an independent audit firm or a recent report from another independent organization qualified to render judgment concerning the soundness of the applicant's financial practices.

c. Evidence of the applicant's nonprofit status, preferably from the IRS.

d. The completeness of the application, including forms, budget detail, narrative and workplan, and required attachments.

4. Budget

a. The reasonableness of the budget in relation to the proposed program activities.

b. The proposed non-Federal share is at least 20% of the total budget.

c. The compliance of the budget with applicable Federal cost principles and with OSHA requirements contained in the grant application instructions.

Preference will be given to applications that propose to serve small businesses.

In addition to the preceding factors, the Assistant Secretary will consider other factors such as the overall geographical distribution and coverage of populations at risk.

Availability of Funds

There is approximately $1,200,000 available for this program, of which $600,000 is for grants addressing lead in construction, $250,000 for confined spaces, $250,000 for bloodborne diseases, and $100,000 for Maine 200. Grants will be awarded for an eighteen-month period.

Application Procedures

Those organizations that meet the eligibility requirements described above and are interested in conducting project activities as described may request a grant application package from the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drives, Des Plaines, Illinois 60018.

All applications must be received no later than 4:30 p.m. Central Time, August 13, 1993.

Notification of Selection

Following review and evaluation, those organizations selected as potential grant recipients will be notified by a representative of the Assistant Secretary. An applicant whose proposal is not selected will also be notified in writing to that effect. Notice of selection as a potential grant recipient will not constitute approval of the grant application as submitted. Prior to the actual grant award, representatives of the potential grant recipient and OSHA will enter into negotiations concerning such items as program components, funding levels, and administrative systems. If negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, this 24th day of June 1993.

David C. Zeigler,

Acting Assistant Secretary of Labor.

[FR Doc. 93–15351 Filed 6–29–93; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

Workshop To Discuss Issues for the Proposed Policy on Compatibility of Agreement States

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) staff plans to convene a public workshop with representatives of Agreement States, non-Agreement States, the regulated community, public groups and the general public to discuss the issues relating to the development of an overall policy on the compatibility of Agreement State regulatory programs with that of the NRC. The purpose of the workshop is to seek comments and recommendations from the full spectrum of interested parties on the various issues pertaining to the compatibility of Agreement State regulatory programs with the NRC.

DATES: The workshop will be held on July 26–27, 1993.

ADDRESSES: The meeting is to be held at the Ramada Inn Rockville at Congressional Park, 1775 Rockville Pike, Rockville, Maryland 20852 (301) 881–2300.

FOR FURTHER INFORMATION CONTACT: Sheldon Schwartz, Office of State Programs, Mail Stop 3D23, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2325.

SUPPLEMENTARY INFORMATION: The Commission has directed the staff to develop a Commission policy on compatibility, except that the focus should include all program areas other than low-level radioactive waste disposal. In April 1993 a working group was established to develop a policy on compatibility and provide guidance on criteria for determining compatibility and an implementation strategy. In order to facilitate the development of the compatibility policy, the working group developed an isssues paper, Issues for the Proposed Policy on Compatibility of Agreement States, to generate discussion and input on compatibility. This issues paper will be used to facilitate discussion at the July workshop. A copy of this paper can be obtained by contacting: Cardelia Maupin, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504–2312.

Conduct of the Meeting

The workshop will be conducted in a manner that will expedite the orderly conduct of business. A transcript of the workshop will be available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555 on or about September 27, 1993.

The following procedures apply to public attendance at the workshop:

1. Questions or statements will be entertained as time permits.

2. Seating will be on a first-come, first-served basis.

Dated at Rockville, Maryland this 23rd day of June 1993.

For the Nuclear Regulatory Commission.

Sheldon A. Schwartz,

Deputy Director, Office of State Programs.

[FR Doc. 93–15377 Filed 6–29–93; 8:45 am]

BILLING CODE 7590–01–M

Individuals Receiving Advance Notification of Nuclear Waste Shipments

States	Part 71	Part 73
Alabama	Col. George McMinn, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36192–0501 (205) 242–4378.	Same.
Alaska	Mead Treadwell, Deputy Commissioner, Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 105, Juneau, AK 99801–1795 (907) 465–2600.	Same.
Arizona	Aubrey Godwin, Director, Arizona Radiation Regulatory Agency, 4814 South 40th Street, Phoenix, AZ 85040 (602) 255–4845, After hours: (602) 223–2212.	Same.
Arkansas	Greta J. Dicus, Director, Division of Radiation Control and Emergency Management Programs, Arkansas Department of Health, 4815 West Markham Street, Little Rock, AR 72205 (501) 661–2301, After hours: (501) 661–2136 or 661–2000.	Same.

States	Part 71	Part 73
California	George M. Edgerton, Chief, Enforcement Services Division, California Highway Patrol, 444 North Third Street, Suite 310, Sacramento, CA 95814 (916) 445–3253.	Same
Colordao	Lt. Colonel Lonnie J. Westphal, Officer in Charge, Region I, Colorado State Patrol, 700 Kipling Street, Denver, CO 80215 (303) 239–4406, After hours: (303) 239–4501.	Same
Connecticut	Honorable Timothy R.E. Keeney, Commissioner, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106 (203) 566–2110.	Same
Delaware	Karen L. Johnson, Secretary, Department of Public Safety, P.O. Box 818, Dover, DE 19903 (302) 739–4321.	Same.
Florida	Harlan Keaton, Manager, Environmental Radiation Program, Office of Radiation Control, Department of Health & Rehabilitative Services, P.O. Box 680069, Orlando, FL 32868–0069 (407) 297–2095.	Same.
Georgia	Al Hatcher, Director, Transportation Division, Public Service Commission, 1007 Virginia Avenue, Suite 310, Hapeville, GA 30354 (404) 559–6600.	Same
Hawaii	Bruce S. Anderson, Ph.D., Deputy Director for Environmental Health, State Department of Health. P.O. Box 96813, Honolulu, HI 96813 (808) 548–4139.	Same.
Idaho	Captain David C. Rich, Department of Law Enforcement, Idaho State Police, 3311 West State Street, P.O. Box 55, Boise, ID 83707–0055 (208) 334–3550.	Same.
Illinois	Thomas W. Ortciger, Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704 (217) 785–9868 (24 Hour), 24 Hrs Emergency: (217) 785–0600.	Same.
Indiana	Lloyd R. Jennings, Superintendent, Indiana State Police, 301 State Office Building, 100 North Senate Avenue, Indianapolis, IN 46204 (317) 232–8241, After hours: (317) 232–8248.	Same.
Iowa	Ellen M. Gordon, Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, IA 50319 (515) 281–3231.	Same.
Kansas	Frank H. Moussa, M.S.A., Technological Hazards Administrator, The Adjutant General's Department, Division of Emergency Preparedness, P.O. Box C–300, Topeka, KS 66601 (913) 266–1409, After hours: (913) 296–3176.	Same.
Kentucky	Donald R. Hughes, Sr., Director, Division of Community Safety, Department for Health Services, 275 East Main Street, Frankfort, KY 40621 (502) 564–3700.	Same.
Louisiana	Captain Louis Cook, Louisiana State Police, 265 South Foster Drive, P.O. Box 66614, Baton Rouge, LA 70896 (504) 925–6113.	Same.
Maine	Chief of the State Police, Maine Dept. of Public Safety, 36 Hospital Street, Augusta, ME 04333 (207) 289–2155.	Same.
Maryland	Colonel James E. Harvey, Chief, Services Bureau, Maryland State Police, 1201 Reisterstown Road, Pikesville, MD 21208 (301) 486–3101.	Same.
Massachusetts	Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Health, State Laboratory Institute, 305 South Street, Jamaica Plain, MA 02130 (617) 727–6214.	Same.
Michigan	Captain Allen L. Byam, Commanding Officer, Special Operations Division, Michigan Department of State Police, 714 S. Harrison Road, East Lansing, MI 48823 (517) 336–6187, After hours: (517) 336–6100.	Same.
Minnesota	John R. Kerr, Assistant Director, Planning Branch, Minnesota Division of Emergency Management, B5—State Capitol, 175 Constitution Avenue, St. Paul, MN 55155 (612) 296–0481, After hours: (612) 649–5451.	Same.
Mississippi	James E. Maher, Director, Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39296–4501 (601) 352–9100 (24 hours).	Same.
Missouri	Jerry B. Uhlmann, Director, State Emergency Management Agency, 1717 Industrial Drive, P.O. Box 116, Jefferson City, MO 65102 (314) 526–9779, After hours: (314) 751–2748.	Same.
Montana	Mr. Adrian Howe, Chief, Occupational Health Bureau, Environmental Sciences Div., Department of Health & Environmental Sciences, Room A113, Cogswell Bldg., Helena, MT 59620 (406) 444–3671, After hours: (406) 442–1426.	Bill Good, Acting Administrator, Disaster & Emergency Services, P.O. Box 4789, Helena, MT 59604–4789 (406) 444–6911.
Nebraska	Colonel Ron Tussing, Superintendent, Nebraska State Patrol, P.O. Box 94907, Lincoln, NE 68509 (402) 471–2406, After hours: (402) 471–4545.	Same.
Nevada	Stanley R. Marshall, Supervisor, Radiological Health Section, Bureau of Health Protection Services, Nevada Division of Health, 505 East King Street, Carson City, NV 89710 (702) 687–5394.	Same.
New Hampshire	Richard M. Flynn, Commissioner, New Hampshire Dept. of Safety, James H. Hayes Building, Hazen Drive, Concord, NH 03305 (603) 271–3636 (24 hours).	Same.
New Jersey	Kent Tosch, Manager, Department of Environmental Protection & Energy, Bureau of Nuclear Engineering, CN 415, Trenton, NJ 08625 (609) 987–2031.	Same.

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States	Part 71	Part 73
New Mexico	Roland K. Lough, Chief, Emergency Management Bureau, Department of Public Safety, P.O. Box 1628, Santa Fe, NM 87504–1628 (505) 827–9222, After hours: (505) 294–7932.	Same.
New York	Anthony J. Germano, Acting Director, State Emergency Management Office, Public Security Building #22, State Campus, Albany, NY 12226 (518) 457–9996.	Same.
North Carolina	First Sergeant T.C. Stroud, Hazardous Materials Section, North Carolina Highway Patrol Training Center, 3318 Garner Road, Raleigh, NC 27610 (919) 662–4430, After hours: (919) 733–3861.	Same.
North Dakota	Dana K. Mount, Director, Division of Environmental Engineering, Department of Health, 1200 Missouri Avenue, Box 5520, Bismarck, ND 58502–5520 (701) 221–5188, After hours: (701) 224–2121.	Same.
Ohio	James R. Williams, Chief of Staff, Ohio Emergency Management Agency, 2825 W. Granville Road, Columbus, OH 43235–0301 (614) 889–7150.	Same.
Oklahoma	Dave McBride, Commissioner of Public Safety, Oklahoma Department of Public Safety, 3600 N. King Avenue, P.O. Box 11415, Oklahoma City, OK 73136–0145 (405) 425–2424 (24 hours).	Same.
Oregon	David Stewart-Smith, Administrator, Facility Regulation Division, Oregon Department of Energy, 625 Marion Street, NE., Salem, OR 97310 (503) 378–6469.	Same.
Pennsylvania	George M. Johnson, Director, Response and Recovery, Pennsylvania Emergency Management Agency, P.O. Box 3321, Harrisburg, PA 17105 (717) 783–8150, After hours: (717) 783–8150.	Same.
Rhode Island	William A. Maloney, Associate Administrator, Motor Carriers, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903 (401) 277–3500.	Same.
South Carolina	Heyward G. Shealy, Chief, Bureau of Radiological Health, South Carolina Department of Health & Environmental Control, 2600 Bull Street, Columbia, SC 29201 (803) 734–4632, After hours: (803) 253–6497.	Same.
South Dakota	Gary N. Whitney, Division Director, Emergency Management, 500 E. Capitol, Pierre, SD 57501–5060 (605) 773–3231.	Same.
Tennessee	John White, Assistant Deputy Director, Tennessee Emergency Management Agency, State Emergency Operations Center, 3041 Sidco Drive, Nashville, TN 37204 (615) 741–0001, After hours: (Inside TN) 1–800–262–3300, (Outside TN) 1–800–258–3300.	Same.
Texas	David K. Lacker, Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, TX 78756 (512) 834–6688.	Col. Joe E. Milner, Director, Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, TX 78752 (512) 465–2000.
Utah	William J. Sinclair, Deputy Director, Bureau of Radiation Control, 168 North 1950 West, P.O. Box 144850, Salt Lake City, UT 84114–4850 (801) 536–4250, After hours: (801) 538–6333.	Same.
Vermont	Patrick J. Garahan, Secretary, Vermont Agency of Transportation, 133 State Street, Montpelier, VT 05602 (802) 828–2657.	Same.
Virginia	James D. Holloway, Director, Technological Hazards Division, Department of Emergency Services, Commonwealth of Virginia, 310 Turner Road, Richmond, VA 23225 (804) 674–2400.	Same.
Washington	Robert J. Huss, Deputy Chief, Washington State Patrol, General Administration Building, Mail Stop AX–12, Olympia, WA 98504–0612 (206) 586–2340.	Same.
West Virginia	Colonel J.R. Buckalew, Superintendent, Department of Public Safety, 725 Jefferson Road, South Charleston, WV 25309 (304) 746–2111.	Same.
Wisconsin	Leroy E. Conner, Jr., Administrator, Wisconsin Division of Emergency Government, P.O. Box 7865, Madison, WI 53707–7865 (608) 266–3232.	Same.
Wyoming	Captain L.S. Gerard, Motor Carrier Officer, Wyoming Highway Patrol, 5300 Bishop Boulevard, P.O. Box 1708, Cheyenne, WY 82003–1708 (307) 777–4317, After hours: (307) 777–4323.	Same.
District of Columbia	Norma J. Stewart, Program Manager, Pharmaceutical and Medical Devices Control Division, Department of Consumer and Regulatory Affairs, 614 H Street, NW., Washington, DC 20001 (202) 727–7219, After hours: (202) 727–6161.	Same.
Puerto Rico	Santos Rohena, Jr., Chairman, Environmental Quality Board, P.O. Box 11488, Santurce, PR 00910 (809) 722–1175 or (809) 725–5140.	Same.
Guam	Fred M. Castro, Administrator, Guam Environmental Protection Agency, D107 IT&E Plaza, 130 Rojas Street, Harmon, Guam 96911 (671) 734–7216.	Same.
Virgin Islands	Alexander Farrelly, Governor, Government House, Charlotte Amalie, St. Thomas, Virgin Islands 00801 (809) 774–0001.	Same.

States	Part 71	Part 73
American Samoa	Mr. Pati Faiai, Government Ecologist, Environmental Protection Agency, Office of the Governor, Pago Pago, American Samoa 96799 (684) 633–2304.	Same.
Commonwealth of the Northern Mariana Islands.	Nicolas M. Leon Guerrero, Director, Department of Natural Resources, Commonwealth of Northern Mariana Islands Government, Capitol Hill, Saipan, MP 96950 (670) 322–9830 or (670) 322–9834.	Same.

Questions regarding this matter should be directed to Mindy Landau at (301) 504–2308.

Dated at Rockville, Maryland, this 22nd day of June 1993.

For the Nuclear Regulatory Commission.

Carlton Kammerer,

Director, Office of State Programs.

[FR Doc. 93–15378 Filed 6–29–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–293]

Boston Edison Co., Pilgrim Nuclear Station; Receipt of Petition for Director's Decision

Notice is hereby given that by letter dated May 26, 1993, Mr. Ernest Hadley submitted a Petition on behalf of We the People, Inc., of the United States (Petitioner) to the U.S. Nuclear Regulatory Commission (NRC) pursuant to 10 CFR 2.206 regarding the Pilgrim Nuclear Station of the Boston Edison Company (Licensee). The Petition has been referred to the Office of Nuclear Reactor Regulation for preparation of a response.

Petitioner requested immediate action by the NRC to delay the schedule startup of the Pilgrim Nuclear Station or, in the alternative, to order its immediate shutdown if the Pilgrim Station is permitted to start up before the Petition can be acted upon.

Petitioner requests that the Pilgrim Nuclear Station not be permitted to operate until the Licensee completes hardware modifications designed to eliminate reactor water level measurement errors. Petitioner contends that the system in place at the Pilgrim facility does not adequately measure the water level of the reactor vessel and thus constitutes an immediate threat to the health and safety of the public.

Specifically, the Petitioner alleges that the NRC staff based its determination that continued operation of boiling water reactors (BWRs) such as the Pilgrim facility did not pose a safety threat on generic studies performed by the Boiling Water Reactor Owners Group (BWROG). These assurances were given, Petitioner alleges, despite the fact that on January 21, 1993, Washington Nuclear 2 reported a significant event in which a water level error was observed that was more than 1 hour in duration. It is further alleged that the error observed was significantly larger than those previously observed.

Additionally, Petitioner alleges that it has requested, from the NRC, information used by the Pilgrim licensee to make its operability determination for the water level measurement system as required by the Technical Specifications for the Pilgrim facility. Based on the NRC's failure to provide this information, Petitioner concludes that such information either does not exist or would not withstand independent scrutiny.

Finally, Petitioner refers to a meeting of the Advisory Committee on Reactors Safeguards held on May 12, 1993, which included the BWROG. It is Petitioner's understanding that during a closed session of that meeting, the BWROG and the NRC staff confirmed that water measurement errors could be on the order of 27 feet and that neither the BWROG nor the NRC staff any longer believe the error will correct itself with the passage of time.

On May 27, 1993, members of the NRC staff contacted Mr. Hadley by telephone to inform Petitioner that the NRC staff had considered the information presented in the Petition and that it has been determined not to grant the immediate relief sought. Mr. Hadley was further informed that Petitioner would receive a written response documenting the NRC staff's reasons for this decision.

In accordance with 10 CFR 2.206, appropriate action with regard to the specific issues raised in the Petition will be taken within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the Pilgrim Nuclear Station located at Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Dated at Rockville, Maryland, this 22nd day of June 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93–15381 Filed 6–29–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 030–04530, and 030–06923; License Nos. 19–00915–03, and 19–00915–06; EAs 92–232 and 93–028]

Department of Agriculture; Order Imposing Civil Monetary Penalty

I

The U.S. Department of Agriculture (Licensee), Washington, DC is the holder of Byproduct/Source Material Licenses Nos. 19–00915–03 and 19–00915–06 (Licenses), issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 33. License No. 19–00915–03 authorizes the Licensee to use byproduct material for research and development; in gauging and measuring devices; in field applications as approved by the Radiation Safety Committee (RSC); and for research studies in humans as approved by a Radioactive Drug Research Committee that has been approved by the Food and Drug Administration, and by the Licensee's Radiation Safety Committee (RSC). This is a large, multi-site, broad scope license with no stated possession limit. License No. 19–00915–06 authorizes the Licensee to use cobalt–60 and cesium–137 sealed sources in irradiators at sites and by users approved by the Licensee's RSC.

Licensed activities are conducted by a number of organizations within the Licensee's organization, including (1) the Agriculture Marketing Service (AMS); (2) the Animal, Plant, and Health Inspection Service (APHIS); (3) the Agricultural Research Service (ARS); (4) the Federal Grain Inspection Service (FGIS); (5) the Food Safety and Inspection Service (FSIS); (6) the National Forest Service (NFS); and (7) the Soil Conservation Service (SCS). Over 3500 permits currently have been issued to individuals in these services to use licensed material at numerous locations around the country.

The Licenses most recently were renewed on February 10, 1990 and May

22, 1986, respectively, and would have expired on February 28, 1991 and May 31, 1991, respectively. Both Licenses continue in force, pursuant to 10 CFR 30.37(b), because of the timely filing of applications by the Licensee to renew the Licenses.

II

Ten inspections of the Licensee's activities were conducted by the NRC between March and October 1992 at several Licensee facilities throughout the country. During the inspections, twelve violations of NRC requirements were identified, five of which were repetitive violations identified during previous NRC inspections. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated March 26, 1993. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice by letters dated April 22, 1993. In its response, the Licensee admits all of the violations, but requests mitigation of the civil penalty.

III

After consideration the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It Is Hereby Ordered That:*

The Licensee pay a civil penalty in the amount of $10,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a Request for an Enforcement Hearing and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 23d day of June 1993.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix

Evaluations and Conclusion

On March 26, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for twelve violations identified during ten NRC inspections conducted between March and October 1992. The licensee responded to the Notice in letters dated April 22, 1993, and admits all of the violations, but requests mitigation of the civil penalty. The NRC's evaluations and conclusions regarding the licensee's requests are as follows:

1. Restatement of Violations

A. Condition 25 of License No. 19–00915–03 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in an application dated July 11, 1989, and the letter dated March 9, 1990.

Item 3 of the application dated July 11, 1989, requires, in part, that Category I locations (major isotope users; facilities that use millicurie quantities of radioiodine and/or perform iodinations; and facilities that perform studies involving human subjects) be inspected at intervals not to exceed three years, and Category II locations (all non-Category I facilities that use licensed material in an unsealed form) be inspected by the Radiation Safety Staff at intervals not to exceed five years.

Condition 17 of License No. 19–00915–06 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained, in part, in an application dated August 27, 1985, and letters dated April 7, 1986, June 27, 1986, and April 14, 1987. Item K.11. of the application dated August 27, 1985 requires that irradiator facilities be inspected by the Radiation Safety Staff at least every three years.

Contrary to the above, as of September 9, 1992, certain USDA facilities were not inspected at the required intervals as specified above. Specifically, two Category I facilities, (namely, Miles City, Montana, and Greenport, New York) had not been inspected in the previous three years; and 12 Category II facilities (Hamden, Connecticut) West Lafayette, Indiana; Morris, Montana; Raleigh, North Carolina; University Park, Pennsylvania; Brooking, South Dakota; Lubbock, Texas; Kearneysville, West Virginia; Columbia, Missouri; Wooster, Ohio; Fresno, California; and Salinas, California) had not been inspected in the previous five years; and one irradiator facility (namely, Otis Air Force Base, Massachusetts) had not been inspected in the previous three years.

This is a repetitive violation.

B. Condition 12 of License No. 19–00915–03 and Condition 13 of License No. 19–00915–06 require, in part, that sealed sources be tested for leakage and/or contamination at intervals not to exceed 6 months or at other intervals as specified by the certificate of registration, not to exceed 3 years; and that records of leak test results be maintained for inspection by the Commission.

Contrary to the above, as of September 9, 1992, 65 sealed sources had not been tested for leakage at six-month intervals, as required, and no other interval was specified by the certificates of registration. In addition, leak test results were not maintained for inspection by the Commission in that leak test records for sealed sources possessed by 13 different users were missing from 29 user files which were reviewed.

This is a repetitive violation.

C. Condition 19 of License No. 19–00915–03 requires, in part, that ash residues may be disposed of as ordinary waste provided appropriate surveys pursuant to Section 20.201 of 10 CFR Part 20 are made to determine that concentrations of licensed material appearing in the ash residues do not exceed the concentrations (in terms of microcuries per gram) specified for

water in 10 CFR Part 20, Appendix B, Table II.

Condition 25 of License No. 19–00915–3 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in an application dated July 11, 1989 and a letter dated March 9, 1990.

Item 11.2 of the application dated July 11, 1989 requires that quarterly summaries of the records of incinerations be furnished to the radiation safety staff.

Contrary to the above, as of September 9, 1992, quarterly summaries were not furnished to the radiation safety staff during the period of July 1991 through June 1992 for seven incinerators at four sites (namely, Athens, Georgia; Clay Center, Nebraska; Fargo, North Dakota; and Ames, Iowa), and surveys of ash residues were not performed for three incinerators at three sites (namely, Clay Center, Nebraska; Grand Forks, North Dakota; and Plum Island, New York) during the period of July 1991 through June 1992 to assure that ash residue disposed of as ordinary waste did not exceed the concentrations specified for water in 10 CFR Part 20, Appendix B, Table II.

This is a repetitive violation.

D. 10 CFR 20.270(a) requires that licensed material stored in an unrestricted area be secured against unauthorized removal from the place of storage. 10 CFR 20.207(b) requires that licensed materials in an unrestricted area and not in storage be tended under constant surveillance and immediate control of the licensee. As defined in 10 CFR 20.3(a)(17), an unrestricted area is any area access to which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive materials.

Contrary to the above, on September 22, 1992, licensed material consisting of a nickel-63 electron capture device in a gas chromatograph located in an unlocked storage building, an unrestricted area, at the Boll Weevil Research Laboratory in Mississippi State, Mississippi, was not secured against unauthorized removal and was not under constant surveillance and immediate control of the licensee.

This is a repetitive violation.

E. 10 CFR 20.301 requires that no licensee dispose of licensed material except by certain specified procedures. 10 CFR 20.301(a) requires that no licensee dispose of licensed material except by transfer to an authorized recipient as provided in the regulations in part 30, 40, 60, 61, 70, or 72, whichever may be applicable.

Contrary to the above, on October 31, 1991, a USDA facility in Albany, California sent a drum containing 0.51 millicuries of sulfur-35, 0.003 millicuries of carbon-14, and 0.002 millicuries of cadmium-109 to a normal landfill for disposal in the normal trash, a method not authorized by 10 CFR 20.301. In addition, as of September 2, 1992, byproduct material was routinely disposed of by transfer to other licensees (namely, Pennsylvania State University and Cornell University) who were not authorized to receive radioactive waste for disposal in University Park, Pennsylvania and Ithaca, New York.

F. Condition 25 of License No. 19–00915–03 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in an application dated July 11, 1989, and the letter dated March 9, 1990.

1. Item 9.18 of the application dated July 11, 1989, requires, in part, that a contamination level survey be performed by permit holders at least every three months and the results be reported to the Radiation Safety Officer.

Contrary to the above, as of September 9, 1992, results of contamination level surveys performed by various permit holders every three months were not reported to the Radiation Safety Officer. Specifically, 14 permit holders failed to report the results of one or more quarterly contamination level surveys during the period of January 1991 through June 1992.

2. Item 10.4.2 of the application dated July 11, 1989, requires that licensed material be used by Radiation Safety Committee-approved users in accordance with generally accepted safe practices, the rules and procedures specified in the USDA Radiological Safety Handbook, and as specifically prescribed by the Committee and/or the Radiation Safety Officer.

Contrary to the above, as of September 9, 1992, licensed material was used in a manner different than prescribed by the Radiation Safety Committee (RSC) and/or the Radiation Safety Officer (RSO). Specifically, (1) a permit holder in Pullman, Washington authorized to possess one 50-millicurie americium-241 sealed source possessed five 50-millicurie and one 1000-millicurie americum-241 sealed sources, quantities in excess of those prescribed by the RSC or RSO; (2) a permit holder in Fargo, North Dakota authorized to use one millicurie of nickel-63, possesses an 8-millicurie sealed source of nickel-63, a quantity in excess of that prescribed by the RSC or RSO; (3) in Ithaca, New York, a permit holder possessed a source of cobalt-60 which no person performing activities under this license is authorized by the RSC or RSO to possess; and (4) in Mississippi State, Mississippi the permit holder used its irradiator for purposes other than the boll weevil studies authorized by the RSO, such as irradiation of blood, spiders, and grasshoppers.

3. Item 11.1.7 of the application dated July 11, 1989, requires that users maintain accurate inventories of radioactive materials under their control so that reports can be prepared and submitted when requested by the Radiation Safety Officer.

Contrary to the above, as of September 9, 1992, users' reports of inventories were not submitted when requested. Specifically, 7 of 18 users reviewed did not submit results of inventories requested by the Radiation Safety Officer in 1991.

G. Condition 15 of License No. 19–00915–03 requires that a physical inventory be performed every six months to account for all sources and/or devices received and possessed by the licensee, and that records of inventories be maintained for two years from the date of each inventory.

Contrary to the above, between June 15, 1990, and September 9, 1992, a period in excess of six months, physical inventories of at least 65 sealed sources were not performed and inventory records were not maintained as required.

H. 10 CFR 71.5(a) requires that licensees who transport licensed material outside the confines of their facilities or deliver licensed material to a carrier for transport comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation in 49 CFR Parts 170 through 189.

49 CFR 177.817(e)(2)(i) requires, in part, that when a driver of a motor vehicle transporting licensed material is at the vehicle's controls, the shipping paper shall be within his reach and either readily visible to a person entering the driver's compartment or in a holder which is mounted on the inside of the door on the driver's side of the vehicle.

Contrary to the above, as of September 1, 1992, a USDA employee at the University Park, Pennsylvania, facility routinely stored shipping papers in the portable gauge case during transportation to and from temporary job sites, and therefore, the shipping papers were not within the driver's reach, readily visible to a person entering the driver's compartment, or in a holder mounted on the inside of the

door on the driver's side of the vehicle during transportation of a portable gauge.

I. 10 CFR 19.12 requires, in part, that all individuals working in a restricted area are instructed in the precautions and procedures to minimize exposure to radioactive materials, in the purpose and functions of protective devices employed, and in the applicable provisions of the Commission's regulations and licenses.

Contrary to the above, as of March 5, 1992, an ancillary staff member working in a restricted area at the Pacific Southwest Research Station in Berkeley, California had not been instructed in the precautions and procedures to be followed when he performed duties in the laboratory where licensed material was used and had not been instructed in the applicable provisions of the regulations and the conditions of the license.

J. 10 CFR 19.11 (a) and (b) require, in part, that the licensee post current copies of 10 CFR Part 19, 10 CFR Part 20, the license, the license conditions, documents incorporated into the license, license amendments, and operating procedures; or, if posting of a document is not practicable, that the licensee post a notice describing these documents and where they may be examined. 10 CFR 19.11(c) requires that a licensee post Form NRC–3, "Notice to Employees". 10 CFR 21.6 requires, in part, that the licensee post current copies of 10 CFR Part 21.

Contrary to the above, on March 6, 1992, at the licensee's facility in Placerville, California, current copies of 10 CFR Parts 19 and 20 were not posted; on September 1, 1992, at the licensee's facility in University Park, Pennsylvania, a current copy of Form NRC–3 was not posted; and as of September 23, 1992, at the licensee's facilities in Mississippi State, Mississippi and Tuscaloosa, Alabama, copies of 10 CFR Part 21 were not posted.

This is a repetitive violation.

These violations are categorized in the aggregate as a Severity Level III problem. (Supplements IV and VI)

Civil Penalty—$10,000

2. Summary of Licensee Response

In its written responses, the licensee admits all of the violations. However, the licensee requests that the penalty be mitigated in its entirety. In support of its request for full mitigation, the licensee notes its commitment to an independent assessment of the Radiation Safety Program to achieve and maintain compliance with NRC requirements, as well as recent improvements in its program operations. The licensee also states that the violations do not represent a significant health and safety risk to the public, and it has taken or planned effective corrective actions.

The licensee further notes that the Enforcement Conference in January 1993 resulted in a significant elevation of the importance of the program within the licensee's organization, and its management has become involved in the program improvement plan and has committed its support to it. The licensee also indicates that it has been granted exemptions to the USDA hiring freeze for two additional health physicist positions on the radiation safety staff. In view of the above, the licensee contends that payment of the civil penalty is not necessary to assure management attention to this program or to the licensee's commitment to the improvement process.

3. NRC Evaluation of Licensee Response

The NRC has evaluated the licensee response and has determined that the licensee has not provided an adequate basis for mitigation of the civil penalty. The severity level of the violations and the civil penalty amount were determined in accordance with the NRC's Enforcement Policy and the enforcement action was consistent with action taken for similar violations by other licensees. Supplement VI.C.7 of the NRC Enforcement Policy gives as an example of a Severity Level III violation, a breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities. The NRC places great importance on management control of activities involving licensed materials to ensure that all NRC requirements are met and that any potential violation of an NRC requirement is identified and corrected expeditiously. Thus, the violations are of significant regulatory concern and were properly categorized in the aggregate as a Severity Level III problem.

Further, in determining the amount of the civil penalty for the Severity Level III problem, the NRC considered the escalation and mitigation factors set forth in the NRC Enforcement Policy. As part of that evaluation, the NRC concluded that the base civil penalty amount for this Severity Level III problem should be increased by 300% because the violations were identified by the NRC, the corrective actions were neither prompt nor comprehensive, the licensee's prior enforcement history included violations that resulted in the issuance of a $5,000 civil penalty in August 1990, and some of the violations existed for an extended duration.

With respect to the issues provided in the licensee's response as a basis for mitigation of the penalty, the NRC acknowledges that the licensee did commit to an independent assessment to improve implementation of the radiation safety program. However, this commitment was made only after these violations were identified by the NRC in 1992 and an Enforcement Conference was scheduled, notwithstanding the fact that many of these violations were repetitive, existed for an extended duration, and should reasonably have been prevented if appropriate management attention had been provided to the program after the NRC had previously conducted an enforcement conference with the licensee on July 11, 1990, and issued the $5,000 proposed civil penalty to the licensee on August 16, 1990.

The NRC acknowledges that there was a significant elevation of the importance of the program within the licensee's organization, subsequent to the more recent enforcement conference with the licensee on January 19, 1993. Further, management has apparently become involved in the program improvement plan and has committed its support to it. Nonetheless, these actions were not timely, given the licensee's existing enforcement history. If these plans for improvement had not been taken by the licensee, the NRC would have considered more significant enforcement action. The Licensee's answer and reply to a Notice of Violation provide no new information which changes the conclusion reached in the Notice.

4. NRC Conclusion

The NRC concludes that the licensee has not provided an adequate basis for mitigating any portion of the civil penalty. Accordingly, the NRC has determined that the proposed civil penalty in the amount of $10,000 should be imposed.

[FR Doc. 93–15379 Filed 6–29–93; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–298, License No. DPR–46 EA–93–030]

Nebraska Public Power District Cooper Nuclear Station; Order Imposing Civil Monetary Penalties

I

Nebraska Public Power District (Licensee) is the holder of NRC License

No. DPR–46 issued by the Nuclear Regulatory Commission(NRC or Commission). The license authorizes the Licensee to operate Cooper Nuclear Station in accordance with the provisions of the license.

II

An inspection of the Licensee's activities was conducted February 1–9, 1993. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated March 30, 1993. The Notice described the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalties proposed for the violations.

The Licensee responded to the Notice in a letter dated April 29, 1993. In its response, the Licensee admitted the violations which resulted in the proposed civil penalties, but requested mitigation for reasons that are summarized in the appendix to this Order.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this Order, that the violations occurred as stated and that the penalties proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay civil penalties in the amount of $200,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing," and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

Whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 23rd day of June 1993.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

Appendix

Evaluation and Conclusion

On March 30, 1993, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued for violations identified during an NRC inspection. Nebraska Public Power District (NPPD) responded to the Notice on April 29, 1993. NPPD admitted the violations that resulted in the proposed civil penalties, but requested mitigation. The NRC staff's evaluation and conclusion regarding NPPD's request follow:

Restatement of Violations

A. 10 CFR 50.9 requires, in part, that information provided to the Commission by a licensee shall be complete and accurate in all material respects.

Contrary to the above, in a letter dated December 1, 1992, the licensee provided written information to the Commission that was inaccurate and incomplete in material respects. The information provided by the licensee was in response to a Notice of Violation issued by the NRC on November 3, 1992, involving the failure of the licensee to identify and remove temporary strainers in the Core Spray system. This information was inaccurate because the licensee's response stated, with respect to the Reactor Core Isolation Cooling system, that "A specific completed sign-off in the preoperational test procedure (unlike the CS System preoperational test) indicates that the strainer had been removed prior to start up testing." In fact, no such document existed indicating that the Reactor Core Isolation Cooling pump strainer had been removed. The only document which would have indicated that the strainers had been removed was Startup Test Instruction (STI) 14. On the only available copy of this document, there was no signature in the block adjacent to Step 6.2.9, which said "Remove suction strainers at a convenient time after completion of all RCIC related tests." This information was material because the NRC relied upon it as evidence that no temporary strainers existed in this system. On January 29, 1993, the Reactor Core Isolation Cooling system temporary strainer was found to have been left in the system.

This is a Severity Level III violation (Supplement VII). Civil Penalty—$100,000.

B. 10 CFR part 50, appendix B, Criterion XVI, requires in part, that measures shall be established to assure that conditions adverse to quality, such as deviations and nonconformances, are promptly identified and corrected.

Contrary to the above, between August 1992 and December 1992, measures established by the licensee to promptly identify and correct nonconformances did not assure the identification and correction of a potentially significant condition adverse to quality—the presence of temporary strainers in the Reactor Equipment Cooling and the Reactor Core Isolation Cooling systems. In response to the identification of temporary strainers in the Core Spray system in August 1992, the licensee became aware of an incomplete evaluation for temporary strainers on the Reactor Equipment Cooling system and observed unmarked spacer rings in the Reactor Equipment Cooling system, and did not identify and correct the nonconforming condition until January 1993 when a strainer was observed during corrective maintenance. In addition, the licensee became aware that there was a lack of documentation to substantiate its belief that temporary strainers in the Reactor Core Isolation Cooling system had been removed. In spite of the fact that documentation did not exist, as described in Violation A, the presence of temporary strainers, a nonconforming condition, was not identified until January 1993, following the identification of temporary strainers in the Reactor Equipment Cooling system.

This is a Severity Level III violation (Supplement I). Civil Penalty—$100,000.

Summary of NPPD's Request for Mitigation

In its April 29, 1993 letter, NPPD admitted the above violations but requested mitigation of the penalty, citing the following reasons:

1. The magnitude and extent of the corrective actions taken and planned by NPPD are such that the NRC has already achieved its objectives in the matter without imposing the civil penalties;

2. NPPD has not had an "accuracy and completeness" related violation for many years; and

3. NPPD's previous enforcement history should not reasonably lead to civil penalties of the magnitude proposed.

NRC Staff's Evaluation of Licensee's Request for Mitigation

The NRC staff's evaluation of the Licensee's arguments for mitigation follows:

1. The NRC staff recognizes that NPPD has supplemented the corrective actions it described at the enforcement conference to address the concerns that the NRC staff described in the letter transmitting the March 30, 1993 Notice regarding individual performance issues and NPPD's problem identification and resolution programs. These additional actions, while important, do not serve as evidence that the NRC staff has achieved all of its objectives in this matter. The NRC's Enforcement Policy states that civil penalties are designed to emphasize the need for lasting remedial action and to deter future (emphasis added) violations. The fact that NPPD has taken steps toward preventing future violations is encouraging. However, since the NRC's letter appears to have been the reason for NPPD having developed these steps, and since the success of NPPD's corrective actions for the 10 CFR part 50, appendix B, criterion XVI violation, which involved multiple opportunities to identify the strainer problem, remains to be determined, the NRC does not agree that these actions provide a basis for mitigation of the proposed penalties.

2. The NRC staff does not disagree with NPPD's statements about its history of compliance with 10 CFR 50.9 and the completeness and accuracy of information it has provided to the NRC staff. This information was recognized by the NRC staff in proposing the civil penalty for this violation and in fact, as alluded to in the Notice, resulted in the penalty being reduced. However, this reduction was more than offset by increases for prior opportunities to identify and NRC staff identification of the violation.

3. The NRC staff took NPPD's enforcement and performance history into account in determining the proposed penalties. As indicated above, the penalty for the violation of 10 CFR 50.9 reflected NRC staff's view that NPPD's performance in this specific area had been good. With regard to the violation of 10 CFR part 50, appendix B, criterion XVI, the penalty reflected the NRC staff's view that NPPD's corrective action programs have not been completely effective in identifying and resolving conditions adverse to quality. This was discussed on pages 4–5 of the cover letter to the Notice. Several documented weaknesses in NPPD's corrective action programs were cited in that letter. These were considered evidence of generally poor performance in identifying and resolving problems and, in accordance with the Enforcement Policy, used as a basis for increasing the penalty under the Licensee Performance factor. The NRC staff finds that NPPD's performance was adequately considered in determining the size of the penalties.

NRC Staff's Conclusion

NPPD has not provided information sufficient to cause the NRC staff to consider a reduction in the size of the proposed civil penalties. Consequently, the proposed civil penalties in the amount of $200,000 should be imposed by order.

[FR Doc. 93–15382 Filed 6–29–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–344]

Portland General Electric Co., et al.; (Trojan Nuclear Plant); Exemption

I

The Portland General Electric Company et al. (PGE or the licensee), is the holder of Facility Operating License No. NPF–1 which authorizes possession and maintenance of the Trojan Nuclear Plant (facility or plant). The licensee provides, among other things, that the plant is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility is a pressurized water reactor, currently in the process of being decommissioned, and is located in Columbia County, Oregon, on the Columbia River. The plant is shut down and the reactor is defueled.

II

Title 10 of the Code of Federal Regulations, § 50.54(x) (10 CFR 50.54(x)), allows each licensee to "take reasonable action that departs from a license condition or a technical specification (contained in a license issued under this part) in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent." Section 50.54(y) of 10 CFR states that such "action permitted by paragraph (x) of this section shall be approved, as a minimum, by a licensed senior operator prior to taking the action." The underlying purpose of 10 CFR 50.54(x) and (y) is to permit personnel to take emergency actions in response to abnormal conditions which may not have been considered when the License Conditions and Technical Specifications were formulated when approved by a senior member of the licensee staff who was technically qualified to carry out licensed activities. See 49 FR 13966 (April 1, 1983).

III

By letter dated January 27, 1993, the licensee requested an exemption from 10 CFR 50.54(y) for the Trojan Nuclear Plant. Trojan Nuclear Plant was permanently shut down on November 9, 1992, and defueling of the reactor completed on January 27, 1993. On March 24, 1993, the NRC staff issued an order confirming the commitment of the licensee dated February 17, 1993, not to move fuel back into the containment without prior NRC staff approval. On May 5, 1993, the NRC staff issued an amendment to Facility Operating License No. NPF–1 modifying the operating license to a possession only license. The licensee Certified Fuel Handler Training and Retraining Program was approved by the staff on April 27, 1993. Amendment 191 to the Trojan license permitted the licensee to replace the 10 CFR part 55 licensed operator program at the Trojan Nuclear Plant with the approved Certified Fuel Handler Training and Retraining Program. Senior Reactor Operators are no longer required at Trojan Nuclear Plant. The non-licensed Certified Fuel Handler position is the highest level of defueled plant operator, analogous to a licensed senior operator at an operational facility. Allowing a Certified Fuel Handler, in lieu of a Senior Reactor Operator, to approve the taking of actions under 10 CFR 50.54(x) for a facility with a possession only license

presents no undue risk to the public health and safety.

The licensee will assure that the underlying purpose of 10 CFR 50.54(y) is fulfilled by establishing administrative controls requiring that any emergency action permited by 10 CFR 50.54(x) must be approved, as a minimum, by a Certified Fuel Handler prior to taking the action. The administrative controls will be implemented when the proposed Technical Specification change is implemented.

The application of the regulation in the particular circumstances existing at Trojan Nuclear Plant would not serve the underlying purpose of the rule and is not necessary to achieve the underlying purpose of the rule. A Certified Fuel Handler will have appropriate technical qualifications to carry-out licensed activities under the possession only license, and a Senior Reactor operator is not necessary to approve the taking of action under 10 CFR 50.54(x). Therefore, based on the considerations stated above, the staff concludes that the request of the licensee for an exemption from the requirements of 10 CFR 50.54(y) is acceptable and should be granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Therefore, the Commission hereby grants the exemption request from the requirements of 10 CFR 50.54(y), for the Trojan Nuclear Plant to allow the approvals provided for therein may be granted by a certified fuel handler.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the quality of the human environment (58 FR 33958—June 22, 1993).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 23rd day of June 1993.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–15380 Filed 6–29–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance of a Revised Information Collection Form RI 25–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of a revised information collection. Form RI 25–7, Marital Status Certification, is used to determine whether widows and former spouses receiving survivor annuities from OPM have remarried before reaching age 55 and, thus, are no longer eligible for benefits from OPM.

Approximately 45,000 RI 25–7 forms are completed annually. It takes approximately 15 minutes to complete this form. The total annual burden is 11,250 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received on or before July 30, 1993.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415,

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Chief Administrative Management Branch, (202) 606–0616.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–15356 Filed 6–29–93; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title*: Request for Review of Part B Medicare Claims.

(2) *Form(s) submitted*: G–790, G–791.

(3) *OMB Number*: 3220–0100.

(4) *Expiration date of current OMB clearance*: Three years from date of OMB approval.

(5) *Type of request*: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response*: On occasion.

(7) *Respondents*: Individuals or households.

(8) *Estimated annual number of respondents*: 4,000.

(9) *Total annual responses*: 4,100.

(10) *Average time per response*: .25 hours.

(11) *Total annual reporting hours*: 1,025.

(12) *Collection description*: The Railroad Retirement Board administers the Medicare program for persons covered by the railroad retirement system. The requests provide the means for obtaining reviews of the determinations made by Travelers on claims for Part B Medicare benefits.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93–15324 Filed 6–29–93; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32393A; File No. SR-Amex-93-16]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc., To Extend Its Pilot Relating to the Use of the Auto-Ex System During Periods of Extremely High Order Flow in Equities

June 24, 1993.

Correction

In FR Document No. 93-13466, beginning on page 32161 for Tuesday, June 8, 1993, the first sentence in Column 2 was incorrectly stated. The word "no" should appear in the sentence. The sentence should read as follows: "Moreover, the Exchange allows Auto-Ex to be activated and remain in use only when the spread between the displayed bid and offer is no wider than the 'minimum fractional change'[1] and there is no potential for price improvement."[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-15393 Filed 6-29-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32500; File No. SR-CBOE-93-19]

June 23, 1993.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to a Proposal To Extend Market-Maker Margin and Capital Treatment to Certain Market-Maker Orders Entered Off the Trading Floor

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 20, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE has submitted a proposal to amend its rules to extend market-maker capital and margin treatment to transactions resulting from orders entered from off the floor by CBOE market-makers who are subject to a requirement that at least 75% of their total transactions on the Exchange must be executed in person and not through the use of orders. The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries; set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to accommodate the occasional need of CBOE market-makers to adjust or hedge options positions in their market-maker accounts at times when they are not physically present on the trading floor, without diluting the requirement that the trading activity of market-makers must be in fulfillment of their market-making obligations and must contribute to the maintenance of fair and orderly markets on the Exchange. Under current CBOE Rule 8.7 and the Interpretations adopted thereunder, all CBOE market-makers are obligated to effect not less than 75% of their total contract volume in their appointed classes of options, and to effect not less than 25% of their total transactions in person on the trading floor and not by entry of orders. In addition, Rule 8.1 currently provides that only those transactions that are initiated on the floor of the Exchange qualify for market-maker treatment under the CBOE's rules. The effect of this last requirement is to disallow market-maker treatment for opening transactions of a market-maker resulting from orders entered from off the floor, even if such orders are entered to adjust or hedge the risk of positions of the market-maker that result from his on-floor market-making activity.

The CBOE believes that limiting market-maker treatment to on-floor orders is contrary to the practical reality that market-makers cannot reasonably be expected to be physically present on the trading floor every minute of every day that the market is open. Yet, as a practical matter, that is essentially what current CBOE Rule 8.1 Rule requires. Since a market-maker cannot effectively adjust his positions or engage in hedging or other risk limiting opening transactions from off the Exchange floor without, according to the CBOE, incurring a significant economic penalty, CBOE market-makers must either be physically present on the floor at all times while the market is open, or face significant risks of adverse market movements during those times when they are absent from the trading floor. Further, current CBOE Rule 8.1 imposes a blanket disallowance of market-maker treatment for all transactions resulting from off-floor orders without regard to the overall level of commitment of the individual market-maker toward meeting his market-making responsibilities as evidenced by his record of engaging in in-person transactions. The CBOE believes that current CBOE Rule 8.1 not only disallows market-makers treatment in circumstances where the market-maker is more than adequately meeting his obligations, but by imposing costs on certain hedging or risk-adjusting transactions of market-makers, currant CBOE Rule 8.1 may actually prevent CBOE market-makers from effectively discharging their market-making obligations and may expose them to unacceptable levels of risk.

According to the CBOE, the proposed rule change would remedy this situation by imposing a more stringent in-person requirement on those market-makers who choose to receive market-maker treatment for transactions executed as a result of off-floor orders. As to these market-makers, in place of the existing 25% in-person requirement of Interpretation .03 under CBOE Rule 8.7, they would be required to satisfy the more stringent requirement that 75% of their total transactions must be executed in person and not through the use of orders. This would be in addition to their having to satisfy all of the other

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[1] Amex Rule 127 lists the minimum fractional changes for securities traded on the Exchange.

[2] See letter from Claire P. McGrath, Senior Counsel, Amex, to Mary Revell, Branch Chief, Exchange Branch, Commission, dated February 24, 1992, correcting the filing to reflect that there is no potential for price improvement when the spread between the displayed bid and offer is no wider than the minimum fractional change. The Amex stated that Auto-Ex will automatically prevent the automatic execution of orders when the spread in a security becomes wider than the minimum fractional change. See letter from Clair P. McGrath, Senior Counsel, Amex, to Mary Revell, Branch Chief, Exchange Branch, Commission, dated March 16, 1992.

existing obligations imposed on market-makers, including the requirement that 75% of their total contract volume in each calendar quarter must be in appointed classes.

The Exchange believes that this approach, as reflected in the proposed rule change, represents a more appropriate and realistic treatment of market-maker transactions initiated from off the trading floor than what is provided for under current CBOE Rule 8.1. Extending favorable margin and capital treatment for off-floor transactions only to those market-makers who submit to a 75% in-person requirement should have the effect of increasing the extent to which the transactions of market-makers contribute to liquidity and to the maintenance of fair and orderly markets on the CBOE, by providing for a greater degree of in-person trading by market-makers and by enabling market-makers to better manage the risk of their market-making activities.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) in particular, in that it will promote the maintenance of fair and orderly markets on the CBOE and will contribute to the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–19 and should be submitted by July 21, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15345 Filed 6–29–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and To Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

June 23, 1993.

On June 14, 1993, the Midwest Stock Exchange, Inc. ("MSE") submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–10864	TUTR	Tro Learning Inc., Common Stock, $.01 par value.

The above-referenced issue is being applied for as a replacement for the following security, which forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act for the following issue:

File No.	Symbol	Issuer
7–10865	CLCDF	Clearly Canadian Beverage Corporation, Common Stock, No. par value.

A replacement issue is being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before July 14, 1993, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP as well as the withdrawal of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15346 Filed 6–29–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19542; File No. 812–8306]

The Guardian Insurance & Annuity Company, Inc., et al.

June 23, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemptions under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Guardian Insurance & Annuity Company, Inc. ("GIAC"), The

[1] 17 CFR 200.30–3(a)(12) (1993).

Guardian Separate Account J (the "Separate Account") and Guardian Investor Services Corporation ("GISC").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemptions from sections 2(a)(35), 26(a)(2) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a premium-based deferred sales charge in six equal annual installments from the accumulation value of certain single premium deferred variable annuity contracts (the "Contracts") and the deduction of mortality and expense risk charges from the assets of the Separate Account.

FILING DATE: Applicants filed the application on March 10, 1993 and an amendment on June 3, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 19, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, The Guardian Insurance & Annuity Company, Inc., 201 Park Avenue South, New York, New York 10003.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Senior Attorney, at (202) 272–2058, or Michael V. Wible, Special Counsel, at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. GIAC is a stock life insurance company incorporated under the laws of the state of Delaware on March 2, 1970. GIAC is principally engaged in the sale of life insurance and annuity policies in all 50 states and the District of Columbia. GIAC is a wholly owned subsidiary of The Guardian Life Insurance Company of America.

2. The Separate Account was established by GIAC as a separate account under the laws of the state of Delaware on February 25, 1993. The Separate Account will invest its assets in shares of a growth and income equity fund (the "Fund"), which is to be registered as a diversified, open-end management investment company. The shares of the Fund will be purchased by GIAC for the Separate Account at net asset value. All dividends and capital gains distributions received from the Fund will be reinvested by the Separate Account at net asset value. Shares of the Fund will be redeemed by GIAC at their net asset value to the extent necessary to make payments under the Contracts. A registration statement on Form N–4 has been filed to register the Contracts under the Securities Act of 1933 and to register the Separate Account as a unit investment trust under the 1940 Act.

3. GISC will serve as distributor and principal underwriter of the Contracts. In addition, the Contracts may be distributed by other broker-dealer firms that have entered into sales agreements with GISC and GIAC. The offering of the Contracts is expected to be of a limited duration (*e.g.*, 60 or 90 days). GIAC reserves the right, however, to extend the offering period or to offer the Contracts during subsequent future periods.

4. Two forms of Contract will be offered: (1) A single premium deferred contract which will be offered to individual purchasers and which is not designed to be used in connection with certain retirement plans or individual retirement accounts that qualify for favorable federal income tax treatment under the Internal Revenue Code of 1986, as amended (the "Code"); and (2) a single premium deferred contract which may be purchased and used by individual purchasers in connection with retirement plans or individual retirement accounts that qualify for favorable federal income tax treatment under the Code. Under both forms of the Contract, the purchase price is paid in one sum at the date of issue. The minimum single premium payment is $25,000.

5. The Contracts provide for the accumulation of values on a variable basis. Annuity benefits will be paid on a variable basis in conformity with the Annuity Payout Option chosen. Before the Retirement Date and while the Annuitant is living, the Contract owner is permitted to surrender the Contract for its then current Cash Surrender Value, or, subject to certain restrictions, to withdraw part of the Contract's Accumulation Value. If any Contract owner or the Annuitant dies on or prior to the Retirement Date, a death benefit is payable. The death benefit under Contracts issued with respect to Annuitants under 75 years of age is equal to the greater of (a) the Accumulation Value of the Contract, or (b) the single premium paid (less any withdrawals). For Contracts issued with respect to Annuitants 75 years of age or over, the death benefit is the Accumulation Value of the Contract.

6. GIAC will deduct an annual administration fee of $30 on each Contract Anniversary Date which occurs on or before the Retirement Date. The annual administration fee will be deducted in full upon any surrender of the Contract which occurs on a date other than a Contract Anniversary Date. The annual administration charge is guaranteed not to increase and will be used solely to compensate GIAC for the expenses it incurs to provide administrative services to Contract owners. GIAC represents that the amount to be charged is not greater than the average expected cost of the services to the provided.

7. A deferred sales charge equal to 6% of the single premium payment (the "Contract Loading") will be assessed by deducting from the Accumulation Value six equal installments of 1% of the amount of the single premium payment on each of the first through the sixth Contract Anniversary Dates. The Contract Loading compensates GIAC for expenses relating to the sale of the Contracts.

8. If a Contract is surrendered on or before the sixth Contract Anniversary Date, GIAC will deduct the amount of any unrecovered Contract Loading from the Accumulation Value to calculate the Cash surrender Value of the Contract. The Cash surrender Value will then be paid to the Contract owner. During the first six Contract years, one partial withdrawal is permitted each year. No portion of the Contract Loading is deducted from a partial withdrawal effected during the first six Contract years unless the withdrawal request is for an amount which exceeds 15% of the then Accumulation Value, in which event the withdrawal request will be treated as a request to surrender the Contract. No portion of the Contract Loading is likely to be due on annuitization of a Contract because the Retirement Date may not be earlier than the sixth Contract Anniversary Date. No Contract Loading is deducted upon payment of the Death Benefit. Because the Contract Loading is a percentage of the single premium payment, neither the investment experience of the Separate Account nor surrenders nor partial withdrawals during the first six Contract years will affect the amount of

Contract Loading to which GIAC is entitled.

9. GIAC imposes a charge to compensate it for bearing certain mortality and expense risks in connection with the Contracts. The effective annual rate of this charge is 0.95% of the value of the net assets in the Separate Account. Of that amount, approximately 0.60% is attributable to mortality risks, and approximately 0.35% is attributable to expense risks. If the mortality and expense risk charges are insufficient to cover actual costs and assumed risks, the loss will fall on GIAC. Conversely, if those charges are more than sufficient to cover costs, any excess will be profit to GIAC. GIAC anticipates a profit from those charges in the future. GIAC guarantees that the mortality and expense risk charges will never increase.

The mortality risk borne by GIAC arises from its contractual obligation to make annuity payments (determined in accordance with the annuity tables and other provisions in the Contract) regardless of how long all Annuitants or any individual Annuitant may live. This undertaking assures that neither an Annuitant's own longevity, nor an improvement in general life expectancy, will adversely affect the monthly annuity payments that the Annuitant will receive under the Contract. GIAC also incurs a risk in connection with the death benefit guarantee, for which there is no additional charge.

The expense risk assumed by GIAC is the risk the GIAC's actual administration costs will exceed the amount recovered through administrative charges.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the 1940 Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate, in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. As the proposed Contract Loading is not deducted from the single premium payment prior to the allocation of the premium payment to the Separate Account, it does not fit within the section 2(a)(35) definition of "sales load." Section 2(a)(35) of the 1940 Act, in pertinent part, defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested, less any portion of such difference which is deducted for certain specified fees and expenses. This definition contemplates that the sales load imposed on a security of a registered investment company will be a front-end sales load. While Rule 6c–8 under the 1940 Act specifically allows the deduction of a deferred sales load upon redemption or annuitization of a variable annuity contract, the Rule does not otherwise contemplate the deduction of a sales-related charge during the term of a variable annuity contract. Thus, it could be argued that the imposition of the Contract Loading could result in an impermissible deduction from the Separate Account's assets.

3. Section 26(a)(2)(C) of the 1940 Act prohibits payments from the assets of a registered unit investment trust to its depositor or principal underwriter, except as compensation for performing certain bookkeeping and other administrative duties. Since the Contract Loading is compensation for sales-related expenses, not bookkeeping or other administrative duties, it could be argued that section 26(a)(2)(C) precludes the deduction of the Contract Loading from the Accumulation Value (*i.e.*, an identifiable portion of the assets of a registered unit investment trust) and its payment to GIAC.

4. Section 27(c)(2) of the 1940 Act prohibits a registered investment company or a depositor or underwriter for such company from selling any periodic payment plan certificate unless the proceeds of all the payments under such certificate are held by a trustee or custodian under an agreement containing in substance the provisions of section 26(a)(2). If single premium payment variable annuity contracts were treated as periodic plan certificates, it could be argued that the Separate Account, by virtue of the deduction of the Contract Loading, does not meet the requirements of section 26(a)(2)(C), and therefore that the sale of the Contracts violates Section 27(c)(2) of the 1940 Act.

5. Applicants request exemptions from sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to deduct the Contract Loading in the manner described.

6. Applicants submit that the imposition of a sales load in the form of a premium-based charge that is deducted from Accumulation Value over six years is more favorable to Contract owners than the deduction of the equivalent charge as a front-end sales load as contemplated by section 2(a)(35) of the 1940 Act. First, the full amount of the single premium payment (after a deduction for premium taxes, if applicable) is available for investment in the Separate Account, thereby providing each Contract owner with more investment dollars than if the entire sales charge were deducted from the single premium payment. Second, deferring a sales charge, the amount of which will not be affected by investment experience, can benefit Contract owners by permitting them to receive any positive investment experience on the portion of the charge that is deferred. Third, the fact that the entire amount of the Contract Loading is deducted over time, rather than at issue of the Contract, can favorably affect the amount of the death benefit payable if death occurs during the first six Contract years, since unrecovered Contract Loading is not deducted from death benefit proceeds. Fourth, the total amount charged to a Contract owner is no greater than it would be if the Contract Loading were deducted directly from the single premium payment.

The Commission has previously promulgated regulations permitting the deduction of sales charges from cash values (*i.e.*, a Contract owner's identifiable interest in separate account assets), but only in connection with variable life insurance policies under rule 6e–3(T). Applicants submit that the same reasoning that justifies the exemptions provided by that Rule in connection with variable life insurance policies also justifies exemptive relief in this instance.

7. Applicants further submit that since the Contract Loading has been set at 6% of the single premium payment, it will always be lower than the 9% maximum permitted by Rule 6c–8 and the provisions of the 1940 Act regarding maximum sales loads for variable insurance products or periodic payment plan certificates (*e.g.*, section 27(a)(1) of the 1940 Act).

8. Sections 26(a)(2) and 27(c)(2) of the 1940 Act, described above, may also prohibit the deduction of the mortality and expense risk charge from the Separate Account. Applicants request exemption from these provisions to the extent necessary to deduct those charges.

9. Applicants represent that the charge of 0.95% under the Contracts made for mortality and expense risks is a reasonable and proper insurance charge. GIAC further represents that the charge of 0.95% for mortality and expense risks assumed by GIAC is within the range of industry practice with respect to comparable annuity products. This representation is based upon GIAC's analysis of publicly

available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. GIAC will maintain at its executive office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

10. Applicants acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed by the Commission as being offset by distribution expenses not reimbursed by the Contract Loading. However, GIAC has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by GIAC at its executive office and which GIAC hereby undertakes to make available to the Commission upon request.

11. GIAC also represents that the Separate Account will only invest in management investment companies which undertake, in the event any such company adopts a plan under rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under rule 12b–1.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15348 Filed 6–29–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19544; 811–6112]

The Hudson Fund, Inc.; Notice of Application June 23, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Hudson Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 3, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 19, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 31 West 52nd Street, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272–3018, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end non-diversified management investment company incorporated under the laws of Maryland. On May 29, 1990, Applicant registered under the Act. On the same date Applicant filed a registration statement under section 8(b) of the Act and under the Securities Act of 1933. Applicant's registration statement never became effective.

2. Applicant has never made a public offering and never sold any of its securities.

3. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–15344 Filed 6–29–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19543; 811–6132]

The Wilson Fund; Notice of Application

June 23, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Wilson Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on June 3, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 19, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 31 West 52nd Street, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272–3018, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end non-diversified management investment company incorporated under the laws of Massachusetts. On July 2, 1990, Applicant registered under the Act. On the same date Applicant filed a registration statement under section 8(b) of the Act and under the Securities Act of 1933. Applicant's registration statement never became effective.

2. Applicant has never made a public offering and never sold any of its securities.

3. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-15347 Filed 6-29-93; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund twenty-four existing Small Business Development Centers (SBDCs) on October 1, 1993. Currently there are 57 SBDCs operating in the SBDC program. The following SBDCs are intended to be refunded, subject to the availability of funds: Alabama, Alaska, Connecticut, Delaware, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New York (Upstate), New York (Downstate), Ohio, Puerto Rico, Dallas, Houston, Lubbock, San Antonio, Vermont, Virgin Islands, West Virginia and Wyoming. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR part 135.

EFFECTIVE DATE: September 28, 1993.

ADDRESSES: Comments should be addressed to Ms. Monika Edwards Harrison, Associate Administrator for SBDC Program, U.S. Small Business Administration, 409 Third Street, SW., Fifth Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR part 135, effective September 30, 1983.

In accord with these regulations, specifically 135.4, SBA is publishing this notice to provide public awareness of the pending application of twenty-four existing Small Business Development Centers (SBDCs) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published three months in advance of the expected date of refunding these SBDCs. Relevant information identifying these SBDCs and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Ms. Monika Edwards Harrison, Associate Administrator for SBDC Program, U.S. Small Business Administration, 409 Third Street, SW., Fifth Floor, Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 90 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 90-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The SBDC operates under the general management and oversight of SBA, but with recognition that a partnership exists between the Agency and the SBDC for the delivery of assistance to the small business community. SBDC services shall be provided pursuant to a negotiated Cooperative Agreement with full participation of both parties. SBDCs operate on the basis of a state plan to provide assistance within a state or designated geographical area. The initial plan must have the written approval of the Governor. As a condition to any financial award made to an applicant, non-Federal funds must be provided from sources other than the Federal Government. SBDCs operate under the provisions of Public Law 96-302, as amended by Public Law 98-395, a Notice of Award (Cooperative Agreement) issued by SBA, and the provisions of this Program Announcement.

Purpose and Scope

The SBDC Program is designed to provide quality assistance to small businesses in order to promote growth, expansion, innovation, increased productivity and management improvement. To accomplish these objectives, SBDCs link resources of the Federal, State, and local governments with the resources of the educational system and the private sector to meet the specialized and complex needs of the small business community. SBDCs also coordinate with other SBA programs of business development and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the state, academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources;

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a full-time Director. SBDCs must

ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information, and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State. The SBDC shall also ensure that a full range of business development and technical assistance services are made available to small businesses located in rural areas.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities:

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

The Lead SBDC and all SBDC subcenters shall operate on a forty (40) hour week basis, or during the normal business hours of the State or Host Organization, throughout the calendar year. The amount of time allowed the Lead SBDC and subcenters for staff vacations and holidays shall conform to the policy of the Host organization.

Dated: June 21, 1993.

Erskine B. Bowles,

Administrator.

Addresses of Relevant SBDC State Directors

Mr. John Sandefur, State Director, University of Alabama, 1717 11th Ave. South, Suite 419, Birmingham, AL 35294, (205) 934–7260

Mr. John P. O'Connor, State Director, University of Connecticut, Box U–41, Room 422, Storrs, CT 06269–2041, (203) 486–4135

Mr. Ronald Manning, State Director, Iowa State University, 137 Lynn Avenue, Ames, IA 50010, (515) 292-6351

Dr. John Baker, State Director, Northeast Louisiana University, College of Business Admin., 700 University Avenue, Monroe, LA 71209, (318) 342–5506

Mr. John Ciccarelli, State Director, University of Massachusetts, School of Management, Amherst, MA 01003, (413) 545–6301

Mr. Raleigh Byars, State Director, University of Mississippi, Old Chemistry Building, University, MS 38677, (601) 232–5001

Mr. James L. King, State Director, State University of New York, SUNY Plaza, S–523, Albany, NY 12246, (518) 443–5398

Ms. Jan Fredericks, State Director, University of Alaska/Anchorage, 430 West 7th Avenue, Suite 110, Anchorage, AK 99501, (907) 274–7232

Mr. Clinton Tymes, State Director, University of Delaware, Suite 005–Purnell Hall, Newark, DE 19711, (302) 831–2747

Ms. Janet Holloway, State Director, University of Kentucky, 225 Business & Economics Bldg., Lexington, KY 40506–0034, (606) 257–7668

Mr. Woodrow McCutchen, State Director, Department of Economic and Employment Development, 217 East Redwood St., 9th Floor, Baltimore, MD 21202 (410) 333–6995

Dr. Normal Schlafmann, State Director, Wayne State University, 2727 Second Avenue, Detroit, MI 48201, (313) 577-4848

Mr. Max Summers, State Director, University of Missouri, Suite 300, University Place, Columbia, MO 65211, (314) 882–0344

Ms. Holly Schick, State Director, Ohio Department of Development, 77 South High Street, Columbus, OH 43226–1001, (614) 466–2711

Mr. Jose Romaguera, Director, University of Puerto Rico, Box 5253–College Station, Mayaguez, PR 00708, (809) 834–3590

Dr. Elizabeth Gatewood, Region Director, University of Houston, 601 Jefferson, Suite 2330, Houston, TX 77002, (713) 752—8444

Mr. Robert McKinley, Region Director, Univ. of Texas at San Antonio, 801 South Bowie Street, San Antonio, TX 78249, (512) 224–0791

Mr. Chester Williams, Director, Univ. of the Virgin Islands, Grand Hotel Building, Annex B, P.O. Box 1087, St. Thomas, US V. Islands 00804, (809) 776–3206

Mr. Jim Glover, State Director, Casper Community College, 951 North

Poplar, Casper WY 82601, (307) 235–4825
Ms. Liz Klimback., Region Director, Dallas Community College, 1402 Corinth Street, Dallas, TX 75215, (214) 565–5833
Mr. Craig Bean, Region Director, Texas Tech University, 2579 South Loop 289, Suite 114, Lubbock, TX 79423–1637, (806) 745–3973
Mr. Donald L. Kelpinski, State Director, Vermont Technical College, P.O. Box 422, Randolph Center, VT 05060, (802) 728–9101
Ms. Hazel Kroesser, State Director, Governor's Office of Community, and Industrial Development, 1115 Virginia Street, East, Charleston, WV 25310 (304) 558–2960

[FR Doc. 93–15243 Filed 6–29–93; 8:45 am]
BILLING CODE 8025–01–M

Delegation of Authority No. 1–A (Revision 19); Delegation of Authority

Delegation of Authority No. 1–A (Revision 18) is hereby revised to read as follows:

(a) Pursuant to authority vested in me by the Small Business Act, of 1958, 72 Stat. 384, as amended is hereby delegated to the following officials in the following order:

(1) Associate Deputy Administrator for Business Development
(2) Associate Deputy Administrator for Finance, Investment and Procurement
(3) Chief of Staff
(4) Counselor to the Administrator
(5) General Counsel
(6) Associate Deputy Administrator for Management and Administration and Chief Financial Officer

to perform, in event of the absence or incapacity of the Administrator and the Deputy Administrator any and all acts which the Administrator is authorized to perform, including but not limited to authority to issue, modify, or revoke delegations of authority and regulations, except exercising authority under sections 9(d) and 11 of the Small Business Act, as amended.

(b) An individual acting in any of the positions in paragraph (a) remains in the line of succession only if he or she has been designated acting by the Administrator or Acting Administrator due to a vacancy in the position.

(c) This delegation is not in derogation of any authority residing in the above-listed officials relating to the operations of their respective programs, nor does it affect the validity of any delegations currently in force and effect and not revoked or revised herein.

Effective Date: June 30, 1993.

Dated: June 21, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–15384 Filed 6–29–93; 8:45 am]
BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Allegheny County, PA

AGENCY: Federal Highway Administration (FHWA), Pennsylvania Department of Transportation (PennDOT).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Lawrenceville section of the City of Pittsburgh in Allegheny County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: John Gerner, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108–1086, Telephone: (717) 782–3411. Henry Nutbrown, P.E., District Engineer, Pennsylvania Department of Transportation, Four Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–4500.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), will prepare an environmental impact statement (EIS) for the construction of a new at-grade industrial access road. The proposed road would extend from 21st Street in the Strip District of Pittsburgh, eastward through Lawrenceville to Washington Boulevard (S.R. 0008). Approximate length of the proposed roadway is 5.5 miles.

The purpose of the roadway is to relieve traffic congestion along Butler Street (S.R. 2122) and neighboring side streets by diverting traffic to the new roadway. The roadway will also support continued economic stability and redevelopment of the heavily industrialized area.

Alternatives that will be considered in the EIS include: (1.) No Action; (2.) Transportation System Management (TSM) Improvements; (3.) Upgrading Butler Street (S.R. 2122); and (4.) Construction of a new at-grade roadway on new location. A number of alignment variations of the final alternatives will be studied and incorporated into the EIS.

The following environmental areas will be investigated for inclusion in the EIS: project need, traffic, safety, air quality, noise and vibration, socioeconomics and land use, historic and archaeological sites, municipal, industrial and hazardous waste contamination, soils and geology, floodplains, surface water resources, groundwater resources, aquatic environment, wetlands, endangered species, vegetation and wildlife, agricultural lands, visual, construction impacts, energy, and Section 4(f) resources.

Letters describing the proposed EIS Plan of Study and soliciting comments will be submitted to appropriate Federal, State and local agencies and to private organizations and citizens who express interest in the project. Meetings will be held with appropriate agencies throughout the course of the project. Public meetings will be held in the project area during the summer of 1993, fall of 1993, summer of 1994 and the winter of 1995. Public notices of the time and place of these meetings and the public hearing will be given in a timely fashion. Additional public involvement and interagency coordination activities will be undertaken, as necessary, throughout the development of the EIS. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalogue of Federal Domestic Assistance Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Philibert A. Ouellet,

District Engineer, Harrisburg, Pennsylvania.

[FR Doc. 93–15325 Filed 6–29–93; 8:45 am]
BILLING CODE 4910–22–M

Maritime Administration

[Docket No. S–890]

Lykes Brothers Steamship Co., Inc.; Show-Cause Proceeding

This docket concerns the application, under section 605(c) of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1175(c)) (the Act), of Lykes Bros.

Steamship Co., Inc. (Lykes) to generally conform its Trade Routes (TR) 21 (U.S. Gulf/United Kingdom and Northern Europe), 13 (U.S. Gulf and South Atlantic/Mediterranean), 10 (U.S. North Atlantic/Mediterranean), and Trade Area (TA) 4 (U.S. Great Lakes/Mediterranean, India, Persian Gulf and Red Sea) subsidized service authority, to the service description of TR 1 (U.S./Europe, Mediterranean), as redefined by Docket R–111, Notice of Final Determination of Essential Trade Routes, Docket No. R–111, 52 FR 17,879, 24 SRR 177, 181 (MA 1987). The Maritime Subsidy Board (Board) has rendered its decision, pursuant to 46 CFR 203.5(c), in the form of an Order (which is available from the Secretary, Maritime Administration, room 7300, 400 Seventh Street, SW. Washington, DC 20590) setting forth tentative conclusions on all matters of fact and law at issue in this proceeding which are quoted verbatim as follows:

1. Lykes' Application is one for additional service within the meaning of the first clause of section 605(c);

2. Farrell's concerns have been addressed by retaining the existing maximum sailing limitations from North and South Atlantic ports to the Mediterranean per the revised service description set forth below;

3. All issues of fact and law arising under this Application, as limited herein, may be appropriately addressed by means of a show cause procedure provided for in the Board's rule at 46 CFR part 203;

4. The U.S.-flag service on TR 1, and individual segments thereof, is presently inadequate, and is expected to remain inadequate for the remaining term of Lykes' ODS contract;

5. Grant of Lykes' application will further the purposes and policy of the Act.

The foregoing tentative conclusions will be issued in final form, unless within thirty days of the date of publication of this notice, interested persons show cause why such conclusions should not be issued. Persons having an interest in the application and who desire to comment or show cause may do so by filing a submission, including support or rebuttal of the tentative conclusions set forth above, in triplicate, with the Secretary, Maritime Subsidy Board, room 7300, 400 Seventh Street, SW., Washington, DC 20590 by the close of business on or before thirty days from the date of the publication of this notice.

Response to such comments shall be filed within ten days thereafter. The Board will consider the submissions of all interested persons and determine the disposition to be made of matters hereby noticed.

By Order of the Maritime Subsidy Board.

Dated: June 24, 1993.

James E. Saari,

Secretary.

[FR Doc. 93–15353 Filed 6–29–93; 8:45 am]

BILLING CODE 3510–25–P

National Highway Traffic Safety Administration

[Docket No. 93–26; Notice 2]

Determination That Nonconforming 1993 BMW 750iL Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1993 BMW 750iL passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1993 BMW 750iL passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1993 BMW 750iL), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Liphardt & Associates, Inc. of Ronkonkoma, New York (Registered Importer R–90–004) petitioned NHTSA to determine whether 1993 BMW 750iL passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on April 30, 1993 (58 FR 26180) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #41 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1993 BMW 750iL not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1993 BMW 750iL originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 24, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–15411 Filed 6–29–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–27; Notice 2]

Determination That Nonconforming 1986 Volkswagen Scirocco Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA) DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1986 Volkswagen Scirocco passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1986 Volkswagen Scirocco passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1986 Volkswagen Scirocco), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (Registered Importer R–90–005) petitioned NHTSA to determine whether 1986 Volkswagen Scirocco passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on May 4, 1993 (58 FR 26584) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #42 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1986 Volkswagen Scirocco not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1986 Volkswagen Scirocco originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 24, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–15412 Filed 6–29–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–30; Notice 2]

Determination That Nonconforming 1981 Volvo 262C Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1981 Volvo 262C passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1981 Volvo 262C passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1981 Volvo 262C), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that

it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (Registered Importer R–90–005) petitioned NHTSA to determine whether 1981 Volvo 262C passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on May 4, 1993 (58 FR 26583) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #43 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1981 Volvo 262C not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1981 Volvo 262C originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued: June 24, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–15413 Filed 6–29–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–45; Notice 1]

Receipt of Petition for Determination That Nonconforming 1971 Daimler Limousine DR420 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1971 Daimler Limousine DR420 passenger cars are eligible for importation.

SUMMARY: This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a determination that a 1971 Daimler Limousine DR420 passenger car that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because it has safety features that comply with, or are capable of being modified to comply with, those standards.

DATES: The closing date for comments on the petition is July 30, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.].

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified vehicle, a vehicle that does not conform to all applicable Federal motor vehicle safety standards may be admitted into the United States if NHTSA determines that the safety features of the vehicle comply with, or are capable of being modified to comply with, those standards based on destructive test data or such other evidence that NHTSA determines to be adequate.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

ICI International, Inc. of Orlando, Florida ("ICI") (Registered Importer R–90–003) has petitioned NHTSA to determine whether 1971 Daimler Limousine DR420 passenger cars that were not originally manufactured in conformity with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. The petitioner contends that this vehicle has safety features that comply with, or are capable of being modified to comply with, all applicable safety standards.

Specifically, the petitioner claims that the 1971 Daimler Limousine DR420 complies with Standards Nos. 102 *Transmission Shift Lever Sequence * * **.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 112 *Headlamp Concealment Devices*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 201 *Occupant Protection in Interior Impact*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, and 212 *Windshield Retention.*

Petitioner also contends that the 1971 Daimler Limousine DR420 is capable of being modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installations of U.S.-model headlamp assemblies with sealed beam headlamps and front side markers; (b) installation of U.S.-model tail lamp assemblies and rear side markers.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 114 *Theft Protection*: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number*: Installation of a VIN plate that can be read from outside the left windshield pillar.

Standard No. 202 *Head Restraints*: Installation of head restraints at each outboard front seating position.

Standard No. 208 *Occupant Crash Protection*: (a) Installation of lap belts in each of the two rear seating positions; (b) installation of a placard on the inside surface of the driver's door stating that the vehicle has a total seating capacity of four.

Standard No. 209 *Seat Belt Assemblies*: Installation of two rear seat belt assemblies that are permanently and legibly labeled by its original manufacturer.

Standard No. 210 *Seat Belt Assembly Anchorages*: Installation of seat belt assembly anchorages at the two rear seating positions by bolting them in three different locations to the crossmember and frame under the rear seat.

Standard No. 301 *Fuel System Integrity*: Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 24, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–15414 Filed 6–29–93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 24, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0062.
Form Number: IRS Forms 3903 and 3903F.
Type of Review: Extension.
Title: Moving Expense and Foreign Moving Expenses.
Description: Internal Revenue Code (IRC) Section 217 requires itemization of various allowable moving expenses. IRC Section 274(n) limits certain meal expenses to 80%. Forms 3903 and 3903F are filed with Form 1040 by individuals claiming employment related moves. The data is used to help verify that the expenses are deductible and that the deduction is computed correctly.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 1,607,278.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—1 hour, 5 minutes.
Learning about the law or the form—7 minutes.
Preparing the form—31 minutes.
Copying, assembling, and sending the form to the IRS—20 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 3,295,539 hours.

OMB Number: 1545–0072.
Form Number: IRS Form 2119.
Type of Review: Revision.
Title: Sale of Your Home.
Description: Individuals who sell their main home use Form 2119, even if they had a loss, and whether or not they buy a new main home. The form is also used by taxpayers age 55 or older who elect to exclude the gain on the sale of their main home. The information is used to determine whether or not the sale has been reported correctly.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 1,377,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—46 minutes.
Learning about the law or the form—17 minutes.
Preparing the form—55 minutes.
Copying, assembling, and sending the form to the IRS—20 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 3,167,100 hours.

OMB Number: 1545–0121.
Form Number: IRS Form 1116.
Type of Review: Extension.
Title: Foreign Tax Credit—Individual, Fiduciary, or Nonresident Alien Individual.
Description: Form 1116 is used by individuals (including nonresident aliens) and fiduciaries who paid foreign income taxes on U.S. taxable income, to compute the foreign tax credit. This information is used by IRS to verify the foreign tax credit.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 589,900.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hours, 44 minutes.
Learning about the law or the form—48 minutes.
Preparing the form—1 hour, 53 minutes.
Copying, assembling, and sending the form to the IRS—55 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 3,415,521 hours.

OMB Number: 1545–0227.
Form Number: IRS Form 6251.
Type of Review: Revision.
Title: Alternative Minimum Tax—Individuals.
Description: Form 6251 is used by individuals with adjustments, tax preference items, taxable income above certain exemption amounts, or certain credits. Form 6251 computes the alternative minimum tax which is added to regular tax. The information is needed to ensure the taxpayer is complying with the law.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 225,622.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—2 hours, 17 minutes.
Learning about the law or the form—1 hour, 13 minutes.
Preparing the form—1 hour, 43 minutes.
Copying, assembling, and sending the form to the IRS—20 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 1,252,202 hours.
OMB Number: 1545–1032.
Form Number: IRS Form 8689.
Type of Review: Extension.
Title: Allocation of Individual Income Tax to the Virgin Islands.
Description: Used by U.S. citizens or residents as an attachment to Form 1040 when they have Virgin Islands source income. The data is used by IRS to verify the amount claimed on Form 1040 for taxes paid to the Virgin Islands.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 800.
Estimated Burden Hours Per Respondents/Recordkeeper:
Recordkeeping—33 minutes.
Learning about the law or the form—18 minutes.
Preparing the form—59 minutes.
Copying, assembling, and sending the form to the IRS—20 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 1,736 hours.
OMB Number: 1545–1073.
Form Number: IRS Form 8801.
Type of Review: Revision.
Title: Credit For Prior Year Minimum Tax—Individuals and Fiduciaries.
Description: Form 8801 is used by individuals, estates, and trusts to compute the minimum tax credit, if any, available from a tax year beginning after 1986 to be used in the current year or to be carried forward for use in a future year.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 38,744.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—1 hour, 33 minutes.
Learning about the law or the form—1 hour, 3 minutes.
Preparing the form—1 hour.
Copying, assembling, and sending the form to the IRS—17 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 150,714.
OMB Number: 1545–1173.
Form Number: IRS Form 8815.
Type of Review: Extension.
Title: Exclusion of Interest From Series EE U.S. Savings Bonds Issued After 1989.
Description: If an individual redeems series EE U.S. Savings Bonds issued after 1989 and pays qualified higher education expenses during the year, the interest on the bonds may be excludable from income. Form 8815 is used by the individual to figure the amount of savings bond interest that is excludable.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 25,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—53 minutes.
Learning about the law or the form—11 minutes.
Preparing the form—35 minutes.
Copying, assembling, and sending the form to the IRS—34 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 50,420 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20244.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–15396 Filed 6–29–93; 8:45 am]

BILLING CODE 4830–01–M

Departmental Offices

Rechartering of the Treasury Borrowing Committee of the Public Securities Association

AGENCY: Departmental Offices, Treasury Department.

ACTION: Notice of determination of necessity for renewal of the Treasury Borrowing Advisory Committee of the Public Securities Association.

SUMMARY: It is in the public interest to continue the existence of the Treasury Borrowing Advisory Committee of the Public Securities Association.

The Department of the Treasury announces the renewal of the charter for the Treasury Borrowing Advisory Committee of the Public Securities Association in accordance with the Federal Advisory Committee Act, 5 U.S.C. app. I.

The Secretary of the Treasury has determined that the renewal of this committee is necessary and in the public interest. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Purpose

The committee provides informed advice as representatives of the financial community to the Secretary of the Treasury and Treasury staff, upon the Secretary of the Treasury's request, in carrying out Federal financing and in the management of the public debt.

Scope

The committee considers commercial and financial information relevant to its objectives and consults with and advises the Secretary of the Treasury and Treasury staff with respect to debt management operations, and makes reports and recommendations.

Meetings are closed to the public since all portions of the meeting concern matters that are exempt from disclosure under the provision of subsection 552b (c)(4) and (c)(9)(A)(i) of title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

The advice consists of commercial and financial information given and received in confidence. As such, debt management advisory committee activities concern matters which fall with the exception covered by subsection 552b(c)(4) of title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although Treasury's final announcement of financing plans may not reflect the recommendation provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities markets. Thus, these meetings also fall within the exception covered by subsection 552(b)(c)(9)(A)(i) of title 5 of the United States Code.

Membership consists of 20–25 members who are experts in Government securities markets, involved in a senior position in debt markets as investor, investment advisor, banker or as a dealer, bank or non-bank in debt securities and are appointed by the Public Securities Association from its association membership. Members must be highly competent, experienced and actively involved in financial markets. Effort is made to get regional representation so that committee views are a reasonable proxy for nationwide views. As far as possible, balance between bank and non-bank dealers is

sought. From time to time, members are added or deleted to reflect changing responsibilities and to provide for a rotation of membership in areas where more than one qualified candidate may be available.

Statement of Public Interest

It is in the public interest to continue the existence of the Treasury Borrowing Advisory Committee of the Public Securities Association. The Secretary of the Treasury, with the concurrence of the General Services Administration, has also approved renewal of the committee.

Authority for this committee will expire two years from the date the charter is filed with the appropriate Congressional committees, unless prior to the expiration of its charter, the committee is renewed.

The Assistant Secretary (Management) has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463) the Department of the Treasury has renewed the charter of the Treasury Borrowing Advisory Committee of the Public Securities Association and approved the following membership:

Daniel A. Ahearn, Partner, Wellington Management Co., 75 State Street, Boston, MA 02109.
Thomas Bennett, Partner, Miller Anderson & Sherrerd, One Tower Bridge, West Conshohocken, PA 19428.
Louis Betanzos, Executive Vice President, National Bank of Detroit, 611 Woodward Avenue, Detroit, MI 48226.
Jon S. Corzine, Partner, Goldman, Sachs & Company, 85 Broad Street, New York, NY 10004.
Ralphael de la Gueronniere, Chairman, Discount Corporation of New York, 58 Pine Street, New York, NY 10005.
Kenneth de Regt, Managing Director, Morgan Stanley & Company, 25 Cabot Square, Canary Wharf, London E14 4QA, England.
Richard Kelly, Chairman of the Board, Aubrey G. Lanston & Co., Inc., 1 Chase Manhattan Pl. 53rd Fl., New York, NY 10005.
Mark F. Kessenich, Jr., President, Eastbridge Capital, Inc., 135 East 56th Street, New York, NY 10022.
Bruce R. Lakefield, Managing Director, Lehman Brothers, 200 Vesey Street, 9th Fl., New York, NY 10285.
Robert D. McKnew, Executive Vice President, Bank of America, 555 California Street, 10th Fl., San Francisco, CA 94104.
Gregory C. Menne, Vice President, A.G. Edwards & Sons, Inc., One North Jefferson, St. Louis, MO 63103.
Daniel T. Napoli, Senior Vice President & Director, Merrill Lynch Capital Markets & Risk Management, World Financial Center, N. Tower, New York, NY 10281.
Richard B. Roberts, Exec. Vice President, Wachovia Bank & Trust Co., NA, P.O. Box 3099, Winston-Salem, NC 27105.
Marcy Recktenwald, Managing Director, BT Securities, Inc., 130 Liberty Street, New York, NY 10006.
Joseph Rosenberg, President, Lawton General Corporation, 667 Madison Avenue, New York, NY 10021–8087.
Stephen Thieke, Managing Director, Morgan Guaranty Trust Co., 60 Wall Street, 4th Fl., New York, NY 10260.
Craig M. Wardlaw, Exec. Vice President, NationsBank Corporation, NationsBank Corporate Center, Charleston, NC 28255–0001.
Patricia Zlotin, Exec. Vice President, Massachusetts Financial Services Co., 500 Boylston Street, Boston, MA 021167.

Dated: June 25, 1993.

Deborah M. Witchey,

Acting Assistant Secretary (Management).

[FR Doc. 93–15397 Filed 6–29–93; 8:45 am]

BILLING CODE 4810-25-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Advisory Committee for Trade Policy and Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Advisory Committee for Trade Policy and Negotiations meeting date and closure of meeting.

SUMMARY: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

DATES: The meeting of the Advisory Committee for Trade Policy and Negotiations is scheduled for June 30, 1993.

ADDRESSES: The meetings will be held at the Sheraton Carlton Hotel, 16th and K Streets, NW., Washington, DC from 11:30 a.m. to 4 p.m. unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Thomas Hynes, Director, Public Liaison, Office of the United States Trade Representative, Executive Office of the President.

Ira S. Shapiro,

Acting United States Trade Representative.

[FR Doc. 93–15436 Filed 6–29–93; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 124
Wednesday, June 30, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (Eastern Time) Tuesday, July 13, 1993.

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be open to the public and part of the Meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes
2. Report to the Commission:
   Systemic Investigations & Review Program, Office of Program Operations
3. Request for Comments on the Use of Alternative Dispute Resolution and Negotiated Rulemaking Procedures
4. Notice of Proposed Rulemaking Regarding Guidelines on Harassment based on Race, Color, Religion, Gender, National Origin, Age, and Disability

Closed Session

1. Litigation Authorization: General Counsel Recommendations
2. Agency Adjudication and Determination on the Record of Federal Agency Discrimination Complaint Appeals
3. Report on Systemic Cases

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 663-7100 (voice) and (202) 663-4077 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663-4070.

Dated: June 28, 1993.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 93-15648 Filed 6-28-93; 3:59 pm]

BILLING CODE 6750-06

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 33855, June 21, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., Wednesday, June 23, 1993.

CHANGES IN THE MEETING: The following topic was moved from the closed portion of the meeting to the open portion of the meeting.

- System 2000.

Through the System 2000 topic was eligible for consideration in the closed session of the meeting pursuant to the exemptions in section 552b(c) and (9)(B) of title 5 of the United States Code, the Board determined that the public interest would be best served if the topic was discussed in the open portion of the meeting. No earlier notice of this change was practicable.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408-2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93-15571 Filed 6-28-93; 1:12 pm]

BILLING CODE 6725-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [58 FR 34498 June 25, 1993].

STATUS: Closed meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, June 22, 1993.

CHANGE IN THE MEETING: Deletion/ Addition.

A closed meeting scheduled for Monday, June 28, 1993, at 11:00 a.m. has been cancelled.

A closed meeting will be held on Wednesday, June 30, 1993, at 2:30 p.m., to consider the following items:

Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Opinions.
Administrative proceeding order.

Commissioner Roberts, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Christine Sakach at (202) 272-2300.

Dated: June 25, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-15570 Filed 6-28-93; 1:11 pm]

BILLING CODE 8010-01-M

Federal Register

Wednesday
June 30, 1993

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

Incorporation of General Industry Safety and Health Standards Applicable to Construction Work and Technical Amendments; Final Rules

VOL 58 ISS 124 JE 30 1993 UMI

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

Incorporation of General Industry Safety and Health Standards Applicable to Construction Work

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final Rule; Incorporation and designation of existing standards applicable to construction work to codify them as construction standards.

SUMMARY: OSHA is incorporating the regulatory text of the General Industry Safety and Health Standards (part 1910) that have been identified as applicable to construction work into the Safety and Health Regulations for Construction (29 CFR part 1926). For some time, elements of both labor and management within the construction industry have requested the Agency to develop a single set of OSHA regulations for the exclusive use of that industry. OSHA prepared this document in response to the concerns of the affected parties and because the Agency recognizes the need for uniform enforcement information. This action will assist employers and employees in obtaining more up-to-date information on their construction safety and health obligations.

EFFECTIVE DATE: June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3647, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202)219–8151.

SUPPLEMENTARY INFORMATION:

Background

OSHA has recognized, since early in its existence, that there are circumstances where the safety and health standards for construction employment (29 CFR part 1926) are less comprehensive than the safety and health standards for general industry employment (29 CFR part 1910). In a number of cases, the Agency has determined that it is appropriate to cite a construction employer for violation of a part 1910 standard, to effectuate the purposes of the OSH Act. (See 29 CFR 1910.5(c), incorporated into the Construction Standards as 29 CFR 1926.20(d).)

By 1978, a number of part 1910 standards had been identified as applicable to construction. As a result, both employers and employees requested that OSHA issue a single volume which would present all of the regulations, whether from part 1910 or from part 1926, that the Agency considered applicable to construction employment. The parties requesting consolidation stated that notifying employers of the applicable part 1910 standards would facilitate compliance.

On February 9, 1979, OSHA issued a Notice of Enforcement Policy and Republication of Standards (44 FR 8577) which reprinted the entire text of 29 CFR part 1926, together with certain General Industry Safety and Health Standards contained in 29 CFR part 1910 which had been identified as applicable to construction employment. On April 6, 1979, the Agency issued a correction notice (54 FR 20940). Subsequently, to promote uniform enforcement, OSHA addressed the application of part 1910 standards to construction employment in field directives CPL 2- 1.68 (2-28-79) and CPL 2-45A CH-1 (8-18-83).

In addition, in 1983 the Agency produced and distributed OSHA Publication 2207, Construction Industry Standards, which presented the part 1910 and part 1926 standards covered by the February 9, 1979, and April 6, 1979, notices. This OSHA publication was reprinted in 1986, and revised in 1987. The volume was available through the Government Printing Office and from the Agency itself in limited quantities.

More recently, a number of parties, including the Advisory Committee on Construction Safety and Health (See Transcript of 6-20-90 meeting, pp. 165-169), have suggested that OSHA consolidate all regulations applicable to construction in a single volume, either by revising 29 CFR part 1926 or by updating and reprinting OSHA Publication 2207. In response to these suggestions, the Agency revised and reissued Publication 2207 in 1991. The initial printing run of the 1991 volume has now sold out.

In this notice, in order to provide construction employers and employees with a more comprehensive compilation of applicable safety and health standards, OSHA is revising its part 1926 regulations by adding identified part 1910 standards to part 1926, complete with their own part 1926 designations.

Most of the General Industry standards incorporated through this action have long been applied to construction employment. A few recent standards, such as the standards for Process Safety Management (PSM), 29 CFR 1910.119, and Hazardous Waste Operations, 29 CFR 1910.120, are being added to part 1926 at this time because OSHA has determined that their inclusion is necessary for the protection of construction workers.

For example, the Agency is aware that employees who perform construction work at petrochemical facilities may be exposed to process hazards. The inclusion of the PSM standard, incorporated here as 29 CFR 1926.64, provides clear notice that employers must comply with that standard to protect employees performing construction work from exposure to the process hazards covered by the standard.

Also, OSHA is adding an Appendix A to 29 CFR 1926.55, "Gases, vapors, fumes, dusts and mists," to set out the 1970 American Conference of Governmental Industrial Hygienists (ACGIH) threshold limit values (TLVs) for airborne contaminants. A reference to the new Appendix A is being added to 29 CFR 1926.55(a). Existing 29 CFR 1926.55(a) requires employers to protect each employee performing construction work from exposures that exceed the 1970 ACGIH TLVs. The existing standard simply references the ACGIH document, so employers have had to look outside 29 CFR part 1926 to determine what TLVs apply to their operations. Recognizing that, with the passage of time, it has become increasingly difficult to obtain the 1970 ACGIH document, OSHA has included the 1970 TLVs in the 1983, 1986, and 1987 editions of OSHA Publication 2207. The Agency believes that spelling out the TLVs in Appendix A will facilitate compliance with 29 CFR 1926.55(a). The substantive provisions of the standard are unchanged.

In addition, the list of TLVs in 29 CFR 1926.55, Appendix A, will be annotated as necessary to indicate that, where a particular substance is regulated both by a TLV listed in Appendix A and by a standard incorporated into new 29 CFR part 1926, subpart Z, the subpart Z standard prevails.

OSHA is also adding an Appendix A at the end of 29 CFR part 1926 to set out the section numbers for the part 1910 standards incorporated into part 1926, along with the part 1926 designations for the incorporated part 1910 standards. This list is essentially the same as that published in 1979, updated to reflect amendments and revisions to the part 1910 standards since that date. OSHA is adding the Appendix so construction industry employers and employees can readily identify the General Industry Standards that have been incorporated into the Construction Industry Standards.

While every effort has been made to identify those General Industry standards which are most likely to be applicable to construction work, OSHA notes that other part 1910 standards may, under some circumstances, also be applicable. A special procedure has been established by the National Office to address any such situations.

Insofar as enforcement experience and other information indicate that part 1910 standards not included in the list are applicable to construction, part 1926 will be modified accordingly, through the issuance of technical amendments.

Exemption From Notice and Comment Procedures

With regard to this action, OSHA has determined that it is not required to follow procedures for public notice and comment rulemaking under either section 4 of the Administrative Procedure Act (5 U.S.C. 553) or under section 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655(b)). This action does not affect the substantive requirements or coverage of the standards themselves. This incorporation does not modify or revoke existing rights or obligations, nor does it establish new ones. This action simply provides additional information on the existing regulatory burden. OSHA, therefore, finds that notice and public procedure are impracticable and unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B). For the same reasons, OSHA also finds that, in accordance with 29 CFR 1911.5, good cause exists for dispensing with the public notice and comment procedures prescribed in section 6(b) of the Occupational Safety and Health Act.

Exemption From Delayed Effective Date Requirement

Under 5 U.S.C. 553, OSHA finds that there is good cause for making this Appendix effective upon publication in the **Federal Register**. This incorporation simply provides additional information on the existing regulatory burden without increasing that burden.

List of Subjects in 29 CFR Part 1926

Construction industry, Electric power, Fire prevention, Hazardous substances, Motor vehicle safety, Noise control, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

Authority

Accordingly, pursuant to sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970, (29 U.S.C. 653, 655 and 657); section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); section 4 of the Administrative Procedure Act (5 U.S.C. 553); Secretary of Labor's Order 1-90 (55 FR 9033); and 29 CFR part 1911. 29 CFR part 1926 is amended as set forth below.

Signed at Washington, DC, this 16th day of June, 1993.

David C. Zeigler,

Acting Assistant Secretary of Labor

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

The following list reflects **ONLY** *new table of contents entries for sections that are being added to part 1926 by this document. The new section headings read as follows:*

Subpart C—General Safety and Health Provisions

Sec.

* * * *

1926.33 Access to employee exposure and medical records.
1926.34 Means of egress.
1926.35 Employee emergency action plans.

Subpart D—Occupational Health and Environmental Control

* * * *

1926.64 Process safety management of highly hazardous chemicals.
1926.65 Hazardous waste operations and emergency response.
1926.66 Criteria for design and construction for spray booths.

Subpart E—Personal Protective Equipment and Life Saving Equipment

1926.95 Criteria for personal protective equipment.
1926.96 Occupational foot protection.
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Subpart C—General Safety and Health Provisions

Authority: Section 8 of the Occupational Safety and Health Act, 29 U.S.C. 657; Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR part 1911.

1. In § 1926.20, new paragraphs (c) through (e) are added to read as follows:

§ 1926.20 General safety and health provisions and applicability of standards.

* * * * *

(c) The standards contained in this part shall apply with respect to employments performed in a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Trust Territory of the Pacific Islands; Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and the Canal Zone.

(d) (1) If a particular standard is specifically applicable to a condition, practice, means, method, operation, or process, it shall prevail over any different general standard which might otherwise be applicable to the same condition, practice, means, method, operation, or process.

(2) On the other hand, any standard shall apply according to its terms to any employment and place of employment in any industry, even though particular standards are also prescribed for the industry to the extent that none of such particular standards applies.

(e) In the event a standard protects on its face a class of persons larger than employees, the standard shall be applicable under this part only to employees and their employment and places of employment.

2. In § 1926.32, paragraphs (g) through (r) are redesignated as paragraphs (h) through (s), and new paragraph (g) is added. The text of new paragraph (g) reads as follows:

§ 1926.32 Definitions.

* * * * *

(g) *Construction work.* For purposes of this section, *Construction work* means work for construction, alteration, and/or repair, including painting and decorating.

* * * * *

3. New § 1926.33 is added to read as follows:

§ 1926.33 Access to employee exposure and medical records.

(a) *Purpose.* The purpose of this section is to provide employees and their designated representatives a right of access to relevant exposure and medical records; and to provide representatives of the Assistant Secretary a right of access to these records in order to fulfill responsibilities under the Occupational Safety and Health Act. Access by employees, their representatives, and the Assistant Secretary is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this section, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this section is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

(b) *Scope and application.* (1) This section applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

(2) This section applies to all employee exposure and medical records, and analyses thereof, of such employees, whether or not the records are mandated by specific occupational safety and health standards.

(3) This section applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house of contractual (*e.g.*, fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this section are complied with regardless of the manner in which the records are made or maintained.

(c) *Definitions*—(1) *Access* means the right and opportunity to examine and copy.

(2) *Analysis using exposure or medical records* means any compilation of data or any statistical study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

(3) *Designated representative* means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purposes of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

(4) *Employee* means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of a deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

(5) *Employee exposure record* means a record containing any of the following kinds of information:

(i) Environmental (workplace) monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;

(ii) Biological monitoring results which directly assess the absorption of a toxic substance or harmful physical agent by body systems (*e.g.*, the level of a chemical in the blood, urine, breath, hair, fingernails, etc) but not including results which assess the biological effect of a substance or agent or which assess an employee's use of alcohol or drugs;

(iii) Material safety data sheets indicating that the material may pose a hazard to human health; or

(iv) In the absence of the above, a chemcial inventory or any other record which reveals where and when used and the identity (*e.g.*, chemical, common, or trade name) of a toxic substance or harmful physical agent.

(6)(i) *Employee medical record* means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel or technician, including:

(A) Medical and employment questionnaires or histories (including job description and occupational exposures),

(B) The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including chest and other X–ray examinations taken for the purposes of establishing a base-line or detecting occupational illness, and all biological monitoring not defined as an "employee exposure record"),

(C) Medical opinions, diagnoses, progress notes, and recommendations,

(D) First aid records,

(E) Descriptions of treatments and prescriptions, and

(F) Employee medical complaints.

(ii) "Employee medical record" does not include medical information in the form of:

(A) Physical specimens (*e.g.*, blood or urine samples) which are routinely discarded as a part of normal medical practice; or

(B) Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (*e.g.*, social security number, payroll number, etc.); or

(C) Records created solely in preparation for litigation which are privileged from discovery under the applicable rules of procedure or evidence; or

(D) Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

(7) *Employer* means a current employer, a former employer, or a successor employer.

(8) *Exposure* or *exposed* means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes past exposure and potential (*e.g.*, accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

(9) *Health professional* means a physician, occupational health nurse, industrial hygienist, toxicologist, or epidemiologist, providing medical or other occupational health services to exposed employees.

(10) *Record* means any item, collection, or grouping of information regardless of the form or process by which it is maintained (*e.g.*, paper document, microfiche, microfilm, X-ray film, or automated data processing).

(11) *Specific chemical identity* means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

(12)(i) *Specific written consent* means a written authorization containing the following:

(A) The name and signature of the employee authorizing the release of medical information,

(B) The date of the written authorization,

(C) The name of the individual or organization that is authorized to release the medical information,

(D) The name of the designated representative (individual or organization) that is authorized to receive the released information,

(E) A general description of the medical information that is authorized to be released,

(F) A general description of the purpose for the release of the medical information, and

(G) A date or condition upon which the written authorization will expire (if less than one year).

(ii) A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless the release of future information is expressly authorized, and does not operate for more than one year from the date of written authorization.

(iii) A written authorization may be revoked in writing prospectively at any time.

(13) *Toxic substance or harmful physical agent* means any chemical substance, biological agent (bacteria, virus, fungus, etc.), or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo—or hyperbaric pressure, etc.) which:

(i) Is listed in the least printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS); or

(ii) Has yielded positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer; or

(iii) Is the subject of a material safety data sheet kept by or known to the employer indicating that the material may pose a hazard to human health.

(14) *Trade secret* means any confidential formula, pattern, process, device, or information or compilation of information that is used in an employer's business and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.

(d) *Preservation of records.* (1) Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

(i) *Employee medical records.* The medical record for each employee shall be preserved and maintained for at least the duration of employment plus thirty (30) years, except that the following types of records need not be retained for any specified period:

(A) Health insurance claims records maintained separately from the employer's medical program and its records,

(B) First aid records (not including medical histories) of one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, and the like which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a non-physician and if maintained separately from the employer's medical program and its records, and

(C) The medical records of employees who have worked for less than (1) year for the employer need not be retained beyond the term of employment if they are provided to the employee upon the termination of employment.

(ii) *Employee exposure records.* Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(A) Background data to environmental (workplace) monitoring or measuring, such as laboratory reports and worksheets, need only be retained for one (1) year as long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(B) Material safety data sheets and paragraph (c)(5)(iv) records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years;[1] and

(C) Biological monitoring results designated as exposure records by specific occupational safety and health standards shall be preserved and maintained as required by the specific standard.

(iii) *Analyses using exposure or medical records.* Each analysis using exposure or medial records shall be preserved and maintained for at least thirty (30) years.

(2) Nothing in this section is intended to mandate the form, manner, or process by which an employer preserves a record as long as the information

[1] Material safety data sheets must be kept for those chemicals currently in use that are effected by the Hazard Communication Standard in accordance with 29 CFR 1926.59(g).

contained in the record is preserved and retrievable, except that chest X-ray films shall be preserved in their original state.

(e) *Access to records*—(1) *General.* (i) Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner. If the employer cannot reasonably provide access to the record within fifteen (15) working days, the employer shall within the fifteen (15) working days apprise the employee or designated representative requesting the record of the reason for the delay and the earliest date when the record can be made available.

(ii) The employer may require of the requester only such information as should be readily known to the requester and which may be necessary to locate or identify the records being requested (*e.g.*, dates and locations where the employee worked during the time period in question).

(iii) Whenever an employee or designated representative requests a copy of a record, the employer shall assure that either:

(A) A copy of the record is provided without cost to the employee or representative,

(B) The necessary mechanical copying facilities (*e.g.*, photocopying) are made available without cost to the employee or representative for copying the record, or

(C) The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

(iv) In the case of an original X-ray, the employer may restrict access to on-site examination or make other suitable arrangements for the temporary loan of the X-ray.

(v) Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (*i.e.*, search and copying expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that

(A) An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

(B) An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

(vi) Nothing in this section is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this section.

(2) *Employee and designated representative access*—(i) *Employee exposure records.* (A) Except as limited by paragraph (f) of this section, each employer shall, upon request, assure the access to each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this section, an exposure record relevant to the employee consists of:

(*1*) A record which measures or monitors the amount of a toxic substance or harmful physical agent to which the employee is or has been exposed;

(*2*) In the absence of such directly relevant records, such records of other employees with past or present job duties or working conditions related to or similar to those of the employee to the extent necessary to reasonably indicate the amount and nature of the toxic substances or harmful physical agents to which the employee is or has been subjected, and

(*3*) Exposure records to the extent necessary to reasonably indicate the amount and nature of the toxic substances or harmful physical agents at workplaces or under working conditions to which the employee is being assigned or transferred.

(B) Requests by designated representatives for unconsented access to employee exposure records shall be in writing and shall specify with reasonable particularity:

(*1*) The records requested to be disclosed; and

(*2*) The occupational health need for gaining access to these records.

(ii) *Employee medical records.* (A) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in paragraph (e)(2)(ii)(D) of this section.

(B) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. Appendix A to this section contains a sample form which may be used to establish specific written consent for access to employee medical records.

(C) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(*1*) Consult with the physician for the purposes of reviewing and discussing the records requested,

(*2*) Accept a summary of material facts and opinions in lieu of the records requested, or

(*3*) Accept release of the requested records only to a physician or other designated representative.

(D) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employee's health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(E) A physician, nurse, or other responsible health care personnel maintaining medical records may delete from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

(iii) *Analyses using exposure or medical records.* (A) Each employee shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(B) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.), the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of the analysis need not be provided.

(3) *OSHA access.* (i) Each employer shall, upon request, and without derogation of any rights under the Constitution or the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, that the employer chooses to exercise, assure the prompt access of representatives of the Assistant Secretary of Labor for Occupational Safety and Health to employee exposure and medical records and to analyses using exposure or medical records. Rules of agency practice and procedure governing OSHA access to employee medical records are contained in 29 CFR 1913.10.

(ii) Whenever OSHA seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to 29 CFR 1913.10(d), the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

(f) *Trade secrets.* (1) Except as provided in paragraph (f)(2) of this section, nothing in this section precludes an employer from deleting from records requested by a health professional, employee, or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in mixture, as long as the health professional, employee, or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the requesting party to identify where and when exposure occurred.

(2) The employer may withhold the specific chemical identity, including the chemical name and other specific identification of a toxic substance from a disclosable record provided that:

(i) The claim that the information withheld is a trade secret can be supported;

(ii) All other available information on the properties and effects of the toxic substance is disclosed;

(iii) The employer informs the requesting party that the specific chemical identity is being withheld as a trade secret; and

(iv) The specific chemical identity is made available to health professionals, employees and designated representatives in accordance with the specific applicable provisions of this paragraph.

(3) Where a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a toxic substance is necessary for emergency or first-aid treatment, the employer shall immediately disclose the specific chemical identity of a trade secret chemical to the treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The employer may require a written statement of need and confidentiality agreement, in accordance with the provisions of paragraphs (f)(4) and (f)(5), as soon as circumstances permit.

(4) In non-emergency situations, an employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under paragraph (f)(2) of this section, to a health professional, employee, or designated representative if:

(i) The request is in writing;

(ii) The request describes with reasonable detail one or more of the following occupational health needs for the information:

(A) To assess the hazards of the chemicals to which employees will be exposed;

(B) To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;

(C) To conduct pre-assignment or periodic medical surveillance of exposed employees;

(D) To provide medical treatment to exposed employees;

(E) To select or assess appropriate personal protective equipment for exposed employees;

(F) To design or assess engineering controls or other protective measures for exposed employees; and

(G) To conduct studies to determine the health effects of exposure.

(iii) The request explains in detail why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information would not enable the health professional, employee or designated representative to provide the occupational health services described in paragraph (f)(4)(ii) of this section:

(A) The properties and effects of the chemical;

(B) Measures for controlling workers' exposure to the chemical;

(C) Methods of monitoring and analyzing worker exposure to the chemical; and,

(D) Methods of diagnosing and treating harmful exposures to the chemical;

(iv) The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and,

(v) The health professional, employee, or designated representative and the employer or contractor of the services of the health professional or designated representative agree in a written confidentiality agreement that the health professional, employee or designated representative will not use the trade secret information for any purpose other than the health need(s) asserted and agree not to release the information under any circumstances other than to OSHA, as provided in paragraph (f)(9) of this section, except as authorized by the terms of the agreement or by the employer.

(5) The confidentiality agreement authorized by paragraph (f)(4)(iv) of this section:

(i) May restrict the use of the information to the health purposes indicated in the written statement of need;

(ii) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and,

(iii) May not include requirements for the posting of a penalty bond.

(6) Nothing in this section is meant to preclude the parties from pursuing non-contractual remedies to the extent permitted by law.

(7) If the health professional, employee or designated representative receiving the trade secret information decides that there is a need to disclose it to OSHA, the employer who provided the information shall be informed by the health professional prior to, or at the same time as, such disclosure.

(8) If the employer denies a written request for disclosure of a specific chemical identity, the denial must:

(i) Be provided to the health professional, employee or designated representative within thirty days of the request;

(ii) Be in writing;

(iii) Include evidence to support the claim that the specific chemical identity is a trade secret;

(iv) State the specific reasons why the request is being denied; and,

(v) Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.

(9) The health professional, employee, or designated representative whose request for information is denied under paragraph (f)(4) of this section may refer the request and the written denial of the request to OSHA for consideration.

(10) When a heath professional employee, or designated representative refers a denial to OSHA under paragraph (f)(9) of this section, OSHA shall consider the evidence to determine if:

(i) The employer has supported the claim that the specific chemical identity is a trade secret;

(ii) The health professional employee, or designated representative has supported the claim that there is a medical or occupational health need for the information; and

(iii) The health professional, employee or designated representative has demonstrated adequate means to protect the confidentiality.

(11)(i) If OSHA determines that the specific chemical identity requested under paragraph (f)(4) of this section is not a *bona fide* trade secret, or that it is a trade secret but the requesting health professional, employee or designated representatives has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means for complying with the terms of such agreement, the employer will be subject to citation by OSHA.

(ii) If an employer demonstrates to OSHA that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, the Assistant Secretary may issue such orders or impose such additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to assure that the occupational health needs are met without an undue risk of harm to the employer.

(12) Notwithstanding the existence of a trade secret claim, an employer shall, upon request, disclose to the Assistant Secretary any information which this section requires the employer to make available. Where there is a trade secret claim, such claim shall be made no later than at the time the information is provided to the Assistant Secretary so that suitable determinations of trade secret status can be made and the necessary protections can be implemented.

(13) Nothing in this paragraph shall be construed as requiring the disclosure under any circumstances of process or percentage of mixture information which is trade secret.

(g) *Employee information.* (1) Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform current employees covered by this section of the following:

(i) The existence, location, and availability of any records covered by this section;

(ii) The person responsible for maintaining and providing access to records; and

(iii) Each employee's rights of access to these records.

(2) Each employer shall keep a copy of this section and its appendices, and make copies readily available, upon request, to employees. The employer shall also distribute to current employees any informational materials concerning this section which are made available to the employer by the Assistant Secretary of Labor for Occupational Safety and Health.

(h) *Transfer of records.* (1) Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this section to the successor employer. The successor employer shall receive and maintain these records.

(2) Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected current employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

(3) Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

(i) Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

(ii) Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

(4) Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

(i) *Appendices.* The information contained in appendices A and B to this section is not intended, by itself, to create any additional obligations not otherwise imposed by this section nor detract from any existing obligation.

(Approved by the Office of Management and Budget under control number 1218–0065)

Appendix A to § 1926.33—Sample Authorization Letter for the Release of Employee Medical Record Information to a Designated Representative (Non-Mandatory)

I, _____ (full name of worker/patient), hereby authorize _____ (individual or organization holding the medical records) to release to _____ (individual or organization authorized to receive the medical information), the following medical information from my personal medical records:

_____

_____

(Describe generally the information desired to be released)

I give my permission for this medical information to be used for the following purpose:

_____

_____

but I do not give permission for any other use or re-disclosure of this information.

(Note: Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year); (2) describe medical information to be created in the future that you intend to be covered by this authorization letter; or (3) describe portions of the medical information in your records which you do not intend to be released as a result of this letter.)

_____

_____

_____

_____

Full name of Employee or Legal Representative

_____

Signature of Employee or Legal Representative

_____

_____

Date of Signature

Appendix B to § 1926.33—Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS) (Non-Mandatory)

Section 1926.33 applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents (paragraph (b)(2)). The term *toxic substance or harmful physical agent* is defined by paragraph (c)(13) to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The regulation uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the regulation applies to exposure and medical records (and analyses of these records) relevant to employees exposed to the substance.

It is appropriate to note that the final regulation does not require that employers

purchase a copy of RTECS, and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the rule. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by section 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669(a)(6)).

The Introduction to the 1980 printed edition describes the RTECS as follows:

"The 1980 edition of the Registry of Toxic Effects of Chemical Substances, formerly known as the Toxic Substances list, is the ninth revision prepared in compliance with the requirements of Section 20(a)(6) of the Occupational Safety and Health Act of 1970 (Public Law 91–596). The original list was completed on June 28, 1971, and has been updated annually in book format. Beginning in October 1977, quarterly revisions have been provided in microfiche. This edition of the Registry contains 168,096 listings of chemical substances: 45,156 are names of different chemicals with their associated toxicity data and 122,940 are synonyms. This edition includes approximately 5,900 new chemical compounds that did not appear in the 1979 Registry. (p. xi)

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers ad information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternative processes which may be less hazardous. Some organizations, including health agencies and chemical companies, have included the NIOSH Registry accession numbers with the listing of chemicals in their files to reference toxicity information associated with those chemicals. By including foreign language chemical names, a start has been made toward providing rapid identification of substances produced in other countries. (p. xi)

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known doses entering an organism by any route described. (p xi)

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences. Thus, the Registry lists many substances that are common in everyday life and are in nearly every household in the United States. One can name a variety of such dangerous substances: prescription and non-prescription drugs; food additives; pesticide concentrates, sprays, and dusts; fungicides; herbicides; paints; glazes, dyes; bleaches and other household cleaning agents; alkalies; and various solvents and diluents. The list is extensive because chemicals have become an integral part of our existence."

The RTECS printed edition may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402 (202–783–3238).

Some employers may desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchased from the GPO (Order the "Microfiche Edition, Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at the OSHA Technical Data Center, Room N2439—Rear, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (202–219–7500), or at any OSHA Regional or Area Office (*See*, major city telephone directories under U.S. Government—Labor Department).

4. New § 1926.34 is added to read as follows:

§ 1926.34 Means of egress.

(a) *General.* In every building or structure exits shall be so arranged and maintained as to provide free and unobstructed egress from all parts of the building or structure at all times when it is occupied. No lock or fastening to prevent free escape from the inside of any building shall be installed except in mental, penal, or corrective institutions where supervisory personnel is continually on duty and effective provisions are made to remove occupants in case of fire or other emergency.

(b) *Exit marking.* Exits shall be marked by a readily visible sign. Access to exits shall be marked by readily visible signs in all cases where the exit or way to reach it is not immediately visible to the occupants.

(c) *Maintenance and workmanship.* Means of egress shall be continually maintained free of all obstructions or impediments to full instant use in the case of fire or other emergency.

5. New § 1926.35 is added to read as follows:

§ 1926.35 Employee emergency action plans.

(a) *Scope and application.* This section applies to all emergency action plans required by a particular OSHA standard. The emergency action plan shall be in writing (except as provided in the last sentence of paragraph (e)(3) of this section) and shall cover those designated actions employers and employees must take to ensure employee safety from fire and other emergencies.

(b) *Elements.* The following elements, at a minimum, shall be included in the plan:

(1) Emergency escape procedures and emergency escape route assignments;

(2) Procedures to be followed by employees who remain to operate critical plant operations before they evacuate;

(3) Procedures to account for all employees after emergency evacuation has been completed;

(4) Rescue and medical duties for those employees who are to perform them;

(5) The preferred means of reporting fires and other emergencies; and

(6) Names or regular job titles of persons or departments who can be contacted for further information or explanation of duties under the plan.

(c) *Alarm system.* (1) The employer shall establish an employee alarm system which complies with §1926.159.

(2) If the employee alarm system is used for alerting fire brigade members, or for other purposes, a distinctive signal for each purpose shall be used.

(d) *Evacuation.* The employer shall establish in the emergency action plan the types of evacuation to be used in emergency circumstances.

(e) *Training.* (1) Before implementing the emergency action plan, the employer shall designate and train a sufficient number of persons to assist in the safe and orderly emergency evacuation of employees.

(2) The employer shall review the plan with each employee covered by the plan at the following times:

(i) Initially when the plan is developed,

(ii) Whenever the employee's responsibilities or designated actions under the plan change, and

(iii) Whenever the plan is changed.

(3) The employer shall review with each employee upon initial assignment those parts of the plan which the employee must know to protect the employee in the event of an emergency. The written plan shall be kept at the workplace and made available for employee review. For those employers with 10 or fewer employees the plan

may be communicated orally to employees and the employer need not maintain a written plan.

Subpart D—Occupational Health and Environmental Control

6. New § 1926.50(g) is added to read as follows:

§ 1926.50 Medical services and first aid.

* * * * *

(g) Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.

7. New paragraphs (a)(6), (d)(2), (f)(2) through (4) and (g) through (i) are added to § 1926.51 and the text of existing § 1926.51 (d) and (f) are redesignated as new paragraphs (d)(1) and (f)(1), respectively. The text of these standards read as follows

§ 1926.51 Sanitation.

(a)

* * * * *

(6) *Potable water* means water which meets the quality standards prescribed in the U.S. Public Health Service Drinking Water Standards, published in 42 CFR part 72, or water which is approved for drinking purposes by the State or local authority having jurisdiction.

* * * * *

(d) *Food handling.*

* * * * *

(2) All employee food service facilities and operations shall be carried out in accordance with sound hygienic principles. In all places of employment where all or part of the food service is provided, the food dispensed shall be wholesome, free from spoilage, and shall be processed, prepared, handled, and stored in such a manner as to be protected against contamination.

* * * * *

(f) *Washing facilities.*

* * * * *

(2) *General.* Washing facilities shall be maintained in a sanitary condition.

(3) *Lavatories.* (i) Lavatories shall be made available in all places of employment. The requirements of this subdivision do not apply to mobile crews or to normally unattended work locations if employees working at these locations have transportation readily available to nearby washing facilities which meet the other requirements of this paragraph.

(ii) Each lavatory shall be provided with hot and cold running water, or tepid running water.

(iii) Hand soap or similar cleansing agents shall be provided.

(iv) Individual hand towels or sections thereof, of cloth or paper, warm air blowers or clean individual sections of continuous cloth toweling, convenient to the lavatories, shall be provided.

(4) *Showers.* (i) Whenever showers are required by a particular standard, the showers shall be provided in accordance with paragraphs (f)(4) (ii) through (v) of this section.

(ii) One shower shall be provided for each 10 employees of each sex, or numerical fraction thereof, who are required to shower during the same shift.

(iii) Body soap or other appropriate cleansing agents convenient to the showers shall be provided as specified in paragraph (f)(3)(iii) of this section.

(iv) Showers shall be provided with hot and cold water feeding a common discharge line.

(v) Employees who use showers shall be provided with individual clean towels.

(g) *Eating and drinking areas.* No employee shall be allowed to consume food or beverages in a toilet room nor in any area exposed to a toxic material.

(h) *Vermin control.* Every enclosed workplace shall be so constructed, equipped, and maintained, so far as reasonably practicable, as to prevent the entrance or harborage of rodents, insects, and other vermin. A continuing and effective extermination program shall be instituted where their presence is detected.

(i) *Change rooms.* Whenever employees are required by a particular standard to wear protective clothing because of the possibility of contamination with toxic materials, change rooms equipped with storage facilities for street clothes and separate storage facilities for the protective clothing shall be provided.

8. In § 1926.53, paragraphs (c) through (r) are added to read as follows:

§ 1926.53 Ionizing radiation.

* * * * *

(c) *Definitions applicable to this section.* (1) *Radiation* includes alpha rays, beta rays, gamma rays, X-rays, neutrons, high-speed electrons, high-speed protons, and other atomic particles; but such term does not include sound or radio waves, or visible light, or infrared or ultraviolet light.

(2) *Radioactive material* means any material which emits, by spontaneous nuclear disintegration, corpuscular or electromagnetic emanations.

(3) *Restricted area* means any area access to which is controlled by the employer for purposes of protection of individuals from exposure to radiation or radioactive materials.

(4) *Unrestricted area* means any area access to which is not controlled by the employer for purposes of protection of individuals from exposure to radiation or radioactive materials.

(5) *Dose* means the quantity of ionizing radiation absorbed, per unit of mass, by the body or by any portion of the body. When the provisions in this section specify a dose during a period of time, the dose is the total quantity of radiation absorbed, per unit of mass, by the body or by any portion of the body during such period of time. Several different units of dose are in current use. Definitions of units used in this section are set forth in paragraphs (c) (6) and (7) of this section.

(6) *Rad* means a measure of the dose of any ionizing radiation to body tissues in terms of the energy absorbed per unit of mass of the tissue. One rad is the dose corresponding to the absorption of 100 ergs per gram of tissue (1 millirad (mrad)=0.001 rad).

(7) *Rem* means a measure of the dose of any ionizing radiation to body tissue in terms of its estimated biological effect relative to a dose of 1 roentgen (r) of X-rays (1 millirem (mrem)=0.001 rem). The relation of the rem to other dose units depends upon the biological effect under consideration and upon the conditions for irradiation. Each of the following is considered to be equivalent to a dose of 1 rem:

(i) A dose of 1 roentgen due to X- or gamma radiation;

(ii) A dose of 1 rad due to X-, gamma, or beta radiation;

(iii) A dose of 0.1 rad due to neutrons or high energy protons;

(iv) A dose of 0.05 rad due to particles heavier than protons and with sufficient energy to reach the lens of the eye;

(v) If it is more convenient to measure the neutron flux, or equivalent, than to determine the neutron dose in rads, as provided in paragraph (c)(7)(iii) of this section, 1 rem of neutron radiation may, for purposes of the provisions in this section be assumed to be equivalent to 14 million neutrons per square centimeter incident upon the body; or, if there is sufficient information to estimate with reasonable accuracy the approximate distribution in energy of the neutrons, the incident number of neutrons per square centimeter equivalent to 1 rem may be estimated from Table D–53.1:

TABLE D–53.1—NEUTRON FLUX DOSE EQUIVALENTS

Neutron energy (million electron volts (Mev))	Number of neutrons per square centimeter equivalent to a dose of 1 rem (neutrons/cm²)	Average flux to deliver 100 millirem in 40 hours (neutrons/cm² per sec.)
Thermal	970×10⁶	670
0.0001	720×10⁶	500
0.005	820×10⁶	570
0.02	400×10⁶	280
0.1	120×10⁶	80
0.5	43×10⁶	30
1.0	26×10⁶	18
2.5	29×10⁶	20
5.0	26×10⁶	18
7.5	24×10⁶	17
10	24×10⁶	17
10 to 30	14×10⁶	10

(8) For determining exposures to X- or gamma rays up to 3 Mev., the dose limits specified in this section may be assumed to be equivalent to the "air dose". For the purpose of this section *air dose* means that the dose is measured by a properly calibrated appropriate instrument in air at or near the body surface in the region of the highest dosage rate.

(d) *Exposure of individuals to radiation in restricted areas.* (1) Except as provided in other paragraphs of this section, no employer shall possess, use, or transfer sources of ionizing radiation in such a manner as to cause any individual in a restricted area to receive in any period of one calendar quarter from sources in the employer's possession or control a dose in excess of the limits specified in Table D–53.2:

TABLE D–53.2

	Rems per calendar quarter
Whole body: Head and trunk; active blood-forming organs; lens of eyes; or gonads	1¼
Hands and forearms; feet and ankles	18¾
Skin of whole body	7½

(2) An employer may permit an individual in a restricted area to receive doses to the whole body greater than those permitted under paragraph (d)(1) of this section, so long as:

(i) During any calendar quarter the dose to the whole body shall not exceed 3 rems; and

(ii) The dose to the whole body, when added to the accumulated occupational dose to the whole body, shall not exceed 5 (N–18) rems, where "N" equals the individual's age in years at his last birthday; and

(iii) The employer maintains adequate past and current exposure records which show that the addition of such a dose will not cause the individual to exceed the amount authorized in this subparagraph. As used in this subparagraph *Dose to the whole body* shall be deemed to include any dose to the whole body, gonad, active bloodforming organs, head and trunk, or lens of the eye.

(3) No employer shall permit any employee who is under 18 years of age to receive in any period of one calendar quarter a dose in excess of 10 percent of the limits specified in Table D–53.2.

(4) *Calendar quarter* means any 3-month period determined as follows:

(i) The first period of any year may begin on any date in January: *Provided,* That the second, third, and fourth periods accordingly begin on the same date in April, July, and October, respectively, and that the fourth period extends into January of the succeeding year, if necessary to complete a 3-month quarter. During the first year of use of this method of determination, the first period for that year shall also include any additional days in January preceding the starting date for the first period; or

(ii) The first period in a calendar year of 13 complete, consecutive calendar weeks; the second period in a calendar year of 13 complete, consecutive weeks; the third period in a calendar year of 13 complete, consecutive calendar weeks; the fourth period in a calendar year of 13 complete, consecutive calendar weeks. If at the end of a calendar year there are any days not falling within a complete calendar week of that year, such days shall be included within the last complete calendar week of that year. If at the beginning of any calendar year there are days not falling within a complete calendar week of that year, such days shall be included within the last complete calendar week of the previous year; or

(iii) The four periods in a calendar year may consist of the first 14 complete, consecutive calendar weeks; the next 12 complete, consecutive calendar weeks, the next 14 complete, consecutive calendar weeks, and the last 12 complete, consecutive calendar weeks. If at the end of a calendar year there are any days not falling within a complete calendar week of that year, such days shall be included (for purposes of this section) within the last complete calendar week of the year. If at the beginning of any calendar year there are days not falling within a complete calendar week of that year, such days shall be included (for purposes of this section) within the last complete week of the previous year.

(e) *Exposure to airborne radioactive material.* (1) No employer shall possess, use or transport radioactive material in such a manner as to cause any employee, within a restricted area, to be exposed to airborne radioactive material in an average concentration in excess of the limits specified in Table 1 of appendix B to 10 CFR part 20. The limits given in Table 1 are for exposure to the concentrations specified for 40 hours in any workweek of 7 consecutive days. In any such period where the number of hours of exposure is less than 40, the limits specified in the table may be increased proportionately. In any such period where the number of hours of exposure is greater than 40, the limits specified in the table shall be decreased proportionately.

(2) No employer shall possess, use, or transfer radioactive material in such a manner as to cause any individual within a restricted area, who is under 18 years of age, to be exposed to airborne radioactive material in an average concentration in excess of the limits specified in Table II of appendix B to 10 CFR part 20. For purposes of this paragraph, concentrations may be averaged over periods not greater than 1 week.

(3) *Exposed* as used in this paragraph means that the individual is present in an airborne concentration. No allowance shall be made for the use of protective clothing or equipment, or particle size.

(f) *Precautionary procedures and personal monitoring.* (1) Every employer shall make such surveys as may be necessary for him to comply with the provisions in this section. *Survey* means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions. When appropriate, such evaluation includes a physical survey of the location of materials and equipment, and measurements of levels of radiation or concentrations of radioactive material present.

(2) Every employer shall supply appropriate personnel monitoring equipment, such as film badges, pocket chambers, pocket dosimeters, or film rings, and shall require the use of such equipment by:

(i) Each employee who enters a restricted area under such circumstances that he receives, or is likely to receive, a dose in any calendar quarter in excess of 25 percent of the applicable value specified in paragraph (d)(1) of this section; and

(ii) Each employee under 18 years of age who enters a restricted area under such circumstances that he receives, or is likely to receive, a dose in any calendar quarter in excess of 5 percent of the applicable value specified in paragraph (d)(1) of this section; and

(iii) Each employee who enters a high radiation area.

(3) As used in this section:

(i) *Personnel monitoring equipment* means devices designed to be worn or carried by an individual for the purpose of measuring the dose received (e.g., film badges, pocket chambers, pocket dosimeters, film rings, etc.);

(ii) *Radiation area* means any area, accessible to personnel, in which there exists radiation at such levels that a major portion of the body could receive in any 1 hour a dose in excess of 5 millirem, or in any 5 consecutive days a dose in excess of 100 millirem; and

(iii) *High radiation area* means any area, accessible to personnel, in which there exists radiation at such levels that a major portion of the body could receive in any one hour a dose in excess of 100 millirem.

(g) *Caution signs, labels, and signals*—(1) *General.* (i) Symbols prescribed by this paragraph shall use the conventional radiation caution colors (magenta or purple on yellow background). The symbol prescribed by this paragraph is the conventional three-bladed design:

RADIATION SYMBOL

1. Cross-hatched area is to be magenta or purple.
2. Background is to be yellow.

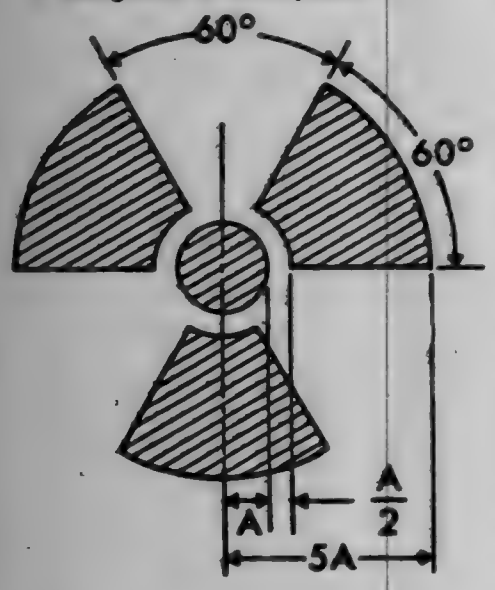


Figure D-2

(2) *Radiation area.* Each radiation area shall be conspicuously posted with a sign or signs bearing the radiation caution symbol described in paragraph (g)(1) of this section and the words:

CAUTION

RADIATION AREA

(3) *High radiation area.* (i) Each high radiation area shall be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words:

CAUTION

HIGH RADIATION AREA

(ii) Each high radiation area shall be equipped with a control device which shall either cause the level of radiation to be reduced below that at which an individual might receive a dose of 100 millirems in 1 hour upon entry into the area or shall energize a conspicuous visible or audible alarm signal in such a manner that the individual entering and the employer or a supervisor of the activity are made aware of the entry. In the case of a high radiation area established for a period of 30 days or less, such control device is not required.

(4) *Airborne radioactivity area.* (i) As used in the provisions of this section, *airborne radioactivity area* means:

(A) Any room, enclosure, or operating area in which airborne radioactive materials, composed wholly or partly of radioactive material, exist in concentrations in excess of the amounts specified in column 1 of Table 1 of appendix B to 10 CFR part 20 or

(B) Any room, enclosure, or operating area in which airborne radioactive materials exist in concentrations which, averaged over the number of hours in any week during which individuals are in the area, exceed 25 percent of the amounts specified in column 1 of Table 1 of appendix B to 10 CFR part 20.

(ii) Each airborne radioactivity area shall be conspicuously posted with a sign or signs bearing the radiation caution symbol described in paragraph (g)(1) of this section and the words:

CAUTION

AIRBORNE RADIOACTIVITY AREA

(5) *Additional requirements*—(i) Each area or room in which radioactive material is used or stored and which contains any radioactive material (other than natural uranium or thorium) in any amount exceeding 10 times the quantity of such material specified in appendix C to 10 CFR part 20 shall be conspicuously posted with a sign or signs bearing the radiation caution symbol described in paragraph (g)(1) of this section and the words:

CAUTION

RADIOACTIVE MATERIALS

(ii) Each area or room in which natural uranium or thorium is used or stored in an amount exceeding 100 times the quantity of such material specified in 10 CFR part 20 shall be conspicuously posted with a sign or signs bearing the radiation caution symbol described in paragraph (g)(1) of this section and the words:

CAUTION

RADIOACTIVE MATERIALS

(6) *Containers.* (i) Each container in which is transported, stored, or used a quantity of any radioactive material (other than natural uranium or thorium) greater than the quantity of such material specified in appendix C to 10 CFR part 20 shall bear a durable, clearly visible label bearing the radiation caution symbol described in paragraph (g)(1) of this section and the words:

CAUTION

RADIOACTIVE MATERIALS

(ii) Each container in which natural uranium or thorium is transported, stored, or used in a quantity greater than 10 times the quantity specified in appendix C to 10 CFR part 20 shall bear a durable, clearly visible label bearing the radiation caution symbol described in paragraph (g)(1) of this section and the words:

CAUTION

RADIOACTIVE MATERIALS

(iii) Notwithstanding the provisions of paragraphs (g)(6) (i) and (ii) of this section a label shall not be required:

(A) If the concentration of the material in the container does not exceed that specified in column 2 of Table 1 of appendix B to 10 CFR part 20, or

(B) For laboratory containers, such as beakers, flasks, and test tubes, used transiently in laboratory procedures, when the user is present.

(iv) Where containers are used for storage, the labels required in this subparagraph shall state also the quantities and kinds of radioactive materials in the containers and the date of measurement of the quantities.

(h) *Immediate evacuation warning signal*—(1) *Signal characteristics.* (i) The signal shall be a midfrequency complex sound wave amplitude modulated at a subsonic frequency. The complex sound wave in free space shall have a fundamental frequency (f_1) between 450 and 500 hertz (Hz) modulated at a subsonic rate between 4 and 5 hertz.

(ii) The signal generator shall not be less than 75 decibels at every location where an individual may be present whose immediate, rapid, and complete evacuation is essential.

(iii) A sufficient number of signal units shall be installed such that the

requirements of paragraph (h)(1)(ii) of this section are met at every location where an individual may be present whose immediate, rapid, and complete evacuation is essential.

(iv) The signal shall be unique in the plant or facility in which it is installed.

(v) The minimum duration of the signal shall be sufficient to insure that all affected persons hear the signal.

(vi) The signal-generating system shall respond automatically to an initiating event without requiring any human action to sound the signal.

(2) *Design objectives.* (i) The signal-generating system shall be designed to incorporate components which enable the system to produce the desired signal each time it is activated within one-half second of activation.

(ii) The signal-generating system shall be provided with an automatically activated secondary power supply which is adequate to simultaneously power all emergency equipment to which it is connected, if operation during power failure is necessary, except in those systems using batteries as the primary source of power.

(iii) All components of the signal-generating system shall be located to provide maximum practicable protection against damage in case of fire, explosion, corrosive atmosphere, or other environmental extremes consistent with adequate system performance.

(iv) The signal-generating system shall be designed with the minimum number of components necessary to make it function as intended, and should utilize components which do not require frequent servicing such as lubrication or cleaning.

(v) Where several activating devices feed activating information to a central signal generator, failure of any activating device shall not render the signal-generator system inoperable to activating information from the remaining devices.

(vi) The signal-generating system shall be designed to enhance the probability that alarm occurs only when immediate evacuation is warranted. The number of false alarms shall not be so great that the signal will come to be disregarded and shall be low enough to minimize personal injuries or excessive property damage that might result from such evacuation.

(3) *Testing.* (i) Initial tests, inspections, and checks of the signal-generating system shall be made to verify that the fabrication and installation were made in accordance with design plans and specifications and to develop a thorough knowledge of the performance of the system and all components under normal and hostile conditions.

(ii) Once the system has been placed in service, periodic tests, inspections, and checks shall be made to minimize the possibility of malfunction.

(iii) Following significant alterations or revisions to the system, tests and checks similar to the initial installation tests shall be made.

(iv) Tests shall be designed to minimize hazards while conducting the tests.

(v) Prior to normal operation the signal-generating system shall be checked physically and functionally to assure reliability and to demonstrate accuracy and performance. Specific tests shall include:

(A) All power sources.

(B) Calibration and calibration stability.

(C) Trip levels and stability.

(D) Continuity of function with loss and return of required services such as AC or DC power, air pressure, etc.

(E) All indicators.

(F) Trouble indicator circuits and signals, where used.

(G) Air pressure (if used)

(H) Determine that sound level of the signal is within the limit of paragraph (h)(1)(ii) of this section at all points that require immediate evacuation.

(vi) In addition to the initial startup and operating tests, periodic scheduled performance tests and status checks must be made to insure that the system is at all times operating within design limits and capable of the required response. Specific periodic tests or checks or both shall include:

(A) Adequacy of signal activation device.

(B) All power sources.

(C) Function of all alarm circuits and trouble indicator circuits including trip levels.

(D) Air pressure (if used).

(E) Function of entire system including operation without power where required.

(F) Complete operational tests including sounding of the signal and determination that sound levels are adequate.

(vii) Periodic tests shall be scheduled on the basis of need, experience, difficulty, and disruption of operations. The entire system should be operationally tested at least quarterly.

(viii) All employees whose work may necessitate their presence in an area covered by the signal shall be made familiar with the actual sound of the signal—preferably as it sounds at their work location. Before placing the system into operation, all employees normally working in the area shall be made acquainted with the signal by actual demonstration at their work locations.

(i) *Exceptions from posting requirements.* Notwithstanding the provisions of paragraph (g) of this section:

(1) A room or area is not required to be posted with a caution sign because of the presence of a sealed source, provided the radiation level 12 inches (30.48 cm) from the surface of the source container or housing does not exceed 5 millirem per hour.

(2) Rooms or other areas in onsite medical facilities are not required to be posted with caution signs because of the presence of patients containing radioactive material, provided that there are personnel in attendance who shall take the precautions necessary to prevent the exposure of any individual to radiation or radioactive material in excess of the limits established in the provisions of this section.

(3) Caution signs are not required to be posted at areas or rooms containing radioactive materials for periods of less than 8 hours: *Provided,* That

(i) The materials are constantly attended during such periods by an individual who shall take the precautions necessary to prevent the exposure of any individual to radiation or radioactive materials in excess of the limits established in the provisions of this section; and

(ii) Such area or room is subject to the employer's control.

(j) *Exemptions for radioactive materials packaged for shipment.* Radioactive materials packaged and labeled in accordance with regulations of the Department of Transportation published in 49 CFR Chapter I, are exempt from the labeling and posting requirements of this subpart during shipment, provided that the inside containers are labeled in accordance with the provisions of paragraph (g) of this section.

(i) *Instruction of personnel, posting.* (1) Employers regulated by the Nuclear Regulatory Commission shall be governed by 10 CFR part 20 standards. Employers in a State named in paragraph (r)(3) of this section shall be governed by the requirements of the laws and regulations of that State. All other employers shall be regulated by the following:

(2) All individuals working in or frequenting any portion of a radiation area shall be informed of the occurrence of radioactive materials or of radiation in such portions of the radiation area; shall be instructed in the safety problems associated with exposure to such materials or radiation and in precautions or devices to minimize

exposure; shall be instructed in the applicable provisions of this section for the protection of employees from exposure to radiation or radioactive materials; and shall be advised of reports of radiation exposure which employees may request pursuant to the regulations in this section.

(3) Each employer to whom this section applies shall post a current copy of its provisions and a copy of the operating procedures applicable to the work conspicuously in such locations as to insure that employees working in or frequenting radiation areas will observe these documents on the way to and from their place of employment, or shall keep such documents available for examination of employees upon request.

(l) *Storage of radioactive materials.* Radioactive materials stored in a nonradiation area shall be secured against unauthorized removal from the place of storage.

(m) *Waste disposal.* No employer shall dispose of radioactive material except by transfer to an authorized recipient, or in a manner approved by the Nuclear Regulatory Commission or a State named in paragraph (r)(3) of this section.

(n) *Notification of incidents*—(1) *Immediate notification.* Each employer shall immediately notify the Assistant Secretary of Labor or his duly authorized representative, for employees not profected by the Nuclear Regulatory Commission by means of 10 CFR part 20; paragraph (r)(2) of this section, or the requirements of the laws and regulations of States named in paragraph (r)(3) of this section, by telephone or telegraph of any incident involving radiation which may have caused or threatens to cause:

(i) Exposure of the whole body of any individual to 25 rems or more of radiation; exposure of the skin of the whole body of any individual to 150 rems or more of radiation; or exposure of the feet, ankles, hands, or forearms of any individual to 375 rems or more of radiation; or

(ii) The release of radioactive material in concentrations which, if averaged over a period of 24 hours, would exceed 5,000 times the limit specified for such materials in Table II of appendix B to 10 CFR part 20.

(2) *Twenty-four hour notification.* Each employer shall within 24 hours following its occurrence notify the Assistant Secretary of Labor or his duly authorized representative for employees not protected by the Nuclear Regulatory Commission by means of 10 CFR part 20; paragraph (r)(2) of this section, or the requirements of the laws and applicable regulations of States named in paragraph (r)(3) of this section, by telephone or telegraph of any incident involving radiation which may have caused or threatens to cause:

(i) Exposure of the whole body of any individual to 5 rems or more of radiation; exposure of the skin of the whole body of any individual to 30 rems or more of radiation; or exposure of the feet, ankles, hands, or forearms to 75 rems or more of radiation; or

(o) *Reports of overexposure and excessive levels and concentrations.* (1) In addition to any notification required by paragraph (n) of this section each employer shall make a report in writing within 30 days to the Assistant Secretary of Labor or his duly authorized representative, for employees not protected by the Nuclear Regulatory Commission by means of 10 CFR part 20; or under paragraph (r)(2) of this section, or the requirements of the laws and regulations of States named in paragraph (r)(3) of this section, of each exposure of an individual to radiation or concentrations of radioactive material in excess of any applicable limit in this section. Each report required under this paragraph shall describe the extent of exposure of persons to radiation or to radioactive material; levels of radiation and concentration of radioactive material involved, the cause of the exposure, levels of concentrations; and corrective steps taken or planned to assure against a recurrence.

(2) In any case where an employer is required pursuant to the provisions of this paragraph to report to the U.S. Department of Labor any exposure of an individual to radiation or to concentrations of radioactive material, the employer shall also notify such individual of the nature and extent of exposure. Such notice shall be in writing and shall contain the following statement: "You should preserve this report for future reference."

(p) *Records.* (1) Every employer shall maintain records of the radiation exposure of all employees for whom personnel monitoring is required under paragraph (f) of this section and advise each of his employees of his individual exposure on at least an annual basis.

(2) Every employer shall maintain records in the same units used in tables in paragraph (d) of this section and appendix B to 10 CFR part 20.

(q) *Disclosure to former employee of individual employee's record.* (1) At the request of a former employee an employer shall furnish to the employee a report of the employee's exposure to radiation as shown in records maintained by the employer pursuant to paragraph (p)(1) of this section. Such report shall be furnished within 30 days from the time the request is made, and shall cover each calendar quarter of the individual's employment involving exposure to radiation or such lesser period as may be requested by the employee. The report shall also include the results of any calculations and analysis of radioactive material deposited in the body of the employee. The report shall be in writing and contain the following statement: "You should preserve this report for future reference."

(r) *Nuclear Regulatory Commission licensees—NRC contractors operating NRC plants and facilities—NRC Agreement State licensees or registrants.* (1) Any employer who possesses or uses source material, byproduct material, or special nuclear material, as defined in the Atomic Energy Act of 1954, as amended, under a license issued by the Nuclear Regulatory Commission and in accordance with the requirements of 10 CFR part 20 shall be deemed to be in compliance with the requirements of this section with respect to such possession and use.

(2) NRC contractors operating NRC plants and facilities: Any employer who possesses or uses source material, byproduct material, special nuclear material, or other radiation sources under a contract with the Nuclear Regulatory Commission for the operation of NRC plants and facilities and in accordance with the standards, procedures, and other requirements for radiation protection established by the Commission for such contract pursuant to the Atomic Energy Act of 1954 as amended (42 U.S.C. 2011 et seq.), shall be deemed to be in compliance with the requirements of this section with respect to such possession and use.

(3) NRC-agreement State licensees or registrants:

(i) *Atomic Energy Act sources.* Any employer who possesses or uses source material, byproduct material, or special nuclear material, as defined in the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), and has either registered such sources with, or is operating under a license issued by, a State which has an agreement in effect with the Nuclear Regulatory Commission pursuant to section 274(b) (42 U.S.C. 2021(b)) of the Atomic Energy Act of 1954, as amended, and in accordance with the requirements of that State's laws and regulations shall be deemed to be in compliance with the radiation requirements of this section, insofar as his possession and use of such material is concerned, unless the Secretary of Labor, after conference with the Nuclear Regulatory Commission,

shall determine that the State's program for control of these radiation sources is incompatible with the requirements of this section. Such agreements currently are in effect only in the States of Alabama, Arkansas, California, Kansas, Kentucky, Florida, Mississippi, New Hampshire, New York, North Carolina, Texas, Tennessee, Oregon, Idaho, Arizona, Colorado, Louisiana, Nebraska, Washington, Maryland, North Dakota, South Carolina, and Georgia.

(ii) *Other sources.* Any employer who possesses or uses radiation sources other than source material, byproduct material, or special nuclear material, as defined in the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.), and has either registered such sources with, or is operating under a license issued by a State which has an agreement in effect with the Nuclear Regulatory Commission pursuant to section 274(b) (42 U.S.C. 2021(b)) of the Atomic Energy Act of 1954, as amended, and in accordance with the requirements of that State's laws and regulations shall be deemed to be in compliance with the radiation requirements of this section, insofar as his possession and use of such material is concerned, provided the State's program for control of these radiation sources is the subject of a currently effective determination by the Assistant Secretary of Labor that such program is compatible with the requirements of this section. Such determinations currently are in effect only in the States of Alabama, Arkansas, California, Kansas, Kentucky, Florida, Mississippi, New Hampshire, New York, North Carolina, Texas, Tennessee, Oregon, Idaho, Arizona, Colorado, Louisiana, Nebraska, Washington, Maryland, North Dakota, South Carolina, and Georgia.

(Approved by the Office of Management and Budget under control number 1218–0103)

§ 1926.55 Gases, vapors, fumes, dusts, and mists. [Amended]

9. In § 1926.55(a), the following new sentence is added to the end of the paragraph: "See Appendix A to this section." In addition, a new table is added as Appendix A to the section. The text of the new appendix reads as follows:

Appendix A to § 1926.55—1970 American Conference of Governmental Industrial Hygienists' Threshold Limit Values of Airborne Contaminants

Threshold Limit Values of Airborne Contaminants for Construction

Substance	CAS No.[d]	ppm[a]	mg/m³[b]	Skin Designation
Abate; see Temephos.				
Acetaldehyde	75–07–0	200	360	—
Acetic acid	64–19–7	10	25	—
Acetic anhydride	108–24–7	5	20	—
Acetone	67–64–1	1000	2400	—
Acetonitrile	75–05–8	40	70	—
2-Acetylaminofluorine; see § 1926.1114	53–96–3			
Acetylene	74–86–2	E		
Acetylene dichloride; see 1,2-Dichloroethylene.				
Acetylene tetrabromide	79–27–6	1	14	—
Acrolein	107–02–8	0.1	0.25	—
Acrylamide	79–06–1	—	0.3	X
Acrylonitrile; see § 1926.1145	107–13–1			
Aldrin	309–00–2	—	0.25	X
Allyl alcohol	107–18–6	2	5	X
Allyl chloride	107–05–1	1	3	—
Allyl glycidyl ether (AGE)	106–92–3	(C)10	(C)45	—
Allyl propyl disulfide	2179–59–1	2	12	—
alpha-Alumina	1344–28–1			
Total dust		—	15	—
Respirable fraction		—	5	—
Aluminum, (as Al) Metal	7429–90–5			
Total dust		—	15	—
Respirable fraction		—	5	—
Alundum; see alpha-Alumina				
4-Aminodiphenyl; see § 1926.1111	92–67–1			
2-Aminoethanol; see Ethanolamine.				
2-Aminopyridine	504–29–0	0.5	2	—
Ammonia	7664–41–7	50	35	—
Ammonium sulfamate	7773–06–0			
Total dust		—	15	—
Respirable fraction		—	5	—
n-Amyl acetate	628–63–7	100	525	—
sec-Amyl acetate	626–38–0	125	650	—
Aniline and homologs	62–53–3	5	19	X
Anisidine (o-, p-isomers)	29191–52–4	—	0.5	X
Antimony and compounds (as Sb)	7440–36–0	—	0.5	—
ANTU (alpha Naphthylthiourea)	86–88–4	—	0.3	—
Argon	7440–37–1	E		
Arsenic, inorganic compounds (as As); see § 1926.1118	7440–38–2	—	—	—
Arsenic, organic compounds (as As)	7440–38–2	—	0.5	—
Arsine	7784–42–1	0.05	0.2	—
Asbestos; see 1926.58.				
Azinphos-methyl	86–50–0	—	0.2	X
Barium, soluble compounds (as Ba)	7440–39–3	—	0.5	—
Barium sulfate	7727–43–7			

Threshold Limit Values of Airborne Contaminants for Construction—Continued

Substance	CAS No.[d]	ppm[a]	mg/m[3][b]	Skin Designation
Total dust		—	15	—
Respirable fraction		—	5	—
Benomyl	17804-35-2			
Total dust		—	15	—
Respirable fraction		—	5	—
Benzene[g]; see § 1926.1128	71-43-2			
Benzidine; see § 1926.1110	92-87-5			
p-Benzoquinone; see Quinone.				
Benzo(a)pyrene; see Coal tar pitch volatiles.				
Benzoyl peroxide	94-36-0	—	5	—
Benzyl chloride	100-44-7	1	5	—
Beryllium and beryllium compounds (as Be)	7440-41-7	—	0.002	—
Biphenyl; see Diphenyl.				
Bismuth telluride, Undoped	1304-82-1			
Total dust		—	15	—
Respirable fraction		—	5	—
Bisphenol A; see Diglycidyl ether.				
Boron oxide	1303-86-2			
Total dust		—	15	—
Boron tribromide	10294-33-4	1	10	—
Boron trifluoride	7637-07-2	(C)1	(C)3	—
Bromine	7726-95-6	0.1	0.7	—
Bromine pentafluoride	7789-30-2	0.1	0.7	—
Bromoform	75-25-2	0.5	5	X
Butadiene (1,3-Butadiene)[h]	106-99-0	1000	2200	—
Butanethiol; see Butyl mercaptan.				
2-Butanone (Methyl ethyl ketone)	78-93-3	200	590	—
2-Butoxyethanol	111-76-2	50	240	X
n-Butyl-acetate	123-86-4	150	710	—
sec-Butyl acetate	105-46-4	200	950	—
tert-Butyl acetate	540-88-5	200	950	—
n-Butyl alcohol	71-36-3	100	300	—
sec-Butyl alcohol	78-92-2	150	450	—
tert-Butyl alcohol	75-65-0	100	300	—
Butylamine	109-73-9	(C)5	(C)15	X
tert-Butyl chromate (as CrO_3)	1189-85-1	—	(C)0.1	X
n-Butyl glycidyl ether (BGE)	2426-08-6	50	270	—
Butyl mercaptan	109-79-5	0.5	1.5	—
p-tert-Butyltoluene	98-51-1	10	60	—
Cadmium dust fume (as Cd); see 1926.1127	7440-43-9	—	—	—
Calcium carbonate	1317-65-3			
Total dust		—	15	—
Respirable fraction		—	5	—
Calcium hydroxide	1305-62-0	—	—	—
Calcium hydroxide.				
Total dust		—	15	—
Respirable fraction		—	5	—
Calcium oxide	1305-78-8	—	5	—
Calcium silicate	1344-95-2			
Total dust		—	15	—
Respirable fraction		—	5	—
Calcium sulfate	7778-18-9			
Total dust		—	15	—
Respirable fraction		—	5	—
Camphor, synthetic	76-22-2	—	2	—
Carbaryl (Sevin)	63-25-2	—	5	—
Carbon black	1333-86-4	—	3.5	—
Carbon dioxide	124-38-9	5000	9000	—
Carbon disulfide	75-15-0	20	60	X
Carbon monoxide	630-08-0	50	55	—
Carbon tetrachloride	56-23-5	10	65	X
Cellulose	9004-34-6			
Total dust		—	15	—
Respirable fraction		—	5	—
Chlordane	57-74-9	—	0.5	X
Chlorinated camphene	8001-35-2	—	0.5	X
Chlorinated diphenyl oxide	55720-99-5	—	0.5	—
Chlorine	7782-50-5	1	3	—
Chlorine trifluoride	7790-91-2	(C)0.1	(C)0.4	—
Chloroacetaldehyde	107-20-0	(C)1	(C)3	—
a-Chloroacetophenone (Phenacyl chloride)	532-27-4	0.05	0.3	—

Threshold Limit Values of Airborne Contaminants for Construction—Continued

Substance	CAS No.[4]	ppm[5]	mg/m³[5,6]	Skin Designation
Chlorobenzene	108-90-7	75	350	—
o-Chlorobenzylidene malononitrile	2698-41-1	0.05	0.4	—
Chlorobromomethane	74-97-5	200	1050	—
2-Chloro-1,3-butadiene; see beta-Chloroprene.				
Chlorodiphenyl (42% Chlorine) (PCB)	53469-21-9	—	1	X
Chlorodiphenyl (54% Chlorine) (PCB)	11097-69-1	—	0.5	X
1-Chloro,2,3-epoxypropane; see Epichlorohydrin.				
2-Chloroethanol; see Ethylene chlorohydrin.				
Chloroethylene; see Vinyl chloride.				
Chloroform (Trichloromethane)	67-66-3	50	240	—
bis(Chloromethyl) ether; see § 1926.1108	542-88-1			
Chloromethyl methyl ether; see § 1926.1106	107-30-2			
1-Chloro-1-nitropropane	600-25-9	20	100	—
Chloropicrin	76-06-2	0.1	0.7	—
beta-Chloroprene	126-99-8	25	90	X
2-Chloro-6-(trichloromethyl) pyridine	1929-82-4			
Total dust		—	15	—
Respirable fraction		—	5	—
Chromic acid and chromates.				
(as CrO_3)	Varies with compound	—	0.1	—
Chromium (II) compounds.				
(as Cr)	7440-47-3	—	0.5	—
Chromium (III) compounds.				
(as Cr)	7440-47-3	—	0.5	—
Chromium metal and insol. salts (as Cr)	7440-47-3	—	1	—
Chrysene; see Coal tar pitch volatiles.				
Clopidol	2971-90-6			
Total dust		—	15	—
Respirable fraction		—	5	—
Coal tar pitch volatiles (benzene soluble fraction), anthracene, BaP, phenanthrene, acridine, chrysene, pyrene	65966-93-2	—	0.2	—
Cobalt metal, dust, and fume (as Co)	7440-48-4	—	0.1	—
Coke oven emissions; see § 1926.1129	—	—	0.15	—
Copper	7440-50-8			
Fume (as Cu)		—	0.1	—
Dusts and mists (as Cu)		—	1	—
Corundum; see Emery.				
Cotton dust (raw)		—	1	
Crag herbicide (Sesone)	136-78-7			
Total dust		—	15	—
Respirable fraction		—	5	—
Cresol, all isomers	1319-77-3	5	22	X
Crotonaldehyde	123-73-9; 4170-30-3	2	6	
Cumene	98-82-8	50	245	X
Cyanides (as CN)	Varies with Compound	—	5	—
Cyanogen	460-19-5	10	—	—
Cyclohexane	110-82-7	300	1050	—
Cyclohexanol	108-93-0	50	200	—
Cyclohexanone	108-94-1	50	200	—
Cyclohexene	110-83-8	300	1015	—
Cyclonite	121-82-4	—	1.5	X
Cyclopentadiene	542-92-7	75	200	—
2,4-D (Dichlorophenoxyacetic acid)	94-75-7	—	10	—
Decaborane	17702-41-9	0.05	0.3	X
Demeton (Systox)	8065-48-3	—	0.1	X
Diacetone alcohol (4-Hydroxy-4-methyl-2-pentanone)	123-42-2	50	240	—
1,2-Diaminoethane; see Ethylenediamine.				
Diazomethane	334-88-3	0.2	0.4	—
Diborane	19287-45-7	0.1	0.1	—
1,2-Dibromo-3-chloropropane (CBCP); see § 1926.1144	96-12-8		—	
1,2-Dibromoethane; see Ethylene dibromide.				
Dibutyl phosphate	107-66-4	1	5	—
Dibutyl phthalate	84-74-2	—	5	—
Dichloroacetylene	7572-29-4	(C)0.1	(C)0.4	—
o-Dichlorobenzene	95-50-1	(C)50	(C)300	—
p-Dichlorobenzene	106-46-7	75	450	—
3,3'-Dichlorobenzidine; see § 1926.1107	91-94-1			

Threshold Limit Values of Airborne Contaminants for Construction—Continued

Substance	CAS No.[d]	ppm[e]	mg/m³[b]	Skin Designation
Dichlorodifluoromethane	75-71-8	1000	4950	—
1,3-Dichloro-5,5-dimethyl hydantoin	118-52-5	—	0.2	—
Dichlorodiphenyltrichloroethane (DDT)	50-29-3	—	1	X
1,1-Dichloroethane	75-34-3	100	400	—
1,2-Dichloroethane; see Ethylene dichloride.				
1,2-Dichloroethylene	540-59-0	200	790	—
Dichloroethyl ether	111-44-4	(C)15	(C)90	X
Dichloromethane; see Methylene chloride.				
Dichloromonofluoromethane	75-43-4	1000	4200	—
1,1-Dichloro-1-nitroethane	594-72-9	(C)10	(C)60	—
1,2-Dichloropropane; see Propylene dichloride.				
Dichlorotetrafluoroethane	76-14-2	1000	7000	—
Dichlorvos (DDVP)	62-73-7	—	1	X
Dicyclopentadienyl iron	102-54-5			
Total dust		—	15	—
Respirable fraction		—	5	—
Dieldrin	60-57-1	—	0.25	X
Diethylamine	109-89-7	25	75	—
2-Diethylaminoethanol	100-37-8	10	50	—
Diethylene triamine	111-40-0	(C)10	(C)42	X
Diethyl ether; see Ethyl ether.				
Difluorodibromomethane	75-61-6	100	860	—
Diglycidyl ether (DGE)	2238-07-5	(C)0.5	(C)2.8	—
Dihydroxybenzene; see Hydroquinone.				
Diisobutyl ketone	108-83-8	50	290	—
Diisopropylamine	108-18-9	5	20	X
4-Dimethylaminoazobenzene; see § 1926.1115	60-11-7			
Dimethoxymethane; see Methylal.				
Dimethyl acetamide	127-19-5	10	35	X
Dimethylamine	124-40-3	10	18	—
Dimethylaminobenzene; see Xylidine.				
Dimethylaniline (N,N-Dimethylaniline)	121-69-7	5	25	X
Dimethylbenzene; see Xylene.				
Dimethyl-1,2-dibromo- 2,2-dichloroethyl phosphate	300-76-5	—	3	—
Dimethylformamide	68-12-2	10	30	X
2,6-Dimethyl-4-heptanone; see Diisobutyl ketone.				
1,1-Dimethylhydrazine	57-14-7	0.5	1	X
Dimethylphthalate	131-11-3	—	5	—
Dimethyl sulfate	77-78-3	1	5	X
Dinitrobenzene (all isomers)			1	X
(ortho)	528-29-0			
(meta)	99-65-0			
(para)	100-25-4			
Dinitro-o-cresol	534-52-1	—	0.2	X
Dinitrotoluene	25321-14-6	—	1.5	X
Dioxane (Diethylene dioxide)	123-91-1	100	360	X
Diphenyl (Biphenyl)	92-52-4	0.2	1	—
Diphenylamine	122-39-4	—	10	—
Diphenylmethane diisocyanate; see Methylene bisphenyl isocyanate.				
Dipropylene glycol methyl ether	34590-94-8	100	600	X
Di-sec octyl phthalate (Di-(2-ethylhexyl) phthalate)	117-81-7	—	5	—
Emery	12415-34-8			
Total dust		—	15	—
Respirable fraction		—	5	—
Endosulfan	115-29-7	—	0.1	X
Endrin	72-20-8	—	0.1	X
Epichlorohydrin	106-89-8	5	19	X
EPN	2104-64-5	—	0.5	X
1,2-Epoxypropane; see Propylene oxide.				
2,3-Epoxy-1-propanol; see Glycidol.				
Ethane	74-84-0	E		
Ethanethiol; see Ethyl mercaptan.				
Ethanolamine	141-43-5	3	6	—
2-Ethoxyethanol (Cellosolve)	110-80-5	200	740	X
2-Ethoxyethyl acetate (Cellosolve acetate)	111-15-9	100	540	X
Ethyl acetate	141-78-6	400	1400	—
Ethyl acrylate	140-88-5	25	100	X
Ethyl alcohol (Ethanol)	64-17-5	1000	1900	—
Ethylamine	75-04-7	10	18	
Ethyl amyl ketone (5-Methyl-3-heptanone)	541-85-5	25	130	—

Threshold Limit Values of Airborne Contaminants for Construction—Continued

Substance	CAS No.[4]	ppm[5]	mg/m³[5,6]	Skin Designation
Ethyl benzene	100-41-4	100	435	—
Ethyl bromide	74-96-4	200	890	—
Ethyl butyl ketone (3-Heptanone)	106-35-4	50	230	—
Ethyl chloride	75-00-3	1000	2600	—
Ethyl ether	60-29-7	400	1200	—
Ethyl formate	109-94-4	100	300	—
Ethyl mercaptan	75-08-1	0.5	1	—
Ethyl silicate	78-10-4	100	850	—
Ethylene	74-85-1	E		
Ethylene chlorohydrin	107-07-3	5	16	X
Ethylenediamine	107-15-3	10	25	—
Ethylene dibromide	106-93-4	(C)25	(C)190	X
Ethylene dichloride (1,2-Dichloroethane)	107-06-2	50	200	—
Ethylene glycol dinitrate	628-96-6	(C)0.2	(C)1	X
Ethylene glycol methyl acetate; see Methyl cellosolve acetate.				
Ethyleneimine; see § 1926.1112	151-56-4			
Ethylene oxide; see § 1926.1147	75-21-8			
Ethylidene chloride; see 1,1-Dichloroethane.				
N-Ethylmorpholine	100-74-3	20	94	X
Ferbam	14484-64-1			
Total dust		—	15	—
Ferrovanadium dust	12604-58-9	—	1	—
Fibrous Glass.				
Total dust			15	—
Respirable fraction		—	5	—
Fluorides (as F)	Varies with compound	—	2.5	—
Fluorine	7782-41-4	0.1	0.2	—
Fluorotrichloromethane (Trichlorofluoromethane)	75-69-4	1000	5600	—
Formaldehyde; see § 1926.1148	50-00-0			
Formic acid	64-18-6	5	9	—
Furfural	98-01-1	5	20	X
Furfuryl alcohol	98-00-0	50	200	—
Gasoline	8006-61-9		A[7]	—
Glycerin (mist)	56-81-5			
Total dust		—	15	—
Respirable fraction		—	5	—
Glycidol	556-52-5	50	150	—
Glycol monoethyl ether; see 2-Ethoxyethanol.				
Graphite, natural, respirable dust	7782-42-5	([8])	([8])	([8])
Graphite, synthetic				
Total dust		—	15	—
Respirable fraction		—	5	—
Guthion; see Azinphos methyl.				
Gypsum	13397-24-5			
Total dust		—	15	—
Respirable fraction		—	5	—
Hafnium	7440-58-6	—	0.5	—
Helium	7440-59-7	E		
Heptachlor	76-44-8	—	0.5	X
Heptane (n-Heptane)	142-82-5	500	2000	—
Hexachloroethane	67-72-1	1	10	X
Hexachloronaphthalene	1335-87-1	—	0.2	X
n-Hexane	110-54-3	500	1800	—
2-Hexanone (Methyl n-butyl ketone)	591-78-6	100	410	—
Hexone (Methyl isobutyl ketone)	108-10-1	100	410	—
sec-Hexyl acetate	108-84-9	50	300	—
Hydrazine	302-01-2	1	1.3	X
Hydrogen	1333-74-0	E		
Hydrogen bromide	10035-10-6	3	10	—
Hydrogen chloride	7647-01-0	(C)5	(C)7	—
Hydrogen cyanide	74-90-8	10	11	X
Hydrogen fluoride (as F)	7664-39-3	3	2	—
Hydrogen peroxide	7722-84-1	1	1.4	—
Hydrogen selenide (as Se)	7783-07-5	0.05		
Hydrogen sulfide	7783-06-4	10	15	—
Hydroquinone	123-31-9	—	2	—
Indene	95-13-6	10	45	—
Indium and compounds (as In)	7440-74-6	—	0.1	—
'odine	7553-56-2	(C)0.1	(C)1	—

Threshold Limit Values of Airborne Contaminants for Construction—Continued

Substance	CAS No.[d]	ppm[a]	mg/m³[b]	Skin Designation
Iron oxide fume	1309–37–1	—	10	—
Iron salts (soluble) (as Fe)	Varies with compound	—	1	—
Isoamyl acetate	123–92–2	100	525	—
Isoamyl alcohol (primary and secondary)	123–51–3	100	360	—
Isobutyl acetate	110–19–0	150	700	—
Isobutyl alcohol	78–83–1	100	300	—
Isophorone	78–59–1	25	140	—
Isopropyl acetate	108–21–4	250	950	—
Isopropyl alcohol	67–63–0	400	980	—
Isopropylamine	75–31–0	5	12	—
Isopropyl ether	108–20–3	500	2100	—
Isopropyl glycidyl ether (IGE)	4016–14–2	50	240	—
Kaolin	1332–58–7			
Total dust		—	15	—
Respirable fraction		—	5	—
Ketene	463–51–4	0.5	0.9	—
Lead, inorganic (as Pb)	7439–92–1	—	0.2	—
Limestone	1317–65–3			
Total dust		—	15	—
Respirable fraction		—	5	—
Lindane	58–89–9	—	0.5	X
Lithium hydride	7580–67–8	—	0.025	—
L.P.G. (Liquefied petroleum gas)	68476–85–7	1000	1800	
Magnesite	546–93–0			
Total dust		—	15	—
Respirable fraction		—	5	—
Magnesium oxide fume	1309–48–4			
Total particulate		15	—	—
Malathion	121–75–5			
Total dust		—	15	X
Maleic anhydride	108–31–6	0.25		
Manganese compounds (as Mn)	7439–96–5	—	(C)5	—
Manganese fume (as Mn)	7439–96–5	—	(C)5	—
Marble	1317–65–3			
Total dust		—	15	—
Respirable fraction		—	5	—
Mercury (aryl and inorganic)(as Hg)	7439–97–6		0.1	X
Mercury (organo) alkyl compounds (as Hg)	7439–97–6	—	0.01	X
Mercury (vapor) (as Hg)	7439–97–6	—	0.1	X
Mesityl oxide	141–79–7	25	100	—
Methane	74–82–8	E		
Methanethiol; see Methyl mercaptan.				
Methoxychlor	72–43–5			
Total dust		—	15	—
2-Methoxyethanol (Methyl cellosolve)	109–86–4	25	80	X
2-Methoxyethyl acetate (Methyl cellosolve acetate)	110–49–6	25	120	X
Methyl acetate	79–20–9	200	610	—
Methyl acetylene (Propyne)	74–99–7	1000	1650	—
Methyl acetylene-propadiene mixture (MAPP)		1000	1800	—
Methyl acrylate	96–33–3	10	35	X
Methylal (Dimethoxy-methane)	109–87–5	1000	3100	—
Methyl alcohol	67–56–1	200	260	—
Methylamine	74–89–5	10	12	—
Methyl amyl alcohol; see Methyl isobutyl carbinol.				
Methyl n-amyl ketone	110–43–0	100	465	—
Methyl bromide	74–83–9	(C)20	(C)80	X
Methyl butyl ketone; see 2-Hexanone.				
Methyl cellosolve; see 2-Methoxyethanol.				
Methyl cellosolve acetate; see 2-Methoxyethyl acetate.				
Methyl chloride	74–87–3	100	210	—
Methyl chloroform (1,1,1-Trichloroethane)	71–55–6	350	1900	—
Methylcyclohexane	108–87–2	500	2000	—
Methylcyclohexanol	25639–42–3	100	470	—
o-Methylcyclohexanone	583–60–8	100	460	X
Methylene chloride[c]; see 56 FR 57036	75–09–2	500	1740	—
Methyl ethyl ketone (MEK); see 2-Butanone.				
Methyl formate	107–31–3	100	250	—
Methyl hydrazine (Monomethyl hydrazine)	60–34–4	(C)0.2	(C)0.35	X
Methyl iodide	74–88–4	5	28	X
Methyl isoamyl ketone	110–12–3	100	475	—

Threshold Limit Values of Airborne Contaminants for Construction—Continued

Substance	CAS No.[4]	ppm[5]	mg/m³[5]	Skin Designation
Methyl isobutyl carbinol	108-11-2	25	100	X
Methyl isobutyl ketone; see Hexone.				
Methyl isocyanate	624-83-9	0.02	0.05	X
Methyl mercaptan	74-93-1	0.5	1	—
Methyl methacrylate	80-62-6	100	410	100
Methyl propyl ketone; see 2-Pentanone.				
Methyl silicate	681-84-5	5	30	—
alpha-Methyl styrene	98-83-9	(C)100	(C)480	—
Methylene bisphenyl isocyanate (MDI)	101-68-8	(C)0.02	(C)0.2	—
Mica; see Silicates.				
Mineral wool.				
Total dust		—	15	—
Respirable dust		—	5	—
Molybdenum (as Mo)	7439-98-7			
Soluble compounds		—	5	—
Insoluble compounds.				
Total dust		—	15	—
Monomethyl aniline	100-61-8	2	9	X
Monomethyl hydrazine; see Methyl hydrazine.				
Morpholine	110-91-8	20	70	X
Naphtha (Coal tar)	8030-30-6	100	400	—
Naphthalene	91-20-3	10	50	—
alpha-Naphthylamine; see § 1926.1104	134-32-7			
beta-Naphthylamine; see § 1926.1109	91-59-8			—
Neon	7440-01-9	E		
Nickel carbonyl (as Ni)	13463-39-3	0.001	0.007	—
Nickel, metal and insoluble compounds (as Ni)	7440-02-0	—	1	—
Nickel, soluble compounds (as Ni)	7440-02-0	—	1	—
Nicotine	54-11-5	—	0.5	X
Nitric acid	7697-37-2	2	5	—
Nitric oxide	10102-43-9	25	30	—
p-Nitroaniline	100-01-6	1	6	X
Nitrobenzene	98-95-3	1	5	X
p-Nitrochlorobenzene	100-00-5	—	1	X
4-Nitrodiphenyl; see § 1926.1103	92-93-3			
Nitroethane	79-24-3	100	310	—
Nitrogen	7727-37-9	E		
Nitrogen dioxide	10102-44-0	(C)5	(C)9	—
Nitrogen trifluoride	7783-54-2	10	29	—
Nitroglycerin	55-63-0	(C)0.2	(C)2	X
Nitromethane	75-52-5	100	250	—
1-Nitropropane	108-03-2	25	90	—
2-Nitropropane	79-46-9	25	90	—
N-Nitrosodimethylamine; see § 1926.1116	62-79-9			—
Nitrotoluene (all isomers)		5	30	X
o-isomer	88-72-2;			
m-isomer	99-08-1;			
p-isomer	99-99-0			
Nitrotrichloromethane; see Chloropicrin.				
Nitrous oxide	10024-97-2	E		
Octachloronaphthalene	2234-13-1	—	0.1	X
Octane	111-65-9	400	1900	—
Oil mist, mineral	8012-95-1	—	5	—
Osmium tetroxide (as Os)	20816-12-0	—	0.002	—
Oxalic acid	144-62-7	—	1	—
Oxygen difluoride	7783-41-7	0.05	0.1	—
Ozone	10028-15-6	0.1	0.2	—
Paraquat, respirable dust	4685-14-7; 1910-42-5; 2074-50-2	—	0.5	X
Parathion	56-38-2	—	0.1	-
Particulates not otherwise regulated.				
Total dust organic and inorganic		—	15	-
PCB; see Chlorodiphenyl (42% and 54% chlorine).				
Pentaborane	19624-22-7	0.005	0.01	—
Pentachloronaphthalene	1321-64-8	—	0.5	X
Pentachlorophenol	87-86-5	—	0.5	X
Pentaerythritol	115-77-5			
Total dust		—	15	—
Respirable fraction		—	5	—

Threshold Limit Values of Airborne Contaminants for Construction—Continued

Substance	CAS No.[4]	ppm[a]	mg/m³[b]	Skin Designation
Pentane	109-66-0	500	1500	—
2-Pentanone (Methyl propyl ketone)	107-87-9	200	700	—
Perchloroethylene (Tetrachloroethylene)	127-18-4	100	670	—
Perchloromethyl mercaptan	594-42-3	0.1	0.8	—
Perchloryl fluoride	7616-94-6	3	13.5	—
Perlite	93763-70-3			
Total dust		—	15	—
Respirable fraction		—	5	—
Petroleum distillates (Naphtha)(Rubber Solvent)			A[3]	—
Phenol	108-95-2	5	19	X
p-Phenylene diamine	106-50-3	—	0.1	X
Phenyl ether, vapor	101-84-8	1	7	—
Phenyl ether-biphenyl mixture, vapor		1	7	—
Phenylethylene; see Styrene.				
Phenyl glycidyl ether (PGE)	122-60-1	10	60	—
Phenylhydrazine	100-63-0	5	22	X
Phosdrin (Mevinphos)	7786-34-7	—	0.1	X
Phosgene (Carbonyl chloride)	75-44-5	0.1	0.4	—
Phosphine	7803-51-2	0.3	0.4	—
Phosphoric acid	7664-38-2	—	1	—
Phosphorus (yellow)	7723-14-0	—	0.1	—
Phosphorus pentachloride	10026-13-8	—	1	—
Phosphorus pentasulfide	1314-80-3	—	1	—
Phosphorus trichloride	7719-12-2	0.5	3	—
Phthalic anhydride	85-44-9	2	12	—
Picloram	1918-02-1			
Total dust		—	15	—
Respirable fraction		—	5	—
Picric acid	88-89-1	—	0.1	—
Piperazine dihydrochloride	142-64-3	—	—	X
Pindone (2-Pivalyl-1,3-indandione)	83-26-1	—	0.1	—
Plaster of Paris	26499-65-0			
Total dust		—	15	—
Respirable fraction		—	5	—
Platinum (as Pt)	7440-06-4			
Metal		—	—	—
Soluble salts		—	0.002	—
Polytetrafluoroethylene decomposition products			A[2]	
Portland cement	65997-15-1			
Total dust		15	—	10
Respirable fraction		5	—	—
Propargyl alcohol	107-19-7	1	—	X
beta-Propriolactone; see § 1926.1113	57-57-8			
Propionic acid	79-09-4	—	—	—
n-Propyl acetate	109-60-4	200	840	—
n-Propyl alcohol	71-23-8	200	500	—
n-Propyl nitrate	627-13-4	25	110	—
Propylene dichloride	78-87-5	75	350	—
Propylene imine	75-55-8	2	5	X
Propylene oxide	75-56-9	100	240	—
Propyne; see Methyl acetylene.				
Pyrethrum	8003-34-7	—	5	—
Pyridine	110-86-1	5	15	—
Quinone	106-51-4	0.1	0.4	—
RDX; see Cyclonite.				
Rhodium (as Rh), metal fume and insoluble compounds	7440-16-6	—	0.1	—
Rhodium (as Rh), soluble compounds	7440-16-6	—	0.001	—
Ronnel	299-84-3	—	10	—
Rotenone	83-79-4	—	5	—
Rouge		—		
Total dust		—	15	—
Respirable fraction		—	5	—
Selenium compounds (as Se)	7782-49-2	—	0.2	—
Selenium hexafluoride (as Se)	7783-79-1	0.05	0.4	—
Silica, amorphous, precipitated and gel	112926-00-8	(2)	(2)	(2)
Silica, amorphous, diatomaceous earth, containing less than 1% crystalline silica	61790-53-2	(2)	(2)	(2)
Silica, crystalline cristobalite, respirable dust	14464-46-1	(2)	(2)	(2)
Silica, crystalline quartz, respirable dust	14808-60-7	(2)	(2)	(2)
Silica, crystalline tripoli (as quartz), respirable dust	1317-95-9	(2)	(2)	(2)
Silica, crystalline tridymite, respirable dust	15468-32-3	(2)	(2)	(2)

Threshold Limit Values of Airborne Contaminants for Construction—Continued

Substance	CAS No.[d]	ppm[e]	mg/m[3][b]	Skin Designation
Silica, fused, respirable dust	60676-86-0	([2])	([2])	([2])
Silicates (less than 1% crystalline silica).				
Mica (respirable dust)	12001-26-2	([2])	([2])	([2])
Soapstone, total dust	—	([2])	([2])	([2])
Soapstone, respirable dust	—	([2])	([2])	([2])
Talc (containing asbestos)	—	([3])	([3])	([3])
Talc (containing no asbestos), respirable dust	14807-96-6	([3])	([3])	([3])
Tremolite		([1])	([1])	([1])
Silicon	7440-21-3			
Total dust		—	15	—
Respirable fraction		—	5	—
Silicon carbide	409-21-2			
Total dust		—	15	—
Respirable fraction		—	5	—
Silver, metal and soluble compounds (as Ag)	7440-22-4	—	0.01	—
Soapstone; see Silicates.				
Sodium fluoroacetate	62-74-8	—	0.05	X
Sodium hydroxide	1310-73-2	—	2	—
Starch	9005-25-8			
Total dust		—	15	—
Respirable fraction		—	5	—
Stibine	7803-52-3	0.1	0.5	—
Stoddard solvent	8052-41-3	200	1150	—
Strychnine	57-24-9	—	0.15	—
Styrene	100-42-5	100	420	50
Sucrose	57-50-1			
Total dust		—	15	—
Respirable fraction		—	5	—
Sulfur dioxide	7446-09-5	5	13	—
Sulfur hexafluoride	2551-62-4	1000	6000	—
Sulfuric acid	7664-93-9	—	1	—
Sulfur monochloride	10025-67-9	1	6	—
Sulfur pentafluoride	5714-22-7	0.025	0.25	—
Sulfuryl fluoride	2699-79-8	5	20	—
Systox, see Demeton.				
2,4,5-T (2,4,5-trichlorophenoxyacetic acid)	93-76-5	—	10	—
Talc; see Silicates—.				
Tantalum, metal and oxide dust	7440-25-7	—	5	—
TEDP (Sulfotep)	3689-24-5	—	0.2	X
Teflon decomposition products			A2	
Tellurium and compounds (as Te)	13494-80-9	—	0.1	—
Tellurium hexafluoride (as Te)	7783-80-4	0.02	0.2	—
Temephos	3383-96-8			
Total dust		—	15	—
Respirable fraction		—	5	—
TEPP (Tetraethyl pyrophosphate)	107-49-3	—	0.05	X
Terphenyls	26140-60-3	(C)1	(C)9	—
1,1,1,2-Tetrachloro-2,2-difluoroethane	76-11-9	500	4170	—
1,1,2,2-Tetrachloro-1,2-difluoroethane	76-12-0	500	4170	—
1,1,2,2-Tetrachloroethane	79-34-5	5	35	X
Tetrachloroethylene; see Perchloroethylene.				
Tetrachloromethane; see Carbon tetrachloride.				
Tetrachloronaphthalene	1335-88-2	—	2	X
Tetraethyl lead (as Pb)	78-00-2	—	0.1	X
Tetrahydrofuran	109-99-9	200	590	—
Tetramethyl lead, (as Pb)	75-74-1	—	0.15	X
Tetramethyl succinonitrile	3333-52-6	0.5	3	X
Tetranitromethane	509-14-8	1	8	—
Tetryl (2;4,6-Trinitrophenylmethylnitramine)	479-45-8	—	1.5	X
Thallium, soluble compounds (as Tl)	7440-28-0	—	0.1	X
4,4'-Thiobis (6-tert, Butyl-m-cresol)	96-69-5			
Total dust		—	15	—
Respirable fraction		—	5	—
Thiram	137-26-8	—	5	—
Tin, inorganic compounds (except oxides) (as Sn)	7440-31-5	—	2	—
Tin, organic compounds (as Sn)	7440-31-5	—	0.1	—
Tin oxide (as Sn)	21651-19-4	—	—	—
Total dust		—	15	—
Respirable fraction		—	5	—
Titanium dioxide	13463-67-7			
Total dust		—	15	—

Threshold Limit Values of Airborne Contaminants for Construction—Continued

Substance	CAS No.[d]	ppm[a]	mg/m³[b]	Skin Designation
Toluene	108-88-3	200	750	100
Toluene-2,4-diisocyanate (TDI)	584-84-9	(C)0.02	(C)0.14	—
o-Toluidine	95-53-4	5	22	X
Toxaphene; see Chlorinated camphene.				
Tremolite; see Silicates.				
Tributyl phosphate	126-73-8	—	5	—
1,1,1-Trichloroethane; see Methyl chloroform.				
1,1,2-Trichloroethane	79-00-5	10	45	X
Trichloroethylene	79-01-6	100	535	—
Trichloromethane; see Chloroform.				
Trichloronaphthalene	1321-65-9	—	5	X
1,2,3-Trichloropropane	96-18-4	50	300	—
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	1000	7600	—
Triethylamine	121-44-8	25	100	—
Trifluorobromomethane	75-63-8	1000	6100	—
Trimethyl benzene	25551-13-7	25	120	—
2,4,6-Trinitrophenyl; see Picric acid.				
2,4,6-Trinitrophenylmethylnitramine; see Tetryl.				
2,4,6-Trinitrotoluene (TNT)	118-96-7	—	1.5	X
Triorthocresyl phosphate	78-30-8	—	0.1	—
Triphenyl phosphate	115-86-6	—	3	—
Tungsten (as W)	7440-33-7			
Insoluble compounds		—	5	—
Soluble compounds		—	1	—
Turpentine	8006-64-2	100	560	—
Uranium (as U)	7440-61-1			
Soluble compounds		—	0.2	—
Insoluble compounds		—	0.2	—
Vanadium	1314-62-1			
Respirable dust (as V_2O_5)		—	(C)0.5	—
Fume (as V_2O_5)		—	(C)0.1	—
Vegetable oil mist				
Total dust		—	15	—
Respirable fraction		—	5	—
Vinyl benzene; see Styrene.				
Vinyl chloride; see § 1926.1117	75-01-4			
Vinyl cyanide; see Acrylonitrile.				
Vinyl toluene	25013-15-4	100	480	—
Warfarin	81-81-2	—	0.1	—
Xylenes (o-, m-, p-isomers)	1330-20-7	100	435	—
Xylidine	1300-73-8	5	25	X
Yttrium	7440-65-5	—	1	—
Zinc chloride fume	7646-85-7	—	1	—
Zinc oxide fume	1314-13-2	—	5	—
Zinc oxide	1314-13-2			
Total dust		—	15	—
Respirable fraction		—	5	—
Zinc stearate	557-05-1			
Total dust		—	15	—
Respirable fraction		—	5	—
Zirconium compounds (as Zr)	7440-67-7	—	5	

MINERAL DUSTS

Substance	mppcf[j]
SILICA:	
Crystalline	
Quartz. Threshold Limit calculated from the formula	250[k] / $\%SiO_2+5$
Cristobalite.	
Amorphous, including natural diatomaceous earth	20
SILICATES (less than 1% crystalline silica)	
Mica	20
Portland cement	50

MINERAL DUSTS—Continued

Substance	mppcf[j]
Soapstone	20
Talc (non-asbestiform)	20
Talc (fibrous), use asbestos limit	—
Graphite (natural)	15

MINERAL DUSTS—Continued

Substance	mppcf[j]
Inert or Nuisance Particulates:[m]	50 (or 15 mg/m³ whichever is the smaller) of total dust <1% SiO_2

Conversion factors.
mppcf × 35.3 = million particles per cubic meter = particles per c.c.

Footnotes
[1] [Reserved]
[2] See Mineral Dusts Table.
[3] Use Asbestos Limit § 1926.58.
[4] See 1926.58.
* The PELs are 8-hour TWAs unless otherwise noted; a (C) designation denotes a ceiling limit.
** As determined from breathing-zone air samples.
[a] Parts of vapor or gas per million parts of contaminated air by volume at 25°C and 760 torr.
[b] Milligrams of substance per cubic meter of air. When entry is in this column only, the value is exact; when listed with a ppm entry, it is approximate.
[c] [Reserved]
[d] The CAS number is for information only. Enforcement is based on the substance name. For an entry covering more than one metal compound, measured as the metal, the CAS number for the metal is given--not CAS numbers for the individual compounds.
[e-f] [Reserved]
[g] For sectors excluded from § 1926.1128 the limit is 10 ppm TWA.
[h] Where OSHA has published a proposal for a substance but has not issued a final rule, the proposal is referenced and the existing limit is published.
[i] [Reserved]
[j] Millions of particles per cubic foot of air, based on impinger samples counted by light-field techniques.
[k] The percentage of crystalline silica in the formula is the amount determined from airborne samples, except in those instances in which other methods have been shown to be applicable.
[l] [Reserved]
[m] Covers all organic and inorganic particulates not otherwise regulated. Same as Particulates Not Otherwise Regulated.
The 1970 TLV uses letter designations instead of a numerical value as follows:
A[1] [Reserved]
A[2] Polytetrafluoroethylene decomposition products. Because these products decompose in part by hydrolysis in alkaline solution, they can be quantitatively determined in air as fluoride to provide an index of exposure. No TLV is recommended pending determination of the toxicity of the products, but air concentrations should be minimal.
A[3] Gasoline and/or Petroleum Distillates. The composition of these materials varies greatly and thus a single TLV for all types of these materials is no longer applicable. The content of benzene, other aromatics and additives should be determined to arrive at the appropriate TLV.
E Simple asphyxiants. The limiting factor is the available oxygen which shall be at least 19.5% and be within the requirements addressing explosion in part 1926.

10. In § 1926.57, new paragraphs (f)—(i) are added to read as follows:

1926.57 Ventilation.

* * * * *

(f) *Abrasive blasting*—(1) *Definitions applicable to this paragraph*—

(i) *Abrasive.* A solid substance used in an abrasive blasting operation.

(ii) *Abrasive-blasting respirator.* A continuous flow air-line respirator constructed so that it will cover the wearer's head, neck, and shoulders to protect him from rebounding abrasive.

(iii) *Blast cleaning barrel.* A complete enclosure which rotates on an axis, or which has an internal moving tread to tumble the parts, in order to expose various surfaces of the parts to the action of an automatic blast spray.

(iv) *Blast cleaning room.* A complete enclosure in which blasting operations are performed and where the operator works inside of the room to operate the blasting nozzle and direct the flow of the abrasive material.

(v) *Blasting cabinet.* An enclosure where the operator stands outside and operates the blasting nozzle through an opening or openings in the enclosure.

(vi) *Clean air.* Air of such purity that it will not cause harm or discomfort to an individual if it is inhaled for extended periods of time.

(vii) *Dust collector.* A device or combination of devices for separating dust from the air handled by an exhaust ventilation system.

(viii) *Exhaust ventilation system.* A system for removing contaminated air from a space, comprising two or more of the following elements (A) enclosure or hood, (B) duct work, (C) dust collecting equipment, (D) exhauster, and (E) discharge stack.

(ix) *Particulate-filter respirator.* An air purifying respirator, commonly referred to as a dust or a fume respirator, which removes most of the dust or fume from the air passing through the device.

(x) *Respirable dust.* Airborne dust in sizes capable of passing through the upper respiratory system to reach the lower lung passages.

(xi) *Rotary blast cleaning table.* An enclosure where the pieces to be cleaned are positioned on a rotating table and are passed automatically through a series of blast sprays.

(xii) *Abrasive blasting.* The forcible application of an abrasive to a surface by pneumatic pressure, hydraulic pressure, or centrifugal force.

(2) *Dust hazards from abrasive blasting.* (i) Abrasives and the surface coatings on the materials blasted are shattered and pulverized during blasting operations and the dust formed will contain particles of respirable size. The composition and toxicity of the dust from these sources shall be considered in making an evaluation of the potential health hazards.

(ii) The concentration of respirable dust or fume in the breathing zone of the abrasive-blasting operator or any other worker shall be kept below the levels specified in § 1926.55 or other pertinent sections of this part.

(iii) Organic abrasives which are combustible shall be used only in automatic systems. Where flammable or explosive dust mixtures may be present, the construction of the equipment, including the exhaust system and all electric wiring, shall conform to the requirements of American National Standard Installation of Blower and Exhaust Systems for Dust, Stock, and Vapor Removal or Conveying, Z33.1–1961 (NFPA 91–1961), and Suubpart S of this part. The blast nozzle shall be bonded and grounded to prevent the build up of static charges. Where flammable or explosive dust mixtures may be present, the abrasive blasting enclosure, the ducts, and the dust collector shall be constructed with loose panels or explosion venting areas, located on sides away from any occupied area, to provide for pressure relief in case of explosion, following the principles set forth in the National Fire Protection Association Explosion Venting Guide. NFPA 68–1954.

(3) *Blast-cleaning enclosures.* (i) Blast-cleaning enclosures shall be exhaust ventilated in such a way that a continuous inward flow of air will be maintained at all openings in the enclosure during the blasting operation.

(A) All air inlets and access openings shall be baffled or so arranged that by the combination of inward air flow and baffling the escape of abrasive or dust particules into an adjacent work area will be minimized and visible spurts of dust will not be observed.

(B) The rate of exhaust shall be sufficient to provide prompt clearance of the dust-laden air within the enclosure after the cessation of blasting.

(C) Before the enclosure is opened, the blast shall be turned off and the exhaust system shall be run for a sufficient period of time to remove the dusty air within the enclosure.

(D) Safety glass protected by screening shall be used in observation windows, where hard deep-cutting abrasives are used.

(E) Slit abrasive-resistant baffles shall be installed in multiple sets at all small access openings where dust might escape, and shall be inspected regularly and replaced when needed.

(*1*) Doors shall be flanged and tight when closed.

(*2*) Doors on blast-cleaning rooms shall be operable from both inside and outside, except that where there is a small operator access door, the large work access door may be closed or opened from the outside only.

(4) *Exhaust ventilation systems.* (i) The construction, installation, inspection, and maintenance of exhaust systems shall conform to the principles and requirements set forth in American National Standard Fundamentals

Governing the Design and Operation of Local Exhaust Systems, Z9.2–1960, and ANSI Z33.1–1961.

(a) When dust leaks are noted, repairs shall be made as soon as possible.

(b) The static pressure drop at the exhaust ducts leading from the equipment shall be checked when the installation is completed and periodically thereafter to assure continued satisfactory operation. Whenever an appreciable change in the pressure drop indicates a partial blockage, the system shall be cleaned and returned to normal operating condition.

(ii) In installations where the abrasive is recirculated, the exhaust ventilation system for the blasting enclosure shall not be relied upon for the removal of fines from the spent abrasive instead of an abrasive separator. An abrasive separator shall be provided for the purpose.

(iii) The air exhausted from blast-cleaning equipment shall be discharged through dust collecting equipment. Dust collectors shall be set up so that the accumulated dust can be emptied and removed without contaminating other working areas.

(5) *Personal protective equipment.* (i) Only respiratory protective equipment approved by the Bureau of Mines, U.S. Department of the Interior (see 30 CFR part 11) shall be used for protection of personnel against dusts produced during abrasive-blasting operations.

(ii) Abrasive-blasting respirators shall be worn by all abrasive-blasting operators:

(A) When working inside of blast-cleaning rooms, or

(B) When using silica sand in manual blasting operations where the nozzle and blast are not physically separated from the operator in an exhaust ventilated enclosure, or

(C) Where concentrations of toxic dust dispersed by the abrasive blasting may exceed the limits set in § 1926.55 or other pertinent sections of this part and the nozzle and blast are not physically separated from the operator in an exhaust-ventilated enclosure.

(iii) Particulate filter respirators, commonly referred to as dust-filter respirators, properly fitted, may be used for short, intermittent, or occasional dust exposures such as cleanup, dumping of dust collectors, or unloading shipments of sand at a receiving point, when it is not feasible to control the dust by enclosure, exhaust ventilation, or other means. Respirators used shall be approved (see 30 CFR part 11) for protection against the specific type of dust encountered.

(A) Dust-filter respirators may be used to protect the operator of outside abrasive-blasting operations where nonsilica abrasives are used on materials having low toxicities.

(B) Dust-filter respirators shall not be used for continuous protection where silica sand is used as the blasting abrasive, or toxic materials are blasted.

(iv) A respiratory protection program as defined and described in § 1926.103, shall be established wherever it is necessary to use respiratory protective equipment.

(v) Operators shall be equipped with heavy canvas or leather gloves and aprons or equivalent protection to protect them from the impact of abrasives. Safety shoes shall be worn to protect against foot injury where heavy pieces of work are handled.

(A) Safety shoes shall conform to the requirements of American National Standard for Men's Safety-Toe Footwear, Z41.1–1967.

(B) Equipment for protection of the eyes and face shall be supplied to the operator when the respirator design does not provide such protection and to any other personnel working in the vicinity of abrasive blasting operations. This equipment shall conform to the requirements of § 1926.102.

(6) Air supply and air compressors. The air for abrasive-blasting respirators shall be free of harmful quantities of dusts, mists, or noxious gases, and shall meet the requirements for air purity set forth in ANSI Z9.2–1960. The air from the regular compressed air line of the plant may be used for the abrasive-blasting respirator if:

(i) A trap and carbon filter are installed and regularly maintained, to remove oil, water, scale,and odor,

(ii) A pressure reducing diaphragm or valve is installed to reduce the pressure down to requirements of the particular type of abrasive-blasting respirator, and

(iii) An automatic control is provided to either sound an alarm or shut down the compressor in case of overheating.

(7) *Operational procedures and general safety.* Dust shall not be permitted to accumulate on the floor or on ledges outside of an abrasive-blasting enclosure, and dust spills shall be cleaned up promptly. Aisles and walkways shall be kept clear of steel shot or similar abrasive which may create a slipping hazard.

(8) *Scope.* (a) This paragraph applies to all operations where an abrasive is forcibly applied to a surface by pneumatic or hydraulic pressure, or by centrifugal force. It does not apply to steam blasting, or steam cleaning, or hydraulic cleaning methods where work is done without the aid of abrasives.

(g) *Grinding, polishing, and buffing operations*—(1) Definitions applicable to this paragraph—

(i) *Abrasive cutting-off wheels.* Organic-bonded wheels, the thickness of which is not more than one forty-eighth of their diameter for those up to, and including, 20 inches (50.8 cm) in diameter, and not more than one-sixtieth of their diameter for those larger than 20 inches (50.8 cm) in diameter, used for a multitude of operations variously known as cutting, cutting off, grooving, slotting, coping, and jointing, and the like. The wheels may be "solid" consisting of organic-bonded abrasive material throughout, "steel centered" consisting of a steel disc with a rim of organic-bonded material moulded around the periphery, or of the "inserted tooth" type consisting of a steel disc with organic-bonded abrasive teeth or inserts mechanically secured around the periphery.

(ii) *Belts.* All power-driven, flexible, coated bands used for grinding, polishing, or buffing purposes.

(iii) *Branch pipe.* The part of an exhaust system piping that is connected directly to the hood or enclosure.

(iv) *Cradle.* A movable fixture, upon which the part to be ground or polished is placed.

(v) *Disc wheels.* All power-driven rotatable discs faced with abrasive materials, artificial or natural, and used for grinding or polishing on the side of the assembled disc.

(vi) *Entry loss.* The loss in static pressure caused by air flowing into a duct or hood. It is usually expressed in inches of water gauge.

(vii) *Exhaust system.* A system consisting of branch pipes connected to hoods or enclosures, one or more header pipes, an exhaust fan, means for separating solid contaminants from the air flowing in the system, and a discharge stack to outside.

(viii) *Grinding wheels.* All power-driven rotatable grinding or abrasive wheels, except disc wheels as defined in this standard, consisting of abrasive particles held together by artificial or natural bonds and used for peripheral grinding.

(ix) *Header pipe (main pipe).* A pipe into which one or more branch pipes enter and which connects such branch pipes to the remainder of the exhaust system.

(x) *Hoods and enclosures.* The partial or complete enclosure around the wheel or disc through which air enters an exhaust system during operation.

(xi) *Horizontal double-spindle disc grinder.* A grinding machine carrying two power-driven, rotatable, coaxial, horizontal spindles upon the inside

ends of which are mounted abrasive disc wheels used for grinding two surfaces simultaneously.

(xii) Horizontal single-spindle disc grinder. A grinding machine carrying an abrasive disc wheel upon one or both ends of a power-driven, rotatable single horizontal spindle.

(xiii) *Polishing and buffing wheels.* All power-driven rotatable wheels composed all or in part of textile fabrics, wood, felt, leather, paper, and may be coated with abrasives on the periphery of the wheel for purposes of polishing, buffing, and light grinding.

(xiv) *Portable grinder.* Any power-driven rotatable grinding, polishing, or buffing wheel mounted in such manner that it may be manually manipulated.

(xv) *Scratch brush wheels.* All power-driven rotatable wheels made from wire or bristles, and used for scratch cleaning and brushing purposes.

(xvi) *Swing-frame grinder.* Any power-driven rotatable grinding, polishing, or buffing wheel mounted in such a manner that the wheel with its supporting framework can be manipulated over stationary objects.

(xvii) *Velocity pressure (vp).* The kinetic pressure in the direction of flow necessary to cause a fluid at rest to flow at a given velocity. It is usually expressed in inches of water gauge.

(xviii) *Vertical spindle disc grinder.* A grinding machine having a vertical, rotatable power-driven spindle carrying a horizontal abrasive disc wheel.

(2) *Application.* Wherever dry grinding, dry polishing or buffing is performed, and employee exposure, without regard to the use of respirators, exceeds the permissible exposure limits prescribed in § 1926.55 or other pertinent sections of this part, a local exhaust ventilation system shall be provided and used to maintain employee exposures within the prescribed limits.

(3) *Hood and branch pipe requirements.* (i) Hoods connected to exhaust systems shall be used, and such hoods shall be designed, located, and placed so that the dust or dirt particles shall fall or be projected into the hoods in the direction of the air flow. No wheels, discs, straps, or belts shall be operated in such manner and in such direction as to cause the dust and dirt particles to be thrown into the operator's breathing zone.

(ii) Grinding wheels on floor stands, pedestals, benches, and special-purpose grinding machines and abrasive cutting-off wheels shall have not less than the minimum exhaust volumes shown in Table D–57.1 with a recommended minimum duct velocity of 4,500 feet per minute in the branch and 3,500 feet per minute in the main. The entry losses from all hoods except the vertical-spindle disc grinder hood, shall equal 0.65 velocity pressure for a straight takeoff and 0.45 velocity pressure for a tapered takeoff. The entry loss for the vertical-spindle disc grinder hood is shown in figure D–57.1 (following paragraph (g) of this section).

TABLE D–57.1—GRINDING AND ABRASIVE CUTTING-OFF WHEELS

Wheel diameter, inches (cm)	Wheel width, inches (cm)	Minimum exhaust volume (feet ^{3}/min.)
To 9 (22.86)	1½ (3.81)	220
Over 9 to 16 (22.86 to 40.64)	2 (5.08)	390
Over 16 to 19 (40.64 to 48.26)	3 (7.62)	500
Over 19 to 24 (48.26 to 60.96)	4 (10.16)	610
Over 24 to 30 (60.96 to 76.2) ..	5 (12.7)	880
Over 30 to 36 (76.2 to 91.44) ..	6 (15.24)	1,200

For any wheel wider than wheel diameters shown in Table D–57.1, increase the exhaust volume by the ratio of the new width to the width shown.

Example:

If wheel width=4½ inches (11.43 cm), then 4.5÷4×610=686 (rounded to 690).

(iii) Scratch-brush wheels and all buffing and polishing wheels mounted on floor stands, pedestals, benches, or special-purpose machines shall have not less than the minimum exhaust volume shown in Table D–57.2.

TABLE D–57.2—BUFFING AND POLISHING WHEELS

Wheel diameter, inches (cm)	Wheel width, inches cm)	Minimum exhaust volume (feet ^{3}/min.)
To 9 (22.86)	2 (5.08)	300
Over 9 to 16 (22.86 to 40.64)	3 (7.62)	500
Over 16 to 19 (40.64 to 48.26)	4 (10.16)	610
Over 19 to 24 (48.26 to 60.96)	5 (12.7)	740

TABLE D–57.2—BUFFING AND POLISHING WHEELS—Continued

Wheel diameter, inches (cm)	Wheel width, inches cm)	Minimum exhaust volume (feet ^{3}/min.)
Over 24 to 30 (60.96 to 76.2) ..	6 (15.24)	1,040
Over 30 to 36 (76.2 to 91.44) ..	6 (15.24)	1,200

(iv) Grinding wheels or discs for horizontal single-spindle disc grinders shall be hooded to collect the dust or dirt generated by the grinding operation and the hoods shall be connected to branch pipes having exhaust volumes as shown in Table D–57.3.

TABLE D–57.3—HORIZONTAL SINGLE-SPINDLE DISC GRINDER

Disc diameter, inches (cm)	Exhaust volume (ft. ^{3}/min.)
Up to 12 (30.48)	220
Over 12 to 19 (30.48 to 48.26) ..	390
Over 19 to 30 (48.26 to 76.2)	610
Over 30 to 36 (76.2 to 91.44)	880

(v) Grinding wheels or discs for horizontal double-spindle disc grinders shall have a hood enclosing the grinding chamber and the hood shall be connected to one or more branch pipes having exhaust volumes as shown in Table D–57.4.

TABLE D–57.4—HORIZONTAL DOUBLE-SPINDLE DISC GRINDER

Disc diameter, inches (cm)	Exhaust volume (ft. ^{3}/min.)
Up to 19 (48.26)	610
Over 19 to 25 (48.26 to 63.5)	880
Over 25 to 30 (63.5 to 76.2)	1,200
Over 30 to 53 (76.2 to 134.62) ..	1,770
Over 53 to 72 (134.62 to 182.88)	5,280

(vi) Grinding wheels or discs for vertical single-spindle disc grinders shall be encircled with hoods to remove the dust generated in the operation. The hoods shall be connected to one or more branch pipes having exhaust volumes as shown in Table D–57.5.

TABLE D–57.5—VERTICAL SPINDLE DISC GRINDER

Disc diameter, inches (cm)	One-half or more of disc covered		Disc not covered	
	Number [1]	Exhaust foot [3]/min.	Number [1]	Exhaust foot [3]/min.
Up to 20 (50.8)	1	500	2	780
Over 20 to 30 (50.8 to 76.2)	2	780	2	1,480
Over 30 to 53 (76.2 to 134.62)	2	1,770	4	3,530
Over 53 to 72 (134.62 to 182.88)	2	3,140	5	6,010

[1] Number of exhaust outlets around periphery of hood, or equal distribution provided by other means.

(vii) Grinding and polishing belts shall be provided with hoods to remove dust and dirt generated in the opefations and the hoods shall be connected to branch pipes having exhaust volumes as shown in Table D–57.6.

TABLE D–57.6—GRINDING AND POLISHING BELTS

Belts width, inches (cm)	Exhaust volume (ft. [3]/min.)
Up to 3 (7.62)	220
Over 3 to 5 (7.62 to 12.7)	300
Over 5 to 7 (12.7 to 17.78)	390
Over 7 to 9 (17.78 to 22.86)	500
Over 9 to 11 (22.86 to 27.94)	610
Over 11 to 13 (27.94 to 33.02)	740

(viii) Cradles and swing-frame grinders. Where cradles are used for handling the parts to be ground, polished, or buffed, requiring large partial enclosures to house the complete operation, a minimum average air velocity of 150 feet per minute shall be maintained over the entire opening of the enclosure. Swing-frame grinders shall also be exhausted in the same manner as provided for cradles. (See fig. D–57.3)

(ix) Where the work is outside the hood, air volumes must be increased as shown in American Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, Z9.2–1960 (section 4, exhaust hoods).

(4) *Exhaust systems.* (i) Exhaust systems for grinding, polishing, and buffing operations should be designed in accordance with American Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, Z9.2–1960.

(ii) Exhaust systems for grinding, polishing, and buffing operations shall be tested in the manner described in American Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, Z9.2–1960.

(iii) All exhaust systems shall be provided with suitable dust collectors.

(5) *Hood and enclosure design.* (i) (A) It is the dual function of grinding and abrasive cutting-off wheel hoods to protect the operator from the hazards of bursting wheels as well as to provide a means for the removal of dust and dirt generated. All hoods shall be not less in structural strength than specified in the American National Standard Safety Code for the Use, Care, and Protection of Abrasive Wheels, B7.1–1970.

(B) Due to the variety of work and types of grinding machines employed, it is necessary to develop hoods adaptable to the particular machine in question, and such hoods shall be located as close as possible to the operation.

(ii) Exhaust hoods for floor stands, pedestals, and bench grinders shall be designed in accordance with figure D–57.2. The adjustable tongue shown in the figure shall be kept in working order and shall be adjusted within one-fourth inch (0.635 cm) of the wheel periphery at all times.

(iii) Swing-frame grinders shall be provided with exhaust booths as indicated in figure D–57.3.

(iv) Portable grinding operations, whenever the nature of the work permits, shall be conducted within a partial enclosure. The opening in the enclosure shall be no larger than is actually required in the operation and an average face air velocity of not less than 200 feet per minute shall be maintained.

(v) Hoods for polishing and buffing and scratch-brush wheels shall be constructed to conform as closely to figure D–57.4 as the nature of the work will permit.

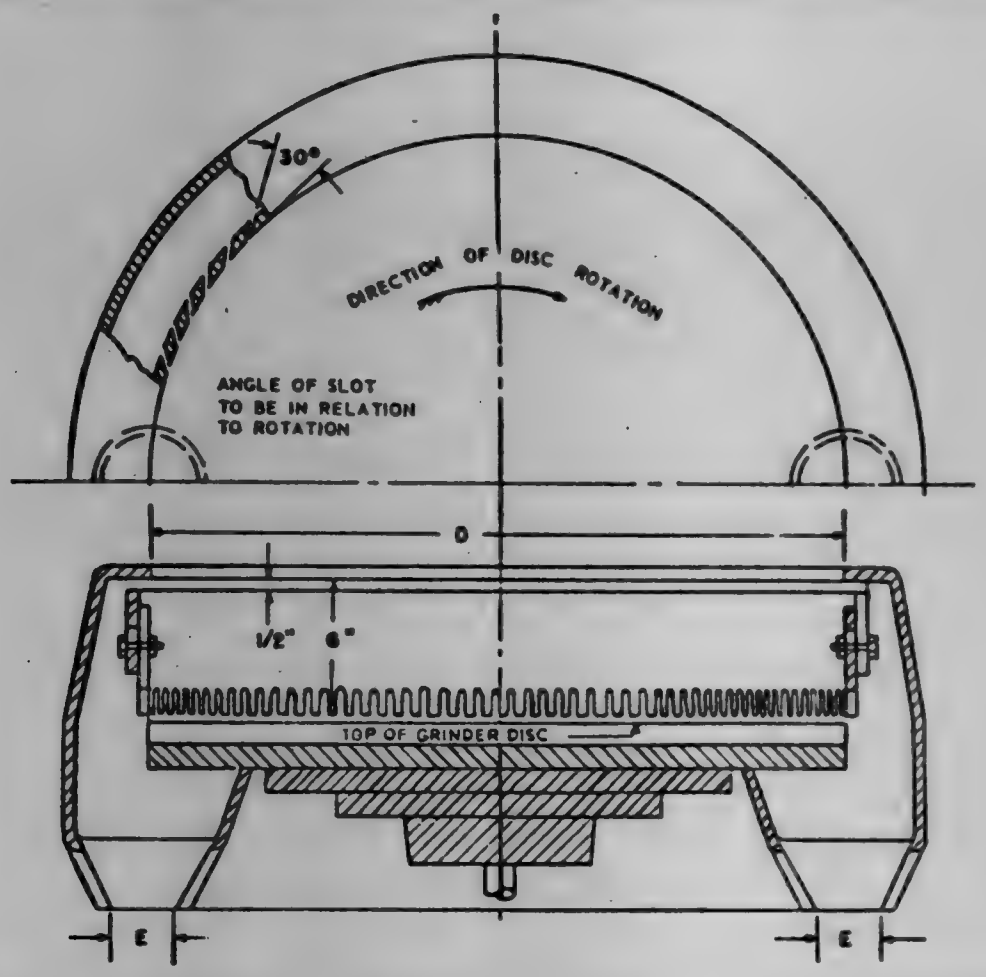
(vi) Cradle grinding and polishing operations shall be performed within a partial enclosure similar to figure D–57.5. The operator shall be positioned outside the working face of the opening of the enclosure. The face opening of the enclosure should not be any greater in area than that actually required for the performance of the operation and the average air velocity into the working face of the enclosure shall not be less than 150 feet per minute.

(vii) Hoods for horizontal single-spindle disc grinders shall be constructed to conform as closely as possible to the hood shown in figure D–57.1. It is essential that there be a space between the back of the wheel and the hood, and a space around the periphery of the wheel of at least 1 inch (2.54 cm) in order to permit the suction to act around the wheel periphery. The opening on the side of the disc shall be no larger than is required for the grinding operation, but must never be less than twice the area of the branch outlet.

(viii) Horizontal double-spindle disc grinders shall have a hood encircling the wheels and grinding chamber similar to that illustrated in figure D–57.2. The openings for passing the work into the grinding chamber should be kept as small as possible, but must never be less than twice the area of the branch outlets.

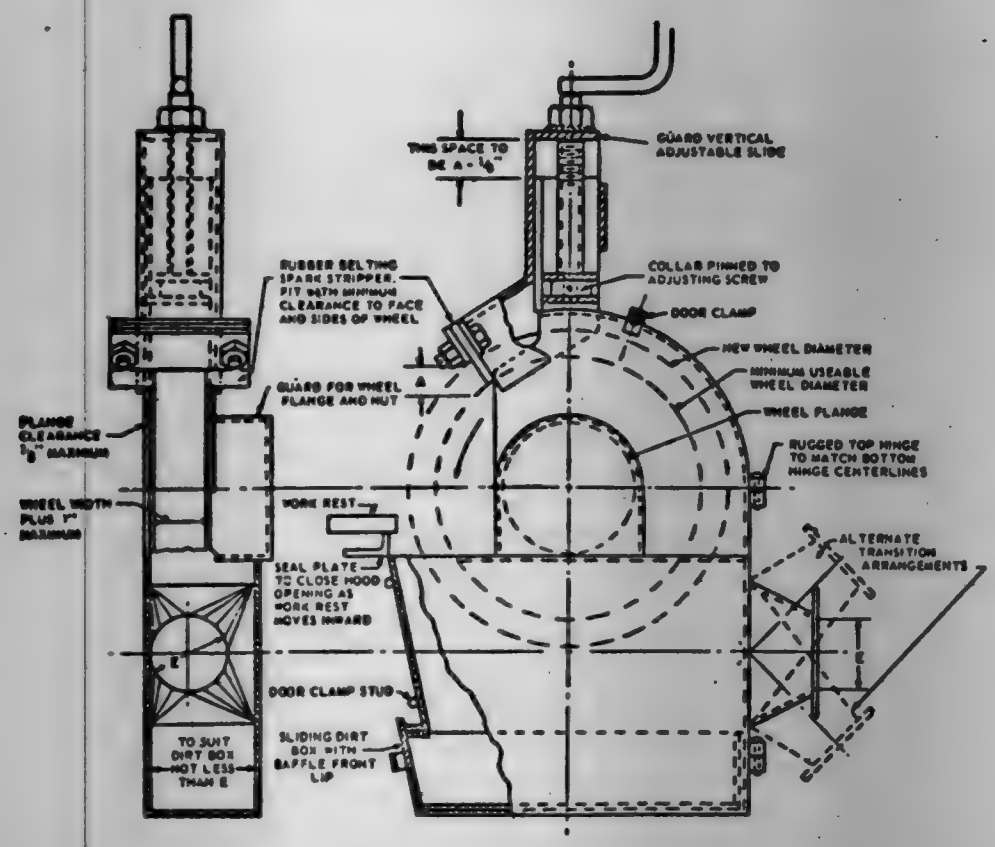
(ix) Vertical-spindle disc grinders shall be encircled with a hood so constructed that the heavy dust is drawn off a surface of the disc and the lighter dust exhausted through a continuous slot at the top of the hood as shown in figure D–57.1.

(x) Grinding and polishing belt hoods shall be constructed as close to the operation as possible. The hood should extend almost to the belt, and 1-inch (2.54 cm) wide openings should be provided on either side. Figure D–57.3 shows a typical hood for a belt operation.



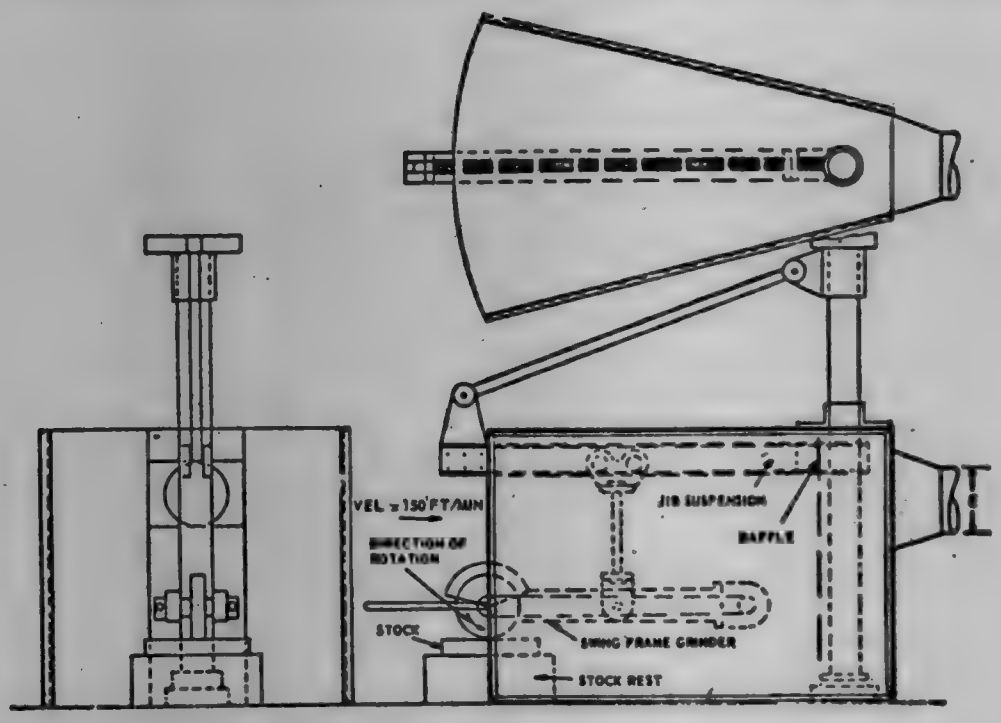
Dia. *D* inches (cm)		Exhaust *E*		Volume Exhausted at 4,500 ft/min ft³/min	Note
Min.	Max.	No Pipes	Dia.		
.....	20 (50.8)	1	4¼ (10.795)	500	When one-half or more of the disc can be hooded, use exhaust ducts as shown at the left.
Over 20 (50.8)	30 (76.2)	2	4 (10.16)	780	
Over 30 (76.2)	72 (182.88)	2	6 (15.24)	1,770	
Over 53 (134.62)	72 (182.88)	2	8 (20.32)	3,140	
.....	20 (50.8)	2	4 (10.16)	780	When no hood can be used over disc, use exhaust ducts as shown at left.
Over 20 (50.8)	20 (50.8)	2	4 (10.16)	780	
Over 30 (76.2)	30 (76.2)	2	5½ (13.97)	1,480	
Over 53 (134.62)	53 (134.62)	4	6 (15.24)	3,530	
	72 (182.88)	5	7 (17.78)	6,010	

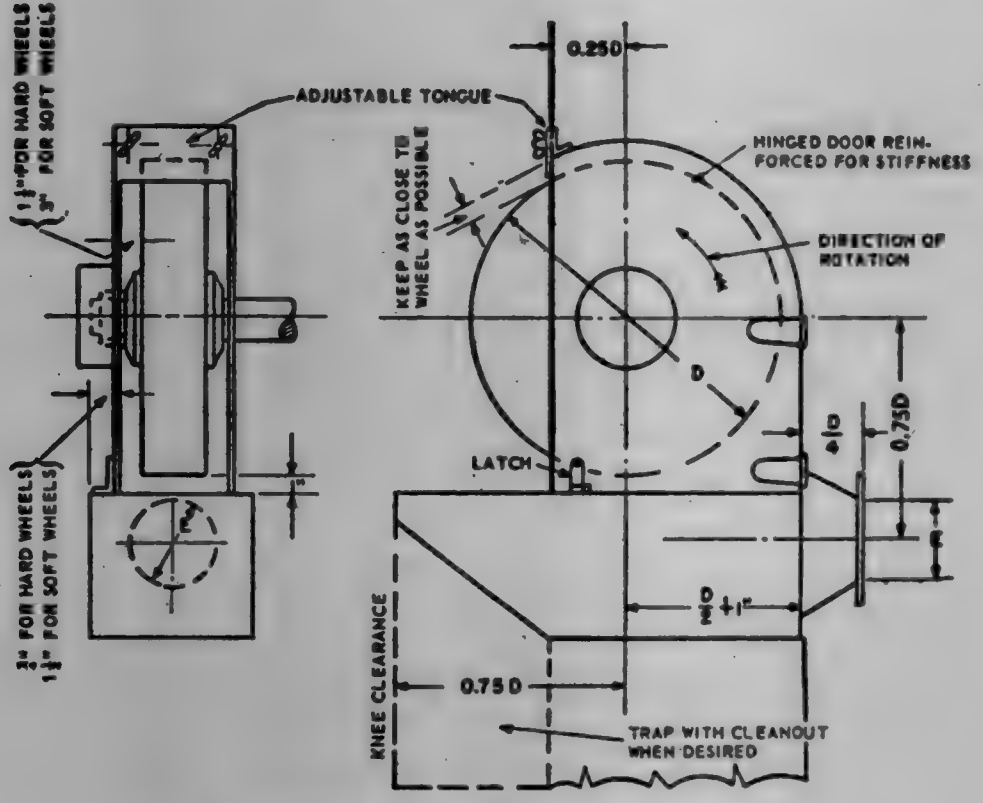
Entry loss=1.0 slot velocity pressure + 0.5 branch velocity pressure.
Minimum slot velocity=2,000 ft/min—½-inch (1.27 cm) slot width.



Wheel dimension, inches (centimeters)			Exhaust outlet, inches (centimeters) *E*	Volume of air at 4,500 ft/min
Diameter		Width, Max		
Min= *d*	Max= *D*			
Over 9 (22.86)	9 (22.86)	1½ (3.81)	3	220
Over 16 (40.64)	16 (40.64)	2 (5.08)	4	390
Over 19 (48.26)	19 (48.26)	3 (7.62)	4½	500
Over 24 (60.96)	24 (60.96)	4 (10.16)	5	610
Over 30 (76.2)	30 (76.2)	5 (12.7)	6	880
	36 (91.44)	6 (15.24)	7	1,200

Entry loss = 0.45 velocity pressure for tapered takeoff 0.65 velocity pressure for straight takeoff.





STANDARD BUFFING AND POLISHING HOOD

Wheel dimension, inches (centimeters)			Exhaust outlet, inches *E*	Volume of air at 4,500 ft/min
Diameter		Width, Max		
Min= *d*	Max= *D*			
	9 (22.86)	2 (5.08)	3½ (3.81)	300
Over 9 (22.86)	16 (40.64)	3 (5.08)	4	500
Over 16 (40.64)	19 (48.26)	4 (11.43)	5	610
Over 19 (48.26)	24 (60.96)	5 (12.7)	5½	740
Over 24 (60.96)	30 (76.2)	6 (15.24)	6½	1.040
Over 30 (76.2)	36 (91.44)	6 (15.24)	7	1.200

Entry loss = 0.15 velocity pressure for tapered takeoff; 0.65 velocity pressure for straight takeoff.

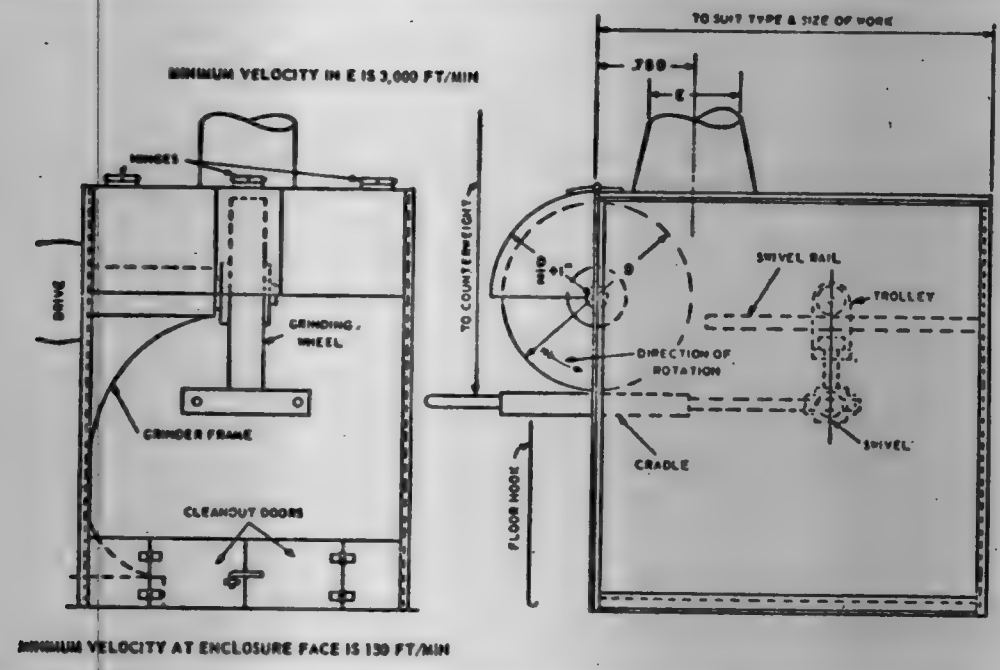
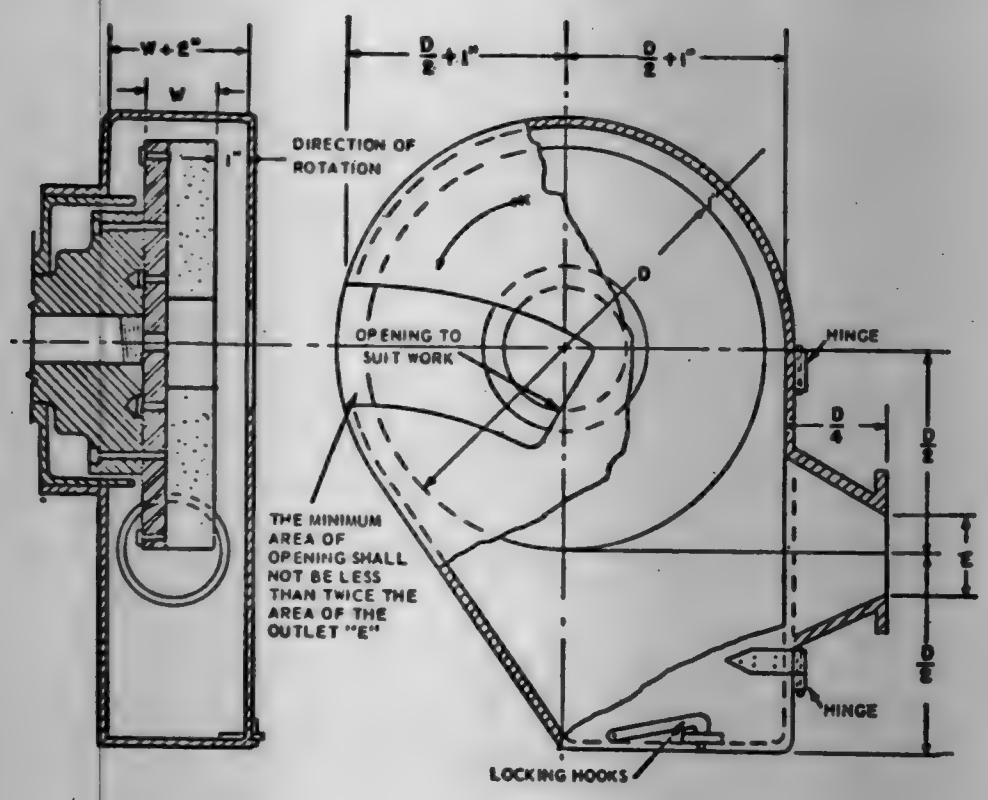


TABLE D–57.12—MAXIMUM ALLOWABLE SIZE OF CONTAINERS AND PORTABLE TANKS

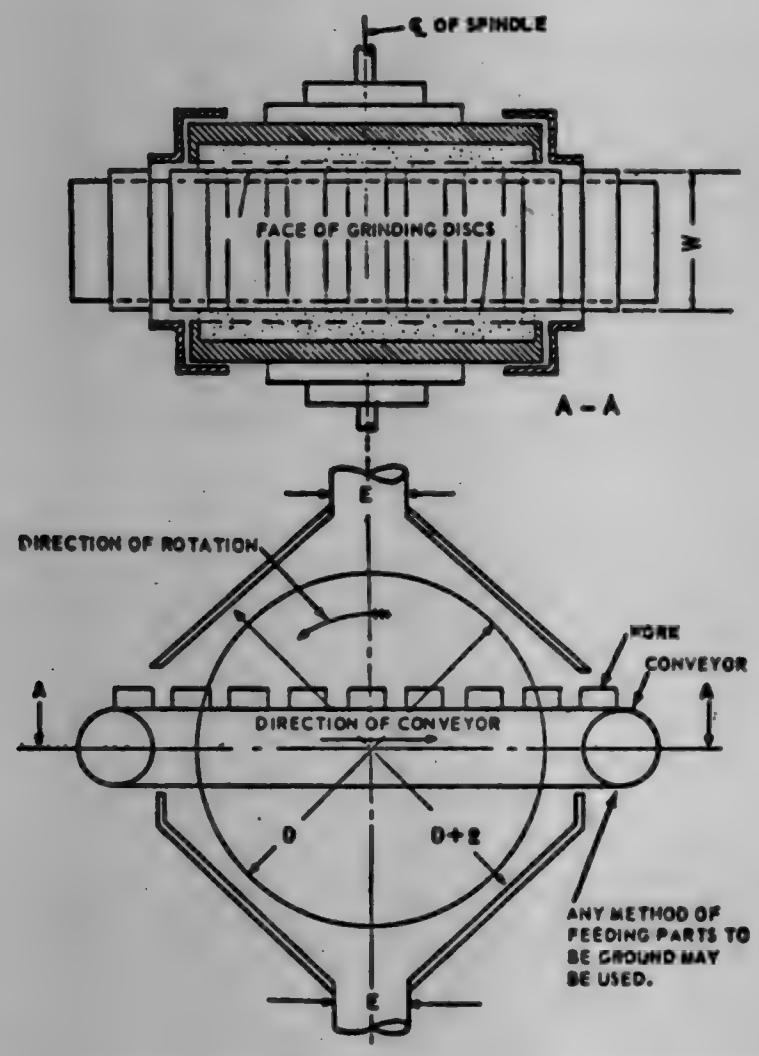
Container type	Flammable liquids			Combustible liquids	
	Class IA	Class IB	Class IC	Class II	Class III
Glass or approved plastic	1 pt (0.473 L)	1 qt (1.1 L)	1 gal (3.785 L)	1 gal (3.785 L)	1 gal (3.785 L).
Metal (other than DOT drums)	1 gal (3.785 L)	5 gal (18.925 L)	5 gal (18.925 L)	5 gal (18.925 L)	5 gal (18.925 L).
Safety cans	2 gal (7.57 L)	5 gal (18.925 L)	5 gal (18.925 L)	5 gal (18.925 L)	5 gal (18.925 L).
Metal drums (DOT spec.)	60 gal (227.1 L)	60 gal (227.1 L)	60 gal (227.1 L)	60 gal (227.1 L)	60 gal (227.1 L).
Approved portable tanks	660 gal (2,498.1 L)	660 gal (2,498.1 L)	660 gal (2,498.1 L)	660 gal (2,498.1 L)	660 gal (2,498.1 L).

Container exemptions: (a) Medicines, beverages, foodstuffs, cosmetics, and other common consumer items, when packaged according to commonly accepted practices, shall be exempt from the requirements of § 1910.106(d)(2) (i) and (ii).



Dia *D*, inches (centimeters)		Exhaust *E*, dia. inches (cm)	Volume exhausted at 4,500 ft/min ft³/min
Min.	Max.		
	12 (30.48)	3 (7.6)	220
Over 12 (30.48)	19 (48.26)	4 (10.16)	390
Over 19 (48.26)	30 (76.2)	5 (12.7)	610
Over 30 (76.2)	36 (91.44)	6 (15.24)	880

NOTE: If grinding wheels are used for disc grinding purposes, hoods must conform to structural strength and materials as described in 9.1.
Entry loss = 0.45 velocity pressure for tapered takeoff.



Disc dia. inches (centimeters)		Exhaust E		Volume exhaust at 4,500 ft/min. ft³/min	Note
Min.	Max.	No Pipes	Dia.		
	19 (48.26)	1	5	610	
Over 19 (48.26)	25 (63.5)	1	6	880	When width "W" permits, exhaust ducts should be as near heaviest grinding as possible.
Over 25 (63.5)	30 (76.2)	1	7	1,200	
Over 30 (76.2)	53 (134.62)	2	8	1,770	
Over 53 (134.62)	72 (182.88)	4	8	3,280	

Entry loss = 0.45 velocity pressure for tapered takeoff.

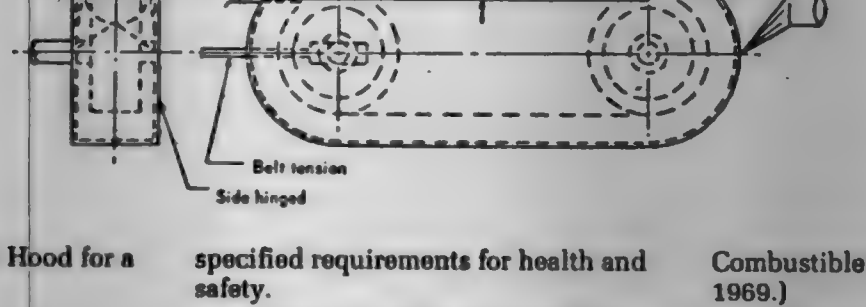


Figure D–57.3.—A Typical Hood for a Belt Operation

Belt width W. inches (centimeters)	Exhaust volume. ft.³/min
Up to 3 (7.62)	220
3 to 5 (7.62 to 12.7)	300
5 to 7 (12.7 to 17.78)	390
7 to 9 (17.78 to 22.86)	500
9 to 11 (22.86 to 27.94)	610
11 to 13 (27.94 to 33.02)	740

Minimum duct velocity = 4,500 ft/min branch, 3,500 ft/min main.

Entry loss = 0.45 velocity pressure for tapered takeoff; 0.65 velocity pressure for straight takeoff.

(6) *Scope.* This paragraph (g), prescribes the use of exhaust hood enclosures and systems in removing dust, dirt, fumes, and gases generated through the grinding, polishing, or buffing of ferrous and nonferrous metals.

(h) *Spray finishing operations*—(1) *Definitions applicable to this paragraph*—(i) *Spray-finishing operations.* Spray-finishing operations are employment of methods wherein organic or inorganic materials are utilized in dispersed form for deposit on surfaces to be coated, treated, or cleaned. Such methods of deposit may involve either automatic, manual, or electrostatic deposition but do not include metal spraying or metallizing, dipping, flow coating, roller coating, tumbling, centrifuging, or spray washing and degreasing as conducted in self-contained washing and degreasing machines or systems.

(ii) *Spray booth.* Spray booths are defined and described in § 1926.66(a). (See sections 103, 104, and 105 of the Standard for Spray Finishing Using Flammable and Combustible Materials, NFPA No. 33–1969).

(iii) *Spray room.* A spray room is a room in which spray-finishing operations not conducted in a spray booth are performed separately from other areas.

(iv) *Minimum maintained velocity.* Minimum maintained velocity is the velocity of air movement which must be maintained in order to meet minimum specified requirements for health and safety.

(2) *Location and application.* Spray booths or spray rooms are to be used to enclose or confine all operations. Spray-finishing operations shall be located as provided in sections 201 through 206 of the Standard for Spray Finishing Using Flammable and Combustible Materials, NFPA No. 33–1969.

(3) *Design and construction of spray booths.* (i) Spray booths shall be designed and constructed in accordance with § 1926.66(b) (1) through (4) and (6) through (10) (see sections 301–304 and 306–310 of the Standard for Spray Finishing Using Flammable and Combustible Materials, NFPA No. 33–1969), for general construction specifications. For a more detailed discussion of fundamentals relating to this subject, see ANSI Z9.2–1960

(A) Lights, motors, electrical equipment, and other sources of ignition shall conform to the requirements of § 1926.66(b)(10) and (c). (See section 310 and chapter 4 of the Standard for Spray Finishing Using Flammable and Combustible Materials NFPA No. 33–1969.)

(B) In no case shall combustible material be used in the construction of a spray booth and supply or exhaust duct connected to it.

(ii) Unobstructed walkways shall not be less than 6½ feet (1.976 m) high and shall be maintained clear of obstruction from any work location in the booth to a booth exit or open booth front. In booths where the open front is the only exit, such exits shall be not less than 3 feet (0.912 m) wide. In booths having multiple exits, such exits shall not be less than 2 feet (0.608 m) wide, provided that the maximum distance from the work location to the exit is 25 feet (7.6 m) or less. Where booth exits are provided with doors, such doors shall open outward from the booth.

(iii) Baffles, distribution plates, and dry-type overspray collectors shall conform to the requirements of § 1926.66(b) (4) and (5). (See sections 304 and 305 of the Standard for Spray Finishing Using Flammable and Combustible Materials, NFPA No. 33–1969.)

(A) Overspray filters shall be installed and maintained in accordance with the requirements of § 1926.66(b)(5), (see section 305 of the Standard for Spray Finishing Using Flammable and Combustible Materials, NFPA No. 33–1969), and shall only be in a location easily accessible for inspection, cleaning, or replacement.

(B) Where effective means, independent of the overspray filters, are installed which will result in design air distribution across the booth cross section, it is permissible to operate the booth without the filters in place.

(iv) (A) For wet or water-wash spray booths, the water-chamber enclosure, within which intimate contact of contaminated air and cleaning water or other cleaning medium is maintained, if made of steel, shall be 18 gage or heavier and adequately protected against corrosion.

(B) Chambers may include scrubber spray nozzles, headers, troughs, or other devices. Chambers shall be provided with adequate means for creating and maintaining scrubbing action for removal of particulate matter from the exhaust air stream.

(v) Collecting tanks shall be of welded steel construction or other suitable non-combustible material. If pits are used as collecting tanks, they shall be concrete, masonry, or other material having similar properties.

(A) Tanks shall be provided with weirs, skimmer plates, or screens to prevent sludge and floating paint from entering the pump suction box. Means for automatically maintaining the proper water level shall also be provided. Fresh water inlets shall not be submerged. They shall terminate at least one pipe diameter above the safety overflow level of the tank.

(B) Tanks shall be so constructed as to discourage accumulation of hazardous deposits.

(vi) Pump manifolds, risers, and headers shall be adequately sized to insure sufficient water flow to provide efficient operation of the water chamber.

(4) *Design and construction of spray rooms.* (i) Spray rooms, including floors, shall be constructed of masonry, concrete, or other noncombustible material.

(ii) Spray rooms shall have noncombustible fire doors and shutters.

(iii) Spray rooms shall be adequately ventilated so that the atmosphere in the breathing zone of the operator shall be maintained in accordance with the requirements of paragraph (h)(6)(ii) of this section.

(iv) Spray rooms used for production spray-finishing operations shall conform to the requirements for spray booths.

(5) *Ventilation.* (i) Ventilation shall be provided in accordance with provisions of § 1926.66(d) (see chapter 5 of the Standard for Spray Finishing Using Flammable or Combustible Materials, NFPA No. 33–1969), and in accordance with the following:

(A) Where a fan plenum is used to equalize or control the distribution of exhaust air movement through the booth, it shall be of sufficient strength or rigidity to withstand the differential air pressure or other superficially imposed loads for which the equipment is designed and also to facilitate cleaning. Construction specifications shall be at least equivalent to those of paragraph (h)(5)(iii) of this section.

(ii) Inlet or supply ductwork used to transport makeup air to spray booths or surrounding areas shall be constructed of noncombustible materials.

(A) If negative pressure exists within inlet ductwork, all seams and joints shall be sealed if there is a possibility of infiltration of harmful quantities of noxious gases, fumes, or mists from areas through which ductwork passes.

(B) Inlet ductwork shall be sized in accordance with volume flow requirements and provide design air requirements at the spray booth.

(C) Inlet ductwork shall be adequately supported throughout its length to sustain at least its own weight plus any negative pressure which is exerted upon it under normal operating conditions.

(iii) [Reserved]

(A) Exhaust ductwork shall be adequately supported throughout its length to sustain its weight plus any normal accumulation in interior during normal operating conditions and any negative pressure exerted upon it.

(B) Exhaust ductwork shall be sized in accordance with good design practice which shall include consideration of fan capacity, length of duct, number of turns and elbows, variation in size, volume, and character of materials being exhausted. See American National Standard Z9.2–1960 for further details and explanation concerning elements of design.

(C) Longitudinal joints in sheet steel ductwork shall be either lock-seamed, riveted, or welded. For other than steel construction, equivalent securing of joints shall be provided.

(D) Circumferential joints in ductwork shall be substantially fastened together and lapped in the direction of airflow, At least every fourth joint shall be provided with connecting flanges, bolted together, or of equivalent fastening security.

(E) Inspection or clean-out doors shall be provided for every 9 to 12 feet (2.736 to 3.648 m) of running length for ducts up to 12 inches (0.304 m) in diameter, but the distance between cleanout doors may be greater for larger pipes. (See 8.3.21 of American National Standard Z9.1–1951.) A clean-out door or doors shall be provided for servicing the fan, and where necessary, a drain shall be provided.

(F) Where ductwork passes through a combustible roof or wall, the roof or wall shall be protected at the point of penetration by open space or fire-resistive material between the duct and the roof or wall. When ducts pass through firewalls, they shall be provided with automatic fire dampers on both sides of the wall, except that three-eighth-inch steel plates may be used in lieu of automatic fire dampers for ducts not exceeding 18 inches (45.72 cm) in diameter.

(G) Ductwork used for ventilating any process covered in this standard shall not be connected to ducts ventilating any other process or any chimney or flue used for conveying any products of combustion.

(6) *Velocity and air flow requirements.* (i) Except where a spray booth has an adequate air replacement system, the velocity of air into all openings of a spray booth shall be not less than that specified in Table D–57.7 for the operating conditions specified. An adequate air replacement system is one which introduces replacement air upstream or above the object being sprayed and is so designed that the velocity of air in the booth cross section is not less than that specified in Table D–57.7 when measured upstream or above the object being sprayed.

TABLE D–57.7—MINIMUM MAINTAINED VELOCITIES INTO SPRAY BOOTHS

Operating conditions for objects completely inside booth	Crossdraft, f.p.m.	Airflow velocities, f.p.m.	
		Design	Range
Electrostatic and automatic airless operation contained in booth without operator.	Negligible	50 large booth	50–75
		100 small booth	75–125
Air-operated guns, manual or automatic	Up to 50	100 large booth	75–125
		150 small booth	125–175
Air-operated guns, manual or automatic	Up to 100	150 large booth	125–175
		200 small booth	150–250

NOTES:

(1) Attention is invited to the fact that the effectiveness of the spray booth is dependent upon the relationship of the depth of the booth to its height and width.

(2) Crossdrafts can be eliminated through proper design and such design should be sought. Crossdrafts in excess of 100fpm (feet per minute) should not be permitted.

(3) Excessive air pressures result in loss of both efficiency and material waste in addition to creating a backlash that may carry overspray and fumes into adjacent work areas.

(4) Booths should be designed with velocities shown in the column headed "Design." However, booths operating with velocities shown in the column headed "Range" are in compliance with this standard.

(ii) In addition to the requirements in paragraph (h)(6)(i) of this section the total air volume exhausted through a spray booth shall be such as to dilute solvent vapor to at least 25 percent of the lower explosive limit of the solvent being sprayed. An example of the method of calculating this volume is given below.

Example: To determine the lower explosive limits of the most common solvents used in spray finishing, see Table D–57.8. Column 1 gives the number of cubic feet of vapor per gallon of solvent and column 2 gives the lower explosive limit (LEL) in percentage by volume of air. Note that the quantity of solvent will be diminished by the quantity of solids and nonflammables contained in the finish.

To determine the volume of air in cubic feet necessary to dilute the vapor from 1 gallon of solvent to 25 percent of the lower explosive limit, apply the following formula:

Dilution volume required per gallon of solvent=4 (100–LEL) (cubic feet of vapor per gallon)÷ LEL

Using toluene as the solvent.

(1) LEL of toluene from Table D–57.8, column 2, is 1.4 percent.

(2) Cubic feet of vapor per gallon from Table D–57.8, column 1, is 30.4 cubic feet per gallon.

(3) Dilution volume required=

4 (100–1.4) 30.4÷ 1.4=8,564 cubic feet.

(4) To convert to cubic feet per minute of required ventilation, multiply the dilution volume required per gallon of solvent by the number of gallons of solvent evaporated per minute.

TABLE D–57.8—LOWER EXPLOSIVE LIMIT OF SOME COMMONLY USED SOLVENTS

Solvent	Cubic feet per gallon of vapor of liquid at 70° F (21.11° C).	Lower explosive limit in percent by volume of air at 70° F (21.11° C)
	Column 1	Column 2
Acetone	44.0	2.6
Amyl Acetate (iso)	21.6	[1]1.0
Amyl Alcohol (n)	29.6	1.2
Amyl Alcohol (iso)	29.6	1.2
Benzene	36.8	[1]1.4
Butyl Acetate (n)	24.8	1.7
Butyl Alcohol (n)	35.2	1.4
Butyl Cellosolve	24.8	1.1
Cellosolve	33.6	1.8
Cellosolve Acetate	23.2	1.7
Cyclohexanone	31.2	[1]1.1
1,1 Dichloroethylene	42.4	5.9
1,2 Dichloroethylene	42.4	9.7
Ethyl Acetate	32.8	2.5
Ethyl Alcohol	55.2	4.3
Ethyl Lactate	28.0	[1]1.5
Methyl Acetate	40.0	3.1
Methyl Alcohol	90.9	7.3

TABLE D–57.8—LOWER EXPLOSIVE LIMIT OF SOME COMMONLY USED SOLVENTS—Continued

Solvent	Cubic feet per gallon of vapor of liquid at 70° F (21.11° C).	Lower explosive limit in percent by volume of air at 70° F (21.11° C)
Methyl Cellosolve	40.8	2.5
Methyl Ethyl Ketone	36.0	1.8
Methyl n-Propyl Ketone	30.4	1.5
Naphtha (VM&P) (76° Naphtha)	22.4	0.9
Naphtha (100° Flash) Safety Solvent—Stoddard Solvent	23.2	1.0
Propyl Acetate (n)	27.2	2.8
Propyl Acetate (iso)	26.0	1.1
Propyl Alcohol (n)	44.8	2.1
Propyl Alcohol (iso)	44.0	2.0
Toluene	30.4	1.4
Turpentine	20.8	0.8
Xylene (o)	26.4	1.0

[1] At 212° F (100° C).

(iii) (A) When an operator must position himself in a booth downstream of the object being sprayed, an air supplied respirator or other type of respirator approved by the Bureau of Mines, U.S. Department of the Interior or specified in ANSI Z88.2–1969 for the material being sprayed should be used by the operator.

(B) Where downdraft booths are provided with doors, such doors shall be closed when spray painting.

(7) *Make-up air.* (i) Clean fresh air, free of contamination from adjacent industrial exhaust systems, chimneys, stacks, or vents, shall be supplied to a spray booth or room in quantities equal to the volume of air exhausted through the spray booth.

(ii) Where a spray booth or room receives make-up air through self-closing doors, dampers, or louvers, they shall be fully open at all times when the booth or room is in use for spraying. The velocity of air through such doors, dampers, or louvers shall not exceed 200 feet per minute. If the fan characteristics are such that the required air flow through the booth will be provided, higher velocities through the doors, dampers, or louvers may be used.

(iii) (A) Where the air supply to a spray booth or room is filtered, the fan static pressure shall be calculated on the assumption that the filters are dirty to the extent that they require cleaning or replacement.

(B) The rating of filters shall be governed by test data supplied by the manufacturer of the filter. A pressure gage shall be installed to show the pressure drop across the filters. This gage shall be marked to show the pressure drop at which the filters require cleaning or replacement. Filters shall be replaced or cleaned whenever the pressure drop across them becomes excessive or whenever the air flow through the face of the booth falls below that specified in Table D–57.7.

(iv) (A) Means for heating make-up air to any spray booth or room, before or at the time spraying is normally performed, shall be provided in all places where the outdoor temperature may be expected to remain below 55° F. (12.77° C.) for appreciable periods of time during the operation of the booth except where adequate and safe means of radiant heating for all operating personnel affected is provided. The replacement air during the heating seasons shall be maintained at not less than 65° F. (18.33° C.) at the point of entry into the spray booth or spray room. When otherwise unheated make-up air would be at a temperature of more than 10° F. below room temperature, its temperature shall be regulated as provided in section 3.6.3 of ANSI Z9.2–1960.

(B) As an alternative to an air replacement system complying with the preceding section, general heating of the building in which the spray room or booth is located may be employed provided that all occupied parts of the building are maintained at not less than 65° F. (18.33° C.) when the exhaust system is in operation or the general heating system supplemented by other sources of heat may be employed to meet this requirement.

(C) No means of heating make-up air shall be located in a spray booth.

(D) Where make-up air is heated by coal or oil, the products of combustion shall not be allowed to mix with the make-up air, and the products of combustion shall be conducted outside the building through a flue terminating at a point remote from all points where make-up air enters the building.

(E) Where make-up air is heated by gas, and the products of combustion are not mixed with the make-up air but are conducted through an independent flue to a point outside the building remote from all points where make-up air enters the building, it is not necessary to comply with paragraph (h)(7)(iv)(F) of this section.

(F) Where make-up air to any manually operated spray booth or room is heated by gas and the products of combustion are allowed to mix with the

supply air, the following precautions must be taken:

(1) The gas must have a distinctive and strong enough odor to warn workmen in a spray booth or room of its presence if in an unburned state in the make-up air.

(2) The maximum rate of gas supply to the make-up air heater burners must not exceed that which would yield in excess of 200 p.p.m. (parts per million) of carbon monoxide or 2,000 p.p.m. of total combustible gases in the mixture if the unburned gas upon the occurrence of flame failure were mixed with all of the make-up air supplied.

(3) A fan must be provided to deliver the mixture of heated air and products of combustion from the plenum chamber housing the gas burners to the spray booth or room.

(8) *Scope.* Spray booths or spray rooms are to be used to enclose or confine all spray finishing operations covered by this paragraph (h). This paragraph does not apply to the spraying of the exteriors of buildings, fixed tanks, or similar structures, nor to small portable spraying apparatus not used repeatedly in the same location.

(i) *Open surface tanks*—(1) *General.* (i) This paragraph applies to all operations involving the immersion of materials in liquids, or in the vapors of such liquids, for the purpose of cleaning or altering the surface or adding to or imparting a finish thereto or changing the character of the materials, and their subsequent removal from the liquid or vapor, draining, and drying. These operations include washing, electroplating, anodizing, pickling, quenching, dying, dipping, tanning, dressing, bleaching, degreasing, alkaline cleaning, stripping, rinsing, digesting, and other similar operations.

(ii) Except where specific construction specifications are prescribed in this section, hoods, ducts, elbows, fans, blowers, and all other exhaust system parts, components, and supports thereof shall be so constructed as to meet conditions of service and to facilitate maintenance and shall conform in construction to the specifications contained in American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, Z9.2–1960.

(2) *Classification of open-surface tank operations.* (i) Open-surface tank operations shall be classified into 16 classes, numbered A–1 to D–57.4, inclusive.

(ii) *Determination of class.* Class is determined by two factors, hazard potential designated by a letter from A to D, inclusive, and rate of gas, vapor, or mist evolution designated by a number from 1 to 4, inclusive (for example, B.3).

(iii) Hazard potential is an index, on a scale of from A to D, inclusive, of the severity of the hazard associated with the substance contained in the tank because of the toxic, flammable, or explosive nature of the vapor, gas, or mist produced therefrom. The toxic hazard is determined from the concentration, measured in parts by volume of a gas or vapor, per million parts by volume of contaminated air (p.p.m.), or in milligrams of mist per cubic meter of air (mg./m.^{3}), below which ill effects are unlikely to occur to the exposed worker. The concentrations shall be those in § 1926.55 or other pertinent sections of this part.

(iv) The relative fire or explosion hazard is measured in degrees Fahrenheit in terms of the closed-cup flash point of the substance in the tank. Detailed information on the prevention of fire hazards in dip tanks may be found in Dip Tanks Containing Flammable or Combustible Liquids, NFPA No. 34–1966, National Fire Protection Association. Where the tank contains a mixture of liquids, other than organic solvents, whose effects are additive, the hygienic standard of the most toxic component (for example, the one having the lowest p.p.m. or mg./m.^{3}) shall be used, except where such substance constitutes an insignificantly small fraction of the mixture. For mixtures of organic solvents, their combined effect, rather than that of either individually, shall determine the hazard potential. In the absence of information to the contrary, the effects shall be considered as additive. If the sum of the ratios of the airborne concentration of each contaminant to the toxic concentration of that contaminant exceeds unity, the toxic concentration shall be considered to have been exceeded. (See Note A to paragraph (i)(2)(v) of this section.)

(v) Hazard potential shall be determined from Table D–57.9, with the value indicating greater hazard being used. When the hazardous material may be either a vapor with a threshhold limit value *(TLV)* in p.p.m. or a mist with a *TLV* in mg./m.^{3}, the *TLV* indicating the greater hazard shall be used (for example, A takes precedence over B or C; B over C; C over D).

Note A:

$$(c_1+TLV_1)+(c_2+TLV_2)+(c_3+TLV_3)+;\ \ldots\ (c_N+TLV_N)\ 1$$

where:

c=Concentration measured at the operation in p.p.m.

TABLE D–57.9—DETERMINATION OF HAZARD POTENTIAL

Hazard potential	Toxicity group		
	Gas or vapor (p.p.m.)	Mist (mg./m^3)	Flash point in degrees F. (C.)
A	0–10	0–0.1	.....
B	11–100	0.11–1.0	Under 100 (37.77)
C	101–500	1.1–10	100 200 (37.77–93.33)
D	Over 500	Over 10	Over 200 (93.33)

(vi) Rate of gas, vapor, or mist evolution is a numerical index, on a scale of from 1 to 4, inclusive, both of the relative capacity of the tank to produce gas, vapor, or mist and of the relative energy with which it is projected or carried upwards from the tank. Rate is evaluated in terms of

(A) The temperature of the liquid in the tank in degrees Fahrenheit;

(B) The number of degrees Fahrenheit that this temperature is below the boiling point of the liquid in degrees Fahrenheit;

(C) The relative evaporation of the liquid in still air at room temperature in an arbitrary scale—fast, medium, slow, or nil; and

(D) The extent that the tank gases or produces mist in an arbitrary scale—high, medium, low, and nil. (See Table D–57.10, Note 2.) Gassing depends upon electrochemical or mechanical processes, the effects of which have to be individually evaluated for each installation (see Table D–57.10, Note 3).

(vii) Rate of evolution shall be determined from Table D–57.10. When evaporation and gassing yield different rates, the lowest numerical value shall be used.

TABLE D–57.10—DETERMINATION OF RATE OF GAS, VAPOR, OR MIST EVOLUTION[1]

Rate	Liquid temperature,° F. (C.)	Degrees below boiling point	Relative evaporation[2]	Gassing[3]
1	Over 200 (93.33)	0–20	Fast	High.
2	150–200 (65.55–93.33)	21–50	Medium	Medium.
3	94–149 (34.44–65)	51–100	Slow	Low.
4	Under 94 (34.44)	Over 100	Nil	Nil.

[1] In certain classes of equipment, specifically vapor degreasers, an internal condenser or vapor level thermostat is used to prevent the vapor from leaving the tank during normal operation. In such cases, rate of vapor evolution from the tank into the workroom is not dependent upon the factors listed in the table, but rather upon abnormalities of operating procedure, such as carryout of vapors from excessively fast action, dragout of liquid by entrainment in parts, contamination of solvent by water and other materials, or improper heat balance. When operating procedure is excellent, effective rate of evolution may be taken as 4. When operating procedure is average, the effective rate of evolution may be taken as 3. When operation is poor, a rate of 2 or 1 is indicated, depending upon observed conditions.

[2] Relative evaporation rate is determined according to the methods described by A. K. Doolittle in Industrial and Engineering Chemistry, vol. 27, p. 1169, (3) where time for 100-percent evaporation is as follows: Fast: 0–3 hours; Medium: 3–12 hours; Slow: 12–50 hours; Nil: more than 50 hours.

[3] Gassing means the formation by chemical or electrochemical action of minute bubbles of gas under the surface of the liquid in the tank and is generally limited to aqueous solutions.

(3) *Ventilation.* Where ventilation is used to control potential exposures to workers as defined in paragraph (i)(2)(iii) of this section, it shall be adequate to reduce the concentration of the air contaminant to the degree that a hazard to the worker does not exist. Methods of ventilation are discussed in American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, Z9.2–1960.

(4) *Control requirements.* (i) Control velocities shall conform to Table D–57.11 in all cases where the flow of air past the breathing or working zone of the operator and into the hoods is undisturbed by local environmental conditions, such as open windows, wall fans, unit heaters, or moving machinery.

(ii) All tanks exhausted by means of hoods which

(A) Project over the entire tank;

(B) Are fixed in position in such a location that the head of the workman, in all his normal operating positions while working at the tank, is in front of all hood openings; and

(C) Are completely enclosed on at least two sides, shall be considered to be exhausted through an enclosing hood.

(D) The quantity of air in cubic feet per minute necessary to be exhausted through an enclosing hood shall be not less than the product of the control velocity times the net area of all openings in the enclosure through which air can flow into the hood.

TABLE D–57.11—CONTROL VELOCITIES IN FEET PER MINUTE (F.P.M.) FOR UNDISTURBED LOCATIONS

Class	Enclosing hood		Lateral exhaust[1]	Canopy hood[2]	
	One open side	Two open sides		Three open sides	Four open sides
B–1 and A–2	100	150	150	Do not use	Do not use
A–3[2], B–1, B–2, and C–1	75	100	100	125	175
A–3, C–2, and D–1[3]	65	90	75	100	150
B–4[2], C–3, and D–2[3]	50	75	50	75	125
A–4, C–4, D–3[3], and D–4[4]	.....	.....	.....	.....	.....

[1] See Table D–57.12 for computation of ventilation rate.
[2] Do not use canopy hood for Hazard Potential A processes.
[3] Where complete control of hot water is desired, design as next highest class.
[4] General room ventilation required.

(iii) All tanks exhausted by means of hoods which do not project over the entire tank, and in which the direction of air movement into the hood or hoods is substantially horizontal, shall be considered to be laterally exhausted. The quantity of air in cubic feet per minute necessary to be laterally exhausted per square foot of tank area in order to maintain the required control velocity shall be determined from Table D–57.12 for all variations in ratio of tank width *(W)* to tank length *(L)*. The total quantity of air in cubic feet per minute required to be exhausted per tank shall be not less than the product of the area of tank surface times the cubic feet per minute per square foot of tank area, determined from Table D–57.12.

(A) For lateral exhaust hoods over 42 inches (1.06 m) wide, or where it is desirable to reduce the amount of air removed from the workroom, air supply slots or orifices shall be provided along the side or the center of the tank opposite from the exhaust slots. The

design of such systems shall meet the following criteria:

(1) The supply air volume plus the entrained air shall not exceed 50 percent of the exhaust volume.

(2) The velocity of the supply airstream as it reaches the effective control area of the exhaust slot shall be less than the effective velocity over the exhaust slot area.

Table D–57.12—Minimum Ventilation Rate in Cubic Feet of Air Per Minute Per Square Foot of Tank Area for Lateral Exhaust

Required minimum control velocity, f.p.m. (from Table D–57.11)	C.f.m. per sq. ft. to maintain required minimum velocities at following ratios (tank width (W)/tank length (L)).[1], [2]				
	0.0–0.09	0.1–0.24	0.25–0.49	0.5–0.99	1.0–2.0
Hood along one side or two parallel sides of tank when one hood is against a wall or baffle.[2] Also for a manifold along tank centerline.[3]					
50	50	60	75	90	100
75	75	90	110	130	150
100	100	125	150	175	200
150	150	190	225	260	300
Hood along one side or two parallel sides of free standing tank not against wall or baffle.					
50	75	90	100	110	125
75	110	130	150	170	190
100	150	175	200	225	250
150	225	260	300	340	375

[1] It is not practicable to ventilate across the long dimension of a tank whose ratio *W/L* exceeds 2.0.
It is undesirable to do so when *W/L* exceeds 1.0. For circular tanks with lateral exhaust along up to 1/2 the circumference, use *W/L*=1.0; for over one-half the circumference use *W/L*=0.5.

[2] Baffle is a vertical plate the same length as the tank, and with the top of the plate as high as the tank is wide. If he exhaust hood is on the side of a tank against a building wall or close to it, it is perfectly baffled.

[3] Use *W*/2 as tank width in computing when manifold is along centerline, or when hoods are used on two parallel sides of a tank.
Tank Width *(W)* means the effective width over which the hood must pull air to operate (for example, where the hood face is set back from the edge of the tank, this set back must be added in measuring tank width). The surface area of tanks can frequently be reduced and better control obtained (particularly on conveyorized systems) by using covers extending from the upper edges of the slots toward the center of the tank.

(3) The vertical height of the receiving exhaust hood, including any baffle, shall not be less than one-quarter the width of the tank.

(4) The supply airstream shall not be allowed to impinge on obstructions between it and the exhaust slot in such a manner as to significantly interfere with the performance of the exhaust hood.

(5) Since most failure of push-pull systems result from excessive supply air volumes and pressures, methods of measuring and adjusting the supply air shall be provided. When satisfactory control has been achieved, the adjustable features of the hood shall be fixed so that they will not be altered.

(iv) All tanks exhausted by means of hoods which project over the entire tank, and which do not conform to the definition of enclosing hoods, shall be considered to be overhead canopy hoods. The quantity of air in cubic feet per minute necessary to be exhausted through a canopy hood shall be not less than the product of the control velocity times the net area of all openings between the bottom edges of the hood and the top edges of the tank.

(v) The rate of vapor evolution (including steam or products of combustion) from the process shall be estimated. If the rate of vapor evolution is equal to or greater than 10 percent of the calculated exhaust volume required, the exhaust volume shall be increased in equal amount.

(5) *Spray cleaning and degreasing.* Wherever spraying or other mechanical means are used to disperse a liquid above an open-surface tank, control must be provided for the airborne spray. Such operations shall be enclosed as completely as possible. The inward air velocity into the enclosure shall be sufficient to prevent the discharge of spray into the workroom. Mechanical baffles may be used to help prevent the discharge of spray. Spray painting operations are covered by paragraph (h) of this section.

(6) *Control means other than ventilation.* Tank covers, foams, beads, chips, or other materials floating on the tank surface so as to confine gases, mists, or vapors to the area under the cover or to the foam, bead, or chip layer; or surface tension depressive agents added to the liquid in the tank to minimize mist formation, or any combination thereof, may all be used as gas, mist, or vapor control means for open-surface tank operations, provided that they effectively reduce the concentrations of hazardous materials in the vicinity of the worker below the limits set in accordance with paragraph (i)(2) of this section.

(7) *System design.* (i) The equipment for exhausting air shall have sufficient capacity to produce the flow of air required in each of the hoods and openings of the system.

(ii) The capacity required in paragraph (i)(7)(i) of this section shall be obtained when the airflow producing equipment is operating against the following pressure losses, the sum of which is the static pressure:

(A) Entrance losses into the hood.

(B) Resistance to airflow in branch pipe including bends and transformations.

(C) Entrance loss into the main pipe.

(D) Resistance to airflow in main pipe including bends and transformations.

(E) Resistance of mechanical equipment; that is, filters, washers, condensers, absorbers, etc., plus their entrance and exit losses.

(F) Resistance in outlet duct and discharge stack.

(iii) Two or more operations shall not be connected to the same exhaust system where either one or the combination of the substances removed

may constitute a fire, explosion, or chemical reaction hazard in the duct system. Traps or other devices shall be provided to insure that condensate in ducts does not drain back into any tank.

(iv) The exhaust system, consisting of hoods, ducts, air mover, and discharge outlet, shall be designed in accordance with American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, Z9.2–1960, or the manual, Industrial Ventilation, published by the American Conference of Governmental Industrial Hygienists 1970. Airflow and pressure loss data provided by the manufacturer of any air cleaning device shall be included in the design calculations.

(8) *Operation.* (i) The required airflow shall be maintained at all times during which gas, mist, or vapor is emitted from the tank, and at all times the tank, the draining, or the drying area is in operation or use. When the system is first installed, the airflow from each hood shall be measured by means of a pitot traverse in the exhaust duct and corrective action taken if the flow is less than that required. When the proper flow is obtained, the hood static pressure shall be measured and recorded. At intervals of not more than 3 months operation, or after a prolonged shutdown period, the hoods and duct system shall be inspected for evidence of corrosion or damage. In any case where the airflow is found to be less than required, it shall be increased to the required value. (Information on airflow and static pressure measurement and calculations may be found in American National Standard Fundamental Governing the Design and Operation of Local Exhaust Systems, Z9.2–1960, or in the manual, Industrial Ventilation, published by the American Conference of Governmental Industrial Hygienists.)

(ii) The exhaust system shall discharge to the outer air in such a manner that the possibility of its effluent entering any building is at a minimum. Recirculation shall only be through a device for contaminant removal which will prevent the creation of a health hazard in the room or area to which the air is recirculated.

(iii) A volume of outside air in the range of 90 percent to 110 percent of the exhaust volume shall be provided to each room having exhaust hoods. The outside air supply shall enter the workroom in such a manner as not to be detrimental to any exhaust hood. The airflow of the makeup air system shall be measured on installation. Corrective action shall be taken when the airflow is below that required. The makeup air shall be uncontaminated.

(9) *Personal protection.* (i) All employees working in and around open-surface tank operations must be instructed as to the hazards of their respective jobs, and in the personal protection and first aid procedures applicable to these hazards.

(ii) All persons required to work in such a manner that their feet may become wet shall be provided with rubber or other impervious boots or shoes, rubbers, or wooden-soled shoes sufficient to keep feet dry.

(iii) All persons required to handle work wet with a liquid other than water shall be provided with gloves impervious to such a liquid and of a length sufficient to prevent entrance of liquid into the tops of the gloves. The interior of gloves shall be kept free from corrosive or irritating contaminants.

(iv) All persons required to work in such a manner that their clothing may become wet shall be provided with such aprons, coats, jackets, sleeves, or other garments made of rubber, or of other materials impervious to liquids other than water, as are required to keep their clothing dry. Aprons shall extend well below the top of boots to prevent liquid splashing into the boots. Provision of dry, clean, cotton clothing along with rubber shoes or short boots and an apron impervious to liquids other than water shall be considered a satisfactory substitute where small parts are cleaned, plated, or acid dipped in open tanks and rapid work is required.

(v) Whenever there is a danger of splashing, for example, when additions are made manually to the tanks, or when acids and chemicals are removed from the tanks, the employees so engaged shall be required to wear either tight-fitting chemical goggles or an effective face shield. See § 1926.102.

(vi) When, during emergencies as described in paragraph (i)(11)(v) of this section, workers must be in areas where concentrations of air contaminants are greater than the limit set by paragraph (i)(2)(iii) of this section, or oxygen concentrations are less than 19.5 percent, they shall be required to wear respirators adequate to reduce their exposure to a level below these limits, or to provide adequate oxygen. Such respirators shall also be provided in marked, quickly accessible storage compartments built for the purpose, when there exists the possibility of accidental release of hazardous concentrations of air contaminants. Respirators shall be approved by the U.S. Bureau of Mines, U.S. Department of the Interior and shall be selected by a competent industrial hygienist or other technically qualified source. Respirators shall be used in accordance with § 1926.103, and persons who may require them shall be trained in their use.

(vii) Near each tank containing a liquid which may burn, irritate, or otherwise be harmful to the skin if splashed upon the worker's body, there shall be a supply of clean cold water. The water pipe (carrying a pressure not exceeding 25 pounds (11.325 kg)) shall be provided with a quick opening valve and at least 48 inches (1.216 m) of hose not smaller than three-fourths inch, so that no time may be lost in washing off liquids from the skin or clothing. Alternatively, deluge showers and eye flushes shall be provided in cases where harmful chemicals may be splashed on parts of the body.

(viii) Operators with sores, burns, or other skin lesions requiring medical treatment shall not be allowed to work at their regular operations until so authorized by a physician. Any small skin abrasions, cuts, rash, or open sores which are found or reported shall be treated by a properly designated person so that chances of exposures to the chemicals are removed. Workers exposed to chromic acids shall have a periodic examination made of the nostrils and other parts of the body, to detect incipient ulceration.

(ix) Sufficient washing facilities, including soap, individual towels, and hot water, shall be provided for all persons required to use or handle any liquids which may burn, irritate, or otherwise be harmful to the skin, on the basis of at least one basin (or its equivalent) with a hot water faucet for every 10 employees. See § 1926.51(f).

(x) Locker space or equivalent clothing storage facilities shall be provided to prevent contamination of street clothing.

(xi) First aid facilities specific to the hazards of the operations conducted shall be readily available.

(10) *Special precautions for cyanide.* Dikes or other arrangements shall be provided to prevent the possibility of intermixing of cyanide and acid in the event of tank rupture.

(11) *Inspection, maintenance, and installation.* (i) Floors and platforms around tanks shall be prevented from becoming slippery both by original type of construction and by frequent flushing. They shall be firm, sound, and of the design and construction to minimize the possibility of tripping.

(ii) Before cleaning the interior of any tank, the contents shall be drained off, and the cleanout doors shall be opened where provided. All pockets in tanks or pits, where it is possible for hazardous

vapors to collect, shall be ventilated and cleared of such vapors.

(iii) Tanks which have been drained to permit employees to enter for the purposes of cleaning, inspection, or maintenance may contain atmospheres which are hazardous to life or health, through the presence of flammable or toxic air contaminants, or through the absence of sufficient oxygen. Before employees shall be permitted to enter any such tank, appropriate tests of the atmosphere shall be made to determine if the limits set by paragraph (i)(2)(iii) of this section are exceeded, or if the oxygen concentration is less than 19.5 percent.

(iv) If the tests made in accordance with paragraph (i)(11)(iii) of this section indicate that the atmosphere in the tank is unsafe, before any employee is permitted to enter the tank, the tank shall be ventilated until the hazardous atmosphere is removed, and ventilation shall be continued so as to prevent the occurrence of a hazardous atmosphere as long as an employee is in the tank.

(v) If, in emergencies, such as rescue work, it is necessary to enter a tank which may contain a hazardous atmosphere, suitable respirators, such as self-contained breathing apparatus; hose mask with blower, if there is a possibility of oxygen deficiency; or a gas mask, selected and operated in accordance with paragraph (i)(9)(vi) of this section, shall be used. If a contaminant in the tank can cause dermatitis, or be absorbed through the skin, the employee entering the tank shall also wear protective clothing. At least one trained standby employee, with suitable respirator, shall be present in the nearest uncontaminated area. The standby employee must be able to communicate with the employee in the tank and be able to haul him out of the tank with a lifeline if necessary.

(vi) Maintenance work requiring welding or open flame, where toxic metal fumes such as cadmium, chromium, or lead may be evolved, shall be done only with sufficient local exhaust ventilation to prevent the creation of a health hazard, or be done with respirators selected and used in accordance with paragraph (i)(9)(vi) of this section. Welding, or the use of open flames near any solvent cleaning equipment shall be permitted only after such equipment has first been thoroughly cleared of solvents and vapors.

(12) *Vapor degreasing tanks.* (i) In any vapor degreasing tank equipped with a condenser or vapor level thermostat, the condenser or thermostat shall keep the level of vapors below the top edge of the tank by a distance at least equal to one-half the tank width, or at least 36 inches (0.912 m), whichever is shorter.

(ii) Where gas is used as a fuel for heating vapor degreasing tanks, the combustion chamber shall be of tight construction, except for such openings as the exhaust flue, and those that are necessary for supplying air for combustion. Flues shall be of corrosion-resistant construction and shall extend to the outer air. If mechanical exhaust is used on this flue, a draft diverter shall be used. Special precautions must be taken to prevent solvent fumes from entering the combustion air of this or any other heater when chlorinated or fluorinated hydrocarbon solvents (for example, trichloroethylene, Freon) are used.

(iii) Heating elements shall be so designed and maintained that their surface temperature will not cause the solvent or mixture to decompose, break down, or be converted into an excessive quantity of vapor.

(iv) Tanks or machines of more than 4 square feet (0.368 m^2) of vapor area, used for solvent cleaning or vapor degreasing, shall be equipped with suitable cleanout or sludge doors located near the bottom of each tank or still. These doors shall be so designed and gasketed that there will be no leakage of solvent when they are closed.

(13) *Scope.* (i) This paragraph (i) applies to all operations involving the immersion of materials in liquids, or in the vapors of such liquids, for the purpose of cleaning or altering their surfaces, or adding or imparting a finish thereto, or changing the character of the materials, and their subsequent removal from the liquids or vapors, draining, and drying. Such operations include washing, electroplating, anodizing, pickling, quenching, dyeing, dipping, tanning, dressing, bleaching, degreasing, alkaline cleaning, stripping, rinsing, digesting, and other similar operations, but do not include molten materials handling operations, or surface coating operations.

(ii) *Molten materials handling operations* means all operations, other than welding, burning, and soldering operations, involving the use, melting, smelting, or pouring of metals, alloys, salts, or other similar substances in the molten state. Such operations also include heat treating baths, descaling baths, die casting stereotyping, galvanizing, tinning, and similar operations.

(iii) *Surface coating operations* means all operations involving the application of protective, decorative, adhesive, or strengthening coating or impregnation to one or more surfaces, or into the interstices of any object or material, by means of spraying, spreading, flowing, brushing, roll coating, pouring, cementing, or similar means; and any subsequent draining or drying operations, excluding open-tank operations.

11. In subpart D, a new § 1926.64 is added to read as follows:

§ 1926.64 Process safety management of highly hazardous chemicals.

Purpose. This section contains requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals. These releases may result in toxic, fire or explosion hazards.

(a) *Application.* (1) This section applies to the following:

(i) A process which involves a chemical at or above the specified threshold quantities listed in Appendix A to this section;

(ii) A process which involves a flammable liquid or gas (as defined in § 1926.59(c) of this part) on site in one location, in a quantity of 10,000 pounds (4535.9 kg) or more except for:

(A) Hydrocarbon fuels used solely for workplace consumption as a fuel (e.g., propane used for comfort heating, gasoline for vehicle refueling), if such fuels are not a part of a process containing another highly hazardous chemical covered by this standard;

(B) Flammable liquids stored in atmospheric tanks or transferred which are kept below their normal boiling point without benefit of chilling or refrigeration.

(2) This section does not apply to:

(i) Retail facilities;

(ii) Oil or gas well drilling or servicing operations; or,

(iii) Normally unoccupied remote facilities.

(b) *Definitions.* Atmospheric tank means a storage tank which has been designed to operate at pressures from atmospheric through 0.5 p.s.i.g. (pounds per square inch gauge, 3.45 Kpa).

Boiling point means the boiling point of a liquid at a pressure of 14.7 pounds per square inch absolute (p.s.i.a.) (760 mm.). For the purposes of this section, where an accurate boiling point is unavailable for the material in question, or for mixtures which do not have a constant boiling point, the 10 percent point of a distillation performed in accordance with the Standard Method of Test for Distillation of Petroleum Products, ASTM D-86-62, may be used as the boiling point of the liquid.

Catastrophic release means a major uncontrolled emission, fire, or explosion, involving one or more highly hazardous chemicals, that presents

serious danger to employees in the workplace.

Facility means the buildings, containers or equipment which contain a process.

Highly hazardous chemical means a substance possessing toxic, reactive, flammable, or explosive properties and specified by paragraph (a)(1) of this section.

Hot work means work involving electric or gas welding, cutting, brazing, or similar flame or spark-producing operations.

Normally unoccupied remote facility means a facility which is operated, maintained or serviced by employees who visit the facility only periodically to check its operation and to perform necessary operating or maintenance tasks. No employees are permanently stationed at the facility. Facilities meeting this definition are not contiguous with, and must be geographically remote from all other buildings, processes or persons.

Process means any activity involving a highly hazardous chemical including any use, storage, manufacturing, handling, or the on-site movement of such chemicals, or combination of these activities. For purposes of this definition, any group of vessels which are interconnected and separate vessels which are located such that a highly hazardous chemical could be involved in a potential release shall be considered a single process.

Replacement in kind means a replacement which satisfies the design specification.

Trade secret means any confidential formula, pattern, process, device, information or compilation of information that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it. Appendix D contained in § 1926.59 sets out the criteria to be used in evaluating trade secrets.

(c) *Employee participation.* (1) Employers shall develop a written plan of action regarding the implementation of the employee participation required by this paragraph.

(2) Employers shall consult with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management in this standard.

(3) Employers shall provide to employees and their representatives access to process hazard analyses and to all other information required to be developed under this standard.

(d) *Process safety information.* In accordance with the schedule set forth in paragraph (e)(1) of this section, the employer shall complete a compilation of written process safety information before conducting any process hazard analysis required by the standard. The compilation of written process safety information is to enable the employer and the employees involved in operating the process to identify and understand the hazards posed by those processes involving highly hazardous chemicals. This process safety information shall include information pertaining to the hazards of the highly hazardous chemicals used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process.

(1) *Information pertaining to the hazards of the highly hazardous chemicals in the process.* This information shall consist of at least the following:

(i) Toxicity information;

(ii) Permissible exposure limits;

(iii) Physical data;

(iv) Reactivity data:

(v) Corrosivity data;

(vi) Thermal and chemical stability data; and

(vii) Hazardous effects of inadvertent mixing of different materials that could foreseeably occur.

Note: Material Safety Data Sheets meeting the requirements of 29 CFR 1926.59(g) may be used to comply with this requirement to the extent they contain the information required by this subparagraph.

(2) *Information pertaining to the technology of the process.* (i) Information concerning the technology of the process shall include at least the following:

(A) A block flow diagram or simplified process flow diagram (see Appendix B to this section);

(B) Process chemistry;

(C) Maximum intended inventory;

(D) Safe upper and lower limits for such items as temperatures, pressures, flows or compositions; and,

(E) An evaluation of the consequences of deviations, including those affecting the safety and health of employees.

(ii) Where the original technical information no longer exists, such information may be developed in conjunction with the process hazard analysis in sufficient detail to support the analysis.

(3) *Information pertaining to the equipment in the process.* (i) Information pertaining to the equipment in the process shall include:

(A) Materials of construction;

(B) Piping and instrument diagrams (P&ID's);

(C) Electrical classification;

(D) Relief system design and design basis;

(E) Ventilation system design;

(F) Design codes and standards employed;

(G) Material and energy balances for processes built after May 26, 1992; and,

(H) Safety systems (e.g. interlocks, detection or suppression systems).

(ii) The employer shall document that equipment complies with recognized and generally accepted good engineering practices.

(iii) For existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, the employer shall determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.

(e) *Process hazard analysis.* (1) The employer shall perform an initial process hazard analysis (hazard evaluation) on processes covered by this standard. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process. Employers shall determine and document the priority order for conducting process hazard analyses based on a rationale which includes such considerations as extent of the process hazards, number of potentially affected employees, age of the process, and operating history of the process. The process hazard analysis shall be conducted as soon as possible, but not later than the following schedule:

(i) No less than 25 percent of the initial process hazards analyses shall be completed by May 26, 1994;

(ii) No less than 50 percent of the initial process hazards analyses shall be completed by May 26, 1995;

(iii) No less than 75 percent of the initial process hazards analyses shall be completed by May 26, 1996;

(iv) All initial process hazards analyses shall be completed by May 26, 1997.

(v) Process hazards analyses completed after May 26, 1987 which meet the requirements of this paragraph are acceptable as initial process hazards analyses. These process hazard analyses shall be updated and revalidated, based on their completion date, in accordance with paragraph (e)(6) of this standard.

(2) The employer shall use one or more of the following methodologies that are appropriate to determine and evaluate the hazards of the process being analyzed.

(i) What-If;

(ii) Checklist;
(iii) What-If/Checklist;
(iv) Hazard and Operability Study (HAZOP);
(v) Failure Mode and Effects Analysis (FMEA);
(vi) Fault-Tree Analysis; or
(vii) An appropriate equivalent methodology.

(3) The process hazard analysis shall address:

(i) The hazards of the process;

(ii) The identification of any previous incident which had a likely potential for catastrophic consequences in the workplace;

(iii) Engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases. (Acceptable detection methods might include process monitoring and control instrumentation with alarms, and detection hardware such as hydrocarbon sensors.);

(iv) Consequences of failure of engineering and administrative controls;

(v) Facility siting;

(vi) Human factors; and

(vii) A qualitative evaluation of a range of the possible safety and health effects of failure of controls on employees in the workplace.

(4) The process hazard analysis shall be performed by a team with expertise in engineering and process operations, and the team shall include at least one employee who has experience and knowledge specific to the process being evaluated. Also, one member of the team must be knowledgeable in the specific process hazard analysis methodology being used.

(5) The employer shall establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

(6) At least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting the requirements in paragraph (e)(4) of this section, to assure that the process hazard analysis is consistent with the current process.

(7) Employers shall retain process hazards analyses and updates or revalidations for each process covered by this section, as well as the documented resolution of recommendations described in paragraph (e)(5) of this section for the life of the process.

(f) *Operating procedures.* (1) The employer shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements.

(i) Steps for each operating phase:

(A) Initial startup;

(B) Normal operations;

(C) Temporary operations;

(D) Emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner.

(E) Emergency operations;

(F) Normal shutdown; and,

(G) Startup following a turnaround, or after an emergency shutdown.

(ii) Operating limits:

(A) Consequences of deviation; and

(B) Steps required to correct or avoid deviation.

(iii) Safety and health considerations:

(A) Properties of, and hazards presented by, the chemicals used in the process;

(B) Precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment;

(C) Control measures to be taken if physical contact or airborne exposure occurs;

(D) Quality control for raw materials and control of hazardous chemical inventory levels; and,

(E) Any special or unique hazards.

(iv) Safety systems and their functions.

(2) Operating procedures shall be readily accessible to employees who work in or maintain a process.

(3) The operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to facilities. The employer shall certify annually that these operating procedures are current and accurate.

(4) The employer shall develop and implement safe work practices to provide for the control of hazards during operations such as lockout/tagout; confined space entry; opening process equipment or piping; and control over entrance into a facility by maintenance, contractor, laboratory, or other support personnel. These safe work practices shall apply to employees and contractor employees.

(g) *Training*—(1) *Initial training.* (i) Each employee presently involved in operating a process, and each employee before being involved in operating a newly assigned process, shall be trained in an overview of the process and in the operating procedures as specified in paragraph (f) of this section. The training shall include emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

(ii) In lieu of initial training for those employees already involved in operating a process on May 26, 1992, an employer may certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as specified in the operating procedures.

(2) *Refresher training.* Refresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. The employer, in consultation with the employees involved in operating the process, shall determine the appropriate frequency of refresher training.

(3) *Training documentation.* The employer shall ascertain that each employee involved in operating a process has received and understood the training required by this paragraph. The employer shall prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

(h) *Contractors*—(1) *Application.* This paragraph applies to contractors performing maintenance or repair, turnaround, major renovation, or specialty work on or adjacent to a covered process. It does not apply to contractors providing incidental services which do not influence process safety, such as janitorial work, food and drink services, laundry, delivery or other supply services.

(2) *Employer responsibilities.* (i) The employer, when selecting a contractor, shall obtain and evaluate information regarding the contract employer's safety performance and programs.

(ii) The employer shall inform contract employers of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process.

(iii) The employer shall explain to contract employers the applicable

provisions of the emergency action plan required by paragraph (n) of this section.

(iv) The employer shall develop and implement safe work practices consistent with paragraph (f)(4) of this section, to control the entrance, presence and exit of contract employers and contract employees in covered process areas.

(v) The employer shall periodically evaluate the performance of contract employers in fulfilling their obligations as specified in paragraph (h)(3) of this section.

(vi) The employer shall maintain a contract employee injury and illness log related to the contractor's work in process areas.

(3) *Contract employer responsibilities.* (i) The contract employer shall assure that each contract employee is trained in the work practices necessary to safely perform his/her job.

(ii) The contract employer shall assure that each contract employee is instructed in the known potential fire, explosion, or toxic release hazards related to his/her job and the process, and the applicable provisions of the emergency action plan.

(iii) The contract employer shall document that each contract employee has received and understood the training required by this paragraph. The contract employer shall prepare a record which contains the identity of the contract employee, the date of training, and the means used to verify that the employee understood the training.

(iv) The contract employer shall assure that each contract employee follows the safety rules of the facility including the safe work practices required by paragraph (f)(4) of this section.

(v) The contract employer shall advise the employer of any unique hazards presented by the contract employer's work, or of any hazards found by the contract employer's work.

(i) *Pre-startup safety review.* (1) The employer shall perform a pre-startup safety review for new facilities and for modified facilities when the modification is significant enough to require a change in the process safety information.

(2) The pre-startup safety review shall confirm that prior to the introduction of highly hazardous chemicals to a process:

(i) Construction and equipment is in accordance with design specifications;

(ii) Safety, operating, maintenance, and emergency procedures are in place and are adequate;

(iii) For new facilities, a process hazard analysis has been performed and recommendations have been resolved or implemented before startup; and modified facilities meet the requirements contained in management of change, paragraph (l).

(iv) Training of each employee involved in operating a process has been completed.

(j) *Mechanical integrity*—(1) *Application.* Paragraphs (j)(2) through (j)(6) of this section apply to the following process equipment:

(i) Pressure vessels and storage tanks;

(ii) Piping systems (including piping components such as valves);

(iii) Relief and vent systems and devices;

(iv) Emergency shutdown systems;

(v) Controls (including monitoring devices and sensors, alarms, and interlocks) and,

(vi) Pumps.

(2) *Written procedures.* The employer shall establish and implement written procedures to maintain the on-going integrity of process equipment.

(3) *Training for process maintenance activities.* The employer shall train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner.

(4) *Inspection and testing.* (i) Inspections and tests shall be performed on process equipment.

(ii) Inspection and testing procedures shall follow recognized and generally accepted good engineering practices.

(iii) The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

(iv) The employer shall document each inspection and test that has been performed on process equipment. The documentation shall identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

(5) *Equipment deficiencies.* The employer shall correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in paragraph (d) of this section) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

(6) *Quality assurance.* (i) In the construction of new plants and equipment, the employer shall assure that equipment as it is fabricated is suitable for the process application for which they will be used.

(ii) Appropriate checks and inspections shall be performed to assure that equipment is installed properly and consistent with design specifications and the manufacturer's instructions.

(iii) The employer shall assure that maintenance materials, spare parts and equipment are suitable for the process application for which they will be used.

(k) *Hot work permit.* (1) The employer shall issue a hot work permit for hot work operations conducted on or near a covered process.

(2) The permit shall document that the fire prevention and protection requirements in 29 CFR 1926.352 have been implemented prior to beginning the hot work operations; it shall indicate the date(s) authorized for hot work; and identify the object on which hot work is to be performed. The permit shall be kept on file until completion of the hot work operations.

(l) *Management of change.* (1) The employer shall establish and implement written procedures to manage changes (except for "replacements in kind") to process chemicals, technology, equipment, and procedures; and, changes to facilities that affect a covered process.

(2) The procedures shall assure that the following considerations are addressed prior to any change:

(i) The technical basis for the proposed change;

(ii) Impact of change on safety and health;

(iii) Modifications to operating procedures;

(iv) Necessary time period for the change; and,

(v) Authorization requirements for the proposed change.

(3) Employees involved in operating a process and maintenance and contract employees whose job tasks will be affected by a change in the process shall be informed of, and trained in, the change prior to start-up of the process or affected part of the process.

(4) If a change covered by this paragraph results in a change in the process safety information required by paragraph (d) of this section, such information shall be updated accordingly.

(5) If a change covered by this paragraph results in a change in the operating procedures or practices required by paragraph (f) of this section, such procedures or practices shall be updated accordingly.

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(m) *Incident investigation.* (1) The employer shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release of highly hazardous chemical in the workplace.

(2) An incident investigation shall be initiated as promptly as possible, but not later than 48 hours following the incident.

(3) An incident investigation team shall be established and consist of at least one person knowledgeable in the process involved, including a contract employee if the incident involved work of the contractor, and other persons with appropriate knowledge and experience to thoroughly investigate and analyze the incident.

(4) A report shall be prepared at the conclusion of the investigation which includes at a minimum:

(i) Date of incident;

(ii) Date investigation began;

(iii) A description of the incident;

(iv) The factors that contributed to the incident; and,

(v) Any recommendations resulting from the investigation.

(5) The employer shall establish a system to promptly address and resolve the incident report findings and recommendations. Resolutions and corrective actions shall be documented.

(6) The report shall be reviewed with all affected personnel whose job tasks are relevant to the incident findings including contract employees where applicable.

(7) Incident investigation reports shall be retained for five years.

(n) Emergency planning and response. The employer shall establish and implement an emergency action plan for the entire plant in accordance with the provisions of 29 CFR 1926.35(a). In addition, the emergency action plan shall include procedures for handling small releases. Employers covered under this standard may also be subject to the hazardous waste and emergency response provisions contained in 29 CFR 1926.65(a), (p) and (q).

(o) *Compliance audits.* (1) Employers shall certify that they have evaluated compliance with the provisions of this section at least every three years to verify that the procedures and practices developed under the standard are adequate and are being followed.

(2) The compliance audit shall be conducted by at least one person knowledgeable in the process.

(3) A report of the findings of the audit shall be developed.

(4) The employer shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

(5) Employers shall retain the two (2) most recent compliance audit reports.

(p) *Trade secrets.* (1) Employers shall make all information necessary to comply with the section available to those persons responsible for compiling the process safety information (required by paragraph (d) of this section), those assisting in the development of the process hazard analysis (required by paragraph (e) of this section), those responsible for developing the operating procedures (required by paragraph (f) of this section), and those involved in incident investigations (required by paragraph (m) of this section), emergency planning and response (paragraph (n) of this section) and compliance audits (paragraph (o) of this section) without regard to possible trade secret status of such information.

(2) Nothing in this paragraph shall preclude the employer from requiring the persons to whom the information is made available under paragraph (p)(1) of this section to enter into confidentiality agreements not to disclose the information as set forth in 29 CFR 1926.59.

(3) Subject to the rules and procedures set forth in 29 CFR 1926.59(i) (1) through (12), employees and their designated representatives shall have access to trade secret information contained within the process hazard analysis and other documents required to be developed by this standard.

Appendix A to 1926.64—List of Highly Hazardous Chemicals, Toxics and Reactives (Mandatory)

This Appendix contains a listing of toxic and reactive highly hazardous chemicals which present a potential for a catastrophic event at or above the threshold quantity.

Chemical Name	CAS*	TQ**
Acetaldehyde	75-07-0	2500
Acrolein (2-Propenal)	107-02-8	150
Acrylyl Chloride	814-68-6	250
Allyl Chloride	107-05-1	1000
Allylamine	107-11-9	1000
Alkylaluminums	Varies	5000
Ammonia, Anhydrous	7664-41-7	10000
Ammonia solutions (greater than 44% ammonia by weight)	7664-41-7	15000
Ammonium Perchlorate	7790-98-9	500
Ammonium Permanganate	7787-36-2	7500
Arsine (also called Arsenic Hydride)	7784-42-1	100
Bis(Chloromethyl) Ether	542-88-1	100
Boron Trichloride	10294-34-5	2500
Boron Trifluoride	7637-07-2	250
Bromine	7726-95-6	1500
Bromine Chloride	13863-41-7	1500
Bromine Pentafluoride	7789-30-2	2500
Bromine Trifluoride	7787-71-5	15000
3-Bromopropyne (also called Propargyl Bromide)	106-96-7	100
Butyl Hydroperoxide (Tertiary)	75-91-2	5000
Butyl Perbenzoate (Tertiary)	614-45-9	7500
Carbonyl Chloride (see Phosgene)	75-44-5	100
Carbonyl Fluoride	353-50-4	2500
Cellulose Nitrate (concentration greater than 12.6% nitrogen	9004-70-0	2500
Chlorine	7782-50-5	1500
Chlorine Dioxide	10049-04-4	1000
Chlorine Pentrafluoride	13637-63-3	1000
Chlorine Trifluoride	7790-91-2	1000
Chlorodiethylaluminum (also called Diethylaluminum Chloride)	96-10-6	5000
1-Chloro-2,4-Dinitrobenzene	97-00-7	5000
Chloromethyl Methyl Ether	107-30-2	500
Chloropicrin	76-06-2	500
Chloropicrin and Methyl Bromide mixture	None	1500
Chloropicrin and Methyl Chloride mixture	None	1500
Cumene Hydroperoxide	80-15-9	5000
Cyanogen	460-19-5	2500
Cyanogen Chloride	506-77-4	500
Cyanuric Fluoride	675-14-9	100
Diacetyl Peroxide (concentration greater than 70%)	110-22-5	5000
Diazomethane	334-88-3	500
Dibenzoyl Peroxide	94-36-0	7500
Diborane	19287-45-7	100
Dibutyl Peroxide (Tertiary)	110-05-4	5000
Dichloro Acetylene	7572-29-4	250
Dichlorosilane	4109-96-0	2500
Diethylzinc	557-20-0	10000
Diisopropyl Peroxydicarbonate	105-64-6	7500
Dilauroyl Peroxide	105-74-8	7500
Dimethyldichlorosilane	75-78-5	1000
Dimethylhydrazine, 1,1-	57-14-7	1000
Dimethylamine, Anhydrous	124-40-3	2500
2,4-Dinitroaniline	97-02-9	5000
Ethyl Methyl Ketone Peroxide (also Methyl Ethyl Ketone Peroxide; concentration greater than 60%)	1338-23-4	5000
Ethyl Nitrite	109-95-5	5000
Ethylamine	75-04-7	7500
Ethylene Fluorohydrin	371-62-0	100
Ethylene Oxide	75-21-8	5000
Ethyleneimine	151-56-4	1000
Fluorine	7782-41-4	1000
Formaldehyde (Formalin)	50-00-0	1000
Furan	110-00-9	500
Hexafluoroacetone	684-16-2	5000
Hydrochloric Acid, Anhydrous	7647-01-0	5000
Hydrofluoric Acid, Anhydrous	7664-39-3	1000
Hydrogen Bromide	10035-10-6	5000
Hydrogen Chloride	7647-01-0	5000
Hydrogen Cyanide, Anhydrous	74-90-8	1000
Hydrogen Fluoride	7664-39-3	1000
Hydrogen Peroxide (52% by weight or greater)	7722-84-1	7500
Hydrogen Selenide	7783-07-5	150
Hydrogen Sulfide	7783-06-4	1500
Hydroxylamine	7803-49-8	2500
Iron, Pentacarbonyl	13463-40-6	250
Isopropylamine	75-31-0	5000
Ketene	463-51-4	100
Methacrylaldehyde	78-85-3	1000
Methacryloyl Chloride	920-46-7	150
Methacryloyloxyethyl Isocyanate	30674-80-7	100
Methyl Acrylonitrile	126-98-7	250
Methylamine, Anhydrous	74-89-5	1000
Methyl Bromide	74-83-9	2500
Methyl Chloride	74-87-3	15000
Methyl Chloroformate	79-22-1	500
Methyl Ethyl Ketone Peroxide (concentration greater than 60%)	1338-23-4	5000

Chemical Name	CAS*	TQ**
Methyl Fluoroacetate	453-18-9	100
Methyl Fluorosulfate	421-20-5	100
Methyl Hydrazine	60-34-4	100
Methyl Iodide	74-88-4	7500
Methyl Isocyanate	624-83-9	250
Methyl Mercaptan	74-93-1	5000
Methyl Vinyl Ketone	79-84-4	100
Methyltrichlorosilane	75-79-6	500
Nickel Carbonly (Nickel Tetracarbonyl)	13463-39-3	150
Nitric Acid (94.5% by weight or greater)	7697-37-2	500
Nitric Oxide	10102-43-9	250
Nitroaniline (para Nitroaniline	100-01-6	5000
Nitromethane	75-52-5	2500
Nitrogen Dioxide	10102-44-0	250
Nitrogen Oxides (NO; NO(2); N2O4; N2O3)	10102-44-0	250
Nitrogen Tetroxide (also called Nitrogen Peroxide)	10544-72-6	250
Nitrogen Trifluoride	7783-54-2	5000
Nitrogen Trioxide	10544-73-7	250
Oleum (65% to 80% by weight; also called Fuming Sulfuric Acid)	8014-94-7	1000
Osmium Tetroxide	20816-12-0	100
Oxygen Difluoride (Fluorine Monoxide)	7783-41-7	100
Ozone	10028-15-6	100
Pentaborane	19624-22-7	100
Peracetic Acid (concentration greater 60% Acetic Acid; also called Peroxyacetic Acid)	79-21-0	1000
Perchloric Acid (concentration greater than 60% by weight)	7601-90-3	5000
Perchloromethyl Mercaptan	594-42-3	150
Perchloryl Fluoride	7616-94-6	5000
Peroxyacetic Acid (concentration greater than 60% Acetic Acid; also called Peracetic Acid)	79-21-0	1000
Phosgene (also called Carbonyl Chloride)	75-44-5	100
Phosphine (Hydrogen Phosphide)	7803-51-2	100
Phosphorus Oxychloride (also called Phosphoryl Chloride)	10025-87-3	1000
Phosphorus Trichloride	7719-12-2	1000
Phosphoryl Chloride (also called Phosphorus Oxychloride)	10025-87-3	1000
Propargyl Bromide	106-96-7	100
Propyl Nitrate	627-3-4	2500
Sarin	107-44-8	100
Selenium Hexafluoride	7783-79-1	1000
Stibine (Antimony Hydride)	7803-52-3	500
Sulfur Dioxide (liquid)	7446-09-5	1000
Sulfur Pentafluoride	5714-22-7	250
Sulfur Tetrafluoride	7783-60-0	250
Sulfur Trioxide (also called Sulfuric Anhydride)	7446-11-9	1000
Sulfuric Anhydride (also called Sulfur Trioxide)	7446-11-9	1000
Tellurium Hexafluoride	7783-80-4	250
Tetrafluoroethylene	116-14-3	5000
Tetrafluorohydrazine	10036-47-2	5000
Tetramethyl Lead	75-74-1	1000
Thionyl Chloride	7719-09-7	250
Trichloro (chloromethyl) Silane	1558-25-4	100
Trichloro (dichlorophenyl) Silane	27137-85-5	2500
Trichlorosilane	10025-78-2	5000
Trifluorochloroethylene	79-38-9	10000
Trimethyoxysilane	2487-90-3	1500

* Chemical Abstract Service Number

** Threshold Quantity in Pounds (Amount necessary to be covered by this standard.)

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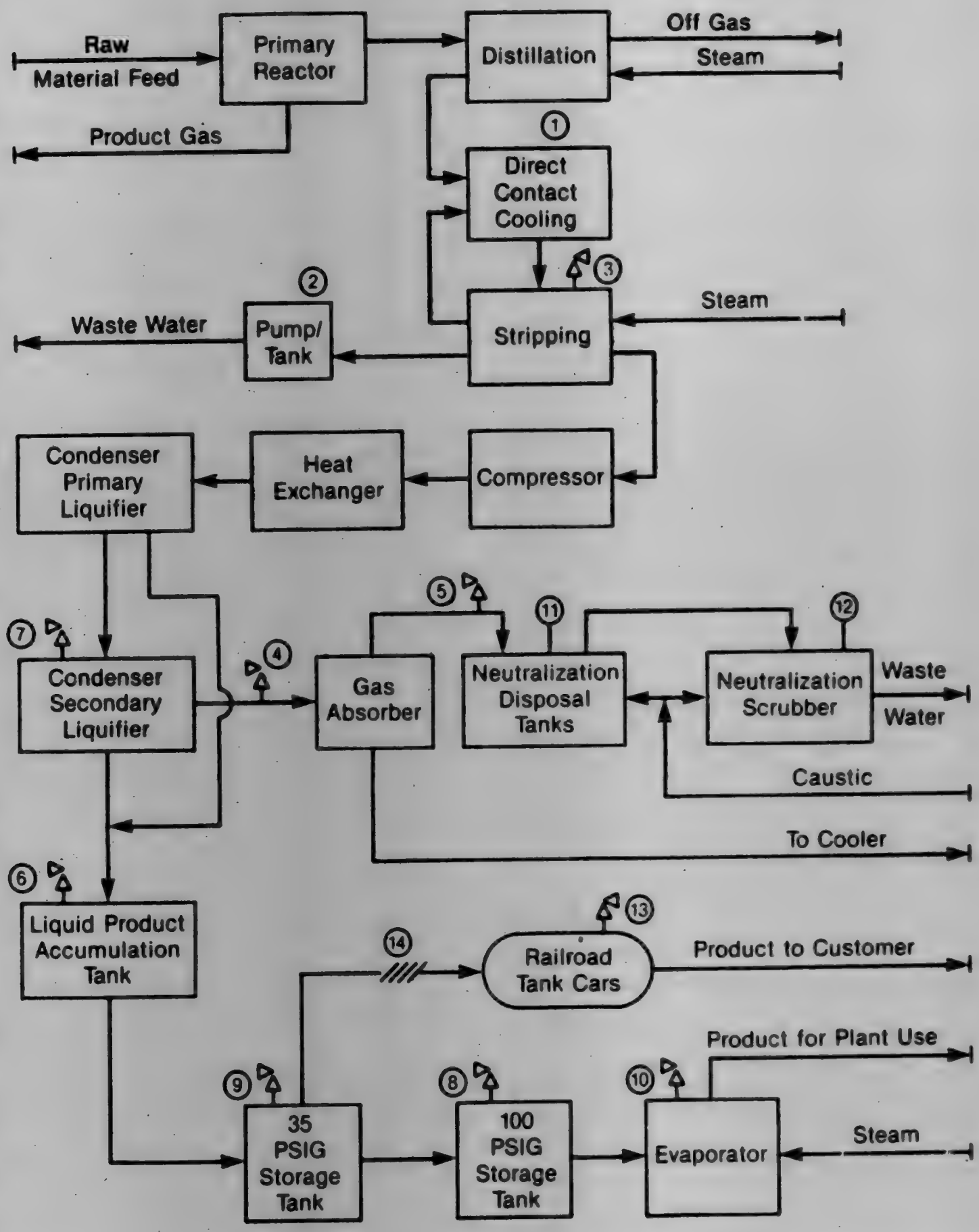
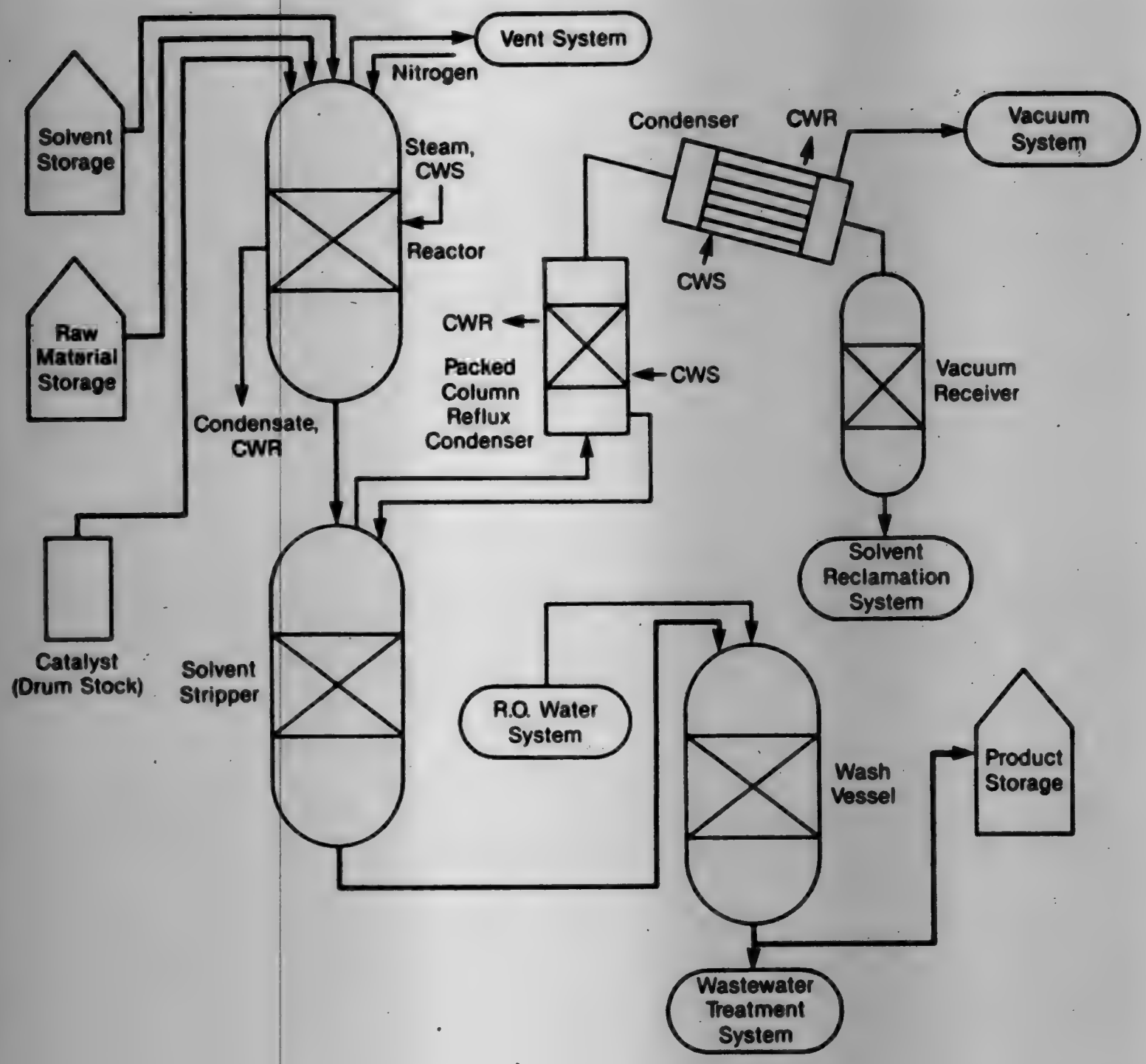
Appendix B to § 1926.64—Block Flow Diagram and Simplified Process Flow Diagram (Nonmandatory)

Example of a Block Flow Diagram



Example of a Process Flow Diagram



Appendix C to § 1926.64—Compliance Guidelines and Recommendations for Process Safety Management (Nonmandatory)

This appendix serves as a nonmandatory guideline to assist employers and employees in complying with the requirements of this section, as well as provides other helpful recommendations and information. Examples presented in this appendix are not the only means of achieving the performance goals in the standard. This appendix neither adds nor detracts from the requirements of the standard.

1. *Introduction to Process Safety Management.* The major objective of process safety management of highly hazardous chemicals is to prevent unwanted releases of hazardous chemicals especially into locations which could expose employees and others to serious hazards. An effective process safety management program requires a systematic approach to evaluating the whole process. Using this approach the process design, process technology, operational and maintenance activities and procedures, nonroutine activities and procedures, emergency preparedness plans and procedures, training programs, and other elements which impact the process are all considered in the evaluation. The various lines of defense that have been incorporated into the design and operation of the process to prevent or mitigate the release of hazardous chemicals need to be evaluated and strengthened to assure their effectiveness at each level. Process safety management is the proactive identification, evaluation and mitigation or prevention of chemical releases that could occur as a result of failures in process, procedures or equipment.

The process safety management standard targets highly hazardous chemicals that have the potential to cause a catastrophic incident. This standard as a whole is to aid employers in their efforts to prevent or mitigate episodic chemical releases that could lead to a catastrophe in the workplace and possibly to the surrounding community. To control these types of hazards, employers need to develop the necessary expertise, experiences, judgement and proactive initiative within their workforce to properly implement and maintain an effective process safety management program as envisioned in the OSHA standard. This OSHA standard is required by the Clean Air Act Amendments as is the Environmental Protection Agency's Risk Management Plan. Employers, who merge the two sets of requirements into their process safety management program, will better assure full compliance with each as well as enhancing their relationship with the local community.

While OSHA believes process safety management will have a positive effect on the safety of employees in workplaces and also offers other potential benefits to employers (increased productivity), smaller businesses which may have limited resources available to them at this time, might consider alternative avenues of decreasing the risks associated with highly hazardous chemicals at their workplaces. One method which might be considered is the reduction in the inventory of the highly hazardous chemical. This reduction in inventory will result in a reduction of the risk or potential for a catastrophic incident. Also, employers including small employers may be able to establish more efficient inventory control by reducing the quantities of highly hazardous chemicals on site below the established threshold quantities. This reduction can be accomplished by ordering smaller shipments and maintaining the minimum inventory necessary for efficient and safe operation. When reduced inventory is not feasible, then the employer might consider dispersing inventory to several locations on site. Dispersing storage into locations where a release in one location will not cause a release in another location is a practical method to also reduce the risk or potential for catastrophic incidents.

2. *Employee Involvement in Process Safety Management.* Section 304 of the Clean Air Act Amendments states that employers are to consult with their employees and their representatives regarding the employers efforts in the development and implementation of the process safety management program elements and hazard assessments. Section 304 also requires employers to train and educate their employees and to inform affected employees of the findings from incident investigations required by the process safety management program. Many employers, under their safety and health programs, have already established means and methods to keep employees and their representatives informed about relevant safety and health issues and employers may be able to adapt these practices and procedures to meet their obligations under this standard. Employers who have not implemented an occupational safety and health program may wish to form a safety and health committee of employees and management representatives to help the employer meet the obligations specified by this standard. These committees can become a significant ally in helping the employer to implement and maintain an effective process safety management program for all employees.

3. *Process Safety Information.* Complete and accurate written information concerning process chemicals, process technology, and process equipment is essential to an effective process safety management program and to a process hazards analysis. The compiled information will be a necessary resource to a variety of users including the team that will perform the process hazards analysis as required under paragraph (e); those developing the training programs and the operating procedures; contractors whose employees will be working with the process; those conducting the pre-startup reviews; local emergency preparedness planners; and, insurance and enforcement officials.

The information to be compiled about the chemicals, including process intermediates, needs to be comprehensive enough for an accurate assessment of the fire and explosion characteristics, reactivity hazards, the safety and health hazards to workers, and the corrosion and erosion effects on the process equipment and monitoring tools. Current material safety data sheet (MSDS) information can be used to help meet this requirement which must be supplemented with process chemistry information including runaway reaction and over pressure hazards if applicable.

Process technology information will be a part of the process safety information package and it is expected that it will include diagrams of the type shown in Appendix B of this section as well as employer established criteria for maximum inventory levels for process chemicals; limits beyond which would be considered upset conditions; and a qualitative estimate of the consequences or results of deviation that could occur if operating beyond the established process limits. Employers are encouraged to use diagrams which will help users understand the process.

A block flow diagram is used to show the major process equipment and interconnecting process flow lines and show flow rates, stream composition, temperatures, and pressures when necessary for clarity. The block flow diagram is a simplified diagram.

Process flow diagrams are more complex and will show all main flow streams including valves to enhance the understanding of the process, as well as pressures and temperatures on all feed and product lines within all major vessels, in and out of headers and heat exchangers, and points of pressure and temperature control. Also, materials of construction information, pump capacities and pressure heads, compressor horsepower and vessel design pressures and temperatures are shown when necessary for clarity. In addition, major components of control loops are usually shown along with key utilities on process flow diagrams.

Piping and instrument diagrams (P&Ids) may be the more appropriate type of diagrams to show some of the above details and to display the information for the piping designer and engineering staff. The P&IDs are to be used to describe the relationships between equipment and instrumentation as well as other relevant information that will enhance clarity. Computer software programs which do P&Ids or other diagrams useful to the information package, may be used to help meet this requirement.

The information pertaining to process equipment design must be documented. In other words, what were the codes and standards relied on to establish good engineering practice. These codes and standards are published by such organizations as the American Society of Mechanical Engineers, American Petroleum Institute, American National Standards Institute, National Fire Protection Association, American Society for Testing and Materials, National Board of Boiler and Pressure Vessel Inspectors, National Association of Corrosion Engineers, American Society of Exchange Manufacturers Association, and model building code groups.

In addition, various engineering societies issue technical reports which impact process design. For example, the American Institute of Chemical Engineers has published technical reports on topics such as two phase flow for venting devices. This type of technically recognized report would constitute good engineering practice.

For existing equipment designed and constructed many years ago in accordance with the codes and standards available at that time and no longer in general use today, the employer must document which codes and standards were used and that the design and construction along with the testing, inspection and operation are still suitable for the intended use. Where the process technology requires a design which departs from the applicable codes and standards, the employer must document that the design and construction is suitable for the intended purpose.

4. *Process Hazard Analysis.* A process hazard analysis (PHA), sometimes called a process hazard evaluation, is one of the most important elements of the process safety management program. A PHA is an organized and systematic effort to identify and analyze the significance of potential hazards associated with the processing or handling of highly hazardous chemicals. A PHA provides information which will assist employers and employees in making decisions for improving safety and reducing the consequences of unwanted or unplanned releases of hazardous chemicals. A PHA is directed toward analyzing potential causes and consequences of fires, explosions, releases of toxic or flammable chemicals and major spills of hazardous chemicals. The PHA focuses on equipment, instrumentation, utilities, human actions (routine and nonroutine), and external factors that might impact the process. These considerations assist in determining the hazards and potential failure points or failure modes in a process.

The selection of a PHA methodology or technique will be influenced by many factors including the amount of existing knowledge about the process. Is it a process that has been operated for a long period of time with little or no innovation and extensive experience has been generated with its use? Or, is it a new process or one which has been changed frequently by the inclusion of innovative features? Also, the size and complexity of the process will influence the decision as to the appropriate PHA methodology to use. All PHA methodologies are subject to certain limitations. For example, the checklist methodology works well when the process is very stable and no changes are made, but it is not as effective when the process has undergone extensive change. The checklist may miss the most recent changes and consequently the changes would not be evaluated. Another limitation to be considered concerns the assumptions made by the team or analyst. The PHA is dependent on good judgement and the assumptions made during the study need to be documented and understood by the team and reviewer and kept for a future PHA.

The team conducting the PHA need to understand the methodology that is going to be used. A PHA team can vary in size from two people to a number of people with varied operational and technical backgrounds. Some team members may only be a part of the team for a limited time. The team leader needs to be fully knowledgeable in the proper implementation of the PHA methodology that is to be used and should be impartial in the evaluation. The other full or part time team members need to provide the team with expertise in areas such as process technology, process design, operating procedures and practices, including how the work is actually performed, alarms, emergency procedures, instrumentation, maintenance procedures, both routine and nonroutine tasks, including how the tasks are authorized, procurement of parts and supplies, safety and health, and any other relevant subject as the need dictates. At least one team member must be familiar with the process.

The ideal team will have an intimate knowledge of the standards, codes, specifications and regulations applicable to the process being studied. The selected team members need to be compatible and the team leader needs to be able to manage the team and the PHA study. The team needs to be able to work together while benefiting from the expertise of others on the team or outside the team, to resolve issues, and to forge a consensus on the findings of the study and the recommendations.

The application of a PHA to a process may involve the use of different methodologies for various parts of the process. For example, a process involving a series of unit operations of varying sizes, complexities, and ages may use different methodologies and team members for each operation. Then the conclusions can be integrated into one final study and evaluation. A more specific example is the use of a checklist PHA for a standard boiler or heat exchanger and the use of a Hazard and Operability PHA for the overall process. Also, for batch type processes like custom batch operations, a generic PHA of a representative batch may be used where there are only small changes of monomer or other ingredient ratios and the chemistry is documented for the full range and ratio of batch ingredients. Another process that might consider using a generic type of PHA is a gas plant. Often these plants are simply moved from site to site and therefore, a generic PHA may be used for these movable plants. Also, when an employer has several similar size gas plants and no sour gas is being processed at the site, then a generic PHA is feasible as long as the variations of the individual sites are accounted for in the PHA. Finally, when an employer has a large continuous process which has several control rooms for different portions of the process such as for a distillation tower and a blending operation, the employer may wish to do each segment separately and then integrate the final results.

Additionally, small businesses which are covered by this rule, will often have processes that have less storage volume, less capacity, and less complicated than processes at a large facility. Therefore, OSHA would anticipate that the less complex methodologies would be used to meet the process hazard analysis criteria in the standard. These process hazard analyses can be done in less time and with a few people being involved. A less complex process generally means that less data, P&IDs, and process information is needed to perform a process hazard analysis.

Many small businesses have processes that are not unique, such as cold storage lockers or water treatment facilities. Where employer associations have a number of members with such facilities, a generic PHA, evolved from a checklist or what-if questions, could be developed and used by each employer effectively to reflect his/her particular process; this would simplify compliance for them.

When the employer has a number of processes which require a PHA, the employer must set up a priority system of which PHAs to conduct first. A preliminary or gross hazard analysis may be useful in prioritizing the processes that the employer has determined are subject to coverage by the process safety management standard. Consideration should first be given to those processes with the potential of adversely affecting the largest number of employees. This prioritizing should consider the potential severity of a chemical release, the number of potentially affected employees, the operating history of the process such as the frequency of chemical releases, the age of the process and any other relevant factors. These factors would suggest a ranking order and would suggest either using a weighing factor system or a systematic ranking method. The use of a preliminary hazard analysis would assist an employer in determining which process should be of the highest priority and thereby the employer would obtain the greatest improvement in safety at the facility.

Detailed guidance on the content and application of process hazard analysis methodologies is available from the American Institute of Chemical Engineers' Center for Chemical Process Safety (see Appendix D).

5. *Operating Procedures and Practices.* Operating procedures describe tasks to be performed, data to be recorded, operating conditions to be maintained, samples to be collected, and safety and health precautions to be taken. The procedures need to be technically accurate, understandable to employees, and revised periodically to ensure that they reflect current operations. The process safety information package is to be used as a resource to better assure that the operating procedures and practices are consistent with the known hazards of the chemicals in the process and that the operating parameters are accurate. Operating procedures should be reviewed by engineering staff and operating personnel to ensure that they are accurate and provide practical instructions on how to actually carry out job duties safely.

Operating procedures will include specific instructions or details on what steps are to be taken or followed in carrying out the stated procedures. These operating instructions for each procedure should include the applicable safety precautions and should contain appropriate information on safety implications. For example, the operating procedures addressing operating parameters will contain operating instructions about pressure limits, temperature ranges, flow rates, what to do when an upset condition occurs, what alarms and instruments are pertinent if an upset condition occurs, and other subjects. Another example of using operating instructions to

properly implement operating procedures is in starting up or shutting down the process. In these cases, different parameters will be required from those of normal operation. These operating instructions need to clearly indicate the distinctions between startup and normal operations such as the appropriate allowances for heating up a unit to reach the normal operating parameters. Also the operating instructions need to describe the proper method for increasing the temperature of the unit until the normal operating temperature parameters are achieved.

Computerized process control systems add complexity to operating instructions. These operating instructions need to describe the logic of the software as well as the relationship between the equipment and the control system; otherwise, it may not be apparent to the operator.

Operating procedures and instructions are important for training operating personnel. The operating procedures are often viewed as the standard operating practices (SOPs) for operations. Control room personnel and operating staff, in general, need to have a full understanding of operating procedures. If workers are not fluent in English then procedures and instructions need to be prepared in a second language understood by the workers. In addition, operating procedures need to be changed when there is a change in the process as a result of the management of change procedures. The consequences of operating procedure changes need to be fully evaluated and the information conveyed to the personnel. For example, mechanical changes to the process made by the maintenance department (like changing a valve from steel to brass or other subtle changes) need to be evaluated to determine if operating procedures and practices also need to be changed. All management of change actions must be coordinated and integrated with current operating procedures and operating personnel must be oriented to the changes in procedures before the change is made. When the process is shutdown in order to make a change, then the operating procedures must be updated before startup of the process.

Training in how to handle upset conditions must be accomplished as well as what operating personnel are to do in emergencies such as when a pump seal fails or a pipeline ruptures. Communication between operating personnel and workers performing work within the process area, such as nonroutine tasks, also must be maintained. The hazards of the tasks are to be conveyed to operating personnel in accordance with established procedures and to those performing the actual tasks. When the work is completed, operating personnel should be informed to provide closure on the job.

6. *Employee Training.* All employees, including maintenance and contractor employees, involved with highly hazardous chemicals need to fully understand the safety and health hazards of the chemicals and processes they work with for the protection of themselves, their fellow employees and the citizens of nearby communities. Training conducted in compliance with 1926.59, the Hazard Communication standard, will help employees to be more knowledgeable about the chemicals they work with as well as familiarize them with reading and understanding MSDS. However, additional training in subjects such as operating procedures and safety work practices, emergency evacuation and response, safety procedures, routine and nonroutine work authorization activities, and other areas pertinent to process safety and health will need to be covered by an employer's training program.

In establishing their training programs, employers must clearly define the employees to be trained and what subjects are to be covered in their training. Employers in setting up their training program will need to clearly establish the goals and objectives they wish to achieve with the training that they provide to their employees. The learning goals or objectives should be written in clear measurable terms before the training begins. These goals and objectives need to be tailored to each of the specific training modules or segments. Employers should describe the important actions and conditions under which the employee will demonstrate competence or knowledge as well as what is acceptable performance.

Hands-on-training where employees are able to use their senses beyond listening, will enhance learning. For example, operating personnel, who will work in a control room or at control panels, would benefit by being trained at a simulated control panel or panels. Upset conditions of various types could be displayed on the simulator, and then the employee could go through the proper operating procedures to bring the simulator panel back to the normal operating parameters. A training environment could be created to help the trainee feel the full reality of the situation but, of course, under controlled conditions. This realistic type of training can be very effective in teaching employees correct procedures while allowing them to also see the consequences of what might happens if they do not follow established operating procedures. Other training techniques using videos or on-the-job training can also be very effective for teaching other job tasks, duties, or other important information. An effective training program will allow the employee to fully participate in the training process and to practice their skill or knowledge.

Employers need to periodically evaluate their training programs to see if the necessary skills, knowledge, and routines are being properly understood and implemented by their trained employees. The means or methods for evaluating the training should be developed along with the training program goals and objectives. Training program evaluation will help employers to determine the amount of training their employees understood, and whether the desired results were obtained. If, after the evaluation, it appears that the trained employees are not at the level of knowledge and skill that was expected, the employer will need to revise the training program, provide retraining, or provide more frequent refresher training sessions until the deficiency is resolved. Those who conducted the training and those who received the training should also be consulted as to how best to improve the training process. If there is a language barrier, the language known to the trainees should be used to reinforce the training messages and information.

Careful consideration must be given to assure that employees including maintenance and contract employees receive current and updated training. For example, if changes are made to a process, impacted employees must be trained in the changes and understand the effects of the changes on their job tasks (e.g., any new operating procedures pertinent to their tasks). Additionally, as already discussed the evaluation of the employee's absorption of training will certainly influence the need for training.

7. *Contractors.* Employers who use contractors to perform work in and around processes that involve highly hazardous chemicals, will need to establish a screening process so that they hire and use contractors who accomplish the desired job tasks without compromising the safety and health of employees at a facility. For contractors, whose safety performance on the job is not known to the hiring employer, the employer will need to obtain information on injury and illness rates and experience and should obtain contractor references. Additionally, the employer must assure that the contractor has the appropriate job skills, knowledge and certifications (such as for pressure vessel welders). Contractor work methods and experiences should be evaluated. For example, does the contractor conducting demolition work swing loads over operating processes or does the contractor avoid such hazards?

Maintaining a site injury and illness log for contractors is another method employers must use to track and maintain current knowledge of work activities involving contract employees working on or adjacent to covered processes. Injury and illness logs of both the employer's employees and contract employees allow an employer to have full knowledge of process injury and illness experience. This log will also contain information which will be of use to those auditing process safety management compliance and those involved in incident investigations.

Contract employees must perform their work safely. Considering that contractors often perform very specialized and potentially hazardous tasks such as confined space entry activities and nonroutine repair activities it is quite important that their activities be controlled while they are working on or near a covered process. A permit system or work authorization system for these activities would also be helpful to all affected employers. The use of a work authorization system keeps an employer informed of contract employee activities, and as a benefit the employer will have better coordination and more management control over the work being performed in the process area. A well run and well maintained process where employee safety is fully recognized will benefit all of those who work in the facility whether they be contract employees or employees of the owner.

8. *Pre-Startup Safety.* For new processes, the employer will find a PHA helpful in improving the design and construction of the

process from a reliability and quality point of view. The safe operation of the new process will be enhanced by making use of the PHA recommendations before final installations are completed. P&IDs are to be completed along with having the operating procedures in place and the operating staff trained to run the process before startup. The initial startup procedures and normal operating procedures need to be fully evaluated as part of the pre-startup review to assure a safe transfer into the normal operating mode for meeting the process parameters.

For existing processes that have been shutdown for turnaround, or modification, etc., the employer must assure that any changes other than "replacement in kind" made to the process during shutdown go through the management of change procedures. P&IDs will need to be updated as necessary, as well as operating procedures and instructions. If the changes made to the process during shutdown are significant and impact the training program, then operating personnel as well as employees engaged in routine and nonroutine work in the process area may need some refresher or additional training in light of the changes. Any incident investigation recommendations, compliance audits or PHA recommendations need to be reviewed as well to see what impacts they may have on the process before beginning the startup.

9. *Mechanical Integrity.* Employers will need to review their maintenance programs and schedules to see if there are areas where "breakdown" maintenance is used rather than an on-going mechanical integrity program. Equipment used to process, store, or handle highly hazardous chemicals needs to be designed, constructed, installed and maintained to minimize the risk of releases of such chemicals. This requires that a mechanical integrity program be in place to assure the continued integrity of process equipment. Elements of a mechanical integrity program include the identification and categorization of equipment and instrumentation, inspections and tests, testing and inspection frequencies, development of maintenance procedures, training of maintenance personnel, the establishment of criteria for acceptable test results, documentation of test and inspection results, and documentation of manufacturer recommendations as to meantime to failure for equipment and instrumentation.

The first line of defense an employer has available is to operate and maintain the process as designed, and to keep the chemicals contained. This line of defense is backed up by the next line of defense which is the controlled release of chemicals through venting to scrubbers or flares, or to surge or overflow tanks which are designed to receive such chemicals, etc. These lines of defense are the primary lines of defense or means to prevent unwanted releases. The secondary lines of defense would include fixed fire protection systems like sprinklers, water spray, or deluge systems, monitor guns, etc., dikes, designed drainage systems, and other systems which would control or mitigate hazardous chemicals once an unwanted release occurs. These primary and secondary lines of defense are what the mechanical integrity program needs to protect and strengthen these primary and secondary lines of defenses where appropriate.

The first step of an effective mechanical integrity program is to compile and categorize a list of process equipment and instrumentation for inclusion in the program. This list would include pressure vessels, storage tanks, process piping, relief and vent systems, fire protection system components, emergency shutdown systems and alarms and interlocks and pumps. For the categorization of instrumentation and the listed equipment the employer would prioritize which pieces of equipment require closer scrutiny than others. Meantime to failure of various instrumentation and equipment parts would be known from the manufacturers data or the employer's experience with the parts, which would then influence the inspection and testing frequency and associated procedures. Also, applicable codes and standards such as the National Board Inspection Code, or those from the American Society for Testing and Material, American Petroleum Institute, National Fire Protection Association, American National Standards Institute, American Society of Mechanical Engineers, and other groups, provide information to help establish an effective testing and inspection frequency, as well as appropriate methodologies.

The applicable codes and standards provide criteria for external inspections for such items as foundation and supports, anchor bolts, concrete or steel supports, guy wires, nozzles and sprinklers, pipe hangers, grounding connections, protective coatings and insulation, and external metal surfaces of piping and vessels, etc. These codes and standards also provide information on methodologies for internal inspection, and a frequency formula based on the corrosion rate of the materials of construction. Also, erosion both internal and external needs to be considered along with corrosion effects for piping and valves. Where the corrosion rate is not known, a maximum inspection frequency is recommended, and methods of developing the corrosion rate are available in the codes. Internal inspections need to cover items such as vessel shell, bottom and head; metallic linings; nonmetallic linings; thickness measurements for vessels and piping; inspection for erosion, corrosion, cracking and bulges; internal equipment like trays, baffles, sensors and screens for erosion, corrosion or cracking and other deficiencies. Some of these inspections may be performed by state or local government inspectors under state and local statutes. However, each employer needs to develop procedures to ensure that tests and inspections are conducted properly and that consistency is maintained even where different employees may be involved. Appropriate training is to be provided to maintenance personnel to ensure that they understand the preventive maintenance program procedures, safe practices, and the proper use and application of special equipment or unique tools that may be required. This training is part of the overall training program called for in the standard.

A quality assurance system is needed to help ensure that the proper materials of construction are used, that fabrication and inspection procedures are proper, and that installation procedures recognize field installation concerns. The quality assurance program is an essential part of the mechanical integrity program and will help to maintain the primary and secondary lines of defense that have been designed into the process to prevent unwanted chemical releases or those which control or mitigate a release. "As built" drawings, together with certifications of coded vessels and other equipment, and materials of construction need to be verified and retained in the quality assurance documentation. Equipment installation jobs need to be properly inspected in the field for use of proper materials and procedures and to assure that qualified craftsmen are used to do the job. The use of appropriate gaskets, packing, bolts, valves, lubricants and welding rods need to be verified in the field. Also, procedures for installation of safety devices need to be verified, such as the torque on the bolts on ruptured disc installations, uniform torque on flange bolts, proper installation of pump seals, etc. If the quality of parts is a problem, it may be appropriate to conduct audits of the equipment supplier's facilities to better assure proper purchases of required equipment which is suitable for its intended service. Any changes in equipment that may become necessary will need to go through the management of change procedures.

10. *Nonroutine Work Authorizations.* Nonroutine work which is conducted in process areas needs to be controlled by the employer in a consistent manner. The hazards identified involving the work that is to be accomplished must be communicated to those doing the work, but also to those operating personnel whose work could affect the safety of the process. A work authorization notice or permit must have a procedure that describes the steps the maintenance supervisor, contractor representative or other person needs to follow to obtain the necessary clearance to get the job started. The work authorization procedures need to reference and coordinate, as applicable, lockout/tagout procedures, line breaking procedures, confined space entry procedures and hot work authorizations. This procedure also needs to provide clear steps to follow once the job is completed in order to provide closure for those that need to know the job is now completed and equipment can be returned to normal.

11. *Managing Change.* To properly manage changes to process chemicals, technology, equipment and facilities, one must define what is meant by change. In this process safety management standard, change includes all modifications to equipment, procedures, raw materials and processing conditions other than "replacement in kind." These changes need to be properly managed by identifying and reviewing them prior to implementation of the change. For example, the operating procedures contain the operating parameters (pressure limits, temperature ranges, flow rates, etc.) and the importance of operating within these limits. While the operator must have the flexibility to maintain safe operation within the established parameters, any operation

outside of these parameters requires review and approval by a written management of change procedure.

Management of change covers such as changes in process technology and changes to equipment and instrumentation. Changes in process technology can result from changes in production rates, raw materials, experimentation, equipment unavailability, new equipment, new product development, change in catalyst and changes in operating conditions to improve yield or quality. Equipment changes include among others change in materials of construction, equipment specifications, piping pre-arrangements, experimental equipment, computer program revisions and changes in alarms and interlocks. Employers need to establish means and methods to detect both technical changes and mechanical changes.

Temporary changes have caused a number of catastrophes over the years, and employers need to establish ways to detect temporary changes as well as those that are permanent. It is important that a time limit for temporary changes be established and monitored since, without control, these changes may tend to become permanent. Temporary changes are subject to the management of change provisions. In addition, the management of change procedures are used to insure that the equipment and procedures are returned to their original or designed conditions at the end of the temporary change. Proper documentation and review of these changes is invaluable in assuring that the safety and health considerations are being incorporated into the operating procedures and the process.

Employers may wish to develop a form or clearance sheet to facilitate the processing of changes through the management of change procedures. A typical change form may include a description and the purpose of the change, the technical basis for the change, safety and health considerations, documentation of changes for the operating procedures, maintenance procedures, inspection and testing, P&IDs, electrical classification, training and communications, pre-startup inspection, duration if a temporary change, approvals and authorization. Where the impact of the change is minor and well understood, a check list reviewed by an authorized person with proper communication to others who are affected may be sufficient. However, for a more complex or significant design change, a hazard evaluation procedure with approvals by operations, maintenance, and safety departments may be appropriate. Changes in documents such as P&IDs, raw materials, operating procedures, mechanical integrity programs, electrical classifications, etc., need to be noted so that these revisions can be made permanent when the drawings and procedure manuals are updated. Copies of process changes need to be kept in an accessible location to ensure that design changes are available to operating personnel as well as to PHA team members when a PHA is being done or one is being updated.

12. *Investigation of Incidents.* Incident investigation is the process of identifying the underlying causes of incidents and implementing steps to prevent similar events from occurring. The intent of an incident investigation is for employers to learn from past experiences and thus avoid repeating past mistakes. The incidents for which OSHA expects employers to become aware and to investigate are the types of events which result in or could reasonably have resulted in a catastrophic release. Some of the events are sometimes referred to as "near misses," meaning that a serious consequence did not occur, but could have.

Employers need to develop in-house capability to investigate incidents that occur in their facilities. A team needs to be assembled by the employer and trained in the techniques of investigation including how to conduct interviews of witnesses, needed documentation and report writing. A multi-disciplinary team is better able to gather the facts of the event and to analyze them and develop plausible scenarios as to what happened, and why. Team members should be selected on the basis of their training, knowledge and ability to contribute to a team effort to fully investigate the incident. Employees in the process area where the incident occurred should be consulted, interviewed or made a member of the team. Their knowledge of the events form a significant set of facts about the incident which occurred. The report, its findings and recommendations are to be shared with those who can benefit from the information. The cooperation of employees is essential to an effective incident investigation. The focus of the investigation should be to obtain facts, and not to place blame. The team and the investigation process should clearly deal with all involved individuals in a fair, open and consistent manner.

13. *Emergency Preparedness.* Each employer must address what actions employees are to take when there is an unwanted release of highly hazardous chemicals. Emergency preparedness or the employer's tertiary (third) lines of defense are those that will be relied on along with the secondary lines of defense when the primary lines of defense which are used to prevent an unwanted release fail to stop the release. Employers will need to decide if they want employees to handle and stop small or minor incidental releases. Whether they wish to mobilize the available resources at the plant and have them brought to bear on a more significant release. Or whether employers want their employees to evacuate the danger area and promptly escape to a preplanned safe zone area, and allow the local community emergency response organizations to handle the release. Or whether the employer wants to use some combination of these actions. Employers will need to select how many different emergency preparedness or tertiary lines of defense they plan to have and then develop the necessary plans and procedures, and appropriately train employees in their emergency duties and responsibilities and then implement these lines of defense.

Employers at a minimum must have an emergency action plan which will facilitate the prompt evacuation of employees when an unwanted release of highly hazardous chemical. This means that the employer will have a plan that will be activated by an alarm system to alert employees when to evacuate and, that employees who are physically impaired, will have the necessary support and assistance to get them to the safe zone as well. The intent of these requirements is to alert and move employees to a safe zone quickly. Delaying alarms or confusing alarms are to be avoided. The use of process control centers or similar process buildings in the process area as safe areas is discouraged. Recent catastrophes have shown that a large life loss has occurred in these structures because of where they have been sited and because they are not necessarily designed to withstand over-pressures from shockwaves resulting from explosions in the process area.

Unwanted incidental releases of highly hazardous chemicals in the process area must be addressed by the employer as to what actions employees are to take. If the employer wants employees to evacuate the area, then the emergency action plan will be activated. For outdoor processes where wind direction is important for selecting the safe route to a refuge area, the employer should place a wind direction indicator such as a wind sock or pennant at the highest point that can be seen throughout the process area. Employees can move in the direction of cross wind to upwind to gain safe access to the refuge area by knowing the wind direction.

If the employer wants specific employees in the release area to control or stop the minor emergency or incidental release, these actions must be planned for in advance and procedures developed and implemented. Preplanning for handling incidental releases for minor emergencies in the process area needs to be done, appropriate equipment for the hazards must be provided, and training conducted for those employees who will perform the emergency work before they respond to handle an actual release. The employer's training program, including the Hazard Communication standard training is to address the training needs for employees who are expected to handle incidental or minor releases.

Preplanning for releases that are more serious than incidental releases is another important line of defense to be used by the employer. When a serious release of a highly hazardous chemical occurs, the employer through preplanning will have determined in advance what actions employees are to take. The evacuation of the immediate release area and other areas as necessary would be accomplished under the emergency action plan. If the employer wishes to use plant personnel such as a fire brigade, spill control team, a hazardous materials team, or use employees to render aid to those in the immediate release area and control or mitigate the incident, these actions are covered by 1926.65, the Hazardous Waste Operations and Emergency Response (HAZWOPER) standard. If outside assistance is necessary, such as through mutual aid agreements between employers or local government emergency response organizations, these emergency responders are also covered by HAZWOPER. The safety and health protections required for emergency responders are the responsibility of their employers and of the on-scene incident commander.

Responders may be working under very hazardous conditions and therefore the objective is to have them competently led by an on-scene incident commander and the commander's staff, properly equipped to do their assigned work safely, and fully trained to carry out their duties safely before they respond to an emergency. Drills, training exercises, or simulations with the local community emergency response planners and responder organizations is one means to obtain better preparedness. This close cooperation and coordination between plant and local community emergency preparedness managers will also aid the employer in complying with the Environmental Protection Agency's Risk Management Plan criteria.

One effective way for medium to large facilities to enhance coordination and communication during emergencies for on plant operations and with local community organizations is for employers to establish and equip an emergency control center. The emergency control center would be sited in a safe zone area so that it could be occupied throughout the duration of an emergency. The center would serve as the major communication link between the on-scene incident commander and plant or corporate management as well as with the local community officials. The communication equipment in the emergency control center should include a network to receive and transmit information by telephone, radio or other means. It is important to have a backup communication network in case of power failure or one communication means fails. The center should also be equipped with the plant layout and community maps, utility drawings including fire water, emergency lighting, appropriate reference materials such as a government agency notification list, company personnel phone list, SARA Title III reports and material safety data sheets, emergency plans and procedures manual, a listing with the location of emergency response equipment, mutual aid information, and access to meteorological or weather condition data and any dispersion modeling data.

14. *Compliance Audits.* Employers need to select a trained individual or assemble a trained team of people to audit the process safety management system and program. A small process or plant may need only one knowledgeable person to conduct an audit. The audit is to include an evaluation of the design and effectiveness of the process safety management system and a field inspection of the safety and health conditions and practices to verify that the employer's systems are effectively implemented. The audit should be conducted or lead by a person knowledgeable in audit techniques and who is impartial towards the facility or area being audited. The essential elements of an audit program include planning, staffing, conducting the audit, evaluation and corrective action, follow-up and documentation.

Planning in advance is essential to the success of the auditing process. Each employer needs to establish the format, staffing, scheduling and verification methods prior to conducting the audit. The format should be designed to provide the lead auditor with a procedure or checklist which details the requirements of each section of the standard. The names of the audit team members should be listed as part of the format as well. The checklist, if properly designed, could serve as the verification sheet which provides the auditor with the necessary information to expedite the review and assure that no requirements of the standard are omitted. This verification sheet format could also identify those elements that will require evaluation or a response to correct deficiencies. This sheet could also be used for developing the follow-up and documentation requirements.

The selection of effective audit team members is critical to the success of the program. Team members should be chosen for their experience, knowledge, and training and should be familiar with the processes and with auditing techniques, practices and procedures. The size of the team will vary depending on the size and complexity of the process under consideration. For a large, complex, highly instrumented plant, it may be desirable to have team members with expertise in process engineering and design, process chemistry, instrumentation and computer controls, electrical hazards and classifications, safety and health disciplines, maintenance, emergency preparedness, warehousing or shipping, and process safety auditing. The team may use part-time members to provide for the depth of expertise required as well as for what is actually done or followed, compared to what is written.

An effective audit includes a review of the relevant documentation and process safety information, inspection of the physical facilities, and interviews with all levels of plant personnel. Utilizing the audit procedure and checklist developed in the preplanning stage, the audit team can systematically analyze compliance with the provisions of the standard and any other corporate policies that are relevant. For example, the audit team will review all aspects of the training program as part of the overall audit. The team will review the written training program for adequacy of content, frequency of training, effectiveness of training in terms of its goals and objectives as well as to how it fits into meeting the standard's requirements, documentation, etc. Through interviews, the team can determine the employee's knowledge and awareness of the safety procedures, duties, rules, emergency response assignments, etc. During the inspection, the team can observe actual practices such as safety and health policies, procedures, and work authorization practices. This approach enables the team to identify deficiencies and determine where corrective actions or improvements are necessary.

An audit is a technique used to gather sufficient facts and information, including statistical information, to verify compliance with standards. Auditors should select as part of their preplanning a sample size sufficient to give a degree of confidence that the audit reflects the level of compliance with the standard. The audit team, through this systematic analysis, should document areas which require corrective action as well as those areas where the process safety management system is effective and working in an effective manner. This provides a record of the audit procedures and findings, and serves as a baseline of operation data for future audits. It will assist future auditors in determining changes or trends from previous audits.

Corrective action is one of the most important parts of the audit. It includes not only addressing the identified deficiencies, but also planning, followup, and documentation. The corrective action process normally begins with a management review of the audit findings. The purpose of this review is to determine what actions are appropriate, and to establish priorities, timetables, resource allocations and requirements and responsibilities. In some cases, corrective action may involve a simple change in procedure or minor maintenance effort to remedy the concern. Management of change procedures need to be used, as appropriate, even for what may seem to be a minor change. Many of the deficiencies can be acted on promptly, while some may require engineering studies or indepth review of actual procedures and practices. There may be instances where no action is necessary and this is a valid response to an audit finding. All actions taken, including an explanation where no action is taken on a finding, needs to be documented as to what was done and why.

It is important to assure that each deficiency identified is addressed, the corrective action to be taken noted, and the audit person or team responsible be properly documented by the employer. To control the corrective action process, the employer should consider the use of a tracking system. This tracking system might include periodic status reports shared with affected levels of management, specific reports such as completion of an engineering study, and a final implementation report to provide closure for audit findings that have been through management of change, if appropriate, and then shared with affected employees and management. This type of tracking system provides the employer with the status of the corrective action. It also provides the documentation required to verify that appropriate corrective actions were taken on deficiencies identified in the audit.

Appendix D to § 1926.64—Sources of Further Information (Nonmandatory)

1. Center for Chemical Process Safety, American Institute of Chemical Engineers, 345 East 47th Street, New York, NY 10017, (212) 705-7319.

2. "Guidelines for Hazard Evaluation Procedures," American Institute of Chemical Engineers; 345 East 47th Street, New York, NY 10017.

3. "Guidelines for Technical Management of Chemical Process Safety," Center for Chemical Process Safety of the American Institute of Chemical Engineers; 345 East 47th Street, New York, NY 10017.

4. "Evaluating Process Safety in the Chemical Industry," Chemical Manufacturers Association; 2501 M Street NW, Washington, DC 20037.

5. "Safe Warehousing of Chemicals," Chemical Manufacturers Association; 2501 M Street NW, Washington, DC 20037.

6. "Management of Process Hazards," American Petroleum Institute (API Recommended Practice 750); 1220 L Street, N.W., Washington, D.C. 20005.

7. "Improving Owner and Contractor Safety Performance," American Petroleum Institute (API Recommended Practice 2220); API, 1220 L Street N.W., Washington, D.C. 20005.

8. Chemical Manufacturers Association (CMA's Manager Guide), First Edition, September 1991; CMA, 2501 M Street, N.W., Washington, D.C. 20037.

9. "Improving Construction Safety Performance," Report A- 3, The Business Roundtable; The Business Roundtable, 200 Park Avenue, New York, NY 10166. (Report includes criteria to evaluate contractor safety performance and criteria to enhance contractor safety performance).

10. "Recommended Guidelines for Contractor Safety and Health," Texas Chemical Council; Texas Chemical Council, 1402 Nueces Street, Austin, TX 78701-1534.

11. "Loss Prevention in the Process Industries," Volumes I and II; Frank P. Lees, Butterworth; London 1983.

12. "Safety and Health Program Management Guidelines," 1989; U.S. Department of Labor, Occupational Safety and Health Administration.

13. "Safety and Health Guide for the Chemical Industry," 1986, (OSHA 3091); U.S. Department of Labor, Occupational Safety and Health Administration; 200 Constitution Avenue, N.W., Washington, D.C. 20210.

14. "Review of Emergency Systems," June 1988; U.S. Environmental Protection Agency (EPA), Office of Solid Waste and Emergency Response, Washington, DC 20460.

15. "Technical Guidance for Hazards Analysis, Emergency Planning for Extremely Hazardous Substances," December 1987; U.S. Environmental Protection Agency (EPA), Federal Emergency Management Administration (FEMA) and U.S. Department of Transportation (DOT), Washington, DC 20460.

16. "Accident Investigation...A New Approach," 1983, National Safety Council; 444 North Michigan Avenue, Chicago, IL 60611-3991.

17. "Fire & Explosion Index Hazard Classification Guide," 6th Edition, May 1987, Dow Chemical Company; Midland, Michigan 48674.

18. "Chemical Exposure Index," May 1988, Dow Chemical Company; Midland, Michigan 48674.

12. New § 1926.65 is added to read as follows:

§ 1926.65 Hazardous waste operations and emergency response.

(a) *Scope, application, and definitions*—(1) *Scope.* This section covers the following operations, unless the employer can demonstrate that the operation does not involve employee exposure or the reasonable possibility for employee exposure to safety or health hazards:

(i) Clean-up operations required by a governmental body, whether Federal, state, local or other involving hazardous substances that are conducted at uncontrolled hazardous waste sites (including, but not limited to, the EPA's National Priority Site List (NPL), state priority site lists, sites recommended for the EPA NPL, and initial investigations of government identified sites which are conducted before the presence or absence of hazardous substances has been ascertained);

(ii) Corrective actions involving clean-up operations at sites covered by the Resource Conservation and Recovery Act of 1976 (RCRA) as amended (42 U.S.C. 6901 *et seq.*);

(iii) Voluntary clean-up operations at sites recognized by Federal, state, local or other governmental bodies as uncontrolled hazardous waste sites;

(iv) Operations involving hazardous wastes that are conducted at treatment, storage, and disposal (TSD) facilities regulated by 40 CFR parts 264 and 265 pursuant to RCRA; or by agencies under agreement with U.S.E.P.A. to implement RCRA regulations; and

(v) Emergency response operations for releases of, or substantial threats of releases of, hazardous substances without regard to the location of the hazard.

(2) *Application.* (i) All requirements of part 1910 and part 1926 of title 29 of the Code of Federal Regulations apply pursuant to their terms to hazardous waste and emergency response operations whether covered by this section or not. If there is a conflict or overlap, the provision more protective of employee safety and health shall apply without regard to 29 CFR 1926.20(e)(1).

(ii) Hazardous substance clean-up operations within the scope of paragraphs (a)(1)(i) through (a)(1)(iii) of this section must comply with all paragraphs of this section except paragraphs (p) and (q).

(iii) Operations within the scope of paragraph (a)(1)(iv) of this section must comply only with the requirements of paragraph (p) of this section.

Notes and Exceptions: (A) All provisions of paragraph (p) of this section cover any treatment, storage or disposal (TSD) operation regulated by 40 CFR parts 264 and 265 or by state law authorized under RCRA, and required to have a permit or interim status from EPA pursuant to 40 CFR 270.1 or from a state agency pursuant to RCRA.

(B) Employers who are not required to have a permit or interim status because they are conditionally exempt small quantity generators under 40 CFR 261.5 or are generators who qualify under 40 CFR 262.34 for exemptions from regulation under 40 CFR parts 264, 265 and 270 ("excepted employers") are not covered by paragraphs (p)(1) through (p)(7) of this section. Excepted employers who are required by the EPA or state agency to have their employees engage in emergency response or who direct their employees to engage in emergency response are covered by paragraph (p)(8) of this section, and cannot be exempted by (p)(8)(i) of this section. Excepted employers who are not required to have employees engage in emergency response, who direct their employees to evacuate in the case of such emergencies and who meet the requirements of paragraph (p)(8)(i) of this section are exempt from the balance of paragraph (p)(8) of this section.

(C) If an area is used primarily for treatment, storage or disposal, any emergency response operations in that area shall comply with paragraph (p)(8) of this section. In other areas not used primarily for treatment, storage, or disposal, any emergency response operations shall comply with paragraph (q) of this section. Compliance with the requirements of paragraph (q) of this section shall be deemed to be in compliance with the requirements of paragraph (p)(8) of this section.

(iv) Emergency response operations for releases of, or substantial threats of releases of, hazardous substances which are not covered by paragraphs (a)(1)(i) through (a)(1)(iv) of this section must only comply with the requirements of paragraph (q) of this section.

(3) *Definitions—Buddy system* means a system of organizing employees into work groups in such a manner that each employee of the work group is designated to be observed by at least one other employee in the work group. The purpose of the buddy system is to provide rapid assistance to employees in the event of an emergency.

Clean-up operation means an operation where hazardous substances are removed, contained, incinerated, neutralized, stabilized, cleared-up, or in any other manner processed or handled with the ultimate goal of making the site safer for people or the environment.

Decontamination means the removal of hazardous substances from employees and their equipment to the extent necessary to preclude the occurrence of foreseeable adverse health affects.

Emergency response or *responding to emergencies* means a response effort by employees from outside the immediate release area or by other designated responders (i.e., mutual-aid groups, local fire departments, etc.) to an occurrence which results, or is likely to result, in an uncontrolled release of a hazardous substance. Responses to incidental releases of hazardous substances where the substance can be absorbed, neutralized, or otherwise controlled at the time of release by employees in the immediate release

area, or by maintenance personnel are not considered to be emergency responses within the scope of this standard. Responses to releases of hazardous substances where there is no potential safety or health hazard (i.e., fire, explosion, or chemical exposure) are not considered to be emergency responses.

Facility means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any water-borne vessel.

Hazardous materials response (HAZMAT) team means an organized group of employees, designated by the employer, who are expected to perform work to handle and control actual or potential leaks or spills of hazardous substances requiring possible close approach to the substance. The team members perform responses to releases or potential releases of hazardous substances for the purpose of control or stabilization of the incident. A HAZMAT team is not a fire brigade nor is a typical fire brigade a HAZMAT team. A HAZMAT team, however, may be a separate component of a fire brigade or fire department.

Hazardous substance means any substance designated or listed under paragraphs (A) through (D) of this definition, exposure to which results or may result in adverse affects on the health or safety of employees:

(A) Any substance defined under section 101(14) of CERCLA;

(B) Any biological agent and other disease-causing agent which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any person, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations in such persons or their offspring;

(C) Any substance listed by the U.S. Department of Transportation as hazardous materials under 49 CFR 172.101 and appendices; and

(D) Hazardous waste as herein defined.

Hazardous waste means—

(A) A waste or combination of wastes as defined in 40 CFR 261.3, or

(B) Those substances defined as hazardous wastes in 49 CFR 171.8.

Hazardous waste operation means any operation conducted within the scope of this standard.

Hazardous waste site or *Site* means any facility or location within the scope of this standard at which hazardous waste operations take place.

Health hazard means a chemical, mixture of chemicals or a pathogen for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, heptaotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. It also includes stress due to temperature extremes. Further definition of the terms used above can be found in appendix A to 29 CFR 1926.59.

IDLH or *Immediately dangerous to life or health* means an atmospheric concentration of any toxic, corrosive or asphyxiant substance that poses an immediate threat to life or would cause irreversible or delayed adverse health effects or would interfere with an individual's ability to escape from a dangerous atmosphere.

Oxygen deficiency means that concentration of oxygen by volume below which atmosphere supplying respiratory protection must be provided. It exists in atmospheres where the percentage of oxygen by volume is less than 19.5 percent oxygen.

Permissible exposure limit means the exposure, inhalation or dermal permissible exposure limit specified either in §1926.55, elsewhere in subpart D, or in other pertinent sections of this part.

Published exposure level means the exposure limits published in "NIOSH Recommendations for Occupational Health Standards" dated 1986 incorporated by reference, or if none is specified, the exposure limits published in the standards specified by the American Conference of Governmental Industrial Hygienists in their publication "Threshold Limit Values and Biological Exposure Indices for 1987–88" dated 1987 incorporated by reference.

Post emergency response means that portion of an emergency response performed after the immediate threat of a release has been stabilized or eliminated and clean-up of the site has begun. If post emergency response is performed by an employer's own employees who were part of the initial emergency response, it is considered to be part of the initial response and not post emergency response. However, if a group of an employer's own employees, separate from the group providing initial response, performs the clean-up operation, then the separate group of employees would be considered to be performing post-emergency response and subject to paragraph (q)(11) of this section.

Qualified person means a person with specific training, knowledge and experience in the area for which the person has the responsibility and the authority to control.

Site safety and health supervisor (or official) means the individual located on a hazardous waste site who is responsible to the employer and has the authority and knowledge necessary to implement the site safety and health plan and verify compliance with applicable safety and health requirements.

Small quantity generator means a generator of hazardous wastes who in any calendar month generates no more than 1,000 kilograms (2,205 pounds) of hazardous waste in that month.

Uncontrolled hazardous waste site, means an area identified as an uncontrolled hazardous waste site by a governmental body, whether Federal, state, local or other where an accumulation of hazardous substances creates a threat to the health and safety of individuals or the environment or both. Some sites are found on public lands such as those created by former municipal, county or state landfills where illegal or poorly managed waste disposal has taken place. Other sites are found on private property, often belonging to generators or former generators of hazardous substance wastes. Examples of such sites include, but are not limited to, surface impoundments, landfills, dumps, and tank or drum farms. Normal operations at TSD sites are not covered by this definition.

(b) *Safety and health program.*

Note to (b): Safety and health programs developed and implemented to meet other Federal, state, or local regulations are considered acceptable in meeting this requirement if they cover or are modified to cover the topics required in this paragraph. An additional or separate safety and health program is not required by this paragraph.

(1) *General.* (i) Employers shall develop and implement a written safety

and health program for their employees involved in hazardous waste operations. The program shall be designed to identify, evaluate, and control safety and health hazards, and provide for emergency response for hazardous waste operations.

(ii) The written safety and health program shall incorporate the following:

(A) An organizational structure;

(B) A comprehensive workplan;

(C) A site-specific safety and health plan which need not repeat the employer's standard operating procedures required in paragraph (b)(1)(ii)(F) of this section;

(D) The safety and health training program;

(E) The medical surveillance program;

(F) The employer's standard operating procedures for safety and health; and

(G) Any necessary interface between general program and site specific activities.

(iii) *Site excavation.* Site excavations created during initial site preparation or during hazardous waste operations shall be shored or sloped as appropriate to prevent accidental collapse in accordance with subpart P of 29 CFR part 1926.

(iv) *Contractors and sub-contractors.* An employer who retains contractor or sub-contractor services for work in hazardous waste operations shall inform those contractors, sub-contractors, or their representatives of the site emergency response procedures and any potential fire, explosion, health, safety or other hazards of the hazardous waste operation that have been identified by the employer, including those identified in the employer's information program.

(v) *Program availability.* The written safety and health program shall be made available to any contractor or subcontractor or their representative who will be involved with the hazardous waste operation; to employees; to employee designated representatives; to OSHA personnel, and to personnel of other Federal, state, or local agencies with regulatory authority over the site.

(2) *Organizational structure part of the site program*—(i) The organizational structure part of the program shall establish the specific chain of command and specify the overall responsibilities of supervisors and employees. It shall include, at a minimum, the following elements:

(A) A general supervisor who has the responsibility and authority to direct all hazardous waste operations.

(B) A site safety and health supervisor who has the responsibility and authority to develop and implement the site safety and health plan and verify compliance.

(C) All other personnel needed for hazardous waste site operations and emergency response and their general functions and responsibilities.

(D) The lines of authority, responsibility, and communication.

(ii) The organizational structure shall be reviewed and updated as necessary to reflect the current status of waste site operations.

(3) *Comprehensive workplan part of the site program.* The comprehensive workplan part of the program shall address the tasks and objectives of the site operations and the logistics and resources required to reach those tasks and objectives.

(i) The comprehensive workplan shall address anticipated clean-up activities as well as normal operating procedures which need not repeat the employer's procedures available elsewhere.

(ii) The comprehensive workplan shall define work tasks and objectives and identify the methods for accomplishing those tasks and objectives.

(iii) The comprehensive workplan shall establish personnel requirements for implementing the plan.

(iv) The comprehensive workplan shall provide for the implementation of the training required in paragraph (e) of this section.

(v) The comprehensive workplan shall provide for the implementation of the required informational programs required in paragraph (i) of this section.

(vi) The comprehensive workplan shall provide for the implementation of the medical surveillance program described in paragraph (f) of this section.

(4) *Site-specific safety and health plan part of the program*—(i) *General.* The site safety and health plan, which must be kept on site, shall address the safety and health hazards of each phase of site operation and include the requirements and procedures for employee protection.

(ii) *Elements.* The site safety and health plan, as a minimum, shall address the following:

(A) A safety and health risk or hazard analysis for each site task and operation found in the workplan.

(B) Employee training assignments to assure compliance with paragraph (e) of this section.

(C) Personal protective equipment to be used by employees for each of the site tasks and operations being conducted as required by the personal protective equipment program in paragraph (g)(5) of this section.

(D) Medical surveillance requirements in accordance with the program in paragraph (f) of this section.

(E) Frequency and types of air monitoring, personnel monitoring, and environmental sampling techniques and instrumentation to be used, including methods of maintenance and calibration of monitoring and sampling equipment to be used.

(F) Site control measures in accordance with the site control program required in paragraph (d) of this section.

(G) Decontamination procedures in accordance with paragraph (k) of this section.

(H) An emergency response plan meeting the requirements of paragraph (l) of this section for safe and effective responses to emergencies, including the necessary PPE and other equipment.

(I) Confined space entry procedures.

(J) A spill containment program meeting the requirements of paragraph (j) of this section.

(iii) *Pre-entry briefing.* The site specific safety and health plan shall provide for pre-entry briefings to be held prior to initiating any site activity, and at such other times as necessary to ensure that employees are apprised of the site safety and health plan and that this plan is being followed. The information and data obtained from site characterization and analysis work required in paragraph (c) of this section shall be used to prepare and update the site safety and health plan.

(iv) *Effectiveness of site safety and health plan.* Inspections shall be conducted by the site safety and health supervisor or, in the absence of that individual, another individual who is knowledgeable in occupational safety and health, acting on behalf of the employer as necessary to determine the effectiveness of the site safety and health plan. Any deficiencies in the effectiveness of the site safety and health plan shall be corrected by the employer.

(c) *Site characterization and analysis*—(1) *General.* Hazardous waste sites shall be evaluated in accordance with this paragraph to identify specific site hazards and to determine the appropriate safety and health control procedures needed to protect employees from the identified hazards.

(2) *Preliminary evaluation.* A preliminary evaluation of a site's characteristics shall be performed prior to site entry by a qualified person in order to aid in the selection of appropriate employee protection methods prior to site entry. Immediately after initial site entry, a more detailed evaluation of the site's specific characteristics shall be performed by a qualified person in order to further identify existing site hazards and to

further aid in the selection of the appropriate engineering controls and personal protective equipment for the tasks to be performed.

(3) *Hazard identification.* All suspected conditions that may pose inhalation or skin absorption hazards that are immediately dangerous to life or health (IDLH), or other conditions that may cause death or serious harm, shall be identified during the preliminary survey and evaluated during the detailed survey. Examples of such hazards include, but are not limited to, confined space entry, potentially explosive or flammable situations, visible vapor clouds, or areas where biological indicators such as dead animals or vegetation are located.

(4) *Required information.* The following information to the extent available shall be obtained by the employer prior to allowing employees to enter a site:

(i) Location and approximate size of the site.

(ii) Description of the response activity and/or the job task to be performed.

(iii) Duration of the planned employee activity.

(iv) Site topography and accessibility by air and roads.

(v) Safety and health hazards expected at the site.

(vi) Pathways for hazardous substance dispersion.

(vii) Present status and capabilities of emergency response teams that would provide assistance to hazardous waste clean-up site employees at the time of an emergency.

(viii) Hazardous substances and health hazards involved or expected at the site, and their chemical and physical properties.

(5) *Personal protective equipment.* Personal protective equipment (PPE) shall be provided and used during initial site entry in accordance with the following requirements:

(i) Based upon the results of the preliminary site evaluation, an ensemble of PPE shall be selected and used during initial site entry which will provide protection to a level of exposure below permissible exposure limits and published exposure levels for known or suspected hazardous substances and health hazards, and which will provide protection against other known and suspected hazards identified during the preliminary site evaluation. If there is no permissible exposure limit or published exposure level, the employer may use other published studies and information as a guide to appropriate personal protective equipment.

(ii) If positive-pressure self-contained breathing apparatus is not used as part of the entry ensemble, and if respiratory protection is warranted by the potential hazards identified during the preliminary site evaluation, an escape self-contained breathing apparatus of at least five minute's duration shall be carried by employees during initial site entry.

(iii) If the preliminary site evaluation does not produce sufficient information to identify the hazards or suspected hazards of the site, an ensemble providing protection equivalent to Level B PPE shall be provided as minimum protection, and direct reading instruments shall be used as appropriate for identifying IDLH conditions. (See appendix B for a description of Level B hazards and the recommendations for Level B protective equipment.)

(iv) Once the hazards of the site have been identified, the appropriate PPE shall be selected and used in accordance with paragraph (g) of this section.

(6) *Monitoring.* The following monitoring shall be conducted during initial site entry when the site evaluation produces information that shows the potential for ionizing radiation or IDLH conditions, or when the site information is not sufficient reasonably to eliminate these possible conditions:

(i) Monitoring with direct reading instruments for hazardous levels of ionizing radiation.

(ii) Monitoring the air with appropriate direct reading test equipment (i.e., combustible gas meters, detector tubes) for IDLH and other conditions that may cause death or serious harm (combustible or explosive atmospheres, oxygen deficiency, toxic substances).

(iii) Visually observing for signs of actual or potential IDLH or other dangerous conditions.

(iv) An ongoing air monitoring program in accordance with paragraph (h) of this section shall be implemented after site characterization has determined the site is safe for the start-up of operations.

(7) *Risk identification.* Once the presence and concentrations of specific hazardous substances and health hazards have been established, the risks associated with these substances shall be identified. Employees who will be working on the site shall be informed of any risks that have been identified. In situations covered by the Hazard Communication Standard, 29 CFR 1926.59, training required by that standard need not be duplicated.

Note to (c)(7).—Risks to consider include, but are not limited to:

(a) Exposures exceeding the permissible exposure limits and published exposure levels.

(b) IDLH concentrations.

(c) Potential skin absorption and irritation sources.

(d) Potential eye irritation sources.

(e) Explosion sensitivity and flammability ranges.

(f) Oxygen deficiency.

(8) *Employee notification.* Any information concerning the chemical, physical, and toxicologic properties of each substance known or expected to be present on site that is available to the employer and relevant to the duties an employee is expected to perform shall be made available to the affected employees prior to the commencement of their work activities. The employer may utilize information developed for the hazard communication standard for this purpose.

(d) *Site control*—(1) *General.* Appropriate site control procedures shall be implemented to control employee exposure to hazardous substances before clean-up work begins.

(2) *Site control program.* A site control program for protecting employees which is part of the employer's site safety and health program required in paragraph (b) of this section shall be developed during the planning stages of a hazardous waste clean-up operation and modified as necessary as new information becomes available.

(3) *Elements of the site control program.* The site control program shall, as a minimum, include: A site map; site work zones; the use of a "buddy system"; site communications including alerting means for emergencies; the standard operating procedures or safe work practices; and, identification of the nearest medical assistance. Where these requirements are covered elsewhere they need not be repeated.

(e) *Training*—(1) *General.* (i) All employees working on site (such as but not limited to equipment operators, general laborers and others) exposed to hazardous substances, health hazards, or safety hazards and their supervisors and management responsible for the site shall receive training meeting the requirements of this paragraph before they are permitted to engage in hazardous waste operations that could expose them to hazardous substances, safety, or health hazards, and they shall receive review training as specified in this paragraph.

(ii) Employees shall not be permitted to participate in or supervise field activities until they have been trained to a level required by their job function and responsibility.

(2) *Elements to be covered.* The training shall thoroughly cover the following:

(i) Names of personnel and alternates responsible for site safety and health;

(ii) Safety, health and other hazards present on the site;

(iii) Use of personal protective equipment;

(iv) Work practices by which the employee can minimize risks from hazards;

(v) Safe use of engineering controls and equipment on the site;

(vi) Medical surveillance requirements, including recognition of symptoms and signs which might indicate overexposure to hazards; and

(vii) The contents of paragraphs (G) through (J) of the site safety and health plan set forth in paragraph (b)(4)(ii) of this section.

(3) *Initial training.* (i) General site workers (such as equipment operators, general laborers and supervisory personnel) engaged in hazardous substance removal or other activities which expose or potentially expose workers to hazardous substances and health hazards shall receive a minimum of 40 hours of instruction off the site, and a minimum of three days actual field experience under the direct supervision of a trained, experienced supervisor.

(ii) Workers on site only occasionally for a specific limited task (such as, but not limited to, ground water monitoring, land surveying, or geo-physical surveying) and who are unlikely to be exposed over permissible exposure limits and published exposure limits shall receive a minimum of 24 hours of instruction off the site, and the minimum of one day actual field experience under the direct supervision of a trained, experienced supervisor.

(iii) Workers regularly on site who work in areas which have been monitored and fully characterized indicating that exposures are under permissible exposure limits and published exposure limits where respirators are not necessary, and the characterization indicates that there are no health hazards or the possibility of an emergency developing, shall receive a minimum of 24 hours of instruction off the site and the minimum of one day actual field experience under the direct supervision of a trained, experienced supervisor.

(iv) Workers with 24 hours of training who are covered by paragraphs (e)(3)(ii) and (e)(3)(iii) of this section, and who become general site workers or who are required to wear respirators, shall have the additional 16 hours and two days of training necessary to total the training specified in paragraph (e)(3)(i).

(4) *Management and supervisor training.* On-site management and supervisors directly responsible for, or who supervise employees engaged in, hazardous waste operations shall receive 40 hours initial training, and three days of supervised field experience (the training may be reduced to 24 hours and one day if the only area of their responsibility is employees covered by paragraphs (e)(3)(ii) and (e)(3)(iii)) and at least eight additional hours of specialized training at the time of job assignment on such topics as, but not limited to, the employer's safety and health program and the associated employee training program, personal protective equipment program, spill containment program, and health hazard monitoring procedure and techniques.

(5) *Qualifications for trainers.* Trainers shall be qualified to instruct employees about the subject matter that is being presented in training. Such trainers shall have satisfactorily completed a training program for teaching the subjects they are expected to teach, or they shall have the academic credentials and instructional experience necessary for teaching the subjects. Instructors shall demonstrate competent instructional skills and knowledge of the applicable subject matter.

(6) *Training certification.* Employees and supervisors that have received and successfully completed the training and field experience specified in paragraphs (e)(1) through (e)(4) of this section shall be certified by their instructor or the head instructor and trained supervisor as having successfully completed the necessary training. A written certificate shall be given to each person so certified. Any person who has not been so certified or who does not meet the requirements of paragraph (e)(9) of this section shall be prohibited from engaging in hazardous waste operations.

(7) *Emergency response.* Employees who are engaged in responding to hazardous emergency situations at hazardous waste clean-up sites that may expose them to hazardous substances shall be trained in how to respond to such expected emergencies.

(8) *Refresher training.* Employees specified in paragraph (e)(1) of this section, and managers and supervisors specified in paragraph (e)(4) of this section, shall receive eight hours of refresher training annually on the items specified in paragraph (e)(2) and/or (e)(4) of this section, any critique of incidents that have occurred in the past year that can serve as training examples of related work, and other relevant topics.

(9) *Equivalent training.* Employers who can show by documentation or certification that an employee's work experience and/or training has resulted in training equivalent to that training required in paragraphs (e)(1) through (e)(4) of this section shall not be required to provide the initial training requirements of those paragraphs to such employees and shall provide a copy of the certification or documentation to the employee upon request. However, certified employees or employees with equivalent training new to a site shall receive appropriate, site specific training before site entry and have appropriate supervised field experience at the new site. Equivalent training includes any academic training or the training that existing employees might have already received from actual hazardous waste site work experience.

(f) *Medical surveillance*—(1) *General.* Employers engaged in operations specified in paragraphs (a)(1)(i) through (a)(1)(iv) of this section and not covered by (a)(2)(iii) exceptions and employers of employees specified in paragraph (q)(9) shall institute a medical surveillance program in accordance with this paragraph.

(2) *Employees covered.* The medical surveillance program shall be instituted by the employer for the following employees:

(i) All employees who are or may be exposed to hazardous substances or health hazards at or above the permissible exposure limits or, if there is no permissible exposure limit, above the published exposure levels for these substances, without regard to the use of respirators, for 30 days or more a year;

(ii) All employees who wear a respirator for 30 days or more a year or as required by § 1926.103;

(iii) All employees who are injured, become ill or develop signs or symptoms due to possible overexposure involving hazardous substances or health hazards from an emergency response or hazardous waste operation; and

(iv) Members of HAZMAT teams.

(3) *Frequency of medical examinations and consultations.* Medical examinations and consultations shall be made available by the employer to each employee covered under paragraph (f)(2) of this section on the following schedules:

(i) For employees covered under paragraphs (f)(2)(i), (f)(2)(ii), and (f)(2)(iv):

(A) Prior to assignment;

(B) At least once every twelve months for each employee covered unless the

attending physician believes a longer interval (not greater than biennially) is appropriate;

(C) At termination of employment or reassignment to an area where the employee would not be covered if the employee has not had an examination within the last six months;

(D) As soon as possible upon notification by an employee that the employee has developed signs or symptoms indicating possible overexposure to hazardous substances or health hazards, or that the employee has been injured or exposed above the permissible exposure limits or published exposure levels in an emergency situation;

(E) At more frequent times, if the examining physician determines that an increased frequency of examination is medically necessary.

(ii) For employees covered under paragraph (f)(2)(iii) and for all employees including those of employers covered by paragraph (a)(1)(v) who may have been injured, received a health impairment, developed signs or symptoms which may have resulted from exposure to hazardous substances resulting from an emergency incident, or exposed during an emergency incident to hazardous substances at concentrations above the permissible exposure limits or the published exposure levels without the necessary personal protective equipment being used:

(A) As soon as possible following the emergency incident or development of signs or symptoms;

(B) At additional times, if the examining physician determines that follow-up examinations or consultations are medically necessary.

(4) *Content of medical examinations and consultations.* (i) Medical examinations required by paragraph (f)(3) of this section shall include a medical and work history (or updated history if one is in the employee's file) with special emphasis on symptoms related to the handling of hazardous substances and health hazards, and to fitness for duty including the ability to wear any required PPE under conditions (i.e., temperature extremes) that may be expected at the work site.

(ii) The content of medical examinations or consultations made available to employees pursuant to paragraph (f) shall be determined by the attending physician. The guidelines in the *Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities* (See appendix D, Reference #10) should be consulted.

(5) *Examination by a physician and costs.* All medical examinations and procedures shall be performed by or under the supervision of a licensed physician, preferably one knowledgeable in occupational medicine, and shall be provided without cost to the employee, without loss of pay, and at a reasonable time and place.

(6) *Information provided to the physician.* The employer shall provide one copy of this standard and its appendices to the attending physician, and in addition the following for each employee:

(i) A description of the employee's duties as they relate to the employee's exposures.

(ii) The employee's exposure levels or anticipated exposure levels.

(iii) A description of any personal protective equipment used or to be used.

(iv) Information from previous medical examinations of the employee which is not readily available to the examining physician.

(v) Information required by § 1926.103.

(7) *Physician's written opinion.* (i) The employer shall obtain and furnish the employee with a copy of a written opinion from the attending physician containing the following:

(A) The physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of the employee's health from work in hazardous waste operations or emergency response, or from respirator use.

(B) The physician's recommended limitations upon the employee's assigned work.

(C) The results of the medical examination and tests if requested by the employee.

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examination or treatment.

(ii) The written opinion obtained by the employer shall not reveal specific findings or diagnoses unrelated to occupational exposures.

(8) *Recordkeeping.* (i) An accurate record of the medical surveillance required by paragraph (f) of this section shall be retained. This record shall be retained for the period specified and meet the criteria of 29 CFR 1926.33.

(ii) The record required in paragraph (f)(8)(i) of this section shall include at least the following information:

(A) The name and social security number of the employee;

(B) Physician's written opinions, recommended limitations, and results of examinations and tests;

(C) Any employee medical complaints related to exposure to hazardous substances;

(D) A copy of the information provided to the examining physician by the employer, with the exception of the standard and its appendices.

(g) *Engineering controls, work practices, and personal protective equipment for employee protection.* Engineering controls, work practices, personal protective equipment, or a combination of these shall be implemented in accordance with this paragraph to protect employees from exposure to hazardous substances and safety and health hazards.

(1) *Engineering controls, work practices and PPE for substances regulated either in § 1926.55, elsewhere in subpart D, or in other pertinent sections of this part.* (i) Engineering controls and work practices shall be instituted to reduce and maintain employee exposure to or below the permissible exposure limits for substances regulated either in § 1926.55 or other pertinent sections of this part, except to the extent that such controls and practices are not feasible.

Note to (g)(1)(i): Engineering controls which may be feasible include the use of pressurized cabs or control booths on equipment, and/or the use of remotely operated material handling equipment. Work practices which may be feasible are removing all non-essential employees from potential exposure during opening of drums, wetting down dusty operations and locating employees upwind of possible hazards.

(ii) Whenever engineering controls and work practices are not feasible or not required, any reasonable combination of engineering controls, work practices and PPE shall be used to reduce and maintain employee exposures to or below the permissible exposure limits or dose limits for substances regulated either in §1926.55 or other pertinent sections of this part.

(iii) The employer shall not implement a schedule of employee rotation as a means of compliance with permissible exposure limits or dose limits except when there is no other feasible way of complying with the airborne or dermal dose limits for ionizing radiation.

(iv) The provisions of subpart D shall be followed.

(2) *Engineering controls, work practices, and PPE for substances not regulated either in §1926.55, elsewhere in subpart D, or in other pertinent sections of this part.* An appropriate combination of engineering controls, work practices and personal protective equipment shall be used to reduce and maintain employee exposure to or

below published exposure levels for hazardous substances and health hazards not regulated either in §1926.55, elsewhere in subpart D, or in other pertinent sections of this part. The employer may use the published literature and MSDS as a guide in making the employer's determination as to what level of protection the employer believes is appropriate for hazardous substances and health hazards for which there is no permissible exposure limit or published exposure limit.

(3) *Personal protective equipment selection.* (i) Personal protective equipment (PPE) shall be selected and used which will protect employees from the hazards and potential hazards they are likely to encounter as identified during the site characterization and analysis.

(ii) Personal protective equipment selection shall be based on an evaluation of the performance characteristics of the PPE relative to the requirements and limitations of the site, the task-specific conditions and duration, and the hazards and potential hazards identified at the site.

(iii) Positive pressure self-contained breathing apparatus, or positive pressure air-line respirators equipped with an escape air supply, shall be used when chemical exposure levels present will create a substantial possibility of immediate death, immediate serious illness or injury, or impair the ability to escape.

(iv) Totally-encapsulating chemical protective suits (protection equivalent to Level A protection as recommended in appendix B) shall be used in conditions where skin absorption of a hazardous substance may result in a substantial possibility of immediate death, immediate serious illness or injury, or impair the ability to escape.

(v) The level of protection provided by PPE selection shall be increased when additional information on site conditions indicates that increased protection is necessary to reduce employee exposures below permissible exposure limits and published exposure levels for hazardous substances and health hazards. (See appendix B for guidance on selecting PPE ensembles.)

Note to (g)(3): The level of employee protection provided may be decreased when additional information or site conditions show that decreased protection will not result in hazardous exposures to employees.

(vi) Personal protective equipment shall be selected and used to meet the requirements of subpart E of this part and additional requirements specified in this section.

(4) *Totally-encapsulating chemical protective suits.* (i) Totally-encapsulating suits shall protect employees from the particular hazards which are identified during site characterization and analysis.

(ii) Totally-encapsulating suits shall be capable of maintaining positive air pressure. (See appendix A for a test method which may be used to evaluate this requirement.)

(iii) Totally-encapsulating suits shall be capable of preventing inward test gas leakage of more than 0.5 percent. (See appendix A for a test method which may be used to evaluate this requirement.)

(5) *Personal protective equipment (PPE) program.* A written personal protective equipment program, which is part of the employer's safety and health program required in paragraph (b) of this section or required in paragraph (p)(1) of this section and which is also a part of the site-specific safety and health plan shall be established. The PPE program shall address the elements listed below. When elements, such as donning and doffing procedures, are provided by the manufacturer of a piece of equipment and are attached to the plan, they need not be rewritten into the plan as long as they adequately address the procedure or element.

(i) PPE selection based upon site hazards,

(ii) PPE use and limitations of the equipment,

(iii) Work mission duration,

(iv) PPE maintenance and storage,

(v) PPE decontamination and disposal,

(vi) PPE training and proper fitting,

(vii) PPE donning and doffing procedures,

(viii) PPE inspection procedures prior to, during, and after use,

(ix) Evaluation of the effectiveness of the PPE program, and

(x) Limitations during temperature extremes, heat stress, and other appropriate medical considerations.

(h) *Monitoring*—(1) *General.* (i) Monitoring shall be performed in accordance with this paragraph where there may be a question of employee exposure to hazardous concentrations of hazardous substances in order to assure proper selection of engineering controls, work practices and personal protective equipment so that employees are not exposed to levels which exceed permissible exposure limits, or published exposure levels if there are no permissible exposure limits, for hazardous substances.

(ii) Air monitoring shall be used to identify and quantify airborne levels of hazardous substances and safety and health hazards in order to determine the appropriate level of employee protection needed on site.

(2) *Initial entry.* Upon initial entry, representative air monitoring shall be conducted to identify any IDLH condition, exposure over permissible exposure limits or published exposure levels, exposure over a radioactive material's dose limits or other dangerous condition such as the presence of flammable atmospheres or oxygen-deficient environments.

(3) *Periodic monitoring.* Periodic monitoring shall be conducted when the possibility of an IDLH condition or flammable atmosphere has developed or when there is indication that exposures may have risen over permissible exposure limits or published exposure levels since prior monitoring. Situations where it shall be considered whether the possibility that exposures have risen are as follows:

(i) When work begins on a different portion of the site.

(ii) When contaminants other than those previously identified are being handled.

(iii) When a different type of operation is initiated (e.g., drum opening as opposed to exploratory well drilling).

(iv) When employees are handling leaking drums or containers or working in areas with obvious liquid contamination (e.g., a spill or lagoon).

(4) *Monitoring of high-risk employees.* After the actual clean-up phase of any hazardous waste operation commences; for example, when soil, surface water or containers are moved or disturbed; the employer shall monitor those employees likely to have the highest exposures to hazardous substances and health hazards likely to be present above permissible exposure limits or published exposure levels by using personal sampling frequently enough to characterize employee exposures. If the employees likely to have the highest exposure are over permissible exposure limits or published exposure limits, then monitoring shall continue to determine all employees likely to be above those limits. The employer may utilize a representative sampling approach by documenting that the employees and chemicals chosen for monitoring are based on the criteria stated above.

Note to (h): It is not required to monitor employees engaged in site characterization operations covered by paragraph (c) of this section.

(i) *Informational programs.* Employers shall develop and implement a program, which is part of the employer's safety and health program

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required in paragraph (b) of this section, to inform employees, contractors, and subcontractors (or their representative) actually engaged in hazardous waste operations of the nature, level and degree of exposure likely as a result of participation in such hazardous waste operations. Employees, contractors and subcontractors working outside of the operations part of a site are not covered by this standard.

(j) *Handling drums and containers*—(1) *General.* (i) Hazardous substances and contaminated soils, liquids, and other residues shall be handled, transported, labeled, and disposed of in accordance with this paragraph.

(ii) Drums and containers used during the clean-up shall meet the appropriate DOT, OSHA, and EPA regulations for the wastes that they contain.

(iii) When practical, drums and containers shall be inspected and their integrity shall be assured prior to being moved. Drums or containers that cannot be inspected before being moved because of storage conditions (i.e., buried beneath the earth, stacked behind other drums, stacked several tiers high in a pile, etc.) shall be moved to an accessible location and inspected prior to further handling.

(iv) Unlabelled drums and containers shall be considered to contain hazardous substances and handled accordingly until the contents are positively identified and labeled.

(v) Site operations shall be organized to minimize the amount of drum or container movement.

(vi) Prior to movement of drums or containers, all employees exposed to the transfer operation shall be warned of the potential hazards associated with the contents of the drums or containers.

(vii) U.S. Department of Transportation specified salvage drums or containers and suitable quantities of proper absorbent shall be kept available and used in areas where spills, leaks, or ruptures may occur.

(viii) Where major spills may occur, a spill containment program, which is part of the employer's safety and health program required in paragraph (b) of this section, shall be implemented to contain and isolate the entire volume of the hazardous substance being transferred.

(ix) Drums and containers that cannot be moved without rupture, leakage, or spillage shall be emptied into a sound container using a device classified for the material being transferred.

(x) A ground-penetrating system or other type of detection system or device shall be used to estimate the location and depth of buried drums or containers.

(xi) Soil or covering material shall be removed with caution to prevent drum or container rupture.

(xii) Fire extinguishing equipment meeting the requirements of subpart F of this part shall be on hand and ready for use to control incipient fires.

(2) *Opening drums and containers.* The following procedures shall be followed in areas where drums or containers are being opened:

(i) Where an airline respirator system is used, connections to the source of air supply shall be protected from contamination and the entire system shall be protected from physical damage.

(ii) Employees not actually involved in opening drums or containers shall be kept a safe distance from the drums or containers being opened.

(iii) If employees must work near or adjacent to drums or containers being opened, a suitable shield that does not interfere with the work operation shall be placed between the employee and the drums or containers being opened to protect the employee in case of accidental explosion.

(iv) Controls for drum or container opening equipment, monitoring equipment, and fire suppression equipment shall be located behind the explosion-resistant barrier.

(v) When there is a reasonable possibility of flammable atmospheres being present, material handling equipment and hand tools shall be of the type to prevent sources of ignition.

(vi) Drums and containers shall be opened in such a manner that excess interior pressure will be safely relieved. If pressure can not be relieved from a remote location, appropriate shielding shall be placed between the employee and the drums or containers to reduce the risk of employee injury.

(vii) Employees shall not stand upon or work from drums or containers.

(3) *Material handling equipment.* Material handiing equipment used to transfer drums and containers shall be selected, positioned and operated to minimize sources of ignition related to the equipment from igniting vapors released from ruptured drums or containers.

(4) *Radioactive wastes.* Drums and containers containing radioactive wastes shall not be handled until such time as their hazard to employees is properly assessed.

(5) *Shock sensitive wastes.* As a minimum, the following special precautions shall be taken when drums and containers containing or suspected of containing shock-sensitive wastes are handled:

(i) All non-essential employees shall be evacuated from the area of transfer.

(ii) Material handling equipment shall be provided with explosive containment devices or protective shields to protect equipment operators from exploding containers.

(iii) An employee alarm system capable of being perceived above surrounding light and noise conditions shall be used to signal the commencement and completion of explosive waste handling activities.

(iv) Continuous communications (i.e., portable radios, hand signals, telephones, as appropriate) shall be maintained between the employee-in-charge of the immediate handling area and both the site safety and health supervisor and the command post until such time as the handling operation is completed. Communication equipment or methods that could cause shock sensitive materials to explode shall not be used.

(v) Drums and containers under pressure, as evidenced by bulging or swelling, shall not be moved until such time as the cause for excess pressure is determined and appropriate containment procedures have been implemented to protect employees from explosive relief of the drum.

(vi) Drums and containers containing packaged laboratory wastes shall be considered to contain shock-sensitive or explosive materials until they have been characterized.

Caution: Shipping of shock sensitive wastes may be prohibited under U.S. Department of Transportation regulations. Employers and their shippers should refer to 49 CFR 173.21 and 173.50.

(6) *Laboratory waste packs.* In addition to the requirements of paragraph (j)(5) of this section, the following precautions shall be taken, as a minimum, in handling laboratory waste packs (lab packs):

(i) Lab packs shall be opened only when necessary and then only by an individual knowledgeable in the inspection, classification, and segregation of the containers within the pack according to the hazards of the wastes.

(ii) If crystalline material is noted on any container, the contents shall be handled as a shock-sensitive waste until the contents are identified.

(7) *Sampling of drum and container contents.* Sampling of containers and drums shall be done in accordance with a sampling procedure which is part of the site safety and health plan developed for and available to employees and others at the specific worksite.

(8) *Shipping and transport.* (i) Drums and containers shall be identified and classified prior to packaging for shipment.

(ii) Drum or container staging areas shall be kept to the minimum number necessary to identify and classify materials safely and prepare them for transport.

(iii) Staging areas shall be provided with adequate access and egress routes.

(iv) Bulking of hazardous wastes shall be permitted only after a thorough characterization of the materials has been completed.

(9) *Tank and vault procedures.* (i) Tanks and vaults containing hazardous substances shall be handled in a manner similar to that for drums and containers, taking into consideration the size of the tank or vault.

(ii) Appropriate tank or vault entry procedures as described in the employer's safety and health plan shall be followed whenever employees must enter a tank or vault.

(k) *Decontamination*—(1) *General.* Procedures for all phases of decontamination shall be developed and implemented in accordance with this paragraph.

(2) *Decontamination procedures.* (i) A decontamination procedure shall be developed, communicated to employees and implemented before any employees or equipment may enter areas on site where potential for exposure to hazardous substances exists.

(ii) Standard operating procedures shall be developed to minimize employee contact with hazardous substances or with equipment that has contacted hazardous substances.

(iii) All employees leaving a contaminated area shall be appropriately decontaminated; all contaminated clothing and equipment leaving a contaminated area shall be appropriately disposed of or decontaminated.

(iv) Decontamination procedures shall be monitored by the site safety and health supervisor to determine their effectiveness. When such procedures are found to be ineffective, appropriate steps shall be taken to correct any deficiencies.

(3) *Location.* Decontamination shall be performed in geographical areas that will minimize the exposure of uncontaminated employees or equipment to contaminated employees or equipment.

(4) *Equipment and solvents.* All equipment and solvents used for decontamination shall be decontaminated or disposed of properly.

(5) *Personal protective clothing and equipment.* (i) Protective clothing and equipment shall be decontaminated, cleaned, laundered, maintained or replaced as needed to maintain their effectiveness.

(ii) Employees whose non-impermeable clothing becomes wetted with hazardous substances shall immediately remove that clothing and proceed to shower. The clothing shall be disposed of or decontaminated before it is removed from the work zone.

(6) *Unauthorized employees.* Unauthorized employees shall not remove protective clothing or equipment from change rooms.

(7) *Commercial laundries or cleaning establishments.* Commercial laundries or cleaning establishments that decontaminate protective clothing or equipment shall be informed of the potentially harmful effects of exposures to hazardous substances.

(8) *Showers and change rooms.* Where the decontamination procedure indicates a need for regular showers and change rooms outside of a contaminated area, they shall be provided and meet the requirements of 29 CFR 1910.141. If temperature conditions prevent the effective use of water, then other effective means for cleansing shall be provided and used.

(l) *Emergency response by employees at uncontrolled hazardous waste sites*—(1) *Emergency response plan.* (i) An emergency response plan shall be developed and implemented by all employers within the scope of paragraphs (a)(1) (i)–(ii) of this section to handle anticipated emergencies prior to the commencement of hazardous waste operations. The plan shall be in writing and available for inspection and copying by employees, their representatives, OSHA personnel and other governmental agencies with relevant responsibilities.

(ii) Employers who will evacuate their employees from the danger area when an emergency occurs, and who do not permit any of their employees to assist in handling the emergency, are exempt from the requirements of this paragraph if they provide an emergency action plan complying with § 1926.35 of this part.

(2) *Elements of an emergency response plan.* The employer shall develop an emergency response plan for emergencies which shall address, as a minimum, the following:

(i) Pre-emergency planning.

(ii) Personnel roles, lines of authority, and communication.

(iii) Emergency recognition and prevention.

(iv) Safe distances and places of refuge.

(v) Site security and control.

(vi) Evacuation routes and procedures.

(vii) Decontamination procedures which are not covered by the site safety and health plan.

(viii) Emergency medical treatment and first aid.

(ix) Emergency alerting and response procedures.

(x) Critique of response and follow-up.

(xi) PPE and emergency equipment.

(3) *Procedures for handling emergency incidents.* (i) In addition to the elements for the emergency response plan required in paragraph (1)(2) of this section, the following elements shall be included for emergency response plans:

(A) Site topography, layout, and prevailing weather conditions.

(B) Procedures for reporting incidents to local, state, and federal governmental agencies.

(ii) The emergency response plan shall be a separate section of the Site Safety and Health Plan.

(iii) The emergency response plan shall be compatible and integrated with the disaster, fire and/or emergency response plans of local, state, and federal agencies.

(iv) The emergency response plan shall be rehearsed regularly as part of the overall training program for site operations.

(v) The site emergency response plan shall be reviewed periodically and, as necessary, be amended to keep it current with new or changing site conditions or information.

(vi) An employee alarm system shall be installed in accordance with 29 CFR 1926.159 to notify employees of an emergency situation; to stop work activities if necessary; to lower background noise in order to speed communication; and to begin emergency procedures.

(vii) Based upon the information available at time of the emergency, the employer shall evaluate the incident and the site response capabilities and proceed with the appropriate steps to implement the site emergency response plan.

(m) *Illumination.* Areas accessible to employees shall be lighted to not less than the minimum illumination intensities listed in the following Table D–65.1 while any work is in progress:

TABLE D–65.1—MINIMUM ILLUMINATION INTENSITIES IN FOOT-CANDLES

Foot-candles	Area or operations
5	General site areas.
3	Excavation and waste areas, accessways, active storage areas, loading platforms, refueling, and field maintenance areas.
5	Indoors: Warehouses, corridors, hallways, and exitways.
5	Tunnels, shafts, and general underground work areas. (Exception: Minimum of 10 foot-candles is required at tunnel and shaft heading during drilling mucking, and scaling. Mine Safety and Health Administration approved cap lights shall be acceptable for use in the tunnel heading.)
10	General shops (e.g., mechanical and electrical equipment rooms, active storerooms, barracks or living quarters, locker or dressing rooms, dining areas, and indoor toilets and workrooms.)
30	First aid stations, infirmaries, and offices.

(n) *Sanitation at temporary workplaces*—(1) *Potable water.* (i) An adequate supply of potable water shall be provided on the site.

(ii) Portable containers used to dispense drinking water shall be capable of being tightly closed, and equipped with a tap. Water shall not be dipped from containers.

(iii) Any container used to distribute drinking water shall be clearly marked as to the nature of its contents and not used for any other purpose.

(iv) Where single service cups (to be used but once) are supplied, both a sanitary container for the unused cups and a receptacle for disposing of the used cups shall be provided.

(2) *Nonpotable water.* (i) Outlets for nonpotable water, such as water for firefighting purposes, shall be identified to indicate clearly that the water is unsafe and is not to be used for drinking, washing, or cooking purposes.

(ii) There shall be no cross-connection, open or potential, between a system furnishing potable water and a system furnishing nonpotable water.

(3) *Toilet facilities.* (i) Toilets shall be provided for employees according to the following Table D–65.2.

TABLE D–65.2—TOILET FACILITIES

Number of employees	Minimum number of facilities
20 or fewer	One.
More than 20, fewer than 200.	One toilet seat and one urinal per 40 employees.
More than 200	One toilet seat and one urinal per 50 employees.

(ii) Under temporary field conditions, provisions shall be made to assure that at least one toilet facility is available.

(iii) Hazardous waste sites not provided with a sanitary sewer shall be provided with the following toilet facilities unless prohibited by local codes:

(A) Chemical toilets;
(B) Recirculating toilets;
(C) Combustion toilets; or
(D) Flush toilets.

(iv) The requirements of this paragraph for sanitation facilities shall not apply to mobile crews having transportation readily available to nearby toilet facilities.

(v) Doors entering toilet facilities shall be provided with entrance locks controlled from inside the facility.

(4) *Food handling.* All food service facilities and operations for employees shall meet the applicable laws, ordinances, and regulations of the jurisdictions in which they are located.

(5) *Temporary sleeping quarters.* When temporary sleeping quarters are provided, they shall be heated, ventilated, and lighted.

(6) *Washing facilities.* The employer shall provide adequate washing facilities for employees engaged in operations where hazardous substances may be harmful to employees. Such facilities shall be in near proximity to the worksite; in areas where exposures are below permissible exposure limits and published exposure levels and which are under the controls of the employer; and shall be so equipped as to enable employees to remove hazardous substances from themselves.

(7) *Showers and change rooms.* When hazardous waste clean-up or removal operations commence on a site and the duration of the work will require six months or greater time to complete, the employer shall provide showers and change rooms for all employees exposed to hazardous substances and health hazards involved in hazardous waste clean-up or removal operations.

(i) Showers shall be provided and shall meet the requirements of 29 CFR 1926.51(f)(4).

(ii) Change rooms shall be provided and shall meet the requirements of 29 CFR 1926.51(i). Change rooms shall consist of two separate change areas separated by the shower area required in paragraph (n)(7)(i) of this section. One change area, with an exit leading off the worksite, shall provide employees with a clean area where they can remove, store, and put on street clothing. The second area, with an exit to the worksite, shall provide employees with an area where they can put on, remove and store work clothing and personal protective equipment.

(iii) Showers and change rooms shall be located in areas where exposures are below the permissible exposure limits and published exposure levels. If this cannot be accomplished, then a ventilation system shall be provided that will supply air that is below the permissible exposure limits and published exposure levels.

(iv) Employers shall assure that employees shower at the end of their work shift and when leaving the hazardous waste site.

(o) *New technology programs.* (1) The employer shall develop and implement procedures for the introduction of effective new technologies and equipment developed for the improved protection of employees working with hazardous waste clean-up operations, and the same shall be implemented as part of the site safety and health program to assure that employee protection is being maintained.

(2) New technologies, equipment or control measures available to the industry, such as the use of foams, absorbents, adsorbents, neutralizers, or other means to suppress the level of air contaminates while excavating the site or for spill control, shall be evaluated by employers or their representatives. Such an evaluation shall be done to determine the effectiveness of the new methods, materials, or equipment before implementing their use on a large scale for enhancing employee protection. Information and data from manufacturers or suppliers may be used as part of the employer's evaluation effort. Such evaluations shall be made available to OSHA upon request.

(p) *Certain operations conducted under the Resource Conservation and Recovery Act of 1976 (RCRA).* Employers conducting operations at treatment, storage and disposal (TSD) facilities specified in paragraph (a)(1)(iv) of this section shall provide and implement the programs specified in this paragraph. See the "Notes and Exceptions" to paragraph (a)(2)(iii) of this section for employers not covered.)".

(1) *Safety and health program.* The employer shall develop and implement

a written safety and health program for employees involved in hazardous waste operations that shall be available for inspection by employees, their representatives and OSHA personnel. The program shall be designed to identify, evaluate and control safety and health hazards in their facilities for the purpose of employee protection, to provide for emergency response meeting the requirements of paragraph (p)(8) of this section and to address as appropriate site analysis, engineering controls, maximum exposure limits, hazardous waste handling procedures and uses of new technologies.

(2) *Hazard communication program.* The employer shall implement a hazard communication program meeting the requirements of 29 CFR 1926.59 as part of the employer's safety and program.

Note to 1926.65—The exemption for hazardous waste provided in § 1926.59 is applicable to this section.

(3) *Medical surveillance program.* The employer shall develop and implement a medical surveillance program meeting the requirements of paragraph (f) of this section.

(4) *Decontamination program.* The employer shall develop and implement a decontamination procedure meeting the requirements of paragraph (k) of this section.

(5) *New technology program.* The employer shall develop and implement procedures meeting the requirements of paragraph (o) of this section for introducing new and innovative equipment into the workplace.

(6) *Material handling program.* Where employees will be handling drums or containers, the employer shall develop and implement procedures meeting the requirements of paragraphs (j)(1) (ii) through (viii) and (xi) of this section, as well as (j)(3) and (j)(8) of this section prior to starting such work.

(7) *Training program*—(i) *New employees.* The employer shall develop and implement a training program, which is part of the employer's safety and health program, for employees exposed to health hazards or hazardous substances at TSD operations to enable the employees to perform their assigned duties and functions in a safe and healthful manner so as not endanger themselves or other employees. The initial training shall be for 24 hours and refresher training shall be for eight hours annually. Employees who have received the initial training required by this paragraph shall be given a written certificate attesting that they have successfully completed the necessary training.

(ii) *Current employees.* Employers who can show by an employee's previous work experience and/or training that the employee has had training equivalent to the initial training required by this paragraph, shall be considered as meeting the initial training requirements of this paragraph as to that employee. Equivalent training includes the training that existing employees might have already received from actual site work experience. Current employees shall receive eight hours of refresher training annually.

(iii) *Trainers.* Trainers who teach initial training shall have satisfactorily completed a training course for teaching the subjects they are expected to teach or they shall have the academic credentials and instruction experience necessary to demonstrate a good command of the subject matter of the courses and competent instructional skills.

(8) *Emergency response program*—(i) *Emergency response plan.* An emergency response plan shall be developed and implemented by all employers. Such plans need not duplicate any of the subjects fully addressed in the employer's contingency planning required by permits, such as those issued by the U.S. Environmental Protection Agency, provided that the contingency plan is made part of the emergency response plan. The emergency response plan shall be a written portion of the employers safety and health program required in paragraph (p)(1) of this section. Employers who will evacuate their employees from the worksite location when an emergency occurs and who do not permit any of their employees to assist in handling the emergency are exempt from the requirements of paragraph (p)(8) if they provide an emergency action plan complying with § 1926.35 of this part.

(ii) *Elements of an emergency response plan.* The employer shall develop an emergency response plan for emergencies which shall address, as a minimum, the following areas to the extent that they are not addressed in any specific program required in this paragraph:

(A) Pre-emergency planning and coordination with outside parties.

(B) Personnel roles, lines of authority, and communication.

(C) Emergency recognition and prevention.

(D) Safe distances and places of refuge.

(E) Site security and control.

(F) Evacuation routes and procedures.

(G) Decontamination procedures.

(H) Emergency medical treatment and first aid.

(I) Emergency alerting and response procedures.

(J) Critique of response and follow-up.

(K) PPE and emergency equipment.

(iii) *Training.* (A) Training for emergency response employees shall be completed before they are called upon to perform in real emergencies. Such training shall include the elements of the emergency response plan, standard operating procedures the employer has established for the job, the personal protective equipment to be worn and procedures for handling emergency incidents.

Exception #1: An employer need not train all employees to the degree specified if the employer divides the work force in a manner such that a sufficient number of employees who have responsibility to control emergencies have the training specified, and all other employees, who may first respond to an emergency incident, have sufficient awareness training to recognize that an emergency response situation exists and that they are instructed in that case to summon the fully trained employees and not attempt control activities for which they are not trained.

Exception #2: An employer need not train all employees to the degree specified if arrangements have been made in advance for an outside fully-trained emergency response team to respond in a reasonable period and all employees, who may come to the incident first, have sufficient awareness training to recognize that an emergency response situation exists and they have been instructed to call the designated outside fully-trained emergency response team for assistance.

(B) Employee members of TSD facility emergency response organizations shall be trained to a level of competence in the recognition of health and safety hazards to protect themselves and other employees. This would include training in the methods used to minimize the risk from safety and health hazards; in the safe use of control equipment; in the selection and use of appropriate personal protective equipment; in the safe operating procedures to be used at the incident scene; in the techniques of coordination with other employees to minimize risks; in the appropriate response to over exposure from health hazards or injury to themselves and other employees; and in the recognition of subsequent symptoms which may result from over exposures.

(C) The employer shall certify that each covered employee has attended and successfully completed the training required in paragraph (p)(8)(iii) of this section, or shall certify the employee's competency at least yearly. The method used to demonstrate competency for

certification of training shall be recorded and maintained by the employer.

(iv) *Procedures for handling emergency incidents.* (A) In addition to the elements for the emergency response plan required in paragraph (p)(8)(ii) of this section, the following elements shall be included for emergency response plans to the extent that they do not repeat any information already contained in the emergency response plan:

(*1*) Site topography, layout, and prevailing weather conditions.

(*2*) Procedures for reporting incidents to local, state, and federal governmental agencies.

(B) The emergency response plan shall be compatible and integrated with the disaster, fire and/or emergency response plans of local, state, and federal agencies.

(C) The emergency response plan shall be rehearsed regularly as part of the overall training program for site operations.

(D) The site emergency response plan shall be reviewed periodically and, as necessary, be amended to keep it current with new or changing site conditions or information.

(E) An employee alarm system shall be installed in accordance with 29 CFR 1926.159 to notify employees of an emergency situation; to stop work activities if necessary; to lower background noise in order to speed communication; and to begin emergency procedures.

(F) Based upon the information available at time of the emergency, the employer shall evaluate the incident and the site response capabilities and proceed with the appropriate steps to implement the site emergency response plan.

(q) *Emergency response to hazardous substance releases.* This paragraph covers employers whose employees are engaged in emergency response no matter where it occurs except that it does not cover employees engaged in operations specified in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. Those emergency response organizations who have developed and implemented programs equivalent to this paragraph for handling releases of hazardous substances pursuant to section 303 of the Superfund Amendments and Reauthorization Act of 1986 (Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11003) shall be deemed to have met the requirements of this paragraph.

(1) *Emergency response plan.* An emergency response plan shall be developed and implemented to handle anticipated emergencies prior to the commencement of emergency response operations. The plan shall be in writing and available for inspection and copying by employees, their representatives and OSHA personnel. Employers who will evacuate their employees from the danger area when an emergency occurs, and who do not permit any of their employees to assist in handling the emergency, are exempt from the requirements of this paragraph if they provide an emergency action plan in accordance with § 1926.35 of this part.

(2) *Elements of an emergency response plan.* The employer shall develop an emergency response plan for emergencies which shall address, as a minimum, the following to the extent that they are not addressed elsewhere:

(i) Pre-emergency planning and coordination with outside parties.

(ii) Personnel roles, lines of authority, training, and communication.

(iii) Emergency recognition and prevention.

(iv) Safe distances and places of refuge.

(v) Site security and control.

(vi) Evacuation routes and procedures.

(vii) Decontamination.

(viii) Emergency medical treatment and first aid.

(ix) Emergency alerting and response procedures.

(x) Critique of response and follow-up.

(xi) PPE and emergency equipment.

(xii) Emergency response organizations may use the local emergency response plan or the state emergency response plan or both, as part of their emergency response plan to avoid duplication. Those items of the emergency response plan that are being properly addressed by the SARA Title III plans may be substituted into their emergency plan or otherwise kept together for the employer and employee's use.

(3) *Procedures for handling emergency response.* (i) The senior emergency response official responding to an emergency shall become the individual in charge of a site-specific Incident Command System (ICS). All emergency responders and their communications shall be coordinated and controlled through the individual in charge of the ICS assisted by the senior official present for each employer.

Note to (q)(3)(i).—The "senior official" at an emergency response is the most senior official on the site who has the responsibility for controlling the operations at the site. Initially it is the senior officer on the first-due piece of responding emergency apparatus to arrive on the incident scene. As more senior officers arrive (i.e., battalion chief, fire chief, state law enforcement official, site coordinator, etc.) the position is passed up the line of authority which has been previously established.

(ii) The individual in charge of the ICS shall identify, to the extent possible, all hazardous substances or conditions present and shall address as appropriate site analysis, use of engineering controls, maximum exposure limits, hazardous substance handling procedures, and use of any new technologies.

(iii) Based on the hazardous substances and/or conditions present, the individual in charge of the ICS shall implement appropriate emergency operations, and assure that the personal protective equipment worn is appropriate for the hazards to be encountered. However, personal protective equipment shall meet, at a minimum, the criteria contained in 29 CFR 1926.97 when worn while performing fire fighting operations beyond the incipient stage for any incident.

(iv) Employees engaged in emergency response and exposed to hazardous substances presenting an inhalation hazard or potential inhalation hazard shall wear positive pressure self-contained breathing apparatus while engaged in emergency response, until such time that the individual in charge of the ICS determines through the use of air monitoring that a decreased level of respiratory protection will not result in hazardous exposures to employees.

(v) The individual in charge of the ICS shall limit the number of emergency response personnel at the emergency site, in those areas of potential or actual exposure to incident or site hazards, to those who are actively performing emergency operations. However, operations in hazardous areas shall be performed using the buddy system in groups of two or more.

(vi) Back-up personnel shall stand by with equipment ready to provide assistance or rescue. Advance first aid support personnel, as a minimum, shall also stand by with medical equipment and transportation capability.

(vii) The individual in charge of the ICS shall designate a safety official, who is knowledgable in the operations being implemented at the emergency response site, with specific responsibility to identify and evaluate hazards and to provide direction with respect to the safety of operations for the emergency at hand.

(viii) When activities are judged by the safety official to be an IDLH

condition and/or to involve an imminent danger condition, the safety official shall have the authority to alter, suspend, or terminate those activities. The safety official shall immediately inform the individual in charge of the ICS of any actions needed to be taken to correct these hazards at the emergency scene.

(ix) After emergency operations have terminated, the individual in charge of the ICS shall implement appropriate decontamination procedures.

(x) When deemed necessary for meeting the tasks at hand, approved self-contained compressed air breathing apparatus may be used with approved cylinders from other approved self-contained compressed air breathing apparatus provided that such cylinders are of the same capacity and pressure rating. All compressed air cylinders used with self-contained breathing apparatus shall meet U.S. Department of Transportation and National Institute for Occupational Safety and Health criteria.

(4) *Skilled support personnel.* Personnel, not necessarily an employer's own employees, who are skilled in the operation of certain equipment, such as mechanized earth moving or digging equipment or crane and hoisting equipment, and who are needed temporarily to perform immediate emergency support work that cannot reasonably be performed in a timely fashion by an employer's own employees, and who will be or may be exposed to the hazards at an emergency response scene, are not required to meet the training required in this paragraph for the employer's regular employees. However, these personnel shall be given an initial briefing at the site prior to their participation in any emergency response. The initial briefing shall include instruction in the wearing of appropriate personal protective equipment, what chemical hazards are involved, and what duties are to be performed. All other appropriate safety and health precautions provided to the employer's own employees shall be used to assure the safety and health of these personnel.

(5) *Specialist employees.* Employees who, in the course of their regular job duties, work with and are trained in the hazards of specific hazardous substances, and who will be called upon to provide technical advice or assistance at a hazardous substance release incident to the individual in charge, shall receive training or demonstrate competency in the area of their specialization annually.

(6) *Training.* Training shall be based on the duties and function to be performed by each responder of an emergency response organization. The skill and knowledge levels required for all new responders, those hired after the effective date of this standard, shall be conveyed to them through training before they are permitted to take part in actual emergency operations on an incident. Employees who participate, or are expected to participate, in emergency response, shall be given training in accordance with the following paragraphs:

(i) *First responder awareness level.* First responders at the awareness level are individuals who are likely to witness or discover a hazardous substance release and who have been trained to initiate an emergency response sequence by notifying the proper authorities of the release. They would take no further action beyond notifying the authorities of the release. First responders at the awareness level shall have sufficient training or have had sufficient experience to objectively demonstrate competency in the following areas:

(A) An understanding of what hazardous substances are, and the risks associated with them in an incident.

(B) An understanding of the potential outcomes associated with an emergency created when hazardous substances are present.

(C) The ability to recognize the presence of hazardous substances in an emergency.

(D) The ability to identify the hazardous substances, if possible.

(E) An understanding of the role of the first responder awareness individual in the employer's emergency response plan including site security and control and the U.S. Department of Transportation's Emergency Response Guidebook.

(F) The ability to realize the need for additional resources, and to make appropriate notifications to the communication center.

(ii) *First responder operations level.* First responders at the operations level are individuals who respond to releases or potential releases of hazardous substances as part of the initial response to the site for the purpose of protecting nearby persons, property, or the environment from the effects of the release. They are trained to respond in a defensive fashion without actually trying to stop the release. Their function is to contain the release from a safe distance, keep it from spreading, and prevent exposures. First responders at the operational level shall have received at least eight hours of training or have had sufficient experience to objectively demonstrate competency in the following areas in addition to those listed for the awareness level and the employer shall so certify:

(A) Knowledge of the basic hazard and risk assessment techniques.

(B) Know how to select and use proper personal protective equipment provided to the first responder operational level.

(C) An understanding of basic hazardous materials terms.

(D) Know how to perform basic control, containment and/or confinement operations within the capabilities of the resources and personal protective equipment available with their unit.

(E) Know how to implement basic decontamination procedures.

(F) An understanding of the relevant standard operating procedures and termination procedures.

(iii) *Hazardous materials technician.* Hazardous materials technicians are individuals who respond to releases or potential releases for the purpose of stopping the release. They assume a more aggressive role than a first responder at the operations level in that they will approach the point of release in order to plug, patch or otherwise stop the release of a hazardous substance. Hazardous materials technicians shall have received at least 24 hours of training equal to the first responder operations level and in addition have competency in the following areas and the employer shall so certify:

(A) Know how to implement the employer's emergency response plan.

(B) Know the classification, identification and verification of known and unknown materials by using field survey instruments and equipment.

(C) Be able to function within an assigned role in the Incident Command System.

(D) Know how to select and use proper specialized chemical personal protective equipment provided to the hazardous materials technician.

(E) Understand hazard and risk assessment techniques.

(F) Be able to perform advance control, containment, and/or confinement operations within the capabilities of the resources and personal protective equipment available with the unit.

(G) Understand and implement decontamination procedures.

(H) Understand termination procedures.

(I) Understand basic chemical and toxicological terminology and behavior.

(iv) *Hazardous materials specialist.* Hazardous materials specialists are individuals who respond with and provide support to hazardous materials

technicians. Their duties parallel those of the hazardous materials technician, however, those duties require a more directed or specific knowledge of the various substances they may be called upon to contain. The hazardous materials specialist would also act as the site liaison with Federal, state, local and other government authorities in regards to site activities. Hazardous materials specialists shall have received at least 24 hours of training equal to the technician level and in addition have competency in the following areas and the employer shall so certify:

(A) Know how to implement the local emergency response plan.

(B) Understand classification, identification and verification of known and unknown materials by using advanced survey instruments and equipment.

(C) Know of the state emergency response plan.

(D) Be able to select and use proper specialized chemical personal protective equipment provided to the hazardous materials specialist.

(E) Understand in-depth hazard and risk techniques.

(F) Be able to perform specialized control, containment, and/or confinement operations within the capabilities of the resources and personal protective equipment available.

(G) Be able to determine and implement decontamination procedures.

(H) Have the ability to develop a site safety and control plan.

(I) Understand chemical, radiological and toxicological terminology and behavior.

(v) *On scene incident commander.* Incident commanders, who will assume control of the incident scene beyond the first responder awareness level, shall receive at least 24 hours of training equal to the first responder operations level and in addition have competency in the following areas and the employer shall so certify:

(A) Know and be able to implement the employer's incident command system.

(B) Know how to implement the employer's emergency response plan.

(C) Know and understand the hazards and risks associated with employees working in chemical protective clothing.

(D) Know how to implement the local emergency response plan.

(E) Know of the state emergency response plan and of the Federal Regional Response Team.

(F) Know and understand the importance of decontamination procedures.

(7) *Trainers.* Trainers who teach any of the above training subjects shall have satisfactorily completed a training course for teaching the subjects they are expected to teach, such as the courses offered by the U.S. National Fire Academy, or they shall have the training and/or academic credentials and instructional experience necessary to demonstrate competent instructional skills and a good command of the subject matter of the courses they are to teach.

(8) *Refresher training.* (i) Those employees who are trained in accordance with paragraph (q)(6) of this section shall receive annual refresher training of sufficient content and duration to maintain their competencies, or shall demonstrate competency in those areas at least yearly.

(ii) A statement shall be made of the training or competency, and if a statement of competency is made, the employer shall keep a record of the methodology used to demonstrate competency.

(9) *Medical surveillance and consultation.* (i) Members of an organized and designated HAZMAT team and hazardous materials specialists shall receive a baseline physical examination and be provided with medical surveillance as required in paragraph (f) of this section.

(ii) Any emergency response employees who exhibits signs or symptoms which may have resulted from exposure to hazardous substances during the course of an emergency incident, either immediately or subsequently, shall be provided with medical consultation as required in paragraph (f)(3)(ii) of this section.

(10) *Chemical protective clothing.* Chemical protective clothing and equipment to be used by organized and designated HAZMAT team members, or to be used by hazardous materials specialists, shall meet the requirements of paragraphs (g) (3) through (5) of this section.

(11) *Post-emergency response operations.* Upon completion of the emergency response, if it is determined that it is necessary to remove hazardous substances, health hazards, and materials contaminated with them (such as contaminated soil or other elements of the natural environment) from the site of the incident, the employer conducting the clean-up shall comply with one of the following:

(i) Meet all of the requirements of paragraphs (b) through (o) of this section; or

(ii) Where the clean-up is done on plant property using plant or workplace employees, such employees shall have completed the training requirements of the following: 29 CFR 1926.35, 1926.59, and 1926.103, and other appropriate safety and health training made necessary by the tasks that they are expected to be performed such as personal protective equipment and decontamination procedures. All equipment to be used in the performance of the clean-up work shall be in serviceable condition and shall have been inspected prior to use.

Appendices to § 1926.65—Hazardous Waste Operations and Emergency Response

Note: The following appendices serve as non-mandatory guidelines to assist employees and employers in complying with the appropriate requirements of this section. However § 1926.65(g) makes mandatory in certain circumstances the use of Level A and Level B PPE protection.

Appendix A to § 1926.65—Personal Protective Equipment Test Methods

This appendix sets forth the non-mandatory examples of tests which may be used to evaluate compliance with § 1926.65(g)(4) (ii) and (iii). Other tests and other challenge agents may be used to evaluate compliance.

A. Totally-encapsulating chemical protective suit pressure test

1.0—Scope

1.1 This practice measures the ability of a gas tight totally-encapsulating chemical protective suit material, seams, and closures to maintain a fixed positive pressure. The results of this practice allow the gas tight integrity of a totally-encapsulating chemical protective suit to be evaluated.

1.2 Resistance of the suit materials to permeation, penetration, and degradation by specific hazardous substances is not determined by this test method.

2.0—Definition of terms

2.1 *Totally-encapsulated chemical protective suit (TECP suit)* means a full body garment which is constructed of protective clothing materials; covers the wearer's torso, head, arms, legs and respirator; may cover the wearer's hands and feet with tightly attached gloves and boots; completely encloses the wearer and respirator by itself or in combination with the wearer's gloves and boots.

2.2 *Protective clothing material* means any material or combination of materials used in an item of clothing for the purpose of isolating parts of the body from direct contact with a potentially hazardous liquid or gaseous chemicals.

2.3 *Gas tight* means, for the purpose of this test method, the limited flow of a gas under pressure from the inside of a TECP suit to atmosphere at a prescribed pressure and time interval.

3.0—Summary of test method

3.1 The TECP suit is visually inspected and modified for the test. The test apparatus is attached to the suit to permit inflation to the pre-test suit expansion pressure for removal of suit wrinkles and creases. The pressure is

lowered to the test pressure and monitored for three minutes. If the pressure drop is excessive, the TECP suit fails the test and is removed from service. The test is repeated after leak location and repair.

4.0—Required Supplies

4.1 Source of compressed air.

4.2 Test apparatus for suit testing, including a pressure measurement device with a sensitivity of at least ¼ inch water gauge.

4.3 Vent valve closure plugs or sealing tape.

4.4 Soapy water solution and soft brush.

4.5 Stop watch or appropriate timing device.

5.0—Safety Precautions

5.1 Care shall be taken to provide the correct pressure safety devices required for the source of compressed air used.

6.0—Test Procedure

6.1 Prior to each test, the tester shall perform a visual inspection of the suit. Check the suit for seam integrity by visually examining the seams and gently pulling on the seams. Ensure that all air supply lines, fittings, visor, zippers, and valves are secure and show no signs of deterioration.

6.1.1 Seal off the vent valves along with any other normal inlet or exhaust points (such as umbilical air line fittings or face piece opening) with tape or other appropriate means (caps, plugs, fixture, etc.). Care should be exercised in the sealing process not to damage any of the suit components.

6.1.2 Close all closure assemblies.

6.1.3 Prepare the suit for inflation by providing an improvised connection point on the suit for connecting an airline. Attach the pressure test apparatus to the suit to permit suit inflation from a compressed air source equipped with a pressure indicating regulator. The leak tightness of the pressure test apparatus should be tested before and after each test by closing off the end of the tubing attached to the suit and assuring a pressure of three inches water gauge for three minutes can be maintained. If a component is removed for the test, that component shall be replaced and a second test conducted with another component removed to permit a complete test of the ensemble.

6.1.4 The pre-test expansion pressure (A) and the suit test pressure (B) shall be supplied by the suit manufacturer, but in no case shall they be less than: (A)=three inches water gauge; and (B)=two inches water gauge. The ending suit pressure (C) shall be no less than 80 percent of the test pressure (B); i.e., the pressure drop shall not exceed 20 percent of the test pressure (B).

6.1.5 Inflate the suit until the pressure inside is equal to pressure (A), the pre-test expansion suit pressure. Allow at least one minute to fill out the wrinkles in the suit. Release sufficient air to reduce the suit pressure to pressure (B), the suit test pressure. Begin timing. At the end of three minutes, record the suit pressure as pressure (C), the ending suit pressure. The difference between the suit test pressure and the ending suit test pressure (B–C) shall be defined as the suit pressure drop.

6.1.6 If the suit pressure drop is more than 20 percent of the suit test pressure (B) during the three-minute test period, the suit fails the test and shall be removed from service.

7.0—Retest Procedure

7.1 If the suit fails the test check for leaks by inflating the suit to pressure (A) and brushing or wiping the entire suit (including seams, closures, lens gaskets, glove-to-sleeve joints, etc.) with a mild soap and water solution. Observe the suit for the formation of soap bubbles, which is an indication of a leak. Repair all identified leaks.

7.2 Retest the TECP suit as outlined in Test procedure 6.0.

8.0—Report

8.1 Each TECP suit tested by this practice shall have the following information recorded:

8.1.1 Unique identification number, identifying brand name, date of purchase, material of construction, and unique fit features, e.g., special breathing apparatus.

8.1.2 The actual values for test pressures (A), (B), and (C) shall be recorded along with the specific observation times. If the ending pressure (C) is less than 80 percent of the test pressure (B), the suit shall be identified as failing the test. When possible, the specific leak location shall be identified in the test records. Retest pressure data shall be recorded as an additional test.

8.1.3 The source of the test apparatus used shall be identified and the sensitivity of the pressure gauge shall be recorded.

8.1.4 Records shall be kept for each pressure test even if repairs are being made at the test location.

CAUTION

Visually inspect all parts of the suit to be sure they are positioned correctly and secured tightly before putting the suit back into service. Special care should be taken to examine each exhaust valve to make sure it is not blocked.

Care should also be exercised to assure that the inside and outside of the suit is completely dry before it is put into storage.

B. Totally-encapsulating chemical protective suit qualitative leak test

1.0—Scope

1.1 This practice semi-qualitatively tests gas tight totally-encapsulating chemical protective suit integrity by detecting inward leakage of ammonia vapor. Since no modifications are made to the suit to carry out this test, the results from this practice provide a realistic test for the integrity of the entire suit.

1.2 Resistance of the suit materials to permeation, penetration, and degradation is not determined by this test method. ASTM test methods are available to test suit materials for these characteristics and the tests are usually conducted by the manufacturers of the suits.

2.0—Definition of terms

2.1 *Totally-encapsulated chemical protective suit (TECP suit)* means a full body garment which is constructed of protective clothing materials; covers the wearer's torso, head, arms, legs and respirator; may cover the wearer's hands and feet with tightly attached gloves and boots; completely encloses the wearer and respirator by itself or in combination with the wearer's gloves, and boots.

2.2 *Protective clothing material* means any material or combination of materials used in an item of clothing for the purpose of isolating parts of the body from direct contact with a potentially hazardous liquid or gaseous chemicals.

2.3 *Gas tight* means, for the purpose of this test method, the limited flow of a gas under pressure from the inside of a TECP suit to atmosphere at a prescribed pressure and time interval.

2.4 *Intrusion Coefficient* means a number expressing the level of protection provided by a gas tight totally-encapsulating chemical protective suit. The intrusion coefficient is calculated by dividing the test room challenge agent concentration by the concentration of challenge agent found inside the suit. The accuracy of the intrusion coefficient is dependent on the challenge agent monitoring methods. The larger the intrusion coefficient the greater the protection provided by the TECP suit.

3.0—Summary of recommended practice

3.1 The volume of concentrated aqueous ammonia solution (ammonia hydroxide NH_4OH) required to generate the test atmosphere is determined using the directions outlined in 6.1. The suit is donned by a person wearing the appropriate respiratory equipment (either a positive pressure self-contained breathing apparatus or a positive pressure supplied air respirator) and worn inside the enclosed test room. The concentrated aqueous ammonia solution is taken by the suited individual into the test room and poured into an open plastic pan. A two-minute evaporation period is observed before the test room concentration is measured, using a high range ammonia length of stain detector tube. When the ammonia vapor reaches a concentration of between 1000 and 1200 ppm, the suited individual starts a standardized exercise protocol to stress and flex the suit. After this protocol is completed, the test room concentration is measured again. The suited individual exits the test room and his stand-by person measures the ammonia concentration inside the suit using a low range ammonia length of stain detector tube or other more sensitive ammonia detector. A stand-by person is required to observe the test individual during the test procedure; aid the person in donning and doffing the TECP suit; and monitor the suit interior. The intrusion coefficient of the suit can be calculated by dividing the average test area concentration by the interior suit concentration. A colorimetric ammonia indicator strip of bromophenol blue or equivalent is placed on the inside of the suit face piece lens so that the suited individual is able to detect a color change and know if the suit has a significant leak. If a color change is observed the individual shall leave the test room immediately.

4.0—Required supplies

4.1 A supply of concentrated aqueous ammonium hydroxide (58% by weight).

4.2 A supply of bromophenol/blue indicating paper or equivalent, sensitive to 5–10 ppm ammonia or greater over a two-minute period of exposure. [pH 3.0 (yellow) to pH 4.6 (blue)]

4.3 A supply of high range (0.5–10 volume percent) and low range (5–700 ppm) detector tubes for ammonia and the corresponding

sampling pump. More sensitive ammonia detectors can be substituted for the low range detector tubes to improve the sensitivity of this practice.

4.4 A shallow plastic pan (PVC) at least 12":14":1" and a half pint plastic container (PVC) with tightly closing lid.

4.5 A graduated cylinder or other volumetric measuring device of at least 50 milliliters in volume with an accuracy of at least ±1 milliliters.

5.0—Safety precautions

5.1 Concentrated aqueous ammonium hydroxide, NH_4OH, is a corrosive volatile liquid requiring eye, skin, and respiratory protection. The person conducting the test shall review the MSDS for aqueous ammonia.

5.2 Since the established permissible exposure limit for ammonia is 35 ppm as a 15 minute STEL, only persons wearing a positive pressure self-contained breathing apparatus or a positive pressure supplied air respirator shall be in the chamber. Normally only the person wearing the totally-encapsulating suit will be inside the chamber. A stand-by person shall have a positive pressure self-contained breathing apparatus, or a positive pressure supplied air respirator available to enter the test area should the suited individual need assistance.

5.3 A method to monitor the suited individual must be used during this test. Visual contact is the simplest but other methods using communication devices are acceptable.

5.4 The test room shall be large enough to allow the exercise protocol to be carried out and then to be ventilated to allow for easy exhaust of the ammonia test atmosphere after the test(s) are completed.

5.5 Individuals shall be medically screened for the use of respiratory protection and checked for allergies to ammonia before participating in this test procedure.

6.0—Test procedure

6.1.1 Measure the test area to the nearest foot and calculate its volume in cubic feet. Multiply the test area volume by 0.2 milliliters of concentrated aqueous ammonia solution per cubic foot of test area volume to determine the approximate volume of concentrated aqueous ammonia required to generate 1000 ppm in the test area.

6.1.2 Measure this volume from the supply of concentrated aqueous ammonia and place it into a closed plastic container.

6.1.3 Place the container, several high range ammonia detector tubes, and the pump in the clean test pan and locate it near the test area entry door so that the suited individual has easy access to these supplies.

6.2.1 In a non-contaminated atmosphere, open a pre-sealed ammonia indicator strip and fasten one end of the strip to the inside of the suit face shield lens where it can be seen by the wearer. Moisten the indicator strip with distilled water. Care shall be taken not to contaminate the detector part of the indicator paper by touching it. A small piece of masking tape or equivalent should be used to attach the indicator strip to the interior of the suit face shield.

6.2.2 If problems are encountered with this method of attachment, the indicator strip can be attached to the outside of the respirator face piece lens being used during the test.

6.3 Don the respiratory protective device normally used with the suit, and then don the TECP suit to be tested. Check to be sure all openings which are intended to be sealed (zippers, gloves, etc.) are completely sealed. DO NOT, however, plug off any venting valves.

6.4 Step into the enclosed test room such as a closet, bathroom, or test booth, equipped with an exhaust fan. No air should be exhausted from the chamber during the test because this will dilute the ammonia challenge concentrations.

6.5 Open the container with the pre-measured volume of concentrated aqueous ammonia within the enclosed test room, and pour the liquid into the empty plastic test pan. Wait two minutes to allow for adequate volatilization of the concentrated aqueous ammonia. A small mixing fan can be used near the evaporation pan to increase the evaporation rate of the ammonia solution.

6.6 After two minutes a determination of the ammonia concentration within the chamber should be made using the high range colorimetric detector tube. A concentration of 1000 ppm ammonia or greater shall be generated before the exercises are started.

6.7 To test the integrity of the suit the following four minute exercise protocol should be followed:

6.7.1 Raising the arms above the head with at least 15 raising motions completed in one minute.

6.7.2 Walking in place for one minute with at least 15 raising motions of each leg in a one-minute period.

6.7.3 Touching the toes with a least 10 complete motions of the arms from above the head to touching of the toes in a one-minute period.

6.7.4 Knee bends with at least 10 complete standing and squatting motions in a one-minute period.

6.8 If at any time during the test the colorimetric indicating paper should change colors, the test should be stopped and section 6.10 and 6.12 initiated (See ¶4.2).

6.9 After completion of the test exercise, the test area concentration should be measured again using the high range colorimetric detector tube.

6.10 Exit the test area.

6.11 The opening created by the suit zipper or other appropriate suit penetration should be used to determine the ammonia concentration in the suit with the low range length of stain detector tube or other ammonia monitor. The internal TECP suit air should be sampled far enough from the enclosed test area to prevent a false ammonia reading.

6.12 After completion of the measurement of the suit interior ammonia concentration the test is concluded and the suit is doffed and the respirator removed.

6.13 The ventilating fan for the test room should be turned on and allowed to run for enough time to remove the ammonia gas. The fan shall be vented to the outside of the building.

6.14 Any detectable ammonia in the suit interior (five ppm ammonia (NH_3) or more for the length of stain detector tube) indicates that the suit has failed the test. When other ammonia detectors are used a lower level of detection is possible, and it should be specified as the pass/fail criteria.

6.15 By following this test method, an intrusion coefficient of approximately 200 or more can be measured with the suit in a completely operational condition. If the intrusion coefficient is 200 or more, then the suit is suitable for emergency response and field use.

7.0—Retest procedures

7.1 If the suit fails this test, check for leaks by following the pressure test in test A above.

7.2 Retest the TECP suit as outlined in the test procedure 6.0.

8.0—Report

8.1 Each gas tight totally-encapsulating chemical protective suit tested by this practice shall have the following information recorded.

8.1.1 Unique identification number, identifying brand name, date of purchase, material of construction, and unique suit features; e.g., special breathing apparatus.

8.1.2 General description of test room used for test.

8.1.3 Brand name and purchase date of ammonia detector strips and color change data.

8.1.4 Brand name, sampling range, and expiration date of the length of stain ammonia detector tubes. The brand name and model of the sampling pump should also be recorded. If another type of ammonia detector is used, it should be identified along with its minimum detection limit for ammonia.

8.1.5 Actual test results shall list the two test area concentrations, their average, the interior suit concentration, and the calculated intrusion coefficient. Retest data shall be recorded as an additional test.

8.2 The evaluation of the data shall be specified as "suit passed" or "suit failed," and the date of the test. Any detectable ammonia (five ppm or greater for the length of stain detector tube) in the suit interior indicates the suit has failed this test. When other ammonia detectors are used, a lower level of detection is possible and it should be specified as the pass fail criteria.

CAUTION

Visually inspect all parts of the suit to be sure they are positioned correctly and secured tightly before putting the suit back into service. Special care should be taken to examine each exhaust valve to make sure it is not blocked.

Care should also be exercised to assure that the inside and outside of the suit is completely dry before it is put into storage.

Appendix B to § 1926.65—General Description and Discussion of the Levels of Protection and Protective Gear

This appendix sets forth information about personal protective equipment (PPE) protection levels which may be used to assist employers in complying with the PPE requirements of this section.

As required by the standard, PPE must be selected which will protect employees from

the specific hazards which they are likely to encounter during their work on-site.

Selection of the appropriate PPE is a complex process which should take into consideration a variety of factors. Key factors involved in this process are identification of the hazards, or suspected hazards; their routes of potential hazard to employees (inhalation, skin absorption, ingestion, and eye or skin contact); and the performance of the PPE *materials* (and seams) in providing a barrier to these hazards. The amount of protection provided by PPE is material-hazard specific. That is, protective equipment materials will protect well against some hazardous substances and poorly, or not at all, against others. In many instances, protective equipment materials cannot be found which will provide continuous protection from the particular hazardous substance. In these cases the breakthrough time of the protective material should exceed the work durations.

Other factors in this selection process to be considered are matching the PPE to the employee's work requirements and task-specific conditions. The durability of PPE materials, such as tear strength and seam strength, should be considered in relation to the employee's tasks. The effects of PPE in relation to heat stress and task duration are a factor in selecting and using PPE. In some cases layers of PPE may be necessary to provide sufficient protection, or to protect expensive PPE inner garments, suits or equipment.

The more that is known about the hazards at the site, the easier the job of PPE selection becomes. As more information about the hazards and conditions at the site becomes available, the site supervisor can make decisions to up-grade or down-grade the level of PPE protection to match the tasks at hand.

The following are guidelines which an employer can use to begin the selection of the appropriate PPE. As noted above, the site information may suggest the use of combinations of PPE selected from the different protection levels (i.e., A, B, C, or D) as being more suitable to the hazards of the work. It should be cautioned that the listing below does not fully address the performance of the specific PPE material in relation to the specific hazards at the job site, and that PPE selection, evaluation and re-selection is an ongoing process until sufficient information about the hazards and PPE performance is obtained.

Part A. Personal protective equipment is divided into four categories based on the degree of protection afforded. (See Part B of this appendix for further explanation of Levels A, B, C, and D hazards.)

I. *Level A*—To be selected when the greatest level of skin, respiratory, and eye protection is required.

The following constitute Level A equipment; it may be used as appropriate;

1. Positive pressure, full face-piece self-contained breathing apparatus (SCBA), or positive pressure supplied air respirator with escape SCBA, approved by the National Institute for Occupational Safety and Health (NIOSH).

2. Totally-encapsulating chemical-protective suit.

3. Coveralls.[1]

4. Long underwear.[1]

5. Gloves, outer, chemical-resistant.

6. Gloves, inner, chemical-resistant.

7. Boots, chemical-resistant, steel toe and shank.

8. Hard hat (under suit).[1]

9. Disposable protective suit, gloves and boots (depending on suit construction, may be worn over totally-encapsulating suit).

II. *Level B*—The highest level of respiratory protection is necessary but a lesser level of skin protection is needed.

The following constitute Level B equipment; it may be used as appropriate.

1. Positive pressure, full-facepiece self-contained breathing apparatus (SCBA), or positive pressure supplied air respirator with escape SCBA (NIOSH approved).

2. Hooded chemical-resistant clothing (overalls and long-sleeved jacket; coveralls; one or two-piece chemical-splash suit; disposable chemical-resistant overalls).

3. Coveralls.[1]

4. Gloves, outer, chemical-resistant.

5. Gloves, inner, chemical-resistant.

6. Boots, outer, chemical-resistant steel toe and shank.

7. Boot-covers, outer, chemical-resistant (disposable).[1]

8. Hard hat.[1]

9. [Reserved]

10. Face shield.[1]

III. *Level C*—The concentration(s) and type(s) of airborne substance(s) is known and the criteria for using air purifying respirators are met.

The following constitute Level C equipment; it may be used as appropriate.

1. Full-face or half-mask, air purifying respirators (NIOSH approved).

2. Hooded chemical-resistant clothing (overalls; two-piece chemical-splash suit; disposable chemical-resistant overalls).

3. Coveralls.[1]

4. Gloves, outer, chemical-resistant.

5. Gloves, inner, chemical-resistant.

6. Boots (outer), chemical-resistant steel toe and shank.[1]

7. Boot-covers, outer, chemical-resistant (disposable)[1].

8. Hard hat.[1]

9. Escape mask.[1]

10. Face shield.[1]

IV. *Level D*—A work uniform affording minimal protection, used for nuisance contamination only.

The following constitute Level D equipment; it may be used as appropriate:

1. Coveralls.

2. Gloves.[1]

3. Boots/shoes, chemical-resistant steel toe and shank.

4. Boots, outer, chemical-resistant (disposable).[1]

5. Safety glasses or chemical splash goggles[1].

6. Hard hat.[1]

7. Escape mask.[1]

8. Face shield.[1]

Part B. The types of hazards for which levels A, B, C, and D protection are appropriate are described below:

I. *Level A*—Level A protection should be used when:

1. The hazardous substance has been identified and requires the highest level of protection for skin, eyes, and the respiratory system based on either the measured (or potential for) high concentration of atmospheric vapors, gases, or particulates; or the site operations and work functions involve a high potential for splash, immersion, or exposure to unexpected vapors, gases, or particulates of materials that are harmful to skin or capable of being absorbed through the skin;

2. Substances with a high degree of hazard to the skin are known or suspected to be present, and skin contact is possible; or

3. Operations are being conducted in confined, poorly ventilated areas, and the absence of conditions requiring Level A have not yet been determined.

II. *Level B*—Level B protection should be used when:

1. The type and atmospheric concentration of substances have been identified and require a high level of respiratory protection, but less skin protection;

2. The atmosphere contains less than 19.5 percent oxygen; or

3. The presence of incompletely identified vapors or gases is indicated by a direct-reading organic vapor detection instrument, but vapors and gases are not suspected of containing high levels of chemicals harmful to skin or capable of being absorbed through the skin.

Note: This involves atmospheres with IDLH concentrations of specific substances that present severe inhalation hazards and that do not represent a severe skin hazard; or that do not meet the criteria for use of air-purifying respirators.

III. *Level C*—Level C protection should be used when:

1. The atmospheric contaminants, liquid splashes, or other direct contact will not adversely affect or be absorbed through any exposed skin;

2. The types of air contaminants have been identified, concentrations measured, and an air-purifying respirator is available that can remove the contaminants; and

3. All criteria for the use of air-purifying respirators are met.

IV. *Level D*—Level D protection should be used when:

1. The atmosphere contains no known hazard; and

2. Work functions preclude splashes, immersion, or the potential for unexpected inhalation of or contact with hazardous levels of any chemicals.

Note: As stated before, combinations of personal protective equipment other than those described for Levels A, B, C, and D protection may be more appropriate and may be used to provide the proper level of protection.

As an aid in selecting suitable chemical protective clothing, it should be noted that the National Fire Protection Association is developing standards on chemical protective clothing. These standards are currently undergoing public review prior to adoption, including:

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[1] Optional, as applicable.

NFPA 1991—Standard on Vapor-Protective Suits for Hazardous Chemical Emergencies (EPA Level A Protective Clothing)
NFPA 1992—Standard on Liquid Splash-Protective Suits for Hazardous Chemical Emergencies (EPA Level B Protective Clothing)
NFPA 1993—Standard on Liquid Splash-Protective Suits for Non-emergency, Non-flammable Hazardous Chemical Situations (EPA Level B Protective Clothing)

These standards would apply documentation and performance requirements to the manufacture of chemical protective suits. Chemical protective suits meeting these requirements would be labelled as compliant with the appropriate standard. When these standards are adopted by the National Fire Protection Association, it is recommended that chemical protective suits which meet these standards be used.

Appendix C to § 1926.65—Compliance Guidelines

1. *Occupational Safety and Health Program.* Each hazardous waste site clean-up effort will require an occupational safety and health program headed by the site coordinator or the employer's representative. The purpose of the program will be the protection of employees at the site and will be an extension of the employer's overall safety and health program. The program will need to be developed before work begins on the site and implemented as work proceeds as stated in paragraph (b). The program is to facilitate coordination and communication of safety and health issues among personnel responsible for the various activities which will take place at the site. It will provide the overall means for planning and implementing the needed safety and health training and job orientation of employees who will be working at the site. The program will provide the means for identifying and controlling worksite hazards and the means for monitoring program effectiveness. The program will need to cover the responsibilities and authority of the site coordinator or the employer's manager on the site for the safety and health of employees at the site, and the relationships with contractors or support services as to what each employer's safety and health responsibilities are for their employees on the site. Each contractor on the site needs to have its own safety and health program so structured that it will smoothly interface with the program of the site coordinator or principal contractor.

Also those employers involved with treating, storing or disposal of hazardous waste as covered in paragraph (p) must have implemented a safety and health program for their employees. This program is to include the hazard communication program required in paragraph (p)(1) and the training required in paragraphs (p)(7) and (p)(8) as parts of the employers comprehensive overall safety and health program. This program is to be in writing.

Each site or workplace safety and health program will need to include the following: (1) Policy statements of the line of authority and accountability for implementing the program, the objectives of the program and the role of the site safety and health supervisor or manager and staff; (2) means or methods for the development of procedures for identifying and controlling workplace hazards at the site; (3) means or methods for the development and communication to employees of the various plans, work rules, standard operating procedures and practices that pertain to individual employees and supervisors; (4) means for the training of supervisors and employees to develop the needed skills and knowledge to perform their work in a safe and healthful manner; (5) means to anticipate and prepare for emergency situations; and (6) means for obtaining information feedback to aid in evaluating the program and for improving the effectiveness of the program. The management and employees should be trying continually to improve the effectiveness of the program thereby enhancing the protection being afforded those working on the site.

Accidents on the site or workplace should be investigated to provide information on how such occurrences can be avoided in the future. When injuries or illnesses occur on the site or workplace, they will need to be investigated to determine what needs to be done to prevent this incident from occurring again. Such information will need to be used as feedback on the effectiveness of the program and the information turned into positive steps to prevent any reoccurrence. Receipt of employee suggestions or complaints relating to safety and health issues involved with site or workplace activities is also a feedback mechanism that can be used effectively to improve the program and may serve in part as an evaluative tool(s).

For the development and implementation of the program to be the most effective, professional safety and health personnel should be used. Certified Safety Professionals, Board Certified Industrial Hygienists or Registered Professional Safety Engineers are good examples of professional stature for safety and health managers who will administer the employer's program.

2. *Training.* The training programs for employees subject to the requirements of paragraph (e) of this standard should address: the safety and health hazards employees should expect to find on hazardous waste clean-up sites; what control measures or techniques are effective for those hazards; what monitoring procedures are effective in characterizing exposure levels; what makes an effective employer's safety and health program; what a site safety and health plan should include; hands on training with personal protective equipment and clothing they may be expected to use; the contents of the OSHA standard relevant to the employee's duties and function; and, employee's responsibilities under OSHA and other regulations. Supervisors will need training in their responsibilities under the safety and health program and its subject areas such as the spill containment program, the personal protective equipment program, the medical surveillance program, the emergency response plan and other areas.

The training programs for employees subject to the requirements of paragraph (p) of this standard should address: the employers safety and health program elements impacting employees; the hazard communication program; the medical surveillance program; the hazards and the controls for such hazards that employees need to know for their job duties and functions. All require annual refresher training.

The training programs for employees covered by the requirements of paragraph (q) of this standard should address those competencies required for the various levels of response such as: the hazards associated with hazardous substances; hazard identification and awareness; notification of appropriate persons; the need for and use of personal protective equipment including respirators; the decontamination procedures to be used; preplanning activities for hazardous substance incidents including the emergency reponse plan; company standard operating procedures for hazardous substance emergency responses; the use of the incident command system and other subjects. Hands-on training should be stressed whenever possible. Critiques done after an incident which include an evaluation of what worked and what did not and how could the incident be better handled the next time may be counted as training time.

For hazardous materials specialists (usually members of hazardous materials teams), the training should address the care, use and/or testing of chemical protective clothing including totally encapsulating suits, the medical surveillance program, the standard operating procedures for the hazardous materials team including the use of plugging and patching equipment and other subject areas.

Officers and leaders who may be expected to be in charge at an incident should be fully knowledgeable of their company's incident command system. They should know where and how to obtain additional assistance and be familiar with the local district's emergency response plan and the state emergency response plan.

Specialist employees such as technical experts, medical experts or environmental experts that work with hazardous materials in their regular jobs, who may be sent to the incident scene by the shipper, manufacturer or governmental agency to advise and assist the person in charge of the incident should have training on an annual basis. Their training should include the care and use of personal protective equipment including respirators; knowledge of the incident command system and how they are to relate to it; and those areas needed to keep them current in their respective field as it relates to safety and health involving specific hazardous substances.

Those skilled support personnel, such as employees who work for public works departments or equipment operators who operate bulldozers, sand trucks, backhoes, etc., who may be called to the incident scene to provide emergency support assistance, should have at least a safety and health briefing before entering the area of potential or actual exposure. These skilled support personnel, who have not been a part of the emergency response plan and do not meet

the training requirements, should be made aware of the hazards they face and should be provided all necessary protective clothing and equipment required for their tasks.

There are two National Fire Protection Association standards, NFPA 472—"Standard for Professional Competence of Responders to Hazardous Material Incidents" and NFPA 471—"Recommended Practice for Responding to Hazardous Material Incidents", which are excellent resource documents to aid fire departments and other emergency response organizations in developing their training program materials. NFPA 472 provides guidance on the skills and knowledge needed for first responder awareness level, first responder operations level, hazmat technicians, and hazmat specialist. It also offers guidance for the officer corp who will be in charge of hazardous substance incidents.

3. *Decontamination.* Decontamination procedures should be tailored to the specific hazards of the site, and may vary in complexity and number of steps, depending on the level of hazard and the employee's exposure to the hazard. Decontamination procedures and PPE decontamination methods will vary depending upon the specific substance, since one procedure or method may not work for all substances. Evaluation of decontamination methods and procedures should be performed, as necessary, to assure that employees are not exposed to hazards by re-using PPE. References in appendix D may be used for guidance in establishing an effective decontamination program. In addition, the U.S. Coast Guard's Manual, "Policy Guidance for Response to Hazardous Chemical Releases," U.S. Department of Transportation, Washington, DC (COMDTINST M16465.30) is a good reference for establishing an effective decontamination program.

4. *Emergency response plans.* States, along with designated districts within the states, will be developing or have developed local emergency response plans. These state and district plans should be utilized in the emergency response plans called for in the standard. Each employer should assure that its emergency response plan is compatible with the local plan. The major reference being used to aid in developing the state and local district plans is the *Hazardous Materials Emergency Planning Guide*, NRT–1. The current Emergency Response Guidebook from the U.S. Department of Transportation, CMA's CHEMTREC and the Fire Service Emergency Management Handbook may also be used as resources.

Employers involved with treatment, storage, and disposal facilities for hazardous waste, which have the required contingency plan called for by their permit, would not need to duplicate the same planning elements. Those items of the emergency response plan that are properly addressed in the contingency plan may be substituted into the emergency response plan required in 1926.65 or otherwise kept together for employer and employee use.

5. *Personal protective equipment programs.* The purpose of personal protective clothing and equipment (PPE) is to shield or isolate individuals from the chemical, physical, and biologic hazards that may be encountered at a hazardous substance site.

As discussed in appendix B, no single combination of protective equipment and clothing is capable of protecting against all hazards. Thus PPE should be used in conjunction with other protective methods and its effectiveness evaluated periodically.

The use of PPE can itself create significant worker hazards, such as heat stress, physical and psychological stress, and impaired vision, mobility, and communication. For any given situation, equipment and clothing should be selected that provide an adequate level of protection. However, over-protection, as well as under-protection, can be hazardous and should be avoided where possible.

Two basic objectives of any PPE program should be to protect the wearer from safety and health hazards, and to prevent injury to the wearer from incorrect use and/or malfunction of the PPE. To accomplish these goals, a comprehensive PPE program should include hazard identification, medical monitoring, environmental surveillance, selection, use, maintenance, and decontamination of PPE and its associated training.

The written PPE program should include policy statements, procedures, and guidelines. Copies should be made available to all employees, and a reference copy should be made available at the worksite. Technical data on equipment, maintenance manuals, relevant regulations, and other essential information should also be collected and maintained.

6. *Incident command system (ICS).* Paragraph 1926.65(q)(3)(ii) requires the implementation of an ICS. The ICS is an organized approach to effectively control and *manage* operations at an emergency incident. The individual in charge of the ICS is the senior official responding to the incident. The ICS is not much different than the "command post" approach used for many years by the fire service. During large complex fires involving several companies and many pieces of apparatus, a command post would be established. This enabled *one* individual to be in charge of managing the incident, rather than having several officers from different companies making separate, and sometimes conflicting, decisions. The individual in charge of the command post would delegate responsibility for performing various tasks to subordinate officers. Additionally, all communications were routed through the command post to reduce the number of radio transmissions and eliminate confusion. However, strategy, tactics, and all decisions were made by one individual.

The ICS is a very similar system, except it is implemented for emergency response to all incidents, both large and small, that involve hazardous substances.

For a small incident, the individual in charge of the ICS may perform many tasks of the ICS. There may not be any, or little, delegation of tasks to subordinates. For example, in response to a small incident, the individual in charge of the ICS, in addition to normal command activities, may become the safety officer and may designate only one employee (with proper equipment) as a back-up to provide assistance if needed. OSHA does recommend, however, that at least two employees be designated as back-up personnel since the assistance needed may include rescue.

To illustrate the operation of the ICS, the following scenario might develop during a small incident, such as an overturned tank truck with a small leak of flammable liquid.

The first responding senior officer would implement and take command of the ICS. That person would size-up the incident and determine if additional personnel and apparatus were necessary; would determine what actions to take to control the leak; and, determine the proper level of personal protective equipment. If additional assistance is not needed, the individual in charge of the ICS would implement actions to stop and control the leak using the fewest number of personnel that can effectively accomplish the tasks. The individual in charge of the ICS then would designate himself as the safety officer and two other employees as a back-up in case rescue may become necessary. In this scenario, decontamination procedures would not be necessary.

A large complex incident may require many employees and difficult, time-consuming efforts to control. In these situations, the individual in charge of the ICS will want to delegate different tasks to subordinates in order to maintain a span of control that will keep the number of subordinates, that are reporting, to a manageable level.

Delegation of task at large incidents may be by location, where the incident scene is divided into sectors, and subordinate officers coordinate activities within the sector that they have been assigned.

Delegation of tasks can also be by function. Some of the functions that the individual in charge of the ICS may want to delegate at a large incident are: medical services; evacuation; water supply; resources (equipment, apparatus); media relations; safety; and, site control (integrate activities with police for crowd and traffic control). Also for a large incident, the individual in charge of the ICS will designate several employees as back-up personnel; and a number of safety officers to monitor conditions and recommend safety precautions.

Therefore, no matter what size or complexity an incident may be, by implementing an ICS there will be *one individual in charge* who makes the decisions and gives directions; and, all actions, and communications are coordinated through one central point of command. Such a system should reduce confusion, improve safety, organize and coordinate actions, and should facilitate effective management of the incident.

7. *Site Safety and Control Plans.* The safety and security of response personnel and others in the area of an emergeny response incident site should be of primary concern to the incident commander. The use of a site safety and control plan could greatly assist those in charge of assuring the safety and health of employees on the site.

A comprehensive site safety and control plan should include the following: summary

analysis of hazards on the site and a risk analysis of those hazards; site map or sketch; site work zones (clean zone, transition or decontamination zone, work or hot zone); use of the buddy system; site communications; command post or command center; standard operating procedures and safe work practices; medical assistance and triage area; hazard monitoring plan (air contaminate monitoring, etc.); decontamination procedures and area; and other relevant areas. This plan should be a part of the employer's emergency response plan or an extension of it to the specific site.

8. *Medical surveillance programs.* Workers handling hazardous substances may be exposed to toxic chemicals, safety hazards, biologic hazards, and radiation. Therefore, a medical surveillance program is essential to assess and monitor workers' health and fitness for employment in hazardous waste operations and during the course of work; to provide emergency and other treatment as needed; and to keep accurate records for future reference.

The *Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities* developed by the National Institute for Occupational Safety and Health (NIOSH), the Occupational Safety and Health Administration (OSHA), the U.S. Coast Guard (USCG), and the Environmental Protection Agency (EPA); October 1985 provides an excellent example of the types of medical testing that should be done as part of a medical surveillance program.

9. *New Technology and Spill Containment Programs.* Where hazardous substances may be released by spilling from a container that will expose employees to the hazards of the materials, the employer will need to implement a program to contain and control the spilled material. Diking and ditching, as well as use of absorbents like diatomaceous earth, are traditional techniques which have proven to be effective over the years. However, in recent years new products have come into the marketplace, the use of which complement and increase the effectiveness of these traditional methods. These new products also provide emergency responders and others with additional tools or agents to use to reduce the hazards of spilled materials.

These agents can be rapidly applied over a large area and can be uniformly applied or otherwise can be used to build a small dam, thus improving the workers' ability to control spilled material. These application techniques enhance the intimate contact between the agent and the spilled material allowing for the quickest effect by the agent or quickest control of the spilled material. Agents are available to solidify liquid spilled materials, to suppress vapor generation from spilled materials, and to do both. Some special agents, which when applied as recommended by the manufacturer, will react in a controlled manner with the spilled material to neutralize acids or caustics, or greatly reduce the level of hazard of the spilled material.

There are several modern methods and devices for use by emergency response personnel or others involved with spill control efforts to safely apply spill control agents to control spilled material hazards. These include portable pressurized applicators similar to hand-held portable fire extinguishing devices, and nozzle and hose systems similar to portable fire fighting foam systems which allow the operator to apply the agent without having to come into contact with the spilled material. The operator is able to apply the agent to the spilled material from a remote position.

The solidification of liquids provides for rapid containment and isolation of hazardous substance spills. By directing the agent at run-off points or at the edges of the spill, the reactant solid will automatically create a barrier to slow or stop the spread of the material. Clean-up of hazardous substances is greatly improved when solidifying agents, acid or caustic neutralizers, or activated carbon adsorbents are used. Properly applied, these agents can totally solidify liquid hazardous substances or neutralize or absorb them, which results in materials which are less hazardous and easier to handle, transport, and dispose of. The concept of spill treatment, to create less hazardous substances, will improve the safety and level of protection of employees working at spill clean-up operations or emergency response operations to spills of hazardous substances.

The use of vapor suppression agents for volatile hazardous substances, such as flammable liquids and those substances which present an inhalation hazard, is important for protecting workers. The rapid and uniform distribution of the agent over the surface of the spilled material can provide quick vapor knockdown. There are temporary and long-term foam-type agents which are effective on vapors and dusts, and activated carbon adsorption agents which are effective for vapor control and soaking-up of the liquid. The proper use of hose lines or hand-held portable pressurized applicators provides good mobility and permits the worker to deliver the agent from a safe distance without having to step into the untreated spilled material. Some of these systems can be recharged in the field to provide coverage of larger spill areas than the design limits of a single charged applicator unit. Some of the more effective agents can solidify the liquid flammable hazardous substances and at the same time elevate the flashpoint above 140° F so the resulting substance may be handled as a nonhazardous waste material if it meets the U.S. Environmental Protection Agency's 40 CFR part 261 requirements (See particularly § 261.21).

All workers performing hazardous substance spill control work are expected to wear the proper protective clothing and equipment for the materials present and to follow the employer's established standard operating procedures for spill control. All involved workers need to be trained in the established operating procedures; in the use and care of spill control equipment; and in the associated hazards and control of such hazards of spill containment work.

These new tools and agents are the things that employers will want to evaluate as part of their new technology program. The treatment of spills of hazardous substances or wastes at an emergency incident as part of the immediate spill containment and control efforts is sometimes acceptable to EPA and a permit exception is described in 40 CFR 264.1(g)(8) and 265.1(c)(11).

Appendix D to § 1926.65—References

The following references may be consulted for further information on the subject of this standard:

1. OSHA Instruction DFO CPL 2.70—January 29, 1986, *Special Emphasis Program: Hazardous Waste Sites.*

2. OSHA Instruction DFO CPL 2–2.37A—January 29, 1986, *Technical Assistance and Guidelines for Superfund and Other Hazardous Waste Site Activities.*

3. OSHA Instruction DTS CPL 2.74—January 29, 1986, *Hazardous Waste Activity Form, OSHA 175.*

4. *Hazardous Waste Inspections Reference Manual,* U.S. Department of Labor, Occupational Safety and Health Administration, 1986.

5. Memorandum of Understanding Among the National Institute for Occupational Safety and Health, the Occupational Safety and Health Administration, the United States Coast Guard, and the United States Environmental Protection Agency, *Guidance for Worker Protection During Hazardous Waste Site Investigations and Clean-up and Hazardous Substance Emergencies.* December 18, 1980.

6. *National Priorities List,* 1st Edition, October 1984; U.S. Environmental Protection Agency, Revised periodically.

7. *The Decontamination of Response Personnel,* Field Standard Operating Procedures (F.S.O.P.) 7; U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, December 1984.

8. *Preparation of a Site Safety Plan,* Field Standard Operating Procedures (F.S.O.P.) 9; U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, April 1985.

9. *Standard Operating Safety Guidelines;* U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, Environmental Response Team; November 1984.

10. *Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities,* National Institute for Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), U.S. Coast Guard (USCG), and Environmental Protection Agency (EPA); October 1985.

11. *Protecting Health and Safety at Hazardous Waste Sites: An Overview,* U.S. Environmental Protection Agency, EPA/625/9–85/006; September 1985.

12. *Hazardous Waste Sites and Hazardous Substance Emergencies,* NIOSH Worker Bulletin, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health; December 1982.

13. *Personal Protective Equipment for Hazardous Materials Incidents: A Selection Guide;* U.S. Department of Health and Human Services, Public Health Service,

Centers for Disease Control, National Institute for Occupational Safety and Health; October 1984.

14. *Fire Service Emergency Management Handbook*, International Association of Fire Chiefs Foundation, 101 East Holly Avenue, Unit 10B, Sterling, VA 22170, January 1985.

15. *Emergency Response Guidebook*, U.S Department of Transportation, Washington, DC, 1987.

16. *Report to the Congress on Hazardous Materials Training, Planning and Preparedness*, Federal Emergency Management Agency, Washington, DC, July 1986.

17. *Workbook for Fire Command*, Alan V. Brunacini and J. David Beageron, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, 1985.

18. *Fire Command*, Alan V. Brunacini, National Fire Protection Association, Batterymarch Park,, Quincy, MA 02269, 1985.

19. *Incident Command System*, Fire Protection Publications, Oklahoma State University, Stillwater, OK 74078, 1983.

20. *Site Emergency Response Planning*, Chemical Manufacturers Association, Washington, DC 20037, 1986.

21. *Hazardous Materials Emergency Planning Guide*, NRT–1, Environmental Protection Agency, Washington, DC, March 1987.

22. *Community Teamwork: Working Together to Promote Hazardous Materials Transportation Safety*. U.S. Department of Transportation, Washington, DC, May 1983.

23. *Disaster Planning Guide for Business and Industry*, Federal Emergency Management Agency, Publication No. FEMA 141, August 1987.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 1218–0139)

13. In subpart D, a new § 1926.66 is added to read as follows:

§ 1926.66 Criteria for design and construction of spray booths.

(a) *Definitions applicable to this section*—(1) *Aerated solid powders.* Aerated powders shall mean any powdered material used as a coating material which shall be fluidized within a container by passing air uniformly from below. It is common practice to fluidize such materials to form a fluidized powder bed and then dip the part to be coated into the bed in a manner similar to that used in liquid dipping. Such beds are also used as sources for powder spray operations.

(2) *Spraying area.* Any area in which dangerous quantities of flammable vapors or mists, or combustible residues, dusts, or deposits are present due to the operation of spraying processes.

(3) *Spray booth.* A power-ventilated structure provided to enclose or accommodate a spraying operation to confine and limit the escape of spray, vapor, and residue, and to safely conduct or direct them to an exhaust system.

(4) *Waterwash spray booth.* A spray booth equipped with a water washing system designed to minimize dusts or residues entering exhaust ducts and to permit the recovery of overspray finishing material.

(5) *Dry spray booth.* A spray booth not equipped with a water washing system as described in paragraph (a)(4) of this section. A dry spray booth may be equipped with

(i) Distribution or baffle plates to promote an even flow of air through the booth or cause the deposit of overspray before it enters the exhaust duct; or

(ii) Overspray dry filters to minimize dusts; or

(iii) overspray dry filters to minimize dusts or residues entering exhaust ducts; or

(iv) Overspray dry filter rolls designed to minimize dusts or residues entering exhaust ducts; or

(v) Where dry powders are being sprayed, with powder collection systems so arranged in the exhaust to capture oversprayed material.

(6) *Fluidized bed.* A container holding powder coating material which is aerated from below so as to form an air-supported expanded cloud of such material through which the preheated object to be coated is immersed and transported.

(7) *Electrostatic fluidized bed.* A container holding powder coating material which is aerated from below so as to form an air-supported expanded cloud of such material which is electrically charged with a charge opposite to the charge of the object to be coated; such object is transported, through the container immediately above the charged and aerated materials in order to be coated.

(8) *Approved.* Shall mean approved and listed by a nationally recognized testing laboratory.

(9) *Listed.* See "approved" in paragraph (a)(8) of this section.

(b) *Spray booths*—(1) *Construction.* Spray booths shall be substantially constructed of steel, securely and rigidly supported, or of concrete or masonry except that aluminum or other substantial noncombustible material may be used for intermittent or low volume spraying. Spray booths shall be designed to sweep air currents toward the exhaust outlet.

(2) *Interiors.* The interior surfaces of spray booths shall be smooth and continuous without edges and otherwise designed to prevent pocketing of residues and facilitate cleaning and washing without injury.

(3) *Floors.* The floor surface of a spray booth and operator's working area, if combustible, shall be covered with noncombustible material of such character as to facilitate the safe cleaning and removal of residues.

(4) *Distribution or baffle plates.* Distribution or baffle plates, if installed to promote an even flow of air through the booth or cause the deposit of overspray before it enters the exhaust duct, shall be of noncombustible material and readily removable or accessible on both sides for cleaning. Such plates shall not be located in exhaust ducts.

(5) *Dry type overspray collectors—(exhaust air filters).* In conventional dry type spray booths, overspray dry filters or filter rolls, if installed, shall conform to the following:

(i) The spraying operations except electrostatic spraying operations shall be so designed, installed and maintained that the average air velocity over the open face of the booth (or booth cross section during spraying operations) shall be not less than 100 linear feet per minute. Electrostatic spraying operations may be conducted with an air velocity over the open face of the booth of not less than 60 linear feet per minute, or more, depending on the volume of the finishing material being applied and its flammability and explosion characteristics. Visible gauges or audible alarm or pressure activated devices shall be installed to indicate or insure that the required air velocity is maintained. Filter rolls shall be inspected to insure proper replacement of filter media.

(ii) All discarded filter pads and filter rolls shall be immediately removed to a safe, well-detached location or placed in a water-filled metal container and disposed of at the close of the day's operation unless maintained completely in water.

(iii) The location of filters in a spray booth shall be so as to not reduce the effective booth enclosure of the articles being sprayed.

(iv) Space within the spray booth on the downstream and upstream sides of filters shall be protected with approved automatic sprinklers.

(v) Filters or filter rolls shall not be used when applying a spray material known to be highly susceptible to spontaneous heating and ignition.

(vi) Clean filters or filter rolls shall be noncombustible or of a type having a combustibility not in excess of class 2 filters as listed by Underwriters' Laboratories, Inc. Filters and filter rolls shall not be alternately used for different types of coating materials.

where the combination of materials may be conducive to spontaneous ignition.

(6) *Frontal area.* Each spray booth having a frontal area larger than 9 square feet shall have a metal deflector or curtain not less than 2 ½ inches (5.35 cm) deep installed at the upper outer edge of the booth over the opening.

(7) *Conveyors.* Where conveyors are arranged to carry work into or out of spray booths, the openings therefor shall be as small as practical.

(8) *Separation of operations.* Each spray booth shall be separated from other operations by not less than 3 feet (0.912 m), or by a greater distance, or by such partition or wall as to reduce the danger from juxtaposition of hazardous operations. See also paragraph (c)(1) of this section.

(9) *Cleaning.* Spray booths shall be so installed that all portions are readily accessible for cleaning. A clear space of not less than 3 feet (0.912 m) on all sides shall be kept free from storage or combustible construction.

(10) *Illumination.* When spraying areas are illuminated through glass panels or other transparent materials, only fixed lighting units shall be used as a source of illumination. Panels shall effectively isolate the spraying area from the area in which the lighting unit is located, and shall be of a noncombustible material of such a nature or so protected that breakage will be unlikely. Panels shall be so arranged that normal accumulations of residue on the exposed surface of the panel will not be raised to a dangerous temperature by radiation or conduction from the source of illumination.

(c) *Electrical and other sources of ignition*—(1) *Conformance.* All electrical equipment, open flames and other sources of ignition shall conform to the requirements of this paragraph, except as follows:

(i) Electrostatic apparatus shall conform to the requirements of paragraphs (e) and (f) of this section;

(ii) Drying, curing, and fusion apparatus shall conform to the requirements of paragraph (g) of this section;

(iii) [Reserved]

(iv) Powder coating equipment shall conform to the requirements of paragraph (c)(1) of this section.

(2) *Minimum separation.* There shall be no open flame or spark producing equipment in any spraying area nor within 20 feet (6.08 m) thereof, unless separated by a partition.

(3) *Hot surfaces.* Space-heating appliances, steampipes, or hot surfaces shall not be located in a spraying area where deposits of combustible residues may readily accumulate

(4) *Wiring conformance.* Electrical wiring and equipment shall conform to the provisions of this paragraph and shall otherwise be in accordance with subpart S of this part.

(5) *Combustible residues, areas.* Unless specifically approved for locations containing both deposits of readily ignitable residue and explosive vapors, there shall be no electrical equipment in any spraying area, whereon deposits of combustible residues may readily accumulate, except wiring in rigid conduit or in boxes or fittings containing no taps, splices, or terminal connections.

(6) *Wiring type approved.* Electrical wiring and equipment not subject to deposits of combustible residues but located in a spraying area as herein defined shall be of explosion-proof type approved for Class I, group D locations and shall otherwise conform to the provisions of subpart S of this part, for Class I, Division 1, Hazardous Locations. Electrical wiring, motors, and other equipment outside of but within 20 feet (6.08 m) of any spraying area, and not separated therefrom by partitions, shall not produce sparks under normal operating conditions and shall otherwise conform to the provisions of subpart S of this part for Class I, Division 2 Hazardous Locations.

(7) *Lamps.* Electric lamps outside of, but within 20 feet (6.08 m) of any spraying area, and not separated therefrom by a partition, shall be totally enclosed to prevent the falling of hot particles and shall be protected from mechanical injury by suitable guards or by location.

(8) *Portable lamps.* Portable electric lamps shall not be used in any spraying area during spraying operations. Portable electric lamps, if used during cleaning or repairing operations, shall be of the type approved for hazardous Class I locations.

(9) *Grounding.* (i) All metal parts of spray booths, exhaust ducts, and piping systems conveying flammable or combustible liquids or aerated solids shall be properly electrically grounded in an effective and permanent manner.

(d) *Ventilation*—(1) *Conformance.* Ventilating and exhaust systems shall be in accordance with the Standard for Blower and Exhaust Systems for Vapor Removal, NFPA No. 91–1961, where applicable and shall also conform to the provisions of this section.

(2) *General.* All spraying areas shall be provided with mechanical ventilation adequate to remove flammable vapors, mists, or powders to a safe location and to confine and control combustible residues so that life is not endangered. Mechanical ventilation shall be kept in operation at all times while spraying operations are being conducted and for a sufficient time thereafter to allow vapors from drying coated articles and drying finishing material residue to be exhausted.

(3) *Independent exhaust.* Each spray booth shall have an independent exhaust duct system discharging to the exterior of the building, except that multiple cabinet spray booths in which identical spray finishing material is used with a combined frontal area of not more than 18 square feet may have a common exhaust. If more than one fan serves one booth, all fans shall be so interconnected that one fan cannot operate without all fans being operated.

(4) *Fan-rotating element.* The fan-rotating element shall be nonferrous or nonsparking or the casing shall consist of or be lined with such material. There shall be ample clearance between the fan-rotating element and the fan casing to avoid a fire by friction, necessary allowance being made for ordinary expansion and loading to prevent contact between moving parts and the duct or fan housing. Fan blades shall be mounted on a shaft sufficiently heavy to maintain perfect alignment even when the blades of the fan are heavily loaded, the shaft preferably to have bearings outside the duct and booth. All bearings shall be of the self-lubricating type, or lubricated from the outside duct.

(5) *Electric motors.* Electric motors driving exhaust fans shall not be placed inside booths or ducts. See also paragraph (c) of this section.

(6) *Belts.* Belts shall not enter the duct or booth unless the belt and pulley within the duct or booth are thoroughly enclosed.

(7) *Exhaust ducts.* Exhaust ducts shall be constructed of steel and shall be substantially supported. Exhaust ducts without dampers are preferred; however, if dampers are installed, they shall be maintained so that they will be in a full open position at all times the ventilating system is in operation.

(i) Exhaust ducts shall be protected against mechanical damage and have a clearance from unprotected combustible construction or other combustible material of not less than 18 inches (45.72 cm).

(ii) If combustible construction is provided with the following protection applied to all surfaces within 18 inches (45.72 cm), clearances may be reduced to the distances indicated:

(a) 28-gage sheet metal on 1/4-inch asbestos mill board.	12 inches (30.48 cm).

(*b*) 28-gage sheet metal on 1/8-inch asbestos mill board spaced out 1 inch (2.54 cm) on noncombustible spacers.	9 inches (22.86 cm).
(*c*) 22-gage sheet metal on 1-inch rockwool batts reinforced with wire mesh or the equivalent.	3 inches (7.62 cm).
(*d*) Where ducts are protected with an approved automatic sprinkler system, properly maintained, the clearance required in paragraph (d)(7)(i) of this section may be reduced to 6 inches (15.24 cm).	

(8) *Discharge clearance.* Unless the spray booth exhaust duct terminal is from a water-wash spray booth, the terminal discharge point shall be not less than 6 feet from any combustible exterior wall or roof nor discharge in the direction of any combustible construction or unprotected opening in any noncombustible exterior wall within 25 feet (7.6 m).

(9) *Air exhaust.* Air exhaust from spray operations shall not be directed so that it will contaminate makeup air being introduced into the spraying area or other ventilating intakes, nor directed so as to create a nuisance. Air exhausted from spray operations shall not be recirculated.

(10) *Access doors.* When necessary to facilitate cleaning, exhaust ducts shall be provided with an ample number of access doors.

(11) *Room intakes.* Air intake openings to rooms containing spray finishing operations shall be adequate for the efficient operation of exhaust fans and shall be so located as to minimize the creation of dead air pockets.

(12) *Drying spaces.* Freshly sprayed articles shall be dried only in spaces provided with adequate ventilation to prevent the formation of explosive vapors. In the event adequate and reliable ventilation is not provided such drying spaces shall be considered a spraying area.

(e) *Fixed electrostatic apparatus*—(1) *Conformance.* Where installation and use of electrostatic spraying equipment is used, such installation and use shall conform to all other paragraphs of this section, and shall also conform to the requirements of this paragraph.

(2) *Type approval.* Electrostatic apparatus and devices used in connection with coating operations shall be of approved types.

(3) *Location.* Transformers, power packs, control apparatus, and all other electrical portions of the equipment, with the exception of high-voltage grids, electrodes, and electrostatic atomizing heads and their connections, shall be located outside of the spraying area, or shall otherwise conform to the requirements of paragraph (c) of this section.

(4) *Support.* Electrodes and electrostatic atomizing heads shall be adequately supported in permanent locations and shall be effectively insulated from the ground. Electrodes and electrostatic atomizing heads which are permanently attached to their bases, supports, or reciprocators, shall be deemed to comply with this section. Insulators shall be nonporous and noncombustible.

(5) *Insulators, grounding.* High-voltage leads to electrodes shall be properly insulated and protected from mechanical injury or exposure to destructive chemicals. Electrostatic atomizing heads shall be effectively and permanently supported on suitable insulators and shall be effectively guarded against accidental contact or grounding. An automatic means shall be provided for grounding the electrode system when it is electrically deenergized for any reason. All insulators shall be kept clean and dry.

(6) *Safe distance.* A safe distance shall be maintained between goods being painted and electrodes or electrostatic atomizing heads or conductors of at least twice the sparking distance. A suitable sign indicating this safe distance shall be conspicuously posted near the assembly.

(7) *Conveyors required.* Goods being painted using this process are to be supported on conveyors. The conveyors shall be so arranged as to maintain safe distances between the goods and the electrodes or electrostatic atomizing heads at all times. Any irregularly shaped or other goods subject to possible swinging or movement shall be rigidly supported to prevent such swinging or movement which would reduce the clearance to less than that specified in paragraph (e)(6) of this section.

(8) *Prohibition.* This process is not acceptable where goods being coated are manipulated by hand. When finishing materials are applied by electrostatic equipment which is manipulated by hand, see paragraph (f) of this section for applicable requirements.

(9) *Fail-safe controls.* Electrostatic apparatus shall be equipped with automatic controls which will operate without time delay to disconnect the power supply to the high voltage transformer and to signal the operator under any of the following conditions:

(i) Stoppage of ventilating fans or failure of ventilating equipment from any cause.

(ii) Stoppage of the conveyor carrying goods through the high voltage field.

(iii) Occurrence of a ground or of an imminent ground at any point on the high voltage system.

(iv) Reduction of clearance below that specified in paragraph (e)(6) of this section.

(10) *Guarding.* Adequate booths, fencing, railings, or guards shall be so placed about the equipment that they, either by their location or character or both, assure that a safe isolation of the process is maintained from plant storage or personnel. Such railings, fencing, and guards shall be of conducting material, adequately grounded.

(11) *Ventilation.* Where electrostatic atomization is used the spraying area shall be so ventilated as to insure safe conditions from a fire and health standpoint.

(12) *Fire protection.* All areas used for spraying, including the interior of the booth, shall be protected by automatic sprinklers where this protection is available. Where this protection is not available, other approved automatic extinguishing equipment shall be provided.

(f) *Electrostatic hand spraying equipment*—(1) *Application.* This paragraph shall apply to any equipment using electrostatically charged elements for the atomization and/or, precipitation of materials for coatings on articles, or for other similar purposes in which the atomizing device is hand held and manipulated during the spraying operation.

(2) *Conformance.* Electrostatic hand spraying equipment shall conform with the other provisions of this section.

(3) *Equipment approval and specifications.* Electrostatic hand spray apparatus and devices used in connection with coating operations shall be of approved types. The high voltage circuits shall be designed so as to not produce a spark of sufficient intensity to ignite any vapor-air mixtures nor result in appreciable shock hazard upon coming in contact with a grounded object under all normal operating conditions. The electrostatically charged exposed elements of the handgun shall be capable of being energized only by a switch which also controls the coating material supply.

(4) *Electrical support equipment.* Transformers, powerpacks, control apparatus, and all other electrical portions of the equipment, with the exception of the handgun itself and its connections to the power supply shall be located outside of the spraying area or shall otherwise conform to the

requirements of paragraph (c) of this section.

(5) *Spray gun ground.* The handle of the spraying gun shall be electrically connected to ground by a metallic connection and to be so constructed that the operator in normal operating position is in intimate electrical contact with the grounded handle.

(6) *Grounding-general.* All electrically conductive objects in the spraying area shall be adequately grounded. This requirement shall apply to paint containers, wash cans, and any other objects or devices in the area. The equipment shall carry a prominent permanently installed warning regarding the necessity for this grounding feature.

(7) *Maintenance of grounds.* Objects being painted or coated shall be maintained in metallic contact with the conveyor or other grounded support. Hooks shall be regularly cleaned to insure this contact and areas of contact shall be sharp points or knife edges where possible. Points of support of the object shall be concealed from random spray where feasible and where the objects being sprayed are supported from a conveyor, the point of attachment to the conveyor shall be so located as to not collect spray material during normal operation.

(8) *Interlocks.* The electrical equipment shall be so interlocked with the ventilation of the spraying area that the equipment cannot be operated unless the ventilation fans are in operation.

(9) *Ventilation.* The spraying operation shall take place within a spray area which is adequately ventilated to remove solvent vapors released from the operation.

(g) *Drying, curing, or fusion apparatus*—(1) *Conformance.* Drying, curing, or fusion apparatus in connection with spray application of flammable and combustible finishes shall conform to the Standard for Ovens and Furnaces, NFPA 86A–1969, where applicable and shall also conform with the following requirements of this paragraph.

(2) *Alternate use prohibited.* Spray booths, rooms, or other enclosures used for spraying operations shall not alternately be used for the purpose of drying by any arrangement which will cause a material increase in the surface temperature of the spray booth, room, or enclosure.

(3) *Adjacent system interlocked.* Except as specifically provided in paragraph (g)(4) of this section, drying, curing, or fusion units utilizing a heating system having open flames or which may produce sparks shall not be installed in a spraying area, but may be installed adjacent thereto when equipped with an interlocked ventilating system arranged to:

(i) Thoroughly ventilate the drying space before the heating system can be started;

(ii) Maintain a safe atmosphere at any source of ignition;

(iii) Automatically shut down the heating system in the event of failure of the ventilating system.

(4) *Alternate use permitted.* Automobile refinishing spray booths or enclosures, otherwise installed and maintained in full conformity with this section, may alternately be used for drying with portable electrical infrared drying apparatus when conforming with the following:

(i) Interior (especially floors) of spray enclosures shall be kept free of overspray deposits.

(ii) During spray operations, the drying apparatus and electrical connections and wiring thereto shall not be located within spray enclosure nor in any other location where spray residues may be deposited thereon.

(iii) The spraying apparatus, the drying apparatus, and the ventilating system of the spray enclosure shall be equipped with suitable interlocks so arranged that:

(*a*) The spraying apparatus cannot be operated while the drying apparatus is inside the spray enclosure.

(*b*) The spray enclosure will be purged of spray vapors for a period of not less than 3 minutes before the drying apparatus can be energized.

(*c*) The ventilating system will maintain a safe atmosphere within the enclosure during the drying process and the drying apparatus will automatically shut off in the event of failure of the ventilating system.

(iv) All electrical wiring and equipment of the drying apparatus shall conform with the applicable sections of Subpart S of this part. Only equipment of a type approved for Class I, Division 2 hazardous locations shall be located within 18 inches (45.72 cm) of floor level. All metallic parts of the drying apparatus shall be properly electrically bonded and grounded.

(v) The drying apparatus shall contain a prominently located, permanently attached warning sign indicating that ventilation should be maintained during the drying period and that spraying should not be conducted in the vicinity that spray will deposit on apparatus.

14. In Subpart E, new §§1926.95 through 1926.97 are added to read as follows

Subpart E—Personal Protective and Life Saving Equipment

§ 1926.95 Criteria for personal protective equipment.

(a) *Application.* Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

(b) *Employee-owned equipment.* Where employees provide their own protective equipment, the employer shall be responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment.

(c) *Design.* All personal protective equipment shall be of safe design and construction for the work to be performed.

§ 1926.96 Occupational foot protection.

Safety-toe footwear for employees shall meet the requirements and specifications in American National Standard for Men's Safety-Toe Footwear, Z41.1–1967.

§ 1926.97 Protective clothing for fire brigades.

The following requirements apply to those employees who perform interior structural fire fighting. The requirements do not apply to employees who use fire extinguishers or standpipe systems to control or extinguish fires only in the incipient stage.

(a) *General.* (1) The employer shall provide at no cost to the employee and assure the use of protective clothing which complies with the requirements of this paragraph. The employer shall assure that protective clothing ordered or purchased after July 1, 1981, meets the requirements contained in this paragraph. As the new equipment is provided, the employer shall assure that all fire brigade members wear the equipment when performing interior structural fire fighting. After July 1, 1985, the employer shall assure that all fire brigade members wear protective clothing meeting the requirements of this paragraph when performing interior structural fire fighting.

(2) The employer shall assure that protective clothing protects the head,

body, and extremities, and consists of at least the following components: foot and leg protection; hand protection; body protection; eye, face and head protection.

(b) *Foot and leg protection.* (1) Foot and leg protection shall meet the requirements of paragraphs (b) (2) and (3) of this section, and may be achieved by either of the following methods:

(i) Fully extended boots which provide protection for the legs; or

(ii) Protective shoes or boots worn in combination with protective trousers that meet the requirements of paragraph (c) of this section.

(2) Protective footwear shall meet the requirements of § 1926.96 for Class 75 footwear. In addition, protective footwear shall be water-resistant for at least 5 inches (12.7 cm) above the bottom of the heel and shall be equipped with slip-resistant outer soles.

(3) Protective footwear shall be tested in accordance with paragraph (f) of this section, and shall provide protection against penetration of the midsole by a size 8D common nail when at least 300 pounds (1330 N) of static force is applied to the nail.

(c) *Body protection.* (1) Body protection shall be coordinated with foot and leg protection to ensure full body protection for the wearer. This shall be achieved by one of the following methods:

(i) Wearing of a fire-resistive coat meeting the requirements of paragraph (c)(2) of this section in combination with fully extended boots meeting the requirements of paragraphs (b) (2) and (3) of this section; or

(ii) Wearing of a fire-resistive coat in combination with protective trousers both of which meet the requirements of paragraph (c)(2) of this section.

(2) The performance, construction, and testing of fire-resistive coats and protective trousers shall be at least equivalent to the requirements of the National Fire Protection Association (NFPA) standard NFPA No. 1971-1975, "Protective Clothing for Structural Fire Fighting," with the following permissible variations from those requirements:

(i) Tearing strength of the outer shell shall be a minimum of 8 pounds (35.6 N) in any direction when tested in accordance with paragraph (g) of this section; and

(ii) The outer shell may discolor but shall not separate or melt when placed in a forced air laboratory oven at a temperature of 500° F (260° C) for a period of five minutes. After cooling to ambient temperature and using the test method specified in paragraph (h) of this section, char length shall not exceed 4.0 inches (10.2 cm) and afterflame shall not exceed 2.0 seconds.

(d) *Hand protection.* (1) Hand protection shall consist of protective gloves or glove system which will provide protection against cut, puncture, and heat penetration. Gloves or glove system shall be tested in accordance with the test methods contained in the National Institute for Occupational Safety and Health (NIOSH) 1976 publication, "The Development of Criteria for Fire Fighter's Gloves; Vol. II, Part II: Test Methods," and shall meet the following criteria for cut, puncture, and heat penetration:

(i) Materials used for gloves shall resist surface cut by a blade with an edge having a 60° included angle and a .001 inch (.0025 cm.) radius, under an applied force of 16 lbf (72N), and at a slicing velocity of greater or equal to 60 in/min (2.5 cm./sec);

(ii) Materials used for the palm and palm side of the fingers shall resist puncture by a penetrometer (simulating a 4d lath nail), under an applied force of 13.2 lbf (60N), and at a velocity greater or equal to 20 in/min (.85 cm./sec); and

(iii) The temperature inside the palm and gripping surface of the fingers of gloves shall not exceed 135° F. (57° C.) when gloves or glove system are exposed to 932° F. (500° C.) for five seconds at 4 psi (28 kPa) pressure.

(2) Exterior materials of gloves shall be flame resistant and shall be tested in accordance with paragraph (h) of this section. Maximum allowable afterflame shall be 2.0 seconds, and the maximum char length shall be 4.0 inches (10.2 cm).

(3) When design of the fire-resistive coat does not otherwise provide protection for the wrists, protective gloves shall have wristlets of at least 4.0 inches (10.2 cm) in length to protect the wrist area when the arms are extended upward and outward from the body.

(e) *Head, eye and face protection.* (1) Head protection shall consist of a protective head device with ear flaps and chin strap which meet the performance, construction, and testing requirements of the National Fire Safety and Research Office of the National Fire Prevention and Control Administration, U.S. Department of Commerce (now known as the U.S. Fire Administration), which are contained in "Model Performance Criteria for Structural Firefighters' Helmets" (August 1977).

(2) Protective eye and face devices which comply with § 1926.102 shall be used by fire brigade members when performing operations where the hazards of flying or falling materials which may cause eye and face injuries are present. Protective eye and face devices provided as accessories to protective head devices (face shields) are permitted when such devices meet the requirements of § 1926.102.

(3) Full facepieces, helmets, or hoods of breathing apparatus which meet the requirements of §§ 1926.98 and 1926.103 of this part, shall be acceptable as meeting the eye and face protection requirements of this section.

(f) *Puncture resistance test method for foot protection*—(1) *Apparatus.* The puncture resistance test shall be performed on a testing machine having a movable platform adjusted to travel at ¼-inch/min (0.1 cm/sec). Two blocks of hardwood, metal, or plastic shall be prepared as follows: the blocks shall be of such size and thickness as to insure a suitable rigid test ensemble and allow for at least one-inch of the pointed end of an 8D nail to be exposed for the penetration. One block shall have a hole drilled to hold an 8D common nail firmly at an angle of 98 deg. The second block shall have a maximum ½-inch (1.3 cm) diameter hole drilled through it so that the hole will allow free passage of the nail after it penetrates the insole during the test.

(2) *Procedure.* The test ensemble consisting of the sample unit, the two prepared blocks, a piece of leather outsole 10 to 11 irons thick, and a new 8D nail, shall be placed as follows: the 8D nail in the hole, the sample of outsole stock superimposed above the nail, the area of the sole plate to be tested placed on the outsole, and the second block with hole so placed as to allow for free passage of the nail after it passes through the outsole stock and sole plate in that order. The machine shall be started and the pressure, in pounds required for the nail to completely penetrate the outsole and sole plate, recorded to the nearest five pounds. Two determinations shall be made on each sole plate and the results averaged. A new nail shall be used for each determination.

(3) *Source.* These test requirements are contained in "Military Specification For Fireman's Boots," MIL-B-2885D (1973 and amendment dated 1975) and are reproduced for your convenience.

(g) *Test method for determining the strength of cloth by tearing: Trapezoid Method*—(1) *Test specimen.* The specimen shall be a rectangle of cloth 3 inches by 6 inches (7.6 cm by 15.2 cm). The long dimension shall be parallel to the warp for warp tests and parallel to the filling for filling tests. No two specimens for warp tests shall contain the same warp yarns, nor shall any two specimens for filling tests contain the

same filling yarns. The specimen shall be taken no nearer the selvage than 1/10 the width of the cloth. An isosceles trapezoid having an altitude of 3 inches (7.6 cm) and bases of 1 inch (2.5 cm) and 4 inches (10.2 cm) in length, respectively, shall be marked on each specimen, preferably with the aid of a template. A cut approximately 3/8-inch (1 cm) in length shall then be made in the center of a perpendicular to the 1-inch (2.5 cm) edge.

(2) *Apparatus.* (i) Six-ounce (.17 kg) weight tension clamps shall be used so designed that the six ounces (.17 kg) of weight are distributed evenly across the complete width of the sample.

(ii) The machine shall consist of three main parts: Straining mechanism, clamps for holding specimen, and load and elongation recording mechanisms.

(iii) A machine wherein the specimen is held between two clamps and strained by a uniform movement of the pulling clamp shall be used.

(iv) The machine shall be adjusted so that the pulling clamp shall have a uniform speed of 12 ± 10.5 inches per minute (0.5 ± .02 cm/sec).

(v) The machine shall have two clamps with two jaws on each clamp. The design of the two clamps shall be such that one gripping surface or jaw may be an integral part of the rigid frame of the clamp or be fastened to allow a slight vertical movement, while the other gripping surface or jaw shall be completely moveable. The dimension of the immovable jaw of each clamp parallel to the application of the load shall measure one-inch, and the dimension of the jaw perpendicular to this direction shall measure three inches or more. The face of the movable jaw of each clamp shall measure one-inch by 3 inches (7.62 cm).

Each jaw face shall have a flat smooth, gripping surface. All edges which might cause a cutting action shall be rounded to a radius of not over 1/64-inch (.04 cm). In cases where a cloth tends to slip when being tested, the jaws may be faced with rubber or other material to prevent slippage. The distance between the jaws (gage length) shall be one-inch at the start of the test.

(vi) Calibrated dial; scale or chart shall be used to indicate applied load and elongation. The machine shall be adjusted or set, so that the maximum load required to break the specimen will remain indicated on the calibrated dial or scale after the test specimen has ruptured.

(vii) The machine shall be of such capacity that the maximum load required to break the specimen shall be not greater than 85 percent or less than 15 percent of the rated capacity.

(viii) The error of the machine shall not exceed 2 percent up to and including a 50-pound load (22.6 kg) and 1 percent over a 50-pound load (22.6 kg) at any reading within its loading range.

(ix) All machine attachments for determining maximum loads shall be disengaged during this test.

(3) *Procedure.* (i) The specimen shall be clamped in the machine along the nonparallel sides of the trapezoid so that these sides lie along the lower edge of the upper clamp and the upper edge of the lower clamp with the cut halfway between the clamps. The short trapezoid base shall be held taut and the long trapezoid base shall lie in the folds.

(ii) The machine shall be started and the force necessary to tear the cloth shall be observed by means of an autographic recording device. The speed of the pulling clamp shall be 12 inches ± 0.5 inch per minute (0.5 ± .02 cm/sec).

(iii) If a specimen slips between the jaws, breaks in or at the edges of the jaws, or if for any reason attributable to faulty technique, an individual measurement falls markedly below the average test results for the sample unit, such result shall be discarded and another specimen shall be tested.

(iv) The tearing strength of the specimen shall be the average of the five highest peak loads of resistance registered for 3 inches (7.6 cm) of separation of the tear.

(4) *Report.* (i) Five specimens in each of the warp and filling directions shall be tested from each sample unit.

(ii) The tearing strength of the sample unit shall be the average of the results obtained from the specimens tested in each of the warp and filling directions and shall be reported separately to the nearest 0.1-pound (.05 kg).

(5) *Source.* These test requirements are contained in "Federal Test Method Standard 191, Method 5136" and are reproduced for your convenience.

(h) *Test method for determining flame resistance of cloth; vertical*—(1) *Test specimen.* The specimen shall be a rectangle of cloth 2¾ inches (7.0 cm) by 12 inches (30.5 cm) with the long dimension parallel to either the warp or filling direction of the cloth. No two warp specimens shall contain the same warp yarns, and no two filling specimens shall contain the same filling yarn.

(2) *Number of determinations.* Five specimens from each of the warp and filling directions shall be tested from each sample unit.

(3) *Apparatus*—(i) *Cabinet.* A cabinet and accessories shall be fabricated in accordance with the requirements specified in Figures E–97.1, E–97.2, and E–97.3. Galvanized sheet metal or other suitable metal shall be used. The entire inside back wall of the cabinet shall be painted black to facilitate the viewing of the test specimen and pilot flame.

(ii) *Burner.* The burner shall be equipped with a variable orifice to adjust the flame height, a barrel having a 3/8-inch (1 cm) inside diameter and a pilot light.

(*a*) The burner may be constructed by combining a 3/8-inch (1 cm) inside diameter barrel 3 ± ¼ inches (7.6 ± .6 cm) long from a fixed orifice burner with a base from a variable orifice burner.

(*b*) The pilot light tube shall have a diameter of approximately 1/16-inch (.2 cm) and shall be spaced 1/8-inch (.3 cm) away from the burner edge with a pilot flame 1/8-inch (.3 cm) long.

(*c*) The necessary gas connections and the applicable plumbing shall be as specified in Figure E–97.4 except that a solenoid valve may be used in lieu of the stopcock valve to which the burner is attached. The stopcock valve or solenoid valve, whichever is used, shall be capable of being fully opened or fully closed in 0.1-second.

(*d*) On the side of the barrel of the burner, opposite the pilot light there shall be a metal rod of approximately 1/8-inch (.3 cm) diameter spaced ½-inch (1.3 cm) from the barrel and extending above the burner. The rod shall have two 5/16-inch (.8 cm) prongs marking the distances of 3/4-inch (1.9 cm) and 1½ inches (3.8 cm) above the top of the burner.

(*e*) The burner shall be fixed in a position so that the center of the barrel of the burner is directly below the center of the specimen.

(iii) There shall be a control valve system with a delivery rate designed to furnish gas to the burner under a pressure of 2½ ± ¼ (psi) (17.5 ± 1.8 kPa) per square inch at the burner inlet (see (g)(3)(vi)(A)). The manufacturer's recommended delivery rate for the valve system shall be included in the required pressure.

(iv) A synthetic gas mixture shall be of the following composition within the following limits (analyzed at standard conditions): 55 ± 3 percent hydrogen, 24 ± 1 percent methane, 3 ± 1 percent ethane, and 18 ± 1 percent carbon monoxide which will give a specific gravity of 0.365 ± 0.018 (air = 1) and a B.T.U. content of 540 ± 20 per cubic foot (20.1 ± 3.7 kJ/L)(dry basis) at 69.8° F (21° C).

(v) There shall be metal hooks and weights to produce a series of total loads to determine length of char. The metal hooks shall consist of No. 19 gage steel wire or equivalent and shall be made from 3-inch (7.6 cm) lengths of wire and

bent ½-inch (1.3 cm) from one end to a 45 degree hook. One end of the hook shall be fastened around the neck of the weight to be used.

(vi) There shall be a stop watch or other device to measure the burning time to 0.2-second.

(vii) There shall be a scale, graduated in 0.1 inch (.3 cm) to measure the length of char.

(4) *Procedure.* (i) The material undergoing test shall be evaluated for the characteristics of after-flame time and char length on each specimen.

(ii) All specimens to be tested shall be at moisture equilibrium under standard atmospheric conditions in accordance with paragraph (h)(3) of this section. Each specimen to be tested shall be exposed to the test flame within 20 seconds after removal from the standard atmosphere. In case of dispute, all testing will be conducted under Standard Atmospheric Conditions in accordance with paragraph (h)(3) of this section.

(iii) The specimen in its holder shall be suspended vertically in the cabinet in such a manner that the entire length of the specimen is exposed and the lower end is ¾-inch (1.9 cm) above the top of the gas burner. The apparatus shall be set up in a draft free area.

(iv) Prior to inserting the specimen, the pilot flame shall be adjusted to approximately ⅛-inch (.3 cm) in height measured from its lowest point to the tip.

The burner flame shall be adjusted by means of the needle valve in the base of the burner to give a flame height of 1½ inches (3.8 cm) with the stopcock fully open and the air supply to the burner shut off and taped. The 1½-inch (3.8 cm) flame height is obtained by adjusting the valve so that the uppermost portion (tip) of the flame is level with the tip of the metal prong (see Figure E–97.2) specified for adjustment of flame height. It is an important aspect of the evaluation that the flame height be adjusted with the tip of the flame level with the tip of the metal prong. After inserting the specimen, the stopcock shall be fully opened, and the burner flame applied vertically at the middle of the lower edge of the specimen for 12 seconds and the burner turned off. The cabinet door shall remain shut during testing.

(v) The after-flame shall be the time the specimen continues to flame after the burner flame is shut off.

(vi) After each specimen is removed, the test cabinet shall be cleared of fumes and smoke prior to testing the next specimen.

(vii) After both flaming and glowing have ceased, the char length shall be measured. The char length shall be the distance from the end of the specimen, which was exposed to the flame, to the end of a tear (made lengthwise) of the specimen through the center of the charred area as follows: The specimen shall be folded lengthwise and creased by hand along a line through the highest peak of the charred area. The hook shall be inserted in the specimen (or a hole, ¼-inch (.6 cm) diameter or less, punched out for the hook) at one side of the charred area ¼-inch (.6 cm) from the adjacent outside edge and ¼-inch (.6 cm) in from the lower end. A weight of sufficient size such that the weight and hook together shall equal the total tearing load required in Table E–97.1 of this section shall be attached to the hook.

(viii) A tearing force shall be applied gently to the specimen by grasping the corner of the cloth at the opposite edge of the char from the load and raising the specimen and weight clear of the supporting surface. The end of the tear shall be marked off on the edge and the char length measurement made along the undamaged edge.

Loads for determining char length applicable to the weight of the test cloth shall be as shown in Table E-97.1.

Table E-97.1[1]

Specified weight per square yard of cloth before any fire retardant treatment or coating—ounces	Total tearing weight for determining the charred length—pound
2.0 to 6.0.	0.25
Over 6.0 to 15.0.	0.50
Over 15.0 to 23.0.	0.75
Over 23.0.	1.0

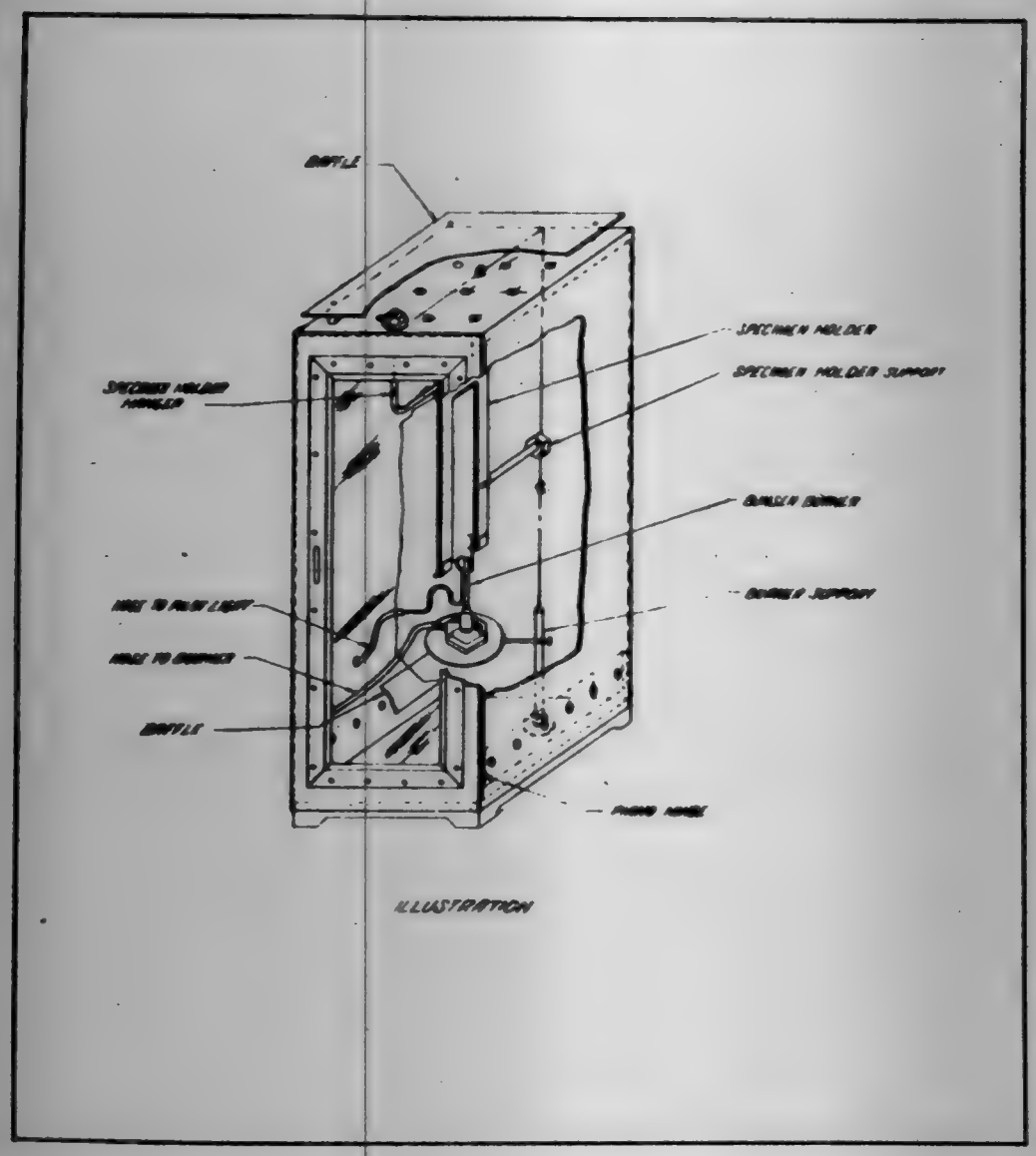
(1) To change into S.I. (System International) units, 1 ounce=28.35 grams, 1 pound=453 grams, 1 yard=.91 meter

(ix) The after-flame time of the specimen shall be recorded to the nearest 0.2-second and the char length to the nearest 0.1-inch (.3 cm).

(5) *Report.* (i) The after-flame time and char length of the sample unit shall be the average of the results obtained from the individual specimens tested. All values obtained from the individual specimens shall be recorded.

(ii) The after-flame time shall be reported to the nearest 0.2-second and the char length to the nearest 0.1-inch (.3 cm).

(6) *Source.* These test requirements are contained in "Federal Test Method Standard 191, Method 5903 (1971)" and are reproduced for your convenience.



ILLUSTRATION

Figure E–97.1—Vertical flame resistance textile apparatus.
All given System International (S.I.) Unit: 1-inch = 2.54 cm. dimensions are in inches.

Figure E
textile a
baffle.

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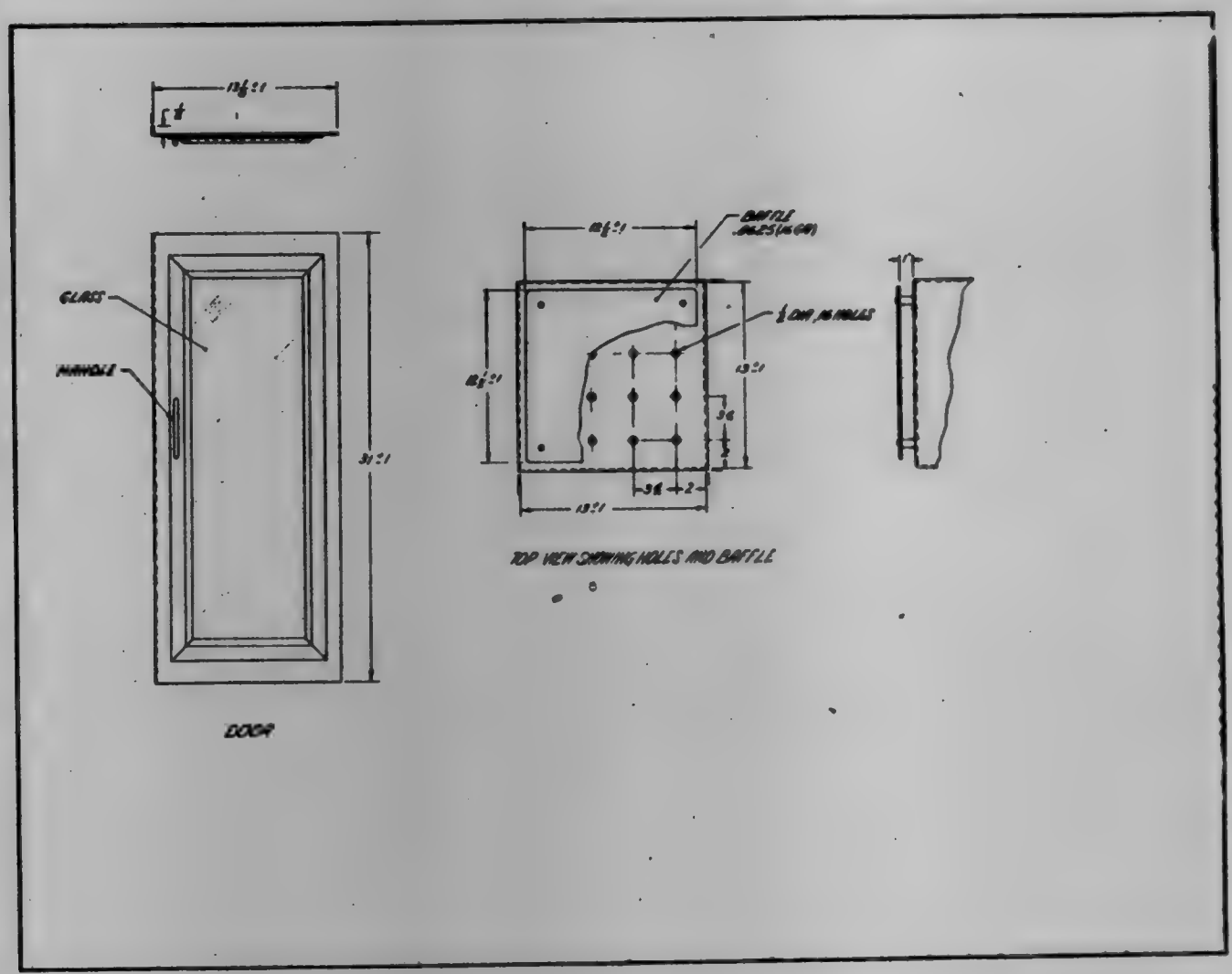

Figure E–97.2—Vertical flame resistance textile apparatus, door and top view w/ baffle.

All given dimensions are in inches. Systems International (S.I.) Unit: 1-inch = 2.54 cm.

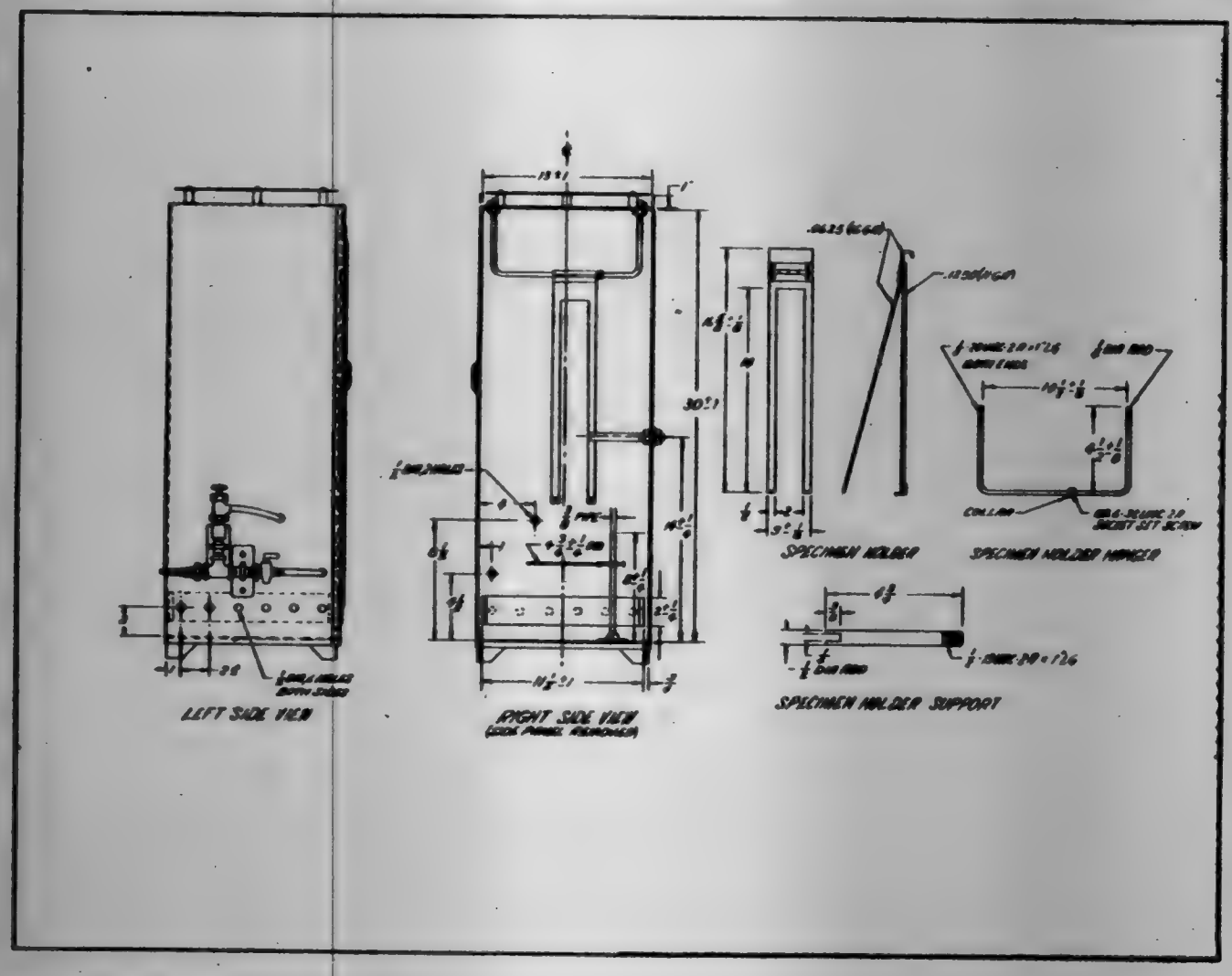

Figure E–97.3—Vertical flame resistance textile apparatus, view and details. All given dimensions are in inches. System International (S.I.) Unit: 1-inch = 2.54 cm.

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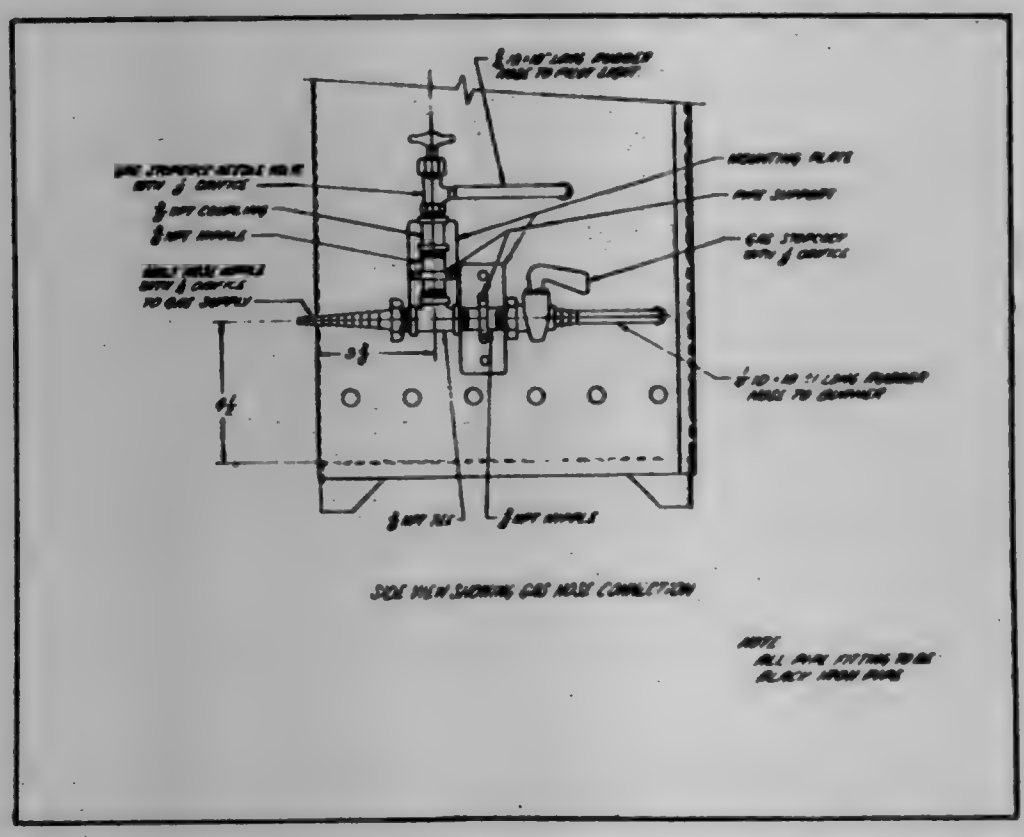

Figure E–97.4—Vertical flame resistance textile apparatus.
All given dimensions are in inches.
System International (S.I.) Unit: 1 inch = 2.54 cm.

15. A new § 1926.98 is added to read as follows:

§ 1926.98 Respiratory protection for fire brigades.

(a) *General requirements.* (1) The employer shall provide at no cost to the employee and assure the use of respirators which comply with the requirements of this paragraph. The employer shall assure that respiratory protective devices worn by fire brigade members meet the requirements contained in § 1926.103 and the requirements contained in this paragraph, and are certified under 30 CFR Part 11.

(2) Approved self-contained breathing apparatus with full-facepiece, or with approved helmet or hood configuration, shall be provided to and worn by fire brigade members while working inside buildings or confined spaces where toxic products of combustion or an oxygen deficiency may be present. Such apparatus shall also be worn during emergency situations involving toxic substances.

(3) Approved self-contained breathing apparatus may be equipped with either a ≥buddy-breathing≥ device or a quick disconnect valve, even if these devices are not certified by NIOSH. If these accessories are used, they shall not cause damage to the apparatus, or restrict the air flow of the apparatus, or obstruct the normal operation of the apparatus.

(4) Approved self-contained compressed air breathing apparatus may be used with approved cylinders from other approved self-contained compressed air breathing apparatus provided that such cylinders are of the same capacity and pressure rating. All compressed air cylinders used with self-contained breathing apparatus shall meet DOT and NIOSH criteria.

(5) Self-contained breathing apparatus shall have a minimum service life rating of 30 minutes in accordance with the methods and requirements of the Mine Safety and Health Administration (MSHA) and NIOSH, except for escape self-contained breathing apparatus (ESCBA) used only for emergency escape purposes.

(6) Self-contained breathing apparatus shall be provided with an indicator which automatically sounds an audible alarm when the remaining service life of the apparatus is reduced to within a range of 20 to 25 percent of its rated service time.

(b) *Positive-pressure breathing apparatus.* (1) The employer shall assure that self-contained breathing apparatus ordered or purchased after July 1, 1981, for use by fire brigade members performing interior structural fire fighting operations, are of the pressure-demand or other positive-pressure type. Effective July 1, 1983, only pressure-demand or other positive-pressure self-contained breathing apparatus shall be worn by fire brigade members performing interior structural fire fighting.

(2) This paragraph does not prohibit the use of a self-contained breathing apparatus where the apparatus can be switched from a demand to a positive-pressure mode. However, such apparatus shall be in the positive-pressure mode when fire brigade members are performing interior structural fire fighting operations.

(3) Negative-pressure self-contained breathing apparatus with a rated service life of more than 2 hours and which have a minimum protection factor of 5,000, as determined by an acceptable quantitative fit test performed on each individual, is acceptable for use only during those interior structural fire fighting situations for which the employer demonstrates that long duration breathing apparatus is necessary. Quantitative fit test procedures shall be available for inspection by the Assistant Secretary or authorized representative. Such negative-pressure breathing apparatus will continue to be acceptable for 18 months after a positive-pressure breathing apparatus with the same or longer-rated service life is certified by NIOSH. After this 18-month period, all self-contained breathing apparatus used for these long duration situations shall be of the positive-pressure type.

(Approved by the Office of Management and Budget under control number1218-0075)

§ 1926.99 [Reserved]

16. In § 1926.102, new paragraphs (a)(6) through (8) are added to read as follows:

§ 1926.102 Eye and face protection.

(a) *General.*

* * * * *

(6) Protectors shall meet the following minimum requirements:

(i) They shall provide adequate protection against the particular hazards for which they are designed.

(ii) They shall be reasonably comfortable when worn under the designated conditions.

(iii) They shall fit snugly and shall not unduly interfere with the movements of the wearer.

(iv) They shall be durable.

(v) They shall be capable of being disinfected.

(vi) They shall be easily cleanable.

(7) Every protector shall be distinctly marked to facilitate identification only of the manufacturer.

(8) When limitations or precautions are indicated by the manufacturer, they shall be transmitted to the user and care taken to see that such limitations and precautions are strictly observed.

17. New paragraphs (d) through (i) are added to § 1926.103. The text of the standards reads as follows:

§ 1926.103 Respiratory protection.

* * * * *

(d) *Permissible practice.* (1) In the control of those occupational diseases caused by breathing air contaminated with harmful dusts, fogs, fumes, mists, gases, smokes, sprays, or vapors, the primary objective shall be to prevent atmospheric contamination. This shall be accomplished as far as feasible by accepted engineering control measures (for example, enclosure or confinement of the operation, general and local ventilation, and substitution of less toxic materials). When effective engineering controls are not feasible, or while they are being instituted, appropriate respirators shall be used pursuant to the following requirements.

(2) Respirators shall be provided by the employer when such equipment is necessary to protect the health of the employee. The employer shall provide the respirators which are applicable and suitable for the purpose intended. The employer shall be responsible for the establishment and maintenance of a respiratory protective program which shall include the requirements outlined in paragraph (e) of this section.

(3) The employee shall use the provided respiratory protection in accordance with instructions and training received.

(e) *Requirements for a minimal acceptable program.* (1) Written standard operating procedures governing the selection and use of respirators shall be established.

(2) Respirators shall be selected on the basis of hazards to which the worker is exposed.

(3) The user shall be instructed and trained in the proper use of respirators and their limitations.

(4) [Reserved]

(5) Respirators shall be regularly cleaned and disinfected. Those used by more than one worker shall be thoroughly cleaned and disinfected after each use.

(6) Respirators shall be stored in a convenient, clean, and sanitary location.

(7) Respirators used routinely shall be inspected during cleaning. Worn or deteriorated parts shall be replaced. Respirators for emergency use such as self-contained devices shall be thoroughly inspected at least once a month and after each use.

(8) Appropriate surveillance of work area conditions and degree of employee exposure or stress shall be maintained.

(9) There shall be regular inspection and evaluation to determine the continued effectiveness of the program.

(10) Persons should not be assigned to tasks requiring use of respirators unless it has been determined that they are physically able to perform the work and use the equipment. The local physician shall determine what health and physical conditions are pertinent. The respirator user's medical status should be reviewed periodically (for instance, annually).

(11) Respirators shall be selected from among those jointly approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health under the provisions of 30 CFR part 11.

(f) *Air quality.* (1) Compressed air, compressed oxygen, liquid air, and liquid oxygen used for respiration shall be of high purity. Oxygen shall meet the requirements of the United States Pharmacopoeia for medical or breathing oxygen. Breathing air shall meet at least the requirements of the specification for Grade D breathing air as described in Compressed Gas Association Commodity Specification G–7.1–1966. Compressed oxygen shall not be used in supplied-air respirators or in open circuit self-contained breathing apparatus that have previously used compressed air. Oxygen must never be used with air line respirators.

(2) Breathing air may be supplied to respirators from cylinders or air compressors.

(i) Cylinders shall be tested and maintained as prescribed in the Shipping Container Specification Regulations of the Department of Transportation (49 CFR part 178).

(ii) The compressor for supplying air shall be equipped with necessary safety and standby devices. A breathing air-type compressor shall be used. Compressors shall be constructed and situated so as to avoid entry of contaminated air into the system and suitable in-line air purifying sorbent beds and filters installed to further assure breathing air quality. A receiver of sufficient capacity to enable the respirator wearer to escape from a contaminated atmosphere in event of compressor failure, and alarms to indicate compressor failure and overheating shall be installed in the system. If an oil-lubricated compressor is used, it shall have a high-temperature or carbon monoxide alarm, or both. If only a high-temperature alarm is used, the air from the compressor shall be frequently tested for carbon monoxide to insure that it meets the specifications in paragraph (f)(1) of this section.

(3) Air line couplings shall be incompatible with outlets for other gas systems to prevent inadvertent servicing of air line respirators with nonrespirable gases or oxygen.

(4) Breathing gas containers shall be marked in accordance with American National Standard Method of Marking Portable Compressed Gas Containers to Identify the Material Contained, Z48.1–1954; Federal Specification BB–A–1034a, June 21, 1968, Air, Compressed for Breathing Purposes; or Interim Federal Specification GG–B–00675b, April 27, 1965, Breathing Apparatus, Self-Contained.

(g) *Use of respirators.* (1) Standard procedures shall be developed for respirator use. These should include all information and guidance necessary for their proper selection, use, and care. Possible emergency and routine uses of respirators should be anticipated and planned for.

(2) The correct respirator shall be specified for each job. The respirator type is usually specified in the work procedures by a qualified individual supervising the respiratory protective program. The individual issuing them shall be adequately instructed to insure that the correct respirator is issued.

(3) Written procedures shall be prepared covering safe use of respirators in dangerous atmospheres that might be

encountered in normal operations or in emergencies. Personnel shall be familiar with these procedures and the available respirators.

(i) In areas where the wearer, with failure of the respirator, could be overcome by a toxic or oxygen-deficient atmosphere, at least one additional man shall be present. Communications (visual, voice, or signal line) shall be maintained between both or all individuals present. Planning shall be such that one individual will be unaffected by any likely incident and have the proper rescue equipment to be able to assist the other(s) in case of emergency.

(ii) When self-contained breathing apparatus or hose masks with blowers are used in atmospheres immediately dangerous to life or health, standby men must be present with suitable rescue equipment.

(iii) Persons using air line respirators in atmospheres immediately hazardous to life or health shall be equipped with safety harnesses and safety lines for lifting or removing persons from hazardous atmospheres or other and equivalent provisions for the rescue of persons from hazardous atmospheres shall be used. A standby man or men with suitable self-contained breathing apparatus shall be at the nearest fresh air base for emergency rescue.

(4) Respiratory protection is no better than the respirator in use, even though it is worn conscientiously. Frequent random inspections shall be conducted by a qualified individual to assure that respirators are properly selected, used, cleaned, and maintained.

(5) For safe use of any respirator, it is essential that the user be properly instructed in its selection, use, and maintenance. Both supervisors and workers shall be so instructed by competent persons. Training shall provide the men an opportunity to handle the respirator, have it fitted properly, test its face-piece-to-face seal, wear it in normal air for a long familiarity period, and, finally, to wear it in a test atmosphere.

(i) Every respirator wearer shall receive fitting instructions including demonstrations and practice in how the respirator should be worn, how to adjust it, and how to determine if it fits properly. Respirators shall not be worn when conditions prevent a good face seal. Such conditions may be a growth of beard, sideburns, a skull cap that projects under the facepiece, or temple pieces on glasses. Also, the absence of one or both dentures can seriously affect the fit of a facepiece. The worker's diligence in observing these factors shall be evaluated by periodic check. To assure proper protection, the facepiece fit shall be checked by the wearer each time he puts on the respirator. This may be done by following the manufacturer's facepiece fitting instructions.

(ii) Providing respiratory protection for individuals wearing corrective glasses is a serious problem. A proper seal cannot be established if the temple bars of eye glasses extend through the sealing edge of the full facepiece. As a temporary measure, glasses with short temple bars or without temple bars may be taped to the wearer's head. Wearing of contact lenses in contaminated atmospheres with a respirator shall not be allowed. Systems have been developed for mounting corrective lenses inside full facepieces. When a workman must wear corrective lenses as part of the facepiece, the facepiece and lenses shall be fitted by qualified individuals to provide good vision, comfort, and a gas-tight seal.

(iii) If corrective spectacles or goggles are required, they shall be worn so as not to affect the fit of the facepiece. Proper selection of equipment will minimize or avoid this problem.

(h) *Maintenance and care of respirators.* (1) A program for maintenance and care of respirators shall be adjusted to the type of plant, working conditions, and hazards involved, and shall include the following basic services:

(i) Inspection for defects (including a leak check),

(ii) Cleaning and disinfecting,

(iii) Repair,

(iv) Storage

Equipment shall be properly maintained to retain its original effectiveness.

(2) (i) All respirators shall be inspected routinely before and after each use. A respirator that is not routinely used but is kept ready for emergency use shall be inspected after each use and at least monthly to assure that it is in satisfactory working condition.

(ii) Self-contained breathing apparatus shall be inspected monthly. Air and oxygen cylinders shall be fully charged according to the manufacturer's instructions. It shall be determined that the regulator and warning devices function properly.

(iii) Respirator inspection shall include a check of the tightness of connections and the condition of the facepiece, headbands, valves, connecting tube, and canisters. Rubber or elastomer parts shall be inspected for pliability and signs of deterioration. Stretching and manipulating rubber or elastomer parts with a massaging action will keep them pliable and flexible and prevent them from taking a set during storage.

(iv) A record shall be kept of inspection dates and findings for respirators maintained for emergency use.

(3) Routinely used respirators shall be collected, cleaned, and disinfected as frequently as necessary to insure that proper protection is provided for the wearer. Respirators maintained for emergency use shall be cleaned and disinfected after each use.

(4) Replacement or repairs shall be done only by experienced persons with parts designed for the respirator. No attempt shall be made to replace components or to make adjustment or repairs beyond the manufacturer's recommendations. Reducing or admission valves or regulators shall be returned to the manufacturer or to a trained technician for adjustment or repair.

(5) (i) After inspection, cleaning, and necessary repair, respirators shall be stored to protect against dust, sunlight, heat, extreme cold, excessive moisture, or damaging chemicals. Respirators placed at stations and work areas for emergency use should be quickly accessible at all times and should be stored in compartments built for the purpose. The compartments should be clearly marked. Routinely used respirators, such as dust respirators, may be placed in plastic bags. Respirators should not be stored in such places as lockers or tool boxes unless they are in carrying cases or cartons.

(ii) Respirators should be packed or stored so that the facepiece and exhalation valve will rest in a normal position and function will not be impaired by the elastomer setting in an abnormal position.

(iii) Instructions for proper storage of emergency respirators, such as gas masks and self-contained breathing apparatus, are found in "use and care" instructions usually mounted inside the carrying case lid.

(i) *Identification of gas mask canisters.* (1) The primary means of identifying a gas mask canister shall be by means of properly worded labels. The secondary means of identifying a gas mask canister shall be by a color code.

(2) All who issue or use gas masks falling within the scope of this section shall see that all gas mask canisters purchased or used by them are properly labeled and colored in accordance with these requirements before they are placed in service and that the labels and colors are properly maintained at all times thereafter until the canisters have completely served their purpose.

(3) On each canister shall appear in bold letters the following:

(i)—

Canister for ————————
(Name for atmospheric contaminant)

or

Type N Gas Mask Canister

(ii) In addition, essentially the following wording shall appear beneath the appropriate phrase on the canister label: "For respiratory protection in atmospheres containing not more than ———— percent by volume of ————————."

(Name of atmospheric contaminant)

(4) Canisters having a special high-efficiency filter for protection against radionuclides and other highly toxic particulates shall be labeled with a statement of the type and degree of protection afforded by the filter. The label shall be affixed to the neck end of, or to the gray stripe which is around and near the top of, the canister. The degree of protection shall be marked as the percent of penetration of the canister by a 0.3–micron-diameter dioctyl phthalate (DOP) smoke at a flow rate of 85 liters per minute.

(5) Each canister shall have a label warning that gas masks should be used only in atmospheres containing sufficient oxygen to support life (at least 16 percent by volume), since gas mask canisters are only designed to neutralize or remove contaminants from the air.

(6) Each gas mask canister shall be painted a distinctive color or combination of colors indicated in Table E–5. All colors used shall be such that they are clearly identifiable by the user and clearly distinguishable from one another. The color coating used shall offer a high degree of resistance to chipping, scaling, peeling, blistering, fading, and the effects of the ordinary atmospheres to which they may be exposed under normal conditions of storage and use. Appropriately colored pressure sensitive tape may be used for the stripes.

TABLE E–5

Atmospheric contaminants to be protected against	Colors assigned [1]
Acid gases	White.
Hydrocyanic acid gas	White with ½-inch green stripe completely around the canister near the bottom.
Chlorine gas	White with ½-inch yellow stripe completely around the canister near the bottom.
Organic vapors	Black.
Ammonia gas	Green.
Acid gases and ammonia gas	Green with ½-inch white stripe completely around the canister near the bottom.
Carbon monoxide	Blue.
Acid gases and organic vapors	Yellow.
Hydrocyanic acid gas and chloropicrin vapor	Yellow with ½-inch blue stripe completely around the canister near the bottom.
Acid gases, organic vapors, and ammonia gases	Brown.
Radioactive materials, excepting tritium and noble gases	Purple (Magenta).
Particulates (dusts, fumes, mists, fogs, or smokes) in combination with any of the above gases or vapors.	Canister color for contaminant, as designated above, with ½-inch gray stripe completely around the canister near the top.
All of the above atmospheric contaminants	Red with ½-inch gray stripe completely around the canister near the top.

[1] Gray shall not be assigned as the main color for a canister designed to remove acids or vapors.

NOTE: Orange shall be used as a complete body, or stripe color to represent gases not included in this table. The user will need to refer to the canister label to determine the degree of protection the canister will afford.

(Approved by the Office of Management and Budget under control number 1218–0099)

Subpart F—Fire Protection and Prevention

18. In § 1926.150, new paragraphs (c)(1) (xi) through (xiv) are added to read as follows:

§ 1926.150 Fire protection.

* * * * *

(c) *Portable firefighting equipment—*

(1) *Fire extinguishers and small hose lines.*

* * * * *

(xi) *Employment and training.* Where the employer has provided portable fire extinguishers for employee use in the workplace, the employer shall also provide an educational program to familiarize employees with the general principles of fire extinguisher use and the hazards involved with incipient stage fire fighting.

(xii) The employer shall provide the education required in paragraph (c)(1)(xi) of this section upon initial employment and at least annually thereafter.

(xiii) The employer shall assure that portable fire extinguishers are maintained in a fully charged and operable condition and kept in their designated places at all times except during use.

(xiv) The employer shall assure that portable fire extinguishers are subjected to an annual maintenance check. Stored pressure extinguishers do not require an internal examination. The employer shall record the annual maintenance date and retain this record for one year after the last entry or the life of the shell, whichever is less. The record shall be available to the Assistant Secretary upon request.

19. In § 1926.152, new paragraphs (b)(5) and (h) through (k) are added to read as follows:

§ 1926.152 Flammable and combustible liquids.

* * * * *

(b) *Indoor storage of flammable and combustible liquids.*

* * * * *

(5) *Quantity.* The quantity of flammable or combustible liquids kept in the vicinity of spraying operations shall be the minimum required for operations and should ordinarily not exceed a supply for 1 day or one shift. Bulk storage of portable containers of flammable or combustible liquids shall be in a separate, constructed building detached from other important

buildings or cut off in a standard manner.

* * * * *

(h) *Scope.* This section applies to the handling, storage, and use of flammable and combustible liquids with a flashpoint below 200° F (93.33° C). This section does not apply to:

(1) Bulk transportation of flammable and combustible liquids; and

(2) Storage, handling, and use of fuel oil tanks and containers connected with oil burning equipment.

(i) *Tank storage*—(1) *Design and construction of tanks*—(i) *Materials.* (A) Tanks shall be built of steel except as provided in paragraphs (i)(1)(i) (B) through (E) of this section.

(B) Tanks may be built of materials other than steel for installation underground or if required by the properties of the liquid stored. Tanks located above ground or inside buildings shall be of noncombustible construction.

(C) Tanks built of materials other than steel shall be designed to specifications embodying principles recognized as good engineering design for the material used.

(D) Unlined concrete tanks may be used for storing flammable or combustible liquids having a gravity of 40° API or heavier. Concrete tanks with special lining may be used for other services provided the design is in accordance with sound engineering practice.

(E) [Reserved]

(F) Special engineering consideration shall be required if the specific gravity of the liquid to be stored exceeds that of water or if the tanks are designed to contain flammable or combustible liquids at a liquid temperature below 0°F.

(ii) *Fabrication.* (A) [Reserved]

(B) Metal tanks shall be welded, riveted, and caulked, brazed, or bolted, or constructed by use of a combination of these methods. Filler metal used in brazing shall be nonferrous metal or an alloy having a melting point above 1000° F. and below that of the metal joined.

(iii) *Atmospheric tanks.* (A) Atmospheric tanks shall be built in accordance with acceptable good standards of design. Atmospheric tanks may be built in accordance with:

(1) Underwriters' Laboratories, Inc., Subjects No. 142, Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids, 1968; No. 58, Standard for Steel Underground Tanks for Flammable and Combustible Liquids, Fifth Edition, December 1961; or No. 80, Standard for Steel Inside Tanks for Oil-Burner Fuel, September 1963.

(2) American Petroleum Institute Standards No. 12A, Specification for Oil Storage Tanks with Riveted Shells, Seventh Edition, September 1951, or No. 650, Welded Steel Tanks for Oil Storage, Third Edition, 1966.

(3) American Petroleum Institute Standards No. 12B, Specification for Bolted Production Tanks, Eleventh Edition, May 1958, and Supplement 1, March 1962; No. 12D, Specification for Large Welded Production Tanks, Seventh Edition, August 1957; or No. 12F, Specification for Small Welded Production Tanks, Fifth Edition, March 1961. Tanks built in accordance with these standards shall be used only as production tanks for storage of crude petroleum in oil-producing areas.

(B) Tanks designed for underground service not exceeding 2,500 gallons (9,462.5 L) capacity may be used aboveground.

(C) Low-pressure tanks and pressure vessels may be used as atmospheric tanks.

(D) Atmospheric tanks shall not be used for the storage of a flammable or combustible liquid at a temperature at or above its boiling point.

(iv) *Low pressure tanks.* (A) The normal operating pressure of the tank shall not exceed the design pressure of the tank.

(B) Low-pressure tanks shall be built in accordance with acceptable standards of design. Low-pressure tanks may be built in accordance with:

(1) American Petroleum Institute Standard No. 620. Recommended Rules for the Design and Construction of Large, Welded, Low-Pressure Storage Tanks, Third Edition, 1966.

(2) The principles of the Code for Unfired Pressure Vessels, Section VIII of the ASME Boiler and Pressure Vessels Code, 1968.

(C) Atmospheric tanks built according to Underwriters' Laboratories, Inc., requirements in paragraph (i)(1)(iii)(A) of this section and shall be limited to 2.5 p.s.i.g. under emergency venting conditions.

This paragraph may be used for operating pressures not exceeding 1 p.s.i.g.

(D) Pressure vessels may be used as low-pressure tanks.

(v) *Pressure vessels.* (A) The normal operating pressure of the vessel shall not exceed the design pressure of the vessel.

(B) Pressure vessels shall be built in accordance with the Code for Unfired Pressure Vessels, Section VIII of the ASME Boiler and Pressure Vessel Code 1968.

(vi) *Provisions for internal corrosion.* When tanks are not designed in accordance with the American Petroleum Institute, American Society of Mechanical Engineers, or the Underwriters' Laboratories, Inc.'s, standards, or if corrosion is anticipated beyond that provided for in the design formulas used, additional metal thickness or suitable protective coatings or linings shall be provided to compensate for the corrosion loss expected during the design life of the tank.

(2) *Installation of outside aboveground tanks.*

(i) [Reserved]

(ii) *Spacing (shell-to-shell) between aboveground tanks.* (A) The distance between any two flammable or combustible liquid storage tanks shall not be less than 3 feet (0.912 m).

(B) Except as provided in paragraph (i)(2)(ii)(C) of this section, the distance between any two adjacent tanks shall not be less than one-sixth the sum of their diameters. When the diameter of one tank is less than one-half the diameter of the adjacent tank, the distance between the two tanks shall not be less than one-half the diameter of the smaller tank.

(C) Where crude petroleum in conjunction with production facilities are located in noncongested areas and have capacities not exceeding 126,000 gallons (3,000 barrels), the distance between such tanks shall not be less than 3 feet (0.912 m).

(D) Where unstable flammable or combustible liquids are stored, the distance between such tanks shall not be less than one-half the sum of their diameters.

(E) When tanks are compacted in three or more rows or in an irregular pattern, greater spacing or other means shall be provided so that inside tanks are accessible for firefighting purposes.

(F) The minimum separation between a liquefied petroleum gas container and a flammable or combustible liquid storage tank shall be 20 feet (6.08 m), except in the case of flammable or combustible liquid tanks operating at pressures exceeding 2.5 p.s.i.g. or equipped with emergency venting which will permit pressures to exceed 2.5 p.s.i.g. in which case the provisions of paragraphs (i)(2)(ii) (A) and (B) of this section shall apply. Suitable means shall be taken to prevent the accumulation of flammable or combustible liquids under adjacent liquefied petroleum gas containers such as by diversion curbs or grading. When flammable or combustible liquid storage tanks are within a diked area, the liquefied petroleum gas containers shall

be outside the diked area and at least 10 feet (3.04 m) away from the centerline of the wall of the diked area. The foregoing provisions shall not apply when liquefied petroleum gas containers of 125 gallons (473.125 L) or less capacity are installed adjacent to fuel oil supply tanks of 550 gallons (2,081.75 L) or less capacity.

(iii) [Reserved]

(iv) *Normal venting for aboveground tanks.* (A) Atmospheric storage tanks shall be adequately vented to prevent the development of vacuum or pressure sufficient to distort the roof of a cone roof tank or exceeding the design pressure in the case of other atmospheric tanks, as a result of filling or emptying, and atmospheric temperature changes.

(B) Normal vents shall be sized either in accordance with: *(1)* The American Petroleum Institute Standard 2000 (1968), Venting Atmospheric and Low-Pressure Storage Tanks; or *(2)* other accepted standard; or *(3)* shall be at least as large as the filling or withdrawal connection, whichever is larger but in no case less than 1¼ inch (3.175 cm) nominal inside diameter.

(C) Low-pressure tanks and pressure vessels shall be adequately vented to prevent development of pressure or vacuum, as a result of filling or emptying and atmospheric temperature changes, from exceeding the design pressure of the tank or vessel. Protection shall also be provided to prevent overpressure from any pump discharging into the tank or vessel when the pump discharge pressure can exceed the design pressure of the tank or vessel.

(D) If any tank or pressure vessel has more than one fill or withdrawal connection and simultaneous filling or withdrawal can be made, the vent size shall be based on the maximum anticipated simultaneous flow.

(E) Unless the vent is designed to limit the internal pressure 2.5 p.s.i. or less, the outlet of vents and vent drains shall be arranged to discharge in such a manner as to prevent localized overheating of any part of the tank in the event vapors from such vents are ignited.

(F) Tanks and pressure vessels storing Class IA liquids shall be equipped with venting devices which shall be normally closed except when venting to pressure or vacuum conditions. Tanks and pressure vessels storing Class IB and IC liquids shall be equipped with venting devices which shall be normally closed except when venting under pressure or vacuum conditions, or with approved flame arresters.

Exemption: Tanks of 3,000 bbls. (84 m^3) capacity or less containing crude petroleum in crude-producing areas; and, outside aboveground atmospheric tanks under 1,000 gallons (3,785 L) capacity containing other than Class IA flammable liquids may have open vents. (See paragraph (i)(2)(vi)(B) of this section.)

(G) Flame arresters or venting devices required in paragraph (i)(2)(iv)(F) of this section may be omitted for Class IB and IC liquids where conditions are such that their use may, in case of obstruction, result in tank damage.

(v) *Emergency relief venting for fire exposure for aboveground tanks.* (*a*) Every aboveground storage tank shall have some form of construction or device that will relieve excessive internal pressure caused by exposure fires.

(B) In a vertical tank the construction referred to in paragraph (i)(2)(v)(A) of this section may take the form of a floating roof, lifter roof, a weak roof-to-shell seam, or other approved pressure relieving construction. The weak roof-to-shell seam shall be constructed to fail preferential to any other seam.

(C) Where entire dependence for emergency relief is placed upon pressure relieving devices, the total venting capacity of both normal and emergency vents shall be enough to prevent rupture of the shell or bottom of the tank if vertical, or of the shell or heads if horizontal. If unstable liquids are stored, the effects of heat or gas resulting from polymerization, decomposition, condensation, or self-reactivity shall be taken into account. The total capacity of both normal and emergency venting devices shall be not less than that derived from Table F–10 except as provided in paragraph (i)(2)(v)(E) or (F) of this section. Such device may be a self-closing manhole cover, or one using long bolts that permit the cover to lift under internal pressure, or an additional or larger relief valve or valves. The wetted area of the tank shall be calculated on the basis of 55 percent of the total exposed area of a sphere or spheroid, 75 percent of the total exposed area of a horizontal tank and the first 30 feet (9.12 m) above grade of the exposed shell area of a vertical tank.

TABLE F–10—WETTED AREA VERSUS CUBIC FEET (METERS) FREE AIR PER HOUR

[14.7 psia and 60° F. (15.55° C)]

Square feet (m^2)	CFH (m^3H)	Square feet (m^2)	CFH (m^3H)	Square feet (m^2)	CFH (m^3H)
20 (1.84)	21,100 (590.8)	200 (18.4)	211,000 (5,908)	1,000 (90.2)	524,000 (14,672)
30 (2.76)	31,600 (884.8)	250 (23)	239,000 (6,692)	1,200 (110.4)	557,000 (15,596)
40 (3.68)	42,100 (1,178.8)	300 (27.6)	265,000 (7,420)	1,400 (128.8)	587,000 (16,436)
50 (4.6)	52,700 (1,475.6)	350 (32.2)	288,000 (8,064)	1,600 (147.2)	614,000 (17,192)
60 (5.52)	63,200 (1,769.6)	400 (36.8)	312,000 (8,736)	1,800 (165.6)	639,000 (17,892)
70 (6.44)	73,700 (2,063.6)	500 (46)	354,000 (9,912)	2,000 (180.4)	662,000 (18,536)
80 (7.36)	84,200 (2,357.6)	600 (55.2)	392,000 (10,976)	2,400 (220.8)	704,000 (19,712)
90 (8.28)	94,800 (2,654.4)	700 (64.4)	428,000 (11,984)	2,800 (257.6)	742,000 (20,776)
100 (9.2)	105,000 (2,940)	800 (73.6)	462,000 (12,936)	and	
120 (11.04)	126,000 (3,528)	900 (82.8)	493,000 (13,804)	over	
140 (12.88)	147,000 (4,116)	1,000 (90.2)	524,000 (14,672)		
160 (14.72)	168,000 (4,704)				
180 (16.56)	190,000 (5,320)				
200 (18.4)	211,000 (5,908)				

(D) For tanks and storage vessels designed for pressure over 1 p.s.i.g., the total rate of venting shall be determined in accordance with Table F–10, except that when the exposed wetted area of the surface is greater than 2,800 square feet (257.6 m^2), the total rate of venting shall be calculated by the following formula:

$$CFH = 1{,}107A^{0.82}$$

Where:

CFH=Venting requirement, in cubic feet (meters) of free air per hour.

A=Exposed wetted surface, in square feet (m^2).

Note: The foregoing formula is based on $Q=21,000A^{0.82}$.

(E) The total emergency relief venting capacity for any specific stable liquid may be determined by the following formula:

$V=1337+L\sqrt{M}$

V=Cubic feet (meters) of free air per hour from Table F–10.
L=Latent heat of vaporization of specific liquid in B.t.u. per pound.
M=Molecular weight of specific liquids.

F) The required airflow rate of paragraph (i)(2)(v) (C) or (E) of this section may be multiplied by the appropriate factor listed in the following schedule when protection is provided as indicated. Only one factor may be used for any one tank.

0.5 for drainage in accordance with paragraph (i)(2)(vii)(B) of this section for tanks over 200 square feet (18.4 m²) of wetted area.
0.3 for approved water spray.
0.3 for approved insulation.
0.15 for approved water spray with approved insulation.

(G) The outlet of all vents and vent drains on tanks equipped with emergency venting to permit pressures exceeding 2.5 p.s.i.g. shall be arranged to discharge in such a way as to prevent localized overheating of any part of the tank, in the event vapors from such vents are ignited.

(H) Each commercial tank venting device shall have stamped on it the opening pressure, the pressure at which the valve reaches the full open position, and the flow capacity at the latter pressure, expressed in cubic feet (meters) per hour of air at 60° F. (15.55° C) and at a pressure of 14.7 p.s.i.a.

(I) The flow capacity of tank venting devices 12 inches (30.48 cm) and smaller in nominal pipe size shall be determined by actual test of each type and size of vent. These flow tests may be conducted by the manufacturer if certified by a qualified impartial observer, or may be conducted by an outside agency. The flow capacity of tank venting devices larger than 12 inches (30.48 cm) nominal pipe size, including manhole covers with long bolts or equivalent, may be calculated provided that the opening pressure is actually measured, the rating pressure and corresponding free orifice area are stated, the word "calculated" appears on the nameplate, and the computation is based on a flow coefficient of 0.5 applied to the rated orifice area.

(vi) *Vent piping for aboveground tanks.* (A) Vent piping shall be constructed in accordance with paragraph (c) of this section.

(B) Where vent pipe outlets for tanks storing Class I liquids are adjacent to buildings or public ways, they shall be located so that the vapors are released at a safe point outside of buildings and not less than 12 feet (3.648 m) above the adjacent ground level. In order to aid their dispersion, vapors shall be discharged upward or horizontally away from closely adjacent walls. Vent outlets shall be located so that flammable vapors will not be trapped by eaves or other obstructions and shall be at least 5 feet (1.52 m) from building openings.

(C) When tank vent piping is manifolded, pipe sizes shall be such as to discharge, within the pressure limitations of the system, the vapors they may be required to handle when manifolded tanks are subject to the same fire exposure.

(vii) *Drainage, dikes, and walls for aboveground tanks*—(A) *Drainage and diked areas.* The area surrounding a tank or a group of tanks shall be provided with drainage as in paragraph (i)(2)(vii)(B) of this section, or shall be diked as provided in (i)(2)(vii)(C) of this section, to prevent accidental discharge of liquid from endangering adjoining property or reaching waterways.

(B) *Drainage.* Where protection of adjoining property or waterways is by means of a natural or manmade drainage system, such systems shall comply with the following:

(1) [Reserved]

(2) The drainage system shall terminate in vacant land or other area or in an impounding basin having a capacity not smaller than that of the largest tank served. This termination area and the route of the drainage system shall be so located that, if the flammable or combustible liquids in the drainage system are ignited, the fire will not seriously expose tanks or adjoining property.

(C) *Diked areas.* Where protection of adjoining property or waterways is accomplished by retaining the liquid around the tank by means of a dike, the volume of the diked area shall comply with the following requirements:

(1) Except as provided in paragraph (i)(2)(vii)(C)(2) of this section, the volumetric capacity of the diked area shall not be less than the greatest amount of liquid that can be released from the largest tank within the diked area, assuming a full tank. The capacity of the diked area enclosing more than one tank shall be calculated by deducting the volume of the tanks other than the largest tank below the height of the dike.

(2) For a tank or group of tanks with fixed roofs containing crude petroleum with boilover characteristics, the volumetric capacity of the diked area shall be not less than the capacity of the largest tank served by the enclosure, assuming a full tank. The capacity of the diked enclosure shall be calculated by deducting the volume below the height of the dike of all tanks within the enclosure.

(3) Walls of the diked area shall be of earth, steel, concrete or solid masonry designed to be liquidtight and to withstand a full hydrostatic head. Earthen walls 3 feet (0.912 m) or more in height shall have a flat section at the top not less than 2 feet (0.608 m) wide. The slope of an earthen wall shall be consistent with the angle of repose of the material of which the wall is constructed.

(4) The walls of the diked area shall be restricted to an average height of 6 feet (1.824 m) above interior grade.

(5) [Reserved]

(6) No loose combustible material, empty or full drum or barrel, shall be permitted within the diked area.

(viii) *Tank openings other than vents for aboveground tanks.*

(A)–(C) [Reserved]

(D) Openings for gaging shall be provided with a vaportight cap or cover.

(E) For Class IB and Class IC liquids other than crude oils, gasolines, and asphalts, the fill pipe shall be so designed and installed as to minimize the possibility of generating static electricity. A fill pipe entering the top of a tank shall terminate within 6 inches (15.24 cm) of the bottom of the tank and shall be installed to avoid excessive vibration.

(F) Filling and emptying connections which are made and broken shall be located outside of buildings at a location free from any source of ignition and not less than 5 feet (1.52 m) away from any building opening. Such connection shall be closed and liquidtight when not in use. The connection shall be properly identified.

(3) *Installation of underground tanks*—(i) *Location.* Excavation for underground storage tanks shall be made with due care to avoid undermining of foundations of existing structures. Underground tanks or tanks under buildings shall be so located with respect to existing building foundations and supports that the loads carried by the latter cannot be transmitted to the tank. The distance from any part of a tank storing Class I liquids to the nearest wall of any basement or pit shall be not less than 1 foot (0.304 m), and to any property line that may be built upon, not less than 3 feet (0.912 m). The distance from any part of a tank storing Class II or Class III liquids to the nearest wall of any basement, pit or property

line shall be not less than 1 foot (0.304 m).

(ii) *Depth and cover.* Underground tanks shall be set on firm foundations and surrounded with at least 6 inches (15.24 cm) of noncorrosive, inert materials such as clean sand, earth, or gravel well tamped in place. The tank shall be placed in the hole with care since dropping or rolling the tank into the hole can break a weld, puncture or damage the tank, or scrape off the protective coating of coated tanks. Tanks shall be covered with a minimum of 2 feet (0.608 m) of earth, or shall be covered with not less than 1 foot (0.304 m) of earth, on top of which shall be placed a slab of reinforced concrete not less than 4 inches (10.16 cm) thick. When underground tanks are, or are likely to be, subject to traffic, they shall be protected against damage from vehicles passing over them by at least 3 feet (0.912 m) of earth cover, or 18 inches (45.72 cm) of well-tamped earth, plus 6 inches (15.24 cm) of reinforced concrete or 8 inches (20.32 cm) of asphaltic concrete. When asphaltic or reinforced concrete paving is used as part of the protection, it shall extend at least 1 foot (0.304 m) horizontally beyond the outline of the tank in all directions.

(iii) *Corrosion protection.* Corrosion protection for the tank and its piping shall be provided by one or more of the following methods:

(A) Use of protective coatings or wrappings;

(B) Cathodic protection; or,

(C) Corrosion resistant materials of construction.

(iv) *Vents.* (A) Location and arrangement of vents for Class I liquids. Vent pipes from tanks storing Class I liquids shall be so located that the discharge point is outside of buildings, higher than the fill pipe opening, and not less than 12 feet (3.648 m) above the adjacent ground level. Vent pipes shall discharge only upward in order to disperse vapors. Vent pipes 2 inches (5.08 cm) or less in nominal inside diameter shall not be obstructed by devices that will cause excessive back pressure. Vent pipe outlets shall be so located that flammable vapors will not enter building openings, or be trapped under eaves or other obstructions. If the vent pipe is less than 10 feet (3.04 m) in length, or greater than 2 inches (5.08 cm) in nominal inside diameter, the outlet shall be provided with a vacuum and pressure relief device or there shall be an approved flame arrester located in the vent line at the outlet or within the approved distance from the outlet.

(B) Size of vents. Each tank shall be vented through piping adequate in size to prevent blow-back of vapor or liquid at the fill opening while the tank is being filled. Vent pipes shall be not less than 1¼ inch (3.175 cm) nominal inside diameter.

TABLE F–11—VENT LINE DIAMETERS

Maximum flow GPM (L)	Pipe length [1]		
	50 feet (15.2 m)	100 feet (30.4 m)	200 feet (60.8 m)
	Inches (cm)	Inches (cm)	Inches (cm)
100 (378.5)	1¼ (3.175)	1¼ (3.175)	1¼ (3.175)
200 (757)	1¼ (3.175)	1¼ (3.175)	1¼ (3.175)
300 (1,135.5)	1¼ (3.175)	1¼ (3.175)	1½ (3.81)
400 (1,514)	1¼ (3.175)	1½ (3.81)	2 (5.08)
500 (1,892.5)	1½ (3.81)	1½ (3.81)	2 (5.08)
600 (2,271)	1½ (3.81)	2 (5.08)	2 (5.08)
700 (2,649.5)	2 (5.08)	2 (5.08)	2 (5.08)
800 (3,028)	2 (5.08)	2 (5.08)	3 (7.62)
900 (3,406.5)	2 (5.08)	2 (5.08)	3 (7.62)
1,000 (3,785)	2 (5.08)	2 (5.08)	3 (7.62)

[1] Vent lines of 50 ft. (15.2 m), 100 ft. (30.4 m), and 200 ft. (60.8 m) of pipe plus 7 ells.

(C) Location and arrangement of vents for Class II or Class III liquids. Vent pipes from tanks storing Class II or Class III flammable liquids shall terminate outside of the building and higher than the fill pipe opening. Vent outlets shall be above normal snow level. They may be fitted with return bends, coarse screens or other devices to minimize ingress of foreign material.

(D) Vent piping shall be constructed in accordance with paragraph (3)(iv)(C) of this section. Vent pipes shall be so laid as to drain toward the tank without sags or traps in which liquid can collect. They shall be located so that they will not be subjected to physical damage. The tank end of the vent pipe shall enter the tank through the top.

(E) When tank vent piping is manifolded, pipe sizes shall be such as to discharge, within the pressure limitations of the system, the vapors they may be required to handle when manifolded tanks are filled simultaneously.

(v) *Tank openings other than vents.* (A) Connections for all tank openings shall be vapor or liquid tight.

(B) Openings for manual gaging, if independent of the fill pipe, shall be provided with a liquid-tight cap or cover. If inside a building, each such opening shall be protected against liquid overflow and possible vapor release by means of a spring loaded check valve or other approved device.

(C) Fill and discharge lines shall enter tanks only through the top. Fill lines shall be sloped toward the tank.

(D) For Class IB and Class IC liquids other than crude oils, gasolines, and asphalts, the fill pipe shall be so designed and installed as to minimize the possibility of generating static electricity by terminating within 6 inches (15.24 cm) of the bottom of the tank.

(E) Filling and emptying connections which are made and broken shall be located outside of buildings at a location free from any source of ignition and not less than 5 feet (1.52 m) away from any building opening. Such connection shall be closed and liquidtight when not in use. The connection shall be properly identified.

(4) *Installation of tanks inside of buildings*—(i) *Location.* Tanks shall not be permitted inside of buildings except as provided in paragraphs (e), (g), (h), or (i) of this section.

(ii) *Vents.* Vents for tanks inside of buildings shall be as provided in paragraphs (i)(2) (iv), (v), (vi)(B), and (3)(iv) of this section, except that

emergency venting by the use of weak roof seams on tanks shall not be permitted. Vents shall discharge vapors outside the buildings.

(iii) *Vent piping.* Vent piping shall be constructed in accordance with paragraph (c) of this section.

(iv) *Tank openings other than vents.* (A) Connections for all tank openings shall be vapor or liquidtight. Vents are covered in paragraph (i)(4)(ii) of this section.

(B) Each connection to a tank inside of buildings through which liquid can normally flow shall be provided with an internal or an external valve located as close as practical to the shell of the tank. Such valves, when external, and their connections to the tank shall be of steel except when the chemical characteristics of the liquid stored are incompatible with steel. When materials other than steel are necessary, they shall be suitable for the pressures, structural stresses, and temperatures involved, including fire exposures.

(C) Flammable or combustible liquid tanks located inside of buildings, except in one-story buildings designed and protected for flammable or combustible liquid storage, shall be provided with an automatic-closing heat-actuated valve on each withdrawal connection below the liquid level, except for connections used for emergency disposal, to prevent continued flow in the event of fire in the vicinity of the tank. This function may be incorporated in the valve required in paragraph (i)(4)(iv)(B) of this section, and if a separate valve, shall be located adjacent to the valve required in paragraph (i)(4)(iv)(B) of this section.

(D) Openings for manual gaging, if independent of the fill pipe (see paragraph (i)(4)(iv)(F) of this section), shall be provided with a vaportight cap or cover. Each such opening shall be protected against liquid overflow and possible vapor release by means of a spring loaded check valve or other approved device.

(E) For Class IB and Class IC liquids other than crude oils, gasolines, and asphalts, the fill pipe shall be so designed and installed as to minimize the possibility of generating static electricity by terminating within 6 inches (15.24 cm) of the bottom of the tank.

(F) The fill pipe inside of the tank shall be installed to avoid excessive vibration of the pipe.

(G) The inlet of the fill pipe shall be located outside of buildings at a location free from any source of ignition and not less than 5 feet (1.52 m) away from any building opening. The inlet of the fill pipe shall be closed and liquidtight when not in use. The fill connection shall be properly identified.

(H) Tanks inside buildings shall be equipped with a device, or other means shall be provided, to prevent overflow into the building.

(5) *Supports, foundations, and anchorage for all tank locations*—(i) *General.* Tank supports shall be installed on firm foundations. Tank supports shall be of concrete, masonry, or protected steel. Single wood timber supports (not cribbing) laid horizontally may be used for outside aboveground tanks if not more than 12 inches (30.48 cm) high at their lowest point.

(ii) *Fire resistance.* Steel supports or exposed piling shall be protected by materials having a fire resistance rating of not less than 2 hours, except that steel saddles need not be protected if less than 12 inches (30.48 cm) high at their lowest point. Water spray protection or its equivalent may be used in lieu of fire-resistive materials to protect supports.

(iii) *Spheres.* The design of the supporting structure for tanks such as spheres shall receive special engineering consideration.

(iv) *Load distribution.* Every tank shall be so supported as to prevent the excessive concentration of loads on the supporting portion of the shell.

(v) *Foundations.* Tanks shall rest on the ground or on foundations made of concrete, masonry, piling, or steel. Tank foundations shall be designed to minimize the possibility of uneven settling of the tank and to minimize corrosion in any part of the tank resting on the foundation.

(vi) *Flood areas.* Where a tank is located in an area that may be subjected to flooding, the applicable precautions outlined in this subdivision shall be observed.

(A) No aboveground vertical storage tank containing a flammable or combustible liquid shall be located so that the allowable liquid level within the tank is below the established maximum flood stage, unless the tank is provided with a guiding structure such as described in paragraphs (i)(5)(vi) (M), (N), and (O) of this section.

(B) Independent water supply facilities shall be provided at locations where there is no ample and dependable public water supply available for loading partially empty tanks with water.

(C) In addition to the preceding requirements, each tank so located that more than 70 percent, but less than 100 percent, of its allowable liquid storage capacity will be submerged at the established maximum flood stage, shall be safeguarded by one of the following methods: Tank shall be raised, or its height shall be increased, until its top extends above the maximum flood stage a distance equivalent to 30 percent or more of its allowable liquid storage capacity: *Provided, however,* That the submerged part of the tank shall not exceed two and one-half times the diameter. Or, as an alternative to the foregoing, adequate noncombustible structural guides, designed to permit the tank to float vertically without loss of product, shall be provided.

(D) Each horizontal tank so located that more than 70 percent of its storage capacity will be submerged at the established flood stage, shall be anchored, attached to a foundation of concrete or of steel and concrete, of sufficient weight to provide adequate load for the tank when filled with flammable or combustible liquid and submerged by flood waters to the established flood stage, or adequately secured by other means.

(E) [Reserved]

(F) At locations where there is no ample and dependable water supply, or where filling of underground tanks with liquids is impracticable because of the character of their contents, their use, or for other reasons, each tank shall be safeguarded against movement when empty and submerged by high ground water or flood waters by anchoring, weighting with concrete or other approved solid loading material, or securing by other means. Each such tank shall be so constructed and installed that it will safely resist external pressures due to high ground water or flood waters.

(G) At locations where there is an ample and dependable water supply available, underground tanks containing flammable or combustible liquids, so installed that more than 70 percent of their storage capacity will be submerged at the maximum flood stage, shall be so anchored, weighted, or secured by other means, as to prevent movement of such tanks when filled with flammable or combustible liquids, and submerged by flood waters to the established flood stage.

(H) Pipe connections below the allowable liquid level in a tank shall be provided with valves or cocks located as closely as practicable to the tank shell. Such valves and their connections to tanks shall be of steel or other material suitable for use with the liquid being stored. Cast iron shall not be permitted.

(I) At locations where an independent water supply is required, it shall be entirely independent of public power and water supply. Independent source of water shall be available when flood waters reach a level not less than 10 feet

(3.04 m) below the bottom of the lowest tank on a property.

(J) The self-contained power and pumping unit shall be so located or so designed that pumping into tanks may be carried on continuously throughout the rise in flood waters from a level 10 feet (3.04 m) below the lowest tank to the level of the potential flood stage.

(K) Capacity of the pumping unit shall be such that the rate of rise of water in all tanks shall be equivalent to the established potential average rate of rise of flood waters at any stage.

(L) Each independent pumping unit shall be tested periodically to insure that it is in satisfactory operating condition.

(M) Structural guides for holding floating tanks above their foundations shall be so designed that there will be no resistance to the free rise of a tank, and shall be constructed of noncombustible material.

(N) The strength of the structure shall be adequate to resist lateral movement of a tank subject to a horizontal force in any direction equivalent to not less than 25 pounds per square foot (1.05 kg m^2) acting on the projected vertical cross-sectional area of the tank.

(O) Where tanks are situated on exposed points or bends in a shoreline where swift currents in flood waters will be present, the structures shall be designed to withstand a unit force of not less than 50 pounds per square foot (2.1 kg m^2).

(P) The filling of a tank to be protected by water loading shall be started as soon as flood waters reach a dangerous flood stage. The rate of filling shall be at least equal to the rate of rise of the floodwaters (or the established average potential rate of rise).

(Q) Sufficient fuel to operate the water pumps shall be available at all times to insure adequate power to fill all tankage with water.

(R) All valves on connecting pipelines shall be closed and locked in closed position when water loading has been completed.

(S) Where structural guides are provided for the protection of floating tanks, all rigid connections between tanks and pipelines shall be disconnected and blanked off or blinded before the floodwaters reach the bottom of the tank, unless control valves and their connections to the tank are of a type designed to prevent breakage between the valve and the tank shell.

(T) All valves attached to tanks other than those used in connection with water loading operations shall be closed and locked.

(U) If a tank is equipped with a swing line, the swing pipe shall be raised to and secured at its highest position.

(V) Inspections. The Assistant Secretary or his designated representative shall make periodic inspections of all plants where the storage of flammable or combustible liquids is such as to require compliance with the foregoing requirements, in order to assure the following:

(1) That all flammable or combustible liquid storage tanks are in compliance with these requirements and so maintained.

(2) That detailed printed instructions of what to do in flood emergencies are properly posted.

(3) That station operators and other employees depended upon to carry out such instructions are thoroughly informed as to the location and operation of such valves and other equipment necessary to effect these requirements.

(vii) *Earthquake areas.* In areas subject to earthquakes, the tank supports and connections shall be designed to resist damage as a result of such shocks.

(6) *Sources of ignition.* In locations where flammable vapors may be present, precautions shall be taken to prevent ignition by eliminating or controlling sources of ignition. Sources of ignition may include open flames, lightning, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, and mechanical), spontaneous ignition, chemical and physical-chemical reactions, and radiant heat.

(7) *Testing*—(i) *General.* All tanks, whether shop built or field erected, shall be strength tested before they are placed in service in accordance with the applicable paragraphs of the code under which they were built. The American Society of Mechanical Engineers (ASME) code stamp, American Petroleum Institute (API) monogram, or the label of the Underwriters' Laboratories, Inc., on a tank shall be evidence of compliance with this strength test. Tanks not marked in accordance with the above codes shall be strength tested before they are placed in service in accordance with good engineering principles and reference shall be made to the sections on testing in the codes listed in paragraphs (i)(1)(iii)(A), (iv)(B), or (v)(B) of this section.

(ii) *Strength.* When the vertical length of the fill and vent pipes is such that when filled with liquid the static head imposed upon the bottom of the tank exceeds 10 pounds per square inch (68.94 kPa), the tank and related piping shall be tested hydrostatically to a pressure equal to the static head thus imposed.

(iii) *Tightness.* In addition to the strength test called for in paragraphs (i)(7) (i) and (ii) of this section, all tanks and connections shall be tested for tightness. Except for underground tanks, this tightness test shall be made at operating pressure with air, inert gas, or water prior to placing the tank in service. In the case of field-erected tanks the strength test may be considered to be the test for tank tightness. Underground tanks and piping, before being covered, enclosed, or placed in use, shall be tested for tightness hydrostatically, or with air pressure at not less than 3 pounds per square inch (20.68 kPa) and not more than 5 pounds per square inch (34.47 kPa).

(iv) *Repairs.* All leaks or deformations shall be corrected in an acceptable manner before the tank is placed in service. Mechanical caulking is not permitted for correcting leaks in welded tanks except pinhole leaks in the roof.

(v) *Derated operations.* Tanks to be operated at pressures below their design pressure may be tested by the applicable provisions of paragraphs (i)(7) (i) or (ii) of this section, based upon the pressure developed under full emergency venting of the tank.

(j) *Piping, valves, and fittings*—(1) *General*—(i) *Design.* The design (including selection of materials) fabrication, assembly, test, and inspection of piping systems containing flammable or combustible liquids shall be suitable for the expected working pressures and structural stresses. Conformity with the applicable provisions of Pressure Piping, ANSI B31 series and the provisions of this paragraph, shall be considered prima facie evidence of compliance with the foregoing provisions.

(ii) *Exceptions.* This paragraph does not apply to any of the following:

(A) Tubing or casing on any oil or gas wells and any piping connected directly thereto.

(B) Motor vehicle, aircraft, boat, or portable or stationary engines.

(C) Piping within the scope of any applicable boiler and pressures vessel code.

(iii) *Definitions.* As used in this paragraph, piping systems consist of pipe, tubing, flanges, bolting, gaskets, valves, fittings, the pressure containing parts of other components such as expansion joints and strainers, and devices which serve such purposes as mixing, separating, snubbing, distributing, metering, or controlling flow.

(2) *Materials for piping, valves, and fittings*—(i) *Required materials.*

Materials for piping, valves, or fittings shall be steel, nodular iron, or malleable iron, except as provided in paragraphs (j)(2) (ii), (iii) and (iv) of this section.

(ii) *Exceptions.* Materials other than steel, nodular iron, or malleable iron may be used underground, or if required by the properties of the flammable or combustible liquid handled. Material other than steel, nodular iron, or malleable iron shall be designed to specifications embodying principles recognized as good engineering practices for the material used.

(iii) *Linings.* Piping, valves, and fittings may have combustible or noncombustible linings.

(iv) *Low-melting materials.* When low-melting point materials such as aluminum and brass or materials that soften on fire exposure such as plastics, or non-ductile materials such as cast iron, are necessary, special consideration shall be given to their behavior on fire exposure. If such materials are used in above ground piping systems or inside buildings, they shall be suitably protected against fire exposure or so located that any spill resulting from the failure of these materials could not unduly expose persons, important buildings or structures or can be readily controlled by remote valves.

(3) *Pipe joints.* Joints shall be made liquid tight. Welded or screwed joints or approved connectors shall be used. Threaded joints and connections shall be made up tight with a suitable lubricant or piping compound. Pipe joints dependent upon the friction characteristics of combustible materials for mechanical continuity of piping shall not be used inside buildings. They may be used outside of buildings above or below ground. If used above ground, the piping shall either be secured to prevent disengagement at the fitting or the piping system shall be so designed that any spill resulting from such disengagement could not unduly expose persons, important buildings or structures, and could be readily controlled by remote valves.

(4) *Supports.* Piping systems shall be substantially supported and protected against physical damage and excessive stresses arising from settlement, vibration, expansion, or contraction.

(5) *Protection against corrosion.* All piping for flammable or combustible liquids, both aboveground and underground, where subject to external corrosion, shall be painted or otherwise protected.

(6) *Valves.* Piping systems shall contain a sufficient number of valves to operate the system properly and to protect the plant. Piping systems in connection with pumps shall contain a sufficient number of valves to control properly the flow of liquid in normal operation and in the event of physical damage. Each connection to pipelines, by which equipments such as tankcars or tank vehicles discharge liquids by means of pumps into storage tanks, shall be provided with a check valve for automatic protection against backflow if the piping arrangement is such that backflow from the system is possible.

(7) *Testing.* All piping before being covered, enclosed, or placed in use shall be hydrostatically tested to 150 percent of the maximum anticipated pressure of the system, or pneumatically tested to 110 percent of the maximum anticipated pressure of the system, but not less than 5 pounds per square inch gage at the highest point of the system. This test shall be maintained for a sufficient time to complete visual inspection of all joints and connections, but for at least 10 minutes.

(k) *Marine service stations*—(1) *Dispensing. (i)* The dispensing area shall be located away from other structures so as to provide room for safe ingress and egress of craft to be fueled. Dispensing units shall in all cases be at least 20 feet (6.08 m) from any activity involving fixed sources of ignition.

(ii) Dispensing shall be by approved dispensing units with or without integral pumps and may be located on open piers, wharves, or floating docks or on shore or on piers of the solid fill type.

(iii) Dispensing nozzles shall be automatic-closing without a hold-open latch.

(2) *Tanks and pumps.* (i) Tanks, and pumps not integral with the dispensing unit, shall be on shore or on a pier of the solid fill type, except as provided in paragraphs (k)(2) (ii) and (iii) of this section.

(ii) Where shore location would require excessively long supply lines to dispensers, tanks may be installed on a pier provided that applicable portions of paragraph (b) of this section relative to spacing, diking, and piping are complied with and the quantity so stored does not exceed 1,100 gallons (4,163.5 L) aggregate capacity.

(iii) Shore tanks supplying marine service stations may be located above ground, where rock ledges or high water table make underground tanks impractical.

(iv) Where tanks are at an elevation which would produce gravity head on the dispensing unit, the tank outlet shall be equipped with a pressure control valve positioned adjacent to and outside the tank block valve specified in §1926.152(c)(8) of this section, so adjusted that liquid cannot flow by gravity from the tank in case of piping or hose failure.

(3) *Piping. (i)* Piping between shore tanks and dispensing units shall be as described in paragraph (k)(2)(iii) of this section, except that, where dispensing is from a floating structure, suitable lengths of oil-resistant flexible hose may be employed between the shore piping and the piping on the floating structure as made necessary by change in water level or shoreline.

TABLE F–19—ELECTRICAL EQUIPMENT HAZARDOUS AREAS—SERVICE STATIONS

Location	Class I Group D division	Extent of classified area
Underground tank:		
Fill opening	1	Any pit, box or space below grade level, any part of which is within the Division 1 or 2 classified area.
	2	Up to 18 inches (45.72 cm) above grade level within a horizontal radius of 10 feet (3.04 m) from a loose fill connection and within a horizontal radius of 5 feet (1.52 m) from a tight fill connection.
Vent—Discharging upward	1	Within 3 feet (0.912 m) of open end of vent, extending in all directions.
	2	Area between 3 feet (0.912 m) and 5 feet (1.52 m) of open end of vent, extending in all directions.
Dispenser:		
Pits	1	Any pit, box or space below grade level, any part of which is within the Division 1 or 2 classified area.

TABLE F–19—ELECTRICAL EQUIPMENT HAZARDOUS AREAS—SERVICE STATIONS—Continued

Location	Class I Group D division	Extent of classified area
Dispenser enclosure	1	The area 4 feet (1.216 m) vertically above base within the enclosure and 18 inches (45.72 cm) horizontally in all directions.
Outdoor	2	Up to 18 inches (45.72 cm) above grade level within 20 feet (6.08 m) horizontally of any edge of enclosure.
Indoor:		
With mechanical ventilation	2	Up to 18 inches (45.72 cm) above grade or floor level within 20 feet (6.08 m) horizontally of any edge of enclosure.
With gravity ventilation	2	Up to 18 inches (45.72 cm) above grade or floor level within 25 feet (7.6 m) horizontally of any edge of enclosure.
Remote pump—Outdoor	1	Any pit, box or space below grade level if any part is within a horizontal distance of 10 feet (3.04 m) from any edge of pump.
	2	Within 3 feet (0.912 m) of any edge of pump, extending in all directions. Also up to 18 inches (45.72 cm) above grade level within 10 feet (3.04 m) horizontally from any edge of pump.
Remote pump—Indoor	1	Entire area within any pit.
	2	Within 5 feet (1.52 m) of any edge of pump, extending in all directions. Also up to 3 feet (3.04 m) above floor or grade level within 25 feet (6.08 m) horizontally from any edge of pump.
Lubrication or service room	1	Entire area within any pit.
	2	Area up to 18 inches (45.72 cm) above floor or grade level within entire lubrication room.
Dispenser for Class I liquids	2	Within 3 feet (0.912 m) of any fill or dispensing point, extending in all directions.
Special enclosure inside building per § 1910.106(f)(1)(ii).	1	Entire enclosure.
Sales, storage and rest rooms	(1)	If there is any opening to these rooms within the extent of a Division 1 area, the entire room shall be classified as Division 1.

[1] Ordinary.

(ii) A readily accessible valve to shut off the supply from shore shall be provided in each pipeline at or near the approach to the pier and at the shore end of each pipeline adjacent to the point where flexible hose is attached.

(iii) Piping shall be located so as to be protected from physical damage.

(iv) Piping handling Class I liquids shall be grounded to control stray currents.

(4) *Definition; as used in this section:* Marine service station shall mean that portion of a property where flammable or combustible liquids used as fuels are stored and dispensed from fixed equipment on shore, piers, wharves, or floating docks into the fuel tanks of self-propelled craft, and shall include all facilities used in connection therewith.

20. In § 1926.153, new paragraphs (a)(3) and (m) through (o) are added to read as follows:

§ 1926.153 Liquefied petroleum gases.

(a) *Approval of equipment and systems.*

* * * * *

(3) *Definition.* As used in this section, *Containers*—All vessels, such as tanks, cylinders, or drums, used for transportation or storing liquefied petroleum gases.

* * * * *

(m) *Systems utilizing containers other than DOT containers*—(1) *Application.* This paragraph applies specifically to systems utilizing storage containers other than those constructed in accordance with DOT specifications. Paragraph (b) of this section applies to this paragraph unless otherwise noted in paragraph (b) of this section.

(2) *Design pressure and classification of storage containers.* Storage containers shall be designed and classified in accordance with Table F–31.

TABLE F–31

Container type	For gases with vapor press. Not to exceed lb. per sq. in. gage at 100° F. (37.8° C.)	Minimum design pressure of container, lb. per sq. in. gage	
		1949 and earlier editions of ASME Code (Par. U–68, U–69)	1949 edition of ASME Code (Par. U–200, U–201); 1950, 1952, 1956, 1959, 1962, 1965, and 1968 (Division 1) editions of ASME Code; All editions of API–ASME Code[3]
[1]80	[1]80	[1]80	[1]100
100	100	100	125
125	125	125	156
150	150	150	187
175	175	175	219

TABLE F–31—Continued

Container type	For gases with vapor press. Not to exceed lb. per sq. in. gage at 100° F. (37.8° C.)	Minimum design pressure of container, lb. per sq. in. gage	
		1949 and earlier editions of ASME Code (Par. U–68, U–69)	1949 edition of ASME Code (Par. U–200, U–201); 1950, 1952, 1956, 1959, 1962, 1965, and 1968 (Division 1) editions of ASME Code; All editions of API–ASME Code[3]
[1]200	215	200	250

[1] New storage containers of the 80 type have not been authorized since Dec. 31, 1947.

[2] Container type may be increased by increments of 25. The minimum design pressure of containers shall be 100% of the container type designation when constructed under 1949 or earlier editions of the ASME Code (Par. U–68 and U–69). The minimum design pressure of containers shall be 125% of the container type designation when constructed under: (1) the 1949 ASME Code (Par. U–200 and U–201), (2) 1950, 1952, 1956, 1959, 1962, 1965, and 1968 (Division 1) editions of the ASME Code, and (3) all editions of the API–ASME Code.

[3] Construction of containers under the API–ASME Code is not authorized after July 1, 1961.

(3) Containers with foundations attached (portable or semiportable b containers with suitable steel "runners" or "skids" and popularly known in the industry as "skid tanks") shall be designed, installed, and used in accordance with these rules subject to the following provisions:

(i) If they are to be used at a given general location for a temporary period not to exceed 6 months they need not have fire-resisting foundations or saddles but shall have adequate ferrous metal supports.

(ii) They shall not be located with the outside bottom of the container shell more than 5 feet (1.52 m) above the surface of the ground unless fire-resisting supports are provided.

(iii) The bottom of the skids shall not be less than 2 inches (5.08 cm) or more than 12 inches (30.48 cm) below the outside bottom of the container shell.

(iv) Flanges, nozzles, valves, fittings, and the like, having communication with the interior of the container, shall be protected against physical damage.

(v) When not permanently located on fire-resisting foundations, piping connections shall be sufficiently flexible to minimize the possibility of breakage or leakage of connections if the container settles, moves, or is otherwise displaced.

(vi) Skids, or lugs for attachment of skids, shall be secured to the container in accordance with the code or rules under which the container is designed and built (with a minimum factor of safety of four) to withstand loading in any direction equal to four times the weight of the container and attachments when filled to the maximum permissible loaded weight.

(4) Field welding where necessary shall be made only on saddle plates or brackets which were applied by the manufacturer of the tank.

(n) When LP-Gas and one or more other gases are stored or used in the same area, the containers shall be marked to identify their content.' Marking shall be in compliance with American National Standard Z48.1–1954, "Method of Marking Portable Compressed Gas Containers To Identify the Material Contained."

(o) *Damage from vehicles.* When damage to LP-Gas systems from vehicular traffic is a possibility, precautions against such damage shall be taken.

21. A new undesignated center heading and §§ 1926.156 and 1926.157 are added to read as follows:

Fixed Fire Suppression Equipment

§ 1926.156 Fixed extinguishing systems, general.

(a) *Scope and application.* (1) This section applies to all fixed extinguishing systems installed to meet a particular OSHA standard except for automatic sprinkler systems which are covered by § 1910.159.

(2) This section also applies to fixed systems not installed to meet a particular OSHA standard, but which, by means of their operation, may expose employees to possible injury, death, or adverse health consequences caused by the extinguishing agent. Such systems are only subject to the requirements of paragraphs (b)(4) through (b)(7) and (c) of this section.

(3) Systems otherwise covered in paragraph (a)(2) of this section which are installed in areas with no employee exposure are exempted from the requirements of this section.

(b) *General requirements.* (1) Fixed extinguishing system components and agents shall be designed and approved for use on the specific fire hazards they are expected to control or extinguish.

(2) If for any reason a fixed extinguishing system becomes inoperable, the employer shall notify employees and take the necessary temporary precautions to assure their safety until the system is restored to operating order. Any defects or impairments shall be properly corrected by trained personnel.

(3) The employer shall provide a distinctive alarm or signaling system which complies with § 1926.159 and is capable of being perceived above ambient noise or light levels, on all extinguishing systems in those portions of the workplace covered by the extinguishing system to indicate when the extinguishing system is discharging. Discharge alarms are not required on systems where discharge is immediately recognizable.

(4) The employer shall provide effective safeguards to warn employees against entry into discharge areas where the atmosphere remains hazardous to employee safety or health.

(5) The employer shall post hazard warning or caution signs at the entrance to, and inside of, areas protected by fixed extinguishing systems which use agents in concentrations known to be hazardous to employee safety and health.

(6) The employer shall assure that fixed systems are inspected annually by a person knowledgeable in the design and function of the system to assure that the system is maintained in good operating condition.

(7) The employer shall assure that the weight and pressure of refillable containers is checked at least semi-annually. If the container shows a loss in net content or weight of more than 5 percent, or a loss in pressure of more than 10 percent, it shall be subjected to maintenance.

(8) The employer shall assure that factory charged nonrefillable containers which have no means of pressure indication are weighed at least semi-annually. If a container shows a loss in net weight or more than 5 percent it shall be replaced.

(9) The employer shall assure that inspection and maintenance dates are recorded on the container, on a tag attached to the container, or in a central location. A record of the last semi-annual check shall be maintained until the container is checked again or for the life of the container, whichever is less.

(10) The employer shall train employees designated to inspect, maintain, operate, or repair fixed extinguishing systems and annually review their training to keep them up-to-date in the functions they are to perform.

(11) The employer shall not use chlorobromomethane or carbon tetrachloride as an extinguishing agent where employees may be exposed.

(12) The employer shall assure that systems installed in the presence of corrosive atmospheres are constructed of non-corrosive material or otherwise protected against corrosion.

(13) Automatic detection equipment shall be approved, installed and maintained in accordance with § 1926.158.

(14) The employer shall assure that all systems designed for and installed in areas with climatic extremes shall operate effectively at the expected extreme temperatures.

(15) The employer shall assure that at least one manual station is provided for discharge activation of each fixed extinguishing system.

(16) The employer shall assure that manual operating devices are identified as to the hazard against which they will provide protection.

(17) The employer shall provide and assure the use of the personal protective equipment needed for immediate rescue of employees trapped in hazardous atmospheres created by an agent discharge.

(c) *Total flooding systems with potential health and safety hazards to employees.* (1) The employer shall provide an emergency action plan in accordance with § 1926.35 for each area within a workplace that is protected by a total flooding system which provides

agent concentrations exceeding the maximum safe levels set forth in paragraphs (b)(5) and (b)(6) of § 1926.157.

(2) Systems installed in areas where employees cannot enter during or after the system's operation are exempt from the requirements of paragraph (c) of this section.

(3) On all total flooding systems the employer shall provide a pre-discharge employee alarm which complies with § 1926.159, and is capable of being perceived above ambient light or noise levels before the system discharges, which will give employees time to safely exit from the discharge area prior to system discharge.

(4) The employer shall provide automatic actuation of total flooding systems by means of an approved fire detection device installed and interconnected with a pre-discharge employee alarm system to give employees time to safely exit from the discharge area prior to system discharge.

§ 1926.157 Fixed extinguishing systems, gaseous agent.

(a) *Scope and application*—(1) *Scope.* This section applies to all fixed extinguishing systems, using a gas as the extinguishing agent, installed to meet a particular OSHA standard. These systems shall also comply with § 1926.156. In some cases, the gas may be in a liquid state during storage.

(2) *Application.* The requirements of paragraphs (b)(2) and (b)(4) through (b)(6) shall apply only to total flooding systems.

(b) *Specific requirements.* (1) Agents used for initial supply and replenishment shall be of the type approved for the system's application. Carbon dioxide obtained by dry ice conversion to liquid is not acceptable unless it is processed to remove excess water and oil.

(2) Except during overhaul, the employer shall assure that the designed concentration of gaseous agents is maintained until the fire has been extinguished or is under control.

(3) The employer shall assure that employees are not exposed to toxic levels of gaseous agent or its decomposition products.

(4) The employer shall assure that the designed extinguishing concentration is reached within 30 seconds of initial discharge except for Halon systems which must achieve design concentration within 10 seconds.

(5) The employer shall provide a distinctive pre-discharge employee alarm capable of being perceived above ambient light or noise levels when agent design concentrations exceed the maximum safe level for employee exposure. A pre-discharge employee alarm for alerting employees before system discharge shall be provided on Halon 1211 and carbon dioxide systems with a design concentration of 4 percent or greater and for Halon 1301 systems with a design concentration of 10 percent or greater. The pre-discharge employee alarm shall provide employees time to safely exit the discharge area prior to system discharge.

(6)(i) Where egress from an area cannot be accomplished within one minute, the employer shall not use Halon 1301 in concentrations greater than 7 percent.

(ii) Where egress takes greater than 30 seconds but less than one minute, the employer shall not use Halon 1301 in a concentration greater than 10 percent.

(iii) Halon 1301 concentrations greater than 10 percent are only permitted in areas not normally occupied by employees provided that any employee in the area can escape within 30 seconds. The employer shall assure that no unprotected employees enter the area during agent discharge.

22. A new undesignated center heading and §§ 1926.158 and 1926.159 are added to read as follows:

Other Fire Protection Systems

§ 1926.158 Fire detection systems.

(a) *Scope and application.* This section applies to all automatic fire detection systems installed to meet the requirements of a particular OSHA standard.

(b) *Installation and restoration.* (1) The employer shall assure that all devices and equipment constructed and installed to comply with this standard are approved for the purpose for which they are intended.

(2) The employer shall restore all fire detection systems and components to normal operating condition as promptly as possible after each test or alarm. Spare detection devices and components which are normally destroyed in the process of detecting fires shall be available on the premises or from a local supplier in sufficient quantities and locations for prompt restoration of the system.

(c) *Maintenance and testing.* (1) The employer shall maintain all systems in an operable condition except during repairs or maintenance.

(2) The employer shall assure that fire detectors and fire detection systems are tested and adjusted as often as needed to maintain proper reliability and operating condition except that factory calibrated detectors need not be adjusted after installation.

(3) The employer shall assure that pneumatic and hydraulic operated detection systems installed after January 1, 1981, are equipped with supervised systems.

(4) The employer shall assure that the servicing, maintenance and testing of fire detection systems, including cleaning and necessary sensitivity adjustments are performed by a trained person knowledgeable in the operations and functions of the system.

(5) The employer shall also assure that fire detectors that need to be cleaned of dirt, dust, or other particulates in order to be fully operational are cleaned at regular periodic intervals.

(d) *Protection of fire detectors.* (1) The employer shall assure that fire detection equipment installed outdoors or in the presence of corrosive atmospheres be protected from corrosion. The employer shall provide a canopy, hood, or other suitable protection for detection equipment requiring protection from the weather.

(2) The employer shall locate or otherwise protect detection equipment so that it is protected from mechanical or physical impact which might render it inoperable.

(3) The employer shall assure that detectors are supported independently of their attachment to wires or tubing.

(e) *Response time.* (1) The employer shall assure that fire detection systems installed for the purpose of actuating fire extinguishment or suppression systems shall be designed to operate in time to control or extinguish a fire.

(2) The employer shall assure that fire detection systems installed for the purpose of employee alarm and evacuation be designed and installed to provide a warning for emergency action and safe escape of employees.

(3) The employer shall not delay alarms or devices initiated by fire detector actuation for more than 30 seconds unless such delay is necessary for the immediate safety of employees. When such delay is necessary, it shall be addressed in an emergency action plan meeting the requirements of 1926.35.

(f) *Number, location and spacing of detecting devices.* The employer shall assure that the number, spacing and location of fire detectors is based upon design data obtained from field experience, or tests, engineering surveys, the manufacturer's recommendations, or a recognized testing laboratory listing.

§ 1926.159 Employee alarm systems.

(a) *Scope and application.* (1) This section applies to all emergency

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employee alarms installed to meet a particular OSHA standard. This section does not apply to those discharge or supervisory alarms required on various fixed extinguishing systems or to supervisory alarms on fire suppression, alarm or detection systems unless they are intended to be employee alarm systems.

(2) The requirements in this section that pertain to maintenance, testing and inspection shall apply to all local fire alarm signaling systems used for alerting employees regardless of the other functions of the system.

(3) All pre-discharge employee alarms installed to meet a particular OSHA standard shall meet the requirements of paragraphs (b) (1) through (4), (c), and (d)(1) of this section.

(b) *General requirements.* (1) The employee alarm system shall provide warning for necessary emergency action as called for in the emergency action plan, or for reaction time for safe escape of employees from the workplace or the immediate work area, or both.

(2) The employee alarm shall be capable of being perceived above ambient noise or light levels by all employees in the affected portions of the workplace. Tactile devices may be used to alert those employees who would not otherwise be able to recognize the audibile or visual alarm.

(3) The employee alarm shall be distinctive and recognizable as a signal to evacuate the work area or to perform actions designated under the emergency action plan.

(4) The employer shall explain to each employee the preferred means of reporting emergencies, such as manual pull box alarms, public address systems, radio or telephones. The employer shall post emergency telephone numbers near telephones, or employee notice boards, and other conspicuous locations when telephones serve as a means of reporting emergencies. Where a communication system also serves as the employee alarm system, all emergency messages shall have priority over all non-emergency messages.

(5) The employer shall establish procedures for sounding emergency alarms in the workplace. For those employers with 10 or fewer employees in a particular workplace, direct voice communication is an acceptable procedure for sounding the alarm provided all employees can hear the alarm. Such workplaces need not have a back-up system.

(c) *Installation and restoration.* (1) The employer shall assure that all devices, components, combinations of devices or systems constructed and installed to comply with this standard are approved. Steam whistles, air horns, strobe lights or similar lighting devices, or tactile devices meeting the requirements of this section are considered to meet this requirement for approval.

(2) The employer shall assure that all employee alarm systems are restored to normal operating condition as promptly as possible after each test or alarm. Spare alarm devices and components subject to wear or destruction shall be available in sufficient quantities and locations for prompt restoration of the system.

(d) *Maintenance and testing.* (1) The employer shall assure that all employee alarm systems are maintained in operating condition except when undergoing repairs or maintenance.

(2) The employer shall assure that a test of the reliability and adequacy of non-supervised employee alarm systems is made every two months. A different actuation device shall be used in each test of a multi-actuation device system so that no individual device is used for two consecutive tests.

(3) The employer shall maintain or replace power supplies as often as is necessary to assure a fully operational condition. Back-up means of alarm, such as employee runners or telephones, shall be provided when systems are out of service.

(4) The employer shall assure that employee alarm circuitry installed after January 1, 1981, which is capable of being supervised is supervised and that it will provide positive notification to assigned personnel whenever a deficiency exists in the system. The employer shall assure that all supervised employee alarm systems are tested at least annually for reliability and adequacy.

(5) The employer shall assure that the servicing, maintenance and testing of employee alarms are done by persons trained in the designed operation and functions necessary for reliable and safe operation of the system.

(e) *Manual operation.* The employer shall assure that manually operated actuation devices for use in conjunction with employee alarms are unobstructed, conspicuous and readily accessible.

Subpart G—Signs, Signals, and Barricades

23. In § 1926.200, a new paragraph (c)(3) is added to read as follows:

§ 1926.200 Accident prevention signs and tags.

* * * * *

(c) *Caution signs.*

* * * * *

(3) Standard color of the background shall be yellow; and the panel, black with yellow letters. Any letters used against the yellow background shall be black. The colors shall be those of opaque glossy samples as specified in Table 1 of American National Standard Z53.1–1967.

* * * * *

Subpart H—Materials Handling, Storage, Use, and Disposal

24. In § 1926.250, new paragraphs (c) and (d) are added to read as follows:

§ 1926.250 General requirements for storage.

* * * * *

(c) *Housekeeping.* Storage areas shall be kept free from accumulation of materials that constitute hazards from tripping, fire, explosion, or pest harborage. Vegetation control will be exercised when necessary.

(d) *Dockboards (bridge plates).* (1) Portable and powered dockboards shall be strong enough to carry the load imposed on them.

(2) Portable dockboards shall be secured in position, either by being anchored or equipped with devices which will prevent their slipping.

(3) Handholds, or other effective means, shall be provided on portable dockboards to permit safe handling.

(4) Positive protection shall be provided to prevent railroad cars from being moved while dockboards or bridge plates are in position.

25. In § 1926.251, new paragraphs (a) (5) and (6), (b)(6)(i) and (ii), (c) (6) through (15), (d) (3) through (6), and (e) (3) through (8) are added to read as follows:

§ 1926.251 Rigging equipment for material handling.

(a) *General.*

* * * * *

(5) *Scope.* This section applies to slings used in conjunction with other material handling equipment for the movement of material by hoisting, in employments covered by this part. The types of slings covered are those made from alloy steel chain, wire rope, metal mesh, natural or synthetic fiber rope (conventional three strand construction), and synthetic web (nylon polyester, and polypropylene).

(6) *Inspections.* Each day before being used, the sling and all fastenings and attachments shall be inspected for damage or defects by a competent person designated by the employer. Additional inspections shall be performed during sling use, where service conditions warrant Damaged or

defective slings shall be immediately removed from service.

(b) *Alloy steel chains.*

* * * * *

(6) *Inspections.* (i) In addition to the inspection required by other paragraphs of this section, a thorough periodic inspection of alloy steel chain slings in use shall be made on a regular basis, to be determined on the basis of (A) frequency of sling use; (B) severity of service conditions; (C) nature of lifts being made; and (D) experience gained on the service life of slings used in similar circumstances. Such inspections shall in no event be at intervals greater than once every 12 months.

(ii) The employer shall make and maintain a record of the most recent month in which each alloy steel chain sling was thoroughly inspected, and shall make such record available for examination.

(c) *Wire rope.*

* * * * *

(6) Slings shall not be shortened with knots or bolts or other makeshift devices.

(7) Sling legs shall not be kinked.

(8) Slings used in a basket hitch shall have the loads balanced to prevent slippage.

(9) Slings shall be padded or protected from the sharp edges of their loads.

(10) Hands or fingers shall not be placed between the sling and its load while the sling is being tightened around the load.

(11) Shock loading is prohibited.

(12) A sling shall not be pulled from under a load when the load is resting on the sling.

(13) *Minimum sling lengths.* (i) Cable laid and 6 × 19 and 6 × 37 slings shall have a minimum clear length of wire rope 10 times the component rope diameter between splices, sleeves or end fittings.

(ii) Braided slings shall have a minimum clear length of wire rope 40 times the component rope diameter between the loops or end fittings.

(iii) Cable laid grommets, strand laid grommets and endless slings shall have a minimum circumferential length of 96 times their body diameter.

(14) *Safe operating temperatures.* Fiber core wire rope slings of all grades shall be permanently removed from service if they are exposed to temperatures in excess of 200°F (93.33° C). When nonfiber core wire rope slings of any grade are used at temperatures above 400°F (204.44° C) or below minus 60°F (15.55° C), recommendations of the sling manufacturer regarding use at that temperature shall be followed.

(15) *End attachments.* (i) Welding of end attachments, except covers to thimbles, shall be performed prior to the assembly of the sling.

(ii) All welded end attachments shall not be used unless proof tested by the manufacturer or equivalent entity at twice their rated capacity prior to initial use. The employer shall retain a certificate of the proof test, and make it available for examination.

(d) *Natural rope and synthetic fiber—*

* * * * *

(3) *Safe operating temperatures.* Natural and synthetic fiber rope slings, except for wet frozen slings, may be used in a temperature range from minus 20°F (-28.88° C) to plus 180°F (82.2° C) without decreasing the working load limit. For operations outside this temperature range and for wet frozen slings, the sling manufacturer's recommendations shall be followed.

(4) *Splicing.* Spliced fiber rope slings shall not be used unless they have been spliced in accordance with the following minimum requirements and in accordance with any additional recommendations of the manufacturer:

(i) In manila rope, eye splices shall consist of at least three full tucks, and short splices shall consist of at least six full tucks, three on each side of the splice center line.

(ii) In synthetic fiber rope, eye splices shall consist of at least four full tucks, and short splices shall consist of at least eight full tucks, four on each side of the center line.

(iii) Strand end tails shall not be trimmed flush with the surface of the rope immediately adjacent to the full tucks. This applies to all types of fiber rope and both eye and short splices. For fiber rope under 1 inch (2.54 cm) in diameter, the tail shall project at least six rope diameters beyond the last full tuck. For fiber rope 1 inch (2.54 cm) in diameter and larger, the tail shall project at least 6 inches (15.24 cm) beyond the last full tuck. Where a projecting tail interferes with the use of the sling, the tail shall be tapered and spliced into the body of the rope using at least two additional tucks (which will require a tail length of approximately six rope diameters beyond the last full tuck).

(iv) Fiber rope slings shall have a minimum clear length of rope between eye splices equal to 10 times the rope diameter.

(v) Knots shall not be used in lieu of splices.

(vi) Clamps not designed specifically for fiber ropes shall not be used for splicing.

(vii) For all eye splices, the eye shall be of such size to provide an included angle of not greater than 60 degrees at the splice when the eye is placed over the load or support.

(5) *End attachments.* Fiber rope slings shall not be used if end attachments in contact with the rope have sharp edges or projections.

(6) *Removal from service.* Natural and synthetic fiber rope slings shall be immediately removed from service if any of the following conditions are present:

(i) Abnormal wear.

(ii) Powdered fiber between strands.

(iii) Broken or cut fibers.

(iv) Variations in the size or roundness of strands.

(v) Discoloration or rotting.

(vi) Distortion of hardware in the sling.

(e) *Synthetic webbing (nylon, polyester, and polypropylene).*

* * * * *

(3) *Webbing.* Synthetic webbing shall be of uniform thickness and width and selvage edges shall not be split from the webbing's width.

(4) *Fittings.* Fittings shall be:

(i) Of a minimum breaking strength equal to that of the sling; and

(ii) Free of all sharp edges that could in any way damage the webbing.

(5) *Attachment of end fittings to webbing and formation of eyes.* Stitching shall be the only method used to attach end fittings to webbing and to form eyes. The thread shall be in an even pattern and contain a sufficient number of stitches to develop the full breaking strength of the sling.

(6) *Environmental conditions.* When synthetic web slings are used, the following precautions shall be taken:

(i) Nylon web slings shall not be used where fumes, vapors, sprays, mists or liquids of acids or phenolics are present.

(ii) Polyester and polypropylene web slings shall not be used where fumes, vapors, sprays, mists or liquids of caustics are present.

(iii) Web slings with aluminum fittings shall not be used where fumes, vapors, sprays, mists or liquids of caustics are present.

(7) *Safe operating temperatures.* Synthetic web slings of polyester and nylon shall not be used at temperatures in excess of 180°F (82.2° C). Polypropylene web slings shall not be used at temperatures in excess of 200°F (93.33° C).

(8) *Removal from service.* Synthetic web slings shall be immediately removed from service if any of the following conditions are present:

(i) Acid or caustic burns;

(ii) Melting or charring of any part of the sling surface;

(iii) Snags, punctures, tears or cuts;
(iv) Broken or worn stitches; or
(v) Distortion of fittings.

* * * * *

Subpart I—Hand and Power Tools

26. In § 1926.300, new paragraphs (b)(3) through (7) are added to read as follows:

§ 1926.300 General requirements.

* * * * *

(b) *Guarding—*

* * * * *

(3) *Types of guarding.* One or more methods of machine guarding shall be provided to protect the operator and other employees in the machine area from hazards such as those created by point of operation, ingoing nip points, rotating parts, flying chips and sparks. Examples of guarding methods are—barrier guards, two-hand tripping devices, electronic safety devices, etc.

(4) *Point of operation guarding.* (i) Point of operation is the area on a machine where work is actually performed upon the material being processed.

(ii) The point of operation of machines whose operation exposes an employee to injury, shall be guarded. The guarding device shall be in conformity with any appropriate standards therefor, or, in the absence of applicable specific standards, shall be so designed and constructed as to prevent the operator from having any part of his body in the danger zone during the operating cycle.

(iii) Special handtools for placing and removing material shall be such as to permit easy handling of material without the operator placing a hand in the danger zone. Such tools shall not be in lieu of other guarding required by this section, but can only be used to supplement protection provided.

(iv) The following are some of the machines which usually require point of operation guarding:

(a) Guillotine cutters.
(b) Shears.
(c) Alligator shears.
(d) Power presses.
(e) Milling machines.
(f) Power saws.
(g) Jointers.
(h) Portable power tools.
(i) Forming rolls and calenders.

(5) *Exposure of blades.* When the periphery of the blades of a fan is less than 7 feet (2.128 m) above the floor or working level, the blades shall be guarded. The guard shall have openings no larger than 1/2 inch (1.27 cm).

(6) *Anchoring fixed machinery.* Machines designed for a fixed location shall be securely anchored to prevent walking or moving.

(7) *Guarding of abrasive wheel machinery—exposure adjustment.* Safety guards of the types described in paragraphs (b) (3) and (4) of this section, where the operator stands in front of the opening, shall be constructed so that the peripheral protecting member can be adjusted to the constantly decreasing diameter of the wheel. The maximum angular exposure above the horizontal plane of the wheel spindle as specified in paragraphs (b) (3) and (4) of this section shall never be exceeded, and the distance between the wheel periphery and the adjustable tongue or the end of the peripheral member at the top shall never exceed ¼ inch (0.635 cm). (See Figures O–18, O–19, O–20, O–21, O–22, and O–23.)

* * * * *

27. In § 1926.302, new paragraph (b)(10) is added to read as follows:

§ 1926.302 Power-operated hand tools.

* * * * *

(b) *Pneumatic hand tools.*

* * * * *

(10) *Abrasive blast cleaning nozzles.* The blast cleaning nozzles shall be equipped with an operating valve which must be held open manually. A support shall be provided on which the nozzle may be mounted when it is not in use.

28. In paragraph (b) of § 1926.303, the existing text is designated as paragraph (b)(1) and a new paragraph (b)(2) is added; in addition, a new paragraph (e) is added. The new paragraphs read as follows:

§ 1926.303 Abrasive wheel and tools.

(b) *Guarding—*

* * * * *

(2) *Guard design.* The safety guard shall cover the spindle end, nut, and flange projections. The safety guard shall be mounted so as to maintain proper alignment with the wheel, and the strength of the fastenings shall exceed the strength of the guard, except:

(i) Safety guards on all operations where the work provides a suitable measure of protection to the operator, may be so constructed that the spindle end, nut, and outer flange are exposed; and where the nature of the work is such as to entirely cover the side of the wheel, the side covers of the guard may be omitted; and

(ii) The spindle end, nut, and outer flange may be exposed on machines designed as portable saws.

* * * * *

(e) *Work rests.* On offhand grinding machines, work rests shall be used to support the work. They shall be of rigid construction and designed to be adjustable to compensate for wheel wear. Work rests shall be kept adjusted closely to the wheel with a maximum opening of ⅛ inch (0.3175 cm) to prevent the work from being jammed between the wheel and the rest, which may cause wheel breakage. The work rest shall be securely clamped after each adjustment. The adjustment shall not be made with the wheel in motion.

29. In § 1926.304, new paragraphs (g) through (i) are added to read as follows:

§ 1926.304 Woodworking tools.

* * * * *

(g) *Radial saws.* (1) The upper hood shall completely enclose the upper portion of the blade down to a point that will include the end of the saw arbor. The upper hood shall be constructed in such a manner and of such material that it will protect the operator from flying splinters, broken saw teeth, etc., and will deflect sawdust away from the operator. The sides of the lower exposed portion of the blade shall be guarded to the full diameter of the blade by a device that will automatically adjust itself to the thickness of the stock and remain in contact with stock being cut to give maximum protection possible for the operation being performed.

(h) *Hand-fed crosscut table saws.* (1) Each circular crosscut table saw shall be guarded by a hood which shall meet all the requirements of paragraph (c)(1) of this section for hoods for circular ripsaws.

(i) *Hand-fed ripsaws.* (1) Each circular hand-fed ripsaw shall be guarded by a hood which shall completely enclose that portion of the saw above the table and that portion of the saw above the material being cut. The hood and mounting shall be arranged so that the hood will automatically adjust itself to the thickness of and remain in contact with the material being cut but it shall not offer any considerable resistance to insertion of material to saw or to passage of the material being sawed. The hood shall be made of adequate strength to resist blows and strains incidental to reasonable operation, adjusting, and handling, and shall be so designed as to protect the operator from flying splinters and broken saw teeth. It shall be made of material that is soft enough so that it will be unlikely to cause tooth breakage. The hood shall be so mounted as to insure that its operation will be positive, reliable, and in true alignment with the saw; and the mounting shall be adequate in strength to resist any reasonable side thrust or other force tending to throw it out of line.

30. New paragraph (d) is added to § 1926.305 to read as follows:

§ 1926.305 Jacks—lever and ratchet, screw, and hydraulic.

* * * * *

(d)(1) *Operation and maintenance.* (i) After the load has been raised, it shall be cribbed, blocked, or otherwise secured at once.

(ii) Hydraulic jacks exposed to freezing temperatures shall be supplied with an adequate antifreeze liquid.

(iii) All jacks shall be properly lubricated at regular intervals.

(iv) Each jack shall be thoroughly inspected at times which depend upon the service conditions. Inspections shall be not less frequent than the following:

(*a*) For constant or intermittent use at one locality, once every 6 months,

(*b*) For jacks sent out of shop for special work, when sent out and when returned,

(*c*) For a jack subjected to abnormal load or shock, immediately before and immediately thereafter.

(v) Repair or replacement parts shall be examined for possible defects.

(vi) Jacks which are out of order shall be tagged accordingly, and shall not be used until repairs are made.

31. New §§ 1926.306 and 1926.307 are added to read as follows:

§ 1926.306 Air receivers.

(a) *General requirements*—(1) *Application.* This section applies to compressed air receivers, and other equipment used in providing and utilizing compressed air for performing operations such as cleaning, drilling, hoisting, and chipping. On the other hand, however, this section does not deal with the special problems created by using compressed air to convey materials nor the problems created when men work in compressed air as in tunnels and caissons. This section is not intended to apply to compressed air machinery and equipment used on transportation vehicles such as steam railroad cars, electric railway cars, and automotive equipment.

(2) *New and existing equipment.* (i) All new air receivers installed after the effective date of these regulations shall be constructed in accordance with the 1968 edition of the A.S.M.E. Boiler and Pressure Vessel Code Section VIII.

(ii) All safety valves used shall be constructed, installed, and maintained in accordance with the A.S.M.E. Boiler and Pressure Vessel Code, Section VIII Edition 1968.

(b) *Installation and equipment requirements*—(1) *Installation.* Air receivers shall be so installed that all drains, handholes, and manholes therein are easily accessible. Under no circumstances shall an air receiver be buried underground or located in an inaccessible place.

(2) *Drains and traps.* A drain pipe and valve shall be installed at the lowest point of every air receiver to provide for the removal of accumulated oil and water. Adequate automatic traps may be installed in addition to drain valves. The drain valve on the air receiver shall be opened and the receiver completely drained frequently and at such intervals as to prevent the accumulation of excessive amounts of liquid in the receiver.

(3) *Gages and valves.* (i) Every air receiver shall be equipped with an indicating pressure gage (so located as to be readily visible) and with one or more spring-loaded safety valves. The total relieving capacity of such safety valves shall be such as to prevent pressure in the receiver from exceeding the maximum allowable working pressure of the receiver by more than 10 percent.

(ii) No valve of any type shall be placed between the air receiver and its safety valve or valves.

(iii) Safety appliances, such as safety valves, indicating devices and controlling devices, shall be constructed, located, and installed so that they cannot be readily rendered inoperative by any means, including the elements.

(iv) All safety valves shall be tested frequently and at regular intervals to determine whether they are in good operating condition.

§ 1926.307 Mechanical power-transmission apparatus.

(a) *General requirements.* (1) This section covers all types and shapes of power-transmission belts, except the following when operating at two hundred and fifty (250) feet per minute or less: (i) Flat belts 1 inch (2.54 cm) or less in width, (ii) flat belts 2 inches (5.08 cm) or less in width which are free from metal lacings or fasteners, (iii) round belts ½ inch (1.27 cm) or less in diameter; and (iv) single strand V-belts, the width of which is thirteen thirty-seconds (13/32) inch or less.

(2) Vertical and inclined belts (paragraphs (e) (3) and (4) of this section) if not more than 2½ inches (6.35 cm) wide and running at a speed of less than one thousand (1,000) feet per minute, and if free from metal lacings or fastenings may be guarded with a nip-point belt and pulley guard.

(3) For the Textile Industry, because of the presence of excessive deposits of lint, which constitute a serious fire hazard, the sides and face sections only of nip-point belt and pulley guards are required, provided the guard shall extend at least 6 inches (15.24 cm) beyond the rim of the pulley on the in-running and off-running sides of the belt and at least 2 inches (5.08 cm) away from the rim and face of the pulley in all other directions.

(4) This section covers the principal features with which power transmission safeguards shall comply.

(b) *Prime-mover guards*—(1) *Flywheels.* Flywheels located so that any part is 7 feet (2.128 m) or less above floor or platform shall be guarded in accordance with the requirements of this subparagraph:

(i) With an enclosure of sheet, perforated, or expanded metal, or woven wire;

(ii) With guard rails placed not less than 15 inches (38.1 cm) nor more than 20 inches (50.8 cm) from rim. When flywheel extends into pit or is within 12 inches (30.48 cm) of floor, a standard toeboard shall also be provided;

(iii) When the upper rim of flywheel protrudes through a working floor, it shall be entirely enclosed or surrounded by a guardrail and toeboard.

(iv) For flywheels with smooth rims 5 feet (1.52 m) or less in diameter, where the preceding methods cannot be applied, the following may be used: A disk attached to the flywheel in such manner as to cover the spokes of the wheel on the exposed side and present a smooth surface and edge, at the same time providing means for periodic inspection. An open space, not exceeding 4 inches (10.16 cm) in width, may be left between the outside edge of the disk and the rim of the wheel if desired, to facilitate turning the wheel over. Where a disk is used, the keys or other dangerous projections not covered by disk shall be cut off or covered. This subdivision does not apply to flywheels with solid web centers.

(v) Adjustable guard to be used for starting engine or for running adjustment may be provided at the flywheel of gas or oil engines. A slot opening for jack bar will be permitted.

(vi) Wherever flywheels are above working areas, guards shall be installed having sufficient strength to hold the weight of the flywheel in the event of a shaft or wheel mounting failure.

(2) *Cranks and connecting rods.* Cranks and connecting rods, when exposed to contact, shall be guarded in accordance with paragraphs (m) and (n) of this section, or by a guardrail as described in paragraph (o)(5) of this section.

(3) *Tail rods or extension piston rods.* Tail rods or extension piston rods shall be guarded in accordance with

paragraphs (m) and (o) of this section, or by a guardrail on sides and end, with a clearance of not less than 15 (38.1 cm) nor more than 20 inches (50.8 cm) when rod is fully extended.

(c) *Shafting*—(1) *Installation.* (i) Each continuous line of shafting shall be secured in position against excessive endwise movement.

(ii) Inclined and vertical shafts, particularly inclined idler shafts, shall be securely held in position against endwise thrust.

(2) *Guarding horizontal shafting.* (i) All exposed parts of horizontal shafting 7 feet (2.128 m) or less from floor or working platform, excepting runways used exclusively for oiling, or running adjustments, shall be protected by a stationary casing enclosing shafting completely or by a trough enclosing sides and top or sides and bottom of shafting as location requires.

(ii) Shafting under bench machines shall be enclosed by a stationary casing, or by a trough at sides and top or sides and bottom, as location requires. The sides of the trough shall come within at least 6 inches (15.24 cm) of the underside of table, or if shafting is located near floor within 6 inches (15.24 cm) of floor. In every case the sides of trough shall extend at least 2 inches (5.08 cm) beyond the shafting or protuberance.

(3) *Guarding vertical and inclined shafting.* Vertical and inclined shafting 7 feet (2.128 m) or less from floor or working platform, excepting maintenance runways, shall be enclosed with a stationary casing in accordance with requirements of paragraphs (m) and (o) of this section.

(4) *Projecting shaft ends.* (i) Projecting shaft ends shall present a smooth edge and end and shall not project more than one-half the diameter of the shaft unless guarded by nonrotating caps or safety sleeves.

(ii) Unused keyways shall be filled up or covered.

(5) *Power-transmission apparatus located in basements.* All mechanical power transmission apparatus located in basements, towers, and rooms used exclusively for power transmission equipment shall be guarded in accordance with this section, except that the requirements for safeguarding belts, pulleys, and shafting need not be complied with when the following requirements are met:

(i) The basement, tower, or room occupied by transmission equipment is locked against unauthorized entrance.

(ii) The vertical clearance in passageways between the floor and power transmission beams, ceiling, or any other objects, is not less than 5 ft. 6 in. (1.672 m).

(iii) The intensity of illumination conforms to the requirements of ANSI A11.1–1965 (R–1970).

(iv) [Reserved]

(v) The route followed by the oiler is protected in such manner as to prevent accident.

(d) *Pulleys*—(1) *Guarding.* Pulleys, any parts of which are 7 feet (2.128 m) or less from the floor or working platform, shall be guarded in accordance with the standards specified in paragraphs (m) and (o) of this section. Pulleys serving as balance wheels (e.g., punch presses) on which the point of contact between belt and pulley is more than 6 ft. 6 in. (1.976 m) from the floor or platform may be guarded with a disk covering the spokes.

(2) *Location of pulleys.* (i) Unless the distance to the nearest fixed pulley, clutch, or hanger exceeds the width of the belt used, a guide shall be provided to prevent the belt from leaving the pulley on the side where insufficient clearance exists.

(ii) [Reserved]

(3) *Broken pulleys.* Pulleys with cracks, or pieces broken out of rims, shall not be used.

(4) *Pulley speeds.* Pulleys intended to operate at rim speed in excess of manufacturers normal recommendations shall be specially designed and carefully balanced for the speed at which they are to operate.

(e) *Belt, rope, and chain drives*—(1) *Horizontal belts and ropes.* (i) Where both runs of horizontal belts are 7 feet (2.128 m) or less from the floor level, the guard shall extend to at least 15 inches (38.1 cm) above the belt or to a standard height (see Table O–12), except that where both runs of a horizontal belt are 42 inches (106.68 cm) or less from the floor, the belt shall be fully enclosed.

(ii) In powerplants or power-development rooms, a guardrail may be used in lieu of the guard required by paragraph (e)(1)(i) of this section.

(2) *Overhead horizontal belts.* (i) Overhead horizontal belts, with lower parts 7 feet (2.128 m) or less from the floor or platform, shall be guarded on sides and bottom in accordance with paragraph (o)(3) of this section.

(ii) Horizontal overhead belts more than 7 feet (2.128 m) above floor or platform shall be guarded for their entire length under the following conditions:

(a) If located over passageways or work places and traveling 1,800 feet or more per minute.

(b) If center to center distance between pulleys is 10 feet (3.04 m) or more.

(c) If belt is 8 inches (20.32 cm) or more in width.

(iii) Where the upper and lower runs of horizontal belts are so located that passage of persons between them would be possible, the passage shall be either:

(a) Completely barred by a guardrail or other barrier in accordance with paragraphs (m) and (o) of this section; or

(b) Where passage is regarded as necessary, there shall be a platform over the lower run guarded on either side by a railing completely filled in with wire mesh or other filler, or by a solid barrier. The upper run shall be so guarded as to prevent contact therewith either by the worker or by objects carried by him. In powerplants only the lower run of the belt need be guarded.

(iv) Overhead chain and link belt drives are governed by the same rules as overhead horizontal belts and shall be guarded in the same manner as belts.

(3) *Vertical and inclined belts.* (i) Vertical and inclined belts shall be enclosed by a guard conforming to standards in paragraphs (m) and (o) of this section.

(ii) All guards for inclined belts shall be arranged in such a manner that a minimum clearance of 7 feet (2.128 m) is maintained between belt and floor at any point outside of guard.

(4) *Vertical belts.* Vertical belts running over a lower pulley more than 7 feet (2.128 m) above floor or platform shall be guarded at the bottom in the same manner as horizontal overhead belts, if conditions are as stated in paragraphs (e)(2)(ii) *(a)* and *(c)* of this section.

(5) *Cone-pulley belts.* (i) The cone belt and pulley shall be equipped with a belt shifter so constructed as to adequately guard the nip point of the belt and pulley. If the frame of the belt shifter does not adequately guard the nip point of the belt and pulley, the nip point shall be further protected by means of a vertical guard placed in front of the pulley and extending at least to the top of the largest step of the cone.

(ii) If the belt is of the endless type or laced with rawhide laces, and a belt shifter is not desired, the belt will be considered guarded if the nip point of the belt and pulley is protected by a nip point guard located in front of the cone extending at least to the top of the largest step of the cone, and formed to show the contour of the cone in order to give the nip point of the belt and pulley the maximum protection.

(iii) If the cone is located less than 3 feet (0.912 m) from the floor or working platform, the cone pulley and belt shall be guarded to a height of 3 feet (0.912

m) regardless of whether the belt is endless or laced with rawhide.

(6) *Belt tighteners.* (i) Suspended counterbalanced tighteners and all parts thereof shall be of substantial construction and securely fastened; the bearings shall be securely capped. Means must be provided to prevent tightener from falling, in case the belt breaks.

(ii) Where suspended counterweights are used and not guarded by location, they shall be so encased as to prevent accident.

(f) *Gears, sprockets, and chains*—(1) *Gears.* Gears shall be guarded in accordance with one of the following methods:

(i) By a complete enclosure; or

(ii) By a standard guard as described in paragraph (o) of this section, at least 7 feet (2.128 m) high extending 6 inches (15.24 cm) above the mesh point of the gears; or

(iii) By a band guard covering the face of gear and having flanges extended inward beyond the root of the teeth on the exposed side or sides. Where any portion of the train of gears guarded by a band guard is less than 6 feet (1.824 m) from the floor a disk guard or a complete enclosure to the height of 6 feet (1.824 m) shall be required.

(2) *Hand-operated gears.* Paragraph (f)(1) of this section does not apply to hand-operated gears used only to adjust machine parts and which do not continue to move after hand power is removed. However, the guarding of these gears is highly recommended.

(3) *Sprockets and chains.* All sprocket wheels and chains shall be enclosed unless they are more than 7 feet (2.128 m) above the floor or platform. Where the drive extends over other machine or working areas, protection against falling shall be provided. This subparagraph does not apply to manually operated sprockets.

(4) *Openings for oiling.* When frequent oiling must be done, openings with hinged or sliding self-closing covers shall be provided. All points not readily accessible shall have oil feed tubes if lubricant is to be added while machinery is in motion.

(g) *Guarding friction drives.* The driving point of all friction drives when exposed to contact shall be guarded, all arm or spoke friction drives and all web friction drives with holes in the web shall be entirely enclosed, and all projecting belts on friction drives where exposed to contact shall be guarded.

(h) *Keys, setscrews, and other projections.* (1) All projecting keys, setscrews, and other projections in revolving parts shall be removed or made flush or guarded by metal cover. This subparagraph does not apply to keys or setscrews within gear or sprocket casings or other enclosures, nor to keys, setscrews, or oilcups in hubs of pulleys less than 20 inches (50.8 cm) in diameter where they are within the plane of the rim of the pulley.

(2) It is recommended, however, that no projecting setscrews or oilcups be used in any revolving pulley or part of machinery.

(i) *Collars and couplings*—(1) *Collars.* All revolving collars, including split collars, shall be cylindrical, and screws or bolts used in collars shall not project beyond the largest periphery of the collar.

(2) *Couplings.* Shaft couplings shall be so constructed as to present no hazard from bolts, nuts, setscrews, or revolving surfaces. Bolts, nuts, and setscrews will, however, be permitted where they are covered with safety sleeves or where they are used parallel with the shafting and are countersunk or else do not extend beyond the flange of the coupling.

(j) *Bearings and facilities for oiling.* All drip cups and pans shall be securely fastened.

(k) *Guarding of clutches, cutoff couplings, and clutch pulleys*—(1) *Guards.* Clutches, cutoff couplings, or clutch pulleys having projecting parts, where such clutches are located 7 feet (2.128 m) or less above the floor or working platform, shall be enclosed by a stationary guard constructed in accordance with this section. A "U" type guard is permissible.

(2) *Engine rooms.* In engine rooms a guardrail, preferably with toeboard, may be used instead of the guard required by paragraph (k)(1) of this section, provided such a room is occupied only by engine room attendants.

(l) *Belt shifters, clutches, shippers, poles, perches, and fasteners*—(1) *Belt shifters.* (i) Tight and loose pulleys on all new installations made on or after August 31, 1971, shall be equipped with a permanent belt shifter provided with mechanical means to prevent belt from creeping from loose to tight pulley. It is recommended that old installations be changed to conform to this rule.

(ii) Belt shifter and clutch handles shall be rounded and be located as far as possible from danger of accidental contact, but within easy reach of the operator. Where belt shifters are not directly located over a machine or bench, the handles shall be cut off 6 ft. 6 in. (1.976 m) above floor level.

(2) *Belt shippers and shipper poles.* The use of belt poles as substitutes for mechanical shifters is not recommended.

(3) *Belt perches.* Where loose pulleys or idlers are not practicable, belt perches in form of brackets, rollers, etc., shall be used to keep idle belts away from the shafts.

(4) *Belt fasteners.* Belts which of necessity must be shifted by hand and belts within 7 feet (2.128 m) of the floor or working platform which are not guarded in accordance with this section shall not be fastened with metal in any case, nor with any other fastening which by construction or wear will constitute an accident hazard.

(m) *Standard guards—general requirements*—(1) *Materials.* (i) Standard conditions shall be secured by the use of the following materials. Expanded metal, perforated or solid sheet metal, wire mesh on a frame of angle iron, or iron pipe securely fastened to floor or to frame of machine.

(ii) All metal should be free from burrs and sharp edges.

(2) *Methods of manufacture.* (i) Expanded metal, sheet or perforated metal, and wire mesh shall be securely fastened to frame.

(n) [Reserved]

(o) *Approved materials*—(1) *Minimum requirements.* The materials and dimensions specified in this paragraph shall apply to all guards, except horizontal overhead belts, rope, cable, or chain guards more than 7 feet (2.128 m) above floor, or platform.

(i) [Reserved]

(a) All guards shall be rigidly braced every 3 feet (0.912 m) or fractional part of their height to some fixed part of machinery or building structure. Where guard is exposed to contact with moving equipment additional strength may be necessary.

(2) *Wood guards.* (i) Wood guards may be used in the woodworking and chemical industries, in industries where the presence of fumes or where manufacturing conditions would cause the rapid deterioration of metal guards; also in construction work and in locations outdoors where extreme cold or extreme heat make metal guards and railings undesirable. In all other industries, wood guards shall not be used.

(3) *Guards for horizontal overhead belts.* (i) Guards for horizontal overhead belts shall run the entire length of the belt and follow the line of the pulley to the ceiling or be carried to the nearest wall, thus enclosing the belt effectively. Where belts are so located as to make it impracticable to carry the guard to wall or ceiling, construction of guard shall be such as to enclose completely the top and bottom runs of belt and the face of pulleys.

(ii) [Reserved]

(iii) Suitable reinforcement shall be provided for the ceiling rafters or overhead floor beams, where such is necessary, to sustain safely the weight and stress likely to be imposed by the guard. The interior surface of all guards, by which is meant the surface of the guard with which a belt will come in contact, shall be smooth and free from all projections of any character, except where construction demands it; protruding shallow roundhead rivets may be used. Overhead belt guards shall be at least one-quarter wider than belt which they protect, except that this clearance need not in any case exceed 6 inches (15.24 cm) on each side. Overhead rope drive and block and roller-chain-drive guards shall be not less than 6 inches (15.24 cm) wider than the drive on each side. In overhead silent chain-drive guards where the chain is held from lateral displacement on the sprockets, the side clearances required on drives of 20 inch (50.8 cm) centers or under shall be not less than ¼ inch (0.635 cm) from the nearest moving chain part, and on drives of over 20 inch (50.8 cm) centers a minimum of ½ inch (1.27 cm) from the nearest moving chain part.

(4) *Guards for horizontal overhead rope and chain drives.* Overhead-rope and chain-drive guard construction shall conform to the rules for overhead-belt guard.

(5) *Guardrails and toeboards.* (i) Guardrail shall be 42 inches (106.68 cm) in height, with midrail between top rail and floor.

(ii) Posts shall be not more than 8 feet (2.432 m) apart; they are to be permanent and substantial, smooth, and free from protruding nails, bolts, and splinters. If made of pipe, the post shall be 1¼ inches (3.175 cm) inside diameter, or larger. If made of metal shapes or bars, their section shall be equal in strength to that of 1½ (3.81 cm) by 1½ (3.81 cm) by 3/16 inch angle iron. If made of wood, the posts shall be two by four (2 × 4) inches or larger. The upper rail shall be two by four (2 × 4) inches, or two one by four (1 × 4) strips, one at the top and one at the side of posts. The midrail may be one by four (1 × 4) inches or more. Where panels are fitted with expanded metal or wire mesh as noted in Table O–12 the middle rails may be omitted. Where guard is exposed to contact with moving equipment, additional strength may be necessary.

(iii) Toeboards shall be 4 inches (10.16 cm) or more in height, of wood, metal, or of metal grill not exceeding 1 inch (2.54 cm) mesh.

(p) *Care of equipment*—(1) *General.* All power-transmission equipment shall be inspected at intervals not exceeding 60 days and be kept in good working condition at all times.

(2) *Shafting.* (i) Shafting shall be kept in alignment, free from rust and excess oil or grease.

(ii) Where explosives, explosive dusts, flammable vapors or flammable liquids exist, the hazard of static sparks from shafting shall be carefully considered.

(3) *Bearings.* Bearings shall be kept in alignment and properly adjusted.

(4) *Hangers.* Hangers shall be inspected to make certain that all supporting bolts and screws are tight and that supports of hanger boxes are adjusted properly.

(5) *Pulleys.* (i) Pulleys shall be kept in proper alignment to prevent belts from running off.

(6) *Care of belts.*

(i) [Reserved]

(ii) Inspection shall be made of belts, lacings, and fasteners and such equipment kept in good repair.

(7) *Lubrication.* The regular oilers shall wear tight-fitting clothing. Machinery shall be oiled when not in motion, wherever possible.

Subpart J—Welding and Cutting

32. In § 1926.350, new paragraphs (a)(10) through (12) are added to read as follows:

§ 1926.350 Gas welding and cutting.

(a) *Transporting, moving, and storing compressed gas cylinders.*

* * * * *

(10) Oxygen cylinders in storage shall be separated from fuel-gas cylinders or combustible materials (especially oil or grease), a minimum distance of 20 feet (6.1 m) or by a noncombustible barrier at least 5 feet (1.5 m) high having a fire-resistance rating of at least one-half hour.

(11) Inside of buildings, cylinders shall be stored in a well-protected, well-ventilated, dry location, at least 20 feet (6.1 m) from highly combustible materials such as oil or excelsior. Cylinders should be stored in definitely assigned places away from elevators, stairs, or gangways. Assigned storage places shall be located where cylinders will not be knocked over or damaged by passing or falling objects, or subject to tampering by unauthorized persons. Cylinders shall not be kept in unventilated enclosures such as lockers and cupboards.

(12) The in-plant handling, storage, and utilization of all compressed gases in cylinders, portable tanks, rail tankcars, or motor vehicle cargo tanks shall be in accordance with Compressed Gas Association Pamphlet P–1–1965.

* * * * *

33. In § 1926.353, new paragraph (b)(3) is added to read as follows:

§ 1926.353 Ventilation and protection in welding, cutting, and heating.

* * * * *

(b) *Welding, cutting, and heating in confined spaces.*

* * * * *

(3) *Lifelines.* Where a welder must enter a confined space through a manhole or other small opening, means shall be provided for quickly removing him in case of emergency. When safety belts and lifelines are used for this purpose they shall be so attached to the welder's body that his body cannot be jammed in a small exit opening. An attendant with a pre-planned rescue procedure shall be stationed outside to observe the welder at all times and be capable of putting rescue operations into effect.

Subpart K—Electrical

Safety-Related Work Practices

34. In § 1926.416, new paragraphs (a)(4), (f), and (g) are added to read as follows:

§ 1926.416 General requirements.

(a) *Protection of employees—*

* * * * *

(4) *Work on energized equipment.* Only qualified persons may work on electric circuit parts or equipment that have not been deenergized under the procedures of § 1926.417(d) of this section. Such persons shall be capable of working safely on energized circuits and shall be familiar with the proper use of special precautionary techniques, personal protective equipment, insulating and shielding materials, and insulated tools.

* * * * *

(f)(1) *Interlocks.* Only a qualified person following the requirements of paragraph (c) of this section may defeat an electrical safety interlock, and then only temporarily while he or she is working on the equipment. The interlock system shall be returned to its operable condition when this work is completed.

(2) *Portable electric equipment—Handling.* Portable equipment shall be handled in a manner which will not cause damage. Flexible electric cords connected to equipment may not be used for raising or lowering the equipment. Flexible cords may not be fastened with staples or otherwise hung in such a fashion as could damage the outer jacket or insulation.

(3) *Visual inspection.* When an attachment plug is to be connected to a receptacle (including an on a cord set),

the relationship of the plug and receptacle contacts shall first be checked to ensure that they are of proper mating configurations.

(4) *Connecting attachment plugs.* (i) Employees' hands may not be wet when plugging and unplugging flexible cords and cord and plug connected equipment, if energized equipment is involved.

(ii) Energized plug and receptacle connections may be handled only with insulating protective equipment if the condition of the connection could provide a conducting path to the employee's hand (if, for example, a cord connector is wet from being immersed in water).

(iii) Locking type connectors shall be properly secured after connection.

(5) *Routine opening and closing of electric power and lighting circuits.* Load rated switches, circuit breakers, or other devices specifically designed as disconnecting means shall be used for the opening, reversing, or closing of circuits under load conditions. Cable connectors not of the load break type, fuses, terminal lugs, and cable splice connections may not be used for such purposes, except in an emergency.

(6) *Reclosing circuits after protective device operation.* After a circuit is deenergized by a circuit protective device, the circuit protective device, the circuit may not be manually reenergized until it has been determined that the equipment and circuit can be safely energized. The repetitive manual reclosing of circuit breakers or reenergizing circuits through replaced fuses is prohibited.

Note: When it can be determined from the design of the circuit and the overcurrent devices involved that the automatic operation of a device was caused by an overload rather than a fault condition, no examination of the circuit or connected equipment is needed before the circuit is reenergized.

(7) *Test instruments and equipment—Use.* Only qualified persons may perform testing work on electric circuits or equipment.

(8) *Visual inspection.* Test instruments and equipment and all associated test leads, cables, power cords, probes, and connectors shall be visually inspected for external defects and damage before the equipment is used. If there is a defect or evidence of damage that might expose an employee to injury, the defective or damaged item shall be removed from service, and no employee may use it until repairs and tests necessary to render the equipment safe have been made.

(9) *Rating of equipment.* Test instruments and equipment and their accessories shall be rated for the circuits and equipment to which they will be connected and shall be designed for the environment in which they will be used.

(10) *Occasional use of flammable or ignitable materials.* Where flammable materials are present only occasionally, electric equipment capable of igniting them shall not be used, unless measures are taken to prevent hazardous conditions from developing. Such materials include, but are not limited to: flammable gases, vapors, or liquids; combustible dust; and ignitible fibers or flyings.

(g) *Use of equipment.* (1) *Work on energized equipment.* Only qualified persons may work on electric circuit parts or equipment that have not been deenergized under the procedures of paragraph (b) of this section. Such persons shall be capable of working safely on energized circuits and shall be familiar with the proper use of special precautionary techniques, personal protective equipment, insulating and shielding materials, and insulated tools.

(2) *Overhead lines.* If work is to be performed near overhead lines, the lines shall be deenergized and grounded, or other protective measures shall be provided before work is started. If the lines are to be deenergized, arrangements shall be made with the person or organization that operates or controls the electric circuits involved to deenergize and ground them. If protective measures, such as guarding, isolating, or insulating, are provided, these precautions shall prevent employees from contacting such lines directly with any part of their body or indirectly through conductive materials, tools, or equipment.

(i) *Unqualified persons.* (A) When an unqualified person is working in an elevated position near overhead lines, the location shall be such that the person and the longest conductive object he or she may contact cannot come closer to any unguarded, energized overhead line than the following distances:

(*1*) For voltages to ground 50kV or below—10 feet (305 cm);

(*2*) For voltages to ground over 50kV—10 feet (305 cm) plus 4 inches (10 cm) for every 10kV over 50kV.

(B) When an unqualified person is working on the ground in the vicinity of overhead lines, the person may not bring any conductive object closer to unguarded, energized overhead lines than the distances given in paragraph (g)(2)(i)(A) of this section.

Note: For voltages normally encountered with overhead power line, objects which do not have an insulating rating for the voltage involved are considered to be conductive.

(ii) *Qualified persons.* When a qualified person is working in the vicinity of overhead lines, whether in an elevated position or on the ground, the person may not approach or take any conductive object without an approved insulating handle closer to exposed energized parts than shown in Table K-2 unless:

(A) The person is insulated from the energized part (gloves, with sleeves if necessary, rated for the voltage involved are considered to be insulation of the person from the energized part on which work is performed), or

(B) The energized part is insulated both from all other conductive objects at a different potential and from the person, or

(C) The person is insulated from all conductive objects at a potential different from that of the energized part.

TABLE K-2—APPROACH DISTANCES FOR QUALIFIED EMPLOYEES—ALTERNATING CURRENT

Voltage range (phase to phase)	Minimum approach distance
300V and less	Avoid contact
Over 300V, not over 750V.	1 ft. 0 in. (30.5 cm)
Over 750V, not over 2kV.	1 ft. 6 in. (46 cm).
Over 2kV, not over 15kV.	2 ft. 0 in. (61 cm).
Over 15kV, not over 37kV.	3 ft. 0 in. (91 cm).
Over 37kV, not over 87.5kV.	3 ft. 6 in. (107 cm).
Over 87.5kV, not over 121kV.	4 ft. 0 in. (122 cm).
Over 121kV, not over 140kV.	4 ft. 6 in. (137 cm).

(iii) *Vehicular and mechanical equipment.* (A) Any vehicle or mechanical equipment capable of having parts of its structure elevated near energized overhead lines shall be operated so that a clearance of 10 ft. (305 cm) is maintained. If the voltage is higher than 50kV, the clearance shall be increased 4 in. (10 cm) for every 10kV over that voltage. However, under any of the following conditions, the clearance may be reduced:

(*1*) If the vehicle is in transit with its structure lowered, the clearance may be reduced to 4 ft. (122 cm). If the voltage is higher than 50kV, the clearance shall be increased 4 in. (10 cm) for every 10 kV over that voltage.

(*2*) If insulating barriers are installed to prevent contact with the lines, and if the barriers are rated for the voltage of the line being guarded and are not a part

of or an attachment to the the vehicle or its raised structure, the clearance may be reduced to a distance within the designed working dimensions of the insulating barrier.

(3) If the equipment is an aerial lift insulated for the voltage involved, and if the work is performed by a qualified person, the clearance (between the uninsulated portion of the aerial lift and the power line) may be reduced to the distance given in Table K-2.

(B) Employees standing on the ground may not contact the vehicle or mechanical equipment or any of the structure that provides a conductive path to employees on the ground) can come closer to the line than permitted in paragraph (g)(2)(iii) of this section.

(C) If any vehicle or mechanical equipment capable of having parts of its structure elevated near energized overhead lines is intentionally grounded, employees working on the ground near the point of grounding may not stand at the grounding location whenever there is a possibility of overhead line contact. Additional precautions, such as the use of barricades or insulation, shall be taken to protect employees from hazardous ground potentials, depending on earth resistivity and fault currents, which can develop within the first few feet or more outward from the grounding point.

(3) *Illumination.* (i) Employees may not enter spaces containing exposed energized parts, unless illumination is provided that enables the employees to perform the work safely.

(ii) Where lack of illumination or an obstruction precludes observation of the work to be performed, employees may not perform tasks near exposed energized parts. Employees may not reach blindly into areas which may contain energized parts.

(4) *Confined or enclosed work spaces.* When an employee works in a confined or enclosed space (such as a manhole or vault) that contains exposed energized parts, the employer shall provide, and the employee shall use, protective shields, protective barriers, or insulating materials as necessary to avoid inadvertent contact with these parts. Doors, hinged panels, and the like shall be secured to prevent their swinging into an employee and causing the employee to contact exposed energized parts.

(5) *Conductive materials and equipment.* Conductive materials and equipment that are in contact with any part of an employee's body shall be handled in a manner that will prevent them from contacting exposed energized conductors or circuit parts. If an employee must handle long dimensional conductive objects (such as ducts and pipes) in areas with exposed live parts, the employer shall institute work practices (such as the use of insulation, guarding, and material handling techniques) which will minimize the hazard.

(6) *Portable ladders.* Portable ladders shall have nonconductive siderails if they are used where the employee or the ladder could contact exposed energized parts.

(7) *Conductive apparel.* Conductive articles of jewelry and clothing (such a watch bands, bracelets, rings, key chains, necklaces, metalized aprons, cloth with conductive thread, or metal headgear) may not be worn if they might contact exposed energized parts. However, such articles may be worn if they are rendered nonconductive by covering, wrapping, or other insulating means.

(8) *Housekeeping duties.* Where live parts present an electrical contact hazard, employees may not perform housekeeping duties at such close distances to the parts that there is a possibility of contact, unless adequate safeguards (such as insulating equipment or barriers) are provided. Electrically conductive cleaning materials (including conductive solids such as steel wool, metalized cloth, and silicon carbide, as well as conductive liquid solutions) may not be used in proximity to energized parts unless procedures are followed which will prevent electrical contact.

35. In § 1926.417, a new paragraph (d) is added to read as follows:

§ 1926.417 Lockout and tagging of circuits.

* * * * *

(d) *Lockout and tagging.* While any employee is exposed to contact with parts of fixed electric equipment or circuits which have been deenergized, the circuits energizing the parts shall be locked out or tagged or both in accordance with the requirements of this paragraph. The requirements shall be followed in the order in which they are presented (*i.e.*, paragraph (d)(1) first, then paragraph (d)(2), etc.).

Note 1: As used in this section, fixed equipment refers to equipment fastened in place or connected by permanent wiring methods.

Note 2: Lockout and tagging procedures that comply with paragraphs (c) through (f) of 1910.147 will also be deemed to comply with paragraph (d) of this section provided that:

(1) The procedures address the electrical safety hazards covered by this subpart; and

(2) The procedures also incorporate the requirements of paragraphs (d)(3)(iv) and (d)(4)(ii) of this section.

(1) *Procedures.* The employer shall maintain a written copy of the procedures outlined in paragraph (d) and shall make it available for inspection by employees and by the Assistant Secretary of Labor and his or her authorized representatives.

Note: The written procedures may be in the form of a copy of paragraph (b) of this section.

(2) *Deenergizing equipment.* (i) Safe procedures for deenergizing circuits and equipment shall be determined before circuits or equipment are deenergized.

(ii) The circuits and equipment to be worked on shall be disconnected from all electric energy sources. Control circuit devices, such as push buttons, selector switches, and interlocks, may not be used as the sole means for deenergizing circuits or equipment. Interlocks for electric equipment may not be used as a substitute for lockout and tagging procedures.

(iii) Stored electric energy which might endanger personnel shall be released. Capacitors shall be discharged and high capacitance elements shall be short-circuited and grounded, if the stored electric energy might endanger personnel.

Note: If the capacitors or associated equipment are handled in meeting this requirement, they shall be treated as energized.

(iv) Stored non-electrical energy in devices that could reenergize electric circuit parts shall be blocked or relieved to the extent that the circuit parts could not be accidentally energized by the device.

(3) *Application of locks and tags.* (i) A lock and a tag shall be placed on each disconnecting means used to deenergize circuits and equipment on which work is to be performed, except as provided in paragraphs (d)(3) (iii) and (v) of this section. The lock shall be attached so as to prevent persons from operating the disconnecting means unless they resort to undue force or the use of tools.

(ii) Each tag shall contain a statement prohibiting unauthorized operation of the disconnecting means and removal of the tag.

(iii) If a lock cannot be applied, or if the employer can demonstrate that tagging procedures will provide a level of safety equivalent to that obtained by the use of a lock, a tag may be used without a lock.

(iv) A tag used without a lock, as permitted by paragraph (d)(3)(iii) of this section, shall be supplemented by at least one additional safety measure that provides a level of safety equivalent to that obtained by use of a lock. Examples of additional safety measures include

the removal of an isolating circuit element, blocking of a controlling switch, or opening of an extra disconnecting device.

(v) A lock may be placed without a tag only under the following conditions:

(A) Only one circuit or piece of equipment is deenergized, and

(B) The lockout period does not extend beyond the work shift, and

(C) Employees exposed to the hazards associated with reenergizing the circuit or equipment are familiar with this procedure.

(4) *Verification of deenergized condition.* The requirements of this paragraph shall be met before any circuits or equipment can be considered and worked as deenergized.

(i) A qualified person shall operate the equipment operating controls or otherwise verify that the equipment cannot be restarted.

(ii) A qualified person shall use test equipment to test the circuit elements and electrical parts of equipment to which employees will be exposed and shall verify that the circuit elements and equipment parts are deenergized. The test shall also determine if any energized condition exists as a result of inadvertently induced voltage or unrelated voltage backfeed even though specific parts of the circuit have been deenergized and presumed to be safe. If the circuit to be tested is over 600 volts, nominal, the test equipment shall be checked for proper operation immediately after this test.

(v) *Reenergizing equipment.* These requirements shall be met, in the order given, before circuits or equipment are reenergized, even temporarily.

(i) A qualified person shall conduct tests and visual inspections, as necessary, to verify that all tools, electrical jumpers, shorts, grounds, and other such devices have been removed, so that the circuits and equipment can be safely energized.

(ii) Employees exposed to the hazards associated with reenergizing the circuit or equipment shall be warned to stay clear of circuits and equipment.

(iii) Each lock and tag shall be removed by the employee who applied it or under his or her direct supervision. However, if this employee is absent from the workplace, then the lock or tag may be removed by a qualified person designated to perform this task provided that:

(A) The employer ensures that the employee who applied the lock or tag is not available at the workplace, and

(B) The employer ensures that the employee is aware that the lock or tag has been removed before he or she resumes work at that workplace.

(iv) There shall be a visual determination that all employees are clear of the circuits and equipment.

Subpart L—Scaffolding

36. In § 1926.451, new paragraphs (a) (22) through (24) are added to read as follows:

§ 1926.451 Scaffolding.

(a) *General requirements.*

* * * * *

(22) Materials being hoisted onto a scaffold shall have a tag line.

(23) Employees shall not work on scaffolds during storms or high winds.

(24) Tools, materials, and debris shall not be allowed to accumulate in quantities to cause a hazard.

* * * * *

37. A new § 1926.453 is added to read as follows:

§ 1926.453 Manually propelled mobile ladder stands and scaffolds (towers).

(a) *General requirements*—(1) *Application.* This section is intended to prescribe rules and requirements for the design, construction, and use of mobile work platforms (including ladder stands but not including aerial ladders) and rolling (mobile) scaffolds (towers). This standard is promulgated to aid in providing for the safety of life, limb, and property, by establishing minimum standards for structural design requirements and for the use of mobile work platforms and towers.

(2) *Working loads.* (i) Work platforms and scaffolds shall be capable of carrying the design load under varying circumstances depending upon the conditions of use. Therefore, all parts and appurtenances necessary for their safe and efficient utilization must be integral parts of the design.

(ii) Specific design and construction requirements are not a part of this section because of the wide variety of materials and design possibilities. However, the design shall be such as to produce a mobile ladder stand or scaffold that will safely sustain the specified loads. The material selected shall be of sufficient strength to meet the test requirements and shall be protected against corrosion or deterioration.

(a) The design working load of ladder stands shall be calculated on the basis of one or more 200-pound (90.6 kg) persons together with 50 pounds (22.65 kg) of equipment each.

(b) The design load of all scaffolds shall be calculated on the basis of:

Light—Designed and constructed to carry a working load of 25 pounds per square foot (1.05 kg m^2).

Medium—Designed and constructed to carry a working load of 50 pounds per square foot (2.1 kg m^2).

Heavy—Designed and constructed to carry a working load of 75 pounds per square foot (3.15 kg m^2).

All ladder stands and scaffolds shall be capable of supporting at least four times the design working load.

(iii) The materials used in mobile ladder stands and scaffolds shall be of standard manufacture and conform to standard specifications of strength, dimensions, and weights, and shall be selected to safely support the design working load.

(iv) Nails, bolts, or other fasteners used in the construction of ladders, scaffolds, and towers shall be of adequate size and in sufficient numbers at each connection to develop the designed strength of the unit. Nails shall be driven full length. (All nails should be immediately withdrawn from dismantled lumber.)

(v) All exposed surfaces shall be free from sharp edges, burrs or other safety hazards.

(3) *Work levels.* (i) The maximum work level height shall not exceed four (4) times the minimum or least base dimensions of any mobile ladder stand or scaffold. Where the basic mobile unit does not meet this requirement, suitable outrigger frames shall be employed to achieve this least base dimension, or provisions shall be made to guy or brace the unit against tipping.

(ii) The minimum platform width for any work level shall not be less than 20 inches (50.8 cm) for mobile scaffolds (towers). Ladder stands shall have a minimum step width of 16 inches (40.64 cm).

(iii) The supporting structure for the work level shall be rigidly braced, using adequate cross bracing or diagonal bracing with rigid platforms at each work level.

(iv) The steps of ladder stands shall be fabricated from slip resistant treads.

(v) The work level platform of scaffolds (towers) shall be of wood, aluminum, or plywood planking, steel or expanded metal, for the full width of the scaffold, except for necessary openings. Work platforms shall be secured in place. All planking shall be 2-inch (5.08 cm) (nominal) scaffold grade minimum 1,500 *f.* (stress grade) construction grade lumber or equivalent.

(vi) All scaffold work levels 10 feet (3.04 m) or higher above the ground or floor shall have a standard (4-inch (10.16 cm) nominal) toeboard.

(vii) All work levels 10 feet (3.04 m) or higher above the ground or floor shall have a guardrail of 2- by 4-inch nominal

or the equivalent installed no less than 36 inches (0.912 m) or more than 42 inches (106.68 cm) high, with a mid-rail, when required, of 1- by 4-inch nominal lumber or equivalent.

(viii) A climbing ladder or stairway shall be provided for proper access and egress, and shall be affixed or built into the scaffold and so located that its use will not have a tendency to tip the scaffold. A landing platform shall be provided at intervals not to exceed 30 feet (9.12 m).

(4) *Wheels or casters.* (i) Wheels or casters shall be properly designed for strength and dimensions to support four (4) times the design working load.

(ii) All scaffold casters shall be provided with a positive wheel and/or swivel lock to prevent movement. Ladder stands shall have at least two (2) of the four (4) casters and shall be of the swivel type.

(iii) Where leveling of the elevated work platform is required, screw jacks or other suitable means for adjusting the height shall be provided in the base section of each mobile unit.

(b) *Mobile tubular welded sectional folding scaffolds*—(1) *General.* Units including sectional stairway and sectional ladder scaffolds shall be designed to comply with the requirements of paragraph (a) of this section.

(2) *Stairway.* An integral stairway and work platform shall be incorporated into the structure of each sectional folding stairway scaffold.

(3) *Bracing.* An integral set of pivoting and hinged folding diagonal and horizontal braces and a detachable work platform shall be incorporated into the structure of each sectional folding ladder scaffold.

(4) *Sectional folding stairway scaffolds.* Sectional folding stairway scaffolds shall be designed as medium duty scaffolds except for high clearance. These special base sections shall be designed as light duty scaffolds. When upper sectional folding stairway scaffolds are used with a special high clearance base, the load capacity of the entire scaffold shall be reduced accordingly. The width of a sectional folding stairway scaffold shall not exceed 4½ feet (1.368 m). The maximum length of a sectional folding stairway scaffold shall not exceed 6 feet (1.824 m).

(5) *Sectional folding ladder scaffolds.* Sectional folding ladder scaffolds shall be designed as light duty scaffolds including special base (open end) sections which are designed for high clearance. For certain special applications the 6'- (1.824 m) folding ladder scaffolds, except for special high clearance base sections, shall be designed for use as medium duty scaffolds. The width of a sectional folding ladder scaffold shall not exceed 4½ feet (1.368 m). The maximum length of a sectional folding ladder scaffold shall not exceed 6 feet 6 inches (1.976 m) for a 6'- (1.824 m) long unit, 8 feet 6 inches (2.584 m) for an 8'- (2.432 m) unit or 10 feet 6 inches (3.192 m) for a 10'- (3.04 m) long unit.

(6) *End frames.* The end frames of sectional ladder and stairway scaffolds shall be designed so that the horizontal bearers provide supports for multiple planking levels.

(7) *Erection.* Only the manufacturer of the scaffold or his qualified designated agent shall be permitted to erect or supervise the erection of scaffolds exceeding 50 feet (15.2 m) in height above the base, unless such structure is approved in writing by a licensed professional engineer, or erected in accordance with instructions furnished by the manufacturer.

Subpart N—Cranes, Derricks, Hoists, Elevators, and Conveyors

38. In § 1926.550, a new paragraph (a)(19) is added to read as follows:

§ 1926.550 Cranes and derricks.

(a) *General requirements.*

* * * * *

(19) All employees shall be kept clear of loads about to be lifted and of suspended loads.

* * * * *

Subpart O—Motor Vehicles, Mechanized Equipment, and Marine Operations

39. In § 1926.600, new paragraph (a)(7) is added to read as follows:

§ 1926.600 Equipment.

(a) *General requirements.*

* * * * *

(7) *Rolling railroad cars.* Derail and/or bumper blocks shall be provided on spur railroad tracks where a rolling car could contact other cars being worked, enter a building, work or traffic area.

* * * * *

40. In § 1926.602, new paragraphs (c)(1) (vii) and (vii) are added to read as follows:

§ 1926.602 Material handling equipmment.

* * * * *

(c) *Lifting and hauling (other than equipment covered under subpart N of this part).* (1) * * *

* * * * *

(vii) Unauthorized personnel shall not be permitted to ride on powered industrial trucks. A safe place to ride shall be provided where riding of trucks is authorized.

(viii) Whenever a truck is equipped with vertical only, or vertical and horizontal controls elevatable with the lifting carriage or forks for lifting personnel, the following additional precautions shall be taken for the protection of personnel being elevated.

(A) Use of a safety platform firmly secured to the lifting carriage and/or forks.

(B) Means shall be provided whereby personnel on the platform can shut off power to the truck.

(C) Such protection from falling objects as indicated necessary by the operating conditions shall be provided.

Subpart U—Blasting and Use of Explosives

41. In § 1926.900, new paragraphs (s) and (t) are added to read as follows:

§ 1926.900 General provisions.

* * * * *

(s) Buildings used for the mixing of blasting agents shall conform to the requirements of this section.

(1) Buildings shall be of noncombustible construction or sheet metal on wood studs.

(2) Floors in a mixing plant shall be of concrete or of other nonabsorbent materials.

(3) All fuel oil storage facilities shall be separated from the mixing plant and located in such a manner that in case of tank rupture, the oil will drain away from the mixing plant building.

(4) The building shall be well ventilated.

(5) Heating units which do not depend on combustion processes, when properly designed and located, may be used in the building. All direct sources of heat shall be provided exclusively from units located outside the mixing building.

(6) All internal-combustion engines used for electric power generation shall be located outside the mixing plant building, or shall be properly ventilated and isolated by a firewall. The exhaust systems on all such engines shall be located so any spark emission cannot be a hazard to any materials in or adjacent to the plant.

(t) Buildings used for the mixing of water gels shall conform to the requirements of this subdivision.

(1) Buildings shall be of noncombustible construcuon or sheet metal on wood studs.

(2) Floors in a mixing plant shall be of concrete or of other nonabsorbent materials.

(3) Where fuel oil is used all fuel oil storage facilities shall be separated from the mixing plant and located in such a manner that in case of tank rupture, the oil will drain away from the mixing plant building.

(4) The building shall be well ventilated.

(5) Heating units that do not depend on combustion processes, when properly designed and located, may be used in the building. All direct sources of heat shall be provided exclusively from units located outside of the mixing building.

(6) All internal-combustion engines used for electric power generation shall be located outside the mixing plant building, or shall be properly ventilated and isolated by a firewall. The exhaust systems on all such engines shall be located so any spark emission cannot be a hazard to any materials in or adjacent to the plant.

42. In § 1926.905, new paragraph (u) is added to read as follows:

§ 1926.905 Loading of explosives or blasting agents.

* * * * *

(u) When loading blasting agents pneumatically over electric blasting caps, semiconductive delivery hose shall be used and the equipment shall be bonded and grounded.

43. In § 1926.914, new paragraph (aa) is added to read as follows:

§ 1926.914 Definitions applicable to this subpart.

* * * * *

(aa) *Semiconductive hose.* Semiconductive hose—a hose with an electrical resistance high enough to limit flow of stray electric currents to safe levels, yet not so high as to prevent drainage of static electric charges to ground; hose of not more than 2 megohms resistance over its entire length and of not less than 5,000 ohms per foot meets the requirement.

Subpart X—Stairways and Ladders

44. In § 1926.1050, a new paragraph defining *ladder stands* is added to read as follows:

§ 1926.1050 Scope, application, and definitions applicable to this subpart.

* * * * *

(b)

* * * * *

Ladder stand. A mobile fixed size self-supporting ladder consisting of a wide flat tread ladder in the form of stairs. The assembly may include handrails.

45. In part 1926, a new subpart Y—Diving is added to read as follows:

Subpart Y—Diving

General

§ 1926.1071 Scope and application.

(a) *Scope.* (1) This subpart (standard) applies to every place of employment within the waters of the United States, or within any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, Johnston Island, the Canal Zone, or within the Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act (67 Stat. 462, 43 U.S.C. 1331), where diving and related support operations are performed.

(2) This standard applies to diving and related support operations conducted in connection with all types of work and employments, including general industry, construction, ship repairing, shipbuilding, shipbreaking and longshoring. However, this standard does not apply to any diving operation:

(i) Performed solely for instructional purposes, using open-circuit, compressed-air SCUBA and conducted within the no-decompression limits;

(ii) Performed solely for search, rescue, or related public safety purposes by or under the control of a governmental agency; or

(iii) Governed by 45 CFR part 46 (Protection of Human Subjects, U.S. Department of Health and Human Services) or equivalent rules or regulations established by another federal agency, which regulate research, development, or related purposes involving human subjects.

(iv) Defined as scientific diving and which is under the direction and control of a diving program containing at least the following elements:

(A) Diving safety manual which includes at a minimum: Procedures covering all diving operations specific to the program; procedures for emergency care, including recompression and evacuation; and criteria for diver training and certification.

(B) Diving control (safety) board, with the majority of its members being active divers, which shall at a minimum have the authority to: Approve and monitor diving projects; review and revise the diving safety manual; assure compliance with the manual; certify the depths to which a diver has been trained; take disciplinary action for unsafe practices; and, assure adherence to the buddy system (a diver is accompanied by and is in continuous contact with another diver in the water) for SCUBA diving.

(b) *Application in emergencies.* An employer may deviate from the requirements of this standard to the extent necessary to prevent or minimize a situation which is likely to cause death, serious physical harm, or major environmental damage, provided that the employer:

(1) Notifies the Area Director, Occupational Safety and Health Administration within 48 hours of the onset of the emergency situation indicating the nature of the emergency and extent of the deviation from the prescribed regulations; and

(2) Upon request from the Area Director, submits such information in writing.

(c) *Employer obligation.* The employer shall be responsible for compliance with:

(1) All provisions of this standard of general applicability; and

(2) All requirements pertaining to specific diving modes to the extent diving operations in such modes are conducted.

§ 1926.1072 Definitions.

As used in this standard, the listed terms are defined as follows:

Acfm: Actual cubic feet per minute.

ASME Code or equivalent: ASME (American Society of Mechanical Engineers) Boiler and Pressure Vessel Code, Section VIII, or an equivalent code which the employer can demonstrate to be equally effective.

ATA: Atmosphere absolute.

Bell: An enclosed compartment, pressurized (closed bell) or unpressurized (open bell), which allows the diver to be transported to and from the underwater work area and which may be used as a temporary refuge during diving operations.

Bottom time: The total elasped time measured in minutes from the time when the diver leaves the surface in descent to the time that the diver begins ascent.

Bursting pressure: The pressure at which a pressure containment device would fail structurally.

Cylinder: A pressure vessel for the storage of gases.

Decompression chamber: A pressure vessel for human occupancy such as a surface decompression chamber, closed bell, or deep diving system used to decompress divers and to treat decompression sickness.

Decompression sickness: A condition with a variety of symptoms which may result from gas or bubbles in the tissues of divers after pressure reduction.

Decompression table: A profile or set of profiles of depth-time relationships

for ascent rates and breathing mixtures to be followed after a specific depth-time exposure or exposures.

Dive location: A surface or vessel from which a diving operation is conducted.

Dive-location reserve breathing gas: A supply system of air or mixed-gas (as appropriate) at the dive location which is independent of the primary supply system and sufficient to support divers during the planned decompression.

Dive team: Divers and support employees involved in a diving operation, including the designated person-in-charge.

Diver: An employee working in water using underwater apparatus which supplies compressed breathing gas at the ambient pressure.

Diver-carried reserve breathing gas: A diver-carried supply of air or mixed gas (as appropriate) sufficient under standard operating conditions to allow the diver to reach the surface, or another source of breathing gas, or to be reached by a standby diver.

Diving mode: A type of diving requiring specific equipment, procedures and techniques (SCUBA, surface-supplied air, or mixed gas).

Fsw: Feet of seawater (or equivalent static pressure head).

Heavy gear: Diver-worn deep-sea dress including helmet, breastplate, dry suit, and weighted shoes.

Hyperbaric conditions: Pressure conditions in excess of surface pressure.

Inwater stage: A suspended underwater platform which supports a diver in the water.

Liveboating: The practice of supporting a surfaced-supplied air or mixed gas diver from a vessel which is underway.

Mixed-gas diving: A diving mode in which the diver is supplied in the water with a breathing gas other than air.

No-decompression limits: The depth-time limits of the "no-decompression limits and repetitive dive group designation table for no-decompression air dives", U.S. Navy Diving Manual or equivalent limits which the employer can demonstrate to be equally effective.

Psi(g): Pounds per square inch (gauge).

Scientific diving means diving performed solely as a necessary part of a scientific, research, or educational activity by employees whose sole purpose for diving is to perform scientific research tasks. Scientific diving does not include performing any tasks usually associated with commercial diving such as: Placing or removing heavy objects underwater; inspection of pipelines and similar objects; construction; demolition; cutting or welding; or the use of explosives.

SCUBA diving: A diving mode independent of surface supply in which the diver uses open circuit self-contained underwater breathing apparatus.

Standby diver: A diver at the dive location available to assist a diver in the water.

Surface-supplied air diving: A diving mode in which the diver in the water is supplied from the dive location with compressed air for breathing.

Treatment table: A depth-time and breathing gas profile designed to treat decompression sickness.

Umbilical: The composite hose bundle between a dive location and a diver or bell, or between a diver and a bell, which supplies the diver or bell with breathing gas, communications, power, or heat as appropriate to the diving mode or conditions, and includes a safety line between the diver and the dive location.

Volume tank: A pressure vessel connected to the outlet of a compressor and used as an air reservoir.

Working pressure: The maximum pressure to which a pressure containment device may be exposed under standard operating conditions.

Personnel Requirements

§ 1926.1076 Qualifications of dive team.

(a) *General.* (1) Each dive team member shall have the experience or training necessary to perform assigned tasks in a safe and healthful manner.

(2) Each dive team member shall have experience or training in the following:

(i) The use of tools, equipment and systems relevant to assigned tasks;

(ii) Techniques of the assigned diving mode; and

(iii) Diving operations and emergency procedures.

(3) All dive team members shall be trained in cardiopulmonary resuscitation and first aid (American Red Cross standard course or equivalent).

(4) Dive team members who are exposed to or control the exposure of others to hyperbaric conditions shall be trained in diving-related physics and physiology.

(b) *Assignments.* (1) Each dive team member shall be assigned tasks in accordance with the employee's experience or training, except that limited additional tasks may be assigned to an employee undergoing training provided that these tasks are performed under the direct supervision of an experienced dive team member.

(2) The employer shall not require a dive team member to be exposed to hyperbaric conditions against the employee's will, except when necessary to complete decompression or treatment procedures.

(3) The employer shall not permit a dive team member to dive or be otherwise exposed to hyperbaric conditions for the duration of any temporary physical impairment or condition which is known to the employer and is likely to affect adversely the safety or health of a dive team member.

(c) *Designated person-in-charge.* (1) The employer or an employee designated by the employer shall be at the dive location in charge of all aspects of the diving operation affecting the safety and health of dive team members.

(2) The designated person-in-charge shall have experience and training in the conduct of the assigned diving operation.

General Operations Procedures

§ 1926.1080 Safe practices manual.

(a) *General.* The employer shall develop and maintain a safe practices manual which shall be made available at the dive location to each dive team member.

(b) *Contents.* (1) The safe practices manual shall contain a copy of this standard and the employer's policies for implementing the requirements of this standard.

(2) For each diving mode engaged in, the safe practices manual shall include:

(i) Safety procedures and checklists for diving operations;

(ii) Assignments and responsibilities of the dive team members;

(iii) Equipment procedures and checklists; and

(iv) Emergency procedures for fire, equipment failure, adverse environmental conditions, and medical illness and injury.

[The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1218–0069]

§ 1926.1081 Pre-dive procedures.

(a) *General.* The employer shall comply with the following requirements prior to each diving operation, unless otherwise specified.

(b) *Emergency aid.* A list shall be kept at the dive location of the telephone or call numbers of the following:

(1) An operational decompression chamber (if not at the dive location);

(2) Accessible hospitals;

(3) Available physicians;

(4) Available means of transportation; and

(5) The nearest U.S. Coast Guard Rescue Coordination Center.

(c) *First aid supplies.* (1) A first aid kit appropriate for the diving operation and approved by a physician shall be available at the dive location.

(2) When used in a decompression chamber or bell, the first aid kit shall be suitable for use under hyperbaric conditions.

(3) In addition to any other first aid supplies, an American Red Cross standard first aid handbook or equivalent, and a bag-type manual resuscitator with transparent mask and tubing shall be available at the dive location.

(d) *Planning and assessment.* Planning of a diving operation shall include an assessment of the safety and health aspects of the following:

(1) Diving mode;

(2) Surface and underwater conditions and hazards;

(3) Breathing gas supply (including reserves);

(4) Thermal protection;

(5) Diving equipment and systems;

(6) Dive team assignments and physical fitness of dive team members (including any impairment known to the employer);

(7) Repetitive dive designation or residual inert gas status of dive team members;

(8) Decompression and treatment procedures (including altitude corrections); and

(9) Emergency procedures.

(e) *Hazardous activities.* To minimize hazards to the dive team, diving operations shall be coordinated with other activities in the vicinity which are likely to interfere with the diving operation.

(f) *Employee briefing.* (1) Dive team members shall be briefed on:

(i) The tasks to be undertaken;

(ii) Safety procedures for the diving mode;

(iii) Any unusual hazards or environmental conditions likely to affect the safety of the diving operation; and

(iv) Any modifications to operating procedures necessitated by the specific diving operation.

(2) Prior to making individual dive team member assignments, the employer shall inquire into the dive team member's current state of physical fitness, and indicate to the dive team member the procedure for reporting physical problems or adverse physiological effects during and after the dive.

(g) *Equipment inspection.* The breathing gas supply system including reserve breathing gas supplies, masks, helmets, thermal protection, and bell handling mechanism (when appropriate) shall be inspected prior to each dive.

(h) *Warning signal.* When diving from surfaces other than vessels in areas capable of supporting marine traffic, a rigid replica of the international code flag "A" at least one meter in height shall be displayed at the dive location in a manner which allows all-round visibility, and shall be illuminated during night diving operations.

(Approved by the Office of Management and Budget under control number 1218–0069)

§ 1926.1082 Procedures during dive.

(a) *General.* The employer shall comply with the following requirements which are applicable to each diving operation unless otherwise specified.

(b) *Water entry and exit.* (1) A means capable of supporting the diver shall be provided for entering and exiting the water.

(2) The means provided for exiting the water shall extend below the water surface.

(3) A means shall be provided to assist an injured diver from the water or into a bell.

(c) *Communications.* (1) An operational two-way voice communication system shall be used between:

(i) Each surface-supplied air or mixed-gas diver and a dive team member at the dive location or bell (when provided or required); and

(ii) The bell and the dive location.

(2) An operational, two-way communication system shall be available at the dive location to obtain emergency assistance.

(d) *Decompression tables.* Decompression, repetitive, and no-decompression tables (as appropriate) shall be at the dive location.

(e) *Dive profiles.* A depth-time profile, including when appropriate any breathing gas changes, shall be maintained for each diver during the dive including decompression.

(f) *Hand-held power tools and equipment.* (1) Hand-held electrical tools and equipment shall be de-energized before being placed into or retrieved from the water.

(2) Hand-held power tools shall not be supplied with power from the dive location until requested by the diver.

(g) *Welding and burning.* (1) A current supply switch to interrupt the current flow to the welding or burning electrode shall be:

(i) Tended by a dive team member in voice communication with the diver performing the welding or burning; and

(ii) Kept in the open position except when the diver is welding or burning.

(2) The welding machine frame shall be grounded.

(3) Welding and burning cables, electrode holders, and connections shall be capable of carrying the maximum current required by the work, and shall be properly insulated.

(4) Insulated gloves shall be provided to divers performing welding and burning operations.

(5) Prior to welding or burning on closed compartments, structures or pipes, which contain a flammable vapor or in which a flammable vapor may be generated by the work, they shall be vented, flooded, or purged with a mixture of gases which will not support combustion.

(h) *Explosives.* (1) Employers shall transport, store, and use explosives in accordance with this section and the applicable provisions of 29 CFR 1910.109 and 1926.912.

(2) Electrical continuity of explosive circuits shall not be tested until the diver is out of the water.

(3) Explosives shall not be detonated while the diver is in the water.

(i) *Termination of dive.* The working interval of a dive shall be terminated when:

(1) A diver requests termination;

(2) A diver fails to respond correctly to communications or signals from a dive team member;

(3) Communications are lost and can not be quickly re-established between the diver and a dive team member at the dive location, and between the designated person-in-charge and the person controlling the vessel in liveboating operations; or

(4) A diver begins to use diver-carried reserve breathing gas or the dive-location reserve breathing gas.

§ 1926.1083 Post-dive procedures.

(a) *General.* The employer shall comply with the following requirements which are applicable after each diving operation, unless otherwise specified.

(b) *Precautions.* (1) After the completion of any dive, the employer shall:

(i) Check the physical condition of the diver;

(ii) Instruct the diver to report any physical problems or adverse physiological effects including symptoms of decompression sickness;

(iii) Advise the diver of the location of a decompression chamber which is ready for use; and

(iv) Alert the diver to the potential hazards of flying after diving.

(2) For any dive outside the no-decompression limits, deeper than 100 fsw or using mixed gas as a breathing mixture, the employer shall instruct the diver to remain awake and in the vicinity of the decompression chamber

which is at the dive location for at least one hour after the dive (including decompression or treatment as appropriate).

(c) *Recompression capability.* (1) A decompression chamber capable of recompressing the diver at the surface to a minimum of 165 fsw (6 ATA) shall be available at the dive location for:

(i) Surface-supplied air diving to depths deeper than 100 fsw and shallower than 220 fsw;

(ii) Mixed gas diving shallower than 300 fsw; or

(iii) Diving outside the no-decompression limits shallower than 300 fsw.

(2) A decompression chamber capable of recompressing the diver at the surface to the maximum depth of the dive shall be available at the dive location for dives deeper than 300 fsw.

(3) The decompression chamber shall be:

(i) Dual-lock;

(ii) Multiplace; and

(iii) Located within 5 minutes of the dive location.

(4) The decompression chamber shall be equipped with:

(i) A pressure gauge for each pressurized compartment designed for human occupancy;

(ii) A built-in-breathing-system with a minimum of one mask per occupant;

(iii) A two-way voice communication system between occupants and a dive team member at the dive location;

(iv) A viewport; and

(v) Illumination capability to light the interior.

(5) Treatment tables, treatment gas appropriate to the diving mode, and sufficient gas to conduct treatment shall be available at the dive location.

(6) A dive team member shall be available at the dive location during and for at least one hour after the dive to operate the decompression chamber (when required or provided).

(d) *Record of dive.* (1) The following information shall be recorded and maintained for each diving operation:

(i) Names of dive team members including designated person-in-charge;

(ii) Date, time, and location;

(iii) Diving modes used;

(iv) General nature of work performed;

(v) Approximate underwater and surface conditions (visibility, water temperature and current); and

(vi) Maximum depth and bottom time for each diver.

(2) For each dive outside the no-decompression limits, deeper than 100 fsw or using mixed gas, the following additional information shall be recorded and maintained:

(i) Depth-time and breathing gas profiles;

(ii) Decompression table designation (including modification); and

(iii) Elapsed time since last pressure exposure if less than 24 hours or repetitive dive designation for each diver.

(3) For each dive in which decompression sickness is suspected or symptoms are evident, the following additional information shall be recorded and maintained:

(i) Description of decompression sickness symptoms (including depth and time of onset); and

(ii) Description and results of treatment.

(e) *Decompression procedure assessment.* The employer shall:

(1) Investigate and evaluate each incident of decompression sickness based on the recorded information, consideration of the past performance of decompression table used, and individual susceptibility;

(2) Take appropriate corrective action to reduce the probability of recurrence of decompression sickness; and

(3) Prepare a written evaluation of the decompression procedure assessment, including any corrective action taken, within 45 days of the incident of decompression sickness.

(The information collection requirements contained in paragraphs (d) and (e) were approved by the Office of Management and Budget under control number 1218–0069)

Specific Operations Procedures

§ 1926.1084 SCUBA diving.

(a) *General.* Employers engaged in SCUBA diving shall comply with the following requirements, unless otherwise specified.

(b) *Limits.* SCUBA diving shall not be conducted:

(1) At depths deeper than 130 fsw;

(2) At depths deeper than 100 fsw or outside the no-decompression limits unless a decompression chamber is ready for use;

(3) Against currents exceeding one (1) knot unless line-tended; or

(4) In enclosed or physically confining spaces unless line-tended.

(c) *Procedures.* (1) A standby diver shall be available while a diver is in the water.

(2) A diver shall be line-tended from the surface, or accompanied by another diver in the water in continuous visual contact during the diving operations.

(3) A diver shall be stationed at the underwater point of entry when diving is conducted in enclosed or physically confining spaces.

(4) A diver-carried reserve breathing gas supply shall be provided for each diver consisting of:

(i) A manual reserve (J valve); or

(ii) An independent reserve cylinder with a separate regulator or connected to the underwater breathing apparatus.

(5) The valve of the reserve breathing gas supply shall be in the closed position prior to the dive.

§ 1926.1085 Surface-supplied air diving.

(a) *General.* Employers engaged in surface-supplied air diving shall comply with the following requirements, unless otherwise specified.

(b) *Limits.* (1) Surface-supplied air diving shall not be conducted at depths deeper than 190 fsw, except that dives with bottom times of 30 minutes or less may be conducted to depths of 220 fsw.

(2) A decompression chamber shall be ready for use at the dive location for any dive outside the no-decompression limits or deeper than 100 fsw.

(3) A bell shall be used for dives with an inwater decompression time greater than 120 minutes, except when heavy gear is worn or diving is conducted in physically confining spaces.

(c) *Procedures.* (1) Each diver shall be continuously tended while in the water.

(2) A diver shall be stationed at the underwater point of entry when diving is conducted in enclosed or physically confining spaces.

(3) Each diving operation shall have a primary breathing gas supply sufficient to support divers for the duration of the planned dive including decompression.

(4) For dives deeper than 100 fsw or outside the no-decompression limits:

(i) A separate dive team member shall tend each diver in the water;

(ii) A standby diver shall be available while a diver is in the water;

(iii) A diver-carried reserve breathing gas supply shall be provided for each diver except when heavy gear is worn; and

(iv) A dive-location reserve breathing gas supply shall be provided.

(5) For heavy-gear diving deeper than 100 fsw or outside the no-decompression limits:

(i) An extra breathing gas hose capable of supplying breathing gas to the diver in the water shall be available to the standby diver.

(ii) An inwater stage shall be provided to divers in the water.

(6) Except when heavy gear is worn or where physical space does not permit, a diver-carried reserve breathing gas supply shall be provided whenever the diver is prevented by the configuration of the dive area from ascending directly to the surface.

§ 1926.1086 Mixed-gas diving.

(a) *General.* Employers engaged in mixed-gas diving shall comply with the following requirements, unless otherwise specified.

(b) *Limits.* Mixed-gas diving shall be conducted only when:

(1) A decompression chamber is ready for use at the dive location; and

(i) A bell is used at depths greater than 220 fsw or when the dive involves inwater decompression time of greater than 120 minutes, except when heavy gear is worn or when diving in physically confining spaces; or

(ii) A closed bell is used at depths greater than 300 fsw, except when diving is conducted in physically confining spaces.

(c) *Procedures.* (1) A separate dive team member shall tend each diver in the water.

(2) A standby diver shall be available while a diver is in the water.

(3) A diver shall be stationed at the underwater point of entry when diving is conducted in enclosed or physically confining spaces.

(4) Each diving operation shall have a primary breathing gas supply sufficient to support divers for the duration of the planned dive including decompression.

(5) Each diving operation shall have a dive-location reserve breathing gas supply.

(6) When heavy gear is worn:

(i) An extra breathing gas hose capable of supplying breathing gas to the diver in the water shall be available to the standby diver; and

(ii) An inwater stage shall be provided to divers in the water.

(7) An inwater stage shall be provided for divers without access to a bell for dives deeper than 100 fsw or outside the no-decompression limits.

(8) When a closed bell is used, one dive team member in the bell shall be available and tend the diver in the water.

(9) Except when heavy gear is worn or where physical space does not permit, a diver-carried reserve breathing gas supply shall be provided for each diver:

(i) Diving deeper than 100 fsw or outside the no-decompression limits; or

(ii) Prevented by the configuration of the dive area from directly ascending to the surface.

§ 1926.1087 Liveboating.

(a) *General.* Employers engaged in diving operations involving liveboating shall comply with the following requirements.

(b) *Limits.* Diving operations involving liveboating shall not be conducted:

(1) With an inwater decompression time of greater than 120 minutes;

(2) Using surface-supplied air at depths deeper than 190 fsw, except that dives with bottom times of 30 minutes or less may be conducted to depths of 220 fsw;

(3) Using mixed gas at depths greater than 220 fsw;

(4) In rough seas which significantly inpede diver mobility or work function; or

(5) In other than daylight hours.

(c) *Procedures.* (1) The propeller of the vessel shall be stopped before the diver enters or exits the water.

(2) A device shall be used which minimizes the possibility of entanglement of the diver's hose in the propeller of the vessel.

(3) Two-way voice communication between the designated person-in-charge and the person controlling the vessel shall be available while the diver is in the water.

(4) A standby diver shall be available while a diver is in the water.

(5) A diver-carried reserve breathing gas supply shall be carried by each diver engaged in liveboating operations.

Equipment Procedures and Requirements

§ 1926.1090 Equipment.

(a) *General.* (1) All employers shall comply with the following requirements, unless otherwise specified.

(2) Each equipment modification, repair, test, calibration or maintenance service shall be recorded by means of a tagging or logging system, and include the date and nature of work performed, and the name or initials of the person performing the work.

(b) *Air compressor system.* (1) Compressors used to supply air to the diver shall be equipped with a volume tank with a check valve on the inlet side, a pressure gauge, a relief valve, and a drain valve.

(2) Air compressor intakes shall be located away from areas containing exhaust or other contaminants.

(3) Respirable air supplied to a diver shall not contain:

(i) A level of carbon monoxide (CO) greater than 20 p/m;

(ii) A level of carbon dioxide (CO_2) greater than 1,000 p/m;

(iii) A level of oil mist greater than 5 milligrams per cubic meter; or

(iv) A noxious or pronounced odor.

(4) The output of air compressor systems shall be tested for air purity every 6 months by means oif samples taken at the connection to the distribution system, except that non-oil lubricated compressors need not be tested for oil mist.

(c) *Breathing gas supply hoses.* (1) Breathing gas supply hoses shall:

(i) Have a working pressure at least equal to the working pressure of the total breathing gas system;

(ii) Have a rated bursting pressure at least equal to 4 times the working pressure;

(iii) Be tested at least annually to 1.5 times their working pressure; and

(iv) Have their open ends taped, capped or plugged when not in use.

(2) Breathing gas supply hose connectors shall:

(i) Be made of corrosion-resistant materials;

(ii) Have a working pressure at least equal to the working pressure of the hose to which they are attached; and

(iii) Be resistant to accidental disengagement.

(3) Umbilicals shall:

(i) Be marked in 10-ft. increments to 100 feet beginning at the diver's end, and in 50 ft. increments thereafter;

(ii) Be made of kink-resistant materials; and

(iii) Have a working pressure greater than the pressure equivalent to the maximum depth of the dive (relative to the supply source) plus 100 psi.

(d) *Buoyancy control.* (1) Helmets or masks connected directly to the dry suit or other buoyancy-changing equipment shall be equipped with an exhaust valve.

(2) A dry suit or other buoyancy-changing equipment not directly connected to the helmet or mask shall be equipped with an exhaust valve.

(3) When used for SCUBA diving, a buoyancy compensator shall have an inflation source separate from the breathing gas supply.

(4) An inflatable flotation device capable of maintaining the diver at the surface in a face-up position, having a manually activated inflation source independent of the breathing supply, an oral inflation device, and an exhaust valve shall be used for SCUBA diving.

(e) *Compressed gas cylinders.* Compressed gas cylinders shall:

(1) Be designed, constructed and maintained in accordance with the applicable provisions of 29 CFR 1910.101 and 1910.169 through 1910.171 and 1926.306;

(2) Be stored in a ventilated area and protected from excessive heat;

(3) Be secured from falling; and

(4) Have shut-off valves recessed into the cylinder or protected by a cap, except when in use or manifolded, or when used for SCUBA diving.

(f) *Decompression chambers.* (1) Each decompression chamber manufactured after the effective date of this standard, shall be built and maintained in

accordance with the ASME Code or equivalent.

(2) Each decompression chamber manufactured prior to the effective date of this standard shall be maintained in conformity with the code requirements to which it was built, or equivalent.

(3) Each decompression chamber shall be equipped with:

(i) Means to maintain the atmosphere below a level of 25 percent oxygen by volume;

(ii) Mufflers on intake and exhaust lines, which shall be regularly inspected and maintained;

(iii) Suction guards on exhaust line openings; and

(iv) A means for extinguishing fire, and shall be maintained to minimize sources of ignition and combustible material.

(g) *Gauges and timekeeping devices.* (1) Gauges indicating diver depth which can be read at the dive location shall be used for all dives except SCUBA.

(2) Each depth gauge shall be deadweight tested or calibrated against a master reference gauge every 6 months, and when there is a discrepancy greater than two percent (2 percent) of full scale between any two equivalent gauges.

(3) A cylinder pressure gauge capable of being monitored by the diver during the dive shall be worn by each SCUBA diver.

(4) A timekeeping device shall be available at each dive location.

(h) *Masks and helmets.* (1) Surface-supplied air and mixed-gas masks and helmets shall have:

(i) A non-return valve at the attachment point between helmet or mask and hose which shall close readily and positively; and

(ii) An exhaust valve.

(2) Surface-supplied air masks and helmets shall have a minimum ventilation rate capability of 4.5 acfm at any depth at which they are operated or the capability of maintaining the diver's inspired carbon dioxide partial pressure below 0.02 ATA when the diver is producing carbon dioxide at the rate of 1.6 standard liters per minute.

(i) *Oxygen safety.* (1) Equipment used with oxygen or mixtures containing over forty percent (40%) by volume oxygen shall be designed for oxygen service.

(2) Components (except umbilicals) exposed to oxygen or mixtures containing over forty percent (40%) by volume oxygen shall be cleaned of flammable materials before use.

(3) Oxygen systems over 125 psig and compressed air systems over 500 psig shall have slow-opening shut-off valves.

(j) *Weights and harnesses.* (1) Except when heavy gear is worn, divers shall be equipped with a weight belt or assembly capable of quick release.

(2) Except when heavy gear is worn or in SCUBA diving, each diver shall wear a safety harness with:

(i) A positive buckling device;

(ii) An attachment point for the umbilical to prevent strain on the mask or helmet; and

(iii) A lifting point to distribute the pull force of the line over the diver's body.

(The information collection requirements contained in paragraph (a)(2) were approved by the Office of Management and Budget under control number 1218–0069)

Recordkeeping

§ 1926.1091 Recordkeeping requirements.

(a)(1) [Reserved]

(2) The employer shall record the occurrence of any diving-related injury or illness which requires any dive team member to be hospitalized for 24 hours or more, specifying the circumstances of the incident and the extent of any injuries or illnesses.

(b) *Availability of records.* (1) Upon the request of the Assistant Secretary of Labor for Occupational Safety and Health, or the Director, National Institute for Occupational Safety and Health, Department of Health and Human Services of their designees, the employer shall make available for inspection and copying any record or document required by this standard.

(2) Records and documents required by this standard shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1926.33 (a)–(e) and (g)–(i). Safe practices manuals (§ 1926.1080), depth-time profiles (§ 1926.1082), recordings of dives (§ 1926.1083), decompression procedure assessment evaluations (§ 1926.1083), and records of hospitalizations (§ 1926.1091) shall be provided in the same manner as employee exposure records or analyses using exposure or medical records. Equipment inspections and testing records which pertain to employees (§ 1926.1090) shall also be provided upon request to employees and their designated representatives.

(3) Records and documents required by this standard shall be retained by the employer for the following period:

(i) Dive team member medical records (physician's reports) (§ 1926.1076)—5 years;

(ii) Safe practices manual (§ 1926.1080)—current document only;

(iii) Depth-time profile (§ 1926.1082)—until completion of the recording of dive, or until completion of decompression procedure assessment where there has been an incident of decompression sickness;

(iv) Recording of dive (§ 1926.1083)—1 year, except 5 years where there has been an incident of decompression sickness;

(v) Decompression procedure assessment evaluations (§ 1926.1083)—5 years;

(vi) Equipment inspections and testing records (§ 1926.1090)—current entry or tag, or until equipment is withdrawn from service;

(vii) Records of hospitalizations (§ 1926.1091)—5 years.

(4) After the expiration of the retention period of any record required to be kept for five (5) years, the employer shall forward such records to the National Institute for Occupational Safety and Health, Department of Health and Human Services. The employer shall also comply with any additional requirements set forth at 29 CFR 1926.33(h).

(5) In the event the employer ceases to do business:

(i) The successor employer shall receive and retain all dive and employee medical records required by this standard; or

(ii) If there is no successor employer, dive and employee medical records shall be forwarded to the National Institute for Occupational Safety and Health, Department of Health and Human Services.

(Approved by the Office of Management and Budget under control number 1218–0058)

§ 1926.1092 Effective date.

This standard shall be effective on October 20, 1977, except that for provisions where decompression chambers or bells are required and such equipment is not yet available, employers shall comply as soon as possible thereafter but in no case later than 6 months after the effective date of the standard.

Appendix A to Subpart Y—Examples of Conditions Which May Restrict or Limit Exposure to Hyperbaric Conditions

The following disorders may restrict or limit occupational exposure to hyperbaric conditions depending on severity, presence of residual effects, response to therapy, number of occurrences, diving mode, or degree and duration of isolation.

History of seizure disorder other than early febrile convulsions.

Malignancies (active) unless treated and without recurrence for 5 yrs.

Chronic inability to equalize sinus and/or middle ear pressure.

Cystic or cavitary disease of the lungs.

Impaired organ function caused by alcohol or drug use.

Conditions requiring continuous medication for control (e.g., antihistamines, steroids, barbiturates, moodaltering drugs, or insulin).

Meniere's disease.

Hemoglobinopathies.

Obstructive or restrictive lung disease.

Vestibular end organ destruction.

Pneumothorax.

Cardiac abnormalities (e.g., pathological heart block, valvular disease, intraventricular conduction defects other than isolated right bundle branch block, angina pectoris, arrhythmia, coronary artery disease).

Juxta-articular osteonecrosis.

Appendix B to Subpart Y—Guidelines for Scientific Diving

This appendix contains guidelines that will be used in conjunction with § 1926.1071(a)(2)(iv) to determine those scientific diving programs which are exempt from the requirements for commercial diving. The guidelines are as follows:

1. The Diving Control Board consists of a majority of active scientific divers and has autonomous and absolute authority over the scientific diving program's operations.

2. The purpose of the project using scientific diving is the advancement of science; therefore, information and data resulting from the project are non-proprietary.

3. The tasks of a scientific diver are those of an observer and data gatherer. Construction and trouble-shooting tasks traditionally associated with commercial diving are not included within scientific diving.

4. Scientific divers, based on the nature of their activities, must use scientific expertise in studying the underwater environment and, therefore, are scientists or scientists in training.

46. In part 1926, a new subpart Z—Toxic and Hazardous Substances is added to read as follows:

Subpart Z—Toxic and Hazardous Substances

Authority: Sections 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable; and 29 CFR part 1911.

Section 1926.1102 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 653.

Section 1926.1103 through 1926.1118 also issued under 29 U.S.C. 653.

Section 1926.1128 also issued under 29 U.S.C. 653.

Section 1926.1145 and 1926.1147 also issued under 29 U.S.C. 653.

Section 1926.1148 also issued under 29 U.S.C. 653.

§§ 1926.1100—1926.1101 [Reserved]

§ 1926.1102 Coal tar pitch volatiles; interpretation of term.

Coal tar pitch volatiles include the fused polycyclic hydrocarbons which volatilize from the distillation residues of coal, petroleum (excluding asphalt), wood, and other organic matter. Asphalt (CAS 8052–42–4, and CAS 64742–93–4) is not covered under the "coal tar pitch volatiles" standard.

§ 1926.1103 4-Nitrobiphenyl.

(a) *Scope and application.* (1) This section applies to any area in which 4-Nitrobiphenyl, Chemical Abstracts Service Registry Number 92933 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 0.1 percent by weight or volume of 4-Nitrobiphenyl.

(b) *Definitions.* For the purposes of this section:

(1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of 4-Nitrobiphenyl. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving 4-Nitrobiphenyl where containment prevents the release of 4-Nitrobiphenyl into regulated areas, non-regulated areas, or the external environment.

(5) *Decontamination* means the inactivation of 4-Nitrobiphenyl or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of 4-Nitrobiphenyl from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of 4-Nitrobiphenyl which may result in exposure to or contact with 4-Nitrobiphenyl.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of 4-Nitrobiphenyl, which is impervious to the passage of 4-Nitrobiphenyl, and which would prevent the entry of 4-Nitrobiphenyl into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 4-Nitrobiphenyl within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving 4-Nitrobiphenyl in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4-Nitrobiphenyl into regulated areas, non-regulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to 4-Nitrobiphenyl.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) "Requirements for areas containing 4-Nitrobiphenyl." A regulated area shall be established by an employer where 4-Nitrobiphenyl is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with 4-Nitrobiphenyl within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where 4-Nitrobiphenyl is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while 4-Nitrobiphenyl is contained within:

(i) Access shall be restricted to authorized employees only;

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas.

close to the point of exit and before engaging in other activities.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where 4-Nitrobiphenyl is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

(iv) Employees engaged in 4-Nitrobiphenyl handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with § 1926.103. A respirator affording higher levels of protection may be substituted.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e) (2), (3), and (4) of this section.

(vi) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(vii) Employees shall be required to shower after the last exit of the day.

(viii) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4-Nitrobiphenyl could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1926.103.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with 4-Nitrobiphenyl such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1926.51(f) (2) and (3).

(iii) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1926.51(f)(4).

(iv) Where employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with § 1926.51(i), for the number of such employees required to change clothes.

(v) Where toilets are in regulated areas, such toilets shall be in a separate room.

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove 4-Nitrobiphenyl from the surfaces of materials, equipment and the decontamination facility.

(iv) Dry sweeping and dry mopping are prohibited.

(e) *Signs, information and training*—(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT

AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA

IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES

AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of 4-Nitrobiphenyl and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of 4-Nitrobiphenyl and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by employees other than

authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have 4-Nitrobiphenyl contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by paragraph (e)(1) shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance. *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

(A) The nature of the carcinogenic hazards of 4-Nitrobiphenyl, including local and systemic toxicity;

(B) The specific nature of the operation involving 4-Nitrobiphenyl which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of 4-Nitrobiphenyl;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of 4-Nitrobiphenyl in each regulated area.

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which 4-Nitrobiphenyl is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of 4-Nitrobiphenyl into any area where employees may be potentially exposed shall be reported in accordance with this paragraph. (i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include:

(A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1926.33 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0085)

§ 1926.1104 alpha-Naphthylamine.

(a) *Scope and application.* (1) This section applies to any area in which alpha-Naphthylamine, Chemical Abstracts Service Registry Number 134327 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to transshipment in sealed containers, except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less

than 1.0 percent by weight or volume of alpha-Naphthylamine.

(3) This section will not apply to operations involving the destructive distillation of carbonaceous materials, such as occurs in coke ovens.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of alpha-Naphthylamine. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving alpha-Naphthylamine where containment prevents the release of alpha-Naphthylamine into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of alpha-Naphthylamine or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of alpha-Naphthylamine from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of alpha-Naphthylamine which may result in exposure to or contact with alpha-Naphthylamine.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of alpha-Naphthylamine, which is impervious to the passage of alpha-Naphthylamine, and which would prevent the entry of alpha-Naphthylamine into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving alpha-Naphthylamine within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving alpha-Naphthylamine in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of alpha-Naphthylamine into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to alpha-Naphthylamine.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing alpha-Naphthylamine.* A regulated area shall be established by an employer where alpha-Naphthylamine is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with alpha-Naphthylamine within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where alpha-Naphthylamine is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while alpha-Naphthylamine is contained within:

(i) Access shall be restricted to authorized employees only;

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where alpha-Naphthylamine is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), and shoe covers and gloves prior to entering a regulated area.

(iv) Employees engaged in alpha-Naphthylamine handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with § 1926.103. A respirator affording higher levels of protection may be substituted.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exist of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e) (2), (3), and (4) of this section.

(vi) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(vii) Employees shall be required to shower after the last exit of the day.

(viii) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with alpha-Naphthylamine could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1926.103.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected areas shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with alpha-Naphthylamine, such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1926.51(f) (2) and (3).

(iii) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1926.51(f)(4).

(iv) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1926.51(i), for the number of such employees required to change clothes.

(v) Where toilets are in regulated areas, such toilets shall be in a separate room.

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove alpha-Naphthylamine from the surfaces of materials, equipment and the decontamination facility.

(iv) Dry sweeping and dry mopping are prohibited.

(e) *Signs, information and training—*

(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT

AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA

IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES

AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of alpha-Naphthylamine and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of alpha-Naphthylamine and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by, employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have alpha-Naphthylamine contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by paragraph (e)(1) of this section shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

(A) The nature of the carcinogenic hazards of alpha-Naphthylamine, including local and systemic toxicity;

(B) The specific nature of the operation involving alpha-Naphthylamine which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of alpha-Naphthylamine;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request

to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of alpha-Naphthylamine in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which alpha-Naphthylamine is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of alpha-Naphthylamine into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph.

(i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include:

(A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1926.33 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0084)

§ 1926.1105 [Reserved]

§ 1926.1106 Methyl chloromethyl ether.

(a) *Scope and application.* (1) This section applies to any area in which methyl chloromethyl ether, Chemical Abstracts Service Registry Number 107302 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 0.1 percent by weight or volume of methyl chloromethyl ether.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of methyl chloromethyl ether. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving methyl chloromethyl ether where containment prevents the release of methyl chloromethyl ether into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of methyl chloromethyl ether or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of methyl chloromethyl ether from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of methyl chloromethyl ether which may result in exposure to or contact with methyl chloromethyl ether.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of methyl chloromethyl ether, which is impervious to the passage of methyl chloromethyl ether, and which would prevent the entry of methyl chloromethyl ether into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving methyl chloromethyl ether within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer

where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving methyl chloromethyl ether in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of methyl chloromethyl ether into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to methyl chloromethyl ether.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing methyl chloromethyl ether.* A regulated area shall be established by an employer where methyl chloromethyl ether is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with methyl chloromethyl ether within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where methyl chloromethyl ether is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while methyl chloromethyl ether is contained within. Access shall be restricted to authorized employees only.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where methyl chloromethyl ether is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), and gloves prior to entering the regulated area.

(iv) Employees engaged in methyl chloromethyl ether handling operations shall be provided with and required to wear and use a full-face, supplied air respirator, of the continuous flow or pressure-demand type, in accordance with § 1926.103.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e) (2), (3), and (4) of this section.

(vi) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with methyl chloromethyl ether could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1926.103.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with methyl chloromethyl ether, such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with § 1926.51(i), for the number of such employees required to change clothes.

(iii) Where toilets are in regulated areas, such toilets shall be in a separate room.

(iv) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1926.51(f) (2) and (3).

(v) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1926.51(f)(4).

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove methyl chloromethyl ether from the surfaces of materials, equipment and the decontamination facility.

(e) *Signs, information and training*—(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT

AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA

IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES

AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of methyl chloromethyl ether and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance.with paragraph (e)(5) of this section may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of methyl chloromethyl ether and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by, employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have methyl chloromethyl ether contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by paragraph (e)(1) of this section shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

(A) The nature of the carcinogenic hazards of methyl chloromethyl ether, including local and systemic toxicity;

(B) The specific nature of the operation involving methyl chloromethyl ether which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of methyl chloromethyl ether;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of methyl chloromethyl ether in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which methyl chloromethyl ether is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of methyl chloromethyl ether into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph.

(i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include:

(A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances be taken, with specific completion dates, of the incident, and measures taken or to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this

paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1926.33 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0086)

§ 1926.1107 3,3'-Dichlorobenzidine (and its salts).

(a) *Scope and application.* (1) This section applies to any area in which 3,3'-Dichlorobenzidine (or its salts), Chemical Abstracts Service Registry Number 91941 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 1 percent by weight or volume of 3,3'-Dichlorobenzidine (or its salts).

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of 3,3'-Dichlorobenzidine (or its salts). The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving 3,3'-Dichlorobenzidine (or its salts) where containment prevents the release of 3,3'-Dichlorobenzidine (or its salts) into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of 3,3'-Dichlorobenzidine or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of 3,3'-Dichlorobenzidine (or its salts) from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of 3,3'-Dichlorobenzidine (or its salts) which may result in exposure to or contact with 3,3'-Dichlorobenzidine (or its salts).

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment, of 3,3'-Dichlorobenzidine (or its salts), which is impervious to the passage of 3,3'-Dichlorobenzidine (or its salts) and which would prevent the entry of 3,3'-Dichlorobenzidine (or its salts) into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 3,3'-Dichlorobenzidine (or its salts) within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving 3,3'-Dichlorobenzidine (or its salts) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 3,3'-Dichlorobenzidine (or its salts) into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to 3,3'-Dichlorobenzidine (or its salts).

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing 3,3'-Dichlorobenzidine (or its salts).* A regulated area shall be established by an employer where 3,3'-Dichlorobenzidine (or its salts) is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with 3,3'-Dichlorobenzidine (or its salts) within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where 3,3'-Dichlorobenzidine (or its salts) is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while 3,3'-Dichlorobenzidine (or its salts) is contained within:

(i) Access shall be restricted to authorized employees only;

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where 3,3'-Dichlorobenzidine (or its salts) is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

(iv) Employees engaged in 3,3'-Dichlorobenzidine (or its salts) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with § 1926.103. A respirator affording higher levels of protection may be substituted.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e) (2), (3), and (4) of this section.

(vi) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(vii) Employees shall be required to shower after the last exit of the day.

(viii) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 3,3'-Dichlorobenzidine (or its salts) could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1926.103.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with 3,3'-Dichlorobenzidine (or its salts), such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1926.51(f) (2) and (3).

(iii) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1926.51(f)(4).

(iv) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1926.51(i), for the number of such employees required to change clothes.

(v) Where toilets are in regulated areas, such toilets shall be in a separate room.

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove 3,3'-Dichlorobenzidine (or its salts) from the surfaces of materials, equipment and the decontamination facility.

(iv) Dry sweeping and dry mopping are prohibited.

(e) *Signs, information and training*—(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT

AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA

IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES

AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of 3,3'-Dichlorobenzidine (or its salts) and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of 3,3'-Dichlorobenzidine (or its salts) and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by, employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have 3,3'-Dichlorobenzidine (or its salts) contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body

(3) *Lettering.* Lettering on signs and instructions required by paragraph (e)(1) of this section shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required

lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

(A) The nature of the carcinogenic hazards of 3,3′-Dichlorobenzidine (or its salts), including local and systemic toxicity;

(B) The specific nature of the operation involving 3,3′-Dichlorobenzidine (or its salts) which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of 3,3′-Dichlorobenzidine (or its salts);

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of 3,3′-Dichlorobenzidine (or its salts) in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which 3,3′-Dichlorobenzidine (or its salts) is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of 3,3′-Dichlorobenzidine (or its salts) into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph. (i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include:

(A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination, and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids of cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1926.33 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0083)

§ 1926.1108 bis-Chloromethyl ether.

(a) *Scope and application.* (1) This section applies to any area in which bis-chloromethyl ether, Chemical Abstracts Service Registry Number 542881 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under paragraphs (e)(2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 0.1 percent by weight or volume of bis-chloromethyl ether.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of bis-chloromethyl ether. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving bis-chloromethyl ether where

containment prevents the release of bis-chloromethyl ether into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of bis-chloromethyl ether or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of bis-chloromethyl ether from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of bis-chloromethyl ether which may result in exposure to or contact with bis-chloromethyl ether.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment, of bis-chloromethyl ether, which is impervious to the passage of, bis-chloromethyl ether and which would prevent the entry of bis-chloromethyl ether into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving bis-chloromethyl ether within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving bis-chloromethyl ether in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of bis-chloromethyl ether into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to bis-chloromethyl ether.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing bis-chloromethyl ether.* A regulated area shall be established by an employer where bis-chloromethyl ether is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with bis-chloromethyl ether within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where bis-chloromethyl ether is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while bis-chloromethyl ether is contained within. Access shall be restricted to authorized employees only.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where bis-chloromethyl ether is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this paragraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), and gloves prior to entering the regulated area.

(iv) Employees engaged in bis-chloromethyl ether handling operations shall be provided with and required to wear and use a full-face, supplied air respirator, of the continuous flow or pressure-demand type, in accordance with § 1926.103.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e)(2), (3), and (4) of this section.

(vi) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with bis-chloromethyl ether could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1926.103.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with bis-chloromethyl ether such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking,

storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1926.51(i), for the number of such employees required to change clothes.

(iii) Where toilets are in regulated areas, such toilets shall be in a separate room.

(iv) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1926.51(f) (2) and (3).

(v) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1926.51(f)(4).

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove bis-chloromethyl ether from the surfaces of materials, equipment and the decontamination facility.

(e) *Signs, information and training*—(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT

AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA

IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES

AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identifications.* (i) Containers of bis-chloromethyl ether and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of bis-chloromethyl ether and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by, employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have bis-chloromethyl ether contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by subparagraph (1) of this paragraph shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

(A) The nature of the carcinogenic hazards of bis-chloromethyl ether, including local and systemic toxicity;

(B) The specific nature of the operation involving bis-chloromethyl ether which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of bis-chloromethyl ether;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and inplant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of bis-chloromethyl ether in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which bis-chloromethyl ether is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of bis-chloromethyl ether into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph. (i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include:

(A) A specification of the amount of material released, the amount of time involved, and an explanation of the

procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1926.33 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0087)

§ 1926.1109 beta-Naphthylamine.

(a) *Scope and application.* (1) This section applies to any area in which beta-Naphthylamine, Chemical Abstracts Service Registry Number 91598 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to transshipment in sealed containers, except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 0.1 percent by weight or volume of beta-Naphthylamine.

(3) This section will not apply to operations involving the destructive distillation of carbonaceous materials, such as occurs in coke ovens.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of beta-Naphthylamine. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving beta-Naphthylamine where containment prevents the release of beta-Naphthylamine into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of beta-Naphthylamine or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of beta-Naphthylamine from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of beta-Naphthylamine which may result in exposure to or contact with beta-Naphthylamine.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of beta-Naphthylamine, which is impervious to the passage of beta-Naphthylamine, and which would prevent the entry of beta-Naphthylamine into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving beta-Naphthylamine within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving beta-Naphthylamine in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of beta-Naphthylamine into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to beta-Naphthylamine.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing beta-Naphthylamine.* A regulated area shall be established by an employer where beta-Naphthylamine is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with beta-Naphthylamine within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where beta-Naphthylamine is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while beta-Napthylamine is contained within (i) Access shall be restricted to authorized employees only;

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where beta-Naphthylamine is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this paragraph shall apply.

(i) Access shall be restricted to authorized employees only.

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

(iv) Employees engaged in beta-Naphthylamine handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with § 1926.103. A respirator affording higher levels of protection may be substituted.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e) (2), (3), and (4) of this section.

(vi) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(vii) Employees shall be required to shower after the last exit of the day.

(viii) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, where direct contact with beta-Naphthylamine could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air suppled hood in accordance with § 1926.103.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with beta-Napthylamine, such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1926.51(f) (2) and (3).

(iii) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1926.51(f)(4).

(iv) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1926.51(i), for the number of such employees required to change clothes.

(v) Where toilets are in regulated areas, such toilets shall be in a separate room.

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove beta-Naphthylamine from the surfaces of materials, equipment and the decontamination facility.

(iv) Dry sweeping and dry mopping are prohibited.

(e) *Signs, information and training—*

(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT

AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA

IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES

AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of beta-Naphthylamine and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of beta-Naphthylamine and containers required under

paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have beta-Naphthylamine contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by paragraph (e)(1) shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

(A) The nature of the carcinogenic hazards of beta-Naphthylamine, including local and systemic toxicity;

(B) The specific nature of the operation involving beta-Naphthylamine which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of beta-Naphthylamine;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of beta-Naphthylamine in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which beta-Naphthylamine is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of beta-Naphthylamine into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph. (i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include:

(A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination;

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1926.33 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0089)

§ 1926.1110 Benzidine.

(a) *Scope and application.* (1) This section applies to any area in which Benzidine, Chemical Abstracts Service Registry Number 92875 is manufactured, processed, repackaged,

released, handled, or stored, but shall not apply to transshipment in sealed containers, except for the labeling requirements under paragraphs (e)(2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixutures containing less than 0.1 percent by weight or volume in Benzidine.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono dispense aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of Benzidine. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving Benzidine where containment prevents the release of Benzidine into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of Benzidine or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of Benzidine from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of Benzidine which may result in exposure to or contact with Benzidine.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of Benzidine, which is impervious to the passage of Benzidine, and which would prevent the entry of Benzidine into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving Benzidine within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving Benzidine in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of Benzidine into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to Benzidine.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing Benzidine.* A regulated area shall be established by an employer where Benzidine is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with Benzidine within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where Benzidine is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while Benzidine is contained within:

(i) Access shall be restricted to authorized employees only;

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where Benzidine is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply. (i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

(iv) Employees engaged in Benzidine handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with § 1926.103. A respirator affording higher levels of protection may be substituted.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e)(2), (3), and (4) of this section.

(vi) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(vii) Employees shall be required to shower after the last exit of the day.

(viii) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, where direct contact with Benzidine could result, each authorized employee entering that area shall: (i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1926.103.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.
(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.
(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.
(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.
(iv) Where an employee has a known contact with Benzidine such employee shall be required to shower as soon as possible unless contraindicated by physical injuries.
(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.
(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.
(ii) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1926.51(f) (2) and (3).
(iii) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1926.51(f)(4).
(iv) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1926.51(i), for the number of such employees required to change clothes.
(v) Where toilets are in regulated areas, such toilets shall be in a separate room.
(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.
(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.
(iii) Decontamination procedures shall be established and implemented to remove Benzidine from the surfaces of materials, equipment and the decontamination facility.
(iv) Dry sweeping and dry mopping are prohibited.
(e) *Signs, information and training*—(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT

AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA

IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES

AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.
(2) *Container contents identification.* (i) Containers of Benzidine and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.
(ii) Containers of Benzidine and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.
(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.
(iv) Containers which have Benzidine contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.
(3) *Lettering.* Lettering on signs and instructions required by paragraph (e)(1) of this section shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.
(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.
(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:
(A) The nature of the carcinogenic hazards of Benzidino, including local and systemic toxicity;
(B) The specific nature of the operation involving Benzidine which could result in exposure;
(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;
(D) The purpose for and application of decontamination practices and purposes;
(E) The purpose for and significance of emergency practices and procedures;
(F) The employee's specific role in emergency procedures;
(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of Benzidine;
(H) The purpose for and application of specific first aid procedures and practices;
(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.
(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.
(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.
(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change. (i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area:

(ii) The name(s) and other identifying information as to the presence of Benzidine in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which Benzidine is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of Benzidine into any area where employees may be potentially exposed shall be reported in accordance with this paragraph. (i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include:

(A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1926.33 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0082)

§ 1926.1111 4-Aminodiphenyl.

(a) *Scope and application.* (1) This section applies to any area in which 4-Aminodiphenyl, Chemical Abstracts Service Registry Number 92671 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 0.1 percent by weight or volume of 4-Aminodiphenyl.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of 4-Aminodiphenyl. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving 4-Aminodiphenyl where containment prevents the release of 4-Aminodiphenyl into regulated areas, nonregulated area, or the external environment.

(5) *Decontamination* means the inactivation of 4-Aminodiphenyl or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of 4-Aminodiphenyl from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of 4-Aminodiphenyl which may result in exposure to or contact with 4-Aminodiphenyl.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of 4-Aminodiphenyl, which is imperivious to the passage of 4-Aminodiphenyl, and which would prevent the entry of 4-Aminodiphenyl into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 4-Aminodiphenyl within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving 4-Aminodiphenyl in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4-Aminodiphenyl into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to 4-Aminodiphenyl.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing 4-Aminodiphenyl.* A regulated area shall

be established by an employer where 4-Aminodiphenyl is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with 4-Aminodiphenyl within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where 4-Aminodiphenyl is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while 4-Aminodiphenyl is contained within:

(i) Access shall be restricted to authorized employees only;

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where 4-Aminodiphenyl is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

(iv) Employees engaged in 4-Aminodiphenyl handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with § 1926.103. A respirator affording higher levels of protection may be substituted.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e) (2), (3), and (4) of this section.

(vi) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(vii) Employees shall be required to shower after the last exit of the day.

(viii) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, where direct contact with 4-Aminodiphenyl could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air suppled hood in accordance with § 1926.103.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with 4-Aminodiphenyl such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1926.51(f) (2) and (3).

(iii) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1926.51(f)(4).

(iv) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1926.51(i), for the number of such employees required to change clothes.

(v) Where toilets are in regulated areas, such toilets shall be in a separate room.

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove 4-Aminodiphenyl from the surfaces of materials, equipment and the decontamination facility.

(iv) Dry sweeping and dry mopping are prohibited.

(e) *Signs, information and training*—(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT

AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA

IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES

AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of 4-Aminodiphenyl and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of 4-Aminodiphenyl and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by, employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have 4-Aminodiphenyl contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by subparagraph (1) shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive including, but not necessarily limited to: A training and indoctrination program

(A) The nature of the carcinogenic hazards of 4-Aminodiphenyl, including local and systemic toxicity;

(B) The specific nature of the operation involving 4-Aminodiphenyl which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of 4-Aminodiphenyl;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in this application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change. (i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of 4-Aminodiphenyl in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which 4-Aminodiphenyl is present in each regulated area; e.g. whether it is manufactured, processed, used repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of 4-Aminodiphenyl into any area where employees may be potentially exposed shall be reported in accordance with this paragraph. (i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include:

(A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof,

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shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1926.33 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0090)

§ 1926.1112 Ethyleneimine.

(a) *Scope and application.* (1) This section applies to any area in which Ethyleneimine, Chemical Abstracts Service Registry Number 151564 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 1.0 percent by weight or volume of Ethyleneimine.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of Ethyleneimine. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving Ethyleneimine where containment prevents the release of Ethyleneimine into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of Ethyleneimine or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of Ethyleneimine from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of Ethyleneimine which may result in exposure to or contact with Ethyleneimine.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of Ethyleneimine, which is impervious to the passage of Ethyleneimine, and which would prevent the entry of Ethyleneimine into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving Ethyleneimine within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving Ethyleneimine in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of Ethyleneimine into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to Ethyleneimine.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing Ethyleneimine.* A regulated area shall be established by an employer where Ethyleneimine is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with Ethyleneimine within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where Ethyleneimine is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while Ethyleneimine is contained within: Access shall be restricted to authorized employees only.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where Ethyleneimine is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), and gloves prior to entering the regulated area.

(iv) Employees engaged in Ethyleneimine handling operations shall be provided with and required to wear and use a full-face, supplied air respirator, of the continuous flow or pressure-demand type, in accordance with § 1926.103.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e) (2), (3), and (4) of this section.

(vi) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on

contaminated systems or equipment, where direct contact with Ethyleneimine could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1926.103.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with Ethyleneimine, such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(vi) Emergency deluge showers and eyewash fountains supplied with running potable water shall be located near, within sight of, and on the same level with locations where a direct exposure of Ethyleneimine would be most likely as a result of equipment failure, or improper work practice.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1926.51(i), for the number of such employees required to change clothes.

(iii) Where toilets are in regulated areas, such toilets shall be in a separate room.

(iv) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1926.51(f) (2) and (3).

(v) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1926.51(f)(4).

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove Ethyleneimine from the surfaces of materials, equipment and the decontamination facility.

(e) *Signs, information and training*—(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT

AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA

IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES

AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of Ethyleneimine and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of Ethyleneimine and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii) (B) of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with paragraph (e)5 of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have Ethyleneimine contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by paragraph (e)(1) of this section shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

(A) The nature of the carcinogenic hazards of Ethyleneimine, including local and systemic toxicity;

(B) The specific nature of the operation involving Ethyleneimine which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of Ethyleneimine;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change. (i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of Ethyleneimine in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which Ethyleneimine is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of Ethyleneimine into any area where employees may be potentially exposed shall be reported in accordance with this paragraph. (i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include:

(A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1926.33 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0080)

§ 1926.1113 beta-Propiolactone.

(a) *Scope and application.* (1) This section applies to any area in which beta-Propiolactone, Chemical Abstracts Service Registry Number 57578 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 1.0 percent by weight or volume of beta-Propiolactone.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of beta-Propiolactone. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving beta-Propiolactone where containment prevents the release of beta-Propiolactone into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of beta-Propiolactone or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of beta-Propiolactone from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of beta-Propiolactone which may result in exposure to or contact with beta-Propiolactone.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of beta-Propiolactone, which is impervious to the passage of beta-Propiolactone, and which would prevent the entry of beta-Propiolactone into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute;

designed, constructed, and maintained in such a way that an operation involving beta-Propiolactone within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving beta-Propiolactone in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of beta-Propiolactone into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to beta-Propiolactone.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing beta-Propiolactone.* A regulated area shall be established by an employer where beta-Propiolactone is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with beta-Propiolactone within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where beta-Propiolactone is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while beta-Propiolactone is contained within. Access shall be restricted to authorized employees only.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where beta-Propiolactone is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

(iv) Employees engaged in beta-Propiolactone handling operations shall be provided with and required to wear and use a full-face, supplied air respirator, of the continuous flow or pressure-demand type, in accordance with § 1926.103.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e)(2), (3), and (4) of this section.

(vi) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, where direct contact with beta-Propiolactone could result, each authorized employee entering that area shall: (i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1926.103.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented. (i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with beta-Propiolactone, such employee shall be required to shower soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(vi) Emergency deluge showers and eyewash fountains supplied with running potable water shall be located near, within sight of, and on the same level with locations where a direct exposure to beta-Propiolactone would be most likely as a result of equipment failure, or improper work practice.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1926.51(i), for the number of such employees required to change clothes.

(iii) Where toilets are in regulated areas, such toilets shall be in a separate room.

(iv) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1926.51(f) (2) and (3).

(v) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1926.51(f)(4).

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove beta-Propiolactone from the surfaces of materials, equipment and the decontamination facility.

(e) *Signs, information and training*—(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT

AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA

IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES

AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of beta-Propiolactone and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of beta-Propiolactone and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by, employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have beta-Propiolactone contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by paragraph (e)(1) shall be a minimum letter height of 2 inches. Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

(A) The nature of the carcinogenic hazards of beta-Propiolactone, including local and systemic toxicity;

(B) The specific nature of the operation involving beta-Propiolactone which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of beta-Propiolactone;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of beta-Propiolactone in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which beta-Propiolactone is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of beta-Propiolactone into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph. (i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include:

(A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those

undergoing treatment with steroids or cytotoxic agent, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1926.33 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0079)

§ 1926.1114 2-Acetylaminofluorene.

(a) *Scope and application.* (1) This section applies to any area in which 2-Acetylaminofluorene, Chemical Abstracts Service Registry Number 53963 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under paragraphs (e)(2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 1.0 percent by weight or volume of 2-Acetylamino fluorene.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of 2-Acetylaminofluorene. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving 2-Acetylaminofluorene where containment prevents the release of 2-Acetylaminofluorene into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of 2-Acetylaminofluorene or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of 2-Acetylaminofluorene from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of 2-Acetylaminofluorene which may result in exposure to or contact with 2-Acetylaminofluorene.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of 2-Acetylaminofluorene, which is impervious to the passage of 2-Acetylaminofluorene, and which would prevent the entry of 2-Acetylaminofluorene into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 2-Acetylaminoflourene within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving 2-Acetylaminofluorene in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 2-Acetylaminofluorene into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to 2-Acetylaminofluorene.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing 2-Acetylaminofluorene.* A regulated area shall be established by an employer where 2-Acetylaminofluorene is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance wtih the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with 2-Acetylaminofluorene within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where 2-Acetylaminofluorene is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while 2-Acetylaminofluorene is contained within:

(i) Access shall be restricted to authorized employees only;

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where 2-Acetylaminofluorene is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and

pants), shoe covers and gloves prior to entering the regulated area.

(iv) Employees engaged in 2-Acetylaminofluorene handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with § 1926.103. A respirator affording higher levels of protection may be substituted.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e)(2), (3), and (4) of this section.

(vi) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(vii) Employees shall be required to shower after the last exit of the day.

(viii) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, where direct contact with 2-Acetylaminofluorene could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1926.103.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with apragraph (f)(2) of this section.

(iv) Where an employee has a known contact with 2-Acetylaminofluorene, such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1926.51(f) (2) and (3).

(iii) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1926.51(f)(4).

(iv) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1926.51(i), for the number of such employees required to change clothes.

(v) Where toilets are in regulated areas, such toilets shall be in a separate room.

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove 2-Acetylaminofluorene from the surfaces of materials, equipment and the decontamination facility.

(iv) Dry sweeping and dry mopping are prohibited.

(e) *Signs, information and training*—

(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT

AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA

IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES

AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of 2-Acetylaminofluorene and containers required under paragraphs (c)(4)(v) and (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification, limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of 2-Acetylaminofluorene and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by, employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have 2-Acetylaminofluorene contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by subparagraph (1) shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance; *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

(A) The nature of the carcinogenic hazards of 2-Acetylaminofluorene, including local and systemic toxicity;

(B) The specific nature of the operation involving 2-Acetylaminofluorene which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of 2-Acetylaminofluorene;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees, shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of 2-Acetylaminofluorene in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which 2-Acetylaminofluorene is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of 2-Acetylaminofluorene into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph.

(i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include:

(A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1926.33 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0088)

§ 1926.1115 4-Dimethylaminoazobenzene.

(a) *Scope and application.* (1) This section applies to any area in which 4-Dimethylaminoazobenzene, Chemical Abstracts Service Registry Number 60117 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to transshipment in sealed containers, except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 1.0 percent by weight or volume of 4-Dimethylaminoazobenzene.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of 4-Dimethylaminoazobenzene. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving 4-Dimeth- ylaminoazobenzene where containment prevents the release of 4-Dimethylaminoazobenzene into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of 4-Dimethylaminoazobenzene or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of 4-Dimethylaminoazobenzene from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of 4-Dimethylaminoazobenzene which may result in exposure to or contact with 4-Dimethylaminoazobenzene.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of 4-Dimethylaminoazobenzene, which is impervious to the passage of 4-Dimethylaminoazobenzene which would prevent the entry of 4-Dimethylaminoazobenzene into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 4-Dimethylaminoazobenzene within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(13) *Open-vessel system* means an operation involving 4-Dimethylaminoazobenzene in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4-Dimethylaminoazobenzene into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to 4-Dimethylaminoazobenzene.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing 4-Dimethylaminoazobenzene.* A regulated area shall be established by an employer where 4-Dimethylaminoazobenzene is manufactured, processed, used, repackaged, released, handled or stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with 4-Dimethylaminoazobenzene within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where 4-Dimethylaminoazobenzene is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while 4-Dimethylaminoazobenzene is contained within:

(i) Access shall be restricted to authorized employees only;

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where 4-Dimethylaminoazobenzene is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers, and gloves prior to entering the regulated area.

(iv) Employees engaged in 4-Dimethylaminoazobenzene handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with § 1926.103. A respirator affording higher levels of protection may be substituted.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e) (2), (3), and (4) of this section.

(vi) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(vii) Employees shall be required to shower after the last exist of the day.

(viii) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, where direct contact with 4-Dimethylaminoazobenzene could result, each authorized employee entering that area shall: (i) Be provided with and required to wear clear, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with § 1926.103.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with 4-Dimethylaminoazobenzene, such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1926.51(f) (2) and (3).

(iii) Where employees are required by this section to shower, shower facilities shall be provided in accordance with 1926.51(f)(4).

(iv) Where employees wear protective clothing and equipment clean change room shall be provided, in accordance with § 1926.51(i), for the number of such employees required to change clothes.

(v) Where toilets are in regulated areas, such toilets shall be in a separate room.

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean makeup air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove 4-Dimethylaminoazobenzene from the surfaces of materials, equipment and the decontamination facility.

(iv) Dry sweeping and dry mopping are prohibited.

(e) *Signs, information and training*—(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT

AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA

IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES

AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of 4-Dimethylaminoazobenzene and containers required under paragraph (c)(4)(v) and (c)(6)(vii) (B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of 4-Dimethylaminoazobenzene and containers required under paragraphs (c)(4)(v), (c)(6)(vii) (B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (a)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have 4-Dimethylaminoazobenzene contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by subparagraph (1) of this paragraph shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

(A) The nature of the carcinogenic hazards of 4-Dimethylamino-azobenzene, including local and sytemic toxicity;

(B) The specific nature of the operation involving 4-Dimethylaminoazo-benzene which could result in exposure;

(C) The purpose for the application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose for and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of 4-Dimethylaminoazobenzene;

(H) The purpose for and application of specific first aid procedures and practices;

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of 4-Dimethylaminoazobenzene in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which 4-Dimethyaminoazobenzene is present in each regulated area; e.g. whether it is

manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of 4-Dimethylaminoazobenzene into any area where employees may be potentially exposed shall be reported in accordance with this paragraph.

(i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include:

(A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examination, the examing physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examination. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1926.33 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0044)

§ 1926.1116 N-Nitrosodimethylamine.

(a) *Scope and application.* (1) This section applies to any area in which N-Nitrosodimethylamine, Chemical Abstracts Service Registry Number 62759 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to transshipment in sealed containers, except for the labeling requirements under paragraphs (e) (2), (3), and (4) of this section.

(2) This section shall not apply to solid or liquid mixtures containing less than 1.0% by weight or volume of N-Nitrosodimethylamine.

(b) *Definitions.* For the purposes of this section: (1) *Absolute filter* is one capable of retaining 99.97 percent of a mono disperse aerosol of 0.3 μm particles.

(2) *Authorized employee* means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(3) *Clean change room* means a room where employees put on clean clothing and/or protective equipment in an environment free of N-Nitrosodimethylamine. The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(4) *Closed system* means an operation involving N-Nitrosodimethyl- amine where containment prevents the release of N-Nitrosodimethylamine into regulated areas, nonregulated areas, or the external environment.

(5) *Decontamination* means the inactivation of N-Nitrosodimethylamine or its safe disposal.

(6) *Director* means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health and Human Services to act for the Director.

(7) *Disposal* means the safe removal of N-Nitrosodimethylamine from the work environment.

(8) *Emergency* means an unforeseen circumstance or set of circumstances resulting in the release of N-Nitrosodimethylamine which may result in exposure to or contact with N-Nitrosodimethylamine.

(9) *External environment* means any environment external to regulated and nonregulated areas.

(10) *Isolated system* means a fully enclosed structure other than the vessel of containment of N-Nitrosodimethylamine, which is impervious to the passage of N-Nitrosodimethylamine, and which would prevent the entry of N-Nitrosodimethylamine into regulated areas, nonregulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(11) *Laboratory type hood* is a device enclosed on three sides and the top and bottom, designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving N-Nitrosodimeth-ylamine within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(12) *Nonregulated area* means any area under the control of the employer where entry and exit is neither restriced nor controlled.

(13) *Open-vessel system* means an operation involving N-Nitrosodimethylamine in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of N-Nitrosodimethylamine into regulated areas, nonregulated areas, or the external environment.

(14) *Protective clothing* means clothing designed to protect an employee against contact with or exposure to N-Nitrosodimethylamine.

(15) *Regulated area* means an area where entry and exit is restricted and controlled.

(c) *Requirements for areas containing N-Nitrosodimethylamine.* A regulated area shall be established by an employer where N-Nitrosodimethylamine is manufactured, processed, used, repackaged, released, handled or stored.

All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(1) *Isolated systems.* Employees working with N-Nitrosodimethylamine within an isolated system, such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(2) *Closed system operation.* Within regulated areas where N-Nitrosodimethylamine is stored in sealed containers, or contained in a closed system, including piping systems, with any sample ports or openings closed while N-Nitrosodimethylamine is contained within:

(i) Access shall be restricted to authorized employees only;

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(3) *Open vessel system operations.* Open vessel system operations as defined in paragraph (b)(13) of this section are prohibited.

(4) *Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system.* In operations involving "laboratory type hoods," or in locations where N-Nitrosodimethylamine is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers, and gloves prior to entering the regulated area.

(iv) Employees engaged in N-Nitrosodimethylamine handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with § 1926.103. A respirator affording higher levels of protection may be substituted.

(v) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e)(2), (3), and (4) of this section.

(vi) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(vii) Employees shall be required to shower after the last exit of the day.

(viii) Drinking fountains are prohibited in the regulated area.

(5) *Maintenance and decontamination activities.* In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, where direct contact with N-Nitrosodimethylamine could result, each authorized employee entering that area shall:

(i) Be provided with and required to wear clean, impervious garment, including gloves, boots and continuous-air supplied hood in accordance with § 1926.103.

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(d) *General regulated area requirements.*

(1) [Reserved]

(2) *Emergencies.* In an emergency, immediate measures including, but not limited to, the requirements of paragraphs (d)(2) (i), (ii), (iii), (iv), and (v) of this section shall be implemented.

(i) The potentially affected area shall be evacuated as soon as the emergency has been determined.

(ii) Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with paragraph (f)(2) of this section.

(iv) Where an employee has a known contact with N–Nitrosodimethylamine, such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

(v) An incident report on the emergency shall be reported as provided in paragraph (f)(2) of this section.

(3) *Hygiene facilities and practices.* (i) Storage or consumption of food, storage or use of containers of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

(ii) Where employees are required by this section to wash, washing facilities shall be provided in accordance with § 1926.51(f) (2) and (3).

(iii) Where employees are required by this section to shower, shower facilities shall be provided in accordance with § 1926.51(f)(4).

(iv) Where employees wear protective clothing and equipment clean change rooms shall be provided, in accordance with § 1926.51(i), for the number of such employees required to change clothes.

(v) Where toilets are in regulated areas, such toilets shall be in a separate room.

(4) *Contamination control.* (i) Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean make-up air in equal volume shall replace air removed.

(ii) Any equipment, material, or other item taken into or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

(iii) Decontamination procedures shall be established and implemented to remove N-Nitrosodimethylamine from the surfaces of materials, equipment and the decontamination facility.

(iv) Dry sweeping and dry mopping are prohibited.

(e) *Signs, information and training—*

(1) *Signs.* (i) Entrances to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT

AUTHORIZED PERSONNEL ONLY

(ii) Entrances to regulated areas containing operations covered in paragraph (c)(5) of this section shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT EXPOSED IN THIS AREA

IMPERVIOUS SUIT INCLUDING GLOVES, BOOTS, AND AIR-SUPPLIED HOOD REQUIRED AT ALL TIMES

AUTHORIZED PERSONNEL ONLY

(iii) Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(2) *Container contents identification.* (i) Containers of N-Nitrosodimethylamine and containers required under paragraphs (c)(4)(v) and (c)(6)(vii) (B), and (c)(6)(viii)(B) of this section which are accessible only to, and handled only by, authorized employees, or by other employees trained in accordance with paragraph (e)(5) of this section, may have contents identification limited to a generic or proprietary name, or other proprietary identification, of the carcinogen and percent.

(ii) Containers of N-Nitrosodimethylamine and containers required under paragraphs (c)(4)(v), (c)(6)(vii)(B), and (c)(6)(viii)(B) of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with paragraph (e)(5) of this section shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in paragraph (c)(1) of this section.

(iii) Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

(iv) Containers which have N-Nitrosodimethylamine contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive or affected portions of the body.

(3) *Lettering.* Lettering on signs and instructions required by paragraph (e)(1) of this section shall be a minimum letter height of 2 inches (5.08 cm). Labels on containers required under this section shall not be less than ½ the size of the largest lettering on the package, and not less than 8 point type in any instance: *Provided,* That no such required lettering need be more than 1 inch (2.54 cm) in height.

(4) *Prohibited statements.* No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(5) *Training and indoctrination.* (i) Each employee prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

(A) The nature of the carcinogenic hazards of N-Nitrosodimethylamine, including local and systemic toxicity;

(B) The specific nature of the operation involving N-Nitrosodimethylamine which could result in exposure;

(C) The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

(D) The purpose of and application of decontamination practices and purposes;

(E) The purpose for and significance of emergency practices and procedures;

(F) The employee's specific role in emergency procedures;

(G) Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of N-Nitrosodimethylamine;

(H) The purpose for and application of specific first aid procedures and practices.

(I) A review of this section at the employee's first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of the Assistant Secretary and the Director.

(f) *Reports*—(1) *Operations.* Not later than March 1, 1974, the information required in paragraphs (f)(1) (i), (ii), (iii), and (iv) of this section shall be reported in writing to the nearest OSHA Area Director. Any changes in such information shall be similarly reported in writing within 15 calendar days of such change.

(i) A brief description and in-plant location of the area(s) regulated and the address of each regulated area;

(ii) The name(s) and other identifying information as to the presence of N-Nitrosodimethylamine in each regulated area;

(iii) The number of employees in each regulated area, during normal operations including maintenance activities; and

(iv) The manner in which N-Nitrosodimethylamine is present in each regulated area; e.g. whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(2) *Incidents.* Incidents which result in the release of N-Nitrosodimethylamine into any area where employees may be potentially exposed shall be reported in accordance with this paragraph.

(i) A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within 24 hours to the nearest OSHA Area Director.

(ii) A written report shall be filed with the nearest OSHA Area Director within 15 calendar days thereafter and shall include:

(A) A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

(B) A description of the area involved, and the extent of known and possible employee exposure and area contamination; and

(C) A report of any medical treatment of affected employees, and any medical surveillance program implemented; and

(D) An analysis of the circumstances of the incident, and measures taken or to be taken, with specific completion dates, to avoid further similar releases.

(g) *Medical surveillance.* At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(1) *Examinations.* (i) Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

(ii) Authorized employees shall be provided periodic physical examinations, not less often than annually, following the preassignment examination.

(iii) In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids or cytotoxic agents, pregnancy and cigarette smoking.

(2) *Records.* (i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of an employee's employment, including retirement or

death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the Director.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1926.33 (a)–(e) and (g)–(i). These records shall also be provided upon request to the Director.

(iii) Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

(Approved by the Office of Management and Budget under control number 1218–0081)

§ 1926.1117 Vinyl chloride.

(a) *Scope and application.* (1) This section includes requirements for the control of employee exposure to vinyl chloride (chloroethene), Chemical Abstracts Service Registry No. 75014.

(2) This section applies to the manufacture, reaction, packaging, repackaging, storage, handling or use of vinyl chloride or polyvinyl chloride, but does not apply to the handling or use of fabricated products made of polyvinyl chloride.

(3) This section applies to the transportation of vinyl chloride or polyvinyl chloride except to the extent that the Department of Transportation may regulate the hazards covered by this section.

(b) *Definitions.* (1) *Action level* means a concentration of vinyl chloride of 0.5 ppm averaged over an 8-hour work day.

(2) *Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or his designee.

(3) *Authorized person* means any person specifically authorized by the employer whose duties require him to enter a regulated area or any person entering such an area as a designated representative of employees for the purpose of exercising an opportunity to observe monitoring and measuring procedures.

(4) *Director* means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services or his designee.

(5) *Emergency* means any occurrence such as, but not limited to, equipment failure, or operation of a relief device which is likely to, or does, result in massive release of vinyl chloride.

(6) *Fabricated product* means a product made wholly or partly from polyvinyl chloride, and which does not require further processing at temperatures, and for times, sufficient to cause mass melting of the polyvinyl chloride resulting in the release of vinyl chloride.

(7) *Hazardous operation* means any operation, procedure, or activity where a release of either vinyl chloride liquid or gas might be expected as a consequence of the operation or because of an accident in the operation, which would result in an employee exposure in excess of the permissible exposure limit.

(8) *OSHA Area Director* means the Director for the Occupational Safety and Health Administration Area Office having jurisdiction over the geographic area in which the employer's establishment is located.

(9) *Polyvinyl chloride* means polyvinyl chloride homopolymer or copolymer before such is converted to a fabricated product.

(10) *Vinyl chloride* means vinyl chloride monomer.

(c) *Permissible exposure limit.* (1) No employee may be exposed to vinyl chloride at concentrations greater than 1 ppm averaged over any 8-hour period, and

(2) No employee may be exposed to vinyl chloride at concentrations greater than 5 ppm averaged over any period not exceeding 15 minutes.

(3) No employee may be exposed to vinyl chloride by direct contact with liquid vinyl chloride.

(d) *Monitoring.* (1) A program of initial monitoring and measurement shall be undertaken in each establishment to determine if there is any employee exposed, without regard to the use of respirators, in excess of the action level.

(2) Where a determination conducted under paragraph (d)(1) of this section shows any employee exposures, without regard to the use of respirators, in excess of the action level, a program for determining exposures for each such employee shall be established. Such a program:

(i) Shall be repeated at least monthly where any employee is exposed, without regard to the use of respirators, in excess of the permissible exposure limit.

(ii) Shall be repeated not less than quarterly where any employee is exposed, without regard to the use of respirators, in excess of the action level.

(iii) May be discontinued for any employee only when at least two consecutive monitoring determinations, made not less than 5 working days apart, show exposures for that employee at or below the action level.

(3) Whenever there has been a production, process or control change which may result in an increase in the release of vinyl chloride, or the employer has any other reason to suspect that any employee may be exposed in excess of the action level, a determination of employee exposure under paragraph (d)(1) of this section shall be performed.

(4) The method of monitoring and measurement shall have an accuracy (with a confidence level of 95 percent) of not less than plus or minus 50 percent from 0.25 through 0.5 ppm, plus or minus 35 percent from over 0.5 ppm through 1.0 ppm, and plus or minus 25 percent over 1.0 ppm. (Methods meeting these accuracy requirements are available in the "NIOSH Manual of Analytical Methods").

(5) Employees or their designated representatives shall be afforded reasonable opportunity to observe the monitoring and measuring required by this paragraph.

(e) *Regulated area.* (1) A regulated area shall be established where:

(i) Vinyl chloride or polyvinyl chloride is manufactured, reacted, repackaged, stored, handled or used; and

(ii) Vinyl chloride concentrations are in excess of the permissible exposure limit.

(2) Access to regulated areas shall be limited to authorized persons.

(f) *Methods of compliance.* Employee exposures to vinyl chloride shall be controlled to at or below the permissible exposure limit provided in paragraph (c) of this section by engineering, work practice, and personal protective controls as follows:

(1) Feasible engineering and work practice controls shall immediately be used to reduce exposures to at or below the permissible exposure limit.

(2) Wherever feasible engineering and work practice controls which can be instituted immediately are not sufficient to reduce exposures to at or below the permissible exposure limit, they shall nonetheless be used to reduce exposures to the lowest practicable level, and shall be supplemented by respiratory protection in accordance with paragraph (g) of this section. A program shall be established and implemented to reduce exposures to at or below the permissible exposure limit, or to the greatest extent feasible, solely by means of engineering and work practice controls, as soon as feasible.

(3) Written plans for such a program shall be developed and furnished upon request for examination and copying to authorized representatives of the Assistant Secretary and the Director.

Such plans shall be updated at least every six months.

(g) *Respiratory protection.* Where respiratory protection is required under this section:

(1) The employer shall provide a respirator which meets the requirements of this paragraph and shall assure that the employee uses such respirator, except that until April 1, 1976, wearing of respirators shall be at the discretion of each employee for exposures not in excess of 25 ppm, measured over any 15-minute period. Until April 1, 1976, each employee who chooses not to wear an appropriate respirator shall be informed at least quarterly of the hazards of vinyl chloride and the purpose, proper use, and limitations of respiratory devices.

(2) Respirators shall be selected from among those jointly approved by the Mining Enforcement and Safety Administration, Department of the Interior, and the National Institute for Occupational Safety and Health under the provisions of 30 CFR part 11.

(3) A respiratory protection program meeting the requirements of § 1926.103 shall be established and maintained.

(4) Selection of respirators for vinyl chloride shall be as follows:

Atmospheric concentration of vinyl chloride	Required apparatus
(i) Unknown, or above 3,600 p/m	Open-circuit, self-contained breathing apparatus, pressure demand type, with full facepiece.
(ii) Not over 3,600 p/m	(A) Combination type C supplied air respirator, pressure demand type, with full or half facepiece, and auxiliary self-contained air supply; or
(iii) Not over 1,000 p/m	(B) Combination type, supplied air respirator continuous flow type, with full or half facepiece, and auxiliary self-contained air supply.
	Type C, supplied air respirator, continuous flow type, with full or half facepiece, helmet or hood.
(iv) Not over 100 p/m	(A) Combination type C supplied air respirator demand type, with full facepiece, and auxiliary self-contained air supply; or
	(B) Open-circuit self-contained breathing apparatus with full facepiece, in demand mode; or
	(C) Type C supplied air respirator, demand type, with full facepiece.
(v) Not over 25 p/m	(A) A powered air-purifying respirator with hood, helmet, full or half facepiece, and a canister which provides a service life of at least 4 hours for concentrations of vinyl chloride up to 25 p/m, or
	(B) Gas mask, front- or back-mounted canister which provides a service life of at least 4 hours for concentrations of vinyl chloride up to 25 p/m.
(vi) Not over 10 p/m	(A) Combination type C supplied-air respirator, demand type, with half facepiece, and auxiliary self-contained air supply; or
	(B) Type C supplied-air respirator, demand type, with half facepiece; or
	(C) Any chemical cartridge respirator with an organic vapor cartridge which provides a service life of at least 1 hour for concentrations of vinyl chloride up to 10 p/m.

(5)(i) Entry into unknown concentrations or concentrations greater than 36,000 ppm (lower explosive limit) may be made only for purposes of life rescue; and

(ii) Entry into concentrations of less than 36,000 ppm, but greater than 3,600 ppm may be made only for purposes of life rescue, firefighting, or securing equipment so as to prevent a greater hazard from release of vinyl chloride.

(6) Where air-purifying respirators are used:

(i) Air-purifying cannisters or cartridges shall be replaced prior to the expiration of their service life or the end of the shift in which they are first used, whichever occurs first, and

(ii) A continuous monitoring and alarm system shall be provided where concentrations of vinyl chloride could reasonably exceed the allowable concentrations for the devices in use. Such system shall be used to alert employees when vinyl chloride concentrations exceed the allowable concentrations for the devices in use.

(7) Apparatus prescribed for higher concentrations may be used for any lower concentration.

(h) *Hazardous operations.* (1) Employees engaged in hazardous operations, including entry of vessels to clean polyvinyl chloride residue from vessel walls, shall be provided and required to wear and use;

(i) Respiratory protection in accordance with paragraphs (c) and (g) of this section; and

(ii) Protective garments to prevent skin contact with liquid vinyl chloride or with polyvinyl chloride residue from vessel walls. The protective garments shall be selected for the operation and its possible exposure conditions.

(2) Protective garments shall be provided clean and dry for each use.

(i) *Emergency situations.* A written operational plan for emergency situations shall be developed for each facility storing, handling, or otherwise using vinyl chloride as a liquid or compressed gas. Appropriate portions of the plan shall be implemented in the event of an emergency. The plan shall specifically provide that:

(1) Employees engaged in hazardous operations or correcting situations of existing hazardous releases shall be equipped as required in paragraph (h) of this section;

(2) Other employees not so equipped shall evacuate the area and not return until conditions are controlled by the methods required in paragraph (f) of this section and the emergency is abated.

(j) *Training.* Each employee engaged in vinyl chloride or polyvinyl chloride operations shall be provided training in a program relating to the hazards of vinyl chloride and precautions for its safe use.

(1) The program shall include:

(i) The nature of the health hazard from chronic exposure to vinyl chloride including specifically the carcinogenic hazard;

(ii) The specific nature of operations which could result in exposure to vinyl chloride in excess of the permissible limit and necessary protective steps;

(iii) The purpose for, proper use, and limitations of respiratory protective devices;

(iv) The fire hazard and acute toxicity of vinyl chloride, and the necessary protective steps;

(v) The purpose for and a description of the monitoring program;

(vi) The purpose for, and a description of, the medical surveillance program;

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(vii) Emergency procedures;

(viii) Specific information to aid the employee in recognition of conditions which may result in the release of vinyl chloride; and

(ix) A review of this standard at the employee's first training and indoctrination program, and annually thereafter.

(2) All materials relating to the program shall be provided upon request to the Assistant Secretary and the Director.

(k) *Medical surveillance.* A program of medical surveillance shall be instituted for each employee exposed, without regard to the use of respirators, to vinyl chloride in excess of the action level. The program shall provide each such employee with an opportunity for examinations and tests in accordance with this paragraph. All medical examinations and procedures shall be performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee.

(1) At the time of initial assignment, or upon institution of medical surveillance;

(i) A general physical examination shall be performed, with specific attention to detecting enlargement of liver, spleen or kidneys, or dysfunction in these organs, and for abnormalities in skin, connective tissues and the pulmonary system (See Appendix A).

(ii) A medical history shall be taken, including the following topics:

(A) Alcohol intake;

(B) Past history of hepatitis;

(C) Work history and past exposure to potential hepatotoxic agents, including drugs and chemicals;

(D) Past history of blood transfusions; and

(E) Past history of hospitalizations.

(iii) A serum specimen shall be obtained and determinations made of:

(A) Total bilirubin;

(B) Alkaline phosphatase;

(C) Serum glutamic oxalacetic transaminase (SGOT);

(D) Serum glutamic pyruvic transaminase (SGPT); and

(E) Gamma glustamyl transpeptidase.

(2) Examinations provided in accordance with this paragraph shall be performed at least:

(i) Every 6 months for each employee who has been employed in vinyl chloride or polyvinyl chloride manufacturing for 10 years or longer; and

(ii) Annually for all other employees.

(3) Each employee exposed to an emergency shall be afforded appropriate medical surveillance.

(4) A statement of each employee's suitability for continued exposure to vinyl chloride including use of protective equipment and respirators, shall be obtained from the examining physician promptly after any examination. A copy of the physician's statement shall be provided each employee.

(5) If any employee's health would be materially impaired by continued exposure, such employee shall be withdrawn from possible contact with vinyl chloride.

(6) Laboratory analyses for all biological specimens included in medical examinations shall be performed in laboratories licensed under 42 CFR part 74.

(7) If the examining physician determines that alternative medical examinations to those required by paragraph (k)(1) of this section will provide at least equal assurance of detecting medical conditions pertinent to the exposure to vinyl chloride, the employer may accept such alternative examinations as meeting the requirements of paragraph (k)(1) of this section, if the employer obtains a statement from the examining physician setting forth the alternative examinations and the rationale for substitution. This statement shall be available upon request for examination and copying to authorized representatives of the Assistant Secretary and the Director.

(l) *Signs and labels.* (1) Entrances to regulated areas shall be posted with legible signs bearing the legend:

CANCER-SUSPECT AGENT AREA
AUTHORIZED PERSONNEL ONLY

(2) Areas containing hazardous operations or where an emergency currently exists shall be posted with legible signs bearing the legend:

CANCER-SUSPECT AGENT IN THIS AREA
PROTECTIVE EQUIPMENT REQUIRED
AUTHORIZED PERSONNEL ONLY

(3) Containers of polyvinyl chloride resin waste from reactors or other waste contaminated with vinyl chloride shall be legibly labeled:

CONTAMINATED WITH VINYL CHLORIDE

CANCER-SUSPECT AGENT

(4) Containers of polyvinyl chloride shall be legibly labeled:

POLYVINYL CHLORIDE (OR TRADE NAME)

CONTAINS

VINYL CHLORIDE

VINYL CHLORIDE IS A CANCER-SUSPECT AGENT

(5) Containers of vinyl chloride shall be legibly labeled either:

(i)

VINYL CHLORIDE

EXTREMELY FLAMMABLE GAS UNDER PRESSURE

CANCER SUSPECT AGENT

or (ii) In accordance with 49 CFR parts 170 through 189, with the additional legend:

CANCER-SUSPECT AGENT

applied near the label or placard.

(6) No statement shall appear on or near any required sign, label or instruction which contradicts or detracts from the effect of, any required warning, information or instruction.

(m) *Records.* (1) All records maintained in accordance with this section shall include the name and social security number of each employee where relevant.

(2) Records of required monitoring and measuring and medical records shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1926.33 (a) through (e) and (g) through (i). These records shall be provided upon request to the Director. Authorized personnel rosters shall also be provided upon request to the Assistant Secretary and the Director.

(i) Monitoring and measuring records shall:

(A) State the date of such monitoring and measuring and the concentrations determined and identify the instruments and methods used;

(B) Include any additional information necessary to determine individual employee exposures where such exposures are determined by means other than individual monitoring of employees; and

(C) Be maintained for not less than 30 years.

(ii) [Reserved]

(iii) Medical records shall be maintained for the duration of the employment of each employee plus 20 years, or 30 years, whichever is longer.

(3) In the event that the employer ceases to do business and there is no successor to receive and retain his records for the prescribed period, these records shall be transmitted by registered mail to the Director, and each employee individually notified in writing of this transfer. The employer shall also comply with any additional requirements set forth in 29 CFR 1926.33(h).

(n) *Reports.* (1) Not later than 1 month after the establishment of a regulated area, the following information shall be reported to the OSHA Area Director. Any changes to such information shall be reported within 15 days.

(i) The address and location of each establishment which has one or more regulated areas; and

(ii) The number of employees in each regulated area during normal operations, including maintenance.

(2) Emergencies, and the facts obtainable at that time, shall be reported within 24 hours to the OSHA Area Director. Upon request of the Area Director, the employer shall submit additional information in writing relevant to the nature and extent of employee exposures and measures taken to prevent future emergencies of similar nature.

(3) Within 10 working days following any monitoring and measuring which discloses that any employee has been exposed, without regard to the use of respirators, in excess of the permissible exposure limit, each such employee shall be notified in writing of the results of the exposure measurement and the steps being taken to reduce the exposure to within the permissible exposure limit.

(Approved by the Office of Management and Budget under control number 1218—0010)

Appendix A to § 1926.1117—Supplementary Medical Information

When required tests under paragraph (k)(1) of this section show abnormalities, the tests should be repeated as soon as practicable, preferably within 3 to 4 weeks. If tests remain abnormal, consideration should be given to withdrawal of the employee from contact with vinyl chloride, while a more comprehensive examination is made.

Additional tests which may be useful:

A. For kidney dysfunction: urine examination for albumin, red blood cells, and exfoliative abnormal cells.

B. Pulmonary system: Forced vital capacity, Forced expiratory volume at 1 second, and chest roentgenogram (posterior-anterior, 14 × 17 inches (35.56 × 43.18 cm)).

C. Additional serum tests: Lactic acid dehydrogenase, lactic acid dehydrogenase isoenzyme, protein determination, and protein electrophoresis.

D. For a more comprehensive examination on repeated abnormal serum tests: Hepatitis B antigen, and liver scanning.

§ 1926.1118 Inorganic arsenic.

(a) *Scope and application.* This section applies to all occupational exposures to inorganic arsenic except that this section does not apply to employee exposures in agriculture or resulting from pesticide application, the treatment of wood with preservatives or the utilization of arsenically preserved wood.

(b) *Definitions. Action level* means a concentration of inorganic arsenic of 5 micrograms per cubic meter of air (5 μg/m^3) averaged over any eight (8) hour period.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees for the purpose of exercising the right to observe monitoring and measuring procedures under paragraph (e) of this section.

Director means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services or designee.

Inorganic arsenic means copper aceto-arsenite and all inorganic compounds containing arsenic except arsine, measured as arsenic (As).

(c) *Permissible exposure limit.* The employer shall assure that no employee is exposed to inorganic arsenic at concentrations greater than 10 micrograms per cubic meter of air (10 μg/m^3), averaged over any 8-hour period.

(d) *Notification of use.* (1) By October 1, 1978 or within 60 days after the introduction of inorganic arsenic into the workplace, every employer who is required to establish a regulated area in his workplaces shall report in writing to the OSHA area office for each such workplace:

(i) The address of each such workplace;

(ii) The approximate number of employees who will be working in regulated areas; and

(iii) A brief summary of the operations creating the exposure and the actions which the employer intends to take to reduce exposures.

(2) Whenever there has been a significant change in the information required by paragraph (d)(1) of this section the employer shall report the changes in writing within 60 days to the OSHA area office.

(e) *Exposure monitoring*—(1) *General.* (i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to inorganic arsenic over an eight (8) hour period.

(ii) For the purposes of this section, employee exposure is that exposure which would occur if the employee were not using a respirator.

(iii) The employer shall collect full shift (for at least 7 continuous hours) personal samples including at least one sample for each shift for each job classification in each work area.

(2) *Initial monitoring.* Each employer who has a workplace or work operation covered by this standard shall monitor each such workplace and work operation to accurately determine the airborne concentration of inorganic arsenic to which employees may be exposed.

(3) *Frequency.* (i) If the initial monitoring reveals employee exposure to be below the action level the measurements need not be repeated except as otherwise provided in paragraph (e)(4) of this section.

(ii) If the initial monitoring, required by this section, or subsequent monitoring reveals employee exposure to be above the permissible exposure limit, the employer shall repeat monitoring at least quarterly.

(iii) If the initial monitoring, required by this section, or subsequent monitoring reveals employee exposure to be above the action level and below the permissible exposure limit the employer shall repeat monitoring at least every six months.

(iv) The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least seven (7) days apart, are below the action level at which time the employer may discontinue monitoring for that employee until such time as any of the events in paragraph (e)(4) of this section occur.

(4) *Additional monitoring.* Whenever there has been a production, process, control or personal change which may result in new or additional exposure to inorganic arsenic, or whenever the employer has any other reason to suspect a change which may result in new or additional exposures to inorganic arsenic, additional monitoring which complies with paragraph (e) of this section shall be conducted.

(5) *Employee notification.* (i) Within five (5) working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employee's exposures.

(ii) Whenever the results indicate that the representative employee exposure exceeds the permissible exposure limit, the employer shall include in the written notice a statement that the permissible exposure limit was exceeded and a description of the corrective action taken to reduce exposure to or below the permissible exposure limit.

(6) *Accuracy of measurement.* (i) The employer shall use a method of monitoring and measurement which has an accuracy (with a confidence level of 95 percent) of not less than plus or minus 25 percent for concentrations of

inorganic arsenic greater than or equal to 10 µg/m³.

(ii) The employer shall use a method of monitoring and measurement which has an accuracy (with confidence level of 95 percent) of not less than plus or minus 35 percent for concentrations of inorganic arsenic greater than 5 µg/m³ but less than 10 µg/m³.

(f) *Regulated area*—(1) *Establishment.* The employer shall establish regulated areas where worker exposures to inorganic arsenic, without regard to the use of respirators, are in excess of the permissible limit.

(2) *Demarcation.* Regulated areas shall be demarcated and segregated from the rest of the workplace in any manner that minimizes the number of persons who will be exposed to inorganic arsenic.

(3) *Access.* Access to regulated areas shall be limited to authorized persons or to persons otherwise authorized by the Act or regulations issued pursuant thereto to enter such areas.

(4) *Provision of respirators.* All persons entering a regulated area shall be supplied with a respirator, selected in accordance with paragraph (h)(2) of this section.

(5) *Prohibited activities.* The employer shall assure that in regulated areas, food or beverages are not consumed, smoking products, chewing tobacco and gum are not used and cosmetics are not applied, except that these activities may be conducted in the lunchrooms, change rooms and showers required under paragraph (m) of this section. Drinking water may be consumed in the regulated area.

(g) *Methods of compliance*—(1) *Controls.* (i) The employer shall institute at the earliest possible time but not later than December 31, 1979, engineering and work practice controls to reduce exposures to or below the permissible exposure limit, except to the extent that the employer can establish that such controls are not feasible.

(ii) Where engineering and work practice controls are not sufficient to reduce exposures to or below the permissible exposure limit, they shall nonetheless be used to reduce exposures to the lowest levels achievable by these controls and shall be supplemented by the use of respirators in accordance with paragraph (h) of this section and other necessary personal protective equipment. Employee rotation is not required as a control strategy before respiratory protection is instituted.

(2) *Compliance Program.* (i) The employer shall establish and implement a written program to reduce exposures to or below the permissible exposure limit by means of engineering and work practice controls.

(ii) Written plans for these compliance programs shall include at least the following:

(A) A description of each operation in which inorganic arsenic is emitted; e.g. machinery used, material processed, controls in place, crew size, operating procedures and maintenance practices;

(B) Engineering plans and studies used to determine methods selected for controlling exposure to inorganic arsenic;

(C) A report of the technology considered in meeting the permissible exposure limit;

(D) Monitoring data;

(E) A detailed schedule for implementation of the engineering controls and work practices that cannot be implemented immediately and for the adaption and implementation of any additional engineering and work practices necessary to meet the permissible exposure limit;

(F) Whenever the employer will not achieve the permissible exposure limit with engineering controls and work practices by December 31, 1979, the employer shall include in the compliance plan an analysis of the effectiveness of the various controls, shall install engineering controls and institute work practices on the quickest schedule feasible, and shall include in the compliance plan and implement a program to minimize the discomfort and maximize the effectiveness of respirator use; and

(G) Other relevant information.

(iii) Written plans for such a program shall be submitted upon request to the Assistant Secretary and the Director, and shall be available at the worksite for examination and copying by the Assistant Secretary, Director, any affected employee or authorized employee representatives.

(iv) The plans required by this paragraph shall be revised and updated at least every 6 months to reflect the current status of the program.

(h) *Respiratory protection*—(1) *General.* The employer shall assure that respirators are used where required under this section to reduce employee exposures to below the permissible exposure limit and in emergencies. Respirators shall be used in the following circumstances:

(i) During the time period necessary to install or implement feasible engineering or work practice controls;

(ii) In work operations such as maintenance and repair activities in which the employer establishes that engineering and work practice controls are not feasible;

(iii) In work situations in which engineering controls and supplemental work practice controls are not yet sufficient to reduce exposures to or below the permissible exposure limit; or

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respirators are required under this section the employer shall select, provide at no cost to the employee and assure the use of the appropriate respirator or combination of respirators from Table I below for inorganic arsenic compounds without significant vapor pressure, or Table II below for inorganic arsenic compounds which have significant vapor pressure.

(ii) Where employee exposures exceed the permissible exposure limit for inorganic arsenic and also exceed the relevant limit for particular gasses such as sulfur dioxide, any air purifying respirator supplied to the employee as permitted by this standard must have a combination high efficiency filter with an appropriate gas sorbent. (See footnote in Table 1)

TABLE I—RESPIRATORY PROTECTION FOR INORGANIC ARSENIC PARTICULATE EXCEPT FOR THOSE WITH SIGNIFICANT VAPOR PRESSURE

Concentration of inorganic arsenic (as As) or condition of use	Required respirator
(i) Unknown or greater or lesser than 20,000 µg/m³ (20 mg/m³) or firefighting.	(A) Any full facepiece self-contained breathing apparatus operated in positive pressure mode.
(ii) Not greater than 20,000 µg/m³ (20 mg/m³)	(A) Supplied air respirator with full facepiece, hood, or helmet or suit and operated in positive pressure mode.
(iii) Not greater than 10,000 µg/m³ (10 mg/m³)	(A) Powered air-purifying respirators in all inlet face coverings with high efficiency filters.[1] (B) Half-mask supplied air respirators operated in positive pressure mode.

TABLE I—RESPIRATORY PROTECTION FOR INORGANIC ARSENIC PARTICULATE EXCEPT FOR THOSE WITH SIGNIFICANT VAPOR PRESSURE—Continued

Concentration of inorganic arsenic (as As) or condition of use	Required respirator
(iv) Not greater than 500 µg/m³	(A) Full facepiece air-purifying respirator equipped with high-efficiency filter.[1] (B) Any full facepiece supplied air respirator. (C) Any full facepiece self-contained breathing apparatus.
(v) Not greater than 100 µg/m³	(A) Half-mask air-purifying respirator equipped with high-efficiency filter.[1] (B) Any half-mask supplied air respirator.

[1]High-efficiency filter—99.97 pct efficiency against 0.3 micrometer monodisperse diethyl-hexyl phthalate (DOP) particles.

TABLE II—RESPIRATORY PROTECTION FOR INORGANIC ARSENICALS (SUCH AS ARSENIC TRICHLORIDE[2] AND ARSENIC PHOSPHIDE) WITH SIGNIFICANT VAPOR PRESSURE

Concentration of inorganic arsenic (as As) or condition of use	Required respirator
(i) Unknown or greater or lesser than 20,000 µg/m³ (20mg/m³) or firefighting.	(A) Any full facepiece self-contained breathing apparatus operated in positive pressure mode.
(ii) Not greater than 20,000 µg/m³ (20 mg/m³)	(A) Supplied air respirator with full facepiece hood, or helmet or suit and operated in positive pressure mode.
(iii) Not greater than 10,000 µg/m³ (10mg/m³)	(A) Half-mask[2] supplied air respirator operated in positive pressure mode.
(iv) Not greater than 500 µg/m³	(A) Front or back mounted gas mask equipped with high-efficiency filter[1] and acid gas canister. (B) Any full facepiece supplied air respirator. (C) Any full facepiece self-contained breathing apparatus.
(v) Not greater than 100 µg/m³	(A) Half-mask[2] air-purifying respirator equipped with high-efficiency filter[1] and acid gas cartridge. (B) Any half-mask supplied air respirator.

[1]High efficiency filter—99.97 pct efficiency against 0.3 micrometer monodisperse diethyl-hexyl phthalate (DOP) particles.
[2]Half-mask respirators shall not be used for protection against arsenic trichloride, as it is rapidly absorbed through the skin.

(iii) The employer shall select respirators from among those approved for protection against dust, fume, and mist by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR part 11.

(3) *Respirator usage.* (i) The employer shall assure that the respirator issued to the employee exhibits minimum facepiece leakage and that the respirator is fitted properly.

(ii) The employer shall perform qualitative fit tests at the time of initial fitting and at least semi-annually thereafter for each employee wearing respirators, where quantitative fit tests are not required.

(iii) Employers with more than 20 employees wearing respirators shall perform a quantitative face fit test at the time of initial fitting and least semi-annually thereafter for each employee wearing negative pressure respirators. The test shall be used to select facepieces that provide the required protection as prescribed in Table I or II.

(iv) If an employee has demonstrated difficulty in breathing during the fitting test or during use, he or she shall be examined by a physician trained in pulmonary medicine to determine whether the employee can wear a respirator while performing the required duty.

(4) *Respirator program.* (i) The employer shall institute a respiratory protection program in accordance with 29 CFR 1926.103 (e), (g), (h) and (i).

(ii) The employer shall permit each employee who uses a filter respirator to change the filter elements whenever an increase in breathing resistance is detected and shall maintain an adequate supply of filter elements for this purpose.

(iii) Employees who wear respirators shall be permitted to leave work areas to wash their face and respirator facepiece to prevent skin irritation associated with respirator use.

(5) *Commencement of respirator use.* (i) The employer's obligation to provide respirators commences on August 1, 1978 for employees exposed over 500 µg/m³ of inorganic arsenic, as soon as possible but not later than October 1, 1978 for employees exposed to over 50 µg/m³ of inorganic arsenic, and as soon as possible but not later than December 1, 1978 for employees exposed between 10 and 50 µg/m³ of inorganic arsenic.

(ii) Employees with exposures below 50 µg/m³ of inorganic arsenic may choose not to wear respirators until December 31, 1979.

(iii) After December 1, 1978 any employee required to wear air-purifying respirators may choose, and if so chosen the employer must provide, if it will give proper protection, a powered air purifying respirator and in addition if necessary a combination dust and acid gas respirator for times where exposures to gases are over the relevant exposure limits.

(i) [Reserved]

(j) *Protective work clothing and equipment*—(1) *Provision and use.* Where the possibility of skin or eye irritation from inorganic arsenic exists, and for all workers working in regulated areas, the employer shall provide at no cost to the employee and assure that employees use appropriate and clean protective work clothing and equipment such as, but not limited to:

(i) Coveralls or similar full-body work clothing;

(ii) Gloves, and shoes or coverlets;

(iii) Face shields or vented goggles when necessary to prevent eye irritation, which comply with the requirements of § 1926.102; and

(iv) Impervious clothing for employees subject to exposure to arsenic trichloride.

(2) *Cleaning and replacement.* (i) The employer shall provide the protective clothing required in paragraph (j)(1) of this section in a freshly laundered and dry condition at least weekly, and daily if the employee works in areas where exposures are over 100 µg/m³ of inorganic arsenic or in areas where more frequent washing is needed to prevent skin irritation.

(ii) The employer shall clean, launder, or dispose of protective clothing required by paragraph (j)(1) of this section.

(iii) The employer shall repair or replace the protective clothing and equipment as needed to maintain their effectiveness.

(iv) The employer shall assure that all protective clothing is removed at the completion of a work shift only in change rooms prescribed in paragraph (m)(1) of this section.

(v) The employer shall assure that contaminated protective clothing which is to be cleaned, laundered, or disposed of, is placed in a closed container in the change-room which prevents dispersion of inorganic arsenic outside the container.

(vi) The employer shall inform in writing any person who cleans or launders clothing required by this section, of the potentially harmful effects including the carcinogenic effects of exposure to inorganic arsenic.

(vii) The employer shall assure that the containers of contaminated protective clothing and equipment in the workplace or which are to be removed from the workplace are labelled as follows:

Caution: Clothing contaminated with inorganic arsenic; do not remove dust by blowing or shaking. Dispose of inorganic arsenic contaminated wash water in accordance with applicable local, State or Federal regulations.

(viii) The employer shall prohibit the removal of inorganic arsenic from protective clothing or equipment by blowing or shaking.

(k) *Housekeeping*—(1) *Surfaces.* All surfaces shall be maintained as free as practicable of accumulations of inorganic arsenic.

(2) *Cleaning floors.* Floors and other accessible surfaces contaminated with inorganic arsenic may not be cleaned by the use of compressed air, and shoveling and brushing may be used only where vacuuming or other relevant methods have been tried and found not to be effective.

(3) *Vacuuming.* Where vacuuming methods are selected, the vacuums shall be used and emptied in a manner to minimize the reentry of inorganic arsenic into the workplace.

(4) *Housekeeping plan.* A written housekeeping and maintenance plan shall be kept which shall list appropriate frequencies for carrying out housekeeping operations, and for cleaning and maintaining dust collection equipment. The plan shall be available for inspection by the Assistant Secretary.

(5) *Maintenance of equipment.* Periodic cleaning of dust collection and ventilation equipment and checks of their effectiveness shall be carried out to maintain the effectiveness of the system and a notation kept of the last check of effectiveness and cleaning or maintenance.

(l) [Reserved]

(m) *Hygiene facilities and practices*—(1) *Change rooms.* The employer shall provide for employees working in regulated areas or subject to the possibility of skin or eye irritation from inorganic arsenic, clean change rooms equipped with storage facilities for street clothes and separate storage facilities for protective clothing and equipment in accordance with 29 CFR 1926.51(i).

(2) *Showers.* (i) The employer shall assure that employees working in regulated areas or subject to the possibility of skin or eye irritation from inorganic arsenic shower at the end of the work shift.

(ii) The employer shall provide shower facilities in accordance with § 1926.51(f)(4).

(3) *Lunchrooms.* (i) The employer shall provide for employees working in regulated areas, lunchroom facilities which have a temperature controlled, positive pressure, filtered air supply, and which are readily accessible to employees working in regulated areas.

(ii) The employer shall assure that employees working in the regulated area or subject to the possibility of skin or eye irritation from exposure to inorganic arsenic wash their hands and face prior to eating.

(4) *Lavatories.* The employer shall provide lavatory facilities which comply with § 1926.51(f) (2) and (3).

(5) *Vacuuming clothes.* The employer shall provide facilities for employees working in areas where exposure, without regard to the use of respirators, exceeds 100 $\mu g/m^3$ to vacuum their protective clothing and clean or change shoes worn in such areas before entering change rooms, lunchrooms or shower rooms required by paragraph (j) of this section and shall assure that such employees use such facilities.

(6) *Avoidance of skin irritation.* The employer shall assure that no employee is exposed to skin or eye contact with arsenic trichloride, or to skin or eye contact with liquid or particulate inorganic arsenic which is likely to cause skin or eye irritation.

(n) *Medical surveillance*—(1) *General*—(i) *Employees covered.* The employer shall institute a medical surveillance program for the following employees:

(A) All employees who are or will be exposed above the action level, without regard to the use of respirators, at least 30 days per year; and

(B) All employees who have been exposed above the action level, without regard to respirator use, for 30 days or more per year for a total of 10 years or more of combined employment with the employer or predecessor employers prior to or after the effective date of this standard. The determination of exposures prior to the effective date of this standard shall be based upon prior exposure records, comparison with the first measurements taken after the effective date of this standard, or comparison with records of exposures in areas with similar processes, extent of engineering controls utilized and materials used by that employer.

(ii) *Examination by physician.* The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee, without loss of pay and at a reasonable time and place.

(2) *Initial examinations.* By December 1, 1978, for employees initially covered by the medical provisions of this section, or thereafter at the time of initial assignment to an area where the employee is likely to be exposed over the action level at least 30 days per year, the employer shall provide each affected employee an opportunity for a medical examination, including at least the following elements:

(i) A work history and a medical history which shall include a smoking history and the presence and degree of respiratory symptoms such as breathlessness, cough, sputum production and wheezing.

(ii) A medical examination which shall include at least the following:

(A) A 14" by 17" (35.56 × 43.18 cm) posterior-anterior chest X-ray and International Labor Office UICC/Cincinnati (ILO U/C) rating;

(B) A nasal and skin examination;

(C) A sputum cytology examination; and

(D) Other examinations which the physician believes appropriate because of the employees exposure to inorganic arsenic or because of required respirator use.

(3) *Periodic examinations.* (i) The employer shall provide the examinations specified in paragraphs (n)(2)(i) and (n)(2)(ii) (A), (B), and (D) at least annually for covered employees who are under 45 years of age with fewer than 10 years of exposure over the action level without regard to respirator use.

(ii) The employer shall provide the examinations specified in paragraphs (n)(2)(i) and (n)(2)(ii) of this section at

least semi-annually for other covered employees.

(iii) Whenever a covered employee has not taken the examinations specified in paragraphs (n)(2)(i) and (n)(2)(ii) of this section within six (6) months preceding the termination of employment, the employer shall provide such examinations to the employee upon termination of employment.

(4) *Additional examinations.* If the employee for any reason develops signs or symptoms commonly associated with exposure to inorganic arsenic the employer shall provide an appropriate examination and emergency medical treatment.

(5) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this standard and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's representative exposure level or anticipated exposure level;

(iv) A description of any personal protective equipment used or to be used; and

(v) Information from previous medical examinations of the affected employee which is not readily available to the examining physician.

(6) *Physician's written opinion.* (i) The employer shall obtain a written opinion from the examining physician which shall include:

(A) The results of the medical examination and tests performed;

(B) The physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of the employee's health from exposure to inorganic arsenic;

(C) Any recommended limitations upon the employee's exposure to inorganic arsenic or upon the use of protective clothing or equipment such as respirators; and

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further explanation or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure.

(iii) The employer shall provide a copy of the written opinion to the affected employee.

(o) *Employee information and training*—(1) *Training program.* (i) The employer shall institute a training program for all employees who are subject to exposure to inorganic arsenic above the action level without regard to respirator use, or for whom there is the possibility of skin or eye irritation from inorganic arsenic. The employer shall assure that those employees participate in the training program.

(ii) The training program shall be provided by October 1, 1978, for employees covered by this provision, at the time of initial assignment for those subsequently covered by this provision, and shall be repeated at least quarterly for employees who have optional use of respirators and at least annually for other covered employees thereafter; and the employer shall assure that each employee is informed of the following:

(A) The information contained in Appendix A;

(B) The quantity, location, manner of use, storage, sources of exposure, and the specific nature of operations which could result in exposure to inorganic arsenic as well as any necessary protective steps;

(C) The purpose, proper use, and limitation of respirators;

(D) The purpose and a description of the medical surveillance program as required by paragraph (n) of this section;

(E) The engineering controls and work practices associated with the employee's job assignment; and

(F) A review of this standard.

(2) *Access to training materials.* (i) The employer shall make readily available to all affected employees a copy of this standard and its appendices.

(ii) The employer shall provide; upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(p) *Signs and labels*—(1) *General.* (i) The employer may use labels or signs required by other statutes, regulations, or ordinances in addition to, or in combination with, signs and labels required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign or label required by this paragraph which contradicts or detracts from the meaning of the required sign or label.

(2) *Signs.* (i) The employer shall post signs demarcating regulated areas bearing the legend;

DANGER
INORGANIC ARSENIC
CANCER HAZARD
AUTHORIZED PERSONNEL ONLY
NO SMOKING OR EATING
RESPIRATOR REQUIRED

(ii) The employer shall assure that signs required by this paragraph are illuminated and cleaned as necessary so that the legend is readily visible.

(3) *Labels.* The employer shall apply precautionary labels to all shipping and storage containers of inorganic arsenic, and to all products containing inorganic arsenic except when the inorganic arsenic in the product is bound in such a manner so as to make unlikely the possibility of airborne exposure to inorganic arsenic. (Possible examples of products not requiring labels are semiconductors, light emitting diodes and glass). The label shall bear the following legend:

DANGER
CONTAINS INORGANIC ARSENIC
CANCER HAZARD
HARMFUL IF INHALED OR SWALLOWED
USE ONLY WITH ADEQUATE VENTILATION
OR RESPIRATORY PROTECTION

(q) *Recordkeeping*—(1) *Exposure monitoring.* (i) The employer shall establish and maintain an accurate record of all monitoring required by paragraph (e) of this section.

(ii) This record shall include:

(A) The date(s), number, duration location, and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure where applicable;

(B) A description of the sampling and analytical methods used and evidence of their accuracy;

(C) The type of respiratory protective devices worn, if any;

(D) Name, social security number, and job classification of the employees monitored and of all other employees whose exposure the measurement is intended to represent; and

(E) The environmental variables that could affect the measurement of the employee's exposure.

(iii) The employer shall maintain these monitoring records for at least 40 years or for the duration of employment plus 20 years, whichever, is longer.

(2) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by paragraph (n) of this section.

(ii) This record shall include:

(A) The name, social security number, and description of duties of the employee;

(B) A copy of the physician's written opinions;

(C) Results of any exposure monitoring done for that employee and the representative exposure levels supplied to the physician: and

(D) Any employee medical complaints related to exposure to inorganic arsenic.

(iii) The employer shall in addition keep, or assure that the examining physician keeps, the following medical records;

(A) A copy of the medical examination results including medical and work history required under paragraph (n) of this section;

(B) A description of the laboratory procedures and a copy of any standards or guidelines used to interpret the test results or references to that information;

(C) The initial X-ray;

(D) The X-rays for the most recent 5 years;

(E) Any X-rays with a demonstrated abnormality and all subsequent X-rays;

(F) The initial cytologic examination slide and written description;

(G) The cytologic examination slide and written description for the most recent 5 years; and

(H) Any cytologic examination slides with demonstrated atypia, if such atypia persists for 3 years, and all subsequent slides and written descriptions.

(iv) The employer shall maintain or assure that the physician maintains those medical records for at least 40 years, or for the duration of employment plus 20 years whichever is longer.

(3) *Availability.* (i) The employer shall make available upon request all records required to be maintained by paragraph (q) of this section to the Assistant Secretary and the Director for examination and copying.

(ii) Records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1926.33 (a) through (e) and (g) through (i).

(4) *Transfer of records.* (i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by this section.

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records required to be maintained by this section for the prescribed period, these records shall be transmitted to the Director.

(iii) At the expiration of the retention period for the records required to be maintained by this section, the employer shall notify the Director at least 3 months prior to the disposal of such records and shall transmit those records to the Director if he requests them within that period.

(iv) The employer shall also comply with any additional requirements involving the transfer of records set in 29 CFR 1926.33(h).

(r) *Observation of monitoring*—(1) *Employee observation.* The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to inorganic arsenic conducted pursuant to paragraph (e) of this section.

(2) *Observation procedures.* (i) Whenever observation of the monitoring of employee exposure to inorganic arsenic requires entry into an area where the use of respirators, protective clothing, or equipment is required, the employer shall provide the observer with and assure the use of such respirators, clothing, and such equipment, and shall require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring, observers shall be entitled to;

(A) Receive an explanation of the measurement procedures;

(B) Observe all steps related to the monitoring of inorganic arsenic performed at the place of exposure; and

(C) Record the results obtained or receive copies of the results when returned by the laboratory.

(s) *Effective date.* This standard shall become effective August 1, 1978.

(t) *Appendices.* The information contained in the appendices to this section is not intended by itself, to create any additional obligations not otherwise imposed by this standard nor detract from any existing obligation.

(u) *Startup dates*—(1) *General.* The startup dates of requirements of this standard shall be the effective date of this standard unless another startup date is provided for either in other paragraphs of this section or in this paragraph.

(2) *Monitoring.* Initial monitoring shall be commenced on August 1, 1978, and shall be completed by September 15, 1978.

(3) *Regulated areas.* Regulated areas required to be established as a result of initial monitoring shall be set up as soon as possible after the results of that monitoring is known and no later than October 1, 1978.

(4) *Compliance program.* The written program required by paragraph (g)(2) as a result of initial monitoring shall be made available for inspection and copying as soon as possible and no later than December 1, 1978.

(5) *Hygiene and lunchroom facilities.* Construction plans for change- rooms, showers, lavatories, and lunchroom facilities shall be completed no later than December 1, 1978, and these facilities shall be constructed and in use no later than July 1, 1979. However, if as part of the compliance plan it is predicted by an independent engineering firm that engineering controls and work practices will reduce exposures below the permissible exposure limit by December 31, 1979, for affected employees, then such facilities need not be completed until 1 year after the engineering controls are completed or December 31, 1980, whichever is earlier, if such controls have not in fact succeeded in reducing exposure to below the permissible exposure limit.

(6) *Summary of startup dates set forth elsewhere in this standard.*

Startup Dates

August 1, 1978—Respirator use over 500 µg/m³.

as soon as possible but no later than

September 15, 1978—Completion of initial monitoring.

October 1, 1978—Complete establishment of regulated areas. Respirator use for employees exposed above 50 µg/m³. Completion of initial training. Notification of use.

December 1, 1978—Respirator use over 10 µg/m³. Completion of initial medical. Completion of compliance plan. Optional use of powered air-purifying respirators.

July 1, 1979—Completion of lunch rooms and hygiene facilities.

December 31, 1979—Completion of engineering controls.

All other requirements of the standard have as their startup date August 1, 1978.

(Approved by the Office of Management and Budget under control number 1218—0104)

Appendix A to § 1926.1118—Inorganic Arsenic Substance Information Sheet

I. Substance Identification

A. *Substance.* Inorganic Arsenic.

B. *Definition.* Copper acetoarsenite, arsenic and all inorganic compounds containing arsenic except arsine, measured as arsenic (As).

C. *Permissible Exposure Limit.* 10 micrograms per cubic meter of air as determined as an average over an 8-hour period. No employee may be exposed to any skin or eye contact with arsenic trichloride or to skin or eye contact likely to cause skin or eye irritation.

D. *Regulated Areas.* Only employees authorized by your employer should enter a regulated area.

II. Health Hazard Data

A. *Comments.* The health hazard of inorganic arsenic is high.

B. *Ways in which the chemical affects your body.* Exposure to airborne concentrations of inorganic arsenic may cause lung cancer, and can be a skin irritant. Inorganic arsenic may also affect your body if swallowed. One compound in particular, arsenic trichloride, is especially dangerous because it can be absorbed readily through the skin. Because inorganic arsenic is a poison, you should

wash your hands thoroughly prior to eating or smoking.

III. Protective Clothing and Equipment

A. *Respirators.* Respirators will be provided by your employer at no cost to you for routine use if your employer is in the process of implementing engineering and work practice controls or where engineering and work practice controls are not feasible or insufficient. You must wear respirators for non-routine activities or in emergency situations where you are likely to be exposed to levels of inorganic arsenic in excess of the permissible exposure limit. Since how well your respirator fits your face is very important, your employer is required to conduct fit tests to make sure the respirator seals properly when you wear it. These tests are simple and rapid and will be explained to you during training sessions.

B. *Protective clothing.* If you work in a regulated area, your employer is required to provide at no cost to you, and you must wear, appropriate, clean, protective clothing and equipment. The purpose of this equipment is to prevent you from bringing to your home arsenic-contaminated dust and to protect your body from repeated skin contact with inorganic arsenic likely to cause skin irritation. This clothing should include such items as coveralls or similar full-body clothing, gloves, shoes or coverlets, and aprons. Protective equipment should include face shields or vented goggles, where eye irritation may occur.

IV. Hygiene Facilities and Practices

You must not eat, drink, smoke, chew gum or tobacco, or apply cosmetics in the regulated area, except that drinking water is permitted. If you work in a regulated area your employer is required to provide lunchrooms and other areas for these purposes.

If you work in a regulated area, your employer is required to provide showers, washing facilities, and change rooms. You must wash your face, and hands before eating and must shower at the end of the work shift. Do not take used protective clothing out of change rooms without your employer's permission. Your employer is required to provide for laundering or cleaning of your protective clothing.

V. Signs and Labels

Your employer is required to post warning signs and labels for your protection. Signs must be posted in regulated areas. The signs must warn that a cancer hazard is present, that only authorized employees may enter the area, and that no smoking or eating is allowed, and that respirators must be worn.

VI. Medical Examinations

If your exposure to arsenic is over the Action Level (5 $\mu g/m^3$)—(including all persons working in regulated areas) at least 30 days per year, or you have been exposed to arsenic for more than 10 years over the Action Level, your employer is required to provide you with a medical examination. The examination shall be every 6 months for employees over 45 years old or with more than 10 years exposure over the Action Level and annually for other covered employees. The medical examination must include a medical history; a chest x-ray; skin examination; nasal examination and sputum cytology exam for the early detection of lung cancer. The cytology exams are only included in the initial exam and examinations given after you are either 45 years or older or have 10 or more years employment over the Action Level. The examining physician will provide a written opinion to your employer containing the results of the medical exams. You should also receive a copy of this opinion. The physician must not tell your employer any conditions he detects unrelated to occupational exposure to arsenic but must tell you those conditions

VII. Observation of Monitoring

Your employer is required to monitor your exposure to arsenic and you or your representatives are entitled to observe the monitoring procedure. You are entitled to receive an explanation of the measurement procedure, and to record the results obtained. When the monitoring procedure is taking place in an area where respirators or personal protective clothing and equipment are required to be worn, you must also be provided with and must wear the protective clothing and equipment.

VIII. Access to Records

You or your representative are entitled to records of your exposure to inorganic arsenic and your medical examination records if you request your employer to provide them.

IX. TRAINING AND NOTIFICATION

Additional information on all of these items plus training as to hazards of exposure to inorganic arsenic and the engineering and work practice controls associated with your job will also be provided by your employer. If you are exposed over the permissible exposure limit, your employer must inform you of that fact and the actions he is taking to reduce your exposures.

Appendix B to § 1926.1118—Substance Technical Guidelines

ARSENIC, ARSENIC TRIOXIDE, ARSENIC TRICHLORIDE (THREE EXAMPLES)

I. Physical and chemical properties

A. Arsenic (metal).
1. Formula: As.
2. Appearance: Gray metal.
3. Melting point: Sublimes without melting at 613°C.
4. Specific Gravity: (H_20=1):5.73.
5. Solubility in water: Insoluble.
B. Arsenic Trioxide.
1. Formula: As203, (As406).
2. Appearance: White powder.
3. Melting point: 315°C.
4. Specific Gravity (H_20=1):3.74.
5. Solubility in water: 3.7 grams in 100cc of water at 20°C.
C. Arsenic Trichloride (liquid).
1. Formula: AsC 13.
2. Appearance: Colorless or pale yellow liquid.
3. Melting point: −8.5°C.
4. Boiling point: 130.2°C.
5. Specific Gravity (H_20=1):2.16 at 20°C.
6. Vapor Pressure: 10mm Hg at 23.5°C.
7. Solubility in Water: Decomposes in water.

II. Fire, explosion and reactivity data.

A. Fire: Arsenic, arsenic Trioxide and Arsenic Trichloride are nonflammable.
B. Reactivity:
1. Conditions Contributing to Instability: Heat.
2. Incompatibility: Hydrogen gas can react with inorganic arsenic to form the highly toxic gas arsine.

III. Monitoring and Measurement Procedures

Samples collected should be full shift (at least 7-hour) samples. Sampling should be done using a personal sampling pump at a flow rate of 2 liters per minute. Samples should be collected on 0.8 micrometer pore size membrane filter (37mm diameter). Volatile arsenicals such as arsenic trichloride can be most easily collected in a midget bubbler filled with 15 ml. of 0.1 N NaOH.

The method of sampling and analysis should have an accuracy of not less than ±25 percent (with a confidence limit of 95 percent) for 10 micrograms per cubic meter of air (10 $\mu g/m^3$) and ±35 percent (with a confidence limit of 95 percent) for concentrations of inorganic arsenic between 5 and 10 $\mu g/m^3$.

Appendix C to § 1926.1118—Medical Surveillance Guidelines

I. GENERAL

Medical examinations are to be provided for all employees exposed to levels of inorganic arsenic above the action level (5 $\mu g/m^3$) for at least 30 days per year (which would include among others, all employees, who work in regulated areas). Examinations are also to be provided to all employees who have had 10 years or more exposure above the action level for more than 30 days per year while working for the present or predecessor employer though they may no longer be exposed above the level.

An initial medical examination is to be provided to all such employees by December 1, 1978. In addition, an initial medical examination is to be provided to all employees who are first assigned to areas in which worker exposure will probably exceed 5 $\mu g/m^3$ (after the effective date of this standard) at the time of initial assignment. In addition to its immediate diagnostic usefulness, the initial examination will provide a baseline for comparing future test results. The initial examination must include as a minimum the following elements:

(1) A work and medical history, including a smoking history, and presence and degree of respiratory symptoms such as breathlessness, cough, sputum production, and wheezing;

(2) A 14" by 17" (35.56 × 43.18 cm) posterior-anterior chest X-ray and an International Labor Office UICC/Cincinnati (ILO U/C) rating;

(3) A nasal and skin examination;

(4) A Sputum Cytology examination; and

(5) Other examinations which the physician believes appropriate because of the employee's exposure to inorganic arsenic or because of required respirator use.

Periodic examinations are also to be provided to the employees listed above. The

periodic examinations shall be given annually for those covered employees 45 years of age or less with fewer than 10 years employment in areas where employee exposure exceeds the action level (5 $\mu g/m^3$). Periodic examinations need not include sputum cytology and only an updated medical history is required.

Periodic examinations for other covered employees, shall be provided every six (6) months. These examinations shall include all tests required in the initial examination, except that the medical history need only be updated.

The examination contents are minimum requirements. Additional tests such as lateral and oblique X-rays or pulmonary function tests may be useful. For workers exposed to three arsenicals which are associated with lymphatic cancer, copper acetoarsenite, potassium arsenite, or sodium arsenite the examination should also include palpation of superficial lymph nodes and complete blood count.

II. Noncarcinogenic Effects

The OSHA standard is based on minimizing risk of exposed workers dying of lung cancer from exposure to inorganic arsenic. It will also minimize skin cancer from such exposures.

The following three sections quoted from "Occupational Diseases: A Guide to Their Recognition", Revised Edition, June 1977, National Institute for Occupational Safety and Health is included to provide information on the nonneoplastic effects of exposure to inorganic arsenic. Such effects should not occur if the OSHA standards are followed.

A. *Local*—Trivalent arsenic compounds are corrosive to the skin. Brief contact has no effect but prolonged contact results in a local hyperemia and later vesicular or pustular eruption. The moist mucous membranes are most sensitive to the irritant action. Conjunctiva, moist and macerated areas of skin, the eyelids, the angles of the ears, nose, mouth, and respiratory mucosa are also vulnerable to the irritant effects. The wrists are common sites of dermatitis, as are the genitalia if personal hygiene is poor. Perforations of the nasal septum may occur. Arsenic trioxide and pentoxide are capable of producing skin sensitization and contact dermatitis. Arsenic is also capable of producing keratoses, especially of the palms and soles.

B. *Systemic*—The acute toxic effects of arsenic are generally seen following ingestion of inorganic arsenical compounds. This rarely occurs in an industrial setting. Symptoms develop within ½ to 4 hours following ingestion and are usually characterized by constriction of the throat followed by dysphagia, epigastric pain, vomiting, and watery diarrhea. Blood may appear in vomitus and stools. If the amount ingested is sufficiently high, shock may develop due to severe fluid loss, and death may ensue in 24 hours. If the acute effects are survived, exfoliative dermatitis and peripheral neuritis may develop.

Cases of acute arsenical poisoning due to inhalation are exceedingly rare in industry. When it does occur, respiratory tract symptoms—cough, chest pain, dyspnea—giddiness, headache, and extreme general weakness precede gastrointestinal symptoms. The acute toxic symptoms of trivalent arsenical poisoning are due to severe inflammation of the mucous membranes and greatly increased permeability of the blood capillaries.

Chronic arsenical poisoning due to ingestion is rare and generally confined to patients taking prescribed medications. However, it can be a concomitant of inhaled inorganic arsenic from swallowed sputum and improper eating habits. Symptoms are weight loss, nausea and diarrhea alternating with constipation, pigmentation and eruption of the skin, loss of hair, and peripheral neuritis. Chronic hepatitis and cirrhosis have been described. Polyneuritis may be the salient feature, but more frequently there are numbness and parasthenias of "glove and stocking" distribution. The skin lesions are usually melanotic and keratotic and may occasionally take the form of an intradermal cancer of the squamous cell type, but without infiltrative properties. Horizontal white lines (striations) on the fingernails and toenails are commonly seen in chronic arsenical poisoning and are considered to be a diagnostic accompaniment of arsenical polyneuritis.

Inhalation of inorganic arsenic compounds is the most common cause of chronic poisoning in the industrial situation. This condition is divided into three phases based on signs and symptoms.

First Phase: The worker complains of weakness, loss of appetite, some nausea, occasional vomiting, a sense of heaviness in the stomach, and some diarrhea.

Second Phase: The worker complains of conjunctivitis, a catarrhal state of the mucous membranes of the nose, larynx, and respiratory passage. Coryza, hoarseness, and mild tracheobronchitis may occur. Perforation of the nasal septum is common, and is probably the most typical lesion of the upper respiratory tract in occupational exposure to arsenical dust. Skin lesions, eczematoid and allergic in type, are common.

Third Phase: The worker complains of symptoms of peripheral neuritis, initially of hands and feet, which is essentially sensory. In more severe cases, motor paralyses occur; the first muscles affected are usually the toe extensors and the peronei. In only the most severe cases will paralysis of flexor muscles of the feet or of the extensor muscles of hands occur.

Liver damage from chronic arsenical poisoning is still debated, and as yet the question is unanswered. In cases of chronic and acute arsenical poisoning, toxic effects to the myocardium have been reported based on EKG changes. These findings, however, are now largely discounted and the EKG changes are ascribed to electrolyte disturbances concomitant with arsenicalism. Inhalation of arsenic trioxide and other inorganic arsenical dusts does not give rise to radiological evidence or pneumoconiosis. Arsenic does have a depressant effect upon the bone marrow, with disturbances of both erythropoiesis and myelopoiesis.

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III. Sputum Cytology

Sputum can be collected by aerosol inhalation during the medical exam or by spontaneous early morning cough at home. Sputum is induced by transoral inhalation of an aerosolized solution of eight per cent (8 percent) sodium chloride in water. After inhaling as few as three to five breaths the subject usually yields an adequate sputum. All sputum should be collected directly into sixty percent (60 percent) alcohol.

Scientific evidence suggests that chest X-rays and sputum cytology should be used together as screening tests for lung tests for lung cancer in high risk populations such as workers exposed to inorganic arsenic. The tests are to be performed every six months on workers who are 45 years of age or older or have worked in the regulated area for 10 or more years. Since the tests seem to be complementary, it may be advantageous to alternate the test procedures. For instance, chest X-rays could be obtained in June and December and sputum cytologies could be obtained in March and September. Facilities for providing necessary diagnostic investigation should be readily available as well as chest physicians, surgeons, radiologists, pathologists and immunotherapists to provide any necessary treatment services.

§ 1926.1128 Benzene.

(a) *Scope and application.* (1) This section applies to all occupational exposures to benzene. Chemical Abstracts Service Registry No. 71–43–2, except as provided in paragraphs (a)(2) and (a)(3) of this section.

(2) This section does not apply to:

(i) The storage, transportation, distribution, dispensing, sale or use of gasoline, motor fuels, or other fuels containing benzene subsequent to its final discharge from bulk wholesale storage facilities, except that operations where gasoline or motor fuels are dispensed for more than 4 hours per day in an indoor location are covered by this section.

(ii) Loading and unloading operations at bulk wholesale storage facilities

which use vapor control systems for all loading and unloading operations, except for the provisions of 29 CFR 1926.59 as incorporated into this section and the emergency provisions of paragraphs (g) and (i)(4) of this section.

(iii) The storage, transportation, distribution or sale of benzene or liquid mixtures containing more than 0.1 percent benzene in intact containers or in transportation pipelines while sealed in such a manner as to contain benzene vapors or liquid, except for the provisions of 29 CFR 1926.59 as incorporated into this section and the emergency provisions of paragraphs (g) and (i)(4) of this section.

(iv) Containers and pipelines carrying mixtures with less than 0.1 percent benzene and natural gas processing plants processing gas with less than 0.1 percent benzene.

(v) Work operations where the only exposure to benzene is from liquid mixtures containing 0.5 percent or less of benzene by volume, or the vapors released from such liquids until September 12, 1988; work operations where the only exposure to benzene is from liquid mixtures containing 0.3 percent or less of benzene by volume or the vapors released from such liquids from September 12, 1988, to September 12, 1989; and work operations where the only exposure to benzene is from liquid mixtures containing 0.1 percent or less of benzene by volume or the vapors released from such liquids after September 12, 1989; except that tire building machine operators using solvents with more than 0.1 percent benzene are covered by paragraph (i) of this section.

(vi) Oil and gas drilling, production and servicing operations.

(vii) Coke oven batteries.

(3) The cleaning and repair of barges and tankers which have contained benzene are excluded from paragraph (f) methods of compliance, paragraph (e)(1) exposure monitoring-general, and paragraph (e)(6) accuracy of monitoring. Engineering and work practice controls shall be used to keep exposures below 10 ppm unless it is proven to be not feasible.

(b) *Definitions.*

Action level means an airborne concentration of benzene of 0.5 ppm calculated as an 8-hour time-weighted average.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees for the purpose of exercising the right to observe monitoring and measuring procedures under paragraph (l) of this section, or any other person authorized by the Act or regulations issued under the Act.

Benzene (C_6H_6) (CAS Registry No. 71–43–2) means liquefied or gaseous benzene. It includes benzene contained in liquid mixtures and the benzene vapors released by these liquids. It does not include trace amounts of unreacted benzene contained in solid materials.

Bulk wholesale storage facility means a bulk terminal or bulk plant where fuel is stored prior to its delivery to wholesale customers.

Container means any barrel, bottle, can, cylinder, drum, reaction vessel, storage tank, or the like, but does not include piping systems.

Day means any part of a calendar day.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Emergency means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which may or does result in an unexpected significant release of benzene.

Employee exposure means exposure to airborne benzene which would occur if the employee were not using respiratory protective equipment.

Regulated area means any area where airborne concentrations of benzene exceed or can reasonably be expected to exceed, the permissible exposure limits, either the 8-hour time weighted average exposure of 1 ppm or the short-term exposure limit of 5 ppm for 15 minutes.

Vapor control system means any equipment used for containing the total vapors displaced during the loading of gasoline, motor fuel or other fuel tank trucks and the displacing of these vapors through a vapor processing system or balancing the vapor with the storage tank. This equipment also includes systems containing the vapors displaced from the storage tank during the unloading of the tank truck which balance the vapors back to the tank truck.

(c) *Permissible exposure limits (PELs)*—(1) *Time-weighted average limit (TWA).* The employer shall assure that no employee is exposed to an airborne concentration of benzene in excess of one part of benzene per million parts of air (1 ppm) as an 8-hour time-weighted average.

(2) *Short-term exposure limit (STEL).* The employer shall assure that no employee is exposed to an airborne concentration of benzene in excess of five (5) ppm as averaged over any 15 minute period.

(d) *Regulated areas.* (1) The employer shall establish a regulated area wherever the airborne concentration of benzene exceeds or can reasonably be expected to exceed the permissible exposure limits, either the 8-hour time weighted average exposure of 1 ppm or the short-term exposure limit of 5 ppm for 15 minutes.

(2) Access to regulated areas shall be limited to authorized persons.

(3) Regulated areas shall be determined from the rest of the workplace in any manner that minimizes the number of employees exposed to benzene within the regulated area.

(e) *Exposure monitoring*—(1) *General.* (i) Determinations of employee exposure shall be made from breathing zone air samples that are representative of each employee's average exposure to airborne benzene.

(ii) Representative 8-hour TWA employee exposures shall be determined on the basis of one sample or samples representing the full shift exposure for each job classification in each work area.

(iii) Determinations of compliance with the STEL shall be made from 15 minute employee breathing zone samples measured at operations where there is reason to believe exposures are high, such as where tanks are opened, filled, unloaded or gauged; where containers or process equipment are opened and where benzene is used for cleaning or as a solvent in an uncontrolled situation. The employer may use objective data, such as measurements from brief period measuring devices, to determine where STEL monitoring is needed.

(iv) Except for initial monitoring as required under paragraph (e)(2) of this section, where the employer can document that one shift will consistently have higher employee exposures for an operation, the employer shall only be required to determine representative employee exposure for that operation during the shift on which the highest exposure is expected.

(2) *Initial monitoring.* (i) Each employer who has a place of employment covered under paragraph (a)(1) of this section shall monitor each of these workplaces and work operations to determine accurately the airborne concentrations of benzene to which employees may be exposed.

(ii) The initial monitoring required under paragraph (e)(2)(i) of this section

shall be completed by 60 days after the effective date of this standard or within 30 days of the introduction of benzene into the workplace. Where the employer has monitored within one year prior to the effective date of this standard and the monitoring satisfies all other requirements of this section, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (e)(2)(i) of this section.

(3) *Periodic monitoring and monitoring frequency.* (i) If the monitoring required by paragraph (e)(2)(i) of this section reveals employee exposure at or above the action level but at or below the TWA, the employer shall repeat such monitoring for each such employee at least every year.

(ii) If the monitoring required by paragraph (e)(2)(i) of this section reveals employee exposure above the TWA, the employer shall repeat such monitoring for each such employee at least every six (6) months.

(iii) The employer may alter the monitoring schedule from every six months to annually for any employee for whom two consecutive measurements taken at least 7 days apart indicate that the employee exposure has decreased to the TWA or below, but is at or above the action level.

(iv) Monitoring for the STEL shall be repeated as necessary to evaluate exposures of employees subject to short term exposures.

(4) *Termination of monitoring.* (i) If the initial monitoring required by paragraph (e)(2)(i) of this section reveals employee exposure to be below the action level the employer may discontinue the monitoring for that employee, except as otherwise required by paragraph (e)(5) of this section.

(ii) If the periodic monitoring required by paragraph (e)(3) of this section reveals that employee exposures, as indicated by at least two consecutive measurements taken at least 7 days apart, are below the action level the employer may discontinue the monitoring for that employee, except as otherwise required by paragraph (e)(5).

(5) *Additional monitoring.* (i) The employer shall institute the exposure monitoring required under paragraphs (e)(2) and (e)(3) of this section when there has been a change in the production, process, control equipment, personnel or work practices which may result in new or additional exposures to benzene, or when the employer has any reason to suspect a change which may result in new or additional exposures.

(ii) Whenever spills, leaks, ruptures or other breakdowns occur that may lead to employee exposure, the employer shall monitor (using area or personal sampling) after the cleanup of the spill or repair of the leak, rupture or other breakdown to ensure that exposures have returned to the level that existed prior to the incident.

(6) *Accuracy of monitoring.* Monitoring shall be accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of benzene.

(7) *Employee notification of monitoring results.* (i) The employer shall, within 15 working days after the receipt of the results of any monitoring performed under this standard, notify each employee of these results in writing either individually or by posting of results in an appropriate location that is accessible to affected employees.

(ii) Whenever the PELs are exceeded, the written notification required by paragraph (e)(7)(i) of this section shall contain the corrective action being taken by the employer to reduce the employee exposure to or below the PEL, or shall refer to a document available to the employee which states the corrective actions to be taken.

(f) *Methods of compliance*—(1) *Engineering controls and work practices.* (i) The employer shall institute engineering controls and work practices to reduce and maintain employee exposure to benzene at or below the permissible exposure limits, except to the extent that the employer can establish that these controls are not feasible or where the provisions of paragraph (f)(1)(iii) or (g)(1) of this section apply.

(ii) Wherever the feasible engineering controls and work practices which can be instituted are not sufficient to reduce employee exposure to or below the PELs, the employer shall use them to reduce employee exposure to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (g) of this section.

(iii) Where the employer can document that benzene is used in a workplace less than a total of 30 days per year, the employer shall use engineering controls, work practice controls or respiratory protection or any combination of these controls to reduce employee exposure to benzene to or below the PELs, except that employers shall use engineering and work practice controls, if feasible, to reduce exposure to or below 10 ppm as an 8-hour TWA.

(2) *Compliance program.* (i) When any exposures are over the PEL, the employer shall establish and implement a written program to reduce employee exposure to or below the PEL primarily by means of engineering and work practice controls, as required by paragraph (f)(1) of this section.

(ii) The written program shall include a schedule for development and implementation of the engineering and work practice controls. These plans shall be reviewed and revised as appropriate based on the most recent exposure monitoring data, to reflect the current status of the program.

(iii) Written compliance programs shall be furnished upon request for examination and copying to the Assistant Secretary, the Director, affected employees and designated employee representatives.

(g) *Respiratory protection.* (1) *General.* The employer shall provide respirators, and assure that they are used, where required by this section. Respirators shall be used in the following circumstances:

(i) During the time period necessary to install or implement feasible engineering and work practice controls;

(ii) In work operations for which the employer establishes that compliance with either the TWA or STEL through the use of engineering and work practice controls is not feasible, such as some maintenance and repair activities, vessel cleaning, or other operations where engineering and work practice controls are infeasible because exposures are intermittent in nature and limited in duration;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient or are not required under paragraph (f)(1)(iii) of this section to reduce exposure to or below the PELs; and

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respirators are required or allowed under this section, the employer shall select and provide, at no cost to the employee, the appropriate respirator as specified in Table 1, and shall assure that the employee uses the respirator provided.

(ii) The employer shall select respirators from among those jointly approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health under the provisions of 30 CFR part 11. Negative pressure respirators shall have filter elements approved by MSHA/NIOSH for organic vapors or benzene.

(iii) Any employee who cannot wear a negative pressure respirator shall be given the option of wearing a respirator with less breathing resistance such as a powered air-purifying respirator or supplied air respirator.

(3) *Respirator program.* The employer shall institute a respiratory protection program in accordance with 29 CFR 1926.103 (e), (g), (h) and (i).

(4) *Respirator use.* (i) Where air-purifying respirators are used, the employer shall replace the air purifying element at the expiration of service life or at the beginning of each shift in which they will be used, whichever comes first.

(ii) If an air purifying element becomes available with an end of useful life indicator for benzene approved by MSHA/NIOSH, the element may be used until such time as the indicator shows no further useful life.

(iii) The employer shall permit employees who wear respirators to leave the regulated area to wash their faces and respirator facepieces as necessary in order to prevent skin irritation associated with respirator use or to change the filter elements of air-purifying respirators whenever they detect a change in breathing resistance or chemical vapor breakthrough.

(5) *Respirator fit testing.* (i) The employer shall perform, and certify the results of, either quantitative or qualitative fit tests at the time of initial fitting and at least annually thereafter for each employee wearing a negative pressure respirator. The test shall be used to select a respirator facepiece which exhibits minimum leakage and provides the required protection as prescribed in Table 1. The employer shall provide and assure that the employee wears a respirator demonstrated by the fit test to provide the required protection.

(ii) The employer shall follow the test protocols outlined in Appendix E of this standard for whichever type of fit testing the employer chooses.

TABLE 1—RESPIRATORY PROTECTION FOR BENZENE

Airborne concentration of benzene or condition of use	Respirator type
(a) Less than or equal to 10 ppm.	(1) Half-mask air-purifying respirator with organic vapor cartridge.
(b) Less than or equal to 50 ppm.	(1) Full facepiece respirator with organic vapor cartridges. (1) Full facepiece gas mask with chin style canister.[1]
(c) Less than or equal to 100 ppm.	(1) Full facepiece powered air-purifying respirator with organic vapor canister.[1]
(d) Less than or equal to 1,000 ppm.	(1) Supplied air respirator with full facepiece in positive-pressure mode.
(e) Greater than 1,000 ppm or unknown concentration.	(1) Self-contained breathing apparatus with full facepiece in positive pressure mode. (2) Full facepiece positive- pressure supplied-air respirator with auxiliary self-contained air supply.
(f) Escape	(1) Any organic vapor gas mask; or (2) Any self-contained breathing apparatus with full facepiece.
(g) Firefighting	(1) Full facepiece self-contained breathing apparatus in positive pressure mode.

[1] Canisters must have a minimum service life of four (4) hours when tested at 150 ppm benzene, at a flow rate of 64 LPM, 25 °C, and 85% relative humidity for non-powered air purifying respirators. The flow rate shall be 115 LPM and 170 LPM respectively for tight fitting and loose fitting powered air-purifying respirators.

(h) *Protective clothing and equipment.* Personal protective clothing and equipment shall be worn where appropriate to prevent eye contact and limit dermal exposure to liquid benzene. Protective clothing and equipment shall be provided by the employer at no cost to the employee and the employer shall assure its use where appropriate. Eye and face protection shall meet the requirements of 29 CFR 1926.102.

(i) *Medical surveillance*—(1) *General.* (i) The employer shall make available a medical surveillance program for employees who are or may be exposed to benzene at or above the action level 30 or more days per year; for employees who are or may be exposed to benzene at or above the PELs 10 or more days per year; for employees who have been exposed to more than 10 ppm of benzene for 30 or more days in a year prior to the effective date of the standard when employed by their current employer; and for employees involved in the tire building operations called tire building machine operators, who use solvents containing greater than 0.1 percent benzene.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician and that all laboratory tests are conducted by an accredited laboratory.

(iii) The employer shall assure that persons other than licensed physicians who administer the pulmonary function testing required by this section shall complete a training course in spirometry sponsored by an appropriate governmental, academic or professional institution.

(iv) The employer shall assure that all examinations and procedures are provided without cost to the employee and at a reasonable time and place.

(2) *Initial examination.* (i) Within 60 days of the effective date of this standard, or before the time of initial assignment, the employer shall provide each employee covered by paragraph (i)(1)(i) of this section with a medical examination including the following elements:

(A) A detailed occupational history which includes:

(*1*) Past work exposure to benzene or any other hematological toxins,

(*2*) A family history of blood dyscrasias including hematological neoplasms;

(*3*) A history of blood dyscrasias including genetic hemoglobin abnormalities, bleeding abnormalities, abnormal function of formed blood elements;

(*4*) A history of renal or liver dysfunction;

(*5*) A history of medicinal drugs routinely taken;

(*6*) A history of previous exposure to ionizing radiation and

(*7*) Exposure to marrow toxins outside of the current work situation.

(B) A complete physical examination.

(C) *Laboratory tests.* A complete blood count including a leukocyte count with differential, a quantitative thrombocyte count, hematocrit, hemoglobin, erythrocyte count and erythrocyte indices (MCV, MCH, MCHC). The results of these tests shall be reviewed by the examining physician.

(D) Additional tests as necessary in the opinion of the examining physician, based on alterations to the components of the blood or other signs which may be related to benzene exposure; and

(E) For all workers required to wear respirators for at least 30 days a year, the physical examination shall pay special attention to the cardiopulmonary system and shall include a pulmonary function test.

(ii) No initial medical examination is required to satisfy the requirements of paragraph (i)(2)(i) of this section if adequate records show that the employee has been examined in

accordance with the procedures of paragraph (i)(2)(i) of this section within the twelve months prior to the effective date of this standard.

(3) *Periodic examinations.* (i) The employer shall provide each employee covered under paragraph (i)(1)(i) of this section with a medical examination annually following the previous examination. These periodic examinations shall incude at least the following elements:

(A) A brief history regarding any new exposure to potential marrow toxins, changes in medicinal drug use, and the appearance of physical signs relating to blood disorders:

(B) A complete blood count including a leukocyte count with differential, quantitative thrombocyte count, hemoglobin, hematocrit, erythrocyte count and erythrocyte indices (MCV, MCH, MCHC); and

(C) Appropriate additional tests as necessary, in the opinion of the examining physician, in consequence of alterations in the components of the blood or other signs which may be related to benzene exposure.

(ii) Where the employee develops signs and symptoms commonly associated with toxic exposure to benzene, the employer shall provide the employee with an additional medical examination which shall include those elements considered appropriate by the examining physician.

(iii) For persons required to use respirators for at least 30 days a year, a pulmonary function test shall be performed every three (3) years. A specific evaluation of the cardiopulmonary system shall be made at the time of the pulmonary function test.

(4) *Emergency examinations.* (i) In addition to the surveillance required by (i)(1)(i), if an employee is exposed to benzene in an emergency situation, the employer shall have the employee provide a urine sample at the end of the employee's shift and have a urinary phenol test performed on the sample within 72 hours. The urine specific gravity shall be corrected to 1.024.

(ii) If the result of the urinary phenol test is below 75 mg phenol/L of urine, no further testing is required.

(iii) If the result of the urinary phenol test is equal to or greater than 75 mg phenol/L of urine, the employer shall provide the employee with a complete blood count including an erythrocyte count, leukocyte count with differential and thrombocyte count at monthly intervals for a duration of three (3) months following the emergency exposure.

(iv) If any of the conditions specified in paragraph (i)(5)(i) of this section exists, then the further requirements of paragraph (i)(5) of this section shall be met and the employer shall, in addition, provide the employees with periodic examinations if directed by the physician.

(5) *Additional examinations and referrals.* (i) Where the results of the complete blood count required for the initial and periodic examinations indicate any of the following abnormal conditions exist, then the blood count shall be repeated within 2 weeks.

(A) The hemoglobin level or the hematocrit falls below the normal limit [outside the 95% confidence interval (C.I.)] as determined by the laboratory for the particular geographic area and/or these indices show a persistent downward trend from the individual's pre-exposure norms; provided these findings cannot be explained by other medical reasons.

(B) The thrombocyte (platelet) count varies more than 20 percent below the employee's most recent values or falls outside the normal limit (95% C.I.) as determined by the laboratory.

(C) The leukocyte count is below 4,000 per mm^3 or there is an abnormal differential count.

(ii) If the abnormality persists, the examining physician shall refer the employee to a hematologist or an internist for further evaluation unless the physician has good reason to believe such referral is unnecessary. (See Appendix C for examples of conditions where a referral may be unnecessary.)

(iii) The employer shall provide the hematologist or internist with the information required to be provided to the physician under paragraph (i)(6) of this section and the medical record required to be maintained by paragraph (k)(2)(ii) of this section.

(iv) The hematologist's or internist's evaluation shall include a determination as to the need for additional tests, and the employer shall assure that these tests are provided.

(6) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this regulation and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's actual or representative exposure level:

(iv) A description of any personal protective equipment used or to be used; and

(v) Information from previous employment-related medical examinations of the affected employee which is not otherwise available to the examining physician.

(7) *Physician's written opinions.* (i) For each examination under this section, the employer shall obtain and provide the employee with a copy of the examining physician's written opinion within 15 days of the examination. The written opinion shall be limited to the following information:

(A) The occupationally pertinent results of the medical examination and tests;

(B) The physician's opinion concerning whether the employee has any detected medical conditions which would place the employee's health at greater than normal risk of material impairment from exposure to benzene;

(C) The physician's recommended limitations upon the employee's exposure to benzene or upon the employee's use of protective clothing or equipment and respirators.

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions resulting from benzene exposure which require further explanation or treatment.

(ii) The written opinion obtained by the employer shall not reveal specific records, findings and diagnoses that have no bearing on the employee's ability to work in a benzene-exposed workplace.

(8) *Medical removal plan.* (i) When a physician makes a referral to a hematologist/internist as required under paragraph (i)(5)(ii) of this section, the employee shall be removed from areas where exposures may exceed the action level until such time as the physician makes a determination under paragraph (i)(8)(ii) of this section.

(ii) Following the examination and evaluation by the hematologist/internist, a decision to remove an employee from areas where benzene exposure is above the action level or to allow the employee to return to areas where benzene exposure is above the action level shall be made by the physician in consultation with the hematologist/internist. This decision shall be communicated in writing to the employer and employee. In the case of removal, the physician shall state the required probable duration of removal from occupational exposure to benzene above the action level and the requirements for future medical examinations to review the decision.

(iii) For any employee who is removed pursuant to paragraph (i)(8)(ii) of this section, the employer shall provide a follow-up examination. The physician, in consultation with the

hematologist/internist, shall make a decision within 6 months of the date the employee was removed as to whether the employee shall be returned to the usual job or whether the employee should be removed permanently.

(iv) Whenever an employee is temporarily removed from benzene exposure pursuant to paragraph (i)(8)(i) or (i)(8)(ii) of this section, the employer shall transfer the employee to a comparable job for which the employee is qualified (or can be trained for in a short period) and where benzene exposures are as low as possible, but in no event higher than the action level. The employer shall maintain the employee's current wage rate, seniority and other benefits. If there is no such job available, the employer shall provide medical removal protection benefits until such a job becomes available or for 6 months, whichever comes first.

(v) Whenever an employee is removed permanently from benzene exposure based on a physician's recommendation pursuant to paragraph (i)(8)(iii) of this section, the employee shall be given the opportunity to transfer to another position which is available or later becomes available for which the employee is qualified (or can be trained for in a short period) and where benzene exposures are as low as possible but in no event higher than the action level. The employer shall assure that such employee suffers no reduction in current wage rate, seniority or other benefits as a result of the transfer.

(9) *Medical removal protection benefits.* (i) The employer shall provide to an employee 6 months of medical removal protection benefits immediately following each occasion an employee is removed from exposure to benzene because of hematological findings pursuant to paragraphs (i)(8) (i) and (ii) of this section, unless the employee has been transferred to a comparable job where benzene exposures are below the action level.

(ii) For the purposes of this section, the requirement that an employer provide medical removal protection benefits means that the employer shall maintain the current wage rate, seniority and other benefits of an employee as though the employee had not been removed.

(iii) The employer's obligation to provide medical removal protection benefits to a removed employee shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program, or from employment with another employer made possible by virtue of the employee's removal.

(j) *Communication of benzene hazards to employees*—(1) *Signs and labels.* (i) The employer shall post signs at entrances to regulated areas. The signs shall bear the following legend:

DANGER
BENZENE
CANCER HAZARD
FLAMMABLE—NO SMOKING
AUTHORIZED PERSONNEL ONLY
RESPIRATOR REQUIRED

(ii) The employer shall ensure that lables or other appropriate forms of warning are provided for containers of benzene within the workplace. There is no requirement to label pipes. The labels shall comply with the requirements of 29 CFR 1926.59(f) and in addition shall include the following legend:

DANGER
CONTAINS BENZENE
CANCER HAZARD

(2) *Material safety data sheets.* (i) Employers shall obtain or develop, and shall provide access to their employees, to a material safety data sheet (MSDS) which addresses benzene and complies with 29 CFR 1926.59.

(ii) Employers who are manufacturers or importers shall:

(A) Comply with paragraph (a) of this section, and

(B) Comply with the requirement in OSHA's Hazard Communication Standard, 29 CFR 1926.59, that they deliver to downstream employers an MSDS which addresses benzene.

(3) *Information and training.* (i) The employer shall provide employees with information and training at the time of their initial assignment to a work area where benzene is present. If exposures are above the action level, employees shall be provided with information and training at least annually thereafter.

(ii) The training program shall be in accordance with the requirements of 29 CFR 1926.59(h) (1) and (2), and shall include specific information on benzene for each category of information included in that section.

(iii) In addition to the information required under 29 CFR 1926.59, the employer shall:

(A) Provide employees with an explanation of the contents of this section, including Appendices A and B, and indicate to them where the standard is available; and

(B) Describe the medical surveillance program required under paragraph (i) of this section, and explain the information contained in Appendix C.

(k) *Recordkeeping*—(1) *Exposure measurements.* (i) The employer shall establish and maintain an accurate record of all measurements required by paragraph (e) of this section, in accordance with 29 CFR 1926.33.

(ii) This record shall include:

(A) The dates, number, duration, and results of each of the samples taken, including a description of the procedure used to determine representative employee exposures;

(B) A description of the sampling and analytical methods used;

(C) A description of the type of respiratory protective devices worn, if any; and

(D) The name, social security number, job classification and exposure levels of the employee monitored and all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for at least 30 years, in accordance with 29 CFR 1926.33.

(2) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance required by paragraph (i) of this section, in accordance with 29 CFR 1926.33.

(ii) This record shall include:

(A) The name and social security number of the employee;

(B) The employer's copy of the physician's written opinion on the initial, periodic and special examinations, including results of medical examinations and all tests, opinions and recommendations;

(C) Any employee medical complaints related to exposure to benzene;

(D) A copy of the information provided to the physician as required by paragraphs (i)(6) (ii) through (v) of this section; and

(E) A copy of the employee's medical and work history related to exposure to benzene or any other hematologic toxins.

(iii) The employer shall maintain this record for at least the duration of employment plus 30 years, in accordance with 29 CFR 1926.33.

(3) *Availability.* (i) The employer shall assure that all records required to be maintained by this section shall be made available upon request to the Assistant Secretary and the Director for examination and copying.

(ii) Employee exposure monitoring records required by this paragraph shall be provided upon request for examination and copying to employees, employee representatives, and the Assistant Secretary in accordance with 29 CFR 1926.33 (a) through (e) and (g) through (i).

(iii) Employee medical records required by this paragraph shall be provided upon request for examination

and copying, to the subject employee, to anyone having the specific written consent of the subject employee, and to the Assistant Secretary in accordance with 29 CFR 1926.33.

(4) *Transfer of records.* (i) The employer shall comply with the requirements involving transfer of records set forth in 29 CFR 1926.33(h).

(ii) If the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall notify the Director, at least three (3) months prior to disposal, and transmit them to the Director if required by the Director within that period.

(l) *Observation of monitoring*—(1) *Employee observation.* The employer shall provide affected employees, or their designated representatives, an opportunity to observe the measuring or monitoring of employee exposure to benzene conducted pursuant to paragraph (e) of this section.

(2) *Observation procedures.* When observation of the measuring or monitoring of employee exposure to benzene requires entry into areas where the use of protective clothing and equipment or respirators is required, the employer shall provide the observer with personal protective clothing and equipment or respirators required to be worn by employees working in the area, assure the use of such clothing and equipment or respirators, and require the observer to comply with all other applicable safety and health procedures.

(m) *Dates*—(1) *Effective date.* The standard shall become effective December 10, 1987.

(2) *Start-up dates.* (i) The requirements of paragraph (a) through (m) of this section, except the engineering control requirements of paragraph (f)(1) of this section shall be completed within sixty (60) days after the effective date of the standard.

(ii) Engineering and work practice controls required by paragraph (f)(1) of this section shall be implemented no later than 2 years after the effective date of the standard.

(iii) Coke and coal chemical operations may comply with paragraph (m)(2)(ii) of this section or alternately include within the compliance program required by paragraph (f)(2) of this section, a requirement to phase in engineering controls as equipment is repaired and replaced. For coke and coal chemical operations choosing the latter alternative, compliance with the engineering controls requirements of paragraph (f)(1) of this section shall be achieved no later than 5 years after the effective date of this standard and substantial compliance with the engineering control requirements shall be achieved within 3 years of the effective date of this standard.

(n) *Appendices.* The information contained in Appendices A, B, C, and D is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligations. The protocols on respiratory fit testing in Appendix E are mandatory.

(Approved by the Office of Management and Budget under control number 1218–0129)

Appendix A to § 1926.1128—Substance Safety Data Sheet, Benzene

I. Substance Identification

A. Substance: Benzene.

B. Permissible Exposure: Except as to the use of gasoline, motor fuels and other fuels subsequent to discharge from bulk terminals and other exemptions specified in § 1926.1128(a)(2):

1. Airborne: The maximum time-weighted average (TWA) exposure limit is 1 part of benzene vapor per million parts of air (1 ppm) for an 8-hour workday and the maximum short-term exposure limit (STEL) is 5 ppm for any 15-minute period.

2. Dermal: Eye contact shall be prevented and skin contact with liquid benzene shall be limited.

C. Appearance and odor: Benzene is a clear, colorless liquid with a pleasant, sweet odor. The odor of benzene does not provide adequate warning of its hazard.

II. Health Hazard Data

A. *Ways in which benzene affects your health.* Benzene can affect your health if you inhale it, or if it comes in contact with your skin or eyes. Benzene is also harmful if you happen to swallow it.

B. *Effects of overexposure.* 1. Short-term (acute) overexposure: If you are overexposed to high concentrations of benzene, well above the levels where its odor is first recognizable, you may feel breathless, irritable, euphoric, or giddy; you may experience irritation in eyes, nose, and respiratory tract. You may develop a headache, feel dizzy, nauseated, or intoxicated. Severe exposures may lead to convulsions and loss of consciousness.

2. Long-term (chronic) exposure. Repeated or prolonged exposure to benzene, even at relatively low concentrations, may result in various blood disorders, ranging from anemia to leukemia, an irreversible, fatal disease. Many blood disorders associated with benzene exposure may occur without symptoms.

III. Protective Clothing and Equipment

A. *Respirators.* Respirators are required for those operations in which engineering controls or work practice controls are not feasible to reduce exposure to the permissible level. However, where employers can document that benzene is present in the workplace less than 30 days a year, respirators may be used in lieu of engineering controls. If respirators are worn, they must have joint Mine Safety and Health Administration and the National Institute for Occupational Safety and Health (NIOSH) seal of approval, and cartridge or canisters must be replaced before the end of their service life, or the end of the shift, whichever occurs first. If you experience difficulty breathing while wearing a respirator, you may request a positive pressure respirator from your employer. You must be thoroughly trained to use the assigned respirator, and the training will be provided by your employer.

B. *Protective Clothing.* You must wear appropriate protective clothing (such as boots, gloves, sleeves, aprons, etc.) over any parts of your body that could be exposed to liquid benzene.

C. *Eye and Face Protection.* You must wear splash-proof safety goggles if it is possible that benzene may get into your eyes. In addition, you must wear a face shield if your face could be splashed with benzene liquid.

IV. Emergency and First Aid Procedures

A. *Eye and face exposure.* If benzene is splashed in your eyes, wash it out immediately with large amounts of water. If irritation persists or vision appears to be affected see a doctor as soon as possible.

B. *Skin exposure.* If benzene is spilled on your clothing or skin, remove the contaminated clothing and wash the exposed skin with large amounts of water and soap immediately. Wash contaminated clothing before you wear it again.

C. *Breathing.* If you or any other person breathes in large amounts of benzene, get the exposed person to fresh air at once. Apply artificial respiration if breathing has stopped. Call for medical assistance or a doctor as soon as possible. Never enter any vessel or confined space where the benzene concentration might be high without proper safety equipment and at least one other person present who will stay outside. A life line should be used.

D. *Swallowing.* If benzene has been swallowed and the patient is conscious, do not induce vomiting. Call for medical assistance or a doctor immediately.

V. Medical Requirements

If you are exposed to benzene at a concentration at or above 0.5 ppm as an 8-hour time-weighted average, or have been exposed at or above 10 ppm in the past while employed by your current employer, your employer is required to provide a medical examination and history and laboratory tests within 60 days of the effective date of this standard and annually thereafter. These tests shall be provided without cost to you. In addition, if you are accidentally exposed to benzene (either by ingestion, inhalation, or skin/eye contact) under emergency conditions known or suspected to constitute toxic exposure to benzene, your employer is required to make special laboratory tests available to you.

VI. Observation of Monitoring

Your employer is required to perform measurements that are representative of your exposure to benzene and you or your designated representative are entitled to observe the monitoring procedure. You are entitled to observe the steps taken in the measurement procedure, and to record the results obtained. When the monitoring

procedure is taking place in an area where respirators or personal protective clothing and equipment are required to be worn, you or your representative must also be provided with, and must wear the protective clothing and equipment.

VII. Access to Records

You or your representative are entitled to see the records of measurements of your exposure to benzene upon written request to your employer. Your medical examination records can be furnished to yourself, your physician or designated representative upon request by you to your employer.

VIII. Precautions for Safe Use, Handling and Storage

Benzene liquid is highly flammable. It should be stored in tightly closed containers in a cool, well ventilated area. Benzene vapor may form explosive mixtures in air. All sources of ignition must be controlled. Use nonsparking tools when opening or closing benzene containers. Fire extinguishers, where provided, must be readily available. Know where they are located and how to operate them. Smoking is prohibited in areas where benzene is used or stored. Ask your supervisor where benzene is used in your area and for additional plant safety rules.

Appendix B to § 1926.1128—Substance Technical Guidlines, Benzene

I. Physical and Chemical Data

A. Substance identification.

1. *Synonyms:* Benzol, benzole, coal naphtha, cyclohexatriene, phene, phenyl hydride, pyrobenzol. (Benzin, petroleum benzin and Benzine do not contain benzene).

2. *Formula:* C_6H_6 (CAS Registry Number: 71–43–2)

B. Physical data.

1. Boiling Point (760 mm Hg): 80.1 °C (176 °F)

2. Specific Gravity (water=1): 0.879

3. Vapor Density (air=1): 2.7

4. Melting Point: 5.5 °C (42 °F)

5. Vapor Pressure at 20 °C (68 °F): 75 mm Hg

6. Solubility in Water: .06%

7. Evaporation Rate (ether=1): 2.8

8. Appearance and Odor: Clear, colorless liquid with a distinctive sweet odor.

II. Fire, Explosion, and Reactivity Hazard Data

A. Fire.

1. Flash Point (closed cup): −11 °C (12 °F)

2. Autoignition Temperature: 580 °C (1076 °F)

3. Flammable limits in Air. % by Volume: Lower: 1.3%, Upper: 7.5%

4. Extinguishing Media: Carbon dioxide, dry chemical, or foam.

5. Special Fire-Fighting procedures: Do not use solid stream of water, since stream will scatter and spread fire. Fine water spray can be used to keep fire-exposed containers cool.

6. Unusual fire and explosion hazards: Benzene is a flammable liquid. Its vapors can form explosive mixtures. All ignition sources must be controlled when benzene is used, handled, or stored. Where liquid or vapor may be released, such areas shall be considered as hazardous locations. Benzene vapors are heavier than air; thus the vapors may travel along the ground and be ignited by open flames or sparks at locations remote from the site at which benzene is handled.

7. Benzene is classified as a 1 B flammable liquid for the purpose of conforming to the requirements of 29 CFR 1926.152. A concentration exceeding 3,250 ppm is considered a potential fire explosion hazard.

B. Reactivity.

1. Conditions contributing to instability: Heat.

2. Incompatibility: Heat and oxidizing materials.

3. Hazardous decomposition products: Toxic gases and vapors (such as carbon monoxide).

III. Spill and Leak Procedures

A. Steps to be taken if the material is released or spilled. As much benzene as possible should be absorbed with suitable materials, such as dry sand or earth. That remaining must be flushed with large amounts of water. Do not flush benzene into a confined space, such as a sewer, because of explosion danger. Remove all ignition sources. Ventilate enclosed places.

B. Waste disposal method. Disposal methods must conform to other jurisdictional regulations. If allowed, benzene may be disposed of: (a) By absorbing it in dry sand or earth and disposing in a sanitary landfill; (b) if small quantities, by removing it to a safe location from buildings or other combustible sources, pouring it in dry sand or earth and cautiously igniting it; and (c) if large quantities, by atomizing it in a suitable combustion chamber.

IV. Miscellaneous Precautions

A. High exposure to benzene can occur when transferring the liquid from one container to another. Such operations should be well ventilated and good work practices must be established to avoid spills.

B. Use non-sparking tools to open benzene containers which are effectively grounded and bonded prior to opening and pouring.

C. Employers must advise employees of all plant areas and operations where exposure to benzene could occur. Common operations in which high exposures to benzene may be encountered are: the primary production and utilization of benzene, and transfer of benzene.

Appendix C to § 1926.1128—Medical Surveillance Guidelines for Benzene

I. Route of Entry

Inhalation; skin absorption.

II. Toxicology

Benzene is primarily an inhalation hazard. Systemic absorption may cause depression of the hematopoietic system, pancytopenia, aplastic anemia, and leukemia. Inhalation of high concentrations can affect central nervous system function. Aspiration of small amounts of liquid benzene immediately causes pulmonary edema and hemorrhage of pulmonary tissue. There is some absorption through the skin. Absorption may be more rapid in the case of abraded skin, and benzene may be more readily absorbed if it is present in a mixture or as a contaminant in solvents which are readily absorbed. The defatting action of benzene may produce primary irritation due to repeated or prolonged contact with the skin. High concentration are irritating to the eyes and the mucuous membranes of the nose, and respiratory tract.

III. Signs and Symptoms

Direct skin contact with benzene may cause erythema. Repeated or prolonged contact may result in drying, scaling dermatitis, or development of secondary skin infections. In addition, there is benzene absorption through the skin. Local effects of benzene vapor or liquid on the eye are slight. Only at very high concentrations is there any smarting sensation in the eye. Inhalation of high concentrations of benzene may have an initial stimulatory effect on the central nervous system characterized by exhiluration, nervous excitation, and/or giddiness, followed by a period of depression, drowsiness, or fatigue. A sensation of tightness in the chest accompanied by breathlessness may occur and ultimately the victim may lose consciousness. Tremors, convulsions and death may follow from respiratory paralysis or circulatory collapse in a few minutes to several hours following severe exposures.

The detrimental effect on the blood-forming system of prolonged exposure to small quantities of benzene vapor is of extreme importance. The hematopoietic system is the chief target for benzene's toxic effects which are manifested by alterations in the levels of formed elements in the peripheral blood. These effects have occurred at concentrations of benzene which may not cause irritation of mucous membranes, or any unpleasant sensory effects. Early signs and symptoms of benzene morbidity are varied, often not readily noticed and non-specific. Subjective complaints of headache, dizziness, and loss of appetite may precede or follow clinical signs. Rapid pulse and low blood pressure, in addition to a physical appearance of anemia, may accompany a subjective complaint of shortness of breath and excessive tiredness. Bleeding from the nose, gums, or mucous membranes, and the development of purpuric spots (small bruises) may occur as the condition progresses. Clinical evidence of leukopenia, anemia, and thrombocytopenia, singly or in combination, has been frequently reported among the first signs.

Bone marrow may appear normal, aplastic, or hyperplastic, and may not, in all situations, correlate with peripheral blood forming tissues. Because of variations in the susceptibility to benzene morbidity, there is no "typical" blood picture. The onset of effects of prolonged benzene exposure may be delayed for many months or years after the actual exposure has ceased and identification or correlation with benzene exposure must be sought out in the occupational history.

IV. Treatment of Acute Toxic Effects

Remove from exposure immediately. Make sure you are adequately protected and do not risk being overcome by fumes. Give oxygen or artificial resuscitation if indicated. Flush eyes, wash skin if contaminated and remove

all contaminated clothing. Symptoms of intoxication may persist following severe exposures. Recovery from mild exposures is usually rapid and complete.

V. Surveillance and Preventive Considerations

A. General

The principal effects of benzene exposure which form the basis for this regulation are pathological changes in the hematopoietic system, reflected by changes in the peripheral blood and manifesting clinically as pancytopenia, aplastic anemia, and leukemia. Consequently, the medical surveillance program is designed to observe, on a regular basis, blood indices for early signs of these effects, and although early signs of leukemia are not usually available, emerging diagnostic technology and innovative regimes make consistent surveillance for leukemia, as well as other hematopoietic effects, essential.

Initial examinations are to be provided within 60 days of the effective date of this standard, or at the time of initial assignment, and periodic examinations annually thereafter. There are special provisions for medical tests in the event of hematologic abnormalities or for emergency situations.

The blood values which require referral to a hematologist or internist are noted in the standard in paragraph (i)(5). The standard specifies that blood abnormalities that persist must be referred "unless the physician has good reason to believe such referral is unnecessary" (paragraph (i)(5)). Examples of conditions that could make a referral unnecessary despite abnormal blood limits are iron or folate deficiency, menorrhagia, or blood loss due to some unrelated medical abnormality.

Symptoms and signs of benzene toxicity can be non-specific. Only a detailed history and appropriate investigative procedures will enable a physician to rule out or confirm conditions that place the employee at increased risk. To assist the examining physician with regard to which laboratory tests are necessary and when to refer an employee to the specialist, OSHA has established the following guidelines.

B. Hematology Guidelines

A minimum battery of tests is to be performed by strictly standardized methods.

1. Red cell, white cell, platelet counts, white blood cell differential, hematocrit and red cell indices must be performed by an accredited laboratory. The normal ranges for the red cell and white cell counts are influenced by altitude, race, and sex, and therefore should be determined by the accredited laboratory in the specific area where the tests are performed.

Either a decline from an absolute normal or an individual's base line to a subnormal value or a rise to a supra-normal value, are indicative of potential toxicity, particularly if all blood parameters decline. The normal total white blood count is approximately 7,200/mm^3 plus or minus 3,000. For cigarette smokers the white count may be higher and the upper range may be 2,000 cells higher than normal for the laboratory. In addition, infection, allergies and some drugs may raise the white cell count. The normal platelet count is approximately 250,000 with a range of 140,000 to 400,000. Counts outside this range should be regarded as possible evidence of benzene toxicity.

Certain abnormalities found through routine screening are of greater significance in the benzene-exposed worker and require prompt consultation with a specialist, namely:

a. Thrombocytopenia.

b. A trend of decreasing white cell, red cell, or platelet indices in an individual over time is more worrisome than an isolated abnormal finding at one test time. The importance of trend highlights the need to compare an individual's test results to baseline and/or previous periodic tests.

c. A constellation or pattern of abnormalities in the different blood indices is of more significance than a single abnormality. A low white count not associated with any abnormalities in other cell indices may be a normal statistical variation, whereas if the low white count is accompanied by decreases in the platelet and/or red cell indices, such a pattern is more likely to be associated with benzene toxicity and merits thorough investigation.

Anemia, leukopenia, macrocytosis or an abnormal differential white blood cell count should alert the physician to further investigate and/or refer the patient if repeat tests confirm the abnormalities. If routine screening detects an abnormality, follow-up tests which may be helpful in establishing the etiology of the abnormality are the peripheral blood smear and the reticulocyte count.

The extreme range of normal for reticulocytes is 0.4 to 2.5 percent of the red cells, the usual range being 0.5 to 1.2 percent of the red cells, but the typical value is in the range of 0.8 to 1.0 percent. A decline in reticulocytes to levels of less than 0.4 percent is to be regarded as possible evidence (unless another specific cause is found) of benzene toxicity requiring accelerated surveillance. An increase in reticulocyte levels to about 2.5 percent may also be consistent with (but is not as characteristic of) benzene toxicity.

2. An important diagnostic test is a careful examination of the peripheral blood smear. As with reticulocyte count the smear should be with fresh uncoagulated blood obtained from a needle tip following venipuncture or from a drop of earlobe blood (capillary blood). If necessary, the smear may, under certain limited conditions, be made from a blood sample anticoagulated with EDTA (but never with oxalate or heparin). When the smear is to be prepared from a specimen of venous blood which has been collected by a commercial Vacutainer® type tube containing neutral EDTA, the smear should be made as soon as possible after the venesection. A delay of up to 12 hours is permissible between the drawing of the blood specimen into EDTA and the preparation of the smear if the blood is stored at refrigerator (not freezing) temperature.

3. The minimum mandatory observations to be made from the smear are:

a. The differential white blood cell count.

b. Description of abnormalities in the appearance of red cells.

c. Description of any abnormalities in the platelets.

d. A careful search must be made throughout of every blood smear for immature white cells such as band forms (in more than normal proportion, i.e., over 10 percent of the total differential count), any number of metamyelocytes, myelocytes or myeloblasts. Any nucleate or multinucleated red blood cells should be reported. Large "giant" platelets or fragments of megakaryocytes must be recognized.

An increase in the proportion of band forms among the neutrophilic granulocytes is an abnormality deserving special mention, for it may represent a change which should be considered as an early warning of benzene toxicity in the absence of other causative factors (most commonly infection). Likewise, the appearance of metamyelocytes, in the absence of another probable cause, is to be considered a possible indication of benzene-induced toxicity.

An upward trend in the number of basophils, which normally do not exceed about 2.0 percent of the total white cells, is to be regarded as possible evidence of benzene toxicity. A rise in the eosinophil count is less specific but also may be suspicious of toxicity if the rises above 6.0 percent of the total white count.

The normal range of monocytes is from 2.0 to 8.0 percent of the total white count with an average of about 5.0 percent. About 20 percent of individuals reported to have mild but persisting abnormalities caused by exposure to benzene show a persistent monocytosis. The findings of a monocyte count which persists at more than 10 to 12 percent of the normal white cell count (when the total count is normal) or persistence of an absolute monocyte count in excess of 800/mm^3 should be regarded as a possible sign of benzene-induced toxicity.

A less frequent but more serious indication of benzene toxicity is the finding in the peripheral blood of the so-called "pseudo" (or acquired) Pelger-Huet anomaly. In this anomaly many, or sometimes the majority, of the neutrophilic granulocytes possess two round nuclear segements—less often one or three round segments—rather than three normally elongated segments. When this anomaly is not hereditary, it is often but not invariably predictive of subsequent leukemia. However, only about two percent of patients who ultimately develop acute myelogenous leukemia show the acquired Pelger-Huet anomaly. Other tests that can be administered to investigate blood abnormalities are discussed below; however, such procedures should be undertaken by the hematologist.

An uncommon sign, which cannot be detected from the smear, but can be elicited by a "sucrose water test" of peripheral blood, is transient paroxysmal nocturnal hemoglobinuria (PNH), which may first occur insidiously during a period of established aplastic anemia, and may be followed within one to a few years by the appearance of rapidly fatal acute myelogenous leukemia. Clinical detection of PNH, which occurs in only one or two percent of those destined to have acute myelogenous leukemia, may be difficult; if the "sucrose water test" is

positive, the somewhat more definitive Ham test, also known as the acid-serum hemolysis test, may provide confirmation.

e. Individuals documented to have developed acute myelogenous leukemia years after initial exposure to benzene may have progressed through a preliminary phase of hematologic abnormality. In some instances pancytopenia (i.e., a lowering in the counts of all circulating blood cells of bone marrow origin, but not to the extent implied by the term "aplastic anemia") preceded leukemia for many years. Depression of a single blood cell type or platelets may represent a harbinger of aplasia or leukemia. The finding of two or more cytopenias, or pancytopenia in a benzene-exposed individual, must be regarded as highly suspicious of more advanced although still reversible, toxicity. "Pancytopenia" coupled with the appearance of immature cells (myelocytes, myeloblasts, erythroblasts, etc.), with abnormal cells (pseudo Pelger-Huet anomaly, atypical nuclear heterochromatin, etc.), or unexplained elevations of white blood cells must be regarded as evidence of benzene overexposure unless proved otherwise. Many severely aplastic patients manifested the ominous finding of 5–10 percent myeloblasts in the marrow, occasional myeloblasts and myelocytes in the blood and 20–30% monocytes. It is evident that isolated cytopenias, pancytopenias, and even aplastic anemias induced by benzene may be reversible and complete recovery has been reported on cessation of exposure. However, since any of these abnormalities is serious, the employee must immediately be removed from any possible exposure to benzene vapor. Certain tests may substantiate the employee's prospects for progression or regression. One such test would be an examination of the bone marrow, but the decision to perform a bone marrow aspiration or needle biopsy is made by the hematologist.

The findings of basophilic stippling in circulating red blood cells (usually found in 1 to 5% of red cells following marrow injury), and detection in the bone marrow of what are termed "ringed sideroblasts" must be taken seriously, as they have been noted in recent years to be premonitory signs of subsequent leukemia.

Recently peroxidase-staining of circulating or marrow neutrophil granulocytes, employing benzidine dihydrochloride, have revealed the disappearance of, or diminution in, peroxidase in a sizable proportion of the granulocytes, and this has been reported as an early sign of leukemia. However, relatively few patients have been studied to date. Granulocyte granules are normally strongly peroxidase positive. A steady decline in leukocyte alkaline phosphatase has also been reported as suggestive of early acute leukemia. Exposure to benzene may cause an early rise in serum iron, often but not always associated with a fall in the reticulocyte count. Thus, serial measurements of serum iron levels may provide a means of determining whether or not there is a trend representing sustained suppression of erythropoiesis.

Measurement of serum iron, determination of peroxidase and of alkaline phosphatase activity in peripheral granulocytes can be performed in most pathology laboratories. Peroxidase and alkaline phosphatase staining are usually undertaken when the index of suspecion for leukemia is high.

Appendix D to § 1928.1128—Sampling and Analytical Methods for Benzene Monitoring and Measurement Procedures

Measurements taken for the purpose of determining employee exposure to benzene are best taken so that the representative average 8-hour exposure may be determined from a single 8-hour sample or two (2) 4-hour samples. Short-time interval samples (or grab samples) may also be used to determine average exposure level if a minimum of five measurements are taken in a random manner over the 8-hour work shift. Random sampling means that any portion of the work shift has the same change of being sampled as any other. The arithmetic average of all such random samples taken on one work shift is an estimate of an employee's average level of exposure for that work shift. Air samples should be taken in the employee's breathing zone (air that would most nearly represent that inhaled by the employee). Sampling and analysis must be performed with procedures meeting the requirements of the standard.

There are a number of methods available for monitoring employee exposures to benzene. The sampling and analysis may be performed by collection of the benzene vaptor or charcoal absorption tubes, with subsequent chemical analysis by gas chromatography. Sampling and analysis may also be performed by portable direct reading instruments, real-time continuous monitoring systems, passive dosimeters or other suitable methods. The employer has the obligation of selecting a monitoring method which meets the accuracy and precision requirements of the standard under his unique field conditions. The standard requires that the method of monitoring must have an accuracy, to a 95 percent confidence level, of not less than plus or minus 25 percent for concentrations of benzene greater than or equal to 0.5 ppm.

The OSHA Laboratory modified NIOSH Method S311 and evaluated it at a benzene air concentration of 1 ppm. A procedure for determining the benzene concentration in bulk material samples was also evalauted. This work, reported in OSHA Laboratory Method No. 12, includes the following two analytical procedures:

I. OSHA Method 12 for Air Samples

Analyte: Benzene
Matrix: Air
Procedure: Adsorption on charcoal, desorption with carbon disulfide, analysis by GC.
Detection limit: 0.04 ppm
Recommended air volume and sampling rate: 10L to 0.2 L/min.

1. Principle of the Method.

1.1 A known volume of air is drawn through a charcoal tube to trap the organic vapors present.

1.2. The charcoal in the tube is transferred to a small, stoppered vial, and the anlyte is desorbed with carbon disulfide.

1.3. An aliquot of the desorbed sample is injected into a gas chromatograph.

1.4 The area of the resulting peak is determined and compared with areas obtained from standards.

2. Advantages and disadvantages of the method.

2.1 The sampling device is small, portable, and involved no liquids. Interferences are minimal, and most of those which do occur can be eliminated by altering chromatographic conditions. The samples are analyzed by means of a quick, instrumental method.

2.2 The amount of sample which can be taken is limited by the number of milligrams that the tube will hold before overloading. When the sample value obtained for the backup section of the charcoal tube exceeds 25 percent of that found on the front section, the possibility of sample loss exists.

3. Apparatus.

3.1 A calibrated personal sampling pump whose flow can be determined within ±5 percent at the recommended flow rate.

3.2. Charcoal tubes: Glass with both ends flame sealed, 7 cm long with a 6-mm O.D. and a 4-mm I.D., containing 2 sections of 20/40 mesh activated charcoal separated by a 2-mm portion of urethane foam. The activated charcoal is prepared from coconut shells and is fired at 600° C prior to packing. The adsorbing section contains 100 mg of charcoal, the back-up section 50 mg. A 3-mm portion of urethane foam is placed between the outlet end of the tube and the back-up section. A plug of silanized glass wool is placed in front of the adsorbing section. The pressure drop across the tube must be less than one inch of mercury at a flow rate of 1 liter per minute.

3.3. Gas chromatograph equipped with a flame ionization detector.

3.4. Column (10-ft × ⅛-in stainless steel) packed with 80/100 Supelcoport coated with 20 percent SP 2100, 0.1 percent CW 1500.

3.5. An electronic integrator or some other suitable method for measuring peak area.

3.6. Two-milliliter sample vials with Teflon-lined caps.

3.7. Microliter syringes: 10-microliter (10-μL syringe, and other convenient sizes for making standards, 1-μL syringe for sample injections.

3.8. Pipets: 1.0 mL delivery pipets

3.9. Volumetric flasks: convenient sizes for making standard solutions.

4. Reagents.

4.1. Chromatographic quality carbon disulfide (CS_2). Most commercially available carbon disulfide contains a trace of benzene which must be removed. It can be removed with the following procedure:

Heat under reflux for 2 to 3 hours, 500 mL of carbon disulfide, 10 mL concentrated sulfuric acid, and 5 drops of concentrated nitric acid. The benzene is converted to nitrobenzene. The carbon disulfide layer is removed, dried with anhydrous sodium sulfate, and distilled. The recovered carbon disulfide should be benzene free. (It has recently been determined that benzene can also be removed by passing the carbon disulfide through 13x molecular sieve).

4.2. Benzene, reagent grade.

4.3. p-Cymene, reagent grade, (internal standard).

4.4. Desorbing reagent. The desorbing reagent is prepared by adding 0.05 mL of p-cymene per milliliter of carbon disulfide. (The internal standard offers a convenient means correcting analytical response for slight inconsistencies in the size of sample injections. If the external standard technique is preferred, the internal standard can be eliminated).

4.5. Purified GC grade helium, hydrogen and air.

5. Procedure.

5.1. Cleaning of equipment. All glassware used for the laboratory analysis should be properly cleaned and free of organics which could interfere in the analysis.

5.2. Calibration of personal pumps. Each pump must be calibrated with a representative charcoal tube in the line.

5.3. Collection and shipping of samples.

5.3.1. Immediately before sampling, break the ends of the tube to provide an opening at least one-half the internal diameter of the tube (2 mm).

5.3.2. The smaller section of the charcoal is used as the backup and should be placed nearest the sampling pump.

5.3.3. The charcoal tube should be placed in a vertical position during sampling to minimize channeling through the charcoal.

5.3.4 Air being sampled should not be passed through any hose or tubing before entering the charcoal tube.

5.3.5. A sample size of 10 liters is recommended. Sample at a flow rate of approximately 0.2 liters per minute. The flow rate should be known with an accuracy of at least ±5 percent.

5.3.6. The charcoal tubes should be capped with the supplied plastic caps immediately after sampling.

5.3.7. Submit at least one blank tube (a charcoal tube subjected to the same handling procedures, without having any air drawn through it) with each set of samples.

5.3.8. Take necessary shipping and packing precautions to minimize breakage of samples.

5.4. Analysis of samples.

5.4.1. Preparation of samples. In preparation for analysis, each charcoal tube is scored with a file in front of the first section of charcoal and broken open. The glass wool is removed and discarded. The charcoal in the first (larger) section is transferred to a 2-ml vial. The separating section of foam is removed and discarded; the second section is transferred to another capped vial. These two sections are analyzed separately.

5.4.2. Desorption of samples. Prior to analysis, 1.0 mL of desorbing solution is pipetted into each sample container. The desorbing solution consists of 0.05 µL internal standard per mL of carbon disulfide. The sample vials are capped as soon as the solvent is added. Desorption should be done for 30 minutes with occasional shaking.

5.4.3. GC conditions. Typical operating conditions for the gas chromatograph are:

1.30 mL/min (60 psig) helium carrier gas flow.

2.30 mL/min (40 psig) hydrogen gas flow to detector.

3.240 mL/min (40 psig) air flow to detector.

4.150 °C injector temperature.

5.250 °C detector temperature.

6.100 °C column temperature.

5.4.4. Injection size. 1 µL.

5.4.5. Measurement of area. The peak areas are measured by an electronic integrator or some other suitable form of area measurement.

5.4.6. An internal standard procedure is used. The integrator is calibrated to report results in ppm for a 10 liter air sample after correction for desorption efficiency.

5.5. Determination of desorption efficiency.

5.5.1. Importance of determination. The desorption efficiency of a particular compound can vary from one laboratory to another and from one lot of chemical to another. Thus, it is necessary to determine, at least once, the percentage of the specific compound that is removed in the desorption process, provided the same batch of charcoal is used.

5.5.2. Procedure for determining desorption efficiency. The reference portion of the charcoal tube is removed. To the remaining portion, amounts representing 0.5X, 1X, and 2X and (X represents target concentration) based on a 10 L air sample are injected into several tubes at each level. Dilutions of benzene with carbon disulfide are made to allow injection of measurable quantities. These tubes are then allowed to equilibrate at least overnight. Following equilibration they are analyzed following the same procedure as the samples. Desorption efficiency is determined by dividing the amount of benzene found by amount spiked on the tube.

6. Calibration and standards. A series of standards varying in concentration over the range of interest is prepared and analyzed under the same GC conditions that will be used on the samples. A calibration curve is prepared by plotting concentration (µg/mL) versus peak area.

7. Calculations. Benzene air concentration can be calculated from the following equation:

$mg/m^3=(A)(B)/(C)(D)$

Where: A=µg/mL benzene, obtained from the calibration curve

B=desorption volume (1 mL)

C=Liters of air sampled

D=desorption efficiency

The concentration in mg/m^3 can be converted to ppm (at 25° and 760 mm) with following equation:

$ppm=(mg/m^3)(24.46)/(78.11)$

Where: 24.46=molar volume of an ideal gas 25 °C and 760 mm

78.11=molecular weight of benzene

8. Backup Data.

8.1 Detection limit—Air Samples.

The detection limit for the analytical procedure is 1.28 ng with a coefficient of variation of 0.023 at this level. This would be equivalent to an air concentration of 0.04 ppm for a 10 L air sample. This amount provided a chromatographic peak that could be identifiable in the presence of possible interferences. The detection limit data were obtained by making 1 µL injections of a 1.283 µg/mL standard.

Injection	Area Count	
1	655.4	
2	617.5D	
3	662.0	X̄=640.2
4	641.1	SD=14.9
5	636.4	CV=0.023
6	629.2	

8.2. Pooled coefficient of variation—Air Samples. The pooled coefficient of variation for the analytical procedure was determined by 1 µL replicate injections of analytical standards. The standards were 16.04, 32.08, and 64.16 µg/mL, which are equivalent to 0.5, 1.0, and 2.0 ppm for a 10 L air sample respectively.

Injection	Area Counts		
	0.5 ppm	1.0 ppm	2.0 ppm
1	3998.5	8130.2	16481
2	4059.4	8235.6	16493
3	4052.0	8307.9	16535
4	4027.2	8263.2	16609
5	4046.8	8291.1	16552
6	4137.9	8288.8	16618
X̄=	4053.3	8254.0	16548.3
SD=	47.2	82.5	57.1
CV=	0.0116	0.0076	0.0034
CV=0.008			

8.3. Storage data—Air Samples

Samples were generated at 1.03 ppm benzene at 80% relative humidity, 22 °C, and 643 mm. All samples were taken for 50 minutes at 0.2 L/min. Six samples were analyzed immediately and the rest of the samples were divided into two groups by fifteen samples each. One group was stored at refrigerated temperature of − 25 °C, and the other group was stored at ambient temperature (approximately 23 °C). These samples were analyzed over a period of fifteen days. The results are tabulated below.

PERCENT RECOVERY

Day analyzed	Refrigerated			Ambient		
0	97.4	98.7	98.9	97.4	98.7	98.9
0	97.1	100.6	100.9	97.1	100.6	100.9
2	95.8	96.4	96.4	95.4	96.6	96.9
5	93.9	93.7	92.4	92.4	94.3	94.*

PERCENT RECOVERY—Continued

Day analyzed	Refrigerated			Ambient		
9	93.6	95.5	94.6	95.2	95.6	96.6
13	94.3	95.3	93.7	91.0	95.0	94.6
15	96.8	95.8	94.2	92.9	96.3	95.9

8.4. Desorption data.

Samples were prepared by injecting liquid benzene onto the A section of charcoal tubes. Samples were prepared that would be equivalent to 0.5, 1.0, and 2.0 ppm for a 10 L air sample.

PERCENT RECOVERY

Sample	0.5 ppm	1.0 ppm	2.0 ppm
1	99.4	98.8	99.5
2	99.5	98.7	99.7
3	99.2	98.6	99.8
4	99.4	99.1	100.0
5	99.2	99.0	99.7
6	99.8	99.1	99.9
$\bar{X}$=	99.4	98.9	99.8
SD=	0.22	0.21	0.18
CV=	0.0022	0.0021	0.0018
$\bar{X}$=99.4			

8.5. Carbon disulfide.

Carbon disulfide from a number of sources was analyzed for benzene contamination. The results are given in the following table. The benzene contamiant can be removed with the procedures given in section 4.1.

Sample	µg Benzene/mL	ppm equivalent (for 10 L air sample)
Aldrich Lot 83017	4.20	0.13
Baker Lot 720364	1.01	0.03
Baker Lot 822351	1.01	0.03
Malinkrodt Lot WEMP	1.74	0.05
Malinkrodt Lot WDSJ	5.65	0.18
Malinkrodt Lot WHGA	2.90	0.09
Treated CS_2		

II. OSHA Laboratory Method No. 12 for Bulk Samples

Analyte: Benzene.

Matrix: Bulk Samples.

Procedure: Bulk Samples are analyzed directly by high performance liquid chromatography (HPLC).

Detection limits: 0.01% by volume.

1. Principle of the method.

1.1. An aliquot of the bulk sample to be analyzed is injected into a liquid chromatograph.

1.2. The peak area for benzene is determined and compared to areas obtained from standards.

2. Advantages and disadvantages of the method.

2.1. The analytical procedure is quick, sensitive, and reproducible.

2.2. Reanalysis of samples is possible.

2.3. Interferences can be circumvented by proper selection of HPLC parameters.

2.4. Samples must be free of any particulates that may clog the capillary tubing in the liquid chromatograph. This may require distilling the sample or clarifying with a clarification kit.

3. Apparatus.

3.1. Liquid chromatograph equipped with a UV detector.

3.2. HPLC Column that will separate benzene from other components in the bulk sample being analyzed. The column used for validation studies was a Waters uBondapack C18, 30 cm x 3.9 mm.

3.3. A clarification kit to remove any particulates in the bulk if necessary.

3.4. A micro-distillation apparatus to distill any samples if necessary.

3.5. An electronic integrator or some other suitable method of measuring peak areas.

3.6. Microliter syringes—10 µL syringe and other convenient sizes for making standards. 10 µL syringe for sample injections.

3.7. Volumetric flasks, 5 mL and other convenient sizes for preparing standards and making dilutions.

4. Reagents.

4.1. Benzene, reagent grade.

4.2. HPLC grade water, methyl alcohol, and isopropyl alcohol.

5. Collection and shipment of samples.

5.1. Samples should be transported in glass containers with Teflon-lined caps.

5.2. Samples should not be put in the same container used for air samples.

6. Analysis of samples.

6.1. Sample preparation.

If necessary, the samples are distilled or clarified. Samples are analyzed undiluted. If the benzene concentration is out of the working range, suitable dilutions are made with isopropyl alcohol.

6.2. HPLC conditions.

The typical operating conditions for the high performance liquid chromatograph are:

1. Mobile phase—Methyl alcohol/water, 50/50

1. Analytical wavelength—254 nm

3. Injection size—10 µL

6.3. Measurement of peak area and calibration.

Peak areas are measured by an integrator or other suitable means. The integrator is calibrated to report results % in benzene by volume.

7. Calculations.

Since the integrator is programmed to report results in % benzene by volume in an undiluted sample, the following equation is used:

% Benzene by Volume=A x B

Where: A=% by volume on report

B=Dilution Factor

(B=1 for undiluted sample)

8. Backup Data.

8.1. Detection limit—Bulk Samples.

The detection limit for the analytical procedure for bulk samples is 0.88 µg, with a coefficient of variation of 0.019 at this level. This amount provided a chromatographic peak that could be identifiable in the presence of possible interferences. The detection limit date were obtained by making 10 µL injections of a 0.10% by volume standard.

Injection	Area Count	
1	45566	
2	44214	
3	43822	$\bar{X}$=44060.1
4	44062	SD=852.5
6	42724	CV=0.019

8.2. Pooled coefficient of variation—Bulk Samples.

The pooled coefficient of variation for analytical procedure was determined by 50 µL replicate injections of analytical standards. The standards were 0.01, 0.02, 0.04, 0.10, 1.0, and 2.0% benzene by volume.

AREA COUNT (PERCENT)

Injection No.	0.01	0.02	0.04	0.10	1.0	2.0
1	45386	84737	166097	448497	4395380	9339150
2	44241	84300	170832	441299	4590800	9464900
3	43822	83835	164160	443719	4593200	9557580
4	44062	84381	164445	444842	4642350	9577060
5	44006	83012	168398	442564	4646430	9766240
6	42724	81957	173002	443975	4646260	

AREA COUNT (PERCENT)—Continued

Injection No.	0.01	0.02	0.04	0.10	1.0	2.0
$\bar{X}$ =	44040.1	83703.6	167872	444149	4585767	9564986
SD =	852.5	1042.2	3589.6	2459.1	96839.3	166233
CV =	0.0194	0.0125	0.0213	0.0055	0.0211	0.0174
$\hat{CV}$ =	0.017					

Appendix E to § 1926.1128—Qualitative and Quantitative Fit Testing Procedures

I. Fit Test Protocols

A. The employer shall include the following provisions in the fit test procedures. These provisions apply to both qualitative fit testing (QLFT) and quantitative fit testing (QNFT).

1. The test subject shall be allowed to pick the most comfortable respirator from a selection including respirators of various sizes from different manufacturers. The selection shall include at least three sizes of elastomeric facepieces of the type of respirator that is to be tested, i.e., three sizes of half mask; or three sizes of full facepiece; and units from at least two manufacturers.

2. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to determine a comfortable fit. A mirror shall be available to assist the subject in evaluating the fit and positioning the respirator. This instruction may not constitute the subject's formal training on respirator use, at it is only a review.

3. The test subject shall be informed that he/she is being asked to select the respirator which provides the most comfortable fit. Each respirator represents a different size and shape, and if fitted and used properly, will provide adequate protection.

4. The test subject shall be instructed to hold each facepiece up to the face and eliminate those which obviously do not give a comfortable fit.

5. The more comfortable facepieces are noted; the most comfortable mask is donned and worn at least five minutes to assess comfort. Assistance in assessing comfort can be given by discussing the points in item 6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to ajust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator:

(a) Position of the mask on the nose.
(b) Room for eye protection.
(c) Room to talk.
(d) Position of mask on face and cheeks.

7. The following criteria shall be used to help determine the adequacy of the respirator fit:

(a) Chin properly placed:
(b) Adequate strap tension, not overly tightened;
(c) Fit across nose bridge;
(d) Respirator of proper size to span distance from nose to chin;
(e) Tendency of respirator to slip;
(f) Self-observation in mirror to evaluate fit and respirator position.

8. The test subject shall conduct the negative and positive pressure fit checks as described below or ANSI Z88.2–1980. Before conducting the negative or positive pressure test, the subject shall be told to seat the mask on the face by moving the head from side-to-side and up and down slowly while taking in a few slow deep breaths. Another facepiece shall be selected and retested if the test subject fails the fit check tests.

(a) *Positive pressure test.* Close off the exhalation value and exhale gently onto the facepiece. The face fit is considered satisfactory if a slight positive pressure can be built up inside the facepiece without any evidence of outward leakage of air at the seal. For most respirators this method of leak testing requires the wearer to first remove the exhalation value cover before closing off the exhalation value and then carefully replacing it after the test.

(b) *Negative pressure test.* Close off the inlet opening of the canister or cartridge(s) by covering with the palm of the hand(s) or by replacing the filter seal(s), inhale gently so that the facepiece collapses slightly, and hold the breath for ten seconds. If the facepiece remains in its slightly collapsed condition and no inward leakage of air is detected, the tightness of the respirator is considered satisfactory.

9. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface, such as stubble beard growth, beard, or long sideburns which cross the respirator sealing surface. Any type of apparel which interferes with a satisfactory fit shall be altered or removed.

10. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respiratory disease or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

11. The test subject shall be given the opportunity to wear the successfully fitted respirator for a period of two weeks. If at any time during this period the respirator becomes uncomfortable, the test subject shall be given the opportunity to select a different facepiece and to be retested.

12. The employer shall certify that a successful fit test has been administered to the employee. The certification shall include the following information:

(a) Name of employee;
(b) Type, brand and size of respirator; and
(c) Date of test.

Where QNFT is used, the fit factor, strip chart, or other recording of the results of the test, shall be retained with the certification. The certification shall be maintained until the next fit test is administered.

13. Exercise regimen. Prior to the commencement of the fit test, the test subject shall be given a description of the fit test and the test subject's responsibilities during the test procedure. The description of the process shall include a description of the test exercises that the subject will be performing. The respirator to be tested shall be worn for at least 5 minutes before the start of the fit test.

14. Test Exercises. The test subject shall perform exercises, in the test environment, in the manner described below:

(a) Normal breathing. In a normal standing position, without talking, the subject shall breathe normally.

(b) Deep breathing. In a normal standing position, the subject shall breathe slowly and deeply, taking caution so as to not hyperventilate.

(c) Turning head side to side. Standing in place, the subject shall slowly turn his/her head from side to side between the extreme positions on each side. The head shall be held at each extreme momentarily so the subject can inhale at each side.

(d) Moving head up and down. Standing in place, the subject shall slowly move his/her head up and down. The subject shall be instructed to inhale in the up position (i.e., when looking toward the ceiling).

(e) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(f) Grimace. The test subject shall grimace by smiling or frowning.

(g) Bending over. The test subject shall bend at the waist as if he/she were to touch his/her toes. Jogging in place shall be substituted for this exercise in those test environments such as shroud type QNFT units which prohibit bending at the waist.

(h) Normal breathing. Same as exercise 1.

Each test exercise shall be performed for one minute except for the grimace exercise which shall be performed for 15 seconds.

The test subject shall be questioned by the test conductor regarding the comfort of the respirator upon completion of the protocol. If it has become uncomfortable, another model of respirator shall be tried.

B. Qualitative Fit Test (QLFT) Protocols.

1. *General.*

(a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator qualitative fit test program.

(b) The employer shall ensure that persons administering QLFT are able to prepare test solutions, calibrate equipment and perform

tests properly, recognize invalid tests, and assure that test equipment is in proper working order.

(c) The employer shall assure that QLFT equipment is kept clean and well maintained so as to operate at the parameters for which it was designed.

2. *Isoamyl Acetate Protocol.*

(a) Odor threshold screening.

The odor threshold screening test, performed without wearing a respirator, is intended to determine if the individual tested can detect the odor of isoamyl acetate.

(1) Three 1-liter glass jars with metal lids are required.

(2) Odor free water (e.g. distilled or spring water) at approximately 25° C shall be used for the solutions.

(3) The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor free water in a 1 liter jar and shaking for 30 seconds. A new solution shall be prepared at least weekly.

(4) The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated but shall not be connected to the same recirculating ventilation system.

(5) The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor free water using a clean dropper or pipette. The solution shall be shaken for 30 seconds and allowed to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution shall be used for only one day.

(6) A test blank shall be prepared in a third jar by adding 500 cc of odor free water.

(7) The odor test and test blank jars shall be labeled 1 and 2 for jar identification. Labels shall be placed on the lids so they can be periodically peeled, dried off and switched to maintain the integrity of the test.

(8) The following instruction shall be typed on a card and placed on the table in front of the two test jars (i.e., 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

(9) The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

(10) If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test shall not be performed.

(11) If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

(b) Isoamyl acetate fit test.

(1) The fit test chamber shall be similar to a clear 55-gallon drum liner suspended inverted over a 2-foot diameter frame so that the top of the chamber is about 6 inches (15.24 cm) above the test subject's head. The inside top center of the chamber shall have a small hook attached.

(2) Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.

(3) After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

(4) A copy of the test exercises and any prepared text from which the subject is to read shall be taped to the inside of the test chamber.

(5) Upon entering the test chamber, the test subject shall be given a 6-inch by 5-inch (15.24 × 12.7 cm) piece of paper towel, or other porous, absorbent, single-ply material, folded in half and wetted with 0.75 cc of pure IAA. The test subject shall hand the wet towel on the hook at the top of the chamber.

(6) Allow two minutes for the IAA test concentration to stabilize before starting the fit test exercises. This would be an appropriate time to talk with the test subject; to explain the fit test, the importance of his/her cooperation, and the purpose for the head exercises; or to demonstrate some of the exercises.

(7) If at any time during the test, the subject detects the banana like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

(8) If the test has failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber and again begin the procedure described in (1) through (7) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

(9) When a respirator is found that passes the test, its efficiency shall be demonstrated for the subject by having the subject break the face seal and take a breath before existing the chamber.

(10) When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the test area from becoming contaminated, the used towels shall be kept in a self sealing bag so there is no significant IAA concentration build-up in the test chamber during subsequent tests.

3. *Saccharin Solution Aerosol Protocol.*

The saccharin solution aerosol QLFT protocol is the only currently available, validated test protocol for use with particulate disposable dust respirators not equipped with high-efficiency filters. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

(a) Taste threshold screening.

The saccharin taste threshold screening, performed without wearing a respirator, is intended to determine whether the individual being tested can detect the taste of saccharin.

(1) Threshold screening as well as fit testing subjects shall wear an enclosure about the head and shoulders that is approximately 12 inches (30.48 cm) in diameter by 14 inches (35.56 cm) tall with at least the front portion clear and that allows free movements of the head when a respirator is worn. An enclosure substantially similar to the 3M hood assembly, parts # FT 14 and # FT 15 combined, is adequate.

(2) The test enclosure shall have a ¾-inch (1.905 cm) hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

(3) The test subject shall don the test enclosure. Throughout the threshold screening test, the test subject shall breathe through his/her wide open mouth with tongue extended.

(4) Using a DeVilbiss Model 40 Inhalation Medication Nebulizer the test conductor shall spray the *threshold check solution* into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

(5) The *threshold check solution* consists of 0.83 grams of sodium saccharin USP in 1 cc of warm water. It can be prepared by putting 1 cc of the fit test solution (see (b)(5) below) in 100 cc of distilled water.

(6) To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then released and allowed to fully expand.

(7) Ten squeezes are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

(8) If the first response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(9) If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(10) The test conductor will take note of the number of squeezes required to solicit a taste response.

(11) If the saccharin is not tasted after 30 squeezes (step 10), the test subject may not perform the saccharin fit test.

(12) If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

(13) Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

(14) The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least each morning and afternoon or at least every four hours.

(b) Saccharin solution aerosol fit test procedure.

(1) The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

(2) The fit test uses the same enclosure described in (a) above.

(3) The test subject shall don the enclosure while wearing the respirator selected in section (a) above. The respirator shall be

properly adjusted and equipped with a particulate filter(s).

(4) A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

(5) The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

(6) As before, the test subject shall breathe through the open mouth with tongue extended.

(7) The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same number of squeezes required to elicit a taste response in the screening test.

(8) After generating the aerosol the test subject shall be instructed to perform the exercises in section I. A. 14 above.

(9) Every 30 seconds the aerosol concentration shall be replenished using one half the number of squeezes as initially.

(10) The test subject shall indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

(11) If the taste of saccharin is detected, the fit is deemed unsatisfactory and a different respirator shall be tried.

4. *Irritant Fume Protocol.*

(a) The respirator to be tested shall be equipped with high-efficiency particulate air (HEPA) filters.

(b) The test subject shall be allowed to smell a weak concentration of the irritant smoke before the respirator is donned to become familiar with its characteristic odor.

(c) Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part No. 5645, or equivalent. Attach one end of the smoke tube to a low flow air pump set to deliver 200 milliliters per minute.

(d) Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep his/her eyes closed while the test is performed.

(e) The test conductor shall direct the stream of irritant smoke from the smoke tube towards the face seal area of the test subject. He/She shall begin at least 12 inches (30.48 cm) from the facepiece and gradually move to within one inch (2.54 cm), moving around the whole perimeter of the mask.

(f) The exercises identified in section I. A. 14 above shall be performed by the test subject while the respirator seal is being challenged by the smoke.

(g) Each test subject passing the smoke test without evidence of a response shall be given a sensitivity check of the smoke from the same tube once the respirator has been removed to determine whether he/she reacts to the smoke. Failure to evoke a response shall void the fit test.

(h) The fit test shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agent.

C. Quantiative Fit Test (QNFT) Protocol.

1. *General.*

(a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator quantitative fit test program.

(b) The employer shall ensure that persons administering QNFT are able to calibrate equipment and perform tests properly, recognize invalid tests, calculate fit factors properly and assure that test equipment is in proper working order.

(c) The employer shall assure that QNFT equipment is kept clean and well maintained so as to operate at the parameters for which it was designed.

2. *Definitions.*

(a) Quantitative fit test. The test is performed in a test chamber. The normal air-purifying element of the respirator is replaced by a high-efficiency particulate air (HEPA) filter in the case of particulate QNFT aerosols or a sorbent offering contaminant penetration protection equivalent to high-efficiency filters where the QNFT test agent is a gas or vapor.

(b) Challenge agent means the aerosol, gas or vapor introduced into a test chamber so that its concentration inside and outside the respirator may be measured.

(c) Test subject means the person wearing the respirator for quantitative fit testing.

(d) Normal standing position means standing erect and straight with arms down along the sides and looking straight ahead.

(e) Maximum peak penetration method means the method of determining test agent penetration in the respirator as determined by strip chart recordings of the test. The highest peak penetration for a given exercise is taken to be representative of average penetration into the respirator for that exercise.

(f) Average peak penetration method means the method of determining test agent penetration into the respirator utilizing a strip chart recorder, integrator, or computer. The agent penetration is determined by an average of the peak heights on the graph or by computer integration, for each exercise except the grimace exercise. Integrators or computers which calculate the actual test agent penetration into the respirator for each exercise will also be considered to meet the requirements of the average peak penetration method.

(g) "Fit Factor" means the ration of challenge agent concentration outside with respect to the inside of a respirator inlet covering (facepiece or enclosure).

3. *Apparatus.*

(a) Instrumentation. Aerosol generation, dilution, and measurement systems using corn oil or sodium chloride as test aerosols shall be used for quantitatives fit testing.

(b) Test chamber. The test chamber shall be large enough to permit all test subjects to perform freely all required exercises without distrubing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air, yet uniform in concentration throughout the chamber.

(c) When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particulate filter supplied by the same manufacturer.

(d) The sampling instrument shall be selected so that a strip chart record may be made of the test showing the rise and fall of the challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000. Integrators or computers which integrate the amount of test agent penetration leakage into the respirator for each exercise may be used provided a record of the readings is made.

(e) The combination of substitute air-purifying elements, challenge agent and challenge agent concentration in the test chamber shall be such that the test subject is not exposed in excess of an established exposure limit for the challenge agent at any time during the testing process.

(f) The sampling port on the test specimen respirator shall be placed and constructed so that no leakage occurs around the port (e.g. where the respirator is probed), a free air flow is allowed into the sampling line at all times and so that there is no interference with the fit or performance of the respirator.

(g) The test chamber and test set up shall permit the person administering the test to observe the test subject inside the chamber during the test.

(h) The equipment generating the challenge atmosphere shall maintain the concentration of challenge agent inside the test chamber constant to within a 10 percent variation for the duration of the test.

(i) The time lag (interval between an event and the recording of the event on the strip chart or computer or integrator) shall be kept to a minimum. There shall be a clear association between the occurrence of an event inside the test chamber and its being recorded.

(j) The sampling line tubing for the test chamber atmosphere and for the respirator sampling port shall be of equal diameter and of the same material. The length of the two lines shall be equal.

(k) The exhaust flow from the test chamber shall pass through a high-efficiency filter before release.

(l) When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.

(m) The limitations of instrument detection shall be taken into account when determining the fit factor.

(n) Test respirators shall be maintained in proper working order and inspected for deficiencies such as cracks, missing valves and gaskets, etc.

4. *Procedural Requirements.*

(a) When performing the initial positive or negative pressure test the sampling line shall be crimped closed in order to avoid air pressure leakage during either of these tests.

(b) An abbreviated screening isoamyl acetate test or irritant fume test may be utilized in order to quickly identify poor fitting respirators which passed the positive and/or negative pressure test and thus reduce the amount of QNFT time. When performing a screening isoamyl acetate test, combination high-efficiency organic vapor cartridges/canisters shall be used.

(c) A reasonably stable challenge agent concentration shall be measured in the test chamber prior to testing. For canopy or shower curtain type of test units the determination of the challenge agent stability may be established after the test subject has entered the test environment.

(d) Immediately after the subject enters the test chamber, the challenge agent

concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half mask or 1 percent for a full facepiece respirator.

(e) A stable challenge concentration shall be obtained prior to the actual start of testing.

(f) Respirator restraining straps shall not be overtightened for testing. The straps shall be adjusted by the wearer without assistance from other persons to give a reasonable comfortable fit typical of normal use.

(g) The test shall be terminated whenever any single peak penetration exceeds 5 percent for half masks and 1 percent for full facepiece respirators. The test subject shall be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate.

(h) In order to successfully complete a QNFT, three successful fit tests are required. The results of each of the three independent fit tests must exceed the minimum fit factor needed for the class of respirator (e.g. half mask respirator, full facepiece respirator).

(i) Calculation of fit factors.

(1) The fit factor shall be determined for the quantitative fit test by taking the ratio of the average chamber concentration to the concentration inside the respirator.

(2) The average test chamber concentration is the arithmetic average of the test chamber concentration at the beginning and of the end of the test.

(3) The concentration of the challenge agent inside the respirator shall be determined by one of the following methods:

(i) Average peak concentration.

(ii) Maximum peak concentration.

(iii) Integration by calculation of the area under the individual peak for each exercise. This includes computerized integration.

(j) Interpretation of test results. The fit factor established by the quantitative fit testing shall be the lowest of the three fit factor values calculated from the three required fit tests.

(k) The test subject shall not be permitted to wear a half mask, or full facepiece respirator unless a minimum fit factor equivalent to at least 10 times the hazardous exposure level is obtained.

(l) Filters used for quantitative fit testing shall be replaced at least weekly, or whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily (when used) or sooner if there is any indication of breakthrough by a test agent.

§ 1926.1029 Coke oven emissions.

(a) *Scope and application.* This section applies to the control of employee exposure to coke oven emissions, except that this section shall not apply to working conditions with regard to which other Federal agencies exercise statutory authority to prescribe or enforce standards affecting occupational safety and health.

(b) *Definitions.* For the purpose of this section:

Authorized person means any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees for the purpose of exercising the opportunity to observe monitoring and measuring procedures under paragraph (n) of this section.

Beehive oven means a coke oven in which the products of carbonization other than coke are not recovered, but are released into the ambient air.

Coke oven means a retort in which coke is produced by the destructive distillation or carbonization of coal.

Coke oven battery means a structure containing a number of slot-type coke ovens.

Coke oven emissions means the benzene-soluble fraction of total particulate matter present during the destructive distillation or carbonization of coal for the production of coke.

Director means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or his or her designee.

Emergency means any occurence such as, but not limited to, equipment failure which is likely to, or does, result in any massive release of coke oven emissions.

Existing coke oven battery means a battery in operation or under construction on January 20, 1977, and which is not a rehabilitated coke oven battery.

Rehabilitated coke oven battery means a battery which is rebuilt, overhauled, renovated, or restored such as from the pad up, after January 20, 1977.

Secretary means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

Stage charging means a procedure by which a predetermined volume of coal in each larry car hopper is introduced into an oven such that no more than two hoppers are discharging simultaneously.

Sequential charging means a procedure, usually automatically timed, by which a predetermined volume of coal in each larry car hopper is introduced into an oven such that no more than two hoppers commence or finish discharging simultaneously although, at some point, all hoppers are discharging simultaneously.

Pipeline charging means any apparatus used to introduce coal into an oven which uses a pipe or duct permanently mounted onto an oven and through which coal is charged.

Green plush means coke which when removed from the oven results in emissions due to the presence of unvolatilized coal.

(c) *Permissible exposure limit.* The employer shall assure that no employee in the regulated area is exposed to coke oven emissions at concentrations greater than 150 micrograms per cubic meter of air (150 $\mu g/m^3$), averaged over any 8-hour period.

(d) *Regulated areas.* (1) The employer shall establish regulated areas and shall limit access to them to authorized persons.

(2) The employer shall establish the following as regulated areas:

(i) The coke oven battery including topside and its machinery, pushside and its machinery, coke side and its machinery, and the battery ends; the wharf; and the screening station;

(ii) The beehive oven and its machinery.

(e) *Exposure monitoring and measurement*—(1) *Monitoring program.* (i) Each employer who has a place of employment where coke oven emissions are present shall monitor employees employed in the regulated area to measure their exposure to coke oven emissions.

(ii) The employer shall obtain measurements which are representative of each employee's exposure to coke oven emissions over an eight-hour period. All measurements shall determine exposure without regard to the use of respiratory protection.

(iii) The employer shall collect fullshift (for at least seven continuous hours) personal samples, including at least one sample during each shift for each battery and each job classification within the regulated areas including at least the following job classifications:

(A) Lidman;
(B) Tar chaser;
(C) Larry car operator;
(D) Luterman;
(E) Machine operator, coke side;
(F) Benchman, coke side;
(G) Benchman, pusher side;
(H) Heater;
(I) Quenching car operator;
(J) Pusher machine operator;
(K) Screening station operator;
(L) Wharfman;
(M) Oven patcher;
(N) Oven repairman;
(O) Spellman; and
(P) Maintenance personnel.

(iv) The employer shall repeat the monitoring and measurements required by this paragraph (e)(1) at least every three months.

(2) *Redetermination.* Whenever there has been a production, process, or control change which may result in new or additional exposure to coke oven emissions, or whenever the employer has any other reason to suspect an increase in employee exposure, the employer shall repeat the monitoring and measurements required by

paragraph (e)(1) of this section for those employees affected by such change or increase.

(3) *Employee notification.* (i) The employer shall notify each employee in writing of the exposure measurements which represent that employe's exposure within five working days after the receipt of the results of measurements required by paragraphs (e)(1) and (e)(2) of this section.

(ii) Whenever such results indicate that the representative employee exposure exceeds the permissible exposure limit, the employer shall, in such notification, inform each employee of that fact and of the corrective action being taken to reduce exposure to or below the permissible exposure limit.

(4) *Accuracy of measurement.* The employer shall use a method of monitoring and measurement which has an accuracy (with a confidence level of 95%) of not less than plus or minus 35% for concentrations of coke oven emissions greater than or equal to 150 $\mu g/m^3$.

(f) *Methods of compliance.* The employer shall control employee exposure to coke oven emmissions by the use of engineering controls, work practices and respiratory protection as follows:

(1) *Priority of compliance methods*—(i) *Existing coke oven batteries.* (A) The employer shall institute the engineering and work practice controls listed in paragraphs (f)(2), (f)(3) and (f)(4) of this section in existing coke oven batteries at the earliest possible time, but not later than January 20, 1980, except to the extent that the employer can establish that such controls are not feasible. In determining the earliest possible time for institution of engineering and work practice controls, the requirement, effective August 27, 1971, to implement feasible administrative or engineering controls to reduce exposures to coal tar pitch volatiles, shall be considered. Wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (g) of this section.

(B) The engineering and work practice controls required under paragraphs (f)(2), (f)(3) and (f)(4) of this section are minimum requirements generally applicable to all existing coke oven batteries. If, after implementing all controls required by paragraphs (f)(2), (f)(3) and (f)(4) of this section, or after January 20, 1980, whichever is sooner, employee exposures still exceed the permissible exposure limit, employers shall implement any other engineering and work practice controls necessary to reduce exposure to or below the permissible exposure limit except to the extent that the employer can establish that such controls are not feasible. Whenever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (g) of this section.

(ii) *New or rehabilitated coke oven batteries.* (A) The employer shall institute the best available engineering and work practice controls on all new or rehabilitated coke oven batteries to reduce and maintain employee exposures at or below the permissible exposure limit, except to the extent that the employer can establish that such controls are not feasible. Wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (g) of this section.

(B) If, after implementing all the engineering and work practice controls required by paragraph (f)(1)(ii)(A) of this section, employee exposures still exceed the permissible exposure limit, the employer shall implement any other engineering and work practice controls necessary to reduce exposure to or below the permissible exposure limit except to the extent that the employer can establish that such controls are not feasible. Wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (g) of this section.

(iii) *Beehive ovens.* (A) The employer shall institute engineering and work practice controls on all beehive ovens at the earliest possible time to reduce and maintain employee exposures at or below the permissible exposure limit, except to the extent that the employer can establish that such controls are not feasible. In determining the earliest possible time for institution of engineering and work practice controls, the requirement, effective August 27, 1971, to implement feasible administrative or engineering controls to reduce exposures to coal tar pitch volatiles, shall be considered. Wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (g) of this section.

(B) If, after implementing all engineering and work practice controls required by paragraph (f)(1)(iii)(A) of this section, employee exposures still exceed the permissible exposure limit, the employer shall implement any other engineering and work practice controls necessary to reduce exposures to or below the permissible exposure limit except to the extent that the employer can establish that such controls are not feasible. Whenever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (g) of this section.

(2) *Engineering controls*—(i) *Charging.* The employer shall equip and operate existing coke oven batteries with all of the following engineering controls to control coke oven emissions during charging operations:

(A) One of the following methods of charging:

(1) Stage charging as described in paragraph (f)(3)(i)(B) of this section; or

(2) Sequential charging as described in paragraph (f)(3)(i)(B) of this section except that paragraph (f)(3)(i)(B)*(3)(iv)* of this section does not apply to sequential charging; or

(3) Pipeline charging or other forms of enclosed charging in accordance with paragraph (f)(2)(i) of this section, except that paragraphs (f)(2)(i) (B), (D), (E), (F) and (H) of this section do not apply;

(B) Drafting from two or more points in the oven being charged, through the

use of double collector mains, or a fixed or moveable jumper pipe system to another oven, to effectively remove the gases from the oven to the collector mains;

(C) Aspiration systems designed and operated to provide sufficient negative pressure and flow volume to effectively move the gases evolved during charging into the collector mains, including sufficient steam pressure, and steam jets of sufficient diameter;

(D) Mechanical volumetric controls on each larry car hopper to provide the proper amount of coal to be charged through each charging hole so that the tunnel head will be sufficient to permit the gases to move from the oven into the collector mains;

(E) Devices to facilitate the rapid and continuous flow of coal into the oven being charged, such as stainless steel liners, coal vibrators or pneumatic shells;

(F) Individually operated larry car drop sleeves and slide gates designed and maintained so that the gases are effectively removed from the oven into the collector mains;

(G) Mechanized gooseneck and standpipe cleaners;

(H) Air seals on the pusher machine leveler bars to control air infiltration during charging; and

(I) Roof carbon cutters or a compressed air system or both on the pusher machine rams to remove roof carbon.

(ii) *Coking.* The employer shall equip and operate existing coke oven batteries with all of the following engineering controls to control coke oven emissions during coking operations;

(A) A pressure control system on each battery to obtain uniform collector main pressure;

(B) Ready access to door repair facilities capable of prompt and efficient repair of doors, door sealing edges and all door parts;

(C) An adequate number of spare doors available for replacement purposes;

(D) Chuck door gaskets to control chuck door emissions until such door is repaired, or replaced; and

(E) Heat shields on door machines.

(3) *Work practice controls*—(i) *Charging.* The employer shall operate existing coke oven batteries with all of the following work practices to control coke oven emissions during the charging operation:

(A) Establishment and implementation of a detailed, written inspection and cleaning procedure for each battery consisting of at least the following elements:

(1) Prompt and effective repair or replacement of all engineering controls;

(2) Inspection and cleaning of goosenecks and standpipes prior to each charge to a specified minimum diameter sufficient to effectively move the evolved gases from the oven to the collector mains;

(3) Inspection for roof carbon build-up prior to each charge and removal of roof carbon as necessary to provide an adequate gas channel so that the gases are effectively moved from the oven into the collector mains;

(4) Inspection of the steam aspiration system prior to each charge so that sufficient pressure and volume is maintained to effectively move the gases from the oven to the collector mains;

(5) Inspection of steam nozzles and liquor sprays prior to each charge and cleaning as necessary so that the steam nozzles and liquor sprays are clean;

(6) Inspection of standpipe caps prior to each charge and cleaning and luting or both as necessary so that the gases are effectively moved from the oven to the collector mains; and

(7) Inspection of charging holes and lids for cracks, warpage and other defects prior to each charge and removal of carbon to prevent emissions, and application of luting material to standpipe and charging hole lids where necessary to obtain a proper seal.

(B) Establishment and implementation of a detailed written charging procedure, designed and operated to eliminate emissions during charging for each battery, consisting of at least the following elements:

(1) Larry car hoppers filled with coal to a predetermined level in accordance with the mechanical volumetric controls required under paragraph (f)(2)(i)(D) of this section so as to maintain a sufficient gas passage in the oven to be charged;

(2) The larry car aligned over the oven to be charged, so that the drop sleeves fit tightly over the charging holes; and

(3) The oven charged in accordance with the following sequence of requirements:

(i) The aspiration system turned on;

(ii) Coal charged through the outermost hoppers, either individually or together depending on the capacity of the aspiration system to collect the gases involved;

(iii) The charging holes used under paragraph (f)(3)(i)(B)*(3)(ii)* of this section relidded or otherwise sealed off to prevent leakage of coke oven emissions;

(iv) If four hoppers are used, the third hopper discharged and relidded or otherwise sealed off to prevent leakage of coke oven emissions;

(v) The final hopper discharged until the gas channel at the top of the oven is blocked and then the chuck door opened and the coal leveled;

(vi) When the coal from the final hopper is discharged and the leveling operation complete, the charging hole relidded or otherwise sealed off to prevent leakage of coke oven emissions; and

(vii) The aspiration system turned off only after the charging holes have been closed.

(C) Establishment and implementation of a detailed written charging procedure, designed and operated to eliminate emissions during charging of each pipeline or enclosed charged battery.

(ii) *Coking.* The employer shall operate existing coke oven batteries pursuant to a detailed written procedure established and implemented for the control of coke oven emissions during coking, consisting of at least the following elements:

(A) Checking oven back pressure controls to maintain uniform pressure conditions in the collecting main;

(B) Repair, replacement and adjustment of oven doors and chuck doors and replacement of door jambs so as to provide a continuous metal-to-metal fit;

(C) Cleaning of oven doors, chuck doors and door jambs each coking cycle so as to provide an effective seal;

(D) An inspection system and corrective action program to control door emissions to the maximum extent possible; and

(E) Luting of doors that are sealed by luting each coking cycle and reluting, replacing or adjusting as necessary to control leakage.

(iii) *Pushing.* The employer shall operate existing coke oven batteries with the following work practices to control coke oven emissions during pushing operations:

(A) Coke and coal spillage quenched as soon as practicable and not shoveled into a heated oven; and

(B) A detailed written procedure for each battery established and implemented for the control of emissions during pushing consisting of the following elements:

(1) Dampering off the ovens and removal of charging hole lids to effectively control coke oven emissions during the push;

(2) Heating of the coal charge uniformly for a sufficient period so as to obtain proper coking including preventing green pushes;

(3) Prevention of green pushes to the maximum extent possible;

(4) Inspection, adjustment and correction of heating flue temperatures and defective flues at least weekly and

after any green push, so as to prevent green pushes;

(5) Cleaning of heating flues and related equipment to prevent green pushes, at least weekly and after any green push.

(iv) *Maintenance and repair.* The employer shall operate existing coke oven batteries pursuant to a detailed written procedure of maintenance and repair established and implemented for the effective control of coke oven emissions consisting of the following elements:

(A) Regular inspection of all controls, including goosenecks, standpipes, standpipe caps, charging hold lids and castings, jumper pipes and air seals for cracks, misalignment or other defects and prompt implementation of the necessary repairs as soon as possible;

(B) Maintaining the regulated area in a neat, orderly condition free of coal and coke spillage and debris;

(C) Regular inspection of the damper system, aspiration system and collector main for cracks or leakage, and prompt implementation of the necessary repairs;

(D) Regular inspection of the heating system and prompt implementation of the necessary repairs;

(E) Prevention of miscellaneous fugitive topside emissions;

(F) Regular inspection and patching of oven brickwork;

(G) Maintenance of battery equipment and controls in good working order;

(H) Maintenance and repair of coke oven doors, chuck doors, door jambs and seals; and

(I) Repairs instituted and completed as soon as possible, including temporary repair measures instituted and completed where necessary, including but not limited to:

(1) Prevention of miscellaneous fugitive topside emissions; and

(2) Chuck door gaskets, which shall be installed prior to the start of the next coking cycle.

(4) *Filtered air.* (i) The employer shall provided positive-pressure, temperature controlled filtered air for larry car, pusher machine, door machine, and quench car cabs.

(ii) The employer shall provide standby pulpits on the battery topside, at the wharf, and at ther screening station, equipped with positive-pressure, temperature controlled filtered air.

(5) *Emergencies.* Whenever an emergency occurs, the next coking cycle may not begin until the cause of the emergency is determined and corrected, unless the employer can establish that it is necessary to initiate the next coking cycle in order to determine the cause of the emergency.

(6) *Compliance program.* (i) Each employer shall establish and implement a written program to reduce exposures solely by means of the engineering and work practice controls required in paragraph (f) of this section.

(ii) The written program shall include at least the following:

(A) A description of each coke oven operation by battery, including work force and operating crew, coking time, operating procedures and maintenance practices;

(B) Engineering plans and other studies used to determine the controls for the coke battery;

(C) A report of the technology considered in meeting the permissible exposure limit;

(D) Monitoring data obtained in accordance with paragraph (e) of this section;

(E) A detailed schedule for the implementation of the engineering and work practice controls required in paragraph (f) of this section; and

(F) Other relevant information.

(iii) If, after implementing all controls required by paragraph (f)(2)–(f)(4) of this section, or after January 20, 1980, whichever is sooner, or after completion of a new or rehabilitated battery the permissible exposure limit is still exceeded, the employer shall develop a detailed written program and schedule for the implementation of any additional engineering controls and work practices necessary to reduce exposure to or below the permissible exposure limit.

(iv) Written plans for such programs shall be submitted, upon request, to the Secretary and the Director, and shall be available at the worksite for examination and copying by the Secretary, the Director, and the authorized employee representative. The plans required under paragraph (f)(6) of this section shall be revised and updated at least every six months to reflect the current status of the program.

(7) *Training in compliance procedures.* The employer shall incorporate all written procedures and schedules required under this paragraph (f) in the information and training program required under paragraph (k) of this section and, where appropriate, post in the regulated area.

(g) *Respiratory protection*—(1) *General.* (i) Where respiratory protection is required under this section, the employer shall provide and assure the use of respirators which comply with the requirements of this paragraph (g). Compliance with the permissible exposure limit may not be achieved by the use of respirators except:

(A) During the time period necessary to install or implement feasible engineering and work practice controls; or

(B) In work operations such as maintenance and repair activity in which engineering and work practice controls are technologically not feasible; or

(C) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the permissible exposure limit; or

(D) In emergencies.

(ii) Notwithstanding any other requirement of this section, until January 20, 1978, the wearing of respirators shall be at the discretion of each employee where the employee is not in the vicinity of visible emissions.

(2) *Selection.* (i) Where respirators are required under this section, the employer shall select, provide and assure the use of the appropriate respirator or combination of respirators from Table I below.

TABLE I.—RESPIRATORY PROTECTION FOR COKE OVEN EMISSIONS

Airborne concentration of coke oven emissions	Required respirator
(a) Any concentration.	*(1)* A Type C supplied air respirator operated in pressure demand or other positive pressure or continuous flow mode; or *(2)* A powered air-purifying particulate filter respirator for dust and mist or *(3)* A powered air-purifying particulate filter respirator or combination chemical cartridge and particulate filter respirator for coke oven emissions.
(b) Concentrations not greater than 1500 $\mu g/m^3$.	*(1)* Any particulate filter respirator for dust and mist except single-use respirator; or *(2)* Any particulate filter respirator or combination chemical cartridge and particulate filter respirator for coke oven emissions; or *(3)* Any respirator listed in paragraph (g)(2)(i)*(a)* of this section.

(ii) Not later than January 20, 1978, whenever respirators are required by this section for concentrations not greater than 1500 $\mu g/m^3$, the employer shall provide, at the option of each

affected employee, either a particulate filter respirator as provided in paragraph (g)(2)(i)(B) of this section, or a powered air-purifying respirator as provided in paragraph (g)(2)(i)(A) of this section.

(iii) The employer shall select respirators from among those approved for protection against dust and mist by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR part 11, except that not later than January 20, 1979, the employer shall select respirators from among those approved by NIOSH for protection against coke oven emissions.

(3) *Respirator program.* The employer shall institute a respiratory protection program in accordance with § 1926.103 of this part.

(4) *Respirator usage.* (i) The employer shall assure that the respirator issued to the employee exhibits minimum facepiece leakage and that the respirator is fitted properly.

(ii) The employer shall allow each employee who uses a filter respirator to change the filter elements whenever an increase in breathing resistance is detected and shall maintain an adequate supply of filter elements for this purpose.

(iii) The employer shall allow employees who wear respirators to wash their face and respirator facepiece to prevent skin irritation associated with respirator use.

(h) *Protective clothing and equipment*—(1) *Provision and use.* The employer shall provide and assure the use of appropriate protective clothing and equipment, such as but not limited to:

(i) Flame resistant jacket and pants;

(ii) Flame resistant gloves;

(iii) Face shields or vented goggles which comply with § 1926.102(a)(6) of this part;

(iv) Footwear providing insulation from hot surfaces for footwear;

(v) Safety shoes which comply with § 1926.96 of this title; and

(vi) Protective helmets which comply with § 1926.100 of this part.

(2) *Cleaning and replacement.* (i) The employer shall provide the protective clothing required by paragraphs (h)(1)(i) and (ii) of this section in a clean and dry condition at least weekly.

(ii) The employer shall clean, launder, or dispose of protective clothing required by paragraphs (h)(1)(i) and (ii) of this section.

(iii) The employer shall repair or replace the protective clothing and equipment as needed to maintain their effectiveness.

(iv) The employer shall assure that all protective clothing is removed at the completion of a work shift only in change rooms prescribed in paragraph (i)(1) of this section.

(v) The employer shall assure that contaminated protective clothing which is to be cleaned, laundered, or disposed of, is placed in a closable container in the change room.

(vi) The employer shall inform any person who cleans or launders protective clothing required by this section, of the potentially harmful effects of exposure to coke oven emissions.

(i) *Hygiene facilities and practices*—(1) *Change rooms.* The employer shall provide clean change rooms equipped with storage facilities for street clothes and separate storage facilities for protective clothing and equipment whenever employees are required to wear protective clothing and equipment in accordance with paragraph (h)(1) of this section.

(2) *Showers.* (i) The employer shall assure that employees working in the regulated area shower at the end of the work shift.

(ii) The employer shall provide shower facilities in accordance with § 1926.51(f)(4) of this part.

(3) *Lunchrooms.* The employer shall provide lunchroom facilities which have a temperature controlled, positive pressure, filtered air supply, and which are readily accessible to employees working in the regulated area.

(4) *Lavatories.* (i) The employer shall assure that employees working in the regulated area wash their hands and face prior to eating.

(ii) The employer shall provide lavatory facilities in accordance with § 1926.51(f)(2) and (3) of this part.

(5) *Prohibition of activities in the regulated area.* (i) The employer shall assure that in the regulated area, food or beverages are not present or consumed, smoking products are not present or used, and cosmetics are not applied, except that these activities may be conducted in the lunchrooms, change rooms and showers required under paragraphs (i)(1)–(i)(3) of this section.

(ii) Drinking water may be consumed in the regulated area.

(j) *Medical surveillance*—(1) *General requirements.* (i) Each employer shall institute a medical surveillance program for all employees who are employed in a regulated area at least 30 days per year.

(ii) This program shall provide each employee covered under paragraph (j)(1)(i) of this section with an opportunity for medical examinations in accordance with this paragraph (j).

(iii) The employer shall inform any employee who refuses any required medical examination of the possible health consequences of such refusal and shall obtain a signed statement from the employee indicating that the employee understands the risk involved in the refusal to be examined.

(iv) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and are provided without cost to the employee.

(2) *Initial examinations.* At the time of initial assignment to a regulated area or upon the institution of the medical surveillance program, the employer shall provide a medical examination for employees covered under paragraph (j)(1)(i) of this section including at least the following elements:

(i) A work history and medical history which shall include smoking history and the presence and degree of respiratory symptoms, such as breathlessness, cough, sputum production, and wheezing;

(ii) A 14"x17" (35.56–43.18 cm) posterior-anterior chest x-ray and International Labour Office UICC/Cincinnati (ILO U/C) rating;

(iii) Pulmonary function tests including forced vital capacity (FVC) and forced expiratory volume at one second (FEV 1.0) with recording of type of equipment used;

(iv) Weight;

(v) A skin examination;

(vi) Urinalysis for sugar, albumin, and hematuria;

(vii) A sputum cytology examination; and

(viii) A urinary cytology examination.

(3) *Periodic examinations.* (i) The employer shall provide the examinations specified in paragraphs (j)(2)(i)–(vi) of this section at least annually for employees covered under paragraph (j)(1)(i) of this section.

(ii) The employer shall provide the examinations specified in paragraphs (j)(2)(i)–(viii) of this section at least semi-annually for employees 45 years of age or older or with five (5) or more years employment in the regulated area.

(iii) Whenever an employee who is 45 years of age or older or with five (5) or more years employment in the regulated area transfers or is transferred from employment in a regulated area, the employer shall continue to provide the examinations specified in paragraphs (j)(2)(i)–(viii) of this section semi-annually, as long as that employee is employed by the same employer or a successor employer.

(iv) Whenever an employee has not taken the examinations specified in paragraphs (j)(3)(i)–(iii) of this section with the six (6) months preceding the

termination of employment the employer shall provide such examinations to the employee upon termination of employment.

(4) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this regulation and its Appendixes;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's exposure level or estimated exposure level;

(iv) A description of any personal protective equipment used or to be used; and

(v) Information from previous medical examinations of the affected employee which is not readily available to the examining physician.

(5) *Physician's written opinion.* (i) The employer shall obtain a written opinion from the examining physician which shall include:

(A) The results of the medical examinations;

(B) The physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of the employee's health from exposure to coke oven emissions;

(C) Any recommended limitations upon the employee's exposure to coke oven emissions or upon the use of protective clothing or equipment such as respirators; and

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further explanation or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure.

(iii) The employer shall provide a copy of the written opinion to the affected employee.

(k) *Employee information and training*—(1) *Training program.* (i) The employer shall institute a training program for employees who are employed in the regulated area and shall assure their participation.

(ii) The training program shall be provided as of January 27, 1977 for employees who are employed in the regulated area at that time or at the time of initial assignment to a regulated area.

(iii) The training program shall be provided at least annually for all employees who are employed in the regulated area, except that training regarding the occupational safety and health hazards associated with exposure to coke oven emissions and the purpose, proper use, and limitations of respiratory protective devices shall be provided at least quarterly until January 20, 1978.

(iv) The training program shall include informing each employee of:

(A) The information contained in the substance information sheet for coke oven emissions (Appendix A);

(B) The purpose, proper use, and limitations of respiratory protective devices required in accordance with paragraph (g) of this section;

(C) The purpose for and a description of the medical surveillance program required by paragraph (j) of this section including information on the occupational safety and health hazards associated with exposure to coke oven emissions;

(D) A review of all written procedures and schedules required under paragraph (f) of this section; and

(E) A review of this standard.

(2) *Access to training materials.* (i) The employer shall make a copy of this standard and its appendixes readily available to all employees who are employed in the regulated area.

(ii) The employer shall provide upon request all materials relating to the employee information and training program to the Secretary and the Director.

(l) *Precautionary signs and labels*—(1) *General.* (i) The employer may use labels or signs required by other statutes, regulations or ordinances in addition to, or in combination with, signs and labels required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign required by this paragraph which contradicts or detracts from the effects of the required sign.

(iii) The employer shall assure that signs required by this paragraph are illuminated and cleaned as necessary so that the legend is readily visible.

(2) *Signs.* (i) The employer shall post signs in the regulated area bearing the legends:

DANGER

CANCER HAZARD

AUTHORIZED PERSONNEL ONLY

NO SMOKING OR EATING

(ii) In addition, not later than January 20, 1978, the employer shall post signs in the areas where the permissible exposure limit is exceeded bearing the legend:

DANGER

RESPIRATOR REQUIRED

(3) *Labels.* The employer shall apply precautionary labels to all containers of protective clothing contaminated with coke oven emissions bearing the legend:

CAUTION

CLOTHING CONTAMINATED WITH COKE EMISSIONS

DO NOT REMOVE DUST BY BLOWING OR SHAKING

(m) *Recordkeeping*—(1) *Exposure measurements.* The employer shall establish and maintain an accurate record of all measurements taken to monitor employee exposure to coke oven emissions required in paragraph (e) of this section.

(i) This record shall include:

(A) Name, social security number, and job classification of the employees monitored;

(B) The date(s), number, duration and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure where applicable;

(C) The type of respiratory protective devices worn, if any;

(D) A description of the sampling and analytical methods used and evidence of their accuracy; and

(E) The environmental variables that could affect the measurement of employee exposure.

(ii) The employer shall maintain this record for at lest 40 years or for the duration of employment plus 20 years, whichever is longer.

(2) *Medical surveillance.* The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by paragraph (j) of this section.

(i) The record shall include:

(A) The name, social security number, and description of duties of the employee;

(B) A copy of the physician's written opinion;

(C) The signed statement of any refusal to take a medical examination under paragraph (j)(1)(ii) of this section; and

(D) Any employee medical complaints related to exposure to coke oven emissions.

(ii) The employer shall keep, or assure that the examining physician keeps, the following medical records:

(A) A copy of the medical examination results including medical and work history required under paragraph (j)(2) of this section;

(B) A description of the laboratory procedures used and a copy of any standards or guidelines used to interpret the test results;

(C) The initial x-ray;

(D) The x-rays for the most recent five (5) years;

(E) Any x-ray with a demonstrated abnormality and all subsequent x-rays;

(F) The initial cytologic examination slide and written description;

(G) The cytologic examination slide and written description for the most recent 10 years; and

(H) Any cytologic examination slides with demonstrated atypia, if such atypia persists for 3 years, and all subsequent slides and written descriptions.

(iii) The employer shall maintain medical records required under paragraph (m)(2) of this section for at least 40 years, or for the duration of employment plus 20 years, whichever is longer.

(3) *Availability.* (i) The employer shall make available upon request all records required to be maintained by paragraph (m) of this section to the Secretary and the Director for examination and copying.

(ii) Employee exposure measurement records and employee medical records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1926.34 (a)–(e) and (g)–(i).

(4) *Transfer of records.* (i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by paragraph (m) of this section.

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, these records shall be transmitted by registered mail to the Director.

(iii) At the expiration of the retention period for the records required to be maintained under paragraphs (m)(1) and (m)(2) of this section, the employer shall transmit these records by registered mail to the Director or shall continue to retain such records.

(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in 29 CFR 1926.34(h).

(n) *Observation of monitoring*—(1) *Employee observation.* The employer shall provide affected employees or their representatives an opportunity to observe any measuring or monitoring of employee exposure to coke oven emissions conducted pursuant to paragraph (e) of this section.

(2) *Observation procedures.* (i) Whenever observation of the measuring or monitoring of employee exposure to coke oven emissions requires entry into an area where the ues of protective clothing or equipment is required, the employer shall provide the observer with and assure the use of such equipment and shall require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the measurement, observers shall be entitled to:

(A) An Explanation of the measurement procedures;

(B) Observe all steps related to the measurement of coke oven emissions performed at the place of exposure; and

(C) Record the results obtained.

(o) *Effective date.* This standard shall become effective January 20, 1977.

(p) *Appendices.* The information contained in the appendixes to this section is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligation.

(Approved by the Office of Management and Budget under control number 1218–0128)

Appendix A to § 1926.1129—Coke Oven Emissions Substance Information Sheet

I. Substance Identification

A. *Substance:* Coke Oven Emissions

B. *Definition:* The benzene-soluble fraction of total particulate matter present during the destructive distillation or carbonization of coal for the production of coke.

C. *Permissible Exposure Limit:* 150 micrograms per cubic meter of air determined as an average over an 8-hour period.

D. *Regulated areas:* Only employees authorized by your employer should enter a regulated area. The employer is required to designate the following areas as regulated areas: the coke oven battery, including topside and its machinery, pushside and its machinery, cokeside and its machinery, and the battery ends; the screening station; and the wharf; and the beehive ovens and their machinery.

II. Health hazard data

Exposure to coke oven emissions is a cause of lung cancer, and kidney cancer, in humans. Although there have not been an excess number of skin cancer cases in humans, repeated skin contact with coke oven emissions should be avoided.

III. Protective clothing and equipment

A. *Respirators:* Respirators will be provided by your employer for routine use if your employer is in the process of implementing engineering and work practice controls or where engineering and work practice controls are not feasible or insufficient to reduce exposure to or below the PEL. You must wear respirators for non-routine activities or in emergency situations where you are likely to be exposed to levels of coke oven emissions in excess of the permissible exposure limit. Until January 20, 1978, the routine wearing of respirators is voluntary. Until that date, if you choose not to wear a respirator you do not have to do so. You must still have your respirator with you and you must still wear it if you are near visible emissions. Since how well your respirator fits your face is very important, your employer is required to conduct fit tests to make sure the respirator seals properly when you wear it. These tests are simple and rapid and will be explained to you during your training sessions.

B. *Protective clothing:* Your employer is required to provide, and you must wear, appropriate, clean, protective clothing and equipment to protect your body from repeated skin contact with coke oven emissions and from the heat generated during the coking process. This clothing should include such items as jacket and pants and flame resistant gloves. Protective equipment should include face shield or vented goggles, protective helmets and safety shoes, insulated from hot surfaces where appropriate.

IV. Hygiene facilities and practices

You must not eat, drink, smoke, chew gum or tobacco, or apply cosmetics in the regulated area, except that drinking water is permitted. Your employer is required to provide lunchrooms and other areas for these purposes.

Your employer is required to provide showers, washing facilities, and change rooms. If you work in a regulated area, you must wash your face, and hands before eating. You must shower at the end of the work shift. Do not take used protective clothing out of the change rooms without your employer's permission. Your employer is required to provide for laundering or cleaning of your protective clothing.

V. Signs and labels

Your employer is required to post warning signs and labels for your protection. Signs must be posted in regulated areas. The signs must warn that a cancer hazard is present, that only authorized employees may enter the area, and that no smoking or eating is allowed. In regulated areas where coke oven emissions are above the permissible exposure limit, the signs should also warn that respirators must be worn.

VI. Medical examinations

If you work in a regulated area at least 30 days per year, your employer is required to provide you with a medical examination every year. The medical examination must include a medical history, a chest x-ray; pulmonary function test; weight comparison; skin examination; a urinalysis and a urine and sputum cytology exam for the early detection of urinary or lung cancer. The cytology exams are only included in the initial exam until you are either 45 years or older or have 5 or more years employment in the regulated areas when the medical exams including these tests are to be given every sixth months. The examining physician will provide a written opinion to your employer containing the results of the medical exams. You should also receive a copy of this opinion.

VII. Observation of monitoring

Your employer is required to monitor your exposure to coke oven emissions and you are entitled to observe the monitoring procedure. You are entitled to receive an explanation of the measurement procedure, observe the steps taken in the measurement procedure,

and to record the results obtained. When the monitoring procedure is taking place in an area where respirators or personal protective clothing and equipment are required to be worn, you must also be provided with and must wear the protective clothing and equipment.

VIII. Access to records

You or your representative are entitled to records of your exposure to coke oven emissions upon request to your employer. Your medical examination records can be furnished to your physician upon request to your employer.

IX. Training and education

Additional information on all of these items plus training as to hazards of coke oven emissions and the engineering and work practice controls associated with your job will also be provided by your employer.

Appendix B to § 1926.1129—Industrial Hygiene and Medical Surveillance Guidelines

I. Industrial Hygiene guidelines

A. *Sampling* (Benzene-Soluble Fraction Total Particulate Matter).

Samples collected should be full shift (at least 7-hour) samples. Sampling should be done using a personal sampling pump with pulsation damper at a flow rate of 2 liters per minute. Samples should be collected on 0.8 micrometer pore size silver membrane filters (37 mm diameter) preceded by Gelman glass fiber type A–E filters encased in three-piece plastic (polystyrene) field monitor cassettes. The cassette face cap should be on and the plug removed. The rotameter should be checked every hour to ensure that proper flow rates are maintained.

A minimum of three full-shift samples should be collected for each job classification on each battery, at least one from each shift. If disparate results are obtained for particular job classification, sampling should be repeated. It is advisable to sample each shift on more than one day to account for environmental variables (wind, precipitation, etc.) which may affect sampling. Differences in exposures among different work shifts may indicate a need to improve work practices on a particular shift. Sampling results from different shifts for each job classification should not be averaged. Multiple samples from same shift on each battery may be used to calculate an average exposure for a particular job classification.

B. *Analysis.*

1. All extraction glassware is cleaned with dichromic acid cleaning solution, rinsed with tap water, then dionized water, acetone, and allowed to dry completely. The glassware is rinsed with nanograde benzene before use. The Teflon cups are cleaned with benzene then with acetone.

2. Pre-weigh the 2 ml Teflon cups to one hundredth of a milligram (0.01 mg) on a autobalance AD 2 Tare weight of the cups is about 50 mg.

3. Place the silver membrane filter and glass fiber filter into a 15 ml test tube.

4. Extract with 5 ml of benzene for five minutes in an ultrasonic cleaner.

5. Filter the extract in 15 ml medium glass fritted funnels.

6. Rinse test tube and filters with two 1.5 ml aliquots of benzene and filter through the fritted glass funnel.

7. Collect the extract and two rinses in a 10 ml Kontes graduated evaporative concentrator.

8. Evaporate down to 1 ml while rinsing the sides with benzene.

9. Pipet 0.5 ml into the Teflon cup and evaporate to dryness in a vacuum oven at 40° C for 3 hours.

10. Weigh the Teflon cup and the weight gain is due to the benzene soluble residue in half the Sample.

II. Medical surveillance guidelines

A. *General.*

The minimum requirements for the medical examination for coke oven workers are given in paragraph (j) of the standard.

The initial examination is to be provided to all coke oven workers who work at least 30 days in the regulated area. The examination includes at 14" X 17" (35.56–43.18 cm) posterior-anterior chest x-ray and a ILO/UC rating to assure some standardization of x-ray reading, pulmonary function tests (FVC and FEV 1.0), weight, urinalysis, skin examination and a sputum and urinary cytologic examination. These tests need serve as the baseline for comparing the employee's future test results. Periodic exams include all the elements of the initial exams except that the cytologic tests are to be performed only on those employees who are 45 years of age or older or who have worked for 5 or more years in the regulated area; periodic exams are to be performed semiannually for this group instead of annually. The examination contents are minimum requirements, additional tests such as lateral and oblique x-rays or additional pulmonary function tests may be performed if deemed necessary.

B. *Pulmonary function tests.*

Pulmonary function tests should be performed in a manner which minimizes subject and operator bias. There has been shown to be learning effects with regard to the results obtained from certain tests, such as FEV 1.0. Best results can be obtained by multiple trials for each subject. The best of three trials or the average of the last three of five trials may be used in obtaining reliable results. The type of equipment used (manufacturer, model, etc.) should be recorded with the results as reliability and accuracy varies and such information may be important in the evaluation of test results. Care should be exercised to obtain the best possible testing equipment.

C. *Sputum cytology.*

Sputum can be collected by aerosol inhalation during the medical exam or by spontaneous early morning cough at home. Sputum is induced by transoral inhalation of an aerosolized solution of eight percent (8%) sodium chloride in water. After inhaling as few as three to five breaths the subject usually yields an adequate sputum specimen. A minimum of three samples should be collected by the subject at home. All sputum should be collected directly into sixty percent (60%) alcohol.

Scientific evidence suggests that chest x-rays and sputum cytology should be used together as screening tests for lung cancer in high risk populations, such as coke oven workers. The tests are to be performed every six months on workers who are 45 years of age or older or have worked in the regulated area for 5 or more years. Since the tests seem to be complementary, it may be advantageous to alternate the test procedures. For instance, chest x-rays could be obtained in June and December and sputum cytologys could be obtained in March and September. Facilities for providing necessary diagnostic investigation should be readily available as well as chest physicians, surgeons, radiologists, pathologists and immunotherapists to provide any necessary treatment services.

§ 1926.1144 1,2-dibromo-3-chloropropane.

(a) *Scope and application.* (1) This section applies to occupational exposure to 1,2-dibromo-3-chloropropane (DBCP).

(2) This section does not apply to:

(i) Exposure to DBCP which results solely from the application and use of DBCP as a pesticide; or

(ii) The storage, transportation, distribution or sale of DBCP in intact containers sealed in such a manner as to prevent exposure to DBCP vapors or liquid, except for the requirements of paragraphs (i), (n) and (o) of this section.

(b) *Definitions. Authorized person* means any person required by his duties to be present in regulated areas and authorized to do so by his employer, by this section, or by the Act. *Authorized person* also includes any person entering such areas as a designated representative of employees exercising an opportunity to observe employee exposure monitoring.

DBCP means 1,2-dibromo-3-chloropropane, Chemical Abstracts Service Registry Number 96–12–8, and includes all forms of DBCP.

Director means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Emergency means any occurrence such as, but not limited to equipment failure, rupture of containers, or failure of control equipment which may, or does, result in an unexpected release of DBCP.

OSHA Area Office means the Area Office of the Occupational Safety and Health Administration having jurisdiction over the geographic area where the affected workplace is located.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

(c) *Permissible exposure limit*—(1) *Inhalation.* The employer shall assure that no employee is exposed to an

airborne concentration of DBCP in excess of 1 part DBCP per billion parts of air (ppb) as an 8-hour time-weighted average.

(2) *Dermal and eye exposure.* The employer shall assure that no employee is exposed to eye or skin contact with DBCP.

(d) *Notification of use.* Within ten (10) days following the introduction of DBCP into the workplace, every employer who has a workplace where DBCP is present, shall report the following information to the nearest OSHA Area Office for each such workplace;

(1) The address and location of the workplace:

(2) A brief description of each process or operation which may result in employee exposure to DBCP;

(3) The number of employees engaged in each process or operation who may be exposed to DBCP and an estimate of the frequency and degree of exposure that occurs; and

(4) A brief description of the employer's safety and health program as it relates to limitation of employee exposure to DBCP.

(e) *Regulated areas.* (1) The employer shall establish, within each place of employment, regulated areas wherever DBCP concentrations are in excess of the permissible exposure limit.

(2) The employer shall limit access to regulated areas to authorized persons.

(f) *Exposure monitoring*—(1) *General.* (i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to DBCP over an 8-hour period.

(ii) For the purposes of this paragraph, employee exposure is that exposure which would occur if the employee were not using a respirator.

(2) *Initial.* Each employer who has a place of employment in which DBCP is present, shall monitor each workplace and work operation to accurately determine the airborne concentrations of DBCP to which employees may be exposed.

(3) *Frequency.* (i) If the monitoring required by this section reveals employee exposures to be below the permissible exposure limit, the employer shall repeat these measurements at least quarterly.

(ii) If the monitoring required by this section reveals employee exposures to be in excess of the permissible exposure limit, the employer shall repeat these measurements for each such employee at least monthly. The employer shall continue monthly monitoring until at least two consecutive measurements, taken at least seven (7) days apart, are below the permissible exposure limit. Thereafter the employer shall monitor at least quarterly.

(4) *Additional.* Whenever there has been a production, process, control, or personnel change which may result in any new or additional exposure to DBCP, or whenever the employer has any reason to suspect new or additional exposures to DBCP, the employer shall monitor the employees potentially affected by such change for the purpose of redetermining their exposure.

(5) *Employee notification.* (i) Within five (5) working days after the receipt of monitoring results, the employer shall notify each employee in writing of the measurements which represent the employee's exposure.

(ii) Whenever the results indicate that employee exposure exceeds the permissible exposure limit, the employer shall include in the written notice a statement that the permissible exposure limit was exceeded and a description of the corrective action being taken to reduce exposure to or below the permissible exposure limit.

(6) *Accuracy of measurement.* The employer shall use a method of measurement which has an accuracy, to a confidence level of 95 percent, of not less than plus or minus 25 percent for concentrations of DBCP at or above the permissible exposure limit.

(g) *Methods of compliance*—(1) *Priority of compliance methods.* The employer shall institute engineering and work practice controls to reduce and maintain employee exposures to DBCP at or below the permissible exposure limit, except to the extent that the employer establishes that such controls are not feasible. Where feasible engineering and work practice controls are not sufficient to reduce employee exposures to within the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls, and shall supplement them by use of respiratory protection.

(2) *Compliance program.* (i) The employer shall establish and implement a written program to reduce employee exposures to DBCP to or below the permissible exposure limit solely by means of engineering and work practice controls as required by paragraph (g)(1) of this section.

(ii) The written program shall include a detailed schedule for development and implementation of the engineering and work practice controls. These plans shall be revised at least every six months to reflect the current status of the program.

(iii) Written plans for these compliance programs shall be submitted upon request to the Assistant Secretary and the Director, and shall be available at the worksite for examination and copying by the Assistant Secretary, the Director, and any affected employee or designated representative of employees.

(iv) The employer shall institute and maintain at least the controls described in his most recent written compliance program.

(h) *Respirators*—(1) *General.* Where respiratory protection is required under this section, the employer shall select, provide and assure the proper use of respirators. Respirators shall be used in the following circumstances:

(i) During the period necessary to install or implement feasible engineering and work practice controls; or

(ii) During maintenance and repair activities in which engineering and work practice controls are not feasible; or

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the permissible exposure limit; or

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respirators are required under this section, the employer shall select and provide, at no cost to the employee, the appropriate respirator from Table 1 below and shall assure that the employee uses the respirator provided.

(ii) The employer shall select respirators from among those approved by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR Part 11.

TABLE 1—RESPIRATORY PROTECTION FOR DBCP

Airborne concentration of DBCP or condition of use	Respirator type
(a) Less than or equal to 10 ppb.	(1) Any supplied-air respirator; or (2) any self-contained breathing apparatus.
(b) Less than or equal to 50 ppb.	(1) Any supplied-air respirator with full facepiece, helmet, or hood; or (2) any self-contained breathing apparatus with full facepiece.
(c) Less than or equal to 1,000 ppb.	(1) A Type C supplied-air respirator operated in pressure-demand or other positive pressure or continuous flow mode.

TABLE 1—RESPIRATORY PROTECTION FOR DBCP—Continued

Airborne concentration of DBCP or condition of use	Respirator type
(d) Less than or equal to 2,000 ppb.	(1) A Type C supplied-air respirator with full facepiece operated in pressure-demand or other positive pressure mode, or with full facepiece, helmet, or hood operated in continuous flow mode.
(e) Greater than 2,000 ppb or entry and escape from unknown concentrations.	(1) A combination respirator which includes a Type C supplied-air respirator with full facepiece operated in pressure-demand or other positive pressure or continuous flow mode and an auxiliary self-contained breathing apparatus operated in pressure-demand or positive pressure mode; or (2) a self-contained breathing apparatus with full facepiece operated in pressure-demand or other positive pressure mode.
(f) Firefighting	(1) A self-contained breathing apparatus with full facepiece operated in pressure-demand or other positive pressure mode.

(3) *Respirator program.* (i) The employer shall institute a respiratory protection program in accordance with 29 CFR 1926.103 (e), (g), (h), and (i).

(ii) Employees who wear respirators shall be allowed to wash their faces and respirator facepieces as needed to prevent potential skin irritation associated with respirator use.

(i) *Emergency situations*—(1) *Written plans.* (i) A written plan for emergency situations shall be developed for each workplace in which DBCP is present.

(ii) Appropriate portions of the plan shall be implemented in the event of an emergency.

(2) Employees engaged in correcting emergency conditions shall be equipped as required in paragraphs (h) and (j) of this section until the emergency is abated.

(3) *Evacuation.* Employees not engaged in correcting the emergency shall be removed and restricted from the area and normal operations in the affected area shall not be resumed until the emergency is abated.

(4) *Alerting employees.* Where there is a possibility of employee exposure to DBCP due to the occurrence of an emergency, a general alarm shall be installed and maintained to promptly alert employees of such occurrences.

(5) *Medical surveillance.* For any employee exposed to DBCP in an emergency situation, the employer shall provide medical surveillance in accordance with paragraph (m)(6) of this section.

(6) *Exposure monitoring.* (i) Following an emergency, the employer shall conduct monitoring which complies with paragraph (f) of this section.

(ii) In workplaces not normally subject to periodic monitoring, the employer may terminate monitoring when two consecutive measurements indicate exposures below the permissible exposure limit.

(j) *Protective clothing and equipments*—(1) *Provision and use.* Where there is any possibility of eye or dermal contact with liquid or solid DBCP, the employer shall provide, at no cost to the employee, and assure that the employee wears impermeable protective clothing and equipment to protect the area of the body which may come in contact with DBCP. Eye and face protection shall meet the requirements of § 1926.102 of this part.

(2) *Removal and storage.* (i) The employer shall assure that employees remove DBCP contaminated work clothing only in change rooms provided in accordance with paragraph (l) (1) of this section.

(ii) The employer shall assure that employees promptly remove any protective clothing and equipment which becomes contaminated with DBCP-containing liquids and solids. This clothing shall not be reworn until the DBCP has been removed from the clothing or equipment.

(iii) The employer shall assure that no employee takes DBCP contaminated protective devices and work clothing out of the change room, except those employees authorized to do so for the purpose of laundering, maintenance, of disposal.

(iv) DBCP-contaminated protective devices and work clothing shall be placed and stored in closed containers which prevent dispersion of the DBCP outside the container.

(v) Containers of DBCP contaminated protective devices or work clothing which are to be taken out of change rooms or the workplace for cleaning, maintenance or disposal, shall bear labels in accordance with paragraph (o)(3) of this section.

(3) *Cleaning and replacement.* (i) The employer shall clean, launder, repair, or replace protective clothing and equipment required by this paragraph to maintain their effectiveness. The employer shall provide clean protective clothing and equipment at least daily to each affected employee.

(ii) The employer shall inform any person who launders or clean DBCP-contaminated protective clothing or equipment of the potentially harmful effects of exposure to DBCP.

(iii) The employer shall prohibit the removal of DBCP from protective clothing and equipment by blowing or shaking.

(k) *Housekeeping*—(1) *Surfaces.* (i) All workplace surfaces shall be maintained free of visible accumulations of DBCP.

(ii) Dry sweeping and the use of compressed air for the cleaning of floors and other surfaces is prohibited where DBCP dusts or liquids are present.

(iii) Where vacuuming methods are selected to clean floors and other surfaces, either portable units or a permanent system may be used.

(A) If a portable unit is selected, the exhaust shall be attached to the general workplace exhaust ventilation system or collected within the vacuum unit, equipped with high efficiency filters or other appropriate means of contaminant removal, so that DBCP is not reintroduced into the workplace air; and

(B) Portable vacuum units used to collect DBCP may not be used for other cleaning purposes and shall be labeled as prescribed by paragraph (o)(3) of this section.

(iv) Cleaning of floors and other surfaces contaminated with DBCP-containing dusts shall not be performed by washing down with a hose, unless a fine spray has first been laid down.

(2) *Liquids.* Where DBCP is present in a liquid form, or as a resultant vapor, all containers or vessels containing DBCP shall be enclosed to the maximum extent feasible and tightly covered when not in use.

(3) *Waste disposal.* DBCP waste scrap, debris, containers or equipment, shall be disposed of in sealed bags or other closed containers which prevent dispersion of DBCP outside the container.

(l) *Hygiene facilities and practices*—(1) *Change rooms.* The employer shall provide clean change rooms equipped with storage facilities for street clothes and separate storage facilities for protective clothing and equipment whenever employees are required to wear protective clothing and equipment in accordance with paragraphs (h) and (j) of this section.

(2) *Showers.* (i) The employer shall assure that employees working in the regulated area shower at the end of the work shift.

(ii) The employer shall assure that employees whose skin becomes contaminated with DBCP-containing liquids or solids immediately wash or shower to remove any DBCP from the skin.

(iii) The employer shall provide shower facilities in accordance with 29 CFR 1926.51(f)(4).

(3) *Lunchrooms.* The employer shall provide lunchroom facilities which have a temperature controlled, positive pressure, filtered air supply, and which are readily accessible to employees working in regulated areas.

(4) *Lavatories.* (i) The employer shall assure that employees working in the regulated area remove protective clothing and wash their hands and face prior to eating.

(ii) The employer shall provide a sufficient number of lavatory facilities which comply with 29 CFR 1926.51(f)(2) and (3).

(5) *Prohibition of activities in regulated areas.* The employer shall assure that, in regulated areas, food or beverages are not present or consumed, smoking products and implements are not present or used, and cosmetics are not present or applied.

(m) *Medical surveillance*—(1) *General.* (i) The employer shall make available a medical surveillance program for employees who work in regulated areas and employees who are subjected to DBCP exposures in an emergency situation.

(ii) All medical examinations and procedures shall be performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee.

(2) *Frequency and content.* At the time of initial assignment, and annually thereafter, the employer shall provide a medical examination for employees who work in regulated areas, which includes at least the following:

(i) A medical and occupational history including reproductive history.

(ii) A physical examination, including examination of the genito-urinary tract, testicle size and body habitus, including a determination of sperm count.

(iii) A serum specimen shall be obtained and the following determinations made by radioimmunoassay techniques utilizing National Institutes of Health (NIH) specific antigen or one of equivalent sensitivity:

(A) Serum follicle stimulating hormone (FSH);

(B) Serum luteinizing hormone (LH); and

(C) Serum total estrogen (females).

(iv) Any other tests deemed appropriate by the examining physician.

(3) *Additional examinations.* If the employee for any reason develops signs or symptoms commonly associated with exposure to DBCP, the employer shall provide the employee with a medical examination which shall include those elements considered appropriate by the examining physician.

(4) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this regulation and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The level of DBCP to which the employee is exposed; and

(iv) A description of any personal protective equipment used or to be used.

(5) *Physician's written opinion.* (i) For each examination under this section, the employer shall obtain and provide the employee with a written opinion from the examining physician which shall include:

(A) The results of the medical tests performed;

(B) The physician's opinion as to whether the employee has any detected medical condition which would place the employee at an increased risk of material impairment of health from exposure to DBCP; and

(C) Any recommended limitations upon the employee's exposure to DBCP or upon the use of protective clothing and equipment such as respirators.

(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure.

(6) *Emergency situations.* If the employee is exposed to DBCP in an emergency situation, the employer shall provide the employee with a sperm count test as soon as practicable, or, if the employee has been vasectionized or is unable to produce a semen specimen, the hormone tests contained in paragraph (m)(2)(iii) of this section. The employer shall provide these same tests three months later.

(n) *Employee information and training*—(1) *Training program.* (i) The employer shall institute a training program for all employees who may be exposed to DBCP and shall assure their participation in such training program.

(ii) The employer shall assure that each employee is informed of the following:

(A) The information contained in Appendix A;

(B) The quantity, location, manner of use, release or storage of DBCP and the specific nature of operations which could result in exposure to DBCP as well as any necessary protective steps;

(C) The purpose, proper use, and limitations of respirators;

(D) The purpose and description of the medical surveillance program required by paragraph (m) of this section; and

(E) A review of this standard, including appendices.

(2) *Access to training materials.* (i) The employer shall make a copy of this standard and its appendices readily available to all affected employees.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(o) *Signs and labels*—(1) *General.* (i) The employer may use labels or signs required by other statutes, regulations, or ordinances in addition to or in combination with, signs and labels required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign or label required by this paragraph which contradicts or detracts from the required sign or label.

(2) *Signs.* (i) The employer shall post signs to clearly indicate all regulated areas. These signs shall bear the legend:

DANGER

1,2-Dibromo-3-chloropropane

(Insert appropriate trade or common names)

CANCER HAZARD

AUTHORIZED PERSONNEL ONLY

RESPIRATOR REQUIRED

(3) *Labels.* (i) The employer shall assure that precautionary labels are affixed to all containers of DBCP and of products containing DBCP in the workplace, and that the labels remain affixed when the DBCP or products containing DBCP are sold, distributed, or otherwise leave the employer's workplace. Where DBCP or products containing DBCP are sold, distributed or otherwise leave the employer's workplace bearing appropriate labels required by EPA under the regulations in 40 CFR Part 162, the labels required by this paragraph need not be affixed.

(ii) The employer shall assure that the precautionary labels required by this paragraph are readily visible and legible. The labels shall bear the following legend:

DANGER

1,2-Dibromo-3-chloropropane

CANCER HAZARD

(p) *Recordkeeping*—(1) *Exposure monitoring.* (i) The employer shall establish and maintain an accurate

record of all monitoring required by paragraph (f) of this section.

(ii) This record shall include:

(A) The dates, number, duration and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure;

(B) A description of the sampling and analytical methods used;

(C) Type of respiratory protective devices worn, if any; and

(D) Name, social security number, and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for at least 40 years or the duration of employment plus 20 years, whichever is longer.

(2) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance required by paragraph (m) of this section.

(ii) This record shall include:

(A) The name and social security number of the employee;

(B) A copy of the physician's written opinion;

(C) Any employee medical complaints related to exposure to DBCP;

(D) A copy of the information provided the physician as required by paragraphs (m)(4)(ii) through (m)(4)(iv) of this section; and

(E) A copy of the employee's medical and work history.

(iii) The employer shall maintain this record for at least 40 years or the duration of employment plus 20 years, whichever is longer.

(3) *Availability.* (i) The employer shall assure that all records required to be maintained by this section be made available upon request to the Assistant Secretary and the Director for examination and copying.

(ii) Employee exposure monitoring records and employee medical records required by this paragraph shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1926.33 (a) through (e) and (g) through (i).

(4) *Transfer of records.* (i) If the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by paragraph (p) of this section for the prescribed period.

(ii) If the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall transmit these records by mail to the Director.

(iii) At the expiration of the retention period for the records required to be maintained under paragraph (p) of this section, the employer shall transmit these records by mail to the Director.

(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in 29 CFR 1926.33(h).

(q) *Observation of monitoring.*—(1) *Employee observation.* The employer shall provide affected employees, or their designated representatives, with an opportunity to observe any monitoring of employee exposure to DBCP required by this section.

(2) *Observation procedures.* (i) Whenever observation of the measuring or monitoring of employee exposure to DBCP requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the observer with personal protective clothing or equipment required to be worn by employees working in the area, assure the use of such clothing and equipment, and require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring or measurement, observers shall be entitled to:

(A) Receive an explanation of the measurement procedures;

(B) Observe all steps related to the measurement of airborne concentrations of DBCP performed at the place of exposure; and

(C) Record the results obtained.

(r) *Appendices.* The information contained in the appendices is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligation.

(Approved by the Office of Management and Budget under control number 1218–0101)

Appendix A to § 1926.1144—Substance Safety Data Sheet For DBCP

I. Substance identification

A. Synonyms and trades names: DBCP; Dibromochloropropane; Fumazone (Dow Chemical Company TM); Nemafume; Nemagon (Shell Chemical Co. TM); Nemaset; BBC 12; and OS 1879.

B. Permissible exposure:

1. *Airborne.* 1 part DBCP vapor per billion parts of air (1 ppb); time-weighted average (TWA) for an 8-hour workday.

2. *Dermal.* Eye contact and skin contact with DBCP are prohibited.

C. Appearance and odor: Technical grade DBCP is a dense yellow or amber liquid with a pungent odor. It may also appear in granular form, or blended in varying concentrations with other liquids.

D. Uses: DBCP is used to control nematodes, very small worm-like plant parasites, on crops including cotton, soybeans, fruits, nuts, vegetables and ornamentals.

II. Health hazard data

A. Routes of entry: Employees may be exposed:

1. Through inhalation (breathing);
2. Through ingestion (swallowing);
3. Skin contact; and
4. Eye contact.

B. Effects of exposure:

1. *Acute exposure.* DBCP may cause drowsiness, irritation of the eyes, nose, throat and skin, nausea and vomiting. In addition, overexposure may cause damage to the lungs, liver or kidneys.

2. *Chronic exposure.* Prolonged or repeated exposure to DBCP has been shown to cause sterility in humans. It also has been shown to produce cancer and sterility in laboratory animals and has been determined to constitute an increased risk of cancer in man.

3. *Reporting Signs and Symptoms.* If you develop any of the above signs or symptoms that you think are caused by exposure to DBCP, you should inform your employer.

III. Emergency first aid procedures

A. *Eye exposure.* If DBCP liquid or dust containing DBCP gets into your eyes, wash your eyes immediately with large amounts of water, lifting the lower and upper lids occasionally. Get medical attention immediately. Contact lenses should not be worn when working with DBCP.

B. *Skin exposure.* If DBCP liquids or dusts containing DBCP get on your skin, immediately wash using soap or mild detergent and water. If DBCP liquids or dusts containing DBCP penetrate through your clothing, remove the clothing immediately and wash. If irritation is present after washing get medical attention.

C. *Breathing.* If you or any person breathe in large amounts of DBCP, move the exposed person to fresh air at once. If breathing has stopped, perform artificial respiration. Do not use mouth-to-mouth. Keep the affected person warm and at rest. Get medical attention as soon as possible.

D. *Swallowing.* When DBCP has been swallowed and the person is conscious, give the person large amounts of water immediately. After the water has been swallowed, try to get the person to vomit by having him touch the back of his throat with his finger. Do not make an unconscious person vomit. Get medical attention immediately.

E. *Rescue.* Notify someone. Put into effect the established emergency rescue procedures. Know the locations of the emergency rescue equipment before the need arises.

IV. Respirators and protective clothing

A. *Respirators.* You may be required to wear a respirator in emergencies and while your employer is in the process of reducing DBCP exposures through engineering controls. If respirators are worn, they must have a National Institute for Occupational Safety and Health (NIOSH) approval label (Older respirators may have a Bureau of Mines Approval label). For effective protection, a respirator must fit your face and head snugly. The respirator should not be

loosened or removed in work situations where its use is required. DBCP does not have a detectable odor except at 1,000 times or more above the permissible exposure limit. If you can smell DBCP while wearing a respirator, the respirator is not working correctly; go immediately to fresh air. If you experience difficulty breathing while wearing a respirator, tell your employer.

B. *Protective clothing.* When working with DBCP you must wear for your protection impermeable work clothing provided by your employer. (Standard rubber and neoprene protective clothing do not offer adequate protection).

DBCP must never be allowed to remain on the skin. Clothing and shoes must not be allowed to become contaminated with DBCP, and if they do, they must be promptly removed and not worn again until completely free of DBCP. Turn in impermeable clothing that has developed leaks for repair or replacement.

C. *Eye protection.* You must wear splash-proof safety goggles where there is any possibility of DBCP liquid or dust contacting your eyes.

V. Precautions for safe use, handling, and storage

A. DBCP must be stored in tightly closed containers in a cool, well-ventilated area.

B. If your work clothing may have become contaminated with DBCP, or liquids or dusts containing DBCP, you must change into uncontaminated clothing before leaving the work premises.

C. You must promptly remove any protective clothing that becomes contaminated with DBCP. This clothing must not be reworn until the DBCP is removed from the clothing.

D. If your skin becomes contaminated with DBCP, you must immediately and thoroughly wash or shower with soap or mild detergent and water to remove any DBCP from your skin.

E. You must not keep food, beverages, cosmetics, or smoking materials, nor eat or smoke, in regulated areas.

F. If you work in a regulated area, you must wash your hands thoroughly with soap or mild detergent and water, before eating, smoking or using toilet facilities.

G. If you work in a regulated area, you must remove any protective equipment or clothing before leaving the regulated area.

H. Ask your supervisor where DBCP is used in your work area and for any additional safety and health rules.

VI. Access to information

A. Each year, your employer is required to inform you of the information contained in this Substance Safety Data Sheet for DBCP. In addition, your employer must instruct you in the safe use of DBCP, emergency procedures, and the correct use of protective equipment.

B. Your employer is required to determine whether you are being exposed to DBCP. You or your representative have the right to observe employee exposure measurements and to record the result obtained. Your employer is required to inform you of your exposure. If your employer determines that you are being overexposed, he is required to inform you of the actions which are being taken to reduce your exposure.

C. Your employer is required to keep records of your exposure and medical examinations. Your employer is required to keep exposure and medical data for at least 40 years or the duration of your employment plus 20 years, whichever is longer.

D. Your employer is required to release exposure and medical records to you, your physician, or other individual designated by you upon your written request.

Appendix B to § 1926.1144—Substance Technical Guidelines for DBCP

I. Physical and chemical data

A. Substance Identification

1. Synonyms: 1,2-dibromo-3-chloropropane; DBCP, Fumazone; Nemafume; Nemagon; Nemaset; BBC 12; OS 1879. DBCP is also included in agricultural pesticides and fumigants which include the phrase "Nema———" in their name.

2. Formula: $C_3H_5Br_2$ C1.

3. Molecular Weight: 236.

B. Physical Data:

1. Boiling point (760 mm HG): 195° C (383° F)

2. Specific gravity (water=1): 2.093.

3. Vapor density (air=1 at boiling point of DBCP): Data not available.

4. Melting point: 6° C (43° F).

5. Vapor pressure at 20° C (68° F): 0.8 mm Hg

6. Solubility in water: 1000 ppm.

7. Evaporation rate (Butyl Acetate=1): very much less than 1.

8. Appearance and odor: Dense yellow or amber liquid with a pungent odor at high concentrations. Any detectable odor of DBCP indicates overexposure.

II. Fire explosion and reactivity hazard data

A. Fire

1. Flash point: 170° F (77° C)

2. Autoignition temperature: Data not available.

3. Flammable limits in air, percent by volume: Data not available.

4. Extinguishing media: Carbon dioxide, dry chemical.

5. Special fire-fighting procedures: Do not use a solid stream of water since a stream will scatter and spread the fire. Use water spray to cool containers exposed to a fire.

6. Unusual fire and explosion hazards: None known.

7. For purposes of complying with the requirements of § 1910.106, liquid DBCP is classified as a Class III A combustible liquid.

8. For the purpose of complying with § 1910.309, the classification of hazardous locations as described in article 500 of the National Electrical Code for DBCP shall be Class I, Group D.

9. For the purpose of compliance with § 1910.157, DBCP is classified as a Class B fire hazard.

10. For the purpose of compliance with § 1910.178, locations classified as hazardous locations due to the presence of DBCP shall be Class I, Group D.

11. Sources of ignition are prohibited where DBCP presents a fire or explosion hazard.

B. Reactivity

1. Conditions contributing to instability: None known.

2. Incompatibilities: Reacts with chemically active metals, such as aluminum, magnesium and tin alloys.

3. Hazardous decomposition products: Toxic gases and vapors (such as HBr, HCl and carbon monoxide) may be released in a fire involving DBCP.

4. Special precautions: DBCP will attack some rubber materials and coatings.

III. Spill, leak and disposal procedures

A. If DBCP is spilled or leaked, the following steps should be taken:

1. The area should be evacuated at once and re-entered only after thorough ventilation.

2. Ventilate area of spill or leak.

3. If in liquid form, collect for reclamation or absorb in paper, vermiculite, dry sand, earth or similar material.

4. If in solid form, collect spilled material in the most convenient and safe manner for reclamation or for disposal.

B. Persons not wearing protective equipment must be restricted from areas of spills or leaks until cleanup has been completed.

C. Waste Disposal Methods:

1. For small quantities of liquid DBCP, absorb on paper towels, remove to a safe place (such as a fume hood) and burn the paper. Large quantities can be reclaimed or collected and atomized in a suitable combustion chamber equipped with an appropriate effluent gas cleaning device. If liquid DBCP is absorbed in vermiculite, dry sand, earth or similar material and placed in sealed containers it may be disposed of in a State-approved sanitary landfill.

2. If in solid form, for small quantities, place on paper towels, remove to a safe place (such as a fume hood) and burn. Large quantities may be reclaimed. However, if this is not practical, dissolve in a flammable solvent (such as alcohol) and atomize in a suitable combustion chamber equipped with an appropriate effluent gas cleaning device. DBCP in solid form may also be disposed in a state-approved sanitary landfill.

IV. Monitoring and measurement procedures

A. Exposure above the permissible exposure limit.

1. *Eight Hour Exposure Evaluation:* Measurements taken for the purpose of determining employee exposure under this section are best taken so that the average 8-hour exposure may be determined from a single 8-hour sample or two (2) 4-hour samples. Air samples should be taken in the employee's breathing zone (air that would most nearly represent that inhaled by the employee).

2. *Monitoring Techniques:* The sampling and analysis under this section may be performed by collecting the DBCP vapor on petroleum based charcoal absorption tubes with subsequent chemical analyses. The method of measurement chosen should determine the concentration of airborne DBCP at the permissible exposure limit to an accuracy of plus or minus 25 percent. If charcoal tubes are used, a total volume of 10

liters should be collected at a flow rate of 50 cc. per minute for each tube. Analyze the resultant samples as you would samples of halogenated solvent.

B. Since many of the duties relating to employee protection are dependent on the results of monitoring and measuring procedures, employers should assure that the evaluation of employee exposures is performed by a competent industrial hygienist or other technically qualified person.

V. Protective clothing

Employees should be required to wear appropriate protective clothing to prevent any possibility of skin contact with DBCP. Because DBCP is absorbed through the skin, it is important to prevent skin contact with both liquid and solid forms of DBCP. Protective clothing should include impermeable coveralls or similar fullbody work clothing, gloves, headcoverings, and workshoes or shoe coverings. Standard rubber and neopsene gloves do not offer adequate protection and should not be relied upon to keep DBCP off the skin. DBCP should never be allowed to remain on the skin. Clothing and shoes should not be allowed to become contaminated with the material, and if they do, they should be promptly removed and not worn again until completely free of the material. Any protective clothing which has developed leaks or is otherwise found to be defective should be repaired or replaced. Employees should also be required to wear splash-proof safety goggles where there is any possibility of DBCP contacting the eyes.

VI. Housekeeping and hygiene facilities

1. The workplace must be kept clean, orderly and in a sanitary condition;

2. Dry sweeping and the use of compressed air is unsafe for the cleaning of floors and other surfaces where DBCP dust or liquids are found. To minimize the contamination of air with dust, vacuuming with either portable or permanent systems must be used. If a portable unit is selected, the exhaust must be attached to the general workplace exhaust ventilation system, or collected within the vacuum unit equipped with high-efficiency filters or other appropriate means of contamination removal and not used for other purposes. Units used to collect DBCP must be labeled.

3. Adequate washing facilities with hot and cold water must be provided, and maintained in a sanitary condition. Suitable cleansing agents should also be provided to assure the effective removal of DBCP from the skin.

4. Change or dressing rooms with individual clothes storage facilities must be provided to prevent the contamination of street clothes with DBCP. Because of the hazardous nature of DBCP, contaminated protective clothing must be stored in closed containers for cleaning or disposal.

VII. Miscellaneous precautions

A. Store DBCP in tightly closed containers in a cool, well ventilated area.

B. Use of supplied-air suits or other impervious clothing (such as acid suits) may be necessary to prevent skin contact with DBCP. Supplied-air suits should be selected, used, and maintained under the supervision of persons knowlegeable in the limitations and potential life-endangering characteristics of supplied-air suits.

C. The use of air-conditioned suits may be necessary in warmer climates.

D. Advise employees of all areas and operations where exposure to DBCP could occur.

VIII. Common operations

Common operations in which exposure to DBCP is likely to occur are: during its production; and during its formulation into pesticides and fumigants.

Appendix C to § 1926.1144—Medical Surveillance Guidelines For DBCP

I. Route of entry

Inhalation; skin absorption

II. Toxicology

Recent data collected on workers involved in the manufacture and formulation of DBCP has shown that DBCP can cause sterility at very low levels of exposure. This finding is supported by studies showing that DBCP causes sterility in animals. Chronic exposure to DBCP resulted in pronounced necrotic action on the parenchymatous organs (i.e., liver, kidney, spleen) and on the testicles of rats at concentrations as low as 5 ppm. Rats that were chronically exposed to DBCP also showed changes in the composition of the blood, showing low RBC, hemoglobin, and WBC, and high reticulocyte levels as well as functional hepatic disturbance, manifesting itself in a long prothrombin time. Reznik et al. noted a single dose of 100 mg produced profound depression of the nervous system of rats. Their condition gradually improved. Acute exposure also resulted in the destruction of the sex gland activity of male rats as well as causing changes in the estrous cycle in female rats. Animal studies have also associated DBCP with an increased incidence of carcinoma. Olson, et al. orally administered DBCP to rats and mice 5 times per week at experimentally predetermined maximally tolerated doses and at half those doses. As early as ten weeks after initiation of treatment, DBCP induced a high incidence of squamous cell carcinomas of the stomach with metastases in both species. DBCP also induced mammary adenocarcinomas in the female rats at both dose levels.

III. Signs and symptoms

A. Inhalation: Nausea, eye irritation, conjunctivitis, respiratory irritation, pulmonary congestion or edema, CNS depression with apathy, sluggishness, and ataxia.

B. Dermal: Erythema or inflammation and dermatitis on repeated exposure.

IV. Special tests

A. *Semen analysis:* The following information excerpted from the document "Evaluation of Testicular Function", submitted by the Corporate Medical Department of the Shell Oil Company (exhibit 39–3), may be useful to physicians conducting the medical surveillance program;

In performing semen analyses certain minimal but specific criteria should be met:

1. It is recommended that a minimum of three valid semen analyses be obtained in order to make a determination of an individual's average sperm count.

2. A period of sexual abstinence is necessary prior to the collection of each masturbatory sample. It is recommended that intercourse or masturbation be performed 48 hours before the actual specimen collection. A period of 48 hours of abstinence would follow; then the masturbatory sample would be collected.

3. Each semen specimen should be collected in a clean, widemouthed, glass jar (not necessarily pre-sterilized) in a manner designated by the examining physician. Any part of the seminal fluid exam should be initialed *only after liquifaction* is complete, i.e., 30 to 45 minutes after collection.

4. Semen volume should be measured to the nearest 1/10 of a cubic centimeter.

5. Sperm density should be determined using routine techniques involving the use of a white cell pipette and a hemocytometer chamber. The immobilizing fluid most effective and most easily obtained for this process is distilled water.

6. Thin, dry smears of the semen should be made for a morphologic classification of the sperm forms and should be stained with either hematoxalin or the more difficult, yet more precise, Papanicolaou technique. Also of importance to record is obvious sperm agglutination, pyospermia, delayed liquifaction (greater than 30 minutes), and hyperviscosity. In addition, pH, using nitrazine paper, should be determined.

7. A total morphology evaluation should include percentages of the following:

a. Normal (oval) forms,

b. Tapered forms,

c. Amorphous forms (include large and small sperm shapes),

d. Duplicated (either heads or tails) forms, and

e. Immature forms.

8. Each sample should be evaluated for sperm *viability* (percent viable sperm moving at the time of examination) as well as sperm *motility* (subjective characterization of "purposeful forward sperm progression" of the majority of those viable sperm analyzed) within two hours after collection, ideally by the same or equally qualified examiner.

B. *Serum determinations:* The following serum determinations should be performed by radioimmuno-assay techniques using National Institutes of Health (NIH) specific antigen or antigen preparations of equivalent sensitivity:

1. Serum follicle stimulating hormone (FSH);

2. Serum luteinizing hormone (LH); and

3. Serum total estrogen (females only).

V. Treatment

Remove from exposure immediately, give oxygen or artificial resuscitation if indicated Contaminated clothing and shoes should be removed immediately. Flush eyes and wash contaminated skin. If swallowed and the person is conscious, induce vomiting. Recovery from mild exposures is usually rapid and complete.

VI. Surveillance and preventive considerations

A. *Other considerations.* DBCP can cause both acute and chronic effects. It is important that the physician become familiar with the operating conditions in which exposure to DBCP occurs. Those with respiratory disorders may not tolerate the wearing of negative pressure respirators.

B. *Surveillance and screening.* Medical histories and laboratory examinations are required for each employee subject to exposure to DBCP. The employer should screen employees for history of certain medical conditions (listed below) which might place the employee at increased risk from exposure.

1. *Liver disease.* The primary site of biotransformation and detoxification of DBCP is the liver. Liver dysfunctions likely to inhibit the conjugation reactions will tend to promote the toxic actions of DBCP. These precautions should be considered before exposing persons with impaired liver function to DBCP.

2. *Renal disease.* Because DBCP has been associated with injury to the kidney it is important that special consideration be given to those with possible impairment of renal function.

3. *Skin desease.* DBCP can penetrate the skin and can cause erythema on prolonged exposure. Persons with pre-existing skin disorders may be more susceptible to the effects of DBCP.

4. *Blood dyscrasias.* DBCP has been shown to decrease the content of erythrocytes, hemoglobin, and leukocytes in the blood, as well as increase the prothrombin time. Persons with existing blood disorders may be more susceptible to the effects of DBCP.

5. *Reproductive disorders.* Animal studies have associated DBCP with various effects on the reproductive organs. Among these effects are atrophy of the testicles and changes in the estrous cycle. Persons with pre-existing reproductive disorders may be at increased risk to these effects of DBCP.

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§ 1926.1145 Acrylonitrile.

(a) *Scope and application.* (1) This section applies to all occupational exposures to acrylonitrile (AN), Chemical Abstracts Service Registry No. 000107131, except as provided in paragraphs (a)(2) and (a)(3) of this section.

(2) This section does not apply to exposures which result solely from the processing, use, and handling of the following materials:

(i) ABS resins, SAN resins, nitrile barrier resins, solid nitrile elastomers, and acrylic and modacrylic fibers, when these listed materials are in the form of finished polymers, and products fabricated from such finished polymers;

(ii) Materials made from and/or containing AN for which objective data is reasonably relied upon to demonstrate that the material is not capable of releasing AN in airborne concentrations in excess of 1 ppm as an eight (8)-hour time-weighted average, under the expected conditions of processing, use, and handling which will cause the greatest possible release; and

(iii) Solid materials made from and/or containing AN which will not be heated above 170° F (77° C) during handling, use, or processing.

(3) An employer relying upon exemption under paragraph (a)(2)(ii) shall maintain records of the objective data supporting that exemption, and of the basis of the employer's reliance on the data, as provided in paragraph (q) of this section.

(b) *Definitions. Acrylonitrile* or *AN* means acrylonitrile monomer, chemical formula CH_2=CHCN.

Action level means a concentration of AN of 1 ppm as an eight (8)-hour time-weighted average.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees for the purpose of exercising the opportunity to observe monitoring procedures under paragraph (r) of this section.

Decontamination means treatment of materials and surfaces by water washdown, ventilation, or other means, to assure that the materials will not expose employees to airborne concentrations of AN above 1 means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Emergency means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment, which results in an unexpected massive release of AN.

Liquid AN means AN monomer in liquid form, and liquid or semiliquid polymer intermediates, including slurries, suspensions, emulsions, and solutions, produced during the polymerization of AN.

OSHA Area Office means the Area Office of the Occupational Safety and Health Administration having jurisdiction over the geographic area where the affected workplace is located.

(c) *Permissible exposure limits*—(1) *Inhalation*—(i) *Time weighted average limit (TWA).* The employer shall assure that no employee is exposed to an airborne concentration of acrylonitrile in excess of two (2) parts acrylonitrile per million parts of air (2 ppm) as an eight (8)-hour time-weighted average.

(ii) *Ceiling limit.* The employer shall assure that no employee is exposed to an airborne concentration of acrylonitrile in excess of ten (10) ppm as averaged over any fifteen (15)-minute period during the work day.

(2) *Dermal and eye exposure.* The employer shall assure that no employee is exposed to skin contact or eye contact with liquid AN.

(d) *Notification of regulated areas and emergencies*—(1) *Regulated areas.* Within thirty (30) days following the establishment of a regulated area pursuant to paragraph (f) of this section, the employer shall report the following information to the OSHA Area Office:

(i) The address and location of each establishment which has one or more regulated areas;

(ii) The locations, within the establishment, of each regulated area;

(iii) A brief description of each process or operation which results in employee exposure to AN in regulated areas; and

(iv) The number of employees engaged in each process or operation within each regulated area which results in exposure to AN, and an estimate of the frequency and degree of exposure that occurs.

Whenever there has been a significant change in the information required to be reported by this paragraph, the employer shall promptly provide the new information to the OSHA Area Office.

(2) *Emergencies.* Emergencies, and the facts obtainable at that time, shall be reported within seventy-two (72) hours of the initial occurrence to the OSHA Area Office. Upon request of the OSHA Area Office, the employer shall submit additional information in writing relevant to the nature and extent of employee exposures and measures taken

to prevent future emergencies of a similar nature.

(e) *Exposure monitoring*—(1) *General.* (i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to AN over an eight (8)-hour period.

(ii) For the purposes of this section, employee exposure is that exposure which would occur if the employee were not using a respirator.

(2) *Initial monitoring.* Each employer who has a place of employment in which AN is present shall monitor each such workplace and work operation to accurately determine the airborne concentrations of AN to which employees may be exposed.

(3) *Frequency.* (i) If the monitoring required by this section reveals employee exposure to be below the action level, the employer may discontinue monitoring for that employee.

(ii) If the monitoring required by this section reveals employee exposure to be at or above the action level but below the permissible exposure limits, the employer shall repeat such monitoring for each such employee at least quarterly. The employer shall continue these quarterly measurements until at least two consecutive measurements taken at least seven (7) days apart, are below the action level, and thereafter the employer may discontinue monitoring for that employee.

(iii) If the monitoring required by this section reveals employee exposure to be in excess of the permissible exposure limits, the employer shall repeat these determinations for each such employee at least monthly. The employer shall continue these monthly measurements until at least two consecutive measurements, taken at least seven (7) days apart, are below the permissible exposure limits, and thereafter the employer shall monitor at least quarterly.

(4) *Additional monitoring.* Whenever there has been a production, process, control, or personnel change which may result in new or additional exposures to AN, or whenever the employer has any other reason to suspect a change which may result in new or additional exposures to AN, additional monitoring which complies with this paragraph shall be conducted.

(5) *Employee notification.* (i) Within five (5) working days after the receipt of the results of monitoring required by this paragraph, the employer shall notify each employee in writing of the results which represent that employee's exposure.

(ii) Whenever the results indicate that the representative employee exposure exceeds the permissible exposure limits, the employer shall include in the written notice a statement that the permissible exposure limits were exceeded and a description of the corrective action being taken to reduce exposure to or below the permissible exposure limits.

(6) *Accuracy of measurement.* The method of measurement of employee exposures shall be accurate to a confidence level of 95 percent, to within plus or minus 35 percent for concentrations of AN at or above the permissible exposure limits, and plus or minus 50 percent for concentrations of AN below the permissible exposure limits.

(f) *Regulated areas.* (1) The employer shall establish regulated areas where AN concentrations are in excess of the permissible exposure limits.

(2) Regulated areas shall be demarcated and segregated from the rest of the workplace, in any manner that minimizes the number of persons who will be exposed to AN.

(3) Access to regulated areas shall be limited to authorized persons or to persons otherwise authorized by the act or regulations issued pursuant thereto.

(4) The employer shall assure that food or beverages are not present or consumed, tobacco products are not present or used, and cosmetics are not applied in the regulated area.

(g) *Methods of compliance*—(1) *Engineering and work practice controls.* (i) By November 2, 1980, the employer shall institute engineering and work practice controls to reduce and maintain employee exposures to AN, to or below the permissible exposure limits, except to the extent that the employer establishes that such controls are not feasible.

(ii) Wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limits, the employer shall nonetheless use them to reduce exposures to the lowest levels achievable by these controls, and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (h) of this section.

(2) *Compliance program.* (i) The employer shall establish and implement a written program to reduce employee exposures to or below the permissible exposure limits solely by means of engineering and work practice controls, as required by paragraph (g)(1) of this section.

(ii) Written plans for these compliance programs shall include at least the following:

(A) A description of each operation or process resulting in employee exposure to AN above the permissible exposure limits;

(B) An outline of the nature of the engineering controls and work practices to be applied to the operation or process in question;

(C) A report of the technology considered in meeting the permissible exposure limits;

(D) A schedule for implementation of engineering and work practice controls for the operation or process, which shall project completion no later than November 2, 1980; and

(E) Other relevant information.

(iii) The employer shall complete the steps set forth in the compliance program by the dates in the schedule.

(iv) Written plans shall be submitted upon request to the Assistant Secretary and the Director, and shall be available at the worksite for examination and copying by the Assistant Secretary, the Director, or any affected employee or representative.

(v) The plans required by this paragraph shall be revised and updated at least every six (6) months to reflect the current status of the program.

(h) *Respiratory protection*—(1) *General.* The employer shall assure that respirators are used where required by this section to reduce employee exposure to within the permissible exposure limits. Respirators shall be used in the following circumstances:

(i) During the time period necessary to install or implement feasible engineering and work practice controls;

(ii) In work operations, such as maintenance and repair activities or reactor cleaning, in which the employer establishes that engineering and work practice controls are not feasible;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the permissible exposure limits; and

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respiratory protection is required under this section, the employer shall select and provide, at no cost to the employee, the appropriate type of respirator from table I below, and shall assure that the employee wears the respirator provided.

TABLE I—RESPIRATORY PROTECTION FOR ACRYLONITRILE (AN)

Concentration of AN or condition of use	Respirator type
(a) Less than or equal to 20 ppm	(1) Chemical cartridge respirator with organic vapor cartridge(s) and half-mask facepiece; or (2) Supplied air respirator with half-mask facepiece.
(b) Less than or equal to 100 ppm or maximum use concentration (MUC) of cartridges or canisters, whichever is lower.	(1) Full facepiece respirator with (A) organic vapor cartridges, (B) organic vapor gas mask chin-style, or (C) organic vapor gas mask canister, front- or back-mounted; (2) Supplied air respirator with full facepiece; or (3) Self-contained breathing apparatus with full facepiece.
(c) Less than or equal to 4,000 ppm	(1) Supplied air respirator operated in the positive pressure mode with full facepiece, helmet, suit, or hood.
(d) Greater than 4,000 ppm or unknown concentration	(1) Supplied air and auxiliary self-contained breathing apparatus with full facepiece in positive pressure mode; or (2) Self-contained breathing apparatus with full facepiece in positive pressure mode.
(e) Firefighting	Self-contained breathing apparatus with full facepiece in positive pressure mode.
(f) Escape	(1) Any organic vapor respirator, or (2) Any self-contained breathing apparatus.

(ii) The employer shall select respirators from among those approved for use with organic vapors by the National Institute for Occupational Safety and Health under the provisions of 30 CFR part 11.

(3) *Respirator program.* (i) The employer shall institute a respiratory protection program in accordance with 29 CFR 1926.103 (e), (g), (h), and (i).

(ii) Where air/purifying respirators (chemical cartridge- or canister-type) are used, the air-purifying canister or cartridge(s) shall be replaced prior to the expiration of their service life or at the completion of each shift, whichever occurs first. A label shall be attached to the cartridge or canister to indicate the date and time at which it is first installed on the respirator.

(iii) *Testing.* Fit testing of respirators shall be performed to assure that the respirator selected provides the protection required by table I.

(A) *Qualitative fit.* The employer shall perform qualitative fit tests at the time of initial fitting and at least semiannually thereafter for each employee wearing respirators.

(B) *Quantitative fit.* Each employer with more than 10 employees wearing negative pressure respirators shall perform quantitative fit testing at the time of initial fitting and at least semiannually thereafter for each such employee.

(iv) Employees who wear respirators shall be allowed to wash their faces and to wipe clean the face-to-facepiece seals on their respirators to minimize potential skin irritation associated with respirator use.

(i) *Emergency situations*—(1) *Written plans.* (i) A written plan for emergency situations shall be developed for each workplace where liquid AN is present. Appropriate portions of the plan shall be implemented in the event of an emergency.

(ii) The plan shall specifically provide that employees engaged in correcting emergency conditions shall be equipped as required in paragraph (h) of this section until the emergency is abated.

(iii) Employees not engaged in correcting the emergency shall be evacuated from the area and shall not be permitted to return until the emergency is abated.

(2) *Alerting employees.* Where there is the possibility of employee exposure to AN in excess of the ceiling limit, a general alarm shall be installed and used to promptly alert employees of such occurrences.

(j) *Protective clothing and equipment*—(1) *Provision and use.* Where eye or skin contact with liquid AN may occur, the employer shall provide at no cost to the employee, and assure that employees wear, impermeable protective clothing or other equipment to protect any area of the body which may come in contact with liquid AN. The provision of §§ 1926.95 and 1926.102 shall be complied with.

(2) *Cleaning and replacement.* (i) The employer shall clean, launder, maintain, or replace protective clothing and equipment required by this section as needed to maintain their effectiveness.

(ii) The employer shall assure that impermeable protective clothing which contacts or is likely to have contacted liquid AN shall be decontaminated before being removed by the employee.

(iii) The employer shall assure that an employee whose nonimpermeable clothing becomes wetted with liquid AN shall immediately remove that clothing and proceed to shower. The clothing shall be decontaminated before it is removed from the regulated area.

(iv) The employer shall assure that no employee removes protective clothing or equipment from the change room, except for those employees authorized to do so for the purpose of laundering, maintenance, or disposal.

(v) The employer shall inform any person who launders or cleans protective clothing or equipment of the potentially harmful effects of exposure to AN.

(k) *Housekeeping.* (1) All surfaces shall be maintained free of visible accumulations of liquid AN.

(2) For operations involving liquid AN, the employer shall institute a program for detecting leaks and spills of liquid AN, including regular visual inspections.

(3) Where spills of liquid AN are detected, the employer shall assure that surfaces contacted by the liquid AN are decontaminated. Employees not engaged in decontamination activities shall leave the area of the spill, and shall not be permitted in the area until decontamination is completed.

(l) *Waste disposal.* AN waste, scrap, debris, bags, containers, or equipment shall be decontaminated before being incorporated in the general waste disposal system.

(m) *Hygiene facilities and practices.* (1) Where employees are exposed to airborne concentrations of AN above the permissible exposure limits, or where employees are required to wear protective clothing or equipment pursuant to paragraph (j) of this section, the facilities required by 29 CFR 1926.51, including clean change rooms and shower facilities, shall be provided by the employer for the use of those employees, and the employer shall assure that the employees use the facilities provided.

(2) The employer shall assure that employees wearing protective clothing

or equipment for protection from skin contact with liquid AN shall shower at the end of the work shift.

(3) The employer shall assure that, in the event of skin or eye exposure to liquid AN, the affected employee shall shower immediately to minimize the danger of skin absorption.

(4) The employer shall assure that employees working in the regulated area wash their hands and faces prior to eating.

(n) *Medical surveillance*—(1) *General.* (i) The employer shall institute a program of medical surveillance for each employee who is or will be exposed to AN at or above the action level, without regard to the use of respirators. The employer shall provide each such employee with an opportunity for medical examinations and tests in accordance with this paragraph.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and that they shall be provided without cost to the employee.

(2) *Initial examinations.* At the time of initial assignment, or upon institution of the medical surveillance program, the employer shall provide each affected employee an opportunity for a medical examination, including at least the following elements:

(i) A work history and medical history with special attention to skin, respiratory, and gastrointestinal systems, and those nonspecific symptoms, such as headache, nausea, vomiting, dizziness, weakness, or other central nervous system dysfunctions that may be associated with acute or with chronic exposure to AN;

(ii) A complete physical examination giving particular attention to the peripheral and central nervous system, gastrointestinal system, respiratory system, skin, and thyroid;

(iii) A 14- by 17-inch (35.56 × 43.18 cm) posteroanterior chest X-ray; and

(iv) Further tests of the intestinal tract, including fecal occult blood screening, for all workers 40 years of age or older, and for any other affected employees for whom, in the opinion of the physician, such testing is appropriate.

(3) *Periodic examinations.* (i) The employer shall provide the examinations specified in paragraph (n)(2) of this section at least annually for all employees specified in paragraph (n)(1) of this section.

(ii) If an employee has not had the examination specified in paragraph (n)(2) of this section within 6 months preceding termination of employment, the employer shall make such examination available to the employee prior to such termination.

(4) *Additional examinations.* If the employee for any reason develops signs or symptoms which may be associated with exposure to AN, the employer shall provide an appropriate examination and emergency medical treatment.

(5) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this standard and its appendixes;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's representative exposure level;

(iv) The employee's anticipated or estimated exposure level (for preplacement examinations or in cases of exposure due to an emergency);

(v) A description of any personal protective equipment used or to be used; and

(vi) Information from previous medical examinations of the affected employee, which is not otherwise available to the examining physician.

(6) *Physician's written opinion.* (i) The employer shall obtain a written opinion from the examining physician which shall include:

(A) The results of the medical examination and test performed;

(B) The physician's opinion as to whether the employee has any detected medical condition(s) which would place the employee at an increased risk of material impairment of the employee's health from exposure to AN;

(C) Any recommended limitations upon the employee's exposure to AN or upon the use of protective clothing and equipment such as respirators; and

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examination or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure to AN.

(iii) The employer shall provide a copy of the written opinion to the affected employee.

(o) *Employee information and training*—(1) *Training program.* (i) By January 2, 1979, the employer shall institute a training program for and assure the participation of all employees exposed to AN above the action level, all employees whose exposures are maintained below the action level by engineering and work practice controls, and all employees subject to potential skin or eye contact with liquid AN.

(ii) Training shall be provided at the time of initial assignment, or upon institution of the training program, and at least annually thereafter, and the employer shall assure that each employee is informed of the following:

(A) The information contained in appendixes A and B;

(B) The quantity, location, manner of use, release, or storage of AN, and the specific nature of operations which could result in exposure to AN, as well as any necessary protective steps;

(C) The purpose, proper use, and limitations of respirators and protective clothing;

(D) The purpose and a description of the medical surveillance program required by paragraph (n) of this section;

(E) The emergency procedures developed, as required by paragraph (i) of this section;

(F) Engineering and work practice controls, their function, and the employee's relationship to these controls; and

(G) A review of this standard.

(2) *Access to training materials.* (i) The employer shall make a copy of this standard and its appendixes readily available to all affected employees.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(p) *Signs and labels*—(1) *General.* (i) The employer may use labels or signs required by other statutes, regulations, or ordinances in addition to, or in combination with, signs and labels required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign or label required by this paragraph which contradicts or detracts from the required sign or label.

(2) *Signs.* (i) The employer shall post signs to clearly indicate all workplaces where AN concentrations exceed the permissable exposure limits. The signs shall bear the following legend:

DANGER
ACRYLONITRILE (AN)
CANCER HAZARD
AUTHORIZED PERSONNEL ONLY
RESPIRATORS MAY BE
REQUIRED

(ii) The employer shall assure that signs required by this paragraph are illuminated and cleaned as necessary so that the legend is readily visible.

(3) *Labels.* (i) The employer shall assure that precautionary labels are affixed to all containers of liquid AN

and AN-based materials not exempted under paragraph (a)(2) of this standard. The employer shall assure that the lables remain affixed when the materials are sold, distributed, or otherwise leave the employer's workplace.

(ii) The employer shall assure that the precautionary labels required by this paragraph are readily visible and legible. The labels shall bear the following legend:

DANGER
CONTAINS ACRYLONITRILE (AN)
CANCER HAZARD

(q) *Recordkeeping*—(1) *Objective data for exempted operations.* (i) Where the processing, use, and handling of materials made from or containing AN are exempted pursuant to paragraph (a)(2)(ii) of this section, the employer shall establish and maintain an accurate record of objective data reasonably relied upon in support of the exemption.

(ii) This record shall include at least the following information:

(A) The material qualifying for exemption;

(B) The source of the objective data;

(C) The testing protocol, results of testing, and/or analysis of the material for the release of AN;

(D) A description of the operation exempted and how the data supports the exemption; and

(E) Other data relevant to the operations, materials, and processing covered by the exemption.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such objective data.

(2) *Exposure monitoring.* (i) The employer shall establish and maintain an accurate record of all monitoring required by paragraph (e) of this section.

(ii) This record shall include:

(A) The dates, number, duration, and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure;

(B) A description of the sampling and analytical methods used and the data relied upon to establish that the methods used meet the accuracy and precision requirements of paragraph (e)(6) of this section;

(C) Type of respiratory protective devices worn, if any; and

(D) Name, social security number, and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for at least forty (40) years, or for the duration of employment plus twenty (20) years, whichever is longer.

(3) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by paragraph (n) of this section.

(ii) This record shall include:

(A) A copy of the physician's written opinions;

(B) Any employee medical complaints related to exposure to AN;

(C) A copy of the information provided to the physician as required by paragraph (n)(5) of this section; and

(D) A copy of the employee's medical and work history.

(iii) The employer shall assure that this record be maintained for at least forty (40) years, or for the duration of employment plus twenty (20) years, whichever is longer.

(4) *Availability.* (i) The employer shall make all records required to be maintained by this section available, upon request, to the Assistant Secretary and the Director for examination and copying.

(ii) Records required by paragraphs (q)(1) through (q)(3) of this section shall be provided upon request to employees, designated representatives, and the Assistant Secretary in accordance with 29 CFR 1926.33 (a) through (e) and (q) through (i). Records required by paragraph (g)(1) shall be provided in the same manner as exposure monitoring records.

(5) *Transfer of records.* (i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by this section for the prescribed period.

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, these records shall be transmitted to the Director.

(iii) At the expiration of the retention period for the records required to be maintained pursuant to this section, the employer shall notify the Director at least 3 months prior to the disposal of the records, and shall transmit them to the Director upon request.

(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in 29 CFR 1926.33(h).

(r) *Observation of monitoring*—(1) *Employee observation.* The employer shall provide affected employees, or their designated representatives, an opportunity to observe any monitoring of employee exposure to AN conducted pursuant to paragraph (e) of this section.

(2) *Observation procedures.* (i) Whenever observation of the monitoring of employee exposure to AN requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the observer with personal protective clothing and equipment required to be worn by employees working in the area, assure the use of such clothing and equipment, and require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring, observers shall be entitled:

(A) To receive an explanation of the measurement procedures;

(B) To observe all steps related to the measurement of airborne concentrations of AN performed at the place of exposure; and

(C) To record the results obtained.

(s) *Effective date:* (1) This section shall become effective November 2, 1978.

(2) Monitoring and medical surveillance conducted since January 17, 1978, under the provisions of the emergency temporary standard may be relied upon by the employer to meet the initial monitoring and initial medical surveillance requirements of this section.

(3) Training programs must be implemented by January 2, 1979.

(4) Engineering and work practice controls required by paragraph (g) of this section shall be implemented no later than November 2, 1980.

(t) *Appendixes.* The information contained in the appendixes is not intended, by itself, to create any additional obligation not otherwise imposed, or to detract from any obligation.

(Approved by the Office of Management and Budget under control number 1218–0126)

Appendix A to § 1926.1145—Substance Safety Data Sheet for Acrylonitrile

I. Substance identification

A. Substance: Acrylonitrile (CH_2 CHCN).

B. Synonyms: Propenenitrile; vinyl cyanide; cyanoethylene; AN; VCN; acylon; carbacryl; fumigrian; ventox.

C. Acrylonitrile can be found as a liquid or vapor, and can also be found in polymer resins, rubbers, plastics, polyols, and other polymers having acrylonitrile as a raw or intermediate material.

D. AN is used in the manufacture of acrylic and modiacrylic fibers, acrylic plastics and resins, speciality polymers, nitrile rubbers, and other organic chemicals. It has also been used as a fumigant.

E. Appearance and odor: Colorless to pale yellow liquid with a pungent odor which can only be detected at concentrations above the permissible exposure level, in a range of 13–19 parts AN per million parts of air (13–19 ppm).

F. Permissible exposure: Exposure may not exceed either:

1. Two parts AN per million parts of air (2 ppm) averaged over the 8-hour workday; or

2. Ten parts AN per million parts of air (10 ppm) averaged over any 15-minute period in the workday.

3. In addition, skin and eye contact with liquid AN is prohibited.

II. Health hazard data

A. Acrylonitrile can affect your body if you inhale the vapor (breathing), if it comes in contact with your eyes or skin, or if you swallow it. It may enter your body through your skin.

B. Effects of overexposure: 1. Short-term exposure: Acrylonitrile can cause eye irritation, nausea, vomiting, headache, sneezing, weakness, and light-headedness. At high concentrations, the effects of exposure may go on to loss of consciousness and death. When acrylonitrile is held in contact with the skin after being absorbed into shoe leather or clothing, it may produce blisters following several hours of no apparent effect. Unless the shoes or clothing are removed immediately and the area washed, blistering will occur. Usually there is no pain or inflammation associated with blister formation.

2. Long-term exposure: Acrylonitrile has been shown to cause cancer in laboratory animals and has been associated with higher incidences of cancer in humans. Repeated or prolonged exposure of the skin to acrylonitrile may produce irritation and dermatitis.

3. Reporting signs and symptoms: You should inform your employer if you develop any signs or symptoms and suspect they are caused by exposure to acrylonitrile.

III. Emergency first aid procedures

A. Eye exposure: If acrylonitrile gets into your eyes, wash your eyes immediately with large amounts of water, lifting the lower and upper lids occasionally. Get medical attention immediately. Contact lenses should not be worn when working with this chemical.

B. Skin exposure: If acrylonitrile gets on your skin, immediately wash the contaminated skin with water. If acrylonitrile soaks through your clothing, especially your shoes, remove the clothing immediately and wash the skin with water. If symptoms occur after washing, get medical attention immediately. Thoroughly wash the clothing before reusing. Contaminated leather shoes or other leather articles should be discarded.

C. Inhalation: If you or any other person breathes in large amounts of acrylonitrile, move the exposed person to fresh air at once. If breathing has stopped, perform artificial respiration. Keep the affected person warm and at rest. Get medical attention as soon as possible.

D. Swallowing: When acrylonitrile has been swallowed, give the person large quantities of water immediately. After the water has been swallowed, try to get the person to vomit by having him touch the back of his throat with his finger. Do not make an unconscious person vomit. Get medical attention immediately.

E. Rescue: Move the affected person from the hazardous exposure. If the exposed person has been overcome, notify someone else and put into effect the established emergency procedures. Do not become a casualty yourself. Understand your emergency rescue procedures and know the location of the emergency equipment before the need arises.

F. Special first aid procedures: First aid kits containing an adequate supply (at least two dozen) of amyl nitrite pearls, each containing 0.3 ml, should be maintained at each site where acrylonitrile is used. When a person is suspected of receiving an overexposure to acrylonitrile, immediately remove that person from the contaminated area using established rescue procedures. Contaminated clothing must be removed and the acrylonitrile washed from the skin immediately. Artificial respiration should be started at once if breathing has stopped. If the person is unconscious, amyl nitrite may be used as an antidote by a properly trained individual in accordance with established emergency procedures. Medical aid should be obtained immediately.

IV. Respirators and protective clothing

A. Respirators. You may be required to wear a respirator for nonroutine activities, in emergencies, while your employer is in the process of reducing acrylonitrile exposures through engineering controls, and in areas where engineering controls are not feasible. If respirators are worn, they must have a Mine Safety and Health Administration (MSHA or MESA) or National Institute for Occupational Safety and Health (NIOSH) label of approval for use with organic vapors. (Older respirators may have a Bureau of Mines approval label.) For effective protection, respirators must fit your face and head snugly. Respirators should not be loosened or removed in work situations where their use is required.

Acrylonitrile does not have a detectable odor except at levels above the permissible exposure limits. Do not depend on odor to warn you when a respirator cartridge or canister is exhausted. Cartridges or canisters must be changed daily or before the end-of-service-life, whichever comes first. Reuse of these may allow acrylonitrile to gradually filter through the cartridge and cause exposures which you cannot detect by odor. If you can smell acrylonitrile while wearing a respirator, proceed immediately to fresh air. If you experience difficulty breathing while wearing a respirator, tell your employer.

B. Supplied-air suits: In some work situations, the wearing of supplied-air suits may be necessary. Your employer must instruct you in their proper use and operation.

C. Protective clothing: You must wear impervious clothing, gloves, face shield, or other appropriate protective clothing to prevent skin contact with liquid acrylonitrile. Where protective clothing is required, your employer is required to provide clean garments to you as necessary to assume that the clothing protects you adequately.

Replace or repair impervious clothing that has developed leaks.

Acrylonitrile should never be allowed to remain on the skin. Clothing and shoes which are not impervious to acrylonitrile should not be allowed to become contaminated with acrylonitrile, and if they do the clothing and shoes should be promptly removed and decontaminated. The clothing should be laundered or discarded after the AN is removed. Once acrylonitrile penetrates shoes or other leather articles, they should not be worn again.

D. Eye protection: You must wear splashproof safety goggles in areas where liquid acrylonitrile may contact your eyes. In addition, contact lenses should not be worn in areas where eye contact with acrylonitrile can occur.

V. Precautions for safe use, handling, and storage

A. Acrylonitrile is a flammable liquid, and its vapors can easily form explosive mixtures in air.

B. Acrylonitrile must be stored in tightly closed containers in a cool, well-ventilated area, away from heat, sparks, flames, strong oxidizers (especially bromine), strong bases, copper, copper alloys, ammonia, and amines.

C. Sources of ignition such as smoking and open flames are prohibited wherever acrylonitrile is handled, used, or stored in a manner that could create a potential fire or explosion hazard.

D. You should use non-sparking tools when opening or closing metal containers of acrylonitrile, and containers must be bonded and grounded when pouring or transferring liquid acrylonitrile.

E. You must immediately remove any non-impervious clothing that becomes wetted with acrylonitrile, and this clothing must not be reworn until the acrylonitrile is removed from the clothing.

F. Impervious clothing wet with liquid acrylonitrile can be easily ignited. This clothing must be washed down with water before you remove it.

G. If your skin becomes wet with liquid acrylonitrile, you must promptly and thoroughly wash or shower with soap or mild detergent to remove any acrylonitrile from your skin.

H. You must not keep food, beverages, or smoking materials, nor are you permitted to eat or smoke in regulated areas where acrylonitrile concentrations are above the permissible exposure limits.

I. If you contact liquid acrylonitrile, you must wash your hands thoroughly with soap or mild detergent and water before eating, smoking, or using toilet facilities.

J. Fire extinguishers and quick drenching facilities must be readily available, and you should know where they are and how to operate them.

K. Ask your supervisor where acrylonitrile is used in your work area and for any additional plant safety and health rules.

VI. Access to information

A. Each year, your employer is required to inform you of the information contained in this Substance Safety Data Sheet for acrylonitrile. In addition, you employer must instruct you in the proper work practices for using acrylonitrile, emergency procedures, and the correct use of protective equipment.

B. Your employer is required to determine whether you are being exposed to

acrylonitrile. You or your representative has the right to observe employee measurements and to record the results obtained. Your employer is required to inform you of your exposure. If your employer determines that you are being overexposed, he or she is required to inform you of the actions which are being taken to reduce your exposure to within permissible exposure limits.

C. Your employer is required to keep records of your exposures and medical examinations. These records must be kept by the employer for at least forty (40) years or for the period of your employment plus twenty (20) years, whichever is longer.

D. Your employer is required to release your exposure and medical records to you or your representative upon your request.

Appendix B to § 1926.1145—Substance Technical Guidelines for Acrylonitrile

I. Physical and chemical data

A. Substance identification: 1. Synonyms: AN; VCN; vinyl cyanide; propenenitrile; cyanoethylene; Acrylon; Carbacryl; Fumigrain; Ventox.

2. Formula: $CH_2=CHCN$.

3. Molecular weight: 53.1.

B. Physical data: 1. Boiling point (760 mm Hg): 77.3° C (171° F);

2. Specific gravity (water=1): 0.81 (at 20° C or 68° F);

3. Vapor density (air=1 at boiling point of acrylonitrile): 1.83;

4. Melting point: −83° C (−117° F);

5. Vapor pressure (@20° F): 83 mm Hg;

6. Solubility in water, percent by weight @20° C (68° F): 7.35;

7. Evaporation rate (Butyl Acetate=1): 4.54; and

8. Appearance and odor: Colorless to pale yellow liquid with a pungent odor at concentrations above the permissible exposure level. Any detectable odor of acrylonitrile may indicate overexposure.

II. Fire, explosion, and reactivity hazard data

A. Fire: 1. Flash point: −1° C (30° F) (closed cup).

2. Autoignition temperature: 481° C (898° F).

3. Flammable limits air, percent by volume: Lower: 3, Upper: 17.

4. Extinguishing media: Alcohol foam, carbon dioxide, and dry chemical.

5. Special fire-fighting procedures: Do not use a solid stream of water, since the stream will scatter and spread the fire. Use water to cool containers exposed to a fire.

6. Unusual fire and explosion hazards: Acrylonitrile is a flammable liquid. Its vapors can easily form explosive mixtures with air. All ignition sources must be controlled where acrylonitrile is handled, used, or stored in a manner that could create a potential fire or explosion hazard. Acrylonitrile vapors are heavier than air and may travel along the ground and be ignited by open flames or sparks at locations remote from the site at which acrylonitrile is being handled.

7. For purposes of compliance with the requirements of 29 CFR 1910.106, acrylonitrile is classified as a class IB flammable liquid. For example, 7,500 ppm, approximately one-fourth of the lower flammable limit, would be considered to pose a potential fire and explosion hazard.

8. For purposes of compliance with 29 CFR 1910.157, acrylonitrile is classified as a Class B fire hazard.

9. For purpose of compliance with 29 CFR 1919.309, locations classified as hazardous due to the presence of acrylonitrile shall be Class I, Group D.

B. Reactivity:

1. Conditions contributing to instability: Acrylonitrile will polymerize when hot, and the additional heat liberated by the polymerization may cause containers to explode. Pure AN may self-polymerize, with a rapid build-up of pressure, resulting in an explosion hazard. Inhibitors are added to the commercial product to prevent self-polymerization.

2. Incompatibilities: Contact with strong oxidizers (especially bromine) and strong bases may cause fires and explosions. Contact with copper, copper alloys, ammonia, and amines may start serious decomposition.

3. Hazardous decompostion products: Toxic gases and vapors (such as hydrogen cyanide, oxides of nitrogen, and carbon monoxide) may be released in a fire involving acrylonitrile and certain polymers made from acrylonitrile.

4. Special precautions: Liquid acrylonitrile will attack some forms of plastics, rubbers, and coatings.

III. Spill, leak, and disposal procedures

A. If acrylonitrile is spilled or leaked, the following steps should be taken:

1. Remove all ignition sources.

2. The area should be evacuated at once and re-entered only after the area has been thoroughly ventilated and washed down with water.

3. If liquid acrylonitrile or polymer intermediate, collect for reclamation or absorb in paper, vermiculite, dry sand, earth, or similar material, or wash down with water into process sewer system.

B. Persons not wearing protective equipment should be restricted from areas of spills or leaks until clean-up has been completed.

C. Waste disposal methods: Waste material shall be disposed of in a manner that is not hazardous to employees or to the general population. Spills of acrylonitrile and flushing of such spills shall be channeled for appropriate treatment or collection for disposal. They shall not be channeled directly into the sanitary sewer system. In selecting the method of waste disposal, applicable local, State, and Federal regulations should be consulted.

IV. Monitoring and measurement procedures

A. Exposure above the Permissible Exposure Limit:

1. Eight-hour exposure evaluation: Measurements taken for the purpose of determining employee exposure under this section are best taken so that the average 8-hour exposure may be determined from a single 8-hour sample or two (2) 4-hour samples. Air samples should be taken in the employee's breathing zone (air that would most nearly represent that inhaled by the employee.)

2. Ceiling evaluation: Measurements taken for the purpose of determining employee exposure under this section must be taken during periods of maximum expected airborne concentrations of acrylonitrile in the employee's breathing zone. A minimum of three (3) measurements should be taken on one work shift. The average of all measurements taken is an estimate of the employee's ceiling exposure.

3. Monitoring techniques: The sampling and analysis under this section may be performed by collecting the acrylonitrile vapor on charcoal adsorption tubes or other composition adsorption tubes, with subsequent chemical analysis. Sampling and analysis may also be performed by instruments such as real-time continuous monitoring systems, portable direct-reading instruments, or passive dosimeters. Analysis of resultant samples should be by gas chromatograph.

Appendix D lists methods of sampling and analysis which have been tested by NIOSH and OSHA for use with acrylonitrile. NIOSH and OSHA have validated modifications of NIOSH Method S–156 (See Appendix D) under laboratory conditions for concentrations below 1 ppm. The employer has the obligation of selecting a monitoring method which meets the accuracy and precision requirements of the standard under his unique field conditions. The standard requires that methods of monitoring must be accurate, to a 95-percent confidence level, to ±35-percent for concentrations of AN at or above 2 ppm, and to ±50-percent for concentrations below 2 ppm. In addition to the methods described in Appendix D, there are numerous other methods available for monitoring for AN in the workplace. Details on these other methods have been submitted by various companies to the rulemaking record, and are available at the OSHA Docket Office.

B. Since many of the duties relating to employee exposure are dependent on the results of monitoring and measuring procedures, employers shall assure that the evaluation of employee exposures is performed by a competent industrial hygienist or other technically qualified person.

V. Protective clothing

Employees shall be provided with and required to wear appropriate protective clothing to prevent any possibility of skin contact with liquid AN. Because acrylonitrile is absorbed through the skin, it is important to prevent skin contact with liquid AN. Protective clothing shall include impermeable coveralls or similar full-body work clothing, gloves, head-coverings, as appropriate to protect areas of the body which may come in contact with liquid AN.

Employers should ascertain that the protective garments are impermeable to acrylonitrile. Non-impermeable clothing and shoes should not be allowed to become contaminated with liquid AN. If permeable clothing does become contaminated, it should be promptly removed, placed in a regulated area for removal of the AN, and not worn again until the AN is removed. If leather footwear or other leather garments

become wet from acrylonitrile, they should be replaced and not worn again, due to the ability of leather to absorb acrylonitrile and hold it against the skin. Since there is no pain associated with the blistering which may result from skin contact with liquid AN, it is essential that the employee be informed of this hazard so that he or she can be protected.

Any protective clothing which has developed leaks or is otherwise found to be defective shall be repaired or replaced. Clean protective clothing shall be provided to the employee as necessary to assure its protectiveness. Whenever impervious clothing becomes wet with liquid AN, it shall be washed down with water before being removed by the employee. Employees are also required to wear splash-proof safety goggles where there is any possibility of acrylonitrile contacting the eyes.

VI. Housekeeping and hygiene facilities

For purposes of complying with 29 CFR 1926.51, the following items should be emphasized:

A. The workplace should be kept clean, orderly, and in a sanitary condition. The employer is required to institute a leak and spill detection program for operations involving liquid AN in order to detect sources of fugitive AN emissions.

B. Dry sweeping and the use of compressed air is unsafe for the cleaning of floors and other surfaces where liquid AN may be found.

C. Adequate washing facilities with hot and cold water are to be provided, and maintained in a sanitary condition. Suitable cleansing agents are also to be provided to assure the effective removal of acrylonitrile from the skin.

D. Change or dressing rooms with individual clothes storage facilities must be provided to prevent the contamination of street clothes with acrylonitrile. Because of the hazardous nature of acrylonitrile, contaminated protective clothing should be placed in a regulated area designated by the employer for removal of the AN before the clothing is laundered or disposed of.

VII. Miscellaneous precautions

A. Store acrylonitrile in tightly-closed containers in a cool, well-ventilated area and take necessary precautions to avoid any explosion hazard.

B. High exposures to acrylonitrile can occur when transferring the liquid from one container to another.

C. Non-sparking tools must be used to open and close metal acrylonitrile containers. These containers must be effectively grounded and bonded prior to pouring.

D. Never store uninhibited acrylonitrile.

E. Acrylonitrile vapors are not inhibited. They may form polymers and clog vents of storage tanks.

F. Use of supplied-air suits or other impervious coverings may be necessary to prevent skin contact with and provide respiratory protection from acrylonitrile where the concentration of acrylonitrile is unknown or is above the ceiling limit. Supplied-air suits should be selected, used, and maintained under the immediate supervision of persons knowledgeable in the limitations and potential life-endangering characteristics of supplied-air suits.

G. Employers shall advise employees of all areas and operations where exposure to acrylonitrile could occur.

VIII. Common operations

Common operations in which exposure to acrylonitrile is likely to occur include the following: Manufacture of the acrylonitrile monomer; synthesis of acrylic fibers, ABS, SAN, and nitrile barrier plastics and resins, nitrile rubber, surface coatings, specialty chemicals, use as a chemical intermediate, use as a fumigant and in the cyanoethylation of cotton.

Appendix C to § 1926.1145—Medical Surveillance Guidelines for Acrylonitrile

I. Route of entry

Inhalation; skin absorption; ingestion.

II. Toxicology

Acrylonitrile vapor is an asphyxiant due to inhibitory action on metabolic enzyme systems. Animals exposed to 75 or 100 ppm for 7 hours have shown signs of anoxia; in some animals which died at the higher level, cyanomethemoglobin was found in the blood. Two human fatalities from accidental poisioning have been reported; one was caused by inhalation of an unknown concentration of the vapor, and the other was thought to be caused by skin absorption or inhalation. Most cases of intoxication from industrial exposure have been mild, with rapid onset of eye irritation, headache, sneezing, and nausea. Weakness, lightheadedness, and vomiting may also occur. Exposure to high concentrations may produce profound weakness, asphyxia, and death. The vapor is a severe eye irritant. Prolonged skin contract with the liquid may result in absorption with systemic effects, and in the formation of large blisters after a latent period of several hours. Although there is usually little or no pain or inflammation, the affected skin resembles a second-degree thermal burn. Solutions spilled on exposed skin, or on areas covered only by a light layer of clothing, evaporate rapidly, leaving no irritation, or, at the most, mild transient redness. Repeated spills on exposed skin may result in dermatitis due to solvent effects.

Results after 1 year of a planned 2-year animal study on the effects of exposure to acrylonitrile have indicated that rats ingesting as little as 35 ppm in their drinking water develop tumors of the central nervous system. The interim results of this study have been supported by a similar study being conducted by the same laboratory, involving exposure of rats by inhalation of acrylonitrile vapor, which has shown similar types of tumors in animals exposed to 80 ppm.

In addition, the preliminary results of an epidemiological study being performed by duPont on a cohort of workers in their Camden, S.C. acrylic fiber plant indicate a statistically significant increase in the incidence of colon and lung cancers among employees exposed to acrylonitrile.

III. Signs and symptoms of acute overexposure

Asphyxia and death can occur from exposure to high concentrations of acrylonitrile. Symptoms of overexposure include eye irritation, headache, sneezing, nausea and vomiting, weakness, and light-headedness. Prolonged skin contact can cause blisters on the skin with appearance of a second-degree burn, but with little or no pain. Repeated skin contact may produce scaling dermatits.

IV. Treatment of acute overexposure

Remove employee from exposure. Immediately flush eyes with water and wash skin with soap or mild detergent and water. If AN has been swallowed, and person is conscious, induce vomiting. Give artificial resuscitation if indicated. More severe cases, such as those associated with loss of consciousness, may be treated by the intravenous administration of sodium nitrite, followed by sodium thiosulfate, although this is not as effective for acrylonitrile poisoning as for inorganic cyanide poisoning.

V. Surveillance and preventive considerations

A. As noted above, exposure to acrylonitrile has been linked to increased incidence of cancers of the colon and lung in employees of the duPont acrylic fiber plant in Camden, S.C. In addition, the animal testing of acrylonitrile has resulted in the development of cancers of the central nervous system in rats exposed by either inhalation or ingestion. The physician should be aware of the findings of these studies in evaluating the health of employees exposed to acrylonitrile.

Most reported acute effects of occupational exposure to acrylonitrile are due to its ability to cause tissue anoxia and asphyxia. The effects are similar to those caused by hydrogen cyanide. Liquid acrylonitrile can be absorbed through the skin upon prolonged contact. The liquid readily penetrates leather, and will produce burns of the feet if footwear contaminated with acrylonitrile is not removed.

It is important for the physician to become familiar with the operating conditions in which exposure to acrylonitrile may occur. Those employees with skin diseases may not tolerate the wearing of whatever protective clothing may be necessary to protect them from exposure. In addition, those with chronic respiratory disease may not tolerate the wearing of negative-pressure respirators.

B. Surveillance and screening. Medical histories and laboratory examinations are required for each employee subject to exposure to acrylonitrile above the action level. The employer must screen employees for history of certain medical conditions which might place the employee at increased risk from exposure.

1. *Central nervous system dysfunction.* Acute effects of exposure to acrylonitrile generally involve the central nervous system. Symptoms of acrylonitrile exposure include headache, nausea, dizziness, and general weakness. The animal studies cited above suggest possible carcinogenic effects of acrylonitrile on the central nervous system,

since rats exposed by either inhalation or ingestion have developed similar CNS tumors.

2. *Respiratory disease.* The du Pont data indicate an increased risk of lung cancer among employees exposed to acrylonitrile.

3. *Gastrointestinal disease.* The du Pont data indicate an increased risk of cancer of the colon among employees exposed to acrylonitrile. In addition, the animal studies show possible tumor production in the stomachs of the rats in the ingestion study.

4. *Skin disease.* Acrylonitrile can cause skin burns when prolonged skin contact with the liquid occurs. In addition, repeated skin contact with the liquid can cause dermatitis.

5. *General.* The purpose of the medical procedures outlined in the standard is to establish a baseline for future health monitoring. Persons unusually susceptible to the effects of anoxia or those with anemia would be expected to be at increased risk. In addition to emphasis on the CNS, respiratory and gastro-intestinal systems, the cardiovascular system, liver, and kidney function should also be stressed.

Appendix D to § 1926.1145—Sampling and Analytical Methods for Acrylonitrile

There are many methods available for monitoring employee exposures to acrylonitrile. Most of these involve the use of charcoal tubes and sampling pumps, with analysis by gas chromatograph. The essential differences between the charcoal tube methods include, among others, the use of different desorbing solvents, the use of different lots of charcoal, and the use of different equipment for analysis of the samples.

Besides charcoal, considerable work has been performed on methods using porous polymer sampling tubes and passive dosimeters. In addition, there are several portable gas analyzers and monitoring units available on the open market.

This appendix contains details for the methods which have been tested at OSHA Analytical Laboratory in Salt Lake City, and NIOSH in Cincinnati. Each is a variation on NIOSH Method S–156, which is also included for reference. This does not indicate that these methods are the only ones which will be satisfactory. There also may be workplace situations in which these methods are not adequate, due to such factors as high humidity. Copies of the other methods available to OSHA are available in the rulemaking record, and may be obtained from the OSHA Docket Office. These include, the Union Carbide, Monsanto, Dow Chemical and Dow Badische methods, as well as NISOH Method P & CAM 127.

Employers who note problems with sample breakthrough should try larger charcoal tubes. Tubes of larger capacity are available, and are often used for sampling vinyl chloride. In addition, lower flow rates and shorter sampling times should be beneficial in minimizing breakthrough problems.

Whatever method the employer chooses, he must assure himself of the method's accuracy and precision under the unique conditions present in his workplace.

NIOSH Method S–156 (Unmodified)

Analyte: Acrylonitrile.
Matrix: Air.
Procedure: Absorption on charcoal, desorption with methanol, GC.

1. *Principle of the method* (Reference 11.1).

1.1 A known volume of air is drawn through a charcoal tube to trap the organic vapors present.

1.2 The charcoal in the tube is transferred to a small, stoppered sample container, and the analyte is desorbed with methanol.

1.3 An aliquot of the desorbed sample is injected into a gas chromatograph.

1.4 The area of the resulting peak is determined and compared with areas obtained for standards.

2. *Range and sensitivity.*

2.1 This method was validated over the range of 17.5–70.0 mg/cu m at an atmospheric temperature and pressure of 22° C and 760 MM Hg, using a 20-liter sample. Under the conditions of sample size (20-liters) the probable useful range of this method is 4.5–135 mg-cu m. The method is capable of measuring much smaller amounts if the desorption efficiency is adequate. Desorption efficiency must be determined over the range used.

2.2 The upper limit of the range of the method is dependent on the adsorptive capacity of the charcoal tube. This capacity varies with the concentrations of acrylonitrile and other substances in the air. The first section of the charcoal tube was found to hold at least 3.97 mg of acrylonitrile when a test atmosphere containing 92.0 mg/cu m of acrylonitrile in air was sampled 0.18 liter per minute for 240 minutes; at that time the concentration of acrylonitrile in the effluent was less than 5 percent of that in the influent. (The charcoal tube consists of two sections of activated charcoal separated by a section of urethane foam. See section 6.2.) If a particular atmosphere is suspected of containing a large amount of contaminant, a smaller sampling volume should be taken.

3. *Interference.*

3.1 When the amount of water in the air is so great that condensation actually occurs in the tube, organic vapors will not be trapped efficiently. Preliminary experiments using toluene indicate that high humidity severely decreases the breakthrough volume.

3.2 When interfering compounds are known or suspected to be present in the air, such information, including their suspected identities, should be transmitted with the sample.

3.3 It must be emphasized that any compound which has the same retention time as the analyte at the operating conditions described in this method is an interference. Retention time data on a single column cannot be considered proof of chemical identity.

3.4 If the possibility of interference exists, separation conditions (column packing, temperature, etc.) must be changed to circumvent the problem.

4. *Precision and accuracy.*

4.1 The Coefficient of Variation (CV_T) for the total analytical and sampling method in the range of 17.5–70.0 mg/cu m was 0.073. This value corresponds to a 3.3 mg/cu m standard deviation at the (previous) OSHA standard level (20 ppm). Statistical information and details of the validation and experimental test procedures can be found in Reference 11.2.

4.2 On the average the concentrations obtained at the 20 ppm level using the overall sampling and analytical method were 6.0 percent lower than the "true" concentrations for a limited number of laboratory experiments. Any difference between the "found" and "true" concentrations may not represent a bias in the sampling and analytical method, but rather a random variation from the experimentally determined "true" concentration. Therefore, no recovery correction should be applied to the final result in section 10.5.

5. *Advantages and disadvantages of the method.*

5.1 The sampling device is small, portable, and involves no liquids. Interferences are minimal, and most of those which do occur can be eliminated by altering chromatographic conditions. The tubes are analyzed by means of a quick, instrumental method.

The method can also be used for the simultaneous analysis of two or more substances suspected to be present in the same sample by simply changing gas chromatographic conditions.

5.2 One disadvantage of the method is that the amount of sample which can be taken is limited by the number of milligrams that the tube will hold before overloading. When the sample value obtained for the backup section of the charcoal tube exceeds 25 percent of that found on the front section, the possibility of sample loss exists.

5.3 Furthermore, the precision of the method is limited by the reproducibility of the pressure drop across the tubes. This drop will affect the flow rate and cause the volume to be imprecise, because the pump is usually calibrated for one tube only.

6. *Apparatus.*

6.1 A calibrated personal sampling pump whose flow can be determined within ±5 percent at the recommended flow rate. (Reference 11.3).

6.2 Charcoal tubes: Glass tubes with both ends flame sealed, 7 cm long with a 6-mm O.D. and a 4-mm I.D., containing 2 sections of 20/40 mesh activated charcoal separated by a 2-mm portion of urethane foam. The activated charcoals prepared from cocoanut shells and is fired at 600° C prior to packing. The adsorbing section contains 100 mg of charcoal, the backup section 50 mg. A 3-mm portion of urethane foam is placed between the outlet end of the tube and the backup section. A plug of silicated glass wool is placed in front of the adsorbing section. The pressure drop across the tube must be less than 1 inch of mercury at a flow rate of 1 liter per minute.

6.3 Gas chromatograph equipped with a flame ionization detector.

6.4 Column (4–ftx¼-in stainless steel) packed with 50/80 mesh Poropak, type Q.

6.5 An electronic integrator or some other suitable method for measuring peak areas.

6.6 Two-milliliter sample containers with glass stoppers or Teflon-lined caps. If an

automatic sample injector is used, the associated vials may be used.

6.7 Microliter syringes: 10-microliter and other convenient sizes for making standards.

6.8 Pipets: 1.0-ml delivery pipets.

6.9 Volumetric flask: 10-ml or convenient sizes for making standard solutions.

7. *Reagents.*

7.1 Chromatographic quality methanol.

7.2 Acrylonitrile, reagent grade.

7.3 Hexane, reagent grade.

7.4 Purified nitrogen.

7.5 Prepurified hydrogen.

7.6 Filtered compressed air.

8. *Procedure.*

8.1 Cleaning of equipment. All glassware used for the laboratory analysis should be detergent washed and thoroughly rinsed with tap water and distilled water.

8.2 Calibration of personal pumps. Each personal pump must be calibrated with a representative charcoal tube in the line. This will minimize errors associated with uncertainties in the sample volume collected.

8.3 Collection and shipping of samples.

8.3.1 Immediately before sampling, break the ends of the tube to provide an opening at least one-half the internal diameter of the tube (2 mm).

8.3.2 The smaller section of charcoal is used as a backup and should be positioned nearest the sampling pump.

8.3.3 The charcoal tube should be placed in a vertical direction during sampling to minimize channeling through the charcoal.

8.3.4 Air being sampled should not be passed through any hose or tubing before entering the charcoal tube.

8.3.5 A maximum sample size of 20 liters is recommended. Sample at a flow of 0.20 liter per minute or less. The flow rate should be known with an accuracy of at least ±5 percent.

8.3.6 The temperature and pressure of the atmosphere being sampled should be recorded. If pressure reading is not available, record the elevation.

8.3.7 The charcoal tubes should be capped with the supplied plastic caps immediately after sampling. Under no circumstances should rubber caps be used.

8.3.8 With each batch of 10 samples submit one tube from the same lot of tubes which was used for sample collection and which is subjected to exactly the same handling as the samples except that no air is drawn through it. Label this as a blank.

8.3.9 Capped tubes should be packed tightly and padded before they are shipped to minimize tube breakage during shipping.

8.3.10 A sample of the bulk material should be submitted to the laboratory in a glass container with a Teflon-lined cap. This sample should not be transported in the same container as the charcoal tubes.

8.4 Analysis of samples.

8.4.1 Preparation of samples. In preparation for analysis, each charcoal tube is scored with a file in front of the first section of charcoal and broken open. The glass wool is removed and discarded. The charcoal in the first (larger) section is transferred to a 2-ml stoppered sample container. The separating section of foam is removed and discarded; the second section is transferred to another stoppered container. These two sections are analyzed separately.

8.4.2 Desorption of samples. Prior to analysis, 1.0 ml of methanol is pipetted into each sample container. Desorption should be done for 30 minutes. Tests indicate that this is adequate if the sample is agitated occasionally during this period. If an automatic sample injector is used, the sample vials should be capped as soon as the solvent is added to minimize volatilization.

8.4.3 GC conditions. The typical operating conditions for the gas chromatograph are:

1. 50 ml/min (60 psig) nitrogen carrier gas flow.
2. 65 ml/min (24 psig) hydrogen gas flow to detector.
3. 500 ml/min (50 psig) air flow to detector.
4. 235° C injector temperature.
5. 255° C manifold temperature (detector).
6. 155° C column temperature.

8.4.4 Injection. The first step in the analysis is the injection of the sample into the gas chromatograph. To eliminate difficulties arising from blowback or distillation within the syringe needle, one should employ the solvent flush injection technique. The 10-microliter syringe is first flushed with solvent several times to wet the barrel and plunger. Three microliters of solvent are drawn into the syringe to increase the accuracy and reproducibility of the injected sample volume. The needle is removed from the solvent, and the plunger is pulled back about 0.2 microliter to separate the solvent flush from the sample with a pocket of air to be used as a marker. The needle is then immersed in the sample, and a 5-microliter aliquot is withdrawn, taking into consideration the volume of the needle, since the sample in the needle will be completely injected. After the needle is removed from the sample and prior to injection, the plunger is pulled back 1.2 microliters to minimize evaporation of the sample from the tip of the needle. Observe that the sample occupies 4.9–5.0 microliters in the barrel of the syringe. Duplicate injections of each sample and standard should be made. No more than a 3 percent difference in area is to be expected. An automatic sample injector can be used if it is shown to give reproducibility at least as good as the solvent flush method.

8.4.5 Measurement of area. The area of the sample peak is measured by an electronic integrator or some other suitable form of area measurement, and preliminary results are read from a standard curve prepared as discussed below.

8.5 Determination of desorption efficiency.

8.5.1 Importance of determination. The desorption efficiency of a particular compound can vary from one laboratory to another and also from one batch of charcoal to another. Thus, it is necessary to determine at least once the percentage of the specific compound that is removed in the desorption process, provided the same batch of charcoal is used.

8.5.2 Procedure for determining desorption efficiency. Activated charcoal equivalent to the amount in the first section of the sampling tube (100 mg) is measured into a 2.5 in, 4-mm I.D. glass tube, flame sealed at one end. This charcoal must be from the same batch as that used in obtaining the samples and can be obtained from unused charcoal tubes. The open end is capped with Parafilm. A known amount of hexane solution of acrylonitrile containing 0.239 g/ml is injected directly into the activated charcoal with a microliter syringe, and tube is capped with more Parafilm. When using an automatic sample injector, the sample injector vials, capped with Teflon-faced septa, may be used in place of the glass tube.

The amount injected is equivalent to that present in a 20-liter air sample at the selected level.

Six tubes at each of three levels (0.5X, 1X, and 2X of the standard) are prepared in this manner and allowed to stand for at least overnight to assure complete adsorption of the analyte onto the charcoal. These tubes are referred to as the sample. A parallel blank tube should be treated in the same manner except that no sample is added to it. The sample and blank tubes are desorbed and analyzed in exactly the same manner as the sampling tube described in section 8.4.

Two or three standards are prepared by injecting the same volume of compound into 1.0 ml of methanol with the same syringe used in the preparation of the samples. These are analyzed with the samples.

The desorption efficiency (D.E.) equals the average weight in mg recovered from the tube divided by the weight in mg added to the tube, or

$$D.E. = \frac{\text{average weight recovered (mg)}}{\text{weight added (mg)}}$$

The desorption efficiency is dependent on the amount of analyte collected on the charcoal. Plot the desorption efficiency versus weight of analyte found. This curve is used in section 10.4 to correct for adsorption losses.

9. *Calibration and standards.*

It is convenient to express concentration of standards in terms of mg/1.0 ml methanol, because samples are desorbed in this amount of methanol. The density of the analyte is used to convert mg into microliters for easy measurement with a microliter syringe. A series of standards, varying in concentration over the range of interest, is prepared and analyzed under the same GC conditions and during the same time period as the unknown samples. Curves are established by plotting concentration in mg/1.0 ml versus peak area.

Note: Since no internal standard is used in the method, standard solutions must be analyzed at the same time that the sample analysis is done. This will minimize the effect of known day-to-day variations and variations during the same day of the FID response.

10. *Calculations.*

10.1 Read the weight, in mg, corresponding to each peak area from the standard curve. No volume corrections are needed, because the standard curve is based on mg/1.0 ml methanol and the volume of sample injected is identical to the volume of the standards injected.

10.2 Corrections for the bank must be made for each sample.

mg = mg sample − mg blank

Where:

mg sample = mg found in front section of sample tube.

mg sample = mg found in front section of blank tube.

A similar procedure is followed for the backup sections.

10.3 Add the weights found in the front and backup sections to get the total weight in the sample.

$$\text{Corrected mg/sample} = \frac{\text{Total weight}}{\text{D.E.}}$$

10.4 Read the desorption efficiency from the curve (see sec. 8.5.2) for the amount found in the front section. Divide the total weight by this desorption efficiency to obtain the corrected mg/sample.

10.5 The concentration of the analyte in the air sampled can be expressed in mg/cu m.

$$\text{mg/cu m} = \text{Corrected mg (section 10.4)} \times \frac{1{,}000 \text{ (liter/cu m)}}{\text{air volume sampled (liter)}}$$

10.6 Another method of expressing concentration is ppm.

$$\text{ppm} = \text{m mg/cu} \times 24.45/\text{M.W.} \times 760/P \times T. + 273/298$$

Where:

P = Pressure (mm Hg) of air sampled.

T = Temperature (°C) of air sampled.

24.45 = Molar volume (liter/mole) at 25°C and 760 mm Hg.

M.W. = Molecular weight (g/mole) of analyte.

760 = Standard pressure (mm Hg).

298 = Standard temperature (°K).

11. *References.*

11.1 White, L. D. et al., "A Convenient Optimized Method for the Analysis of Selected Solvent Vapors in the Industrial Atmosphere," *Amer. Ind. Hyg. Assoc. J.*, 31:225 (1970).

11.2 Documentation of NIOSH Validation Tests, NIOSH Contract No. CDC–99–74–45.

11.3 Final Report, NIOSH Contract HSM–99–71–31, "Personal Sampler Pump for Charcoal Tubes," September 15, 1972.

NIOSH Modification of NIOSH Method S–156

The NIOSH recommended method for low levels for acrylonitrile is a modification of method S–156. It differs in the following respects:

(1) Samples are desorbed using 1 ml of 1 percent acetone in CS_2 rather than methanol.

(2) The analytical column and conditions are:

Column: 20 percent SP–1000 on 80/100 Supelcoport 10 feet x ⅛ inch S.S.
Conditions:
Injector temperature: 200°C.
Detector temperature: 100° C.
Column temperature: 85° C.
Helium flow: 25 ml/min.
Air flow: 450 ml/min.
Hydrogen flow: 55 ml/min.

(3) A 2 µl injection of the desorbed analyte is used.

(4) A sampling rate of 100 ml/min is recommended.

OSHA Laboratory Modification of NIOSH Method S–156

Analyte: Acrylonitrile.
Matrix: Air.
Procedure: Adsorption on charcoal, desorption with methanol, GC.

1. *Principle of the Method* (Reference 1).

1.1 A known volume of air is drawn through a charcoal tube to trap the organic vapors present.

1.2 The charcoal in the tube is transferred to a small, stoppered sample vial, and the analyte is desorbed with methanol.

1.3 An aliquot of the desorbed sample is injected into a gas chromatograph.

1.4 The area of the resulting peak is determined and compared with areas obtained for standards.

2. *Advantages and disadvantages of the method.*

2.1 The sampling device is small, portable, and involves no liquids. Interferences are minimal, and most of those which do occur can be eliminated by altering chromatographic conditions. The tubes are analyzed by means of a quick, instrumental method.

2.2 This method may not be adequate for the simultaneous analysis of two or more substances.

2.3 The amount of sample which can be taken is limited by the number of milligrams that the tube will hold before overloading. When the sample value obtained for the backup section of the charcoal tube exceeds 25 percent of that found on the front section, the possibility of sample loss exists.

2.4 The precision of the method is limited by the reproducibility of the pressure drop across the tubes. This drop will affect the flow rate and cause the volume to be imprecise, because the pump is usually calibrated for one tube only.

3. *Apparatus.*

3.1 A calibrated personal sampling pump whose flow can be determined within ±5 percent at the recommended flow rate.

3.2 Charcoal tubes: Glass tube with both ends flame sealed, 7 cm long with a 6-mm O.D. and a 4-mm I.D., containing 2 sections of 20/40 mesh activated charcoal separated by a 2-mm portion of urethane foam. The activated charcoal is prepared from coconut shells and is fired at 600° C prior to packing. The adsorbing section contains 100 mg of charcoal, the back-up section 50 mg. A 3-mm portion of urethane foam is placed between the outlet end of the tube and the back-up section. A plug of sililated glass wool is placed in front of the adsorbing section. The pressure drop across the tube must be less than one inch of mercury at a flow rate of 1 liter per minute.

3.3 Gas chromatograph equipped with a nitrogen phosphorus detector.

3.4 Column (10-ft x 1/8"-in stainless steel) packed with 100/120 Supelcoport coated with 10 percent SP 1000.

3.5 An electronic integrator or some other suitable method for measuring peak area.

3.6 Two-milliliter sample vials with Teflon-lined caps

3.7 Microliter syringes: 10-microliter, and other convenient sizes for making standards.

3.8 Pipets: 1.0-ml delivery pipets.

3.9 Volumetric flasks: convenient sizes for making standard solutions.

4. *Reagents.*

4.1 Chromatographic quality methanol.

4.2 Acrylonitrile, reagent grade.

4.3 Filtered compressed air.

4.4 Purified hydrogen.

4.5 Purified helium.

5. *Procedure.*

5.1 Cleaning of equipment. All glassware used for the laboratory analysis should be properly cleaned and free of organics which could interfere in the analysis.

5.2 Calibration of personal pumps. Each pump must be calibrated with a representative charcoal tube in the line.

5.3 Collection and shipping of samples.

5.3.1 Immediately before sampling, break the ends of the tube to provide an opening at least one-half the internal diameter of the tube (2 mm).

5.3.2 The smaller section of the charcoal is used as the backup and should be placed nearest the sampling pump.

5.3.3 The charcoal should be placed in a vertical position during sampling to minimize channeling through the charcoal.

5.3.4 Air being sampled should not be passed through any hose or tubing before entering the charcoal tube.

5.3.5 A sample size of 20 liters is recommended. Sample at a flow rate of approximately 0.2 liters per minute. The flow rate should be known with an accuracy of at least ±5 percent.

5.3.6 The temperature and pressure of the atmosphere being sampled should be recorded.

5.3.7 The charcoal tubes should be capped with the supplied plastic caps immediately after sampling. Rubber caps should not be used.

5.3.8 Submit at least one blank tube (a charcoal tube subjected to the same handling procedures, without having any air drawn through it) with each set of samples.

5.3.9. Take necessary shipping and packing precautions to minimize breakage of samples.

5.4 Analysis of samples.

5.4.1 Preparation of samples. In preparation for analysis, each charcoal tube is scored with a file in front of the first section of charcoal and broken open. The glass wool is removed and discarded. The charcoal in the first (larger) section is transferred to a 2-ml vial. The separating section of foam is removed and discarded; the section is transferred to another capped vial. These two sections are analyzed separately.

5.4.2 Desorption of samples. Prior to analysis, 1.0 ml of methanol is pipetted into each sample container. Desorption should be done for 30 minutes in an ultrasonic bath. The sample vials are recapped as soon as the solvent is added.

5.4.3 GC conditions. The typical operating conditions for the gas chromatograph are:

1. 30 ml/min (60 psig) helium carrier gas flow.
2. 3.0 ml/min (30 psig) hydrogen gas flow to detector.
3. 50 ml/min (60 psig) air flow to detector.
4. 200° C injector temperature.
5. 200° C dejector temperature.
6. 100° C column temperature.

5.4.4 Injection. Solvent flush technique or equivalent.

5.4.5 Measurement of area. The area of the sample peak is measured by an electronic integator or some other suitable form of area measurement, and preliminary results are read from a standard curve prepared as discussed below.

5.5 Determination of desorption efficiency.

5.5.1 Importance of determination. The desorption efficiency of a particular compound can vary from one laboratory to another and also from one batch of charcoal to another. Thus, it is necessary to determine, at least once, the percentage of the specific compound that is removed in the desorption process, provided the same batch of charcoal is used.

5.5.2 Procedure for determining desorption efficiency. The reference portion of the charcoal tube is removed. To the remaining portion, amounts representing 0.5X, 1X, and 2X (X represents TLV) based on a 20 l air sample are injected onto several tubes at each level. Dilutions of acrylonitrile with methanol are made to allow injection of measurable quantities. These tubes are then allowed to equilibrate at least overnight. Following equilibration they are analyzed following the same procedure as the samples A curve of the desorption efficiency

amt recovered/amt added

is plotted versus amount of analyte found. This curve is used to correct for adsorption losses.

6. *Calibration and standards.*

A series of standards, varying in concentration over the range of interest, is prepared and analyzed under the same GC conditions and during the same time period as the unknown samples. Curves are prepared by plotting concentration versus peak area.

Note: Since no internal standard is used in the method, standard solutions must be analyzed at the same time that the sample analysis is done. This will minimize the effect of known day-to-day variations and variations during the same day of the NPD response. Multiple injections are necessary.

7. *Calculations.*

Read the weight, corresponding to each peak area from the standard curve, correct for the blank, correct for the desorption efficiency, and make necessary air volume corrections.

8. *Reference.* NIOSH Method S–156.

§ 1926.1147 Ethylene oxide.

(a) *Scope and application.* (1) This section applies to all occupational exposures to ethylene oxide (EtO), Chemical Abstracts Service Registry No. 75–21–8, except as provided in paragraph (a)(2) of this section.

(2) This section does not apply to the processing, use, or handling of products containing EtO where objective data are reasonably relied upon that demonstrate that the product is not capable of releasing EtO in airborne concentrations at or above the action level, and may not reasonably be foreseen to release EtO in excess of the excursion limit, under the expected conditions of processing, use, or handling that will cause the greatest possible release.

(3) Where products containing EtO are exempted under paragraph (a)(2) of this section, the employer shall maintain records of the objective data supporting that exemption and the basis for the employer's reliance on the data, as provided in paragraph (k)(1) of this section.

(b) *Definitions:* For the purpose of this section, the following definitions shall apply:

Action level means a concentration of airborne EtO of 0.5 ppm calculated as an eight (8)-hour time-weighted average.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees for the purpose of exercising the right to observe monitoring and measuring procedures under paragraph (l) of this section, or any other person authorized by the Act or regulations issued under the Act.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Emergency means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment that is likely to or does result in an unexpected significant release of EtO.

Employee exposure means exposure to airborne EtO which would occur if the employee were not using respiratory protective equipment.

Ethylene oxide or *EtO* means the three-membered ring organic compound with chemical formula C_2H_4O.

(c) *Permissible exposure limits*—(1) *8-hour time weighted average (TWA).* The employer shall ensure that no employee is exposed to an airborne concentration of EtO in excess of one (1) part EtO per million parts of air (1 ppm) as an 8-hour time-weighted average (8-hour TWA).

(2) *Excursion limit.* The employer shall ensure that no employee is exposed to an airborne concentration of EtO in excess of 5 parts of EtO per million parts of air (5 ppm) as averaged over a sampling period of fifteen (15) minutes.

(d) *Exposure monitoring*—(1) *General.* (i) Determinations of employee exposure shall be made from breathing zone air samples that are representative of the 8-hour TWA and 15-minute short-term exposures of each employee.

(ii) Representative 8-hour TWA employee exposure shall be determined on the basis of one or more samples representing full-shift exposure for each shift for each job classification in each work area. Representative 15-minute short-term employee exposures shall be determined on the basis of one or more samples representing 15-minute exposures associated with operations that are most likely to produce exposures above the excursion limit for each shift for each job classification in each work area.

(iii) Where the employer can document that exposure levels are equivalent for similar operations in different work shifts, the employer need only determine representative employee

exposure for that operation during one shift.

(2) *Initial monitoring.* (i) Each employer who has a workplace or work operation covered by this standard, except as provided for in paragraph (a)(2) or (d)(2)(ii) of this section, shall perform initial monitoring to determine accurately the airborne concentrations of EtO to which employees may be exposed.

(ii) Where the employer has monitored after June 15, 1983 and the monitoring satisfies all other requirements of this section, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (d)(2)(i) of this section.

(iii) Where the employer has previously monitored for the excursion limit and the monitoring satisfies all other requirements of this sections, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (d)(2)(i) of this section.

(3) *Monitoring frequency (periodic monitoring).* (i) If the monitoring required by paragraph (d)(2) of this section reveals employee exposure at or above the action level but at or below the 8-hour TWA, the employer shall repeat such monitoring for each such employee at least every 6 months.

(ii) If the monitoring required by paragraph (d)(2)(i) of this section reveals employee exposure above the 8-hour TWA, the employer shall repeat such monitoring for each such employee at least every 3 months.

(iii) The employer may alter the monitoring schedule from quarterly to semiannually for any employee for whom two consecutive measurements taken at least 7 days apart indicate that the employee's exposure has decreased to or below the 8-hour TWA.

(iv) If the monitoring required by paragraph (d)(2)(i) of this section reveals employee exposure above the 15 minute excursion limit, the employer shall repeat such monitoring for each such employee at least every 3 months, and more often as necessary to evaluate exposure the employee's short-term exposures.

(4) *Termination of monitoring.* (i) If the initial monitoring required by paragraph (d)(2)(i) of this section reveals employee exposure to be below the action level, the employer may discontinue TWA monitoring for those employees whose exposures are represented by the initial monitoring.

(ii) If the periodic monitoring required by paragraph (d)(3) of this section reveals that employee exposures, as indicated by at least two consecutive measurements taken at least 7 days apart, are below the action level, the employer may discontinue TWA monitoring for those employees whose exposures are represented by such monitoring.

(iii) If the initial monitoring required by paragraph (d)(2)(1) of this section reveals employee exposure to be at or below the excursion limit, the employer may discontinue excursion limit monitoring for those employees whose exposures are represented by the initial monitoring.

(iv) If the periodic monitoring required by paragraph (d)(3) of this section reveals that employee exposures, as indicated by at least two consecutive measurements taken at least 7 days apart, are at or below the excursion limit, the employer may discontinue excursion limit monitoring for those employees whose exposures are represented by such monitoring.

(5) *Additional monitoring.* Notwithstanding the provisions of paragraph (d)(4) of this section, the employer shall institute the exposure monitoring required under paragraphs (d)(2)(i) and (d)(3) of this section whenever there has been a change in the production, process, control equipment, personnel or work practices that may result in new or additional exposures to EtO or when the employer has any reason to suspect that a change may result in new or additional exposures.

(6) *Accuracy of monitoring.* (i) Monitoring shall be accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of EtO at the 1 ppm TWA and to within plus or minus 35 percent for airborne concentrations of EtO at the action level of 0.5 ppm.

(ii) Monitoring shall be accurate, to a confidence level of 95 percent, to within plus or minus 35 percent for airborne concentrations of EtO at the excursion limit.

(7) *Employee notification of monitoring results.* (i) The employer shall, within 15 working days after the receipt of the results of any monitoring performed under this standard, notify the affected employee of these results in writing either individually or by posting of results in an appropriate location that is accessible to affected employees.

(ii) The written notification required by paragraph (d)(7)(i) of this section shall contain the corrective action being taken by the employer to reduce employee exposure to or below the TWA and/or excursion limit, wherever monitoring results indicated that the TWA and/or excursion limit has been exceeded.

(e) *Regulated areas.* (1) The employer shall establish a regulated area wherever occupational exposure to airborne concentrations of EtO may exceed the TWA or wherever the EtO concentration exceeds or can reasonably be expected to exceed the excursion limit.

(2) Access to regulated areas shall be limited to authorized persons.

(3) Regulated areas shall be demarcated in any manner that minimizes the number of employees within the regulated area.

(f) *Methods of compliance*—(1) *Engineering controls and work practices.* (i) The employer shall institute engineering controls and work practices to reduce and maintain employee exposure to or below the TWA and to or below the excursion limit, except to the extent that such controls are not feasible.

(ii) Wherever the feasible engineering controls and work practices that can be instituted are not sufficient to reduce employee exposure to or below the TWA and to or below the excursion limit, the employer shall use them to reduce employee exposure to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protection that complies with the requirements of paragraph (g) of this section.

(iii) Engineering controls are generally infeasible for the following operations: collection of quality assurance sampling from sterilized materials removal of biological indicators from sterilized materials: loading and unloading of tank cars; changing of ethylene oxide tanks on sterilizers; and vessel cleaning. For these operations, engineering controls are required only where the Assistant Secretary demonstrates that such controls are feasible.

(2) *Compliance program.* (i) Where the TWA or excursion limit is exceeded, the employer shall establish and implement a written program to reduce exposure to or below the TWA and to or below the excursion limit by means of engineering and work practice controls, as required by paragraph (f)(1) of this section, and by the use of respiratory protection where required or permitted under this section.

(ii) The compliance program shall include a schedule for periodic leak detection surveys and a written plan for emergency situations, as specified in paragraph (h)(i) of this section.

(iii) Written plans for a program required in paragraph (f)(2) shall be developed and furnished upon request for examination and copying to the Assistant Secretary, the Director, affected employees and designated employee representatives. Such plans

shall be reviewed at least every 12 months, and shall be updated as necessary to reflect significant changes in the status of the employer's compliance program.

(iv) The employer shall not implement a schedule of employee rotation as a means of compliance with the TWA or excursion limit.

(g) *Respiratory protection and personal protective equipment*—(1) *General.* The employer shall provide respirators, and ensure that they are used, where required by this section. Respirators shall be used in the following circumstances.

(i) During the interval necessary to install or implement feasible engineering and work practice controls;

(ii) In work operations, such as maintenance and repair activities, vessel cleaning, or other activities for which engineering and work practice controls are not feasible;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the TWA or excursion limit; and

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respirators are required under this section, the employer shall select and provide, at no cost to the employee, the appropriate respirator as specified in Table 1, and shall ensure that the employee uses the respirator provided.

(ii) The employer shall select respirators from among those jointly approved as being acceptable for protection against EtO by the Mine Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR Part 11.

(3) *Respirator program.* Where respiratory protection is required by this section, the employer shall institute a respirator program in accordance with 29 CFR 1926.103 (e), (g), (h), and (i).

(4) *Protective clothing and equipment.* Where eye or skin contact with liquid EtO or EtO solutions may occur, the employer shall select and provide, at no cost to the employee, appropriate protective clothing or other equipment in accordance with 29 CFR 1926.95 and 1926.102 to protect any area of the body that may come in contact with liquid EtO or EtO in solution, and shall ensure that the employee wears the protective clothing and equipment provided.

(h) *Emergency situations*—(1) *Written plan.* (i) A written plan for emergency situations shall be developed for each workplace where there is a possibility of an emergency. Appropriate portions of the plan shall be implemented in the event of an emergency.

(ii) The plan shall specifically provide that employees engaged in correcting emergency conditions shall be equipped with respiratory protection as required by paragraph (g) of this section until the emergency is abated.

(iii) The plan shall include the elements prescribed in 29 CFR 1926.35, "Employee emergency plans and fire prevention plans."

(2) *Alerting employees.* Where there is the possibility of employee exposure to EtO due to an emergency, means shall be developed to alert potentially affected employees of such occurrences promptly. Affected employees shall be immediately evacuated from the area in the event that an emergency occurs.

TABLE 1—MINIMUM REQUIREMENTS FOR RESPIRATORY PROTECTION FOR AIRBORNE ETO

Condition of use or concentration of airborne EtO (ppm)	Minimum required respirator
Equal to or less than 50.	(a) Full facepiece respirator with EtO approved canister, front-or back-mounted.
Equal to or less than 2,000.	(a) Positive-pressure supplied air respirator, equipped with full facepiece, hood, or helmet, or (b) Continuous-flow supplied air respirator (positive pressure) equipped with hood, helmet or suit.
Concentration above 2,000 or unknown concentration (such as in emergencies).	(a) Positive-pressure self-contained breathing apparatus (SCBA), equipped with full facepiece, or (b) Positive-pressure full facepiece supplied air respirator equipped with an auxiliary positive-pressure self-contained breathing apparatus.
Firefighting	(a) Positive pressure self-contained breathing apparatus equipped with full facepiece.
Escape	(a) Any respirator described above.

Note.—Respirators approved for use in higher concentrations are permitted to be used in lower concentrations.

(i) *Medical surveillance*—(1) *General*—(i) *Employees covered.* (A) The employer shall institute a medical surveillance program for all employees who are or may be exposed to EtO at or above the action level, without regard to the use of respirators, for at least 30 days a year.

(B) The employer shall make available medical examinations and consultations to all employees who have been exposed to EtO in an emergency situation.

(ii) *Examination by a physician.* The employer shall ensure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and are provided without cost to the employee, without loss of pay, and at a reasonable time and place.

(2) *Medical examinations and consultations.* (i) Frequency. The employer shall make available medical examinations and consultations to each employee covered under paragraph (i)(1)(i) of this section on the following schedules:

(A) Prior to assignment of the employee to an area where exposure may be at or above the action level for at least 30 days a year.

(B) At least annually each employee exposed at or above the action level for at least 30 days in the past year.

(C) At termination of employment or reassignment to an area where exposure to EtO is not at or above the action level for at least 30 days a year.

(D) As medically appropriate for any employee exposed during an emergency.

(E) As soon as possible, upon notification by an employee either (1) that the employee has developed signs or symptoms indicating possible overexposure to EtO, or (2) that the employee desires medical advice concerning the effects of current or past exposure to EtO on the employee's ability to produce a healthy child.

(F) If the examining physician determines that any of the examinations should be provided more frequently than specified, the employer shall provide such examinations to affected employees at the frequencies recommended by the physician.

(ii) *Content.* (A) Medical examinations made available pursuant to paragraphs (i)(2)(i)(A)–(D) of this section shall include:

(*1*) A medical and work history with special emphasis directed to symptoms related to the pulmonary, hematologic, neurologic, and reproductive systems and to the eyes and skin.

(*2*) A physical examination with particular emphasis given to the pulmonary, hematologic, neurologic, and reproductive systems and to the eyes and skin.

(*3*) A complete blood count to include at least a white cell count (including

differential cell count), red cell count, hematocrit, and hemoglobin.

(4) Any laboratory or other test which the examining physician deems necessary by sound medical practice.

(B) The content of medical examinations or consultation made available pursuant to paragraph (i)(2)(i)(E) of this section shall be determined by the examining physician, and shall include pregnancy testing or laboratory evaluation of fertility, if requested by the employee and deemed appropriate by the physician.

(3) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this standard and Appendices A, B, and C.

(ii) A description of the affected employee's duties as they relate to the employee's exposure.

(iii) The employee's representative exposure level or anticipated exposure level.

(iv) A description of any personal protective and respiratory equipment used or to be used.

(v) Information from previous medical examinations of the affected employee that is not otherwise available to the examining physician.

(4) *Physician's written opinion.* (i) The employer shall obtain a written opinion from the examining physician. This written opinion shall contain the results of the medical examination and shall include:

(A) The physician's opinion as to whether the employee has any detected medical conditions that would place the employee at an increased risk of material health impairment from exposure to EtO;

(B) Any recommended limitations on the employee or upon the use of personal protective equipment such as clothing or respirators; and

(C) A statement that the employee has been informed by the physician of the results of the medical examination and of any medical conditions resulting from EtO exposure that require further explanation or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion given to the employer specific findings or diagnoses unrelated to occupational exposure to EtO.

(iii) The employer shall provide a copy of the physician's written opinion to the affected employee within 15 days from its receipt.

(j) *Communication of EtO hazards to employees*—(1) *Signs and labels.* (i) The employer shall post and maintain legible signs demarcating regulated areas and entrances or accessways to regulated areas that bear the following legend:

DANGER
ETHYLENE OXIDE
CANCER HAZARD AND REPRODUCTIVE HAZARD
AUTHORIZED PERSONNEL ONLY
RESPIRATORS AND PROTECTIVE CLOTHING
MAY BE REQUIRED
TO BE WORN IN THIS AREA

(ii) The employer shall ensure that precautionary labels are affixed to all containers of EtO whose contents are capable of causing employee exposure at or above the action level or whose contents may reasonably be foreseen to cause employee exposure above the excursion limit, and that the labels remain affixed when the containers of EtO leave the workplace. For the purpose of this paragraph, reaction vessels, storage tanks, and pipes or piping systems are not considered to be containers. The labels shall comply with the requirements of 29 CFR 1926.59(f) of OSHA's Hazard Communication standard, and shall include the following legend:

(A) DANGER
CONTAINS ETHYLENE OXIDE
CANCER HAZARD AND REPRODUCTIVE HAZARD

and

(B) A warning statement against breathing airborne concentrations of EtO.

(iii) The labeling requirements under this section do not apply where EtO is used as a pesticide, as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), when it is labeled pursuant to that Act and regulations issued under that Act by the Environmental Protection Agency.

(2) *Material safety data sheets.* Employers who are manufacturers or importers of EtO shall comply with the requirements regarding development of material safety data sheets as specified in 29 CFR 1926.59(g) of OSHA's Hazard Communication standard.

(3) *Information and training.* (i) The employer shall provide employees who are potentially exposed to EtO at or above the action level or above the excursion limit with information and training on EtO at the time of initial assignment and at least annually thereafter.

(ii) Employees shall be informed of the following:

(A) The requirements of this section with an explanation of its contents, including Appendices A and B;

(B) Any operations in their work area where EtO is present;

(C) The location and availability of the written EtO final rule; and

(D) The medical surveillance program required by paragraph (i) of this section with an explanation of the information in Appendix C.

(iii) Employee training shall include at least:

(A) Methods and observations that may be used to detect the presence or release of EtO in the work area (such as monitoring conducted by the employer, continuous monitoring devices, etc.);

(B) The physical and health hazards of EtO;

(C) The measures employees can take to protect themselves from hazards associated with EtO exposure, including specific procedures the employer has implemented to protect employees from exposure to EtO, such as work practices, emergency procedures, and personal protective equipment to be used; and

(D) The details of the hazard communication program developed by the employer, including an explanation of the labeling system and how employees can obtain and use the appropriate hazard information.

(k) *Recordkeeping*—(1) *Objective data for exempted operations.* (i) Where the processing, use, or handling of products made from or containing EtO are exempted from other requirements of this section under paragraph (a)(2) of this section, or where objective data have been relied on in lieu of initial monitoring under paragraph (d)(2)(ii) of this section, the employer shall establish and maintain an accurate record of objective data reasonably relied upon in support of the exemption.

(ii) This record shall include at least the following information:

(A) The product qualifying for exemption;

(B) The source of the objective data;

(C) The testing protocol, results of testing, and/or analysis of the material for the release of EtO;

(D) A description of the operation exempted and how the data support the exemption; and

(E) Other data relevant to the operations, materials, processing, or employee exposures covered by the exemption.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such objective data.

(2) *Exposure measurements.* (i) The employer shall keep an accurate record of all measurements taken to monitor employee exposure to EtO as prescribed in paragraph (d) of this section.

(ii) This record shall include at least the following information:

(A) The date of measurement;

(B) The operation involving exposu to EtO which is being monitored;

(C) Sampling and analytical methods used and evidence of their accuracy;

(D) Number, duration, and results of samples taken;

(E) Type of protective devices worn, if any; and

(F) Name, social security number and exposure of the employees whose exposures are represented.

(iii) The employer shall maintain this record for at least thirty (30) years, in accordance with 29 CFR 1926.33.

(3) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance by paragraph (i)(1)(i) of this section, in accordance with 29 CFR 1926.33.

(ii) The record shall include at least the following information:

(A) The name and social security number of the employee;

(B) Physicians' written opinions;

(C) Any employee medical complaints related to exposure to EtO; and

(D) A copy of the information provided to the physician as required by paragraph (i)(3) of this section.

(iii) The employer shall ensure that this record is maintained for the duration of employment plus thirty (30) years, in accordance with 29 CFR 1926.33.

(4) *Availability.* (i) The employer, upon written request, shall make all records required to be maintained by this section available to the Assistant Secretary and the Director for examination and copying.

(ii) The employer, upon request, shall make any exemption and exposure records required by paragraphs (k) (1) and (2) of this section available for examination and copying to affected employees, former employees, designated representatives and the Assistant Secretary, in accordance with 29 CFR 1926.33 (a) through (e) and (g) through (i).

(iii) The employer, upon request, shall make employee medical records required by paragraph (k)(3) of this section available for examination and copying to the subject employee, anyone having the specific written consent of the subject employee, and the Assistant Secretary, in accordance with 29 CFR 1926.33.

(5) *Transfer of records.* (i) The employer shall comply with the requirements concerning transfer of records set forth in 29 CFR 1926.33(h).

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall notify the Director at least 90 days prior to disposal and transmit them to the Director.

(l) *Observation of monitoring*—(1) *Employee observation.* The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to EtO conducted in accordance with paragraph (d) of this section.

(2) *Observation procedures.* When observation of the monitoring of employee exposure to EtO requires entry into an area where the use of protective clothing or equipment is required, the observer shall be provided with and be required to use such clothing and equipment and shall comply with all other applicable safety and health procedures.

(m) *Dates*—(1) *(i) Effective date.* The paragraphs contained in this section shall become effective August 21, 1984, except for paragraphs (a)(2), (d), (e), (f)(2), (g)(3), (h), (i), and (j) which shall become effective on March 12, 1985.

(ii) The requirements in this section which pertain only to or are triggered by the excursion limit shall become effective June 6, 1988, except for the excursion limit provisions in paragraphs (a)(2), (d), (f)(2), (g)(3) and (j) of this section which shall become effective August 25, 1988.

(2) *Start-up dates.* (i) The start-up date for the requirements in those paragraphs that were effective on August 21, 1984, including institution of work practice controls specified in paragraph (f)(1), shall be February 19, 1985, except as provided for in paragraph (m)(2)(ii), and the start-up date for paragraphs (a)(2), (d), (e), (f)(2), (g)(3), (h), (i), and (j) of this section shall be September 9, 1985.

(ii) Engineering controls specified by paragraph (f)(1) of this section shall be implemented by August 21, 1985.

(iii) Compliance with the requirements in this section which pertain only to or are triggered by the excursion limit shall be by September 6, 1988, except for compliance with the excursion limit provisions of paragraphs (a)(2), (d), (f)(2), (g)(3), and (j) of this section, which shall be by October 6, 1988, and implementation of engineering controls specified for compliance with the excursion limit, which shall be by December 6, 1988.

(3) *Labeling.* (i) Paragraph (j)(1)(ii)(A) of this section as amended is effective January 9, 1986.

(ii) Paragraph (j)(1)(iii) of this is effective October 11, 1985.

(n) *Appendices.* The information contained in the appendices is not intended by itself to create any additional obligations not otherwise imposed or to detract from any existing obligation.

(Approved by the Office of Management and Budget under control number 1218–0108)

Appendix A to § 1926.1147—Substance Safety Data Sheet for Ethylene Oxide (Non-Mandatory)

I. Substance identification

A. Substance: Ethylene oxide (C_2H_4O).

B. Synonyms: dihydrooxirene, dimethylene oxide, EO, 1,2-epoxyethane, EtO, ETO, oxacyclopropane, oxane, oxidoethane, alpha/beta-oxidoethane, oxiran, oxirane.

C. Ethylene oxide can be found as a liquid or vapor.

D. EtO is used in the manufacture of ethylene glycol, surfactants, ethanolamines, glycol ethers, and other organic chemicals. EtO is also used as a sterilant and fumigant.

E. Appearance and odor: Colorless liquid below 10.7 °C (51.3 °F) or colorless gas with ether-like odor detected at approximately 700 parts EtO per million parts of air (700 ppm).

F. Permissible Exposure: Exposure may not exceed 1 part EtO per million parts of air averaged over the 8-hour workday.

II. Health hazard data

A. Ethylene oxide can cause bodily harm if you inhale the vapor, if it comes into contact with your eyes or skin, or if you swallow it.

B. Effects of overexposure:

1. Ethylene oxide in liquid form can cause eye irritation and injury to the cornea, frostbite, and severe irritation and blistering of the skin upon prolonged or confined contact. Ingestion of EtO can cause gastric irritation and liver injury. Acute effects from inhalation of EtO vapors include respiratory irritation and lung injury, headache, nausea, vomiting, diarrhea, shortness of breath, and cyanosis (blue or purple coloring of skin). Exposure has also been associated with the occurrence of cancer, reproductive effects, mutagenic changes, neurotoxicity, and sensitization.

1. EtO has been shown to cause cancer in laboratory animals and has been associated with higher incidences of cancer in humans. Adverse reproductive effects and chromosome damage may also occur from EtO exposure.

a. Reporting signs and symptoms: You should inform your employer if you develop any signs or symptoms and suspect that they are caused by exposure to EtO.

III. Emergency first aid procedures

A. Eye exposure: If EtO gets into your eyes, wash your eyes immediately with large amounts of water, lifting the lower and upper eyelids. Get medical attention immediately. Contact lenses should not be worn when working with this chemical.

B. Skin exposure: If EtO gets on your skin, immediately wash the contaminated skin with water. If EtO soaks through your clothing, especially your shoes, remove the clothing immediately and wash the skin with water using an emergency deluge shower. Get medical attention immediately. Thoroughly wash contaminated clothing before reusing. Contaminated leather shoes or other leather articles should not be reused and should be discarded.

C. Inhalation: If large amounts of EtO are inhaled, the exposed person must be moved to fresh air at once. If breathing has stopped, perform cardiopulmonary resuscitation. Keep the affected person warm and at rest. Get medical attention immediately.

D. Swallowing: When EtO has been swallowed, give the person large quantities of water immediately. After the water has been swallowed, try to get the person to vomit by having him or her touch the back of the throat with his or her finger. Do not make an unconscious person vomit. Get medical attention immediately.

E. Rescue: Move the affected person from the hazardous exposure. If the exposed person has been overcome, attempt rescue only after notifying at least one other person of the emergency and putting into effect established emergency procedures. Do not become a casualty yourself. Understand your emergency rescue procedures and know the location of the emergency equipment before the need arises.

IV. Respirators and protective clothing

A. Respirators: You may be required to wear a respirator for nonroutine activities, in emergencies, while your employer is in the process of reducing EtO exposures through engineering controls, and where engineering controls are not feasible. As of the effective date of the standard, only air supplied positive-pressure, full-facepiece respirators are approved for protection against EtO. If air-purifying respirators are worn in the future, they must have a joint Mine Safety and Health Administration (MSHA) and National Institute for Occupational Safety and Health (NIOSH) label of approval for use with ethylene oxide. For effective protection, respirators must fit your face and head snugly. Respirators should not be loosened or removed in work situations where their use is required.

EtO does not have a detectable odor except at levels well above the permissible exposure limits. If you can smell EtO while wearing a respirator, proceed immediately to fresh air. If you experience difficulty breathing while wearing a respirator, tell your employer.

B. Protective clothing: You may be required to wear impermeable clothing, gloves, a face shield, or other appropriate protective clothing to prevent skin contact with liquid EtO or EtO-containing solutions. Where protective clothing is required, your employer must provide clean garments to you as necessary to assure that the clothing protects you adequately.

Replace or repair protective clothing that has become torn or otherwise damaged.

EtO must never be allowed to remain on the skin. Clothing and shoes which are not impermeable to EtO should not be allowed to become contaminated with EtO, and if they do, the clothing should be promptly removed and decontaminated. Contaminated leather shoes should be discarded. Once EtO penetrates shoes or other leather articles, they should not be worn again.

C. Eye protection: You must wear splashproof safety goggles in areas where liquid EtO or EtO-containing solutions may contact your eyes. In addition, contact lenses should not be worn in areas where eye contact with EtO can occur.

V. Precautions for safe use, handling, and storage

A. EtO is a flammable liquid, and its vapors can easily form explosive mixtures in air.

B. EtO must be stored in tighly closed containers in a cool, well-ventilated area, away from heat, sparks, flames, strong oxidizers, alkalines, and acids, strong bases, acetylide-forming metals such as cooper, silver, mercury and their alloys.

C. Sources of ignition such as smoking material, open flames and some electrical devices are prohibited wherever EtO is handled, used, or stored in a manner that could create a potential fire or explosion hazard.

D. You should use non-sparking tools when opening or closing metal containers of EtO, and containers must be bonded and grounded in the rare instances in which liquid EtO is poured or transferred.

E. Impermeable clothing wet with liquid EtO or EtO-containing solutions may be easily ignited. If your are wearing impermeable clothing and are splashed with liquid EtO or EtO-containing solution, you should immediately remove the clothing while under an emergency deluge shower.

F. If your skin comes into contact with liquid EtO or EtO-containing solutions, you should immediately remove the EtO using an emergency deluge shower.

G. You should not keep food, beverages, or smoking materials in regulated areas where employee exposures are above the permissible exposure limits.

H. Fire extinguishers and emergency deluge showers for quick drenching should be readily available, and you should know where they are and how to operate them.

I. Ask your supervisor where EtO is used in your work area and for any additional plant safety and health rules.

VI. Access to information

A. Each year, your employer is required to inform you of the information contained in this standard and appendices for EtO. In addition, your employer must instruct you in the proper work practices for using EtO emergency procedures, and the correct use of protective equipment.

B. Your employer is required to determine whether you are being exposed to EtO. You or your representative has the right to observe employee measurements and to record the results obtained. Your employer is required to inform you of your exposure. If your employer determine that you are being overexposed, he or she is required to inform you of the actions which are being taken to reduce your exposure to within permissible exposure limits.

C. Your employer is required to keep records of your exposures and medical examinations. These exposure records must be kept by the employer for at least thirty (30) years. Medical records must be kept for the period of your employment plus thirty (30) years.

D. Your employer is required to release your exposure and medical records to your physician or designated representative upon your written request.

VII. Sterilant use of eto in hospitals and health care facilities

This section of Appendix A, for informational purposes, sets forth EPA's recommendations for modifications in workplace design and practice in hospitals and health care facilities for which the Environmental Protection Agency has registered EtO for uses as a sterilant or fumigant under the Federal Insecticide, Funigicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.* These new recommendations, published in the **Federal Register** by EPA at 49 FR 15268, as modified in today's **Register**, are intended to help reduce the exposure of hospital and health care workers to EtO to 1 ppm. EPA's recommended workplace design and workplace practice are as follows:

1. Workplace Design

a. *Installation of gas line hand valves.* Hand valves must be installed on the gas supply line at the connection to the supply cylinders to minimize leakage during cylinder change.

b. *Installation of capture boxes.* Sterilizer operations result in a gas/water discharge at the completion of the process. This discharge is routinely piped to a floor drain which is generally located in an equipment or an adjacent room. When the floor drain is not in the same room as the sterilizer and workers are not normally present, all that is necessary is that the room be well ventilated.

The installation of a "capture box" will be required for those work place layouts where the floor drain is located in the same room as the sterilizer or in a room where workers are normally present. A "capture box" is a piece of equipment that totally encloses the floor drain where the discharge from the sterilizer is pumped. The "capture box" is to be vented directly to a non-recirculating or dedicated ventilation system. Sufficient air intake should be allowed at the bottom of the box to handle the volume of air that is ventilated from the top of the box. The "capture box" can be made of metal, plastic, wood or other equivalent material. The box is intended to reduce levels of EtO discharged into the work room atmosphere. The use of a "capture box" is not required if: (1) The vacuum pump discharge floor drain is located in a well ventilated equipment or other room where workers are not normally present or (2) the water sealed vacuum pump discharges directly to a closed sealed sewer line (check local plumbing codes).

If it is impractical to install a vented "capture box" and a well ventilated equipment or other room is not feasible, a box that can be sealed over the floor drain may be used if: (1) The floor drain is located in a room where workers are not normally present and EtO cannot leak into an occupied area, and (2) the sterilizer in use is less than 12 cubic feet in capacity (check local plumbing codes).

c. *Ventilation of aeration units* i. *Existing aeration units.* Existing units must be vented to a non-recirculating or dedicated system or vented to an equipment or other room where workers are not normally present and which is well ventilated. Aerator units must be positioned as close as possible to the

sterilizer to minimize the exposure from the off-gassing of sterilized items.

ii. *Installation of new aerator units (where none exist).* New aerator units must be vented as described above for existing aerators. Aerators must be in place by July 1, 1986.

d. *Ventilation during cylinder change.* Workers may be exposed to short but relatively high levels of EtO during the change of gas cylinders. To reduce exposure from this route, users must select one of three alternatives designed to draw off gas that may be released when the line from the sterilizer to the cylinder is disconnected:

i. Location of cylinders in a well ventilated equipment room or other room where workers are not normally present.

ii. Installation of a flexible hose (at least 4" (10.16 cm) in diameter) to a non-recirculating or dedicated ventilation system and located in the area of cylinder change in such a way that the hose can be positioned at the point where the sterilizer gas line is disconnected from the cylinder.

iii. Installation of a hood that is part of a non-recirculating or dedicated system and positioned no more than one foot above the point where the change of cylinders takes place.

e. *Ventilation of sterilizer door area.* One of the major sources of exposure to EtO occurs when the sterilizer door is opened following the completion of the sterilization process. In order to reduce this avenue of exposure, a hood or metal canopy closed on each end must be installed over the sterilizer door. The hood or metal canopy must be connected to a non-recirculating or dedicated ventilation system or one that exhausts gases to a well ventilated equipment or other room where workers are not normally present. A hood or canopy over the sterilizer door is required for use even with those sterilizers that have a purge cycle and must be in place by July 1, 1986.

f. *Ventilation of sterilizer relief valve.* Sterilizers are typically equipped with a safety relief device to release gas in case of increased pressure in the sterilizer. Generally, such relief devices are used on pressure vessels. Although these pressure relief devices are rarely opened for hospital and health care sterilizers, it is suggested that they be designed to exhaust vapor from the sterilizer by one of the following methods:

i. Through a pipe connected to the outlet of the relief valve ventilated directly outdoors at a point high enough to be away from passers by, and not near any windows that open, or near any air conditioning or ventilation air intakes.

ii. Through a connection to an existing or new non-recirculating or dedicated ventilation system.

iii. Through a connection to a well ventilated equipment or other room where workers are not normally present.

g. *Ventilation systems.* Each hospital and health care facility affected by this notice that uses EtO for the sterilization of equipment and supplies must have a ventilation system which enables compliance with the requirements of section (b) through (f) in the manner described in these sections and within the timeframes allowed. Thus, each affected hospital and health care facility must have or install a non-recirculating or dedicated ventilation equipment or other room where workers are not normally present in which to vent EtO.

h. *Installation of alarm systems.* An audible and visual indicator alarm system must be installed to alert personnel of ventilation system failures, i.e., when the ventilation fan motor is not working.

2. Workplace Practices

All the workplace practices discussed in this unit must be permanently posted near the door of each sterilizer prior to use by any operator.

a. *Changing of supply line filters.* Filters in the sterilizer liquid line must be changed when necessary, by the following procedure:

i. Close the cylinder valve and the hose valve.

ii. Disconnect the cylinder hose (piping) from the cylinder.

iii. Open the hose valve and bleed slowly into a proper ventilating system at or near the in-use supply cylinders.

iv. Vacate the area until the line is empty.

v. Change the filter.

vi. Reconnect the lines and reverse the value position.

vii. Check hoses, filters, and valves for leaks with a fluorocarbon leak detector (for those sterilizers using the 88 percent chlorofluorocarbon, 12 percent ethylene oxide mixture (12/88)).

b. *Restricted access area.* i. Areas involving use of EtO must be designated as restricted access areas. They must be identified with signs or floor marks near the sterilizer door, aerator, vacuum pump floor drain discharge, and in-use cylinder storage.

ii. All personnel must be excluded from the restricted area when certain operations are in progress, such as discharging a vacuum pump, emptying a sterilizer liquid line, or venting a non-purge sterilizer with the door ajar or other operations where EtO might be released directly into the face of workers.

c. *Door opening procedures.* i. *Sterilizers with purge cycles.* A load treated in a sterilizer equipped with a purge cycle should be removed immediately upon completion of the cycle (provided no time is lost opening the door after cycle is completed). If this is not done, the purge cycle should be repeated before opening door.

ii. *Sterilizers without purge cycles.* For a load treated in a sterilizer not equipped with a purge cycle, the sterilizer door must be ajar 6" (15.24 cm) for 15 minutes, and then fully opened for at least another 15 minutes before removing the treated load. The length of time of the second period should be established by peak monitoring for one hour after the two 15-minute periods suggested. If the level is above 10 ppm time-weighted average for 8 hours, more time should be added to the second waiting period (door wide open). However, in no case may the second period be shortened to less than 15 minutes.

d. *Chamber unloading procedures.* i. Procedures for unloading the chamber must include the use of baskets or rolling carts, or baskets and rolling tables to transfer treated loads quickly, thus avoiding excessive contact with treated articles, and reducing the duration of exposures.

ii. If rolling carts are used, they should be pulled not pushed by the sterilizer operators to avoid offgassing exposure.

e. *Maintenance.* A written log should be instituted and maintained documenting the date of each leak detection and any maintenance procedures undertaken. This is a suggested use practice and is not required.

i. *Leak detection.* Sterilizer door gaskets, cylinder and vacuum piping, hoses, filters, and valves must be checked for leaks under full pressure with a Fluorocarbon leak detector (for 12/88 systems only) every two weeks by maintenance personnel. Also, the cylinder piping connections must be checked after changing cylinders. Particular attention in leak detection should be given to the automatic solenoid valves that control the flow of EtO to the sterilizer. Specifically, a check should be made at the EtO gasline entrance port to the sterilizer, while the sterilizer door is open and the solenoid valves are in a closed position.

ii. *Maintenance procedures.* Sterilizer/aerator door gaskets, valves, and fittings must be replaced when necessary as determined by maintenance personnel in their bi-weekly checks; in addition, visual inspection of the door gaskets for cracks, debris, and other foreign substances should be conducted daily by the operator.

Appendix B to § 1926.1147—Substance Technical Guidelines for Ethylene Oxide (Non-Mandatory)

I. Physical and chemical data

A. Substance identification:

1. Synonyms: dihydrooxirene, dimethylene oxide, EO, 1,2-epoxyethane, EtO ETO oxacyclopropane, oxane, oxidoethane, alpha/beta-oxidoethane, oxiran, oxirane.

2. Formula: (C_2H_4O).

3. Molecular weight: 44.06

B. Physical data:

1. Boiling point (760 mm Hg): 10.70° C (51.3° F);

2. Specific gravity (water = 1): 0.87 (at 20°C or 68°F)

3. Vapor density (air = 1): 1.49;

4. Vapor pressure (at 20° C); 1,095 mm Hg;

5. Solubility in water: complete;

6. Appearance and odor: colorless liquid; gas at temperature above 10.7° F or 51.3° C with ether-like odor above 700 ppm.

II. Fire, explosion, and reactivity hazard data

A. Fire:

1. Flash point: less than O°F (open cup);

2. Stability: decomposes violently at temperatures above 800°F;

3. Flammable limits in air, percent by volume: Lower: 3, Upper: 100;

4. Extinguishing media: Carbon dioxide for small fires, polymer or alcohol foams for large fires;

5. Special fire fighting procedures: Dilution of ethylene oxide with 23 volumes of water renders it non-flammable;

6. Unusual fire and explosion hazards: Vapors of EtO will burn without the presence of air or other oxidizers. EtO vapors are heavier than air and may travel along the ground and be ignited by open flames or sparks at locations remote from the site at which EtO is being used.

7. For purposes of compliance with the requirements of 29 CFR 1926.152, EtO is

classified as a flammable gas. For example, 7,500 ppm, approximately one-fourth of the lower flammable limit, would be considered to pose a potential fire and explosion hazard.

B. Reactivity:

1. Conditions contributing to instability: EtO will polymerize violently if contaminated with aqueous alkalies, amines, mineral acids, metal chlorides, or metal oxides. Violent decomposition will also occur at temperatures above 800° F;

2. Incompatabilities: Alkalines and acids;

3. Hazardous decomposition products: Carbon monoxide and carbon dioxide.

III. Spill, leak, and disposal procedures

A. If EtO is spilled or leaked, the following steps should be taken:

1. Remove all ignition sources.

2. The area should be evacuated at once and re-entered only after the area has been thoroughly ventilated and washed down with water.

B. Persons not wearing appropriate protective equipment should be restricted from areas of spills or leaks until cleanup has been completed.

C. Waste disposal methods: Waste material should be disposed of in a manner that is not hazardous to employees or to the general population. In selecting the method of waste disposal, applicable local, State, and Federal regulations should be consulted.

IV. Monitoring and measurement procedures

A. Exposure above the Permissible Exposure Limit:

1. Eight-hour exposure evaluation: Measurements taken for the purpose of determining employee exposure under this section are best taken with consecutive samples covering the full shift. Air samples should be taken in the employee's breathing zone (air that would most nearly represent that inhaled by the employee.)

2. Monitoring techniques: The sampling and analysis under this section may be performed by collection of the EtO vapor on charcoal adsorption tubes or other composition adsorption tubes, with subsequent chemical analysis. Sampling and analysis may also be performed by instruments such as real-time continuous monitoring systems, portable direct reading instruments, or passive dosimeters as long as measurements taken using these methods accurately evaluate the concentration of EtO in employees' breathing zones.

Appendix D describes the validated method of sampling and analysis which has been tested by OSHA for use with EtO. Other available methods are also described in Appendix D. The employer has the obligation of selecting a monitoring method which meets the accuracy and precision requirements of the standard under his unique field conditions. The standard requires that the method of monitoring should be accurate, to a 95 percent confidence level, to plus or minus 25 percent for concentrations of EtO at 1 ppm, and to plus or minus 35 percent for concentrations at 0.5 ppm. In addition to the method described in Appendix D, there are numerous other methods available for monitoring for EtO in the workplace. Details on these other methods have been submitted by various companies to the rulemaking record, and are available at the OSHA Docket Office.

B. Since many of the duties relating to employee exposure are dependent on the results of measurement procedures, employers should assure that the evaluation of employee exposures is performed by a technically qualified person.

V. Protective clothing and equipment

Employees should be provided with and be required to wear appropriate protective clothing wherever there is significant potential for skin contact with liquid EtO or EtO-containing solutions. Protective clothing shall include impermeable coveralls or similar full-body work clothing, gloves, and head coverings, as appropriate to protect areas of the body which may come in contact with liquid EtO or EtO-containing solutions.

Employers should ascertain that the protective garments are impermeable to EtO. Permeable clothing, including items made of rubber, and leather shoes should not be allowed to become contaminated with liquid EtO. If permeable clothing does become contaminated, it should be immediately removed, while the employer is under an emergency deluge shower. If leather footwear or other leather garments become wet from EtO they should be discarded and not be worn again, because leather absorbs EtO and holds it against the skin.

Any protective clothing that has been damaged or is otherwise found to be defective should be repaired or replaced. Clean protective clothing should be provided to the employee as necessary to assure employee protection. Whenever impermeable clothing becomes wet with liquid EtO, it should be washed down with water before being removed by the employee. Employees are also required to wear splash-proof safety goggles where there is any possibility of EtO contacting the eyes.

VI. Miscellaneous precautions

A. Store EtO in tightly closed containers in a cool, well-ventilated area and take all necessary precautions to avoid any explosion hazard.

B. Non-sparking tools must be used to open and close metal containers. These containers must be effectively grounded and bonded.

C. Do not incinerate EtO cartridges, tanks or other containers.

D. Employers should advise employees of all areas and operations where exposure to EtO occur.

VII. Common operations

Common operations in which exposure to EtO is likely to occur include the following: Manufacture of EtO, surfactants, ethanolamines, glycol ethers, and specialty chemicals, and use as a sterilant in the hospital, health product and spice industries.

Appendix C to § 1926.1147—Medical Surveillance Guidelines for Ethylene Oxide (Non-Mandatory)

I. Route of entry

Inhalation.

II. Toxicology

Clinical evidence of adverse effects associated with the exposure to EtO is present in the form of increased incidence of cancer in laboratory animals (leukemia, stomach, brain), mutation in offspring in animals, and resorptions and spontaneous abortions in animals and human populations respectively. Findings in humans and experimental animals exposed to airborne concentrations of EtO also indicate damage to the genetic material (DNA). These include hemoglobin alkylation, unescheduled DNA synthesis, sister chromatid exchange chromosomal aberration, and functional sperm abnormalities.

Ethylene oxide in liquid form can cause eye irritation and injury to the cornea, frostbite, severe irritation, and blistering of the skin upon prolonged or confined contact. Ingestion of EtO can cause gastric irritation and liver injury. Other effects from inhalation of EtO vapors include respiratory irritation and lung injury, headache, nausea, vomiting, diarrhea, dyspnea and cyanosis.

III. Signs and symptoms of acute overexposure

The early effects of acute overexposure to EtO are nausea and vomiting, headache, and irritation of the eyes and respiratory passages. The patient may notice a "peculiar taste" in the mouth. Delayed effects can include pulmonary edema, drowsiness, weakness, and incoordination. Studies suggest that blood cell changes, an increase in chromosomal aberrations, and spontaneous abortion may also be causally related to acute overexposure to EtO.

Skin contact with liquid or gaseous EtO causes characteristic burns and possibly even an allergic-type sensitization. The edema and erythema occurring from skin contact with EtO progress to vesiculation with a tendency to coalesce into blebs with desquamation. Healing occurs within three weeks, but there may be a residual brown pigmentation. A 40–80% solution is extremely dangerous, causing extensive blistering after only brief contact. Pure liquid EtO causes frostbite because of rapid evaporation. In contrast, the eye is relatively insensitive to EtO, but there may be some irritation of the cornea.

Most reported acute effects of occupational exposure to EtO are due to contact with EtO in liquid phase. The liquid readily penetrates rubber and leather, and will produce blistering if clothing or footwear contaminated with EtO are not removed.

IV. Surveillance and preventive considerations

As noted above, exposure to EtO has been linked to an increased risk of cancer and reproductive effects including decreased male fertility, fetotoxicity, and spontaneous abortion. EtO workers are more likely to have chromosomal damage than similar groups not exposed to EtO. At the present, limited studies of chronic effects in humans resulting from exposure to EtO suggest a causal association with leukemia. Animal studies indicate leukemia and cancers at other sites (brain, stomach) as well. The physician should be aware of the findings of these studies in evaluating the health of employees exposed to EtO.

Adequate screening tests to determine an employee's potential for developing serious chronic diseases, such as cancer, from exposure to EtO do not presently exist. Laboratory tests may, however, give evidence to suggest that an employee is potentially overexposed to EtO. It is important for the physician to become familiar with the operating conditions in which exposure to EtO is likely to occur. The physician also must become familiar with the signs and symptoms that indicate a worker is receiving otherwise unrecognized and unacceptable exposure to EtO. These elements are especially important in evaluating the medical and work histories and in conducting the physical exam. When an unacceptable exposure in an active employee is identified by the physician, measures taken by the employer to lower exposure should also lower the risk of serious long-term consequences.

The employer is required to institute a medical surveillance program for all employees who are or will be exposed to EtO at or above the action level (0.5 ppm) for at least 30 days per year, without regard to respirator use. All examinations and procedures must be performed by or under the supervision of a licensed physician at a reasonable time and place for the employee and at no cost to the employee.

Although broad latitude in prescribing specific tests to be included in the medical surveillance program is extended to the examining physician, OSHA requires inclusion of the following elements in the routine examination:

(i) Medical and work histories with special emphasis directed to symptoms related to the pulmonary, hematologic, neurologic, and reproductive systems and to the eyes and skin.

(ii) Physical examination with particular emphasis given to the pulmonary, hematologic, neurologic, and reproductive systems and to the eyes and skin.

(iii) Complete blood count to include at least a white cell count (including differential cell count), red cell count, hematocrit, and hemoglobin.

(iv) Any laboratory or other test which the examining physician deems necessary by sound medical practice.

If requested by the employee, the medical examinations shall include pregnancy testing or laboratory evaluation of fertility as deemed appropriate by the physician.

In certain cases, to provide sound medical advice to the employer and the employee, the physician must evaluate situations not directly related to EtO. For example, employees with skin diseases may be unable to tolerate wearing protective clothing. In addition those with chronic respiratory diseases may not tolerate the wearing of negative pressure (air purifying) respirators. Additional tests and procedures that will help the physician determine which employees are medically unable to wear such respirators should include: An evaluation of cardiovascular function, a baseline chest x-ray to be repeated at five year intervals, and a pulmonary function test to be repeated every three years. The pulmonary function test should include measurement of the employee's forced vital capacity (FVC), forced expiratory volume at one second (FEV1), as well as calculation of the ratios of FEV1 to FVC, and measured FVC and measured FEV1 to expected values corrected for variation due to age, sex, race, and height.

The employer is required to make the prescribed tests available at least annually to employees who are or will be exposed at or above the action level, for 30 or more days per year; more often than specified if recommended by the examining physician; and upon the employee's termination of employment or reassignment to another work area. While little is known about the long term consequences of high short-term exposures, it appears prudent to monitor such affected employees closely in light of existing health data. The employer shall provide physician recommended examinations to any employee exposed to EtO in emergency conditions. Likewise, the employer shall make available medical consultations including physician recommended exams to employees who believe they are suffering signs or symptoms of exposure to EtO.

The employer is required to provide the physician with the following informatin: a copy of this standard and its appendices; a description of the affected employee's duties as they relate to the employee exposure level; and information from the employee's previous medical examinations which is not readily available to the examining physician. Making this information available to the physician will aid in the evaluation of the employee's health in relation to assigned duties and fitness to wear personal protective equipment, when required.

The employer is required to obtain a written opinion from the examining physician containing the results of the medical examinations; the physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of his or her health from exposure to EtO; any recommended restrictions upon the employee's exposure to EtO, or upon the use of protective clothing or equipment such as respirators; and a statement that the employee has been informed by the physician of the results of the medical examination and of any medical conditions which require further explanation or treatment. This written opinion must not reveal specific findings or diagnoses unrelated to occupational exposure to EtO, and a copy of the opinion must be provided to the affected employee.

The purpose in requiring the examining physician to supply the employer with a written opinion is to provide the employer with a medical basis to aid in the determination of initial placement of employees and to assess the employee's ability to use protective clothing and equipment.

Appendix D to § 1926.1147—Sampling and Analytical Methods for Ethylene Oxide (Non-Mandatory)

A number of methods are available for monitoring employee exposures to EtO. Most of these involve the use of charcoal tubes and sampling pumps, followed by analysis of the samples by gas chromatograph. The essential differences between the charcoal tube methods include, among others, the use of different desorbing solvents, the use of different lots of charcoal, and the use of different equipment for analysis of the samples.

Besides charcoal, methods using passive dosimeters, gas sampling bags, impingers, and detector tubes have been utilized for determination of EtO exposure. In addition, there are several commercially available portable gas analyzers and monitoring units.

This appendix contains details for the method which has been tested at the OSHA Analytical Laboratory in Salt Lake City. Inclusion of this method in the appendix does not mean that this method is the only one which will be satisfactory. Copies of descriptions of other methods available are available in the rulemaking record, and may be obtained from the OSHA Docket Office. These include the Union Carbide, Dow Chemical, 3M, and DuPont methods, as well as NIOSH Method S–286. These methods are briefly described at the end of this appendix.

Employers who note problems with sample breakthrough using the OSHA or other charcoal methods should try larger charcoal tubes. Tubes of larger capacity are available. In addition, lower flow rates and shorter sampling times should be beneficial in minimizing breakthrough problems. Whatever method the employer chooses, he must assure himself of the method's accuracy and precision under the unique conditions present in his workplace.

Ethylene Oxide

Method No.: 30.
Matrix: Air.
Target Concentration: 1.0 ppm (1.8 mg/m^3).
Procedure: Samples are collected on two charcoal tubes in series and desorbed with 1% CS_2 in benzene. The samples are derivatized with HBr and treated with sodium carbonate. Analysis is done by gas chromatography with an electron capture detector.
Recommended Air Volume and Sampling Rate: 1 liter and 0.05 Lpm.
Detection Limit of the Overall Procedure: 13.3 ppb (0.024 mg/m^3) (Based on 1.0 liter air sample).
Reliable Quantitation Limit: 52.2 ppb (0.094 mg/m^3) (Based on 1.0 liter air sample).
Standard Error of Estimate: 6.59% (See Backup Section 4.6).
Special Requirements: Samples must be analyzed within 15 days of sampling date.
Status of Method: The sampling and analytical method has been subjected to the established evaluation procedures of the Organic Method Evaluations Branch.

Date: August 1981.
Chemist: Wayne D. Potter.

Organic Solvents Branch, OSHA Analytical Laboratory, Salt Lake City, Utah

1. General Discussion.
1.1 Background.
1.1.1 History of Procedure.
Ethylene oxide samples analyzed at the OSHA Laboratory have normally been collected on activated charcoal and desorbed

with carbon disulfide. The analysis is performed with a gas chromatograph equipped with a FID (Flame ionization detector) as described in NIOSH Method S286 (Ref. 5.1). This method is based on a PEL of 50 ppm and has a detection limit of about 1 ppm.

Recent studies have prompted the need for a method to analyze and detect ethylene oxide at very low concentrations.

Several attempts were made to form an ultraviolet (UV) sensitive derivative with ethylene oxide for analysis with HPLC. Among those tested that gave no detectable product were: p-anisidine, methylimidazole, aniline, and 2,3,6-trichlorobenzoic acid. Each was tested with catalysts such as triethylamine, aluminum chloride, methylene chloride and sulfuric acid but no detectable derivative was produced.

The next derivatization attempt was to react ethylene oxide with HBr to form 2-bromoethanol. This reaction was successful. An ECD (electron capture detector) gave a very good response for 2-bromoethanol due to the presence of bromine. The use of carbon disulfide as the desorbing solvent gave too large a response and masked the 2-bromoethanol. Several other solvents were tested for both their response on the ECD and their ability to desorb ethylene oxide from the charcoal. Among those tested were toluene, xylene, ethyl benzene, hexane, cyclohexane and benzene. Benzene was the only solvent tested that gave a suitable response on the ECD and a high desorption. It was found that the desorption efficiency was improved by using 1% CS_2 with the benzene. The carbon disulfide did not significantly improve the recovery with the other solvents. SKC Lot 120 was used in all tests done with activated charcoal.

1.1.2 Physical Properties (Ref. 5.2–5.4).

Synonyms: Oxirane; dimethylene oxide, 1,2-epoxy-ethane; oxane; C_2H_4O; ETO;

Molecular Weight: 44.06

Boiling Point: 10.7 °C (51.3°)

Melting Point: −111 °C

Description: Colorless, flammable gas

Vapor Pressure: 1095 mm. at 20 °C

Odor: Ether-like odor

Lower Explosive Limits: 3.0% (by volume)

Flash Point (TOC): Below 0 °F

Molecular Structure: $CH_2—CH_2$

1.2 Limit Defining Parameters.

1.2.1 Detection Limit of the Analytical Procedure.

The detection limit of the analytical procedure is 12.0 picograms of ethylene oxide per injection. This is the amount of analyte which will give a peak whose height is five times the height of the baseline noise. (See Backup Data Section 4.1).

1.2.2 Detection Limit of the Overall Procedure.

The detection limit of the overall procedure is 24.0 ng of ethylene oxide per sample.

This is the amount of analyte spiked on the sampling device which allows recovery of an amount of analyte equivalent to the detection limit of the analytical procedure. (See Backup Data Section 4.2).

1.2.3 Reliable Quantitation Limit.

The reliable quantitation limit is 94.0 nanograms of ethylene oxide per sample. This is the smallest amount of analyte which can be quantitated within the requirements of 75% recovery and 95% confidence limits. (See Backup Data Section 4.2).

It must be recognized that the reliable quantitation limit and detection limits reported in the method are based upon optimization of the instrument for the smallest possible amount of analyte. When the target concentration of an analyte is exceptionally higher than these limits, they may not be attainable at the routine operating parameters. In this case, the limits reported on analysis reports will be based on the operating parameters used during the analysis of the samples.

1.2.4 Sensitivity.

The sensitivity of the analytical procedure over a concentration range representing 0.5 to 2 times the target concentration based on the recommended air volume is 34105 area units per µg/mL. The sensitivity is determined by the slope of the calibration curve (See Backup Data Section 4.3).

The sensitivity will vary somewhat with the particular instrument used in the analysis.

1.2.5 Recovery.

The recovery of analyte from the collection medium must be 75% or greater. The average recovery from spiked samples over the range of 0.5 to 2 times the target concentration is 88.0% (See Backup Section 4.4). At lower concentrations the recovery appears to be non-linear.

1.2.6 Precision (Analytical Method Only).

The pooled coefficient of variation obtained from replicate determination of analytical standards at 0.5X, 1X and 2X the target concentration is 0.036 (See Backup Data Section 4.5).

1.2.7 Precision (Overall Procedure).

The overall procedure must provide results at the target concentration that are 25% of better at the 95% confidence level. The precision at the 95% confidence level for the 15 day storage test is plus or minus 12.9% (See Backup Data Section 4.6).

This includes an additional plus or minus 5% for sampling error.

1.3 Advantages.

1.3.1 The sampling procedure is convenient.

1.3.2 The analytical procedure is very sensitive and reproducible.

1.3.3 Reanalysis of samples is possible.

1.3.4 Samples are stable for at least 15 days at room temperature.

1.3.5 Interferences are reduced by the longer GC retention time of the new derivative.

1.4 Disadvantages.

1.4.1 Two tubes in series must be used because of possible breakthrough and migration.

1.4.2 The precision of the sampling rate may be limited by the reproducibility of the pressure drop across the tubes. The pumps are usually calibrated for one tube only.

1.4.3 The use of benzene as the desorption solvent increases the hazards of analysis because of the potential carcinogenic effects of benzene.

1.4.4 After repeated injections there can be a buildup of residue formed on the electron capture detector which decreases sensitivity.

1.4.5 Recovery from the charcoal tubes appears to be nonlinear at low concentrations.

2. Sampling Procedure.

2.1 Apparatus.

2.1.1 A calibrated personal sampling pump whose flow can be determined within plus or minus 5% of the recommended flow.

2.1.2 SKC Lot 120 Charcoal tubes: glass tube with both ends flame sealed, 7 cm long with a 6 mm O.D. and a 4-mm I.D., containing 2 sections of coconut shell charcoal separated by a 2-mm portion of urethane foam. The adsorbing section contains 100 mg of charcoal, the backup section 50 mg. A 3-mm portion of urethane foam is placed between the outlet end of the tube and the backup section. A plug of silylated glass wool is placed in front of the adsorbing section.

2.2 Reagents.

2.2.1 None required.

2.3 Sampling Technique.

2.3.1 Immediately before sampling, break the ends of the charcoal tubes. All tubes must be from the same lot.

2.3.2 Connect two tubes in series to the sampling pump with a short section of flexible tubing. A minimum amount of tubing is used to connect the two sampling tubes together. The tube closer to the pump is used as a backup. This tube should be identified as the backup tube.

2.3.3 The tubes should be placed in a vertical position during sampling to minimize channeling.

2.3.4 Air being sampled should not pass through any hose or tubing before entering the charcoal tubes.

2.3.5 Seal the charcoal tubes with plastic caps immediately after sampling. Also, seal each sample with OSHA seals lengthwise.

2.3.6 With each batch of samples, submit at least one blank tube from the same lot used for samples. This tube should be subjected to exactly the same handling as the samples (break, seal, transport) except that no air is drawn through it.

2.3.7 Transport the samples (and corresponding paperwork) to the lab for analysis.

2.3.8 If bulk samples are submitted for analysis, they shoud be transported in glass containers with Teflon-lined caps. These samples must be mailed separately from the container used for the charcoal tubes.

2.4 Breakthrough.

2.4.1 The breakthrough (5% breakthrough) volume for a 3.0 mg/m ethylene oxide sample stream at approximately 85% relative humidity, 22°C and 633 mm is 2.6 liters sampled at 0.05 liters per minute. This is equivalent to 7.8 µg of ethylene oxide. Upon saturation of the tube it appeared that the water may be displacing ethylene oxide during sampling.

2.5 Desorption Efficiency.

2.5.1 The desorption efficiency, from liquid injection onto charcoal tubes, averaged 88.0% from 0.5 to 2.0 x the target concentration for a 1.0 liter air sample. At lower ranges it appears that the desorption efficiency is non-linear (See Backup Data Section 4.2).

2.5.2 The desorption efficiency may vary from one laboratory to another and also from

one lot of charcoal to another. Thus, it is necessary to determine the desorption efficiency for a particular lot of charcoal.

2.6 Recommended Air Volume and Sampling Rate.

2.6.1 The recommended air volume is 1.0 liter.

2.6.2 The recommended maximum sampling rate is 0.05 Lpm.

2.7 Interferences.

2.7.1 Ethylene glycol and Freon 12 at target concentration levels did not interfere with the collection of ethylene oxide.

2.7.2 Suspected interferences should be listed on the sample data sheets.

2.7.3 The relative humidity may affect the sampling procedure.

2.8 Safety Precautions.

2.8.1 Attach the sampling equipment to the employee so that it does not interfere with work performance.

2.8.2 Wear safety glasses when breaking the ends of the sampling tubes.

2.8.3 If possible, place the sampling tubes in a holder so the sharp end is not exposed while sampling.

3. Analytical Method.

3.1 Apparatus.

3.1.1 Gas chromatograph equipped with a linearized electron capture detector.

3.1.2 GC column capable of separating the derivative of ethylene oxide (2-bromoethanol) from any interferences and the 1% CS_2 in benzene solvent. The column used for validation studies was: 10 ft x ⅛ inch stainless steel 20% SP–2100, .1% Carbowax 1500 on 100/120 Supelcoport.

3.1.3 An electronic integrator or some other suitable method of measuring peak areas.

3.1.4 Two milliliter vials with Teflon-lined caps.

3.1.5 Gas tight syringe—500 µL or other convenient sizes for preparing standards.

3.1.6 Microliter syringes—10 µL or other convenient sizes for diluting standards and 1 µL for sample injections.

3.1.7 Pipets for dispensing the 1% CS_2 in benzene solvent. The Glenco 1 mL dispenser is adequate and convenient.

3.1.8 Volumetric flasks—5 mL and other convenient sizes for preparing standards.

3.1.9 Disposable Pasteur pipets.

3.2 Reagents.

3.2.1 Benzene, reagent grade.

3.2.2 Carbon Disulfide, reagent grade.

3.2.3 Ethylene oxide, 99.7% pure.

3.2.4 Hydrobromic Acid, 48% reagent grade.

3.2.5 Sodium Carbonate, anhydrous, reagent grade.

3.2.6 Desorbing reagent, 99% Benzene/1% CS_2.

3.3 Sample Preparation.

3.3.1 The front and back sections of each sample are transferred to separate 2-mL vials.

3.3.2 Each sample is desorbed with 1.0 mL of desorbing reagent.

3.3.3 The vials are sealed immediately and allowed to desorb for one hour with occasional shaking.

3.3.4 Desorbing reagent is drawn off the charcoal with a disposable pipet and put into clean 2-mL vials.

3.3.5 One drop of HBr is added to each vial. Vials are resealed and HBr is mixed well with the desorbing reagent.

3.3.6 About 0.15 gram of sodium carbonate is carefully added to each vial. Vials are again resealed and mixed well.

3.4 Standard Preparation.

3.4.1 Standards are prepared by injecting the pure ethylene oxide gas into the desorbing reagent.

3.4.2 A range of standards are prepared to make a calibration curve. A concentration of 1.0 µL of ethylene oxide gas per 1 mL desorbing reagent is equivalent to 1.0 ppm air concentration (all gas volumes at 25°C and 760 mm) for the recommended 1 liter air sample. This amount is uncorrected for desorption efficiency (See Backup Data Section 4.2. for desorption efficiency corrections).

3.4.3 One drop of HBr per mL of standard is added and mixed well.

3.4.4 About 0.15 grams of sodium carbonate is carefully added for each drop of HBr (A small reaction will occur).

3.5 Analysis.

3.5.1 GC Conditions.

Nitrogen flow rate—10mL/min.
Injector Temperature—250° C
Detector Temperature—300° C
Column Temperature—100° C
Injection size—0.8 µL
Elution time—3.9 minutes

3.5.2 Peak areas are measured by an integrator or other suitable means.

3.5.3 The integrator results are in area units and a calibration curve is set up with concentration vs. area units.

3.6 Interferences.

3.6.1 Any compound having the same retention time of 2-bromoethanol is a potential interference. Possible interferences should be listed on the sample data sheets.

3.6.2 GC parameters may be changed to circumvent interferences.

3.6.3 There are usually trace contaminants in benzene. These contaminants, however, posed no problem of interference.

3.6.4 Retention time data on a single column is not considered proof of chemical identity. Samples over the 1.0 ppm target level should be confirmed by GC/Mass Spec or other suitable means.

3.7 Calculations

3.7.1 The concentration in µg/mL for a sample is determined by comparing the area of a particular sample to the calibration curve, which has been prepared from analytical standards.

3.7.2 The amount of analyte in each sample is corrected for desorption efficiency by use of a desorption curve.

3.7.3 Analytical results (A) from the two tubes that compose a particular air sample are added together.

3.7.4 The concentration for a sample is calculated by the following equation:

$$\text{ETO, mg/m}^3 = AXB/C$$

where:

A=µg/mL

B=desorption volume in milliliters

C=air volume in liters.

3.7.5 To convert mg/m^3 to parts per million (ppm) the following relationship is used:

$$\text{ETO, ppm} = \text{mg/m}^3 \times 24.45/44.05$$

where:

mg/m^3=results from 3.7.4

24.45=molar volume at 25 °C and 760mm Hg

44.05=molecular weight of ETO.

3.8 Safety Precautions

3.8.1 Ethylene oxide and benzene are potential carcinogens and care must be exercised when working with these compounds.

3.8.2 All work done with the solvents (preparation of standards, desorption of samples, etc.) should be done in a hood.

3.8.3 Avoid any skin contact with all of the solvents.

3.8.4 Wear safety glasses at all times.

3.8.5 Avoid skin contact with HBr because it is highly toxic and a strong irritant to eyes and skin.

4. Backup Data.

4.1 Detection Limit Data.

The detection limit was determined by injecting 0.8 µL of a 0.015 µg/mL standard of ethylene oxide into 1% CS_2 in benzene. The detection limit of the analytical procedure is taken to be 1.20×10^{-5} µg per injection. This is equivalent to 8.3 ppb (0.015 mg/m^3) for the recommended air volume.

4.2 Desorption Efficiency.

Ethylene oxide was spiked onto charcoal tubes and the following recovery data was obtained.

Amount spiked (µg)	Amount recovered (µg)	Percent recovery
4.5	4.32	96.0
3.0	2.61	87.0
2.25	2.025	90.0
1.5	1.365	91.0
1.5	1.38	92.0
.75	.6525	87.0
.375	.315	84.0
.375	.312	83.2
.1875	.151	80.5
.094	.070	74.5

At lower amounts the recovery appears to be non-linear.

4.3 Sensitivity Data.

The following data was used to determine the calibration curve.

Injection	0.5x.75 µg/mL	1x1.5 µg/mL	2x3.0 µg/mL
1	30904	59567	111778
2	30987	62914	106016
3	32555	58578	106122
4	32242	57173	109716
X	31672	59558	108408

Slope=34.105.

4.4 Recovery.

The recovery was determined by spiking ethylene oxide onto lot 120 charcoal tubes and desorbing with 1% CS_2 in Benzene. Recoveries were done at 0.5, 1.0, and 2.0 X the target concentration (1 ppm) for the recommended air volume.

PERCENT RECOVERY

Sample	0.5x	1.0x	2.0x
1	88.7	95.0	91.7
2	83.8	95.0	87.3
3	84.2	91.0	86.0
4	88.0	91.0	83.0
5	88.0	86.0	85.0

PERCENT RECOVERY—Continued

Sample	0.5x	1.0x	2.0x
X	86.5	90.5	87.0

Weighted Average=88.2.

4.5 Precision of the Analytical Procedure.

The following data was used to determine the precision of the analytical method:

Concentration	0.5x.75 µg/mL	1x1.5 µg/mL	2x3.0 µg/mL
Injection	.7421	1.4899	3.1184
	.7441	1.5625	3.0447
	.7831	1.4626	2.9149
	.7753	1.4244	2.9185
Average	.7612	1.4899	2.9991
Standard Deviation	.0211	.0674	.0996
CV	.0277	.0452	.0333

Insert illus. 44

CV+0.036

4.6 Storage Data.

Samples were generated at 1.5 mg/m³ ethylene oxide at 85% relative humidity, 22°C and 633 mm. All samples were taken for 20 minutes at 0.05 Lpm. Six samples were analyzed as soon as possible and fifteen samples were stored at refrigerated temperature (5°C) and fifteen samples were stored at ambient temperature (23°C). These stored samples were analyzed over a period of nineteen days.

PERCENT RECOVERY

Day analyzed	Refrigerated	Ambient
1	87.0	87.0
1	93.0	93.0
1	94.0	94.0
1	92.0	92.0
4	92.0	91.0
4	93.0	88.0
4	91.0	89.0
6	92.0	.....
6	92.0	.....
8	.....	92.0
8	.....	86.0
10	91.7	.....
10	95.5	.....
10	95.7	.....
11	.....	90.0
11	.....	82.0
13	78.0	.....

PERCENT RECOVERY—Continued

Day analyzed	Refrigerated	Ambient
13	81.4	.....
13	82.4	.....
14	.....	78.5
14	.....	72.1
18	56.0	.....
18	68.0	.....
19	.....	64.0
19	.....	77.0

4.7 Breakthrough Data.

Breakthrough studies were done at 2 ppm (3.6 mg/m³) at approximately 85% relative humidity at 22°C (ambient temperature). Two charcoal tubes were used in series. The backup tube was changed every 10 minutes and analyzed for breakthrough. The flow rate was 0.050 Lpm.

Tube No.	Time (minutes)	Percent breakthrough
1	10	(1)
2	20	(1)
3	30	(1)
4	40	1.23
5	50	3.46
6	60	18.71
7	70	39.2
8	80	53.3
9	90	72.0
10	100	96.0
11	110	113.0
12	120	133.9

[1] None.

The 5% breakthrough volume was reached when 2.6 liters of test atmosphere were drawn through the charcoal tubes.

5. References.

5.1 "NIOSH Manual of Analytical Methods," 2nd ed. NIOSH: Cincinnati, 1977; Method S286.

5.2 "IARC Monographs on the Evaluation of Carcinogenic Risk of Chemicals to Man," International Agency for Research on Cancer: Lyon, 1976; Vol. II, p. 157.

5.3 Sax., N.I. "Dangerous Properties of Industrial Materials," 4th ed.; Van Nostrand Reinhold Company. New York, 1975; p. 741.

5.4 "The Condensed Chemical Dictionary", 9th ed.; Hawley, G.G., ed.; Van Nostrand Reinhold Company, New York, 1977; p. 361.

Summary of Other Sampling Procedures

OSHA believes that served other types of monitoring equipment and techniques exist for monitoring time-weighted averages. Considerable research and method development is currently being performed, which will lead to improvements and a wider variety of monitoring techniques. A combination of monitoring procedures can be used. There probably is no one best method for monitoring personal exposure to ethylene oxide in all cases. There are advantages, disadvantages, and limitations to each method. The method of choice will depend on the need and requirements. Some commonly used methods include the use of charcoal tubes, passive dosimeters, Tedlar gas sampling bags, detector tubes, photoionization detection units, infrared detection units and gas chromatographs. A number of these methods are described below.

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A. Charcoal Tube Sampling Procedures

Qazi-Ketcham method (Ex. 11–133)—This method consists of collecting EtO on Columbia JXC activated carbon, desorbing the EtO with carbon disulfide and analyzing by gas chromatography with flame ionization detection. Union Carbide has recently updated and revalidated this monitoring procedures. This method is capable of determining both eight-hour time-weighted average exposures and short-term exposures. The method was validated to 0.5 ppm. Like other charcoal collecting procedures, the method requires considerable analytical expertise.

ASTM-proposed method—The Ethylene Oxide Industry Council (EOIC) has contracted with Clayton Environmental Consultants, Inc. to conduct a collaborative study for the proposed method. The ASTM-Proposed method is similar to the method published by Qazi and Ketcham is the November 1977 American Industrial Hygiene Association Journal, and to the method of Pilney and Coyne, presented at the 1979 American Industrial Hygiene Conference. After the air to be sampled is drawn through an activated charcoal tube, the ethylene oxide is desorbed from the tube using carbon disulfide and is quantitated by gas chromatography utilizing a flame ionization detector. The ASTM-proposed method specifies a large two-section charcoal tube, shipment in dry ice, storage at less than −5°C, and analysis within three weeks to prevent migration and sample loss. Two types of charcoal tubes are being tested— • Pittsburgh Coconut-Based (PCB) and Columbia JXC charcoal. This collaborative study will give an indication of the inter- and intralaboratory precision and accuracy of the ASTM-proposed method. Several laboratories have considerable expertise using the Qazi-Ketcham and Dow methods.

B. Passive Monitors—Ethylene oxide diffuses into the monitor and is collected in the sampling media. The DuPont Pro-Tek badge collects EtO in an absorbing solution, which is analyzed colorimetrically to determine the amount of EtO present. The 3M 350 badge collects the EtO on chemically treated charcoal. Other passive monitors are currently being developed and tested. Both 3M and DuPont have submitted data indicating their dosimeters meet the precision and accuracy requirements of the proposed ethylene oxide standard. Both presented laboratory validation data to 0.2 ppm (Exs. 11–65, 4–20, 108, 109, 130).

C. Tedlar Gas Sampling Bags-Samples are collected by drawing a known volume of air into a Tedlar gas sampling bag. The ethylene oxide concentration is often determined on-site using a portable gas chromatograph or portable infrared spectometer.

D. Detector tubes—A known volume of air is drawn through a detector tube using a small hand pump. The concentration of EtO is related to the length of stain developed in the tube. Detector tubes are economical, easy to use, and give an immediate readout. Unfortunately, partly because they are nonspecific, their accuracy is often questionable. Since the sample is taken over a short period of time, they may be useful for determining the source of leaks.

E. Direct Reading Instruments—There are numerous types of direct reading instruments, each having its own strengths and weaknesses (Exs. 135B, 135C, 107, 11–78, 11–153). Many are relatively new, offering greater sensitivity and specificity. Popular ethylene oxide direct reading instruments include infrared detection units, photoionization detection units, and gas chromatographs.

Portable infrared analyzers provide an immediate, continuous indication of a concentration value; making them particularly useful for locating high concentration pockets, in leak detection and in ambient air monitoring. In infrared detection units, the amount of infrared light absorbed by the gas being analyzed at selected infrared wavelengths is related to the concentration of a particular component. Various models have either fixed or variable infrared filters, differing cell pathlengths, and microcomputer controls for greater sensitivity, automation, and interference elimination.

A fairly recent detection system is photoionization detection. The molecules are ionized by high energy ultraviolet light. The resulting current is measured. Since different substances have different ionization potentials, other organic compounds may be ionized. The lower the lamp energy, the better the selectivity. As a continuous monitor, photoionization detection can be useful for locating high concentration pockets, in leak detection, and continuous ambient air monitoring. Both portable and stationary gas chromatographs are available with various types of detectors, including photoionization detectors. A gas chromatograph with a photoionization detector retains the photionization sensitivity, but minimizes or eliminates interferences. For several GC/PID units, the sensitivity is in the 0.1–0.2 ppm EtO range. The GC/PID with microprocessors can sample up to 20 sample points sequentially, calculate and record data, and activate alarms or ventilation systems. Many are quite flexible and can be configured to meet the specific analysis needs for the workplace.

DuPont presented their laboratory validation data of the accuracy of the Qazi-Ketcham charcoal tube, the PCB charcoal tube, Miran 103 IR analyzer, 3M #3550 monitor and the Du Pont C–70 badge. Quoting Elbert V. Kring:

> We also beleive that OSHA's proposed accuracy in this standard is appropriate. At plus or minus 25 percent at one part per million, and plus or minus 35 percent below that. And, our data indicates there's only one monitoring method, right now, that we've tested thoroughly, that meets that accuracy requirements. That is the Du Pont Pro-Tek badge* * *. We also believe that this kind of data should be confirmed by another independent laboratory, using the same type dynamic chamber testing (Tr. 1470)

Additional data by an independent laboratory following their exact protocol was not submitted. However, information was submitted on comparisons and precision and accuracy of those monitoring procedures which indicate far better precision and accuracy of those monitoring procedures than that obtained by Du Pont (Ex. 4–20, 130, 11–68, 11–133, 130, 135A).

The accuracy of any method depends to a large degree upon the skills and experience of those who not only collect the samples but also those who analyze the samples. Even for methods that are collaboratively tested, some laboratories are closer to the true values than others. Some laboratories may meet the precision and accuracy requirements of the method; others may consistently far exceed them for the same method.

§ 1926.1148 Formaldehyde.

(a) *Scope and application.* This standard applies to all occupational exposures to formaldehyde, i.e. from formaldehyde gas, its solutions, and materials that release formaldehyde.

(b) *Definitions.* For purposes of this standard, the following definitions shall apply:

Action level means a concentration of 0.5 part formaldehyde per million parts of air (0.5 ppm) calculated as an eight (8)-hour time-weighted average (TWA) concentration.

Assistant Secretary means the Assistant Secretary of Labor for the Occupational Safety and Health Administration, U.S. Department of Labor, or designee.

Authorized person means any person required by work duties to be present in regulated areas, or authorized to do so by the employer, by this section, or by the OSH Act of 1970.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Emergency is any occurrence, such as but not limited to equipment failure, rupture of containers, or failure of control equipment that results in an uncontrolled release of a significant amount of formaldehyde.

Employee exposure means the exposure to airborne formaldehyde which would occur without corrections for protection provided by any respirator that is in use.

Formaldehyde means the chemical substance, HCHO, Chemical Abstracts Service Registry No. 50–00–0.

(c) *Permissible Exposure Limit (PEL)*—(1) *TWA*: The employer shall assure that no employee is exposed to an airborne concentration of formaldehyde which exceeds 0.75 parts formaldehyde per million parts of air (0.75 ppm) as an 8-hour TWA.

(2) *Short Term Exposure Limit (STEL).* The employer shall assure that no employee is exposed to an airborne concentration of formaldehyde which exceeds two parts formaldehyde per million parts of air (2 ppm) as a 15-minute STEL.

(d) *Exposure monitoring*—(1) *General.* (i) Each employer who has a workplace covered by this standard shall monitor employees to determine their exposure to formaldehyde.

(ii) *Exception.* Where the employer documents, using objective data, that the presence of formaldehyde or formaldehyde-releasing products in the workplace cannot result in airborne concentrations of formaldehyde that would cause any employee to be exposed at or above the action level or the STEL under foreseeable conditions of use, the employer will not be required to measure employee exposure to formaldehyde.

(iii) When an employee's exposure is determined from representative sampling, the measurements used shall be representative of the employee's full shift or short-term exposure to formaldehyde, as appropriate.

(iv) Representative samples for each job classification in each work area shall be taken for each shift unless the employer can document with objective data that exposure levels for a given job classification are equivalent for different work shifts.

(2) *Initial monitoring.* The employer shall identify all employees who may be exposed at or above the action level or at or above the STEL and accurately determine the exposure of each employee so identified.

(i) Unless the employer chooses to measure the exposure of each employee potentially exposed to formaldehyde, the employer shall develop a representative sampling strategy and measure sufficient exposures within each job classification for each workshift to correctly characterize and not underestimate the exposure of any employee within each exposure group.

(ii) The initial monitoring process shall be repeated each time there is a change in production, equipment, process, personnel, or control measures which may result in new or additional exposure to formaldehyde.

(iii) If the employer receives reports of signs or symptoms of respiratory or dermal conditions associated with formaldehyde exposure, the employer shall promptly monitor the affected employee's exposure.

(3) *Periodic monitoring.* (i) The employer shall periodically measure and accurately determine exposure to formaldehyde for employees shown by the initial monitoring to be exposed at or above the action level or at or above the STEL.

(ii) If the last monitoring results reveal employee exposure at or above the action level, the employer shall repeat monitoring of the employees at least every 6 months.

(iii) If the last monitoring results reveal employee exposure at or above the STEL, the employer shall repeat monitoring of the employees at least once a year under worst conditions.

(4) *Termination of monitoring.* The employer may discontinue periodic monitoring for employees if results from two consecutive sampling periods taken at least 7 days apart show that employee exposure is below the action level and the STEL. The results must be statistically representative and consistent with the employer's knowledge of the job and work operation.

(5) *Accuracy of monitoring.* Monitoring shall be accurate, at the 95 percent confidence level, to within plus or minus 25 percent for airborne concentrations of formaldehyde at the TWA and the STEL and to within plus or minus 35 percent for airborne concentrations of formaldehyde at the action level.

(6) *Employee notification of monitoring results.* Within 15 days of receiving the results of exposure monitoring conducted under this standard, the employer shall notify the affected employees of these results. Notification shall be in writing, either by distributing copies of the results to the employees or by posting the results. If the employee exposure is over either PEL, the employer shall develop and implement a written plan to reduce employee exposure to or below both PELs, and give written notice to employees. The written notice shall contain a description of the corrective action being taken by the employer to decrease exposure.

(7) *Observation of monitoring.* (i) The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to formaldehyde required by this standard.

(ii) When observation of the monitoring of employee exposure to formaldehyde requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the clothing and equipment to the observer, require the observer to use such clothing and equipment, and assure that the observer complies with all other applicable safety and health procedures.

(e) *Regulated areas.* (1) The employer shall establish regulated areas where the concentration of airborne formaldehyde exceeds either the TWA or the STEL and post all entrances and accessways with signs bearing the following information:

DANGER
FORMALDEHYDE
IRRITANT AND POTENTIAL CANCER HAZARD
AUTHORIZED PERSONNEL ONLY

(2) The employer shall limit access to regulated areas to authorized persons who have been trained to recognize the hazards of formaldehyde.

(3) An employer at a multiemployer worksite who establishes a regulated area shall communicate the access restrictions and locations of these areas to other employers with work operations at that worksite.

(f) *Methods of compliance*—(1) *Engineering controls and work practices.* The employer shall institute engineering and work practice controls to reduce and maintain employee exposures to formaldehyde at or below the TWA and the STEL.

(2) *Exception.* Whenever the employer has established that feasible engineering and work practice controls cannot reduce employee exposure to or below either of the PELs, the employer shall apply these controls to reduce employee exposures to the extent feasible and shall supplement them with respirators which satisfy this standard.

(g) *Respiratory protection*—(1) *General.* Where respiratory protection is required, the employer shall provide the respirators at no cost to the employee and shall assure that they are properly used. The respirators shall comply with the requirements of this standard and shall reduce the concentration of formaldehyde inhaled by the employee to at or below both the TWA and the STEL. Respirators shall be used in the following circumstances:

(i) During the interval necessary to install or implement feasible engineering and work practice controls;

(ii) In work operations, such as maintenance and repair activities or vessel cleaning, for which the employer establishes that engineering and work practice controls are not feasible;

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the PELs; and

(iv) In emergencies.

(2) *Respirator selection.* (i) The appropriate respirators as specified in Table 1 shall be selected from those approved by the Mine Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR part 11.

TABLE 1.—MINIMUM REQUIREMENTS FOR RESPIRATORY PROTECTION AGAINST FORMALDEHYDE

Condition of use or formaldehyde concentration (ppm)	Minimum respirator required[1]
Up to 7.5 ppm. (10 x PEL)	Full facepiece with cartridges or canisters specifically approved for protection against formaldehyde.[2]
Up to 75 ppm. (100 x PEL)	Full-face mask with chin style or chest or back mounted type with industrial size canister specifically approved for protection against formaldehyde. Type C supplied-air respirator, pressure demand or continuous flow type, with full facepiece, hood, or helmet.
Above 75 ppm or unknown (emergencies). (100 x PEL).	Self-contained breathing apparatus (SCBA) with positive pressure full facepiece. Combination supplied-air, full facepiece positive pressure respirator with auxiliary self-contained air supply.
Firefighting	SCBA with positive pressure in full facepiece.
Escape	SCBA in demand or pressure demand mode. Full-face mask with chin style or front or back mounted type industrial size canister specifically approved for protection against formaldehyde.

[1] Respirators specified for use at higher concentrations may be used at lower concentrations.
[2] A half-mask respirator with cartridges specifically approved for protection against formaldehyde can be substituted for the full facepiece respirator providing that effective gas-proof goggles are provided and used in combination with the half-mask respirator.

(ii) The employer shall make available a powered air-purifying respirator adequate to protect against formaldehyde exposure to any employee who experiences difficulty wearing a negative pressure respirator to reduce exposure to formaldehyde.

(3) *Respirator usage.* (i) whenever respirator use is required by this standard, the employer shall institute a respiratory protection program in accordance with 29 CFR 1926.103 (b), (d), (e), and (f).

(ii) The employer shall perform either quantitative or qualitative face fit tests in accordance with the procedures outlined in Appendix E at the time of initial fitting and at least annually thereafter for all employees required by this standard to wear negative pressure respirators.

(A) Respirators selected shall be from those exhibiting the best facepiece fit.

(B) No respirator shall be chosen that would potentially permit the employee to inhale formaldehyde at concentrations in excess of either the TWA or the STEL.

(iii) Where air purifying chemical cartridge respirators are used, the cartridges shall be replaced after three hours of use or at the end of the workshift, whichever is sooner unless the cartridge contains a NIOSH-approved end-of-service indicator to show when breakthrough occurs.

(iv) Unless the canister contains a NIOSH-approved end-of-service-life indicator to show when breakthrough occurs, canisters used in atmospheres up to 7.5 ppm (10×PEL) shall be replaced every 4 hours and industrial sized canisters used in atmospheres up to 75 ppm (100×PEL) shall be replaced every two hours or at the end of the workshift, whichever is sooner.

(v) Employers shall permit employees to leave the work area to wash their faces and respirator facepieces as needed to prevent skin irritation from respirator use.

(h) *Protective equipment and clothing.* Employers shall comply with the provisions of §§1926.95 and 1926.102 of this part. When protective equipment or clothing is provided under these provisions, the employer shall provide these protective devices at no cost to the employee and assure that the employee wears them.

(1) *Selection.* The employer shall select protective clothing and equipment based upon the form of formaldehyde to be encountered, the conditions of use, and the hazard to be prevented.

(i) All contact of the eyes and skin with liquids containing 1 percent or more formaldehyde shall be prevented by the use of chemical protective clothing made of material impervious to formaldehyde and the use of other personal protective equipment, such as goggles and face shields, as appropriate to the operation.

(ii) Contact with irritating or sensitizing materials shall be prevented to the extent necessary to eliminate the hazard.

(iii) Where a face shield is worn, chemical safety goggles are also required if there is a danger of formaldehyde reaching the area of the eye.

(iv) Full body protection shall be worn for entry into areas where concentrations exceed 100 ppm and for emergency reentry into areas of unknown concentration.

(2) *Maintenance of protective equipment and clothing.* (i) The employer shall assure that protective equipment and clothing that has become contaminated with formaldehyde is cleaned or laundered before its reuse.

(ii) When ventilating formaldehyde-contaminated clothing and equipment, the employer shall establish a storage area so that employee exposure is minimized. Containers for contaminated clothing and equipment and storage areas shall have labels and signs containing the following information:

DANGER

FORMALDEHYDE–CONTAMINATED [CLOTHING] EQUIPMENT

AVOID INHALATION AND SKIN CONTACT

(iii) The employer shall assure that only persons trained to recognize the hazards of formaldehyde remove the contaminated material from the storage area for purposes of cleaning, laundering, or disposal.

(iv) The employer shall assure that no employee takes home equipment or clothing that is contaminated with formaldehyde.

(v) The employer shall repair or replace all required protective clothing and equipment for each affected employee as necessary to assure its effectiveness.

(vi) The employer shall inform any person who launders, cleans, or repairs such clothing or equipment of formaldehyde's potentially harmful effects and of procedures to safely handle the clothing and equipment.

(i) *Hygiene protection.* (1) The employer shall provide change rooms, as described in 29 CFR 1926.51 for employees who are required to change from work clothing into protective clothing to prevent skin contact with formaldehyde.

(2) If employees' skin may become spashed with solutions containing 1 percent or greater formaldehyde, for example, because of equipment failure or improper work practices, the employer shall provide conveniently located quick drench showers and assure that affected employees use these facilities immediately.

(3) If there is any possibility that an employee's eyes may be splashed with solutions containing 0.1 percent or greater formaldehyde, the employer shall provide acceptable eyewash facilities within the immediate work area for emergency use.

(j) *Housekeeping.* For operations involving formaldehyde liquids or gas,

the employer shall conduct a program to detect leaks and spills, including regular visual inspections.

(1) Preventative maintenance of equipment, including surveys for leaks, shall be undertaken at regular intervals.

(2) In work areas where spillage may occur, the employer shall make provisions to contain the spill, to decontaminate the work area, and to dispose of the waste.

(3) The employer shall assure that all leaks are repaired and spills are cleaned promptly by employees wearing suitable protective equipment and trained in proper methods for cleanup and decontamination.

(4) Formaldehyde-contaminated waste and debris resulting from leaks or spills shall be placed for disposal in sealed containers bearing a label warning of formaldehyde's presence and of the hazards associated with formaldehyde.

(k) *Emergencies.* For each workplace where there is the possibility of an emergency involving formaldehyde, the employer shall assure appropriate procedures are adopted to minimize injury and loss of life. Appropriate procedures shall be implemented in the event of an emergency.

(l) *Medical surveillance*—(1) *Employees covered.* (i) The employer shall institute medical surveillance programs for all employees exposed to formaldehyde at concentrations at or exceeding the action level or exceeding the STEL.

(ii) The employer shall make medical surveillance available for employees who develop signs and symptoms of overexposure to formaldehyde and for all employees exposed to formaldehyde in emergencies. When determining whether an employee may be experiencing signs and symptoms of possible overexposure to formaldehyde, the employer may rely on the evidence that signs and symptoms associated with formaldehyde exposure will occur only in exceptional circumstances when airborne exposure is less than 0.1 ppm and when formaldehyde is present in material in concentrations less than 0.1 percent.

(2) *Examination by a physician.* All medical procedures, including administration of medical disease questionnaires, shall be performed by or under the supervision of a licensed physician and shall be provided without cost to the employee, without loss of pay, and at a reasonable time and place.

(3) *Medical disease questionnaire.* The employer shall make the following medical surveillance available to employees prior to assignment to a job where formaldehyde exposure is at or above the action level or above the STEL and annually thereafter. The employer shall also make the following medical surveillance available promptly upon determining that an employee is experiencing signs and symptoms indicative of possible overexposure to formaldehyde.

(i) Administration of a medical disease questionnaire, such as in appendix D, which is designed to elicit information on work history, smoking history, any evidence of eye, nose, or throat irritation; chronic airway problems or hyperreactive airway disease; allergic skin conditions or dermatitis; and upper or lower respiratory problems.

(ii) A determination by the physician, based on evaluation of the medical disease questionnaire, of whether a medical examination is necessary for employees not required to wear respirators to reduce exposure to formaldehyde.

(4) *Medical examinations.* Medical examinations shall be given to any employee who the physician feels, based on information in the medical disease questionnaire, may be at increased risk from exposure to formaldehyde and at the time of initial assignment and at least annually thereafter to all employees required to wear a respirator to reduce exposure to formaldehyde. The medical examination shall include:

(i) A physical examination with emphasis on evidence of irritation or sensitization of the skin and respiratory system, shortness of breath, or irritation of the eyes.

(ii) Laboratory examinations for respirator wearers consisting of baseline and annual pulmonary function tests. As a minimum, these tests shall consist of forced vital capacity (FVC), forced expiratory volume in one second (FEV_1), and forced expiratory flow (FEF).

(iii) Any other test which the examining physician deems necessary to complete the written opinion.

(iv) Counseling of employees having medical conditions that would be directly or indirectly aggravated by exposure to formaldehyde on the increased risk of impairment of their health.

(5) *Examinations for employees exposed in an emergency.* The employer shall make medical examinations available as soon as possible to all employees who have been exposed to formaldehyde in an emergency.

(i) The examination shall include a medical and work history with emphasis on any evidence of upper or lower respiratory problems, allergic conditions, skin reaction or hypersensitivity, and any evidence of eye, nose, or throat irritation.

(ii) Other examinations shall consist of those elements considered appropriate by the examining physician.

(6) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this standard and appendix A, C, D, and E;

(ii) A description of the affected employee's job duties as they relate to the employee's exposure to formaldehyde;

(iii) The representative exposure level for the employee's job assignment;

(iv) Information concerning any personal protective equipment and respiratory protection used or to be used by the employee; and

(v) Information from previous medical examinations of the affected employee within the control of the employer.

(vi) In the event of a nonroutine examination because of an emergency, the employer shall provide to the physician as soon as possible: A description of how the emergency occurred and the exposure the victim may have received.

(7) *Physician's written opinion.* (i) For each examination required under this standard, the employer shall obtain a written opinion from the examining physician. This written opinion shall contain the results of the medical examination except that it shall not reveal specific findings or diagnoses unrelated to occupational exposure to formaldehyde. The written opinion shall include:

(A) The physician's opinion as to whether the employee has any medical condition that would place the employee at an increased risk of material impairment of health from exposure to formaldehyde;

(B) Any recommended limitations on the employee's exposure or changes in the use of personal protective equipment, including respirators;

(C) A statement that the employee has been informed by the physician of any medical conditions which would be aggravated by exposure to formaldehyde, whether these conditions may have resulted from past formaldehyde exposure or from exposure in an emergency, and whether there is a need for further examination or treatment.

(ii) The employer shall provide for retention of the results of the medical examination and tests conducted by the physician.

(iii) The employer shall provide a copy of the physician's written opinion

to the affected employee within 15 days of its receipt.

(8) *Medical removal.* (i) The provisions of paragraph (l)(8) apply when an employee reports significant irritation of the mucosa of the eyes or the upper airways, respiratory sensitization, dermal irritation, or dermal sensitization attributed to workplace formaldehyde exposure. Medical removal provisions do not apply in the case of dermal irritation or dermal sensitization when the product suspected of causing the dermal condition contains less than 0.05% formaldehyde.

(ii) An employee's report of signs or symptoms of possible overexposure to formaldehyde shall be evaluated by a physician selected by the employer pursuant to paragraph (l)(3). If the physician determines that a medical examination is not necessary under paragraph (l)(3)(ii), there shall be a two-week evaluation and remediation period to permit the employer to ascertain whether the signs or symptoms subside untreated or with the use of creams, gloves, first aid treatment or personal protective equipment. Industrial hygiene measures that limit the employee's exposure to formaldehyde may also be implemented during this period. The employee shall be referred immediately to a physician prior to expiration of the two-week period if the signs or symptoms worsen. Earnings, seniority and benefits may not be altered during the two-week period by virtue of the report.

(iii) If the signs or symptoms have not subsided or been remedied by the end of the two-week period, or earlier if signs or symptoms warrant, the employee shall be examined by a physician selected by the employer. The physician shall presume, absent contrary evidence, that observed dermal irritation or dermal sensitization are not attributable to formaldehyde when products to which the affected employee is exposed contain less than 0.1% formaldehyde.

(iv) Medical examinations shall be conducted in compliance with the requirements of paragraph (l)(5) (i) and (ii). Additional guidelines for conducting medical exams are contained in Appendix C.

(v) If the physician finds that significant irritation of the mucosa of the eyes or of the upper airways, respiratory sensitization, dermal irritation, or dermal sensitization result from workplace formaldehyde exposure and recommends restrictions or removal, the employer shall promptly comply with the restrictions or recommendation of removal. In the event of a recommendation of removal, the employer shall remove the effected employee from the current formaldehyde exposure and if possible, transfer the employee to work having no or significantly less exposure to formaldehyde.

(vi) When an employee is removed pursuant to paragraph (l)(8)(v), the employer shall transfer the employee to comparable work for which the employee is qualified or can be trained in a short period (up to 6 months), where the formaldehyde exposures are as low as possible, but not higher than the action level. The employeer shall maintain the employee's current earnings, seniority, and other benefits. If there is no such work available, the employer shall maintain the employee's current earnings, seniority and other benefits until such work becomes available, until the employee is determined to be unable to return to workplace formaldehyde exposure, until the employee is determined to be able to return to the original job status, or for six months, whichever comes first.

(vii) The employer shall arrange for a follow-up medical examination to take place within six months after the employee is removed pursuant to this paragraph. This examination shall determine if the employee can return to the original job status, or if the removal is to be permanent. The physician shall make a decision within six months of the date the employee was removed as to whether the employee can be returned to the original job status, or if the removal is to be permanent.

(viii) An employer's obligation to provide earnings, seniority and other benefits to a removed employee may be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program or from employment with another employer made possible by virtue of the employee's removal.

(ix) In making determinations of the formaldehyde content of materials under this paragraph the employer may rely on objective data.

(9) *Multiple physician review.* (i) After the employer selects the initial physician who conducts any medical examination or consultation to determine whether medical removal or restriction is appropriate, the employee may designate a second physician to review any findings, determinations or recommendations of the initial physician and to conduct such examinations, consultations, and laboratory tests as the second physician deems necessary and appropriate to evaluate the effects of formaldehyde exposure and to facilitate this review.

(ii) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician conducts a medical examination or consultation for the purpose of medical removal or restriction.

(iii) The employer may condition its participation in, and payment for, the multiple physician review mechanism upon the employee doing the following within fifteen (15) days after receipt of the notification of the right to seek a second medical opinion, or receipt of the initial physician's written opinion, whichever is later;

(A) The employee informs the employer of the intention to seek a second medical opinion, and

(B) The employee initiates steps to make an appointment with a second physician.

(iv) If the findings, determinations or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve the disagreement. If the two physicians are unable to quickly resolve their disagreement, then the employer and the employee through their respective physicians shall designate a third physician who shall be a specialist in the field at issue:

(A) To review the findings, determinations or recommendations of the prior physicians; and

(B) To conduct such examinations, consultations, laboratory tests and discussions with the prior physicians as the third physician deems necessary to resolve the disagreement of the prior physicians.

(v) In the alternative, the employer and the employee or authorized employee representative may jointly designate such third physician.

(vi) The employer shall act consistent with the findings, determinations and recommendations of the third physician, unless the employer and the employee reach an agreement which is otherwise consistent with the recommendations of at least one of the three physicians.

(m) *Hazard communication*—(1) *General.* Communication of the hazards associated with formaldehyde in the workplace shall be governed by the requirements of paragraph (m). The definitions of 29 CFR 1926.59(c) shall apply under this paragraph.

(i) The following shall be subject to the hazard communication requirements of this paragraph: Formaldehyde gas, all mixtures or solutions composed of

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greater than 0.1 percent formaldehyde, and materials capable of releasing formaldehyde into the air, under reasonably foreseeable conditions of use, at concentrations reaching or exceeding 0.1 ppm.

(ii) As a minimum, specific health hazards that the employer shall address are: Cancer, irritation and sensitization of the skin and respiratory system, eye and throat irritation, and acute toxicity.

(2) Manufacturers and importers who produce or import formaldehyde or formaldehyde-containing products shall provide downstream employers using or handling these products with an objective determination through the required labels and MSDSs if these items may constitute a health hazard within the meaning of 29 CFR 1926.59(d) under normal conditions of use.

(3) *Labels.* (i) The employer shall assure that hazard warning labels complying with the requirements of 29 CFR 1926.59(f) are affixed to all containers of materials listed in paragraph (m)(1)(i), except to the extent that 29 CFR 1926.59(f) is inconsistent with this paragraph.

(ii) *Information on labels.* As a minimum, for all materials listed in paragraph (m)(1)(i) capable of releasing formaldehyde at levels of 0.1 ppm to 0.5 ppm, labels shall identify that the product contains formaldehyde; list the name and address of the responsible party; and state that physical and health hazard information is readily available from the employer and from material safety data sheets.

(iii) For materials listed in paragraph (m)(1)(i) capable of releasing formaldehyde at levels above 0.5 ppm, labels shall appropriately address all hazards as defined in 29 CFR 1926.59 (d) and appendices A and B to that section, including respiratory sensitization, and shall contain the words "Potential Cancer Hazard."

(iv) In making the determinations of anticipated levels of formaldehyde release, the employer may rely on objective data indicating the extent of potential formaldehyde release under reasonably foreseeable conditions of use.

(v) *Substitute warning labels.* The employer may use warning labels required by other statutes, regulations, or ordinances which impart the same information as the warning statements required by this paragraph.

(4) *Material safety data sheets.* (i) Any employer who uses formaldehyde-containing materials listed in paragraph (m)(1)(i) shall comply with the requirements of 29 CFR 1926.59(g) with regard to the development and updating of material safety data sheets.

(ii) Manufacturers, importers, and distributors of formaldehyde-containing materials listed in paragraph (m)(1)(i) shall assure that material safety data sheets and updated information are provided to all employers purchasing such materials at the time of the initial shipment and at the time of the first shipment after a material safety data sheet is updated.

(5) *Written hazard communication program.* The employer shall develop, implement, and maintain at the workplace, a written hazard communication program for formaldehyde exposures in the workplace, which at a minimum describes how the requirements specified in this paragraph for labels and other forms of warning and material safety data sheets, and paragraph (n) for employee information and training, will be met. Employers in multi-employer workplaces shall comply with the requirements of § 1926.59(e)(2) of this part.

(n) *Employee information and training*—(1) *Participation.* The employer shall assure that all employees who are assigned to workplaces where there is exposure to formaldehyde participate in a training program, except that where the employer can show, using objective data, that employees are not exposed to formaldehyde at or above 0.1 ppm, the employer is not required to provide training.

(2) *Frequency.* Employers shall provide such information and training to employees at the time of initial assignment, and whenever a new exposure to formaldehyde is introduced into the work area. The training shall be repeated at least annually.

(3) *Training program.* The training program shall be conducted in a manner which the employee is able to understand and shall include:

(i) A discussion of the contents of this regulation and the contents of the Material Safety Data Sheet.

(ii) The purpose for and a description of the medical surveillance program required by this standard, including:

(A) A description of the potential health hazards associated with exposure to formaldehyde and a description of the signs and symptoms of exposure to formaldehyde.

(B) Instructions to immediately report to the employer the development of any adverse signs or symptoms that the employee suspects is attributable to formaldehyde exposure.

(iii) Description of operations in the work area where formaldehyde is present and an explanation of the safe work practices appropriate for limiting exposure to formaldehyde in each job;

(iv) The purpose for, proper use of, and limitations of personal protective clothing and equipment;

(v) Instructions for the handling of spills, emergencies, and clean-up procedures;

(vi) An explanation of the importance of engineering and work practice controls for employee protection and any necessary instruction in the use of these controls; and

(vii) A review of emergency procedures including the specific duties or assignments of each employee in the event of an emergency.

(4) *Access to training materials.* (i) The employer shall inform all affected employees of the location of written training materials and shall make these materials readily available, without cost, to the affected employees.

(ii) The employer shall provide, upon request, all training materials relating to the employee training program to the Assistant Secretary and the Director.

(o) *Recordkeeping*—(1) *Exposure measurements.* The employer shall establish and maintain an accurate record of all measurements taken to monitor employee exposure to formaldehyde. This record shall include:

(i) The date of measurement;

(ii) The operation being monitored;

(iii) The methods of sampling and analysis and evidence of their accuracy and precision;

(iv) The number, durations, time, and results of samples taken;

(v) The types of protective devices worn; and

(vi) The names, job classifications, social security numbers, and exposure estimates of the employees whose exposures are represented by the actual monitoring results.

(2) *Exposure determinations.* Where the employer has determined that no monitoring is required under this standard, the employer shall maintain a record of the objective data relied upon to support the determination that no employee is exposed to formaldehyde at or above the action level.

(3) *Medical surveillance.* The employer shall establish and maintain an accurate record for each employee subject to medical surveillance under this standard. This record shall include:

(i) The name and social security number of the employee;

(ii) The physician's written opinion;

(iii) A list of any employee health complaints that may be related to exposure to formaldehyde; and

(iv) A copy of the medical examination results, including medical

disease questionnaires and results of any medical tests required by the standard or mandated by the examining physician.

(4) *Respirator fit testing.* (i) The employer shall establish and maintain accurate records for employees subject to negative pressure respirator fit testing required by this standard.

(ii) This record shall include:

(A) A copy of the protocol selected for respirator fit testing.

(B) A copy of the results of any fit testing performed.

(C) The size and manufacturer of the types of respirators available for selection.

(D) The date of the most recent fit testing, the name and social security number of each tested employee, and the respirator type and facepiece selected.

(5) *Record retention.* The employer shall retain records required by this standard for at least the following periods:

(i) Exposure records and determinations shall be kept for at least 30 years.

(ii) Medical records shall be kept for the duration of employment plus 30 years.

(iii) Respirator fit testing records shall be kept until replaced by a more recent record.

(6) *Availability of records.* (i) Upon request, the employer shall make all records maintained as a requirement of this standard available for examination and copying to the Assistant Secretary and the Director.

(ii) The employer shall make employee exposure records, including estimates made from representative monitoring and available upon request for examination, and copying to the subject employee, or former employee, and employee representatives in accordance with 29 CFR 1926.33 (a)–(e) and (g)–(i).

(iii) Employee medical records required by this standard shall be provided upon request for examination and coying, to the subject employee or former employee or to anyone having the specific written consent of the subject employee or former employee in accordance with 29 CFR 1926.33 (a)–(e) and (g)–(i).

(p) *Dates*—(1) *Effective dates*—(i) *General.* This section shall become effective February 2, 1988, except as noted below.

(ii) *Laboratories.* Tbis standard shall become effective for anatomy, histology, and pathology laboratories February 2, 1988, except as noted in the start-up date section. For all other laboratories, paregraphs (a) and (c) of this standard shall become effective February 2, 1988, and paragraphs (b) and (d)–(o) of this standard shall become effective on September 1, 1988, except as noted in the start-up date section.

(2) *Start-up dates*—(i) *Exposure determinations.* Initial monitoring or objective determinations that no monitoring is required by the standard shall be completed by 6 months after the effective date of the standard.

(ii) *Medical surveillance.* The initial medical surveillance of all eligible employees shall be completed by 6 months after the effective date of the standard.

(iii) *Emergencies.* The emergency procedures required by this standard shall be implemented by 6 months after the effective date of the standard.

(iv) *Respiratory protection.* Respiratory protection as required in this standard shall be provided as soon as possible and no later than 9 months after the effective date of the standard.

(v) *Engineering and work practice controls.* Engineering and work practice controls required by this standard shall be implemented as soon as possible, but no later than one year after the effective date of the standard.

(vi) *Employee training.* Written materials for employee training shall be updated as soon as possible, but no later than 2 months after the effective date of the standard.

(3) *Start-up dates of amended paragraphs*—(i) *Respiratory protection.* Respiratory protection required to meet the amended PEL of 0.75 ppm TWA shall be provided as soon as possible but no later than September 24, 1992.

(ii) *Engineering and work practice controls.* Engineering and work practice controls required to meet the amended PEL of 0.75 ppm TWA shall be implemented as soon as possible, but no later than June 26, 1993.

(iii) *Medical removal protection.* The medical removal protection provisions including the multiple physician review mechanism shall be implemented no later than December 28, 1992.

(iv) *Hazard communication.* The labeling provisions contained in amended paragraph (m) of this standard shall be implemented no later than December 28, 1992. Labeling of containers of formaldehyde products shall continue to comply with the provisions of 29 CFR 1926.59 (e)–(j) until that time.

(v) *Training.* The periodic training mandated for all employees exposed to formaldehyde between 0.1 ppm and 0.5 ppm shall begin no later than August 25, 1992.

(Approved by the Office of Management and Budget under control number 1218–0145)

Appendix A to § 1926.1148—Substance Technical Guidelines for Formalin

The following Substance Technical Guideline for Formalin provides information on uninhibited formalin solution (37% formaldehyde, no methanol stabilizer). It is designed to inform employees at the production level of their rights and duties under the formaldehyde standard whether their job title defines them as workers or supervisors. Much of the information provided is general; however, some information is specific for formalin. When employee exposure to formaldehyde is from resins capable of releasing formaldehyde, the resin itself and other impurities or decomposition products may also be toxic, and employers should include this information as well when informing employees of the hazards associated with the materials they handle. The precise hazards associated with exposure to formaldehyde depend both on the form (solid, liquid, or gas) of the material and the concentration of formaldehyde present. For example, 37–50 percent solutions of formaldehyde present a much greater hazard to the skin and eyes from spills or splashes than solutions containing less than 1 percent formaldehyde. Individual Substance Technical Guidelines used by the employer for training employees should be modified to properly give information on the material actually being used.

Substance Identification

Chemical Name: Formaldehyde
Chemical Family: Aldehyde
Chemical Formula: HCHO
Molecular Weight: 30.03
Chemical Abstracts Service Number (CAS Number): 50–00–0

Synonyms: Formalin; Formic Aldehyde; Paraform; Formol; Formalin (Methanol-free); Fyde; Formalith; Methanal; Methyl Aldehyde; Methylene Glycol; Methylene Oxide; Tetraoxymethalene; Oxomethane; Oxymethylene

Components and Contaminants

Percent: 37.0 Formaldehyde
Percent: 63.0 Water

(Note.—Inhibited solutions contain methanol.)

Other Contaminants: Formic acid (alcohol free)
Exposure Limits:

OSHA TWA—0.75 ppm
OSHA STEL—2 ppm

Physical Data

Description: Colorless liquid, pungent odor
Boiling point: 214° F (101 °C).
Specific Gravity: 1.08 (H_2O=1 @ 20 °C)
pH: 2.8–4.0
Solubility in Water: Miscible
Solvent Solubility: Soluble in alcohol and acetone
Vapor Density: 1.04 (Air=1 @ 20 °C)
Odor Threshold 0.8–1 ppm

Fire and Explosion Hazard

Moderate fire and explosion hazard when exposed to heat or flame.

The flash point of 37% formaldehyde solutions is above normal room temperature, but the explosion range is very wide, from 7 to 73% by volume in air.

Reaction of formaldehyde with nitrogen dioxide, nitromethane, perchloric acid and aniline, or peroxyformic acid yields explosive compounds.

Flash Point: 185 °F (85 °C) closed cup
Lower Explosion Limit: 7%
Upper Explosion Limit: 73%
Autoignition Temperature: 806 °F (430 °C)
Flammability Class (OSHA): III A

Extinguishing Media: Use dry chemical, "alcohol foam", carbon dioxide, or water in flooding amounts as fog. Solid streams may not be effective. Cool fire-exposed containers with water from side until well after fire is out.

Use of water spray to flush spills can also dilute the spill to produce nonflammable mixtures. Water runoff, however, should be contained for treatment.

National Fire Protection Association Section 325M Designation:

Health: 2—Materials hazardous to health, but areas may be entered with full-faced mask self-contained breathing apparatus which provides eye protection.

Flammability: 2—Materials which must be moderately heated before ignition will occur. Water spray may be used to extinguish the fire because the material can be cooled below its flash point.

Reactivity: D—Materials which (in themselves) are normally stable even under fire exposure conditions and which are not reactive with water. Normal fire fighting procedures may be used.

Reactivity

Stability: Formaldehyde solutions may self-polymerize to form paraformaldehyde which precipitates.

Incompatibility (Materials to Avoid): Strong oxidizing agents, caustics, strong alkalies, isocyanates, anhydrides, oxides, and inorganic acids. Formaldehyde reacts with hydrochloric acid to form the potent carcinogen, bis-chloromethyl ether. Formaldehyde reacts with nitrogen dioxide, nitromethane, perchloric acid and aniline, or peroxyformic acid to yield explosive compounds. A violent reaction occurs when formaldehyde is mixed with strong oxidizers.

Hazardous Combustion or Decomposition Products: Oxygen from the air can oxidize formaldehyde to formic acid, especially when heated. Formic acid is corrosive.

Health Hazard Data

Acute Effects of Exposure

Ingestion (Swallowing): Liquids containing 10 to 40% formaldehyde cause severe irritation and inflammation of the mouth, throat, and stomach. Severe stomach pains will follow ingestion with possible loss of consciousness and death. Ingestion of dilute formaldehyde solutions (0.03–0.04%) may cause discomfort in the stomach and pharynx.

Inhalation (Breathing): Formaldehyde is highly irritating to the upper respiratory tract and eyes. Concentrations of 0.5 to 2.0 ppm may irritate the eyes, nose, and throat of some individuals. Concentrations of 3 to 5 ppm also cause tearing of the eyes and are intolerable to some persons. Concentrations of 10 to 20 ppm cause difficulty in breathing, burning of the nose and throat, cough, and heavy tearing of the eyes, and 25 to 30 ppm causes severe respiratory tract injury leading to pulmonary edema and pneumonitis. A concentration of 100 ppm is immediately dangerous to life and health. Deaths from accidental exposure to high concentrations of formaldehyde have been reported.

Skin (Dermal): Formalin is a severe skin irritant and a sensitizer. Contact with formalin causes white discoloration, smarting, drying, cracking, and scaling. Prolonged and repeated contact can cause numbness and a hardening or tanning of the skin. Previously exposed persons may react to future exposure with an allergic eczematous dermatitis or hives.

Eye Contact: Formaldehyde solutions splashed in the eye can cause injuries ranging from transient discomfort to severe, permanent corneal clouding and loss of vision. The severity of the effect depends on the concentration of formaldehyde in the solution and whether or not the eyes are flushed with water immediately after the accident.

Note.—The perception of formaldehyde by odor and eye irritation becomes less sensitive with time as one adapts to formaldehyde. This can lead to overexposure if a worker is relying on formaldehyde's warning properties to alert him or her to the potential for exposure.

Acute Animal Toxicity:
Oral, rats: LD50=800 mg/kg
Oral, mouse: LD50=42 mg/kg
Inhalation, rats: LCLo=250 mg/kg
Inhalation, mouse: LCLo=900 mg/kg
Inhalation, rats: LC50=590 mg/kg

Chronic Effects of Exposure

Carcinogenicity: Formaldehyde has the potential to cause cancer in humans. Repeated and prolonged exposure increases the risk. Various animal experiments have conclusively shown formaldehyde to be a carcinogen in rats. In humans, formaldehyde exposure has been associated with cancers of the lung, nasopharynx and oropharynx, and nasal passages.

Mutagenicity: Formaldehyde is genotoxic in several *in vitro* test systems showing properties of both an initiator and a promoter.

Toxicity: Prolonged or repeated exposure to formaldehyde may result in respiratory impairment. Rats exposed to formaldehyde at 2 ppm developed benign nasal tumors and changes of the cell structure in the nose as well as inflamed mucous membranes of the nose. Structural changes in the epithelial cells in the human nose have also been observed. Some persons have developed asthma or bronchitis following exposure to formaldehyde, most often as the result of an accidental spill involving a single exposure to a high concentration of formaldehyde.

Emergency and First Aid Procedures

Ingestion (Swallowing): If the victim is conscious, dilute, inactivate, or absorb the ingested formaldehyde by giving milk, activated charcoal, or water. Any organic material will inactivate formaldehyde. Keep affected person warm and at rest. Get medical attention immediately. If vomiting occurs, keep head lower than hips.

Inhalation (Breathing): Remove the victim from the exposure area to fresh air immediately. Where the formaldehyde concentration may be very high, each rescuer must put on a self-contained breathing apparatus before attempting to remove the victim, and medical personnel should be informed of the formaldehyde exposure immediately. If breathing has stopped, give artificial respiration. Keep the affected person warm and at rest. Qualified first-aid or medical personnel should administer oxygen, if available, and maintain the patient's airways and blood pressure until the victim can be transported to a medical facility. If exposure results in a highly irritated upper respiratory tract and coughing continues for more than 10 minutes, the worker should be hospitalized for observation and treatment.

Skin Contact: Remove contaminated clothing (including shoes) immediately. Wash the affected area of your body with soap or mild detergent and large amounts of water until no evidence of the chemical remains (at least 15 to 20 minutes). If there are chemical burns, get first aid to cover the area with sterile, dry dressing, and bandages. Get medical attention if you experience appreciable eye or respiratory irritation.

Eye Contact: Wash the eyes immediately with large amounts of water occasionally lifting lower and upper lids, until no evidence of chemical remains (at least 15 to 20 minutes). In case of burns, apply sterile bandages loosely without medication. Get medical attention immediately. If you have experienced appreciable eye irritation from a splash or excessive exposure, you should be referred promptly to an opthamologist for evaluation.

Emergency Procedures

Emergencies: If you work in an area where a large amount of formaldehyde could be released in an accident or from equipment failure, your employer must develop procedures to be followed in event of an emergency. You should be trained in your specific duties in the event of an emergency, and it is important that you clearly understand these duties. Emergency equipment must be accessible and you should be trained to use any equipment that you might need. Formaldehyde contaminated equipment must be cleaned before reuse.

If a spill of appreciable quantity occurs, leave the area quickly unless you have specific emergency duties. Do not touch spilled material. Designated persons may stop the leak and shut off ignition sources if these procedures can be done without risk. Designated persons should isolate the hazard area and deny entry except for necessary people protected by suitable protective clothing and respirators adequate for the exposure. Use water spray to reduce vapors.

Do not smoke, and prohibit all flames or flares in the hazard area.

Special Firefighting Procedures: Learn procedures and responsibilities in the event of a fire in your workplace. Become familiar with the appropriate equipment and supplies and their location. In firefighting, withdraw immediately in case of rising sound from venting safety device or any discoloration of storage tank due to fire.

Spill, Leak, and Disposal Procedures

Occupational Spill: For small containers, place the leaking container in a well ventilated area. Take up small spills with absorbent material and place the waste into properly labeled containers for later disposal. For larger spills, dike the spill to minimize contamination and facilitate salvage or disposal. You may be able to neutralize the spill with sodium hydroxide or sodium sulfite. Your employer must comply with EPA rules regarding the clean-up of toxic waste and notify state and local authorities, if required. If the spill is greater than 1,000 lb/day; it is reportable under EPA's Superfund legislation.

Waste Disposal: Your employer must dispose of waste containing formaldehyde in accordance with applicable local, state, and Federal law and in a manner that minimizes exposure of employees at the site and of the clean-up crew.

Monitoring and Measurement Procedures

Monitoring Requirements: If your exposure to formaldehyde exceeds the 0.5 ppm action level or the 2 ppm STEL, your employer must monitor your exposure. Your employer need not measure every exposure if a "high exposure" employee can be identified. This person usually spends the greatest amount of time nearest the process equipment. If you are a "representative employee", you will be asked to wear a sampling device to collect formaldehyde. This device may be a passive badge, a sorbent tube attached to a pump, or an impinger containing liquid. You should perform your work as usual, but inform the person who is conducting the monitoring of any difficulties you are having wearing the device.

Evaluation of 8-hour Exposure: Measurements taken for the purpose of determining time-weighted average (TWA) exposures are best taken with samples covering the full shift. Samples collected must be taken from the employee's breathing zone air.

Short-term Exposure Evaluation: If there are tasks that involve brief but intense exposure to formaldehyde, employee exposure must be measured to assure compliance with the STEL. Sample collections are for brief periods, only 15 minutes, but several samples may be needed to identify the peak exposure.

Monitoring Techniques: OSHA's only requirement for selecting a method for sampling and analysis is that the methods used accurately evaluate the concentration of formaldehyde in employees' breathing zones. Sampling and analysis may be performed by collection of formaldehyde on liquid or solid sorbents with subsequent chemical analysis. Sampling and analysis may also be performed by passive diffusion monitors and short-term exposure may be measured by instruments such as real-time continuous monitoring systems and portable direct reading instruments.

Notification of Results: Your employer must inform you of the results of exposure monitoring representative of your job. You may be informed in writing, but posting the results where you have ready access to them constitutes compliance with the standard.

Protective Equipment and Clothing

[Material impervious to formaldehyde is needed if the employee handles formaldehyde solutions of 1% or more. Other employees may also require protective clothing or equipment to prevent dermatitis.]

Respiratory Protection: Use NIOSH-approved full facepiece negative pressure respirators equipped with approved cartridges or canisters within the use limitations of these devices. (Present restrictions on cartridges and canisters do not permit them to be used for a full workshift.) In all other situations, use positive pressure respirators such as the positive-pressure air purifying respirator or the self-contained breathing apparatus (SCBA). If you use a negative pressure respirator, your employer must provide you with fit testing of the respirator at least once a year in accordance with the procedures outlined in Appendix E.

Protective Gloves: Wear protective (impervious) gloves provided by your employer, at no cost, to prevent contact with formalin. Your employer should select these gloves based on the results of permeation testing and in accordance with the ACGIH Guidelines for Selection of Chemical Protective Clothing.

Eye Protection: If you might be splashed in the eyes with formalin, it is essential that you wear goggles or some other type of complete protection for the eye. You may also need a face shield if your face is likely to be splashed with formalin, but you must not substitute face shields for eye protection. (This section pertains to formaldehyde solutions of 1% or more.)

Other Protective Equipment: You must wear protective (impervious) clothing and equipment provided by your employer at no cost to prevent repeated or prolonged contact with formaldehyde liquids. If you are required to change into whole-body chemical protective clothing, your employer must provide a change room for your privacy and for storage of your normal clothing.

If you are splashed with formaldehyde, use the emergency showers and eyewash fountains provided by your employer immediately to prevent serious injury. Report the incident to your supervisor and obtain necessary medical support.

Entry Into an IDLH Atmosphere

Enter areas where the formaldehyde concentration might be 100 ppm or more only with complete body protection including a self-contained breathing apparatus with a full facepiece operated in a positive pressure mode or a supplied air respirator with full facepiece and operated in a positive pressure mode. This equipment is essential to protect your life and health under such extreme conditions.

Engineering Controls

Ventilation is the most widely applied engineering control method for reducing the concentration of airborne substances in the breathing zones of workers. There are two distinct types of ventilation.

Local Exhaust: Local exhaust ventilation is designed to capture airborne contaminants as near to the point of generation as possible. To protect you, the direction of contaminant flow must always be toward the local exhaust system inlet and away from you.

General (Mechanical): General dilution ventilation involves continuous introduction of fresh air into the workroom to mix with the contaminated air and lower your breathing zone concentration of formaldehyde. Effectiveness depends on the number of air changes per hour. Where devices emitting formaldehyde are spread out over a large area, general dilution ventilation may be the only practical method of control.

Work Practices: Work practices and administrative procedures are an important part of a control system. If you are asked to perform a task in a certain manner to limit your exposure to formaldehyde, it is extremely important that you follow these procedures.

Medical Surveillance

Medical surveillance helps to protect employees' health. You are encouraged strongly to participate in the medical surveillance program.

Your employer must make a medical surveillance program available at no expense to you and at a reasonable time and place if you are exposed to formaldehyde at concentrations above 0.5 ppm as an 8-hour average or 2 ppm over any 15-minute period. You will be offered medical surveillance at the time of your initial assignment and once a year afterward as long as your exposure is at least 0.5 ppm (TWA) or 2 ppm (STEL). Even if your exposure is below these levels, you should inform your employer if you have signs and symptoms that you suspect, through your training, are related to your formaldehyde exposure because you may need medical surveillance to determine if your health is being impaired by your exposure.

The surveillance plan includes:

(a) A medical disease questionnaire.

(b) A physical examination if the physician determines this is necessary.

If you are required to wear a respirator, your employer must offer you a physical examination and a pulmonary function test every year.

The physician must collect all information needed to determine if you are at increased risk from your exposure to formaldehyde. At the physician's discretion, the medical examination may include other tests, such as a chest x-ray, to make this determination.

After a medical examination the physician will provide your employer with a written opinion which includes any special protective measures recommended and any restrictions on your exposure. The physician must inform you of any medical conditions you have which would be aggravated by exposure to formaldehyde.

All records from your medical examinations, including disease surveys, must be retained at your employer's expense.

Emergencies

If you are exposed to formaldehyde in an emergency and develop signs or symptoms associated with acute toxicity from formaldehyde exposure, your employer must provide you with a medical examination as soon as possible. This medical examination will include all steps necessary to stabilize your health. You may be kept in the hospital for observation if your symptoms are severe to ensure that any delayed effects are recognized and treated.

Appendix B to § 1926.1148—Sampling Strategy and Analytical Methods for Formaldehyde

To protect the health of employees, exposure measurements must be unbiased and representative of employee exposure. The proper measurement of employee exposure requires more than a token commitment on the part of the employer. OSHA's mandatory requirements establish a baseline; under the best of circumstances all questions regarding employee exposure will be answered. Many employers, however, will wish to conduct more extensive monitoring before undertaking expensive commitments, such as engineering controls, to assure that the modifications are truly necessary. The following sampling strategy, which was developed at NIOSH by Nelson A. Leidel, Kenneth A. Busch, and Jeremiah R. Lynch and described in NIOSH publication No. 77–173 (Occupational Exposure Sampling Strategy Manual) will assist the employer in developing a strategy for determining the exposure of his or her employees.

There is no one correct way to determine employee exposure. Obviously, measuring the exposure of every employee exposed to formaldehyde will provide the most information on any given day. Where few employees are exposed, this may be a practical solution. For most employers, however, use of the following strategy will give just as much information at less cost.

Exposure data collected on a single day will not automatically guarantee the employer that his or her workplace is always in compliance with the formaldehyde standard. This does not imply, however, that it is impossible for an employer to be sure that his or her worksite is in compliance with the standard. Indeed, a properly designed sampling strategy showing that all employees are exposed below the PELs, at least with a 95 percent certainty, is compelling evidence that the exposure limits are being achieved provided that measurements are conducted using valid sampling strategy and approved analytical methods.

There are two PELs, the TWA concentration and the STEL. Most employers will find that one of these two limits is more critical in the control of their operations, and OSHA expects that the employer will concentrate monitoring efforts on the critical component. If the more difficult exposure is controlled, this information, along with calculations to support the assumptions, should be adequate to show that the other exposure limit is also being achieved.

Sampling Strategy

Determination of the Need for Exposure Measurements

The employer must determine whether employees may be exposed to concentrations in excess of the action level. This determination becomes the first step in an employee exposure monitoring program that minimizes employer sampling burdens while providing adequate employee protection. If employees may be exposed above the action level, the employer must measure exposure. Otherwise, an objective determination that employee exposure is low provides adequate evidence that exposure potential has been examined.

The employer should examine all available relevant information, *eg.* insurance company and trade association data and information from suppliers or exposure data collected from similar operations. The employer may also use previously-conducted sampling including area monitoring. The employer must make a determination relevant to each operation although this need not be on a separate piece of paper. If the employer can demonstrate conclusively that no employee is exposed above the action level or the STEL through the use of objective data, the employer need proceed no further on employee exposure monitoring until such time that conditions have changed and the determination is no longer valid.

If the employer cannot determine that employee exposure is less than the action level and the STEL, employee exposure monitoring will have to be conducted.

Workplace Material Survey

The primary purpose of a survey of raw material is to determine if formaldehyde is being used in the work environment and if so, the conditions under which formaldehyde is being used.

The first step is to tabulate all situations where formaldehyde is used in a manner such that it may be released into the workplace atmosphere or contaminate the skin. This information should be available through analysis of company records and information on the MSDSs available through provisions of this standard and the Hazard Communication standard.

If there is an indication from materials handling records and accompanying MSDSs that formaldehyde is being used in the following types of processes or work operations, there may be a potential for releasing formaldehyde into the workplace atmosphere:

(1) Any operation that involves grinding, sanding, sawing, cutting, crushing, screening, sieving, or any other manipulation of material that generates formaldehyde-bearing dust

(2) Any processes where there have been employee complaints or symptoms indicative of exposure to formaldehyde

(3) Any liquid or spray process involving formaldehyde

(4) Any process that uses formaldehyde in preserved tissue

(5) Any process that involves the heating of a formaldehyde-bearing resin.

Processes and work operations that use formaldehyde in these manners will probably require further investigation at the worksite to determine the extent of employee monitoring that should be conducted.

Workplace Observations

To this point, the only intention has been to provide an indication as to the existence of potentially exposed employees. With this information, a visit to the workplace is needed to observe work operations, to identify potential health hazards, and to determine whether any employees may be exposed to hazardous concentrations of formaldehyde.

In many circumstances, sources of formaldehyde can be identified through the sense of smell. However, this method of detection should be used with caution because of olfactory fatigue.

Employee location in relation to source of formaldehyde is important in determining if an employee may be significantly exposed to formaldehyde. In most instances, the closer a worker is to the source, the higher the probability that a significant exposure will occur.

Other characteristics should be considered. Certain high temperature operations give rise to higher evaporation rates. Locations of open doors and windows provide natural ventilation that tend to dilute formaldehyde emissions. General room ventilation also provides a measure of control.

Calculation of Potential Exposure Concentrations

By knowing the ventilation rate in a workplace and the quantity of formaldehyde generated, the employer may be able to determine by calculation if the PELs might be exceeded. To account for poor mixing of formaldehyde into the entire room, locations of fans and proximity of employees to the work operation, the employer must include a safety factor. If an employee is relatively close to a source, particularly if he or she is located downwind, a safety factor of 100 may be necessary. For other situations, a factor of 10 may be acceptable. If the employer can demonstrate through such calculations that employee exposure does not exceed the action level or the STEL, the employer may use this information as objective data to demonstrate compliance with the standard.

Sampling Strategy

Once the employer determines that there is a possibility of substantial employee exposure to formaldehyde, the employer is obligated to measure employee exposure.

The next step is selection of a maximum risk employee. When there are different processes where employees may be exposed to formaldehyde, a maximum risk employee should be selected for each work operation.

Selection of the maximum risk employee requires professional judgment. The best procedure for selecting the maximum risk employee is to observe employees and select the person closest to the source of formaldehyde. Employee mobility may affect this selection; *eg.* if the closest employee is mobile in his tasks, he may not be the maximum risk employee. Air movement patterns and differences in work habits will also affect selection of the maximum risk employee.

When many employees perform essentially the same task, a maximum risk employee cannot be selected. In this circumstance, it is necessary to resort to random sampling of the group of workers. The objective is to select a subgroup of adequate size so that there is a high probability that the random sample will contain at least one worker with high exposure if one exists. The number of persons in the group influences the number that need to be sampled to ensure that at least one individual from the highest 10 percent exposure group is contained in the sample. For example, to have 90 percent confidence in the results, if the group size is 10, nine should be sampled; for 50, only 18 need to be sampled.

If measurement shows exposure to formaldehyde at or above the action level or the STEL, the employer needs to identify all other employees who may be exposed at or above the action level or STEL and measure or otherwise accurately characterize the exposure of these employees.

Whether representative monitoring or random sampling are conducted, the purpose remains the same—to determine if the exposure of any employee is above the action level. If the exposure of the most exposed employee is less than the action level and the STEL, regardless of how the employee is identified, then it is reasonable to assume that measurements of exposure of the other employees in that operation would be below the action level and the STEL.

Exposure Measurements

There is no "best" measurement strategy for all situations. Some elements to consider in developing a strategy are:

(1) Availability and cost of sampling equipment

(2) Availability and cost of analytic facilities

(3) Availability and cost of personnel to take samples

(4) Location of employees and work operations

(5) Intraday and interday variations in the process

(6) Precision and accuracy of sampling and analytic methods, and

(7) Number of samples needed.

Samples taken for determining compliance with the STEL differ from those that measure the TWA concentration in important ways. STEL samples are best taken in a nonrandom fashion using all available knowledge relating to the area, the individual, and the process to obtain samples during periods of maximum expected concentrations. At least three measurements on a shift are generally needed to spot gross errors or mistakes; however, only the highest value represents the STEL.

If an operation remains constant throughout the workshift, a much greater number of samples would need to be taken over the 32 discrete nonoverlapping periods in an 8-hour workshift to verify compliance with a STEL. If employee exposure is truly uniform throughout the workshift, however, an employer in compliance with the 1 ppm TWA would be in compliance with the 2 ppm STEL, and this determination can probably be made using objective data.

Need to Repeat the Monitoring Strategy

Interday and intraday fluctuations in employee exposure are mostly influenced by the physical processes that generate formaldehyde and the work habits of the employee. Hence, in-plant process variations influence the employer's determination of whether or not additional controls need to be imposed. Measurements that employee exposure is low on a day that is not representative of worst conditions may not provide sufficient information to determine whether or not additional engineering controls should be installed to achieve the PELs.

The person responsible for conducting sampling must be aware of systematic changes which will negate the validity of the sampling results. Systematic changes in formaldehyde exposure concentration for an employee can occur due to:

(1) The employee changing patterns of movement in the workplace

(2) Closing of plant doors and windows

(3) Changes in ventilation from season to season

(4) Decreases in ventilation efficiency or abrupt failure of engineering control equipment

(5) Changes in the production process or work habits of the employee.

Any of these changes, if they may result in additional exposure that reaches the next level of action (*i.e.* 0.5 or 1.0 ppm as an 8-hr average or 2 ppm over 15 minutes) require the employer to perform additional monitoring to reassess employee exposure.

A number of methods are suitable for measuring employee exposure to formaldehyde or for characterizing emissions within the worksite. The preamble to this standard describes some methods that have been widely used or subjected to validation testing. A detailed analytical procedure derived from the OSHA Method 52 for acrolein and formaldehyde is presented below for informational purposes.

Inclusion of OSHA's method in this appendix in no way implies that it is the only acceptable way to measure employee exposure to formaldehyde. Other methods that are free from significant interferences and that can determine formaldehyde at the permissible exposure limits within ±25 percent of the "true" value at the 95 percent confidence level are also acceptable. Where applicable, the method should also be capable of measuring formaldehyde at the action level to ±35 percent of the "true" value with a 95 percent confidence level. OSHA encourages employers to choose methods that will be best for their individual needs. The employer must exercise caution, however, in choosing an appropriate method since some techniques suffer from interferences that are likely to be present in workplaces of certain industry sectors where formaldehyde is used.

OSHA's Analytical Laboratory Method

Method No: 52
Matrix: Air
Target Concentration: 1 ppm (1.2 mg/m^3)
Procedures: Air samples are collected by drawing known volumes of air through sampling tubes containing XAD–2 adsorbent which have been coated with 2-(hydroxymethyl) piperidine. The samples are desorbed with toluene and then analyzed by gas chromatography using a nitrogen selective detector.
Recommended Sampling Rate and Air Volumes: 0.1 L/min and 24 L
Reliable Quantitation Limit: 16 ppb (20 μg/m^3)
Standard Error of Estimate at the Target Concentration: 7.3%
Status of the Method: A sampling and analytical method that has been subjected to the established evaluation procedures of the Organic Methods Evaluation Branch.
Date: March 1985

1. *General Discussion*

1.1 *Background:* The current OSHA method for collecting acrolein vapor recommends the use of activated 13X molecular sieves. The samples must be stored in an ice bath during and after sampling and also they must be analyzed within 48 hours of collection. The current OSHA method for collecting formaldehyde vapor recommends the use of bubblers containing 10% methanol in water as the trapping solution.

This work was undertaken to resolve the sample stability problems associated with acrolein and also to eliminate the need to use bubblers to sample formaldehyde. A goal of this work was to develop and/or to evaluate a common sampling and analytical procedure for acrolein and formaldehyde.

NIOSH has developed independent methodologies for acrolein and formaldehyde which recommend the use of reagent-coated adsorbent tubes to collect the aldehydes as stable derivatives. The formaldehyde sampling tubes contain Chromosorb 102 adsorbent coated with N-benzylethanolamine (BEA) which reacts with formaldehyde vapor to form a stable oxazolidine compound. The acrolein sampling tubes contain XAD–2 adsorbent coated with 2-(hydroxymethyl)piperidine (2–HMP) which reacts with acrolein vapor to form a different, stable oxazolidine derivative. Acrolein does not appear to react with BEA to give a suitable reaction product. Therefore, the formaldehyde procedure cannot provide a common method for both aldehydes. However, formaldehyde does react with 2–HMP to form a very suitable reaction product. It is the quantitative reaction of acrolein and formaldehyde with 2–HMP that provides the basis for this evaluation.

This sampling and analytical procedure is very similar to the method recommended by NIOSH for acrolein. Some changes in the NIOSH methodology were necessary to permit the simultaneous determination of both aldehydes and also to accommodate OSHA laboratory equipment and analytical techniques.

1.2 *Limit-defining parameters:* The analyte air concentrations reported in this method are based on the recommended air volume for each analyte collected separately and a desorption volume of 1 mL. The amounts are presented as acrolein and/or formaldehyde, even though the derivatives are the actual species analyzed.

1.2.1 *Detection limits of the analytical procedure:* The detection limit of the analytical procedure was 386 pg per injection

for formaldehyde. This was the amount of analyte which gave a peak whose height was about five times the height of the peak given by the residual formaldehyde derivative in a typical blank front section of the recommended sampling tube.

1.2.2 *Detection limits of the overall procedure:* The detection limits of the overall procedure were 482 ng per sample (16 ppb or 20 μg/m³ for formaldehyde). This was the amount of analyte spiked on the sampling device which allowed recoveries approximately equal to the detection limit of the analytical procedure.

1.2.3 *Reliable quantitation limits:* The reliable quantitation limit was 482 ng per sample (16 ppb or 20 μg/m³) for formaldehyde. These were the smallest amounts of analyte which could be quantitated within the limits of a recovery of at least 75% and a precision (±1.96 SD) of ±25% or better.

The reliable quantitation limit and detection limits reported in the method are based upon optimization of the instrument for the smallest possible amount of analyte. When the target concentration of an analyte is exceptionally higher than these limits, they may not be attainable at the routine operating parameters.

1.2.4 *Sensitivity:* The sensitivity of the analytical procedure over concentration ranges representing 0.4 to 2 times the target concentration, based on the recommended air volumes, was 7,589 area units per μg/mL for formaldehyde. This value was determined from the slope of the calibration curve. The sensitivity may vary with the particular instrument used in the analysis.

1.2.5 *Recovery:* The recovery of formaldehyde from samples used in an 18-day storage test remained above 92% when the samples were stored at ambient temperature. These values were determined from regression lines which were calculated from the storage data. The recovery of the analyte from the collection device must be at least 75% following storage.

1.2.6 *Precision (analytical method only):* The pooled coefficient of variation obtained from replicate determinations of analytical standards over the range of 0.4 to 2 times the target concentration was 0.0052 for formaldehyde (Section 4.3).

1.2.7 *Precision (overall procedure):* The precision at the 95% confidence level for the ambient temperature storage tests was ±14.3% for formaldehyde. These values each include an additional ±5% for sampling error. The overall procedure must provide results at the target concentrations that are ±25% at the 95% confidence level.

1.2.8 *Reproducibility:* Samples collected from controlled test atmospheres and a draft copy of this procedure were given to a chemist unassociated with this evaluation. The formaldehyde samples were analyzed following 15 days storage. The average recovery was 96.3% and the standard deviation was 1.7%.

1.3 *Advantages:*

1.3.1 The sampling and analytical procedures permit the simultaneous determination of acrolein and formaldehyde.

1.3.2 Samples are stable following storage at ambient temperature for at least 18 days.

1.4 *Disadvantages:* None.

2. *Sampling Procedure*

2.1 *Apparatus:*

2.1.1 Samples are collected by use of a personal sampling pump that can be calibrated to within ±5% of the recommended 0.1 L/min sampling rate with the sampling tube in line.

2.1.2 Samples are collected with laboratory prepared sampling tubes. The sampling tube is constructed of silane treated glass and is about 8-cm long. The ID is 4 mm and the OD is 6 mm. One end of the tube is tapered so that a glass wool end plug will hold the contents of the tube in place during sampling. The other end of the sampling tube is open to its full 4-mm ID to facilitate packing of the tube. Both ends of the tube are fire-polished for safety. The tube is packed with a 75-mg backup section, located nearest the tapered end and a 150-mg sampling section of pretreated XAD–2 adsorbent which has been coated with 2–HMP. The two sections of coated adsorbent are separated and retained with small plugs of silanized glass wool. Following packing, the sampling tubes are sealed with two 7/32 inch OD plastic end caps. Instructions for the pretreatment and the coating of XAD–2 adsorbent are presented in Section 4 of this method.

2.1.3 Sampling tubes, similar to those recommended in this method, are marketed by Supelco, Inc. These tubes were not available when this work was initiated; therefore, they were not evaluated.

2.2 *Reagents:* None required.

2.3 *Technique:*

2.3.1 Properly label the sampling tube before sampling and then remove the plastic end caps.

2.3.2 Attach the sampling tube to the pump using a section of flexible plastic tubing such that the large, front section of the sampling tube is exposed directly to the atmosphere. Do not place any tubing ahead of the sampling tube. The sampling tube should be attached in the worker's breathing zone in a vertical manner such that it does not impede work performance.

2.3.3 After sampling for the appropriate time, remove the sampling tube from the pump and then seal the tube with plastic end caps.

2.3.4 Include at least one blank for each sampling set. The blank should be handled in the same manner as the samples with the exception that air is not drawn through it.

2.3.5 List any potential interferences on the sample data sheet.

2.4 *Breakthrough:*

2.4.1 Breakthrough was defined as the relative amount of analyte found on a backup sample in relation to the total amount of analyte collected on the sampling train.

2.4.2 For formaldehyde collected from test atmospheres containing 6 times the PEL, the average 5% breakthrough air volume was 41 L. The sampling rate was 0.1 L/min and the average mass of formaldehyde collected was 250 μg.

2.5 *Desorption Efficiency:* No desorption efficiency corrections are necessary to compute air sample results because analytical standards are prepared using coated adsorbent. Desorption efficiencies were determined, however, to investigate the recoveries of the analytes from the sampling device. The average recovery over the range of 0.4 to 2 times the target concentration, based on the recommended air volumes, was 96.2% for formaldehyde. Desorption efficiencies were essentially constant over the ranges studied.

2.6 *Recommended Air Volume and Sampling Rate:*

2.6.1 The recommended air volume for formaldehyde is 24 L.

2.6.2 The recommended sampling rate is 0.1 L/min.

2.7 *Interferences:*

2.7.1 Any collected substance that is capable of reacting 2-HMP and thereby depleting the derivatizing agent is a potential interference. Chemicals which contain a carbonyl group, such as acetone, may be capable or reacting with 2-HMP.

2.7.2 There are no other known interferences to the sampling method.

2.8 *Safety Precautions:*

2.8.1 Attach the sampling equipment to the worker in such a manner that it well not interfere with work performance or safety.

2.8.2 Follow all safety practices that apply to the work area being sampled.

3. *Analytical Procedure*

3.1 *Apparatus:*

3.1.1 A gas chromatograph (GC), equipped with a nitrogen selective detector. A Hewlett-Packard Model 5840A GC fitted with a nitrogen-phosphorus flame ionization detector (NPD) was used for this evaluation. Injections were performed using a Hewlett-Packard Model 7671A automatic sampler.

3.1.2 A GC column capable of resolving the analytes from any interference. A 6 ft x ¼ in OD (2mm ID) glass GC column containing 10% UCON 50–HB–5100 + 2% KOH on 80/100 mesh Chromosorb W–AW was used for the evaluation. Injections were performed on-column.

3.1.3 Vials, glass 2-mL with Teflon-lined caps.

3.1.4 Volumetric flasks, pipets, and syringes for preparing standards, making dilutions, and performing injections.

3.2 *Reagents:*

3.2.1 Toluene and dimethylformamide. Burdick and Jackson solvents were used in this evaluation.

3.2.2 Helium, hydrogen, and air, GC grade.

3.2.3 Formaldehyde, 37%, by weight, in water. Aldrich Chemical, ACS Reagent Grade formaldehyde was used in this evaluation.

3.2.4 Amberlite XAD–2 adsorbent coated with 2-(hydroxymethyl—piperidine (2-HMP), 10% by weight (Section 4).

3.2.5 Desorbing solution with internal standard. This solution was prepared by adding 20 μL of dimethylformamide to 100 mL of toluene.

3.3 *Standard preparation:*

3.3.1 *Formaldehyde:* Prepare stock standards by diluting known volumes of 37% formaldehyde solution with methanol. A procedure to determine the formaldehyde content of these standards is presented in Section 4. A standard containing 7.7 mg/mL

formaldehyde was prepared by diluting 1 mL of the 37% reagent to 50 mL with methanol.

3.3.2 It is recommended that analytical standards be prepared about 16 hours before the air samples are to be analyzed in order to ensure the complete reaction of the analytes with 2–HMP. However, rate studies have shown the reaction to be greater than 95% complete after 4 hours. Therefore, one or two standards can be analyzed after this reduced time if sample results are outside the concentration range of the prepared standards.

3.3.3 Place 150-mg portions of coated XAD–2 adsorbent, from the same lot number as used to collect the air samples, into each of several glass 2-mL vials. Seal each vial with a Teflon-lined cap.

3.3.4 Prepare fresh analytical standards each day by injecting appropriate amounts of the diluted analyte directly onto 150-mg portions of coated adsorbent. It is permissible to inject both acrolein and formaldehyde on the same adsorbent portion. Allow the standards to stand at room temperature. A standard, approximately the target levels, was prepared by injecting 11 µL of the acrolein and 12 µL of the formaldehyde stock standards onto a single coated XAD–2 adsorbent portion.

3.3.5 Prepare a sufficient number of standards to generate the calibration curves. Analytical standard concentrations should bracket sample concentrations. Thus, if samples are not in the concentration range of the prepared standards, additional standards must be prepared to determine detector response.

3.3.7 Desorb the standards in the same manner as the samples following the 16-hour reaction time.

3.4 *Sample preparation:*

3.4.1 Transfer the 150-mg section of the sampling tube to a 2-mL vial. Place the 75-mg section in a separate vial. If the glass wool plugs contain a significant number of adsorbent beads, place them with the appropriate sampling tube section. Discard the glass wool plugs if they do not contain a significant number of adsorbent beads.

3.4.2 Add 1 mL of desorbing solution to each vial.

3.4.3 Seal the vials with Teflon-lined caps and then allow them to desorb for one hour. Shake the vials by hand with vigorous force several times during the desorption time.

3.4.4 Save the used sampling tubes to be cleaned and recycled.

3.5 *Analysis:*

3.5.1 GC *Conditions*

Column Temperature:
Bi-level temperature program—First level: 100 to 140 °C at 4 °C/min following completion of the first level.
Second level: 140 to 180 °C at 20 °C/min following completion of the first level.
Isothermal period: Hold column at 180 °C until the recorder pen returns to baseline (usually about 25 min after injection).

Injector temperature: 180 °C
Helium flow rate: 30 mL/min (detector response will be reduced if nitrogen is substituted for helium carrier gas).
Injection volume: 0.8 µL
GC column: Six-ft x ¼-in OD (2 mm ID) glass GC column containing 10% UCON 50–HB–5100 + 2% KOH on 80/100 Chromosorb W–AW.
NPD conditions:
Hydrogen flow rate: 3 mL/min
Air flow rate: 50 mL/min
Detector temperature: 275 °C

3.5.2 *Chromatogram:* For an example of a typical chromatogram, see Figure 4.11 in OSHA Method 52.

3.5.3 Use a suitable method, such as electronic integration, to measure detector response.

3.5.4 Use an internal standard method to prepare the calibration curve with several standard solutions of different concentrations. Prepare the calibration curve daily. Program the integrator to report results in µg/mL.

3.5.5 Bracket sample concentrations with standards.

3.6 *Interferences (Analytical)*

3.6.1 Any compound with the same general retention time as the analytes and which also gives a detector response is a potential interference. Possible interferences should be reported to the laboratory with submitted samples by the industrial hygienist.

3.6.2 GC parameters (temperature, column, etc.) may be changed to circumvent interferences.

3.6.3 A useful means of structure designation is GC/MS. It is recommended this procedure be used to confirm samples whenever possible.

3.6.4 The coated adsorbent usually contains a very small amount of residual formaldehyde derivative (Section 4.8).

3.7 *Calculations:*

3.7.1 Results are obtained by use of calibration curves. Calibration curves are prepared by plotting detector response against concentration for each standard. The best line through the data points is determined by curve fitting.

3.7.2 The concentration, in µg/mL, for a particular sample is determined by comparing its detector response to the calibration curve. If either of the analytes is found on the backup section, it is added to the amount found on the front section. Blank corrections should be performed before adding the results together.

3.7.3 The acrolein and/or formaldehyde air concentration can be expressed using the following equation:

$mg/m^3 = (A)(B)/C$

where A=µg/mL from 3.7.2, B=desorption volume, and C=L of air sampled.

No desorption efficiency corrections are required.

3.7.4 The following equation can be used to convert results in mg/m^3 to ppm.

$ppm = (mg/m^3)(24.45)/MW$

where mg/m^3=result from 3.7.3, 24.45=molar volume of an ideal gas at 760 mm Hg and 25 °C, MW=molecular weight (30.0).

4. *Backup Data*

4.1 Backup data on detection limits, reliable quantitation limits, sensitivity and precision of the analytical method, breakthrough, desorption efficiency, storage, reproducibility, and generation of test atmospheres are available in OSHA Method 52, developed by the Organics Methods Evaluation Branch, OSHA Analytical Laboratory, Salt Lake City, Utah.

4.2 *Procedure to Coat XAD–2 Adsorbent with 2–HMP:*

4.2.1 *Apparatus:* Soxhlet extraction apparatus, rotary evaporation apparatus, vacuum dessicator, 1–L vacuum flask, 1–L round-bottomed evaporative flask, 1–L Erlenmeyer flask, 250-mL Buchner funnel with a coarse fritted disc, etc.

4.2.2 *Reagents:*

4.2.2.1 Methanol, isooctane, and toluene.

4.2.2.2 2-(Hydroxymethyl)piperidine.

4.2.2.3 Amberlite XAD–2 non-ionic polymeric adsorbent, 20 to 60 mesh, Aldrich Chemical XAD–2 was used in this evaluation.

4.2.3 *Procedure:* Weigh 125 g of crude XAD–2 adsorbent into a 1–L Erlenmeyer flask. Add about 200 mL of water to the flask and then swirl the mixture to wash the adsorbent. Discard any adsorbent that floats to the top of the water and then filter the mixture using a fritted Buchner funnel. Air dry the adsorbent for 2 minutes. Transfer the adsorbent back to the Erlenmeyer flask and then add about 200 mL of methanol to the flask. Swirl and then filter the mixture as before. Transfer the washed adsorbent back to the Erlenmeyer flask and then add about 200 mL of methanol to the flask. Swirl and then filter the mixture as before. Transfer the washed adsorbent to a 1–L round-bottomed evaporative flask, add 13 g of 2–HMP and then 200 mL of methanol, swirl the mixture and then allow it to stand for one hour. Remove the methanol at about 40 °C and reduced pressure using a rotary evaporation apparatus. Transfer the coated adsorbent to a suitable container and store it in a vacuum desiccator at room temperature overnight. Transfer the coated adsorbent to a Soxhlet extractor and then extract the material with toluene for about 24 hours. Discard the contaminated toluene, add methanol in its place and then continue the Soxhlet extraction for an additional 4 hours. Transfer the adsorbent to a weighted 1–L round-bottom evaporative flask and remove the methanol using the rotary evaporation apparatus. Determine the weight of the adsorbent and then add an amount of 2-HMP, which is 10% by weight of the adsorbent. Add 200 mL of methanol and then swirl the mixture. Allow the mixture to stand for one hour. Remove the methanol by rotary evaporation. Transfer the coated adsorbent to a suitable container and store it in a vacuum desiccator until all traces of solvents are gone. Typically, this will take 2–3 days. The coated adsorbent should be protected from contamination. XAD–2 adsorbent treated in this manner will probably not contain residual acrolein derivative. However, this adsorbent will often contain residual formaldehyde derivative levels of about 0.1 µg per 150 mg of adsorbent. If the blank values for a batch of coated adsorbent are too high, then the batch should be returned to the Soxhlet extractor, extracted with toluene again and then recoated. This process can be repeated until the desired blank levels are attained.

The coated adsorbent is now ready to be packed into sampling tubes. The sampling tubes should be stored in a sealed container

to prevent contamination. Sampling tubes should be stored in the dark at room temperature. The sampling tubes should be segregated by coated adsorbent lot number. A sufficient amount of each lot number of coated adsorbent should be retained to prepare analytical standards for use with air samples from that lot number.

4.3 *A Procedure to Determine Formaldehyde by Acid Titration:* Standardize the 0.1 N HCl solution using sodium carbonate and methyl orange indicator.

Place 50 mL of 0.1 M sodium sulfite and three drops of thymophthalein indicator into a 250-mL Erlenmeyer flask. Titrate the contents of the flask to a colorless endpoint with 0.1 N HCl (usually one or two drops is sufficient). Transfer 10 mL of the formaldehyde/methanol solution (prepared in 3.3.1) into the same flask and titrate the mixture with 0.1 N HCl, again, to a colorless endpoint. The formaldehyde concentration of the standard may be calculated by the following equation:

$$\text{Formaldehyde, mg/mL} = \frac{\text{acid titer} \times \text{acid normality} \times 30.0}{\text{mL of sample}}$$

This method is based on the quantitative liberation of sodium hydroxide when formaldehyde reacts with sodium sulfite to form the formaldehyde-bisulfite addition product. The volume of sample may be varied depending on the formaldehyde content but the solution to be titrated must contain excess sodium sulfite. Formaldehyde solutions containing substantial amounts of acid or base must be neutralized before analysis.

Appendix C to § 1926.1148—Medical Surveillance—Formaldehyde

I. Health Hazards

The occupational health hazards of formaldehyde are primarily due to its toxic effects after inhalation, after direct contact with the skin or eyes by formaldehyde in liquid or vapor form, and after ingestion.

II. Toxicology

A. Acute Effects of Exposure

1. *Inhalation (breathing):* Formaldehyde is highly irritating to the upper airways. The concentration of formaldehyde that is immediately dangerous to life and health is 100 ppm. Concentrations above 50 ppm can cause severe pulmonary reactions within minutes. These include pulmonary edema, pneumonia, and bronchial irritation which can result in death. Concentrations above 5 ppm readily cause lower airway irritation characterized by cough, chest tightness and wheezing. There is some controversy regarding whether formaldehyde gas is a pulmonary sensitizer which can cause occupational asthma in a previously normal individual. Formaldehyde can produce symptoms of bronchial asthma in humans. The mechanism may be either sensitization of the individual by exposure to formaldehyde or direct irritation by formaldehyde in persons with pre-existing asthma. Upper airway irritation is the most common respiratory effect reported by workers and can occur over a wide range of concentrations, most frequently above 1 ppm. However, airway irritation has occurred in some workers with exposures to formaldehyde as low as 0.1 ppm. Symptoms of upper airway irritation include dry or sore throat, itching and burning sensations of the nose, and nasal congestion. Tolerance to this level of exposure may develop within 1–2 hours. This tolerance can permit workers remaining in an environment of gradually increasing formaldehyde concentrations to be unaware of their increasingly hazardous exposure.

2. *Eye contact:* Concentrations of formaldehyde between 0.05 ppm and 0.5 ppm produce a sensation of irritation in the eyes with burning, itching, redness, and tearing. Increased rate of blinking and eye closure generally protects the eye from damage at these low levels, but these protective mechanisms may interfere with some workers' work abilities. Tolerance can occur in workers continuously exposed to concentrations of formaldehyde in this range. Accidental splash injuries of human eyes to aqueous solutions of formaldehyde (formalin) have resulted in a wide range of ocular injuries including corneal opacities and blindness. The severity of the reactions have been directly dependent on the concentration of formaldehyde in solution and the amount of time lapsed before emergency and medical intervention.

3. *Skin contact:* Exposure to formaldehyde solutions can cause irritation of the skin and allergic contact dermatitis. These skin diseases and disorders can occur at levels well below those encountered by many formaldehyde workers. Symptoms include erythema, edema, and vesiculation or hives. Exposure to liquid formalin or formaldehyde vapor can provoke skin reactions in sensitized individuals even when airborne concentrations of formaldehyde are well below 1 ppm.

4. *Ingestion:* Ingestion of as little as 30 ml of a 37 percent solution of formaldehyde (formalin) can result in death. Gastrointestinal toxicity after ingestion is most severe in the stomach and results in symptoms which can include nausea, vomiting, and servere abdominal pain. Diverse damage to other organ systems including the liver, kidney, spleen, pancreas, brain, and central nervous systems can occur from the acute response to ingestion of formaldehyde.

B. Chronic Effects of Exposure

Long term exposure to formaldehyde has been shown to be associated with an increased risk of cancer of the nose and accessory sinuses, nasopharyngeal and oropharyngeal cancer, and lung cancer in humans. Animal experiments provide conclusive evidence of a causal relationship between nasal cancer in rats and formaldehyde exposure. Concordant evidence of carcinogenicity includes DNA binding, genotoxicity in short-term tests, and cytotoxic changes in the cells of the target organ suggesting both preneoplastic changes and a dose-rate effect. Formaldehyde is a complete carcinogen and appears to exert an effect on at least two stages of the carcinogenic process.

III. Surveillance considerations

A. History

1. *Medical and occupational history:* Along with its acute irritative effects, formaldehyde can cause allergic sensitization and cancer. One of the goals of the work history should be to elicit information on any prior or additional exposure to formaldehyde in either the occupational or the non-occupational setting.

2. *Respiratory history:* As noted above, formaldehyde has recognized properties as an airway irritant and has been reported by some authors as a cause of occupational asthma. In addition, formaldehyde has been associated with cancer of the entire respiratory system of humans. For these reasons, it is appropriate to include a comprehensive review of the respiratory system in the medical history. Components of this history might include questions regarding dyspnea on exertion, shortness of breath, chronic airway complaints, hyperreactive airway disease, rhinitis, bronchitis, bronchiolitis, asthma, emphysema, respiratory allergic reaction, or other preexisting pulmonary disease.

In addition, generalized airway hypersensitivity can result from exposures to a single sensitizing agent. The examiner should, therefore, elicit any prior history of exposure to pulmonary irritants, and any short- or long-term effects of that exposure.

Smoking is known to decrease mucociliary clearance of materials deposited during respiration in the nose and upper airways. This may increase a worker's exposure to inhaled materials such as formaldehyde vapor. In addition, smoking is a potential confounding factor in the investigation of any chronic respiratory disease, including cancer. For these reasons, a complete smoking history should be obtained.

3. *Skin Disorders:* Because of the dermal irritant and sensitizing effects of formaldehyde, a history of skin disorders should be obtained. Such a history might include the existence of skin irritation, previously documented skin sensitivity, and other dermatologic disorders. Previous exposure to formaldehyde and other dermal sensitizers should be recorded.

4. *History of atopic or allergic diseases:* Since formaldehyde can cause allergic sensitization of the skin and airways, it might be useful to identify individuals with prior

allergen sensitization. A history of atopic disease and allergies to formaldehyde or any other substances should also be obtained. It is not definitely known at this time whether atopic diseases and allergies to formaldehyde or any other substances should also be obtained. Also it is not definitely known at this time whether atopic individuals have a greater propensity to develop formaldehyde sensitivity than the general population, but identification of these individuals may be useful for ongoing surveillance.

5. *Use of disease questionnaires:* Comparison of the results from previous years with present results provides the best method for detecting a general deterioration in health when toxic signs and symptoms are measured subjectively. In this way recall bias does not affect the results of the analysis. Consequently, OSHA has determined that the findings of the medical and work histories should be kept in a standardized form for comparison of the year-to-year results.

B. Physical Examination

1. *Mucosa of eyes and airways:* Because of the irritant effects of formaldehyde, the examining physician should be alert to evidence of this irritation. A speculum examination of the nasal mucosa may be helpful in assessing possible irritation and cytotoxic changes, as may be indirect inspection of the posterior pharynx by mirror.

2. *Pulmonary system:* A conventional respiratory examination, including inspection of the thorax and auscultation and percussion of the lung fields should be performed as part of the periodic medical examination. Although routine pulmonary function testing is only required by the standard once every year for persons who are exposed over the TWA concentration limit, these tests have an obvious value in investigating possible respiratory dysfunction and should be used wherever deemed appropriate by the physician. In cases of alleged formaldehyde-induced airway disease, other possible causes of pulmonary disfunction (including exposures to other substances) should be ruled out. A chest radiograph may be useful in these circumstances. In cases of suspected airway hypersensitivity or allergy, it may be appropriate to use bronchial challenge testing with formaldehyde or methacholine to determine the nature of the disorder. Such testing should be performed by or under the supervision of a physician experienced in the procedures involved.

3. *Skin:* The physician should be alert to evidence of dermal irritation of sensitization, including reddening and inflammation, urticaria, blistering, scaling, formation of skin fissures, or other symptoms. Since the integrity of the skin barrier is compromised by other dermal diseases, the presence of such disease should be noted. Skin sensitivity testing carries with it some risk of inducing sensitivity, and therefore, skin testing for formaldehyde sensitivity should not be used as a routine screening test. Sensitivity testing may be indicated in the investigation of a suspected existing sensitivity. Guidelines for such testing have been prepared by the North American Contact Dermatitis Group.

C. Additional Examinations or Tests

The physician may deem it necessary to perform other medical examinations or tests as indicated. The standard provides a mechanism whereby these additional investigations are covered under the standard for occupational exposure to formaldehyde.

D. Emergencies

The examination of workers exposed in an emergency should be directed at the organ systems most likely to be affected. Much of the content of the examination will be similar to the periodic examination unless the patient has received a severe acute exposure requiring immediate attention to prevent serious consequences. If a severe overexposure requiring medical intervention or hospitalization has occurred, the physician must be alert to the possibility of delayed symptoms. Followup nonroutine examinations may be necessary to assure the patient's well-being.

E. Employer Obligations

The employer is required to provide the physician with the following information: A copy of this standard and appendices A, C, D, and E; a description of the affected employee's duties as they relate to his or her exposure concentration; an estimate of the employee's exposure including duration (*e.g.* 15 hr/wk, three 8-hour shifts, full-time); a description of any personal protective equipment, including respirators, used by the employee; and the results of any previous medical determinations for the affected employee related to formaldehyde exposure to the extent that this information is within the employer's control.

F. Physician's Obligations

The standard requires the employer to obtain a written statement from the physician. This statement must contain the physician's opinion as to whether the employee has any medical condition which would place him or her at increased risk of impaired health from exposure to formaldehyde or use of respirators, as appropriate. The physician must also state his opinion regarding any restrictions that should be placed on the employee's exposure to formaldehyde or upon the use of protective clothing or equipment such as respirators. If the employee wears a respirator as a result of his or her exposure to formaldehyde, the physician's opinion must also contain a statement regarding the suitability of the employee to wear the type of respirator assigned. Finally, the physician must inform the employer that the employee has been told the results of the medical examination and of any medical conditions which require further explanation or treatment. This written opinion is not to contain any information on specific findings or diagnoses unrelated to occupational exposure to formaldehyde.

The purpose in requiring the examining physician to supply the employer with a written opinion is to provide the employer with a medical basis to assist the employer in placing employees initially, in assuring that their health is not being inpaired by formaldehyde, and to assess the employee's ability to use any required protective equipment.

Appendix D to § 1926.1148—Nonmandatory Medical Disease Questionnaire

A. Identification

Plant Name———

Date———

Employee Name———

S.S.———

Job Title———

Birthdate:———

Age:———

Sex:———

Height:———

Weight:———

B. Medical History

1. Have you ever been in the hospital as a patient?
Yes ☐No ☐

If yes, what kind of problem were you having?———

———

2. Have you ever had any kind of operation?
Yes ☐No ☐

If yes, what kind?———

———

3. Do you take any kind of medicine regularly?
Yes ☐No ☐

If yes, what kind?———

———

4. Are you allergic to any drugs, foods, or chemicals?
Yes ☐No ☐

If yes, what kind of allergy is it?———

———

What causes the allergy?———

———

5. Have you ever been told that you have asthma, hayfever, or sinusitis?
Yes ☐No ☐

6. Have you ever been told that you have emphysema, bronchitis, or any other respiratory problems?
Yes ☐No ☐

7. Have you ever been told you had hepatitis?
Yes ☐No ☐

8. Have you ever been told that you had cirrhosis?
Yes ☐No ☐

9. Have you ever been told that you had cancer?
Yes ☐No ☐

10. Have you ever had arthritis or joint pain?
Yes ☐No ☐

11. Have you ever been told that you had high blood pressure?
Yes ☐No ☐

12. Have you ever had a heart attack or heart trouble?

Yes ☐No ☐

B–1. Medical History Update

1. Have you been in the hospital as a patient any time within the past year?
Yes ☐No ☐
If so, for what condition?————————

2. Have you been under the care of a physician during the past year?
Yes ☐No ☐
If so, for what condition?————————

3. Is there any change in your breathing since last year?
Yes ☐No ☐
Better?————————
Worse?————————
No change?————————
If change, do you know why?————————

4. Is your general health different this year from last year?
Yes ☐No ☐
If different, in what way?————————

5. Have you in the past year or are you now taking any medication on a regular basis?
Yes ☐No ☐
Name Rx————————
Condition being treated————————

C. Occupational History

1. How long have you worked for your present employer?

2. What jobs have you held with this employer? Include job title and length of time in each job.

3. In each of these jobs, how many hours a day were you exposed to chemicals?

4. What chemicals have you worked with most of the time?

5. Have you ever noticed any type of skin rash you feel was related to your work?
Yes ☐No ☐
6. Have you ever noticed that any kind of chemical makes you cough?
Yes ☐No ☐
Wheeze?
Yes ☐No ☐
Become short of breath or cause your chest to become tight?
Yes ☐No ☐
7. Are you exposed to any dust or chemicals at home?
Yes ☐No ☐
If yes, explain:————————

8. In other jobs, have you ever had exposure to:
Wood dust?
Yes ☐No ☐
Nickel or chromium?
Yes ☐No ☐
Silica (foundry, sand blasting)?
Yes ☐No ☐
Arsenic or asbestos?
Yes ☐No ☐
Organic solvents?
Yes ☐No ☐
Urethane foams?
Yes ☐No ☐

C–1. Occupational History Update

1. Are you working on the same job this year as you were last year?
Yes ☐No ☐
If not, how has your job changed?————————

2. What chemicals are you exposed to on your job?

3. How many hours a day are you exposed to chemicals?

4. Have you noticed any skin rash within the past year you feel was related to your work?
Yes ☐No ☐
If so, explain circumstances: ————————

5. Have you noticed that any chemical makes you cough, be short of breath, or wheeze?
Yes ☐No ☐
If so, can you identify it?————————

D. Miscellaneous

1. Do you smoke?
Yes ☐No ☐
If so, how much and for how long?————————
Pipe————————
Cigars————————
Cigarettes————————
2. Do you drink alcohol in any form?
Yes ☐No ☐
If so, how much, how long, and how often?

3. Do you wear glasses or contact lenses?
Yes ☐No ☐
4. Do you get any physical exercise other than that required to do your job?
Yes ☐No ☐
If so, explain:————————

5. Do you have any hobbies or "side jobs" that require you to use chemicals, such as furniture stripping, sand blasting, insulation or manufacture of urethane foam, furniture, etc?
Yes ☐No ☐
If so, please describe, giving type of business or hobby, chemicals used and length of exposures.

E. Symptoms Questionnaire

1. Do you ever have any shortness of breath?
Yes ☐No ☐
If yes, do you have to rest after climbing several flights of stairs?
Yes ☐No ☐
If yes, if you walk on the level with people your own age, do you walk slower than they do?
Yes ☐No ☐
If yes, if you walk slower than a normal pace, do you have to limit the distance that you walk?
Yes ☐No ☐
If yes, do you have to stop and rest while bathing or dressing?
Yes ☐No ☐
2. Do you cough as much as three months out of the year?
Yes ☐No ☐
If yes, have you had this cough for more than two years?
Yes ☐No ☐
If yes, do you ever cough anything up from chest?
Yes ☐No ☐
3. Do you ever have a feeling of smothering, unable to take a deep breath, or tightness in your chest?
Yes ☐No ☐
If yes, do you notice that this on any particular day of the week?
Yes ☐No ☐
If yes, what day or the week?
Yes ☐No ☐
If yes, do you notice that this occurs at any particular place?
Yes ☐No ☐
If yes, do you notice that this is worse after you have returned to work after being off for several days?
Yes ☐No ☐
4. Have you ever noticed any wheezing in your chest?
Yes ☐No ☐
If yes, is this only with colds or other infections?
Yes ☐No ☐
Is this caused by exposure to any kind of dust or other material?
Yes ☐No ☐
If yes, what kind?————————
5. Have you noticed any burning, tearing, or redness of your eyes when you are at work?
Yes ☐No ☐
If so, explain circumstances:————————

6. Have you noticed any sore or burning throat or itchy or burning nose when you are at work?

Yes ☐No ☐

If so, explain circumstances: _____

_____

7. Have you noticed any stuffiness or dryness of your nose?
Yes ☐No ☐
8. Do you ever have swelling of the eyelids or face?
Yes ☐No ☐
9. Have you ever been jaundiced?
Yes ☐No ☐
If yes, was this accompanied by any pain?
Yes ☐No ☐
10. Have you ever had a tendency to bruise easily or bleed excessively?
Yes ☐No ☐
11. Do you have frequent headaches that are not relieved by aspirin or tylenol?
Yes ☐No ☐
If yes, do they occur at any particular time of the day or week?
Yes ☐No ☐
If yes, when do they occur?_____

_____

12. Do you have frequent episodes of nervousness or irritability?
Yes ☐No ☐
13. Do you tend to have trouble concentrating or remembering?
Yes ☐No ☐
14. Do you ever feel dizzy, light-headed, excessively drowsy or like you have been drugged?
Yes ☐No ☐
15. Does your vision ever become blurred?
Yes ☐No ☐
16. Do you have numbness or tingling of the hands or feet or other parts of your body?
Yes ☐No ☐
17. Have you ever had chronic weakness or fatigue?
Yes ☐No ☐
18. Have you ever had any swelling of your feet or ankles to the point where you could not wear your shoes?
Yes ☐No ☐
19. Are you bothered by heartburn or indigestion?
Yes ☐No ☐
20. Do you ever have itching, dryness, or peeling and scaling of the hands?
Yes ☐No ☐
21. Do you ever have a burning sensation in the hands, or reddening of the skin?
Yes ☐No ☐
22. Do you ever have cracking or bleeding of the skin on your hands?
Yes ☐No ☐
23. Are you under a physician's care?
Yes ☐No ☐
If yes, for what are you being treated?_____

_____

24. Do you have any physical complaints today?
Yes ☐No ☐
If yes, explain?_____

_____

25. Do you have other health conditions not covered by these questions?
Yes ☐No ☐
If yes, explain: _____

_____

Appendix E to § 1926.1148—Qualitative and Quantitative Fit Testing Procedures

I. FIT Test Protocols

Because exposure to formaldehyde can affect the employee's ability to detect common odorants, fit test results from the isoamyl acetate test must be augmented by results from either the saccharin or irritant smoke test.

A. The employer shall include the following provisions in the fit test procedures. These provisions apply to both qualitative fit testing (QLFT) and quantitative fit testing (QNFT).

1. The test subject shall be allowed to pick the most comfortable respirator from a selection including respirators of various sizes from different manufacturers. The selection shall include at least three sizes of elastomeric facepieces of the type of respirator that is to be tested, i.e., three sizes of half mask; or three sizes of full facepiece; and units from at least two manufacturers.

2. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to determine a comfortable fit. A mirror shall be available to assist the subject in evaluating the fit and positioning the respirator. This instruction may not constitute the subject's formal training on respirator use, as it is only a review.

3. The test subject shall be informed that he/she is being asked to select the respirator which provides the most comfortable fit. Each respirator represents a different size and shape, and if fitted and used properly, will provide adequate protection.

4. The test subject shall be instructed to hold each facepiece up to the face and eliminate those which obviously do not give a comfortable fit.

5. The more comfortable facepieces are noted; the most comfortable mask is donned and worn at least five minutes to assess comfort. Assistance in assessing comfort can be given by discussing the points in item 6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator:

(a) position of the mask on the nose.
(b) room for eye protection.
(c) room to talk.
(d) position of mask on face and cheeks.

7. The following criteria shall be used to help determine the adequacy of the respirator fit:

(a) chin properly placed;
(b) adequate strap tension, not overly tightened;
(c) fit across nose bridge;
(d) respirator of proper size to span distance from nose to chin;
(e) tendency of respirator to slip;
(f) self-observation in mirror to evaluate fit and respirator position.

8. The test subject shall conduct the negative and positive pressure fit checks as described below or ANSI Z88.2–1980. Before conducting the negative or positive pressure test, the subject shall be told to seat the mask on the face by moving the head from side-to-side and up and down slowly while taking in a few slow deep breaths. Another facepiece shall be selected and retested if the test subject fails the fit check tests.

(a) *Positive pressure test.* Close off the exhalation valve and exhale gently onto the facepiece. The face fit is considered satisfactory if a slight positive pressure can be built up inside the facepiece without any evidence of outward leakage of air at the seal. For most respirators this method of leak testing requires the wearer to first remove the exhalation valve cover before closing off the exhalation valve and then carefully replacing it after the test.

(b) *Negative pressure test.* Close off the inlet opening of the canister or cartridge(s) by covering with the palm of the hand(s) or by replacing the filter seal(s), inhale gently so that the facepiece collapses slightly, and hold the breath for ten seconds. If the facepiece remains in its slightly collapsed condition and no inward leakage of air is detected, the tightness of the respirator is considered satisfactory.

9. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface, such as stubble beard growth, beard, or long sideburns which cross the respirator sealing surface. Any type of apparel which interferes with a satisfactory fit shall be altered or removed.

10. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respiratory disease or pulmonary medicine to determine whether the test subject can wear a respirator while performing her or his duties.

11. The test subject shall be given the opportunity to wear the successfully fitted respirator for a period of two weeks. If at any time during this period the respirator becomes uncomfortable, the test subject shall be given the opportunity to select a different facepiece and to be retested.

12. The employer shall certify that a successful fit test has been administered to the employee. The certification shall include the following information:

(a) Name of employee;
(b) Type, brand and size of respirator; and
(c) Date of test;

Where QNFT is used, the fit factor, strip chart, or other recording of the results of the test, shall be retained with the certification. The certification shall be maintained until the next fit test is administered.

13. Exercise regimen. Prior to the commencement of the fit test, the test subject shall be given a description of the fit test and the test subject's responsibilities during the test procedure.

The description of the process shall include a description of the test exercises that the subject will be performing. The respirator to be tested shall be worn for at least 5 minutes before the start of the fit test.

14. Test Exercises. The test subject shall perform exercises, in the test environment, in the manner described below:

(a) *Normal breathing.* In a normal standing position, without talking, the subject shall breathe normally.

(b) *Deep breathing.* In a normal standing position, the subject shall breathe slowly and deeply, taking caution so as to not hyperventilate.

(c) *Turning head side to side.* Standing in place, the subject shall slowly turn his/her head from side to side between the extreme positions on each side. The head shall be held at each extreme momentarily so the subject can inhale at each side.

(d) *Moving head up and down.* Standing in place, the subject shall slowly move his/her head up and down. The subject shall be instructed to inhale in the up position (i.e., when looking toward the ceiling).

(e) *Talking.* The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(f) *Grimace.* The test subject shall grimace by smiling or frowning.

(g) *Bending over.* The test subject shall bend at the waist as if he/she were to touch his/her toes. Jogging in place shall be substituted for this exercise in those test environments such as shroud type QNFT units which prohibit bending at the waist.

(h) *Normal breathing.* Same as exercise 1.

Each test exercise shall be performed for one minute except for the grimace exercise which shall be performed for 15 seconds.

The test subject shall be questioned by the test conductor regarding the comfort of the respirator upon completion of the protocol. If it has become uncomfortable, another model of respirator shall be tried.

B. Qualitative Fit Test (QLFT) Protocols

1. *General.* (a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator qualitative fit test program.

(b) The employer shall ensure that persons administering QLFT are able to prepare test solutions, calibrate equipment and perform tests properly, recognize invalid tests, and assure that tese equipment is in proper working order.

(c) The employer shall assure the QLFT equipment is kept clean and well maintained so as to operate at the parameters for which it was designed.

2. *Isoamyl Acetate Protocol*—(a) *Odor threshold screening.* The odor threshold screening test, performed without wearing a respirator, is intended to determine if the individual tested can detect the odor of isoamyl acetate.

(1) Three 1-liter glass jars with metal lids are required.

(2) Odor free water (e.g., distilled or spring water) at approximately 25 degrees C shall be used for the solutions.

(3) The isoamyl acetate (IAA) (also known at isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor free water in a 1 liter jar and shaking for 30 seconds. A new solution shall be prepared at least weekly.

(4) The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated but shall not be connected to the same recirculating ventilation system.

(5) The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor free water using a clear dropper or pipette. The solution shall be shaken for 30 seconds and allowed to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution shall be used for only one day.

(6) A test blank shall be prepared in a third jar by adding 500 cc of odor free water.

(7) The odor test and test blank jars shall be labeled 1 and 2 for jar identification. Labels shall be placed on the lids so they can be periodically peeled, dried off and switched to maintain the integrity of the test.

(8) The following instruction shall be typed on a card and placed on the table in front of the two jars (i.e., 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contain a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

(9) The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

(10) If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test shall not be performed.

(11) If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

(b) *Isoamyl acetate fit test.* (1) The fit test chamber shall be similar to a clear 55-gallon drum liner suspended inverted over a 2-foot diameter frame so that the top of the chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

(2) Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.

(3) After selecting, donning, and properly adjusting a respirator, the test subject shall wore it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

(4) A copy of the test exercises and any prepared text from which the subject is to read shall be taped to the inside of the test chamber.

(5) Upon entering the test chamber, the test subject shall be given a 6-inch by 5-inch piece of paper towel, or other porous, absorbent, single-ply material, folded in half and wetted with 0.75 cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.

(6) Allow two minutes for the IAA test concentration to stabilize before starting the fit test exercises. This would be an appropriate time to talk with the test subject; to explain the fit test, the importance of his/her cooperation, and the purpose for the hood exercises; or to demonstrate some of the exercises.

(7) If at any time during the test, the subject detects the banana like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

(8) If the test has failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber and again begin the procedure described in (1) through (7) above. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

(9) When a respirator is found that passes the test, its efficiency shall be demonstrated for the subject by having the subject break the face seal and take a breath before exiting the chamber.

(10) When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the test area from becoming contaminated, the used towels shall be kept in a self sealing bag so there is no significant IAA concentration build-up in the test chamber during subsequent tests.

3. *Saccharin Solution Aerosol Protocol.* The saccharin solution aerosol QLFT protocol is the only currently available, validated test protocol for use with particulate disposable dust respirators not equipped with high-efficiency filters. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

(a) *Taste threshold screening.* The saccharin taste threshold screening, performed without wearing a respirator, is intended to determine whether the individual being tested can detect the taste of saccharin.

(1) Threshold screening as well as fit testing subjects shall wear an enclosure about the head and shoulders that is approximately 12 inches in diameter by 14 inches tall with at least the front portion clear and that allows free movements of the head when a respirator is worn. An enclosure substantially similar to the 3M hood assembly, parts # FT 14 and # FT 15 combined, is adequate.

(2) The test enclosure shall have a ¾-inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

(3) The test subject shall don the test enclosure. Throughout the threshold screening test, the test subject shall breathe through his/her wide open mouth with tongue extended.

(4) Using a DeVilbiss Model 40 Inhalation Medication Nebulizer the test conductor

shall spray the *threshold check solution* into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

(5) The *threshold check solution* consists of 0.83 grams of sodium saccharin USP in 1 cc of warm water. It can be prepared by putting 1 cc of the fit test solution (see (b)(5) below) in 100 cc of distilled water.

(6) To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then released and allowed to fully expand.

(7) Ten squeezes are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

(8) If the first response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(9) If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(10) The test conductor will take note of the number of squeezes required to solicit a taste response.

(11) If the saccharin is not tasted after 30 squeezes (step 10), the test subject may not perform the saccharin fit test.

(12) If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

(13) Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

(14) The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least each morning and afternoon or at least every four hours.

(b) *Saccharin solution aerosol fit test procedure.* (1) The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

(2) The fit test uses the same enclosure described in (a) above.

(3) The test subject shall don the enclosure while wearing the respirator selected in section (a) above. The respirator shall be properly adjusted and equipped with a particular filter(s).

(4) A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

(5) The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

(6) As before, the test subject shall breathe through the open mouth with tongue extended.

(7) The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same number of squeezes required to elicit a taste response in the screening test.

(8) After generating the aerosol the test subject shall be instructed to perform the exercises in section I. A. 14 above.

(9) Every 30 seconds the aerosol concentration shall be replenished using one half the number of squeezes as initially.

(10) The test subject shall indicate to the test conductor if any time during the fit test the taste of saccharin is detected.

(11) If the taste of saccharin is detected, the fit is deemed unsatisfactory and a different respirator shall be tried.

4. *Irritant Fume Protocol.* (a) The respirator to be tested shall be equipped with high-efficiency particulate air (HEPA) filters.

(b) The test subject shall be allowed to smell a weak concentration of the irritant smoke before the respirator is donned to become familiar with its characteristic odor.

(c) Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part No. 5645, or equivalent. Attach one end of the smoke tube to a low flow air pump set to deliver 200 milliliters per minute.

(d) If a half-mask is being fitted, advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep his/her eyes closed while the test is performed.

(e) The test conductor shall direct the stream of irritant smoke from the smoke tube towards the face seal area of the test subject. He/She shall begin at least 12 inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

(f) The exercises identified in section I. A. 14 above shall be performed by the test subject while the respirator seal is being challenged by the smoke.

(g) Each test subject passing the smoke test without evidence of a response shall be given a sensitivity check of the smoke from the same tube once the respirator has been removed to determine whether he/she reacts to the smoke. Failure to evoke a response shall void the fit test.

(h) The fit test shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agent.

C. Quantitative Fit Test (QNFT) Protocol

1. *General.* (a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator quantitative fit test program.

(b) The employer shall ensure that persons administering QNFT are able to calibrate equipment and perform tests properly, recognize invalid tests, calculate fit factors properly and assure that test equipment is in proper working order.

(c) The employer shall assure that QNFT equipment is kept clean and well maintained so as to operate at the parameters for which it was designed.

2. *Definitions.* (a) Quantitative fit test. The test is performed in a test chamber. The normal air-purifying element of the respirator is replaced by a high-efficiency particulate air (HEPA) filter in the case of particulate QNFT aerosols or a sorbent offering contaminant penetration protection equivalent to high-efficiency filters where the QNFT test agency is a gas or vapor.

(b) Challenge agent means the aerosol, gas or vapor introduced into a test chamber so that its concentration inside and outside the respirator may be measured.

(c) Test subject means the person wearing the respirator for quantitative fit testing.

(d) Normal standing position means standing erect and straight with arms down along the sides and looking straight ahead.

(e) Maximum peak penetration method means the method of determing test agent penetration in the respirator as determined by strip chart recordings of the test. The highest peak penetration for a given exercise is taken to be representative of average penetration into the respirator for that exercise.

(f) Average peak penetration method means the method of determining test agent penetration into the respirator utilizing a strip chart recorder, integrator, or computer. The agent penetration is determined by an average of the peak heights on the graph or by computer integration, for each exercise except the grimace exercise. Integrators or computers which calculate the actual test agent penetration into the respirator for each exercise will also be considered to meet the requirements of the average peak penetration method.

(g) "Fit Factor" means the ratio of challenge agent concentration outside with respect to the inside of a respirator inlet covering (facepiece or enclosure).

3. *Apparatus.* (a) Instrumentation. Aerosol generation, dilution, and measurement systems using corn oil or sodium chloride as test aerosols shall be used for quantitiative fit testing.

(b) Test chamber. The test chamber shall be large enough to permit all test subjects to perform freely all required exercises without disturbing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air, yet uniform in concentration throughout the chamber.

(c) When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particulate filter supplied by the same manufacturer.

(d) The sampling instrument shall be selected so that a strip chart record may be made of the test showing the rise and fall of the challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000. Integrators or computers which integrate the amount of test agent penetration leakage into the respirator for each exercise may be used provided a record of the readings is made.

(e) The combination of substitute air-purifying elements, challenge agent and challenge agent concentration in the test chamber shall be such that the test subject is not exposed in excess of an established exposure limit for the challenge agent at any time during the testing process.

(f) The sampling port on the test specimen respirator shall be placed and constructed so that no leakage occurs around the port (e.g., where the respirator is probed), a free air flow is allowed into the sampling line at all times and so that there is no interference with the fit or performance of the respirator.

(g) The test chamber and test set up shall permit the person administering the test to observe the test subject inside the chamber during the test.

(h) The equipment generating the challenge atmosphere shall maintain the concentration of challenge agent inside the test chamber constant to within a 10 percent variation for the duration of the test.

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(i) The time lag (interval between an event and the recording of the event on the strip chart or computer or integrator) shall be kept to a minimum. There shall be a clear association between the occurrence of an event inside the test chamber and its being recorded.

(j) The sampling line tubing for the test chamber atmosphere and for the respirator sampling port shall be of equal diameter and of the same material. The length of the two lines shall be equal.

(k) The exhaust flow from the test chamber shall pass through a high-efficiency filter before release.

(l) When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.

(m) The limitations of instrument detection shall be taken into account when determining the fit factor.

(n) Test respirators shall be maintained in proper working order and inspected for deficiencies such as cracks, missing valves and gaskets, etc.

4. *Procedural Requirements.* (a) When performing the initial positive or negative pressure test the sampling line shall be crimped closed in order to avoid air pressure leakage during either of these tests.

(b) An abbreviated screening isoamyl acetate test or irritant fume test may be utilized in order to quickly identify poor fitting respirators which passed the positive and/or negative pressure test and thus reduce the amount of QNFT time. When performing a screening isoamyl acetate test, combination high-efficiency organic vapor cartridges/canisters shall be used.

(c) A reasonably stable challenge agent concentration shall be measured in the test chamber prior to testing. For canopy or shower curtain type of test units the determination of the challenge agent stability may be established after the test subject has entered the test environment.

(d) Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half mask or 1 percent for a full facepiece respirator.

(e) A stable challenge concentration shall be obtained prior to the actual start of testing.

(f) Respirator restraining straps shall not be overtightened for testing. The straps shall be adjusted by the wearer without assistance from other persons to give a reasonable comfortable fit typical of normal use.

(g) The test shall be terminated whenever any single peak penetration exceeds 5 percent for half masks and 1 percent for full facepiece respirators. The test subject shall be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate.

(h) In order to successfully complete a QNFT, three successful fit tests are required. The results of each of the three independent fit tests must exceed the minimum fit factor needed for the class of respirator (e.g., half mask respirator, full facepiece respirator).

(i) Calculation of fit factors.

(1) The fit factor shall be determined for the quantitative fit test by taking the ratio of the average chamber concentration to the concentration inside the respirator.

(2) The average test chamber concentration is the arithmetic average of the test chamber concentration at the beginning and of the end of the test.

(3) The concentration of the challenge agent inside the respirator shall be determined by one of the following methods:

(i) Average peak concentration

(ii) Maximum peak concentration

(iii) Integration by calculation of the area under the individual peak for each exercise. This includes computerized integration.

(j) Interpretation of test results. The fit factor established by the quantitative fit testing shall be the lowest of the three fit factor values calculated from the three required fit tests.

(k) The test subject shall not be permitted to wear a half mask, or full facepiece respirator unless a minimum fit factor equivalent to at least 10 times the hazardous exposure level is obtained.

(l) Filters used for quantitative fit testing shall be replaced at least weekly, or whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily (when used) or sooner if there is any indication of breakthrough by a test agent.

A new Appendix A, entitled "Designations for General Industry Standards Incorporated Into Body of Construction Standards" is added to the end of part 1926. The text of the appendix reads as follows:

Appendix A to Part 1926—Designations for General Industry Standards Incorporated Into Body of Construction Standards

New Designations for General Industry Standards Incorporated Into Body of Construction Standards

1926 DESIGNATIONS FOR APPLICABLE 1910 STANDARDS

New § no. and/or para.	Source § no. and/or para.
1926.20 (c)	1910.5 (a)
[Do.] (d)	[Do.] (c)
[Do.] (e)	[Do.] (d)
1926.32(g)	1910.12(b)
1926.33	1910.20
1926.34 (a)	1910.36(b)(4)
[Do.] (b)	1910.37 (q)(1)
[Do.] (c)	[Do.] (k)(2)
1926.35	1910.38(a)
1926.50(g)	1910.151(c)
1926.51(a)(6)	1910.141(a)(2)(v)
[Do.] (d)(2)	[Do.] (h)
[Do.] (f) (2)—(4)	[Do.] (d) (1)—(3)
[Do.] (g)	[Do.] (g)(2)
[Do.] (h)	[Do.] (a)(5)
[Do.] (i)	[Do.] (e)
1926.53 (c)—(r)	1910.95
1926.57 (f)—(i)	1910.94
1926.64	1910.119
1926.65	1910.120
1926.66 (a)	1910.107 (a)
[Do.] (b)	[Do.] (b) (1)—(10)
[Do.] (c)—(d)	[Do.] (c)—(d)
[Do.] (e)—(g)	[Do.] (h)—(j)
1926.95	1910.132
1926.96	1910.136
1926.97 (a)—(e)	1910.156(e)
[Do.] (f)—(h)	[Do.] Subpt. I. App. E
1926.98	1910.156(f)
1926.102(a) (6)	1910.133(a) (2)
[Do.] (7)	[Do.] (4)
[Do.] (8)	[Do.] (5)
1926.103 (d)	1910.134 (a)
[Do.] (e)	[Do.] (b)
[Do.] (f)—(l)	[Do.] (d)—(g)
1926.150(c)(1) (xi)	1910.157 (g)(1)
[Do.] (xii)	[Do.] (g)(2)
[Do.] (xiii)	[Do.] (c)(4)
[Do.] (xiv)	[Do.] (e)(3)
1926.152 (b)(5)	1910.107(e)(2)
[Do.] (h)	1910.106(j)
[Do.] (i)	[Do.] (b)
[Do.] (j)	[Do.] (c)
[Do.] (k) (1)—(3)	[Do.] (g)(4)
[Do.] (k)(4)	[Do.] (a)(22)
1926.153(a) (3)	1910.110(a)(4)
[Do.] (m) (1)	[Do.] (d)(1)
[Do.] (2)	[Do.] (d)(2)
[Do.] (3)	[Do.] (d)(7)(vii)
[Do.] (4)	[Do.] (d)(7)(viii)
[Do.] (n)	[Do.] (b)(5)(iii)
[Do.] (o)	[Do.] (d)(10)
1926.156	1910.160
1926.157	1910.162
1926.158	1910.164
1926.159	1910.165
1926.200(c)(3)	1910.145(d)(4)
1926.250(c)	1910.176(c)
[Do.] (d)	XXX
1926.251(a)(5)	1910.184(a)
[Do.] (a)(6)	[Do.] (d)
[Do.] (b)(6)(i)—(ii)	[Do.] (e)(3)(i)—(ii)
[Do.] (c)(6)—(7)	[Do.] (c) (2)—(3)
[Do.] (c)(8)	[Do.] (c)(5)
[Do.] (c)(9)	[Do.] (c)(7)
[Do.] (c)(10)—(12)	[Do.] (c)(10)—(12)
[Do.] (c)(13)—(15)	[Do.](f) (2)—(4)
[Do.] (d)(3)—(6)	[Do.] (h) (2)—(5)
[Do.] (e)(3)—(5)	[Do.] (i) (2)—(4)
[Do.] (e)(6)—(7)	[Do.] (i) (6)—(7)
[Do.] (e)(8)	[Do.] (i)(9)
1926.300(b) (3)	1910.212(a)(1)
[Do.] (4)	[Do.] (a)(3)
[Do.] (5)	[Do.] (a)(5)
[Do.] (6)	[Do.] (b)
[Do.] (7)	1910.215(b)(9)
1926.302(b)(10)	1910.244(b)
1926.303(b)(2)	1910.215(a) (2)
[Do.] (e)	[Do.] (4)
1926.304 (g)	1910.213(h)(1)
[Do.] (h)	[Do.] (d)(1)
[Do.] (i)	[Do.] (c)(1)
1926.305(d)(1)	1910.244(a)(2) (iii)—(viii)
1926.306	1910.169
1926.307	1910.219
1926.350(a) (10)	1910.253(b) (4)(iii)
[Do.] (11)	[Do.] (2)(ii)
[Do.] (12)	1910.101(b)
1926.353(b)(3)	1910.252(b)(4)(iv)
1926.416 (a)(4)	1910.333(c)(2)

1926 DESIGNATIONS FOR APPLICABLE 1910 STANDARDS—Continued

New § no. and/or para.	Source § no. and/or para.
[Do.] (f) (1)	[Do.] (c)(10)
[Do.] (2)	1910.334(a)(1)
[Do.] (3)	[Do.] (a)(2)(iii)
[Do.] (4)	[Do.] (a)(5)
[Do.] (5)—(6)	[Do.] (b) (1)—(2)
[Do.] (7)—(10)	[Do.] (c) (1)—(3)
1926.417(d)	1910.333(b)(2)
1926.451(a) (22)	1910.28(a) (15)
[Do.] (23)	[Do.] (18)
[Do.] (24)	[Do.] (20)
1926.453 (a)	1910.29(a)
[Do.] (b)	[Do.] (c)
1926.550 (a)(19)	1910.184(c)(9)
1926.600(a)(7)	1910.176(f)
1926.602(c)(1) (vii)	1910.178(m) (3)
[Do.] (viii)	[Do.] (12)
1926.900 (s)	1910.109 (g)(2)(ii)
[Do.] (t)	[Do.] (h)(3)(ii)
1926.905(u)	[Do.] (e)(3)(iii)
1926.914(aa)	[Do.] (a)(12)
1926.1050(b)	1910.21(g)(9)
1926.1071	1910.401
1926.1072	1910.402
1926.1076	1910.410
1926.1080	1910.420
1926.1081	1910.421
1926.1082	1910.422
1926.1083	1910.423
1926.1084	1910.424
1926.1085	1910.425
1926.1086	1910.426
1926.1087	1910.427
1926.1090	1910.430
1926.1091	1910.440
1926.1092	1910.441
1926.1102	1910.1002
1926.1103	1910.1003
1926.1104	1910.1004
1926.1105	1910.1005
1926.1106	1910.1006
1926.1107	1910.1007
1926.1108	1910.1008
1926.1109	1910.1009
1926.1110	1910.1010
1926.1111	1910.1011
1926.1112	1910.1012
1926.1113	1910.1013
1926.1114	1910.1014
1926.1115	1910.1015
1926.1116	1910.1016
1926.1117	1910.1017
1926.1118	1910.1018
1926.1128	1910.1028
1926.1129	1910.1029
1926.1144	1910.1044
1926.1145	1910.1045
1926.1147	1910.1047
1926.1148	1910.1048

[FR Doc. 93–15063 Filed 6–29–93; 8:45 am]

BILLING CODE 4510–26–F

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

Safety Standards for General Industry and Construction

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule; technical amendments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is making nomenclature changes, address changes, and minor technical amendments to OSHA standards for construction and general industry. These changes reflect transfers of authority and editorial corrections to construction and general industry standards that have not undergone recent revision. For example, this document reflects the replacement of the Atomic Energy Commission by the Nuclear Regulatory Commission and the transfer of certain regulatory authority from the Internal Revenue Service to the Bureau of Alcohol, Tobacco and Firearms.

This document also corrects typographic errors in tables of decompression times for employees who work in compressed air environments. In addition, typographic errors in tables of rated capacities for different sizes, configurations, and types of wire rope and synthetic web slings are being corrected.

EFFECTIVE DATE: June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 219–8151.

SUPPLEMENTARY INFORMATION:

Background

Section 6(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) authorized the Secretary of Labor to adopt national consensus standards and established Federal standards issued under other statutes, including the Contract Work Hours and Safety Standards Act (the Construction Safety Act) (40 U.S.C. 333), as occupational safety and health standards. On May 29, 1971 (36 FR 10466), OSHA promulgated 29 CFR part 1910, Occupational Safety and Health Standards, to incorporate certain national consensus standards and established Federal standards for general industry. Subsequently, on December 30, 1971 (36 FR 25232), the Agency redesignated the existing standards in 29 CFR for ship repairing (part 1501), shipbuilding (part 1502), and shipbreaking (part 1503), and construction (part 1518) as 29 CFR parts 1915, 1916, 1917, and 1926, respectively. Parts 1910 and 1926 still contain various cross-references to the earlier versions of these standards which need to be updated to reflect their redesignations.

In addition, there have been changes regarding the Federal agencies and the consensus standard organizations whose standards were adopted by OSHA under section 6(a). In particular, there have been changes in the names of certain agencies and in the addresses of certain organizations. OSHA's existing standards do not fully reflect the above-noted developments. In addition, several standards either adopted under section 6(a) or promulgated under section 6(b) contain typographic errors. Therefore, the Agency has determined that this technical amendment is necessary to update and correct OSHA's safety and health standards as set forth below.

In particular, 29 CFR 1910.5(c)(1), which addresses the applicability of general industry standards, twice refers to a specific standard for ship repairing, once as 29 CFR 1501.23(c)(3) and then as 29 CFR 1915.23(c)(3). The second reference correctly reflects the 1971 redesignation of the ship repairing standards, while the first reference does not. However, neither reference correctly reflects the 1982 consolidation of the shipyard employment standards (47 FR 16985, April 20, 1982), under which the standard in question was redesignated as 29 CFR 1915.34(c)(3). OSHA is amending § 1910.5(c)(1) so that the provision correctly reflects the redesignation of the pertinent standard.

Also, this technical amendment clears up some other loose ends left over from the 1971 redesignation and from the subsequent consolidation of 29 CFR parts 1915, 1916, and 1917 into 29 CFR parts 1915, Shipyard Employment, published on April 20, 1982 (47 FR 16985). Existing §§ 1910.13 through 1910.15 reference either 29 CFR parts 1501, 1502, or 1503. In order to reconcile the General Industry standards to the above-noted redesignations and consolidations, OSHA is merging the provisions of existing §§ 1910.13, 1910.14, and 1910.15 into a single § 1910.15, "shipyard employment," and amending § 1910.15 so it refers to 29 CFR part 1915.

In addition, several standards are being revised so that they reflect the current addresses of the National Fire Protection Association, the Compressed Gas Association, and the American Petroleum Institute, as set out in lists of

standards organizations referenced in the regulatory text. The sections being amended to reflect the current address of these organizations include §§ 1910.40, 1910.100, 1910.109, 1910.116, 1910.171, 1910.190, and 1910.275, and appendixes B through D to subpart L.

OSHA's initial set of standards for general industry and construction, promulgated in 1971, included standards for ionizing radiation which referred to the Atomic Energy Commission (AEC). However, those references have been obsolete since 1974, when the Nuclear Regulatory Commission (NRC) assumed the role previously held by the AEC. This document amends the general industry and construction standards to reflect the above-noted transfer of authority. The pertinent sections are § 1910.96 (general industry) and § 1926.53 (construction).

In the general industry health and environmental control standard for ventilation, § 1910.94, paragraph (a)(5)(i) addresses the selection of personal protective equipment. That provision states that only approved equipment shall be used to protect personnel against dusts produced during abrasive-blasting operations and names the U.S. Department of the Interior, Bureau of Mines as the authority to approve respirators for such use. Additional references to respirator approval by the Bureau of Mines appear in paragraphs (c)(6)(vii)(*a*) and (d)(9)(vi) of that same section. Also, 29 CFR 1910.134(b)(11), which addresses the selection of respiratory protection, requires that approved or accepted respirators be used when they are available. That provision cites the U.S. Department of Agriculture and the U.S. Department of the Interior, Bureau of Mines, as authorities competent to set standards for respirators. Existing paragraph (b)(11) further states that, while pesticide respirators listed by the U.S. Department of Agriculture continue to be accepted for specified pesticides, the U.S. Department of the Interior, Bureau of Mines, is the agency now responsible for testing and approving pesticide respirators.

Pursuant to the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 957), the respirator approval function once delegated to the Bureau of Mines (and for part of the 1970's, to the Mining Enforcement and Safety Administration) has been delegated to the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH). The procedures and requirements to be met in obtaining NIOSH/MSHA approval for respirators are set out in 30 CFR part 11. Therefore, OSHA is amending § 1910.94 (a)(5)(ii), (c)(6)(vii)(*a*), and (d)(9)(vi) and § 1910.134(b)(11) to reflect the current requirements for the approval of respirators. Also, in the health standard for occupational exposure to vinyl chloride (29 CFR 1910.1017(g)(2)), there is a reference to the Mining Enforcement and Safety Administration (MESA), Department of the Interior. This outdated reference is being changed to reflect the transfer of authority for the approval of respirators from MESA to MSHA.

This document also corrects errors in OSHA's standard for slings used in general industry material handling (29 CFR 1910.184). These errors first appeared when the code volume containing 29 CFR part 1910 volume was reprinted in 1977 and 1981. The errors are numbers contained in tables that express rated capacities for particular types of wire rope and synthetic web slings (N–184–7, N–184–20, N–184–21, and N–184–22).

On June 27, 1975 (40 FR 27367), OSHA published a standard covering slings used in general industry material handling operations. In that standard (§ 1910.184), requirements for the use of alloy steel chain slings, wire rope slings, metal mesh slings, fiber rope and synthetic web slings were set out. The standard includes tables that indicate the maximum safe capacities for different sizes and configurations of the various types of slings covered by the standard.

The tables to § 1910.184 were printed correctly in part 1910 of the 1976 edition of the CFR volume. However, when the CFR volume was reprinted in 1977, typographic errors appeared in Table N–184–7 and Table N–184–20. In addition, when the part 1910 volume was printed in 1981, other errors appeared in Tables N–184–20, N–184–21, and N–184–22. This document amends the sling capacities listed in those tables to correct those errors.

In existing general industry standards that address toxic and hazardous substances (subpart Z), there are references to the Department of Health, Education, and Welfare (HEW). These appear in a section of the safety standards for diving (§ 1910.401(a)(2)(iii)) and in paragraph (b)(6) that is repeated in a number of OSHA health standards (§§ 1910.1003 though 1910.1018, 1910.1044 and 1910.1045). These outdated references are being changed to reflect the redesignation from HEW to the Department of Health and Human Services (HHS). Under the Department of Education Organization Act (Oct. 17, 1979, 20 U.S.C. 3411 and 3508), HEW was redesignated as HHS, effective May 4, 1980. (Functions pertaining to education were transferred to a newly created Department of Education.)

In addition, in the construction standards, OSHA is amending § 1926.451(y)(9) so that it refers to § 1926.1053, instead of to § 1926.450. On November 14, 1990 (55 FR 47687), the Agency deleted § 1926.450, "Ladders," replacing that section with new § 1926.1053, "Ladders." This change provides the correct reference for employers who have employees use ladders while performing construction work on pump jack scaffolds.

Also, OSHA is amending § 1926.451(y)(11), which addresses the provision of guardrails on pump jack scaffolds, to correct a typographic error, so that it refers to § 1926.451(a)(5) instead of § 1926.451(a)(15). This change provides the correct reference for employers who comply with § 1926.451(y)(11) by providing standard guardrails.

Elsewhere in the construction standards, under subpart S, "Underground Construction, Caissons, Cofferdams, and Compressed Air," § 1926.800 addresses certain underground operations for tunnels, shafts, chambers, and passageways. In paragraph (q)(8) of that section, which applies to drilling and jumbo decks, an error arose in the process of codifying the standard. The change corrects an inadvertent paragraph designation of (i) that falls between paragraph (iii) and precedes (v). The amendment redesignates that paragraph as (q)(8)(iv).

In another section of that same subpart, the standards cover employees who are exposed to compressed air working environments. Procedures for gradual decompression of employees working in these environments are set out in § 1926.803(f)(1), which in turn references decompression tables in appendix A to the subpart. The tables list conditions, according to working chamber pressure and exposure time, and give specified uniform rates and timed incremental stages for pressure-reduction for an employee's return to normal conditions.

In Decompression Table No. 2, for a working chamber pressure of 22 pounds per square inch gauge (p.s.i.g.), the number "133" is being inserted in the last column under the heading "Total time decompress minutes" for Stage number 2 for a working period of over 8 hours. In addition, in the same table, for a working chamber pressure of 50 p.s.i.g. and a working period of 5 hours, the entries in the fourth through eighth (last) columns are being shifted over one column to the left. (This amended

version corrects the entries to read that they are for Stage 1 and a pressure reduc. p.s.i.g. from 50 to 34, with a time in stage of 3 minutes, and a pressure reduc. rate of 0.20 min/pound). Under the same working chamber pressure of 50 p.s.i.g. for a working period of 5 hours, at Stage 3, the entry "1.42" for pressure reduc. rate min/pound in the next to last column is being changed to "11.42."

In the construction standards that cover blasting and the use of explosives (in subpart U of part 1926), there are several outdated references to regulations promulgated by other Federal agencies. The references to Internal Revenue Service (IRS) rules in the standard for storage of explosives and blasting agents (§ 1926.904) and the definitions applicable to the subpart (§ 1926.914) are being changed to reflect the redesignation and transfer of certain rules to the Bureau of Alcohol, Tobacco and Firearms. In addition, the standard for surface transportation of explosives (§ 1926.902) is being amended to reflect the removal, redesignation, or transfer of Department of Transportation rules in titles 14 and 49 of the CFR.

List of Subjects:

29 CFR Part 1910

Business and Industry, Hazardous Materials, Occupational Safety and Health, Scientific Equipment.

29 CFR Part 1926

Construction Industry, Occupational Safety and Health, Protective Equipment

Authority: This document was prepared under the direction of David C. Zeigler, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and Secretary of Labor's Order No. 1–90 (55 FR 9033), 29 CFR parts 1910 and 1926 are amended as set forth below.

Signed at Washington, DC, this 21st day of June, 1993.

David C. Zeigler,

Acting Assistant Secretary of Labor.

PART 1910—[AMENDED]

Subpart A—General

1. The authority for subpart A of part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); sec. 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333); sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033) as applicable.

§ 1910.5 [Amended]

2. In the second sentence of § 1910.5(c)(1), the reference to "§ 1501.23(c)(3)" is revised to read "§ 1915.23(c)(3))."

Subpart B—Adoption and Extension of Established Federal Standards

3. The authority for subpart B is revised to read as follows:

Authority: Secs. 4, 6 and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Walsh-Healey Act, 41 U.S.C. 35 et seq; Service Contract Act of 1965, 41 U.S.C. 351 et seq; sec. 107, Contract Work Hours and Safety Standards Acts (Construction Safety Act), 40 U.S.C. 333; sec. 41, Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 941; National Foundation of Arts and Humanities Act, 20 U.S.C. 951 et seq.; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 1911, 9–83 (48 FR 35736), or 1–90 (55 FR 9033) as applicable.

§§ 1910.13 and 1910.14 [Removed]

4. Sections §§ 1910.13 and 1910.14 are removed.

5. In § 1910.15 is revised to read as follows:

§ 1910.15 Shipyard employment.

(a) *Adoption and extension of established safety and health standards for shipyard employment.* The standards prescribed by part 1915 (formerly parts 1501–1503) of this title and in effect on April 28, 1971 (as revised), are adopted as occupational safety or health standards under section 6(a) of the Act and shall apply, according to the provisions thereof, to every employment and place of employment of every employee engaged in ship repair, shipbreaking, and shipbuilding, or a related employment. Each employer shall protect the employment and places of employment of each of his employees engaged in ship repair, shipbreaking, and shipbuilding, or a related employment, by complying with the appropriate standards prescribed by this paragraph.

(b) *Definitions.* For purposes of this section:

(1) *Ship repair* means any repair of a vessel, including, but not restricted to, alterations, conversions, installations, cleaning, painting, and maintenance work;

(2) *Shipbreaking* means any breaking down of a vessel's structure for the purpose of scrapping the vessel, including the removal of gear, equipment, or any component of a vessel;

(3) *Shipbuilding* means the construction of a vessel, including the installation of machinery and equipment;

(4) *Related employment* means any employment performed as an incident to, or in conjunction with, ship repair, shipbreaking, and shipbuilding work, including, but not restricted to, inspection, testing, and employment as a watchman; and

(5) *Vessel* includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, including special purpose floating structures not primarily designed for, or used as a means of, transportation on water.

Subpart E—Means of Egress

6. The authority for subpart E is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

§ 1910.40 [Amended]

7. In § 1910.40, the address for the National Fire Protection Association is revised to read "Batterymarch Park, Quincy, MA 02269."

Subpart G—Occupational Health and Environmental Control

8. The authority for subpart G continues to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

§ 1910.94 [Amended]

9. In § 1910.94 (a)(5)(i) and (c)(6)(iii)(*a*), the phrase "approved by the Bureau of Mines, U.S. Department of the Interior" is revised to read "approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health."

9A. In § 1910.94(d)(9)(vi), the phrase "approved by the U.S. Bureau of Mines, U.S. Department of the Interior" is revised to read "approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health."

§ 1910.96 [Amended]

10. In § 1910.96 (i)(1), (k), (l)(1) introductory text, (l)(2) introductory text, (m)(1), (p) heading, (p)(1), (p)(2), and (p)(3) (i) and (ii), the term "Atomic Energy Commission" is revised to read "Nuclear Regulatory Commission."

11. In § 1910.96 (p) heading, (p)(2), and (p)(3) introductory text, the acronym "AEC" is revised to read "NRC."

12. In the same section (§ 1910.96), in paragraph (a)(7)(v) of the cross-reference to "subdivision (iii) of this subparagraph" is revised to read "paragraph (a)(7)(iii) of this section."

§ 1910.100 [Amended]

13. In § 1910.100, the address for the National Fire Protection Association is revised to read "Batterymarch Park, Quincy, MA 02269."

Subpart H—Hazardous Materials

14. The authority for subpart H continues to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

§ 1910.103 [Amended]

15. In paragraph (c)(2)(iii)(*i*) of § 1910.103, the cross-reference to "subparagraph (i)(iv)(*b*) of this paragraph and subdivision (i)(f) of this subparagraph" is changed to read "paragraphs (c)(1)(iv)(*b*) and (c)(2)(i)(*f*) of this section."

16. In paragraph (c)(3)(i)(*c*) of § 1910.103, the cross-reference to "subdivision (*a*) of this subdivision" is revised to read "paragraph (c)(3)(i)(*a*) of this section."

17. In paragraph (c)(3)(i)(*d*) of § 1910.103, the cross-reference to "subparagraph (1)(ix) (*a*) and (*b*) of this paragraph" is revised to read "paragraph (c)(1)(ix) (*a*) and (*b*) of this section."

18. In paragraph (c)(3)(ii)(*d*) of § 1910.103, the cross-reference to "subparagraph (1)(ix) (*a*) and (*b*) of this paragraph" is revised to read "paragraphs (c)(1)(ix) (*a*) and (*b*) of this section," and the cross-reference to "subparagraph (1)(ix)(*b*) of this paragraph" is revised to read "paragraph (c)(1)(ix)(*b*) of this section."

19. In paragraph (c)(3)(iii)(*b*) of § 1910.103, the cross-reference to "subdivision (ii)(*b*) of this subparagraph" is revised to read "paragraph (c)(3)(ii)(*b*) of this section."

20. In paragraph (c)(3)(iii)(*e*) of § 1910.103, the cross-reference to "subparagraph (1)(ix) (*a*) and (*b*) of this paragraph" is revised to read "paragraphs (c)(1)(ix) (*a*) and (*b*) of this section," and the cross-reference to "subparagraph (1)(ix)(*b*) of this paragraph" is revised to read "paragraph (c)(1)(ix)(*b*) of this section."

§ 1910.109 [Amended]

21. In § 1910.109, entitled "Explosives and blasting agents," paragraph (i)(1)(ii)(*b*), the address for the Compressed Gas Association, Inc., is revised to read "1235 Jefferson Davis Highway, Arlington, VA 22202."

§ 1910.110 [Amended]

22. In the last sentence of paragraph (b)(10)(i) of § 1910.110, the cross-reference to "subdivision (ii) of this subparagraph or subdivision (iii) of this subparagraph" is revised to read "paragraph (b)(10)(ii) or (b)(10)(iii) of this section."

§ 1910.116 [Amended]

23. In § 1910.116, the address for the Compressed Gas Association, Inc., is revised to read "1235 Jefferson Davis Highway, Arlington, VA 22202." In addition, the address for the American Petroleum Institute, Inc., is revised to read "1220 L Street NW., Washington, DC 20005," and the address for the National Fire Protection Association is changed to read "Batterymarch Park, Quincy, MA 02269."

Subpart I—Personal Protective Equipment

24. The authority for subpart I is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

25. In § 1910.134, paragraph (b)(11) is revised to read as follows:

§ 1910.134 [Amended]

* * * * *

(b) * * *

* * * * *

(11) Respirators shall be selected from among those jointly approved by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health under the provisions of 30 CFR part 11.

* * * * *

Subpart L—Fire Protection

26. The authority for subpart L is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033) as applicable.

Subpart L—[Amended]

27. In Appendix B to Subpart L—National Consensus Standards, the address for the National Fire Protection Association that appears as the first footnote at the end of the table is revised to read "Batterymarch Park, Quincy, MA 02269.

28. In appendix C to subpart L, under II., B., (regarding references applicable to § 1910.157), the address for the Compressed Gas Association, Inc., is revised to read "1235 Jefferson Davis Highway, Arlington, VA 22202" in the items numbered 2. through 4. In addition, the address for the National Fire Protection Association is revised to read "Batterymarch Park, Quincy, MA 02269" wherever it appears.

29. In appendix D to subpart L (regarding the availability of publications incorporated by reference in § 1910.156, fire brigades), the address for the National Fire Protection Association that appears in the third column of the first entry of the table is revised to read "Batterymarch Park, Quincy, MA 02269."

Subpart M—Compressed Gas and Compressed Air Equipment

30. The authority for subpart M is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

§ 1910.171 [Amended]

31. In § 1910.171, the address for the Compressed Gas Association, Inc., is revised to read "1235 Jefferson Davis Highway, Arlington, VA 22202," and the address for the National Fire Protection Association is revised to read "Batterymarch Park, Quincy, MA 02269."

Subpart N—Materials Handling and Storage

32. The authority for subpart N continues to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

§ 1910.184 [Amended]

33. In § 1910.184(f)(4)(ii), Table N–184–7, Rated Capacities for 2-Leg and 3-

Leg Bridle Slings, 6x19 and 6x37 Classification Improved Plow Steel Grade Rope with Fiber Core [FC], the value for 1 5/8 inch, 6 x 37 mechanically spliced improved plow steel 2 leg bridle, wire rope slings with fiber cores which presently reads "32.Oh" is revised to read "32.0".

34. In § 1910.184(i)(6)(iii), Table N–184–20, the rated capacities for triangle-choker slings, type I; triangle-triangle slings, type II; Eye and eye with flat eye slings, type III; and eye and eye with twisted eye slings, type IV, when used in 45 and 60 basket hitches are revised as indicated below:

TABLE N–184–20.—SYNTHETIC WEB SLINGS—1,000 Pounds per Inch of Width—Single-Ply

[Triangle-choker slings, Type I; Triangle-triangle slings, Type II, Eye and Eye with flat eye slings, Type III, Eye and Eye with twisted eye slings, Type IV]

Sling body width, in.	45 basket		60 Basket	
	Remove	Add	Remove	Add
1	81,400	1,400	91,000	1,000
2	82,800	2,800	92,000	2,000
3	84,200	4,200	93,000	3,000
4	85,700	5,700	94,000	4,000
5	87,100	7,100	95,000	5,000
6	88,500	8,500	96,000	6,000

35. In § 1910.184(i)(6)(iii), Table N–184–20, the rated capacity for 2-inch endless slings, type V, used in a vertical hitch is corrected from 3,2000 to 3,200.

36. In § 1910.184(i)(6)(iii), Table N–184–21, the rated capacities for triangle-choker slings, type I; triangle-triangle slings, type II; Eye and eye with flat eye slings, type III; and eye and eye with twisted eye slings, type IV, when used in 45 and 60 basket hitches are revised as indicated below:

TABLE N–184–21.—SYNTHETIC WEB SLINGS—1,200 POUNDS PER INCH OF WIDTH—SINGLE-PLY

[Triangle-choker slings, Type I; Triangle-triangle slings, Type II, Eye and Eye with flat eye slings, Type III, Eye and eye with twisted eye slings, Type IV]

Sling body width, in.	45 basket		60 Basket	
	Remove	Add	Remove	Add
1	81,700	1,700	91,200	1,200
2	83,400	3,400	92,400	2,400
3	85,100	5,100	93,600	3,600
4	86,800	6,800	94,800	4,800
5	88,500	8,500	96,000	6,000
6	810,200	10,200	97,200	7,200

37. In § 1910.184(i)(6)(iii), Table N–184–21, the rated capacity for 6-inch return eye slings, type VI, used in a 30 basket is revised from 10;,000 to 10,000.

38. In § 1910.184(i)(6)(iii), Table N–184–21, the rated capacity for a 5-inch return eye sling, type VI, used in a 45 basket, is revised from 76,750 to 6,750.

39. In § 1910.184(i)(6)(iii), Table N–184–22, the rated capacities for triangle-choker slings, type I; Eye and eye with flat eye slings, type II; eye and eye with flat eye slings, Type III; and eye and eye with twisted eye slings, type IV, when used in 45 and 60 basket hitches are revised as indicated below:

TABLE N–184–22.—SYNTHETIC WEB SLINGS—1,600 POUNDS PER INCH OF WIDTH—SINGLE-PLY

[Triangle-choker slings, Type I; Triangle-triangle slings, Type II; Eye and Eye with flat eye slings, Type III; Eye and eye with twisted eye slings, Type IV]

Sling body width, in.	45 basket		60 Basket	
	Remove	Add	Remove	Add
1	82,300	2,300	91,600	1,600
2	84,500	4,500	93,200	3,200
3	86,800	6,800	94,800	4,800
4	89,000	9,000	96,400	6,400
5	811,300	11,300	98,000	8,000
6	813,600	13,600	99,600	9,600

§ 1910.190 [Amended]

40. In § 1910.190, the address for the National Fire Protection Association is revised to read "Batterymarch Park, Quincy, MA 02269."

Subpart R—Special Industries

41. The authority for subpart R continues to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

§ 1910.275 [Amended]

42. In § 1910.275, the address for the National Fire Protection Association is revised to read "Batterymarch Park, Quincy, MA 02269."

Subpart T—Commercial Diving Operations

43. The authority for subpart T is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); sec. 107, Contract Work Hours and Safety Standards Act (the Construction Safety Act) (40 U.S.C. 333); sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

§ 1910.401 [Amended]

44. In § 1910.401(a)(2)(iii), the term "Department of Health, Education, and Welfare" is revised to read "Department of Health and Human Services."

Subpart Z—Toxic and Hazardous Substances

45. The authority for subpart Z continues to read in pertinent part as follows:

Authority: Sections 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

§§ 1910.1003, 1910.1004, 1910.1006–1910.1018, 1910.1044, and 1910.1045 [Amended]

46. In paragraph (b)(6) of §§ 1910.1003, 1910.1004, 1910.1006 through 1910.1016, in paragraph (b)(4) of 1910.1017, in the definition for "Director" of 1910.1018 and 1910.1044, and in the definition for "Decontamination" in 1910.1045, the term "Health, Education, and Welfare" and acronym "HEW" are revised to read "Health and Human Services" and "HHS," respectively, each time the term or acronym appears.

46A. In addition, in § 1910.1017(g)(2), the words "approved by the Mining Enforcement and Safety Administration, Department of the Interior" are revised to read "approved by the Mine Safety and Health Administration."

PART 1926—[AMENDED]

1. The authorities for subparts D, L, S, and U are revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Subpart D—Occupational Health and Environmental Controls

§ 1926.53 [Amended]

2. In paragraphs (a) and (b) of § 1926.53, replace the term "Atomic Energy Commission" with "Nuclear Regulatory Commission" each time it appears.

Subpart L—Scaffolding

§ 1926.451 [Amended]

3. In paragraph (y)(9) of § 1926.451, the reference to "in accordance with

§ 1926.450" is revised to read "in accordance with § 1926.1053." In addition, in § 1926.451(y)(11), the reference to "as defined in § 1926.451(a)(15)" is revised to read "as defined in § 1926.451(a)(5)."

Subpart S—Underground Construction, Caissons, Cofferdams, and Compressed Air

§ 1926.800 [Amended]

4. In § 1926.800(q)(8), the paragraph designated (i) that follows paragraph (iii) and precedes (v) is redesignated as (iv).

Appendix A to Subpart S—[Amended]

5. In part 1926, in Appendix A to Subpart S—Decompression Tables, Decompression Table No. 2, is amended by inserting "133" in the last column (under Total time decompress minutes) for Stage no. 2, a working period of over 8 hours, and a working chamber pressure of 22 p.s.i.g.

5A. In addition, in the same table, the entries in the fourth through eighth columns at a working chamber pressure of 50 p.s.i.g. for a working period of 5 hours, are each moved over one column to the left, so the entry now reads for Stage no. 1, with a pressure reduc. p.s.i.g. from 50 to 34, a time of 3 minutes in stage, and a pressure reduc. rate of 0.20 min./pound. Under the same working chamber pressure of 50 p.s.i.g. for a working period of 5 hours, at Stage no. 3, the entry "1.42" for pressure reduc. rate min/pound in the next to last column is revised to "11.42".

Subpart U—Blasting and the Use of Explosives

§ 1926.902 [Amended]

6. In paragraph (a) of § 1926.902, the reference "14 CFR Part 103, Air Transportation;" is removed and the reference "49 CFR Part 180" is revised to "49 CFR part 195".

§ 1926.904 [Amended]

7. In paragraph (a) of § 1926.904, the words "Internal Revenue Service" are revised to read "Bureau of Alcohol, Tobacco and Firearms" and the reference "26 CFR Part 181" is revised to "27 CFR part 55."

§ 1926.914 [Amended]

8. In paragraph (b) of § 1926.914, the words "Internal Revenue Service" are revised to read "Bureau of Alcohol, Tobacco and Firearms" and the reference "26 CFR Part 181" is revised to "27 CFR part 55."

[FR Doc. 93–15119 Filed 6–29–93; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Parts 117, 302, and 355
Reportable Quantity Adjustments for Lead Metal, Lead Compounds, Lead-Containing Hazardous Wastes, and Methyl Isocyanate; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 117, 302, and 355

[SW H–FRL 4673–1]

Reportable Quantity Adjustments for Lead Metal, Lead Compounds, Lead-Containing Hazardous Wastes, and Methyl Isocyanate

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this rulemaking, the U.S. Environmental Protection Agency (EPA) is promulgating reportable quantity (RQ) adjustments for 30 hazardous substances whose RQs were proposed to be adjusted in a proposed rule on May 8, 1992 and modified by a technical correction notice on June 25, 1992. These hazardous substances include lead metal, 12 lead compounds, 15 waste streams listed under the Resource Conservation and Recovery Act (RCRA) that contain lead, RCRA characteristic wastes that fail the Toxicity Characteristic Leaching Procedure based on their lead constituents, and methyl isocyanate (MIC). The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, requires the Administrator of EPA to adjust RQs for CERCLA hazardous substances, including the 30 substances in this rule. Under CERCLA, the person in charge of a vessel or facility must, as soon as such person has knowledge of a release of a hazardous substance into the environment in an amount equal to or greater than its RQ, immediately report the release to the National Response Center. The RQs for the hazardous substances promulgated in this rule will provide the Agency with information concerning releases of lead metal, lead compounds, lead-containing hazardous wastes, and MIC into the environment at levels that correspond to the relative hazards posed by exposure to these substances.

EFFECTIVE DATE: July 30, 1993.

ADDRESSES: Docket: Copies of materials relevant to this rulemaking are contained in room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Docket Number 102 RQ–31L). The docket is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 1–202/260–3046. The public may copy a maximum of 267 pages from any regulatory docket at no cost. If the number of pages copied exceeds 267, however, a charge of $0.15 will be incurred for each page after page 100.

Release Notification: The toll-free telephone number of the National Response Center is 1–800/424–8802; in the Washington, DC metropolitan area, the number is 1–202/267–2675.

FOR FURTHER INFORMATION CONTACT:

Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or at 703/603–9055; or the RCRA/Superfund Hotline at 1–800/424–9346 (in the Washington, DC metropolitan area, contact 703/920–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 1–800/553–7672 (in Washington, DC metropolitan area, contact 703/486–3323).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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I. Introduction

A. Statutory Authority

Under section 102(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96–510), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499), a reportable quantity (RQ) of one pound is established for releases of hazardous substances, except for hazardous substances whose RQs were established pursuant to section 311 of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes the Administrator of the U.S. Environmental Protection Agency (EPA or "the Agency") to adjust all of these RQs by regulation.

Under CERCLA section 103(a), the person in charge of a vessel or facility must, as soon as such person has knowledge of a release of a hazardous substance in a quantity that equals or exceeds its RQ, immediately report the release to the National Response Center. A release is reportable if an RQ or more is released within a 24-hour period. This notification requirement serves as a trigger for informing the government of a release so that Federal personnel can evaluate the need for a Federal removal or remedial action and undertake any necessary action in a timely fashion. Under section 104 of CERCLA, the Federal government may respond whenever there is a release or substantial threat of a release of a hazardous substance into the environment. Response activities are to be taken, to the extent practicable, in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300), which was originally developed under the CWA and which has been revised to reflect the responsibilities and authority created by CERCLA.

In addition to the reporting requirement under CERCLA, section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (Pub. L. 99–499), 42 U.S.C. 11001 *et seq.*, also known as SARA title III, requires owners or operators of

certain facilities to report certain release of extremely hazardous substances (EHSs) and CERCLA hazardous substances to State and local authorities. EPCRA section 304 notification must be given immediately after releases of hazardous substances in quantities equal to or greater than their RQs (or one pound if a reporting trigger is not established by regulation) to the community emergency coordinator for each local emergency planning committee ("LEPC") for any area likely to be affected by the release, and to the State emergency response commission ("SERC") of any State likely to be affected by the release. These notification requirements apply to releases that extend off-site and that are from facilities at which a "hazardous chemical" (defined by regulations under the Occupational Safety and Health Act of 1970 (29 CFR 1910.1200(c)) and section 311(e) of EPCRA) is produced, used, or stored.

Section 311(b)(5) of the CWA requires the person in charge of a vessel or facility, as soon as that person has knowledge of any discharge of a CWA hazardous substance, to immediately notify the appropriate Federal agency.

Section 109 of CERCLA and section 325 of EPCRA authorize EPA to assess civil penalties for failure to report releases of hazardous substances that equal or exceed their RQs. Section 103(b) of CERCLA authorizes EPA to seek criminal penalties for failure to notify pursuant to CERCLA section 103(a) or for submitting false or misleading information in a notification.

B. Background of this Rulemaking

1. Previous Proposed and Final RQ Adjustments

Adjustments are being promulgated for two categories of RQs in this rule: (1) statutory RQs; and (2) RQs adjusted in previous final rules. All of these statutory and previously adjusted RQs will be superseded by the 10-pound RQ adjustments promulgated in today's final rule. No RQ is assigned in this final rule to the class of "lead and compounds," which is included in the list of CERCLA hazardous substances on Table 302.4 of 40 CFR 302.4. For further discussion of this issue, see section II.C.4.f. The chronology of the previous proposed and final RQ adjustments is summarized briefly in the remainder of this Section.

EPA initially proposed to adjust the statutory one-pound RQ for methyl isocyanate (MIC) to 100 pounds in the May 25, 1983, Notice of Proposed Rulemaking (NPRM) (48 FR 23552). After the December 3, 1984 release of MIC in Bhopal, India and the resultant loss of human life, EPA withdrew this proposed RQ adjustment in the April 4, 1985, final rule (50 FR 13456) and retained the statutory one-pound RQ, pending further analysis of the data on MIC.

Eight of the substances whose RQs are being adjusted today (lead chloride, lead fluoborate, lead fluoride, lead iodide, lead nitrate, lead sulfate, lead thiocyanate, and waste stream K046) received final RQ adjustments of 100 pounds based on their chronic toxicity in the September 29, 1986, final rule (51 FR 34534).

In an NPRM published on March 16, 1987 (52 FR 8140), EPA proposed to adjust the statutory RQ for lead subacetate (one pound) to 100 pounds based on chronic toxicity; this 100-pound proposed RQ was promulgated on August 14, 1989 (54 FR 33426).

In the same NPRM, EPA proposed to adjust the statutory RQs for lead acetate (5000 pounds) and lead phosphate (one pound) to 10 pounds based on potential carcinogenicity. EPA also proposed one-pound RQ adjustments for 11 lead-containing waste streams (K002, K003, K005, K048, K049, K051, K061, K062, K069, K086, and K100). The RQs for these 11 waste streams were proposed at one pound on March 16, 1987 because at that time: (1) The RQs for hexavalent chromium compounds (e.g., calcium chromate), which are constituents of each of these waste streams, were being proposed at one pound; and (2) the existing RQ for lead metal was one pound.[1] The RQ for hexavalent chromium compounds was changed to 10 pounds in the August 14, 1989, final rule, based on public comments received on the March 16, 1987, NPRM.

An RQ of 100 pounds was proposed in the March 16, 1987, NPRM for RCRA characteristic wastes that are toxic by virtue of their lead constituents. Since the March 16, 1987, NPRM, the procedure for determining the toxicity of RCRA characteristic wastes has been changed from the extraction procedure (EP) to the toxicity characteristic leaching procedure (TCLP) (55 FR 11798, March 29, 1990).[2] RCRA characteristic wastes that fail the TCLP test are referred to as TC wastes. The RQs of the metal constituents of TC wastes are based on the RQs of the soluble salts of the metal in question (52 FR 8148, March 16, 1987). The RQ for the soluble salts is used, rather than the RQ for the metal itself, because the TCLP (similar to the earlier extraction procedure) tests for the presence of the soluble salts.

In the March 2, 1988, NPRM (53 FR 6762), EPA reproposed 100-pound RQ adjustments for lead acetate and lead phosphate. In the same NPRM, EPA reproposed the RQ adjustment for lead metal at 100 pounds, and proposed RQ readjustments of 100 pounds for lead stearate and lead sulfide.[3] The RQ adjustments proposed in the March 2, 1988, NPRM were based on the Human Health Assessment Group's (HHAG's) re-evaluation of the potential carcinogenicity of lead metal and lead compounds and its determination that these hazardous substances were weight-of-evidence Group B2 potential carcinogens.

Three lead-containing waste streams (K064, K065, and K066) were listed as hazardous under RCRA section 3001 on September 3, 1988 (53 FR 35412).[4] Because the RQs for these waste streams were not proposed for adjustment, the statutory one-pound RQ remained applicable.

Although tetramethyl lead is included within the class of "lead and compounds" on Table 302.4 of 40 CFR 302.4, tetramethyl lead is not otherwise specifically listed as a CERCLA hazardous substance. EPA proposed to designate tetramethyl lead as a CERCLA hazardous substance on January 23, 1989 (54 FR 3388) and to adjust its statutory RQ from one pound to 100 pounds on August 30, 1989 (54 FR 35988). Because EPA has not yet promulgated this rule, tetramethyl lead is not specifically listed as a CERCLA hazardous substance and it is not assigned an adjusted RQ in today's rule. By virtue of its inclusion in the class of "lead and compounds," however, releases of tetramethyl lead remain subject to response, abatement, and liability provisions under CERCLA. For further discussion of the CERCLA

[1] As the Agency has stated (54 FR 33440, August 14, 1989), the RQ for a hazardous waste stream is the lowest RQ of any of its constituents. One pound is the lowest possible RQ level. Although a 5000-pound RQ was proposed for lead metal in the April 4, 1985, NPRM the statutory one-pound RQ for lead metal was retained in the September 29, 1986, final rule.

[2] This change applies to all RCRA toxicity characteristic wastes, including those that are toxic by virtue of their lead constituents.

[3] The statutory RQ for lead metal (one pound) was proposed to be adjusted to 5000 pounds in an April 4, 1985 NPRM (50 FR 13514). Lead stearate and lead sulfide received RQ adjustments of 5000 pounds in the September 29, 1986 final rule (51 FR 34534).

[4] The listing of waste streams K064, K065, and K066 as hazardous under RCRA was remanded to EPA for further explanation of the specific studies that support the Agency's decision to list these wastes. See *American Mining Congress* v. *U.S. Environmental Protection Agency*, No. 88–1835 (D.C. Cir., July 10, 1990). The Agency is documenting the technical evidence to support the listing of these three waste streams as RCRA hazardous wastes.

requirements that apply to the class of "lead and compounds," see section II.C.4.f of this preamble.

In the May 8, 1992, NPRM (57 FR 20014), the Agency proposed to adjust the RQ for MIC to 100 pounds based on an evaluation of reproductive and respiratory effects under the Agency's chronic toxicity criterion and the application of the secondary RQ adjustment criteria of biodegradation, hydrolysis, and photolysis (BHP). As discussed in section II.D.3.b, EPA has decided, based on public comments, that it would be inappropriate to apply BHP to adjust the 10-pound chronic toxicity RQ for MIC to 100 pounds. Therefore, EPA is promulgating a 10-pound adjusted RQ for MIC in today's final rule.

2. Developments Leading to Today's Final Rule

On November 30, 1988, at the request of outside parties and as part of a broader review of EPA's scientific policy regarding lead, EPA's Science Advisory Board and Clean Air Scientific Advisory Committee, formed a Joint Study Group. This Group reviewed the HHAG determination that lead metal and lead compounds are weight-of-evidence Group B2 potential carcinogens. In the August 14, 1989 final rule to adjust RQs for potential carcinogens (54 FR 33435), EPA stated that until the Joint Study Group review of the HHAG determination was complete, it would withhold final RQ adjustments for lead metal, lead acetate, lead phosphate, lead stearate, and lead sulfide that were proposed to be adjusted in the March 2, 1988 NPRM, and for 11 lead-containing waste streams proposed to be adjusted in the March 16, 1987, NPRM. In December 1989, the Joint Study Group issued a report containing its findings and recommendations.[5] The Joint Study group supported the HHAG's evaluation of the potential carcinogenicity of lead metal and lead compounds and, in particular, its determination that these hazardous substances are weight-of-evidence Group B2 potential carcinogens.

The Joint Study Group also recommended that EPA reassess its regulatory strategy concerning lead to emphasize the prevention of adverse neurotoxic effects in children. Recent available data show that: (1) A correlation exists between exposure to lead (measured as blood lead levels) and neurotoxic effects; and (2) children are particularly susceptible to these effects. For a discussion of the studies that form the basis for these conclusions, see section II.C.1 of this preamble.

One aspect of the Agency's methodology for adjusting the RQs of CERCLA hazardous substances, the chronic toxicity criterion, is designed to consider the neurotoxicity of these substances. However, when this criterion was applied to lead metal and lead compounds in 1983, the extent of absorption of lead was not sufficiently known. Therefore, an accurate relationship between environmental lead levels and toxic concentrations within the body could not be established.

Since 1983, several studies have determined that various forms of lead are absorbed through oral, dermal, and inhalation routes, and have established a linear relationship between dietary lead intake and blood lead levels in children. Based on one of these studies,[6] the Agency has estimated that 16 percent of environmental lead to which an individual child is exposed by ingestion is absorbed into the child's bloodstream. Taken together with the evidence from studies conducted prior to 1983, the results of more recent studies show that there is a relationship between children exhibiting symptoms typical of lead exposure and their blood lead levels, and that children may be at greater risk of neurobehavioral impairment than adults when exposed to lead metal and lead compounds in part because their physiological defense mechanisms are not fully developed. These studies have led to the general acceptance in the scientific community of using blood lead levels as an index of lead exposure.[7]

EPA has reapplied its chronic toxicity criterion to lead metal, lead compounds, and lead-containing hazardous wastes using the more recent studies on lead's neurotoxic effects in children. As a result, EPA today is promulgating 10-pound RQ adjustments for lead metal and 12 lead compounds based on chronic toxicity. The Agency also is promulgating adjusted RQs of 10 pounds for 15 lead-containing waste streams: K002, K003, K005, K046, K048, K049, K051, K061, K062, K064, K065, K066, K069, K086, and K100.[8] The lowest RQ of the constituents of a waste stream determines the RQ for each waste stream. The 10-pound final RQ for lead metal and lead compounds is the lowest RQ of the constituents of each of the 15 lead-containing waste streams included in today's final rule.[9] In addition, the RQ for TC wastes that are toxic by virtue of their lead constituents also is being promulgated at 10 pounds because 10-pound RQs are being promulgated today for soluble lead salts, such as lead acetate.

The final adjusted RQs for lead metal, lead compounds, and lead-containing hazardous wastes will provide the Agency with information concerning releases of lead into the environment at levels that correspond to the relative hazards posed by exposure to these hazardous substances. Upon notification of such releases, the Agency will be able to evaluate the need for a Federal removal or remedial action consistent with its strategy to reduce overall environmental exposure to lead.

Today's RQ adjustments amend Table 302.4 of 40 CFR 302.4, which lists RQs for CERCLA hazardous substances, and appendices A and B of 40 CFR part 355, which list CERCLA RQs for EHSs. In addition, some of today's final RQ adjustments amend Table 117.3 of 40 CFR 117.3, which lists RQs established for hazardous substances under section 311(b)(4) of the CWA.

3. Agency Efforts To Reduce Exposure to Lead

This rulemaking is consistent with EPA's overall strategy to reduce environmental exposure to lead. The goal of this strategy is to reduce lead exposures to the fullest extent possible, with particular emphasis on decreasing health risks to children, who are particularly sensitive to lead exposure (see section II.C.1).

Specifically, the Agency intends to reduce the amount of lead introduced into the environment by developing methods to identify geographic "hot spots," implementing a lead pollution prevention program using regulatory mechanisms, minimizing lead pollution

[5] U.S. EPA, Report of the Joint Study Group on Lead: Review of Lead Carcinogenicity and EPA Scientific Policy on Lead (EPA–SAB–EHC–90–001), December 1989, available for inspection as part of the public docket for this rulemaking at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[6] Ryu, J.E., E.E. Ziegler, S.E. Nelson, and S.J. Fomon, 1983. Dietary Intake of Lead and Blood Lead Concentration in Early Infancy. *Am. J. Dis. Child* 137:886.

[7] U.S. EPA, 1986. Air Quality Criteria for Lead. See this document for a summary of data concerning the effects of lead exposure on neurobehavioral development. For further information on the effects of low blood lead levels on the neurobehavioral development of children, see Exhibit 3–4 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 6, available for inspection as part of the public docket for this rulemaking at room M2427, U.S. EPA, 401 M Street, SW., Washington DC 20460.

[8] The method for determining when an RQ or more of a hazardous substance in a mixture or solution has been released is codified at 40 CFR 302.6(b).

[9] In addition, some of these waste streams contain cadmium and hexavalent chromium, which have 10-pound RQs.

through traditional pollution control devices, developing and transferring abatement technology to lead pollution sources, and ensuring the availability of environmentally sound recycling of lead.

To date, the Agency has made progress toward reducing environmental exposure to lead. There have been large reductions in concentrations of lead in air and in food products since the late 1970's, primarily due to the phase-down of lead use in gasoline. While data are not available on changes to concentrations of lead in soil over time, it is likely that reductions in soil deposition have occurred as air emissions have declined.[10]

Section II of this preamble discusses the rationale for RQ adjustments in general, describes the methodology used in adjusting RQs from their statutory levels, and explains the specific RQ adjustments promulgated in today's final rule. Section III of this preamble addresses RQ adjustments promulgated today under section 311 of the CWA. Section IV describes the changes made to 40 CFR part 355 to reflect the RQ adjustment for one EHS, MIC, that is promulgated in today's rule. Section V describes minor conforming changes to the footnotes that accompany the lists of hazardous substances and EHSs in 40 CFR parts 302 and 355. Section VI provides a summary of the regulatory analyses supporting this final rule.

II. Reportable Quantity Adjustments

A. Introduction

In this rulemaking, the Agency is promulgating RQ adjustments based on specific scientific and technical criteria that relate to the possibility of harm from the release of a hazardous substance into the environment. The RQ adjustments made today will enable the Agency to focus its resources on those releases that are more likely to pose threats to public health or welfare or the environment. The net effect of these 30 RQ adjustments will be to relieve the regulated community and emergency response personnel from the burden of making and responding to reports of releases that are less likely to pose such threats.

B. Summary of the Reportable Quantity Adjustment Methodology

The Agency has wide discretion in adjusting the statutory RQs for hazardous substances under CERCLA. Administrative feasibility and practicality are important considerations. The Agency's methodology for adjusting the RQs of individual hazardous substances begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance.[11] The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity.

Generally, for each intrinsic property, the Agency ranks hazardous substances on a scale, associating a specific range of values on each scale with an RQ value of 1, 10, 100, 1000, or 5000 pounds.[12] These RQ levels were originally established pursuant to CWA section 311 (see 40 CFR part 117 and 44 FR 50776, August 29, 1979). The data for each hazardous substance are evaluated using various primary criteria; each hazardous substance may receive several tentative RQ values based on its particular intrinsic properties. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance.

The Agency is promulgating 10-pound RQs today for lead metal, lead compounds, lead-containing hazardous wastes, and MIC based on the tentative RQs these hazardous substances received when evaluated for chronic toxicity.[13] Under the methodology for developing chronic toxicity tentative RQs, each substance is first assigned two rating values, one based on the dose that causes a particular effect, and one based on the severity of the effect. The dose rating values range from one to 10, with 10 representing the most toxic substances. The effect rating values also range from one to 10, with 10 representing the most severe effect. The product of the dose and effect rating values for the substance yields a composite score between one and 100, which is directly proportional to the toxicity of the substance. Chronic toxicity tentative RQs are then assigned on the basis of the composite score as shown in Table 1:

TABLE 1.—RELATIONSHIP OF COMPOSITE SCORES TO CHRONIC TOXICITY TENTATIVE RQS

Composite score	RQ (lbs.)
81–100	1
41–80	10
21–40	100
6–20	1000
1–5	5000

After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain degradative processes, which are used as secondary adjustment criteria. These natural degradative processes are biodegradation hydrolysis, and photolysis (BHP).[14] If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, its RQ (as determined by the primary RQ adjustment criteria), is generally raised one level.[15] This adjustment is made because the relative potential for harm to public health or welfare or the environment posed by the release of such a substance is reduced by these degradative processes. Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ for the original substance. The downward adjustment is appropriate because the hazard posed by the release of the original substance is increased as a result of BHP.

On August 30, 1989 (54 FR 35988), the Agency proposed to add the methodology for developing threshold planning quantities (TPQs) pursuant to EPCRA section 302 to the RQ adjustment methodolgy. The RQ adjustment methodology used to calculate the proposed RQ adjustments for lead and lead compounds published in the May 8, 1992, NPRM (see 57 FR 20018) included application of the TPQ criteria in order to reflect the proposed addition of these criteria to the RQ adjustment methodology in the August 30, 1989 NPRM. However, the proposed

[10] U.S. EPA, 1990. U.S. Environmental Protection Agency Strategy for Reducing Lead Exposures. Office of Pesticides and Toxic Substances.

[11] A different methodology applies for assigning adjusted RQs to radionuclides (see 54 FR 22524, May 24, 1989).

[12] RQ levels for potential carcinogens are 1, 10, and 100 pounds; for ignitable and reactive hazardous substances, 10, 100, 1000, and 5000 pounds; and for radionuclides, 10^{-3}, 10^{-2}, 10^{-1}, 1, 10, 100, and 1000 curies.

[13] For further information on the chronic toxicity RQ adjustment methodology, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 2, available for inspection as part of the public docket for this rulemaking at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[14] For further information on the methodology for applying BHP, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 1, March 1985, available for inspection as part of the public docket for this rulemaking at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[15] No RQ level increase based on BHP occurs if the primary criteria RQ is already at its highest possible level (100 pounds for potential carcinogens and 5000 pounds for all other types of hazardous substances except radionuclides). BHP is not applied to radionuclides.

addition of the TPQ criteria to the RQ adjustment methodology has not yet been promulgated. Consequently, the Agency has not finalized the application of the methodology for developing TPQs in its evaluation of the hazardous substances whose RQs are being adjusted today.

In the May 8, 1992, NPRM (57 FR 20018), the Agency noted that application of the TPQ criteria to the substances evaluated in the proposed rule did not affect any of the proposed RQs. Likewise, the RQ adjustments promulgated in today's final rule would be the same whether the current RQ adjustment methodology, or the proposed expanded methodology, is used.

C. Basis of RQ Adjustments for Lead Metal, Lead Compounds, and Lead-Containing Hazardous Wastes

1. Summary of Data on Neurotoxic Effects of Lead in Children

As mentioned in section I.B.2 of this preamble, available data show a clear relationship between blood lead levels in children and a variety of neurotoxic effects.[16] Children may be at greater risk of neurobehavioral impairment in part because their nervous systems are undergoing rapid development, their physiological defense mechanisms against toxicants are not effective as those of adults, they characteristically ingest foreign objects, and they absorb significantly more lead from these objects than do adults.[17]

Studies in children demonstrate conclusively that low blood lead levels are associated with neurobehavioral impairments, and that the severity of neurobehavioral impairment increases with increasing blood lead levels. Findings of severe nervous system damage at high blood lead levels in certain studies confirm the validity of findings of similar, but less severe, damage at lower levels.[18]

Studies of children with lower blood lead levels (10 to 15 μg/dL) show less severe but still detectable neurobehavioral changes, including a positive correlation between blood lead levels and neurobehavioral defects. A series of recent prospective studies in children support the relationship between low levels of lead exposure and detectable neurobehavioral impairment. Prospective studies identify a group of individuals who may be at risk from long-term exposure and then monitor exposure, as well as the health effects resulting from that exposure, over time. Prospective experiments are particularly important because adverse effects in an exposed child can be studied from early pregnancy through childhood. During this period, levels of environmental lead can be accurately and continuously assessed. Prospective studies, therefore, avoid many of the problems associated with retrospective studies, in which exposure levels must be estimated months or years after exposure began. Prospective studies in a group of Boston children from six months to 2 years of age showed impaired responses in tests of mental development associated with prenatal blood lead levels of 10 to 25 μg/dL.[19] In addition, a study of Australian children has shown that early childhood exposures to low levels of lead results in impaired intellectual development at two, four, and seven years of age.[20]

Based on current available prospective and cross-sectional studies,[21] the Agency believes that exposure of children to lead resulting in blood lead levels of as low as 10 to 15 μg/dL represents a health concern. This conclusion is further supported by consistent findings in a large body of experimental animal studies.[22]

2. Application of the RQ Adjustment Methodology to Neurotoxicity Data

In light of recent data on the neurotoxic effects of lead on children, EPA has decided to reassess the RQs for lead metal as well as the lead compounds and lead-containing hazardous wastes that are CERCLA hazardous substances using the RQ adjustment methodology (see section II.B of this preamble). Application of the RQ adjustment methodology for a CERCLA hazardous substance begins with the derivation of a "primary criteria RQ" for each of the several primary criteria, including chronic toxicity (which considers neurotoxic effects). Based on the application of the chronic toxicity criterion used to assign tentative RQs (described in section II.B) to the neurotoxicity data on lead summarized above, EPA has calculated composite scores of between 44.8 and 51.1 for lead metal and each of the individual lead compounds included in today's final rule.[23] As indicated by Table 1 in Section II.B, the composite scores for lead and lead compounds correspond to tentative chronic toxicity RQs of 10 pounds. Therefore, lead metal and all lead compounds listed in Table 1 are assigned final adjusted RQs of 10 pounds based on chronic toxicity.

The Agency considered the individual characteristics, including bioavailability[24] and molecular weight, of lead metal and each of the lead compounds in deriving the RQs promulgated in today's rule. The specific chemical forms of lead whose RQs are adjusted in today's rule have not been assigned differential bioavailabilities because, based on a review of the available literature on humans, ingestion of these chemical forms of lead results in blood lead levels that are capable of posing a similar degree of hazard to public health or welfare.[25] The Agency has adjusted the

[16] See U.S. EPA, 1990. Air Quality Criteria for Lead, Supplement to the 1986 Addendum, Volume I.

[17] For a discussion of and citations to the studies on the absorption of lead through the gastrointestinal tract in newborn children, see section 3 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 6, available for inspection as part of the public docket for this rulemaking at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[18] For discussion of and citations to the studies on the effects of high blood lead levels, see section 3 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 6, available for inspection as part of the public docket for this rulemaking at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460

[19] Bellinger, D. et al., 1989. Low-level Lead Exposure and Early Development in Socioeconomically Advantaged Urban Infants. In: Smith, M.A., Grant, L.D., Sors, A.I., eds Lead Exposure and Child Development: An International Assessment. Lancaster, United Kingdom.

[20] Baghurst, P.A., A.J. McMichael, N.R. Wigg, G.V. Vimpani, E.F. Robertson, R.J. Roberts, and S. Tong. 1992. Environmental exposure to lead and children's intelligence at the age of seven years. New England Journal of Medicine, Vol. 327, No. 18, pp. 1279–1284.

[21] For a discussion of and citations to the prospective and cross-sectional studies used to support the association between low level lead exposures and neurotoxicological effects in children, see section 3 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 6, available for inspection as part of the public docket for this rulemaking at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460. In addition, for a more detailed review and assessment of these prospective and cross-sectional studies, see U.S. EPA, 1990. Air Quality Criteria for Lead, Supplement to the 1986 Addendum, Volume I.

[22] For a discussion of the neurotoxicological effects of lead exposure in experimental animals, see section 3 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 6, available for inspection as part of the public docket for this rulemaking at room M2427, U.S. EPA, 401 M Street, SW., Washington DC 20460.

[23] For a table providing the dose and effect ratings for each of these substances, see Exhibit 3–5 in the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 6, available for inspection as part of the public docket for this rulemaking at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[24] Bioavailability represents the rate and extent to which a substance is absorbed or otherwise assimilated into body tissue following exposure by various routes, such as ingestion.

[25] U.S. EPA, 1986. Air Quality Criteria for Lead, Volumes I-IV. Available from the National Technical Information Service (NTIS), Springfield, VA, PB87–142378.

dietary lead intake levels for lead metal and each of the lead compounds by calculating the product of the intake level for lead metal and the fractional contribution of lead, based on the molecular weight of each compound.[26] These differences in dietary lead intake levels for lead metal and each of the lead compounds result in various composite scores (see discussion above) that are all within the range corresponding to a chronic toxicity RQ of 10 pounds.[27] The assignment of 10-pound RQs to each of the lead-related substances in this rule is not equivalent to a determination that each of these substances is equally bioavailable.

After evaluation under the primary criteria, lead metal and lead compounds were evaluated for the secondary RQ adjustment criteria of BHP. This evaluation did not result in any changes to the primary criteria RQs.[28]

3. RQ Adjustments for Lead Metal, Lead Compounds, and Lead-Containing Hazardous Wastes

As a result of the application of the RQ adjustment methodology to the neurotoxicity data on lead metal and lead compounds, EPA today is promulgating adjusted RQs for 13 individual lead-containing hazardous substances, 15 lead-containing hazardous waste streams, and the TC wastes that are toxic by virtue of their lead constituents.[29]

The RQs for all 13 individual hazardous substances are adjusted to 10 pounds based on the primary criterion of chronic toxicity; none of their RQs was adjusted upward or downward based on BHP. The RQ for a hazardous waste stream is the same as the lowest of the RQs of the substances that are constituents of the waste stream. Each of the RQs for the 15 lead-containing hazardous waste streams is being adjusted to 10 pounds because the lowest RQ for any hazardous constituent in each of the waste streams is 10 pounds.[30] If the quantity of one or more of the hazardous constituents of a mixture (including a waste stream) is unknown, notification is required when the total amount of the mixture released equals or exceeds this lowest RQ of the constituents (10 pounds in the case of the lead-containing waste streams). However, where the quantities of the hazardous constituents of a mixture are known, notification is required only when an RQ or more of any hazardous constituent is released. Each TC waste that is toxic by virtue of its lead constituents receives an RQ of 10 pounds, which is equal to the RQ for soluble lead salts. For further discussion of how EPA derives the RQs for TC wastes, see section I.B.1 of this preamble.

One other lead compound (tetraethyl lead), and one lead-containing waste stream (K052), were assigned to 10-pound RQs based on chronic toxicity in a previous final rule (51 FR 34534, September 29, 1986). Because the application of the RQ adjustment methodology to the neurotoxicity data on lead metal and lead compounds results in 10-pound RQs for these two substances, no adjustment to their existing 10-pound RQ levels need be made, and the primary criterion on which their RQs are based (chronic toxicity) remains the same. However, the neurotoxicity data summarized in section II.C.1 above provide additional support for the 10-pound RQs for tertraethyl lead and waste stream K052. These neurotoxicity data are available for inspection in the docket for this rulemaking (Docket Number 102 RQ–31L).[31]

The RQ for one other lead compound, lead arsenate, also is not being adjusted in this rulemaking. Lead arsenate was assigned a one-pound RQ in the August 14, 1989 final rule (54 FR 33426) based on the potential carcinogenicity of arsenic. Because the current one-pound RQ for lead arsenate is based on the potential carcinogenicity of arsenic and is lower than the 10-pound RQs promulgated today for lead metal, the lead compounds discussed herein, and lead-containing waste streams, the RQ for lead arsenate does not need to be readjusted in today's final rule.

4. Response to Comments

a. *Bioavailability.* Bioavailability can be considered as part of the chronic toxicity RQ adjustment methodology. However, the limited available data concerning the bioavailability of lead metal and lead compounds are not sufficient to change the RQs for any of these hazardous substances from the 10-pound level.

Four commenters claimed that EPA incorrectly assigned the same RQ level (10 pounds) to all lead compounds and that the Agency failed to consider the differing bioavailabilities of various forms of lead. In particular, the commenters asserted that lead sulfide is significantly less bioavailable than other lead compounds (e.g., lead acetate) used by EPA as the basis for the proposed RQs.

The commenters provided the Agency with new data on the bioavailability of lead acetate and mining waste soils (which contain lead sulfate).[32] The Agency did not propose to specifically regulate lead-containing mining wastes as part of this rule. In addition, because these data are derived from studies of mining waste, rather than from studies of lead metal or particular lead compounds, the data could not be used to establish RQs for the specific lead compounds in this rule.

The commenters also provided data comparing the solubility of lead acetate and lead sulfate in simulated gastric fluid. These data demonstrate that lead acetate is 10,000 times more soluble than lead sulfate in water, but also show that after two hours in simulated gastric fluids (to reflect the holding time in the stomach), lead acetate is only five times more soluble than lead sulfate. Lead acetate would need to be at least eight times more bioavailable than lead sulfate to raise the RQ for lead sulfate from 10 pounds to 100 pounds. The commenters did not provide any direct data on bioavailability, but the data they provided on solubility do not suggest that the differences in bioavailability between lead acetate and lead sulfate

[26] The dose derived from this intake level was used as the minimum effective dose for purposes of RQ determination. For more detailed discussion, see sections 2 and 3 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 6, and the Reportable Quantity Document for each individual lead compound, available for inspection as part of the public docket for this rulemaking at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[27] For a list of the composite scores for lead metal and each of the lead compounds, see Exhibit 3–6 in section 3 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 6, available for inspection as part of the public docket for this rulemaking at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[28] In addition to the evaluations based on the primary and secondary criteria, EPA has proposed that the TPQ criteria be incorporated into the RQ adjustment methodology (see Section II.B of this preamble). Of the lead-related substances whose RQs are adjusted in today's rule, none meet the first of the TPQ criteria (i.e., fall within the limits of the EHS screening criteria). Therefore, none of the primary criteria RQs for lead metal, lead compounds, and lead-containing hazardous wastes whose RQs are adjusted in today's rule would be affected by application of the TPQ criteria.

[29] These RCRA characteristic wastes are considered as one hazardous substance for the purposes of today's final rule.

[30] All of these waste streams contain at least one of the lead compounds adjusted to 10 pounds today. In addition, some of these waste streams contain cadmium and hexavalent chromium, which have 10-pound final RQs.

[31] See section 3 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 6, and the Reportable Quantity Document for Tetraethyl Lead, available for inspection as part of the public docket for this rulemaking at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[32] Freeman, G.B., et al. 1992. Relative Bioavailability of Lead from Mining Waste Soil in Rats. Fund and Appl. Tox. 19:388–398.

are sufficient to raise the RQ for lead sulfate.[33]

EPA considered the limited available data related to the bioavailability of lead compounds in the assignment of RQs to lead metal and lead compounds. Recent scientific evidence, including the studies cited by the commenters, is consistent with the Agency's position that all chemical forms of lead that have been tested are ultimately absorbed in the gastrointestinal tract. Furthermore, the data provided by the commenters on the differences in solubility of various lead compounds in simulated gastric fluids do not suggest that any differences in bioavailability would change the RQs for any of these compounds from the 10-pound level. For a more detailed explanation of solubility and bioavailability issues, see Section 3 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 6, available for inspection as part of the public docket for this rulemaking at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

b. *Potential carcinogenicity.* EPA received several comments on the classification of lead and lead compounds as potential carcinogens. Because the RQ adjustments promulgated in today's rule are based on chronic toxicity rather than potential carcinogenicity, these comments are addressed only in the comment response document which is available for inspection as part of the public docket for this rulemaking at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

c. *Mixture rule.* Three commenters requested that EPA adjust the RQs for waste streams K048, K049, and K051 to 5000 pounds rather than 10 pounds, as proposed. One commenter requested the EPA adjust the RQ for waste stream K061 to 1000 pounds rather than 10 pounds. In addition, one commenter stated that a generic RQ of 10 pounds for waste streams K069 and K100 is inappropriate. In a final rule promulgated on August 14, 1989 (54 FR 33440), the Agency stated that the RQ assigned to a hazardous waste stream is the lowest RQ of any of its constituents. As mentioned in section II.C.3 of this preamble, each of the 10-pound RQ adjustments for the 15 lead-containing hazardous waste streams is appropriate because the lowest RQ for any of the hazardous constituents in these waste streams is 10 pounds.

These five commenters generally argued that the RQs for these waste streams should take into account the low concentrations of hazardous constituents. Three of the commenters recommended that the Clean Water Act mixture rule used to determine reporting requirements for mixtures of hazardous substances also be applied to hazardous waste streams. EPA would like to clarify that 40 CFR 302.6(b)(1)(i) states that the mixture rule can be applied only if the person in charge of a facility knows the concentrations of all hazardous constituents of the mixture. EPA acknowledges that the process of determining the precise quantities of hazardous constituents in a waste stream in some cases may be difficult or impossible. However, such a determination is not required by the RQ regulations. Under 40 CFR 302.6(b)(1)(ii), where the quantities of constituents of a mixture are not known, the person in charge is required to report when the total amount of the waste stream released equals or exceeds the RQ for the hazardous constituent with the lowest RQ (i.e., the RQ for the waste stream). Although EPA recognizes that this latter approach would result in a greater number of notifications being received by the National Response Center and by State and local authorities, such an increase would be appropriate because it would ensure that government personnel are able to evaluate the need for a response to the release of a waste stream that may have above-average concentrations of hazardous constituents.

d. *Scope of substances covered.* One commenter requested that releases of "expended lead shot and bullets [in sports shooting activities] be specifically exempted from CERCLA reporting requirements" in the final rule adjusting RQs for lead and lead compounds. The commenter asserted that in establishing CERCLA section 103, Congress did not intend to require reporting of all releases associated with shooting at target ranges.

EPA has established by regulation that notification of a release of an RQ of solid particles of lead metal is not necessary if the diameter of the lead metal particles released is greater than 100 micrometers (see 40 CFR 302.6(d) and 50 FR 13461, April 4, 1985). If, however, sports shooting activities result in the release of 10 pounds or more of lead metal with a particle size of less than 100 micrometers into the environment, the release must be reported immediately to the National Response Center and to state and local authorities.

Although Congress created specific statutory exemptions from the notification requirements of CERCLA section 103 for several types of releases, Congress did not create an exemption from CERCLA reporting requirements for releases associated with shooting at target ranges. Therefore, under the statute, releases associated with such activities are not exempt from CERCLA reporting requirements.

To the extent that a release associated with sports shooting activities is "continuous" and "stable in quantity and rate" as those terms are defined in the continuous release reporting regulation (40 CFR 302.8), the person in charge of the facility may be subject to the reduced reporting requirements for continuous releases authorized by CERCLA section 103(f)(2). If the criteria described in 40 CFR 302.8 are met, the person in charge need not report each release as it occurs, as would otherwise be required under CERCLA section 103(a). Rather, if the criteria for continuous releases are met, the person in charge of the facility must make only one telephone call to the National Response Center, the State emergency response commission (SERC), and, the local emergency planning committee (LEPC); submit to the EPA Region, the SERC, and the LEPC a written report characterizing the release; and submit a follow-up report one year later to the EPA Region. Thereafter, the person in charge must notify EPA only if there is a change in the release, or an increase in the release above the normal range during any 24-hour period.

e. *Statutory requirements for RQ adjustment.*

One commenter stated that the May 8, 1992, NPRM is arbitrary and capricious because EPA failed to present toxicity and exposure information sufficient to demonstrate that the proposed RQs for lead and lead compounds are necessary to prevent substantial danger to public health or the environment. The commenter then suggested that to determine whether substantial danger exists, some reasonable analysis is necessary to establish that the magnitude and duration of potential exposure are sufficient to pose a real threat of chronic effects.

EPA disagrees with the commenter's premise that the reason for adjusting RQs under CERCLA is that the adjusted RQ is "necessary to prevent substantial danger to public health or the environment." Apparently, the

[33] Bioavailability, as used here, means the relationship between the amount of lead ingested and the amount of lead that enters the bloodstream, as measured by blood lead levels. Solubility, as used here, is the degree to which lead dissolves in the gastric fluid of the stomach. Thus, these two terms are not synonymous. For example, studies reviewed by EPA show that although lead acetate is 100 percent soluble in gastric fluid, only 16 percent of the lead acetate ingested is absorbed into the bloodstream.

commenter has misinterpreted CERCLA section 102(a) which requires the EPA Administrator to designate as hazardous substances those substances "which when released into the environment may present substantial danger to public health or welfare or the environment." CERCLA section 102(a) further requires the Administrator to "promulgate regulations establishing that quantity of any hazardous substance the release of which shall be reported pursuant to section 103 of this title." Thus, the substantial danger standard applies not to RQ adjustments, but to the evaluation that must occur as a prerequisite to listing additional hazardous substances (beyond those required to be listed under section 101(14) under CERCLA.

RQs are adjusted based on specific scientific and technical criteria that relate to the possibility of harm from the release of a hazardous substance. It is important to note, however, that RQs do not represent determinations of absolute risk. Rather, RQs are merely reporting triggers that will allow appropriate government personnel to conduct an assessment to determine whether a particular release of a hazardous substance poses a threat to public health or welfare or the environment.

f. *Lead chromate pigments.* One commenter objected to EPA's determination that specific forms of lead would not be assigned differential bioavailabilities because the absorption rates of different chemical forms of lead appear to be about equal. The commenter stated that the health effects resulting from exposure to a substance are related to the bioavailability of the substance. The commenter further stated that lead chromate pigments have extremely low bioavailability because they have very low solubility in stomach acid.

Because lead chromate is not specifically listed as a CERCLA hazardous substance and its RQ is not adjusted in today's rule, EPA has not made a regulatory determination that specifically assessed the bioavailability of lead chromate. However, as discussed in greater detail in section II.C.4.a of this preamble, differences in the solubility of the lead compounds whose RQs are adjusted in this rule are not sufficient to change the RQs for any of these substances from the 10-pound level.

The commenter also noted that lead chromate pigments are used and disposed of safely in a variety of commercial applications, and are extensively regulated under current statutes and regulations. EPA acknowledges that lead chromate pigments are used in a variety of industrial applications and that industrial hygiene practices can be used to minimize worker exposure. EPA encourages these protective measures. EPA would like to clarify that regulation of the industrial uses of, and worker exposure to, lead chromate are beyond the scope of this rule. As noted by the commenter, regulations pertinent to these issues can be found in Federal labor regulations. The Occupational Safety and Health Administration (OSHA) lead standard (29 CFR 1910.1025), regulates exposure to lead (including lead metal and all inorganic lead compounds) in the workplace. OSHA hazardous waste operations and emergency response and health and safety programs (29 CFR 1900.120(b)) require that employers develop and implement written programs that identify, evaluate, and control safety and health hazards, and provide for emergency response for hazardous waste operations.

Releases of hazardous substances into the environment in amounts equal to or greater than their reportable quantities (RQ) must be reported immediately to the National Response Center under section 103 of CERCLA and to the SERC and LEPC under EPCRA section 304. The purpose of these notification requirements is to give appropriate government personnel the opportunity to decide whether a response action is necessary to protect public health or welfare or the environment. By contrast, the OSHA regulations cited by the commenter require protective practices and equipment to prevent exposure to hazardous chemicals in the workplace and procedures for communicating relevant hazards to workers.

The list of hazardous substances in 40 CFR 302.4 includes certain classes of compounds designated as toxic pollutants under section 307(a) of the Clean Water Act. In the April 4, 1985, final rule (50 FR 13461), after a technical review of their hazardous constituents, the Agency decided not to establish RQs for these classes of compounds, including the category "lead and compounds." Thus, CERCLA section 103 reporting requirements apply only to those lead compounds for which RQs are otherwise specifically listed under the statutes referenced in CERCLA section 101(14) (see Table 302.4 of 40 CFR 302.4). Although lead chromate falls under the class of "lead and compounds," lead chromate is not otherwise specifically listed as a CERCLA hazardous substance. For this reason, lead chromate has not been assigned an RQ and, consequently, releases of lead chromate are not subject to CERCLA section 103 or EPCRA section 304 reporting requirements. It is important to note, however, that releases of lead chromate remain subject to response, abatement, and liability provisions under CERCLA.

The commenter has indicated that certain lead chromate pigments contain lead sulfate and that both lead metal and lead nitrate are used in the manufacturing process for lead chromate pigments. Unlike lead chromate, each of these three lead-related substances is specifically listed as hazardous in Table 302.4 of 40 CFR 302.4 and each is assigned a 10-pound adjusted RQ in this rule. CERCLA section 103 and EPCRA section 304 reporting requirements would apply, therefore, to releases of lead sulfate, lead metal, or lead nitrate into the environment in a quantity that equals or exceeds 10 pounds, and to releases of lead chromate mixtures containing those substances calculated in accordance with the mixture rule set forth in 40 CFR 302.6(b).

In addition, lead metal and hexavalent chromium (two of the three elements that constitute the compound lead chromate) are the constituents for which 11 of the RCRA waste streams in this rule are listed as hazardous. These 11 waste streams are K002, K003, K004, K005, K049, K051, K061, K062, K069, K086, and K100. A release of any of these waste streams into the environment must be reported pursuant to the notification requirements for releases of mixtures or solutions in 40 CFR 302.6(b). Upon promulgation of this rule, the RQ for these 11 waste streams will be 10 pounds based on the 10-pound RQ for lead metal and hexavalent chromium which are the constituents with the lowest RQs. If the concentrations of the constituents of one of these waste streams is known, notification is required where amounts equal to or greater than an RQ of any hazardous constituent (e.g., 10 pounds or more of hexavalent chromium or lead metal) is released into the environment. If the quantity of one or more of the hazardous constituents of a waste stream is unknown, notification is required where an amount of the waste stream equal to or greater than its RQ (10 pounds) is released. Four of these waste streams may be of particular interest to the commenter (K002, K003, K005, and K086) because each of these waste streams may be produced by the lead chromate pigment industry. The Agency has not identified the nature of the lead compounds contained in these waste streams, but has based the adjusted RQ for the waste streams on the RQs for lead metal and the lead compounds that are established in today's rule.

RCRA characteristic wastes containing lead and/or chromium that fail the RCRA toxicity characteristic (TC) leaching procedure are unlisted hazardous wastes D007 (chromium) and D008 (lead) (55 FR 11798, March 29, 1990). Pursuant to CERCLA section 101(14)(C), these wastes are also CERCLA hazardous substances with 10-pound RQs. The 10-pound RQs for these wastes are based on the RQs for their hazardous constituents, chromium and lead.

g. *Reporting and response burden.* Several commenters stated that the proposed RQ adjustments, in particular the adjustment of the RQ for lead sulfide from the statutory 5000-pound level to 10 pounds, would impose rather than relieve a regulatory burden.

The Agency was referring to the net effect of the RQ adjustments proposed in the May 8, 1992, NPRM (57 FR 20014) in its assertion that these RQ adjustments would relieve the regulated community and emergency response personnel from the burden of unnecessary reporting and response actions. In this final rule, EPA is raising the RQs for 18 hazardous substances and lowering the RQs for 12 hazardous substances from their previous levels. As indicated above, EPA estimates that the net effect of all 30 RQ adjustments would be to reduce by approximately 361 the number of reportable releases for these hazardous substances each year. This reduction in reportable releases is estimated to result in a net cost savings, as discussed in the economic analysis in support of the final rule. The net effect of the 30 RQ adjustments promulgated in today's final rule will be to relieve the regulated community and emergency response personnel from the burden of making and responding to reports of releases that are less likely to pose threats to public health and welfare and the environment.

D. RQ Adjustment for Methyl Isocyanate

1. RQ Adjustment History

As mentioned in section I.B.1, EPA initially proposed to adjust the statutory one-pound RQ for MIC to 100 pounds in the May 25, 1983, NPRM (48 FR 23565). After the December 3, 1984 release of MIC in Bhopal, India, which resulted in over 2,000 human fatalities and approximately 170,000 injuries, EPA withdrew this proposed RQ adjustment in the April 4, 1985, final rule (50 FR 13456) and retained the statutory one-pound RQ, pending further analysis of the data on MIC.

In the March 2, 1988, NPRM (53 FR 6762), EPA announced that it had obtained additional toxicological data on MIC, including new animal studies documented in "Environmental Health Perspectives," Volume 72, and that it was awaiting human toxicological and epidemiological data associated with the release of MIC in Bhopal. EPA has completed its analysis of the animal and human data on the toxic effects of MIC. The discussion below summarizes these data, their application to the RQ adjustment methodology, and the final adjusted RQ for MIC.

2. Summary of Reproductive and Respiratory Studies

At Bhopal contamination of an MIC storage tank increased the pressure within the tank until a key pressure valve burst. Gases containing approximately 40,000 pounds of MIC then surged through the relief vent lines and overwhelmed the scrubber system, escaping unneutralized to the surrounding environment and city of Bhopal. Studies of pregnant women exposed to MIC as a result of this incident show an unusually high mortality rate among fetal and newborn children.[34] For example, one survey conducted nine months after the release of MIC found that miscarriage occurred in approximately 44 percent of all pregnancies, a miscarriage rate four to seven times higher than the average rate in the Bhopal region.[35] The same study found that 14 percent of the infants that had survived birth died within 30 days, a mortality rate five to six times higher than the regional rate.

Reproductive studies of laboratory mice exposed to MIC provide further evidence to support the relationship between exposure to MIC and significant increases in fetal and newborn deaths. One study of pregnant mice exposed to MIC at concentrations of 1 or 3 parts per million (ppm) during a critical period of fetal development demonstrated a positive correlation between concentration of MIC exposure and adverse fetal effects.[36] The mice in the group exposed to the higher concentration of MIC (3 ppm) demonstrated more severe effects, including a high rate of fetal and postnatal mortality through 21 days of age. These effects were exhibited by mice in numerous litters (i.e., the effects were not isolated in a single litter), indicating a low probability that the effects were caused by genetic sensitivity to MIC in particular mice.

Additional animal studies have found a significant relationship between exposure to MIC and impaired lung function.[37] MIC is a lung irritant that stimulates the secretion of excessive amounts of mucus and other protective fluids in the lungs. One study of laboratory mice found that overstimulation of these fluids contributes to impaired lung function and may result in death by asphyxiation.[38] Mice that survived exposure to MIC by inhalation exhibited scar formation in the lungs and decreased respiratory function.

Based on these human and animal studies of the adverse reproductive and respiratory effects of MIC, EPA has re-evaluated MIC using the RQ adjustment methodology (see section II.B of this preamble). Evaluation of MIC based on the chronic toxicity methodology used to assign tentative RQs (which considers reproductive and respiratory effects) resulted in a composite score of 46.[39] As shown in Table 1 in section II.B, this composite score corresponds to a tentative chronic toxicity RQ of 10 pounds. This 10-pound RQ based on chronic toxicity was the lowest tentative RQ resulting from application of the primary RQ adjustment criteria to MIC.[40]

After the application of the primary RQ adjustment criteria, MIC was evaluated under the secondary criteria of BHP. Because MIC undergoes rapid

[34] For discussions of and citations to the studies on the effects of high concentrations of MIC, see Section 4 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 6, available for inspection as part of the public docket for this rulemaking at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[35] Varma, D.R., 1987. Epidemiological and Experimental Studies on the Effect of Methyl Isocyanate on the Course of Pregnancy. In: Hook, G.E., Lucier, G.W., eds. Environmental Health Perspectives. 72:153–157.

[36] Schwetz, B.A. et al., 1987. Methyl Isocyanate: Reproductive and Developmental Toxicology Studies in Swiss Mice. In: Hook, G.E., Lucier, G.W., eds. Environmental Health Perspectives. 72:149–152.

[37] Fowler, E.H. and D.E. Dodd, 1987. Respiratory Tract Changes in Guinea Pigs, Rats, and Mice Following a Single Six-hour Exposure to Methyl Isocyanate Vapor. In: Hook, G.E., Lucier, G.W., eds. Environmental Health Perspectives. 72:109–116.

[38] Bucher, J.R. and L. Uraith, 1989. Carcinogenicity and Pulmonary Pathology Associated With a Single, Two-hour Inhalation Exposure of Laboratory Rodents to Methyl Isocyanate. Chappell, J., ed. Journal of the National Cancer Institute. 81(20):1586–1587.

[39] For further information on the chronic toxicity data for MIC and for its dose and effect ratings, see section 4 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 6, available for inspection as part of the public docket for this rulemaking at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[40] An evaluation of MIC based on acute inhalation toxicity resulted in a tentative RQ of 100 pounds. Because the 10-pound, tentative chronic toxicity RQ (based on reproductive and respiratory effects) is lower than the 100-pound tentative acute toxicity RQ, the primary criteria RQ for MIC is 10 pounds.

hydrolysis in water to form methylamine (which has a 100-pound RQ) and several non-CERCLA substances,[41] the RQ for MIC was proposed to be raised from the primary criteria level of 10 pounds to 100 pounds based on BHP. As discussed in the response to comments below, several commenters on the May 8, 1992, NPRM objected to the application of BHP to raise the RQ for MIC from the primary criteria level of 10 pounds to 100 pounds. Based on a thorough review of the hydrolysis data for MIC, EPA has decided that the application of BHP in this case would be inappropriate. Therefore, the Agency is promulgating a 10-pound adjusted RQ for MIC in today's final rule. For further discussion of the BHP data on MIC, see section 2 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 6, available for inspection in the docket for this rulemaking.[42]

Under the current RQ adjustment methodology, no criteria exist for addressing chronic or delayed effects resulting from single exposures to hazardous substances. Nevertheless, EPA has reviewed a number of studies designed to evaluate delayed, chronic effects in experimental animals following single, brief inhalation exposures similar to those that occurred at Bhopal. Extensive studies of pulmonary changes in rats were conducted in which the animals were observed for periods as long as six months following a single exposure to 3, 10, or 30 ppm of MIC.[43] These studies indicated the delayed development of restrictive lung lesions, persistent airway obstruction, and pulmonary hypertension. A close correlation appears to exist between laboratory animals and Bhopal survivors with respect to chronic pulmonary and cardiopulmonary effects. As discussed in the response to comments below, EPA has conducted an analysis of whether the results of these studies would affect the RQ for MIC.

3. Response to Comments

a. *Studies not considered.* Six commenters stated that the RQ for MIC should not be adjusted until EPA revised its RQ adjustment methodology to allow for consideration of chronic effects from acute or single exposures to a hazardous substance. One of these commenters stated that "EPA chose to ignore valid data simply because it would not fit into a scientific formula. This does not comport with the Agency's policy of erring on the side of conservatism." Another commenter believed that EPA's rationale in the preamble to the May 8, 1992, NPRM was confusing and contained contradictory statements relating to the evaluation of delayed or chronic effects resulting from single exposure to MIC.

In response, the Agency would like to clarify that although the current RQ adjustment methodology considers chronic effects from long-term exposures to hazardous substances, there is no specific mechanism in the methodology to consider chronic effects from acute or single exposures. In order to provide a comprehensive discussion of all types of health effects that may result from exposure to MIC in the May 8, 1992, NPRM, however, EPA mentioned the pulmonary effects that have been found in studies of laboratory rats exposed by inhalation to single doses of MIC.

The commenter did not provide data on the chronic effects from acute exposures to MIC. Nevertheless, EPA has identified and analyzed available data on such chronic effects from acute exposures,[44] and based on its analysis of these relevant data, has concluded that the 10-pound adjusted RQ for MIC promulgated in today's rule would not change. If any additional data come to EPA's attention, the 10-pound RQ for MIC will be re-evaluated and revised, as appropriate.

The analysis performed by the Agency evaluated chronic effects from acute exposures using three variations of the primary criteria under the RQ adjustment methodology: (1) Acute mammalian toxicity (inhalation); (2) acute mammalian toxicity (oral); and (3) chronic toxicity. Evaluation of the data under each of these three alternatives resulted in dose and effect ratings that correspond to a 100-pound tentative RQ.[45] This 100-pound tentative RQ is higher than the 10-pound tentative RQ based on chronic toxicity. Thus, even if the chronic effects from acute exposures to MIC were considered as part of the RQ adjustment methodology, the 10-pound chronic toxicity RQ for MIC would not change.

One commenter requested that EPA consider the risks associated with exposure of individuals suffering from chemical sensitivity in adjusting the RQ for MIC. EPA recognizes that some people are sensitive to extremely low levels of exposure to hazardous substances. It is important to note, however, that the standard for establishing RQs under CERCLA section 102 is not to protect the most sensitive human populations that may be affected by releases of hazardous substances. Rather, the adjusted RQs reflect the level at which the government is most appropriately notified of potential threats to public health or welfare or the environment, without being overburdened by notifications of releases that are unlikely to pose such threats. Once notified, response personnel assess release-specific factors such as location of the release, proximity to drinking water supplies or other valuable resources, and likelihood of exposure or injury to nearby populations to determine whether a government response is necessary to protect public health or welfare or the environment.

b. *Rate of hydrolysis.* Three commenters objected to EPA's application of the secondary RQ adjustment criteria of BHP to adjust the 10-pound chronic toxicity RQ of MIC to 100 pounds. One of these commenters noted that, although the Agency's analysis considered hydrolysis of MIC in water, MIC would not characteristically be discharged to water and that 100 pounds of MIC under dry, windless conditions could present a serious health threat to surrounding communities.

EPA proposed in the May 8, 1992, NPRM to adjust the RQ of MIC from the statutory one-pound level to 100 pounds. In the proposed rule, evaluation of chronic toxicity data on MIC resulted in a primary criterion RQ of 10 pounds. The proposed application of the secondary criteria of BHP resulted in a one-level increase in the adjusted RQ for MIC to 100 pounds. The proposed application of BHP to MIC was based on the rate at which MIC undergoes hydrolysis in water to form methylamine (RQ of 100 pounds) and carbon dioxide. EPA's review of available data in light of concerns raised by the commenter, however, has resulted in an Agency determination that adjusting the RQ for MIC based on

[41] These non-CERCLA substances include carbon dioxide and, under certain conditions, N,N'-dimethylurea and carboxymethylamine.

[42] Docket Number 102 RQ–31L. Application of the TPQ methodology would result in a 100-pound RQ. Thus, the RQ for MIC would be the same whether the current RQ adjustment methodology, or the proposed expanded methodology, is used.

[43] Bucher, J.R., 1987. Methyl Isocyanate: A Review of Health Effects Research Since Bhopal. Fundamental and Applied Toxicology. 9:367–379.

[44] Bucher, J.R., et al., 1989. Carcinogenicity and Pulmonary pathology Associated with a Single 2-Hour Inhalation Exposure of Laboratory Rodents to Methyl Isocyanate. J. Nat. Cancer Inst. 81(20): 1586–1587.

[45] For further information on the three alternatives considered in evaluating chronic effects from acute exposures, see section 4 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 6, available for inspection as part of the public docket for this rulemaking at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

the secondary criteria of BHP would be inappropriate.

The Agency proposed to apply the secondary criterion of hydrolysis to adjust the RQ for MIC in the May 8, 1992, NPRM because MIC hydrolyses in water at 25° Celsius (C) with a half life of approximately nine minutes (see Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 6). Under the standards established by EPA for the RQ adjustment methodology, the secondary criterion of hydrolysis may be applied when the hydrolytic half life is equal to or less than five days (50 FR 13469, April 4, 1985).

The Agency, however, has reserved the right to take into account other factors when applying the secondary criteria for adjustment. For example, the Agency does not apply the biodegradation secondary criterion to any highly volatile substance, unless that substance is also highly water soluble (50 FR 13469, April 4, 1985). This decision was made because biodegradation occurs in soil and water, but not in air.[46] If a highly volatile substance with low water solubility is released, the release will be to air and not to water or soil where biodegradation can occur. The secondary RQ adjustment criterion of biodegration is applied, however, to highly volatile substances that are also water soluble. Ammonia, for example, is a highly volatile gas at standard temperature and pressure that is also highly water soluble. Ammonia that escapes to the atmosphere after release tends to remain there for only a short time before it is returned to the soil or water, as a result of its water solubility, and degraded by naturally occurring bacteria.[47]

Hydrolysis, in a manner similar to biodegradation, is a phenomenon that takes place most readily in soil or water. MIC is volatile, but unlike ammonia, it is not highly water soluble. Upon release, MIC will volatilize and tend to persist in air and not be returned to soil or water where hydrolysis can take place most readily. As noted by EPA previously,[48] the decision to adjust an RQ upward one level on the basis of the BHP criteria requires the existence of technical evidence that the substance is indeed subject to biodegradation, hydrolysis, or photolysis. No such evidence exists for MIC vapor in air.

There are no data suggesting that MIC meets the criteria for biodegradation or photolysis. Although the RQ for MIC was proposed to be adjusted upward based on hydrolysis in the May 8, 1992, NPRM, several properties of MIC, as explained below, suggest that application of hydrolysis in today's final rule would not be appropriate. MIC vapor is approximately twice as dense as air. Therefore, releases of MIC vapor will tend to follow terrain contours and, in the absence of wind or air turbulence, settle in low spots. Even if MIC is released to water, it tends to float on the surface and not mix with the water. This allows most of the MIC to evaporate and form vapor clouds.

The process used by the Agency to calculate the rate of hydrolysis of MIC is based on measurement of its reaction rate in water. The hydrolysis of MIC in water is a three-step process: (1) The collision of MIC with water to form an activated complex; (2) the collapse of the activated complex to form an intermediate and water; and (3) the breakdown of the intermediate to form methylamine and carbon dioxide. The rate-limiting step of this process in aqueous solution has been experimentally shown to be step 2, the collapse of the activated complex to form an intermediate and water.[49] This is reasonable because, in aqueous solution, the collisions between MIC and water are frequent and result in rapid formation of activated complexes (step 1). Also, the intermediate is likely to be less stable than the molecules methylamine and carbon dioxide and will quickly decompose to form these more stable products (step 3).

Although the rate of hydrolysis of MIC in water has been determined, the rate of hydrolysis of MIC in air is unknown. The concentration of water and its availability for reaction in air is variable and, of course, much less than in aqueous solution. As a result, the rate-limiting step of the hydrolysis of MIC in air may be step 1, collision between water molecules and MIC to form activated complexes. Assuming that, in air, the rate of step 1 is markedly less than the rates of steps 2 and 3 of the reaction, the rate of hydrolysis of MIC in air, even moist air, would be much slower than in water.

EPA agrees with the commenter who suggested that MIC is more likely to be released to air than to water. Because MIC is a volatile organic compound that is not very soluble in water and is less dense than water, a significant portion of releases of MIC into water will ultimately enter the air. Furthermore, the rate of MIC's hydrolysis in air is unknown and may be considerably slower than it is in water. As a result of these factors, the Agency has decided not to apply the secondary RQ adjustment criterion of hydrolysis to adjust the 10-pound primary criteria RQ for MIC to 100 pounds. Therefore, the final adjusted RQ for MIC will be 10 pounds, based on chronic toxicity.

c. *Consideration of site-specific factors.* One commenter expressed concern that MIC continues to be produced, emitted, and stored at the Rhone-Poulenc facility in Institute, West Virginia. The commenter noted that the distance of the MIC unit from the fenceline is 1,700 feet, and that the average stored inventory is 320,000 pounds (the maximum stored volume is 400,000 pounds). The commenter stated that the proximity of the unit to the Institute community, and the health effects of MIC are reasons for EPA not to promulgate an RQ adjustment for MIC "that will jeopardize the life and health of individuals directly downwind." The commenter requested that the statutory one-pound RQ for MIC be retained.

EPA understands the commenter's concern regarding the proximity of the Rhone-Poulenc facility to the Institute, West Virginia community and the potential threat to public health posed by the relatively large amount of MIC stored at the facility. EPA has decided that a 100-pound RQ for MIC would be inappropriate because a more thorough analysis of the data on the hydrolysis of MIC in the environment shows that the rate of degradation in air may not be sufficient to meet EPA's standards for applying the secondary RQ adjustment criteria of BHP. Therefore, the RQ for MIC is being adjusted to 10 pounds, the level indicated by the available reproductive and respiratory effects data under the primary RQ adjustment criterion of chronic toxicity.

EPA believes that receiving notification of all releases of 10 pounds or more of MIC is sufficient to allow government personnel to decide whether a response action is necessary to protect public health or welfare or the

[46] For further information on the biodegradation criterion, see section 2 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, volume 1, March 1985, available for inspection as part of the public docket for this rulemaking at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[47] For further information on substances that are both highly volatile and highly water soluble, see section 2 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, volume 2, August 1986, available for inspection as part of the public docket for this rulemaking at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[48] See Section 2 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 1, March 1985, available for inspection as part of the public docket for this rulemaking at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[49] Castro, E. A., et al . The Kinetics of Hydrolysis of Methyl and Phenyl Isocyanates. J. Chem. Soc., Perkin Trans. II, 5:737–42 (1985).

environment. In addition, EPA would like to note that the RQ adjustment methodology does not consider site-specific factors. In enacting CERCLA, Congress recognized that establishing a different RQ for every conceivable release scenario would be infeasible. The legislative history of CERCLA emphasizes the virtues of simplicity and administrative convenience (see Sen. Rep. 848, 96th Cong., 2d Sess. 29 (1980)). EPA considered the option of establishing multiple RQs for each hazardous substance based on such factors as release history, environmental media into which a substance is released, and whether a particular release is likely to require a government response (50 FR 13456, April 4, 1985). However, EPA decided that considering these factors in adjusting RQs would be undesirable because such a process would: (1) Place an intolerable burden on Agency resources; (2) delay the RQ adjustments; and (3) result in a complex reporting system that would cause confusion. EPA believes that the 10-pound final adjusted RQ for MIC will provide notification that is adequate to protect public health and welfare and the environment.

Another commenter stated that the community of Institute, West Virginia, including the industrial facilities, the emergency responders and plant neighbors already have a "good neighbor" policy to report releases in amounts even less than one pound. The commenter stated that each of these groups agree that one pound should and will remain the quantity reported locally. The commenter concluded that EPA's proposal to adjust the RQ for MIC upward "may be entirely moot." If, in fact, the industrial facilities in the Institute, West Virginia area currently are reporting all one-pound releases to local authorities, the Agency believes that the adjusted RQ of 10 pounds for MIC would simply provide the added benefit of requiring notification to the Federal government under CERCLA section 103 and to State emergency response commissions and local emergency planning committees under EPCRA section 304.

A different commenter noted that a small release of only a few ounces at the Rhone-Poulenc facility at Institute, West Virginia in 1990 sent two workers to the hospital, but was not reported to the community residents until three days later. The commenter stated that since this incident, Rhone-Poulenc claims they report all toxic emissions, regardless of the amount. The commenter concluded that the proposed 100-pound RQ adjustment for MIC would only add to the distrust and suspicions that already exist in the community.

The Agency cannot consider and protect against all conceivable release scenarios when establishing an RQ for a hazardous substance. If all such scenarios were to be considered in adjusting RQs, the Federal government would receive a large number of notifications of extremely small releases of hazardous substances. Because of the time and resources necessary to process reports of these numerous releases, the Federal government would be unable to respond in a timely fashion to releases that are more likely to pose a threat to public health or welfare or the environment. In the situation described by the commenter, worker exposure would have occurred regardless of whether the small release of MIC had been reported. Other regulations designed to prevent releases and to protect workers from harmful exposures, such as those administered by the Occupational Safety and Health Administration (OSHA), are designed to address the concerns raised by the commenter.

As noted above, EPA encourages the Institute community and chemical companies in the area to work together to develop a voluntary reporting system that is satisfactory to all parties concerned for releases of MIC that are not covered by the CERCLA and EPCRA reporting requirements.

d. *Industry prevention standards.* One commenter claimed that if the statutory one-pound RQ for an accidental MIC release is adjusted upward 100-fold, industry may become lax with its preventive maintenance programs.

EPA does not agree that an upward adjustment of the reporting level for MIC under CERCLA would decrease industry prevention and planning practices. The provisions of other laws that require planning and prevention practices will apply, regardless of the level at which EPA establishes the final adjusted RQ for MIC.

For example, OSHA's Process Safety Management rule (57 FR 6356, February 24, 1992) requires that employers establish and implement written procedures to maintain the integrity of equipment and to train employees in those maintenance procedures. Under the rule, facilities must also perform tests and inspections on process equipment. These tests must be documented and any deficiencies found in the equipment must be corrected. Members of the Chemical Manufacturers Association are required to participate in the organization's Community Awareness and Emergency Response (CAER) program, which subjects industries to an additional set of process safety management guidelines.

The RQ serves only as a trigger to notify Federal, State, and local government authorities of a release that has the potential to threaten public health or welfare or the environment. It does not have any bearing on the process safety management programs and other prevention regulations to which a facility is subject. Therefore, raising the RQ for a hazardous substance should not result in a relaxation of process safety management standards for a particular facility.

Another commenter requested that EPA "not even consider increasing the levels of toxic chemicals of any kind." The commenter stated that Union Carbide and Rhone-Poulenc chemical facilities in the Institute, West Virginia area leave no safety buffer zone between themselves and a nearby college and the community of Institute. The commenter asserted that if the RQ for an accidental release of MIC is increased 100-fold, the lives and health of residents in a wide area would be threatened. The commenter suggested that EPA should decrease rather than increase allowances for hazardous chemical emissions so that companies will be required to make greater investments in research projects to minimize hazardous wastes as end-products.

EPA appreciates the commenter's concerns regarding potential exposure to hazardous wastes and toxic chemicals. The Agency also supports the goal of waste minimization and encourages companies to research methods of reducing or eliminating hazardous wastes as end products of the manufacturing process.

This goal, however, cannot be accomplished through the RQ notification program. The purpose of the RQs is to establish triggers for notifying appropriate government personnel of releases of hazardous substances so that a decision can be made whether a response action is necessary to protect public health or welfare or the environment. Furthermore, the commenter should note that the level at which RQs are established does not directly affect the ambient levels of toxic chemicals in the environment.

e. *Purpose of upward RQ adjustment.* Five commenters noted that Rhone-Poulenc, the U.S. manufacturer of MIC, did not request that the one-pound statutory RQ for MIC be adjusted to 100 pounds. One commenter asked whether EPA had received a petition for the RQ adjustment, or whether this was "unfinished business on the agency's agenda." This commenter suggested that the Agency serve in an oversight

capacity by supporting both sound science and community involvement in establishing standards for hazardous chemicals.

The EPA Administrator is authorized to adjust RQs under section 102(a) of CERCLA. The adjusted RQ levels are based on specific scientific and technical criteria that relate to the possibility of harm from a release of a hazardous substance into the environment. The adjusted RQs will enable the Agency to focus its resources on those releases that are more likely to pose potential threats to public health or welfare or the environment, while relieving the regulated community and emergency response personnel from the burden of making and responding to reports of releases that are less likely to pose such threats.

The Agency has made a concerted effort to be responsive to community concerns. Specifically, based on public comment, EPA has conducted a thorough review of all available data on the hydrolysis of MIC in water, and has decided that use of the secondary criteria of BHP in its RQ adjustment methodology for MIC would be inappropriate for several reasons (see discussion in section II.D.3.b). As a result of the Agency's decision not to adjust the primary criteria RQ for MIC upward based on its hydrolysis in water, the final adjusted RQ for MIC will remain at the primary criteria RQ level of 10 pounds. Therefore, EPA believes that the final RQ for MIC is supported by sound science and has been developed in response to the concerns raised by the community.

III. Reportable Quantity Adjustments Under Section 311 of the Clean Water Act

In the April 4, 1985, final rule (50 FR 13456), EPA amended 40 CFR 117.3 to make RQs adjusted under CERCLA the applicable RQs for notification of discharges of hazardous substances pursuant to CWA section 311. Ten of the hazardous substances whose CERCLA RQs are adjusted today—lead acetate, lead chloride, lead fluoborate, lead fluoride, lead iodide, lead nitrate, lead stearate, lead sulfate, lead sulfide, and lead thiocyanate—also have RQs under the CWA. Thus, the 10-pound RQ adjustments promulgated for these 10 substances apply to both CERCLA and CWA section 311. Where there is a release of a hazardous substance in a quantity equal to or greater than an RQ into navigable waters, a single report to the National Response Center by the person in charge will satisfy the notification requirements of both statutes. Of course, the owner or operator of the facility may still need to notify State and local authorities under EPCRA section 304. (Note, however, that section 304 does not apply to vessels.) For further discussion of the relationship between CERCLA RQs and CWA section 311 RQs, see the May 25, 1983, NPRM preamble (48 FR 23569) and the April 4, 1985, final rule preamble (50 FR 13473).

IV. Reportable Quantities Listed in 40 CFR Part 355

Appendices A and B of 40 CFR part 355, which list EHSs and their TPQs under EPCRA, also show the RQs for EHSs. One of the 30 substances whose RQs are adjusted in today's rule, MIC, is also an EHS. The RQ for MIC is adjusted from the statutory one-pound level to 10 pounds. Therefore, to fully reflect the RQ adjustment for MIC, EPA today is amending not only Table 302.4 of 40 CFR part 302 (which lists the RQs for all CERCLA hazardous substances), but also appendices A and B of 40 CFR part 355.

V. Minor Conforming Changes to 40 CFR Part 355

Footnote "f" that appears in both appendix A and appendix B of 40 CFR part 355 states that "[t]he statutory 1 pound reportable quantity for methyl isocyanate may be adjusted in a future rulemaking action." A correction notice published on June 25, 1992 (52 FR28471) proposed to remove footnote "f" from appendices A and B of 40 CFR part 355. Because today's final rule establishes a 10-pound adjusted RQ for MIC, the amendatory language for part 355 in today's rule removes footnote "f" from appendices A and B.

VI. Regulatory Analyses

A. Executive Order No. 12291

Executive Order (E.O.) No. 12291 requires that regulations be classified as major or non-major for purposes of review by the Office of Management and Budget (OMB). According to E.O. No. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As demonstrated by an economic analysis performed by the Agency, available for inspection at room M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, this final rule is nonmajor, because it would result in estimated net cost savings of $459,000 annually. In this final rule, RQs, for 18 hazardous substances would be raised and RQs for 12 hazardous substances would be lowered from their previous levels. The estimated net effect of these 30 RQ adjustments would be to reduce by approximately 361 the number of reportable releases for these hazardous substances each year (see the economic analysis mentioned above). The estimated $459,000 annual net cost savings reflect only those effects of the RQ adjustments that are:

(1) Readily quantifiable in dollars; and

(2) Associated with the release notification requirements under CERCLA section 103 and EPCRA section 304 (including the associated activities of recordkeeping, notification processing, monitoring, and response).

This final rule has been submitted to OMB for review, as required by E.O. No. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rulemakings that are likely to have a "significant impact on a substantial number of small entities." A Regulatory Flexibility Analysis is not necessary for this final rule, because the upper-bound total cost of compliance to small firms is negligible. See the Regulatory Impact Analysis of Reportable Quantity Adjustments Under sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act, Volume I, March 1985, available for inspection at room M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Therefore, I hereby certify that today's rule will not have a significant impact on a substantial number of small entities. As a result, no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

The information collection requirements contained in this final rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The public reporting burden for the collection of information pursuant to CERCLA section 103 is estimated to average 4.2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and

maintaining the data needed, and completing and reviewing the collection of information. These information collection requirements have been assigned OMB control number 2050–0046. The public reporting burden for the collection of information pursuant to EPCRA section 304 is estimated to be 5 hours per response (OMB control number 2050–0092).

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects

40 CFR Part 117

Hazardous substances, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 302

Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 355

Air pollution control, Chemical accident prevention, Chemical emergency preparedness, Chemicals, Community emergency response plan, Community right-to-know, Contingency planning, Disaster assistance, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous substances, Intergovernmental relations, Natural resources, Penalties, Reportable quantity, Reporting and recordkeeping requirements, Superfund Amendments and Reauthorization Act, Threshold planning quantity, Water pollution control, Water supply.

Dated: April 30, 1993.

Jonathan Cannon,

Acting Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

1. The authority citation for part 117 continues to read as follows:

Authority: Secs. 311 and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), ("the Act") and Executive Order 11735, superceded by Executive Order 12777, 56 FR 54757.

2. Section 117.3 is amended by revising the following entries in Table 117.3 to read as set forth below. The note preceding Table 117.3 is republished without change.

§ 117.3 Determination of reportable quantities.

* * * * *

Note: The first number under the column headed "RQ" is the reportable quantity in pounds. The number in parentheses is the metric equivalent in kilograms. For convenience, the table contains a column headed "Category" which lists the code letters "X," "A," "B," "C," and "D" associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively.

TABLE 117.3.—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES DESIGNATED PURSUANT TO SECTION 311 OF THE CLEAN WATER ACT

Material	Category	RQ in pounds (kilograms)
* * * * *		
Lead acetate	A	10 (4.54)
* * * * *		
Lead chloride	A	10(4.54)
Lead fluoborate	A	10(4.54)
Lead fluoride	A	10(4.54)
Lead iodide	A	10(4.54)
Lead nitrate	A	10(4.54)
Lead stearate	A	10(4.54)

TABLE 117.3.—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES DESIGNATED PURSUANT TO SECTION 311 OF THE CLEAN WATER ACT CONTINUED

Material	Category	RQ in pounds (kilograms)
Lead sulfate	A	10(4.54)
Lead sulfide	A	10(4.54)
Lead thiocyanate	A	10(4.54)
* * * * *		

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

3. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

4. Section 302.4 is amended by revising the note preceding Table 302.4 and the following entries in Table 302.4 to read as set forth below.

§ 302.4 Designation of hazardous substances.

* * * * *

Note: The numbers under the column headed "CASRN" are the Chemical Abstracts Service Registry Numbers for each hazardous substance. Other names by which each hazardous substance is identified in other statutes and their implementing regulations are provided in the "Regulatory Synonyms" column. The "Statutory RQ" column lists the RQs for hazardous substances established by section 102 of CERCLA. The "Statutory Code" column indicates the statutory source for designating each substance as a CERCLA hazardous substance: "1" indicates that the statutory source is section 311(b)(4) of the Clean Water Act, "2" indicates that the source is section 307(a) of the Clean Water Act, "3" indicates that the source is section 112 of the Clean Air Act, and "4" indicates that the source is RCRA section 3001. The "RCRA Waste Number" column provides the waste identification numbers assigned to various substances by RCRA regulations. The column headed "Category" lists the code letters "X," "A," "B," "C," and "D," which are associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively. The "Pounds (kg)" column provides the reportable quantity adjustment for each hazardous substance in pounds and kilograms.

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste no.	Category	Pounds (kg)
Acetic acid, Lead(2+) salt	301042	Lead acetate	5000	1,4	U144	A	10 (4.54)
Lead††	7439921		1*	2		A	10 (4.54)
Lead acetate	301042	Acetic acid, lead(2+) salt	5000	1,4	U144	A	10 (4.54)
Lead, bis(acetatato-O)tetrahydroxytri-.	1335326	Lead subacetate	1*	4	U146	A	10 (4.54)
Lead chloride	7758954		5000	1		A	10 (4.54)
Lead fluoborate	13814965		5000	1		A	10 (4.54)
Lead fluoride	7783462		1000	1		A	10 (4.54)
Lead iodide	10101630		5000	1		A	10 (4.54)
Lead nitrate	10099748		5000	1		A	10 (4.54)
Lead phosphate	7446277	Phosphoric acid, lead(2+) salt (2:3)	1*	4	U145	A	10 (4.54)
Lead stearate	1072351		5000	1		A	10 (4.54)
Lead subacetate	1335326	Lead, bis(acetato-O)tetrahydroxytri-	1*	4	U146	A	10 (4.54)
Lead sulfate	7446142		5000	1		A	10 (4.54)
Lead sulfide	1314870		5000	1		A	10 (4.54)
Lead thiocyanate	592870		5000	1		A	10 (4.54)
Methane, isocyanato-	624839	Methyl isocyanate	1*	3,4	P064	A	10 (4.54)
Methyl isocyanate	624839	Methane, isocyanato-	1*	3,4	P064	A	10 (4.54)
Phosphoric acid, lead(2+) salt (2:3)	7446277	Lead phosphate	1*	4	U145	A	10 (4.54)
Unlisted Hazardous Waste Characteristics: Characteristic of Toxicity:	N.A		1*	4			
Lead (D008)	N.A		1*	4	D008	A	10 (4.54)
K002—Wastewater treatment sludge from the production of chrome yellow and orange pigments.			1*	4	K002	A	10 (4.54)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Codet	RCRA waste no.	Category	Pounds (kg)
K003—Wastewater treatment sludge from the production of molybdate orange pigments.	.....	.....	1*	4	K003	A	10 (4.54)
K005—Wastewater treatment sludge from the production of chrome green pigments.	.....	.....	1*	4	K005	A	10 (4.54)
K046—Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.	.....	.....	1*	4	K046	A	10 (4.54)
K048—Dissolved air flotation (DAF) float from the petroleum refining industry.	.....	.....	1*	4	K048	A	10 (4.54)
K049—Slop oil emulsion solids from the petroleum refining industry.	.....	.....	1*	4	K049	A	10 (4.54)
K051—API separator sludge from the petroleum refining industry.	.....	.....	1*	4	K051	A	10 (4.54)
K061—Emission control dust/sludge from the primary production of steel in electric furnaces.	.....	.....	1*	4	K061	A	10 (4.54)
K062—Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).	.....	.....	1*	4	K062	A	10 (4.54)
K064—Acid plant blowdown slurry/sludge resulting from thickening of blowdown slurry from primary copper production.	.....	.....	1*	4	K064	A	10 (4.54)
K065—Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities.	.....	.....	1*	4	K065	A	10 (4.54)
K066—Sludge from treatment of process wastewater and/or acid plant blowdown from primary zinc production.	.....	.....	1*	4	K066	A	10 (4.54)
K069—Emission control dust/sludge from secondary lead smelting.	.....	.....	1*	4	K069	A	10 (4.54)
K086—Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	.....	.....	1*	4	K086	A	10 (4.54)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste no.	Category	Pounds (kg)
K100—Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting	.....	.....	1*	4	K100	A	10 (4.54)

†Indicates the statutory source as defined by 1, 2, 3, or 4 below.

††No reporting of releases of this hazardous substance is required if the diameter of the pieces of the solid metal released is equal to or exceeds 100 micrometers (0.004 inches).

1—Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 311(b)(4).
2—Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 307(a).
3—Indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA Section 112.
4—Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.
1*—Indicates that the 1-pound RQ is a CERCLA statutory RQ.

PART 355—EMERGENCY PLANNING AND NOTIFICATION

Authority: 42 U.S.C. 11002, 11004, and 11048.

5. The authority citation for part 355 continues to read as follows:

6. Part 355 is amended by removing and reserving footnote "f" from appendices A and B by revising the following entry in appendices A and B to read as set forth below.

APPENDIX A TO PART 355.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[Alphabetical order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
624-83-9	Methyl Isocyanate	.....	10	500

*Only the statutory or final RQ is shown. For more information, see 40 CFR Table 302.4

APPENDIX B TO PART 355.—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[CAS number order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
624-83-9	Methyl Isocyanate	.....	10	500

*Only the statutory or final RQ is shown. For more information, see 40 CFR Table 302.4

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting Regulations for Shotshell Length, Shot Size and Shot Coatings; Proposed Rule

VOL 58 ISS 124 JE 30 1993 UMI

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AB80

Migratory Bird Hunting: Migratory Bird Hunting Regulations for Restriction of Shotshell Length, Shot Size and Shot Coatings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent and request for public comment.

SUMMARY: The principal purpose of this Notice is to advise the public of the U.S. Fish and Wildlife Service's (Service) intent to propose, and to ultimately promulgate, a rule that would restrict: (a) Possession and use of shotshells used in the hunting of migratory birds to 3½ inches fired length (3¼ inches loaded length); (b) shot size to No. T (0.200 inches in diameter); and (c) restrict shotshell pellet coating materials to those which are determined to be nontoxic. The purpose of this Notice is also to request comments from the public regarding these anticipated regulatory changes. A Service proposal to restrict shotshell length is consistent with current regulations, established early this century, restricting gauge size (diameter) of shotgun bores. A propcsal to restrict shot size would stem from Service lethality studies that show No. T size shot to be the largest in use for waterfowling, of those that have been field tested, that exhibits acceptable harvest efficiency. A proposal to restrict shot coatings is consistent with recent regulations that require nontoxic shot to be used for the hunting of waterfowl and coots. Promulgation of a rule to effect these restrictions would be directed at realizing greater conservation of migratory game bird resources in North America. Regulations regarding shot size would become effective for the 1994–95 hunting season to allow supplies of shot sizes greater than size No. T. to be reduced or exhausted. Regulations regarding shell length and shot coatings would become effective March 1, 1994, or 30 days after publication of the final rulemaking.

DATES: Comments should be submitted as soon as possible and must be received by September 28, 1993.

ADDRESSES: All comments should be submitted to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634, Arlington Square, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634, Arlington Square, 1849 C Street NW., Washington, DC 20240, or call 703/358–1714.

SUPPLEMENTARY INFORMATION:

Background

Until the early 1900s the practice of taking waterfowl and other migratory game birds with large-bore shotguns was widespread. Both stationary—and shoulder-mounted guns were commonly much larger bore than those used today, often 8 gauge and larger bores.

(Note: Bore size is an expression of the inside diameter of the barrel; bore diameter becomes larger as the gauge number becomes smaller. For example, the nominal bore diameter of a 12 gauge shotgun barrel is 0.730 inches, while the nominal bore diameter of a 10 gauge shotgun barrel is 0.776 inches.)

At a time of seemingly endless resources, in the late 1800s, great quantities of migratory game birds were harvested by market hunters for sale in the U.S. and elsewhere using these large bore weapons. This commercial practice, enhanced by the unregulated use of battery guns loaded with such missiles as nails and bolts, baiting, live decoys and unlimited or large bag limits, to mention just a few features of early market hunting, eventually contributed to the depletion of many migratory bird populations. As a result, in the period immediately following this unfettered commercial exploitation of the migratory bird resource, hunting regulations were instituted which allowed the sport hunting of only some of the many species of migratory birds. These regulations, which largely resulted from the Migratory Bird Convention with Great Britain (for Canada) signed in 1916, also provided for measures to ensure the future viability of migratory game bird populations. One of the regulatory requirements later made to effect protection of migratory bird populations was to restrict gauge/bore size of the shotgun used. According to a Mississippi Flyway Technical Section report, dated July 28, 1988, the first nationwide restrictions on the use of firearms and ammunition used in hunting migratory birds were established on July 31, 1918. These restrictions, established pursuant to the Migratory Bird Treaty Act, as amended (16 U.S.C. 703–711), provided that "Migratory game birds * * * may be taken during the open season with a gun only, not larger than 10 gauge, fired from the shoulder * * *" Subsequently, the regulations were changed to specify the use of a shotgun and the restrictions concerning gauge continue to the present time. However, current shotshell technology is changing which, in effect, circumvents these restrictions.

Discussion—Shell Length

Because the report referenced above contains a discussion pertinent to this proposal, and to the circumvention of the regulation, most of the relevant section is cited here, as follows:

"Although Federal regulations established the maximum diameter (10-gauge) for shotgun shells for waterfowl hunting nationwide 70 years ago, the subject of shell length has never been addressed. Length obviously functions hand-in-hand with diameter in determining the amount of shot and powder contained in shells. Over the years, the 10-gauge restriction has been circumvented, in part, by increasing the length of shells. In 1912, before restrictions were implemented, the 8-gauge shell contained 1¾ ounces of lead shot * * * Most shotgun shells available in 1923 contained a maximum of 1¼ ounces of lead shot * * * In 1933, most shells still contained a maximum of 1¼ ounces of lead shot and their length did not exceed 2¾ inches * * * By comparison, today's 3-inch, 12-gauge shells contain a maximum of 1⅞ ounces of lead (1⅜ ounces of steel) shot and 3½-inch, 10-gauge shells contain a maximum of 2¼ ounces of lead (1¾ ounces of steel) shot—more than the 1¾ ounces of lead shot in 8-gauge shells that were outlawed * * *

"If shell diameter is to continue to be restricted nationwide by Federal regulations, length should also be restricted nationwide by Federal regulations.

"Although we make no specific recommendations as to the maximum allowable length of shotgun shells, we point out that 3½-inch, 10-gauge shells have been manufactured and marketed by all 3 [major] ammunition companies for many years. Also, we consider it impractical to establish maximum lengths that differ from gauge to gauge. In other words, the same maximum allowable length should apply to all shotgun shells regardless of diameter."

Since the above report was written, we now have factory 3" 12 gauge loads containing 2 ounces of lead shot and factory 3½" 12 gauge loads containing 2¼ ounces of lead shot. Thus, although some of the details of the above report section would change in a current assessment, the point made that evolving shotshell technology has resulted in shotshell payloads that

exceed the intent of the regulations is even more valid in 1993 than it was in 1988.

In 1988 also, the Service requested Mr. Tom Roster, the ballistics consultant for the Cooperative Nontoxic Shot Education Program (CONSEP, formerly known as the Cooperative Lead Poisoning Control Information Program (CLPCIP) to research the question of payloads of various gauges of shotguns in common use at the time bore size was restricted, and how this might relate to shell length restriction. Mr. Roster's findings are excerpted as follows:

"* * * I have not been able to determine precisely what the standard 8 gauge shell length and 8 gauge shot charge weight were at the time of regulations enactment. It appears that circa 1918 the maximum 8 gauge shell length was 3" and that the maximum lead shot charge weight * * * was 2 ounces.

"Given these details, a 3" 8 gauge shell would yield an approximate maximum possible volume of 1.6467 cubic inches for propellant, wadding and payload [Editorial note: see footnote at the end of the document for calculation of shotshell volume]. This assumes a nominal 8 gauge bore diameter of 0.836". Actual volume would vary with each given shotshell manufacturer's specific base wad height, tube wall thickness, and crimp style and length. All of these configurations would subtract from the total possible volume.

"After the 1918 gauge regulation prohibiting any gauge larger than 10, the standard 10 gauge load for many years was about 1¼ ounces of lead shot. In the 1920's the 3" 12 gauge shell was born with the term 'magnum' added. It was loaded with 1⅜ ounces of lead shot. Soon, this was upstaged by a 1⅝ oz. lead load in the 2⅞" 10 gauge case. Then Western Cartridge Company and Ithaca Gun Company cooperated to bring out a 3½" 10 gauge shell loaded with 2 ounces of lead shot. This in effect replaced the 2 oz. load of the old 8 gauge which was prohibited by [F]ederal law.

"The approximate maximum possible volume of 10 gauge in 3½" length with a nominal bore diameter of 0.776" is 1.6553 cubic inches. This is a one-half of one percent increase over the maximum possible volume of 3" 8 gauge.

"The approximate maximum possible volume of the new 3½" 12 gauge shell which Federal Cartridge Corporation cooperated with O. F. Mossberg and Sons to bring out in 1988 is 1.4649 cubic inches, assuming a nominal 12 gauge bore diameter of 0.730". The 3" 8 gauge and the 3½" 10 gauge offer a maximum possible volume increase over the 3½" 12 gauge of about 12% and 13% respectively.

"When gauge regulations were first enacted the easiest and most conceivable method of limiting payload (and thus killing potential in a sense) was to limit bore size (diameter). When loading lead, shell length and payload weight become self-limiting due to the ever greater deformation caused to lead shot * * *, plus the subsequent geometric increase in recoil in a shoulder firearm. When loading steel shot, shell length and recoil no longer are so limiting. Because current steel pellets are essentially non-deformable, pellet deformation considerations are now irrelevant. Because for a given volume of shot, a steel shot charge will weigh about a third less than a lead shot charge, recoil is reduced compared to lead, given equivalent muzzle velocities.

"The consideration is this: Since there are no regulations limiting shell length and given the onset of steel shot, shotshell inflation can now quite simply and practically increase longitudinally rather than in diameter. The net effect is the same: increased payload weight. Current 3½" 10 gauge lead and steel loadings are already the equivalent of the old, now outlawed 8 gauge loadings. The 3½" 12 gauge is close behind. In the 10 and 12 gauges, shells longer than 3½" could easily accomodate payloads in excess of the old 8 gauge loads outlawed in 1918."

In summary, on the basis of the information provided above and to comply with the intent of existing regulations, as well as concerns expressed by some members of the waterfowl hunting community, the Service feels it essential at this time to propose to prevent shotshell length from increasing beyond what it already has, i.e., a maximum of 3.5 inches fired length and 3.25 inches loaded length.

Discussion—Shot Size

The second issue this Notice addresses concerns limiting shot size, which, in this instance, cannot be discussed totally in isolation of the shell length issue. In recent years many hunters have focused their waterfowling attention on geese, most populations of which have prospered while duck numbers have generally declined. With greater hunter focus now on geese, and with the requirement for nontoxic shot and the need to increase pellet size to compensate for the lower specific gravity of steel when compared to lead pellets, there has been an increasing emphasis on the use of larger shot sizes. Size No. F (0.220") steel shot is currently the largest size steel shot commercially loaded and used by hunters for taking the larger geese and other game birds of comparable or larger size.

With these changes, among regulatory agencies and in some quarters of the waterfowl hunting community, there has developed a sensitivity to the potential for increased unretrieved harvest loss as a result of shooting at birds in the periphery of range, or even birds out-of-range, of the shotshell loads being used. This practice is also known as "skybusting." This practice, which has long been a recognized problem in waterfowl hunting, is encouraged by larger shot sizes and longer shells that are touted by some of the ammunition companies as having extended range performance. These claims are also made without benefit of field testing under actual hunting conditions. However, very few hunters are practiced enough to either judge long distances accurately or otherwise maximize the potential of the load they are using, a problem especially inherent with geese because of their large size. "Skybusting" commonly results only in embedding shot in birds with nonlethal or delayed lethal effects.

In this instance the concern and sensitivity is heightened by the fact that loadings of No. F steel shot have been found by CONSEP to have unacceptable unretrieved harvest rates at ranges beyond 55 yards primarily due to insufficient pattern density. In other words, No. F steel in both 10 and 12 gauge loadings have been determined not to be lethal on geese at distances beyond 55 yards primarily because pattern density at these ranges is not sufficient to consistently allow the minimum number of body strikes necessary to immediately dispatch the target bird. Since much goose shooting occurs at ranges beyond 55 yards, unacceptable levels of shot embedding and crippling of birds is the most likely result with use of No. F size shot in current loading configurations for legal shell sizes. This conclusion is supported by the field lethality studies carried out by the CONSEP ballistics consultant.

The preliminary analysis of lethality was provided to CONSEP members in 1988 in a report titled "Code Z (No. F Steel) Preliminary Summary Report." This report represents the only existing field testing of No. F steel in 3" 12 gauge configuration. The report states in part that, "Preliminary analysis of the data suggest that the principal problem with the Code Z load of No. F steel seems to be one of pattern density rather than pellet energy. The Code Z test load of 48 No. F steel pellets produced a 35–36

count pattern at 40 yards [inside a 30-inch diameter circle], while the No. T steel load previously tested by the CLPCIP [now CONSEP] contained 64 pellets and produced through the same chokes a 51–56 count pattern at the same distance. This is a 51% increase in pattern density for the No. T steel load over the No. F steel load. The rapid fall-off beyond 35–40 yards in bagging success and rapid increase in wounding losses exhibited by the No. F steel test load, was found to be closely correlated with pattern density ($P < 0.05$)."

At the time of conclusion of preliminary testing of this load, the ballistics consultant had recorded 133 Canada geese struck (visibly hit) over all distances. Of that number, 55 were knocked down and lost or otherwise unrecoverable, for an overall crippling loss rate of 41.3 percent, i.e., 41.3 birds lost per each 100 hit.

About this same time, the State of Illinois Department of Conservation published the results of a study in which the effectiveness, hunter preference and safety of 3" 12 gauge BBB (0.190"), T and F shot were compared for taking Canada geese (Anderson and Thornburg 1987). In this study, goose hunters were given shotgun shells, forms for recording data, and written instructions for testing. There were no direct controls over the field testing process. The results show that 29 experienced goose hunters spent 268 days afield, fired 1,152 of the test shells at a mean range of 47 yards and bagged 326 geese. For each 100 shells fired, the hunters reported that the 3 shells performed similarly in terms of geese hit (40.3–45.0), geese knocked down (30.7–35.1), geese bagged (25.4–31.1), and geese lost as cripples (13.9–14.9). Of geese struck, 76.0–78.0 and 53.0–69.0 were knocked down and bagged, respectively. The report conclusions state that "* * * size F steel shot (1) is not more effective than size BBB or size T steel for hunting Canada geese, (2) is not preferred by goose hunters, (3) poses a potential safety problem and (4), like lead buck shot, encourages 'skybusting'."

Safety and the inducement for "skybusting" associated with use of No. F steel shot were factors highlighted in letters to the Mississippi and Pacific Flyway Technical Sections dated February 19, 1988 by Winchester-Olin (Identical ltrs. sent to Chairmen of Mississippi and Pacific Flyway Technical Sections). Winchester-Olin, which is a member of CONSEP, tested No. F steel shot for safety and potential bodily injury considerations and concluded that it still retained 16.0, 5.3 and 1.4 foot-pounds of energy at 50, 100 and 200 yards, repectively, when launched at a nominal velocity of 1350 feet/second into ballistics gelatin. The letters go on to say that this is sufficient energy to potentially cause injury to persons in hunting situations where blinds are placed closer together than 150 yards. Such per-pellet energy levels may also damage the glass windows of cars, trucks and buildings within 150 to 200 yards of the shooter. Winchester-Olin also cited the increased potential for barrel damage, both to the shotgun barrels containing integral chokes and to barrels containing screw-in chokes. Although the two flyways are not on record as making such a recommendation, the Atlantic Waterfowl Council recommended in July 1988 that no shot larger than size T and no shell greater than 3½ inches in length be allowed for waterfowl hunting (NY State Dept. Env. Cons. memo to J. Proud from B. Swift, Oct. 1991).

Because of the initial poor efficiency and other potential problems shown by this particular 3" 12 gauge load, the CONSEP ballistics consultant was redirected to test 3½" loads of No. F steel shot in both 12 and 10 gauges. As a result, in 1990, the consultant provided a report titled "The exterior and terminal ballistic performance of a Federal production 3½" 12 gauge load of No. F steel shot." In part, the report concluded that "While the 3½" 12 gauge 1⅞ oz. (60-pellet) load exhibited improved performance over that measured previously for a 3" 12 gauge 1¼ oz. (48-pellet) load of No. F steel, high wounding losses were also found for the heavier load. Performance analyses measured an overall bagging rate of 74.5% and crippling rate of 25.5% for the 3½ 12 gauge 60-pellet No. F. steel load. The maximum distance the load was able to effect an efficient harvest on geese was found to be 55 yards. At longer distances it produced an inefficient harvest with high wounding losses. Crippling was found to increase significantly ($P < 0.05$) as distance increased with the rate at distances beyond 50 yards increasing to 36.6% on small/medium-sized geese, and 32.3% on large geese. Necropsies revealed excellent penetration performance for No. F. spherical-shaped steel projectiles on both medium-sized and large geese. The factor found most closely associated with the load's performance fall-off at long range was insufficient pattern density due to insufficient in-shell pellet count."

More recently, the CONSEP ballistics consultant has been engaged in testing size No. F steel shot in 3½" 10 gauge on large-, small- and medium-sized geese. Results thus far for large-sized geese parallel the earlier findings with 12 gauge 3" and 3½", however, the maximum effective range in this case has been pushed out another 5–10 yards. Although the sample was completed for large-sized geese, the ballistics consultant has been unable to complete the sample for the smaller body size components due to a low production year for most high latitude nesting geese this last season, in which collecting was suspended. Nevertheless, on the basis of what we know about body size factors, load characteristics and load performance from past CONSEP testing, the size No. F steel shot load never performed better and usually performed worse on medium- or small-bodied geese than for large-bodied geese. Thus, the Service believes it is justified at this point to propose a blanket restriction that would preclude the use of No. F size steel shot in all load configurations for all gauges currently legal for hunting migratory birds.

In addition to the concerns expressed above, the Winchester-Olin letters (cited above) also broached the ethical and practical question that relates both to shell length and shot size: "When is enough, enough?" The letter summarizes the known poor performance of No. F steel shot and then, on the basis of the established excellent performance of sizes No. BBB and No. T, concludes that there is no real need for No. F size steel shot in waterfowl hunting. However, the letter goes further in its exploration of these issues and the trends that have been established and the Service feels that this information should be communicated to the hunting community because the message is one that today is critically important to the image of hunters and hunting. After posing the question, Winchester goes on to explain: "Let us be frank and realistic for a moment. In the absence of pellet size restrictions, No. F steel doesn't have to be the end in steel pellet sizes. Winchester can make buckshot loads of steel shot available tomorrow. And we could alloy them with an Olin patented process used for military applications to make such loads lethal on geese to a minimum range of 100 yards (Tungsten Alloy).

"Additionally, we at Winchester have the technology today to expand the length of shotshell hulls in 12 ga. and 10 ga. much beyond their current lengths. This in turn would allow the manufacture of nontoxic shot loadings fully the equivalent of currently prohibited 8 ga. or 6 ga. lead loads. What are the ramifications of a 4" 12 ga.

shell or a 4" 10 ga. shell, for example? In this light, we see the development of a 3½" 12 ga. shell as only the beginning of a trend. Do we need or want higher and higher tech ammunition, larger and larger pellets, longer and longer shells, and more and more expense to the hunters?

"While the technology is available, we at Winchester are very concerned about the possible consequences for our wildlife resources and the safety of hunters, landowners, bystanders, and their buildings and equipment if ever longer and ever heavier loads are legal, are marketed, and become popular."

Winchester also advised that it was seriously considering, in light of its poor performance, discontinuing the sale of No. F size steel shotshells—and that they had so informed their competition. However, Winchester also advised that such a decision would be contingent upon the marketing actions of their competition and possible regulatory action of wildlife management authorities. It is understandable that Winchester did not follow through with discontinuation of sales of No. F size shotshells because of market demand and a lack of regulatory action. However, at the time, testing of No. F size shot had not been completed on the primary load configurations and the Service believed it was premature to move to restrict on a national basis. Nevertheless, the CONSEP has now essentially completed the necessary testing and the Service believes that the weight of evidence shows that there is no compelling reason to continue to allow the use of size No. F steel shot for waterfowling. Of course, some States were convinced much earlier that the existing evidence was sufficient to move to restrict and have done so. In fact, some States have restricted pellets at sizes less than No. T in steel.

In summary, the Service believes Winchester-Olin's question is valid and today is even more pressing: "* * * is there not a need here to examine and regulate trends in harvest technology which may not be in the best interests of the resource, hunting in general, and safety of all concerned?" Indeed, the Service and many others believe that increasingly longer and more powerful shotshells with larger-sized shot pellets that encourage hunters to shoot at extended ranges do not enhance the image of hunters and hunting, neither do they portend greater conservation of the migratory bird resource.

Discussion—Shot Coatings

The last issue which the Service intends to address in a proposed rulemaking relates to corrosion protection coatings for nontoxic shot pellets. In the Code of Federal Regulations, at part 20, § 20.134, the Service currently provides a procedure for approval of nontoxic shot. However, this procedure is considered not to pertain to coatings of various types applied to nontoxic shot, which prevent corrosion and potential fusion of the shot, insofar as the coatings typically are quite thinly applied and constitute a small percent of the pellet by weight. In other words, a coating should not alter the nontoxic properties of nontoxic shot. Nevertheless, the concern is that the coating, although quite necessary and present in small amount, may in and of itself be toxic in small amounts and pose a hazard to migratory birds. Thus, the Service proposes to codify its informal policy on approval of the types of steel shot coatings with which a waterfowler may hunt. It is important to note that the Service cannot dictate makeup of the shot an ammunition manufacturer can make and sell, only the makeup of a particular ammunition a waterfowl hunter may use.

Earlier, the Service responded to a request from industry and approved for use in waterfowling both copper and nickel coatings for steel shot. This request specified that coating thickness would be, typically, approximately 2 ten-thousandths of an inch thick (0.0002") and 1 percent or less of the weight of the shot. Previously, these two coatings had been the only ones approved for waterfowling since May of 1986. More recently, the Service received a request to approve zinc as a coating and learned, in the process of acquiring more information, that one ammunition manufacturer was already marketing a zinc coated steel shot and that another was planning a zinc coated steel shot for this coming season (1993–94). Apparently, despite past efforts to get out the information, there was no recognition of the Service's role in this aspect of nontoxic shot regulation in some quarters and a definite recognition of the role in others. Thus, the Service perceives there is a need to establish a regulation which allows only approved coatings to be used on pellets utilized in waterfowl hunting. This regulation would also set out requirements for the type and quality information for the coating that would be necessary in order for the Service to consider approval. It would be necessary for ammunition manufacturers to provide the Service with this information. Briefly, the Service would request the specifics on the chemical compound(s) to be used and a complete analysis of potential toxicity, as well as the thickness of the coating(s) and percentage of the coating in comparison to the total shot weight. The Service would also seek an assessment explaining why the manufacturer believes the coating does not pose toxicity problems for wildlife. There would likely not be a requirement for toxicity testing (feeding tests) unless background research of the chemical compounds making up the coatings was unclear with regard to potential effects. Some compounds can be toxic in small amounts and, if indicated, the Service may require small-scale testing.

Because the shot coating policy has been in effect for approximately the last six years, the Service intends to propose to make, after notice and comment, that particular regulation effective immediately upon publication in the **Federal Register**. The Service will also propose to restrict shot shell length as early as possible to prevent difficulties regarding any longer shell fabrication plans in progress. For the above, the Service intends that the effective date will be approximately March 1, 1994. In contrast, size No. F shot has been marketed for the past several years and hunters, distributers and manufacturers should be allowed an opportunity to reduce size No. F supplies prior to making their use illegal for waterfowling. Thus, the Service will propose to make the beginning of the 1994–95 waterfowl hunting season the effective date for limiting shot size.

In summary, this Notice provides the public early opportunity to comment on a future proposal to, for migratory bird hunting: (a) Limit the maximum length of shotshells used to 3.5 inches fired length and 3.25 inches loaded length, (b) limit the maximum size of shot used to No. T (0.200"), and (c), in addition to the basic type of nontoxic shot, regulate the type of shot coatings that may be used by hunters.

Footnote: For any given length and diameter of shotshell there is a maximum volume, or payload, which must accomodate wad, propellant, shot pellets and the crimp. The volume (V) of that shell as a regular cylinder is arrived at by applying the formula $V=3.1416(r^2)(h)$, where "r" is the radius and "h" is the height of the cylinder.

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Dated: April 8, 1993.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 93-15246 Filed 6-29-93; 8:45 am]

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June 30, 1993

Part V

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910
Air Contaminants; Rule

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218–AB26

Air Contaminants

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: This document announces the revocation of the exposure limits specified in the "Final rule limits" columns of Table Z–1–A of 29 CFR 1910.1000. This implements the Court of Appeals decision in *AFL–CIO* v. *OSHA*, 965 F.2d 962 (11th Cir., 1992), vacating those limits. Enforcement of those limits was suspended starting March 23, 1993. The permissible exposure limits specified in the "Transitional limits" columns of Table Z–1–A and in Tables Z–2 and Z–3 of 29 CFR 1910.1000 have remained in effect and are being enforced. In order to effectuate this action, Table Z–1–A is being removed from 29 CFR 1910.1000 and a Table Z–1 is being added which includes the exposure limits which were included in Table Z–1 before 1989 and which were published in the Transitional limits columns of Table Z–1–A.

EFFECTIVE DATE: June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA, U.S. Department of Labor, Office of Public Affairs, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: OSHA published its final rule on Air Contaminants on January 19, 1989 at 54 FR 2332–2983. That rule amended 29 CFR 1910.1000 by lowering 212 of OSHA's existing permissible exposure limits (PELs) for toxic substances and setting PELs for 164 toxic substances which had been previously unregulated. The final rule left unchanged the PELs for 51 of the 428 substances considered for change, and raised one exposure limit.

That rulemaking did not consider, and consequently left unchanged, 168 other substances which were listed in the tables of 29 CFR 1910.1000. It also did not consider and left unchanged the 24 substances which had their own comprehensive single substance standards codified in 29 CFR 1910.1001–1048.

On July 7, 1992, the Eleventh Circuit Court of Appeals issued a decision stating that the revised air contaminants standard was vacated. *American Federation of Labor and Congress of Industrial Organizations, et al.* v *Occupational Safety and Health Administration Department of Labor (AFL–CIO* v. *OSHA)*, 965 F.2d 962 (11th Cir. 1992). At OSHA's request, the Eleventh Circuit did not issue its mandate or order enforcing its decision while the possibility of appeal was pursued. Consequently the new limits remained in effect and enforced past July 7, 1992.

On October 23, 1992 the Eleventh Circuit denied OSHA's request for rehearing. After consideration, the Government determined not to petition the Supreme Court for review. March 22, 1993 was the last date to file a petition for review in the Supreme Court. As none was filed, there was no longer a basis for OSHA to request the Eleventh Circuit to further stay the issuance of its mandate.

Accordingly, OSHA directed its compliance officers to cease enforcing the new exposure limits (376 more protective, 1 less protective) starting March 23, 1993.

In consequence, as of March 23, 1993, OSHA resumed enforcing, and employers were required to comply with, the air contaminant exposure limits that were in effect prior to the issuance of the new limits on January 19, 1989. These are the exposure limits (both airborne limits and skin designations) which are located in the "Transitional limits" columns of 29 CFR 1910.1000, Table Z–1–A and the limits located in Tables Z–2 and Z–3.

Section 1910.1000(f)(3)(iii) specifically provides that if the new limits in the Final Rule limits columns of Table Z–1–A are vacated, then the Transitional limits columns of Table Z–1–A and Tables Z–2 and Z–3 remain in effect. This includes the textual language of § 1910.1000 (a)–(f) relevant to the Transitional limits of Table Z–1–A and relevant to Tables Z–2 and Z–3. That text is in substance what was in effect prior to the issuance of the new limits.

The Court of Appeals decision does not directly affect the 25 States operating their own OSHA-approved occupational safety and health State plans as their standards were adopted under authority of applicable State law. The 25 State plan States are: Alaska, Arizona, California, Connecticut, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, New Mexico, New York, Nevada, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virgin Islands, Virginia, Washington and Wyoming. (Connecticut and New York are public sector only plans.)

Some States are continuing to enforce the 1989 Air Contaminants standard or an "at least as effective" equivalent. However, in other States the authorizing legislation or other circumstances will require the State to parallel Federal standards-setting actions. Since section 18 of the OSH Act permits, but does not require, the State plan States to maintain standards which are more stringent than those of OSHA, each State must make its own determination based on its legal authority and other circumstances. Accordingly, the changes to the OSHA Air Contaminants standards set forth in today's **Federal Register** notice do not necessarily apply in the State plan States listed above.

Changes to CFR

In order to implement the Court's decision in a way that is clear and convenient to the public, OSHA is making a number of changes to the Code of Federal Regulations. In 1989, OSHA replaced Table Z–1 with Table Z–1–A. Table Z–1–A included the substantive changes of incorporating 164 substances which had not been regulated before and adding "Final rule limits" columns which included the limits for those 164 plus 212 new limits for substances which had pre-existing limits.

In addition, Table Z–1–A had non-substantive format changes for the convenience of employers and employees. OSHA included in alphabetical order in Table Z–1–A every substance it regulated in 29 CFR part 1910, subpart Z. This had not been done in the earlier Table Z–1. Consequently, it listed substances covered by Table Z–1–A, Tables Z–2 and Z–3, and the substances regulated by the substance specific standards in 29 CFR 1910.1001–1048. The "Transitional limits" columns also included the old exposure limits which had existed in Table Z–1.

As a result of these style changes, the public could locate in one place a list of all the substances regulated by subpart Z, along with the exposure limit or a cross reference to where the exposure limit and other regulatory provisions concerning the substance could be found. Table Z–1–A also presented the Chemical Abstract Service (CAS) numbers for all substances regulated by subpart Z as a further convenience for the public.

In order to carry out the Court's decision, OSHA is removing Table Z–1–A from the CFR, which of course includes removing its Final rule limits columns which contained the 376 new or more protective limits and one new but higher limit. It is replaced by a new

Table Z–1 which does not contain the limits which were in the Final rule limits columns. The new Table Z–1 contains the limits which were in effect prior to 1989 in Table Z–1, and which are also the limits which were in the Transitional limits columns of Table Z–1–A.

In this manner, OSHA is implementing the Eleventh Circuit's decision and removing from the CFR the vacated limits. It is retaining in the CFR the limits in effect prior to the issuance of the 1989 Air Contaminants standard which are the limits that are currently enforceable.

However, OSHA is retaining the non-substantive format advantages of Table Z–1–A for the convenience of the public. The new Table Z–1 lists all the substances regulated by Subpart Z with their CAS numbers. If a regulated substance's exposure limit is not included in the new Table Z–1, then a cross reference to the location of that substance's limit is included. In this manner, employers and employees will be in a better position to find the toxic substance exposure limits which would cover them.

OSHA is also deleting the footnotes to Table Z–1–A which were only relevant to the Final rule limits. It is retaining and relettering those footnotes which are relevant to Table Z–1 and is making a few style changes for format consistency.

Tables Z–2 and Z–3 were not substantively changed when the new Air Contaminants standard was issued in 1989, and they are not being substantively changed now. However, as a number of errors have existed in these tables, OSHA is using this **Federal Register** Notice as an opportunity to correct those errors.

Specifically, the entries and footnotes for benzene, cadmium and formaldehyde in Table Z–2 are corrected to reflect their current legal status and the status of their single substance standards. Errors in alphabetization are corrected and the footnotes relettered. In Table Z–3, the formulas for the coal dust entries are presented more clearly, the tremolite cross-reference is corrected, certain spelling errors are corrected, the format is made clearer and the footnotes are relettered. OSHA is reprinting the entire tables Z–1, Z–2 and Z–3 in the **Federal Register** with the corrections made, for the convenience of the public.

In addition, to implement the court's decision, it is necessary to make some changes to the regulatory text. Specifically, it is necessary to delete from the beginning of 29 CFR 1910.1000, the language which is applicable to the exposure limits in the Final rule limits columns of Table Z–1–A. Accordingly, OSHA is removing from 29 CFR 1910.1000, paragraph (a)(3) on the obligation to comply with the Final rule limits, paragraph (a)(5) on definitions applicable to the Final rule limits, and most of paragraph (f) on the starting dates and transitional provisions relevant to the Final rule limits.

Retained are the provisions necessary to effectuate the exposure limits in Tables Z–1, Z–2 and Z–3. These provisions are substantively the same as the equivalent provisions which were in effect prior to the issuance of the 1989 Air Contaminants Final Rule and retain the same lettering. A few minor, non-substantive style changes have been made. Thus, paragraphs (a)(1) and (a)(2) which define the compliance requirements of the exposure limits in Table Z–1 (the Transitional limits of Table Z–1–A), paragraph (b) which defines the compliance requirements of the exposure limits in Table Z–2, and paragraph (c) which defines the compliance requirements of the exposure limits in Table Z–3 are all retained.

OSHA followed and enforced the following practice, which it set out explicitly in the CFR and the **Federal Register** during the PELs rulemaking. In circumstances where there was no available instrumentation to measure a substance instantaneously, OSHA inspectors and employers were permitted to measure the ceiling as a time weighted average over 15 minutes. OSHA is retaining that explicit provision, which was located in paragraph (a)(5)(iii) (which is being removed) and inserting it into paragraph (a)(1).

OSHA is removing paragraph (a)(6) which had explicitly stated that the terms "substance," "air contaminant" and "material" are equivalent. It remains the case that they are equivalent for purposes of § 1910.1000. But as this is now generally known and clear from the context, it is unnecessary to retain this definition.

Paragraph (d) concerning the computation formulae, and paragraph (e) concerning the preference for engineering controls are retained unchanged. These provisions were in effect prior to 1989, remained in effect after the 1989 Final rule and continue in effect. These provisions were not opened for comment in the rulemaking which led to the 1989 Final rule.

A new paragraph (f) has been inserted to replace the removed paragraph (f). The new paragraph is informational only. It informs the public that the exposure limits contained in Tables Z–1, Z–2 and Z–3 have been in effect since May 29, 1971.

Various changes are also being made to the authority citation for subpart Z to reflect the removal of the Final rule limits.

Other Issues

1. Carbon dioxide was the one substance where OSHA raised the TWA from 5000 to 10,000 ppm but incorporated a 30,000 ppm STEL. As the Court vacated that STEL and the new TWA, it is necessary to return to the 5000 ppm 8 hour TWA. This change is made in Table Z–1.

2. The AFL–CIO and National Grain and Feed Association (NGFA), which had reached a settlement with OSHA on the new grain dust limit, moved the Eleventh Circuit to rule that its decision did not disturb the settlement. The Court, on February 1, 1993, granted the motion and stated, "The settlement agreement remains in full force and effect insofar as this Court is concerned with the appeal filed in this matter." Accordingly, OSHA will continue to enforce the grain dust limit pursuant to the settlement agreement. Therefore, Table Z–1 contains the grain dust limit of 10 mg/m^3 which was issued as a new limit in 1989.

3. Table Z–3 has always contained an entry for "Inert or Nuisance dust." The American Conference of Governmental Industrial Hygienists (ACGIH), the source of that limit, had always intended it to cover both organic and inorganic particulates not otherwise regulated. This is clear from the Appendix D to the 1968 and subsequent editions of the "Threshold Limit Values" by ACGIH, which lists as nuisance particulates such organic substances as cellulose, vegetable oil mists, starch and sucrose. OSHA had also intended that entry to cover organic dusts and issued many citations reflecting that view.

However, the Nuisance Dust entry appeared in a Table which was titled "Mineral Dusts." The Occupational Safety and Health Review Commission, in the case of Bunge Corp. 12 OSHC 1785 (1986), held that because of the location of the nuisance dust entry in Table Z–3, inadequate notice was given to employers that the limit applied to organic dusts.

OSHA made it clear when it issued the Final Air Contaminants rule, that it intended this limit, which was left unchanged, to apply to both organic and inorganic particulates or dusts. See 54 FR 2597 (January 19, 1989). OSHA also gave notice to employers by renaming the Inert or Nuisance Dust limit as the

Particulates Not Otherwise Regulated (PNOR) limit and placing it in Table Z–1–A. To provide additional notice, it left the same entry in Table Z–3 under its old name, and added a footnote indicating it applied to organic as well as inorganic dusts.

These were format changes to reflect OSHA's and ACGIH's intentions for over 20 years, and to give full notice to employers that organic dusts and particulates are covered by the standard; they were not substantive changes. Accordingly, in both Table Z–1 and Z–3, OSHA is retaining the equivalent PNOR and Nuisance Dust entries with footnotes to make clear that organic and inorganic particulates or dusts are covered.

OSHA continues to believe that many of the old limits which it will now be enforcing are out of date (they predate 1968) and not sufficiently protective of employee health based on current scientific information and expert recommendations. In addition, many of the substances for which OSHA has no PELs present serious health hazards to employees.

OSHA finds that notice and comment are unnecessary for these changes because they implement the final decision of the Eleventh Circuit Court of Appeals. For the same reason, good cause is found for these changes to take immediate effect.

This document was prepared under the direction of David C. Zeigler, Acting Assistant Secretary of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued under sections 4,6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655 657), 5 U.S.C. 553, Secretary Labor's Order 1–90 (55 FR 9033) and 29 CFR part 1911.

Signed at Washington, DC, this 24 day of June, 1993.

David C. Zeigler,

Acting Assistant Secretary of Labor.

PART 1910—[AMENDED]

Part 1910 of title 29 of the Code of Federal Regulation is hereby amended as follows:

Subpart Z—Toxic and Hazardous Substances

1. The authority citation for subpart Z of part 1910 is revised to read in relevant part as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Order 12–71 (36 FR 8754), 9–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, except those substances which have exposure limits listed in Tables Z–1, Z–2 and Z–3 of 29 CFR 1910.1000. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z–1, Z–2 and Z–3 also issued under 5 U.S.C. 553. Section 1910.1000, Tables Z–1, Z–2 and Z–3 not issued under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, and cotton dust listings.

* * * * *

§ 1910.1000 [Amended]

2. Section 1910.1000 is revised to read as follows:

§ 1910.1000 Air contaminants.

An employee's exposure to any substance listed in Tables Z–1, Z–2, or Z–3 of this section shall be limited in accordance with the requirements of the following paragraphs of this section.

(a) *Table Z–1.* (1) *Substances with limits preceded by "C"—Ceiling Values.* An employee's exposure to any substance in Table Z–1, the exposure limit of which is preceded by a "C", shall at no time exceed the exposure limit given for that substance. If instantaneous monitoring is not feasible, then the ceiling shall be assessed as a 15-minute time weighted average exposure which shall not be exceeded at any time during the working day.

(2) *Other substances—8-hour Time Weighted Averages.* An employee's exposure to any substance in Table Z–1, the exposure limit of which is not preceded by a "C", shall not exceed the 8-hour Time Weighted Average given for that substance in any 8-hour work shift of a 40-hour work week.

(b) *Table Z–2.* An employee's exposure to any substance listed in Table Z–2 shall not exceed the exposure limits specified as follows:

(1) *8-hour time weighted averages.* An employee's exposure to any substance listed in Table Z–2, in any 8-hour work shift of a 40-hour work week, shall not exceed the 8-hour time weighted average limit given for that substance in Table Z–2.

(2) *Acceptable ceiling concentrations.* An employee's exposure to a substance listed in Table Z–2 shall not exceed at any time during an 8-hour shift the acceptable ceiling concentration limit given for the substance in the table, except for a time period, and up to a concentration not exceeding the maximum duration and concentration allowed in the column under "acceptable maximum peak above the acceptable ceiling concentration for an 8-hour shift."

(3) *Example.* During an 8-hour work shift, an employee may be exposed to a concentration of Substance A (with a 10 ppm TWA, 25 ppm ceiling and 50 ppm peak) above 25 ppm (but never above 50 ppm) only for a maximum period of 10 minutes. Such exposure must be compensated by exposures to concentrations less than 10 ppm so that the cumulative exposure for the entire 8-hour work shift does not exceed a weighted average of 10 ppm.

(c) *Table Z–3.* An employee's exposure to any substance listed in Table Z–3, in any 8-hour work shift of a 40-hour work week, shall not exceed the 8-hour time weighted average limit given for that substance in the table.

(d) *Computation formulae.* The computation formula which shall apply to employee exposure to more than one substance for which 8-hour time weighted averages are listed in subpart Z of 29 CFR part 1910 in order to determine whether an employee is exposed over the regulatory limit is as follows:

(1)(i) The cumulative exposure for an 8-hour work shift shall be computed as follows:

$$E=(C_aT_a+C_bT_b+\ldots C_nT_n)\div 8$$

Where:

E is the equivalent exposure for the working shift.

C is the concentration during any period of time T where the concentration remains constant.

T is the duration in hours of the exposure at the concentration C.

The value of E shall not exceed the 8-hour time weighted average specified in subpart Z of 29 CFR part 1910 for the substance involved.

(ii) To illustrate the formula prescribed in paragraph (d)(1)(i) of this section, assume that Substance A has an 8-hour time weighted average limit of 100 ppm noted in Table Z–1. Assume that an employee is subject to the following exposure:

Two hours exposure at 150 ppm
Two hours exposure at 75 ppm
Four hours exposure at 50 ppm

Substituting this information in the formula, we have

$$(2\times 150+2\times 75+4\times 50)\div 8=81.25 \text{ ppm}$$

Since 81.25 ppm is less than 100 ppm, the 8-hour time weighted average limit, the exposure is acceptable.

(2)(i) in case of a mixture of air contaminants an employer shall compute the equivalent exposure as follows:

$$E_m=(C_1+L_1+C_2+L_2)+\ldots(C_n+L_n)$$

Where:

E_m is the equivalent exposure for the mixture.

C is the concentration of a particular contaminant.

L is the exposure limit for that substance specified in subpart Z of 29 CFR part 1910.

The value of E_m shall not exceed unity (1).

(ii) To illustrate the formula prescribed in paragraph (d)(2)(i) of this section, consider the following exposures:

Substance	Actual concentration of 8-hour exposure (ppm)	8-hour TWA PEL (ppm)
B	500	1,000
C	45	200
D	40	200

Substituting in the formula, we have:

E_m=500÷1,000+45÷200+40÷200

E_m=0.500+0.225+0.200

E_m=0.925

Since E_m is less than unity (1), the exposure combination is within acceptable limits.

(e) To achieve compliance with paragraphs (a) through (d) of this section, administrative or engineering controls must first be determined and implemented whenever feasible. When such controls are not feasible to achieve full compliance, protective equipment or any other protective measures shall be used to keep the exposure of employees to air contaminants within the limits prescribed in this section. Any equipment and/or technical measures used for this purpose must be approved for each particular use by a competent industrial hygienist or other technically qualified person. Whenever respirators are used, their use shall comply with 1910.134.

(f) *Effective dates.* The exposure limits specified have been in effect with the method of compliance specified in paragraph (e) of this section since May 29, 1971.

TABLE Z–1.—LIMITS FOR AIR CONTAMINANTS

Substance	CAS No. (c)	ppm (a) [1]	mg/m³ (b) [1]	Skin designation
Acetaldehyde	75–07–0	200	360	
Acetic acid	64–19–7	10	25	
Acetic anhydride	108–24–7	5	20	
Acetone	67–64–1	1000	2400	
Acetonitrile	75–05–8	40	70	
2-Acetylaminofluorine; see 1910.1014	53–96–3			
Acetylene dichloride; see 1,2-Dichloroethylene.				
Acetylene tetrabromide	79–27–6	1	14	
Acrolein	107–02–8	0.1	0.25	
Acrylamide	79–06–1		0.3	X
Acrylonitrile; see 1910.1045	107–13–1			
Aldrin	309–00–2		0.25	X
Allyl alcohol	107–18–6	2	5	X
Allyl chloride	107–05–1	1	3	
Allyl glycidyl ether (AGE)	106–92–3	(C)10	(C)45	
Allyl propyl disulfide	2179–59–1	2	12	
alpha-Alumina	1344–28–1			
Total dust			15	
Respirable fraction			5	
Aluminum, metal (as Al)	7429–90–5			
Total dust			15	
Respirable fraction			5	
4-Aminodiphenyl; see 1910.1011	92–67–1			
2-Aminoethanol; see Ethanolamine.				
2-Aminopyridine	504–29–0	0.5	2	
Ammonia	7664–41–7	50	35	
Ammonium sulfamate	7773–06–0			
Total dust			15	
Respirable fraction			5	
n-Amyl acetate	628–63–7	100	525	
sec-Amyl acetate	626–38–0	125	650	
Aniline and homologs	62–53–3	5	19	X
Anisidine (o-, p-isomers)	29191–52–4		0.5	X
Antimony and compounds (as Sb)	7440–36–0		0.5	
ANTU (alpha Naphthylthiourea)	86–88–4		0.3	
Arsenic, inorganic compounds (as As); see 1910.1018	7440–38–2			
Arsenic, organic compounds (as As)	7440–38–2		0.5	
Arsine	7784–42–1	0.05	0.2	
Asbestos; see 1910.1001	(*)			
Azinphos-methyl	86–50–0		0.2	X
Barium, soluble compounds (as Ba)	7440–39–3		0.5	
Barium sulfate	7727–43–7			
Total dust			15	
Respirable fraction			5	
Benomyl	17804–35–2			
Total dust			15	
Respirable fraction			5	
Benzene; see 1910.1028	71–43–2			
See Table Z–2 for the limits applicable in the operations or sectors excluded in 1910.1028 [d]				
Benzidine; see 1910.1010	92–87–5			
p-Benzoquinone; see Quinone.				

TABLE Z-1.—LIMITS FOR AIR CONTAMINANTS—Continued

Substance	CAS No. (c)	ppm (a) [1]	mg/m³ (b) [1]	Skin designation
Benzo(a)pyrene; see Coal tar pitch volatiles..				
Benzoyl peroxide	94-36-0		5	
Benzyl chloride	100-44-7	1	5	
Beryllium and beryllium compounds (as Be)	7440-41-7		([2])	
Biphenyl; see Diphenyl.				
Bismuth telluride, Undoped	1304-82-1			
Total dust			15	
Respirable fraction			5	
Boron oxide	1303-86-2			
Total dust			15	
Boron trifluoride	7637-07-2	(C)1	(C)3	
Bromine	7726-95-6	0.1	0.7	
Bromoform	75-25-2	0.5	5	X
Butadiene (1,3-Butadiene)	106-99-0	1000	2200	
Butanethiol; see Butyl mercaptan.				
2-Butanone (Methyl ethyl ketone)	78-93-3	200	590	
2-Butoxyethanol	111-76-2	50	240	X
n-Butyl-acetate	123-86-4	150	710	
sec-Butyl acetate	105-46-4	200	950	
tert-Butyl acetate	540-88-5	200	950	
n-Butyl alcohol	71-36-3	100	300	
sec-Butyl alcohol	78-92-2	150	450	
tert-Butyl alcohol	75-65-0	100	300	
Butylamine	109-73-9	(C)5	(C)15	X
tert-Butyl chromate (as CrO_3)	1189-85-1		(C)0.1	X
n-Butyl glycidyl ether (BGE)	2426-08-6	50	270	
Butyl mercaptan	109-79-5	10	35	
p-tert-Butyltoluene	98-51-1	10	60	
Cadmium (as Cd); see 1910.1027	7440-43-9			
Calcium carbonate	1317-65-3			
Total dust			15	
Respirable fraction			5	
Calcium hydroxide	1305-62-0			
Total dust			15	
Respirable fraction			5	
Calcium oxide	1305-78-8		5	
Calcium silicate	1344-95-2			
Total dust			15	
Respirable fraction			5	
Calcium sulfate	7778-18-9			
Total dust			15	
Respirable fraction			5	
Camphor, synthetic	76-22-2		2	
Carbaryl (Sevin)	63-25-2		5	
Carbon black	1333-86-4		3.5	
Carbon dioxide	124-38-9	5000	9000	
Carbon disulfide	75-15-0		([2])	
Carbon monoxide	630-08-0	50	55	
Carbon tetrachloride	56-23-5		([2])	
Cellulose	9004-34-6			
Total dust			15	
Respirable fraction			5	
Chlordane	57-74-9		0.5	X
Chlorinated camphene	8001-35-2		0.5	X
Chlorinated diphenyl oxide	55720-99-5		0.5	
Chlorine	7782-50-5	(C)1	(C)3	
Chlorine dioxide	10049-04-4	0.1	0.3	
Chlorine trifluoride	7790-91-2	(C)0.1	(C)0.4	
Chloroacetaldehyde	107-20-0	(C)1	(C)3	
a-Chloroacetophenone (Phenacyl chloride)	532-27-4	0.05	0.3	
Chlorobenzene	108-90-7	75	350	
o-Chlorobenzylidene malononitrile	2698-41-1	0.05	0.4	
Chlorobromomethane	74-97-5	200	1050	
2-Chloro-1,3-butadiene; see beta-Chloroprene.				
Chlorodiphenyl (42% Chlorine) (PCB)	53469-21-9		1	X
Chlorodiphenyl (54% Chlorine) (PCB)	11097-69-1		0.5	X
1-Chloro-2,3-epoxypropane; see Epichlorohydrin.				
2-Chloroethanol; see Ethylene chlorohydrin.				
Chloroethylene; see Vinyl chloride.				
Chloroform (Trichloromethane)	67-66-3	(C)50	(C)240	
bis(Chloromethyl) ether; see 1910.1008	542-88-1			

TABLE Z–1.—LIMITS FOR AIR CONTAMINANTS—Continued

Substance	CAS No. (c)	ppm (a) [1]	mg/m³ (b) [1]	Skin designation
Chloromethyl methyl ether; see 1910.1006	107–30–2			
1-Chloro-1-nitropropane	600–25–9	20	100	
Chloropicrin	76–06–2	0.1	0.7	
beta-Chloroprene	126–99–8	25	90	X
2-Chloro-6-(trichloromethyl) pyridine	1929–82–4			
Total dust			15	
Respirable fraction			5	
Chromic acid and chromates (as CrO_3)	([4])		([2])	
Chromium (II) compounds.				
(as Cr)	7440–47–3		0.5	
Chromium (III) compounds.				
(as Cr)	7440–47–3		0.5	
Chromium metal and insol. salts (as Cr)	7440–47–3		1	
Chrysene; see Coal tar pitch volatiles.				
Clopidol	2971–90–6			
Total dust			15	
Respirable fraction			5	
Coal dust (less than 5% SiO_2), respirable fraction			([3])	
Coal dust (greater than or equal to 5% SiO_2), respirable fraction.			([3])	
Coal tar pitch volatiles (benzene soluble fraction), anthracene, BaP, phenanthrene, acridine, chrysene, pyrene.	65966–93–2		0.2	
Cobalt metal, dust, and fume (as Co)	7440–48–4		0.1	
Coke oven emissions; see 1910.1029.				
Copper	7440–50–8			
Fume (as Cu)			0.1	
Dusts and mists (as Cu)			1	
Cotton dust[5]; see 1910.1043			1	
Crag herbicide (Sesone)	136–78–7			
Total dust			15	
Respirable fraction			5	
Cresol, all isomers	1319–77–3	5	22	X
Crotonaldehyde	123–73–9; 4170–30–3	2	6	
Cumene	98–82–8	50	245	X
Cyanides (as CN)	([4])		5	
Cyclohexane	110–82–7	300	1050	
Cyclohexanol	108–93–0	50	200	
Cyclohexanone	108–94–1	50	200	
Cyclohexene	110–83–8	300	1015	
Cyclopentadiene	542–92–7	75	200	
2,4-D (Dichlorophenoxyacetic acid)	94–75–7		10	
Decaborane	17702–41–9	0.05	0.3	X
Demeton (Systox)	8065–48–3		0.1	X
Diacetone alcohol (4-Hydroxy-4-methyl-2-pentanone)	123–42–2	50	240	
1,2-Diaminoethane; see Ethylenediamine.				
Diazomethane	334–88–3	0.2	0.4	
Diborane	19287–45–7	0.1	0.1	
1,2-Dibromo-3-chloropropane (CBCP); see 1910.1044	96–12–8			
1,2-Dibromoethane; see Ethylene dibromide.				
Dibutyl phosphate	107–66–4	1	5	
Dibutyl phthalate	84–74–2		5	
o-Dichlorobenzene	95–50–1	(C)50	(C)300	
p-Dichlorobenzene	106–46–7	75	450	
3,3'-Dichlorobenzidine; see 1910.1007	91–94–1			
Dichlorodifluoromethane	75–71–8	1000	4950	
1,3-Dichloro-5,5-dimethyl hydantoin	118–52–5		0.2	
Dichlorodiphenyltrichloroethane (DDT)	50–29–3		1	X
1,1-Dichloroethane	75–34–3	100	400	
1,2-Dichloroethane; see Ethylene dichloride.				
1,2-Dichloroethylene	540–59–0	200	790	
Dichloroethyl ether	111–44–4	(C)15	(C)90	X
Dichloromethane; see Methylene chloride.				
Dichloromonofluoromethane	75–43–4	1000	4200	
1,1-Dichloro-1-nitroethane	594–72–9	(C)10	(C)60	
1,2-Dichloropropane; see Propylene dichloride.				
Dichlorotetrafluoroethane	76–14–2	1000	7000	
Dichlorvos (DDVP)	62–73–7		1	X
Dicyclopentadienyl iron	102–54–5			
Total dust			15	
Respirable fraction			5	

TABLE Z–1.—LIMITS FOR AIR CONTAMINANTS—Continued

Substance	CAS No. (c)	ppm (a) [1]	mg/m³ (b) [1]	Skin designation
Dieldrin	60–57–1		0.25	X
Diethylamine	109–89–7	25	75	
2-Diethylaminoethanol	100–37–8	10	50	X
Diethyl ether; see Ethyl ether.				
Difluorodibromomethane	75–61–6	100	860	
Diglycidyl ether (DGE)	2238–07–5	(C)0.5	(C)2.8	
Dihydroxybenzene; see Hydroquinone.				
Diisobutyl ketone	108–83–8	50	290	
Diisopropylamine	108–18–9	5	20	X
4-Dimethylaminoazobenzene; see 1910.1015	60–11–7			
Dimethoxymethane; see Methylal.				
Dimethyl acetamide	127–19–5	10	35	X
Dimethylamine	124–40–3	10	18	
Dimethylaminobenzene; see Xylidine.				
Dimethylaniline (N,N-Dimethylaniline)	121–69–7	5	25	X
Dimethylbenzene; see Xylene.				
Dimethyl-1,2-dibromo-2,2-dichloroethyl phosphate	300–76–5		3	
Dimethylformamide	68–12–2	10	30	X
2,6-Dimethyl-4-heptanone; see Diisobutyl ketone.				
1,1-Dimethylhydrazine	57–14–7	0.5	1	X
Dimethylphthalate	131–11–3		5	
Dimethyl sulfate	77–78–1	1	5	X
Dinitrobenzene (all isomers)			1	X
(ortho)	528–29–0			
(meta)	99–65–0			
(para)	100–25–4			
Dinitro-o-cresol	534–52–1		0.2	X
Dinitrotoluene	25321–14–6		1.5	X
Dioxane (Diethylene dioxide)	123–91–1	100	360	X
Diphenyl (Biphenyl)	92–52–4	0.2	1	
Diphenylmethane diisocyanate; see Methylene bisphenyl isocyanate.				
Dipropylene glycol methyl ether	34590–94–8	100	600	X
Di-sec octyl phthalate (Di-(2-ethylhexyl) phthalate)	117–81–7		5	
Emery	12415–34–8			
Total dust			15	
Respirable fraction			5	
Endosulfan	115–29–7		0.1	X
Endrin	72–20–8		0.1	X
Epichlorohydrin	106–89–8	5	19	X
EPN	2104–64–5		0.5	X
1,2-Epoxypropane; see Propylene oxide.				
2,3-Epoxy-1-propanol; see Glycidol.				
Ethanethiol; see Ethyl mercaptan.				
Ethanolamine	141–43–5	3	6	
2-Ethoxyethanol (Cellosolve)	110–80–5	200	740	X
2-Ethoxyethyl acetate (Cellosolve acetate)	111–15–9	100	540	X
Ethyl acetate	141–78–6	400	1400	
Ethyl acrylate	140–88–5	25	100	X
Ethyl alcohol (Ethanol)	64–17–5	1000	1900	
Ethylamine	75–04–7	10	18	
Ethyl amyl ketone (5-Methyl-3-heptanone)	541–85–5	25	130	
Ethyl benzene	100–41–4	100	435	
Ethyl bromide	74–96–4	200	890	
Ethyl butyl ketone (3-Heptanone)	106–35–4	50	230	
Ethyl chloride	75–00–3	1000	2600	
Ethyl ether	60–29–7	400	1200	
Ethyl formate	109–94–4	100	300	
Ethyl mercaptan	75–08–1	(C)10	(C)25	
Ethyl silicate	78–10–4	100	850	
Ethylene chlorohydrin	107–07–3	5	16	X
Ethylenediamine	107–15–3	10	25	
Ethylene dibromide	106–93–4		(2)	
Ethylene dichloride (1,2-Dichloroethane)	107–06–2		(2)	
Ethylene glycol dinitrate	628–96–6	(C)0.2	(C)1	X
Ethylene glycol methyl acetate; see Methyl cellosolve acetate.				
Ethyleneimine; see 1910.1012	151–56–4			
Ethylene oxide; see 1910.1047	75–21–8			
Ethylidene chloride; see 1,1-Dichloroethane.				
N-Ethylmorpholine	100–74–3	20	94	X

TABLE Z-1.—LIMITS FOR AIR CONTAMINANTS—Continued

Substance	CAS No. (c)	ppm (a) [1]	mg/m³ (b) [1]	Skin designation
Ferbam	14484-64-1			
Total dust			15	
Ferrovanadium dust	12604-58-9		1	
Fluorides (as F)	(*)		2.5	
Fluorine	7782-41-4	0.1	0.2	
Fluorotrichloromethane (Trichlorofluoromethane)	75-69-4	1000	5600	
Formaldehyde; see 1910.1048	50-00-0			
Formic acid	64-18-6	5	9	
Furfural	98-01-1	5	20	X
Furfuryl alcohol	98-00-0	50	200	
Grain dust (oat, wheat, barley)			10	
Glycerin (mist)	56-81-5			
Total dust			15	
Respirable fraction			5	
Glycidol	556-52-5	50	150	
Glycol monoethyl ether; see 2-Ethoxyethanol.				
Graphite, natural, respirable dust	7782-42-5		(*)	
Graphite, synthetic				
Total dust			15	
Respirable fraction			5	
Guthion; see Azinphos methyl.				
Gypsum	13397-24-5			
Total dust			15	
Respirable fraction			5	
Hafnium	7440-58-6		0.5	
Heptachlor	76-44-8		0.5	X
Heptane (n-Heptane)	142-82-5	500	2000	
Hexachloroethane	67-72-1	1	10	X
Hexachloronaphthalene	1335-87-1		0.2	X
n-Hexane	110-54-3	500	1800	
2-Hexanone (Methyl n-butyl ketone)	591-78-6	100	410	
Hexone (Methyl isobutyl ketone)	108-10-1	100	410	
sec-Hexyl acetate	108-84-9	50	300	
Hydrazine	302-01-2	1	1.3	X
Hydrogen bromide	10035-10-6	3	10	
Hydrogen chloride	7647-01-0	(C)5	(C)7	
Hydrogen cyanide	74-90-8	10	11	X
Hydrogen fluoride (as F)	7664-39-3		(*)	
Hydrogen peroxide	7722-84-1	1	1.4	
Hydrogen selenide (as Se)	7783-07-5	0.05	0.2	
Hydrogen sulfide	7783-06-4		(*)	
Hydroquinone	123-31-9		2	
Iodine	7553-56-2	(C)0.1	(C)1	
Iron oxide fume	1309-37-1		10	
Isoamyl acetate	123-92-2	100	525	
Isoamyl alcohol (primary and secondary)	123-51-3	100	360	
Isobutyl acetate	110-19-0	150	700	
Isobutyl alcohol	78-83-1	100	300	
Isophorone	78-59-1	25	140	
Isopropyl acetate	108-21-4	250	950	
Isopropyl alcohol	67-63-0	400	980	
Isopropylamine	75-31-0	5	12	
Isopropyl ether	108-20-3	500	2100	
Isopropyl glycidyl ether (IGE)	4016-14-2	50	240	
Kaolin	1332-58-7			
Total dust			15	
Respirable fraction			5	
Ketene	463-51-4	0.5	0.9	
Lead, inorganic (as Pb); see 1910.1025	7439-92-1			
Limestone	1317-65-3			
Total dust			15	
Respirable fraction			5	
Lindane	58-89-9		0.5	X
Lithium hydride	7580-67-8		0.025	
L.P.G. (Liquefied petroleum gas)	68476-85-7	1000	1800	
Magnesite	546-93-0			
Total dust			15	
Respirable fraction			5	
Magnesium oxide fume	1309-48-4			
Total particulate			15	
Malathion	121-75-5			

TABLE Z–1.—LIMITS FOR AIR CONTAMINANTS—Continued

Substance	CAS No. (c)	ppm (a) [1]	mg/m³ (b) [1]	Skin designation
Total dust			15	X
Maleic anhydride	108–31–6	0.25	1	
Manganese compounds (as Mn)	7439–96–5		(C)5	
Manganese fume (as Mn)	7439–96–5		(C)5	
Marble	1317–65–3			
Total dust			15	
Respirable fraction			5	
Mercury (aryl and inorganic) (as Hg)	7439–97–6		(2)	
Mercury (organo) alkyl compounds (as Hg)	7439–97–6		(2)	
Mercury (vapor) (as Hg)	7439–97–6		(2)	
Mesityl oxide	141–79–7	25	100	
Methanethiol; see Methyl mercaptan.				
Methoxychlor	72–43–5			
Total dust			15	
2-Methoxyethanol (Methyl cellosolve)	109–86–4	25	80	X
2-Methoxyethyl acetate (Methyl cellosolve acetate)	110–49–6	25	120	X
Methyl acetate	79–20–9	200	610	
Methyl acetylene (Propyne)	74–99–7	1000	1650	
Methyl acetylene-propadiene mixture (MAPP)		1000	1800	
Methyl acrylate	96–33–3	10	35	X
Methylal (Dimethoxy-methane)	109–87–5	1000	3100	
Methyl alcohol	67–56–1	200	260	
Methylamine	74–89–5	10	12	
Methyl amyl alcohol; see Methyl isobutyl carbinol.				
Methyl n-amyl ketone	110–43–0	100	465	
Methyl bromide	74–83–9	(C)20	(C)80	X
Methyl butyl ketone; see 2-Hexanone.				
Methyl cellosolve; see 2-Methoxyethanol.				
Methyl cellosolve acetate; see 2-Methoxyethyl acetate.				
Methyl chloride	74–87–3		(2)	
Methyl chloroform (1,1,1-Trichloroethane)	71–55–6	350	1900	
Methylcyclohexane	108–87–2	500	2000	
Methylcyclohexanol	25639–42–3	100	470	
o-Methylcyclohexanone	583–60–8	100	460	X
Methylene chloride	75–09–2		(2)	
Methyl ethyl ketone (MEK); see 2-Butanone.				
Methyl formate	107–31–3	100	250	
Methyl hydrazine (Monomethyl hydrazine)	60–34–4	(C)0.2	(C)0.35	X
Methyl iodide	74–88–4	5	28	X
Methyl isoamyl ketone	110–12–3	100	475	
Methyl isobutyl carbinol	108–11–2	25	100	X
Methyl isobutyl ketone; see Hexone.				
Methyl isocyanate	624–83–9	0.02	0.05	X
Methyl mercaptan	74–93–1	(C)10	(C)20	
Methyl methacrylate	80–62–6	100	410	
Methyl propyl ketone; see 2-Pentanone.				
alpha-Methyl styrene	98–83–9	(C)100	(C)480	
Methylene bisphenyl isocyanate (MDI)	101–68–8	(C)0.02	(C)0.2	
Mica; see Silicates.				
Molybdenum (as Mo)	7439–98–7			
Soluble compounds			5	
Insoluble compounds.				
Total dust			15	
Monomethyl aniline	100–61–8	2	9	X
Monomethyl hydrazine; see Methyl hydrazine.				
Morpholine	110–91–8	20	70	X
Naphtha (Coal tar)	8030–30–6	100	400	
Naphthalene	91–20–3	10	50	
alpha-Naphthylamine; see 1910.1004	134–32–7			
beta-Naphthylamine; see 1910.1009	91–59–8			
Nickel carbonyl (as Ni)	13463–39–3	0.001	0.007	
Nickel, metal and insoluble compounds (as Ni)	7440–02–0		1	
Nickel, soluble compounds (as Ni)	7440–02–0		1	
Nicotine	54–11–5		0.5	X
Nitric acid	7697–37–2	2	5	
Nitric oxide	10102–43–9	25	30	
p-Nitroaniline	100–01–6	1	6	X
Nitrobenzene	98–95–3	1	5	X
p-Nitrochlorobenzene	100–00–5		1	X
4-Nitrodiphenyl; see 1910.1003	92–93–3			
Nitroethane	79–24–3	100	310	

TABLE Z-1.—LIMITS FOR AIR CONTAMINANTS—Continued

Substance	CAS No. (c)	ppm (a) [1]	mg/m³ (b) [1]	Skin designation
Nitrogen dioxide	10102-44-0	(C)5	(C)9	
Nitrogen trifluoride	7783-54-2	10	29	
Nitroglycerin	55-63-0	(C)0.2	(C)2	X
Nitromethane	75-52-5	100	250	
1-Nitropropane	108-03-2	25	90	
2-Nitropropane	79-46-9	25	90	
N-Nitrosodimethylamine; see 1910.1016.				
Nitrotoluene (all isomers)		5	30	X
o-isomer	88-72-2			
m-isomer	99-08-1			
p-isomer	99-99-0			
Nitrotrichloromethane; see Chloropicrin.				
Octachloronaphthalene	2234-13-1		0.1	X
Octane	111-65-9	500	2350	
Oil mist, mineral	8012-95-1		5	
Osmium tetroxide (as Os)	20816-12-0		0.002	
Oxalic acid	144-62-7		1	
Oxygen difluoride	7783-41-7	0.05	0.1	
Ozone	10028-15-6	0.1	0.2	
Paraquat, respirable dust	4685-14-7; 1910-42-5; 2074-50-2		0.5	X
Parathion	56-38-2		0.1	X
Particulates not otherwise regulated (PNOR) [f].				
Total dust			15	
Respirable fraction			5	
PCB; see Chlorodiphenyl (42% and 54% chlorine).				
Pentaborane	19624-22-7	0.005	0.01	
Pentachloronaphthalene	1321-64-8		0.5	X
Pentachlorophenol	87-86-5		0.5	X
Pentaerythritol	115-77-5			
Total dust			15	
Respirable fraction			5	
Pentane	109-66-0	1000	2950	
2-Pentanone (Methyl propyl ketone)	107-87-9	200	700	
Perchloroethylene (Tetrachloroethylene)	127-18-4		(d)	
Perchloromethyl mercaptan	594-42-3	0.1	0.8	
Perchloryl fluoride	7616-94-6	3	13.5	
Perlite	93763-70-3			
Total dust			15	
Respirable fraction			5	
Petroleum distillates (Naphtha) (Rubber Solvent)		500	2000	
Phenol	108-95-2	5	19	X
p-Phenylene diamine	106-50-3		0.1	X
Phenyl ether, vapor	101-84-8	1	7	
Phenyl ether-biphenyl mixture, vapor		1	7	
Phenylethylene; see Styrene.				
Phenyl glycidyl ether (PGE)	122-60-1	10	60	
Phenylhydrazine	100-63-0	5	22	X
Phosdrin (Mevinphos)	7786-34-7		0.1	X
Phosgene (Carbonyl chloride)	75-44-5	0.1	0.4	
Phosphine	7803-51-2	0.3	0.4	
Phosphoric acid	7664-38-2		1	
Phosphorus (yellow)	7723-14-0		0.1	
Phosphorus pentachloride	10026-13-8		1	
Phosphorus pentasulfide	1314-80-3		1	
Phosphorus trichloride	7719-12-2	0.5	3	
Phthalic anhydride	85-44-9	2	12	
Picloram	1918-02-1			
Total dust			15	
Respirable fraction			5	
Picric acid	88-89-1		0.1	X
Pindone (2-Pivalyl-1,3-indandione)	83-26-1		0.1	
Plaster of Paris	26499-65-0			
Total dust			15	
Respirable fraction			5	
Platinum (as Pt)	7440-06-4			
Metal			0.002	
Soluble salts				
Portland cement	65997-15-1			
Total dust			15	

TABLE Z-1.—LIMITS FOR AIR CONTAMINANTS—Continued

Substance	CAS No. (c)	ppm (a) [1]	mg/m³ (b) [1]	Skin designation
Respirable fraction			5	
Propane	74-98-6	1000	1800	
beta-Propriolactone; see 1910.1013	57-57-8			
n-Propyl acetate	109-60-4	200	840	
n-Propyl alcohol	71-23-8	200	500	
n-Propyl nitrate	627-13-4	25	110	
Propylene dichloride	78-87-5	75	350	
Propylene imine	75-55-8	2	5	X
Propylene oxide	75-56-9	100	240	
Propyne; see Methyl acetylene.				
Pyrethrum	8003-34-7		5	
Pyridine	110-86-1	5	15	
Quinone	106-51-4	0.1	0.4	
RDX; see Cyclonite.				
Rhodium (as Rh), metal fume and insoluble compounds	7440-16-6		0.1	
Rhodium (as Rh), soluble compounds	7440-16-6		0.001	
Ronnel	299-84-3		15	
Rotenone	83-79-4		5	
Rouge				
Total dust			15	
Respirable fraction			5	
Selenium compounds (as Se)	7782-49-2		0.2	
Selenium hexafluoride (as Se)	7783-79-1	0.05	0.4	
Silica, amorphous, precipitated and gel	112926-00-8		(3)	
Silica, amorphous, diatomaceous earth, containing less than 1% crystalline silica.	61790-53-2		(3)	
Silica, crystalline cristobalite, respirable dust	14464-46-1		(3)	
Silica, crystalline quartz, respirable dust	14808-60-7		(3)	
Silica, crystalline tripoli (as quartz), respirable dust	1317-95-9		(3)	
Silica, crystalline tridymite, respirable dust	15468-32-3		(3)	
Silica, fused, respirable dust	60676-86-0		(3)	
Silicates (less than 1% crystalline silica)				
Mica (respirable dust)	12001-26-2		(3)	
Soapstone, total dust			(3)	
Soapstone, respirable dust			(3)	
Talc (containing asbestos); use asbestos limit; see 29 CFR 1910.1001.			(3)	
Talc (containing no asbestos), respirable dust	14807-96-6		(3)	
Tremolite, asbestiform; see 1910.1001.				
Silicon	7440-21-3			
Total dust			15	
Respirable fraction			5	
Silicon carbide	409-21-2			
Total dust			15	
Respirable fraction			5	
Silver, metal and soluble compounds (as Ag)	7440-22-4		0.01	
Soapstone; see Silicates.				
Sodium fluoroacetate	62-74-8		0.05	X
Sodium hydroxide	1310-73-2		2	
Starch	9005-25-8			
Total dust			15	
Respirable fraction			5	
Stibine	7803-52-3	0.1	0.5	
Stoddard solvent	8052-41-3	500	2900	
Strychnine	57-24-9		0.15	
Styrene	100-42-5		(2)	
Sucrose	57-50-1			
Total dust			15	
Respirable fraction			5	
Sulfur dioxide	7446-09-5	5	13	
Sulfur hexafluoride	2551-62-4	1000	6000	
Sulfuric acid	7664-93-9		1	
Sulfur monochloride	10025-67-9	1	6	
Sulfur pentafluoride	5714-22-7	0.025	0.25	
Sulfuryl fluoride	2699-79-8	5	20	
Systox; see Demeton.				
2,4,5-T (2,4,5-trichlorophenoxyacetic acid)	93-76-5		10	
Talc; see Silicates.				
Tantalum, metal and oxide dust	7440-25-7		5	
TEDP (Sulfotep)	3689-24-5		0.2	X
Tellurium and compounds (as Te)	13494-80-9		0.1	

TABLE Z–1.—LIMITS FOR AIR CONTAMINANTS—Continued

Substance	CAS No. (c)	ppm (a) [1]	mg/m³ (b) [1]	Skin designation
Tellurium hexafluoride (as Te)	7783–80–4	0.02	0.2	
Temephos	3383–96–8			
Total dust			15	
Respirable fraction			5	
TEPP (Tetraethyl pyrophosphate)	107–49–3		0.05	X
Terphenyls	26140–60–3	(C)1	(C)9	
1,1,1,2-Tetrachloro-2,2-difluoroethane	76–11–9	500	4170	
1,1,2,2-Tetrachloro-1,2-difluoroethane	76–12–0	500	4170	
1,1,2,2-Tetrachloroethane	79–34–5	5	35	X
Tetrachloroethylene; see Perchloroethylene.				
Tetrachloromethane; see Carbon tetrachloride.				
Tetrachloronaphthalene	1335–88–2		2	X
Tetraethyl lead (as Pb)	78–00–2		0.075	X
Tetrahydrofuran	109–99–9	200	590	
Tetramethyl lead (as Pb)	75–74–1		0.075	X
Tetramethyl succinonitrile	3333–52–6	0.5	3	X
Tetranitromethane	509–14–8	1	8	
Tetryl (2,4,6-Trinitrophenylmethylnitramine)	479–45–8		1.5	X
Thallium, soluble compounds (as Tl)	7440–28–0		0.1	X
4,4'-Thiobis (6-tert, Butyl-m-cresol)	96–69–5			
Total dust			15	
Respirable fraction			5	
Thiram	137–26–8		5	
Tin, inorganic compounds (except oxides) (as Sn)	7440–31–5		2	
Tin, organic compounds (as Sn)	7440–31–5		0.1	
Titanium dioxide	13463–67–7			
Total dust			15	
Toluene	108–88–3		(2)	
Toluene-2,4-diisocyanate (TDI)	584–84–9	(C)0.02	(C)0.14	
o-Toluidine	95–53–4	5	22	X
Toxaphene; see Chlorinated camphene.				
Tremolite; see Silicates.				
Tributyl phosphate	126–73–8		5	
1,1,1-Trichloroethane; see Methyl chloroform.				
1,1,2-Trichloroethane	79–00–5	10	45	X
Trichloroethylene	79–01–6		(2)	
Trichloromethane; see Chloroform.				
Trichloronaphthalene	1321–65–9		5	X
1,2,3-Trichloropropane	96–18–4	50	300	
1,1,2-Trichloro-1,2,2-trifluoroethane	76–13–1	1000	7600	
Triethylamine	121–44–8	25	100	
Trifluorobromomethane	75–63–8	1000	6100	
2,4,6-Trinitrophenyl; see Picric acid.				
2,4,6-Trinitrophenylmethylnitramine; see Tetryl.				
2,4,6-Trinitrotoluene (TNT)	118–96–7		1.5	X
Triorthocresyl phosphate	78–30–8		0.1	
Triphenyl phosphate	115–86–6		3	
Turpentine	8006–64–2	100	560	
Uranium (as U)	7440–61–1			
Soluble compounds			0.05	
Insoluble compounds			0.05	
Vanadium	1314–62–1			
Respirable dust (as V_2O_5)			(C)0.5	
Fume (as V_2O_5)			(C)0.1	
Vegetable oil mist				
Total dust			15	
Respirable fraction			5	
Vinyl benzene; see Styrene.				
Vinyl chloride; see 1910.1017	75–01–4			
Vinyl cyanide; see Acrylonitrile.				
Vinyl toluene	25013–15–4	100	480	
Warfarin	81–81–2		0.1	
Xylenes (o-, m-, p-isomers)	1330–20–7	100	435	
Xylidine	1300–73–8	5	25	X
Yttrium	7440–65–5		1	
Zinc chloride fume	7646–85–7		1	
Zinc oxide fume	1314–13–2		5	
Zinc oxide	1314–13–2			
Total dust			15	
Respirable fraction			5	
Zinc stearate	557–05–1			

TABLE Z–1.—LIMITS FOR AIR CONTAMINANTS—Continued

Substance	CAS No. (c)	ppm (a) [1]	mg/m³ (b) [1]	Skin designation
Total dust			15	
Respirable fraction			5	
Zirconium compounds (as Zr)	7440–67–7		5	

[1] The PELs are 8-hour TWAs unless otherwise noted; a (C) designation denotes a ceiling limit. They are to be determined from breathing-zone air samples.

(a) Parts of vapor or gas per million parts of contaminated air by volume at 25 °C and 760 torr.

(b) Milligrams of substance per cubic meter of air. When entry is in this column only, the value is exact; when listed with a ppm entry, it is approximate.

(c) The CAS number is for information only. Enforcement is based on the substance name. For an entry covering more than one metal compound, measured as the metal, the CAS number for the metal is given—not CAS numbers for the individual compounds.

(d) The final benzene standard in 1910.1028 applies to all occupational exposures to benzene except in some circumstances the distribution and sale of fuels, sealed containers and pipelines, coke production, oil and gas drilling and production, natural gas processing, and the percentage exclusion for liquid mixtures; for the excepted subsegments, the benzene limits in Table Z–2 apply. See 1910.1028 for specific circumstances.

(e) This 8-hour TWA applies to respirable dust as measured by a vertical elutriator cotton dust sampler or equivalent instrument. The time-weighted average applies to the cottom waste processing operations of waste recycling (sorting, blending, cleaning and willowing) and garnetting. See also 1910.1043 for cotton dust limits applicable to other sectors.

(f) All inert or nuisance dusts, whether mineral, inorganic, or organic, not listed specifically by substance name are covered by the Particulates Not Otherwise Regulated (PNOR) limit which is the same as the inert or nuisance dust limit of Table Z–3.

[2] See Table Z–2.

[3] See Table Z–3.

[4] Varies with compound.

TABLE Z–2

Substance	8-hour time weighted average	Acceptable ceiling concentration	Acceptable maximum peak above the acceptable ceiling concentration for an 8-hr shift	
			Concentration	Maximum duration
Benzene[a] (Z37.40–1969)	10 ppm	25 ppm	50 ppm	10 minutes.
Beryllium and beryllium compounds (Z37.29–1970)	2 µg/m³	5 µg/m³	25 µg/m³	30 minutes.
Cadmium fume[b] (Z37.5–1970)	0.1 mg/m³	0.3 mg/m³		
Cadmium dust[b] (Z37.5–1970)	0.2 mg/m³	0.6 mg/m³.		
Carbon disulfide (Z37.3–1968)	20 ppm	30 ppm	100 ppm	30 minutes.
Carbon tetrachloride (Z37.17–1967)	10 ppm	25 ppm	200 ppm	5 min. in any 4 hrs.
Chromic acid and chromates (Z37.7–1971)		1 mg/10m³.		
Ethylene dibromide (Z37.31–1970)	20 ppm	30 ppm	50 ppm	5 minutes.
Ethylene dichloride (Z37.21–1969)	50 ppm	100 ppm	200 ppm	5 min. in any 3 hrs.
Fluoride as dust (Z37.28–1969)	2.5 mg/m³			
Formaldehyde; see 1910.1048				
Hydrogen fluoride (Z37.28–1969)	3 ppm			
Hydrogen sulfide (Z37.2–1966)		20 ppm	50 ppm	10 mins. once, only if no other meas. exp. occurs.
Mercury (Z37.8–1971)		1 mg/10m³		
Methyl chloride (Z37.18–1969)	100 ppm	200 ppm	300 ppm	5 mins. in any 3 hrs.
Methylene chloride (Z37.23–1969)	500 ppm	1,000 ppm	2,000 ppm	5 mins. in any 2 hrs.
Organo (alkyl) mercury (Z37.30–1969)	0.01 mg/m³	0.04 mg/m³		
Styrene (Z37.15–1969)	100 ppm	200 ppm	600 ppm	5 mins. in any 3 hrs.
Tetrachloroethylene (Z37.22–1967)	100 ppm	200 ppm	300 ppm	5 mins. in any 3 hrs.
Toluene (Z37.12–1967)	200 ppm	300 ppm	500 ppm	10 minutes.
Trichloroethylene (Z37.19–1967)	100 ppm	200 ppm	300 ppm	5 mins. in any 2 hrs.

[a] This standard applies to the industry segments exempt from the 1 ppm 8-hour TWA and 5 ppm STEL of the benzene standard at 1910.1028.

[b] This standard applies to any operations or sectors for which the Cadmium standard, 1910.1027, is stayed or otherwise not in effect.

TABLE Z–3 MINERAL DUSTS

Substance	mppcfa	mg/m³
Silica: Crystalline		
Quartz (Respirable).	250[b] / %SiO_2+5	[c]10 mg/m³ / % SiO_2 + 2
Quartz (Total Dust).	.....	30 mg/m³ / %SiO_2+2
Cristobalite: Use ½ the value calculated from the count or mass formulae for quartz.	.....	
Tridymite: Use ½ the value calculated from the formulae for quartz.	.....	
Amorphous, including natural diatomaceous earth.	20	80 mg/m³ / %SiO_2
Silicates (less than 1% crystalline silica):		
Mica	20	
Soapstone	20	
Talc (not containing asbestos).	[c]20	
Talc (containing asbestos) Use asbestos limit.	.....	

TABLE Z–3 MINERAL DUSTS—Continued

Substance	mppcfa	mg/m³
Tremolite, asbestiform (see 29 CFR 1910.1001).	.....	
Portland cement	50	
Graphite (Natural)	15	
Coal Dust:	.....	
Respirable fraction less than 5% SiO_2.	.....	[e]2.4 mg/m³ / %SiO_2+2
Respirable fraction greater than 5% SiO_2.	[e]10 mg/m³ / %SiO_2+2	
Inert or Nuisance Dust[d]:		
Respirable fraction	15	5 mg/m³
Total dust	50	15 mg/m³

Note—Conversion factors - mppcf X 35.3 = million particles per cubic meter = particles per c.c.

[a] Millions of particles per cubic foot of air, based on impinger samples counted by light-field techniques.

[b] The percentage of crystalline silica in the formula is the amount determined from airborne samples, except in those instances in which other methods have been shown to be applicable.

[c] Containing less than 1% quartz; if 1% quartz or more, use quartz limit.

[d] All inert or nuisance dusts, whether mineral, inorganic, or organic, not listed specifically by substance name are covered by this limit, which is the same as the Particulates Not Otherwise Regulated (PNOR) limit in Table Z–1.

[e] Both concentration and percent quartz for the application of this limit are to be determined from the fraction passing a size-selector with the following characteristics:

Aerodynamic diameter (unit density sphere)	Percent passing selector
2	90
2.5	75
3.5	50
5.0	25
10	0

The measurements under this note refer to the use of an AEC (now NRC) instrument. The respirable fraction of coal dust is determined with an MRE; the figure corresponding to that of 2.4 mg/m³ in the table for coal dust is 4.5 mg/m³.

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Department of Education

34 CFR Parts 785, 786 and 787
National Diffusion Network; Rule

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DEPARTMENT OF EDUCATION

34 CFR Parts 785, 786 and 787

RIN 1850–AA42

National Diffusion Network

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the National Diffusion Network. These amendments establish Program Effectiveness Panel (PEP) review procedures for reapproval of exemplary programs, products, practices, and dissemination processes that have been previously approved by either the Joint Dissemination Review Panel (JDRP) or the PEP.

The National Diffusion Network supports State and local efforts to meet the National Education goals by promoting the nationwide dissemination of exemplary education programs, products, and practices.

EFFECTIVE DATE: These regulations take effect either August 16, 1993 or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Helen O'Leary, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Ave., NW., room 510, Washington, DC 20208–5645, telephone (202) 219–2134. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On September 25, 1992, the Secretary published a notice of proposed rulemaking for the National Diffusion Network in the **Federal Register** (57 FR 44408). On pages 44408–44410, the NPRM included a discussion of the major issues including the establishment of separate criteria for the PEP review of a previously approved Developer Demonstrator program, product, or practice and a previously approved Dissemination Process project. Comments on the NPRM have resulted in three minor changes, which are discussed below.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, one party submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations as a result of the comments received on the NPRM follows.

Criteria (§ 786.17)

Comment: § 786.17(d)(1). The commenter suggested that evidence be required about "best dissemination practices" used, that is, a description of the dissemination strategies employed and evidence of their effectiveness.

Discussion: The Department believes that evidence of effectiveness is important, and the purpose of this criterion is to have the PEP consider the amount and types of information provided about the exemplary program, product, or practice (henceforth to be referred to as program) as an indicator of how well the program serves continuing needs in the field. The criterion looks at the effects of the dissemination strategy in terms of the amount and types of information disseminated, the extent of program adoptions, and the number of participants trained.

Change: None.

Comment: § 786.17(d)(1)(i). The commenter suggested that the criterion clarify that the evidence requested is about the information provided to "users" and others such as State Facilitators.

Discussion: The purpose of this subcriterion is to have the PEP consider the extent to which information about the program has been disseminated to potential users and others. The Secretary agrees that this should be clarified.

Change: The Secretary has revised § 786.17(d)(1)(i) to have the PEP consider the extent to which information has been disseminated to potential users and others such as State Facilitators.

Comment: § 786.17(d)(1)(ii). The commenter suggested that the PEP consider the number and types of users, as well as the chief characteristics of users (schools and others), who have adopted the program.

Discussion: The purpose of this section is to gather quantitative and qualitative information concerning program adoptions. The Secretary agrees that additional language would clarify the section.

Change: The Secretary has revised § 786.17(d)(1)(ii) to make it clear that information should be provided about the number and characteristics of adopting sites.

Comment: § 786.17(d)(1)(iii). The commenter suggested that the PEP consider evidence regarding the types of participants and the effects of the training, as well as the number of individuals trained.

Discussion: The purpose of this subcriterion is to have the PEP consider the number of individuals trained to adopt the program as a measure of the program's continuing success in serving educational needs in the field. Qualitative evidence on the adequacy of training would be considered under § 786.17(d)(2) Implementation and Retention. The effects of the training would, if it were a variable in the evaluation design, also be considered under § 786.17(d)(3) Effectiveness.

Change: None.

Comment: § 786.17(d)(3). The commenter suggested that evidence regarding effectiveness be submitted from a "nationally representative sample" of adoption sites.

Discussion: It is impossible to draw "nationally representative samples" of adoption sites. The universe of projects in any one case will not be sufficiently defined nor large enough to warrant drawing samples on a formal statistical basis with acceptable levels of validity and sampling error. The Secretary believes that evidence should be submitted from a variety of sites that are representative of the adoption sites as a whole. The selection of sites would depend on the nature of the project and its evaluation design.

Change: The Secretary has revised § 786.17(d)(3) to require that evidence be submitted from a variety of sites that are representative of the adoption sites as a whole.

Comment: The commenter also suggested that the PEP consider both qualitative and quantitative evidence of effectiveness to make the language in this criterion parallel to the language used in § 786.11(b).

Discussion: The Secretary agrees that the language in § 786.17(d)(3) should parallel the language in § 786.11(b).

Change: The Secretary has revised § 786.17(d)(3) by requiring that the PEP consider both qualitative and quantitative evidence of effectiveness.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened

federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 785, 786 and 787

Dissemination, Education, Educational research, Grant programs—education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.073—National Diffusion Network)

Dated: June 24, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends parts 785, 786, and 787 of title 34 of the Code of Federal Regulations as follows:

PART 785—NATIONAL DIFFUSION NETWORK: GENERAL PROVISIONS

1. The authority citation for part 785 continues to read as follows:

Authority: 20 U.S.C. 2962, unless otherwise noted.

2. Section 785.4 is amended by revising paragraph (a)(1) to read as follows:

§ 785.4 What regulations apply?

(a) * * *

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs)—except § 75.650 (Participation of students enrolled in private schools), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), Part 82 (New Restrictions on Lobbying), Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), and Part 86 (Drug-Free Schools and Campuses).

* * * * *

PART 786—NATIONAL DIFFUSION NETWORK: DEVELOPER DEMONSTRATOR PROJECTS

3. The authority citation for part 786 continues to read as follows:

Authority: 20 U.S.C. 2962, unless otherwise noted.

4. Section 786.11 is revised to read as follows:

§ 786.11 What must an applicant submit for review by the PEP?

(a) For PEP review of a program, product, or practice that has not been previously approved by the PEP or JDRP, an eligible applicant shall submit to the Secretary qualitative or quantitative evidence, or both, of the effectiveness of the program, product, or practice.

(b) For PEP review of a program, product, or practice that has been previously approved by the PEP or JDRP, an eligible applicant shall submit to the Secretary qualitative and quantitative evidence of dissemination, implementation, and continued effective results of the program, product, or practice.

(Authority: 20 U.S.C. 2962)

5. Section 786.12 is amended by revising the heading and paragraph (a) to read as follows:

§ 786.12 How does the PEP review a program, product, or practice that has not been previously approved by the PEP or the JDRP?

(a) The PEP reviews each program, product, or practice that has not been previously approved by the PEP or the JDRP for educational effectiveness on the basis of the criteria in paragraph (d) of this section.

* * * * *

6. A new § 786.17 is added to subpart B to read as follows:

§ 786.17 How does the PEP review an exemplary program, product, or practice that has been previously approved by the PEP or the JDRP?

(a) The PEP reviews each program, product, or practice that has been previously approved by the PEP or the JDRP for evidence of its successful dissemination, for evidence of its successful implementation, and for evidence of its educational effectiveness, on the basis of the criteria in paragraph (d) of this section.

(b) The PEP awards up to 100 points for these criteria.

(c) The maximum score for each criterion is indicated in parentheses following the criterion.

(d) In reviewing each program, product, or practice the PEP determines the following:

(1) *Dissemination.* (25 points) The PEP determines the extent to which the program, product, or practice demonstrates successful performance in serving educational needs in the field, on the basis of evidence of—

(i) The amount and types of information provided about the program, product, or practice to potential users and others, such as State Facilitators;

(ii) The extent to which the program, product, or practice has been adopted, including information about the number and characteristics of adopting sites; and

(iii) The number of participants trained to adopt the program, product, or practice.

(2) *Implementation and retention.* (25 points) The PEP determines the extent to which the program, product, or practice has been successfully implemented and retained by adoption sites on the basis of evidence of—

(i) The extent to which the program, product, or practice has been implemented in adoption sites with reasonable fidelity to the original elements of the program, product, or practice;

(ii) The extent to which the program, product, or practice has been continued, over time, in adoption sites with reasonable fidelity to the original elements;

(iii) The extent of the demonstrated understanding of and commitment to the program, product, or practice by personnel in adoption sites; and

(iv) The institutional commitment to continue the program, product, or practice as evidenced by such actions as the extension of training to additional sites or staff or the commitment of funding for continued implementation.

(3) *Effectiveness.* (50 points) The PEP determines the extent to which the program, product, or practice shows evidence from a variety of adoption sites of continued effective results relative to the original claims of effectiveness made for the program, product, or practice. The PEP considers both qualitative and

quantitative evidence of the effectiveness of the program, product, or practice, if the evidence is logically linked to the substance of the claims and evaluation design originally submitted to the PEP or the JDRP. In addition, the PEP considers whether the group of sites reported on are representative of the adoption sites as a whole.

(Authority: 20 U.S.C. 2962)

7. A new § 786.18 is added to subpart B to read as follows:

§ 786.18 How is PEP reapproval granted?

PEP reapproval is granted if the PEP has given the program, product, or practice a total score of at least 70 points for the criteria in § 786.17.

(Authority: 20 U.S.C. 2962)

8. A new § 786.19 is added to subpart B to read as follows:

§ 786.19 How long does PEP reapproval last?

PEP reapproval remains in effect for six years from the date of reapproval.

(Authority: 20 U.S.C. 2962)

PART 787—NATIONAL DIFFUSION NETWORK: DISSEMINATION PROCESS PROJECTS

9. The authority citation for part 787 continues to read as follows:

Authority: 20 U.S.C. 2962, unless otherwise noted.

10. Section 787.2 is revised to read as follows:

§ 787.2 Who is eligible for an award?

(a) *New awards.* Any public or nonprofit private agency, organization, or institution that has in operation a dissemination process that has current Program Effectiveness Panel (PEP) approval may apply for a new Dissemination Process grant.

(b) *Continuation awards.* Any Dissemination Process grantee, otherwise eligible to apply for a continuation award, may apply for the continuation award even if either the PEP approval period or the JDRP approval period has expired.

(Authority: 20 U.S.C. 2962)

11. Section 787.11 is revised to read as follows:

§ 787.11 What must an applicant submit for review by the PEP?

(a) For PEP review of a dissemination process that has not been previously approved by the PEP or the JDRP, an eligible applicant shall submit to the Secretary—

(1) A description of its dissemination process;

(2) A description of the procedures and criteria for selecting information, materials, and services to be disseminated and for judging that they are educationally significant; and

(3) A description of the procedures and criteria for evaluating qualitative and quantitative evidence of the effectiveness of information, instructional materials, and services to be disseminated.

(b) For PEP review of a dissemination process that has been previously approved by the PEP or the JDRP, an eligible applicant shall submit to the Secretary—

(1) A description of its dissemination process;

(2) A description of the procedures and criteria for selecting information, materials, and services to be disseminated and for judging that they are educationally significant;

(3) A description of the procedures and criteria for evaluating qualitative and quantitative evidence of the effectiveness of information, instructional materials, and services to be disseminated;

(4) Information about the extent to which information, materials, and services have been disseminated; and

(5) Qualitative and quantitative evidence of the effectiveness of the information, instructional materials, and services that have been disseminated, based on the evaluation procedures and criteria described by the applicant in the previously approved PEP or JDRP submittal.

(Authority: 20 U.S.C. 2962)

12. Section 787.12 is amended by revising the heading and paragraph (a) to read as follows:

§ 787.12 How does the PEP review a Dissemination Process that has not been previously approved by the PEP or the JDRP?

(a) The PEP reviews each dissemination process that has not been previously approved by the PEP or the JDRP for educational effectiveness by examining the procedures and criteria for selecting information and instructional materials to be disseminated and for providing services according to the criteria in paragraph (d) of this section.

* * * * *

13. A new § 787.17 is added to subpart B to read as follows:

§ 787.17 How does the PEP review a Dissemination Process that has been previously approved by the PEP or the JDRP?

(a) The PEP reviews each dissemination process that has been previously approved by the PEP or the JDRP for educational effectiveness by examining the information submitted according to the requirements described in § 787.11(b), on the basis of criteria in paragraph (d) of this section.

(b) The PEP awards up to 100 points for these criteria.

(c) The maximum score for each criterion is indicated in parentheses following the criterion.

(d) In reviewing each dissemination process the PEP determines the following:

(1) *Evaluation design.* (25 points) The PEP determines the extent to which the evaluation design continues to—

(i) Be appropriate for the program;

(ii) Be based on correct interpretation of relevant research and literature;

(iii) Demonstrate that a clear and attributable connection exists between the evidence of an educational effect and the program treatment; and

(iv) Address rival hypotheses.

(2) *Results.* (25 points) The PEP determines the extent to which the results indicate that the process has been and will continue to be particularly effective relative to similar processes.

(3) *Replication.* (50 points) The PEP determines the extent to which—

(i) The information, instructional materials, and services have been used at other sites;

(ii) The information, instructional materials, and services are used at other sites with reasonable fidelity to the original model; and

(iii) The information, instructional materials, and services will continue to be used at other sites with the likelihood of continuing to achieve similar results.

(Authority: 20 U.S.C. 2962)

14. A new § 787.18 is added to subpart B to read as follows:

§ 787.18 How is PEP reapproval granted?

PEP reapproval is granted if the PEP has given the procedures and criteria a score of at least 20 points for the criterion in § 787.17(d)(2) (Results) and a total score of at least 70 points for all the procedures and the criteria in § 787.17.

(Authority: 20 U.S.C. 2962)

15. A new § 787.19 is added to subpart B to read as follows:

§ 787.19 How long does PEP reapproval last?

PEP reapproval remains in effect for six years from the date of reapproval.

(Authority: 20 U.S.C. 2962)

[FR Doc. 93–15386 Filed 6–29–93; 8:45 am]

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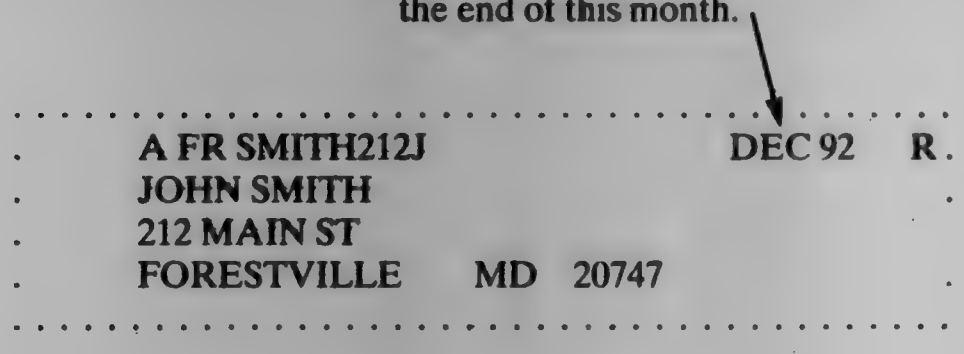

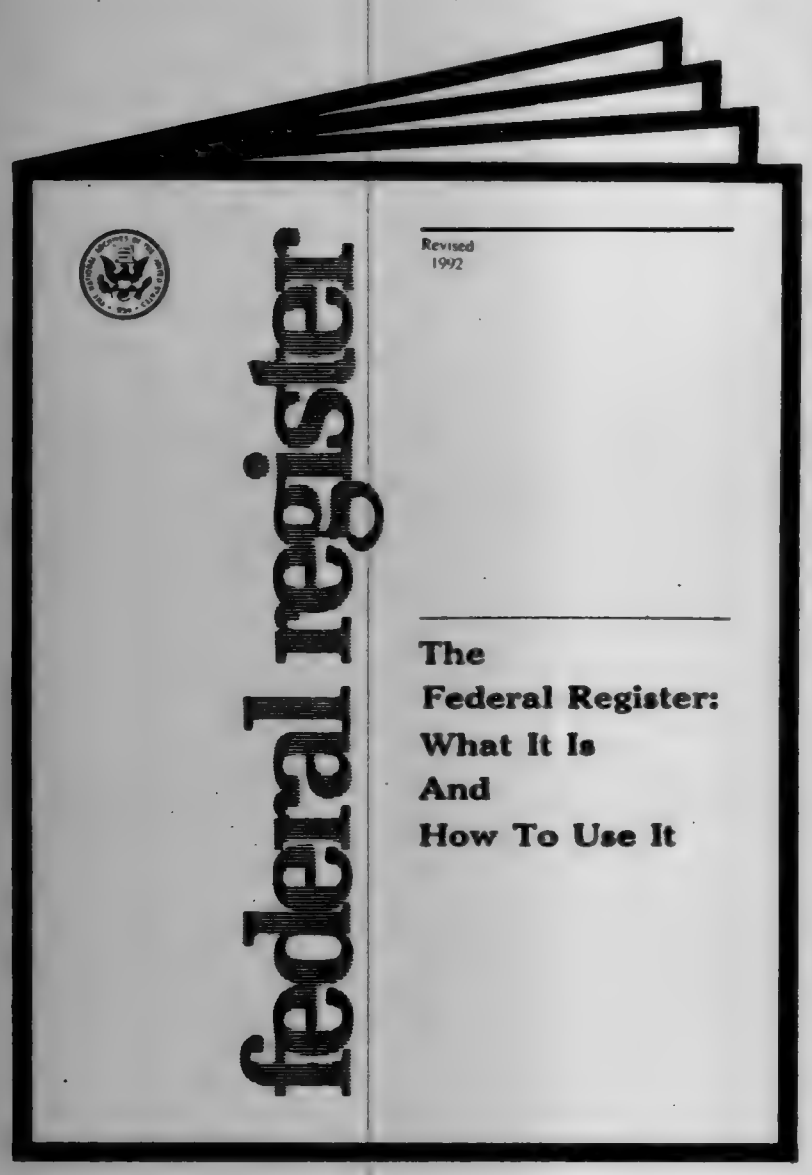

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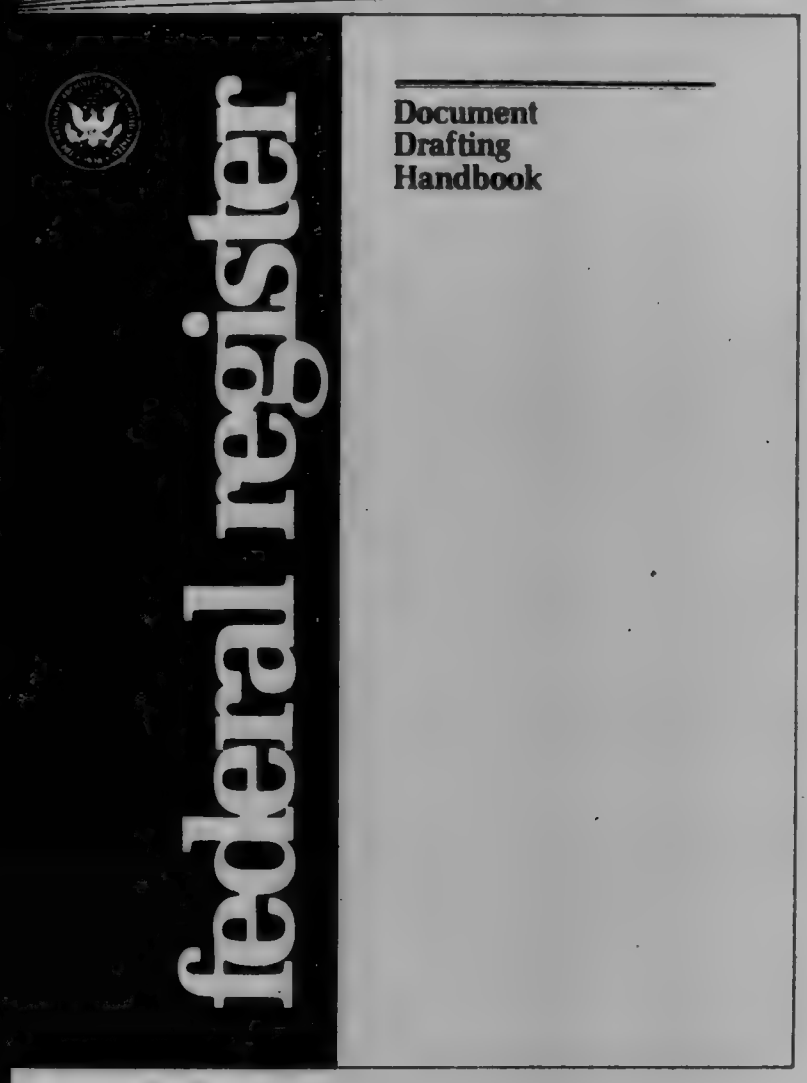

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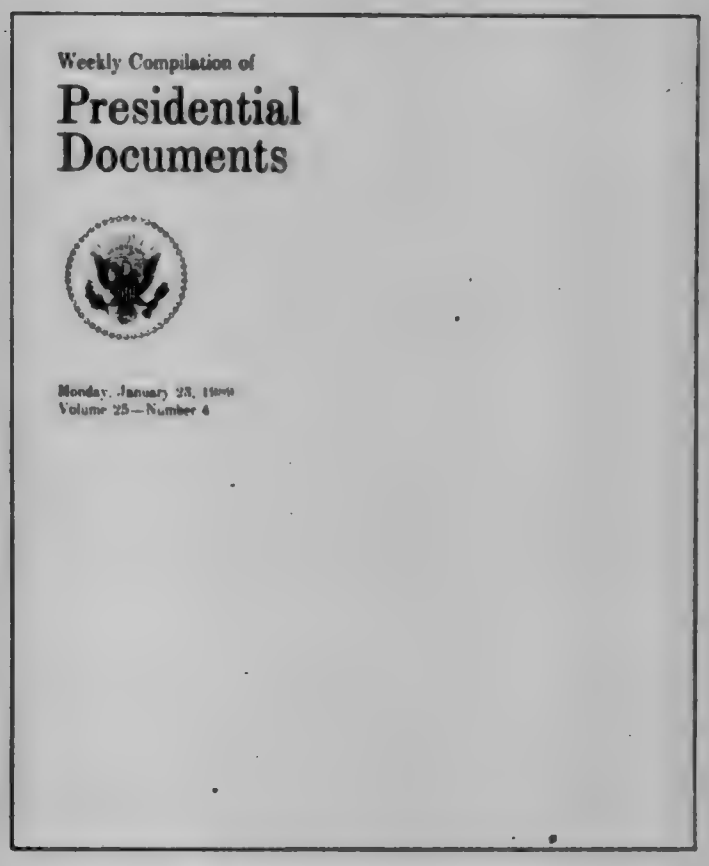

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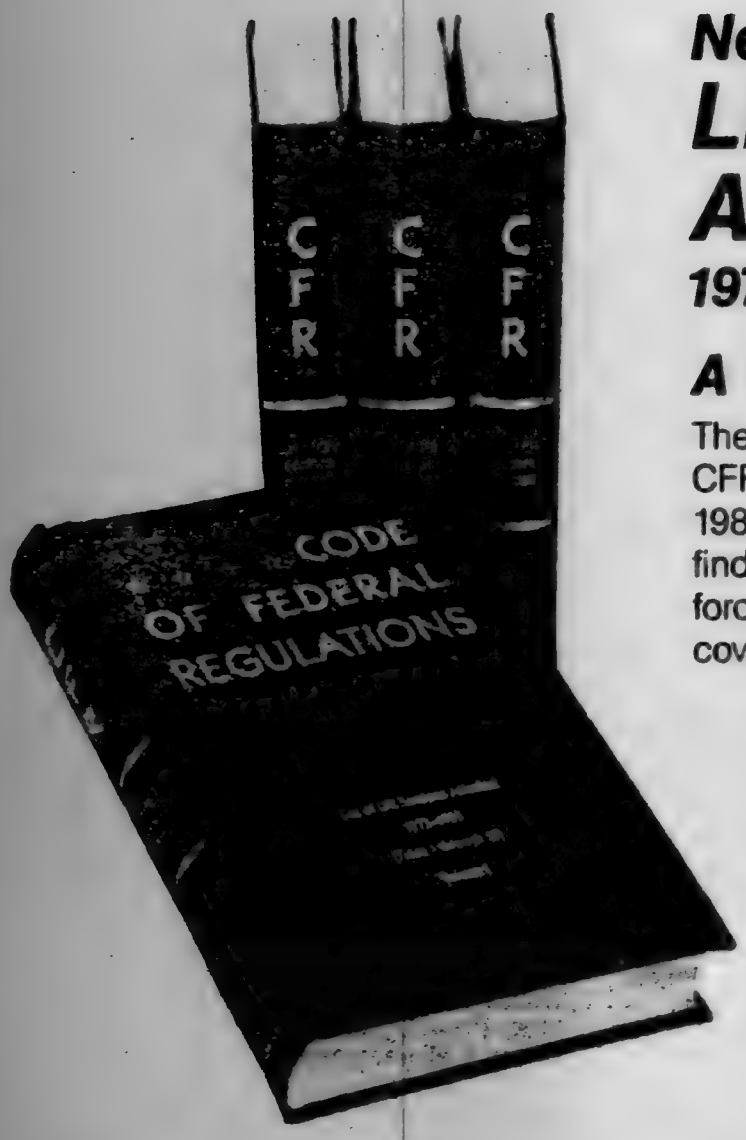

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Title 42–50
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The CFR is revised annually according to the following schedule:

Titles 1-16—as of Jan. 1
17-27—as of April 1
28-41—as of July 1
42-50—as of Oct. 1

To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

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PARALLEL TABLE OF AUTHORITIES AND RULES

Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1993.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

INDEXES

An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

INQUIRIES AND SUGGESTIONS

Brian Swidal was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

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968.201 Revised; interim; eff. 4-14-93 13933
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968.205 Revised; interim; eff. 4-14-93 13933
968.210 Revised; interim; eff. 4-14-93 13933
968.215 Revised; interim; eff. 4-14-93 13933
968.220 Revised; interim; eff. 4-14-93 13933
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968.255 Revised; interim; eff. 4-14-93 13938
968.260 Added; interim; eff. 4-14-93 13938
968.305 Amended; interim; eff. 4-14-93 13931
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103.38 Amended 46474
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103.43 Revised 46474
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103.46 Existing text designated as (a); (b) added 46474
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502 Added 12392
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503 Added 16495
515 Added 5815
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1.43-6 Added 54930
1.43-7 Added 54930
1.56(g)-0 Amended 60476
1.56(g)-1 (a)(6)(i) and (d)(2)(ii)(B) revised; (a)(7), (f)(3), (m), (r) and (s) added 60477
1.58-9 Added 19255
(c)(3)(iii)(A)(*3*)(*iii*), (d) *Example* 1, *Example* 2 and (e)(2)(i) corrected 24848
1.58-9T Removed 19262
1.61-2T (c)(3)(i) heading and (ii) removed; (c)(3)(i) redesignated as (c)(3) 62195
1.61-3 (a) amended 12419
1.61-21 (a)(7), (c)(2)(i), (3)(i), (4) and (7) amended; (c)(1), (3) heading, (3)(i) heading and (ii) revised; (c)(2)(ii) and (iii) redesignated as (c)(2)(iii) and (iv); new (c)(2)(ii) added 62195
1.62-1 Added 57668
(c) corrected 60568
1.62T (c)(2) and (f) removed; (e)(1) amended 57668
1.62-2 (c)(1), (5), (d)(3)(ii), (e)(2), (h)(2)(i)(B)(*1*) amended 57668
1.62-25 (b) corrected 60568
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1.79-3 (d)(2) revised 33635
1.79-3T Removed 33635
1.103-13 (f) removed 20977
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(c)(1)(iii) corrected 26891
(c)(2)(ii)(B) corrected 28611, 36001
1.108-2 Added 61808
1.132-0 Amended 62196
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1.132-5 (b)(1)(iv) amended 57669
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1.148-0 Added 20977

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1.148-1 Added 20982
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(b)(1)(ii) corrected 45878, 48851
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1.148-2 Added 20984
(c)(1), (2) *Example* 2, (d)(2) and (4) corrected 44990
(b)(2)(iii) and (c)(2) *Example* 3 corrected 45878
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1.148-3 Added 20987
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1.148-3T Removed 20977
1.148-4 Added 21005
(c)(5), (d)(3)(ii) and (e)(6)(i)(A) corrected 44990
1.148-4T Removed 20977
1.148-5 Added 21011
(c)(1)(iii) corrected 44990
1.148-5T Removed 20977
1.148-6 Added 21012
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(b)(5)(ii) and (m)(4) corrected 45879
1.148-6T Removed 20977
1.148-7 Added 21020
1.148-7T Removed 20977
1.148-8 Added 21020
(c)(3), (d)(3), (e)(13), (14) and (h)(4) corrected 44990
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1.148-9T Removed 20977
1.148-10 (c) through (i) added 21024
1.148-10T Removed 20977
1.148-11 Added 21025
(b)(2)(i) introductory text, (C), (c)(1)(i)(A), (e)(2)(i), (ii), (f)(2)(vii), (3), (g) and (j)(5) corrected 44990
Heading and (j)(3) corrected 45879
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1.148-12T Added 21030
1.148-13T Added 21031
(b)(1) corrected 44991

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1.149(d)-1T Correctly removed 44991
1.149(e)-1 Added 36002
1.149(e)-1T Removed 36002
1.150-0 Added 21031
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1.150-1 (g) corrected; (h)(1) correctly designated 13028
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1.162-25 Added 57669
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1.163-12 Added 236
(b)(1) corrected 8098
1.166-2 (d)(3)(iii)(D), (E), and (iv)(C)(*2*) revised 45569
1.166-2T Added 45569
1.168(d)-0 Added 48981
1.168(d)-1 Added 48981
1.168(j)-1T Amended 43896
1.179-0 Added 61316
1.179-1 (j) redesignated as (k); (a) through (d), (e)(4), (f)(1), (h) and (i)(2) revised; (e)(1), (f)(2), (3) and new (k) amended; new (j) added 61316
1.179-2 Revised 61318
1.179-3 Redesignated as 1.179-4; new 1.179-3 added 61321
1.179-4 Redesignated as 1.179-5; new 1.179-4 redesignated from 1.179-3 61321
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1.179-6 Revised 61323
1.263(a)-1 (b) amended 12419
1.263A-1T (a)(5)(i) revised 12419
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1.274 (d)-1 Added 57669
1.274-5T (e)(1)(ii), (l) and (m) amended; (g) revised 57669
1.337(d)-1 (a)(5) Example 8 amended 53550
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1.367(e)-0T Removed 5929
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1.382-2 (a)(3)(ii) *Example* 2 and *Example* 3 corrected 24188
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1.382-2T (h)(4)(x)(J) added 12210
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(f)(7), (g)(4) *Example* 5, (h)(4)(x)(J) and (j)(2)(iii)(A) amended; (h)(4)(x)(Z) revised 45712
(f)(7) corrected 52827
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1.383-2 (c) correctly designated from 1.383-2T; CFR correction 39359
1.383-2T Correctly designated as 1.383-2; CFR correction 39359
1.401(a)(31)-1T Added 48166
1.401(k)-1 (f)(3)(ii) concluding text corrected 59915

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1.451-3 (a)(8) added....12420
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9.141 Added 20761
9.144 Added 11967
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20.63 (a) revised 40849
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70.471 (a)(3) revised 40329
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0.157 Added 31314
0.160—0.172 (Subpart Y) Appendix amended 30396
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2.19 (b)(4) added 16612
2.20 Paroling policy guidelines amended 41392, 41393
2.41 (b) revised 59916
2.62 (a)(1) revised 41394
2.66 (f) removed; (g) and (h) redesignated as (f) and (g); (e) and new (f) revised; new (g) amended 41395
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11 Authority citation revised 44107
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26 Added 4901
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68.3 (a), (b), and (c) redesignated as (1), (2), and (3); introductory text redesignated as (a); (d) redesignated as (b); new (c) added 57672
68.5 (b) amended 57672
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68.26 Amended 57672
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68.37 (b)(2)(ii) revised; (c) amended 57672
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549 Authority citation revised; subpart and sectional authority citations removed 53820
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86.1340–84 Removed 16019
86 Appendix I amended 16067
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88 Added 60046
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88.301–93—88.313–93 (Subpart C) Added 11901
91.215 (a) revised 34618
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122.21 (c)(2)(i), (ii) and (iii) redesignated as (c)(2)(ii), (iii) and (v); new (c)(2)(ii) and (iii) revised; new (c)(2)(i) and (iv) added 9413
122.26 (e)(7) added 60447
122.42 (d) added 60448
122.44 (d)(1)(vi)(B) revised 33049
123.25 (a)(4) revised 9414
123.46 (a) revised 33049
124.2 Amended 60129
124.5 (b) amended 60129
124.78 Correctly designated 30657
130.7 (d)(1) redesignated in part as (d)(2); (b) revised; (c)(1) introductory text, (ii), (2), (d) introductory text, (1), (2) and (e) amended 33049
130.8 (b)(5) added 33050
130.10 (b)(2) and (d)(3) revised 33050
131 Authority citation revised 60910
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136.3 (a) Table 1B, (b) table amended 41833
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141.6 (h) added 31838
141.12 Table amended 31838
141.23 (k)(4) and (5) redesignated as (k)(5) and (6); (a)(4) introductory text, (a)(4)(i) introductory text, Table, (c) introductory text, (1), (i)(1), new (k)(5) and (6) revised; (a)(4)(iii) and new (k)(4) added 31838
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141.32 (e)(53) through (75) added 31843
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141.50 (a)(19) through (23) added; (b) table amended; effective in part 8–17–92 and 1–17–94 31846
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261.5 (j) amended 41612
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261.31 Table amended 61502
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25.209 (a) through (d) revised; (g) added 13420
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61.47 (h) redesignated as (h)(1); (h)(2) added 54331
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90.311 (a) table amended 12181
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Table I is in the CFR Index and Finding Aids revised as of January 1, 1993. Additions during 1992 are in the December 1992 LSA (List of CFR Sections Affected).

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List of CFR Sections Affected

April 1993

Editor's Note:
The revision **date** for Chapters II to the end of the 1993 edition of title 17 will be delayed until June 30, 1993. The 1993 revision for Chapter II to the end will include amendments promulgated during the period of April 1, 1992 through June 30, 1993. For the convenience of the user, this **LSA** contains all amendments promulgated since the April 1, 1992 revision.

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List of CFR Sections Affected

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LSA—LIST OF CFR SECTIONS AFFECTED

The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

Titles 1-16—as of Jan. 1
17-27—as of April 1
28-41—as of July 1
42-50—as of Oct. 1

To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

Boldface page numbers under a particular title indicate that the page numbers span 2 years. **Boldface** is used to distinguish the previous year from the current year.

Cite a page reference from this publication using the volume number (i.e. 58 FR for 1993) and the page number. Example: 24727 cite as 57 FR 24727. For your convenience, the volume number has been included in the Table of Federal Register Issue Pages and Dates.

ISSUES TO BE SAVED

There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1-16; the MARCH issue is the ANNUAL for Titles 17-27; the JUNE issue is the ANNUAL for Titles 28-41; the SEPTEMBER issue is the ANNUAL for Titles 42-50. ANNUAL ISSUES to be saved are clearly designated on the cover.

PARALLEL TABLE OF AUTHORITIES AND RULES

Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1993.

TABLE OF FEDERAL REGISTER ISSUE PAGES AND DATES

A table is included at the end of this publication which identifies the volume number, the inclusive page numbers, and the corresponding Federal Register issue dates for the period covered.

INDEXES

An INDEX to the daily Federal Register is published monthly and is cumulated for 12 months. A separate volume, the CFR Index and Finding Aids to the entire Code of Federal Regulations, is revised as of January 1 each year.

INQUIRIES AND SUGGESTIONS

Brian Swidal was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

(Comprising a Complete CFR Set)

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-019-00001-1)	$15.00	Jan. 1, 1993
3 (1990 Compilation and Parts 100 and 101)	(869-019-00002-0)	17.00	[1] Jan. 1, 1993
4	(869-019-00003-8)	5.50	Jan. 1, 1993
5 Parts:			
1-699	(869-019-00004-6)	21.00	Jan. 1, 1993
700-1199	(869-019-00005-4)	17.00	Jan. 1, 1993
1200-End, 6 (6 Reserved)	(869-019-00006-2)	21.00	Jan. 1, 1993
7 Parts:			
0-26	(869-019-00007-1)	20.00	Jan. 1, 1993
27-45	(869-019-00008-9)	13.00	Jan. 1, 1993
46-51	(869-017-00009-4)	18.00	Jan. 1, 1992
52	(869-019-00010-1)	28.00	Jan. 1, 1993
53-209	(869-019-00011-9)	21.00	Jan. 1, 1993
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12 Parts:			
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220-299	(869-019-00037-2)	26.00	Jan. 1, 1993
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60-139	(869-017-00043-4)	22.00	Jan. 1, 1992
140-199	(869-019-00044-5)	12.00	Jan. 1, 1993

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200–1199	(869–019–00045–3)	22.00	Jan. 1, 1993
1200–End	(869–019–00046–1)	16.00	Jan. 1, 1993
15 Parts:			
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16 Parts:			
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150–999	(869–017–00051–5)	14.00	Jan. 1, 1992
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17 Parts:			
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200–239	(869–017–00055–8)	17.00	Apr. 1, 1992
240–End	(869–017–00056–6)	24.00	Apr. 1, 1992
18 Parts:			
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200–End	(869–017–00062–1)	9.50	Apr. 1, 1992
20 Parts:			
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170–199	(869–017–00068–0)	18.00	Apr. 1, 1992
200–299	(869–017–00069–8)	5.50	Apr. 1, 1992
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§§ 1.851-1.907	(869-017-00091-4)	23.00	Apr. 1, 1992
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§§ 1.1001-1.1400	(869-017-00093-1)	19.00	Apr. 1,1992
§§ 1.1401-End	(867-017-00094-9)	26.00	Apr. 1, 1992
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34 Parts:			
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86-99	(869-017-00143-1)	33.00	July 1, 1992
100-149	(869-017-00144-9)	34.00	July 1, 1992
150-189	(869-017-00145-7)	21.00	July 1, 1992
190-259	(869-017-00146-5)	16.00	July 1, 1992
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1200-End	(869-017-00167-8)	20.00	Oct. 1, 1992
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90-139	(869-017-00171-6)	14.00	Oct. 1, 1992
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200-499	(869-017-00175-9)	22.00	Oct. 1, 1992
500-End	(869-017-00176-7)	14.00	Oct. 1, 1992
47 Parts:			
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40-69	(869-017-00179-1)	10.00	Oct. 1, 1992
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1030.801 (Subpart H) Removed 12335
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1030.1001—1030.1002 (Subpart J) Removed 12335
1030.1101—1030.1109 (Subpart K) Removed 12335
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1030 Appendixes A through F removed 12335
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190.10 (c)(1) revised 17505

Chapter II—Securities and Exchange Commission (Parts 200—399)

[EDITORIAL NOTE: The revision date for the 1993 edition of title 17, chapters II through the end, will be delayed until June 30, 1993. The 1993 revision will include amendments promulgated during the period of April 1, 1992 through June 30, 1993. For amendments promulgated during that period, see the June, 1993 LSA.]

200.1—200.30-16 (Subpart A) Authority citation revised 14659
200.30-1 (c) revised **36449**
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(k) corrected 21349
200.30-3 (a)(51) added 11792
(a)(52) added 25774
200.30-5 (a)(7) and (f)(10) removed; (a)(8) and (9) redesignated as new (a)(7) and (8); (j), (k) and (l) added; interim 14857
(m) and (n) added; interim 15004
(j) corrected 17327
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200.30-14 (f) revised 8541
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210.3-03 (b)(2) amended **45292**
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210.3-12 (a) amended **45292**
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210.7-04 Amended **45293**
210.10-01 (a)(4) revised; (c)(3) and (4) amended **45293**
210.12-04 (a) amended **45293**
210.12-16 Amended **45293**
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228.403 (b) introductory text revised **48150**
228.502 (d) heading, (1), (2), (3) introductory text and (d)(3)(i) through (v) redesignated as (d)(1), (i), (ii), (iii) introductory text and (A) through (E); new (d)(2) added 19605
228.508 (i) added 19605
228.601 (b)(10)(ii)(A) revised **48150**
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(b)(99) existing text designated as (b)(99)(i); (a)(3), (b)(13)(ii), (b)(25)(ii), new (b)(27), (c) and Appendixes A through F added; instructions, table and new (b)(24) amended; interim; eff. 4-26-93 and 11-1-93 14660
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229.508 (k) added 19606
229.601 (b)(10)(iii)(A) revised 48158
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230.144A (a)(1)(i)(F) through (H) redesignated as (a)(1)(i)(G) through (I); (a)(1)(i)(A) note and new (a)(1)(i)(F) added; (a)(1)(i)(B) and (2) amended 48722
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0.96 Revised 38772
0.157 Added 31314
0.160—0.172 (Subpart Y) Appendix amended 30396
2.12 (a) revised 41391
2.19 (b)(4) added 16612
2.20 Paroling policy guidelines amended 41392, 41393
2.41 (b) revised 59916
2.62 (a)(1) revised 41394
2.66 (f) removed; (g) and (h) redesignated as (f) and (g); (e) and new (f) revised; new (g) amended 41395
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11 Authority citation revised 44107
11.4—11.9 (Subpart B) Added 44107
20 Authority citation revised 31318
20.32 (a) and (b) amended 31318
26 Added 4901
35.105 OMB number 17521
35.133 (a) amended 17521
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68 Authority citation revised 57671
68.2 (i), (j), (k), and (l) through (q) redesignated as (j), (l), (m), and (o) through (t); new (i), new (k), and (n) added 57671
68.3 (a), (b), and (c) redesignated as (1), (2), and (3); introductory text redesignated as (a); (d) redesignated as (b); new (c) added 57672
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68.6 (a) amended 57672

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68.8 (c)(2) amended 57672
68.23 (c)(6) amended 57672
68.25 (b) revised; (d) redesignated as (e); new (d) added 57672
68.26 Amended 57672
68.28 (a) introductory text amended 57672
68.37 (b)(2)(ii) revised; (c) amended 57672
68.43 (c) heading revised 57672
68.48 (a) amended 57672
68.52 (a), (c)(1)(v), (2)(i)(K) and (ii) amended; (c)(4) revised 57672
68.53 (a) introductory text and (1) amended 57672
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503.4 (b)(1) through (4) redesignated as (b)(2) through (5); new (b)(1) and (e) added 53822
503.5 (b)(2) and (3) redesignated as (b)(3) and (4); new (b)(2) added 53822
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503.8 (b) and (c) revised 53822
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549 Authority citation revised; subpart and sectional authority citations removed 53820
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571 Authority citation revised 34663
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and (d); (a) and new (c) revised; (b)(1)(iv), (c)(1) introductory text, (2), (3) and (e) amended 41095
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10.51 Introductory text amended 41095
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103.22 (a)(2) revised; eff. 9-8-93 13547
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103.36 (a) and (b)(4) amended; (b)(9) through (15) added; eff. 9-8-93 13548
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35.4000—35.4130 (Subpart M) Revised....45316
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51 Authority citation revised...32334, 52987
51.165 (a)(1)(xii)(D) revised; (a)(1)(v)(C)(*8*), (*9*), (xii)(E) and (xx) through (xxv added....32334
51.166 (b)(21)(iv) revised; (b)(2)(iii)(*h*) through (*k*), (21)(v) and (30) through (37) added....32335
51.350—51.373 (Subpart S) Added....52987
51 Appendix N removed....52987
52 Authority citation revised....32336

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52.24 (f)(13)(iv) revised; (f)(5)(iii)(*h*), (*i*), (13)(v) and (19) through (24) added..... 32337
52.50 (c)(60) added..... 25567
52.220 (c)(183)(i)(B)(*2*), (184)(i)(B)(*2*), (C)(*1*), (185)(i)(A)(*3*) and (C)(*2*) amended..... 35759
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52.770 (c)(81) added..... 42892
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52.820 (c)(55) revised..... 6093
52.870 (c)(27) added..... 3848
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52.1220 (c)(25) added..... 46308
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52.1270 (c)(22) added..... 34252
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52.1520 (c)(45) added..... 36605
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52.1570 (c)(47) added..... 42893
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52.1605 Amended..... 42893, 43441
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52.1820 (c)(23) added..... 5297
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52.1020 (c)(32) added..... 15282
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52.2020 (c)(73) added 42895
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52.2120 (c)(36) added 59302
52.2170 (c)(13) added 5297
52.2220 (c)(106) added 40337
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52.2270 (c)(77) added 44126
52.2420 (c)(97) removed 35760
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(c)(94) added 10983
(c)(89) added 11376
52.2423 (f) revised 11377
52.2470 (c)(38) added 4580
52.2479 Revised 4580
52.2520 (c)(25) added 42896
52.2570 (c)(62) added 46310
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55 Added 40806
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55.8 OMB number 16626
55.14 (e)(3)(ii)(F) and (H) revised 16626
55.15 Added; eff. 9-4-93 14159
55 Appendix A amended 16626
58.1 (f) amended; (w), (x) and (y) added 4867
58.2 (d) redesignated as (e); new (d) added 8467
58.13 (b) revised; (c) redesignated as (d); new (c) added 8467
58.20 (a) and (c) revised; (f) added 8467
58.40—58.46 (Subpart E) Added 8468
58.40 (Subpart E) Redesignated as 58.50 (Subpart F) 8467
58.50—58.51 (Subpart F) Redesignated as 58.60 through 58.61 (Subpart G); new 58.50 (Subpart F) redesignated from 58.40 (Subpart E) 8467
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58 Appendix D amended 44496
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60.4 (c) table revised 5298
60.14 (h) through (l) added 32339
60.17 (a)(31) amended; (a)(62) added 30656
60.48 Added (OMB number) 18015
60.49a OMB number 18015
60.55 Added (OMB number) 18015
60.59a OMB number 18015
60.75 Added (OMB number) 18015
60.94 Added (OMB number) 18015
60.107 OMB number 18015
60.115b OMB number 18015
60.116a Added (OMB number) 18015
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60.134 Added (OMB number) 18015
60.155 OMB number 18015
60.205 Added (OMB number) 18015
60.215 Added (OMB number) 18015
60.225 Added (OMB number) 18015
60.235 Added (OMB number) 18015
60.245 Added (OMB number) 18015
60.255 Added (OMB number) 18015
60.276 OMB number 18015
60.297 Added (OMB number) 18015
60.305 Added (OMB number) 18015
60.336 Added (OMB number) 18016
60.343 OMB number 18016
60.375 Added (OMB number) 18016
60.405 Added (OMB number) 18016
60.434 OMB number 18016
60.475 Added (OMB number) 18016
60.537 OMB number 18016
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60.665 OMB number 18016
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60.684 OMB number 18016
60.730—60.737 (Subpart UUU) Added 44503
60 Appendix A amended 30656
61 Authority delegation notices 29649, 48563, 55113
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61.04 (c) table revised 5299
61.35 Added (OMB number) 18016
61.60 (c) amended 60999

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61.340 (c)(3) removed..... 3095
61.341 Amended..... 3095
61.342 (a), (b), (c)(1) introductory text, (iii), (2), (3), and (d) introductory text revised; (e), (f) and (g) redesignated as (f), (g) and (h); new (e) added..... 3095
61.343 (a) introductory text amended; (b) and (c) redesignated as (c) and (d); (a)(1)(i)(C) and new (b) added; new (c) revised..... 3096
61.344 (a)(1)(i)(C) redesignated as (a)(1)(i)(D); new (a)(1)(i)(C) added..... 3097
61.345 (a)(1)(ii), (2) and (3) introductory text revised; (a)(4) added..... 3097
61.346 (a)(1)(i)(C) added..... 3097
61.347 (a)(1)(i)(C) Added..... 3098
61.348 (a)(5) amended; (b) introductory text and (e) introductory text revised; (f), (g), (h), and (i) redesignated as (e)(1), (2), (f), and (g); (e)(3) added..... 3098
61.349 (a)(1)(ii), (2)(i)(B), (ii), and (e) revised; (a)(1)(iv) and (2)(iv) added..... 3098
61.353 (a) revised..... 3099
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61.355 (a)(1) introductory text, (1)(i), (ii), (2), (3), (b), (c) introductory text, (e)(3), (4), (f)(3), (i) introductory text, (3) introductory text, (ii)(C), (iii), (iv), and (4) revised; (c)(1) and (2) redesignated as (c)(2) and (3); (a)(6), new (c)(1), (j), and (k) added; new (c)(2), (d) and (g) amended..... 3099

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61.357 (d)(4) removed; (d)(3), (5), (6), and (7) redesignated as (d)(4), (6), (7), and (8); new (d)(7)(iii) redesignated as (d)(7)(iv); (a) introductory text, (4), (d)(1), and new (d)(4)(iii), (7)(iv)(D), and (8) revised; (c) and (d)(2) amended; new (d)(3), new (5), new (7)(iii), (iv)(J), and (v) added..... 3105
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62.6123 Undesignated heading and section added..... 43405
62.7325 Undesignated center heading and section added..... 56858
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70 Added..... 32295
70.1 (f) added..... 57347
72 Added..... 3650
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72.6 (a)(2) revised; (a)(3)(iii) through (vii), (b)(4), (5), (6), (7) and (c) added..... 15648
72.30 (b)(2)(iv) through (viii) added..... 15649
72.44 (f)(3)(i) and (ii) revised; (g)(1)(ii) amended..... 15649
73.1—73.3 (Subpart A) Revised..... 3687
73.1 (f) added..... 15650
73.10—73.27 (Subpart B) Added..... 3687
73.10 (b), (c) and (d) added..... 15650
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73.30—73.38 (Subpart C) Added....3691
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73.72 (c) revised....3695
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73.80—73.86 (Subpart F) Added....3695
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75 Added....3701
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75.2 (b)(2) and (3) revised....15716
75.4 (c) revised....15717
77 Added....3757
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80 Program extension....46316
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80.2 (pp), (qq) and (rr) added....47771
80.22 (j) added....16019
80.27 (b) and (c) revised; (e) added....14484
(a)(2) table amended....26069
80.28 (g)(1)(i), (3)(ii), and (6)(ii) removed; (g)(1)(iii), (3)(iii), (6)(iii), and (iv) redesignated as (g)(1)(i), (3)(ii), (6)(ii), and (iii); (b)(1), (2), (3), (f)(3), (4), new (g)(1)(i), (ii), (2) introductory text, (ii), (3) introductory text, new (ii), (4)(i), new (6)(ii), (iii), and (7) revised; (b)(4) and (f)(5) added....14484
80.35—80.39 (Subpart C) Added....47771
80 Appendix D amended....14485
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82.1—82.20 (Subpart A) Appendixes A through E redesignated from appendixes A through E to part 82; Appendixes A, B, C and E revised....31261
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82.62 (a) corrected 8820
82.64 (b) correctly designated 8820
82.100—82.124 (Subpart E) Added 8164
82 Appendixes A through E redesignated as appendixes A through E to subpart A and revised 33787
85 Authority citation revised 21386
85.1401—85.1415 (Subpart O) added 21386
85.1407 OMB number pending 21397
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86 Authority citation revised 30055
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86.091-28 (e) added 31897
86.091-29 (a)(3)(i) and (c)(3)(i) revised 16020
86.093-2 Added 15795
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86.093-35 Added 15795
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86.094-30 Revised 4028
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86.094-35 (a) introductory text through (a)(1)(iii)(E), (a)(2)(iii)(L) through (a)(3)(iii)(H), (a)(3)(iii)(J) through (b), (d)(2) through (h) revised; (a)(1)(iii)(k) added 31907
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86.128-79 (c) revised	16033
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86.201-94—86.246-94 (Subpart C) Added	31916
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86.901-93—86.911-93 (Subpart J) Added	30055
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List of CFR Sections Affected

May 1993

Editor's Note:
The revision **date** for Chapters II to the end of the 1993 edition of title 17 will be delayed until June 1, 1993. The 1993 revision for Chapter II to the end will include amendments promulgated during the period of April 1, 1992 through June 1, 1993. For the convenience of the user, this **LSA** contains all amendments promulgated since the April 1, 1992 revision.

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The LSA (List of CFR Sections Affected) is a monthly publication designed to lead users of the Code of Federal Regulations (CFR) to amendatory actions published in the Federal Register (FR). It should be shelved with current CFR volumes. Entries are by CFR title, chapter, part, and section. Proposed rules are listed at the end of appropriate titles.

HOW TO USE THIS FINDING AID

The CFR is revised annually according to the following schedule:

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To bring these regulations up to date, consult the most recent LSA for any changes, additions, or removals published after the revision date of the volume you are using. Then check the CUMULATIVE LIST OF PARTS AFFECTED appearing in the Reader Aids of the latest Federal Register for less detailed but timely changes published after the final date included in this publication.

Boldface page numbers under a particular title indicate that the page numbers span 2 years. **Boldface** is used to distinguish the previous year from the current year.

Cite a page reference from this publication using the volume number (i.e. 58 FR for 1993) and the page number. Example: 24727 cite as 57 FR 24727. For your convenience, the volume number has been included in the Table of Federal Register Issue Pages and Dates.

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There is no single annual issue of the LSA. Four ANNUAL ISSUES must be saved; the DECEMBER issue is the ANNUAL for Titles 1-16; the MARCH issue is the ANNUAL for Titles 17-27; the JUNE issue is the ANNUAL for Titles 28-41; the SEPTEMBER issue is the ANNUAL for Titles 42-50. ANNUAL ISSUES to be saved are clearly designated on the cover.

PARALLEL TABLE OF AUTHORITIES AND RULES

Following Title 50 is an update to Table I—Parallel Table of Authorities and Rules found in the CFR Index and Finding Aids. This table contains authority citations added to or removed from Table I as a result of documents published in the Federal Register since January 1, 1993.

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INQUIRIES AND SUGGESTIONS

Brian Swidal was Chief Editor of the LSA. The LSA was prepared under the direction of Richard L. Claypoole, assisted by Laurice Clark. INQUIRIES, telephone 202-523-5227.

SUGGESTIONS concerning this and other publications of the Office are welcomed. Please send your suggestions to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

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200-1199	(869-019-00045-3)	22.00	Jan. 1, 1993
1200-End	(869-019-00046-1)	16.00	Jan. 1, 1993
15 Parts:			
0-299	(869-019-00047-0)	14.00	Jan. 1, 1993
300-799	(869-019-00048-8)	25.00	Jan. 1, 1993
800-End	(869-019-00049-6)	19.00	Jan. 1, 1993
16 Parts:			
0-149	(869-019-00050-0)	7.00	Jan. 1, 1993
150-999	(869-019-00051-8)	17.00	Jan. 1, 1993
1000-End	(869-019-00052-6)	24.00	Jan. 1, 1993
17 Parts:			
1-199	(869-019-00054-2)	18.00	Apr. 1, 1993
200-239	(869-017-00055-8)	17.00	Apr. 1, 1992
240-End	(869-017-00056-6)	24.00	Apr. 1, 1992
18 Parts:			
1-149	(869-017-00057-4)	16.00	Apr. 1, 1992
150-279	(869-017-00058-2)	19.00	Apr. 1, 1992
280-399	(869-017-00059-1)	14.00	Apr. 1, 1992
400-End	(869-019-00060-7)	10.00	Apr. 1, 1993
19 Parts:			
1-199	(869-017-00061-2)	28.00	Apr. 1, 1992
200-End	(869-017-00062-1)	9.50	Apr. 1, 1992
20 Parts:			
1-399	(869-017-00063-9)	16.00	Apr. 1, 1992
400-499	(869-017-00064-7)	31.00	Apr. 1, 1992
500-End	(869-017-00065-5)	27.00	Apr. 1, 1992
21 Parts:			
1-99	(869-017-00066-3)	13.00	Apr. 1, 1992
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170-199	(869-017-00068-0)	18.00	Apr. 1, 1992
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800-1299	(869-017-00073-6)	18.00	Apr. 1, 1992
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50-299	(869-017-00098-1)	15.00	Apr. 1, 1992
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2200.63 (c) revised 41687
2200.64 (c) revised 41687
2200.93 (c) revised; (i) added 41687
2200.95 (a)(1) revised; (g) amended; (j) and (k) added 41688
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2200.100 (c) revised 41688
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2200.203 (a)(2), (3), (b)(2), (3), (4), (c) and (d) revised; (a)(4) removed; (e) added 41688
2200.204 Revised 41689
2200.205 (a) revised 41689
2200.207 (b) and (c) revised 41689
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2550 Authority citation revised; sectional authority citations removed 46932
2550.404c-1 Added 46932

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2601 Authority citation revised 61324
2601.3 (b)(1) amended; (c) revised 61324
2602 Heading and authority citation revised 45714
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2602.1—2602.32 Designated as Subpart A; heading added; nomenclature change 45714
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2602.1 Undesignated center heading removed 4319
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2602.41—2602.46 (Subpart B) Added 45714
2602 Appendix A redesignated as subpart A Appendix A 45714
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2615 Authority citation corrected 48319
2615.16 (b) amended 48319
2615.30 Redesignated as 2615.31 48319
2615.31 Redesignated from 2615.30; (a) and (c) amended; OMB number 48319
2616 Revised 59218
2616.1 (b) corrected 4203
2616.110 Added 6606
2617 Revised 59225
2617.11 Added 6606
2617.24 (b)(1) and (2), (d)(4) and (e) corrected 4203
2619 Authority citation revised 36602
2619 Appendix B amended 31320, 36602, 53855, 59292
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2622 Appendix A amended 31319, 47259
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2640.6 Revised 59815
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2642 Authority citation revised 59809
2642.1 (a) revised 59809
2642.21—2642.27 (Subpart D) Added 59809
2644 Appendix A amended 31321, 47260
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2646 Added 59815
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2671 Removed 29350

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2676.15 (c) table amended 31322, 36603, 42491, 47261, 53856, 59295
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2700 Revised 12164

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TITLE 30—MINERAL RESOURCES

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7.44 (k) amended 61220

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18.9 (a) amended; eff. 12-23-93....61223
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18.34 Introductory text added; (a)(6) revised....61210
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56.6131 (a)(1) stayed to 7-1-93....44256
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57.6304 (b) stayed to 7-1-93....44256
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206.10 Revised 41863
206.254 (b) amended 52720
206.257 (d)(3) amended 52720
206.259 (c)(1)(i), (2)(i), (c)(4), (d)(1), (e)(1) and (2) amended 52720
206.262 (a)(1) amended 41864
(c)(1), (2)(i), (4), (d)(1), (e)(1) and (2) amended 52720
207 Authority citation revised 41864
207.1 Revised 41864
208 Authority citation revised 41864
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210.202 Amended 52720
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218.40 (c) amended 52720
218.42 Added 62206
218.51 (f)(1) revised 41867
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218.54 (e) added 62206
218.102 (b) revised 41868

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218.155 (d)(3) and (4) revised....41868
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230 Heading revised; section added....62207
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401.3 Amended....27204
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902.20 Revised....53992
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914.25 Revised....45985
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917.15 (kk) added....37093
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917.16 (g) added....45307
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917.21 (c) added....59921
918.15 (c) added....48730
918.16 (a) through (i) removed....48730
920.15 (q) added....44113
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935.16 (c) removed 33123
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935.25 (e) added 44121
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938.16 (rr) through (bbb) added 62229
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944.16 (a) through (m) removed; (p) added 41696
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10.0 Amended 41095
10.20 (a) and (b) amended 41095
10.21 Amended 41095
10.22 Introductory text amended 41095
10.23 Amended 41095
10.24 Introductory text amended 41095
10.26 (a)(4) amended 41095
10.27 Amended 41095
10.28 Amended 41095
10.29 Amended 41095
10.30 (b) removed; (c), (d) and (e) redesignated as (b), (c) and (d); (a) and new (c) revised; (b)(1)(iv), (c)(1) introductory text, (2), (3) and (e) amended 41095
10.31 Amended 41095
10.50 Amended 41095
10.51 Introductory text amended 41095
10.52 (a) amended 41095
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103 Authority citation revised 13546
103.11 (i)(7) revised; eff. 9-8-93 13546
103.22 (a)(2) revised; eff. 9-8-93 13547
103.28 Existing text designated in part as (a)(1) and (a)(3); remaining text removed; (a)(2) and (b) added; new (a)(1) amended; eff. 9-8-93 13547
103.36 (a) and (b)(4) amended; (b)(9) through (15) added; eff. 9-8-93 13548
103.54 Added; eff. 9-8-93 13549
103 Appendix amended 7048
129 Revised 30707

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204 Removed 40330
205 Revised 44280, 60676
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250.2 Amended 4578
250.3 (a)(1) and (b) amended 4578
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257 Removed 57345
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315.64 Revised 39602
315.65 Removed; new 315.65 redesignated from 315.66 39602
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317.2 (a) amended 34684
349 Removed 414
353 Authority citation revised 39602
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353.64 Revised 39602
353.65 Removed; new 353.65 redesignated from 353.66 39603
353.66 Redesignated as 353.65 39603
356 Added 414
357.21 (c) amended; (f) added 38774
357.26 (b)(1)(vii), (viii), (4), (5), (6), (d) and (e) removed; (f) redesignated as (d); (b)(2) and (3) revised 38774
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500.574 Added 62230
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515.333 Added 53997
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515.564 (c) revised; (d) added 53999
515.566 Added 53999
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550.511 Heading and (g) revised; (a) amended 41697
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550.805 Amended 41697
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60 Removed 40849
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82 Removed 21927
92 Removed 13550
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169a.8 (c) revised; heading and (a) amended 29208
169a.9 (a) introductory text, (1) introductory text and (i) revised; (a)(1)(ii), (iv), (2)(i)(A), (B) and (D) amended 29208
169a.10 Revised 29208
169a.11 Amended 29208
169a.13 Revised 29208
169a.15 (a), (b), (c)(3), (d)(1), (2)(ii)(A), (iii) and (4)(i)(E) revised; (d)(2)(i), (v), (3)(viii), (4)(i)(C), (F), (H), (ii)(A), (D)(*2*), (*3*) and (E) introductory text amended 29209
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169a.17 (a), (d) and (g)(1) revised; (l) added 29210

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141.23	(k)(4) and (5) redesignated as (k)(5) and (6); (a)(4) introductory text, (a)(4)(i) introductory text, Table, (c) introductory text, (1), (i)(1), new (k)(5) and (6) revised; (a)(4)(iii) and new (k)(4) added	31838
141.24	(f) introductory text, (4), (5), (7), (10), (11), introductory text, (12), (14) introductory text, (15) introductory text, (16) introductory text, (17), (18), (h)(10), (12)(ii), (iii), (iv), (vi), (vii), (viii), (18) and (19)(i)(B) revised; (h)(12)(ix) through (xiv) added	31841
141.32	(e)(53) through (75) added	31843

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141.40 (e) through (h), (n)(11) and (12) revised; eff. 1-17-94 31845
141.50 (a)(19) through (23) added; (b) table amended; effective in part 8-17-92 and 1-17-94 31846
141.51 (b) table amended; eff. 1-17-94 31846
141.60 (a)(3) and (b)(3) added 31846
141.61 (a)(19), (20), (21) and (c)(19) through (33) added; (b) and (c) introductory text revised; effective in part 8-17-92 and 1-17-94 31846
141.62 (b) introductory text and (c) revised; (b)(11) through (b)(15) added; eff. 1-17-94 31847
141.89 (a) table amended 31847
142.16 (e) introductory text and (2) revised; eff. 1-17-94 31847
142.62 (a) and (b) revised; eff. 1-17-94 31848
146.68 (d)(4) revised 46294
147.2650 Revised 33446
147.2651 Revised 33447
148.1 (d) revised 31963
148.17 Added 37263
Regulation at 57 FR 37263 effective date corrected 39275, 41173
156 Notification of USDA comments 42472
Comment period reopened 54464
156.10 Designated as Subpart A; (i)(2)(viii) revised 38146
156.200—156.212 (Subpart K) Added 38146
164.2 (k) through (r) correctly redesignated as (l) through (s) 30657
168.65—168.85 (Subpart D) Added 9085
169.2 (h)(3) and concluding text revised 9090
170 Revised 38151
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180 Technical correction 54304, 59824
180.1 (h) table amended 53569
180.33 Revised 34518
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180.103 (a) table and (b) table amended 36005

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180.115 Revised 58386
180.142 (k) added 37475
180.145 (c) added 26689
180.221 Revised 53568
180.287 Table amended 53568
Table amended 14316
180.298 (c) table amended 31325
180.304 Revised 59823
180.319 Table amended 58387
180.333 Removed 30132
180.342 (a) table and (c) table amended 19356
180.352 (b) added 29119
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180.361 (a) table amended 11379
180.364 (a) table amended 42701
180.381 (a) table and (b) table amended 34518
180.408 (a) table amended 53572
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180.413 (a) table revised 30122
180.415 (a) table revised 31454
(a) amended 53445
(a) table amended 19354
180.425 Table amended 59824
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180.432 (b) revised 58149
180.434 Table amended 8699
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180.438 (a) table amended 32440
180.461 Added 48328
180.462 Added 54303
180.463 Added 47996
180.464 Added 14317
180.466 Added 19358
180.1001 (d) table amended 40129, 48737, 58149
(c) table amended 48738, 61000
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180.1023 Revised 6893
180.1112 Added 61002
180.1113 Added 53570
180.1114 Added 42700
180.1115 Added 61003
180.1116 Added 29120
180.1118 Added 25784
180.1119 Added 8696
180.1120 Added 21403
185 Authority citation revised 36006

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185.1000 (a) table amended; (d) added 19356
185.1310 (b) added 32441
185.3225 Added 19358
185.3500 (a)(2) table amended 42701
185.3625 Added 36006
185.4000 (a) Table amended 30123
185.4035 Added 29121
186 Technical correction 59824
186.1860 Added 47996
186.3225 Added 19359
186.3375 Added 26689
186.3500 (a) table amended 42701
186.4000 (a) table amended 30123
186.4035 Added 29121
232.2 Amended 8182
233.1 (b) revised 8183
233.2 Amended 8183
233.41 (f) added 8183
233.60 (Subpart G) Redesignated as 233.70 (Subpart H); new 233.60 through 233.62 (Subpart G) added (OMB number) 8183
233.70 (Subpart H) Redesignated from 233.60 (Subpart G) 8183
257.1 (b) and (c)(3) revised; (c)(11) added 9385
257.2 Amended 9385
257.3–4 (b)(1) introductory text revised 9386
260.10 Amended 37263, 38564, 54460
Regulation at 57 FR 37263 effective date corrected 39275, 41173
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260.20 (a) amended 38565
261 Clarification 15287
261.2 (c)(2)(iv) revised 38564
261.3 (a)(2)(iii) and (c)(2)(ii)(C) revised; (f) added 37263
Regulation at 57 FR 37263 effective date corrected 39275, 41173
(a)(2)(v) added 41611
(e) removed 49279
261.4 (b)(15) correctly revised 29220
(b)(6)(ii) introductory text and (9) revised 30658
(a)(10) revised 37305
(b)(15) redesignated as (b)(13); (b)(14) added 26424
261.5 (j) amended 41612
(j) amended 26424
261.6 (a)(2)(iii) and (3)(iii) removed; (a)(2)(iv), (v) and (3)(iv) through (viii) redesignated as (a)(2)(iii), (iv) and (3)(iii) through (vii); (a)(4) added 41612
261.31 Table amended 61502
261.32 Amended 37305
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261 Appendix VII amended 37305
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262.34 (a)(1)(iii) introductory text amended; (a)(1)(iii)(B) and (a)(1) concluding text revised; (a)(1)(iv) added; (a)(2) removed 37264
264.1 (g)(2) revised 38564
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264.3 Amended 8683
264.13 (c)(3) added 54460
264.101 (b) revised 8683
264.110 (b)(1), (2) and (3) amended; (b)(4) added 37264
264.111 (c) revised 37265
264.112 (a)(2) revised 37265
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264.140 (b)(1), (2) and (3) amended; (b)(4) added 37265
264.142 (a) introductory text revised 37265
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264.143 (f)(10) introductory text revised 42835
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264.145 (f)(11) introductory text revised 42836
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264.147 (a)(7), (b)(7) and (f)(6) revised; (h)(4) and (5) added 42836
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264.314 (e) redesignated as (f); (a)(2), (b), and (d)(1)(ii) revised; new (e) added 54460
264.316 (b) and (c) revised 54460
264.552—264.553 (Subpart S) Added 8683
264.570 (a) revised; (c) added 61502
264.571 (a) amended; (b) revised 61503
264.572 Revised 61503
264.573 (a)(4), (b) introductory text and (i) revised; (b)(3) added 61503
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264.1036 OMB number 18017
264.1062 OMB number 18017
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264.1065 OMB number 18017
264.1100—264.1102 (Subpart DD) Added 37265
265.1 (c)(6) revised 38564
(b) amended 8685
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(c)(10) revised; interim 29884
265.13 (c)(3) added 54461
265.110 (b)(1), (2) and (3) amended; (b)(4) added 37267
265.111 (c) revised 37267
265.112 (d)(4) amended 37267
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265.140 (b) revised 37267
265.142 (a) introductory text revised 37267
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265.143 (e)(10) introductory text revised 42843
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265.147 (a)(7), (b)(7) and (f)(6) revised; (h)(4) and (5) added 42843
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265.150 OMB number 18017
265.221 (h) added 37267
265.301 (d)(1) revised 30658
265.314 (f) redesignated as (g); (a)(2), (b) and (c)(1)(ii) revised; new (f) added 54461
265.316 (b) and (c) revised 54461
265.440 (a) revised; (c) added 61503
265.441 (a) amended; (b) revised 61504
265.442 Revised 61504
265.1035 OMB number 18017
265.1064 OMB number 18017
265.1100—265.1102 (Subpart DD) Added 37268
266 Meeting 6607
266.40—266.44 (Subpart E) Removed 41612
266.100 (a) and (f) introductory text amended 38564
(b)(1) revised 41612
266.101 (c)(1) amended; (c)(2) revised 38564
266.103 (b)(2)(ii) introductory text, (iii), (3)(ii)(B), (v), (c)(1) introductory text, (ii)(A), (C), (iii), (vi), (5) and (7)(ii)(B) revised 38564
(c)(1) and (3) revised 45000
266.104 (f)(1) revised 38565
266.106 (b)(7) introductory text, (d)(1) and (5) revised; (d)(3) amended 38565
266.107 (a) revised 38566
266.108 (c) amended 38566
266.112 (b)(2)(i) revised 38566
266 Appendix IX amended 38566
Appendix IX corrected 44999
268.1 (e)(4) and (5) added; interim 29884
268.2 (g) revised; (h) added 37270
Regulation at 57 FR 37270 effective date corrected 39275, 41173
(c) revised 8685
(i) added; interim 29884
268.3 (b) suspended in part to 6-17-93 14319
268.5 (h)(2)(ii) amended; (h)(2)(iv) revised; (h)(2)(v) redesignated as (h)(2)(vi); new (h)(2)(v) added 37270
Regulation at 57 FR 37270 effective date corrected 39275, 41173
268.7 (a)(1)(iii), (iv), (2) introductory text, (3) (iv), (v), (4)

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introductory text, (b)(4) introductory and (5) introductory text revised; (a)(1)(v), (3)(vi) and (d) added **37270**
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268.9 (d) revised **37271**
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(a) revised; interim 29885
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268.35 (c), (d) and (e) revised; eff. 10-13-92 to 5-8-93 ..... **47776**
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268.36 Added **37271**
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268.37 Added; interim 29885
268.40 (b) revised; (d) added **37272**
Regulation at 57 FR 37272 effective date corrected **39275, 41173**
(b) revised; interim 29885
268.41 (a) introductory text revised; (a) table amended; (c) added **37272**
Regulation at 57 FR 37272 effective date corrected **39275, 41173**
(a) table amended; interim 29885
268.42 (a) Table 2 amended; (b) and (d) revised **37273**
Regulation at 57 FR 37273 effective date corrected **39275, 41173**
(a) Table 2 suspended in part to 6-17-93 14319
(a) Table 2 amended; interim 29885
268.43 (a) table amended **37274**
Regulation at 57 FR 37274 effective date corrected **39275, 41173**
(a) table amended; interim 29886
268.45 Added **37277**
Regulation at 57 FR 37277 effective date corrected **39275, 41173**
268.46 Added **37280**
Regulation at 57 FR 37280 effective date corrected **39275, 41173**
268.50 (a)(1) and (2) introductory text revised **37281**
Regulation at 57 FR 37281 effective date corrected **39275, 41173**
268 Appendix II revised **37281**
270.2 Amended 8685

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270.13 (n) added **37281**
270.14 (b)(2) revised **37281**
Regulation at 57 FR 37281 effective date corrected **39275, 41173**
270.42 (e)(3)(ii)(B) revised; Appendix I amended **37281**
Regulation at 57 FR 37281 effective date corrected **39275, 41173**
Appendix I amended 8685
Appendix I amended; interim 29886
270.72 (b)(6) revised **37282**
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271.1 (j) Tables 1 and 2 amended **37282**
(j) Table 1 amended **37306, 47385, 54461, 55117, 61504**
Regulation at 57 FR 37282 effective date corrected **39275, 41173**
(a) revised **41612**
Authority citation revised **61504**
(j) Table 1 corrected 6854
(j) Table 1 amended 8685
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271.16 (a)(3)(ii) revised 26424
271.24 Revised; interim **60132**
271.26 Added **41612**
(g) amended; (h) and Table 1 added 26424
272.1 Revised 3500
272.2 Added 3500
272.700 (a) and (b) revised **45576**
272.701 Introductory text, (a) introductory text, (1), (2)(ii) introductory text, (b), (c) and (d) revised **45576**
272.1200 (a) and (b) revised **47266**

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272.1301 Introductory text, (a), (b) and (c)(2) revised 3500
272 Appendix A added 3500
279 Added 41612
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279.11 Note added 26425
279.12 (c)(3) added 26425
279.21 (a) revised 26425
279.22 Amended 26425
279.23 (b) removed; (a) redesignated as introductory text and (a)(1), (2) and (3) redesignated as (a), (b) and (c) 26425
279.40 (a)(4) and (d)(4) amended 26425
279.42 (a) revised; (b)(1) amended 26425
279.43 (b) revised 26425
279.45 Introductory text and (d)(1)(ii) amended; (d)(1)(iii) added 26426
279.51 (a) revised 26426
279.52 (b)(6)(viii)(C) amended 26426
279.54 Introductory text, (a), and (c)(1)(ii) amended; (c)(1)(iii) added 26426
279.60 (b)(1) amended 26426
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280.110 Redesignated as 280.114; new 280.110 redesignated from 280.106 and revised (OMB number) 9051
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305 Added; interim 7706
307 Added 5475
310 Technical correction 29353
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372 Technical correction 37888
374 Added 55040
374.3 (c) corrected 61612
403.6 OMB number 18017
403.7 (a)(3)(iv) amended; (a)(3)(iv)(A), (B) and (C) added 9386

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1602.170-9 Regulation at 57 FR 14359 confirmed 54001
1605—1609 Designated as Subchapter B 54001
1609 Regulation at 57 FR 14359 confirmed 54001
1632.170 Regulation at 57 FR 14360 confirmed 54001
1632.171 Regulation at 57 FR 14360 confirmed 54001
1632.172 Regulation at 57 FR 14360 confirmed 54001
1652.216-71 Regulation at 57 FR 14360 confirmed 54001
1652.232-70 Regulation at 57 FR 14360 confirmed 54001
1652.232-71 Regulation at 57 FR 14360 confirmed 54001

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Chapter 18—National Aeronautics and Space Administration (Parts 1800—1899)

1801.104-370 (e) and (f) amended 58719
1801.370 (a)(1)(ii) and (b) amended 58719
1804.170 (b) amended 58719
1804.202 (a) amended 58719
1804.671-4 (ss) revised 58719
1804.671-6 (d) revised 58719
1804.671-7 Introductory text amended 58719
1804.677-1 (c) revised; interim 60737
1804.677-4 (b) revised; interim 60737
1804.677-6 (n)(2), (4) and (q) revised; interim 60738
1805.202 Revised 58719
1806.203 Added 58719
1807.103 (a)(1)(ii) (C) through (G) redesignated as (a)(1)(ii)(D) through (H); (a)(1)(i)(B) redesignated as new (a)(1)(ii)(C); (b)(1)(ii)(B) (*3*) through (*7*) redesignated as (b)(1)(ii)(B)(*4*) through (*8*); (b)(1)(ii)(A)(*2*) redesignated as new (b)(1)(ii)(B)(*3*); new (a)(1)(i)(B) and new (b)(1)(ii)(A)(*2*) added 58719
1807.7102 (b)(2) (iii) through (vii) redesignated as (b)(2) (iv) through (viii); (b)(1)(ii) redesignated as new (b)(2)(iii); new (b)(1)(ii) added 58719
1809.105 Added 58720
1809.105-1 Added 58720
1809.506 Redesignated from 1809.507; (a) and (b) amended 58720
1809.507 Redesignated as 1809.506 58720
1809.508-2 Amended 58720
1815.507 Removed 58720
1817.7002-2 Amended 58720
1817.7002-3 Amended 58720
1827.406 (b)(1)(v) revised 58720
1827.409 (l) added 58720
1828.2 Added 58720
1828.106-1 Revised 58720

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1831.205-70 Amended 58720
1832.402-2 Added 4086
1832.7001—1832.7008 (Subpart 1832.70) Added 4086
1833.214 Redesignated as 1833.215 58720
1835.003-70 Amended 58720
1835.070 (a) amended 58720
1837.7000—1837.7001-4 (Subpart 1837.70) Added 58720
1839.7000—1839.7007 (Subpart 1839.70) Revised 58721
1842.202-70 (a)(6)(iii) amended 58725
1845.302-1 (a) revised 58725
1845.302-73 Added 58725
1849.110 Heading revised 58725
1852.204-70 Heading and (c) amended 58725
1852.232-83 Added 4088
1852.232-84 Added 4088
1852.235-70 Revised 58725
1853.204-70 Heading revised 58726
1870.303 Appendix I amended 58726

Chapter 20—Nuclear Regulatory Commission (Parts 2000—2099)

Chapter 20 Revised 61157
2001.602-3 (c) corrected 8449
2009.570-2 Corrected 8449
2012.104-70 (b)(1) amended 26253
2015.407-70 Revised 26253
2015.604 (b) corrected 8449
2015.605 Corrected 8450
2015.611 Corrected 8450
2015.670 Revised 26254
2027—2033 (Subchapter E) Correctly designated 12988
2030.201-5 Revised 26254
2052 Corrected 8450
2052.212-72 Amended 26254
2052.215-73 Redesignated as 2052.215-74; new 2052.215-73 added 26254
2052.215-74 Redesignated as 2052.215-75; new 2052.215-74 redesignated from 2052.215-73 26254
2052.215-75 Redesignated as 2052.215-76; new 2052.215-75 redesignated from 2052.215-74 26254
2052.215-76 Redesignated as 2052.215-77; new 2052.215-76 redesignated from 2052.215-75 26254
2052.215-77 Redesignated as 2052.215-78; new 2052.215-77 redesignated from 2052.215-76; (d)(1) amended 26254
2052.215-78 Redesignated as 2052.215-79; new 2052.215-78 redesignated from 2052.215-77 and revised 26254
2052.215-79 Redesignated as 2052.215-80; new 2052.215-79 redesignated from 2052.215-78 26254
2052.215-80 Redesignated as 2052.215-81; new 2052.215-80 redesignated from 2052.215-79 26254
2052.215-81 Redesignated as 2052.215-83; new 2052.215-81 redesignated from 2052.215-80 26254
2052.215-82 Redesignated as 2052.215-84; new 2052.215-82 added 26254
2052.215-83 Redesignated as 2052.215-85; new 2052.215-83 redesignated from 2052.215-81 and revised 26254
2052.215-84 Redesignated as 2052. 215-86; new 2052.215-84 redesignated from 2052.215-82 26254
2052.216-74 (b)(2) corrected 8450
2052.231-70 Corrected 8450

Chapter 24—Department of Housing and Urban Affairs (Parts 2400—2499)

2401 Authority citation revised 59787
2401.601-70 Revised 59787
2401.601-71 Revised 59787
2401.601-72 Removed; new 2401.602-72 redesignated from 2401.601-73 and revised 59787
2401.601-73 Redesignated as 2401.601-72; new 2401.601-73 redesignated from 2401.601-74 and revised 59787
2401.601-74 Redesignated as 2401.601-73 59787
2401.603-2 (c) revised 59787

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2401.603-3 (b) amended 59787
2402 Authority citation revised 59787
2402.101 Amended 59787
2403 Authority citation revised 59788
2403.303-70 (Subpart 2403.3) Heading amended 59788
2403.670 Added 59788
2405 Authority citation revised 59788
2405.301 (Subpart 2405.3) Added 59788
2406 Authority citation revised 59788
2406.304-70 Removed; new 2406.304-70 redesignated from 2406.304-71 59788
2406.304-71 Redesignated as 2406.304-70; new 2406.304-71 redesignated from 2406.304-72; (c) revised 59788
2406.304-72 Redesignated as 2406.304-71 59788
2409 Authority citation revised 59788
2409.501 Removed 59788
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2409.504 Introductory text revised 59788
2413 Authority citation revised 59788
2413.505-2 (b) revised 59788
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2414.406-3 Revised 59788
2415 Authority citation revised 59788
2415.407 (a) revised 59788
2415.604 Revised 59789
2415.608 (a) revised 59789
2415.611 Removed 59789
2415.611-70 Removed 59789
2415.612 Redesignated from 2415.613 and revised 59787
2415.612-70 Redesignated from 2415.613-70 and revised 59789
2415.613 Redesignated as 2415.612; new 2415.613 added 59789
2415.613-70 Redesignated as 2415.612-70; new 2415.613-70 added 59789
2415.613-71 Removed; new 2415.613-71 added 59789

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2415.613-72 Added 59789
2416 Authority citation revised 59790
2416.504 Revised 59790
2419 Authority citation revised 59790
2419.708 (Subpart 2419.7) Added 59790
2425 Added 59790
2425.402 Added 59790
2426 Authority citation added 59790
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2428 Authority citation revised 59790
2428.203 Redesignated as 2428.204 59790
2428.203-70 Redesignated as 2428.204-70 59790
2428.204 Redesignated from 2428.203 59790
2428.204-70 Redesignated from 2428.203-70 59790
2432 Authority citation revised 59790
2432.402 Revised 59790
2432.906 (Subpart 2432.9) Added 59790
2433 Authority citation revised 59790
2433.103 Revised 59790
2433.103-70 Removed; new 2433.103-70 redesignated from 2433.103-71 59790
2433.103-71 Redesignated as 2433.103-70 59790
2433.104 (f) redesignated as (g) 59790
2433.104-70 Removed 59790
2436 Authority citation revised 59790
2436.602-2 (a) amended 59790
(3) added 59791
2436.602-4 Revised 59791
2436.602-5 Amended 59791
2437 Authority citation revised 59791
2437.110 (g) and (h) added 59791
2437.205 (Subpart 2437.2) Heading revised; (b)(6) amended 59791
2446 Authority citation amended 59791

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2446.710 (Subpart 2446.7) Added....59791
2452 Authority citation revised....59791
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2452.203-71 Added (OMB number)....59791
2452.215-70 (b) amended (OMB number)....59791
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107.601 (e) revised....12545
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107.620 (a)(1) amended; (a)(2) removed; (a)(3) redesignated as (a)(2)....12545
171 Interpretation....48739
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172.504 (c) introductory text, (f)(1) and (4) revised; (f)(9) and (10) added....45460
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172.505 (a) revised....45460
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173.31 (c) Table I amended....45460
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173.244 Heading revised....45463
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176.600 (d) amended 45465
177 Authority citation revised 45465
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177.33 (c)(4) and (d)(1) amended 12905
177.805 (a) designation removed 45465
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177.848 (f) table revised; (d) table and (e)(5) amended 45465
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178.270–5 (a), (c) and (d) amended 45465
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193.2817 (b) introductory text amended 14522
193.2819 (a), (d) and (f) amended 14522
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193 Appendix A revised 14523
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Table I is in the CFR Index and Finding Aids revised as of January 1, 1993. Removals during 1992 are in the December 1992 LSA (List of CFR Sections Affected).

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